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THIS INDEX is based on a consolidation of contents entries appearing in the January-December issues of the **Federal Register** together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the **Federal Register** where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Department of the Interior, Office of Surface Mining	Listing of Directives which are considered in effect with respect to current operations of the Bureau. Historical listing of Directives not currently in effect. Internet address: http://www.osmre.gov/directiv.htm	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington, DC 20240 One copy only, no charge. Telephone 202–208–2608	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone 202–208–2608
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Phone 202–523–9277
Legal Services Corporation	LSC Index lists decisions, opinions, statements of policy, manuals, and other records of general interest to members of the public in understanding the activities of the Corporation. The index contains records from 1975 to date.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250. No charge.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250.
Department of Transportation, Federal Highway Administration (FHWA)	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1968-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Treasury, Departmental Offices	Index of Selected Records, July 1967 to Dec. 31, 1994. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, Federal Law Enforcement Training Center, Office of Thrift Supervision.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.7. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220 Telephone 202–622–0990
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Phone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone 202–245–1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1990 incorporates all additions and deletions through Nov. 3, 1989; (b) Current index November 1989-December 1991.	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. Apr. 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. Apr. 21, 1975 to date	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202–254–6314

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Index of Commission administrative manuals and instructions to staff that affect a member of the public. Apr. 21, 1975 to date. (Commission instructions no longer in use are not included in this index)		
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA, 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL, 60604 Region 6: 1500 East Bannister Rd., Kansas City, MO 64131 Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map – Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Prices: 14≥x36≥ $4.00 per map; 10≥x28≥ $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secreatry, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since Apr. 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Policy and Program Analysis Division (NAA), National Archives, College Park, MD 20740-6001 One copy only (free).	Policy and Program Analysis Division (NAA), Room 3200, National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740-6001. 301-713-6730
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year		NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550

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	Numerical index of the following NSF agency-wide issuances and Important Notices in effect as of Jan. 24, 1986: (1) Office of the Director Staff Memoranda (O/D's); (2) NSF Bulletins; (3) NSF Manuals/Circulars; (4) NSF Handbooks; and (5) NSF Important Notices. O/D's are used by the NSF Director and Deputy Director to communicate information to the staff. O/D's also may be used to convey short-term policy statements or the initial statement of long-term policy. NSF Bulletins transmit approved changes to policy and convey administrative or "housekeeping" information. Significant NSF policy and procedure are located in NSF Manuals. NSF Circulars (historically used to communicate policies and procedures of a continuing nature) are being converted to Manuals and will be discontinued. Handbooks, less formal than Manuals, provide compendia of information concerning NSF programs, i.e., they do not establish NSF policy. Important Notices are the Director's primary means of communicating with organizations receiving or eligible for NSF support. Important Notices are issued over the Director's signature and convey information on NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.		
	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550
	Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 86-18)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free)	For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550

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	NSF Guide to Programs, A composite listing of summary information about NSF support programs, as of October 1985. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 85-40)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy gratis; or Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price $5.00	
	NSF Grant Policy Manual. A compendium of basic NSF grant policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements amoung Federal granting agencies. (NSF Publication 77-47)	Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-81001-4. Unit Price $13.00	NSF Division of Grants and Contracts. Room 1150, 1800 G St., NW., Washington, DC 20550
Office of Personnel Management	Handbook of Publications, Periodicals, and Operating Manuals, OPM-OCAS-PSD-01. As of September 1996. A listing of publications, periodicals, and operating manuals arranged in alphabetical order by title within each OPM issuing organization. This handbook contains some information formerly published in the Index to Information (no longer published).	Publishing Management Branch, Office of Personnel Management, Room 5H35, 1900 E St. NW., Washington, DC 20415-0001.	OPM Library or any OPM Office, including regional and area offices
Pennsylvania Avenue Development Corporation	PADC Freedom of Information Act (FOIA) Index; this index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since Oct. 27, 1972, to date. The index is updated semi-annually (Mar. and Sept.).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703. Fees charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Office of the General Counsel	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005; Charge $0.15 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, 202–326–4040 (202–326–4179 for TTY and TDD), Suite 240, 1200 K St., NW., Washington, DC 20005
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. GPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operations Manual	
Pension Benefit Guaranty Corporation, Participant and Employer Appeals Department	Index to Pension Benefit Guaranty Corp. Appeals Board decisions; from Feb. 28, 1980, to present; contains closed appeal case decision letters that are final decisions of the Appeals Board made pursuant to PBGC regulation, 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp.	
Department of Veterans Affairs	Board of Veterans' Appeals Index I–01–1, an index to appellate decisions. Decisions of the BVA that were written prior to 1977 are available only in a "digest" form that consists of summaries of decisions, organized by subject. Final decisions are published in redacted form from 1977 through 1993. The text of these decisions are on microfiche and may be retrieved by subject matter through the use of BVA Decisions Index I-01-1 for the following years: 1977 through 1993.	The microfiche index may be purchased for approximately $22.50 per copy from: Promisel & Korn, Inc., 7201 Wisconsin Ave., Suite 620, Bethesda, MD 20814. Make check payable to: Promisel & Korn, Inc.	The index is available for inspection at Department of Veterans Affairs regional offices.
	Board of Veterans' Appeals Decisions CD-ROM are available in CD-ROM format. Decisions from 1992 through 1995 may be searched by subject or by any word that appears in them. Included in this format are BVA Indexes for 1993 and 1994 decisions; and a subject index, identified as "VOCABULARY" that pertains to the following years: 1993, 1994 and 1995.	The Board of Veterans' Appeals Decisions CD-ROM may be purchased for $19.00 from: Superintendent of Documents, P.O. Box 371954, Pittsburg, PA 15250-7954. Make check payable to: Superintendent of Documents.	The CD-ROM is available for copying and inspection at Department of Veterans' Affairs regional offices or at the Board of Veterans' Appeals Research Center, 811 Vermont Avenue, NW., Washington, DC 20420.
Department of Veterans Affairs	Department of Veterans Affairs Publication I–03–1. All information is current as of April 1991. Classification subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the index without charge from the VA Service and Distribution Center, Forms and Publications Services (901P), P.O. Box 7010, Hines, IL 60141.	VA Central Office, IRM Policies and Standards Service (045A3), Room 583, 810 Vermont Ave., NW., Washington, DC 20420. Phone: 202–273–8129 -OR- Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Department of Veterans Affairs, or ask your Directory Assistance Operator for the number in your area.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 178

RIN 3206–AJ13

Procedures for Settling Claims

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to amend its regulation on procedures for settling claims. The amendments reflect the recent transfer within OPM of the authority to settle claims by advising individuals where they now may file such claims.

EFFECTIVE DATE: Effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, (202) 606–1700.

SUPPLEMENTARY INFORMATION: The United States General Accounting Office originally settled claims concerning federal employees'compensation and leave, compensation of deceased employees, and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries. On June 30, 1996, the Legislative Branch Appropriations Act of 1996 transferred the authority to settle these claims from the General Accounting Office to the Director of the Office of Management and Budget. See Sec. 211, Pub. L. 104–53, 109 Stat. 535. On June 28, 1996, the Acting Director of the Office of Management and Budget issued a determination order redelegating to OPM the authority to settle claims against the United States involving federal employees' compensation and leave, deceased employees' compensation, and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries. Congress subsequently codified these changes through additional legislation. See Pub.L. 104–316, 110 Stat. 3826.

The Director of OPM initially delegated the claims settlement authority to the Office of General Counsel. On April 10, 2000, the Director of OPM transferred the claims settlement authority to the Office of Merit Systems Oversight and Effectiveness. Consequently, OPM is amending section 178.102(e)(1), as well as section 178.207(b) and (c), to reflect that individuals should file Part 178 claims with the Office of Merit Systems Oversight and Effectiveness rather than with the Claims Adjudication Unit, Office of the General Counsel.

Waiver of Notice of Proposed Rulemaking

I find, under 5 U.S.C. 553(b)(3)(B), that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because these amendments merely reflect an organizational change within OPM and do not affect the rights of federal employees to file claims for settlement under Part 178. In addition, potential claimants must know, as soon as possible, where they now should file their claims.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 178

Administrative practice and procedure, Claims, Compensation, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

For the reasons set forth in the preamble, OPM is amending 5 CFR part 178 as follows:

PART 178—PROCEDURES FOR SETTLING CLAIMS

Subpart A—Administrative Claims—Compensation and Leave, Deceased Employees' Accounts and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries

1. The authority citation for subpart A continues to read as follows:

Authority: 31 U.S.C. 3702; 5 U.S.C. 5583; 38 U.S.C. 5122; Pub. L. No. 104–53, § 211, 109 Stat. 535 (Nov. 19, 1995); E.O. 12107.

2. In § 178.102, revise paragraph (e)(1) to read as follows:

§ 178.102 Procedures for submitting claims.

* * * * *

(e) *Where to submit claims.* (1) All claims under this section should be sent to the Program Manager, Office of Merit Systems Oversight and Effectiveness, Room 7671, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Telephone inquiries regarding these claims may be made to (202) 606–7948.

* * * * *

Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees

1. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 5581, 5582, 5583.

§ 178.207 [Amended]

2. In § 178.207, remove the words "Claims Adjudication Unit, Office of General Counsel" from paragraph (b) and the words "Claims Adjudication Unit" from paragraph (c). Add in their place the words "Office of Merit Systems Oversight and Effectiveness."

[FR Doc. 00–16708 Filed 6–30–00; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV00–958–1 FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) under Marketing Order No. 958 for the 2000–2001 and subsequent fiscal periods from $0.09 to $0.08 per hundredweight of onions handled. The

Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess Idaho-Eastern Oregon onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning on July 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.09 per hundredweight to $0.08 per hundredweight of onions handled.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members, four handler members and one public member, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.09 per hundredweight that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 6, 2000, and unanimously recommended 2000–2001 expenditures of $1,047,637 and an assessment rate of $0.08 per hundredweight of onions handled during the 2000–2001 and subsequent fiscal periods. The Committee estimated that the 2000–2001 onion crop will approximate 9,600,000 hundredweight of onions. In comparison, the 1999–2000 fiscal period budget was established at $1,133,785 on an estimated assessable onion crop of 9,200,000 hundredweight of onions. The Committee recommended the decreased assessment rate to help offset the negative effects of the currently depressed onion market.

The Committee anticipates that assessment income during the 2000–2001 fiscal period will be approximately $768,000, which is $60,000 less than the $828,000 assessment income estimated for its 1999–2000 budget. The Committee now projects a total income of approximately $944,372 and expenditures of about $1,025,098 by June 30, 2000. At the time the 1999–2000 fiscal period budget was recommended, the Committee had estimated that it would draw up to $260,785 from its operating reserve. However, since current assessment income is greater than anticipated and expenditures are less than budgeted, the operating reserve may actually be depleted by about $80,726. Thus, the Committee has estimated that its operating reserve will be approximately $859,793 on July 1, 2000, and, if it requires an estimated $234,637 from its monetary reserve as budgeted during the 2000–2001 fiscal period, approximately $625,156 on July 1, 2001. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate operating reserve.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $235,105 for marketing order administration, which includes salary, office, travel and Committee expenses, $58,532 for production research, $675,000 for market promotion including paid advertising, $54,000 for export market development, and $25,000 for marketing order contingencies. Budgeted expenses for these items in the 1999–2000 fiscal period were $224,685, $69,100, $750,000, $60,000, and $30,000, respectively.

The Committee has based its recommended assessment rate decrease on the 2000–2001 crop estimate and fiscal period expenditures estimate, the current condition of the onion market, and the current and projected size of its monetary reserve. The decreased assessment rate should provide $768,000 in income, which, when combined with interest income of $45,000 and operating reserve funds of $234,637, would be adequate to cover budgeted expenses. As noted above, the

Committee estimates it will have approximately $859,793 in its operating reserve at the end of the 1999–2000 fiscal period, which should be adequate to cover any income shortages. This amount is within the maximum permitted by the order of approximately one fiscal period's expenditures (§ 958.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department and are locally published. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 34 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 270 onion producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The Committee estimates that all of the handlers of Idaho-Eastern Oregon onions ship under $5,000,000 worth of onions on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of onion producers in the regulated production area, the average gross annual producer revenue from onions is about $230,000. Based on this information, it can be concluded that the majority of Idaho-Eastern Orogon onion handlers and producers may be classified as small entities, excluding receipts from other sources.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.09 per hundredweight to $0.08 per hundredweight of onions handled. Both the $0.08 assessment rate and the 2000–2001 budget of $1,047,637 were unanimously recommended by the Committee at its April 6, 2000, meeting. The $0.08 assessment rate is $0.01 lower than the 1999–2000 rate. The Committee recommended a decreased assessment rate to help offset the negative effects of the currently depressed onion market. The anticipated 2000–2001 crop of 9,600,000 hundredweight is approximately 400,000 hundredweight larger than the crop estimate used to establish the 1999–2000 budget. The $0.08 rate should provide $768,000 in assessment income, which, when combined with estimated interest income of $45,000 and up to $234,637 from the operating reserve, should be adequate to meet the 2000–2001 fiscal period's budgeted expenses.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $1,047,637 which include increases in administrative expenses, salaries, and committee expenses, and decreases in production research, market promotion, export market development, and contingency fund expenses. Prior to recommending this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Promotion and Export Market Development Committees. Alternative expenditure levels were discussed and rejected by these subcommittees, and ultimately by the full Committee, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $235,105 for marketing order administration, which includes salary, office, travel and Committee expenses, $58,532 for production research, $675,000 for market promotion including paid advertising, $54,000 for export market development, and $25,000 for marketing order contingencies. Budgeted expenses for these items in the 1999–2000 fiscal period were $224,685, $69,100, $750,000, $60,000, and $30,000, respectively.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the F.O.B. price for the 2000–2001 onion season could average $5.50 per hundredweight of onions. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period ($768,000) as a percentage of the projected total F.O.B. revenue ($52,800,000) would be 0.0145 percent. This figure indicates that the $0.08 assessment rate will have a relatively insignificant impact on the Idaho-Eastern Oregon onion industry.

This action decreases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 6, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on May 15, 2000 (65 FR 30920). A copy of the proposed rule was mailed to the Committee office, which in turn notified Committee members and industry members. The proposed rule was also made available on the Internet by the Office of the Federal Register. A 30-day comment period ending June 14, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 2000–2001 fiscal period begins on July 1, 2000, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.240 is revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 2000, an assessment rate of $0.08 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: June 27, 2000.

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs

[FR Doc. 00–16741 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV00–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1999–2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which established interim and final free and restricted percentages for domestic inshell hazelnuts for the 1999–2000 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR Part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 1999–2000 marketing year (July 1, 1999, through June 30, 2000). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the

three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 38,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The quantity marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled or otherwise disposed of by handlers (restricted). The preliminary free percentage releases 80 percent of the adjusted inshell trade demand. The adjusted inshell trade demand used by the Board was the average of the past three years' sales (4,136 tons), plus an additional 10 percent for market development (414 tons), minus the declared carryin from last year's crop (110 tons).

The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

Based on the NASS crop estimate of 38,000 tons, the Board computed and announced preliminary free and restricted percentages of 10 percent and 90 percent, respectively, at its August 31, 1999, meeting. This action initially released 3,552 tons of hazelnuts from the 1999 supply for domestic inshell use as the preliminary free percentage. The preliminary restricted percentage of the 1999 supply for export and kernel markets thus initially totaled 31,143 tons.

A special meeting of the Board was held on October 26, 1999, to increase the percentage of free product released for market development from 10 percent (414 tons) to 20 percent (827 tons) which is 120 percent of the three-year average trade acquisitions of inshell hazelnuts. The Board took this action because it determined that the demand for domestic inshell hazelnuts was greater than previously thought. Based upon the new adjusted trade demand of 4,854 tons, the Board computed revised preliminary free and restricted percentages of 11 percent and 89 percent, respectively. This revised preliminary free percentage (11 percent) released 3,883 tons of hazelnuts from the 1999 supply for domestic inshell use rather than the initially computed 3,552 tons. The revised preliminary restricted percentage (89 percent) of the 1999 supply for export and kernel markets thus totaled 30,720 tons, rather than 31,143 tons.

Under the order, the Board must meet on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (*i.e.*, desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by the Secretary. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 1999, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 15 percent free and 85 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carryout, were recommended at 16 percent free and 84 percent restricted effective March 1, 2000. The final percentages release 5,474 tons of inshell hazelnuts from the 1999 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate (36,548 tons) and the following supply and demand information for the 1999–2000 marketing year:

	Tons
Inshell Supply:	
(1) Total production (Board's estimate)	36,548
(2) Less substandard, farm use (disappearance)	3,271
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	33,277
(4) Plus undeclared carryin as of July 1, 1999, subject to regulation	4
(5) Supply subject to regulation (Item 3 plus Item 4)	33,281
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	4,136
(7) Increase to encourage increased sales (20 percent of Item 6)	827
(8) Less declared carryin as of July 1, 1999, not subject to regulation	109
(9) Adjusted Inshell Trade Demand	4,854
(10) Desirable carryout on August 31, 2000 (15 percent of Item 6)	620
(11) Adjusted Inshell Trade Demand plus desirable carryout (Item 9 plus Item 10)	5,474

	Free	Restricted
Percentages:		
(12) Interim final percentages (Item 9 divided by Item 5)	15	85
(13) Final percentages (Item 11 divided by Item 5) × 100	16	84

In addition to complying with the provisions of the order, the Board also considered the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its

computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. At its October 26 and November 15, 1999, meetings the Board recommended that an increase of 20 percent (827 tons) for market expansion be included in the inshell trade demand which was used to compute the interim percentages. The established final percentages are based on the final inshell trade demand, and made available an additional 620 tons for desirable carryout effective March 1, 2000. The total free supply for the 1999–2000 marketing year is 4,756 tons of hazelnuts, which is the final trade demand of 4,136 tons plus the 620 tons for desirable carryout. This amount is 135 percent of prior years' sales and exceeds the goal of the Guidelines.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 800 producers of hazelnuts in the production area and approximately 22 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. Using these criteria, virtually all of the producers are small agricultural producers and an estimated 19 of the 22 handlers are small agricultural service firms. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities, excluding receipts from other sources.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. The current volume control procedures fully supply the domestic inshell market while preventing oversupplies in that market.

Inshell hazelnuts sold to the domestic market provide higher returns to the industry than are obtained from shelling. The inshell market is inelastic and is characterized as having limited demand and being prone to oversupply.

Industry statistics show that total hazelnut production has varied widely over the last 10 years, from a low of 13,000 tons in 1989 to a high of 47,000 tons in 1997. Average production has been around 27,000 tons. While crop size has fluctuated, the volume regulations contribute toward orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small. For instance, production in the shortest crop year (1989) was 48 percent of the 10-year average (1989–1998). Production in the biggest crop year (1997) was 173 percent of the 10-year average. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic inshell market. That market is available to all handlers, regardless of handler size.

NASS statistics show that the producer price per pound has increased over the last 5 years, from $.32 in 1993 to $.49 in 1998.

The Board discussed not regulating. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the United States. This production represents, on average, less than 5 percent of total U.S. tree nut production, and less than 5 percent of the world's hazelnut production.

This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the United States. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to the Secretary release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Currently, U.S. hazelnut production can be successfully allocated between the inshell domestic and secondary markets. One of the best secondary markets for hazelnuts is the export market. Inshell hazelnuts produced under the marketing order compete well in export markets because of quality. Europe, and Germany in particular, is historically the primary world market for U.S. produced inshell hazelnuts. A third market is for shelled hazelnuts (kernels) sold domestically. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand secondary markets, especially the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This final rule does not change those requirements. In addition, as noted in the initial

regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this regulation.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and encouraged to participate in Board deliberations. Like all Board meetings, those held on August 31, October 26, and November 15, 1999, were open to the public and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 4 are handlers, 5 are producers, and one is a public member. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 19, 2000. Copies of the rule were mailed by the Board's staff to all Board members and hazelnut handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 20, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (65 FR 2841, January 19, 2000), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The percentages continued herein apply to all merchantable hazelnuts handled during the 1999–2000 marketing year; (2) the 1999–2000 marketing year ends June 30, 2000; and (3) handlers are aware of this action and are prepared to comply with the marketing percentages.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 65 FR 2841 on January 19, 2000, is adopted as a final rule without change.

Dated: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16740 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV00–985–4 FIR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled. The Committee is responsible for local administration of the marketing order which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The marketing year begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning June 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Committee for the 2000–2001 and subsequent marketing years from $0.10

per pound to $0.09 per pound of spearmint oil handled.

The spearmint oil order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1995–1996 and subsequent marketing years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on February 23, 2000, and unanimously recommended 2000–2001 expenditures of $212,900 and an assessment rate of $0.09 per pound of spearmint oil handled. In comparison, last year's budgeted expenditures were $219,028. The assessment rate of $0.09 is $0.01 lower than the rate in effect prior to this action. The Committee discussed assessment rates both lower and greater than $0.09 per pound. However, the Committee decided that an assessment rate of less than $0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000–2001 marketing year include $178,500 for Committee expenses and $34,400 for administrative expenses. For 2000–2001, a total of $156,000 is budgeted for agency fees, $21,000 is budgeted for Committee per diem and travel, $16,500 is budgeted for agency staff travel, and $10,700 is budgeted for copying, mail handling, postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total $165,000, $22,133, $16,843, and $10,900. For 2000–2001, funds also are budgeted for market development ($5,000) and for compliance ($1,000). Expenditures for these items in 1999–2000 are expected to total $5,000.

The Committee estimates that spearmint oil sales for the 2000–2001 marketing year will be approximately 2,058,474 pounds, which should provide $185,263 in assessment income. This assessment income, when combined with $13,029 from the monetary reserve, $3,500 in interest income, and $11,108 from the sale of certain assets should be adequate to meet this year's expenses of $212,900. The Committee estimates that its monetary reserve will be approximately $156,757 at the beginning of the 2000–2001 marketing year. It is not anticipated that the reserve fund will exceed the maximum permitted by the order of approximately one marketing year's operational expense (§ 985.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled. The Committee estimates that spearmint oil sales will total 2,058,474 pounds in the 2000–2001 marketing year. The $0.09 per pound assessment rate should provide an estimated income of $185,263, which, when combined with $13,029 from the monetary reserve, $3,500 in interest income, and $11,108 from the sale of certain assets should be adequate to meet this year's expenses of $212,900. The Committee estimates that its monetary reserve will be approximately $156,757 at the beginning of the 2000–2001 marketing year and that the fund will not exceed the maximum permitted by the order of approximately one marketing year's operational expense (§ 985.42).

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $212,900 which is $6,128 less than approved for last year. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee and the current marketing year's actual and anticipated expenditures. Alternative expenditure levels and assessment rates were discussed by the Committee officers prior to presentation to the full Committee for approval. The Committee

decided that an assessment rate of less than $0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000–2001 marketing year include $178,500 for Committee expenses and $34,400 for administrative expenses. For 2000–2001, a total of $156,000 is budgeted for agency fees, $21,000 is budgeted for Committee per diem and travel, $16,500 is budgeted for agency staff travel, and $10,700 is budgeted for copying, mail handling, postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total $165,000, $22,133, $16,843, and $10,900. For 2000–2001, funds also are budgeted for market development ($5,000) and for compliance ($1,000). Expenditures for these items in 1999–2000 are expected to total $5,000.

Based on 1999 prices, the average price paid to producers for both Scotch and Native spearmint oils during the 2000–2001 marketing year could be about $9.80 per pound. Therefore, the estimated assessment revenue for the 2000–2001 marketing year as a percentage of total producer revenue could be about 0.92 percent.

This action continues to decrease the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 23, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on April 5, 2000 (65 FR 17756). A copy of the rule was mailed to the Committee office, which in turn provided copies for Committee members and industry members. Further, the interim final rule was made available on the Internet by the Office of the Federal Register. A 30-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on May 5, 2000, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 65 FR 17756 on April 5, 2000, is adopted as a final rule without change.

Dated: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16738 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–989–4 FIR]

Raisins Produced From Grapes Grown In California; Final Free and Reserve Percentages for 1999–2000 Crop Natural (Sun-Dried) Seedless and Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule that established final volume regulation percentages for 1999–2000 crop Natural (sun-dried) Seedless raisins (Naturals) and Zante Currant raisins (Zantes) covered under the Federal marketing order for California raisins (order). The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989),

both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect final free and reserve percentages for Naturals and Zantes for the 1999–2000 crop year, which began August 1, 1999, and ends July 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect final volume regulation percentages for 1999–2000 crop Naturals and Zantes covered under the order. The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. Final percentages for Zantes were recommended by the Committee on January 13, 2000, and for Naturals on February 11, 2000.

Computation of Trade Demands

Section 989.54 of the order prescribes the procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 12, 1999, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year and by adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for each varietal type is equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one-half of October. In accordance with these provisions, the Committee computed and announced 1999–2000 trade demands for Naturals and Zantes at 254,475 and 1,855 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	Naturals	Zantes
Prior year's shipments	[1] 314,013	3,542
Multiplied by 90 percent	0.90	0.90
Equals adjusted base	282,612	3,188
Minus carryin inventory	101,946	1,906
Plus desirable carryout	73,809	573
Equals computed trade demand	254,475	1,855

[1] Pursuant to § 989.54(a), 1996–97 shipments were utilized to compute trade demand because 1998–99 shipments were limited.

Computation of Preliminary Volume Regulation Percentages

As required under § 989.54(b) of the order, the Committee met on October 1, 1999, and announced a preliminary crop estimate of 294,519 tons for Naturals. This estimate was almost 15 percent lower than the 10-year average of 346,325 tons. Naturals are the major varietal type of California raisins. Combining the carryin inventory of 101,946 tons with the 294,519-ton crop estimate resulted in a total available supply of 396,465 tons, which was much higher than the 254,475-ton trade demand. Thus, the Committee determined that volume regulation for Naturals was warranted. The Committee announced preliminary free and reserve percentages for Naturals which released 65 percent of the computed trade demand since the field price had not yet been established. The preliminary percentages were 56 percent free and 44 percent reserve. The Committee authorized its staff to modify the preliminary percentages to release 85 percent of the trade demand once the field price was established. The field price was established on October 22, 1999, and the preliminary percentages were thus modified to 73 percent free and 27 percent reserve.

Also at its October 1, 1999, meeting, the Committee announced a preliminary crop estimate for Zantes at 4,187 tons, which is comparable to the 10-year average of 4,463 tons. Combining the carryin inventory of 1,906 tons with the 4,187-ton crop estimate resulted in a total available supply of 6,093 tons, which is significantly greater the 1,855-ton trade demand. Thus, the Committee determined that volume regulation for Zantes was warranted. The Committee

announced preliminary free and reserve percentages for Zantes which released 65 percent of the computed trade demand since field price had not yet been established. The preliminary percentages were 29 percent free and 71 percent reserve. Like Naturals, the Committee authorized its staff to modify the preliminary percentages to release 85 percent of the trade demand once the field price was established. The field price was established on October 12, 1999, and the preliminary percentages were thus modified to 38 percent free and 62 percent reserve. As in past seasons, the Committee submitted its marketing policy to the Department for review. In addition, the Committee determined that volume regulation was not warranted for the other varietal types of raisins covered under the order.

Computation of Final Volume Regulation Percentages

Pursuant to 989.54(c) and (d) of the order, the Committee met on January 12, 2000, and announced interim percentages for Zantes at 50.75 percent free and 49.25 percent reserve. These interim percentages were based on a revised Zante crop estimate of 3,650 tons. At that meeting, the Committee also computed final percentages for Zantes which, when applied to the final 3,650-ton crop estimate, tend to release the full Zante trade demand. Final percentages compute to 51 percent free and 49 percent reserve.

The Committee met on February 11, 2000, and announced interim percentages for Naturals at 84.75 percent free and 15.25 percent reserve. These interim percentages were based on a revised crop estimate of 298,477 tons. The Committee also computed final percentages for Naturals which, when applied to the final 298,477-ton crop estimate, tend to release the full trade demand. Final percentages compute to 85 percent free and 15 percent reserve. The Committee's calculations to arrive at final percentages for Naturals and Zantes are shown in the table below.

FINAL VOLUME REGULATION PERCENTAGES

[Tonnage as natural condition weight]

	Naturals	Zantes
Trade demand	254,475	1,855
Divided by crop estimate	298,477	3,650
Equals free percentage	85	51
100 minus free percentage equals reserve percentage	15	49

In addition, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for Naturals and Zantes by the establishment of final percentages that released 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins that are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

For Naturals, both 10 plus 10 offers were held in May 2000 where a total of about 44,000 tons of raisins were made available to handlers. This quantity is less than the amount specified in the order. As previously stated, the Committee utilized 1996–97 shipments of 314,013 tons as a base to compute trade demand because 1998–99 shipments were limited. Similarly, as specified in § 989.54(g), 1996–97 shipments were used as a base to compute the amount of tonnage to be made available in the 10 plus 10 offers. Thus, 31,402 tons should have been made available in each of the 10 plus 10 offers (62,804 tons total). However, this amount was not available in the reserve. Thus, all of the reserve pool raisins were made available to handlers for free use through the 10 plus 10 offers. A total of 265 tons of reserve Naturals were purchased in the offers.

Adding the 265 tons of 10 plus 10 raisins to the 254,475-ton trade demand figure, plus 101,946 tons of 1998–99 carryin inventory equates to about 356,686 tons natural condition raisins, or 334,835 tons packed raisins, made available for free use, or to the primary market thus far this season. This is 121 percent of the quantity of Naturals shipped during the 1998–99 crop year (295,401 natural condition tons or 277,305 packed tons).

For Zantes, both Zante 10 plus 10 offers were made available simultaneously in early February 2000 and 708 tons of raisins were purchased by handlers. Adding the 708 tons of 10 plus 10 raisins to the 1,855 ton trade demand figure, plus 1,906 tons of 1998–99 carryin inventory equates to 4,469 tons natural condition raisins, or about 3,985 tons packed raisins, made available for free use, or to the primary market. This is 126 percent of the quantity of Zantes shipped during the 1998–99 crop year (3,542 natural condition tons or 3,158 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, these additional offers of reserve raisins make even more raisins available to primary markets, which is consistent with the Department's Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts

of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities, excluding receipts from other sources.

Pursuant to § 989.54(d) of the order, this rule continues in effect final volume regulation percentages for 1999–2000 crop Natural and Zante raisins. The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season for Naturals because the final crop estimate of 298,477 tons combined with the carryin inventory of 101,946 tons results in a total available supply of 400,423 tons, which is about 57 percent higher than the 254,475-ton trade demand. Volume regulation is warranted for Zantes this season because the crop estimate of 3,650 tons combined with the carryin inventory of 1,906 tons results in a total available supply of 5,556 tons which is about 200 percent higher than the 1,855-ton trade demand. The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

Raisin-variety grapes can be marketed as fresh grapes, crushed for use in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. These supply fluctuations can cause producer price instability and disorderly market conditions. Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, excluding the 1997–98 season for which complete data is not yet available, producer prices for Naturals have remained fairly steady between the 1992–93 through the 1998–99 seasons, although production has varied. As shown in the table below, production has varied from a low of 240,469 tons in 1998–99 to a high of 387,007 tons in 1993–94, or 61 percent. According to Committee data, during years of Natural volume regulation, the total producer return per ton, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Production (natural condition tons)	Producer prices
1998–99	240,469	[1] $1,290
1997–98	382,448	[2] 925.50
1996–97	272,063	1,049
1995–96	325,911	1,007
1994–95	378,427	928
1993–94	387,007	904
1992–93	371,516	901

[1] No volume regulation.
[2] Return to date, reserve pool still open.

In addition, the Committee is implementing an export program for Naturals. Through this program, the Committee hopes to export more Naturals thereby helping to build and maintain export markets, and ultimately improve producer returns. Volume regulation helps the industry not only to manage its supply of raisins, but also maintain market stability.

Regarding Zantes, Zante production is much smaller than that of Naturals. Volume regulation has been implemented for Zantes during the 1994–95, 1995–96, 1997–98, and 1998–99 seasons. Various programs to utilize reserve Zantes were implemented when volume regulation was in effect during those seasons. As shown in the table following this paragraph, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (free tonnage plus reserve Zantes) from $412.56 per ton in 1994–95 to an estimated high of $730 per ton in 1997–98. The Committee is implementing an export program for Zantes, in addition to Naturals. Through this program, the Committee hopes to export more Zantes, thereby continuing to reduce the industry's oversupply, helping to build export markets, and ultimately improve producer returns. Volume regulation helps the industry not only to manage oversupplies of raisins, but also maintain market stability.

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION

[*Natural condition tons]

Crop year	Production*	Inventory*		Total season average producer price (per ton)
		Desirable	Physical	
1998–99	3,880	573	1,906	(1)

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION—Continued

[*Natural condition tons]

Crop year	Production*	Inventory*		Total season average producer price (per ton)
		Desirable	Physical	
1997–98	4,826	694	1,188	[2] $730.00
1996–97	4,491	987	549	[3] 1,150.00
1995–96	3,294	782	2,890	711.32
1994–95	5,377	837	4,364	412.56

[1] Data not yet available, reserve pool open.
[2] Estimate.
[3] No volume regulation.

Free and reserve percentages are established by variety, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. However, volume regulation may also be utilized in short crop years so that the industry may utilize its export program as described to maintain its export markets and provide stability in the domestic market. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended only two of the nine raisin varieties defined under the order for volume regulation this season.

The free and reserve percentages release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For Naturals, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. All handlers are regulated based on the quantity of raisins that they acquire from producers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action will not impose any additional reporting or recordkeeping burdens on either small or large handlers. The forms require information that is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

An interim final rule concerning this action was published in the **Federal Register** on April 10, 2000 (65 FR 18871). Copies of the rule were mailed by the Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period, which ended June 9, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab/html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 69 FR 18871 on April 10, 2000, is adopted as a final rule without change.

Dated: June 27, 2000

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16739 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 925 and 950

[No. 2000–30]

RIN 3069–AA94

Amendment of Membership Regulation and Advances Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting as final, with several changes, the Interim Final Rule that: Amended its Membership Regulation and Advances Regulation to conform certain provisions to the requirements of the

Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act); and made certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo* members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame.

DATES: This final rule shall be effective on July 3, 2000.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, Jennifer R. Salamon, Program Analyst, (202) 408–2974, or Patricia L. Sweeney, Program Analyst, (202) 408–2872, Office of Policy, Research and Analysis; or Sharon B. Lake, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Federal Home Loan Banks (Banks), which provide advances and other financial services to their member institutions. *See* 12 U.S.C. 1422a(a) (1994). Institutions, including those not meeting the Qualified Thrift Leader (QTL) test, may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Bank Act and the Finance Board's implementing Membership Regulation. *See id.* secs. 1424, 1426, 1430(e)(3) (1994); 12 CFR part 925.[1] Members may obtain advances from a Bank subject to certain statutory and regulatory requirements. *See* 12 U.S.C. 1430(a) (1994). Prior to recent amendments to the Bank Act, discussed further below, access to advances by non-QTL members was restricted in various ways. *See id.* sec. 1430(e).

The recently enacted Modernization Act[2] amended certain membership eligibility provisions, and repealed certain stock purchase and non-QTL advances provisions, in the Bank Act. *See* Pub. L. No. 106–102, secs. 602, 603, 604(c), (d)(1), 605, 608 (1999).

Accordingly, the Finance Board adopted the Interim Final Rule, which amended its regulations to conform them to the Modernization Act amendments. *See* 65 FR 13866 (March 15, 2000). The Finance Board also took the opportunity in the Interim Final Rule to make certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo* members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame. *See id.*

The Interim Final Rule provided for a 30-day public comment period, which closed on April 14, 2000. The Finance Board received a total of 7 comment letters on the Interim Final Rule. Commenters included 4 Banks and three financial institutions trade associations. Commenters generally focused their comments on how the three-year average total assets number for community financial institutions (CFIs) should be calculated. These comments are discussed below.

II. Analysis of the Final Rule

A. Removal of the 10 Percent Residential Mortgage Loans Requirement For Community Financial Institution Applicants For Membership; Definition of "Community Financial Institution"—§§ 925.1(ff), 925.6(b), 925.10, 925.14(a)(3)

Section 4(a)(2)(A) of the Bank Act formerly provided that an insured depository institution may become a member of a Bank only if it has at least 10 percent of its total assets in residential mortgage loans (10 percent requirement). *See* 12 U.S.C. 1424(a)(2)(A) (1994). Section 4(a)(2) also provided that an insured depository institution commencing business operations after January 1, 1989 (*de novo* institution), may become a member of a Bank if at least 10 percent of its total assets are in residential mortgage loans, within one year after the commencement of its operations. *See id.* sec. 1424(a)(2). Section 4(a)(2) is implemented by §§ 925.6(b), 925.10 and 925.14(a)(3) of the Finance Board's Membership Regulation. *See* 12 CFR 925.6(b), 925.10, 925.14(a)(3).

The Modernization Act amended section 4(a)(2) of the Bank Act to exempt from the 10 percent requirement any applicants, including *de novo* institutions, that qualify as "community financial institutions" *See* Modernization Act, sec. 605 (*to be codified at* 12 U.S.C. 1424(a)(2)(A)(4)). The Modernization Act defines a "community financial institution" to mean an institution whose deposits are insured under the Federal Deposit Insurance Act (FDIA) and that has, as of the date of the transaction at issue, less than $500 million in average total assets, based on an average of total assets over the three years preceding that date. *See id.* sec. 602 (*to be codified at* 12 U.S.C. 1422(13)). Accordingly, the Interim Final Rule amended §§ 925.6(b), 925.10 and 925.14(a)(3) of the Membership Regulation to include an exemption from the 10 percent requirement for CFIs, and added a definition of "community financial institution" in new § 925.1(ff) that mirrored the statutory definition. A definition of "community financial institution" that predates the Modernization Act, in § 925.1(n)(1)(iii), also was removed. The Finance Board requested comments in the Interim Final Rule on what source of data should be used in calculating the average of total assets over the three preceding years.

The issue of how to calculate an institution's average total assets over the three preceding years also arises in the context of the new authority under the Modernization Act allowing CFI members to pledge secured loans for small business or agriculture, or securities representing a whole interest in such secured loans, as security for advances. *See* Modernization Act, section 604(a)(5)(C). The Finance Board recently issued a proposed rule to implement this new advances collateral authority (Advances Collateral Rule). *See* 65 FR 26518 (May 8, 2000). A number of commenters on the Interim Final Rule recommended that the Banks be allowed to calculate average total assets of all of their member institutions on an annual basis, based on calendar year-end financial data available from the institutions' regulatory financial reports filed with their regulators or, in the alternative, based on data available from the institutions' quarterly regulatory financial reports for the preceding three years. Commenters stated that it would be confusing to determine CFI status on a quarterly or monthly basis when § 925.22(b)(1) of the Membership Regulation requires the Banks to calculate annually each member's minimum capital stock requirement using calendar year-end financial data. Commenters stated that calculation of CFI status on a quarterly or monthly basis would result in unnecessary administrative burdens and expense. Other commenters supported quarterly calculations of average total assets based on the institutions' quarterly regulatory financial reports over the three preceding years.

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[1] The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 FR 8253 (Feb. 18, 2000). The Membership Regulation, which formerly was part 933 of the Finance Board's regulations (12 CFR part 933 of the Finance Board's regulations (12 CFR part 933 (1999), was redesignated as part 925. *See* 65 FR 8253, 8260 (to be codified at 12 CFR part 925).

[2] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338, enacted into law on November 12, 1999.

Commenters also stated that calculation of CFI status on a quarterly or monthly basis would cause some members' CFI status to fluctuate more frequently, which, for members approaching the CFI asset cap, could have a chilling effect on their reliance on Bank funding secured by CFI-eligible collateral.

For membership eligibility purposes, the determination of whether an institution applying for Bank membership is a CFI and, therefore, exempt from the 10 percent requirement, is only required to be made by the Bank one time, during the membership application evaluation process. Therefore, the comments regarding the administrative burden and cost of performing more frequent periodic calculations, coordinating with the annual stock purchase calculation, and the effect on use of Bank funding, are inapposite for membership eligibility purposes. Rather, these comments appear to be directed at how CFI status should be calculated for purposes of allowing CFI members to use the expanded collateral authority under the Modernization Act. These comments, and the definition of CFI for advances collateral purposes, are more appropriately addressed in the Finance Board's final Advances Collateral Rule.

Under the Membership Regulation, the calculation of the 10 percent requirement is based on the applicant's total assets and residential mortgage loans drawn from its most recent quarterly regulatory financial report filed with its appropriate regulator. *See* 12 CFR 925.10. Since the calculation of average total assets to determine CFI status is necessary in order to determine whether the 10 percent requirement applies, it would be consistent with the current membership application review process at the Banks to use the same total assets data from the applicant's most recent quarterly regulatory financial report for the CFI calculation. In addition, since an average of total assets over three years is required for the CFI calculation, it also would be reasonable to include in the calculation the total assets data from the quarterly regulatory financial reports filed with the applicant's appropriate regulator for the immediately preceding 11 calendar quarters.

Because the calculation of the three-year total assets average affects the determination of CFI status for both membership and advances purposes, the definition of CFI belongs in § 900.1, which contains general definitions applying to all Finance Board regulations. Accordingly, this final rule removes the definitions of "community financial institution" and "community financial institution asset cap" (§ 925.1(ff) and (gg)) from the Membership Regulation. The final Advances Collecteral Rule will add the calculation for membership purposes as described above, as well a the calculation for advances purposes, to a definition of "community financial institution" in § 900.1. The final Advances Collateral Rule also will add the definition of "community financial institution asset cap" to § 900.1.

B. Readmission to Membership—§ 925.30

The final rule makes technical revisions to the language on readmission to membership in § 925.30 of the Interim Final Rule for greater clarity.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act, U.S.C. 601 *et seq.*, do not apply.

IV. Paperwork Reduction Act

For the reasons stated in the Interim Final Rule, the Finance Board adopted the Interim Final Rule on an expedited basis to conform provisions of its regulations to the recently enacted statutory amendments to the Bank Act. Due to the expedited nature of this rulemaking, the Finance Board has not completed its analysis of the information collection requirements contained in the final rule. The amendments in the final rule may result in a reduction in the information collection burden for institutions that qualify as community financial institutions, and an increase in the number of respondents that apply for Bank membership. The Finance Board intends to submit to the Office of Management and Budget the information collection requirements contained in this final rule in accordance with the requirements of section 3507(d) of the Paperwork Reudction Act of 1995, 44 U.S.C. 3507(d).

List of Subjects in Parts 925 and 950

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Interim Final Rule amending title 12, chapter IX, parts 925 and 950, Code of Federal Regulations, which was published at 65 FR 13866 (March 15, 2000), is adopted as final with the following changes:

PART 925—MEMBERS OF THE BANKS

1. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

§ 925.1 [Amended]

2. Amend § 925.1 by removing paragraphs (ff) and (gg).

3. Revised § 925.30 to read as follows:

§ 925.30 Readmission to membership.

(a) *In general.* An institution that has withdrawn from membership, or otherwise terminated its membership, may not be readmitted to membership in any Bank for a period of 5 years from the date on which its membership terminated.

(b) *Exceptions.* An institution that transfers membership between two Banks without interruption shall not be deemed to have withdrawn from Bank membership. Any institution that withdrew from Bank membership prior to December 31, 1997, and for which the 5-year period has not expired, may apply for membership in a Bank at any time, subject to the approval of the Finance Board and the requirements of 12 CFR part 925.

Dated: June 23, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–16790 Filed 6–30–00; 8:45 am]

BILLING CODE 6725–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–15–AD; Amendment 39–11800; AD 2000–13–01]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company, Inc. AE 3007A and AE 3007C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines. This AD requires the removal from service of certain turbine wheels before exceeding new, reduced cyclic life limits. This amendment is prompted by a refined life analysis that was performed by the manufacturer.

The actions specified by this AD are intended to prevent an uncontained turbine wheel failure, which could result in damage to the airplane.

DATES: Effective date September 1, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce Allison, P.O. Box 420, Indianapolis, IN 46206–0420; telephone: (888) 255–4766. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) applicable to Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines was published in the **Federal Register** on August 5, 1999 (64 FR 42622). That action proposed to require the removal of certain turbine wheels from service before exceeding new, reduced cyclic life limits listed in Rolls-Royce Alert Service Bulletin (ASB) AE 3007A–A–72–105/AE 3007C–A–72–105, dated January 29, 1999.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Rule

One commenter supports the proposed rule as written.

Part Numbers

One commenter requests the addition of part numbers (P/N) to the compliance section. The commenter states that the way the NPRM is written, paragraphs (a)(2) and (b)(2) could be interpreted to mean that all stage 1 and stage 2 turbine wheels, respectively, should have lower lives. In fact, the life reduction is limited to a few part numbers. The addition of the affected part numbers would prevent confusion.

The FAA agrees. To eliminate confusion, paragraph (a)(2) of the compliance section of the final rule has been revised to specify P/Ns 23065891 and 23062373. Paragraph (b)(2) of the compliance section of the final rule has been revised to specify P/Ns 23065892 and 23063462.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 325 engines of the affected design in the worldwide fleet. The FAA estimates that 260 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 63 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. The estimated cost of the lost cycles due to the reduction of the engine cycle life limit is $57,800 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,028,000. The manufacturer of the affected turbine wheels has advised the FAA that it may defray the cost of the reduced life limits, thus reducing the overall cost to operators.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–13–01 Allison Engine Company, Inc.: Amendment 39–11800. Docket No. 99–NE–15–AD.

Applicability

Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines, installed on, but not limited to, Cessna Aircraft Company 750 series airplanes and Empresa Brasileira de Aeronautica S.A. (Embraer) EMB–145 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent an uncontained turbine wheel failure, which could result in damage to the airplane, accomplish the following:

Remove and Replace

(a) Remove stage 1 turbine wheels, part numbers (P/Ns) 23065891 and 23062373, and replace with new or serviceable parts as follows:

(1) For stage 1 turbine wheels with serial numbers (SNs) listed in Table 5 of Rolls-Royce Alert Service Bulletin (ASB) AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29, 1999, replace before accumulating 9,000 engine cycles since new (CSN).

(2) For all other stage 1 turbine wheel SNs with P/Ns 23065891 and 23062373, replace before accumulating 13,100 engine CSN.

(b) Remove stage 2 turbine wheels, P/Ns 23065892 and 23063462, and replace with new or serviceable parts as follows:

(1) For stage 2 turbine wheels with SNs listed in Table 6 of Rolls-Royce ASB AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29, 1999, replace before accumulating 7,800 engine CSN.

(2) For all other stage 2 turbine wheel SNs with P/Ns 23065892 and 23063462, replace before accumulating 8,400 engine CSN.

Alternative Life Limits

(c) This AD establishes new cyclic life limits for the turbine wheels identified in paragraphs (a) and (b) of this AD. Except in accordance with paragraph (d) of this AD, no alternative life limits may be approved for the turbine wheels identified in paragraphs (a) and (b) of this AD.

Alternative Method of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Documents Incorporated by Reference

(f) This AD references Rolls-Royce Alert Service Bulletin AE 3007A–A–72–105/AE 3007C–A–72–105, dated January 29, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Allison, P.O. Box 420, Indianapolis, IN 46206–0420; telephone: (888) 255–4766. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on September 1, 2000.

Issued in Burlington, Massachusetts, on June 19, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–16232 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–05–AD; Amendment 39–11804; AD 2000–13–05–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. This action requires initial and repetitive ultrasonic inspections for cracks in fan blade dovetail roots, and if necessary, replacement with serviceable parts. This amendment is prompted by reports of fan blade failures due to dovetail root cracks. The actions specified in this AD are intended to prevent possible multiple fan blade failures, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective August 2, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 2, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011–44–1332–249428; fax 011–44–1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176; fax 781–238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines with fan blade part numbers (P/N's) FK22580, FK23411, FK25441, and FK25968 installed. The CAA received a report of multiple fan blade root cracks in a factory engine. A recent inspection of a set of fan blades from a factory fleet leader test engine has identified small cracks in the blade roots on the convex root flank. To date, this is the only engine that has exhibited the blade root cracks. This condition, if not corrected, could result in possible multiple fan blade failures, which could result in an uncontained engine failure and damage to the airplane.

Manufacturer's Service Information

Rolls-Royce plc (RR) has issued service bulletin (SB) No. RB.211–72–C878, Revision 1, dated December 10, 1999, that specifies procedures for ultrasonic inspections for cracks in fan blade dovetail roots. The CAA classified this SB as mandatory and issued airworthiness directive (AD) 003–11–99 in order to assure the airworthiness of these engines in the U.K.

Differences Between This AD and the Manufacturer's Service Information

This AD applies only to those engines with fan blades having four specific part numbers. The manufacturer's service bulletin is not limited in that fashion. The FAA expects that future changes in the design of the affected fan blades will eliminate the need for the required inspections and that those newer fan blades will have different part numbers. The installation of the newer part number will therefore have the effect of removing the engine from the applicability of this AD.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K. and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary

for products of this type design that are certificated for operation in the United States.

Requirements of This AD

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Because an unsafe condition has been identified that is likely to exist or develop on other RR RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 series turbofan engines of the same type design, with fan blade P/N's FK22580, FK23411, FK25441, and FK25968 installed, this AD requires:

- Initial ultrasonic inspections within 200 cycles after the effective date of this AD, or within 200 cycles of achieving 2,800 cycles since new, whichever is later; and
- Repetitive ultrasonic inspection of the fan blade root within 340 cycles since the last inspection.

The actions are required to be completed in accordance with the service bulletin described previously.

Immediate Adoption

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–05–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–13–05 Rolls-Royce plc: Amendment 39–11804. Docket 2000–NE–05–AD.

Applicability

This AD is applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines with fan blade part numbers (P/N's) FK22580, FK23411, FK25441, and FK25968 installed. These engines are installed on but not limited to Airbus A330–341 and A330–342 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated below, unless already completed.

To prevent possible multiple fan blade failures, which could result in an uncontained engine failure and damage to the airplane, do the following:

Ultrasonic Inspections

(a) Ultrasonically inspect the dovetail roots of all fan blade P/N's FK22580, FK23411, FK25441, and FK25968 with more than 2800 cycles since new (CSN), for cracks as follows:

Initial Inspection

(1) Initially inspect the fan blade in accordance with paragraph 3.A.(1) or paragraph 3.B.(1) through paragraph 3.B.(8) of RR service bulletin (SB) No. RB.211–72–C878, revision 1, dated December 10, 1999, at the later of the following:

(i) Within 200 fan blade cycles in service (CIS) after the effective date of this AD; or

(ii) Within 200 fan blade CIS of achieving 2800 CSN.

Repetitive Inspections

(2) Thereafter, inspect at intervals not to exceed 340 CIS, since last inspection, in accordance with paragraph 3.A.(1) or paragraph 3.B.(1) through paragraph 3.B.(8) of RR SB No. RB.211–72–C878, revision 1, dated December 10, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall

submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference Material

(d) The actions required by this AD shall be performed in accordance with the following service documents:

Document No.	Pages	Revision	Date
RB.211–72–C878	1–2	1	December 10, 1999
	3–4	Original	November 19, 1999
	Appendix	Original	November 19, 1999
Total pages: 7.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011–44–1332–249428; fax: 011–44–1332–249223. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date of This AD

(e) This amendment becomes effective on August 2, 2000.

Issued in Burlington, Massachusetts, on June 21, 2000.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–16231 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–196–AD; Amendment 39–11806; AD 2000–13–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This AD requires repetitive detailed visual and ultrasonic inspections of the main landing gear (MLG) to detect fatigue cracks, and repair if necessary; replacement of certain nose landing gear (NLG) handwheel controllers and certain placards with new placards; installation of steering angle recording software; and corrective action for exceeding certain steering angles. This AD also requires an AFM revision to limit the nose wheel steering angle for pushback and towing and to limit the nose wheel steering for powered turns. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent MLG failure due to fatigue cracking, which could result in reduced structural capability of the airplane and collapse of the MLG.

DATES: Effective August 7, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on January 12, 2000 (65 FR 1833). That action proposed to require repetitive detailed visual and ultrasonic inspections of the main landing gear (MLG) to detect fatigue cracks, and repair if necessary; replacement of certain nose landing gear (NLG) handwheel controllers and certain placards with new placards; installation of steering angle recording software; corrective action for exceeding certain steering angles; and an AFM revision to limit the nose wheel steering angle for pushback and towing and to limit the nose wheel steering for powered turns.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Exclude Certain Airplanes From Proposed Actions

The commenter (an operator) requests that certain airplanes be excluded from the actions specified in the proposed AD. (Although the proposed rule identifies no affected U.S.-registered airplanes, the commenter has since taken delivery of several Model A330 series airplanes.) Subsequent to issuance of the proposed rule, the manufacturer developed the following production modifications for Model A330 and A340 series airplanes (all of which have been installed on the commenter's airplanes):

Modification 47487: Introduces scallop on the growth main fitting of the main landing gear (MLG)

Modification 47500: Introduces brake steering and control unit (BSCU) S8D for the MLG

Modification 47701: Provides for application of markings for maximum turning angle (±65 degrees) for towing and pushback of the nose landing gear doors

Modification 47787: Introduces ACMS software to record nose wheel steering angles exceeding 67 degrees during towing and pushback

FAA Response

The FAA concurs with the request. The Direction Générale de l'Aviation

Civile (DGAC), which is the airworthiness authority for France, advises that the four production modifications are acceptable alternative means of compliance with all requirements of the parallel French airworthiness directives. Based on the data presented, the FAA has revised the applicability of the final rule to remove the inspection and modification requirements for airplanes on which all four of the referenced production modifications have been installed.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

None of the airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to inspect the main landing gear; approximately 7 work hours to replace the controller; approximately 1 work hour to replace the placards; approximately 1 work hour to install the software program; and approximately 1 work hour to revise the AFM. The average labor rate is $60 per work hour. The manufacturer has previously committed to bearing the cost of the necessary parts to accomplish the actions. Based on these figures, the cost impact of the inspections required by this AD would be $60 per airplane, per inspection cycle, and $660 per airplane for the remaining actions.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to modify the functional software of the brake steering and control unit (BSCU) rather than replace the nose wheel steering handwheel controllers, the modification would take approximately 1 work hour. Based on this figure, the cost impact of the optional modification would be $60 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–13–07 Airbus Industrie: Amendment 39–11806. Docket 99–NM–196–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category, except those on which Airbus Modifications 47487, 47500, 47701, and 47787 have been installed in production.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent main landing gear (MLG) failure due to fatigue cracking, which could result in reduced structural capability of the airplane and collapse of the MLG, accomplish the following:

Inspection of the MLG

(a) Prior to the accumulation of 800 total landings on the MLG, or within 120 landings after the effective date of this AD, whichever occurs later, perform detailed visual and ultrasonic inspections of the MLG to detect fatigue cracks, as specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A330 series airplanes: Accomplish the detailed visual and ultrasonic inspections in accordance with Airbus Service Bulletin A330–32A3088, Revision 02, dated June 10, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Detailed visual and ultrasonic inspections accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–32A3088, dated October 16, 1998; or Revision 01, dated November 20, 1998; are acceptable methods of compliance for the inspection requirements of paragraph (a)(1) of this AD.

(2) For Model A340 series airplanes: Accomplish the detailed visual and ultrasonic inspections in accordance with Airbus Service Bulletin A340–32A4124, Revision 01, dated November 20, 1998.

Note 4: Detailed visual and ultrasonic inspections accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A340–32A4124, dated October 16, 1998, are acceptable methods of compliance for the inspection requirements of paragraph (a)(2) of this AD.

Repetitive Inspections

(b) If no crack is detected during the inspection required by paragraph (a)(1) or

(a)(2) of this AD: Repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed 120 landings.

Corrective Actions

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD: Prior to further flight, perform a detailed magnetic particle inspection of the MLG to detect fatigue cracks, in accordance with Airbus Service Bulletin A330–32A3088, Revision 02, dated June 10, 1999, or Airbus Service Bulletin A340–32A4124, Revision 01, dated November 20, 1998, as applicable; and repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Reporting

(d) Within 10 days after accomplishing any inspection required by paragraph (a), (b), or (c) of this AD, report the inspection results (both positive and negative) to Airbus Industrie at fax 33(0) 5 61 93 32 73. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Replacement of Nose Wheel Steering Handwheel Controllers or Software Modification

(e) Within 20 days after the effective date of this AD, replace the nose wheel steering handwheel controllers with new controllers, or modify the functional software of the brake steering and control unit (BSCU), as specified in either paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For Model A330 series airplanes: Replace the controllers in accordance with Airbus Service Bulletin A330–32–3091, Revision 01, dated December 2, 1998, or modify the functional software of the BSCU in accordance with Airbus Service Bulletin A330–32–3092, Revision 02, dated June 10, 1999.

Note 5: Replacement of nose wheel steering handwheel controllers with new controllers accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–32–3091, dated November 19, 1998, is an acceptable method of compliance for the replacement requirements of paragraph (e)(1) of this AD.

Note 6: Modification of the functional software of the BSCU accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–32–3092, dated December 18, 1998; or Revision 01, dated February 24, 1999; is an acceptable method of compliance for the software modification requirements of paragraph (e)(1) of this AD.

(2) For Model A340 series airplanes: Replace the controllers in accordance with Airbus Service Bulletin A340–32–4128, Revision 01, dated December 2, 1998, or modify the functional software of the BSCU in accordance with Airbus Service Bulletin A340–32–4131, Revision 01, dated June 10, 1999.

Note 7: Replacement of nose wheel steering handwheel controllers with new controllers accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A340–32–4128, dated November 19, 1998, is an acceptable method of compliance for the replacement requirements of paragraph (e)(2) of this AD.

Note 8: Modification of the functional software of the BSCU accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A340–32–4131, dated February 24, 1999, is an acceptable method of compliance for the software modification requirements of paragraph (e)(2) of this AD.

Replacement of Placards

(f) Within 20 days after the effective date of this AD, replace the placards on the left- and right-hand sides of the aft mechanically-operated nose landing gear doors with new placards, as specified in either paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Model A330 series airplanes: Replace placards in accordance with Airbus Service Bulletin A330–32–3089, dated November 2, 1998.

(2) For Model A340 series airplanes: Replace placards in accordance with Airbus Service Bulletin A340–32–4126, dated November 2, 1998.

Installation of a Software Program

(g) Within 20 days after the effective date of this AD, accomplish either paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model A330–200 series airplanes: Install a software program that automatically records all nose wheel steering angle exceedance above 63 degrees into the Aircraft Condition Monitoring System (ACMS) [*i.e.*, modify the new setup database software by adding the existing operator customized version; and upload the setup database software to the data management unit (DMU)] in accordance with Airbus Service Bulletin A330–31–3033, dated September 13, 1999.

(2) For Model A330–300 and Model A340 series airplanes: Install a software program that automatically records all nose wheel steering angle exceedance above 67 degrees into the ACMS (*i.e.*, modify the new setup database software by adding the existing operator customized version; and upload the setup database software to the DMU) in accordance with Airbus Service Bulletin A330–31–3033, dated September 13, 1999 (for Model A330–300 series airplanes), or Airbus Service Bulletin A340–31–4047, dated September 13, 1999 (for Model A340 series airplanes); as applicable.

Incorporation of Ground and Crew Operating Procedures

(h) Within 20 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting the procedures to incorporate ground operating procedures to limit the nose wheel steering angle for pushback and towing and to limit nose wheel steering for powered turns, in accordance with Flight Operations TELEX (FOT) 999.0099/98, Revision 5, dated May 21, 1999.

Corrective Actions for Exceedance of Nose Wheel Steering Angle

(i) For Model A330–200 series airplanes: If, after 20 days from the effective date of this AD, a 63-degree hand wheel steering is exceeded, a 63 degrees is recorded on the ACMS, or a 60-degree steering is exceeded during towing or pushback, within 4 landings after each occurrence, accomplish the actions required by paragraph (a) of this AD.

(j) For Model A330–300 and Model A340 series airplanes: If, after 20 days from the effective date of this AD, a 65-degree hand wheel steering is exceeded, a 67 degrees is recorded on the ACMS, or a 60-degree steering is exceeded during towing or pushback; within 4 landings after each occurrence, accomplish paragraph (j)(1) and (j)(2) of this AD, as applicable.

(1) Accomplish the actions required by paragraph (a) of this AD.

(2) For airplanes on which Airbus Modification 46804 has been accomplished: Reinstall a positive stop and re-rig the tiller as specified in either paragraph (j)(2)(i) or (j)(2)(ii) of this AD, as applicable.

(i) For Model A330–300 series airplanes: Reinstall a stop and re-rig in accordance with Airbus Service Bulletin A330–32–3091, Revision 01, dated December 2, 1998.

(ii) For Model A340 series airplanes: Reinstall a stop and re-rig in accordance with Airbus Service Bulletin A340–32–4128, Revision 01, dated December 2, 1998.

Alternative Methods of Compliance

(k) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 9: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(m) Except for the repair required by paragraph (c) of this AD: The actions shall be done in accordance with the following Airbus service bulletins and telex, as applicable.

Airbus service bulletin number	Revision level	Service bulletin date
A330–32A3088	02	June 10, 1999.
A340–32A4124	01	November 20, 1998.
A330–32–3091	01	December 2, 1998.
A330–32–3092	02	June 10, 1999.
A340–32–4128	01	December 2, 1998.
A340–32–4131	01	June 10, 1999.
A330–32–3089	Original	November 2, 1998.
A340–32–4126	Original	November 2, 1998.
A330–31–3033	Original	September 13, 1999.
A340–31–4047	Original	September 13, 1999.
Flight Operations TELEX 999.0099/98	Revision 5	May 21, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 10: The subject of this AD is addressed in French airworthiness directives 1998–475–103(B)R1; 1998–473–083(B)R1; and 1999–160–096(B); all dated April 21, 1999.

(n) This amendment becomes effective on August 7, 2000.

Issued in Renton, Washington, on June 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16357 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–18–AD; Amendment 39–11805; AD 2000–13–06]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Model S–61 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Sikorsky Model S–61 helicopters. That AD requires inspecting certain pylon upper and lower hinge web fittings (web fittings) for corrosion or a crack and either repairing certain web fittings or replacing any unairworthy web fittings with airworthy web fittings. That AD also requires creating a log card or equivalent record and implementing a recurring inspection of the web fittings. This amendment retains the requirements of that AD but corrects an error in paragraph (a)(3) by removing the words "and 3.E." This amendment is prompted by an operator notifying the FAA of that error which requires an unnecessary major inspection within 25 hours time-in-service (TIS). The actions specified in this AD are intended to remove an undue burden on the public by superseding the AD and removing the requirement for the major inspection within 25 hours TIS.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of March 30, 2000 (65 FR 13877, March 15, 2000).

Comments for inclusion in the Rules Docket must be received on or before September 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–18–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9–asw–adcomments@faa.gov.

The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brian K. Murphy, Aviation Safety Engineer, ANE–150, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7739, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On March 6, 2000, the FAA issued AD 2000–05–16, Amendment 39–11626 (65 FR 13877, March 15, 2000). That AD for Sikorsky Model S–61 helicopters with pylon, part number (P/N) S6120–76265–001 or S6120–76266–507, installed, requires inspecting and repairing or, if necessary, replacing certain web fittings and the fitting faying surfaces. The AD also requires making an entry on the log card or equivalent record. That action was prompted by the discovery of extensive cracking in the area of the web fitting. That condition, if not corrected, could result in structural failure of certain web fittings due to stress corrosion, subsequent structural failure of the tailboom and loss of control of the helicopter.

Since the issuance of that AD, an operator notified the FAA of an error. That error is the reference in paragraph (a)(3) of the AD to paragraph 3.E. of the Accomplishment Instructions of Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999 (ASB). Requiring paragraph 3.E. of the ASB in paragraph (a)(3) of the AD would inadvertently require conducting a major inspection within 25 hours TIS, which is not intended. The Inspection Plan in Chart A of the ASB refers to paragraph 3.E., which specifies a major recurring inspection at 9000 flight hours or 4 years, whichever is less. That inspection is appropriately covered under paragraph (a)(6) of the AD, which requires entering on the log card or equivalent record the recurring inspection intervals in accordance with Chart A of the ASB.

Since requiring the major inspection within 25 hours TIS is not required to correct the unsafe condition, this AD supersedes AD 2000–05–16. This AD would correct the requirement that inadvertently requires conducting the major inspection in 25 hours TIS by removing the words "and 3.E." from paragraph (a)(3) of the AD. The short

compliance time involved is required because the superseded AD is ambiguous and the previously described major inspection requiring unscheduled disassembly of the helicopter is impractical and unnecessary to maintain safety, and creates an undue burden on the public. Therefore, correcting paragraph (a)(3) by removing the words "and 3.E." is required and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 125 helicopters will be affected by this AD, that it will take approximately 115 work hours to accomplish the inspection and replacement of parts, and that the average labor rate is $60 per work hour. Required parts will cost approximately $75,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,237,500 if the parts have to be replaced on the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–18–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11626 (65 FR 13877, March 15, 2000) and by adding a new airworthiness directive (AD), Amendment 39–11805, to read as follows:

2000–13–06 Sikorsky Aircraft Corporation: Amendment 39–11805. Docket No. 2000–SW–18–AD. Supersedes AD 2000–05–16, Amendment 39–11626, Docket No. 99–SW–61–AD.

Applicability: Model S–61 helicopters with pylon, part number (P/N) S6120–76265–001 or S6120–76266–507, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure due to a crack or corrosion of pylon upper and lower hinge web fittings (web fittings), P/N S6120–76261–012, –013 (upper) or S6120–76262–012, –013 (lower), and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS),

(1) Determine the alloy-temper of the web fittings in accordance with Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999 (ASB), Accomplishment Instructions, paragraph 3.A.

(2) Prepare the web fittings for inspection in accordance with the ASB Accomplishment Instructions, paragraph 3.B.

(3) Inspect the web fitting in accordance with the ASB Inspection Plan, Chart A, and the Accomplishment Instructions, paragraphs 3.C. and 3.D. Nicks, scratches, corrosion pitting or prior rework beyond the limits specified in paragraph 3.C.(5) require approval by the FAA.

(4) Repair or replace web fittings, as necessary, in accordance with the ASB Accomplishment Instructions, paragraph 3.C.(3) through (6). Nicks, scratches, corrosion pitting, or prior rework beyond the limits specified in paragraph 3.C.(5) require approval by the FAA.

(5) If replacing an unairworthy web fitting with an airworthy web fitting, replace it in accordance with the ASB Accomplishment Instructions, paragraph 3.F., prior to further flight.

(6) Create a log card for the pylon, if none exists. Make an entry on the log card or equivalent record implementing recurring inspection intervals in accordance with Chart A of the ASB.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspection, repair, and replacement shall be done in accordance with the Inspection Plan, Chart A, and the Accomplishment Instructions of Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999. This incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 30, 2000 (65 FR 13877, March 15, 2000). Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 18, 2000.

Issued in Fort Worth, Texas, on June 19, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–16356 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–12]

Amendment to Class E Airspace; Oelwein, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Oelwein Municipal Airport, Oelwein, IA. The FAA has developed an Area Navigation (RNAV) Runway (RWY) 13 Standard Instrument Approach Procedure (SIAP) to serve Oelwein Municipal Airport, Oelwein, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the RNAV RWY 13 SIAP in controlled airspace.

In addition a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 13 SIAP, revise the ARP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 28, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–12, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 13 SIAP to serve the Oelwein Municipal Airport, Oelwein, IA. The amendment to Class E airspace at Oelwein, IA will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Oelwein Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR and revise the ARP. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–12." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Oelwein, IA [Revised]

Oelwein Municipal Airport, IA
(Lat. 42°40′51″N., long. 91°58′28″W.)
Hampton NDB
(Lat. 42°41′03″N., long. 91°58′35″W.)

That airspace extending upward from 700 feet above the surface within a 7.3-miles radius of Oelwein Municipal Airport and within 3.5 miles each side of the 302° bearing from the Oelwein NDB extending from the 7.3-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on June 16, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–16662 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–13]

Amendment to Class E Airspace; Fairfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Fairfield Municipal Airport, Fairfield, IA. The FAA has developed an Area Navigation (RNAV) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) to serve Fairfield Municipal Airport, Fairfield, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the RNAV RWY 18 SIAP in controlled airspace.

In addition a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 18 SIAP, revise the ARP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 28, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–13, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 18 SIAP to serve the Fairfield Municipal Airport, Fairfield, IA. The amendment to Class E airspace at Fairfield, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Fairfield Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR and revise the ARP. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower

altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACA–13." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6004 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Fairfield, IA [Revised]

Fairfield Municipal Airport, IA
(Lat 41°03′12″ N., long. 91°58′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-miles radius of Fairfield Municipal Airport and within 2.6 miles each side of the 188° bearing from the Fairfield Municipal Airport extending from the 6.4-mile radius to 9.5 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on June 16, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–16661 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 101B]

Staff Accounting Bulletin No. 101B

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: Staff Accounting Bulletin No. 101 ("SAB 101") was released on December 3, 1999 (64 FR 68936 December 9, 1999) and provides the staff's views in applying generally accepted accounting principles to selected revenue recognition issues. SAB 101A was released on March 24, 2000 (65 FR 16811 March 30, 2000) and delayed for one fiscal quarter the implementation date of SAB 101 for registrants with fiscal years beginning between December 16, 1999 and March 15, 2000. Since the issuance of SAB 101 and SAB 101A, the staff has continued to receive requests from a number of groups asking for additional time to determine the effect, if any, on registrant's revenue recognition practices. This staff accounting bulletin delays the implementation date of SAB 101 until no later than the fourth fiscal quarter of fiscal years beginning after December 15, 1999.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Rodgers, Scott Taub, or Eric Jacobsen, Professional Accounting Fellows, Office of the Chief Accountant (202/942–4400) or Robert Bayless, Division of Corporation Finance (202/942–2960), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549; electronic addresses: RodgersR@sec.gov; TaubS@sec.gov; JacobsenE@sec.gov; or BaylessR@sec.gov.

SUPPLEMENTARY INFORMATION: The statements in the staff accounting bulletins are not rules or interpretations

of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: June 26, 2000.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 101B to the table found in Subpart B.

Staff Accounting Bulletin No. 101B

[The text of Staf Accounting Bulletin No. 101B will not appear in the Code of Federal Regulations.]

The staff hereby amends Question 2 of Section B of Topic 13 of the Staff Accounting Bulletin Series.

Topic 13: Revenue Recognition

* * * * *

B. Disclosures

Question 1

* * * * *

Question 2

Question: Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

Interpretive Response: All registrants are expected to apply the accounting and disclosures described in this bulletin. The staff, however, will not object if registrants that have not applied this accounting do not restate prior financial statements provided they report a change in accounting principle in accordance with APB Opinion No. 20, *Accounting Changes*, and FASB Statement No. 3, *Reporting Accounting Changes in Interim Financial Statements*, no later than the fourth fiscal quarter of the fiscal year beginning after December 15, 1999. In periods subsequent to transition, registrants should disclose the amount of revenue (if material to income before income taxes) recognized in those periods that was included in the cumulative effect adjustment. If a registrant files financial statements with the Commission before applying the guidance in this bulletin, disclosures similar to those described in Staff Accounting Bulletin Topic 11–M, *Disclosure of the Impact that Recently Issued Accounting Standards Will Have on the Financial Statements of a Registrant When Adopted in a Future Period*, should be provided. With regard to question 10 of Topic 13–A and Topic 8–A regarding income statement presentation, the staff would normally expect retroactive application to all periods presented unless the effect of applying the guidance herein is immaterial.

However, if registrants have not previously complied with generally accepted accounting principles, for example, by recording revenue for products prior to delivery that did not comply with the applicable bill-and-hold guidance, those registrants should apply the guidance in APB Opinion No. 20 for the correction of an error.[1] In addition, registrants should be aware that the Commission may take enforcement action where a registrant in prior financial statements has violated the antifraud or disclosure provisions of the securities laws with respect to revenue recognition.

[FR Doc. 00–16580 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8889]

RIN 1545–AV10

Guidance Regarding Claims for Certain Income Tax Convention Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to treaty withholding rates for items of income received by entities that are fiscally transparent in the United States and/or a foreign jurisdiction. The regulations affect the determination of tax treaty benefits available to foreign persons with respect to such items of income.

DATES: *Effective Dates:* These regulations are effective June 30, 2000.

Applicability Dates: These regulations apply to items of income paid on or after June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn R. Pringle, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations relating to the Income Tax Regulations (CFR part 1) under section 894 of the Internal Revenue Code (Code). On June 30, 1997, the IRS and Treasury issued temporary regulations (TD 8722 [1997–2 C.B. 81]) in the **Federal Register** (62 FR 35673, as corrected at 62 FR 46876, 46877) under section 894 of the Code relating to eligibility for benefits under income tax treaties for payments to entities. A notice of proposed rulemaking ([1997–2 C.B. 646]) cross-referencing the temporary regulations was also published in the same issue of the **Federal Register** (62 FR 35755).

Need for Changes

Since the publication of TD 8722 and proposed regulation § 1.894(d)(REG–104893–97, 62 FR 35755), the IRS and Treasury have received numerous comments. This Treasury decision contains changes made in response to some of those comments.

Explanation of Provisions

I. General

These final section 894 regulations clarify the availability of treaty benefits with respect to an item of U.S. source income paid to an entity that is treated as fiscally transparent under the laws of one or more jurisdictions (including the United States) with respect to that item of income. An entity that is treated as fiscally transparent in one jurisdiction but not another is referred to as a hybrid entity. If an item of U.S. source income is paid to a hybrid entity, the United States may regard the entity as fiscally transparent with respect to the item of income and the foreign treaty jurisdiction may regard the entity as deriving the item of income. Alternatively, the United States may regard the entity as deriving the item of income under U.S. tax principles, but a foreign treaty jurisdiction may regard the entity as fiscally transparent and may therefore regard the interest holders as deriving the item of income. This dual classification may give rise to inappropriate and unintended results under tax treaties, such as double non-taxation or double taxation of the item of income, unless the tax treaties are interpreted to resolve the conflict of laws.

These final regulations clarify how to apply U.S. treaties when the entity classification law of the United States and a foreign treaty jurisdiction conflict by providing that a reduced treaty rate for an item of U.S. source income is available only if the income is derived by a foreign recipient resident in the applicable treaty jurisdiction. This general rule, which has been simplified but not substantially changed from the rule contained in the temporary and

[1] APB Opinion No. 20, ¶ 13 and ¶ 36–37 describe and provide the accounting and disclosure requirements applicable to the correction of an error in previously issued financial statements. Because the term "error" as used in APB Opinion No. 20 includes "oversight or misuse of facts that existed at the time that the financial statements were prepared," that term includes both unintentional errors as well as intentional fraudulent financial reporting and misappropriation of assets as described in Statement on Auditing Standards No. 82, *Consideration of Fraud in a Financial Statement Audit*.

proposed section 894 regulations, is discussed in greater detail below.

These final regulations are fully consistent with existing U.S. treaties. They rely on the basic principle that tax treaties are intended to relieve double taxation or excessive taxation. Accordingly, the United States and its treaty partners agree to cede part or all of their taxation rights on income arising from sources within their respective borders on the mutual understanding that the other party is asserting tax jurisdiction over the items of income. This objective is generally achieved through treaty provisions that limit or eliminate the tax that the source state may impose on income arising within its borders to the extent that the income is considered to be derived by a resident of the other jurisdiction. In general, an item of income will be considered derived by a resident for treaty purposes only when the residence country is asserting taxing jurisdiction over the item of income. However, the source state does not necessarily require, as a condition for ceding its taxing jurisdiction, that the income actually be taxed in the residence state or taxed at a rate commensurate with the rate imposed in the source state. The source state and the residence state may come to different conclusions regarding the appropriate taxation principles that apply to a particular type of taxpayer or a particular type of income. Such differences reflect how each state has decided to assert its taxing jurisdiction over that taxpayer or item of income and may or may not affect the source state's willingness to forego its taxing rights in whole or in part during the treaty negotiation process.

The approach adopted in these final regulations is consistent with the evolving multilateral consensus among the member countries of the Organization for Economic Cooperation and Development (OECD) on the appropriate method for source countries to follow to determine if they should provide treaty benefits on items of income paid to fiscally transparent entities, particularly when an entity classification conflict exists between the source and residence states. This evolving multilateral consensus is described in greater detail in the OECD report, "The Application of the OECD Model Tax Convention to Partnerships" (OECD Partnership Report). The report generally provides that a source state is required to grant treaty benefits on income paid to an entity only if the income is considered to be derived by a resident of a treaty partner for purposes of the treaty partner's tax laws. IRS and Treasury will continue to coordinate these issues with U.S. tax treaty partners both bilaterally and multilaterally to resolve substantive issues arising from application of the principles set forth in the section 894 regulations and the OECD Partnership Report.

These regulations apply with respect to all U.S. income tax treaties regardless of whether such treaties contain partnership provisions, unless the competent authorities agree otherwise. As with the proposed and temporary regulations, the final regulations address only the treatment of U.S. source income that is not effectively connected with the conduct of a U.S. trade or business. The IRS and Treasury may issue additional regulations addressing the availability of other tax treaty benefits, such as the application of business profits provisions, with respect to the income of fiscally transparent entities, particularly where a conflict in entity classification exists.

II. Objective Versus Subjective Regulatory Approach

The temporary and proposed section 894 regulations adopted an objective approach to determining whether the United States should grant treaty benefits on U.S. source items of income paid to entities. Application of the regulations did not turn on whether there existed a tax avoidance motive for choosing a particular transaction or structure.

Commentators recommended a narrower approach that would deny treaty benefits on items of income paid to an entity only if the entity served a tax avoidance purpose. As part of this approach, commentators requested implementation of a ruling procedure that could be used to claim treaty benefits by rebutting any deemed tax avoidance motive for the items of income paid to an entity. This suggestion was not adopted. These final regulations are intended to provide objective rules regarding eligibility for treaty benefits on certain items of U.S. source income paid to entities. Although a ruling procedure was not adopted, taxpayers may still invoke the Mutual Agreement Procedures under an applicable treaty in appropriate circumstances.

III. Simplified Standard for Determining When U.S. Source Income Is Derived by a Treaty Resident

The proposed and temporary regulations provided that the tax imposed by sections 871(a), 881(a), 1461, and 4948(a) on an item of income received by an entity is eligible for reduction under the terms of an income tax treaty to which the United States is a party if such item of income is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner of the item of income, and all other applicable requirements for benefits under the treaty are satisfied. The proposed and temporary regulations further provided that an item of income received by an entity is treated as derived by a resident only to the extent the item of income is subject to tax in the hands of a resident of such jurisdiction. Numerous comments were received stating that this general rule needed clarification. As a result, the IRS and Treasury are eliminating the use of the terms beneficial ownership and subject to tax from the general rule, as described in greater detail below.

A. Beneficial Ownership

Commentators requested clarification regarding the relationship between beneficial owner and the § 1.881–3 anti-conduit regulations issued under the authority of section 7701(l). The anti-conduit rules under section 7701(l) are incorporated into the U.S. determination of beneficial owner. They are not separate additional requirements.

The concept of beneficial owner was included in the proposed regulations to explain the circumstances under which a hybrid entity may beneficially own an item of income for purposes of an income tax treaty, in light of the then proposed withholding regulations under § 1.1441–1(c)(6)(ii)(B). However, the definition of beneficial owner in § 1.1441–1(c)(6) of the amended final regulations (TD 8881 [2000–23 I.R.B 1158]) does not apply to claims for reduced withholding under an income tax treaty. Accordingly, because there is no longer a need to clarify the meaning of the term under the section 1441 regulations in the treaty context, these final regulations no longer provide specific rules for this determination. The concept of beneficial owner nevertheless remains an important condition for claiming tax treaty benefits that is determined under U.S. tax principles, including the anti-conduit rules.

B. Subject to Tax

Commentators suggested that the term subject to tax in the proposed and temporary regulations was ambiguous and could be misinterpreted. Commentators suggested that the term subject to tax could be interpreted as requiring that an actual tax be paid rather than requiring an exercise of taxing jurisdiction by the applicable treaty jurisdiction, whether or not there

is an actual tax paid. Commentators suggested that such an interpretation would lead to anomalous results, for example, in cases when the applicable treaty jurisdiction provides an exemption from income for U.S. source dividends under its tax laws.

The IRS and Treasury agree that the term subject to tax could cause unintentional confusion and that a more direct and simpler way of ensuring that an item of income is subject to the taxing jurisdiction of the residence country is to determine if the item of income is derived by a resident of a treaty jurisdiction. The concept of derived by a resident is a more useful surrogate for the concept of subject to the taxing jurisdiction of the residence state, the necessary prerequisite for the grant of treaty benefits on an item of income.

C. New General Rule Based on "Derived By" Standard

The regulations now provide three specific situations in which income is derived by a resident of a treaty jurisdiction, and thus considered subject to the taxing jurisdiction of the residence jurisdiction and eligible for treaty benefits.

In the first situation, an item of income paid to an entity is considered to be derived by the entity if the entity is not fiscally transparent with respect to the item of income under the laws of the entity's jurisdiction. The entity's jurisdiction is generally the place of the entity's organization, although it may be the place of management and control of the entity if it is a resident in a jurisdiction by reason of such factors.

In the second situation, regardless of whether the entity is found to be fiscally transparent with respect to the item of income under the laws of the entity's jurisdiction, an interest holder in the entity may derive the item of income if that interest holder can establish that, under the laws of the jurisdiction in which the interest holder is a resident, the entity is fiscally transparent with respect to the item of income. Under this test, the interest holder itself must not be considered fiscally transparent with respect to the item of income under the laws of its jurisdiction in order to claim the treaty benefit of that jurisdiction.

In the third situation, an item of income paid to a type of entity specifically listed in a treaty as a resident of that treaty jurisdiction is treated as derived by a resident of that jurisdiction. The reason for this rule is that the two treaty partners reached an explicit agreement on the appropriate treatment of that entity and treaty benefits accordingly should be provided on items of income paid to it.

In some circumstances, both the entity and the interest holders in the entity will be treated as deriving the item of income under the foregoing tests. In that event, both the interest holder and the entity may be entitled to treaty benefits if all other conditions are satisfied. See § 1.1441–6(b)(2) for procedures for dual rate claims under separate income tax treaties.

IV. Determining Fiscal Transparency

A. Generally

The concept of fiscally transparent therefore is critical to the determination of whether an item of income is derived by an entity or an interest holder in an entity. Paragraph (d)(4)(ii) of the proposed and temporary regulations provided that an entity is treated as fiscally transparent by a jurisdiction to the extent the jurisdiction requires interest holders in the entity to take into account separately on a current basis their respective shares of the items of income paid to the entity and to determine the character of such item as if such items were realized directly from the source from which realized by the entity for purposes of the tax laws of the jurisdiction. The proposed and temporary regulations further provided that entities that are fiscally transparent for U.S. federal income tax purposes include partnerships, common trust funds described under section 584, simple trusts, grantor trusts, as well as certain other entities (including entities that have a single interest holder) that are treated as partnerships or as disregarded entities for U.S. federal income tax purposes.

The IRS and Treasury received numerous comments regarding the definition of fiscally transparent under the proposed regulations. The comments stated that it is unclear, in situations when multiple foreign jurisdictions are involved, which jurisdiction's laws apply in determining whether an entity is fiscally transparent. The comments further stated that the requirement that all items of income be separately stated is not consistent with the U.S. tax rules regarding partnerships, which permit partners not to state separately certain items if the outcome is the same whether or not the item is separately stated. Commentators also suggested that the regulations were unclear as to whether fiscal transparency is an item by item determination or a determination made with respect to the entity as a whole.

In response to the comments, several simplifying and clarifying changes were made to the regulations. When an entity is invoking the treaty, paragraph (d)(3)(ii) of the final regulations provides a definition for purposes of determining whether the entity will be treated as fiscally transparent under the laws of the entity's jurisdiction with respect to an item of income received by the entity. When an interest holder in an entity is invoking the treaty, paragraph (d)(3)(iii) of the final regulations provides a definition for purposes of determining whether the entity will be fiscally transparent under the laws of the interest holder's jurisdiction. This clarifies which jurisdiction's laws apply in determining fiscal transparency in cases in which multiple foreign jurisdictions are involved.

Paragraphs (d)(3)(ii) and (iii) of the final regulations generally retain the definition of fiscally transparent as provided by the proposed and temporary regulations, with certain clarifications and modifications. They provide that an entity will be fiscally transparent only if inclusion by the interest holders in the entity is required whether or not an item of income is distributed to such interest holders and, generally, the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity. They also provide that fiscal transparency is determined on an item of income by item of income basis. Accordingly, for example, an entity can be fiscally transparent with respect to interest income, but not with respect to dividend income. The regulations further provide, however, that if an item of income is not separately taken into account by its interest holders, the entity may still be fiscally transparent with respect to that item of income if failure to take the item of income into account separately does not result in a treatment under the tax laws of the applicable treaty jurisdiction different from that which would be required if the interest holder did separately take the share of such item into account. This is consistent with the U.S. tax provisions with respect to partnerships.

Because the final regulations adopt an item by item determination of fiscal transparency, the provision in the proposed regulations stating that partnerships, common trust funds described in section 584, simple trusts, grantor trusts and certain other entities are fiscally transparent for U.S. federal income tax purposes has been deleted from the final regulations. The foregoing language implied that fiscal transparency is determined with respect to the entity as a whole. Although the

final regulations remove this language, it is anticipated that such entities ordinarily will be fiscally transparent for federal income tax purposes with regard to all items of income received by them.

B. Investment Vehicles

Commentators also requested clarification regarding the treatment of investment vehicles that may be allowed an exclusion or deduction from income for amounts distributed to interest holders. The final regulations clarify that if an entity such as an investment company is not otherwise fiscally transparent as defined in paragraphs (d)(3)(ii) and (iii) of the final regulations, it will not be deemed to be fiscally transparent merely because it is allowed to exclude or deduct from income amounts distributed to interest holders. Examples provide further guidance with respect to foreign investment vehicles, most of which will not be fiscally transparent under the final regulations.

C. Treatment of Tax Exempt Organizations

In addition to the foregoing, several commentators suggested that the regulations undermine reciprocal treaty exemptions for pension funds and other tax exempt organizations by, for example, denying treaty benefits under circumstances when the fund or organization invests in U.S. LLCs that are treated as partnerships for purposes of U.S. tax law and as corporations under the laws of the applicable treaty jurisdiction. Treasury does not believe that the regulations conflict with U.S. treaty obligations to provide reduced treaty rates to pension funds and other tax exempt organizations investing in the United States. In most cases, the denial of benefits described by commentators can be avoided by ensuring that the pension fund or tax exempt organization invests directly or through an entity treated as fiscally transparent under the laws of the jurisdiction of the fund or organization, with the result that the fund or organization will still be able to claim exemptions under the applicable treaty. In addition, treaties may be negotiated that permit pensions and other tax exempt organizations to invest in the United States through nonfiscally transparent entities and still obtain reduced treaty rates. (See for example paragraph 2(b) of Article XXI of the U.S.-Canada treaty, with respect to pension funds). Further, paragraph (d)(4) gives the competent authorities the flexibility, in appropriate circumstances, to enter into a mutual reciprocal understanding that would depart from the rules of paragraph (d) with respect to certain classes of entities.

D. Treatment of Complex Trusts

The proposed and temporary regulations did not specifically address the treatment of section 661 trusts that are permitted to accumulate income from year to year. Commentators suggested that they should be treated as fiscally transparent for U.S. tax purposes because, under section 662, the distributable net income of such trusts retains its character in the hands of the beneficiaries if it is distributed in the current year and not accumulated. The definitions of fiscally transparent as set forth in the final regulations provide that, in order for the entity to be fiscally transparent with respect to an item of income, the interest holder must be required to take that item of income into account in a taxable year whether or not the item is distributed, and generally the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity.

Thus, to the extent the beneficiaries of a trust are required under section 662 to take an item of the trust's income into account in a taxable year, whether or not the item is distributed, and the character and source of the item in the hands of the beneficiaries are determined as if such item were realized directly from the source from which realized by the entity, the trust will be treated as fiscally transparent for U.S. tax purposes with respect to that item of income. If inclusion by the interest holders is not required whether or not such item of income is distributed, or the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity, the trust will not be treated as fiscally transparent for U.S. tax purposes. In determining whether a trust, or any other entity, is fiscally transparent with respect to an item of income under the laws of any other jurisdiction, the treatment of that item of income under the laws of that jurisdiction controls, not the treatment under U.S. laws.

E. Effect of Anti-Deferral Regimes

Commentators also argued that controlled foreign corporations should be treated as fiscally transparent to the extent interest holders are required to account for the controlled foreign corporation's net passive income on a current basis. This suggestion was rejected because the nature of an inclusion under an anti-deferral regime is that of a deemed distribution of after-tax profits of the controlled foreign corporation, while an inclusion because an entity is fiscally transparent is in the nature of a share of the item of income itself, as if the interest holder realized the income directly. This follows from the definition of fiscal transparency contained in paragraph (d)(3)(iii), relating to whether an entity is fiscally transparent under the laws of the interest holder's jurisdiction.

V. Treatment of Payments To and From Domestic Reverse Hybrid Entities

Section 1.894–1T(d)(3) provided guidance on the appropriate treatment of items of income paid to an entity that is treated as a domestic corporation for U.S. tax purposes but is treated as fiscally transparent under the laws of an interest holder's jurisdiction (a "domestic reverse hybrid" entity). That section provided that § 1.894–1T(d)(1) may not be applied to reduce the amount of federal income tax on U.S. source income received by a domestic reverse hybrid entity through application of an income tax treaty. Commentators expressed concern that this rule did not provide sufficient guidance and could lead to inappropriate results, noting that an item of income paid *by* a domestic reverse hybrid entity could be viewed as neither "received by" the interest holder nor "subject to tax" because the interest holder's jurisdiction would treat the domestic reverse hybrid entity as fiscally transparent. Thus, the interest holder's jurisdiction would view the interest holder as "receiving" the items of income paid to the domestic reverse hybrid entity and as being "subject to tax" on those items of income on an immediate basis, but may not recognize the items of income paid by the domestic reverse hybrid entity to the interest holder.

The IRS and Treasury are also aware of certain abusive structures involving domestic reverse hybrid entities, which are designed to manipulate differences in U.S. and foreign entity classification rules to produce inappropriate reductions in U.S. tax. These transactions give rise to some of the same concerns that led to the promulgation of the temporary and proposed regulations and caused Congress to enact section 894(c). Treasury and the IRS expect to issue guidance shortly regarding payments by domestic reverse hybrid entities to their interest holders in a separate regulation package. Thus, these final regulations reserve on the question of eligibility for

treaty benefits with respect to payments by domestic reverse hybrid entities.

Effective Date

The final regulations apply to items of income paid on or after June 30, 2000. Withholding agents should consider the effect of these regulations on their withholding obligations, including the need to obtain a new withholding certificate to confirm claims of treaty benefits for items of income paid on or after the effective date.

Special Analyses

It has been determined that this treasury decision not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information: The principal author of these regulations is Shawn R. Pringle of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, CFR 26 part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by revising the entry for section 1.894–1 to read in part as follows:

Authority: 26 U.S.C. 7805. * * * Section 1.894–1 also issued under 26 U.S.C. 894 and 7701(l). * * *

Par. 2. In § 1.894–1, paragraph (d) is revised to read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(d) *Special rule for items of income received by entities*—(1) *In general.* The tax imposed by sections 871(a), 881(a), 1443, 1461, and 4948(a) on an item of income received by an entity, wherever organized, that is fiscally transparent under the laws of the United States and/or any other jurisdiction with respect to an item of income shall be eligible for reduction under the terms of an income tax treaty to which the United States is a party only if the item of income is derived by a resident of the applicable treaty jurisdiction. For this purpose, an item of income may be derived by either the entity receiving the item of income or by the interest holders in the entity or, in certain circumstances, both. An item of income paid to an entity shall be considered to be derived by the entity only if the entity is not fiscally transparent under the laws of the entity's jurisdiction, as defined in paragraph (d)(3)(ii) of this section, with respect to the item of income. An item of income paid to an entity shall be considered to be derived by the interest holder in the entity only if the interest holder is not fiscally transparent in its jurisdiction with respect to the item of income and if the entity is considered to be fiscally transparent under the laws of the interest holder's jurisdiction with respect to the item of income, as defined in paragraph (d)(3)(iii) of this section. Notwithstanding the preceding two sentences, an item of income paid directly to a type of entity specifically identified in a treaty as a resident of a treaty jurisdiction shall be treated as derived by a resident of that treaty jurisdiction.

(2) *Application to domestic reverse hybrid entities*—(i) *In general.* An income tax treaty may not apply to reduce the amount of federal income tax on U.S. source payments received by a domestic reverse hybrid entity. Further, notwithstanding paragraph (d)(1) of this section, the foreign interest holders of a domestic reverse hybrid entity are not entitled to the benefits of a reduction of U.S. income tax under an income tax treaty on items of income received from U.S. sources by such entity. A domestic reverse hybrid entity is a domestic entity that is treated as not fiscally transparent for U.S. tax purposes and as fiscally transparent under the laws of the interest holder's jurisdiction, with respect to the item of income received by the domestic entity.

(ii) *Payments by domestic reverse hybrid entities.* [Reserved].

(3) *Definitions*—(i) *Entity.* For purposes of this paragraph (d), the term *entity* shall mean any person that is treated by the United States or the applicable treaty jurisdiction as other than an individual. The term *entity* includes disregarded entities, including single member disregarded entities with individual owners.

(ii) *Fiscally transparent under the law of the entity's jurisdiction*—(A) *General rule.* For purposes of this paragraph (d), an entity is fiscally transparent under the laws of the entity's jurisdiction with respect to an item of income to the extent that the laws of that jurisdiction require the interest holder in the entity, wherever resident, to separately take into account on a current basis the interest holder's respective share of the item of income paid to the entity, whether or not distributed to the interest holder, and the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity. However, the entity will be fiscally transparent with respect to the item of income even if the item of income is not separately taken into account by the interest holder, provided the item of income, if separately taken into account by the interest holder, would not result in an income tax liability for that interest holder different from that which would result if the interest holder did not take the item into account separately, and provided the interest holder is required to take into account on a current basis the interest holder's share of all such nonseparately stated items of income paid to the entity, whether or not distributed to the interest holder. In determining whether an entity is fiscally transparent with respect to an item of income in the entity's jurisdiction, it is irrelevant that, under the laws of the entity's jurisdiction, the entity is permitted to exclude such item from gross income or that the entity is required to include such item in gross income but is entitled to a deduction for distributions to its interest holders.

(B) *Special definitions.* For purposes of this paragraph (d)(3)(ii), an entity's jurisdiction is the jurisdiction where the entity is organized or incorporated or may otherwise be considered a resident under the laws of that jurisdiction. An interest holder will be treated as taking into account that person's share of income paid to an entity on a current basis even if such amount is taken into account by the interest holder in a taxable year other than the taxable year of the entity if the difference is due solely to differing taxable years.

(iii) *Fiscally transparent under the law of an interest holder's jurisdiction*—(A) *General rule.* For purposes of this paragraph (d), an entity is treated as fiscally transparent under the law of an interest holder's jurisdiction with respect to an item of income to the extent that the laws of the interest holder's jurisdiction require the interest holder resident in that jurisdiction to separately take into account on a current basis the interest holder's respective share of the item of income paid to the

entity, whether or not distributed to the interest holder, and the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity. However, an entity will be fiscally transparent with respect to the item of income even if the item of income is not separately taken into account by the interest holder, provided the item of income, if separately taken into account by the interest holder, would not result in an income tax liability for that interest holder different from that which would result if the interest holder did not take the item into account separately, and provided the interest holder is required to take into account on a current basis the interest holder's share of all such nonseparately stated items of income paid to the entity, whether or not distributed to the interest holder. An entity will not be treated as fiscally transparent with respect to an item of income under the laws of the interest holder's jurisdiction, however, if, under the laws of the interest holder's jurisdiction, the interest holder in the entity is required to include in gross income a share of all or a part of the entity's income on a current basis year under any type of anti-deferral or comparable mechanism. In determining whether an entity is fiscally transparent with respect to an item of income under the laws of an interest holder's jurisdiction, it is irrelevant how the entity is treated under the laws of the entity's jurisdiction.

(B) *Special definitions.* For purposes of this paragraph (d)(3)(iii), an interest holder's jurisdiction is the jurisdiction where the interest holder is organized or incorporated or may otherwise be considered a resident under the laws of that jurisdiction. An interest holder will be treated as taking into account that person's share of income paid to an entity on a current basis even if such amount is taken into account by such person in a taxable year other than the taxable year of the entity if the difference is due solely to differing taxable years.

(iv) *Applicable treaty jurisdiction.* The term *applicable treaty jurisdiction* means the jurisdiction whose income tax treaty with the United States is invoked for purposes of reducing the rate of tax imposed under sections 871(a), 881(a), 1461, and 4948(a).

(v) *Resident.* The term *resident* shall have the meaning assigned to such term in the applicable income tax treaty.

(4) *Application to all income tax treaties.* Unless otherwise explicitly agreed upon in the text of an income tax treaty, the rules contained in this paragraph (d) shall apply in respect of all income tax treaties to which the United States is a party. Notwithstanding the foregoing sentence, the competent authorities may agree on a mutual basis to depart from the rules contained in this paragraph (d) in appropriate circumstances. However, a reduced rate under a tax treaty for an item of U.S. source income paid will not be available irrespective of the provisions in this paragraph (d) to the extent that the applicable treaty jurisdiction would not grant a reduced rate under the tax treaty to a U.S. resident in similar circumstances, as evidenced by a mutual agreement between the relevant competent authorities or by a public notice of the treaty jurisdiction. The Internal Revenue Service shall announce the terms of any such mutual agreement or public notice of the treaty jurisdiction. Any denial of tax treaty benefits as a consequence of such a mutual agreement or notice shall affect only payment of U.S. source items of income made after announcement of the terms of the agreement or of the notice.

(5) *Examples.* This paragraph (d) is illustrated by the following examples:

Example 1. Treatment of entity treated as partnership by U.S. and country of organization. (i) *Facts.* Entity A is a business organization formed under the laws of Country X that has an income tax treaty in effect with the United States. A is treated as a partnership for U.S. federal income tax purposes. A is also treated as a partnership under the laws of Country X, and therefore Country X requires the interest holders in A to separately take into account on a current basis their respective shares of the items of income paid to A, whether or not distributed to the interest holders, and the character and source of the items in the hands of the interest holders are determined as if such items were realized directly from the source from which realized by A. A receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States.

(ii) *Analysis.* A is fiscally transparent in its jurisdiction within the meaning of paragraph (d)(3)(ii) of this section with respect to the U.S. source royalty income in Country X and, thus, A does not derive such income for purposes of the U.S.-X income tax treaty.

Example 2. Treatment of interest holders in entity treated as partnership by U.S. and country of organization. (i) *Facts.* The facts are the same as under *Example 1.* A's partners are M, a corporation organized under the laws of Country Y that has an income tax treaty in effect with the United States, and T, a corporation organized under the laws of Country Z that has an income tax treaty in effect with the United States. M and T are not fiscally transparent under the laws of their respective countries of incorporation. Country Y requires M to separately take into account on a current basis M's respective share of the items of income paid to A, whether or not distributed to M, and the character and source of the items of income in M's hands are determined as if such items were realized directly from the source from which realized by A. Country Z treats A as a corporation and does not require T to take its share of A's income into account on a current basis whether or not distributed.

(ii) *Analysis.* M is treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Y income tax treaty because A is fiscally transparent under paragraph (d)(3)(iii) with respect to that income under the laws of Country Y. Under Country Z law, however, because T is not required to take into account its share of the U.S. source royalty income received by A on a current basis whether or not distributed, A is not treated as fiscally transparent. Accordingly, T is not treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Z income tax treaty.

Example 3. Dual benefits to entity and interest holder. (i) *Facts.* The facts are the same as under *Example 2*, except that A is taxable as a corporation under the laws of Country X. Article 12 of the U.S.-X income tax treaty provides for a source country reduced rate of taxation on royalties of 5-percent. Article 12 of the U.S.-Y income tax treaty provides that royalty income may only be taxed by the beneficial owner's country of residence.

(ii) *Analysis.* A is treated as deriving the U.S. source royalty income for purposes of the U.S.-X income tax treaty because it is not fiscally transparent with respect to the item of income within the meaning of paragraph (d)(3)(ii) of this section in Country X, its country of organization. M is also treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Y income tax treaty because A is fiscally transparent under paragraph (d)(3)(iii) of this section with respect to that income under the laws of Country Y. T is not treated as deriving the U.S. source royalty income for purposes of the U.S.-Z income tax treaty because under Country Z law A is not fiscally transparent. Assuming all other requirements for eligibility for treaty benefits have been satisfied, A is entitled to the 5-percent treaty reduced rate on royalties under the U.S.-X income tax treaty with respect to the entire royalty payment. Assuming all other requirements for treaty benefits have been satisfied, M is also entitled to a zero rate under the U.S.-Y income tax treaty with respect to its share of the royalty income.

Example 4. Treatment of grantor trust. (i) *Facts.* Entity A is a trust organized under the laws of Country X, which does not have an income tax treaty in effect with the United States. M, the grantor and owner of A for U.S. income tax purposes, is a resident of Country Y, which has an income tax treaty in effect with the United States. M is also treated as the grantor and owner of the trust under the laws of Country Y. Thus, Country Y requires M to take into account all items of A's income in the taxable year, whether or not distributed to M, and determines the character of each item in M's hands as if such item was realized directly from the source

from which realized by A. Country X does not treat M as the owner of A and does not require M to account for A's income on a current basis whether or not distributed to M. A receives interest income from U.S. sources that is neither portfolio interest nor effectively connected with the conduct of a trade or business in the United States.

(ii) *Analysis.* A is not fiscally transparent under the laws of Country X within the meaning of paragraph (d)(3)(ii) of this section with respect to the U.S. source interest income, but A may not claim treaty benefits because there is no U.S.-X income tax treaty. M, however, does derive the income for purposes of the U.S.-Y income tax treaty because under the laws of Country Y, A is fiscally transparent.

Example 5. Treatment of complex trust. (i) *Facts.* The facts are the same as in *Example 4* except that M is treated as the owner of the trust only under U.S. tax law, after application of section 672(f), but not under the law of Country Y. Although the trust document governing A does not require that A distribute any of its income on a current basis, some distributions are made currently to M. There is no requirement under Country Y law that M take into account A's income on a current basis whether or not distributed to him in that year. Under the laws of Country Y, with respect to current distributions, the character of the item of income in the hands of the interest holder is determined as if such item were realized directly from the source from which realized by A. Accordingly, upon a current distribution of interest income to M, the interest income retains its source as U.S. source income.

(ii) *Analysis.* M does not derive the U.S. source interest income because A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source interest income under the laws of Country Y. Although the character of the interest in the hands of M is determined as if realized directly from the source from which realized by A, under the laws of Country Y, M is not required to take into account his share of A's interest income on a current basis whether or not distributed. Accordingly, neither A nor M is entitled to claim treaty benefits, since A is a resident of a non-treaty jurisdiction and M does not derive the U.S. source interest income for purposes of the U.S.-Y income tax treaty.

Example 6. Treatment of interest holders required to include passive income under anti-deferral regime. (i) *Facts.* The facts are the same as under *Example 2.* However, Country Z does require T, who is treated as owning 60-percent of the stock of A, to take into account its respective share of the royalty income of A under an anti-deferral regime applicable to certain passive income of controlled foreign corporations.

(ii) *Analysis.* T is still not eligible to claim treaty benefits with respect to the royalty income. T is not treated as deriving the U.S. source royalty income for purposes of the U.S.-Z income tax treaty under paragraph (d)(3)(iii) of this section because T is only required to take into account its pro rata share of the U.S. source royalty income by reason of Country Z's anti-deferral regime.

Example 7. Treatment of contractual arrangements operating as collective investment vehicles. (i) *Facts.* A is a contractual arrangement without legal personality for all purposes under the laws of Country X providing for joint ownership of securities. Country X has an income tax treaty in effect with the United States. A is a collective investment fund which is of a type known as a Common Fund under Country X law. Because of the absence of legal personality of the arrangement, A is not liable to tax at the entity level in Country X and is not a resident within the meaning of the Residence Article of the U.S.-X income tax treaty. A is treated as a partnership for U.S. income tax purposes and receives U.S. source dividend income. Under the laws of Country X, however, investors in A only take into account their respective share of A's income upon distribution from the Common Fund. Some of A's interest holders are residents of Country X and some of Country Y. Country Y has no income tax treaty in effect with the United States.

(ii) *Analysis.* A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividend income because the interest holders in A are not required to take into account their respective shares of such income in the taxable year whether or not distributed. Because A is an arrangement without a legal personality that is not considered a resident of Country X under the Residence Article of the U.S.-X income tax treaty, however, A does not derive the income for purposes of the U.S.-X income tax treaty. Further, because A is not fiscally transparent under paragraph (d)(3)(iii) of this section with respect to the U.S. source dividend income, A's interest holders that are residents of Country X do not derive the income as residents of Country X for purposes of the U.S.-X income tax treaty.

Example 8. Treatment of person specifically listed as resident in applicable treaty. (i) *Facts.* The facts are the same as in *Example 7* except that A (the Common Fund) is organized in Country Z and the Residence Article of the U.S.-Z income tax treaty provides that "the term 'resident of a Contracting State' includes, in the case of Country Z, Common Funds.* * * *"

(ii) *Analysis.* A is treated, for purposes of the U.S.-Z income tax treaty as deriving the dividend income as a resident of Country Z under paragraph (d)(1) of this section because the item of income is paid directly to A, A is a Common Fund under the laws of Country Z, and Common Funds are specifically identified as residents of Country Z in the U.S.-Z treaty. There is no need to determine whether A meets the definition of fiscally transparent under paragraph (d)(3)(ii) of this section.

Example 9. Treatment of investment company when entity receives distribution deductions, and all distributions sourced by residence of entity. (i) *Facts.* Entity A is a business organization formed under the laws of Country X, which has an income tax treaty in effect with the United States. A is treated as a partnership for U.S. income tax purposes. Under the laws of Country X, A is an investment company taxable at the entity level and a resident of Country X. It is also entitled to a distribution deduction for amounts distributed to its interest holders on a current basis. A distributes all its net income on a current basis to its interest holders and, thus, in fact, has no income tax liability to Country X. A receives U.S. source dividend income. Under Country X law, all amounts distributed to interest holders of this type of business entity are treated as dividends from sources within Country X and Country X imposes a withholding tax on all payments by A to foreign persons. Under Country X laws, the interest holders in A do not have to separately take into account their respective shares of A's income on a current basis if such income is not, in fact, distributed.

(ii) *Analysis.* A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividends because the interest holders in A do not have to take into account their respective share of the U.S. source dividends on a current basis whether or not distributed. A is also not fiscally transparent under paragraph (d)(3)(ii) of this section because there is a change in source of the income received by A when A distributes the income to its interest holders and, thus, the character and source of the income in the hands of A's interest holder are not determined as if such income were realized directly from the source from which realized by A. Accordingly, A is treated as deriving the U.S. source dividends for purposes of the U.S.-Country X treaty.

Example 10. Item by item determination of fiscal transparency. (i) *Facts.* Entity A is a business organization formed under the laws of Country X, which has an income tax treaty in effect with the United States. A is treated as a partnership for U.S. income tax purposes. Under the laws of Country X, A is an investment company taxable at the entity level and a resident of Country X. It is also entitled to a distribution deduction for amounts distributed to its interest holders on a current basis. A receives both U.S. source dividend income and interest income from U.S. sources that is neither portfolio interest nor effectively connected with the conduct of a trade or business in the United States. Country X law sources all distributions attributable to dividend income based on the residence of the investment company. In contrast, Country X law sources all distributions attributable to interest income based on the residence of the payor of the interest. No withholding applies with respect to distributions attributable to U.S. source interest and the character of the distributions attributable to the interest income remains the same in the hands of A's interest holders as if such items were realized directly from the source from which realized by A. However, under Country X law the interest holders in A do not have to take into account their respective share of the interest income received by A on a current basis whether or not distributed.

(ii) *Analysis.* An item by item analysis is required under paragraph (d) of this section. The analysis is the same as *Example 9* with respect to the dividend income. A is also not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the interest income because, although the character of the

distributions attributable to the interest income in the hands of A's interest holders is determined as if realized directly from the source from which realized by A, under Country X law the interest holders in A do not have to take into account their respective share of the interest income received by A on a current basis whether or not distributed. Accordingly, A derives the U.S. source interest income for purpose of the U.S.-X treaty.

Example 11. Treatment of charitable organizations. (i) *Facts.* Entity A is a corporation organized under the laws of Country X that has an income tax treaty in effect with the United States. Entity A is established and operated exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes. Entity A receives U.S. source dividend income from U.S. sources. A provision of Country X law generally exempts Entity A's income from Country X tax due to the fact that Entity A is established and operated exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes. But for such provision, Entity A's income would be subject to tax by Country X.

(ii) *Analysis.* Entity A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividend income because, under Country X law, the dividend income is treated as an item of income of A and no other persons are required to take into account their respective share of the item of income on a current basis, whether or not distributed. Accordingly, Entity A is treated as deriving the U.S. source dividend income.

Example 12. Treatment of pension trusts. (i) *Facts.* Entity A is a trust established and operated in Country X exclusively to provide pension or other similar benefits to employees pursuant to a plan. Entity A receives U.S. source dividend income. A provision of Country X law generally exempts Entity A's income from Country X tax due to the fact that Entity A is established and operated exclusively to provide pension or other similar benefits to employees pursuant to a plan. Under the laws of Country X, the beneficiaries of the trust are not required to take into account their respective share of A's income on a current basis, whether or not distributed and the character and source of the income in the hands of A's interest holders are not determined as if realized directly from the source from which realized by A.

(ii) *Analysis.* A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividend income because under the laws of Country X, the beneficiaries of A are not required to take into account their respective share of A's income on a current basis, whether or not distributed. A is also not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividend income because under the laws of Country X, the character and source of the income in the hands of A's interest holders are not determined as if realized directly from the source from which realized by A. Accordingly, A derives the U.S. source dividend income for purposes of the U.S.-X income tax treaty.

(6) *Effective date.* This paragraph (d) applies to items of income paid on or after June 30, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 28, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 00–16761 Filed 6–30–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC–73

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Production Measurement Document Incorporated by Reference

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is adding a production measurement document incorporated by reference to the regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). The document will continue to ensure that lessees are able to use the best available and most accurate technologies while operating in the OCS. The document is from the American Petroleum Institute's Manual of Petroleum Measurement Standards.

DATES: This rule is effective August 2, 2000. The incorporation by reference of publications listed in the regulation is approved by the Director of the Federal Register as of August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Research Branch, at (703) 787–1147.

SUPPLEMENTARY INFORMATION: MMS uses standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry as a means of establishing requirements for activities in the OCS. This practice, known as incorporation by reference, allows MMS to incorporate the requirements of technical documents into the regulations without increasing the volume of the Code of Federal Regulations (CFR). MMS currently incorporates by reference approximately 85 documents into the offshore operating regulations.

The regulations found at 1 CFR part 51 govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the Federal Register for each publication incorporated by reference.

Incorporation by reference of a document or publication is limited to the edition of the document or publication cited in the regulations. This means that newer editions, amendments, or revisions to documents already incorporated by reference in regulations are not part of MMS's regulations.

This rule adds the following API document to those currently incorporated by reference into MMS regulations:

- API Manual of Petroleum Measurement Standards (MPMS), Chapter 10, Section 9, Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration, First Edition, November 1993.

MMS has reviewed this document and has determined that it must be incorporated into regulations to ensure that industry is able to use the best available and most accurate technologies. Our review shows that the option to use this standard will not impose additional costs on the offshore oil and gas industry. In fact, industry will still have the option to use the other procedures in current documents incorporated, as approved. Therefore, MMS is including this document via a final rule. MMS has determined under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) that publishing this rule as a notice of proposed rulemaking would be contrary to the public interest. The regulations found at 30 CFR 250.198(a)(2) allow updating documents without opportunity to comment when MMS determines that the revisions to a document result in safety improvements or represent new industry standard technology and do not impose undue costs on the affected parties.

A summary of MMS's review of the document is provided below:

API MPMS Chapter 10, Section 9, Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration, First Edition, November, 1993.

This document lists the method for directly determining water in crude oils by volume and weight. It represents an industry standard that would be newly used in the OCS. The MMS will retain the documents from MPMS, Chapter 10, Sediment and Water, that describe the other methods of determining water in crude oils.

Procedural Matters

This is a very simple rule. The rule's purpose is to add a document to those that are currently incorporated by reference in the regulations. If MMS did not give the option to use the other techniques incorporated into the regulations, MMS could not add this document via a final rule. The document will not cause any economic effect on any entity (small or large). It simply gives industry standards for using an alternate method to determine sediment and water.

Federalism (Executive Order 13132)

According to Executive Order 13132, the rule does not have

Federalism implications because it does not affect the relationship between the Federal and State governments.

The rule simply provides the option and guidance to use new technology. It does not prevent any lessee, operator, or drilling contractor from performing operations on the OCS, provided they follow the regulations. This rule will not impose costs on States or localities.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule does not have new requirements. This rule will not create an inconsistency or otherwise interfere with an action taken or planned by another agency.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The standards only apply to those lessees who choose to use the new technology. Either way, the costs will be the same.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no new costs. The standards contain guidance if lessees use the new measurement technology. They do have the option to use current technology. Therefore, the costs will be the same.

(4) This rule does not raise novel legal or policy issues. The requirements are based on the legal authority of the OCS Lands Act and other laws.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The document was added to give lessees the option to use new technology. If they choose to do so, the cost will be the same. It does not contain new requirements, and it will not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Takings Implication Assessment

According to Executive Order 12630, the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The standards are optional. Thus, a Takings Implication Assessment need not be prepared according to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The optional standards will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under the Standard Industrial Classification code, 1381, Drilling Oil and Gas Wells, MMS estimates that there is a total of 1,380 firms that drill oil and gas wells onshore and offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. According to SBA estimates, 39 companies qualify as large firms, leaving 91 companies qualified as small firms with fewer than 500 employees. This rule imposes no new operational requirements, reporting burdens, or other measures that would increase costs to lessees/operators, large or small. Therefore, this rule has no significant economic impact on small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small businesses. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under (5 U.S.C. 804(2)) the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The main purpose of this rule is to add industry standards to give lessees the option to use new measurement technology and the guidance if they choose to do so. The rule does not have new requirements.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The cost to comply with the rule is the same as current requirements.

(c) Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. The rule does not contain new requirements.

Paperwork Reduction Act (PRA) of 1995

The Department of the Interior has determined that this regulation does not contain information collection requirements pursuant to PRA (44 U.S.C. 3501 *et seq.*). We will not be submitting an information collection request to OMB.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 7, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS amends 30 CFR Part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.198, in the table in paragraph (e), add the following in alpha-numerical order:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at
. . . . .	.
API MPMS, Chapter 10, Section 9, Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration, First Edition, November 1993, API Stock No. 852–30210.	§ 250.1202(a)(3), (l)(4)
. . . . .	.

[FR Doc. 00–15659 Filed 6–30–00; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Bonus Payments in Medically Underserved Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements a bonus payment, in addition to the amount normally paid under the allowable charge methodology, to providers in medically underserved areas. For purposes of this rule, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the CHAMPUS program, and as described in instructions issued by the Director, OCHAMPUS. Due to the urgency for such bonus payments in medically underserved areas to alleviate problems of access to healthcare coverage caused by lower payments, the interim final rule making process has been utilized. This rule promotes a reimbursement enhancement to a limited number of providers designed to increase CHAMPUS beneficiary access to care, which also supports the use of the interim final rule.

DATES: This rule is effective August 2, 2000. Written comments will be accepted until September 1, 2000.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3742.

SUPPLEMENTARY INFORMATION: 32 CFR Part 199, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," was published in the **Federal Register** on July 1, 1986. This interim final rule implements a bonus payment, in addition to the amount normally paid under the allowable charge methodology, to providers in medically underserved areas. For purposes of this rule, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the CHAMPUS program, and as described in instructions issued by the Director, OCHAMPUS. If the Department of Health and Human Services acts to amend or remove the provision for bonus payments under Medicare, CHAMPUS likewise may follow Medicare in amending or removing provision for such payments. To expedite access to healthcare coverage that has been impacted by lower payments in such medically underserved areas, the interim final rule process is being utilized. Additionally, it provides a reimbursement enhancement that favors providers in underserved areas, thus alleviating healthcare access problems experienced by beneficiaries residing in such areas. Finally, because Medicare previously established a bonus payment reimbursement mechanism in these areas, our emulation of this well established mechanism complies with existing statutory mandates that CHAMPUS follow Medicare reimbursement policy wherever practicable. This rule will not unilaterally increase payments to all providers, but just those residing in these underserved areas. Due to the urgency for additional payments to ensure beneficiary access to care in these areas, it would be impracticable and contrary to the public's interest not to use the interim final rule process. To do otherwise would prevent OCHAMPUS from fulfilling its duty to beneficiaries in these underserved areas.

Regulatory Procedure

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public

comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This Interim Final Rule is not a significant regulatory action under Executive Order 12866, nor would it have a significant impact on a substantial number of small entities. The changes set forth in the interim final rule are minor revisions to the existing regulation.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This determination is based on several factors. Most importantly, this change directly implements a payment process already used by Medicare. All public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. Chapter 55.

2. Section 199.14 is amended by redesignating paragraphs (h)(2) and (h)(3) as (h)(3) and (h)(4) and adding a new paragraph (h)(2) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(h) * * *

(2) *Bonus payments in medically underserved areas.* A bonus payment, in addition to the amount normally paid under the allowable charge methodology, may be made to providers in medically underserved areas. For purposes of this paragraph, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the CHAMPUS program, and as described in instructions issued by the Director, OCHAMPUS.

If the Department of Health and Human Services acts to amend or remove the provision for bonus payments under Medicare, CHAMPUS likewise may follow Medicare in amending or removing provision for such payments.

* * * * *

Dated: June 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–16264 Filed 6–30–00; 8:45 am]

BILLING CODE 5001–10–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–00–062]

RIN 2115–AE46

Special Local Regulations; Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being adopted for the Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC. The event will be held from 9 p.m. to 9:30 p.m. local time on July 4, 2000 in Calibogue Sound, Hilton Head, SC. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 8:30 p.m. to 9:30 p.m. local time on July 4, 2000 and from 8:30 p.m. to 9:30 p.m. on July 5, 2000 in case of event postponement due to the onset of inclement weather.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 07–00–062 and are available for inspection or copying at Commander, Coast Guard Group, 196 Tradd St., Charleston, SC 29401, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Simone Brisco, U.S. Coast Guard Group, Charleston, SC, at (843) 724–7628.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because information concerning the exact date and times of the event were only recently received. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because information concerning the exact date and times of the event were only recently received.

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger of fireworks during the Harbour Town Display, Calibogue Sound, Hilton Head, SC.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary as this regulation will only be in effect for one hour in a limited area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Calibogue Sound from 8:30 p.m. to 9:30 p.m. on July 4, 2000 (or July 5, 2000 if the event is postponed). This special local regulation will not have a significant economic impact on a substantial number of small entities

because this rule will be in effect for only 1 hour, and vessel traffic can pass safely around the regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531—1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—MARINE EVENTS

1. The Authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Temporary § 100.35T–07–062 is added to read as follows:

§ 100.35T–07–062 Temporary Special Local Regulation, Calibogue Sound, Harbour Town, Hilton Head, SC.

(a) *Definitions.*

(1) *Regulated Area.* A regulated area is established on the waters of Calibogue Sound, Harbour Town, Hilton Head, SC, within a 1000 foot radius of a fireworks launch area on a barge in approximate position 32 08.2′ N, 080 49.2′ W. All coordinates referenced use Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Group Charleston, SC.

(b) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor The Club Group, LTD.

(c) *Dates.* These regulations are effective from 8:30 p.m. to 9:30 p.m. local time on July 4, 2000. If event is postponed, they are effective from 8:30 p.m. to 9:30 p.m. local time on July 5, 2000.

Dated: June 20, 2000.

G.W. Sutton,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 00–16882 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Southeast Alaska 00–005]

RIN 2115–AA97

Safety Zone; Gastineau Channel, Juneau, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone along the navigable waters of Gastineau Channel, Juneau, Alaska to encompass the vessel conducting fireworks display activities. The safety zone is needed to protect maritime vessels and to minimize traffic for the safety and protection of both the vessel conducting fireworks display activities and other vessels in the immediate proximity.

This safety zone will encompass the waters within a 300 yard radius of the vessel situated at approximately 58°17′41″ N, 134°24′22″ W. Entry into, transit through or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port Southeast Alaska or the Coast Guard vessel on-scene via VHF–FM channel 16.

DATES: This temporary final rule becomes effective at 10 p.m. July 3, 2000 and terminates at 2 a.m. July 4, 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at U.S. Coast Guard, Marine Safety Office, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 463–2450.

FOR FUTHER INFORMATION CONTACT: Lieutenant Cecil McNutt Jr., Chief, Port

Operations, U.S. Coast Guard Marine Safety Office Juneau; (907) 463–2470.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the Coast Guard finds a good cause exists for not publishing a NPRM. In keeping with requirements of 5 U.S.C. 553 (d)(3), the Coast Guard also finds that cause exists for making this regulation effective less than 30 days after publication in the **Federal Register** due to receipt of application for this marine event was not received until June 6, 2000. Publication of a NPRM and delay of effective date would be contrary to the public interest because immediate action is necessary to protect the safety of the maritime vessel traffic.

Background and Purpose

Each year, on or about the 3rd of July, a tug vessel with a barge conducts fireworks display activities within an established 100 yd safety zone (33 CFR 165.1706) located on the navigable waters of Gastineau Channel, mid-channel off the shoreline of the city of Juneau, AK. This year will differ slightly from the established safety zone, in that a blast or fallout radius of 300 yards is required for the city authorized 12-inch fireworks display shells and 600 lbs of Division 1.3G (UN 0335) Fireworks.

This will occur at 12 a.m. ADT, and will last approximately 1 hour. This safety zone is necessary to protect the maritime public from the fallout hazards created by the vessel conducting firework display activities.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under sections 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under Section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with Sec. 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 US.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T17–005 is added to read as follows:

§ 165.T17–005 Gastineau Channel, Juneau, Alaska—Safety Zone.

(a) *Location.* The following area is a temporary safety zone: the waters in Juneau Harbor within a 300 yard radius of the vessel engaged in firework display activities, situated at approximately 58°17′41″ N, 134°24′22″ W.

(b) *Effective Dates.* This regulation becomes effective at 10 p.m. July 3, 2000 and terminates at 2 a.m. July 4, 2000.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited except as authorized by the Captain of the Port-Southeast Alaska, or the Coast Guard vessel on scene via VHF–FM Channel 16.

Dated: June 21, 2000.

B.J. Peter,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Southeast Alaska.

[FR Doc. 00–16878 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–122]

RIN 2115–AA97

Safety Zone: Fireworks Display, Provincetown Harbor, Provincetown, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within a five hundred (500) yard radius of the fireworks barge in Provincetown Harbor, Provincetown, MA on July 4, 2000, with a rain date of July 5, 2000. The safety zone is needed to safeguard the public from possible hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

EFFECTIVE DATE: This rule is effective from 8 p.m. until 10 p.m. July 4, 2000 and 8 p.m. until 10 p.m. July 5, 2000, in case of event postponement due to the onset of inclement weather.

FOR FURTHER INFORMATION CONTACT: CWO John W. Winter at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less then 30 days after **Federal Register** publication. Due to the date that conclusive information for this event was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway to protect the maritime public from the hazards associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

This regulation establishes a safety zone in all waters within a five hundred (500) yard radius of the fireworks launching barge in Provincetown Harbor, Provincetown, MA on July 4, 2000, with a rain date of July 5, 2000. This safety zone is needed to protect the maritime community from possible hazards associated with a fireworks display. No vessel may enter the safety zone without permission of the Captain of the Port (COTP), Providence RI.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, l979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves a very small area of Provincetown Harbor. The effect of this regulation will not be significant due to the lateness of the hour, all vessel traffic may safely transit around this safety zone, and the extensive maritime advisories that will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this action under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This temporary rule would not impose an unfunded mandate.

Taking of Private Property

This temporary rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of implementing this temporary rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–122 to read as follows:

§ 165.T01–122 Safety Zone: Fireworks Display, Provincetown Harbor, Provincetown, MA.

(a) *Location.* All waters within a five hundred (500) yard radius of the fireworks launching barge located in Provincetown harbor, Provincetown, MA.

(b) *Effective Period.* This section is effective from 8 p.m. until 10 p.m. on July 4, 2000, rain date 8 p.m. until 10 p.m. on July 5, 2000, unless extended or terminated sooner by the Captain of the Port Providence.

(c) *Regulations.* (1) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 20, 2000.

J.D. Stieb,

Commander, U.S. Coast Guard, Acting Captain of the Port, Marine Safety Office Providence.

[FR Doc. 00–16880 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–152]

RIN 2115–AA97

Security Zone: Presidential Visit, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone between Piers 83 and 90 on the Hudson River, Manhattan, New York. This action is necessary to protect the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during the President's visit to New York City. This action is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: This rule is effective from 6 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on July 5, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–152) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York, 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date that specific information on the President's visit to New York City was made available to the Coast Guard, there was insufficient time to draft and publish an NPRM. This event will have minimal impact on the waterway, vessels may still transit through the western 600 yards of the 950-yard wide Hudson River during the President's visit to the Intrepid Sea Air and Space Museum, and the zone is only in effect for 5 hours. Additionally, the New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do. Any delay encountered in this regulation's effective date would be unnecessary and contrary to security interests as immediate action is needed to protect the Port of New York/New Jersey and the President.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: this event will have minimal impact on the waterway, vessels may still transit through the western 600 yards of the 950-yard wide Hudson River during the President's visit to the Intrepid Sea Air and Space Museum, and the zone is only in effect for 5 hours. Additionally, the New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do.

Background and Purpose

This zone is needed to ensure the security of the Port of New York/New Jersey while the President is visiting the Intrepid Sea Air and Space Museum in Manhattan. This security zone will safeguard the Port of New York/New Jersey during his visit to the Intrepid Museum against terrorism, sabotage or other subversive acts and incidents of a similar nature. This security zone provides for an exclusion area during the President's visit at the museum. This zone includes all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″ N 074°00′13″ W (NAD 1983), south to approximate position 40°45′54″ N 074°00′25″ W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall, then north to the point of beginning. The security zone is based on security needs for the Port of New York/New Jersey and the President. All vessels are prohibited from transiting the area for approximately five hours during the President's visit at the Intrepid Museum. The New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do. This security zone has been narrowly tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary. Entry into or movement within this security zone is prohibited unless authorized by the Coast Guard Captain of the Port, New York.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the western 600 yards of the 950-yard wide Hudson River while the security zone is in effect. Additionally, the New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do, and extensive advance notifications that will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Hudson River during the time this zone is activated.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can transit through the western 600 yards of the 950-yard wide Hudson River while the security zone is in effect, this rule will be in effect for only five hours, and extensive advance notifications which will be made. Additionally, the New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its affects on them and participate in the rulemaking process. The New York City Passenger Ship Terminal and Circle Line Sightseeing Cruises were both contacted about the affects this zone may have on their business. The Passenger Ship Terminal does not have any vessels scheduled to be berthed during the event. Circle Line anticipates only having to move 2 vessels between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) during the event which they will be authorized to do.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a security zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–152 to read as follows:

§ 165.T01–152 Security Zone: Presidential Visit, Hudson River, New York.

(a) *Location.* The following area is a security zone: all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″ N 074°00′13″ W (NAD 1983), south to approximate position 40°45′54″ N 074°00″25″ W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall, then north to the point of beginning.

(b) *Effective period.* This section is effective from 6 p.m. (e.s.t.) until 11 p.m. (e.s.t.) on July 5, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise

commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 27, 2000.

R.E. Bennis,

Captain, U.S. Coast Guard; Captain of the Port, New York.

[FR Doc. 00–16881 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Southeast Alaska 00–008]

RIN 2115–AA97

Safety Zone; Tongass Narrows, Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone along the navigable waters of Tongass Narrows, Ketchikan, Alaska. The safety zone is required to protect maritime vessels and minimize traffic for the safety and protection of both the vessel conducting fireworks display activities and other vessels in the immediate proximity. This safety zone will encompass the waters within a 300 yd radius of the vessel situated at approximately 55°20′32″ N, 131°39′40″ W. Entry into, transit through or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port, Southeast Alaska, or the Coast Guard vessel on scene via VHF.

DATES: This temporary final rule becomes effective 10 p.m. July 4, 2000 and terminates at 1 a.m. July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cecil McNutt, Marine Safety Office Juneau, Alaska, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska 99801, (907) 463–2470.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at U.S. Coast Guard, Marine Safety Office, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 463–2450.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the Coast Guard finds a good cause exists for not publishing a NPRM. In keeping with requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that cause exists for making this regulation effective less than 30 days after publication in the **Federal Register** due to receipt of application for this marine event was not received until June 12, 2000. Publication of a NPRM and delay of effective date would be contrary to the public interest because immediate action is necessary to protect the safety of the maritime vessel traffic.

Background and Purpose

On or about the 4th of July, a tug and barge conducts fireworks display activities within an established 100 yd safety zone (33 CFR 165.1708) located on the navigable waters of Tongass Narrows, off the northern tip of Pennock Island. This year the tug and barge will be positioned approximately 55°20′32″ N, 131°39′40″ W and a blast or fallout radius has been increased to 300 yd for the fireworks display.

This will occur at 10 p.m. July 4, 2000 and ending approximately 1 a.m. July 5, 2000. This safety zone is required to protect the maritime public from the hazards created by the vessel conducting fireworks activities.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with Sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. § 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership (58 FR 58093; October 28, 1993), govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.2.

2. A new temporary section § 165.T17–008 is added to read as follows:

§ 165.T17–008 Tongass Narrows, Ketchikan, Alaska—Safety Zone.

(a) *Location.* The following area is a temporary Safety Zone: the waters in Ketchikan Harbor within a 300 yd radius of the vessel engaged in fireworks display activities, situated at approximately 55°20′32″ N, 131°39′40″ W.

(b) *Effective dates.* This regulation becomes effective at 10 p.m. July 4, 2000 and terminates 1 a.m. July 5, 2000.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited except as authorized by the Captain of the Port, Southeast Alaska or the Coast Guard vessel on scene via VHF–FM Channel 16.

Dated: June 21, 2000.

B.J. Peter,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Southeast Alaska.

[FR Doc. 00–16883 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–00–157]

RIN 2115–AA97

Safety Zone: Manchester Fourth of July Fireworks, Manchester, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Manchester Fourth of July Fireworks, Manchester, MA. The safety zone will be in effect from 8 p.m. until 11 p.m. on Monday, July 3, 2000. The safety zone will temporarily close all waters of Massachusetts Bay within a four hundred (400) yard radius of the fireworks barge located at position 42°34.05′N, 070°45.52′W. The safety zone prohibits entry into or movement within this portion of Massachusetts Bay and is needed to protect the maritime public from the hazards posed by a fireworks display.

DATES: This rule is effective from 8 p.m. until 11 p.m. on Monday, July 3, 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Brian J. Downey, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until June 2, 2000, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

This regulation establishes a safety zone on the waters of Massachusetts Bay in a four hundred (400) yard radius around the fireworks barge located at position 42°34.05′N, 070°45.52′W. The safety zone is in effect from 8 p.m. until 11 p.m. on Monday, July 3, 2000. This safety zone prohibits entry into or movement within this portion of Massachusetts Bay and is needed to protect the maritime public from the dangers posed by a fireworks display.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Due to the limited duration of the safety zone, the fact that the safety zone will not restrict the entire Bay, allowing marines to freely navigate around the safety zone, and the advance maritime advisories that will be made, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Massachusetts Bay from 8 p.m. until 11 p.m. on July 3, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone is only 3 hours in duration; mariners may freely navigate around the safety zone, and the Coast Guard will issue marine radio advisories before the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions

annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under E.O. 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.

2. Add temporary § 165.T01–157 to read as follows:

§ 165.T01–157 Safety Zone: Manchester Fourth of July Fireworks, Massachusetts Bay, Massachusetts

(a) *Location.* The following area is a safety zone: All waters of Massachusetts Bay within a four hundred (400) yard radius of the fireworks barge located at position 42°34.05′N, 070°45.52′W.

(b) *Effective Date.* This section is effective from 8 p.m. until 11 p.m. on Monday, July 3, 2000.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: June 19, 2000.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 00–16880 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 775

National Environmental Policy Implementing Procedures

AGENCY: Postal Service (USPS).

ACTION: Final rule.

SUMMARY: This rule corrects an oversight in wording in the Postal Service's National Environmental Policy Act (NEPA) regulations concerning procedures and categorical exclusions.

EFFECTIVE DATE: This regulation is effective June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Susan L. Koetting, Attorney, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–1135, phone (202) 268–4818.

SUPPLEMENTARY INFORMATION: On August 27, 1998, the Postal Service published in the **Federal Register**, final regulations on procedures and categorical exclusions regarding NEPA (63 FR 45719). After the publication of the regulations, it was discovered that an error had been made in language in section 775.9(a)(1). Specifically, it was not intended that a written determination not to prepare an environmental assessment be required for all actions. When these regulations were proposed on August 11, 1997 (62 FR 42958), the Postal Service expanded the list of postal activities that were subject to NEPA review and also expanded the list of categorical exclusions. Previous and current internal guidance for facilities programs and projects requires a checklist for all facility actions, while previous and current internal guidance for operational activities only requires a checklist for certain actions that exceed certain higher level financial approval requirements. When these regulations were finalized, internal facilities policy was inadvertently carried over to all activities. This was not intended and is inconsistent with internal guidance and the purpose for establishing categorical exclusions. Postal policy, as discussed in the August 1997 notice, requires a checklist to screen for potential environmental concerns, but it was not intended to do one for all activities, even if categorically excluded.

In a further development, it was recently discovered that a sentence in the regulations was inadvertently dropped during the codification process. In § 775.9(b)(1), the original second sentence in the 1997 version of the published regulations in Title 39, Code of Federal Regulations was dropped out of the version of the regulations published in 1999. The old second sentence was to have become the third sentence in § 775.9(b)(1).

In light of the foregoing, the Postal Service adopts the following minor revisions to its NEPA regulations.

List of Subjects in 39 CFR Part 775

Environmental impact statements.

Accordingly, the Postal Service amends 39 part 775 as follows:

PART 775—NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

1. The authority citation for 39 CFR part 775 continues to read as follows:

Authority: 39 U.S.C. 401; 42 U.S.C. 4321 *et seq.*; 40 CFR 1500.4.

2. Amend § 775.9 by revising the introductory text of paragraph (a)(1) and adding a sentence after the second sentence in paragraph (b)(1) to read as follows:

§ 775.9 Environmental evaluation process.

(a) All actions—(1) Assessment of actions. An environmental checklist may be used to support a record of environmental consideration as the determination that the proposed action does not require an environmental assessment. An environmental assessment must be prepared for each proposed action except that an assessment need not be made if a determination is made that:

* * * * *

(b) Additional requirements for facility actions. (1) * * * An environmental assessment report, however, is not required until the contending project sites have been determined. * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–16674 Filed 6–30–00; 8:45 am]

BILLING CODE 7710–12–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1412, MM Docket No. 99–291; RM–9665]

Digital Television Broadcast Service; Reno, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sarkes Tarzian, Inc., licensee of Station KTVN(TV), Reno, Nevada, substitutes DTV Channel 13 for DTV Channel 32 at Reno, Nevada. *See* 64FR 52486, September 29, 1999. DTV Channel 13 can be allotted to Reno at coordinates (39–18–45 N. and 119–53–00 W.) with a power of 12, HAAT of 906 meters and with a DTV service population of 481 thousand. With this action, this proceeding is terminated.

DATES: Effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–291, adopted June 26, 2000, and released June 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Nevada, is amended by removing DTV Channel 32 and adding DTV Channel 13 at Reno.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16777 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1413, MM Docket No. 99–252; RM–9648]

Digital Television Broadcast Service; Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Journal Broadcast Corporation, licensee of Station KTNV, Las Vegas, Nevada, substitutes DTV Channel 12 for DTV Channel 17 at Las Vegas, Nevada. *See* 64 FR 38621, July 19, 1999. DTV Channel 12 can be allotted to Las Vegas at coordinates (35–56–43 N. and 115–02–32 W) with a power of 26.4, HAAT of 610 meters and with a DTV service population of 738 thousand.

With this action, this proceeding is terminated.

DATES: Effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–252, adopted June 26, 2000, and released June 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Nevada, is amended by removing DTV Channel 17 and adding DTV Channel 12 at Las Vegas.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16776 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1261; MM Docket No. 99–287; RM–9712]

Radio Broadcasting Services; Sulphur Bluff, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 259A to Sulphur Bluff, Texas, in

response to a petition filed by Sulphur Bluff Radio Broadcasting . *See* 64 FR 52487, September 29, 1999. The coordinates for Channel 259A at Sulphur Bluff are 33–23–03 NL and 95–22–59 WL. There is a site restriction 2.7 kilometers (1.7 miles) northeast of the community. With this action, this proceeding is terminated. A filing window for Channel 259A at Sulphur Bluff will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–287, adopted May 31, 2000, and released June 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Sulphur Bluff, Channel 259A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16681 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1245; MM Docket No. 99–84; RM–9501, RM–9594]

Radio Broadcasting Services; Stratford and Lincoln, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Peter George, allots Channel 254A to Stratford, NH, as the community's first local aural service. *See* 64 FR 14429, May 21, 1999. Channel 254A can be allotted to Stratford in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) north, at coordinates 44–43–54 NL; 71–34–10 WL, to avoid a short-spacing to vacant and unapplied-for Channel 256A at Whitefield, NH. Canadian concurrence in the allotment has been obtained since Stratford is located within 320 kilometers (200 miles) of the U.S.-Canadian border. The petition and counterproposal filed by Barry P. Lunderville to allot Channel 254A to Lincoln, NH, is dismissed for failure to comply with the subscription and verification requirements of Section 1.52 of the Commission's Rules. A filing window for Channel 254A at Stratford will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–84, adopted May 31, 2000, and released July 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by adding Stratford, Channel 254A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16682 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1259; MM Docket No. 98–128; RM–9308 and RM–9385]

Radio Broadcasting Services; Crystal Falls and Republic, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 235A at Crystal Falls, Michigan, in response to a petition filed by Results Broadcasting of Iron Mountain, Inc. *See* 63 FR 40253, July 28, 1998. The coordinates for Channel 235A at Crystal Falls are 46–09–05 and 88–22–01. There is a site restriction 7.4 kilometers (4.6 miles) north of the community. In response to a counterproposal filed by Crystal Radio Company, we shall also allot Channel 244A at Republic, Michigan, at coordinates 46–26–09 and 88–07–12. There is a site restriction 11.5 kilometers (7.2 miles) west of the community. Canadian concurrence has been received for the allotment of Channel 244A at Republic. Although Canadian concurrence has been requested for the allotment of Channel 235A at Crystal Falls, notification has not yet been received. Therefore, operation with the facilities specified for Crystal Falls herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA–Canada FM Broadcast Agreement or if specifically objected to by Canada. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–128, adopted May 31, 2000, and released June 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 235A at Crystal Falls and by adding Republic, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16680 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–2000–7581]

Organization and Delegation of Powers and Duties; Delegation to the Administrators of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Section 101(f) of the Motor Carrier Safety Improvement Act of 1999 provides that the authority under title 49, United States Code, to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture is vested in the Secretary and may be delegated. Accordingly, by this action, the Secretary delegates to the Administrator of the National Highway Traffic Safety Administration the authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture when the standards are based upon and similar to a Federal Motor Vehicle Safety Standard (FMVSS) promulgated under chapter 301 of title 49, U.S.C. The Administrator may promulgate a standard simultaneously with the FMVSS on which it is based. The authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture is delegated to the Administrator of the Federal Motor Carrier Safety Administration when the standards are not based upon and similar to an FMVSS promulgated under chapter 301 of title 49, U.S.C.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John Womack, Office of the Chief Counsel, HCC–01, (202) 366–9511, National Highway Traffic Safety Administration, or Ms. Judith A. Rutledge, Office of the Chief Counsel, (MC-CC), (202) 366–2519, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

Effective October 9, 1999, the Secretary of Transportation rescinded the authority of the Federal Highway Administrator to perform motor carrier safety functions and operations and redelegated it to the Director of a newly established Office of Motor Carrier Safety in the Department of Transportation. (64 FR 56270, October 19, 1999; 64 FR 58356, October 29, 1999.) This action was consistent with section 338 of the Fiscal Year 2000 Department of Transportation and Related Agencies Appropriations Act (Pub. L. 106–69), as amended by Pub. L. 106–73, which prohibits the Federal Highway Administration from spending funds made available or limited in that Act to carry out such functions. On December 9, 1999, the Motor Carrier Safety Improvement Act of 1999 (MCSI Act) (Public Law No. 106–159, 113 Stat. 1748) was enacted for the purpose of establishing the Federal Motor Carrier Safety Administration effective January 1, 2000. As we noted in a prior delegation to the FMCSA, 49 U.S.C. 113(f), as enacted by section 101(a) of the MCSI Act, states that the Federal Motor Carrier Safety Administrator shall carry out a number of duties and powers related to motor carrier and motor carrier safety and gives the Secretary discretion to delegate the authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture. As a result, Part 1 of title 49, CFR, was amended to reflect this new provision by substituting the words "Administrator of the Federal Motor Carrier Safety Administration" for the words "Director of the Office of Motor Carrier Safety." (65 FR 220, January 4, 2000.) It was also amended to reflect the Federal Motor Carrier Safety Administration as an organization within the Department of Transportation and to describe its general responsibilities. *Id.* In addition, section 1.73 of this Part was amended in accordance with section 101(f) of the MCSI Act to reflect the Secretary's reservation to himself of the authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture. *Id.* These amendments were effective January 1, 2000.

This rule amends 49 CFR Part 1 to reflect the Secretary's decision to now delegate to the National Highway Traffic Safety Administrator the authority to promulgate safety standards for commercial motor vehicles and equipment already in use when the standards are based upon and similar to an FMVSS promulgated under chapter 301 of title 49, U.S.C. In issuing standards under this delegation, the Administrator will coordinate with the Federal Motor Carrier Safety Administrator. This rule also amends Part 1 to delegate to the Federal Motor Carrier Safety Administrator the authority to promulgate safety standards for commercial motor vehicles and equipment already in use when the standards are not based upon and similar to an FMVSS promulgated under chapter 301 of title 49, U.S.C. Nothing in this rule changes the existing authority of the Federal Motor Carrier Safety Administration to promulgate standards relating to motor carrier

operations and maintenance of commercial motor vehicles, to inspect vehicles and equipment for compliance with applicable safety standards and maintenance requirements, and to take enforcement action as necessary.

The Administrators of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration have the authority to redelegate the functions described in this document if not inconsistent with statute, departmental regulations, policies, and orders governing delegation of functions.

As the rule relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). This action makes no substantive changes to the motor carrier safety regulations. Therefore, prior notice and opportunity to comment are unnecessary, and good cause exists under 5 U.S.C. 553(d)(3) to dispense with the 30-day delay in the effective date requirement so that the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration may immediately operate pursuant to the changes noted below.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

Issued this 22nd day of June, 2000 at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends 49 CFR Part 1 as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 2104(a); Pub. L. 101–552; 28 U.S.C. 2672, 31 U.S.C. 3711 (a)(2), 46 U.S.C. 2104(a).

2. In § 1.50 add paragraph (n) to read as follows:

§ 1.50 Delegation to the National Highway Traffic Safety Administrator.

* * * * *

(n) Carry out, in coordination with the Federal Motor Carrier Safety Administrator, the authority vested in the Secretary by subchapter III of chapter 311 and section 31502 of title 49, U.S.C., to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture when the standards are based upon and similar to a Federal Motor Vehicle Safety Standard promulgated, either simultaneously or previously, under chapter 301 of title 49, U.S.C.

§ 1.73 [Amended]

3. Amend § 1.73 as follows:

a. Amend paragraph (g) by removing the word "for" the first time it is used and adding the word "that" in its place, and by adding before the period "is limited to standards that are not based upon and similar to a Federal Motor Vehicle Safety Standard promulgated under chapter 301 of title 49, U.S.C."

b. Amend paragraph (l) by removing the word "for" the first time it is used and adding the word "that" in its place, and by adding before the period "is limited to standards that are not based upon and similar to a Federal Motor Vehicle Safety Standard promulgated under chapter 301 of title 49, U.S.C."

[FR Doc. 00–16623 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000503121–0189–02; I.D. 030600A]

RIN 0648–AN07

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures (framework procedure) of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS issues this final rule to: Increase the annual total allowable catch (TAC) and increase the commercial trip limit off the southeast coast of Florida for Atlantic group king mackerel; and increase the TAC, modify the commercial trip limits applicable off Florida, and increase the recreational bag limit for Atlantic group Spanish mackerel. The intended effects of this rule are to maintain healthy stocks of king and Spanish mackerel while still allowing catches by important commercial and recreational fisheries.

DATES: This final rule is effective August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter; telephone: 727–570–5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils and was approved and implemented by NMFS through regulations at 50 CFR part 622. In accordance with the framework procedure, the South Atlantic Fishery Management Council (Council) recommended, and NMFS published, a proposed rule (65 FR 31132, May 16, 2000) to: Increase the annual TAC and increase the commercial trip limit off the southeast coast of Florida for Atlantic group king mackerel; and increase the TAC, modify the commercial trip limits applicable off Florida, and increase the recreational bag limit for Atlantic group Spanish mackerel. The proposed rule described the need and rationale for these measures, which are not repeated here.

Comments and Responses

One public comment on the proposed rule was received from the Council.

Comment: The Council reiterated its support for a TAC of 7.04 million lb (3.19 million kg) for Atlantic group Spanish mackerel; noted that the regulations would relieve restrictions, consistent with conserving the resource, and would benefit fishers who had experienced necessary restrictions in the past; and urged timely implementation of the regulations.

Response: NMFS agrees that the Council's proposed actions are appropriate, has approved them, and is implementing them by this final rule.

Change from the Proposed Rule

The proposed rule inadvertently did not include the revision of the adjusted quota for Atlantic group Spanish mackerel that results automatically from the increase in TAC. This final rule incorporates the appropriate revision in § 622.44(b)(2).

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when

this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Comments should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.39, paragraph (c)(1)(iii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(iii) Atlantic migratory group Spanish mackerel—15.

* * * * *

3. In § 622.42, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 3.71 million lb (1.68 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

* * * * *

(2) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.87 million lb (1.76 million kg).

* * * * *

4. In § 622.44, paragraph (a)(1)(iii), paragraphs (b)(1)(ii)(A) and (B), and the first sentence of paragraph (b)(2) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(iii) In the area between 28°47.8′ N. lat. and 25°20.47′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 75 fish from April 1 through October 31.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) From April 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays through Fridays—unlimited.

(*2*) Saturdays and Sundays—not exceeding 1,500 lb (680 kg).

* * * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.62 million lb (1.64 million kg). * * *

* * * * *

[FR Doc. 00–16774 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000229053–0190–02; I.D. 120699A]

RIN 0648–AK96

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 17 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 17 and this final rule extend the current commercial reef fish vessel permit moratorium, which is effective through December 31, 2000, for 5 years through December 31, 2005. The purpose of the moratorium is to provide a stable environment in the fishery necessary for evaluation and development of a more comprehensive controlled access system for the entire commercial reef fish fishery.

DATES: This rule is effective August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–570–5305; fax: 727–570–5583; e-mail: Michael.Barnette@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery is managed under the FMP as prepared by the Gulf of Mexico Fishery Management Council (Council) and approved and implemented by NMFS, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), by regulations at 50 CFR part 622.

On December 17, 1999, NMFS announced the availability of Amendment 17 and requested comments on the amendment (64 FR 70678). NMFS approved Amendment 17 on March 16, 2000, and published a proposed rule to implement the 5-year extension of the current commercial reef fish vessel permit moratorium, which would otherwise expire on January 1, 2001, in Amendment 17 and requested comments on it (65 FR 14518, March 17, 2000). The background and rationale for the measure in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

Comments and Responses

One comment from the Department of the Interior (DOI) was received on Amendment 17. The DOI requested an extension of the comment period due to the inability to respond with comments in the allotted time. However, the 60-day comment period for the amendment is set by section 304 of the Magnuson-Stevens Act and cannot be extended.

No comments were received on the proposed rule.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 17 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Comments should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraph (m) introductory text is revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(m) *Moratorium on commercial vessel permits for Gulf reef fish.* The provisions of this paragraph (m) are applicable through December 31, 2005.

* * * * *

[FR Doc. 00–16771 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. No. 112399C]

RIN 0648–AM48

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2000 Specifications; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction.

SUMMARY: This document contains corrections to the **DATES** section of the 2000 specifications that was published on May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fisheries Policy Analyst, (978) 281–9221.

SUPPLEMENTARY INFORMATION:

Background

In the final rule implementing the 2000 annual specifications for summer flounder, scup, and black sea bass, the regulations were inadvertently made effective for the same time frame as the quotas (i.e., for the calendar year). The regulations were meant to remain effective until revised. This correction clarifies that the regulations are final, not temporary, regulations.

Correction

In FR Doc. 00–12993, published in the **Federal Register** issue of May 24, 2000, on page 33486, in column 2, correct the **DATES** caption to read as follows:

DATES: Effective 0001 hours, May 24, 2000, except that the quotas identified in the preamble are effective 0001 hours, May 24, 2000, through 2400 hours, December 31, 2000.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16772 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 128
Monday, July 3, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00–927–1 PR]

Winter Pears Grown in Oregon and Washington; Establishment of Quality Requirements for the Beurre D'Anjou Variety of Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on establishing quality requirements for the Beurre D'Anjou (Anjou) variety of pears under the winter pear marketing order. The marketing order regulates the handling of winter pears grown in Oregon and Washington and is administered locally by the Winter Pear Control Committee (Committee). This rule would require that Anjou variety pears shipped to North America during the period of August 15 through November 1 of each year be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Establishing quality requirements for Anjou pears would enhance the ripening process. This is expected to result in higher quality Anjou pears reaching the market and to benefit producers, handlers, and consumers. A minimum quantity exemption from the quality and inspection requirements also is proposed.

DATES: Comments must be received by July 18, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on establishing quality requirements under the order for Anjou variety pears. This rule would require that Anjou pears shipped to North America (Continental United States, Canada, or Mexico) during the period of August 15 through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Application of the quality and inspection requirements to shipments to these three markets is proposed because shipments to other important markets outside of North America are transported in cold storage containers and arrive after November 1. This rule would also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the proposed inspection and quality requirements.

Section 927.51 of the order provides authority for the issuance, modification, suspension, or termination of regulations for grade, size, and quality for any variety of winter pears grown in any district during a specified period and for different requirements applicable to shipments for different export markets.

Section 927.60 provides that when such regulations are in effect, no person shall handle such pears unless they are inspected and certified by the Federal-State Inspection service as meeting such requirements. Section 927.60 further provides authority for the establishment of minimum quantity exemptions from such requirements.

Section 927.52 provides that any vote on size, grade, and quality regulations be conducted based upon an affirmative vote of not less than 80 percent of the applicable total number of votes for that variety. This section provides that for the Anjou variety of pears, each member shall have one vote as an individual and, in addition, shall have an equal share of the vote of the district represented by the member. Each district is given an additional vote for each 25,000 boxes of the average quantity of Anjou pears produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods. Using this formula, there are 453 applicable total votes for Anjou pears.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) of the applicable total number of votes voting in favor, that it be required that such pears have their core/pulp temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntary comply with these two quality requirements because they are necessary for Anjou pears to ripen properly. In addition, the Committee has regularly provided handlers with research studies collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears meeting these minimum quality requirements prior to shipment to North American markets (Continental United States, Canada, or Mexico). The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should also have an average pressure of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements would prevent any producer from ultimately being able to have his fruit marketed. The requirements would simply ensure the proper handling practices that are necessary to prevent poor quality fruit from being shipped early in the marketing year. The Committee further anticipates that these requirements would be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption would eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule would apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 would naturally drop to the proposed minimum temperature because the pears are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation would no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure that a quality product is shipped to the consumer and to maintain reasonable returns to producers.

The Committee estimates the total 2000–2001 winter pear shipments at approximately 15,300,000 standard boxes. Of that amount, Anjou pear shipments are estimated at approximately 11,800,000 standard boxes. Last year, the total winter pear crop was about 13,800,000 standard boxes. Of that amount, Anjou pear shipments were approximately 10,100,000 standard boxes. In recent years approximately 7–8 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into the domestic market.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears who are subject to regulation under the marketing order and approximately 1,800 winter pear producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The Committee estimates, based upon handler shipment totals and an average price of $14 per standard box, that about 87 percent of winter pear handlers could be considered small businesses under SBA's definition, excluding receipts from other sources. In addition, based on acreage, production, and

producer prices reported by the National Agricultural Statistic Service, and the total number of winter pear producers, the average annual producer receipts are approximately $43,200, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of handlers and producers of winter pears may be classified as small entities.

This rule would require that Anjou pears shipped to North America (Continental United States, Mexico, or Canada) during the period of August 15 through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Shipments to other markets outside of North America are transported in cold storage containers and the fruit arrives after November 1. This rule would also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) in favor, that it be required that such pears have their core/pulp temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntarily comply with these two quality factors necessary to enhance the ripening process. In addition, the Committee has regularly provided handlers with a compilation of research data that has been collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program has worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears to meet these quality requirements prior to shipment. The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should have an average pressure test of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds that it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements would prevent any producer from ultimately being able to have his fruit marketed. The requirements would simply ensure that handlers follow the handling practices necessary to prevent poor quality fruit from being shipped early in the marketing year. The Committee further anticipates that these requirements would be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption would eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule would apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 would naturally drop to the minimum temperature because they are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation would no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure a quality product is shipped to the consumer and to maintain reasonable returns to producers.

This rule would impose some additional costs on handlers. Some of the additional costs may be passed on to producers. In recent years, approximately 9–10 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into North American markets. The Committee currently estimates the Anjou pear crop to be approximately 11,800,000 standard boxes. An average inspection rate for pears within the production area would approximate $0.05 per standard box. Therefore, it is estimated that the establishment of quality and inspection requirements would result in mandatory inspection costs of approximately $56,050 (9.5 percent × 11,800,000 standard boxes × inspection rate of $0.05 per standard box). The actual increase in costs to the industry because of mandatory inspection requirements would be significantly less, however, because approximately 65–75 percent of the Anjou pear crop is currently being inspected on a voluntary basis. These costs are expected to be significantly offset by the benefits of the proposed rule. The benefits for this proposed rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to the quality requirements, including a longer time period of mandatory inspection as well as continuing with the voluntary program. The Committee believes that the requirements proposed are the minimum level necessary to ensure a quality product. The Committee believes that voluntary compliance is no longer effective. The Committee believes that this action would benefit producers, handlers, and consumers.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meetings were widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 30, May 4, and June 2, 2000, meetings were public meetings and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twelve members, of whom six are handlers and six are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place by August 15, 2000, because shipments of Anjou pears are expected to begin shortly thereafter. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 927.316 is added to read as follows:

§ 927.316 Handling regulation.

During the period August 15 through November 1, no person shall handle any Beurre D'Anjou variety of pears for shipments to North America (Continental United States, Mexico, or Canada), unless such pears meet the following requirements:

(a) Beurre D'Anjou variety of pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that (1) the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and

(2) Any such pears have an average pressure test of 14 pounds. The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Control Committee.

(b) Each handler may ship on any one conveyance 8,800 pounds or less of Beurre D'Anjou variety of pears without regard to the quality and inspection requirements in paragraph (a) of this section.

Dated: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16737 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

RIN 3150–AG40

Operator License Eligibility and Use of Simulation Facilities in Operator Licensing

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by allowing applicants for operator and senior operator licenses to fulfill a portion of the experience prerequisites for license eligibility by manipulating a plant-referenced simulator as an alternative to use of the actual plant. The proposed rule would allow applicants for operator and senior operator licenses to fulfill a portion of the experience prerequisites by manipulating a plant-referenced simulator as an alternative to use of the actual plant. In addition, the proposed rule would remove current requirements for certification of simulation facilities and routine submittal of simulator performance test reports to the NRC for review. Also, the proposed rule would revise the definitions of "Performance testing," "Plant-referenced simulator," and "Simulator facility."

DATES: Submit comments by September 18, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, Mail Stop O–16C1. Deliver written comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://www.nrc.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: cag@nrc.gov). Copies of any comments received and certain documents related to this rulemaking may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after April 1, 2000, are also available electronically at the NRC's Public Electronic Reading room on the internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agency Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 202–634–3273 or toll-free at 1–800–397–4209, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Glenn Tracey, Operator Licensing, Human Performance and Plant Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1031; or by Internet electronic mail to gmt@nrc.gov.

SUPPLEMENTARY INFORMATION:

Introduction

Section 107 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2137), requires the NRC to prescribe uniform conditions for licensing individuals as operators of production and utilization facilities to determine the qualifications

of these individuals, and to issue licenses to these individuals. The regulations implementing these requirements are set out in Part 55 of Title 10, Chapter 1, of the Code of Federal Regulations. To assist licensees and others, the Commission has issued regulatory guides and generic letters that provide guidance on acceptable methods of meeting these regulatory requirements.

The Commission has become increasingly aware of the need to update its operator licensing regulations and related regulatory guides. These revisions are needed to clarify the extent to which applicants for operator and senior operator licenses may fulfill a portion of the experience prerequisites for license eligibility with the performance of five significant control manipulations on a plant-referenced simulator as an alternative to use of the actual plant, and to remove current requirements for certification of simulation facilities and routine submittal of simulator performance test reports to the NRC for review. The proposed rule changes would improve the operator licensing process. If adopted, these revisions would achieve the following objectives: (1) Allow applicants for operator and senior operator licenses to fulfill a portion of the experience prerequisites by performing five significant control manipulations on a plant-referenced simulator and/or the actual plant facility for which a license is sought; (2) maintain training integrity through a requirement that ensures adequate simulator replication of the plant and demonstrated fidelity for those simulators used to provide control manipulation experience; (3) remove current requirements for certification of simulation facilities; (4) eliminate routine submittal of simulator performance test reports to the NRC for review; and (5) maintain safety through NRC reviews to ensure simulator suitability for providing effective training in performance assessment of operator license applicants.

Background

On March 25, 1987 (52 FR 9453), the Commission published a final rule in the **Federal Register** that amended 10 CFR Part 55 and became effective May 26, 1987. The amendment requires that an applicant successfully manipulate the controls of the facility for which a license is sought. Five significant control manipulations must be performed which affect reactivity or power level. The final rule also included requirements for the use of simulators in the qualification and requalification of nuclear power plant operators, and required certification of simulation facilities.

Discussion of Proposed Rule Changes

Subpart A—Revision of § 55.4, Definitions

Three definitions would be revised. The definition of "Performance testing," which is testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance, would be revised in a manner that would not impose additional requirements on licensees, to comport with the definition for such testing in the most recent edition of the industry standard for use of nuclear plant simulators in operator training and examination (ANSI/ANS–3.5–1998). The definition of a "Plant-referenced simulator," which is a simulator modeling the systems of the reference plant, would be revised to reference within the definition existing simulator requirements in Part 55, and the proposed revision allowing completion of certain on-the-job training prerequisites for license applicant eligibility on the simulator. The definition of "Simulation facility," which describes the components that alone, or in combination, can be used for partial conduct of operating tests, would be revised to include part-task and limited-scope simulator devices because these devices are now referenced in the most recent edition of ANSI/ANS–3.5, and a request could be received for Commission approval of their use.

Conforming Changes to § 55.8 Information Collection Requirements: OMB Approval

As a result of the previously described proposed changes to § 55.45(b) that eliminate the simulator certification requirement, a conforming change to § 55.8(c)(3) would delete Form 474, "Simulation Facility Certification," OMB approval No. 3150–0138, as currently referred to § 55.45(b)(1)(iii) and § 55.45(b)(3)(iii).

Section 55.8(c)(4) would be deleted because its requirements have been incorporated into this 10 CFR part.

Subpart D—Revision of § 55.31 To Allow Performance of Control Manipulations on the Plant-Referenced Simulator

Section 55.31(a)(5), currently requires that five significant control manipulations that affect reactivity or power level be performed on the actual plant would be revised to allow those manipulations to be performed either on a plant-referenced simulator or on the actual plant, at the facility licensee's discretion. Eligibility for an operator license encompasses education, training, and experience factors. Reactivity manipulations are an operating experience requirement addressed by on-the-job training (OJT). Use of a plant-referenced simulator of appropriate fidelity for these manipulations is appropriate based upon improvements in simulator technology and 13 years of successful experience in using plant-specific simulation facilities since the 1987 final rule. Modern plant-referenced simulation facilities in operation today are providing accurate and validated operator training and examination scenarios that convey realism in reactivity manipulations, other normal and abnormal procedure operations, complex plant operations, and emergency operating procedure evolutions, including simultaneous task management and faulted conditions. The proposed rule change would allow part of the plant operating experience requirement for license eligibility to be fully satisfied in a timely manner within the facility's accredited training program without impacting operation of the actual plant.

The requirement of § 55.31(a)(4) to complete the facility licensee's program of education, experience, and OJT as a prerequisite of license eligibility would not be affected by the proposed rule change. Performance of control manipulations that affect reactivity or power level constitutes only a small part of an applicant's preparedness to perform licensed duties and would continue to be implemented as a subset of OJT. If adopted, the proposed rule would alternatively allow use of the actual plant and/or the plant-referenced simulator for control manipulations, thus broadening the range of options available to facility licensees for selecting the most advantageous training method.

Although facility licensees' simulation facilities are, for the most part, state-of-the-art, the NRC has identified two areas of concern with respect to considering a plant-referenced simulator suitable for fulfilling the experience requirements of a license applicant. First, recognizing that the simulator may differ to a degree from the reference unit and to provide experience essentially replicating that obtained from control manipulations on the plant, reasonable measures should be taken to ensure that the simulated reactor core, at least for the directly associated models such as those for nuclear and thermal-hydraulic

characteristics, represents the actual reactor core that will exist in the plant at the time the applicant is tested for a license. Second, the performance of the nuclear and thermal-hydraulic characteristics models must be tested to ensure that the simulator is capable of being used to satisfy predetermined objectives without significant performance discrepancies or deviation from the approved scenario sequence. To address these concerns and thereby maintain plant safety, the proposed rule would add a requirement under § 55.45(b) for licensees using a plant-referenced simulator to satisfy reactivity manipulation experience requirements to ensure that: Simulator models relating to nuclear and thermal-hydraulic characteristics replicate the core load that exists in the nuclear power unit for which a license is being sought at the time of the applicant's operating test; and simulator fidelity has been demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviations from the approved training scenario sequence. This provision in the proposed rule thus links § 55.45(b) with the proposed § 55.31(a)(5).

Subpart E—Revision of § 55.45 To Remove Current Requirements for Simulator Certification and Routine Submittal of Performance Test Reports

The proposed rule would delete requirements that have become outdated and burdensome to the facility licensees and are of limited value to the NRC in the following areas of § 55.45(b): (1) Certification of simulation facilities; (2) submittal of test schedule information; and (3) submittal of quadrennial test reports.

The March 25, 1987, final rule provided a phased implementation schedule for the requirement that facility licensees who propose to use a simulation facility consisting solely of a plant-referenced simulator certify, by means of NRC Form 474, "Simulation Facility Certification," the availability of a simulation facility meeting Commission regulations. The certification requirement also contained associated requirements for submittal of test documentation and test schedules on a quadrennial basis. Licensees have certified plant-referenced simulators at all power reactor facilities, and the NRC staff's experience has shown the quadrennial reports to be of minimal value in assessing simulator suitability for testing of operators.

The proposed rule would, by means of an alternative regulatory approach that would not change substantive existing requirements, eliminate the need for certification and quadrennial reports. Absent certification, assurance of simulator suitability would be provided through NRC reviews and validation of operating test scenarios, with review of performance test results, and uncorrected modeling or hardware discrepancies, if needed. If the simulator is found by this review to be unsuitable, the simulator may not be used to conduct an operating test, requalification training, or for performing control manipulations to establish license applicant eligibility. The current requirement for more recent simulator test and performance data to remain onsite would not be changed.

Facility licensees proposing to use a simulator facility meeting the definition in § 55.4 for a plant-referenced simulator are not required to submit an application for Commission approval of that simulator.

For cases in which licensees propose to use a simulation facility not meeting the definition of a plant-referenced simulator, the Commission would require additional information to determine the acceptability of the simulator, and thus would require an application for Commission approval.

Since 1987, the last time the Commission amended its regulations regarding the use of simulators, facility licensees have trained licensed operators and applicants for operator and senior operator licenses on plant-referenced simulators that were certified in accordance with the 1985 edition of ANSI/ANS–3.5. This standard specifies full-scope, stand-alone testing of system models and simulator training capabilities as part of initial simulator acceptance testing. Licensees continue to test their plant-referenced simulators in the manner of initial development and to submit test schedules and reports on a quadrennial basis to comply with the 1987 final rule that requires periodic scheduling and reporting of test results to the NRC. The industry's approach to computer software development and simulator testing has changed considerably since 1987, and a new approach has been codified though the issuance of the 1998 version of ANSI/ANS–3.5, Nuclear Power Plant Simulators for Use in Operator Training and Examination. The standard has moved away from continued full-scope, stand-alone testing of system models and simulator training capabilities toward a scenario-based testing and quality control philosophy that is associated with the facility's planned simulator usage.

The proposed rule would eliminate the need for certification of simulation facilities to the NRC and the associated testing and reporting requirements that have been become outdated by the 1998 revision of the national consensus standard ANSI/ANS–3.5.

The proposed rule would eliminate duplicate testing for those licensees that choose to adopt the revised national standard. The proposed rule changes would neither require facility licensees to adopt a newly revised version of the national consensus standard, nor would it require facility licensees to modify existing simulator support programs or practices. The proposed rule changes would not impose additional burden or increase the risks to the health and safety of any segment of the nuclear industry or the public.

The proposed rule would allow facility licensees to voluntarily adjust their performance test programs consistent with end-user needs as defined by their accredited systems-approach-to-training (SAT) programs or to voluntarily conform existing simulation facility programs to new revisions of ANSI/ANS–3.5. Facility licensees' plant-referenced simulators are continually in the update and maintenance mode of their life-cycle as new computer technology and new plant information is incorporated into the simulation facility. Earlier revisions of the national consensus standard were not intended for today's highly technical, very complex, and sophisticated computer simulation programs that routinely encompass verification, validation, and documentation of a simulator's performance. Identification and resolution of discrepancies are a function of the licensees discrepancy reporting and resolution practices. The proposed rule and associated proposed Regulatory Guide 1.149, "Nuclear Power Simulation Facilities for Use in License Examinations," which would endorse ANSI/ANS–3.5–1998 without exception, would reduce apparent inconsistencies between the operational needs of facility licensee programs and simulator testing requirements, thereby relieving unnecessary regulatory burden and freeing resources for more effective developmental and validation testing associated with either simulator modification programs or the operator licensing training and examination processes.

Subpart F—Licenses

Conforming Changes to § 55.59, Requalification

As a result of the proposed changes to § 55.45(b) that would eliminate the simulator certification requirement, a

conforming change to § 55.59(c)(4)(iv) is proposed that would delete the terms "certified or approved" when referring to a simulation facility in this section.

Section-by-Section Analysis

Subpart D—Revisions To Allow Performance of Control Manipulations on the Plant-Referenced Simulator

The proposed rule would add a statement that "The Commission may accept evidence of satisfactory performance of control manipulations as part of a Commission-approved training program by a trainee on a plant-referenced simulator acceptable to the Commission under Section 55.45(b) of this part in lieu of use of the actual plant. Control manipulations performed on the simulator may be chosen from a representative sampling of the control manipulations and plant evolutions described in Section 55.59(c)(3)(A–F), (R), (T), (W), and (X) of this part, as applicable to the design of the plant for which the license application is submitted."

By providing an option for licensee to use plant-referenced simulators for control manipulations, the proposed rule obviates the need for current provisions in Section 55.31(a)(5) addressing the use of simulators for performance of control manipulations for facilities that have not yet completed pre-operational testing and initial startup test programs and provisions addressing plants in extended shutdowns. Thus those provisions are removed.

Subpart E—Remove Current Requirements for Simulator Certification and Routine Submittal of Performance Test Reports

10 CFR 55.45(b) provides regulations associated with the implementation and use of simulation facilities in operator licensing. Section 55.45(b)(1) addresses "Administration" of the operating test on a simulation facility. Section 55.45(b)(2) addresses "Schedule for facility licensees" with respect to submitting a plan by which its simulation facility will be developed and by which an application will be submitted for its use. Section 55.45(b)(3) addresses "Schedule for facility applicants" with respect to submitting a plan which identifies whether its simulation facility will conform with paragraph (b)(1)(i) or (b)(1)(ii) of this section at the time of application. Section 55.45(b)(4) addresses "Application for and approval of simulation facilities" with respect to using a simulation facility that is other than solely a plant-referenced simulator as defined in § 55.4. Section 55.45(b)(5) addresses "Certification of simulation facilities" with respect to those facility licensees which propose, in accordance with paragraph (b)(1)(ii) of this section, to use a simulation facility consisting solely of a plant-referenced simulator. Facility licensees have communicated to the NRC and the NRC agrees that some or portions of the rule provisions discussed and identified in this paragraph are unnecessarily burdensome.

Section 55.45(b)(1)(ii) requires that, "A simulation facility consisting solely of a plant-reference simulator which has been certified to the Commission" be used in administering the operating test. The proposed rule would eliminate the requirement for certification of the simulation facility and more appropriately refer to the definition of a simulation facility as described in § 55.4.

Section 55.45(b)(2) discusses, "Schedule for facility licenses." The proposed rule would eliminate this outdated item in its entirety.

Section 55.45(b)(2)(i) requires that, "Within one year after the effective date of this part, each facility licensee which proposes to use a simulation facility pursuant to paragraph (b)(1)(i) of this section, except test and research reactors, shall submit a plan by which its simulation facility will be developed and by which an application will be submitted for its use" The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(2)(ii) requires that, "Those facility licensees which propose to conform with paragraph (b)(1)(i) of this section, not later than 42 months after the effective date of this rule, shall submit an application for use of this simulation facility to the Commission, in accordance with paragraph (b)(4)(i) of this section" The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(2)(iii) requires that, "Those facility licensees which propose to conform with paragraph (b)(1)(ii) of this section, not later than 46 months after the effective date of this rule, shall submit a certification for use of this simulation facility to the Commission on Form NRC–474, "Simulation Facility Certification," available from Records and Reports Management Branch, Division of Information Support Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, in accordance with paragraph (b)(5)(i) of this section." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(2)(iv) requires that, "The simulation facility portion of the operating test will not be administered on other than a certified or an approved simulation facility after May 26, 1991." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(3) discusses, "Schedule for facility applicants." The proposed rule would eliminate this outdated item in its entirety.

Section 55.45(b)(3)(i) requires that, "For facility licensee applications after the effective date of this rule, except test and research reactors, the applicant shall submit a plan which identifies whether its simulation facility will conform with paragraph (b)(1)(i) or (b)(1)(ii) of this section at the time of application." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(3)(ii) requires that, "Those applicants which propose to conform with paragraph (b)(1)(i) of this section, not later than 180 days before the date when the applicant proposes that the Commission conduct operating tests, shall submit an application for use of its simulation facility to the NRC, in accordance with paragraph (b)(4)(i) of this section." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(3)(iii) requires that, "Those applicants which propose to conform with paragraph (b)(1)(ii) of this section, not later than 60 days before the date when the applicant proposes that NRC conduct operating tests, shall submit a certification for use of its simulation facility to the Commission on Form NRC–474, in accordance with paragraph (b)(5)(i) of this section." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4) requires that, "Application for and approval of simulation facilities. Those facility licensees which propose, in accordance with paragraph (b)(1)(i) of this section, to use a simulation facility that is other than solely a plant-referenced simulator as defined in § 55.4 shall—." The proposed rule would eliminate in its entirety this requirement and replace it with language to address "Commission-approved simulation facilities" whereby the Commission would approve a simulation facility if it finds that the simulation facility and its proposed use are suitable for the conduct of operating test for the facility licensee's reference plant, in accordance with paragraph (a) of this section.

Section 55.45(b)(4)(i) requires that, "In accordance with the plan submitted pursuant to paragraph (b)(2)(i) or (b)(3)(i) of this section, as applicable,

submit an application for approval of the simulation facility to the Commission, in accordance with the schedule in paragraph (b)(2)(ii) or (b)(3)(ii) of this section, as appropriate. This application must include:" The proposed rule would eliminate the phrases "In accordance with the plan submitted pursuant to paragraph (b)(2)(i) or (b)(3)(i) of this section, as applicable" and " * * * in accordance with the schedule in paragraph (b)(2)(ii) or (b)(3)(ii) of this section, as appropriate." and replace its language to address those facility licensees that propose, in accordance with paragraph (b)(1)(i) of this section, to use a simulation facility that is other than solely a plant-referenced simulator as defined in § 55.4 and to also submit an application for approval of the simulation facility to the Commission that include certain items as described in § 55.45(b)(2)(i)(A), (B), and (C).

Section 55.45(b)(4)(i)(A) requires that, "A statement that the simulation facility meets the plan submitted to the Commission pursuant to paragraph (b)(2)(i) or (b)(3)(i) of this section, as applicable;" The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(ii) requires that, "The Commission will approve a simulation facility if it finds that the simulation facility and its proposed use are suitable for the conduct of operating tests for the facility licensee's reference plant, in accordance with paragraph (a) of this section." The proposed rule would eliminate in its entirety this requirement and replace it with language applicable to those facility licensees which use a plant-referenced simulator to establish prerequisites for operator license eligibility in accordance with § 55.31(a)(5) and to provide in addition to existing performance testing required for significant control manipulations which affect reactivity; that simulator models relating to nuclear and thermal-hydraulic characteristics replicate the core load that exist in the nuclear power unit for which a license is being sought at the time of the applicants's operating test and that simulator fidelity has been demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

Section 55.45(b)(4)(iii) requires that facility licensees, "Submit, every four years on the anniversary of the application, a report to the Commission which identifies any uncorrected performance test failures, and submit a schedule for correction of these performance test failures, if any." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(iv) requires that facility licensees, "Retain the results of the performance test conducted until four years after the submittal of the application under paragraph (b)(4)(i), each report pursuant to paragraph (b)(4)(iii), or any reapplication under paragraph (b)(4)(iv) of this section, as appropriate." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(v) requires that, "If the Commission determines, based upon the results of performance testing, that an approved simulation facility does not meet the requirements of this part, the simulation facility may not be used to conduct operating tests." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(vi) requires that, "If the Commission determines, pursuant to paragraph (b)(4)(v) of this section, that an approved simulation facility does not meet the requirements of this part, the facility licensee may again submit an application for approval. This application must include a description of corrective actions taken, including results of completed performance testing as required for approval." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(vii) requires that, "Any application or report submitted pursuant to paragraphs (b)(4)(i), (b)(4)(iii) and (b)(4)(vi) of this section must include a description of the performance testing completed for the simulation facility, and must include a description of performance tests, if different, to be conducted on the simulation facility during the subsequent four-year period, and a schedule for the conduct of approximately 25 percent of the performance tests per year for the subsequent four years." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(5), "Certification of simulation facilities" requires that, "Those facility licensees which propose, in accordance with paragraph (b)(1)(ii) of this section, to use a simulation facility that is other than solely a plant-referenced simulator as defined in § 55.4 shall—." The proposed rule would eliminate in its entirety this requirement and replace it with language to address "Acceptability of simulation facilities" such that facility licensees which maintain a simulation facility for the conduct of operating test shall conform to the revised proposed rule and to provide assurance that approved or certified simulation facilities remain acceptable over a period time to meet the requirements paragraph (a) of this section.

Section 55.45(b)(5)(i) requires that facility licensees, "Submit a certification to the Commission that the simulation facility meets the Commission's regulations. The facility licensee shall provide this certification on Form NRC 474 in accordance with the schedule in paragraph (b)(2)(iii) or (b)(3)(iii) of this section, as applicable." The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(5)(ii) requires that facility licensees, "Submit, every four years on the anniversary of the certification, a report to the Commission which identifies any uncorrected performance test failures, and submit a schedule for correction of such performance test failures, if any." The proposed rule would partially eliminate this requirement. The facility licensee would have to make available for NRC review, prior to or concurrent with preparations for each operator licensing operating test or requalification program inspection results of any uncorrected performance test failures that will exist at the time of the operating test or requalification program inspection.

Section 55.45(b)(5)(iii) requires that facility licensees, "Retain the results of the performance test conducted until four years after the submittal of certification under paragraph (b)(5)(i), each report pursuant to paragraph (b)(5)(ii), or recertification under paragraph (b)(5)(v) of this section, as applicable." The proposed rule would revise the rule to require facility licensees to provide recurring assurance of fidelity by performance testing throughout the life of the simulation facility consistent with paragraphs 55.45(b)(2)(ii) and 55.45(b)(3)(i)(B) and only retain the results of performance test conducted for four years or until superseded by updated test results. The proposed rule would require the inclusion of provisions for maintaining examination and test integrity consistent with § 55.49.

Section 55.45(b)(5)(iv) requires that, "If the Commission determines, based upon the results of performance testing, that a certified simulation facility does not meet the requirements of this part, the simulation facility may not be used to conduct operating tests." The proposed rule revises the language such that if the Commission determines, based upon the results of pre-examination scenario validation, a review of performance testing results, or

uncorrected modeling or hardware discrepancies, that a simulation facility consisting solely of a plant-referenced simulator does not meet the requirements of this part as defined in § 55.4 or the criteria in § 55.45(b)(2)(ii), then the plant-referenced simulator may not be used to conduct operating tests, requalification, or control manipulations as described in §§ 55.31(a), 55.45(b)(1), and 55.59(c)(3) of this part. Facility licensees proposing to use simulation facilities meeting the definition in § 55.4 of a plant-referenced facility would not be required to submit an application for Commission approval.

Section 55.45(b)(5)(v) requires that, "If the Commission determines, pursuant to paragraph (b)(5)(iv) of this section, that a certified simulation facility does not meet the requirements of this part, the facility licensee may submit a recertification to the Commission on Form NRC—474. This recertification must include a description of corrective actions taken, including results of completed performance testing as required for recertification." The proposed rule eliminates this provision.

Section 55.45(b)(5)(vi) requires that, "Any certification report, or recertification submitted pursuant to paragraph (b)(5)(i), (b)(5)(ii) or (b)(5)(v) of this section must include a description of performance testing completed for the simulation facility, and must include a description of the performance tests, if different, to be conducted on the simulation facility during the subsequent four-year period, and a schedule for the conduct of approximately 25 percent of the performance tests per year for the subsequent four years." The proposed rule would eliminate in its entirety this requirement.

The proposed rule requirements associated with the implementation and use of simulation facilities would significantly reduce unnecessary burden for facility licensees and the NRC. The proposed rule would allow facility licensees greater flexibility to adjust their performance test programs consistent with user needs as defined by their accredited training programs, and encourage implementation of improved revisions of the national standard which, as endorsed by the NRC, would improve focus on the training and examination environment in which the plant-referenced simulator is used. In addition, the proposed rule would allow facility licensees to reduce cost.

Since § 55.45(b) was last revised on March 25, 1987 (52 FR 9453), facility licensees have continually improved and implemented sophisticated simulator modeling and replaced outdated computer hardware to ensure that operator and senior operator applicants as well as licensed operators are trained and qualified on a plant-referenced simulator.

Subpart A—Revisions of § 55.4 Definitions

Section 55.4 defines performance testing as "Performance testing means testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance." The proposed rule would redefine performance testing as "Performance testing means validation, scenario-based, or operability testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance."

Section 55.4 defines plant-referenced simulator as "Plant-referenced simulator means a simulator modeling the systems of the reference plant with which the operator interfaces in the control room, including operating consoles, and which permits use of the reference plant's procedures. A plant-referenced simulator demonstrates expected plant response to operator input, and to normal, transient, and accident conditions to which the simulator has been designed to respond." The proposed rule would enhance the definition of plant-referenced simulator as "Plant-referenced simulator means a simulator modeling the systems of the reference plant with which the operator interfaces in the control room, including operating consoles, and which permits use of the reference plant's procedures. A plant-referenced simulator demonstrates expected plant response to operator input, and to normal, transient, and accident conditions to which the simulator has been designed to respond. A plant-referenced simulator is designed, implemented, and maintained such that it: (1) Is sufficient in scope and fidelity to allow conduct of the evolutions listed in paragraphs 55.45(a)(1) through (13), and 55.59(c)(3)(i)(A) through (AA), as applicable to the design of the reference unit; (2) allows for the completion of on-the-job training experience prerequisites for license operator eligibility consistent with paragraph 55.45(b)(2)(ii)."

Section 55.4 defines simulation facility as "Simulation facility means one or more of the following components, alone or in combination, used for the partial conduct of operating tests for operators, senior operators, and candidates: (1) The plant, (2) a plant-referenced simulator, (3) another simulation device." The proposed rule would update the definition of simulation facility to "Simulation facility means one or more of the following components, alone or in combination, used for the partial conduct of operating tests for operators, senior operators, and license applicants: (1) The plant, (2) a plant-referenced simulator, (3) a Commission-approved simulator in accordance with § 55.45(b)(2), (4) another simulation device, including part-task and limited scope simulation devices."

Subpart A—General Provisions, § 55.8 Information Collection Requirements: OMB Approval

Section 55.8(c)(3) identifies the information collection requirement and the control number under which the requirement is approved for NRC Form 474, "Simulation Facility Certification," OMB approval No. 3150–0138. If adopted, the proposed rule would eliminate the need for the certification form.

Section 55.8(c)(4) would be deleted because its requirements have been incorporated into this 10 CFR part.

Subpart F—Licenses, § 55.59, Requalification

Section 55.59(c)(4)(iv) requires that, "* * * After the provisions of § 55.45(b) have been implemented at a facility, the certified or approved simulation facility must be used to comply with this paragraph." The proposed rule would eliminate the words "certified or approved" as a result of eliminating the certification requirement as described in the proposed rule § 55.45(b).

Issues for Public Comment

Comments concerning the content, level of detail specified, and the implementation of the proposed amendments are encouraged. Suggestions of alternatives other than those described in this notice and estimates of cost for implementation are encouraged. Because the intent of the proposed rule changes to § 55.31(a)(5) and § 55.45(b)(1) is to reduce unnecessary regulatory burden by providing acceptable methods to comply with the Commission's regulations, the NRC is particularly interested in receiving from the public comments on the following issues related to this proposed rule:

1. Are there rulemaking alternatives to this proposed rule that were not considered in the regulatory analysis for this proposed rule?

2. Are the revised definitions as used in § 55.4 clearly defined?

3. Would the revised requirements permitting control manipulations to be performed on a plant-referenced simulator as prescribed in § 55.31(a)(5) reduce unnecessary regulatory burden associated with establishing license eligibility for operators and senior operators and yet continue to maintain safety by ensuring that experience gained on the simulator essentially replicates that obtained from control manipulations on the plant?

4. Would the revised requirements in § 55.45 to eliminate the need for certification of simulation facilities and duplicate testing and reporting requirements accomplish their intended purpose of eliminating unnecessary regulatory burden?

5. Would the proposed NRC reviews of simulators ensure requisite simulator suitability to support effective training and operator performance assessment and thereby maintain plant safety?

Related Regulatory Activity

NRC Endorsement of ANSI/ANS 3.5–1998

The NRC staff has reviewed ANSI/ANS 3.5–1998 with respect to the revision of Regulatory Guide 1.149, "Nuclear Power Plant Simulation Facilities for Use in License Examinations." The 1998 revision of the standard was developed with full NRC participation and insight. Accordingly, the staff believes that those testing and fidelity concerns that have required exceptions and clarifications in the regulatory positions of the previous revisions of Regulatory Guide 1.149, are adequately addressed in this latest revision of the standard. The staff further believes that industry's concerns have been addressed in this latest revision of the standard. As noted in the introductory paragraph to the standard, "the consensus committee was balanced to ensure that competent, concerned, and varied interests have had an opportunity to participate." The staff is considering endorsing ANSI/ANS 3.5–1998 without the exceptions or clarifications that have characterized NRC's endorsement of previous revisions.

The staff published in the **Federal Register** for public comment a notice of availability of Draft Guide DG–1080 (proposed Revision 3 of Regulatory Guide 1.149) on August 23, 1999 (64 FR 162). The public comment period closed on November 12, 1999. NRC Form 474 and the associated OMB clearance will also be modified to reflect NRC's endorsement of the 1998 revision of the standard upon final issuance of Regulatory Guide 1.149 and final Commission action on changes described in this proposed rule.

Facility licensees would not be required to automatically adopt the new standard. The 1993 revision is still recognized by ANS, and the 1985 revision is considered to be a "historical" standard. Simultaneous endorsement of more than one version of the standard is consistent with both the NRC policy of evaluating the latest version of national consensus standards in terms of their suitability for endorsement by regulations or regulatory guides and the established regulatory position regarding simulators, allowing industry to establish recommended and required capabilities and acceptability criteria.

Referenced Documents

Copies of SECY–99–0225, DG–1080 (Proposed Revision 3 to Regulatory Guide 1.149), NRC Form 474, NUREG–1262, NUREG–1258, and NUREG–1021 are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editoral changes have been made in this proposed amendment to improve readability of the existing language of the provisions being revised. These types of changes are not discussed further in this document. The NRC requests comment on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will reduce existing information collection requirements, the public burden for this information collection is expected to be decreased by 120 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for further reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0138), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by August 2, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

National Technology Transfer and Advancement Act Statement

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise

impractical. Regulatory Guide 1.149 describes an acceptable method by which facility licensees might implement specific parts of this proposed rule and references the 1985, 1993, and 1998, revisions of voluntary standard American National Standards Institute/American Nuclear Society (ANSI/ANS) 3.5, "Nuclear Power Plant Simulators for Use in Operator Training and Examination."

Comments are being solicited, particularly with respect to effects of application of ANSI/ANS 3.5–1998 on existing simulator support and operator training programs and perceived compatibility with the proposed regulations. Comments are also being solicited with respect to applicability of earlier versions of ANSI/ANS 3.5 or applicability of standards and guidance other than ANSI/ANS 3.5 for use in training and examination of operators at nuclear power plants.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from the Branch Chief, Operator Licensing, Human Performance and Plant Support Branch, Office Nuclear Reactor Regulation, U.S. Regulatory Commission, at 301–415–3173 or by e-mail at jfc@nrc.gov. The Commission requests public comment on the regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 55.

PART 55—OPERATOR'S LICENSES

1. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

2. In § 55.4, the terms "Performance testing," "Plant-referenced simulator," and "Simulation facility," are revised to read as follows:

§ 55.4 Definitions.

* * * * *

Performance testing means validation, scenario-based, or operability testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.

* * * * *

Plant-referenced simulator means a simulator modeling the systems of the reference plant with which the operator interfaces in the control room, including operating consoles, and which permits use of the reference plant's procedures. A plant-referenced simulator demonstrates expected plant response to operator input, and to normal, transient, and accident conditions to which the simulator has been designed to respond. A plant-referenced simulator is designed and implemented such that it:

(1) Is sufficient in scope and fidelity to allow conduct of the evolutions listed in §§ 55.45(a)(1) through (13), and 55.59(c)(3)(i)(A) through (AA), as applicable to the design of the reference unit, and

(2) Allows for the completion of on-the-job training experience prerequisites for licensed operator applicant eligibility consistent with § 55.45(b)(3)(i).

* * * * *

Simulation facility means one or more of the following components, alone or in combination, used for the partial conduct of operating tests for operators, senior operators, and license applicants, or to establish on-the-job training experience prerequisites for operator license eligibility:

(1) The plant;

(2) A plant-referenced simulator;

(3) A Commission-approved simulator in accordance with § 55.45(b)(2); and

(4) Another simulation device, including part-task and limited scope simulation devices.

* * * * *

3. In § 55.8, paragraphs (c)(3) and (c)(4) are removed and paragraph (b) is revised to read as follows:

§ 55.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 55.11, 55.23, 55.25, 55.27, 55.31, 55.35, 55.40, 55.41, 55.43, 55.45, 55.47, 55.53, 55.57, and 55.59.

* * * * *

4. In § 55.31, paragraph (a)(5) is revised to read as follows:

§ 55.31 How to apply.

(a) * * *

(5) Provide evidence that the applicant, as a trainee, has successfully manipulated the controls of the facility for which a license is sought. At a minimum, five significant control manipulations must be performed that affect reactivity or power level. Evidence of satisfactory performance of control manipulations may be demonstrated on a plant-referenced simulator that meets the requirements of § 55.45(b)(3). Control manipulations performed on the simulator may be chosen from a representative sampling of the control manipulations and plant evolutions described in § 55.59(c)(3)(A–F), (R), (T), (W), and (X) of this part, as applicable to the design of the plant for which the license application is submitted. For licensed operators applying for a senior operator license, certification that the operator has successfully operated the controls of the facility as a licensed operator shall be accepted; and

* * * * *

5. In § 55.45, paragraph (b) is revised to read as follows:

§ 55.45 Operating tests.

* * * * *

(b) *Implementation*— (1) *Administration*. The operating test will be administered in a plant walkthrough and in either—

(i) A simulation facility which the Commission has approved for use after application has been made by the facility licensee; or

(ii) A plant-referenced simulator as defined in § 55.4.

(2) *Commission-approved simulation facilities*. (i) Facility licensees who propose to use a simulation facility in the administration of the operating test in accordance with paragraph (b)(1)(i) of this section, shall submit an application for approval of the simulation facility to the Commission. This application must include:

(A) A description of the components of the simulation facility that are intended to be used for each part of the operating test, unless previously approved;

(B) A description of the performance tests as part of the application, and the results of these tests; and

(C) A description of the procedures for maintaining examination and test integrity consistent with the requirements of § 55.49.

(ii) The Commission will approve a simulation facility if it finds that the simulation facility and its proposed use are suitable for the conduct of operating tests for the facility licensee's reference plant under paragraph (a) of this section.

(3) *Plant-referenced simulators*. (i) Facility licensees which propose to use a plant-referenced simulator to meet the experience requirements in § 55.31(a)(5) must ensure that:

(A) The plant-referenced simulator uses models relating to nuclear and thermal-hydraulic characteristics that replicate the core load that exists in the nuclear power unit for which a license is being sought at the time of the applicant's operating test; and

(B) Simulator fidelity has been demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

(ii) If the Commission determines that a simulation facility consisting solely of a plant-referenced simulator does not meet either the definition of a plant-referenced simulator as defined in § 55.4, or the criteria in § 55.45(b)(4)(A) and (D), the Commission will not accept the plant-referenced simulator for conducting operating tests as described in § 55.45(b)(1) of this part, requalification training as described in § 55.59(c)(3) of this part, or performing control manipulations that affect reactivity to establish eligibility for an operator's license as described in § 55.31(a)(5).

(4) *Continued assurance of simulator fidelity*. Facility licensees that maintain a simulation facility shall:

(A) Conduct performance testing throughout the life of the simulation facility in a manner sufficient to assure that the criteria of paragraphs 55.45(b)(4)(C) and 55.45(b)(3)(i)(B) as applicable, are met. The results of performance tests must be retained for four years after the completion of each performance test or until superseded by updated test results;

(B) Correct scenario validation, performance test, modeling , and hardware discrepancies;

(C) Make available for NRC review, before or concurrent with preparations for each operator licensing operating test or requalification program inspection, results of any uncorrected performance test failures that may exist at the time of the operating test or requalification program inspection; and

(D) Maintain the provisions for examination and test integrity consistent with § 55.49.

* * * * *

6. In § 55.59, paragraph (c)(4)(iv) is revised to read as follows:

§ 55.59 Requalification.

* * * * *

(c) * * *

(4) * * *

(iv) Simulation of emergency or abnormal conditions that may be accomplished by using the control panel of the facility involved or by using a simulator. Where the control panel of the facility is used for simulation, the actions taken or to be taken for the emergency or abnormal condition must be discussed; actual manipulation of the plant controls is not required. If a simulator is used in meeting the requirements of paragraph (c)(4)(iii) of this section, it must accurately reproduce the operating characteristics of the facility involved and the arrangement of the instrumentation and controls of the simulator must closely parallel that of the facility involved. After the provisions of § 55.45(b) have been implemented at a facility, the simulation facility must be used to comply with this paragraph.

* * * * *

Dated at Rockville, Maryland, this 27th day of June, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–16751 Filed 6–30–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 00N–1351]

Food Labeling; Use of the Term "Fresh" for Foods Processed With Alternative Nonthermal Technologies; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the use of the term "fresh" in the labeling of foods processed with alternative nonthermal technologies. The purpose of the meeting is to determine whether the use of the term "fresh" is truthful and not misleading on foods processed with these alternative technologies and to determine what type of criteria FDA should use when considering the use of the term with future technologies.

DATES: The public meeting will be held on July 21, 2000, from 8:30 a.m. to 4 p.m. Please preregister by July 14, 2000. Late registrations will be accepted contingent on space availability. Comments must be submitted no later than August 21, 2000.

ADDRESSES: The meeting will be held at the Holiday Inn City Centre, 300 East Ohio St., Chicago, IL, 312–787–6100.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or on the FDA website at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm.

FOR FURTHER INFORMATION CONTACT:

For registration: Kimberly Phillips or Darlene M. Bailey, Office of Public Affairs (HFR–CE645), Food and Drug Administration, 300 South Riverside Plaza, suite 550 South, Chicago, IL 60606, 312–353–7126 or FAX 312–886–3280.

For general information: Geraldine A. June, Center for Food Safety and Nutrition, Food and Drug Administration (HFS–822), 200 C St. SW., Washington, DC 20204, 202–205–4168 or FAX 202–205–5295.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2302 at 2401), FDA published a final rule that established labeling regulations that govern the use of the terms "fresh," "freshly _____" (e.g., "freshly baked") and "fresh frozen" as they appear on the labeling of foods, including the use of these terms in brand names and as sensory modifiers. As discussed in the final rule, we issued this regulation because of the continued misuse of the term "fresh" and related terms in the marketplace.

We concluded at that time that it was necessary to establish a definition for "fresh" to preclude the type of misuse that we encountered most often, i.e., use of the term to imply that a food is unprocessed, when in fact it has been processed. Thus, provisions in § 101.95 (21 CFR 101.95) govern the use of the term "fresh" when used on the labels or in labeling of foods to suggest or imply that the food is unprocessed. Generally, the appearance of the term "fresh" on a label or in labeling means that the food in its raw state or finished form has not been frozen or subjected to any form of thermal processing or any other form of preservation. However, we provided that the following treatments do not preclude the food from bearing the term "fresh": (1) The addition of approved waxes or coatings, (2) the post-harvest use of approved pesticides, (3) the application of a mild chlorine wash or mild acid wash on produce, or (4) the treatment of raw foods with ionizing radiation not to exceed the maximum dose of 1 kiloGray.

The regulation also notes that use of the term "fresh" is not precluded when it does not imply that the food is unprocessed, e.g., "fresh" may be used to describe pasteurized whole milk because consumers understand that almost all milk is pasteurized and, therefore, there is no misleading implication.

Recently, manufacturers have developed new alternative food processing technologies to control pathogens in foods while minimizing the thermal component of the process. Such processes include, but are not limited to, high pressure processing, pulsed electric field, pulsed light, submerged arc, and filtration.

FDA contracted with the Institute of Food Technologists (IFT) to review and evaluate the scientific information available on these new alternative technologies and to assist us in evaluating each technology's effectiveness in reducing and inactivating pathogens of public health concern. Where information on these technologies was too limited for a thorough evaluation and conclusion, IFT identified research needs. The final report of this work, entitled "Kinetics of Microbial Inactivation for Alternative Food Processing Technologies" (Ref. 1), is available on FDA's website at www.cfsan.fda.gov.

Manufacturers using these processes contend that their products maintain the same "fresh" characteristics as unprocessed products. Thus, these manufacturers have asked FDA if they may label these products with the term "fresh." We are interested in obtaining the views of interested parties on the use of the term "fresh" for foods processed with these technologies. Thus, we have decided to hold a public meeting to engage interested parties in discussion on this issue. We will use information gathered at this meeting, as well as other information available to FDA, in considering whether to initiate rulemaking to amend § 101.95.

In this notice, we are announcing a public meeting to discuss the use of the term "fresh" in the labeling of foods processed with the alternative technologies. We are soliciting public comment on whether the use of the term "fresh" is truthful and not misleading on foods processed with these alternative technologies and on what type of criteria FDA should use when considering the use of the term with future technologies. Specifically, we invite comment on the following questions:

1. Do consumers associate the term "fresh" with organoleptic characteristics, nutritional characteristics, or some other characteristics?
2. Do consumers want a way to identify foods that taste and look fresh but have been processed to control pathogens?
3. What does industry think the term "fresh" means?
4. Is the term "fresh" when applied to foods processed with the new technologies misleading to consumers?
5. Do the new technologies preserve the foods?
6. Are the new technologies truly nonthermal?
7. Are there quantifiable parameters, e.g., level of nutrients, vitamins etc., that could be measured to determine if a food is "fresh?"
8. Is there a term other than "fresh" that can be used for foods processed with the new technologies?
9. Would consumers understand a new term?
10. What is the economic impact of allowing use of the term "fresh" for foods processed with the new technologies?
11. Would allowing the term "fresh" on foods processed with new technologies place small firms not able to use these technologies at an economic disadvantage?

At the public meeting, we will be addressing whether the use of alternative processing technologies should preclude the use of the term "fresh." Therefore, the public meeting will be restricted to the discussion of whether these processes fit the criteria for the use of the term "fresh" and not whether other aspects of the provisions in § 101.95 should be reopened.

II. Registration and Requests to Make Oral Presentations

If you would like to attend the meeting, you must preregister in writing with the contact person for registration (address above) by July 14, 2000, by providing your name, title, business affiliation, address, telephone and fax number. Preregistered persons should check in before the meeting between 8 a.m. and 8:30 a.m. Persons who have not preregistered may register before the meeting between 8 a.m. and 8:30 a.m., dependent on space availability. To expedite processing, this registration information also may be sent to the contact person by FAX to 312–886–3280. If you need special accommodations due to disability (e.g., sign language interpreter), please inform the contact person when you register.

If, in addition to attending, you wish to make an oral presentation during the meeting, you must so inform the contact person and submit: (1) A brief written statement of the general nature of the views you wish to present and (2) the names and addresses of the persons who will give the presentation. Depending on the number of people who register to make presentations, we will limit the time allotted for each presentation. We anticipate that, if time permits, those attending the meeting will have the opportunity to ask questions during the meeting.

III. Comments

Interested persons may, on or before August 21, 2000, submit written comments to the Dockets Management Branch (address above). You may also

send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or to the FDA website at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Please address your comments to the docket number given at the beginning of this notice. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

IV. Transcripts

You may request a transcript of the meeting from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting after August 11, 2000, at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA website at http://www.fda.gov.

V. Reference

We have placed the following reference on display in the Dockets Management Branch. You may see it at that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Institute of Food Technologists, "Kinetics of Microbial Inactivation for Alternative Food Processing Technologies," A report of the Institute of Food Technologists for the Food and Drug Administration of the United States Department of Health and Human Services, June 2, 2000.

REGISTRATION FORM

Public Meeting on Use of the Term "Fresh" on Foods Processed with Alternative Nonthermal Technologies

Instructions: To register, complete this form and mail it to the address of the contact person(s) for registration or fax it to 312–886–3280 by July 14, 2000.

Name, _____
Title, _____
Company, _____
Address, _____
Telephone, _____
Fax, _____
E-mail, _____

Please indicate the type of organization that you represent:

Industry ____
Government ____
Consumer Organization ____
Media ____
Law Firm ____
Educational Organization ____
Other (specify) ____

Do you wish to make an oral presentation?

Yes____
No ____

If yes, you must also submit the following:

1. A brief statement of the general nature of the views you wish to present,
2. The names and addresses of all persons who will participate in the presentation, and depending on the number of people who register to make presentations, we will limit the time allotted for each presentation.

Dated: June 27, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–16716 Filed 6–28–00; 1:38 pm]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6728–2]

Announcement of Stakeholders Meeting on Arsenic in Drinking Water Proposed Rule

AGENCY: . Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The Environmental Protection Agency (EPA) will be holding a one-day Stakeholders meeting on August 9, 2000 in Reno, Nevada. The purpose of this meeting is to present information and to answer questions on the proposed rule. EPA is encouraging people to attend from State and Tribal drinking water programs, the regulated community (water systems), public health organizations, academia, environmental and public interest groups, engineering firms, and other interested stakeholders.

DATES: The stakeholder meeting on arsenic in drinking water will be held on Wednesday, August 9, 2000 from 8 a.m. to 12 pm and 1 p.m. to 5 p.m. PDT.

ADDRESSES: The meeting will be held at the Reno Hilton [(800) 648–5080], which is located at 2500 E. Second Street, Reno, NV 89595.

To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 between 9 am and 5:30 p.m. EST. Those registered for the meeting by Friday, July 28, 2000 will receive an agenda, logistics sheet, and a copy of the **Federal Register** notice prior to the meeting. There will be a limited number of conference lines available. These lines will be allocated on a first-reserved, first served basis. Members of the public who cannot attend the meeting in person should register with the Safe Drinking Water Hotline by July 28 to receive copies of the overheads in advance. Please provide your name, organization, title, mailing address, telephone number, facsimile number, e-mail address and telephone number for EPA to connect the caller via conference call [if applicable] for the "Arsenic Meeting."

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to the proposed arsenic rule, contact the Safe Drinking Water Hotline at 1–800–426–4791, or visit the EPA Office of Ground Water and Drinking Water arsenic webpage at *http://www.epa.gov/OGWDW/ars/arsenic.html*, which contains electronic copies of two fact sheets, the proposed rule, and the discussion papers and executive meeting summaries from previous stakeholders meetings. Registrants must make their own room reservations for the Reno Hilton by July 7, 2000 by calling (800) 648–5080 and mention "EPA Arsenic in Drinking Water Meeting" to guarantee the room rate of $55 plus tax.

SUPPLEMENTARY INFORMATION:

A. Background

Arsenic (As) is a naturally occurring element found in the human body and is present in food, water, and air. Arsenic in drinking water occurs in ground water and surface water and is associated with certain natural geologic conditions, as well as with contamination from human activities. Arsenic ingestion is linked to skin cancer and arsenic inhalation to lung cancer. In addition, arsenic ingestion seems to be associated with vascular effects, gastrointestinal irritation, and cancers of the kidney, bladder, liver, lung, and other organs. Water primarily contains inorganic arsenic species (As^{V+} and As^{III+}).

On August 6, 1996, Congress amended the SDWA, adding section 1412(b)(12)(A) which requires, in part, that EPA propose a NPDWR for arsenic by January 1, 2000 and issue a final regulation by January 1, 2001. The current maximum contaminant level (MCL) of 50 µg/L remains in effect until the effective date of the revised rule.

The National Primary Drinking Water regulation for arsenic proposes a Maximum Contaminant Level Goal (MCLG) of zero, an MCL of 5 µg/L, and lists best available technologies and small system compliance technologies. In addition, the proposed rule,

published June 22, 2000 (65 FR 38888) requests comments on MCLs of 3 µg/L, 10 µg/L, and 20 µg/L. EPA is proposing to withdraw two analytical methods, keeping the rest of the approved test methods for arsenic intact. The regulation will be effective for community water systems (CWSs) serving over 10,000 people three years after the final rule is issued, and effective five years after promulgation for CWSs serving under 10,000 people. In addition, EPA is proposing that non-transient, non-community water systems (NTNCWS) monitor and report arsenic that exceeds the new MCL, but not requiring compliance for NTNCWS with the MCL.

Furthermore, the proposal clarifies compliance for State-determined monitoring after exceedances for inorganic, volatile organic, and synthetic organic contaminants. Finally, EPA is proposing that States will specify the time period and sampling frequency for new public water systems and systems using a new source of water to demonstrate compliance for inorganic, volatile organic, and synthetic organic MCLs.

In conducting research and developing the proposed rule for arsenic in drinking water, EPA has consulted with the National Academy of Sciences, other Federal agencies, and other interested public and private parties.

The stakeholders meeting will cover a broad range of issues including: (1) Regulatory process, including risk management decisions; (2) arsenic risk assessment (exposure, health assessment, national occurrence); (3) key technical assessments (treatment technologies, treatment residuals, cost, analytical methods); (4) small system concerns; and (5) future stakeholder involvement.

EPA has announced this public meeting to discuss the proposed rule prior to the close of the public comment period. The meeting is not the forum for giving the Agency public comment on the rule. The public comment period ends on September 20, 2000, and you may send written comments to the W–99–16 Arsenic Comments Clerk, Water Docket (MC–4101), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Comments may be hand delivered to the Water Docket, located at U.S. EPA EB–57, 401 M St. SW, Washington, DC between 9 am. and 3:30 pm., Monday through Friday. Comments may be submitted electronically to *ow-docket@epamail.epa.gov*. Please submit an original and three copies of your comments and enclosures (including references) to the Water Docket at the address given above. For further information about submitting comments, please contact the Safe Drinking Water Hotline at 1-800–426–4791.

Dated: June 26, 2000.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 00–16754 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[WT Docket No. 00–77; RM Nos. 9376, 9462; FCC 00–160]

Advanced Digital Communications in the 117.975–137 MHz Band and Implementation of Flight Information Services in the 136–137 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission seeks comment on proposals regarding the use of the 136–137 MHz frequency band by the Aviation Services and certain modifications to parts 2 and 87 of the Commission's rules in response to two Petitions for Rulemaking filed by the Federal Aviation Administration and the Small Aircraft Manufacturers Association. In response to the Petitions and comments received, the Commission has released a Notice of Proposed Rulemaking (NPRM) in which the Commission proposes to: modify the footnote allocation of the Commission's rules to permit the FAA to use twenty channels in the 136–136.475 MHz band on a shared basis with non-Federal Government users for Air Traffic Control purposes, including Flight Information Services; revise certain technical rules in part 87 for the 117.975–137 MHz band to accommodate digital communications systems; and modify those rules pertaining to special purpose enroute services in the Gulf of Mexico.

DATES: Comments are due August 2, 2000. Reply comments are due August 2, 2000.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW., TW–325, Washington, DC 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, and Roberto Mussenden, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW., Room 3–A424, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden (rmussend@fcc.gov) or Ghassan Khalek (gkhalek@fcc.gov) at the Public Safety and Private Wireless Division, Policy and Rules Branch, (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WT Docket No. 00–77, FCC No. 00–160, released on May 15, 2000, as amended by *Errata* released on June 5, 2000. The full text of the NPRM is available for inspection and copying during normal business hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 4–C207, Washington, DC 20554. The complete text of this NPRM may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW., Washington, DC 20036, 202–857–3800. Alternative formats (computer diskette, large print, audiocassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

Currently, the 136–137 MHz band is allocated to the non-Federal Government aeronautical mobile (R) service on a primary basis. This one megahertz of spectrum is used by the civil aviation community, in particular ARINC, for AOC communications, and pursuant to footnote US244, by the FAA for general aviation ATC purposes. SAMA, in its Petition, requests the FCC to set aside four channels in the 136–137 MHz band for FIS to support general aviation. The FAA, in its Revised Petition, supports this request but also seeks a reallocation of approximately half of the band (136–136.475 MHz) to accommodate a new, digital communications system. While generally supporting both requests, it appears that the aviation community challenges the amount of spectrum needed and the manner in which it is allocated. The aviation community counsels caution when evaluating the petitions and stresses the need to balance future Federal Government services against the existing and planned improvements in non-Federal Government data communications services. All parties also request that 47

CFR part 87 be amended to permit digital communications for general aviation.

The Commission proposes to amend 47 CFR 2.106, footnote US244 to extend the FAA's access from fifteen to twenty channels within the 136–136.475 MHz band on a shared basis with non-Federal Government users. Specifically, the Commission proposes to add channels 136.100 MHz, 136.200 MHz, 136.275 MHz, 136.375 MHz, and 136.475 MHz to the list of FAA's shared channels. As requested by SAMA and supported by the FAA and industry, the Commission further proposes to accommodate FIS in the 136–137 MHz band. SAMA contends that locating the FIS within in the 136–137 MHz band is most appropriate. It notes that frequencies in the 136–137 MHz band are not currently being used because very few general aviation aircraft have voice radios that can tune to this band. NATA, NBAA, and ARINC/ATA all support authorization of FIS within the 136–137 MHz band. According to SAMA, most general aviation aircraft have 720-channel transceivers that tune up to 136 MHz; only the newest radios are 760-channel transceivers that also tune to the forty channels in the 136–137 MHz band. SAMA maintains that aircraft desiring to receive FIS broadcasts could purchase an FIS receiver that tunes to these frequencies only. Finally, SAMA avers that avionics manufacturers have already introduced low-cost radio receivers for FIS broadcasts for the general aviation market in anticipation of the FAA's initiation of this service. Consequently, the Commission proposes to add the FIS designation to footnote US244; however, it tentatively concludes that specifying four channels for FIS in US244 is unnecessary and could curtail flexibility.

To foster improved spectrum efficiencies, the Commission also proposes to amend various service and technical rules pertaining to the aviation services, 47 CFR part 87. The specific rule provisions proposed for amendment are: (1) 47 CFR 87.131 (Power and emissions); (2) 47 CFR 87.133 (Frequency stability); (3) 47 CFR 87.137 (Types of mission); (4) 47 CFR 87.139 (Emission limitations); (5) 47 CFR 87.173 (Frequencies) [General List]; (6) 47 CFR 87.187 (Frequencies) [Aircraft Stations]; and (7) 47 CFR 87.263 (Frequencies) [Aeronautical Enroute and Aeronautical Fixed Stations]. The Commission believes that these changes would serve to promote the transition from analog voice communications to digital voice and data transmissions.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this NPRM provided. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). *See* 5 U.S.C. 603(a).

I. Need for and Objectives of the Proposed Rules

Increased spectrum congestion within the 117.975–136 MHz band, due to increasing air traffic control communications requirements, which cause frequency assignments in this band to grow about four percent annually, compels the transition to digital communications technology. Further pressuring our aviation communications spectrum capacity is the explosive growth in data communications within the civil aviation communications spectrum band. This, combined with the FAA's role in administering the civil aviation communications spectrum, along with the public safety issues inherent with aviation communications, provides justification for our proposals in this NPRM. The objective is to develop aviation communications spectrum policies for the civil aviation community while providing the FAA with the latitude it needs to meet its statutory requirements. Our proposals are aimed at being as least intrusive on the private sector as feasible, while achieving our public interest objectives.

II. Legal Basis

The proposed action is authorized by sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 332(a)(2).

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions, or entities. 5 U.S.C. 601(6). The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the [SBA], and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in § 22.99 of the Commission's rules. 47 CFR 22.99. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as "small businesses" or "small entities" under the SBA definition.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Current licensees are subject to minimal reporting, recordkeeping, and compliance requirements, *e.g.*, retaining a copy of their license, filing for renewal of their license after a period of years. Equipment manufacturers are required to certify that their products comply with the performance standards established by the Commission. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions proposed in this rulemaking proceeding.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or

simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The first two and the fourth alternatives are not relevant at this stage of the proceeding, whereby the Commission would permit additional use of existing Aviation Radio Service frequencies and the establishment of a new service. The third alternative is reflected in the NPRM in that the Commission has not specified the design standards for any potential radio apparatus but has limited its proposal to technical, performance standards for the use of the frequencies at issue. We seek comment on the impact on small entities of the proposals in the NPRM.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules: None.

VI. Paperwork Reduction Analysis

This NPRM contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this NPRM as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. These comments should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW., Washington, D.C. 20554, or via the Internet to <jboley@fcc.gov>. Furthermore, a copy of any such comments should be submitted to Virginia Huth, OMB Desk Officer, 725 17th Street, NW., Room 10236 NEOB, Washington, DC 20503, or via the Internet to <vhuth@omb.eop.gov>.

List of Subjects in 47 CFR Parts 2 and 87

Communications equipment, Radio, Air Transportation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16679 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90–314; ET Docket No. 92–100; PP Docket No. 93–253; DA 00–1421]

Narrowband Personal Communications Services; Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making; extension of comment period.

SUMMARY: In this document, the Commission grants in part a motion for extension of time to file comments and reply comments in the narrowband PCS proceeding. The motion was filed by the Personal Communications Industry Association (PCIA). A brief extension of time is warranted in order to give PCIA and its members adequate time to develop a consensus position and thus facilitate the compilation of a more complete record on the issues raised. The new deadlines for filing comments and reply comments will be July 19, 2000, and August 3, 2000, respectively.

DATES: Comments are due on or before July 19, 2000, and reply comments are due on or before August 3, 2000.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. *See* the "Supplementary Information" section for additional information about paper and electronic filing.

FOR FURTHER INFORMATION CONTACT: Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in GEN Docket No. 90–314, ET Docket No. 92–100, and PP Docket No. 93–253, DA 00–1421, adopted and released on June 26, 2000. The complete text of the Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY–A257, Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. The Order is also available via the Internet at

http://www.fcc.gov/Bureaus/Wireless/Orders/2000/index.html.

1. On May 18, 2000, the Commission released a *Second Report and Order and Second Further Notice of Proposed Rule Making,* GEN Docket No. 90–314, ET Docket No. 92–100, PP Docket No. 93–253, FCC 00–159, 65 FR 35875 (June 6, 2000). Comments on the *Second Further Notice of Proposed Rule Making* were due on or before July 5, 2000, and reply comments were due on or before July 20, 2000.

2. On June 19, 2000, the Personal Communications Industry Association (PCIA) filed a "Motion of the Personal Communications Industry Association for Extension of Time," requesting that the Commission extend these deadlines for filing comments and reply comments by thirty days. Thus, PCIA requested that the deadlines be extended to August 4, 2000, and August 21, 2000, respectively. According to PCIA, additional time is needed to permit PCIA and its members to explore fully channelization options and other issues raised in the *Second Further Notice of Proposed Rule Making* and to develop a consensus position. PCIA urges that a brief delay of the rulemaking process would be more than compensated for by the advantage of a more complete record and the development of a consensus position on behalf of a significant portion of the messaging industry.

3. The Commission does not routinely grant extensions of time. Upon review, however, the Division agrees that a brief extension of time is warranted in order to give PCIA and its members adequate time to develop a consensus position and thus facilitate the compilation of a more complete record in this proceeding. However, the Division is not persuaded that a thirty-day extension is necessary and is concerned that such an extension could delay the Commission's consideration of the issues raised in the *Second Further Notice of Proposed Rule Making.* The current deadlines for filing comments and reply comments in this proceeding will therefore be extended by two weeks.

4. Accordingly, it is ordered that the Motion of the Personal Communications Industry Association for Extension of Time filed on June 19, 2000, is granted in part. Interested parties may file comments on or before July 19, 2000,

and reply comments on or before August 3, 2000.

5. Filing procedures. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments in accordance with the schedule listed in the "Dates" section. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (Form-ET) at

http://www.fcc.gov/efile/email.html.

7. Parties who choose to file by paper must file an original and four copies of each filing. If interested parties want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. One copy should also be sent to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036. In addition, a courtesy copy should be delivered to Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

8. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including GEN Docket No. 90–314, ET Docket No. 92–100, PP Docket No. 93–253), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036.

9. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, 445 12th Street, SW, Washington, DC 20554.

10. This action is taken pursuant to the authority provided in 47 CFR 1.46 and under delegated authority pursuant to 47 CFR 0.131, 0.331.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00–16814 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1411, MM Docket No. 00–116, RM–9877]

Digital Television Broadcast Service; Kansas City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KMBC Hearst-Argyle Television, Inc. licensee of station KMBC(TV), NTSC Channel 9, Kansas City, Missouri, requesting the substitution of DTV Channel 7 for DTV Channel 14. DTV Channel 7 can be allotted to Kansas City, Missouri, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (39–05–01 N. and 94–30–57 W.). As requested, we propose to allot DTV Channel 7 to Kansas City with a power of 115 and a height above average terrain (HAAT) of 357 meters.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Brooks, Pierce, McLendon, Humphrey & Leonard, Post Office Box 1800, Raleigh, North Carolina 27602 (Counsel for KMBC Hearst-Argyle Television, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–116, adopted June 23, 2000, and released June 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16686 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1409, MM Docket No. 00–114, RM–9744]

Digital Television Broadcast Service; Great Fall, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KFBB Corporation, L.L.C., licensee of station KFBB–TV, NTSC Channel 5, Great Falls, Montana, requesting the substitution of DTV Channel 8 for its assigned DTV Channel 39. DTV Channel 8 can be substituted and allotted to Great Falls, Montana, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (47–32–08 N. and 111–17–02 W). However, since the community of Great Falls is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this allotment. DTV Channel 8 can be allotted to Great Falls with a power of 160 (kW) and a height above average terrain (HAAT) of 180 meters.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kenneth C. Howard, Jr., Baker & Hostetler, 1050 Connecticut Avenue, NW, Suite 1100, Washington, DC 20036–5304 (Counsel for KFBB Corporation, L.L.C.)

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–114, adopted June 23, 2000, and released June 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16685 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1410, MM Docket No. 00–115, RM–9884]

Digital Television Broadcast Service; Redding, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by California Broadcasting, Inc., licensee of Station KRCR–TV, NTSC Channel 7, Redding, California, requesting the substitution of DTV Channel 34 for its assigned DTV Channel 14. DTV Channel can be allotted to Redding, California, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (40–36–10 N and 122–39–00 W). As requested, we propose to allot DTV Channel 34 to Redding with a power of 1106 and a height above average terrain (HAAT) of 1106 meters.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur B. Goodkind, Koteen & Naftalin, L.L.P., 1150 Connecticut Avenue, Washington, DC 20036–4104 (Counsel for California Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–115, adopted June 23, 2000, and released June 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16684 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1301, MM Docket No. 00–109, RM–9899]

Radio Broadcasting Services; Ravenwood, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on by Clyde John Holdsworth Ronald G. Filbeck d/b/a R.C. Broadcasting Company requesting the allotment of Channel 291A at Ravenwood, Missouri, as the community's first FM broadcast service. The coordinates for Channel 291A at

Ravenwood are 40–21–09 and 94–40–16.

DATES: Comments must be filed on or before August 4, 2000, and reply comments on or before August 21, 2000.

ADDDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Clyde John Holdsworth and Ronald G. Filbeck d/b/a R.C. Broadcasting Co., 9118 N.W. 198th Street, Trimble, Missouri 64492.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–109, adopted May 31, 2000 and released June 13, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16687 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1260; MM Docket No. 00–107; RM–9891]

Radio Broadcasting Services; Florence and Comobabi, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Desert West Air Ranchers Corporation, licensee of FM Station KCDX, Channel 276C1, Florence, Arizona, requesting the substitution on Channel 276C for Channel 276C1 and modification of its authorization accordingly. Additionally, to accommodate the request, petitioner seeks the deletion of vacant reserved Channel *275A at Comobabi, Arizona, or its replacement with Channel *289A. Coordinates used for Channel 276C at Florence, Arizona, are 32–48–45 NL and 110–57–30 WL; coordinates used for Channel *289A at Comobabi, Arizona are 32–03–29 NL and 111–47–58 WL. As Florence and Comobabi are each located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the requested use of Channel 276C at Florence and Channel *289A at Comobabi, as specially negotiated restricted allotments is required.

DATES: Comments must be filed on or before July 31, 2000, and reply comments on or before August 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Esq., Shook, Hardy & Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–107, adopted May 31, 2000, and released June 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16683 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2000–D017]

Defense Federal Acquisition Regulation Supplement; Polyacrylonitrile Carbon Fiber

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to phase out restrictions on the acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources. The restrictions will be phased out over a five-year period to minimize short-term risks to DoD and current domestic suppliers.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 1, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 2000–D017 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 2000–D017 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes revisions to DFARS 225.7103–1 and 225.7103–3 to phase out restrictions on the acquisition

of PAN carbon fiber from foreign sources. DoD conducted a review of the administratively imposed restrictions, evaluating DoD applications for PAN carbon fiber, key domestic and foreign suppliers, supply and demand market information, potential impacts on DoD and key suppliers, and potential national security issues. As a result, DoD is proposing to phase out the restrictions over the five-year period ending May 31, 2005. The phased elimination will minimize short-term risks to both DoD and current domestic suppliers and will allow for a gradual introduction of competition that will encourage innovation and emphasize affordability. This action is consistent with DoD's interest in promoting vigorous competition in defense markets while ensuring that industrial capabilities essential to national defense are preserved.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there are no known domestic small business manufacturers of PAN carbon fiber. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D017.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 225 as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7103–1 is revised to read as follows:

§ 225.7103–1 Policy.

DoD has imposed restrictions on the acquisition of PAN carbon fiber from foreign sources. DoD is phasing out the restrictions over the five-year period ending May 31, 2005. Contractors with contracts that contain the clause at 252.225–7022 must use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

3. Section 225.7103–3 is revised to read as follows:

§ 225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems as follows:

(a) In solicitations and contracts issued on or before May 31, 2003, if—

(1) The system is not yet in production (milestone III as defined in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPS) and Major Automated Information System (MAIS) Acquisition Programs); or

(2) The clause was used in prior program contracts.

(b) In solicitations and contracts issued during the period beginning June 1, 2003, and ending May 31, 2005, if the system is not yet in engineering and manufacturing development (milestone II as defined in DoD 5000.2–R).

[FR Doc. 00–16639 Filed 6–30–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 242 and 252

[DFARS Case 2000–D003]

Defense Federal Acquisition Regulation Supplement; Material Management and Accounting Systems

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the criteria for determining when review of a contractor's material management and accounting system (MMAS) is needed. The rule also replaces the current requirement for an MMAS "demonstration" with a requirement for the contractor to provide adequate evidence that it has conducted internal audits to ensure compliance with its MMAS policies, procedures, and operating instructions.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 1, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to dfars@acq.osd.mil

Please cite DFARS Case 2000–D003 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 2000–D003 in the subject line.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule makes the following changes to the DFARS:

1. Revises the prescription for use of the clause at 252.242–7004, Material Management and Accounting System.

a. The DFARS presently requires inclusion of the clause in fixed-price contracts with progress payments or other Government financing, regardless of whether the financing provisions are based on cost. The proposed rule requires inclusion of the clause in only those fixed-price contracts that contain progress payments based on cost or other financing provisions based on cost.

b. The DFARS presently exempts small businesses, educational institutions, and nonprofit organizations from the major MMAS requirements of disclosure, demonstration, and maintenance, but still requires inclusion of the clause in contracts with these entities. The proposed rule eliminates the requirement for inclusion of the clause in contracts with small businesses, educational institutions, and nonprofit organizations.

2. Revises the clause at 252.242–7004 to replace the requirement for an MMAS "demonstration" with a requirement for the contractor to have policies, procedures, and operating instructions that adequately describe its MMAS, and to provide adequate evidence that it has conducted internal audits to ensure compliance with its MMAS policies, procedures, and operating instructions.

The requirement for a demonstration has caused significant confusion, because the DFARS does not define the term or describe what constitutes an adequate demonstration. The proposed rule revises the MMAS requirements to be consistent with the documentation and testing requirements of other system reviews such as accounting and purchasing. The Government does not require demonstrations of these systems, but instead performs risk-based reviews that focus on contractor practices and the implementation of those practices, including testing the system when and where necessary. This revision does not eliminate the requirement for contractor compliance with the ten MMAS standards or alter the level of audit access to which the Government is entitled.

3. Makes the dollar threshold for conducting an MMAS review consistent with the threshold for conducting a Contractor Insurance/Pension Review at DFARS Subpart 242.73. The DFARS presently requires an MMAS review every 3 years for contractors that receive total annual DoD awards in excess of $70 million, unless the administrative contracting officer (ACO) specifies otherwise. The proposed rule eliminates the requirement for an MMAS review every 3 years; raises the minimum dollar threshold for MMAS review from $30 million to $40 million; requires the ACO to make a case-by-case determination of the need for an MMAS review; and revises the basis for the dollar threshold, replacing "prior year DoD contract and subcontract awards" with the definition of "qualifying sales" from DFARS Subpart 242.73.

4. Clarifies the responsibilities of the ACO and the MMAS team members.

This rule was not subject to Office of Management and Budget review under executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS already exempts small business concerns from the major MMAS requirements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D003.

C. Paperwork Reduction Act

The proposed rule will eliminate the requirement for contractors to demonstrate their material management and accounting systems, and will reduce the number of contractors that must disclose their systems to the Government. Therefore, this rule will reduce the paperwork burden hours approved under Office of Management and Budget Control Number 0704–0250.

List of Subjects in 48 CFR Parts 242 and 252

Government procurement.

Michele P. Peterson,

Executive Editor,

Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 242 and 252 as follows:

1. The authority citation for 48 CFR Parts 242 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Subpart 242.72 is revised to read as follows;

Subpart 242.72—Contractor Material Management and Accounting System

Sec.

242.7200 Scope of subpart.
242.7201 Definitions.
242.7202 Policy.
242.7203 Review procedures.
242.7204 Contract clause.

242.7200 Scope of subpart.

(a) This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

(b) The policies, procedures, and standards in this subpart—

(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are either—

(i) Cost-reimbursement contracts; or

(ii) Fixed-price contracts with progress payments based on cost or other financing provisions based on cost; and

(2) Do not apply to small businesses, educational institutions, or nonprofit organizations.

242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242–7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for its contractors to have an MMAS that conforms to the standards in paragraph (e) of the clause at 252.242–7004, so that the system—

(a) Reasonably forecasts material requirements;

(b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

242.7203 Review procedures.

(a) *Criteria for conducting reviews.* Conduct an MMAS review when—

(1) A contractor has $40 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(2) The administrative contracting officer (ACO), with advice from the auditor, determines an MMAS review is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Qualifying sales.* Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(c) *System evaluation.* Cognizant contract administration and audit activities must jointly establish and manage programs for evaluating the MMAS systems of contractors and must annually establish a schedule of contractors to be reviewed. In addition, they must—

(1) Conduct reviews as a team effort.

(i) The ACO—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (*e.g.*, industrial specialist, engineer, property administrator, auditor).

(ii) The team leader—

(A) Advises the ACO and the contractor of findings during the review and at the exit conference.

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(iii) The contractor auditor—

(A) Participates as a member of the MMAS team or serves as the team leader (see paragraph (c)(1)(i) of this section); and

(B) Issues an audit report for incorporation into the MMAS report based on an analysis of the contractor's books, accounting records, and other related data.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare the MMAS report.

(d) *Disposition of evaluation team findings.* The team leader must document the evaluation team findings and recommendations in the MMAS report to the ACO. If there are any significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO must provide a copy of the report to the contractor immediately upon receipt from the team leader.

(i) The ACO must notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are any deficiencies, the ACO must request the contractor to provide a written response within 30 days (or such other date as may be mutually agreed to by the ACO and the contractor) from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days (or such other date as may be mutually agreed to by the ACO and the contractor) to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(iv) If the contractor disagrees with the report, the contractor must provide rationale in the written response.

(2) *Evaluation of the contractor's response.* The ACO, in consultation with the auditor, evaluates the contractor's response and determines whether—

(i) The MMAS contains any deficiencies and, if so, any corrective action is needed;

(ii) The deficiencies are significant enough to result in the reduction of progress payments or disallowance of costs on vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) *Notification of ACO determination.*

(i) The ACO must notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Any deficiencies and the necessary corrective action;

(B) Acceptability of the contractor's corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce progress payments or disallow costs on vouchers.

(ii) The Government does not approve or disapprove the contractor's MMAS. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there are any significant MMAS deficiencies until the time the deficiencies are corrected, all field pricing reports for that contractor must contain a recommendation relating to proposed adjustments necessary to protect the Government's interests.

(iv) The ACO should consider the effect of any significant MMAS deficiencies in reviews of the contractor's estimating system (see 215.407–5).

(4) *Reductions or disallowances.*

(i) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or disallow costs on vouchers (in accordance with FAR 42.803). The reductions or disallowances must remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the MMAS report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or when the plan is unacceptable. In other cases, the ACO should consider the quality of the contractor's corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor's progress in making corrections. However, the ACO must not fully reinstate withheld amounts until the contractor corrects the deficiencies, or until the impact of the deficiencies become immaterial.

(5) *Monitoring contractor's corrective action.* The ACO and the auditor must monitor the contractor's progress in correcting deficiencies. When the ACO determines the deficiencies have been corrected, the ACO must notify the contractor in writing. If the contractor fails to make adequate progress, the ACO must take further action. The ACO may—

(i) Elevate the issue to higher level management;

(ii) Further reduce progress payments and/or disallow costs on vouchers;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system; and

(iv) Issue cautions to contracting activities regarding the award of future contracts.

242.7204 Contract clause.

Use the clause at 252.242–7004, Material Management and Accounting System, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and—

(a) Are not awarded to small businesses, educational institutions, or nonprofit organizations; and

(b) Are either—

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments based on cost or other financing provisions based on cost.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.242–7004 is revised to read as follows:

252.242–7004 Material Management and Accounting System.

As prescribed in 242.7204, use the following clause.

Material Management and Accounting System (XXX 2000)

(a) *Definitions.* As used in this clause—

(1) "Material management and accounting system (MMAS)" means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) "Valid time-phased requirements" means material that is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, *etc.*; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) "Contractor" means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) *General.* The Contractor shall—

(1) Maintain an MMAS that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) *Disclosure and maintenance requirements.* The Contractor shall—

(1) Have policies, procedures, and operating instructions that adequately describe its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO) adequate evidence that it has conducted internal audits to ensure compliance with established MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO within 30 days of implementation.

(d) *Deficiencies.*

(1) If the Contractor receives a report from the ACO that identifies any deficiencies in its MMAS, the Contractor shall respond as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days, state its rationale for each area of disagreement.

(2) The ACO will evaluate the Contractor's response and will notify the Contractor in writing of the—

(i) Determination concerning any remaining deficiencies;

(ii) Adequacy of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(3) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or disallow costs on vouchers (in accordance with FAR 42.803) until the ACO determines that—

(i) The deficiencies are corrected; or

(ii) The amount of the impact is immaterial.

(e) *MMAS standards.* The MMAS shall have adequate internal controls to ensure system and data integrity, and shall—

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the FAR and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that—

(i) Three is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411–50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The "loan/pay-back technique" means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (e)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Notwithstanding FAR 45.505–3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (e)(1) through (8) of this clause. Government-furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal audits to ensure compliance with established policies and procedures.

(End of clause)

[FR Doc. 00–16640 Filed 6–30–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000616183–0183–01; I.D. 053000E]

RIN 0648–AN35

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Special Management Zones

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), NMFS proposes to establish 12 new special management zones (SMZs) at the sites of artificial reefs (ARs) in the exclusive economic zone (EEZ) off Georgia; to revise the boundaries of the 7 existing SMZs that are in the EEZ off Georgia; to restrict fishing in the new and revised SMZs to rod and reel and spearfishing gear, including powerheads; and within these SMZs, to limit the harvest and possession of South Atlantic snapper-grouper taken by powerheads to the applicable bag limits. NMFS also proposes establishing a 30-day deadline for resolving deficiencies related to an application and a 60-day deadline for correcting deficiencies regarding automatic renewals of permits. The intended effects are to promote orderly use of the fishery resources on and around the ARs and SMZs, to reduce

potential user-group conflicts, and to maintain the socioeconomic benefits of the ARs and SMZs to the maximum extent practicable.

DATES: Written comments must be received no later than 4:30 p.m. eastern standard time, on August 2, 2000.

ADDRESSES: Comments on the proposed rule may be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Roy Crabtree, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of the framework regulatory amendment, which includes an environmental assessment, a regulatory impact review, a social impact assessment/fishery impact statement, and a Monitoring Team Report should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 803–571–4366; Fax: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge, Phone: 727–570–5305, Fax: 727–570–5583, E-mail *Peter.Eldridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fisheries for snapper-grouper species in the EEZ off the southern Atlantic states are regulated under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

New and Revised SMZs

In accordance with the FMP framework procedures, the Council recommended that the Regional Administrator, Southeast Region, NMFS (RA), establish 12 new SMZs and modify the boundaries of the 7 existing SMZs in the EEZ off Georgia. The Council's recommendation is based on a request from the Georgia Department of Natural Resources (GADNR). Fishing in the new and revised SMZs would be restricted to specified gear.

The new SMZs in the EEZ off Georgia would be, and the existing SMZs whose boundaries would be modified are, at the sites of ARs constructed by the GADNR. The ARs were constructed for the purpose of enhancing fishing opportunities for offshore sport fishermen. The ARs in the EEZ off Georgia are on an expansive shelf area that has large areas devoid of any live/hard bottom. Prior to establishment of the ARs, these areas did not support any significant fisheries.

Thus, these ARs create fishing opportunities in the areas where they are placed that would not exist otherwise and may increase the biological production of fish in the long term. They are expensive to construct. The enhanced fishing benefits created by ARs can be dissipated rapidly by use of highly efficient commercial fishing gear with the capacity to harvest large amounts of fish in a short period of time, thereby reducing catch-per-unit-effort for other users. The use of such gear can disrupt, and potentially eliminate, the intended, long-term fishing benefits and can jeopardize the incentive for development of ARs. In addition, use of commercial fishing gear such as bottom longlines, gillnets, or trawls, is not suitable for use on ARs because such gear tends to foul on the AR structure and with other gear. Restrictions on the use of such gear are necessary to preserve the intended benefits of ARs.

The Council proposes to modify the boundaries of 7 existing SMZs in the EEZ off Georgia to conform to the boundaries specified in GADNR's permits from the Corps of Engineers (COE) for placement of these ARs. Since NOAA nautical charts identify SMZs using the COE permit coordinates, compliance and enforcement of the SMZs would be facilitated by these minor modifications. Each of the revised SMZs would be enlarged by a small amount, but, in no case would the enlargement exceed 1.5 square nautical miles. The enlarged SMZs were requested by GADNR and approved by the COE to disperse fishing pressure further and to create habitat with adequate forage zones. As with the current sites, the expanded boundaries would encompass only flat, sand-shell expanses where little or no fishing occurs.

Authorized Fishing Gear

Fishing in the SMZs in the EEZ off Georgia would be restricted to rod and reel, including manual, electric, and hydraulic reels, and spearfishing gear, including powerheads. Further, within these SMZs, the harvest and possession of South Atlantic snapper-grouper taken by powerheads would be limited to the applicable bag limits. Thus, the maximum amount of snapper-grouper that a person aboard a commercial vessel could take by powerhead from an SMZ would be the recreational bag limit. Currently, in the existing SMZs in the EEZ off Georgia, there is no limitation on the use of powerheads to harvest snapper-grouper commercially. The use of powerheads, a highly efficient gear; can quickly overharvest already limited snapper-grouper species, particularly amberjack. Limitations on commercial gear, including powerheads, would better maintain the availability of artificial reef resources and more equitably distribute them among greater numbers of users over a longer period of time.

Monitoring Team Report

In accordance with the FMP, the monitoring team appointed by the Council evaluated GADNR's request in consideration of the following criteria: (1) Fairness and equity; (2) promotion of conservation; (3) prevention of excessive shares; (4) consistency with the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law; (5) suitability of the natural bottom in and surrounding the areas and impacts on historical uses; and (6) cumulative impacts. A copy of the monitoring team's report is available (see **ADDRESSES**).

After consideration of all relevant information, including the Monitoring Team Report, other supporting data, and comments received during public hearings, committee meetings, and Council meetings, the Council voted to recommend to the RA that GADNR's request be approved. Accordingly, the proposed new and revised SMZs and the management measures applicable to them are published for public comment.

Additional Changes to Part 622 Proposed by NMFS

In § 622.4, NMFS proposes revising paragraph (h) relating to renewals of permits, licenses, or endorsements. Paragraph (h) provides applicants the opportunity to correct deficiencies that would otherwise preclude renewals. However, there is no deadline specified for resolving the deficiencies. Therefore, a pending renewal could be left unresolved for extended periods. This could circumvent the intent of renewing a permit, license, or endorsement in a timely manner. NMFS proposes establishing a 30-day deadline for resolving deficiencies related to an application and a 60-day deadline for correcting deficiencies regarding automatic renewals (that may involve more time-consuming issues related to reporting requirements). NMFS also

proposes to reorganize paragraph (h) for clarity.

NMFS also corrects the telephone number in §§ 622.17(b)(1) introductory text and 622.41(a)(4) introductory text to reflect a change in area code.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This proposed rule makes minor revisions to an existing collection-of-information requirement subject to review and approval by OMB under Control Number 0648–0205. Public reporting burden for submitting permit applications is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

This proposed action will establish 12 new SMZs at the sites of ARs in the EEZ off Georgia, revise the boundaries of the 7 existing SMZs that are in the EEZ off Georgia, and restrict fishing in the new and revised SMZs to rod and reel and spearfishing gear, including powerheads. The 17 AR sites cover a total area of about 80 square nautical miles. These sites were originally established as recreational fishing areas, and the purpose of the proposed rule is to maintain these areas mainly as recreational fishing areas by specifying the allowable fishing methods that can be used by fishermen when fishing within the boundaries of the artificial reef sites. The allowable gears are hand-held hook and line and spearfishing gears, including powerheads. The catch by the users of powerheads will be restricted to the recreational bag limit for all species having a bag limit. By implication, certain commercial gears, including longlines, bandit rigs and the use of powerheads to take commercial quantities of fish are prohibited.

According to information supplied by GADNR to NMFS, there is almost no commercial fishing activity on these artificial reefs at the present time. Therefore, the actual effect of the proposed rule would be to maintain the status quo in terms of the current users of these sites (recreational fishermen for the most part). In terms of the use of commercial fishing gear that would be prohibited, the information supplied by GADNR indicates that there is no commercial fishing activity by fishermen using bandit rigs or longlines at these sites. GADNR's information further indicates that one or two commercial fishermen fish on one or two of the artificial reef sites using powerheads. These fishermen use the areas during the period May to October and target greater amberjack. A total of 349 documented vessels and an unknown number of small fishing craft commercially fish in Georgia waters and most of these commercial fishing activities represent individual small business entities. Since only one or two of over 349 small entities are expected to be impacted by the proposed rule, a substantial number of small entities are not expected to be impacted. There are no large business entities engaged in commercial fishing in Georgia, so there cannot be any disproportional impacts between large entities and the one or two small entities expected to be impacted. Based on the available information, NMFS has concluded that the small amount of current commercial fishing activity reported by GADNR does not constitute a case where this proposed rule, if implemented, would have a significant negative impact on a substantial number of small entities.

As a result, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule. Comments should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraph (h) is revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(h) *Renewal.* Although a permit, license, or endorsement required by this section is issued on an annual basis, an application for its renewal is required only every 2 years. In the interim years, renewal is automatic (without application) for a vessel owner or dealer who has met the specific requirements for the requested permit, license, or endorsement, who has submitted all reports required under the Magnuson Act, and who is not subject to a sanction or denial under paragraph (j) of this section. An owner or dealer whose permit, license, or endorsement is expiring will be mailed a notification by the RA approximately 2 months prior to its expiration. That notification will advise the status of the renewal. That is, the notification will advise that the renewal will be issued without further action by the owner or dealer (automatic renewal), that the permit, license, or endorsement is ineligible for automatic renewal, or that a new application is required.

(1) *If eligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is eligible for automatic renewal, the RA will mail the automatically renewed permit, license, or endorsement approximately 1 month prior to expiration of the old permit, license, or endorsement.

(2) *If ineligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is ineligible for automatic renewal, the notification will specify the reasons and will provide an opportunity for correction of any deficiencies. If the owner or dealer does not correct such deficiencies within 60 days after the date of the RA's notification, the renewal will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(3) *If new application is required.* If the RA's notification indicates that a new application is required, the notification will include a preprinted renewal application. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(4) *If notification is not received.* A vessel owner or dealer who does not receive a notification from the RA regarding status of renewal of a permit, license, or endorsement by 45 days prior to expiration of the current permit must contact the RA.

* * * * *

3. In § 622.35, paragraphs (e)(1)(xii) through (e)(1)(xviii) are revised and paragraphs (e)(1)(xl) through (e)(1)(li) and (e)(2)(v) are added to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(e) * * *

(1) * * *

(xii) *Artificial Reef—A* is bounded on the north by 30°57.4' N. lat.; on the south by 30°55.4' N. lat.; on the east by 81°13.9' W. long.; and on the west by 81°16.3' W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°52.0' N. lat.; on the south by 30°50.0' N. lat.; on the east by 81°08.5' W. long.; and on the west by 81°10.9' W. long.

(xiv) *Artificial Reef—G* is bounded on the north by 30°00.0' N. lat.; on the south by 30°58.0' N. lat.; on the east by 80°56.8' W. long.; and on the west by 80°59.2' W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.8' N. lat.; on the south by 31°04.8' N. lat.; on the east by 81°10.5' W. long.; and on the west by 81°13.4' W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7' N. lat.; on the south by 31°34.7' N. lat.; on the east by 80°47.3' W. long.; and on the west by 80°50.1' W. long.

(xvii) *Artificial Reef—L* is bounded on the north by 31°46.0' N. lat.; on the south by 31°44.0' N. lat.; on the east by 80°34.7' W. long.; and on the west by 80°37.1' W. long.

(xviii) *Artificial Reef—KC* is bounded on the north by 31°51.2' N. lat.; on the south by 31°49.2' N. lat.; on the east by 80°45.3' W. long.; and on the west by 80°47.7' W. long.

* * * * *

(xl) *Artificial Reef—ALT* is bounded on the north by 31°18.6' N. lat.; on the south by 31°16.6' N. lat.; on the east by 81°07.0' W. long.; and on the west by 81°09.4' W. long.

(xli) *Artificial Reef—CAT* is bounded on the north by 31°40.2' N. lat.; on the south by 31°38.2' N. lat.; on the east by 80°56.2' W. long.; and on the west by 80°58.6' W. long.

(xlii) *Artificial Reef—CCA* is bounded on the north by 31°43.7' N. lat.; on the south by 31°41.7' N. lat.; on the east by 80°40.0' W. long.; and on the west by 80°42.3' W. long.

(xliii) *Artificial Reef—DRH* is bounded on the north by 31°18.0' N. lat.; on the south by 31°16.0' N. lat.; on the east by 80°56.6' W. long.; and on the west by 80°59.0' W. long.

(xliv) *Artificial Reef—DUA* is bounded on the north by 31°47.8' N. lat.; on the south by 31°45.8' N. lat.; on the east by 80°52.1' W. long.; and on the west by 80°54.5' W. long.

(xlv) *Artificial Reef—DW* is bounded on the north by 31°22.8' N. lat.; on the south by 31°20.3' N. lat.; on the east by 79°49.8' W. long.; and on the west by 79°51.1' W. long.

(xlvi) *Artificial Reef—KBY* is bounded on the north by 30°48.6' N. lat.; on the south by 30°46.6' N. lat.; on the east by 81°15.0' W. long.; and on the west by 81°17.4' W. long.

(xlvii) *Artificial Reef—KTK* is bounded on the north by 31°31.3' N. lat.; on the south by 31°29.3' N. lat.; on the east by 80°59.1' W. long.; and on the west by 81°01.5' W. long.

(xlviii) *Artificial Reef—MRY* is bounded on the north by 30°47.5' N. lat.; on the south by 30°45.5' N. lat.; on the east by 81°05.5' W. long.; and on the west by 81°07.8' W. long.

(xlix) *Artificial Reef—SAV* is bounded on the north by 31°55.4' N. lat.; on the south by 31°53.4' N. lat.; on the east by 80°45.2' W. long.; and on the west by 80°47.6' W. long.

(l) *Artificial Reef—SFC* is bounded on the north by 31°00.8' N. lat.; on the south by 30°59.8' N. lat.; on the east by 81°02.2' W. long.; and on the west by 81°03.4' W. long.

(li) *Artificial Reef—WW* is bounded on the north by 31°43.5' N. lat.; on the south by 31°42.2' N. lat.; on the east by 79°57.7' W. long.; and on the west by 79°59.3' W. long.

* * * * *

(2) * * *

(v) In the SMZs specified in paragraphs (e)(1)(xii) through (e)(1)(xviii) and (e)(1)(xl) through (e)(1)(li) of this section, the possession of South Atlantic snapper-grouper taken with a powerhead is limited to the bag limits specified in § 622.39(d)(1).

* * * * *

4. In § 622.39, paragraph (a)(4) is added to read as follows:

§ 622.39 Bag and possession limits.

(a) * * *

(4) Paragraph (a)(1) of this section notwithstanding, a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued must comply with the bag limits specified in paragraph (d)(1) of this section for South Atlantic snapper-grouper taken with a powerhead, regardless of where taken, when such snapper-grouper are possessed in an SMZ specified in § 622.35(e)(1)(xii) through (e)(1)(xviii) or (e)(1)(xl) through (e)(1)(li).

* * * * *

§§ 622.17 and 622.41 [Amended]

5. In addition to the amendments set forth above, in 50 CFR part 622, remove the telephone number, "813–570–5344", and add in its place "727–570–5344" in the following places:

(a) Section 622.17(b)(1) introductory text; and

(b) Section 622.41(a)(4) introductory text.

[FR Doc. 00–16773 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000627195–0195–01; I.D. 060500C]

RIN: 0648–AN94

Fisheries of the Exclusive Economic Zone Off Alaska; Seasonal Adjustment of Closure Areas to Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to implement a seasonal closure of a portion of the Central Regulatory Area of the Gulf of Alaska (GOA) to vessels using trawl gear. Regulatory authority also is proposed

for inseason action to open directed fishing for pollock within 10 nautical miles (nm) of the Steller sea lion haulouts located at Gull Point and Cape Barnabas for research purposes. These actions are necessary to support NMFS-sponsored research on the effect of fishing on localized pollock distribution and abundance. The proposed regulatory amendment is intended to meet the objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments on the proposed rule must be received by July 18, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the listed address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, (907) 481–1780, fax (907) 481–1781, or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

This proposed regulatory action would impose a ban on all trawl fishing in the Chiniak Gully region on the east side of Kodiak Island and authorize a temporary reopening of the 10–nm zones around Gull Point and Cape Barnabas to directed fishing for pollock. These fishing restrictions would be in effect annually during the period of August 1st to no later than September 20 in the years 2000–2003. These restrictions are necessary to support NMFS research designed to identify and quantify the effects of commercial fishing on the availability of pollock to foraging Steller sea lions within a finite area. This research is intended to help assess the effectiveness and efficiency of alternative management methods for ensuring that pollock fisheries off Alaska neither jeopardize the continued existence of the western population of endangered Steller sea lions nor adversely modify its critical habitat. Currently the information available to evaluate alternative methods for protecting Steller sea lions and their habitat is very limited, which could result in the use of less effective and less efficient management measures. NMFS is proposing a controlled experiment off Kodiak Island in order to improve the information that can be used to assess further management actions to protect Steller sea lions and their habitat.

The proposed research is designed to provide information bearing on the following issues: (1) Whether measurable changes exist in the distribution and abundance of pollock during the 4-year duration of the study, (2) whether commercial pollock fisheries cause short-term (days to weeks) changes in the pollock school dynamics, and (3) whether pollock fisheries cause reductions in the availability of sea lion forage (i.e., pollock) in localized regions off the east side of Kodiak Island.

NMFS plans to conduct an echo integration trawl (EIT) survey before, during, and after the 'πC' season commercial pollock fishery off the east side of Kodiak Island in the years 2000 to 2003. An EIT survey involves systematic survey vessel track lines over which acoustic and research trawl data are collected and used to generate estimates of abundances and distribution patterns of targeted species. The 'C' season currently opens on August 20 (§ 679.22(d)(3)).

The experimental design proposes a feasibility study in the first year and three full implementation experiments in 2001 to 2003. A feasibility study is necessary because NMFS has not conducted EIT surveys in the GOA during summer months and uncertainty exists whether survey conditions will be suitable for identifying abundance and distribution patterns of pollock. Questions also exist about conducting an EIT survey in a small geographic area during the same time period that commercial fisheries are operating.

The research proposal identifies two treatment (fishing areas) areas at Barnabas Gully and Marmot Canyon where directed fishing for pollock typically occurs. A control site (no fishing) also is proposed in the Chiniak Gully area where trawl fishing will be prohibited in Federal waters. The prohibition on trawling in the control site is necessary to provide a basis for comparing pollock school dynamics in a fished and unfished condition (addressing issue 2 above). These study locations are proposed because they encompass historical fishing areas for pollock that are separated by topographical features with generally discrete concentrations of fish. The concentration of fishing effort in the GOA enables the designation of comparable treatment and control sites, which are essential to the study design.

In 2001 to 2003, the EIT research surveys would be conducted in the same areas as the feasibility survey in 2000, with additional sampling after the fishing season has ended. The consistency in area and season (August to September) will enable researchers to obtain a time series of data and evaluate the effects of interannual variation. The proposed research could provide researchers with better information on pollock movements and impacts of commercial pollock harvest on foraging behavior of Steller sea lions.

A regulatory amendment is required to prohibit trawl fishing in the control site and to allow fishing for pollock in the treatment sites, including within the 10–nm zones surrounding the Cape Barnabas and Gull Island Steller sea lion haulout sites that currently are closed to directed fishing for pollock. To accomplish this objective, the proposed regulatory amendment would implement two measures. First, it would prohibit trawl fishing in the Chiniak Gully area off the east side of Kodiak Island from August 1st to a date no later than September 20th for four years (2000 to 2003). The Chiniak Gully control site is defined by straight lines intersecting the following coordinates in the order given: 152.37° W. long., 57.81° N. lat.; 151.85° W. long., 57.81° N. lat.; 150.64° W. long., 57.22° N. lat.; 151.27° W. long., 56.98° N. lat.; 152.16° W. long., 57.62° N. lat.; and 152.37° W. long., 57.81° N. lat.

The second management measure would authorize inseason action to open directed fishing for pollock within 10 nm of the Steller sea lion haulouts located at Gull Point and Cape Barnabas during the same period of time the Chiniak Gully control site is closed if specified conditions are met. Fishing within 10 nm of these two haulout sites would be authorized as part of the treatment area of Barnabas Gully, unless NMFS' EIT survey conducted as part of its proposed research design prior to the August 20 opening of the pollock C season indicates that the abundance and size distribution of pollock in the Barnabas Gully area are insufficient to support a commercial fishery. If the annual EIT survey fails to locate commercial concentrations of pollock in

Barnabas Gully, the treatment area for a year would be moved from Barnabas Gully to Marmot Canyon and the pollock fishing closures within 10 nm surrounding Cape Barnabas and Gull Point would remain effective. These considerations are intended to focus the research area where large concentrations of pollock are present to minimize the potential for localized depletion.

Pursuant to section 7 of the Endangered Species Act (ESA), NMFS completed a biological opinion (B.O.) on December 3, 1998, which was revised December 16, 1998, that evaluated the effects of the Atka mackerel fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and the pollock fisheries of the BSAI and the GOA on candidate and listed species, including the Steller sea lion, and designated critical habitat. The B.O. concluded that the Atka mackerel fisheries were not likely to jeopardize candidate or listed species or adversely modify any designated critical habitat. However, the B.O. concluded that the pollock fisheries were likely to jeopardize the endangered western population of Steller sea lions and adversely modify its critical habitat. On October 15, 1999, NMFS issued revised final reasonable and prudent alternatives (RFRPAs) to avoid the likelihood that the pollock fisheries jeopardize the endangered western population of Steller sea lions and adversely modify its critical habitat. The RFRPAs were implemented by emergency interim rule at the commencement of the 2000 pollock fisheries (65 FR 3892, January 25, 2000). This emergency interim rule was extended through December 31, 2000 (65 FR 36795, June 12, 2000), to continue to implement RFRPAs to protect Steller sea lions and their designated critical habitat. Among other things, the RFRPAs allow the proposed research and directed fishing for pollock to be authorized until permanent rulemaking is implemented.

The RFRPAs establish pollock "no trawl zones" in waters of the GOA around Steller sea lion rookeries and major haulouts out to 10 nm. Three exceptions to these closures were described, including one for the Steller sea lion haulouts at Cape Barnabas and Gull Point, where these sites may be opened for the purpose of conducting research to determine the effects of the pollock fisheries on prey resources in this area.

Species listed under the ESA are present in the action area and some may be negatively affected by the proposed research. Therefore, NMFS has initiated formal consultation under section 7 of the ESA on the proposed action to authorize directed fishing for pollock within 10 nm of the Gull Point and Cape Barnabas haulout areas during the August 20 opening of the pollock "C" season in the GOA. Consultation will need to be concluded prior to agency determination on whether or not to approve the proposed action.

Classification

At this time, NMFS has not determined that the proposed seasonal adjustments of fishery closures this rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Nothing in this proposed action would result in any changes in reporting or recordkeeping requirements. The analysis for this proposed action did not reveal any existing Federal rules that duplicate, overlap, or conflict with this action.

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, may have on small entities. Most of the vessels that the proposed rule would apply to are between 80 and 100 feet in length and are small entities under the $3 million gross earnings criterion. This action would apply to all of the approximately 200 groundfish trawl vessels that participate in the Gulf of Alaska groundfish trawl fisheries during the months of August and September. However, only about 10 percent (20 vessels) have fished in the areas subject to the controlled experiment during those months. Most of the vessels that otherwise would trawl for groundfish in the proposed Chiniak Gully area are home ported in and operate out of Kodiak, adjacent to the proposed closure area. Although vessels would be able to harvest elsewhere, they would be expected to incur some additional costs as a result of traveling greater distances to alternative fishing areas. However, these costs are expected to be low and would be short-lived while the benefits of the improved information the controlled experiment is designed to provide could be substantial. NMFS anticipates that the information the experiment would produce would help decrease the risk of not implementing effective measures to protect Steller sea lions, and decrease the cost of providing a given level of protection for the sea lions.

NMFS considered maintaining the status quo, which could have resulted in less severe economic impacts on some small entities. However, this alternative would not allow NMFS to conduct the controlled experiment and obtain information that could be used to assess further management actions to protect Steller sea lions and their habitat. NMFS also considered an alternative that would exempt small entities from the proposed time/area closure. However, such an exemption would undermine the intent of the action to allow a controlled experiment to assess the effects of trawl fishing on the availability of prey for Steller sea lions. The preferred alternative, which this proposed rule would implement, was designed to cause the least economic impact to small entities while still obtaining the necessary information to protect Steller sea lions. Without the information obtained through this proposed action, other management actions that would cause greater economic impacts, such as permanent closure of all critical habitat to protect Steller sea lions, may have to be implemented.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.22, paragraph (b)(5) is added to read as follows:

§ 679.22 Closures.

* * * * *

(b) * * *

(5) *Chiniak Gully Research Area (effective through December 31, 2003)*—(i) *Description of Chiniak Gully.* The Chiniak Gully Research Area is defined as that part of statistical Area 630 bounded by straight lines connecting the coordinates in the order listed:

57.81° N. lat., 152.37° W. long.;
57.81° N. lat., 151.85° W. long.;
57.22° N. lat., 150.64° W. long.;
56.98° N. lat., 151.27° W. long.;

57.62° N. lat., 152.16° W. long.; and hence counterclockwise along the shoreline of Kodiak Island to

57.81° N. lat., 152.37° W. long.

(ii) *Closure.* (A) The Chiniak Gully Research Area is closed to vessels using trawl gear from August 1 to a date no later than September 20, except that trawl gear may be tested in the manner described at § 679.24(d)(2) in the Kodiak Test Area defined at § 679.24(d)(4)(i) and illustrated in Figure 7 to this part.

(B) Prior to September 20, the Regional Administrator may publish notification in the **Federal Register** rescinding the trawl closure in the Chiniak Gully Research Area described in paragraph (b)(5)(i) of this part and reinstating closures to directed fishing for pollock within 10 nm of the Steller sea lion haulout sites located at Gull Point and Cape Barnabas if such closures were rescinded under paragraph (b)(5)(iii) of this section.

(iii) *Exemption to Steller sea lion critical habitat closures.* (A) *General.* During the C season in Statistical Area 630 of the GOA, defined at § 679.23(d)(3)(iii) of this part, the Regional Administrator may rescind the prohibition on directed fishing for pollock within 10 nm of the Steller sea lion haulout sites at Cape Barnabas and Gull Point on Kodiak Island, which are defined at § 679.22(b)(3)(ii)and Table 13 of this part.

(B) *Criteria for exemption.* NMFS will conduct an annual echo integration trawl survey of pollock abundance and distribution off the east side of Kodiak Island prior to the start of the pollock C season defined at § 679.23(d)(3)(iii). If survey results indicate that the abundance and size distribution of pollock in the area between the Steller sea lion haulouts at Cape Barnabas and Gull Point, defined at § 679.22(b)(3)(ii) and Table 13 of this part, are sufficient to support a commercial fishery, then NMFS will authorize directed fishing for pollock within 10 nm of these two haulout sites during that C season.

(C) *Notification.* If the Regional Administrator rescinds the closures to directed fishing for pollock around the Cape Barnabas and Gull Point haulout sites under this paragraph (b)(5)(iii), NMFS will publish notification in the **Federal Register** announcing this action prior to the start of the pollock C season.

* * * * *

[FR Doc. 00–16770 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 128
Monday, July 3, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Implemetation of the Wildfire Suppression Aircraft Transfer Act of 1996

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Wildfire Suppression Aircraft Transfer Act of 1996 authorizes the Department of Defense to sell excess aircraft and aircraft parts to eligible persons or entities seeking a contract with the Forest Service for the delivery of fire retardant by air for wildfire suppression. The Secretary of Agriculture must certify in writing to the Secretary of Defense, prior to a sale, those persons or entities that are capable of meeting the terms and conditions of a contract to deliver fire retardant by air. This notice identifies the certification criteria against which persons or entities, who want to contract with the Forest Service, will be evaluated when seeking to purchase excess U.S. Department of Defense aircraft or excess aircraft parts.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Dudley, Aviation Management Specialist, Forest Service, Fire and Aviation Staff, Mail Stop 1107, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090 or call (202) 205–0995 or email mdudley@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Background

The Wildfire Suppression Aircraft Transfer Act of 1996 (10 U.S.C. 2576) provides that from October 1, 1996, through September 30, 2000, the Secretary of Defense may sell certain aircraft and aircraft parts to persons or entities that contract with the Federal government for the delivery of fire retardant by air to suppress wildfire. The Defense Logistics Agency of the Department of Defense published regulations implementing the Wildfire Suppression Aircraft Transfer Act of 1996 in the **Federal Register** on June 1, 1999 (64 FR 29227).

The Secretary of Agriculture must certify in writing to the Secretary of Defense, prior to a sale, those persons or entities that are capable of meeting the terms and conditions of a contract to deliver fire retardant by air. This notice identifies the certification criteria that persons or entities, who want to contract with the Forest Service, will have to meet to be eligible to bid on U.S. Department of Defense excess aircraft and aircraft parts for delivery of fire retardent by air for wildfire suppression. Determination of eligibility will be conducted under existing procedures described in Federal Acquisition Regulation Part 9. Sale of aircraft and parts will be conducted under existing procedures described in 32 CFR Part 171 and Department of Defense Manual 4160.21–M, Chapter 4, paragraph B2.

Aircraft Sale Certification and Restrictions

The Wildfire Suppression Act of 1996 (10 U.S.C. 2576), hereby referred to as the Act, authorizes the U.S. Department of Defense to sell excess aircraft and aircraft parts to eligible persons or entities seeking a contract with the Forest Service of the U.S. Department of Agriculture for airtanker service for suppression of wildfires. The Act requires that, prior to the sale, the Secretary of Agriculture must certify to the Secretary of Defense that potential purchasers are capable of meeting the terms and conditions of an aerial fire retardant delivery contract with the Forest Service. These criteria supplement the rule adopted by the Defense Logistics Agency of the U.S. Department of Defense at 32 CFR, Part 171, on June 1, 1999 (64 FR 29227).

Certification Criteria for Potential Purchasers of Excess Aircraft.

(1) The potential purchaser can demonstrate proof of adequate financial capacity to purchase, modify, operate, and maintain proposed aircraft at competitive rates in the airtanker marketplace.

(2) The potential purchaser can provide a business plan indicating current and proposed ability to drop retardant from airtankers in an acceptable manner.

(3) The potential purchaser can demonstrate adequate organization and facilities for operation and maintenance of proposed aircraft.

(4) The potential purchaser has the ability to comply with all applicable Federal Aviation Regulations (FAR). The potential purchaser can be certified and can operate under 14 CFR, Part 137.

(5) The potential purchaser can provide a proposed plan for obtaining required approvals, including type and airworthiness certificates, for aircraft modification and/or tank and gating system. (FAA and Interagency Airtanker Board)

(6) The potential purchaser can demonstrate experience in operating and maintaining aircraft proposed for sale.

(7) Aircraft parts will be sold only to those persons or entities eligible to bid on aircraft under the Wildfire Suppression Act of 1996 and implementation regulations adopted by the Defense Logistics Agency of the U.S. Department of Defense at 32 CFR, Part 171. Firms may only purchase parts appropriate for the aircraft they are operating.

Restrictions

Section 171.3 of Title 32 of the Code of Regulations published by the Department of Defense on June 1, 1999, restricts the use of the aircraft and aircraft parts sold under the Wildfire Suppression Aircraft Transfer Act of 1996 to wildfire suppression purposes only; the aircraft and aircraft parts must not be flown or removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression or when jointly approved in advance, in writing, by the Secretary of Agriculture and the Secretary of Defense.

Dated: June 27, 2000.

Clyde Thompson,

Deputy Chief, Business Operations.

[FR Doc. 00–16734 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[00–C]

Designation for the East Indiana (IN) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of East Indiana Grain Inspection, Inc. (East Indiana) to provide official services under the United States Grain Standards Act, as amended (Act), for a 1-year term, September 1, 2000, though August 31, 2001.

EFFECTIVE DATE: September 1, 2000.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 1999, **Federal Register** (64 FR 67246), GIPSA asked persons interested in providing official services in the geographic area assigned to East Indiana to submit an application for designation. Applications were due by December 30, 1999. Since East Indiana was the sole applicant for designation to provide official services in the entire area currently assigned to them, GIPSA did not ask for comments on the applicant.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(l)(B), determined that East Indiana is able to provide official services in the geographic area, specified in the December 1, 1999, **Federal Register**, for which they applied. We are granting the 1-year designation to allow East Indiana time to complete the requirements for compliance with the national quality database. Interested persons may obtain official services by calling East Indiana at 765–289–1206.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 14, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–16542 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[99–05–s]

Designation for the Kansas (KS), Minot (ND), and Tri-State (OH) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Kansas Grain Inspection Service, Inc. (Kansas); Minot Grain Inspection, Inc. (Minot); and Tri-State Grain Inspection Service, Inc. (Tri-State).

EFFECTIVE DATES: September 1, 2000, for Kansas; and October 1, 2000, for Minot and Tri-State.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 1999, **Federal Register** (64 FR 67246), GIPSA asked persons interested in providing official services in the geographic areas assigned to Kansas, Minot, and Tri-State to submit an application for designation. Applications were due by December 30, 1999. Kansas, Minot, and Tri-State, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them. Since these they were the only applicants, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(1)(B), determined that Kansas, Minot, and Tri-State are able to provide official services in the geographic areas, specified in the December 1, 1999, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Designation term	Telephone
Kansas	09/01/2000–06/30/2003	785–233–7063
Minot	10/01/2000–06/30/2003	701–838–1734
Tri-State	10/01/2000–06/30/2003	513–251–6571

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 14, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–16541 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Cement Clinker From Mexico; Final Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: gray portland cement and cement clinker from Mexico.

SUMMARY: On February 28, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on gray portland cement and cement clinker from Mexico (65 FR 10468) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and in 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On February 28, 2000, the Department published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on gray portland cement and cement clinker from Mexico pursuant to the Act. In our preliminary results, we determined that revocation of the order would be likely to lead to continuation or recurrence of dumping. In addition, we preliminarily determined that the following margins are likely to prevail for respective manufactures/exporters if the order were revoked: CEMEX, S.A. ("CEMEX") " 95.44 percent; Apasco, S.A. de C.V. ("Apasco") " 53.26 percent; Cementos Hidalgo, S.C.L. " 3.69 percent; and all others " 59.91 percent.

Subsequent to the issuance of our preliminary results, on March 15, 2000, the Department issued the final results of the administrative review covering the period from August 1, 1997, through July 31, 1998 (65 FR 13943). Information included in the latest final results of the administrative review is reflected in our final determination.

On April 10, 2000, we received case briefs from both domestic and respondent interested parties within the deadline specified in 19 CFR 351.309(c)(1)(i). We also received rebuttal comments from both parties on April 18, 2000, within the deadline specified in 19 CFR 351.309(d). [1]

Scope of Review

The products covered by this order include gray portland cement and clinker ("portland cement") from Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as other hydraulic cements. In its only scope ruling, the Department determined that masonry cement is not within the scope of the order. The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on portland cement from Mexico would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/Exporter	Margin (percent)
CEMEX/GCCC/Hidalgo	91.94
Apasco	53.26
All others	59.91

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16792 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] On April 13, 2000, the domestic interested parties requested an extension of the deadline for filing rebuttal comments to the case briefs. The Department extended the deadline until April 18, 2000, for all participants eligible to file rebuttal comments.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–803]

Gray Portland Cement and Cement Clinker From Venezuela; Final Results of Sunset Review of Suspended Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Gray Portland Cement and Cement Clinker From Venezuela.

SUMMARY: On February 28, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the suspended antidumping duty investigation on gray portland cement and cement clinker from Venezuela (65 FR 10467) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments only from domestic interested parties. As a result of this review, the Department finds that termination of this agreement would be likely to lead to continuation or recurrence of dumping at the rates indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

EFFECTIVE DATE: July 3, 2000.

Statute and Regulations

Unless otherwise indicated, all citations to the Act of 1930 are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On February 28, 2000, the Department published in the **Federal Register** a notice of preliminary results of the suspended antidumping duty investigation on gray portland cement and cement clinker from Venezuela pursuant to section 751(c) of the Act. In our preliminary results, we determined that termination of the suspended antidumping duty investigation would be likely to lead to continuation or recurrence of dumping. In addition, we preliminarily determined that the following weighted-average dumping margins are likely to prevail if the order were revoked: 50.02 percent for Venezolana de Cementos, S.A.C.A. ("Vencemos"); 49.20 percent for Cementos Caribe, C.A. ("Caribe"); and 49.26 percent for all others.

Only domestic interested parties submitted a case brief within the deadline specified in 19 CFR 351.309(c)(1)(i). (See domestic interested parties' April 10, 2000, case brief.)

Scope of Review

The products covered by this order include gray portland cement and cement clinker ("portland cement") from Venezuela. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Oil well cement is also included within the scope of the investigation. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as other hydraulic cements. The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that termination of the suspended antidumping duty investigation on portland cement from Venezuela would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Vencemos	50.02
Caribe	49.20
All others	49.26

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16793 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–842]

Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea

AGENCY: Import Administration, International Trade Administration Department of Commerce.

ACTION: Notice of final affirmative countervailing duty investigation.

SUMMARY: On December 14, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the countervailing duty investigation of structural steel beams from the Republic of Korea for the period January 1, 1998, through December 31, 1998.

Based on our analysis of the comments received, we have made changes to the net subsidy rates. Therefore the net subsidy rates in the *Final Determination* differ from those of the *Preliminary Determination*. The final net subsidy rates for the reviewed companies are listed below in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Tipten Troidl, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR part 351 (1999).

Background

On December 14, 1999, the Department published the results of its

Preliminary Determination in the investigation of structural steel beams from the Republic of Korea. *See Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Structural Steel Beams From the Republic of Korea*, 64 FR 69731 (December 14, 1999) (*Preliminary Determination*). We invited interest parties to comment on the *Preliminary Determination*. On June 14, 2000, case briefs were submitted by respondents and petitioners. Also, on June 14, 2000, petitioners withdrew their January 13, 2000, request for a hearing. No other interested party requested a hearing. On June 19, 2000, rebuttal briefs were submitted by petitioners and respondents.

This investigation covers three manufactures/exporters: Kangwon Industries Ltd. (Kangwon), Inchon Iron and Steel Co., Ltd. (Inchon), and Dongkuk Steel Mill Co., Ltd. (DSM). This investigation also covers four trading companies: Hyosung Corporation (Hyosung), Sampyo Corporation (Sampyo), Hyundai Corporation (Hyundai), and Dongkuk Industries Co. (DKI). This investigation covers the period January 1, 1998, through December 31, 1998, and thirty-four programs.

Scope of the Investigation

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (Structural Steel Beams) include, but are not limited to, wide-flange beams (W shapes), bearing piles (HP shapes), standard beams (S or I shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation: Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our *Final Determination*. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit of the Department of Commerce (Room B–099).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this countervailing duty investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 26, 2000, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded is in the Decision Memorandum and is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn, under the heading "Republic of Korea." The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the record and comments received, we have made certain changes to the net subsidy rate. As a result of the changes, the net subsidy rates of Kangwon and DSM are above *de minimis*. All changes made since the *Preliminary Determination* are discussed in the relevant sections of the Decision Memorandum.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual subsidy rate for Kangwon, Inchon, and DSM, manufacturers of subject merchandise. We determine that the total estimated net subsidy rates are as follows:

Company	Net subsidy rate
Inchon	0.15 percent *ad valorem*
Kangwon	3.88 percent *ad valorem*
DSM	1.34 percent *ad valorem*
All Others Rate	3.87 percent *ad valorem*

With respect to Inchon, its estimated net countervailable subsidy rate is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to Inchon for its production or exportation of structural steel beams. In accordance with section 705(c)(5)(A)(i) of the Act, we calculated an all-others rate, which is an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates. On this basis, we determined the all-others rate listed in the table above. Because Inchon has a *de minimis* rate, it will be excluded from any suspension of liquidation.

In accordance with section 705(c)(1)(C) of the Act, we will instruct the U.S. Customs Service to suspend liquidation under section 703(d) of the Act for all entries of subject merchandise from Korea, except for Inchon, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and will require a cash deposit of estimated countervailing duties for such entries of the merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary

information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated. If however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the act.

Dated: June 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues Discussed in Decision Memorandum

Methodology and Background Information

I. Subsidies Valuation Information
- A. Allocation Period
- B. Treatment of Subsidies Received by Trading Companies
- C. Benchmark Interest Rates and Discount Rates
- D. Creditworthiness

Analysis of Programs

I. Programs Conferring Subsidies
- A. The Government of Korea's (GOK) Direction of Credit Policies
  1. The GOK's Credit Policies Through 1991
  2. The GOK's Credit Policies from 1992 Through 1998
- B. Debt Restructuring for Kangwon
- C. Reserve for Export Loss Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL)
- D. Reserve for Overseas Market Development Under Article 17 of the TERCL
- E. Investment Tax Credits Under Article 25 of the TERCL
- F. Asset Revaluation Under Article 56(2) of the TERCL
- G. Electricity Discounts Under the Requested Load Adjustment Program
- H. Scrap Reserve Fund
- I. Export Industry Facility Loans (EIFLs)
- J. Special Cases of Tax for Balanced Development in Selected Areas Under Article 43 of the TERCL

II. Programs Determined To Be Not Countervailable
- A. Tariff Reductions on Imported Machinery Equipment

III. Programs Determined To Be Not Used
- A. Private Capital Inducement Act
- B. Tax Credit in Equipment to Develop Technology and Manpower Under Article 10 of the TERCL
- C. Tax Credits for Vocational Training Under Article 18 of the TERCL
- D. Exemptions of Corporate Tax on Dividend Income from Overseas Resources Development Resources Act Under Article 24 of the TERCL
- E. Tax Credits for Investments in Specific Facilities Under Article 26 of the TERCL
- F. Tax Credits for Temporary Investments Under Article 27 of the TERCL
- G. Social Indirect Capital Investment Reserve Funds Under Article 28 of the TERCL
- H. Energy-Savings Facilities Investment Reserve Funds Under Article 29 of the TERCL
- I. Tax Credits for Specific Investments Under Article 71 of the TERCL
- J. Mining Investment Reserve Funds Under Article 95 of the TERCL
- K. Grants Under the Technology Development Promotion Act
- L. Highly Advanced National Project Fund Industry Technology Development Fund
- M. Short-Term Export Financing
- N. Korean Export-Import Bank Loans
- O. Tax Incentives for Highly Advanced Technology Businesses
- P. Special Depreciation of Assets Based on Foreign Exchange Earnings
- Q. Steel Campaign for the 21st Century
- R. Excessive Duty Drawback
- S. Reserve for Investment
- T. Export Insurance Rates By The Korean Export Insurance Corporation
- U. Special Cases of Tax for Balanced Development among Areas (TERCL Articles 41, 42, 44, and 45)
- V. Reserve for Investment
- W. Overseas Resource Development Loan

IV. Analysis of Comments
- Comment 1: Kangwon's Creditworthiness from 1991 through 1998
- Comment 2: Countervailability of Kangwon's Debt for Equity Swap
- Comment 3: Department Selection of Benchmarks
- Comment 4: Calculation Errors in Preliminary Determination
- Comment 5: The Suspension of Kangwon's Interest Payments Following the Company's Debt Restructuring and Its Affect on Kangwon's Benefit Calculations
- Comment 6: The Department's Finding Regarding Direction of Credit to the Steel Industry Is Not Supported By Substantial Evidence Or Otherwise in Accordance With Law
- Comment 7: Whether the Department Must Find a "Casual Nexus" to Determine Direction of Credit to the Steel Industry Countervailable
- Comment 8: Countervailability of the Tariff Reductions on Imported Machinery Equipment Program

[FR Doc. 00–16794 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders or suspended investigation listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of Institution of Five-Year Reviews covering these same orders.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho, or James Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1698, or 482–3330, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigation:

DOC Case No.	ITC Case No.	Country	Product
A–357–809	731–TA–707	Argentina	Seamless Pipe.
A–351–826	731–TA–708	Brazil	Seamless Pipe.
A–428–820	731–TA–709	Germany	Seamless Pipe.
A–475–814	731–TA–710	Italy	Seamless Pipe.

DOC Case No.	ITC Case No.	Country	Product
A–357–810	731–TA–711	Argentina	Oil Country Tubular Goods.
A–475–816	731–TA–713	Italy	Oil Country Tubular Goods.
A–588–835	731–TA–714	Japan	Oil Country Tubular Goods.
A–580–825	731–TA–715	Korea	Oil Country Tubular Goods.
A–201–817	731–TA–716	Mexico	Oil Country Tubular Goods.
A–570–838	731–TA–722	China (the PRC)	Honey (Suspended investigation).
C–475–815	701–TA–362	Italy	Seamless Pipe.
C–475–817	701–TA–364	Italy	Oil Country Tubular Goods.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) Dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The reviews will be conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Sunset Regulations and Sunset Policy Bulletin, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (2000). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (2000)) wishing to participate in the sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the Sunset Regulations at 19 CFR 351.218(d)(1)(ii). In accordance with the Sunset Regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review.

If we receive a notice of intent to participate from a domestic interested party, the Sunset Regulations provide that all parties wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the Sunset Regulations at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Sunset Regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 (2000) for definitions of terms and for other general information concerning antidumping duty order proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 16, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16670 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000522149–0149–01]

RIN 0648–ZA87

Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Program

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice announces that applications may be submitted for a Fellowship program which was initiated by the National Sea Grant Office (NSGO), NOAA, in fulfilling its broad educational responsibilities, to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (Sunset Regulations, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (2000), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Government to graduate students in marine and aquatic-related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to the local Sea Grant program in their state. Applicants from states not served by a Sea Grant program should obtain further information by contacting the Knauss Fellows Program Manager at the NSGO.

DATES: Deadlines vary from program to program, but are generally due early to mid-September. Contact your state's Sea Grant program for specific deadlines (see list below).

ADDRESSES: Applications should be addressed to your local Sea Grant program. Contact the appropriate state's Sea Grant program from the list below to obtain the mailing address or the address may be obtained on the web site *http://www.nsgo.seagrant.org/SGDirectors.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Nikola Garber, Knauss Fellows Program Manager, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, Tel. (301) 713–2431 ext. 124; e-mail: *nikola.garber@noaa.gov*. Also call your nearest Sea Grant program or visit the web site *http://www.nsgo.seagrant.org/Knauss.html*.

Sea Grant Programs

Alabama, Mississippi-Alabama Sea Grant Consortium, (228) 875–9341
Alaska, University of Alaska (907) 474–7086
California, University of California, San Diego, (858) 534–4440
California, University of Southern California, (213) 812–1335
Connecticut, University of Connecticut, (860) 405–9128
Delaware, University of Delaware, (302) 831–2841
Florida, University of Florida, (352) 392–5870
Georgia, University of Georgia, (706) 542–5954
Hawaii, University of Hawaii, (808) 956–7031
Illinois, Purdue University, (765) 494–3593
Indiana, Purdue University, (765) 494–3593
Louisiana, Louisiana Sea Grant, (225) 388–6710
Maine, University of Maine, (207) 581–1435
Maryland, University of Maryland, (301) 405–6371
Massachusetts, Massachusetts Institute of Technology, (617) 253–7131
Massachusetts, Woods Hole Oceanographic Institution, (508) 289–2557
Michigan, University of Michigan, (734) 763–1437
Minnesota, University of Minnesota, (218) 726–8710
Mississippi, Mississippi-Alabama Sea Grant Consortium, (228) 875–9341
New Hampshire, University of New Hampshire, (603) 862–0122
New Jersey, New Jersey Marine Science Consortium, (732) 872–1300 Ext. 21
New York, New York Sea Grant Institute, SUNY, (631) 632–6905
North Carolina, North Carolina State University, (919) 515–2454
Ohio, Ohio State University, (614) 292–8949
Oregon, Oregon State University, (541) 737–2714
Puerto Rico, University of Puerto Rico, (787) 832–3585
Rhode Island, University of Rhode Island, (401) 874–6800
South Carolina, South Carolina Sea Grant Consortium, (843) 727–2078
Texas, Texas A&M University, (979) 845–3854
Virginia, Virginia Graduate Marine Science Consortium, (804) 924–5965
Washington, University of Washington, (206) 543–6600
Wisconsin, University of Wisconsin-Madison, (608) 262–0905

SUPPLEMENTARY INFORMATION:

Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Program

Purpose of the Fellowship Program

In 1979, the National Sea Grant Office (NSGO), NOAA, in fulfilling its broad educational responsibilities, initiated a program to provide a unique educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students who have an interest in ocean, coastal and Great Lakes resources and in the national policy decisions affecting these resources. The U.S. Congress recognized the value of this program and in 1987, Public Law 100–220 stipulated the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows pursuant to 33 U.S.C. 1127(b).

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the local sea Grant program upon receipt of notice from the NSGO.

Eligibility

Any student who, on September 26, 2000, is in a graduate or professional program in a marine or aquatic-related field at a United States accredited institution of higher education may apply to the NSGO through their local Sea Grant program. Applicants from states not served by a Sea Grant program should obtain further information by contacting the Knauss Fellows Program Manager at the NSGO. NOAA makes financial assistance funds available to the Sea Grant programs nationwide to implement the fellowship program. The National Sea Grant program is listed in the *Catalog of Federal Domestic Assistance* under number 11.417: Sea Grant Support.

How To Apply

Interested students should discuss this fellowship with their local Sea Grant Program Director. Applications must be submitted with signature to the local Sea Grant program by the deadline set in the announcement (usually early to mid-September). Each Sea Grant program may select and forward to the NSGO no more than five (5) applicants selected according to criteria used by the NSGO in the national competition.

Selected applications are to be received in the NSGO from the sponsoring Sea Grant program, no later than 5 p.m. EST on September 26, 2000. The competitive selection process and subsequent notification to the Sea Grant programs will be completed by October 25, 2000.

Stipend and Expenses

The local Sea Grant program receives and administers the overall award of $38,000 per student on behalf of each Fellow selected from their program. Of this award, the local Sea Grant program provides $32,000 to each Fellow for stipend and living expenses (per diem). The additional $6,000 will be used to cover mandatory health insurance for the Fellow and moving expenses. In addition, any remaining funds shall be used during the Fellowship year, first to satisfy academic degree-related travel, and second for Fellowship-related travel. Indirect costs are not allowable for either the Fellowships or for any costs associated with the Fellowships [15 CFR 917.11(e), Guidelines for Sea Grant Fellowships]. During the fellowship, the host may provide supplemental funds for work-related travel by the fellow.

Application

An application will include:

(1) Personal and academic curriculum vitae (not to exceed two pages using 12 pt. font).

(2) A personal education and career goal statement which emphasizes the applicant's abilities and the applicant's expectations from the experience in the way of career development (1000 words or less). Placement preference in the Legislature or Executive Branches of the Government may be stated; this preference will be honored to the extent possible.

(3) Two letters of recommendation, including one from the student's major professor.

(4) A letter of endorsement from the sponsoring Sea Grant Program Director.

(5) Copy of all undergraduate and graduate student transcripts.

It is our intent that all applicants be evaluated only on their ability. Therefore, letters of endorsements from members of Congress, friends, relatives or others; as well as thesis papers, publications, or other additional supporting documents will not be accepted.

Selection Criteria

The selection criteria will include:

(1) Quality of the applicant's personal education and career goal statement.

(2) Endorsement of the applicant's Sea Grant program director, and support of the applicant's major professor and second letter of recommendation.

(3) Strength of academic performance and diversity of educational background including extracurricular activities, awards and honors (from the curriculum vitae and transcripts).

(4) Experience in marine or aquatic-related fields, oral and written communication skills, and interpersonal abilities. Relative weights of the evaluation criteria are equal.

Selection

Applicants will be individually reviewed and ranked, according to the criteria outlined above, by a panel appointed by the Director of the NSGO with input from the Sea Grant Association and the National Sea Grant Review Panel. The panel will include representation from the Sea Grant Association and the current, and possibly past, class of Fellows. Once the entire class is selected, based on the criteria listed, the Knauss Program Manager will group the top-ranked applicants in each category, legislative and executive, based upon the applicant's stated preference and/or judgement of the panel based upon material submitted. Academic discipline and geographic representation may be considered by the National Sea Grant Office to provide overall balance. The number of fellows assigned to the Congress will be limited to 10.

Federal Policies and Procedures

Fellows receive funds directly from their sponsoring Sea Grant Program and are considered to be subrecipients of Federal assistance subject to all Federal laws and Federal and Commerce Department policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any cost prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance they may have been received, there is no obligation on the part of Department of Commerce to cover pre-award costs.

No Obligation for Future Funding

If an application is selected for funding, Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of Department of Commerce.

Delinquent Federal Debts

No award of Federal funds shall be made to a Fellows applicant who has an outstanding delinquent Federal debt or fine until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to Department of Commerce are made.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Application Certifications

All primary applicant must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

i. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "NONPROCUREMENT Debarment and Suspension" and the related section of the certification form prescribed above applies;

ii. Drug-Free Workplace: Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

iii. Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000,and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower tier Covered Transaction and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities," Form CD–512 is intended for the use of recipients and should not be transmitted to Department of Commerce. SF–LLL submitted by any tier recipient or subrecipients should be submitted to Department of Commerce in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Minority Serving Institutions Statement

Pursuant to Executive Orders 12876, 12900, and 13021, DOC/NOAA is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the Nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: *http://www.ed.gov/offices/OCR/99minin.html.*

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This document contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB under control number 0648–0362. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: June 26, 2000.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 00–16713 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–KA–M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 20 July 2000, at 9 a.m. at the Department of Interior's main auditorium, 18th & C Streets, NW., Washington, DC, 20240. The principal item for review will be the World War II Memorial.

Following this meeting, the Commission will reconvene at the Commission of Fine Arts, National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728, to discuss the remaining items on the agenda, including the design of the Woodrow Wilson Bridge.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, June 23, 2000.

Charles H. Atherton,

Secretary.

[FR Doc. 00–16752 Filed 6–30–00; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0133]

Proposed Collection; Comment Request Entitled Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0133).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Defense Production Act Amendments. This OMB clearance expires on October 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 1, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

FAR 34.1 and 52.234–1 require contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The FAR coverage also expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Respondents: 6.
Responses Per Respondent: 3.
Total Annual Responses: 18.
Hours Per Response: 100.

Total Burden Hours: 1,800.FP

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0133, in all correspondence.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–16688 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034]

Proposed Collection; Comment Request Entitled Examination of Records by Comptroller General and Contract Audit

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0034).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Examination of Records by Comptroller General/Audit-Negotiation now retitled Examination of Records by Comptroller General and Contract Audit. The clearance currently expires on October 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 1, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212–5(d); and Audit and Records-Sealed Bidding clause, 52.214–26, implement the requirements of 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306. The statutory requirements are that the Comptroller General and/or agency shall have access to, and the right to, examine certain books, documents and records of the contractor for a period of 3 years after final payment. The record retention periods required of the contractor in the clauses are for compliance with the aforementioned statutory requirements. The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed.

B. Annual Reporting Burden

Respondents: 19,142.

Responses Per Respondent: 20.

Total Responses: 382,840.

Hours Per Response: .167.

Total Burden Hours: 63,934.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit in all correspondence.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–16689 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115]

Proposed Collection; Comment Request Entitled Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notification of Ownership Changes. This OMB clearance expires on October 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 1, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–40, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 125.
Total Burden Hours: 125.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–16690 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075]

Submission for OMB Review; Comment Request Entitled Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding extension of an existing OMB clearance (9000–0075).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property. A request for public comments was published at 65 FR 26818, on May 9, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before August 2, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

"Property," as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to:

(a) Provide financial accounts for Government-owned property in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Locate any item of Government property within a reasonable period of time.

This clearance covers the following requirements:

(a) FAR 45.307–2(b) requires a contractor to notify the contracting officer if it intends to acquire or fabricate special test equipment.

(b) FAR 45.502–1 requires a contractor to furnish written receipts for Government property.

(c) FAR 45.502–2 requires a contractor to submit a discrepancy report upon receipt of Government property when overages, shortages, or damages are discovered.

(d) FAR 45.504 requires a contractor to investigate and report all instances of loss, damage, or destruction of Government property.

(e) FAR 45.505–1 requires that basic information be placed on the contractor's property control records.

(f) FAR 45.505–3 requires a contractor to maintain records for Government material.

(g) FAR 45.505–4 requires a contractor to maintain records of special tooling and special test equipment.

(h) FAR 45.505–5 requires a contractor to maintain records of plant equipment.

(i) FAR 45.505–7 requires a contractor to maintain records of real property.

(j) FAR 45.505–8 requires a contractor to maintain scrap and salvage records.

(k) FAR 45.505–9 requires a contractor to maintain records of related data and information.

(l) FAR 45.505–10 requires a contractor to maintain records for completed products.

(m) FAR 45.505–11 requires a contractor to maintain records of transportation and installation costs of plant equipment.

(n) FAR 45.505–12 requires a contractor to maintain records of misdirected shipments.

(o) FAR 45.505–13 requires a contractor to maintain records of property returned for rework.

(p) FAR 45.505–14 requires a contractor to submit an annual report of Government property accountable to each agency contract.

(q) FAR 45.508–2 requires a contractor to report the results of physical inventories.

(r) FAR 45.509–1(a)(3) requires a contractor to record work accomplished in maintaining Government property.

(s) FAR 45.509–1(c) requires a contractor to report the need for major repair, replacement and other rehabilitation work.

(t) FAR 45.509–2(b)(2) requires a contractor to maintain utilization records.

(u) FAR 45.606–1 requires a contractor to submit inventory schedules.

(v) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(w) FAR 52.245–2(a)(3) requires a contractor to notify the contracting

officer when Government-furnished property is received and is not suitable for use.

(x) FAR 52.245–2(a)(4) requires a contractor to notify the contracting officer when government-furnished property is not timely delivered and the contracting officer will make a determination of the delay, if any, caused the contractor.

(y) FAR 52.245–2(b) requires a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(z) FAR 52.245–4 requires a contractor to submit a timely written request for an equitable adjustment when Government-furnished property is not furnished in a timely manner.

(aa) FAR 52.245–5(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is received that is not suitable for use.

(bb) FAR 52.245–5(a)(5) requires a contractor to notify the contracting officer when Government-furnished property is not received in a timely manner.

(cc) FAR 52.245–5(b)(2) requests a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(dd) FAR 52.245–7(f) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ee) FAR 52.245–7(l)(2) requires a contractor to alert the contracting officer within 30 days of receiving facilities that are not suitable for use.

(ff) FAR 52.245–9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

(gg) FAR 52.245–10(h)(2) requires a contractor to notify the contracting officer if facilities are received that are not suitable for the intended use.

(hh) FAR 52.245–11(e) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ii) FAR 52.245–11(j)(2) requires a contractor to notify the contracting officer within 30 days of receiving facilities not suitable for intended use.

(jj) FAR 52.245–17 requires a contractor to maintain special tooling records.

(kk) FAR 52.245–18(b) requires a contractor to notify the contracting officer 30 days in advance of the contractor's intention to acquire or fabricate special test equipment (STE).

(ll) FAR 52.245–18(d) & (e) requires a contractor to furnish the names of subcontractors who acquire or fabricate special test equipment (STE) or components and comply with paragraph (d) of this clause, and contractors must comply with the (b) paragraph of this clause if an engineering change requires acquisition or modification of STE. In so complying, the contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(mm) FAR 52.245–19 requires a contractor to notify the contracting officer if there is any change in the condition of property furnished "as is" from the time of inspection until time of receipt.

This information is used to facilitate the management of Government property in the possession of the contractor.

B. Annual Reporting Burden

Respondents: 27,884.
Responses Per Respondent: 488.6.
Total Responses: 13,624,122.
Average Burden Hours Per Response: .4826.
Total Burden Hours: 6,575,309.

The total burden hours have changed under this OMB clearance 9000–0075 to reflect the incorporation of hours currently associated with OMB clearance 9000–0151 (FAR Case 1995–013) which expires on June 30, 2000, and will not be renewed. The OMB collection burden associated with Government property nonetheless remains unchanged.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–16691 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 1, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 27, 2000.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Management.
Type of Review: Extension.
Title: Master Plan for Customer Surveys and Focus Groups.
Frequency: On Occasion.
Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 100,000—Burden Hours: 50,600.

Abstract: Customer satisfaction surveys and focus group discussions will be conducted by the Principal Offices of the Department of Education to measure customer satisfaction and establish and improve customer service standards as required by Executive Order 12862.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–16723 Filed 6–30–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Intent To Repay the Commonwealth of Massachusetts Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the Secretary of Education (Secretary) intends to repay to the Commonwealth of Massachusetts Department of Education (Massachusetts), under a grantback arrangement, an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) as a result of the final audit determination in this matter (ACN: 01–33145G). The Department's recovery of funds followed the settlement reached between the parties under which Massachusetts refunded $2,111,810 to the Department in full resolution of the Department's final audit determination for State fiscal year (FY) 1992. This notice describes Massachusetts' plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: All comments must be received on or before August 2, 2000.

ADDRESSES: All written comments should be addressed to Ron Castaldi, Chief, Division of Vocational-Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW, Mary E. Switzer Building, Room 4317, MS 7323, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Ron Castaldi. Telephone: (202) 205–9444. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

A. Background

Under the settlement agreement between the Department and the Commonwealth of Massachusetts, the Department recovered $2,111,810 from Massachusetts in full resolution of all claims arising from an audit of Massachusetts covering FY 1992 (ACN: 01–33145G).

The Department's original claim of $4,604,211 was contained in a program determination letter (PDL) issued by the Assistant Secretary for Vocational and Adult Education on March 31, 1995. This claim arose from findings related to Massachusetts' administration of its vocational education program under the provisions of the Carl D. Perkins Vocational and Applied Technology Education Act. 20 U.S.C. 2301 *et seq.* (1988) (Perkins II).

In the March 31, 1995 PDL, the Assistant Secretary determined that Massachusetts violated the Federal requirements governing maintenance of fiscal effort. Specifically, the Assistant Secretary concluded that Massachusetts failed to expend non-Federal funds at an appropriate level to maintain fiscal effort on either an aggregate or per pupil basis, thus violating section 502(a) of Perkins II (20 U.S.C. 2463(a)).

The settlement negotiations resulting from Massachusetts' appeal of the Assistant Secretary's March 31, 1995 PDL culminated in a settlement agreement for a total repayment of a principal amount of $2,111,810. The settlement agreement was executed on August 15, 1997. The Department received full payment for this determination in September 1997.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to any applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State or local educational agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) The practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program;

(2) The recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) The use of the funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, Massachusetts has applied for a grantback of $1,583,858, or 75 percent of the $2,111,810 repaid to the Department under the settlement agreement, and has submitted a plan for use of the proposed grantback funds, consistent with the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), which is the successor statute to Perkins II and is currently in effect. Massachusetts plans to establish new career and technical education programs in high-wage, high-demand emerging career fields where there is a critical shortage of skilled workers, and to assist existing career and technical programs seeking national program certification.

Specifically, Massachusetts plans to utilize the requested grantback funds, totaling $1,583,858, to offer a competitive Request for Proposal for Perkins-eligible secondary schools with career and technical programs. Funds will be used either to begin a career and technical education program in a new and emerging field, or to update an existing program using the National Program Standards as a framework. The award of grants will be weighed in favor of schools with a higher concentration

of special populations. Massachusetts expects to award 20–25 grants ranging from $50,000 to $100,000 each. Grant recipients will be required to match on a dollar for dollar basis the total grant request from State, local, business and industry, or other non-Perkins Federal funding source. The Request for Proposal will include a stipulation that schools include enrollment figures for new proposed programs or grant-impacted programs, and also include the number of students who are members of special populations. Grant funds awarded under this Request for Proposal cannot be used to supplant activities that are currently being funded.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by Massachusetts and other relevant documentation. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action at a later date. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Massachusetts Department of Education under a grantback arrangement. The grantback award would be in the amount of $1,583,858, which is 75 percent—the maximum percentage authorized by the statute—of the principal recovered by the Department as a result of the final audit determination and the settlement in this matter.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

Massachusetts agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) Massachusetts will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that was submitted and any amendments to the plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 2000, for ACN: 01–33145G, in accordance with section 459(c) of GEPA and Massachusetts' plan.

(3) Massachusetts will, no later than January 1, 2002, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been expended in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: June 28, 2000.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 00–16750 Filed 6–30–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM98–10–000, RM98–12–000 and RP00–335–000]

Regulation of Short-Term Natural Gas Transportation Services; Regulation of Interstate Natural Gas Transportation Services; and Black Marlin Pipeline Company; Notice of Compliance Filing

June 27, 2000.

Take notice that on June 15, 2000, Black Marlin Pipeline Company tendered for filing its *pro forma* tariff sheets, in compliance with Order Nos. 637 and 637–A.

On February 9 and May 19, 2000, the Commission issued Order Nos. 637 and 637–A, respectively, which prescribed new regulations, implemented new policies and revised certain existing regulations respecting natural gas transportation in interstate commerce. The Commission directed pipelines to file *pro forma* tariff sheets to comply with the new regulatory requirements regarding scheduling procedures, capacity segmentation, imbalance management services and penalty credits, or in the alternative, to explain why no changes to existing tariff provisions are necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm. (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16697 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR00–6–000]

Chevron Pipeline Company; Notice of Request for Protective Order and for Limited Waiver of 18 CFR 348.2(e)

June 27, 2000.

Take notice that on June 13, 2000, pursuant to 18 CFR part 348, Chevron Pipeline Company (Chevron) filed an application for authority to charge market-based rates on its two pipeline systems originating in El Paso, Texas. Pursuant to 18 CFR 388.112, Chevron requests confidential treatment of certain information contained in its application. Chevron states that the only information for which it is requesting confidential treatment is shipper information that Chevron is required by law not to disclose pursuant to Section 15(13) of the Interstate Commerce Act (ICA). Chevron maintains that it is not requesting confidential treatment of any of its own business information at this time. In addition, Chevron requests the expedited issuance of a protective order and limited waiver of 18 CFR 348.2(e)—until the Commission issues the requested protective order—to govern the provision of the application containing the confidential information to other parties.

According to Chevron, the proposed protective order encompasses both the provision of the confidential version of the application prior to any entity becoming a participant in this proceeding and the later provision of both Section 15(13) and other confidential information among participants, should that become necessary in this proceeding. Chevron contends that the proposed protective order limits access to Section 15(13) information to an entity's outside counsel and consultants.

Any person desiring to comment or protest this request for a protective order and limited waiver should file the comment or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All such comments or protests must be filed by July 7, 2000. Comments or protests will be considered by the Commission in determining the appropriate action to be taken, but will not make the person filing a party to the proceeding. Copies of this filing, including the request for a protective order are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–16702 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2496]

Eugene Water and Electric Board, Leaburg Walterville Project, Oregon; Notice

June 27, 2000.

The following Commission staff are assigned to help facilitate resolution of environmental issues and related issues for any filings that may be submitted to the Commission for the Leaburg Walterville Project.

Office of General Council

Ellen Korthaus-Vos (202) 501–6794
Merrill Hathaway (202) 208–0825

Office of Energy Projects

Jim Hastreiter (503) 944–6760

The staff listed above are separated from the advisory staff in these proceedings and will not participate as advisory staff in these proceedings.

David P. Boergers,

Secretary.

[FR Doc. 00–16695 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2921–000]

JPower Inc.; Notice of Filing

June 27, 2000.

Take notice that on June 13, 2000, JPower, Inc., tendered for filing notice of change in status. JPower requests that the name JPower and JPower's market based rate schedule under ER95–1421–000 be transferred to Great Lakes Energy Trading, LLC effective immediately.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–16701 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–298–002]

Kern River Gas Transmission Company; Notice of Proposed Pro Forma Changes in FERC Gas Tariff

June 27, 2000.

Take notice that on June 19, 2000, Kern River Gas Transmission Company (Kern River) has withdrawn certain dated tariff sheets initially filed in this proceeding and has replaced them with the following corresponding pro forma tariff sheets for inclusion in its FERC Gas Tariff, Second Revised Volume No. 1.

Pro Forma Sheet No. 15
Pro Forma Sheet No. 71
Pro Forma Sheet No. 171
Pro Forma Sheet No. 186
Pro Forma Sheet No. 423–426
Pro Forma Sheet No. 501
Pro Forma Sheet No. 601
Pro Forma Sheet No. 701
Pro Forma Sheet No. 901

Kern River states that the purpose of this filing is to withdraw the dated and numbered tariff sheets filed in this docket on May 24, 2000, and to replace them with corresponding pro forma sheets.

Kern River states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulation. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspect in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16699 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–304–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

June 27, 2000.

Take notice that on June 21, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Substitute Twenty-fourth Revised Sheet No. 5. PG&E GTN requests that the above-referenced tariff sheet become effective July 1, 2000.

PG&E GTN asserts that the purpose of this filing is to correct an error in its fuel surcharge filing filed June 1, 2000 in this Docket. PG&E GTN states that the correction of the error will reduce PG&E GTN's proposed fuel surcharge to be in effect for the period July 1, 2000 through December 31, 2000 from 0.0015% per Dth per pipeline-mile to 0.0006% per Dth per pipeline-mile. Also included are revised workpapers showing the derivation of the corrected fuel surcharge.

PG&E GTN further states that a copy of this filing has been served on PG&E GTN's jurisdictional customers, interested state regulatory agencies, and all parties on the Commission's official service list for this proceeding.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16700 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands

June 27, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and isavailable for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* 2183–023.

c. *Date Filed:* June 8, 2000.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Markham Ferry Hydroelectric Project.

f. *Location:* The Markham Ferry hydroelectric project is located on the Grand (Nesho) River in Mayes County, Oklahoma. The project does not occupy any federal or tribal lands.

g. *Applicant Contact:* Ms. Mary E. Von Drehle, Assistant General Council, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301. Phone (918) 256–5545.

h. *FERC Contact:* Steve Hocking at (202) 219–2656. E-mail address: *steve.hocking@ferc.fed.us.* Note, the Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

i. *Deadline for filing comments and recommendations, motions to intervene, and protests:* August 2, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of the Application:* Grand River Dam Authority (GRDA) has filed a supplement which substantially changes a pending application before the Commission. On January 14, 1999, GRDA filed an application to grant a permit to Mike Sisemore (applicant) to dredge about 102,00 cubic yards (cy) of material and create a canal from Lake Hudson to his private property. Commission staff public noticed the application on February 12, 1999. On June 10, 1999, GRDA filed a supplement reducing the amount of proposed dredging to about 25,000 cy. Finally, on June 8, 2000, GRDA filed a supplement to permit the applicant to install two boat docks with a total of 36 slips within the area to be dredged. The site where the applicant would dredge 25,000 cy and install two boat docks with 36 slips is located in Lake Hudson, in the southwest 1/4 of Section 16, Township 21 North, Range 20 East, Mays County, Oklahoma. This is on the north side of state highway 20 just west of the bridge over Lake Hudson going to Salina, Oklahoma.

k. *Locations of the application:* The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance. In addition, a copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letter the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number (P–2183–023) of the particular application to which the filing refers. Any of the above-named documents must be filed

by providing the original and the number of copies provided by the Commission's regulatoins to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–16694 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–007; Holt Project]

Alabama Power Company; Notice of Telephone Conference

June 27, 2000.

On Thursday, July 13, 2000, the Federal Energy Regulatory Commission (Commission) staff will conduct a telephone conference with representatives of the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Alabama Department of Conservation and Natural Resources, the National Marine Fisheries Service, the Alabama Department of Environmental Management, and Alabama Power Company to discuss the Application for Non-Capacity Amendment of Project License for the Holt Project, FERC Docket No. 2203–007. The Commission staff will initiate the telephone conference. The telephone conference will begin at 2 p.m. Eastern Daylight Time (1 p.m. Central Daylight Time).

The telephone conference will be conducted according to the procedures used at Commission meetings. Meeting minutes will be taken, which will be distributed to interested parties and placed in the Commission's public files for the proceeding.

For further information, please contact Steve Kartalia at the Commission, 9202) 219–2942.

David P. Boergers,

Secretary.

[FR Doc. 00–16696 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–264–000]

Northern Natural Gas Company; Notice of Rescheduling of Technical Conference

June 27, 2000.

In the Commission's order issued on May 31, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference has been rescheduled for Thursday, July 20, 2000, at 9:30 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–16698 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: June 26, 2000, 65 FR 39384.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 28, 2000, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Nos. and Company has been added to Item CAE–1 and on the Agenda scheduled for the June 28, 2000 meeting.

Item No.	Docket No. and company
CAE–1	ER00–2068–000, ER00–1379–000, ER00–1386–000 and ER00–1387–000, Ameren Services Company.

[1] 91 FERC ¶ 61,216 (2000).

David P. Boergers,

Secretary.

[FR Doc. 00–16877 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6728–6]

Agency Information Collection: Continuing Collection; Comment Request Combined Sewer Overflow Control Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA plans to submit the following renewal Information Collection Request (ICR) to the Office of Management and Budget (OMB): Combined Sewer Overflow Control Policy (OMB Control Number 2040–0170; EPA Number 1680.03; expiring on September 30, 2000). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 1, 2000.

ADDRESSES: Environmental Protection Agency, Office of Wastewater Management, (Mail Code 4203, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Interested persons may obtain a copy of the proposed renewal ICR without charge by calling or writing to Timothy J. Dwyer at the Office of Wastewater Management, MC 4203, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20450; telephone (202) 260–6064.

FOR FURTHER INFORMATION CONTACT: Timothy Dwyer, EPA Office of Wastewater Management (Mail Code 4203), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 260–6064. Fax: (202) 260–1460. E-mail: dwyer.tim@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are municipalities with combined sewer systems, which are covered by EPA's Combined Sewer Overflow (CSO) Control Policy.

Title: Combined Sewer Overflow Control Policy (OMB Control No. 2040–0170; EPA ICR No. 1680.02) expiring on 09/30/00.

Abstract: EPA is proposing to continue its ICR for the Combined Sewer Overflow (CSO) Control Policy. The ICR was initially approved in April 1994. The first renewal was approved in September 1997. This renewal ICR includes the burden associated with documenting implementation of the nine minimum controls identified in the CSO control policy, public notification of CSO events and their impacts, developing and submitting long-term CSO control plans (LTCPs), and post-construction compliance monitoring.

Combined sewer systems (CSSs) serve approximately 900 municipalities, primarily in the Northeast and Great Lakes regions. This number is smaller than that in the former ICR largely because the Agency has better data on the number of municipalities with combined sewer systems nationwide. CSOs occur when these systems overflow and discharge to receiving waters prior to treatment in a publicly owned treatment works (POTW).

The CSO Control Policy, published on April 19, 1994 (59 FR 18688), is a national framework for controlling CSOs through the National Pollutant Discharge Elimination System (NPDES) permitting program. The Policy represents a comprehensive national strategy to ensure that municipalities with CSSs, NPDES permitting authorities, water quality standards authorities, and the public engage in a comprehensive and coordinated planning effort to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives, including compliance with water quality standards.

Among the provisions in the CSO Policy are the nine minimum controls, which are technology-based actions or measures designed to reduce the magnitude, frequency, and duration of CSOs and their effects on receiving water quality. The CSO Control Policy provided for implementation of the nine minimum controls by January 1, 1997.

One of these controls is public notification of CSO occurrences and impacts. Public notification is of particular concern at beach and recreation areas directly or indirectly affected by CSOs, where public exposure is likely to be significant. That burden continues to be included in this renewal.

The CSO Control Policy also contains a provision for the development of long-term control plans. The policy recommends that permit writers require permittees to develop a long-term plan within two years of the issuance of a NPDES permit or other enforceable mechanism containing such a requirement. The core of the plan is the development and evaluation of long-term control alternatives. One of the elements of the long-term plan is the development of a post-construction compliance monitoring program to be implemented when selected controls are completed. OMB's approval of the initial ICR for the CSO Control Policy recommended that the renewal ICRs include EPA's best estimate of the burden associated with a reasonable and targeted compliance monitoring program. That burden also continues to be included in this renewal.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments on its renewal ICR for the CSO Control Policy. Specifically we would like comments to help us to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The estimated burden reflected in this ICR is 1,754,877 hours and a cost of $61,964,707.

Of this total, the portion for municipalities with combined sewer systems is 1,699,696 hours at a cost of $60,016,265, including start-up costs of $182,125 for the third party notification under the nine minimum controls in the CSO Policy. The estimated burden on each of 585 municipalities for DMR reporting and record keeping is 417 hours and $14,724. The estimated burden on each of 490 municipalities for nine minimum control reporting and LTCP development and submission is 3,011 hours and $106,313 and for third-party notification, 27 hours and $940.

The estimated burden for Federal and State governments is 4,894 hours and $172,807 and 55,181 hours and $1,948,441, respectively. This includes the burden associated with reviewing the DMRs, the nine minimum control documentations, and the LTCP plans submitted by the respondents, and reissuing NPDES permits or issuing other enforceable mechanisms to municipalities with CSSs to implement the CSO Control Policy. The annual average burden for Federal and State review of DMRs, nine minimum control documentations, and LTCP plans is 1,325 hours and $46,774 and 15,807 hours and $532,722, respectively. The annual average burden associated with reissuing NPDES permits or issuing other enforceable mechanisms to CSO municipalities is 307 hours and $10,828 for the Federal government and 3,307 hours and $116,758 for State governments.

The estimated burden on the States to report summary information to EPA for oversight of the EPA's CSO Control Policy and for GPRA purposes is 1,200 hours and $42,351.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Interested parties may obtain a copy of the draft supporting statement, including the burden analysis, from Timothy Dwyer, EPA Office of Wastewater Management, at (202) 260–6064.

Dated: June 23, 2000.

A.W. Lindsey,

Acting Director, Office of Wastewater Management.

[FR Doc. 00–16764 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6728–7]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Tolerance Petitions for Pesticides on Food/Feed and New Inert Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Tolerance Petitions for Pesticides on Food/Feed and New Inert Ingredients, [EPA ICR No. 0597.07, OMB No. 2070–0024]. The ICR, which is abstracted below, expires on June 30, 2000. The ICR describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew approval of the ICR for a three year period. On June 9, 1999 (64 FR 30988), EPA solicited comment on this ICR pursuant to 5 CFR 1320.8(d). EPA received comments, which have been addressed in this ICR prior to submission to OMB.

DATES: Additional comments may be submitted on or before August 2, 2000.

FOR FURTHER INFORMATION: For a copy of the ICR contact Sandy Farmer by phone at 202–260–2740, by e-mail at *farmer.sandy@epa.gov*, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0597.07 and OMB Control No. 2070–0024.

ADDRESSES: Send comments, referencing the proper ICR numbers, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, N.W.,Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title: Tolerance Petitions for Pesticides on Food/Feed and New Inert Ingredients [EPA ICR No. 0597.07, OMB No. 2070–0024]. This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

Abstract: The use of pesticides to increase crop production may result in pesticide residues in or on the crop. To protect the public health from unsafe pesticide residues, the Environmental Protection Agency (EPA) sets limits on the nature and level of residues permitted. Food or feed commodities found to contain pesticide residues in excess of established tolerances are considered adulterated, and are subject to seizure. This ICR covers all requests for tolerances, or exemptions from the requirement of a tolerance, for both active and inert ingredients in pesticides. The type of data that are required to be submitted is dependent on the type of tolerance that is sought.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Burden Statement: Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. The annual respondent burden for this collection of information is estimated to average 1,726 hours per petitioner. No forms are associated with this collection, however, petitioners must submit information related to: (1) The name, chemical identity, and composition of the pesticide chemical; (2) chemical use; (3) safety reports; (4) residue test results; (5) residue removal; (6) proposed MRLs for the pesticidal chemical; (7) reasonable grounds in support of the petition; (8) an analysis of factors relevant to the provisions of FQPA, specifically, aggregate exposure, children's exposure, special sensitivities, cumulative effects and endocrine disruptor effects; 9) an informative summary of the petition or application, including a summary of the supporting data, information, accompanying rationales, and a statement providing permission to publish such summary; and a cover letter and fee. The following is a summary of the estimates taken from the ICR:

Respondents/Affected Entities: Any person seeking a tolerance action.

Estimated Number of Annual Respondents: 150.

Frequency of Response: On occasion.

Estimated total annual responses for each respondent: 1.

Estimated Total Annual Burden: 258,900 hours.

Estimated Total Annual Non-labor Costs: $0.

Changes in Burden Estimates: The total burden associated with this ICR has increased from 216,300 hours in the previous ICR to 258,900 for this ICR. This increase in burden represents a change in the underlying statutory requirements under which the Agency may take a tolerance action. The ICR provides a more detailed description of these changes and the activities currently related to this ICR. As such, the Agency considers this to be a program change.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: June 21, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–16755 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6729–1]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; District of Columbia, Maryland, Virginia; Revised Phase II Plans for the Metropolitan Washington D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the motor vehicle emissions budgets for the out-years 2015 and 2020 (budgets) established in revised Phase II Plans for the Metropolitan Washington DC Ozone Nonattainment Area are adequate for transportation conformity purposes. The revised Phase II Plans which establish these out-year budgets were submitted by the District of Columbia on March 22, 2000, and by the State of Maryland and Commonwealth of Virginia on March 31, 2000 as State Implementation Plans (SIPs) revisions. These SIP revisions consist of revisions to the attainment plan for the Metropolitan Washington D.C. Ozone Nonattainment Area and have been made to establish revised out-year budgets for 2015 and 2020. EPA has found these out-year budgets adequate for transportation conformity purposes.

DATES: The finding that these out-year budgets of the revised attainment plan are adequate was made in letters dated June 22, 2000 from EPA Region III to the District of Columbia, the State of Maryland and the Commonwealth of

Virginia. This adequacy finding is effective on July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E., U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA. 19103 at (215) 814–2183 or by e-mail at: wentworth.paul@epa.gov .

SUPPLEMENTARY INFORMATION:

Throughout this document "we, us," or "our" refer to EPA. The word "budgets" refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the out-years 2015 and 2020. The word "SIP" in this document refers to the revised Phase II SIPs submitted on March 22, 2000, March 31, 2000 and March 31, 2000 by the District, Maryland and Virginia , respectively. The revised Phase II SIPs consist of the revised attainment plan for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Metropolitan Washington DC Nonattainment Area.

On March 2, 1999, the D.C. Circuit Court ruled that budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. By transmittal letters dated as shown below, the District, Maryland, and Virginia each formally submitted revisions to the attainment plan for the purpose of establishing out-year budgets for 2015 and 2020 for the Metropolitan Washington DC Ozone Nonattainment Area. The revised Phase II SIPs submittal dates are:

The District of Columbia—March 22, 2000;
Maryland—March 31, 2000;
Virginia—March 31, 2000.

On April 24, 2000, we posted the availability of these revised Phase II SIPs and their budgets on our conformity website for the purpose of soliciting public comment on the adequacy of the budgets. The comment period closed on May 24, 2000.

On June 22, 2000, EPA Region III sent letters to the District of Columbia, the State of Maryland and the Commonwealth of Virginia which constituted final Agency actions on the adequacy of the budgets contained in the revised Phase II SIPs. Those actions were EPA's finding that the mobile budgets contained in the revised attainment plan are adequate for transportation conformity purposes. As a result of our finding, the budgets contained in the submitted revised attainment plans for the Metropolitan Washington D.C. Nonattainment Area may be used for future conformity determinations. This is an announcement of an adequacy finding that we already made on June 22, 2000. The effective date of this finding is July 18, 2000. This finding will also be announced on EPA's website: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button, then look for "Adequacy Review of Submissions for Conformity"). The website will contain a detailed analysis of our adequacy finding and our responses to public comments.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding of the mobile budgets of a submitted SIP is separate from EPA's completeness determination on that SIP, and separate from EPA's final action as to whether or not the SIP is approvable. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in guidance memorandum dated May 14, 1999 and titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." We followed this guidance in making this adequacy finding for the budgets contained in the revised Phase II SIPs submitted on March 22, 2000, March 31, 2000 and March 31, 2000 by the District, Maryland, and Virginia, respectively. You may obtain a copy of this guidance from EPA's conformity web site: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button) or by calling the contact name listed in "For Further Information Contact" section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 23, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–16736 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL202–1; FRL–6728–4]

Adequacy Status of East St. Louis, Illinois Submitted Ozone Attainment Demonstration for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emissions budgets in the Illinois portion of the St. Louis ozone attainment demonstration are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the St. Louis area can use the motor vehicle emissions budgets for volatile organic compounds and oxides of nitrogen from the submitted ozone attainment demonstration for future conformity determinations.

DATES: These budgets are effective July 18, 2000.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments will be available at EPA's conformity website: http://www.epa.gov/oms/traq, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Patricia Morris, Environmental Scientist, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, morris.patricia@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

Throughout this document, whenever "we", "us" or "our" is used, we mean EPA. Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Illinois Environmental Protection Agency on June 12, 2000, stating that the motor vehicle emissions budgets for volatile organic compounds and oxides of nitrogen in the Illinois portion of the St. Louis submitted ozone attainment demonstration for 2003 are adequate. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the "Conformity" button, then

look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 16, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–16757 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6728–3]

Community Based In-Home Asthma Environmental Education and Management

AGENCY: Environmental Protection Agency.

ACTION: Request for grant proposals.

SUMMARY: Request for Proposals for Community Based In-Home Asthma Environmental Education and Management. This is an announcement of the availability of FY 2000 grant funds for the Environmental Protection Agency's (EPA) Indoor Environments Division/Office of Radiation and Indoor Air. Section 103(a)(1) of the Clean Air Act authorizes the Administrator to conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution by ((b)(3)) making grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in 103(a)(1). The intended use of these funds is to support pilot studies of asthma education, including asthma management and indoor asthma trigger identification/mitigation, in existing Community-Based In-Home Environmental Management or Education programs. EPA is awarding these grants to support the recipients to conduct pilot studies of in-home asthma education and assess the effectiveness of their in-home approaches to educating children with asthma, their parents and/or primary care givers, and other people with asthma, including how to identify the indoor triggers to which the asthmatic(s) in the household may be sensitive, and how to mitigate them. EPA plans to award two grants to each of two organizations for $100,000.00 each, however the final number of awards and award amounts may vary depending on proposal quality and resource availability.

DATES: Letter of Intent due by July 7, 2000. Pre-application Assistance Conference Call dates are:

1. July 11, 2000, 12 noon until 2pm Eastern Daylight Time
2. July 14, 2000, 12 noon until 2pm Eastern Daylight Time

Application Deadline: Postmarked no later than August 7, 2000.

ADDRESSES: Send Letter of Intent and Applications to the attention of Sheila Brown, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6609J), Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Sheila Brown (202) 564–9370

SUPPLEMENTARY INFORMATION: The focus for funding is to: (a) Reduce the impact of in-home environmental asthma triggers on children and adults with asthma; (b) strengthen the capacity of individual households to control in-home environmental asthma triggers; and (c) assess the effectiveness and sustainability of strategies for in-home environmental asthma trigger management and education within communities. Completed applications, including work plans and detailed budgets, are due to the Indoor Environments Division no later than August 7, 2000. If you intend to apply, you must send a letter of intent postmarked no later than July 7, 2000 to Attention: Sheila Brown,1200 Pennsylvania Avenue, N.W. (6609J), Washington, D.C. 20460, or an e-mail to <*brown.sheila@epa.gov*> no later than 3 pm (EDT) on July 7, 2000, indicating the name of your organization, the name and phone number of a contact person in the organization, whether you expect to participate in one of the pre-award technical assistance conference calls (see page 5), and if so, on which day. Should demand exceed capacity, we will schedule an additional call and inform you by telephone of the date and time.

Eligibility Criteria

To be eligible for funding, an applicant must:

(1) Demonstrate the ability to implement an in-home education program which includes: In-home identification and assessment of potential indoor environmental asthma triggers; direct one-on-one education in the home on asthma, asthma management, and mitigation of indoor environmental triggers to which household members with asthma may be sensitive;

(2) Meet the standards for eligibility as identified in Section 103 (3)(b) of the Clean Air Act (page 1, paragraph 1);

(3) Request no more than $100,000.00 to accomplish pilot project objectives;

(4) Properly complete and submit standard form SF–424 and a work plan no greater than seven pages in length (in no smaller than 12 point type) by the established due date;

(5) Commit to complete the proposed pilot project activities within 18–24 months of grant award.

Ranking Criteria

Applications will be ranked on the basis of the criteria listed below. Ranking for each criterion is based on a scale of 1 (does not meet the requirement) to 10 (exceeds the requirement).

(1) Applicant organization currently is established and operates within a base community, performing community level work. (1–10 points).

(2) Applicant organization currently is, or is affiliated with, an established in-home environmental management and/or education program. (1–10 points)

(3) Education materials and assessment tools developed or selected for use in conducting in-home education and assessment pilot project activities address established indoor environmental triggers of asthma including: environmental (secondhand) tobacco smoke, house dust mites, cockroaches, molds, and animal dander. Materials are compatible with the

guidance contained in EPA's asthma brochure, "Clear Your Home Of Asthma Triggers: Your Children Will Breathe Easier" (http://www.epa.gov/iaq/pubs/asthma.html) and the findings and recommendations contained in the January, 2000 National Academy of Sciences report on asthma, "Clearing the Air: Asthma and Indoor Air Exposures" (*http://books.nap.edu/catalog/9610.html*). (1–10 points)

(4) Mitigation methods for environmental (secondhand) tobacco smoke, house dust mites, cockroaches, molds, and animal dander included among the pilot project activities are compatible with the guidance in EPA's asthma brochure, "Clear Your Home Of Asthma Triggers: Your Children Will Breathe Easier" (http://www.epa.gov/iaq/pubs/asthma.html) and the findings and recommendations contained in the January, 2000 National Academy of Sciences report on asthma, "Clearing the Air: Asthma and Indoor Air Exposures" (*http://books.nap.edu/catalog/9610.html*). (1–10 points)

(5) Education materials and assessment tools selected for the pilot project reflect current standards for conducting public health education and outreach activities, particularly with respect to motivating behavioral changes in low-literacy, low-income, and disproportionately impacted populations. (1–10 points)

(6) Applicant adequately describes mechanisms for obtaining feedback about program effectiveness from households after the in-home education assessment visit(s). (1–10 points)

(7) Applicant agrees to provide quarterly performance reports to EPA which shall include, at a minimum, information about: the number of homes visited, the number of children and adults with asthma educated, the number of homes in which indoor environmental triggers have been identified, and the number of households in which mitigation actions have been taken. (1–10 points)

(8) The project demonstrates the effectiveness of education strategies that are appropriate to varied populations and geographic locations in the United States, and contributes to an improved understanding of how to conduct in-home asthma education programs. (1–10 points)

Application Process

Applicants must complete standard form 424 (*http://www.whitehouse.gov/omb/grants/sf424.pdf*) and submit a work plan no greater than five pages in length (12 point type). The work plan must include: (1) A summary of specific objectives, expected outcomes, and deliverables; and (2) a discussion of the budget and how the budget relates to the objectives, outcomes, and deliverables in the work plan. Resumes and supplementary biographical information, if any, should not exceed an additional two pages. The project work plan submitted with the completed application SF–424 should conform to the following outline:

(1) Title.

(2) Description of the applicant organization, experience in community work (especially with children and adults with asthma), existing in-home education efforts, existing indoor air quality/asthma activities, and the organization's infrastructure as it relates to its ability to do in-home assessments and/or education programs.

(3) Description of staffing and funding resources needed to implement proposed work plans, including number of staff and qualifications.

(4) Description of experience implementing evaluation and tracking procedures and managing grants (*e.g.*, submitting reports, budgets, etc.).

(5) Project Period—beginning and ending dates.

(6) Project purpose.

(7) Description of basic structure of the in-home asthma education and assessment pilot project proposed, curricula and assessment tools to be used, and resource lists including references. Describe why the curricula and protocols were selected or created; what other materials you may have considered (including reasons for not selecting them); and, if possible, a discussion of how the asthma education approaches you wish to demonstrate compare or contrast to other known approaches.

(8) Description of target audiences, community, and any special asthma-related demographics of areas targeted for this work.

(9) Description of mechanisms for question resolution and follow-up with asthmatics and their families and/or primary care givers following in-home visit(s). Reasons for selecting or creating these mechanisms and, if possible, a discussion of how the selected mechanisms compare to other available mechanisms.

(10) Description of any types of follow-up materials or training that may be given to the households such as community resource lists, household repair and maintenance training, lessons on how to obtain services in the community, etc.

(11) Definition of success for the project and how success will be measured. Describe mechanisms for tracking program outputs (*e.g.*, how many households were educated, how many homes were assessed, in how many homes actions were taken), summarizing and characterizing program outcomes (*i.e.*, the effectiveness of the education and mitigation methods, the level of increased awareness).

(12) Identification of other localities, regions, or states that might benefit from the lessons you expect to learn as a result of your pilot project.

(13) Schedule—indicate tasks, quarterly report submission and final report submission dates.

(14) Budget. Indicate funds used for salaries, materials, equipment, contracted activities, travel, overhead, and other pertinent information.

If you would like to apply for assistance under the Community Based In-Home Asthma Environmental Education and Management program, application materials are available at the web addresses listed below or by calling the Indoor Environments Division at (202) 564–9370. The application kit contains the following information:

—Application for Federal Assistance—http://www.epa.gov/region4/grantpgs/grants.htm)
—Instructions for completing the application
—Assurances/certifications

An original application and one copy must be received at the following address no later than close of business on Monday, August 7, 2000:

Mailing Address: Attn: Sheila Brown, Environmental Protection Agency, Indoor Environments Division, In-Home Program (6609J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460

Courier Address: Attn: Sheila Brown, Environmental Protection Agency, Indoor Environments Division, In-Home Program (6609J), 501 3rd Street, NW., Washington, DC 20001

Questions regarding the administrative aspects and programmatic aspects, including work plan, should be referred to Sheila Brown (202) 564–9370. Two pre-application assistance conference calls have been scheduled to help prospective applicants:

1. Tuesday, July 11, 2000 from 12 noon until 2pm Eastern Daylight Time. Call in number (202) 260–1015, then dial access code 9490#
2. Thursday, July 14, 2000 from 12 noon until 2pm Eastern Daylight Time. Call in number (202) 260–7280, then dial access code 0792#

Twenty lines have been reserved for each call. To ensure access, please

follow the instructions for submitting the letter of intent described on page 1 of this announcement.

In addition, prospective applicants should obtain a copy of the Code of Federal Regulations (CFR) Title 40, Part 30 (and for State and local agencies, also see Part 31). This portion of the CFR includes regulations applicable to your assistance agreement. Copies of the CFR are available at your local U.S. Government Bookstore, the U.S. Government Printing Office or on the internet at *http://www.epa.gov/ogd/grants.htm*. Once at this site, select "Administrative Regulations and Policies/Subchapter B-Grants and Other Federal Assistance" and select Part 30 or Part 31.

Selected projects will be announced on or around October 15, 2000. If you have any questions regarding this grant notice, please contact Sheila Brown (202) 564–9370.

Authority: 42 U.S.C. 7401–7626; Pub. L. 159, 69 Stat. 322.

Dated: June 26, 2000.

Robert Perciasepe,

Assistant Administrator of Air and Radiation.

[FR Doc. 00–16763 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6728–5]

Notice of Proposed Prospective Purchaser Agreements Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601–9675, notice is hereby given that two identical proposed prospective purchaser agreements ("Purchaser Agreements") associated with the Sharon Steel Farrell Works Superfund Site ("Site") in Farrell, Pennsylvania, have been executed by the Environmental Protection Agency and the Department of Justice. The prospective purchasers, Shenango Valley Manufacturing Company ("SVMC") and Farrell Slag, Inc. ("Farrell Slag") competed at a bankruptcy auction sale by the United States Bankruptcy Court for the Western District of Pennsylvania to purchase approximately 200 acres of the Sharon Steel Farrell Works Superfund Site ("Site"). Sharon Steel Corporation presently owns the Site and is liquidating its assets pursuant to Chapter 11 of the Bankruptcy Code. Farrell Slag bid successfully for the property. SVMC was the second highest bidder. Pursuant to the bankruptcy sale, if Farrell Slag is unable to complete the purchase of the property, it will be conveyed to the next highest bidder, SVMC. Since it is acceptable to EPA for either Farrell Slag or SVMC to acquire the property, EPA is proposing Purchaser Agreements for each. However, only the ultimate purchaser of the property will be bound by its respective Purchaser Agreement.

The Purchaser Agreements are now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreements are inappropriate, improper, or inadequate. The Purchaser Agreements will resolve certain potential EPA claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The property subject to the Purchaser Agreements is the portion of the Site south of Ohio Street and west of the Shenango River. The property contains slag Sharon Steel generated during operation of an integrated steel making plant at the Site. EPA will conduct or oversee long term remedial actions at the Site and has initiated the Remedial Investigation/Feasibility Study to identify the hazards posed by contamination at and arising from the Site. Under the terms of each Purchaser Agreement, the purchaser will pay the United States $40,000 for a limited covenant not to sue, cooperate with EPA in the continued implementation of remedial actions at the Site and otherwise comply with the requirements of the Purchaser Agreement.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Purchaser Agreements. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before August 2, 2000.

ADDRESSES: *Availability:* The proposed Purchaser Agreements and additional background information relating to the proposed Purchaser Agreements are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreements may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "Sharon Steel Farrell Works Superfund Site Prospective Purchaser Agreements" and "EPA Docket No. CERCLA–PPA–2000–01 and CERCLA–PPA–2000–02," and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Ami Y. Antoine (3RC43), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2497.

Dated: June 16, 2000.

Bradley M. Campbell,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 00–16762 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 17, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Alan E. Knudson and the Knudson Family Limited Partnership, Ltd., Draper, Utah; to retain voting shares of Silver State Bancorp, Henderson, Nevada, and thereby indirectly retain voting shares of Silver State Bank, Henderson, Nevada.

Board of Governors of the Federal Reserve System, June 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16733 Filed 6–30–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Avant Financial LLC, Syracuse, New York, to become a bank holding company by acquiring 67.5 percent of the voting shares of Reliance Bank, White Plains, New York.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Cardinal Financial Corporation, Fairfax, Virginia; to merge with Heritage Bancorp, Inc., McLean, Virginia, and thereby indirectly acquire The Heritage Bank, McLean, Virginia.

Board of Governors of the Federal Reserve System, June 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16732 Filed 6–30–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire Sand Hill Advisors, Inc., Menlo Park, California, and thereby engage in investment advisory services, pursuant to § 225.28(b)(6) if Regulation Y.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Southern Financial Bancorp, Inc., Warrenton, Virginia; to acquire First Savings Bank of Virginia, Springfield, Virginia, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and immediately merging this institution into Southern Financial Bank, Warrenton, Virginia, a wholly owned subsidiary of Southern Financial Bancorp, Inc. Comments on this application must be received not later than July 27, 2000.

Board of Governors of the Federal Reserve System, June 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16731 Filed 6–30–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Evaluation of the BodyWise Eating Disorder Initiative—NEW—The Office on Women's Health plans to conduct an evaluation of the initial demonstration phase of the BodyWise Eating Disorder initiative to look for changes in school practices and awareness regarding eating disorder issues. The study design features a pre-test/post-test model with questionnaires to be completed by a sample of middle school staff. Burden Information for Pre-test—Number of Respondents: 426; Burden Per Response: 20 minutes; Burden for Pre-test: 142 hours—Burden Information for Post-test—Number of Respondents: 396; Burden Per Response: 20 minutes; Burden for Post-test: 132 hours—Total Burden: 274 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and

Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received on or before August 2, 2000.

Dated: June 15, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–16669 Filed 6–30–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council and HIV/AIDS and Its Subcommittees

June 27, 2000.

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS scheduled for September 21–22, 2000 at the Madison Hotel, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place of Thursday, September 21, and Friday, September 22 (8:30 a.m. to 6 p.m. on Thursday and Friday) at the Madison Hotel, 1177 15th Street, NW, Washington, D.C. 20005. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council of HIV/AIDS may include presentations from either of the Council's subcommittees, Services or Prevention.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, DC 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Vanessa Vaughn at (301) 986–4870 no later than August 25, 2000.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council of HIV and AIDS.

[FR Doc. 00–16779 Filed 6–30–00; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Human Subject Protection and Financial Conflict of Interest: Conference

AGENCIES: OASPE, OPHS, NIH, FDA, and CDC, HHS.

ACTION: Notice of conference; request for comments.

SUMMARY: A Conference on Human Subject Protection and Financial Conflict of Interest will be held at Natcher Auditorium, NIH Campus on August 15–16, 2000. The issue of financial conflict of interest is one of the 5 main issues identified by the Secretary of Health and Human Services in her announcement of steps being taken to strengthen human subject protection during clinical trials. In that announcement, the Secretary stated that there would be a public process to review this issue. She said that HHS would undertake an extensive public consultation to identify new or improved means to manage financial conflicts of interest that could threaten the safety of research subjects or the objectivity of the research itself. Emphasis will be placed on the informed consent process and how it might be clarified and enhanced in dealing with issues related to financial conflict of interest.

The Conference will review the current regulatory requirements and guidance, serve as a forum for presentations of current approaches being taken for dealing with real and potential financial conflict of interest at the institution, IRB, and clinical investigator levels. This conference will help the government refine its current guidance and may lead to other changes. NIH has developed a set of issues to consider related to its regulations which is now available as background for the conference. Further guidance will be issued based on the responses to questions posed in this Notice and the conference deliberations.

To facilitate review of current policies, regulations, and guidance documents, these documents are cited as references at the end of this Notice. The references cited are also available electronically at the OASPE Website (http://aspe.hhs.gov/sp/coi/index.htm).

To maximize the efficiency of this process, six questions (see below) have been developed. Please address these in writing by August 1, 2000. This will help in organizing the plenary and concurrent work group sessions. There will be a public session where brief comments on these topics can be addressed during the conference.

DATES: *Conference on Human Subject Protection and Financial Conflict of Interest:* The Conference will be held on Tuesday August 15, 2000 from 8:30 AM to 5:30 PM and Wednesday August 16, 2000 from 8:30 AM to 1:00 PM. Although the entire conference is open to the public and there will be no registration fee, it is requested that all those who wish to participate in the conference register by August 1, 2000. This will allow us to prepare an adequate number of conference background materials and to make appropriate assignments for the breakout sessions.

Request for Comments: Written responses to the six questions are requested by all parties, whether or not they will be attending the conference, by August 1, 2000 as described below.

Opportunity for Public Comment during the Conference on August 15, 2000, 2:15–3:30 PM. There will be an opportunity to make brief presentations during this session set aside for public comments. The comments should be responses to any or all of the six questions listed below. Anyone wishing to make comments should file a written Notice of Participation as described below by August 1, 2000. You will be contacted after all the requests are reviewed and given information about the time of your presentation and other details.

ADDRESSES: The Conference will be held at Natcher Auditorium, Building 45, NIH Campus, 9000 Rockville Pike, Bethesda, MD 20892.

Registration Information: To register for the conference please contact Mr. Mark Brown, CMP, MasiMax Resources, Inc., phone 240–632–5618, FAX 240–632–0519, e-mail: *Mbrown@masimax.com*. Please register by August 1, 2000.

Comments and Notices of Participation in Public Session: Written or electronic responses to the six questions as well as submissions of written or electronic Notices of Participation to speak during the Public Session of the Conference should both be addressed to: Stuart L. Nightingale, M.D., Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW, Washington, DC 20101, Fax: 202–205–8835 email: *COI@aspe.dhhs.gov*

Notices of Participation to present during the Public Session should include name, affiliation, (whether person is from an IRB, an institution,

industry, is a clinical investigator, etc.), main points of presentation, how much time requested (no more than 5 minutes), and telephone number and other contact information.

FOR FURTHER INFORMATION CONTACT: Stuart L. Nightingale, FAX 202–205–8835, e-mail: *coi@OSASPE.dhhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In recent years, clinical research has generally become ever more complex—which, in turn, has engendered a new degree of complexity in accompanying ethical and conflict of interest considerations. Financial conflict of interest in clinical trials has been of concern for a number of years, both from the perspective of research objectivity and human subject protection. Both the PHS and FDA have requirements/regulations and guidance in place relating to financial conflict of interest. Recently, financial arrangements between commercial interests and institutions have become more common and some institutions have arrangements with the same commercial organizations as investigators. This has been highlighted in the area of gene transfer research. Additionally, although IRBs are required to deal with conflict of interest issues, these have been understood to be directed more toward members' own conflict of interest rather than those of investigators or institutions. There is little guidance to IRB's and a recent HHS Inspector General's Report found that only 25 percent of IRBs review these issues and consider them for inclusion in the informed consent document.

B. The Secretary's Initiatives To Strengthen Human Subject Protection

Notwithstanding the many successes over the years in protecting human research subjects from undue and undisclosed risks, we recognize that the protection system itself needs to be enhanced. In this regard, we agree with the finding of the HHS Inspector General that Institutional Review Boards (IRBs)—the central element of the system—often have difficulty fulfilling even their fundamental responsibilities because many of them are overworked and few have been accorded adequate resources by their parent institutions. These findings have been reinforced over the last two years by a series of inspections by the HHS Office for Protection from Research Risks (OPRR). Several inspections resulted in complete or partial cessation of human subjects research until the institutions involved took appropriate actions.

In response to these developments, Secretary Shalala recently announced five initiatives designed to enhance protection for human research subjects.

First, HHS will take steps to require that clinical investigators and IRB members and staff undergo continuing education in issues relating to human subjects.

Second, HHS will issue guidance making clear that research institutions and clinical trial sponsors are expected to take stringent continuing review actions, such as audits of research records, to promote compliance with current informed consent requirements.

Third, HHS will expand its requirements for study monitoring—thereby improving the oversight of even small-scale clinical trials. Large-scale phase III clinical trials, already have the requirement to have data and safety monitoring.

Fourth, HHS will undertake an extensive public consultation to identify new or improved means to manage financial conflict of interest that could threaten the safety of research subjects or the objectivity of the research itself. The insights gained from this process will be expressed in new guidance for the research community regarding what information about the financial interests of investigators and research institutions should be disclosed to research subjects and others. The objective of this guidance will be to make current conflict of interest regulations more effective.

Fifth, HHS will seek new legislation to enable FDA to level civil money penalties for violation of informed consent and other important regulatory requirements so that they can be applied to clinical investigators and institutions. This new authority would fill a significant gap in the current spectrum of sanctions against those who fail to obey Federal regulations for protection of human research subjects.

C. HHS/PHS Grant Award Requirements for Dealing With Financial Conflict of Interest

In 1995 the Public Health Service promulgated regulations establishing standards and procedures to be followed by institutions that apply for research funding to ensure that the design, conduct and reporting of research under PHS grants, contracts or cooperative agreements would not be biased by any conflicting financial interest of those investigators responsible for the research. These regulations require that investigators disclose to an institutional official a listing of significant financial interests (and those of his/her spouse and dependent children) that would reasonably appear to be affected by the research. The institutional official must review the disclosures and determine whether any of the reported financial interests could directly and significantly affect the design, conduct or reporting of the research and, if so, the institution must, prior to any expenditure of funds, report the existence of any conflicting interests to the PHS awarding component and assure that the conflict of interest has been managed, reduced or eliminated in accordance with the regulations.

D. FDA Regulations Requiring Financial Disclosure by Clinical Investigators

On February 2, 1998, FDA published a final rule requiring that financial interests and arrangements of clinical investigators that could affect the reliability of data submitted to FDA be identified and disclosed to FDA by the applicant. Clinical research data provide the basis for FDA's assessment of whether a product is approvable under statutory requirements. It is essential that these data be reliable and that steps be taken to minimize possible effects on the data resulting from potential bias on the part of any investigator. This regulation, which became effective on February 2, 1999, applies to any applicant who submits a marketing application or reclassification petition for a human drug, biological product, or medical device and who submits any clinical study of a drug or device in humans that the applicant or FDA relies on to establish that the product is effective, or any study in which a single investigator makes a significant contribution to the demonstration of safety. The regulation requires applicants to certify to the absence of certain financial interests of clinical investigators or to disclose those financial interests. If the applicant does not include certification and/or disclosure, or does not certify that it was not possible to obtain the information, the agency may refuse to file the application. On December 31, 1998, FDA published an amended final rule that reduced the need to gather certain financial information for studies completed before February 2, 1999.

E. Purpose of This Conference

As discussed above, the issue of financial conflict of interest in research is one of the 5 main areas identified by the Secretary of Health and Human Services in her announcement of steps being taken to strengthen human subject protection during clinical trials. In that

announcement, the Secretary stated that HHS will hold public discussions this summer to find new ways to manage conflicts of interest so that research subjects are appropriately informed, and to further ensure that research results are analyzed and presented objectively. In addition, these public discussions also will focus on clarifying and enhancing the informed consent process.

This Conference Will:

Implement one of the Secretary's five initiatives to strengthen human subject protection in clinical research.

Remind participants of current PHS/FDA regulations, guidelines and guidance through documents and presentations.

Present examples of how the issue of financial conflict of interest is dealt with at the level of: Institutions, IRBs, and Clinical Investigators (including Sponsor/Investigators), and Industry/Sponsors.

Receive public comments on questions posed in the **Federal Register** announcing the conference.

Provide information for the Department of Health and Human Services to develop more useful and detailed guidance to implement current regulatory requirements.

Who Should Attend?

Institutional Officials, IRB staff and members, Clinical Investigators, Industry/Sponsors, National Organizations/Health Professionals, Patient and Advocate groups, Patients and Research Participants.

General information about the conference, the conference Program is available on the ASPE Website (*http://aspe.hhs.gov/sp/coi*) and at the Website of MasiMax Resources, Inc. (www.masimax.com/coi/index.html).

F. Questions for Comment

Members of the Public who wish to respond to the following questions, should send their comments by August 1, 2000 or comment at the Conference during the public session (To comment at the conference during the session for Public Comment, a Notice of Participation should be submitted).

1. For each group listed below, what types of financial interests are associated with human subjects research funded or regulated by HHS agencies?

Clinical investigators (including sponsor/investigators)
IRB members and staff
Awardee institutions

2. Is there empirical evidence that informing research participants about financial relationships or financial conflict of interest of the investigator, the institution, or the IRB:

Can cause or prevent real or perceived harm (physical or psychological) to human research subjects?

Can compromise the objectivity of the associated research?

Can adversely or positively affect participation in the trial?

Can enhance the informed consent process by more fully informing potential participants?

Can be understood by and is meaningful to the potential research participant?

3. If information about financial interests is disclosed to potential participants in clinical trials, what information should be disclosed and at what level of detail?

Should potential participants be told of all of the financial interests of investigators, IRB members, or institutions, or only those financial interests which constitute a financial conflict of interest or might constitute a financial conflict of interest? Should potential participants be told what protections are in place and are working to ensure that financial conflicts are managed, reduced, or eliminated to promote objectivity and enhance human subject protection in the trial? Are the financial limits set forth in current PHS regulations covering awardee institutions still appropriate for clinical researchers? What are appropriate levels of reportable financial relationships for IRB members and institutions?

4. If information about financial interests is disclosed to potential participants, when and how should information about financial conflict of interest be provided to them?

If information about financial interests/conflict of interest involving institutions, IRBs, and investigators should be provided, what is the optimal point in the process for disclosure?

Should information be provided by the institution, the research investigator, the IRB, or a third party?

Should disclosure information and institutional policy be provided in the informed consent document or in an entirely separate document?

5. What are appropriate roles for the institution, the IRB, the clinical investigator (including sponsor/investigators), and perhaps other entities in dealing with financial interests or financial conflict of interest?

What are the responsibilities and obligations of each entity?

How should each entity relate to the other entities?

Should disclosed information on which determinations are made (including deliberations) be shared with the other entities? If so, what information should be shared and how and when should the disclosures be conducted?

What confidentiality protections are/should be in place to safeguard the privacy and confidentiality of the investigator, IRB member, and institution?

6. Other than those at the Federal level, what protections exist to ensure that the financial conflicts are managed, reduced, or eliminated to promote objectivity in the trial and to enhance human subjects protection?

References

HHS NEWS, U.S. Department of Health and Human Services, May 23, 2000: "Secretary Shalala Bolsters Protections for Human Research Subjects"

HHS FACT SHEET, U.S. Department of Health and Human Services, May 23, 2000 "Protecting Research Subjects"

Code of Federal Regulations, Title 45, Part 46, Subpart A. Federal Policy for the Protection of Human Subjects (Basic DHHS Policy for Protection of Human Research Subjects).

Code of Federal Regulations, Title 42, Part 50, Subpart A. Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

Code of Federal Regulations, Title 42, Part 50, Subpart F. Responsibility of Applicants for Promoting Objectivity in Research for Which PHS Funding Is Sought

Frequently Asked Questions Concerning the Department of Health and Human Services' Objectivity in Research Regulations and the National Science Foundation Investigator Financial Disclosure Policy, **Federal Register**: July 3, 1996 Volume 61, Number 129, p. 34839.

Required Education in the Protection of Human Research Participants. NIH Guidance, June 5, 2000

Financial Conflict of Interest and Research Objectivity: Issues for Investigators and Institutional Review Boards. NIH Guidance, June 5, 2000.

FDA Information Sheets, Guidance for Institutional Review Boards and Clinical Investigators, 1998 Update, Revised February 1999. Also available at www.fda.gov

Code of Federal Regulations, Title 21, Part 50. Protection of Human Subjects (FDA)

Code of Federal Regulations, Title 21, Part 54. Financial Disclosure by Clinical Investigators (FDA)

Code of Federal Regulations, Title 21, Part 56. Institutional Review Boards (FDA)
Code of Federal Regulations, Title 45, Part 76. HHS Debarment Regulations

Dated: June 27, 2000.

William F. Raub,

Deputy Assistant Secretary for Science Policy, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

[FR Doc. 00–16760 Filed 6–30–00; 8:45 am]
BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00095]

Cooperative Agreement for Birth Defects Surveillance, Research, and Prevention Activities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the University of South Alabama Birth Defects Surveillance, Research, and Prevention Activities.

B. Eligible Applicants

Single Source: Assistance will be provided only to the University of South Alabama. No other applications are solicited.

This authority is granted under the Consolidated Appropriations Act 2000 (Public Law 106–113), which states: "* * * under section 1509 of the Public Health Service Act * * * $1,000,000 shall be for the University of South Alabama birth defects monitoring and prevention activities."

C. Availability of Funds

Approximately $800,000 is available in FY 2000 to fund this award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of only 1 year. Funding estimates may change.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: William A. Paradies, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2721, Email address: WParadies@cdc.gov.

For program technical assistance, contact: Larry D. Edmonds, State Services, Birth Defects and Pediatric Genetics Branch, Division of Birth Defects, Child Development, Disability and Health, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–45, Atlanta, GA 30341–3724, Telephone number (770) 488–7171, E-mail address: LEdmonds@cdc.gov.

Dated: June 27, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16719 Filed 6–30–00; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00105]

TB Epidemiologic and Operational Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year 2000 funds for a new cooperative agreement to enhance the capabilities of recipients of state and local tuberculosis (TB) elimination and laboratory agreements to conduct TB epidemiologic and operational research. This program addresses the "Healthy People 2010" focus areas of Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010", visit the internet site http://www.health.gov/healthypeople

The purpose of this cooperative agreement is to build capacity at state and local health departments to conduct and implement protocol-driven epidemiologic and operational research. Such actions are consistent with recommendations issued by the Advisory Council for the Elimination of Tuberculosis (ACET) calling for decisive actions to: Better understand the changing epidemiology of TB to rebuild the public health infrastructure; identify challenges and opportunities for TB control in an era of changes in health care organizations and delivery; recognize the interdependence of global TB and TB in the United States; and develop and evaluate new tools for TB diagnosis, treatment and prevention. This new cooperative agreement will be awarded to successful applicants from state and local health agencies to support health department-based investigators with access to patients with tuberculosis, latent tuberculosis infection, or recent exposure to persons with active tuberculosis ("contacts") in the implementation of protocols for epidemiologic and operational research. Recipients of this award will be expected to conduct site-specific epidemiologic and operational research activities in TB which rely upon the implementation of common, agreed-upon study protocols. Award recipients will be expected to successfully compete for one or more of the specific TB research projects listed below. Eligible applicants may request support for activities under one or more of the following three separate focus areas. See Attachments 1–3 in the application kit for details under each focus area:

1. *Development of Contact Investigation Self-Evaluation Tools:* (See Attachment 1): Assist local TB control programs in building local-level capacity for evaluation of contact investigation processes by providing them with a package of self-evaluation tools. These tools will enable programs to systematically assess contact investigation processes and target programmatic revisions accordingly. The package will include economic evaluation tools to show how program changes will impact resource use and outcomes, thus enabling programs to plan strategically. The package of tools will be pilot tested to ensure usefulness and feasibility. These funds will give state and local health departments the ability to develop practical evaluation tools, based on the CDC's Recommended Framework for Evaluation, that can be used by local TB programs to use local data to evaluate contact investigation processes. They will also provide for the development of educational support materials to enable local level program staff to understand evaluation principles and conduct self-evaluations.

2. *Improving Contact Investigations in Foreign-Born Populations:* (See Attachment 2) Improve contact identification for foreign-born (FB) TB cases. Improve completeness and timeliness of screening for identified contacts to FB TB cases. Improve the interpretation of screening results for contacts to FB TB cases in [a] the context of screening results for US-born contacts to the same cases and [b] using serum immunologic profile (IFN-gamma

and TNF-alpha) and results of skin test screening with non-tuberculous mycobacterial antigens to aid interpretation of screening results for FB contacts. Improve completion of treatment for latent TB infection for FB contacts to pulmonary TB cases. These funds will be used to provide information for public health officials and policy makers to better understand methods for conducting contact investigations in FB populations and will provide improved completeness and timeliness of screening, interpretation of screening results, and treatment for latent TB infection for FB contacts to pulmonary TB cases.

3. *The Unmeasured Impact of the TB Epidemic on TB Programs in Health Departments:* (See Attachment 3) Describe the burden of investigating, providing diagnostic and treatment services, and conducting contact investigations for persons reported as suspect TB cases who are not subsequently verified as a TB case using the public health surveillance case definition or who are verified as a TB case but do not meet the criteria to be included in the area's annual morbidity reported to the national TB surveillance system. These funds will be used to allow state or local public health departments to provide information for public health officials and policy makers to better understand the burden of TB suspects and TB patients who are not included in annual morbidity TB counts. In addition, they will be used to provide a template for approaches to measuring this burden that may be useful in other jurisdictions in the future.

Additional background information and details for each of the three focus areas are provided in Attachments 1–3 in the application kit.

B. Eligible Applicants

Applications for this cooperative agreement award are limited to the official public health agencies of States and territories, or their bona-fide agents that are current recipients of the Tuberculosis Cooperative Awards announced in PA 00001, AND which reported 200 or more TB cases in 1999. These sites are the states of Alabama, Arizona, California, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington; the cities of Chicago, Houston, Los Angeles, New York, San Diego and San Francisco; and Puerto Rico.

The only additional requirement of eligibility applies to the research activity listed in Attachment 2 for "Improving Contact Investigations in Foreign-Born Populations" which includes a requirement that of the reported 200 or more TB cases in 1999, at least 100 must be among foreign-born persons. Therefore, eligible applicants for this cooperative agreement would be the states of Arizona, California, Florida, Georgia, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, Texas, Virginia, and Washington and the cities of Chicago, New York, Houston, Los Angeles, San Diego, and San Francisco.

C. Availability of Funds

Approximately $1,015,000 is available in FY 2000 to fund approximately 13 awards. See Attachments 1—3 for the specific amount of funds available in each focus area.

It is anticipated that awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

Applicants may request Federal personnel, equipment, or supplies as direct assistance in lieu of a portion of financial assistance.

Use of Funds

Categorical funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant state or local health department funds or for inpatient care or construction of facilities. Funds may not be used to purchase drugs for treatment. In addition, recipients must maintain clear audit records to insure that the funding awarded under this cooperative agreement is used toward the activities under this announcement and remains separate from any funding the recipient may be awarded under other mechanisms.

Funding Preferences

Funding preferences for awards under this announcement will be given to those applicants who have demonstrated the greatest continued achievement of the following National TB Program Objectives:

1. At least 90 percent of patients with newly diagnosed TB, for whom therapy for one year or less is indicated*, will complete therapy within 12 months (*please refer to the definitions in "Reported Tuberculosis in the United States, 1997" for more information). To obtain a copy of this report, you may order through the CDC Website http://www.cdc.gov/nchstp/tb/ and go to online ordering; or you may contact the Communication and Education Branch, Sherry Hussain, 404–639–8135.

2. At least 85 percent of infected contacts who are started on treatment for latent TB infection will complete therapy.

3. Completeness of RVCT reporting on HIV status for at least 75 percent of all newly reported TB cases age 25–44.

In addition, funding preference will be given to those applicants in areas with a high number of TB cases in foreign-born persons and other high-risk populations (*e.g.*, HIV-infected persons), and to applicants with a high number of culture-positive TB cases reported in urban and rural areas.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities, and CDC will be responsible for conducting activities listed under 2. CDC Activities. See Attachments 1–3 for specific Program Requirements for each focus area.

E. Application Content

Submit separate and complete narrative and budget sections for each specific epidemiologic and operations research focus area addressed. For the budget section, submit a separate Form 424A (included in the Application Package) and detailed line-item justification for each focus area project.

Applications for each of the focus areas addressed must be developed in accordance with PHS Form 5161–1 (OMB Number 0937–0189). Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and each copy of the application must be submitted unstapled and unbound. Materials which should be part of the basic plan should not be in the appendices.

Please label each application request clearly. See Attachments 1–3 for specific application content instructions for each focus area.

F. Submission and Deadline

Submit the original and two copies of the application including the PHS Form 5161–1 (OMB Number 0937–0189) on or before July 28, 2000 to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the stated criteria by an independent review group appointed by CDC. Evaluation Criteria instructions specific to each focus area may be found in Attachments 1–3.

H. Other Requirements

Technical Reporting Requirements: Provide CDC with an original plus two copies of:

1. Annual progress report, no more than 90 days after the end of the budget period;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this announcement. For a complete description of each, See Attachment IV in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317E of the Public Health Service Act, 42 U.S.C. section 42 U.S.C. 247b–6, as amended. The Catalog of Federal Domestic Assistance number is 93.947.

J. Where To Obtain Additional Information

This and other CDC Announcements can be found on the CDC homepage on the Internet address http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements".

To obtain additional information, contact: Carrie Clark, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–2783, Telephone (770) 488–2783, E-mail address: zri4@cdc.gov

Programmatic technical assistance may be obtained from: Juanita Elder, Division of Tuberculosis Elimination, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–10, Atlanta, GA 30333, Telephone (404) 639–8120, Email Address: jlc7@cdc.gov.

Dated: June 27, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16718 Filed 6–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 2000 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors Among Men Who Have Sex With Men, PA# 99000–H

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 2000 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors among Men who have Sex with Men, PA# 99000–H.

Times and Dates: 8:30 a.m.–9 a.m., August 4, 2000 (Open), 9 a.m.–4:30 p.m., August 4, 2000 (Closed).

Place: Centers for Disease Control and Prevention, Corporate Square, Building 11, Conference Room 2214, Atlanta, Georgia 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 99000–H.

Contact Person for more Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16720 Filed 6–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Community-Based Strategies To Increase HIV Testing of Persons at High Risk in Communities of Color, PA# 00100

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis

Panel: Community-Based Strategies to Increase HIV Testing of Persons at High Risk in Communities of Color, PA# 00100.

Times and Dates: 9 a.m.–12 p.m., August 22, 2000 (Open), 12 p.m.–4:30 p.m., August 22, 2000 (Closed), 8:30 a.m.–4:30 p.m., August 23, 2000 (Closed), 8:30 a.m.–4:30 p.m., August 24, 2000 (Closed), 8:30 a.m.–4:30 p.m., August 25, 2000 (Closed).

Place: Crowne Plaza Airport Hotel, 1325 Virginia Avenue, Atlanta, GA 30344. Telephone 404/768–6660.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 00100.

Contact Person For More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16721 Filed 6–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Optimizing Strategies to Provide Sexually Transmitted Disease (STD) Partner Services, PA# 00080.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Optimizing Strategies to Provide Sexually Transmitted Disease (STD) Partner Services, PA# 00080.

Times and Dates: 8:30 a.m–9 a.m., August 29, 2000 (Open), 9 a.m.–4:30 p.m., August 29, 2000 (Closed), 8:30 a.m.–4:30 p.m., August 30, 2000 (Closed).

Place: Centers for Disease Control and Prevention, 12 Corporate Square Boulevard, Building 12, Conference Rooms 1203 and 1307, Atlanta, GA 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 00080.

Contact Person for more Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16722 Filed 6–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 65 FR 30125–26, dated May 10, 2000) is amended to retitle the Office of Data Processing and Services (ODPS), National Center for Health Statistics (NCHS), to the Office of Information Technology and Services, and revise the functional statement.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the title and functional statement for the Office of Data Processing and Services (CS3) and insert the following:

Office of Information Technology and Services (CS3). (1) Participates in the development of policy, long-range plans and programs of the Center; (2) Directs, plans and coordinates the Information Services and Information Technology Infrastructure of the Center; (3) Provides IRM policy coordination for the Center and IRM procurement approval authority for software, hardware and systems contract support; (4) Provides liaison with other public and private health agencies, foundations and statistical agencies on Information Technology and electronic data dissemination activities; and (5) Serves as the focal point for advanced Information Technology infrastructure research activities for NCHS-wide systems and in that capacity represents NCHS in developing technology partnerships with other agencies both public and private.

Dated: June 18, 2000.

Jeffrey P. Koplan,

Director.

[FR Doc. 00–16791 Filed 6–30–00; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–1366]

Nippon Shokubai; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nippon Shokubai has filed a petition proposing that the food additive regulations be amended to provide for the safe use of methylmethacrylate-trimethylolpropane trimethacrylate copolymer as an antiblocking agent in linear low-density polyethylene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0B4713) has been filed by Nippon Shokubai, c/o Keller & Heckman, 1001 G St., NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 177.1520 *Olefins polymers* (21 CFR 177.1520) to provide for the safe use of

methylmethacrylate-trimethylolpropane trimethacrylate copolymer as an antiblocking agent in linear low-density polyethylene intended for use in contact with food. The agency has also determined under 21 CFR 25.32(i) that the petitioned action would be of the type that would not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement would be required.

Dated: May 16, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–16725 Filed 6–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education (CHGME) Program Conference

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

In notice document 00–15901 appearing on page 39151 in the issue of Friday, June 23, 2000, make the following correction:

On page 39151, in the first column, in the first paragraph, fourteen lines down, the second to last sentence should read as follows:

"To do so, dial: 800–545–4387, then enter the access code ID # M31053, or 700–991–1738 (for Federal Government employees), then enter the access code ID # 28353."

Dated: June 29, 2000.

Jane M. Harrison,

Director of Policy Review and Coordination.

[FR Doc. 00–16865 Filed 6–30–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Invasive Species Council; Listening Sessions for Input to the Development of the National Invasive Species Management Plan

AGENCY: National Invasive Species Council, Interior.

ACTION: Notice of regional public listening sessions.

SUMMARY: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463). Pursuant to Executive Order 13112, the National Invasive Species Council (NISC) on behalf of the Invasive Species Advisory Committee (ISAC) is holding regional public listening sessions in five locations for the first round of public input to the National Invasive Species Management Plan (Management Plan) under development by the NISC. A compilation of working group recommendations will be available at the meeting and through the Council's website (invasivespecies.gov) on or about July 7, 2000. These recommendations will be used to develop the framework and strategies of a draft plan.

DATES: See **SUPPLEMENTARY INFORMATION** section for ISAC/Council listening sessions dates and locations.

ADDRESSES: Comments and statements should be sent to Kelsey Passé, Program Analyst, National Invasive Species Council, 1951 Constitution Ave., NW, Room 320, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Passé or Alexis Gutierrez at (202) 208–6336; FAX (202) 208–1526; email: kelsey_passe@ios.doi.gov or alexis_gutierrez@ios.doi.gov; Phone: (202) 208–6336; Fax: (202) 208–1526. Council website (available on or about 7/10/2000): http://www.invasivespecies.gov.

SUPPLEMENTARY INFORMATION: In 1997, more than 500 scientists and land and resource managers from across the U.S. wrote the Administration to express their concerns about invasive species and the federal government's lack of coordinated actions to address biological invaders. In response to the letter and to the growing concern associated with invasive species, the Administration issued Executive Order 13112 on February 3, 1999.

EO 13112 establishes a National Invasive Species Council (NISC) which is to provide national leadership regarding invasive species. The Council is to ensure that Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective.

The NISC includes the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council is Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce.

The NISC is required to produce a Management Plan in August, 2000. The Management Plan will encourage planning and action at the local, tribal, State, regional, and ecosystem-based levels; develop recommendations for international cooperation; provide guidance on incorporating prevention and control of invasive species into the National Environmental Policy Act; facilitate development of a communication network to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health; and initiate the development of an information-sharing system that facilitates the exchange of information concerning invasive species.

The NISC, in order to address the requirements of EO 13112, established the Invasive Species Advisory Committee which consists of qualified representatives from outside of the Federal government. Their role is to provide stakeholder input to help the NISC achieve the goals and objectives of the Executive Order.

Management Plan—Scope and Objectives

Working groups, including federal and non-federal members, were convened this spring to provide the ISAC and the Council advice on what elements were most important to include in the first edition of the National Invasive Species Management Plan. The six working groups include the following:

1. Communication, Outreach, and Education
2. International Activities and Cooperation
3. Policy and Regulation
4. Research, Information Sharing, Documentation and Monitoring
5. Risk Analysis and Prevention
6. Management (Control and Restoration)

Working groups were organized with federal and non-federal co-leaders. The groups have and continue to utilize electronic communications (email, listservers, and web-based postings) to accelerate development of Management Plan input. The vision or scoping statements developed by each working group reflect a more specific refinement of the draft guiding principles adopted by the ISAC. Priority issues have been identified and the groups have developed draft responses or actions to be taken for consideration by the ISAC. As part of the management planning process, model projects will be identified which improve coordination and effectiveness and stimulate local action.

The working groups provided Council staff with summary information regarding the priority recommendations the Management Plan should include when the draft plan is ready for public comment and publication in the **Federal Register** in August, 2000. After issuance of the plan in the fall, the working groups will help implement the plan and begin developing input for its biennial revision.

A compilation of the working group recommendations will be available on the Council website, invasivespecies.gov on or about July 7, 2000. Initial comments from Federal agencies, State agencies, and the public (via the listening sessions and website responses) will be incorporated into a draft plan for discussion by the ISAC at their meeting in Seattle, WA, on August 2 and 3. A second draft will be completed by the end of August, for a 60 or 90 day comment period in the **Federal Register**.

Focus Questions

1. What are the most effective methods for gathering and disseminating information on invasive species and information on federal and non-federal activities regarding invasive species?

2. What is the best way to improve, expand, and implement an invasive species risk analysis or screening process?

3. What is the most effective way to communicate with interested parties before and during critical decision making activities?

4. What is the best way to encourage and involve key groups or individuals in implementing actions to address invasive species problems?

5. Is there an immediate project or action involving multiple regions, states, or interest groups that would address a significant invasive species issue? In your opinion, what should be the federal government's role in implementing this project or action?

ISAC Council Listening Sessions

(1) July 12, Oakland, California. 9 am–12 noon. Elihu Harris State Building, 1st Floor Auditorium, 1515 Clay Street.

(2) July 14, Chicago, Illinois. 9 am–3 pm. EPA Regional Office, 12th Floor Conference Center, Lake Michigan Room, 77 West Jackson Boulevard.

(3) July 14, Denver, Colorado. 9 am–2 pm. Executive Tower Hotel, Symphony Ballroom, 1405 Curtis Street.

(4) July 17, Albany, New York. 1 pm–5 pm. Marriott, Grand Ballroom Area, 189 Wolf Road.

(5) July 20, West Palm Beach, Florida. 1 pm–5 pm. South Florida Water Management District Headquarters Building, B–1, 3301 Gun Club Road.

Anyone wishing to make an oral presentation at a public listening session may do so without prior arrangement. Presenters will be recognized on a first-come, first-served basis, and comments will be limited based on the time available and the number of presenters. The presentation should identify the name and affiliation of the individual. Written presentation material may be provided to the staff for supplement to the court reporter's record. Written statements will be accepted at the meeting, or may be mailed or faxed to the NISC office. Those wishing to provide initial comments, but who are unable to attend one of the listening sessions, may send written comments to Kelsey Passé (see address below) by COB July 21, 2000.

Persons with disabilities who require accommodations to attend or participate in these meetings should contact Kelsey Passé, at 202–208–6336 or kelsey_passe@ios.doi.gov, by COB July 6, 2000.

Dated: June 28, 2000.

A. Gordon Brown,

Acting Co-Executive Director, National Invasive Species Council.

[FR Doc. 00–16735 Filed 6–28–00; 3:16 pm]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–1230–00–PA]

Cocoraque Butte Area Use Travel Restriction

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This order restricts all motorized vehicle use year round on public lands in the Cocoraque Butte area in the Tucson Field Office, Arizona. The existing Off Highway Vehicle (OHV) use designation limiting motorized travel to existing roads and trails established in the Phoenix Resource Management Plan remains unchanged. This order is issued under the authority of 43 CFR 8364.1.

The affected public land includes approximately 480 acres generally located south of the Cocoraque Ranch Road, in

Gila and Salt River Meridian, Arizona T.14 S.,R. 10 E., sec. 8, Pima County, Arizona

EFFECTIVE DATES: The restrictions shall be effective immediately until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION:

Current OHV use designations limit motorized vehicle travel to existing routes in the Cocoraque Butte area, which contains significant cultural values that are fragile and easily damaged or destroyed through intentional or unintentional actions. Public use in the affected area in increasing and expected to grow as public awareness of the area increases. Adverse impacts from damage to fragile and irreplaceable resources have occurred and are likely to continue unless management action is taken. The use restrictions excluding motor vehicle use within the affected area will reduce the potential adverse impacts on fragile resource values.

The Cocoraque Butte area described herein will be subject to the following use restriction: Unless otherwise authorized, no person shall use, drive or operate any motor vehicle in the restricted area. Persons who are exempt from the restriction include: (1) Any Federal, State, or local officers engaged in fire, emergency or law enforcement activities; (2) BLM employees engaged in official duties; (3) Persons authorized by BLM to operate motorized vehicles within the restricted area. Non motorized access or use is not affected by this restriction.

The area affected by this order will be posted with appropriate regulatory signs. Additional information is available in the Tucson Field Office at the address shown below.

PENALTIES: Violations of this restriction order are punishable by fines not to exceed $100,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Jesse Juen, Field Manager, Tucson Field Office, 12661 East Broadway Boulevard, Tucson, Arizona 85748; (520) 722–4289.

Jesse J. Juen,

Field Manager.

[FR Doc. 00–16461 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–14000–00–1610–00]

Interim Travel Limitations to Motorized and Mechanized Vehicles in the Roan Plateau Area; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that motorized and mechanized travel, except snowmobiles operating on snow,

are limited to designated routes yearround. The affected public land is generally known as the Roan Plateau or the Roan Cliffs. The affected public land is located northwest of Rifle, Colorado in Garfield County. The travel order specifically encompasses, approximately 53, 916 acres public lands in T. 5 S., R. 93 W., Sections 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32; T. 5 S., R 94 W., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; T. 5 S., R 95 W., Sections 1, 2, 4, 11, 12, 13, 14, 23, 24, 25, 26, 35, 36; T. 6 S., R 94 W., Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19; T. 6 S, R. 95 W. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17,19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33; T. 6 S. R. 96 W., Sections 25, 26, 35, 36; T. 7 S., R. 95 W., Section 6; T. 7 S., R. 96 W., Section 1; 6th Principal Meridian; Garfield County.

This action is in accordance with the Glenwood Springs Resource Management Plan (RMP), Record of Decision (BLM, 1984). This order, issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a), is established because there are currently no travel designations for the area. The interim travel designations are needed as a temporary measure to halt and mitigate the proliferation of roads and trails, caused by cross-country travel, which results in unacceptable damage to vegetation, soils, wildlife habitat, and other natural resources as well as creating user conflicts. Any cross-country use of motorized or mechanized transport off designated routes is prohibited. This travel order does not apply to foot or horseback travel.

EFFECTIVE DATES: The travel limitations become effective immediately upon publication of this notice in the **Federal Register** and will remain in effect until the Glenwood Springs Field Office RMP is amended. The RMP amendment process is scheduled to begin in October of the year 2000. The planning process may result in a decision by the authorized officer to maintain, rescind or modify these interim travel designations.

SUPPLEMENTARY INFORMATION: In November, 1997 Public Law 105–85 directed the transfer of jurisdiction of the area formally known as the Naval Oil Shale Reserve (NOSR) from the Department of Energy (DOE) to the BLM. The transfer directed that the lands be managed in accordance with laws applicable to public lands. BLM has been providing custodial surface management on the NOSR for many years under a Memorandum of Understanding with DOE. In fact, the 1984 Glenwood Springs Field Office (GSFO), Resource Management Plan (RMP), includes the NOSR lands and provides management direction for some activities. However, some major land use allocation decisions, like travel management were not included in the 1984 RMP.

Visitors will notice little change in the routes open for travel since the existing network of travel routes have been essentially designated as open. The area and routes affected by this order will be posted with appropriate regulatory signs and information in such a manner and location as is reasonable to bring prohibitions to the attention of visitors. Information, including an updated map of the designated routes (Roan Plateau Visitor Guide and Map), is available from the Glenwood Springs Field Office at the addresses shown below.

Persons who are exempt from the restrictions include: (1) Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities; (2) BLM employees engaged in official duties; (3) Persons authorized to travel off designated routes via travel authorizations from the Glenwood Springs Field Office.

Penalties: Any person who fails to comply with the provisions of this order may be subject to penalties outlined in 43 CFR 8360.0–7.

ADDRESSES: Field Office Manager, Glenwood Springs Field Office, Bureau of Land Management, 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, CO 81602

FOR FURTHER INFORMATION CONTACT: Brian Hopkins, (970) 947–2840.

Steve Bennett,

Acting Glenwood Springs Field Office Manager.

[FR Doc. 00–16780 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Minor Boundary Revision

SUMMARY: This notice announces a minor boundary revision to add approximately 0.181 of an acre of land at the Dayton Aviation Heritage National Historical Park, Dayton, Ohio. The National Park Service has determined this boundary revision is necessary to facilitate preservation of the historically important Wright Brothers Print Shop Building, adjacent Aviation Trail Building, and maintain an overall cost-savings for the renovation projects proposed at the Dayton Aviation Heritage National Historical Park. This boundary revision will contribute to the proper care and management of the Dayton Aviation Heritage National Historical Park, and protect the immediate environment of the park unit for the benefit and enjoyment of present and future generations.

Public Notice. This minor boundary revision was published for public comments in the Dayton Daily News on August 16, 23, and 30. The forty-five day public comment period ended October 14, 1999. No public comments were received in response to this publication.

FOR FURTHER INFORMATION CONTACT: Superintendent, Dayton Aviation Heritage National Historic Park, P.O. Box 9280, Dayton, Ohio 45409 (UPS or Federal Express address—c/o Wright Cycle Company, 22 South Williams Street, Dayton, Ohio 45407), or by telephone (937) 225–7705.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 4601–9(c) authorizes the Secretary of the Interior to make this boundary revision. Notice is hereby provided that the boundary of Dayton Aviation Heritage National Historical Park is revised, effective as of the date of this notice, to include approximately 0.18 of an acre of land of privately owned land, and 0.01 of an acre of land of publicly owned land within the Dayton Aviation Heritage National Historical Park located in Montgomery County, Ohio. The legal description of these tracts of lands are as follows:

TRACT 101–08—containing an area of 0.18 of an acre, more or less, situated in the City of Dayton, County of Montgomery, State of Ohio, and being part of Lot Number 6316 of the Revised and Consecutive Lot Numbers of the City of Dayton and being more particularly described as follows:

Beginning at a cut cross set at the Southwest Corner of said Lot Number 6315 also being the intersection of the east right-of-way line of South Williams Street (60.0 feet wide) and the north right-of-way line of Sanford Court (16.5 feet wide); Thence, North 72° 37′ 54″ East, along the south boundary of said Lot 6315 Tract 2, a distance of 97.46 feet to the point of beginning, also being the southeast corner; Thence North 16° 52′ 59″ West, along the eastern boundary of Lot 6315 Tract 2, a distance of 90.48 feet; Thence North 16° 52′ 59″ West, along the eastern boundary of Lot 6315 Tract 2A. a distance of 72.53 feet; Thence North 72° 37′ 54″ East, along West Third Street, a distance of 48.15 feet; Thence South 17° 33′ 36″ East, a distance of 163.00 feet; Thence South

72° 37′ 54″ West, a distance of 50.07 feet, and the point of beginning; and

TRACT 101–09—containing an area of 0.001 of an acre, more or less, situated in the City of Dayton, County of Montgomery, State of Ohio, and being part of Sanford Court of the City of Dayton and being more particularly described as follows:

Beginning at a cut cross set at the Southwest Corner of said Lot Number 6315 also being the intersection of the east right-of-way line of South Williams Street (60.0 feet wide) and the north right-of-way line of Sanford Court (16.5 feet wide); Thence, North 72° 37′ 54″ East along the Northern right-of-way line of said Lot Number 6315, a distance of 97.46 feet to the point of beginning; Thence, North 72° 37′ 54″ East, a distance of 50.07 feet to an iron pin set; Thence, South 17° 33′ 36″ East, a distance of 8.25 feet to the centerline of Sanford Court; Thence, South 72° 37′ 54″ West, a distance of 50.07 feet to a point in the centerline of Sanford Court; Thence, North 16° 52′ 59″ West, a distance of 8.25 feet to an iron pin set, and the place of beginning.

The National Park Service has prepared a map bearing drawing number 362/80,009, dated July 19, 1999, which depicts the specific real property for inclusion within the historic park. Copies of this map are available at the following three locations: The Department of the Interior, National Park Service, Land Resources Division, 1849 "C" Street, NW, Room 2444, Washington, D.C. 20240; The National Park Service, Midwest Region Office, 1709 Jackson Street, Omaha, NE 68102; and Superintendent, Dayton Aviation Heritage National Historic Park, at the address given above.

Dated: November 24, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 00–16704 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Service Concession Contract Franchise Fees

AGENCY: National Park Service, Interior.

ACTION: Notice Regarding Franchise Fee Determination

SUMMARY: On February 6, 1998, the National Park Service (NPS) published in the **Federal Register** a notice regarding the continuation of guidelines for determining franchise fees for NPS concession contracts. On November 13, 1998, Title IV of Public Law 105–391 amended NPS statutory authorities regarding concession contracts, including provisions concerning franchise fees. This notice provides the public with information as to NPS concession contract franchise fee determinations under the terms of Title IV of Public Law 105–391.

EFFECTIVE DATE: On or before August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Cindy Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: the February 6, 1998, **Federal Register** notice concerning NPS franchise fee determinations re-adopted those portions of the NPS concession contracting guidelines (NPS–48) that concern determinations of concession contract franchise fees, including determinations of franchise fees for new (or reviewed) concession contracts and possible adjustments to the franchise fees of existing concession contracts during their term. On April 17, 2000, NPS published in the **Federal Register** final new regulations for the NPS concession contracting program (36 CFR Part 51).

Title IV of Public Law 105–391 repealed the statutory authorities under which the franchise fee guidelines were developed. In addition, Section 407 of Public Law 105–391 established new statutory authorities and policies regarding NPS concession contract franchise fees. Title IV of Public Law 105–391 also included other provisions that have implications for concession contract franchise fees, including, without limitation, the establishment of leasehold surrender interest in certain capital improvements constructed pursuant to a concession contract.

Section 407(a) of Public Law 105–391 reads as follows:

> SEC. 407(a). A concession contract shall provide for payment to the government of ■ franchise fee or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon ■ reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

In light of the enactment of Title IV of Public Law 105–391, NPS hereby withdraws Chapter 24, Section D ("Franchise Fee") of NPS–48 as outdated. The terms and conditions of current concession contracts and permits remain in effect except as may otherwise be provided by Section 415(a) of Public Law 105–391.

Until such time as NPS may adopt more specific new franchise fee determination guidelines reflecting the terms and conditions of Title IV of Public Law 105–391, NPS will establish minimum franchise fees for new (or renewed) concession contracts on a case by case basis in accordance with the terms of Section 407(a) of Public Law 105–391 and will include the proposed minimum franchise fee in concession contract prospectuses issued pursuant to 36 CFR part 51. The establishment of minimum franchise fees will consider the probable value to the concessioner of the privileges to be granted by the new contract. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

Dated: June 27, 2000.

Maureen Finnerty,

Associate Director, Park Operations and Education.

[FR Doc. 00–16783 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement and Comprehensive Management Plan; Merced Wild and Scenic River; Yosemite National Park; Madera and Mariposa Counties, California; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council of Environmental Quality regulations (40 CFR 1500), the National Park Service, Department of the Interior has prepared a Final Environmental Impact Statement identifying and evaluating five alternatives for a Merced Wild and Scenic River Comprehensive Management Plan (Merced River Plan) for segments of the river within lands managed by the National Park Service at Yosemite National Park, California. Potential impacts, and appropriate mitigation measures, are assessed for each alternative. Responses to public comment are provided in the document.

When approved, the plan will guide management actions during the next 15–20 years which are necessary to protect and enhance the "Outstandingly Remarkable Values" (ORVs) for which the river was designated, pursuant to the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271).

Proposal: The proposed Merced River Plan (Alternative 2—Preferred) would provide management direction for the Merced Wild and Scenic River by establishing seven management elements: ORVs, boundaries, classifications, Section 7 determination, River Protection Overlay (RPO), management zoning, and research and monitoring. The Wild and Scenic Rivers Act requires the first four elements; the final three elements were developed in the Merced River Plan to respond to the Act's requirement to protect and enhance ORVs. This plan modifies the ORVs, boundaries and classifications from the present situation to respond to public comment, to more accurately respond to the Wild and Scenic Rivers Act, and to reflect updated information. The proposed alternative presents the management elements to guide future decision-making and management actions with the intent that natural processes will prevail.

Alternatives: In addition to the proposal, four other alternatives are identified and analyzed. Alternative 1 ("no action") is a continuation of the existing situation, based on the ORVs, boundaries, and classifications as published in the 1996 Draft Yosemite Valley Housing Plan/Supplemental EIS. If approved, Alternative 1 will not implement the three management elements—establishment of a RPO, management zoning, and a research and monitoring program—that are not required by the Act. Nor would it present the specific Section 7 determination process outlined in the proposed action.

Alternative 3 differs from the proposed alternative (Alternative 2) with regard to the boundaries, classifications, and management zones. The effect of the differences would promote more resource protection, using a narrower corridor in east Yosemite Valley and in Wawona, within the river corridor than under Alternative 2.

Alternative 4 varies from Alternatives 2 and 3 by presenting yet another combination of boundaries, classifications and management zoning. Of the alternatives presented, Alternative 4 would present the most resource protection within the developed areas along the Merced River.

Alternative 5 presents the same boundaries and classifications as Alternative 4, but with zoning that would allow for more use and facilities in developed areas than that presented under any of the other action alternatives. In addition, there would be no river protection overlay under Alternative 5, reducing the ability to protect the areas immediately adjacent to the Merced.

Planning Background: The draft and final Merced River Plan/EIS were prepared pursuant to the Wild and Scenic Rivers Act and National Environmental Policy Act. A Scoping Notice was published in the **Federal Register** on June 11, 1999; and the Notice of Intent was published on August 23, 1999. An intensive scoping phase was undertaken during June and July 1999, which included a series of six public meetings. The invitation letter requesting input into the development of the draft Merced River Plan/EIS was sent to the park's general mailing list. In addition, the scoping effort was publicized via regional and local media and on the park's Webpage. As a result of this outreach, over 330 responses were received and used in the development of issues upon which preparation of the draft Merced River Plan/EIS was based. A summary of the scoping process is available on the park's Webpage (address noted below). On January 7, 2000, a Notice of Availability for the Draft Merced Wild and Scenic River Comprehensive Management Plan/EIS appeared in the **Federal Register**. A press briefing was held earlier the same week to raise public awareness of the plan. Over 9000 plans were mailed to each person or organization listed on the park's mailing list. A 70-day public comment period began on January 14, 2000 and ended on March 24, 2000. Fourteen public hearings were held throughout the state of California in January and February. Local press was notified days in advance of each meeting to help raise awareness of the meetings. Yosemite National Park management and planning officials attended all sessions to present the draft Merced River Plan/EIS, to receive oral and written comments, and to answer questions. More than 2300 comments were received by mail, fax, electronic mail, recorded testimony, and other means.

Distribution of MRP/Final EIS: A post-card was mailed to all individuals and organizations on the park's general mailing list to determine whether a printed copy or a CD-ROM version (or both) of the Merced River Plan/FEIS should be mailed to the respective address. Another option presented on the postcard was to receive nothing by mail, considering that the complete final plan will be available on the park's website (http://www.nps.gov/yose/planning). Still another option was to receive a "user's guide" after a Record of Decision is signed. In view of these options, the Merced River Plan/FEIS will be mailed, in format requested, until quantities are exhausted. Copies will also be available at park headquarters in Yosemite Valley, the Warehouse Building in El Portal, and at local and regional libraries (*i.e.*, San Francisco and Los Angeles).

Decision Process: Depending upon the response from other agencies, organizations and the general public, at this time it is anticipated that the notice of an approved Record of Decision would be published in the **Federal Register** not sooner than July 31, 2000 (nor would it be signed until at least 30 days have elapsed after publication by the EPA of the filing notice for the Final MRP/EIS). The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Yosemite National Park.

Dated: June 23, 2000.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 00–16703 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 24, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 18, 2000.

Carol D. Shull,

Keeper of the National Register.

Arizona

Yavapai County
Toltec Lodge,
228 High St.,
Prescott, 00000812

Arkansas

Pulaski County

Capitol View Neighborhood Historic District,
Roughly bounded by Riverview Dr., Schiller St., W. 7th St. and Woodrow St.
Little Rock, 00000813

Colorado

Larimer County
Mountainside Lodge,
2515 Tunnel Rd.,
Estes Park, 00000814

Connecticut

Litchfield County
Bridgewater Center Historic District,
Roughly along Main St., Warner Rd., Clapboard Rd. and Hat Shop Hill,
Bridgewater, 00000816
New Haven County
Pine Orchard Union Chapel,
25 Chapel Dr.,
Branford, 00000815
New London County
Perkins—Bill House,
1040 Long Cove Rd.,
Gales Ferry, 00000817

Minnesota

Goodhue County
Florence Town Hall,
33923 MN 61 Blvd.,
Florence Township, 00000818

Missouri

Cape Girardeau County
Cape Girardeau Commercial Historic District,
(Cape Girardeau, Missouri MPS)
100 Blk. of N. Main St. and 100 Blk. of Broadway,
Cape Girardeau, 00000820
Haarig Commercial Historic District,
(Cape Girardeau, Missouri MPS)
Along sections of the 600 Blk. of Good Hope St. and 300 Blk. of S. Sprigg St.,
Cape Girardeau, 00000819

Nevada

Lander County
Lander County High School,
130 Sixth St.,
Austin, 00000821

New York

Oneida County
Memorial Church of the Holy Cross,
841 Bleecker St.,
Utica, 00000823
Ulster County
Ashokan—Turnwood Covered Bridge,
477 Beaverkill Rd.,
Oliverbridge, 00000822

North Carolina

Chatham County
North Third Avenue Historic District,
Roughly bounded by N. Second Ave., E. Fourth St., N. Third Ave., and E. Third St.,
Siler City, 00000824
Rowan County
Salisbury Historic District (Boundary Increase),
Portions of E. Council, E. Innes, Lee and E. Liberty Sts. bet. Main and Depot Sts.,
Salisbury, 00000826
Transylvania County
Hanckel—Barclay House (Boundary Increase),
8 mi. W of Jct. NC 1114 and US 276,
Brevard, 00000825

South Dakota

Minnehaha County
Gloria House, The,
1216 S. Center Ave.,
Sioux Falls, 00000828
Split Rock Creek Park Historic District,
Roughly 1 mi. N of Garretson in Split Rock Park,
Garretson, 00000827

Vermont

Addison County
Union Church, Jct. of River Rd. and East St.,
New Haven, 00000829
Orleans County
House at 68 Highland Avenue,
68 Highland Ave.,
Newport, 00000831
Windsor County
Smith, Samuel Gilbert, Farmstead,
(Agricultural Resources of Vermont MPS)
375 Orchard St.,
Brattleboro, 00000830

A request for a *move* has been made for the following resource

Arkansas

Pulaski County
Compton-Wood House 800 High St.
Little Rock, 80000781

A request for *removal* has been made for the following resources:

Arkansas

Benton County
Sunset Hotel
(Benton County MRA)
US 71
Bella Vista, 92000986
Franklin County
Cabins, The
W of Ozark on AR 219
Ozark vicinity, 77000253
Jackson County
Hickory Grove Church and School
N of Jacksonport
Jacksonport vicinity, 78000595
Pulaski County
Pulaski County Road 67D Bridge
(Historic Bridges of Arkansas MPS)
Co. Rd. 67D over Bridge Cr.
Jacksonville, 95000651

[FR Doc. 00–16782 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–722 (Review)]

Honey From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the suspended investigation on honey from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether termination of the suspended investigation on honey from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 22, 2000. Comments on the adequacy of responses may be filed with the Commission by September 18, 2000. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–059, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background.—On August 16, 1995, the Department of Commerce suspended an antidumping duty investigation on imports of honey from China (60 F.R. 42521). The Commission is conducting a review to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original preliminary determination, the Commission found one Domestic Like Product consisting of natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original preliminary determination, the Commission found one Domestic Industry consisting of producers of natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight. For the purpose of the preliminary investigation, the Commission included independent packers in the definition of the domestic industry and declined to exclude any firms under the related parties provision. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the investigation was suspended. In this review, the Order Date is August 16, 1995.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 18, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification

(or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response To This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigation on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 23, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–16671 Filed 6–30–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–364 (Review) and 731–TA–711 and 713–716 (Review)]

Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, Korea, and Mexico.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, Korea, and Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 22, 2000. Comments on the adequacy of responses may be filed with the Commission by September 18, 2000. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On August 10, 1995, the Department of Commerce issued a countervailing duty order on imports of oil country tubular goods from Italy (60 FR 40822). On August 11, 1995, the Department of Commerce issued antidumping duty orders on imports of oil country tubular goods from Argentina, Italy, Japan, Korea, and Mexico (60 FR 41055). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Argentina, Italy, Japan, Korea, and Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission found two *Domestic Like Products* consisting of (1) OCTG excluding drill pipe (*i.e.*, casing and tubing) and (2) drill pipe.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found two *Domestic Industries* consisting of (1) producers of OCTG excluding drill pipe (*i.e.*, casing and tubing) and (2) producers of drill pipe. The Commission found that processors should be included in both the domestic casing and tubing industry and in the domestic drill pipe industry, but those firms that only perform basic threading and coupling operations should not be included.

(5) The *Order Dates* are the dates that the countervailing duty and antidumping duty orders under review became effective. In the review concerning the countervailing duty order on OCTG from Italy, the *Order Date* is August 10, 1995. In the reviews concerning the antidumping duty orders on OCTG from Argentina, Italy, Japan, Korea, and Mexico, the *Order Date* is August 11, 1995.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) under an Administrative Protective Order (APO) and APO Service List.—Pursuant to

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–058, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. appendix 3.

Written Submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 18, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to Provide Requested Information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined by the Commission in its original determinations, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the *Subject Merchandise* in the *Subject Countries* that currently export or have exported *Subject Merchandise* to the United States or other countries since 1994.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Countries*, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties)

of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Countries* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Countries;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Countries.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Countries* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Countries* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* since the *Order Dates,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 23, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–16672 Filed 6–30–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–362 (Review) and 731–TA–707–710 (Review)]

Seamless Pipe From Argentina, Brazil, Germany, and Italy

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751 © of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 22, 2000. Comments on the adequacy of responses may be filed with the Commission by September 18, 2000. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On August 3, 1995, the Department of Commerce issued antidumping duty orders on imports of seamless pipe from Argentina, Brazil, Germany, and Italy (60 FR 39704). On August 8, 1995, the Department of Commerce issued a countervailing duty order on imports of seamless pipe from Italy (60 FR 40569). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Argentina, Brazil, Germany, and Italy.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–057, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product, which consists of certain seamless carbon and alloy standard, line and pressure pipe and tube not more than 4.5 inches in outside diameter, and including all redraw and semifinished hollows.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of seamless carbon and alloy steel standard, line and pressure pipes and tubes not more than 4.5 inches in outside diameter, as well as all redraw hollows. The Commission included all domestic production in the domestic industry, whether toll-produced, captively consumed or sold in the merchant market.

(5) The Order Dates are the dates that the countervailing duty and antidumping duty orders under review became effective. In the reviews concerning the antidumping duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy, the Order Date is August 3, 1995. In the review concerning the countervailing duty order on seamless pipe from Italy, the Order Date is August 8, 1995.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 18, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16" and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61© of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of

the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 23, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–16673 Filed 6–30–00; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 15, 2000, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application to the Drug

Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Penylacetone (8501)	II

The firm plans to import the phenylacetone to manufacture methamphetamine and to import racemic methamphetamine for resolution into the d- and 1-stereoisomers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 2, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.349b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 21, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–16675 Filed 6–30–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 3, 2000, and May 10, 2000, ISP Freetown Fine Chemicals, Inc., 2328 South Main Street, Assonet, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to bulk manufacture amphetamine for a customer and to bulk manufacture the phenylacetone for the manufacture of the amphetamine.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 1, 2000.

Dated: June 21, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–16676 Filed 6–30–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2077–00]

Opportunity to File Untimely Motions to Reconsider Decisions Denying EB–2 Immigrant Visa Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice informs concerned parties (prospective employers who have filed certain EB–2 immigrant visa petitions) of the opportunity to file untimely motions to reconsider Service decisions denying EB–2 immigrant visa petitions. The Service is publishing this notice in accordance with an order issued May 4, 2000, by the United States District Court for the Northern District of California (Chesney, J.), in the case entitled *Chintakuntla* v. *INS*, No. C99–5211 MMC (N.D.Cal.). This notice is necessary to ensure that all persons who are able to file motions to reconsider in accordance with the Court's order have notice of their right to do so.

DATES: This notice is effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Janice Podolny, Associate General Counsel, Chief of the Examinations Division, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone number (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Why Is the Service Publishing This Notice?

On March 20, 2000, the Service published a policy memorandum (the March 20, 2000, Service Memorandum) clarifying the requirements that govern the adjudication of immigrant visa petitions filed under section 204 of the Immigration and Nationality Act (Act) to classify aliens as preference immigrants as aliens who are members of the professions holding advanced degrees or the equivalent (EB–2 immigrants). The March 20, 2000, Service Memorandum provided guidance for Service officers who, in adjudicating EB–2 immigrant visa petitions, must determine whether the job offered to the alien beneficiary actually requires a member of the professions holding an advanced degree or the equivalent. The March 20, 2000, Service Memorandum also addresses the issue of what sort of experience the job must require of a person with only a bachelor's degree, in order for the position to qualify as a position requiring an advanced degree or the equivalent. This March 20, 2000, Service Memorandum is particularly relevant in cases in which the labor certification (ETA–750) does not clearly indicate whether a person with a bachelor's degree must have 5 years post-baccalaureate progressive experience in the profession in order to meet the minimum qualifications for the job.

If a person who has standing wants the Service to reconsider a Service decision in a case, the person may file a motion to reconsider the decision. Under 8 CFR 103.5(a)(1)(i), the person

must file the motion no later than 30 days after the Service made the decision. On May 4, 2000, in a case entitled *Chintakuntla* v. *INS*, No. C99–5211 MMC (N.D.Cal.), the United States District Court for the Northern District of California ordered the Service to permit some EB–2 immigrant visa petitioners to file untimely motions to reconsider the decisions in their cases in light of the March 20, 2000, Service Memorandum. This part of the Court's order applies to cases in which the Service decision had already become final before the Service issued the March 20, 2000, Service Memorandum. The purpose of this Notice is to ensure that all persons who are able to file motions to reconsider in accordance with the Court's order have notice of their right to do so.

To Whom Do the Personal Pronouns "I," "Me," "My," "You" and "Your" Refer?

In this Notice, the personal pronouns "I," "me," "my," "you" and "your" refer to any person, firm, or other prospective employer who filed an EB–2 immigrant visa petition with the Service.

Does This Notice Apply To My Case?

This Notice applies to your case if you filed an EB–2 immigrant visa petition on behalf of an alien in the second sub-class that the District Court certified in *Chintakuntla*. The second sub-class includes any alien:

Who is the beneficiary of an I–140 Employment Based Second Preference (EB–2) immigrant visa petition seeking to classify the alien beneficiary as a member of the professions holding an advanced degree, or the equivalent, whose ETA–750 indicated that a bachelor's degree (plus at least five years experience) was required for the position, whose I–140 petition was or may be denied by the Service on the basis that the position did not require an advanced degree; and

In whose case the Service made an administratively final decision on or after July 1, 1997 denying the EB–2 visa petition (whether because the AAO affirmed the initial denial or because the petitioner did not appeal the initial denial to the AAO); and

In whose case there is not already pending a civil action seeking judicial review of the final Service decision in a different case.

If you filed an EB–2 immigrant visa petition on behalf of an alien described in this sub-class, then this Notice applies to your case.

What Does the Court's Order Permit Me To Do?

If this Notice applies to your case, you may obtain a new Service decision on your visa petition. If you want to do so, you must file a motion to reconsider with the Service office that made the last decision on your visa petition. Your motion to reconsider must meet all of the requirements in 8 CFR 103.5(a)(1), including the payment of the filing fee, except that you do not need to file the motion to reconsider within 30 days of the Service decision in your case.

To avoid delays, please make sure that your motion to reconsider says that you are seeking reconsideration of your case in light of the March 20, 2000, Service Memorandum, as permitted by the May 4, 2000, order in *Chintakuntla* v. *INS*. It would also be prudent to clearly mark the envelope that you use to submit the motion with the notation: "EB–2 CLASS MEMBER, DO NOT OPEN IN MAIL ROOM. DELIVER IMMEDIATELY TO DIRECTOR'S OFFICE."

When Must I File a Motion To Reconsider Under the District Court's Order and This Notice?

You must file your motion to reconsider no later than November 1, 2000. The Service will not consider you to have filed a motion to reconsider on time unless the Service actually receives your motion by that date. If you file by mail or by delivery service, you should take care to send your motion in a way that guarantees delivery by November 1, 2000. The Service will accept for filing any motion received after November 1, 2000, but will deny the motion as untimely. The Service will not refund the filing fee.

May I Include Additional Evidence With My Motion?

The March 20, 2000, Service Memorandum provides that the Service may ask a visa petitioner for a statement that supplements the ETA–750. This statement must be an affidavit (or other statement signed under penalty of perjury), signed by a person within your firm who has relevant knowledge concerning the minimum acceptable qualifications for the job. It will speed up the processing of your case if you include a supplemental statement with your motion. If you do, then you should refer to your motion as a "motion to reopen and reconsider." Other than this supplemental statement, you may not include any additional evidence.

What If I Do Not File a Motion To Reconsider by November 1, 2000?

If you do not file a motion to reconsider by November 1, 2000, you will forever lose your right to seek a new Service decision under the District Court's order. You may still, however, seek judicial review of your case under 5 U.S.C. 701, *et seq.*, in any court that has jurisdiction to review your case, if you seek judicial review within the time allowed by 28 U.S.C. 2401.

What If the Service Decided My Case Before July 1, 1997?

If the Service decided your case before July 1, 1997, you do not have a right to file a motion to reconsider under the District Court's order. You may, however, still seek judicial review of your case under 5 U.S.C. 701, *et seq.*, in any court that has jurisdiction to review your case, provided you do so within the time allowed by 28 U.S.C. 2401.

Does the Court's Order Have Any Effect on My Potential Employee's Ability To Apply for Adjustment of Status?

Yes it does; an alien may apply for adjustment of status only if an immigrant visa is immediately available. Ordinarily, this means, under 8 CFR 245.1(g)(1), that an employment-based immigrant alien must have a current priority date and the Service must have approved the visa petition. The Court enjoined the Service from requiring approval of the visa petition before accepting an adjustment application. Any class member who is otherwise eligible to apply for adjustment of status, and who has a current priority date, may, therefore, file an application for adjustment of status even while the visa petition is still pending. The class member must file, no later than November 1, 2000, a complete adjustment application, including the filing and fingerprinting fees and all supporting evidence. The spouse or child of a class member may also do so.

Note that the ability to file an adjustment application is not limited to the second *Chintakuntla* sub-class (that is, those aliens whose petitioners are entitled to file untimely motions to reconsider). Members of the first sub-class under the injunction may also do so. The *Chintakuntla* injunction defines the first sub-class to include:

> any alien who is the beneficiary of an I–140 Employment Based Second Preference (EB–2) immigrant visa petition seeking to classify the alien beneficiary as a member of the professions holding an advanced degree, or the equivalent, whose ETA–750 indicated that a bachelor's degree (plus at least five years experience) was required for the

position, whose I–140 petition was or may be denied by the Service on the basis that the position did not require an advanced degree; and in whose case the I–140 petition was still pending before the Service on March 20, 2000, (whether before a Service Center or before the AAO).

To avoid delays, a class member should make sure that he or she includes with the application for adjustment of status a written indication that he or she is filing the application before approval of the visa petition, as permitted by the May 4, 2000, order in *Chintakuntla* v. *INS*. The class member should also clearly mark the envelope used to submit the application with the notation: "EB–2 CLASS MEMBER, DO NOT OPEN IN MAIL ROOM. DELIVER IMMEDIATELY TO THE DIRECTOR'S OFFICE." If your prospective employee is a member of the second sub-class and files for adjustment of status, the alien should also include a copy of your motion to reconsider and proof that you actually filed the motion.

Note that if there is a final decision denying your visa petition, the Service will also deny the class member's adjustment application and will not refund the filing and fingerprinting fees.

Does the Court's Order Have Any Effect on My Potential Employee's Ability To Apply for Employment Authorization or Advance Parole?

If your potential employee is eligible under the Court's order to file an application for adjustment of status before approval of the related visa petition, then your potential employee may also file an application for employment authorization (INS Form I–765), an application for advance parole (INS Form I–131), or both. If the Service approves either application, the Service will issue the appropriate documents. Note that the Service will adjudicate the INS Form I–765 by the day before your potential employee's current employment authorization expires if your potential employee:

—Clearly marks the envelope used to submit the INS Form I–765 with the notation "EB–2 CLASS MEMBER, DO NOT OPEN IN MAIL ROOM. DELIVER IMMEDIATELY TO DIRECTOR'S OFFICE.";

—Identifies himself or herself in writing as a member of the first or second sub-class in the *Chintakuntla* case; and

—Advises the Service in writing of the date on which his or her current employment authorization is scheduled to expire.

Where Can I Get a Copy of the March 20, 2000, Service Memorandum?

The Service is including the text of the March 20, 2000, Service Memorandum as an appendix to this notice.

Dated: June 28, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: The following is the text of the March 20, 2000, Service Memorandum, sent to the INS Service Center Directors and Regional Directors, mentioned in the preamble of this notice.

United States Department of Justice
Immigration and Naturalization Service

425 I Street NW Washington DC 20536

March 20, 2000

MEMORANDUM FOR All Service Center Directors All Regional Directors
FROM: /s/ Michael D. Cronin Acting Associate Commissioner Office of Programs
/s/ William R Yates, Deputy Executive Associate Commissioner, Office of Field Operations
SUBJECT: Educational and Experience Requirements for Employment-Based Second Preference (EB–2) Immigrants

This memorandum addresses issues relating to the *Adjudicator's Field Manual*, Appendix 22–1. Chapter 22 provides guidance on employment-based immigrant petitions. This memorandum is being released as an appendix to insure complete Service-wide dissemination. The policies outlined within this document will eventually be incorporated within the text of Chapter 22 of the Adjudicator's Field Manual.

Background

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act) provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States.

Petitions seeking the classification of alien beneficiaries as EB–2 advanced degree professionals present a number of issues for Service Center adjudicators. This memorandum provides guidance regarding such decisions.

What is an Advanced Degree?

An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level.[1]

What is the Equivalent of an Advanced Degree?

The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. Consequently, an alien beneficiary who does not actually hold an advanced degree may still qualify as an EB–2 professional if he or she has the equivalent of an advanced degree.

There are several ways in which an alien seeking EB–2 classification may satisfy the advanced-degree requirement. The simplest is by possessing a U.S. academic or professional degree above the level of baccalaureate. In the alternative, the foreign equivalent of such a degree is equally acceptable.

An alien with a U.S. or foreign equivalent baccalaureate degree who does not possess an advanced degree may still meet this requirement if the baccalaureate-level degree is followed by at least five years of "progressive experience" in the specialty.[2]

What Elements Must Be Established Before an EB–2 Petition for an Advanced Degree Professional Can Be Approved?

Two critical elements must be established before an advanced degree EB–2 petition can be approved. First, the position itself must require a member of the professions holding an advanced degree. Second, the alien must possess an advanced degree as shown by a master's degree or its equivalent. The threshold issue regarding the position itself appears to be the most troublesome in adjudicating EB–2 petitions for advanced degree professionals.

The key to making this determination is found on Form ETA–750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. An adjudicator must review the job requirements contained in blocks 14 and 15 of the ETA–750 and determine whether the position requires an advanced degree professional.

Deciding whether the position requires an advanced degree professional is independent of whether the alien beneficiary is himself an advanced degree professional. If the job itself does not require an advanced degree professional, the petition must be denied, even if the alien beneficiary actually is an advanced degree professional. Likewise, the petition must be denied if the alien beneficiary is not an advanced degree professional, even if the job itself requires an advanced degree professional.

Whether the alien beneficiary actually possesses the advanced degree should be demonstrated by evidence in the form of a transcript from the institution that granted the advanced degree. An adjudicator must similarly consider the baccalaureate transcript and the alien's post-baccalaureate experience for the alien beneficiary claiming the equivalent to an advanced degree.

Does the Job To Be Filled by the Alien Beneficiary Require an Advanced Degree?

A petitioner seeking classification for an EB–2 advanced degree professional must clearly demonstrate that the position requires a member of the professions holding an advanced degree. In other words, blocks 14 and 15 of the ETA–750 must establish that the position requires an employee with either a master's degree or a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty.

[1] 8 CFR 204.5(k)(2).

[2] *Id.*

It should be emphasized that the mere absence of the word "progressive" from blocks 14 and 15 on the ETA–750 is not grounds for denial of the petition if the required experience is in fact progressive in nature. Adjudicators should examine the nature of the experience required for the position as described in block 13 of the ETA–750 in order to determine whether such experience is progressive.

What Exactly is Progressive Experience?

"Progressive experience" is not defined by statute or regulation. Its plain meaning within the context of EB–2 adjudications is relatively simple: employment experience that reveals progress, moves forward, and advances toward increasingly complex or responsible duties. In short, progressive experience is demonstrated by advancing levels of responsibility and knowledge in the specialty.

Recognizing progressive experience in blocks 14 and 15 of the ETA–750, however, is not so simple. Much of the uncertainty concerning such determinations involves petitions for highly technical positions, which invariably describe required experience in highly technical terms. Such descriptions may be difficult to understand for anyone outside that specific industry.

Adjudicators who encounter these types of descriptions should request that petitioners provide, to the extent possible, plain-English explanations of the experience required. Such descriptions may take the form of a supplemental statement filed with the Service Centers indicating why five years of post-baccalaureate and progressive experience would be necessary to perform successfully the duties set forth in highly technical job descriptions. The supplemental statement should be an affidavit (or other statement under penalty of perjury) from some person within the petitioning firm who has relevant knowledge concerning the minimum acceptable qualifications for the position involved in the Form I–140. It is incumbent upon the petitioner to describe the position offered in such a way so that an adjudicator can reasonably determine whether the job actually requires an advanced degree or, in the alternative, five years of post-baccalaureate experience that is progressive in nature.

It is reasonable to infer that highly technical positions are progressive in nature due to the constant state of change in their respective industries. This is not to say, however, that five years of post-baccalaureate experience in a highly technical position automatically translates to an advanced degree in every case. As with any adjudication, a petition seeking classification for an EB–2 advanced degree professional should be decided on a case-by-case basis.

How Can These Requirements Be Demonstrated?

The terms, "MA," " MS," "Master's Degree or Equivalent" and "Bachelor's degree with five years of progressive experience," all equate to the educational requirements of a member of the professions holding an advanced degree. The threshold for granting EB–2 classification will be satisfied when any of these terms appear in block 14.

It is also important to read the ETA–750 as a whole. In particular, if the education requirement in block 14 includes an asterisk (*) or other footnote, the information included in the note must be considered in determining whether the educational requirement, as a whole, demonstrates that an advanced degree or the equivalent is the minimum acceptable qualification for the position.

As long as the minimum requirement for the job offered is master's degree or the equivalent, the position should be found to require a member of the professions holding an advanced degree. This is true even if several variations of this requirement are stated.

Examples

The following are examples of actual statements contained at blocks 14 and 15 of the ETA–750. They are by no means exhaustive. Their inclusion here is intended to simply illustrate concepts discussed in this memorandum.

Position 1: Staff Software Engineer

ETA 750 Item 14: Education—B.S. (or foreign equiv.) comp. science, elec. eng., or related field.
Experience—5 years job offered or 5 years related occupation software engineer.
ETA 750 Item 15: Exp. must include: design & development of major software subsystems; RDBMS internals; operating system internals; complex systems software design; symmetric multiprocessing and large scale network systems.

It is unclear whether this job requires 5 years of experience following receipt of the baccalaureate. For this reason, the adjudicator should request that the petitioner provide a supplemental statement clarifying whether the position requires five years of post-baccalaureate experience that is truly progressive in nature. If the supplemental statement establishes that the minimum qualifications for the position require a member of the professions holding an advanced degree and, assuming the beneficiary possesses these qualifications, the petition should be approved.

Position 2: Senior Software Engineer

ETA 750 Item 14: Education—MSCS or equiv. * * *. Major Field of Study—Computer Science or related field.
Experience—3 years in job offered or 3 years in related occupation of Software Engineer.
ETA 750 Item 15: C/C++ Programming; RDBMS Design * * * Will consider candidates with BSCS and 5 years experience as Software Engineer.

Similarly, it is unclear in this position as well whether this job requires 5 years of post-baccalaureate experience as a Software Engineer. Because of the additional requirement of a Master of Science in Computer Science degree or its equivalent, however, the underlying petition may be approvable. For this reason, the adjudicator should request that the petitioner provide a supplemental statement clarifying whether the position requires five years of post-baccalaureate experience that is truly progressive in nature. If the supplemental statement establishes that the minimum qualifications for the position require a member of the professions holding an advanced degree and, assuming the beneficiary possesses these qualifications, the petition should be approved.

Position 3: Software Engineer

ETA 750 Item 14: Education—Master's or equivalent* Major Field of Study**
Experience—3 years in job offered or in the related occupation of software engineer, systems engineer, or programmer/analyst.
ETA 750 Item 15: * Bachelor's degree in Computer Science, Electrical Engineering or academic equivalent, and 5 years of progressive experience will substitute for Master's degree in Computer Science and 3 years of such experience.
** Computer Science, Electrical Engineering or academic equivalent.

This position clearly requires a master's degree or 5 years of progressive experience. Consequently, the position requires a member of the professions holding an advanced degree. Again, assuming the beneficiary possesses these qualifications, the underlying petition should be approved.

Relevance of the Alien Beneficiary's Actual Qualifications

The second and third examples raise an additional question to be decided before approving some petitions—those in which the alien beneficiary does not actually have a Master's degree. The ETA–750 in each of those cases requires that a candidate with a Master's degree must have three years' experience, but that a baccalaureate with five years' experience is acceptable. The question is whether the petitioner can include the alien's 5 years' post-baccalaureate progressive experience both to make the alien's baccalaureate the equivalent of a Master's degree *and* to meet the three years' experience that someone who actually does have a Master's degree must have. The answer will depend on what the ETA–750 actually says. Note that the sample ETA–750s do not require that the three years' experience must follow the receipt of a Master's degree—only that the applicant must have both the degree and the experience. The ETA–750, therefore, does not preclude someone who just received a Master's degree from qualifying for the position on the basis of pre-Master's experience. By the same reasoning, someone with a baccalaureate degree, and experience that makes it equivalent to a Master's, can qualify based on the pre-Master's equivalency experience. If the beneficiary has a baccalaureate with five years' progressive post baccalaureate experience, the petition should be approved unless the ETA–750 clearly and explicitly requires that the level of experience that a Master's applicant must have must be post-magisterial experience.

If the ETA–750 *does* require that the experience must have been post-magisterial experience, and the alien beneficiary just has the baccalaureate plus five years' progressive post-baccalaureate, then the alien beneficiary cannot meet the post-magisterial experience

requirement. In that case, the petition should be denied, not because the alien beneficiary is not an advance degree professional, but because the alien does not meet the actual qualifications as stated on the ETA–750. *See K.R.K. Irvine, Inc.*, v. *Landon*, 699 F.2d 1006 (9th Cir. 1983); *Matter of Wing's Tea House*, 16 I & N Dec. 158 (INS 1977).

Where Do Adjudicators Find Help Concerning EB–2 Petitions for Advanced Degree Professionals?

EB–2 petitions for advanced degree professionals involving unusually complex or novel issues of law or fact can be certified to the Administrative Appeals Office pursuant to 8 CFR 103.4. Questions concerning this guidance can be addressed to Senior Adjudications Officer [officer's name deleted] through channels via cc:Mail.

[FR Doc. 00–16885 Filed 6–29–00; 1:57 pm]

BILLING CODE 4410–10–U

DEPARTMENT OF JUSTICE

Office of Justice Programs

Corrections Program Office; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Justice Programs; Department of Justice.

ACTION: Notice of information collection under review; New collection.

Program Guidance on Environmental Protection Requirements and Project Status Report for the Violent Offender Incarceration/Truth-in-Sentence Grant Program

The Department of Justice, Office of Justice Programs, Corrections Program Office, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by July 12, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with the instructions, should be directed to Patricia Malak, Environmental Coordinator, Office of Justice Programs, Corrections Program Office, 810 7th Street, NW, Washington, DC 20531, or facsimile at (202) 307–2019.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Program Guidance on Environmental Protection Requirements and Project Status Report for the Violent Offender Incarceration/Truth-in-Sentencing Grant Program.

(3) *Agency form number, If any, and the applicable component of the Department sponsoring the collection:* Department of Justice, office of Justice Programs, Corrections Program office.

(4) *Affected public who will be required to respond, as well as a brief abstract: Primary:* State and Local Government. *Other:* None.

The Violent Offender Incarceration/ Truth-in-Sentencing Grant Program, authorized under Title II, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994, as amended, provides funds for the construction of prisons and jails to assist states in their efforts to remove violent offenders from the community and to encourage states to implement truth-in-sentencing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The Project Status Report will be completed by approximately 150 respondents with initiated project and is expected to take approximately 60 minutes to complete. The Program Guidance requires the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for approximately 400–500 projects. An average EA may take 2–6 months to complete and an EIS approximately 12–18 months, although the time required will depend on the scope and nature of the project, the alternatives that are analyzed, the impacts on the environment, and public reaction to the project.

(6) An estimate of the total public burden (in hours) associated with the collection: Average time will vary depending on the scope of the project and the potential environmental impacts.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington DC 20530.

Dated: June 28, 2000.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–16795 Filed 6–30–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1285]

RIN 1121–ZB90

Fiscal Year 2000 Missing and Exploited Children's Program Plan

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Announcement of Fiscal Year 2000 Missing and Exploited Children's Program Plan.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is issuing its Missing and Exploited Children's Program Final Program Plan for Fiscal Year 2000.

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Child Protection Division, 202–616–3637. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: On January 7, 2000, OJJDP published the Fiscal Year 2000 Missing and Exploited Children's Program Proposed Program

Plan in the **Federal Register** at 65 FR 1175 and requested public comments on the plan. No comments were received.

OJJDP has determined that the Proposed Program Plan does not need to be modified in any way. Accordingly, the Proposed Plan as published in the January 7, 2000, **Federal Register** is now the Final Missing and Exploited Children's Program Plan for Fiscal Year 2000.

Dated: June 27, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–16711 Filed 6–30–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 23, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by e-mail to Kurz-Karin@dol. gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: 4,4′-Methylenedianiline (MDA)—29 CFR 1926.60.

Type of Review: Extension.

OMB Number: 1218–0183.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 66.

Number of Annual Responses: 3,220.

Estimated Time Per Response: Varies from 5 minutes to provide information to the examining physician to 2 hours to update and review compliance plans.

Total Burden Hours: 1,520.

Total Annualized capital/startup costs: $0.

Total Annual costs (operating/maintaining systems or purchasing services): $73.500.

Description: The purpose of this standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to MDA. Employers must monitor exposure, keep employee exposures within the permissible exposure limits, provides employees with medical examinations and training, and establish and maintain employee exposure-monitoring and medical records.

Agency: Occupational Safety and Health Administration (OSHA).

Title: 4,4′-Methylenedianiline (MDA)—29 CFR 1910.1050.

Type of Review: Extension.

OMB Number: 1218–0184.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 12.

Number of Annual Responses: 650.

Estimated Time Per Response: Varies from 5 minutes to provide information to the examining physician to 2 hours to update and review compliance plans.

Total Burden Hours: 320.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/mintaining systems or purchasing services: $19,170.

Description: The purpose of this standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to MDA. Employers must monitor exposure, keep employee exposures within the permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure-monitoring and medical records.

Agency: Employment Standards Administration (ESA).

Title: Notice of Termination, Suspension, Reduction or Increase in Benefit Payments.

Type of Review: Extension.

OMB Number: 1215–0064.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 325.

Number of Annual Responses: 9,000.

Estimated Time Per Response: 12 minutes.

Total Burden Hours: 1,800.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $3,240.

Description: Coal mine operators who pay monthly black lung benefits must notify DCMWC of any change in benefits and the reason for that change. DCMWC uses this notification to monitor payments to beneficiaries.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–16744 Filed 6–30–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the UC Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time, after consultation with the Secretary of Defense, a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX).

This notice is to publish a revised schedule that reflects increases in military pay and allowances which were effective in July 2000.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12(c), applies to "First Claims" for UCX which are effective beginning with the first day of the first week which begins on or after October 1, 2000.

Pay grade	Monthly rate
(1) Commissioned Officers:	
0–10	13,329
0–9	12,445
0–8	11,465
0–7	10,388
0–6	8,761
0–5	7,341
0–4	6,085
0–3	4,807
0–2	3,834
0–1	2,900
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
0–3E	5,634
0–2E	4,653
0–1E	3,889
(3) Warrant Officers:	
W–5	6,410
W–4	5,511
W–3	4,599
W–2	3,925
W–1	3,354
(4) Enlisted Personnel:	
E–9	5,086
E–8	4,276
E–7	3,724
E–6	3,273
E–5	2,778
E–4	2,330
E–3	2,055
E–2	1,972
E–1	1,744

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time for which any prior schedule was in effect.

Signed at Washington, DC, on June 26, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 00–16748 Filed 6–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health: Appointment of Members; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Appointment of members; Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), which was established to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United Sates, has been re-chartered. This Notice announces the selection of 15 persons to serve as members of the MACOSH Committee and schedules the first meeting of the re-chartered committee.

DATES: The Committee will meet:

—On July 19, 2000 from 9:30 A.M. until approximately 5 P.M.; and

—On July 20, 2000 from 8:30 A.M. until approximately 4 P.M.

ADDRESSES: The Committee will meet at the U.S. Merchant Marine Academy, 300 Steamboat Road, Kings Point, New York 11024; telephone: (516) 773–5000. Mail comments, views, or statements in response to this notice to Chappell Pierce, Acting Director, Officer of Maritime Standards, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 693–2086; FAX; (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Chappell Pierce, Acting Director, Officer of Maritime Standards, OSHA; Phone (202) 693–2086.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of MACOSH at the time and place listed above. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than July 11, 2000, to obtain appropriate accommodations.

Background

MACOSH was established pursuant to the authority in Section 7 of the Occupational Safety and Health Act of 1970 to advise the Assistant Secretary of Labor for Occupational Safety and Health on issues relating to occupational safety and health for workers involved in shipbuilding, shipbreaking, ship repair, and longshoring in the maritime industries in the United States. Since its establishment in 1995, the committee, using its unique and collective expertise, has provided invaluable assistance and advice to the Assistant Secretary on maritime matters.

On January 24, 2000, OSHA announced its intention to renew the charter of MACOSH for another two-year term and requested nominations of interested persons to serve on the advisory committee (65 FR 3740). The Agency received the nominations of many highly qualified person. Unfortunately, the Occupational Safety and Health Act limits the number of members that can be on an advisory committee to 15. The following 15 persons were selected to represent the diverse interests of the maritime community on MACOSH.

Employee Representatives

Albert Cernadas, International Longshore Association (ILA)
Jeff Vigna, International Longshore Workers Union (ILWU)
Chico McGill, International Brotherhood of Electrical Workers (IBEW)
Mike Flynn, International Association of Machinists and Aerospace Workers (IAM)
Robert Scott, United Brotherhood of Carpenters
Edwin Lant, Federal Employees Metal Trades Council (Tidewater Virginia)

Employer Representatives

John McNeill, National Maritime Safety Association
Charles Thompson, American Association of Port Authorities
James Thornton, American Shipbuilding Association
Steve Morris, Shipbuilders Council of America
Iona Evans, U.S. Navy
Teresa Preston, Alabama Shipyard

Government Representatives

Laurence Reed, National Institute for Occupational Safety and Health (NIOSH)
Peter Schmidt, Washington State Department of labor and Industry
Lt. Emile Benard, U.S. Coast Guard

Meeting Agenda

This meeting will include discussion of the following subjects: goals and objectives for the next two years, the Maritime ergonomics project, OSHA Standards update, partnership and training initiatives (including OSHA's Electronic Compliance Assistance Tool), vertical tandem lifting of containers, and MACOSH workgroup reports.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with copies, to Chappell Pierce at the address listed above. Submissions received by July 5, 2000 will be provided to the members of the committee prior to the meeting. Requests to make an oral presentation to the Committee may be granted if time permits. Anyone wishing to make an

oral presentation to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Chappell Pierce by July 5, 2000. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC this 21st day of June 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–16823 Filed 6–28–00; 4:35 pm]

BILLING CODE 4510–26–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 10, 2000.
Time: 8:30 a.m. to 6:00 p.m.
Room: 420.
Program: This meeting will review applications for History Museums, Historical Societies, and Historic Sites, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

2. *Date:* July 17, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Latin American History and Studies, submitted to the Division of Research Programs at the May 1, 2000 deadline.

3. *Date:* July 18, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in History and Philosophy of Science, submitted to the Division of Research Programs at the May 1, 2000 deadline.

4. *Date:* July 18, 2000.
Time: 8:30 a.m. to 6:00 p.m.
Room: 420.
Program: This meeting will review applications for Museums, Cultural Centers, and other Humanities Organizations, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

5. *Date:* July 19, 2000.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Religious Studies, submitted to the Division of Research Programs at the May 1, 2000 deadline.

6. *Date:* July 19, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in American and Latin American Literature and Linguistics, submitted to the Division of Research Programs at the May 1, 2000 deadline.

7. *Date:* July 20, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Philosophy, submitted to the Division of Research Programs at the May 1, 2000 deadline.

8. *Date:* July 21, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Music and Dance, submitted to the Division of Research Programs at the May 1, 2000 deadline.

9. *Date:* July 21, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in European History, submitted to the Division of Research Programs at the May 1, 2000 deadline.

10. *Date:* July 21, 2000.
Time: 8:30 a.m. to 6:00 p.m.
Room: 420.
Program: This meeting will review applications for Research Associations, Collections, and Programs, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

11. *Date:* July 24, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in American History, submitted to the Division of Research Programs at the May 1, 2000 deadline.

12. *Date:* July 24, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in American History, submitted to the Division of Research Programs at the May 1, 2000 deadline.

13. *Date:* July 26, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in East Asian Studies, submitted to the Division of Research Programs at the May 1, 2000 deadline.

14. *Date:* July 27, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in American History, submitted to the Division of Research Programs at the May 1, 2000 deadline.

15. *Date:* July 28, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in British Literature, submitted to the Division of Research Programs at the May 1, 2000 deadline.

16. *Date:* July 28, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in British Literature, submitted to the Division of Research Programs at the May 1, 2000 deadline.

17. *Date:* July 31, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Anthropology and Archaeology I, submitted to the Division of Research Programs at the May 1, 2000 deadline.

Laura S. Nelson,
Advisory Committee Management Officer.
[FR Doc. 00–16692 Filed 6–30–00; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Humanities; Meeting

June 22, 2000.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended), notice is hereby given the National Council on the Humanities will meet in Washington, DC on July 13–14, 2000.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington, DC. A portion of the morning and afternoon sessions on July 13–14, 2000, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on July 13, 2000 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9:00–10:30 a.m.

Education Programs—Room M–07
Federal/State Partnership—Room 507
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Research Programs—Room 315

(Closed to the Public)

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until Adjourned
Education Programs—Room M–07
Federal/State Partnership—Room 507
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Research Programs—Room 315

1:30–3:00 p.m. Jefferson Lecture Committee Meeting—Room 430

The morning session on July 14, 2000 will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting
Reports

A. Introductory Remarks and Presentations
B. Staff Report
C. Congressional Report
D. Reports on Policy and General Matters
1. Overview
2. Research Programs
3. Education Programs
3. Preservation and Access/Challenge Grants
4. Public Programs
5. Federal/State Partnership
6. Jefferson Lecture/Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Laura S. Nelson,
Advisory Committee Management Officer.
[FR Doc. 00–16693 Filed 6–30–00; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).
Date/Time: July 20, 2000 8 AM–5 PM.
Place: Room 340, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: A. Frederick Thompson, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, Virginia 22230; Telephone: (703) 306–1318.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Environmental Technology Engineering Unsolicited Proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 2000.

Karen J. York,
Committee Management Officer.
[FR Doc. 00–16787 Filed 6–30–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (1110): Committee of Visitors.
Date and Time: July, 17–29, 2000; 8:30 a.m. to 5 p.m. each day.
Place: National Science Foundation, Room 680, 4201 Wilson Boulevard, Arlington, VA.
Type of Meeting: Part open (see agenda below):
Contact Person: Dr. Christopher Platt, Division of Integrative Biology and Neuroscience, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, (703) 306–1420.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged information.

Agenda: To provide oversight review of the Division of Integrative Biology and Neuroscience.

Open Sessions: July 17, 8:30 a.m.–10:30 a.m.; July 18, 1 p.m.–2 p.m.; July 19, 1 p.m.–2 p.m.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include information of a proprietary nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Committee membership was not finalized until June 20, 2000 and scheduling dates to include travel could not take place until membership was finalized.

Dated: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16785 Filed 6–30–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194).

Date/Time: August 31, 2000, 8 am–5:30 pm.

Place: Room 330 and 365, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. George Hazelrigg, Program Director, Design and Integration Engineering, National Science Foundation, 4201 Wilson Boulevard, Room 508, Arlington, VA 2230. Telephone: (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate "NSF/SANDIA" proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16789 Filed 6–30–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System (1196).

Date/Time: July 24, 2000–8:30 a.m. to 5 p.m.

Place: National Science Foundation, Room 380, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Usha Varshney, Program Director, Electronic, Photonics and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Blvd, Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the Electronics, Photonics and Device Technologies program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16788 Filed 6–30–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Intergrative Activities (1193).

Date/Time: July 24, 2000, 8:30 a.m.–5 p.m.

Place: Room 130, 320, 330, 340, 370, and 470, National Science Foundation, 4201 Wilson Blvd., Arlington, VA

Type of Meeting: Closed.

Contact Person: Dr. Caroline Wardle, Information Technology Workforce, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Information Technology Workforce proposals submitted in response to the program announcement (NSF 00–77).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16786 Filed 6–30–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental Program To Stimulate Competitive Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Experimental Program to Stimulate Competitive Research (1198).

Date/Time: August 25, 2000; 8 am–5 pm.

Place: Holiday Inn Arlington at Ballston, 4610 Fairfax, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard J. Anderson, Senior Science Advisor, Experimental Program to Stimulate Competitive Research (EPSCoR), National Science Foundation, Suite 875, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1683.

Purpose of Meeting: To provide advice and recommendations concerning EPSCoR Infrastructure Improvement proposals submitted to the NSF EPSCoR program for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information

concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16784 Filed 6–30–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Amergen Energy Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to AmerGen Energy Company, LLC (the licensee) for operation of the Clinton Power Station (CPS) located in DeWitt County, Illinois.

The proposed amendment would change the leak rate test frequency for the primary containment feedwater penetrations designed to be sealed by the Feedwater Leakage Control System from a specific test interval of 18 months to a frequency based on the performance-based Primary Containment Leakage Rate Testing Program. Additionally, an editorial change was requested to reverse the order of Technical Specification (TS) Surveillance Requirements 3.6.1.3.11 and 3.6.1.3.12. This change was requested because it would group TS 3.6.1.3.12 with other TS having the same applicability and frequency.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change to Technical Specification Surveillance Requirement (SR) 3.6.1.3.12 involves a change in frequency of the combined leakage rate of the primary containment feedwater penetrations that are designed to be sealed by the Feedwater Leakage Control System (FWLCS). Testing performed pursuant to this Surveillance Requirement is not an initiator to any accident previously evaluated. The proposed change does not affect the design, operational characteristics, function or reliability of the FWLCS or the primary containment feedwater penetrations. Further, the change has no impact on plant design or operation, as it is merely a change in the specified frequency for the affected SR. Therefore, the proposed change does not affect any parameters or conditions that may contribute to the initiation of any accidents previously evaluated, and as a result, the probability of initiation of any accident previously evaluated will not be significantly increased.

The proposed change to the specified Frequency for SR 3.6.1.3.12 would permit a longer test interval for this surveillance. An excessively long test interval could result in reduced leak tightness of the feedwater penetrations and, therefore, in reduced effectiveness of the barrier presented by the feedwater penetrations and the FWLCS. However, this potential is precluded by making the SR 3.6.1.3.12 test interval performance based. Such an approach is based on approved industry guidelines reflected in the Primary Containment Leakage Rate Testing Program outlined in Technical Specification 5.5.13. Accordingly, a longer test interval would only be permitted if leak test performance supports the longer interval. It should also be noted that the acceptance criterion for the water-type leak test imposed by SR 3.6.1.3.12 was established on the expected capability of the feedwater penetrations to meet this acceptance criterion. Thus, the proposed change to SR 3.6.1.3.12 will not result in reduced barrier performance of the feedwater penetrations, nor in reduced effectiveness of the FWLCS. These barriers for the prevention or minimization of post-LOCA radioactive release from the containment will not therefore be adversely impacted by the proposed change. The FWLCS and the feedwater penetrations will still be required to be Operable per the Technical Specifications and thus capable of performing their accident mitigation functions assumed in the accident analysis. On this basis, the consequences of any accident previously evaluated are not affected by the proposed change.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences on any accident previously evaluated.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the surveillance Frequency of the combined leakage rate of the primary containment feedwater penetrations that are designed to be sealed by the FWLCS does not involve a change in the design, configuration, or method of operation of the plant. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the method governing normal plant operation. No new accident initiators are introduced as a result of the change in specified surveillance Frequency. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The margin of safety related to the proposed change involves the offsite dose consequences that result from the release of radioactive material from the containment following a design basis accident. This release is effected by leakage through the containment, including the feedwater penetrations sealed by the FWLCS. The proposed change to the Frequency for the leakage rate test for these penetrations does not involve a change to the acceptance criteria for the leakage rate test, nor in the effectiveness of the testing since the test interval for the test will be performance based. That is, an acceptable level of reliability (leak tightness) of the feedwater penetrations will be maintained using the performance-based Primary Containment Leakage Rate Testing Program. On this basis, the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 2, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Kevin P. Gallen, Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 19, 2000 (U–603378), which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 28th day of June, 2000.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–16727 Filed 6–30–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[70–1257]

Consideration of License Amendment Request for the Siemens Power Corporation, and Opportunity for Hearing

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact and opportunity to request a hearing on amendment of materials license SNM–1227, Siemens Power Corporation.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–1227 to authorize constructing, installing, and operating an addition to the Ammonia Recovery Facility at the Siemens Power Corporation facility located in Richland, WA.

Environmental Assessment

1.0 Introduction

1.1 Background

The Nuclear Regulatory Commission (NRC) staff has evaluated the environmental impacts of Siemens Power Corporation (SPC) constructing, installing and operating an addition to their Ammonia Recovery Facility (ARF). This Environmental Assessment (EA) has been prepared pursuant to the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and NRC regulations (10 CFR part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The SPC facility at Richland, Washington, is authorized under SNM–1227 and Washington State Materials License No. WN–1062–1 to possess nuclear materials for the conversion of uranium hexafluoride (UF_6) to uranium dioxide (UO_2), and to fabricate and assemble nuclear fuel assemblies for light-water reactors. The SPC operation uses a dry conversion process to convert UF_6 to UO_2 powder. The UO_2 powder is pressed into pellets, which are sintered and then loaded into fuel rods. The fuel rods are placed into storage and are withdrawn as needed and fabricated into fuel assemblies.

Siemens has six lagoons that contain process waste solutions and sediment from past and current manufacturing operations. Under the terms of a consent decree with the State of Washington Department of Ecology (WDOE), the lagoons will be emptied, decommissioned and removed by the year 2006. To meet this requirement and phase out the lagoons, SPC will install new wastewater treatment equipment into a new containment building attached to the existing ARF Building. The new equipment includes four tanks and an ion exchange column.

The addition will be of the same construction as the ARF Building; *i.e.*, a pre-engineered metal structure on a concrete pad. The floor of the addition will be three feet below grade to provide sealed spill containment (1 ½ times the capacity of the largest tank). Three of the four tanks and the ion exchange column will be located inside the building and the fourth tank will be located outside the addition on a concrete pad under an awning.

Tank 1 will be a 5000 gallon tank which will hold the ion exchange regeneration solution, which will eliminate this material from entering Lagoon 3. Tank 2 will be a 7000 gallon tank which will replace Lagoon 2. Tank 2 will receive the low U, high ammonia effluent from the ammonium diuranate line and will be the feed to the ARF process. Tank 5A will be a 12,000 gallon tank to replace Lagoon 5A. It will receive treated effluent from the ARF as well as low-U, low ammonia effluents from other processes. Tank 5A will feed the ion exchange columns whose output feeds the sewer. The carbonate makeup tank will be located under an awning outside the ARF. This tank will replace Lagoon 4 by holding the carbonate solution used to regenerate the ion exchange columns. The second ion exchange column will be added so that while one column is being regenerated, the ion exchange operation can continue.

1.2 Review Scope

In accordance with 10 CFR part 51, this EA serves to (1) present information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fulfill the NRC's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary; and (3) facilitate preparation of an EIS if one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

1.3 Proposed Action

The proposed action is to amend NRC Materials License SNM–1227 to authorize installation and operation of the new equipment in the Ammonia Recovery Facility.

1.4 Need for Proposed Action

Under the terms of the consent decree with the State of Washington, SPC will empty, decommission, and remove their six lagoons by the year 2006. To meet this requirement, SPC will install new wastewater treatment equipment into a new containment building attached to the existing ARF Building. The new equipment will include two new waste tanks, two tanks for the regeneration of existing final ion exchange columns, and a new ion exchange column. The new waste tanks will replace the lagoons, thereby eliminating the concern of any possible leaks or emissions to the environment from the lagoons.

1.5 Alternatives

The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Deny the amendment request.

2.0 Affected Environment

The following sections contain a summary of the affected environment at and near the SPC site. A full description of the site and its characteristics is given in the 1995 Environmental Assessment for the Renewal of the NRC license for SPC.

2.1 Location and Land Use

The Siemens Power Corporation (SPC) facility is located on a 131-hectare site just inside the northern boundary of the City of Richland in Benton County, Washington. The site consists of 36 buildings plus various outside facilities. The uranium handling and processing facilities are located within a restricted 21.5-hectare area. The facility is located within a 2,470-hectare land parcel known as the Horn Rapids Triangle, which was part of the U.S. Department of Energy's (DOE) Hanford Site until 1967 when it was annexed to the City of Richland. The Horn Rapids Triangle is bounded to the north by Horn Rapids Road, to the south by the Horn Rapids Irrigation Ditch, to the east by the DOE1100 Area, and on the southeast by the Port of Benton Skypark and Richland Airport. Most developed land within a 16 kilometer radius of the site is used for agriculture, light industry, or residences.

2.2 Geology, Soils, and Seismicity

The site region is characterized as a semi-arid desert of generally flat terrain except for wind formed ridges from 1.5 to 9 meters high. The site is located

between the Columbia and Yakima Rivers at an elevation of 114 meters above mean sea level (MSL). At their closest points, the nominal elevations of the Columbia and Yakima Rivers are approximately 107 and 113 meters above mean sea level, respectively. Basalt flows more than 3,000 meters thick underlie the Pasco basin. Unconsolidated silts, sands, and gravels of the Ringold and Hanford Formations, totaling tens to hundreds of feet in thickness, overlie the basalts. The depth to basalt below the SPC site has not been determined.

The distribution and intensity of historical earthquakes indicate that the Columbia Plateau is an area of moderate seismicity. Seismic activity above magnitude 3.0 on the Richter scale has occurred in this region, but activity above magnitude 3.5 is most commonly found around the northern and western portions of the Columbia Plateau, with a few events occurring along the border between Washington and Oregon.

2.3 Water Resources

Surface Water: Primary surface water features associated with the SPC site are the Columbia and Yakima rivers. The confluence of the Yakima and Columbia rivers is located about 5 kilometers south of Richland and about 8 kilometers south of the SPC site. The Columbia River in the vicinity of the site is classified as Class A (excellent) which requires that industrial uses of this water be compatible with other uses including drinking water, wildlife, and recreation. The water is used for irrigation, power generation, municipal water supplies, transportation, fishing, and water sports. The primary source for water in Richland and at the SPC site is from the Columbia River. There is no storm water runoff from the facility to water bodies, rivers, streams or the municipal sewer system. Surface water runoff from the plant is very limited because of the desert environment and percolation into the soil.

Ground Water: There are three distinct aquifer systems that underlie the SPC site. The deepest aquifer consists of highly productive water-bearing zones within thick basalt flows. A confined aquifer occurs in silt, gravel and sand layers in the lower portion of the Ringold Formation which overlies the basalt. An unconfined aquifer system, consisting of the sands and gravels in the Hanford Formation and in the upper portion of the Ringold Formation, is the shallowest aquifer and the one that is monitored by the SPC site.

2.4 Meteorology and Air Quality

The SPC site region has a dry, continental climate with large temperature variations between winter and summer caused by mountain ranges to the west and the orientation of the Rocky Mountains. The prevailing wind on the site is from the southwest. Severe weather in the area consists of wind, thunderstorms, and occasionally a tornado.

Air quality at the site is good—within the air quality standards set by EPA and the State of Washington.

3.0 Effluent Releases and Monitoring

3.1 Monitoring Program

Monitoring programs at the SPC facility comprise effluent monitoring of air and water and environmental monitoring of various media (air, soil, vegetation, and groundwater). This program provides a basis for evaluation of public health and safety impacts, for establishing compliance with environmental regulations, and for development of mitigation measures if necessary. The proposed activities will be monitored using current monitoring equipment located in the ARF. The tanks will be equipped with alarmed, electronic level detectors and alarmed leak detectors. No near-term changes are planned in the effluent and/or environmental monitoring programs currently committed to in License SNM–1227. Effluents from the new tanks will enter the sewer and will continue to be subject to the same NRC and State of Washington radiological and chemical release limits regardless of whether the effluents are managed via the lagoons or in tanks. In the long-term, close-out of the lagoon system will relieve SPC of its need to conduct inter-liner lagoon sampling and may also decrease lagoon-related groundwater monitoring requirements.

3.2 Effluents

Gaseous, liquid, and solid wastes are produced at the SPC site. These wastes are categorized as low-level radioactive, nonradioactive, hazardous, or mixed wastes. A description of each of these waste categories, control strategies, and an estimate of release quantities is provided in the 1995 Environmental Assessment for the Renewal of the NRC license for SPC.

Each of the effluent streams is monitored at or just prior to the point of release. SPC has a set of action levels for both gaseous and liquid effluent streams. Results from the radiological effluent monitoring program are reviewed quarterly by the plant's As Low As Reasonably Achievable (ALARA) Committee and reported annually to the Siemens Health and Safety Council to determine trends in effluent releases; to determine if effluent controls are being properly used, maintained and inspected; and to determine if effluents could be reduced using the ALARA concept. Results from the monitoring program are also reported in the semiannual effluent reports submitted to the NRC. Impacts on effluent releases resulting from the proposed activities are described below.

3.2.1 Solid Wastes

The amendment request is expected to eventually decease the solid wastes released from the site. The operation of a closed tank system will generate fewer solids wastes than operation of a large open lagoon system due to the generation of contaminated sediments and soils in a lagoon system.

3.2.2 Air Effluents

The release of air effluents is expected to increase minimally and remain within applicable regulatory limits. These additional effluents will be the same composition as what is currently emitted from the ARF. The ARF Feed Collection tank is vented to the existing ARF process feed tank to contain ammonia fumes. The ion exchange feed tank and the ion exchange regeneration tank will be vented to the existing ARF exhaust and stack for the control of low level ammonia releases.

3.2.3 Liquid Effluents

The proposed activity is not expected to impact the quantity or radioactivity of liquid effluents released to the sewer. Essentially the same waste streams will be processed through low residence time tanks as opposed to the longer residence time lagoon system.

4.0 Environmental Impacts of Proposed Action and Alternatives

4.1 Public and Occupational Health

The risk to human health was evaluated as a result of construction, installation, and operation of the new equipment in the new containment building. Personnel are expected to enter the new containment building on an as needed basis rather than working there full time. The licensee's existing radiation protection and environmental programs, as described in their license application, will be used to control the radiation exposures of the licensee's workers and the public. The licensee's existing radiation protection and environmental programs include training, protective clothing, air sampling, surface contamination surveys, bioassays, waste management,

monitoring of effluents, environmental monitoring, etc. In addition, the programs include action levels and actions to be taken to minimize the radiation exposures of workers and the public. Since the radioactive material will be contained in tanks and will be in low concentrations, the exposures to workers and the public are expected to result in no significant increase in worker or public exposure. Thus, the NRC staff has determined that the licensee's existing radiation protection and environmental programs are adequate for the new operations in the new containment building.

4.2 Water Resources

The NRC staff has determined that the proposed amendment will not impact the quality of nearby surface waters.

The tanks will eliminate the concern of any possible leaks or emissions to the environment from the lagoons. Contamination of groundwater is expected to decrease as a result of the phase-out of the lagoons. The tanks will be double-contained and will be monitored for leaks. The design of the building provides for spill containment.

4.3 Air Quality

The construction, installation and operation of the new equipment is expected to have a minimal impact on the air quality on and near the site. Construction activities will be minimal with no major soil disruption. No new stack monitoring will be required because the current monitoring system will be used. The slight increase in air effluents will remain within applicable regulatory limits.

4.4 Demography, Biota, Cultural and Historic Resources

The NRC staff has determined that the proposed amendment will not impact demography, biota, or cultural or historic resources. The proposed construction will occur on an area of the site which has been previously evaluated for these concerns and has been previously impacted by actions at the site (1996 EA).

4.5 Alternatives

The action that the NRC is considering is approval of an amendment request to a Materials License issued pursuant to 10 CFR part 70. The amendment would approve the construction, installation and operation of new equipment in the ARF building. The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant denial of the license amendment. There are no significant environmental impacts associated with the proposed action, and therefore alternatives with equal or greater impacts need not be evaluated. In addition, the approval of the amendment request will decrease the impacts to the groundwater as operation of the tanks pose less of a threat of leaks into the groundwater than operation of lagoons. The staff considers that Alternative 1 is the appropriate alternative for selection.

5.0 Agencies and Persons Contacted

The NRC staff contacted representatives from the State of Washington Department of Health and the State of Washington Department of Ecology. The City of Richland, Development and Permit Services Division completed a State Environmental Policy Act (SEPA) Checklist and issued a Determination of Nonsignificance dated June 11, 1999. The conclusion of the review was that the proposed activities would not have a probable significant adverse impact on the environment.

6.0 References

Siemens Power Corporation(SPC), 1999, Letter from J.B. Edgar to NRC dated July 21, 1999.

SPC, 1999, Letter from J.B. Edgar to NRC dated November 18, 1999.

U.S. Nuclear Regulatory Commission (NRC), June 1995, "Environmental Assessment for Renewal of Special Nuclear Material License SNM–1227."

7.0 Conclusions

Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**. The NRC staff considered the environmental consequences of constructing, installing and operating new equipment in the ARF building and determined that these activities will have no significant effect on public health and safety or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License SNM–1227. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, the Commission is making a Finding of No Significant Impact.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Based on the Environmental Assessment and Finding of No Significant Impact, and a staff safety evaluation to be completed, NRC is preparing to amend License SNM–1227. The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or
2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in section 2.1205(h).
3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for a hearing is timely in accordance with section 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Siemens Power Corporation, 2101 Horn Rapids Road, Richland, WA 99352–0130; and

2. The NRC staff, by delivering it to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The NRC contact for this licensing action is Dan E. Martin. Dan E. Martin may be contacted at (301) 415–7254 or by e-mail at dem1@nrc.gov for more information about this licensing action.

Dated at Rockville, Maryland, this 22nd day of June 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–16728 Filed 6–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–2]

Virginia Electric and Power Company; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Amendment To Revise Technical Specifications of License No. SNM–2501

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an amendment, pursuant to 10 CFR 72.56, to the Special Nuclear Materials License No. 2501 (SNM–2501) held by Virginia Electric and Power Company (Virginia Power) for the Surry independent spent fuel storage installation (ISFSI). The requested amendment would revise the Technical Specifications of SNM–2501 to specifically permit the continued storage of burnable poison rod assemblies (BPRA) and thimble plug devices (TPD) within the CASTOR V/21, NAC I28, and Westinghouse MC–10 casks used at the Surry ISFSI.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated April 5, 1999, as supplemented on February 29, 2000, Virginia Power requested an amendment to revise the Technical Specifications of SNM–2501 for the Surry ISFSI. The changes would specifically permit the continued storage of BPRAs and/or TPDs within the CASTOR V/21, NAC I28, and Westinghouse MC–10 dry storage casks used at the Surry ISFSI.

Need for the Proposed Action: The proposed action will eliminate the need to physically remove BPRAs and TPDs from irradiated fuel assemblies in order for dry cask storage to continue under the present technical specifications of the license.

Environmental Impacts of the Proposed Action: The NRC has completed its evaluation of the proposed action and concludes that granting the request for an amendment to specifically allow the continued storage of BPRAs and TPDs within the CASTOR V/21, NAC I28, and Westinghouse MC–10 casks used at the Surry ISFSI will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released off site. With regard to radiological impacts, the addition of irradiated BPRAs and TPDs only affects the gamma source term of the cask. For this amendment, Virginia Power's calculated increase in surface dose rate resulting from the added BPRAs and TPDs remains within the bounds of the currently approved dose rate limit and, consequently, results in no significant increase in occupational or public radiation exposure. Additionally, the applicant made physical dose rate measurements of casks currently loaded with BPRAs and TPDs, and they are less than the calculated dose rates. The measured increase in the surface dose rate remains within the bounds of the currently approved dose rate limit. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

The amendment only affects the requirements associated with the content of the casks and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: The alternative to the proposed action would be to deny the request for an amendment (i.e., the "no-action" alternative). Denial of the proposed action would result in the need to physically remove BPRAs and TPDs from each fuel assembly possessing them prior to continuing dry cask storage. Physical removal of irradiated BPRAs and TPDs would increase the exposure time and dose to the plant workers. In addition, it would require disposal or storage of additional radioactive material (*i.e.*, BPRAs and TPDs) that would otherwise be safely stored if the BPRAs and TPDs are left intact with their irradiated fuel assembly. The environmental impacts of the alternative action are greater than the proposed action.

Given that there are greater environmental impacts associated with the alternative action of denying the approval for an amendment, the Commission concludes that the preferred alternative is to grant this amendment.

Agencies and Persons Consulted: On September 27, 1999, Mr. Les Foldese of the Virginia Department of Health, Bureau of Radiological Health, was contacted in regard to the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an amendment to permit the continued storage of BPRAs and TPDs within the CASTOR V/21, NAC I28, and Westinghouse MC–10 casks used at the Surry ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the amendment application dated April 5, 1999, as supplemented on February 29, 2000. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 26th day of June 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–16730 Filed 6–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–00001; License No. 24–04206–01; EA–00–143]

Mallinckrodt, Inc., St Louis, Missouri; Confirmatory Order Modifying License

I

Mallinckrodt, Inc. (Mallinckrodt), is the holder of NRC License No. 24–04206–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes Mallinckrodt to use byproduct materials in manufacturing, processing and packaging of radiopharmaceuticals and radiochemicals for distribution to holders of a specific license issued by the Commission or an Agreement State. The license also authorizes Mallinckrodt to use byproduct material for research and development of radiopharmaceuticals. The license was issued on October 8, 1958, was most recently amended on March 27, 1998, and is currently in the renewal process.

II

On April 13, 2000, Mallinckrodt identified a potential extremity exposure in excess of regulatory limits to an individual working on the molybdenum/technetium generator manufacturing line and immediately notified the NRC of the incident. The NRC initiated a special inspection on April 14, 2000, to review the circumstances, and root and contributing causes of the event. On April 28, 2000, Mallinckrodt identified additional potential exposures in excess of regulatory limits involving additional processing areas. Based on the additional potential exposures and the complexity of the processes, the NRC expanded the special inspection to an Augmented Inspection Team (AIT). The AIT inspected Mallinckrodt between May 4 and May 26, 2000.

Based upon the AIT results, the NRC concluded that programmatic deficiencies exist in Mallinckrodt's ability to conduct: (1) Comprehensive assessments of its radiation protection program; (2) accurate root cause determinations for deficiencies identified through its problem identification program; and, (3) radiological evaluations of manufacturing processes. The results of these deficiencies included the failure to identify that significant differences existed in dose rates between fingertips and extremity monitoring devices when handling unshielded containers of radioactive material, the identification that operating procedures did not reflect actual work practices, and that supervisors overseeing laboratory activities did not recognize the potential radiological consequences of work habits in their area. The NRC is concerned that inadequate controls over the safe use of licensed material continue to exist. NRC concerns along with various remedial and corrective actions, designed to improve Mallinckrodt's radiation safety program, were discussed with Mallinckrodt during a telephone call between members of NRC and Mallinckrodt staff on June 8, 2000. By letter dated June 9, 2000, NRC proposed conditions that could be taken to identify and correct the licensee's programmatic weaknesses. By letter dated June 16, 2000, Mallinckrodt agreed to implement the proposed conditions with minor modifications. These modifications have been incorporated into this Order.

III

By letter dated June 16, 2000, Mallinckrodt has agreed to:

(1) Retain an independent organization to assess the radiation safety program and the radiation safety aspects of its radioactive material manufacturing processes;

(2) Provide written assurance that workers have received training and understand procedures and practices in place to maintain radiation exposures as low as is reasonably achievable;

(3) Develop a plan to review operations for the last five years to determine if any individuals have received exposures in excess of regulatory limits; and,

(4) Request an amendment to its license incorporating a program that will identify and correct deficiencies associated with radiation safety.

On June 16, 2000, Mallinckrodt consented to issuance of this Order with the commitments, as described in Section IV below. Mallinckrodt further agreed in its June 16, 2000, letter that this Order is to be effective upon issuance and has waived its right to a hearing. Implementation of these commitments will provide enhanced assurance that sufficient attention will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that Mallinckrodt's commitments as set forth in Section IV are acceptable and necessary. Further, I conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mallinckrodt's commitments be confirmed by this Order. Based on the above and Mallinckrodt's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, *It Is Hereby Ordered, Effective Immediately, That License No. 24–04206–01 Is Modified As Follows:*

A. Mallinckrodt shall retain the services of one or more independent individuals or organizations capable of evaluating radiation safety program implementation and manufacturing processes associated with radioactive materials at large facilities to perform the following:

1. An assessment of Mallinckrodt's radiation protection program. At a minimum the assessment shall include:

a. Roles and responsibilities of the Radiation Safety Office and Officer;

b. Effectiveness of Mallinckrodt's Radiation Safety and Dose Reduction Committees;

c. Current radiation protection organization staffing levels to determine if sufficient resources are available to support plant operations;

d. Effectiveness of the occupational exposure monitoring program (deep-dose equivalent; shallow dose equivalent, whole body and maximum extremity; and committed effective dose equivalent) to assure that all recorded exposures (*e.g.*, finger and hand exposures) are representative of maximum exposures received;

e. Effectiveness of Mallinckrodt in resolving previous radiation protection issues; and

f. Effectiveness of Mallinckrodt's radiation safety training program, including on the job training for radiation workers.

2. A radiation safety assessment of Mallinckrodt's radioactive materials manufacturing processes. At a minimum the assessment shall include:

a. The radiation safety practices and related engineering controls associated with Mallinckrodt's processes involving radioactive materials;

b. Adequacy of and adherence to Standard Operating Procedures affecting radiation safety; and

c. The process that Mallinckrodt uses for evaluating radiation safety issues associated with new and modified product lines involving radioactive materials.

Mallinckrodt shall inform NRC Region III of the individual(s) or

organization(s) hired for each of these assessments. These notifications shall be made within seven days of the date of this Order, and include the audit plan. Each assessment shall be completed within 60 days of the date of this Order. Within 90 days of the date of this Order, Mallinckrodt shall ensure that the individual(s) or organization(s) conducting each assessment submit to Mallinckrodt and NRC Region III, at the same time, the results of each assessment, including the deficiencies identified.

Mallinckrodt shall evaluate the root causes and develop corrective actions associated with any identified findings and submit to NRC Region III the schedules to implement those corrective actions. Mallinckrodt shall provide to NRC Region III the radiation protection program assessment corrective actions within 150 days of the date of this Order. Mallinckrodt shall provide to NRC Region III the corrective actions to the radiation safety assessment of the radioactive materials manufacturing processes within 180 days of the date of this Order. Should Mallinckrodt disagree with any assessment finding or plan not to initiate any corrective action arising from the assessments, Mallinckrodt must provide a written explanation of the rationale for such disagreement to NRC Region III within the respective 150-day or 180-day period.

B. Mallinckrodt shall provide to NRC Region III, a written statement that all applicable Mallinckrodt workers have been trained and that Mallinckrodt has assessed the effectiveness of the training to ensure workers understand the procedures and practices in place to maintain radiation exposures as-low-as-is-reasonably-achievable. This written assurance shall be submitted to NRC Region III within 15 days of the date of this Order.

C. Mallinckrodt shall develop a plan to review past operations to determine if any individuals could have received radiation exposures in excess of the applicable NRC limits in 10 CFR Part 20. This review shall encompass activities for a period of five years prior to the date of this Order. Mallinckrodt shall provide NRC Region III the plan and implementing schedule within 90 days of the date of this Order. The provisions of this Order do not relieve Mallinckrodt from complying with the reporting requirements in 10 CFR Part 20 should an exposure in excess of regulatory limits be identified during the review.

D. Mallinckrodt shall request an amendment to its license incorporating a program that will identify and correct deficiencies associated with radiation safety. This program shall include, as a minimum, provisions for: (1) Worker identification of radiation related safety issues; (2) prompt notification to management of significant issues; (3) root cause analysis, including associated training for all managers, supervisors, and radiation protection staff involved with performing and reviewing root cause evaluations; and (4) tracking of identified deficiencies. This amendment request shall be submitted to NRC Region III within 180 days of the date of this Order.

The Regional Administrator, Region III, may relax or rescind, in writing, any of the above conditions upon a showing by Mallinckrodt of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Mallinckrodt, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois, and to Mallinckrodt. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 22nd day of June, 2000.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Director, Office of Enforcement.

[FR Doc. 00–16729 Filed 6–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: August 1–2, 2000—Carson City, NV: Discussions of a Total System Performance Assessment for a Potential Yucca Mountain, Nevada, Repository for Spent Nuclear Fuel and High-Level Radioactive Waste; Update on Scientific and Engineering Studies Undertaken at the Yucca Mountain Site; and Update on the DOE's Development of a Safety Strategy for a Potential Yucca Mountain Repository

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, August 1, Wednesday, August 2, the Nuclear Waste Technical Review Board (Board) will meet in Carson City, Nevada, to discuss technical and scientific issues related to evaluating a possible site for a repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada. Among the issues that will be discussed are a total system performance assessment (TSPA), a safety strategy for the potential repository, and scientific and engineering studies being conducted to evaluate the suitability of the Yucca Mountain site. The Board is charged by Congress with reviewing the technical and scientific aspects of the Department of Energy's (DOE) civilian radioactive waste management program, including disposing of, packaging, and transporting the waste.

The Board meeting will be held at Piñon Plaza Resort (Best Western), 2171 Hwy 50 East; Carson City, NV 89701. The telephone number is (775) 885–9000; the fax number is (775)–888–8018. The meeting will start at 8:30 a.m. on both days and will be open to the public.

On Tuesday, August 1, the DOE's Office of Civilian Radioactive Waste Management will present a general overview of the status of the program. The overview will be followed by

presentations by representatives of the State of Nevada, including comments on studies conducted by the state related to materials proposed for use in the waste package. The DOE will present updates on ongoing scientific and engineering studies at the Yucca Mountain site, including results of testing in the exploratory tunnels, isotope studies, and estimating volcanic hazard. In the afternoon, discussions will begin on the TSPA that is used by the DOE to estimate potential repository performance. In particular, the DOE will make presentations on TSPA results, their uncertainties, and the individual components that make up the TSPA. Critical assumptions underlying the models used to estimate the performance of a potential repository also will be discussed.

The presentations on the TSPA will resume on Wednesday, August 2, and will continue until midafternoon, when the DOE will update the Board on the development of the DOE's safety strategy for a potential Yucca Mountain repository, including principal factors affecting repository performance, defense-in-depth, natural analogs, and the vulnerabilities, uses, and limitations of the safety case.

Several opportunities for public comment will be provided: before the lunch break and at the end of the day on August 1 and at the end of the session on August 2. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, the questions will be answered during the meeting.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff, beginning on September 4, 2000.

A block of rooms has been reserved at the Piñon Plaza Resort. Reservations must be made by July 10 to receive the meeting rate. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB, Karyn Severson, External Affairs, 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: June 26, 2000.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 00–16726 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. The FEHB Open Season Express IVR System collects the following information from annuitants and survivors: Retirement Claim Number (CSA or CSF), Personal Identification Number (PIN), FEHB plan code for requesting plan brochures, FEHB plan code for making an enrollment change, and dependent information for self and family enrollments. Annuitants and survivors may request a copy of the FEHB Customer Satisfaction Survey results, cancel or suspend FEHB benefits, request payment directly to OPM where FEHB payment is greater than the monthly annuity amount, or request a change of address through the IVR system.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 75,000 requests will be completed annually. Each request takes approximately 10 minutes to complete. The annual estimated burden is 12,525 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before September 1, 2000.

ADDRESSES: Send or deliver comments to—James K. Freiert, Chief, Retirement Services Division, Retirement and Insurance Service, U.S. Office of Personnel Management 1900 E Street, NW, Room 1312, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–16710 Filed 6–30–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—Thursday, July 6, 2000; Thursday, July 20, 2000; Thursday, August 3, 2000; Thursday, August 17, 2000.

The meeting will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the

Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: June 22, 2000.

John F. Leyden,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 00–16709 Filed 6–30–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension

Rule 17f–1(c), SEC File No. 270–28, OMB Control No. 3235–0032

Rule 17f–1(c) and Form X–17F–1A, SEC File No. 270–29, OMB Control No. 3235–0037

Rules 17h–1T and 17h–2T, SEC File No. 270–359, OMB Control No. 3235–0410

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17f–1(b) requires approximately 1,150 entities in the securities industry to register in the Lost and Stolen Securities Program. Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential database that stores information for the program.

It is estimated that 1,150 entities will register in the Lost and Stolen Securities Program annually. It is also estimated that each respondent will register one time. The staff estimates that the average number of hours necessary to comply with the Rule 17f–1(b) is one-half hour. The total burden is 575 hours annually for respondents, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $28,750.

Rule 17f–1(b) is a reporting rule and does not specify a retention period. The rule requires a one-time registration for reporting institutions. Registering under Rule 17f–1(b) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Lost and Stolen Securities Program. Reporting institutions required to register under Rule 17f–(b) will not be kept confidential, however, the Lost and Stolen Securities Program database will be kept confidential.

Rule 17f–1(c) and Form X–17F–1A requires approximately 23,000 entities in the securities industry to report lost, stolen, missing, or counterfeit securities to a central database. Form X–17F–1A facilitates the accurate reporting and precise and immediate data entry into the central database. Reporting to the central database fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Reporting to the central database also allows reporting institutions to gain access to the database that stores information for the Lost and Stolen Securities Program.

It is estimated that 23,000 reporting institutions will report that securities are either missing, lost, counterfeit, or stolen annually. It is also estimated that each reporting institution will submit this report 56 times each year. The staff estimates that the average amount of time necessary to comply with Rule 17f–1(c) and Form X–17F–1A is five minutes. The total burden is 107,333 hours annually for respondents, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $5,366,666.

Rule 17f–1(c) is a reporting rule and does not specify a retention period. The rule requires an incident-based reporting requirement by the reporting institutions when securities are discovered missing, lost, counterfeit, or stolen. Registering under Rule 17f–1(c) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Lost and Stolen Securities Program. Reporting institutions required to register under Rule 17f–1(c) will not be kept confidential, however, the Lost and Stolen Securities Program database will be kept confidential.

Rule 17h–1T requires a broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires a broker-dealer to file with the Commission quarterly reports and a cumulative year-end report concerning the information required to be maintained and preserved under Rule 17h–1T.

The collection of information required by Rules 17h–1T and 17h–2T are necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities are reasonably likely to have a material impact on the financial and operational condition of the broker-dealer. Without this information, the Commission would be unable to asses the potentially damaging impact of the affiliate's activities on the broker-dealer.

There are currently 215 respondents that must comply with Rules 17h–1T and 17h–2T. Each of these 215 respondents require approximately 10 hours per year, or 2.5 hours per quarter,

to maintain the records required under Rule 17h–1T, for an aggregate annual burden of 2,150 hours (215 respondents × 10 hours). In addition, each of these 215 respondents must make five annual response under Rule 17h–2T. These five responses require approximately 14 hours per responder per year, or 3.5 hours per quarter, for an aggregate annual burden of 3,010 hours (215 respondents × 14 hours). In addition, there are approximately seven new respondents per year, which must draft an organizational chart required under Rule 17h–1T and establish a system for complying with the rules. The staff estimates that drafting the required organizational chart requires one hour and establishing a system for complying with the rules requires three hours, thus requiring an aggregate of 28 hours (7 new respondents × 4 hours). The total compliance burden per year is approximately 5,188 burden hours (2,150 + 3,010 + 28).

Rule 17h–1T specifies that the records required to be maintained under the rule must be preserved for a period of not less than three years. There is no specific retention period or record keeping requirement for Rule 17h–2T. The collection of information is mandatory and the information required to be provided to the Commission pursuant to these rules are deemed confidential, notwithstanding any other provision of law under Section 17(h)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(h)(5)) and Section 552(b)(3)(B) of the Freedom of Information Act (15 U.S.C. 552(b)(3)(B)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless its displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Office for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Directive, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: June 26, 2000.

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 00–16742 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:

Form T–6, SEC File No. 270–344, OMB Control No. 3235–0391

Form 11–K, SEC File No. 270–101, OMB Control No. 3235–0082

Form 144, SEC File No. 270–112, OMB Control No. 3235–0101

Regulation S–B, SEC File No. 270–370, OMB Control No. 3235–0417

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form T–6 is a statement of eligibility and qualification for a foreign corporate trustee under the Trust Indenture Act of 1939. Form T–6 provides the basis for determining if a trustee is qualified. Form T–6 is filed on occasion and the information required is mandatory. All information is provided to the public upon request. Form T–6 takes approximately 17 burden hours to prepare and is filed by 15 respondents. It is estimated that 25% of the 255 total burden hours (64 hours) would be prepared by the filer.

Form 11–K is the annual report designed for use by employee stock purchase, savings and similar plans to facilitate their compliance with the reporting requirement. Form 11–K is necessary to provide employees with information, including financial information, with respect to the investment vehicle or plan itself. Form 11–K provides the employees with the necessary information to assess the performance of the investment vehicle in which their money is invested. Form 11–K is filed on occasion and the information required is mandatory. All information is provided to the public upon request. Form 11–K takes approximately 30 burden hours to prepare and is filed by 774 respondents for a total of 23,220 annual burden hours.

Form 144 is used to report the sale of securities during any three month period that exceeds 500 shares or other units or has an aggregate sales price in excess of $10,000. The information requested is mandatory. Form 144 operates in conjunction with Rule 144. If the information collection was not required, the objectives of the rule could be frustrated. All information is provided to the public upon request. Form 144 takes 2 burden hours to prepare and is filed by 18,096 respondents for a total of 36,192 annual burden hours.

Regulation S–B provides an integrated disclosure system for small business issuers that file registration statements under the Securities Act of 1933 and reports under the Securities Exchange Act of 1934. The information requested is mandatory. The information collected is intended to ensure the adequacy of information available to investors in the registration of securities. All information is provided to the public upon request. Regulation S–B takes approximately one burden hour to review and is filed by one respondent for a total of one annual burden hour. The one hour associated with Regulation S–B is strictly an administrative reporting burden.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 26, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16743 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24547 812–12022]

Evergreen Equity Trust, et al.; Notice of Application

June 27, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the

"Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of open-end management investment companies to acquire all of the assets and certain stated liabilities of certain other series of the investment companies. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Evergreen Equity Trust, Evergreen Fixed Income Trust, Evergreen Select Fixed Income Trust, and Evergreen Select Equity Trust (collectively, the "Evergreen Funds") and First Union National Bank ("FUNB").

FILING DATE: The application was filed on March 14, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 20, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. FUNB, 201 S. College Street, Charlotte, NC 28288; Evergreen Funds, 200 Berkeley Street, Boston, MA 02116–9000.

FOR FURTHER INFORMATION CONTACT: Sara P. Crovitz, Senior Counsel, at (202) 942–0667 or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102, (202) 942–8090.

Applicant's Representations

1. The Evergreen Funds, each a Delaware business trust, are registered under the Act as open-end management investment companies. Evergreen Equity Trust has twenty-three series. Six of these series, the Evergreen Stock Selector Fund ("Stock Selector"), Evergreen Small Cap Value Fund ("Small Cap Value"), Evergreen Equity Income Fund ("Equity Income"), Evergreen Income and Growth Fund ("Income and Growth"), Evergreen Capital Balanced Fund ("Capital Balanced"), and Evergreen Foundation Fund ("Foundation"), are involved in the proposed transactions. Evergreen Fixed Income Trust has nine series. Three of these series, Evergreen High Income Fund ("High Income"), Evergreen High Yield Bond Fund ("High Yield Bond"), and Evergreen Capital Preservation and Income Fund ("Capital Preservation and Income"), are involved in the proposed transactions. Evergreen Select Fixed Income Trust has ten series. One of its series, Evergreen Select Adjustable Rate Fund ("Adjustable Rate"), is involved in the proposed transactions. Evergreen Select Equity Trust has twelve series. Five of these series, Evergreen Select Large Cap Blend Fund ("Large Cap Blend"), Evergreen Select Small Company Value Fund ("Small Company Value"), Evergreen Select Social Principles Fund ("Social Principles"), Evergreen Select Special Equity Fund ("Special Equity"), and Evergreen Select Diversified Value Fund ("Diversified Value"), are involved in the proposed transactions.

2. Large Cap Blend, Small Company Value, Social Principles, Diversified Value, Equity Income, Capital Balanced, High Income, and Capital Preservation and Income are the "Acquired Series." Stock Selector, Small Cap Value, Special Equity, Income and Growth, Foundation, High Yield Bond, and Adjustable Rate are the "Acquiring Series." Collectively, the Acquired Series and Acquiring Series are referred to as the "Series."[1]

3. FUNB is a national banking association and a banking subsidiary of First Union Corporation, a publicly held bank holding company. First Capital Group ("FCG"), a division of FUNB, is the investment adviser to Large Cap Blend, Social Principles, and Diversified Value. Evergreen Asset Management Corp. ("EAMC"), an indirect wholly-owned subsidiary of FUNB, is the investment adviser to Small Company Value, Small Cap Value, Income and Growth, and Foundation. Evergreen Investment Management Company ("EIMC"), also an indirect wholly-owned subsidiary of FUNB, is the investment adviser to Equity Income, High Yield Bond, Capital Preservation and Income, and Adjustable Rate. Meridian Investment Company ("Meridian"), also an indirect wholly owned subsidiary of FUNB, is the investment adviser to Stock Selector and Special Equity. Mentor Investment Advisors, LLC ("Mentor"), also an indirect wholly owned subsidiary of FUNB, is the investment adviser to Capital Balanced and High Income. EAMC, EIMC, Meridian, and Mentor are registered under the Investment Advisers Act of 1940 ("Advisers Act"). FCG, as a division of FUNB, is not required to register as an investment adviser under the Advisers Act.

4. FUNB, as fiduciary for its customers, owns of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series. In addition, FUNB, as fiduciary for its customers, owns of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquiring Series.[2] All such shares are held by FUNB in a fiduciary capacity, and FUNB does not have an economic interest in any such shares.

On March 23–24, 2000, the boards of trustees of the Evergreen Funds (the "Boards"), including a majority of the trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act (the "Independent Trustees"), approved plans of reorganization (the "Plans"). Under the Plans, on the closing date (the "Closing Date"), which is currently anticipated to be July 24, 2000, the Acquiring Series will acquire all of the assets and stated liabilities of the corresponding Acquired Series in exchange for shares of the Acquiring Series that have an aggregate net asset value ("NAV") equal to the aggregate NAV of the Acquired Series, calculated as of the close of business on

[1] Each Acquired Series and its corresponding Acquiring Series are as follows: Large Cap Blend and Stock Selector; Small Company Value and Small Cap Value; Social Principles and Special Equity; Diversified Value and Stock Selector; Equity Income and Income and Growth; Capital Balanced and Foundation; High Income and High Yield Bond; and Capital Preservation and Income and Adjustable Rate.

[2] FUNB owns approximately 100% of Large Cap Blend, 84% of Stock Selector, 93% of Small Company Value, 16% of Small Cap Value, 100% of Social Principles, 61% of Special Equity, 51% of Diversified Value, and 6% of Adjustable Rate. Although the proposed transactions between Equity Income and Income and Growth, Capital Balanced and Foundation, and High Income and High Yield Bond do not currently require exemptive relief, applicants are requesting relief in the event that FUNB's ownership as fiduciary increases to 5% or more of either of the respective merging Series' assets prior to the proposed transactions. If FUNB does not acquire such ownership, the respective merging Series will not rely on the requested relief.

the business day next preceding the date on which the fund reorganization will occur (the "Valuation Date"). The net asset value of each Series will be determined in the manner set forth in the Series' current prospectus and statement of additional information. On or as soon as is reasonably practicable after the Closing Date, each Acquired Series will distribute its full and fractional shares of the Acquiring Series pro rata to its shareholders of record, determined as of the close of business on the Valuation Date (the "Reorganizations"). After the distribution of the Acquiring Series' shares and the winding up of its affairs, each Acquired Series will be terminated.

6. Applicants state that the investment objectives of each Acquired Series and its corresponding Acquiring Series are similar. The investment restrictions and limitations of each Acquired Series and its corresponding Acquiring Series are also similar, but in some cases involve differences that reflect the differences in the general investment strategies utilized by the Series. The respective Acquired Series and Acquiring Series offer identical classes of shares, and after the Reorganizations, the shareholders of the Acquired Series and the Acquiring Series will hold shares with the same distribution-related fees as the shares they currently hold. Shareholders of the Acquired Series will not incur any sales charges in connection with the Reorganizations. For purposes of calculating contingent deferred sales charges, shareholders of the Acquired Series will be deemed to have held corresponding shares of the Acquiring Series since the date the shareholders initially purchased the shares of the Acquired Series. FUNB will be responsible for the fees and expenses related to the Reorganizations other than each Acquiring Series' federal and state registration fees.

7. The Board of each Series, including a majority of the Independent Trustees, determined that the Reorganization is in the best interests of each Series and its shareholders, and that the interests of the shareholders will not be diluted by the Reorganizations. In assessing the Plans, the factors considered by the Boards included, among others, (a) the terms and conditions of the Plans; (b) the expense ratios, fees, and expenses of the Acquired Series and Acquiring Series, (c) the fact that FUNB will bear the expenses incurred in connection with the Reorganizations, and (d) the tax-fee nature of the Reorganizations.

8. The Plans are subject to a number of conditions precedent, including that: (a) the Plans shall have been approved by the Boards on behalf of each of the Series and approved by the shareholders of each of the Acquired Series; (b) definitive proxy solicitation materials shall have been filed with the Commission and distributed to shareholders of the Acquired Series; (c) the Series receive an opinion of tax counsel that the Reorganizations will be tax-free for each Series and its shareholders; and (d) applicants receive from the Commission an exemption from section 17(a) of the Act for the Reorganizations. Each Plan may be terminated and the Reorganizations abandoned at any time by mutual consent of the respective Boards of the Series or by either party in case of a breach of the Plan. Applicants agree not to make any material changes to the Plans without prior Commission approval.

9. Proxy solicitation materials have been filed with the Commission and were mailed to shareholders of the Acquired Series on or about May 26, 2000. A special meeting of shareholders is scheduled for July 14, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Acquired Series and Acquiring Series may be deemed affiliated persons and thus the Reorganizations may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that they may not rely on rule 17a–8 in connection with the Reorganizations because the Acquiring Series and Acquired Series may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. FUNB, as fiduciary for its customers, owns of record with power to vote more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series and Acquiring Series. Because of this ownership, each Acquiring Series may be deemed an affiliated person of an affiliated person of each of the Acquired Series for a reason other than having a common investment adviser, common directors, and/or common officers.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that each Board determined that the Reorganization is in the best interests of each Series and its shareholders, and that the interests of existing shareholders will not be diluted as a result of the Reorganizations. Applicants state that the exchange of the Acquired Series' shares for shares of the Acquiring Series will be based on relative NAV.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16744 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42983; File No. SR–NASD–00–27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Amending the Nasdaq By-Laws and Restated Certificate of Incorporation

June 26, 2000.

I. Introduction

On May 11, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Nasdaq By-laws and Restated Certificate of Incorporation. The proposed rule change was published for comment in the **Federal Register** on May 23, 2000.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of Proposal

The purpose of the proposed rule change was to amend Nasdaq's By-Laws and Restated Certificate of Incorporation ("Certificate") in accordance with the Restructuring Plan (the "Restructuring") approved by NASD members on April 14, 2000. The Restructuring involves broadening the ownership in Nasdaq (which is currently 100 percent owned by the NASD) through a two-phase private placement of common stock and warrants to NASD members, Nasdaq issuers, institutional investors and strategic partners. Nasdaq's By-laws and Certificate must be amended in order to reflect the changes to Nasdaq's ownership structure. Therefore, the proposed rule change included the amendments necessary to implement Phase I of the Restructuring.

Eventually, Nasdaq will submit an Application For, and Amendments to Application For, Registration as a National Securities Exchange or Exemption from Registration Pursuant to Section 5 of the Exchange Act to obtain exchange registration. Prior to its registration as a national securities exchange, however, Nasdaq will continue to operate under the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries (the "Delegation Plan"), as approved by the Commission. After exchange registration, Nasdaq will no longer be governed pursuant to the Delegation Plan.

This Order does not address provisions of the existing Nasdaq By-laws Certificate and that remain unchanged, and it limits the discussion to the most significant changes to the corporate documents.

Summary of Significant Amendments

1. Authorized Capital Stock

To carry out the recapitalization of Nasdaq, the total number of shares that Nasdaq is authorized to issue has been increased to 330,000,000, consisting of 30,000,000 shares of preferred stock, par value $.01 per share, and 300,000,000 shares of common stock, par value $0.01 per share. In addition, the Nasdaq Board of Directors ("the Board") is now entitled to issue preferred stock in one or more series, and to fix the powers, preferences, rights, qualifications, limitations, and restrictions of this preferred stock (including, for example, dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, etc). The issuance of preferred stock could have the effect of decreasing the market price of the common stock and could adversely affect the voting and other rights of the holders of common stock.

2. Scaled Voting Provision

The Certificate provides that holders of common stock are entitled to one vote per share on all appropriate matters, except that any person, other than the NASD or any other person approved by the Board prior to the time such person owns more than 5% of the then outstanding shares of common stock will be unable to exercise voting rights in respect of any shares owned in excess of 5%.[4] Exemptions from this scaled voting provision can be granted by the Board. The Certificate, however, provides that in no event shall an exemption from the scaled voting provision be granted to (1) a registered broker or dealer, or an affiliate[5] thereof, or (2) an individual or entity subject to statutory disqualification under Section 3(a)(39) of the Act. The Board may approve an exemption from the scaled voting provision if the Board determines that granting the exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, the Nasdaq Stock Market or other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

3. Board of Directors

The Certificate provides for a "classified" or "staggered" Board; that is, the Board will be divided into three classes, with one class to be elected each year to serve a three-year term. The By-laws also create a Chief Executive Officer ("CEO"), who shall have general supervision over the business and affairs of Nasdaq. The By-laws preserve the existing Industry, Non-Industry and Public classifications for Board Directors, and provide that the newly created CEO and President are deemed "neutral" directors for classification purposes.

The Certificate provides that the exact number of directors is to be determined by the Board from time to time. The By-laws require that the number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, must equal or exceed the number of Industry Directors, plus the President and CEO (if they are elected Directors), unless the Board consists of 10 or more Directors. If the Board consists of 10 or more Directors, then at least two Directors shall be issuer representatives. The By-laws provide that at least two Industry Directors and two Non-Industry Directors shall be drawn from candidates proposed to the National Nominating Committee by a majority of the non-NASD stockholders of Nasdaq.[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42790 (May 16, 2000), 65 FR 33384.

[4] This restriction on voting shares owned in excess of 5% is referred to as the "scaled voting provision."

[5] The Certificate provides that an affiliate "shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity." For purposes of this order, references to a broker or dealer will include affiliates, as defined in the By-laws or Certificate.

[6] As previously noted, Nasdaq currently operates under the Delegation Plan which authorizes NASD to elect the Board. Vacancies on the Board are filled by candidates put forward by the NASD's National Nominating Committee ("NNC"). The Board is currently authorized to consist of 10 members. Prior to Exchange registration, it is contemplated that the Board will be increased from 10 voting members to 14. These four new members of the Board will not be current members of the NASD Board of Directors, nor will they be able to serve

The By-laws also authorize the Nasdaq Board, rather than the NASD Board, to fill vacancies on the Nasdaq Board.

Under the Delegation Plan, all stockholders have the right to recommend one or more candidates for consideration by the NNC for nomination to the Board by providing written notice to the Corporate Secretary, containing specified information relating to the candidate (the candidate's name, industry classification, etc.).[7]

4. Removal of Directors and Committee Members

Directors previously could be removed with or without cause. The By-laws and Certificate now provide that Directors may only be removed for cause by an affirmative vote of a supermajority of outstanding shares entitled to vote. Removal of committee members still requires a majority vote of the Board and notice to the committee member, but the provision that committee members may only be removed for refusal, failure, neglect, or inability to discharge the committee member's duties is eliminated.

5. Annual and Special Meetings of Stockholders, and Stockholder Action

Because there will be multiple owners of Nasdaq, the By-laws now provide detailed procedures for the calling and conduct of annual and special meetings of shareholders. The Certificate provides that stockholders are not entitled to act by written consent in lieu of a meeting.

6. Notice Requirements for Stockholder Proposals and Stockholder Nominated Directors

The By-laws allow stockholders to bring business before an annual and special meeting of stockholders, and to nominate candidates for election as directors at an annual meeting of stockholders, provided they comply with the procedures outlined in the By-laws.

7. Amendments to the By-Laws

The By-laws and Certificate state that By-law amendments may be made by a supermajority vote of the shareholders or by the Board. In addition, the Certificate requires a supermajority vote of the outstanding shares of common stock to amend, repeal or adopt certain provisions of the Certificate including, but not limited to, limitations on voting rights of certain persons, the classified Board, removal of Directors, and prohibitions on stockholder action by written consent.

8. Certificate, Article Eleventh—"Constituency Provision" Relating to Certain Corporate Transactions

A new provision, Article Eleventh of the Certificate, sets forth factors that the Board must consider when evaluating the merits of certain major corporate transactions such as tender or exchange offers, mergers, liquidations, any action relating to the voting cap, or other issues, due to the unique nature of Nasdaq and its operations and status as a self-regulatory organization.[8] Article Eleventh requires that the Board shall to the fullest extent permitted by applicable law, take into account the following factors when evaluating a major corporate transaction: (1) The potential impact on the integrity, continuity and stability of The Nasdaq Stock Market and the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) whether such ■ transaction would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, or assist in the removal of impediments to, or perfection of the mechanisms for, a free and open market and a national market system.

9. Other Changes to Conform the By-Laws and Certificate to Nasdaq's New Corporate Form

Other changes to the By-laws and Certificate are made to reflect Nasdaq's new ownership structure and to institute procedures necessary for Nasdaq to operate as a corporation. For example, references to "shareholder" have been changed to "shareholders," to reflect the fact that the NASD no longer owns 100% of Nasdaq and that ownership of Nasdaq will now be broadened to a number of entities and individuals. Similarly, provisions have been added relating to waiver of notice of a meeting by a Director, definitions of new terms (*e.g.*, "beneficial owner" and "subsidiary"), and a provision defining the necessary quorum to approve interested party transactions.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. The proposed rule change also fulfills the division of responsibilities as set forth in the Delegation Plan approved by the Commission. Pursuant to the Delegation Plan, NASD has retained the authority "[t]o exercise overall responsibility for ensuring that the Association's statutory and self-regulatory obligations are fulfilled."[9] However, NASD has delegated to Nasdaq the responsibility to operate The Nasdaq Stock Market, including the responsibility to "develop and adopt rules, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.[10] Thus, the Commission looks to NASD as the self-regulatory organization with statutory responsibility to implement and enforce the requirements of the Act, but Nasdaq, as a market owned and controlled by NASD, is required to operate The Nasdaq Stock Market and to provide rules, interpretations, policies, and procedures to carry out the purposes of the Act.[11] In the Discussion section below, the Commission applies this "chain" of regulatory responsibilities in its analysis and findings in support of this approval order.[12]

In light of the above, the Commission believes that the proposed rule change is consistent with the requirements of Section 15A(b)(2), (4) and (6)[13] of the Act. Section 15A(b)(2)[14] requires that the association be so organized and have the capacity to be able to carry out the purpose of the title and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the

concurrently on the NASD Board of Directors. Two of the four new directors will be Industry Directors and the other two will be Non-Industry or Public Directors. Before exchange registration, or until such time that Nasdaq does not otherwise operate under the Delegation Plan, the Board is expected to consist of 14 members, the majority of whom shall be Public or Non-Industry Directors.

[7] If Nasdaq as a national securities exchange, then the procedures for nomination to the Board may differ.

[8] The Commission notes that, by it terms, Article Eleventh is not operative until the Commission approves nasdaq's registration as a national securities exchange.

[9] Section I(B)(1) of the Delegation Plan.

[10] Section III(A)(1)(e) of the Delegation Plan.

[11] NASD, however, is ultimately responsible for ensuring that the Nasdaq's actions fulfill the statutory and self-regulatory obligations as set forth in the Act.

[12] The Commission also notes that the amendments to the By-laws and Certificate begin the process of implementing the corporate governance changes that will be necessary if Nasdaq registers as a national securities exchange.

[13] 15 U.S.C. 78o–3(b)(2), (4) and (6).

[14] 15 U.S.C. 78o–3(b)(2).

Act.[15] Section 15A(b)(4)[16] requires that the rules of an association assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.[17] Section 15A(b)(6)[18] requires, among other things, that the association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.[19]

A. Amendments Incident to the Restructuring and Recapitalization of Nasdaq

The Commission finds that the amendments to Nasdaq's By-laws and Certificate authorizing certain corporate actions and implementing procedures that are necessary to allow Nasdaq to function as a for-profit corporation are consistent with Section 15A(b)(2)[20] of the Act. The Commission believes that the amendments relating to the following subject matters, as described in more detail above, are needed to reflect the recapitalization and restructuring of Nasdaq: the issuance of capital stock (both common and preferred shares); the procedures for calling and conducting annual meetings and special meetings of stockholders; the nomination and election procedures for the Board of Directors; the quorum calculations for interested party transactions; the defined terms; and the procedures for amendments to the By-laws and Certificate. These changes satisfy the requirements set forth in Section 15A(b)(2) that NASD be so organized and have the capacity to carry out the purposes of the Act.

B. Structure and Governance of Nasdaq's Board

Section 15A(b)(4)[21] of the Act requires fair representation of an association's members in the selection of its directors and administration of its affairs, and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer. The NASD, through the Delegation Plan, has the responsibility for ensuring that the Nasdaq Board fulfills the fair representation and public participation requirements.[22] The Commission finds that the proposed structure and composition of the Board fulfills the provisions of Section 15A(b)(4).

The fair representation requirement of Section 15A(b)(4) helps to ensure that no particular constituency is subject to the unfair, unfettered actions of another constituency, and helps to ensure that the NASD, including its Nasdaq subsidiary, is administered in a way that is equitable to NASD members.

In addition, to ensure that the public interest is adequately represented in an association's decision-making process, Section 15A(b)(4) states that an association must provide that one or more of its directors be representatives of issuers and investors. The Commission believes that public directors provide a unique, unbiased perspective that should enhance the ability of a board to address issues in a non-discriminatory fashion.

The Commission finds that the proposed composition of the Board meets the fair representation and public participation criteria as set forth in Section 15A(b)(4) of the Act. The By-laws provide that the number of Non-Industry Directors on the Board, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors, plus the President and CEO (if they are elected Directors), unless the Board consists of 10 or more Directors. If the Board consists of 10 or more Directors, at least two Directors shall be issuer representatives. The Certificate also requires public participation on the Board. This structure ensures that all interests, Industry and Non-Industry, will be adequately represented on the Board. Further, the requirement that the number of Non-Industry Directors equal or exceed the number of Industry Directors, and the requirement of Public Directors helps to ensure that decisions by the Board are not unfairly discriminatory between customers, issuers, brokers, or dealers, and that the protection of investors and the public interest is considered. Therefore, the Commission believes that the Board structure is consistent with the fair representation and public participation requirements of Section 15A(b)(4) of the Act.

C. Scaled Voting, Exemptions From Scaled Voting, and Other Limitations on the Control of Nasdaq

The Commission is concerned that the NASD's self-regulatory obligations may be challenged if a substantial portion of Nasdaq is owned or controlled by a broker or dealer that also trades on Nasdaq. In such a situation, it may be difficult for NASD to carry out its self-regulatory responsibilities if it is required to take action against that broker or dealer. These concerns will be heightened if NASD goes through with its plans to register Nasdaq as a national securities exchange, and sell off additional shares of Nasdaq to investors.

The scaled voting provision is one way of limiting the ability of any entity, particularly a registered broker or dealer, from controlling Nasdaq. However, permitting the Board to lift the voting cap in some cases is necessary to allow Nasdaq flexibility should Nasdaq seek to enter into a business combination in which it would want to use shares of common stock in the transaction. The Certificate therefore provides that the Board may generally lift the voting cap, but that it cannot be lifted for a broker or dealer (or an affiliate of a broker or dealer)[23] or any other individual or entity subject to statutory disqualification as defined in Section 3(a)(39) of the Act. The Board is also required to consider certain factors before lifting the voting cap for any other individual or entity.

The Commission believes that the proposed rule change relating to scaled voting, exemptions from scaled voting, and other limitations affecting the control of Nasdaq fulfill the obligations under Section 15A(b)(2) and (6). The Certificate provides for an absolute bar on a broker, dealer, or statutorily disqualified person, from voting shares owned in excess of 5%. Section 15A(b)(6) requires that rules be in place that prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, facilitate transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The limitation on voting shares owned in excess of 5% satisfies this requirement because it helps to avoid a situation where the integrity of Nasdaq might be compromised if the NASD had to choose between taking action against a broker or dealer that owned, and could vote, a Nasdaq share in excess of 5%,

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[15] Again, through the operation of the Delegation Plan, NASD must be responsible for, and Nasdaq must implement, rules, policies and procedures that are consistent with the Act.

[16] 15 U.S.C. 78o–3(b)(4).

[17] See *supra* note 15.

[18] 15 U.S.C. 78o–3(b)(6).

[19] See *supra* note 15.

[20] 15 US.C. 78o–3(b)(2).

[21] 15 U.S.C. 78o–3(b)(4).

[22] The Delegation Plan also provides that the NASD will appoint Nasdaq's Board. Section I(B)(3) of the Delegation Plan.

[23] See *supra* note 5.

and fulfilling its self-regulatory responsibilities.

The Commission also finds that the current requirement that the Board consider factors relating to the qualifications of any shareholder (other than a broker or dealer or statutorily disqualified person) before lifting the voting cap also helps to address the Commission's concern that Nasdaq not be controlled or substantially influenced by an entity that may promote acts or practices that would be inimical to the purposes of the Act.

Two other provisions also act as a deterrent to a shareholder's ability to effect a rapid change in control of Nasdaq. The classified Board structure ensures that it will take at least two shareholder meetings, instead of one, for majority control of the board to shift. As discussed previously, the Certificate also provides that Directors may only be removed for cause and by a supermajority vote of the shareholders. These provisions, together with the scaled voting provision, help to ensure that control of Nasdaq will be attained only in a measured manner and consistent with the requirements set forth in the Act.

Finally, the Commission notes that as currently stated, a person or entity could own a substantial portion of Nasdaq and yet be limited in its actual control of Nasdaq by virtue of the scaled voting provisions, the classified Board structure, and the limitations on the removal of Directors in the By-laws and Certificate. While these provisions help ameliorate the Commission's concern about the control of Nasdaq, concerns about the ability of an entity—in particularly a broker, dealer or affiliate—to own up to 100 percent of Nasdaq remain. Thus, further action to address the ownership of a substantial portion of Nasdaq by a broker, dealer or affiliate may be warranted if Nasdaq registers as a national securities exchange.

D. Certificate, Article Eleventh ("Constituency Provision")

By its own terms Article Eleventh applies when Nasdaq achieves "status as a self-regulatory organization," and it therefore will become operative only if the Commission approves Nasdaq's anticipated application to register as a national securities exchange. The Commission notes preliminarily, however, that Article Eleventh balances the need to ensure that Nasdaq fulfill the self-regulatory obligations incumbent upon it if it registers as a national securities exchange without unduly hampering Nasdaq's ability to consummate major corporate transactions. Therefore, the Commission finds that new Article Eleventh of the Certificate is consistent with Section 15A(b)(6) of the Act and outlines a legitimate and useful set of criteria that should be considered by the Board if it considers major corporate transactions after exchange registration.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NASD–00–27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16745 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42984; File No. SR–NASD–00–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Cap on ACT Risk Management Charges

June 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq filed the proposed rule change to amend NASD Rule 7010, Systems Services, to establish a cap on the Automation Confirmation Transaction Service ("ACT") risk management charge. Nasdaq has designated this proposal as non-controversial, and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act,[6] to allow the proposal to be both effective and operative immediately upon filing with the Commission. The text of the proposed rule is below. Proposed new language is in italics.

* * * * *

Rule 7010. Systems Services

(g) Automated Confirmation Transaction Service

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction Related Charges:

No change.

Risk Management Charges: $0.035/side and $17.25/month per correspondent firm (*maximum $10,000/month per correspondent firm*)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of pre-negotiated trades completed in Nasdaq, OTC Bulletin

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[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq provided written notice to the Commission on June 8, 2000, that is intended to file this proposal. The Commission agreed to waive the 5-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] 17 CFR 240.19b–4(f)(6)(iii).

Board, and other over-the-counter securities. ACT handles transactions negotiated over the telephone or executed through any of Nasdaq's automated trading services. It also manages post-execution procedures for transactions in exchange-listed securities that are traded off-board in the Third Market. Participation in ACT is mandatory for NASD members that are members of a clearing agency registered with the SEC, that have a clearing arrangement with such a member, or that participate in any of Nasdaq's trading services.

The ACT risk management function allows firms that clear for other firms to establish acceptable levels of credit for their introducing firms. ACT risk management enables clearing firms to monitor buy/sell trading activity of their introducing firms, establish trading thresholds, allow/inhibit large trades, add/delete clearing relationships, and access a real-time database of correspondent trading activity.[7] Clearing firms providing clearing services to correspondent firms are assessed risk management charges of $0.035 per trade and $17.50 per month per correspondent firm. Self-clearing firms do not utilize the ACT risk management function and are not assessed risk management charges.

The ACT service for clearing firms and their executing correspondents, including the risk management function, was implemented in October 1990.[8] The ACT risk management service charge was implemented in November 1990.[9] The original ACT risk management charge was calculated to recoup the development costs for ACT programming efforts as well as costs associated with computer and other hardware purchases to meet the capacity requirements to run the risk management system and to reflect the ongoing costs of operating the risk management function of the ACT system. The per trade portion of the charge was calculated based on trading volume in 1990, which was substantially less than it is at the present. For example, in 1990, Nasdaq National Market ("NNM") securities average 47,000 trades per day; in comparison, NNM securities average 1.26 million trades per day in 1999 (with an average of 1.67 million trades per day in the fourth quarter of 1999). Because the ACT risk management charge is based largely on the number of trades cleared, the expansion in trading volume since 1990 has required some firms to pay increasingly large risk management charges that are disproportionate to the value they receive from ACT, particularly firms that clear for correspondents that execute a large number of trades.

Nasdaq believes that it is appropriate to update the pricing model for ACT risk management charges to reflect current business practices and trading patterns and to ensure that the ACT risk management feature continues to be a valuable, cost-effective service for clearing firms. Nasdaq proposes to revise the ACT service charges and establish a cap of $10,000 on the monthly risk management charge that a clearing firm must pay on behalf of a correspondent firm. Nasdaq will implement the cap retroactive to April 1, 2000.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system, and, in general, to protect investors and the public interest. Nasdaq also believes the proposed rule change is consistent with Section 15A(b)(5) of the Act[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become immediately operative upon filing, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow NASD members to reap the benefits of the cap on ACT risk management charges retroactive to April 1, 2000 immediately, rather than having to wait 30 days before implementing the cap. For these reasons, the Commission finds good cause to waive the 5-day pre-filing requirement, and to designate that the proposal become operative immediately.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[7] *See* NASD Rule 6150, ACT Risk Management Functions.

[8] *See* Securities Exchange Act Release No. 28583 (October 26, 1990), 55 FR 46120 (November 1, 1990)(SR–NASD–89–25). ACT was implemented for self-clearing firms in March 1990. *See* Securities Exchange Act Release No. 27229 (September 8, 1989), 54 FR 38484 (September 18, 1989)(SR–NASD–89–25).

[9] *See* Securities Exchange Act Release No. 28595 (November 5, 1990), 55 FR 47161 (November 9, 1990)(SR–NASD–90–57).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD All submissions should refer to file number SR–NASD–00–35 and should be submitted by July 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 00–16747 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42982; File No. SR–NSCC–00–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Dividend Processing of AT&T Corporation's When-Issued Trades

June 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 23, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is facilitate the processing through NSCC's continuous net settlement ("CNS") system of a dividend declared by AT&T Corp. payable on both its regular way and its when-issued securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to facilitate the processing in NSCC's CNS system of a dividend declared by AT&T Corp. to which firms with both regular way and when-issued positions as of a certain date are entitled. NSCC's procedures for the processing of the dividend are set forth in NSCC's Important Notice dated June 22, 2000, which is attached to this Notice and Order as Exhibit A.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder the particularly with the requirements of Section 17A(b)(3)(F).[4] Section 17A(b)(3)(A)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Allowing the dividend which is payable on both when-issued and regular way securities to be processed in the CNS system should help ensure the dividend will be promptly and accurately cleared and settled.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will facilitate the processing in NSCC's CNS system of a dividend declared by AT&T Corp.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–08 and should be submitted by July 24, 2000.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–00–08) be and hereby is approved.

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Important

June 22, 2000.

To: All Participants

Attention: Managing Partner/Officer, Cashier, Manager Reorganization Department, Data Processing Manager, Manager Dividend Department

Subject: AT&T Corp

On June 15, 2000, the New York Stock Exchange (NYSE) began trading in AT&T Corp When-Issued (CUSIP 001957109 Symbol TWD).

On June 21, 2000, AT&T announced the payment of a quarterly cash dividend to be paid based on the following:

Ex-Dividend June 28, 2000
Record Date June 30, 2000
Payable Date August 1, 2000

The Ex-Dividend will apply to *both* the Regular-Way *and* When-issued securities trades occurring prior to the ex-dividend date.

Dividend processing for regular way trades will occur in accordance with NSCC's current procedures. In order to permit NSCC to process dividend debits and credits for the when-issued trades occurring prior to the ex-dividend date the following procedures will apply:

1. NSCC will carry two (2) separate CUSIP numbers in CNS

CUSIP number 001957109 for trades prior to ex-dividend date

CUSIP number 001957125 for trades on or after ex-dividend date

2. NSCC will calculate a net when-issued position for when-issued trades eligible for the dividend. (CUSIP 001957109) Participants will be debited or credited the appropriate dividend amounts on payable date August 1, 2000 based on the net positions.

For Settlement purposes, all compared When-Issued trades will settle via the Continuous Net Settlement System (CNS). When-Issued trades compared using CUSIP 001957109 will be combined with any regular way positions in AT&T common stock (normal when-issued processing). When-Issued trades compared using CUSIP number 001957125 will be merged into the AT&T CUSIP (001957109) using the CNS Reorg system. These entries will occur on When-Issued Settlement Date and will appear on your CNS Miscellaneous Activity Report as Code 51 Merger.

At the opening of trading on June 28, 2000, The New York Stock Exchange will suspend trading in AT&T Corp When-Issued CUSIP 001957109 (Symbol TWD) and begin trading in AT&T Corp When-Issued CUSIP 001957125 (Symbol TWD). The NYSE will announce the actual Settlement Date once it has been determined. The same settlement date will apply to *both* AT&T When-Issued CUSIPS.

Please refer to the New York Stock Exchange Information Notice dated June 22, 2000 for additional information regarding this security.

Questions regarding this notice can be directed to the Joe Conte, NYSE @ 212–656–5024, Tony Aliberti, NYSE @ 212–656–5034 or the undersigned @ 212–412–8662.

Kevin A. Brennan,

Director, Operations.

[FR Doc. 00–16746 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3352]

Culturally Significant Objects Imported for Exhibition Determinations: "Art and the Empire City"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Art and the Empire City, " imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum, New York, NY from September 11, 2000 through January 7, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: June 22, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–16767 Filed 6–30–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3354]

Culturally Significant Objects Imported for Exhibition Determinations: "Egyptian Art at Eton College: Selections from the Myers Museum"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Egyptian Art at Eton College: Selections from the Myers Museum," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from on or about September 25, 2000 to on or about January 21, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: June 23, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–16769 Filed 6–30–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3353]

Culturally Significant Objects Imported for Exhibition Determinations: "Queen Victoria and Thomas Sully"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of

October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Queen Victoria and Thomas Sully," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum, New York, NY from September 18 to December 31, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: June 19, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–16768 Filed 6–30–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6404]

Petition for Grandfathering of Non-Compliant Equipment: National Railroad Passenger Corp.; Closure of Comment Period; Date and Location of Public Hearing

On October 18, 1999, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for grandfathering approval of non-compliant passenger equipment manufactured by Renfe Talgo of America (Talgo) for use on rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. Notice of receipt of such petition was published in the **Federal Register** on November 2, 1999, at 64 FR 59230. Interested parties were invited to comment on the petition before the end of the comment period (then December 2, 1999).

Through published notice in the **Federal Register**, FRA extended the comment period in this proceeding and explained the reasons therefor. See 65 FR 5723; Feb. 4, 2000. By notice published on February 29, 2000, FRA announced that the comment period in this proceeding would remain open to permit the resolution of issues involving Freedom of Information Act (FOIA) requests for information related to this proceeding. 65 FR 10851. FRA has completed its responses to the FOIA requests, and placed copies of the documents provided to the FOIA requester in the public docket for this proceeding. Accordingly, FRA hereby announces that the comment period in this proceeding will close on August 2, 2000.

FRA also announces that, in accordance with 49 CFR 211.25 and 238.203(h), it has scheduled a public hearing on Amtrak's petition for grandfathering approval of the Talgo passenger trainsets. A public hearing is set for 9:30 a.m. on Friday, July 21, 2000, at the Federal Railroad Administration, 7th floor, conference room 1, 1120 Vermont Avenue, N.W., Washington, D.C. Interested parties are invited to present oral statements at the hearing. The hearing will be an informal one and will be conducted in accordance with FRA's Rules of Practice (49 CFR 211.25) by a representative designated by FRA. The hearing will be a non-adversarial proceeding; therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing.

All written comments concerning this proceeding should be identified with Docket Number FRA–1999–6404 and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. Comments received within 30 days of publication of this notice will be considered by FRA before final action is taken on Amtrak's petition. Comments received after that date will be considered by FRA to the extent practicable.

Amtrak's petition, documents inserted in the docket, and written communications concerning this proceeding are available for examination during regular business hours (9 a.m. to 5 p.m.) at the DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, S.W., Washington, D.C. 20590. Documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*. Documents that cannot be accessed on the Internet, due to limitations on scanning large documents and color documents, are available for inspection and copying at the Federal Railroad Administration, Docket Clerk, 7th floor, 1120 Vermont Avenue, N.W., Washington, D.C.

Issued in Washington, D.C. on June 27, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–16724 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: System Diagram Maps.
OMB Form Number: 2140–0003.
No. of Respondents: 38.
Total Burden Hours: 76.

DATES: Persons wishing to comment on this information collection should submit comments by July 31, 2000.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, Room 705, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Charles L. Renninger, 202 565–1631. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565–1654.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by

statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996 abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board. All railroads are required to keep current system diagram maps on file. These maps designated all lines in a particular railroad's sytem according to various categories. Carriers are obligated to amend these maps as the need to change the caregories of particular lines arose. If no amendment had taken place within a one-yer period, a verified statement to that effect must be filed with the Board. The Board will use this information to facilitate informed decision making. Respondents will be railroads initiating abandonment exemption proceedings.

Dated June 22, 2000.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16705 Filed 6–30–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: Financial Assistance of Railroad Lines.

OMB Form Number: 2140–0003.

No. of Respondents: 11.

Total Burden Hours: 350.

DATES: Persons wishing to comment on this information collection should submit comments by July 31, 2000.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, Room 705, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Charles L. Renninger, 202 565–1631. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565–1654.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996 abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board. The Board needs, in each abandonment exemption proceeding, a detailed map of the rail line, depicting its relation to other rail lines, roads, water routes, and population centers. The Board will use the information concerning the value of the property involved to set the fair market value of the property and conditions of sale or the terms of the subsidy. Interested parties have a statutory right to file offers of financial assistance. The Board has the Congressionally mandated responsibility to handle offers of financial assistance. The consequences of failure to collect data related to offers of financial assistance will be an inability to fullfill responsibilities under 49 U.S.C. 10904.

Dated: June 22, 2000.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16706 Filed 6–30–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: Maps To Be Submitted in Abandonment Exemption Proceedings.

OMB Form Number: 2140–0003

No. of Respondents: 84.

Total Burden Hours: 84.

DATES: Persons wishing to comment on this information collection should submit comments by July 31, 2000.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, Room 705, 1925 K Street, NW, Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Charles L. Renninger, 202 565–1631. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565–1654.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996 abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board. The Board needs, in each abandonment exemption proceeding, a detailed map of the rail line, depicting its relation to other rail lines, roads, water routes, and population centers. The Board will use this information in processing abandonment exemption proceedings. Review of the map often assists in determining the precise location of the rail line, which helps in determining the scope of the transaction or service, and to some degree the impact of the proposed transaction on shippers or receivers on the line.

Dated: June 22, 2000.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16707 Filed 6–30–00; 8:45 am]

BILLING CODE 4915–00–U

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. app. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on August 1, 2000, of the following debt management advisory committee: the Bond Market Association, Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:00 a.m. Eastern time and will be opened to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. app. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. app. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. app. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: June 26, 2000.

Lee Sachs,

Assistant Secretary, Financial Markets.

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Medicare Program; Prospective Payment System for Home Health Agencies; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, and 484

[HCFA–1059–F]

RIN 0938–AJ24

Medicare Program; Prospective Payment System for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes requirements for the new prospective payment system for home health agencies as required by section 4603 of the Balanced Budget Act of 1997, as amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999. The requirements include the implementation of a prospective payment system for home health agencies, consolidated billing requirements, and a number of other related changes. The prospective payment system described in this rule replaces the retrospective reasonable-cost-based system currently used by Medicare for the payment of home health services under Part A and Part B.

EFFECTIVE DATE: These regulations are effective October 1, 2000.

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In addition, because of the many terms to which we refer by abbreviation in this rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL	Activities of Daily Living
BBA	Balanced Budget Act of 1997
BBRA	Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999
COPs	Conditions of participation

DME	Durable medical equipment
FIs	Fiscal intermediaries
FFY	Federal fiscal year
FMR	Focused medical review
FY	Fiscal year
HHA	Home health agency
HIC	Health insurance claim
HHRGs	Home Health Resource Groups
IADL	Instrumental Activities of Daily Living
IPS	Interim payment system
LUPA	Low-utilization payment adjustment
MS	Medical social services
MSA	Metropolitan Statistical Area
NCSB	Neurological, cognitive, sensory, and behavioral variables
OASIS	Outcome and Assessment Information Set
OBQI	Outcome based quality improvement
OCESAA	Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999
OSCAR	On-line Survey and Certification System
OT	Occupational therapy
PEP	Partial episode payment
PPS	Prospective payment system
PT	Physical therapy
RHHI	Regional Home Health Intermediary
RUGs	Resource Utilization Groups
SCIC	Significant Change in Condition
SN	Skilled nursing service
SP	Speech-language pathology

I. Background

A. Current System for Payment of Home Health Agencies

The Balanced Budget Act of 1997 (BBA), Public Law 105 33, enacted on August 5, 1997, significantly changed the way we pay for Medicare home health services. Until the implementation of a home health prospective payment system (PPS), home health agencies (HHAs) receive payment under a cost-based reimbursement system, referred to as the interim payment system and generally established by section 4602 of the BBA. The interim payment system imposes two sets of cost limits for HHAs. Section 4206(a) of the BBA reduced the home health per-visit cost limits from 112 percent of the mean labor-related and nonlabor-related, per-visit costs for freestanding agencies to 105 percent of the median. In addition, HHA costs are subjected to an aggregate per-beneficiary cost limitation. For those providers with a 12-month cost reporting period ending in Federal fiscal year (FFY) 1994, the per-beneficiary cost limitation is based on a blend of costs (75 percent on 98 percent of the agency-specific costs and 25 percent on 98 percent of the standardized regional average of the costs for the agency's census region). For new providers and those providers without a 12-month cost-reporting period ending in FFY 1994, the per-beneficiary limitation is the national median of the per-beneficiary limits for HHAs. Under the interim payment system, HHAs are paid the lesser of (1) actual reasonable costs; (2) the per-visit limits; or (3) the per-beneficiary limits. Effective October 1, 1997, the interim payment system exists until prospective payment for HHAs is implemented.

On October 21, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (OCESAA), Public Law 105–277, was signed into law. Section 5101 of OCESAA amended section 1861(v)(1)(L) of the Social Security Act (the Act) by providing for adjustments to the per-beneficiary and per-visit limitations for cost-reporting periods beginning on or after October 1, 1998. We had published a notice with comment period establishing the cost limitations for cost reporting periods beginning on or after October 1, 1998 in the **Federal Register** that was entitled "Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998" on August 11, 1998 (63 FR 42912). OCESAA made the following adjustments to these limitations:

Providers with a 12-month cost reporting period ending during FY 1994, whose per-beneficiary limitations were less than the national median, which is to be set at 100 percent for comparison purposes, will get their current per-beneficiary limitation plus ⅓ of the difference between their rate and the adjusted national median per-beneficiary limitation. New providers and providers without a 12-month cost-reporting period ending in FFY 1994 whose first cost-reporting period begins before October 1, 1998 will receive 100 percent of the national median per-beneficiary limitation.

New providers whose first cost-reporting periods begin during FFY 1999 will receive 75 percent of the national median per-beneficiary limitation as published in the August 11, 1998 notice. In the case of a new provider or a provider that did not have a 12-month cost-reporting period beginning during FFY 1994 that filed an application for HHA provider status before October 15, 1998 or that was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate freestanding agency on or after that date, the per-beneficiary limitation will be set at 100 percent of the median. The per-visit limitation effective for cost-reporting periods beginning on or after October 1, 1998 is set at 106 percent of the median instead of 105 percent of the median, as previously required in the BBA.

There was contingency language for the home health PPS provided in the BBA that was also amended by section 5101 of OCESAA. The language provided that if the Secretary, for any reason, does not establish and implement the PPS for home health services by October 1, 2000, the Secretary will provide for a reduction by 15 percent to the per-visit cost limits and per-beneficiary limits, as those limits would otherwise be in effect on September 30, 2000. Section 302 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), Public Law 106–113, enacted on November 29, 1999, however, subsequently removed the contingency language governing the 15 percent reduction to the IPS cost limits for FFY 2001. It also increased the per-beneficiary limit for those providers with limits below the national median.

B. Requirements of the Balanced Budget Act of 1997, the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, and the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999 for the Development of a Prospective Payment System for Home Health Agencies

Section 4603(a) of the BBA provides the authority for the development of a PPS for all Medicare-covered home health services paid on a reasonable cost basis that will ultimately be based on units of payment by adding section 1895 to the Act entitled "Prospective Payment For Home Health Services."

Section 5101(c) of OCESAA amends section 1895(a) of the Act by removing the transition into the PPS by cost-reporting periods and requiring all HHAs to be paid under PPS effective upon the implementation date of the system. Section 1895(a) of the Act now states "Notwithstanding section 1861(v), the Secretary shall provide, for portions of cost reporting periods occurring on or after October 1, 2000, for payments for home health services in accordance with a prospective payment system established by the Secretary under this section."

Section 1895(b)(1) of the Act requires the Secretary to establish a PPS for all costs of home health services. Under this system all services covered and paid for on a reasonable cost basis under the Medicare home health benefit as of

the date of enactment of the BBA, including medical supplies, will be paid on the basis of a prospective payment amount. The Secretary may provide for a transition of not longer than 4 years during which a portion of the prospective payment may be agency-specific as long as the blend does not exceed budget-neutrality targets.

Section 1895(b)(2) of the Act requires the Secretary in defining a prospective payment amount to consider an appropriate unit of service and the number, type, and duration of visits furnished within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services.

Section 1895(b)(3)(A)(i) of the Act requires that (1) the computation of a standard prospective payment amount include all costs of home health services covered and paid for on a reasonable-cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 5101(c) of OCESAA modifies the effective date of the budget-neutrality targets for HHA PPS by amending section 1895(b)(3)(A)(ii) of the Act. Section 1895(b)(3)(A)(ii) of the Act, as amended, requires that the standard prospective payment limitation amounts be budget neutral to what would be expended under the current interim payment system with the limits reduced by 15 percent at the inception of the PPS on October 1, 2000. Section 302 of the BBRA, delayed the application of the 15 percent reduction in the budget neutrality target for PPS until one year after PPS implementation. The law further requires the Secretary to report within 6 months of implementation of PPS on the need for the 15 percent reduction.

Section 5101(d)(2) of OCESAA also modifies the statutory provisions dealing with the home health market basket percentage increase. For fiscal years 2002 or 2003, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act, as so modified, require that the standard prospective payment amounts be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires the rates to be increased by the applicable home health market basket index change. Section 306 of the BBRA amended the statute to provide a technical correction clarifying the applicable market basket increase for PPS in each of FYs 2002 and 2003. The technical correction clarifies that the update in home health PPS in FY 2002 and FY 2003 will be the home health market basket minus 1.1 percent.

Section 1895(b)(3)(C) of the Act requires the Secretary to reduce the prospective payment amounts if the Secretary accounts for an addition or adjustment to the payment amount made in the case of outlier payments. The reduction must be in a proportion such that the aggregate reduction in the prospective payment amounts for the given period equals the aggregate increase in payments resulting from the application of outlier payments.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that explains a significant amount of the variation in cost among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. These wage-adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to grant additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year cannot exceed 5 percent of total payments projected or estimated.

Section 1895(b)(6) of the Act provides for the proration of prospective payment amounts between the HHAs involved in the case of a patient electing to transfer or receive services from another HHA within the period covered by the prospective payment amount.

Section 1895(d) of the Act limits review of certain aspects of the HHA PPS. Specifically, there is no administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, of the following: the establishment of the transition period under 1895(b)(1) of the Act, the definition and application of payment units under section 1895(b)(2) of the Act, the computation of initial standard prospective amounts under 1895(b)(3)(A) of the Act (including the reduction described in section 1895(b)(3)(A)(ii) of the Act), the establishment of the adjustment for outliers under 1895(b)(3)(C) of the Act, the establishment of case-mix and area wage adjustments under 1895(b)(4) of the Act, and the establishment of any adjustments for outliers under 1895(b)(5) of the Act.

Section 4603(b) of the BBA amends section 1815(e)(2) of the Act by eliminating periodic interim payments for HHAs effective October 1, 2000.

Section 4603(c) of the BBA sets forth the following conforming amendments:

- Section 1814(b)(1) of the Act is amended to indicate that payments under Part A will also be made under section 1895 of the Act;
- Section 1833(a)(2)(A) of the Act is amended to require that home health services, other than a covered osteoporosis drug, are paid under HHA PPS;
- Section 1833(a)(2) is amended by adding a new subparagraph (G) regarding payment of Part B services at section 1861(s)(10)(A) of the Act; and
- Section 1842(b)(6)(F) is added to the Act and section 1832(a)(1) of the Act is amended to include a reference to section 1842(b)(6)(F), both governing the consolidated billing requirements.

Section 4603(d) of the BBA was amended by section 5101(c)(2) of OCESAA by changing the effective date language for the HHA PPS and the other changes made by section 4603 of the BBA. Section 4603(d) now provides that: "Except as otherwise provided, the amendments made by this section shall apply to portions of cost reporting periods occurring on or after October 1, 2000." This change requires all HHAs to be paid under HHA PPS effective October 1, 2000 regardless of the current cost-reporting period.

Section 4603(e) of the BBA sets forth the contingency language for HHA PPS noting that if the Secretary, for any reason, does not establish and implement HHA PPS on October 1, 2000, the per-visit cost limits and per-beneficiary limits under the interim payment system will be reduced by 15 percent. Section 302(a) of the BBRA of 1999 eliminated the interim payment system contingency language by striking this section from the statute.

Section 305 of the BBRA refined the consolidated billing requirements under PPS. The new law excludes durable medical equipment (DME) from the home health consolidated billing requirements.

C. Summary of the Proposed Rule

We published a proposed rule in the **Federal Register** on October 28, 1999 at (64 FR 58134) that set forth proposed

requirements that would establish the new prospective payment system for home health agencies as required by the Balanced Budget Act (BBA) of 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA), of 1999, and the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA). The PPS would replace the retrospective reasonable cost-based system currently used by Medicare for the payment of home health services under Part A and Part B.

1. Transition to PPS

The statute provides authority for a transition period of no longer than 4 years to PPS. We proposed a full transition to the PPS. The overwhelming majority of the industry seems eager to move to PPS. However, some individual home health agencies (HHAs) will object to PPS because they currently enjoy a competitive advantage with high cost limits under the interim payment system. Furthermore, the statute now requires that we pay all providers under PPS on October 1, 2000 rather than phasing in by cost reporting period.

2. Unit of Payment (60-Day Episode)

We proposed a 60-day episode as the basic unit of payment under the HHA PPS. Evidence from the Phase II per-episode HHA PPS demonstration illustrated that the length of a 60-day episode captured a majority of the patients. Moreover, the 60-day episode would coordinate with the 60-day physician recertification of the plan of care and with the 60-day reassessment of the patient using the Outcomes and Assessment Information Set (OASIS). This would encourage physicians' involvement in the plan of care.

3. Split Percentage Payment Approach to the 60-Day Episode Payment (Periodic Interim Payments Statutorily Eliminated With PPS)

Because the PPS system must maintain a cash flow to agencies accustomed to billing on 30-day cycles or receiving periodic interim payments, we proposed a split percentage billing for each 60-day episode. Under this system, an agency would receive a partial episode payment (50 percent) as soon as it notifies us of an admission and a final percentage (50 percent) payment at the close of the 60-day episode.

4. Partial Episode Payment Adjustment (PEP Adjustment)

The partial episode payment adjustment (PEP adjustment) provides a simplified approach to the episode definition and accounts for key intervening events in a patient's care defined as:

—A beneficiary elected transfer, or

—A discharge and return to the same HHA that would warrant a new clock for purposes of payment, OASIS assessment, and physician certification of the new plan of care. When a new 60-day episode begins, the original 60-day episode payment is proportionally adjusted to reflect the length of time the beneficiary remained under the agency's care before the intervening event. The proportional payment is the PEP adjustment.

The proposed PEP adjustment is based on the span of days including the start-of-care date/first billable service date through and including the last billable service date under the original plan of care before the intervening event. The PEP adjustment is calculated by using the span of days (first billable service date through and including the last billable service date) under the original plan of care as a proportion of 60. The proportion is multiplied by the original case-mix and wage-adjusted 60-day episode payment.

We also proposed to close out the initial episode payment with a PEP adjustment and restart the 60-day episode clock under an existing episode due to a beneficiary elected transfer. We are concerned that these transfer situations could be subject to manipulation. Therefore, we proposed that we will not apply the PEP adjustment if the transfer is between organizations of common ownership.

In addition, the discharge and return to the same HHA during the 60-day episode period is only recognized when a beneficiary reached the treatment goals in the original plan of care. The original plan of care must be terminated with no anticipated need for additional home health services for the balance of the 60-day period. The discharge cannot be a result of a significant change in condition. In order for the situation to be defined as a PEP adjustment due to discharge and return to the same HHA during the 60-day episode, the discharge must be a termination of the complete course of treatment in the original plan of care. We would not recognize any PEP adjustment in an attempt to circumvent the payment made under the significant change in condition payment adjustment discussed below.

5. Significant Change in Condition Adjustment (SCIC Adjustment)

We proposed that the third intervening event over a course of a 60-day episode of home health care that could trigger a change in payment level to be a significant change in the patient's condition. We proposed the significant change in condition payment adjustment (SCIC adjustment) as the proportional payment adjustment reflecting the time both before and after the patient experienced a significant change in condition during the 60-day episode. The proposed SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case-mix assignment for purposes of SCIC payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in treatment approach in the patient's plan of care.

The SCIC adjustment is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment *before* the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment *after* the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment uses the span of days of the first billable service date through the last billable service date before the intervening event of the patient's significant change in condition that warrants a new case-mix assignment for payment. The first part of the SCIC adjustment is determined by taking the span of days before the patient's significant change in condition as a proportion of 60 multiplied by the original episode payment amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA before the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case-mix assignment for payment at the end of the 60-day episode.

The second part of the SCIC adjustment reflects the time the patient is under the care of the HHA after the patient experienced the significant change in condition during the 60-day episode that warranted the new case-mix assignment for payment purposes. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and

continuing until the end of the 60-day episode. Once the HHA completes the OASIS, obtains the necessary physician change orders reflecting the need for a new course of treatment in the plan of care, and assigns a new case-mix level for payment, the second part of the SCIC adjustment begins. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment (or any applicable medical review or low utilization payment adjustment (LUPA) discussed below) determined at the final billing for the 60-day episode.

6. Low-Utilization Payment Adjustment (LUPA)

We proposed payments for low-utilization episodes by paying those episodes at a standardized average per-visit amount. Episodes with four or fewer visits would be paid the per-visit amount times the number of visits actually provided during the episode. "Savings" from reduced episode payments would be redistributed to all episodes.

7. Case-Mix Methodology

In the proposed rule, we described a home health case-mix system developed under a research contract with Abt Associates, Inc., of Cambridge, Massachusetts. The case-mix system uses selected data elements from the OASIS assessment instrument and an additional data element measuring receipt of therapy services of at least 8 hours (the 8-hour threshold has been defined as 10 visits for purposes of case-mix adjustment of PPS reimbursements). The data elements are organized into three dimensions to capture clinical severity factors, functional severity factors, and services utilization factors influencing case-mix. The process of selecting data elements for each dimension was described in the proposed rule. In the clinical and functional dimensions, each data element is assigned a score value derived from multiple regression analysis of the Abt research data. The score value measures the impact of the data element on total resource use. Scores are also assigned to data elements in the services utilization dimension. To find a patient's case-mix group, the case-mix grouper sums the patient's scores within each of the three dimensions. The resulting sum is used to assign the patient to a severity level on each dimension. There are four clinical severity levels, five functional severity levels, and four services utilization severity levels. Thus there are 80 possible combinations of severity levels across the three dimensions. Each combination defines one of the 80 groups in the case-mix system. For example, a patient with high clinical severity, moderate functional severity, and low services utilization severity is placed in the same group with all other patients whose summed scores place them in the same set of severity levels for the three dimensions.

8. Outlier Payments

Outlier payments are payments made in addition to the 60-day episode payments for episodes that incur unusually large costs. Outlier payments would be made for episodes whose estimated cost exceeds a threshold amount for each case-mix group. The outlier threshold for each case-mix group, PEP adjustment or total SCIC adjustment would be the episode payment amount, PEP adjustment, or total SCIC adjustment for that group plus a fixed dollar loss amount that is the same for all case-mix groups. The outlier payment would be a proportion of the amount of estimated costs beyond the threshold. Costs would be estimated for each episode by applying standard per-visit amounts to the number of visits by discipline reported on claims. The fixed dollar loss amount and the loss-sharing proportion are chosen so that total outlier payments are estimated to be no more than 5 percent of estimated total payments. There is no need for a long-stay outlier payment because we would not be limiting the number of continuous episode payments in a fiscal year that may be made for Medicare covered home health care to eligible beneficiaries.

9. Consolidated Billing/Bundling

Under the consolidated billing requirement, we would require that the HHA submit all Medicare claims for the home health services included in 1861(m) of the Social Security Act while the beneficiary is under the home health plan of care established by a physician and is eligible for the home health benefit. The proposed rule included an approach that was superseded by changes to the law made by the BBRA.

II. Provisions of Proposed Rule

In the proposed rule that was published on October 28, 1999 (64 FR 54134), we proposed a number of revisions to the regulations in order to implement the prospective payment system, the HHA consolidated billing provision, and conforming statutory changes. We proposed to make conforming changes in 42 CFR parts 409, 424, and 484 to synchronize all timeframes for the plan of care certification, OASIS Recertification (follow-up) assessment, and episode payments to reflect a 60-day period. In addition, we proposed to add a new subpart in part 484 to set forth our new payment system for HHAs. These revisions and others are discussed in detail below.

First, we proposed to revise part 409, subpart E, and discussed the requirements that must be met for Medicare to make payment for home health services. We proposed to make a conforming change in § 409.43 regarding the plan of care requirements. Specifically, we proposed to revise the frequency for review in paragraph (e) of this section by replacing the phrase "62 days" with "60 days unless there is—

- An intervening beneficiary elected transfer;
- A significant change in condition resulting in a new case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care.

In addition, we proposed to revise subpart H of this part regarding payments of hospital insurance benefits. We proposed to revise paragraph (a) in § 409.100, which discusses payment for services, to specify the conditions under which Medicare may pay hospital insurance benefits for home health services. We proposed to provide introductory text to paragraph (a) and to redesignate the current paragraph (a) as paragraph (a)(1). Proposed paragraph (a)(2) of this section would require that Medicare may pay hospital insurance benefits for the home health services specified at section 1861(m) of the Act, when furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA, to the HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

We proposed to make similar changes in part 410, subpart I, which deals with payment of benefits under Part B. We

proposed to add a new paragraph (b)(19) to § 410.150 to specify the conditions under which Medicare Part B pays for home health services. Specifically, proposed paragraph (b)(19) specified that Medicare Part B pay a participating HHA, for home health services furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

We also proposed to revise part 411 subpart A, which discusses excluded services. We proposed to add a new paragraph (q) to § 411.15 to specify the conditions under which HHA services are excluded from coverage. Proposed paragraph (q) specified that a home health service as defined in section 1861(m) of the Act furnished to an individual who is under a plan of care of an HHA is excluded from coverage unless that HHA has submitted a claim for payment for such services.

We also proposed to simplify the authority citation for part 413. In § 413.1 in the introduction to the section on principles of reasonable cost reimbursement, we proposed to add a new paragraph (h) to include the timeframe under which home health services will be paid prospectively. Paragraph (h) under this section specified that the amount paid for home health services as defined in section 1861(m) of the Act that are furnished beginning on or after October 1, 2000 to an eligible beneficiary under a home health plan of care is determined according to the prospectively determined payment rates for HHAs set forth in part 484, subpart E of this chapter. In addition, we proposed to amend § 413.64 concerning payments to providers. Specifically, we proposed to amend paragraph (h)(1) of this section by removing Part A and Part B HHA services from the periodic interim payment method.

We also proposed to revise part 424, which explains the conditions for Medicare payment. We proposed to revise § 424.22 regarding the certification requirements as a condition for payment. We proposed to add a new paragraph (a)(1)(v) that would specify that as a condition for payment of home health services under Medicare Part A or Medicare Part B, a physician must certify that the individual is correctly assigned to one of the HHRGs. We proposed to make a conforming change at paragraph (b)(1) of this section regarding the timing of the recertification. Specifically, we proposed to amend § 424.22(b) by replacing the phrase "at least every 2 months" with "at least every 60 days," and adding the following sentence: "Recertification is required at least every 60 days preferably unless there is a beneficiary elected transfer, a significant change in condition resulting in a new case-mix assignment, or a discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care."

We proposed to add a new statutory authority, section 1895 of the Act, to paragraph(a) of § 484.200, "Basis and scope." Section 1895(a) provides for the implementation of a prospective payment system for HHAs for portions of cost-reporting periods occurring on or after October 1, 2000.

We proposed to revise the regulations in 42 CFR part 484, which set forth the conditions that an HHA must meet in order to participate in Medicare. First, we proposed to revise the part heading from "Conditions Of Participation: Home Health Agencies" to the more generic heading "Home Health Services." We proposed to make a conforming change in § 484.18(b) by replacing the phrase "62 days" with "60 days" unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a change in the case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode.

Also, we proposed to revise § 484.55(d)(1) by replacing "every second calendar month" with language that reflects the 60-day episode and possible PEP Adjustment or SCIC Adjustment. We proposed to require that the comprehensive assessment be updated and revised as frequently as the patient's condition warrants but not less frequently than every 60 days beginning with the start-of-care date unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a change in the case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode.

In addition, we proposed to add and reserve a new subpart D, then add a new subpart E, "Prospective Payment System for Home Health Agencies." This proposed subpart sets forth the regulatory framework of the new prospective payment system. It specifically discussed the development of the payment rates, associated adjustments, and related rules. In § 484.202, "Definitions," we proposed the following definitions for purposes of this new subpart:

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the clinical model.

Clinical model means a system for classifying Medicare-eligible patients under a home health plan of care into mutually exclusive groups based on clinical, functional, and intensity-of-service criteria. The mutually exclusive groups are defined as Home Health Resource Groups (HHRGs).

Discipline means one of the six home health disciplines covered under the Medicare home health benefit (skilled nursing services, home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

Market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in home health services.

In proposed § 484.205 "Basis of payment," we discussed the Medicare payment to providers of services. Proposed § 484.205(a) described the method by which the provider would receive payment. Specifically, § 484.205(a)(1) provided that an HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis. We determine this national 60-day episode payment under the methodology set forth in § 484.215. Paragraph (a)(2) specified that an HHA may receive a low-utilization payment adjustment (LUPA) of a predetermined per-visit rate. We proposed to determine the LUPA under the methodology set forth in § 484.230. Paragraph (a)(3) of this section provided that an HHA may receive a partial episode payment (PEP) adjustment due to an intervening event during an existing 60-day episode that initiates the start of a new 60-day episode payment and a new patient plan of care. We proposed to determine the PEP Adjustment under the methodology set forth in § 484.235. Paragraph (a)(4) of this section specified that a HHA may receive a significant change in condition (SCIC) Adjustment due to the intervening event defined as a significant change in the patient's condition during an existing 60-day episode. We proposed to determine the SCIC adjustment under a methodology set forth in 484.237.

Proposed paragraph (b) discussed the 60-day episode payment and circumstances surrounding adjustments to the payment method. This paragraph

proposed that the national 60-day episode payment represents payment in full for all costs associated with furnishing a home health service paid on a reasonable cost basis as of August 5, 1997 (the date of the enactment of the BBA) unless the national 60-day episode payment is subject to a low-utilization payment adjustment as set forth in § 484.230, a partial episode payment adjustment as set forth in § 484.235, a significant change in condition payment adjustment as set forth in 484.237, or an additional outlier payment as set forth in § 484.240. All payments under this system may be subject to a medical review adjustment. We noted that DME provided as a home health service as defined in section 1861(m) of the Act would continue to be paid the fee schedule amount.

In paragraph (c) of this section, we proposed the low-utilization payment adjustment to the 60-day episode payment. We would require that an HHA receive a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless we determine at the end of the 60-day episode that the HHA furnished minimal services to a patient during the 60-day episode. The low-utilization payment adjustment would be determined under the methodology set forth in § 484.230.

In paragraph (d), we discussed the partial episode payment adjustment. We describe that an HHA receives a national payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless there is an intervening event that warrants the initiation of a new 60-day episode payment and a new physician certification of the new plan of care. The initial HHA receives a partial episode payment adjustment reflecting the length of time the patient remained under its care. A partial episode payment adjustment would be determined under the methodology set forth in § 484.235.

In paragraph (e), we discussed the significant change in condition adjustment. We discussed that the HHA receives a national 60-day episode payment of a pre-determined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event defined as a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case-mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care. The significant change in condition payment adjustment is a proportional payment adjustment reflecting the time both before and after the patient experienced a significant change in condition during the 60-day episode.

In paragraph (f), we discussed how we treat payment for outliers. In this paragraph we would provide that an HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable-cost basis as of August 5, 1997, unless the estimated cost of the 60-day episode exceeds a threshold amount. The outlier payment is defined to be a proportion of the estimated costs beyond the threshold. An outlier payment is a payment in addition to the national 60-day episode payment. The total of all outlier payments is limited to 5 percent of total outlays under the HHA PPS. An outlier payment would be determined under the methodology set forth in § 484.240.

In proposed § 484.210, we specified the data used for the calculation of the national prospective 60-day episode payment. These data include the following:

- Medicare cost data on the most recent audited cost report data available.
- Utilization data based on Medicare claims.
- An appropriate wage index to adjust for area wage differences.
- The most recent projections of increases in costs from the HHA market basket index.
- OASIS assessment data and other data that account for the relative resource utilization for different HHA Medicare patient case-mix.

Proposed § 484.215, paragraphs (a) through (e) specified the methodology used for the calculation of the national 60-day episode payment. Proposed paragraph (a) specified that in calculating the initial unadjusted national 60-day episode payment applicable for a service furnished by an HHA using data on the most recent available audited cost reports, we determined each HHA's costs by summing its allowable costs for the period. We then determined the national mean cost per visit.

Proposed paragraph (b) of this section specified that in calculating the initial unadjusted national 60-day episode payment, we determined the national mean utilization for each of the six disciplines using home health claims data.

Proposed paragraph (c) of this section specified that we used the HHA market basket index to adjust the HHA cost data to reflect cost increases occurring between October 1, 1996 through September 30, 2001. For each fiscal year from 2002 or 2003, we would update the cost data by a factor equivalent to the annual market basket index percentage minus 1.1 percentage points.

Proposed paragraph (d) regarding standardization of the data for variation in area wage levels and case-mix specified that we would standardize the cost data described in paragraph (a) of this section to remove the effects of geographic variation in wage levels and variation in case-mix. We would then standardize the cost data for geographic variation in wage levels using the hospital wage index. We standardized the cost data for HHA variation in case-mix using the case-mix indices and other data that indicate HHA case-mix.

Proposed paragraph (e) of this section described how we calculated the unadjusted national average prospective payment amount for the 60-day episode. Specifically, we calculated this payment amount by—

- Computing the mean standardized national cost per visit;
- Computing the national mean utilization for each discipline; then
- Multiplying the mean standardized national cost per visit by the national mean utilization summed in the aggregate for each discipline.

Proposed § 484.220 described how we calculated the national adjusted prospective 60-day episode payment rate for case-mix and area wage levels. This section specified that we adjusted the national prospective 60-day episode payment rate to account for HHA case-mix using a case-mix index to explain the relative resource utilization of different patients. We also adjusted the national prospective 60-day episode payment rate to account for geographic differences in wage levels using an appropriate wage index.

In proposed § 484.225, we explained our methods for annually updating the national adjusted prospective payment rates for inflation. We proposed to handle it in the following manner:

- We update the unadjusted national 60-day episode payment rate on a fiscal year basis.
- For FY 2001, the unadjusted national 60-day episode payment rate is adjusted using the latest available market basket factors.
- For fiscal year 2002 or 2003, the unadjusted national 60-day episode payment rate is equal to the rate for the previous period or fiscal year increased

by a factor equal to the HHA market basket minus 1.1 percentage point.

• For any subsequent fiscal years, the unadjusted national rate is equal to the rate for the previous fiscal year increased by the applicable HHA market basket index amount.

In proposed § 484.230, we explained the methodology we use for the calculation of the low-utilization payment adjustment. In this section, we specified that in calculating the low-utilization payment adjustment, an episode with four or fewer visits is paid the national average standardized per-visit amount by discipline for each visit type. We also specified that the national average standardized per-visit amount is determined by using cost data set forth in § 484.210(a) and adjusting by the appropriate wage index.

Proposed § 484.235 illustrated the methodology we used to calculate the partial episode payment adjustment. The intervening event of either a beneficiary elected transfer or discharge and return to the same HHA during the 60-day episode warrants a new 60-day episode payment and a new physician certification of a new plan of care. The original 60-day episode payment is adjusted with a partial episode payment that reflects the length of time the beneficiary remained under the care of the original HHA. The partial episode payment is calculated using the actual days served by the original HHA as a proportion of 60 multiplied by the initial 60-day episode payment.

Proposed 484.237 illustrated the methodology we used to calculate the significant change in condition payment adjustment. The intervening event, here, a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care, initiates the significant change in condition payment adjustment. The significant change in condition is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment prior to the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment after the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA prior to the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case-mix assignment for payment at the end of the 60-day episode. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and continuing until the end of the 60-day episode. The second part of the SCIC adjustment is determined by taking the span of days (first billable visit date through the last billable visit date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second part of the SCIC adjustment.

Proposed § 484.240 described the methodology we used to calculate the outlier payment. The methodology for the calculation of the outlier payment would involve the following:

• We make an outlier payment for an episode whose estimated cost exceeds a threshold amount for each case-mix group.

• The outlier threshold for each case-mix group is the episode payment amount for that group plus a fixed dollar loss amount that is the same for all case-mix groups.

• The outlier payment is a proportion of the amount of estimated cost beyond the threshold.

• We estimate the cost for each episode by applying the standard per-visit amount to the number of visits by discipline reported on claims.

• The fixed dollar loss amount and the loss-sharing proportion are chosen so that the estimated total outlier payment is no more than 5 percent of total episode payment.

Proposed § 484.250 related to data that must be submitted for the development of a reliable case-mix. Specifically, we would require an HHA to submit the OASIS data described at the current § 484.55(b)(1) and (d)(1) (that we proposed to revise in the proposed rule) to administer the payment rate methodologies described in § 484.215 (methodology used for the calculation of the national 60-day episode payment), § 484.230 (methodology used for the calculation of the LUPA) and 484.237 (methodology used for the calculation of the SCIC adjustment).

Proposed § 484.260 discussed the limitation for review with regard to our new payment system. In this section, we specified that judicial or administrative review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of a payment unit including the national 60-day episode payment rate and the LUPA. This prohibition includes the establishment of the transition period, definition and application of the unit of payments, the computation of initial standard prospective payment amounts, the establishment of the adjustment for outliers, and the establishment of case-mix and area wage adjustment factors.

III. Analysis and Responses to Public Comments

We received approximately 381 timely comments on the HHA prospective payment system proposed rule HCFA–1059–P published on October 28, 1999 (64 FR 58134). Comments were submitted by HHAs and other health care providers, national industry associations, suppliers and practitioners (both individually and through their respective trade associations), State associations, health care consulting firms, and private citizens. The comments centered on various aspects of the proposed policies governing our approach to the home health prospective payment system. We have considered all comments received during the 60-day public comment period in this final rule and have set forth our responses to the comments and corresponding policy modifications in the following section.

As noted in the proposed rule, because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to respond to them individually. In particular, a number of commenters on the proposed rule raised extremely technical and detailed questions, many of which were not directly related to the proposed rule, regarding OASIS, the cost report, RHHI systems and the billing process. These questions are of the nature that would more appropriately be addressed through manual instructions and other issuances than in these regulations. In this final rule, we are addressing the policy concerns raised by the commenters that are related to the proposed rule. Summaries of the major issues and our responses to those comments are set forth below.

A. 60-Day Episode Payment Definition (§ 484.205)

Comment: We received several comments on our proposed definition of

a 60-day episode as the unit of payment under HHA PPS. The majority of commenters supported the 60-day episode approach. A few commenters suggested a shorter time period for the unit of payment.

Response: We believe the 60-day episode definition is the most appropriate approach to define the unit of payment under HHA PPS. Public support for the 60-day episode as the unit of payment under PPS centered on the general consensus that HHAs and physicians predict home care needs over a 60-day period due to current plan of care requirements and OASIS assessments that basically follow a 60-day period. As discussed in detail in the proposed rule, research indicated that the 60-day episode captures the majority of stays experienced in the Phase II per-episode HHA PPS demonstration.

We will continue to monitor the appropriateness of the 60-day unit of payment and may consider modifying our approach to the episode definition in subsequent years of PPS, if warranted.

Comment: A few commenters raised concerns with the change to a 60-day episode from the current plan of care certification and OASIS assessments requirements that follow a bimonthly period, that is, at least every 62 days. Some of the concerns centered on confusion and the possible burden associated with the change to a 60-day episode.

Response: The statute requires us to establish an appropriate unit of payment. We believe the 60-day episode is the most suitable time frame upon which to base payment and to manage home care needs of patients. To effectively implement a payment system that is built on a foundation of (1) OASIS assessments for case-mix adjustment and (2) plan of care certifications to ensure the appropriate plan of treatment, all schedules for assessment, certification and payment term should be on a parallel track. The current schedules for OASIS assessment and plan of care certification basically mirror a 60-day episode. Thus, for purposes of payment, assessment, and care planning, we do not believe it is an undue burden to adjust to a 60-day episode from a bimonthly period.

Comment: A few commenters recommended that we re-examine the language we proposed to govern the 60-day episode. The commenters referred specifically to the following statement in the proposed rule: "An HHA that accepts a Medicare eligible beneficiary for home health care for the 60-day episode period and submits a bill for payment may not refuse to treat an eligible beneficiary who has been discharged from the HHA during the 60-day episode, but later requires Medicare covered home health services during the same 60-day episode period and elects to return to the same HHA * * *" (64 FR 58201) Commenters suggested that HHAs should be allowed to refuse to readmit a Medicare eligible beneficiary in accordance with HHA policies when the safety of HHA staff or the patient are threatened; when the HHA does not have the staff necessary to meet the patient's needs; or when the patient or caregiver refuses to cooperate or comply with the plan of care.

Response: We proposed this policy to indicate that we would not accept a refusal to treat the beneficiary when only the HHA's economic interests were the cause of the refusal. It was not our intent to restrict the legitimate rights of an HHA that has a well-documented individualized situation that results in a determination to refuse further care of a patient. This would include threats to the safety of HHA staff or patients or failure of patients to cooperate in the care plan. As long as agencies treat all similarly situated patients equally, document the individualized situation, and comply with all Federal and State laws, they have the right to refuse to treat patients in certain well-documented situations.

B. Definition of Non-Routine Medical Supplies Included in the Episode Definition

Comment: We received several comments regarding certain non-routine medical supply costs that were not included in the computation of the 60-day national episode rate. Specifically, the commenters suggested that we include non-routine medical supplies both paid on the cost report and non-routine medical supply amounts that could have been unbundled to part B prior to PPS in the 60-day episode rate. Commenters also provided several suggestions for a revised approach to the payment for non-routine medical supplies under HHA PPS. Recommendations included the following:

- Providing for a separate payment for non-routine medical supplies used by a patient designated as a new designated home health supply payment amount separate from the prospective payment rate.
- Allowing all non-routine medical supplies to be billed under Part B.
- Carving out or adjusting the medical supply amount due to the variation in intermediary coverage guidelines.
- Adjusting the medical supply amounts to reflect the costs associated with wound patients, chux and diaper supply patients.
- Paying medical supplies as used because of the wide variation in use due to patients who sustain out-of-pocket payments.
- Carving out wound care and diabetes related medical supplies and re-examining the overall calculation of the non-routine supply costs, both bundled and non-routine supply costs that could have been unbundled, because commenters viewed the amounts inadequate to care for patients requiring supplies which then might lead to access issues.

Commenters further noted problems with the 199 HCPCs codes we used to calculate the non-routine medical supply amounts that could have been unbundled to Part B before implementation of PPS. We adjusted the proposed rate to account for the non-routine medical supply behavior prior to PPS. Several commenters suggested that the inclusion of glucose test strips codes were inappropriate codes included in the original 199 code list for non-routine medical supply costs. Other commenters believed we inadvertently omitted certain codes in the original list of 199 codes. Furthermore, several commenters centered on consolidated billing requirements for non-routine medical supplies. We note that all consolidated billing comments and responses are included under the consolidated billing portion of this section of the regulation.

Response: The goal of reviewing and calculating the non-routine medical supply costs that could have been unbundled to Part B was to ensure adequate payment for non-routine medical supplies used by a patient under a home health plan of care in the prospective payment rate. As stated in the proposed rule, we developed a list of 199 codes that could have possibly been unbundled to Part B before implementation of PPS, linked those Part B supply claims that included any of the 199 codes to home health claims for beneficiaries under a home health plan of care during calendar year 1997. We have replicated the exact claims analysis on corresponding calendar year 1998 claims data to develop an updated supply amount for this final regulation. This calculation was performed on an adjusted list of codes based upon review of comments and is described below.

As stated in the proposed rule, section 1895(b)(1) of the Act, which governs the development of the unit of payment under HHA PPS, requires all services covered and paid on a reasonable cost

basis as of the date of enactment of the BBA, including medical supplies, to be paid on the basis of a prospective payment amount under HHA PPS. The statutory language specifically refers to the inclusion of medical supplies in the prospective payment rate. We believe the statute requires the inclusion of costs of non-routine medical supplies in the episode rate. However, as stated in the proposed rule, since DME covered as a home health service as part of the Medicare home health benefit is not currently paid on a reasonable cost basis, DME will continue to be paid under the DME fee schedule as a separate payment amount from the prospective payment rates under HHA PPS.

As mentioned above, commenters also supplied us with an additional 79 codes that they believed should be included on our list of non-routine medical supplies that could have been unbundled to Part B. We re-examined our approach to the original 199 codes used to calculate the amounts that could have been unbundled non-routine medical supplies. We found that several of the recommended codes had been discontinued. Further, upon re-examination of our original list, we found that several of the original codes were inappropriately included, for example, glucose test strips. These codes have subsequently been deleted. Our analysis results in a final list of 178 codes as listed below. We have provided the following analysis in order to clarify our revised approach.

59 codes proposed in comments were discontinued codes as of 12/31/96.

A4190 ..... Transparent film each
A4200 ..... Gauze pad medicated/non-med
A4202 ..... Elastic gauze roll
A4203 ..... Non-elastic gauze roll
A4204 ..... Absorptive drsg
A4205 ..... Nonabsorptive drsg
K0197 ..... Alginate drsg > 16 <=48 sq in
K0198 ..... Alginate drsg > 48 sq in
K0199 ..... Alginate drsg wound filler
K0203 ..... Composite drsg <= 16 sq in
K0204 ..... Composite drsg > 16 <=48 sq in
K0205 ..... Composite drsg > 48 sq in
K0206 ..... Contact layer <= 16 sq in
K0207 ..... Contact layer > 16 <= 48 sq in
K0208 ..... Contact layer > 48 sq in
K0209 ..... Foam drg <= 16 sq in w/o bdr
K0210 ..... Foam drg > 16 <=48 sq in w/o b
K0211 ..... Foam drg > 48 sq in w/o brdr
K0212 ..... Foam drg <= 16 sq in w/bdr
K0213 ..... Foam drg > 16 <=48 sq in w/ bdr
K0214 ..... Foam drg > 48 sq in w/bdr
K0215 ..... Foam dressing wound filler
K0219 ..... Gauze <= 16 sq in w/bdr
K0220 ..... Gauze > 16 <=48 sq in w/bdr
K0221 ..... Gauze > 48 sq in w/bdr
K0222 ..... Gauze <= 16 in no w/sal w/o b
K0223 ..... Gauze > 16 <=48 no w/sal w/o b
K0224 ..... Gauze > 48 in no w/sal w/o b
K0228 ..... Gauze <= 16 sq in water/sal
K0229 ..... Gauze > 16 <=48 sq in watr/sal
K0230 ..... Gauze > 48 sq in water/salne
K0234 ..... Hydrocolloid drg <= 16 w/o bdr
K0235 ..... Hydrocolloid drg > 16 <=48 w/ o b
K0236 ..... Hydrocolloid drg > 48 in w/o b
K0237 ..... Hydrocolloid drg <= 16 in w/ bdr
K0238 ..... Hydrocolloid drg > 16 <=48 w/ bdr
K0239 ..... Hydrocolloid drg > 48 in w/bdr
K0240 ..... Hydrocolloid drg filler paste
K0241 ..... Hydrocolloid drg filler dry
K0242 ..... Hydrogel drg <= 16 in w/o bdr
K0243 ..... Hydrogel drg > 16 <=48 w/o bdr
K0244 ..... Hydrogel drg > 48 in w/o bdr
K0245 ..... Hydrogel drg <= 16 in w/bdr
K0246 ..... Hydrogel drg > 16 <=48 in w/b
K0247 ..... Hydrogel drg > 48 sq in w/b
K0248 ..... Hydrogel drsg gel filler
K0249 ..... Hydrogel drsg dry filler
K0251 ..... Absorpt drg <= 16 sq in w/o b
K0252 ..... Absorpt drg > 16 <=48 w/o bdr
K0253 ..... Absorpt drg > 48 sq in w/o b
K0254 ..... Absorpt drg <= 16 sq in w/bdr
K0255 ..... Absorpt drg > 16 <=48 in w/ bdr
K0256 ..... Absorpt drg > 48 sq in w/bdr
K0257 ..... Transparent film <= 16 sq in
K0258 ..... Transparent film > 16 <=48 in
K0259 ..... Transplant filmpercent 48 sq in
K0261 ..... Wound filler gel/paste/oz
K0262 ..... Wound filler dry form/gram
K0266 ..... Impreg gauze no h20/sal/yard

Seven codes included in original list should be removed because they are considered routine medical supplies and as such would not be separately billable by an HHA.

A4214 ..... 30 CC sterile water/saline
K0216 ..... Non-sterile gauze <= 16 sq in
K0217 ..... Non-sterile gauze > 16 <= 48 sq
K0218 ..... Non-sterile gauze > 48 sq in
K0263 ..... Non-sterile elastic gauze/yd
K0264 ..... Non-sterile no elastic gauze
K0265 ..... Tape per 18 sq inches

Four codes are not valid for Medicare.

A4206 ..... 1 CC sterile syringe & needle
A4207 ..... 2 CC sterile syringe & needle
A4208 ..... 3 CC sterile syringe & needle
A4209 ..... 5+ CC sterile syringe & needle

Three codes are for items that are not covered under Medicare.

A4210. ..... Nonneedle injection device
K0250 ..... Skin seal protect moisturizer
K0260 ..... Wound cleanser any type/size

One code is a DME Fee Schedule code and should not be included in accordance with the statute.

A4221 ..... Maint drug infus cath per wk

One code is not separately paid by Part B.

A4211 ..... Supp for self-adm injections

Three codes mentioned by commenters had already been included in our original list of 199 codes.

A4212 ..... Non coring needle or stylet
A4213 ..... 20+ CC syringe only
A4215 ..... Sterile needle

After further re-examination based upon the comments, we added the following code to the list:

A4554 ..... Disposable underpads

Upon further review of the original 199 codes used in the proposed rule, the following codes were deemed inappropriate to be included in the definition of non-routine medical supplies and were deleted from the list used in this final rule:

A4206 ..... 1 CC sterile syringe & needle
A4207 ..... 2 CC sterile syringe & needle
A4208 ..... 3 CC sterile syringe & needle
A4209 ..... 5+ CC sterile syringe & needle
A4210 ..... Nonneedle injection device
A4211 ..... Supp for self-adm injections
A4214 ..... 30 CC sterile water/saline
A4253 ..... Blood glucose/reagent strips
A4255 ..... Glucose monitor platforms
A4256 ..... Calibrator solution/chips
A4258 ..... Lancet device each
A4259 ..... Lancets per box
A4454 ..... Tape all types all sizes
A6216 ..... Non-sterile gauze <= 16 sq in
A6217 ..... Non-sterile gauze > 16 <= 48 sq
A6218 ..... Non-sterile gauze > 48 sq in
A6263 ..... Non-sterile elastic gauze/yd
A6264 ..... Non-sterile no elastic gauze
A6265 ..... Tape per 18 sq inches
K0137 ..... Skin barrier liquid per oz
K0138 ..... Skin barrier paste per oz
K0139 ..... Skin barrier powder per oz

The following is the *final* list of *178* codes for non- Routine Medical Supplies that have a duplicate Part B code that could have been unbundled and billed under Part B before implementation of PPS. The following codes were used to calculate additional non-routine medical supply costs to the national rate. The revised rate calculation is found in section IV.C. of this preamble.

A4212 ..... Non coring needle or stylet
A4213 ..... 20+ CC syringe only
A4215 ..... Sterile needle
A4310 ..... Insert tray w/o bag/cath
A4311 ..... Catheter w/o bag 2-way latex
A4312 ..... Cath w/o bag 2-way silicone
A4313 ..... Catheter w/bag 3-way
A4314 ..... Cath w/drainage 2-way latex
A4315 ..... Cath w/drainage 2-way silcne
A4316 ..... Cath w/drainage 3-way
A4320 ..... Irrigation tray
A4321 ..... Cath therapeutic irrig agent
A4322 ..... Irrigation syringe
A4323 ..... Saline irrigation solution
A4326 ..... Male external catheter
A4327 ..... Fem urinary collect dev cup
A4328 ..... Fem urinary collect pouch
A4329 ..... External catheter start set
A4330 ..... Stool collection pouch
A4335 ..... Incontinence supply
A4338 ..... Indwelling catheter latex
A4340 ..... Indwelling catheter special
A4344 ..... Cath indw foley 2 way silicn
A4346 ..... Cath indw foley 3 way

A4347	Male external catheter
A4351	Straight tip urine catheter
A4352	Coude tip urinary catheter
A4353	Intermittent urinary cath
A4354	Cath insertion tray w/bag
A4355	Bladder irrigation tubing
A4356	Ext ureth clmp or compr dvc
A4357	Bedside drainage bag
A4358	Urinary leg bag
A4359	Urinary suspensory w/o leg bag
A4361	Ostomy face plate
A4362	Solid skin barrier
A4363	Liquid skin barrier
A4364	Ostomy/cath adhesive
A4365	Ostomy adhesive remover wipe
A4367	Ostomy belt
A4368	Ostomy filter
A4397	Irrigation supply sleeve
A4398	Ostomy irrigation bag
A4399	Ostomy irrig cone/cath w brs
A4400	Ostomy irrigation set
A4402	Lubricant per ounce
A4404	Ostomy ring each
A4421	Ostomy supply misc
A4454	Tape all types all sizes
A4455	Adhesive remover per ounce
A4460	Elastic compression bandage
A4462	Abdmnl drssng holder/binder
A4481	Tracheostoma filter
A4622	Tracheostomy or larngectomy
A4623	Tracheostomy inner cannula
A4625	Trach care kit for new trach
A4626	Tracheostomy cleaning brush
A4649	Surgical supplies
A5051	Pouch clsd w barr attached
A5052	Clsd ostomy pouch w/o barr
A5053	Clsd ostomy pouch faceplate
A5054	Clsd ostomy pouch w/flange
A5055	Stoma cap
A5061	Pouch drainable w barrier at
A5062	Drnble ostomy pouch w/o barr
A5063	Drain ostomy pouch w/flange
A5071	Urinary pouch w/barrier
A5072	Urinary pouch w/o barrier
A5073	Urinary pouch on barr w/flng
A5081	Continent stoma plug
A5082	Continent stoma catheter
A5093	Ostomy accessory convex inse
A5102	Bedside drain btl w/wo tube
A5105	Urinary suspensory
A5112	Urinary leg bag
A5113	Latex leg strap
A5114	Foam/fabric leg strap
A5119	Skin barrier wipes box pr 50
A5121	Solid skin barrier 6x6
A5122	Solid skin barrier 8x8
A5123	Skin barrier with flange
A5126	Disk/foam pad +or− adhesive
A5131	Appliance cleaner
A5149	Incontinence/ostomy supply
A6020	Collagen wound dressing
A6154	Wound pouch each
A6196	Alginate dressing <= 16 sq in
A6197	Alginate drsg > 16 <= 48 sq in
A6198	Alginate dressing > 48 sq in
A6199	Alginate drsg wound filler
A6200	Compos drsg <= 16 no bdr
A6201	Compos drsg > 16 <=48 no bdr
A6202	Compos drsg > 48 no bdr
A6203	Composite drsg <= 16 sq in
A6204	Composite drsg > 16 <=48 sq in
A6205	Composite drsg > 48 sq in
A6206	Contact layer <= 16 sq in
A6207	Contact layer > 16 <= 48 sq in
A6208	Contact layer > 48 sq in
A6209	Foam drsg <= 16 sq in w/o bdr
A6210	Foam drg > 16 <=48 sq in w/o b
A6211	Foam drg > 48 sq in w/o brdr
A6212	Foam drg <= 16 sq in w/bdr
A6213	Foam drg > 16 <=48 sq in w/ bdr
A6214	Foam drg > 48 sq in w/bdr
A6215	Foam dressing wound filler
A6219	Gauze <= 16 sq in w/bdr
A6220	Gauze > 16 <=48 sq in w/bdr
A6221	Gauze > 48 sq in w/bdr
A6222	Gauze <= 16 in no w/sal w/o b
A6223	Gauze > 16 <= 48 no w/sal w/o b
A6224	Gauze > 48 in no w/sal w/o b
A6228	Gauze <= 16 sq in water/sal
A6229	Gauze > 16 <=48 sq in watr/sal
A6230	Gauze > 48 sq in water/salne
A6234	Hydrocolld drg <= 16 w/o bdr
A6235	Hydrocolld drg > 16 <= 48 w/o b
A6236	Hydrocolld drg > 48 in w/o b
A6237	Hydrocolld drg <= 16 in w/bdr
A6238	Hydrocolld drg > 16 <=48 w/ bdr
A6239	Hydrocolld drg > 48 in w/bdr
A6240	Hydrocolld drg filler paste
A6241	Hydrocolloid drg filler dry
A6242	Hydrogel drg <= 16 in w/o bdr
A6243	Hydrogel drg > 16 <=48 w/o bdr
A6244	Hydrogel drg > 48 in w/o bdr
A6245	Hydrogel drg <= 16 in w/bdr
A6246	Hydrogel drg > 16 <=48 in w/b
A6247	Hydrogel drg > 48 sq in w/b
A6251	Absorpt drg <= 16 sq in w/o b
A6252	Absorpt drg > 16 <=48 w/o bdr
A6253	Absorpt drg > 48 sq in w/o b
A6254	Absorpt drg <= 16 sq in w/bdr
A6255	Absorpt drg > 16 <=48 in w/ bdr
A6256	Absorpt drg > 48 sq in w/bdr
A6257	Transparent film <= 16 sq in
A6258	Transparent film > 16 <=48 in
A6259	Transparent film > 48 sq in
A6261	Wound filler gel/paste/oz
A6262	Wound filler dry form/gram
A6266	Impreg gauze no h20/sal/yard
A6402	Sterile gauze <= 16 sq in
A6403	Sterile gauze > 16 <= 48 sq in
A6404	Sterile gauze > 48 sq in
A6405	Sterile elastic gauze/yd
A6406	Sterile non-elastic gauze/yd
K0137	Skin barrier liquid per oz
K0138	Skin barrier paste per oz
K0139	Skin barrier powder per oz
K0277	Skin barrier solid 4x4 equiv
K0278	Skin barrier with flange
K0279	Skin barrier extended wear
K0280	Extension drainage tubing
K0281	Lubricant catheter insertion
K0407	Urinary cath skin attachment
K0408	Urinary cath leg strap
K0409	Sterile H2O irrigation solut
K0410	Male ext cath w/adh coating
K0411	Male ext cath w/adh strip
K0419	Drainable plstic pch w fcplt
K0420	Drainable rubber pch w fcplt
K0421	drainable plstic pch w/o fp
K0422	Drainable rubber pch w/o fp
K0423	Urinary plstic pouch w fcplt
K0424	Urinary rubber pouch w fcplt
K0425	Urinary plstic pouch w/o fp
K0426	Urinary hvy plstc pch w/o fp
K0427	Urinary rubber pouch w/o fp
K0428	Ostomy faceplt/silicone ring
K0429	Skin barrier solid ext wear
K0430	Skin barrier w flang ex wear
K0431	Closed pouch w st wear bar
K0432	Drainable pch w ex wear bar
K0433	Drainable pch w st wear bar
K0434	Drainable pch ex wear convex
K0435	Urinary pouch w ex wear bar
K0436	Urinary pouch w st wear bar
K0437	Urine pch w ex wear bar conv
K0438	Ostomy pouch liq deodorant
K0439	Ostomy pouch solid deodorant

We believe our revised approach to the calculation that incorporates both non-routine medical supplies provided under a plan of care and those non-routine medical supplies that could have been unbundled to Part B prior to the consolidated billing requirements results in an equitable payment methodology. As stated above, we have re-examined the list of non-routine medical supplies that could have been unbundled to Part B, recalculated the costs, and have adjusted the rates accordingly. We have also included any additional medical supply costs included in the audited cost report data from the sample that became available after the publication of the proposed rule.

We have thoroughly re-examined the issue of all non-routine medical supplies included in the rate. The statute does not provide for an exception for the removal of any or all supplies for certain type of patients from the PPS rate. We have used the best data available to calculate the non-routine medical supply component of the rates. We will continue to monitor the issue of non-routine medical supply costs with implementation of PPS.

Comment: Several commenters recommended that we re-examine the amount we added to adjust the LUPA per-visit amounts to account for non-routine medical supply costs. Many commenters suggested that the amount was inadequate, especially for wound care patients.

Response: As stated above, we have re-examined the issue of the appropriate level of non-routine medical supply costs in terms of wound care supplies and all non-routine medical supplies as they relate to all rates in the proposed rule, including the LUPA amounts. Based on comments, we have decided to increase the LUPA amount by paying the updated, prospective per-visit amount by discipline. We believe this per-visit amount accurately reflects an appropriate per-visit payment level, including medical supplies and other services furnished during LUPA visits. This provision is set forth in regulations at § 484.230. The revised LUPA approach is discussed in section IV.D. of this rule.

Comment: Commenters requested clarification of the application of 20 percent co-payment of non-routine medical supplies not related to the plan of care.

Response: Medical supplies are specifically listed in section 1861(m) of the Act as a covered home health service. All covered home health services are ordered by a physician for a patient under a plan of care. The 20 percent copayment does not apply to non-routine medical supplies covered as a home health service. There is currently no imposition of copayment on home health services except for DME. There is a 20 percent copayment on DME covered as a home health service. However, as stated above in section I.B. of this rule, BBRA of 1999 removed DME covered as a home health service from the consolidated billing requirements.

We note that Part B does not provide coverage of and payment for items termed "non-routine medical supplies." DME may have a DME supply component, but that supply cost is related to the DME and included in the DME fee schedule payment. Further, the statute governing consolidated billing specifically refers to a patient under a plan of care. Providers cannot circumvent the consolidated billing requirements by attempting to exclude certain non-routine medical supplies from the plan of care by distinguishing between non-routine medical supplies related and unrelated to the plan of care. The comment may reflect concern with Part B services such as parenteral or enteral nutrition that are neither currently covered as home health services nor defined as a non-routine medical supply. Parenteral or enteral nutrition would therefore not be subject to the requirements governing home health consolidated billing because those Part B services are not home health services as defined in section 1861(m)of the Act. The applicable copayment or deductible requirements governing Medicare Part B outside of the Medicare home health benefit defined in section 1861(m) of the Act are not changed by this rule.

Comment: A few commenters stated that if a beneficiary has a continuing medical need for medical supplies due to a chronic illness unrelated to the condition the HHA is treating, the patient should be excluded from the PPS rate and consolidated billing.

Response: As we indicated in the proposed rule and the response to the previous comment, the law is very specific regarding the inclusion of medical supplies in the prospective rates. The law requires all services covered and paid on a reasonable cost basis as of the date of enactment of the BBA, including medical supplies, to be paid on the basis of a prospective payment amount under HHA PPS. The consolidated billing requirements at section 1842(b)(6)(F) of the Act, as amended by section 305 of BBRA, specifically require "in the case of home health services (including medical supplies described in section 1861(m)(5), but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who (at the time the item or service is furnished) is under a plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise)."

The statutory language governing consolidated billing clearly states that the patient is under the plan of care. If the patient requires medical supplies that are currently covered and paid for under the Medicare home health benefit during a certified episode under HHA PPS, the billing for those medical supplies falls under the auspices of the HHA due to the consolidated billing requirements. As stated in previous comments, there is no statutory latitude for an exception or carve-out of medical supplies from the PPS rate for patients under a plan of care under HHA PPS. We have included the costs of all such supplies in the rates.

Comment: A few commenters suggested that we establish clear guidelines so that providers of medical supplies receive adequate notice when items they may be furnishing to a beneficiary become subject to HHA PPS.

Response: The law refers to a patient under a home health plan of care. All routine and non-routine medical supplies that are currently covered as a Medicare home health service are subject to the home health PPS requirements. We believe the proposed rule and this final rule as well as current Medicare policies governing coverage of medical supplies under the home health benefit provide the notice of the requirements governing the HHA PPS. We will be directing our carrier to inform suppliers of this change and will be developing efforts to prevent erroneous billings. Further clarification of routine and non-routine medical supplies can be found in section 204.1 of the Medicare home health agency manual.

Comment: A few commenters suggested that we review the non-routine medical supply coverage policies of the various RHHIs and establish a consistent national coverage policy. Adjustments to the medical supply component of the rate should be made based on the analysis of the coverage variations in the original data used to establish the PPS rates.

Response: We have re-examined our approach to the national coverage policy governing non-routine medical supplies under the Medicare home health benefit. We do not have any indication of the existence of significant inconsistencies in coverage policies across RHHIs. As stated in previous comments, we will continue to monitor the coverage and utilization of non-routine medical supplies in subsequent years of PPS implementation.

Comment: Commenters suggested that medical supplies should be paid as used due to the wide variation in supply usage across patients and because some patients have historically paid out-of-pocket for supplies although HHAs were required to furnish them.

Response: As indicated above, the law specifically includes costs of medical supplies in determining the PPS rates. We are concerned that commenters even suggested that HHAs have historically permitted or even encouraged eligible Medicare beneficiaries to pay out-of-pocket for Medicare services that patients were not required to pay. We emphasize that agencies are obligated to furnish and Medicare will pay for needed medical supplies covered under the home health benefit.

C. Possible Inclusion of Medicare Part B Therapy Services in the Episode

Comment: We received a few comments regarding certain Part B therapy costs that were not included in the computation of the PPS rates. Several commenters suggested that we collect Medicare Part B Claims information for all therapy services provided to patients while receiving home health services under the home health benefit and adjust the episode definition, payment rate, and budget neutrality factor accordingly. Commenters believed that HHAs prior to PPS, as with non-routine medical supplies, had the option to unbundle therapy services outside of the home health benefit to Part B therapy providers. Because such services cannot be unbundled under PPS, commenters suggested that, based on our analysis of Part B therapy claims during a home health stay, an adjustment to the non-standardized amount should be made to account for this additional cost for therapy services.

Response: Before implementation of PPS, HHAs were not clearly prohibited from unbundling therapies to Part B. Consistent with our approach to non-routine medical supplies that could have been unbundled to Part B prior to PPS, we again analyzed Part B therapy claims data. Section IV.B.3. of this rule describes our claims analysis of the Part B therapy claims. Based on the analysis, we have adjusted the rates accordingly with the methodology described in section V. of this rule.

D. Continuous Episode Recertification

Comment: Several commenters support continuous episode certifications because the policy permits access to home health services for eligible beneficiaries. A few commenters requested clarification of continuous episode recertification with regard to long term utilizers of Medicare home health services. In addition, commenters requested further clarification of the definition of terms associated with continuous episode recertification. Some commenters requested specific clarification of the dates governing continuous episode recertification.

Response: We proposed continuous recertifications and payment, as appropriate, for beneficiaries who continue to be eligible for home health services. The payment system set forth in this final rule will permit continuous episode recertification for Medicare eligible beneficiaries. We believe this policy negates the need for a day or time (length of stay) outlier because beneficiaries will continue to be recertified for continuous episodes as long as they remain eligible for the Medicare home health benefit. In order to address the needs of longer stay patients, we are not limiting the number of 60-day episode recertifications permitted in a given fiscal year assuming a patient remains eligible for the Medicare home health benefit.

In response to comments, our explanation of the dates governing continuous episode recertification and clarification of terms associated with subsequent episode recertifications is given below. The first day of a subsequent second episode is day 61. The first day of all subsequent episodes, whether it is the second or third, etc. continuous episode, will be termed the "subsequent episode date." The first day of a subsequent episode is not necessarily the first billable visit date. Unlike the initial episode, the first day of a subsequent episode may not occur on the first billable service date. Therefore, one must distinguish between the definition of the subsequent continuing episode date and the initial episode. Further technical examples of continuous care will be found in billing instructions that will be issued after publication of this rule.

E. Transition/Blend

Comment: Several commenters and most national industry associations supported full transition to a national rate. Conversely, only one industry association supported a four-year blend of agency-specific and national PPS rates. A few commenters suggested the continuation of IPS for the first certification or assessment period or next discharge date or a blend with IPS related data. A few commenters provided other creative alternative blend approaches that fell out of the scope of the statutory authority for the transition blend.

Response: Section 1895(b)(1) of the Act provides the option for a four-year transition to HHA PPS by blending agency-specific and national rates. We proposed full transition to the 60-day national episode rate. We believed blending cost based IPS with an episode rate was not a viable, effective option. After thorough re-examination of the comments and subsequent analysis, we continue to believe that full transition to national PPS rates without any blend of current IPS on October 1, 2000 is the most appropriate alternative. A blended rate system would be overly complex, distort the positive incentives in PPS, and reallocate limited resources from more efficient HHAs to less cost-conscious providers. A national PPS system has significant advantages over IPS. It recognizes case-mix and provides additional payments for higher cost outliers.

Comment: Several commenters objected to all HHAs being paid under home health PPS effective October 1, 2000. Many commented that this was unprecedented and recommended that the implementation date should be transitioned based on cost reporting year.

Response: The law governing the effective date for home health PPS implementation is very specific. In fact, section 5101(c)(1)(A) of OCESSA amended section 1895(a) of the Act to change the effective date for PPS from a transition by cost reporting periods to an immediate start-up date for all HHAs, effective October 1, 2000. The law, as amended, does not provide implementation by cost reporting period.

F. Split Percentage Payment

Comment: Current regulations require a physician signed plan of care before a HHA can bill Medicare for payment. Several commenters suggested the need to receive the initial percentage payment based on verbal orders. Many commenters were concerned about cash flow. Further, commenters believed that if we adopt a policy that permits initial payment based on verbal orders the need for a notice of admission would be eliminated.

Response: A number of commenters expressed concerns about cash flow to providers under the proposed system. Many reasons centered on the percentage of total payment provided upfront, as opposed to the end of the episode and the potential delays in receiving payments as a result of claims processing times, documentation requirements, and medical review. We appreciate these issues and are very interested in ensuring HHAs have adequate cash flow to maintain quality services to beneficiaries. As a result, we have taken a number of steps in this final rule that include increasing the amount of the initial percentage payment for initial episodes and a number of adjustments detailed below to significantly shorten the amount of time between the submission of the request for anticipated payment (defined below) and the receipt of payment. We believe these changes will significantly lessen the time for the receipt of payment as opposed to the approach set forth in the proposed rule. We are revising our approach to the split percentage payment as originally set forth in our proposed rule. We view the initial percentage payment as a "request for anticipated payment" rather than a Medicare "claim" for purposes of the Act. However, a request for anticipated payment is a "claim" for purposes of Federal, civil, criminal, and administrative law enforcement authorities, including but not limited to the civil monetary penalties law (as defined in 42 U.S.C. 1320a–7a(i)(2)), the Civil False Claims Act (as defined in 31 U.S.C. 3729(c)), and the Criminal False Claims Act (18 U.S.C. 287)). We also note that where we use the term "claim" in this final regulation, it refers to a "Medicare claim." The first percentage payment will not require a physician signed plan of care before submission. The request for anticipated payment reflecting the initial percentage payment for the episode may be submitted based on verbal orders. All physician verbal orders must: (1) Be put in writing; (2) reflect the agreement between the home health agency and the physician with the appropriate detail regarding the patient's condition and the services to be rendered; (3) be compatible with the regulations governing the plan of care at

§ 409.43, § 424.22, and § 484.18; and (4) be signed by a physician prior to submission of the claim. In order to request anticipated payment for the initial percentage payment based on physician verbal orders, a copy of the plan of care with all physician verbal orders placed in writing and dated with the date of receipt by the registered nurse or qualified therapist (as defined in § 484.4) responsible for furnishing or supervising the ordered service must be completed. A copy of the plan of care, which includes the verbal orders, must also be transmitted to the physician for his or her records. We believe this documentation need is consistent with current practice. Alternatively, the request for anticipated payment may be submitted if the HHA has a signed referral prescribing the physician's detailed orders for the services to be rendered and the patient's condition. Signed orders must, however, be obtained as soon as possible and before the submission of the claim for services is submitted for the final percentage payment for each episode. The final percentage payment including all of the utilization data for the episode is the Medicare claim. The claim for the residual final percentage payment requires a signed plan of care prior to billing for payment. Since the request for anticipated payment may be submitted based on verbal orders that are copied into the plan of care with the plan of care being immediately submitted to the physician and is not considered a Medicare claim, the request for anticipated payment will be canceled and recovered unless the claim for the episode is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the anticipated payment. The request of anticipated payment for the initial percentage payment is a request for payment of anticipated services. The claim for final payment of the residual percentage payment constitutes the claim for services furnished. We believe this revised approach to split percentage payment will alleviate cash flow concerns raised in the public comments. We revised current § 409.43(c) governing physician signature of the plan of care. Specifically, paragraph (c)(1) of this section specifies, "If the physician signed plan of care is not available, the request for anticipated payment of the initial percentage payment must be based on—

• A physician's verbal order that—

++ Is recorded in the plan of care;

++ Includes a description of the patient's condition and the services to be provided by the home health agency;

++ Includes an attestation (relating to the physician's orders and the date received) signed and dated by the registered nurse or qualified therapist (as defined in 42 CFR 484.4) responsible for furnishing or supervising the ordered service in the plan of care; and

++ Is copied into the plan of care and the plan of care is immediately submitted to the physician; or

• A referral prescribing detailed orders for the services to be rendered that is signed and dated by a physician."

In paragraph (c)(2) of this section, we specify that "HCFA has the authority to reduce or disapprove requests for anticipated payments in situations when protecting Medicare program integrity warrants this action. Since the request for anticipated payment is based on verbal orders as specified in paragraphs (c)(1)(i) and/or a prescribing referral as specified in (c)(1)(ii) of this section and is not a Medicare claim for purposes of the Act (although it is a "claim" for purposes of Federal, civil, criminal, and administrative law enforcement authorities, including but not limited to the Civil Monetary Penalties Law (as defined in 42 U.S.C. 1320a–7a(i)(2), and the Civil False Claims Act (as defined in 31 U.S.C. 3729(c), and the Criminal False Claims Act (18 U.S.C. 287), the request for anticipated payment will be canceled and recovered unless the claim is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the request for anticipated payment."

Paragraph (c)(3) of this section specifies that "The plan of care must be signed and dated—

• By a physician as described who meets the certification and recertification requirements of § 424.22 of this chapter and;

• Before the claim for each episode for services is submitted for the final percentage payment."

Paragraph (c)(4) of this section specifies that "Any changes in the plan must be signed and dated by a physician."

We agree with the commenter and believe that our revised approach eliminates the need for an additional notice of admission as originally proposed. We believe that the requests for anticipated payment of the initial percentage payment based on physician verbal orders responds directly to commenters concerns with current requirements governing physician signatures prior to claim submission. Commenters were concerned that the current signature requirements could disrupt necessary cash flow under PPS. We believe the request for anticipated payment for the initial percentage payment alleviates the cash flow concerns. Further, the request for anticipated payment of the initial percentage payment will provide appropriate cash flow to all providers because the requests are not subject to the current payment floor processing restrictions. The revised request for anticipated payment approach to the split percentage payment ensures adequate cash flow to providers who rely on Medicare resources to ensure continued quality care. Both the request for anticipated payment and the claim will be subject to medical review determinations. Subsequent payment withholdings may occur, as applicable. If a provider is targeted for medical review due to a history of excessive claim denials, it may not be able to submit requests for anticipated payment.

Comment: In the proposed rule, we proposed a 50/50 split percentage payment approach to the 60-day episode payment. The majority of commenters recommended a higher initial percentage payment in order to recognize the front loading of administrative costs associated with patient admissions. Many commenters requested increasing the initial percentage payment on at least the first episode due to the up-front costs associated with new patients.

Response: Based on comments that we have received, we believe the public has raised serious issues regarding cash flow under PPS. Therefore, we have re-evaluated our original split percentage proposal and have decided to revise our proposed approach to incorporate a 60/40 split for all initial episodes in order to recognize the up-front costs associated with new admissions. This new split percentage payment approach for all initial episodes is set forth in regulations at § 484.205(b)(1). All subsequent episodes will be paid at the 50/50 percentage payment split. The split percentage payment approach for subsequent episodes is set forth in regulations at § 484.205(b)(2). We believe our revised approach to the split percentage payment will provide appropriate financial relief to HHAs, adequate cash flow, and preserve the integrity of the Medicare trust funds. We believe our revised approach to the split percentage payment to include both the higher up-front percentage for first episodes and the submission of the request for anticipated payment of the initial percentage payment based on verbal orders, alleviates the cash flow issue for non-PIP providers as well as ongoing cash flow issues for PIP

providers. PIP providers will receive their last September PIP payments during October. That continuing payment flow during the transition combined with the ability to submit all requests for anticipated payment of the initial percentage payment based on verbal orders at the onset of PPS will ensure adequate cash flow to PIP providers. The ability to submit all requests for anticipated payment of the initial percentage payment based on physician verbal orders responds directly to commenters concerns with current requirements governing physician signatures prior to submission of the claim. Commenters were concerned that the current signature requirements could disrupt necessary cash flow under PPS. We believe the request for anticipated payment for the initial percentage payment alleviates the cash flow concerns. Further, the request for anticipated payment of the initial percentage payment will provide appropriate cash flow to all providers because the requests are not subject to the current payment floor processing restrictions. We plan to continue to study the up-front rate of utilization under PPS.

G. Statutory Elimination of Periodic Interim Payments (PIP)

Comment: The majority of commenters recommended the reinstatement of PIP or a PIP-like accelerated payment under PPS to ensure adequate cash flow to PIP providers as well as all providers. One commenter specifically suggested accelerated payments for high volume HHAs.

Response: Section 4603(b) of the BBA amended section 1815(e)(2) of the Act to eliminate periodic interim payments. PIP payments are a method to periodically pay in advance before receiving a claim. Accordingly, we proposed to revise § 413.64(h)(1) to eliminate PIP for HHAs for services furnished on or after October 1, 2000. In this final rule, we are also removing paragraph (h)(2)(iv) of this section to comply with the BBA requirement that eliminates PIP for home health services upon implementation of PPS.

Based on comments received, we believe the public has raised critical issues regarding the need to provide adequate cash flow to all providers and specifically to PIP providers during the transition to PPS. However, traditional PIP is related to cost-based payment reconciliations and cannot be readily adopted to PPS rates.

As stated previously, we believe our revised approach to the split percentage billing to include both the higher up-front percentage for first episodes and the submission of the request for anticipated payment of the initial percentage payment based on verbal orders, that are copied into the plan of care with the plan of care being immediately submitted to the physician, eliminates the cash flow issue for non-PIP providers as well as ongoing cash flow issues for PIP providers. With regard to transition payments to PIP providers, they will be receiving their last September PIP payments during October. That continuing payment flow during transition combined with the ability to submit all requests for anticipated payment of the initial split percentage payment at the onset of PPS as of October 1, 2000, will also ensure adequate cash flow to PIP providers. We believe our revised methodology will reduce payment flow issues and meet the needs of all providers equitably.

In addition, accelerated payments, as historically available, may be available to HHAs that are disadvantaged by delayed payments due to unanticipated HCFA claims processing system failures or delays to ensure adequate cash flow. In regulations at § 413.64(g) for cost-reimbursed providers, and in §§ 412.116(f) and 413.350(d) for hospitals and skilled nursing facilities, respectively, that receive payment under a prospective payment system, we have provided for the availability of accelerated payments for non-PIP providers in certain situations. We do not believe that HHAs should be penalized for unanticipated claims processing system delays and are extending the availability of accelerated payments to all HHAs under PPS. Therefore, we are adding a new § 484.245 to provide HHAs the ability to request accelerated payments under home health PPS if the HHA is experiencing financial difficulties due to delays by the intermediary in making payment to the HHA.

H. Low Utilization Payment Adjustment (LUPA) (§ 484.230)

Comment: Commenters on the LUPA centered on such issues as the total elimination of the LUPA, retaining the four or fewer visit threshold at a minimum, the lack of recognition of additional costs associated with the first visit in the episode due to patient admission responsibilities, negative impact on rural and small providers, and the inadequate payment amount proposed for each standardized per-visit amount per-discipline. Many commenters suggested we increase the proposed LUPA amounts to reflect the current per-visit limits by discipline or cost per visit by discipline or by a percentage increase approach. A few commenters suggested the elimination of LUPA for the first episodes, but supported application of the LUPA for subsequent episodes.

Response: We proposed a low utilization payment adjustment in order to moderate provision of minimal or negligible care, that is, to discourage HHAs from providing a minimal number of visits in an episode. We proposed episodes with four or fewer visits be paid the wage adjusted national standardized per-visit amount by discipline for each of the four or fewer visits rendered during the 60-day episode. We solicited comments on the most appropriate threshold and specifically solicited comments on the use of the higher threshold of six or fewer visits. We will retain the original four or fewer visit threshold as no commenters supported moving the threshold to six or fewer visits. In this final rule, we respond to the recommendation to increase the proposed LUPA amount by now calculating the LUPA based on a higher national average per-visit amount by discipline updated by the market basket to FY 2001. This will provide a higher level of payment and fully compensate HHAs for such visits. We are revising our regulations at § 484.230 to reflect the higher per-visit amounts that will be used to calculate the LUPA payments. We are not adopting the comment to increase the payment only for the first visit to account for the front-loading of costs in an episode because we believe the approach set forth in this rule will adequately account for the costs for low utilization episodes. We will continue to monitor the impact of the four or fewer visit threshold and the revised LUPA per-visit amounts on all types of providers under PPS. The revised LUPA methodology and rate tables are found in section IV. of this rule.

Comment: Commenters suggested that we apply LUPA only to acute patients and not to chronic patients who require B–12 injections or catheter changes.

Response: The LUPA payment approach does not distinguish between an acute or chronic home care patient. The goal of the LUPA is to appropriately pay for low utilization episodes. As stated above we have revised § 484.230 to reflect the higher per-visit amounts that will be used to calculate the LUPA payments. We believe the revised approach to calculating the LUPA per-visit amounts by discipline will more adequately reflect average costs associated with low volume episodes.

Comment: A few commenters suggested the removal of wage index adjustment in the LUPA payment

approach. Commenters also suggested that we case-mix adjust the LUPA.

Response: The LUPAs are not case-mix adjusted because they are calculated using national claims data for episodes with four or fewer visits. The claims data is only wage adjusted, not case-mix adjusted. We believe it is important to adjust the labor component of the LUPA based on the most recent pre-floor and pre-reclassified hospital wage index as historically reflected in the labor portion of home health services.

Comment: One commenter requested clarification of whether telephone contact or a telemedicine visit will count as a visit for purposes of the LUPA policy.

Response: The current definition of a Medicare home health visit has not changed with the implementation of home health PPS. The definition of a visit is set forth in § 409.48(c) of the regulations specifies that "A visit is an episode of personal contact with the beneficiary by staff of the HHA or others under arrangements with the HHA for the purpose of providing a covered service." A telephone contact or telemedicine visit does not meet the definition of a visit and therefore would not count toward a LUPA visit.

Comment: A few commenters requested clarification of the type of practitioner that would provide a LUPA visit.

Response: The current personnel qualifications and coverage guidelines governing the provision of covered home health services are not changed by home health PPS. All visits provided under HHA PPS regardless of the provision under an episode rate or LUPA rate must meet current Medicare coverage guidelines.

Comment: A few commenters requested a specific HHRG level for LUPA cases.

Response: We do not believe the case-mix weight methodology as proposed would accommodate an HHRG specific weight for the LUPA. The LUPA is a wage adjusted per-visit payment. Constructing a LUPA specific HHRG would confuse the concept of case-mix adjustment and per-visit payment for LUPAs. However, we will continue to consider this proposal as we further refine PPS in the future.

I. Partial Episode Payment Adjustments (PEP Adjustment)

Comment: Several commenters did not support the use of billable visit dates to calculate the PEP adjustment due to possible gaps in days that may not be recognized in the payment. Many commenters recommended the use of the first billable visit date through the day before the intervening event or discharge date as the span of time used to calculate the proportional payment. Many commenters did not believe the PEP reflected the increased costs associated with admission during the start of the episode. Commenters proposed eliminating the proportional payment aspect of the provision thus yielding a full episode payment for the initial HHA and a full episode payment for the HHA receiving the patient due to the intervening event. Several commenters provided alternative payment approaches to the PEP policy as set forth in the proposed rule.

Response: In the October 28, 1999 proposed rule, we proposed a PEP Adjustment to address the key intervening events of the beneficiary elected transfer to another HHA and the discharge of a beneficiary who returns to the same HHA during the 60-day episode. We proposed to restart the 60-day episode clock due to the two intervening events and end the original episode payment with a proportional payment adjustment. The proportional payment adjustment would be calculated by using the span of billable visit dates prior to the intervening event. We are not adopting the commenters' suggestions to use the day before the intervening event or discharge date to calculate the proportional payment. We are retaining the use of billable service dates to determine the appropriate payments because of the HHAs involvement in decisions influencing the intervening events for a beneficiary elected transfer or the beneficiary is discharged and returns to the same HHA during the same 60-day episode period. Proportional payments based on billable visit dates will continue to be the payment methodology for the initial HHA as a result of the intervening event. We believe the new 60/40 percentage payment split for first episode payments as specified in regulations at § 484.205(b)(1) will alleviate concerns with costs associated with new patients.

Comment: A few commenters requested clarification of the calculation of the therapy hour threshold in the case of the transfer PEP Adjustment.

Response: The therapy threshold will apply separately to the proportional portion of the first episode and the new episode that results from the intervening event. The initial HHA will have the period of time of the first billable service date through the last billable visit date in the original plan of care prior to the intervening event to reach the therapy threshold. The new episode resulting from the intervening event will not incorporate therapy usage from the prior period but will determine the therapy needs for the patient resulting from the new certified plan of care. Each part of the episode, the PEP adjusted portion and the new 60-day episode resulting from the intervening event is subject to separate therapy thresholds. The therapy threshold is not combined or prorated across episodes. Each episode whether full or proportionally adjusted is subject to its own unique therapy threshold for purposes of case-mix adjusting the payment for that individual patient's resource needs. This PEP approach to the therapy threshold applies to both intervening events of the beneficiary elected transfer and the discharge and return to the same HHA during the same 60-day episode period.

Comment: Several commenters suggested the elimination or modification of the proposed policy that prevents the PEP adjustment when a beneficiary elects to transfer to an HHA that is under common ownership with the initial HHA. We proposed that transfers among HHAs under common ownership would be paid as an under arrangement situation. Commenters believed that the proposed common ownership policy should not apply when the transfer was made because the patient moved out of the first HHA's geographic service area defined by the agency's license. Further, commenters were concerned that if the proposed language regarding common ownership was not changed to conform to the rules currently governing related parties, it would be viewed as an attempt by HCFA to pierce the corporate veil and offset the liabilities of one corporation against payments due to another.

Response: In response to these concerns, we are providing further clarification of our definition of common ownership for purposes of the PEP adjustment for beneficiary elected transfers. If an HHA has a significant ownership interest as defined in § 424.22 (Requirement for home health services), then the PEP adjustment would not apply. Those situations would be considered services provided under arrangement on behalf of the originating HHA by the receiving HHA with the ownership interest until the end of the episode. The common ownership exception to the transfer PEP adjustment does not apply if the beneficiary moved out of their MSA or non-MSA during the 60-day episode before the transfer to the receiving HHA. The transferring HHA not only serves as the billing agent, but must also exercise professional responsibility over the

arranged-for services in order for the services provided under arrangements to be paid.

Comment: A few commenters requested that we clarify how we apply our PEP policy when a home health patient elects hospice before the end of the episode. The comments focused on a hospice that is under common ownership with the HHA.

Response: If a patient elects hospice before the end of the episode and the patient did not experience an intervening event of discharge and return to the same HHA, or transfer to another HHA during an open 60-day episode prior to the hospice election, the HHA receives a full episode payment for that patient. Upon hospice election, the beneficiary is no longer eligible for the home health benefit. The common ownership restriction for the PEP adjustment applies only to the relationship between two HHAs providing covered home health services to a home health eligible beneficiary.

Comment: A few commenters requested clarification of whether a PEP adjustment will apply to the initial HHA when a physician or patient-initiated termination of home health services occurs and the treatment goals have not been reached. In addition, commenters further requested clarification of the beneficiary elected transfer PEP policy when the beneficiary transfers because the HHA provided minimal or negligible services.

Response: To account for the situation when a patient initiates the termination of services for any reason and requests a transfer to another HHA, we developed the PEP adjustment to assure that the patient's freedom of choice was honored and that the Medicare Trust funds were protected by a policy that ensures adequate payment levels that reflect the time each HHA served the patient under a transfer situation. Unless the beneficiary refused further care or was a safety risk to the HHA staff, we do not envision a situation in which a physician would terminate care prior to the completion of treatment goals. However, we would focus survey or medical review resources to investigate complaints of minimal or negligible service delivery as a motivating factor for a beneficiary's election to transfer from the original HHA.

Comment: A few commenters suggested that we allow the physician to reinstate the initial plan of care rather than requiring a new plan of care in the situation of discharge and return to the same HHA during the same 60-day episode.

Response: We are not adopting this comment. We believe that a new certified plan of care is a critical feature of any episode payment, regardless of whether prior treatment goals were met and the patient was formally discharged. We do not believe that it is unduly burdensome because the HHA will be receiving access to an entire 60-day episode payment. Further, a patient that returns to the HHA for admission after discharge would require a new OASIS assessment and new plan of care under current practice guidelines.

Comment: Some commenters asked if the PEP adjustment is applied when a patient dies.

Response: A full episode payment will be paid in the event of a patient's death during a 60-day episode. No PEP adjustment will be calculated due to a patient's death during an episode.

Comment: A few commenters argued that the PEP adjustment policy approach does not adequately address "snow birds", persons who seasonally migrate from one place to another.

Response: We believe the PEP adjustment will adequately address this situation. As stated previously, if for any reason, a beneficiary elects to transfer to another HHA, the original HHA's episode payment would be proportionately adjusted with a PEP adjustment to reflect the time the HHA served the patient prior to the intervening event of the transfer. This would include the "snow bird" situation. We do not believe there is a need for an exception from the transfer policy regarding "snow birds". Our PEP adjustment policy governing transfers provides for a clean slate for a 60-day episode payment, OASIS assessment, and certification for the receiving HHA. We believe this is an equitable approach to intervening events during the 60-day episode.

Comment: Commenters argued PEP adjustment governing discharge and return should not apply when there is a readmission for the same diagnosis. Commenters stated that the discharge and return to the same HHA during the 60-day episode PEP adjustment requires the goals in the original plan of care to be met prior to discharge. Commenters requested further clarification of meeting treatment goals in the original plan of care.

Response: We will not provide for payment for two full episodes at any time during a given certified 60-day episode. If an HHA discharges a patient, it is assumed that the patient has met the course of treatment set forth in conjunction with physician orders in the patient's original plan of care. If the patient returns with the same diagnosis, it may not indicate the same plan of care. Even if the HHRG level did not change upon return, the patient's initial discharge indicated completion of the original course of treatment. The original episode payment would be proportionately adjusted to reflect the time prior to discharge with a PEP adjustment.

J. Significant Change in Condition Payment Adjustment (SCIC Adjustment) (§ 484.237)

In the October 28, 1999 proposed rule, we proposed a significant change in condition adjustment to recognize the event of a significant change in patient condition that was not envisioned in the original plan of care. The SCIC adjustment is calculated as a proportional payment reflecting the time both before and after the patient experienced the significant change in condition. Billable visit dates are used to calculate the proportional payments.

Comment: Some commenters did not support the use of billable visit dates due to the potential gaps in payment days used to calculate the SCIC adjustment. Commenters suggested using the dates that the patient received comprehensive case management or all the days in the 60-day episode. Many commenters suggested the restart of the 60-day episode clock due to the patient's significant change in condition, resulting in two full episode payments or a prorated payment plus a full new episode payment. Other commenters suggested that the admission to an inpatient facility should indicate close of a previous episode for outcome data collection, similar to the PEP proportional payment approach. Other SCIC comments centered on prorating payments based on visits or increasing the SCIC proportional payments by an equitable percentage increase to each proportional payment for the original diagnosis.

Response: The use of billable visit dates as the boundaries for the payment adjustment encourages appropriate service use and supports the delivery of all needed care. We further believe that the current SCIC adjustment policy provides financial relief to HHAs who would otherwise be locked into a case-mix adjusted payment based on a point in time of the patient's condition at the beginning of the episode. We will retain the current SCIC adjustment policy and are not adopting the commenters' suggestions. The SCIC adjustment ensures HHAs will have adequate resources to meet the changing patient needs of its mix of patients. The SCIC adjustment provides HHAs with the

ability to meet the changing resource needs of their patients.

Comment: Many commenters requested clarification, and others requested removal, of the policy set forth in the preamble of the proposed rule governing intervening hospital stays during a 60-day episode. In the proposed rule, we stated that if a patient experiences an intervening hospital stay during an existing 60-day episode under an open plan of care, then the patient would not have met all of the treatment goals in the plan of care. Therefore, the intervening hospital admission during an existing 60-day episode could result in a SCIC adjustment, but could not be considered a discharge and return to the same HHA PEP adjustment. Currently, HHAs are provided the option to discharge patients upon transfer to an inpatient facility.

Response: We believe that HHAs should be given the option to discharge the patient within the scope of their own operating policies; however, when an HHA discharges a patient as a result of a hospital admission during the 60-day episode that discharge will not be recognized by Medicare for payment purposes. Either an intervening hospital stay will result in an applicable SCIC adjustment or if the Resumption of Care OASIS assessment upon return to home health does not indicate a change in case-mix level, a full 60-day episode payment will be provided spanning the home health episode start of care date prior to the hospital admission, through and including the days of the hospital admission, and ending with the 59th day from the original start of care date of the episode.

Comment: Commenters requested clarification that the SCIC adjustment will only apply in cases of deterioration, that is, increased payment due to a new HHRG and not improvement resulting in a possible decrease in payment for the second part of the SCIC adjustment.

Response: We designed the SCIC adjustment to permit the HHA to adjust the assessment and the concomitant HHRG assignment when the patient's condition changes in a significant way that was unanticipated in the context of the initial assessment. The SCIC adjustment will occur in both situations of significant patient deterioration and improvement. Excessive use of the SCIC adjustment for patient deterioration will be monitored under PPS to ensure the legitimacy of claims for increased payment.

Comment: A few commenters asked if there is a limit to the number of SCIC adjustments in one 60-day episode.

Response: Although there is the clinical possibility of more than one SCIC adjustment during a given 60-day episode, we believe it will be a rare occurrence. While we will permit more than one SCIC per episode, providers who demonstrate a pattern of multiple SCIC adjustments will likely be subject to review to assure the validity of such situations.

Comment: Several commenters suggested the use of a modified OASIS assessment for purposes of SCIC Adjustments. Commenters requested that we require only those OASIS and other items necessary for case-mix for the determination of a SCIC adjustment.

Response: Totally apart from PPS, the current protocol governing OASIS assessment schedules, requires the complete OASIS assessment at points in time when the patient experiences a significant change in condition. Further, we believe it is necessary to have all OASIS items relevant for outcome measures to monitor the use of SCIC adjustments under PPS. We are not adopting this comment on the approach to SCIC adjustments. The SCIC adjustment provides an additional payment adjustment without which PPS would have locked the HHA and patient in a 60-day episode payment level according to the patient's status at the beginning of the 60-day episode. We do not believe the completion of the full OASIS assessment generates a cost that outweighs the benefit of the SCIC adjustment from a payment and quality of care perspective.

Comment: Commenters had additional questions regarding our policies governing the SCIC adjustment. Specifically, commenters asked if physician verbal orders would suffice to precipitate a SCIC adjustment or would the form 485 have to be completed.

Response: The SCIC adjustment occurs when a beneficiary experiences a significant change in condition during the 60-day episode that was not accounted for in the original plan of care. In order to receive a new case-mix assignment for purposes of the SCIC adjustment payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain necessary change orders reflecting the significant change in treatment approach in the patient's plan of care. While the physician's verbal order and the corresponding OASIS reassessment may precipitate the new case-mix level and corresponding payment grouping the HHRG for the balance of the 60-day episode, the SCIC adjusted episode, like any other episode, requires a signed plan of care prior to submission of the claim for the final percentage payment.

Comment: Commenters requested clarification of whether the LUPA will apply in situations of the SCIC adjustment.

Response: A SCIC adjusted episode payment could be further adjusted to reflect the LUPA, if applicable. However, because a LUPA payment is not case-mix adjusted, the SCIC would have no payment consequence on an episode paid at the LUPA level. This would be a limited, but not inconceivable, occurrence that would likely be targeted by medical review.

K. Case-Mix

Caregiver Variables on OASIS Not Used in Case-Mix System

Comment: In the proposed rule we stated that caregiver variables would be omitted from the case-mix model. Some commenters were concerned that failure to consider caregiver availability may result in inadequate payment. One commenter stated that returning to independence or assuming care on a long-term basis often depends on the patient's support system or lack thereof. Commenters stressed that caregiver availability is a particularly strong factor in rural areas where patients have fewer community supports to make up for the lack of caregiver assistance in the home.

Response: In the proposed rule, we discussed our basis for excluding such variables. We recognize that adjusting payment in response to the presence or absence of a caregiver may be seen as inequitable by patients and their families. To the extent the availability of caregiver services, particularly privately paid services, reflects socioeconomic status differences, reducing payment for patients who have caregiver assistance may be particularly sensitive in view of Medicare's role as an insurance program rather than a social welfare program. Furthermore, adjusting payment for caregiver factors risks introducing new and negative incentives into family and patient behavior. It is questionable whether Medicare should adopt a payment policy that could weaken informal familial supports currently benefiting patients at times when they are most vulnerable.

Notwithstanding these considerations, we examined the usefulness of caregiver factors but found them to be only minimally helpful in explaining or predicting resource use. A variable on the availability of a caregiver had no impact on average resource cost (Abt Associates, Second Interim Report, September 24, 1999), and only a modest impact after controlling for other patient characteristics (Abt Associates, First Interim Report, July 1998 [Revised December 1998]). This could result if patients who are able to remain in the

home without a caregiver are inherently less impaired and more able to provide self-care than other home care patients. (One commenter seemed to confirm this hypothesis in stating that caregiver availability can determine whether a patient can safely live at home.) A strong relationship between caregiver assistance and patient health/functional status could make it difficult analytically to identify a cost impact resulting from the caregiver's lack of availability. As a technical matter, this problem could hinder accurate incorporation of caregiver availability into the case-mix system, were it deemed appropriate.

Results from the Phase II per-episode prospective payment demonstration lend credence to the limited value of caregivers in explaining resource use under a PPS system. Evaluation of the demonstration indicated that reductions in service utilization among PPS patients were the same, regardless of whether the patient had other caregiving (Mathematica Policy Research, Inc., "Per Episode Prospective Payment for Medicare Home Health Care Sharply Reduces Service Use," Draft Report, December 1998). The findings suggest that, despite intentions to rely more heavily on other caregivers as a way of reducing home care costs, PPS agencies did not target their service reductions more heavily on patients with caregivers. The reason for this outcome is unclear. (There was also little or no indication that PPS agencies tried to avoid patients without caregivers.)

Other caregiver variables examined in the case-mix study, measuring frequency of assistance and caregiver health/psychosocial status, also exhibited a relatively modest impact on resource cost. When added to the existing model they added less than one point to the model's explanatory power (R-squared) (Abt Associates, Second Interim Report, September 24, 1999). These findings weaken the assertion that failure to adjust for caregiver factors could render payments inadequate. It should also be noted that, based on preliminary data, these caregiver variables did not have particularly strong item reliability (Abt Associates, Second Interim Report, September 24, 1999, Appendix G). Low reliability means an assessment item is prone to mis-measurement. In measuring case-mix for payment purposes, we wish to avoid, to the extent possible, items with weaker reliability. (We will continue to examine the reliability data as they are finalized.)

In summary, we believe that in light of data that support our policy concerns surrounding caregiver variables, and their insignificant contribution to predicting resource use, these OASIS items are not appropriate for use in the case-mix adjuster.

Comment: Several commenters urged us to continue to study the issue of caregiver impacts, including further study of language used in the caregiver items for the OASIS.

Response: We will continue to examine OASIS caregiver variables and their impact as we analyze national OASIS and claims data to pursue refinements to the case-mix system. However, in the absence of policy consensus that caregiver variables are appropriate to include, it would not be cost-effective to commission further studies of alternative wording of caregiver-related assessment items.

Variables Identifying Preadmission Location in the Services Utilization Dimension

In the proposed rule we set forth a services utilization dimension within the case-mix model. We proposed including variables indicating whether certain inpatient stays occurred in the 14-day period immediately preceding the home health episode. Not only are pre-admission inpatient stays a traditional indication of need in clinical practice, but also such variables were useful correlates of resource cost in our analyses of the case-mix data (Abt Associates, First Interim Report, July 1998 [Revised December 1998], Abt Associates, Second Interim Report, September 24, 1999).

Comment: Several commenters requested clarification about the derivation of the scores and severity grouping in the services utilization dimension.

Response: Our data indicate that an acute care hospital discharge (without follow up post-acute inpatient stay) within the 14 days immediately preceding admission to home care is associated with the lowest costs during the 60-day episode. Other research has shown similar findings. For example, in the home health Phase II per-episode prospective payment demonstration research, multivariate analysis of home care utilization in the year following admission also suggested that pre-home-care hospital stays were associated with reduced home care utilization. In the case-mix data, episodes involving patients with no pre-admission inpatient stay had the second-lowest cost; episodes involving patients who had both a hospital and post-acute-care institutional stay (that is, skilled nursing facility (SNF) or rehabilitation facility) had the third-lowest cost; and episodes involving patients who had only a SNF or rehabilitation facility stay had the highest cost. The highest-cost category (SNF or rehabilitation stay alone, given a 14-day window) may actually be comprised predominantly of relatively long stays. These stays appear to be indicators for patients who, upon their return home, have high care needs during the 60 days following home health admission.

In the case-mix data, if a patient who had a hospital stay in the 14 days preceding admission is evaluated to need significant home therapy, then the resource costs increase sharply. Likewise, therapy utilization markedly increased resource cost for the episodes preceded by the other three pre-admission locations. Because the therapy utilization was to be considered simultaneously with the preadmission location in the services utilization dimension, we examined the resource cost according to eight categories. These eight categories are the four pre-admission locations (hospital stay alone, no inpatient hospital or SNF/rehab stay, a hospital-stay-plus-SNF/rehab-stay, or a SNF/rehab stay alone) with and without therapy utilization of at least eight hours.

The resulting array of average resource cost indicated that among episodes not meeting the therapy threshold, those following a hospital stay, no inpatient hospital or SNF/rehab stay, or a hospital-stay-plus-SNF/rehab-stay all had similar resource costs. We assigned increasing scores—zero to 2—for these groups, in accordance with the trend in the data overall, but ultimately grouped them into a single severity level reflecting their similar resource costs. Episodes not meeting the therapy threshold but with a SNF/rehab stay alone were effectively assigned a score of three (from the combination of scoring for the hospital stay and SNF/rehab response categories) and grouped separately into the second severity level, because their resource cost was significantly higher than patients with a score of zero to 2.

The remaining two severity groups were for episodes that met the therapy threshold. Therapy-threshold patients coming from the first three locations were grouped together into a third severity level because of the similarity in their resource costs. Scoring for these patients again reflected the overall trend by preadmission location (scores of zero, one, and two for hospital stay, no inpatient hospital or SNF/rehab stay, or a hospital-stay-plus-SNF/rehab-stay, respectively) but included an additional four points to reflect the cost impact of the therapy. High-therapy patients from the fourth pre-admission location (SNF/

rehab stay alone) had the highest costs of any group, so we placed them in the fourth and final severity category. Following the existing scoring logic, these episodes had a total score of seven based on three points for the preadmission location and four points for the therapy need.

Comment: Some commenters stated that their own experience did not confirm the relationship between pre-admission institutional stays and resource cost as indicated in our case-mix research data. Specifically, commenters indicated that patients coming from the hospital are often more acutely ill and resource-intensive than other patients, particularly patients who had no preadmission institutional care. For example, these patients typically need more frequent visits and teaching. As a result, according to these comments, the case-mix system fosters a disincentive to admit post-acute-hospital patients.

Response: The conclusion reached by the commenters is incorrect because the severity grouping (though not the scoring) is neutral with regard to pre-admission hospital stays. Patients with such stays, as well as patients without any institutional stays, and patients with hospital-plus-SNF/rehab care, are all grouped together in the same severity category. The patients who were admitted with only a SNF/rehab stay in the previous 14 days are grouped into a separate severity category. Within each of these two severity categories, the patients meeting the therapy threshold are split off into an analogous severity category reserved for therapy patients. It is the severity category that determines the case-mix weight. (In the services utilization dimension, the scoring system is simply a device to organize the assessment data on preadmission location and therapy threshold.)

Comment: Several commenters suggested that the 14-day definition for the preadmission location on OASIS actually encompasses a heterogeneous group of patients, and that comparison of patients admitted to home care within 1 or 2 days of discharge with patients admitted within 5 to 14 days of discharge would reveal a cost difference.

Response: While this distinction or others related to the time since discharge might prove useful, the OASIS assessment does not provide the level of detail necessary to recognize any difference. In analyzing the data available to us, we examined the cost separately for the subset of patients who experienced a SNF/rehab stay as well as an acute care stay (and thus were unlikely to be among the patients admitted to home care within one to two days of discharge). This subset of patients was generally about as costly as the hospital-stay-only patients. This suggests that in the absence of the SNF/rehab stay, the agency would have otherwise incurred higher resource costs by admitting the patient to home care directly from the acute-care-hospital. The timing of the home health admission is to some extent correlated with SNF use, which in turn may be correlated with case severity. Under these conditions, it may be difficult to quantify a suspected relationship between the timing of the admission and resource use. (This is similar to the comment noted earlier concerning caregiver variables; that is, a variable such as caregiver availability or SNF use may tend to offset resource cost for particularly costly patients, making it difficult to observe the relationship between these patients' severity and their presumed costliness.) We will continue to examine this issue in the future using claims and linked OASIS data.

Comment: Another comment stated that paying a higher rate for patients experiencing a pre-episode SNF or rehab stay puts rural agencies at a disadvantage, because many patients elect to return directly home from the hospital due to a shortage of post-acute institutional care facilities.

Response: As stated earlier, three pre-admission location categories are all grouped in the same severity level. The fourth category was grouped separately—patients experiencing only a SNF/rehab stay within the previous 14 days. As we noted in the proposed rule, these patients likely experienced a relatively long SNF stay, which appears to be an indicator for exceptionally high case severity. Whether such cases from rural areas systematically fail to be placed appropriately in post-acute-care institutions deserves further study. Our impact analysis suggests, however, that rural agencies will experience payment increases under PPS (see Table 11). Examination of payment-to-cost ratios in the Abt case-mix data also suggests that rural agencies will experience payments under the PPS system that exceed their historical cost levels (Second Interim Report, September 24, 1999).

Comment: One commenter stated that recent hospitalization affects the plan of care, particularly within the first 30 days. We also received a comment noting the costliness of care for "chronic, long-term" patients coming from the community as their pre-admission location, but with high clinical and functional severity.

Response: We emphasize that the resource cost used to develop the case-mix system was measured over the patient's first 60 days under the care of the HHA. Thus, it is entirely possible that patients with contrasting pre-admission locations could have similar total resource costs albeit with different care trajectories. For example, for relatively healthy patients who are bound for recovery from an acute illness, and who may therefore be discharged from home care fairly soon after a short, intensive period of teaching and support, the total 60-day resource cost may be comparable to the cost for certain chronically ill patients who have less-intensive but more sustained needs over the course of the 60-day episode.

Comment: A commenter urged us to revise the services utilization scoring of OASIS item M0170 because a patient coming from the community is similar in resource need to one coming from a rehabilitation hospital or SNF, but they have different scores on the services utilization category.

Response: We have not revised the scoring of M0170 because the combination of scoring for M0170, lines 1, 2, and 3, allows for differentiation between SNF or rehabilitation patients with and without hospital discharge. This distinction is important in case-mix system grouping.

Comment: Commenters also indicated concern about the accuracy of reporting on the OASIS for the preadmission location.

Response: We agree that assessing clinicians may have difficulty in some instances obtaining accurate data on the type of institution and the dates of discharge. The fact that the severity levels in the services utilization dimension are neutral with respect to most pre-admission location scenarios partially mitigates this concern. Assessing clinicians would be well-advised to confirm information with multiple sources (for example, the patient, family, referring physician, local hospital) to ensure its accuracy. The clinician may also ask to see the patient's discharge instructions. Virtually all institutional stays that require ascertainment for case-mix purposes are covered by Medicare. The National Claims History and other data bases eventually record these events, potentially affording Medicare's fiscal intermediaries opportunities for reviewing case-mix accuracy on a post-pay basis. We will instruct the fiscal intermediaries to take into consideration the challenges faced by agencies in accurately reporting the preadmission

location, and formulate review policies accordingly.

Comment: A commenter expressed concern that preadmission location variables are a matter of timing for a service rather than a measure of acuity. The commenter questioned why a SNF discharge 16 days before would differ from one 14 days before home health admission.

Response: The preadmission location item M0170 was originally included in OASIS as one of many variables useful for risk adjusting outcome measures. A recent institutional stay (discharge within two weeks) continues to be a frequent event preceding home care. The two-week definition is unambiguous, and has proven statistical impact in both a case-mix and outcomes research context. Using a longer recall period would present measurement problems and would be less helpful in explaining resource use.

Comment: A commenter stated that the OASIS item on prior location (M0170) creates an artificial distinction between patients who received care in a rehabilitation wing of an acute care hospital and patients who received care in a rehabilitation facility.

Response: OASIS instructions define a rehabilitation facility as a freestanding rehabilitation hospital or a rehabilitation distinct part unit of a general acute care hospital. Therefore, a rehabilitation wing (that is, distinct part unit) is included in the OASIS rehabilitation facility definition.

Comment: A commenter stated that the language regarding nursing facilities was inconsistent between Table 7 in the proposed rule and OASIS. A related comment suggested that we clarify the response categories in OASIS item number MO170 to distinguish between stays in skilled nursing facilities and extended care facilities.

Response: We are revising the OASIS MO170 response categories to allow separate reporting of skilled nursing facility discharges within the previous 14 days. This change will resolve the inconsistency.

Comment: A commenter requested clarification of Case 1 in the proposed rule (page 58179) and asked whether the case information or Table 7 is correct.

Response: We apologize for this error in the case description. The Service Dimension should have read "Service Domain=4 (therapy more than 8 hours)."

Comment: A commenter stated that there should be much less emphasis on where the patient is located and more on the patient's clinical needs.

Response: We included preadmission location information in the services utilization dimension because it has traditionally been associated with variation in home care services utilization, and in our case-mix research it helped to explain variation in home care resource use. We do not believe the case-mix system places excessive emphasis on this type of predictor variable. Clinical needs are addressed in the clinical dimension.

Variables Measuring Therapy Utilization in the Services Utilization Dimension

To ensure that patients who require therapy would maintain their access to appropriate services under the HHA prospective payment system, in the proposed rule we grouped patients according to their therapy utilization status. Specifically, we defined a therapy threshold of at least eight hours of combined physical, speech, or occupational therapy over the 60-day episode, to identify high therapy cases. We proposed a threshold of eight hours of therapy based on clinical judgment about the level of therapy that reflects a clear need for rehabilitation services and that would reasonably be expected to result in meaningful treatment over the course of 60 days. Subsequently, further development and refinement of the Abt case-mix model assumed this threshold as part of the grouper logic.

The 15-minute-increment billing requirement in principle allows the RHHI payment system to verify the case-mix therapy threshold. However, there is uncertainty about the completeness and accuracy of the 15-minute reporting. This led us to propose that, pending resolution of this issue, the therapy threshold be expressed in a defined number of visits. Returning to the resource use data of the Abt study, we determined that on average a therapy visit lasted approximately 48 minutes. This implies that on average eight hours of therapy would be exhausted in 10 visits.

Comment: Several commenters urged us to change the conversion to eight visits to be consistent with current cost reporting and salary equivalency practice equating one visit to one hour. Commenters suggested that, without such a change, the proposal effectively reduces therapy payments. Some commenters argued that a conversion to eight visits (or fewer—other commenters proposed six visits and four visits) would compensate for excluding time spent on a case outside of the home from the calculation of resource cost in the Abt study. In addition, commenters pointed out that some patients will achieve eight or more hours in fewer than 10 visits, so HCFA should recognize that the therapy threshold has been met as soon as the eight hours are achieved.

Response: We see no reason to associate the cost reporting and salary equivalency practices with the independent, congressionally mandated 15-minute-increment reporting requirement. The origin of this requirement was Congress's intent that adequate data be available to both develop and refine the HHA prospective payment system. We see these data potentially as key resources for improving the case-mix system in the future. Upon linking the claims with the OASIS assessments, a data resource comparable to the Abt case-mix study data will be available for research purposes. This resource promises to improve upon the Abt data by virtue of the large sample sizes it would provide. Many suggestions from commenters for improvements that need study can be pursued once these data are assembled. We believe there are advantages to the continued gathering of 15-minute billing information. We urge home health agencies to continue their diligent collection of these data so that eventually the therapy threshold can be used as originally defined—in terms of time spent in the home, not visits.

The PPS pricer developed for the first year of PPS will determine the case-mix adjustment based on the 10-visit threshold without consideration of the 15-minute-increment billing data on the claim. Upon analysis of national claims data under PPS, we will determine whether the pricer should be changed to take into account information from the 15-minute-increment reporting. We are concerned that counting visits rather than hours to satisfy the therapy threshold in the case-mix groupings could become a source of potential abuse. Therefore, if we identify providers whose therapy visits are systematically and significantly shorter than the 48-minute standard, yet meet the 10-visit threshold, we will examine such cases and reduce the case-mix assignment if evidence documents that therapy hours were well below the 8-hour threshold.

The commenters' suggestion that we compensate for excluded time spent outside the home by adopting a lower therapy threshold does not resolve a significant issue that requires further study. The commenters' proposal can result in diminished payment accuracy, because the relative weights are based on groups defined from the 8-hour threshold. If, over time, the composition of the therapy groups shifts to lower-cost patients, the relative weights would need to be adjusted accordingly.

If we adopted a lower therapy threshold or a graduated threshold, as some commenters suggested, we believe the result would be an increase in the incentive to maximize payment by manipulating the delivery of therapy. Comments proposing that Medicare prorate the therapy factor in transfer or in cases where the therapy utilization is spread over more than one episode, present problems for this reason as well. The comment suggesting that the therapy factor be prorated when utilization is spread over more than one episode appears to reflect a misunderstanding of our intent to have the therapy threshold, as applied within the 60-day episode, target patients with significant therapy needs. The rationale for recognizing a therapy utilization factor is to ensure that agencies will be adequately compensated for delivering this high-cost service, thus preserving access for patients with therapy needs. It is the same rationale that underlies case-mix adjustment itself. Payment weights for groups containing patients whose therapy utilization is spread over multiple episodes reflect the reduced resource costs of these patients per each 60-day episode. As discussed previously, in a PEP situation (for example, a transfer), the therapy threshold is separately measured for the proportional episode and the new episode resulting from the beneficiary elected transfer. In the SCIC situation, the therapy threshold applies to the total therapy visits provided to the beneficiary during the episode both before and after the significant change in condition occurred.

Further suggestions that skilled nursing time as well as aide time be measured and treated the same as therapy hours would also seem to reinforce these undesirable incentives, as skilled nursing visits make up the single largest discipline category in home health care, and aide visits the second largest, with both far outweighing therapy visits.

Comment: Several commenters questioned the decision to use a therapy threshold in the case-mix adjustment system.

Response: We recognize that, as we indicated in the proposed rule, using a utilization variable such as the therapy measure is susceptible to manipulation. However, currently our best available data requires us to rely in part on the therapy measure. Without it, we cannot achieve the preferred level of payment accuracy, notwithstanding its potential susceptibility to manipulation. We note that the case-mix system for home health is similar to the other major Medicare case-mix systems, in that these others also use measures of treatment planned or received. We will continue to review the use of a utilization variable in this system over the long term.

Comment: We received several suggestions from commenters that amounted to changing the group assignment for certain types of patients so that the payment weights for these patients would be comparable to or even higher than the existing therapy-group weights. For example, one suggestion was to award points to the services utilization dimension when the patient is assessed at the highest level of the clinical and functional dimensions. Another suggestion was to add points to the services utilization dimension when the patient is a user of multiple therapies, perhaps by defining a fifth severity level within the services utilization dimension.

Response: We appreciate these comments as they will aid us as we further refine the case-mix model. At this time, however, it is not clear that such changes would provide a satisfactory remedy for the problems the commenters have raised. In deciding on the basic structural characteristics of the case-mix system, we had to balance clinical acceptability, complexity, and technical issues, such as the feasibility of estimating payment weights from varying group sample sizes. Thus, suggestions that imply a larger number of groups must be evaluated in terms of their potential to impact the accuracy of the payment weights, the system's clinical logic add to, not lessen, the complexity of administering the system. Any grouping changes potentially affect the entire array of payment weights because they are relative values.

Comment: One commenter stated that it will be very difficult for agencies to comply with the requirement to project the number of therapy hours at the start of care, because physicians' orders in the plan of care do not typically indicate the number of anticipated therapy hours or visits.

Response: The Home Health Certification and Plan of Care (HCFA 485) requires the physician orders to specify the amount, frequency, and duration for disciplines and treatments. We expect agencies to make the projection from these orders.

Comment: A commenter sought confirmation that the reconciliation of projected therapy use with actual therapy services furnished during the 60-day episode has the potential to either decrease or increase final payment.

Response: The commenter is correct. The final payment may increase or decrease in response to a difference between the therapy projected at the start of care and the therapy received by the patient by the end of the 60-day episode.

Comment: A commenter stated that the Phase II per-episode prospective payment demonstration research indicated barriers to occupational therapy (OT) services under PPS. The commenter recommended that we consider a more interdisciplinary approach to OASIS so occupational therapy would not be underutilized.

Response: The therapy threshold in the case-mix adjuster is based on all three therapy disciplines combined. The design of the demonstration did not include a case-mix adjuster with a therapy threshold of any sort. It does not necessarily follow that the national PPS would introduce a barrier to OT services.

Comment: A commenter recommended that therapists should assess the patient's functional status to minimize errors in measurement. In addition, the commenter believes monitoring will be needed to prevent payment incentives from distorting functional assessment measurements.

Response: We expect that agencies will measure functional status as accurately as possible, consistent with incentives for efficiency in the prospective payment system. We have no authority to mandate functional status assessment by a particular discipline. We agree that medical review activities should include review of functional assessment results.

Comment: A commenter stated that, as a result of the therapy threshold, the case-mix system will divert utilization of the home health benefit away from the frail elderly and in favor of the short-term patient.

Response: It is not our intention to change access under the home health benefit through a case-mix adjusted prospective payment system. Moreover, the payment for continuous 60-day episodes of care under PPS will be more conducive to the care of longer stay patients than the current interim payment system. We expect that evaluations of the system's impact will study the question raised by this commenter.

Comment: A commenter recommended standardizing therapy visits in hours or 15-minute increments to meet the current statutory requirements of section 4603 of the BBA that specify that home health visits are reported in 15-minute increments.

Response: We have not accepted this recommendation. We believe this would

restrict agencies' ability to manage care efficiently.

Comment: One commenter was concerned about the high relative payment weight associated with therapy-threshold case-mix groups, and because of this concern, questioned whether the Abt Associates sample was representative of agencies in the industry offering therapy programs.

Response: The Abt Associates sample used to develop the case-mix groups was selected to be representative of national service delivery patterns. The 90 participating agencies were selected from all four census regions of the country, from among different ownership categories (freestanding for-profit, freestanding voluntary/private nonprofit; hospital-based; and government), from both urban and rural areas, and from among agencies with high, medium, or low practice patterns (as measured by the number of visits per-episode in 1995). As we note elsewhere in this rule, in our subsequent analysis of OASIS data and utilization data for the nation as a whole, we have found that these agencies on average appear to resemble the nation closely. We have no reason to believe that their therapy service delivery is unusual and would result in an inaccurate relative weight for therapy-threshold cases.

Wound Care Patients

Comment: Many commenters argued that services for many wound patients would be inadequately reimbursed under the proposed case-mix system. One often cited reason was the high cost of wound supplies for some patients. Some commenters recommended that wound supplies costs should be directly reimbursed, rather than being bundled into the episode payment.

Response: We have not adopted this recommendation. We have no statutory authority to unbundle the wound supplies costs. All supplies costs are now in the base costs used in determining the payment amount. As we note in our response to comments on omission of time spent outside the home from the calculation of resource costs, the current system of relative weights assumes that the omitted costs are directly proportional to time spent in the home. We will consider methods for testing this assumption, including the impact on wound care reimbursement. Case-mix model revisions, adopted in response to comments concerning wound care patients, have resulted in increased payments for wound care patients. These are described below and in the section on changes to the case-mix model.

Comment: Several commenters noted that the clinical dimension does not address wounds from trauma.

Response: In response to this comment, we have added a variable to identify trauma and burn patients who have wounds. This variable is now included in the clinical dimension. If a patient has a primary diagnosis of trauma or burns and OASIS item M0440 indicates that there is a wound, the clinical score is increased by 21 points.

Comment: A commenter recommended that the scoring for pressure ulcers in the clinical dimension should take into account their number, size, condition, or complexity.

Response: The clinical dimension in the proposed rule took into account the stage of the most problematic observable pressure ulcer, if any. OASIS does not record the size of pressure ulcers. The assessment covers the number of pressure ulcers at each stage. The status of the most problematic observable pressure ulcer is also reported. These stage and status measures are intended to measure the condition and complexity of the pressure ulcers.

In accordance with the comments on pressure ulcers, we re-examined the impact of the pressure ulcer stage and status variables, and the number of pressure ulcers by stage, in the Abt data. We analyzed a newly available larger learning sample of 11,503 episodes. As a result of these analyses, we identified a statistically significant score to add to the clinical dimension score if the number of pressure ulcers at stage three or four is two or more. This variable is now included in addition to the original variable measuring the stage of the most problematic pressure ulcer. It adds 17 points to the clinical score. As in our earlier investigations, the status of the most problematic observable pressure ulcer did not contribute significantly to the model after the other variables were included. As we continue to study revisions to OASIS, we will consider including additional data on such factors as the size of pressure ulcers.

Comment: Several commenters indicated that wound variables should be more detailed to provide better reimbursement for wound patients who score low on the clinical dimension but nevertheless incur high costs. For example, a commenter stated that if a stasis ulcer status is early/partial granulation, no points are given, but this does not make sense if the goal is to heal the wound. Another commenter recommended that early/partially granulating stasis ulcers should be given 24 points to make the case-mix system's treatment of stasis ulcers consistent with its treatment of surgical wounds.

Response: In addition to analyses on pressure ulcers (described above), we re-examined the definition of the case-mix variables for the status of stasis ulcers and surgical wounds. We used the newly available larger learning sample of 11,503 episodes. As a result, we have identified separate score values to add to the clinical dimension for early/partial granulation. These scores are 14 and 7 for the early/partially granulating most problematic stasis ulcer and early/partially granulating most problematic surgical wound, respectively. Revised scores for the most problematic nonhealing stasis ulcer and most problematic nonhealing surgical wound are 22 and 15, respectively.

In further attempts to more accurately measure the severity of wound patients, we investigated interactions between wound severity and several comorbidities (for example, diabetes) and immobility, but statistical results generally did not support including such interactions as additional score-bearing variables. In future work refining the case-mix model, we plan to use national claims and OASIS data to continue investigating comorbidities. Agencies could assist such efforts by reporting diagnosis codes on OASIS at the complete four-digit or five-digit level, as recommended by the official coding guidelines.

Comment: One commenter reasoned that costly wound patients, especially severe pressure ulcer patients, often may receive additional points in the clinical dimension for other problems (for example, diabetes or vision problems), but there is no recognition in the case-mix system for a sum of clinical points exceeding 27. In a similar vein, another commenter recommended creating a fifth severity level in the clinical dimension to increase payments for severe wound patients.

Response: In addition to refining measures for pressure ulcers, stasis ulcers, and surgical wounds, in a further effort to improve payment accuracy for wound patients, we have revised the case-mix system by re-defining the clinical severity score intervals. The revised score intervals are as follows: minimal severity: 0–7; low severity: 8–19; moderate severity: 20–40; high severity: 41+. The relative frequencies in the Abt sample for the revised clinical severity levels are 30 percent, 36 percent, 28 percent, and 6 percent, for minimal, low, moderate, and high clinical severity, respectively. (In the proposed rule, the corresponding percentages were 30 percent, 30 percent, 23 percent, 17 percent) This change has

generally resulted in higher case-mix relative weights for the case-mix groups involving moderate and high clinical severity. It has also resulted in a wider range of weights for therapy-threshold case-mix groups and non-therapy-threshold case-mix groups. We have not added a fifth level of clinical severity. Given the array of the clinical scores in the sample, the amount of sample data available, and our objective of administrative feasibility, at this time we believe that four clinical severity levels is an appropriate structure for the case-mix model.

Comment: In commenting on the status of wound care patients under the case-mix system, several commenters specifically stated that services for daily care wound patients would be inadequately reimbursed under the proposed rule. Some commenters recommended that we add a variable to the services utilization dimension that recognizes skilled nursing hours, analogous to our use of therapy hours in the services utilization score. They suggested that this would be a way to remedy inadequate payment for daily wound care patients while recognizing the skilled wound treatments that contribute to their higher costs.

Response: The wound care patient must be deemed eligible for the Medicare Home Health Benefit which dictates that the skilled nursing care be provided on an "intermittent" basis, as required by sections 1814(a)(2)(C) and 1835(a)(2)(A). The "intermittent" skilled care provided must be either provided or needed on fewer than 7 days each week or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable). The need for skilled nursing care for a wound care patient on a continuing basis is contingent upon evidence documented in the patient's record that the wound is improving in response to the wound care provided. It is neither reasonable nor medically necessary to continue a given type of wound care if evidence of wound improvement cannot be shown.

For the following reasons, we are not accepting the recommendation that skilled nursing hours be treated comparably with therapy hours in order to address the needs of costly wound care patients. First, as described previously concerning changes to the case-mix system, we have made additions and modifications to the clinical dimension in an attempt to better capture variations in clinical severity associated with wound care patients. Second, we are concerned that adopting an additional utilization-based measure strongly compromises the intention of home health payment reform to move away from a cost-based system. Finally, we are also concerned that in some instances extended wound care episodes may reflect inattention to the statutory eligibility requirement regarding "finite and predictable" need, and to our policy that continuing wound care must be efficacious. We will, however, continue reviewing the OASIS wound measures and the case-mix system's ability to adequately reflect the needs of wound care patients.

Daily Insulin Injection Patients

Comment: Many commenters identified diabetic patients requiring daily insulin injection as a group similar to daily wound care patients in terms of their extraordinary costs. They maintained that such patients might experience access barriers because the case-mix system does not account for their extraordinary care needs. They further indicated that the proposed outlier payment methodology would not necessarily result in payments adequate to compensate agencies for the cost of these patients.

Response: The OASIS does not provide information allowing accurate identification of these diabetic patients. Daily insulin patients appear to be a heterogeneous group, some of whom can be taught self-injection. There are no variables on the OASIS assessment that clearly distinguish such patients from others unable or unwilling to self-inject. As the outlier payment is intended to compensate for difficulties in case-mix measures, we have determined that daily insulin injection patients are likely candidates for outlier payments. We assume that daily injection visits tend to be low-cost visits, so it is likely that outlier payments will be adequate for many daily insulin patients.

Diagnoses Included and Excluded From the Clinical Dimension

Comment: The case-mix system discussed in the proposed rule recognized three diagnostic categories in the clinical dimension. These were certain orthopedic and neurological diagnoses, and diabetes. Diagnoses in these groups are assigned a score to help determine the patient's clinical dimension total score when the diagnoses appear in the OASIS primary home care diagnosis field (M0230A). A commenter suggested that we classify all diagnoses. Other commenters stated that the three categories proposed do not include all high-acuity diagnoses.

Response: From our work with the Abt Associates sample, we concluded that a complete classification of all diagnoses would not necessarily make the case-mix system appreciably more accurate, but it would make the grouping system more complex. In developing the clinical dimension, we studied the effect of placing every patient in one of several defined groups of diagnoses (such as orthopedic, cardiovascular/pulmonary, psychiatric). We investigated how this classification contributed to explaining resource use in home care. The three groups in the proposed rule stood out as accounting for significantly higher costs on average than other groups we defined. Adding the other groups to the model did not appreciably raise the explanatory power of the case-mix adjuster. Consequently, we believe that restricting recognition in the clinical dimension to the orthopedic, neurological, and diabetes groups balances our payment policy objectives of payment accuracy and administrative feasibility. We have not added any diagnoses to these three groups published in the proposed rule. However, we have added a variable to identify certain wound patients. This variable uses selected diagnoses codes from the primary diagnosis (OASIS item M0230, line a). We added this new variable to respond to comments we received about wound patients.

We are continuing to study a variation of the case-mix system that recognizes more diagnostic groups, but it would be a more complicated system with a substantially larger number of groups. We would require any such system to explain significantly more variation in resource cost than does the current model, in order to justify the added administrative complexity.

Currently, the OASIS instructions do not require complete four-digit and five-digit coding of the primary and secondary home care diagnoses. Three-digit coding of the category code is allowed, although agencies may voluntarily report complete four and five-digit coding. In the interests of future case-mix refinement, we will consider requiring that all agencies report the complete code. Such a requirement would conform OASIS with existing coding guidelines in the Medicare program and nationally.

Comment: One commenter pointed out that we did not list all diagnoses in the three groups in the clinical dimension, and requested confirmation that this was an error.

Response: The list of code categories presented in the proposed rule was complete. We omitted certain code categories based on clinical judgment and knowledge of coding practices in the community. We believe that

including these codes would reduce the explanatory power of the model, because they are likely to consist of heterogeneous or low-cost cases. When we examined the resource cost of orthopedic diagnoses omitted from the orthopedic group, we found indications that confirmed our decision.

Comment: Several commenters indicated that they believed the list should not exclude common diagnoses.

Response: Some of the diagnoses cited by commenters are frequently encountered in home care. It was not our objective to identify common diagnoses, but to pinpoint conditions that were associated with variations in resource cost. Some common diagnoses are associated with widely varying needs for home care services, which would tend to make them poor predictors statistically.

Comment: Some commenters suggested that the case-mix system recognize certain diagnoses in addition to those listed. Several commenters mentioned cardiac, respiratory, cardiopulmonary, and "other circulatory" diagnoses.

Response: As noted previously, cardiac, vascular, and respiratory diagnoses were a category studied during development of the clinical dimension, but the category did not demonstrate a contribution to the model sufficient to justify its inclusion, after we accounted for existing elements such as dyspnea and wound problems. We will continue to study this group of diagnoses.

Comment: We received various comments suggesting that we should have included psychiatric, mental health, or behavioral diagnoses. A commenter stated that three points for mental health conditions is inadequate, citing the additional credentials Medicare requires for psychiatric nurses as a reason for higher costs of psychiatric patients. Another commenter noted that depression, common among many elderly patients with health problems, negatively affects response to treatment. One commenter suggested the addition of "780 (alteration of consciousness)", in order to ensure access for psychiatric patients.

Response: In the clinical dimension, we included M0610 on behavioral problems to capture both cognitive and behavioral factors affecting resource cost. If the assessing clinician checks one or more of the response categories, three points are added to the clinical dimension. During case-mix system development, we examined diagnoses and various OASIS assessment items relating to mental health, sensory, and cognitive status. Specific to mental health, we looked at the relationship between home health resource use and mental health diagnoses (psychoses, drug psychoses, and neurotic disorders). We found that this group of conditions did not greatly contribute to explaining variation in resource use in home care after including functional, clinical, and service factors in the case-mix model.

However, we do *not* interpret our statistical results as necessarily indicating that mental health issues are unimportant in home care. One reason our statistical findings do not support including further information specific to mental health status is that the remaining functional and service factors in the case-mix system already capture the costliness of these patients. Thus, the impact of behavioral health issues is being recognized in factors other than diagnosis-specific elements. Other possible reasons for our statistical findings may stem from the extreme impairment of many psychiatric patients, which can lead to periods of institutional care and extensive informal support in the home. Such factors may tend to reduce the measured resource cost.

In future review of the case-mix system, we will continue to study case-mix measures for mental health patients.

Comment: A few commenters suggested that we include cancer diagnoses in the list of diagnoses for clinical dimension scoring.

Response: Several cancer diagnosis code categories appear in the orthopedic and neurological lists used in the case-mix model. We found no evidence during case-mix development activities that cancer diagnoses should be a separate group in the clinical dimension. We believe that part of the reason is that care needs for certain cancer patients (for example, functional assistance, wound care, pain management) are already accounted for in the case-mix model. Therefore, we have not added any more cancer diagnoses to the final regulation.

Comment: A commenter suggested that we include terminal cancer patients as a diagnosis group. Another commenter stated that end-stage cardiac/respiratory disease cases should be included.

Response: We have not added terminal cancer patients or end-stage cardiac/respiratory cases as a special diagnostic category. There are no OASIS items directly identifying these cases. In developing the case-mix model, we considered including OASIS items assessing overall prognosis and life expectancy, which potentially have a use in identifying terminal cancer patients. However, we concluded that these items are inappropriate elements for payment policy because of their inherent subjectivity and vulnerability to gaming. Moreover, statistical analyses have suggested the life expectancy item has poor scientific reliability.

Comment: A commenter suggested that we add category code 438, "late effects of cerebrovascular disease", to the list of neurological diagnostic categories because it is extremely common in home care and is the correct code assignment following hospitalization for an acute cerebrovascular accident (codes 434 and 436). The commenter added that we should delete codes 434 and 436 because coding guidelines reserve them for hospital coding.

Response: We have not adopted this suggestion. Codes 434 and 436 are being used in home care, notwithstanding the coding guidelines. In the Abt case-mix data, episodes coded with 436 are about nine times as common as episodes coded with 438. Code 434 is also used, but appears only about one-third as often as 438. The definition of 438 encompasses sequelae whose lags may be of any length. For this reason, we believe that including 438 presents significant risks of inappropriate payment. We will continue to examine the applicability of code 438 in future work.

Comment: A few commenters suggested that we include joint replacement diagnoses in the orthopedic diagnosis group.

Response: Joint replacement diagnoses are V-codes, which are not used on the OASIS assessment. Therefore, we did not study or specify including such codes in the case-mix system. However, care needs of many joint replacement patients are addressed in the therapy-threshold variable of the services utilization dimension and in the functional dimension. In setting the therapy threshold, based primarily on clinical judgment, we had in mind the treatment needs of the many joint replacement patients covered by the Medicare home health benefit.

Comment: Several commenters requested clarification about the omission of certain orthopedic diagnosis codes from the orthopedic group. These comprised 715 (osteoarthrosis and allied disorders), 719 (other and unspecified disorders of joint), 726 (peripheral enthesopathies and allied syndromes), 727 (other disorders of synovium, tendon and bursa), and 729 (other disorders of soft tissues).

Response: The exclusion of these diagnoses was intentional, based on clinical judgment that they are often

reflective of low case severity, and therefore unsuitable for the purposes of the groups defined in the proposed rule. Statistical information supports this judgment. In the Abt data, the average resource cost of the omitted diagnoses was 85 percent of the average resource cost of the included diagnoses, an indication that the excluded codes' cost impact is significantly lower. We also found statistical evidence that including these code categories in the current orthopedic diagnosis group does not improve, and may slightly reduce, the predictive value of the diagnosis groups included in the clinical dimension.

Comment: A commenter recommended that we add category code 733, "other disorders of bone and cartilage", to the orthopedic group because this category includes pathological fractures. The commenter added that requiring greater specificity in code assignment, beyond the three-digit category code, would allow inclusion of the pathological fracture codes without inclusion of other diagnoses in category 733.

Response: We disagree. We did not add 733 because the range of severity in this category may be very wide. For example, this code category includes osteoporosis, a very common condition in the elderly population. On the other hand, 733 also contains aseptic necrosis of bones, and aseptic necrosis of the femoral head is an indication for hip joint replacement. Without more information about the specific frequency of diagnoses, we expect that the osteoporosis cases would be much more common. We believe that adding this category code to the orthopedic group increases the risks of inappropriate payment. We will continue to study the excluded diagnosis codes. We agree that greater specificity in coding could solve this problem. Agencies can assist our efforts to develop information about the usefulness of specific codes in case-mix models by reporting diagnoses at the complete four-digit and five-digit code level.

Comment: One commenter suggested that we add diagnosis code category 707 (chronic ulcers) to the orthopedic category because these patients may present high costs for such services as debridement and dressing changes.

Response: The orthopedic group is not an appropriate placement for this code. However, as noted elsewhere in this rule, we have added assessment items to the clinical dimension in an attempt to strengthen the case-mix measurement for wound patients.

Comment: A commenter stated that we should include the diagnosis severity index on OASIS in the clinical dimension scoring.

Response: We did not include this assessment item because we believe its inherent subjectivity and vulnerability to gaming make it unsuitable for use in the case-mix model. Preliminary statistical analysis suggests the scientific reliability of the index is low for orthopedic and neurological diagnoses.

Comment: One commenter stated that the categories included in the diagnosis groups were unrealistic and unrelated to the need for home care services in an elderly population.

Response: Our statistical information indicates otherwise. The statistical results are shown in Abt Associates, Second Interim Report, September 24, 1999, Appendix H. They indicate that the incremental cost associated with each of the diagnosis groups is large and highly statistically significant.

Comment: We received various general and specific comments suggesting the use of secondary or multiple diagnoses in the clinical dimension. Some commenters stated that comorbidities are important in determining patient needs, and therefore they should be recognized in the case-mix system. A commenter suggested that, to improve the accuracy of the clinical dimension score, patients with multiple diagnoses from the existing groups should be credited with additional points in their clinical dimension measurement. One commenter suggested considering the first three diagnoses in order of importance. A couple of commenters mentioned diabetes as a secondary diagnosis that may appear in conjunction with wound care as a primary diagnosis, a situation that, if accounted for in scoring, might improve payment accuracy.

Response: Although we agree that multiple diagnoses and comorbidities warrant consideration, we have not used any of these suggestions because data and time constraints do not allow adequate evaluation of their contribution and impact on resource cost. To conduct an orderly exploration of the impact on case-mix measurement, and to assign a valid score in such cases, would require more observations than the Abt data set contains. We did test the impact of diabetes on severe wound patients, but the results suggested that some of the most severe wound patients would be paid inappropriately if the clinical score was increased. Further analysis of these suggestions to fully understand the implications can be undertaken with appropriate resources. We intend to use national claims data linked to OASIS to investigate multiple diagnoses/comorbidity issues in future case-mix analyses. We believe that such an effort would be significantly aided by complete four-digit and five-digit diagnosis coding on the OASIS record.

Comment: Commenters suggested that we credit the points published in the proposed rule for the neurological, orthopedic, or diabetes groups to the patient's clinical dimension score whether the diagnosis is primary or secondary.

Response: We believe such suggestions should be tested empirically to derive an appropriate score as there is more than one way to implement this suggestion. These are subjects for study when larger data resources become available.

Comment: Two commenters stated that the adjuster's use of a limited number of diagnosis groups will lead to more coding of the specified diagnoses as the primary diagnosis, distorting national data that would be used to make refinements of the system.

Response: We believe such practices would be counterproductive. Payment-motivated coding can eventually lower the predictive ability of a case-mix measure, and result in less differentiation among case-mix groups. We will continue to examine the accuracy of the case-mix model and the reliability of the data used for determining payments. If necessary, we would adjust the case-mix weights in response to those studies. As stated in the proposed rule, we intend to revise the case-mix weights over time to adjust for changes in patient population, actual changes in home health care practice patterns, and changes in the coding or classification of patients that do not reflect real changes in case-mix.

Comment: A commenter expressed concern that the quality of the diagnosis codes reported for home care are of such poor quality that they would be of no value in the development of the prospective payment system.

Response: We recognize the commenter's position, but we believe diagnoses are still useful in developing a case-mix model. The three diagnosis code categories in the model are the strongest contributors of all the diagnosis groups we defined in conducting our analyses on the Abt sample. We will continue to study the usefulness of diagnoses, and believe that agencies can assist our efforts by reporting diagnoses at the complete four-digit and five-digit code level.

Comment: One commenter urged us to clearly define "primary home care diagnosis" to prevent inappropriate upcoding.

Response: The OASIS implementation manual suggests strategies for the assessor to use in identifying the diagnoses for the diagnosis reporting items (M0230 and M0240). There is no specific guidance on differentiating the primary from secondary diagnoses. However, a definition for the primary diagnosis on the physician certification and plan of care (HCFA form 485) is discussed in the Medicare Home Health Agency Manual. We believe agencies are very familiar with the instructions in the Manual. The diagnosis guidance in the Manual is consistent with the language used in the OASIS instructions. (One difference, however, is that the Manual allows V-codes and the OASIS does not.) Nonetheless, we agree that it might be desirable to expand the instructions on the OASIS in the future. We will consider this in modifications to the OASIS form.

Comment: One commenter stated that the OASIS diagnosis reporting requirement that allows only three-digit ICD–9–CM category codes to be reported has a severe adverse impact on clinical severity data and, thus, adversely impacts the design of the home health classification system. The commenter noted that this practice violates official coding guidelines.

Response: We agree that a lack of specificity in code assignment somewhat diminishes accurate case-mix development and ascertainment. To help rectify the situation, we urge agencies to voluntarily code to the complete four-digit or five-digit code level.

Comment: A commenter expressed concern that the OASIS reporting requirements do not allow V-codes, in contrast to official coding guidelines approved by HCFA which accept V-codes as potentially the most appropriate codes in some circumstances in the home health setting. The commenter cited the distinction between acute fracture codes in the hospital setting and aftercare codes in the home health setting. According to the commenter, this conflict with the official coding guidelines threatens the consistency and uniformity of national health care data, resulting in data that are of poor quality and little value.

Response: The OASIS instructions state that instead of V-codes the agency should list the relevant diagnosis. This requirement was installed to serve the needs of OASIS as it was originally designed—as a quality assurance tool. We have adopted OASIS as a valuable quality assurance tool. Therefore, any changes in coding policy on OASIS would have to balance the quality assurance objectives with the consistency and uniformity objectives articulated by the commenter. At this time we do not believe that adopting V-codes is consistent with the needs of either OASIS or the case-mix system. Regarding case-mix, one of our objectives is to classify patients with minimal reliance on treatments planned or received. Given that objective, there is little clear benefit from adopting the applicable V-codes intended to indicate aftercare services.

Comment: A commenter stated that certain category codes in the three diagnosis groups to be identified from the OASIS primary diagnosis field (M0230) should never be reported as primary diagnoses, according to ICD–9–CM coding rules and official coding guidelines. These diagnoses must be used with a higher-coded diagnosis that indicates the etiology. The affected ICD–9–CM category codes are 711, 712, 713, 720, 730, 731, 320, 321, 323, 330, 331, 334, 336, 337, 357, and 358.

Response: In accordance with this comment, we have listed the affected codes (not code categories) in Table 8 as either primary or secondary diagnoses at the applicable four- or five-digit level. We will recognize these diagnosis codes in the case-mix adjuster only if the following conditions are met: (1) Manifestation codes (that is, codes that can never be used as the primary diagnosis) must appear as the first secondary diagnosis (line b, under "other diagnoses" in OASIS M0240) and must appear with all digits required by ICD–9–CM coding rules. (2) Remaining codes from the affected categories must appear as the primary diagnosis (line a, under OASIS M0230) and must appear with all digits required by ICD–9–CM coding rules. The requirement to report manifestation codes as the first secondary diagnosis is consistent with our intention to recognize the primary diagnosis for case-mix purposes. In this circumstance, the primary diagnosis is indicated by the combination of the manifestation code preceded by the underlying disease code in the primary field.

Structure of the Case-Mix System

Comment: Several commenters suggested adding a fifth level of severity to the clinical dimension, in view of the large score range in the fourth and highest severity level. In contrast, other commenters suggested that 80 groups was too large a number; they recommended greatly reducing the number of groups. A related question was why some groups with a small incidence of episodes warranted establishment of an HHRG.

Response: At this time, we have not changed the basic structure resulting in 80 groups. Adding a fifth clinical severity level would increase the number of groups to 100. Reducing the number of groups may obfuscate the clinical logic we used to help shape the system. Also, we feel it is prudent at this early stage of the model's application to avoid imposing additional structural streamlining before larger data sets become available allowing exploration of refinements to the model.

Comment: A commenter stated that the case-mix system should have as many episodes at the high end of the scale as the low end.

Response: We disagree. It is more important for the structure of the groups to differentiate episodes with similar severity and costliness. Severity and costliness are not evenly distributed in the population of episodes. The most resource intensive episodes are infrequently encountered.

Comment: A commenter criticized the use of a scoring range from 27 to 160 for the highest level of severity in the clinical dimension, saying it is too broad.

Response: In response to several comments on the adequacy of payment for severe wound cases, we have revised the severity score intervals along with making additions to elements in the clinical dimension. We discuss changes to the case-mix system in section IV.G.1.

Comment: It was suggested that the case-mix assignment be made at the end of the episode, because of difficulties agencies may have in obtaining accurate information about patient status early in the episode.

Response: OASIS data collected as part of the comprehensive assessment must be collected within 5 days of the start of care. After collection, agencies have 7 days to "lock" the assessment. Therefore, agencies have a maximum of 12 days to establish the case-mix assignment. We think this time period is adequate to resolve uncertainties about the health and functional status items on the OASIS. Further, the therapy threshold used in the case-mix system is projected at the start of care, and is updated by the end of the episode to determine the final case-mix adjusted payment.

Omission of Time Spent Outside the Home From the Calculation of Resource Costs

Comment: We received comments faulting the case-mix adjuster for limiting the measurement of resource costs to time spent in the home. Commenters argued that time spent

outside of the home, travel time, and resource costs of equipment and supplies should be included. One commenter maintained that failure to account for medical supplies leads to two inconsistent reimbursement methodologies, one for services and the other for supplies. In the case of wound patients using very expensive dressings and supplies, commenters argued the resource cost is seriously underestimated.

Response: We acknowledge the underlying concern from the commenter but we are limited in our ability to address this comment in the near term. Variation in costs other than visit time is a subject for careful empirical study that will take time. Were we to adopt imprecise estimates in a hasty attempt to rectify perceived errors in the payment weights, we would risk introducing other errors and potential inequities into the payment system. The model as developed to date assumes that the omitted resource costs are directly proportional to time spent in the home. In future years, we plan to consider methods for testing this assumption. Studies to directly account for costs beyond time spent in the home pose significant challenges in terms of their feasibility, cost, and reliability. The Abt study did not attempt to measure non-home resource costs because it was believed the complexity of the necessary measurement procedures would jeopardize agency recruitment and data accuracy.

Use of OASIS Data To Validate the Case-Mix System

Comment: Several commenters advised us against using early OASIS data to validate the case-mix grouping system. They believe that the data are flawed because agency personnel are still learning how to conduct assessments. A couple of commenters sought confirmation that we validated the system, and requested information about how we validated the system.

Response: It is not possible to use the OASIS data for complete system validation, because validation requires information about resource cost as well as patient characteristics. OASIS data provide only patient characteristics. However, as discussed in the proposed rule, we did validate the case-mix grouping system using a split sample methodology with the Abt case-mix data (see Abt Associates, Second Interim Report, September 24, 1999).

Our primary purpose for using the OASIS data was for payment allocation during the first year of PPS. Specifically, we hoped the OASIS data could be used to estimate the distribution of case-mix in the population, which is information needed to accurately establish the standardized payment amount. As described elsewhere in this regulation, we used OASIS data to achieve this purpose.

Comment: A few commenters recommended allowing therapy assistant services and rehabilitation nurse services to count towards the therapy threshold.

Response: We do not believe that any changes to the current coverage rules governing the coverage of physical therapy, occupational therapy, and speech-language pathology services under the Medicare home health benefit is warranted at this time. If we believe coverage revisions are necessary for future refinements to the HHA PPS, we may consider revisiting the coverage guidelines at that later time. Under the case mix methodology, patients with intense therapeutic needs are classified in higher payment groups. A physical therapist, occupational therapist or speech-language pathologist would have to diagnose the therapeutic needs of the patient. If significant assistant substitution occurs under PPS, we may focus medical review efforts or reprice the case-mix groups. Rehabilitation nurses have never met the personnel qualifications or coverage criteria for physical therapy, occupational therapy or speech-language pathology services under the Medicare home health benefit.

Other Comments

Comment: A commenter stated that we should add more variables to the case-mix system to increase the R-squared.

Response: In an effort to better capture resource cost for severe wound patients, we have added several more variables as explained in the discussion of changes to the case-mix system in section IV.G. The R-squared has increased. Future refinement activities may result in more additions and better ways to use existing variables.

Comment: A few commenters asserted that an R-squared (proportion of variation explained) of .32 for the case-mix system is too low, and one asked whether the system was validated.

Response: We used a split sample methodology to validate the case-mix system. The R-squared for the validation sample changed little. The R-squared for the initial case-mix system is comparable to that for other case-mix systems in their early stages. We should expect future research, using better data (such as improved diagnosis coding) and more observations, to result in higher predictive power.

Comment: Some commenters recommended that we add to the case-mix model OASIS items measuring such nonclinical factors as safety hazards and other environmental variables, and socioeconomic status variables.

Response: OASIS includes these variables to use as risk factors in analyses of the outcomes of home health care. But as we discussed in the proposed rule, we do not believe they are appropriate factors in determining payment.

Comment: Some commenters disagreed with our decision to exclude items dealing with signs and symptoms such as fluid retention and diet, on the grounds that these are important clinical changes with a direct relationship to care quality and outcomes.

Response: As we noted in the proposed rule, we are concerned about the vulnerability to manipulation for payment maximization of some possibly transient clinical items. Our statistical analysis also suggests weakness in their scientific reliability. Moreover, inclusion of these items would require a change to the OASIS data collection procedure, causing additional burden on home health agencies. Lastly, after all other elements are included in the model, they do not make any independent contribution to explaining variation in resource use.

Comment: A commenter stated that patients with low or moderate scores who need to be observed and assessed, and taught how to manage their medication and diagnosis, would not receive adequate reimbursement. A couple of other commenters suggested adding variables concerning multiple medications.

Response: During the early phases of model development, there were indications that a variable measuring multiple medications would be useful, but as it was not an OASIS variable we sought to substitute similar OASIS items. We found substitutes in the two OASIS variables measuring the patient's ability to manage oral and injectable medications. Statistical results suggest only one of these variables (injectable medications management) contributes independently to explaining resource variation after accounting for the other variables in the case-mix model. However, we believe using this variable makes the case-mix system vulnerable to manipulation, and have decided against including it at this time. As we refine the case-mix system, we will continue to look for ways to capture nursing functions mentioned in the comment.

Comment: Two commenters responded critically to the absence of

respiratory treatments from the clinical dimension.

Response: This variable was excluded from the model because it was statistically insignificant and inversely related to resource cost.

Comment: Several commenters stated that the system should specifically allocate points for limitations affecting medication management, meal preparation, feeding, and the ability to structure time.

Response: Measures of medication administration, meal preparation, and feeding dependence were tested but did not contribute significantly to explaining home health resource use. We note the case-mix system recognizes patients with memory deficit, impaired decision-making and behavior problems.

Comment: Stating that patients with multiple treatments at home (intravenous infusion, parenteral/enteral therapies, OASIS M0250) are often observed in home care, a commenter asked why these patients are not assigned the sum of scores for each treatment.

Response: At this time the case-mix model does not assign the sum of two scores when patients are receiving multiple treatments. In terms of care quality, we are concerned about the potential incentive to make patients' care more complex if scores for this OASIS item are additive. Currently, patients who receive both intravenous infusion and enteral nutrition, the most plausible combination, would receive 24 points for enteral nutrition, the highest score possible among the three treatments and the second-highest single score in the clinical dimension. Given our understanding of the needs these patients may present, this score seems appropriate pending further review of data for multiple-treatment patients. The Abt sample did not contain any patients receiving more than one of these treatments. As these treatments do not appear to produce additive work, we believe it is prudent to wait until more-reliable scores for multiple-treatment patients can be developed during refinement activities using larger data sets.

Comment: Commenters also criticized us for omitting types of specific OASIS items or response categories that indicate lower severity than items/categories currently in the case-mix model. For example, one commenter stated, the presence of "any pain" would affect the plan of care. The pain response categories that are allocated points are "daily but not constantly" and "all of the time'.

Response: We understand the commenter's recommendation for more specificity in the case-mix system. We note that generally, the case-mix model captures levels of severity that were reliably associated with variations in resource use. Constructing variables for the model involved both statistically based decisions as well as judgments about how many grades of distinction are desirable from clinical, policy, and structural points of view. For example, in response to comments about wound care patients, we have elaborated certain wound variables to capture finer distinctions in wound status, while retaining statistical reliability for the clinical dimension. We have traded off some structural parsimony for slightly increased accuracy. As larger data sets become available to refine the case-mix system, we may have an opportunity to incorporate still more detailed variable levels, but we will continue to evaluate them in light of their clinical, policy, and structural implications.

Comment: A commenter wondered whether listing M0530 (when does urinary incontinence occur?) rather than M0520 (urinary incontinence or urinary catheter presence) in the clinical dimension was a typographical error.

Response: No, it is not. As we noted in the proposed rule, we avoided M0520 because of concern that using it might promote negative practice patterns. M0530 is a stronger measure of the impact of incontinence on home care because it takes timed voiding into account.

Comment: A couple of commenters stated that the case-mix adjuster should identify patients with urostomy because services and teaching requirements exceed those for bowel ostomy patients.

Response: OASIS does not currently allow identification of urostomy patients. We will consider this suggestion for future OASIS studies.

Comment: A commenter asked why hearing status is not included, while vision status is.

Response: We tested hearing problems as part of a set of neurological, cognitive, sensory, and behavioral impairments during our development of the case-mix system. Few of these variables contributed meaningfully to the case-mix model, and for some types of clinically severe patients these impairments were inversely related to resource cost. We were ultimately able to include both vision problems (M0390) and behavioral problems (M0610) in the clinical dimension as statistically significant variables positively related to resource cost.

Comment: One commenter suggested that we change OASIS item M0390 on vision status to identify patients who have difficulty accommodating to distance.

Response: We will consider testing this change in research on modifications to OASIS.

Comment: A commenter requested clarification of the definition in the vision status item (M0390).

Response: All OASIS items, including this item, are discussed in the OASIS Implementation Manual available on the HCFA Web site.

Comment: A commenter stated that OASIS functional items are not sensitive to patient progression, so that the patient who improves is still rated at the same level after improvement. The commenter cited the case of the patient who is dependent in bathing in bed, and progresses to independent in bathing in bed.

Response: This comment appears to address the use of OASIS items for outcome measurement. During the testing of outcome measures for use in home health care, it was necessary to balance several competing demands. One of these demands was for sufficient "rigor" in the outcome measures and data items, including the data item's likelihood of consistent application by the clinicians making the assessment. Another demand was a more practical one—would the home health agency's staff be able to use the item in its day-to-day functioning? Because every OASIS item that now has several levels of a scale could most likely be expanded to many more scale levels, several questions must be asked as part of the evaluation of OASIS items. For example, would the item be perceived as practical for use by clinicians? Would the resulting outcome measures be valuable in evaluating quality of care across agencies? Would the item have a high incidence of consistent application? These are among the evaluation criteria we would apply as the outcome measures and the OASIS items continue to evolve over time.

Comment: A commenter said the system should recognize medically underserved patients.

Response: The OASIS assessment does not clearly identify medically underserved patients. However, a variable relating to Medicaid status is reported on the OASIS assessment and can be considered a proxy indicator. During our system development work on the Abt sample we tested the Medicaid variable (which indicates whether Medicaid was among the patient's payment sources). We found that it did not contribute to explaining variation in resource use.

Comment: A commenter stated that home health aide supervisory visits should be included in the case rates, and the agency should be able to bill for those visits.

Response: Time spent in the home, including time spent on supervisory visits, was recorded in the visit log data submitted to Abt Associates by agencies participating in the case-mix research. This means that the case-mix relative weights should reflect any case-mix group differences in supervisory time. Supervisory visits are also in the cost base for the average cost per-visit computations used in the PPS episode rates. We are making no changes in payment policy regarding billing for supervisory visits.

Comment: A commenter, stating that the case-mix system inadequately accounts for costs of behavioral patients, asked how well such patients were represented in the Abt sample.

Response: We believe these patients were adequately represented. Approximately 4.5 percent of the Abt sample had a primary diagnosis code of a mental disorder. Approximately 2.6 percent received psychiatric nursing services at home. About 14 percent were classifiable as having chronic cognitive, mental, or behavioral problems. Approximately one-quarter of the sample had current problems due to one or more of the behaviors listed in OASIS M0610.

Comment: A commenter suggested that refinement activities include examining outliers to see whether the case-mix categories involved are improperly weighted.

Response: We plan to examine the data as suggested.

Comment: One commenter questioned whether we examined the validity of the relative weights. A related recommendation was to validate the relative weights on a large national data set after the first year of PPS.

Response: We examined various measures of fit of the case-mix model to episode-cost data to judge the model's performance and, by implication, the validity of the relative case-mix weights derived from it. Most of these fit measures are reported and discussed in the Abt Associates Second Interim Report (September 24, 1999). As explained in the proposed rule, we derived the relative weights from a straightforward regression equation that estimates the average addition to resource cost due to each severity level above the lowest-severity case-mix group (C0F0S0). This regression equation, estimated from the Abt sample data, performed well. We used case-mix-group means estimated from the coefficients of the regression equation to compute the relative case-mix weights. We plan to re-examine the accuracy of the relative weights periodically.

Comment: A commenter asked whether the mean or median was used to calculate the relative case-mix weights.

Response: We used the mean estimated from the regression equation described in the previous response.

Comment: A commenter requested that we disclose the computations for independent review.

Response: In the section of the rule regarding the calculation of the case-mix relative weights, we show the regression equation coefficients and the mean resource cost calculated for each case-mix group from the regression coefficients.

Comment: A commenter stated that we should release data showing the incidence of cases in the groups used to define the relative weights.

Response: Appendix C in the Abt Associates Second Interim Report (available on the HCFA website) shows the incidence of cases in each case-mix group in the sample.

Comment: A commenter questioned whether hospital-based agencies were adequately represented in the sample used to develop the case-mix system.

Response: We believe that hospital-based agencies were adequately represented in the sample. About one-third of the 90 agencies participating in the Abt study were hospital-based and one-third of the episodes in the Abt analytic sample came from hospital-based agencies. The hospital-based agencies were distributed across the four census regions, urban and rural locations, and represented varying practice patterns. The total development sample included more than 9,000 episodes (Abt Associates Second Interim Report, September 24, 1999). The sample for deriving case-mix weights in the final rule included more than 26,500 episodes.

Phase II Per-Episode PPS Demonstration

Comment: One commenter asked whether demonstration agencies deliberately avoided higher-acuity patients while participating in the demonstration project.

Response: The demonstration evaluation study examined this question. Analyses suggested that PPS agencies were no less likely than non-PPS agencies to admit a patient with a serious medical condition, limitations in activities of daily living, or other conditions predictive of higher-than-average service needs. Furthermore, the demonstration did not appear to affect the admission of patients expected to have relatively high costs per visit.

Comment: A commenter wanted to know why data on pages 58143 and 58150 in the proposed rule showed different percentages of discharges at 60 days and 120 days. Page 58143 cites completion rates of 60 percent and 73 percent in 60 and 120 days, respectively. Page 58150 cites completion rates of 46 percent and 62 percent, respectively.

Response: Data cited on page 58143 were completion rates for 39 agencies paid prospectively under the Phase II per-episode prospective payment demonstration in the first year of the demonstration (1995-96). Data cited on page 58150 are national averages from an episode file constructed from 1997 paid claims. Research would suggest that the differences stem mainly from the incentives of prospective payment.

L. Episode Rate Methodology

Comment: Several commenters suggested that we include the amounts for new billing and financial systems in the PPS episode rate.

Response: We do not foresee any major changes to the billing and financial systems for home health agencies that would justify an increase in the rate amount. Home health agencies will still use and submit the same claim forms that are currently being used under IPS. With only minimal changes in bill content we will be furnishing free grouping software to all HHAs. If an HHA elects to purchase different or more deluxe software from its vendors, that would be an individual business decision of the HHA. It is primarily the fiscal intermediaries systems that will require changes in order to process home health claims under PPS. We will not reimburse agencies for modifications to their internal billing and financial systems beyond what is already included as overhead costs reported on the cost report.

Comment: Several commenters requested that we not use the most current data for developing the home health PPS episode rates in order to avoid incorporating the effects of IPS.

Response: In developing the final PPS episode payment rate, the primary influence for the final amount is the budget neutrality target. The statute requires that the total amounts payable under HHA PPS be equal to the total amount that would have been made if HHA PPS had not been in effect. This numeric value is based on actuarial estimates of future home health spending and utilization in the aggregate. Since the projected spending

is based on historical trends derived using the most recent data available, IPS cannot be ignored. Using data prior to the implementation of IPS would not reflect current home health utilization and spending.

Comment: One commenter suggested that we revise the computations of the average cost per visit to only apply the cost limit adjustment factor to those disciplines that were over the per-visit cost limits.

Response: The per-visit cost limit has been applied on an aggregate basis, not on a per-discipline basis. Separating the disciplines proved too difficult to achieve and would be of questionable worth. The cost limit adjustment factor was determined by dividing the aggregate cost limit amount by the aggregate reasonable cost amount. If the factor was less that 1.0, then the factor was applied across all disciplines. If we had only applied it to the disciplines that were over the limits, then we would not have recognized the actual impact of the cost limits.

M. Audited Cost Report Sample

Comment: Several commenters questioned the accuracy and use of the statutorily required most current audited cost report data available to the Secretary to calculate the PPS rates. Commenters questioned whether better, more accurate data may exist than the 1997 audited cost report data set forth in the proposed rule.

Response: For the proposed rule, data from audited cost reports received by an HCFA determined deadline date were used for the calculation of the proposed HHA PPS rates. Even though all audited cost reports were not available (for reasons such as, suspensions, investigations, natural disasters, etc.), HCFA had to set a cut-off date to meet the stringent time constraints for completing the proposed rule. Any additional audited cost report data files that were received by HCFA Central Office (CO) beyond the deadline were not included in the rate calculations for the proposed rule. Since then, audited cost reports from the sample may have been appealed, reopened, and revised resulting in an updated version of the cost report data available for calculation of the rates for the final rule. Even after the publication of the proposed rule, we required fiscal intermediaries to resubmit any reopened audited cost reports and have that more recent, accurate data available for final rule calculations through the first week of January, 2000. This process resulted in an additional seven providers for which we now have audited cost reports for FY 1997. Additionally, during the above-described additional time period, we received 23 reopened audited cost reports with newer and more accurate data for use in the final rule calculations.

Comment: Commenters were concerned with pre-IPS cost data being used and that 1997 data may not be an adequate time period to reflect the cost of providing care today.

Response: HCFA is required, in its development of a PPS for home health agencies, to use the most current audited cost report data available. At present, 1997 audited cost reports are the most current audited cost reports available of a representative sample of HHAs. The 1997 audited cost data is updated by the market basket in order to make it more reflective of the cost of providing care today.

Comment: Commenters were concerned that not all types of HHAs, with respect to their being considered large, small, urban, rural, for profit, not-for-profit, for example, were adequately represented in the audited cost report sample used to construct the PPS rates.

Response: The sample was designed to be representative of the home health industry, including census region, urban versus rural location, and large versus small agencies. The sample included each provider type (freestanding not-for-profit, freestanding for-profit, freestanding governmental, and provider-based), which are referred to as strata in sampling terms. The design of the sample then took into account the number of providers and the variation in cost and beneficiaries in each stratum, resulting in a representative sample of the home health industry.

Comment: A few commenters were concerned with the sample design which excluded "very small" agencies.

Response: Agencies with fewer than 50 Medicare beneficiaries were excluded from the sample list of agencies for development of the home health PPS. These agencies were judged to be atypical in their costs and utilization. This would particularly be the case if the agency is a large agency that happens to have only a small Medicare business. Prior PPS demonstrations also excluded these low-volume providers from participation for similar reasons.

Comment: Commenters raised concern about rebasing for FY 2002 based on a 100 percent sample of cost reports. Commenters further recommended that if the future PPS data varies from the FY 2001 base year or their proposed revised approach to rebase for FY 2002, that adjustments be made to the standards on which the system is based.

Response: HCFA has no statutory authority to rebase the home health PPS on 100 percent cost report data. We will continue to monitor the effects of the policies governing the PPS system.

N. Cost Outlier Payments

Comment: Commenters generally supported the outlier policy but often disagreed with specific aspects of the proposed policy. Many commenters stated that protection from the financial risk of catastrophic cases was important. These commenters frequently identified severe wound care patients and non-self injecting diabetics as the types of patients that pose the greatest financial risk because of the concern that the HHRG system may not adequately recognize their costs. In addition, commenters tended to support greater financial protection against large losses, favoring a greater concentration of outlier payments on the most expensive cases, which can be accomplished by using a higher fixed dollar loss amount and a higher loss sharing ratio. Several commenters wanted provisions totally incompatible with the statutory constraint that total outlier payments be no greater than 5 percent of total payments including outliers, such as no fixed dollar loss and a higher loss sharing ratio, or even full cost reimbursement of outlier cases. However, several commenters argued that if greater catastrophic protection could not be provided, 5 percent higher episode payments for all episodes would be preferable to the proposed outlier policy.

Response: As stated in the proposed rule, the provision for outlier payments is optional under section 1895(b)(5) of the Act. However, if outlier payments are included in the PPS, the statute requires that total outlier payments be no more than 5 percent of total payments, including outlier payments. Section 1895(b)(3)(C) of the Act also requires that the episode payment amounts be adjusted to effectively pay for outlier payments within the same level of estimated total spending. These statutory requirements place rather strict limits upon the additional payments that can be directed to unusually expensive cases.

Before deciding to exercise our discretionary authority to include a home health PPS outlier policy in this final rule, we carefully considered the arguments presented in the public comments. We have decided that the benefit to the home health community of adopting an outlier policy consistent with the statute outweighs no outlier policy. However, based on the majority of public comments, we have decided to

increase the loss sharing ratio from the 60 percent set forth in the proposed rule to 80 percent, the same ratio that is used in the inpatient hospital PPS.

Accordingly, the fixed dollar loss amount has also been changed. Our preliminary estimates reported in the proposed rule indicated that a loss-sharing ratio of .80 was consistent with a fixed dollar loss amount equal to 1.35 times the standard episode amount. However, estimates based on the most recent data indicate that the fixed dollar loss amount should be changed to 1.13 times the standard episode amount. Among the commenters supporting a higher loss sharing ratio, while no one suggested a loss sharing ratio lower than .75; some stated that the ratio should be the same as in the inpatient hospital PPS (.80), and others stated that the ratio should be .80 or even .90.

Comment: Several commenters argued that the proposed outlier policy was not sufficient to cover the costs of patients with intensive service needs and would result in inadequate home care being provided to patients with the greatest needs. Some commenters cited the effects of the fixed dollar loss and the loss sharing ratio in severely limiting the additional payment that would be made to outlier cases. Another commenter stated that the outlier threshold should be based on medical necessity without any qualifying financial loss being suffered by the provider, and others stated, in effect, that there should be no fixed dollar loss. Yet another commenter questioned the sufficiency of 5 percent for these types of cases.

Response: As noted above, section 1895(b)(5) of the Act limits the total amount of outlier payments that can be targeted to outlier cases to no more than 5 percent of estimated total payments. It is impossible to eliminate the fixed dollar loss and to pay the full estimated cost in excess of the episode payment. To do so would result in outlier payments far in excess of the 5 percent allowed by the statute. It is also inconsistent with a basic premise of the episode based payment, which is based on average episode costs, and anticipates that "underpayment" of some episodes will tend to be balanced by "overpayment" of other episodes.

Given the constraint on total outlier payments, we were presented with determining how to beneficially distribute the limited amount of additional payments among the expensive cases. If only the very most expensive of the costly cases qualify for outlier payments, a higher proportion of the total costs of those cases can be paid. Alternatively, if a larger number of costly cases qualify for outlier payments, it is necessary to pay a lower proportion of their total costs. If the fixed dollar loss were eliminated, so that all cases whose estimated costs exceeded the episode amount qualified for outlier payments, the amount of the outlier payment per case would of necessity be so small that there would be little or no benefit for the expensive cases.

As discussed in another comment, we have chosen a loss-sharing ratio of .80 for the final rule instead of the .60 set forth in the proposed rule. We believe that a loss-sharing ratio of 1.00 would go too far in concentrating outlier payments on the most expensive cases. It would further limit the number of cases that could receive any outlier payment and would provide no incentive for agencies to attempt to provide care cost-effectively for outlier cases.

Comment: A number of commenters raised concerns regarding the method used to estimate the cost of an episode in determining outlier payments. Several commenters stated that the "outlier-standardized per-visit rates" do not reflect the real cost of visits. Another commenter appeared to misunderstand that we would use per-visit costs for each of the six home health disciplines.

Response: In this final rule, we are revising proposed § 484.240 to modify the per-visit rate used to estimate per-visit costs. We will now use the average cost per visit from the PPS audit sample including the average cost for nonroutine medical supplies and the average OASIS adjustment costs. The only standardization applied to these per-visit costs will be the wage index standardization factor. See Table 6 of the proposed rule (64 FR 58169) and Table 6 in section IV.C. of this final rule.

The wage index standardization factor is included in the per-visit cost because the estimated episode cost will be adjusted by the wage index, just as is the episode payment amount. As a result of these changes from the proposed rule, our estimated cost of an episode will be higher, and more episodes will qualify for higher outlier payments than would have occurred under the originally proposed method. This change in cost methodology will require increasing the fixed dollar loss in order to stay within the 5 percent constraint.

The estimated cost of an episode will be calculated by multiplying the per-visit cost of each discipline by the number of visits in the discipline and computing the total cost for all disciplines.

We understand that the estimated cost will not necessarily accurately measure the actual cost of any individual episode or the actual costs of any single agency. Our method of cost estimation will measure differences among episodes in three factors: the total number of visits, the skill mix of those visits, and the wage costs of the geographical area where the care was provided. This methodology will assume an equitable and timely application of outlier payments among HHAs without introducing the complex and idiosyncratic elements of individual agency cost finding using cost report analysis.

Comment: Several commenters suggested that we consider reimbursing reasonable costs for outlier cases. Other commenters stated that the estimated cost does not include the cost of non-routine medical supplies provided during each outlier episode, and that if we estimated costs in the same manner that is used in the inpatient hospital PPS, we could include the costs of non-routine medical supplies.

Response: It is correct that while the total costs of non-routine medical supplies were included in the episode payment amount, the non-routine medical supplies of an individual episode are not accounted for in calculating the payment for an episode or in outlier calculations. In the inpatient hospital PPS, costs of outlier cases are estimated by multiplying total charges for the services provided during the hospital stay by a hospital-specific cost-to-charge ratio that is determined from the Medicare hospital cost report. Applying this method to the home health PPS would provide a means of including the cost of non-routine medical supplies in the estimated cost of an episode. However, there are two major reasons why we believe that using the estimated visit cost method is necessary. First, we do not have charges for non-routine medical supplies or agency cost-to-charge ratios in the Abt case-mix data that we are using to estimate the outlier policy for the first year of the PPS. Therefore, we are unable to use the cost-to-charge ratio method at this time. Second, we would like to avoid making the Medicare cost report a necessary part of determining an agency's payments under the home health PPS. In particular, we would like to make the new system independent of the burdensome and idiosyncratic cost-finding process of the previous, reasonable cost-based payment system.

Comment: Some commenters indicated a misunderstanding about the application of the wage index in calculating outlier payments. The

confusion was whether the fixed dollar loss was adjusted by the wage index.

Response: The fixed dollar loss amount is wage-adjusted in exactly the same manner that the standard episode payment is wage-adjusted. As a result, the fixed dollar loss will be the same proportion of the episode payment in all wage index areas. In nominal dollars, the outlier threshold for an episode in a low wage index area is lower than the outlier threshold for an episode in the same HHRG in a high wage index area. The outlier payment is also wage-adjusted. Hence, the outlier payment for an episode will be the same proportion of the total payment for that episode whether the episode of care is provided in a low or a high wage index area.

Comment: Several commenters asked operational questions about the outlier policy and how outlier payments would actually be made. For example, one commenter asked us to clarify how and when outlier payments would be made. Another asked who initiates an outlier request and whether it would be automated. Others asked how the 5 percent would be determined and how information on outlier payments would be communicated to agencies. Another commenter asked what our policy would be if total outlier payments are significantly different than the 5 percent amount. Another commenter asked how outlier payments would be tracked and capped nationally and how agencies would know when the outlier pool had been exhausted. Finally, there was the question whether the 5 percent applied to individual agencies or all agencies in the aggregate.

Response: Outlier payments will be made automatically by RHHI through the normal claims processing system. When the RHHI determines the final episode payment based on the claim submitted by the agency, as part of determining the appropriate payment for the episode, the RHHI system estimates the imputed cost of the episode under the outlier methodology. If the cost exceeds the outlier threshold for the HHRG to which the episode is assigned, then an outlier payment will automatically be calculated for the episode. The agency will know when it receives an outlier payment for an episode because it will be part of the final payment for the episode and noted on the remittance advice.

It is important to understand that, according to section 1895(b)(5) of the Act, the 5 percent constraint applies to estimated total payments, not actual total payments. Each year, we will establish, the loss-sharing ratio and the fixed dollar loss values that will be used throughout the next fiscal year to calculate outlier payments. There will be no reconciliation of actual outlier payments to the 5 percent target either during a current fiscal year or in any subsequent fiscal years. If actual outlier payments during a given year exceed 5 percent of actual total payments, there will be no attempt to recoup the difference. Similarly, if total outlier payments in a year fall short of 5 percent of actual total payments, there will be no additional payments made to agencies. Such information will, however, be part of the analysis conducted for setting the appropriate threshold in subsequent years.

Finally, there is no direct relationship between the 5 percent limit on total outlier payments and the percent of outlier payments that an individual agency may receive. Depending on the agency's caseload during the year, the percentage of outlier payment to its total payments as outlier payments will likely vary. The 5 percent constraint applies to all agencies in the aggregate and not to individual agencies.

Comment: One commenter questioned why we have no outlier policy for LUPA episodes.

Response: No additional payments will be made for LUPA episodes beyond the LUPA payment. However, it should be noted that in this final rule, we have changed the per-visit costs to be used in computing the LUPA payment so that the same per-visit amounts will be used for the LUPA payment as that used in estimating the cost of a regular 60-day episode.

Comment: A commenter stated that we should implement a payment ceiling for outlier cases (such as 175 percent of the HHRG payment) and use a 15 percent adjustment to fund the outlier pool.

Response: Since a basic objective of outlier payments is to increase payments to the most costly cases, we do not think that outlier payments should be limited to some percent of the HHRG payment. The effect of such a ceiling would be to allow other less costly cases to receive higher relative outlier payments. As to the latter comment, a 15 percent outlier adjustment is not permitted by the statute, which sets 5 percent of total estimated payments as the maximum amount of outlier payments.

Comment: One commenter suggested that we eliminate outliers and recalculate the case-mix to include long stay cases as part of the HHRG system.

Response: "Long stay" cases are as much a part of the HHRG system as shorter term cases, and will not necessarily become outlier cases. As the system provides for unlimited 60-day periods, provided that patients continue to be eligible for Medicare home health services for each 60-day period, HHAs will receive additional episode payments based on the assigned HHRG for each episode. Thus, length of stay is not a factor leading to underpayments. The purpose of the outlier policy is to provide additional payments to cases requiring unusually intensive services within a 60-day episode.

Comment: One commenter stated that a transition policy would be a preferable alternative to the proposed outlier policy.

Response: As discussed previously, we have decided against implementing a transition policy. However, we note that a transition policy could serve some of the same purposes as an outlier policy early in system implementation. For example, a transition policy bases a proportion of the episode payment on the estimated cost (using the same method as we apply in the outlier policy) and the rest of the episode payment on the case-mix and wage adjusted episode amount. Such a policy could provide higher total payments to episodes whose estimated cost exceeds the episode payment. However, for all cases whose estimated cost is less than the episode payment, this blended payment would be lower than the episode payment. Because it would potentially change the payment to all episodes, a transition policy has a greater impact on total payments than that of the outlier policy. Whereas the outlier policy is self-financing under the terms of the statute, a broader transition policy would require a different and possibly greater adjustment for budget neutrality. Finally, a transition policy is, as the name indicates, intended to be temporary, and intended to allow providers time to adjust to a new system. In contrast, we intend the outlier policy to be a permanent feature of the payment system.

Comment: One commenter urged us to carefully monitor the impact of the outlier policy and stressed the importance of maintaining an appropriate balance between the total number of outlier patients and the payment per outlier case. Another commenter expressed a preference for refinement of the case-mix system as an alternative to the outlier policy.

Response: We fully agree with the suggestion of both commenters. We will monitor the impact of the outlier policy with the intention of refining it where possible. We will also explore case-mix refinements as we gather the data needed to support the necessary analyses. We are also hopeful that, over time, case-mix refinement may reduce

the need for an outlier policy. We will examine the issue in the future when more information is available.

Comment: Three commenters raised concern about the impact of outliers on specific types of home health agencies. They expressed concern for financial losses that would be incurred by rural agencies, a provider of "last resort" whose cases are in need of intensive services, and agencies in States where there are no other publicly funded home and community based services. In addition, a commenter stated that the wage adjusted per-visit costs would be significantly less than the actual per-visit costs in a particular geographical area.

Response: These comments suggest that the outlier policy might be tailored to increase outlier payments for specific agencies on the basis of their location or case-mix. The outlier policy set forth in this rule provides greater compensation for agencies based on the imputed cost of an agency's episodes. There is no data available to us which objectively identifies providers for whom, on some basis, additional payments would be warranted. We believe the PPS system with its various adjustments provides a sound basis for distributing payment in accordance with patient need.

Comment: Some commenters suggested that we apply different outlier criteria to different types of cases. For example, one commenter stated that the outlier payments should be restricted to the 40 non-therapy HHRGs.

Response: We believe that estimated total cost is the best measure we have for identifying outlier cases. The fact that the fixed dollar loss is the same for all cases means that the estimated loss that must be incurred is the same for all cases and thus achieves equity. Even though a therapy case receives a higher episode payment than a non-therapy case, the estimated loss that must be incurred before it qualifies for outlier payments will be the same.

Comment: One commenter recommended a lower fixed dollar loss for wound care cases than for other outlier cases.

Response: We note that a lower fixed dollar loss for wound care cases than for other cases would direct a greater proportion of outlier payments to wound care cases. We have decided against adopting such a policy at this time. As indicated in a previous response, we believe that it is more equitable to let the estimated cost of each episode determine the amount of outlier payments without singling out specific types of cases for special treatment.

Comment: One commenter seemed to argue that a fixed dollar loss equal to or greater than the episode payment amount was impossible empirically and resulted from assumptions we made about episode costs and payments.

Response: This commenter seemed to misunderstand the method we used to estimate the fixed dollar loss amount and the loss-sharing ratio. The estimates of fixed dollar loss amounts and loss-sharing ratios presented in the proposed rule and in this final rule were not based on any assumptions about internal data relationships. As described in the proposed rule, the estimates were derived from modeling simulated payments and estimated costs for the episodes included in the Abt case-mix data set. For this final rule, we conducted the simulations again using an updated Abt data set. We were unable to perform simulations using early OASIS data from the OASIS national repository, because data lags prevented us from linking OASIS data to claims such that they could be included in this final rule. However, we were able to perform a variety of case-mix comparisons between the national OASIS data and the Abt sample data. These comparisons indicated a high degree of conformity between the two data sources. Further, we were able to compare the 1998 episode file developed from Medicare claims and the Abt data to determine how well the distribution of expensive cases matched in the two files. This analysis also supported the use of the Abt data.

O. Budget Neutrality

Comment: A number of commenters raised concerns regarding the budget neutrality target. A few commenters were concerned about the budget target of IPS limits reduced by 15 percent. Another felt expenditures should be based on the Congressional Budget Office projection of expenditures.

Response: Section 302 of BBRA of 1999 amended the statute to delay the 15 percent reduction in spending until one year after the implementation of PPS and further requires the Secretary to report to Congress within 6 months after implementation of PPS on the need for the 15 percent reduction. The statute also requires the budget target to be based on the Secretary's estimate of spending in FY 2001, not the Congressional Budget Office estimate.

Comment: Some commenters asked if we intend to re-evaluate the budget neutrality factor in the future.

Response: Re-evaluating the experience over the next few years and adjusting the rates accordingly could be beneficial. However, the statute does not provide for any adjustment in the budget neutrality factor nor an adjustment to change the program budget target.

Comment: Several commenters were concerned about our projection of the number of episodes in FY 2001. Some mentioned specific reasons for declining episodes such as the changes in venipuncture rules.

Response: Since the time we published the preliminary notice, we have obtained more meaningful data about home health spending and utilization changes. We now have two consecutive year's episode files and have clarified issues related to spending projections such as unsubmitted claims and sequential billing. We are no longer projecting the same number of episodes as we had in CY 1997. Utilization has dropped substantially since that time. However, the reasons for the drop, such as venipuncture changes, cannot be quantified. We have a two-year comparison relating the drop in episodes to the drop in visits within an episode. Based upon the most recent data, we are dropping the projected number of episodes substantially.

Comment: Several commenters took issue with the data to be used as the basis for the rate setting. They felt that we should not use the 1998 data to establish rates as the low utilization associated with IPS would be built into this analysis.

Response: Because the law requires us to establish a PPS that is budget neutral to what would have been paid under IPS, we need the most recent data to help us develop a model of what would have happened under IPS in 2001. Since utilization did drop so dramatically, we feel that it is important to know how the mix of services changed. Use of 1997 data or 1998 data does not necessarily have a direct effect on the level of payment because of the budget neutrality requirement. For example, using 1998 data, with a lower number of visits in an episode than 1997 data, will result in less of an adjustment to obtain budget neutrality to reach projected FY 2001 spending.

Comment: Some commenters suggested that we increase the budget target to reflect the cost of Part B therapies that were provided outside the home health benefit that will now be covered by the PPS rate.

Response: We determined how much of this type of therapy is being provided to current beneficiaries receiving home health services. We added this amount to the target for spending.

Comment: One commenter believed that we should have performed an impact study for rural areas because

such an analysis would have shown the need for separate budget neutrality factors for rural versus urban areas.

Response: We did look at costs per visits in several different types of rural areas versus urban areas. There was no significant difference, therefore we did not create distinct rates for urban versus rural.

Comment: Several commenters argued that we did not provide support for the behavioral adjustment assumed about the percentage of LUPA payments.

Response: Analysis of the 1998 episode file showed that when home health services were broken into 60-day blocks, for 16 percent of the time either a beneficiary had 1 to 4 visits extending outside a continuous period of service or that a beneficiary simply had only 1 to 4 visits within a 60-day period. Of this 16 percent, only 26 percent or 4 percent of the total were cases where only 1 to 4 visits were provided in a single 60-day, non-contiguous period. This four percent would clearly classify as LUPA episodes. It is not clear that those visits simply falling outside the 60 days would, under PPS, qualify as an episode. A plan of care would probably simply include those straggler visits with the preceding episode in many cases. The episode file was created to help us determine the average number of visits and the mix of visits in an episode. The file was not meant to fully reflect a system where payments are made prospectively. The incentives and the management of care under the prospective system we have designed have many differences from a cost-based reimbursement system. Our assumption about the percentage of LUPA episodes is not so much a reflection of a behavioral change but a clarification of how the episode file was constructed. It would not be reasonable to assume that the distribution of visits under PPS will replicate that of IPS. Our assumption that 5 percent of episodes will be LUPA is based on the actuaries' best estimate of what will actually happen under PPS.

Comment: One commenter suggested that we include appropriate assumptions regarding the PEP in the budget neutrality adjustment.

Response: We developed the PEP and the SCIC to benefit both agencies and beneficiaries. The SCIC was created so that beneficiaries whose condition had changed since the start of the episode could continue to be cared for by the same agency. There is a cost to the payment system in allowing this change in condition. Because we do not have adequate data to estimate this cost, our rate setting assumptions could not incorporate the increased cost of changing to a higher case-mix mid-episode. There are some slight savings from using an end date to the PEP which does not equal the start date of the next episode. Again, we did not specifically account for this in determining the budget neutrality factor because as in the case of the SCIC, we do not have concrete data on which to base any cost estimate. We feel that the cost of the SCIC will outweigh any savings from the PEP. This being the case, the rates are not lower than they should be because of assumptions about the PEP.

P. Discharge Issues

Comment: Several commenters raised concern over possible impacts of discharge policies under the new PPS. Commenters requested clarification of our policy governing the situations of patients who are discharged because they are no longer homebound and therefore ineligible for the Medicare home health benefit during the 60-day episode, the patient refuses services or is discharged because of safety, abuse, non-compliance concerns, or dies.

Response: We believe the documented and legitimate event of a patient's death would result in a full episode payment for the HHA. Therefore, if a patient dies on day 35 of an episode, the HHA would receive a full episode payment for that individual. There would be no proportional payment adjustments to the full episode payment. If a patient is discharged because he or she becomes no longer homebound and therefore ineligible for the home health benefit, refuses services, or becomes a documented safety, abuse or non-compliance discharge during the 60-day episode, the HHA would receive a full 60-day episode payment unless the patient became subsequently eligible for the home health benefit during the same 60-day episode and later transferred to another HHA or returned to the same HHA, then the latter situation would result in a PEP adjustment.

Comment: Commenters requested clarification of discharge policies governing an intervening hospital, SNF or hospice admission.

Response: We believe that HHAs should be given the option to discharge the patient within the scope of its own operating policies; however, an HHA discharging a patient as a result of hospital admission during the 60-day episode will not be recognized by Medicare as a discharge for billing and payment purposes. An intervening hospital stay will result in either an applicable SCIC adjustment or, if the Resumption of Care OASIS assessment upon return to home health does not indicate a change in case-mix level, a full 60-day episode payment will be provided spanning the home health episode start of care date prior to the hospital admission, through and including the days of the hospital admission, and ending with the 59th day from the original start of care date.

Comment: Several commenters asked whether a patient could be discharged before the end of the 60-day episode and whether the final bill could be submitted upon discharge before the end of the 60-day episode.

Response: The claim may be submitted upon discharge before the end of the 60-day episode. However, subsequent adjustments to any payment based on the claim may be made due to an intervening event resulting in a PEP adjustment, such as a transfer to another HHA prior to the end of the 60-day episode or discharge and return to the same HHA prior to the end of the 60-day episode.

Comment: A commenter requested clarification of the situation where an HMO fails to notify the HHA of a transfer of coverage, asking whether the HHA would be responsible for that portion of the PPS payment deducted by Medicare.

Response: The common working file data base includes enrollment data that should inform the HHA of the enrollment status of patients under a home health plan of care with their agency. If the beneficiary becomes HMO eligible mid-episode, the 60-day episode payment will be proportionally adjusted with a PEP adjustment. The episode payment will be proportionally adjusted using the span of days based on the billable visit date that the beneficiary was under the care of the HHA prior to the beneficiary transfer to an HMO.

Q. Consolidated Billing

Comment: Several commenters requested clarification of the services governed by the statutorily required consolidated billing requirements under sections 1842(b)(6)(F) and 1862(a) of the Act as amended by section 305 of BBRA. Some commenters were concerned with possible False Claims Act violations.

Response: Section 1842(b)(6)(F) of the Act, enacted by the BBA , and amended by the BBRA, requires the consolidated billing of all covered home health services listed in section 1861(m) of the Act, except for DME covered as a Medicare home health service. Section 305 of BBRA revised the statute to exclude DME covered under the Medicare home health benefit from the consolidated billing requirements. Under PPS, HHAs will be required to bill and receive payment for all covered

home health services listed in section 1861(m) of the Act, except DME during the 60-day episode. Under the current system, issues concerning the False Claims Act are within the purview of the Inspector General who will review any possible claims violation.

Comment: Commenters requested reassurance that parenteral and enteral nutrition was not included in the consolidated billing requirements governing home health PPS.

Response: Perenteral and enteral nutrition services are currently not a covered home health service. Therefore, perenteral and enteral nutrition services are not subject to the consolidated billing requirements and are not included in the PPS episode rate.

Comment: Several commenters requested the elimination of non-routine medical supplies, osteoporosis drugs and the therapies from the consolidated billing requirements governing PPS.

Response: The statute requires all covered home health services listed in section 1861(m) of the Act, except for DME, to be governed by the consolidated billing requirements. HHAs cannot unbundle non-routine medical supplies that are currently covered as a Medicare home health service that may coincidentally have a duplicate Part B payment code for payment. In addition, HHAs cannot unbundle the osteoporosis drug or therapies covered under the Medicare home health benefit. Although the osteoporosis drug covered under the Medicare home health benefit is not included in the PPS rate, it is still governed by the statutorily required consolidated billing requirements.

Comment: Commenters suggested that we remove the requirement for consolidated billing of intern and resident services unless it is a choice of the hospital and the HHAs. Commenters suggested a separate payment amount to those HHAs that will bill for their intern and resident services.

Response: To the extent these services were paid on a reasonable cost basis and covered under the home health benefit, there cannot be separate payment for these services under home health PPS. These services will be subject to the consolidated billing requirements. However, the HHA PPS rates and consolidated billing requirements do not affect Medicare payments to hospitals for graduate medical education or billing requirements.

Comment: Commenters suggested that we establish, at a minimum, a partial episode payment to a nonprimary HHA that can demonstrate they followed the recommended Common Working File (CWF) procedures for CWF verification of home health status before providing care, but received incorrect information about the episode status of the beneficiary.

Response: We believe that HCFA systems will provide the appropriate information in a timely manner so that HHAs may establish primacy for purposes of consolidated billing and corresponding payment. In future refinements to the system we will certainly not rule out the feasibility of this proposal if the data shows that this situation occurs frequently.

Comment: Commenters requested clarification of the procedures HHAs and other providers will follow to communicate the necessary charges of DME and the osteoporosis drug.

Response: The current communication level that is necessary to effectively meet the DME and osteoporosis drug needs of home health patients will continue under PPS. Both DME and the osteoporosis drug are paid outside of the PPS rates. As DME covered as a home health service, is no longer subject to the consolidated billing requirements governing home health PPS, the status quo for the provision of DME will continue under PPS. The osteoporosis drug is subject to the consolidated billing provisions although it is paid outside of the PPS rates. HHAs will no longer be able to unbundle the osteoporosis drug to a Part B supplier. The HHA will have to bill Medicare directly for the osteoporosis drug and any applicable supplier will have to look to the HHA for payment.

Comment: Commenters requested clarification of consolidated billing requirements governing billings and payments for services at hospitals, skilled nursing facilities, and rehabilitation centers when they include equipment too cumbersome to bring to the home.

Response: Payments for services at hospitals, SNFs, and rehabilitation centers when they include equipment too cumbersome to bring to the home have been incorporated into the baseline cost data used to develop the PPS rates and are included in those rates. Those services are also subject to the consolidated billing requirements. Therefore, the HHA cannot unbundle the services to a Part B supplier. The HHA must provide the services either directly or under arrangement and bill Medicare directly for payment.

R. Physician Certification of the HHRG (§ 484.22)

Comment: Several commenters requested the elimination of the proposed requirement governing physician certification of the HHRG. In general, commenters objected to the burden associated with this requirement and questioned its logic. Commenters also argued that physicians would not be able to comply with the requirement of certification of the HHRG.

Response: We proposed to require the physician to certify the appropriate case-mix weight/HHRG as part of the required physician certification of the plan of care. This was an attempt to have the physician more involved in the decentralized delivery of home health services. However, based on the number of negative responses from commenters and our reevaluation of this issue, we have decided to eliminate this requirement and focus our attention on physician certification efforts and education in order to better involve the physician in the delivery of home health services. In this final rule, we are deleting proposed § 424.22(a)(1)(v) to remove this requirement from our regulations.

S. Small Rural Providers

Comment: Several commenters suggested that we recognize several small rural exceptions to the national episode payment rate and LUPA policy that would more appropriately recognize the special needs of small rural providers. Commenters suggested that the payment rates are inadequate to meet the special travel needs and potential economy of scale challenges that commenters believe small rural HHAs encounter. Commenters believed the data used to develop the PPS did not include or adequately reflect the behavior of small rural HHAs, and therefore believed it would be difficult to predict the impact of PPS on small rural HHAs. Conversely, other commenters specifically recommended no exception for small rural HHAs.

Response: In our re-examination of the small rural impact issue, we did not find data to support the rural differentiation suggested in the comments submitted. Our analysis included the subcategorization of data into increasing degrees of rural remoteness. As demonstrated in the analysis below, the subcategories did not yield a significant differentiation in costs associated with resource needs and service delivery in rural areas. We do not believe that rural providers will be disadvantaged under HHA PPS. However, we will continue to look at alternatives regarding beneficiary access to Medicare home health services in remote areas. We will continue to analyze this complex issue with new data under HHA PPS. If and when an adjustment is justified, we will refine the system accordingly.

RURAL CONTINUUM CODE STATUS TABLE

Provider type	Continuum code [1]	Average cost per beneficiary 1997 [2]	Average cost per beneficiary 2001 [3]
Free Standing For Profit Agencies	0	$6,622	$4,079
Free Standing For Profit Agencies	1	12,632	3,939
Free Standing For Profit Agencies	2	7,367	5,397
Free Standing For Profit Agencies	3	7,965	6,577
Free Standing For Profit Agencies	4	6,400	5,330
Free Standing For Profit Agencies	5	7,014	5,997
Free Standing For Profit Agencies	6	6,367	4,230
Free Standing For Profit Agencies	7	7,671	4,333
Free Standing For Profit Agencies	8	5,838	4,971
Free Standing For Profit Agencies	9	4,871	4,266
Free Standing Governmental Agencies	0	3,758	2,589
Free Standing Governmental Agencies	1	2,325	2,370
Free Standing Governmental Agencies	2	4,117	2,938
Free Standing Governmental Agencies	3	4,054	3,407
Free Standing Governmental Agencies	4	3,683	2,975
Free Standing Governmental Agencies	5	4,459	3,495
Free Standing Governmental Agencies	6	3,204	2,375
Free Standing Governmental Agencies	7	3,905	3,253
Free Standing Governmental Agencies	8	3,046	2,572
Free Standing Governmental Agencies	9	3,170	2,477
Free Standing Non-Profit Agencies	0	5,341	3,035
Free Standing Non-Profit Agencies	1	4,258	3,871
Free Standing Non-Profit Agencies	2	4,897	2,991
Free Standing Non-Profit Agencies	3	4,069	3,162
Free Standing Non-Profit Agencies	4	3,279	2,810
Free Standing Non-Profit Agencies	5	6,124	4,630
Free Standing Non-Profit Agencies	6	5,730	3,320
Free Standing Non-Profit Agencies	7	5,146	3,638
Free Standing Non-Profit Agencies	8	3,620	3,692
Free Standing Non-Profit Agencies	9	6,546	4,899
Provider Based Agencies	0	5,488	3,233
Provider Based Agencies	1	4,049	3,498
Provider Based Agencies	2	4,553	3,845
Provider Based Agencies	3	4,418	3,015
Provider Based Agencies	4	2,834	2,757
Provider Based Agencies	5	4,358	3,322
Provider Based Agencies	6	3,973	3,212
Provider Based Agencies	7	4,221	2,938
Provider Based Agencies	8	2,355	1,496
Provider Based Agencies	9	4,553	3,580

[1] Source: Bureau of Census' urban and rural classification of populations.
[2] Source: Audited Cost Report Sample Data.
[3] Source: Audited Cost Report Sample Data updated to FY 2001.

CODE DEFINITIONS*

0 Central counties of metro areas of 1 million population or more
1 Fringe counties of metro areas of 1 million population or more
2 Counties in metro areas of 250,000 to 1 million population
3 Counties in metro areas of fewer than 250,000 population
4 Urban population of 20,000 or more, adjacent to a metro area
5 Urban population of 20,000 or more, not adjacent to a metro area
6 Urban population of 2,500 to 19,999, adjacent to a metro area
7 Urban population of 2,500 to 19,999, not adjacent to a metro area
8 Completely rural or fewer than 2,500 urban population, adjacent to a metro area
9 Completely rural or fewer than 2,500 urban population, not adjacent to a metro area

RURAL FRONTIER STATUS TABLE

Provider type	Frontier status [1]	Average cost per beneficiary 1997 [2]	Average cost per beneficiary 2001 [3]
Free Standing For Profit Agencies	No	$6,858	$4,664
Free Standing For Profit Agencies	Yes	4,179	4,620
Free Standing Governmental Agencies	No	3,579	2,803
Free Standing Governmental Agencies	Yes	2,450	1,758
Free Standing Non-Profit Agencies	No	4,921	3,118
Free Standing Non-Profit Agencies	Yes	6,926	2,785
Provider Based Agencies	No	4,500	3,344
Provider Based Agencies	Yes	3,999	2,942

[1] Frontier Status is defined as 6 or fewer persons per square mile.
Source: "Definitions of Rural: A Handbook for Health Policy Makers and Researchers (HRSA)."
[2] Source: Audited Cost Report Sample Data.
[3] Source: Audited Cost Report Sample Data updated to FY 2001.

T. Wage Index

Comment: We received several comments regarding the wage index that is used to standardize and adjust the rates. The commenters suggested that the hospital wage index might not adequately represent wages paid by HHAs. Many commenters suggested the development of a home health specific wage index. Several of the commenters that suggested the home health specific wage index believed the hospital wage index did not adequately represent the cost of rural wages. A few commenters expressed concern with our proposed approach that continues to apply the wage index adjustment based on the site of service of beneficiaries rather than the location of the parent office. Several commenters suggested that a few wage index values included in Table 4 of the proposed rule were incorrect. A commenter suggested the application of the latest hospital wage index with exclusion of physician and resident costs and hours from the calculation. Several commenters were concerned with the application of the wage index when the patient transfers mid-episode or relocates during the episode.

Response: As indicated in the proposed rule, we are using the latest pre-floor and pre-reclassified hospital wage index. We used the latest pre-floor and pre-reclassified hospital wage index that was available at the time of publication of the proposed rule.

While we appreciate the intent of a home health specific wage index, we want to point out that our previous efforts in developing such an index resulted in weights that the industry immediately repudiated because it was viewed less favorable than the pre-floor and pre-reclassified hospital wage index. The industry had concerns with the methodology used to develop a home health specific wage index. These concerns coupled with our lack of applicable home health specific data resulted in our adoption of the hospital wage index in our approach to adjusting the labor portion of the formulas. In future refinements to the PPS we will certainly not rule out the feasibility of this recommendation.

We have decided to continue basing the application of the wage index on the site of service of the beneficiary under PPS. We believe this is the most equitable recognition of the wage component for service delivery. Based on commenters concerns with incorrect values included in Table 4 of the proposed rule, we re-examined our data. Based on the data available at the time of publication of the proposed rule, both Tables 4A and B in the proposed rule are correct. We use, and will continue to use the pre-floor and pre-reclassified hospital wage index values which are not published in the annual inpatient hospital PPS notice. We believe this may be the source of some confusion reflected in the comments.

If there is a PEP adjustment, whether it is a transfer or discharge and return to the same HHA during the 60-day episode, the patients site of service is the location of application of the appropriate wage index value. The wage index based on the beneficiary site of service adjusts the labor portion of the original proportional payment and will also adjust the labor portion of the new 60-day episode payment resulting from the intervening event. The PEP adjustment is viewed as two discrete situations: (1) The labor adjustment of the original proportional payment and (2) the labor adjustment of the new 60-day episode payment resulting from the intervening event. If a beneficiary changes locations during the episode (for example, moves in with a family member), then the MSA or non-MSA at the start of the episode governs the labor adjustment of the episode payment for the balance of the episode. The new MSA or non-MSA corresponding to the new location would begin with the subsequent episode.

U. Market Basket

Comment: One commenter requested further clarification of the market basket used to update the cost data for inflation.

Response: We believe the market basket update was adequately described in the proposed rule (64 FR 58149). See section IV.B.2. of this rule for further clarification on the home health market basket. We are available to answer specific questions any commenters may have on an individual basis.

V. Alternative Methods of Care

Comment: Some commenters suggested the need to recognize alternative methods of care under PPS such as telemedicine or other innovations. Commenters recommended such alternative methods as a way to improve service delivery to patients and promote efficiencies.

Response: While we appreciate the intent of this comment, at this point the modality of telemedicine has not been adequately defined nor are there established safety and effectiveness standards across the continuum of products. Thus, we do not intend to change the current definition of a visit governed by § 409.48(c) which states, "A visit is an episode of personal contact with the beneficiary by staff of the HHA or others under arrangements with the HHA for the purpose of providing a covered service." There is nothing to preclude an HHA from adopting telemedicine or other technologies that they believe promote efficiencies, but those untested technologies will not be specifically recognized and reimbursed by Medicare under the home health benefit.

W. Discrimination

Comment: A few commenters argued that the PPS as proposed discriminates

against States, provider types, classes of patients, and the impoverished and poorly educated due to their disproportionate numbers in certain States and regions of the country.

Response: The PPS was developed based on national norms and is intended to eliminate previous patterns of care that never related to patient need. We believe the case-mix methodology, significant change in condition adjustment, and cost outlier payments as developed in the system, treats all patients across the country equitably in relation to their condition.

X. Other Federal Requirements

Comment: A few commenters suggested that HHAs should not be required to comply with new Occupational Safety and Health Administration standards or any other new Federal requirements prior to PPS implementation.

Response: While we appreciate the concerns of the commenters, it is beyond the scope of our authority to place a moratorium on the application of regulations from other Federal agencies or other statutory Medicare requirements.

Y. OASIS Assessment and Plan of Care Certification Transition Concerns

Comment: Several commenters requested clarification of requirements governing OASIS assessments and plan of care certifications for implementation October 1, 2000. Commenters raised concerns regarding burden and costs associated with complying with the requirement that all patients be grouped into appropriate case-mix classifications and plan of care certifications for the October 1, 2000 implementation date.

Response: We addressed this concern in the proposed rule. We proposed to provide a one-time grace period in order to ease the transition to PPS for patients under an established OASIS assessment and certified plan of care prior to PPS implementation on October 1, 2000. We proposed if a beneficiary is under a home health plan of care before October 1, 2000 and the HHA has completed a Start of Care or Follow-Up OASIS assessment earlier than September 1, 2000, the HHA must complete a one-time additional Follow-up OASIS assessment using the modified OASIS B–1(8/2000) at least 5 days before October 1, 2000 for purposes of case-mix classification. The modified OASIS B–1(8/2000) is available on the HCFA Internet site at: http://www.hcfa.gov. If a beneficiary is under an established home health plan of care before October 1, 2000, and the HHA completed a Start of Care or Follow-Up OASIS assessment using the modified OASIS data set B–1(8/2000) on or after September 1, 2000 and does not wish to do a one-time OASIS at the inception of PPS, the HHA may use the earlier OASIS assessment.

We proposed a similar one-month grace period for physician certifications of the plan of care. In the October 28, 1999 proposed rule (64 FR 58195), we proposed, "If a beneficiary is under an established home health plan of care before October 1, 2000 and the certification date is on or after September 1, 2000 and the HHA in conjunction with a certifying physician does not wish to do a one-time additional recertification of the plan of care at the inception of PPS, the HHA may use the recertification date (September 1, 2000 through September 30, 2000) from the earlier version of the plan of care. This is a one time grace period." We believe it is important to allow a one time grace period for plan of care certifications to ease transition concerns.

A beneficiary under an established plan of care as of September 1, 2000, may have a one-time implementation grace period for the plan of care certification requirements for a maximum period of up to 90 days (September 1, 2000 through and including November 29, 2000). This one-time grace period to alleviate implementation burden must be done in conjunction with a certifying physician. The regulatory requirements governing the Medicare home health benefit before implementation of PPS would apply to the certification period up to and including September 30, 2000. Home health agencies in conjunction with a certifying physician will have to document a break in ordered services for the pre-PPS physician ordered services (September 1, 2000 through and including September 30, 2000) and all post-PPS physician ordered services as of PPS implementation on October 1, 2000. The documented break in services during the one-time implementation grace period for the plan of care certification requirements for a maximum period of up to 90 days is required in order to ensure the alignment of all certified episodes and OASIS assessments as of PPS implementation on October 1, 2000.

For example, a Medicare home health eligible patient is under a physician's plan of care and the first billable visit date/start of care date in the plan of care is September 15, 2000. The one-time implementation grace period would reflect a plan of care that specifies physician orders for services furnished both before and after implementation of HHA PPS. The physician orders in the plan of care would reflect services from September 15, 2000 through and including September 30, 2000. All current coverage and payment rules would apply to the services provided on September 15, 2000 through and including September 30, 2000. The plan of care would also specify any services ordered on October 1, 2000 through and including November 29, 2000. The plan of care would reflect the break in services both before and after implementation of HHA PPS. The start of care date/first billable visit date for this patient under PPS in the plan of care is October 1, 2000. The one-time implementation grace period would require the documentation of services in the plan of care that were furnished both before and after implementation of HHA PPS and the documentation of the new PPS start of care date under PPS.

Many commenters raised concern about the potential burden associated with patients who are under a plan of care prior to October 1, 2000, but due to timing, their OASIS schedule did not fall in the post September 1, 2000 grace period time frame. These patients would require OASIS reassessment during the last 5 days of September in order to group the patients for purposes of case-mix classification for the October 1, 2000 PPS effective date. For some HHAs, this could potentially pose a significant implementation burden. Thus, we are revising our proposed approach to permit the completion of the next scheduled OASIS follow-up assessment for those patients under an established home health plan of care prior to September 1, 2000, but on or after August 1, 2000, to be completed at the HHA's discretion during the month of September. Therefore, if the patient is under a home health plan of care that overlaps the month of August 2000, the HHA will have the discretion to complete the next scheduled Follow-Up OASIS Assessment during the month of September. Under the one-time transition grace period, we are not requiring that the OASIS assessment be completed during the required time frame during the last 5 days of the episode certification requirement for August and September 2000. The requirement that the OASIS assessment must be completed during the last 5 days of the certification period in order to case-mix adjust the patient for a subsequent episode certification will resume with PPS implementation effective October 1, 2000. If the patient is under an established certified home health plan of care as of August 1, 2000 through and including August 31, 2000, then the HHA may complete the next

scheduled OASIS follow-up assessment anytime during the month of September 2000. For patients under an established home health plan of care on September 1, 2000 through and including September 30, 2000, then the HHA may use the most recent start of care or follow-up assessment on file for the month of September 2000 to group patients for purposes of case-mix PPS implementation on October 1, 2000.

Z. Billing Issues

Comment: Several commenters requested clarification regarding the billing instructions governing the new PPS.

Response: Due to the highly technical nature of these comments, we will not address those comments in this final rule. However, we will release operational billing instructions to accompany the publication of this final rule.

AA. Cost Reporting Under PPS

Comment: Several commenters recommended that the requirement for an HHA cost report end with PPS implementation.

Response: Cost reporting requirements for HHAs will not end with PPS. As with all other PPS systems there is continued demand for this data. Importantly, the data may be used to monitor, refine, and improve PPS in the future.

Comment: Several commenters requested clarification of the cost reporting requirements governing the October 1, 2000 PPS implementation date. Commenters were concerned with cost reporting periods that do not parallel the implementation date of PPS, October 1, 2000.

Response: All providers will file a full 12-month cost report regardless of their specific cost reporting year. There will be a statistical break in the cost report based on Medicare statistics up through and including September 30, 2000. Under PPS, the cost report will capture all statistical data for both costs and statistics for all subsequent periods. A provider's cost reporting year will not be affected by the implementation of PPS. We will provide more detailed instructions on PPS cost reporting instructions in subsequent program instructions and revisions to the Provider Reimbursement Manual.

Comment: Commenters requested clarification of the application of the interim payment system cost limits for the period of a cost reporting period that may overlap the date of implementation of PPS. Commenters wanted clarification on whether or not the interim payment system cost limits will be prorated.

Response: The interim payment system cost limits (per-visit limit and per-beneficiary limit) will not be prorated. Full application of the limits will apply to the cost reporting year subject to the interim payment system limits.

Comment: A commenter suggested a cost reporting mechanism for the identification of nontraditional home health services and their costs.

Response: Currently, there is no cost reporting mechanism for the separate identification of non-traditional Medicare costs. At their own option, providers may accumulate detailed statistics within their own accounting system.

BB. OASIS Data and Grouper Issues

Many of the OASIS comments were highly technical or not within the parameters of this final rule. Interested parties can get assistance with their queries on an individual basis as well as through the RHHIs and on HCFA's home page. We have provided general responses to the following OASIS data comments:

Comment: A few commenters reported that State OASIS personnel are stating that payments to HHAs under PPS will be based upon actual bills submitted.

Response: This information is incorrect. We have provided State OASIS Educational Coordinators (OEC) with the authority and responsibility to educate HHA providers about the implementation of the clinical aspects of the OASIS data set in their agency, and with the reporting and transmission requirements of the data set needed to go from the agency to the State system. They are not trained to answer questions about reimbursement. The RHHIs have the background and knowledge to educate HHA providers on the reimbursement aspect of HHA PPS. HHAs are free to contact their RHHI on questions concerning reimbursement under HHA PPS.

Comment: One commenter requested that we use the criteria of hospitalization as an indicator for a PEP adjustment due to concerns with the impact on outcome tracking.

Response: As discussed previously in our response to comments concerning the PEP adjustment, we have re-examined our approach due to intervening hospitalizations and potential discharge concerns. We have provided consistency to the extent possible to ensure adequate payment levels and corresponding outcome tracking for quality purposes.

Comment: A few commenters requested clarification of the payment approach for pre- and post-partum Medicare disability patients who are not required to have an OASIS assessment.

Response: While the OASIS data set was not designed for the assessment of the clinical needs of the maternity patient, and the maternity patient is excluded by regulation from the collection of the data set, the reimbursement system will require a home health resource group (HHRG) to be submitted on the claim. In the rare case of a pre-or post-partum Medicare maternity patient, the HHA will need to complete the comprehensive assessments at the specified time points, which are required for production of the HHRG. The HHA can place that HHRG group case-mix number on the claim to receive payment. The HHA is not required to transmit the assessments to the State Agency, but must include those assessments in the clinical record at the agency.

We believe the majority of this type of maternity patient will be held at the LUPA level. If, in the rare instance the patient requires more than four visits, we would suggest the HHA complete an OASIS in order to ensure adequate payment levels. We believe this would be true for the Medicare disabled population under 18. If the patient was at the LUPA level, in all likelihood he or she would be classified into the lowest HHRG level and ultimately paid at the LUPA level at the end of the episode.

Comment: A few commenters requested clarification on the proper OASIS schedule that should be used for a private pay or Medicaid patient who is in a current OASIS assessment period that becomes eligible for Medicare home health benefits during that period.

Response: All Medicare cases require a new Start of Care OASIS assessment to group the patient for payment purposes and assess the patient for care planning at the time the patient becomes Medicare eligible.

Comment: Several commenters requested access to the grouper prior to the publication of the final rule.

Response: We provided draft grouper software on the HHA PPS HCFA website during the comment period of the proposed rule. Providers could download the grouper software in a PC EXCEL format. We plan to also provide the final grouper on the HCFA HHA PPS website.

Comment: Some commenters questioned the affect untimely reporting of OASIS date or the absence of it would have on payment.

Response: An HHRG cannot be generated without a completed OASIS. The RHHI will not accept a billed HHRG unless the OASIS that supports the billed case-mix classification is encoded by the agency, electronically transmitted and accepted by the State's OASIS repository.

Comment: A few commenters were concerned with potential implementation costs associated with the OASIS schedules used to group patients for case-mix purposes.

Response: In section IV.C. of this rule, we set forth the payment methodology for the first year of PPS one-time adjustment reflecting implementation costs associated with revised OASIS schedules needed to classify patients into appropriate categories for payment. We have provided clarification of the proper OASIS assessment schedule used to group patients for case-mix based on the patient's episode status. Further clarification will be provided in subsequent program instructions.

Type of episode or adjustment	OASIS assessment: M0100 & M0825 response selection
1. Initial, whether first or new 60-day episode resulting from PEP Adjustment. 2. SCIC *with* intervening Hospital Stay during current episode	Start of Care: (M0100) RFA 1 and (M0825) select 0—No or 1—Yes * Resumption of Care: (M0100) RFA 3 and (M0825) is 0—No or 1—Yes * If a patient was transferred to the hospital without agency discharge during the current episode, the required assessment upon return to home is the Resumption of Care assessment (RFA 3). The Resumption of Care assessment is required within 48 hours of the patient's return from the inpatient facility. The Resumption of Care assessment (RFA 3) also serves to determine the appropriate new case-mix assignment for the SCIC adjustment.
3. SCIC *with* intervening Hospital Stay at the end of an episode	Resumption of Care: (M0100) RFA 3 and (M0825) is 0—No or 1—Yes * and Follow up (M0100) RFA4 and (M0825) is 0—No or 1—Yes * If a patient was transferred to the hospital without agency discharge, the required assessment upon return to home is the Resumption of Care assessment (RFA 3). The Resumption of Care assessment is required within 48 hours of the patient's return from the inpatient facility. The recertification (Follow-up, RFA 4) comprehensive assessment is required in the last five days of the certification period; for payment purposes, this assessment is used to determine the case-mix assignment for the subsequent 60-day period. If the second part of the SCIC adjustment occurs in the last five days of the certification period, two comprehensive assessments are required. One assessment will be done for the resumption of care (RFA 3) and (M0825) select 0—No or 1—Yes; the other will be done for the re-certification (Follow-up) assessment (RFA4) and (M0825) select 0—No or 1—Yes.* The reason two assessments are required is that therapy need must be predicted and reported on the OASIS record for each discrete 60 day episode.
4. SCIC *without* intervening Hospital Stay	Other Follow-Up Assessment: (M0100) RFA 5 and (M0825) select 0—No or 1—Yes *
5. Subsequent 60-day episode due to the need for continuous home health care after an initial 60-day episode.	Recertification (Follow-up): (M0100) RFA 4 and (M0825) select 0—No or 1—Yes *

* (M0825) = NA is applicable only when response (M0150)—response 1 (traditional Medicare fee-for-service) is not selected.

CC. Medical Review Under PPS

Comment: A number of commenters expressed concerns pertaining to the initiation of medical review activities for home health claims under the prospective payment system and suggested there should be a moratorium on or a delay of medical review. Others proposed a limit on the amount of and/or the kind of medical review performed.

Response: We believe it is important to implement medical review activities at the start-up of the new prospective payment system. As problems with specific home health claims are identified, contractors will be able to educate the home health agencies to prevent future billing errors. We have been working hard to develop an effective medical review strategy that will guard against program vulnerabilities unique to the PPS environment, be fair to home health providers, and meet the goal of paying claims correctly.

Comment: Commenters asked that we clarify the medical review process. One commenter asked if the RHHIs will change the case-mix assignment based on the medical review determination, and if so, asked what appeals process will be available to the agencies.

Response: For the most part, medical reviewers will continue to perform the same types of reviews that were conducted prior to implementation of PPS. For example, they will review to ensure that the beneficiary meets the requirements for Medicare home health coverage, and that services provided were reasonable and necessary and appropriately documented. One additional aspect of the review strategy will focus on the OASIS information and whether it is supported by documentation in the medical record. If the RHHI determines that a case-mix assignment is not appropriate, they will adjust the case-mix group accordingly. Agencies will continue to have all appeal rights currently associated with home health claims.

Comment: A commenter suggested that we impose time limits on contractors to complete medical review activities within a prescribed amount of time after receiving requested medical documentation.

Response: We have not prescribed specific contractor medical review time frames. We agree that this may be an issue that warrants further consideration; however, it is beyond the scope of this regulation and we will revisit this issue if warranted.

Comment: Several commenters expressed concerns about cash flow

issues if providers are placed on focused medical review and recommended that we prohibit sequential billing. Other commenters asked how medical review of an episode would affect subsequent episodes.

Response: We are sensitive to provider cash flow concerns and desires to balance legitimate provider concerns with Medicare's stewardship responsibilities. Sequential billing is not a requirement in the home health PPS, therefore medical review of one episode will not automatically delay payment for subsequent episodes. However, we may reduce or disapprove requests for anticipated payments in those situations in which protecting Medicare program integrity warrants these actions.

Comment: Several commenters expressed concerns about vulnerabilities presented by the prospective payment system.

Response: We recognize that there are unique program vulnerabilities related to the prospective payment environment. However, we believe we have identified possible vulnerabilities and random review will assist us in assessing vulnerabilities and problems on an ongoing basis. We are working with the RHHIs and home health providers to address them as we develop the medical review strategy.

Comment: A commenter recommended that RHHIs review the patient's plan of care (POC) and all visit documentation before determining whether or not patients qualify for full episode payments or therapy thresholds.

Response: We agree, and for claims selected for medical review, RHHIs will consider all available information from the agency for the episode billed in determining payment. That information may include all visit information such as nursing and therapy notes, treatment and flow charts, and vital sign records, weight charts, and medication records. In addition, the solicited information may also include the OASIS, the patient's POC, physician orders, hospital discharge summaries and transfer forms.

Comment: One commenter asked if HCFA expects significant changes in the numbers of denials under PPS.

Response: It is our goal to reduce payment errors. Because this is a new payment methodology, it is difficult to predict whether there will be changes in the denial rate for home health claims. We believe that education and early intervention is key to ensure proper billing under the new payment methodology, and can help reduce both denials and errors by increasing compliance.

DD. Quality Under PPS

Comment: We received a few comments requesting clarification of the quality improvement approach proposed under PPS.

Response: Efforts are currently underway to develop systems to generate outcome based quality improvement reports based on the OASIS that can be used to assess the quality of care at home health agencies, assist the States in their survey and certification responsibility, and provide information to home health agencies to assist them in ongoing quality improvement. Part of this effort is the implementation of the Home Health Outcome Based Quality Improvement System pilot project where the Peer Review Organizations (PROs) will act in a supportive role to assess and support quality improvement efforts in home health agencies. The Home Health Outcome Based Quality Improvement (HH OBQI) System is being implemented as a pilot project in five States through the PRO program. The HH OBQI system will explore the feasibility of providing assistance to HHAs in their efforts to implement and manage new programs for quality improvement. After a competitive solicitation to all PROs, HCFA selected the Maryland PRO, the Delmarva Foundation for Medical Care, Inc., as the lead or Home Health PRO (HH PRO). As the HH PRO, Delmarva will oversee the implementation of the project, coordinate the efforts of the four pilot PROs, and also serve as the fifth pilot PRO. The PROs for Michigan, New York, Rhode Island, and Virginia have also been selected as pilot PROs. The HH PRO will distribute information and guidance to the pilot PROs based on OASIS outcome reports, and its own analysis of OASIS data obtained from the national OASIS repository. The pilot PROs will, in turn, provide education and consultation to home health agencies to assist them in developing and managing their outcome based quality improvement programs. The pilot PROs will also provide consultation to State agencies, RHHIs and HCFA components in interpreting and using the outcome reports to assess home health quality.

EE. Medicare Secondary Payor (MSP) Under PPS

Comment: A few commenters raised concerns regarding the treatment of MSP under home health PPS.

Response: The statute governing home health PPS was silent regarding the treatment of MSP. The current requirements governing MSP will continue under the home health PPS environment. If warranted, further technical clarification will be provided in operational program instructions.

FF. Appeal Rights Under PPS

Comment: Several commenters requested clarification of provider appeal rights under home health PPS.

Response: Under the home health PPS, HHAs will have appeal rights comparable to the current environment. They will not be able to appeal the request for anticipated payment of the initial percentage payment for the episode, but they will be able to appeal a denial or down-coding by the intermediary where items or services were found as to be noncovered custodial care or were not reasonable and necessary AND where the intermediary finds that the beneficiary or provider should have known that they were excluded from coverage under the program (42 CFR § 405.704(c)).

Comment: Some commenters asked about beneficiary appeal rights under home health PPS, specifically demand billing procedures.

Response: We are currently reviewing demand billing procedures to determine whether they must be modified to take into account differences between HHA reasonable cost billing and the HHA PPS.

GG. Suggestions for HCFA

Comment: Several commenters sent comments on other regulations that were outside the scope of this rule. In addition, some commenters requested changes to the current statutorily required eligibility requirements, plan of care certification requirements, other coverage requirements that were not set forth in the proposed rule and the request to publish aspects of the final regulation on a faster publication track.

Response: These comments cannot be addressed in this rule, as this rule does not pertain to current law governing eligibility or plan of care certification requirements and therefore, we cannot amend these requirements as requested by the commenters. Due to tight timeframes for publication of this rule, we were unable to publish any portion of this rule in a separate rule under a quicker timeframe.

Comment: Several commenters recommended that we review all regulations and manual instructions for consistency.

Response: We have reviewed and will continue to review all current instructions and provide corresponding manual revisions and operational

instructions that reflect the final policies set forth in this rule.

Comment: Several commenters suggested the need for formal quarterly meetings with industry representatives or other industry groups to develop the final rule and provide a forum of open communication.

Response: We will continue to strive to keep the lines of communication open with our external environment. There are several requirements that govern the rulemaking process that inhibit consultation with outside groups. However, we will continue to ensure that we are available to clarify concerns and listen to our stakeholders throughout the process.

IV. Overview of Final Regulation

This final rule sets forth the methodology for the national PPS applicable to all Medicare home health services covered under both Part A and Part B. This final rule incorporates a national 60-day episode payment for all of the reasonable costs of services furnished to an eligible beneficiary under a Medicare home health plan of care. This section describes the components of the national 60-day episode payment and the methodology and data used in computation.

A. Costs and Services Covered by the Payment

The prospective payment applies to all home health services set forth in section 1861(m) of the Act that are covered and paid on a reasonable cost basis under the Medicare home health benefit (except osteoporosis drugs as defined in 1861(kk) which are paid outside PPS) as of the date of the enactment of the BBA, including medical supplies. DME is a covered home health service that is not currently paid on a reasonable cost basis, but is paid on a fee schedule basis when covered as a home health service under the Medicare home health benefit. Under the HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule. A separate payment amount in addition to the prospective payment amount for home health services will be made for DME currently covered as a home health service under the PPS. Although the covered osteoporosis drug under the home health benefit is currently paid on a reasonable cost basis, section 4603(c)(2)(A) of the BBA amended section 1833(a)(2)(A) of the Act to specifically exclude it from the prospective payment rate. In addition, unlike DME which is now excluded from the statutorily required consolidated billing requirement, the osteoporosis drug is included in the consolidated billing requirements.

B. Data Sources Used for the Development of the Payment

1. Audited Cost Report Data

Audit Sample Methodology: As discussed in the response to comments section, we provided an additional time period for intermediaries serving providers in the audited sample to resubmit audited cost reports ending in FY 1997 if the cost reports had been appealed and reopened. This provided us with the opportunity to include revised data in the calculation of the final rates if any of the audited cost reports in the original sample had been appealed, reopened or revised as of January 2000. The result was that we added an additional seven providers from whom we have audited cost report data for FY 1997, resulting in a total of 574 cost reports that have been used in the final rate calculations in this rule. The "window of opportunity" resulted in an additional seven audited cost reports. Although the new total number of audited cost reports increased to 574, however, we used only 563 of the 574 providers in the developing of the impacts. From 1997 to 1998, 11 of the 574 providers either closed or merged with another provider. As stated above, we are using CY 1998 utilization data in the PPS rate calculation. There was not 1998 utilization data to match to the audited cost report data for the 11 providers that closed or merged.

- Updating to September 30, 2001. Before computing the average cost per visit for each discipline that would be used to calculate the prospective payment rate, we adjusted the costs from the audit sample by the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods ending in FY 1997 to September 30, 2001. Multiplying nominal dollars for a given FY end by their respective inflation adjustment factor will express those dollars in the dollar level for the FY ending September 30, 2001. Therefore, we multiplied the total costs for each provider by the appropriate inflation factor shown in the table below. See section IV.B.2. of this regulation for a detailed description of the market basket.
- Nonroutine Medical Supplies Paid on a Reasonable Cost Basis Under a Home Health Plan of Care. Before computing the average cost per episode for non-routine medical supplies paid on a reasonable cost basis under a home health plan of care, we also adjusted the audited cost report data for nonroutine medical supplies using the latest market basket factors to reflect expected cost increases occurring between the cost reporting periods ending in FY 1997 to September 30, 2001.
- Adjusting Costs for Providers Impacted by the Per-Visit Limits. For cost reporting periods ending in FY 1997, Medicare recognized reasonable costs as the lower of the provider's actual costs or the per-visit limit applied in the aggregate for the six disciplines. Because some providers' costs were higher than the per-visit limits applied in the aggregate for the six disciplines, it was necessary to adjust their costs in order to reflect only those costs on which the provider's payment was based. The adjustment factor was calculated by dividing a provider's total visit limit by the total Medicare costs, but only if the total visit limit was less than the total Medicare costs. For those providers who were not impacted by the visit limit, (that is, those subject to their actual reasonable costs) no adjustment was necessary and the adjustment factor was set equal to one. The adjustment factor was applied to each provider's total costs for each discipline. Summing each provider's updated, weighted, and adjusted total costs by the sum of visits for each discipline results in the non-standardized, updated, weighted, and visit limit adjusted average cost per visit by discipline.

2. Home Health Agency Market Basket Index

The data used to develop the HHA PPS payments were adjusted using the latest available market basket factors to reflect expected cost increases occurring between cost reporting periods contained in our database and September 30, 2001. The following inflation factors were used in calculating the HHA PPS:

FACTORS FOR INFLATING DATABASE DOLLARS TO SEPTEMBER 30, 2001

FY end	1996	1997
October 31	1.15736	
November 30	1.15468	
December 31	1.15203	
January 31		1.14946
February 28		1.14697
March 31		1.14451
April 30		1.14203
May 31		1.13952
June 30		1.13693
July 31		1.13420
August 31		1.13132
September 30		1.12841

For each of fiscal years 2002 and 2003, section 1895(b)(3)(B)(ii) of the Act

requires the standard prospective payment amounts to be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires that the rates be increased by the applicable home health market basket index change.

3. Claims Data

We also conducted analysis on an episode database created from the 1997 and 1998 National Claims History Files using 60-day episodes to define episode lengths. These data were based on use of home health services under the current system. We built a CY 1998 episode data base parallel to the construction of the CY 1997 episode data base set forth in the proposed rule at 64 FR 58149.

Table 1 illustrates the comparison of the distribution of consecutive 60-day episodes that occurred in calendar years 1997 and 1998.

Total number of consecutive 60-day episodes	Distribution based on only 60-day episodes that occurred in the CY 1997 period (percent)	Distribution based on only 60-day episodes that occurred in the CY 1998 period (percent)
1	51	59.5
2	18	19.3
3	8	7.7
4	5	4.1
5	4	2.5
6	3	1.7
7	10	5.2

Table 2 is a comparison of the average number of visits per episode for each discipline for CY 1997 and CY 1998 and Episodes in CY 1997 and CY 1998 with five or more visits.

Average number of visits by discipline	Average based on only 60-day episodes that fell into the CY 1997 period	Average based on only 60-day episodes that fell into the CY 1997 period with visit >4	Average based on only 60-day episodes that fell into the CY 1998 period	Average based on only 60-day episodes that fell into the CY 1998 period with visit >4
Skilled Nursing Services	12.55	14.69	12.1	14.08
Physical Therapy Services	2.35	2.74	2.59	3.05
Occupational Therapy Services	0.41	0.48	0.45	0.53
Speech Pathology Services	0.15	0.18	0.15	0.18
Medical Social Services	0.31	0.36	0.28	0.32
Home Health Aide Services	14.59	17.59	11.28	13.4
Total for all Disciplines	30.36	36.04	26.85	31.56

Table 3 provides analysis of the distribution of disciplines across a series of 60-day episodes in CY 1998.

Total number of 60-day episodes	Episode number within series of 60-day episodes	Percent of skilled nursing services	Percent of home health aide services	Percent of occupational therapy services	Percent of speech pathology services	Percent of medical social services	Percent of physical therapy services
1	1	50	24	3	1	2	20
2	1	46	34	3	1	1	15
2	2	46	37	2	1	1	13
3	1	46	38	2	1	1	11
3	2	45	41	2	1	1	10
3	3	46	42	2	1	1	9
4	1	45	43	2	1	1	8
4	2	45	46	1	1	1	7
4	3	45	46	1	0	1	7
4	4	46	45	1	0	1	6
5	1	45	46	1	0	1	6
5	2	44	48	1	0	1	5
5	3	44	49	1	0	1	5
5	4	44	49	1	0	1	5
5	5	45	47	1	0	1	5
6	1	44	48	1	0	1	6

Total number of 60-day episodes	Episode number within series of 60-day episodes	Percent of skilled nursing services	Percent of home health aide services	Percent of occupational therapy services	Percent of speech pathology services	Percent of medical social services	Percent of physical therapy services
6	2	43	50	1	0	1	5
6	3	43	51	1	0	1	4
6	4	43	51	1	0	1	4
6	5	44	50	1	0	1	4
6	6	45	49	1	0	1	4
7	1	40	56	1	0	1	3
7	2	41	55	0	0	1	3
7	3	41	56	0	0	1	3
7	4	41	56	0	0	1	2
7	5	41	55	0	0	1	2
7	6	42	55	0	0	1	2
7	7	42	55	0	0	0	2
8	1	42	53	1	0	1	4
8	2	42	54	1	0	1	3
8	3	42	53	0	0	1	3
8	4	43	54	0	0	1	3
8	5	43	54	0	0	0	3
8	6	43	53	0	0	0	3
8	7	44	53	0	0	0	3
8	8	44	52	0	0	0	3

National Part B Claims History File—Medical Supplies. Nonroutine medical supplies are also a covered home health service listed in section 1861(m)(5) of the Act. The law governing PPS requires medical supplies to be included in the prospective payment rate and to be subject to the consolidated billing requirements. As discussed in the proposed rule, before PPS implementation, HHAs were not required to bundle all home health services. Specifically, nonroutine medical supplies that have a duplicate Part B code could have been furnished by a supplier rather than the HHA and paid under Part B prior to PPS. Under the current IPS, some HHAs may have chosen to unbundle those non-routine medical supplies that had a corresponding Part B payment. In order to determine the scope of the non-routine medical supplies that could have been unbundled under the current system, we identified 199 HCPCs codes representing those items that would fall into the possible "unbundled nonroutine medical supply" category.

As discussed in the response to comment section of this rule, based on several comments we re-examined our approach to the original list of 199 codes. Our analysis yielded a payment approach to non-routine medical supplies included in the PPS rates that uses 178 Part B codes that could have possibly been unbundled to Part B before PPS. We performed the same data analysis on the CY 1998 claims data and the revised list of 178 Part B codes to develop the appropriate payment adjustment amount for non-routine medical supplies that could possibly be unbundled to Part B before PPS that is added to the non-standardized episode payment.

We pulled all claims with the corresponding HCPCs codes from the Part B national claims history file. In order to determine whether the HCPCs codes were related to the beneficiary receiving home health services under a home health plan of care, we linked every Part B claim with one or more of the 199 HCPCs codes to home health episodes from our episode database for both CY 1997 and CY 1998 by beneficiary and dates of service. If a beneficiary received home health services during a 60-day episode and there was a corresponding Part B claim with one of the 178 HCPCs codes that was billed during the same 60-day episode, we identified the item as related to the home health stay. We proposed an additional payment amount of $6.08 to the 60-day episode base rate for those nonroutine medical supplies with corresponding Part B codes that may have been unbundled under the interim payment system.

National Part B Claims History File—Therapies. As discussed above in section III. of this final rule. *Analysis and Responses to Public Comments,* we conducted a parallel analysis of Part B therapy claims that could possibly be related to a home health stay during CY 1997 and CY 1998. Prior to consolidated billing requirements governing PPS, HHAs may have unbundled therapy services to Part B. We believe that this was a rare occurrence. Under PPS, HHAs will be responsible for providing physical therapy, speech language pathology services and occupational therapy either directly or under arrangement. Under subsequent analysis, based upon comments received, we believe that there is a need to recognize these therapy services that could have been unbundled to Part B before PPS in the PPS rates. We conducted claims analysis similar to our approach to identify those non-routine medical supplies that could have been unbundled to Part B. We identified the three therapy services in both Part B outpatient and Part B physician/supplier claims data.

HCFA identified 54 HCPCs codes that represent those services that could fall into the possible "unbundled therapy related services" category under Part B Physician/Supplier claims for patients under a home health plan of care before implementation of PPS. We also identified under Part B, therapy services that could have been unbundled and provided in an hospital outpatient setting to patients under a home health plan of care before implementation of PPS. We identified the 17 revenue center code ranges for physical, occupational, and speech therapy services that could have been billed under Part B in a hospital outpatient setting for patients under a home health plan of care before implementation of PPS. HCFA pulled all claims from the Part B Physician/Supplier claims with the corresponding 54 codes above and all claims from the Part B hospital outpatient claims with the corresponding 17 revenue center code ranges. As with our analysis of nonroutine medical supplies that could have been unbundled to Part B before implementation of PPS, HCFA matched

claims for a beneficiary receiving home health services under a home health plan of care by linking the Part B claims to home health episodes from our 1998 episode database, by beneficiary and dates of service. If a beneficiary received home health services during a 60-day episode and there was a corresponding part B claim with either one of the 54 HCPCs or a revenue center code within one of the 17 revenue center code ranges for therapy services, we identified the Part B service as related to the home health stay.

As a result of our therapy analysis, we are recognizing an additional adjustment to the 60-day non-standardized episode amount for therapy services that could have been unbundled to Part B before implementation of PPS. The per episode possible unbundled therapy related service amounts billed under Part B included in the PPS rate were calculated by summing the allowed charges for the 54 HCPCs for physician/supplier and the costs for the 17 therapy revenue center code ranges for hospital outpatient in calendar year 1998 for beneficiaries under a home health plan of care. That total was divided by the total number of episodes in calendar year 1998 from the episode database. The methodology for the adjustment is set forth in section IV.C. of this regulation.

4. Hospital Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act, require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of health services and to provide appropriate adjustments to the episode payment amounts under PPS to account for area wage differences. The wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act. The statute allows the Secretary to use the area where the services are furnished or such area as the Secretary may specify for the wage index adjustment. To be consistent with the wage index adjustment under the current interim payment system, we proposed and will retain applying the appropriate wage index value to the labor portion of the PPS rates based on the geographic area in which the beneficiary received home health services.

In addition, section 1895(b)(3)(A)(i) of the Act requires the Secretary to standardize the cost data used in developing the PPS payment amount for wage levels among different HHAs in a budget-neutral manner. The wage index adjustment to the PPS rates must be made in a manner that does not result in aggregate payments that are greater or less than those that would have otherwise been made if the PPS rates were not adjusted by the wage index.

Each HHA's labor market area is determined based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). In establishing the final HHA PPS rates, we used the most recent pre-floor and pre-reclassified hospital wage index without regard to whether these hospitals have been classified to a new geographic area by the Medicare Geographic Reclassification Board. As stated in the response to comments, we believe the use of the pre-floor and pre-reclassified hospital wage index data results in an appropriate adjustment to the labor portion of costs as required by law.

TABLE 4A.—FY 2000 WAGE INDEX FOR RURAL AREAS—PRE-FLOOR AND PRE-RECLASSIFIED

Nonurban area	Wage Index
Alabama	0.7391
Alaska	1.2058
Arizona	0.8545
Arkansas	0.7236
California	0.9952
Colorado	0.8814
Connecticut	1.2414
Delaware	0.9167
Florida	0.8987
Georgia	0.8095
Guam	0.7268
Hawaii	1.0728
Idaho	0.8652
Illinois	0.8048
Indiana	0.8397
Iowa	0.7927
Kansas	0.7461
Kentucky	0.8043
Louisiana	0.7382
Maine	0.8640
Maryland	0.8632
Massachusetts	1.1370
Michigan	0.8815
Minnesota	0.8670
Mississippi	0.7307
Missouri	0.7724
Montana	0.8396
Nebraska	0.8008
Nevada	0.9098
New Hampshire	0.9906
New Jersey [1]	.....
New Mexico	0.8379
New York	0.8637
North Carolina	0.8290
North Dakota	0.7648
Ohio	0.8650
Oklahoma	0.7256
Oregon	0.9868
Pennsylvania	0.8525
Puerto Rico	0.4249
Rhode Island [1]	.....
South Carolina	0.8264

TABLE 4A.—FY 2000 WAGE INDEX FOR RURAL AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

Nonurban area	Wage Index
South Dakota	0.7577
Tennessee	0.7651
Texas	0.7471
Utah	0.8907
Vermont	0.9408
Virginia	0.7904
Virgin Islands	0.6389
Washington	1.0447
West Virginia	0.8069
Wisconsin	0.8760
Wyoming	0.8860

[1] All counties within the State are classified as urban.

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED

MSA	Urban area (constituent counties)	Wage index
0040	Abilene, TX	0.8180
	Taylor, TX	
0060	Aguadilla, PR	0.3814
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	1.0164
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.0373
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY.	0.8755
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.8500
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.7870
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA.	1.0228
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9343
	Blair, PA	
0320	Amarillo, TX	0.8381
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.2860
	Anchorage, AK	
0440	Ann Arbor, MI	1.1484
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.8463
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI.	0.8913

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.4815
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.8885
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	0.9705
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	1.0051
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ	1.1311
	Atlantic, NJ	
	Cape May, NJ	
0580	Auburn-Opelka, AL	0.9619
	Lee, AL	
0600	Augusta-Aiken, GA–SC	0.9014
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.9082
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	0.9531
	Kern, CA	
0720	Baltimore, MD	0.9892
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Anne's, MD	
0733	Bangor, ME	0.9610
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA.	1.3303
	Barnstable, MA	
0760	Baton Rouge, LA	0.8708
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX.	0.8624
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.1395
	Whatcom, WA	
0870	Benton Harbor, MI	0.8458
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.2029
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	1.0039
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS.	0.7868
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.8751
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.8995
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.7759
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.8593
	Monroe, IN	
1040	Bloomington-Normal, IL	0.8994
	McLean, IL	
1080	Boise City, ID	0.9060
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1359
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	0.9945
	Boulder, CO	
1145	Brazoria, TX	0.8517
	Brazoria, TX	
1150	Bremerton, WA	1.1012
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX.	0.9213
	Cameron, TX	
1260	Bryan-College Station, TX.	0.8510
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY.	0.9605
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	1.0559
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.4561
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH	0.8772
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.9200
	Natrona, WY	
1360	Cedar Rapids, IA	0.9019
	Linn, IA	
1400	Champaign-Urbana, IL	0.9164
	Champaign, IL	
1440	Charleston-North Charleston, SC.	0.8989
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.9096
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC.	0.9434
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0575
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA	0.9732
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8176
	Laramie, WY	
1600	Chicago, IL	1.0874
	Cook, IL	
	DeKalb, IL	
	DuPage, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	1.0391
	Butte, CA	
1640	Cincinnati, OH–KY–IN	0.9419
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN–KY.	0.8090
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH.	0.9689
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO ..	0.9218
	El Paso, CO	
1740	Columbia, MO	0.8905
	Boone, MO	
1760	Columbia, SC	0.9358
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	0.8511
	Russell, AL	
	Chattahoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840	Columbus, OH	0.9908
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.8702
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, OR	1.1088
	Benton, OR	
1900	Cumberland, MD–WV ...	0.8802
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	0.9607
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.9062
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL.	0.8707
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	0.9461
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.8988
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.8680
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8322
	Macon, IL	
2080	Denver, CO	1.0190
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.8755
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.0422
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.7799
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9336
	Kent, DE	
2200	Dubuque, IA	0.8521
	Dubuque, IA	
2240	Duluth-Superior, MN–WI	1.0166
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY ...	1.0553
	Dutchess, NY	
2290	Eau Claire, WI	0.8958
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.8948
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9380
	Elkhart, IN	
2335	Elmira, NY	0.8534
	Chemung, NY	
2340	Enid, OK	0.7954
	Garfield, OK	
2360	Erie, PA	0.9024
	Erie, PA	
2400	Eugene-Springfield, OR	1.0604
	Lane, OR	
2440	Evansville-Henderson, IN–KY.	0.8304
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN.	0.8621
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.8495
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR.	0.7774
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	1.0349
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1021
	Genesee, MI	
2650	Florence, AL	0.7928
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.8619
	Florence, SC	
2670	Fort Collins-Loveland, CO.	1.0303
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0173
	Broward, FL	
2700	Fort Myers-Cape Coral, FL.	0.8951
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL.	0.9999
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR–OK	0.7844
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL ..	0.8714
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9097
	Adams, IN	
	Allen, IN	
	DeKalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX.	0.9836
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0263
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.8689
	Etowah, AL	
2900	Gainesville, FL	1.0103
	Alachua, FL	
2920	Galveston-Texas City, TX.	0.9733
	Galveston, TX	
2960	Gary, IN	0.9391
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.8607
	Warren, NY	
	Washington, NY	
2980	Goldsboro, NC	0.8334
	Wayne, NC	
2985	Grand Forks, ND–MN ...	0.9098
	Polk, MN	
	Grand Forks, ND	
2995	Grand Junction, CO	0.9189
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI.	1.0136
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	1.0460

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Cascade, MT	
3060	Greeley, CO	0.9723
	Weld, CO	
3080	Green Bay, WI	0.9133
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC.	0.9038
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150	Greenville, NC	0.9501
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC.	0.9189
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	0.8843
	Washington, MD	
3200	Hamilton-Middletown, OH.	0.8947
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA.	0.9918
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT [1 2]	1.1716
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.7634
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC.	0.9113
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.1477
	Honolulu, HI	
3350	Houma, LA	0.7837
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	0.9388
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV–KY–OH.	0.9758
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
3440	Huntsville, AL	0.8823
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	0.9793
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	0.9608
	Johnson, IA	
3520	Jackson, MI	0.8841
	Jackson, MI	
3560	Jackson, MS	0.8387
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.8601
	Madison, TN	
	Chester, TN	
3600	Jacksonville, FL	0.8958
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.7853
	Onslow, NC	
3610	Jamestown, NY	0.7858
	Chautauqua, NY	
3620	Janesville-Beloit, WI	0.9657
	Rock, WI	
3640	Jersey City, NJ	1.1676
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA.	0.8854
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.8641
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.7232
	Craighead, AR	
3710	Joplin, MO	0.7679
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI.	0.9982
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee; IL	0.8599
	Kankakee, IL	
3760	Kansas City, KS–MO	0.9322
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	0.9034
	Kenosha, WI	
3810	Killeen-Temple, TX	0.9933
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.9200
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	0.8919
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	0.8934
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.8340
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.8810
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.7967
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL.	0.8816
	Polk, FL	
4000	Lancaster, PA	0.9256
	Lancaster, PA	
4040	Lansing-East Lansing, MI.	0.9978
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.8323
	Webb, TX	
4100	Las Cruces, NM	0.8591
	Dona Ana, NM	
4120	Las Vegas, NV–AZ	1.1259
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150	Lawrence, KS	0.8900
	Douglas, KS	
4200	Lawton, OK	09533
	Comanche, OK	
4243	Lewiston-Auburn, ME ...	0.8900
	Androscoggin, ME	
4280	Lexington, KY	0.8532
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	0.8906
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	0.9671

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR.	0.8615
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	0.8739
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA.	1.2052
	Los Angeles, CA	
4520	Louisville, KY–IN	0.9382
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.8412
	Lubbock, TX	
4640	Lynchburg, VA	0.8815
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.8531
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	0.9730
	Dane, WI	
4800	Mansfield, OH	0.8476
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	0.4675
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX.	0.8121
	Hidalgo, TX	
4890	Medford-Ashland, OR	1.0493
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL.	0.9297
	Brevard, FL	
4920	Memphis, TN–AR–MS	0.8245
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	1.0278
	Merced, CA	
5000	Miami, FL	1.0234
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ.	1.1123
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI.	0.9846
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI.	1.0930
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9086
	Missoula, MT	
5160	Mobile, AL	0.8268
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.0112
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.1259
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.8222
	Ouachita, LA	
5240	Montgomery, AL	0.7704
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	1.0835
	Delaware, IN	
5330	Myrtle Beach, SC	0.8530
	Horry, SC	
5345	Naples, FL	0.9840
	Collier, FL	
5360	Nashville, TN	0.9450
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.4076
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.	1.2357
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT.	1.2429
	New London, CT	
5560	New Orleans, LA	0.9090
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.4519
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.1647
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660	Newburgh, NY–PA	1.0910
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VA–NC.	0.8441
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.5059
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	0.9616
	Marion, FL	
5800	Odessa-Midland, TX	0.8874
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK	0.8588
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.0933
	Thurston, WA	
5920	Omaha, NE–IA	1.0456
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945	Orange County, CA	1.1591
	Orange, CA	
5960	Orlando, FL	0.9796
	Lake, FL	
	Orange, FL	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.8105
	Daviess, KY	
6015	Panama City, FL	0.9170
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH.	0.8415
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8443
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.8350
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ	1.1161
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	0.9465
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.7698
	Jefferson, AR	
6280	Pittsburgh, PA	0.9635
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0256
	Berkshire, MA	
6340	Pocatello, ID	0.8974
	Bannock, ID	
6360	Ponce, PR	0.4971
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	0.9476
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA.	1.0976
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI.	1.0691
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
6520	Provo-Orem, UT	0.9819
	Utah, UT	
6560	Pueblo, CO	0.8854
	Pueblo, CO	
6580	Punta Gorda, FL	0.9509
	Charlotte, FL	
6600	Racine, WI	0.9217
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC.	0.9545
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.8364
	Pennington, SD	
6680	Reading, PA	0.9537
	Berks, PA	
6690	Redding, CA	1.1265
	Shasta, CA	
6720	Reno, NV	1.0656
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA.	1.1225
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA.	0.9546
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA.	1.1211
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	0.8139
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.1430
	Olmsted, MN	
6840	Rochester, NY	0.9185
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.8784
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.8735
	Edgecombe, NC	
	Nash, NC	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
6920	Sacramento, CA	1.2285
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI.	0.9287
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	0.9422
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.8944
	Andrew, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	0.9053
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
7080	Salem, OR	0.9950
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.4711
	Monterey, CA	
7160	Salt Lake City-Ogden, UT.	0.8855
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.7846
	Tom Green, TX	
7240	San Antonio, TX	0.8318
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.1931
	San Diego, CA	
7360	San Francisco, CA	1.4002
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.3610
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.4658
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso Robles, CA.	1.0471
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA.	1.0820
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA.	1.3929
	Santa Cruz, CA	
7490	Santa Fe, NM	1.0438
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3001
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	0.9906
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	0.9954
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton—Wilkes-Barre—Hazleton, PA.	0.8373
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA.	1.1291
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.8284
	Mercer, PA	
7620	Sheboygan, WI	0.8203
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.9330
	Grayson, TX	
7680	Shreveport-Bossier City, LA.	0.9050
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA–NE	0.8549
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.8777
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	0.9794
	St. Joseph, IN	
7840	Spokane, WA	1.0800
	Spokane, WA	
7880	Springfield, IL	0.8689
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.7992
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.0678
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	0.9139
	Centre, PA	
8080	Steubenville-Weirton, OH–WV.	0.8815
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.0519
	San Joaquin, CA	
8140	Sumter, SC	0.8239
	Sumter, SC	
8160	Syracuse, NY	0.9413
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.1479
	Pierce, WA	
8240	Tallahassee, FL	0.8485
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL.	0.9045
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.8571
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX.	0.8136
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	0.9816
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.9327
	Shawnee, KS	
8480	Trenton, NJ	1.0103
	Mercer, NJ	
8520	Tucson, AZ	0.8743
	Pima, AZ	
8560	Tulsa, OK	0.8087
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.8065
	Tuscaloosa, AL	
8640	Tyler, TX	0.9370
	Smith, TX	
8680	Utica-Rome, NY	0.8299
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA.	1.3347
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1456
	Ventura, CA	
8750	Victoria, TX	0.8379
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ.	1.0518
	Cumberland, NJ	
8780	Visalia-Tulare-Portersville, CA.	1.0412
	Tulare, CA	
8800	Waco, TX	0.8076
	McLennan, TX	
8840	Washington, DC–MD–VA–WV.	1.1055
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA	0.8518
	Black Hawk, IA	
8940	Wausau, WI	0.9446
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL.	1.0013
	Palm Beach, FL	
9000	Wheeling, WV–OH	0.7644
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	0.9422
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.7653
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	0.8450
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD.	1.1275
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	0.9708
	New Hanover, NC	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Brunswick, NC	
9260	Yakima, WA	1.0333
	Yakima, WA	
9270	Yolo, CA	0.9720
	Yolo, CA	
9280	York, PA	0.9310
	York, PA	
9320	Youngstown-Warren, OH.	0.9997
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.0663
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	0.9925
	Yuma, AZ	

C. Methodology Used for the Calculation of the 60-Day Episode Payment Amount

The methodology used to compute the standardized national 60-day episode payment rates was a multistep process combining each of the data sources described above. As stated above, section 1895(b)(3)(A)(i) of the Act requires that—(1) the computation of a standard prospective payment amount that includes all costs of home health services covered and paid for on a reasonable-cost basis be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs. The budget neutrality provision, with the 15-percent reduction and contingency reduction to IPS, originated from the BBA, was delayed by OCESAA, and further amended by BBRA to delay the 15 percent reduction by one year, while eliminating the contingency reduction to IPS. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost reporting periods contained in our database and September 30, 2001.

With data described above, we calculated the standard average prospective payment amount for the 60-day episode using the following formula:

• We multiply the national mean cost per visit updated for inflation for each of the six disciplines (skilled nursing, physical therapy, occupational therapy, speech-language pathology services, medical social services, and home health aide services) in a 60-day episode by the national mean utilization for each of the six disciplines in a 60-day episode summed in the aggregate. We add to the figure derived from the above calculation, amounts for—

++ Nonroutine medical supplies paid on a reasonable-cost basis under a home health plan of care;

++ Nonroutine medical supplies that could have been unbundled to Part B that will be included under the PPS rate;

++ Therapy services that could have been unbundled to Part B that will be included under the PPS rate;

++ An OASIS adjustment to pay HHAs for estimated ongoing OASIS assessment reporting costs; and

++ A one-time implementation adjustment to pay HHAs for estimated costs associated with implementing the revisions to the OASIS assessment schedules in order to classify patients into the appropriate case-mix categories for payment for the first year of PPS.

• Nonroutine Medical Supplies. The per-episode nonroutine medical supply amounts, paid on a reasonable cost basis under a home health plan of care, were calculated by summing the nonroutine medical supply costs for all of the providers in the audited cost report sample weighted to represent the national population and updated to FY 2001. That total was divided by the number of episodes for the providers in the audited cost report sample weighted to represent the national population and updated to FY 2001.

The per-episode possible unbundled nonroutine medical supply amounts billed under Part B included in the PPS rate were calculated by summing the allowed charges for the revised 178 HCPCs codes (described in sections II.B and IV.) in calendar year 1998 for beneficiaries under a home health plan of care. That total was divided by the total number of episodes in calendar year 1998 from the episode database.

• Possible unbundled therapies billed to Part B that will be included under the PPS Rate. As discussed in the response to comments and section III. of this regulation, prior to consolidated billing requirements governing PPS, HHAs may have been unbundled therapy services to Part B. Although this was a rare occurrence, we re-examined our approach to calculating the PPS rate. There is an additional therapy adjustment to the nonstandardized 60-day episode. For further detail, see section IV.B.3. The rate methodology is provided in Table 5 below.

• Ongoing OASIS Cost Adjustments. In the August 11, 1998 IPS Per-Visit and Per-Beneficiary Limitations notice (63 FR 42912) HCFA discussed a proposed adjustment for HHAs for the agency collection of the Outcome Assessment Information Set (OASIS) Data. Collecting and reporting OASIS is a condition of Medicare participation for HHAs. As we stated in the August 11, 1998 IPS notice, we believe there will be no permanent ongoing incremental costs associated with OASIS collection. Additionally, we believe that there will be no further one-time, start-up, OASIS reporting costs beyond those recognized at the inception of OASIS collection under IPS. However, we do believe that ongoing costs are associated with reporting OASIS data. Our proposed adjustment for the ongoing costs associated with OASIS reporting is based on information from the ongoing Medicare Quality and Improvement Demonstration, as well as the OASIS demonstration data. We assume, for purposes of deriving the OASIS proposed adjustment, that the typical HHA has 486 admissions and 30,000 visits per year and an 18 person staff. OASIS reporting adjustments are unlike the one-time OASIS collection adjustments published in the August 11, 1998 **Federal Register** which were based only on the number of skilled visits. These reporting adjustments are based on total Medicare visits. The following are HCFA's estimates of costs that a typical HHA will incur for OASIS reporting which form the basis of the per-visit OASIS reporting adjustment and the per-episode OASIS adjustment. The first descriptive chart below shows the base OASIS reporting costs for an HHA which include the following: audits to ensure data accuracy; data entry, editing and auditing; supplies; and telephone costs. We estimate these ongoing OASIS costs to total $.101228 per visit. The second descriptive chart shows the OASIS personal computer costs for those HHAs that are unable to run OASIS because they lack the requisite hardware needed to support automation of the assessment tool. We estimate this percentage to be 50 percent (64 FR 3759). These costs consist of the depreciation of a personal computer and printer. For years one through three, HHAs are able to depreciate both their personal computer and printer. We estimate this OASIS cost to be $.026778 per visit. For years four and five, HHAs can only depreciate their printer. We estimate this OASIS cost to be $.004 per visit. In order for HHAs to keep pace with the ever evolving computing standards, to include enhancements to computer hardware and software, as well as future versions of Haven's OASIS software, this process of the depreciation of computer hardware is one that would repeat itself every five

years. Similarly, a yearly average computer hardware depreciation adjustment was computed to yield an OASIS adjustment for each of the five years. This was accomplished by multiplying the first three years' computer hardware depreciation adjustment of $.026778 by 3, multiplying the following two years' computer hardware depreciation adjustment of $.004 by 2, summing those two factors, and dividing that sum by the total number of depreciable years (five), to get a yearly average for the computer hardware depreciation adjustment of $.017667. This yearly average for computer hardware depreciation adjustments ($.017667), when added to the base OASIS adjustment ($.101228), results in a total OASIS adjustment of $.118895 rounded to $.12 per visit.

For purposes of calculating the ongoing OASIS adjustment for the 60-day episode payment, we multiplied the average number of visits per 60-day episode (36 visits) by the total rounded per-visit OASIS adjustment ($.12 per visit). The calculation resulted in a per-episode OASIS adjustment of $4.32 for each 60-day episode under HHA PPS. The home health prospective payment calculation is provided in Table 5.

We calculated the ongoing OASIS adjustment for the low utilization payment adjustments by adding the total rounded per-visit OASIS adjustment ($.12 per visit) to the national standardized average cost per visit by discipline for each of the four or fewer visits provided in the episode. The low utilization payment adjustment calculation is provided in Table 6.

CONTINUOUS OASIS ADJUSTMENT: BASE

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Audits to ensure data accuracy	University of Colorado (CHPR); BLS Occupational Employment Survey (1996), 1994 & 1995 HCFA Cost Report Data.	(((((10 records per month * 12 months)) * .25 hrs) * $25.42) / 30,000 avg visits)...professional staff.	$.02542
Data entry, editing, & auditing	University of Colorado(CHPR), Estimated average salary for clerical staff, 1994 & 1995 HCFA Cost Report Data.	((((8.5 hrs per month * 12) + (5 hrs per month * 12) + (1 hr per month * 12) + (5 hrs per year)) * $10 per hour) / 30,000 avg visits).	.059667
Supplies	HCFA–3006–IFC OASIS Reporting (64 FR 3748), 1994 & 1995 HCFA Cost Report Data.	$250 avg cost / 30,000 avg visits	.008333
Ongoing telephone costs	Bell Atlantic, 1994 & 1995 HCFA Cost Report Data (for average size HHA).	((($13.14 per month, per line) + ($ 6.38 per month subscriber fee)) * 12 months) / 30,000 avg visits).	.007808
Total			.101228

CONTINUOUS OASIS ADJUSTMENT: 5 YEAR DEPRECIATION AVERAGING

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Computer Hardware	American Hospital Association's, Health Data & Coding Standards Group's, Estimated Useful Lives of Depreciable Hospital Assets {revised 1998}.		
Computer	Average cost for PC with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data.	$2050 computer depreciated over 3 years (($2050/3) / 30,000 avg visits.	$.022778
Printer	Average cost for printer with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data.	$600 printer cost depreciated over 5 years (($600/5) / 30,000 avg visits.	.004
	First 3 Year's Adjustment	*Note: computer & printer depreciation	.026778
	Next 2 Year's Adjustment	*Note: printer ONLY depreciation	.004
	5-Year Average Adjustment	(((($.026777 * 3) + ($.004 * 2)) / 5)	.017667

PERSONAL COMPUTER MINIMAL SPECIFICATIONS

Description	Minimal specifications
Warranty	Minimum 3 year.
Processor	Pentium II Processor running at 400 MHz w/512 Cache.
Operating System	32-bit operating system with Graphical User Interface.
Hard Drive	3 Gb Hard drive minimum.
Memory	32 MB minimum.
CD ROM	14–32 X, IDE, integrated sound.
Floppy Drive	3.5″ 1.44 MB diskette drive.
Fax Modem	56K v.90 Data/Fax.
Monitor	17″ Color Monitor.
Graphics	MB AGP.

PERSONAL COMPUTER MINIMAL SPECIFICATIONS—Continued

Description	Minimal specifications
Mouse	Wheel mouse.
Keyboard	104 key ergonomic keyboard.
Anti Virus	Anti Virus Software.
Management Software	System management client software/license.
Printer	600 dpi Laser printer with cable.

OASIS ADJUSTMENT: "ONE-TIME"

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Training of Data Entry Staff	BLS Employer Provided Training (Hrs of Training 1995) & an estimated average salary for clerical personnel 1994 & 1995 HCFA Cost Report Data.	(24 hrs * $10)/30,000 avg visits	$.008
Telephone installation	Bell Atlantic Bell Atlantic 1994 & 1995 HCFA Cost Report Data.	($28 processing fee) + ($40 per line connect fee)/30,000 avg visits.	.002266
Total One Time Adjustment			.010266

• First Year of PPS One-Time Adjustment Reflecting Implementation Costs Associated with Revised OASIS Assessment Schedules needed to Classify Patients into Appropriate Case-Mix Categories for Payment.

As set forth in the home health PPS proposed rule published in the **Federal Register** on October 28, 1999, (64 FR 58134) all data necessary to classify a patient to one of the 80 HHRG categories are contained in the OASIS–B supplemented, as applicable, by one additional item regarding projected therapy use in a given 60-day episode. Under PPS, HHAs are required to use the collection and reporting requirements for the OASIS data elements published in the **Federal Register** on January 25, 1999, supplemented by one additional therapy item as applicable. We set forth the proposed changes to the OASIS schedules in the home health PPS proposed rule. We also stated that we expect that the software programs, called grouper software, that use the OASIS–B supplemented by the projected therapy variable and assign patients to the appropriate groups, will be available from many software vendors. The version we use will be available at no cost from our HCFA website on PPS. We proposed the option to build the grouper logic into the HAVEN software, which is currently used for the transmission of OASIS data for purposes of quality via the State system.

As stated in the Interim Payment System Notice published in the **Federal Register** on August 11, 1998, (63 FR 42912) we set forth the methodology for the one-time offset adjustment for the implementation of the home health OASIS. The one-time offset adjustment methodology provided financial relief to HHAs for costs associated with integrating the OASIS collection into their overall approach to comprehensive assessment of patients. The costs recognized in the one-time offset adjustment methodology included three types of costs associated with training staff, increases in assessment time during the initial implementation, and staff to revise assessment forms and integrate OASIS elements.

In response to commenters concern with costs associated with implementing the OASIS-based case-mix methodology, we believe there will be a modified one-time adjustment for HHAs to implement the revised schedules for the start of care and follow up assessments for PPS implementation. We are providing a refined methodology for the one-time adjustment for OASIS scheduling changes required by the case-mix adjustment methodology for the first year of PPS implementation. This is a one-time one year implementation adjustment. This methodology is a refined version of the offset adjustment set forth in the August 11, 1998 Interim Payment System Notice. The total offset adjustment described in the August 11, 1998 notice was applied by—

• First, multiplying the labor portion of the per-visit limitation for skilled nursing, physical therapy, speech language pathology, and occupational therapy by the factor of 1.003513 for training and forms revision;

• Secondly, adding the non-labor portion to the adjusted labor portion; and

• Thirdly, adding one cent for printing costs.

Under PPS, we are applying the same formula to the non-standardized average number and average cost per-visit amounts for episodes containing 5 or more visits for skilled nursing services, physical therapy services, speech-language pathology services, and occupational therapy services. That aggregate non-standardized amount will then be adjusted by an OASIS scheduling adjustment factor.

As part of the formal OMB clearance process (see section VI. of this regulation for OMB approval number), we requested the following modifications to the current Version Start of Care/Resumption of Care Version Form HCFA–R245A approved 6/99, Follow-Up Version Form HCFA–R245B approved 6/99 for purposes of case-mix adjusting patients under home health PPS.

• Modification to the Version Start of Care/Resumption of Care Version Form HCFA–R245A approved 6/99.

(1) New Therapy Threshold Question discussed in the background section of this package.

MO825 Therapy Need: Does the care plan of the Medicare payment period for which this assessment will define a case-mix group indicate a need for therapy (physical, occupational, or speech

therapy) that meets the threshold for a Medicare high-therapy case-mix group?

0—No

1—Yes

NA—not applicable

• Modification to the Follow-Up Version Form HCFA–R245B approved 6/99.

(1) Must add the following already approved OASIS items to the Follow-Up schedule:

MO230 Home Care Diagnosis

M0240 Other Diagnosis

MO390 Vision

(2) Must modify and add the current approved OASIS item MO170 regarding hospital discharge or nursing home care discharge within the past 14 days.

(3) Must add the therapy threshold variable (M0825) to the Follow-Up OASIS Form and Schedule.

We believe there will be a modified one-time adjustment for HHAs to implement the revised schedules for the start of care and follow up assessments as follows:

Visit by discipline	Average number of visits (A)	Average cost per visit (B)	Aggregate total ((A) * (B))
SK Nursing	14.08	$94.96	$1,337.04
PT	3.05	104.05	317.35
SPL	.18	113.26	20.39
OT	.53	104.76	55.52
Total			1730.30

Approach:

(1) Total = $1730.30

(2) Labor Portion = 1730.30 × .77668 = 1343.89, Non-Labor Portion = 1730.30 × .22332 = 386.41

(3) Adjusted Labor Portion = 1343.89 × 1.003513 = 1348.61

(4) Adjusted Labor Portion 1348.61 + Non-Labor Portion 386.41 = 1735.02

(5) .01 for printing + 1735.02 = $1735.03

(6) 1735.03/80 (80 OASIS items) = $21.69

(7) 21.69/4 (4 types of OASIS Schedules) = $5.42

(8) We believe $5.42 reflects the cost for a new item added to a new schedule. Therefore, $5.42 is the figure used to reflect the need to add the new therapy variable to Start of Care/Resumption of Care Assessment Schedules to case-mix adjust the initial episodes as part of the implementation adjustment to the 60-day non-standardized episode amount.

We must then add the cost of adding the new therapy variable to the Follow-Up Assessment Schedule as well as three already approved OASIS items. As set forth in the approach on the previous page, adding the new therapy variable to an assessment schedule is projected to cost $5.42 for the first year of implementation. In addition to the new therapy variable, three of the already approved OASIS items need to be added to the Follow-up OASIS. We estimated that adding a new item to the OASIS schedule would cost $5.42. We are applying an adjustment factor to that amount to account for the three additional already approved OASIS items to the Follow-Up Assessment schedule. We multiply the 5.42 for the new therapy variable by 3/80 (3 of the total 80 OASIS items). (We are applying a scheduling adjustment factor of 3/80 to the $5.42 amount to recognize that the three OASIS items are already approved and are only added to a new assessment schedule.) The Follow-Up Assessment schedule will now include the new therapy variable ($5.42) and the three already approved OASIS items ($5.42 * 3/80). The formula for the costs associated with the one-time first year implementation of the Scheduling Changes to the Follow-Up Assessment is as follows: $5.42 for the new therapy variable plus an additional $0.20 ($ 5.42 × .0375 or (3/80)) = $5.62 per patient per Follow-Up assessment used to case-mix adjust subsequent episodes for continuing home health care.

The non-standardized 60-day episode amount for each Start of Care 60-day episode will be adjusted to offset the one-time implementation cost and burden associated with the OASIS scheduling modifications required to implement the case-mix methodology for the first year of HHA PPS. The non-standardized 60-day episode amount for each follow-up assessment used to case-mix adjust subsequent episodes will also be adjusted. These adjustments will be combined and reflected as proportional adjustments.

Our research upon which we are basing the national PPS rate indicates that about 60 percent of episodes are completed within 60-days. We are using the following approach to reflect the one time transition:

Start of Care Assessments used for initial episodes (.60 × $5.42) + Follow-Up Assessments used for subsequent episodes (.40 × $5.62) = an adjustment of $5.50 for each non-standardized 60-day episode for the first year of PPS.

The nonstandardized average prospective payment amount must be then standardized to eliminate the effects of case-mix and wage levels among HHAs. The standard average prospective payment amount for the 60-day episode equals the nonstandardized average prospective payment amount for a 60-day episode divided by the standardization factor. The standardization factor is discussed in section IV.C.4 of this regulation. Once the payment rate is standardized, that amount is multiplied by the budget-neutrality factor. The budget-neutrality factor is discussed in section IV.C.5 of this regulation. The standardized budget-neutral amount is divided by 1.05 to account for outlier payments capped at 5 percent of total estimated outlays under PPS.

The actual national 60-day episode payment amount that will be paid to HHAs incorporates the standard average prospective payment amount adjusted to account for case-mix and wage index. All of the elements incorporated into the national 60-day episode payment amounts (the standard average prospective payment amount adjusted to account for case-mix and wage index) must be budget neutral to the interim payment system limitation amounts. Table 5 illustrates the home health prospective payment calculation.

TABLE 5.—HOME HEALTH PROSPECTIVE PAYMENT CALCULATION

Home health discipline type	Total costs for all providers in the PPS audit sample (weighted, updated to FY 2001, and visit limit adjusted)	Total visits for all providers in the PPS audit sample (weighted)	Average cost per visit from the PPS audit sample	Average number of visits for episodes with >4 visits from the CY 1998 episode file	Home health prospective payment rate
Home Health Aide Services	5,915,395,602	141,682,907	$41.75	13.4	$559.45
Medical Social Services	458,571,353	2,985,588	153.59	.32	49.15
Occupational Therapy Services	444,691,130	4,244,901	104.76	.53	55.52
Physical Therapy Services	2,456,109,303	23,605,011	104.05	3.05	317.35
Skilled Nursing Services	12,108,884,714	127,515,950	94.96	14.08	1,337.04
Speech Pathology Services	223,173,331	1,970,399	113.26	.18	20.39

Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001	2,338.90
Average Cost per Episode for Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report	43.54
Average Payment per Episode for Non Routine Medical Supplies possibly unbundled and billed separately to Part B	6.08
Average Payment per Episode for Part B Therapies	17.67
Average Payment per Episode for OASIS One Time Adjustment for form changes	5.50
Average Payment per Episode for Ongoing OASIS Adjustment Costs	4.32
Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001 Plus Medical Supplies & Ongoing OASIS	2,416.01

Total non standardized prospective payment amount per 60-day episode for FY 2001	Standardization factor for wage index and case-mix [1]	Budget neutrality factor [2]	Outlier adjustment factor [3]	Final standardized and budget neutral prospective payment amount per 60-day episode for FY 2001
$2,416.01	.96184	.88423	1.05	$2115.30

[1] (Based on 100% episode wage indicies with therapy/nontherapy factors based on ABT data).
[2] (Budget neutral to current IPS).
[3] (Adjustment to PPS rate to account for 5% of total payments to outlier episodes).

CALCULATION FOR NON ROUTINE MEDICAL SUPPLIES PER EPISODE AMOUNT INCLUDED IN THE HOME HEALTH BENEFIT

Non routine medical supplies included in the home health benefit and reported as costs on the cost report [1]	Total number of episodes for those providers in the audited cost report sample [2]	Average cost per episode for non routine medical supplies included in the home health benefit and reported as costs on the cost report	Market basket update factor to FY 2001 [3]	Average cost per episode for non routine medical supplies included in the home health benefit and reported as costs on the cost report
$234,547,615	5,733,010	$40.91	1.0643	$43.54

[1] Source: Audited Cost Report Data from the audit sample updated to FY 2001 and weighted to National Totals.
[2] Source: Calendar Year 1998 Episode file.
[3] Cumulative Market Basket Update Factor for years 1999–2001.

CALCULATION FOR NON ROUTINE MEDICAL SUPPLIES POSSIBLY UNBUNDLED AND BILLED UNDER PART B

Non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule [1]	Total number of episodes for all providers in the calendar year 1998 file adjusted for estimated total episodes in FY 2001 [2]	Average payment per episode for non routine medical supplies possibly unbundled and billed separately to part B	DME fee schedule update to FY 2001 [3]	Updated average payment per episode for non routine medical supplies possibly unbundled and billed separately to part B
$37,526,132.26	6,170,887	$6.08	1.0	$6.08

[1] Source: 1998 National Claims History Part B file extract for 178 codes matched to the 60-day episode file by beneficiary and dates of service.
[2] Source: Calendar Year 1998 Episode file.
[3] There exists no update to the DME Fee Schedule affecting Non Routine Medical Supplies for years 1999–2001.

CALCULATION FOR THE PART B THERAPIES

Therapy services billed separately to part B	Total number of episodes for all providers in the calendar year 1998 file adjusted for estimated total episodes in FY 2001 [2]	Average payment per episode for part B therapies	Physician fee schedule updates to FY 2001 [3]	Updated average payment per episode for part B therapies
$94,200,316.08	6,170,887	$15.27	1.157	$17.67

[1] Source: 1998 National Claims History Part B extract file for 57 CPT therapy codes for Physician/Supplier claims and for the physical therapy, occupational therapy, and speech therapy revenue center codes matched to the 60 Day episode file by beneficiary and dates of service.

[2] Source: Calendar Year 1998 Episode file.
[3] Cumulative Update Factor for Part B Therapies based on Physician Fee Schedule Updates for years 1999–2001.

Each component of the methodology is discussed below.

1. Cost Data—60-Day Episode Payment

The audited cost data is discussed above in detail in section IV. of this regulation. The data source used in developing the national mean cost per visit for a 60-day episode is the audited cost report sample database. We calculated the national mean cost per visit for each of the six disciplines (skilled nursing, physical therapy, occupational therapy, speech-language pathology services, medical social services, and home health aide services) used in a 60-day episode. The data source in developing the average cost per episode for nonroutine medical supplies paid on a reasonable-cost basis under a home health plan of care is the audited cost report sample database also discussed in section III. this regulation.

2. Utilization Data—60-Day Episode Payment

As discussed above, developing the national mean number of visits for each of the six disciplines in a 60-day episode resulted from the thorough analysis of the national claims history.

3. Updating the Data

The HHA market basket index reflects changes over time in the prices of an appropriate mix of goods and services included in covered HHA services. The HHA market basket index is used to develop the national 60-day episode payment rates. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost reporting periods contained in our database and September 30, 2001. For each of fiscal years 2002 and 2003, section 1895(b)(3)(B)(ii) of the Act requires the standard prospective payment amounts be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute further requires the rates to be increased by the applicable home health market basket index change. A complete discussion concerning the design and application of the HHA market basket index and the factors used in developing the 60-day episode payment rates is discussed in section IV.B.2. of the regulation.

4. Standardization Factor

Section 1895(b)(3)(A)(i) of the Act requires that the prospective payment amounts be standardized to eliminate the effects of variation in wage levels and case-mix among HHAs. The objective of standardization is to ensure that the wage-index and case-mix adjustments to the episode payment amount do not alter the aggregate payments that would occur in the absence of these adjustments. All the estimates described in this section are based on episodes with more than four visits since only those episodes will be paid on a per-episode basis.

Several types of information are required for standardization. To account for wage differences, the proportion of labor and nonlabor components of HHA costs must be identified. These proportions are based on the relative importance of the different components of the HHA market basket index. As calculated, the labor-related portion of cost is 77 percent and the nonlabor-related portion is 23 percent. Wage differences are measured using the hospital wage index. In standardizing the episode payment amount, we used the pre-floor and pre-reclassified FY 2000 hospital wage index, which is based on FY 1996 hospital wage data. For application of the wage index, the statute allows us to use the service area or any other area we specify. As noted in the proposed rule, to be consistent with the current interim payment system, the wage index value that will be applied to the labor portion of the episode amount will be the appropriate wage index for the geographic area where the beneficiary received home health services. The best source of data on wage-index variation among 60-day episodes that was available for standardization was the episode data set that we constructed from 1998 Medicare home health claims.

To account for case-mix differences, it is necessary to have information on the distribution of 60-day home health episodes among the 80 groups of the HHRG case-mix system. For this final rule, we were able to examine more data on case-mix variation than was available for the proposed rule. For the proposed rule, the only available data on episodes classified by HHRG was the Abt data set that was used to develop the HHRG case-mix classification system. For the final rule, we had access to an updated (and larger) Abt data set, early data from the OASIS national repository, and the 1998 episode file constructed from Medicare claims to which we were able to assign average therapy and non-therapy HHRG weights.

We first compared the Abt data to the data from the OASIS national repository. We compared the distributions of the responses to the OASIS items used in constructing the HHRGs. In addition, we compared the distributions of the HHRGs for both of these data sets. This comparison had to be made using only 40 of the 80 HHRGs as therapy assignments could not be made from the national OASIS data. (Time lags in the receipt of claims for episodes corresponding to the OASIS from the national repository prevented us from making therapy assignments for the national OASIS data.) Despite this limitation, the comparisons we were able to make showed a high degree of similarity between the two data sources and increased our confidence that the Abt data set is representative of national case-mix variation.

We next compared the Abt data to the 1998 episode data set derived from Medicare claims. In particular, we compared the distributions of estimated cost for the two data sets. Cost was estimated by multiplying the national per-visit costs for each discipline by the number of visits in each discipline and summing the total. Cost distributions were constructed for the Abt data using both samples, with and without applying the population weights described in the proposed rule. We found that the cost distribution of the unweighted Abt data matched the 1998 episode data much more closely than did the weighted Abt data. From this analysis, we concluded that the unweighted Abt data provided a good basis for comparison of standardization factors.

To make full use of the available data, we developed the following strategy for standardizing the episode amount:

- First, we estimated three standardization factors using the Abt data set. The first one accounts only for variation in wage index values; the second accounts for wage index and case-mix variation, using all 80 HHRGs; the third accounts for wage index and case-mix variation, using HHRG weights collapsed to therapy and non-therapy averages. All three Abt standardization factors are very similar: .97510, .97945, and .97888, respectively.
- Then, we estimated two standardization factors using the 1998 national claims episode data: a wage-only factor and a wage and two case-mix groups factor. The wage-only standardization factor was .95808, compared to .97510 for the

corresponding factor using the Abt data. The wage index and two case-mix groups standardization factor was .96183, compared to .97887 for the corresponding factor from the Abt data.

For several reasons, we decided to use the wage index and two case-mix groups factor from the 1998 national claims data as the final standardization factor for this rule.

- First, the national claims data provides the most reliable estimate of the effects of wage index variation;
- Second, there was hardly any difference in the wage and case-mix standardization factors based on the Abt data using either 80 HHRGs or the collapsed two-groups;
- Third, overall there was a high degree of similarity of values obtained from all of the various methods.

Each of the estimates of the standardization factor was calculated in the following manner:

- For each episode (or in the case of the Abt data, the number of episodes represented by each sample episode), the appropriate wage index value was multiplied by the labor-related proportion of cost (.77668) and added to the nonlabor-related proportion (.22332) to obtain a wage-adjustment factor;
- In turn, the wage-adjustment factor was multiplied by the HHRG relative weight;
- The product of the wage and case-mix factors was summed over all episodes in the database, yielding a case-mix and wage-adjusted episode sum;
- Dividing the case-mix and wage-adjusted episode sum by the total number of episodes (the unadjusted episode sum) yields the standardization factor, a ratio that indicates how the combined effects of wage and case-mix variation impact aggregate payments;
- If the standardization factor is greater than one, the unstandardized episode cost must be reduced to account for the aggregate payment effect of the case-mix and wage index payment adjustments;
- If the factor is less than one, then the unstandardized episode cost must be increased to accomplish the same objective. The standardized episode amount is equal to the unstandardized episode cost divided by the standardization factor. Note that all three of our estimates were less than one, which implies that the standardization factor increases the standard episode amount. Our final standardization factor produces an increase of about 4.7 percent.

5. Budget-Neutrality Factor

To determine the budget neutrality adjustment, we use our most current estimate of incurred costs for home health expenditures in FY 2001 under the interim payment system (IPS). Under the President's FY 2001 Budget assumptions, we are projecting this amount to be $11,273 million. This amount includes the medical supplies which were billed separately under IPS but will be bundled under PPS. Our best estimate of what would be spent in FY 2001 on Part B therapies not currently included in the home health benefit but which will be covered by the benefit under PPS is $109 million. We did not include this in the home health spending for the FY 2001 budget because we had not yet determined it needed to be added to the spending target. We are adding $109 million to the $11,273 million to determine the total spending target for home health PPS spending, $11,382 million. We are estimating that there would have been 137,271,000 visits incurred in FY 2001. The following table outlines the variables used to determine the adjustment:

Period (1)	Visits (2)	Visits/per episode (3)	Number of episodes (4)
CY 1997	280,569,000	30.99	9,054,000
CY 1998	163,208,000	26.88	6,072,000
FY 2001	137,271,000		

Column (2) represents the actuaries' best estimate of the number of visits incurred in each of the time periods. These numbers differ from the number of visits in the episode files. The episode files were created to analyze visits per episode and were not meant to be the basis for the actual number of visits incurred in calendar years 1997 and 1998.

Column (3) was determined from the episode files we had created. Column (4) was determined by dividing Column (2) by Column (3) and rounding to the nearest thousand. From these numbers we need to determine the number of visits per episodes we would have if we had an episode file created for 2001. This would then allow us to determine the number of episodes there will be in 2001.

From the table, we can see that the number of visits declined by about 42 percent from CY 1997 to CY 1998. The episode file analysis showed that one-third of this decline was due to a decline in the number of visits per episode. Between CY 1998 and FY 2001, we are projecting a further 16 percent decline in the number of visits. We are assuming that one-third of this decline will be attributable to the decline in the number of visits per episode. This results in number of visits per episode of 25.5. Dividing 137,271,000 visits by 25.5 results in 5,383,000 episodes. This would be the number of expected episodes if episodes were not all starting on October 1, 2001. Because all patients being served at the beginning of the fiscal year will be starting a new episode on October 1, we will be making more episode payments in that first year. We will be paying for an increased number of episodes in FY 2001 compared to what would have been paid if patients entered PPS only after their current period of home health care ended. To account for this first-year anomaly, we increased the number of episodes by 3.66 percent over the 5,383,000 determined above. This results in a projected number of episodes of 5,580,000 incurred in FY 2001. In fiscal years 2002 and later we will be adding $79 to the episode payment since this anomaly will no longer exist in those years.

These 5,580,000 episodes need to be split into full episodes and LUPA episodes since our current number of projected visits includes both. We estimate that 5 percent of episodes will be ones with four or fewer visits. Therefore, 95 percent will receive a full episode payment. The 1998 episode file showed that 16 percent of episodes would have received a LUPA payment. Of this 16 percent, only 26 percent or 4 percent of the total were cases where only 1 to 4 visits were provided in a single 60-day, non-contiguous period. These cases would clearly receive LUPA payments under PPS. Twelve percent of total episodes have less than five visits but were episodes which fell at the end of a series of prior episodes. Under a plan of care established for PPS these "episode end" visits may not exist. Because of the nature of how the episode file created LUPA episodes, we

feel that LUPA payments will make up a smaller portion of payments than was shown in the episode file. The determination of this adjustment factor to the episode payment is as follows:

Number of LUPA episodes	Average LUPA payment	Number of full episodes (non-LUPA)	Average full episode (non-LUPA) payment
5,580,000 × .05 = 279,000	$205.20	5,580,000 × .95 = 5,301,000	$2,416.01

	LUPA	Full episode
Projected Payments Before Neutrality	(279,000 × $205.20) + (5,301,000 × $2,416.01)	
	= $57.25 million	= $12,807 million

Projected Incurred Spending in FY 2001: $11,382 million

Budget Neutrality Adjustment Factor = (11,382–57.25)/ 12,807 = 0.88423

After applying this adjustment to the full episode payments, we expect to have the following incurred payments in FY 2001: $57.25 million for LUPA payments plus 5,301 × $2,416.01 × .88423 = $11,325 million in full episode payments, totaling $11,382 million.

D. Methodology Used for Low-Utilization Payments

As discussed above, section 1895(b)(1) of the Act requires the development of the definition of the unit of payment or episode to take into consideration the number, type, duration, mix, and cost of visits provided within the unit of payment. As a result of our analysis, we determined the need to also recognize a low-utilization payment under HHA PPS. Low-utilization payment would reduce the 60-day episode payments, PEP adjustment or the SCIC adjustment to those HHAs that provide minimal services to patients during a 60-day episode.

Payments for low-utilization episodes will be made on a per-visit basis using the cost per-visit rates by discipline determined from the audited cost report sample for calculation of the standard episode amount. Included in these per-visit amounts are amounts for (1) nonroutine medical supplies paid under a home health plan of care, (2) nonroutine medical supplies possibly unbundled to Part B, (3) a per-visit ongoing OASIS reporting adjustment as discussed above, and (4) a one-time one year adjustment reflecting costs associated with OASIS assessment schedule refinements needed to implement the case-mix methodology in section IV.G. of this regulation. We did not add a per-visit rate adjustment for therapies possibly unbundled to Part B as we did for the per-episode payments. Based on the analysis of the Part B therapy date, we found that blending the higher and lower therapy per-visit amounts creates an anomalous result. We know the per-visit amounts provided in Table 6 are appropriate. These per-visit "prices" would be updated in the same manner as the standard episode amount. However, as discussed in the responses to comment section, we have revised our approach to the calculation of the amount paid for each visit price per discipline. We are retaining the four or fewer visit threshold for the LUPA, but are increasing the proposed amount by using the standardized wage adjusted national average cost per visit by discipline amounts updated by the market basket to FY 2001. See the response to comment in section III. of this rule for further clarification.

For low-utilization payments, they would be adjusted by the wage index in the same manner as the standard episode amount. However, the low-utilization payments are not case-mix adjusted. The standardization factor used to adjust the LUPAs was calculated using national claims data for episodes containing four or fewer visits. This standardization factor includes adjustments only for the wage index. The "savings" from the reduced episode payments would be redistributed to all episodes.

Below is Table 6 which presents the home health low-utilization provider adjustment payment calculation.

TABLE 6.—HOME HEALTH LOW-UTILIZATION PROVIDER ADJUSTMENT PAYMENT CALCULATION

Home health discipline type	Average cost per visit from the PPS audit sample	Average cost per visit for non routine medical supplies reported as costs on the cost report	Average cost per visit for non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule	Average cost per visit for on-going OASIS adjustment costs [3]	Ave cost per visit for one-time OASIS scheduling implementation change	Standardization factor for wage index [1]	Outlier adjustment factor [2]	Final wage standardized per visit payment amounts per 60-day episode for FY 2001
Home Health Aide Services	$41.75	$1.71	$0.23	$0.12	$.21	.96674	1.05	$43.37
Medical Social Services	153.59	1.71	0.23	0.12	.21	.96674	1.05	153.55
Occupational Therapy. Services	104.76	1.71	0.23	0.12	.21	.96674	1.05	105.44

TABLE 6.—HOME HEALTH LOW-UTILIZATION PROVIDER ADJUSTMENT PAYMENT CALCULATION—Continued

Home health discipline type	Average cost per visit from the PPS audit sample	Average cost per visit for non routine medical supplies reported as costs on the cost report	Average cost per visit for non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule	Average cost per visit for on-going OASIS adjustment costs [3]	Ave cost per visit for one-time OASIS scheduling implementation change	Standardization factor for wage index [1]	Outlier adjustment factor [2]	Final wage standardized per visit payment amounts per 60-day episode for FY 2001
Physical Therapy Services	104.05	1.71	0.23	0.12	.21	.96674	1.05	104.74
Skilled Nursing Services	94.96	1.71	0.23	0.12	.21	.96674	1.05	95.79
Speech Pathology Services	113.26	1.71	0.23	0.12	.21	.96674	1.05	113.81

[1] (Based on 100% episode for episodes with 4 or fewer visits and wage index only standardization factor)
[2] (Adjustment to PPS rate to account for 5% of total payments to outlier episodes)
[3] (See Section II.A.3 for description of calculation of OASIS Adjustment cost)

CALCULATION FOR NON ROUTINE MEDICAL SUPPLIES PER-VISIT AMOUNT INCLUDED IN THE HOME HEALTH BENEFIT

Non routine medical supplies included in the home health benefit and reported as costs on the cost report [1]	Total number of visits for those providers in the audited cost report sample [2]	Average cost per visit for non routine medical supplies included in the home health benefit and reported as costs on the cost report	Market basket update factor to FY 2001 [3]	Updated average cost per visit for non routine medical supplies included in the home health benefit and reported as costs on the cost report
$234,547,615	145,658,396	$1.61	1.0643	$1.71

[1] Source: Audited Cost Report Data from the audit sample updated to FY 2001 and weighted to National Totals.
[2] Source: Calendar Year 1998 Episode file.
[3] Cumulative Market Basked Update Factor for years 1999–2001.

CALCULATION FOR NON ROUTINE MEDICAL SUPPLIES PER-VISIT AMOUNT POSSIBLY UNBUNDLED AND BILLED UNDER PART B

Non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule [1]	Total number of visits for all providers in the calendar year 1998 file [2]	Average payment per visits for non routine medical supplies possibly unbundled and billed separately to part B	DME fee schedule update to FY 2001 [3]	Updated average payment per visits for non routine medical supplies possibly unbundled and billed separately to part B
$37,526,132.26	163,208,000	$0.23	1.0	$0.23

[1] Source: 1998 National Claims History Part B file extract for 178 codes matched to the 60-day episode file by beneficiary and dates of service.
[2] Source: Calendar Year 1998 Episode file.
[3] There exists no update to the DME Fee Schedule affecting Non Routine Medical Supplies for years 1999–2001.

CALCULATION FOR ONE-TIME OASIS SCHEDULING IMPLEMENTATION FOR FORM CHANGES

Total cost for OASIS scheduling implementation change [1]	Total number of visits for all providers in the calendar year 1998 file [2]	Average payment per visits for part B therapies possibly unbundled and billed separately to part B physician/supplier
$33,939,878 .50	163,208,000	$0.21

[1] Episode Rate for OASIS Scheduling Implementation Change ($5.50) / the total number of episodes in 1998 (6,170,887).
[2] Calendar year 1998 Episode File.

E. Methodology Used for Outlier Payments

As discussed above, while we are not statutorily required to make provisions for outlier payments, we are establishing outlier payments. Outlier payments are payments made in addition to regular 60-day case-mix-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments are made for episodes whose estimated cost exceeds a threshold amount for each HHRG. The outlier threshold for each HHRG is defined as the 60-day episode payment for the HHRG plus a fixed dollar loss amount that is the same for all case-mix groups. Outlier payments are made for 60-day episode payments that reflect a PEP adjustment or SCIC adjustment. The PEP adjustment results in a truncated episode period and a SCIC adjustment results in a total of the proportional payments over a 60-day episode, but these periods could still incur unusually large costs. The outlier threshold for the PEP adjustment is the PEP adjustment plus the fixed dollar loss. The outlier threshold for the SCIC adjustment

equals the total SCIC payment plus a fixed dollar loss. The wage adjusted component discussed below will be applied consistently for the 60-day episode payment, the PEP adjustment, and the total SCIC adjustment. The outlier payment is defined to be a proportion of the wage adjusted estimated costs beyond the wage adjusted threshold. The threshold amount is the sum of the wage and case-mix adjusted PPS episode amount and the wage-adjusted fixed dollar loss amount. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

The fixed dollar loss amount and the loss-sharing ratio are chosen so that estimated total outlier payments are 5 percent of total episode payments. The 5 percent constraint on total outlier payments creates a tradeoff between the values selected for the fixed dollar loss amount and the loss-sharing ratio. For a given level of outlier payments, a higher fixed dollar loss amount reduces the number of cases that receive outlier payments, but makes it possible to select a higher loss-sharing ratio and, therefore, increase outlier payments per episode. Alternatively, a lower fixed dollar loss amount means that more episodes qualify for outlier payments, but outlier payments per episode must be lower. Therefore, setting these two parameters involves policy choices about the number of outlier cases and their rate of payment.

We initially proposed a loss sharing ratio of .60 and a fixed dollar loss of 1.07 times the national standard episode payment amount. For the proposed rule, we estimated that with these variables, 7.5 percent of total episodes would have qualified for an outlier payment while holding total outlier outlays at 5 percent of outlays in a given fiscal year. In response to comments, we are increasing the loss sharing ratio from 0.60 to 0.80 to provide greater compensation for the episodes that qualify for outlier payments. We believe that this change is appropriate and will continue to monitor the impacts of the outlier policy under PPS implementation.

The simulations conducted for the proposed rule found that a loss sharing ratio of 0.80 would require a fixed dollar loss ratio of 1.35. We have rerun these simulations using the expanded and updated Abt data and are making some refinements in our simulation methods.

The new simulations also reflect the refinements for wound cases that have been incorporated into the case-mix system. The results of the new simulations indicate that a fixed dollar loss ratio of 1.13 is consistent with a loss sharing ratio of 0.80. With these parameters, we estimate that about 6.8 percent of episodes would qualify for outlier payments with total outlier outlays equal to the required 5 percent.

In estimating the final outlier policy parameters, we examined OASIS data from the national repository, an episode data set created from 1998 Medicare home health claims, and an updated and expanded data set from the Abt case-mix study. As noted in our discussion of standardization, we compared the OASIS and the Abt data in terms of the responses to the 18 OASIS items used for case-mix classification and in terms of the distribution of episodes across the HHRGs. We also compared the Abt and the 1998 episode data and found that the estimated cost distribution based on the pattern of visits within episodes was very similar in both sets of data. These comparisons increased our confidence in using the Abt data to simulate the outlier policy parameters. In addition, the Abt data is the most complete data currently available for estimating outlier policy variables. It contains information on all 80 HHRGs and a measure of resource cost for each episode. The Abt data set used for the final outlier policy is about 15 percent larger than the data set that was used for the estimates in the proposed rule.

The fixed dollar loss estimate was based on simulations that calculated PPS payments and costs for each episode in the data set. Payments were calculated twice, once for a PPS without outlier payments and again for a PPS with outlier payments. For the payment system with outlier payments, the LUPA and episode payment amounts were deflated by 1.05. Using a loss sharing ratio of 0.80, the simulation was repeated until a fixed dollar loss ratio was found that resulted in (1) equal total payments for the PPS with and without outlier payments, and (2) total outlier payments equal to 5 percent of total payments, including outlier payments. In addition, payment amounts were set to equate total payments and total costs. Because the Abt data does not represent all wage areas of the country, the simulations did not apply the wage index adjustments that will be applied to actual outlier payments. It was not possible to account for PEP or SCIC adjustments in the simulations.

Simulations were performed to obtain the most reasonable estimates possible of the fixed dollar loss ratio consistent with the 5 percent outlier payment target. Based on the experience of the Phase II per-episode prospective payment demonstration and the interim payment system, we were concerned that agencies may reduce utilization for high-cost episodes in response to the budget neutral episode payment rate. If our simulations failed to account for such reductions, the simulations might overestimate agencies' losses and lead us to set the fixed dollar loss amount higher than necessary to meet the 5 percent target. We incorporated estimates of cost reduction into our simulations that resulted in a lower fixed dollar loss ratio lower than would have been chosen otherwise. In general, we assumed that any reduction in payment rates below the level of the mean cost would be matched by a cost reduction of equal percentage.

Simulations were also performed to test the sensitivity of the fixed dollar loss to alternative proportions of LUPA episodes. LUPAs can affect the fixed dollar loss ratio consistent with a 0.8 loss sharing ratio. Because they are paid much less than regular episodes, substantial differences in their frequency can affect estimated total payments. Due to the asymmetric impacts on outlier and total payments, variations in the frequency of LUPAs could potentially lead to either overestimation or underestimation of the 5 percent outlier target.

LUPAs comprise 11.6 percent of the episodes in the Abt data used for the outlier simulations. Given the incentives under the PPS to obtain the 60-day episode payment rather than the LUPA payment, we believe that 11.6 percent overestimates the frequency of LUPAs that are likely to occur under PPS. As a result, we simulated the outlier policy under alternative percentage of LUPA episodes.

It is also worth noting that the case-mix refinements for wound cases improved regular episode payments and reduced the need for outlier payments for these cases.

The following is a case for illustrative purposes only. An HHA serves a Medicare beneficiary in State College PA. The HHA determines the patient is in HHRG C2F2S2. The patient had physician orders for and received 55 skilled nursing visits and 40 home health aide visits during the 60-day episode.

1. Calculation of the Wage-Adjusted Outlier Threshold

The Wage-Adjusted Outlier Threshold Amount is the sum of the Wage and Case-Mix Adjusted 60-Day Episode Amount and the Wage-Adjusted Fixed Dollar Loss Amount.

a. Calculate Case-Mix and Wage-Adjusted Episode = $3,855.31
Case-Mix Weight = 1.9532

Standard 60-Day Prospective Episode Payment Amount = $2,115.30
Calculate the Case-Mix Adjusted Episode Payment
Multiply the Standard 60-Day Prospective Episode Payment Amount by the Applicable Case-Mix Weight = (1.9532 * $2,115.30) = $4,131.60
Divide the Case-Mix Adjusted Episode Payment into the Labor and Non-Labor Portions
Labor Portion = (.77668 * $4131.60) = $3,208.93
Wage-Adjust the Labor Portion by Multiplying the Labor Portion by the Wage Index Factor (.9139 * $3,208.93) = $2,932.64
Calculate Non-Labor Portion = (.22332 * $4,131.60) = $922.67
Add Wage-Adjusted Labor Portion to Non-Labor Portion to Calculate the Total Case-Mix and Wage-Adjusted Episode Payment = (2,932.64 + $922.67) = $3,855.31
b. Calculate Wage-Adjusted Fixed Dollar Loss Amount = $2,230.45
Fixed Dollar Loss Amount = Standard 60-Day Episode Payment Multiplied by 1.13 ($2115.30 * 1.13) = $2,390.29
Divide Fixed Dollar Loss Amount into Labor and Non Labor Portions:
Calculate Labor Portion of Fixed Dollar Loss Amount = (.77668 * $2,390.29) = $1,856.49
Wage Adjust the Labor Portion by Multiplying the Labor Portion of the Fixed Dollar Loss by Multiplying the Labor Portion of the Fixed Dollar Loss Amount by the Wage Index (.9139 * $1,856.49) = $1,696.65
Calculate Non-Labor Portion of Fixed Dollar Loss Amount = (.22332 * $2,390.29) = $533.80
Calculate Total Wage Adjusted Fixed Dollar Loss Amount by adding the wage adjusted portion of the fixed dollar loss amount to the non labor portion of the fixed dollar loss amount ($1,696.65 + $533.80) = $2,230.45
Wage-Adjusted Outlier Threshold = Case-Mix and Wage-Adjusted Episode Amount + Wage Adjusted Fixed Dollar Loss Amount = ($3,855.31 + $2,230.45) = $6,085.76

2. Calculate the Wage-Adjusted Imputed Cost of the Episode

Multiply the total number of visits by the national average per-visit amounts listed in Table 6.
55 skilled nursing visits * $95.79 (national average per skilled nursing visit cost) = $5,268.45
40 home health aide visits * $43.37 (national average per home health aide visit cost) = $1,734.80
Calculate the wage-adjusted labor and non-labor portions for the imputed skilled nursing visit costs
Labor Portion = ($5,268.45* .77668) = $4,091.90
Adjust the labor portion by the wage index
Wage Adjusted Skilled Nursing Labor Portion = ($4,091.90 * .9139) = $3,739.59
Wage Adjusted Skilled Nursing Labor Portion = $3,739.59
Calculate the Skilled Nursing Non-Labor Portion
Non-Labor Portion = ($5,268.45 * .22332) = $1,176.55
Non-Labor Skilled Nursing Portion = $1,176.55
Total Wage Adjusted Imputed Costs for Skilled Nursing Visits = $4,916.14
(Wage Adjusted Skilled Nursing Labor Portion of $3,739.59 + Non-Labor Skilled Nursing Portion of $1,176.55) = $ 4,916.14
Calculate the wage adjusted labor and non-labor portions for the imputed home health aide visit costs
Labor Portion = ($1,734.80 * .77668) = $1,347.38
Adjust the labor portion by the wage index
Wage Adjusted Home Health Aide Labor Portion = ($1,347.38 * .9139) = $1,231.37
Wage Adjusted Home Health Aide Labor Portion = $1,231.37
Calculate the Home Health Aide Non-Labor Portion
Non-Labor Portion = ($1,734.80 * .22332) = $387.42
Non-Labor Home Health Aide Portion = $387.42
Total Wage Adjusted Imputed Costs for Home Health Aide Visits = $1,618.79
(Wage Adjusted Home Health Aide Labor Portion of $1,231.37 + Non-Labor Home Health Aide Portion of $387.42) = $ 1,618.79
Total Wage Adjusted Imputed Costs for Skilled Nursing and Home Health Visits During the 60 Day Episode = ($4,916.14 + $1,618.79) = $ 6,534.93

3. Calculate the Amount Absorbed by the HHA in Excess of the Outlier Threshold Subtract the Outlier Threshold from the Total Wage Adjusted Imputed Per-Visit Costs for the Episode

$6534.93 (Total Imputed Wage Adjusted Per-Visit Costs)—$6,085.76 (Outlier Threshold) = $449.17
Imputed Amount in Excess of the Outlier Threshold = $449.17

4. Calculate Outlier Payment by Multiplying the Imputed Amount in Excess of the Outlier Threshold Absorbed by the HHA By the Loss Sharing Ratio (80%)

($449.17 (Imputed Amount in Excess of the Outlier Threshold Absorbed by the HHA * .80 (Risk Sharing Ratio) = $359.34
Outlier Payment = $359.34
The HHA in this illustrative example would receive the total case-mix and wage adjusted 60-day episode payment of *$3,855.31* plus the additional outlier payment of *$359.34*
Total Payment (Episode & Outlier Payment) = ($3,855.31 + 359.34) = $4,214.65

F. Examples of National Standardized 60-Day Episode Payment Amounts and Low-Utilization Payment Adjustments

For any HHRG group, to compute a case-mix and wage-adjusted 60-day episode prospective payment amount, the standardized prospective payment rate for FY 2001 (see Table 5 of this regulation) is multiplied by the case-mix index from Table 9 for that HHRG group. To compute a wage-adjusted national 60-day episode payment, the labor-related portion of the 60-day national prospective payment rate for FY 2001 is multiplied by the HHA's appropriate wage index factor listed in Table 4A or 4B. The product of that calculation is added to the corresponding nonlabor-related component. The resulting amount is the national case-mix and wage-adjusted 60-day episode prospective payment rate for FY 2001.

Example 1. An HHA is providing services to a Medicare beneficiary in State College, PA. The HHA determines the beneficiary is in HHRG C2F2S2.

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case-mix index from Table 9 for case-mix group	1.9532
Standardized Prospective Payment Rate for FY 2001	$2,115.30

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT—Continued

Calculate the Case-Mix adjusted Prospective Payment Rate for FY 2001	(1.9532 * $2,115.30)	$4,131.60
Calculate the Labor portion of the Prospective Payment Rate for FY 2001	(.77668 * $4,131.60)	$3,208.93
Apply wage index factor from Table 4B for patient in State College, PA	(0.9139 * $3,208.93)	$2,932.64
Calculate the Non-Labor portion of the Prospective Payment Rate for FY 2001	(.22332 * $4,131.60)	$922.67
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case-mix and wage index amounts	($2,932.64 + $922.67)	$3,855.31

Example 2. An HHA serves a beneficiary who resides in Lake Placid, NY. The HHA determines the patient is in HHRG C1F4S3.

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case-mix index from Table 9 for case-mix group		2.2360
Standardized Prospective Payment Rate for FY 2001		$2,115.30
Calculate the Case-Mix adjusted Prospective Payment Rate for FY 2001	(2.2360 * $2,115.30)	$4,729.81
Calculate the Labor portion of the Prospective Payment Rate for FY 2001	(.77668 * $4,729.81)	$3,673.55
Apply wage index factor from Table 4A for patient in Lake Placid, NY	(0.8637 * $3,673.55)	$3,172.85
Calculate the Nonlabor portion of the Prospective Payment Rate for FY 2001	(.22332 * $4,729.81)	$1,056.26
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and nonlabor portion of the case-mix and wage index amounts	($3,172.85 + $1,056.26)	$4,229.11

Example 3. HHA serves a beneficiary who resides in Fort Collins, CO. The HHA determines the beneficiary is in HHRG C3F0S0.

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case-mix index from Table 9 for case-mix group		1.1973
Standardized Prospective Payment Rate for FY 2001		$2,115.30
Calculate the Case-Mix adjusted Prospective Payment Rate for FY 2001	(1.1973 * $2,115.30)	$2,532.65
Calculate the Labor portion of the Prospective Payment Rate for FY 2001	(.77668 * $2,532.65)	$1,967.06
Apply wage index factor from Table 4B for patient in Fort Collins, CO	(1.0303 * $1,967.06)	$2,026.66
Calculate the Non-Labor portion of the Prospective Payment Rate for FY 2001	(.22332 * $2,532.65)	$565.59
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case-mix and wage index amounts	($2,026.66 + $565.59)	$2,592.25

Example 4. HHA serves a beneficiary who resides in Grand Forks, ND. The HHA determines the beneficiary is in HHRG C0F3S1.

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case-mix index from Table 9 for case-mix group		.8438
Standardized Prospective Payment Rate for FY 2001		$2,115.30
Calculate the Case-Mix adjusted Prospective Payment Rate for FY 2001	(.8438 * $2,115.30)	$1,784.89
Calculate the Labor portion of the Prospective Payment Rate for FY 2001	(.77668 * $1,784.89)	$1,386.29
Apply wage index factor from Table 4B for patient in Grand Forks, ND	(0.9098 * $1,386.29)	$1,261.25
Calculate the Non-Labor portion of the Prospective Payment Rate for FY 2001	(.22332 * $1,784.89)	$398.60
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case-mix and wage index amounts	($1,261.25 + $398.60)	$1,659.85

Example 5. An HHA in Baltimore, MD assigns a patient to an HHRG at the start of a 60-day episode. The claim for the patient indicates that only two visits (one skilled nursing and one home health aide) were furnished during the 60-day episode. The HHA would be paid the low-utilization payment adjustment. Any necessary adjustment to the request for advance payment for the episode would be made on subsequent claims for the HHA.

COMPUTATION OF WAGE INDEX ADJUSTED LOW UTILIZATION PAYMENT

Number and visit discipline type	Final wage standardized and budget neutral per-visit payment amounts per 60-day episode for FY 2001 [1]
1 Skilled Nursing Visit	$95.791
2 Home Health Aide Visit	43.371

[1] See Table 6 for the Calculation of Final Wage Standardized and Budget Neutral Per-Visit Payment Amounts Per 60-Day Episode for FY 2001.

Calculate the labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 Skilled Nursing Visit	(.77668 * $95.79)	$74.40
Apply wage index factor from Table 4B for Baltimore, MD	(.9892 * $74.40)	73.60
Calculate the non-labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 Skilled Nursing Visit	(.22332 * $95.79)	21.39
SUBTOTAL—Low Utilization Payment for 1 Wage Adjusted Skilled Nursing Visit rendered in a 60-day episode	($73.60 + $21.39)	94.99
Calculate the labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 home health aide visit	(.77668 * $43.37)	33.69
Apply wage index factor from Table 4B for Baltimore, MD	(.9892*$33.69)	33.33
Calculate the non-labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 home health aide visit	(.22332 * $43.37)	9.69
SUBTOTAL—Low Utilization Payment for 1 wage adjusted home health aide visit rendered in a 60-day episode	($33.33 + $9.69)	43.02
Calculate Total Low Utilization Payment Adjustment for 2 visits provided during the 60-day episode by adding the wage adjusted skilled nursing visit and the wage adjusted home health aide visit	($94.99 + $43.02)	138.01

G. Design and Methodology for Case-Mix Adjustment of 60-Day Episode Payments

1. Revisions to the Case-Mix Classification System

In the proposed rule, we described a home health case-mix system developed under a research contract with Abt Associates, Inc., of Cambridge, Massachusetts. The case-mix system uses selected data elements from the OASIS assessment instrument and an additional data element measuring receipt of at least 10 visits for therapy services. The data elements are organized into three dimensions to capture clinical severity factors, functional severity factors, and services utilization factors influencing case-mix. In the clinical and functional dimensions, each data element is assigned a score value derived from multiple regression analysis of the Abt research data. The score value measures the impact of the data element on total resource use. Scores are also assigned to data elements in the services utilization dimension. To find a patient's case-mix group, the case-mix grouper sums the patient's scores within each of the three dimensions. The resulting sum is used to assign the patient to a severity level on each dimension. There are four clinical severity levels, five functional severity levels, and four services utilization severity levels. Thus, there are 80 possible combinations of severity levels across the three dimensions. Each combination defines one of the 80 groups in the case-mix system. For example, a patient with high clinical severity, moderate functional severity, and low services utilization severity is placed in the same group with all other patients whose summed scores place them in the same set of severity levels for the three dimensions.

The initial Abt Associates sample used to develop the system described in the proposed rule was subsequently augmented for a first round of refinements, as described in the proposed rule. Following publication of the proposed rule, we augmented the Abt Associates sample with the remaining outstanding data from the 90 participating agencies, with the intention of re-estimating the case-mix relative weights based on the latest, most complete data available. We also pursued another round of refinements to the system using the augmented data, in response to public comments we received. The sample for this phase of refinements consisted of 19,204 initial episodes from the 90 agency participants.

The public comments on case-mix are summarized with our responses elsewhere in the rule. Below we describe the process we used to revise the case-mix system and the results. The revised case-mix model and scoring system are summarized in Table 7, "Home Health Resource Group Case-mix Classification Decision Tree Logic."

Test of newly added data. Before pursuing statistical modeling in response to comments, we checked the data newly added from the participating agencies for consistency with the previous data base. This involved re-estimating the regression equations that determined the scores, adding observations from the augmented, final sample. The results were consistent with the scores in the proposed rule. Additionally, we retested a short list of variables that were eliminated from the case-mix model at the end of the first round of refinements because of statistical insignificance. Upon retesting, they were still found to be statistically insignificant.

Investigation of wound-related variables. In response to comments from the public, indicating that certain wound care patients had costs higher than predicted by the case-mix model, we returned to the wound-related variables available on the OASIS for re-investigation. We used the learning subsample from the final, augmented sample. We tested three types of changes: Re-defining wound variables, adding more wound-related variables, and adding variables to represent interactions of wound variables with other variables. Interactions capture additional potential sources of severity or cost impact associated with certain types of wound patients. For example, patients who have certain diagnoses may be more susceptible to slow-healing wounds.

The statistical results suggested we could make meaningful score distinctions and create additional levels for the variables measuring the status of stasis ulcers and surgical wounds. In the proposed rule, the clinical dimension distinguished two statuses for the most problematic observable stasis ulcer—not healing (score=24) and all other statuses including no ulcer (score=0). The refined definition defines three statuses—early/partial granulation (score=14), not healing (score=22), and all other statuses including no observable ulcer (score=0). The proposed rule defined two statuses for the most problematic observable surgical wound—early/partial granulation or not healing (score=10) and all other statuses including no observable surgical wound (score=0). The refined definition defines three statuses—early/partial granulation (score=7), not healing (score=15), and all other statuses including no observable surgical wound (score=0).

We also retested the variables measuring pressure ulcers. We found no contribution to the model from adding variables measuring the status of pressure ulcers when the stage of the most problematic observable pressure ulcer was already in the model. We also determined that defining status levels beyond the three included in the proposed rule did not produce meaningful differences in the scores.

Therefore, the final rule model continues to define three levels: stage 1 or 2 (score=15), stage 3 or 4 (score=36), and all other (including no pressure ulcer and no observable pressure ulcer) (score=0). In addition, we tested whether the number of pressure ulcers made an independent contribution to explaining resource use. We found that having more than one pressure ulcer was a significant predictor of resource use when the multiple ulcers were stage 3 or 4. Therefore, the model in the final rule includes a variable adding 17 points if the patient has two or more stage 3 or 4 pressure ulcers.

We tested a general variable that measured the presence of any kind of open wound, decubitus ulcer, stasis ulcer, or surgical wound, based on an affirmative answer to M0445 (does patient have a pressure ulcer?), M0468 (does patient have a stasis ulcer?), M0482 (does patient have a surgical wound), or reporting of wound diagnosis codes in M0230 (primary home care diagnosis). This variable did not contribute statistically significant explanatory power when added to the model containing the other wound variables. However, we also tested separately a variable identifying burn or trauma patients with skin lesions or open wounds, identified from M0230 (primary diagnosis) and M0440 (does this patient have a skin lesion or an open wound?). This variable did contribute significantly and has been added to the model. The score for this variable is 21. The burn and trauma diagnosis code categories are shown in Table 8B.

In addition, we examined the impact of selected diagnoses that may be associated with difficult-to-heal wounds, including diabetes, atherosclerosis, peripheral vascular disease, and heart failure. We tested whether patients with these diagnoses should be assigned a higher score for their wound severity. Most results were not statistically significant. A few results were inconsistent across measures of wound severity. We also tested a variable measuring whether limited mobility results in higher cost impact for severe pressure ulcers, but this variable did not contribute significantly to the model after all other variables were included. The reasons for the weak results and inconsistency are unclear, and we did not make any of these changes to the clinical dimension. We will continue to study these types of issues during further refinement work on larger samples with more detailed diagnostic data.

Differences between the clinical dimension scores in the proposed rule and the final rule are generally small. Differences that do exist are attributable to our use of an augmented sample and the use of new variables related to wounds. In our model-building methodology, the scores in the functional dimension depend on results of the regression for deriving the clinical dimension scores. New scores for the functional dimension are very similar to the proposed-rule functional scores. Differences that do exist are attributable to the above-mentioned changes to the clinical dimension. The changes in functional scoring lead to a slightly different set of severity-score level intervals compared to the functional scoring in the proposed rule. The functional severity-score intervals are now minimal severity: 0–2; low severity: 3–15; moderate severity: 16–23; high severity: 24–29; maximum severity: 30+. The frequency distribution of the sample observations across the functional severity levels is essentially unchanged.

We validated the revised scoring for the clinical and functional dimensions using the validation subsample of the final, augmented sample. The results supported the scoring system developed with the learning subsample.

Re-examination of severity levels in clinical dimension. In response to several comments on wound-care patients, we refined the severity-score intervals in the clinical dimension to better differentiate patients who are clinically most severe from remaining patients. The revised score intervals are as follows: minimal severity: 0–7; low severity: 8–19; moderate severity: 20–40; high severity: 41+. To determine the refined severity-score intervals, we used the same process we followed in developing the case-mix system initially. We examined the array of scores for natural clustering and the impact of alternative sets of intervals on the proportion of variation explained by the model (R-squared). We also considered increases in the imbalance of the population across severity levels. The refined severity score intervals do result in more imbalance. The relative frequencies in the Abt sample for the revised clinical severity levels are 30 percent, 36 percent, 28 percent, 6 percent, for minimal, low, moderate, and high clinical severity, respectively. In contrast, the previous model's corresponding percentages were 30 percent, 30 percent, 23 percent, 17 percent. However, this change has also generally resulted in higher case-mix relative weights for the case-mix groups involving moderate and high clinical severity, where the most severe wound patients are likely to be found. It has also resulted in a wider range of weights for therapy-threshold case-mix groups and non-therapy-threshold case-mix groups.

Comparison with the earlier model. All combined, the refinements made to the case-mix model cause a modest improvement in explanatory power. The proportion of variation explained (R-squared) is now .34, compared to .32 for the model in the proposed rule. The model now provides for more adequate payment for wound care patients. Some of these high-cost patients would have been assigned to a different group under the model we presented in the proposed rule. Their removal from those earlier groups potentially results in a lower average cost, and lower case-mix weight, for those groups. We examined the impact on the array of relative case-mix weights across the case-mix groups. For the most part, we find generally small changes in the individual weights other than the weights for groups involving the moderate and high clinical severity levels.

The case-mix system will continue to be studied and refined in future years. Larger and better data resources, and information accumulated from users like those who commented, will both contribute to the evolution of the system.

2. Diagnosis Coding Changes in the Revised Case-Mix Model

When we published the proposed rule, we listed ICD–9–CM three-digit diagnosis category codes to identify orthopedic, neurologic, and diabetes diagnoses recognized in the clinical dimension. The scores associated with these diagnoses were based on analysis of the OASIS primary diagnosis item (M0230). A commenter pointed out that certain diagnoses within the category codes we listed should never be reported as primary diagnoses, according to ICD–9–CM coding rules and official coding guidelines. These diagnoses must be used with a higher-coded diagnosis that indicates the underlying disease. The affected category codes are 711, 712, 713, 720, 730, 731, 320, 321, 323, 330, 331, 334, 336, 337, 357, 358.

Accordingly, we have revised the diagnosis coding list. The revised list shows the complete code for the affected category codes, and is divided into two sections, one for primary diagnoses and one for secondary diagnoses (see Table 8A). The case-mix system will recognize the appropriate score for a diagnosis that should never be reported as a primary diagnosis, provided that the diagnosis appears as the first OASIS secondary diagnosis

(line b, under OASIS M0240) and that the code shows all digits required by ICD–9–CM coding guidelines. Remaining diagnoses from the affected categories must appear as the primary diagnosis (line a, under OASIS M0230) and the code must show all digits required by ICD–9–CM coding rules. The case-mix system will not recognize remaining diagnoses from the affected categories if they appear as a secondary diagnosis on the OASIS record. Nor will it recognize diagnoses that must never be reported as primary if they are placed on the primary diagnosis line (line a, M0230).

The refined case-mix system recognizes burns and trauma primary diagnoses, if the OASIS item M0440 shows the patient has a skin lesion or open wound. The diagnosis code categories for burns and trauma diagnoses included in the case-mix system are shown in Table 8B.

A lack of specificity in diagnosis code assignment may be a hindrance to case-mix refinement. Agencies that voluntarily code all diagnoses to the complete four- or five-digit level in accordance with ICD–9–CM coding rules would help us in subsequent review and examination of the case-mix methodology.

TABLE 7.—HOME HEALTH RESOURCE GROUP CASE-MIX CLASSIFICATION DECISION TREE LOGIC

Clinical severity domain			
OASIS+ Item	Description	Value	Scoring
M0230/M0240	Primary home care diagnosis (or initial secondary diagnosis ONLY for selected ICD-9 manifestation codes).	—credit *only* the single highest value: If Orthopedic diagnostic group (DG)*, add 11 to score If Diabetes DG*, add 17 to score If Neurological DG*, add 20 to score	Min = 0–7 Low = 8–19 Mod = 20–40 High = 41+
M0250	IV/Infusion/Parenteral/Enteral Therapies.	—credit *only* the single highest value: If box 1, add 14 to score If box 2, add 20 to score If box 3, add 24 to score	
M0390	Vision	If box 1 or 2, add 6 to score	
M0420	Pain	If box 2 or 3, add 5 to score	
M0440	Wound/Lesion	If box 1 and M0230 is Burn/Trauma DG*, add 21 to score	
M0450	Multiple pressure ulcers	If 2 or more stage 3 or 4 pressure ulcers, add 17 to score	
M0460	Most problematic pressure ulcer stage.	If box 1 or 2, add 15 to score If box 3 or 4, add 36 to score	
M0476	Stasis ulcer status	If box 2, add 14 to score If box 3, add 22 to score	
M0488	Surgical wound status	If box 2, add 7 to score If box 3, add 15 to score	
M0490	Dyspnea	If box 2, 3 or 4, add 5 to score	
M0530	Urinary incontinence	If box 1 or 2, add 6 to score	
M0540	Bowel incontinence	If box 2–5, add 9 to score	
M0550	Bowel ostomy	If box 1 or 2, add 10 to score	
M0610	Behavioral Problems	If box 1–6, add 3 to score	

*See table for ICD9–CM codes included in each diagnosis group (DG)

Functional status domain			
OASIS+ Item	Description	Value	Scoring
M0650 (current) M0660 (current)	Dressing	If M0650 = box 1, 2 or 3 Or M0660 = box 1, 2 or 3 } add 4 to score	Min = 0–2 Low = 3–15 Mod = 16–23 High = 24–29 Max = 30+
M0670 (current)	Bathing	If box 2, 3, 4 or 5 add 8 to score	
M0680 (current)	Toileting	If box 2–4, add 3 to score	
M0690 (current)	Transferring	If box 1, add 3 to score If box 2–5, add 6 to score	
M0700 (current)	Locomotion	If box 1 or 2, add 6 to score	
.....	.....	If box 3–5, add 9 to score	

Service utilization domain			
Variable	Description	Value	Scoring
M0170—line 1	No Hospital discharge past 14 days.	If box 1 IS BLANK, add 1 to score	Min = 0–2
M0170—line 2 or 3	Inpatient rehab/SNF discharge past 14 days.	If box 2 or 3, add 2 to score	Low = 3
Receipt of Therapy	10 or more therapy visits	If yes, add 4 to score	Mod = 4–6 High = 7

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
Primary Diagnoses		
DM	250	DIABETES MELLITUS
NEURO	013	CNS TUBERCULOSIS
NEURO	045	ACUTE POLIOMYELITIS
NEURO	046	CNS SLOW VIRUS INFECTION
NEURO	047	ENTEROVIRAL MENINGITIS
NEURO	048	OTH ENTEROVIRAL CNS DIS
NEURO	049	OTH NONARTHROPOD CNS VIR
NEURO	191	MALIGNANT NEOPLASM BRAIN
NEURO	192	MAL NEO NERVE NEC/NOS
NEURO	225	BENIGN NEO NERVOUS SYST
NEURO	320.0	HEMOPHILUS MENINGITIS
NEURO	320.1	PNEUMOCOCCAL MENINGITIS
NEURO	320.2	STREPTOCOCCAL MENINGITI
NEURO	320.3	STAPHYLOCOCC MENINGITIS
NEURO	320.81	ANAEROBIC MENINGITIS
NEURO	320.82	MNINGTS GRAM-NEG BCT NEC
NEURO	320.89	MENINGITIS OTH SPCF BAC
NEURO	320.9	BACTERIAL MENINGITIS NOS
NEURO	322	MENINGITIS, UNSPECIFIED
NEURO	323.5	POSTIMMUNIZAT ENCEPHALI
NEURO	323.8	ENCEPHALITIS NEC
NEURO	323.9	ENCEPHALITIS NOS
NEURO	324	CNS ABSCESS
NEURO	325	PHLEBITIS INTRCRAN SINU
NEURO	326	LATE EFF CNS ABSCESS
NEURO	330.0	LEUKODYSTROPHY
NEURO	330.1	CEREBRAL LIPIDOSES
NEURO	330.8	CEREB DEGEN IN CHILD NEC
NEURO	330.9	CEREB DEGEN IN CHILD NOS
NEURO	331.0	ALZHEIMER'S DISEASE
NEURO	331.1	PICK'S DISEASE
NEURO	331.2	SENILE DEGENERAT BRAIN
NEURO	331.3	COMMUNICAT HYDROCEPHALU
NEURO	331.4	OBSTRUCTIV HYDROCEPHALU
NEURO	331.81	REYE'S SYNDROME
NEURO	331.89	CEREB DEGENERATION NEC
NEURO	331.9	CEREB DEGENERATION NOS
NEURO	332	PARKINSON'S DISEASE
NEURO	333	EXTRAPYRAMIDAL DIS NEC
NEURO	334.0	FRIEDREICH'S ATAXIA
NEURO	334.1	HERED SPASTIC PARAPLEGI
NEURO	334.2	PRIMARY CEREBELLAR DEGE
NEURO	334.3	CEREBELLAR ATAXIA NEC
NEURO	334.8	SPINOCEREBELLAR DIS NEC
NEURO	334.9	SPINOCEREBELLAR DIS NOS
NEURO	335	ANT HORN CELL DISEASE
NEURO	336.0	SYRINGOMYELIA
NEURO	336.1	VASCULAR MYELOPATHIES
NEURO	336.8	MYELOPATHY NEC
NEURO	336.9	SPINAL CORD DISEASE NOS
NEURO	337.0	IDIOPATH AUTO NEUROPATH
NEURO	337.20	UNSP RFLX SYMPTH DYSTRP
NEURO	337.21	RFLX SYM DYSTRPH UP LIM
NEURO	337.22	RFLX SYM DYSTRPH LWR LM
NEURO	337.29	RFLX SYM DYSTRPH OTH ST
NEURO	337.3	AUTONOMIC DYSREFLEXIA
NEURO	337.9	AUTONOMIC NERVE DIS NEC
NEURO	340	MULTIPLE SCLEROSIS
NEURO	341	OTHER CNS DEMYELINATION
NEURO	342	HEMIPLEGIA
NEURO	343	INFANTILE CEREBRAL PALSY
NEURO	344	OTH PARALYTIC SYNDROMES
NEURO	347	CATAPLEXY AND NARCOLEPS
NEURO	348	OTHER BRAIN CONDITIONS
NEURO	349	CNS DISORDER NEC/NOS
NEURO	352	DISORDER CRAN NERVE NEC
NEURO	356	HERED PERIPH NEUROPATHY
NEURO	357.0	AC INFECT POLYNEURITIS

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
NEURO	357.5	ALCOHOLIC POLYNEUROPATH
NEURO	357.6	NEUROPATHY DUE TO DRUGS
NEURO	357.7	NEURPTHY TOXIC AGENT NEC
NEURO	357.8	INFLAM/TOX NEUROPTHY NEC
NEURO	357.9	INFLAM/TOX NEUROPTHY NOS
NEURO	358.0	MYASTHENIA GRAVIS
NEURO	358.2	TOXIC MYONEURAL DISORDE
NEURO	358.8	MYONEURAL DISORDERS NEC
NEURO	358.9	MYONEURAL DISORDERS NOS
NEURO	392	RHEUMATIC CHOREA
NEURO	430	SUBARACHNOID HEMORRHAGE
NEURO	431	INTRACEREBRAL HEMORRHAG
NEURO	432	INTRACRANIAL HEM NEC/NOS
NEURO	433	PRECEREBRAL OCCLUSION
NEURO	434	CEREBRAL ARTERY OCCLUS
NEURO	435	TRANSIENT CEREB ISCHEMIA
NEURO	436	CVA
NEURO	437	OTH CEREBROVASC DISEASE
NEURO	741	SPINA BIFIDA
NEURO	742	OTH NERVOUS SYSTEM ANOM
NEURO	851	CEREBRAL LACER/CONTUSION
NEURO	852	MENINGEAL HEM FOLLOW INJ
NEURO	853	OTH TRAUMATIC BRAIN HEM
NEURO	854	OTHER BRAIN INJURY
NEURO	907	LATE EFF NERV SYSTEM INJ
NEURO	950	INJ OPTIC NERV/PATHWAYS
NEURO	951	CRANIAL NERVE INJURY NEC
NEURO	952	SPINAL CORD INJ W/O FX
NEURO	953	INJ NERVE ROOT/SPIN PLEX
NEURO	954	INJURY OTH TRUNK NERVE
NEURO	955	INJ PERIPH NERV SHLD/ARM
NEURO	956	INJ PERIPH NERV PELV/LEG
ORTHO	170	MAL NEO BONE/ARTIC CART
ORTHO	171	MAL NEO SOFT TISSUE
ORTHO	213	BEN NEO BONE/ARTIC CART
ORTHO	274	GOUT
ORTHO	710	DIFF CONNECTIVE TISS DIS
ORTHO	711.00	PYOGEN ARTHRITIS—UNSPEC
ORTHO	711.01	PYOGEN ARTHRITIS—SHLDER
ORTHO	711.02	PYOGEN ARTHRITIS—UP/ARM
ORTHO	711.03	PYOGEN ARTHRITIS—FOREAR
ORTHO	711.04	PYOGEN ARTHRITIS—HAND
ORTHO	711.05	PYOGEN ARTHRITIS—PELVIS
ORTHO	711.06	PYOGEN ARTHRITIS—L/LEG
ORTHO	711.07	PYOGEN ARTHRITIS—ANKLE
ORTHO	711.08	PYOGEN ARTHRITIS NEC
ORTHO	711.09	PYOGEN ARTHRITIS—MULT
ORTHO	711.90	INF ARTHRITIS NOS—UNSPE
ORTHO	711.91	INF ARTHRITIS NOS—SHLDE
ORTHO	711.92	INF ARTHRITIS NOS—UP/AR
ORTHO	711.93	INF ARTHRIT NOS—FOREARM
ORTHO	711.94	INF ARTHRIT NOS—HAND
ORTHO	711.95	INF ARTHRIT NOS—PELVIS
ORTHO	711.96	INF ARTHRIT NOS—L/LEG
ORTHO	711.97	INF ARTHRIT NOS—ANKLE
ORTHO	711.98	INF ARTHRIT NOS—OTH SIT
ORTHO	711.99	INF ARTHRITIS NOS—MULT
ORTHO	712.80	CRYST ARTHROP NEC—UNSPE
ORTHO	712.81	CRYST ARTHROP NEC—SHLDE
ORTHO	712.82	CRYST ARTHROP NEC—UP/AR
ORTHO	712.83	CRYS ARTHROP NEC—FOREAR
ORTHO	712.84	CRYST ARTHROP NEC—HAND
ORTHO	712.85	CRYST ARTHROP NEC—PELVI
ORTHO	712.86	CRYST ARTHROP NEC—L/LEG
ORTHO	712.87	CRYST ARTHROP NEC—ANKLE
ORTHO	712.88	CRY ARTHROP NEC—OTH SIT
ORTHO	712.89	CRYST ARTHROP NEC—MULT
ORTHO	712.90	CRYST ARTHROP NOS—UNSPE
ORTHO	712.91	CRYST ARTHROP NOS—SHLDR
ORTHO	712.92	CRYST ARTHROP NOS—UP/AR

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
ORTHO	712.93	CRYS ARTHROP NOS—FOREAR
ORTHO	712.94	CRYST ARTHROP NOS—HAND
ORTHO	712.95	CRYST ARTHROP NOS—PELVI
ORTHO	712.96	CRYST ARTHROP NOS—L/LEG
ORTHO	712.97	CRYST ARTHROP NOS—ANKLE
ORTHO	712.98	CRY ARTHROP NOS—OTH SIT
ORTHO	712.99	CRYST ARTHROP NOS—MULT
ORTHO	714	OTH INFLAMM POLYARTHROP
ORTHO	716	ARTHROPATHIES NEC/NOS
ORTHO	717	INTERNAL DERANGEMNT KNEE
ORTHO	718	OTHER JOINT DERANGEMENT
ORTHO	720.0	ANKYLOSING SPONDYLITIS
ORTHO	720.1	SPINAL ENTHESOPATHY
ORTHO	720.2	SACROILIITIS NEC
ORTHO	720.89	INFLAM SPONDYLOPATHY NEC
ORTHO	720.9	INFLAM SPONDYLOPATHY NOS
ORTHO	721	SPONDYLOSIS ET AL
ORTHO	722	INTERVERTEBRAL DISC DIS
ORTHO	723	OTHER CERVICAL SPINE DIS
ORTHO	724	BACK DISORDER NEC & NOS
ORTHO	725	POLYMYALGIA RHEUMATICA
ORTHO	728	DIS OF MUSCLE/LIG/FASCIA
ORTHO	730.00	AC OSTEOMYELITIS—UNSP
ORTHO	730.01	AC OSTEOMYELITIS—SHLDER
ORTHO	730.02	AC OSTEOMYELITIS—UP/ARM
ORTHO	730.03	AC OSTEOMYELITIS—FOREAR
ORTHO	730.04	AC OSTEOMYELITIS—HAND
ORTHO	730.05	AC OSTEOMYELITIS—PELVIS
ORTHO	730.06	AC OSTEOMYELITIS—L/LEG
ORTHO	730.07	AC OSTEOMYELITIS—ANKLE
ORTHO	730.08	AC OSTEOMYELITIS NEC
ORTHO	730.09	AC OSTEOMYELITIS—MULT
ORTHO	730.10	CHR OSTEOMYELITIS—UNSP
ORTHO	730.11	CHR OSTEOMYELIT—SHLDER
ORTHO	730.12	CHR OSTEOMYELIT—UP/ARM
ORTHO	730.13	CHR OSTEOMYELIT—FOREARM
ORTHO	730.14	CHR OSTEOMYELIT—HAND
ORTHO	730.15	CHR OSTEOMYELIT—PELVIS
ORTHO	730.16	CHR OSTEOMYELIT—L/LEG
ORTHO	730.17	CHR OSTEOMYELIT—ANKLE
ORTHO	730.18	CHR OSTEOMYELIT NEC
ORTHO	730.19	CHR OSTEOMYELIT—MULT
ORTHO	730.20	OSTEOMYELITIS NOS—UNSPE
ORTHO	730.21	OSTEOMYELITIS NOS—SHLDE
ORTHO	730.22	OSTEOMYELITIS NOS—UP/AR
ORTHO	730.23	OSTEOMYELIT NOS—FOREARM
ORTHO	730.24	OSTEOMYELITIS NOS—HAND
ORTHO	730.25	OSTEOMYELITIS NOS—PELVI
ORTHO	730.26	OSTEOMYELITIS NOS—L/LEG
ORTHO	730.27	OSTEOMYELITIS NOS—ANKLE
ORTHO	730.28	OSTEOMYELIT NOS—OTH SIT
ORTHO	730.29	OSTEOMYELITIS NOS—MULT
ORTHO	730.30	PERIOSTITIS—UNSPEC
ORTHO	730.31	PERIOSTITIS—SHLDER
ORTHO	730.32	PERIOSTITIS—UP/ARM
ORTHO	730.33	PERIOSTITIS—FOREARM
ORTHO	730.34	PERIOSTITIS—HAND
ORTHO	730.35	PERIOSTITIS—PELVIS
ORTHO	730.36	PERIOSTITIS—L/LEG
ORTHO	730.37	PERIOSTITIS—ANKLE
ORTHO	730.38	PERIOSTITIS NEC
ORTHO	730.39	PERIOSTITIS—MULT
ORTHO	730.90	BONE INFEC NOS—UNSP SIT
ORTHO	730.91	BONE INFECT NOS—SHLDER
ORTHO	730.92	BONE INFECT NOS—UP/ARM
ORTHO	730.93	BONE INFECT NOS—FOREARM
ORTHO	730.94	BONE INFECT NOS—HAND
ORTHO	730.95	BONE INFECT NOS—PELVIS
ORTHO	730.96	BONE INFECT NOS—L/LEG
ORTHO	730.97	BONE INFECT NOS—ANKLE

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
ORTHO	730.98	BONE INFECT NOS—OTH SIT
ORTHO	730.99	BONE INFECT NOS—MULT
ORTHO	731.0	OSTEITIS DEFORMANS NOS
ORTHO	731.2	HYPERTROPH OSTEOARTHROP
ORTHO	732	OSTEOCHONDROPATHIES
ORTHO	781	NERV/MUSCULSKEL SYS SYMP
ORTHO	800	SKULL VAULT FRACTURE
ORTHO	801	SKULL BASE FRACTURE
ORTHO	802	FRACTURE OF FACE BONES
ORTHO	803	OTHER SKULL FRACTURE
ORTHO	804	MULT FX SKULL W OTH BONE
ORTHO	805	VERTEBRL FX W/O CORD INJ
ORTHO	806	VERTEBRAL FX W CORD INJ
ORTHO	807	FX RIB/STERN/LARYN/TRACH
ORTHO	808	PELVIC FRACTURE
ORTHO	809	FRACTURE OF TRUNK BONES
ORTHO	810	CLAVICLE FRACTURE
ORTHO	811	SCAPULA FRACTURE
ORTHO	812	HUMERUS FRACTURE
ORTHO	813	RADIUS & ULNA FRACTURE
ORTHO	814	CARPAL FRACTURE
ORTHO	815	METACARPAL FRACTURE
ORTHO	816	FRACTURE PHALANGES, HAND
ORTHO	817	MULTIPLE HAND FRACTURES
ORTHO	818	FRACTURE ARM MULT/NOS
ORTHO	819	FX ARMS W RIB/STERNUM
ORTHO	820	FRACTURE NECK OF FEMUR
ORTHO	821	OTHER FEMORAL FRACTURE
ORTHO	822	PATELLA FRACTURE
ORTHO	823	TIBIA & FIBULA FRACTURE
ORTHO	824	ANKLE FRACTURE
ORTHO	825	FX OF TARSAL/METATARSAL
ORTHO	827	LOWER LIMB FRACTURE NEC
ORTHO	828	FX LEGS W ARM/RIB
ORTHO	831	SHOULDER DISLOCATION
ORTHO	832	ELBOW DISLOCATION
ORTHO	833	WRIST DISLOCATION
ORTHO	835	DISLOCATION OF HIP
ORTHO	836	DISLOCATION OF KNEE
ORTHO	837	DISLOCATION OF ANKLE
ORTHO	838	DISLOCATION OF FOOT
ORTHO	846	SPRAIN SACROILIAC REGION
ORTHO	847	SPRAIN OF BACK NEC/NOS
ORTHO	887	TRAUMATIC AMPUT ARM/HAND
ORTHO	896	TRAUMATIC AMPUTAT FOOT
ORTHO	897	TRAUMATIC AMPUTATION LEG
ORTHO	927	CRUSHING INJ UPPER LIMB
ORTHO	928	CRUSHING INJURY OF LEG

Secondary Diagnoses

The following diagnoses should never be used as primary diagnoses, according to ICD–9–CM coding guidelines. The case-mix system will recognize them in the clinical dimension if they appear as the first secondary diagnosis (line b, M0240 on the OASIS record). Diagnoses coded with 4 or 5 digits must be coded as shown to be recognized in the clinical dimension.

NEURO	320.7	MENINGITIS IN OTH BAC
NEURO	321.0	CRYPTOCOCCAL MENINGITIS
NEURO	321.1	MENING IN OTH FUNGAL DI
NEURO	321.2	MENING IN OTH VIRAL DIS
NEURO	321.3	TRYPANOSOMIASIS MENINGI
NEURO	321.4	MENINGIT D/T SARCOIDOSI
NEURO	321.8	MENING IN OTH NONBAC DI
NEURO	323.0	ENCEPHALIT IN VIRAL DIS
NEURO	323.1	RICKETTSIAL ENCEPHALITI
NEURO	323.2	PROTOZOAL ENCEPHALITIS
NEURO	323.4	OTH ENCEPHALIT D/T INFE
NEURO	323.6	POSTINFECT ENCEPHALITIS
NEURO	323.7	TOXIC ENCEPHALITIS
NEURO	330.2	CEREB DEGEN IN LIPIDOSI
NEURO	330.3	CERB DEG CHLD IN OTH DI

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
NEURO	331.7	CEREB DEGEN IN OTH DIS
NEURO	334.4	CEREBEL ATAX IN OTH DIS
NEURO	336.2	COMB DEG CORD IN OTH DI
NEURO	336.3	MYELOPATHY IN OTH DIS
NEURO	337.1	AUT NEUROPTHY IN OTH DI
NEURO	357.1	NEURPTHY IN COL VASC DI
NEURO	357.2	NEUROPATHY IN DIABETES
NEURO	357.3	NEUROPATHY IN MALIG DIS
NEURO	357.4	NEUROPATHY IN OTHER DIS
NEURO	358.1	MYASTHENIA IN OTH DIS
ORTHO	711.10	REITER ARTHRITIS—UNSPEC
ORTHO	711.11	REITER ARTHRITIS—SHLDER
ORTHO	711.12	REITER ARTHRITIS—UP/ARM
ORTHO	711.13	REITER ARTHRITIS—FOREAR
ORTHO	711.14	REITER ARTHRITIS—HAND
ORTHO	711.15	REITER ARTHRITIS—PELVIS
ORTHO	711.16	REITER ARTHRITIS—L/LEG
ORTHO	711.17	REITER ARTHRITIS—ANKLE
ORTHO	711.18	REITER ARTHRITIS NEC
ORTHO	711.19	REITER ARTHRITIS—MULT
ORTHO	711.20	BEHCET ARTHRITIS—UNSPEC
ORTHO	711.21	BEHCET ARTHRITIS—SHLDER
ORTHO	711.22	BEHCET ARTHRITIS—UP/ARM
ORTHO	711.23	BEHCET ARTHRITIS—FOREAR
ORTHO	711.24	BEHCET ARTHRITIS—HAND
ORTHO	711.25	BEHCET ARTHRITIS—PELVIS
ORTHO	711.26	BEHCET ARTHRITIS—L/LEG
ORTHO	711.27	BEHCET ARTHRITIS—ANKLE
ORTHO	711.28	BEHCET ARTHRITIS NEC
ORTHO	711.29	BEHCET ARTHRITIS—MULT
ORTHO	711.30	DYSENTER ARTHRIT—UNSPEC
ORTHO	711.31	DYSENTER ARTHRIT—SHLDER
ORTHO	711.32	DYSENTER ARTHRIT—UP/ARM
ORTHO	711.33	DYSENTER ARTHRIT—FOREAR
ORTHO	711.34	DYSENTER ARTHRIT—HAND
ORTHO	711.35	DYSENTER ARTHRIT—PELVIS
ORTHO	711.36	DYSENTER ARTHRIT—L/LEG
ORTHO	711.37	DYSENTER ARTHRIT—ANKLE
ORTHO	711.38	DYSENTER ARTHRIT NEC
ORTHO	711.39	DYSENTER ARTHRIT—MULT
ORTHO	711.40	BACT ARTHRITIS—UNSPEC
ORTHO	711.41	BACT ARTHRITIS—SHLDER
ORTHO	711.42	BACT ARTHRITIS—UP/ARM
ORTHO	711.43	BACT ARTHRITIS—FOREARM
ORTHO	711.44	BACT ARTHRITIS—HAND
ORTHO	711.45	BACT ARTHRITIS—PELVIS
ORTHO	711.46	BACT ARTHRITIS—L/LEG
ORTHO	711.47	BACT ARTHRITIS—ANKLE
ORTHO	711.48	BACT ARTHRITIS NEC
ORTHO	711.49	BACT ARTHRITIS—MULT
ORTHO	711.50	VIRAL ARTHRITIS—UNSPEC
ORTHO	711.51	VIRAL ARTHRITIS—SHLDER
ORTHO	711.52	VIRAL ARTHRITIS—UP/ARM
ORTHO	711.53	VIRAL ARTHRITIS—FOREARM
ORTHO	711.54	VIRAL ARTHRITIS—HAND
ORTHO	711.55	VIRAL ARTHRITIS—PELVIS
ORTHO	711.56	VIRAL ARTHRITIS—L/LEG
ORTHO	711.57	VIRAL ARTHRITIS—ANKLE
ORTHO	711.58	VIRAL ARTHRITIS NEC
ORTHO	711.59	VIRAL ARTHRITIS—MULT
ORTHO	711.60	MYCOTIC ARTHRITIS—UNSPE
ORTHO	711.61	MYCOTIC ARTHRITIS—SHLDE
ORTHO	711.62	MYCOTIC ARTHRITIS—UP/AR
ORTHO	711.63	MYCOTIC ARTHRIT—FOREARM
ORTHO	711.64	MYCOTIC ARTHRITIS—HAND
ORTHO	711.65	MYCOTIC ARTHRITIS—PELVI
ORTHO	711.66	MYCOTIC ARTHRITIS—L/LEG
ORTHO	711.67	MYCOTIC ARTHRITIS—ANKLE
ORTHO	711.68	MYCOTIC ARTHRITIS NEC
ORTHO	711.69	MYCOTIC ARTHRITIS—MULT

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
ORTHO	711.70	HELMINTH ARTHRIT—UNSPEC
ORTHO	711.71	HELMINTH ARTHRIT—SHLDER
ORTHO	711.72	HELMINTH ARTHRIT—UP/ARM
ORTHO	711.73	HELMINTH ARTHRIT—FOREAR
ORTHO	711.74	HELMINTH ARTHRIT—HAND
ORTHO	711.75	HELMINTH ARTHRIT—PELVIS
ORTHO	711.76	HELMINTH ARTHRIT—L/LEG
ORTHO	711.77	HELMINTH ARTHRIT—ANKLE
ORTHO	711.78	HELMINTH ARTHRIT NEC
ORTHO	711.79	HELMINTH ARTHRIT—MULT
ORTHO	711.80	INF ARTHRITIS NEC—UNSPE
ORTHO	711.81	INF ARTHRITIS NEC—SHLDE
ORTHO	711.82	INF ARTHRITIS NEC—UP/AR
ORTHO	711.83	INF ARTHRIT NEC—FOREARM
ORTHO	711.84	INF ARTHRITIS NEC—HAND
ORTHO	711.85	INF ARTHRITIS NEC—PELVI
ORTHO	711.86	INF ARTHRITIS NEC—L/LEG
ORTHO	711.87	INF ARTHRITIS NEC—ANKLE
ORTHO	711.88	INF ARTHRIT NEC—OTH SIT
ORTHO	711.89	INF ARTHRITIS NEC—MULT
ORTHO	712.10	DICALC PHOS CRYST—UNSPE
ORTHO	712.11	DICALC PHOS CRYST—SHLDE
ORTHO	712.12	DICALC PHOS CRYST—UP/AR
ORTHO	712.13	DICALC PHOS CRYS—FOREAR
ORTHO	712.14	DICALC PHOS CRYST—HAND
ORTHO	712.15	DICALC PHOS CRYST—PELVI
ORTHO	712.16	DICALC PHOS CRYST—L/LEG
ORTHO	712.17	DICALC PHOS CRYST—ANKLE
ORTHO	712.18	DICALC PHOS CRY—SITE NE
ORTHO	712.19	DICALC PHOS CRYST—MULT
ORTHO	712.20	PYROPHOSPH CRYST—UNSPEC
ORTHO	712.21	PYROPHOSPH CRYST—SHLDER
ORTHO	712.22	PYROPHOSPH CRYST—UP/ARM
ORTHO	712.23	PYROPHOSPH CRYST—FOREAR
ORTHO	712.24	PYROPHOSPH CRYST—HAND
ORTHO	712.25	PYROPHOSPH CRYST—PELVIS
ORTHO	712.26	PYROPHOSPH CRYST—L/LEG
ORTHO	712.27	PYROPHOSPH CRYST—ANKLE
ORTHO	712.28	PYROPHOS CRYST—SITE NEC
ORTHO	712.29	PYROPHOS CRYST—MULT
ORTHO	712.30	CHONDROCALCIN NOS—UNSPE
ORTHO	712.31	CHONDROCALCIN NOS—SHLDE
ORTHO	712.32	CHONDROCALCIN NOS—UP/AR
ORTHO	712.33	CHONDROCALC NOS—FOREARM
ORTHO	712.34	CHONDROCALCIN NOS—HAND
ORTHO	712.35	CHONDROCALCIN NOS—PELVI
ORTHO	712.36	CHONDROCALCIN NOS—L/LEG
ORTHO	712.37	CHONDROCALCIN NOS—ANKLE
ORTHO	712.38	CHONDROCALC NOS—OTH SIT
ORTHO	712.39	CHONDROCALCIN NOS—MULT
ORTHO	713.0	ARTHROP W ENDOCR/MET DI
ORTHO	713.1	ARTHROP W NONINF GI DIS
ORTHO	713.2	ARTHROPATH W HEMATOL DI
ORTHO	713.3	ARTHROPATHY W SKIN DIS
ORTHO	713.4	ARTHROPATHY W RESP DIS
ORTHO	713.5	ARTHROPATHY W NERVE DIS
ORTHO	713.6	ARTHROP W HYPERSEN REAC
ORTHO	713.7	ARTHROP W SYSTEM DIS NE
ORTHO	713.8	ARTHROP W OTH DIS NEC
ORTHO	720.81	SPONDYLOPATHY IN OTH DI
ORTHO	730.70	POLIO OSTEOPATHY—UNSPEC
ORTHO	730.71	POLIO OSTEOPATHY—SHLDER
ORTHO	730.72	POLIO OSTEOPATHY—UP/ARM
ORTHO	730.73	POLIO OSTEOPATHY—FOREAR
ORTHO	730.74	POLIO OSTEOPATHY—HAND
ORTHO	730.75	POLIO OSTEOPATHY—PELVIS
ORTHO	730.76	POLIO OSTEOPATHY—L/LEG
ORTHO	730.77	POLIO OSTEOPATHY—ANKLE
ORTHO	730.78	POLIO OSTEOPATHY NEC
ORTHO	730.79	POLIO OSTEOPATHY—MULT

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
ORTHO	730.80	BONE INFECT NEC—UNSPEC
ORTHO	730.81	BONE INFECT NEC—SHLDER
ORTHO	730.82	BONE INFECT NEC—UP/ARM
ORTHO	730.83	BONE INFECT NEC—FOREARM
ORTHO	730.84	BONE INFECT NEC—HAND
ORTHO	730.85	BONE INFECT NEC—PELVIS
ORTHO	730.86	BONE INFECT NEC—L/LEG
ORTHO	730.87	BONE INFECT NEC—ANKLE
ORTHO	730.88	BONE INFECT NEC—OTH SIT
ORTHO	730.89	BONE INFECT NEC—MULT
ORTHO	731.1	OSTEITIS DEF IN OTH DIS
ORTHO	731.8	BONE INVOLV IN OTH DIS

TABLE 8B.—BURNS AND TRAUMA DIAGNOSES

[**Note:** Codes shown at the 3-digit level include all of the related 4- and 5-digit codes. Burns and trauma diagnoses are included in the clinical dimension if the diagnosis is the primary diagnosis and if box 1 of the OASIS item M0440 is checked.]

ICD–9–CM code	Description
870	OCULAR ADNEXA OPEN WOUND
872	OPEN WOUND OF EAR
873	OTHER OPEN WOUND OF HEAD
874	OPEN WOUND OF NECK
875	OPEN WOUND OF CHEST
876	OPEN WOUND OF BACK
877	OPEN WOUND OF BUTTOCK
878	OPEN WOUND GENITAL ORGAN
879	OPEN WOUND SITE NEC
880	OPN WND SHOULDR/UPPR ARM
881	OPEN WOUND OF LOWER ARM
882	OPEN WOUND OF HAND
883	OPEN WOUND OF FINGER
884	OPEN WOUND ARM MULT/NOS
885	TRAUM AMPUTATION THUMB
886	TRAUM AMPUTATION FINGER
890	OPEN WOUND OF HIP/THIGH
891	OPEN WND KNEE/LEG/ANKLE
892	OPEN WOUND OF FOOT
893	OPEN WOUND OF TOE
894	OPEN WOUND OF LEG NEC
895	TRAUMATIC AMPUTATION TOE
941	BURN OF HEAD/FACE/NECK
942	BURN OF TRUNK
943	BURN OF ARM
944	BURN OF HAND & WRIST
945	BURN OF LEG
946	BURN OF MULTIPLE SITE
948	BURN BY % BODY SURFACE
949	BURN UNSPECIFIED

3. Determining the Case-Mix Indices

Calculation of the case-mix relative weights. We derived the relative weights for the case-mix groups from a straightforward multiple regression analysis. The data for the regression came from the Abt sample episodes with more than four visits (the same sample used to develop and validate the case-mix model).

The coefficients that resulted from the regression equation are shown below. The multiple regression coefficients are estimates of the average addition to resource cost due to each severity level above the lowest-severity case-mix group (C0F0S0). For each case-mix group, the average resource cost is calculated from the sum of the appropriate regression coefficients. In the example below, the average resource cost for case-mix group C3F0S3 is the sum of the average resource cost for the base group (C0F0S0) plus the average additional cost due to C3 plus the average additional cost due to S3. We then used the computed case-mix-group average resource costs to find the relative case-mix weights. Specifically, the case-mix group averages (that is, sum of appropriate regression coefficients) are divided by the overall average resource cost. The case-mix weights are shown in Table 9.

The methodology for calculating the case-mix weights is the same one we used to find the case-mix weights in the proposed rule, except that we did not use weighted regression for the final rule. We determined that the distribution of the unweighted Abt Associates data better resembled the 1998 episode file distribution than did the weighted Abt Associates data. Thus, unweighted regression was the appropriate methodology. As stated in the proposed rule, we plan to refine the case-mix weights to adjust for changes in patient population, actual changes in home health care practice patterns, and changes in the coding or classification of patients that do not reflect real changes in case-mix.

Regression Coefficients for Calculating Case-Mix Relative Weights

Intercept*—$1,271.95
C1—$230.98
C2—$652.42
C3—$1,620.75
F1—$229.14
F2—$479.30
F3—$571.20
F4—$976.08
S1—$195.53
S2—$2,315.15
S3—$2,923.22

Example:

Calculate case-mix relative weight for group C3F0S3

Overall average resource cost (scaled to national average episode cost): $2,416.00

Relative weight = average resource cost for group C3F0S3 divided by overall average resource cost = (base group cost +C3 increment +S3 increment)/overall average resource cost = (1271.95 + 1620.75 + 2923.22)/2416.00 = 2.4073

Below we show the average resource cost calculated from the regression coefficients for each case-mix group.

Regression coefficient	Average resource cost
C0F0S0	$1,271.95
C0F0S1	1,467.48
C0F0S2	3,587.10
C0F0S3	4,195.17
C0F1S0	1,501.09
C0F1S1	1,696.62
C0F1S2	3,816.24
C0F1S3	4,424.31
C0F2S0	1,751.25
C0F2S1	1,946.77
C0F2S2	4,066.40
C0F2S3	4,674.46
C0F3S0	1,843.15
C0F3S1	2,038.68
C0F3S2	4,158.30

* Intercept value is the average resource cost for the base group, C0F0S0.

Regression coefficient	Average resource cost
C0F3S3	4,766.37
C0F4S0	2,248.03
C0F4S1	2,443.56
C0F4S2	4,563.18
C0F4S3	5,171.25
C1F0S0	1,502.93
C1F0S1	1,698.46
C1F0S2	3,818.08
C1F0S3	4,426.15
C1F1S0	1,732.07
C1F1S1	1,927.60
C1F1S2	4,047.22
C1F1S3	4,655.29
C1F2S0	1,982.23
C1F2S1	2,177.75
C1F2S2	4,297.38
C1F2S3	4,905.45
C1F3S0	2,074.13
C1F3S1	2,269.66
C1F3S2	4,389.28
C1F3S3	4,997.35
C1F4S0	2,479.01
C1F4S1	2,674.54
C1F4S2	4,794.16
C1F4S3	5,402.23
C2F0S0	1,924.37
C2F0S1	2,119.90
C2F0S2	4,239.52
C2F0S3	4,847.59
C2F1S0	2,153.51
C2F1S1	2,349.04
C2F1S2	4,468.66
C2F1S3	5,076.73
C2F2S0	2,403.67
C2F2S1	2,599.19
C2F2S2	4,718.82
C2F2S3	5,326.89
C2F3S0	2,495.57
C2F3S1	2,691.10
C2F3S2	4,810.72
C2F3S3	5,418.79
C2F4S0	2,900.45
C2F4S1	3,095.98
C2F4S2	5,215.61
C2F4S3	5,823.67
C3F0S0	2,892.70
C3F0S1	3,088.23
C3F0S2	5,207.85
C3F0S3	5,815.92
C3F1S0	3,121.84
C3F1S1	3,317.37
C3F1S2	5,436.99
C3F1S3	6,045.06
C3F2S0	3,372.00
C3F2S1	3,567.52
C3F2S2	5,687.15
C3F2S3	6,295.22
C3F3S0	3,463.91
C3F3S1	3,659.43
C3F3S2	5,779.06
C3F3S3	6,387.12
C3F4S0	3,868.79
C3F4S1	4,064.31
C3F4S2	6,183.94
C3F4S3	6,792.00

Construction of the Relative Weights for the HHRGs

TABLE 9.—RELATIVE CASE-MIX WEIGHTS CORRESPONDING TO HOME HEALTH RESOURCE GROUPS

HHRG group	HHRG description	Case-mix weight
C0F0S0	"Clinical=Min, Functional=Min, Service=Min"	0.5265
C0F0S1	"Clinical=Min, Functional=Min, Service=Low"	0.6074
C0F0S2	"Clinical=Min, Functional=Min, Service=Mod"	1.4847
C0F0S3	"Clinical=Min, Functional=Min, Service=High"	1.7364
C0F1S0	"Clinical=Min, Functional=Low, Service=Min"	0.6213
C0F1S1	"Clinical=Min, Functional=Low, Service=Low"	0.7022
C0F1S2	"Clinical=Min, Functional=Low, Service=Mod"	1.5796
C0F1S3	"Clinical=Min, Functional=Low, Service=High"	1.8313
C0F2S0	"Clinical=Min, Functional=Mod, Service=Min"	0.7249
C0F2S1	"Clinical=Min, Functional=Mod, Service=Low"	0.8058
C0F2S2	"Clinical=Min, Functional=Mod, Service=Mod"	1.6831
C0F2S3	"Clinical=Min, Functional=Mod, Service=High"	1.9348
C0F3S0	"Clinical=Min, Functional=High, Service=Min"	0.7629
C0F3S1	"Clinical=Min, Functional=High, Service=Low"	0.8438
C0F3S2	"Clinical=Min, Functional=High, Service=Mod"	1.7212
C0F3S3	"Clinical=Min, Functional=High, Service=High"	1.9728
C0F4S0	"Clinical=Min, Functional=Max, Service=Min"	0.9305
C0F4S1	"Clinical=Min, Functional=Max, Service=Low"	1.0114
C0F4S2	"Clinical=Min, Functional=Max, Service=Mod"	1.8887
C0F4S3	"Clinical=Min, Functional=Max, Service=High"	2.1404
C1F0S0	"Clinical=Low, Functional=Min, Service=Min"	0.6221
C1F0S1	"Clinical=Low, Functional=Min, Service=Low"	0.7030
C1F0S2	"Clinical=Low, Functional=Min, Service=Mod"	1.5803
C1F0S3	"Clinical=Low, Functional=Min, Service=High"	1.8320
C1F1S0	"Clinical=Low, Functional=Low, Service=Min"	0.7169
C1F1S1	"Clinical=Low, Functional=Low, Service=Low"	0.7978
C1F1S2	"Clinical=Low, Functional=Low, Service=Mod"	1.6752
C1F1S3	"Clinical=Low, Functional=Low, Service=High"	1.9269
C1F2S0	"Clinical=Low, Functional=Mod, Service=Min"	0.8205
C1F2S1	"Clinical=Low, Functional=Mod, Service=Low"	0.9014
C1F2S2	"Clinical=Low, Functional=Mod, Service=Mod"	1.7787
C1F2S3	"Clinical=Low, Functional=Mod, Service=High"	2.0304
C1F3S0	"Clinical=Low, Functional=High, Service=Min"	0.8585
C1F3S1	"Clinical=Low, Functional=High, Service=Low"	0.9394
C1F3S2	"Clinical=Low, Functional=High, Service=Mod"	1.8168
C1F3S3	"Clinical=Low, Functional=High, Service=High"	2.0684
C1F4S0	"Clinical=Low, Functional=Max, Service=Min"	1.0261
C1F4S1	"Clinical=Low, Functional=Max, Service=Low"	1.1070
C1F4S2	"Clinical=Low, Functional=Max, Service=Mod"	1.9843
C1F4S3	"Clinical=Low, Functional=Max, Service=High"	2.2360
C2F0S0	"Clinical=Mod, Functional=Min, Service=Min"	0.7965
C2F0S1	"Clinical=Mod, Functional=Min, Service=Low"	0.8774
C2F0S2	"Clinical=Mod, Functional=Min, Service=Mod"	1.7548
C2F0S3	"Clinical=Mod, Functional=Min, Service=High"	2.0065
C2F1S0	"Clinical=Mod, Functional=Low, Service=Min"	0.8914

TABLE 9.—RELATIVE CASE-MIX WEIGHTS CORRESPONDING TO HOME HEALTH RESOURCE GROUPS—Continued

HHRG group	HHRG description	Case-mix weight
C2F1S1	"Clinical=Mod, Functional=Low, Service=Low"	0.9723
C2F1S2	"Clinical=Mod, Functional=Low, Service=Mod"	1.8496
C2F1S3	"Clinical=Mod, Functional=Low, Service=High"	2.1013
C2F2S0	"Clinical=Mod, Functional=Mod, Service=Min"	0.9949
C2F2S1	"Clinical=Mod, Functional=Mod, Service=Low"	1.0758
C2F2S2	"Clinical=Mod, Functional=Mod, Service=Mod"	1.9532
C2F2S3	"Clinical=Mod, Functional=Mod, Service=High"	2.2048
C2F3S0	"Clinical=Mod, Functional=High, Service=Min"	1.0329
C2F3S1	"Clinical=Mod, Functional=High, Service=Low"	1.1139
C2F3S2	"Clinical=Mod, Functional=High, Service=Mod"	1.9912
C2F3S3	"Clinical=Mod, Functional=High, Service=High"	2.2429
C2F4S0	"Clinical=Mod, Functional=Max, Service=Min"	1.2005
C2F4S1	"Clinical=Mod, Functional=Max, Service=Low"	1.2814
C2F4S2	"Clinical=Mod, Functional=Max, Service=Mod"	2.1588
C2F4S3	"Clinical=Mod, Functional=Max, Service=High"	2.4105
C3F0S0	"Clinical=High, Functional=Min, Service=Min"	1.1973
C3F0S1	"Clinical=High, Functional=Min, Service=Low"	1.2782
C3F0S2	"Clinical=High, Functional=Min, Service=Mod"	2.1556
C3F0S3	"Clinical=High, Functional=Min, Service=High"	2.4073
C3F1S0	"Clinical=High, Functional=Low, Service=Min"	1.2922
C3F1S1	"Clinical=High, Functional=Low, Service=Low"	1.3731
C3F1S2	"Clinical=High, Functional=Low, Service=Mod"	2.2504
C3F1S3	"Clinical=High, Functional=Low, Service=High"	2.5021
C3F2S0	"Clinical=High, Functional=Mod, Service=Min"	1.3957
C3F2S1	"Clinical=High, Functional=Mod, Service=Low"	1.4766
C3F2S2	"Clinical=High, Functional=Mod, Service=Mod"	2.3540
C3F2S3	"Clinical=High, Functional=Mod, Service=High"	2.6056
C3F3S0	"Clinical=High, Functional=High, Service=Min"	1.4337
C3F3S1	"Clinical=High, Functional=High, Service=Low"	1.5147
C3F3S2	"Clinical=High, Functional=High, Service=Mod"	2.3920
C3F3S3	"Clinical=High, Functional=High, Service=High"	2.6437
C3F4S0	"Clinical=High, Functional=Max, Service=Min"	1.6013
C3F4S1	"Clinical=High, Functional=Max, Service=Low"	1.6822
C3F4S2	"Clinical=High, Functional=Max, Service=Mod"	2.5596
C3F4S3	"Clinical=High, Functional=Max, Service=High"	2.8113

H. Consolidated Billing

1. Background

Under the HHA consolidated billing requirement established by sections 4603(c)(2)(B) and (c)(2)(C) of the BBA, the HHA that establishes the home health plan of care has the Medicare billing responsibility for all of the Medicare-covered home health services listed in section 1861(m) of the Act that the patient receives and are ordered by the physician in the plan of care. Section 305 of BBRA of 1999 amended the consolidated billing language governing home health PPS by eliminating DME covered as a home health service from the consolidated billing requirements.

2. HHA Consolidated Billing Legislation

Specific Provisions of the Legislation. Sections 4603(c)(2)(B) and (c)(2)(C) of the BBA amend sections 1842(b)(6) and 1862(a) of the Act, respectively, to require a new consolidated billing and bundling of all home health services while a beneficiary is under the plan of care. The statute now requires payment for all items and services to be made to an agency. As stated above, section 305 of BBRA of 1999 excludes DME covered as a home health service from the consolidated billing requirements.

Specifically, the law requires, "in the case of home health services (including medical supplies described in section 1861(m)(5), but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who (at the time the item or service is furnished) is under the plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise)."

Moreover, there will be separate payment for DME items and services provided under the home health benefit, which are under the DME fee schedule. As discussed previously, under the HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule and will also be excluded from the consolidated billing requirements. In addition to the prospective payment amount for home health services a separate payment amount will be made for DME currently covered as a home health service under the PPS.

3. Types of Services That Are Subject to the Provision

Under the consolidated billing requirement, we require that the HHA must submit all Medicare claims for all home health services included in section 1861(m) of the Act (including medical supplies described in section 1861(m)(5)) of the Act, but excluding DME to the extent provided for in such section), while the beneficiary is under the home health plan of care established by a physician and eligible for the home health benefit. The home health services included in consolidated billing are:

- Part-time or intermittent skilled nursing care.
- Part-time or intermittent home health aide services.
- Physical therapy.
- Speech-language pathology.
- Occupational therapy, medical social services.

• Routine and nonroutine medical supplies.
• A covered osteoporosis drug (as defined in section 1861(kk) of the Act- (not paid under PPS rate, see 1833(a)(2)(A)), but excluding other drugs and biologicals).
• Medical services provided by an intern or resident- in-training of the hospital, under an approved teaching program of the hospital in the case of an HHA that is affiliated or under common control with a hospital.
• Services at hospitals, SNFs, or rehabilitation centers when they involve equipment too cumbersome to bring to the home.

4. Effects of This Provision

HHAs will no longer be able to "unbundle" services to an outside supplier that can then submit a separate bill directly to the Part B carrier. Instead, the HHA itself will have to furnish the home health services (except DME) either directly or under an arrangement with an outside supplier in which the HHA itself, rather than the supplier, bills Medicare. With the exception of DME, the outside supplier must look to the HHA rather than to Medicare Part B for payment. Beneficiaries receiving DME prior to establishment of a home health plan of care, can continue the relationship with that same DME supplier. The consolidated billing requirement eliminates the potential for duplicative billings for the same services to the RHHI by the HHA and to the Part B carrier by an outside supplier. All covered home health services listed in section 1861(m) of the Act, (including medical supplies described in section 1861(m)(5) of the Act, but excluding DME to the extent provided in such section) ordered in the patient's plan of care must be billed by the HHA.

As discussed in the proposed rule published on October 28, 1999, the responsibility for consolidated billing moves to the transfer HHA. The consolidated billing requirement enhances the HHA's capacity to meet its existing responsibility to oversee and coordinate the Medicare- covered home health services that each of its patients receives.

Consistent with SNF PPS consolidated billing, the beneficiary exercises his or her freedom of choice for the entire home health benefit of services listed in section 1861(m) of the Act, including medical supplies described in section 1861(m)(5) of the Act, but excluding DME as a home health service by choosing the HHA. Once a home health patient chooses a particular HHA, he or she has clearly exercised freedom of choice with respect to all items and services included within the scope of the Medicare home health benefit (except DME). The HHA's consolidated billing role supersedes all other billing situations the beneficiary may wish to establish for home health services covered under the scope of the home health benefit during the certified episode.

Current law is silent regarding the specific terms of an HHA's payment to an outside supplier, and does not authorize the Medicare program to impose any requirements in this regard. We remain concerned, however, over the potential for the provision of unnecessary services, and will continue to evaluate approaches addressing this concern. One appropriate way to address any abusive practices would be through more vigorous enforcement of existing statutes and regulations (such as medical review procedures). Furthermore, since under current law, an HHA's relationship with its supplier is essentially a private contractual matter, the terms of the supplier's payment by the HHA must be arrived through direct negotiations between the two parties themselves. Accordingly, we believe that the most effective way for a supplier to address any concerns that it may have about the adequacy or timeliness of the HHA's payment would be for the supplier to ensure that any terms to which it agrees in such negotiations satisfactorily address those concerns. Finally, we note that matters relating to the enforcement of the statutory anti-kickback provisions lie exclusively within the purview of the Office of the Inspector General, and any questions or concerns in this area should be directed to the attention of that agency.

5. Effective Date for Consolidated Billing

The effective date for consolidated billing is October 1, 2000.

V. Provisions of the Final Rule

We are adopting the provisions of the proposed rule with the following revisions:

Section 409.43

We revised paragraph (c) to clarify that the request for anticipated payment for the initial percentage payment is not a Medicare claim under the Act and subject to the requirement that the physician sign the plan of care before the HHA bills for the initial percentage payment. The request for anticipated payment for the initial percentage episode payment may be based on verbal orders that are copied into the plan of care with the plan of care being immediately submitted to the physician. However, the requests for anticipated payments may be modified or withheld in order to protect Medicare program integrity. However, the final percentage payment is a claim subject to the current physician signature requirements. We revised current paragraph (c) governing physician signature of the plan of care. Specifically, paragraph (c)(1) of this section specifies, "If the physician signed plan of care is not available, the request for anticipated payment of the initial percentage payment must be based on—

• A physician's verbal order that—
++ Is recorded in the plan of care;
++ Includes a description of the patient's condition and the services to be provided by the home health agency;
++ Includes an attestation (relating to the physician's orders and the date received) signed and dated by the registered nurse or qualified therapist (as defined in 42 CFR 484.4) responsible for furnishing or supervising the ordered service in the plan of care; and
++ Is copied into the plan of care and the plan of care is immediately submitted to the physician; or
• A referral prescribing detailed orders for the services to be provided that is signed and dated by a physician."

In paragraph (c)(2) of this section, we specify that "HCFA has the authority to reduce or disapprove requests for anticipated payments in situations when protecting Medicare program integrity warrants this action. Since the request for anticipated payment is based on verbal orders as specified in paragraphs (c)(1)(i) and/or a prescribing referral as specified in (c)(1)(ii) of this section and is not a Medicare claim for purposes of the Act (although it is a "claim" for purposes of Federal, civil, criminal, and administrative law enforcement authorities, including but not limited to the Civil Monetary Penalties Law (as defined in 42 U.S.C. 1320a–7a (i) (2)), the Civil False Claims Act (as defined in 31 U.S.C. 3729(c)), and the Criminal False Claims Act (18 U.S.C. 287)), the request for anticipated payment will be canceled and recovered unless the claim is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the request for anticipated payment."

Paragraph (c)(3) of this section specifies that "The plan of care must be signed and dated—

• By a physician as described who meets the certification and recertification requirements of § 424.22 of this chapter and;

• Before the claim for each episode for services is submitted for the final percentage payment."

Paragraph (c)(4) of this section specifies that "Any changes in the plan must be signed and dated by a physician."

Section 409.43

We revised the paragraph (e) of this section to clarify that the plan of care must be reviewed by the physician at least every 60 days or more frequently when there is a beneficiary elected transfer, significant change in condition, or discharge and return to the same HHA during the same 60-day episode.

We also made a conforming change in paragraph (f) of this section regarding the termination of the plan of care by replacing "62-day" with "60-day." We amended this paragraph to specify that if specific services are not provided to the beneficiary at least once every 60-days, the plan of care is terminated unless the physician documents that the interval without this care is appropriate to the treatment of the beneficiary's condition.

Sections 409.100(a)(2), 410.150(b)(19), and 411.15(q)

We revised the regulations at §§ 409.100(a)(2), 410.150(b)(19), and 411.15(q) to conform to the BBRA revisions that eliminate DME from the consolidated billing requirements.

Section 413.64

We revised § 413.1(h) to clarify that durable medical equipment and the covered osteoporosis drug as defined in section 1861(m) of the Act are not included in the HHA PPS rate.

We deleted § 413.64(h)(2)(iv). This corresponds to our revision in the proposed rule to remove Part A and Part B home health services from § 413.64(h)(1). PIP is eliminated for home health services upon implementation of PPS.

Section 424.22

We are not adopting proposed paragraph (a)(1)(v) that would have required the physician to certify the correct HHRG.

Section 484.1(a)

We amended this section by adding a new paragraph (3) to include the provision under the Act that provides the basis for establishing the new prospective payment system for home health services covered under Medicare.

Section 484.18

We revised the paragraph (b) to clarify that the plan of care must be reviewed by the physician at least every 60 days or more frequently when there is a beneficiary elected transfer, significant change in condition, or discharge and return to the same HHA during the same 60-day episode.

Section 484.55

We revised paragraph (d)(1) to specify that the update to the comprehensive assessment is required the last five days of every 60 days beginning with the start of care date unless there is an applicable payment adjustment. This clarification parallels the current OASIS requirements governing the timeframe of the update.

Section 484.202

We amended this section by removing the term "clinical model" from the list of definitions because we did not use the term in this subpart.

Section 484.205

We revised paragraph (a)(1) and (b) to clarify that the PPS payments are based on a predetermined rate for a home health service previously paid on a reasonable cost basis and that the osteoporosis drug covered under the home health benefit is the only home health service listed in section 1861(m) of the Act that continues to be paid on a reasonable cost basis under PPS. The revised language will read, "The national 60-day episode payment represents payment in full for all costs associated with furnishing a home health service paid on a reasonable cost basis (except the osteoporosis drug listed in section 1861(m) of the Act as defined in section 1861(kk) of the Act) as of August 5, 1997 * * *"

We also clarify in paragraph (b) that all payments under this system must be subject to a medical review adjustment reflecting beneficiary eligibility, medical necessity determinations, and the HHRG assignment.

We added paragraphs (b)(1) and (b)(2) that provides for the requirements governing the final split percentage payment approach. New paragraph (b)(1) governs the split percentage payment approach for initial episodes. The initial percentage payment for initial episodes is paid at 60 percent of the case-mix and wage adjusted 60 day episode rate. The residual final payment for initial episodes is paid at 40 percent of the case-mix and wage adjusted 60 day episode rate. New paragraph (b)(2) governs the split percentage payment approach for subsequent episodes. The initial percentage payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60 day episode rate. The residual final payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60 day episode rate.

We revised paragraph (d) of this section to clarify that PEP adjustments do not apply in situations of transfer among HHAs of common ownership as defined in § 424.22. Those situations would be considered services provided under arrangement on behalf of the originating HHA by the receiving HHA with the common ownership interest for the balance of the 60-day episode. The common ownership exception to the transfer PEP adjustment does not apply if the beneficiary moves to a different MSA or Non-MSA during the 60-day episode before the transfer to the receiving HHA. The transferring HHA in situations of transfers among HHAs of common ownership not only serves as a billing agent, but must also exercise professional responsibility over the arranged-for services in order for services provided for under arrangements to be paid.

Section 484.215

We renamed the heading of section 484.215 to clarify that the calculation reflects the initial establishment of the PPS rates. Section 484.215 has been revised to read "Initial establishment of the calculation of the national 60-day episode payment." We revised paragraph (d)(4) to reflect the amounts that are added to the nonstandardized episode amount for the OASIS adjustment for the one time implementation costs associated with assessment scheduling form changes and amounts for Part B therapies that could have been unbundled to Part B prior to PPS implementation.

Section 424.220

We revised § 484.220 to specify that HCFA adjusts the national 60-day episode payment rate to account for geographic differences in wage levels using an appropriate wage index based on the site of the service for the beneficiary.

Section 484.225(c)

We revised paragraph (c) to reflect that for each of FYs 2002 *and* 2003 the rates are updated by the applicable home health market basket minus 1.1 percentage points.

Section 484.230

We revised the language in this section to reflect the higher per-visit amounts that will be used to calculate the LUPA payments. The amounts will be referred to as national per-visit amounts. We also clarified that the wage

index are based on the site of service for the beneficiary.

Section 484.235

We revised paragraph (b) to reflect the use of billable visit dates as the defining points for the PEP adjustment. The following phrase will be added to the end of the sentence, "* * * based on the first billable visit date through and including the last billable visit date."

Section 484.237

We revised paragraphs (b)(1) and (b)(2) governing the SCIC adjustment to reflect the use of billable visit dates to define the span of days used to calculate the proportional payments both before and after a patient experiences a significant change in condition. In §§ 484.237(b)(1) and (b)(2) we inserted the phrase "(the first billable visit date through and including the last billable visit date)" after the phrase "span of days."

Section 484.240

We revised paragraph (d) to reflect the higher per- visit amounts that will be used to calculate the imputed costs for each episode for outlier payment determination. The amounts are referred to as national per-visit amounts.

Section 484.245

We added new § 484.245 that sets forth the processes involving accelerated payment requests by an HHA under PPS if there is a delay by the intermediary in making payment.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, the requirements summarized below are currently approved as indicated by the appropriate OMB control number.

Section 409.43 Plan of Care Requirements

Section 409.43(c) states that a plan of care must be signed and dated by a physician and meets the certification and recertification requirements of § 424.22 of this chapter, before the episode claim for services is submitted for the final percentage payment. This provision also states that any changes in the plan must be signed and dated by the physician. The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

Section 409.43(e) states that a plan of care must be reviewed, signed, and dated by the physician who reviews the plan of care (as specified in § 409.42(b))in consultation with agency professional personnel at least every 60 days. The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

Section 424.22 Requirements for Home Health Services

Section 424.22(b) states that a recertification is required at least every 60 days, preferably at the time the plan is reviewed, and must be signed by the physician who reviews the plan of care. The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

Section 484.55 Comprehensive Assessment of Patients

Section 484.55 states that an HHA must update the comprehensive assessment by completing the appropriate OASIS schedule the last five days of every 60 days beginning with the start of care date unless there is a PEP adjustment or SCIC adjustment. The new requirement replaces the current language regarding "every second calendar month" with every 60 days." The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

Section 484.250 Patient Assessment Data.

Section 484.250 states that an HHA must submit OASIS data to HCFA as described at § 484.55(b)(1) and (d)(1) to administer the payment rate methodologies described in §§ 484.215, 484.230, 484.235, and 484.237. The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

VII. Regulatory Impact Analysis

Section 804(2) of title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets.

We estimate, based on a simulation model, that the redistributional effects on HHAs participating in the Medicare program associated with this final rule would range from a positive $428 million for freestanding not-for-profit agencies to a negative $363 million for freestanding for-profit agencies in FY 2001. Therefore, this rule, is a major rule as defined in Title 5, United States Code, section 804(2).

We have examined the impacts of this final rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, (Public Law 104–4), and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for

major rules with economically significant effects ($100 million or more annually). Section 1895(b)(3)(A)(i) of the Act requires that the total amounts payable under the HHA PPS be equal to the total amount that would have been paid if this system had not been in effect. Section 302 of the BBRA amends section 1895(b)(3)(A)(ii) of the Act and delays the application of a 15 percent reduction in HHA PPS payment amounts until 1 year after its implementation. Section 306 of the BBRA amends section 1895(b)(3)(B)(ii) of the Act to require the standard prospective payment amounts to be increased by a factor equal to the home health market basket minus 1.1 percentage points for each of FYs 2002 and 2003. In addition, for subsequent fiscal years, the law requires the rates to be increased by the applicable home health market basket index change. Thus, subject to these adjustments, the statutory construction of this final rule is budget neutral. However, we are aware that there would be a number of organizational accommodations that must be made by HHAs in order to make the transition from the cost-based/interim payment system environment to a prospective payment environment that would result in costs to these entities. On that basis, we are preparing this RIA.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any given year. We believe that the costs associated with this final rule that apply to these governmental sectors would fall below this threshold. Therefore, the law does not apply and we have not prepared an assessment of anticipated costs and benefits of this final rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most HHAs are considered small entities, either by nonprofit status or by having revenues of $5 million or less annually.

Table 10 illustrates the distribution of HHAs by provider type participating in Medicare as of March 16, 2000.

TABLE 10.—NUMBER OF HHAS BY PROVIDER TYPE

HHA Provider Type	Number of HHAs
Visiting Nurse Association	451
Combination of Government & Voluntary	35
Official Health Agency	910
Rehabilitation Facility Based	0
Hospital Based	2,278
Skilled Nursing Facility Based	161
Other	3,801
Total	7,636

Source: HCFA—On Line Survey Certification and Reporting System Standard Report 10—March 16, 2000.

The following RIA/RFA analysis, together with the rest of this preamble, explains the rationale for and purposes of this final rule.

A. Background

This final rule establishes requirements for the new prospective payment system for home health agencies as required by section 4603 of the Balanced Budget Act of 1997, as amended by section 5101 of OCESAA and sections 302, 305, and 306 of BBRA. The requirements include the implementation of a prospective payment system for home health agencies and a number of other related changes. The prospective payment system described in this rule would replace the retrospective reasonable cost-based system currently used by Medicare for the payment of home health services under Part A and Part B. This final rule sets forth a prospective payment system for all costs of home health services under section 1895 of the Act.

B. Revisions to the Proposed Rule

Below are listed a number of the significant changes to the proposed rule that are reflected in the final rule.

Section 409.100

Section 305 of the BBRA excludes DME covered as a home health service from the consolidated billing requirements. Specifically, the law requires, "in the case of home health services (including medical supplies described in section 1861(m)(5), but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who (at the time the item or service is furnished) is under the plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise)."

However, under HHA PPS there is a separate payment for DME items and services currently provided as a home health service and paid under the DME fee schedule. As discussed earlier, under the HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule. Further, in accordance with the statue, as amended by section 305 of BBRA, DME is also excluded from the consolidated billing requirements. A separate payment amount in addition to the prospective payment amount for home health services will be made for DME currently covered as a home health service under the PPS.

HHAs will no longer be able to "unbundle" home health services (other than DME) to an outside supplier that can then submit a separate bill directly to the Part B carrier or DMERC. Instead, the HHA itself will have to furnish the home health services (except DME) either directly or under an arrangement with an outside supplier in which the HHA itself, rather than the supplier, bills Medicare. The outside supplier must look to the HHA rather than to Medicare Part B for payment, except in the case of DME. Beneficiaries receiving DME prior to establishment of a home health plan of care can continue the relationship with that same DME supplier. The consolidated billing requirement eliminates the potential for duplicative billings for the same services to the RHHI by the HHA and to the Part B carrier by an outside supplier. All covered home health services listed in section 1861(m) (including medical supplies described in section 1861(m)(5), but excluding DME to the extent provided in such section) of the Act under a plan of care must be billed by the HHA.

Section 484.205

- We revised paragraph (a)(1) and (b) to clarify that the osteoporosis drug covered under the home health benefit is the only home health service listed in section 1861(m) of the Act that continues to be paid on a reasonable cost basis under PPS.
- We added paragraphs (b)(1) and (b)(2) that provides for the requirements governing the final split percentage payment approach. New paragraph (b)(1) governs the split percentage payment approach for initial episodes. The initial percentage payment for initial episodes is paid at 60 percent of the case-mix and wage adjusted 60 day episode rate. The residual final payment for initial episodes is paid at 40 percent

of the case-mix and wage adjusted 60 day episode rate. New paragraph (b)(2) governs the split percentage payment approach for subsequent episodes. The initial percentage payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60 day episode rate. The residual final payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60 day episode rate.

Section 484.215

We revised paragraph (d)(4) to reflect the amounts that are added to the nonstandardized episode amount for the OASIS adjustment for the one time implementation costs associated with assessment scheduling form changes and amounts for Part B therapies that could have been unbundled to Part B prior to PPS implementation.

Section 484.225

We revised paragraph (c) to reflect that for each of FYs 2002 and 2003 the rates are updated by the applicable home health market basket minus 1.1 percentage points.

Section 484.230

We revised the language in this section to reflect the higher per-visit amounts that will be used to calculate the LUPA payments.

Section 484.235

We revised paragraph (b) to reflect the use of billable visit dates as the defining points for the PEP adjustment.

Section 484.237

We revised paragraphs (b)(1) and (b)(2) governing the SCIC adjustment to reflect the use of billable visit dates to define the span of days used to calculate the proportional payments both before and after a patient experiences a significant change in condition.

Section 484.240

We revised paragraph (d) to reflect the higher per-visit amounts that will be used to calculate the imputed costs for each episode for outlier payment determination.

C. Effects of This Final Rule

Section 1895(b)(3)(A)(i) of the Act requires the computation of a standard prospective payment amount to be initially based on the most recent audited cost-report data available to the Secretary. In accordance with this section of the Act, the primary data source in developing the cost basis for the 60-day episode payments was the audited cost- report sample of HHAs whose cost reporting periods ended in fiscal year 1997 (that is, ending on or after October 1, 1996 through September 30, 1997). We also adopted the most current complete utilization data available from 1998.

Table 11 below illustrates the proportion of HHAs that are likely to be affected. This table reflects how agencies would be paid under PPS versus how they would be paid under IPS. The limits under IPS were determined by updating the per-visit limits in effect for FY 2000 by the market basket minus 1.1 percent and updating each agency's per-beneficiary cap for FY 2000 by this same percentage. For each agency in the audited cost report data set, we updated their costs from FY 1997 to FY 2001 by our best estimate of HHA cost increases during this period. We then compared each agency's FY 2001 costs to the IPS limits to determine their IPS payment in FY 2001. To determine each agency's payment under PPS, we translated the cost report data into 60-day episodes and used the average case-mix for urban/rural and provider type as a proxy. We extrapolated the audited cost report data to reflect the total Medicare HHA distribution. We obtained average case-mix values based on the type of provider and whether the HHA was urban or rural from the Abt data set. We then multiplied the agency's expected number of episodes in FY 2001 by the wage-adjusted and case-mix- adjusted episode payment to obtain the agency's expected PPS payment. The PPS payment was then compared to the IPS payment.

TABLE 11.—IMPACT OF THE HOME HEALTH PROSPECTIVE PAYMENT AMOUNTS ON HOME HEALTH AGENCIES BY TYPE AND LOCATION FOR THE 563 AUDITED COST REPORT SAMPLE AGENCIES

Type of agency	Percentage change from IPS to PPS
All Agencies	0.0
By Urban/Rural and Provider Type:	
Rural:	
Freestanding: For-Profit	−7.50
Governmental	29.98
Non-Profit	13.28
Provider Based	5.31
Urban:	
Freestanding: For-Profit	−14.25
Governmental	20.58
Non-Profit	18.89
Provider Based	−2.50
By Provider Type:	
Freestanding: For-Profit	−12.77
Governmental	26.50
Non-Profit	17.88
Provider Based	−1.03
By Urban/Rural:	
Rural Agencies	5.94
Urban Agencies	−0.08
By Region:	
Midwest States	14.77
Northeast States	15.37
Southern States	−16.75
Western States	17.84

Table 11 represents the projected effects of the HHA PPS and is based on the 563 providers in the audited cost-report sample weighted to the national total of HHAs. This sample has been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost-reporting periods for the data contained in the database and September 30, 2001.

This impact table compares the effect on categories of HHAs in moving from the IPS payment methodology to the PPS payment methodology. These cost limits have already had the effect of reducing many extremes in the cost of the system; therefore, as a result of IPS, a majority of HHA providers are currently held at the median national cost per-beneficiary or below. It should be noted that HHAs will have had 2 or more years experience under this system before PPS implementation. The effect of IPS payment restraint combined with the improvements in this final rule have significantly reduced the degree of variation between providers and regions as well as the overall impact of the rule. Because we believe it was important that the impact tables provide the most accurate representation possible, it was necessary for us to use the data set drawn upon from the audited cost report file. This file of course is nationally representative and these data become decreasingly valid when divided into smaller geographic areas. Thus, the lowest level of analysis we could reasonably provide using this data is the four census regions. Any finer level of analysis would introduce a level of statistical error that we believe would be unacceptable.

Column one of this table divides HHAs by a number of characteristics including provider type, region, and urban versus rural location. For purposes of this impact table four regions have been defined: Northeast, South, Midwest, and West. The Northeast Region consists of Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands. The South Region consists of Alabama, Arkansas, the District of Columbia, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The Midwest Region consists of Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, South Dakota, and Wisconsin. The West Region consists of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

Column two shows the percentage change in Medicare payments a particular category of HHAs would experience in moving from the IPS payment methodology to the final PPS payment methodology. Because the statute requires aggregate payments under the HHA PPS and HHA IPS payment methodology to be budget neutral, the effect on agencies in the aggregate is zero.

Rural freestanding for-profit HHAs experience an 7.50 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. Rural freestanding governmental HHAs experience an 29.98 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Rural freestanding nonprofit HHAs experience an 13.28 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Rural provider-based HHAs, in the aggregate, experience an 5.31 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Rural agencies, in the aggregate, experience an 5.94 percent increase in moving from the IPS payment methodology to the PPS payment methodology.

Urban freestanding for-profit HHAs experience an 14.25 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. Urban freestanding governmental HHAs experience an 20.58 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Urban freestanding nonprofit HHAs experience an 18.89 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Urban provider-based HHAs, in the aggregate, experience an 2.50 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. Urban agencies, in the aggregate, experience an 0.08 percent decrease in moving from the IPS payment methodology to the PPS payment methodology.

The current IPS cost limits have been criticized as providing better financial treatment of urban providers relative to rural providers. The HHA PPS system, which is based on patient characteristics, tends to level the playing field; thus, rural providers, in general, fare relatively better than urban providers. The largest impact on urban providers is in the urban freestanding for-profit category where it can be argued that historical costs have been disproportionately high compared to other providers for reasons unrelated to the relative needs of the patients they serve.

Freestanding for-profit HHAs, in the aggregate, experience an 12.77 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. Freestanding governmental HHAs, in the aggregate, experience an 26.50 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Freestanding nonprofit HHAs, in the aggregate, experience an 17.88 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Provider-based HHAs, in the aggregate, experience an 1.03 percent decrease in moving from the IPS payment methodology to the PPS payment methodology.

It should be noted that governmental providers fare relatively better under the HHA PPS system than other types of providers. In part, this is because the HHA PPS system is driven primarily by the needs of patients rather than utilization incentives. Thus, governmental providers are less affected by the IPS payment methodology because their costs have been historically lower and visit utilization per episode is much lower. On average, governmental agencies have reported lower average costs per visit as well as fewer visits per episode. It should be noted that this category of HHAs accounts for only 3.8 percent of total home health expenditures and, therefore, the large increase attributed to them has little impact in the aggregate system costs.

Provider-based agencies historically tended to have, as a group, higher per-visit costs. As could be anticipated, the payment differential reflected in this impact table for provider-based agencies is in a negative direction, but relatively modest, probably due to the cost discipline already in place due to IPS.

HHAs in the Midwest region experience an 14.77 percent increase in moving from the IPS payment methodology to the PPS payment methodology. HHAs in the Northeast region experience an 15.37 percent increase in moving from the IPS payment methodology to the PPS payment methodology. HHAs in the South region experience an 16.75 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. HHAs in the West region experience an 17.84 percent increase in moving from the IPS

payment methodology to the PPS payment methodology.

We would have preferred to provide an impact table with more regions; however, the limitations of our data prevented us from obtaining provider data at a lower level than the four major regions. However, this regional breakdown does reflect what one might expect in moving from our current IPS cost limitations payment methodology to a national PPS payment methodology. Medicare payments have historically varied by region without regard to the relative needs/conditions of patients; therefore, that region that had the highest unexplained costs for home health services is the most impacted area (South region). In contrast, the Midwest, Northeast, and West regions fare relatively well by comparison. It must be noted that in a payment methodology system that is legislatively required to achieve budget neutrality, any effort to increase payments to those regions more affected by a national payment system necessarily results in a reduction of payments to those regions that have historically restrained costs under home health.

It should be noted that to the degree that agencies respond to the incentives of the prospective payment system and apply resources commensurate with the measured characteristics of their patients, the impacts predicted in this model will further be reduced.

D. Rural Hospital Impact Statement

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We have not prepared a rural impact statement since we have determined, and the Secretary certifies, that this rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that this final rule would not have substantial direct effects on the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

A. Amend part 409 as set forth below:

1. Revise the authority citation for part 409 to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Amend § 409.43 as follows:

A. Revise paragraphs (c) and (e).

B. Amend paragraph (f) by removing the phrase "62-day" and adding in its place the phrase "60-day."

§ 409.43 Plan of care requirements.

* * * * *

(c) *Physician signature.* (1) *Request for Anticipated payment signature requirements.* If the physician signed plan of care is not available at the time the HHA requests an anticipated payment of the initial percentage prospective payment in accordance with § 484.205, the request for the anticipated payment must be based on—

(i) A physician's verbal order that—

(A) Is recorded in the plan of care;

(B) Includes a description of the patient's condition and the services to be provided by the home health agency;

(C) Includes an attestation (relating to the physician's orders and the date received) signed and dated by the registered nurse or qualified therapist (as defined in 42 CFR 484.4) responsible for furnishing or supervising the ordered service in the plan of care; and

(D) Is copied into the plan of care and the plan of care is immediately submitted to the physician; or

(ii) A referral prescribing detailed orders for the services to be rendered that is signed and dated by a physician.

(2) *Reduction or disapproval of anticipated payment requests.* HCFA has the authority to reduce or disapprove requests for anticipated payments in situations when protecting Medicare program integrity warrants this action. Since the request for anticipated payment is based on verbal orders as specified in paragraph (c)(1)(i) and/or a prescribing referral as specified in (c)(1)(ii) of this section and is not a Medicare claim for purposes of the Act (although it is a "claim" for purposes of Federal, civil, criminal, and administrative law enforcement authorities, including but not limited to the Civil Monetary Penalties Law (as defined in 42 U.S.C. 1320a–7a (i) (2)), the Civil False Claims Act (as defined in 31 U.S.C. 3729(c)), and the Criminal False Claims Act (18 U.S.C. 287)), the request for anticipated payment will be canceled and recovered unless the claim is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the request for anticipated payment.

(3) *Final percentage payment signature requirements.* The plan of care must be signed and dated—

(i) By a physician as described who meets the certification and recertification requirements of § 424.22 of this chapter; and

(ii) Before the claim for each episode for services is submitted for the final percentage prospective payment.

(4) *Changes to the plan of care signature requirements.* Any changes in the plan must be signed and dated by a physician.

* * * * *

(e) *Frequency of review.* (1) The plan of care must be reviewed by the physician (as specified in § 409.42(b)) in consultation with agency professional personnel at least every 60 days or more frequently when there is a—

(i) Beneficiary elected transfer;

(ii) Significant change in condition resulting in a change in the case-mix assignment; or

(iii) Discharge and return to the same HHA during the 60-day episode.

(2) Each review of a beneficiary's plan of care must contain the signature of the

physician who reviewed it and the date of review.

* * * * *

3. In § 409.100, revise paragraph (a) to read as follows:

§ 409.100 To whom payment is made.

(a) *Basic rule.* Except as provided in paragraph (b) of this section—

(1) Medicare pays hospital insurance benefits only to a participating provider.

(2) For home health services (including medical supplies described in section 1861(m)(5) of the Act, but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA, payment is made to the HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

* * * * *

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

B. Amend part 410 as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.150, republish the introductory text to paragraph (b) and add new paragraph (b)(19) to read as follows:

§ 410.150 To whom payment is made.

* * * * *

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

* * * * *

(19) To a participating HHA, for home health services (including medical supplies described in section 1861(m)(5) of the Act, but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

C. Amend part 411 as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 411.15, republish the introductory text to the section, and add a new paragraph (q) to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage:

* * * * *

(q) A home health service (including medical supplies described in section 1861(m)(5) of the Act, but excluding durable medical equipment to the extent provided for in such section) as defined in section 1861(m) of the Act furnished to an individual who is under a plan of care of an HHA, unless that HHA has submitted a claim for payment for such services.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

D. Amend part 413 as set forth below:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a),(i) and (n), 1861(v), 1871, 1881, 1883, and 1866 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a),(i) and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.1, add a new paragraph (h) to read as follows:

§ 413.1 Introduction.

* * * * *

(h) *Payment for services furnished by HHAs.* The amount paid for home health services as defined in section 1861(m) of the Act (except durable medical equipment and the covered osteoporosis drug as provided for in that section) that are furnished beginning on or after October 1, 2000 to an eligible beneficiary under a home health plan of care is determined according to the prospectively determined payment rates for HHAs set forth in part 484, subpart E of this chapter.

§ 413.64 [Amended]

3. Amend § 413.64 by:

A. Amending paragraph (h)(1) to remove the phrase "and for both Part A and Part B HHA services" at the end of the paragraph.

B. Removing paragraph (h)(2)(iv) and redesignating paragraphs (h)(2)(v) and (h)(2)(vi) as paragraphs (h)(2)(iv) and (h)(2)(v) respectively.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

E. Amend part 424 as set forth below:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh).

2. In § 424.22, revise paragraph (b)(1) to read as follows:

§ 424.22 Requirements for home health services.

* * * * *

(b) *Recertification.* (1) *Timing and signature of recertification.* Recertification is required at least every 60 days, preferably at the time the plan is reviewed, and must be signed by the physician who reviews the plan of care. The recertification is required at least every 60 days when there is a—

(i) Beneficiary elected transfer; or

(ii) Discharge and return to the same HHA during the 60-day episode.

* * * * *

PART 484—HOME HEALTH SERVICES

F. Amend part 484 as set forth below:

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh), unless otherwise indicated.

2. Revise the heading for part 484 to read as set forth above.

3. Add a new paragraph (a)(3) to § 484.1 to read as follows:

§ 484.1 Basis and scope.

(a) *Basis and scope.* * * *

(3) Section 1895 provides for the establishment of a prospective payment system for home health services covered under Medicare.

* * * * *

§ 484.18 [Amended]

4. In § 484.18, in paragraph (b), remove the phrase "62 days" and in its place add the phrase "60 days or more frequently when there is a beneficiary elected transfer; a significant change in condition resulting in a change in the case-mix assignment; or a discharge and return to the same HHA during the 60-day episode."

5. In § 484.55, revise paragraph (d)(1) to read as follows:

§ 484.55 Condition of participation: Comprehensive assessment of patients.

* * * * *

(d) *Standard: Update of the comprehensive assessment.*

* * * * *

(1) The last five days of every 60 days beginning with the start-of-care date, unless there is a—

(i) Beneficiary elected transfer;

(ii) Significant change in condition resulting in a new case-mix assignment; or

(iii) Discharge and return to the same HHA during the 60-day episode.

* * * * *

6. Add and reserve a new subpart D.

7. Add a new subpart E to read as follows:

Subpart E—Prospective Payment System for Home Health Agencies

Sec.

484.200 Basis and scope.
484.202 Definitions.
484.205 Basis of payment.
484.210 Data used for the calculation of the national prospective 60-day episode payment.
484.215 Initial establishment of the calculation of the national 60-day episode payment.
484.220 Calculation of the national adjusted prospective 60-day episode payment rate for case-mix and area wage levels.
484.225 Annual update of the national adjusted prospective 60-day episode payment rate.
484.230 Methodology used for the calculation of the low-utilization payment adjustment.
484.235 Methodology used for the calculation of the partial episode payment adjustment.
484.237 Methodology used for the calculation of the significant change in condition payment adjustment.
484.240 Methodology used for the calculation of the outlier payment.
484.245 Accelerated payments for home health agencies.
484.250 Patient assessment data.
484.260 Limitation on review.

Subpart E—Prospective Payment System for Home Health Agencies

§ 484.200 Basis and scope.

(a) *Basis.* This subpart implements section 1895 of the Act, which provides for the implementation of a prospective payment system (PPS) for HHAs for portions of cost reporting periods occurring on or after October 1, 2000.

(b) *Scope.* This subpart sets forth the framework for the HHA PPS, including the methodology used for the development of the payment rates, associated adjustments, and related rules.

§ 484.202 Definitions.

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the clinical model.

Discipline means one of the six home health disciplines covered under the Medicare home health benefit (skilled nursing services, home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

Home health market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in home health services.

§ 484.205 Basis of payment.

(a) *Method of payment.* An HHA receives a national prospective 60-day episode payment of a predetermined rate for a home health service previously paid on a reasonable cost basis (except the osteoporosis drug defined in section 1861(kk) of the Act) as of August 5, 1997. The national 60-day episode payment is determined in accordance with § 484.215. The national prospective 60-day episode payment is subject to the following adjustments and additional payments:

(1) A low-utilization payment adjustment (LUPA) of a predetermined per-visit rate as specified in § 484.230.

(2) A partial episode payment (PEP) adjustment due to an intervening event defined as a beneficiary elected transfer or a discharge and return to the same HHA during the 60-day episode, that warrants a new 60-day episode payment during an existing 60-day episode, that initiates the start of a new 60-day episode payment and a new physician certification of the new plan of care. The PEP adjustment is determined in accordance with § 484.235.

(3) A significant change in condition (SCIC) payment adjustment due to the intervening event defined as a significant change in the patient's condition during an existing 60-day episode. The SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. The SCIC adjustment is determined in accordance with § 484.237.

(4) An outlier payment is determined in accordance with § 484.240.

(b) *Episode payment.* The national prospective 60-day episode payment represents payment in full for all costs associated with furnishing home health services previously paid on a reasonable cost basis (except the osteoporosis drug listed in section 1861(m) of the Act as defined in section 1861(kk) of the Act) as of August 5, 1997 unless the national 60-day episode payment is subject to a low-utilization payment adjustment set forth in § 484.230, a partial episode payment adjustment set forth at § 484.235, a significant change in condition payment set forth at § 484.237, or an additional outlier payment set forth in § 484.240. All payments under this system may be subject to a medical review adjustment reflecting beneficiary eligibility, medical necessity determinations, and HHRG assignment. DME provided as a home health service as defined in section 1861(m) of the Act continues to be paid the fee schedule amount.

(1) *Split percentage payment for initial episodes.* The initial percentage payment for initial episodes is paid to an HHA at 60 percent of the case-mix and wage adjusted 60-day episode rate. The residual final payment for initial episodes is paid at 40 percent of the case-mix and wage adjusted 60-day episode rate. Split percentage payments are made in accordance with requirements at § 409.43(c) of this chapter.

(2) *Split percentage payment for subsequent episodes.* The initial percentage payment for subsequent episodes is paid to an HHA at 50 percent of the case-mix and wage adjusted 60-day episode rate. The residual final payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60-day episode rate. Split percentage payments are made in accordance with requirements at § 409.43(c) of this chapter.

(c) *Low-utilization payment.* An HHA receives a national 60-day episode payment of a predetermined rate for home health services previously paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines at the end of the 60-day episode that the HHA furnished minimal services to a patient during the 60-day episode. A low-utilization payment adjustment is determined in accordance with § 484.230.

(d) *Partial episode payment adjustment.* An HHA receives a national 60-day episode payment of a predetermined rate for home health services previously paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event, defined as a beneficiary elected transfer, or discharge and return to the same HHA during a 60-day episode, warrants a new 60-day episode payment. The PEP adjustment would not apply in situations of transfers among HHAs of common ownership as defined in § 424.22 of this chapter. Those situations would be considered services provided under arrangement on behalf

of the originating HHA by the receiving HHA with the common ownership interest for the balance of the 60-day episode. The common ownership exception to the transfer PEP adjustment does not apply if the beneficiary moves to a different MSA or Non-MSA during the 60-day episode before the transfer to the receiving HHA. The transferring HHA in situations of common ownership not only serves as a billing agent, but must also exercise professional responsibility over the arranged-for services in order for services provided under arrangements to be paid. The discharge and return to the same HHA during the 60-day episode is only recognized in those circumstances when a beneficiary reached the goals in the original plan of care. The original plan of care must have been terminated with no anticipated need for additional home health services for the balance of the 60-day episode. If the intervening event warrants a new 60-day episode payment and the new physician certification of a new plan of care, the initial HHA receives a partial episode payment adjustment reflecting the length of time the patient remained under its care. A partial episode payment adjustment is determined in accordance with § 484.235.

(e) *Significant change in condition adjustment.* The HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event defined as a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care occurred. In order to receive a new case-mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care. The total significant change in condition payment adjustment is a proportional payment adjustment reflecting the time both prior and after the patient experienced a significant change in condition during the 60-day episode. A SCIC adjustment is determined in accordance with § 484.237.

(f) *Outlier payment.* An HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis as of August 5, 1997, unless the imputed cost of the 60-day episode exceeds a threshold amount. The outlier payment is defined to be a proportion of the imputed costs beyond the threshold. An outlier payment is a payment in addition to the national 60-day episode payment. The total of all outlier payments is limited to 5 percent of total outlays under the HHA PPS. An outlier payment is determined in accordance with § 484.240.

§ 484.210 Data used for the calculation of the national prospective 60-day episode payment.

To calculate the national prospective 60-

day episode payment, HCFA uses the following:

(a) Medicare cost data on the most recent audited cost report data available.

(b) Utilization data based on Medicare claims.

(c) An appropriate wage index to adjust for area wage differences.

(d) The most recent projections of increases in costs from the HHA market basket index.

(e) OASIS assessment data and other data that account for the relative resource utilization for different HHA Medicare patient case-mix.

§ 484.215 Initial establishment of the calculation of the national 60-day episode payment.

(a) *Determining an HHA's costs.* In calculating the initial unadjusted national 60-day episode payment applicable for a service furnished by an HHA using data on the most recent available audited cost reports, HCFA determines each HHA's costs by summing its allowable costs for the period. HCFA determines the national mean cost per visit.

(b) *Determining HHA utilization.* In calculating the initial unadjusted national 60-day episode payment, HCFA determines the national mean utilization for each of the six disciplines using home health claims data.

(c) *Use of the market basket index.* HCFA uses the HHA market basket index to adjust the HHA cost data to reflect cost increases occurring between October 1, 1996 through September 30, 2001.

(d) *Calculation of the unadjusted national average prospective payment amount for the 60-day episode.* HCFA calculates the unadjusted national 60-day episode payment in the following manner:

(1) By computing the mean national cost per visit.

(2) By computing the national mean utilization for each discipline.

(3) By multiplying the mean national cost per visit by the national mean utilization summed in the aggregate for the six disciplines.

(4) By adding to the amount derived in paragraph (d)(3) of this section, amounts for nonroutine medical supplies, an OASIS adjustment for estimated ongoing reporting costs, an OASIS adjustment for the one time implementation costs associated with assessment scheduling form changes and amounts for Part B therapies that could have been unbundled to Part B prior to October 1, 2000. The resulting amount is the unadjusted national 60-day episode rate.

(e) *Standardization of the data for variation in area wage levels and case-mix.* HCFA standardizes—

(1) The cost data described in paragraph (a) of this section to remove the effects of geographic variation in wage levels and variation in case-mix;

(2) The cost data for geographic variation in wage levels using the hospital wage index; and

(3) The cost data for HHA variation in case-mix using the case-mix indices and other data that indicate HHA case- mix.

§ 484.220 Calculation of the adjusted national prospective 60-day episode payment rate for case-mix and area wage levels.

HCFA adjusts the national prospective 60-day episode payment rate to account for—

(a) HHA case-mix using a case-mix index to explain the relative resource utilization of different patients; and

(b) Geographic differences in wage levels using an appropriate wage index based on the site of service of the beneficiary.

§ 484.225 Annual update of the unadjusted national prospective 60-day episode payment rate.

(a) HCFA updates the unadjusted national 60-day episode payment rate on a fiscal year basis.

(b) For fiscal year 2001, the unadjusted national 60-day episode payment rate is adjusted using the latest available home health market basket index factors.

(c) For fiscal years 2002 and 2003, the unadjusted national prospective 60-day episode payment rate is updated by a factor equal to the applicable home health market basket minus 1.1 percentage points.

(d) For subsequent fiscal years, the unadjusted national rate is equal to the rate for the previous fiscal year increased by the applicable home health market basket index amount.

§ 484.230 Methodology used for the calculation of the low-utilization payment adjustment.

An episode with four or fewer visits is paid the national per-visit amount by

discipline updated annually by the applicable market basket for each visit type. The national per-visit amount is determined by using cost data set forth in § 484.210(a) and adjusting by the appropriate wage index based on the site of service for the beneficiary.

§ 484.235 Methodology used for the calculation of the partial episode payment adjustment.

(a) HCFA makes a PEP adjustment to the original 60-day episode payment that is interrupted by an intervening event described in § 484.205(d).

(b) The original 60-day episode payment is adjusted to reflect the length of time the beneficiary remained under the care of the original HHA based on the first billable visit date through and including the last billable visit date.

(c) The partial episode payment is calculated by determining the actual days served by the original HHA as a proportion of 60 multiplied by the initial 60-day episode payment.

§ 484.237 Methodology used for the calculation of the significant change in condition payment adjustment.

(a) HCFA makes a SCIC payment adjustment to the original 60-day episode payment that is interrupted by the intervening event defined in § 484.205(e).

(b) The SCIC payment adjustment is calculated in two parts.

(1) The first part of the SCIC payment adjustment reflects the adjustment to the level of payment prior to the significant change in the patient's condition during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days (the first billable visit date through and including the last billable visit date) prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode amount.

(2) The second part of the SCIC payment adjustment reflects the adjustment to the level of payment after the significant change in the patient's condition occurs during the 60-day episode. The second part of the SCIC adjustment is calculated by using the span of days (the first billable visit date through and including the last billable visit date) through the balance of the 60-day episode.

(c) The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the total SCIC adjustment determined at the end of the 60-day episode.

§ 484.240 Methodology used for the calculation of the outlier payment.

(a) HCFA makes an outlier payment for an episode whose estimated cost exceeds a threshold amount for each case-mix group.

(b) The outlier threshold for each case-mix group is the episode payment amount for that group, the PEP adjustment amount for the episode or the total significant change in condition adjustment amount for the episode plus a fixed dollar loss amount that is the same for all case-mix groups.

(c) The outlier payment is a proportion of the amount of estimated cost beyond the threshold.

(d) HCFA imputes the cost for each episode by multiplying the national per-visit amount of each discipline by the number of visits in the discipline and computing the total imputed cost for all disciplines.

(e) The fixed dollar loss amount and the loss sharing proportion are chosen so that the estimated total outlier payment is no more than 5 percent of total payment under home health PPS.

§ 484.245 Accelerated payments for home health agencies.

(a) *General rule.* Upon request, an accelerated payment may be made to an HHA that is receiving payment under the home health prospective payment system if the HHA is experiencing financial difficulties because there is a delay by the intermediary in making payment to the HHA.

(b) *Approval of payment.* An HHA's request for an accelerated payment must be approved by the intermediary and HCFA.

(c) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(d) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as HHA bills are processed or by direct payment by the HHA.

§ 484.250 Patient assessment data.

An HHA must submit to HCFA the OASIS data described at § 484.55(b)(1) and (d)(1) in order for HCFA to administer the payment rate methodologies described in §§ 484.215, 484.230, 484.235, and 484.237.

§ 484.260 Limitation on review.

An HHA is not entitled to judicial or administrative review under sections 1869 or 1878 of the Act, or otherwise, with regard to the establishment of the payment unit, including the national 60-day prospective episode payment rate, adjustments and outlier payments. An HHA is not entitled to the review regarding the establishment of the transition period, definition and application of the unit of payments, the computation of initial standard prospective payment amounts, the establishment of the adjustment for outliers, and the establishment of case-mix and area wage adjustment factors.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 19, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 22, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–16432 Filed 6–28–00; 2:00 pm]

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Federal Register

Monday,
July 3, 2000

Part III

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Kansas; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–OW–6721–3]

RIN 2040–ZA00

Water Quality Standards for Kansas

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing water quality standards for the State of Kansas. If promulgated as final standards, they would supersede aspects of Kansas's water quality standards that EPA disapproved in 1998. In furtherance of EPA's 1998 disapproval action, EPA is proposing: that all discharges to stream segments for which continuous flow is sustained primarily through the discharge of treated effluent shall protect the States' designated uses; 7Q10, 4B3, or other scientifically defensible design flows approved by EPA shall be used to implement the State's chronic aquatic life criteria; 1Q10, 1B3, or other scientifically defensible design flows approved by EPA shall be used to implement the State's acute aquatic life criteria; implementation procedures for use when applying the States' antidegradation policy to determine whether to allow a lowering of surface water quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water; an aquatic life use for one stream segment and a primary contact recreation use for 1,292 stream segments and 164 lakes.

In addition, under its discretionary authority to address State standards that the Administrator determines are inconsistent with the Clean Water Act, EPA is proposing: that water quality standards in Kansas apply to all privately owned surface waters in Kansas that are waters of the U.S.; and numeric human health criteria for alpha- and beta-endosulfan.

DATES: EPA will accept public comments on this proposed rule until September 1, 2000. Comments postmarked after this date may not be considered. On July 27, 2000, EPA is holding two public hearings on today's proposed water quality standards for Kansas.

ADDRESSES: An original plus 2 copies, and if possible an electronic version of comments either in WordPerfect or ASCII format, should be addressed to Ann Jacobs at *jacobs.ann@epa.gov* or at U.S. EPA Region VII, Water Resources Protection Branch, 901 North 5th Street, Kansas City, Kansas 66101.

The public hearings will be held in the Ballroom of the Days Inn at 914 S.E. Madison in Topeka, Kansas. The first is scheduled for 2:30–5:30 p.m. (CDT), and the second for 7–9 p.m. (CDT).

The administrative record for today's proposed rule is available for public inspection at EPA Region VII, Regional Records Center, 901 North 5th Street, Kansas City, Kansas 66101, between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ann Jacobs at *jacobs.ann@epa.gov* or at U.S. EPA Region VII, Water Resources Protection Branch, 901 North 5th Street, Kansas City, Kansas 66101 (Telephone: 913–551–7930).

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I. Potentially Affected Entities

Citizens concerned with water quality in Kansas may be interested in this proposed rulemaking. Entities discharging pollutants to waters of the United States in Kansas could be indirectly affected by this proposed rulemaking since water quality standards are used in determining water quality-based National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may indirectly be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Kansas.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Kansas.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. What Are the Statutory and Regulatory Requirements That Are Relevant to This Action?

Under section 303(c) of the Clean Water Act (CWA), 33 U.S.C. 1313(c), States and Tribes are required to develop water quality standards for waters of the United States within their jurisdiction. Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State water quality standards to include the designated use or uses to be made of the water, the criteria necessary to protect those uses, and an antidegradation policy. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c). States are required to submit the results of these triennial reviews to EPA. EPA is to approve or disapprove any new or revised standards. States may include in their standards policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are subject to EPA review and approval. See 40 CFR 131.6(f), 40 CFR 131.13. Section 303(c)(4) of the CWA authorizes EPA to promulgate water quality standards when necessary to supersede disapproved State water quality standards, or in any case where the Administrator determines that new or revised standards are necessary to meet the requirements of the CWA.

B. What Actions Have Kansas and EPA Taken Leading to Today's Action?

On October 31, 1994, Kansas submitted a complete set of water quality standards to EPA for review and approval. In a February 19, 1998, letter from U. Gale Hutton, Region VII Director of the Water, Wetlands and Pesticides Division, to Gary R. Mitchell, Secretary of the Kansas Department of Health and Environment (KDHE), EPA reviewed and approved in part and disapproved in part all of the State's new or revised standards. Specifically, EPA's letter of February 19, 1998, (hereafter EPA's 1998 disapproval letter or EPA's 1998 action) disapproved the following provisions of Kansas' 1994 water quality standards:

- The State's antidegradation policy to the extent that it applied to protections for so-called Tier 3 waters;
- Provisions governing discharges from waste stabilization ponds;
- Disinfection requirements;
- Provisions addressing the adoption of water quality criteria for the protection of the State's domestic water supply use;
- A number of water quality criteria;
- The State's water quality standards implementation procedures;
- The State's antidegradation implementation procedures;
- Use designations for 1,485 waters with classified uses;
- The State's water quality standards provisions for assumed stream design flows in applying water quality criteria; and,
- Provisions relating to waters with effluent-created habitat.

In the letter disapproving these provisions, Region VII also stated that it was requesting the EPA Administrator to make a determination under CWA section 303(c)(4)(B) that an existing provision in the State's water quality standards that exempted certain privately owned surface waters from the State's water quality standards is inconsistent with the CWA to the extent it exempts privately owned surface waters that are waters of the United States.

In June 1999, Kansas completed a triennial review of its water quality standards. As part of that review, Kansas adopted revisions to the Kansas Administrative Regulations (K.A.R.), Title 28, Article 16, on June 29, 1999, including the adoption of new or revised water quality standards. These new or revised water quality standards became effective under State law on June 30, 1999. (These revisions are hereafter referred to as the 1999 revisions to the Kansas water quality standards.) Kansas submitted these standards for EPA review and approval on August 10, 1999, as required under Federal regulations at 40 CFR 131.5. In its submission, KDHE corrected several provisions disapproved by EPA in its February 1998 disapproval letter to make them consistent with the CWA. By letter dated January 19, 2000, EPA Region VII approved many of these new or revised portions of the States' water quality standards. EPA's approval of these new or revised standards eliminated the need for a Federal promulgation to correct many of the previously disapproved provisions. These provisions are discussed in section III.

Today's proposal addresses the remaining standards disapproved by EPA in its 1998 action by proposing replacement water quality standards for the State of Kansas. The proposed regulations are discussed in section IV.

III. What Disapproved Provisions Have Been Addressed?

As discussed in section II. B., Kansas completed its most recent triennial review in June 1999 and submitted the resulting new or revised water quality standards to EPA for review and approval on August 10, 1999. By letter dated January 19, 2000, EPA Region VII approved the submission in part and disapproved it in part. Among the provisions approved by EPA were new or revised water quality standards that addressed provisions previously disapproved by EPA in its 1998 action. In the case of the standards changes discussed later in this section, EPA in its January 19, 2000, letter determined that Kansas adopted new or revised standards consistent with the CWA and EPA's implementing regulations. Under CWA section 303(c)(4), this action by Kansas eliminated the need for EPA to promulgate replacement water quality standards addressing these provisions. Therefore, EPA is not proposing water quality standards for the following provisions.

A. Antidegradation Policy To Protect Outstanding Natural Resource Waters

The State of Kansas revised portions of its antidegradation provisions at K.A.R. 28–16–28c(a) as part of its triennial review in 1994. In its 1998 action, EPA disapproved a portion of the State's antidegradation provisions because the provisions failed to include an appropriate level of protection for high quality waters constituting outstanding national resource waters (ONRWs) as required by 40 CFR 131.12(a)(3). This level of protection is commonly referred to as "Tier 3." The

State's 1994 submittal included specific revisions to mixing zone provisions at K.A.R. 28–16–28c(b)(2)(C)(i) that provided for placement of mixing zones in what Kansas identified as its Outstanding Natural Resource Waters, allowing a permanent lowering of water quality in at least a portion of such waters. This modification to the State regulations reduced the level of protection that previously had been provided to the State's Outstanding Natural Resource Waters and was not consistent with Federal regulations requiring that the water quality of ONRWs be maintained and protected.

EPA's interpretation of the Federal requirements for ONRWs emphasizes restriction of new or increased discharges to such waters. Although this interpretation of the regulation is not the only means of assuring that the water quality will be maintained and protected in ONRWs, the new or revised State water quality standards of 1994 deviated significantly from this level of protection and provided no commensurate level of protection. Without providing a level of protection equivalent to that provided under 40 CFR 131.12(a)(3), the State antidegradation policy was not complete because it did not provide for a category of waters where new or increased discharges are prohibited. Regardless of whether there are current or future State waters designated as ONRWs, the State's water quality standards must provide the opportunity for such designation.

As part of its 1999 revisions to the Kansas water quality standards, the State added a fourth level of protection under its antidegradation provisions. The States' standards now include a definition for outstanding national resource waters, which include surface waters or surface water segments of extraordinary recreational or ecological significance, and which are to be afforded the highest level of water quality protection under the antidegradation provisions. Kansas' new or revised water quality standards at K.A.R. 28–16–28c(a)(3) require maintenance and protection of existing uses and existing water quality in these waters with a prohibition against new or expanded discharges. In its review of these new or revised provisions, EPA determined by letter dated January 19, 2000, that the State's 1999 revisions to the water quality standards provide protection to high quality waters constituting an outstanding national resource as required at 40 CFR 131.12(a)(3). EPA's approval of the State's revision eliminated the need for EPA to promulgate Federal replacement water quality standards for Tier 3 protection.

B. Waste Stabilization Ponds

As part of the State's 1994 revision of its water quality standards, Kansas adopted a provision at K.A.R. 28–16–28c(d)(3) that waived NPDES permitting requirements for determining the reasonable potential of certain waste stabilization pond discharges to violate water quality standards for ammonia and fecal coliform bacteria. In its 1998 disapproval letter, EPA stated that this provision circumvented the application of water quality standards and would not ensure that such discharges meet State water quality standards as required by 40 CFR 122.44(d).

In its 1999 revisions to its water quality standards, Kansas removed K.A.R. 28–16–28c(d)(3) from the State's water quality standards regulations. EPA approved this revision to the State's water quality standards on January 19, 2000, eliminating the need for promulgation of Federal standards.

C. Disinfection Requirements

In its February 19, 1998, disapproval letter to KDHE, EPA also disapproved revised regulations at K.A.R. 28–16–28c(d)(4), which allowed dischargers to avoid disinfection requirements regardless of a water body's designation for primary contact recreation. The State's regulations at K.A.R. 28–16–28c(d)(4) required disinfection of wastewater only if the KDHE determined that such a discharge will result in a threat to public health. This provision relied on information indicating whether or not the water body is known or likely to be used for either primary or secondary recreation, or domestic water supply, rather than upon the waterbody's use designation specified in the State's water quality standards.

In its 1998 disapproval of this provision, EPA stated that the need for disinfection of wastewater effluent must be a function of the need to protect designated uses based on a determination that the discharge has a reasonable potential to cause or contribute to an excursion of applicable water quality standards, regardless of any demonstration at the time of permit issuance regarding whether the public actually utilizes that water body for the use or uses designated in the States' standards. Because all waters of the State are designated for secondary contact recreation by default, implementation of this provision could potentially undermine the State's efforts to comply with Federal regulations at 40 CFR 122.44(d) in writing limitations for NPDES permits that derive from and comply with State water quality standards and, specifically, protect designated uses.

As part of Kansas' 1999 revisions to its water quality standards, this provision was revised and moved to K.A.R. 28–16–28e(c)(7)(D). EPA approved this revision on January 19, 2000, because it now requires disinfection of wastewater where there is a reasonable potential for discharges to exceed the applicable criteria supporting the assigned recreational use designation. EPA's approval of the 1999 revision to the State's water quality standards regarding disinfection requirements eliminated the need for promulgation of Federal standards.

D. Domestic Water Supply Criteria

In its 1998 disapproval, EPA disapproved K.A.R. 28–16–28e(c)(3)(C) because it appeared to limit State adoption of water quality criteria for the protection of domestic water supplies to levels equivalent to the Federally adopted maximum contaminant levels (MCLs) under section 1412 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g-1. EPA was concerned that this provision, in appearing to require the adoption of criteria equal to MCLs, restricted the State's authority to adopt criteria necessary to protect domestic water supplies for pollutants for which EPA has not published MCLs, even though EPA has published recommended water quality criteria under section 304(a) of the CWA for this purpose. A State regulation authorizing the State to adopt criteria only for pollutants for which EPA has promulgated MCLs is inconsistent with Federal regulations at 40 CFR 131.11(a), which requires that States adopt water quality criteria necessary to protect the designated uses. Such criteria "must contain sufficient parameters or constituents to protect the designated use." K.A.R. 28–16–28e(c)(3)(C) appeared to restrict the State from meeting this requirement, and for that reason EPA disapproved the provision in 1998.

In response to EPA's 1998 action, KDHE clarified that this provision did not limit the State's authority to go beyond the MCLs when adopting water quality criteria for its domestic water supply. KDHE identified pollutants for which it had adopted numeric water quality criteria applicable to the domestic water supply use based on EPA's recommended section 304(a) criteria for those pollutants, even though EPA had not published MCLs for them under the SDWA. Although there continue to be gaps in domestic water

supply criteria for specific pollutants within the State's standards, EPA believes the State demonstrated that EPA's original interpretation of this provision was in error. As a result of the State's clarification that it has the authority to adopt water quality criteria applicable to its domestic water supply use under K.A.R. 28–16–28e(c)(3)(C) based on EPA's published section 304(a) criteria, EPA determined that this provision of the State's water quality standards is consistent with the CWA and EPA's implementing regulations. Therefore, in its January 19, 2000, letter, EPA withdrew its 1998 disapproval and approved the provision, thereby eliminating the need for a Federal promulgation.

E. EPA Review of Kansas' 1994 and 1999 Water Quality Criteria for Toxic Pollutants

a. 1994 Revisions to Kansas Water Quality Standards

In its 1994 revisions of its water quality standards, Kansas adopted numeric water quality criteria for many pollutants for which it previously had none. Kansas also revised existing single-value criteria to separately address both acute and chronic toxicity. In its 1998 action, EPA approved 89 separate water quality criteria for toxics for the protection of aquatic life and human health adopted by the State as fully consistent with the requirements of the CWA and EPA's implementing regulations. All of the State-adopted water quality criteria approved by EPA in 1998 were equal to or more stringent than those Federal criteria previously promulgated by EPA for Kansas under the NTR in 1992. (*See* Enclosure B, Table B., February 19, 1998, letter from EPA to the Kansas Department of Health and Environment.) With that approval decision, the numeric water quality criteria that EPA had promulgated for Kansas for those pollutants as part of the NTR were no longer necessary. Therefore, EPA withdrew the Federal criteria (65 FR 19659, April 12, 2000).

EPA, in its 1998 action, also disapproved a number of water quality criteria for both aquatic life and human health protection that EPA determined did not protect the State's designated uses. Of the State-adopted criteria disapproved by EPA, a large number of the pollutants were already addressed by Federally-promulgated criteria in the NTR. Because the NTR criteria for these pollutants continue to apply in Kansas, no further action by EPA is necessary at this time. In its 1998 action, EPA also disapproved water quality criteria for pollutants that were not included in the 1992 NTR for Kansas. EPA identified these pollutants as candidates for future promulgation should the State fail to adopt water quality criteria which protect designated uses or to provide adequate scientific justification for not having them.

b. 1999 Revisions to the Kansas Water Quality Standards

On June 29, 1999, the State of Kansas completed another set of revisions to its water quality standards regulations and submitted them for EPA's review and approval on August 10, 1999. In that action, Kansas revised a number of its water quality criteria for both aquatic life and human health protection to address criteria previously disapproved by EPA in 1998. Many of those revised criteria were approved by EPA on January 19, 2000. Where the State adopted water quality criteria that are equal to or more stringent than the applicable Federal criteria promulgated for Kansas under the NTR, EPA withdrew the Federal criteria (65 FR 19659, April 12, 2000). EPA also approved water quality criteria adopted by the State in 1999 that were less stringent than those Federal criteria promulgated for Kansas in the NTR but that were consistent with the Clean Water Act. In a separate, upcoming action, EPA will propose to withdraw Kansas from the NTR for those pollutants.

In its 1999 revisions, Kansas also submitted water quality criteria for pollutants not included in the NTR for Kansas. Those revised criteria were intended to address criteria disapproved by EPA in its 1998 action. EPA approved the 1999 water quality criteria where EPA determined that they were based on scientifically defensible methods and protected designated uses. In its January 19, 2000, approval of Kansas' 1999 submission of revised water quality standards, EPA approved acute and chronic aquatic life quality criteria for nickel and zinc; acute aquatic life criteria for silver; human health criteria (water and organism) for thallium; and human health criteria (organism only) for alpha-and beta-endosulfan. The new or revised water quality criteria adopted by Kansas on June 29, 1999, and approved by EPA on January 19, 2000, address EPA's disapproval in its 1998 action. Therefore, no further action by EPA is necessary for those pollutants.

Several water quality criteria adopted by the State in 1994 and disapproved by EPA in 1998 were not corrected by the State in its 1999 revisions to its water quality standards. For those pollutants that are already subject to Federally promulgated water quality criteria, no further EPA action is necessary in response to the 1998 disapproval action because Kansas remains in the NTR for those pollutants. In many instances, the State withdrew its EPA-disapproved water quality criteria as part of its 1999 revisions and replaced State criteria with a footnote acknowledging there are Federal criteria in place. Because an acknowledgment of existing Federal water quality standards within Kansas regulations does not constitute actual adoption of water quality criteria by the State, EPA is leaving the existing Federal water quality standards in place.

c. EPA Withdrawal of 1998 Disapproval

In its 1998 review of the 1994 Kansas water quality standards revisions, EPA disapproved State water quality criteria for alpha-endosulfan and beta-endosulfan for the State's Domestic Water Supply use as being inconsistent with the requirements of the CWA and EPA's implementing regulations. This disapproval was procedurally in error however, because the State had not adopted any new or revised criteria for the Domestic Water Supply use for those pollutants in 1994 that would have triggered EPA's approval or disapproval authority.

d. Water Quality Criteria for Endrin

In 1994, the State adopted a new criterion for endrin for its Domestic Water Supply use, which EPA disapproved in its 1998 action under section 303(c)(3). In its 1999 revision, the State removed the numeric criterion for endrin altogether. EPA subsequently found that its 1998 disapproval of the numeric criterion for endrin had been in error. The State's 1994 criterion was consistent with the CWA and was based on the drinking water MCL for endrin (and no Kansas NTR value for endrin had been promulgated). Therefore, on January 19, 2000, EPA withdrew its 1998 disapproval of Kansas's 1994 endrin criterion and disapproved the State's 1999 deletion of the endrin criterion. EPA disapproved this deletion because it had the effect of leaving the State with no criterion for endrin in its Domestic Water Supply use. If the State fails to address this deficiency, EPA will propose water quality criteria for endrin, in a separate action, at the same time it addresses the other provisions EPA disapproved on January 19, 2000.

F. Antidegradation and Water Quality Standards Implementation Procedures

As part of the Kansas' 1994 submission, KDHE submitted procedures for the implementation of its

standards through the development of NPDES permit limitations (*Kansas Surface Water Quality Implementation Procedures*; October, 18, 1994). These procedures contain two separate components: procedures for implementing the State's antidegradation policy at K.A.R. 28–16–28c(a), and procedures governing the implementation of water quality standards, *e.g.*, through development of water quality-based effluent limitations for NPDES permits.

In its 1998 action, EPA addressed components of these procedures separately based on their distinctly different treatment under Federal regulations. Federal regulations at 40 CFR 131.12(a) require that States identify methods for implementing the State's antidegradation policy. Development of these implementation procedures is not discretionary. Section 3 of the State's procedures addressed implementation of the State's antidegradation policy. In its 1998 disapproval of Kansas' October 18, 1994, antidegradation implementation procedures, EPA identified three deficiencies with the procedures that would lead to the implementation of Kansas' antidegradation policy in a manner inconsistent with Federal regulations. These deficiencies were: (1) Failure to maintain existing *water quality* for Tier 3 waters; (2) Failure to maintain existing water quality for Tier 2 waters under the State's antidegradation provision; and (3) Failure to identify the means by which the State would implement its antidegradation policy in the context of determining whether to allow a lowering of surface water quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water. The State revised it's antidegradation procedures and submitted them to EPA for review in 1999. These revised procedures addressed the first two disapproved items regarding existing water quality in Tier 3 and Tier 2 waters, but not the third disapproved item. This last item remains disapproved and is addressed in section IV.D.

The 1994 antidegradation procedures required the protection of existing water quality within the State's Outstanding Natural Resource Waters, but did not describe the mechanisms or methods by which that level of protection was to be implemented. Specifically, the Procedures failed to identify how existing water quality in the State's Outstanding Natural Resource Waters would be maintained under the mixing zone provisions at K.A.R. 28–16–28c(b)(2). The use of mixing zones and zones of initial dilution in the State's Outstanding Natural Resource Waters allowed for the permanent lowering of existing water quality in portions of those waters.

The State's 1994 Procedures also did not adequately protect high quality waters as required under Federal regulations at 40 CFR 131.12(a)(2) (referred to as "Tier 2") and the State provision at K.A.R. 28–16–28c(a)(2). The Tier 2 level of protection under the Federal antidegradation regulations and the State antidegradation policy requires protection of existing *water quality* unless a lowering of water quality is necessary to accommodate important social or economic development in the area where the lowering of existing water quality occurs. However, the State procedure only addressed the protection of existing and designated *uses* in regulating point sources of pollution rather than existing water quality. This is contrary to the State provision at K.A.R. 28–16–28c(a)(2) and is also inconsistent with 40 CFR 131.12(a)(2).

As part of its June 29, 1999, revisions to its water quality standards, the State revised its antidegradation implementation procedures in a manner consistent with revisions to the State's antidegradation policy (see section III.A.) to maintain existing water quality in Tier 3 waters. Kansas' 1999 revision of its antidegradation implementation procedures also adequately addressed the manner in which the maintenance of existing water quality is ensured for high quality waters (Tier 2). EPA approved these revisions in its January 19, 2000, letter. These corrections to the State's Procedures made further Federal action to address these two disapproved provisions unnecessary.

The remaining provisions of the State's 1994 implementation procedures addressed implementation of water quality standards. Federal regulations at 40 CFR 131.13 address policies generally affecting the application and implementation of standards that States may adopt, at their discretion. If a State adopts such policies, the regulation provides that they are subject to EPA review and approval. In its 1998 action, EPA disapproved the State's implementation procedures for NPDES permits because the procedures did not ensure that permits would derive from and comply with the State's water quality standards. Specifically, EPA identified the following deficiencies. First, the procedures failed to clearly identify how mixing zones were to be limited or sized. Second, the procedures addressing whole effluent toxicity (WET) testing allowed the use of less sensitive organisms than recommended in the testing methodology and did not identify any circumstances when WET limitations would be placed in NPDES permits when there was reasonable potential to violate the State's narrative water quality criteria. Third, the procedures specified a "lesser level of evaluation" for minor permits than is specified for major permits. Finally, the procedures did not include provisions addressing site-specific water quality criteria development, the issuance of variances or the manner by which the State would measure and evaluate socio-economic impacts.

In its 1999 revisions to its water quality standards, Kansas significantly revised its implementation procedures (*Kansas Implementation Procedures: Surface Water*, June 1, 1999) and corrected the deficiencies identified in EPA's 1998 disapproval letter. Additionally, the State incorporated its implementation procedures into the State's water quality regulations at K.A.R. 28–16–28b(cc). These revised implementation procedures, to the extent they addressed water quality standards implementation, were reviewed by EPA and approved on January 19, 2000.

IV. What Federal Water Quality Standards Is EPA Proposing in Response to Its 1998 Disapproval?

A. Designated Uses

1. Background

Section 101(a)(2) of the CWA establishes as a national goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water," wherever attainable. This national goal is commonly referred to as the "fishable/swimmable" goal of the CWA. (Hereafter, the fishable/swimmable goals are referred to as CWA section 101(a) goal uses.) Section 303(c)(2)(A) requires State water quality standards to "protect the public health and welfare, enhance the quality of water, and serve the purposes of this Act." EPA's regulations at 40 CFR part 131 interpret and implement these CWA provisions by requiring that water quality standards provide for CWA section 101(a) goal uses unless those uses have been shown to be unattainable, effectively creating a rebuttable presumption of attainability, *i.e.*, a default designation of CWA section 101(a) goal uses should apply. The mechanism in EPA's regulations used to rebut this presumption is a use attainability analysis.

Under 40 CFR 131.10(j), States are required to conduct a use attainability analysis (UAA) whenever the State designates or has designated uses that do not include the CWA section 101(a) goal uses, or when the State wishes to remove CWA section 101(a) goal uses, or when it adopts subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under section 301(b)(1)(A) and (B) and section 306 are imposed on point source dischargers, and (2) when cost effective and reasonable best management practices are imposed on nonpoint source dischargers. See 40 CFR 131.10(d). EPA's regulations at 40 CFR 131.10 list grounds upon which to base a finding that attaining the designated use is not feasible, as long as the designated use is not an existing use. A UAA is defined in 40 CFR 131.3(g) as a "structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors." In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment. Guidance on water body survey and assessment techniques is contained in the Technical Support Manual, Volumes I–III: Water Body Surveys and Assessments for Conducting Use Attainability Analyses. Volume I provides information on water bodies in general, Volume II contains information on estuarine systems and Volume III contains information on lake systems. (Volumes I–II, November 1983; Volume III, November 1984). Additional guidance is provided in the Water Quality Standards Handbook: Second Edition (EPA–823–B–94–005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in the Interim Economic Guidance for Water Quality Standards: Workbook (EPA–823–B–95–002, March 1995).

As discussed earlier, EPA regulations effectively establish a "rebuttable presumption" that CWA section 101(a) goal uses are attainable and therefore should apply to a water body unless it is affirmatively demonstrated that such uses are not attainable. EPA adopted this approach in order to help achieve the national goal articulated by Congress that, "wherever attainable," water quality should provide for the "protection and propagation of fish, shellfish and wildlife" and for "recreation in and on the water." CWA 101(a). While facilitating achievement of Congress' goals, the "rebuttable presumption" approach preserves States' paramount role in establishing water quality standards in weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict the discretion that States have to determine that CWA section 101(a) goal uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a credible, "structured scientific assessment" of use attainability. See 40 CFR 131.3(g) (defining use attainability analysis).

EPA believes that the rebuttable presumption policy reflected in these regulations is an essential foundation for effective implementation of the CWA as a whole. The "use" of a water body is the most fundamental articulation of its role in the aquatic and human environments, and all of the water quality protections established by the CWA follow from the water's designated use. If a use lower than a CWA section 101(a) goal use is designated based on inadequate information or superficial analysis, water quality-based protections that might have enabled the water to achieve the goals articulated by Congress in section 101(a) may not be put in place. As a result, the true potential of the water body may never be realized, and a resource highly valued by Congress and the public may be forever lost.

EPA seeks, through its oversight under section 303(c) of the Act, to ensure that any State's decision to forgo protection of a water body's potential to support CWA section 101(a) goal uses results from an appropriately "structured" analysis of use attainment. Where EPA concludes that the State failed to adequately justify a use designation lower than a CWA section 101(a) goal use designation, EPA disapproves the use designation. In some cases, the State may decide to revise its use classifications to protect CWA section 101(a) goal uses. In other cases, the State may decide to conduct a more thorough analysis of use attainability sufficient to rebut the rebuttable presumption reflected in the regulations. Where, however, a State does neither, federally promulgated CWA section 101(a) goal uses will ensure the water quality goals of the Act are effectively implemented.

2. EPA Review of Kansas' Use Designations

When Kansas submitted its revised standards to EPA on October 31, 1994, it also submitted the *Kansas Surface Water Register*, which contains the listing of all streams, lakes and wetlands classified under the State's water quality standards, individual water body locational data and all designated uses for each stream segment, wetland and lake. The *Register*, adopted by reference at K.A.R. 28–16–28d(c)(2), greatly expanded the number of streams previously designated under the 1985 Kansas standards, dividing each original stream segment into multiple parts, with independent designations for each newly identified segment. Given both the extensive restructuring of the citations for classified stream segments and the creation of the *Register* separate from the K.A.R., EPA treated all of the 1994 use designations as new or revised water quality standards subject to EPA approval under section 303(c)(3) of the CWA. In the 1994 revision to Kansas' water quality standards, the State listed a number of streams and lakes that it determined did not support a primary contact recreation use or aquatic life protection use, or that were simply undesignated because Kansas reported that it had limited or no field information to make a CWA section 101(a) goal use designation. In 1998, of these waters, EPA disapproved nine water body designations because it determined that the use attainability analyses submitted by Kansas were inadequate, and it disapproved one water body designation for which the State failed to submit a use attainability analysis to justify the omission of the CWA section 101(a) goal uses. EPA also disapproved Kansas' failure to designate any uses at all for another 1,475 waters.

Since the early 1980's, EPA has identified the State's lack of justification for waters not designated with section 101(a) goal uses, particularly primary contact recreation, as a significant issue that must be addressed. EPA approved the 1985 revisions to the Kansas water quality standards on June 19, 1986, based on "completion of the statewide use attainability analyses in accordance with the KDHE schedule submitted to EPA, dated May 2, 1986." These analyses were to address all surface waters that the State did not designate for primary contact recreational use. The schedule of planned use attainability analyses submitted by KDHE and accepted by EPA provided for completion of this task by 1991. Kansas has performed a number of use attainability analyses since the adoption

of the 1994 Water Quality Standards. As part of its 1998 approval action, EPA approved over 300 revised use designations as a result of those use attainability analyses that were submitted. However, Kansas did not include supporting use attainability analyses for all the surface waters that the State did not designate for primary contact recreation. EPA therefore disapproved those use designations as being inconsistent with 40 CFR 131.10(g).

3. EPA Proposal To Promulgate Federal Designated Uses for Specific Stream Segments and Lakes

Subsequently, in 1999, Kansas adopted, and submitted to EPA, use designations consistent with the CWA and EPA's implementing regulations for two streams and 14 lakes for which EPA had previously disapproved use designations. On January 19, 2000, EPA approved these revised use designations. Kansas also identified in its 1999 submittal, and EPA approved on January 19, 2000, the deletion of seven water bodies due to errors in their original identification. EPA also identified, in its January 2000 letter, one stream segment in Kansas that is located totally within Indian country, over which Kansas has not demonstrated jurisdiction for CWA purposes. In preparing today's proposed rulemaking, EPA also identified four waterbodies the Agency inadvertently counted twice in its 1998 disapproval action. Accordingly, in today's action, EPA is proposing to promulgate primary contact use designations for 1,456 stream segments and lakes and the State's expected aquatic life use designation for one stream segment.

When proposing replacement Federal water quality standards, EPA must follow the same rebuttable presumption approach that applies under the regulation to State decision-making (40 CFR 131.22). EPA does not believe it would be appropriate to alter the current approach to establishing use designations under 40 CFR part 131 merely because the forum for decision-making has changed from the State to the Federal level. Attaining the goals articulated by Congress is no less important when EPA, as opposed to a State, is making use designation determinations. Moreover, EPA believes that failure to apply the rebuttable presumption in the Federal context could undermine how that presumption currently applies to State decision-making under the Federal regulations. If the presumption did not apply equally in the State and Federal decision-making process, a State could effectively shift the burden of demonstrating attainability simply by failing to adequately justify its use designation and thereby triggering a Federal rulemaking proceeding.

EPA's approach in this proposed rulemaking does not undermine the State's primary role in designating uses for waters in Kansas. If, prior to EPA finalizing this rule, the State undertakes a sound analysis of use attainability for the waters subject to this proposal that takes into account appropriate biological, chemical and physical factors, and concludes that the CWA section 101(a) goal uses are not attainable for these waters, EPA would approve the State's action and would not promulgate CWA section 101(a) goal use designations for those waters. EPA is soliciting public comment and information on the attainability of the proposed Federal uses for the water bodies listed in proposed 40 CFR 131.34 (g) and (h). EPA also encourages the State to continue evaluating the appropriate use designations for these waters. The State of Kansas has performed a number of use attainability analyses (UAAs) since the adoption of the 1994 Water Quality Standards. As part of the 1998 approval action, EPA approved over 300 revised use designations as a result of those UAAs submitted to EPA. As part of the State's commitment to review uses, Kansas is updating and standardizing the protocols for performing UAAs through a public process. Four public forums were held by the State to present the revised UAA protocols to the public. Improvements to the State's methods of performing use attainability analyses also implements recommendations made by the Kansas Special Commission of Water Quality Standards. Kansas expects to complete this process in the Summer of 2000. EPA will review any future UAAs submitted by the State with the same level of rigor as it has reviewed previous UAAs submitted by the State. EPA's proposal of designated uses based on the rebuttable presumption does not affect the substance of EPA's review of State UAAs. If further data indicates that this presumption is not appropriate for particular water bodies, EPA's final rule will be revised accordingly. In particular, if EPA determines, based on the record, that any of Kansas' designations are justified, there will be no need for Federally promulgated use designations for those particular water bodies. EPA believes that this approach is reasonable because it is consistent with the goals in section 101(a)(2) of the CWA and the implementing regulations at 40 CFR part 131.

Kansas' use classification system includes a variety of designated uses for its waters, including "domestic water supply," "agricultural water supply," "special aquatic life," "expected aquatic life," "restricted aquatic life," "primary contact recreation," and "food procurement." Kansas water quality standards identify three subcategories of aquatic life uses for Kansas' surface waters: Special aquatic life use waters, expected aquatic life use waters, and restricted aquatic life use waters. The Kansas water quality standards define "expected aquatic life use waters" as "surface waters containing habitat types and indigenous biota commonly found or expected in the State." Further, the Kansas Surface Water Register includes the expected aquatic life use designation for the majority of surface waters in the State. EPA's approach in proposing designated uses for 1,457 of the water bodies is to select uses from Kansas' system that correspond to CWA section 101(a) goal uses. This approach meets the requirements of the CWA while deferring to the State's approach for defining 101(a) goal uses.

a. Expected Aquatic Life

EPA is proposing to promulgate an aquatic life use designation for one stream segment, Whiskey Creek, that the State designated for a restricted aquatic life use in 1994 without a supporting UAA. Subsequently, the State submitted a UAA documenting its designation decision for Whiskey Creek on December 23, 1997. The basis for this designation was the State's determination that poor water quality, associated with the discharge from a wastewater treatment facility, limited the attainment of an expected aquatic life use. The State's determination was not consistent with Federal regulations at 40 CFR 131.10, which require that at least one of six reasons be met to justify uses less than CWA section 101(a) uses or downgrades in designated uses. The reason supplied by Kansas was not one of the six possible bases specified in the regulation. Therefore, EPA disapproved Kansas' use designation for Whiskey Creek in 1998.

Because the State assigns the expected aquatic life use category to a majority of its surface waters, and there is no information to indicate that Whiskey Creek contains other than common habitat types and indigenous biota, EPA believes that an expected aquatic life use designation is appropriate for aquatic life in Whiskey Creek. Therefore, EPA proposes to designate Whiskey Creek for expected aquatic life.

This water is identified in proposed 131.34 (g).

b. Primary Contact Recreation

EPA is proposing to promulgate primary contact recreation use designations for 1,456 waters in Kansas. In its 1998 action, EPA disapproved the absence of a primary contact recreation use designation for 1,484 water bodies. Of these waters, EPA disapproved nine water bodies' use designations because of inadequate use attainability analyses. For the remainder, which under Kansas' water quality standards received default protection for secondary contact recreational use, see K.A.R. 28–16–28d(c)(1), the State provided no documentation regarding the absence of a primary contact recreation use. Therefore, EPA proposes to promulgate primary contact recreation use designations for 1,456 waters in Kansas. These waters are identified in proposed 40 CFR 131.34(h).

The designation of primary contact recreation uses in this proposed rule is not intended to apply to waters within Indian country. The 1999 *Kansas Surface Water Register* includes some stream segments that may be located wholly or partly in Indian country. EPA approval of designated uses for waters in Kansas has never been intended to apply to any waters located within Indian country because EPA has not analyzed or approved the State's authority to adopt water quality standards for waters in Indian country. In its January 19, 2000, letter, EPA recommended that the State clarify this matter by amending the Kansas Surface Water Register to specify that the State's water quality standards do not apply to any portions of waters located in Indian country. EPA is working with Tribes in Region VII to identify those Tribes that may consider seeking authorization to administer the water quality standards program under the CWA. That effort is part of a national effort to ensure there are water quality standards for Indian Country waters.

4. Request for Comment and Data

EPA believes the proposed designated uses in today's rule are appropriate considering the requirements of the CWA and EPA's implementing regulations and the absence of data and information supporting the State's designation of less stringent uses. EPA solicits any additional data and information that may further support or refute the attainability of today's proposed designated uses. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period with regard to designating uses for these 1,457 stream segments and lakes. After full consideration of such information, EPA will make a final decision whether the designated uses in today's proposal are appropriate. To assist commenters, the following paragraphs provide guidance on the type of information EPA considers to be most important.

EPA is seeking information that would assist in determining for each of the waters identified in proposed 40 CFR 131.34(g) and (h) whether the proposed designated uses are currently being attained or have been attained since November 28, 1975; whether natural conditions or features or human-caused conditions prevent the attainment of these uses and whether these conditions can or cannot be remedied or would cause more environmental damage to correct than to leave in place; and whether controls more stringent than those required by sections 301(b) and 306 of the CWA would be needed to attain the uses, and, if imposed, whether they would result in substantial and widespread social and economic impact to the community. A general discussion of the types of data/information requested by the Agency follows.

Ambient Monitoring Information: (1) Any in-stream data for any of the stream segments listed in 40 CFR 131.34 (g) and (h) reflecting either natural conditions (*e.g.*, in-stream flow data or other data relating to stream hydrology) or irretrievable human-caused conditions that cannot be remedied and that prevent the uses or water quality criteria from being attained; (2) any available in-stream biological data; (3) any chemical and biological monitoring data that verify improvements to water quality as a result of treatment plant/facility upgrades and/or expansions; and (4) any in-stream data reflecting nonpoint sources of pollution or best management practices that have been implemented for nonpoint source control.

Current and Historical Effluent Data: (1) Any data and information relating to mass loadings from point source discharges of pollutants such as BOD, NH_3 -N, chlorine, metals (*e.g.*, arsenic, cadmium, chromium, copper, lead, mercury, nickel, silver, zinc), other toxics (*e.g.*, volatile organic chemicals such as benzene or toluene, acid extractables such as pentachlorophenol, base neutrals such as anthracene, fluorine or pyrene, and pesticides such as aldrin, lindane, DDT, dieldrin, endrin and toxaphene); (2) data and information related to facility or treatment plant effluent quality; and (3) any information related to releases of pollutants from other sources such as landfills, transportation facilities, construction sites, agriculture/silviculture, incinerators, and contaminated sediments.

Water Quality Modeling Information: (1) Any data or information on analytical models that can be used to evaluate or predict stream quality, flow, morphology; (2) any physical, biological or chemical characteristics relating to designated uses; and (3) the results of any such models that can be used to evaluate the attainment of designated uses.

Economic Data: any information relating to costs and benefits associated with or incurred as a result of facility or treatment plant expansions or upgrades. This information includes: (1) Qualitative descriptions or quantitative estimates of any costs and benefits associated with facility or treatment plant expansions or upgrades, or associated with facilities or treatment plants meeting limits; (2) any information on costs to households in the community with facility or treatment plant expansions or upgrades, whether through an increase in user fees, an increase in taxes, or a combination of both; (3) descriptions of the geographical area affected; (4) any changes in median household income, employment, and overall net debt as a percent of full market value of taxable property; and (5) any effects of changes in tax revenues if the private-sector entity were to go out of business, including changes in income to the community if workers lose their jobs, and effects on other businesses both directly and indirectly influenced by the continued operation of the private sector entity.

B. Stream Design Flow

1. Background

The 1985 Kansas water quality standards at K.A.R. 28–16–28c(c)(1) specified conditions for the application of numeric water quality criteria to State waters, including stream flows below which numeric criteria did not apply (*i.e.*, the 7Q10 or 1 cubic foot per second (cfs)). The 1985 provisions at K.A.R. 28–16–28c(b), describing the allocation of dilution for discharges to classified streams based on the use of mixing zones, did not specify a stream design flow. Revisions to the 1985 Kansas water quality standards at K.A.R. 28–16–28c(c)(1) in 1994 introduced a stream design flow of an "assumed 7Q10" in addition to a "measured 7Q10," defining the stream flow below which numeric criteria do not apply. Under the 1994 revisions, an "assumed 7Q10" of either 1 cfs or 0.1 cfs

(depending upon the particular aquatic life use designation of that stream segment) would serve as the low flow cut-off if the "measured 7Q10" was below one of those values. Exceptional State waters and special aquatic life use waters are afforded 0.1 cfs for assumed dilution, whereas expected aquatic life use waters and restricted aquatic life use waters are afforded 1 cfs for assumed dilution. In its 1994 revisions to the mixing zone provisions at K.A.R. 28–16–28c(b), the State also explicitly included the concept of either the "measured 7Q10" or the "assumed 7Q10" flow in its calculation of the mixing zone cross-sectional area and, therefore, the dilution available to meet the applicable criteria. In disapproving these provisions in 1998, EPA pointed out that implementation of this provision could authorize water quality based effluent limits (WQBELs) that would cause exceedences of numeric water quality criteria beyond the mixing zone and would fail to protect the designated uses of the water body.

For example, under K.A.R. 28–16–28e(c)(2)(F), the State applies its acute and chronic numeric water quality criteria for protecting aquatic life outside the zone of initial dilution and beyond the mixing zone, respectively. In this manner, toxicity within the waters of the State is prevented. Under other provisions at K.A.R. 28–16–28e(c)(4) and (7), State standards specify numeric criteria for protecting food procurement and recreational uses, respectively, beyond the mixing zone. K.A.R. 28–16–28c(b) specifies the dimension of the allowed mixing zone based on the designated use of the water body and the ratio of the receiving stream 7Q10 flow to the discharge design flow. In the calculation of the specific mixing zone cross-sectional area or volumetric flow, the State standards regulation provides for the use of either the 7Q10 flow or an assumed flow.

Reliance on an "assumed flow" provides for dilution which does not exist and will result in the criteria being exceeded more often than once in three years as specified in the State's numeric criteria for chronic protection. The 1999 State standards at K.A.R. 28–16–28b(lll) implement the acute aquatic life criteria by defining the size or volume of the allowed zone of initial dilution in terms of the allowed mixing zone (i.e., no more than 10% of the mixing zone). Calculating a mixing zone cross-sectional area that allows for an assumed flow is not scientifically defensible because it relies on flow that, at times, does not exist. EPA recommends a 1B3 or 1Q10 design flow for acute aquatic life protection, and harmonic mean flow for human health protection including recreational uses. EPA believes that the State's use of a 7Q10 design flow for implementation of human health is protective of the corresponding designated uses. Therefore, EPA is only proposing to promulgate design flows for the protection of acute and chronic aquatic life.

In August 1999, KDHE submitted water quality standards revisions for EPA review and approval that included revisions to K.A.R. 28–16–28c(b)(2)(D) and (c)(1). These new or revised provisions were relocated to K.A.R. 28–16–28c(b)(7) and (b)(8), subsection (A) through (D) without being substantially revised. The provisions disapproved by EPA in its 1998 action regarding assumed low flow remained. In EPA's January 19, 2000, approval/disapproval letter, EPA informed the State that the revised provisions at K.A.R. 28–16–28c(b)(7) and (b)(8) remain disapproved consistent with EPA's 1998 disapproval decision.

2. EPA Review of Kansas' Assumed Flow Provision

Kansas' water quality criteria are derived from EPA's recommended 304(a) water quality criteria which are designed around specific assumptions regarding magnitude of exposure, duration of exposure and the frequency these parameters may be exceeded and still protect the designated use. These parameters are based on the toxicological studies supporting the criteria. These toxicological assumptions are matched to biologically-based stream design flows to ensure that the probabilities of occurrence for both pollutant concentrations and stream flow are protective of aquatic life. Simply put, the water quality criteria relied upon to protect designated uses are inseparable from the stream design flow assumptions through which they are implemented. EPA guidance in the 1994 Water Quality Standards Handbook and the 1991 Technical Support Document for Water Quality-based Toxics Control identify the stream flows that match the aquatic life criterion continuous concentration (CCC, or chronic criteria) and the criterion maximum concentration (CMC, or acute criteria) as the biologically-based 4B3 and 1B3, respectively. These statistically derived flows match the averaging periods and recurrence frequency specified in the State's water quality criteria. Although EPA recommends the use of biologically-based flows in implementing water quality criteria, there are alternative approaches. Most States routinely rely on hydrologically-based flows derived using the Log Pearson 3 method generated by the U.S. Geological Survey, to implement water quality criteria. EPA guidance evaluated the compatibility of using "extreme value statistic flows" (*e.g.*, 7Q10) for the implementation of water quality criteria for the protection of aquatic life (*Technical Guidance Manual for Performing Waste Load Allocations, Book VI, Design Conditions:* Chapter 1—Stream Design Flow for Steady-state Modeling. August 1986). EPA determined that, for most waters and in most instances, the use of 7Q10 and 1Q10 hydrologically-based stream design flows for the implementation of chronic and acute water quality criteria, respectively, provides a level of protection commensurate with EPA's recommended biologically-based flows. That is, 7Q10 equates to the 4B3 and 1Q10 equates to the 1B3. States may select other design flows based on a demonstration that such alternative flows are protective of the specified designated uses. Also, States are encouraged to use dynamic modeling as a scientifically defensible alternative to extreme flow statistics.

Many Kansas streams possess 7Q10 flows of zero, particularly western streams that are already stressed by excessive surface and ground water withdrawals. Small, low flow headwater streams that serve as critical habitat for many threatened and endangered aquatic species may receive toxic loadings of pollutants as a result of the implementation of this provision because discharge limits would be based on flow that is not there. K.A.R. 28–16–28d(b)(1) applied water quality standards to those streams with mean summer base flows exceeding 0.1 cfs and those with less flow but with adequate pooling that serve as refuge for aquatic life during intermittent flow. Base flow is specifically defined in State standards to include sources of flow other than precipitation or ground water (*e.g.*, effluent discharge and irrigation return flow). Many streams classified for designated uses under this provision (*i.e.*, streams with mean summer base flows greater than 0.1 cfs) nevertheless have 7Q10 flows of less than 1 or 0.1 cfs. In such instances, Kansas' standards allow a classified stream to receive discharges that rely on dilution to comply with State standards, even though the dilution does not exist. This will result in ambient pollutant concentration exceeding the criteria value more often than once every three years as specified in the State's numeric aquatic life criteria.

EPA expects that the scientific defensibility of alternate flows would be dependent upon pollutant-specific or site-specific circumstances such as watershed size and characteristic hydrography. EPA believes that Kansas' implementation of these assumed flows is not scientifically defensible or protective of the State's designated aquatic life use, as required by the Clean Water Act and EPA's implementing regulations.

KDHE has not provided any scientific rationale for the use of assumed flows or provided any data suggesting that this provision will sufficiently protect the designated aquatic life uses. EPA's regulations at 40 CFR 131.21(a)(2) require that new or revised standards be accompanied by supporting analyses. KDHE noted in its *"Response to Comments Concerning Proposed K.A.R."s 28–16–28 b through f"* (June 23, 1994) that default low flows are employed in other States, that they are necessary because of the paucity of flow data in small watersheds, and that some form of this provision has been employed by Kansas for twenty years. Although these are valid points, they are not compelling reasons to approve State provisions that do not ensure the protection of the designated uses of Kansas' surface waters. As EPA's 1994 Water Quality Standards Handbook (EPA–823–B–94–005a) specifically states, "[The fact that] many streams within a state have no flow at 7Q10 is *not* adequate justification for designating alternative flows." Because Kansas failed to adequately justify its alternative stream flow provisions, EPA, in its 1998 action, disapproved the standards provisions under K.A.R. 28–16–28c(b)(2)(D) and (c)(1) that reference assumed flows.

The State, in a February 26, 1999, letter to EPA and in its draft 1999 implementation procedures, noted that the primary purpose of the alternate flow approach is to provide economic relief for "small communities [that] will face costly upgrades or construction of completely new treatment systems if permit limits are made more stringent." KDHE further stated in the letter to EPA that "[T]he environmental benefit is small compared to the large and widespread costs associated with the removal of the minimum default flows." Although these potential impacts are of concern, the CWA and EPA's implementing regulations do not allow considerations of costs and benefits in establishing water quality criteria (design flows are a component of the criteria). Under Federal regulations, economic impacts associated with standards should be taken into account when assessing the attainability of designated uses and granting temporary variances to water quality standards. 40 CFR 131.10(g). It is permissible for the State to grant individual variances or to downgrade a designated use for a specific water body relying on economic data, but relying on dilution that is not available to violate the State's numeric criteria is not scientifically defensible. In section V, EPA discusses its analysis of the potential economic impacts associated with today's proposed standards.

3. EPA Proposal To Promulgate Stream Design Flows

In today's action, EPA is proposing the 7Q10 or 4B3 stream design flows for the implementation of chronic aquatic life criteria in Kansas. Additionally, EPA is proposing the 1Q10 or 1B3 design flow for the implementation of acute aquatic life criteria in Kansas. Kansas may submit to EPA alternate low flows for implementing criteria. Such alternative flows must be scientifically defensible, protective of the designated use, and approved by EPA before they can be used by the State.

4. Request for Comment and Data

EPA solicits any additional data and information that may further support or refute the attainability of the changes being proposed today. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period. EPA will consider all available information and make a final decision on the appropriateness of today's proposed changes.

C. Effluent-Created Habitat

1. Background

Another regulation submitted to EPA by Kansas in 1994, K.A.R. 28–16–28c(c)(3), addressed those streams where designated uses are not attainable because of inadequate stream flow. Under the State's provision, if continuous flow in a stream is sustained primarily through the discharge of treated effluent, and all designated uses are otherwise unattainable due to low or nonexisting flow, then the discharger shall not be required to provide treatment beyond that required by technology-based effluent limitations imposed under Federal law. That exemption would not apply, however, if the resulting effluent would result in violations of the State's narrative water quality criteria or in an impairment of any of the existing or designated uses of a downstream classified surface water segment. In other words, this provision exempts dischargers from having to meet water quality-based effluent limitations derived from numeric water quality criteria adopted to protect the designated uses.

2. EPA Review of Kansas' Effluent-Created Habitat Provision

Implementation of K.A.R. 28–16–28c(c)(3) would result in State NPDES permits that cause or contribute to excursions above State water quality standards (*i.e.*, numeric criteria) prohibited by 40 CFR 122.44(d). Further, this reduced level of protection achieved through the NPDES permit is in effect a lowering of the designated use based on the State's determination that stream flow was inadequate. Not only has the State failed to submit a UAA to justify the implicit use downgrade, but, if Kansas had done so, such an approach would clearly be inconsistent with 40 CFR 131.10(g)(2). EPA's regulation specifically prohibits the removal or down-grading of a designated use based on inadequate flow where "* * * these conditions may be compensated for by the discharge of sufficient volume of effluent discharges * * *to enable uses to be met." 40 CFR 131.10(g)(2).

EPA previously informed the State of the basis for its position in letters dated May 13, 1993, to Dr. Hammerschmidt, Deputy Director, Division of Environment, KDHE, and May 24, 1994, to Mark Bradbury, District Environmental Administrator, KDHE, which were entered into the record at the public hearings held by KDHE during its standards adoption. EPA disapproved this provision in its 1998 action. In its disapproval letter to the State, EPA stated that this deficiency could be remedied by deleting the provision or by revising K.A.R. 28–16–28c(c)(3) to require that, prior to a removal of a designated use, a showing be made as to whether attaining the designated use is not feasible consistent with the provisions at 40 CFR 131.10(g).

In 1999, the State of Kansas adopted subsequent revisions to its water quality standards, including revisions to K.A.R. 28–16–28c(c)(3). Those revisions recognize the need for the State to conduct a use attainability analysis to support any downgrade in use and acknowledge that any new or revised use would need to be adopted as part of the State's water quality standards.

However, in oral communications with EPA staff, KDHE staff informed EPA that the 1999 revisions also authorize NPDES permit limitations to be based on the use attainability analysis even before the corresponding revised use designations are adopted by

the State into their water quality standards. That is inconsistent with the current EPA regulations. In effect, Kansas is removing a designated use upon completion of a UAA but prior to following the public process for water quality standards revisions. 40 CFR 131.20(b). Furthermore, under recently promulgated regulations at 65 FR 24641 (April 27, 2000), revisions to State water quality standards will not be effective for the purposes of the CWA until approved by EPA. Therefore, a use attainability analysis contemplated under the provisions of the 1999 revisions cannot serve as a basis for NPDES permit limitations until the State adopts the corresponding use designation revision, submits it to EPA, and obtains EPA approval. K.A.R. 28–16–28c(c)(3), in effect, would allow permitting authorities to calculate limitations based on the results of a use attainability analysis irrespective of the outlined process. For that reason, the 1999 Kansas revisions are inconsistent with EPA's implementing regulations and do not address the deficiencies identified in EPAs 1998 disapproval letter with respect to the State's earlier version of that section. Therefore, the 1999 Kansas revisions to this provision do not eliminate the need for a Federal promulgation.

3. Ensuring Discharges to Effluent-Created Habitat Waters Protect the Designated Use

EPA is proposing to promulgate a provision requiring that designated uses at K.A.R. 28–16–28d and K.A.R. 28–16–28e for stream segments for which continuous flow is sustained primarily through the discharge of treated effluent must be protected (irrespective of the development of a use attainability analysis that demonstrates that a different use may be appropriate) until EPA approves a revision to the applicable use designation.

4. Request for Comment and Data

EPA solicits any additional data and information that may further support or refute the need for the changes being proposed today. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period. After full consideration of such information, EPA will make a final decision on the appropriateness of the changes in today's proposal.

D. Procedures for Implementing the State's Antidegradation Policy

1. Background

In compliance with Federal regulations at 40 CFR 131.12(a), the State identified its methods for implementing the State's antidegradation policy and submitted these methods to EPA as part of the *Kansas Surface Water Quality Implementation Procedures* (October 18, 1994) on October 31, 1994. The *Kansas Surface Water Quality Implementation Procedures* (the Procedures) contained procedures the State uses to implement its antidegradation policy and develop water quality-based effluent limitations and conditions for NPDES permits. The portion of the Procedures addressing implementation of the State's antidegradation policy only addressed point sources of pollution. The State's Procedures were silent on implementing the antidegradation requirements of K.A.R. 28–16–28c(a)(2), in the context of determining whether to allow a lowering of surface water quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water. On August 10, 1999, the State submitted revised *Kansas Implementation Procedures: Surface Water* (June 1, 1999) to EPA for review and approval. The citation for the State antidegradation regulation changed from K.A.R. 28–16–12c(a)(2) to K.A.R. 28–16–28c(a)(1)(B) in the 1999 revisions.

2. EPA's Review of Kansas' Antidegradation Implementation Procedures

As part of its review of the 1994 submission of new or revised water quality standards from the State, EPA reviewed the portion of *Kansas Surface Water Quality Implementation Procedures* (October 18, 1994) addressing antidegradation, section 3, and found that the procedures did not fully address implementation of Kansas' antidegradation policy consistent with Federal regulations at 40 CFR 131.12(a). As discussed in section III. F., however, the State addressed all but one of the deficiencies in its 1999 submission, and EPA approved them in January 2000. Although revised in 1999, the State's antidegradation implementation procedures still did not identify how Kansas would implement the requirement in K.A.R. 28–16–28c(a)(1)(B) that all cost-effective and reasonable best management practices for nonpoint sources of pollution shall be achieved in instances when the KDHE allows a lowering of water quality by point sources. Accordingly, EPA's February 1998 disapproval remains in effect.

3. EPA Proposal To Promulgate Antidegradation Implementation Provisions for Kansas

Because of this continuing deficiency in Kansas' antidegradation implementation procedures, EPA is proposing to identify implementation procedures for use when applying K.A.R. 28–16–28c(a)(1)(B) to determine whether to allow a lowering of surface waters quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water. The proposed implementation procedures are described next.

Consistent with Federal regulations, Kansas' antidegradation policy at K.A.R. 28–16–28c(a)(1)(B) requires that, before allowing degradation of water quality in high quality waters from a point source, the highest statutory and regulatory requirements for all point sources, and all cost effective and reasonable BMPs for controlling nonpoint sources, are achieved. This requirement ensures that, before additional increments of water quality are used by point sources, nonpoint sources currently introducing the same pollutants into the water body are taking all reasonable steps required by State law to minimize the introduction of those pollutants. The implementation procedures proposed today are intended to facilitate the application of this requirement in Kansas' antidegradation regulation. These proposed procedures are based on guidance issued by EPA in 1994 entitled *Interpretation of Federal Antidegradation Regulatory Requirement*, from Tudor T. Davies, dated February 22, 1994. They consist of three steps to be undertaken when applying K.A.R. 28–16–28c(a)(1)(B) to determine whether to allow a lowering of surface water quality by point sources of pollution where non-pont sources also contribute the pollutant of concern. First, Kansas would need to identify significant sources (or categories) of nonpoint pollution that may impact a high quality water body by releasing the pollutants of concern. Second, Kansas would need to identify reasonable and cost-effective BMPs for each of these significant nonpoint sources or source categories. Third, Kansas would need to determine that significant nonpoint sources in those nonpoint source categories will implement the appropriate BMPs. In addition, EPA recommends conducting these analyses prospectively, on a watershed basis, to

facilitate antidegradation reviews of individual activities.

With respect to the first step, significant nonpoint source contributors can be identified through an analysis of all nonpoint source contributors in the area, or by an analysis of all nonpoint source contributors whose proximity to the water body, water body segment, or tributaries makes them "significant" in terms of potential water quality impact. Other factors such as the degree of uncertainty concerning cause-effect relationships can also be considered. Consistent with EPA's interpretation of its regulations, Kansas need only identify nonpoint source contributors for which the State has established requirements to implement control programs, but Kansas may also choose to identify other significant nonpoint source contributors that are not subject to such programs.

With respect to the second step of this implementation procedure, Kansas need only identify those cost-effective and reasonable BMPs or other nonpoint source pollution reduction measures that are part of its nonpoint source programs, including any developed under section 319 of the CWA, and that are required to be implemented under State law. Of course, the State is also free to identify cost-effective and reasonable BMPs that are not required by State law.

With respect to the third step, the State need only determine that the BMPs will be implemented. Such a determination can rely on Kansas regulations, local ordinances, performance bonds, contracts, cost share agreements and memorandums of understanding, as well as voluntary programs under certain circumstances, *e.g.*, an active nonpoint source program covering a watershed or area of concern.

Under this proposed regulation, the implementation procedures would apply to any determination under K.A.R. 28–16–28c(a)(1)(B) to allow a lowering of water quality from a point source where nonpoint sources are also contributing the pollutant of concern to the body of water. The State is also encouraged to apply or adapt the EPA's 1994 guidance to other activities that State law requires to comply with Tier 2 of the State's antidegradation requirements, including new or significantly expanded nonpoint sources.

To comply with the requirements of today's proposal, EPA would expect that permit fact sheets or statements of basis for facilities permitted under the National Pollutant Discharge Elimination System (NPDES) program describe compliance with antidegradation requirements through the application of the proposed implementation procedures. EPA may object to any permit that does not meet the requirements of the Clean Water Act. Where there is no discussion of antidegradation in the NPDES permit fact sheet, EPA may be unable to determine that the permit conditions derive from and comply with the State standards and with the requirements of the CWA.

4. Request for Comment and Data

EPA solicits comment on the antidegradation implementation procedures it is proposing. EPA also requests comments on any other procedures that could be used to implement the Kansas requirements at K.A.R. 28–16–28c(a)(1)(B). EPA also requests comment on whether it is necessary to promulgate a regulation in order to establish these implementation procedures for Kansas. The Agency will evaluate any comments, data and information submitted to EPA by the close of the public comment period. After full consideration of such comments, data, and information, EPA will make a final decision on the appropriateness of today's proposed changes and EPA's antidegradation implementation procedures with respect to the relationship between point and nonpoint sources.

V. What Federal Water Quality Standards Is EPA Proposing Under Section 303(c)(4)(B)?

A. Legal Basis

CWA section 303(c) specifies that adoption of water quality standards is primarily the responsibility of the States. However, section 303(c) also describes a role for EPA overseeing State actions to ensure compliance with CWA requirements. If EPA's review of the State's standards finds flaws or omissions, then the CWA authorizes EPA to promulgate replacement Federal standards to correct the deficiencies if the State or authorized Tribes fail to do so. See section 303(c)(4).

Section 303(c)(4) of the CWA provides two bases for promulgation of Federal water quality standards. The first basis, in 303(c)(4)(A), applies when a State submits new or revised standards that EPA determines are not consistent with the applicable requirements of the CWA and EPA's implementing regulations. If the State does not amend its rules within 90 days of EPA's disapproval to be consistent with the CWA and EPA's implementing regulations, EPA must promptly propose appropriate Federal water quality standards for that State. The second basis for EPA's action is 303(c)(4) (B), which provides that EPA shall promptly initiate promulgation "* * * in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of this Act." The authority to make a finding under section 303(c)(4)(B) of the CWA and to propose and promulgate Federal regulations correcting such State water quality standards rests solely with the Administrator.

B. Water Quality Criteria for Alpha-Endosulfan and Beta-Endosulfan

1. Background

Under section 303(c)(2)(B) of the CWA, States must adopt numeric water quality criteria for toxic pollutants listed under EPA section 307(a)(1) for which EPA has published section 304(a) criteria, if the presence of the toxic pollutant in the State's waters is reasonably expected to interfere with the protection of the waters' designated uses. On December 22, 1992, EPA promulgated the National Toxics Rule (NTR), specifying the chemical-specific, numeric water quality criteria for priority toxic pollutants necessary to bring all States into compliance with the requirements of section 303(c)(2)(B) of the CWA. At that time, Kansas had failed to revise its water quality standards to meet the requirements of section 303(c)(2)(B) of the CWA. Therefore, in the NTR, EPA promulgated numeric water quality criteria for a number of toxic pollutants for the protection of aquatic life and human health in Kansas.

2. Administrator's Findings Regarding Alpha-Endosulfan and Beta-Endosulfan

The Administrator has determined that new or revised water quality standards for alpha- and beta-endosulfan are necessary to protect human health in Kansas. The Administrator bases this determination on the fact that the State has failed to adopt standards required by section 303(c)(2)(B) despite information that alpha- and beta-endosulfan may reasonably be expected to interfere with drinking water designated uses. In enacting section 303(c)(2)(B), Congress indicated the need for prompt adoption and implementation of water quality standards for toxic pollutants if the presence of the toxic pollutants in the State's waters is reasonably expected to interfere with the protection of the waters' designated uses. Therefore, a State's failure to meet this fundamental section 303(c)(2)(B) requirement of adopting appropriate standards

constitutes a failure "to meet the requirements of the Act." Under this proposed rulemaking, the State of Kansas retains the ability to adopt water quality criteria for these pollutants and correct this deficiency.

3. Request for Comment and Data

EPA solicits any additional data and information that may further support or refute the need for numeric water quality criteria for alpha- and beta-endosulfan. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period. After full consideration of such information, EPA will make a final decision whether the changes in today's proposal are appropriate.

C. Administrator's Finding Regarding Privately Owned Surface Waters

1. Background

In its 1998 disapproval letter, EPA identified certain existing water quality standards within the K.A.R. relating to the application of water quality standards to privately owned surface waters that EPA had previously approved, but that appeared to be inconsistent with the CWA and EPA's implementing regulations. The Region therefore indicated that this issue would be forwarded to the Administrator for action consistent with her authority under CWA section 303(c)(4)(B).

At issue is K.A.R. 28–16–28c(f), entitled Application of Standards to Privately-Owned Surface Waters, which states that the application of water quality standards to privately owned water bodies shall be subject to the provisions of K.S.A. 65–171d. The State law cited in the regulation provides in relevant part as follows: If a freshwater reservoir or farm pond is privately owned, and where complete ownership of land bordering the reservoir or pond is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards in Kansas except as it relates to water discharges or seepage from the reservoir or pond to waters of the State, either surface water or ground water, or as it relates to the public health of persons using the reservoir or pond or waters therefrom. This is inconsistent with the CWA and EPA's implementing regulations to the extent that it would potentially exempt from water quality standards surface water—regardless of its ownership characteristics—that may be a water of the United States. Kansas' exclusion of private waters from protections under the CWA could also be a problem in the State's NPDES program. Kansas' failure to apply the State's water quality standards to all surface waters—including private waters—that are waters of the United States was specifically identified as a program deficiency by EPA in an October 1, 1990, letter from Martha Steincamp, EPA Regional Counsel, to David Traster, General Counsel for KDHE. As a result of discussions between EPA's Regional Office and KDHE, this statutory deficiency was to have been addressed by legislative action in the 1991 legislative session, but no such correction occurred.

The CWA does not recognize distinctions in ownership in the application of water quality standards to waters of the United States. Rather, the CWA requires that water quality standards apply to all waters of the United States, making no distinction between publicly and privately owned waters. The Administrator therefore has determined under section 303(c)(4)(B) that the identified provisions are inconsistent with the CWA and EPA's implementing regulations. In today's **Federal Register** notice, EPA is proposing to narrow the exemption for privately owned surface waters (notably lakes and wetlands) so that the exemption would not apply to waters of the United States. Whether a particular water is a water of the United States is a water body-specific determination. EPA is not aware of any waters of the United States in Kansas that are currently exempted from State water quality standards because of to the State's provision; nonetheless, EPA believes the State's provision creates a potential loophole that may preclude the State from protecting a waterbody from degradation. Every privately owned waterbody that is a water of the United States is entitled to—and indeed requires—protection under the CWA. Should the need ever arise to apply water quality standards to any privately owned water that is a water of the United States, the State's standard for unclassified waters would apply.

2. Request for Comment and Data

EPA solicits any additional data and information that may further support or refute the changes being proposed today. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period. After full consideration of such information, EPA will make a final decision whether the changes in today's proposal are appropriate.

VI. Economic Analysis

This proposed rule would have no direct impact on any entity because the proposed rule, once finalized, will simply establish water quality standards (*e.g.*, ambient water quality criteria) which by themselves do not impose any costs. These standards, however, may serve as a basis for development of NPDES permit limits. In Kansas, the State is the NPDES permitting authority and retains considerable discretion in implementing standards. Thus, until the State implements these water quality standards, there will be no effect on any entity. Nonetheless, EPA prepared a preliminary analysis to evaluate potential costs to NPDES dischargers in Kansas associated with future State implementation of EPA's Federal standards.

Any NPDES-permitted facility that discharges to water bodies affected by the proposed rule or that is subject to effluent limits for pollutants for which EPA is proposing to promulgate criteria could potentially incur costs to comply with the proposed rule's provisions. The types of affected facilities may include industrial facilities and publically owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources, although EPA recognizes that controls on these sources may be necessary to achieve designated uses. Nonpoint source discharges are technically difficult to model and evaluate for costing purposes because they are intermittent, highly variable, and occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, the evaluation of nonpoint sources and their effects on the environment is highly site specific and data sensitive. In addition, EPA did not address the potential monetary benefits of this proposed rule for Kansas.

A. Identifying Affected Facilities

EPA used available data to identify the total number of facilities discharging to Kansas surface waters and the number that may be affected by the provisions of today's proposed rule. According to EPA's Permit Compliance System (PCS), there are 1,253 NPDES-permitted facilities in Kansas. Fifty-seven of the facilities are classified as major dischargers, and 1,196 are minor dischargers. The total includes 320 nondischarging animal feedlots and 85 sand and gravel quarries, which are all classified as minor dischargers.

In determining the number of facilities potentially affected by the proposed rule, EPA did not include non-discharging animal feedlots or sand and gravel quarries. Because CWA

section 301(a) prohibits point sources, including concentrated animal feeding operations (CAFOs), from discharging to surface waters without a permit, and because NPDES permits for CAFOs in turn prohibit discharges, EPA was not aware of any CAFO that would be impacted by EPA's proposal to upgrade the water use designation. (The only CAFOs that would be affected would be those discharging in violation of CWA section 301(a) or their permit, and EPA is not aware of such CAFOs in Kansas.) Nonetheless, EPA is aware that there may be facilities that presently are not subject to NPDES permitting requirements but that theoretically could be designated as CAFOs. EPA therefore requests information or data on any animal feeding facilities in Kansas that are discharging to waters for which EPA proposes to upgrade their designated uses and that therefore might be affected by this proposal.

EPA did not consider sand and gravel quarries because they would not discharge pollutants of concern in EPA's proposed rule. Sand and gravel quarries likely have permit limits only for total suspended solids. In addition, some quarries may have no discharge.

Therefore, the universe of dischargers that might be affected by EPA's proposed rule includes 848 permitted facilities (57 majors and 791 minors).

To identify facilities potentially affected by the proposed designated use change, EPA determined which of the 848 permitted facilities are located on water bodies with proposed changed use designations. EPA evaluated 1,485 stream segments and lakes for today's proposed rule. However, EPA could not discern the location of all facilities with respect to these segments. For water bodies where EPA today proposes to upgrade the designated use, EPA solicits any additional data and information (*e.g.*, if there are discharges to such streams; how the discharges are permitted; concentrations of pollutants in such discharges, etc.) that may further support or refute the attainability of EPA's proposed changes.

To identify facilities discharging to waters lacking primary contact recreation uses, EPA matched water body data to facility records in EPA's Permit Compliance System (PCS) and Industrial Facilities Database and a database provided by the State of Kansas. This effort identified 154 facilities (6 majors and 148 minors) that discharge to segments affected by the proposed rule. However, EPA could not discern the discharge location of over 300 facilities, so it is not known whether these facilities would be affected by the proposed rule or not. To estimate costs, EPA assumed these facilities to be located on affected water bodies in the same proportion as identified facilities.

Of the 1,485 stream segments and lakes evaluated, one is also lacking an aquatic life support use (Whiskey Creek). Using the same procedures, EPA identified one facility that discharges to Whiskey Creek.

To identify facilities discharging to waters affected by the proposed assumed flow changes, EPA linked PCS facility data and State-provided facility data with stream segment information from EPA's National Computer Center Gauge File. EPA identified 116 facilities (3 majors and 113 minors) on water bodies with 7Q10 flows less than 1 cfs. Of these 116 facilities, 69 facilities (2 majors and 67 minors) were located on streams with zero flow. Thus, EPA assumed that facilities evaluated for assumed flow changes would also account for those facilities impacted by the effluent created habitat provision of today's proposed rule. As such, EPA did not assess the costs for these two provisions separately. Note, however, that flow data were not available for over half of the facilities. To estimate costs, EPA assumed that the proportion of facilities on water bodies with flow data that had low flows less than 1 cfs would be the same as the proportion of facilities on water bodies without flow data with low flows less than 1 cfs. EPA requests comment on its assumption that the assumed flow analysis accounts for facilities affected by the effluent created habit provision of today's proposal. EPA solicits any additional data and information on facilities discharging to waters affected by the effluent created habitat provision that may further support or refute this approach.

EPA found no facilities in PCS in Kansas with effluent limits for alpha-endosulfan or beta-endosulfan. Although this does not necessarily mean that there would be no impact from proposed water quality criteria for these pollutants (*i.e.*, facilities may have these pollutants in their effluent and may be subject to effluent limits under the proposed criteria), EPA does not have data with which to evaluate effluent concentrations. EPA requests that persons with data or information on the discharge of alpha- or beta-endosulfan to surface waters in Kansas to provide it to the Agency for evaluation.

With respect to EPA's proposal to apply the States' water quality standards to privately owned surface waters that are waters of the United States, EPA was unable to evaluate the economic impact of that proposal for several reasons. EPA was unable to determine whether any such waters received discharges that, as a consequence of the proposal, henceforth could be subject to the CWA's permitting requirements. Similarly, EPA did not evaluate potential costs associated with proposing to promulgate a regulation that would require Kansas to apply the implementation procedures in 40 CFR 131.34(f) when applying the States' antidegradation policy (at K.A.R. 28–16–28c(a)(1)(B)) to determine whether to allow a lowering of surface waters quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water. EPA solicits any additional data and information (*e.g.*, where such waters are located, how discharges are permitted; concentrations of pollutants in such discharges, etc.) that may assist EPA in estimating potential indirect costs to point and nonpoint sources of pollution associated with this proposed provision.

B. Selecting a Sample

Once EPA identified facilities potentially affected by the proposed rule, it selected a sample of facilities for evaluation of potential compliance costs. EPA stratified the potentially affected facilities by major and minor classification and included all major facilities in each sample. EPA then drew a random sample of potentially affected minor facilities for evaluation. In addition, EPA evaluated separately the one facility discharging to the water body lacking an aquatic life use. The number of facilities identified and the number of facilities used for cost estimation are presented in the following table.

NUMBER OF FACILITIES IDENTIFIED AND EVALUATED

Provision	Identified facilities [1]			Evaluated facilities		
	Majors	Minors	Total	Majors	Minors	Total
Designated Uses:						
Primary Contact Recreation [2]	6	148	154	6	9	15
—Aquatic Life [3]	1	0	1	1	0	1
Assumed Flow [4]	3	113	116	3	7	10
Water Quality Criteria	0	0	0	0	0	0

[1] Additional facilities may be affected but could not be identified (*i.e.*, the universe of potentially affected facilities may exceed the estimates shown).
[2] Facilities discharging to water bodies lacking primary contact recreation use.
[3] Facilities discharging to water bodies lacking aquatic life use.
[4] Facilities discharging to streams with a 7Q10 flow of less than one.

C. Methodology for Estimating Potential Compliance Costs

1. Proposed Designated Uses

EPA evaluated the separate samples of facilities for potential costs resulting from EPA's proposal to designate waters for primary contact recreation and aquatic life support. For primary contact recreation, EPA assumed that a sample facility would have a reasonable potential to exceed water quality criteria for fecal coliforms (and require a permit limit) if, for facilities with effluent data for fecal coliforms, the maximum effluent concentration exceeded the most stringent water quality criterion (the monthly average of 200 colonies per 100 ml). EPA also assumed a facility to have reasonable potential to exceed water quality criteria if a limit for fecal coliforms is included in its existing permit or if it discharges treated domestic sewage that has not been disinfected.

EPA assumed that projected effluent limits would be the same as existing water quality criteria for fecal coliforms (a monthly geometric mean of 200 colonies per 100 ml and a weekly geometric mean of 400 colonies per 100 ml) because existing EPA guidance recommends this approach (U.S. EPA, 1977).

EPA assumed that a sample facility would incur costs when its maximum effluent concentration (or existing permit limit, whichever is smaller) exceeded the most stringent water quality criterion for fecal coliforms. EPA also assumed that a facility would incur costs if it discharges domestic sewage without a disinfection system currently in place.

For this analysis, EPA assumed that facilities with disinfection systems in place but whose effluents do not comply with projected effluent limits could be brought into compliance with treatment process optimization. EPA assumed that UV light disinfection would be installed at facilities with effluents containing domestic sewage that do not have a disinfection system in place.

One facility discharges to a stream that is not designated as supporting aquatic life uses. However, because effluent data are not available for this facility, EPA estimated that it does not have reasonable potential to cause exceedences of chronic aquatic criteria. Consequently, EPA anticipates no cost for this provision.

2. Proposal Regarding Assumed Flow

EPA analyzed reasonable potential for all toxic pollutants with effluent data or limits in existing NPDES permits under two scenarios. For a low scenario, EPA calculated a projected effluent quality (PEQ) value for pollutants with effluent data above detection levels. The PEQ is an effluent value statistically adjusted for uncertainty which EPA uses to estimate a maximum value. The methodology to derive a PEQ is based on EPA's *Technical Support Document for Water Quality-based Toxics Control* (TSD) (1991).

EPA then determined that waste load allocations (WLAs) for each sample facility would be equal to the chronic criterion (or chronic continuous concentration, CCC) because there would be no dilution available (*i.e.*, all sample facilities had 7Q10 stream flows equal to zero). WLAs for metals are expressed in dissolved form (*i.e.*, a translator of one was used to convert criteria from dissolved to total). EPA estimated that a facility had reasonable potential to exceed the water quality criterion for a pollutant when its PEQ exceeded the WLA. For the high scenario, EPA assumed that a facility had reasonable potential to exceed water quality criteria for a pollutant if it had a limit in its existing NPDES permit or if it had reasonable potential under the low scenario. EPA calculated projected effluent limits based on the methods recommended in EPA's TSD.

Dischargers may be affected by EPA's proposed action if their current permit limits or PEQs exceed projected effluent limits developed using actual stream flows. Affected dischargers would need to implement measures to either reduce pollutant concentrations in their effluent or seek relief (*e.g.*, through total maximum daily loads (TMDLs), site-specific criteria, or water quality variances). EPA used different approaches to estimate potential cost impacts under its low and high scenarios.

For the low scenario, EPA estimated pollution control costs in situations where the maximum effluent concentration (MEC) exceeded projected effluent limits and used the MEC as the baseline effluent quality value. However, if the MEC exceeded an existing permit limit, EPA used the existing permit limit as a baseline concentration to avoid including costs that are associated with complying with current State regulations. EPA estimated costs based on the incremental pollutant loading reductions required to achieve the projected limits. However, if the annualized cost to remove a pollutant exceeded $200 per toxic pound-equivalent, EPA assumed that the facility would pursue regulatory relief (*e.g.*, a variance) at a cost of $200,000 per pollutant (U.S. EPA, 1995).

For the high scenario, EPA estimated pollution control costs using the existing permit limit as a baseline effluent concentration. Where an existing permit limit was not available, EPA used the MEC as the baseline effluent quality concentration. Again, EPA estimated costs based on the incremental pollutant loading reductions required to achieve the projected limits. However, EPA did not assume that facilities would pursue regulatory relief even if costs exceeded $200 per toxic pound-equivalent.

For both scenarios, EPA followed a decision framework based on the assumption that a facility would pursue lower cost control strategies prior to adding end-of-pipe treatment.

EPA estimated loading reductions as the difference between the baseline

concentration and the projected WQBEL. Note, however, that this convention likely results in an upper bound estimate of loading reductions because facilities typically discharge at levels below the MEC.

EPA converted pollutant loading reductions from pounds (lbs) to toxic pounds-equivalent (lbs-eq) using toxicity weighting factors from the Assessment of Compliance Costs Resulting from Implementation of the Final Great Lakes Water Quality Guidance (U.S. EPA, 1995). EPA uses the toxic weights presented in the Great Lakes analysis to allow comparability of cost-effectiveness among previous water quality regulatory efforts. Toxicity weighting factors are primarily derived from EPA chronic freshwater aquatic criteria and toxicity values, but are also based on human health criteria when a human health criterion has been established. The toxicity weighting factors used for the analysis are standardized to the former copper water quality criterion of 5.6 µg/L.

EPA did not evaluate reasonable potential for non-toxic, conventional pollutants (*e.g.*, dissolved oxygen) for facilities discharging to streams with a 7Q10 flow of less than one cfs. EPA found that most of the sample facilities do not have water quality-based effluent limits for conventional pollutants in existing NPDES permits. EPA solicits effluent data and information on treatment technologies currently in place for conventional pollutants for facilities discharging to streams with a 7Q10 flow of less than one cfs.

D. Results

1. Proposed Designated Uses

EPA estimated the costs associated with its proposal to designate water bodies for primary contact recreation use and aquatic life use separately. For primary contact recreation use, there are 154 potentially affected facilities out of a total of 511 identified facilities. However, EPA could not obtain reach code information or location data to determine if 337 facilities are affected or not. For these facilities, EPA assumed that the same percentage would be affected as for identified facilities (estimating separately for major and minor facilities).

EPA estimated that the total statewide cost associated with designating the affected water bodies for primary contact recreation would be approximately $1.9 million. EPA estimated that costs for major dischargers are negligible because five of the six major dischargers sampled presently have disinfection facilities and NPDES limits that are consistent with primary contact recreation. For minors, however, eight of the nine sampled facilities do not have disinfection facilities, effluent limits, or monitoring data for fecal coliforms.

EPA estimated that the potential cost associated with reinstating aquatic life uses on the affected water bodies is zero. However, this estimate is based on the one affected facility that could be identified.

2. Proposal Regarding Assumed Flow

For the assumed flow provision, there are 116 potentially affected facilities out of a total of 517 identified facilities. However, EPA did not have information to determine if 331 facilities are affected or not. Again, for these facilities, EPA assumed that the same percentage would be affected as for identified facilities (estimating separately for major and minor facilities).

EPA estimated that the total statewide cost may range from $28,000 to $128,000 annually. The costs are minimal because, of the ten sample facilities, EPA anticipates that two major facilities would incur pollutant minimization control costs under the high scenario. Under the low scenario, only one major facility would require some control, and EPA assumed that this facility would pursue regulatory relief. EPA does not anticipate any costs for minor facilities because none of the facilities have limits or data for toxic pollutants.

EPA does not anticipate any resulting pollutant loading reductions under the low scenario. EPA anticipates small reductions in the discharge of chromium VI and copper under the high scenario.

EPA did not evaluate potential costs associated with removing the assumed flow provision for conventional pollutants. EPA recognizes that costs associated with installing new treatment technologies for treating conventional pollutants could be significant. Facility-specific cost analysis can be used to support a variance from the State's standard, or to justify a lower aquatic life use with less stringent criteria; however, such information is not a basis for assuming that dilution exists in situations where the stream flow, at times, is at or near zero. EPA's proposed rule, if finalized, would not affect the State's ability to issue pollutant-specific variances where information shows that one of the factors in 40 CFR 131.10(g) are met, including information that shows such water quality-based controls would result in substantial and widespread economic and social impact. EPA's cost analysis for the final rule will fully address costs associated with applying the 7Q10 to conventional pollutants.

3. Total Statewide Costs

The following table summarizes the total estimated statewide costs of the proposed rule. The bulk of the costs are attributable to the designation of affected water bodies for primary contact recreation use. As described earlier, much of the costs for this provision result from the need for minor dischargers to install disinfection.

TOTAL ESTIMATED STATEWIDE COSTS BY PROVISION

[July 1999 $/yr]

Provision	Estimated annual cost
Designated Use:	
—Primary Contact Recreation	1,900,000
—Aquatic Life	0
Assumed Flow	0–100,000
Total	1,900,000–2,000,000

EPA recognizes that its identification of facilities that may be affected by the proposed rule is based on limited data. EPA could not determine whether over 300 facilities would or would not be affected because of a lack of data on facility locations. While the assumption that the proportion of facilities in this indeterminate category that would be affected would be similar to the proportion of facilities known to be affected by the proposed rule is

reasonable, EPA solicits information that would help resolve the universe of facilities that would be affected. Should the proportion of facilities in the indeterminate category be substantially different from the proportion of facilities in the known category, then statewide costs may also differ from those reported here.

VII. Alternative Regulatory Approaches and Implementation Mechanisms

In developing a final rule, EPA will consider any data or information submitted to the Agency by the close of the comment period. However, it is possible that data and information may become available after completion of this rulemaking that will be material to water quality standards for Kansas. If EPA ultimately promulgates Federal use designations for Kansas, there are several mechanisms available to ensure that the water quality standards and their implementing mechanisms appropriately take into account such new information. These mechanisms are described in VII. A., B., C., and D.

The State should be aware, however, that EPA considers designated use changes, site-specific criteria, and variances developed pursuant to this provision to be modifications to the State's water quality standards. Federal regulations at 40 CFR 122.44(d)(1) require that NPDES permits include limitations necessary to achieve water quality standards adopted under section 303 of the CWA. Therefore, a designated use change, a site-specific criterion, or a variance cannot be the basis for NPDES permit limitations until the State has adopted it as part of its water quality standards, has submitted it to EPA and EPA has approved it. See 40 CFR 131.21(c) & (d). As with any other revision to the State's water quality standards, EPA would then review these revisions to determine whether they are scientifically defensible in accordance with 40 CFR 131.11(b)(1)(iii), or meet the requirements of 40 CFR 131.10(g), as applicable. EPA will also consider whether the appropriate procedural requirements have been met, such as public participation and certification by the appropriate legal authority within the State. Therefore, if EPA promulgates that regulation as proposed, then Kansas would not be able to employ its designated use changes, site-specific criteria, and variances as a basis for NPDES permit limits until Kansas submits and EPA approves them.

A. Designating Uses

States have considerable discretion in designating uses. The State may find that changes in use designations are warranted. As stated, EPA will review any new or revised use designations adopted by the State for any of the water bodies in today's proposal to determine if the standards meet the requirements of the CWA and implementing regulations. If approved, EPA would subsequently initiate withdrawal of any final Federal water quality standards which may result from today's proposal. However, EPA cautions the State that it must conduct a use attainability analyses as described in 40 CFR 131.10(g) when adopting water quality standards that result in uses that are not specified in section 101(a)(2) of the CWA, or that result in subcategories of uses specified in section 101(a)(2) that require less stringent criteria.

B. Site-Specific Criteria

The State may also develop data that indicates that a site-specific water quality criterion for a particular pollutant is appropriate, and then take action to adopt such a criterion into its water quality standards. Site specific criteria are allowed by regulation and are subject to EPA review and approval. 40 CFR 131.11 requires States to adopt criteria that protect designated uses, that are based on sound scientific rationale, and that contain sufficient parameters or constituents to protect the designated use. In adopting water quality criteria, States should establish numerical values based on EPA's recommended 304(a) criteria guidance, 304(a) criteria guidance modified to reflect site specific conditions, or other scientifically defensible methods, or should establish narrative criteria where numerical criteria cannot be determined or where necessary to supplement narrative criteria.

Currently, EPA guidance specifies three procedures for States and Tribes to follow in deriving site-specific criteria. These are the Recalculation Procedure, the Water-Effect Ratio Procedure and the Resident Species Procedure. These procedures can be found in the *Water Quality Standards Handbook* (EPA–823–B940005a, 1994). There is currently draft guidance for the development of site-specific criteria for the protection of human health in the draft *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health*. EPA also recognizes there may be naturally occurring concentrations of pollutants which may exceed the national criteria published under section 304(a) of the CWA, and has issued policy guidance on establishing site specific aquatic life criteria equal to natural background. (Memo from Tudor T. Davies, Director, Office of Science and Technology to the Regional Water Management Division Directors, and State and Tribal Water Quality Management Program Directors, dated 11/5/97.)

C. Variances

Water quality standards variances are an alternative that can provide a facility with a limited period of time to comply with water quality standards. The proposed rule contains a Federal variance procedure for the designated uses being proposed today. However, the procedures described later in this section can also be used by the State to develop variances of State-adopted water quality standards.

EPA believes variances are particularly suitable when the cause of nonattainment is discharger-specific and it appears that the designated use in question will eventually be attainable. EPA has approved the granting of water quality standards variances by States in circumstances that would otherwise justify changing a use designation on grounds of unattainability (*i.e.*, one or more of the six circumstances contained in 40 CFR 131.10(g)). In contrast to a change in standards that removes a use designation for a water body, a water quality standards variance can apply only to the discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability was based, and only for a limited period of time; the underlying standard remains in effect for all other purposes.

For example, if a designated aquatic life use is currently precluded because of high levels of metals from past mining activities that cannot be remediated in the short term, but it is expected that water quality will eventually improve, a temporary variance may be granted to a discharger with relaxed criteria for such metals, until remediation progresses and the use becomes attainable. The practical effect of such a variance is to allow a permit to be written using less stringent criteria, while encouraging ultimate attainment of the underlying standard. A water quality standards variance provides a mechanism for assuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA that require NPDES permits to meet applicable water quality standards, while granting temporary relief to point source dischargers.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to grant variances from Federally adopted standards. EPA believes that it is appropriate to provide comparable

Federal procedures where, as proposed here, EPA adopts use designations which rely, at least in part, on a rebuttable presumption that fishable/swimmable uses are attainable or adopts more stringent criteria for the State's use designations. EPA is proposing to authorize the Region VII Regional Administrator to grant water quality standards variances where a permittee submits data indicating that an EPA-designated use is not attainable for any of the reasons in 40 CFR 131.10(g). Therefore today's rule proposes variance procedures that would apply to the designated uses promulgated by EPA for the specific stream segments named in today's proposal at proposed 40 CFR 131.34(g) and (h).

Today's proposed rule spells out the process for applying for and granting such variances. Authorizing the Regional Administrator to grant variances should expedite the processing of variance requests. EPA is proposing to use informal adjudication processes in reviewing and granting variance requests. That process is contained in 131.34(i) of today's proposed rule. Because water quality standards variances, technically speaking, are revised water quality standards, the proposal provides that the Regional Administrator will provide public notice of the proposed variance and provide an opportunity for public comment. EPA understands that variance-related issues can often arise in the context of permit issuance. EPA Region VII will seek to work closely with the State permitting authorities to ensure that variance requests will be considered in tandem with the State NPDES permitting process.

The proposed variance procedures would require an applicant for a water quality standards variance to submit a request to the Regional Administrator (or his delegatee) with supporting information.

Under its proposal, as in the national program, the burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). A variance may not be granted if the use could be attained, at a minimum, by all dischargers implementing effluent limitations required under sections 301(b) and 306 of the CWA and the applicant implementing reasonable best management practices for nonpoint source control.

Under the proposal, a variance may not exceed three years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.10(g) are not met.

EPA is soliciting comment on the need for a variance process for EPA-promulgated use designations, the appropriateness of the particular procedures proposed today, and whether the proposed variance procedures are sufficiently detailed.

D. Total Maximum Daily Loads (TMDLs)

State development of TMDLs is an alternative approach for allocating loads of pollutants and ensuring attainment of designated uses in these water bodies. Section 303(d) of the CWA and its implementing regulations establish the TMDL process to provide a mechanism for allocating more stringent water quality-based requirements when technology-based controls and other controls are inadequate to achieve applicable water quality standards. The TMDL process can broaden the opportunity for public participation, expedite water quality-based NPDES permitting, and lead to technically sound and legally defensible decisions for attaining and maintaining water quality standards. In addition, the TMDL process provides a mechanism for integrating the management of both point and nonpoint pollution sources that together may contribute to a water body's impairment. (See: *Guidance for Water Quality-based Decisions: The TMDL Process*, EPA 440–4–91–001, April 1991.)

VIII. Administrative Requirements and Related Government Acts

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. The Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering these economic impacts of today's proposed rule on small entities, the Administrator hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines

that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule," United Distribution* at 1170, *quoting Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Under the CWA water quality standards program, States must adopt water quality standards for their waters and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate criteria or standards in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program, which limits discharges to navigable waters except in compliance with an EPA permit or a permit issued under an approved State program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State implements through the NPDES permit process. The State has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While the State's implementation of Federally promulgated water quality standards *may* result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's proposed rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Kansas will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the State will have a number of discretionary choices associated with permit writing. While Kansas's implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

C. The Paperwork Reduction Act

This rule imposes no new or additional information collection requirements. Therefore, this rule is not subject to the Paperwork Reduction Act.

D. The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on the State or any local or Tribal government or the private sector; rather, this rule proposes designated uses for certain waterbodies in Kansas which, when combined with State adopted water quality criteria, constitute water quality standards for those waterbodies. The State may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated, the proposed rule imposes no enforceable requirements on any party, including small governments. Moreover, any water quality standards, including those proposed here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not affect the nature of the relationship between EPA and States generally, for the rule only applies to waterbodies in Kansas. Further, the proposed rule would not substantially affect the relationship of EPA and the State of Kansas, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter the State's authority to issue NPDES permits or the State's considerable discretion in implementing these water quality standards. Further, this proposed rule would not preclude Kansas from adopting water quality standards that meet the requirements of the CWA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local government representatives in developing this proposed rule. A summary of the concerns raised during that consultation and EPA's response to those concerns is provided later in this section. In its communications with EPA, KDHE expressed concern that some of the standards disapproved by EPA in 1998 and for which EPA is today proposing Federal replacement regulations, would result in substantial costs to small communities without significant environmental benefits. Chief among these issues was EPA's disapproval of the Kansas assumed low flow provision, that allows discharges to water bodies with a 7Q10 flow of less than 1 cubic foot per second (cfs) to use an assumed 7Q10 of 1 cfs in setting permit limits. EPA disapproved this provision in the State standards because it allows water quality-based NPDES permit limits to be derived based on dilution that does not exist. As explained previously, the economic impact of meeting water quality standards may be taken into consideration by the State in making site-specific determinations during preparation of use attainability analyses and variances, but not in adopting water quality standards for statewide implementation.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it impose substantial direct compliance costs on them. In this proposed action, EPA expressly excludes waters in Indian country. Therefore, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

G. The Endangered Species Act

Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), to ensure their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which have been designated as "critical." Consultation is designed to assist Federal agencies in complying with the requirements of section 7 by supplying a process within which FWS and NMFS provide such agencies with advice and guidance on whether an action complies with the substantive requirements of ESA.

EPA initiated informal consultation with the FWS under section 7 of the ESA in November 1997 regarding EPA's planned action to approve in part, and disapprove in part, water quality standards revisions submitted by Kansas in 1994. By letter dated February 19, 1998, the FWS notified EPA that it concurred with EPA's determination that the partial approval, and partial disapproval of the Kansas water quality standards revisions of 1994 should not adversely impact Federally-listed and endangered species. EPA continued to correspond with the FWS throughout the period during which Kansas revised its water quality standards and submitted them to EPA for approval in August 1999.

EPA continued its consultation with FWS under section 7 of the ESA regarding EPA's planned approval of some of the 1999 revisions to the Kansas water quality standards that corrected standards previously disapproved by EPA in its 1998 action. As a result of this consultation, the FWS issued a biological opinion dated January 6, 2000, regarding the State of Kansas' Water Quality Standards program. The opinion concurred with EPA's determination that EPA's partial approval of the 1999 revisions to the Kansas water quality standards program should have no adverse effect on any Federally listed species or species proposed for listing.

In its January 6, 2000, letter, FWS also indicated that it would continue to coordinate "with EPA to resolve the disapproval issues in the State action." EPA continues to actively consult with FWS regarding this action to establish Federal water quality standards in Kansas and plans to conclude consultation on these proposed Federal standards before taking final action.

H. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) Public Law No.104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. Nevertheless, EPA welcomes comments on this aspect of the proposed rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule establishes water quality standards o meet the requirements of the CWA and the implementing Federal regulations.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that indicates these water quality standards are not adequate to protect children's health.

J. Executive Order 12886: Plain Language

Executive Order 12886 and the President's memorandum of June 1, 1998 require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that isn't clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—What else could we do to make the rule easier to understand?

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Reporting and recordkeeping requirements, Water pollution control.

Dated: June 16, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.34 is added to read as follows:

§ 131.34 Kansas.

(a) *Do Kansas' water quality standards apply to "privately owned surface waters'?* The State's water quality standards apply to all waters of the U.S. within the jurisdiction of the State.

(b) *What criteria apply to the Domestic Water Supply Use in Kansas?* In addition to the criteria specified at K.A.R. 28–16–28e(c)(3) and at § 131.36 of this Part for Kansas, the following criteria apply to Kansas surface waters designated for Domestic Water Supply Use:

Pollutant	Criterion
alpha-endosulfan	110 µgliter.
beta-endosulfan	110 µgliter.

(c) *What uses must be protected for stream segments in Kansas for which continuous flow is sustained primarily through the discharge of treated effluent?* Designated uses at K.A.R. 28–16–28d and K.A.R. 28–16–28e for stream segments for which continuous flow is sustained primarily through the discharge of treated effluent must be protected (irrespective of the development of a use attainability analysis that demonstrates that a different use may be appropriate) until EPA approves a revision to the applicable use designation.

(d) *What design flow applies when establishing mixing zones to implement chronic aquatic life criteria in Kansas?* The design flow of 7Q10, 4B3, or other scientifically defensible design flows approved by EPA shall be used in calculating the mixing zone cross-sectional area or volumetric flow in the implementation of chronic aquatic life criteria:

(1) Under K.A.R. 28–16–28c(b)(7)for discharges of all pollutants to any surface waters designated in Kansas as exceptional State waters; and

(2) Under K.A.R. 28–16–28c(b)(8), (A) through (C), for discharges of all pollutants to any surface waters designated in Kansas as general purpose waters, including special aquatic life use waters, expected aquatic life use waters, and restricted aquatic life use waters.

(e) *What design flow applies when establishing mixing zones to implement acute aquatic life criteria in Kansas?* The design flow of 1Q10, 1B3, or other scientifically defensible design flows approved by EPA shall be used in calculating the mixing zone cross-sectional area or volumetric flow in the implementation of acute aquatic life criteria:

(1) Under K.A.R. 28–16–28c(b)(7)for discharges of all pollutants to any surface waters designated in Kansas as exceptional State waters; and

(2) Under K.A.R. 28–16–28c(b)(8), (A) through (C), for discharges of all pollutants to any surface waters designated in Kansas as general purpose waters, including special aquatic life use waters, expected aquatic life use waters, and restricted aquatic life use waters.

(f) *What procedures apply to implement the provisions of Kansas' antidegradation requirements that would allow the lowering of surface water quality by point sources where nonpoint sources also contribute the pollutant of concern to that body of water?* The following implementation procedures are for use when applying K.A.R. 28–16–28c(a)(1)(B) to determine whether to allow a lowering of surface water quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water:

(1) Identification of significant sources (or categories) of nonpoint pollution that may impact a high quality water body by releasing the pollutants of concern;

(2) Identification of reasonable and cost-effective best management practices (BMPs) for each of these significant nonpoint sources or source categories; and

(3) Determination that significant nonpoint sources in those nonpoint source categories will implement appropriate BMPs.

(g) In addition to the State-adopted use designations, the following water body in Kansas is designated for expected aquatic life use.

Stream segment name	HUC8	Lattitude/longitude				Segment No.
		Lower		Upper		
Basin; Missouri						
Subbasin; Independence-Sugar						
WHISKEY CREEK	10240011	39.54	95.11	39.53	95.11	235 00.00

(h) In addition to the State adopted use designations, the following water body segments and lakes in Kansas are designated for primary contact recreational use.

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Basin: Cimarron						
Subbasin: Crooked						
Remuda Creek	11040007	37.08	100.28	37.16	100.28	4
Subbasin: Upper Cimarron-Bluff						
Antelope Creek	11040008	37.09	99.91	37.25	99.98	16
Bear Creek	11040008	37.05	99.71	37.3	99.79	18
Big Sandy Creek	11040008	37.04	99.76	37.06	99.81	[illegible]
Big Sandy Creek	11040008	37.06	99.81	37.07	99.83	7
Big Sandy Creek	11040008	37.07	99.83	37.21	100.34	9
Bullard Creek	11040008	37.06	99.81	37.11	100.21	10
Day Creek	11040008	37.07	99.61	37.27	99.67	20
Gyp Creek	11040008	37.17	100.07	37.37	100.11	25
Indian Creek	11040008	37.16	100.05	37.35	100.01	14
Kiger Creek	11040008	37.07	99.83	37.35	99.95	8
Kiowa Creek	11040008	37.18	99.47	37.49	99.43	12
Snake Creek	11040008	37.06	99.61	36.99	99.68	21
Stink Creek	11040008	37.04	99.79	37	99.87	17
Trout Creek	11040008	37.05	99.55	37.02	99.59	19
Twomile Creek	11040008	37.13	100.01	37.14	100.16	15
Subbasin: Lower Cimarron-Eagle Chief						
Anderson Creek	11050001	36.99	99.36	37.02	99.33	39
Keno Creek	11050001	36.97	99.29	37	99.29	22
West Creek	11050001	36.98	99.42	37.08	99.35	24
Basin: Kansas/Lower Republican						
Subbasin: Middle Republican						
Advent Creek	10250016	40.01	98.4	39.99	98.4	64
Antelope Creek	10250016	39.9	98.26	39.98	98.31	65
Ash Creek	10250016	39.88	98.44	39.99	98.49	65
Ayres Creek	10250016	40.01	98.29	39.98	98.31	70
Bean Creek	10250016	39.9	97.92	39.94	98.02	76
Burr Oak Creek	10250016	39.87	98.31	39.99	98.45	48
Calumet Creek	10250016	40.01	98.97	39.99	98.98	54
Cedar Creek	10250016	40.02	98.52	40	98.51	63
Cora Creek	10250016	39.9	98.56	39.94	98.72	51
Crow Creek (Crystal Creek)	10250016	40	99.16	39.93	99.24	52
Dry Creek	10250016	39.84	97.83	39.9	97.71	80
Korb Creek	10250016	39.9	98.21	39.97	98.24	72
Lohff Creek	10250016	40.01	98.83	39.98	98.83	56
Long Branch	10250016	39.9	98.24	39.98	98.28	68
Lost Creek	10250016	40	99.02	39.96	99.01	53
Louisa Creek	10250016	40.02	98.58	39.98	98.58	61
Norway Creek	10250016	39.9	98.16	39.97	98.2	73
Oak Creek	10250016	40.02	98.21	39.96	98.21	75
Otter Creek	10250016	39.91	97.84	40.01	97.77	79
Rankin Creek	10250016	40.01	98.35	39.98	98.35	69
Rebecca Creek	10250016	40.01	99.1	39.96	99.15	39
Rock Creek	10250016	40.01	98.77	39.98	98.77	57
Spring Creek	10250016	39.9	98.19	39.85	98.22	71
Spring Creek	10250016	39.94	97.86	39.96	97.99	78
State Creek	10250016	40.07	98.59	40	98.61	62

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Taylor Creek	10250016	39.9	98.16	39.97	98.19	74
Walnut Creek	10250016	40.01	98.69	39.97	98.81	40
Walnut Creek	10250016	39.88	98.29	39.99	98.37	46
White Rock Creek, North Branch	10250016	39.88	98.48	39.98	98.58	60
Wolf Creek	10250016	39.89	98.28	39.94	98.32	67
Subbasin: Lower Republican						
Beaver Creek	10250017	39.71	97.8	39.86	97.92	45
Beaver Creek	10250017	39.56	97.38	39.48	97.43	61
Buffalo Creek	10250017	39.59	97.71	39.62	97.87	29
Buffalo Creek, EAST	10250017	39.67	98.14	39.82	98.14	68
Cheyenne Creek	10250017	39.61	97.86	39.51	97.91	55
Coal Creek	10250017	39.68	97.56	39.79	97.55	47
Cool Creek	10250017	39.59	97.64	39.67	97.67	50
Dry Creek	10250017	39.64	98.13	39.67	98.21	43
East Creek	10250017	39.66	97.56	39.82	97.51	21
Elk Creek, West Fork	10250017	39.63	97.42	39.78	97.45	16
Elm Creek, East Branch	10250017	39.53	97.46	39.41	97.52	62
Elm Creek, West Branch	10250017	39.51	97.53	39.43	97.6	59
Finney Creek	10250017	39.36	97.11	39.46	97.05	64
Gar Creek	10250017	39.56	97.26	39.75	97.34	12
Hay Creek	10250017	39.59	97.67	39.68	97.69	49
Lincoln Creek	10250017	39.33	97.08	39.43	97.01	65
Lost Creek	10250017	39.59	97.66	39.51	97.68	57
Marsh Creek	10250017	39.71	97.94	39.86	97.97	35
Marsh Creek, EAST	10250017	39.74	97.95	39.84	98.09	42
Marsh Creek, WEST	10250017	39.71	97.94	39.81	98.11	36
Millers Creek	10250017	39.46	97.23	39.4	97.52	40
Mud Creek	10250017	39.55	97.34	39.49	97.36	63
Oak Creek	10250017	39.67	97.8	39.7	97.85	48
Oak Creek	10250017	39.58	97.57	39.43	97.65	58
Peel Creek	10250017	39.51	97.23	39.79	97.2	10
Plum Creek	10250017	39.58	97.56	39.5	97.59	60
Riley Creek	10250017	39.73	97.59	39.89	97.65	24
Salt Creek, West	10250017	39.65	97.56	39.9	97.7	25
Spring Creek	10250017	39.65	98.07	39.76	98.11	44
Spring Creek	10250017	39.58	97.19	39.66	97.18	53
Turkey Creek	10250017	39.7	97.54	39.73	97.49	51
Upton Creek	10250017	39.61	97.49	39.7	97.5	52
Whites Creek	10250017	39.59	97.8	39.47	97.87	54
Wolf Creek, West Branch	10250017	39.54	97.73	39.47	97.81	56
Subbasin: Upper Kansas						
Davis Creek	10270101	38.96	96.75	38.85	96.65	18
Dry Creek	10270101	38.99	96.74	38.87	96.6	19
Humbolt Creek	10270101	39.05	96.73	38.89	96.54	10
Kitten Creek	10270101	39.21	96.7	39.27	96.69	14
Little Arkansas Creek	10270101	39.24	96.77	39.29	96.85	13
Little Kitten Creek	10270101	39.18	96.62	39.23	96.64	16
Mulberry Creek	10270101	38.83	96.82	38.75	96.79	20
Ralls Creek	10270101	38.86	96.79	38.8	96.74	21
Sevenmile Creek	10270101	39.13	96.65	39.21	96.82	5
Swede Creek	10270101	39.03	96.6	39.08	96.56	17
Subbasin: Middle Kansas						
Adams Creek	10270102	39.27	96.25	39.42	96.32	53
Bartlett Creek	10270102	39.32	96.06	39.4	96.11	55
*Big Elm Creek	10270102	39.27	95.76	39.35	95.73	90
Blackjack Creek	10270102	39.19	96.42	39.24	96.41	64
Blacksmith Creek	10270102	39.06	95.84	38.98	95.85	102
Bourbonais Creek	10270102	39.12	96.02	39.27	96.08	63
Brush Creek	10270102	39.26	96.34	39.38	96.33	57
Coal Creek	10270102	39.53	96.1	39.64	96.14	46
Coryell Creek	10270102	39.21	95.95	39.25	95.92	94
Cow Creek	10270102	39.51	96.13	39.46	96.1	45
*Crow Creek	10270102	39.32	95.91	39.41	95.85	86
Darnells Creek	10270102	39.4	96.4	39.44	96.32	51
Dog Creek	10270102	39.07	96.11	39.02	96.07	78
Doyle Creek	10270102	39.15	96.05	39.27	96.09	69

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Dry Creek	10270102	39.07	96.02	39	96.03	79
*Dutch Creek	10270102	39.24	95.88	39.31	95.82	92
Elm Creek	10270102	39.16	95.59	39.2	95.66	98
Elm Creek	10270102	39.08	95.53	39.14	95.55	103
Elm Slough	10270102	39.25	96.33	39.21	96.39	58
Emmons Creek	10270102	39.16	96.38	39.09	96.4	66
French Creek	10270102	39.5	96.15	39.64	96.17	19
Gilson Creek	10270102	39.58	96.22	39.62	96.23	47
Hendricks Creek	10270102	39.03	96.27	39.07	96.4	73
Hise Creek	10270102	39.48	96.16	39.52	96.28	43
Indian Creek	10270102	39.33	96.22	39.48	96.3	20
*James Creek	10270102	39.26	95.89	39.33	95.82	87
Jim Creek	10270102	39.39	96.18	39.48	96.27	52
Johnson Creek	10270102	38.96	96.02	39.01	96.06	84
Kuenzli Creek	10270102	39.06	96.2	38.94	96.13	82
Little Cross Creek	10270102	39.28	96.03	39.42	95.98	61
Little Muddy Creek	10270102	39.09	95.6	39.17	95.64	99
Loire Creek	10270102	38.98	96.33	39.06	96.4	80
Lost Creek	10270102	39.19	96.16	39.34	96.16	60
Messhoss Creek	10270102	39.11	95.77	39.19	95.74	96
Mud Creek	10270102	39.55	96.21	39.57	96.26	44
Mud Creek	10270102	39.32	96.47	39.34	96.53	56
Muddy Creek, West Fork	10270102	39.22	95.62	39.3	95.71	93
Mulberry Creek	10270102	39.6	96.2	39.65	96.22	42
Mulberry Creek	10270102	39.07	96.14	39.12	96.25	77
Nehring Creek	10270102	38.95	96.24	38.89	96.11	81
Paw Paw Creek	10270102	39.05	96.23	39.11	96.3	75
Pomeroy Creek	10270102	39.34	96.21	39.35	96.16	59
Post Creek	10270102	39.09	95.91	39.01	95.98	101
Pretty Creek	10270102	39.05	96.25	39.08	96.32	74
Rock Creek	10270102	39.21	96.23	39.24	96.25	15
Rock Creek	10270102	39.24	96.25	39.27	96.4	21
Rock Creek	10270102	39.27	96.4	39.4	96.51	23
Rock Creek, East Fork	10270102	39.27	96.4	39.49	96.32	22
Ross Creek	10270102	38.99	95.94	38.98	95.98	35
Salt Creek	10270102	39.24	95.97	39.3	95.95	88
Sand Creek	10270102	39.19	96.46	39.23	96.45	65
Shunganunga Creek, South Branch	10270102	39.02	95.71	38.94	95.7	106
Snake Creek	10270102	39.16	95.96	39.21	96.01	95
Snokomo Creek	10270102	39.06	96.15	38.95	96.12	85
Spring Creek	10270102	39.52	96.11	39.46	96.07	48
Spring Creek	10270102	39.41	96.17	39.36	96.14	54
Spring Creek	10270102	39.06	96.19	39.1	96.23	76
Spring Creek	10270102	39.06	95.46	39.02	95.5	105
Sullivan Creek	10270102	39.25	95.99	39.34	95.96	89
Tecumseh Creek	10270102	39.05	95.57	38.96	95.56	107
Turkey Creek	10270102	39.12	96.04	39.12	96.16	71
Unnamed Stream	10270102	39.18	95.8	39.24	95.8	8
Vassar Creek	10270102	39.08	95.91	39	95.96	100
*Walnut Creek	10270102	39.16	95.86	39.28	95.81	91
Wells Creek	10270102	39.19	96.17	39.13	96.27	68
Whetstone Creek	10270102	39.06	95.53	38.99	95.55	104
Wilson Creek	10270102	39.34	96.43	39.47	96.45	50
Wolf Creek	10270102	39.55	96.04	39.6	96	49
Subbasin: Delaware						
Banner Creek	10270103	39.47	95.72	39.44	95.87	45
Barnes Creek	10270103	39.69	95.86	39.69	95.94	39
*Bills Creek	10270103	39.47	95.65	39.41	95.79	47
Brush Creek	10270103	39.64	95.43	39.63	95.4	44
Brush Creek	10270103	39.34	95.45	39.35	95.36	54
Burr Oak Branch	10270103	39.22	95.34	39.19	95.31	8
Catamount Creek	10270103	39.42	95.52	39.39	95.57	49
Cedar Creek, North	10270103	39.34	95.56	39.39	95.7	46
Claywell Creek	10270103	39.18	95.53	39.23	95.53	56
Clear Creek	10270103	39.62	95.52	39.66	95.38	19
Coal Creek	10270103	39.38	95.49	39.5	95.43	50
Grasshopper Creek	10270103	39.56	95.53	39.62	95.52	18
Grasshopper Creek	10270103	39.62	95.52	39.76	95.63	20
*Gregg Creek	10270103	39.68	95.66	39.88	95.86	24
Honey Creek	10270103	39.24	95.31	39.3	95.28	55

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Little Grasshopper Creek	10270103	39.54	95.52	39.64	95.33	16
Little Wild Horse Creek	10270103	39.08	95.4	39.17	95.34	57
Mission Creek	10270103	39.65	95.52	39.71	95.53	40
Mosquito Creek	10270103	39.55	95.7	39.67	95.96	42
Nebo Creek	10270103	39.45	95.54	39.43	95.65	48
Negro Creek	10270103	39.54	95.53	39.59	95.64	43
Otter Creek	10270103	39.63	95.52	39.71	95.44	41
*Plum Creek	10270103	39.69	95.69	39.81	95.77	36
Rock Creek	10270103	39.17	95.52	39.29	95.61	34
Rock Creek	10270103	39.32	95.44	39.33	95.34	53
*Squaw Creek	10270103	39.71	95.67	39.79	95.69	38
Straight Creek	10270103	39.48	95.55	39.57	95.86	28
Tick Creek	10270103	39.2	95.55	39.27	95.55	52
Unnamed Stream	10270103	39.48	95.76	39.47	95.82	31
Walnut Creek	10270103	39.35	95.46	39.4	95.34	51
Wolfley Creek	10270103	39.64	95.76	39.76	95.91	27
Subbasin: Lower Kansas						
Baldwin Creek	10270104	39.01	95.27	38.97	95.36	69
Brush Creek	10270104	39.25	95.08	39.29	95.06	49
Brush Creek, WEST	10270104	39.31	95.11	39.33	95.19	46
Buttermilk Creek	10270104	39.36	95.11	39.38	95.19	44
Camp Creek	10270104	39.48	95.23	39.57	95.29	41
Camp Creek	10270104	38.96	94.92	38.88	94.92	74
Captain Creek	10270104	38.97	95.04	38.76	95.13	72
Chicken Creek	10270104	38.87	95.34	38.81	95.33	79
Clear Creek	10270104	39.02	94.82	38.97	94.89	383
Cow Creek	10270104	39.03	95.1	39.08	95.1	58
Crooked Creek	10270104	39.46	95.19	39.43	95.24	10
Crooked Creek	10270104	39.43	95.24	39.3	95.3	12
Dawson Creek	10270104	39.33	95.11	39.35	95.21	45
Elk Creek	10270104	38.89	95.48	38.78	95.54	68
Fall Creek	10270104	39.23	95.07	39.23	95.13	52
Hanson Creek	10270104	38.96	94.97	38.96	94.98	436
Hanson Creek	10270104	38.96	94.98	38.94	95.01	437
Hog Creek	10270104	39.13	95.01	39.09	94.96	54
Howard Creek	10270104	39.41	95.24	39.36	95.22	43
Hulls Branch	10270104	39.4	95.26	39.34	95.24	42
Indian Creek	10270104	39.29	95.2	39.35	95.22	48
Jarbalo Creek	10270104	39.19	95.05	39.19	95.14	51
Kent Creek	10270104	38.97	95.12	39.02	95.15	73
Kill Creek	10270104	38.98	94.96	38.82	94.97	37
Little Cedar Creek	10270104	38.92	94.89	38.85	94.83	76
Little Mill Creek	10270104	39.01	94.82	38.95	94.75	78
Little Turkey Creek	10270104	39.06	94.77	39.12	94.84	62
Little Wakarusa Creek	10270104	38.93	95.14	38.82	95.12	71
Mission Creek, East	10270104	39.06	94.83	39.12	94.85	61
Ninemile Creek	10270104	39.01	95.03	39.1	95.16	15
Ninemile Creek	10270104	39.1	95.16	39.2	95.22	17
Oakley Creek	10270104	39.04	95.36	38.99	95.36	56
Plum Creek	10270104	39.1	95.26	39.16	95.25	50
Prairie Creek	10270104	39.25	95.2	39.21	95.22	47
Rock Creek	10270104	38.87	95.43	38.77	95.53	35
Scatter Creek	10270104	39.28	95.17	39.25	95.25	13
Spoon Creek	10270104	38.92	94.98	38.81	95.01	75
Stone Horse Creek	10270104	39.03	95.33	39.15	95.32	57
Stranger Creek	10270104	39.1	95.02	39.23	95.07	7
Stranger Creek	10270104	39.28	95.11	39.46	95.19	8
Stranger Creek	10270104	39.46	95.19	39.57	95.38	9
Tonganoxie Creek	10270104	39.1	95.02	39.2	95.19	14
Tooley Creek	10270104	39.05	94.78	39.04	94.78	379
Turkey Creek	10270104	39.08	94.62	38.97	94.72	77
Unnamed Stream	10270104	39.43	95.24	39.43	95.31	11
Unnamed Stream	10270104	39.1	95.16	39.15	95.14	16
Wakarusa River, Middle Branch	10270104	38.9	95.85	38.93	95.92	64
Wakarusa River, South Branch	10270104	38.89	95.82	38.89	96.03	63
Washington Creek	10270104	38.92	95.29	38.8	95.41	36
Yankee Tank Creek	10270104	38.92	95.27	38.97	95.35	70
Subbasin: Lower Big Blue						
Ackerman Creek	10270205	39.7	96.36	39.82	96.35	49

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Black Vermillion River, Clear Fork	10270205	39.65	96.48	39.52	96.31	9
Black Vermillion River, North Fork	10270205	39.72	96.33	39.93	96.34	15
Black Vermillion River, South Fork	10270205	39.7	96.38	39.55	96.31	12
Bluff Creek	10270205	39.54	96.55	39.49	96.44	K37
Bommer Creek	10270205	39.93	96.62	39.93	96.56	40
Busksnort Creek	10270205	39.48	96.49	39.49	96.53	K33
Carter Creek	10270205	39.55	97.02	39.62	97	59
Cedar Creek	10270205	39.67	96.45	39.64	96.37	56
Corndodger Creek	10270205	39.62	96.53	39.72	96.55	52
De Shazer Creek	10270205	39.65	96.49	39.57	96.46	55
Deadman Creek	10270205	39.5	96.99	39.61	96.98	60
Deer Creek	10270205	39.9	96.65	40	96.67	36
Dog Walk Creek	10270205	39.75	96.46	39.74	96.53	53
Dutch Creek	10270205	39.78	96.68	39.81	96.74	44
Elm Creek	10270205	39.68	96.63	39.78	96.57	46
Elm Creek, North	10270205	39.97	96.6	39.95	96.46	41
Fancy Creek, North Fork	10270205	39.49	96.88	39.62	96.93	61
Fancy Creek, West	10270205	39.47	96.76	39.63	97.06	29
Game Fork	10270205	39.62	96.58	39.59	96.7	54
Hop Creek	10270205	39.8	96.68	39.87	96.78	43
Indian Creek	10270205	39.93	96.72	40.01	96.7	37
Jim Creek	10270205	39.62	96.44	39.61	96.36	57
Johnson Fork	10270205	39.66	96.47	39.73	96.54	51
Kearney Branch	10270205	39.64	96.32	39.65	96.25	58
Lily Creek	10270205	39.82	96.6	39.87	96.58	39
Little Indian Creek	10270205	39.95	96.77	40.02	96.75	35
Little Timber Creek	10270205	39.7	96.41	39.82	96.36	48
Meadow Creek	10270205	39.94	96.75	40	96.74	34
Mission Creek	10270205	40	96.6	40	96.46	22
Murdock Creek	10270205	40	96.46	39.97	96.4	42
Otter Creek	10270205	39.47	96.83	39.39	96.93	67
Otter Creek, North	10270205	39.47	96.77	39.58	96.82	62
Perkins Creek	10270205	39.76	96.46	39.76	96.56	47
Phiel Creek	10270205	39.25	96.59	39.24	96.65	68
Raemer Creek	10270205	39.9	96.7	39.88	96.78	33
Robidoux Creek	10270205	39.69	96.44	39.99	96.36	16
Schell Creek	10270205	39.82	96.62	39.78	96.59	45
School Branch	10270205	39.47	96.82	39.57	96.85	63
Scotch Creek	10270205	39.9	96.63	39.91	96.57	38
Spring Creek	10270205	39.83	96.66	39.93	96.47	19
Spring Creek	10270205	39.55	96.59	39.43	96.53	65
Timber Creek	10270205	39.54	96.62	39.59	96.67	64
Weyer Creek	10270205	39.77	96.24	39.74	96.11	50
Subbasin: Upper Little Blue						
Dry Creek	10270206	40.01	97.68	39.97	97.71	41
Subbasin: Lower Little Blue						
Ash Creek	10270207	39.81	97.04	39.75	97.14	36
Beaver Creek	10270207	39.79	96.88	39.72	96.96	38
Bolling Creek	10270207	39.74	96.82	39.81	96.83	42
Bowman Creek	10270207	39.87	97.24	40	97.32	21
Buffalo Creek	10270207	39.84	97.14	39.78	97.19	32
Camp Creek	10270207	39.81	97.06	39.76	97.15	35
Camp Creek	10270207	39.66	96.81	39.71	96.95	44
Cedar Creek	10270207	39.86	96.89	39.86	96.82	40
Cherry Creek	10270207	39.85	97.35	39.94	97.44	25
Coon Creek	10270207	39.7	96.76	39.7	97.07	23
Fawn Creek	10270207	39.69	96.7	39.61	96.74	45
Gray Branch	10270207	39.86	97.23	39.99	97.25	27
Humphrey Branch	10270207	40.01	97.44	39.98	97.41	24
Iowa Creek	10270207	39.86	97.2	39.8	97.26	34
Joy Creek	10270207	39.94	96.97	40.01	97.12	13
Jones Creek	10270207	39.87	97.22	39.95	97.23	29
Lane Branch	10270207	39.81	96.89	39.84	96.97	39
Malone Creek	10270207	39.78	96.87	39.73	96.92	37
Melvin Creek	10270207	39.85	97.16	39.79	97.2	33
Mercer Creek	10270207	39.75	96.83	39.72	96.89	43
Mill Creek, South Fork	10270207	39.85	97.33	39.85	97.52	31
Myer Creek	10270207	39.86	97.29	39.99	97.35	26

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Riddle Creek	10270207	39.84	97.13	40	97.2	17
Rose Creek	10270207	40	97.51	39.97	97.71	12
Salt Creek	10270207	39.85	97.18	39.99	97.21	19
School Creek	10270207	40	97.01	40	97.03	49
Silver Creek	10270207	40.02	97.23	39.99	97.23	28
Spring Creek	10270207	39.89	97.01	40	97.13	15
Spring Creek	10270207	39.91	97.1	39.96	97.11	30
Walnut Creek	10270207	39.72	96.77	39.86	96.79	41
Basin: Lower Arkansas Subbasin: Rattlesnake						
Bear Creek	11030009	38.05	98.82	37.98	98.9	8
Little Wild Horse Creek	11030009	38.04	98.84	37.95	98.97	6
Spring Creek	11030009	37.97	98.81	37.92	98.91	7
Wildhorse Creek	11030009	38.06	98.74	37.95	99.05	2
Subbasin: Gar-Peace						
Gar Creek	11030010	37.9	97.69	37.86	97.83	8
Subbasin: Cow						
Blood Creek	11030011	38.48	98.7	38.59	99.04	15
Calf Creek	11030011	38.44	98.43	38.59	98.48	16
Deception Creek	11030011	38.48	98.68	38.65	98.79	13
Dry Creek	11030011	38.24	98.09	38.37	98.08	22
Jarvis Creek	11030011	38.27	98.12	38.4	98.12	19
Little Cheyenne Creek	11030011	38.45	98.48	38.44	98.63	7
Little Cow Creek	11030011	38.31	98.19	38.55	98.24	2
Lost Creek	11030011	38.42	98.33	38.61	98.3	17
Owl Creek	11030011	38.31	98.18	38.43	98.16	18
Plum Creek	11030011	38.44	98.36	38.62	98.51	4
Salt Creek	11030011	38.31	98.21	38.39	98.18	21
Spring Creek	11030011	38.35	98.29	38.32	98.42	20
Subbasin: Little Arkansas						
Beaver Creek	11030012	38.11	97.32	38.14	97.24	26
Bull Creek	11030012	38.35	97.65	38.43	97.67	24
Dry Creek	11030012	38.34	97.97	38.35	98.05	22
Emma Creek	11030012	37.94	97.44	38	97.45	8
Emma Creek	11030012	38	97.45	38.27	97.36	7
Emma Creek, West	11030012	38	97.45	38.37	97.4	5
Gooseberry Creek	11030012	37.91	97.35	37.95	97.3	17
Horse Creek	11030012	38.42	98.02	38.52	98.08	19
Jester Creek	11030012	37.85	97.4	38.06	97.28	2
Jester Creek, East Fork	11030012	37.97	97.32	38.05	97.28	18
Kisiwa Creek	11030012	37.96	97.47	38.02	97.79	15
Lone Tree Creek	11030012	38.27	97.92	38.41	97.91	20
Mud Creek	11030012	37.98	97.39	38.08	97.36	16
Running Turkey Creek	11030012	38.27	97.62	38.42	97.47	25
Salt Creek	11030012	38.35	97.97	38.43	97.96	21
Sun Creek	11030012	38.12	97.6	38.25	97.65	11
Sun Creek	11030012	38.25	97.65	38.45	97.58	13
Turkey Creek	11030012	38.25	97.65	38.45	97.55	12
Subbasin: Middle Arkansas-Slate						
Antelope Creek	11030013	37.21	97.27	37.3	97.32	25
Badger Creek	11030013	37.18	97.23	37.13	97.28	31
Beaver Creek	11030013	37.23	97.38	37.32	97.34	29
Beaver Creek	11030013	37.16	97.1	37.25	97.07	33
Big Slough	11030013	37.6	97.39	37.78	97.73	11
Big Slough, South Fork	11030013	37.83	97.6	37.77	97.72	35
Bitter Creek	11030013	37.41	97.2	37.48	97.16	28
Dry Creek	11030013	37.72	97.49	37.7	97.55	15
Dry Creek	11030013	37.61	97.41	37.66	97.55	16
Gypsum Creek	11030013	37.64	97.31	37.75	97.23	5
Hargis Creek	11030013	37.23	97.39	37.34	97.35	24
Lost Creek	11030013	37.26	97.16	37.27	97.18	23
Negro Creek	11030013	37.08	97.09	37.04	97.14	20
Oak Creek	11030013	37.28	97.43	37.36	97.41	26

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Salt Creek	11030013	37.11	97.13	37.09	97.24	22
Spring Creek	11030013	37.08	97.09	37.07	97.17	19
Spring Creek	11030013	37.1	97.1	37.13	97.05	21
Spring Creek	11030013	37.3	97.46	37.4	97.5	27
Spring Creek	11030013	37.21	97.15	37.36	97.1	34
Spring Creek	11030013	37.51	97.27	37.61	97.18	37
Winser Creek	11030013	37.19	97.23	37.29	97.27	32
Subbasin: North Fork Ninnescah						
Crow Creek	11030014	37.85	97.92	37.92	97.93	11
Dooleyville Creek	11030014	37.91	98.52	37.96	98.64	8
Goose Creek	11030014	37.83	98.18	37.71	98.35	10
Ninnescah River, North Fork	11030014	37.57	97.71	37.73	97.79	1
Ninnescah River, North Fork	11030014	37.82	97.9	37.84	98.15	5
Ninnescah River, North Fork	11030014	37.84	98.15	37.84	98.75	6
Red Rock Creek	11030014	37.87	97.99	37.97	98.1	12
Rock Creek	11030014	37.7	97.78	37.78	97.74	13
Silver Creek	11030014	37.84	98.15	37.76	98.59	7
Spring Creek	11030014	37.62	97.74	37.76	97.71	14
Wolf Creek	11030014	37.83	98.32	37.83	98.41	9
Subbasin: South Fork Ninnescah						
Coon Creek	11030015	37.66	98.53	37.61	98.58	9
Coon Creek	11030015	37.55	97.9	37.53	98	17
Hunter Creek	11030015	37.64	98.08	37.55	98.2	14
Mead Creek	11030015	37.63	98.33	37.56	98.37	10
Mod Creek	11030015	37.57	97.72	37.54	97.8	19
Natrona Creek	11030015	37.66	98.63	37.72	98.69	K38
Negro Creek	11030015	37.63	98.05	37.57	98.08	13
Nester Creek	11030015	37.6	97.81	37.7	97.87	15
Ninnescah River, West Branch South Fork	11030015	37.64	98.77	37.62	98.95	5
Painter Creek	11030015	37.64	98.34	37.57	98.65	7
Pat Creek	11030015	37.63	98.31	37.56	98.33	11
Petyt Creek	11030015	37.63	98.23	37.56	98.29	12
Sand Creek	11030015	37.59	97.95	37.55	98.1	18
Spring Creek	11030015	37.7	97.98	37.78	98	8
Wild Run Creek	11030015	37.62	98.2	37.54	98.22	16
Subbasin: Ninnescah						
Afton Creek	11030016	37.6	97.64	37.61	97.63	5
Clearwater Creek	11030016	37.55	97.63	37.6	97.64	4
Clearwater Creek	11030016	37.6	97.64	37.72	97.66	7
Dry Creek	11030016	37.51	97.42	37.59	97.46	16
Elm Creek	11030016	37.43	97.38	37.41	97.47	10
Garvey Creek	11030016	37.47	97.43	37.42	97.46	11
Sand Creek	11030016	37.54	97.69	37.5	97.93	14
Silver Creek	11030016	37.47	97.47	37.42	97.53	12
Spring Creek	11030016	37.46	97.38	37.58	97.53	2
Spring Creek	11030016	37.51	97.56	37.62	97.58	15
Turtle Creek	11030016	37.48	97.49	37.43	97.53	13
Subbasin: Kaw Lake						
Blue Branch	11060001	37.3	96.69	37.34	96.72	30
Bullington Creek	11060001	37.23	96.71	37.26	96.61	28
Cedar Creek	11060001	37.31	96.68	37.4	96.53	32
Chilocco Creek	11060001	36.98	97.06	37.05	97.16	19
Crabb Creek	11060001	37.13	96.78	37.19	96.61	29
Ferguson Creek	11060001	37.46	96.57	37.45	96.52	38
Franklin Creek	11060001	37.45	96.58	37.5	96.61	35
Gardners Branch	11060001	37.39	96.63	37.39	96.56	39
Goose Creek	11060001	37.39	96.64	37.46	96.64	34
Myers Creek	11060001	36.97	96.81	37.03	96.74	24
Otter Creek	11060001	37.02	96.9	37.05	96.83	20
Pebble Creek	11060001	37.18	96.85	37.23	96.77	26
Plum Creek	11060001	37.28	96.78	37.32	96.73	33
Riley Creek	11060001	37.46	96.57	37.47	96.51	37
School Creek	11060001	37.26	96.69	37.29	96.63	31
Shellrock Creek	11060001	37.01	96.81	37.07	96.75	22
Silver Creek	11060001	37.06	96.87	37.34	96.76	17

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Snake Creek	11060001	37.22	96.83	37.31	96.82	25
Spring Creek	11060001	36.97	96.7	37.08	96.72	21
Turkey Creek	11060001	37.2	96.71	37.26	96.75	27
Wagoner Creek	11060001	37.47	96.56	37.52	96.5	36
Subbasin: Upper Salt Fork Arkansas						
Ash Creek	11060002	37.15	98.99	37.2	98.93	20
Big Sandy Creek	11060002	37.03	98.86	37.24	98.88	5
Cave Creek	11060002	37.07	98.97	37.02	99.05	28
Deadman Creek	11060002	37.13	98.85	37.24	98.9	22
Dog Creek	11060002	37.12	99.08	37.17	99.11	29
Hackberry Creek	11060002	36.98	98.81	37.16	98.8	23
Indian Creek	11060002	37.12	99.04	37.28	99.16	9
Inman Creek	11060002	37.19	99	37.27	98.94	21
Mustang Creek	11060002	37.09	99.14	36.97	99.19	31
Nescatunga Creek, East Branch	11060002	37.18	99.21	37.3	99.21	27
Red Creek	11060002	37.11	99.05	36.98	99.11	16
Spring Creek	11060002	37.32	99.12	37.39	99.16	24
Wildcat Creek	11060002	37.12	99.09	37.22	99.13	12
Yellowstone Creek	11060002	36.99	98.84	36.98	98.86	17
Subbasin: Medicine Lodge						
Amber Creek	11060003	37.38	98.59	37.49	98.64	12
Antelope Creek	11060003	37.24	98.56	37.31	98.51	22
Bear Creek	11060003	37.36	98.88	37.3	98.99	13
Bitter Creek	11060003	37.31	98.73	37.24	98.79	18
Cedar Creek	11060003	37.28	98.63	37.2	98.8	20
Cottonwood Creek	11060003	37.36	98.85	37.43	98.85	16
Crooked Creek	11060003	37.41	98.65	37.5	98.67	11
Litle Mule Creek	11060003	36.93	98.52	37.19	98.77	9
Dry Creek	11060003	37.14	98.66	37.19	98.74	21
Elm Creek, East Branch South	11060003	37.43	98.77	37.54	98.83	10
Elm Creek, North Branch	11060003	37.43	98.68	37.56	98.78	4
Elm Creek, South Branch	11060003	37.43	98.68	37.56	98.89	5
Little Bear Creek	11060003	37.31	98.76	37.22	98.81	19
Medicine Lodge River, North Branch	11060003	37.45	99.2	37.53	99.28	24
Mulberry Creek	11060003	37.37	98.89	37.5	98.89	14
Otter Creek	11060003	37.43	99.12	37.39	99.16	25
Puckett Creek	11060003	37.35	98.84	37.31	98.87	15
Sand Creek	11060003	37.33	98.76	37.4	98.75	17
Soldier Creek	11060003	37.44	99.04	37.61	99.04	27
Stink Creek	11060003	36.94	98.43	37.05	98.53	28
Turkey Creek	11060003	37.37	98.92	37.6	98.99	7
Wilson Slough	11060003	37.17	98.54	37.23	98.52	23
Subbasin: Lower Salt Fork Arkansas						
Camp Creek	11060004	37.13	98.24	37.27	98.25	68
Cooper Creek	11060004	36.97	98.06	37.07	98.06	71
Crooked Creek	11060004	36.97	97.93	37.04	97.92	24
Little Sandy Creek	11060004	36.96	98.27	37.37	98.49	39
Little Sandy Creek, East Branch	11060004	37.24	98.41	37.37	98.5	65
Osage Creek	11060004	36.9	97.79	37	97.8	17
Plum Creek	11060004	37.06	98.22	37.14	98.18	70
Pond Creek	11060004	36.98	97.87	37.04	97.89	18
Rush Creek	11060004	36.98	98.19	37.01	98.12	69
Salty Creek	11060004	36.99	98.3	37.18	98.45	40
Sandy Creek	11060004	36.98	98.21	37.36	98.33	37
Sandy Creek, West	11060004	37.2	98.32	37.36	98.38	56
Spring Creek	11060004	37.16	98.35	37.31	98.38	66
Unnamed Stream	11060004	36.97	97.96	37.03	97.99	25
Subbasin: Chikaskia						
Allen Creek	11060005	37.47	98.28	37.55	98.36	40
Baehr Creek	11060005	37.08	97.86	37.22	97.9	22
Beaver Creek	11060005	37.2	97.63	37.35	97.62	28
Beaver Creek	11060005	37.12	98.06	37.17	98.17	46
Big Spring Creek	11060005	37.42	97.95	37.52	97.98	34
Bitter Creek	11060005	36.95	97.26	37.13	97.28	4
Bitter Creek, East	11060005	36.99	97.23	37.07	97.19	16

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Blue Stem Creek	11060005	37.45	98.01	37.53	98.04	48
Chicken Creek	11060005	37.4	98.5	37.48	98.54	36
Copper Creek	11060005	37.44	98.03	37.5	98.06	42
Dry Creek	11060005	36.95	97.34	37.01	97.3	17
Duck Creek	11060005	37.43	97.97	37.53	98.02	32
Fall Creek	11060005	37	97.56	37.2	97.82	14
Fall Creek, East Branch	11060005	37.09	97.69	37.18	97.7	27
Goose Creek	11060005	37.41	98.3	37.44	98.35	38
Kemp Creek	11060005	37.46	98.26	37.51	98.27	49
Long Creek	11060005	37.18	97.56	37.26	97.54	529
Meridian Creek	11060005	37	97.38	37.16	97.34	20
Prairie Creek	11060005	37.13	97.59	37.15	97.75	512
Prairie Creek, East	11060005	37.15	97.57	37.28	97.53	516
Prairie Creek, West	11060005	37.15	97.57	37.31	97.56	527
Red Creek	11060005	37.44	98.07	37.54	98.18	43
Rock Creek	11060005	37.11	97.97	37.24	97.99	23
Rodgers Branch	11060005	37.08	97.55	37.17	97.52	26
Rose Bud Creek	11060005	37.45	98.08	37.54	98.09	44
Rush Creek	11060005	37.17	98.1	37.37	98.13	45
Sand Creek	11060005	37.44	98.2	37.58	98.79	11
Sand Creek, East	11060005	37.25	97.78	37.38	98.16	12
Sandy Creek	11060005	37.34	97.86	37.45	97.85	30
Shoo Fly Creek, East	11060005	37.09	97.44	37.17	97.4	19
Shore Creek	11060005	37.24	97.68	37.37	97.67	35
Silver Creek	11060005	37.25	97.69	37.37	97.7	29
Skunk Creek	11060005	37.39	98.37	37.45	98.44	39
Spring Branch	11060005	37.07	97.83	37.2	97.85	21
Wild Horse Creek	11060005	37.44	98.16	37.55	98.2	4
Wildcat Creek	11060005	37.1	97.95	37.03	98.02	24
Basin: Marais Des Cygnes Subbasin: Upper Marais Des Cygnes						
Appanoose Creek	10290101	38.62	95.33	38.77	95.49	16
Appanoose Creek, East	10290101	38.68	95.43	38.75	95.44	89
Batch Creek	10290101	38.8	95.97	38.87	96.04	86
Blue Creek	10290101	38.6	95.35	38.63	95.4	81
Bradshaw Creek	10290101	38.21	95.25	38.15	95.28	75
Cedar Creek	10290101	38.33	95.26	38.16	95.47	66
Cherry Creek	10290101	38.24	95.47	38.22	95.53	74
Chicken Creek	10290101	38.69	96.05	38.81	96.09	70
Chicken Creek	10290101	38.52	95.67	38.57	95.68	93
Coal Creek	10290101	38.59	95.4	38.49	95.44	48
Dry Creek	10290101	38.36	95.2	38.42	95.21	57
Dry Creek	10290101	38.56	95.52	38.58	95.63	95
Duck Creek	10290101	38.54	95.95	38.64	96.16	41
Eightmile Creek	10290101	38.62	95.29	38.69	95.34	13
Frog Creek	10290101	38.52	95.61	38.36	95.81	42
Hard Fish Creek	10290101	38.59	95.47	38.52	95.47	47
Hickory Creek	10290101	38.58	95.11	38.68	95.03	8
Hill Creek	10290101	38.6	96.05	38.69	96.2	71
Iantha Creek	10290101	38.34	95.34	38.42	95.51	62
Jersey Creek	10290101	38.6	95.74	38.65	95.79	76
Kenoma Creek	10290101	38.32	95.38	38.41	95.52	64
Little Rock Creek	10290101	38.45	95.59	38.4	95.55	73
Long Creek	10290101	38.52	95.61	38.46	95.69	K36
Locust Creek	10290101	38.77	96.12	38.79	96.2	69
Middle Creek	10290101	38.57	95.13	38.48	95.44	50
Mosquito Creek	10290101	38.45	95.07	38.48	95.14	52
Mud Creek	10290101	38.57	95.33	38.54	95.39	49
Mud Creek	10290101	38.7	95.78	38.65	95.83	78
Mud Creek	10290101	38.51	95.92	38.49	96	91
Mute Creek	10290101	38.6	95.8	38.59	95.91	92
Ottawa Creek	10290101	38.59	95.16	38.63	95.19	K25
Plum Creek	10290101	38.5	94.95	38.59	94.99	2
Plum Creek	10290101	38.72	95.86	38.7	95.94	79
Popcorn Creek	10290101	38.69	95.73	38.77	95.73	87
Pottawatomie Creek, North Fork	10290101	38.32	95.38	38.35	95.58	65
Pottawatomie Creek, South Fork	10290101	38.38	95.14	38.13	95.15	67
Rock Creek	10290101	38.53	95.58	38.35	95.57	43
Rock Creek	10290101	38.6	95.23	38.53	95.34	97
Sac Branch, South Fork	10290101	38.43	95.11	38.44	95.2	54

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Sac Creek	10290101	38.34	95.3	38.47	95.44	60
Salt Creek	10290101	38.59	95.51	38.73	95.99	29
Sand Creek	10290101	38.65	95.3	38.69	95.29	82
Smith Creek	10290101	38.71	95.81	38.69	95.92	77
Spring Creek	10290101	38.69	95.34	38.71	95.39	84
Switzler Creek	10290101	38.71	95.79	38.84	95.92	80
Tauy Creek	10290101	38.59	95.16	38.83	95.27	11
Tauy Creek, West Fork	10290101	38.63	95.19	38.71	95.27	K26
Tequa Creek	10290101	38.54	95.54	38.49	95.52	44
Tequa Creek, East Branch	10290101	38.49	95.52	38.48	95.45	46
Tequa Creek, South Branch	10290101	38.49	95.52	38.42	95.51	45
Thomas Creek	10290101	38.27	95.4	38.18	95.51	72
Turkey Creek	10290101	38.58	95.09	38.59	95.08	4
Turkey Creek	10290101	38.59	95.08	38.6	95.01	6
Unnamed Stream	10290101	38.59	95.08	38.59	95.02	5
Walnut Creek	10290101	38.63	95.19	38.76	95.14	90
West Fork Eight Mile Creek	10290101	38.71	95.35	38.79	95.4	88
Willow Creek	10290101	38.51	95.59	38.43	95.63	94
Wilson Creek	10290101	38.62	95.28	38.69	95.27	83
Wolf Creek	10290101	38.52	95.62	38.58	95.65	96
Subbasin: Lower Marais Des Cygnes						
Buck Creek	10290102	38.14	94.89	38.09	94.93	44
Bull Creek	10290102	38.73	94.96	38.82	94.98	99
Davis Creek	10290102	38.25	94.88	38.32	94.95	38
Dorsey Creek	10290102	38.56	94.85	38.63	94.82	22
Elm Branch	10290102	38.71	94.8	38.69	94.74	48
Elm Branch	10290102	38.47	94.81	38.54	94.77	53
Elm Creek	10290102	38.36	94.83	38.34	94.96	40
Hushpuckney Creek	10290102	38.4	94.87	38.44	94.93	37
Jake Branch	10290102	38.5	94.71	38.55	94.71	54
Jordan Branch	10290102	38.48	94.91	38.45	94.92	36
Little Bull Creek	10290102	38.72	94.87	38.83	94.89	51
Little Sugar Creek	10290102	38.24	94.74	38.11	95.01	33
Little Sugar Creek, North Fork	10290102	38.14	94.91	38.08	94.96	43
Martin Creek	10290102	38.76	94.81	38.77	95.06	26
Middle Creek	10290102	38.49	94.75	38.52	94.63	13
Middle Creek	10290102	38.37	94.81	38.34	95.09	30
Mound Creek	10290102	38.39	94.96	38.39	95.05	35
Richland Creek	10290102	38.25	94.81	38.31	94.87	41
Rock Creek	10290102	38.7	94.99	38.78	95.07	27
Smith Branch	10290102	38.7	94.94	38.73	94.92	47
Spring Creek	10290102	38.73	94.87	38.78	94.82	50
Sugar Creek	10290102	38.2	95	38.24	95.17	42
Turkey Creek	10290102	38.24	94.85	38.19	94.91	45
Walnut Creek	10290102	38.49	94.75	38.54	94.74	14
Walnut Creek	10290102	38.12	94.6	38.11	94.67	34
Walnut Creek	10290102	38.58	94.89	38.62	94.99	52
WEA Creek, North	10290102	38.6	94.78	38.74	94.68	21
WEA Creek, South	10290102	38.55	94.86	38.56	94.85	18
WEA Creek, South	10290102	38.56	94.85	38.6	94.79	19
WEA Creek, South	10290102	38.6	94.78	38.59	94.63	20
Subbasin: Little Osage						
Clever Creek	10290103	38.02	94.76	37.95	94.79	7
Elk Creek	10290103	38.02	94.77	38.1	94.86	11
Fish Creek	10290103	38.01	94.7	37.95	94.77	8
Indian Creek	10290103	38	94.64	38.11	94.68	12
Irish Creek	10290103	38.02	94.99	38.08	94.98	9
Laberdie Creek, East	10290103	38.02	94.72	38.1	94.71	13
Limestone Creek	10290103	37.99	94.96	37.93	95.1	5
Lost Creek	10290103	38.02	94.8	38.07	94.94	10
Reagan Branch	10290103	37.98	94.94	37.94	94.95	6
Subbasin: Marmaton						
Buck Run	10290104	37.7	94.6	37.74	94.72	46
Bunion Creek	10290104	37.79	94.9	37.72	94.88	39
Cedar Creek	10290104	37.82	94.79	37.87	94.84	41
Drywood Creek, Moores Branch	10290104	37.77	94.53	37.79	94.7	17
Drywood Creek, West Fork	10290104	37.7	94.6	37.6	94.8	19

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Elm Creek	10290104	37.79	94.82	37.73	94.87	15
Hinton Creek	10290104	37.77	94.96	37.74	95.06	38
Lath Branch	10290104	37.85	94.66	37.82	94.68	42
Little Mill Creek	10290104	37.91	94.81	37.96	94.82	34
Mill Creek	10290104	37.85	94.7	37.93	94.92	6
Owl Creek	10290104	37.75	94.95	37.69	94.92	45
Paint Creek	10290104	37.8	94.82	37.79	94.82	13
Paint Creek	10290104	37.79	94.82	37.7	94.97	14
Prong Creek	10290104	37.73	94.97	37.72	94.99	44
Robinson Branch	10290104	37.83	94.87	37.87	94.87	40
Shiloh Creek	10290104	37.86	94.59	37.95	94.67	36
Sweet Branch	10290104	37.87	95.11	37.92	95.11	30
Tennyson Creek	10290104	37.83	95	37.88	95.03	31
Turkey Creek	10290104	37.85	94.95	37.92	95	33
Walnut Creek	10290104	37.84	94.9	37.9	94.91	32
Walnut Creek	10290104	37.68	94.7	37.72	94.74	47
Wolfpen Creek	10290104	37.8	95.06	37.74	95.08	37
Wolverine Creek	10290104	37.87	94.68	37.93	94.72	35
Subbasin: South Grand						
Harless Creek	10290108	38.59	94.57	38.59	94.62	67
Poney Creek	10290108	38.64	94.61	38.68	94.64	48
Basin: Missouri **Subbasin: Tarkio-Wolf**						
Cold Ryan Branch	10240005	39.79	95.22	39.74	95.19	70
Coon Creek	10240005	39.84	95.17	39.78	95.12	71
Halling Creek	10240005	39.78	95.29	39.7	95.32	68
Mill Creek	10240005	39.95	95.25	39.86	95.29	52
Rittenhouse Branch	10240005	39.8	95.21	39.83	95.27	69
Spring Creek	10240005	39.91	95.3	39.92	95.34	65
Striker Branch	10240005	39.86	95.18	39.84	95.24	72
Wolf River, Middle Fork	10240005	39.81	95.44	39.74	95.55	67
Wolf River, North Fork	10240005	39.81	95.48	39.84	95.56	66
Wolf River, South Fork	10240005	39.81	95.38	39.65	95.34	57
Unnamed Stream	10240005	39.81	95.38	39.84	95.35	55
Subbasin: South Fork Big Nemaha						
Burger Creek	10240007	39.94	96.08	39.99	96.11	24
Deer Creek	10240007	39.92	96.03	39.93	95.85	18
Fisher Creek	10240007	39.82	96.06	39.79	96.12	28
Illinois Creek	10240007	39.78	96.05	39.68	96.05	30
Rattlesnake Creek	10240007	40.05	95.86	39.98	95.87	27
Rock Creek	10240007	40.06	95.72	39.94	95.86	20
Tennessee Creek	10240007	39.81	96.06	39.73	95.94	29
Turkey Creek	10240007	39.95	96.04	39.98	96.15	4
Turkey Creek	10240007	39.98	96.15	40.02	96.14	5
Wildcat Creek	10240007	39.88	96.04	39.83	96.16	23
Wildcat Creek	10240007	40	96.24	40	96.22	22
Wolf Pen Creek	10240007	39.92	95.99	39.96	95.91	25
Subbasin: Big Nemaha						
*Noharts Creek	10240008	40.01	95.45	39.92	95.47	42
Pedee Creek	10240008	39.98	95.68	40	95.73	41
Pony Creek	10240008	40	95.62	39.91	95.8	38
*Roys Creek	10240008	40.02	95.39	39.9	95.49	40
Subbasin: Independence-Sugar						
Brush Creek	10240011	39.67	95.03	39.75	95.07	26
Deer Creek	10240011	39.62	95.1	39.57	95.25	32
Fivemile Creek	10240011	39.3	94.9	39.3	94.97	35
Independence Creek, North Branch	10240011	39.67	95.2	39.69	95.29	29
Jordan Creek	10240011	39.66	95.19	39.74	95.15	30
Owl Creek	10240011	39.47	95.05	39.43	95.09	33
Rock Creek	10240011	39.64	95.11	39.76	95.12	21
Salt Creek	10240011	39.39	94.94	39.3	95.03	34
Smith Creek	10240011	39.85	94.94	39.84	94.97	28
Threemile Creek	10240011	39.32	94.91	39.32	94.97	36

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Walnut Creek	10240011	39.5	95.05	39.52	95.18	23
Walnut Creek	10240011	39.73	94.97	39.76	95.05	25
White Clay Creek	10240011	39.56	95.11	39.56	95.12	31
White Clay Creek	10240011	39.56	95.12	39.56	95.13	31
White Clay Creek	10240011	39.56	95.13	39.53	95.2	31
Whiskey Creek	10240011	39.54	95.11	39.53	95.11	235 00.00
Whiskey Creek	10240011	39.53	95.11	39.52	95.14	235 00.32
Subbasin: Lower Missouri-Crooked						
Brush Creek	10300101	39.02	94.62	39	94.62	54
Camp Branch	10300101	38.83	94.63	38.74	94.66	56
Coffee Creek	10300101	38.81	94.68	38.82	94.78	57
Dyke Branch	10300101	38.97	94.61	38.98	94.63	55
Indian Creek	10300101	38.94	94.61	38.9	94.76	32
Negro Creek	10300101	38.86	94.61	38.85	94.69	58
Tomahawk Creek	10300101	38.93	94.62	38.87	94.76	53
Basin: Neosho **Subbasin: Neosho Headwaters**						
Allen Creek	11070201	38.44	96.19	38.69	96.23	5
Badger Creek	11070201	38.39	96.06	38.52	96.09	45
Big John Creek	11070201	38.62	96.44	38.74	96.4	37
Bluff Creek	11070201	38.63	96.37	38.74	96.21	[illegible]
Crooked Creek	11070201	38.75	96.64	38.68	96.67	35
Dows Creek	11070201	38.43	96.16	38.44	96.19	3
Dows Creek	11070201	38.44	96.19	38.65	96.19	4
Eagle Creek	11070201	38.28	95.88	38.26	96.21	25
Eagle Creek, South	11070201	38.27	96.04	38.22	96.14	47
East Creek	11070201	38.62	96.46	38.54	96.63	39
Elm Creek	11070201	38.65	96.48	38.65	96.66	36
Fourmile Creek	11070201	38.65	96.66	38.66	96.67	24
Fourmile Creek	11070201	38.27	95.95	38.18	96.02	48
Haun Creek	11070201	38.75	96.65	38.64	96.72	29
Horse Creek	11070201	38.75	96.31	38.82	96.32	33
Kahola Creek	11070201	38.54	96.33	38.52	96.47	43
Lairds Creek	11070201	38.73	96.58	38.86	96.59	30
Lanos Creek	11070201	38.72	96.54	38.86	96.56	21
Lebo Creek	11070201	38.3	95.91	38.41	95.84	51
Munkers Creek, East Branch	11070201	38.79	96.41	38.83	96.33	31
Munkers Creek, Middle Branch	11070201	38.77	96.45	38.81	96.39	32
Neosho River, East Fork	11070201	38.73	96.5	38.83	96.35	18
Neosho River, West Fork	11070201	38.76	96.71	38.67	96.79	28
Parkers Creek	11070201	38.76	96.67	38.83	96.68	27
Plum Creek	11070201	38.34	95.98	38.43	95.96	50
Plumb Creek	11070201	38.43	96.12	38.51	96.1	49
Rock Creek	11070201	38.62	96.37	38.63	96.37	7
Rock Creek	11070201	38.63	96.37	38.81	96.2	9
Rock Creek, East Branch	11070201	38.75	96.3	38.82	96.23	34
Spring Creek	11070201	38.6	96.51	38.54	96.53	40
Stillman Creek	11070201	38.47	96.17	38.55	96.18	44
Taylor Creek	11070201	38.44	96.16	38.52	96.1	46
Walker Branch	11070201	38.59	96.4	38.57	96.46	42
Wolf Creek	11070201	38.6	96.49	38.54	96.5	41
Wrights Creek	11070201	38.55	96.35	38.64	96.28	38
Subbasin: Upper Cottonwood						
Antelope Creek	11070202	38.32	97.15	38.22	97.26	19
Bills Creek	11070202	38.15	96.8	38.08	96.87	30
Bruno Creek	11070202	38.26	96.83	38.37	96.89	27
Catlin Creek	11070202	38.27	96.97	38.24	97.15	20
Clear Creek	11070202	38.36	97.02	38.6	96.92	5
Clear Creek, East Branch	11070202	38.44	96.96	38.53	96.9	24
Coon Creek	11070202	38.24	96.81	38.22	96.69	32
Cottonwood River, South	11070202	38.36	97.07	38.32	97.15	17
Cottonwood River, South	11070202	38.32	97.15	38.41	97.34	18
Doyle Creek	11070202	38.24	96.91	38.21	97.26	21
French Creek	11070202	38.39	97.17	38.43	97.33	6
Mud Creek	11070202	38.36	97.02	38.57	97.17	6
Perry Creek	11070202	38.51	97.3	38.43	97.33	23
Spring Branch	11070202	38.31	97.02	38.25	97.16	26

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Spring Creek	11070202	38.16	97.11	38.22	97.21	28
Spring Creek	11070202	38.23	96.93	38.12	96.92	29
Stony Brook	11070202	38.31	97.26	38.24	97.31	25
Turkey Creek	11070202	38.19	96.82	38.09	96.87	31
Subbasin: Lower Cottonwood						
Beaver Creek	11070203	38.41	96.33	38.47	96.35	29
Bloody Creek	11070203	38.37	96.45	38.24	96.4	40
Buck Creek	11070203	38.37	96.53	38.32	96.61	39
Buckeye Creek	11070203	38.4	96.37	38.5	96.47	44
Bull Creek	11070203	38.39	96.38	38.46	96.45	26
Camp Creek	11070203	38.58	96.81	38.58	96.9	14
Coal Creek	11070203	38.36	96.08	38.28	96.24	43
Collett Creek	11070203	38.4	96.71	38.47	96.75	21
Corn Creek	11070203	38.17	96.55	38.16	96.5	47
Coyne Branch	11070203	38.29	96.74	38.23	96.69	33
Crocker Creek	11070203	38.18	96.56	38.15	96.64	46
Dodds Creek	11070203	38.55	96.74	38.63	96.71	15
Fox Creek	11070203	38.39	96.55	38.52	96.63	19
French Creek	11070203	38.27	96.77	38.36	96.83	32
Gannon Creek	11070203	38.42	96.65	38.48	96.59	24
Gould Creek	11070203	38.35	96.67	38.37	96.71	36
Holmes Creek	11070203	38.32	96.69	38.28	96.68	35
Jacob Creek	11070203	38.4	96.36	38.28	96.35	28
Kirk Creek	11070203	38.21	96.56	38.2	96.62	48
Little Cedar Creek	11070203	38.1	96.54	38.06	96.43	11
Little Cedar Creek	11070203	38.15	96.55	38.13	96.42	45
Middle Creek	11070203	38.38	96.63	38.55	96.89	5
Mile-and-A-Half Creek	11070203	38.56	96.77	38.66	96.8	13
Moon Creek	11070203	38.4	96.27	38.47	96.3	31
Mulvane Creek	11070203	38.44	96.66	38.5	96.64	22
Peyton Creek	11070203	38.38	96.42	38.5	96.51	25
Phenis Creek	11070203	38.39	96.26	38.28	96.3	30
Pickett Creek	11070203	38.5	96.71	38.49	96.77	18
Prather Creek	11070203	38.39	96.55	38.33	96.61	23
Rock Creek	11070203	38.26	96.54	38.18	96.65	37
Schaffer Creek	11070203	38.48	96.69	38.55	96.65	17
School Creek	11070203	38.51	96.71	38.57	96.68	16
Sharpes Creek	11070203	38.27	96.52	38.15	96.44	38
Silver Creek	11070203	38.31	96.72	38.37	96.79	34
Spring Creek	11070203	38.37	96.43	38.32	96.4	41
Stout Run	11070203	38.37	96.48	38.44	96.52	27
Stribby Creek	11070203	38.41	96.78	38.51	96.79	20
Subbasin: Upper Neosho						
Badger Creek	11070204	38.15	95.65	38.2	95.6	42
Big Creek, North	11070204	38.09	95.73	38.16	96	16
Big Creek, South	11070204	38.09	95.73	38.13	95.97	17
Bloody Run	11070204	37.81	95.49	37.88	95.52	25
Carlyle Creek	11070204	37.98	95.39	38.07	95.37	47
Charles Branch	11070204	37.82	95.39	37.87	95.4	27
Cherry Creek	11070204	37.85	95.58	38	95.71	20
Coal Creek	11070204	37.77	95.45	37.86	95.26	4
Cottonwood Creek	11070204	37.97	95.41	38.02	95.42	48
Crooked Creek	11070204	38.06	95.63	38.26	95.57	44
Draw Creek	11070204	37.65	95.34	37.72	95.36	34
Goose Creek	11070204	37.74	95.28	37.82	95.27	29
Long Creek	11070204	38.11	95.67	38.37	95.61	12
Martin Creek	11070204	37.98	95.48	38.09	95.38	49
Mud Creek	11070204	37.78	95.45	37.78	95.52	26
Mud Creek	11070204	37.79	95.22	37.86	95.24	31
Onion Creek	11070204	37.85	95.47	37.92	95.51	24
Owl Creek	11070204	37.79	95.45	37.85	95.58	19
Owl Creek	11070204	37.85	95.58	37.93	95.88	21
Plum Creek	11070204	37.87	95.59	37.94	95.6	22
Rock Creek	11070204	37.9	95.42	37.97	95.21	7
Rock Creek	11070204	37.98	95.52	37.95	95.6	23
Rock Creek	11070204	38.18	95.73	38.18	95.8	15
Rock Creek	11070204	38.18	95.8	38.17	95.82	32
School Creek	11070204	38.3	95.64	38.35	95.64	38

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Scott Creek	11070204	38.18	95.64	38.28	95.58	40
Slack Creek	11070204	37.8	95.4	37.8	95.31	30
Spring Creek	11070204	38.01	95.55	38.12	95.52	46
Sutton Creek	11070204	37.71	95.41	37.74	95.37	35
Turkey Branch	11070204	37.71	95.31	37.77	95.34	28
Turkey Creek	11070204	38.07	95.67	37.92	95.89	18
Turkey Creek	11070204	37.64	95.41	37.61	95.53	32
Twiss Creek	11070204	38.03	95.58	38.12	95.52	45
Varvel Creek	11070204	38.07	95.83	38.12	95.9	43
Village Creek	11070204	37.71	95.42	37.63	95.6	33
Wolf Creek	11070204	38.15	95.71	38.33	95.67	37
Subbasin: Middle Neosho						
Bachelor Creek	11070205	37.5	95.21	37.45	95.23	40
Canville Creek	11070205	37.56	95.3	37.74	95.1	16
Center Creek	11070205	37.1	95.04	37.15	94.93	25
Cherry Creek	11070205	37.08	95.07	37.32	94.83	4
Deer Creek	11070205	37.1	95.19	37.23	95.3	27
Denny Branch	11070205	37.18	94.97	37.18	94.88	31
Elk Creek	11070205	37.6	95.33	37.5	95.46	19
Elm Creek	11070205	37.47	94.92	37.54	94.95	43
Flat Rock Creek	11070205	37.5	95.16	37.56	95.13	12
Flat Rock Creek	11070205	37.56	95.13	37.71	95.02	14
Fourmile Creek	11070205	37.53	95.21	37.66	95.16	49
Grindstone Creek	11070205	37.42	94.94	37.48	94.98	42
Hickory Creek	11070205	37.34	95.1	37.54	94.98	10
Lake Creek	11070205	37.1	95.16	37	95.29	24
Lightning Creek	11070205	37.18	95.07	37.35	94.96	6
Lightning Creek	11070205	37.35	94.96	37.63	94.9	8
Limestone Creek	11070205	37.35	94.96	37.43	94.82	7
Little Cherry Creek	11070205	37.22	94.94	37.31	94.8	32
Little Elk Creek	11070205	37.57	95.41	37.51	95.42	47
Little Fly Creek	11070205	37.03	95.02	37.05	94.95	26
Little Labette Creek	11070205	37.31	95.24	37.45	95.44	23
Little Walnut Creek	11070205	37.57	95.09	37.69	95.03	46
Litup Creek	11070205	37.28	95.1	37.36	95.03	36
Mulberry Creek	11070205	37.33	94.97	37.44	94.99	35
Murphy Creek	11070205	37.47	95.13	37.52	95.05	41
Ogeese Creek	11070205	37.51	95.23	37.49	95.36	38
Pecan Creek	11070205	37.6	95.29	37.66	95.27	45
Plum Creek	11070205	37.31	95	37.31	94.92	34
Rock Creek	11070205	37.57	95.31	37.52	95.37	48
Spring Creek	11070205	37.21	95.2	37.23	95.29	30
Stink Branch	11070205	37.26	95.04	37.28	94.97	37
Thunderbolt Creek	11070205	37.41	94.93	37.52	94.85	44
Tolen Creek	11070205	37.35	95.25	37.41	95.22	39
Town Creek	11070205	37.02	95.06	37.04	95.16	28
Turkey Creek	11070205	37.08	95.13	37	95.22	29
Walnut Creek	11070205	37.56	95.13	37.66	94.97	13
Wolf Creek	11070205	37.36	94.91	37.36	94.83	33
Subbasin: Lake O'The Cherokees						
Fourmile Creek	11070206	36.99	94.94	37.07	94.88	18
Tar Creek	11070206	36.96	94.84	37.07	94.84	19
Subbasin: Spring						
Little Shawnee Creek	11070207	37.18	94.7	37.29	94.79	22
Long Branch	11070207	37.24	94.67	37.29	94.73	21
Shawnee Creek	11070207	37.09	94.69	37.25	94.8	17
Taylor Branch	11070207	37.29	94.67	37.38	94.61	25
Willow Creek	11070207	37.04	94.73	37.08	94.85	20
Basin: Smoky Hill/Saline **Subbasin: Middle Smoky Hill**						
Ash Creek	10260006	38.65	98.07	38.53	98.19	37
Big Timber Creek	10260006	38.71	99.27	38.64	99.32	24
Big Timber Creek	10260006	38.64	99.32	38.6	99.48	25
Big Timber Creek	10260006	38.6	99.48	38.67	99.74	27
Blood Creek	10260006	38.78	98.42	38.63	98.52	35

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Buck Creek	10260006	38.71	99.08	38.6	99.18	29
Buffalo Creek	10260006	38.74	98.3	38.89	98.32	6
Clear Creek	10260006	38.68	98.08	38.8	98.14	42
Coal Creek	10260006	38.79	98.49	38.63	98.58	34
Cow Creek	10260006	38.76	98.37	38.89	98.33	38
Eagle Creek	10260006	38.72	99.07	38.56	99.06	30
Fossil Creek	10260006	38.79	98.8	38.89	98.96	13
Goose Creek	10260006	38.79	98.7	38.63	98.76	39
Landon Creek	10260006	38.78	98.85	38.61	98.9	31
Loss Creek	10260006	38.74	98.32	38.65	98.38	44
Mud Creek	10260006	38.67	98.17	38.64	98.22	47
Oxide Creek	10260006	38.71	98.21	38.6	98.29	45
Sellens Creek	10260006	38.79	98.77	38.61	98.87	32
Shelter Creek	10260006	38.7	99.21	38.59	99.21	43
Skunk Creek	10260006	38.68	98.14	38.6	98.15	48
Spring Creek	10260006	38.78	98.43	38.74	98.48	41
Timber Creek	10260006	38.6	99.48	38.72	99.67	26
Turkey Creek	10260006	38.73	98.26	38.62	98.32	46
Unnamed Stream	10260006	38.72	99.34	38.87	99.47	20
Unnamed Stream	10260006	38.72	99.41	38.71	99.56	23
Unnamed Stream	10260006	38.64	99.32	38.59	99.32	28
Wilson Creek	10260006	38.79	98.45	38.86	98.49	40
Wolf Creek	10260006	38.75	98.35	38.65	98.48	36
Subbasin: Lower Smoky Hill						
Basket Creek	10260008	39.16	97.2	39.13	97.29	40
Battle Creek	10260008	38.54	97.45	38.42	97.48	23
Carry Creek	10260008	38.75	97.09	38.72	97.13	32
Carry Creek	10260008	38.87	96.92	38.71	97.11	35
Chapman Creek, West	10260008	39.21	97.3	39.27	97.49	5
Dry Creek	10260008	38.74	97.58	38.6	97.8	36
Dry Creek, East	10260008	38.85	97.53	38.76	97.53	43
Hobbs Creek	10260008	38.69	97.42	38.6	97.35	48
Holland Creek	10260008	38.88	97.25	38.74	97.29	25
Holland Creek, East	10260008	38.74	97.29	38.59	97.27	27
Holland Creek, West	10260008	38.74	97.29	38.59	97.31	26
Kentucky Creek	10260008	38.62	97.62	38.46	97.56	17
Kentucky Creek, West	10260008	38.52	97.61	38.47	97.62	54
Lone Tree Creek	10260008	38.95	97.08	39	97.12	41
Lyon Creek, West Branch	10260008	38.87	96.92	38.64	97.09	34
McAllister Creek	10260008	38.73	97.42	38.7	97.35	49
Middle Branch	10260008	38.61	97.2	38.55	97.2	58
Mud Creek	10260008	38.89	97.21	39.13	97.33	8
Otter Creek	10260008	38.95	96.85	38.9	96.82	42
Paint Creek	10260008	38.52	97.71	38.44	97.72	52
Pewee Creek	10260008	38.63	97.59	38.58	97.55	56
Sand Creek	10260008	38.6	97.93	38.7	97.98	46
Sharps Creek	10260008	38.53	97.76	38.5	97.94	16
Spring Creek	10260008	38.78	97.43	38.63	97.52	45
Stag Creek	10260008	38.68	97.42	38.6	97.53	19
Turkey Creek	10260008	38.88	97.19	38.8	97.18	28
Turkey Creek	10260008	38.8	97.18	38.58	97.25	30
Turkey Creek, East	10260008	38.69	97.16	38.57	97.09	50
Turkey Creek, West Branch	10260008	38.8	97.18	38.63	97.25	29
Unnamed Stream	10260008	38.72	96.95	38.72	96.94	K3
Unnamed Stream	10260008	38.71	97.06	38.71	97.07	K4
Unnamed Stream	10260008	38.73	96.97	38.74	96.99	K24
Wiley Creek	10260008	38.61	97.93	38.68	97.94	47
Subbasin: Upper Saline						
Cedar Creek	10260009	38.96	98.68	38.86	98.79	30
Chalk Creek	10260009	39.11	99.82	39.21	99.86	26
Coyote Creek	10260009	39.11	100.09	39.03	100.13	23
Eagle Creek	10260009	39.11	98.91	39.27	99.08	6
Happy Creek	10260009	39.12	99.84	39.24	99.98	25
Paradise Creek	10260009	38.98	98.79	39.11	98.91	5
Salt Creek	10260009	38.96	98.88	38.97	99.07	20
Spring Creek, East	10260009	39.09	99.35	39.23	99.45	10
Sweetwater Creek	10260009	39.06	99.1	39.02	99.19	29
Trego Creek	10260009	39.08	99.49	39.04	99.67	19

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Unnamed Stream	10260009	39.11	99.7	39.23	99.87	13
Wild Horse Creek	10260009	39.11	99.54	39.25	99.58	27
Subbasin: Lower Saline						
Bacon Creek	10260010	39.11	98.34	39.29	98.4	7
Blue Stem Creek	10260010	39.03	98.48	39	98.6	33
Coon Creek	10260010	39.11	98.68	39.22	98.73	31
Dry Creek	10260010	38.87	97.61	38.74	97.62	29
Eff Creek	10260010	38.88	97.79	38.82	97.9	23
Elkhorn Creek	10260010	39.01	98.09	38.84	98.18	17
Elkhorn Creek, West	10260010	38.96	98.1	38.84	98.2	38
Fourmile Creek	10260010	39.09	98.63	39.22	98.64	30
Lost Creek	10260010	39.04	98.16	39.12	98.17	34
Owl Creek	10260010	38.97	97.83	38.89	98	18
Owl Creek	10260010	38.99	97.96	38.88	98.02	39
Ralston Creek	10260010	38.76	97.8	38.63	97.84	28
Shaw Creek	10260010	38.96	97.77	38.92	97.8	41
Spillman Creek	10260010	39.03	98.21	39.11	98.34	6
Spillman Creek, North Branch	10260010	39.11	98.34	39.24	98.5	8
Spring Creek	10260010	38.99	98.21	38.85	98.21	16
Spring Creek	10260010	38.89	97.6	38.86	97.63	19
Spring Creek	10260010	38.86	97.63	38.84	97.7	20
Spring Creek	10260010	39.84	97.7	38.77	97.8	24
Spring Creek	10260010	38.77	97.8	38.76	97.8	26
Spring Creek	10260010	38.76	97.8	38.63	97.86	27
Table Rock Creek	10260010	38.86	97.95	38.81	98.03	40
Trail Creek	10260010	39.08	98.27	39.2	98.31	32
Twelvemile Creek	10260010	39.01	98.01	39.08	98.06	36
Twin Creek, West	10260010	38.99	98.38	38.9	98.42	37
West Spring Creek	10260010	38.77	97.8	38.75	98.01	25
Wolf Creek	10260010	39	98.43	39.05	98.51	10
Wolf Creek, East Fork	10260010	39.05	98.51	39.24	98.62	11
Wolf Creek, West Fork	10260010	39.05	98.51	39.18	98.83	12
Yauger Creek	10260010	39.03	98.15	39.11	98.15	35
Basin: Solomon **Subbasin: Upper North Fork Solomon**						
Ash Creek	10260011	39.66	99.4	39.78	99.49	24
Beaver Creek	10260011	39.67	99.56	39.81	99.6	23
Big Timber Creek	10260011	39.64	99.73	39.78	99.79	8
Bow Creek	10260011	39.56	99.28	39.45	100.23	15
Cactus Creek	10260011	39.66	99.58	39.8	99.7	28
Crooked Creek	10260011	39.66	99.55	39.82	99.68	6
Elk Creek	10260011	39.61	100	39.66	100.23	12
Elk Creek, East	10260011	39.62	99.92	39.73	100	25
Game Creek	10260011	39.62	99.8	39.76	99.84	10
Game Creek	10260011	39.66	99.83	39.75	99.83	27
Lost Creek	10260011	39.61	99.98	39.53	100.02	20
Sand Creek	10260011	39.64	99.75	39.73	99.82	26
Scull Creek	10260011	39.65	99.66	39.78	99.74	21
Spring Creek	10260011	39.58	100.16	39.52	100.13	19
Wolf Creek	10260011	39.67	99.47	39.79	99.55	22
Subbasin: Lower North Fork Solomon						
Beaver Creek	10260012	39.65	98.86	39.75	98.84	
Beaver Creek, East Branch	10260012	39.75	98.84	39.95	98.81	11
Beaver Creek, Middle	10260012	39.75	98.84	39.75	98.85	12
Beaver Creek, Middle	10260012	39.75	98.85	39.97	98.97	13
Beaver Creek, West	10260012	39.75	98.85	39.96	99	14
Big Creek	10260012	39.72	99.19	39.92	99.27	26
Boughton Creek	10260012	39.77	99.41	39.9	99.45	34
Buck Creek	10260012	39.64	98.52	39.66	98.6	43
Cedar Creek	10260012	39.65	98.91	39.68	98.95	16
Cedar Creek	10260012	39.68	98.95	39.7	99	18
Cedar Creek, East	10260012	39.68	98.95	39.93	99.01	17
Cedar Creek, East Middle	10260012	39.88	99.06	39.97	99.06	37
Cedar Creek, Middle	10260012	39.7	99	39.95	99.13	19
Deer Creek	10260012	39.66	99.1	39.7	99.14	23
Deer Creek	10260012	39.7	99.14	39.72	99.19	25
Deer Creek	10260012	39.72	99.19	39.73	99.25	27

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Deer Creek	10260012	39.73	99.25	39.73	99.33	29
Deer Creek	10260012	39.73	99.33	39.85	99.64	31
Dry Creek	10260012	39.6	98.8	39.76	98.71	42
Glen Rock Creek	10260012	39.64	98.94	39.56	98.96	41
Lawrence Creek	10260012	39.57	98.74	39.54	98.88	44
Lindley Creek	10260012	39.56	98.7	39.65	98.7	45
Little Oak Creek	10260012	39.54	98.48	39.74	98.49	3
Medicine Creek	10260012	39.65	99.02	39.55	99.13	33
Oak Creek	10260012	39.5	98.46	39.54	98.48	2
Oak Creek	10260012	39.54	98.48	39.88	98.69	4
Oak Creek, East	10260012	39.68	98.55	39.84	98.55	40
Oak Creek, West	10260012	39.72	98.59	39.86	98.69	39
Plotner Creek	10260012	39.73	99.33	39.91	99.38	30
Plum Creek	10260012	39.7	99	39.94	99.19	20
Spring Creek	10260012	39.6	98.82	39.9	98.72	8
Spring Creek	10260012	39.73	99.25	39.92	99.33	28
Starvation Creek	10260012	39.67	99.1	39.9	99.49	38
Turner Creek	10260012	39.7	99.14	39.92	99.25	24
Subbasin: Upper South Fork Solomon						
Spring Creek	10260013	39.38	99.61	39.49	99.85	5
Subbasin: Lower South Fork Solomon						
Ash Creek	10260014	39.41	99.36	39.52	99.44	22
Boxelder Creek	10260014	39.42	99.31	39.25	99.31	14
Carr Creek	10260014	39.45	98.46	39.24	98.61	21
Covert Creek	10260014	39.43	98.71	39.25	98.9	19
Crooked Creek	10260014	39.46	98.94	39.54	99.03	27
Dibble Creek	10260014	39.43	99.32	39.51	99.36	23
Elm Creek	10260014	39.44	99.23	39.25	99.26	15
Jim Creek	10260014	39.43	99.18	39.53	99.22	25
Kill Creek	10260014	39.43	98.78	39.27	99	18
Kill Creek, East	10260014	39.4	98.8	39.29	98.89	28
Lost Creek	10260014	39.4	99.39	39.25	99.53	13
Lucky Creek	10260014	39.44	99.01	39.33	99.07	26
Medicine Creek	10260014	39.43	99.14	39.27	99.18	16
Medicine Creek	10260014	39.45	98.83	39.29	99.07	17
Robbers Roost Creek	10260014	39.42	99.28	39.29	99.3	24
Twin Creek	10260014	39.43	98.54	39.24	98.76	20
Twin Creek, East	10260014	39.41	98.55	39.32	98.58	29
Subbasin: Solomon River						
Antelope Creek	10260015	39.33	98.25	39.38	98.31	43
Antelope Creek	10260015	39.03	97.62	39.01	97.7	58
Battle Creek	10260015	39.2	98.08	39.12	98.22	33
Battle Creek	10260015	39.06	97.67	39.04	97.74	57
Brown Creek	10260015	39.47	98.17	39.72	98.24	15
Coal Creek	10260015	38.98	97.49	39.05	97.47	2
Cow Creek	10260015	39.15	97.9	39.28	97.92	28
Cow Creek	10260015	39.18	97.91	39.26	97.88	55
Cris Creek	10260015	39.34	97.84	39.46	97.79	48
Disappointment Creek	10260015	39.55	98.32	39.63	98.29	35
Dry Creek	10260015	39.45	98.06	39.53	98.01	37
Dry Creek	10260015	39.25	97.76	39.3	97.66	52
Elm Creek	10260015	39.66	98.34	39.81	98.26	59
Elkhorn Creek, West	10260015	39.16	97.99	39.09	98.07	47
Fifth Creek	10260015	39.24	98.08	39.34	98.11	45
Fourth Creek	10260015	39.39	97.99	39.31	98	46
Frog Creek	10260015	39.48	98.28	39.55	98.27	34
Granite Creek	10260015	39.53	98.38	39.62	98.42	24
Indian Creek	10260015	39.45	98.15	39.39	98.21	40
Leban Creek	10260015	39.43	98.11	39.38	98.23	41
Limestone Creek, Middle	10260015	39.63	98.36	39.83	98.39	21
Limestone Creek, West	10260015	39.61	98.34	39.63	98.36	20
Limestone Creek, West	10260015	39.63	98.36	39.84	98.45	22
Lindsey Creek	10260015	39.1	97.69	39.26	97.5	7
Little Creek	10260015	39.28	98.2	39.3	98.32	44
Lost Creek	10260015	39.12	97.76	39.25	97.87	56
Marshall Creek	10260015	39.4	98.03	39.34	98.08	42
Mill Creek	10260015	39.45	98.41	39.36	98.4	38

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Mortimer Creek	10260015	39.29	97.8	39.44	97.76	49
Mulberry Creek	10260015	39.46	98.13	39.59	98.17	36
Pipe Creek	10260015	39.12	97.71	39.22	97.63	9
Pipe Creek	10260015	39.22	97.63	39.43	97.6	10
Pipe Creek, West	10260015	39.22	97.63	39.42	97.61	11
Plum Creek	10260015	39.43	98.07	39.61	98.16	13
Rattlesnake Creek	10260015	39.19	98.04	39.2	98.08	31
Rattlesnake Creek	10260015	39.2	98.08	39.2	98.29	32
Sand Creek	10260015	39.02	97.6	39.18	97.52	4
Second Creek	10260015	39.36	97.89	39.28	97.97	51
Second Creek	10260015	39.15	97.94	39.27	97.98	54
Spring Creek	10260015	39.15	97.92	39.04	98.02	53
Turkey Creek	10260015	39.46	98.21	39.39	98.27	39
Walnut Creek	10260015	39.45	98.35	39.34	98.41	26
Yockey Creek	10260015	39.28	97.79	39.41	97.72	50
Basin: Upper Arkansas **Subbasin: Middle Arkansas-Lake McKinney**						
Great Eastern Ditch	11030001	37.98	101.19	38.06	100.99	2
Subbasin: Buckner						
Buckner Creek, South Fork	11030006	37.95	100.2	37.84	100.28	6
Duck Creek	11030006	37.9	99.94	37.8	100.1	8
Elm Creek	11030006	37.9	99.88	37.75	99.93	5
Rock Creek	11030006	38.09	99.79	38	99.89	9
Saw Log Creek	11030006	38.13	99.69	37.9	99.88	3
Saw Log Creek	11030006	37.9	99.88	37.82	100.21	4
Subbasin: Lower Walnut Creek						
Alexander Dry Creek	11030008	38.47	99.58	38.65	99.8	7
Bazine Creek	11030008	38.44	99.69	38.62	99.95	9
Boot Creek	11030008	38.45	98.96	38.55	99.05	15
Dry Creek	11030008	38.46	99.02	38.4	99.17	14
Dry Walnut Creek	11030008	38.38	98.73	38.37	99.24	13
Otter Creek	11030008	38.45	99.29	38.38	99.4	12
Sand Creek	11030008	38.48	99.14	38.57	99.41	3
Sandy Creek	11030008	38.47	99.39	38.35	99.44	11
Walnut Creek	11030008	38.36	98.67	38.38	98.73	1
Walnut Creek	11030008	38.38	98.73	38.48	99.14	2
Walnut Creek	11030008	38.48	99.14	38.45	99.29	4
Walnut Creek	11030008	38.45	99.29	38.47	99.39	5
Walnut Creek	11030008	38.47	99.39	38.47	99.58	6
Walnut Creek	11030008	38.47	99.58	38.44	99.69	8
Walnut Creek	11030008	38.44	99.69	38.41	99.88	10
Basin: Upper Republican **Subbasin: South Fork Republican**						
Battle Creek	10250003	39.65	101.95	39.59	102.05	71
Big Timber Creek	10250003	40.02	101.53	39.78	101.58	61
Drury Creek	10250003	39.75	101.84	39.66	101.86	60
Subbasin: Beaver						
Beaver Creek	10250014	40.01	100.53	39.82	101.03	2
Basin: Verdigris **Subbasin: Upper Verdigris**						
Bachelor Creek	11070101	37.84	96.1	37.97	96.33	21
Bernard Creek	11070101	37.91	96.17	37.97	96.22	24
Big Cedar Creek	11070101	37.51	95.67	37.62	95.53	39
Brazil Creek	11070101	37.84	95.96	37.91	95.9	31
Buffalo Creek	11070101	37.64	95.75	37.79	95.59	2
Buffalo Creek, West	11070101	37.68	95.73	37.8	95.76	34
Cedar Creek	11070101	37.87	95.94	37.91	95.88	32
Chetopa Creek	11070101	37.44	95.67	37.59	95.51	22
Crooked Creek	11070101	37.59	95.71	37.62	95.62	38
Dry Creek	11070101	37.86	95.98	37.99	95.92	27
Elder Branch	11070101	37.64	95.75	37.68	95.6	37

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Fancy Creek	11070101	37.8	96.04	37.76	96.07	28
Greenhall Creek	11070101	37.99	96.02	38.04	95.96	26
Holderman Creek	11070101	38.12	96.1	38.11	96.2	47
Homer Creek	11070101	37.84	96.1	37.99	96.28	20
Kelly Branch	11070101	38.15	96.16	38.22	96.17	42
Kuntz Branch	11070101	37.82	96.07	37.76	96.08	29
Little Sandy Creek	11070101	37.68	95.83	37.76	95.8	33
Long Creek	11070101	38.06	96.05	38.14	95.98	45
Miller Creek	11070101	37.81	95.96	37.84	95.87	30
Moon Branch	11070101	38.17	96.19	38.25	96.26	43
Onion Creek	11070101	38	96.14	38.06	96.21	23
Rock Creek	11070101	38.16	96.21	38.29	96.33	14
Ross Branch	11070101	37.69	95.88	37.7	96.01	35
Sandy Creek	11070101	37.68	95.84	37.9	95.84	4
Shaw Creek	11070101	38.18	96.28	38.26	96.37	40
Slate Creek	11070101	37.97	96.11	38.06	96.31	25
Snake Creek	11070101	37.62	95.76	37.61	95.87	36
Tate Branch Creek	11070101	38.15	96.13	38.21	96.12	44
Van Horn Creek	11070101	38.06	96.05	38.06	96.13	46
Verdigris River, Bernard Branch	11070101	38.15	96.17	38.09	96.35	16
Verdigris River, North Branch	11070101	38.15	96.17	38.16	96.21	13
Verdigris River, North Branch	11070101	38.16	96.21	38.09	96.36	15
Walnut Creek	11070101	37.79	95.99	37.84	96.1	19
West Creek	11070101	37.89	96.01	38.1	96.28	17
Wolf Creek	11070101	38.19	96.31	38.23	96.4	41
Subbasin: Fall						
Battle Creek	11070102	37.99	96.51	38.02	96.54	18
Burnt Creek	11070102	37.79	96.41	37.86	96.47	24
Clear Creek	11070102	37.5	95.83	37.52	95.74	37
Coon Creek	11070102	37.87	96.4	37.85	96.46	25
Coon Creek	11070102	37.56	95.94	37.51	96	36
Crain Creek	11070102	37.63	96.05	37.7	96.03	32
Honey Creek	11070102	37.72	96.2	37.75	96.33	26
Indian Creek	11070102	37.58	95.96	37.58	96.17	15
Ivanpah Creek	11070102	37.9	96.45	37.88	96.58	19
Kitty Creek	11070102	37.78	96.34	37.75	96.4	27
Little Indian Creek	11070102	37.54	96.07	37.49	96.1	34
Little Salt Creek	11070102	37.62	96.06	37.59	96.12	35
Oleson Creek	11070102	37.95	96.39	38.02	96.44	21
Otis Creek	11070102	37.92	96.46	38.03	96.46	20
Plum Creek	11070102	37.61	96.2	37.66	96.27	30
Rainbow Creek, East	11070102	37.51	95.86	37.46	95.98	17
Salt Creek	11070102	37.61	96.04	37.65	96.27	14
Salt Creek	11070102	37.51	95.84	37.6	95.87	38
Silver Creek	11070102	37.59	95.96	37.64	95.96	33
Snake Creek	11070102	37.71	96.22	37.67	96.24	31
Spring Creek	11070102	37.81	96.29	37.7	96.51	12
Swing Creek	11070102	38.01	96.32	38.02	96.31	989
Tadpole Creek	11070102	37.7	96.27	37.74	96.38	29
Watson Branch	11070102	37.69	96.38	37.76	96.4	23
Subbasin: Middle Verdigris						
Big Creek	11070103	36.98	95.35	37.03	95.31	21
Biscuit Creek	11070103	37.05	95.71	37.1	95.69	53
Bluff Run	11070103	37.07	95.74	37.11	95.72	54
Choteau Creek	11070103	37.29	95.66	37.36	95.6	63
Claymore Creek	11070103	37.06	95.59	37.15	95.5	50
Deadman Creek	11070103	37.06	95.72	37	95.78	57
Deer Creek	11070103	37.07	95.51	37.05	95.36	51
Drum Creek	11070103	37.2	95.63	37.44	95.5	34
Dry Creek	11070103	37.39	95.66	37.45	95.51	37
Fawn Creek	11070103	37.08	95.75	37	95.8	56
Mud Creek	11070103	37.17	95.45	37.23	95.44	59
Onion Creek	11070103	36.99	95.59	37.18	95.9	39
Potato Creek	11070103	37.11	95.59	37.2	95.51	31
Prior Creek	11070103	37.34	95.68	37.36	95.62	62
Pumpkin Creek	11070103	37.04	95.58	37.29	95.39	28
Richland Creek	11070103	37.12	95.46	37.15	95.33	49
Rock Creek	11070103	37.21	95.67	37.16	95.74	58

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Rock Creek	11070103	37.38	95.52	37.38	95.47	61
Snow Creek	11070103	36.96	95.53	37.03	95.34	25
Spring Creek	11070103	37.1	95.76	37.06	95.82	55
Sycamore Creek	11070103	37.03	95.65	37.1	95.68	52
Wildcat Creek	11070103	37.27	95.44	37.3	95.42	60
Subbasin: Elk						
Bachelor Creek	11070104	37.31	95.97	37.39	95.94	25
Bloody Run	11070104	37.34	96.01	37.34	96.07	26
Bull Creek	11070104	37.47	96.34	37.44	96.41	33
Card Creek	11070104	37.25	95.85	37.21	95.94	19
Chetopa Creek	11070104	37.23	95.81	37.21	95.85	18
Clear Creek	11070104	37.36	96.15	37.31	96.21	30
Clear Creek	11070104	37.49	96.36	37.49	96.47	32
Coffey Branch	11070104	37.27	96.01	37.24	96.07	20
Duck Creek	11070104	37.3	95.92	37.46	95.95	3
Elk River, Mound Branch	11070104	37.42	96.22	37.43	96.41	15
Elk River, South Branch	11070104	37.51	96.4	37.54	96.5	38
Elk River, Rowe Branch	11070104	37.55	96.44	37.58	96.41	39
Elm Branch	11070104	37.37	95.87	37.42	95.83	23
Hickory Creek	11070104	37.35	96.02	37.44	95.98	28
Hitchen Creek	11070104	37.38	96.06	37.52	96.15	7
Hitchen Creek, East	11070104	37.45	96.15	37.5	96.11	35
Little Duck Creek	11070104	37.32	95.89	37.37	95.93	24
Little Hitchen Creek	11070104	37.42	96.15	37.46	96.11	37
Painterhood Creek	11070104	37.38	96.04	37.52	96.04	5
Painterhood Creek, East	11070104	37.43	96.05	37.5	95.98	36
Pan Creek	11070104	37.3	96.08	37.34	96.1	27
Pawpaw Creek	11070104	37.45	96.23	37.61	96.31	11
Racket Creek	11070104	37.28	95.78	37.35	95.78	21
Rock Creek	11070104	37.45	96.27	37.6	96.34	13
Salt Creek	11070104	37.27	95.92	37.31	96.19	17
Salt Creek, South	11070104	37.3	96.09	37.31	96.17	29
Skull Creek	11070104	37.42	96.36	37.4	96.38	31
Snake Creek	11070104	37.47	96.25	37.56	96.25	34
Sycamore Creek	11070104	37.28	95.74	37.42	95.8	22
Wildcat Creek	11070104	37.37	96.17	37.38	96.38	16
Subbasin: Caney						
Bachelor Creek	11070106	37.2	96.15	37.27	96.11	47
Bee Creek	11070106	37.05	95.97	37.23	96	9
California Creek	11070106	37.17	95.99	37.22	96.04	48
Caney Creek	11070106	37.11	96.05	37.33	96.37	12
Caney River, East Fork	11070106	37.36	96.47	37.45	96.42	52
Caney Creek, North	11070106	37.11	96.05	37.32	96.26	11
Cedar Creek	11070106	37.08	96.47	37.15	96.61	30
Cedar Creek	11070106	36.99	96.24	37.12	96.29	32
Cheyenne Creek	11070106	37.02	95.95	37.13	95.87	40
Coon Creek	11070106	36.99	96.23	37.04	96.19	36
Corum Creek	11070106	37.34	96.45	37.41	96.41	51
Cotton Creek	11070106	37.07	95.95	37.12	95.89	38
Cotton Creek, North Fork	11070106	36.98	95.88	37.01	95.87	37
Dry Creek	11070106	37.05	96.44	37.11	96.44	29
Fly Creek	11070106	37.15	96.11	37.23	96.06	46
Illinois Creek	11070106	37.11	95.95	37.2	95.93	39
Jim Creek	11070106	37.21	96.56	37.24	96.61	49
Lake Creek	11070106	37.03	95.96	37.03	96.05	34
Otter Creek	11070106	37.09	96.11	37.06	96.17	33
Pool Creek	11070106	37.15	96.27	37.18	96.36	43
Possum Trot Creek	11070106	37.03	96.41	36.99	96.46	74
Rock Creek	11070106	37.04	96.43	37.05	96.66	28
Spring Creek	11070106	37.17	96.27	37.3	96.28	44
Spring Creek	11070106	37.27	96.46	37.35	96.53	53
Squaw Creek	11070106	37.24	96.46	37.27	96.42	42
Sycamore Creek	11070106	37.02	96.35	37.14	96.34	31
Turkey Creek	11070106	37.21	96.18	37.23	96.24	45
Union Creek	11070106	37.2	96.49	37.29	96.53	41
Wolf Creek	11070106	37.11	96.15	37.18	96.18	35
Wolf Creek	11070106	37.26	96.46	37.37	96.38	50

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Basin: Walnut						
Subbasin: Upper Walnut River						
Badger Creek	11030017	37.74	97.01	37.77	97.08	36
Bemis Creek	11030017	37.85	96.73	37.89	96.59	8
Coke Creek	11030017	37.94	96.79	38.08	96.75	15
Constant Creek	11030017	37.8	96.86	37.84	96.92	41
Dry Creek	11030017	37.67	97	37.77	97.22	27
Dry Creek	11030017	37.93	97.04	38.04	97.13	32
Durechen Creek	11030017	37.92	96.75	38.01	96.56	12
Elm Creek	11030017	37.68	96.99	37.79	96.95	43
Fourmile Creek	11030017	37.89	97.05	37.99	96.91	20
Gilmore Branch	11030017	37.95	96.79	37.98	96.82	39
Gypsum Creek	11030017	37.93	97.15	38.01	97.25	30
Henry Creek	11030017	37.99	97.03	38.11	97.11	33
Lower Branch	11030017	37.85	96.72	37.83	96.57	42
Prairie Creek	11030017	37.84	97.11	37.86	97.24	35
Rock Creek	11030017	37.85	97.04	37.93	96.94	37
Sand Creek	11030017	37.9	97.19	37.91	97.25	29
Satchel Creek	11030017	37.88	96.75	37.91	96.58	10
School Branch	11030017	38.01	96.72	38.08	96.71	45
Sutton Creek	11030017	37.75	96.88	37.82	96.93	40
Walnut Creek	11030017	38.03	97.2	38.06	97.26	44
Whitewater Creek	11030017	37.83	97.1	37.81	97.23	34
Whitewater Creek, East Branch	11030017	37.97	97.16	38.1	97.19	31
Whitewater River, East Branch	11030017	37.98	97.02	38.1	96.9	22
Whitewater River, West Branch	11030017	37.81	97.02	37.85	97.12	24
Whitewater River, West Branch	11030017	37.85	97.12	38.12	97.24	25
Wildcat Creek	11030017	37.85	97.12	38	97.26	26
Wildcat Creek, West	11030017	37.93	97.22	37.98	97.26	28
Subbasin: Lower Walnut River						
Black Crook Creek	11030018	37.22	96.98	37.27	96.93	18
Cedar Creek	11030018	37.3	96.96	37.33	96.81	19
Chigger Creek	11030018	37.48	96.9	37.54	96.83	21
Crooked Creek	11030018	37.31	97.04	37.37	97.09	31
Durham Creek	11030018	37.47	96.94	37.45	96.88	23
Dutch Creek	11030018	37.24	97	37.34	96.94	2
Dutch Creek	11030018	37.34	96.94	37.47	96.73	4
Eightmile Creek	11030018	37.45	97.04	37.63	97.16	30
Foos Creek	11030018	37.31	97.03	37.36	96.97	26
Hickory Creek	11030018	37.61	96.91	37.66	96.52	12
Honey Creek	11030018	37.62	96.69	37.67	96.62	33
Little Dutch Creek	11030018	37.35	97.04	37.4	96.95	27
Lower Dutch Creek	11030018	37.45	96.81	37.46	96.72	20
Plum Creek	11030018	37.62	96.73	37.59	96.64	36
Polecat Creek	11030018	37.43	97.04	37.57	97.19	17
Posey Creek	11030018	37.16	96.95	37.21	97.03	37
Richland Creek	11030018	37.39	96.89	37.43	96.77	25
Rock Creek, North Branch	11030018	37.51	96.79	37.56	96.61	35
Sanford Creek	11030018	37.4	97.01	37.41	96.96	29
Spring Branch	11030018	37.66	97.15	37.7	97.21	32
Stalter Branch	11030018	37.44	96.98	37.43	96.92	24
Stewart Creek	11030018	37.37	97.05	37.43	97.12	28
Swisher Branch	11030018	37.49	96.92	37.55	96.87	22
Total = 1292						

Lake name	County	Waterbody No.
Basin: Cimarron		
Subbasin: Upper Cimarron (HUC 11040002)		
Moss Lake East	Morton	L1
Moss Lake West	Morton	L3
Subbasin: North Fork Cimarron (HUC 11040003)		
Frazier Lake	Grant	L4

Lake name	County	Waterbody No.
Subbasin: North Fork Cimarron (HUC 11040003)		
Russell Lake	Stevens	L5
Subbasin: Upper Cimarron-Bluff (HUC 11040008)		
Clark State Fishing Lake	Clark	L8
Saint Jacob's Well	Clark	L7
Basin: Kansas/Lower Republican **Subbasin: Middle Republican (HUC 10250016)**		
Lake Jewell	Jewell	L14
Subbasin: Lower Republican (HUC 10250017)		
Belleville City Lake	Republic	L16
Wakefield Lake	Clay	L19
Subbasin: Upper Kansas (HUC 10270101)		
Ogden City Lake	Riley	L20
Rocky Ford Fishing Lake	Riley	L21
Subbasin: Middle Kansas (HUC 10270102)		
Alma City Reservoir	Wabaunsee	L23
Cedar Crest Pond	Shawnee	L24
Central Park Lake	Shawnee	L25
Gage Park Lake	Shawnee	L28
Jeffrey Energy Center Lakes	Pottawatomie	L29
Wamego City Lake	Pottawatomie	L40
Pillsbury Crossing Fishing Lake	Riley	L33
Pottawatomie State Fishing Lake #1	Pottawatomie	L34
Pottawatomie State Fishing Lake #2	Pottawatomie	L35
Shawnee County State Fishing Lake	Shawnee	L36
Subbasin: Delaware (HUC 10270103)		
Atchison County Park Lake	Atchison	L41
Elk Horn Lake	Jackson	L42
Little Lake	Brown	L43
Nebo Watershed Lake	Jackson	L46
Subbasin: Lower Kansas (HUC 10270104)		
Carbondale West Lake	Osage	L48
Douglas County State Lake	Douglas	L50
Leavenworth County State Fishing Lake	Leavenworth	L53
Lenexa Lake	Johnson	L54
Mahaffie Farmstead Pond	Johnson	L56
North Park Lake	Wyandotte	L58
Pierson Park Lake	Wyandotte	L61
Potter's Lake	Douglas	L62
Strowbridge Reservoir	Osage	L63
Sunflower Park Lake	Johnson	L64
Waterworks Lakes	Johnson	L65
Subbasin: Lower Big Blue (HUC 10270205)		
Lake Idlewild	Marshall	L67
Subbasin: Lower Little Blue (HUC 10270207)		
Washington County State Fishing Lake	Washington	L68
Basin: Lower Arkansas **Subbasin: Rattlesnake (HUC 11030009)**		
Kiowa County State Fishing Lake	Kiowa	L71
Subbasin: Cow (HUC 11030011)		
Dillon Park Lakes #1	Reno	L76
Dillon Park Lake #2	Reno	L77

Lake name	County	Waterbody No.
Sterling City Lake	Rice	L78
Subbasin: Little Arkansas (HUC 11030012)		
Mingenback Lake	McPherson	L82
Newton City Park Lake	Harvey	L83
Subbasin: Middle Arkansas-Slate (HUC 11030013)		
Belaire Lake	Sedgwick	L84
Buffalo Park Lake	Sedgwick	L86
Emery Park	Sedgwick	L90
Harrison Park Lake	Sedgwick	L91
Horseshoe Lake	Sedgwick	L92
Kid's Pond	Sedgwick	L93
Moss Lake	Sedgwick	L94
Riggs Park Lake	Sedgwick	L95
Vic's Lake	Sedgwick	L96
Windmill Lake	SedgwicK	L98
Subbasin: South Fork Ninnescah (HUC 11030015)		
Kingman County State Fishing Lake	Kingman	L101
Lemon Park Lake	Pratt	L103
Subbasin: Kaw Lake (HUC 11060001)		
Cowley County State Fishing Lake	Cowley	L107
Subbasin: Medicine Lodge (HUC 11060003)		
Barber County State Fishing Lake	Barber	L108
Subbasin: Lower Salt Fork Arkansas (HUC 11060004)		
Hargis Lake	Barber	L109
Basin: Marais Des Cygnes		
Subbasin: Upper Marais Des Cygnes (HUC 10290101)		
Allen/Admire City Lake	Lyon	L115
Cedar Creek Lake	Anderson	L116
Crystal Lake	Anderson	L117
Lebo City Lake	Coffey	L121
Lebo City Park Lake	Coffey	L121
Lyon County State Fishing Lake	Lyon	L124
Osage City Reservoir	Osage	L126
Osage County State Fishing Lake	Osage	L127
Waterworks Impoundment	Anderson	L132
Subbasin: Lower Marais Des Cygnes (HUC 10290102)		
Edgerton City Lake	Johnson	L133
Edgerton South Lake	Johnson	L134
Lake Lacygne	Linn	L136
Louisburg State Fishing Lake	Miami	L139
Miami County State Fishing Lake	Miami	L141
Paola City Lake	Miami	L144
Pleasanton Lake #1	Linn	L146
Pleasanton Lake #2	Linn	L147
Spring Hill City Lake	Johnson	L149
Subbasin: Little Osage (HUC 10290103)		
Blue Mound City Lake	Linn	L150
Subbasin: Marmaton (HUC 10290104)		
Bourbon County State Fishing Lake	Bourbon	L152
Bronson City Lake	Bourbon	L153
Gunn Park Lake, East	Bourbon	L155
Gunn Park Lake, West	Bourbon	L156
Mulberry City Park	Crawford	L159
Rock Creek Lake	Bourbon	L160

Lake name	County	Waterbody No.
Basin: Missouri		
Subbasin: Tarkio-Wolf (HUC 10240005)		
Brown County State Fishing Lake	Brown	L161
Hiawatha City Lake	Brown	L162
Subbasin: South Fork Big Nemaha (HUC 10240007)		
Pony Creek Lake	Nemaha	L163
Sabetha City Lake	Nemaha	L164
Subbasin: Independence-Sugar (HUC 10240011)		
Atchison City Lakes	Atchison	L165
Atchison County State Fishing Lake	Atchison	L166
Big Eleven Lake	Wyandotte	L167
Doniphan Fair Association Lake	Doniphan	L168
Jerrys Lake	Leavenworth	L169
Lansing City Lake	Leavenworth	L170
South Park Lake	Leavenworth	L171
Subbasin: Lower Missouri-Crooked (HUC 10300101)		
Prairie View Park	Johnson	L175
South Park Lake	Johnson	L176
Stanley Rural Water District Lake #2	Johnson	L177
Stohl Park Lake	Johnson	L70
Basin: Neosho		
Subbasin: Upper Cottonwood (HUC 11070202)		
Hillsboro City Pond	Marion	L184
Subbasin: Lower Cottonwood (HUC 11070203)		
Peter Pan Pond	Lyon	L192
Subbasin: Upper Neosho (HUC 11070204)		
Chanute City (Santa Fe) Lake	Neosho	L193
Circle Lake	Woodson	L45
Leonard's Lake	Woodson	L72
Neosho Falls City Lake	Woodson	L208
New Strawn Park	Coffey	L197
Subbasin: Middle Neosho (HUC 11070205)		
Altamont City Lake #1	Labette	L201
Bartlett City Lake	Labette	L204
Harmon Wildlife Area Lakes	Labette	L205
Mined Land Wildlife Area Lakes	Cherokee	L206
Neosho County State Fishing Lake	Neosho	L207
Timber Lake	Neosho	L211
Subbasin: Spring (HUC 11070207)		
Empire Lake	Cherokee	L212
Frontenac City Park	Crawford	L213
Mined Land Wildlife Area Lakes	Crawford	L214
Pittsburg College Lake	Crawford	L215
Playters Lake	Crawford	L216
Basin: Smoky Hill/Saline		
Subbasin: North Fork Smoky Hill (HUC 10260002)		
Smoky Hill Garden Lake	Sherman	L217
Subbasin: Upper Smoky Hill (HUC 10260003)		
Logan County State Fishing Lake	Logan	L22
Subbasin: Middle Smoky Hill (HUC 10260006)		
Fossil Lake	Russell	L222

Lake name	County	Waterbody No.
Subbasin: Big (HUC 10260007)		
Big Creek Oxbow	Ellis	L224
Ellis City Lake	Ellis	L225
Subbasin: Lower Smoky Hill (HUC 10260008)		
Geary County State Fishing Lake	Geary	L226
Herington City Park Lake	Dickinson	L228
Herington Reservoir	Dickinson	L229
Lakewood Park Lake	Saline	L230
McPherson County State Fishing Lake	McPherson	L231
Rimrock Lake	Geary	L218
Subbasin: Upper Saline (HUC 10260009)		
Plainville Township Lake	Rooks	L233
Subbasin: Lower Saline (HUC 10260010)		
Lucus City Lake	Russell	L235
Saline County State Fishing Lake	Saline	L236
Basin: Solomon		
Subbasin: Lower North Fork Solomon (HUC 10260012)		
Francis Wachs Wildlife Area Lakes	Smith	L241
Subbasin: Upper South Fork Solomon (HUC 10260013)		
Antelope Lake	Graham	L242
Sheridan County State Fishing Lake	Sheridan	L243
Subbasin: Lower South Fork Solomon (HUC 10260014)		
Rooks County State Fishing Lake	Rooks	L246
Subbasin: Solomon River (HUC 10260015)		
Jewell County State Fishing Lake	Jewell	L237
Ottawa County State Fishing Lake	Ottawa	L248
Basin: Upper Arkansas		
Subbasin: Middle Arkansas-Lake McKinney (HUC 11030001)		
Lake McKinney	Kearny	L251
Subbasin: Arkansas-Dodge City (HUC 11030003)		
Lake Charles	Ford	L252
Subbasin: Pawnee (HUC 11030005)		
Concannon State Fishing Lake	Finney	L253
Finney County Game Refuge Lakes	Finney	L254
Subbasin: Buckner (HUC 11030006)		
Ford County Lake	Ford	L256
Hain State Fishing Lake	Ford	L257
Subbasin: Upper Walnut Creek (HUC 11030007)		
Goodman State Fishing Lake	Ness	L259
Subbasin: Lower Walnut Creek (HUC 11030008)		
Barton Lake	Barton	L260
Memorial Park Lake	Barton	L261
Stone Lake	Barton	L262
Basin: Upper Republican		
Subbasin: South Fork Republican (HUC 10250003)		
Saint Francis Wildlife Area Lakes	Cheyenne	L263
Subbasin: South Fork Beaver (HUC 10250012)		
Atwood Township Lake	Rawlins	L264

Lake name	County	Waterbody No.
Subbasin: Prairie Dog (HUC 10250015)		
Colby City Pond	Thomas	L265
Basin: Verdigris **Subbasin: Upper Verdigris (HUC 11070101)**		
New Yates Center Reservoir	Woodson	L269
Quarry Lake	Wilson	L270
Thayer New City Lake	Neosho	L271
Wilson County State Fishing Lake	Wilson	L274
Woodson County State Fishing Lake	Woodson	L275
Subbasin: Middle Verdigris (HUC 11070103)		
La Claire Lake	Montgomery	L281
Montgomery County State Fishing Lake	Montgomery	L282
Pfister Park Lakes	Montgomery	L283
Subbasin: Elk (HUC 11070104)		
Moline City Lake #2	Elk	L285
Polk Daniels (Elk) State Fishing Lake	Elk	L288
Subbasin: Caney (HUC 11070106)		
Caney City Lake	Chautauqua	L289
Sedan City Lake, North	Chautauqua	L290
Basin: Walnut **Subbasin: Lower Walnut River (HUC 11030018)**		
Butler County State Fishing Lake	Butler	L297
Winfield Park Lagoon	Cowley	L299
Total = 164		

(i) Water quality standard variances. (1) The Regional Administrator, EPA Region 7, is authorized to grant variances from the water quality standards in paragraphs (f) and (g) of this section where the requirements of this paragraph (h) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) Subject to paragraph (b)(2) of this section, a water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) Procedures. An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 7. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in paragraph (i)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable

permit modification provisions of Kansas' NPDES program.

(5) A variance may not exceed 3 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

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Federal Register

Monday,
July 3, 2000

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 8, 15, 44, and 52
Federal Acquisition Regulation; JWOD Subcontract Preference Under Service Contracts; Truth in Negotiations Act Threshold; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 44, and 52

[FAR Case 1999–017]

RIN 9000–AI82

Federal Acquisition Regulation; JWOD Subcontract Preference Under Service Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes relating to preferences for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day (JWOD) (41 U.S.C. 48)).

DATES: Interested parties should submit comments in writing on or before September 1, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999–017@gsa.gov.

Please submit comments only and cite FAR case 1999–017 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mrs. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 1999–017.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends—

- FAR Part 8 to extend the priority for award of service contracts that will satisfy agency requirements that are available from the Committee for Purchase From People Who Are Blind or Severely Disabled to subcontracts when contractors purchase the services for Government use;
- FAR part 44 to add purchase from nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled to the list of items a contracting officer must consider when reviewing a subcontract that is subject to the procedures at FAR Subpart 44.2, Consent to Subcontracts; and
- The clause at FAR 52.208–9, Contractor Use of Mandatory Sources of Supply, to inform offerors and contractors that certain services to be provided for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled.

These amendments implement changes in the Committee for Purchase From People Who Are Blind or Severely Disabled regulations (41 CFR 51–5.5(e)).

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule contains a priority for subcontracts under services contracts with nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The rule implements 41 CFR 51–5.5(e) relating to preferences for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)). The proposed rule will apply to all large and small entities that seek award of a subcontract under a Government services contract. Although awards of subcontracts to certain small entities may decrease as a result of the rule, the decrease will be offset by an increase in awards to nonprofit workshops. Nonprofit workshops meet the size standards for most acquisitions. Therefore, we do not expect the total number of subcontract awards to small entities to change as a result of this rule.

A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 8, 44, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 1999–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8, 44, and 52

Government procurement.

Dated: June 21, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 8, 44, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 8, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Amend section 8.001 by revising paragraph (c) to read as follows:

8.001 Priorities for use of Government supply sources.

* * * * *

(c) The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use.

3. Revise section 8.003 to read as follows:

8.003 Contract clause.

Insert the clause at 52.208–9, Contractor Use of Mandatory Sources of Supply and Services, in solicitations and contracts that require a contractor to provide supplies or services for Government use that are available from the Committee for Purchase From People Who Are Blind or Severely Disabled. The contracting officer must identify in the contract schedule the supplies or services that must be purchased from a mandatory source and the specific source.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

4. In section 44.202–2, amend the introductory text of paragraph (a) by

removing "shall" and adding "must" in its place; and revising paragraph (a)(4) to read as follows:

44.202–2 Considerations.

(a) * * *

(4) Has the contractor complied with the prime contract requirements regarding—

(i) Small business subcontracting, including, if applicable, its plan for subcontracting with small, small disadvantaged and women-owned small business concerns (see part 19); and

(ii) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)) (see part 8)?

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. In section 52.208–9, revise the section and clause headings, paragraphs (a) and (b), and the second sentence in paragraph (c) to read as follows:

52.208–9 Contractor Use of Mandatory Sources of Supply or Services.

* * * * *

Contractor Use of Mandatory Sources of Supply or Services (Date)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) * * * For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. * * *

* * * * *

(End of clause)

[FR Doc. 00–16454 Filed 6–30–00; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 2000–300]

RIN 9000–AI83

Federal Acquisition Regulation; Truth in Negotiations Act Threshold

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

DATES: Interested parties should submit comments in writing on or before September 1, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.2000–300@gsa.gov

Please submit comments only and cite FAR case 2000–300 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–0692. Please cite FAR case 2000–300.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR 15.403–4 to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995. The proposed increase of $50,000 is based on escalation of 10.22 percent from 1994 to 2000, calculated using the gross domestic product deflators from the fiscal year 2001 budget.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts and subcontracts with small entities do not require the submission of cost or pricing data. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–300), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, the proposed changes to the FAR do not significantly change the information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, under OMB Clearance Number 9000–0045.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 15.403–4 by revising paragraph (a)(1) to read as follows:

15.403–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) The contracting officer must obtain cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403–1(b) applies. However, if the contracting officer has sufficient information available to

determine price reasonableness, then the contracting officer should consider requesting a waiver under the exception at 15.403–1(b)(4). The threshold for obtaining cost or pricing data is $550,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, for existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to submit cost or pricing data (but see waivers at 15.403–1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (*e.g.*, a $200,000 modification resulting from a reduction of $400,000 and an increase of $200,000 is a pricing adjustment exceeding $550,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

* * * * *

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Part V

Department of Health and Human Services

Office of Public Health and Science; Standards of Compliance for and Provision of Abortion-Related Services in Family Planning Services Projects; Final Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 59

RIN: 0940–AA00

Standards of Compliance for Abortion-Related Services in Family Planning Services Projects

AGENCY: Office of Population Affairs, OPHS, DHHS.

ACTION: Final rules.

SUMMARY: The rules issued below revise the regulations that apply to grantees under the federal family planning program by readopting the regulations, with one revision, that applied to the program prior to February 2, 1988. Several technical changes to the regulation are also made to remove and/or update obsolete regulatory references. The effect of the revisions made by the rules below is to revoke the compliance standards, promulgated in 1988 and popularly known as the "Gag Rule," that restricted family planning grantees from providing abortion-related information in their grant-funded projects.

DATES: These rules are effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Samuel S. Taylor, Office of Population Affairs, (301) 594–4001.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services issues below regulations establishing requirements for recipients of family planning services grants under section 1001 of the Public Health Service Act, 42 U.S.C. 300. The rules below adopt, with minor technical amendments and one substantive modification, the regulations proposed for public comment on February 5, 1993, at 58 FR 7464. They accordingly revoke the compliance standards, known as the "Gag Rule," promulgated on February 2, 1988.

By notice published elsewhere in this issue of the **Federal Register**, the Department is separately acting to reinstitute, with minor changes, the interpretations of the statute relating to the provision of abortion-related information and services that applied to grantees prior to the issuance of the Gag Rule. The Secretary had previously proposed reinstituting these interpretations in the notice of February 5, 1993 and requested public comment on this proposed action; the public comment period was subsequently reopened by notice of June 23, 1993, 58 FR 34024.

I. Background

In 1988, the Secretary of Health and Human Services issued rules, widely known as the "Gag Rule," which substantially revised the longstanding polices and interpretations defining what abortion-related activities were permissible under Title X's statutory limitation on abortion services. That statutory limitation, section 1008 (42 U.S.C. 300a–6), provides that "[n]one of the funds appropriated under this title shall be used in programs where abortion is a method of family planning." The rules issued on February 2, 1988 (53 FR 2922) set out detailed requirements that (1) Prohibited the provision to Title X clients of nondirective counseling on all pregnancy options and referral to abortion providers, (2) required physical and financial separation of abortion-related activities from Title X project activities, and (3) prohibited Title X projects from engaging in activities that encourage, promote, or advocate abortion. These requirements are presently codified principally at 42 CFR 59.7–59.10.

The February 2, 1988 "Gag Rule" was extremely controversial: The proposed rules generated approximately 75,000 public comments, many of which were negative. 53 FR 2922. The rules were subsequently challenged in several district courts by a variety of providers, provider organizations, and others. Although the requirements embodied in the Gag Rule were upheld by the Supreme Court in 1991 as a permissible construction of section 1008, the rules continued to be a source of controversy, with the provider and medical communities litigating after 1991 to prevent enforcement of the rules. Following his inauguration in 1993, President Clinton ordered the Secretary to suspend the rules and initiate a new rulemaking:

> The Gag Rule endangers women's lives and health by preventing them from receiving complete and accurate medical information and interferes with the doctor-patient relationship by prohibiting information that medical professionals are otherwise ethically and legally required to provide to their patients. Furthermore, the Gag Rule contravenes the clear intent of a majority of the members of both the United States Senate and House of Representatives, which twice passed legislation to block the Gag Rule's enforcement but failed to override Presidential vetoes.
>
> For these reasons, you have informed me that you will suspend the Gag Rule pending the promulgation of new regulations in accordance with the "notice and comment" procedures of the Administrative Procedure Act. I hereby direct you to take that action as soon as possible. I further direct that, within 30 days, you publish in the **Federal Register** new proposed regulations for public comment.

Presidential Memorandum of January 22, 1993, published at 58 FR 7455 (February 5, 1993). The Secretary subsequently suspended the 1988 rules on February 5, 1993 (58 FR 7462) and issued proposed rules for public comment (58 FR 7464).

The notice of proposed rulemaking proposed to revise the program regulations by readopting the program regulations as they existed prior to the adoption of the Gag Rule, which would have the effect of revoking the Gag Rule. It also proposed that the policies and interpretations in effect prior to the issuance of the Gag Rule be reinstated, both in substance and in form. As noted in the proposed rules, these policies and interpretations, which had been in effect for a considerable time prior to 1988, were set out largely, "in the 1981 Family Planning Guidelines and in individual policy interpretations." 58 FR 7464. The pre-1988 interpretations had been developed during the 1970's and early 1980's in response to questions arising out of the Department's initial interpretation that section 1008 not only prohibited Title X projects from performing or providing abortions, but also prohibited actions by Title X projects that "promoted or encouraged" abortion as a method of family planning. Over time, questions were raised, and answered in a series of legal opinions, as to whether particular actions would violate the statute by promoting or encouraging abortion as a method of family planning. As summarized in the proposed rules, the answers that were developed were generally as follows:

> Title X projects [are] required, in the event of an unplanned pregnancy and where the patient requests such action, to provide nondirective counseling to the patient on all options relating to her pregnancy, including abortion, and to refer her for abortion, if that is the option she selects. However, consistent with the long-standing Departmental interpretation of the statute, Title X projects [are] not * * * permitted to promote or encourage abortion as a method of family planning, such as by engaging in pro-choice litigation or lobbying activities. Title X projects [are] also * * * required to maintain a separation (that is more than a mere exercise in bookkeeping) of their project activities from any activities that promote or encourage abortion as a method of family planning.

Id. By notice dated June 23, 1993 (58 FR 34024), the Secretary made available for public comment a detailed exposition of the prior policies and interpretations.

In the public comment periods, the Secretary received 146 comments,

virtually all of which concerned the proposed policies and interpretations rather than the proposed regulations themselves. Approximately one-third of these opposed the proposed policies and interpretations on various grounds; most of these comments were from individuals who, in general, were opposed to any change to the Gag Rule. The remainder of the public comments, most of which were from providers and other health organizations, generally supported the reinstatement of the prior policies and interpretations, although a number of these comments suggested that they be modified in various respects. The public comments and the Secretary's response thereto are summarized below.

II. Public Comment and Departmental Response

The public comment generally focused on a few issues raised by the rulemaking. As noted above, these comments generally pertained to the proposed policies and interpretations rather than to the proposed regulatory language itself. Accordingly, the comments on the issues raised in the rulemaking are summarized below, and the Secretary's response thereto is provided.

A. Lack of a Rational Basis To Revoke the Gag Rule; Necessity for Continuation of the Gag Rule

Most of the comments in opposition to the proposed rules came from individuals, and most objected to the proposed revocation of the Gag Rule on the ground that abortion is wrong or that tax dollars should not be used to provide abortion services of any kind. Several comments also objected that the Secretary had not rational basis for revoking the Gag Rule, as it had never gone into operation. For example, a comment signed by fifteen members of Congress argued that—

> HHS intends to discard the February 2, 1988 regulations in their entirety * * * regardless of whether any particular portion was the subject of court challenge or legislative action. * * * We believe the rejection of the 1988 rule is precipitous and that each portion of the 1988 regulations must be reviewed on its merits and justification provided in any final regulations as to why the 1988 clarifications were or were not maintained in a new rule.

With respect to the comments objecting to the revocation of the Gag Rule or the use of tax dollars for abortion on moral grounds, the Secretary notes that, under the interpretations adopted in conjunction with the regulations below, the funding of abortion or activities that promote or encourage abortion with Title X funds has been and will continue to be prohibited. Rather, what changes under the interpretations reinstated in conjunction with the regulations below is which activities are considered to "promote or encourage" abortion. In contrast to the position taken under the Gag Rule, under the present view (which was also the Department's view of the statute prior to 1988), the provision of neutral and factual information about abortion is not considered to promote or encourage abortion as a method of family planning. Indeed, the rule itself, now requires the provision to pregnant women, on request, of neutral, factual information and non-directive counseling on each of three options. The basic statutory interpretation underlying both the Gag Rule and the specific policies that governed the Title X program prior to 1988—that section 1008 prohibits activities that promote or encourage abortion as a method of family planning—remains unchanged.

With respect to the contentions that the Secretary lacks a rational basis for revoking the Gag Rule and that she must justify each separate part of the Gag Rule being discarded, we do not agree. The pre-1988 interpretation of the statute represents a permissible exercise of administrative discretion. The crucial difference between this approach and the Gag Rule is one of experience. Because of ongoing litigation, the Gag Rule was never implemented on a nationwide basis, so that its proponents can point to no evidence that it can and will work operationally on a national basis in the Title X program. The policies reflected in, and interpretations reinstituted in conjunction with, the regulations below, on the other hand, have been used by the program for virtually its entire history; indeed, they have been in effect during the pendency of this rulemaking. Both the program managers and the Title X grantee community are well-versed in these policies and interpretations, and the grantees have in the past generally been able to operate in compliance with them. Further, as evidenced by the public comment received, the reinstituted policies and interpretations are generally acceptable to the grantee community, in contrast to the compliance standards in the Gag Rule, which were generally unacceptable to the grantee community. This factor likewise favors their adoption, as it suggests a far greater likelihood of voluntary compliance by grantees. Finally, the suggestion that the Gag Rule provisions should be accepted or rejected separately is rejected as unsound. The provisions of the Gag Rule were an interrelated set of requirements that depended on several underlying assumptions about how the Title X program should work; moreover, they depended in part on several definitions that applied to all the major provisions of the Gag Rule. *See*, in this regard, 53 FR 2923, 2925; *see also*, the discussion of definitions at 53 FR 2926–2927.

B. Failure To Comply With the Administrative Procedure Act; Vagueness of Standards

A number of comments, from both proponents of and opponents to the proposed rules, objected to the failure to publish the actual policies and interpretations as part of the proposed rule on the ground that this violated the public comment requirements of the Administrative Procedure Act (APA); several comments argued that it was impossible to comment on policies that had never been published. A related criticism was that several of the interpretations described in the preamble to the notice of proposed rulemaking, particularly the interpretation relating to physical separation, were too vague.

The Secretary agreed that the provision of further information on the specific details of the pre-1988 policies and interpretations would promote more helpful public comment. Accordingly, by notice dated June 23, 1993 (58 FR 34024), the Department made available on request a summary of the policies and interpretations in existence prior to 1988. The June notice also extended the public comment period for 45 days, to permit further substantive comment on the prior policies and interpretations. Over a third of the public comments, including the majority of the comments from individuals, were received during the re-opened and comment period. The Secretary has thus addressed the concern about notice of the content of the policies and interpretations expressed by these comments.

As is further discussed below, the Secretary has incorporated in the regulatory text the policies relating to nondirective counseling and referral of the 1981 Program Guidelines for Project Grants for Family Planning Services (1981 Guidelines). The comments urging that these Guidelines requirements be reflected in the regulations have thus been accepted. With respect to the longstanding program interpretations, however, the Secretary does not agree that the Department is required to set out those

interpretations in the regulations promulgated below and accordingly, has not accepted the comments suggesting that it do so. As noted above, the interpretations themselves were developed in the classic way in which statutory interpretations are done: That is, they have generally been developed in legal opinions written to answer questions about how the statutory prohibition, as initially interpreted by the Department, applied to particular situations. This is not an unusual approach within the program as a whole: Interpretive guidance has been provided on a number of issues (*e.g.*, fee schedules, use of certain methods) over the years, as particular questions have arisen in the course of the program. While the program could incorporate those interpretations in the legislative rules below, the Secretary has decided not to do so. With respect to the areas that continue to be covered by guidance, the Secretary believes that incorporating the guidance into the regulations below would be inadvisable and unnecessary. The Secretary has thus chosen to preserve the program's flexibility to address new issues that may arise in this area.

Moreover, the Title X program grantees have operated on the basis of the policies of the 1981 Guidelines and the interpretations summarized in the notice published elsewhere in this issue of the **Federal Register** for virtually the entire history of the program and in general compliance with them. As the comment of one State agency grantee stated with regard to this issue:

> The [State] Family Planning Program has been a participant in the nation's Title X program since the early 1970's. The rules and *1981 Family Planning Guidelines* in place prior to the "Gag Rule" were adequate guidance to the state for program operation and for compliance with the statutory prohibition related to abortions. These guidelines and directives have been used successfully for many years in providing quality medical care, education and counseling to clients in the program.

The audits of 14 Title X grantees conducted by the GAO and of 31 Title X grantees conducted by the Department's Office of the Inspector General in the 1980's showed only minor compliance problems. Indeed, the principal recommendation of both audit reports was that the Department provide more specific guidance to its grantees than that previously available in the program guidelines and prior legal opinions, not that the Department undertake major disallowances, require major corrective actions, or develop new interpretations of the law such as that embodied in the Gag Rule. *See, e.g.*, Comp. Gen. Rep. No GAO/HARD–HRD–82–106 (1982), at 14–15. The Secretary is addressing this recommendation through the specific guidance in the notice published elsewhere in this edition of the **Federal Register** and believe that the notice will provide grantees with sufficient guidance to reduce or eliminate potential variations in grantee practice.

The Secretary views this final rule, the principal purposes of which are to revoke the Gag Rule and adopt the counseling and referral requirements noted, as separate and severable from the Notice. The interpretations set out in the Notice are being set out in order to clarify the Department's view of the statute and its operation in practical terms, and because so much of the public comment received was directed at the interpretations reflected in the Notice rather than at the revision of the regulation itself. Were the policies set forth in the Notice to be challenged or invalidated, it is our view that the Title X program could still be administered under the rules below in compliance with the statute, in that grantees would be prohibited by § 59.5(a)(5) below from providing abortions as part of the Title X family project and from engaging in counseling and referral practices inconsistent with the regulatory requirements adopted in that section. Such an outcome would be consistent with a permissible interpretation of the statute.

C. Amend, or Adopt a More Restrictive Reading of, the Statute

Fifteen of the comments that stated support for the proposed policies and interpretations suggested, however, that the prior limitations in the policies and interpretations with respect to what abortion-related activities a Title X project could engage in be eliminated. A few of these comments suggested that the statutory prohibition of section 1008 be repealed outright. Most of the comments suggested in essence that the statute be read strictly to prohibit only the use of funds for abortions, thereby permitting Title X projects to engage in a number of abortion-related activities that would not be permitted under the pre-1988 interpretations.

With respect to the suggestion that section 1008 be repealed, such an action is obviously outside the scope of what can be accomplished through rulemaking and thus cannot be accepted in this context. With respect to the remaining comments, while the Secretary agrees that the statute could on its face be read only to proscribe the use of Title X funds for the provisions of abortion, this is not considered to be the better reading of the statutory language. Rather, the legislative history of section 1008 indicates that that section was intended to restrict the permissible scope of abortion-related services provided under Title X. Conf. Rep. No. 1667, 97th Cong., 2d Sess. 8–9 (1970). The floor statements by the section's principal sponsor, Rep. Dingell, indicated that the section's restrictions on the "use" of Title X funds should be read as having a broader scope that is urged by these comments:

> Mr. Speaker, I support the legislation before this body. I set forth in my extended remarks the reasons why I offered to the amendment which prohibited abortion as a method of family planning * * *. With the "prohibition of abortion" the committee members clearly intended that abortion is not to be encouraged or promoted in any way through this legislation. Programs which include abortion as a method of family planning are not eligible for funds allocated through this Act.

116 Cong. Rec. 37375 (1970). The Department has consistently, since 1972, read section 1008 as incorporating this legislation on activities that "promote or encourage" abortion as a method of family planning. This interpretation is well-known to Congress, which has not, to date amended section 1008. Thus, there is legal support for this longstanding interpretation of the statute. Moreover, there is nothing in the rulemaking record that suggests that this fundamental reading of the statute, as it was administered before the Gag Rule, presented major operational problems for Title X projects. Accordingly, the Secretary has not accepted the suggestions made by this group of comments that section 1008 be read only to prohibit the provision of, or payment for, abortions.

D. Abortion Information and Counseling

The Gag Rule prohibited the provision of information other than information directed at protecting maternal and fetal health to women determined to be pregnant; thus, it prohibited what is generally known as "options counseling", *i.e.*, the provision to pregnant women in a nondirective fashion of neutral, factual information about all options for the management of a pregnancy, including abortion. *See*, 42 CFR 59.8 (1989 ed.). The pre-1988 policies, in contrast, required options counseling, if requested. As stated in the 1981 "Title X Guidelines":

> Pregnant women should be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an

unintended pregnancy are to be given non-directive counseling on the following alternative courses of action, and referral upon requests:

- Prenatal care and delivery
- Infant care, foster care, or adoption
- Pregnancy termination.

The June, 1993 summary of the pre-1988 interpretations also stated that Title X projects were not permitted to provide options counseling that promoted abortion or encouraged patients to obtain abortion, but could advise patients of all medical options and accompanying risks.

Most of those comments supporting adoption of the proposed rules appeared to agree with the pre-1988 policies and interpretations. However, there appeared to be some confusion among those who agreed with the pre-1988 requirement for options counseling as to how much information and counseling could be provided. Several of these comments also suggested that the "on request" limitation be deleted, particularly where State law requires the provision of information about abortion to women considering that option.

Several comments opposing adoption of the proposed rules and revocation of the Gag Rule also specifically addressed the issue of counseling. Several of these comments suggested that counseling on "all options" include the option of keeping the baby, and two comments suggested that the rules should contain an exception for grantees or individuals who object to providing such information and counseling on moral grounds.

A number of comments argued that the regulatory text should reflect the requirement for nondirective counseling and referral. These comments recommended that the final regulations include specific language providing for options counseling as a necessary component of quality reproductive health care services. Some cited medical ethics and good medical care as requiring that patients receive full and complete information to enable them to make informed decisions. For example, a leading medical organization commented that all women, regardless of their income level, have a right to full and accurate information about all options for managing an unwanted pregnancy. The organization pointed out that it is essential that the program regulations contain specific language about the counseling and referral requirements, and recommended the incorporation of sections of the 1981 Title X program guidelines into the regulations so as to be absolutely clear that pregnancy counseling and referral must be provided to patients facing an unwanted pregnancy upon request. Congress has also repeatedly indicated that it considers this requirement to be an important one: the program's four most recent appropriations, Pub. L. 104–208 (110 Stat. 300–243), Pub. L. 105–78 (111 Stat. 1478), Pub. L. 105–277 (112 Stat. 2681), and Pub. L. 106–113 (113 Stat. 1501–225), required that pregnancy counseling in the Title X program be "nondirective." Consequently, the Secretary has decided to reflect this fundamental program policy in the regulatory text. *See,* § 59.5(a)(5) below. The interpretive summary has also been revised to reflect this change to the regulation. However, in response to the apparent confusion as to the amount of counseling permitted to be provided under the pre-1988 interpretations, the interpretive summary clarifies that Title X grantees are not restricted as to the completeness of the factual information they may provide relating to all options, including the option of pregnancy termination. It should be noted, though, that the previous restriction as to the "type" of information that may be provided about abortion continues: Information and counseling provided by Title X projects on all options for pregnancy management, including pregnancy termination, must be nondirective. Thus, grantees may provide as much factual, neutral information about any option, including abortion, as they consider warranted by the circumstances, but may not steer or direct clients toward selecting any option, including abortion, in providing options counseling.

The Secretary is retaining the "on request" policy in the regulatory language adopted below, on the ground that it properly implements the requirement for nondirective counseling. If projects were to counsel on an option even where a client indicated that she did not want to consider that option, there would be a real question as to whether the counseling was truly nondirective or whether the client was being steered to choose a particular option. We note that under the "on request" policy a Title X grantee is not prohibited from offering to a pregnant client information and counseling on all options for pregnancy management, including pregnancy termination; indeed, such an offer is required under § 59.5(a)(5) below. However, if the client indicates that she does not want information and counseling on any particular option, that decision must be respected. The regulatory language below reflects this policy. Also, consistent with longstanding program practice and sound public health policy (see the discussion in the following paragraphs) and to avoid ambiguity in when the offer of pregnancy options counseling must be made, the rule has been clarified to require the offer of pregnancy options counseling to be made whenever a pregnant client presents, not just when the pregnancy is "unintended."

With respect to the suggestion that counseling on "keeping the baby" be provided, the Secretary views that suggestion as co-extensive with the requirement for the provision of counseling on prenatal care and delivery, as the remaining counseling option set out in the 1981 "Title X Guidelines" and the regulatory language adopted below relates to foster care and adoption. If a more directive form of counseling is meant by this suggestion, it is rejected as inconsistent with the underlying interpretation, recently reinforced by Congress, that counseling on pregnancy options should be nondirective.

Finally, the Secretary rejects the suggestion that an exception to the requirement for options counseling be carved out for those organizations that object to providing such counseling on religious or moral grounds. First, totally omitting information on a legal option or removing an option from the client's consideration necessarily steers her toward the options presented and is a directive form of counseling. Second, the Secretary is unaware of any current grantees that object to the requirement for nondirective options counseling, so this suggestion appears to be based on more of a hypothetical than an actual concern. Third, the requirement for nondirective options counseling has existed in the Title X program for many years, and, with the exception of the period 1988–1992, it has always been considered to be a necessary and basic health service of Title X projects. Indeed, pregnancy testing is a common and frequent reason for women coming to visit a Title X clinic: in 1995, an estimated 1.1 million women obtained pregnancy tests in Title X clinics. (National Survey of Family Growth, 1995 cycle, special table.) Clearly, a significant number of Title X clients have a need for information and counseling relating to pregnancy. Fourth, this policy is also consistent with the prevailing medical standards recommended by national medical groups such as the American College of Obstetricians and Gynecologists and the American Medical Association. "Guidelines for Women's Health Care," American College of Obstetricians and

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Gynecologists, 1996 ed., at 65; "Pregnancy Choices: Raising the Baby, Adoption, and Abortion," American College of Obstetricians and Gynecologists, September, 1993, reviewed December, 1995; "Code of Medical Ethics: Current Opinions with Annotations," American Medical Association, 199–1997 ed. Accordingly, the Secretary has not accepted this suggestion.

The corollary suggestion, that the requirement to provide options counseling should not apply to employees of a grantee who object to providing such counseling on moral or religious grounds, is likewise rejected. In addition to the foregoing considerations, such a requirement is not necessary: under 42 U.S.C. 300a–7(d), grantees may not require individual employees who have such objections to provide such counseling. However, in such cases the grantees must make other arrangements to ensure that the service is available to Title X clients who desire it.

E. Referral for abortion

The Gag Rule specifically prohibited referral for abortion as a method of family planning and required grantees to give women determined to be pregnant a list of providers of prenatal care, which list could not include providers "whose principal business is the provision of abortion." 42 CFR 59.8(a) (1989 ed.). The Gag Rule permitted referral to an abortion provider only where there was a medical emergency. 42 CFR 59.8(a)(2) (1989 ed.). By contrast, the 1981 Guidelines required appropriate referral on request, while the pre-1988 interpretations permitted Title X projects to make what was known as a "mere referral" for abortion; a "mere referral" was considered to be the provision to the client of the name and address and/or telephone number of an abortion provider. Affirmative actions, such as obtaining a consent for the abortion, arranging for transportation, negotiating a reduction in the fee for an abortion or arranging for or scheduling the procedure, were considered to be prohibited by section 1008. The pre-1988 rules (§ 59.5(b)(1)) were interpreted by the agency to require referral for abortion where medically indicated. *See, Valley Family Planning* v. *State of North Dakota,* 489 F.Supp. 238 (D.N.D. 1980), *aff'd.,* 661 F.2d 99 (8th Cir. 1981).

A number of comments, mostly from individuals and organizations supporting revocation of the Gag Rule, suggested modifications of the proposed referral policies and interpretations. Most of these comments suggested that the content limitations on referrals be broadened, with Title X grantees being permitted to provide other relevant information, such as comparative charges, stage of pregnancy up to which referral providers may under State law or will provide abortion, the number of weeks of estimated gestation, etc. These comments argued that the provision of such factual information does not "promote or encourage" abortion any more than does the provision of the abortion providers' names and addresses and/or telephone numbers. One comment also suggested that the restriction on negotiating fees for clients referred for abortion conflicts with the requirement to refer for abortion where medically indicated.

Several comments opposing revocation of the Gag Rule also expressed problems with the proposed referral policies and interpretations. A few comments urged that referrals to agencies that can assist clients who choose the "keeping the baby" or adoption options should be required. Another comment criticized the requirement for referral where "medically indicated" as confusing. Revisions suggested were that "self-referrals" for abortion be specifically prohibited, to reduce commercialization and profiteering by Title X grantees who are also abortion providers and that grantees who objected to abortion on moral or religious grounds be permitted not to make abortion referrals.

The Secretary agrees with the comments advocating expanding the content of what information may be provided in the course of an abortion referral. The content (as opposed to action) restrictions of the "mere referral" policy proceeded from an assumption that the provision of information other than the name and address and/or telephone number of an abortion provider might encourage or promote abortion as a method of family planning. The Secretary now agrees, based on experience and the comments of several providers on this point, that the provision of the types of additional neutral, factual information about particular providers described above is likely to do little, if anything, to encourage or promote the selection of abortion as a method of family planning over and above the provision of the information previously considered permissible; at most, such information would seem likely to assist clients in making a rational selection among abortion providers, if abortion is being considered. Moreover, it does not seem rational to restrict the provision of factual information in the referral context, when no similar restriction applies in the counseling context. Accordingly, the Secretary has revised the interpretations summarized in the notice section to clarify that grantees are not restricted from providing neutral, factual information about abortion providers in the course of providing an abortion referral, when one is requested by a pregnant Title X client.

Consistent with the incorporation of the requirement for nondirective counseling in the regulations, the regulations below also include the remaining requirement from the 1981 Guidelines, the requirement to provide a referral, if requested by the client. As referenced previously, a number of comments argued that the regulatory text should reflect the requirement for nondirective counseling and referral. One comment described the provision of factual information and referral as requested as both a necessary and significant component of the Title X program for many years. Another comment pointed out that the program guideline requirements regarding pregnancy options counseling and referral have been used for many years, are well understood and accepted in the Title X provider community, and should be required services in Title X family planning clinics. Since the services about which pregnancy options counseling is provided are not ones which a Title X project typically provides, the provision of a referral is the logical and appropriate outcome of the counseling process.

The Secretary is not accepting the remainder of the comments on this issue, as they either proceed from a misunderstanding of, or do not raise valid objections to, the regulations and the proposed policies and interpretations. The comment arguing that the restriction on negotiating fees conflicts with the requirement to refer for abortion where medically indicated is based on a misunderstanding of that requirement: in such circumstances, the referral is not for abortion "as a method of family planning" (*i.e.*, to determine the number and/or space of one's children) but is rather for the treatment of a medical condition; thus, the statutory prohibition does not apply, so there is no restriction on negotiating fees and similar actions. The suggestion that referrals to agencies that can assist clients who choose the options of "keeping the baby" or adoption be required is likewise rejected as unnecessary. Under the regulatory language adopted below, the options of prenatal care and delivery and adoption are options that are required to be part of the options counseling process, so an

appropriate referral for one or the other option would be required, if the client chose one of those options and requested a referral. However, requiring a referral for prenatal care and delivery or adoption where the client rejected those options would seem coercive and inconsistent with the concerns underlying the "nondirective" counseling requirement. The Secretary also rejects the criticism that the provision requiring referral for abortion where medically indicated is undefined and confusing. The meaning of the regulatory requirement for referrals where medically indicated (which applies to all medical services not provided by the project, not just abortion services) has not in the past been a source of confusion for providers, and the Secretary believes that Title X medical personnel are able to make the medical judgments this requirement calls for.

The Secretary likewise rejects the suggestion that "self-referrals" for abortion be banned. Very few current Title X providers are also abortion providers: it is estimated that, over the past decade, the percentage of Title X providers located with or near abortion providers has been at or below five percent, with approximately half of these providers consisting of hospitals. Thus, the issue this comment raises is irrelevant to the vast majority of Title X grantees and the program as a whole. Moreover, with respect to those few grantees that are also abortion providers, some may be the only or one of only a few abortion providers in their service area, making "self-referrals" a necessity in such situations. The Department has no evidence that commercialization and profiteering are occurring in these circumstances; absent such evidence, the Secretary sees no reason to limit or cut off a legal service option for those Title X clients who freely select it. However, the Department will continue to monitor the issue of self-referrals in the Title X program, to forestall the type of problem suggested by these commenters.

Finally, the Secretary rejects the suggestion that the referral requirement not apply to providers that object to it on moral or religious grounds for the same reasons it objected to the same suggestion with respect to counseling.

F. Physical and Financial Separation

The Gag Rule required Title X projects to be organized so as to have a physical and financial separation from prohibited abortion activities, determined by whether there was "objective integrity and independence [of the Title X project] from prohibited activities." 42 CFR 59.9 (1989 ed.). This determination was to be based on a case-by-case review of facts and circumstances. Factors relevant to this determination included, but were not limited to, the existence of separate accounting records, the degree of separation from facilities (such as treatment, consultation, examination, and waiting room) in which prohibited activities occurred and the extent of such prohibited activities, the existence of separate personnel, and the extent of the presence of evidence of identification of the Title X project and the absence of identification of material promoting abortion. *Id.*

The pre-1988 interpretations required Title X grantees to maintain physical and financial separation between the Title X project and any abortion-related activities they conducted, in that a Title X grantee was required to ensure that the Title X-supported project was separate and distinguishable from those activities. This requirement was held to go beyond a requirement for the technical allocation of funds between Title X project activities and impermissible abortion activities. However, it was considered permissible for a hospital grantee to provide abortions, as long as "sufficient separation" was maintained, and common waiting rooms were also permissible, as long as no impermissible materials were present. Common staff and unitary filing systems were also permissible, so long as costs were properly allocated and, with respect to staff members, their abortion-relation activities were performed in a program that was itself separate from the Title X project. The test, as articulated in the summary made available for comment by the June 23, 1993 notice, was "whether the abortion element in a program of family planning services bulks so large and is so intimately related to all aspects of the program as to make it difficult or impossible to separate the eligible and non-eligible items of cost."

These interpretations received by far the most specific and extensive public comment. The vast majority of this public comment was from providers and provider organizations and was negative. Although it was generally agreed that the financial separation of Title X project activities from abortion-related activities was required by statute and, in the words of one comment, "absolutely necessary," many of these comments objected that requiring additional types of separation would be unnecessary, costly, and medically unwise. The argument was made that the requirement for physical separation is unnecessary, as it is not required by the statute which, on its face, requires financial separation only. Further, it was argued that since Title X grantees are subject to rigorous financial audits, it can be determined whether program funds have been spent on permissible family planning services, without additional requirements being necessary. With respect to the issue of cost, it was generally objected that requiring separation of staff and facilities would be inefficient and cost ineffective. For example, one comment argued that—

> The wastefulness and inefficiency of the separation requirements is * * * illustrated by the policy which allows common waiting rooms, but disallows "impermissible materials" in them. This puts grantees in the position of having to continuously monitor health information for undefined "permissibility" or to build a separate waiting room just to be able to utilize those materials * * *.

It was argued that these concerns were particularly important for small and rural clinics "that may be the only accessible Title X family planning and/or abortion providers for a large population of low-income women." Of particular concern for such clinics was the duplication of costs inherent in the separation requirements, as they—

> cannot afford to operate separate facilities or to employ separate staff for these services without substantially increasing the prices of * * * services. Nor can they offer different services on different days of the week because so many of their patients * * * are only able to travel to the clinic on one day.

Many providers also pointed out that requiring complete physical separation of services would be inconsistent with public health principles, which recommend integrated health care, and would impact negatively on continuity of care. As one comment stated, "women's reproductive health needs are not artificially separated between services: a woman who needs an abortion may also need contraceptive services, and may at another time require parental care." Several providers objected in particular that such a separation would, in the words of one comment, "remove * * * one of the most opportune time[s] to facilitate the entry of the abortion patent into family planning counseling, which is at the post-abortion check-up." it was also pointed out that separation of services would burden women, by making them "make multiple appointments or trips to visit different staff or facilities." Finally, the separation policy was objected to by several of the comments that otherwise generally supported the proposed rule

as unnecessarily broad, ambiguous, and vague.

Several of the comments opposing the revocation of the Gag Rule and the adoption of the proposed rules likewise objected specifically to the separation requirements, generally on the ground that the pre-1988 policies were vague and unenforceable. Two comments also argued that, if the pre-1988 requirement of physical separation was to be reinstituted, it made no sense to revoke § 59.9 of the Gag Rule in its entirety, as that section of the Gag Rule contained specific standards to implement this requirement; alternatively, it was argued that if the Secretary is going to use different standards to determine whether the requisite physical separation existed, those should be published for public comment.

The Secretary agrees that the comments on both sides of this issue have identified substantial concerns with the pre-1988 interpretations with respect to the issue of how much physical separation should be required between a grantee's Title X project activities and abortion-related activities. The Secretary agrees with the comments that the pre-1988 interpretation that some physical separation was required was unenforceable. Indeed, since the pre-1988 interpretations had held that it was permissible to provide abortions on a Title X clinic site and to have common waiting areas, records, and staff (subject largely to proper allocation of costs), it was difficult to tell just what degree and kind of physical separation were prohibited. As a consequence, the agency attempted to enforce this requirement on only a few occasions prior to 1988. The Secretary does not agree with opponents of the proposed rules, however, who argued that the "physical separation" requirements in § 59.9 of the Gag Rule should be retained on the ground that they provide a necessary clarification of this issue. Although § 59.9 provided ostensibly more specific standards, the fundamental measure of compliance under that section remained ambiguous: "the degree of separation from facilities [in which prohibited activities occurred] and the extent of such prohibited activities," and "[t]he extent to which" certain materials were present or absent. Furthermore, since under § 59.9 compliance was to be determined on a "facts and circumstances" basis, this section of the Gag Rule provided grantees with less specific advance notice of the compliance standards than did the pre-1988 policies and interpretations. Moreover, the change in policy from the more concrete policies proposed during the Gag Rule rulemaking to the less concrete "facts and circumstances" standard ultimately adopted in the final Gag Rule as a result of the public comment suggests the practical difficulties of line-drawing in this area. In fact, since the Gag Rule was never implemented on a national basis, the precise contours of the compliance standards of § 59.9 were never determined. The Secretary has accordingly not accepted the suggestion from several opponents of the proposed rule that the policies of § 59.9 be retained.

As noted by many of the comments from groups that generally supported the revocation of the Gag Rule, the statute does not on its face require physical separation; rather, by its terms it is addressed to the use of "funds." While the interpretation of the statute by agency counsel on which the requirement for physical separation is based was reasonable, it is not the only possible reading of the statute. Rather, the fundamental question under the statute is, as the agency sees it, whether Title X funds are used by Title X grantees to promote or encourage abortions as a method of family planning in the Title X-assisted project. The Department has traditionally viewed a grant project as consisting of an identified set of activities supported in whole or in part by grant funds. If a Title X grantee can demonstrate by its financial records, counseling and service protocols, administrative procedures, and other means that—within the identified set of Title X-supported activities—promotion or encouragement of abortion as a method of family planning does not occur, then it is hard to see what additional statutory protection is afforded by the imposition of a requirement for "physical" separation. Indeed, in the light of the enforcement history noted above, it is not unreasonable to say that the standard of "physical" separation has, as a practical matter, had little relevance or applicability in the Title X program to date. Moreover, the practical difficulty of drawing lines in this area, both as experienced prior to 1988 and as evident in the history of the Gag Rule itself, suggests that this legal interpretation is not likely ever to result in an enforceable compliance policy that is consistent with the efficient and cost-effective delivery of family planning services. Accordingly, the Secretary has accepted the suggestion of a number of the comments that the requirement for physical separation be dropped; the interpretations summarized in the notice published in the notices section of this edition of the **Federal Register** are revised accordingly. This decision makes it unnecessary to respond to the remaining comments on the issue.

G. Advocacy Restrictions

The Gag Rule, at 42 CFR 59.10 (1989 ed.), prohibited Title X projects from encouraging, promoting, or advocating abortion as a method of family planning. This section prohibited Title X projects from engaging in actions to "assist women to obtain abortions or increase the availability or accessibility of abortion for family planning purposes," including actions such as lobbying for the passage of legislation to increase the availability of abortion as a method of family planning, providing speakers to promote the use of abortion as a method of family planning, paying dues to any group that as a significant part of its activities advocated abortion as a method of family planning, using legal action to make abortion available as a method of family planning, and developing or disseminating materials advocating abortion as a method of family planning. The pre-1988 interpretations likewise prohibited the promotion or encouragement of abortion as a method of family planning through advocacy activities such as providing speakers, bringing legal action to liberalize statutes relating to abortion, and producing and/or showing films that tend to encourage or promote abortion as a method of family planning. However, under those prior interpretations, it was considered permissible for Title X grantees to be dues-paying members of abortion advocacy groups, so long as there were other legitimate program-related reasons for the affiliation.

Very few comments were received concerning these proposed interpretations. Those received from persons and entities that generally supported the proposed rules generally argued against the restriction on showing films advocating abortion, on the ground that it was possible to violate this restriction by showing a film that was purely factual and detailed relative risks. The few comments on this part of the policies and interpretations received from those who generally opposed revoking the Gag Rule pointed out the similarity between the advocacy policies articulated in the proposed interpretations and § 59.10 of the Gag Rule and argued that § 59.10 should accordingly be reinstated.

As set out above, the Secretary is of the view the Gag Rule cannot and should not be adopted piecemeal, as recommended by these comments. Moreover, the Secretary is of the view

that the prohibition against dues paying contained in § 59.10 is not required by the statute and does not represent sound public policy. Accordingly, the suggestion that § 59.10 be reinstated has not been adopted. With respect to the criticism of the prohibition against Title X grantees showing films advocating abortion as a method of family planning, it is recognized that the prohibition should not encompass the kind of neutral, factual information that grantees are permitted to provide in the counseling context; the interpretations have been clarified accordingly. To the extent that these comments seek to further liberalize the advocacy restrictions, however, they are rejected as inconsistent with the Secretary's basic interpretation of section 1008.

H. Miscellaneous

A number of comments were received on miscellaneous issues. Those comments, and the Secretary's responses thereto, are summarized below.

1. Changes outside the scope of the rulemaking

Several comments were received advocating changes to other sections of the regulations on issues other than the issue of compliance with section 1008. These comments included the following suggestions: that the regulations be revised to permit natural family planning providers to be Title X grantees; that the regulations be revised to prohibit single method providers from participating in Title X projects; that the footnote in the regulation addressing Pub. L. 94–63 be revised to state that the law also forbids coercion to carry a pregnancy to term; that the regulations be revised to deal with recent medical developments, such as HIV or Norplant. All of these suggestions are rejected on the ground that they exceed the scope of the rulemaking because these issues were not the subject of the Notice of Proposed Rulemaking.

2. Audit standards

Several providers urged that the OMB audit standards for Title X projects be revised to reflect the change in the regulations. While this comment is likewise outside the scope of the rulemaking, the Department intends to work with the Office of Management and Budget to revise the program audit standards to reflect the regulations below and the policies and interpretations also being reinstituted.

3. Separation of Powers

Two comments, including one from four members of Congress, argued that the suspension of the Gag Rule violated the separation of powers insofar as it misspent federal tax dollars without amendment to the statute or compliance with the APA. The Secretary disagrees that suspension of the Gag Rule violated either the statute or the APA. The Gag Rule was, in the Secretary's view, a permissible interpretation of the statute, but not the only permissible interpretation of the statute; thus, suspension of those rules (and reinstitution of the Department's longstanding policies and interpretations of the statute) is not inconsistent with the statute. Nor was the suspension action inconsistent with the APA, as the findings which the APA requires be made in such circumstances were made. Finally, the Secretary notes that this issues is now moot, with the publication of the regulations below.

I. Technical Amendments

Because the proposed rules proposed the reissuance of the program regulations that were issued in 1980, it was recognized that—

> some of the other regulations cross-referenced in the rules below may no longer be operative or citations may need to be updated. However, such housekeeping details will be addressed in the final rules.

58 FR 7464. Further review of the proposed regulations has established that this is indeed the case. Accordingly, a number of technical amendments have been made to the regulations, to delete obsolete statutory or regulatory references or to clarify the existing provisions or incorporate new regulatory or other references made relevant by subsequent changes in the law. A summary of the technical amendments, and the reasons therefor, follows:

1. *§ 59.2 (definition of "low income family"):* The reference to "Community Services Administration Income Poverty Guidelines (45 CFR 1060.2)" is changed to "Poverty Guidelines issued pursuant to 42 U.S.C. 9902(2)." This change reflects a change in the law, effected by Pub. L. 97–35, § 673.

2. *§ 59.2 (definition of "State"):* The definition of this term is changed to reflect statutory changes regarding the Trust Territories of the Pacific Islands effected by Pub. L. 99–239 (relating to the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau).

3. *§ 59.5(a)(8):* The reference to the "CSA Income Poverty Guidelines" is changed, consistent with and for the reason set out above with respect to § 59.2 (definition of "low income family").

4. *§ 59.9:* The reference to "Subpart Q" of 45 CFR Part 74 has been deleted, as that subpart has been revoked. A reference to 45 CFR Part 92 has been added, to reflect the requirements at that part that apply by their terms of State and local governments.

5. *§ 59.10:* The references to 42 CFR Part 122 and 45 CFR Part 19 have been deleted, as those parts have been revoked. A reference to 37 CFR Part 401, which applies by its terms, has been added, reflecting a change in the law. The description of 45 CFR Part 74 has been changed, to reflect accurately the current title of that part. A reference to 45 CFR Part 92 has been added, to reflect the requirements at that part that apply by their terms to State and local governments.

6. *§ 59.11:* The word "documented" has been inserted before the word "consent" in this section to clarify what was implicit in this section, that the consent for disclosure must be documented by the project.

7. *§ 59.12 (proposed):* The proposed section (which was the prior section relating to inventions and discoveries) has been deleted, as it has been superseded by the government-wide regulations at 37 CFR Part 401, a reference to which has been added to § 59.10. This change has also occasioned the renumbering of the proposed § 59.13.

The above changes are all technical in nature and simply bring the regulations issued below into conformity with current law. They are thus essentially housekeeping in nature, as noted in the proposed rules. Accordingly, and for the reasons set out above, the Secretary finds that public comment on these changes would be impracticable, unnecessary, and contrary to the public interest and that good cause therefore exists for omitting public comment thereon.

III. Effective Date

These regulations are adopted effective upon publication, as they meet the conditions for exception from the requirement for a 30-day delay in effective date under 5 U.S.C. 553(d). First, by revoking the Gag Rule, the regulations below relieve the restrictions imposed on grantees' conduct of their Title X projects by the Gag Rule. Second, the policies adopted in the regulations below and the interpretations adopted in conjunction with them are already largely in effect, by virtue of the suspension of the Gag Rule and the reinstitution of the pre-

1988 policies and interpretations effected by the interim rules of February 5, 1993. To the extent this *status quo* is changed by the revision of the policies and interpretations in question, the effect of those revisions is to clarify and simplify certain of the present restrictions, which should make complying with the policies and interpretations easier for grantees than is presently the case. Thus, no useful purpose would be served by delaying the effective date of these regulations, and the Secretary accordingly finds that good cause exists for making them effective upon publication.

IV. Analysis of Impacts

The Secretary has examined the impacts of the final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612), and certifies that this final rule will not have a significant impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act (the Act) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted for inflation) in any year. This rule will not result in such an expenditure; consequently, it is not covered by Section 202 of the Act.

Executive Order 13132 requires that a Federalism Assessment be prepared in any cases in which policies have significant federalism implications as defined in the Executive Order. The Department does not intend or interpret this final rule as imposing additional costs or burdens on the States. The Department has evaluated the public comments. Public comments from State and local health departments indicate support for the Title X policies contained in the final rule and the interpretations to ensure the provision of quality medical care and patients' rights to comprehensive services. In the interest of consistent program operation and uniform understanding of the policy, the final rule codifies what has been longstanding program policy and is consistent with current program practice.

The Office of Management and Budget has reviewed this rule pursuant to Executive Order 12866.

List of Subjects in 42 CFR Part 59.

Family planning—birth control; Grant programs—health; Health facilities.

Dated: June 28, 2000.

David Satcher,

Assistant Secretary for Health and Surgeon General.

Approved: June 28, 2000.

Donna E. Shalala,

Secretary.

PART 59—GRANTS FOR FAMILY PLANNING

For the reasons set out in the preamble, subpart A of part 59 of title 42, Code of Federal Regulations, is hereby revised to read as follows:

Subpart A—Project Grants for Family Planning Services

Sec.

59.1 To what programs do these regulations apply?
59.2 Definitions.
59.3 Who is eligible to apply for a family planning services grant?
59.4 How does one apply for a family planning services grant?
59.5 What requirements must be met by a family planning project?
59.6 What procedures apply to assure the suitability of informational and educational material?
59.7 What criteria will the Department of Health and Human Services use to decide which family planning services projects to fund and in what amount?
59.8 How is a grant awarded?
59.9 For what purposes may grant funds be used?
59.10 What other HHS regulations apply to grants under this subpart?
59.11 Confidentiality.
59.12 Additional conditions.

Subpart A—Project Grants for Family Planning Services

Authority: 42 U.S.C. 300a–4.

§ 59.1 To what programs do these regulations apply?

The regulations of this subpart are applicable to the award of grants under section 1001 of the Public Health Service Act (42 U.S.C. 3200) to assist in the establishment and operation of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.

§ 59.2 Definitions.

As used in this subpart:

Act means the Public Health Service Act, as amended.

Family means a social unit composed of one person, or two or more persons living together, as a household.

Low income family means a family whose total annual income does not exceed 100 percent of the most recent Poverty Guidelines issued pursuant to 42 U.S.C. 9902(2). "Low-income family" also includes members of families whose annual family income exceeds this amount, but who, as determined by the project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources.

Nonprofit, as applied to any private agency, institution, or organization, means that no part of the entity's net earnings benefit, or may lawfully benefit, any private shareholder or individual.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State includes, in addition to the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, the U.S. Outlaying Islands (Midway, Wage, *et al.*), the Marshall Islands, the Federated State of Micronesia and the Republic of Palau.

§ 59.3 Who is eligible to apply for a family planning services grant?

Any public or nonprofit private entity in a State may apply for a grant under this subpart.

§ 59.4 How does one apply for a family planning services grant?

(a) Application for a grant under this subpart shall be made on an authorized form.

(b) An individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant, including the regulations of this subpart, must sign the application.

(c) The application shall contain—

(1) A description, satisfactory to the Secretary, of the project and how it will meet the requirements of this subpart;

(2) A budget and justification of the amount of grant funds requested;

(3) A description of the standards and qualifications which will be required for all personnel and for all facilities to be used by the project; and

(4) Such other pertinent information as the Secretary may require.

§ 59.5 What requirements must be met by a family planning project?

(a) Each project supported under this part must:

(1) Provide a broad range of acceptable and effective medically approved family planning methods

(including natural family planning methods) and services (including infertility services and services for adolescents). If an organization offers only a single method of family planning, it may participated as part of a project as long as the entire project offers a broad range of family planning services.

(2) Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning. Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility for, or receipt of, any other services, assistance from or participation in any other program of the applicant.[1]

(3) Provide services in a manner which protects the dignity of the individual.

(4) Provide services without regard of religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies, or martial status.

(5) Not provide abortion a method of family planning. A project must:

(i) Offer pregnant women the opportunity to provided information and counseling regarding each of the following options:

(A) Prenatal care and delivery;

(B) Infant care, foster care, or adoption; and

(C) Pregnancy termination.

(ii) If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant woman indicates she does not wish to receive such information and counseling.

(6) Provide that priority in the provision of services will be given to persons from low-income families.

(7) Provide that no charge will be made for services provided to any persons from a low-income family except to the extent that payment will be made by a third party (including a government agency) which is authorized to or is under legal obligation to pay this charge.

(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set forth in the most recent Poverty Guidelines issued pursuant to 42 U.S.C. 9902(2) will be made in accordance with a schedule of fees designed to recover the reasonable cost of providing services.

(9) If a third party (including a Government agency) is authorized or legally obligated to pay for services, all reasonable efforts must be made to obtain the third-party payment without application of any discounts. Where the cost of services is to be reimbursed under title XIX, XX, or XXI of the Social Security Act, a written agreement with the title XIX, XX or XXI agency is required.

(10)(i) Provide that if an application relates to consolidation of service areas or health resources or would otherwise affect the operations of local or regional entities, the applicant must document that these entities have been given, to the maximum feasible extent, an opportunity to participate in the development of the application. Local and regional entities include existing or potential subgrantees which have previously provided or propose to provide family planning services to the area proposed to be served by the applicant.

(ii) Provide an opportunity for maximum participation by existing or potential subgrantees in the ongoing policy decisionmaking of the project.

(11) Provide for an Advisory Committee as required by § 59.6.

(b) In addition to the requirements of paragraph (a) of this section, each project must meet each of the following requirements unless the Secretary determines that the project has established good cause for its omission. Each project must:

(1) Provide for medical services related to family planning (including physician's consultation, examination prescription, and continuing supervision, laboratory examination, contraceptive supplies) and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices.

(2) Provide for social services related to family planning, including counseling, referral to and from other social and medical services agencies, and any ancillary services which may be necessary to facilitate clinic attendance.

(3) Provide for informational and educational programs designed to—

(i) Achieve community understanding of the objectives of the program;

(ii) Inform the community of the availability of services; and

(iii) Promote continued participation in the project by persons to whom family planning services may be beneficial.

(4) Provide for orientation and in-service training for all project personnel.

(5) Provide services without the imposition of any durational residency requirement or requirement that the patient be referred by a physician.

(6) Provide that family planning medical services will be performed under the direction of a physician with special training or experience in family planning.

(7) Provide that all services purchased for project participants will be authorized by the project director or his designee on the project staff.

(8) Provide for coordination and use of referral arrangements with other providers of health care services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other federal programs.

(9) Provide that if family planning services are provided by contract or other similar arrangements with actual providers of services, services will be provided in accordance with a plan which establishes rates and method of payment for medical care. These payments must be made under agreements with a schedule of rates and payment procedures maintained by the grantee. The grantee must be prepared to substantiate, that these rates are reasonable and necessary.

(10) Provide, to the maximum feasible extent, an opportunity for participation in the development, implementation, and evaluation of the project by persons broadly representative of all significant elements of the population to be served, and by others in the community knowledgeable about the community's needs for family planning services.

§ 59.6 What procedures apply to assure the suitability of informational and educational material?

(a) A grant under this section may be made only upon assurance satisfactory to the Secretary that the project shall provide for the review and approval of informational and educational materials developed or made available under the project by an Advisory Committee prior to their distribution, to assure that the materials are suitable for the population

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[1] Section 205 of Pub. L. 94–63 states: "Any (1) officer or employee of the United States, (2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or (3) person who receives, under any program receiving Federal assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than $1,000 or imprisoned for not more than one year, or both."

or community to which they are to be made available and the purposes of title X of the Act. The project shall not disseminate any such materials which are not approved by the Advisory Committee.

(b) The Advisory Committee referred to in paragraph (a) of this section shall be established as follows:

(1) *Size.* The Committee shall consist of no fewer than five but not more than nine members, except that this provision may be waived by the Secretary for good cause shown.

(2) *Composition.* The Committee shall include individuals broadly representative (in terms of demographic factors such as race, color, national origin, handicapped condition, sex, and age) of the population or community for which the materials are intended.

(3) *Function.* In reviewing materials, the Advisory Committee shall:

(i) Consider the educational and cultural backgrounds of individuals to whom the materials are addressed;

(ii) Consider the standards of the population or community to be served with respect to such materials;

(iii) Review the content of the material to assure that the information is factually correct;

(iv) Determine whether the material is suitable for the population or community to which is to be made available; and

(v) Establish a written record of its determinations.

§ 59.7 What criteria will the Department of Health and Human Services use to decide which family planning services projects to fund and in what amount?

(a) Within the limits of funds available for these purposes, the Secretary may award grants for the establishment and operation of those projects which will in the Department's judgment best promote the purposes of section 1001 of the Act, taking into account:

(1) The number of patients, and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in these regulations.

(b) The Secretary shall determine the amount of any award on the basis of his estimate of the sum necessary for the performance of the project. No grant may be made for less than 90 percent of the project's costs, as so estimated, unless the grant is to be made for a project which was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975.

(c) No grant may be made for an amount equal to 100 percent for the project's estimated costs.

§ 59.8 How is a grant awarded?

(a) The notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for three to five years.

(b) Generally the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 59.9 For what purpose may grant funds be used?

Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in 45 CFR Part 74 or Part 92, as applicable.

§ 59.10 What other HHS regulations apply to grants under this subpart?

Attention is drawn to the following HHS Department-wide regulations which apply to grants under this subpart. These include:

37 CFR Part 401—Rights to inventions made by nonprofit organizations and small business firms under government grants, contracts, and cooperative agreements

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations; and certain grants and agreements with states, local governments and Indian tribal governments

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to state and local governments

§ 59.11 Confidentiality.

All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

§ 59.12 Additional conditions.

The Secretary may, with respect to any grant, impose additional conditions prior to or at the time of any award, when in the Department's judgment these conditions are necessary to assure orb protect advancement of the approved program, the interests of public health, or the proper use of grant funds.

[FR Doc. 00–16758 Filed 6–30–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Provision of Abortion-Related Services in Family Planning Services Projects

AGENCY: Office of Population Affairs, OPHS, DHHS.

ACTION: Notice.

SUMMARY: This notice informs the public of the interpretations relating to the statutory requirement that no funds appropriated under Title X of the Public Health Service Act be used in programs in which abortion is a method of family planning.

FOR FURTHER INFORMATION CONTACT: Samuel S. Taylor, Office of Population Affairs, (301) 594–4001.

SUPPLEMENTARY INFORMATION: On February 5, 1993, the Department of Health and Human Services published in the **Federal Register** a notice of proposed rulemaking that proposed to revise the regulations at 42 CFR Part 59, Subpart A. Subpart A of Part 59 sets forth the program requirements applicable to grantees under section 1001 of the Public Health Service (PHS) Act, 42 U.S.C. 300, *et seq.* The notice of proposed rulemaking proposed to revise that subpart by readopting the program regulations as they existed prior to February 2, 1988. This action would have the effect of revoking the regulations published on February 2, 1988, commonly known as the "Gag Rule," which set forth standards for the compliance by such grantees with section 1008 of that Act, 42 U.S.C. 300a–6.

The February 5, 1993 notice of proposed rulemaking also proposed to reinstitute the pre-1988 policies and interpretations regarding compliance with section 1008. 58 FR 7464. As explained in the notice of proposed rulemaking, those policies and interpretations derived from previous opinions of the Department concerning section 1008. To promote more useful public comment in the rulemaking process, the Department subsequently made available a more detailed summary of the policies and interpretations and reopened the public comment period. 58 FR 34042 (June 23, 1993).

A number of public comments on the prior policies and interpretations were obtained during the reopened comment period, and the public comments received during both comment periods were generally focused on the prior policies and interpretations rather than on the proposed regulatory language. The Department has changed one paragraph of the regulations and has modified its prior interpretations in several particulars based in part on the public comment received. These modifications, and the grounds therefor, are described in the preamble to the final rules published on this date in the rules section of the **Federal Register**. The interpretations, as so modified, are set out in the summary statement below. The summary below is also reorganized from the summary statement made available for public comment, for purposes of clarification.

Accordingly, to provide guidance to grantees in order to promote uniform administration of the program and facilitate grantee compliance with the interpretations that are being reinstituted in conjunction with the final regulations adopted on this date, provided below is a summary of the program regulatory requirements and interpretations that relate to section 1008 of the PHS Act.

Program Policies Regarding the Title X National Family Planning Program and the Section 1008 Abortion Prohibition

Section 1008 of the Title X statute, 42 U.S.C. 300a–6, states: "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning." This prohibition applies not only to the performance of abortion by a Title X project, but also to the conduct of certain abortion-related activities by the project. However, the prohibition does not apply to all the activities of a Title X grantee, but only to those within the Title X project. This statement summarizes the Department requirements and interpretations in existence prior to the imposition of the 1988 "Gag Rule" with regard to implementation of section 1008, as modified following the rulemaking of 1993.

1. General Principles

In general, section 1008 prohibits Title X programs from engaging in activities which promote or encourage abortion as a method of family planning. However, section 1008 does not prohibit the funding under Title X of activities which have only a possibility of encouraging or promoting abortion; rather, a more direct nexus is required. The general test is whether the immediate effect of the activity in question is to promote or encourage the use of abortion as a method of family planning. If the immediate effect of the activity in question is essentially neutral, then it is not prohibited by the statute. Thus, a Title X project may not provide services that directly facilitate the use of abortion as a method of family planning, such as providing transportation for an abortion, explaining and obtaining signed abortion consent forms from clients interested in abortions, negotiating a reduction in fees for an abortion, and scheduling or arranging for the performance of an abortion, promoting or advocating abortion within Title X program activities, or failing to preserve sufficient separation between Title X program activities and abortion-related activities.

2. Abortion Counseling and Referral

Under 42 CFR 59.5(a)(5), a Title X project must:

Not provide abortion as a method of family planning. A project must:

(i) Offer pregnant women the opportunity to be provided information and counseling regarding each of the following options:

(A) Prenatal care and delivery;

(B) Infant care, foster care, or adoption; and

(C) Pregnancy termination.

(ii) If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and referral on request, except with respect to any option(s) about which the pregnant woman indicates she does not wish to receive such information and counseling.

However, there are limitations on what abortion counseling and referral is permissable under the statute. A Title X project may not provide pregnancy options counseling which promotes abortion or encourages persons to obtain abortion, although the project may provide patients with complete factual information about all medical options and the accompanying risks and benefits. While a Title X project may provide a referral for abortion, which may include providing a patient with the name, address, telephone number, and other relevant factual information (such as whether the provider accepts Medicaid, charges, etc.) about an abortion provider, the project may not take further affirmative action (such as negotiating a fee reduction, making an appointment, providing transportation) to secure abortion services for the patient. Where a referral to another provider who might perform an abortion is medically indicated because of the patient's condition or the condition of the fetus (such as where the woman's life would be endangered), such a referral by a Title X project is not prohibited by section 1008 and is required by 42 CFR 59.5(b)(1). The limitations on referrals do not apply in cases in which a referral is made for medical indications.

3. Advocacy Activities

A Title X project may not promote or encourage the use of abortion as a method of family planning through advocacy activities such as providing speakers to debate in opposition to anti-abortion speakers, bringing legal action to liberalize statutes relating to abortion, or producing and/or showing films that encourage or promote a favorable attitude toward abortion as a method of family planning. Films that present only neutral, factual information about abortion are permissible. A Title X project may be a dues paying participant in a national abortion advocacy organization, so long as there are other legitimate program-related reasons for the affiliation (such as access to certain information or data useful to the Title X project). A Title X project may also discuss abortion as an available alternative when a family planning method fails in a discussion of relative risks of various methods of contraception.

4. Separation

Non-Title X abortion activities must be separate and distinct from Title X project activities. Where a grantee conducts abortion activities that are not part of the Title X project and would not be permissible if they were, the grantee must ensure that the Title X-supported project is separate and distinguishable from those other activities. What must be looked at is whether the abortion element in a program of family planning services is so large and so intimately related to all aspects of the program as to make it difficult or impossible to separate the eligible and non-eligible items of cost.

The Title X project is the set of activities the grantee agreed to perform in the relevant grant documents as a condition of receiving Title X funds. A grant applicant may include both project and nonproject activities in its grant application, and, so long as these are properly distinguished from each other and prohibited activities are not reflected in the amount of the total approved budget, no problem is created. Separation of Title X from abortion activities does not require separate grantees or even a separate health facility, but separate bookkeeping entries alone will not satisfy the spirit of the law. Mere technical allocation of funds, attributing federal dollars to non-abortion activities, is not a legally supportable avoidance of section 1008.

Certain kinds of shared facilities are permissible, so long as it is possible to distinguish between the Title X supported activities and non-Title X abortion-related activities: (a) A common waiting room is permissible, as long as the costs properly pro-rated; (b) common staff is permissible, so long as salaries are properly allocated and all abortion related activities of the staff members are performed in a program which is entirely separate from the Title X project; (c) a hospital offering abortions for family planning purposes and also housing a Title X project is permissible, as long as the abortion activities are sufficiently separate from the Title X project; and (d) maintenance of a single file system for abortion and family planning patients is permissible, so long as costs are properly allocated.

Whether a violation of section 1008 has occurred is determined by whether the prohibited activity is part of the funded project, not by whether it has been paid for by federal or non-federal funds. A grantee may demonstrate that prohibited abortion-related activities are not part of the Title X project by various means, including counseling and service protocols, intake and referral procedures, material review procedures, and other administrative procedures.

Dated: June 28, 2000.

Samuel S. Taylor,

Acting Director, Office of Population Affairs.

[FR Doc. 00–16759 Filed 6–30–00; 8:45 am]

BILLING CODE 4160–17–M

Federal Register

Monday,
July 3, 2000

Part VI

Department of Transportation

Federal Railroad Administration

49 CFR Parts 215, 220, and 238
Passenger Equipment Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 215, 220, and 238

[FRA Docket No. PCSS–1, Notice No. 6]

RIN 2130–AA95

Passenger Equipment Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document specifically responds to the petitions for reconsideration related to the inspection, testing, maintenance, and movement of defective equipment provisions that FRA received in response to its May 12, 1999 final rule establishing comprehensive Federal safety standards for railroad passenger equipment. This document clarifies and amends the final rule as it relates to these provisions.

EFFECTIVE DATE: The amendments to the final rule are effective July 3, 2000.

FOR FURTHER INFORMATION, CONTACT: Ronald Newman, Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, Mail Stop 25, Washington, DC 20590 (telephone: 202-493–6300); Daniel Alpert, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6026); or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1999, FRA issued a final rule establishing comprehensive Federal safety standards for railroad passenger equipment. *See* 64 FR 25540. FRA received petitions for reconsideration of the final rule from nine separate parties. These petitions sought reconsideration of numerous provisions contained in the final rule which generally involved the following major topics: structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. The purpose of this document is to address the issues raised in the petitions for reconsideration relating to the final rule requirements regarding the inspection, testing, and maintenance of passenger equipment and the movement of such equipment when it becomes defective as well as other miscellaneous provisions related to those topics. FRA believes that it is necessary to address these issues as quickly as possible in order to allow railroads sufficient time to complete the development of the training protocols required by the final rule and to begin the process of training their employees on the requirements of the final rule. Due to the complexity of some of the structural and fire safety issues raised in the petitions for reconsideration and because FRA's technical staff has concentrated its attention on resolving the issues related to the grandfathering of existing passenger equipment, FRA intends to respond to the issues raised in the petitions for reconsideration that are related to fire safety and the structural design of passenger equipment in a separate notice that will be published in the **Federal Register** in the near future.

In response to the final rule, FRA received petitions for reconsideration from five parties raising various issues relating to the inspection, testing, maintenance, and movement for repair provisions contained in the final rule. These petitioners included:

American Association of Private Railroad Car Owners, Inc. (AAPRCO),
American Public Transit Association (APTA),
Brotherhood of Railway Carmen Division of the Transportation Communications International Union (BRC),
National Railroad Passenger Corporation (Amtrak), and
Transportation Workers Union of America (TWU).

The specific issues and recommendations raised by these petitioners, and FRA's response to those petitions are discussed in detail in the "Section-by-Section Analysis" portion of the preamble. The section-by-section analysis also contains a detailed discussion of each provision which is being clarified or amended from the May 12, 1999 final rule. This will enable the regulated community to more readily compare this document with the preamble discussions contained in the final rule and will aid the regulated community in understanding the requirements of the rule. All of the changes being made to the final rule in this response to the petitions for reconsideration are intended to be clarifying or technical amendments or are within the scope of the issues and options discussed, considered, and raised in either the 1997 Notice of Proposed Rulemaking (NPRM) or the final rule.

The following discussion is intended to address the general concerns raised by the BRC regarding FRA's collection and reliance on the power brake defect ratios contained in FRA's database. The BRC submitted a petition for reconsideration which raised numerous issues regarding power brake defect ratios and their use in this proceeding. In its petition the BRC contends that data developed in joint field inspections (i.e., FRA, BRC, and the carriers) during the Passenger Equipment Safety Standards process have been ignored in favor of traditional FRA safety data. The BRC asserts the data it developed regarding inspections by carmen and train crews were ignored by FRA when developing the NPRM and final rule and that FRA instead relied on data contained in its database. The BRC maintains that the data upon which FRA has relied to justify the new safety regulations are highly suspect, inaccurate, and unreliable.

The BRC contends that its own review of FRA safety data has uncovered instances where the same inspection data have been counted twice, three times, and even six times when calculating power brake defect ratios. BRC further states that it has uncovered numerous incidents in which FRA conducted power brake inspections while equipment is not connected to a source of compressed air, and contends that these types of inspections uncover only the most obvious defects in the power brake system. Thus, they contend that other defects that are less obvious, but no less dangerous, are not detected in these types of inspections. The BRC contends that FRA's inclusion of these types of inspections causes an artificial deflation of power brake defect ratios since the entire brake system is not inspected. The BRC contends that the deflation of these ratios is demonstrated by FRA in the 1998 NPRM proposing modification of the power brake regulations related to freight operations (63 FR 48294; Sept. 9, 1998). The BRC argues that although FRA noted an average freight power brake defect ratio of 3.9 percent in the 1998 NPRM, data collected in joint FRA, BRC and carrier inspections under various Safety Assurance and Compliance (SACP) initiatives reveal actual defect ratios of over 20 to 25 percent. The BRC asserts that FRA considered these data issues to be important enough to hold a public meeting on May 27, 1999 to discuss the issues related to FRA's inspection and reporting practices. Consequently, in a letter dated May 10, 1999, and in its petition, the BRC requested withdrawal of the final rule until more reliable safety data exist or are developed to justify the final rule.

Although the BRC's petition for reconsideration alludes to several

concerns regarding FRA's collection and reporting of power brake defect data, the petition does not allege that the accident/incident data presented by FRA in the final rule were inaccurate. In the May 12, 1999, final rule, FRA noted that its accident/incident data related to intercity passenger and commuter train operations support the general assumption that the current practices of these operations in the area of power brake inspection, testing, and maintenance are for the most part sufficient to ensure the safety of the public. *See* 64 FR 25556. The final rule noted that between January 1, 1990, and October 31, 1996, there were only five brake-related accidents involving commuter and intercity passenger railroad equipment and that no casualties resulted from any of these accidents. The total damage to railroad equipment reported to FRA totaled approximately $650,000, or $96,000 annually.

In the final rule, FRA also noted that between January 1, 1995, and October 31, 1996, FRA inspected approximately 13,000 commuter and intercity passenger rail units for compliance with 49 CFR part 232. FRA noted that the power brake defect ratio for these units during this period was approximately 0.8 percent. Furthermore, during this same period FRA inspected approximately 6,300 locomotives for compliance with 49 CFR part 229. The brake defect ratio for these units was approximately 4.65 percent. *See* 64 FR 25556–57. Although these defect ratios were presented in the general preamble portion of the final rule and the NPRM, there is nothing in either document or in the specific discussions of the various provisions proposed in the NPRM or retained in the final rule to indicate that these defect ratios were relied upon or used as a basis for developing any of the provisions. They were merely presented for illustrative purposes and were only relied on to the limited extent as discussed below.

The allegations regarding FRA's collection and reporting of power brake defect ratios raised by the BRC in its petition are virtually identical to the issues the organization raised with regard to the 1998 NPRM on freight power brakes or are directly related to those concerns. Therefore, FRA believes it is necessary to provide a general discussion explaining the limitations of using defect data collected by FRA, how defect data are used by FRA when developing a regulation, and how defect data are collected by FRA. As the concerns raised by BRC are applicable to FRA's collection of defect data for both freight and passenger equipment, the discussion will generally discuss freight defect data and the concerns related to that data raised at a public meeting conducted on May 27, 1999, but are equally applicable to defect data on passenger equipment.

Data on brake defects are collected by FRA inspectors as they do general rail equipment inspections and during special projects conducted under the SACP. FRA has consistently maintained that the power brake defect data it collects are not suitable for use in any statistical analysis of brake defects. In order to perform a statistically valid analysis, either all cars and locomotives must be inspected (prohibitively expensive), or a statistically valid sample must be collected. For the sample to be valid for the purpose of statistical analysis, the sample must be randomly selected so that it will represent the same characteristics as the universe of data. Random samples have several unique characteristics. They are unbiased, meaning that each unit has the same chance of being selected. Random samples are independent, or the selection of one unit has no influence on the selection of other units. Most statistical methods depend on independence and lack of bias. Without a randomized sample design, there can be no dependable statistical analysis, and no way to measure sampling error, no matter how the data are modified. Random sampling "statistically guarantees" the accuracy of the results.

The sampling method used for regular FRA inspections is not random. It is more of a combination between a *judgment* sample and an opportunity sample. The opportunity sample basically just takes the first sample population that comes along, while the judgment sample is based on "expert" opinion. The sampling method used for SACP inspections is also a judgment sample, where FRA is focusing its inspections on a specific safety concern. This method is extremely prone to bias, as FRA is typically investigating known problem areas. Furthermore, some SACP inspections are joint inspections with rail labor representatives. Consequently, it is unknown whether the final reports reflect only FRA defects, as many of the joint inspections had both railroad and FRA defects recorded.

Neither the regular FRA inspections nor the SACP inspections were designed for random data collection. Although both are very useful to FRA, they were not designed for this purpose, and the data should be used carefully. FRA believes that data collected during routine inspections are the most likely data to accurately reflect the condition of the fleet. However, both FRA inspection data and SACP data lack any measuring device; a defect is a defect, and no distinction is made between a critical defect versus a minor defect. Furthermore, the estimated correlation coefficients between defects and accidents were not found to be statistically significant. This does not mean that defects cannot lead to collisions or derailments as the lack of correlation could easily be a result of non-random sampling. Therefore, the data collected both during routine FRA inspections and under SACP cannot be used as a proxy for data collected by means of a random sample for the purpose of statistical analysis. The sample is not random, so no dependable statistical analysis may be performed. Consequently, FRA did not and will not use the data regarding power brake defects for the purpose of conducting a purely statistical analysis.

Power brake defect ratios were not specifically relied on when developing any provision contained in the final rule or in the NPRM which preceded the final rule. Although power brake defect ratios were considered, they were not used as the exclusive or necessary basis for any of the provisions proposed in the NPRM or contained in the final rule. They were generally used to aid FRA in identifying problem areas, which in turn helped FRA identify brake issues and practices that needed to be addressed. For example, the existence of high power brake defect ratios at a particular location or on a particular railroad likely indicated the existence of certain practices or procedures that created or contributed to the high defect levels. As is evident from the discussions of the various requirements contained in both the NPRM and in the final rule, FRA considered a massive amount of information and data when developing the rule.

Although the data regarding defect ratios contained in FRA's database have limited usefulness in the context of developing a regulation, the data are very useful to FRA in other ways. The data are useful in measuring a railroad's general compliance level and aid in identifying problem areas or locations. This information aids FRA in allocating its inspection forces and permits FRA to focus its enforcement on locations or issues which are in the greatest need of such scrutiny. By focusing its enforcement in this manner, FRA is able to make the best use of its limited resources.

Although the preceding discussion details the limitations of using the data collected by FRA regarding power brake defects when developing a regulation, FRA believes that a more detailed

discussion of FRA's collection of power brake defect data is needed in order to address the issues raised or alluded to by the BRC in its petition. As noted above, FRA conducted a public meeting on May 27, 1999, in order to address general concerns raised by various parties regarding the accuracy of the FRA's power brake defect data and to provide interested parties the opportunity to develop the issues they generally raised in oral and written comments regarding the data. Although this public meeting was held in connection with the NPRM regarding power brake regulations related to freight operations, many of the issues are identical to the issues raised by the BRC in its petition in this proceeding. At this May 27, 1999, public meeting, representatives of several labor organizations raised issues regarding the accuracy and use of the power brake defect data complied by FRA. These commenters generally alleged that the method by which FRA collects power brake defect data results in the underreporting of defects which in turn results in a systematic deflation of power brake defect ratios.

Specific issues raised at this public meeting and in subsequent written comments include: the overreporting of units inspected during FRA inspections; the calculation and deflation of the power brake defect ratio; the inspection procedures used by FRA that tend to exclude certain categories of power brake defects; potential discrepancies in the input data relative to the activity codes from FRA field inspection reports to FRA's database; the performance of power brake inspections by FRA inspectors on cars that are not properly charged or connected to a source of compressed air; FRA's reliance on the railroads for the total number of cars inspected; and the wide variance between FRA inspectors and FRA regions in the number of units inspected, the number of defects reported, and the resulting defect ratios.

In order to understand some of the issues raised, it is necessary to understand how inspection data developed by an FRA inspector are entered into FRA's database. FRA Motive Power & Equipment (MP&E) inspectors conduct inspections of railroad passenger and freight equipment pursuant to various parts of the Federal regulations contained in title 49 of the Code of Federal Regulations. Principally, these include inspections under the following: part 215—Freight Car Safety Standards; part 229—Locomotive Safety Standards; part 231—Safety Appliance Standards; and part 232—Power Brakes and Drawbars. When performing an inspection under each of these parts, an FRA inspector will fill out the appropriate inspection form which indicates the number of units inspected under each part as well as the number of defective conditions found on those units. In the context of performing power brake inspections under part 232, an inspection of a car means a unit count of one. When this type of inspection is conducted, inspectors inspect various brake-related car components such as: Foundation brake rigging, air hoses, angle cocks, brake shoes, and, where possible, piston travel. When an inspector performs an inspection of a brake test required under part 232, the unit count for such a test is the train consist, block of cars, or car being tested. For example, when an inspector observes the performance of an initial terminal brake test, the entire train would constitute one unit count.

The BRC has raised various issues regarding FRA's calculation of power brake defect ratios both at the public meeting and in its petition. Several of these concerns involve the potential overreporting of the number of units inspected which then results in the deflation of power brake defect ratios. One concern addressed the practice of counting a single car or locomotive as a unit count under each of the MP&E regulations that it is inspected under. For example, a freight car, MU locomotive, or passenger car could be considered a unit count under part 215, part 229, part 231, and part 232 respectively if an FRA inspector were to inspect that car or locomotive under each of those provisions. Thus, one vehicle could be represented as three unit counts. It is claimed that this practice inflates the number of units inspected and thus, deflates defect ratios. This concern would be valid if FRA were to attempt to express a defect ratio for combined parts of the CFR. For example, if FRA were to attempt to express an MP&E defect ratio (a combination of parts 215, 229, 231, and 232), then the method by which FRA collects data would result in an inflation of the number of units inspected and the resulting defect ratio would be skewed. For purposes of analysis, FRA's database is constructed so that defect ratios are expressed only in terms of each separate part of the CFR.

A second concern, raised at both the public meeting and in BRC's petition, involves the potential of duplicate inspection reports being submitted by different FRA inspectors when engaged in team inspections. The BRC alleges that FRA inspectors are significantly inflating the number of power brake units being inspected by submitting duplicate reports for the same inspection activity when groups of FRA inspectors perform inspections at the same location. In an effort to investigate this concern, FRA designed a computer program to search for potentially duplicate inspection reports submitted during the years of 1995 through 1998. Table 1 displays the figures regarding power brake inspections conducted by FRA for the years of 1995 through 1998 that are contained in FRA's database.

TABLE 1.—POWER BRAKE INSPECTIONS AND DEFECT RATIOS: 1995 THROUGH 1998

Calendar year	Power brake units	Power brake defective units	Power brake defect ratios
1995	611,824	24,387	.03986
1996	646,140	28,795	.04456
1997	582,685	26,004	.04463
1998	585,663	26,286	.04488

In order to identify potential duplicate reports, the computer program was designed to identify inspection reports in which two or more FRA inspectors were in the same county, on the same day, on the same railroad, and in which at least one unit-count code matched. Table 2 displays the results of this search, showing the number of potential duplicate reports that were submitted from 1995 through 1998 and showing the potential number of overreported units.

TABLE 2.—POTENTIAL DUPLICATE POWER BRAKE INSPECTIONS: 1995 THROUGH 1998

Calendar year	Inspection reports with More than one matching unit	Total units reported twice	Potential duplicate units (half of total units)
1995	39	1,965	983
1996	154	12,646	6,323
1997	342	19,482	9,741
1998	182	8,692	4,346

Table 3 and Table 4 display the impact of the potential duplicate reports on the calculation of power brake defect ratios. FRA believes that the data contained in Table 3 and Table 4

establish that the impact of potential duplicate reports on the defect ratios presented in the NPRM is insignificant when considered in the context of nationwide data.

TABLE 3.—REVISED POWER BRAKE DATA CONSIDERING POTENTIAL DUPLICATE REPORTS: 1995 THROUGH 1998

Calendar Year	Power brake units inspected	Potential duplicate units	Units inspected minus potential duplcate units	Defective units	Defect ratios after adjusting for potential duplicate units
1995	611,824	983	610,841	24,387	.03992
1996	646,140	6,323	639,817	28,795	.04501
1997	582,685	9,741	572,994	26,004	.04539
1998	585,663	4,346	581,317	26,286	.04522

TABLE 4.—EFFECT OF POTENTIAL DUPLICATE REPORTS ON POWER BRAKE DEFECT RATIOS: 1995 THROUGH 1998

Calendar year	Defect ratios before adjustment for potential duplicates	Defect ratios after adjustment for potential duplicates	Difference
1995	.03986	.03992	.00006
1996	.04456	.04501	.00045
1997	.04463	.04539	.00076
1998	.04488	.04522	.00034

It should be noted that the numbers presented in Tables 2 through Table 4 overstate the actual impact of potential duplicate inspection reports. For the year 1998, FRA conducted an in-depth analysis of the potential duplicate reports found by the computer program. The computer program identified 393 potential duplicate inspection reports for the year 1998. However, included in this grouping were unique inbound inspection reports, outbound inspection reports and split inspection reports. In addition, there were inspection reports from inspectors who worked in the same county, but at different locations. Each of these reports was removed from the 393 potentially duplicate inspection reports identified by the computer program based on a report-by-report analysis of each of the reports by FRA MP&E specialists. This analysis left 182 potential duplicate reports for 1998, which were used to calculate the figures presented in Tables 2 through 4 for 1998. Although these tables note 182 potential duplicate inspection reports involving 8,692 units (4,346 duplicates), a further analysis of the reports by FRA found that only 54 of the inspection reports were actually found to be duplicative. These 54 duplicate inspection reports involved the overreporting of just 3,073 units rather than the 4,346 units identified in Table 2. As an in-depth analysis was not performed on the potential duplicate inspection reports identified by the computer program for the years of 1995 through 1997, the figures provided for those years in all likelihood greatly overstate the actual number of duplicate claims submitted in each of those years. Thus, the actual impact of duplicate inspection reports is even less than the small percentages indicated in Table 4 above.

Although the impact of duplicate inspection reports is insignificant, FRA believes that a brief discussion of how these duplicate inspection reports happened is necessary in order to assure interested parties that such occurrences are rare and that FRA has taken steps to avoid these inaccuracies. In 1994, FRA had four inspection forms for the Agency's five inspection disciplines. The Operating Practices and Hazardous Materials disciplines shared the same form. FRA also had a Quality Improvement Plan (QIP) daily activity report form to help the Agency track resource allocations, including the amount of time required to perform certain inspections. When "team inspections" occurred, one inspector completed the inspection report for the entire team. However, each inspector on the team was also required to complete a separate QIP report to receive credit for the inspection. On January 1, 1995, a newly developed single inspection form (FRA 6180.96) for all disciplines became operational. Furthermore, in May of 1995, FRA discontinued the collection of QIP-time data based on FRA's conclusion that it had adequate information from previous QIP reports regarding the time it takes to conduct various inspections. In addition, the new inspection form incorporated many of the previous QIP codes. In August 1995, FRA converted to a data collection system using personal computers.

After conducting the analysis discussed above, it was determined that 26 FRA MP&E inspectors inadvertently prepared all of the involved duplicate inspection reports. Furthermore, FRA was not aware that the new computer system did not filter out duplicate inspection reports. After becoming aware of these problems based on reports from its field personnel, FRA specifically addressed the issue of inspection reporting at FRA's multi-regional conference conducted in 1998. At this conference, FRA's Office of Safety management provided specific guidance on preparing reports that would eliminate potential duplicate reporting. During this same period, FRA also changed its computer software to give inspectors credit for inspections while at the same time preventing potential duplicate reporting. Furthermore, on March 5, 1999, FRA re-issued reporting procedures designed to prevent duplicate inspection reports when team inspections are conducted. These procedures were issued to all Federal and State inspection personnel and to all FRA Regional Administrators and Deputy Regional Administrators.

Subsequent to the public meeting conducted in May of 1999, FRA made two modifications to the summary data produced by its database in order to clarify the meaning of the data and to avoid misunderstanding by outside parties. The first modification relates to safety appliance inspections conducted under 49 CFR part 231. The summary data previously contained the heading "SA & PB (cars and locomotives)." This heading may have caused some confusion because the heading suggests that it applies to both safety appliance and power brake inspections when in reality the data captured under this heading only concern safety appliance

inspections under part 231. This heading has been modified to read "SA (cars and locomotives)" to more accurately reflect the information contained under this heading. FRA has also modified the summary data by eliminating the calculation of an MP&E defect ratio. As discussed above, FRA believes that the calculation of a composite MP&E defect ratio is inappropriate based on the way FRA collects the information contained in its database and would result in a deflation of MP&E defect ratios. Therefore, defect ratios will only be presented for each separate MP&E CFR part.

In response to the issue raised regarding FRA's practice of conducting brake inspections under part 232 while cars are not connected to a source of compressed air or not completely charged with air, FRA has developed a separate reporting code for brake inspections conducted in this manner. This reporting code will become effective in mid-2000 and will indicate when brake inspections are conducted on cars or trains that are not charged with compressed air. Although FRA agrees that the most thorough brake inspection is performed when a car or train is charged, a large majority of the brake components on a car can be inspected for abnormalities without the actual application of the air brakes. For example, the following defects can all be discovered regardless of whether a car or train is charged with air or not: cut-out air brakes, brake connection pins missing, brake rigging down or dragging, brake shoes worn to the extent that the backing plate comes in contact with the tread of the wheel, angle cocks missing or broken, retainer valves broken or missing, and air brake piping bent or broken. When FRA inspectors conduct train air brake tests, they inspect all of the components noted above as well as the operation of the train air brakes while under the required air pressures. FRA has conducted inspections of brake equipment in this manner for decades and will continue to conduct brake inspections under part 232 on equipment that is both on and off a source of compressed air. Moreover, the issue of inspecting cars for brake defects while not connected to a source of compressed air is a very infrequent occurrence in the passenger equipment context. Virtually all passenger equipment is inspected by FRA while it is connected to a source of compressed air. FRA believes that the addition of a code to identify those inspections conducted while equipment is not connected to a source of compressed air will provide a more accurate assessment of defective brake system components.

Two other issues raised by various individuals at the May 27, 1999, public meeting concerned FRA's reliance on railroads to determine the number of cars inspected and the wide variation among FRA inspectors and among FRA Office of Safety regions with regard to the number of units inspected and defects reported. FRA acknowledges that FRA inspectors frequently rely on information provided by the railroad regarding car counts when initially conducting an inspection, information that is sometimes higher than the actual number of cars being inspected. However, in most instances FRA inspectors request a copy of the consist prior to finalizing their inspection reports to ensure a proper unit count. FRA has issued guidance to its inspectors to ensure that the unit counts on all inspections are accurate.

Although FRA acknowledges that the number of brake inspections conducted varies somewhat from inspector to inspector and from region to region, FRA contends that these variations are the result of competing priorities and varying workloads within each region. FRA makes every effort to standardize its inspection activities by providing substantial training to each of its inspectors. This training is comprised of both classroom and on-the-job training. In addition to basic and advanced training provided through FRA's field liaison training staff, classroom training is also conducted at least once a year at the regional or multi-regional conferences. Product-specific training is provided by manufacturers, suppliers, and other sources (*e.g.*, General Electric, General Motors-EMD, and Westinghouse Air Brake Company). Many FRA regions also conduct discipline-specific conferences, with training on new regulations and issues provided by various subject matter experts. On-the-job training is provided through FRA Regional Specialists and senior inspectors. These individuals will work one-on-one with the inspectors on the various types of inspections that the inspector is required to conduct. FRA also frequently issues enforcement guidance to its inspectors in the form of technical bulletins in order to ensure consistent enforcement of the regulations.

The BRC's petition also asserts that FRA ignored the data developed by its organization when developing the final rule. However, the final rule discussed in detail the information provided by the BRC, compiled by carmen stationed at Union Station in Washington, DC from January 1996 through February of 1997, describing defective conditions allegedly found on Amtrak trains traveling through Union Station. *See* 64 FR 25567. The BRC submitted this data in support of its contention that large numbers of defects were being discovered on long-distance passenger trains and that the existing 1,000-mile intermediate brake interval for such trains should not be extended or eliminated. In the discussion, FRA noted that the lack of detail in the information submitted by the BRC, made it is impossible to determine whether the vast majority of the alleged defective conditions were contrary to the Federal regulations or whether the conditions were merely contrary to Amtrak's voluntary maintenance standards or operating practices. In addition, based on the description of some of the conditions, they would not be considered defective conditions under current Federal regulations. Furthermore, the vast majority of the conditions alleged in the document were not power brake defects, and thus, under the current regulations, would not have been required to have been inspected at a 1,000-mile inspection; nor did the regulations in effect at the time of BRC's inspections mandate any type of mechanical inspection on passenger equipment, except under 49 CFR parts 223 (glazing), 231 (safety appliances), and 232 (power brakes). Moreover, the vast majority of the alleged conditions were mechanical and wheel defects which would not be addressed in a power brake inspection.

In the final rule, FRA also made clear that the documentation submitted by the BRC regarding defective conditions found on cars at Union Station in Washington, DC did not indicate a safety problem on long-distance intercity passenger trains. Assuming that all of the cars cited in the BRC's submission were in fact defective as alleged, it appears that approximately 750 cars were defective. However, the documentation also reveals that approximately 1,300 trains were inspected; thus, using a conservative estimate of 10 cars per train, approximately 13,000 cars were inspected. Therefore, approximately only six percent of the cars inspected were found to contain either a brake defect or other mechanical defect. Furthermore, of the approximate 750 cars alleged to have been found defective, only approximately 20 percent of those cars contained a defect related to power brakes. Consequently, only about one to two percent of the total cars inspected contained a power-brake-related defect. Moreover, from the

information provided, it appears that none of the trains contained in the BRC submission was involved in any type of accident or incident related to the defective conditions alleged.

Section-by-Section Analysis

Amendments to 49 CFR Part 215

A clarifying amendment is being made to the applicability provisions of this part contained in § 215.3. The modification is being made to clarify that the requirements contained in this part do not apply to express cars and other unpowered vehicles being hauled in a passenger train that is inspected, tested, maintained, and operated pursuant to the Passenger Equipment Safety Standards contained in part 238. FRA believes that this clarification is consistent with FRA's existing general policy not to subject this type of equipment to the requirements of part 215. FRA also believes this clarifying change is necessary to avoid potential misunderstandings of the interrelationship between part 215 and part 238. FRA further believes that the applicability of the inspection, testing, and maintenance requirements contained in part 238 to this type of equipment will adequately ensure the safety and proper operation of this equipment when used in passenger operations. It should be noted that when this type of equipment is used in a freight train the requirements of part 215 will become applicable to its operation. Furthermore, the applicability or non-applicability of part 215 to this equipment is not in any way intended to affect the use or classification of the equipment under other provisions contained in Title 49 of the Code of Federal Regulations.

Amendments to 49 CFR Part 220

A technical amendment to part 220, addressing communications in connection with railroad operations, is made to the definition of "train" contained in § 220.5. The technical amendment merely adds a reference to part 238 in that definition to ensure that trains operated under the testing provisions of part 238 are covered by the railroad communication requirements of part 220.

Amendments to 49 CFR Part 238

Section 238.1 Purpose and Scope

Paragraph (c) has been modified in response to petitions filed by APTA and Amtrak. Both these parties recommended that FRA extend the date by which railroads covered by the final rule must adopt and comply with a training, qualification, and designation program required by § 238.109. Both of these petitioners contend that the date of compliance required in the final rule (July 12, 2001) provides an insufficient time for railroads to establish and implement the required training programs. In a letter dated September 30, 1999, FRA separately responded to these two petitions. In that letter, FRA agreed to extend the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Thus, conforming changes have been made in this paragraph to indicate that railroads will not be responsible for compliance with the provisions contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D of this part until January 1, 2002.

As FRA stated in the final rule, FRA recognizes the interrelationship between the proper training of railroad personnel and the implementation of the provisions on inspection, testing, and maintenance and on movement of defective equipment. *See* 64 FR 25575. In order for railroads to comply with the requirements related to the inspection, testing, and maintenance and the requirements regarding the movement of defective equipment, the railroads must first be provided a sufficient amount of time to develop and implement proper training programs. Therefore, as the date by which railroads are to adopt training programs required by this final rule and to train their workforces has been extended until the end of 2001, this paragraph has been modified to indicate that the provisions on inspection, testing, and maintenance and on movement for repair do not become applicable until that time. Of course, the statutory provision at 49 U.S.C. 20303 will continue to apply to movements for repair of cars that are defective under 49 CFR parts 231 or 232.

Section 238.5 Definitions

A new definition of the term "actuator" is added in response to the Transport Workers Union of America (TWU) concerns regarding the final rule's allowance to rely on brake indicators during the performance of Class IA brake tests. The TWU's petition indicates that there may be some misunderstanding of the difference between brake indicators, allowed to be used during Class IA brake tests, and actuators, which are permitted to be relied upon during Class I brake tests. A "brake indicator" is generally a device actuated by brake cylinder pressure that indicates whether the brakes are applied or released. In contrast, an "actuator" is a device directly activated by the movement of the brake cylinder piston that provides an indication of piston travel. Thus, because an actuator is tied directly to the movement of the brake cylinder piston and because direct observation of the brake cylinder piston is not possible or extremely difficult on some passenger equipment, FRA has allowed and will continue to allow the use of these devices to determine proper piston travel on passenger equipment as part of Class I brake tests. A brake indicator is useful and is appropriate for Class IA and Class II brake tests.

The definition of "effective brake" is also being slightly modified in response to TWU's petition, which generally contended that vehicles with excessive piston travel should be considered to have inoperative or ineffective brakes when calculating the percentage of operative brakes in a train under § 238.15. It appears that part of TWU's concern may be based on a misunderstanding as to what constitutes excessive piston travel sufficient to render a brake ineffective. In order to add clarity to the issue, FRA believes it is necessary to explain that a brake will not be considered ineffective until its piston travel exceeds the maximum prescribed limits for the brake. Although the final rule did not contain specific piston travel limits for various brake systems, the intent of the final rule was to retain the specific piston travel limits contained in the existing regulations. *See* 49 CFR 232.11(c). Thus, this definition is being modified to clarify that on vehicles equipped with nominal 12-inch stroke brake cylinders, the brake will not be considered effective if the piston travel exceeds 10½ inches.

The definition of "primary responsibility" has been slightly modified in response to a petition for reconsideration submitted by APTA. APTA's petition sought clarification of whether the time spent by supervisors of mechanical employees would be considered consistent with the duties that a qualified maintenance person (QMP) would be required to perform when determining a supervisor's primary responsibility. FRA's intent when issuing the final rule was to allow supervisory mechanical personnel to be considered QMP's if they were otherwise properly trained as required by this final rule. Therefore, the definition of "primary responsibility" has been modified in order to clarify that time spent supervising employees engaged in the functions of troubleshooting, inspection, testing, maintenance, or repair of train brake and mechanical components and systems covered by this part shall be considered work that is generally

consistent with the function of troubleshooting of such systems and components. The final rule also made clear that the totality of the circumstances should be considered in those situations where an employee does not spend 50 percent of the day engaged in any one readily identifiable type of activity.

The definition of "qualified person" has also been modified, in response to a petition from the TWU. The definition in the final rule reads as follows:

> *Qualified person* means a person determined by the railroad to have the knowledge and skills necessary to perform one or more functions required under this part. The railroad determines the qualifications and competencies for employees designated to perform various functions in the manner set forth in this part.

See 64 FR 25664. In its petition, the TWU contends that this definition of "qualified person" is so broad that a railroad could lawfully consider just about anyone to be a qualified person. Due to this, the TWU recommends that any task for which the final rule requires to be performed by a qualified person be changed to require that the task be performed by either a carman or a QMP. Although FRA disagrees with the assertion that a "qualified person" should not be permitted to perform the tasks identified in the final rule that the person is able to perform properly, FRA does agree that the definition of "qualified person" contained in the final rule may be overly vague and susceptible to abuse and misunderstanding. Therefore, the definition of a "qualified person" is being modified in order to clarify what is required of a railroad when it designates a person as qualified to perform a particular task.

The modified definition of "qualified person" is intended to clarify that the person is to receive training pursuant to the training, qualification, and designation program required under § 238.109. The definition also makes clear that although a person may be deemed a "qualified person" for the performance of one task, that same person may or may not be considered a "qualified person" for the performance of another task. The final rule permits certain tasks to be performed by a "qualified person." For example, these tasks include the performance of some brake inspections, interior mechanical inspections, and the handling of defective equipment in some circumstances. FRA would expect employees performing these various tasks to have different levels of training. For example, a person receiving appropriate training to be deemed a "qualified person" for the purpose of performing Class IA brake tests should not be deemed a "qualified person" for the purpose of moving defective equipment or performing interior mechanical inspections, unless specific training is provided that individual which specifically covers those tasks. The modified definition stresses that the individual must have received appropriate training to perform the task for which the railroad is assigning the person responsibility to perform.

The definition of "running gear defect" is also being modified, in response to petitions from APTA and Amtrak. The modified definition eliminates propulsion system components from the definition. As the definition contained in the final rule pertains only to conditions not in compliance with part 238 and because part 238 does not cover propulsion system components for the most part, FRA agrees with the petitioners that the definition of "running gear defect" contained in the final rule creates confusion as to how locomotives with propulsion system defects must be handled. FRA believes that propulsion system defects, which are found on locomotives, are sufficiently covered by part 229 of this chapter, containing locomotive safety standards. Thus, locomotives with conditions that are not in compliance with part 229 should be handled in accordance with the provisions contained in that part regarding the movement of defective equipment. The only potential propulsion system component directly addressed in part 238 is dynamic brakes, and separate handling restrictions have been imposed in the final rule and clarified in this document when this component is found to be inoperative. *See* 64 FR 25679 and discussion of § 238.305(e)(15) below. Consequently, propulsion system components have been removed from the definition of "running gear defect."

Although the TWU's petition requests modification of the definitions of "bind" and "foul," FRA believes that the definitions of these terms in the final rule are sufficiently clear. *See* 64 FR 25661–62. The TWU contends that the definitions of these terms fail to address every possible condition that could affect the proper operation of a brake system. FRA believes that the conditions noted by TWU as not being covered by these definitions are sufficiently covered by the definition of "effective brake" contained in the final rule. *See* 64 FR 25661. Thus, even though a condition may not cause a brake to "bind" or "foul," the condition would cause the brake not to be an "effective brake" as defined in the final rule. Furthermore, FRA is modifying the language contained in the Class I brake test requirements regarding the operation of the brake rigging to include language that the rigging or system mounted on a car for transmission of the braking force operates as intended and does not bind or foul. Therefore, even though a condition may not cause the brake rigging to "bind" or "foul," the condition could cause the brake not to operate as intended and thus, render the brake ineffective.

TWU's petition also seeks clarification of the definition of "switching service" to further explain what constitutes a "train movement." Although FRA does not believe that the final rule definition of "switching service" needs to be modified, a brief discussion of what constitutes a "train movement" may be useful. FRA's determination of whether the movement of cars is a "train movement," potentially subject to some of the requirements of this part, or a "switching movement" is and will be based on the voluminous case law developed by various courts of the United States. FRA's general rule of thumb as to whether a trip constitutes a "train movement" requires five or more cars (in a passenger context this number would likely be lower) coupled together that are hauled a distance of at least one mile without a stop to set off or pick up a car and not moving for the purpose of assembling or disassembling a train. However, FRA may consider movements of less than one mile "train movements" if various circumstances exist. In determining whether a particular movement constitutes a "train movement," FRA conducts a multi-factor analysis based upon the discussions contained in various court decisions on the subject. *See, e.g., United States* v. *Seaboard Air Line R.R.*, 361 U.S. 78 (1959); *Louisville & Jeffersonville Bridge Co.* v. *United States*, 249 U.S. 543 (1919). The following factors are taken into consideration by FRA: the purpose of the movement; the distance traveled without a stop to set out or pick up cars; the number of cars hauled; and the hazards associated with the particular route traveled (*e.g.*, the existence of public or private crossings with or without active crossing warning systems, the steepness of the grade, the existence of curves, any other conditions that minimize the locomotive engineer's sight distance, and any other conditions that may create a greater need for power brakes during the movement). The existence of

any of these hazards would tend to weigh towards the finding of a "train movement," since these are the types of hazards against which the power brake provisions of the Federal rail safety laws were designed to give protection.

Section 238.9 Responsibility for Compliance

Amtrak petitioned FRA for reconsideration of this section to clarify the responsibility of a railroad or other entity that is involved in the operation of passenger trains but does not maintain the equipment used in such trains. Amtrak noted that it is a contract operator of commuter service in at least one urban area where it does not exercise any control over who performs the maintenance of the commuter equipment it operates. In this circumstance, Amtrak reported it has no contractual responsibility for ensuring that the condition of the equipment complies with applicable legal requirements. Amtrak also explained that four commuter operations are conducted on Amtrak's Northeast Corridor (NEC) using equipment that is not maintained by Amtrak. Amtrak believed that the regulation would appear to impose upon an entity, such as itself, that operates passenger trains as a contractor, or that allows commuter authorities to operate passenger trains on its rail lines, responsibility to ensure that equipment maintained by other entities is in full compliance with the regulation. Amtrak noted the expense involved if it were to ensure that equipment maintained by other entities is in full compliance with the regulation, including potential operational delays. Assuming FRA did not intend to require entities like Amtrak to perform independent inspections on equipment maintained by others, Amtrak requested that FRA amend this section by adding the following paragraph: "For purposes of this section, a railroad that hauls, or permits to be hauled on its line, any passenger train or passenger equipment shall not be required to perform independent inspections of equipment maintained by entities that are not selected by the railroad and under control of the railroad in performing the maintenance of equipment services." Amtrak further stated that it does not dispute responsibility for hauling, or permitting to be hauled, equipment if it has actual knowledge of a condition that does not comply with the standards.

As explained in the preamble to the final rule, paragraphs (a)(1) and (a)(2) prohibit a railroad subject to part 238 from committing a series of specified acts with respect to a train or a piece of passenger equipment while the train or passenger equipment is in service if it has a condition that does not comply with part 238 or if it has not been inspected and tested as required by part 238. In particular, consistent with 49 U.S.C. chapter 203, paragraph (a)(1) imposes a strict liability standard with respect to violations of the safety appliance and power brake provisions of part 238. In addition to the acts prohibited by paragraph (a)(2) (that is, the use, haul, offering in interchange, or accepting in interchange of defective or not properly inspected equipment), paragraph (a)(1) prohibits a railroad from merely permitting the use or haul on its line of such equipment if it does not conform with the safety appliance and power brake provisions. *See* 49 CFR 238.3(b). By contrast, paragraph (a)(2) imposes a lower standard of liability for using, hauling, delivering in interchange, or accepting in interchange a train or passenger equipment that is defective or not properly inspected, in violation of another provision of this part; a railroad subject to this part is liable only if it knew, had notice, or should have known of the existence of either the defective condition of the equipment or the failure to inspect and test.

As noted, the liability standard contained in paragraph (a)(1) is consistent with longstanding Federal law. FRA did not intend to impose any new standard on railroads through paragraph (a)(1), at least insofar as this paragraph subjects railroads to liability for permitting the use on their lines of equipment with a defective power brake or safety appliance. As a result, even before this final rule, Amtrak has been subject to liability for permitting equipment with a defective power brake or safety appliance to be operated over its NEC trackage. Likewise, the Nation's freight railroads have been—and are—subject to liability for permitting the use on their lines of Amtrak or other passenger equipment with such defective conditions. As paragraph (a)(1) effectively restates otherwise applicable Federal law, FRA has not adopted Amtrak's request for reconsideration as it relates to paragraph (a)(1). FRA notes that the safety appliance and power brake laws do not specifically impose inspection requirements on Amtrak or a freight railroad to inspect passenger equipment merely because the equipment is used on its lines, though these laws would subject Amtrak or a freight railroad to liability for permitting the use on their lines of Amtrak or other passenger equipment with such defective conditions. However, FRA generally does not intend to hold a freight railroad or Amtrak responsible for passenger equipment not in compliance with part 238 merely because the passenger equipment operates over the freight railroad's or Amtrak's trackage. Further, FRA does not intend to hold Amtrak responsible for passenger equipment not in compliance with part 238 merely because it provides the crews to operate the passenger equipment. FRA would look for more of a connection between the railroad and the defective condition of the equipment than these.

As this discussion indicates, a number of entities may be involved in a single passenger train operation. For example, the following entities (and/or others) may be involved in the operation of a commuter railroad: a local governmental authority may fund and organize the commuter rail operation, and own the passenger equipment; a freight railroad may host the operation by providing the trackage over which the passenger trains operate and dispatching the trains; Amtrak may provide the crews to operate the trains; and another entity may inspect, test, and maintain the equipment. Here, the freight railroad, Amtrak, and the entity maintaining the equipment are all performing services for, or on behalf of, the governmental authority funding and organizing the operation. As a result, the governmental authority holds ultimate responsibility for the condition of the passenger equipment and compliance with these passenger equipment safety standards.

Of course, as provided in paragraph (c), any other person who performs any action on behalf of a railroad or any person who performs any action covered by this part is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. Continuing with the above example, the contractor who inspects, tests, and maintains the passenger equipment on behalf of the governmental authority (the railroad) is thereby subject to liability for failing to perform properly an inspection required by this part, for instance. Whether this contractor is otherwise a railroad in its own right, as Amtrak is, is not necessary for purposes of its assumption of responsibility for compliance with part 238.]

As noted above, paragraph (a)(2) imposes a lower standard of liability for using, hauling, delivering in interchange, or accepting in interchange a train or passenger equipment that is defective or not properly inspected, in violation of a provision of this part other than a power brake or safety appliance

provision. A railroad subject to this part is liable only if it knew, had notice, or should have known of the existence of either the defective condition of the equipment or the failure to inspect and test. (Again, paragraph (a)(1) imposes a strict liability standard with respect to violations of the safety appliance and power brake provisions of part 238.) As written, paragraph (a)(2) effectively embodies Amtrak's reconsideration request. First of all, Amtrak (or a freight or other host railroad) is in no way subject to liability for merely permitting to be hauled or used on its trackage a train or passenger equipment that is defective or not properly inspected in violation of a provision of this part other than a power brake or safety appliance provision. Further, Amtrak is not subject to liability for merely using, hauling, delivering in interchange, or accepting in interchange a train or passenger equipment that is defective or not properly inspected, in violation of a provision of this part other than a power brake or safety appliance provision. As a result, Amtrak is not subject to liability for merely providing the crews to operate the passenger equipment in the commuter railroad example discussed above. FRA notes that, as a general matter, paragraph (a)(2) is not drafted to impose a strict liability standard on railroads for using or hauling passenger equipment that is defective or not properly inspected, in violation of a provision of this part other than a power brake or safety appliance provision. As a result, even if Amtrak were potentially subject to liability for using or hauling passenger equipment under paragraph (a)(2)—as in the case where it uses or hauls its own equipment; or inspects, tests, and maintains passenger equipment on behalf of another railroad—Amtrak would not incur liability in fact unless it knew, had notice, or should have known of the existence of either the defective condition of the equipment or the failure to inspect and test (other than for a power brake or safety appliance provision).

The TWU, in its petition for reconsideration, suggested that paragraph (a)(2) is at best misleading and open to misinterpretation with respect to current statutory requirements, focusing on use of the phrase "other than safety appliance and power brake provisions of this part." However, as discussed above, § 238.9 is specially drafted to retain the specific liability standards of the power brake and safety appliance laws, through inclusion of paragraph (a)(1). Paragraph (a)(2), and its use of the phrase "other than safety appliance and power brake provisions of this part," cannot be read in isolation of paragraph (a)(1), which specifically addresses power brakes and safety appliances. FRA makes clear that § 238.9 does not exclude safety appliances and power brakes from the compliance requirements.

Though not the subject of a petition for reconsideration, FRA notes for clarification that a violation of paragraph (a)(3) would include failing to keep a record required by this part; failing to submit a test plan required by this part; and failing to perform an analysis required by this part. A railroad is strictly liable for any such violation. Of course, FRA retains enforcement discretion whether to assess a penalty or take other action in these and any other instances of non-compliance with part 238.

Section 238.15 Movement of Passenger Equipment With Power Brake Defects

A conforming change has been made to the introductory text of this section to indicate that the requirements contained in the section do not become effective until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. This letter was issued in response to petitions for reconsideration submitted by APTA and Amtrak. In the letter, FRA noted the interrelationship between the proper training of railroad personnel and the implementation of the provisions on inspection, testing, and maintenance and on movement of defective equipment. Consequently, this modification is consistent with the date by which a railroad is to have completed the training of its employees.

Paragraphs (b) and (c)(2) of this section have been slightly modified in response to petitions submitted by Amtrak and the TWU seeking clarification of the liability standards related to the movement of defective equipment. The provisions regarding a railroad's responsibility for compliance contained in § 238.9, and discussed in detail above, make clear that a strict liability standard will be applied to power brake components not in compliance with the requirements of this part. In order to ensure that there is no misunderstanding regarding this standard of liability, FRA has modified the language contained in paragraphs (b) and (c)(2) to reflect the fact that a railroad must have knowledge of the existence of a defective condition in order to haul a car for the purposes of repair under the provisions contained in this section. The modifications made to these paragraphs make clear that such knowledge will be established by tagging the defective equipment or entering the existence of the defective condition into an automated tracking system. Consequently, if a railroad lacks knowledge of the existence of a power brake defect and uses the defective equipment, then the railroad may be held liable for civil penalties.

Similarly, paragraph (c) of this section has been slightly modified in order to clarify that passenger equipment which develops ineffective or inoperative brakes while en route may be moved for repair without civil penalty liability only if all of the requirements contained in this section are met. Although this was FRA's intent when including the requirements contained in this paragraph, the specific wording of the paragraph may have caused some parties to misinterpret or misunderstand its meaning. Thus, if FRA were to discover a unit of passenger equipment being used or hauled with inoperative or ineffective brakes without the provisions of paragraph (c) being otherwise met, then a violation may be assessed pursuant to this paragraph for improper movement of an en route power brake defect.

A clarifying change has been made to paragraph (d)(1)(ii) of this section regarding the calculation of operative brakes on trains equipped with tread brake units (TBUs). FRA believes that the wording of the final rule may have created some uncertainty as to how the percentage of operative brakes is to be calculated on trains equipped with a mixture of TBUs and other types of brakes. The change clarifies FRA's intent when issuing the final rule that the calculation of operative brakes based on the number of operative TBUs is for trains equipped solely with TBUs. *See* 64 FR 25583. For example, if a train utilizes a mixture of TBU and disc brakes, the calculation of the percentage of operative brakes is to be determined by first dividing the number of axles in the train with operative brakes by the total number of axles in the train and then multiplying that fraction (expressed as a decimal fraction) by 100.

FRA received a petition from the TWU requesting elimination of the final rule's list of conditions that do not render power brakes inoperative for purposes of calculating the percentage of operative brakes. FRA disagrees that such an approach is necessary. The purpose of the calculation is to determine the percentage of operative brakes, and the conditions listed in paragraph (d)(1)(iv) of the final rule do

not render the power brakes inoperative. Many of the listed conditions constitute a violation under other provisions contained in the final rule or another regulatory provision for which separate penalties are provided.

A cut-out or ineffective power brake is an inoperative power brake, but the failure or cutting out of a secondary brake system does not result in inoperative power brakes; for example, failure of the dynamic brake does not render the power brake inoperative. Furthermore, inoperative handbrakes or power brakes overdue for maintenance or stenciling do not render the power brakes inoperative on the car and should not be deemed inoperative power brakes for purposes of the calculation. The final rule and other regulations contain separate penalties for operating a car that has an inoperative handbrake, is overdue for maintenance, lacks the proper stenciling, or is not properly inspected and tested. Although FRA disagrees that the list of conditions contained in paragraph (d)(1)(iv) should be eliminated, clarifying language has been added to paragraph (d)(1)(iv) to ensure that the conditions listed are not to be considered inoperative power brakes for purposes of calculating the percentage of operative brakes but are considered power brake defects under other provisions of part 238.

Paragraph (d)(1)(iv)(C) of this section is also being slightly modified in response to the TWU's petition indicating some confusion regarding when a car with excessive piston travel should not be considered to have inoperative brakes for the purpose of calculating the percentage of operative brakes pursuant to paragraph (d). When including the exception contained in this paragraph, it was FRA's intent to recognize that some brake systems are required to have certain piston travel ranges at the time that a Class I brake test is performed that do not necessarily render the brakes ineffective if those piston travel ranges are exceeded while the equipment is en route. Thus, although a car may be found with piston travel that exceeds the Class I brake test limits, such excess travel does not render the brakes inoperative until the piston travel exceeds the outside limits established for that particular type of piston design. However, piston travel that exceeds the applicable Class I brake test limits would be considered a defective condition if the piston travel were not adjusted at the time that a Class I brake test were performed, and would be considered a partial failure to perform a Class I brake test pursuant to § 238.313(g). In order to clarify this intent, FRA has not only modified the language contained in this paragraph but has also modified the definition of "effective brake" and the Class I brake test requirements to include the existing piston travel limitations that are applicable to vehicles equipped with nominal 12-inch stroke brake cylinders. *See* 49 CFR 232.11(c) and 232.12(f)(1).

The TWU's petition also raises concerns, many of which were raised in response to the NPRM, regarding the final rule provisions governing the movement of defective equipment and the potential allowance for railroads to utilize an automated tracking system rather than directly tagging defective equipment. After a review of the petition, FRA believes that it is unnecessary to modify any of the provisions contained in the final rule regarding these issues. FRA concedes that the requirements regarding the movement of equipment with defective power brakes allow such equipment to be moved to the nearest forward location where the necessary repairs can be effectuated and in some instances to be moved past a location where the necessary repairs could be conducted. FRA believes that the requirements contained in the final rule are fully consistent with Congress' intent when enacting the statutory provisions regarding the movement of such equipment nearly a century ago. The preamble to the final rule provided a detailed discussion outlining FRA's position on this issue and need not be reiterated here. *See* 64 FR 25568–72, 25581–85. It should be noted that there are concerns in the context of passenger train operations that do not exist in the freight arena when determining whether a location is one where the necessary repairs can be made. Chief among these concerns is the safety of the passengers on the train with the power brake defect and the safety of passengers on following trains. FRA believes these two overriding concerns provide sufficient justification for permitting passenger train operations greater flexibility in moving defective equipment than is available to a freight operator.

FRA also believes that the definition of "repair point" contained in the final rule is sufficiently clear and does not require modification as requested in the TWU petition. The preamble to the final rule makes clear that the determination of whether a location should be considered a location where necessary repairs can be made is one which must be conducted on a case-by-case basis after consideration of a variety of factors. *See* 64 FR 25571, 25584–85. FRA continues to believe that it is virtually impossible to develop a standard establishing what constitutes a location where repairs can be made that would address the variety of operations covered by the final rule and that such determinations are best left to FRA's inspectors in the field. *Id.*

FRA also sees no reason to modify the requirement that operators of long-distance passenger trains designate the locations where repairs can be conducted on the equipment they operate. Although FRA agrees that this provision puts the control of what locations constitute repair locations in the hands of the railroad, FRA believes that the operators of these long-distance intercity trains are in the best position to determine which locations have the necessary expertise to handle the repairs of the somewhat advanced braking systems utilized in passenger trains. Due to the unique technologies used on the brake systems of these operations and the unique operating environments, the facilities and personnel necessary to conduct proper repairs on this equipment are somewhat specialized and limited. Moreover, the final rule contains a broad performance-based requirement that railroads operating this equipment designate a sufficient number of repair locations to ensure the safe and timely repair of the equipment. Contrary to the beliefs of some labor representatives, FRA believes that this performance standard provides FRA sufficient grounds to institute civil penalty enforcement actions or take other enforcement actions if, based on its expertise and experience, FRA believes the railroad is failing to designate an adequate number of repair locations.

FRA also believes that the final rule fully addressed the concerns of various labor representatives regarding the use of automated tracking systems in lieu of direct tagging of defective equipment. *See* 64 FR 25572, 25582. FRA believes that provisions must be provided to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. FRA believes that the use of such a medium to track defective equipment can expedite the identification and repair of defective equipment and, thus, reduce the time that defective equipment is operated in passenger service. Furthermore, the final rule contains specific provisions regarding FRA's ability to monitor and review a railroad's automated tracking system and provides FRA the ability to prohibit or revoke a railroad's ability to utilize such a system in lieu of directly tagging defective equipment if FRA finds that the automated tracking system is not properly secure, is inaccessible to

FRA or a railroad's employees, or fails to adequately track and monitor the movement of defective equipment. Moreover, if the automated tracking system developed and implemented by a railroad does not accurately and adequately record the information required by this part, the railroad would be in violation of the movement for repair provisions and subject to civil penalty liability for the subsequent defect for which the unit was being hauled for repair.

Section 238.17 Movement of Passenger Equipment With Other Than Power Brake Defects

A conforming change has been made to the introductory text of this section to indicate that the requirements contained in the section do not become applicable until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Consequently, this modification is consistent with the date by which a railroad is to complete the training of its employees.

Paragraph (b) of this section has been slightly modified to include a reference to the exceptions contained in § 238.305(c) and (d) and § 238.307(c)(1) regarding the continued use in passenger service of passenger cars found with certain interior defects found at the car's interior calendar day mechanical inspection. In response to petitions filed by APTA and Amtrak, FRA has modified the provisions contained in §§ 238.305 and 238.307 to permit passenger cars found with certain types of interior defects at a daily interior inspection to continue in passenger service until its next interior calendar day mechanical inspection. The modifications made in §§ 238.305 and 238.307 contain various operational, mechanical, and inspection requirements related to the continued use of such equipment. The modifications being made to §§ 238.305 and 238.307 are discussed in detail below.

Paragraph (c) of this section has been slightly modified to include a reference to the exception contained in § 238.307(c)(1) regarding the continued use in passenger service of passenger cars found with defective seats while en route. In response to petitions filed by APTA and Amtrak, FRA has modified the provisions contained in § 238.307 to permit passenger cars found with defective seats to continue in passenger service. The modifications made in § 238.307 contain various requirements related to the continued use of such equipment. The modifications being made to § 238.307 are discussed in detail below.

Paragraph (d) of this section has been modified in response to a petition submitted by APTA requesting modification of the requirements related to the inspection of the roller bearings on passenger equipment involved in a derailment. FRA agrees that the requirements for roller bearing inspections on derailed equipment contained in the final rule were essentially a reiteration of the requirements contained in part 215 of this chapter related to such inspections on freight cars. FRA recognizes that the freight car inspection requirements are not easily applicable to many types of passenger equipment because the wheels on such equipment cannot be spun freely or manually rotated. Therefore, FRA is modifying the provisions contained in paragraph (d)(1) to allow the inspection of the roller bearings on derailed passenger equipment to be in accordance with the railroad's procedures for handling defective equipment. The APTA PRESS Maintenance Committee is currently in the process of developing a standard regarding the inspection, testing, and maintenance of cars that have derailed, to serve as a guide to all passenger railroads. FRA expect railroads to adopt those procedures or incorporate similar procedures for handling derailed equipment and will enforce those procedures that are adopted.

Paragraph (d)(2) has also been slightly modified to incorporate the recommendations proposed by APTA in its petition. This paragraph requires that a roller bearing be disassembled from the axle and inspected internally if any one of the four enumerated conditions exists. The modifications being made to this paragraph clarify that an on-track rolling test of the wheel set will be considered sufficient to meet the requirement that the wheel set be spun freely. As noted above, the wheels on many types of passenger equipment cannot be spun freely; thus, alternate method of inspection is necessary. FRA also adopts APTA's suggestion to require disassembly of the roller bearing if the truck on the equipment was dragged on the ground for more than 100 feet, which is more stringent than the 200-foot threshold contained in the final rule.

FRA finds the concerns raised by the TWU in its petition regarding the inadequacies of the final rule provisions relating to the movement of defective passenger equipment to be based on a general misunderstanding of the provisions contained both in this part and in 49 CFR part 215. The TWU generally asserts that the movement restrictions of the final rule need to be modified to be at least as restrictive as the requirements contained in part 215 regarding the movement of defective freight cars. The petition also asserts that qualified persons should not be allowed to make any of the determinations required in this section and that on-site personnel should not be permitted to relay information to qualified personnel via radio.

In FRA's view, the provisions contained in the final rule of part 238 regarding the movement of defective equipment are in many ways more stringent than the requirements related to freight cars contained in part 215. For example, a passenger car found with a defect in the running gear (which include virtually all of the components addressed in part 215) may not be moved in passenger service from the point where the car receives a calendar day mechanical inspection and may only be used in passenger service until its next calendar day mechanical inspection if such a condition is found en route and the car is properly tagged. Whereas, a freight car containing a part 215 defect could potentially be used in freight service under part 215 from subsequent mechanical inspections and could remain in use for numerous days and for hundreds of miles, provided the car is properly tagged.

FRA also believes that the TWU's objection to the final rule allowance that a "qualified person" may approve the continued use of a defective passenger vehicle is somewhat misplaced. The final rule only permits a "qualified person" to authorize the continued use of a vehicle with a non-running-gear defect, which is a defective condition that does not affect the mechanical operation of the equipment and is generally a defect in the interior of the vehicle that is specific to a passenger car. The final rule requires that the continued use of a vehicle containing a running gear defect (defects similar to those addressed in part 215) must be authorized by a "qualified maintenance person." Furthermore, the clarifications contained in this document establish that a "qualified person" must receive specific training covering the tasks he or she is deemed qualified to perform.

FRA also believes that the TWU's request for elimination of the final rule provisions permitting on-site personnel to relay information to qualified personnel (QMP or QP) regarding defective equipment ignores the reality of current passenger operations and fails to acknowledge the fact that

mechanical-type personnel are not readily available at every location on a railroad's line of road. Moreover, requiring passenger trains to sit at locations until qualified personnel can physically arrive to inspect the equipment is not prudent in many cases and could endanger the passengers on both the train waiting to be inspected and on trailing trains. Furthermore, when such off-site determinations are made, the final rule allows that the equipment with running gear defects be moved only to the next forward location where the equipment can be inspected by a QMP to verify the description of the defect provided by the on-site personnel.

It should also be noted that prior to the issuance of the final rule there were no Federal requirements addressing the inspection of mechanical components on passenger equipment or limitations on the movement of passenger equipment with defective mechanical components. FRA's general intent when issuing the final rule was to capture the best practices of the industry with regard to the inspection and testing of passenger equipment and attempt to codify current best practices with regard to the movement of defective equipment, which have generally proven to be safe and effective. Thus, FRA did not intend to impose every requirement applicable to the inspection and movement of freight equipment in a rule designed for passenger operations, nor did it view such a requirement as necessary.

Section 238.19 Reporting and Tracking of Repair to Defective Passenger Equipment

A conforming change is being made to paragraph (a) of this section to indicate that the requirements contained in the section do not become applicable until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Consequently, this modification is consistent with the date by which a railroad is required to complete the training of its employees. The title of this section has also been slightly modified to clarify the purpose of the requirements contained in this section.

Paragraph (a)(2) of this section is being slightly modified in order to clarify the information which must be retained in the reporting and tracking system. The modification clarifies that the date that a defective condition is discovered must be included in the retained information. FRA recognizes that the final rule requirement to record the date on which the defect occurred would be impossible to determine in many instances and it was not FRA's intent to require the recording of that information. Rather, FRA intended that the date on which the defective condition was discovered by the railroad to be recorded and has modified the final rule language accordingly.

Subpart B—Safety Planning and General Requirements

Section 238.107 Inspection, Testing, and Maintenance Plan

A conforming change is being made to paragraph (a) of this section to indicate that the requirements contained in the section do not become applicable until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Consequently, this modification is consistent with the date by which a railroad is required to complete the training of its employees.

Section 238.109 Training, Qualification, and Designation Program

Paragraphs (a) and (b) of this section are being amended in accordance with FRA's letter dated September 30, 1999, addressed to representatives of APTA and Amtrak in response to their petitions for reconsideration of the provisions contained in this section. APTA and Amtrak petitioned for reconsideration of this section as providing an insufficient time for railroads to establish and implement training programs. APTA's petition notes that several commuter railroads will be unable to comply because of the large number of employees that must be trained. According to the petition, it will take up to three years to administer the training programs to these railroads' current employees and one year initially to prepare and validate the training courses. The APTA petition specifically references the potential impact on the Long Island Rail Road, and on July 27, 1999, FRA received a letter describing the potential impact on this railroad. The Long Island Rail Road and Amtrak submissions both raise logistical concerns associated with implementing the training programs because of their large workforces.

APTA's petition further states that to efficiently and effectively meet the three-year refresher training requirement in the final rule, railroads need to provide the new training program to one-third of their workforce every year. The petition notes that if railroads initially train more than that percentage in one year, they must retrain that same percentage of their workforce every third year, resulting in an inefficient training workload now and in the future. For this reason and the others discussed above, the petitions request that FRA allow railroads 48 months from the date of the publication of the final rule to adopt training programs and train their workforces as required by this section.

The final rule recognizes the interrelationship between the proper training of railroad personnel and the implementation of the inspection, testing, and maintenance and movement of defective equipment provisions contained in the final rule. See 64 FR 25575. In order for railroads to comply with the requirements related to the inspection, testing, and maintenance requirements and the requirements regarding the movement of defective equipment, the railroads must first be provided a sufficient amount of time to develop and implement proper training programs. The final rule further states that the process of developing training programs or modifying existing programs to meet the requirements of the final rule should be completed within a year, and that railroads will need several months to a year to rotate their employees through the programs in order not to disrupt the operation of their railroads. Accordingly, the final rule provided railroads with 26 months from the date of publication of the final rule to develop and train their employees as required by the rule.

After carefully considering the submitted petitions, FRA responded to the petitions in a letter dated September 30, 1999. In that letter, FRA agreed to extend the date by which railroads must adopt training programs and train their workforces under the final rule to no later than December 31, 2001. Paragraph (a) of this section has been amended to reflect this extension. In that letter, FRA noted that its principal concern in granting any additional time to railroads is delaying the date by which the final rule's inspection, testing, and maintenance requirements must apply. In particular, there are now generally no Federal inspection, testing, and maintenance requirements for exterior and interior (non-brake) mechanical components of passenger cars, and consequently no immediate regulatory means for FRA to ensure that such components meet minimum levels of safety.

In the September 30, 1999 letter, FRA made clear that the chief objective of the

training requirements contained in this section is to ensure that the appropriate passenger railroad employees and contractors understand the Federal inspection, testing, and maintenance requirements as they relate to their involvement with railroad passenger equipment. FRA believed that the additional two years, requested in the petitions, to implement the training requirements requested was not necessary since the focus of the required training is to be on the Federal inspection, testing, and maintenance requirements, not on voluntary railroad or industry standards. FRA also noted that, with the exception of newly emerging passenger railroads, passenger railroads are not starting from a blank slate to train their workforces. Passenger railroads should already have training programs in place, and these training programs could be adapted to include the training specifically required by this section. Furthermore, both the APTA inspection, testing, and maintenance standards, and those FRA inspection, testing, and maintenance standards required under this part, are based on the current best practices of the passenger railroad industry. Neither arose from a vacuum.

In FRA's response letter, FRA recognized that some of the specific requirements contained in this section could be easily misunderstood to cover inspection, testing, and maintenance tasks not required by part 238—such as those tasks required only under an APTA or Amtrak maintenance standard. This was not FRA's intent when issuing the final rule. Therefore, FRA noted that it would amend the language contained in this section to clarify that the focus of the training required in this section is on the Federal inspection, testing, and maintenance requirements for passenger equipment in this part. Consequently, paragraph (a) and paragraphs (b)(1) through (b)(7) have been slightly modified in order to clarify that the focus of the training required under this section is the Federal requirements related to the inspection, testing, and maintenance of passenger equipment.

The September 30, 1999, letter also responded to the concerns of APTA, Amtrak, and the Long Island Rail Road regarding the issue of refresher training. In the letter, FRA agreed that it would amend the refresher training interval contained in the final rule to alleviate the concern that large portions of a railroad's workforce would be required to undergo refresher training under this section in the same year due to condensing the initial training period to less than three years. FRA noted that the final rule would have permitted refresher training to be conducted at intervals of less than three years and thus, provide railroads with the ability to accelerate their retaining of some employees to relieve workforce allocation issues. However, FRA believes that it is more important for passenger railroads to initially train their workforces pursuant to the requirements of this section and direct their resources in this regard, rather than be immediately concerned with the need to provide refresher training soon after the initial training is completed. Therefore, FRA stated that it would amend the final rule to allow those individuals trained by no later than December 31, 2001, pursuant to this section, not to undergo their first refresher training until four years after the completion of their original training. Thereafter, such individuals would be required to undergo refresher training at an interval not to exceed three years, as currently provided in the final rule. FRA also made clear, that for individuals trained after December 31, 2001, under this section, (*e.g.*, new hires) the refresher training interval would remain at three years as provided in the final rule. Consequently, paragraph (b)(11) has been amended to include the extension of the first refresher training cycle for employees initially trained prior to January 1, 2002.

One concern raised by APTA in its petition for reconsideration, which was not addressed in FRA's response letter, is the issue of the transferability of an individual's training credentials from one railroad to another either in the context of the individual changing his or her employer or working for multiple railroads while remaining in the employ of only one railroad. Nothing in the final rule prohibits a railroad from utilizing training provided to one of its employees by another railroad in order to qualify that employee. In FRA's view, the previous training would have to cover the tasks and equipment for which the employee will have responsibility on the "successor" railroad and the previous training would have to be adequately documented by the training railroad, such documentation provided to the "successor" railroad, and maintained by the "successor" railroad. Furthermore, the transferring employee's period for refresher training would start to run from the time of the employee's previous training received on the other railroad.

Subpart C—Specific Requirements for Tier I Passenger Equipment

Section 238.231 Brake System

This section contains general brake system performance requirements that apply on or after September 9, 1999, to Tier I passenger equipment except as otherwise provided. APTA, in its petition for reconsideration, states that this section fails to make clear if the requirements in this section apply to new or existing equipment, or both. APTA believes that, while most equipment will meet the performance requirements in this section, applying new design requirements to existing equipment invariably causes problems and may result in a number of waiver requests to FRA. FRA's intent when issuing the final rule was to require the provisions contained in this section to apply to all Tier I passenger equipment, both existing and new, unless otherwise specifically stated to be applicable only to new equipment. Except as discussed below, FRA is not aware of any existing passenger equipment which would not meet the requirements contained in this section nor does APTA's petition provide any indication of equipment that could not meet the requirements. If such equipment exists, FRA would expect necessary modification to be made to the equipment or appropriate waivers to be submitted to FRA for its consideration.

FRA acknowledges that the provisions related to the operation and design of locomotives equipped with blended brakes contained in paragraph (j) should have been applicable only to new locomotives. Although there is no existing documentation or information available to FRA to indicate that existing locomotives would not meet the requirements of paragraph (j)(1)-(j)(3) of this paragraph, verification that existing locomotives meet the requirements could be very expensive and time consuming. Compliance with paragraph (j)(4) may be problematic for some equipment designs and this is an important reason for insisting on appropriate maintenance of dynamic brakes. Furthermore, there are other requirements contained both in this section and in this part which ensure that a train's primary braking system is capable of stopping a train within the existing signal spacing (§ 238.231(a)) and that the dynamic brakes on locomotives are operational within a very short time of being discovered defective (§ 238.303(e)(15)). Consequently, FRA has amended paragraph (j) to clarify that it applies only to new locomotives equipped with blended braking systems. Narrowing the

application of this provision will allow proper testing to be conducted when the equipment is being designed and assembled.

A new paragraph (h)(3) is being added in order to clarify the general requirements related to the use of hand brakes found in paragraphs (h)(1) and (h)(2) of this section. Because the final rule contains specific provisions requiring passenger equipment to be equipped with hand brakes, FRA believes that the addition of the existing general requirements regarding their use constitutes a clarifying amendment to the hand brake requirements. FRA's inclusion of specific provisions requiring passenger equipment to be equipped with hand brakes establishes FRA's intent that those hand brakes are to be used in at least the same manner as required under the existing regulations. The provisions contained in this paragraph merely incorporate the existing general requirements related to the setting and releasing of hand brakes and will impose no additional burden on the railroads. *See* 49 CFR 232.13(f). The language has been slightly modified from that contained in the existing regulations for purposes of clarity.

Paragraph (m) of this section is being modified in response to Amtrak's petition, which asserts that it currently permits trains to operate with up to two cars in the consist being operated in direct release mode while the rest of the train operates in graduated release mode. It is also FRA's understanding that the direct release cars operated by Amtrak in this fashion are hauled at the rear of the train. The reason Amtrak hauls cars in this manner is because some vehicles it operates in its passenger trains are equipped with AB type brake valves which can be operated only in a direct release mode. Thus, under the final rule the hauling of just one of these cars would require the rest of the train to be changed over to a direct release mode. FRA is not aware of any safety issues that have arisen from Amtrak's current method of operation and agrees with Amtrak's assertion that operation in this manner would not affect the stopping distance of a train. Furthermore, FRA's intent when including this provision in the final rule was to incorporate the current best practices of Amtrak and its operation of express equipment. Consequently, paragraph (m) is modified to allow no more than two cars to be operated in direct release mode when the rest of the train is operated in graduated release mode provided those cars are hauled at the rear of the train.

A new paragraph (n) is added to this section to include the existing procedures for eliminating the presence of compressed air in a vehicle's brake system prior to adjusting piston travel or working on brake rigging. As FRA is clarifying the requirements related to excessive piston travel and to adjusting piston travel while performing Class I brake tests, FRA believes, that for purposes of clarity and to avoid misunderstandings, it is also necessary to include the existing basic procedures that are to be undertaken prior to making such adjustments. These procedures address the safety of employees responsible for making piston travel or brake rigging adjustments by ensuring that the brake system or brake system components on which they will be working are void of all compressed air. The procedures contained in this new paragraph are currently contained in the existing power brake regulations and are currently part of virtually every railroad's operating and inspection practices. *See* 49 CFR 232.12(j). Therefore, no new burden is being created by FRA's retention of these existing provisions.

A new paragraph (o) is added to this section to clarify and alert the operators of passenger trains that they may be required to comply with the provisions requiring the use of a two-way end-of-train device (EOT) contained in part 232 of this chapter. This addition is merely for the purpose of clarity. The provisions regarding two-way EOTs are currently applicable to certain passenger train operations, and the inclusion of this paragraph is not intended to expand the applicability of those provisions but merely to inform passenger train operators of their potential applicability.

Amtrak raised an issue in its petition regarding the requirements contained in paragraph (h)(1) for equipping new locomotives with a hand or parking brake. Amtrak sought clarification as to whether a pneumatically operated parking brake would meet the manual application and release requirements of this paragraph. Amtrak's petition did not provide a specific description or design of the pneumatically operated parking brake for which it sought clarification. A pneumatically operated parking brake would meet the requirements of this section if it were designed to permit the manual application and release of the brake in some fashion. The ability to manually apply or release the brake would not have to be the primary means of applying or releasing the brake, but manual capability must be available if necessary.

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

Section 238.301 Scope

A conforming change is being made to paragraph (b) of this section to indicate that the requirements contained in subpart D do not become applicable until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Consequently, this modification is consistent with the date for when a railroad is required to complete the training of its employees.

Section 238.303 Exterior Calendar Day Mechanical Inspection of Passenger Equipment

Paragraph (b) of this section regarding the performance of exterior mechanical inspections on cars added to a passenger train is being modified in response to petitions filed by APTA and AAPRCO. Both these parties contend that the requirement to perform an exterior mechanical inspection at the time a passenger car or private car is added to a train is overly burdensome and unnecessary. They contend that at many locations where such cars are added to trains there is not a QMP available to perform such an inspection. They also note that there is currently no requirement to perform such an inspection when cars are added a passenger train and there has been no indication of any safety hazard being caused by this practice. Furthermore, they assert that the final rule already requires that a car added to a train must receive an exterior mechanical inspection sometime on the day on which it is added to the train. APTA also contends that passenger equipment used on commuter operations do not sit for long periods on sidings, no more than a weekend at most, and other cars that are in trains that remain together but not used over a weekend are not required to receive such an inspection before they are used; thus, the rule lacks consistency.

After consideration of the petitions received, FRA believes that there is a significant difference between traditional passenger equipment hauled by most commuter and intercity operations and the express and intermodal equipment being hauled by some passenger trains. FRA agrees that the need to mechanically inspect traditional passenger equipment and private cars immediately upon their being added to a train is not as great as

when express or freight-type cars are added to a train. Currently, when traditional passenger equipment and private cars are added to a passenger train, there is no requirement to conduct a mechanical inspection, and at many locations such inspections are not performed. FRA has found no indication of safety being compromised by these practices and agrees that requiring such an inspection could have significant cost implications to some operations. Furthermore, FRA agrees that traditional passenger equipment is less prone to developing mechanical defects than is freight equipment because the passenger equipment is not switched in and out of trains as often and does not undergo the rigors inherent to the loading and unloading of freight equipment. Moreover, any equipment added to a passenger train that does not receive a mechanical inspection when added will be required to receive an exterior mechanical inspection sometime during that calendar day on which the car is added to the train. Consequently, the final rule has been amended to permit traditional passenger cars and private cars to be added to a train without receiving an exterior mechanical inspection under this section, provided that the vehicle had received an exterior mechanical inspection pursuant to this section on the last day it was used in passenger service and the train crew operating the train to which the vehicle is added is notified of the date, time, and location of that inspection.

However, the current practice within the industry is to conduct thorough mechanical inspections on express cars, intermodal equipment (*e.g.*, RoadRailers''), and other freight-type equipment at the time it is added to a passenger train. Furthermore, this type of equipment is relatively new, and its performance history is not as clear as traditional passenger equipment. Moreover, FRA also agrees that this type of equipment carries a greater potential of developing exterior mechanical defects because this equipment is subject to the more frequent switching and the stresses of loading and unloading inherent in its use. Consequently, the final rule requirement that these types of cars must receive an exterior mechanical inspection pursuant to this section at the time they are added to a train unless they received such an inspection within the previous calendar day is retained. In such circumstances, the train crew must be notified of the date, time, and location where the previous exterior mechanical inspection was performed.

As noted above, paragraph (b) of the final rule has also been modified to clarify that the train crew must be notified of the date, time, and location where the previous exterior mechanical inspection was performed in order to add a car without performing an exterior mechanical inspection at the time it is added to a train. The final rule merely stated that the train crew must be provided ''documentation'' of the previous mechanical inspection. *See* 64 FR 25617, 25678. However, as APTA correctly asserts in its petition, the final rule does not indicate how or in what form the documentation is to be provided. To clarify the issue, FRA is amending the final rule to indicate that the train crew must be notified of the date, time, and location that the previous exterior mechanical inspection was performed on the vehicle in order to be excepted from the requirement to perform a mechanical inspection at the time the vehicle is added to the train. FRA intends to make clear that this notification may be provided in any format that best suits the railroad's operation. Thus, for example, the notification may be either written, electronic, or by radio.

Paragraph (e)(7)(ii) has been slightly modified in response to APTA's petition which asserts that the final rule requirement that each friction side bearing not run in contact unless designed to carry weight fails to recognize the design of some passenger equipment. APTA claims that this requirement fails to recognize passenger equipment, such as Metra gallery cars, which are designed to operate in contact but to carry no weight. FRA agrees that the final rule fails to cover this type of equipment, which was not FRA's intent when issuing the final rule. When issuing the final rule, FRA did not realize that the side bearings on some passenger equipment are designed to operate in contact but carry no weight. Consequently, FRA is modifying the final rule to require that the friction side bearings do not run in contact unless designed to operate in that manner. FRA believes this amended language permits the use of equipment with friction side bearings designed to operate in contact but carry no weight, while also prohibiting the use of equipment that is not designed to operate with friction side bearings in contact unless the equipment is designed to carry weight.

Paragraph (e)(8)(x) has also been slightly modified to clarify the requirement contained in that paragraph in response to Amtrak's petition. In its petition, Amtrak contends that paragraphs (e)(8)(iii) and (e)(8)(x) of the final rule appear to be in conflict because paragraph (e)(8)(iii) allows some leeway when a break in a rim exists based on the width of the tread; whereas, (e)(8)(x) would make any break in the rim condemnable. Paragraph (e)(8) of the final rule contains a listing of wheel conditions that would render a wheel defective. The conditions contained in this paragraph are identical to the wheel conditions identified in part 229 related to locomotives. *See* 49 CFR 229.75. FRA agrees with the comments provided by Amtrak, and will modify paragraph (e)(8)(x) to clarify that the language contained in the provision related to cracks or breaks in the rim of a wheel is intended to be limited by the language contained in paragraph (e)(8)(iii) regarding breaks in the rim of a wheel. Paragraph (e)(8)(x) is intended to cover situations where there is a crack in the rim of a wheel which may not constitute a break under subparagraph (iii). This would include thermal and other cracks that do not actually result in the rim being broken.

Paragraph (e)(15) of this section is being amended in response to a petition for reconsideration submitted by APTA requesting that defective dynamic brakes on an MU locomotive not be considered a running gear defect pursuant to the movement of defective equipment provisions contained in § 238.17. APTA contends that the restrictions imposed in the final rule treating dynamic brakes on MU locomotives as running gear defects will create equipment shortages on some passenger operations because equipment found with defective dynamic brakes would not be permitted to continue in service until repaired. APTA asserts that FRA's treatment of these brake systems is inconsistent with FRA's discussions in the final rule regarding blended braking systems and dynamic brakes on conventional locomotives. APTA requests that MU locomotives discovered with defective dynamic brakes be permitted to continue in service to their next exterior calendar day inspection. APTA contends that thermal damage to the wheels on these vehicles will not occur in such a short period of time.

After consideration of APTA's petition, FRA agrees that the final rule requirements related to defective dynamic brakes on MU locomotives may have the potential to create certain operational difficulties on some railroads that were not envisioned by FRA when issuing the final rule. Although FRA continues to believe that extended use of an MU locomotive with defective dynamic brakes significantly increases the potential for causing thermal stress to the wheels of the vehicle, FRA must agree that there is no evidence showing that use of an MU

locomotive with no dynamic brakes for a short period of time (less than 48 hours) will result in thermal stress to the wheels. Consequently, the final rule is being amended specifically to include requirements for the handling of MU locomotives discovered with defective dynamic brakes. The amended provisions are similar to the final rule provisions regarding conventional locomotives in that both sets of provisions require locomotives discovered with defective dynamic brakes to be conspicuously tagged in the cab of the locomotive and require the locomotive engineer to be notified in writing that the dynamic brakes on the locomotive are inoperative. A copy of the required tag will meet the requirement for written notification.

The amendment to the final rule will accept APTA's recommendation and will allow MU locomotives discovered with dynamic brakes to continue in service until the locomotive's next exterior mechanical inspection. Thus, if an MU locomotive's dynamic brakes are discovered defective during the performance of an exterior calendar day inspection mechanical inspection, it may continue to be used in passenger service until the performance of the locomotive's next exterior calendar day mechanical inspection under this part, provided it is properly tagged and the locomotive engineer informed of the defective condition in writing. Similarly, if an MU locomotive is discovered to have inoperative dynamic brakes while en route, it may continue to be used in passenger service only until its next exterior calendar day inspection is required to be performed and the tagging and notification requirements noted above would apply. FRA believes that the flexibility provided by these modifications is consistent with the recommendations of APTA and is sufficient to allow a railroad to arrange for appropriate repairs to be made to the locomotives without interrupting or significantly impacting the service it provides to the public.

A new paragraph (e)(16) has been added in response to petitions submitted by APTA and Amtrak requesting elimination of the 92-day periodic mechanical inspection contained in § 238.307 of the final rule. As discussed in detail below, FRA is granting APTA's and Amtrak's petition and thus, is moving some of the inspection requirements contained in the 92-day periodic mechanical inspection to the exterior and interior calendar day mechanical inspections. APTA's petition suggested that the roller bearing inspection requirements contained in the 92-day periodic inspection be moved to the exterior calendar day inspection. FRA accepts this suggestion and thus, this new paragraph contains the roller bearing inspection requirements previously contained in § 238.307(c)(6) of the final rule. *See* 64 FR 25681.

A technical change has been made to paragraph (g)(2)(iv) of this section to clarify the nature of the record that must be retained regarding the performance of exterior mechanical inspections. The final rule requires that the signature of the inspector was to be part of the record; however, the final rule specifically allows the record to be maintained electronically. Thus, FRA's intent when issuing the final rule was to allow some type of electronic signature or electronic identification to serve as the inspector's signature. In order to avoid confusion, this paragraph has been modified to clarify that the signature or some type of electronic identification of the inspector must be included in the required record.

The TWU's petition objects to the exterior mechanical inspection provisions contained in the final rule contending that the provisions do not meet or are not as stringent as the requirements contained in 49 CFR part 215 related to the mechanical inspection of freight cars and thus, do not ensure the safety of the traveling public. FRA disagrees with this assessment for several reasons. First, it should be noted that no Federal requirements currently exist regarding the mechanical inspection of passenger equipment. However, most passenger railroad operations conduct mechanical inspections on their equipment and these practices have generally ensured the safety of the equipment. Thus, the rule's intent was to capture and codify the current best industry practices related to the mechanical inspection of passenger equipment.

Secondly, the mechanical inspection provisions contained in the final rule cover many of the same mechanical components addressed in part 215 and further require that an exterior mechanical inspection be performed on passenger equipment by a highly qualified inspector every calendar day that the equipment is in service. Whereas, under part 215, freight equipment is only required to be mechanically inspected when the equipment is added to a train and the inspection may or may not be performed by a highly qualified inspector. *See* 49 CFR 215.13 and Appendix D to part 215. Thus, in the freight context a car may be used for multiple days without receiving any additional mechanical inspection but the one it received when being added to the train. Therefore, although the mechanical inspection requirements of the final rule are not identical to those contained in part 215, FRA believes they are equally if not more stringent than those contained in part 215 and are more than sufficient to ensure the safety of passenger train operations. Finally, as discussed in detail above, FRA believes that the movement restrictions imposed by the final rule on passenger equipment containing a mechanical defect are comparable to the restrictions placed on freight equipment containing similar defects under part 215.

Section 238.305 Interior Calendar Day Mechanical Inspection of Passenger Cars

Paragraph (c) is being modified and a new paragraph (d) is being added in response to petitions filed by APTA and Amtrak requesting modification of the movement provisions related to certain "minor" interior defects and their request that the 92-day periodic mechanical inspection be eliminated. APTA and Amtrak assert that the interior stenciling, marking, vestibule lighting provisions, and the requirements relating to trap doors and seats should not be treated as stringently as other non-running gear defects under the movement of defective equipment provisions contained in § 238.17 of the final rule. These parties contend that equipment containing conditions not in compliance with the above noted requirements should be permitted to be moved out of an interior calendar day inspection without having the car locked out and empty as the final rule requires. They request that the equipment be permitted to remain in passenger service until the vehicle's next interior mechanical inspection. APTA asserts that requiring equipment with these "minor" defects to be locked out and empty will actually create more safety problems than it solves. According to APTA, the final rule requirement would require passengers to be crowded on to fewer cars and would result in more passengers standing in the aisles and in vestibules, creating environments where more injuries are likely to occur.

FRA tends to agree with the concerns raised by both APTA and Amtrak and is reorganizing paragraph (c) to allow equipment with certain non-complying interior conditions to remain in passenger service if the non-complying conditions are discovered during an interior calendar day mechanical inspection. The non-complying conditions to which FRA is extending

some flexibility include the requirements related to stenciling and marking, trap doors, vestibule illumination, and doors. A new paragraph (d) contains provisions for allowing equipment with these non-complying conditions to remain in passenger service and requires certain determinations to be made by a qualified person or QMP prior to continuing the equipment in service and that a record be maintained of the non-complying condition. Although the intent of the final rule was to generally have mechanical inspections conducted at locations where all necessary repairs could be conducted, FRA recognizes that some interior inspections may be conducted at outlying locations or at a location lacking the necessary parts or components to fix a particular defective condition. However, in order to remain consistent with the general intent of the final rule, paragraph (d) requires a qualified person or QMP to determine that the necessary repairs cannot be made at the time the interior mechanical inspection is performed. FRA believes that if the necessary repairs can be conducted with the equipment and supplies available, and within the time available, the repairs should be made.

In addition to the requirements contained in paragraph (d), paragraph (c) contains specific requirements based on the defective condition involved when continuing certain equipment in passenger service after being found in non-compliance during an interior calendar day mechanical inspection. The additional conditions are intended to ensure the safety of passengers and are attached to the requirements related to the continued used of non-complying trap doors, vestibule lighting, and doors. The additional requirements attached to the continued use of a car with a defective door are the same as those contained in the final rule. FRA intends to make clear that the restrictions and flexibility permitted in paragraphs (c) and (d) are only applicable to equipment found with a non-complying condition discovered at an interior calendar day mechanical inspection. Interior non-complying conditions that are discovered while a piece of equipment is en route, must be handled in accordance with the provisions for such en route defects contained in § 238.17 of the final rule. Although FRA believes some leeway should be provided when certain non-complying conditions are discovered at the time that an interior mechanical inspection is being performed, FRA believes that the railroad should be able to take adequate steps to ensure that equipment found with non-complying conditions while en route are moved to locations where necessary repairs can be performed either prior to or at the next required interior mechanical inspection.

Paragraph (c) has also been modified to include a provision which was part of the 92-day periodic mechanical inspection contained in § 238.307(c) of the final rule. This modification is being made in response to petitions submitted by APTA and Amtrak requesting elimination of the 92-day periodic mechanical inspection. As discussed in detail below, FRA is granting APTA's and Amtrak's petition and thus, is moving some of the inspection requirements contained in the 92-day periodic mechanical inspection to the exterior and interior calendar day mechanical inspections. APTA's petition suggested that the requirements related to the condition of floors on passenger cars contained in the 92-day periodic inspection be moved to the exterior calendar day inspection. FRA accepts this suggestion and thus, paragraph (c) contains the inspection requirements related to floors previously contained in § 238.307(c)(1) of the final rule. *See* 64 FR 25680.

A technical change has been made to the paragraph redesignated as paragraph (f)(2)(iv) of this section to clarify the nature of the record that must be retained regarding the performance of interior mechanical inspections. The final rule requires that the signature of the inspector was to be part of the record; however, the final rule specifically allows the record to be maintained electronically. Thus, FRA's intent when issuing the final rule was to allow some type of electronic signature or electronic identification to serve as the inspector's signature. In order to avoid confusion, this paragraph has been modified to clarify that the signature or a unique electronic identification of the inspector must be included in the required record.

The TWU again objects to the final rule's provision which allows a qualified person to perform the interior mechanical inspection required by this section. The TWU contends that the determination of who is considered to be a qualified person is left totally to the discretion of the railroad and thus, recommends that a QMP be required to perform these inspections. FRA continues to disagree with the contention raised by the TWU. FRA believes that the clarifications made to the definition of "qualified person," discussed in detail above, address the concerns of TWU and ensure that properly trained individuals perform these inspections. Furthermore, the final rule made clear that FRA's original position was to require the interior inspections to be performed by qualified maintenance persons. However, after several discussions with members of the Working Group and several other representatives of passenger railroads, FRA determined that the training and experience typical of QMPs is not necessary and often does not apply to inspecting interior safety components of passenger equipment. In addition, the flexibility created by permitting someone less qualified than a qualified maintenance person can reduce the cost of performing the mechanical safety inspection since the most economical way to accomplish the mechanical inspection is to combine the exterior inspection with the Class I brake test, and then have a crewmember inspect on arrival at the final terminal or have a trained coach cleaner combine the interior coach inspection with coach cleaning. Moreover, the type of components being inspected during an interior mechanical inspection do not affect the general operation of the train and do not require the extensive knowledge of the interrelationship between the mechanical components or brake system components that would be necessary when performing an exterior mechanical inspection or Class I brake test.

Section 238.307 Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles Used in Passenger Trains

This section has been amended in response to petitions submitted by APTA and Amtrak regarding the final rule requirement to conduct periodic mechanical inspections at a 92-day interval. Both APTA and Amtrak contend that the industry does not currently inspect passenger equipment at this interval. Some railroads periodically inspect their equipment more frequently and many inspect their equipment on a less frequent basis. Both petitioners note that FRA did not propose a 92-day inspection interval in the NPRM and believe that the increase in the frequency of such inspection is unjustified and inconsistent with current industry practice. APTA contends that the final rule requirement to conduct a 92-day periodic mechanical inspection will seriously impact equipment utilization and will require its member railroads to purchase approximately 30–60 new passenger coaches in order to have a sufficient number of replacement units available when cars are removed from service to have the inspection performed. The purchase of these replacement units will

cost the industry approximately $45–90 million dollars. Amtrak also recommends that periodic intervals of 180 days and 365 days be provided for RoadRailer® and express cars, respectively, due to the fact that they are less complicated than other types of passenger equipment and their safety record does not justify more frequent periodic mechanical inspections.

In the final rule, FRA made clear that its adoption of the 92-day periodic mechanical inspection interval was an attempt to incorporate the current practices of the industry. *See* 64 FR 25620. When issuing the final rule FRA believed that railroads were conducting periodic mechanical inspection at cycles that were less than 92 days. After review of the petitions, it appears that several railroads conduct periodic mechanical inspections and maintenance at intervals which are greater than 92 days. As it was not FRA's intention to significantly alter the current inspection practices when proposing the 92-day periodic interval, FRA grants the petitions of APTA and Amtrak to the extent that they request elimination of the 92-day periodic mechanical inspection interval. Thus, the final rule is being amended, as requested by the petitioners, by eliminating the 92-day periodic inspection and requiring a 184-day periodic mechanical inspection interval similar to that proposed in the NPRM. *See* 62 FR 49809. Therefore, many of the components required by the final rule to be inspected on a 92-day basis are being moved to a 184-day cycle and the requirements related to the inspection of passenger car floors and roller bearings are being moved to the exterior calendar day inspection provisions as discussed above. Consequently, paragraph (c) of this section is being modified to require periodic mechanical inspection of passenger equipment at 184-day intervals.

Two of the requirements contained in paragraph (c) are also being modified in response to Amtrak's petition seeking clarification of the periodic inspection requirements related to draft gears and center casting on trucks. Amtrak contends that the final rule is unclear as to what steps must be taken to ensure that these two components are in proper condition. Amtrak seeks clarification that the requirement that center castings are not cracked or broken does not require that the cars be jacked and the trucks rolled out. Amtrak also seeks clarification that the determination that a car's draft gear is not broken does not require the dropping of the cover plates under the car. Amtrak contends that imposition of either of these procedures will greatly increase the cost of performing periodic mechanical inspections. As it was not FRA's intent to require the extensive type of inspections that Amtrak details in its petition, the final rule is amended to clarify that cover plates do not need to be dropped when inspecting draft gears and that cars do not need to be jacked and trucks rolled out when determining whether center castings are broken at the periodic mechanical inspection. Although FRA believes that the most effective method of determining whether center casting on trucks are cracked or broken is to jack the car and roll out the truck, FRA recognizes the cost and time implications of requiring such an inspection every 184 days. However, FRA believes this type of extensive inspection should be performed periodically. Consequently, in accordance with the recommendation made by APTA in its petition, the final rule is amended to require this extensive inspection of a truck center casting at the COT&S cycle provided in § 238.309 for the vehicle. FRA believes this is an opportune time in which to conduct this inspection and will impose the least burden on the railroads.

It should be noted that FRA is not granting APTA's petition as it relates to the extension of the inspection of couplers. APTA's petition requested extension of the inspection requirement regarding the distance between coupler guard arm and the knuckle nose to a period consistent with a vehicle's COT&S interval. APTA contends that in order to conduct this inspection cars must be uncoupled and that the final rule requirement to conduct this inspection every 184 days will require unnecessary uncoupling of train consists that rarely experience undesired partings. Although FRA recognizes the impact of the inspection requirement, FRA finds no reason to extend the interval related to this inspection requirement and believes that railroads will not be substantially affected by retaining the final rule interval. Furthermore, in response to the NPRM, APTA requested that the coupler inspection requirements be moved to the periodic mechanical inspection interval, which FRA did in the final rule. *See* 64 FR 25561, 25620, 25681. FRA will not now extend the inspection interval further without credible data showing that the component will not fail between the periodic inspection interval. In paragraph (b) of this section in the final rule, FRA provided railroads the option to develop alternative intervals for performing inspections for specific components or equipment based on a more quantitative reliability assessment completed as part of their system safety programs. The final rule contained a detail discussion regarding a railroad's use of reliability assessments to change the periodic inspection intervals contained in the final rule. *See* 64 FR 25621–22, 25680, and 25704–05. Individual railroads may want to pursue the extension of the coupler inspection requirement through this approach.

The requirement related to the inspection of seats and seat attachments which will be contained in paragraph (c)(1) of this modified section is amended to include provisions for moving equipment discovered with non-complying seats or seat attachments. FRA agrees with the general statements of Amtrak and APTA that this interior component should not be handled in the same manner as other non-running gear defects pursuant to § 238.17 of the final rule. FRA agrees that it makes no sense to lock-out an entire car when only one seat is found broken or loose, which can be isolated and rendered unuseable without impacting the safety of the people traveling on the train. Although FRA believes that defective seats should be repaired as soon as possible, FRA recognizes that repairs to this component may be more difficult in some circumstances than the repairs required to fix other interior components. FRA also agrees that the safety impacts of locking-out an entire car is probably greater than the safety impacts of allowing passengers on a car with a seat that is rendered unuseable. Thus, separate requirements related to the handling of equipment found with non-complying seats or seat attachments are being included in this paragraph. This paragraph permits a car that is found with a non-complying seat to be used in passenger service until the performance of an interior calendar day mechanical inspection on the day following the discovery of the defective condition, provided the seat is rendered unuseable, a notice is prominently displayed on the seat, and a record is maintained with the date and time that the non-complying condition was discovered.

A technical change has been made to the paragraph redesignated as paragraph (e)(1) of this section to clarify the nature of the record that must be retained regarding the performance of interior mechanical inspections. The final rule requires that the signature of the inspector was to be part of the record; however, the final rule specifically allows the record to be maintained electronically. Thus, FRA's intent when

issuing the final rule was to allow some type of electronic signature or electronic identification to serve as the inspector's signature. In order to avoid confusion, this paragraph has been modified to clarify that the signature or some type of electronic identification of the inspector must be included in the required record. This paragraph has also be reorganized, with no substantive change, in order to bring it into conformity with the record keeping provisions contained in other sections of the final rule.

Section 238.309 Periodic Brake Equipment Maintenance

Paragraph (d) of this section is being modified in response to Amtrak's petition seeking recognition of its current practice of performing periodic brake system maintenance on equipment equipped with AB, ABD, ABDX, and equivalent brake systems. Amtrak contends that AB-type brake valves have proven very reliable and that there is no COT&S cycle for these types of brake valves in freight operations. Amtrak asserts that it has over 450 cars equipped with AB-type brake systems and because such brake systems are not a 26–C or equivalent brake system the final rule would impose a three year COT&S maintenance interval on these cars. Amtrak contends that it has conducted COT&S on these types of brake systems on a six-year cycle since 1982 and this interval has proven safe and reliable. Thus, Amtrak asserts that reducing the COT&S interval for these vehicles would result in a significant cost burden to the railroad with no safety justification for such a reduction.

FRA agrees with Amtrak's concerns and is granting its petition as it relates to this issue. When issuing the final rule, it was FRA's intent to incorporate existing industry practices as they relate to the performance of COT&S on passenger equipment. At that time, FRA staff working on this rulemaking were not aware that Amtrak operated some vehicles equipped with AB-type brake systems. FRA agrees that the current COT&S interval of six years conducted on this type of equipment has proven safe and reliable. Consequently, the final rule is amended to provide a six year COT&S interval for passenger coaches and other unpowered vehicles equipped with AB-type brake systems.

It should be noted that the BRC's petition generally asserts that increases in the time interval for COT&S provided in the final rule have not been bolstered by significant safeguards for dry air. The rationale for the COT&S intervals provided in the final rule are fully explained in the section-by-section analysis related to this section in the final rule. FRA points out that the extension of the COT&S interval related to MU locomotives draws a distinction between locomotive fleets that are 100 percent equipped with air dryers and those locomotive fleets that are not so equipped. The preamble to the final rule also explains that virtually all of the required COT&S intervals are based on extensive tests or previous waivers granted by FRA for which service experience has been satisfactory. *See* 64 FR 25622–23.

Section 238.311 Single Car Test

Paragraph (e)(1) of this section is being modified in response to AAPRCO's petition seeking an exception for private cars from the requirement to perform a single car test on any vehicle which is placed in service after being out of service for 30 days or more. AAPRCO contends that the final rule requirement contained in this paragraph imposes a significant cost to the owners of private cars. They assert that private cars are used on an occasional basis in many instances and may sit for months in between trips. Furthermore, they contend that the cost and availability of locations where single car tests can be performed on a private car makes the requirement overly burdensome to private car owners. The AAPRCO contends that the yearly single car test required by Amtrak during the annual inspection of a private car is sufficient to ensure the integrity of the brake systems on such equipment. FRA agrees with the concerns raised by AAPRCO in its petition. Consequently, FRA is amending the final rule to exclude private cars from the requirement to have a single car test performed when such a car is placed in service after being out of service for 30 days or more.

Section 238.313 Class I Brake Test

Paragraph (c) of this section regarding the performance of a Class I brake test on cars added to a passenger train is being modified in response to petitions filed by APTA and AAPRCO. Both these parties contend that the requirement to perform a Class I brake test at the time a passenger vehicle is added to a train is overly burdensome and unnecessary. They contend that at many locations where such cars are added to trains there is not a QMP available to perform such an inspection. They also note that under current regulations when cars are added to a passenger train only an intermediate-type brake test is required on the cars being added. Furthermore, they assert that the final rule requires that cars added to a train must receive a Class I brake test sometime during the day in which they are added to the train. APTA also notes that FRA's treatment of cars being added to a train is more stringent than the current and final rule requirements for cars departing on the first run of the day that are already entrained. Under the final rule cars in a train may depart on their first run of the day with only a Class IA brake test being performed. Consequently, these petitioners request that cars added to a train be permitted to be added after the performance of a Class I or Class IA brake test.

After consideration of the petitions received, FRA believes that the final rule requirement that a Class I brake test be performed on cars added to a passenger train is overly burdensome and somewhat inconsistent with the current regulatory provision when equipment is added to a passenger train. FRA agrees that the final rule requirement that a Class I brake test be performed when the equipment is added to a train is inconsistent with the requirements related to performing a Class IA brake test prior to the first run of a train on any given calendar day. FRA also recognizes that equipment may be added to a passenger train at a location where a QMP is not readily available to perform a Class I brake test. Furthermore, any equipment added to a passenger train that does not receive a Class I brake test when added to a train is required to receive a Class I brake test sometime during that calendar day on which the car is added to the train. Moreover, FRA believes that a Class IA brake test, although performed by a person likely to be less qualified than a QMP, generally ensures that the brake system on a piece of equipment operates as intended. Consequently, the final rule has been amended to require that when a vehicle is added to a train it must receive either a Class I or Class IA brake test unless the vehicle had received a Class I brake test pursuant to this section within the previous calendar day, has not been off a source of compressed air for more than four hours prior to being added to the train, and the train crew operating the train to which the vehicle is added is notified of the date, time, and location of that inspection.

As noted above, paragraph (c) of the final rule has also been modified to clarify that the train crew must be notified of the date, time, and location where the previous Class I brake test was performed in order to add a vehicle to a train without performing either a Class I or Class IA brake test at the time it is added to a train. The final rule

merely stated that the train crew must be provided "documentation" of the previous brake test. *See* 64 FR 25682. However, as APTA correctly asserts in its petition, the final rule does not indicate how or in what form the documentation is to be provided. To clarify the issue, FRA is amending the final rule to indicate that the train crew must be notified of the date and time that the previous Class I brake test was performed on the vehicle and the location where that inspection was performed on the vehicle in order to be excepted from the requirement to perform a Class I or Class IA brake test at the time the vehicle is added to the train. FRA intends to make clear that this notification may be provided in any format that best suits the railroad's operation. Thus, the notification may be either written, electronic, or via radio communication.

A clarifying change is being made to paragraph (g) of this section to explain that a Class I brake test is to be performed at the air pressure at which the train will be operated but not less than 90 psi. Although the final rule did not contain this specific requirement, FRA believes that it was understood that all the brake tests in this part were to be performed at either the pressure at which the train would be operated or 90 psi, whichever is greater, and it is currently standard industry practice to perform brake tests at these pressures. Consequently, in order to prevent any confusion or misunderstanding, the final rule is being amended to specifically state that the brake test is to be performed at the pressure at which the train will be operated or at 90 psi, whichever is greater.

Paragraph (g)(3) is being modified in response to the petition submitted by the TWU, which indicated that some confusion exists regarding what constitutes an effective brake. In order to prevent misunderstandings and avoid confusion, the final rule is being modified to clarify the difference between Class I brake test piston travel limits and the piston travel limits at which a brake will be considered not to be effective. As part of this clarification, the existing piston travel requirements related to the performance of initial terminal inspections on vehicles equipped with 8½-inch and 10-inch diameter brake cylinders, currently contained at § 232.12(f), are being added to this paragraph. Although these piston travel limits and adjustment requirements were not specifically included in the final rule, it was clearly FRA's intent to have the requirements remain in effect for passenger equipment containing such brake systems. FRA believes this modification also clarifies the definition of "effective brake" by making clear that although a car may be found with piston travel that exceeds the Class I brake test limits, and that piston travel must be adjusted at a Class I brake test, such excess travel does not render the brakes inoperative until the piston travel exceeds the outside limits established for that particular type of piston design. However, piston travel that exceeds the applicable Class I brake test limits would be considered a defective condition if the piston travel were not adjusted at the time that a Class I brake test was performed, and would be considered a partial failure to perform a Class I brake test pursuant to § 238.313(g). FRA also believes that the modifications being made to this paragraph more clearly delineate how the brakes are to be inspected during the performance of a Class I brake test.

The language added to this paragraph clarifies that if the piston travel on a standard 12-inch stroke brake cylinder is found to be more than 9 inches or less than 7 inches of piston travel at the time that a Class I brake test is performed, it must be adjusted to nominally 7½ inches. It should be noted that this adjustment requirement is slightly different from the existing 7-inch nominal adjustment requirement. However, this change is consistent with the requirements proposed by FRA in the 1998 NPRM related to brake system safety standards for freight and other non-passenger trains and equipment. See 63 FR 48340, 48363. The change is based on a request from the industry to change the nominal adjustment for these brake cylinders to 7½ inches from 7 inches because several railroads were finding it extremely difficult to adjust piston travel to precisely 7 inches and that in some cases the adjustment would be marginally less than 7 inches and, thus, require readjustment. Therefore, in order to provide a small measure for error when adjusting piston travel, FRA proposed that the adjustment be changed to nominally 7½ inches for freight equipment containing these types of brake systems. FRA believes this same margin for error should be extended to passenger equipment containing a similar brake system and, thus, has incorporated the change in this paragraph.

Paragraphs (g)(4) and (g)(15) are being modified in response to petitions submitted by Amtrak and AAPRCO. Both these parties seek clarification of the final rule requirement that the communicating signal system is tested and known to be operating as intended and the requirement that the communication of brake pipe pressure changes at the rear of the train is verified. These parties assert that the requirement regarding operation and testing of the communicating signal system should either be deleted or clarified to acknowledge that a tested and operating two-way radio system meets the requirement. Amtrak notes that it has not maintained the electric feature in the communication train line because the railroad uses radios carried by train crew members to serve the same function. Amtrak also seeks clarification of the requirement to verify communication of brake pipe pressure changes at the rear of the train to permit this requirement to be met through observation of the application and release of the brakes on the rear car of the train. Amtrak seeks this clarification to ensure that an air gauge is not required at the rear of passenger trains, which would be consistent with the existing regulations.

FRA supports the positions discussed above and believes that there is nothing in the final rule to indicate that the practices discussed above would not meet the requirements contained in the final rule. In fact, it was FRA's intent to consider a tested and operated two-way radio system to meet the requirement in paragraph (g)(4) of the final rule as well as to permit visual observation of the application and release of the rear car to serve as a method for verifying that proper communication of brake pipe changes at the rear of the train under paragraph (g)(15), which is currently permitted. However, in order to avoid confusion or misunderstanding, the final rule is being modified to acknowledge acceptance of the practices discussed above.

Paragraph (g)(11) of this section is being slightly modified in response to a petition submitted by the TWU. In its petition, the TWU requests modification of the definitions of "bind" and "foul," contending that the definitions of these terms fail to address every possible condition that could affect the proper operation of a brake system. FRA believes that the conditions noted by TWU as not being covered by these definitions are sufficiently covered by the definition of "effective brake" contained in the final rule. See 64 FR 25661. Thus, even though a condition may not cause a brake to "bind" or "foul," the condition would cause the brake not to be an "effective brake" as defined in the final rule. In order to fully address TWU's concerns, FRA is modifying the language contained in paragraph (g)(11), regarding the operation of the brake rigging, to include language that the rigging or

system mounted on a car for transmission of the braking force operates as intended and does not bind or foul. This modification is intended to clarify that even though a condition may not cause the brake rigging to "bind" or "foul," the condition could cause the brake not to operate as intended and, thus, render the brake ineffective.

Paragraph (h) of this section is being amended in order to make the record keeping requirements pertaining to Class I brake tests consistent with the record keeping requirements applicable to mechanical inspections addressed in §§ 238.303 through 238.307. Rather than specifically requiring that a written record of the performance of a Class I brake test be maintained in the cab of the controlling locomotive, FRA believes that a railroad should be allowed to maintain records in a fashion that best suits their operations and that the record keeping requirements related to inspections, mechanical and brake, be consistent. FRA also believes that the provisions must be revised to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. Consequently, this paragraph is being amended to make it consistent with the record keeping provisions applicable to the performance of mechanical inspections.

The petitions of the BRC and the TWU raise general objections to FRA's renaming of the various brake inspections and departing from the terminology used in the current regulations, and also object to an approach which allows major brake tests to be performed anytime during a calendar day. As these parties raised these same objections when both the ANPRM and the NPRM were issued, FRA believes that the issues have been fully addressed in the preambles to the NPRM and the final rule. See 62 FR 49737–39, 64 FR 25563, and 25624–28. Contrary to the contentions of these parties, FRA does not believe that the final rule's designation of the brake inspections as Class I, Class IA, and Class II in any way conflicts with previous case law regarding the inspection of passenger equipment. FRA continues to believe that the classifications contained in the final rule clearly delineate what is required at each inspection, better clarify when each inspection is to be performed, and avoid the potential confusion caused by the terminology used in the present regulations.

Section 238.315 Class IA Brake Test

A clarifying change is being made to paragraph (f) of this section to explain that a Class IA brake test is to be performed at the air pressure at which the train will be operated. This clarifying change is identical to the change made in § 238.313 regarding Class I brakes tests. Although the final rule did not contain this specific requirement, FRA believes that it was understood that all the brake tests in this part were to be performed at this pressure, and it is standard industry practice to perform brake tests at the pressure at which a train will be operated. Consequently, in order to prevent any confusion or misunderstanding, the final rule is being amended to specifically state that the brake test is to be performed at the pressure at which the train will be operated.

Paragraphs (f)(5) and (f)(6) of this section are being slightly modified in order to conform with the clarifying changes being made with regard to the Class I brake test requirements. The modifications made in these paragraphs clarify that the requirement to have a tested and operating communicating signal system may be met by having a tested and operating two-way radio system, and that verification that brake pipe changes are being communicated at the rear of the train may be accomplished through observation of the application and release of the brakes on the rear car of the train. These clarifying changes are identical to the changes made in § 238.313(g)(4) and (g)(15) discussed above.

The TWU's petition raises the same objection to allowing the use of brake indicators as was raised in the TWU's response to the NPRM. The TWU again asserts that brake indicators should not be permitted to be used to perform a brake inspection because they are prone to malfunction and do not prove a true indication as to whether the brakes operate as intended. In the final rule, FRA acknowledged the concerns raised by various commenters regarding the use of piston travel indicators and agreed that indicators do not provide 100 percent certainty that the brakes are effective. However, FRA noted that brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years and that the indicators have proven themselves effective enough to be preferable to requiring an inspector to assume a dangerous position. Moreover, the use of a brake indicator is only permitted to be relied on to aid in the performance of a Class IA brake test when such an inspection is required to be performed at a location where it is impossible or hazardous to the safety of the inspector to physically observe the application and release of the brakes.

Section 238.317 Class II Brake Test

Paragraph (d)(1) of this section is being modified in order to clarify the method by which a railroad must verify that the brakes on the rear car of a train apply and release in response to signals from the engineer's brake valve when conducting a Class II brake test. The second clause of this paragraph has been slightly modified to acknowledge that a gauge "or similar device" at the rear of the train indicates that brake pipe pressure changes are properly communicated. FRA is adding the words "or similar device" in order to clarify that an indicator that provides a positive indication regarding the increase and decrease in brake pipe pressure at the rear car may be utilized to meet this requirement in lieu of direct observation of the application and release of the brakes on the rear car in a train.

Paragraph (d)(3) of this section is being slightly modified in order to conform with the clarifying changes being made with regard to the Class I and Class IA brake test requirements. The modification made in this paragraph clarifies that the requirement to have a tested and operating communicating signal system may be met by having a tested and operating two-way radio system. This clarifying change is identical to the changes made in § 238.313(g)(4) and § 238.315(f)(6) discussed above.

Appendix A to Part 238—Schedule of Civil Penalties

Appendix A to this part contains the schedule of civil penalties to be used in connection with this part. Conforming changes are being made to the schedule of civil penalties based on the changes being made to the final rule discussed in detail above.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This response to petitions for reconsideration of the final rule has been evaluated in accordance Executive Order 12866 and DOT policies and procedures. Although the final rule met the criteria for being considered a significant rule under those policies and procedures, the amendments contained in this response to petitions for reconsideration of the final rule are not considered significant because they either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the

rule. The economic impact of the amendments and clarifications contained in this response to petitions for reconsideration will generally reduce the cost of compliance with the rule. However, the cost reduction will be of a minimal nature and does not alter FRA's original analysis of the costs and benefits associated with the original final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this response to petitions for reconsideration does not have a significant impact on a substantial number of small entities. Because the amendments contained in this document either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

Paperwork Reduction Act

This response to petitions for reconsideration of the final rule does not change any of the information collection requirements contained in the original final rule.

Environmental Impact

FRA has evaluated this response to petitions for reconsideration of the final rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA Procedures)(64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. Because the amendments contained in this response to petitions for reconsideration of the final rule either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, this document will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This response to petitions for reconsideration of the final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

List of Subjects

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

PART 215—[AMENDED]

1. The authority citation for part 215 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Section 215.3 is amended by adding a new paragraph (c)(4) to read as follows:

§ 215.3 Application.

* * * * *

(c) * * *

(4) Operated in a passenger train and that is inspected, tested, maintained, and operated pursuant to the requirements contained in part 238 of this chapter.

PART 220—[AMENDED]

3. The authority citation for part 220 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

4. Section 220.5 is amended by revising the definition of *Train* to read as follows:

§ 220.5 Definitions.

* * * * *

Train means one or more locomotives coupled with or without cars, requiring an air brake test in accordance with 49 CFR part 232 or part 238, except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.

* * * * *

PART 238—[AMENDED]

5.–6. The authority citation for part 238 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart A—General—[Amended]

7. Section 238.1(c) is revised to read as follows:

§ 238.1 Purpose and scope.

* * * * *

(c) Railroads to which this part applies shall be responsible for compliance with all of the requirements contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D of this part effective January 1, 2002.

* * * * *

8. Section 238.5 is amended by adding a definition for *Actuator,* and revising the definitions for *Brake, effective, Primary responsibility, Qualified person,* and *Running gear defect* to read as follows:

§ 238.5 Definitions.

* * * * *

Actuator means a device directly actuated by the movement of the brake cylinder piston which provides an indication of the piston travel.

* * * * *

Brake, effective means a brake that is capable of producing its required designed retarding force on the train. A brake is not effective if its piston travel is in excess of the maximum prescribed limits. On vehicles equipped with nominal 12-inch stroke brake cylinders, the brake is not effective if its piston travel exceeds 10½ inches.

* * * * *

Primary responsibility means the task that a person performs during at least 50 percent of the time that the person is working. The totality of the circumstances will be considered on a case-by-case basis in circumstances where an individual does not spend 50 percent of his or her workday engaged in any one readily identifiable type of activity. Time spent supervising employees engaged in the functions of troubleshooting, inspection, testing, maintenance, or repair of train brake and mechanical components and systems covered by this part shall be considered work which is generally consistent with the function of troubleshooting of such systems and components for the purpose of the definition of this term and the definition of "Qualified Maintenance Person."

* * * * *

Qualified person means a person who has received, as a part of the training, qualification, and designation program required under § 238.109, instruction and training necessary to perform one or more functions required under this part. The railroad is responsible for determining that the person has the knowledge and skills necessary to perform the required function for which the person is assigned responsibility. The railroad determines the qualifications and competencies for employees designated to perform various functions in the manner set forth in this part. Although the rule uses the term "qualified person" to describe a person responsible for performing various functions required under this part, a person may be deemed qualified to perform some functions but not qualified to perform other functions. For example, although a person may be deemed qualified to perform the Class II brake test required by this part, that same person may or may not be qualified to perform the Class IA brake test or authorize the movement of defective equipment under this part. The railroad will determine the required functions for which an individual will be deemed a "qualified person" based upon the instruction and training the individual has received pursuant to § 238.109 on a particular function.

* * * * *

Running gear defect means any condition not in compliance with this part which involves a truck component, a draft system component, a wheel, or a wheel component.

* * * * *

9. Section 238.15 is amended by revising the first sentence of the introductory text, paragraphs (b), introductory text, (c), introductory text, (c)(2), introductory text, (d)(1)(ii), (d)(1)(iv), and (d)(1)(iv)(C) to read as follows:

§ 238.15 Movement of passenger equipment with power brake defects.

Beginning on January 1, 2002, the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. * * *

* * * * *

(b) *Limitations on movement of passenger equipment containing a power brake defect at the time a Class I or IA brake test is performed.* Except as provided in paragraph (c) of this section (which addresses brakes that become defective en route after a Class I or IA brake test was performed), a commuter or passenger train that has in its consist passenger equipment containing a power brake defect at the time that a Class I or IA brake test (or, for Tier II trains, the equivalent) is performed may only be moved, without civil penalty liability under this part—

* * *

* * * * *

(c) *Limitations on movement of passenger equipment in passenger service that becomes defective en route after a Class I or IA brake test.* Passenger equipment hauled or used in service in a commuter or passenger train that develops inoperative or ineffective power brakes or any other power brake defect while en route to another location after receiving a Class I or IA brake test (or, for Tier II trains, the equivalent) may be hauled or used by a railroad for repair, without civil penalty liability under this part, if the applicable operating restrictions set forth in paragraphs (d) and (e) of this section are complied with and all of the following requisites are satisfied:

* * * * *

(2) *Record.* A tag or card is placed on both sides of the defective passenger equipment, or an automated tracking system is provided, with the following information about the defective passenger equipment:

* * * * *

(d) * * *

(ii) For trains equipped with only tread brake units (TBUs), the percentage of operative power brakes shall be determined by dividing the number of operative TBUs by the total number of TBUs in the train.

* * * * *

(iv) The following brake conditions not in compliance with this part do not render power brakes inoperative for purposes of this calculation:

* * * * *

(C) Piston travel that is in excess of the Class I brake test limits required in § 238.313 but that does not exceed the maximum prescribed limits for considering the brakes to be effective; and

* * * * *

10. Section 238.17 is amended by revising the first sentence of the introductory text, paragraphs (b), introductory text, (c), introductory text, (d)(1), (d)(2)(ii), and (d)(2)(iv) to read as follows:

§ 238.17 Movement of passenger equipment with other than power brake defects.

Beginning on January 1, 2002, the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. * * *

* * * * *

(b) *Limitations on movement of passenger equipment containing defects found at time of calendar day inspection.* Except as provided in §§ 238.303(e)(15), 238.305(c) and (d), and 238.307(c)(1), passenger equipment containing a condition not in conformity with this part at the time of its calendar day mechanical inspection may be moved from that location for repair if all of the following conditions are satisfied: * * *

* * * * *

(c) *Limitations on movement of passenger equipment that develops defects en route.* Except as provided in §§ 238.303(e)(15), 238.307(c)(1), and 238.503(f), passenger equipment that develops en route to its destination, after its calendar day mechanical inspection is performed and before its next calendar day mechanical inspection is performed, any condition not in compliance with this part, other than a power brake defect, may be moved only if the railroads complies with all of the following requirements or, if applicable, the special requirements in paragraph (e) of this section:

* * * * *

(d) *Inspection of roller bearing on equipment involved in a derailment.*

(1) A railroad shall not continue passenger equipment in service that has a roller bearing whose truck was involved in a derailment unless the bearing has been inspected and tested in accordance with the railroad's procedures for handling defective equipment.

(2) * * *

(ii) It makes any unusual noise when its wheel set is spun freely (an on-track rolling test is acceptable) or when the bearing is manually rotated;

(iii) * * *

(iv) Its truck was dragged on the ground for more than 100 feet.

* * * * *

11. Section 238.19 is amended by revising the section heading, the first sentence of paragraph (a) and paragraph (a)(2) to read as follows:

§ 238.19 Reporting and tracking of repairs to defective passenger equipment.

(a) *General.* Beginning on January 1, 2002, each railroad shall have in place a reporting and tracking system for passenger equipment with a defect not in conformance with this part. * * *

* * * * *

(2) The date the defect was discovered;

* * * * *

Subpart B—Safety Planning and General Requirements—[Amended]

12. The first sentence of § 238.107(a) is revised to read as follows:

§ 238.107 Inspection, testing, and maintenance plan.

(a) *General.* Beginning on January 1, 2002, the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. * * *

* * * * *

13. Section 238.109 is amended by revising the first sentence of paragraph (a), by revising paragraphs (b)(1) through (b)(7) and paragraph (b)(11) to read as follows:

§ 238.109 Training, qualification, and designation program.

(a) Beginning on January 1, 2002, each railroad shall have adopted a training, qualification, and designation program for employees and contractors that perform any of the inspections, tests, or maintenance required by this part, and shall have trained such employees and contractors in accordance with the program. * * *

* * * * *

(b) As part of this program, the railroad shall, at a minimum:

(1) Identify the tasks related to the inspection, testing, and maintenance required by this part that must be performed on each type of equipment that the railroad operates;

(2) Develop written procedures for the performance of the tasks identified in paragraph (b)(1) of this section;

(3) Identify the skills and knowledge necessary to perform each task identified in paragraph (b)(1) of this section;

(4) Adopt a training curriculum that includes classroom and "hands-on" lessons designed to impart the skills and knowledge identified as necessary to perform each task identified in paragraph (b)(1) of this section. The training curriculum shall specifically address the Federal regulatory requirements contained in this part that are related to the performance of the tasks identified;

(5) Require all employees and contractors to successfully complete the training course that covers the equipment and tasks for which they are responsible that are required by this part as well as the specific Federal regulatory requirements contained in this part related to equipment and tasks for which they are responsible;

(6) Require all employees and contractors to pass a written examination covering the equipment and tasks for which they are responsible that are required by this part as well as the specific Federal regulatory requirements contained in this part related to equipment and tasks for which they are responsible;

(7) Require all employees and contractors to individually demonstrate "hands-on" capability to successfully perform the tasks required by this part that must be performed as part of their duties on the type equipment to which they are assigned;

* * * * *

(11) Require periodic refresher training, at an interval not to exceed three years, that includes classroom and "hands-on" training, as well as testing; except, employees and contractors that have completed their initial training under this part prior to January 1, 2002, shall not be required to complete their first periodic refresher training until four years after the completion of their initial training, and every three years thereafter;

* * * * *

Subpart C—Specific Requirements for Tier I Passenger Equipment—[Amended]

14. Section 238.231 is amended by revising paragraphs (j), introductory text, and (m) and by adding new paragraphs (h)(3), (n), and (o) to read as follows:

§ 238.231 Brake system.

* * * * *

(h) * * *

(3) The air brake shall not be depended upon to hold equipment standing unattended on a grade (including a locomotive, a car, or a train whether or not a locomotive is attached). When required, a sufficient number of hand brakes shall be applied to hold the train or equipment before the air brakes are released. Any hand brakes applied to hold equipment shall not be released until it is known that the air brake system is properly charged.

* * * * *

(j) Locomotives ordered after September 8, 2000, or placed in service for the first time after September 9, 2002, that are equipped with blended brakes shall be designed so that: * * *

* * * * *

(m) When a passenger train is operated in either direct or graduated release—

(1) all the cars in the train consist shall be set up in the same operating mode or

(2) up to two cars may be operated in direct release mode when the rest of the cars in the train are operated in graduated release mode, provided that the cars operated in direct release mode are hauled at the rear of the train consist.

(n) Before adjusting piston travel or working on brake rigging, the cutout cock in the brake pipe branch must be closed and the air reservoirs must be voided of all compressed air. When cutout cocks are provided in brake cylinder pipes, these cutout cocks may be closed, and air reservoirs need not be voided of all compressed air.

(o) All passenger trains to which this part applies shall comply with the requirements covering the use of two-way end-of-train devices contained in part 232 of this chapter.

* * * * *

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment—[Amended]

15. Section 238.301 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 238.301 Scope.

* * * * *

(b) Beginning on January 1, 2002, the requirements contained in this subpart shall apply to railroads operating Tier I passenger equipment covered by this part. * * *

* * * * *

16. Section 238.303 is amended by revising paragraphs (b), (e)(7)(ii), (e)(8)(x), (e)(15)(i), and (g)(2)(iv) and by adding a new paragraph (e)(16) to read as follows:

§ 238.303 Exterior calendar day mechanical inspection of passenger equipment.

* * * * *

(b) Each passenger car and each unpowered vehicle added to a passenger train shall receive an exterior calendar day mechanical inspection in accordance with the following:

(1) Except as provided in paragraph (b)(2) of this section, each passenger car and each unpowered vehicle added to a passenger train shall receive an exterior calendar day mechanical inspection at the time it is added to the train unless notice is provided to the train crew that an exterior mechanical inspection was performed on the car or vehicle on the last day it was used in passenger service. The notice required by this section shall contain the date, time, and

location of the last exterior mechanical inspection;

(2) Each express car, freight car, and each unit of intermodal equipment (*e.g.*, RoadRailers®) added to a passenger train shall receive an exterior calendar day mechanical inspection at the time it is added to the train, unless notice is provided to the train crew that an exterior mechanical inspection was performed on the car within the previous calendar day. The notice required by this section shall contain the date, time, and location of the last exterior mechanical inspection.

* * * * *

(e) * * *

(7) * * *

(ii) Each friction side bearing does not run in contact unless designed to operate in that manner; and

* * * * *

(8) * * *

(x) Except as provided in paragraph (e)(8)(iii) of this section, a crack or break in the flange, tread, rim, plate, or hub;

* * * * *

(15) * * *

(i) MU locomotives equipped with dynamic brakes found not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes shall be handled in accordance with the following requirements:

(A) A tag bearing the words "inoperative dynamic brakes" shall be securely displayed in a conspicuous location in the cab of the locomotive and contain the locomotive number, the date and location where the condition was discovered, and the signature of the individual who discovered the condition;

(B) The locomotive engineer shall be informed in writing that the dynamic brakes on the locomotive are inoperative at the location where the locomotive engineer first takes charge of the train; and

(C) The inoperative or defective dynamic brakes shall be repaired or removed from service by or at the locomotive's next exterior calendar day mechanical inspection.

* * * * *

(16) All roller bearings do not have any of the following conditions:

(i) A sign of having been overheated as evidenced by discoloration or other telltale sign of overheating, such as damage to the seal or distortion of any bearing component;

(ii) A loose or missing cap screw;

(iii) A broken, missing, or improperly applied cap screw lock; or

(iv) A seal that is loose or damaged or permits leakage of lubricant in clearly formed droplets.

* * * * *

(g) * * *

(2) * * *

(iv) The signature or electronic identification of the inspector.

* * * * *

17. Section 238.305 is amended as follows:

a. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f).

b. A new paragraph (d) is added.

c. Paragraph (c) and redesignated paragraph (f)(2)(iv) are revised. The addition and revisions to § 238.305 read as follows:

§ 238.305 Interior calendar day mechanical inspection of passenger cars.

* * * * *

(c) As part of the interior calendar day mechanical inspection, the railroad shall verify conformity with the following conditions, and nonconformity with any such condition renders the car defective whenever discovered in service, except as provided in paragraphs (c)(5) through (c)(10), and paragraph (d) of this section:

(1) All fan openings, exposed gears and pinions, exposed moving parts of mechanisms, pipes carrying hot gases and high-voltage equipment, switches, circuit breakers, contactors, relays, grid resistors, and fuses are installed in non-hazardous locations or equipped with guards to prevent personal injury.

(2) Floors of passageways and compartments are free from oil, water, waste, or any obstruction that creates a slipping, tripping, or fire hazard, and floors are properly treated to provide secure footing.

(3) All D rings, pull handles, or other means to access manual door releases are in place based on a visual inspection.

(4) All emergency equipment, including a fire extinguisher, pry bar, auxiliary portable lighting, and first aid kits, as applicable, are in place.

(5) The words "Emergency Brake Valve" are legibly stenciled or marked near each brake pipe valve or shown on an adjacent badge plate.

(6) All doors and cover plates guarding high voltage equipment are marked "Danger—High Voltage" or with the word "Danger" and the normal voltage carried by the parts so protected.

(7) All safety-related signage is in place and legible.

(8) All trap doors safely operate and securely latch in place in both the up and down position. A non-complying car may continue in passenger service pursuant to paragraph (d) of this section, if the trap door can be secured by locking out the door for which it is used.

(9) All vestibule steps are illuminated. A non-complying car may continue in passenger service pursuant to paragraph (d) of this section, if the car will be used solely in high-platform service.

(10) All end doors and side doors operate safely and as intended. A non-complying car may continue in passenger service pursuant to paragraph (d) of this section, if at least one operative and accessible door is available on each side of the car; and a notice is prominently displayed directly on the defective door indicating that the door is defective.

(d) Any passenger car found not to be in compliance with the requirements contained in paragraphs (c)(5) through (c)(10) of this section at the time of its interior calendar day mechanical inspection may remain in passenger service until the car's next interior calendar day mechanical inspection where it must be repaired or removed from passenger service; provided, all of the specific conditions contained in paragraphs (c)(8) through (c)(10) of this section are met and all of the following requirements are met:

(1) A qualified person or a qualified maintenance person determines that the repairs necessary to bring the car into compliance cannot be performed at the time that the current day's interior mechanical inspection is conducted;

(2) A qualified person or a qualified maintenance person determines that it is safe to move the equipment in passenger service; and

(3) A record is maintained of the non-complying condition with the date and time that the condition was first discovered.

* * * * *

(f) * * *

(2) * * *

(iv) The signature or electronic identification of the inspector.

* * * * *

18. Section 238.307 is amended as follows:

a. Paragraph (d) is removed,

b. Paragraphs (e) through (g) are redesignated as paragraphs (d) through (f) respectively, and

c. Paragraph (c) and redesignated paragraph (e)(1) are revised to read as follows:

§ 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

* * * * *

(c) The periodic mechanical inspection shall specifically include the

following interior and exterior mechanical components, which shall be inspected not less frequently than every 184 days. At a minimum, this inspection shall determine that:

(1) Seats and seat attachments are not broken or loose. If a car is found with a seat that is not in compliance with this requirement while being used between periodic mechanical inspections, the equipment may continue to be used in passenger service until the performance of an interior calendar day mechanical inspection pursuant to § 238.305 on the day following the discovery of the defective condition provided the seat is rendered unuseable, a notice is prominently displayed on the seat, and a record is maintained with the date and time that the non-complying condition was discovered.

(2) Luggage racks are not broken or loose.

(3) All beds and bunks are not broken or loose, and all restraints or safety latches and straps are in place and function as intended.

(4) A representative sample of emergency window exits on the railroad's passenger cars properly operate, in accordance with the requirements of § 239.107 of this chapter.

(5) Emergency lighting systems are operational.

(6) With regard to switches:

(i) All hand-operated switches carrying currents with a potential of more than 150 volts that may be operated while under load are covered and are operative from the outside of the cover;

(ii) A means is provided to display whether the switches are open or closed; and

(iii) Switches not designed to be operated safely while under load are legibly marked with the voltage carried and the words "must not be operated under load".

(7) Each coupler is in the following condition:

(i) The distance between the guard arm and the knuckle nose is not more than 5⅛ inches on standard type couplers (MCB contour 1904), or not more than 5$^{5}/_{16}$ inches on D&E couplers;

(ii) The free slack in the coupler or drawbar not absorbed by friction devices or draft gears is not more than ½ inch; and

(iii) The draft gear is not broken, to the extent possible without dropping cover plates.

(8) All trucks are equipped with a device or securing arrangement to prevent the truck and car body from separating in case of derailment.

(9) All center castings on trucks are not cracked or broken, to the extent possible without jacking the car and rolling out the trucks. However, an extensive inspection of all center castings shall be conducted by jacking the equipment and rolling out the trucks at each COT&S cycle provided in § 238.309 for the equipment.

(10) All mechanical systems and components of the equipment are free of all the following general conditions that endanger the safety of the crew, passengers, or equipment:

(i) A continuous accumulation of oil or grease;

(ii) Improper functioning of a component;

(iii) A crack, break, excessive wear, structural defect, or weakness of a component;

(iv) A leak;

(v) Use of a component or system under a condition that exceeds that for which the component or system is designed to operate; and

(vi) Insecure attachment of a component.

(11) All of the items identified in the exterior calendar day mechanical inspection contained at § 238.303 are in conformity with the conditions prescribed in that section.

(12) All of the items identified in the interior calendar day mechanical inspection contained at § 238.305 are in conformity with the conditions prescribed in that section.

* * * * *

(e) *Records.* (1) A record shall be maintained of each periodic mechanical inspection required to be performed by this section. This record may be maintained in writing or electronically, provided FRA has access to the record upon request. The record shall be maintained either in the railroad's files, the cab of the locomotive, or a designated location in the passenger car. The record shall be retained until the next periodic mechanical inspection of the same type is performed and shall contain the following information:

(i) The date of the inspection;

(ii) The location where the inspection was performed;

(iii) The signature or electronic identification of the inspector; and

(iv) The signature or electronic identification of the inspector's supervisor.

* * * * *

19. Section 238.309 is amended by revising paragraph (d) to read as follows:

§ 238.309 Periodic brake equipment maintenance.

* * * * *

(d) *Passenger coaches and other unpowered vehicles.* The brake equipment on each passenger coach and each unpowered vehicle used in a passenger train shall be cleaned, repaired, and tested at intervals in accordance with following schedule:

(1) Every 2,208 days for a coach or vehicle equipped with an AB-type brake system.

(2) Every 1,476 days for a coach or vehicle equipped with a 26–C or equivalent brake system; and

(3) Every 1,104 days for a coach or vehicle equipped with other than an AB, ABD, ABDX, 26–C, or equivalent brake system.

* * * * *

20. Section 238.311 is amended by revising paragraph (e)(1) to read as follows:

§ 238.311 Single car test.

* * * * *

(e) * * *

(1) Except for private cars, a car or vehicle is placed in service after having been out of service for 30 days or more; or

* * * * *

21. Section 238.313 is amended by revising paragraphs (c), (g), introductory text, (g)(3), (g)(4), (g)(11), (g)(15), and (h) to read as follows:

§ 238.313 Class I brake test.

* * * * *

(c) Each passenger car and each unpowered vehicle added to a passenger train shall receive a Class I or Class IA brake test at the time it is added to the train unless notice is provided to the train crew that a Class I brake test was performed on the car within the previous calendar day and the car has not been disconnected from a source of compressed air for more than four hours prior to being added to the train. The notice required by this section shall contain the date, time, and location of the last Class I brake test.

* * * * *

(g) A Class I brake test shall be performed at the air pressure at which the train's air brakes will be operated, but not less than 90 psi, and shall be made to determine and ensure that:

* * * * *

(3) Piston travel is within prescribed limits, either by direct observation, observation of an actuator, or in the case of tread brakes by determining that the brake shoe provides pressure to the wheel. For vehicles equipped with 8½-inch or 10-inch diameter brake cylinders, piston travel shall be within 7 to 9 inches. If piston travel is found to be less than 7 inches or more than ■

inches, it must be adjusted to nominally 7½ inches. Proper release of the brakes can be determined by observation of the clearance between the brake shoe and the wheel or between the brake pad and the brake disc.

(4) The communicating signal system is tested and known to be operating as intended; a tested and operating two-way radio system meets this requirement;

* * * * *

(11) The brake rigging or the system mounted on the car for the transmission of the braking force operates as intended and does not bind or foul so as to impede the force delivered to a brake shoe, impede the release of a brake shoe, or otherwise adversely affect the operation of the brake system;

* * * * *

(15) The communication of brake pipe pressure changes at the rear of the train is verified, which may be accomplished by observation of an application and release of the brakes on the last car in the train.

* * * * *

(h) *Records.* A record shall be maintained of each Class I brake test performed.

(1) This record may be maintained in writing or electronically, provided FRA has access to the record upon request.

(2) The written or electronic record must contain the following information:

(i) The date and time that the Class I brake test was performed;

(ii) The location where the test was performed;

(iii) The identification number of the controlling locomotive of the train;

(iv) The total number of cars inspected during the test; and

(v) The signature or electronic identification of the inspector.

(3) This record shall be maintained at the place where the inspection is conducted or at one central location and shall be retained for at least 92 days.

* * * * *

22. Section 238.315 is amended by revising paragraphs (f), introductory text, (f)(5) and (f)(6) to read as follows:

§ 238.315 Class IA brake test.

* * * * *

(f) A Class IA brake test shall be performed at the air pressure at which the train's air brakes will be operated and shall determine and ensure that:

* * * * *

(5) The communication of brake pipe pressure changes at the rear of the train is verified, which may be accomplished by observation of an application and release of the brakes on the last car in the train; and

(6) The communicating signal system is tested and known to be operating as intended; a tested and operating two-way radio system meets this requirement.

* * * * *

23. Section 238.317 is amended by revising paragraphs (d)(1) and (d)(3) to read as follows:

§ 238.317 Class II brake test.

* * * * *

(d) * * *

(1) The brakes on the rear unit of the train apply and release in response to a signal from the engineer's brake valve or controller of the leading or controlling unit, or a gauge or similar device located at the rear of the train or in the cab of the rear unit indicates that brake pipe pressure changes are properly communicated at the rear of the train;

(2) * * *

(3) The communicating signal system is tested and known to be operating as intended; a tested and operating two-way radio system meets this requirement.

* * * * *

24. Appendix A to part 238 is amended as follows:

a. The entry for section 238.231 is revised;

b. In the entry for section 238.303 by adding (e)(16);

c. In the entry for section 238.305 by revising (c)(1) through (c)(9) and adding (c)(10), (c)(11), and (f);

d. In the entry for section 238.307 by revising (c)(1) through (c)(7), adding (c)(8) through (c)(10), (d), (e)(1), and (e)(1)(i)–(iv); and

e. In the entry for section 238.313 by adding (g)(3).

The revisions and additions read as follows:

Appendix A to Part 238—Schedule of Civil Penalties [1]

* * * * *

Section	Violation	Willful violation
* * * * *		
238.231 Brake System (a)–(g), (i)–(n)	2,500	5,000
(h)(1), (2) Hand or parking brake missing or inoperative	5,000	7,500
(h)(3) Hand or parking brake not applied to hold equipment unattended on grade or prematurely released	5,000	7,500
* * * * *		
238.303 Exterior mechanical inspection of passenger equipment:		
* * * * *		
(e)(16) Roller bearings:		
(i) Overheated	5,000	7,500
(ii) Cap screw loose or missing	2,500	5,000
(iii) Cap screw lock broken or missing	1,000	2,000
(iv) Seal loose, damaged, or leaks lubricant	2,500	5,000
* * * * *		
238.305 Interior mechanical inspection of passenger equipment:		
* * * * *		
(c)(1) Failure to protect against personal injury	2,500	5,000
(c)(2) Floors not free of condition that creates hazard	2,500	5,000
(c)(3) Access to manual door release not in place	2,000	4,000
(c)(4) Emergency equipment not in place	1,000	2,000
(c)(5) Emergency brake valve not stenciled or marked	2,500	5,000
(c)(6) Door or cover plates not properly marked	2,500	5,000
(c)(7) Safety signage not in place or legible	1,000	2,000
(c)(8) Trap door unsafe or improperly secured	2,500	5,000

Section	Violation	Willful violation
(c)(9) Vestibule steps not illuminated	2,000	4,000
(c)(10) Door not safely operate as intended	2,500	5,000
(c)(11) Seat broken, loose, or not properly attached	2,500	5,000
(f) Record of inspection:		
(1), (4) Failure to maintain record of inspection	2,000	4,000
(2) Record contains insufficient information	1,000	2,000
* * * * * * *		
238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles:		
* * * * * * *		
(c)(1) Seat or seat attachment broken or loose	2,500	5,000
(c)(2) Luggage rack broken or loose	2,500	5,000
(c)(3) Bed, bunks, or restraints broken or loose	2,500	5,000
(c)(4) Emergency window exit not properly operate	2,500	5,000
(c)(5) Emergency lighting not operational	2,500	5,000
(c)(6) Switches not in proper condition	2,500	5,000
(c)(7) Coupler not in proper condition	2,500	5,000
(c)(8) Truck not equipped with securing arrangement	2,500	5,000
(c)(9) Truck center casting cracked or broken	5,000	7,500
(c)(10) General conditions endangering crew, passengers	2,500	5,000
(d) Manual door release not operate as intended	2,500	5,000
(e)(1) Failure to maintain record of inspection	2,000	4,000
(i)–(iv) Record contains insufficient information	1,000	2,000
* * * * * * *		
238.313 Class I brake test:		
* * * * * * *		
(g) * * *		
(3) Failure to adjust piston travel (per car)	2,500	5,000
* * * * * * *		

* * * * *

Issued in Washington, D.C., on June 19, 2000.

Jolene M. Molitoris,

Federal Railroad Administrator.

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Part VII

The President

Proclamation 7325—To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

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Title 3—

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Federal Register
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Monday, July 3, 2000

Presidential Documents

Title 3—

The President

Proclamation 7325 of June 29, 2000

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501, 503(a)(1)(A), and 503(c)(1) of title V of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2461, 2463(a)(1)(A), and 2463(c)(1)), the President may designate or withdraw designation of specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D)), are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.

3. Pursuant to section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)), a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) (19 U.S.C. 2463(c)(2)(A)) during the preceding calendar year.

4. Pursuant to section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)), the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year does not exceed an amount set forth in section 503(c)(2)(F)(ii) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(ii)).

5. Pursuant to section 503(d) of the 1974 Act (19 U.S.C. 2463(d)), the President may waive the application of the competitive need limitations in section 503(c)(2)(A) with respect to any eligible article from any beneficiary developing country if certain conditions are met.

6. Pursuant to section 503(c)(2)(E) of the 1974 Act (19 U.S.C. 2463(c)(2)(E)), section 503(c)(2)(A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

7. Pursuant to sections 501 and 503(a)(1)(A) of the 1974 Act, and after receiving advice from the International Trade Commission in accordance with section 503(e), I have determined to designate certain articles, previously designated under section 503(a)(1)(B), as eligible articles when imported from any beneficiary developing country.

8. Pursuant to section 503(c)(1) of the 1974 Act, I have determined to limit the application of duty-free treatment accorded to certain articles from certain beneficiary developing countries.

9. Pursuant to section 503(c)(2)(A) of the 1974 Act, I have determined that certain beneficiary countries should no longer receive preferential tariff

treatment under the GSP with respect to certain eligible articles imported in quantities that exceed the applicable competitive need limitation.

10. Pursuant to section 503(c)(2)(C) of the 1974 Act, I have determined that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles that previously had been imported in quantities exceeding the competitive need limitations of section 503(c)(2)(A).

11. Pursuant to section 503(c)(2)(F) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) should be waived with respect to certain eligible articles from certain beneficiary developing countries.

12. Pursuant to section 503(d) of the 1974 Act, I have determined that the competitive need limitations of section 503(c)(2)(A) should be waived with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c), that such waivers are in the national economic interest of the United States.

13. Pursuant to section 503(c)(2)(E) of the 1974 Act (19 U.S.C. 2463(c)(2)(E)), I have determined that the limitation provided for in section 503(c)(2)(A)(i)(II) shall not apply with respect to HTS subheading 3817.10.50 because no like or directly competitive article was produced in the United States on January 1, 1995.

14. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide that one or more countries that have not been treated as beneficiary developing countries with respect to one or more eligible articles should be designated as beneficiary developing countries with respect to such article or articles for purposes of the GSP, and that one or more countries should no longer be treated as beneficiary developing countries with respect to one or more eligible articles for purposes of the GSP, general note 4(d) to the HTS is modified as provided in section A of Annex I to this proclamation.

(2)(a) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any beneficiary developing country, the Rates of Duty 1–Special subcolumn for certain HTS subheadings is modified as provided in section B(1) of Annex I to this proclamation.

(b) In order to provide preferential tariff treatment under the GSP to a beneficiary developing country that has been excluded from the benefits of the GSP for certain eligible articles, the Rates of Duty 1–Special subcolumn for each of the HTS subheadings enumerated in section B(2) of Annex I to this proclamation is modified as provided in such section.

(c) In order to provide that one or more countries should not be treated as a beneficiary developing country with respect to certain eligible articles for purposes of the GSP, the Rates of Duty 1–Special subcolumn for each of the HTS subheadings enumerated in section B(3) of Annex I to this proclamation is modified as provided in such section.

(3) A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to the beneficiary developing countries set forth in Annex II to this proclamation.

(4) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5)(a) The modifications made by Annex I to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2000.

(b) The action taken in Annex II to this proclamation shall be effective on the date of publication of this proclamation in the **Federal Register**.

(c) The action taken in paragraph 13 of this proclamation shall be effective on the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J Clinton

Billing code 3195–01–P

Annex I

Modifications to the Harmonized Tariff Schedule of the United States (HTS)
Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2000.
Section A. General note 4(d) to the Harmonized Tariff Schedule of the United States (HTS) is modified by:
(1). deleting the following subheadings and the country set out opposite such subheadings:

0811.20.40 Chile	7202.50.00 Russia
1701.91.10 Brazil	

(2). adding, in numerical sequence, the following provisions and countries set out opposite them:

0713.90.80 India	5007.90.30 India
0714.90.45 Costa Rica	5702.39.10 India
1102.90.30 El Salvador	6302.99.10 India
2001.90.45 India	7113.19.25 India
2008.19.25 Peru	7113.20.25 India
2008.99.45 Dominican Republic	7418.19.10 India
4010.19.50 Brazil	8211.95.50 Pakistan
4104.39.20 India	8450.90.20 Ecuador
4412.92.40 Ecuador	8708.99.67 Brazil

(3). adding, in alphabetical order, the country or countries set out opposite the following subheadings:

0714.20.10 Colombia	2008.50.20 Turkey
1602.50.20 Brazil	2905.42.00 Brazil
1702.30.22 Jamaica	3212.90.00 Colombia
2004.10.40 Peru	4106.20.30 Pakistan
2008.19.30 Turkey	7801.99.30 Colombia

Section B. Each enumerated article's preferential tariff treatment under the Generalized System of Preferences (GSP) in the HTS is modified as provided in this section.
(1). For subheadings 7202.99.10 and 8104.30.00, the Rates of Duty 1–Special subcolumn is modified by deleting the symbol "A+" and inserting an "A" in lieu thereof.
(2). For the following subheadings, the Rates of Duty 1–Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof.

0811.20.40
1701.91.10
7202.50.00

(3). For the following provisions, the Rates of Duty 1–Special subcolumn is modified by deleting the symbol "A" and inserting an "A*" in lieu thereof:

0713.90.80	2008.19.25	4412.92.40	7113.19.25	8450.90.20
0714.90.45	2008.99.45	5007.90.30	7113.20.25	8708.99.67
1102.90.30	4010.19.50	5702.39.10	7418.19.10	
2001.90.45	4104.39.20	6302.99.10	8211.95.50	

Annex II

Harmonized Tariff Schedule of the United States (HTS)
Subheadings and Countries Granted Waivers of the Application of Section 503(c)(2)(A) of the 1974 Act

HTS Subheading	Country
7202.50.00	Russia
7202.99.10	Brazil

[FR Doc. 00–17012
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CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Insured and guaranteed loans; general and pre-loan policies and procedures; published 5-17-00

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Oklahoma; published 5-2-00

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:
- New York; published 5-4-00

Radio stations; table of assignments:
- Mississippi et al.; published 6-1-00
- South Carolina; published 6-5-00

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:
- Membership and advance regulations; published 7-3-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare Program:
- State health insurance assistance program; terms and conditions; published 6-1-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Grants:
- Family planning services projects; abortion-related services; compliance standards; published 7-3-00

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
- EB-2 petitions; untimely motions to reconsider decisions of denial; filing opportunity; published 7-3-00

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
- Share insurance and appendix; published 6-1-00

PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:
- Defense Department demonstration project; published 6-2-00

Practice and procedures:
- Procedures for settling claims; published 7-3-00

SOCIAL SECURITY ADMINISTRATION

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- Federal old age, survivors, and disability insurance and supplemental security income—
  - Aged blind and disabled; medical and other evidence of impairment, etc.; published 6-1-00

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Coast Guard

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- Gastineau Channel, AK; safety zone; published 7-3-00
- Massachusetts Bay, Manchester, MA; safety zone; published 7-3-00

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Organization, functions, and authority delegations:
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- Fees and charges increase; comments due by 7-14-00; published 6-14-00

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  - Microprocessors controlled by ECCN 3A001 and Graphics accelerators controlled by ECCN 4A003; License Exception CIV eligibility expansion; comments due by 7-13-00; published 6-13-00

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  - Gulf of Alaska groundfish; comments due by 7-11-00; published 5-12-00
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  - Tennessee; comments due by 7-10-00; published 6-8-00

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S. 1967/P.L. 106–228

To make technical corrections to the status of certain land held in trust for the Mississippi Band of Choctaw Indians, to take certain land into trust for that Band, and for other purposes. (June 29, 2000; 114 Stat. 462)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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July 10	July 25	August 9	August 24	Sept 8	October 10
July 11	July 26	August 10	August 25	Sept 11	October 10
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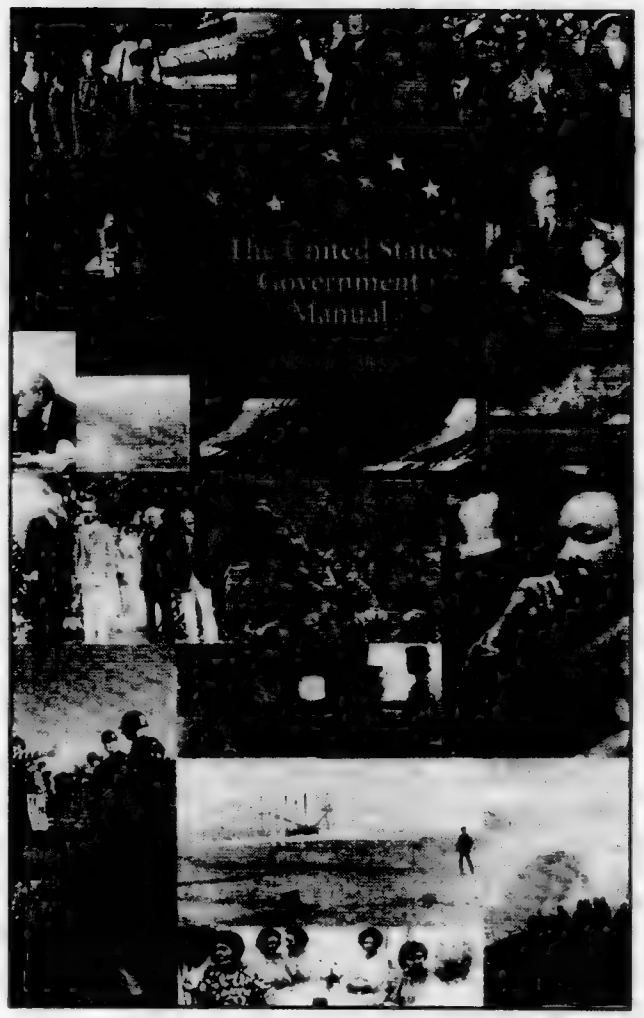

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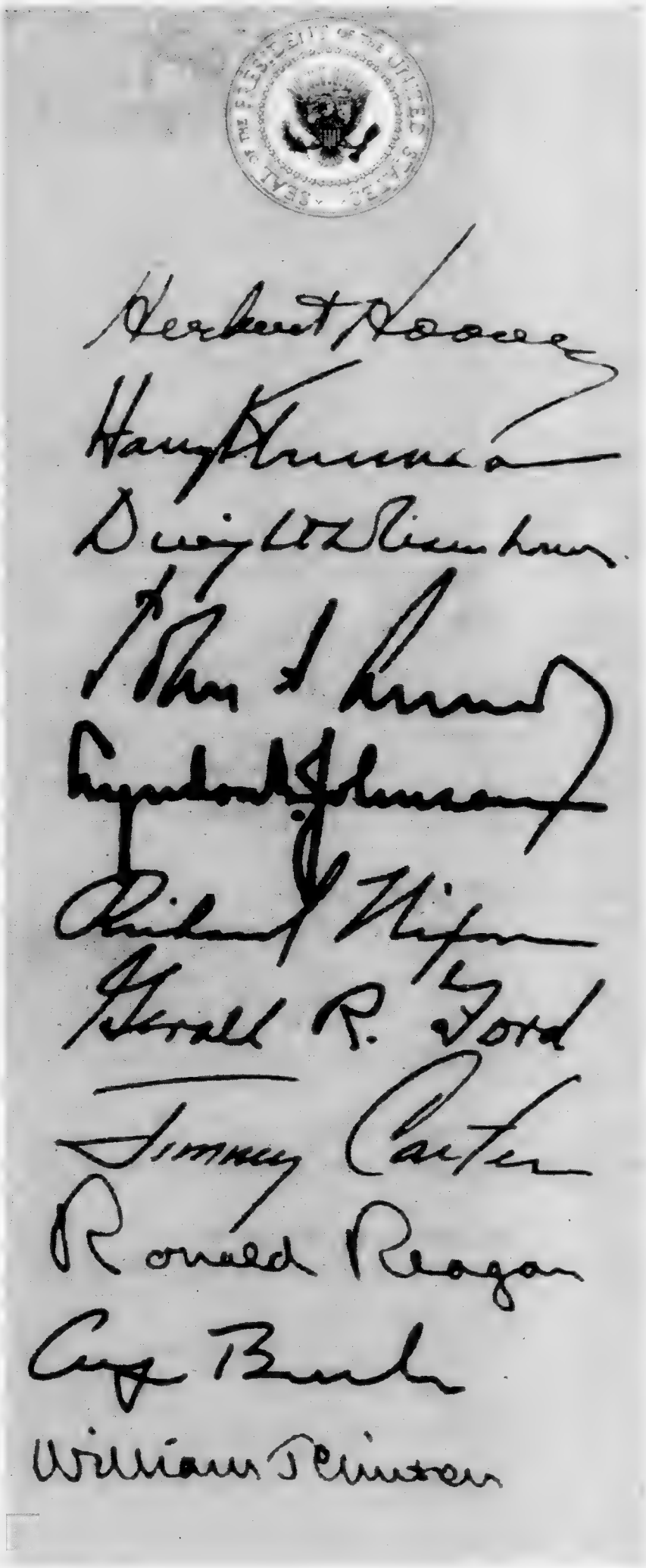

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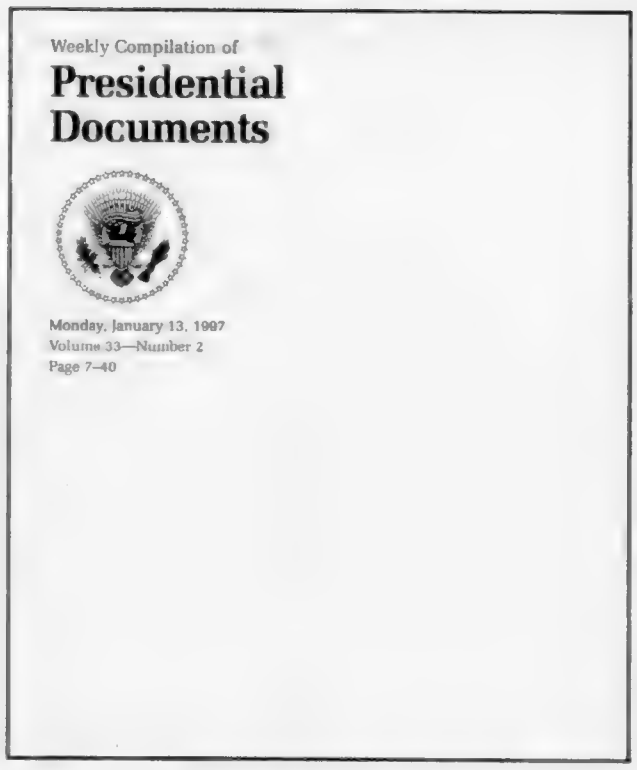

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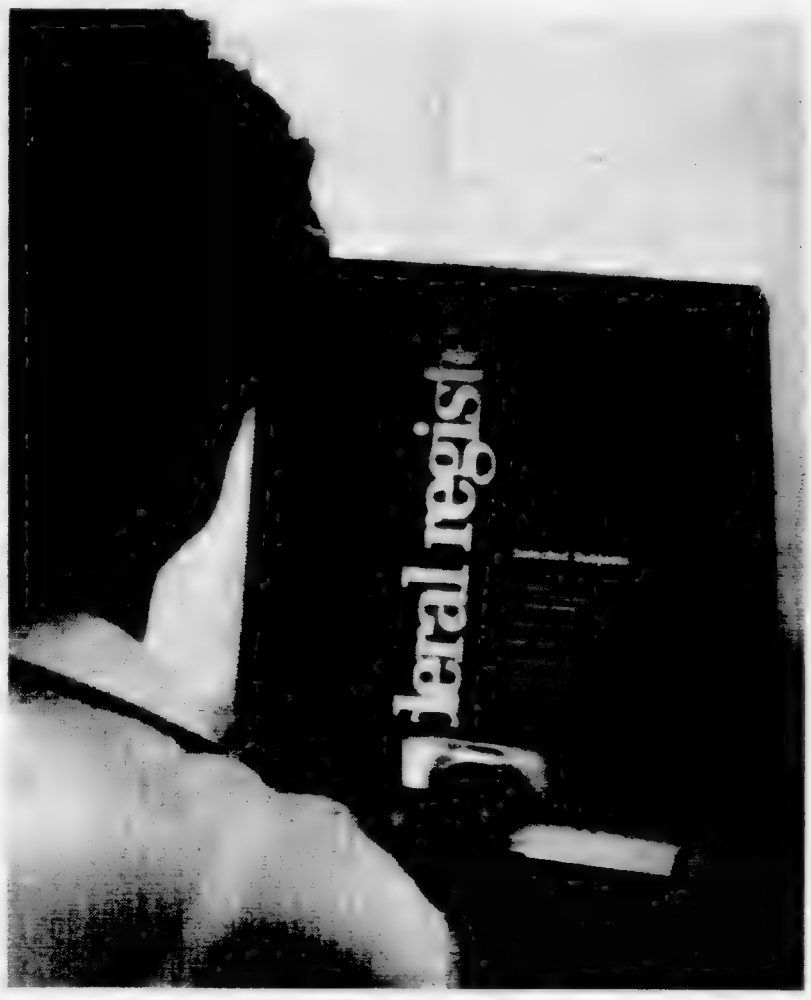

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Rules and Regulations

Federal Register
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Wednesday, July 5, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273 and 274

[Amdt. No. 378]

RIN 0584–AC61

Food Stamp Program; Electronic Benefit Transfer Benefit Adjustments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides final rulemaking for an interim rule published on September 9, 1999. The final rule revises Food Stamp Program regulations pertaining to a State agency's ability to make an adjustment to a household's account in an Electronic Benefit Transfer system. It enables State agencies to make adjustments to correct system errors without sending households *advance* notice of the action but does require that households be notified of any such actions. The rule also defines the timeframes and other requirements for the adjustments. The final rule incorporates several changes in response to a number of comments the Department received on the interim rule.

As a separate action, this regulation also adopts as final the requirements for re-presentation in the interim rule. State agencies may use re-presentation to recover funds when the host computer is inaccessible and there are insufficient funds to cover a manual transaction.

DATES: This final rule is effective August 4, 2000. State agencies may begin implementing the rule August 4, 2000 but no later than January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, room 718, 3101 Park Center Drive, Alexandria, Virginia 22302, or telephone (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be non-significant for purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator, Food and Nutrition Service, has certified that this final rule will not have a significant economic impact on a substantial number of small entities. Food stamp authorized retailers will be affected minimally. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Dates" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 for rules related to non-quality control (QC) liabilities or 7 CFR Part 283 for rules related to QC liabilities; and (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

In a State where food stamp benefits are issued using an Electronic Benefit Transfer System (EBT), Food Stamp Program (FSP) participants purchase food by swiping their EBT card through a point-of-sale (POS) machine at an authorized retailer. In the transaction, benefits move from the participants' accounts to the retailers' bank accounts. During normal EBT transaction processing, settlement of the transaction

is completed when the transaction acquirer, typically a retail food store, has been properly credited for an amount equal to the amount debited from the household's benefit allotment. System malfunctions can cause an interruption to this process, resulting in a settlement condition that does not reflect the original transaction. Proposed regulations were published in the **Federal Register** on May 19, 1998 at 63 FR 27511 to change the way in which certain EBT error conditions are handled. Because of the complex nature of this issue and the substantive comments received to the proposed rule, the Department published an interim rule rather than a final rule in order to obtain further comments. The interim rule, published in the **Federal Register** September 9, 1999 at 64 FR 48933, implemented the proposed rule with some substantive changes as a result of comments received on the proposed rule.

The interim rule requires State agencies to make adjustments to correct out-of-balance settlement conditions that do not reflect original EBT transactions as a result of system malfunctions. In cases where a store is not credited for the full transaction amount, the interim rule requires State agencies to make an adjustment by debiting the client household's account, provided a concurrent notice is sent to the household. The interim rule also requires State agencies to debit a household's future month's benefits to complete an adjustment.

Apart and separate from system error adjustments, changes were also implemented for handling re-presentations when the system host computer cannot be accessed and there are insufficient funds in the household's account to cover a manual transaction. Readers should refer to the proposed and interim regulations for a more complete understanding of this final action.

This final rule reflects further revisions to the regulations, taking into consideration all comments received on the interim rule. Comments on the interim rule were solicited through November 8, 1999. Seventeen comment letters were received in response. Individual comments were received from twelve State agencies. Of the remaining letters, 2 were from EBT processors, 1 was from a retailer association, 1 was from an alliance of States, networks, financial institutions and retailers, and 1 was from a credit card company.

In general, the commenters supported the Department's efforts to streamline the adjustment process for certain types of system errors. However, the commenters still believe that the Department did not go far enough in doing so and that the EBT adjustment policy should be further simplified to more closely mirror procedures used to correct system errors in the commercial environment. The major comments are discussed below.

General

There is a significant difference between adjustments in an EBT environment and adjustments in a commercial environment. Processors treat commercial adjustments as routine corrections which do not require special notification to customers. However, commercial debit card customers do have protections found in Regulation E at 12 CFR part 205 (hereinafter "Reg. E"), that food stamp clients do not have. One important protection is the requirement that commercial debit card users receive monthly statements summarizing their account activities. The monthly statement provides the account holder notification after the fact that an adjustment was processed to the account. However, food stamp EBT users were explicitly exempted from Reg. E with the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (PRWORA).

Requirements set forth in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2019(e)(10), (FSA), and in the FSP regulations, require client notifications and rights to appeal when negative actions are taken. Because debit adjustments against a food stamp client's EBT account can be viewed as a type of adverse action, the same notice and appeal rights must be applied in these circumstances. The State agencies and other stakeholders continue to raise this as a primary concern due to the potential costs associated with notification and the fair hearing process. However, because of the statutory and regulatory provisions set up to protect food stamp households in situations of adverse action, and the gap left without the customer protections from Reg. E, these requirements remain unchanged in the final regulation.

Several commenters expressed concern that there needs to be sufficient training for retailers and third party processors on how the adjustment rule will be implemented, especially those aspects of the rule dealing with liabilities and timeframes. Although not addressed in the regulation, the Department will work with State agencies to ensure that the appropriate level of information is made available to retailers and third party processors. We will also work with State agencies to determine how best to disseminate that information.

Definitions

The interim rule defined business days as Automated Clearing House (ACH) days. Two commenters requested that instead of ACH days, we define business days as calendar days other than Saturdays, Sundays or Federal holidays. We have made this change at 7 CFR 274.12 (f)(4)(ii)(A) to make the rule language more universal. Another commenter requested that we clarify all references to "days" as either "calendar" or "business" days. Where appropriate, we have done so throughout the final rule.

Future Month's Benefits

The interim rule requires a debit adjustment from a recipient's account to be made from a future month's benefit, *i.e.*, benefits that are not in the account at the time the initial adjustment is attempted, but are issued in subsequent months. This would apply in situations where either: (1) No benefits are available in the client account when the adjustment is attempted, or (2) only a portion of the benefits required for the full adjustment is available at the time the adjustment is attempted.

Two commenters provided general support of collection against future month's benefits. One commenter, however, asked for clarification on what was meant in the interim rule by requiring State agencies to collect from future months in which there has been a break in benefits. In the interim rule, State agencies are required to complete an outstanding adjustment that exists for a household that comes back on to the FSP after being off the Program for a period of time. This would require debiting the household's account in a month other than when the error occurred, *i.e.*, use their future month's benefits.

Two commenters suggested limiting the number of months processors must attempt adjustments against a client's account, *e.g.*, 1 future month, before the adjustment debt is canceled. Limiting the number of months an adjustment must be carried over until it is satisfied reduces the length of time State agencies and processors must track and account for an adjustment. Consequently, State agencies will also be relieved of tracking adjustments that cannot be collected from a household that leaves the FSP, regardless of whether that household returns to the FSP at a future date.

The Department is convinced that limiting the length of time the State agency may attempt an adjustment to

one future month greatly reduces costs and makes this operation much more manageable. The Department is further convinced that this change will not significantly impact the number of adjustments that can be completed for the full amount. This is consistent with data that shows the average EBT transaction amount is $20, and therefore, most adjustments will be fully satisfied after going against no more than one future month's issuance. The final rule reflects this change.

At 7 CFR 274.12(f)(4)(ii), the interim rule states that, by definition, the amount of an adjustment cannot differ from the value of the original transaction. In response to three commenters, we are removing this language from the rule because it does not account for the possibility of partial adjustments in the current month, and again in future months. This language becomes more problematic now that we are limiting the State agencies' access to one future month's benefits to make an adjustment. In some cases, it is possible that the State agency will not be able to collect anything from a household, or only a portion of a total adjustment because the household has left the FSP, or they have a minimal benefit issuance that will not cover the full adjustment in the next month.

However, the Department is clarifying that we are not requiring State agencies to settle partial adjustments to retailer accounts. We have been informed that many acquirers' systems cannot accept partial adjustment amounts that do not match the original error transaction and prefer receiving no credit rather than a partial credit. In cases where the State agency chooses not to settle a partial adjustment to the acquirer, the adjustment amount must be returned to the household account.

Another commenter raised the concern that making a partial adjustment in the current month, then another partial adjustment in the next month is problematic. This is another example where tracking and settling the adjustment becomes complicated by the likelihood of multiple transactions to complete a full adjustment. The suggested solution from the commenter was to place a hold on a partial adjustment available in the current month, then move the funds at one time, as a single adjustment, after the next month's benefits are issued. This reduces the number of transactions required to make an adjustment when going against a future month's benefits. We can see the merit in this approach and will allow State agencies to handle the process in this way, so long as the notification to households: (1) Is sent at the time the initial hold is placed on the current month's remaining available funds, if any; (2) clearly states the full adjustment amount; and (3) advises the household that any amount still owing is subject to collection from the household's next future month's benefits. To reduce the possibility of creating a hardship on the household, the processor must place a hold on whatever portion of the adjustment is available in the current month rather than wait to debit the entire adjustment amount from the household's next month's issuance.

Two commenters suggested dropping the language at 7 CFR 274.12(f)(4)(ii), which provides that "[a] State agency shall make adjustments to an account after the availability date * * *," because it implies that adjustments can never be made before the availability date. We have re-worded this paragraph to clarify that State agencies must make adjustments to correct system errors and that those adjustments may be made after the availability date. This distinguishes system error adjustments from other types of adjustments to client EBT accounts which may not be made after the benefit availability date.

The Department will require State agencies to amend training materials to disclose information to households about adjustments, including the possibility that an adjustment can be made against a future month's benefit. Training materials must also inform households of their right to a fair hearing if they do not feel that the adjustment is warranted and their right to receive a credit for the adjustment amount pending a fair hearing decision. Although one commenter questioned the sense of allowing State agencies a grace period to make changes to training materials, we have not changed the rule. State agencies may grandfather disclosure information on adjustments into their training materials if they have EBT systems that have been operational for one year from the date of this publication. However, as we discuss below, whenever a household's account is debited to make an adjustment, the State agency must provide the household concurrent notification of their rights to appeal and to provisional credits, including the possibility of adjustment from the next month's benefits.

Notice and Fair Hearing Requirement

When an adjustment will adversely affect the household, the interim rule requires State agencies to send a concurrent notice at the time the action is taken rather than an advance notice which must be sent 10 days before an action is taken. The concurrent notice gives households the right to a fair hearing and the right to be credited for the adjustment amount pending the outcome of the fair hearing. The majority of comments received on this subject continue to disagree with the notice requirement. However, as mentioned above, such notification is mandated by the FSA. Thus, the final rule remains unchanged in requiring concurrent notice to households. These notices must contain the level of detail described in current regulations at 7 CFR 273.13, *i.e.*, State agencies are required to include information about the circumstances which resulted in the adverse action. State agencies are encouraged to include as much detail about the transaction—date, time and location—as possible, since such information could reduce calls to the help desk as well as requests for fair hearings and provisional credits.

Several commenters relayed concern that only one notice be required, even when partial adjustments are necessary from future months to recoup the full adjustment amount. It is the intent of this rule that only one notice be sent to a household informing it of the error and disclosing the full adjustment amount. The State agency must send the notice concurrent to taking initial action on the adjustment. Subsequent transactions to move the funds or otherwise complete the adjustment do not require additional household notification. It should be noted that all actions taken to reduce the household's allotment are subject to notice, including the correction of an erroneous adjustment that first went in the household's favor. No notice is necessary if an adjustment is a credit to the household account.

The household has 90 days from the date of the notice to request a fair hearing. However, if the request is received within 10 days from the date of the notice, the household must be granted a provisional credit pending the fair hearing decision. Three commenters believe that merchants and/or processors need to have input into the fair hearing process. There is no prohibition against parties other than the State agency and the FSP households having input into the fair hearing process. We encourage State agencies to ensure that all parties involved in resolving an error have access to the fair hearing process.

Provisional Credits

Several comments were received relating to provisional credits pending fair hearing determination. There continues to be considerable confusion

about how to handle provisional credits, specifically how to handle claims of system errors and how provisional credits should be funded. Commenters also continue to have questions regarding liabilities for provisional credits in various circumstances.

First, the Department is clarifying that provisional credits are not required for denied system error claims initiated by client households. For example, a household claims that they are missing benefits from the EBT account as a result of a retailer's system problem, but the alleged system error cannot be substantiated with settlement data. In this case, the State agency may deny the adjustment. However, in so doing, they must also inform the household of their right to a fair hearing. In such a case, if the household does request a fair hearing, the State agency is not required to make a provisional credit to the household pending the fair hearing decision.

Several commenters were also concerned with the complexity of the provisional credit process when a retailer requests an adjustment. The interim rule states that, when a client responds to a retailer-initiated adjustment by requesting a fair hearing and provisional credit, the State agency must notify the processor to initiate another adjustment to credit the recipient's account—presumably coming out of the retailer's account. This scenario becomes even further complicated in cases where the client's fair hearing is not upheld. At such time, the amount of the provisional credit must be debited from the client account and credited back to the retailer.

Many commenters expressed concerns about the problems associated with State agencies and their processors having to track adjustments back and forth between the retailer and household accounts pending a fair hearing decision. There was also concern expressed about the likelihood that a household may spend the provisional credit and leave the FSP before it could be determined that the adjustment was in error. To simplify the process and reduce the risk involved in instances of retailer-initiated adjustments, the Department will require State agencies to have their processors place a hold on the adjustment amount in the client account pending a timely request for a provisional credit.

If the household does not request a provisional credit within the 10-day timeframe allotted for doing so, the hold on the funds in the client account is released and the adjustment is made into the retailer's account. As discussed above, if there are insufficient funds to cover the full adjustment amount, the State agency may choose to maintain the hold until the next month's benefits are issued and settle the full adjustment amount. If the household does request the provisional credit, the hold is released and the funds remain in the client's account. Should the fair hearing decision go against the client, the adjustment amount will then be credited to the retailer's account.

Four commenters felt that it was unfair to make retailers liable for provisional credits. Three commenters asked that we specify where provisional credits are to come from. Three other commenters suggested that government sources rather than private sources fund provisional credits. We are not changing the source of provisional credits in the final rule. However, we believe that, by not requiring provisional credits in instances of denied client-initiated adjustments, and by requiring State agencies to put a hold on an adjustment until after the time when a household can request a provisional credit, we have simplified the adjustment process and reduced the retailers' liability for unwarranted provisional credits.

Four commenters supported the Department taking on the liability of funding credit adjustments to clients when the responsible retailers have left the FSP or otherwise refuse to fund a legitimate adjustment. The Department has determined that because these adjustments result from the State agency's system errors, the State is ultimately responsible for making the client whole in these instances. The number of these situations that are likely to occur are quite small given that adjustments occur infrequently and the majority of food stamp transactions take place in stores with historically low turnover in the FSP. Moreover, adjustment amounts as reported by retailers and processors are small. If a client household leaves the FSP before a credit adjustment has been completed for a retailer, the adjustment is discontinued. As was stated in the interim rule, collections made from clients that are not credited to retailers because they have left the FSP must be returned to the Department.

Timeframes

The interim rule distinguishes between adjustments generated by retailers and recipients. It allows the State agency 10 days from the date of the error transaction to complete an adjustment requested by a retailer and 5 days from the date a client household notifies the State agency or help desk to complete a client-initiated adjustment. Three commenters felt the timeframes to complete adjustments were too short; three others specified that the 5-day timeframe to complete a client-initiated adjustment was too short, given the actions that must take place and the number of participants inherent in the adjustment process. The processes described by the commenters include compilation of documentation, research, exchange of information, and making the adjustment. The suggestion was to extend the timeframe for client initiated adjustments from 5 days to 10 or 15 days.

We believe that most client-initiated adjustments will result in funds owed to the household. In these scenarios, recipients have suffered a loss through no fault of their own, ostensibly through a verifiable system error. However, we have been convinced that 5 days is not enough time to complete an investigation of a client-initiated adjustment request. Therefore, the Department is extending the timeframe for client-initiated adjustments from 5 days to 10 days, in order to provide sufficient time for the State agencies and the processors to complete error verification research and handle the adjustment properly. This timeframe also applies to circumstances where the State agency or other entity besides the household discovers an error which must be corrected by crediting the household's account. Such a correction must occur within 10 days from the time the error is discovered.

The Department does not believe that a case has been made to justify allowing additional time after the 10-day deadline to complete retailer-initiated adjustments. In response to three comments, we are clarifying the use of the word "completed" in the context of retailer-initiated adjustments to mean that the initial adjustment transaction, which will be a hold placed on the funds available in the client account, must be attempted as soon as possible within 10 days of the error transaction, and a concurrent notification must be sent to the household. The funds will not move until after the time has passed for a household to request a provisional credit. We understand that, in some cases, all or some portion of the full adjustment will have to be made from the next month's allotment. However, the household must be notified concurrent with the initial adjustment action. The State agency may not take action on any adjustment to debit a household's account if more than 10 days have passed since the error transaction occurred, except in cases when the action is initiated within the 10-day timeframe but the funds are not

available in the current month and must be taken from the next month's benefit issuance.

Another comment was raised regarding the 180 days a client household has to notify the State agency of a system error and request an adjustment. Indications are that client households do not request adjustments this far from the date an alleged error occurred, primarily because EBT households do not receive account statements, and therefore, keep track of their account balances with their POS receipts. As such, it is more likely that they will discover the error soon after the transaction takes place.

Furthermore, many State agencies only keep transaction data on-line at the host computer for 90 days. To research an alleged error once the data has been moved off-line greatly increases the potential cost and administrative burden of the adjustment process. The Department is convinced that the 180-day timeframe is longer than necessary for households to request an adjustment and has reduced the timeframe to 90 days.

One commenter requested that the Department put specific deadlines on each participant in the adjustment, e.g., the retailer has a certain number of days to request the adjustment, then the processors have another specified timeframe to complete the process, and so on. The Department believes that such an approach would be difficult to track and administratively burdensome. We realize, however, that each of these participants has a responsibility to the others to handle their portion expeditiously if timeframes are to be met. We would recommend and expect that this level of detail be addressed in retailer and third party agreements.

One commenter wanted clarification on the ramifications of not meeting timeframes or otherwise complying with this rule. This rule will not impose specific penalties for non-compliance. As with other regulatory requirements, however, State agencies are required to ensure the processor's compliance and failure to do so may result in administrative sanctions by the Department against the State agency.

Re-presentations

The Department received three comments relaying confusion about how re-presentation fits into the adjustment process. In fact, re-presentation regulations are separate and apart from adjustment rules, because State agencies now have access to a household's future month's benefit issuance to make an adjustment. The only time a State agency would need to consider re-presentation is in the event of insufficient funds to cover a manual transaction when the system host computer is down. Any references to re-presentation are used in the context of 7 CFR 274.12(e). There are no changes regarding re-presentations in the final rule from what was published in the interim rule.

Implementation

This final rule is effective August 4, 2000. State agencies may begin implementing the rule August 4, 2000 but no later than January 2, 2001. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training materials according to 7 CFR 274.12(f)(10)(viii).

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant Programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative procedures and practices, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 7 CFR Parts 272, 273 and 274, which was published at 64 FR 48933 on September 9, 1999, is adopted as a final rule with the following changes:

1. The authority citation for 7 CFR Parts 272, 273 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011–3036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(154) is revised to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(154) *Amendment No. 386.* The provisions of Amendment No.386 are effective August 4, 2000. State agencies may begin implementing the rule August 4, 2000 but not later than January 2, 2001. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training materials according to 7 CFR 274.12(f)(10)(viii).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.13, paragraph (a)(3)(vii) is redesignated as (a)(4) and is revised to read as follows:

§ 273.13 Notice of adverse action.

(a) * * * (4) The State agency shall notify a household that its benefits will be reduced if an EBT system-error has occurred during the redemption process resulting in an out-of-balance settlement condition. This notification shall be made no later than the date the action is initiated against the household account. The State agency shall adjust the benefit in accordance with § 274.12 of this chapter.

* * * * *

4. In § 273.15, the fifth and sixth sentences of paragraph (k)(1) are revised to read as follows:

§ 273.15 Fair hearings.

* * * * *

(k) *Continuation of benefits.*

(1) * * * In the case of an EBT adjustment, as defined in § 274.12(f)(4)(ii) of this chapter, once an adverse action is upheld, the State agency shall immediately debit the household's account for the total amount stated in its original notice. If there are no benefits or insufficient benefits remaining in the household's account at the time the State agency action is upheld, the State agency may only make the adjustment from the next month's benefits, regardless of whether this satisfies the full adjustment amount. * * *

* * * * *

PART 274—ISSUANCE AND USE OF COUPONS

5. In § 274.12, paragraphs (f)(4) and (f)(10)(viii) are revised to read as follows:

§ 274.12 Electronic Benefit Transfer issuance system approval standards.

* * * * *

(f) *Household Participation* * * *

(4) *Issuance of Benefits.* State agencies shall establish an availability date for household access to their benefits and inform households of this date.

(i) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) A State agency shall make adjustments to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error. A system error is defined as an error resulting from a malfunction at any point in the redemption process: from the system host computer, to the switch, to the third party processors, to a store's host computer or point of sale (POS) device. These adjustments may occur after the availability date and may result in either a debit or credit to the household.

(A) *Client-initiated adjustments.* The State agency must act on all requests for adjustments made by client households within 90 calendar days of the error transaction. The State agency has 10 business days from the date the household notifies it of the error to investigate and reach a decision on an adjustment and move funds into the client account. This timeframe also applies if the State agency or entity other than the household discovers a system error that requires a credit adjustment to the household. Business days are defined as calendar days other than Saturdays, Sundays, and Federal holidays.

(B) *Retailer-initiated adjustments.* The State agency must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjustment balance in the household's account. If there are insufficient benefits to cover the entire adjustment, a hold shall be placed on any remaining balance that exists, with the difference being subject to availability only in the next future month. The household shall be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter. The notice must be sent at the time the initial hold is attempted on the household's current month's remaining balance, clearly state the full adjustment amount, and advise the household that any amount still owing is subject to collection from the household's next future month's benefits.

(*1*) The household shall have 90 days from the date of the notice to request a fair hearing.

(*2*) Should the household dispute the adjustment and request a hearing within 10 days of the notice, a provisional credit must be made to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If no request for a hearing is made within 10 days of the notice, the hold is released on the adjustment balance, and this amount is credited to the retailer's account. If there are insufficient funds available in the current month to cover the full adjustment amount, the hold may be maintained and settled at one time after the next month's benefits become available.

(iii) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (f)(7)(iii) of this section.

* * * * *

(10) * * *

(viii) Disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where to call to dispute an adjustment and request a fair hearing. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training materials.

* * * * *

Dated: June 28, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–16944 Filed 7–3–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–74–AD; Amendment 39–11807; AD 2000–13–08]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC 135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that applies to Eurocopter Deutschland GmbH (ECD) Model EC 135 helicopters. That AD requires conducting a tail rotor drive shaft vibration survey (survey), installing a Fenestron Shaft Retrofit Kit, inspecting each tail rotor drive shaft bearing (bearing) attaching lock plate for bent-open tabs and broken or missing slippage marks, and visually inspecting each bearing support for cracks. This AD requires conducting the survey and installing the Fenestron Shaft Retrofit Kit. This AD also requires installing double bearing supports and struts, revising the required compliance time for the repetitive inspections of the bearing attach hardware and supports, and removing the requirement to contact the FAA if a lock plate tab is bent open or if slippage marks are broken or missing. This amendment is prompted by continued reports of misaligned or cracked bearing supports and loose bearing attachment bolts. The actions specified by this AD are intended to prevent loss of drive to the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective August 9, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–15–25, Amendment 39–10866 (63 FR 59206, November 3, 1998), that applies to ECD Model EC 135 helicopters, was published in the **Federal Register** on April 6, 2000 (65 FR 18010). That action proposed to require the following:

- Conducting a vibration survey and installing the Fenestron Shaft Retrofit Kit L535M3002 882;
- Installing double bearing supports and struts;
- Inspecting and, if necessary, replacing bearing attach hardware; and
- Increasing the repetitive inspection interval for the bearing supports and attach hardware to 50 hours time-in-service (TIS).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the

public interest require the adoption of the rule as proposed.

The FAA estimates that 16 helicopters of U.S. registry will be affected by this AD. The 50-hour inspection will take approximately 2 work hours to complete. The average labor rate is $60 per work hour. ECD has stated in its ASB's that the baseline vibration measurements and initial installation of all new parts will be provided at no charge to the owner/operator. Assuming the helicopters are operated 900 hours TIS per year, the total cost impact of this AD on U.S. operators is estimated to be $34,560.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10866, and by adding a new airworthiness directive (AD), Amendment 39–11807, to read as follows:

2000–13–08 Eurocopter Deutschland GmbH: Amendment 39–11807. Docket No. 98–SW–74–AD. Supersedes AD 98–15–25, Amendment 39–10866, Docket No. 98–SW–35–AD.

Applicability: Model EC 135 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered. or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of drive to the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, conduct a tail rotor drive shaft vibration survey and install a Fenestron Shaft Retrofit Kit L535M3002 882 in accordance with Eurocopter Deutschland GmbH Alert Service Bulletin (ASB) EC 135–53A–005, Revision 3, dated September 2, 1998.

(b) Before further flight, install double bearing supports for the tail rotor driveshaft and tail boom struts in accordance with ASB EC 135–53A–004, dated August 14, 1998.

Note 2: ASB EC 135–53A–002, Revision 2, dated September 2, 1998, pertains to the subject of this AD.

(c) Before further flight and thereafter at intervals not to exceed 50 hours time-in-service, perform the following:

(1) Clean each tail rotor drive shaft bearing support. Using a 6-power or higher magnifying glass and a bright light, visually inspect the attach lugs of the bearing supports B and C (shown in Figure 1) for cracks, particularly in the area extending from the bend radius to the attaching screws and rivets connecting the bearing supports to the tail boom. Before further flight, replace each cracked bearing support with an airworthy bearing support.

BILLING CODE 4910–13–P

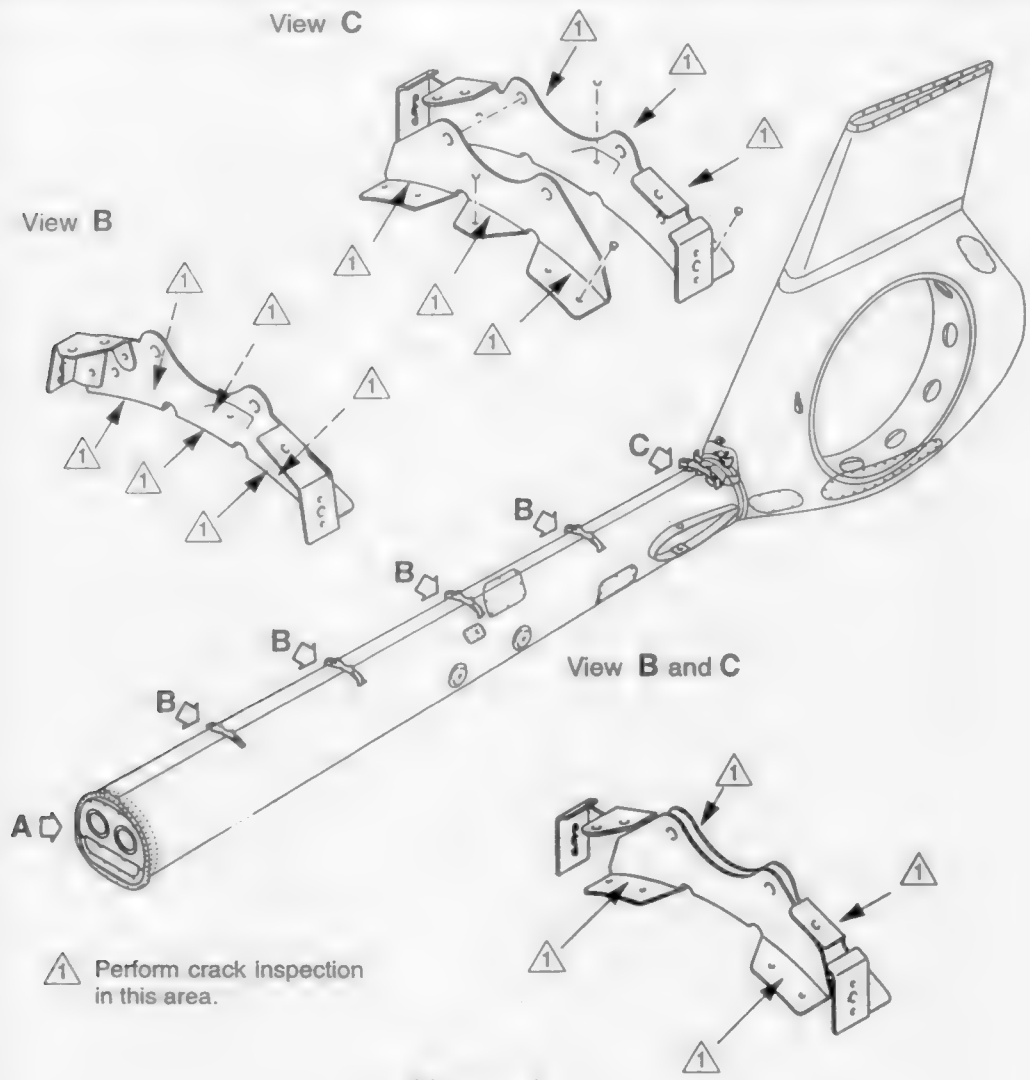

Figure 1

BILLING CODE 4910–13–C

(2) Inspect each bearing attach hardware lock plate for bent-open tabs and slippage marks for attach hardware looseness or rotation. Before further flight, replace any loose bearing attach hardware (including lock plates found bent or open due to bolt rotation) with airworthy hardware.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The modifications shall be done in accordance with Eurocopter Deutschland GmbH Alert Service Bulletin EC 135–53A–005, Revision 3, dated September 2, 1998, and Eurocopter Deutschland GmbH Alert Service Bulletin EC 135–53A–004, dated August 14, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 9, 2000.

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD's 1998–033/7 and 1998–389, both dated September 14, 1998.

Issued in Fort Worth, Texas, on June 26, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–16781 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–1]

Revision of Class E Airspace; Barrow, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Barrow, AK. The revision of instrument approach procedures to runway (RWY) 6 and RWY 24 at Wiley Post—Will Rogers Memorial Airport, Barrow, AK, made this action necessary. This rule provides adequate controlled airspace for aircraft flying IFR procedures at Barrow, AK.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–

7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On April 24, 2000, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Barrow, AK, was published in the **Federal Register** (65 FR 21681). The proposal was necessary due to revisions to the instrument approaches to runway (RWY) 06 and RWY 24 at Wiley Post—Will Rogers Memorial Airport, Barrow, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Barrow, AK, through the revisions of instrument approaches to the Wiley Post—Will Rogers Memorial Airport, Barrow, AK. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Wiley Post—Will Rogers Memorial Airport, Barrow, AK.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Barrow, AK [Revised]

Barrow/Wiley Post—Will Rogers Memorial Airport, AK
(Lat. 71°17′08″ N, long. 156°45′58″ W)
Barrow VORTAC
(Lat. 71°16′24″ N, long. 156°47′18″ W)
Barrow Localizer
(Lat. 71°17′08″ N, long. 156°44′07″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Barrow/Wiley Post—Will Rogers Memorial Airport and within 4 miles north and 6 miles south of the Barrow Localizer back course extending from the 6.6-mile radius to 14.6 miles east of the airport; and that airspace extending upward from 1,200 feet above the surface within a 77-mile radius of the airport extending clockwise from the Barrow VORTAC 101° radial to the 240° radial and within the area bounded by a line beginning at the Barrow VORTAC 240° radial 20 miles west to lat. 71°13′ N long. 158° W, to lat. 71°23′ N long. 157°48′ W to lat. 71°25′ N long. 156°55′ W to lat. 71°20′ N long. 155°40′ W to lat. 71°14′ N 155°40′ W.

* * * * *

Issued in Anchorage, AK, on June 27, 2000.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 00–16918 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–33]

RIN 2120–AA66

Realignment of Jet Route; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on June 14, 2000 (Airspace Docket No. 99–ASW–33). The legal description of Jet Route 25 (J–25) contained an inadvertent error between the Corpus Christi, TX, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the San Antonio, TX, VORTAC. This action corrects that error.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On June 14, 2000, Airspace Docket No. 99–ASW–33, FR Doc. 00–14909, was published amending the legal description of J–25 between the Corpus Christi, TX, VORTAC and the San Antonio, TX, VORTAC (65 FR 37277). This rule inadvertently listed the true bearing between Corpus Christi, TX, and San Antonio, TX, as "166°." The correct true bearing is "174°." The correct true bearing was listed in the Notice of Proposed Rulemaking for this matter.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for J–25 as published in the **Federal Register** on June 24, 2000 (65 FR 37277), FR Doc. 00–14909, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

Paragraph 2004 Jet Routes

* * * * *

J–25 [Revised]

From the INT of the United States/Mexican Border and the Brownsville, TX, INT 221° radial via Brownsville; INT of the Brownsville 358° and the Corpus Christi, TX, 178° radials; Corpus Christi; INT of the Corpus Christi 311° and the San Antonio, TX, 174° radials; San Antonio; Centex, TX; Waco, TX; Ranger, TX; Tulsa, OK; Kansas City, MO; Des Moines, IA; Mason City, IA; Gopher, MN; Brainerd, MN; to Winnipeg, MB, Canada. The airspace within Canada is excluded. The airspace within Mexico is excluded.

* * * * *

Issued in Washington, DC, on June 27, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division

[FR Doc. 00–16915 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–18]

RIN 2120–AA66

Realignment and Establishment of VOR Federal Airways; KY and TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on June 2, 2000. The legal description of Federal Airway V–384 inadvertently listed incorrect radials. This action corrects that error.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On June 2, 2000, Airspace Docket No. 97–ASO–18, FR Doc. 00–13750, was published establishing V–384 between Livingston, TN, and Volunteer, TN. This rule included a legal description for V–384, which inadvertently listed incorrect radials. This action corrects this situation by omitting the radials in the legal description for V–384, thereby eliminating the error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for V–384 as published in the **Federal Register** on June 2, 2000 (65 FR 35272); FR Doc. 00–13750, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 35273, the legal description for V–384 is corrected as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–384—[Revised]

From Livingston, TN; to Volunteer, TN.

* * * * *

Issued in Washington, DC, on June 27, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–16914 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 95N–0084]

Medical Devices; Effective Date of Requirement for Premarket Approval for a Class III Preamendments Obstetrical and Gynecological Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for a Group 1 preamendments class III device, the obstetric data analyzer intended to analyze data from fetal and maternal monitors during labor and to warn of possible fetal distress. The agency has summarized its findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements and the benefits to the public from the use of the devices.

DATES: This rule is effective July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy document set forth FDA's plans for implementing the provisions of section 515(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(i)) for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into three groups as referenced in the May 6, 1994, notice.

In the **Federal Register** of September 7, 1995 (60 FR 46718), FDA published a proposed rule to require the filing under section 515(b) of the act of a PMA or a notice of completion of a PDP for 43 preamendment class III devices, including the obstetric data analyzer. In accordance with section 515(b)(A)(2) of the act, FDA included in the preamble to the proposal the agency's tentative findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and the benefits to the public from use of the device. The September 7, 1995, proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings. Under section 515(b)(2)(B) of the act, FDA provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the devices was required to be submitted by September 22, 1995. The comment period closed January 5, 1996.

FDA received one citizen petition requesting a change in the classification of the obstetrical data analyzer. FDA reviewed the petition, identified a deficiency in the petition, and issued a deficiency letter on March 7, 1996, to the petitioner. From the petitioner's response to the deficiency letter, it was apparent that the petitioner had misinterpreted the September 7, 1995, proposed rule because he believed that it was about another device and not the obstetrical data analyzer. In light of this petition, FDA has amended the identification of the device in § 884.2050(a) by changing the first two sentences to read as follows: "An obstetric data analyzer (fetal status data analyzer) is a device used during labor to analyze electronic signal data obtained from fetal and maternal monitors. The obstetric data analyzer provides clinical diagnosis of fetal

status and recommendations for labor management and clinical interventions." With this clarifying change, FDA is proceeding to issue a final rule to require the filing of a PMA or a PDP for the obstetric data analyzer.

II. Findings With Respect to Risks and Benefits

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the proposed rule of September 7, 1995. As required by section by section 515(b) of the act, FDA published its findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the Obstetrical and Gynecological Devices Panel, an FDA advisory committee for the classification of the devices, along with any additional information FDA discovered. Additional information can be found in the proposed and final rules classifying the devices in the **Federal Register** of April 3, 1979 (44 FR 19894) and February 26, 1980 (45 FR 12682), respectively.

III. The Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and issuing this final rule to require premarket approval of the generic type of device, the obstetric data analyzer, by revising 21 CFR part 884.

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before October 3, 2000, for any obstetric data analyzer that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before October 3, 2000. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other obstetric data analyzer that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for an obstetric data analyzer is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of the obstetric data analyzer. Further, FDA concludes that investigational obstetric data analyzers are significant risk devices as defined in § 812.3(m) and advises that, as of the effective date of § 878.3530(c), the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of an obstetric data analyzer. For any obstetric data analyzer that is not subject to a timely filed PMA or PDP, an IDE must be in effect under § 812.20 on or before 90 days after the effective date of this regulation or distribution of the device must cease. FDA advises all persons presently sponsoring a clinical investigation involving the obstetric data analyzer to submit an IDE application to FDA no later than 60 days after the effective date of this final rule to avoid the interruption of ongoing investigations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121) and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the agency certifies that the final rule, if issued, will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no new collections of information. The premarket approval program information collection is approved by the Office of Management and Budget (OMB) under OMB Control No. 0910–0231. Therefore, clearance by under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.2050 is revised to read as follows:

§ 884.2050 Obstetric data analyzer.

(a) *Identification.* An obstetric data analyzer (fetal status data analyzer) is a device used during labor to analyze electronic signal data obtained from fetal and maternal monitors. The obstetric data analyzer provides clinical diagnosis of fetal status and recommendations for labor management and clinical interventions. This generic type of device may include signal analysis and display equipment, electronic interfaces for other equipment, and power supplies and component parts.

(b) *Classification:* Class III (premarket approval).

(c) *Date PMA or notice of completion of PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before October 3, 2000, for any obstetric data analyzer described in paragraph (a) of this section that was in commercial distribution before May 28, 1976, or that has been found, on or before October 3, 2000, to be substantially equivalent to an obstetric data analyzer described in paragraph (a) of this section that was in commercial distribution before May 28, 1976. Any other obstetric data analyzer described in paragraph (a) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: June 22, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–16808 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8890]

RIN 1545–AX25

Definition of Grantor

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations defining the term *grantor* for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code. These regulations provide necessary guidance in determining who is the grantor of a trust in applying those Code sections. These regulations affect trusts and any person creating or funding a trust.

DATES: *Effective Date:* These regulations are effective July 5, 2000.

Applicability Dates: For dates of applicability of § 1.671–2(e), see § 1.671–2(e)(7).

FOR FURTHER INFORMATION CONTACT: James A. Quinn at (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background

On June 5, 1997, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–252487–96) under section 671 of the Internal Revenue Code (Code) in the **Federal Register** (62 FR 30785). Comments responding to the notice were received and a public hearing was held on August 27, 1997. After consideration of the comments, the proposed regulations under section 671 were re-issued as proposed (64 FR 43323) and temporary regulations (64 FR 43267) on August 10, 1999.

The proposed and temporary regulations provide a definition of grantor for purposes of part I of subchapter J, chapter 1 of the Code. No comments were received in response to the Notice of Proposed Rulemaking published on August 10, 1999, in the **Federal Register**, and no one requested to speak at the public hearing scheduled for November 2, 1999. Accordingly, the public hearing was canceled on October 28, 1999 (64 FR 58006). This document finalizes the proposed regulations and removes the temporary regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on the regulations' impact on small business.

Drafting Information

The principal author of these regulations is James A. Quinn of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for section 1.671–2T and adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.671–2 also issued under 26 U.S.C. 643(a)(7) and 672(f)(6). * * *

§ 1.643(h)–1 [Amended]

Par. 2. Section 1.643(h)–1 is amended as follows:

1. In paragraph (a)(2)(i) the language "§ 1.671–2T(e)(2)" is removed, and "§ 1.671–2(e)(2)" is added in its place.

2. In paragraph (b)(1) the language "§ 1.671–2T(e)(2)" is removed, and "§ 1.671–2(e)(2)" is added in its place.

3. In paragraph (b)(2) the language "§ 1.671–2T(e)" is removed, and "§ 1.671–2(e)" is added in its place.

4. In paragraph (g) *Example 1* the language "§ 1.671–2T(e)(2)" is removed, and "§ 1.671–2(e)(2)" is added in its place.

Par. 3. Section 1.671–2(e) is revised to read as follows:

§ 1.671–2 Applicable principles.

* * * * *

(e)(1) For purposes of part I of subchapter J, chapter 1 of the Internal

Revenue Code, a grantor includes any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer (within the meaning of paragraph (e)(2) of this section) of property to a trust. For purposes of this section, the term *property* includes cash. If a person creates or funds a trust on behalf of another person, both persons are treated as grantors of the trust. (See section 6048 for reporting requirements that apply to grantors of foreign trusts.) However, a person who creates a trust but makes no gratuitous transfers to the trust is not treated as an owner of any portion of the trust under sections 671 through 677 or 679. Also, a person who funds a trust with an amount that is directly reimbursed to such person within a reasonable period of time and who makes no other transfers to the trust that constitute gratuitous transfers is not treated as an owner of any portion of the trust under sections 671 through 677 or 679. See also § 1.672(f)–5(a).

(2)(i) A gratuitous transfer is any transfer other than a transfer for fair market value. A transfer of property to a trust may be considered a gratuitous transfer without regard to whether the transfer is treated as a gift for gift tax purposes.

(ii) For purposes of this paragraph (e), a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust. For example, rents, royalties, interest, and compensation paid to a trust are transfers for fair market value only to the extent that the payments reflect an arm's length price for the use of the property of, or for the services rendered by, the trust. For purposes of this determination, an interest in the trust is not property received from the trust. In addition, a person will not be treated as making a transfer for fair market value merely because the transferor recognizes gain on the transaction. See, for example, section 684 regarding the recognition of gain on certain transfers to foreign trusts.

(iii) For purposes of this paragraph (e), a gratuitous transfer does not include a distribution to a trust with respect to an interest held by such trust in either a trust described in paragraph (e)(3) of this section or an entity other than a trust.

For example, a distribution to a trust by a corporation with respect to its stock described in section 301 is not a gratuitous transfer.

(3) A grantor includes any person who acquires an interest in a trust from a grantor of the trust if the interest acquired is an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter.

(4) If a gratuitous transfer is made by a partnership or corporation to a trust and is for a business purpose of the partnership or corporation, the partnership or corporation will generally be treated as the grantor of the trust. For example, if a partnership makes a gratuitous transfer to a trust in order to secure a legal obligation of the partnership to a third party unrelated to the partnership, the partnership will be treated as the grantor of the trust. However, if a partnership or ■ corporation makes a gratuitous transfer to a trust that is not for a business purpose of the partnership or corporation but is for the personal purposes of one or more of the partners or shareholders, the gratuitous transfer will be treated as a constructive distribution to such partners or shareholders under federal tax principles and the partners or the shareholders will be treated as the grantors of the trust. For example, if a partnership makes a gratuitous transfer to a trust that is for the benefit of a child of a partner, the gratuitous transfer will be treated as a distribution to the partner under section 731 and a subsequent gratuitous transfer by the partner to the trust.

(5) If a trust makes a gratuitous transfer of property to another trust, the grantor of the transferor trust generally will be treated as the grantor of the transferee trust. However, if a person with a general power of appointment over the transferor trust exercises that power in favor of another trust, then such person will be treated as the grantor of the transferee trust, even if the grantor of the transferor trust is treated as the owner of the transferor trust under subpart E of part I, subchapter J, chapter 1 of the Internal Revenue Code.

(6) The following examples illustrate the rules of this paragraph (e). Unless otherwise indicated, all trusts are domestic trusts, and all other persons are United States persons. The examples are as follows:

Example 1. A creates and funds a trust, T, for the benefit of her children. B subsequently makes a gratuitous transfer to T. Under paragraph (e)(1) of this section, both A and B are grantors of T.

Example 2. A makes an investment in a fixed investment trust, T, that is classified as a trust under § 301.7701–4(c)(1) of this chapter. A is a grantor of T. B subsequently acquires A's entire interest in T. Under paragraph (e)(3) of this section, B is a grantor of T with respect to such interest.

Example 3. A, an attorney, creates a foreign trust, FT, on behalf of A's client, B, and transfers $100 to FT out of A's funds. A is reimbursed by B for the $100 transferred to FT. The trust instrument states that the trustee has discretion to distribute the income or corpus of FT to B and B's children. Both A and B are treated as grantors of FT under paragraph (e)(1) of this section. In addition, B is treated as the owner of the entire trust under section 677. Because A is reimbursed for the $100 transferred to FT on behalf of B, A is not treated as transferring any property to FT. Therefore, A is not an owner of any portion of FT under sections 671 through 677 regardless of whether A retained any power over or interest in FT described in sections 673 through 677. Furthermore, A is not treated as an owner of any portion of FT under section 679. Both A and B are responsible parties for purposes of the requirements in section 6048.

Example 4. A creates and funds a trust, T. A does not retain any power or interest in T that would cause A to be treated as an owner of any portion of the trust under sections 671 through 677. B holds an unrestricted power, exercisable solely by B, to withdraw certain amounts contributed to the trust before the end of the calendar year and to vest those amounts in B. B is treated as an owner of the portion of T that is subject to the withdrawal power under section 678(a)(1). However, B is not a grantor of T under paragraph (e)(1) of this section because B neither created T nor made a gratuitous transfer to T.

Example 5. A transfers cash to a trust, T, through a broker, in exchange for units in T. The units in T are not property for purposes of determining whether A has received fair market value under paragraph (e)(2)(ii) of this section. Therefore, A has made a gratuitous transfer to T, and, under paragraph (e)(1) of this section, A is a grantor of T.

Example 6. A borrows cash from T, a trust. A has not made any gratuitous transfers to T. Arm's length interest payments by A to T will not be treated as gratuitous transfers under paragraph (e)(2)(ii) of this section. Therefore, under paragraph (e)(1) of this section, A is not a grantor of T with respect to the interest payments.

Example 7. A, B's brother, creates a trust, T, for B's benefit and transfers $50,000 to T. The trustee invests the $50,000 in stock of Company X. C, B's uncle, purportedly sells property with a fair market value of $1,000,000 to T in exchange for the stock when it has appreciated to a fair market value of $100,000. Under paragraph (e)(2)(ii) of this section, the $900,000 excess value is a gratuitous transfer by C. Therefore, under paragraph (e)(1) of this section, A is a grantor with respect to the portion of the trust valued at $100,000, and C is a grantor of T with respect to the portion of the trust valued at $900,000. In addition, A or C or both will be treated as the owners of the respective portions of the trust of which each person is a grantor if A or C or both retain powers over or interests in such portions under sections 673 through 677.

Example 8. G creates and funds a trust, T1, for the benefit of G's children and grandchildren. After G's death, under authority granted to the trustees in the trust instrument, the trustees of T1 transfer a portion of the assets of T1 to another trust, T2, and retain a power to revoke T2 and revest the assets of T2 in T1. Under paragraphs (e)(1) and (5) of this section, G is the grantor of T1 and T2. In addition, because the trustees of T1 have retained a power to revest the assets of T2 in T1, T1 is treated as the owner of T2 under section 678(a).

Example 9. G creates and funds a trust, T1, for the benefit of B. G retains a power to revest the assets of T1 in G within the meaning of section 676. Under the trust agreement, B is given a general power of appointment over the assets of T1. B exercises the general power of appointment with respect to one-half of the corpus of T1 in favor of a trust, T2, that is for the benefit of C, B's child. Under paragraph (e)(1) of this section, G is the grantor of T1, and under paragraphs (e)(1) and (5) of this section, B is the grantor of T2.

(7) The rules of this section are applicable to any transfer to a trust, or transfer of an interest in a trust, on or after August 10, 1999.

§ 1.671–2T [Removed]

Par. 4. Section 1.671–2T is removed.

§ 1.672(f)–2 [Amended]

Par. 5. Section 1.672(f)–2 is amended as follows:

1. In paragraph (b)(1) the language "§ 1.671–2T(e)(2)" is removed, and "§ 1.671–2(e)(2)" is added in its place.

2. In paragraph (d) *Example 1* the language "§ 1.671–2T(e)" is removed, and "§ 1.671–2(e)" is added in its place.

§ 1.672(f)–3 [Amended]

Par. 6. Section 1.672(f)–3 is amended as follows:

1. In paragraph (a)(1) the language "§ 1.671–2T(e)" is removed, and "§ 1.671–2(e)" is added in its place.

2. In paragraph (a)(4) *Example 2* the language "§ 1.671–2T(e)" is removed, and "§ 1.671–2(e)" is added in its place.

3. In paragraph (b)(1) the language "§ 1.671–2T(e)(2)" is removed, and "§ 1.671–2(e)(2)" is added in its place.

4. In paragraph (b)(1) the language "§ 1.671–2T(e)" is removed, and "§ 1.671–2(e)" is added in its place.

5. In paragraph (b)(4) *Example 1* the language "§ 1.671–2T(e)" is removed, and "§ 1.671–2(e)" is added in its place.

6. In paragraph (b)(4) *Example 2* the language "§ 1.671–2T(e)" is removed and "§ 1.671–2(e)" is added in its place.

§ 1.672(f)–4 [Amended]

Par. 7. Section 1.672(f)–4 is amended as follows:

1. In paragraph (c)(1) the language "§ 1.671–2T(e)(2)" is removed, and "§ 1.671–2(e)(2)" is added in its place.

2. In paragraph (c)(1) the language "§ 1.671–2T(e)(4)" is removed, and "§ 1.671–2(e)(4)" is added in its place.

3. In paragraph (d)(1) the language "§ 1.671–2T(e)(2)(ii)" is removed, and "§ 1.671–2(e)(2)(ii)" is added in its place.

4. In paragraph (g) *Example 4* the language "§ 1.671–2T(e)" is removed, and "§ 1.671–2(e)" is added in its place.

§ 1.672(f)–5 [Amended]

Par. 8. In § 1.672(f)–5, paragraph (a)(1) is amended by removing the language "§ 1.671–2T(e)(2)" and adding "§ 1.671–2(e)(2)" in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 28, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501 and 598

Reporting and Procedures Regulations; Foreign Narcotics Kingpin Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending its Reporting and Procedures Regulations, and issuing the Foreign Narcotics Kingpin Sanctions Regulations, in implementation of the Foreign Narcotics Kingpin Designation Act.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs, tel.: 202/622–2420, or Barbara C. Hammerle, Deputy Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On December 3, 1999, President Clinton signed into law the Foreign Narcotics Kingpin Designation Act, Pub. L. No. 106–120, title VIII, 113 Stat. 1606, 1626–1636 (1999) (to be codified at 21 U.S.C. 1901–1908, 8 U.S.C. 1182(a)(2)(C)) (the "Act"), which provides authority for the application of sanctions to significant foreign narcotics traffickers and their organizations operating worldwide. Section 805(b) of the Act blocks all property and interests in property within the United States or within the possession or control of any United States person, which are owned or controlled by significant foreign narcotics traffickers, as identified by the President, or foreign persons designated by the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, because they are found to be:

(1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a significant foreign narcotics trafficker or foreign persons designated by the Secretary of the Treasury pursuant to section 805(b) of the Act;

(2) Owned, controlled, or directed by, or acting for or on behalf of, a significant foreign narcotics trafficker or foreign persons designated by the Secretary of the Treasury pursuant to section 805(b) of the Act; or

(3) Playing a significant role in international narcotics trafficking.

Significant foreign narcotics traffickers and persons coming within any of the above three categories are referred to as specially designated narcotics traffickers.

Section 805(e)(1) of the Act authorizes the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the

Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, to take such actions as may be necessary to carry out the Act, including the promulgation of rules and regulations permitted under the Act. Section 806 of the Act authorizes the Secretary of the Treasury to issue regulations and orders as may be necessary for the exercise of authorities granted by the Act.

In implementation of the Act, the Office of Foreign Assets Control of the Department of the Treasury is issuing the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR Part 598 (the "Regulations"). These Regulations are separate from, and independent of, the Narcotics Trafficking Sanctions Regulations, 31 CFR Part 536, which implement the national emergency declared in Executive Order 12978 of October 21, 1995, with respect to significant foreign narcotics traffickers centered in Colombia. See § 598.101. Sanctions imposed and persons named as specially designated narcotics traffickers pursuant to 31 CFR part 536 are not affected by this part 598. Section 809 of the Act, which amends section 212(a)(2)(C) of the Immigration and Nationality Act, is not implemented by these Regulations.

Subpart B of the Regulations implements section 805 of the Act. Specifically, section 598.201 implements section 805(a) of the Act by providing that specially designated narcotics traffickers are subject to any and all sanctions authorized by the Act until revoked or waived. Section 598.202 implements section 805(b) of the Act by providing that property and interests in property owned or controlled by specially designated narcotics traffickers and within the United States or within the possession or control of a United States person are blocked. Section 598.203 of the Regulations implements section 805(c)(1) of the Act by prohibiting transactions and dealings by U.S. persons or within the United States in property or interests in property of specially designated narcotics traffickers. Section 598.204 implements section 805(c)(2) of the Act by prohibiting transactions that have the effect of evading or avoiding, and attempts or conspiracies to violate, the prohibitions set forth in this part. Sections 598.205 and 598.206 of the Regulations detail the effect of transfers of blocked property in violation of the Regulations and the required holding of blocked property in interest-bearing accounts.

Subpart C of the Regulations implements section 808 of the Act and defines key terms used throughout the Regulations. Subpart D of the Regulations sets forth interpretive sections regarding the general prohibitions of subpart B.

Transactions otherwise prohibited under this part but found to be consistent with U.S. policy may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures set forth in subpart D of part 501 of chapter V. The general licenses contained in subpart E include an authorization for U.S. financial institutions to debit blocked accounts for normal service charges. See § 598.506. Section 598.507 authorizes the provision of certain legal services, provided that receipt of payment for such services is specifically licensed.

Subpart F of the Regulations implements sections 806(a)–(b) of the Act by reference to the Reporting and Procedures Regulations in subpart C of 31 CFR part 501, which set forth provisions relating to required records and reports. Subpart G implements section 807 of the Act by describing the civil and criminal penalties applicable to violations of the Regulations. Specifically, section 598.701 sets forth the civil and criminal penalties prescribed in sections 807(a)–(b) of the Act, and section 598.706 implements section 807(c) of the Act by providing that civil penalties shall be subject to judicial review only to the extent provided in 5 U.S.C. 702.

Subpart H provides certain administrative procedures applicable to this part and implements others by reference to the Reporting and Procedures Regulations in subpart D of 31 CFR part 501, which contain provisions relating to administrative procedures. Section 598.802 implements section 805(e)(3) of the Act by clarifying that records or information obtained or created in the implementation of the Regulations are not subject to disclosure under section 552(a)(3) of the Freedom of Information Act (5 U.S.C. 552(a)(3)). Section 598.803 delegates to the Office of Foreign Assets Control those actions that the Secretary of the Treasury is authorized to take pursuant to the Act. Subpart I of the Regulations sets forth a Paperwork Reduction Act notice.

In addition to adding a new part 598, the Office of Foreign Assets Control is revising its Reporting and Procedures Regulations contained in 31 CFR part 501 in implementation of certain provisions of the Act. Pursuant to section 805(e)(3) of the Act, section 501.805(a) is amended to add a note clarifying the inapplicability of section 552(a)(3) of the Freedom of Information Act.

In implementing the Regulations, the Office of Foreign Assets Control will seek to consult with foreign governments where appropriate. Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in the Reporting and Procedures Regulations in 31 CFR part 501. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information were previously approved by the Office of Management and Budget ("OMB") under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 598

Administrative practice and procedure, Banks, banking, Blocking of assets, Drug traffic control, Narcotics trafficking, Penalties, Reporting and recordkeeping requirements, Significant foreign narcotics traffickers, Specially designated narcotics traffickers, Transfer of assets.

For the reasons set forth in the preamble, 31 CFR Chapter V is amended as follows:

PART 501—REPORTING AND PROCEDURES REGULATIONS

1. The authority citation for part 501 is revised to read as follows:

Authority: 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

Subpart D—Procedures

2. A note is added to paragraph (a) of § 501.805 to read as follows:

§ 501.805 Rules governing availability of information.

(a) * * *

Note to paragraph (a) of § 501.805: Records or information obtained or created in the implementation of part 598 of this chapter are not subject to disclosure under section

552(a)(3) of the Freedom of Information Act. See § 598.802 of this chapter.

* * * * *

3. Part 598 is added to read as follows:

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
598.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

598.201 Applicability of sanctions.
598.202 Blocking of assets.
598.203 Prohibited transactions involving blocked property.
598.204 Evasions; attempts; conspiracies.
598.205 Effect of transfers violating the provisions of this part.
598.206 Holding of funds in interest-bearing accounts; investment and reinvestment.

Subpart C—General Definitions

598.301 Blocked account; blocked property.
598.302 Effective date.
598.303 Entity.
598.304 Foreign Narcotics Kingpin Designation Act.
598.305 Foreign person.
598.306 General license.
598.307 Interest.
598.308 License.
598.309 Narcotic drug; controlled substance; listed chemical.
598.310 Narcotics trafficking.
598.311 Person.
598.312 Property; property interest.
598.313 Significant foreign narcotics trafficker.
598.314 Specially designated narcotics trafficker.
598.315 Specific license.
598.316 Transfer.
598.317 United States.
598.318 United States person; U.S. person.
598.319 U.S. financial institution.

Subpart D—Interpretations

598.401 Reference to amended sections.
598.402 Effect of amendment.
598.403 Termination and acquisition of an interest in blocked property.
598.404 Setoffs prohibited.
598.405 Transactions incidental to a licensed transaction.
598.406 Provision of services.
598.407 Offshore transactions.
598.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.
598.409 Credit extended and cards issued by U.S. financial institutions.
598.410 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

598.501 General and specific licensing procedures.
598.502 Effect of license.
598.503 Exclusion from licenses.
598.504 Payments and transfers to blocked accounts in U.S. financial institutions.
598.505 Investment and reinvestment of certain funds.
598.506 Entries in certain accounts for normal service charges authorized.
598.507 Provision of certain legal services authorized.

Subpart F—Reports

598.601 Records and reports.

Subpart G—Penalties

598.701 Penalties.
598.702 Prepenalty notice.
598.703 Response to prepenalty notice; informal settlement.
598.704 Penalty imposition or withdrawal.
598.705 Administrative collection; referral to United States Department of Justice.
598.706 Judicial review of civil penalty.

Subpart H—Procedures

598.801 Procedures.
598.802 Availability of information pursuant to the Freedom of Information Act.
598.803 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

598.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note).

Subpart A—Relation of This Part to Other Laws and Regulations

§ 598.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, including part 536 of this chapter, "Narcotics Trafficking Sanctions Regulations," with the exception of part 501 of this chapter, the provisions of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 598.201 Applicability of sanctions.

A specially designated narcotics trafficker is subject to any and all sanctions authorized by the Foreign Narcotics Kingpin Designation Act and implemented in this part. The application of sanctions on any specially designated narcotics trafficker will remain in effect until revoked by the President pursuant to section 804(h)(2) of the Foreign Narcotics Kingpin Designation Act, waived by the President pursuant to section 804(g)(1) of that Act, or revoked by the Secretary of the Treasury pursuant to section 805(e)(1)(A) of that Act.

§ 598.202 Blocking of assets.

Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, there are blocked as of the effective date, and any date thereafter, all such property and interests in property within the United States, or within the possession or control of any United States person, which are owned or controlled by a specially designated narcotics trafficker.

§ 598.203 Prohibited transactions involving blocked property.

(a) Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction or dealing by a United States person, or within the United States, in property or interests in property of a specially designated narcotics trafficker is prohibited.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any specially designated narcotics trafficker is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security.

(c) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the

funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

§ 598.204 Evasions; attempts; conspiracies.

Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction or dealing by any United States person, or within the United States, that evades or avoids, or has the effect of evading or avoiding, and any endeavor, attempt, or conspiracy to violate any of the prohibitions set forth in this part is prohibited.

§ 598.205 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property of a specially designated narcotics trafficker is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property of a specially designated narcotics trafficker, unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the Foreign Narcotics Kingpin Designation Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Property transfers that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license issued pursuant to this part and was not so licensed, or if a license did purport to cover the transfer, that such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, direction, or license issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 598.205: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date there existed an interest of a specially designated narcotics trafficker.

§ 598.206 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 598.202 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or sub-account, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 598.202 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 598.202 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 598.202. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to specially designated narcotics traffickers, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

Note to § 598.206: Please refer to § 598.505 for authorized investment and reinvestment of certain funds held in blocked accounts.

Subpart C—General Definitions

§ 598.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* mean any account or property subject to § 598.202 held in the name of a specially designated narcotics trafficker, or in which a specially designated narcotics trafficker has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 598.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives of this part, which is December 3, 1999, or, in the case of specially designated narcotics traffickers designated after that date, the earlier of the date on which actual or constructive notice of such designation is received.

§ 598.303 Entity.

The term *entity* means a partnership, joint venture, association, corporation, organization, network, group, or subgroup, or any form of business collaboration.

§ 598.304 Foreign Narcotics Kingpin Designation Act.

The term *Foreign Narcotics Kingpin Designation Act* means the Foreign Narcotics Kingpin Designation Act, Pub. L. 106–120, title 8, 113 Stat. 1606, 1626–1636 (codified at 21 U.S.C. 1901–1908, 8 U.S.C. 1182(a)(2)(C)).

§ 598.305 Foreign person.

The term *foreign person* means any citizen or national of a foreign state or any entity not organized under the laws of the United States, but does not include a foreign state.

§ 598.306 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 598.307 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (*e.g., an interest in property*) means an interest of any nature whatsoever, direct or indirect.

§ 598.308 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 598.309 Narcotic drug; controlled substance; listed chemical.

The terms *narcotic drug, controlled substance,* and *listed chemical* have the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

§ 598.310 Narcotics trafficking.

The term *narcotics trafficking* means any illicit activity to cultivate, produce, manufacture, distribute, sell, finance, or transport narcotic drugs, controlled substances, or listed chemicals, or otherwise endeavor or attempt to do so, or to assist, abet, conspire, or collude with others to do so.

§ 598.311 Person.

The term *person* means an individual or entity.

§ 598.312 Property; property interest.

The terms *property* and *property interest* include but are not limited to money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, whether present, future, or contingent.

§ 598.313 Significant foreign narcotics trafficker.

The term *significant foreign narcotics trafficker* means any foreign person that plays a significant role in international narcotics trafficking that the President has determined to be appropriate for sanctions and has publicly identified under section 804(b) or section 804(h)(1) of the Foreign Narcotics Kingpin Designation Act.

§ 598.314 Specially designated narcotics trafficker.

The term *specially designated narcotics trafficker* means:

(a) Significant foreign narcotics traffickers; and

(b) Foreign persons designated by the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, because they are found to be:

(1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker;

(2) Owned, controlled, or directed by, or acting for or on behalf of, a specially designated narcotics trafficker; or

(3) Playing a significant role in international narcotics trafficking.

Note to § 598.314: Please refer to the appendices at the end of this chapter V for listings of persons determined to fall within this definition who have been designated pursuant to this part. Section 501.807 of this chapter V sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or who wish to assert that the circumstances resulting in designation no longer apply.

§ 598.315 Specific license.

The term *specific license* means any license not set forth in this part but issued pursuant to this part.

§ 598.316 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation upon the foregoing, the term *transfer* includes the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process

or order; the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 598.317 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 598.318 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen or national, permanent resident alien, an entity organized under the laws of the United States (including its foreign branches), or any person within the United States.

§ 598.319 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including a foreign branch) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, as principal or agent. This terms includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 598.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 598.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 598.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed pursuant to this part results in the transfer of property (including any property interest) away from a specially designated narcotics trafficker, the transferred property will no longer be considered property in which that person has or has had an interest. Provided no other specially designated narcotics trafficker has any interest in the transferred property following the transfer, the transferred property will no longer be considered property blocked pursuant to § 598.202.

(b) Unless otherwise specifically provided in a license issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a specially designated narcotics trafficker, such property shall be deemed to be property in which that person has an interest, and such property is therefore blocked pursuant to § 598.202.

§ 598.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. financial institution or other U.S. person, is a prohibited transfer under § 598.203 if effected after the effective date.

§ 598.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect to the licensed transaction is also authorized by the license. Except as specifically authorized by the terms of a license, prohibited transactions by specially designated narcotics traffickers and debits to accounts blocked pursuant to § 598.202 are not considered incidental to a licensed transaction and therefore remain prohibited.

§ 598.406 Provision of services.

(a) The prohibitions contained in § 598.203 apply to services performed by U.S. persons, wherever located:

(1) On behalf of or for the benefit of a specially designated narcotics trafficker; or

(2) With respect to property interests of a specially designated narcotics trafficker.

(b) Example: U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a specially designated narcotics trafficker. See § 598.507 on licensing policy with regard to the provision of certain legal services.

§ 598.407 Offshore transactions.

The prohibitions contained in § 598.203 apply to transactions by any U.S. person in a location outside the United States with respect to property in which the U.S. person knows, or has reason to know, that a specially designated narcotics trafficker has or has had an interest since the effective date.

§ 598.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.

(a) A change or alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker shall not be the basis for removal of that entity from the list of specially designated narcotics traffickers unless, upon investigation by the Office of Foreign Control and submission of evidence by the entity, it is demonstrated to the satisfaction of the Director of the Office of Foreign Assets Control that the transfer to a bona fide purchaser at arm's length, or other means of changing ownership or control, is legitimate and that the entity no longer meets the criteria for designation under § 598.314. Evidence submitted must conclusively demonstrate that all ties with other specially designated narcotics traffickers have been completely severed, and may include, but is not limited to, articles of incorporation; identification of new directors, officers, shareholders, and sources of capital; and contracts evidencing the sale of the entity to its new owners.

(b) Any continuing substantial financial obligations on the part of the new owners to any specially designated narcotics traffickers, including long-term payment plans, leases, or rents, will be considered as evidence of continuing control of the entity by the specially designated narcotics trafficker. Purchase of a designated entity without ongoing substantial financial obligations to a specially designated narcotics trafficker may nonetheless be a basis for

subsequent designation of the purchaser, if the transaction is determined materially to assist in or provide financial support for the international narcotics trafficking activities of specially designated narcotics traffickers for purposes of § 598.314(b)(1). For example, any acquisition transaction resulting in a direct cash transfer to or other enrichment of a specially designated narcotics trafficker could lead to designation of the purchaser. Mere change in name of an entity will not be considered as constituting a change of the entity's status.

§ 598.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 598.203 on dealing in property in which a specially designated narcotics trafficker has an interest prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a specially designated narcotics trafficker.

§ 598.410 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

No debits may be made to a blocked account to pay obligations to U.S. persons or other persons, including payment for goods or services exported prior to the effective date of the blocking, except as authorized pursuant to this part.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 598.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart D of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 598.502 Effect of license.

(a) No license contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control pursuant to this part, authorizes or validates any transaction effected prior to the issuance of the license, unless the prior transaction is specifically authorized in such license.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited by this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part authorizes any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited by this part has the effect of removing from the transaction a prohibition or prohibitions contained in this part, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest that would not otherwise exist under ordinary principles of law in or with respect to any property.

§ 598.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 598.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a specially designated narcotics trafficker has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

Note to § 598.504: Please refer to part 501, subpart C of this chapter for mandatory reporting requirements regarding financial transfers. See also § 598.206 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 598.505 Investment and reinvestment of certain funds.

Subject to the requirements of § 598.206, U.S. financial institutions are authorized to invest and reinvest assets held in blocked accounts in the name of a specially designated narcotics trafficker, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but in no case may funds be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments are not credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.*, through pledging or other use) to the specially designated narcotics trafficker.

§ 598.506 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charges* includes but is not limited to charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; minimum balance charges; notary and protest fees; and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 598.507 Provision of certain legal services authorized.

(a) The provision to or on behalf of a specially designated narcotics trafficker of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipt of payment for such services must be specifically licensed.

(b) Specific licenses may be issued on a case-by-case basis authorizing receipt from unblocked sources of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to a specially designated narcotics trafficker:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States,

provided that such advice and counseling is not provided to facilitate transactions that would violate any prohibition contained in this chapter;

(2) Representation of a specially designated narcotics trafficker when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction of a specially designated narcotics trafficker;

(4) Representation of a specially designated narcotics trafficker before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such person; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) The provision of any other legal services to a specially designated narcotics trafficker, not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property of a specially designated narcotics trafficker or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property of a specially designated narcotics trafficker is prohibited unless specifically licensed in accordance with § 598.205(e).

Subpart F—Reports

§ 598.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 598.701 Penalties.

(a) Attention is directed to section 807 of the Foreign Narcotics Kingpin Designation Act, which is applicable to violations of the provisions of any license, rule, or regulation issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under that Act. Section 807 of Foreign Narcotics Kingpin Designation Act provides that:

(1) Whoever willfully violates the provisions of the Foreign Narcotics Kingpin Designation Act, or any license, rule, or regulation issued pursuant to that Act, or willfully neglects or refuses to comply with any order of the President issued under that Act, shall be imprisoned for not more than 10 years, fined in the amount provided in title 18, United States Code, or both, or, in the case of an entity, fined not more than $10,000,000;

(2) Any officer, director, or agent of any entity who knowingly participates in a violation of the provisions of the Foreign Narcotics Kingpin Designation Act, shall be imprisoned for not more than 30 years, fined not more than $5,000,000, or both;

(3) A civil penalty not to exceed $1,000,000 per violation may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of the Foreign Narcotics Kingpin Designation Act.

(b) The criminal penalties provided in this part are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 598.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Foreign Narcotics Kingpin Designation Act, and the Director determines that further proceedings are warranted, the Director shall issue to the person concerned a notice of intent to impose a monetary penalty. This prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within 30 days of the date of mailing of the notice as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

§ 598.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent shall have 30 days from the date of mailing of the prepenalty notice to make a written response to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of response.* The written response need not be in any particular form, but must contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(c) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice issued pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30-day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 598.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to a prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any response to a prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition of the monetary penalty to the respondent. The issuance of a written notice of the imposition of a monetary penalty shall constitute final agency action.

(1) The penalty notice shall inform the respondent that payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice.

(2) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

§ 598.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay a penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of a penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

§ 598.706 Judicial review of civil penalty.

A civil penalty imposed pursuant to this subpart G is subject to judicial review only to the extent provided in 5 U.S.C. 702.

Subpart H—Procedures

§ 598.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Privacy Act (5 U.S.C. 552a), see part 501, subpart D of this chapter.

§ 598.802 Availability of information pursuant to the Freedom of Information Act.

Any record or information obtained or created in the implementation of this part is not subject to disclosure under section 552(a)(3) of the Freedom of Information Act. Information required to be made available to the public under other provisions of the Freedom of Information Act (5 U.S.C. 552) will be made available in accordance with § 501.805(a) of this chapter.

§ 598.803 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to the Foreign Narcotics Kingpin Designation Act may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 598.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: June 6, 2000.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 13, 2000.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 00–16844 Filed 6–29–00; 3:39 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–160]

RIN 2115–AA97

Safety Zone: Hudson Valley Triathlon, Hudson River, Ulster Landing, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the annual Hudson Valley Triathlon swim located on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: This rule is effective from 6:30 a.m. (e.s.t.) until 8:30 a.m. (e.s.t.) on July 9, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–160) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4012.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. Special Local Regulations have been published for this event in 33 CFR 100.121 for the same date. The location of this year's event has been moved 3.5 nautical miles north in the vicinity of Barrytown Reach, north of the Kingston-Rhinecliff Bridge. The safety zone encompasses about 800 yards of Barrytown Reach and is about 1,000 yards smaller than the permanent area, and it is also scheduled to start and finish 30 minutes earlier as compared to the current regulations. Further, it is a annual, local event, recreational vessels may still transit to the east of the zone during the event, the zone is only in affect for 2 hours, and commercial traffic is not heavy in this area of the Hudson River. It is expected that no more than 1 or 2 commercial vessels may be affected by this event. Due to the publication of this annual event in the Local Notice to Mariners, commercial traffic will be able to adjust their transit time to arrive before or after the event. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public

interest since immediate action is needed to close the waterway and protect swimmers and the maritime public from the hazards associated with 500 athletes competing in the swimming portion of the Hudson Valley Triathlon.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: Special Local Regulations have been published for this event in 33 CFR 100.121 for the same date. The location of this year's event has been moved 3.5 nautical miles north in the vicinity of Barrytown Reach, north of the Kingston-Rhinecliff Bridge. It encompasses about 800 yards of Barrytown Reach and is about 1,000 yards smaller than the permanent area, it is also scheduled to start and finish 30 minutes earlier, as compared to the current regulations. Further, it is a annual local event, recreational vessels may still transit to the east of the zone during the event, the zone is only in effect for 2 hours, and commercial traffic is not heavy in this area of the Hudson River. It is expected that no more than 1 or 2 commercial vessels may be affected by this event. Due to the publication of this annual event in the Local Notice to Mariners, commercial traffic will be able to adjust their transit time to arrive before or after the event. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect swimmers and the maritime public from the hazards associated with 500 athletes competing in the swimming portion of the Hudson Valley Triathlon.

Background and Purpose

The Coast Guard has received an application to hold a triathlon swim on the waters of the Hudson River. This regulation establishes a safety zone in all waters of the Hudson River, in the vicinity of Ulster Landing, bound by the following points: 41°59′52.5″ N 073°56′34.2″ W (about 150 yards south of Hudson River Lighted Buoy 82 (LLNR 38325)), thence to 42°00′15.1″ N 073°56′25.2″ W, thence to 42°00′05.4″ N 073°56′41.9″ W, thence to 42°00′03.7″ N 073°56′43.1″ W, (NAD 1983), thence back to the point of beginning, in the northern end of Barrytown Reach. The safety zone is in effect from 6:30 a.m. (e.s.t.) until 8:30 a.m. (e.s.t.) on Sunday, July 9, 2000. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of the Hudson River. It is needed to protect swimmers and boaters from the hazards associated with 500 swimmers competing in a confined area of the Hudson River. Recreational vessels can still transit to the east of the zone during the event and will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone. Commercial vessels will be precluded from transiting the area because the safety zone encompasses about 800 yards of Barrytown Reach and there is no viable alternative route. Public notifications will be made prior to the event via the Local Notice to Mariners.

Special Local Regulations have been published for this event in 33 CFR 100.121 for the same date. The location of this year's event has been moved 3.5 nautical miles north in the vicinity of Barrytown Reach, north of the Kingston-Rhinecliff Bridge. It encompasses about 800 yards of Barrytown Reach and is about 1,000 yards smaller than the permanent area, it is also scheduled to start and finish 30 minutes earlier, as compared to the current regulations.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the following: This is an annual marine event currently published in 33 CFR 100.121, this final rule will close a smaller portion of the Hudson River, and the minimal time on a Sunday morning that vessels will be restricted from the zone. Recreational vessels may still transit to the east of the zone during the event and will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone. Commercial vessels can plan their transits up the river around the time the zone is in effect as they will have advance notice of this annual event, and advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–160 to read as follows:

§ 165.T01–160 Safety Zone: Hudson Valley Triathlon, Hudson River, Ulster Landing, NY.

(a) *Location.* The following area is a safety zone: All waters of the Hudson River, in the vicinity of Ulster Landing, bound by the following points: 41°59′52.5″ N 073°56′34.2″ W (about 150 yards south of Hudson River Lighted Buoy 82 (LLNR 38325)), thence to 42°00′15.1″ N 073°56′25.2″ W, thence to 42°00′05.4″ N 073°56′41.9″ W, thence to 42°00′03.7″ N 073°56′43.1″ W, (NAD 1983), thence back to the point of beginning, in the northern end of Barrytown Reach.

(b) *Effective period.* This section is effective from 6:30 a.m. (e.s.t.) until 8:30 a.m. (e.s.t.) on July 9, 2000. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 27, 2000.

R.E. Bennis,

Captain, U. S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–16889 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–IS–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA077–7210a; A–1–FRL–6709–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; VOC Regulation for Large Commercial Bakeries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires large commercial bakeries to meet VOC Reasonably Available Control Technology (RACT) requirements. The intended effect of this action is to approve a revision to Massachusetts SIP which reduces VOC emissions from bakeries. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on September 5, 2000 without further notice, unless EPA receives adverse comment by August 4, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Manager, Air Quality Planning Unit, Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 918–1669.

SUPPLEMENTARY INFORMATION: The Clean Air Act (CAA) establishes requirements for State Implementation Plans for areas that have not attained the national ambient air quality standards for ozone. Section 182(b)(2) of the CAA expands the applicability of RACT to sources of VOC equal to or greater than 50 tons per year. To help the states identify VOC control options, the CAA required EPA to publish alternative control technology (ACT) documents for a variety of VOC sources. EPA published an ACT document for Bakery Oven Emissions (EPA 453/R–92–017) in December, 1992. Massachusetts has identified several large commercial bakeries that are greater than 50 ton per year sources and as such are subject to RACT. Massachusetts adopted 310 CMR 7.18(29), Bakeries to reduce VOC emissions from bakeries.

On March 29, 1995, the Commonwealth of Massachusetts submitted a formal revision to its SIP. The SIP revision amends 310 CMR 7.00 by adding Section 310 CMR 7.18(29), Bakeries.

I. Summary of SIP Revision

The adopted air pollution control regulation, 310 CMR 7.18(29) Bakeries, establishes RACT for bakery facilities. The rule applies to any person who owns, leases, operates or controls any bakery which has the potential to emit, before the application of air pollution control equipment, equal to or greater than 50 tons per year of VOC. The rule establishes as RACT that affected bakeries reduce VOC emissions from baking ovens by 81% by weight. The 81% overall reduction requirement is based on a minimum capture efficiency of 90% combined with a minimum destruction efficiency of 90%. According to the Massachusetts Department of Environmental Protection, affected bakeries in the Commonwealth will be installing catalytic oxidation to achieve RACT level VOC reductions. Massachusetts' rule contains the following additional provisions:

1. *Exemption for small bakeries*: This section exempts bakeries that can demonstrate that, since January 1, 1990, the bakery has not emitted, before the application of air pollution control equipment, greater than or equal to 50 tons per year of VOC. Small bakeries must obtain a permit restriction which restricts potential emissions to below 50 tons per year;

2. *Exemptions for small ovens*: This section exempts individual baking ovens (at an applicable facility) which have not emitted since January 1, 1990, before application of air pollution control equipment, greater than 25 tons of VOC in any calendar year from the RACT requirement and plan submittal requirements. (small ovens must still comply with the recordkeeping and testing requirements);

3. *Plan submittal requirements*: This section requires bakeries to submit an emission control plan to the Massachusetts DEP for approval (note that the emission limit requirement in 310 CMR 7.18(29)(e) is directly

enforceable under the SIP whether or not a bakery has submitted a plan.);

4. *Recordkeeping requirements*: This section requires bakeries to maintain records necessary to demonstrate compliance for at least five years, including: monthly records to determine emissions from each oven, and hourly (or continuous) records of control equipment operating parameters such as temperature, pressure drop, or other parameters to assure continuous compliance; and

5. *Testing Requirements*: This section requires bakeries to perform tests to demonstrate compliance upon request of the Massachusetts DEP.

Facilities are required to comply with RACT by May 31, 1995.

EPA's evaluation is detailed in a memorandum, entitled "Technical Support Document for Massachusetts Air Pollution Control Regulation, 310 CMR 7.18(29), Bakeries." EPA considers the Massachusetts bakery regulation to represent a reasonable level of control for all affected facilities. In approvals granted by Massachusetts DEP of emission control plans submitted by individual bakeries, Massachusetts DEP evaluates the feasibility of higher reduction rates (e.g. 95% minimum oxidizer destruction efficiency) and imposes those if determined to be feasible.

II. Final Action

EPA is approving Section 310 CMR 7.18(29), Bakeries. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 5, 2000, unless by August 4, 2000, relevant adverse comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 5, 2000.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 5, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment on the proposed rule rather than file a petition for review in the Court of Appeals.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 22, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(110) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(110) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on March 29, 1995.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated March 29, 1995 submitting a revision to the Massachusetts State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the Commonwealth of Massachusetts effective on January 27, 1995: 310 Code of Massachusetts Regulations Section 7.18(29), Bakeries.

3. In § 52.1167 Table 52.1167 is amended by adding the following new state citation: 310 CMR 7.18(29), Bakeries.

§ 52.1167 EPA-approved Massachusetts State regulations.

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS.

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.18(29)	Bakeries	03/29/95	July 5, 2000	[Insert FR citation from published date].	110	Reasonably Available Control Technology Requirement (RACT) for bakeries.
*	*	*	*	*	*	*

[FR Doc. 00–15909 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR 82–7297a; FRL 6714–7]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or we) approves the following revisions to the Oregon State Implementation Plan (SIP): the repeal of Oregon's Consumer Products Rules, the repeal of the Architectural Coatings Rules, the revision and partial repeal of the Motor Vehicle Refinishings Rules, and definition revisions. The Oregon Department of Environmental Quality (ODEQ) forwarded this submittal to EPA for inclusion in the Oregon SIP on June 18, 1999. These revisions were submitted for the purposes of complying with section 110 and part D of the Clean Air Act.

DATES: This direct final rule is effective on September 5, 2000 without further notice, unless EPA receives adverse comment by August 4, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of material submitted to EPA and other information supporting this action may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101 and Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0985.

SUPPLEMENTARY INFORMATION:

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Summary of Action

Administrative Requirements

A. Consumer and Commercial Products Rules

1. What Revisions to the Oregon SIP Are We Approving?

We are approving the repeal of Oregon's Consumer Products Rules, the repeal of the Architectural Coatings Rules, and a revision and partial repeal of the Motor Vehicle Refinishings Rules.

2. What Are Consumer and Commercial Products Rules?

Consumer and Commercial Products Rules reduce Volatile Organic

Compound (VOC) emissions from categories of products such as consumer products, architectural coatings, automobile refinishing coatings, aerospace coatings, aerosol spray paints, industrial cleaning solvents, and metal furniture coatings. VOCs contribute significantly to the formation of ground-level ozone.

3. What Is Ozone?

Ozone is an odorless, colorless gas composed of three atoms of oxygen. Ozone is major component of smog and causes adverse health and environmental impacts when present in high concentrations at ground level. Ground-level ozone is not emitted directly into the air but forms when VOCs and Nitrogen Oxides (NO_X) mix and react chemically in the presence of sunlight. Therefore, ozone is controlled by reducing VOC or NO_X emissions.

The federal Clean Air Act requires EPA to set health-based standards for six commonly occurring air pollutants, including ozone. These standards are referred to as the National Ambient Air Quality Standards (NAAQS). The Clean Air Act also requires each state to develop and implement a SIP for meeting and maintaining the NAAQS within their state.

4. Why Are Consumer and Commercial Products Regulated?

The Clean Air Act Amendments of 1990 included a new requirement (Section 183(e)) for regulating consumer and commercial products. Section 183(e) directs EPA to conduct a study of VOC emissions from consumer and commercial products. Based on this study, EPA is required to schedule for regulation the categories of products that have the potential to contribute to ozone nonattainment. EPA completed the study and a report to Congress in 1995 and also published the schedule for regulation in a **Federal Register** document (60 FR 15264) on March 23, 1995. The schedule was subsequently revised on March 18, 1999 (64 FR 13422).

In the past, the Portland area failed to meet the ozone NAAQS and was designated as a non-attainment area in 1978. The Governor of Oregon appointed a Task Force in 1992 to ensure the maintenance of the ozone standard. One of the strategies the Task Force selected was to reduce VOCs from consumer and commercial products. The promulgation of EPA's Consumer and Commercial Products Rules was delayed beyond the time when Portland needed the VOC reductions to meet its emission targets. Therefore, in 1995, Oregon adopted its own rules for Portland for Consumer Products, Architectural Coatings, Aerosol Spray Paint, and Motor Vehicle Refinishings in the Portland Ozone Maintenance Plan. On May 19, 1997, after Oregon had demonstrated that the Portland area had attained the ozone NAAQS, EPA redesignated the area as an ozone attainment area and approved the maintenance plan as a part of the SIP (62 FR 27204).

5. Why Are We Repealing Oregon's Consumer and Commercial Products Rules From the SIP Now?

Oregon developed its rules with the intention of repealing them when EPA's rules took effect. On September 11, 1998, EPA finalized federal rules for Consumer Products (63 FR 48819), Architectural Coatings (63 FR 48848), and Automobile Refinishing Coatings (63 FR 48806). These measures apply nationwide and provide consistency for the regulated community. In May of 1999, Oregon adopted revisions to their administrative rules to amend and repeal their Consumer and Commercial Products Rules.

6. What Are the Differences Between EPA's and Oregon's Rules?

a. General: EPA's national rules apply to the manufacturers, importers, and distributors (for the Consumer Products Rule) of the products, so VOC content is controlled at the source. Since Oregon's rules only applied in the Portland area, they also had to restrict the sale and commercial application of the products.

b. Consumer Products (OAR 340–022–0800 through OAR 340–022–0860): The Consumer Products Rules establish VOC limits for a variety of household products such as hair sprays, air fresheners, windshield washer fluids, cleaners, and antiperspirants. Oregon's rules are more stringent than EPA's rules in two categories of products, windshield washer fluid and nail polish remover.

c. Architectural Coatings (OAR 340–022–1000 through OAR 340–022–1050): The Architectural Coatings Rules establish VOC limits for paint for all "stationary structures" (houses, industrial equipment, traffic markings, etc.). The EPA VOC limits are more stringent than Oregon in four categories (alkali resistant primers, swimming pool coatings, opaque below ground wood preservatives, and lacquer stains), while Oregon's limits are more stringent in nine categories (antenna coatings, calcimine recoaters, clear shellacs, concrete curing and sealing compounds, concrete surface retarders, conversion varnishes, faux finishes, stain controllers, and zone marking coatings).

EPA's rules allow manufacturers to produce high VOC coatings if they pay an "exceedance fee" of $2,500 per ton of VOC in excess of the applicable VOC content limit. EPA's rules also allow each manufacturer and importer to exempt the VOC used in small volume products. The exemption begins at twenty-five tons per year for each manufacturer and importer, but decreases to ten tons per year in 2002. Oregon's rules do not contain either of these provisions.

d. Aerosol Spray Paint (OAR 340–022–0900 through OAR 340–022–0950): The Aerosol Spray Paint Rules limit the VOC content of paint sold in aerosol cans. EPA's rules for aerosol spray paint is not scheduled to be promulgated until 2001. Therefore, this portion of Oregon's rules is retained.

e. Automobile Refinishing Coatings (OAR 340–022–0700 through OAR 340–022–0760): The Automobile Refinishing Coatings Rules set VOC limits for automotive coatings. Oregon's rules require painters to use efficient High Volume/Low Pressure (HVLP) spray guns and spray gun cleaning equipment to further reduce solvent emissions, which is not required in the EPA rules. Therefore, the provisions of Oregon's regulations regarding the use of HVLP spray guns and spray gun cleaning equipment are retained in the SIP. Additionally, EPA's rules exempt lacquer topcoats, while Oregon's rules do not.

7. How Will These Differences Affect VOC Emissions in Portland?

ODEQ submitted a demonstration showing that the EPA rules will achieve VOC reductions at least as significant as the existing Consumer and Commercial Products Rules in the Portland Ozone Maintenance Plan (based on EPA's VOC reduction estimates published in the Final Rules). ODEQ's rules only apply to the Portland area, so noncomplying products inevitably leak into Portland from the outlying region. EPA's rules apply uniformly across the nation and consequently achieve a much higher degree of rule effectiveness. Therefore, Oregon's Consumer and Commercial Products Rules can be removed from the SIP with no deleterious effect on any NAAQS, Prevention of Significant Deterioration increment, or visibility in Class I areas.

B. VOC Definitions

1. What Revisions to the Oregon SIP Are We Approving?

The June 18, 1999 submittal included revisions to the VOC definitions in OAR 340–022–0102 and OAR 340–028–0110. The VOC definitions were revised to delist 17 compounds from the definitions of VOC. The delisted compounds are: difluoromethane (HFC–32); ethylfluoride (HFC–161); 1,1,1,3,3,3-hexafluoropropane (HFC–236fa); 1,1,2,2,3-pentafluoropropane (HFC–245ca); 1,1,2,3,3-pentafluoropropane (HFC–245ea); 1,1,1,2,3-pentafluoropropane (HFC–245eb); 1,1,1,3,3-pentafluoropropane (HFC–245fa); 1,1,1,2,3,3-hexafluoropropane (HFC–236ea); 1,1,1,3,3-pentafluorobutane (HFC–365mfc); chlorofluoromethane (HCFC–31); 1-chloro-1-fluoroethane (HCFC–151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC–123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); and methyl acetate. The proposed amendments also add a technical clarification that these VOC definitions relate to ground-level (tropospheric) ozone and not to ozone depleting reactions in the stratosphere.

2. Why Are the VOC Definitions Changing?

EPA modified the federal definition of VOC in 40 CFR 51.100(s) by adding additional compounds that are exempted from the VOC definition due to their negligible photochemical reactivity. This SIP revision will make the state and federal definitions of VOC consistent.

Summary of Action

While EPA's Consumer and Commercial Products Rules are slightly less stringent than ODEQ's rules as detailed above, ODEQ has demonstrated that the VOC reductions relied upon in the Portland Ozone Maintenance Plan will not be adversely affected by the substitution of EPA's national rules for Oregon's rules. Therefore, we are approving the repeal of Oregon's Consumer Products Rules, the repeal of the Architectural Coatings Rules, and ■ revision and partial repeal of the Motor Vehicle Refinishings Rules. The SIP revision to the VOC definitions will make the state and federal definitions consistent, and therefore we are also approving this revision.

The list below identifies the revisions we are approving and the rules we are repealing from the SIP, with the state effective date of the rules in parentheses. The effective date of Oregon's repeal of the Consumer Products Rules was June 10, 1999. The effective date of Oregon's revision and partial repeal of the Motor Vehicle Refinishings Rules was July 12, 1999. The effective date of Oregon's repeal of the Architectural Coatings Rules was March 13, 2000.

Please note that since these SIP revisions were adopted by the state, other modifications to Oregon's rules may have been adopted by the Environmental Quality Commission and submitted to the EPA for approval (e.g. the rule recodification package). Approval of the SIP revisions discussed in this action does not rescind any local rule amendments that were subsequently filed and submitted.

A. The Revisions EPA is Approving Into the SIP

OAR 340–022–0102 (73)—Definitions (5–21–99)
OAR 340–028–0110 (139)—Definitions (5–21–99)

Motor Vehicle Refinishing

OAR 340–022–0700—Applicability (7–12–99)
OAR 340–022–0710—Definitions (7–12–99)
OAR 340–022–0740—Requirements for Motor Vehicle Refinishing in Portland AQMA (7–12–99)
OAR 340–022–0760—Inspecting and Testing Requirements (7–12–99)

B. The Revisions EPA is Removing From the SIP

OAR 340–022–0102 (73)—Definitions (5–9–97)
OAR 340–028–0110 (139)—Definitions (10–14–98)

Consumer Products

OAR 340–022–0800—Applicability (5–25–95)
OAR 340–022–0810—Definitions (8–14–96)
OAR 340–022–0820—Consumer Product Standards and Exemptions (5–25–95)
OAR 340–022–0830—Requirements for Manufacture and Sale of Consumer Products (5-25–95)
OAR 340–022–0840—Innovative Products (10–22–96)
OAR 340–022–0850—Recordkeeping and Reporting Requirements (5–25–95)
OAR 340–022–0860—Inspection and Testing Requirements (5–25–95)

Motor Vehicle Refinishing

OAR 340–022–0700—Applicability (5–25–95)
OAR 340–022–0710—Definitions (8–14–96)
OAR 340–022–0720—Coating Standards and Exemptions (5–25–95)
OAR 340–022–0730—Requirements for Manufacture and Sale of Coatings (5–25–95)
OAR 340–022–0740—Requirements for Motor Vehicle Refinishing in Portland AQMA (5–25–95)
OAR 340–022–0750—Recordkeeping and Reporting Requirements (5–25–95)
OAR 340–022–0760—Inspecting and Testing Requirements (5–25–95)

Architectural Coatings

OAR 340–022–1000—Applicability (5–25–95)
OAR 340–022–1010—Definitions (8–14–96)
OAR 340–022–1020—Standards (5–25–95)
OAR 340–022–1030—Requirements for Manufacture, Sale and Use of Architectural Coating (5–25–95)
OAR 340–022–1040—Recordkeeping and Reporting Requirements (5–25–95)
OAR 340–022–1050—Inspection and Testing Requirements (5–25–95)

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing ■ separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 5, 2000 without further notice unless the Agency receives adverse comments by August 4, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 5, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action"

and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 5, 2000 unless EPA receives adverse written comments by August 4, 2000.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 5, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

B. *Oregon Notice Provision.* During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of ORS 468.126(2)(e) and agreed that, because federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

C. *Oregon Audit Privilege.* Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

Dated: May 22, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(132) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(132) On June 18, 1999, the Director of the Oregon Department of Environmental Quality (ODEQ) submitted a SIP revision to repeal the Consumer Products Rules, repeal the Architectural Coatings Rules, revise and partially repeal the Motor Vehicle Refinishings Rules, and revise the Volatile Organic Compounds definitions.

(i) Incorporation by reference.

(A) Oregon Administrative Rule (OAR) 340–022–0102 (73) and OAR 340–028–0110 (139), as effective May 21, 1999; and OAR 340–022–0700, OAR 340–022–0710, OAR 340–022–0740, and OAR 340–022–0760, as effective July 12, 1999.

(B) Remove the following provisions from the current incorporation by reference: OAR 340–022-0102 (73), as effective May 9, 1997; OAR 340–028–0110 (139), as effective October 14, 1998; OAR 340–022–0800, OAR 340–022–0820, OAR 340–022–0830, OAR 340–022–0850, and OAR 340–022–0860, OAR 340–022–0700, OAR 340–022–0720, OAR 340–022–0730, OAR 340–022-0740, OAR 340–022–0750, OAR 340–022–0760, OAR 340–022–1000, OAR 340–022–1020, OAR 340–022–1030, OAR 340–022–1040, and OAR 340–022–1050 as effective May 25, 1995; OAR 340–022–0840, as effective October 22, 1996; and OAR 340–022–710, OAR 340–022–810, OAR 340–022–1010, as effective August 14, 1996.

[FR Doc. 00–16068 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN105–1a; FRL–6720–2]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving Indiana's State Implementation Plan (SIP) revision request to control emissions of volatile organic compounds (VOCs) from steel mill sinter plants in Lake and Porter Counties. The Indiana Department of Environmental Management (IDEM) submitted the SIP revision request on April 6, 1999. The revision applies to integrated steel mills in Lake and Porter Counties, and provides for limits on emissions of VOCs from those facilities. VOC emissions are a precursor of ground-level ozone, commonly known as smog. High ozone levels are detrimental to human health and contribute to upper respiratory ailments such as asthma.

DATES: This rule is effective on September 5, 2000, unless EPA receives relevant adverse written comments by August 4, 2000. If EPA receives adverse written comment, it will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. You can inspect copies of the State Plan submittal at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend you contact Francisco J. Acevedo, Environmental Protection Specialist, at (312) 886–6061 before visiting the Region 5 office).

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, at (312) 886–6061.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What Is EPA Approving in This Action?

We are approving Indiana's rule (IAC 8–13) that regulates emissions of VOCs from steel mill sinter plants in Lake and Porter Counties. Our approval makes the Indiana sinter plant rule part of the federally enforceable SIP under the Clean Air Act (Act).

II. Why Did Indiana Submit a Sinter Plant SIP Revision Request?

Lake and Porter Counties are classified under the Act as severe nonattainment for ozone. High ozone levels are detrimental to human health and contribute to upper respiratory ailments such as asthma. The sintering process at steel mills emits significant amounts of VOC, and Indiana has identified reductions in emissions from the sintering process as making an important contribution toward improving air quality and attaining the ambient ozone air quality standard.

III. Who Is Affected by the Indiana Sinter Plant SIP Revision?

The SIP revision requirements are applicable to all steel mill sinter plant operations in Lake and Porter Counties. According to Indiana, there are four existing sinter plants operating in Lake and Porter Counties. Three are located in Lake County: LTV Steel Company, Inland Steel Company and U.S. Steel, Gary Works; and, one is located in Porter County: Bethlehem Steel.

IV. What Does the Indiana Sinter Plant SIP Revision Require?

The rule establishes three types of VOC emission limits for the period from May 1 through September 30 for sinter plant windbox exhaust gas VOC emissions: a seasonal cap, a maximum daily limit, and a lower daily limit for days on which an exceedance of the national ambient air quality standard for ozone is predicted to be likely. The emission limits are based on a VOC emission rate equal to twenty-five hundredths (0.25) pounds per sinter produced and a daily sinter production rate. In addition, from October 1 through April 30, sinter plant windbox exhaust gas VOC emissions are limited to thirty-six hundredths (0.36) pound per ton of sinter produced. The rule also contains control measure operation, maintenance, and monitoring requirements, and record keeping and reporting requirements.

The rule requires that by November 1, 1998, the owners or operators of the sinter plants mentioned above submit a report detailing, among other things, how the limits of the rule will be met. In addition, the rule requires the submission of a corrective action plan that will be implemented in the event of an exceedance, and a high ozone day action plan in the event that a high ozone day is predicted. At this time, all of the sinter plant operations covered by this rule have submitted the above documentation to the Indiana Department of Environment.

The rule requires that on or after January 1, 1999, the sinter plant operations comply with all the above requirements.

V. Where Are the Indiana Sinter Plant Requirements Codified?

Indiana has codified its sinter plant rule at 326 Indiana Administrative Code (IAC) 8–13. The Indiana Pollution Control Board adopted the rule on March 4, 1998. The rule was filed with the Secretary of State on June 24, 1998, and became effective on July 24, 1998. The rule was published in the Indiana Register on August 1, 1998, at 21 IR 4195.

VI. What Public Review Opportunities Did Indiana Provide?

Indiana held three public hearings in Indianapolis, Indiana on the sinter plant rule on December 3, 1997, February 4, 1998, and March 4, 1998.

VII. EPA Rulemaking Action.

In this rulemaking action, we are approving Indiana's April 6, 1999, SIP revision request regarding steel mill sinter plant VOC controls (326 IAC 8–13) in Lake and Porter Counties.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse written comments be received. This action will be effective without further notice unless EPA receives relevant adverse written comment by August 4, 2000. Should the Agency receive such comments, it will publish a notice informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 5, 2000.

VIII. Administrative Requirements.

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on

a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 5, 2000 unless EPA receives adverse written comments by August 4, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 5, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 12, 2000.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(131) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(131) On April 6, 1999, Indiana submitted rules for the control of volatile organic compound emissions from steel mill sinter plant operations in Lake and Porter Counties as a revision to the State Implementation Plan.

(i) Incorporation by reference.

326 Indiana Administrative Code 8–13: Sinter Plants. Adopted by the Indiana Air Pollution Control Board March 4, 1998. Filed with the Secretary of State June 24, 1998. Published at Indiana Register, Volume 21, Number 11, August 1, 1998. Effective July 24, 1998.

[FR Doc. 00–16070 Filed 7–3–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN128–1a; FRL–6713–1]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revised opacity limits for three casting complexes at ALCOA Warrick Operations, which were submitted by the Indiana Department of Environmental Management (IDEM) on January 13, 2000 as amendments to its State Implementation Plan (SIP). ALCOA Warrick Operations is a primary aluminum smelter located in Newburgh, Indiana. The revised limits allow higher opacity emissions during fluxing operations at three casting complexes. This action does not reverse applicable mass emissions limits.

DATES: This rule is effective on September 5, 2000, unless EPA receives adverse written comments by August 4, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What Is the EPA Approving?

We are approving as SIP revisions revised opacity limits for three processes at ALCOA Warrick Operations, which were submitted by IDEM on January 13, 2000. The revised limits allow higher opacity emissions during fluxing operations at three casting complexes. This action does not change mass emissions limits for these sources.

II. What Facilities/Operations Does This Action Apply To?

We are approving revised opacity limits for three processes at ALCOA Warrick Operations. ALCOA Warrick Operations is a primary aluminum smelter located in Newburgh, Indiana. Molten aluminum is transferred from the melt furnaces into the holding furnaces for final fluxing, then cast into slabs. There are no particulate matter (PM) control devices for these processes. Emissions are exhausted through ventilation hoods to the exhaust stacks for each holding furnace. The revised limits apply to the #1 Complex (Horizontal Direct Chill Casting, or HDC), the #8 Complex (Electromagnetic Casting, or EMC) and the #5 HDC complex. Each of these casting complexes contains two holding furnaces.

III. What Are the Provisions of the Opacity Limits?

The revised limits for both the #1 complex and the #8 complex are contained in revised operation permits OP 87–07–91–0112 thru 0116, issued by IDEM on October 1, 1999. The revised limit for the #5 complex is contained in revised operation permit OP 87–07–91–0113 issued by IDEM on December 15, 1999.

The revised limits allow emissions with an opacity up to 80 percent during the fluxing portion of the production cycle from the East and West holding furnace exhaust stacks at the #1 Complex (HDC). This opacity is allowed for no more than 6 six-minute averaging periods, and only during fluxing. For all other portions of the production cycle, the limit remains at 40 percent. Fluxing typically lasts 12–15 minutes of the 5–10 hour production cycle for the HDC, but can last as long as 35 minutes.

For the East and West holding furnace exhaust stacks at the #8 Complex (EMC), the revised limit allows opacity during fluxing up to 85 percent for 2 six-minute averaging periods, and up to 80 percent opacity for 4 additional six-minute averaging periods. During all other portions of the production cycle, the opacity of emissions from the EMC continues to be limited to 40 percent. Fluxing typically lasts 12–15 minutes of the 3–4 hour production cycle for the EMC, but can last as long as 35 minutes.

For the East and West holding furnace exhaust stacks at the #5 Complex (HDC), the revised limit allows opacity during fluxing up to 80 percent for 3 six-minute averaging periods, 75 percent opacity for 1 six-minute averaging period, 65 percent opacity for 1 six-minute averaging period, and 55 percent opacity for 1 six-minute averaging period. During all other portions of the production cycle, the opacity of emissions from the EMC continues to be limited to 40 percent. Fluxing typically lasts 12–15 minutes of the 5–10 hour production cycle for the HDC, but can last as long as 35 minutes.

Mass PM emissions remain unchanged for all stacks at all complexes.

IV. What Are the Current Limits on These Sources?

These processes are currently covered by SIP rule Title 326 Indiana Administrative Code, Article 5, Rule 1, Section 2 (326 IAC 5–1–2), which provides a 40 percent opacity limit (6-minute average).

They are also covered by a SIP mass emission limit contained in 326 IAC 6–3–2. This regulation provides for a limit based on the process rate, and continues to apply at all times.

V. What Supporting Materials Did Indiana Provide?

Indiana provided stack test data and opacity readings. ALCOA conducted stack tests to show that the revised opacity limit would still be protective of the SIP mass PM emission limits. ALCOA conducted two rounds of stack tests on the #1 and #8 complexes, and one round on the #5 complex. ALCOA conducted opacity readings, utilizing EPA reference Method 9, during fluxing for many of the runs.

The first round of tests on the #1 and #8 complexes measured emissions of PM over the entire production cycle. (The production cycle lasts 5–10 hours for the HDC complexes (#1 and #5) and 3–4 hours for the EMC complex (#8).) Nine test runs were conducted on each exhaust stack. Fluxing was conducted for 35 minutes during each run, to approximate a worst-case scenario. (Fluxing normally lasts only 12–15 minutes.)

The second round of tests for the #1 and #8 complexes and the single round for the #5 complex were conducted for only one hour of the production cycle each, including the fluxing portion of the cycle. These tests were designed to show compliance with mass PM emissions limits on a one-hour basis. The tests include the fluxing portion of the cycle, since fluxing produces the bulk of emissions from the holding furnaces. 3–12 test runs were conducted on each exhaust stack. During these tests, fluxing was also conducted for a "worst-case" time of 35 minutes. ALCOA took opacity readings during the runs.

The tests show that ALCOA can meet SIP mass emissions limits at the EMC and HDC holding furnace stacks during fluxing. Even though opacity was often high during fluxing, no violations of the SIP mass PM emissions limits were measured. The tests indicate that the revised opacity limits should not result in violations of the mass limits for these sources.

VI. What Are the Environmental Effects of This Action?

The revised opacity limits will allow darker smoke to be emitted than does the current SIP rule. However, since no mass limits are being revised, and since the revised opacity limits are protective of the current mass limits, this SIP revision should not jeopardize air quality.

VII. EPA Rulemaking Action

We are approving, through direct final rulemaking, revised opacity limits for three casting complexes at ALCOA Warrick Operations. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by August 4, 2000. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, you are advised that this action will be effective on September 5, 2000.

VIII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 5, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: May 31, 2000.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(135) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(135) On January 1, 2000, Indiana submitted revised opacity limits for three processes at ALCOA Warrick Operations. The revised limits allow higher opacity emissions during fluxing operations at three casting complexes. This action does not change mass emissions limits for these sources.

(i) Incorporation by reference.

(A) Modifications to Operating Permits OP 87–07–91–0112 thru 0116: Permit I.D. 173–10913, Issued on October 1, 1999, to ALCOA, Inc.—Warrick Operations. Effective October 1, 1999.

(B) Modifications to Operating Permit OP 87–07–91–0113: Permit I.D. 173–11414, Issued on December 15, 1999, to ALCOA, Inc.—Warrick Operations. Effective December 15, 1999.

[FR Doc. 00–16361 Filed 7–3–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300983; FRL–6496–5]

RIN 2070–AB78

Methoxyfenozide; Benzoic Acid, 3-methoxy-2-methyl-2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: . This regulation establishes tolerances for residues of methoxyfenozide in or on cotton, undelinted seed; cotton gin byproducts; pome fruit; apple pomace, wet; milk, meat of cattle, goats, hogs, horses and sheep and fat of cattle, goats, hogs, horses and sheep; and tolerances for the combined residues of methoxyfenozide and its glucuronide metabolite in meat byproduct (except liver) and liver of cattle, goats, hogs, horses and sheep. Rohm and Haas Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective July 5, 2000. Objections and requests for hearings, identified by docket control number OPP–300983. must be received by EPA on or before September 5, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify

docket control number OPP–300983 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6411; and e-mail address: tavanojoseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300983. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of (October 6, 1998, 63 FR 53656) (FRL–6033–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA of 1996 (Public Law 104–170) announcing the filing of a pesticide petition for tolerance by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide, methoxyfenozide, in or on cottonseed; cotton gin trash; pome fruit; meat, kidney, meat byproducts and milk of cattle, goats, sheep and hogs and fat of cattle, goats, sheep and hogs at 2.0, 25.0, 1.25, 0.02, 0.1 parts per million (ppm) respectively and tolerances for the combined residues of methoxyfenozide and its glucuronide metabolite in or on liver of cattle, goats, sheep, and hogs at 0.1 ppm.

Methoxyfenozide is a reduced risk pesticide which will be sold under the trade name of Intrepid 2F. Methoxyfenozide controls codling moth, green fruitworm, lesser appleworm, Oriental fruit moth, obliquebanded leafroler, eyespotted bud moth, fruittree leafroller, pandemis leafroller, redbanded leafroller, variegated leafroller, tufted apple bud moth, spotted tentiform leafminer and Western tentiform leafminer on pome fruit and cotton bollworm, tobacco budworm, beet armyworm, cabbage looper, cotton leafworm, fall armyworm, Southern armyworm, soybean looper and true armyworm on cotton.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of methoxyfenozide on cotton, undelinted seed; cotton gin byproducts; pome fruit; apple pomace, wet; milk; meat of cattle, goats, hogs, horses, and sheep and fat of cattle, goats, hogs, horses, and sheep at 2.0, 35.0, 1.5, 7.0, 0.02, 0.02, 0.1 ppm respectively, and tolerances for the combined residues of methoxyfenozide and its glucuronide metabolite in liver of cattle, goats, hogs, horses and sheep and meat byproducts (except liver) of cattle, goats, hogs, horses and sheep at 0.1 and 0.02 ppm respectively. EPA's assessment of the

dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by methoxyfenozide are discussed in this unit.

Acute toxicity studies with technical grade: Oral LD_{50} in the rat is > 5,000 milligrams/kilograms (mg/kg) for males and females-Toxicity Category IV; Oral LD_{50} in the mouse is > 5,000 mg/kg for males and females-Toxicity Category IV; Dermal LD_{50} in the rat is > 2,000 mg/kg-Toxicity Category III; Inhalation LC_{50} in the rat is > 4.3 millgram/liter (mg/L)-Toxicity Category IV; Primary Eye Irritation in the rabbit -very mild irritant-Toxicity Category IV; Primary skin irritation in the rabbit-not a skin irritant-Toxicity Category IV. Methoxyfenozide is not a skin sensitizer.

In an acute neurotoxicity study in rats, statistically significant decreased hindlimb grip strength was observed in male rats at 3 hours (approximate time of peak effect) following a single oral dose of 2,000 mg/kg (limit dose) of methoxyfenozide. Decreased hindlimb grip strength was also observed in the male rats at 7 and 14 days, but was not statistically significant. No other systemic or neurotoxic effects were observed in the male rats or in the female rats at any time in this study. Since this marginal effect occurred only in one sex, was statistically significant at only one time, was observed only at the high dose (limit dose) and no other signs of toxicity were observed in the rats in this study, this possible effect is not considered to be biologically significant. In addition, neither decreased hindlimb grip strength nor any other signs of neurotoxicity were observed in any of the animals at any time in a 90-day subchronic neurotoxicity study in rats.

In a 2-week range-finding dietary study in rats, treatment-related effects were observed at > 5,000 ppm in the liver (increased liver weights and hepatocellular hypertrophy in males and females), in the thyroid gland (hypertrophy/hyperplasia of follicular cells in males and females), and in the adrenal gland (increased adrenal weights and/or hypertrophy of the zona fasciculata in females). Hypertrophy/hyperplasia of thyroid follicular cells was also observed in males and females at 1,000 ppm, the lowest observed adverse effect level (LOAEL) in this study. The no observed adverse effect level (NOAEL) was 250 ppm. Treatment-related hematological changes were not observed in the rats in this study.

In a 3-month feeding study in rats, the predominant treatment-related effects were increased liver weights in males and females and periportal hepatocellular hypertrophy in all males and females at 20,000 ppm highest dose tested (HDT) and at 5,000 ppm. In addition, at 20,000 ppm, a slightly decreased (7-8%) RBC count and slightly decreased (7-8%) hemoglobin concentration, compared to control rats, were observed in the females. The LOAEL in this study was 5,000 ppm (353/379 mg/kg/day in males/females, respectively). The NOAEL was 1,000 ppm (69/72 mg/kg/day in males/females, respectively). Although observed in the 2-week dietary study and in the 2-year chronic feeding/carcinogenicity study in rats, treatment-related effects in the thyroid and adrenal glands were not observed in the rats in this 3-month study. There is no available biological explanation for this difference in findings in the studies.

In a 2-year combined chronic feeding/carcinogenicity study in rats, the following treatment-related effects were observed at 20,000 ppm (highest dose tested): decreased survival in males, decreased body weight and food efficiency in females during the last year of the study, hematological changes (decreased RBC counts, hemoglobin concentrations, and/or hematocrits; methemoglobinemia; and increased platelet counts) in males and females, increased liver weights and periportal hepatocellular hypertrophy in males and females, thyroid follicular cell hypertrophy in males, altered thyroid colloid in males and females, and increased adrenal weights in males and females. At 8,000 ppm, the following treatment-related effects were observed: hematological changes (decreased RBC counts, hemoglobin concentrations, and/or hematocrits in males and females), liver toxicity (increased liver weights in males and periportal hepatocellular hypertrophy in males and females), histopathological changes in the thyroid (increased follicular cell hypertrophy in males and altered colloid in males) and possible adrenal toxicity (increased adrenal weights in males and females). The LOAEL in this study was 8,000 ppm (411/491 mg/kg/day in males/females, respectively), based on the effects described above. The NOAEL was 200 ppm (10.2/11.9 mg/kg/day in males/females, respectively). This NOAEL was used to establish the reference dose (RfD) for methoxyfenozide. Utilizing an uncertainty factor of 100 to account for both interspecies extrapolation (10x) and intraspecies variability (10x), the chronic RfD for methoxyfenozide was calculated to be 0.10 mg/kg/day. No evidence of carcinogenicity was observed in this study. Dosing was considered adequate because of the decreased survival in males and the decreased body weights and food efficiency in females at 20,000 ppm. In addition, the HDT for both males and females, 20,000 ppm (1,045/1,248 mg/kg/day in males/females, respectively), is higher than the limit dose of 1,000 mg/kg/day.

In a 2-week range-finding study in dogs, treatment-related hematological changes were observed in both males and females at 3,500 ppm, 7,000 ppm, 15,000 ppm, and 30,000 ppm (HDT). These changes included decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, decreased MCHC, increased MCV, increased MCH, increased Heinz bodies, methemoglobinemia, changes in RBC morphology such as Howell-Jolly bodies and polychromasia, increased reticulocyte counts, increased nucleated RBC and increased platelet counts. At the same dose levels (> 3,500 ppm), increased spleen weights and/or enlarged spleens were also observed. At 7,000 ppm, plasma total bilirubin was increased. The LOAEL in this study was 3,500 ppm (90-184 mg/kg/day in males and females). The NOAEL was 300 ppm (11–16 mg/kg/day in males and females).

In a 3-month feeding study in dogs, no treatment-related effects other than a suggestion of decreased body weight gains in males and females were observed in either males or females at the HDT viz. 5,000 ppm (198/209 mg/kg/day in males/females, respectively). Although hematological effects were noted in dogs in the 2-week range-finding study at > 3,500 ppm (90-184 mg/kg/day) and in the 1-year chronic feeding study at > 3,000 ppm (106/111 mg/kg/day), hematological changes were not observed in this 3-month study at 5,000 ppm (198/209 mg/kg/day). There is no available biological explanation for this difference in findings in the studies.

As part of the 3-month study in dogs, some male and female dogs were given 15 ppm (0.6 mg/kg/day) of methoxyfenozide in the diet for 15 weeks followed by an increase in the dietary dose to 15,000 ppm (422/460 mg/kg/day in males/females,

respectively) for an additional 6 weeks. After about 2 weeks and 6 weeks at 15,000 ppm, hematological examinations were conducted. No hematological changes in these dogs were observed. Apparently, pretreatment of the dogs at 15 ppm for 15 weeks prevented the occurrence of hematological changes which would have been expected to occur based on results in the 2-week and 1-year feeding studies. One possible explanation is that the liver microsomal enzyme system may have been stimulated so much during pretreatment at 15 ppm that the metabolic (detoxification) rate of methoxyfenozide was increased to the point where blood levels of methoxyfenozide may have remained below critical effect levels at 15,000 ppm. Another possible explanation is that compensatory mechanisms for replacing damaged RBC in pretreated dogs may have been so efficient that hematological changes were not observed in these dogs even at 15,000 ppm. Other explanations for this finding are also possible.

In a 1-year chronic feeding study in dogs, the predominant toxic effects were anemia and signs of an associated compensatory response. At 30,000 ppm, the HDT, the following treatment-related effects were observed in both males and females: decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, methemoglobinemia, nucleated RBC, increased platelets, increased serum total bilirubin, bilirubinurea, increased hemosiderin in macrophages in liver and spleen, and increased hyperplasia in bone marrow of rib and sternum. Increased liver weights in males and females and increased thyroid weights in males were also observed at 30,000 ppm. Signs of anemia were also noted at 3,000 ppm and included decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, methemoglobinemia, increased platelets, and increased serum total bilirubin and bilirubinurea. The LOAEL in this study was 3,000 ppm (106/111 mg/kg/day in males/females, respectively). The NOAEL was 300 ppm (9.8/12.6 mg/kg/day in males/females, respectively).

In a 3-month feeding study in mice, the only treatment-related effect was decreased body weight gain in males and females at 7,000 ppm, the HDT. The LOAEL in this study was 7,000 ppm (1,149/1,742 mg/kg/day in males/females, respectively) and the NOAEL was 2,500 ppm (428/589 mg/kg/day in males/females, respectively). In an 18-month carcinogenicity study in mice (MRID 44617729), no treatment-related effects were observed at doses up to and including the limit dose of 7,000 ppm (1,020/1,354 mg/kg/day in males/females, respectively). No evidence of carcinogenicity was observed in this study. Dosing was considered adequate because the HDT for both males and females, 7,000 ppm (1,020/1,354 mg/kg/day in males/females, respectively), is higher than the limit dose of 1,000 mg/kg/day.

In a battery of four mutagenicity studies (with and without metabolic activation, as appropriate for the specific study), technical grade methoxyfenozide was negative for genotoxicity in all four studies. The four studies satisfy the new revised mutagenicity guideline requirements for a new chemical (published in 1991). An additional mutagenicity study, performed on RH–117,236 (Metabolite M-B), a metabolite of methoxyfenozide, was also negative for genotoxicity.

Based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies, methoxyfenozide is classified as a "not likely" human carcinogen according to the EPA.

In a developmental toxicity study in rats, no signs of maternal toxicity in dams or of developmental toxicity in fetuses were observed at the limit dose of 1,000 mg/kg/day. The NOAEL in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The LOAEL was > 1,000 mg/kg/day. Similarly, in a developmental toxicity study in rabbits, no signs of maternal toxicity or of developmental toxicity were observed at the limit dose of 1,000 mg/kg/day. The NOAEL in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The LOAEL was > 1,000 mg/kg/day.

In neither the developmental toxicity study in rats nor in the developmental toxicity study in rabbits was there any evidence for increased susceptibility of fetuses to *in utero* exposure to methoxyfenozide. In these studies, methoxyfenozide was determined not to be a developmental toxicant.

In a 2-generation (1 litter/generation) reproduction study in rats, treatment-related parental toxicity was observed only at 20,000 ppm, the HDT. At this dose, increased liver weights were observed in males and females of both generations and midzonal to periportal hepatocellular hypertrophy was observed in the livers of all males and females of both generations. The LOAEL for parental toxicity was 20,000 ppm (1,552/1,821 mg/kg/day for males/females, respectively) and the NOAEL was 2,000 ppm (153/181 mg/kg/day for males/females, respectively). There were no treatment-related effects on reproductive parameters for adult (parent) animals. The NOAEL for reproductive toxicity was 20,000 ppm. Since no treatment-related effects were observed in the pups, the NOAEL for neonatal toxicity was also, 20,000 ppm. The NOAEL for parental toxicity in this reproduction study is higher than the NOAEL for the 2-year combined chronic feeding/carcinogenicity study in rats because many of the toxic effects observed in the 2-year study at the LOAEL (hematological changes, liver toxicity, histopathological changes in the thyroid gland and increased adrenal weights) were not examined in the reproduction study.

In a metabolism study in rats, ^{14}C-methoxyfenozide was rapidly absorbed, distributed, metabolized and almost completely excreted within 48 hours. The major route of excretion was feces (86–97%) with lesser amounts in the urine (5–13%). An enterohepatic circulation was observed. The test material was metabolized principally by O-demethylation of the A-ring methoxy group and oxidative hydroxylation of the B-ring methyl groups followed by conjugation with glucuronic acid. No significant sex-related or dose-dependent differences in metabolic disposition were noted. Seven metabolites and the parent accounted for 74–90% of the administered dose in all groups. The glucuronide conjugates are considered to be less toxic than the parent compound because glucuronide conjugation is well known to be a commonly occurring "detoxification" mechanism in mammalian species since it results in the formation of more polar, more water-soluble metabolites which are readily and easily excreted from the body (in this case, in the bile and urine). Further, based on similarities of chemical structure, the non-conjugated metabolites would be expected to be no more toxic than the parent compound. In a dermal absorption study in rats using an 80% wettable powder formulation as the test material, the cumulative dermal absorption of test material after a 10- or 24-hour dermal exposure was determined to be 2%. In a 28-day dermal toxicity study in rats, no treatment-related systemic or skin effects were observed at the limit dose of 1,000 mg/kg/day (HDT). Regarding effects on endocrine organs, methoxyfenozide affected the thyroid gland and adrenal gland in the 2-week and 2-year feeding studies in rats. In the thyroid gland, hypertrophy/hyperplasia

of follicular cells and altered colloid were observed in males and females at or near the LOAEL in both of these studies. In the adrenal gland, increased adrenal weights and hypertrophy of the zona fasciculata were also observed in males and females at or near the LOAEL. In addition, in the 1-year chronic feeding study in dogs, increased thyroid weight in males was observed, but only at the very high dose of 30,000 ppm. Since the definition and regulatory significance of the term "endocrine disruptor chemical" has not yet been established by the Agency, it is not clear whether methoxyfenozide, on the basis of these effects on the thyroid gland and adrenal gland, should be considered to be an "endocrine disruptor chemical." Other than the morphological changes described above, there were no signs of thyroid or adrenal dysfunction in these or in any other studies on methoxyfenozide.

B. Toxicological Endpoints

1. *Acute toxicity.* No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide including the acute neurotoxicity study in rats, the developmental toxicity study in rats and the developmental toxicity study in rabbits. In the acute neurotoxicity study in rats, statistically significant decreased hindlimb grip strength was observed in male rats at 3 hours (approximate time of peak effect) following a single oral dose of 2,000 mg/kg (limit dose) of methoxyfenozide. Decreased hindlimb grip strength was also observed in the male rats at 2,000 mg/kg at 7 and 14 days, but was not statistically significant. Decreased hindlimb grip strength was not observed in the male rats at 1,000 mg/kg. No other systemic or neurotoxic effects were observed in the male rats or in the female rats at any time in the study. Since this marginal effect occurred only in one sex, was statistically significant only one time, was observed only at the high dose (limit dose) and no other signs of toxicity were observed in the rats in the study, this equivocal effect is not considered to be an appropriate toxicological endpoint for acute dietary risk assessments. In addition, decreased hindlimb grip strength was not observed in a subchronic neurotoxicity study in rats in any of the animals at any time. It is also noted that the acute oral LD_{50} for male and female rats for technical grade methoxyfenozide (98% active ingredient (a.i.) is > 5,000 mg/kg (Toxicity Category IV). No treatment-related effects were observed in either dams or pups in the developmental toxicity studies in rats or rabbits at doses up to the limit dose of 1,000 mg/kg/day. Thus the risk from acute exposure is considered negligible.

2. *Short- and intermediate-term toxicity.* In a 28-day repeated dose dermal toxicity study in rats, no systemic or dermal toxicity was observed at 1,000 mg/kg/day, the HDT (limit dose). By applying the dermal absorption factor of 2% (derived from a dermal absorption study in rats, to the NOAEL of 10.2 mg/kg/day and the LOAEL of 411 mg/kg/day in the 2-year combined chronic feeding/carcinogenicity study in rats, the oral NOAEL and LOAEL in this study are equivalent to a dermal NOAEL of 510 mg/kg/day and a dermal LOAEL of 20,550 mg/kg/day. By applying the dermal absorption factor of 2% to the NOAEL of 9.8 mg/kg/day and the LOAEL of 106.1 mg/kg/day in the 1-year chronic feeding study in dogs, the oral NOAEL and LOAEL in this study are equivalent to a dermal NOAEL of 490 mg/kg/day and a dermal LOAEL of 5,305 mg/kg/day. The likelihood of toxic effects resulting from repeated dermal exposure to methoxyfenozide is quite low. Further, based on the use pattern, no long-term dermal exposure is expected to occur.

Methoxyfenozide is a non-volatile solid with a very low vapor pressure of $> 1 \times 10^{-7}$ torr (or $> 1.33 \times 10^{-5}$ pascal). In an acute inhalation toxicity study in rats, the acute inhalation LC_{50} for technical grade methoxyfenozide dust (98% a.i.) was determined to be > 4.3 mg/L (> 2x limit dose, Toxicity Category IV) for both male and female rats. In another acute inhalation toxicity study in rats), the acute inhalation LC_{50} for RH–112,485 80WP formulation 80% a.i. was determined to be > 4.5 mg/L (> 2x limit dose, Toxicity Category IV) for both male and female rats. In both of these acute inhalation toxicity studies, there were no mortalities, treatment-related clinical signs, changes in body weights or necropsy findings. Based on the low vapor pressure, the low acute inhalation toxicity (Toxicity Category IV) of the technical grade product and the formulated product, the packaging of the formulated product (water soluble pouches), the application rate (0.05 to 0.4 lb. a.i./acre for a maximum of 2.0 lb. ai/season), and the application method, there is minimal concern for potential inhalation risk. Further, based on the use pattern, no long-term inhalation exposure is expected to occur.

3. *Chronic toxicity.* EPA has established the RfD for methoxyfenozide at 0.10 mg/kg/day. This RfD is based on a NOAEL of 10.2 mg/kg/day and an UF of 100 accounting for both interspecies extrapolation (10x) and intraspecies variability (10x). This chronic RfD is based on the 2-year combined chronic feeding/carcinogenicity study in rats, in which the following effects were observed at the LOAEL of 411/491 mg/kg/day in males/females: hematological changes (decreased RBC counts, hemoglobin concentrations, and/or hematocrit in males and females), liver toxicity (increased liver weights in males and periportal hepatocellular hypertrophy in males and females), histopathological changes in the thyroid (increased follicular cell hypertrophy and altered colloid in males) and possible adrenal toxicity (increased adrenal weights in males and females). EPA determined that the 10x Safety Facter for the protection of infants and children (as required by FQPA) should be reduced to 1x. Therefore, the chronic Population Adjusted Dose (cPAD) is the same as the RFD. This cPAD is used in assessing chronic risk and applies to all population subgroups. Reducing the 10x safety factor to 1x is supported by the following factors:

i. The toxicology data base for methoxyfenozide is complete for assessment of potential hazard to infants and children.

ii. Based on weight-of-the-evidence considerations, EPA determined that a developmental neurotoxicity study in rats is not required to support the registration of methoxyfenozide.

iii. In developmental toxicity studies in rats and rabbits, no increased susceptibility in fetuses as compared to maternal animals was observed following *in utero* exposures.

iv. In a 2-generation reproduction study in rats, no increased susceptibility in pups as compared to adults was observed following *in utero* and postnatal exposures.

v. The exposure assessments will not underestimate the potential dietary (food and drinking water) or non-dietary exposures for infants and children from the use of methoxyfenozide.

4. *Carcinogenicity.* Methoxyfenozide has been classified as a "not likely" human carcinogen. This classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies.

C. Exposures and Risks

1. *From food and feed uses.* In today's action tolerances will be established (40 CFR part 180) for the residues of methoxyfenozide on cotton, undelinted seed; cotton gin byproducts; pome fruit; apple pomace, wet; milk; meat of cattle,

goats, hogs, horses and sheep and fat of cattle, goats, hogs, horses and sheep at 2.0, 35.0, 1.5, 7.0, 0.02, 0.02, 0.1 ppm and tolerances for the combined residues of methoxyfenozide and its glucuronide metabolite in liver of cattle, goats, hogs, horses and sheep and meat byproducts (except liver) of cattle, goats, hogs, horses and sheep at 0.1 and 0.02 ppm respectively. Risk assessments were conducted by EPA to assess dietary exposures from methoxyfenozide as follows.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide including the acute neurotoxicity study in rats, the developmental toxicity study in rats and the developmental toxicity study in rabbits. This risk is considered to be negligible.

ii. *Chronic exposure and risk.* EPA used the Dietary Exposure Evaluation Model (DEEM) software for conducting a chronic dietary (food) risk analysis. DEEM is a dietary exposure analysis system that is used to estimate exposure to a pesticide chemical in foods comprising the diets of the U.S. population, including population subgroups. DEEM contains food consumption data as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989-1992. EPA has made the assumptions that 100% of pome fruit and cotton would be treated and contain methoxyfenozide residues at the tolerance level. The following tolerance levels were used in the analysis:

Commodity	Tolerance Level (parts per million) (ppm)
Cotton, underlinted seed.	2.0 ppm
Pome fruits	1.5 ppm
Milk	0.02 ppm
Meat*	0.02 ppm
Meat byproducts* (except liver).	0.02 ppm
Fat*	0.1 ppm
Liver	0.1 ppm

*of cattle, goats, hogs, horses and sheep.

Processing factors were also applied to apple juice concentrate (3x), dried apples (8x), dried beef (1.92x), dried pears (6.25x), and dried veal (1.92x). The processing factors are default values from DEEM.

As shown in the following table, the resulting dietary food exposures occupy up to 11% of the Chronic PAD for the most highly exposed population subgroup, non-nursing infants. These results should be viewed as conservative (health protective) risk estimates. Refinements such as use of percent crop-treated information and/or anticipated residue values would yield even lower estimates of chronic dietary exposure.

SUMMARY: CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)

Population Subgroup[1]	Exposure (mg/kg/day)	% of Chronic PAD[2]
U.S. population (total).	0.001839	1.8
All infants (> 1 year).	0.009617	9.6
Nursing infants ..	0.005605	5.6
Non-nursing infants.	0.011306	11
Children (1–6 years).	0.007350	6.8
Children (7–12 years).	0.003103	2.8
U.S. population (autumn season).	0.002285	2.3
U.S. population (winter season).	0.001891	1.9
Northeast region	0.002014	2.0
Western region	0.002004	2.0
Non-hispanic whites.	0.001917	1.9
Non-hispanic/non-white/non-black.	0.002025	2.0
Females (> 13 years, nursing).	0.002479	2.5
Pacific region	0.002023	2.0

[1] The subgroups listed are: (1) The U.S. population (total); (2) those for infants and children; (3) the other subgroup(s), if any, for which the percentage of the Chronic PAD occupied is greater than that occupied by the subgroup U.S. population (total); and, (4) the most highly exposed of the females subgroups (in this case, females, > 13 years, nursing).

[2] Percent chronic PAD = (Exposure + Chronic PAD) x 100%.

2. *From drinking water.* The Agency currently lacks sufficient water-related exposure data from monitoring to complete a quantitative drinking water exposure analysis and risk assessment for methoxyfenozide. Therefore, the Agency is presently relying on computer-generated estimated environmental concentrations (EECs). GENEEC and/or PRZM/EXAMS (both produce estimates of pesticide concentration in a farm pond) are used to generate EECs for surface water and SCI-GROW (an empirical model based upon actual monitoring data collected for a number of pesticides that serve as benchmarks) predicts EECs in ground water. These models take into account the use patterns and the environmental profile of a pesticide, but do not include consideration of the impact that processing raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for assessing whether a pesticide is likely to be present in drinking water at concentrations which would exceed human health levels of concern.

A drinking water level of comparison (DWLOC) is the concentration of a pesticide in drinking water that would be acceptable as a theoretical upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. HED uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for a pesticide, the DWLOC is used as a point of comparison against the conservative EECs provided by computer modeling (SCI-GROW, GENEEC, PRZM/EXAMS).

i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* EPA conducted its Tier II screening-level assessments using the simulation models SCI-GROW and PRZM/EXAMS to generate EECs for ground and surface water, respectively. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for methoxyfenozide (0.4 lb ai/acre x 5 applications/acre/year on cotton). PRZM/EXAMS was used to generate the surface water EECs, because it can factor the persistent nature of the chemical into the estimates.

The EECs for assessing chronic aggregate dietary risk are 312 parts per billion (ppb) (in ground water, based on SCI-GROW) and 3,197 ppb (in surface water, based on the PRZM/EXAMS, long-term mean). The back-calculated DWLOCs for assessing chronic aggregate dietary risk range from 890 ppb for the most highly exposed population subgroup (Non-nursing infants, > 1-year old) to 3,400 ppb for the U.S. population (48 contiguous States—all seasons) and the U.S. population (autumn season).

The SCI-GROW and PRZM/EXAMS chronic EECs are less than the Agency's

level of comparison (the DWLOC value for each population subgroup) for methoxyfenozide residues in drinking water as a contribution to chronic aggregate exposure. EPA thus concludes with reasonable certainty that residues of methoxyfenozide in drinking water will not contribute significantly to the aggregate chronic human health risk and that the chronic aggregate exposure from methoxyfenozide residues in food and drinking water will not exceed the Agency's level of concern (100% of the cPAD) for chronic dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the cPAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, conservative, and very protective of human health.

3. *From non-dietary exposure.* Methoxyfenozide is not currently registered for use on any residential non-food sites. Therefore, there is no non-dietary acute, chronic, short- or intermediate-term exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that methoxyfenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (5754–7).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Since no acute toxicological endpoints were established, EPA considers acute aggregate risk to be negligible.

2. *Chronic risk.* Using the DEEM exposure assumptions described in this unit, EPA has concluded that aggregate exposure to methoxyfenozide from food will utilize 1.8% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (> 1-year old) at 11% of the cPAD and is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Since there are currently no registered indoor or outdoor residential non-dietary uses of methoxyfenozide and no short or intermediate term toxic endpoints, EPA considers short or intermediate term aggregate risks to be negligible.

4. *Aggregate cancer risk for U.S. population.* Methoxyfenozide is classified as a "not likely" human carcinogen. Therefore this risk does is negligible.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—In general.* In assessing the potential for additional sensitivity of infants and children to residues of methoxyfenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *Prenatal and postnatal sensitivity.* The toxicology data base for methoxyfenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats.The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to methoxyfenozide.

3. *Conclusion.* There is a complete toxicity data base for methoxyfenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the completeness of the data base and the lack of prenatal and postnatal toxicity, EPA determined that an additional safety factor was not needed for the protection of infants and children.

4. *Acute risk.* Since no acute toxicological endpoints were established, EPA considers acute aggregate risk to be negligible.

5. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to methoxyfenozide from food will utilize 11% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to

methoxyfenozide in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

6. *Short- or intermediate-term risk.* Short and intermediate term risks are judged to be negligible due to the lack of significant toxicological effects observed.

7. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to methoxyfenozide residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of methoxyfenozide residues in plants is adequately understood based upon acceptable cotton, apple and grape metabolism studies. EPA has determined that the residue of concern for dietary exposure and tolerance setting purposes in primary crops and water is the parent compound, methoxyfenozide.

The qualitative nature of the residue in animals is adequately understood based on acceptable studies conducted on goats and laying hens. EPA has determined that the residue of concern in milk and ruminant tissues (other than liver and kidney) is the parent compound, methoxyfenozide. The residue of concern in ruminant liver and kidney is the parent compound, methoxyfenozide, and its glucuronide metabolite designated as RH–141,518 (also referred to as RH–1518). The glucuronide metabolite was included in the tolerance expression for liver and kidney because the conjugation may be reversible and it comprises a significant portion of the total radioactive residues (TRR) (up to 42% TRR in kidney and up to 29% TRR in liver) in those tissues.

B. Analytical Enforcement Methodology

The petitioner has proposed HPLC/UV Method TR 34–98–87 for the enforcement of tolerances for pome fruits. Adequate confirmatory method validation, radiovalidation, and independent method validation data have been submitted for this method. This method was sent to the EPA laboratory for a petition method validation (PMV). The laboratory has reported that the pome fruit method (Method TR 34–98–87) is adequate in the interim for enforcement of the proposed tolerances for methoxyfenozide in/on pome fruit. Initial recoveries (60%) in the PMV were just below the minium acceptable recovery level (70%) as specified in OPPTS Harmonized Test Guidelines 860.1340. The laboratory modified the method and achieved acceptable recoveries with the modified method. EPA will require that Rohm and Haas Company revise and modify the method. Additional recovery data will be required for the revised method.

The petitioner has proposed Method TR 43–96–88 for the enforcement of tolerances for cotton. This method is a shortened version of the pome fruit method. Thus, EPA concludes that Method TR 34–96–87 is adequate for enforcement of the proposed tolerances for residues of methoxyfenozide in/on cotton commodities. The validation of the cotton method is in progress. EPA expects that Method TR 43–96–88 will need to be modified or revised and additional recovery data may be required. EPA will require Rohm and Haas Company to revise and modify the cotton method and submit any additional recovery data if necessary.

The petitioner has proposed Method TR 34–98–106 for the enforcement of tolerances in animal commodities. This method determines residues of methoxyfenozide (HPLC/UV) in fat, cream, milk, and muscle and residues of methoxyfenozide and its glucuronide metabolite, RH–141,518 (HPLC/MS) in liver and kidney. Adequate confirmatory method validation, radiovalidation, and independent method validation data, have been submitted for this method. This method has been forwarded to the EPA laboratory for petition method validation (PMV). The method has passed the PMV, however it requires some minor revisions. EPA will require that Rohm and Haas Company revise the method and resubmit the final revised method.

The petitioner submitted data concerning the recovery of residues of methoxyfenozide using Food and Drug Administration (FDA) multiresidue method protocols (PAM Vol. I). Methoxyfenozide was not recoverable by these methods. These data will be forwarded to FDA for evaluation.

EPA has determined that the residues of concern in ruminant liver and kidney are methoxyfenozide and its metabolite RH–141,518. Data concerning the recovery of residues of RH–141,518 using FDA multiresidue method protocols (PAM Vol. I) will be required. This will be made a condition of the registration for methoxyfenozide.

Adequate enforcement methodology is available to enforce the tolerance expression. The methods may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

1. *Magnitude of the residue in apples and pears.* An adequate number of geographically representative field trials were submitted to support the proposed use on pome fruits. Apples and pears are the representative commodities of this crop group. These studies were conducted via use patterns approximating those proposed by this petition. Residues of methoxyfenozide ranged from 0.16 to 1.2 ppm in/on apples and from 0.21 to 0.93 ppm in/on pears treated with the 80% WP formulation according to the maximum proposed use patterns. The results of the field trials indicate that residues of methoxyfenozide will not exceed 1.5 ppm in/on pome fruit when treated as proposed. Rohm and Haas Company proposed a tolerance level of 1.25 ppm for residues of methoxyfenozide in/on pome fruit. EPA concludes that the proposed tolerance must be raised to 1.5 ppm for methoxyfenozide in/on the "Crop Group 11; Pome Fruits Group."

2. *Magnitude of the residue in cotton.* An adequate number of geographically representative field trials were submitted to support the proposed use on cotton. These studies were conducted via use patterns approximating those proposed by this petition. The results of the cotton field trials indicate that residues of methoxyfenozide will not exceed the proposed tolerance level of 2.0 ppm in/on cottonseed when treated as proposed. Residues of methoxyfenozide ranged from 0.060 to 1.8 ppm in/on cottonseed treated with the 80% WP formulation according to the maximum proposed use pattern. Residues of methoxyfenozide did not vary significantly in cotton treated with ULV spray applications (1 GPA) versus standard volume applications (10–30 GPA). Residues ranged from 0.13 to 0.32 ppm and from 0.12 to 0.66 ppm in/on cotton treated in side-by-side plots with ULV and standard volume applications, respectively. Rohm and Haas Company requested the proposed tolerance on cottonseed at 2.0 ppm. However, EPA has determined that it should be "cotton, undelinted seed" at 2.0 ppm.

The results of the cotton field trials indicate that residues of methoxyfenozide may exceed the proposed tolerance level of 25 ppm in/on cotton gin byproducts when treated as proposed. Residues of methoxyfenozide ranged from 3.8 to 31.2 ppm in/on cotton gin byproducts treated with the 80% WP formulation

according to the maximum proposed use pattern. Based on these data, the tolerance for residues of methoxyfenozide in/on cotton gin byproducts must be raised to 35 ppm.

3. *Magnitude of the residue in apple processed commodities.* The submitted apple processing data are adequate for the purposes of this petition. Residues of methoxyfenozide did not concentrate in juice but concentrated 6x in wet pomace processed from whole apples bearing detectable residues. Based on the results of the apple processing study, a tolerance for residues of methoxyfenozide in apple juice is not required. Rohm and Haas proposed a tolerance level of 7.5 ppm for residues of methoxyfenozide in/on apple wet pomace. The maximum residue level of methoxyfenozide expected in apple wet pomace was 6.06 ppm, calculated by multiplying the HAFT residue (1.01 ppm; see apple field trial) and the observed concentration factor (6x). Based on this calculation, a tolerance of 7.0 ppm for residues of methoxyfenozide in/on "apple pomace, wet" is appropriate.

4. *Magnitude of the residue in cottonseed processed commodities.* The submitted cotton processing data are adequate for the purposes of this petition. No concentration of methoxyfenozide residues was observed in hulls, meal, and oil processed from undelinted cottonseed bearing detectable residues. Based on the results of the current processing study, tolerances for residues of methoxyfenozide in the processed commodities of cotton are not required.

5. *Residues in meat, milk, poultry, and eggs.* The submitted dairy cattle feeding study is adequate for the purpose of establishing tolerances for secondary transfer of methoxyfenozide residues in milk and ruminant tissues. EPA has determined that the residues of concern in milk and ruminant tissues (except kidney and liver) are the parent compound, methoxyfenozide. For liver and kidney, the residues of concern are the parent compound, methoxyfenozide, and its metabolite RH–141,518. EPA concludes that residues of methoxyfenozide are not likely to exceed the proposed tolerances of 0.02 ppm in the milk and meat of cattle, goats, hogs, horses, and sheep. EPA further concludes that residues of methoxyfenozide are not likely to exceed the proposed tolerance of 0.1 ppm in the fat of cattle, goats, hogs, horses, and sheep as a result of the proposed uses. EPA also concludes that residues of methoxyfenozide and its metabolite RH—141,518 are not likely to exceed 0.1 ppm in liver and 0.02 ppm in meat byproduct (except liver) of cattle, goat, hogs, horses, and sheep. The proposed tolerances did not include residues in tissues of horses. However, horses must be a part of the tolerance.

Rohm and Haas Company requested a waiver from the requirements to: (i) Conduct a poultry feeding study; (ii) propose tolerances for methoxyfenozide residues of concern in eggs and poultry tissues; and (iii) provide enforcement method(s) for determination of methoxyfenozide residues of concern in eggs and poultry tissues. The waiver request is based on the maximum theoretical dietary burden of methoxyfenozide for poultry animals as well as the results of the poultry metabolism study. The only poultry feed item associated with this petition is cotton meal, which would contribute a maximum theoretical dietary burden for methoxyfenozide at 0.4 ppm.

The poultry metabolism study reviewed in this petition was conducted at feeding levels of 58 ppm (MOP-label), 60 ppm (DMP-label), and 68 ppm (TB-label) which are equivalent to 145x, 150x, and 170x, respectively, the maximum theoretical dietary burden for poultry. Assuming a linear relationship between dose and residues, the expected residues in eggs and poultry tissues would be below the LOD for methods used to measure residues in poultry products. EPA concludes that there is no reasonable expectation of finite residues in eggs and poultry tissues and that a poultry feeding study is not required at this time. However, should the dietary burden for poultry increase due to the addition of methoxyfenozide-treated poultry feed items through new uses, a poultry feeding study may be required. If a poultry feeding study is required in the future, then all tissues should be analyzed for residues of methoxyfenozide and its metabolite RH–141,518.

D. International Residue Limits

There are no established or proposed Codex, Canadian or Mexican limits for residues of methoxyfenozide in/on plant or animal commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances discussed in this petition review.

E. Rotational Crop Restrictions

A confined rotational crop study was submitted and reviewed. The petitioner has proposed a 30-day plantback interval for all crops not listed on the product label. The confined rotational crop study demonstrated that methoxyfenozide may accumulate in rotational crop commodities at > 0.01 ppm at 30- and 90-day plantback intervals. The rotational crop restrictions included on the submitted label are not adequate. The label must include the following rotational crop restrictions: Cotton may be rotated to treated fields at any time. Leafy vegetables (except Brassica vegetables) and root and tuber vegetables may be rotated to treated fields 1-year following application of methoxyfenozide. Rotation to all other crops is prohibited.

V. Conclusion

Therefore, the tolerances are established for residues of methoxyfenozide in or on cotton, undelinted seed; cotton gin byproducts; pome fruit; apple pomace, wet; milk; meat of cattle, goats, hogs, horses and sheep and fat of cattle, goats, hogs, horses and sheep at 2.0, 35.0, 1.5, 7.0, 0.02, 0.02, 0.1 ppm respectively and for the combined residues of methoxyfenozide and its glucuronide metabolite in liver of cattle, goats, hogs, horses and sheep and meat byproducts (except liver) of cattle, goats, hogs, horses and sheep at 0.1 and 0.02 ppm respectively.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300983 in the subject line on the first page of your submission. All requests must be in writing, and must be

mailed or delivered to the Hearing Clerk on or before September 5, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300983, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (October 4, 1993, 58 FR 51735). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (May 19, 1998, 63 FR 27655); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 16, 1994, 59 FR 7629); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (April 23, 1997, 62 FR 19885). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (August 4, 1999, 64 FR 43255). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 13, 2000.

Suzan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.544 is added to read as follows:

§ 180.544 Methoxyfenozide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide methoxyfenozide; benzoic acid, 3-methoxy-2-methyl-2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide in or on the following agricultural commodities:

Commodity	Parts per million
Apple pomace, wet	7.0
Cotton gin byproducts	35
Cotton, undelinted seed	2.0
Fat of cattle, goats, hogs, horses and sheep	0.1
Meat of cattle, goats, hogs, horses and sheep	0.02
Milk	0.02
Pome fruits crop group	1.5

(2) Tolerances are established for the combined residues of methoxyfenozide; benzoic acid, 3-methoxy-2-methyl-2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide and its glucuronide metabolite in or on the following agricultural commodities:

Commodity	Parts per million
Liver of cattle, goats, hogs, horses and sheep	0.1
Meat byproducts (except liver) of cattle, goats, hogs, horses and sheep	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 00–16801 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300997; FRL–6555–3]

RIN 2070–AB78

Bacillus subtilis Strain QST 713; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus subtilis* strain QST 713 in or on all raw agricultural commodities when applied/used according to label instructions. AgraQuest, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus subtilis* strain QST 713.

DATES: This regulation is effective July 5, 2000. Objections and requests for hearings, identified by docket control number [OPP–300997], must be received by EPA, on or before September 5, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number [OPP–300997] in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Susanne Cerrelli, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8077; and e-mail address: cerrelli.susanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112	Crop production Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300997. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 26, 1999 (64 FR 20295) (FRL–6074–8), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a(e), as amended by FQPA (Public Law 104–170) announcing the filing of a pesticide tolerance petition by AgraQuest, Inc., 1530 Drew Ave., Davis California 95616. This notice included a summary of the petition prepared by the petitioner AgraQuest, Inc. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* strain QST 713.

III. Risk Assessment

New section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A battery of tests determined that QST 713 Technical product is not pathogenic and has no significant toxicity. The acute oral toxicity/pathogenicity, acute pulmonary toxicity/pathogenicity and acute intravenous toxicity/pathogenicity studies demonstrated no significant toxicity and a lack of pathogenicity. The dermal toxicity and eye irritation studies resulted in a Toxicity Category III classification. The acute dermal irritation study resulted in a Toxicity Category IV classification. *Bacillus subtilis* strain QST 713 is a ubiquitous organism in the environment and there have been no reports of the organism affecting the immune system. The submitted toxicity/pathogenicity studies in rodents with *Bacillus subtilis* strain QST 713 indicated that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient. As would be expected for any microbial pesticide, QST 713 did elicit a very mild delayed hypersensitivity response and is considered a potential dermal sensitizer. Further, although it is not known whether strain QST 713 does, the species is known to produce the enzyme subtilisin which has been reported to produce allergenic or hypersensitivity reactions to individuals repeatedly exposed to the enzyme in industrial settings. The use of personal protective equipment required for applicators and other handlers mitigates the hypersensitivity risk by minimizing exposure. No hypersensitivity risk is expected for dietary exposure due to the low likelihood that any significant residues will occur on treated food.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to

consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Dietary exposure to the microbial pesticide is likely to occur. The lack of acute oral toxicity/pathogenicity, and the ubiquitous nature of the microbial, support the establishment of an exemption from the requirement of a tolerance for *Bacillus subtilis* strain QST 713.

1. *Food.* Dietary exposure to the microbial is expected to be minimal. In additon, standard practices of washing, peeling, cooking, or processing fruits and vegetables will reduce residues of *Bacillus subtilis* strain QST 713 and further minimize dietary exposure. The risk posed to adults, infants, and children is likely to be minimal, because of the low acute oral toxicity/pathogenicity potential of the microbial pesticide.

2. *Drinking water exposure.* Oral exposure, at very low levels, may occur from ingestion of drinking water. Drinking water is not being screened for *Bacillus subtilis* strain QST 713 as a potential indicator of microbial contamination. Both percolation through soil and municipal treatment of drinking water would reduce the possibility of exposure to the bacterial active ingredient through drinking water. If oral exposure should occur through drinking water, the Agency concludes that such exposure would present minimal risk due to the lack of acute oral toxicity/pathogenicity and the ubiquitous nature of the microbe.

B. Other Non-Occupational Exposure

The use sites proposed are for agricultural sites. Dermal and inhalation exposure is expected to be limited to those who apply or handle the pesticide in orchards and farms. *Bacillus subtilis* presence is ubiquitous in the environment and the use of this product is not expected to increase dermal or inhalation exposure in non-occupational settings.

VI. Cumulative Effects

No mechanism of toxicity in mammals has been identified for *Bacillus subtilis* strain QST 713. Therefore no cumulative effect with other related organisms is anticipated. Because the data available demonstrate a low toxicity/pathogenicity potential of the active ingredient, the likelihood of adverse dietary effects is expected to be minimal.

VII. Determination of Safety for U.S. Population, Infants and Children

Based on the acute toxicity information discussed above, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to the United States population, including infants and children, to residues of *Bacillus subtilis* strain QST 713. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, the data available on *Bacillus subtilis* strain QST 713 demonstrate a low toxicity/pathogenicity potential. *Bacillus subtilis* is not a human pathogen and has not been implicated in human disease, but has been isolated as a rare contaminant from human infections. Risk of increased exposure is likely only to exist for pesticide applicators and manufacturers of the product. The Agency has imposed appropriate risk mitigation measures to protect the workers via the use of protective clothing.

VIII. Other Considerations

A. Endocrine Disruptors

The Agency has no information to suggest that *Bacillus subtilis* strain QST 713 has an effect on the immune and endocrine systems. No specific tests have been conducted with *Bacillus subtilis* strain QST 713 to determine such effects. However, the submitted toxicity/pathogenicity studies in rodents indicated that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient. *Bacillus subtilis* strain QST 713 is a ubiquitous organism in the environment and there have been no reports of the organism affecting endocrine system. Therefore, it is unlikely that this organism would have estrogenic or endocrine effects because it is practically non-toxic to mammals.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore the Agency has concluded that an analytical method is not required for enforcement purposes for *Bacillus subtilis* strain QST 713.

C. Codex Maximum Residue Level

There are no CODEX values for *Bacillus subtilis* strain QST 713.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

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1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400.

Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–300997, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2000.

Joseph J. Merenda, Jr.,

Acting Deputy Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1209 is added to subpart D to read as follows:

§ 180.1209 Bacillus subtilis strain QST 713; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Bacillus subtilis* strain QST 713 when used in or on all food commodities.

[FR Doc. 00–16803 Filed 7–3–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6727–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; deletion of the Laskin/Poplar Oil Company Superfund Site from the National Priorities List; request for comments.

SUMMARY: EPA Region 5 announces the deletion of the Laskin/Poplar Oil Company Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA is taking this action because it has determined that the responsible parties have implemented all responses under CERCLA; and EPA, in consultation with the State of Ohio, has determined that no further response is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: This " direct final" action will be effective September 5, 2000, unless EPA receives dissenting comments by August 4, 2000. If written dissenting comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region 5 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region 5 office and at the local information repository located at: The Ashtabula Public Library, 355 W. 44th St., Ashtablula, OH 44004. Requests for comprehensive copies of documents should be directed formally to the Region 5 Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Richard Boice, Remedial Project Manager, at (312) 886–4740 (SR–6J), or Gladys Beard, Associate Remedial Project Manager, Superfund Division (SR–6J), U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Susan Pastor (P–19J), Office of Public Affairs, EPA, Region 5 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–1325; Mike Eberle, State Project Manager, at Ohio Environmental Protection Agency, 2110 East Aurora Road, Twinsburg, Ohio 44087–1969, (330) 963–1126; the Laskin Final Remediation Trust Fund, Engineering Management, Inc., 1500 Ardmore Blvd., Suite 502, Pittsburgh, Pennsylvania 15221–4468, Attn: James R. Campell, at (412) 244–0917.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Action

I. Introduction

EPA Region 5 announces the deletion of the Laskin/Poplar Oil Company Site from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. U.S. EPA identifies sites that appear to present a significant risk to public health, welfare and the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions that the Hazardous Substance Superfund Response Trust Fund (Fund) finances. Under § 300.425(e) (3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses procedures that U.S. EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria. Section V states U.S. EPA's prospective action of deleting the Site from the NPL unless dissenting comments are received during the comment period.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Specifically, this deletion does not affect the provisions or requirements of the Consent Decrees entered in *United States* v. *Alvia Laskin, et al* Civil Action (84–2035Y N.D. Ohio) and *United States* v. *Anchor Motor Freight Co., et al,* Civil Action No. (89CV1999 N. D. Ohio. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency Management.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that Sites may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate non-time critical Removal Actions or Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate. The Laskin/Poplar Oil Site now meets criterion (i). Criteria (ii) and (iii) are not relevant to this Site.

III. Deletion Procedures

The following procedures were followed before the proposed deletion of this Site from the NPL:

(1) All appropriate response actions, under CERCLA have been implemented and no further EPA action is appropriate; (2) The State of Ohio has

concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day dissenting public comment period on U.S. EPA's Direct Final Action to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repositories. EPA is requesting only dissenting comments on the Direct Final Action to Delete.

For deletion on the Site, EPA's Regional Office will accept and evaluate public comments on U.S. EPA's Final Notice. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. As stated in section I above, deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights of obligations. The NPL is designed primarily for informational purposes and to assist Agency management. Further, mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a release from a site from the NPL does not preclude the Site's eligibility for future response actions.

IV. Basis for Intended Site Deletion

The Laskin/Poplar Oil Company Site is located at 717 North Poplar Street in Ashtabula County, Jefferson Township, Ohio west of the Village of Jefferson. The nine-acre site is bounded on the north by Cemetery Creek, on the south by Ashtabula County Fairground, to the east by Poplar Street, and to the west by softball fields and a wooded ravine belonging to the County of Ashtabula.

Prior to remedial action implementation the Site contained the property owner's former residence, a greenhouse complex, a boiler house containing 4 boilers formerly used to heat the greenhouses, a smokestack, 4 in-ground oil storage pits, 1 underground and 32 above ground tanks, a retention pond, two drained ponds, a fresh water pond, and miscellaneous buildings and sheds.

Greenhouses were located on the Site since the early 1890's. In the 1950's, boilers were installed to heat the greenhouse. Storage pits and tanks were installed during the 1960's to store the oil that fired the boilers. The Poplar Oil Company continued to accept waste oil from hundreds of sources in northern Ohio and western Pennsylvania throughout the 1960's and 1970's. The company resold some of the waste oil and used additional waste oil to treat gravel and dirt roads in 17 townships of Ashtabula County. In 1977, U.S. EPA and Ohio Environmental Protection Agency (OEPA) indentified polychlorinated biphenys (PCBs) in the waste oil. In 1981, a court order stopped activities at the Poplar Oil Company.

In early 1981, EPA investigated the Site and detected PCBs in waste oils, ground water and soils. In 1981 and 1982, EPA performed several removal actions at the Site. The emergency actions included draining and regrading two ponds; diverting surface runoff to a retention pond to prevent flooding; removing 302,000 gallons of waste oil taking them to an off-site incinerator; treating and discharging off site 430,000 gallons of contaminated surface water; and solidifying on site 205,000 gallons of sludge.

In 1983, the Site was placed on the EPA's Superfund National Priorities List of uncontrolled hazardous waste sites. Fund-lead Phase I remedial investigation (RI) activities were conducted from December 1983 to November 1984. In response to an Administrative Order issued in August 1984, the potentially responsible parties(PRPs) removed approximately 250,000 gallons of waste oil and wastewater during the winter of 1985–1986. A second Administrative Order was issued to the PRPs in late 1986, which ordered them to develop a work plan to address the storage pits, tank, and their contents, and surrounding soils. EPA completed Focused Feasibility Study (FFS) in August 1987. The Source Removal (SR) Record of Decision (ROD) was issued on September 30, 1987. Phase II RI activities were conducted in the fall and winter of 1987–88. A third Administrative Order was issued in February 1988 for implementing the 1987 SR ROD. The Phase II RI Report which contained the results of both the Phase I and II RI Investigations was released in December 1988. The Final Remedy (FR) FS was provided for public comment on April 7, 1989. A final remedy was selected on June 29, 1989 and documented in the FR ROD.

PRPs organized the Laskin Site Group and performed the SR and the FR remedial design and remedial actions (RD/RA) under a September 1990 Consent Decree. The SR ROD work to be performed under the 1988 Administrative Order was incorporated into the 1990 Consent Decree. Due to the incineration of different materials set forth in both RODs and the need to prepare the Site for RA activities, some FR activities were necessarily performed during the SR.

The SR ROD selected remedy consists of the following major components:

- Construction of a fence around the contaminated portions of the Site and the mobile on-site incinerator;
- Off-site treatment of all wastewater, decontamination water, and scrubber water;
- Dismantling and off-site disposal of all tanks;
- Crushing and incineration of the cinder block walls of the pits; and
- Backfilling and/or grading of all excavated areas to prevent ponding.

The components of the FR ROD consist of the following:

- Drain retention and fresh water ponds. Discharge surface water from ponds to Cemetery Creek, with treatment if required. Backfill a freshwater pond with clean fill and grade retention pond area;
- Thermally treat contaminated soil, ash, and debris from the boiler house area and dispose of ash on-site (if delistable) or off-site to a RCRA permitted landfill;
- Demolish and thermal treatment or decontamination of dioxin contaminated structures. If material cannot be thermally treated or decontaminate, contain material in an on-site concrete vault and place beneath the cap;
- Construct a groundwater diversion trench up-gradient of the contaminated oil and groundwater;
- Construct a multi-layer cap;
- De-water site by natural groundwater flow to Cemetery Creek;
- Conduct groundwater and surface water monitoring to assess quality of groundwater migrating towards Cemetery Creek; and
- Impose access and use restrictions.

The ROD and statement of work for the Consent Decree included performance standards for the FR including:

1. The on-site incinerator would meet a destruction and removal efficiency at 99.99% for solvents, miscellaneous organics, 99.999% dioxin and 99.999% for PCBS;

2. Discharges to the water in Cemetery Creek must comply with Ohio Water Quality Standards, and Federal Ambient Water Quality Criteria;

3. The goal of the groundwater diversion was to dewater the site. If the groundwater is lowered to below the top of the unweathered shale, the site would be considered dewatered. If complete site dewatering was not achieved then Federal Maximum Contaminant Levels, under the Safe Drinking Water Act, would apply at the property boundary.

In June 1991, the Remedial Design (RD) for the SR was finalized, and in the

Remedial Action (RA) work was formally initiated. U.S. EPA and Ohio Environmental Protection Agency (OEPA) conducted a prefinal inspection on November 19, 1992. Incineration of all required material was completed on November 25, 1992. EPA approved the RA report on December 22, 1992.

The FR RD was formally approved and the RA work initiated in March 1992. The FR included construction of a slurry wall to facilitate site dewatering in addition to the diversion trenches provided for in the ROD. A letter dated September 21, 1993 from the PRP Laskin/Poplar Site Group certified that all RA activities were performed according to design specifications, contractor plan, and EPA and OEPA approved modifications. EPA conducted a final inspection on September 20, 1993, and approved a Preliminary Close Out Report on September 23, 1993.

Since completion of construction, the Site has been monitored and inspected in accordance with a EPA approved Inspection, Maintenance and Monitoring Plan. In accordance with this plan, quarterly groundwater and surface water monitoring was conducted in 1994, 1995, and 1996, and semi-annual groundwater and surface water monitoring was conducted in 1997 and 1998.

A five-year review pursuant to OSWER Directive 9355.7–02 ("Structure and Components of Five-Year Reviews") was conducted at the Site and a report of its conclusions was signed in May 1999. The five-year review report concluded that the remedial action selected for this Site remains protective of human health and the environment. The review determined that groundwater monitoring conducted over the five years since completion of construction has demonstrated that the groundwater has consistently been lowered below the unweathered shale, and that the data has not identified an impact of the Site on groundwater of surface water.

V. Action

In its review of the five year review report, Engineering Management Inc., the Laskin Remedial Trust Fund's contractor correctly pointed out that the non-incinerable materials that were potentially dioxin-contaminated were decontaminated sampled, and found to contain less the 1 ppb of dioxin. As a result, it was not necessary to store any dioxin-contaminated material in a proposed vault below the cap, and this part of the remedy was eliminated. A small amount of asbestos-contaminated material was encased in what has been referred to as a "concrete vault" on site diagrams, but this vault is not the vault referred to in the ROD. The five year review found that the Site inspections have indentified a concern about slope stability, as well as routine erosion problems. The on-going inspection and maintenance program will address these problems. The next five year review should be completed by October 15, 2000.

On June 30, 1999, EPA approved discontinuing the periodic groundwater and surface water sampling. However, periodic water level monitoring, inspections, and maintenance activities will continue, and groundwater and surface water sampling can resume if necessary.

EPA, will the State of Ohio's concurrence, has determined that all appropriate Fund-financed responses under CERCLA at the Ladkin-Poplar Oil Company Superfund Site have been completed, and no further CERCLA response is appropriate or necessary in order to provide protection of human health and the environment other than the ongoing inspection, maintenance and monitoring activities. Therefore, EPA is deleting the Site from the NPL.

This action will be effective September 5, 2000. However, if EPA receives dissenting comments by August 4, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 14, 2000.

Gary Gulezian,

Acting Regional Administrator, Region 5.

Part 300, Title 40 of Chapter 1 of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the entry for "Laskin-Poplar Oil Co", Jefferson Township, Ohio.

[FR Doc. 00–16513 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPPTS–82054; FRL–6589–1]

RIN–2070–AB08

Preliminary Assessment Information Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule addresses the recommendations of the 41st TSCA Interagency Testing Committee (ITC) Report by adding 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols to the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Reporting (PAIR) rule. The ITC recommendations are given priority consideration by EPA in promulgating TSCA section 4 test rules. This PAIR rule will require manufacturers (including importers) of the 29 substances identified in this document to report certain production, importation, use, and exposure-related information to EPA.

DATES: This rule is effective on August 4, 2000.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul Campanella, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–8130; fax number: (202) 401–3672; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information:

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in § 712.30(e) of the regulatory text portion of this document. Entities potentially affected by this action may include, but are not limited to:

Category	SIC codes	NAICS codes	Examples of potentially affected entities
Chemical manufacturers (including importers)	28, 2911	325, 32411	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The Standard Industrial Classification (SIC) codes and the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and other documents from the EPA Internet EPA Home Page at http://www.epa.gov/. On the Home Page select "Law and Regulations" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. In person. The Agency has established an official record for this action under docket control number OPPTS–82054. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, your comments must identify docket control number OPPTS–82054 in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Document Control Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., East Tower, Rm. G–099, Washington, DC. The telephone number for the OPPT Document Control Office is (202) 260–7093.

3. *Electronically.* Submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or you may mail or deliver your computer disk to the addresses identified in Units I.C.1. or 2. Do not submit any information electronically that you consider to be CBI. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8 or ASCII file format. All copies of electronic comments must be identified by docket control number OPPTS–82054. Electronic comments may be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comments that include any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, consult the technical person listed under "FOR FURTHER INFORMATION CONTACT."

II. What Action is EPA Taking?

In this document, EPA is issuing a final TSCA section 8(a) "Preliminary Assessment Information Reporting" (PAIR) rule for 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols recommended for testing in the 41st TSCA ITC Report to the EPA Administrator published in the **Federal Register** of April 9, 1998 (63 FR 17658) (FRL–5773–5).

III. What is the Preliminary Assessment Information Reporting (PAIR) Rule?

EPA promulgated the PAIR rule in 40 CFR part 712 under section 8(a) of TSCA (15 U.S.C. 2607(a)). This model section 8(a) rule establishes standard reporting requirements for manufacturers (including importers) of the chemicals listed in the rule at 40 CFR 712.30. These entities are required to submit a one-time report on general production/importation volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35). EPA uses this model section 8(a) rule to quickly gather current information on chemicals.

This model rule provides for the automatic addition of ITC *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC Report, EPA may, at the same time and without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. The amendment adding these chemicals to the PAIR rule is effective August 4, 2000.

IV. What Chemicals are to be Added ?

In its 41st Report to EPA, the ITC recommended 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols. These chemicals can be automatically added to the TSCA section 8(a) PAIR reporting rule.

The regulatory text (§ 712.30(e)) of this document lists the 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols that are being added

to the PAIR rule as a result of this document.

V. Who Must Report Under this PAIR Rule?

All persons who manufactured (defined by statute to include import) the 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols identified in the regulatory text (§ 712.30(e)) of this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency as specified in 40 CFR 712.28 no later than October 3, 2000. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA may be able to submit a copy of the original report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the PAIR reporting requirements, including the basis for exemptions, are provided in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT**. Copies of the PAIR form are also available electronically from the Chemical Testing and Information Gathering Home Page on the Internet at http://www.epa.gov/opptintr/chemtest/.

VI. Removal of Chemical Substances from the PAIR Rule

Any person who believes that section 8(a) reporting required by this rule is not warranted, should promptly submit to EPA on or before July 19, 2000, detailed reasons for that belief. EPA, in its discretion, may remove the substance from this rule (see 40 CFR 712.30(c)). When withdrawing a chemical from the rule, EPA will publish a rule amendment in the **Federal Register**.

VII. Public Record

The following documents constitute the public record for this rule under docket control number OPPTS–82054.

1. This final rule.
2. The Economic Analysis for this rule (February 10, 2000).
3. The 41st Report of the ITC (63 FR 17658, April 9, 1998) (FRL–5773–5).

VIII. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary. As discussed in Unit III., whenever EPA announces the receipt of an ITC report, EPA may, at the same time and without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. EPA finds, therefore, that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553 (b)(3)(B)) to make these amendments without prior notice and comment.

IX. Economic Analysis

The economic analysis for the addition of the 29 alkylphenols, alkylphenol ethoxylates, and polyalkylphenols to the TSCA section 8(a) PAIR rule is entitled "*Economic Analysis for the Addition of 29 Chemicals Recommended for Testing in the 41st Report of the TSCA Interagency Testing Committee to EPA's Preliminary Assessment Information Reporting (PAIR) Rule*" (February 10, 2000) (Economic Analysis).

EPA's 1998 Chemical Update System (CUS) was searched to identify manufacturers (including importers) of the 29 CAS-numbered alkylphenols, alkylphenol ethoxylates, and polyalkylphenols recommended in the ITC's 41st Report. Only 5 of the 29 chemicals were located in CUS indicating, for example, that the other chemicals are not being produced or imported in quantities large enough to be reported to EPA for 1998 under the TSCA Inventory Update Rule (IUR) (40 CFR part 710) or are not subject to reporting under the IUR. The Economic Analysis estimates governmental and industry burden and costs associated with this final rule based upon the data regarding the five chemical substances found in CUS. Six firms were identified as manufacturers of the chemical, at eight sites. The costs and burden associated with this rule are estimated in the Economic Analysis to be the following:

Reporting Costs (dollars)

9 reports estimated at $1977.29 per report = $17,795.62

Total Cost = $17,795.62

Mean cost per site/firm = $17,795.62/8 sites = $2,224.45/site

Reporting Burden (hours)

Rule familiarization: 7 hours/site x 8 sites = 56 hours

Reporting: 21.6 hours/report x 9 reports = 194 hours

Total burden hours = 250 hours

Average burden per site/firm = 250 hours/8 sites = 31.3 hours/site

EPA Costs (dollars)

The annual costs to the Federal Government will be approximately 0.0227 FTEs (or 47.25 hours annually). At an estimated $75,306 per FTE, the total 0.0227 FTEs ($1709.45), plus $1,834.92 for data processing, will cost EPA $3,544.37.

X. Regulatory Assessment Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(a) related to the PAIR rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Executive Order 12898

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

C. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this final rule, because it is not "economically significant" as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This rule requires the reporting of production, importation, use, and exposure-related information to EPA by manufacturers (including importers) of certain chemicals recommended in the 41st Report of the TSCA ITC.

D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity analysis prepared as a part of the Economic Analysis for this rule, and is briefly summarized here. Three of the six firms identified as manufacturers of chemicals affected by this rule met the Small Business Administration definition of a small business, (i.e., having less than 1,000 employees when combined with any corporate parents). Based on the

Agency's analysis, the maximum potential impact of this action on an individual firm is estimated to be less than $2,224, regardless of the firm's size. To determine the potential significance of the estimated impact of this action on the small firms, the Agency compared the estimated maximum potential cost with the estimated annual sales revenue for these firms. Based on currently available financial information for these firms, EPA has determined that this action will not result in a significant impact on any of these firms. Information relating to this EPA determination is included in the docket for this rulemaking (OPPTS–82054). Any comments regarding the economic impacts that this action imposes on small entities should be submitted to the Agency at the address listed under **FOR FURTHER INFORMATION CONTACT**.

E. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, and included on the related collection instrument. The information collection activities related to this action have already been approved by OMB, under OMB control number 2070–0054 (EPA ICR No. 586) for PAIR reporting. This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to be 250 hours. Of that total, an estimated 56 hours are spent in an initial review of the rule, and the remaining 194 hours are associated with actual reporting activities (Economic Analysis). Because this rule does not contain any new information collection activities, additional review and approval of these activities by OMB under the PRA is not necessary.

F. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

Based on EPA's experience with past TSCA section 8(a) rulemakings, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As a result, this action is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

G. National Technology Transfer and Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on the Agency's determination that this regulatory action does not require the consideration of voluntary consensus standards.

H. Executive Order 12988

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

I. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the *Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings* issued under the Executive Order.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of August 4, 2000. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit VIII. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: June 20, 2000.

William Sanders III,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. In § 712.30, the table in paragraph (e) is amended by revising the category heading for "Alkylphenols and Alkylphenol ethoxylated" to read

"Alkylphenols, Alkylphenol ethoxylates, and Polyalkylphenols" and adding 29 chemicals in ascending numeric CAS number order to the category to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(e) * * *

CAS No.	Substance	Effective date	Reporting date
* * * * * * *			
Alkylphenols, Alkylphenol ethoxylates, and Polyalkylphenols			
* * * * * * *			
136–81–2	Phenol, 2-pentyl-	August 4, 2000	October 3, 2000
140–66–9	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	August 4, 2000	October 3, 2000
* * * * * * *			
1987–50–4	Phenol, 4-heptyl-	August 4, 2000	October 3, 2000
* * * * * * *			
2446–69–7	Phenol, 4-hexyl-	August 4, 2000	October 3, 2000
* * * * * * *			
2589–78–8	Phenol, 4-hexadecyl-	August 4, 2000	October 3, 2000
* * * * * * *			
3279–27–4	Phenol, 2-(1,1-dimethylpropyl)-	August 4, 2000	October 3, 2000
* * * * * * *			
9004–87–9	Poly(oxy-1,2-ethanediyl), α-(isooctylphenyl)-ω-hydroxy-.	August 4, 2000	October 3, 2000
9014–92–0	Poly(oxy-1,2-ethanediyl), α-(dodecylphenyl)-ω-hydroxy-.	August 4, 2000	October 3, 2000
* * * * * * *			
9063–89–2	Poly(oxy-1,2-ethanediyl), α-(octylphenyl)-ω-hydroxy-.	August 4, 2000	October 3, 2000
* * * * * * *			
25401–86–9	Phenol, 2-hexadecyl-	August 4, 2000	October 3, 2000
* * * * * * *			
25735–67–5	Phenol, 4-sec-pentyl-	August 4, 2000	October 3, 2000
26401–47–8	Poly(oxy-1,2-ethanediyl), α-(4-dodecylphenyl)-ω-hydroxy-.	August 4, 2000	October 3, 2000
26401–74–1	Phenol, 2-sec-pentyl-	August 4, 2000	October 3, 2000
27157–66–0	Phenol, decyl-	August 4, 2000	October 3, 2000
* * * * * * *			
59911–95–4	Poly(oxy-1,2-ethanediyl), α-(4-hexadecylphenyl)-ω-hydroxy-.	August 4, 2000	October 3, 2000
61723–87–3	Poly(oxy-1,2-ethanediyl), α-(tridecylphenyl)-ω-hydroxy-.	August 4, 2000	October 3, 2000
* * * * * * *			
68081–86–7	Phenol, nonyl derivs.	August 4, 2000	October 3, 2000
68784–24–7	Phenol, C18–30-alkyl derivs.	August 4, 2000	October 3, 2000
68891–67–8	Phenol, polypropene derivs.	August 4, 2000	October 3, 2000
68908–55–4	Phenol, polybutene derivs.	August 4, 2000	October 3, 2000
68954–70–1	Phenol, polyethyl derivs.	August 4, 2000	October 3, 2000
70682–80–3	Phenol, tetradecyl-	August 4, 2000	October 3, 2000
71902–25–5	Phenol, octenylated	August 4, 2000	October 3, 2000
72624–02–3	Phenol, heptyl derivs.	August 4, 2000	October 3, 2000
74499–35–7	Phenol, (tetrapropenyl) derivs.	August 4, 2000	October 3, 2000
84605–25–4	Phenol, 1-methylhexyl derivs.	August 4, 2000	October 3, 2000
* * * * * * *			
91672–41–2	Phenol, 2-nonyl-, branched	August 4, 2000	October 3, 2000
112375–88–9	Phenol, polyisobutylene derivs.	August 4, 2000	October 3, 2000
112375–89–0	Phenol, poly(2,4,4-trimethylpentene) derivs	August 4, 2000	October 3, 2000
* * * * * * *			

[FR Doc. 00–16802 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1395; MM Docket No. 99–276; RM–9702]

Radio Broadcasting Services; Tillamook and Scappoose, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Thunderegg Wireless, L.L.C., licensee of Station KJUN, Tillamook, OR, reallots Channel 281C3 from Tillamook to Scappoose, OR, as the community's first local aural service, and modifies the license of Station KJUN to specify Scappoose as its community of license. *See* 64 FR 50266, September 16, 1999. Channel 281C3 can be allotted to Scappoose in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4.1 miles) northwest, at coordinates 45–46–58 NL; 122–57–13 WL, to accommodate petitioner's desired transmitter site. Canadian concurrence in the allotment has been obtained since Scappoose is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Effective August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–276, adopted June 14, 2000, and released June 23, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 281C3 at Tillamook and adding Scappoose, Channel 281C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16866 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1393; MM Docket No. 99–353; RM–9787]

Radio Broadcasting Services; Mojave, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241A to Mojave, California, as that community's second local FM transmission service, in response to a petition for rule making filed on behalf of Linda A. Davidson. *See* 64 FR 73460, December 30, 1999. Although the petitioner did not file supporting comments, an expression of interest in pursuing the proposal was filed on behalf of Lazer Broadcasting Corp. Coordinates used for Channel 241A at Mojave, California, are 35–06–11 NL and 118–10–22 WL. As Mojave is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government was requested but has not been received. As the allotment complies with the terms of the 1992 USA-Mexico FM Broadcast Agreement ("Agreement"), Channel 241A has been allotted to Mojave with an interim operating condition which may be removed once an official response from the Mexican government has been obtained.

DATES: Effective August 7, 2000. A filing window for Channel 241A at Mojave, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 241A at Mojave, California, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–353, adopted June 14, 2000, and released June 23, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 241A at Mojave.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16867 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1323; MM Docket No. 99–348; RM–9765]

Radio Broadcasting Services; Tallulah, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 248A to Tallulah, Louisiana, as that community's second local FM transmission service, in response to a petition for rule making filed by Joe Kool Broadcasting. *See* 64 FR 73464, December 30, 1999. Coordinates used for Channel 248A at Tallulah, Louisiana, are 32–25–07 NL and 91–12–15 WL.

DATES: Effective July 31, 2000. A filing window for Channel 248A at Tallulah, Louisiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 248A at Tallulah, Louisiana, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–348, adopted June 7, 2000, and released June 16, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel Channel 248A at Tallulah.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16869 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1328; MM Docket No. 99–350; RM–9769]

Radio Broadcasting Services; Simmesport, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287A to Simmesport, Louisiana, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of C. Wayne Dowdy. See 64 FR 73463, December 30, 1999. Coordinates used for Channel 287A at Simmesport, Louisiana, are 30–53–30 NL and 91–47–00 WL.

DATES: Effective July 31, 2000. A filing window for Channel 287A at Simmesport, Louisiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 287A at Simmesport, Louisiana, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–350, adopted June 7, 2000, and released June 16, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Simmesport, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16870 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1322; MM Docket No. 99–50; RM–9425]

Radio Broadcasting Services; Pacific Junction, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Warga Broadcasting L.L.C., allots Channel 299A at Pacific Junction, Iowa, as the community's first local aural transmission service. *See* 64 FR 8786, February 23, 1999. Channel 299A can be allotted to Pacific Junction in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.5 kilometers (2.8 miles) north to avoid a short-spacing to the licensed site of Station KMAJ–FM, Channel 299C, Topeka, Kansas. The coordinates for Channel 299A at Pacific Junction are 41–03–25 North Latitude and 95–46–50 West Longitude.

DATES: Effective July 31, 2000. A filing window for Channel 299A at Pacific Junction, Iowa, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–50, adopted June 7, 2000, and released June 16, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Pacific Junction, Channel 299A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16871 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–U

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 511, 512, 525, 532, 537, and 552

RIN 3090–AH22

Payment Information and Clarification of Provisions and Clauses Applicable to Contract Actions Under the Javits-Wagner-O'Day Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule to rewrite the General Services Administration Acquisition Regulation (GSAR), Foreign Acquisition, for consistency with the recent Federal Acquisition Regulation (FAR) rewrite. This final rule also deletes a provision for brand name or equal purchase descriptions now covered by a FAR provision, adds a clause to notify contractors of payment information available electronically, and clarifies that certain provisions and clauses for building services contracts do not apply to contract actions made under the Javits-Wagner-O'Day Act.

DATES: Effective Date: July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208–6726.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR published a final rewrite of FAR Part 25, Foreign Acquisition, in the **Federal Register** on December 27, 1999 (64 FR 72414). This rule reorganizes the GSAR for consistency with the FAR changes. It also eliminates a provision and a clause, which duplicate coverage in the FAR, regarding evaluation of offers and delivery under contracts subject to trade agreements. It does not place any new requirements on offerors or contractors.

The FAR published a final rule on use of brand name or equal purchase descriptions in the **Federal Register** on June 17, 1999 (64 FR 32740). This rule eliminates a GSAR provision that duplicates coverage now contained in the provision at FAR 52.211–6, Brand Name or Equal.

For invoice payments made by GSA, payment information is available on the Internet. This rule provides a clause to notify contractors that the information is available and how to access it. A GSA contractor may access this information at its discretion to track the date and amount of payments made by GSA. Access to timely payment information may help a contractor to improve its financial management.

This rule also clarifies that certain provisions and clauses prescribed at GSAR 537.110 do not apply to contracts for building services initiated under the authority of the Javits-Wagner-O'Day Act (JWOD). The provision at GSAR 552.237–70, Qualifications of Offerors, and the clause at 552.237–71, Qualifications of Employees, do not apply to JWOD contract actions. Qualifications of JWOD participating nonprofit agencies are established by the Committee for Purchase from People Who Are Blind or Severely Disabled (see FAR subpart 8.7). This clarification will help avoid potential conflict with the rules established by the Committee, which have precedence.

B. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The final rule does not constitute a significant GSAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public commenters is not required. However, GSA will consider comments from small entities concerning the affected GSAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S. 601, *et seq.*, in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule under 5 U.S.C. 804. This rule was submitted to Congress and GAO under 5 US.C. 801.

F. Determination To Issue a Final Rule

GSA expects this rule will have no significant cost or administrative burden on contractors or offerors. The changes improve clarity and avoid potential conflicts with FAR rules.

List of Subjects in 48 CFR Parts 501, 511, 512, 525, 532, 537 and 552

Government procurement.

Final Rule

Accordingly, GSA amends 48 CFR Parts 501, 511, 512, 525, 532, 537 and 552 as set forth below:

1. The authority citation for 48 CFR Parts 501, 511, 512, 525, 532, 537 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 511—DESCRIBING AGENCY NEEDS

2. Amend section 501.106 as follows: Delete the GSAR Reference to 511.170–3(a) and OMB Control No. 3090–0203, delete the GSAR Reference to 511.170–3(c) and OMB control No. 3090–0203, delete the GSAR Reference to 552.211–70 and OMB Control No. 3090–0203, and add a GSAR Reference to 511.140–70 and OMB Control N. 3090–0203.

3. Redesignate section 511.170 as 511.104 and revise the section title to read as follows:

511.104 Use of brand name or equal purchase descriptions.

4. Redesignate section 511.170–3 as section 511.104–70, delete paragraphs (c) and (d), and add a new paragraph (c) to read as follows:

511.104–70 Solicitation provisions

* * * * *

(c) If you use brand name or equal purchase descriptions for some component parts of an end item, you may limit the application of the provision at FAR 52.211–6 to the specified components

PART 512—ACQUISITION OF COMMERCIAL ITEMS

5. In section 512.301, revise paragraph (a)(3) to read as follows:

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) * * *

(3) 552.212–72, Contract Terms and Conditions Required to Implement

Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Items, when listed clauses apply. The clause provides for the incorporation by reference of terms and conditions required to implement provisions of law or executive orders that apply to commercial item acquisitions.

* * * * *

PART 525—FOREIGN ACQUISITION

525.105, 525.105–70, 525.109 and Subpart 525.4 [Removed]

6. Remove sections 525.105, 525.105–70, 525.109, and Subpart 525.4. Add Subparts 525.5 and 525.11 to read as follows:

Subpart 525.5—Evaluating Foreign Officers—Supply Contracts

525.570 Procurement of hand or measuring tools or stainless steel flatware for DOD.

(a) *Stainless steel flatware* means special order and stock items of stainless steel flatware purchased for DOD, including, but not limited to, the following National Stock Numbers (NSN):

7340–00–060–6057
7340–00–205–3340
7340–00–241–8171
7340–00–559–8357
7340–00–205–3341
7340–00–241–8169
7340–00–241–8170
7340–00–688–1055
7340–00–721–6316
7340–00–721–6971

(b) Purchases of hand or measuring tools or stainless steel flatware exceeding the simplified acquisition threshold by DOD must be domestic end products. In the case of stainless steel flatware, the Secretary of the Department concerned can make an exception. The individual must determine that a satisfactory quality and sufficient quantity produced in the United States or its possessions are not available when needed at domestic market prices.

(c) If GSA solicitations of hand or measuring tools or stainless steel flatware include DOD requirements, GSA will apply the DOD restrictions. The bases for applying the DOD restriction to GSA acquisitions are:

(1) DOD's restrictions apply to requisitions of such items from the GSA stock program.

(2) The impracticality of establishing a dual supply system to satisfy the requirements of civilian and military agencies.

(3) GSA may reject any offer when it is considered necessary for reasons of national interest.

Subpart 525.11—Solicitation Provisions and Contract Clauses

525.1101 Acquisition of supplies.

If you include DOD requirements for hand or measuring tools or stainless steel flatware in the solicitation for an acquisition estimated to exceed the simplified acquisition threshold, insert 552.225–70, Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware, in the solicitation and resulting contract(s).

PART 532—CONTRACT FINANCING

7. Amend section 532.908 to add paragraph (c) to read as follows:

532.908 Contract clauses.

* * * * *

(c) *Solicitations, purchase orders, contracts, and leases over the micropurchase theshold.* Insert 552.232–78, Payment information:

(1) In all solicitations, purchase orders, and contracts, including acquisitions of leasehold interests in real property.

(2) In task and delivery orders if the contract that the order is placed against does not include the clause.

PART 537—SERVICE CONTRACTING

8. Revise section 537.110 to read as follows:

537.110 Solicitation provisions and contract clauses.

The following provision and clauses apply to contracts for building services:

(a) If the contract is expected to exceed the simplified acquisition threshold and it is not initiated under the Javits-Wagner-O'Day Act:

(1) Insert 552.237–70, Qualifications of Offerors, in the solicitation.

(2) Insert 552.237–71, Qualifications of Employees, in the solicitation and contract. If needed, use supplemental provisions or clauses to describe specific requirements for employees performing work on the contract.

(b) Insert 552.237–72, Prohibition Regaring "Quasi-Military Armed Forces," in solicitations and contracts for guard service.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.211–70 [Removed and Reserved]

9. Remove and reserve section 552.211–70.

552.212–71 [Amended]

10. In section 552.212–71, revise the date of the clause to read "JUL 2000)" and in paragraph (b) add "_552.232–78 Payment Information" in numerical order.

11. In section 552.212–72, revise the date of the clause to read "(JUL 2000)", in paragraph (a) delete "_552.225–8 Buy American Act—Trade Agreement's—Balance of Payments Program Certificate", and in paragraph (b) delete "_552.225–9 Buy American Act—Trade Agreements—Balance of Payments Program."

552.225–8 and 552.225–9 [Removed]

12. Remove sections 552.225–8 and 552.225–9

13. In section 552.225–70, revise the introductory text to read as follows:

552.225–70 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware.

As prescribed in 525.1101, insert the following clause:

* * * * *

14. Add section 552.232–78 to read as follows:

552.232–78 Payment Information.

As prescribed in 532.908(c), insert the following information.

PAYMENT INFORMATION (JUN 2000)

The General Services Administration (GSA) makes information on contract payments available electronically at http://www.finance.gsa.gov. The Contractor may register at the site and review its record of payments. This site provides information only on payments made by GSA, not by other agencies.

(End of clause)

15. In section 552.243–72, revise the clause date and paragraph (b)(1)(vii) to read as follows:

552.243–72 Modifications Award Schedule).

* * * * *

MODIFICATIONS (MULTIPLE AWARD SCHEDULE) (JUL 2000)

* * * * *

(b) * * *

(1) * * *

(vii) Any information requested by 52.212–3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225–1, Buy American Act—Balance of Payments Programs—Supplies.

* * * * *

Dated: June 19, 2000.

David A. Drabkin,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–16766 Filed 7–03–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 050500G]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Texas Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of the ending date of the Texas closure.

SUMMARY: NMFS announces an adjustment to the ending date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure is normally from May 15 to July 15 each year. For 2000, the closure began on May 11, and will end at 30 minutes after sunset on July 5. The Texas closure is intended to prohibit the harvest of brown shrimp during their major emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

DATES: The EEZ off Texas is open to trawl fishing from 30 minutes after sunset, July 5, 2000, until 30 minutes after sunset, May 15, 2001, or until NMFS publishes further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–570–5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

The EEZ off Texas is normally closed to all trawling each year from 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15. The regulations at 50 CFR 622.34(h) describe the area of the Texas closure and provide for adjustments to the beginning and ending dates by the Regional Administrator, Southeast Region, NMFS, under procedures and restrictions specified in the FMP.

The beginning and ending dates of the Texas closure are based on biological sampling by Texas Parks and Wildlife Department (TPWD). The closure date is established based on projected times that brown shrimp in Texas bays and estuaries will reach a mean size of 90 mm, and begin strong emigrations out of the bays and estuaries during maximum duration ebb tides. The waters off of Texas are re-opened to shrimping based on projections indicating that brown shrimp will reach a mean size of 112 mm, in concurrence with maximum duration ebb tides. Biological data collected by TPDW indicates that the criteria to end the Texas closure will be met on July 5, 2000. Accordingly, the time and date for ending the Texas closure is changed from 30 minutes after sunset on July 15, 2000, to 30 minutes after sunset on July 5, 2000.

Classification

This action is authorized by 50 CFR 622.34(h)(2) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 2000 .

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16942 Filed 6–29–00; 4:21 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981224323–9226–02; I.D. 120198B]

RIN 0648–AL23

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule for recordkeeping and reporting that was published in the **Federal Register** on November 15, 1999.

DATES: Effective December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** on November 15, 1999 (64 FR 61964), to revise recordkeeping and reporting regulations. The requirement that the operator of a catcher vessel is required to make records available for inspection upon the request of an authorized officer was inadvertently omitted from 50 CFR part 679.

Correction

In the final rule Revisions to Recordkeeping and Reporting Requirements published in 64 FR 61964, November 15, 1999, FR Doc. 99–28294, on page 61974, in the third column, remove § 679.5(a)(13)(i) and add in its place the following:

§ 679.5 [Corrected]

(a) * * *

(13) * * *

(i) *Inspection.* The operator of a catcher vessel or catcher/processor or mothership or the manager of a shoreside processor or the operator of a buying station must make all logbooks, reports, forms, and mothership-issued fish tickets required under this section available for inspection upon the request of an authorized officer for the time periods indicated in paragraph (a)(13)(ii) of this section.

* * * * *

Dated: June 29, 2000.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16940 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 129
Wednesday, July 5, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) Airplanes

AGENCY: FAA, Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM); Extension of the comment period.

SUMMARY: This document provides additional time for the public to comment on a proposal to supersede Airworthiness Directive (AD) 99–12–02, which currently requires flight and operating limitations on Raytheon Aircraft Corporation (Raytheon) Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. AD 99–12–02 resulted from a report of an in-flight separation of the right wing on a Raytheon Beech Model A45 (T–34A) airplane. AD 99–12–02 was issued as an interim action until the development of FAA-approved inspection procedures. Raytheon has developed such procedures. The proposed AD would require repetitive inspections of the wing spar assembly for cracks, with replacement of any wing spar assembly found cracked (unless the spar assembly has a crack indication in the filler strip where the direction of the crack is toward the outside of the filler strip); require reporting the results of the initial inspection; and change the flight and operating limitations that AD 99–12–02 currently requires. Several comments received on the original notice of proposed rulemaking (NPRM) specify additional time to respond to the proposed action. The actions specified by the proposed AD are intended to detect and correct cracks in the wing spar assemblies and assure the operational safety of the above-referenced airplanes.

DATES: The Federal Aviation Adminstration (FAA) must receive any comments on the proposed rule on or before October 15, 2000. This is extended from July 7, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–09–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in the proposed AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may examine this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

We believe that the proposed regulation may have a significant economic impact on a substantial number of small entities. Due to the urgent nature of the safety issues addressed, FAA has been unable to complete a preliminary regulatory flexibility analysis prior to issuance of the NPRM. We anticipate including the final regulatory flexibility analysis and determination with the final rule, if adopted. To assist in this analysis, we are particularly interested in receiving information on the impact of the proposed rule on small businesses and suggested alternative methods of compliance that will reduce or eliminate such impacts. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–09–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA taken any action to this point? In-flight separation of the right wing on a Raytheon Beech Model A45 (T34A) airplane caused us to issue AD 99–12–02, Amendment 39–11193 (64 FR 31689, June 14, 1999). This AD requires:

- Incorporating flight and operating limitations that restrict the airplanes to normal category operation and prohibit them from acrobatic and utility category operations;
- Limiting the flight load factor to 0 to 2.5 G; and

• Limiting the maximum airspeed to 175 miles per hour (mph) (152 knots).

AD 99–12–02 was issued as an interim action until the development of FAA-approved inspection procedures.

What happened since AD 99–12–02? Raytheon has developed procedures to inspect the wing spar assemblies on Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. We have reviewed and approved the technical aspects of these procedures.

Raytheon also issued Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000. The service bulletin:

• Includes procedures for inspecting the forward (main) and aft (rear) wing spar assemblies of the above-referenced airplanes; and

• Specifies provisions for when to replace a cracked wing spar assembly. The service bulletin specifies that a crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip. If the direction of the crack is toward the inside of the filler strip or any crack is found in any other area, the service bulletin specifies replacing the spar assembly prior to further flight.

We then issued an NPRM that proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. The NPRM proposed to supersede AD 99–12–02 and would:

• Require you to repetitively inspect the wing spar assemblies for cracks and replace any cracked wing spar assembly. A crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip;

• Require you to report the results of the initial inspection;

• Require you to maintain the flight and operating restrictions that AD 99–12–02 currently requires until you accomplish the initial inspection and possible replacement proposed in this AD; and

• Allow you to change the flight and operating restrictions that AD 99–12–02 currently requires after the wing spar assemblies are inspected and the wing spar assembly either is replaced, is crack free, or only has a crack indication in the filler strip where the direction of the crack is toward the outside of the filler strip.

What has happened to cause FAA to issue this document? We received several requests on the NPRM for more time to submit data on the proposed AD. Based on the content of the comments and the interest in the rule expressed by various operators and other interested parties, FAA has decided to extend the comment period on this rule in order to seek additional data. Therefore, the comment period is extended approximately 90 days and will close October 15, 2000. The speed and operating restrictions that AD 99–12–02 requires remain in effect during this time so FAA has determined that extending the comment period will not impact aviation safety.

We are including preamble information and the actual AD for the reader's convenience.

Are there differences between the proposed AD and the service information? Raytheon Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000, specifies that you accomplish the initial inspection prior to further flight after receipt. We do not have justification for requiring the initial inspection prior to further flight. Instead, we have determined that 80 hours time-in-service (TIS) or 12 months (whichever occurs first) is a reasonable time period for accomplishing the initial inspection in this AD. We will retain the flight and operating restrictions that AD 99–12–02 currently requires until this inspection is accomplished.

Why is the compliance of the initial inspection in hours time-in-service (TIS) and calendar time? We have established the compliance time of the initial inspection at the next 80 hours TIS or 12 months time with the prevalent one being that which occurs first. This would assure that cracks are detected on high usage airplanes while the owners/operators of the lower usage airplanes would have additional time to accomplish the action (up to 12 months). Having the inspection accomplshed on all airplanes within 12 months would assure that all wing spar cracks on the affected airplanes are detected in a reasonable time period, while not inadvertently grounding the affected airplanes. The FAA has determined that the dual compliance time will assure that the safety issue is addressed in a timely manner without inadvertently grounding any of the affected airplanes.

Cost Impact

How many airplanes does the proposed AD impact? The FAA estimates that 476 airplanes in the U.S. registry would be affected by the proposed AD.

What is the cost impact of the initial inspection on owners/operators of the affected airplanes? We estimate that it would take approximately 241 workhours per airplane to accomplish the proposed initial inspection, at an average labor rate of $60 an hour. Based on these figures, FAA estimates the cost impact of the proposed initial inspection on U.S. operators at $6,882,960, or $14,460 per airplane.

What about the cost of repetitive inspections and replacements? The figures above only take into account the cost of the proposed initial inspection and do not take into account the cost of repetitive inspections or the cost to replace a cracked wing spar assembly. The FAA has no way of determining the number of repetitive inspections each owner/operator would incur over the life of an affected airplane or the number of airplanes that would have a cracked wing spar(s) and need replacement.

The cost of each repetitive inspection would be $1,860 per airplane (31 workhours × $60 per hour).

Raytheon no longer produces wings spars for the affected airplanes. If a wing spar was found cracked, you would have to install an FAA-approved wing spar configuration in order to continue to operate the airplane. For cost estimate purposes, we are using information on installing a Raytheon Beech 55 or 58 series airplane wing spar on a Raytheon Beech Model A45 airplane in accordance with Supplemental Type Certificate (STC) No. SA5521NM. Nogle and Black Aviation, Inc., owns this STC. The cost to replace a cracked wing spar through this STC would be $14,100 (160 workhours × $60 per hour plus $4,500 for parts). The airplane would still be subject to the inspection requirements proposed in this NPRM.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed action (1) Is not a "significant regulatory action" under Executive Order 12866; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). This proposed rule, if adopted, may have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We are currently conducting a Regulatory Flexibility Determination and Analysis. We are

considering alternative methods of compliance to the proposed AD that could minimize the impact on small entities. We specifically invite comments in this area.

At this point, we have determined that AD action is the best course to address the unsafe condition specified in this document. We have also determined that the situation does not warrant waiting for the completion of the Regulatory Flexibility Determination and Analysis before we issue the NPRM. We will place a copy of the completed Regulatory Flexibility Determination and Analysis in the Docket file. You may obtain this information at the address specified in the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by removing Airworthiness Directive (AD) 99–12–02, Amendment 39–11193 (64 FR 31689, June 14, 1999), and by adding a new AD to read as follows:

Raytheon Aircraft Company: Docket No. 2000–CE–09–AD; Supersedes AD 99–12–02, Amendment 39–11193.

(a) *What airplanes are affected by this AD?* This AD applies to Beech Models 45 (YT–34), A45 (T–34A, B-45), and D45 (T–34B) airplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the wing spar assemblies and assure the operational safety of the above-referenced airplanes.

(d) *What actions must I accomplish that are retained from AD 99–12–02?* You must continue to follow the requirements from AD 99–12–02 that are presented in this chart, until you have accomplished the actions of paragraph (e) of this AD:

Action	When
(1) Placard requirements:	All actions prior to further flight after July 9, 1999 (the effective date of AD 99–12–02).
(i) Fabricate two placards using letters of at least 1/10-inch in height with each consisting of the following words: "Never exceed speed, Vne–175 MPH (152 knots) IAS; Normal Acceleration (G) Limits—0, and +2.5; ACROBATIC MANEUVERS PROHIBITED."	
(ii) Install these placards on the airplane instrument panels (one on the front panel and one on the rear panel) next to the airspeed indicators within the pilot's clear view.	
(iii) Insert a copy of this AD into the Limitations Section of the Airplane Flight Manual (AFM).	
(2) Modification requirements:	All actions required within 10 hours time-in-service (TIS) after July 9, 1999 (the effective date of AD 99–12–02).
(i) Modify the airspeed indicator glass by accomplishing the following:	
(A) Place a red radial line on the indicator glass at 175 miles per hour (mph) (152 knots)..	
(B) Place a white slippage index mark between the airspeed indicator glass and the case to visually verify that the glass has not rotated.	
(ii) Mark the outside surface of the "g" meters with lines of approximately 1/16-inch by 3/16-inch, as follows:	
(A) A red line at 0 and 2.5; AND	
(B) A white slippage mark between each "g" meter glass and case to visually verify that the glass has not rotated.	

(e) *What actions must I accomplish to address the safety issue presented in this AD?*

Action	When	In accordance with
(1) Inspect the wing (i) spar assemblies for cracks.	Initially at whichever occurs first:	Raytheon Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000.
	(A) Within 80 hours time-in-service (TIS) after the effective date of this AD; OR	
	(B) Within 12 months after the effective date of this AD.	
	(ii) Repetitively inspect thereafter at intervals not to exceed 80 hours TIS.	
(2) Replace any cracked wing spar assembly. A crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip. If the direction of the crack is toward the inside of the filler strip or any crack is found in any other area, you must replace the cracked wing spar assembly prior to further flight.	Prior to further flight after the required inspection where the cracked wing spar assembly is found.	The applicable maintenance manual.

Action	When	In accordance with
(3) Submit a report to the FAA that describes the damage found on the wing spar. Use the chart on pages 58 through 60 of Raytheon Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000. (i) Submit this report even if no cracks are found. (ii) Submit this report to the FAA at the address found in paragraph (g) of this AD.	Within 10 days after the initial inspection or within 10 days after the effective date of the AD, whichever occurs later.	Pages 58 through 60 of Raytheon Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000
(4) The flight and operating restrictions that required were required by paragraph (d) of this AD, as retained from AD 99–12–02, may be changed by accomplishing the following: (i) Remove the placards, modifications, etc. required by paragraph (d) of this AD, as retained from AD 99–12–02. (ii) Fabricate two placards using letters of at least 1/10-inch in height with each consisting of the following words: "Never exceed speed, Vne–225 MPH (219 knots) IAS; Normal Acceleration (G) Limits—0, +5." (iii) Install these placards on the airplane instrument panels (one on the front panel and one on the rear panel) next to the airspeed indicators within the pilot's clear view. (iv) Modify the airspeed indicator glass by accomplishing the following: (A) Place a red radial line on the indicator glass at 225 miles per hour (mph) (219 knots). (B) Place a white slippage index mark between the airspeed indicator glass and the case to visually verify that the glass has not rotated. (v) Mark the outside surface of the "g" meters with lines of approximately 1/16-inch by 3/16-inch, as follows: (A) A red line at 0 and +5; AND (B) A white slippage mark between each "g" meter glass and case to visually verify that the glass has not rotated. (vi) Insert a copy of this AD into the Limitations Section of the AFM.	All actions prior to further flight after the initial inspection provided the wing spar assembly is either replaced, is crack free, or only has a crack indication in the filler strip where the direction of the crack is toward the outside of the filler strip.	Not applicable.

(f) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 99–12–02, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note: This AD applies to each aircraft identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul Nguyen, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4407.

(h) *What if I need to fly the aircraft to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your aircraft to a location where you can accomplish the requirements of this AD.

(i) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 99–12–02, Amendment 39–11193.

Issued in Kansas City, Missouri, on June 28, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16852 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–04–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, that currently requires repetitive radiographic and ultrasonic or eddy current inspections, and modification of the upper cap of the front spar of the left and right engine pylons, if necessary. This action would require new, improved x-ray and eddy current inspections to detect cracks of the upper cap of the front spar of the left and right engine pylons, and repetitive inspections or corrective actions, if necessary. This action also would require modification of the subject area, which would constitute terminating action for the repetitive inspection requirements. This proposal is prompted by additional reports of fatigue cracking in the subject area of these airplanes. The actions specified by the proposed AD are intended to prevent failure of the upper cap of the front spar of the engine pylons due to fatigue cracking, and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by August 21, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–04–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–04–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1977, the FAA issued AD 77–44–19, amendment 39–2971, applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, to require repetitive radiographic and ultrasonic or eddy current inspections, and modification of the upper cap of the front spar of the left and right engine pylons, if necessary. The requirements of that AD are intended to detect fatigue cracks and/or failure of the upper cap of the front spar of the left and right engine pylons.

Actions Since Issuance of Previous Rule

Since the issuance of AD 77–14–19, the FAA has received additional reports of fatigue cracking in the subject area of the upper cap of the front spar of the left and right engine pylons. The airplanes on which the cracking occurred had accumulated between 10,162 and 23,850 total flight hours. Investigation revealed that the repetitive ultrasonic and eddy current inspections, as required by AD 77–14–19, do not adequately detect fatigue cracking in the subject area. Such fatigue cracking, if not detected and corrected, could result in failure of the upper cap of the front spar of the left and right engine pylons, and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–54–030, Revision 06, dated November 11, 1999. The service bulletin describes procedures for x-ray and eddy current inspections to detect cracks of the upper cap of the front spar of the left and right engine pylons, and repetitive inspections or corrective actions (*i.e.*, the modification described below), if necessary. The service bulletin also describes procedures for an optional modification of the upper cap of the front spar of the left and right engine pylons, which would eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 77–14–19 to continue to require radiographic and ultrasonic or eddy current inspections. The proposed AD also would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed AD and Relevant Service Information

Operators should note that this AD proposes to mandate, prior to the accumulation of 100,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, the modification of the upper cap of the front spar of the left and right engine pylons described in McDonnell Douglas Service Bulletin DC9–54–030, Revision 06, as terminating action for the repetitive inspections. (Incorporation of the terminating action is specified in this service bulletin as optional).

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is consistent with these conditions.

Explanation of Change of Applicability

The applicability of AD 77–14–19 includes affected airplanes having fuselage numbers 1 through 837. However, the applicability of this proposed AD removes several of those fuselage numbers because those airplanes are out of service.

Cost Impact

There are approximately 809 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 77–14–19, and retained in this proposed AD, take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $411,840, or $720 per airplane, per inspection cycle.

The new inspection that is proposed in this AD action would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $411,840, or $720 per airplane, per inspection cycle.

The new modification that is proposed in this AD action would take approximately 110 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $30,496 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $21,218,912, or $37,096 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2971, and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2000–NM–04–AD. Supersedes AD 77–14–19, Amendment 39–2971.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes; as listed in McDonnell Douglas Service Bulletin DC9–54–030, Revision 06, dated November 11, 1999; certificated in any category; except for those airplanes on which Special Change Notification 1269A, dated August 11, 1965, or Service Rework Drawing SR09540004, Change "E," dated September 21, 1992, Change "F," dated April 19, 1995, Change "G," dated May 6, 1997, or Change "H," dated July 12, 1997, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the front spar attachment and upper cap of the engine pylons due to fatigue cracking, and consequent reduced structural integrity of the airplane, accomplish the following:

Repetitive Inspections

(a) Prior to the accumulation of 9,800 total flight hours, or within the next 1,800 flight hours after August 23, 1977 (the effective date of AD 77–14–19, amendment 39–2971), whichever occurs later, unless accomplished previously within the last 1,800 flight hours, accomplish the radiographic and ultrasonic

or eddy current inspections in accordance with the instructions in Douglas Service Bulletin 54–30, dated January 19, 1977. Repeat the inspection thereafter at intervals not to exceed 3,600 flight hours. For those operators who have conducted only the radiographic inspections in accordance with Douglas All Operators Letter AOL 9–835, dated October 30, 1974, perform the ultrasonic or eddy current inspections, and thereafter, the radiographic and ultrasonic or eddy current inspection in accordance with the requirements of this AD, as applicable.

Note 2: Inspections accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Service Bulletin 54–30, Revision 1, dated June 29, 1977, Revision 2, dated October 27, 1978, Revision 3, dated April 30, 1986, or Revision 4, dated March 25, 1991; or McDonnell Douglas Service Bulletin DC9–54–030, Revision 05, dated August 26, 1999, or Revision 06, dated November 11, 1999; are considered acceptable for compliance with the inspections required by paragraph (a) of this AD.

Initial Inspections and Follow-On/Corrective Action

(b) For airplanes on which the modification specified in paragraph (e) of this AD has not been accomplished: Prior to the accumulation of 8,000 total flight hours or within 3,600 flight hours after the effective date of this AD, whichever occurs later, perform x-ray and eddy current inspections to detect cracks of the upper cap of the front spar of the left and right engine pylons, in accordance with McDonnell Douglas Service Bulletin DC9–54–030, Revision 06, dated November 11, 1999. Accomplishment of these inspections constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

No Crack Detected: Repetitive Inspections

(c) If no crack is detected during any inspection required by paragraph (a) or (b) of this AD, repeat the inspections thereafter at intervals not to exceed 3,600 flight hours until the modification required by paragraph (e) of this AD is accomplished.

Any Crack Detected: Modification

(d) If any crack is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, accomplish the modification specified in paragraph (e) of this AD.

Terminating Modification

(e) Except as provided by paragraph (d) of this AD, prior to the accumulation of 100,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the upper cap of the front spar of the left and right engine pylons in accordance with McDonnell Douglas Service Bulletin DC9–54–030, Revision 06, dated November 11, 1999. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

Note 3: Accomplishment of the modification of the upper cap of the front spar of the left and right engine pylons prior to the effective date of this AD in accordance with Douglas Service Bulletin 54–30, Revision 4, dated March 25, 1991, or McDonnell Douglas Service Bulletin DC9–54–030, Revision 5, dated August 26, 1999; is considered acceptable for compliance with the modification specified in paragraph (e) of this AD.

(f) Accomplishment of the terminating modification required by paragraph (e) of this AD constitutes compliance with the actions specified in McDonnell Douglas Service Bulletin 54–30, Revision 4, dated March 25, 1991, as required by AD 96–10–11, amendment 39–9618 (61 FR 24675, May 16, 1996) [which references "DC–9/MD–80 Aging Aircraft Service Action Requirements Document" (SARD), McDonnell Douglas Report MDC K1572, Revision B, dated January 15, 1993].

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16927 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–6]

Proposed Revision of Class E Airspace; Wainwright, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Wainwright, AK. The revision of instrument approaches to runway (RWY) 4 and RWY 22 at Wainwright Airport, Wainwright, AK, have made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Wainwright, AK.

DATES: Comments must be received on or before August 21, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 00–AAL–6, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AAL–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch,

Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Wainwright, AK, due to the revision of several instrument approach procedures to RWY 4 and RWY 22 . The intended effect of this proposal is to provide additional controlled airspace for IFR operations at Wainwright, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Wainwright, AK [Revised]

Wainwright Airport, AK
(Lat. 70°38′17″N., long. 159°59′41″W.)

That airspace extending upward from 700 feet above the surface within a 8.5 mile radius of the Wainwright Airport; and that airspace extending upward from 1,200 feet above the surface from lat. 70°54′00″ N long. 159°00′00″ W, to lat. 70°38′00″ N long. 161°00′00″ W, to lat. 70°20′00″ N long. 161°00′00″ W, to lat. 70°30′00″ N long. 159°30′00″ W, to lat. 70°40′00″ N long. 159°00′00″ W, to the point of beginning.

* * * * *

Issued in Anchorage, AK, on June 27, 2000.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 00–16919 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–14]

Proposed Alteration of VOR Federal Airway; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to eliminate a segment of Federal Airway V–382 between Bryce Canyon, UT, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and Grand Junction, CO, VORTAC. The FAA is proposing to delete this portion of the airway because the flight inspection found the current route segment unusable for navigation.

DATES: Comments must be received on or before August 21, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 99–ANM–14, Federal Aviation Administration, 1601 Lind Avenue, Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ANM–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Document's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 (part 71) to modify Federal Airway V–382 by eliminating the route segment between Bryce Canyon and Grand Junction, CO, VORTAC. Since 1998, V–382 has been unusable between Bryce Canyon, UT, VORTAC and the Grand Junction, CO, VORTAC. This segment of V–382 no longer passes flight inspection and is out of service. The proposed amendment would retain the route segment from Grand Junction, CO, VORTAC to Durango, CO, VORTAC.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airways listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–382 [Revised]

From Grand Junction, CO; Cones, CO; to Durango, CO.

* * * * *

Issued in Washington, DC, June 27, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–16916 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA077–7210b; A–1–FRL–6709–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; VOC Regulation for Large Commercial Bakeries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires Large Commercial Bakeries to meet VOC Reasonably Available Control Technology (RACT) requirements. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before August 4, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Manager, Air Quality

Planning Unit, U.S. Environmental Protection Agency New England, Suite 1100, One Congress Street, Boston, MA 02114. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 918–1669.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401—7671q.

Dated: April 26, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–15910 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR 82–7297b; FRL–6714–6]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by Oregon Department of Environmental Quality (ODEQ), for the purpose of repealing the Consumer Products Rules, repealing the Architectural Coatings Rules, revising and partially repealing the Motor Vehicle Refinishings Rules, and revising the Volatile Organic Compounds Definitions. The SIP revisions were submitted by the State to satisfy certain Federal Clean Air Act requirements under section 110 and part D. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by August 4, 2000.

ADDRESSES: Written comments should be addressed to: Debra Suzuki, SIP Manager, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the state submittal and other information supporting this action are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day: Environmental Protection Agency, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101; and Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0985.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: May 22, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 00–16069 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN105–1b; FRL–6720–1]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Indiana's State Implementation Plan (SIP) revision request to control emissions of volatile organic compounds (VOCs) from steel mill sinter plants in Lake and Porter Counties. The Indiana Department of Environmental Management (IDEM) submitted the SIP revision request on April 6, 1999. The revision applies to integrated steel mills and provides for seasonal limits on emissions of VOCs. VOC emissions are a precursor of ground-level ozone, commonly known as smog. High ozone levels are detrimental to human health and contribute to upper respiratory ailments such as asthma. In the Final Rules section of this **Federal Register**, EPA is approving as described herein, the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule we plan to take no further activity in relation to this proposed rule. If EPA receives significant adverse comments, in writing, which have not been addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments by August 4, 2000.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

We are proposing to approve Indiana's rule IAC 8–plants in Lake and Porter Counties. Our approval makes the

Indiana sinter plant rules part of the federally enforceable SIP.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 12, 2000.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 00–16071 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN128–1b; FRL–6713–2]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revised opacity limits for three casting complexes at ALCOA Warrick Operations, which were submitted by the Indiana Department of Environmental Management (IDEM) on January 13, 2000 as amendments to its State Implementation Plan (SIP). ALCOA Warrick Operations is a primary aluminum smelter located in Newburgh, Indiana. The revised limits allow higher opacity emissions during fluxing operations at three casting complexes. This action does not reverse applicable mass emissions limits.

DATES: EPA must receive written comments by August 4, 2000.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What action is EPA taking today?
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I. What Action Is EPA Taking Today?

We are proposing to approve revised opacity limits for three casting complexes at ALCOA Warrick Operations, which were submitted by IDEM on January 13, 2000. The revised limits allow for higher opacity emissions during fluxing operations at three casting complexes.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: May 31, 2000.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 00–16362 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–6729–3]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Centralized Waste Treatment and Landfills Point Source Categories; Notice of Data Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: On January 13, 1999, EPA proposed effluent limitations guidelines, pretreatment standards, and new source performance standards for the Centralized Waste Treatment (CWT) Point Source Category to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works. The comment period for the proposal closed on March 15, 1999.

In the CWT proposal, EPA noted plans for a validation study for several pollutants found during EPA's data gathering, using EPA Methods 625 and 1625. Today, EPA invites comment on the validation data for the pollutants included in the CWT proposal. EPA plans to use these data to support the use of EPA Methods 625 and 1625, as amended, in the upcoming final CWT rule, and to establish performance criteria for the additional analytes. EPA is soliciting comment only on the new information and data being made available today.

Today's document also provides notice that EPA will clarify the scope of recently-published amendments to EPA Methods 625 and 1625 for the Landfills Point Source Category.

DATES: Submit an original and three copies of your comments on or before August 4, 2000.

ADDRESSES: Please send an original and 3 copies of your comments and enclosures (including references) to "Centralized Waste Treatment—Notice of Data Availability," W–98–21 Comment Clerk, Water Docket (MC–4101), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW. Washington, DC 20460. Hand deliveries should be delivered to: EPA's Water Docket at 401 M St., SW., Room EB–57, Washington, DC.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number [W–98-21]. Comments and data will also be accepted on disks in WP5.1, WP6.1, WP8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for this rulemaking has been established under docket number [W–98–21], and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, at EPA's Water Docket, 401 M St., Room EB–57, SW., Washington, DC. For access to docket materials, please call 202/260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Dr. Maria Gomez-Taylor, Engineering and Analysis Division (MC–4303), USEPA Office of Science and Technology, 1200 Pennsylvania Avenue, Ariel Rios Building, N.W. Washington, D.C., 20460, or call (202) 260–1639.

SUPPLEMENTARY INFORMATION: On January 13, 1999, EPA proposed effluent limitations guidelines, pretreatment standards, and new source performance standards for the Centralized Waste Treatment (CWT) Point Source Category (64 FR 2280). The comment period for the proposal closed on March 15, 1999. These comments may be reviewed in the Water Docket at EPA Headquarters (see address above).

In the January 1999 **Federal Register** notice, EPA discussed the use of modified versions of EPA Methods 625 and 1625 for the determination of all CWT semivolatile organic pollutants, including some analytes not currently listed in these methods, which are published at 40 CFR part 136, Appendix A. The proposed modifications to EPA Methods 625 and 1625 were included in the EPA Water Docket at proposal. The modified versions of these methods would allow the analysis of all CWT semivolatile organic pollutants in the proposed rule. In the preamble to the CWT proposal, the Agency noted its plans to conduct further validation of these method modifications and also noted plans to promulgate these method modifications in the final rulemaking for CWT.

Following proposal, EPA conducted a validation study to demonstrate the performance of the methods and to use the data gathered during the study to develop quality control (QC) acceptance criteria for the target pollutants. The resulting modifications to EPA Methods 625 and 1625 consist of text, performance data, and quality control (QC) acceptance criteria for the additional target analytes. The eleven CWT target analytes are acetophenone, aniline, benzoic acid, 2,3-dichloroaniline, o-cresol, p-cresol, pyridine, alpha-terpineol, carbazole, n-decane, and n-octadecane. This information would allow a laboratory to practice the methods with the additional analytes as an integral part. In addition to the CWT pollutants, the study included five pollutants for which EPA had proposed and then promulgated effluent limitations in the Landfills Point Source Category (see 63 FR 6425, February 6, 1998 and 65 FR 3007, January 19, 2000, respectively). The five Landfill analytes (aniline, benzoic acid, o-cresol, p-cresol, and pyridine) are among the CWT target analytes. The data collected in support of both CWT and Landfills were published in a validation study report dated October 1999, and that report is available for review in EPA's Water Docket. EPA will review the public comments received on the study and may, based on those comments, amend the 40 CFR part 136 revisions made in the Landfills rule to revise the list of analytes subject to Methods 625 and 1625.

Today's notice solicits comments only on the new data which support the use of Methods 625 and 1625 for the pollutants in the CWT rule. Specifically, the Agency seeks comment on the data summarized in the study report and placed in EPA's Water Docket. The Agency in not reopening the comment period on the entire proposed rule. Therefore, comments on other aspects of the proposal will not be considered.

The final rule for the Landfills Point Source Category (see 65 FR 3008, January 19, 2000) promulgated amendments to EPA Methods 625 and 1625 by modifying the methods for additional pollutants, including the five pollutants of concern for Landfills. These amendments are also available for review in EPA's Water Docket. Since publication of that rule, EPA has received inquiries about the scope and applicability of the amendments to Methods 625 and 1625 promulgated at 40 CFR part 136 pertaining to the Landfills rule. Specifically, EPA received questions on whether these amendments apply to any other point source categories. Today's notice clarifies EPA's intent regarding the published amendments to these methods. The amendments are applicable only to the five regulated pollutants in the Landfills rule when found in the waste streams regulated under that rule. When EPA promulgates effluent limitations and standards for CWT, EPA plans to further amend the methods to specify that the revisions to Methods 625 and 1625 are only applicable to the five pollutants in the Landfills rule (listed above) and to the eleven pollutants promulgated in the final CWT rule and only for the waste streams regulated under those rules.

EPA intends to use the revised Methods 625 and 1625 for monitoring the pollutants regulated in the CWT and Landfills rules only and not for general use. To clarify this intent, EPA plans to amend Methods 625 and 1625 in the upcoming final CWT rule to limit the scope and applicability to these rules. These amendments will clarify the Agency's objective to expand the scope of Methods 625 and 1625 for complying with monitoring requirements for the additional pollutants regulated in the two effluent guidelines discussed herein (*i.e.*, CWT and Landfills only).

Dated: June 27, 2000.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 00–16756 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6727–3]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; deletion of the Laskin/Poplar Oil Company Superfund Site (Site) from the National Priorities List (NPL).

SUMMARY: The EPA proposes to delete the releases from the Laskin/Poplar Oil Company Superfund site (Site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to 40 CFR part 300 which is the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA has determined that the Site currently poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. We are publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this approval is set forth in the direct final rule. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by August 4, 2000.

ADDRESSES: Comments may be mailed to Richard Boice, Remedial Project Manager, or Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson, Chicago, IL 60604.

Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Boulevard, Chicago, IL 60604 (312) 886–0900; the Henderson Memorial Library, 55 E. Jefferson, Jefferson, OH 44047 and the Ashtabula Public Library, 355 W. 44th St., Ashtablula, OH 44004.

FOR FURTHER INFORMATION CONTACT: Richard Boice, Remedial Project Manager, at (312) 886–4740 or Gladys Beard Associate Remedial Project Manager at (312) 886–7253, written correspondence can be directed to either Mr. Boice or Ms. Beard at U.S. Environmental Protection Agency, (SR–6J) 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: June 14, 2000.

Gary Gulezian,

Acting Regional Administrator, Region V.

[FR Doc. 00–16514 Filed 7–3–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–108; FCC 00–213]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to eliminate that section of the Commission's rules that that would prohibit affiliation with an entity maintaining one of the major television networks (ABC, CBS, Fox, and NBC) and the UPN or WB television network. Currently, this rule permits a television broadcast station to affiliate with an entity maintaining two or more broadcast television networks *unless* the two or more networks consist of two or more of the major networks (*i.e.*, ABC, CBS, NBC and Fox) or one of these four networks and either the UPN or WB television network. This rule was identified as one that should be modified in the Commission's Biennial Review Report.

DATES: Comments are due by September 1, 2000, and reply comments are due by October 2, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, (202) 418–2134 or Dan Bring, Mass Media Bureau, Policy and Rules Division, (202) 418–2170.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *NPRM* in MM Docket No. 00–108, FCC 00–213, adopted June 8, 2000, and released June 20, 2000. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 445 12th Street, SW., Room CY–B402, Washington, D.C. The *NPRM* is also available on the Internet at the Commission's website: *http://www.fcc.gov.*

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. This *Notice of Proposed Rulemaking* (*NPRM*) proposes the amendment of Section 73.658(g) of the Commission's Rules (47 CFR 73.658(g)), the "dual network" rule applicable to broadcast stations. This rule permits a television broadcast station to affiliate with an entity maintaining two or more broadcast television networks *unless* the two or more networks consist of two or more of the major networks (*i.e.*, ABC, CBS, NBC and Fox) or one of these four networks and either the UPN or WB television network. These networks are not explicitly named in the rule. However, the statute and legislative history of the Telecommunications Act of 1996, which required the Commission to amend the dual-network to its current form make it clear that these are the networks intended to be described by the legislation. As a result of our analysis in our Biennial Review proceeding concerning broadcast ownership rules (*Biennial Review Report* in MM Docket No. 98–35 ("Biennial Report"), FCC 00–191 (Adopted May 26, 2000; Released June 20, 2000)), we made a preliminary determination that the current rule, as a result of competition, may no longer serve the public interest. Accordingly, we indicated that we would commence this rulemaking proceeding proposing to amend the rule by eliminating the portion of the rule that precludes the ownership of the UPN or WB networks by the ABC, NBC, CBS, or Fox television networks.

II. Background

2. As we noted in the Biennial Review Report, the Commission first adopted a dual network rule for broadcast radio networks in 1941 following an investigation to determine whether the public interest required "special regulations" for radio stations engaged in chain broadcasting (6 FR 2282 (May 6, 1941)). The rule provided that no license would be issued to a broadcast station affiliated with a network organization that maintained more than one broadcast network. The Commission extended the dual network rule to television networks in 1946 (*Amendment of Part 3 of the Commission's Rules*, 11 FR 33 (Jan. 1, 1946)). The Commission believed that permitting an entity to operate more than one network might preclude new networks from developing and affiliating with desirable stations because those stations might already be tied up by the more powerful network entity. In addition, the Commission expressed concern that dual networking could give a network too much market power. The dual network prohibition, therefore, was intended to remove barriers that would inhibit the development of new networks, as well to serve the Commission's more general diversity and competition goals. The dual network rule for broadcast television remained unchanged until 1996, when the Commission amended the rule to conform with the provisions in Section 202(e) of the Telecommunications Act of 1996 (Public Law 104–104, 110 Stat. 56 (1996)).

3. Section 73.658(g) sets forth the Commission's current dual network rule. It directly reflects the provisions of the Telecom Act which permit a television broadcast station to affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such networks are composed of: (1) Two or more persons or entities that were "networks" on the date the Telecom Act was enacted; or (2) any such network and an English-language program distribution service that on the date of the Telecom Act's enactment provided 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television households. Section 202(e) of

the 1996 Act defines a "network" with reference to § 73.3613(a)(1) of the Commission's Rules (47 CFR 73.3613(a)(1)). That Rule provides that a network is "any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation."

4. The Conference Report stated that the Commission was being directed to revise its dual network rule "to permit a television station to affiliate with a person or entity that maintains two or more networks unless such dual or multiple networks are composed of (1) two or more of the four existing networks (ABC, CBS, NBC, Fox) or, (2) any of the four existing networks and one of the two emerging networks (WBTN, UPN). The conferees do not intend these limitations to apply if such networks are not operated simultaneously, or if there is no substantial overlap in the territory served by the group of stations comprising each such networks" (S. Rep. No. 230, 104th Cong., 2d Sess. At 163).

III. Discussion

5. In the Biennial Report we tentatively concluded that we should explore modifying the dual network rule by eliminating the prohibition on the ownership of either the UPN or WB network by one of the major television networks. We stated that neither competition nor diversity issues appeared to warrant retention of the rule in its current form.

6. Our proposal to relax the dual network rule to permit ownership of either the UPN or WB network by one of the major networks is based on a review of the current economics of the network broadcasting industry. The elements of our economic review are briefly summarized in the following paragraphs. We seek comment on our view of the current economics of network broadcasting both in general and with respect to particular conclusions derived from the review.

7. *Framework.* The dual network rule, as modified as a consequence of the 1996 Act, may be viewed as an anti-merger rule that constrains the current organization of the network broadcasting industry. This constraint on the organization of the contemporary network broadcasting industry may result in organizational inefficiencies that adversely affect industry performance, including the type and quality of network programming available to viewers. One way to examine the network broadcasting industry for possible organizational inefficiencies is the application of concepts developed in the transaction cost economics (TCE) literature. From a TCE perspective, the economic organization of firms and industries reflects specific attributes of the contracting process between buyer and seller. The following discussion identifies key attributes of critical exchange relationships in the network television broadcasting industry, e.g., the relationship between program suppliers and broadcast networks, and how these attributes contribute to the efficiency or inefficiency of existing industry organization. The commercial television network broadcast industry today consists of a number of vertically-integrated firms. For example, ABC is vertically integrated with Disney as a program supplier; the Fox network is vertically integrated with 20th Century Fox as a program supplier; and UPN is vertically integrated with Viacom. Thus, an economic analysis of the effects of potential mergers between the major networks, *i.e.*, ABC, CBS, NBC, and Fox, or potential mergers between these entities and an emerging network, *i.e.*, UPN or WB, will in many cases involve mergers between vertically-integrated firms. To facilitate discussion, the analysis decomposes a hypothetical merger between two broadcast networks into two parts. First, we examine the relationship between a program supplier and a broadcast network to determine whether vertical integration is either more or less efficient than simply negotiating an arms-length contractual relationship between the program supplier and the broadcast network. The comparative assessment of the efficiency of contracting versus vertical integration relies extensively on TCE concepts. Second, we assess the effects of a horizontal merger between two broadcast networks by relying on antitrust measures of market concentration and an analysis of price competition in the national market for network television advertising. Finally, the gains or losses resulting from the analysis of vertical integration are integrated into the measurement of the efficiencies or inefficiencies resulting from the horizontal merger to determine the overall benefits and costs of a merger between two vertically-integrated firms. The merger of two vertically-integrated enterprises may have both horizontal and vertical economic effects. Horizontal effects refer to the economies or diseconomies resulting from enlarging the size of the firm post-merger and include effects on consumers, such as higher or lower prices and changes in the quantity and quality of output produced. These effects can be assessed at each stage of production of the vertically-integrated firm. For a television network vertically-integrated into the production of network programming, the assessment of horizontal effects would include assessing the economies or diseconomies of increasing the size of the network and the economies or diseconomies of increasing the size and scale of program production, assuming that the network that is being acquired is also vertically-integrated into program production. The effects of the merger of two program production enterprises on competition in the network television program production market would also be included in the analysis of horizontal effects. Growth in the size of the vertically-integrated firm post-merger may either accentuate the economies of vertical integration post-merger or diminish the efficiencies of vertical integration as organizational complexity increases and coordination of decisionmaking within the larger firm becomes more difficult and costly. Vertical effects refer to the economies or diseconomies of integrated production as the size of the vertically-integrated firm increases. The analytical framework suggests a way to assess the relative significance of some of these horizontal and vertical effects that may result from the merger of two television networks that are both vertically integrated into the production of network television programming.

8. Standard economic analyses of the effects of a horizontal merger of two competing firms, such as two television networks, do not ordinarily include an assessment of the effects of the proposed merger on the efficiency of vertical integration within the acquiring firm, especially if the acquired firm is not vertically integrated. However, vertical relationships within the network television broadcasting business are endemic in the industry and virtually define its economic purpose and industry structure, especially the vertical relationship between a television network and its affiliated local broadcast stations. Increasingly, television networks, like cable television multiple system operators, are vertically integrated into the production of programming. Thus, television networks today are intrinsically vertically-integrated enterprises and to ignore the impact of a horizontal merger

on the efficiency of such integration is to ignore a critical dimension of the economic effects produced by the merger. Consequently, this unconventional approach seems appropriate to evaluate more completely the economic implications of a potential merger between two television networks.

9. *Overview of the Analysis.* The application of TCE concepts suggests that vertical integration between program suppliers and major networks may produce substantial economic efficiencies (compared to market contracting) that may benefit both advertisers and viewers. The analysis of horizontal mergers between broadcast networks suggests that the merger of two major networks would adversely affect competition in the national network television advertising market, while the merger of a major network and an emerging network may produce efficiencies benefiting both viewers and advertisers. Based on the aggregation of the costs and benefits from both the vertical and horizontal components of a proposed merger, the analysis concludes that the dual network rule should be retained as it relates to mergers between the major networks, but relaxed to permit mergers between a major network and an emerging network.

10. *Attributes of Television Network Output.* From an economic perspective, firms in the network broadcasting industry, such as ABC, NBC, CBS, and Fox, together with their local television station affiliates and their owned and operated (O&O) stations, are in the business of producing audiences. Access to network television viewers is sold to advertisers that want to reach a large, nationwide audience of potential customers. Network advertising provides audience reach unmatched by any other broadcasting medium. No single cable channel today provides the audience reach of any television network. Only network television is a mass-distribution venue for programming and advertising, notwithstanding the continuing erosion of network television audience attributable to the growth of cable and DBS viewership. Of the 27 prime time programs viewed in more than ten million households during the week of January 17–23, 2000, all 27 were aired by either ABC, CBS, NBC or Fox. The largest share for a UPN program was approximately 5 million homes and the most popular cable program (during any hour) was viewed in just under 5 million homes. Access to the mass audience produced by television networks is sold to advertisers in terms of thousands of viewers for a defined interval of commercial time, such as 30 seconds.

11. Both a network television program and the over-the-air broadcast transmission that delivers the program to viewers have economic attributes of a pure public good, *i.e.*, a good or service with the property that one individual's viewing of the program does not diminish the quantity of the program available for any other individual who wishes to view the same program. By contrast, a pure private good, such as food, clothing, and many other consumer products and services, are "rivalrous" in consumption, *i.e.*, a good consumed by one individual is not available for consumption by a different individual. Thus, a network television program, having the property of a pure public good, is not "used up" once it is shown. Indeed, the same program may be aired repeatedly to the same or different audiences without physically "wearing out" the program as an asset that produces audiences. It is possible, of course, that new audiences for the program cannot be found or existing audiences tire of the program and will no longer watch it. The program becomes obsolete as an audience-producing asset, although the program itself is not physically depleted by repeated airings on television.

12. The public good attributes of a network television program imply several things about its cost as an audience-producing asset and its market value to the program producer and the network that broadcasts the program. First, broadcasting a network program represents, in substantial part, a fixed cost of production for the network with respect to the number of viewers produced by airing the program. Once the program is on the air, the cost of production for the network and its station affiliates is insensitive to the number of viewers "consuming" the program. In other words, the marginal cost of adding an additional viewer within the signal coverage area is zero for both the network and the station affiliate. This attribute of network program costs suggests that large audiences are always preferable to smaller ones, since a larger audience costs the network no more to produce than a smaller one for the same level of program quality, and network revenues derived from advertisers depend directly on the number of viewers produced. Expressed differently, the average fixed costs of production for the network, *i.e.*, total fixed cost divided by the number of viewers, declines as the size of the audience produced increases in size. To the extent that such economies are reflected in the pricing of network advertising, then the marginal price of network advertising per viewer falls as audience size increases. Given the fixed cost attributes of network programming assets and the economies of spreading such costs over large audiences, economically viable television networks must be large rather than small as measured in terms of the number of affiliated stations and the viewers produced and sold to advertisers.

13. Second, not only are the costs of network programming fixed, they are also sunk. Typically, a sunk cost refers to an investment in highly specialized productive assets that cannot be redeployed to an alternative use. Sunk cost investments reflect asset-specificity and typically have little or no productive value in any other use beyond the intended application. While asset-specific investments often facilitate reductions in the cost of production or improvements in the quality of output produced compared to the use of less specialized assets, they involve substantially higher risks of capital recovery compared to non-specialized general purpose assets. General purpose assets can be redeployed to alternative uses should demand for the asset in its original application decline or disappear entirely, while asset-specific investments may become worthless. Once created, investments in network programming are asset-specific: an action movie targeted to a specific audience cannot be redeployed to attract a totally different audience that prefers, say, musical comedy. If the targeted audience does not like the movie, then much of the investment in the movie by the network may be unrecoverable.

14. Third, the public good and cost characteristics of network programs result in a multiplicity of rights that can be sold to television networks by program producers. Among these rights are the initial network exhibition rights; the right to renew those rights (options); and the right to earn revenues from the syndication of a successful network program, among other future revenue streams. As a result, contract negotiations between a program producer and a network for the sale and purchase of program rights are extremely complex, involving especially high stakes for the incumbent television networks. The growth of cable television and DBS have substantially increased the number of viewing options for viewers, resulting in a steady erosion in the size of audiences attracted to conventional, over-the-air network television programming. Additionally, program producers now have expanded

options for selling their programming beyond the networks or through syndication to local television stations. Increasingly, the continuing growth in cable networks provides significant competition to the incumbent television networks as purchasers of television programs. Additionally, some program suppliers, such as Warner Brothers and Viacom, have decided to integrate vertically into program distribution by creating their own television networks. This option for program suppliers introduces additional complexity in the contractual relationship between program suppliers and the incumbent television networks. As a result of these changes in industry structure over the past decade, the contracting environment between and among suppliers of network programming and the incumbent networks is both more complicated than before and somewhat more risky for the networks. It is imperative that networks obtain quality programming to stem audience erosion while dealing with suppliers that now have expanded options for the sale of their product.

15. *The Market for Network Programming.* From the business perspective of an incumbent television network, programs are a critical input in the process of producing a mass audience. Like any business firm, a network faces a "make or buy" decision, namely, either make the input of production itself or contract with an independent supplier to make the input according to specifications established in a contract. Prior to the expiration of the Commission's financial interest rule in 1995, which prohibited the networks from acquiring equity and profit rights in network programming produced by independent program suppliers, the Commission forced the network to contract with independent program suppliers rather than partially or fully integrate vertically with such firms. Following repeal of the Commission's financial interest and syndication rules, the networks have partially or fully integrated vertically with a number of program suppliers. This integration reflects, in part, the difficulties in negotiating a contractual relationship with program suppliers. These difficulties reflect the peculiar attributes of television network output previously described.

16. The economic complexities of contract negotiation between a television network and a program supplier may be illustrated by a specific example. Suppose a network wants to contract with a program supplier for a prime time program series, say, a situation comedy. Both the network and the program supplier may be expected to approach contract negotiations from a self-interest maximizing point of view, although the inherent uncertainties of creating a successful program and forecasting audience acceptance probably makes it impossible to know what decisions are profit-maximizing. In the language of TCE, both parties approach contact negotiations with bounded rationality, *i.e.*, "intendedly rational, but limitedly so." As previously discussed, a program, or program series, once completed is "durable" and can be rebroadcast as a network re-run or put in syndication after its network run. The economic life of the program or series cannot be known a priori, ranging from months to decades. If the program producer believes that the planned program may have a long life in syndication, then the program producer may be willing to forego front-end profits in exchange for the profits expected to be earned in syndication. The network, however, may have very different expectations about the expected life of the program series and its long-term profitability which may pose a fundamental conflict to be resolved through negotiation.

17. If the program series becomes a "hit", then the program producer may wish to re-open the negotiated contract with the network in an effort to obtain a larger share of the anticipated large network revenues resulting from the success of the program in attracting viewers and advertisers. Since the program producer retains substantial control over the creative process that generates the programming, including how and when the star talent is utilized in the program, the program producer may attempt to "hold up" the network by threatening to adjust program quality that may benefit the program producer (*e.g.*, altering the compensation of key program talent) at the expense of the network (*e.g.*, reducing the value of the program as a network re-run). In the language of TCE, the program producer may behave opportunistically, *i.e.*, "self-interest seeking with guile." With respect to other aspects of contract negotiations, the network may also behave opportunistically, especially if such behavior is expected of the program producer. Moreover, both the network and the program producer recognize that attributes of contractual relationship between the program producer and the network involve certain external effects, *i.e.*, costs or benefits which may accrue to the parties to the contract that are largely outside the scope of the immediate transaction. For example, should the network suddenly cancel the program series due to poor ratings rather than wait to see if the ratings eventually improve, the program producer's future revenues derived from its syndication rights may be reduced or virtually eliminated. Similarly, the network can vary the audience attracted to a network program by positioning the program in its program lineup so that it benefits from the audience attracted by the program appearing immediately before it. Thus, the network's manipulation of its program schedule to achieve its own current profit objectives will have a significant effect on the future revenues produced by the program in syndication. If the network is unable to capture some fraction of these future revenues, it has no incentive to consider the external effects of its program schedule decisions and may well behave opportunistically toward the program supplier's financial interests.

18. An especially difficult aspect of contract negotiations between a network and a program supplier concerns the allocation of the risks of program development between the two parties. Given the asset-specificity of every network program and the significant probability that the program will fail to attract an audience of sufficient size to attract advertisers, risk allocation between the parties is a difficult issue to negotiate, since attitudes toward risk aversion will differ between the network and the program producer. The advantages of sharing the risks of multiple program production will vary with different program producers and networks.

19. Given the substantial financial risks implied in the production and distribution of network programming, both the program supplier and the network have a mutual interest in maintaining a mutually beneficial, long-term contractual relationship, especially if (1) the program purchased is intended as a prime time series; and (2) the network and program producer expect to maintain ongoing contractual relationships for new programs in the future. Such expectations may, in fact, attenuate to some degree the possible incentives to pursue opportunistic behavior by either party. Nevertheless, writing a contract that resolves inherent conflicts between the parties, incorporates the consequences of external effects, discourages opportunism, and anticipates many future contingencies in the contractual relationship including dispute resolution, is both difficult and costly. As suggested by the TCE literature, transactions involving substantial asset specificity, uncertainty, and frequency

may be more efficiently effectuated by some other governance structure than contracting by two independent entities. Vertical integration of program production and network distribution whereby the former market transaction is made internal to the merged firms under unified ownership results in a major efficiency gain, namely, the ability to adapt more readily the (internal) relationship between the program supplier division of the merged enterprise with the network distribution division to unanticipated changes in the economic environment. As Williamson explains,

> The advantage of vertical integration is that adaptations can be made in a sequential way without the need to consult, complete, or revise interfirm agreements. Where a single ownership entity spans both sides of the transaction, a presumption of joint profit maximization is warranted. Thus price adjustments in vertically integrated enterprises will be more complete than in interfirm trading. And, assuming that internal incentives are not misaligned, quantity adjustments will be implemented at whatever frequency serves to maximize the joint gain to the transaction.

Based on our analysis of the comparative transaction costs of effectuating exchange between program suppliers and television networks by market contracting versus vertical integration, we believe that partial or complete vertical integration between a broadcast network and a program producer may result in substantial efficiencies that may benefit network television advertisers and viewers. More specifically, advertisers may benefit from reduced rates if the efficiencies of vertical integration are reflected in reduced network costs of producing a mass audience. Similarly, viewers may benefit from the wider availability of diverse programming that a network may produce as a result from having available its own program production capability that may encourage new but riskier programming possibilities. Once fully or partially vertically-integrated into program production, the network has full or enlarged claim on revenue opportunities in all distribution windows which may enhance the network's incentive to invest in innovative programming.

20. *Tendency Toward Network Industry Concentration.* As explained above, most costs of producing and distributing programming are not sensitive to the number of viewers that actually watch a given program once broadcast facilities are in place. In effect, a television network shares the substantial fixed costs of network television programming among the stations either owned by the networks or affiliated with the network. Often, a network affiliate shares the fixed costs of network programming by giving the network broadcast time which the network then sells to network advertisers. In some cases, network affiliates make cash payments to networks in addition to broadcast time. The larger the number of owned or affiliated stations belonging to a given television network, the lower is the average fixed cost of network programming that each affiliated station must recover and, all other things remaining the same, the lower is the effective price per viewer for an advertiser so long as the network faces some competition from other television networks. Given the fixed cost nature of the business, larger networks, in terms of the number of affiliated stations and viewers, tend to be more economically viable than smaller networks.

21. The number of economically viable television networks is presently severely constrained by the number of available local affiliates. The number of available station affiliates is constrained, in turn, by the amount of spectrum the Commission has allocated to broadcast television. A network must have a sufficient number of affiliated stations so that (1) a large enough percentage of national viewership is achieved so that national advertisers can be attracted, and (2) average fixed cost is reduced to a point where the competitive price of network advertising will produce network advertising revenues sufficient to cover the total cost of network operations. Television networks today compete in a national market and need, therefore, an affiliated station in most local markets across the country. If stations are unavailable in too many local markets, or the available stations have poor signal coverage, then the network can neither attract sufficient national advertisers nor drive average fixed costs low enough such that competitive rates for network advertising will cover total network operating costs. Both the fixed cost attributes of network costs and the Commission's limited allocation of spectrum to broadcast television present obstacles to new broadcast networks.

22. *National Television Advertising Market.* Within the national television advertising market that includes national spot sales by affiliated and independent stations, a strategic group consisting of the major networks, *i.e.*, ABC, NBC, CBS, and Fox, can be identified. (A strategic group refers to a cluster of independent firms within an industry that pursue similar business strategies. For example, the major networks supply programming to their affiliated local stations that is intended to attract mass audiences and advertisers that want to reach such large, nationwide audiences. By contrast, the emerging networks target more specialized, niche audiences similar to cable television networks. The conceptual basis for a strategic group is developed in R. E. Caves and M. E. Porter, "From Entry Barriers to Mobility Barriers: Conjectural Decisions and Contrived Deterrence to New Competition," *Quarterly Journal of Economics* 91 (May 1977): 241–261. Also see Michael E. Porter, *Competitive Strategy: Techniques for Analyzing Industries and Competition* (New York: The Free Press, 1980), Chapter 7. For additional references on the application of the strategic group concept, see F. M. Scherer and David Ross, *Industrial Market Structure and Economic Performance, 3rd Edition,* (Boston: Houghton Mifflin, 1990), pp. 284–85. When properly applied, the concept of a strategic group ordinarily implies that only a relatively few firms will be included within its boundaries so that competitive rivalry will be oligopolistic in nature, although the number of firms actually populating the industry aggregated over all strategic groups may be quite numerous.) At present, the network firms comprising this strategic group provide the greatest reach of any medium of mass communications. Since delivering a mass audience is becoming more difficult for all media, media that can still produce mass audiences become more valuable. As a result, broadcast networks have achieved double-digit gains in revenues in recent years despite their loss of audience relative to years past. The major mobility barrier impeding entry into the major network strategic group is the availability of affiliated stations. Notwithstanding some growth in the number of stations over the last decade, obtaining sufficient affiliated stations remains a major obstacle to developing a new network that can achieve sufficient national reach to be attractive to national advertisers.

23. At present, mobility barriers protecting the major network strategic group result in an oligopoly of established networks where prices for network advertising will also depend on the number of networks. (Mobility barriers are barriers to entry that deter the movement of a firm within a given industry from shifting from one strategic group to another. Differed strategic groups will be defended by different mobility barriers that vary in the effectiveness in restricting entry into a

given strategic group. In general, firms protected by high mobility barriers will have greater profit potential than firms in other strategic groups protected by low mobility barriers.) In general, as the number of independently-owned networks in the strategic group decreases, the equilibrium price for network advertising will increase. Pricing and output behavior by the major networks may be conceptualized as Cournot competition in quantities. In other words, the networks by contractual arrangement with their affiliated stations produce capacity output at all times, representing the profit-maximizing quantity of programming that affiliated stations are expected to "clear" over all dayparts. As a result, each network in the strategic group is expected to maximize profit assuming that the quantity of output produced by its rival networks is not affected by its own output decisions.

24. *Economic Effects of Network Mergers.* So long as mobility barriers deter entry into the major network strategic group, the pricing of network advertising will be sensitive to the number of network competitors. Thus, horizontal mergers between the major networks will increase the unit price of network advertising, all other things remaining the same. (The merger may, of course, result in some scale economies as the post-merger network increases in size. The extent of such possible economies, if any, is not known.) Although network advertisers may be harmed by such mergers, viewers of network television may benefit if the duplication of similar types of network programming is reduced and more programming for specialized audiences is offered. Whether the welfare gains to viewers—if any—exceed the welfare loss to network advertisers is not known.

25. Given our analysis of the potential effects of a merger of networks in the major networks strategic group, the dual network rule as applied to the four major networks should not be relaxed until the mobility barriers defending the major network strategic group are lowered. An analysis by Commission staff suggests that economic concentration within the major network strategic group as measured by the Herfindahl-Hirschman Index (HHI) presently exceeds 2600, indicating a "highly concentrated" market. Any merger between or among the four major networks would exceed 100 points, suggesting that such a merger would enhance market power or facilitate its exercise. As noted above, the major barrier impeding entry into the broadcast networking industry is the availability of affiliated stations created by the amount of spectrum the Commission allocated to broadcast television. In the near future, we expect that deployment of digital television may lower barriers to new broadcast networks by enabling broadcast stations to carry multiple program streams. Our biennial reviews of the dual network rule will enable us to periodically evaluate the impact of DTV on existing barriers to new broadcast networks.

26. While retaining a prohibition on mergers between major broadcast networks, we believe a merger between an emerging network, such as WB or UPN, and a major network may produce net benefits. Such a merger may produce significant efficiencies by internalizing the contentious issue of program production risk-sharing within a vertical relationship. For example, an emerging network acquired by a major network provides the major network with an additional "window" for the distribution of network programming. In effect, this additional window allows the merged network to broadcast the same program in different time slots in the same market if both the major and emerging networks have affiliates in the same city. Alternatively, if the emerging and major network do not have affiliates in the same city, then the merged network entity will now reach more households than before the merger. In either case, the fixed costs of program production are spread over additional viewers in different time slots or additional cities. As a result, the effective program cost per viewer is reduced in either case. Similarly, a network program that fails, or is only marginally successful, on the major network's affiliated station might succeed, however, when broadcast to the niche audience reached by the affiliates of the emerging network. The risks of network program development are clearly attenuated for the merged networks as a consequence of reaching additional viewers at different times or in additional cities or with audience attributes that may differ from the mass audience ordinarily targetted by a major network. Moreover, since the emerging networks, such as WB, UPN, or Pax Net are *not* in the major network strategic group, there should be little or no adverse effect on the price for network television advertising as a result of such a merger. From an economic perspective, the emerging networks strategic group would include WB, UPN, Pax Net, Univision, Telemundo, and possibly some national syndicators. From a legal perspective, the 1996 Act restricted the membership of the emerging networks strategic group to include only WB and UPN. Accordingly, we are proposing to eliminate that portion of the dual network that would prohibit the merger of a network in the major network strategic group with the WB or UPN networks.

27. While we believe that relaxing the dual network rule will result in net benefits to both viewers and advertisers as shown by our economic analysis, such relaxation of the rule may adversely affect our goal of diversity in broadcasting. Clearly, the merger of an emerging network with a major network results in the loss of an independent network "voice" and thus diminishes source diversity. Such a result runs counter to the Commission's long-standing goal to foster the entry of additional broadcast television networks as a means of promoting diversity. So long as substitutes for network television remained limited, the entry of additional television networks was crucial to increasing viewer choices of diverse television programming. With the growth of cable television networks, direct broadcast satellite services, and the ongoing deployment of digital television, however, encouraging the entry of new, over-the-air broadcast networks may have diminished in importance relative to twenty years ago. In other words, rivalry between and among direct competitors (*i.e.*, the major networks), which still remain relatively few in number even after twenty years, has been augmented by the growth of partial substitutes, such as cable television and direct broadcast television, supplied by firms outside the major networks strategic group. This growth in partial substitutes dilutes to some degree the market power of major networks relative to their market power in the absence of such substitutes. Moreover, our local broadcast ownership rules will continue to ensure outlet diversity in local broadcasting markets. In short, circumstances may have so changed in broadcast markets that our diversity goals may no longer preclude the realization of the beneficial effects resulting from the relaxation of the dual network rule proposed in this *NPRM*. We seek comment on the possible effects of relaxing the dual network rule on our diversity goals and our tentative conclusion that such effects are outweighed by the benefits identified in our economic analysis.

28. We invite comment on any or all aspects of our economic analysis of the possible effects of relaxing the dual network rule to permit the merger of an emerging network with a major network. In particular, we seek comment on (1)

our analysis of the difficulties of negotiating long term contracts between a program supplier and a television network; (2) the likely benefits of vertical integration between program producers and networks for network advertisers and viewers; (3) our application of the concept of a major network strategic group; (4) the likely effects on the price of network advertising resulting from (a) a merger of incumbent networks within the major network strategic group and (b) a merger of a major network and an emerging network; and (5) the effects of the merger of an incumbent network and an emerging network on a viewer's choice of programming options (mass audience vs. niche audience programming) and the likely quality of such program options. Comments supplying empirical evidence that is consistent or inconsistent with our economic analysis will be especially useful. Theoretical analysis that further refines our economic analysis or identifies critical weaknesses will also be useful.

29. We also seek comment on possible merger conditions that might help safeguard our broadcast diversity goals while partially relaxing the dual network rule to achieve the potential net benefits identified in our economic analysis. Are there conditions that could maintain separation between the programming decisions of the two networks while still allowing them to achieve the efficiencies described in our economic analysis?

IV. Administrative Matters

30. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 1, 2000 and reply comments on or October 2, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

31. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

32. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW–A325, Washington, DC 20554.

33. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, SW., 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 00–108), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must sent diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, SW., CY–B402, Washington, DC 20554.

34. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov.* Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: *www.fcc.gov/dtf.* Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

35. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810–0260, TTY (202) 418–2555, or *mcontee@fcc.gov.*

36. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding, subject to the "permit-but-disclose" requirements under 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description or the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

37. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared an IRFA of the possible economic impact on small entities of the proposals contained in this *NPRM.* Written public comments are requested on the IFRA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM,* and must have a distinct heading designating them as a response to the IRFA. The Reference Information Center, Consumer Information Bureau, will send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

38. As required by the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.*), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

39. Section 202(h) of the Telecom Act requires the Commission to review its broadcast ownership rules every two years, beginning in 1998, and to "determine whether any of such rules are necessary in the public interest as the result of competition." It instructs the Commission to repeal or modify any regulation it determines to be no longer in the public interest. In its first Biennial Report, issued as a result of Section 202(h) of the Telecom Act, the Commission determined that the dual network rule, as it currently exists, appeared to no longer be in the public interest. Accordingly, in compliance with the provisions of Section 202(h) of the Telecom Act, the Commission is commencing this proceeding in order to modify § 73.658(g).

B. Legal Basis

40. This *NPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, 310, of the Communications Act, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, and Section 202(h) of the Telecommunications Act of 1996.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

41. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term "small entity as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

42. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

43. *Small TV Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, fewer than 800 commercial TV broadcast stations (65%) subject to our proposal have revenues of less than $10.5 million dollars. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, our estimate may overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. It would appear that there would be no more than 800 entities affected.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

44. Currently, § 73.3613 of the Commission's rules requires TV broadcast licensees to file network affiliation contracts. The *NPRM* proposes no change to that requirement or any new recordkeeping or other compliance requirements.

E. Significant Alternatives Considered Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

45. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

46. As indicated above, the *NPRM* proposes to allow licensees to affiliate with a network entity that maintains two or more networks unless such multiple networks consist of more than one of the "big four" networks (NBC, ABC, CBS and Fox). This would eliminate the bar on affiliation with an entity that maintains one of the "big four" networks and the UPN and/or WB networks. All significant alternatives, *i.e.*, retention of the existing rule, modification of the existing rule, and elimination of the dual network rule altogether, were recently considered in the Commission's 1998 biennial review of its broadcast ownership rules (MM Docket No. 98–35). In that proceeding the Commission tentatively determined that elimination of the subject provision would be in the public interest. The Commission considered the results of this top-to-bottom review of the subject rule in its consideration of alternatives to the course proposed herein in the instant proceeding. The proposed action will provide television licensees, including those considered to be "small businesses," to have increased flexibility with regard to the broadcast networks with which they may affiliate.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

47. None.

48. *Initial Paperwork Reduction Act Analysis.* This *NPRM* proposes no new information collection requirements.

49. *Additional Information.* For additional information on this proceeding, please contact Roger Holberg, Policy and Rules Division, Mass Media Bureau, (202) 418–2130, or Dan Bring (202) 418–2164, (202) 418–1169 TTY.

V. Ordering Clauses

50. Accordingly, pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this *Notice of*

51. *Proposed Rulemaking is adopted.*

52. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16820 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1394; MM Docket No. 00–55; RM–9836]

Radio Broadcasting Services; Falconer and Fredonia, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission, at the request of North Country Broadcasting, Inc., licensee of Station WCQA, Fredonia, NY, dismisses its petition to reallot Channel 243A from Fredonia to Falconer, NY, and modify Station WCQA's license accordingly. *See* 65 FR 17618, April 4, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–55, adopted June 14, 2000, and released June 23, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16868 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 00–105; FCC 00–203]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to eliminate the Commission rule that prohibits an entity from controlling more than one experimental broadcast station license absent a showing of need. As a result of the preliminary determination in the Commission's biennial review proceeding that this rule is no longer necessary in the public interest as a result of competition, this document proposes to eliminate the subject provision.

DATES: Comments are due by September 1, 2000 , and reply comments are due by October 2, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, (202) 418–2134.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Commission's Notice of Proposed Rule Making (NPRM)* in MM Docket No. 00–105, FCC 00–203, adopted June 5, 2000, and released June 20, 2000. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C. and may also be purchased from the Commission's copy contractor, International Transcription Service (202)857–3800, 445 12th Street, S.W., Room CY–B402, Washington, D.C. The *NPRM* is also available on the Internet at the Commission's website: *http://www.fcc.gov.*

Synopsis of Notice of Proposed Rule Making

1. By this *NPRM* the Commission proposes to eliminate the multiple ownership rule for experimental broadcast stations which now provides that no entity may control more than one experimental license absent a showing of need (47 CFR 74.134). We seek comment on whether this rule remains necessary to achieve goals of competition and diversity in the broadcast market. The Commission stated in the Biennial Review *Notice of Inquiry (Notice of Inquiry,* In the Matter of 1998 Biennial Regulatory Review, Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 13 F.C.C.R. 11276, 11293–94 (1998) (*NOI*)) a tentative belief that this rule has a negligible impact on these goals and sought comment on whether this rule remains necessary in the public interest. Accordingly, this *NPRM* seeks comment on the repeal of § 74.134. Commenters advocating less than the outright repeal of the rule are encouraged to propose alternatives to the current restriction.

I. Background

2. The multiple ownership rule for experimental broadcast stations was adopted in 1946 and generally limited ownership to one station. In 1963 this rule was redesignated as part 74 (74.134) with no changes. In 1984 the Commission combined parts 74 A (Experimental TV), 74 B (Experimental Facility) and 74 C (Developmental Broadcast Stations) into the present subpart 74 A (Experimental Broadcast Stations) without changing the ownership limit.

3. By Section 202(h) of the Telecommunications Act of 1996 (Public Law 104–104, 110 Stat. 56 (1996)), Congress directed the Commission to review its broadcast ownership rules as part of the biennial ownership review. That section requires the Commission to review its broadcast ownership rules biennially and to determine whether any of these rules are necessary in the public interest as the result of competition. Furthermore, it requires the Commission to "repeal or modify any regulation it determines to be no longer in the public interest."

4. Subpart A of part 74 of the Commission's Rules [1] sets forth the rules for licensing "experimental broadcast stations," which are defined as stations "licensed for experimental or developmental transmission of radio telephony, television, facsimile, or other types of telecommunication services intended for reception and use by the general public." Experimental broadcast facilities are used to carry on "research and experimentation for the development and advancement of new broadcast technology, equipment, systems or services which are more extensive or require other modes of transmission than can be accomplished by using a licensed broadcast station under an experimental authorization." The rules governing experimental broadcast stations encourage innovation while protecting existing services from interference. Licensees are subject to operating and reporting requirements and are prohibited from using the experimental broadcast facility in a commercial manner.

5. Currently, § 74.134 states that "[n]o persons (including all persons under common control) shall control, directly or indirectly, two or more experimental broadcast stations unless a showing is made that the program of research requires a licensing of two or more separate stations." This *NPRM* proposes

the repeal of this limitation on ownership.

II. Discussion

6. It appears that § 74.134 was intended to limit experimental licensees to the minimum spectrum use necessary and to prevent them from aggregating a sufficient number of stations under the guise of experimentation to enable them to operate a commercial service on these stations. We believe, however, that other rules and requirements will adequately assure these ends and that the ownership limitation may, therefore, no longer be necessary. Because licensees are prohibited from commercial use of experimental broadcast stations, such a licensee may not charge, directly or indirectly, for the production or transmission of any programming or information used for experimental broadcast purposes. Nor may it transmit program material unless it is necessary to the experiments being conducted, and no regular program service may be broadcast unless specifically authorized. Thus, repeal of the multiple ownership rule would not appear to affect the Commission's ability to ensure that experimental stations are used solely for *bona fide* experimental purposes. Furthermore, because a license for an experimental broadcast station does not grant the exclusive use of a frequency, no licensee is able to control multiple frequencies. The Commission believes that these other sections of our experimental broadcast station rules provide sufficient protection to prevent entities from operating on a commercial basis while functioning under the guise of an experimental authorization. Since experimental broadcast facilities do not exert influence on the competitive market we believe ownership limits are unduly restrictive. Allowing a party to have more than one experimental broadcast station license, however, may permit efficiencies to be realized in the operation of such stations, permitting resources to be devoted to research more efficiently. This will promote the Commission's statutory charge to "[s]tudy new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest."

7. In the only comment filed in response to our *NOI* with regard to the instant rule, the National Association of Broadcasters (NAB) recommended repeal of this rule. It contended that broadcast auxiliary facilities are facing regulatory change and dislocation and, accordingly, there is now an even greater need for responsible use of experimental stations to develop solutions to these problems. NAB supported elimination of what it characterized as an "arbitrary restriction," and urged the Commission to ensure that such stations do not endanger the interference-free service provided by broadcasters. We tentatively agree with the NAB's assessment of § 74.134.

8. Accordingly, we tentatively conclude that elimination of § 74.134 will have no adverse impact on our diversity and competition goals. We also tentatively conclude that the protections afforded by our operations, non-interference, and reporting rules are sufficient to assure such stations are used for the purposes for which they are intended and use no more spectrum than needed. Accordingly, we believe that the multiple ownership rule governing experimental broadcast stations is no longer necessary in the public interest and propose its repeal. We invite comment on this matter.

III. Administrative Matters

11. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 1, 2000, and reply comments on or before October 2, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

12. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

13. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW–A325, Washington, DC 20554.

14. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, SW., 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 00–105), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, SW., CY–B402, Washington, DC 20554.

15. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov*. Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: *www.fcc.gov/dtf*. Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

16. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810–0260, TTY (202) 418–2555, or *mcontee@fcc.gov*.

17. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding, subject to the "permit-but-disclose" requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of

the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description or the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

18. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an IRFA of the possible economic impact on small entities of the proposals contained in this *NPRM*. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM,* and must have a distinct heading designating them as a response to the IRFA. The Reference Information Center, Consumer Information Bureau, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

19. As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 11. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

A. Need for, and Objectives of, the Proposed Rules

20. Section 202(h) of the Telecom Act requires the Commission to review its broadcast ownership rules every two years, beginning in 1998, and to "determine whether any of such rules are necessary in the public interest as the result of competition." It instructs the Commission to repeal or modify any regulation it determines to be no longer in the public interest. In its first Biennial Report, issued as a result of Section 202(h) of the Telecom Act, the Commission tentatively determined that the experimental broadcast multiple ownership rule appeared to no longer be in the public interest. Accordingly, in compliance with the provisions of Section 202(h) of the Telecom Act, the Commission is commencing this proceeding in order to repeal or to examine the need to retain § 74.134 of its rules.

B. Legal Basis

21. This *NPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, 310, of the Communications Act, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, and Section 202(h) of the Telecommunications Act of 1996.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

22. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

23. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

24. The Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of September 30, 1999, Commission records indicate that 12,615 radio stations (both commercial and noncommercial) were operating of which 2,066 were noncommercial educational FM radio stations. Applying the 1992 percentage of station establishments producing less than $5 million in revenue (*i.e.*, 96 percent) to the number of radio stations in operation, (*i.e.*, 12,615) indicates that 12,109 of these radio stations would be considered "small businesses" or "small organizations."

25. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. There are currently 1,243 commercial television stations and 373 non-commercial educational television stations on the air. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, fewer than 800 commercial TV broadcast stations (65%) have revenues of less than $10.5 million dollars. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. Accordingly, it appears that the proposed revisions would affect no more than 800 television stations that might be considered "small businesses" or "small organizations."

26. The *NPRM* proposes to eliminate the bar on the ability of licensees to hold licenses for more than one experimental broadcast station. We seek comment and data regarding the number of small entities that may be affected by the proposed elimination of our experimental broadcast station multiple ownership.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. There currently are no recordkeeping or other compliance requirements associated with the subject rule. The *NPRM* proposes no new recordkeeping or other compliance requirements.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

28. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

29. As indicated above, the *NPRM* proposes to eliminate the subject rule and to allow licensees to have more than a single experimental broadcast license irrespective of their reason for seeking such multiple licenses. Significant alternatives were recently considered in the Commission's 1998 biennial review of its broadcast ownership rules (MM Docket No. 98–35). Those alternatives were: (1) Retention of the current rule; (2) modification of the current rule; (3) elimination of the current rule. In that proceeding the Commission determined that elimination of the subject provision would be in the public interest. The Commission considered the results of this top-to-bottom review of the subject rule in its consideration of alternatives to the course proposed herein in the instant proceeding. Under the proposal in this *NPRM*, small entities will be able to obtain multiple experimental broadcast station licenses, as will all broadcast licensees.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

30. None.

31. *Initial Paperwork Reduction Act Analysis.* This *NPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *NPRM*. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov*.

32. *Additional Information.* For additional information on this proceeding, please contact Roger Holberg, Policy and Rules Division, Mass Media Bureau, (202) 418–2134, (202) 418–1169 TTY.

IV. Ordering Clauses

33. Accordingly, pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this *NPRM* is adopted.

34. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16821 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF92; RIN 1018–AF95

Endangered and Threatened Wildlife and Plants; Extension of Comment Periods on Proposed Critical Habitat for the Spectacled Eider and Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide notice that we are extending the comment periods on the proposed rules designating critical habitat for the spectacled eider (*Somateria fischeri*) and the Alaska-breeding population of the Steller's eider (*Polysticta stelleri*). We are extending these comment periods to allow the public the opportunity to comment simultaneously on the proposed rules and the associated economic analyses, which we anticipate will be available for public review in August 2000. All interested parties are invited to submit comments on these proposed rules.

DATES: The comment periods for the proposed rules concerning spectacled eiders and Steller's eiders, which previously closed on June 30, 2000, now close on August 31, 2000.

ADDRESSES: Submit written data or comments on the spectacled eider to the Field Supervisor, Ecological Services Field Office, Anchorage, U.S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; fax: 907/271–2786. Submit written data or comments on the Steller's eider to Ted Swem, Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK 99701.

FOR FURTHER INFORMATION CONTACT: For the proposed rule concerning spectacled eiders, contact Ann G. Rappoport, Field Supervisor, Ecological Services Field Office, Anchorage (see **ADDRESSES** above), phone: 907/271–2787 or toll-free 800/272–4174; fax: 907/271–2786. For the proposed rule concerning Steller's eiders, contact Ted Swem, Endangered Species Branch, at Northern Alaska Ecological Services (see **ADDRESSES** above), phone: 907/456–0441; fax: 907/456–0208.

SUPPLEMENTARY INFORMATION:

Background

The spectacled eider is a large seaduck found in marine waters and

coastal areas from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian Border. The species is threatened by habitat degradation, lead poisoning, increased predation rates, and hunting and other human disturbance. The Steller's eider is a seaduck found in coastal and marine waters from the eastern Aleutian Islands around the western and northern coasts of Alaska to the Canada border. The Alaska-breeding population of this species is thought to have decreased significantly, but the causes of the suspected decline are unknown. On February 8, 2000, the Service published a proposed rule (65 FR 6114) to designate critical habitat for the spectacled eider, and on March 13, 2000, the Service published a proposed rule (65 FR 13262) to designate critical habitat for the Alaska-breeding population of the Steller's eider.

The comment period for the proposed rule designating critical habitat for spectacled eiders originally closed on May 8, 2000. The comment period for the proposed rule designating critical habitat for Steller's eiders originally closed on May 12, 2000. We subsequently extended the comment periods for both species to June 30, 2000, in response to concerns expressed by several parties that the original comment periods did not allow adequate time for review and comment by affected individuals and communities. Additionally, we anticipated that the comment periods for the economic analyses associated with the proposed critical habitat designations would be open during June 2000, and we wished to solicit comments on the proposed rules and their respective economic analyses simultaneously. The development of the economic analyses for the proposed critical habitat designations was unexpectedly delayed, and we now anticipate that the economic analyses will be available for public review and comment during August 2000. Accordingly, to ensure simultaneous comment on proposed critical habitat and the associated economic analyses, the Service is extending the comment periods for both proposed rules until August 31, 2000. Written comments may be submitted to the appropriate Service office as specified in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The deadline for requesting public hearings on the proposed rule regarding critical habitat for the spectacled eider was March 24, 2000. The deadline for requesting public hearings for the proposed rule regarding critical habitat for Steller's eider was April 27, 2000. We have not extended these deadlines. In order to be considered valid, requests for public hearings must have been submitted in writing and received at the appropriate office by the relevant deadline.

Author: The primary author of this notice is Susan Detwiler, U.S. Fish and Wildlife Service, Division of Endangered Species, 1011 E. Tudor Rd., Anchorage, AK 99503.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 27, 2000.

Gary Edwards,

Acting Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 00–16923 Filed 7–3–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Peninsular Bighorn Sheep

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Peninsular bighorn sheep pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat boundary encompasses approximately 354,343 hectares (ha) (875,613 acres (ac)) of Peninsular bighorn sheep habitat in Riverside, San Diego, and Imperial Counties, California.

Critical habitat identifies specific areas that have physical and biological features that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary elements for the bighorn are those habitat components that are essential for the primary biological needs of feeding, sheltering, reproduction, dispersal, and genetic exchange.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: Comments from all interested parties must be received by August 31, 2000. A public hearing is scheduled to be held on July 20, 2000, in Palm Springs, Riverside County, California (see **ADDRESSES** section below for details).

ADDRESSES:

Comments: You may submit your comments and materials concerning this proposal by any one of several methods.

1. You may mail written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

3. You may send comments by electronic mail (e-mail) to FW1PBSH@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440.

Public Hearings

We have scheduled two public hearings for Thursday, July 20, 2000, from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m. at the Wyndham Palm Springs Hotel, 888 E. Tahquitz Canyon Way, Palm Springs, California.

Document Availability

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone: 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

The bighorn sheep (*Ovis canadensis*) is a large mammal (family Bovidae) originally described by Shaw in 1804 (Wilson and Reeder 1993). Wild sheep became established in North America after crossing the Bering land bridge from Eurasia during the late Pleistocene (Geist 1971), and their range has since spread to include desert habitats as far south as northern Mexico (Manville 1980). In North America, two species of wild sheep currently are recognized: the thinhorn sheep (*Ovis dalli*) and the bighorn sheep (*Ovis canadensis*).

Peninsular bighorn sheep were once divided into seven recognized subspecies based on differences in skull measurements (Cowan 1940, Buechner 1960, Shackleton 1985). These subspecies included Audubon bighorn sheep (*Ovis canadensis auduboni*), Peninsular bighorn sheep (*Ovis canadensis cremnobates)*, Nelson bighorn sheep (*Ovis canadensis nelsoni*), Mexican bighorn sheep (*Ovis canadensis mexicana*), Weems bighorn sheep (*Ovis canadensis weemsi*), California bighorn sheep (*Ovis canadensis californiana*), and Rocky Mountain bighorn sheep (*Ovis canadensis canadensis*). Audubon bighorn sheep are now extinct. As described below, this taxonomy has since been revised.

The term "desert bighorn" is used to describe bighorn sheep that inhabit dry and relatively barren desert environments and typically includes bighorn sheep subspecies that have, to date, been classified as *nelsoni, mexicana, cremnobates*, and *weemsi* (Manville 1980). The validity of these subspecies delineations has been questioned and reassessed. Based on morphometric and genetic analyses, Wehausen and Ramey (1993) synonymized Peninsular bighorn with the subspecies *nelsoni*, which is the current taxonomy.

Bighorn sheep (*Ovis canadensis*) are found along the Peninsular Mountain Ranges from the San Jacinto Mountains of southern California south into the Volcan Tres Virgenes Mountains near Santa Rosalia, Baja California, Mexico, a total distance of approximately 800 kilometers (km) (500 miles (mi)). The area occupied by the distinct vertebrate population segment covered herein coincides with the range of the former subspecies *Ovis canadensis* cremnobates in California. The California Fish and Game Commission listed *Ovis canadensis* cremnobates as "rare" in 1971. The designation was changed to "threatened" by the California Department of Fish and Game (CDFG) to conform with terminology of the amended California Endangered Species Act.

The Peninsular bighorn sheep is similar in appearance to other desert bighorn sheep. The coat is pale brown, and the permanent horns, which become rough and scarred with age, vary in color from yellowish-brown to dark brown. The horns are massive and coiled in males; in females, they are smaller and not coiled. In comparison to other desert bighorn sheep, the Peninsular bighorn sheep is generally described as having paler coloration and having horns with very heavy bases (Cowan 1940).

The Peninsular bighorn sheep occurs on steep, open slopes, canyons, and washes in hot and dry desert regions where the land is rough, rocky, and sparsely vegetated. Most of these sheep live between 91 and 1,219 meters (m) (300 and 4,000 feet (ft)) in elevation, where average annual precipitation is less than 10 centimeters (cm) (4 inches (in)) and daily high temperatures average 104° Fahrenheit in the summer. Caves and other forms of shelter (*e.g.*, rock outcrops) are used during inclement weather. Lambing areas are associated with ridge benches or canyon rims adjacent to steep slopes or escarpments. Alluvial fans (sloping masses of gravel, sand, clay, and other sediments that widen out like fans at the base of canyons and washes) are also used for breeding, feeding, and movement.

Peninsular bighorn sheep use a wide variety of plant species as their food source (Turner 1976, Scott 1986). Cunningham (1982) determined that the bighorn sheep diet in Carrizo Canyon (at the south end of the U.S. Peninsular Ranges) consisted of 57 percent shrubs, 32 percent herbaceous annuals and perennials, 8 percent cacti, and 2 percent grasses. Scott (1986) and Turner (1976) reported similar diet compositions at the north end of the range. Diet composition varied among seasons (Cunningham 1982, Scott 1986), presumably because of variability in forage availability, selection of specific plant species during different times of the year (Scott 1986), and seasonal movements of bighorn sheep. As with water sources, forage resources near escape terrain may be most valuable to bighorn sheep, especially ewes (Bleich *et al.* 1997).

Peninsular bighorn sheep typically produce only one lamb per year. In the Peninsular Ranges, ewes estimated to be between 2 and 16 years of age have been documented to produce lambs (Ostermann *et al.* in prep., Rubin *et al.* in prep.). Rams are believed to be capable of successful breeding as early as 6 months of age (Turner and Hansen 1980). Lambs are born after a gestation of approximately 174 days (Shackleton *et al.* 1984). Lambing occurs from January through August (Service 1999); however, most lambs are born between February and April. Ewes and lambs frequently occupy steep terrain that provides escape cover and shelter from excessive heat; they tend to congregate near dependable water sources during the summer. Lambs are able to eat native grass within 2 weeks of their birth and are weaned between 4 and 5 months of age.

Bighorn ewes exhibit a high degree of site fidelity to their home range; this behavior is learned by their offspring (Geist 1971). By following older animals, young bighorn sheep gather knowledge regarding escape terrain, water sources, and lambing habitat (Geist 1971). Ewes that share portions of a range are likely to be more closely related to each other than they are to other ewes (Festa-Bianchet 1991, Boyce *et al.* 1999); and are referred to as "ewe groups" in this proposal. Rams do not show the same level of site fidelity and tend to range more widely, often moving among ewe groups. As young rams reach 2 to 4 years of age, they follow older rams away from their birth group during the fall breeding period, or rut, and often return after this period (Geist 1971, Festa-Bianchet 1991).

From May through October, Peninsular bighorn sheep are dependent on permanent sources of water and are typically more localized in distribution. Bighorn sheep populations aggregate during this period due to a combination of breeding activities and diminishing water sources. Summer concentration areas are associated primarily with

dependable water sources, and ideally provide a diversity of vegetation to meet the forage requirements of bighorn sheep.

Bighorn sheep are primarily diurnal (Krausman *et al.* 1985) but may be active at any time of day or night (Miller *et al.* 1984). Their daily activity pattern includes feeding and resting periods. As bighorn sheep rely on vigilance to detect predators; they benefit from gregariousness and group alertness (Geist 1971, Berger 1978). Within each ewe group, ewes appear to associate with other ewes based on their availability rather than on their matrilineal (descent through the mother) relationships (Festa-Bianchet 1991, Boyce *et al.* 1999). These subgroups are dynamic; that is, they may split, reform, or change membership on a daily or hourly basis as animals move through their home ranges.

The decline of the Peninsular bighorn sheep is attributed to a combination of factors, including: (1) The effects of disease and parasitism (Buechner 1960, DeForge and Scott 1982, DeForge *et al.* 1982, Jessup 1985, Wehausen *et al.* 1987, Elliott *et al.* 1994); (2) low lamb recruitment (DeForge *et al.* 1982, Wehausen *et al.* 1987, DeForge *et al.* 1995); (3) habitat loss, degradation, and fragmentation (Service 1999); and (4) predation (DeForge *et al.* 1997, Hayes *et al.* in prep.).

Disease has been identified as one of the factors responsible for population declines in the Peninsular Ranges and elsewhere. Analysis of exposure to disease-causing agents between 1978 and 1990 showed that Peninsular bighorn sheep populations and surrounding populations in southern California have higher levels of pathogen exposure than other populations of bighorn sheep in the State (Elliott *et al.* 1994). However, tests of exposure to pathogens have revealed the presence of antibodies to several infectious disease agents in healthy as well as clinically ill animals (Clark *et al.* 1993, Elliott *et al.* 1994; DeForge *et al.* 1997), and essentially all of the viruses, bacteria, and parasites that have been reported from Peninsular St. sheep appear to be widespread among desert big horn sheep in the western United States (Jessup *et al.* 1990). All evidence indicates that the influence of disease in the Peninsular Ranges has subsided in more recent years. For example, examinations of big horn sheep throughout the range indicate that most animals are clinically normal (DeForge *et al.* 1997, Borjesson *et al.* 2000). The reduced influence of disease on Peninsular big horn sheep (at the same time they are in decline) suggests that other factors, such as predation, habitat loss and modification, and human-related disturbance, currently limit the population.

In the Peninsular Ranges, a growing human population and increased activity adjacent to and within big horn sheep habitat are adversely affecting big horn sheep. Human development impacts sheep through habitat loss, fragmentation, or other modification; impacts also extend into big horn sheep habitat beyond the urban edge. These include increased noise, predator attraction, and an increased number of humans and their pets that venture into sheep habitat. Numerous researchers have expressed concern over the impact that human activity in big horn sheep habitat has on big horn sheep (*e.g.*, Jorgensen and Turner 1973, Hicks 1978, Leech 1979, Graham 1980, Cunningham 1982, DeForge and Scott 1982, Gross 1987, Smith and Krausman 1988, Sanchez *et al.* 1988). Although cases have been cited in which big horn sheep populations did not appear to be impacted by human activity (*e.g.*, Hicks and Elder 1979, Hamilton *et al.* 1982), numerous researchers, including the previous authors, have documented altered big horn sheep behavior in response to human-related disturbance. In addition to development, a variety of other human activities, such as hiking, mountain biking, horseback riding, camping, hunting, livestock grazing, and use of aircraft and off-road-vehicles, have the potential to disrupt normal big horn sheep social behaviors. Big Horn sheep may also alter their use of essential resources resulting in physiological effects or abandon traditional habitat as a result of human disturbance (McQuivey 1978, MacArthur *et al.* 1979, Leech 1979, Leslie and Douglas 1980, Graham 1980, MacArthur *et al.* 1982, Bates and Workman 1983, Miller and Smith 1985, Krausman and Leopold 1986, Krausman *et al.* 1989, Papouchis *et al.* 1999).

Mountain lion predation is an apparent limiting factor to some ewe groups in the Peninsular Ranges (Hayes *et al.* In prep.). Reported incidents of lion predation were not common in the past and predation was not considered to be a serious risk to big horn sheep (Weaver and Mensch 1970, Jorgensen and Turner 1975, Cunningham 1982), but the increase in the number of radio-collared big horn sheep since 1993 has increased the detection of such mortalities. Such observations need to be interpreted carefully, however, because it is possible that changes in other causes of mortality (such as diseases) have altered the proportion of mortalities attributed to lion predation. Although predation by other species such as coyotes and bobcats could reduce lamb recruitment, its impact is not well understood.

The Peninsular big horn sheep in the United States declined from an estimated 1,171 individuals in 1971 to about 570 individuals in 1991 (Bleach *et al.* 1992). Recent estimates now number the population at approximately 335 in about eight ewe groups in the wild in the United States

There are also two captive populations of Peninsular bighorn sheep. The Living Desert Museum, an educational and zoo facility in Palm Desert, California, maintains a small group (seven adult females and two adult males). The Bighorn Institute, also in Palm Desert, maintains a small captive herd of approximately 15 to 20 animals. This private, nonprofit organization, established in 1982 through a Memorandum of Understanding with the California Department of Fish and Game, conducts research and maintains a breeding herd at its facility. Since 1985, 77 animals from this herd have been released into the wild. Releases have occurred in the northern Santa Rosa Mountains (seventy-four releases from 1985 to 1998) and in the San Jacinto Mountains (3 during 1997) (Ostermann *et al.* in prep.).

The habitat still remaining for the Peninsular bighorn sheep in the United States is managed by: the California Department of Parks and Recreation (416,398 ac or 47 percent); California Department of Fish and Game (25,613 ac or 3 percent), Bureau of Land Management (BLM) (228,568 ac or 26 percent), private landowners (149,906 ac or 17 percent), Trust (20,462 ac or 2 percent) (tribal and allotted lands), U.S. Forest Service (23,073 ac or 3 percent), and other State and local entities (11,593 ac or 1 percent).

The Santa Rosa Mountains National Monument has been proposed in the Santa Rosa and San Jacinto Mountains. Since the proposed monument boundaries have not been finalized, we do not know how much of the monument will be within proposed Peninsular bighorn sheep critical habitat. The preliminary proposed monument configuration encompasses a variety of BLM, U.S. Forest Serivce, State, and private lands. Approximately 35% of the proposed critical habitat for Peninsular bighorn sheep overlaps this configuration.

Previous Federal Action

On September 18, 1985, the Service designated the Peninsular bighorn sheep as a category 2 candidate and solicited

status information (50 FR 37958). Category 2 included taxa for which the Service had information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a proposed rule. In the January 6, 1989 (54 FR 554), Notice of Review, the Peninsular bighorn sheep was retained in category 2. In 1990, we initiated an internal status review of category 2 species. We completed this review in the spring of 1991; Peninsular bighorn sheep were changed from category 2 to category 1. Category 1 were those taxa for which we had sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. However, we inadvertently omitted this change to category 1 in the November 21, 1991, Animal Notice of Review (56 FR 58804), and the Peninsular bighorn sheep retained category 2 status. Beginning with our February 28, 1996, Notice of Review (61 FR 235), we discontinued the designation of multiple categories of candidates, and we now consider only taxa that meet the definition of former category 1 taxa as candidates for listing.

On July 15, 1991, we received a petition from the San Gorgonio Chapter of the Sierra Club to list the Peninsular bighorn sheep as an endangered species. The petition requested that the Service list, through emergency or normal procedures, the Peninsular bighorn sheep throughout its entire range. Alternatively, the petition requested the listing in at least the Santa Rosa and San Jacinto mountains of southern California. The Service used information from the status review and the July 15, 1991, petition to determine that substantial information existed indicating that the Peninsular bighorn sheep may be in danger of extinction throughout all or a significant portion of its range. This finding was made on December 30, 1991, pursuant to section 4(b)(3)(A) of the Act and was published in the **Federal Register** on May 8, 1992, as a proposed rule to list the Peninsular bighorn sheep as endangered (57 FR 19837). The proposed rule constituted the 1-year finding for the July 15, 1991, petitioned action. The proposed listing status was cited in the subsequent November 15, 1994 (59 FR 58982), and February 28, 1996 (61 FR 7596), Notices of Review. On February 14, 1995, the Sierra Club Legal Defense Fund (plaintiff) filed suit in Federal District Court for the Eastern District of California to compel the Secretary of the Interior and the Director of the Service to make a final determination to list the Peninsular bighorn sheep as an endangered or threatened species.

On April 10, 1995, Congress enacted a moratorium prohibiting work on listing actions (Public Law 104–6), thus preventing the Service from taking final listing action on the Peninsular bighorn sheep. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Appropriations Act (Pub. L. No. 104–134, 100 Stat. 1321, 1996). The Service published guidance for restarting the listing program on May 16, 1996 (61 FR 24722).

In response to the Sierra Club Legal Defense suit, the District Court issued a stay order on April 10, 1996. On October 15, 1996, the plaintiff asked the Court to lift the stay and require the final Peninsular bighorn sheep listing decision within 30 days. On November 26, 1996, the District Court entered an order denying the plaintiff's request to lift the stay, but certified the issue underlying that denial for interlocutory (temporary) appeal.

Due to new information becoming available during the lapse between the original comment period (November 4, 1992) and lifting the listing moratorium, the Service reopened the public comment period on April 7, 1997, for 30 days (62 FR 16518). Because of additional requests, the Service reopened the public comment period again on June 17, 1997, for an additional 15 days (62 FR 32733).

To acquire additional information on the status, distribution, and management of bighorn sheep in Baja California, Mexico, the public comment period was reopened on October 27, 1997 (62 FR 55563), for another 15 days. During this third and last comment period extension, the Mexican Government submitted information that they had instituted a new conservation program for bighorn sheep. Due in part to the implementation of this conservation program, the southern boundary of the distinct vertebrate population segment was re-delineated at the United States/Mexico International Border.

On March 18, 1998, the bighorn sheep occupying the Peninsular Ranges of southern California were listed as endangered (63 FR 13134) pursuant to the Act. At the time of the listing, we concluded that designation of critical habitat was not prudent. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We concluded that critical habitat designation for the Peninsular bighorn sheep was not prudent because both of the described situations existed. We were concerned that publishing detailed maps of bighorn habitat would encourage human disturbance in sensitive areas, such as lambing habitat, rutting areas, and water sources, and result in increased disruption of bighorn sheep. We cited the rapidly growing human population in the Coachella Valley and the increasing recreational interest within bighorn habitat. We also concluded that designation of critical habitat did not add an additional regulatory benefit to bighorn sheep due to the limited Federal regulatory jurisdiction, through section 7 of the Act, for the majority of habitat necessary for conservation of the species. Therefore, we concluded that designation of critical habitat could increase the degree of threats to the species and would not provide any additional protection beyond existing regulatory mechanisms.

On December 18, 1998, the Southwest Center for Biological Diversity (Center) and Desert Survivors filed a complaint against the Service alleging that our "not prudent" findings were unsubstantiated. On September 17, 1999, we entered into a Settlement Agreement with the Center and Desert Survivors that stipulated a schedule for reviewing our prudency determination and publishing a Recovery Plan for Peninsular bighorn sheep. The schedule included the following dates—draft Recovery Plan, December 31, 1999; new proposed critical habitat determination, June 30, 2000; final Recovery Plan, October 31, 2000; and final determination of critical habitat as not prudent, September 30, 2000, or final critical habitat, by December 31, 2000. On December 31, 1999, we published the draft Recovery Plan for the Bighorn Sheep in the Peninsular Ranges (Service 1999).

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon

a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

We have reconsidered our previous prudency determination regarding the threats posed by a potential increase in disturbance of especially sensitive bighorn areas, such as lambing areas. Peninsular bighorn sheep distribution is not solely dependent on isolated habitat features, but requires a continuum of essential resources that allows the species to adapt to natural and unnatural environmental processes. Though bighorn sheep exhibit a high degree of site fidelity to their home range, their distributions are continually changing in response to changes in the environment. Peninsular bighorn sheep are considered a metapopulation, which is a group of smaller populations that occasionally exchange individuals and/or genetic material, usually through ram movement. As in any metapopulation, habitat restriction and fragmentation can impede dispersal and recolonization potential, thereby degrading the ability of the sub populations to interact. This is particularly true for large mammals that range widely to locate and exploit unpredictably changing sources of food, water, and shelter. Accordingly, we have used an ecosystem approach to delineate critical habitat that includes all of the essential habitat components, and does not highlight localized bighorn areas. Consequently, we conclude that designating critical habitat is not expected to increase the degree of threat from human activities.

Furthermore, we have determined that the limited section 7 nexus for the majority of Peninsular bighorn habitat, as discussed in the final listing rule, is not, by itself, an adequate basis for making a "not prudent" finding. Designation of critical habitat will also provide some educational benefit by identifying the range-wide habitat essential to the conservation of the species, and help provide a focus for interagency recovery efforts. Therefore, we now conclude that the benefits of designating critical habitat outweigh the potential negative impacts.

Critical habitat receives protection under the Act through the prohibition against destruction or adverse modification of critical habitat as set forth under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Critical habitat designation would not afford any protection under the Act to activities on private or other non-Federal lands that do not involve a Federal action.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, set aside areas as preserves, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Critical habitat identifies specific areas that have features that are essential to the conservation of a listed species and that may require special management considerations or protection. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation and section 10 permits.

Methods

In identifying areas that are essential to conserve the Peninsular bighorn sheep, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles; recovery criteria and habitat analyses outlined in the draft Recovery Plan; discussions with, and data made available through, the Peninsular Bighorn Sheep Recovery Team; and regional Geographic Information System (GIS) coverages.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species.

The areas that we are proposing to designate as critical habitat for Peninsular bighorn sheep provide some or all of those habitat components essential for the primary biological needs of feeding, resting, reproduction and population recruitment, dispersal, connectivity between ewe groups, and isolation from detrimental human disturbance. The primary biological and physical constituent elements that are essential to the conservation of Peninsular bighorn sheep include space for the normal behavior of groups and individuals; protection from disturbance; availability of a variety of native desert vegetation, including alluvial habitat that provides essential seasonal forage; a range of habitats that provide forage during periods of environmental stress, such as drought or predation; steep, remote habitat for lambing, rearing of young, and escape from disturbance and/or predation; water sources; suitable corridors allowing individual bighorn to move freely between ewe groups; and space and the essential habitat components to accommodate a recovered population. Areas with these primary constituent elements support or have the potential to support native forage elements, and provide, or could provide, connectivity between or within ewe groups.

Criteria Used To Identify Critical Habitat

The criteria for delineating Peninsular bighorn habitat was based on biological information in pertinent literature and the expert opinion of those most familiar with bighorn sheep in the Peninsular Ranges (*i.e.*, the recovery team). We used a quarter-section grid based on the Public Land Survey township, section, range coordinate system to delineate those areas identified in the draft recovery plan that contain the primary constituent elements. A small area of San Diego County within the Valle de San Felipe Land Grant was defined using Universal Transverse Mercator (UTM) coordinates.

We did not map critical habitat in sufficient detail to exclude all developed areas, such as scattered residential housing in sparsely inhabited regions, that do not contain primary constituent elements essential for bighorn conservation. Within the delineated critical habitat boundary, only lands supporting one or more constituent elements are considered critical habitat. Road and railroad rights-of-way and flood control facilities that must be traversed to maintain connectivity between sub-populations, or otherwise may provide food, water, or cover for Peninsular bighorn sheep are considered to support primary constituent elements.

We excluded habitat that is not considered essential to bighorn recovery from the proposed critical habitat boundary. This includes areas such as those that were historically used for migration between other mountain ranges but have been eliminated as migration areas due to development. While bighorn have been documented to use areas outside of proposed critical habitat, these areas are considered to be non-essential, largely due to fragmentation and/or proximity to development.

All proposed critical habitat is currently occupied and necessary to maintain connectivity between ewe groups. Maintaining connectivity between ewe groups and access to changing resource availability in a variable environment is a necessary component for continued viability of the metapopulations and to achieve recovery of Peninsular bighorn. Bighorn sheep are wide-ranging large animals that often move great distances. Thus we consider all critical habitat to be occupied by the species.

Proposed Critical Habitat Designation

The approximate area of proposed critical habitat by county and land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HECTARES (ACRES)) BY COUNTY AND LAND OWNERSHIP

County	Federal*	Trust (tribal and allotted lands)	Local/State	Private	Total
Riverside	39,713 ha (98,135 ac)	6,594 ha (16,293 ac)	17,725 ha (43,081 ac)	35,256 ha (87,121 ac)	99,288 ha (245,350 ac)
San Diego	20,112 ha (49,699 ac)	0 ha (0 ac)	152,839 ha (377,677 ac)	16,245 ha (40,143 ac)	189,196 ha (467,519 ac)
Imperial	42,009 ha (103,808 ac)	1,687 ha (4,168 ac)	13,001 ha (32,126 ac)	9,163 ha (22,642 ac)	65,859 ha (162,744 ac)
Total	101,834 ha (251,642 ac)	8,281 ha (20,461 ac)	183,565 ha (453,604 ac)	60,664 ha (149,906 ac)	354,343 ha (875,613 ac)

*Federal lands include Bureau of Land Management and National Forest (U.S. Forest Service) lands.

Proposed critical habitat includes bighorn habitat in Riverside, San Diego, and Imperial Counties, California. Lands proposed are under private, Local/State, Trust (tribal and allotted lands), and Federal ownership, with Federal lands including those lands managed by the Bureau of Land Management (BLM) and U.S. Forest Service.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect the Peninsular bighorn sheep or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency funding), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the bighorn is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly adversely affect critical habitat include, but are not limited to:

(1) Unauthorized destruction or degradation of habitat (as defined in the primary constituent elements discussion), including, but not limited to, clearing vegetation, bulldozing terrain, overgrazing, construction, road building, mining, and disturbing natural hydrology; and

(2) Appreciably decreasing habitat value or quality through indirect effects (*e.g.*, noise, edge effects, low-flying aircraft, invasion of exotic plants or animals, or fragmentation).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, the ramifications of designation of critical habitat are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit to designation of critical habitat in such areas.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the Bureau of Land Management and U.S. Forest Service;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(5) Regulation of airspace and flight plans within the Federal Aviation Administration jurisdiction;

(6) Military training, maneuvers, and flights on applicable Department of Defense lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and

(10) Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

All proposed critical habitat is currently occupied and necessary to maintain connectivity between ewe groups. Bighorn sheep are wide-ranging large animals that often move great distances. Thus we consider all critical habitat to be occupied by the species. As Federal agencies already consult with us on activities in these areas that may affect the species to ensure that their actions do not jeopardize the continued existence of the species; we do not anticipate that additional regulatory protection will result from critical habitat designation.

Relationship to Habitat Conservation Plans

We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of Habitat Conservation Plans (HCPs) for such areas on non-Federal lands. Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Peninsular bighorn sheep, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Peninsular bighorn sheep. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

The Coachella Valley Multiple Species Habitat Conservation Plan, currently under preparation, proposes coverage for Peninsular bighorn sheep. This effort represents an important opportunity to address the long-term conservation needs of Peninsular bighorn sheep throughout the private lands under city and county jurisdiction in Riverside County, and to integrate management with intermixed public lands. Within Imperial and San Diego Counties, Federal land ownership patterns, Federal funding and permitting, and extensive habitat protection on State lands, limit the prospects for HCPs that would include Peninsular bighorn sheep. We fully expect that HCPs undertaken by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of proposed HCPs and proposed projects under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in

destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify lands essential for the long-term conservation of the Peninsular bighorn sheep and appropriate conservation and management actions. Several HCP efforts are currently under way that address listed and nonlisted species in areas within the range of the Peninsular bighorn sheep and in areas we propose as critical habitat. These HCPs, which will incorporate appropriate adaptive management, should provide for the conservation of the species. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the Peninsular bighorn sheep should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Offices (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

(2) Specific information on the amount and distribution of Peninsular bighorn sheep habitat, and what habitat is essential to the conservation of the species, and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the Peninsular bighorn sheep, such as those derived from nonconsumptive uses (*e.g.* enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs).

There are conservation-planning efforts now under way in areas we are proposing as critical habitat for the Peninsular bighorn sheep. We believe that areas covered by an approved HCP for the species would provide the long-term commitments necessary for the conservation of the species and would not meet the definition of critical habitat because they would not need special management consideration or protections. However, these HCPs are still being developed. Here we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection.

We invite comments on the following, or other alternative approaches, for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Peninsular bighorn sheep:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the Peninsular bighorn sheep, we would revise the critical habitat designation to exclude areas outside any reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal. Given the large geographic area covered by this proposal, the likelihood of requests, and the need to publish the final determination by December 31, 2000, we have scheduled two public hearings. The hearings are scheduled to be held on Thursday, July 20, 2000, from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m. at the Wyndham Palm Springs Hotel, 888 E. Tahquitz Canyon Way, Palm Springs, California. Written comments submitted during the comment period will receive equal consideration as comments presented at the public hearing. For additional information on the public hearing see the **ADDRESSES** section.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) In the economic analysis, we will determine if this rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Peninsular bighorn sheep was listed as an endangered species in 1998. In fiscal years 1998 through 2000 we have conducted three formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the species.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below).

TABLE 2.—IMPACTS OF PENINSULAR BIGHORN SHEEP LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation
Federal activities potentially affected.	Activities such as those affecting U.S. waters by the Army Corps of Engineers under section 404 of the Clean Water Act; Regulation of water flows, damming, diversion, and channelization by Federal agencies; Regulation of grazing, mining, and recreation by the Bureau of Land Management and U.S. Forest Service; Road construction and maintenance, right-of-way designation, and regulation of agricultural activities; Regulation of airspace and flight plans within the Federal Aviation Administration jurisdiction; Military training, maneuvers, and flights on applicable Department of the Defense lands; Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service; Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; Construction of communication sites licensed by the Federal Communications Commission; and Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.	None.
Private or other non-Federal Activities potentially affected.	Activities that destroy bighorn whether directly (*e.g.* grading, overgrazing, construction, road building, mining, etc.) or through indirect effects (*e.g.* noise, edge effects, invasion of exotic species, or fragmentation) that require a Federal action (permit, authorization, or funding).	None.

Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of critical habitat does not have any incremental

impacts above the listing on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have any Federal involvement with their actions are not restricted by the designation of critical habitat, however, they continue to be bound by the provisions of the Act concerning "take" of the species.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Peninsular bighorn sheep since the listing in 1998. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under the Regulatory Planning and Review section, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Proposed Critical Habitat Designation section) we have designated critical habitat on property owned by Federal, State, Tribal, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the Bureau of Land Management and U.S. Forest Service;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(5) Regulation of airspace and flight plans within the Federal Aviation Administration jurisdiction;

(6) Military training, maneuvers, and flights by Department of Defense lands;

(7) Construction of roads and fences along the International Border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and,

(10) Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal nexus (such as funding or authorization), the current restrictions concerning "take" of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any programs having Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Peninsular bighorn sheep. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the bighorn.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from, and coordinated development of this critical

habitat proposal with, appropriate State resource agencies in California, as well as during the listing process. The designation of critical habitat for Peninsular bighorn sheep imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur) and may lead to quicker recovery of the species.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Peninsular bighorn sheep.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

We have determined that there are Tribal Trust lands essential for the conservation of the Peninsular bighorn sheep because they contain the primary constituent elements that support Peninsular bighorn sheep populations, and provide essential linkages between ewe groups in the Peninsular Ranges metapopulation. Therefore, we are proposing to designate critical habitat for the bighorn on Trust lands of the Morongo Band of Mission Indians, Aqua Caliente Band of Cahuilla Indians, and Torres-Martinez Desert Cahuilla Indians. Subsequent to this proposal, we will consult with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for the Peninsular bighorn sheep. We will consider whether these Tribal lands require special management considerations or protection; we may also exclude some or all of these lands from critical habitat upon a determination that the benefits of excluding them outweighs the benefits of designating these areas as critical habitat, as provided under section 4(b)(2) of the Act. This consultation will take place under the auspices of Secretarial Order 3206 and the Presidential Memorandum of April 29, 1994, which require us to coordinate with federally recognized Tribes on a Government-to-Government basis.

Lands within the Aqua Caliente Reservation necessary to the survival and recovery of Peninsular bighorn sheep occur within the current home range of the San Jacinto Mountains ewe group and provide a dispersal linkage to the northern Santa Rosa Mountains ewe group. The Tribe and Service are coordinating on the development of a habitat management plan that would protect Peninsular bighorn sheep and more clearly define how Indian lands would contribute to regional conservation planning and the overall recovery program for Peninsular bighorn sheep. This management plan will be considered in our final decision on critical habitat designation.

On the Torres-Martinez Reservation, the Tribe and Service are coordinating on a habitat analysis and will complete a management plan, if appropriate, prior to making a decision on the value of Reservation lands to conservation of bighorn sheep.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this notice are the Carlsbad Fish and Wildlife Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Sheep, bighorn" under "MAMMALS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Sheep, bighorn	*Ovis canadensis*	U.S.A. (western conterminous States), Canada (southwestern), Mexico (northern).	U.S.A., (CA) Peninsular Ranges.	E	634	17.95(a)	NA
*	*	*	*	*	*	*	*

3. In § 17.95 add critical habitat for the bighorn sheep (Peninsular Ranges) (*Ovis canadensis*) under paragraph (a) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(a) *Mammals.*

* * * * *

Bighorn sheep (Peninsular Ranges) (*Ovis canadensis*)

1. Critical habitat is depicted for Riverside, San Diego, and Imperial Counties, California, on the maps below.

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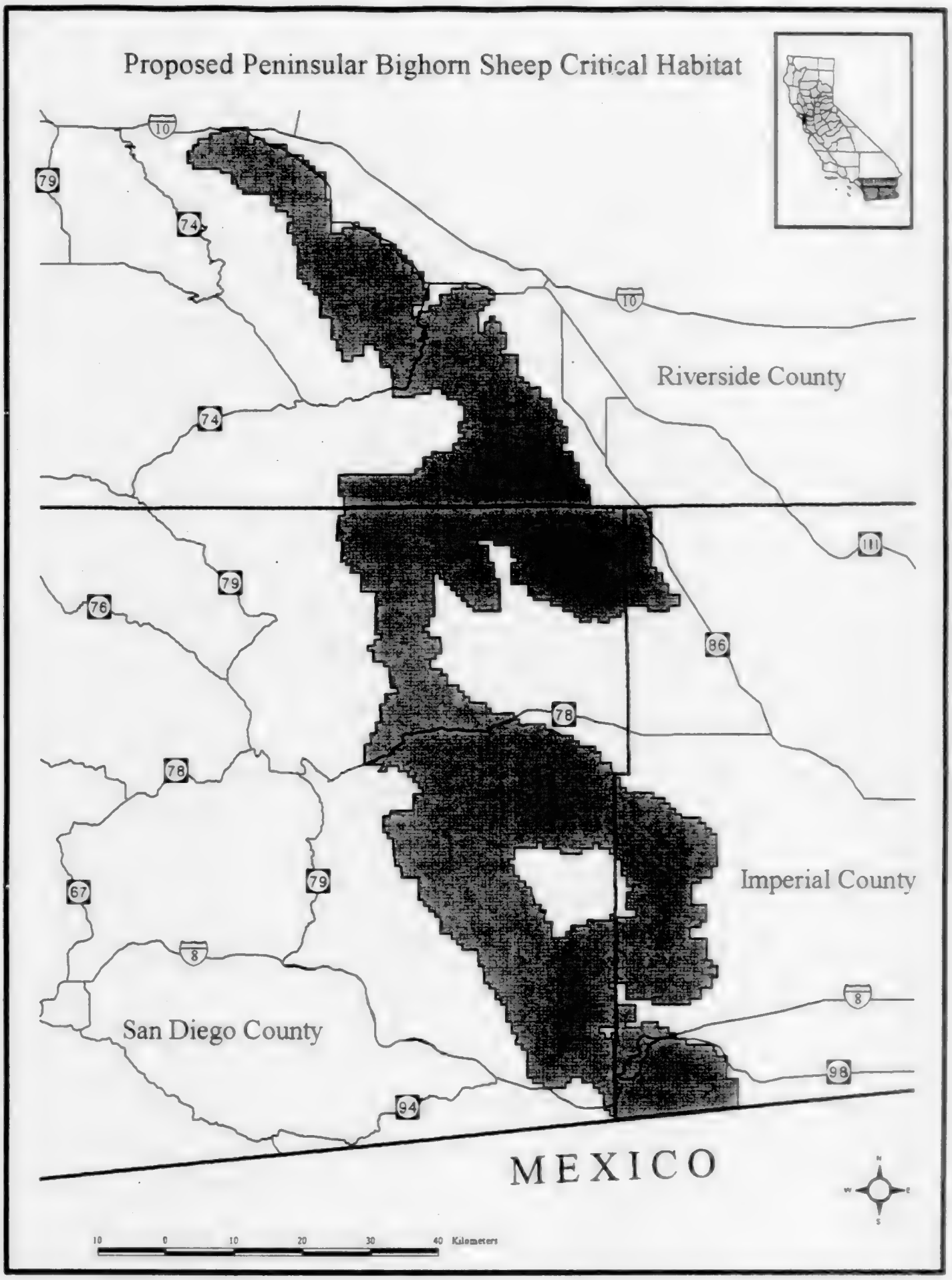
Proposed Peninsular Bighorn Sheep Critical Habitat
Riverside County
Imperial County
San Diego County
MEXICO
10
79
74
10
74
79
76
78
86
78
67
79
8
8
98
94
N
W
E
S
10 0 10 20 30 40 Kilometers

2. Within these areas, the primary constituent elements for Peninsular bighorn sheep are those habitat components that are essential for the primary biological needs of feeding, resting, reproduction and population recruitment, dispersal, connectivity between ewe groups, and isolation from detrimental human disturbance. The principal biological and physical constituent elements that are essential to the conservation of Peninsular bighorn sheep includes space for the normal behavior of groups and individuals; protection from disturbance; availability of a variety of native desert vegetation, including alluvial habitat that provides essential seasonal forage; the ability to utilize a range of habitats during periods of environmental stress, such as drought or predation; steep, remote habitat for lambing, rearing of young, and escape from disturbance and/or predation; water sources; the ability of individual bighorn to move freely between ewe groups; space and the essential habitat components to accommodate a recovered population. Primary constituent elements exist in areas that support, or have the potential to support, native forage elements and provide, or could provide, connectivity between or within ewe groups. These areas and associated habitat that provide the variety of necessary habitat components and connectivity were used to identify critical habitat.

Map Unit 1: Riverside County, California. From USGS 1:100,000 quadrangle maps Borrego Valley (1982), and Palm Springs (1982), California. Lands within T3S, R2E, S13; T3S, R2E, S14SE; T3S, R2E, S14NE; T3S, R2E, S23–S26; T3S, R2E, S27NE; T3S, R2E, S27SE; T3S, R3E, S7SE; T3S, R3E, S7SW; T3S, R3E, S8SE; T3S, R3E, S8SW; T3S, R3E, S9SW; T3S, R3E, S15SE; T3S, R3E, S15SW; T3S, R3E, S16NW; T3S, R3E, S16SW; T3S, R3E, S17–S30; T3S, R3E, S31NW; T3S, R3E, S31NE; T3S, R3E, S32–S36; T3S, R4E, S29NW; T3S, R4E, S29SW; T3S, R4E, S29SE; T3S, R4E, S30–S32; T3S, R4E, S33NW; T3S, R4E, S33SW; T3S, R4E, S33SE; T4S, R3E, S1–S4; T4S, R3E, S5NW; T4S, R3E, S5NE; T4S, R3E, S5SE; T4S, R3E, S9NE; T4S, R3E, S9NW; T4S, R3E, S10NW; T4S, R3E, S10NE; T4S, R3E, S11NW; T4S, R3E, S11NE; T4S, R3E, S11SE; T4S, R3E, S12–S13; T4S, R3E, S14NE; T4S, R4E, S3NW; T4S, R4E, S3SW; T4S, R4E, S4–S9; T4S, R4E, S10NW; T4S, R4E, S10SW; T4S, R4E, S15–S18; T4S, R4E, S19NW; T4S, R4E, S19NE; T4S, R4E, S19SE; T4S, R4E, S20–S22; T4S, R4E, S25SW; T4S, R4E, S25SE; T4S, R4E, S27–S30; T4S, R4E, S31NE; T4S, R4E, S31SE; T4S, R4E, S32–34; T4S, R4E, S35SE; T4S, R4E, S35NE; T4S, R4E, S36; T4S, R5E, S29SE; T4S, R5E, S29SW; T4S, R5E, S30NW; T4S, R5E, S30SW; T4S, R5E, S30SE; T4S, R5E, S31–S32; T4S, R5E, S33NW; T4S, R5E, S33SW; T5S, R4E, S1–S5; T5S, R4E, S8–S17; T5S, R4E, S20NE; T5S, R4E, S21–S27; T5S, R4E, S28NE; T5S, R4E, S34–S36; T5S, R5E, S2SW; T5S, R5E, S3–S11; T5S, R5E, S12SW; T5S, R5E, S13NW; T5S, R5E, S13SW; T5S, R5E, S13SE; T5S, R5E, S14–35; T5S, R5E, S36NW; T5S, R5E, S36NE; T5S, R5E, S36SW; T5S, R6E, S18SW; T5S, R6E, S19NW; T5S, R6E, S19SW; T5S, R6E, S23SW; T5S, R6E, S25–S27; T5S, R6E, S28SW; T5S, R6E, S28SE; T5S, R6E, S30; T5S, R6E, S31NW; T5S, R6E, S31SE; T5S, R6E, 32SW; T5S, R6E, S32SE; T5S, R6E, S33–S36; T5S, R7E, S30NW; T5S, R7E, S30SW; T5S, R7E, S31NW; T6S, R4E, S1–S2; T6S, R4E, S3NW; T6S, R4E, S3NE; T6S, R4E, S11–S13; T6S, R4E, S14NW; T6S, R4E, S14NE; T6S, R4E, S14SE; T6S, R4E, S23NE; T6S, R4E, S24; T6S, R4E, S25NW; T6S, R4E, S25NE; T6S, R5E, S1NW; T6S, R5E, S1SW; T6S, R5E, S1SE; T6S, R5E, S2–S19; T6S, R5E, S21NW; T6S, R5E, S21NE; T6S, R5E, S21SE; T6S, R5E, S22–S27; T6S, R5E, S28NE; T6S, R5E, S28SE; T6S, R5E, S35NW; T6S, R5E, S35NE; T6S, R5E, S35SE; T6S, R5E, S36; T6S, R6E, S1NW; T6S, R6E, S1SW; T6S, R6E, S2–S5; T6S, R6E, S6NE; T6S, R6E, S6SE; T6S, R6E, S6SW; T6S, R6E, S7–S11; T6S, R6E, S12NW; T6S, R6E, S12SW; T6S, R6E, S13–S36; T6S, R7E, S6SE; T6S, R7E, S7; T6S, R7E, S8SW; T6S, R7E, S8SE; T6S, R7E, S17–S19; T6S, R7E, S20NW; T6S, R7E, S20NE; T6S, R7E, S20SW; T6S, R7E, S28NW; T6S, R7E, S28SW; T6S, R7E, S28SE; T6S, R7E, S29–S33; T7S, R5E, S1; T7S, R5E, S2NE; T7S, R5E, S2SE; T7S, R5E, S2SW; T7S, R5E, S11–S12; T7S, R6E, S1–S6; T7S, R6E, S7NW; T7S, R6E, S7NE; T7S, R6E, S9NE; T7S, R6E, S9NW; T7S, R6E, S9SE; T7S, R6E, S10–S14; T7S, R6E, S15NE; T7S, R6E, S23–S26; T7S, R6E, S27NE; T7S, R6E, S27SE; T7S, R6E, S34SE; T7S, R6E, S35–S36; T7S, R7E, S3NW; T7S, R7E, S3SW; T7S, R7E, S3SE; T7S, R7E, S4–S10; T7S, R7E, S11NW; T7S, R7E, S11SE; T7S, R7E, S11SW; T7S, R7E, S13NW; T7S, R7E, S13SE; T7S, R7E, S13SW; T7S, R7E, S14–S36; T7S, R8E, S19NW; T7S, R8E, S19SW; T7S, R8E, S29SW; T7S, R8E, S30–S31; T7S, R8E, S32NW; T7S, R8E, S32SW; T8S, R4E, S24–S25; T8S, R4E, S36NE; T8S, R4E, S36SE; T8S, R5E, S19–S36; T8S, R6E, S1–S3; T8S, R6E, S7SE; T8S, R6E, S8–S17; T8S, R6E, S18NE; T8S, R6E, S18SE; T8S, R6E, S18SW; T8S, R6E, S19–S36; T8S, R7E, S1–S36; T8S, R8E, S6NW; T8S, R8E, S6SW; T8S, R8E, S7–S8; T8S, R8E, S16NW; T8S, R8E, S16SW; T8S, R8E, S17–S20; T8S, R8E, S21NW; T8S, R8E, S21SE; T8S, R8E, S21SW; T8S, R8E, S27SW; T8S, R8E, S28–S34.

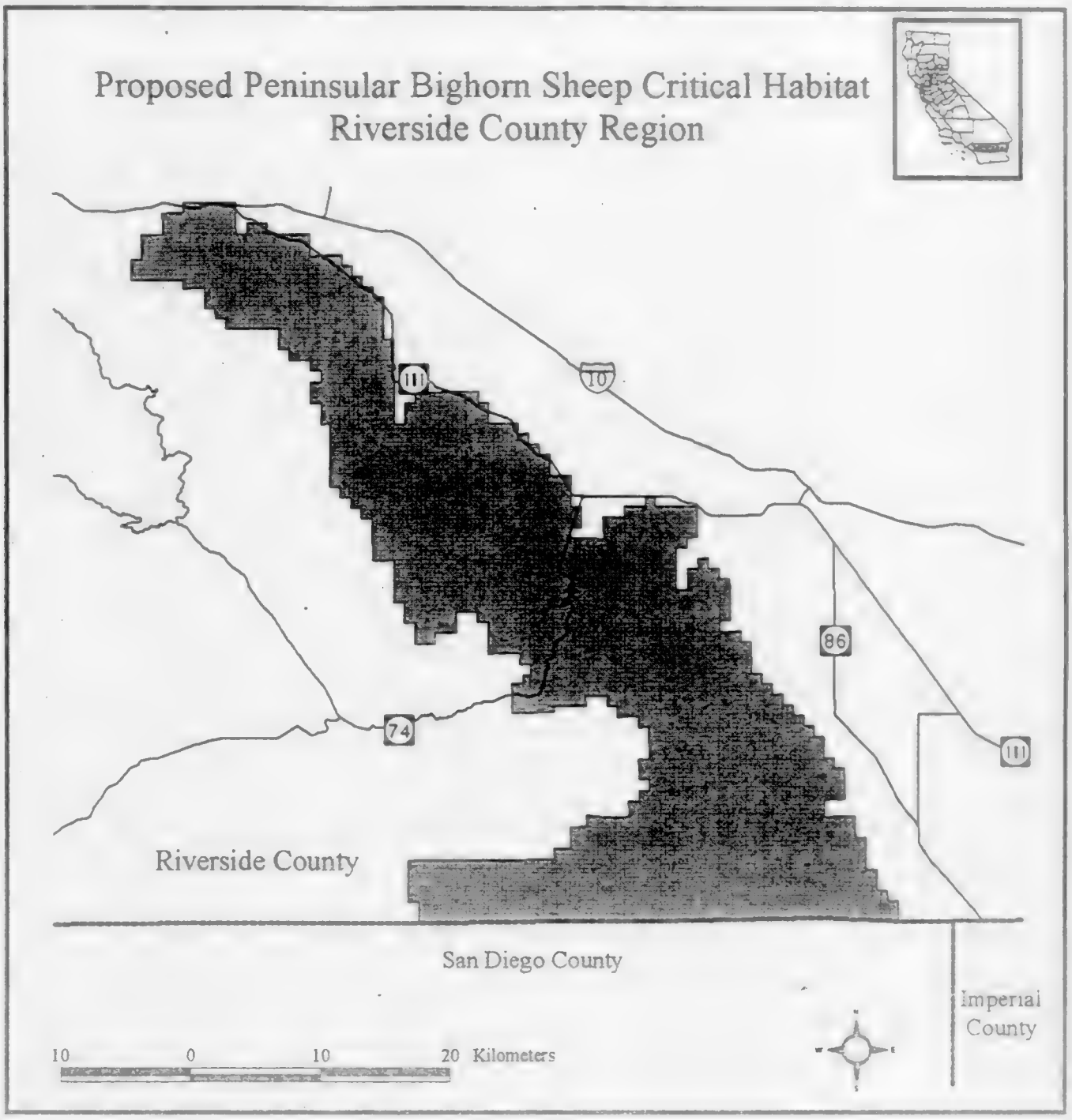
Proposed Peninsular Bighorn Sheep Critical Habitat
Riverside County Region
10
111
86
74
111
Riverside County
San Diego County
Imperial County
10 0 10 20 Kilometers

Map Unit 2: San Diego County, California. From USGS 1:100,000 quadrangle maps Borrego Valley (1982) and El Cajon (1979), California. Lands within T9S, R4E, S1; T9S, R4E, S2SE; T9S, R4E, S11NE; T9S, R4E, S11SE; T9S, R4E, S12–S13; T9S, R4E, S14NE; T9S, R4E, S24; T9S, R4E, S25NW; T9S, R4E, S25NE; T9S, R4E, S25SE; T9S, R5E, S1–S36; T9S, R6E, S1–13; T9S, R6E, S14NW; T9S, R6E, S14NE; T9S, R6E, S15–S23; T9S, R6E, S24SW; T9S, R6E, S24SE; T9S, R6E, S25–S36; T9S, R7E, S1–S18; T9S, R7E, S19NE; T9S, R7E, S20NW; T9S, R7E, S20NE; T9S, R7E, S21–S27; T9S, R7E, S28NW; T9S, R7E, S28NE; T9S, R7E, S28SE; T9S, R7E, S31NW; T9S, R7E, S31SW; T9S, R7E, S33–S36; T9S, R8E, S1NE; T9S, R8E, S1SE; T9S, R8E, S1SW; T9S, R8E, S2NW; T9S, R8E, S2SW; T9S, R8E, S2SE; T9S, R8E, S3–S36; T10S, R5E, S1–S5; T10S, R5E, S8NW; T10S, R5E, S8NE; T10S, R5E, S9–S28; T10S, R5E, S33NE; T10S, R5E, S33NW; T10S, R5E, S33SE; T10S, R5E, S34–S36; T10S, R6E, S1–S4; T10S, R6E, S5NE; T10S, R6E, S6–S7; T10S, R6E, S9NE; T10S, R6E, S10–S14; T10S, R6E, S15NE; T10S, R6E, S18–S19; T10S, R6E, S23NE; T10S, R6E, S24NW; T10S, R6E, S24NE; T10S, R6E, S30NW; T10S, R6E, S30SW; T10S, R7E, S1–S4; T10S, R7E, S6NW; T10S, R7E, S6SW; T10S, R7E, S6SE; T10S, R7E, S7; T10S, R7E, S10NE; T10S, R7E, S10SE; T10S, R7E, S11–S12; T10S, R7E, S13NW; T10S, R7E, S13NE; T10S, R7E, S13SE; T10S, R7E, S14NW; T10S, R7E, S14NE; T10S, R7E, S18; T10S, R7E, S19NW; T10S, R7E, S19NE; T10S, R8E, S1–S18; T10S, R8E, S19NE; T10S, R8E, S20NE; T10S, R8E, S20NW; T10S, R8E, S20SE; T10S, R8E, S21–S23; T10S, R8E, S24NW; T10S, R8E, S24NE; T10S, R8E, S24SW; T10S, R8E, S26NW; T10S, R8E, S27NE; T10S, R8E, S28NW; T10S, R8E, S28NE; T11S, R5E, S1–S4; T11S, R5E, S5SE; T11S, R5E, S9–S14; T11S, R5E, S15NE; T11S, R5E, S15NW; T11S, R5E, S15SE; T11S, R5E, S22NE; T11S, R5E, S22SE; T11S, R5E, S23–S26; T11S, R5E, S27NE; T11S, R5E, S34–S36; T11S, R6E, S5NW; T11S, R6E, S5SW; T11S, R6E, S6–S7; T11S, R6E, S18NW; T11S, R6E, S18SW; T11S, R6E, S19; T11S, R6E, S20NW; T11S, R6E, S20SW; T11S, R6E, S20SE; T11S, R6E, S28SW; T11S, R6E, S28SE; T11S, R6E, S29–S33; T11S, R6E, S34NW; T11S, R6E, S34SW; T11S, R6E, S34SE; T12S, R5E, S1–S3; T12S, R5E, S4NE; T12S, R5E, S4SE; T12S, R5E, S9NE; T12S, R5E, S9SE; T12S, R5E, S9SW; T12S, R5E, S10–S16; T12S, R5E, S17SE; T12S, R5E, S20NE; T12S, R5E, S20SE; T12S, R5E, S20SW; T12S, R5E, S21–S33; T12S, R5E, S34NE; T12S, R5E, S34NW; T12S, R5E, S35–S36; T12S, R6E, S1NW; T12S, R6E, S1SW; T12S, R6E, S1SE; T12S, R6E, S2–S36; T12S, R7E, S7–S8; T12S, R7E, S9SW; T12S, R7E, S13SE; T12S, R7E, S13SW; T12S, R7E, S14SW; T12S, R7E, S15–S36; T12S, R8E, S18SE; T12S, R8E, S18SW; T12S, R8E, S19; T12S, R8E, S20NW; T12S, R8E, S20SW; T12S, R8E, S20SE; T12S, R8E, S21SW; T12S, R8E, S21SE; T12S, R8E, S27SW; T12S, R8E, S28–S34; T12S, R8E, S35NW; T12S, R8E, S35SW; T13S, R5E, S1NW; T13S, R5E, S1NE; T13S, R5E, S1SE; T13S, R5E, S13SE; T13S, R5E, S13NE; T13S, R5E, S22SE; T13S, R5E, S23SW; T13S, R5E, S23SE; T13S, R5E, S24NE; T13S, R5E, S24SW; T13S, R5E, S24SE; T13S, R5E, S25–S27; T13S, R5E, S34NW; T13S, R5E, S34NE; T13S, R5E, S34SE; T13S, R5E, S35–S36; T13S, R6E, S1–S6; T13S, R6E, S7NW; T13S, R6E, S7NE; T13S, R6E, S7SE; T13S, R6E, S8–S36; T13S, R7E, S1–S36; T13S, R8E, S1–S36; T14S, R5E, S1–S2; T14S, R5E, S11–S13; T14S, R5E, S14NW; T14S, R5E, S14NE; T14S, R5E, S14SE; T14S, R5E, S23NE; T14S, R5E, S24NE; T14S, R5E, S24NW; T14S, R6E, S1–S30; T14S, R6E, S31NW; T14S, R6E, S31NE; T14S, R6E, S31SE; T14S, R6E, S32–S36; T14S, R7E, S1NW; T14S, R7E, S1NE; T14S, R7E, S1SE; T14S, R7E, S2–S9; T14S, R7E, S16NW; T14S, R7E, S16SE; T14S, R7E, S16SW; T14S, R7E, S17–S21; T14S, R7E, S22SW; T14S, R7E, S26SW; T14S, R7E, S27–S34; T14S, R7E, S35NW; T14S, R7E, S35SW; T14S, R8E, S1; T14S, R8E, S2NE; T14S, R8E, S2NW; T14S, R8E, S2SE; T14S, R8E, S3–S6; T14S, R8E, S8NW; T14S, R8E, S8NE; T14S, R8E, S9NW; T14S, R8E, S9NE; T14S, R8E, S12NE; T15S, R6E, S1–S4; T15S, R6E, S5NW; T15S, R6E, S5NE; T15S, R6E, S5SE; T15S, R6E, S9–S15; T15S, R6E, S16NW; T15S, R6E, S16NE; T15S, R6E, S22NE; T15S, R6E, S23–S24; T15S, R6E, S25NE; T15S, R6E, S25SE; T15S, R6E, S36NE; T15S, R7E, S1SW; T15S, R7E, S2–S11; T15S, R7E, S12NW; T15S, R7E, S12SW; T15S, R7E, S12SE; T15S, R7E, S13–S36; T15S, R8E, S10SE; T15S, R8E, S11SW; T15S, R8E, S11SE; T15S, R8E, S12NE; T15S, R8E, S12SW; T15S, R8E, S12SE; T15S, R8E, S13–S16; T15S, R8E, S17SE; T15S, R8E, S19–S36; T16S, R7E, S1–S6; T16S, R7E, S7NE; T16S, R7E, S8–S16; T16S, R7E, S17NW; T16S, R7E, S17NE; T16S, R7E, S17SE; T16S, R7E, S21–S27; T16S, R7E, S28NW; T16S, R7E, S28NE; T16S, R7E, S28SE; T16S, R7E, S33NE; T16S, R7E, S34–36; T16S, R8E, S1–S34; T16S, R8E, S35NW; T16S, R8E, S35SW; T16S, R8E, S35SE; T16S, R8E, S36SE; T17S, R7E, S1–S2; T17S, R7E, S3NE; T17S, R7E, S3NW; T17S, R7E, S3SE; T17S, R7E, S11–S14; T17S, R7E, S23NW; T17S, R7E, S23NE; T17S, R7E, S23SE; T17S, R7E, S24; T17S, R7E, S25NE; T17S, R8E, S1–S20; T17S, R8E, S21NW; T17S, R8E, S21NE; T17S, R8E, S22–S25; T17S, R8E, S26NW; T17S, R8E, S26NE; T17S, R8E, S26SE; T17S, R8E, S29NW; T17S, R8E, S30NW; T17S, R8E, S30NE; T17S, R8E, S36; T18S, R8E, S1NW; T18S, R8E, S1NE; T18S, R8E, S1SE. The following lands within the Valle de San Felipe Land Grant bounded by UTM zone 11, NAD27 coordinates (X, Y): 547000, 3664000; 548000, 3664000; 548000, 3663000; 552000, 3663000; 552000, 3662000; 551000, 3662000; 551000, 3661000; 547000, 3661000; 547000, 3664000.

Proposed Peninsular Bighorn Sheep Critical Habitat
San Diego County Region
Riverside County
79
76
78
78
79
86
San Diego County
Imperial County
8
8
94
98
MEXICO
10 0 10 20 30 Kilometers

Map Unit 3: Imperial County, California. From USGS 1:100,000 quadrangle maps Borrego Valley (1982), El Cajon (1979), Salton Sea (1982), and El Centro (1982), California. Lands within T9S, R9E, S5SW; T9S, R9E, S6–S8; T9S, R9E, S9SW; T9S, R9E, S16NW; T9S, R9E, S16SW; T9S, R9E, S17–S20; T9S, R9E, S21NW; T9S, R9E, S21SW; T9S, R9E, S28NW; T9S, R9E, S28SW; T9S, R9E, S29–S32; T9S, R9E, S33NW; T9S, R9E, S33SE; T9S, R9E, S33SW; T10S, R9E, S3NW; T10S, R9E, S3SW; T10S, R9E, S4–S9; T10S, R9E, S10NW; T10S, R9E, S10SE; T10S, R9E, S10SW; T10S, R9E, S14–S18; T10S, R9E, S21NE; T10S, R9E, S21NW; T10S, R9E, S22NE; T10S, R9E, S22NW; T13S, R9E, S6SW; T13S, R9E, S7NW; T13S, R9E, S7SE; T13S, R9E, S7SW; T13S, R9E, S14SW; T13S, R9E, S15NW; T13S, R9E, S15SE; T13S, R9E, S15SW; T13S, R9E, S16–S23; T13S, R9E, S24SW; T13S, R9E, S25–S36; T13S, R10E, S29SW; T13S, R10E, S30–S32; T13S, R10E, S33SW; T14S, R9E, S1–S17; T14S, R9E, S18NE; T14S, R9E, S18SE; T14S, R9E, S19NE; T14S, R9E, S20–S28; T14S, R9E, S29NE; T14S, R9E, S29NW; T14S, R9E, S29SE; T14S, R9E, S32–S36; T14S, R10E, S4NW; T14S, R10E, S4SW; T14S, R10E, S5–S8; T14S, R10E, S9NW; T14S, R10E, S9SW; T14S, R10E, S16NW; T14S, R10E, S17–S19; T14S, R10E, S20NE; T14S, R10E, S20NW; T14S, R10E, S30NW; T14S, R10E, S30SW; T14S, R10E, S31NW; T14S, R10E, S31SW; T15S, R9E, S1–S5; T15S, R9E, S6NE; T15S, R9E, S7–S36; T15S, R10E, S5SW; T15S, R10E, S6–S7; T15S, R10E, S8NW; T15S, R10E, S19; T15S, R10E, S20SW; T15S, R10E, S29NW; T15S, R10E, S29SW; T15S, R10E, S30–S33; T16.5S, R9.5E, S1NW; T16.5S, R9.5E, S1SE; T16.5S, R9.5E, S1SW; T16.5S, R9.5E, S2; T16.5S, R10E, S4SE; T16.5S, R10E, S4SW; T16.5S, R10E, S5SE; T16.5S, R10E, S5SW; T16.5S, R10E, S6SE; T16.5S, R10E, S6SW; T16S, R9E, S1–S14; T16S, R9E, S15NE; T16S, R9E, S15NW; T16S, R9E, S15SE; T16S, R9E, S16NE; T16S, R9E, S16NW; T16S, R9E, S17NE; T16S, R9E, S17NW; T16S, R9E, S18NE; T16S, R9E, S19; T16S, R9E, S28SE; T16S, R9E, S28SW; T16S, R9E, S30NE; T16S, R9E, S30NW; T16S, R9E, S30SW; T16S, R9E, S31–S34; T16S, R9E, S35SW; T16S, R10E, S4–S7; T16S, R10E, S8NE; T16S, R10E, S8NW; T16S, R10E, S18NE; T16S, R10E, S18NW; T17S, R9E, S1–S36; T17S, R10E, S2–S10; T17S, R10E, S11NW; T17S, R10E, S11NE; T17S, R10E, S11SW; T17S, R10E, S13SW; T17S, R10E, S14NW; T17S, R10E, S14SW; T17S, R10E, S14SE; T17S, R10E, S15–S23; T17S, R10E, S24NW; T17S, R10E, S24SW; T17S, R10E, S25NW; T17S, R10E, S25SW; T17S, R10E, S26–S35; T17S, R10E, S36NW; T17S, R10E, S36SW; T18S, R9E, S1–S6; T18S, R9E, S7NE; T18S, R9E, S7SE; T18S, R9E, S7NW; T18S, R9E, S8–S11.

Proposed Peninsular Bighorn Sheep Critical Habitat
Imperial County Region
Riverside County
San Diego County
Imperial County
MEXICO
111
66
78
86
8
98
94
10 0 10 20 Kilometers

Dated: June 28, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–16925 Filed 7–3–00; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000622191–0191–01; I.D. 041700D]

RIN 0648–AO35

Fisheries off West Coast States and in the Western Pacific; Pelagics Fisheries; Measures To Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes a rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that would require operators of vessels registered for use under Hawaii pelagic longline limited access permits to use two or more of six specific bird mitigation techniques when fishing with pelagic longline gear north of 25° N. lat.; annually attend a protected species workshop conducted by NMFS; and release all hooked or entangled sea birds in a manner that maximizes their post-release survival. This proposed rule would reduce fishery impacts on black-footed and Laysan albatrosses that are accidentally hooked or entangled and killed by Hawaii pelagic longliners during the setting and hauling of longline gear. This proposed rule would also reduce the potential for interactions between pelagic longline fishing vessels and endangered short-tailed albatrosses, which are known to occasionally visit the Northwestern Hawaiian Islands.

DATES: Comments on this proposed rule must be received at the appropriate address or fax number, (see **ADDRESSES**) no later than 5 p.m., Hawaiian standard time, on August 21, 2000.

ADDRESSES: Written comments on this proposed rule must be sent to Kathy Cousins, NMFS Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd. Suite 1101, Honolulu HI 96822; or sent via facsimile (fax) to 808–973–2941. Comments will not be accepted if submitted via e-mail or Internet. Copies of a background document on the proposed regulatory action, including an environmental assessment (EA) and initial regulatory flexibility analysis (IRFA), are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kathy Cousins, 808–973–2937, fax 808–973–2941, e-mail kathy.cousins@noaa.gov.

SUPPLEMENTARY INFORMATION: The Hawaii-based domestic pelagic longline fishery operates under a limited access regime with a maximum of 164 transferable permits. The number of active vessels in the fishery has ranged from 110 to 120; in 1998, there were 114 active vessels. Data on Hawaii-based pelagic longline interactions with seabirds have been collected by NMFS observers since 1994. Estimated annual black-footed albatross mortalities caused by pelagic longline gear range from a 1996 low of 1,568, to a 1994 high of 1,994; there were 1,963 mortalities estimated to have taken place in 1998. Laysan albatross estimated annual mortalities caused by pelagic longline gear range from a low in 1996 of 1,047 to a high in 1994 of 1,828, with 1,479 mortalities estimated to have occurred in 1998. There have been no observed fishery interactions with short-tailed albatrosses, although two short-tail albatrosses have been sighted near Hawaii pelagic longline operations at sea on separate occasions. In response to concerns expressed by the U.S. Fish and Wildlife Service (FWS), researchers, and conservationists about these fishery-related impacts on albatross populations, the Council has proposed regulatory changes under FMP framework procedures. These proposed changes were developed by the Council's Pelagics Plan Team, Advisory Panel, and Scientific and Statistical Committee. The Council discussed various alternative sea bird mitigation measures at its June 1999 meeting and again at its October 1999 meeting, when final action was taken to recommend to NMFS the measures set forth in this proposed rule.

The first proposed measure would require operators of vessels registered for use with Hawaii pelagic longline limited access permits to employ 2 or more of 6 specific bird take mitigation techniques when longlining north of 25° N. lat. Individual pelagic longline vessel operators would choose which 2 or more of the 6 mitigation methods to employ based on their vessel operations and at-sea conditions. The six mitigation methods approved by the Council are: (1) discharge offal strategically from the side of the vessel opposite the gear while the vessel is setting or hauling pelagic longline gear; (2) begin to set pelagic longline gear at least 1 hour after sunset and complete the setting operation at least 1 hour before sunrise using only such lighting necessary for crew safety; (3) use only completely thawed bait which has been dyed blue; (4) tow a buoy or tori (bird) line, meeting the specifications proposed under 50 CFR 660.33(b)(4) while the longline gear is being set and hauled; (5) attach weights of at least 45 grams to branch lines within 1 meter of each hook; and, (6) set the line using a line setting machine with weights of at least 45 grams attached to branch lines within 1 meter of each hook. These techniques have been tested individually and were found to mitigate 71 to 98 percent of seabird interactions as compared to normal Hawaii pelagic longline operations.

Two geographical management options were investigated and the management area (north of 25° N. lat.) was selected by the Council because it encompasses the area with 95 percent of the fleet's annual average incidental seabird catch and impacts 33 percent of the average annual fleet effort. The second management area option (north of 23° N. lat.) was rejected because it would impact an additional 11 percent of fishing effort without significantly reducing incidental seabird catch.

A no action alternative was rejected because it would not meet the seabird conservation objective. A second rejected alternative would have required similar mitigation techniques, however, the choice of which 2 seabird take mitigation measures to use would have been made by the Council for all vessels fishing north of 25° N. lat. This alternative would have required all pelagic longline fishing vessels to use seabird mitigation methods without regard to particular vessel operating patterns and at-sea conditions. This rejected alternative would likely have resulted in unduly burdensome impacts on fishing operations. A third rejected alternative would have prohibited longline fishing within the exclusive economic zone (EEZ) around Hawaii north of 23° N. lat. This alternative was rejected because it would have potentially reduced seabird interactions by a maximum of only 62 percent.

The second proposed measure would require all owners and operators of longline vessels holding Hawaii longline limited access permits to attend

annual protected species workshops conducted by NMFS. These workshops would educate Hawaii-based pelagic longline fishery participants on fishery impacts on populations of seabirds, sea turtles, and other protected resources, provide information on protected species identification, answer questions concerning the most effective ways to deploy required mitigation measures, and provide information on additional voluntary modifications to fishing operations to further minimize interactions with protected marine species. These workshops would also provide an ongoing forum for vessel operators to express their concerns and observations to NMFS concerning the incidental take of protected species.

The third proposed measure would require Hawaii pelagic longline vessel operators to release all hooked or entangled birds in a manner that maximizes their chances of post-release survival. Vessel operators would be required to: (1) stop the vessel (to remove line tension) when a bird is hooked or entangled; (2) bring hooked or entangled birds on board using dip nets (which are required in separate regulations at 65 FR 16436 that were published on March 28, 2000, and effective on April 27, 2000, for retrieving incidentally caught sea turtles); (3) remove externally embedded hooks; and, (4) cut the line as close as possible to ingested hooks that cannot be safely removed.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an EA that discusses the environmental impacts that may result from implementation of this proposed rule. A copy of the EA is available from the Council (see **ADDRESSES**).

NMFS prepared an IRFA that describes the economic impact that this proposed rule, if adopted, would have on small entities. A complete copy of this analysis is available from the Council (see **ADDRESSES**). In the IRFA analysis NMFS considered a variety of seabird take mitigation alternatives that had a range of economic impacts on HI pelagic longline vessel owners and operators.

This proposed rule would potentially affect all 164 Hawaii pelagic longline fishery limited entry permit holders (114 of which were active in 1998). The proposed measures are expected to have at least a minor economic impact on vessel operators or owners because of the requirement for vessel operators to use seabird mitigation measures, including the requirement to carry and have ready dip nets, bolt cutters, pliers, and small knives. The actual economic impacts to individual permit holders for the entire range of proposed management measures is uncertain; it would depend on individual fishing vessel operating patterns, which seabird take mitigation measures are employed, and how vessel operators respond to the proposed new regulations. Direct costs to individual vessels for the range of fishery operational seabird take mitigation measures in the preferred alternative range from zero for night setting to $4,800 per year for the purchase and maintenance of towed deterrents. The non-operational measures (workshop attendance and careful release of live seabirds) are not anticipated to have significant economic impacts on fishery participants.

The preferred alternative would mitigate sea bird take and minimize economic impacts on vessel operators by: (1) keeping all fishing areas open and (2) allowing vessel operators to choose which 2 seabird take mitigation methods to use when fishing north of 25° N. lat. based on their individual fishing vessel operations and at-sea conditions. Under this alternative it is likely that those vessels that already set at night (primarily pelagic longline vessels targeting swordfish) would adopt night setting as one of their 2 required seabird mitigation measures, while those vessels that already use line-setting machines (primarily pelagic longline vessels targeting tuna) would employ line setters and weighted branch lines as one of their 2 required seabird mitigation measures. In this manner, negative economic impacts that result from requirements to use seabird mitigation measures would be avoided and impacts on vessel operations and catch rates minimized.

There were 3 rejected alternatives. The first, a no action alternative, was rejected because it failed to meet the management objective of mitigating seabird takes in the pelagic longline fishery.

The second rejected alternative, in which the Council would specify which two or more seabird take mitigation measures would be employed by all HI pelagic longline vessels, was rejected because it did not allow fishermen flexibility to choose the most effective measures based on individual vessel operating conditions and at-sea conditions. The economic impacts would vary depending on which 2 specific mitigation methods the Council required. Night setting would have uneven revenue impacts (due to changes in catch rates) depending on the type of fish the vessel is targeting, while the other mitigation measures have unpredictable revenue impacts due to a lack of data. Direct costs to the pelagic longline fishery for the range of mitigation measures considered vary from zero (night setting) to $4,800 per year for the purchase and maintenance of towed deterrents.

The third rejected alternative, a prohibition on all pelagic longline fishing within the EEZ around Hawaii north of 23° N. lat., was rejected because it would have reduced seabird interactions by a maximum of only 62 percent. The economic impact would, at maximum, be the ex-vessel revenue forgone resulting from the prohibition on longline fishing in the closed area. This is estimated to average $6.4 million annually (1994–1998). It is likely that some of this lost revenue would be made up by displacement of longline effort to other areas; however, the result of such changes is difficult to predict or quantify.

Consultation under section 7 of the Endangered Species Act (ESA) was initiated within NMFS for these measures to determine whether the effect of the proposed action on threatened and endangered sea turtles and marine mammals is likely to be adverse. This consultation is expected to conclude soon. Formal consultation under section 7 of the ESA between NMFS and FWS is ongoing to examine whether the fishery, as managed under the proposed measures, is likely to jeopardize the continued existence of the endangered short-tailed albatross.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 28, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administratorfor Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.22, new paragraphs (ee), (ff), and (gg) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(ee) Fish for Pacific pelagic management unit species using pelagic longline gear with a vessel registered for use under a Hawaii pelagic longline limited access permit north of 25° N. lat. without employing two or more of the seabird mitigation measures described in § 660.33(b).

(ff) Fail to release seabirds that are caught by pelagic longline gear in a manner that maximizes their long-term survival as described in § 660.33(a).

(gg) Operate a vessel used to fish for Pacific pelagic management unit species using pelagic longline gear with a vessel registered for use under a Hawaii pelagic longline limited access permit after September 30, 2000, without a certificate showing completion of a NMFS workshop on protected species as described in § 660.34.

3. A new § 660.33 is added to subpart C to read as follows:

§ 660.33 Pelagic longline seabird mitigation measures.

The operator of a vessel registered for use under a Hawaii pelagic longline limited access permit and engaged in fishing for Pacific pelagic management unit species using pelagic longline gear north of 25° N. lat. must:

(a) Release seabirds that are caught by pelagic longline gear in a manner that maximizes their long-term survival. The vessel operator must have on board the vessel a long-handled dip net, bolt cutters, pliers, and a knife. If a seabird is hooked, the operator must stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net. Vessel crew must work in pairs to remove hooks from seabirds. The vessel operator must ensure that hooks are not removed backward, as this will cause further damage to the seabird. The vessel operator must ensure that the line is cut as close as possible to the hook, that the hook barb is pushed out point first through a small knife incision and then cut off using bolt cutters, and that the hook shank is removed. If an ingested hook is in the bird's stomach and cannot be removed, the vessel operator must ensure that the line is cut as close as possible to the hook. After removing entangled lines or hooks from seabirds, the vessel operator must ensure that the birds are left to recover on board the vessel for a short period before being released; and

(b) Use at least two of the following six seabird mitigation methods:

(1) *Discharge offal strategically.* While pelagic longline gear is being set or hauled, fish, fish parts, or bait must be discharged on the opposite side of the vessel from where the longline is being set or hauled. Sufficient quantities of offal must be retained between sets for this purpose;

(2) *Night setting.* Begin setting pelagic longline gear at least 1 hour after local sunset and complete the setting process at least 1 hour before local sunrise, utilizing only enough deck lighting to ensure safety;

(3) *Blue-dyed bait.* Thaw, and dye blue, all bait used. The color intensity of the blue-dyed bait must conform to a level specified by a color quality control card issued by NMFS;

(4) *Towed deterrent.* While setting and hauling the gear, employ a tori (bird) line or towed buoy that meets the specifications of this paragraph. The point of attachment between the tori line, or towing line for the towed buoy, and the towing pole to which it is attached must be 4 to 8 m above the sea surface. The tori line or towing line for the towed buoy must be constructed of material that is between 5 mm and 8 mm in diameter. The tori line must be a minimum of 150 m in length and be weighted at the end so that it streams directly over the pelagic longline gear, even in cross winds. If a towed buoy is used, it must be an inflatable type rubber buoy at least 50 in. (127 cm) in circumference. The buoy must be attached to the towing pole by a line which is at least 175 ft (53.3 m) long, and must be towed to maintain a distance of approximately 150 ft (45.7 m) behind the vessel during setting and approximately 90 ft (27.4 m) during hauling operations. For both types of deterrents, swivels must be placed every 20 m along the line to reduce twisting. A total of 7–10 pairs of streamers must be attached to the line at 5 m intervals beginning 10 m from the point of attachment to the towing pole. The streamers must be made of a heavy, flexible material which allows them to move freely and be attached to the line using three-way swivels or adjustable snaps. The tori line, or towing line for the buoy, must be attached to a towing pole at the stern of the vessel that is positioned such that it is directly above the baited hooks as they are deployed or hauled back. The streamers must be constructed and deployed in a manner such that they each skim the water's surface in the area where the gear is being set and hauled;

(5) *Weighted branch lines.* Attach a weight of at least 45 g to each branch line within 1 m of each hook; or

(6) *Line-setting machine with weighted branch lines.* Set the mainline using a line-setting machine (e.g. Lindgren-Pitman model LS–4) operating at least 1.3 times the average setting speed of the vessel. A weight of at least 45 g must be attached to each branch line within 1 m of the hook.

4. A new § 660.34 is added to subpart C to read as follows:

§ 660.34 Annual protected species workshops.

The owner and operator of a vessel registered for use under a Hawaii pelagic longline limited access permit and engaged in fishing for Pacific pelagic management unit species using pelagic longline gear must annually attend a NMFS workshop on protected species and receive a protected species workshop certificate before commencing fishing each fishing season. For the years 2000 and 2001, all vessel owners and operators must have attended a protected species workshop by September 30, 2000. The vessel owner must ensure the vessel operator is certified. An owner or operator must maintain proficiency sufficient to perform the procedures required by relevant protected species regulations of NMFS, and must attend and satisfactorily complete a formal training session approved by the Administrator of PIAO, in order to obtain his or her protected species workshop certificate. Owners and operators may be required to attend additional formal training sessions if there are substantial changes in the fishery, fishing gear, or mitigation techniques. Additional training may be required for any owner or operator who is found by the Administrator of PIAO, to lack proficiency in the application of mitigation techniques presented at the workshop. NMFS may waive the requirement to attend these workshops by notice to all vessel owners and operators.

[FR Doc. 00–16939 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000504124–0124–01; I.D. 011900B]

RIN 0648–AK11

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Prohibition on the Use of Set Net Fishing Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: NMFS reopens the public comment period on a proposed rule to prohibit the use of setnet (gillnet and trammel nets) fishing gear to take groundfish species in portions of the exclusive economic zone (EEZ) adjacent to state waters at four areas off California. NMFS is reopening the comment period to ensure that affected fishers are aware of the proposed changes and have an opportunity to provide comments. This action is intended to avoid unnecessary bycatch and is expected to promote consistent conservation of groundfish stocks and species managed by California throughout their range.

DATES: Comments must be received on or before August 3, 2000.

ADDRESSES: Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The proposed rule that would prohibit the use of set nets in portions of the EEZ was published in the **Federal Register** on May 19, 2000 (65 FR 31871). Groundfish fisheries on the west coast are managed under the authority of the Fishery Management Plan for Groundfish Fisheries off Washington, Oregon, and California. California has jurisdiction over fishing for groundfish and other species within State waters and, with respect to State registered vessels, in the EEZ off California as long as State regulations are not in conflict with Federal regulations. This action would achieve consistency between regulations governing waters under California's jurisdiction and those of the EEZ. NMFS is reopening the comment period to ensure that affected fishers are aware of the proposed changes and have an opportunity to provide comments.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16934 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 129
Wednesday, July 5, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for a currently approved information collection in support of the CCC Facility Guarantee Program (FGP) based on re-estimates.

DATES: Comments on this notice must be received by September 5, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Merle Brown, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1031, Washington, DC 20250–1031, telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION:

Title: CCC Facility Guarantee Program (FGP).

OMB Number: 0551–0032.

Expiration Date of Approval: February 28, 2001.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of the FGP is to expand U.S. agricultural exports by improving agricultural infrastructure in importing countries. The FGP makes available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. goods and services on credit terms. The CCC currently offers the FGP for exports to at least 3 countries and 7 country regions. The FGP information collection is similar to those for the Export Credit Guarantee Program (GSM–102) and the Intermediate Export Credit Guarantee Program (GSM–103) (OMB control number 0551–004). The information collection for the FGP differs primarily as follows:

(1) The applicant, in order to receive a payment guarantee, provides information evidencing that the exported goods and services used to develop improved infrastructure will primarily benefit exports of U.S. agricultural commodities and products;

(2) The applicant is required to certify that the value of non-U.S. components of good and services is less than 50 percent of the contract value covered under the payment guarantee.

In addition, each exporter and exporter's assignee (U.S. financial institution) must maintain records on all information submitted to CCC and in connection with sales made under the FGP. The information collected is used by CCC to manage, plan, evaluate and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden of these collections is estimated to average 3.88 hours per response.

Respondents: Exporters of U.S. agricultural commodities, banks or other financial institutions, producer associations, export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 58 per annum.

Estimated Number of Responses per Respondent: 1.14 per annum.

Estimated Total Annual Burden of Respondents: 256 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments: Send comments regarding (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Merle Brown, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1031, Washington, DC 20250–1031, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C. on June 28, 2000.

Richard Fritz,

General Sales Manager, Foreign Agricultural Service.

[FR Doc. 00–16891 Filed 7–3–00; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Draft EIS, Fernow Experimental Forest, Implementation of New Research Studies, Monongahela National Forest Land and Resource Management Plan, Tucker County, WV

AGENCY: Forest Service, USDA.

ACTION: Notice of correction and extension of comment period.

SUMMARY: The agency published a notice of availability for a draft environmental impact statement (EIS No. 000185) for the Fernow Experimental Forest on June 16, 2000, in the **Federal Register** (65 FR 37780). The comment due date in the notice was listed as July 31, 2000. Prior to the publication of the notice in the **Federal Register** the agency had sent a copy of the draft EIS to interested parties on June 7, 2000, but had listed the comment due date as August 2, 2000. To avoid confusion about the date the comments are due, the Forest Service is

extending the comment period to August 7, 2000.

DATES: Written comments are due by August 7, 2000.

ADDRESSES: Forest Service, USDA, Timber and Watershed Laboratory, P.O. Box 404, Parsons, WV 26287–0404

FOR FURTHER INFORMATION CONTACT: Mary Beth Adams, Project Leader, at (304) 478–2000.

Dated: June 28, 2000.

Barbara C. Weber,

Associate Deputy Chief for Research and Development.

[FR Doc. 00–16855 Filed 7–3–00; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

Date and Time: July 11, 2000; 9:30 A.M.–5 P.M. July 12, 2000; 9 A.M.–11 A.M.

Place: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded nonmilitary international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c) (2) and (6))

Contact Person for More Information: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: June 30, 2000.

John A. Lindburg,

Legal Counsel.

[FR Doc. 00–17103 Filed 6–30–00; 2:48 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Census Advisory Committees

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a joint meeting of the 2000 Census Advisory Committee (CAC), the CAC of Professional Associations, the CAC on the African American Population, the CAC on the American Indian and Alaska Native Populations, the CAC on the Asian Population, the CAC on the Native Hawaiian and Other Pacific Islander Populations, and the CAC on the Hispanic Population. The meeting will be primarily an informational meeting focusing on the American Community Survey and planning for the 2010 decennial census. Participants also will discuss the status of Census 2000 activities and share their experiences as they relate to the American Community Survey (ACS) and 2010 census planning. Last minute changes to the schedule are possible, and they could prevent us from giving advance notice.

DATES: On Friday, July 28, 2000, the meeting will begin at 8:30 a.m. and adjourn at approximately 5:15 p.m.

ADDRESSES: The meeting will take place at the Doubletree Hotel, 300 Army Navy Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 1647, Federal Building 3, Washington, DC 20233, telephone: 301–457–2308.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, American Indian and Alaska Native Populations, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population are composed of nine members each, appointed by the Secretary of Commerce. The Committees provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on its effort to reduce the differential undercount for Census 2000, and on research, technological, and policy issues related to the 2010 decennial census, the ACS, and related programs.

The CAC of Professional Associations is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairman of the Board of the American Marketing Association. The Committee advises the Director, Bureau of the Census, on the full range of Census Bureau programs and activities in relation to its area of expertise.

The 2000 Census Advisory Committee is composed of a Chair, Vice Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Advisory Committee considers the goals of Census 2000 and user needs for information provided by that census. The Committee provides an outside user perspective about how operational planning and implementation methods for Census 2000 are realizing the overall goals of achieving an accurate count during Census 2000. The Advisory Committee considers all aspects of Census 2000 and advises the Secretary of Commerce on its findings.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer on 301–457–2308, TDD 301–457–2540.

Dated: June 27, 2000.

Robert J. Shapiro,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 00–16806 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Notice of Meeting With Interested Public To Discuss Sanctions Easing for North Korea

The Bureau of Export Administration (BXA), in conjunction with other federal agencies, will brief companies and interested organizations on recent changes in North Korea that have led to easing of trade sanctions. U.S. officials will provide information on the new rules for doing business with North Korea.

The meeting will be held July 6, 2000, at 9:30 a.m., at the Department of Commerce, Herbert C. Hoover Building, Room 6802, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC.

If you plan to attend, please fax your name and company or organization affiliation to ATTN: NORTH KOREA BRIEFING, at (202) 482–6088. For further information contact Frank Ruggiero in BXA at (202) 482–1926 or 482–4252. Interested parties requiring special accommodations should also contact BXA in advance.

Background

On June 19, 2000, BXA published regulations easing sanctions on North Korea. This implemented the Administration's September 1999 decision to ease sanctions provided North Korea maintains its moratorium on testing long-range ballistic missiles. U.S. exporters may now export the vast majority of U.S. consumer products to North Korea without a license, including agricultural, medical, and low-level industrial goods and services. The Administration's sanctions easing program continues to require a license for items on the Commerce Control List (CCL), including additional items added to the CCL on June 19. Items on the CCL include multilaterally controlled items, as well as a range of lower-level products and technologies controlled for anti-terrorism and non-proliferation reasons.

Other Federal agencies took related measures. The Transportation Department published a rule lifting the ban on U.S. ships and aircraft transporting goods or traveling to North Korea. Previously, U.S. registered ships and aircraft were prohibited from engaging in such activities. The Treasury Department published rules allowing new financial, trade and other transactions with North Korea and its nationals. Treasury will require a notification and approval process for all imports from North Korea.

BXA has scheduled a meeting for July 6 to more fully explain to industry and other organizations the new rules for conducting business with North Korea.

James A. Lewis,

Director, Office of Strategic Trade.

[FR Doc. 00–16886 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–2000]

Foreign-Trade Zone 112—Colorado; Springs, CO; Application for Expansion and Request for Manufacturing Authority (Data Storage Systems)

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Colorado Springs Foreign-Trade Zone, Inc., grantee of FTZ 112, requesting authority to reorganize and expand its existing zone space to include three new sites in Colorado Springs, Colorado, and requesting, on behalf of the Quantum Corporation and its subsidiaries (Quantum), authority to manufacture data storage drives under zone procedures within FTZ 112 (Colorado Springs Customs Service Station). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended, (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 27, 2000.

FTZ 112 was approved on November 1, 1984 (Board Order 281, 49 FR 44936, 11/13/84). The zone currently consists of one site (2,270 acres) within the Colorado Centre industrial and commercial community on Drennan Road, in El Paso County, adjacent to the Colorado Springs Municipal Airport.

The applicant is now requesting authority to transfer 1017.22 acres from the current site to three proposed sites. The area to be removed from the zone is located within the current Site 1, the Colorado Centre and is north of Fontaine Boulevard, east of Powers Boulevard, south of Bradley Road, and west of Meridian Road. The expansion would include the following new sites: proposed *Site 2:* (55.84 acres) Arrowswest Business and Industrial Park, located along the Garden of the Gods High-Tech Corridor, Colorado Springs, Colorado; proposed *Site 3:* (202.94 acres) InterQuest Business and Industrial Park, located at the intersection of I–25 and InterQuest Parkway; and proposed *Site 4:* (1023.6 acres) Colorado Springs Airport, located at the intersection of Powers Boulevard and Drennan Road. The proposed expansion would add 265.48 acres to the zone.

The application also requests authority on behalf of Quantum to manufacture data storage systems within FTZ 112 (within the proposed expansion area). Quantum currently operates in three buildings (392,688 square feet) within proposed Site 3. The Quantum facilities are used for the manufacturing of DLTtape™ drives, solid state disk drives, ATL Products (DLTtape™ libraries) and Snap! Systems (file servers) (HTS 8471, duty free). Components and materials sourced from abroad (representing about 60% of all parts consumed in manufacturing) include: vulcanized rubber, packing materials of wood, plastic and paper, springs, data processing machines and parts, gaskets, electric motors and parts, electrical transformers, bearings, primary cells and batteries, prepared unrecorded media, insulated wire, measuring instruments and electrical apparatuses for switching electrical circuits (HTS 3923, 3926, 4016, 4819, 4821, 7320, 8471, 8473, 8484, 8485, 8501, 8503, 8504, 8506, 8523, 8536, 8544, and 9031, duty rate ranges from duty-free to 10.7%).

FTZ procedures would exempt Quantum from Customs duty payments on the foreign components used in export production. Some 27 percent of the plant's shipments are exported. On its domestic sales, Quantum would be able to choose the duty rates during Customs entry procedures that apply to finished data storage drives (duty-free) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 5, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 18, 2000).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 1625 Broadway, Suite 680, Denver, CO 80202

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, D.C. 20230

Dated: June 28, 2000.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 00–16957 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Certain cased pencils from the People's Republic of China.

SUMMARY: On December 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on certain cased pencils from the People's Republic of China ("PRC") (64 FR 67247), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Meader, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On December 1, 1999, the Department published the notice of initiation of sunset review of the antidumping duty order on certain cased pencils from the PRC (64 FR 67247). We invited interested parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on April 6, 2000, the Department determined that the sunset review of the antidumping duty order on certain cased pencils from the PRC is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than June 28, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by this investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States ("HTSUS").

[1] See Extension of Time Limit for Final Results of Five-year Reviews, 65 FR 18058 (April 6, 2000).

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.[2]

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 28, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at ia.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
China First	8.60
Shanghai Lansheng Corp	19.36
Shanghai Foreign Trade Corp	11.15
Guangdong Stationery/Three Star Stationery [1]	0.00
Guangdong Stationery/all other producers [2]	53.65
PRC-wide	53.65

[1] Exported by Guangdong Stationery and produced by Three Star.

[2] Exported by Guangdong Stationery and produced by all other producers.

This notice also serves as the only reminder to parties subject to

[2] See Notice of Scope Rulings, 62 FR 62288 (November 21, 1997) (the Department determined that a plastic, quasi-mechanical pencil known as the Bensia pencil is outside the scope of the order); and Notice of Scope Rulings, 63 FR 29700 (June 1, 1998) (Naturally Pretty, a young girl's 10 piece dress-up vanity set, including two 3-inch pencils, is outside the scope of the order).

administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: June 28, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16955 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: fresh garlic from the People's Republic of China.

SUMMARY: On December 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC") (64 FR 67247), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate responses from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On December 1, 1999, the Department published the notice of initiation of sunset review of the antidumping duty order on fresh garlic from the PRC (64 FR 67247). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate substantive responses from respondent interested parties, we determined to conduct an expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on April 6, 2000, the Department determined that the sunset review of the antidumping duty order on fresh garlic from the PRC is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than June 28, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 65 FR 18058 (April 6, 2000).

Scope of Review

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States ("HTSUS").

In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated March 30, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at ia.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
PRC-wide	376.67

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: June 28, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16954 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–811; A–588–831]

Grain-Oriented Electrical Steel From Italy and Japan; Final Results of Expedited Sunset Reviews of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: grain-oriented electrical steel from Italy and Japan.

SUMMARY: On December 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on grain-oriented electrical steel ("GOES") from Italy and Japan (64 FR 67247) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and inadequate response from respondent interested parties (in these cases, no response), the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope of Reviews

The scope of these reviews includes GOES, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") under item numbers 7225.10.0030, 7226.10.1030, 7226.10.5015, and 7226.10.5056. Although the HTS subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Background

On December 1, 1999, the Department initiated the sunset reviews of the antidumping duty orders on GOES from Italy and Japan (64 FR 67247), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate in these cases on behalf of Allegheny Ludlum Corporation ("Allegheny Ludlum"), AK Steel Corporation ("AK Steel"), Butler Armco Independent Union, the United Steelworkers of America AFL-CIO/CLC, and the Zanesville Armco Independent Union (collectively, "domestic interested parties"), within the applicable deadline (December 16, 1999) specified in 19 CFR 351.218(d)(1)(i). Additionally, on December 16, 1999, Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA Inc. (together, "AST") submitted an entry of appearance in the Italian proceeding and, pursuant to 19 CFR 351.305(b), an application for access to business proprietary information under administrative protect order.

Allegheny Ludlum and AK Steel claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product. The unions listed above are interested parties, pursuant to 771(9)(D), because they are certified or recognized unions or groups of workers representative of the industry engaged in the manufacture, production, or wholesale in the United States of the domestic like product.

Domestic interested parties state that Allegheney Ludlum, Armco Inc. ("Armco"), United Steel Workers of America, Butler Armco Independent Union, and Zanesville Armco Independent Union were the petitioners in the initial investigation of GOES from Italy and participated in the only completed administrative review of the Italian order (*see* January 3, 2000, substantive response of domestic interested parties at 5). Armco was not a petitioner in the case concerning GOES from Japan because Armco had certain technical relationships with a Japanese producer of GOES at the time that it wanted to preserve. However, the relationship terminated prior to AK Steel's acquisition of Armco, on September 30, 1999, when it assumed control of Armco's production of GOES. *Id.* Accordingly, AK Steel, as the successor of Armco, has replaced Armco as a domestic interested party for purposes of these sunset reviews and all other administrative reviews. *Id.*

On January 3, 2000, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under 19 CFR 351.218(d)(3)(i). Although we received an entry of appearance from AST in the Italian review, AST did not submit a substantive response. Therefore, without a substantive response from respondent interested parties in the Italian and Japanese reviews, the Department, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), determined to conduct expedited, 120-day reviews of these orders. On February 9, 2000, we received domestic interested parties' comments in support of the Department's decision to conduct expedited reviews of the antidumping duty orders on GOES from Italy and Japan (*see* February 9, 2000, domestic interested parties' comments on adequacy at 3).

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). These reviews concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Accordingly, on April 6, 2000, the Department determined that the sunset reviews of GOES from Italy and Japan are extraordinarily complicated, and extended the time limit for completion of the final results of these reviews until not later than June 28, 2000 (65 FR 18058), in accordance with section 751(c)(5)(B) of the Act.

Analysis of Comments Received

All issues raised in the substantive responses by parties to these sunset reviews are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 28, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were these orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

As a result of these reviews, we determine that revocation of the antidumping duty orders on GOES from Italy and Japan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Italy:	
ILVA S.p.A	60.79
Acciai Speciali Terni, S.r.l	60.79
All Others	60.79
Japan:	
Kawasaki Steel Corporation	31.08
Nippon Steel Corporation	31.08
All Others	31.08

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16951 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–703]

Internal Combustion Forklift Trucks From Japan; Corrected Final Results of Expedited Sunset Review and Continuation of Antidumping Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Correction to Final Results of Expedited Sunset Review and Continuation of Antidumping Order: Internal Combustion Forklift Trucks from Japan.

SUMMARY: On August 5, 1999, the Department of Commerce (the "Department") published in the **Federal Register** the final results of the expedited sunset review of the antidumping duty order on internal combustion forklift trucks from Japan (64 FR 30962). On June 2, 2000, the Department published the notice of continuation of this order (65 FR 35323). Subsequent to the publication of these notices, we identified an inadvertent error in the "Scope" section of the notices. Therefore, we are correcting and clarifying these inadvertent errors.

The error lies in the first sentence of the scope section of each notice: "The merchandise subject to this antidumping duty order is internal combustion industrial forklift trucks, with a lifting capacity of 2,000 to 5,000 pounds, from Japan." This sentence should be replaced with: "The merchandise subject to this antidumping duty order is internal combustion industrial forklift trucks, with a lifting capacity of 2,000 to 15,000 pounds, from Japan."

EFFECTIVE DATE: April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230: telephone (202) 482–1930 and (202) 482–3330, respectively.

This correction is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16950 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–826]

Paper Clips From the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: paper clips from the People's Republic of China

SUMMARY: On December 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on paper clips from the People's Republic of China ("PRC") (64 FR 67247), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On December 1, 1999, the Department published the notice of initiation of sunset review of the antidumping duty order on paper clips from the PRC (64 FR 67247). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on April 6, 2000, the Department determined that the sunset review of the antidumping duty order on paper clips from the PRC is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than June 28, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by this order are certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (*e.g.*, copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products subject to this order may have rectangular or ring-like shape and include, but are not limited to, clips commercially referred to as No. 1 clips, No. 3 clips, Jumbo or Giant clips, Gem clips, Frictioned clips, Perfect Gems, Marcel Gems, Universal clips, Nifty clips, Peerless clips, Ring clips, and Glide-On clips.

Specifically excluded from the scope of this order are plastic and vinyl covered paper clips, butterfly clips, binder clips, or other paper fasteners that are not made wholly of wire of base metal and are covered under a separate subheading of the Harmonized Tariff Schedule of the United States ("HTSUS").

The products subject to this order are currently classifiable under subheading 8305.90.3010 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 28, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at ia.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Lansheng	57.64
Zhejiang Light	46.01
Zhejiang Machinery	60.70
PRC-wide	126.94

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: June 28, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16953 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 65 FR 18058 (April 6, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Final Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Pure Magnesium from Canada.

SUMMARY: On August 2, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on pure magnesium from Canada (64 FR 41915) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive comments filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On February 29, 2000, the Department published the preliminary results of the sunset review of the antidumping duty order on pure magnesium from Canada (65 FR 10768). In the preliminary results, the Department determined that it is likely that dumping of the subject merchandise would continue or recur if the order were revoked because imports of the subject merchandise decreased by more than 97 percent in the year following the issuance of the order. In addition, imports of pure magnesium from Canada have consistently remained at less than 10 percent of their pre-order levels. Therefore, consistent with section II.A.3 of the Department's Sunset Policy Bulletin, and with the Statement of Administrative Action at 889–90, and the House Report at 63 (H.R. Rep. No. 103–826, pt.1 (1994), at 63)), we preliminarily determined that although dumping was eliminated by Norsk Hydro Canada Inc. ("NHCI")(the only respondent participating in this sunset review) export volumes by NHCI have declined significantly since the issuance of the order.[1] As a result, we determined that Canadian imports of pure magnesium would likely continue or recur if the order were revoked at the weighted-average dumping margin assessed in the original investigation.

On April 19, 2000, we received a case brief on behalf of NHCI.[2] On April 20, 2000, we received rebuttal comments from Magnesium Corporation of America ("Magcorp") in response to NHCI's case brief.

Scope of Review

The merchandise subject to this antidumping duty order is pure magnesium from Canada. Pure magnesium is currently classifiable under item number 8104.11.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this review. Although the HTSUS subheading is provided for convenience and customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Canada." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on pure magnesium from Canada would be likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Manufacturer/Exporter	Margin (percent)
Norsk Hydro Canada Inc.	21.00
Timminco Limited	(1)
All Others	21.00

[1] Excluded.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act. This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

[1] On August 4, 1999, the Government of Quebec ("GOQ") entered an appearance in this sunset review as an interested party in accordance with 19 CFR 351.102(b). The GOQ also submitted application for access to business proprietary information under an administrative protection order and, pursuant to 19 CFR 351.305(b), the appropriate certification. However, the GOQ did not file any written comments.

[2] On April 10, 2000, NHCI submitted its case brief in response to the Department's preliminary determination. However, because NHCI's case brief contained new factual information, the Department removed NHCI's case brief from the record. The Department granted NHCI until close of business day ("COB"), Wednesday, April 19, 2000, to amend and re-file its case brief. Therefore, the new date for the filing of rebuttal briefs was COB, Thursday, April 20, 2000.

and the terms of an APO is a sanctionable violation.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16946 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") determines that structural steel beams from South Korea are being, or are likely to be, sold in the United States at less than fair value.

Based on our analysis of the comments received, we have made changes to our analysis. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita (Kangwon), Brandon Farlander (Inchon) or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4243, (202) 482–0182, or 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to provisions of the Tariff Act of 1930 ("the Act") as amended by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (April 1999).

Background

On February 11, 2000, the Department published in the **Federal Register** (65 FR 6984) the *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams from South Korea ("Preliminary Determination")*. We invited parties to comment on our preliminary determination. We verified Inchon's sales and cost questionnaire responses from March 6–18, 2000. We verified Kangwon's sales and cost questionnaire responses from March 6–10, 2000, and March 13–17, 2000, respectively. We verified Hyundai U.S.A., the U.S. affiliate of Inchon, on April 12–13, 2000. On May 4, 2000, we solicited further information from Inchon regarding the merger between Inchon and Kangwon. On May 17, 2000, we received case briefs from interested parties, and on May 22, 2000, we received rebuttal briefs. On June 1 and 2, 2000, we verified Inchon's information concerning the merger. On June 6, we issued our successorship verification report. On June 9, 2000, we received case briefs on successorship from Inchon and petitioners and, on June 14, 2000, we received rebuttal briefs on successorship from Inchon and petitioners. At the request of petitioners, we held a public hearing on June 16, 2000.

Scope of Investigation

The products covered by this investigation are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Use of Facts Available

For a discussion of our application of facts available, see the "Facts Available" section of the *Issues and Decision Memorandum for the Investigation of Structural Steel Beams from South Korea from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration* ("Decision Memo"), dated June 26, 2000, which is on file in the Central Records Unit, room B–099 of the main Department building, and on the Web at: *http://ia.ita.doc.gov/frn*.

Fair Value Comparisons

To determine whether sales of beams from South Korea to the United States were made at less than fair value, we compared the export price ("EP") and constructed export price ("CEP") to comparison market prices or CV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections below. Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in the company-specific calculation memoranda dated June 26, 2000, which have been placed in the file in Room B–099. For detailed discussions relating to the issues described below, *see* Decision Memo.

Export Price

For Kangwon's sales to all U.S. customers, and Inchon's direct sales and sales through Hyundai Corporation (Channels 2 and 3) to U.S. customers, we used EP as defined in section 772 of the Act. We calculated EP based on the same methodology described in the *Preliminary Determination*, with the following exceptions:

Inchon

a. Based on verification findings, we deducted bank charges and negotiation fees as a direct selling expense for all U.S. sales. *See* Decision Memo, Comment 31.

b. We disregarded all of Inchon's U.S. Channel 3 sales to a particular customer. *See* Decision Memo, Comment 11.

c. We applied additional expenses for all Inchon's U.S. sales to account for various additional movement fees, excluding U.S. marine insurance, incurred on certain U.S. sales. *See* Decision Memo, Comment 13.

d. We adjusted Hyundai Corporation's indirect selling expenses for U.S. sales. *See* Decision Memo, Comment 14.

e. We adjusted Inchon's reported packing expenses for all U.S. sales. *See* Decision Memo, Comment 19.

f. Based on verification findings with regard to U.S. marine insurance, because record evidence indicates that Inchon's expenses reported from affiliates were slightly lower, in terms of the dollar amount per metric ton, than from non-affiliates, we have applied, as facts available, the percentage difference between these two to reported U.S. marine insurance expenses for all U.S. sales. *See Final Analysis Memo: Inchon.*

Kangwon

a. Based on verification findings, we deducted bank charges/fees as a direct selling expense for all U.S. sales. *See* Decision Memo, Comment 31.

Constructed Export Price

As discussed in Comment 28 of the Decision Memo, we now determine that Inchon's sales through Hyundai U.S.A. are CEP sales. For Inchon's sales to U.S. customers via Hyundai U.S.A. (Channel 1), we used CEP as defined section 772 of the Act. We calculated CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign wharfage, international freight, marine insurance, U.S. warehousing expenses, U.S. loading expenses, U.S. custom duty, U.S. wharfage expenses and U.S. brokerage expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit expenses) and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Final Analysis Memo: Inchon.* Additionally, we made the following adjustments:

a. We applied additional expenses for all of Inchon's U.S. sales to account for various additional movement fees, excluding U.S. marine insurance, incurred on certain U.S. sales. *See* Decision Memo, Comment 13.

b. Based on verification findings, we deducted bank charges and negotiation fees as a direct selling expense for all U.S. sales. *See* Decision Memo, Comment 31.

c. We adjusted Hyundai Corporation's indirect selling expenses for U.S. sales. *See* Decision Memo, Comment 14.

d. We adjusted Inchon's reported packing expenses for all U.S. sales. *See* Decision Memo, Comment 19.

e. Based on our verification findings from the Hyundai U.S.A. verification, we are deducting U.S. brokerage expenses on a per invoice basis. *See Final Analysis Memo: Inchon.*

f. We deducted other discounts (which Inchon reported in its December 10, 1999, supplemental questionnaire response), where applicable, from the U.S. prices. *See Final Analysis Memo: Inchon.*

g. Based on verification findings with regard to U.S. marine insurance, because record evidence indicates that Inchon's expenses reported from affiliates were slightly lower, in terms of the dollar amount per metric ton, than from non-affiliates, we have applied, as facts available, the percentage difference between these two to reported U.S. marine insurance expenses for all U.S. sales. *See Final Analysis Memo: Inchon.*

Normal Value

We used the same methodology to calculate NV as that described in the *Preliminary Determination*, with the following exceptions:

1. Cost of Production Analysis

Inchon

a. We increased Inchon's direct materials costs to account for materials supplied by affiliated parties. *See* Decision Memo, Comment 1.

b. We revised Inchon's reported depreciation expenses to account for machinery and equipment supplied by affiliated parties. *See* Decision Memo, Comment 3.

c. We revised Inchon's reported repairs and maintenance expenses to account for services supplied by affiliated parties. *See* Decision Memo, Comment 4.

d. We revised Inchon's reported R&D expenses. *See* Decision Memo, Comment 6.

e. We revised Inchon's reported interest expenses. *See* Decision Memo, Comment 9.

Kangwon

a. We adjusted Kangwon's interest expense to account for the disallowance of the gain on debt restructure. *See* Decision Memo, Comment 26.

b. We recalculated the foreign exchange gains and losses included in the interest expense calculation by using Kangwon's historical method of amortizing these amounts over the life of the related debt.

c. We adjusted Kangwon's G&A expense rate computation for various miscellaneous income and expense items. *See* Decision Memo, Comment 27.

2. Calculation of NV Based on Comparison Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the comparison market that did not fail the cost test using the same methodology described in the *Preliminary Determination*, with the following exception: For Inchon, we revised the customer relationship for one customer to indicate its affiliation with Inchon. *See* Decision Memo, Comment 15.

3. Calculation of NV Based on Constructed Value

We calculated CV in the same way as in the *Preliminary Determination* with the same exceptions noted above for COP.

Level of Trade

We have made the same level of trade determinations described in the *Preliminary Determination.*

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination.*

Verification

As provided in section 782(i)(1) of the act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Decision Memo dated June 26, 2000, which is hereby adopted. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in Room B–099. In addition, a complete version of the Decision Memo can be accessed directly on the Web at

www.ita.doc.gov/import–admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(A) of the Act, we are directing the U.S. Customs Service ("Customs") to suspend liquidation of all imports of the subject merchandise from South Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP and CEP as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade (GATT 1994) provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented in section 772(c)(1)(C) of the Tariff Act. Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies there is no reason to require a cash deposit or bond for that amount. The Department has determined in its concurrent countervailing duty investigation for structural steel beams from Korea that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct the Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below, minus the amount determined to constitute an export subsidy. *See, e.g. Notice of Antidumping Duty Order: Stainless Steel Wire Rod From Italy*, 63 FR 49327 (September 15, 1998). Accordingly, for cash deposit purposes we are subtracting from Kangwon's cash deposit rate that portion of the rate attributable to the export subsidies found in the countervailing duty investigation involving Kangwon(*i.e.*, 0.09 percent). We have made the same adjustment to the "All Others" cash deposit rate by subtracting the rate attributable to export subsidies found in the countervailing duty investigation of Kangwon.

We will instruct the Customs Service to require a cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds the EP or CEP, adjusting for the export subsidy rate, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

[In percent]

Exporter/manufacturer	Weighted-average margin	Bonding/cash deposit rate
Inchon	25.51	25.51
Kangwon	49.73	49.64
All others	37.72	37.67

The rate for all other producers and exporters applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memo

I. Issues Specific to Inchon Iron & Steel Co., Ltd.

A. Cost of Production/Constructed Value Issues
- Comment 1: Applicant of Major Input Rule
- Comment 2: Application of Major Input Rule to Other Affiliated-Party Transactions
- Comment 3: Description
- Comment 4: Overhead
- Comment 5: SG&A Expenses
- Comment 6: R&D Expenses
- Comment 7: Interest Expense (Securities)
- Comment 8: Interest Expense (Sales-Related Activities)
- Comment 9: Loan Guarantees
- Comment 10: Affiliated-Party Services for an Input

B. Sales and General Issues
- Comment 11: Sales Price and Adjustments for U.S. Channel 3
- Comment 12: Billing Adjustments for U.S. Channel 2 sales
- Comment 13: U.S. Movement Expenses
- Comment 14: Recalculation of Home Market and U.S. Indirect Selling Expenses
- Comment 15: Home Market Sales to an Affiliated Customer
- Comment 16: Fees to a Home Market Customer
- Comment 17: Home Market Inland Freight
- Comment 18: Application of Total Adverse Facts Available
- Comment 19: Packing Expenses for U.S. Sales
- Comment 20: Clarification of Home Market and U.S. Verification Reports

II. Issues Specific to Kangwon Industries Ltd.

A. Sales and General Issues
- Comment 21: Commissions
- Comment 22: Duty Drawback
- Comment 23: Home Market Freight
- Comment 24: Corrections to Kangwon's Response
- Comment 25: Over- and Under-Reporting of Home Market Sales

B. Cost of Production/Constructed Value Issues
- Comment 26: Gain on Exemption of Debt
- Comment 27: G&A Expenses

III. Issues Applicable to Both Respondents
- Comment 28: EP vs. CEP Sales
- Comment 29: Cash Deposit Rate/Successorship
- Comment 30: Home Market Sales of ASTM-Grade Merchandise
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[FR Doc. 00–16952 Filed 7–3–00; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–621–802]

Uranium From Russia; Final Results of Full Sunset Review of Suspended Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: Uranium from Russia.

SUMMARY: On February 28, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty suspension agreement on uranium from Russia (65 FR 10473) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of the antidumping duty suspension agreement would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*Sunset Regulations*) and in CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Background

On February 28, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the suspended antidumping duty investigation on uranium from Russia (65 FR 10473) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that termination of the agreement suspending the antidumping duty investigation would likely result in continuation or recurrence of dumping at a weighted-average margin of 115.82 percent for all producers/exporters of uranium from Russia.

On March 15, 2000, we received a request from the Ministry of the Russian Federation for Atomic Energy ("Minatom"), AO Technsnabexport ("Tenex"), and Globe Nuclear Services and Supply GNSS, Limited ("GNSS") (collectively, "respondent interested parties") for an extension of time for filing rebuttal comments to case briefs until April 17, 2000. The Department agreed to extend the deadline to April 17, 2000.[1]

On March 29, 2000, the Ad Hoc Committee of Domestic Uranium Producers (the "Ad Hoc Committee"), including Rio Algom Mining Corporation ("Rio Algom") and Uranium Resources Inc. ("URI"), and USEC, Inc., and its subsidiary, United States Enrichment Corporation (together, "USEC"), each requested a hearing in this review.

On April 10, 2000, we received a case brief on behalf of the Ad Hoc Committee and USEC. We also received a case brief on behalf of the Ad Hoc Utilities Group ("AHUG"),[2] and respondent interested parties.

On April 14, 2000, the Ad Hoc Committee formally withdrew its March 29, 2000, request for a hearing in this review. On April 18, 2000, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from the Ad Hoc Committee, USEC, AHUG, and respondent interested parties. In its rebuttal, USEC also withdrew its March 29, 2000, request for a hearing. Therefore, the Department canceled the public hearing. We have addressed the comments received below.

Scope of Review

According to the June 3, 1992, preliminary determination, the suspended investigation encompassed one class or kind of merchandise.[3] The merchandise included natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in U^{235} and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U^{235} or compounds or uranium enriched in U^{235}; and any other forms of uranium within the same class or kind. The uranium subject to these investigations was provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States ("HTSUS").[4] In addition, the Department preliminarily determined that highly-enriched uranium ("HEU") is not within the scope of the investigation.

On October 30, 1992, the Department issued a suspension of the antidumping duty investigation of uranium from Russia and an amendment of the preliminary determination.[5] The notice amended the scope of the investigation to include HEU.[6] The merchandise covered by the agreement suspending the antidumping investigation on uranium from the Russian Federation included natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in U^{235} and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U^{235} or compounds or uranium enriched in U^{235}; and any other forms of uranium within the same class or kind.

In addition, Section III of the suspension agreement provides that uranium ore from Russia that is milled into U_3O_8 and/or converted into UF_6 in

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[1] *See* Letter from Jeffrey A. May, Director, Office of Policy, to Mark D. Herlach, Sutherland, Asbill & Brennan, granting an extension for time for filing rebuttal comments to the case briefs.

[2] AHUG consists of industrial users Ameren UE, Baltimore Gas and Electric Co., Carolina Power and Light Co., Commonwealth Edison Co., Consumers Energy, Duke Power Co., Entergy Services, Ins., FirstEnergy Nuclear Operating Co., Florida Power and Light Co., Northern States Power Co., PECO Energy Co., Southern Nuclear Operating Co., Texas Utilities Electric Co., and Virginia Power.

[3] The Department based its analysis of the comments on class or kind submitted during the proceeding and determined that the product under investigation constitutes a single class or kind of merchandise. The Department based its analysis on the "Diversified" criteria (*see Diversified Products Corp.* v. *United States*, 6 CIT 1555 (1983)) and case precedent) (57 FR 23380, 23382, June 3, 1992).

[4] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23381 (June 3, 1992).

[5] *See Antidumping; Uranium from Kazakhstan, Kyrgyszstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992).

[6] Id. at 49235.

another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of the Russian agreement, regardless of any subsequent modification or blending.[7] Uranium enriched in U^{235} in another country prior to direct and/or indirect importation into the United States is not considered uranium from the Russian Federation and is not subject to the terms of the Russian agreement.

Under the terms of suspension agreement HEU is within the scope of this investigation, and HEU is covered by this Russian suspension agreement. (HEU means uranium enriched to 20 percent or greater in the isotope uranium-235.) Imports of uranium ores and concentrates, natural uranium compounds, and all other forms of enriched uranium were classifiable under HTSUS subheadings 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds were classifiable under HTSUS subheadings 2844.10.10 and 2844.10.50. *Id.*

In addition, Section M.1 of the Russian suspension agreement in no way prevents the Russian Federation from selling directly or indirectly any or all of the HEU in existence at the time of the signing of the agreement and/or LEU produced in Russia from HEU to the Department of Energy ("DOE"), its governmental successor, its contractors, assigns, or U.S. private parties acting in association with DOE or the USEC and in a manner not inconsistent with the Agreement between the United States of America and the Russian Federation concerning the disposition of HEU resulting from the dismantlement of nuclear weapons in Russia.

There were three amendments to the Agreement suspending the antidumping duty investigation on Russian uranium. In particular, the second amendment to the Russian suspension agreement, on November 4, 1996, permitted, among other things, the sale in the United States of Russian low-enriched uranium ("LEU") derived from HEU and included within the scope of the suspension agreement Russian uranium which has been enriched in a third country prior to importation into the United States.[8] According to the amendment, these modifications would remain in effect until October 3, 1998.[9]

[7] *Id.* at 49235.

[8] *See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996).

[9] *Id.* 61 FR at 56667.

On August 6, 1999, USEC, Inc. and its subsidiary, United States Enrichment Corporation (collectively, "USEC") requested that the Department issue a scope ruling to clarify that enriched uranium located in Kazakstan at the time of the dissolution of the Soviet Union is within the scope of the Russian suspension agreement. Respondent interested parties filed an opposition to the scope request on August 27, 1999. That scope request is pending before the Department at this time.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the suspension investigation terminated. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Russia." The paper copy and electronic version of the memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty suspension agreement on uranium from Russia would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

Manufacturer/exporters	Margin (percent)
All Russian manufacturers/exporters	115.82

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16948 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–844–802]

Uranium From Uzbekistan; Final Results of Full Sunset Review of Suspended Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: Uranium from Uzbekistan.

SUMMARY: On February 28, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty suspension agreement on uranium from Uzbekistan (65 FR 10471) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of the antidumping duty suspension agreement would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the

conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On February 28, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty investigation on uranium from Uzbekistan (65 FR 10471) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that termination of the agreement suspending the antidumping duty investigation would likely result in continuation or recurrence of dumping at a weighted-average margin of 115.82 percent for all producers/exporters from Uzbekistan.

On March 24, 2000, we received a request from Navoi Mining and Metallurgical Combinat ("Navoi") and the Government of Uzbekistan ("GOU") (together, "respondent interested parties") for an extension of time for filing rebuttal comments to case briefs until April 18, 2000. The Department agreed to extend the deadline to April 18, 2000.[1]

On March 29, 2000, the Ad Hoc Committee of Domestic Uranium Producers (the "Ad Hoc Committee"), requested a hearing in this review. On April 14, 2000, the Ad Hoc Committee formally withdrew its March 29, 2000, request for a hearing in this review; therefore, the Department canceled the public hearing.

On April 10, 2000, we received case briefs on behalf of the Ad Hoc Committee, the Ad Hoc Utilities Group ("AHUG"),[2] and respondent interested parties. On April 18, 2000, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from the Ad Hoc Committee and respondent interested parties.

Scope of Review

According to the June 3, 1992, preliminary determination the suspended investigation included natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in U^{235} and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U^{235} or compounds or uranium enriched in U^{235}; and any other forms of uranium within the same class or kind. The uranium subject to these investigations was provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States ("HTSUS").[3] In addition, the Department preliminarily determined that highly-enriched uranium ("HEU") was not covered within the scope of the investigation, and that the subject merchandise constituted a single class or kind of merchandise.

On October 30, 1992, the Department issued a suspension of the antidumping duty investigation of uranium from Uzbekistan and an amendment of the preliminary determination.[4] The notice amended the scope of the investigation to include HEU.[5] The suspension agreement provided that uranium ore from Uzbekistan that is milled into U3O8 and/or converted into UF6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Uzbekistan and is subject to the terms of the Agreement.[6] Further, uranium enriched in U^{235} in another country prior to direct and/or indirect importation into the United States was not considered uranium from Uzbekistan and was not subject to the terms of the suspension agreement.[7] In this suspension agreement, imports of uranium ores and concentrates, natural uranium compounds, and all forms of enriched uranium are classifiable under HTSUS subheadings 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds were classifiable under HTSUS subheadings 2844.10.10 and 2844.44.10.50.

On October 13, 1995, the Department issued an amendment to the suspension agreement on uranium from Uzbekistan. Among other things, this amendment modifies the agreement to include Uzbek uranium enriched in a third country prior to importation into the United States.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the suspension investigation terminated. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import admin/records/frn/, under the heading "Uzbekistan." The paper copy and electronic version of the memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty suspension agreement on uranium from Uzbekistan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

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[1] *See* April 4, 2000, Letter from Jeffrey A. May, Director, Office of Policy, to Carolyn B. Lamm, granting an extension for time for filing rebuttal comments to the case briefs.

[2] AHUG consists of U.S. industrial users Ameren UE, Baltimore Gas and Electric Co., Carolina Power and Light Co., Commonwealth Edison Co., Consumers Energy, Duke Power Co., Entergy Services, Ins., FirstEnergy Nuclear Operating Co., Florida Power and Light Co., Northern States Power Co., PECO Energy Co., Southern Nuclear Operating Co., Texas Utilities Electric Co., and Virginia Power.

[3] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23381, 23382 (June 3, 1992).

[4] *See Antidumping; Uranium from Kazakhstan, Kyrgyszstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992).

[5] *Id.* at 49221.

[6] *Id.* at 49255.

[7] *Id.*

Producers/Exporters	Margin percent
All Uzbek Producer/Exporters	115.82

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16949 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period January 1, 2000 through March 31, 2000. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Russell Morris, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period January 1, 2000 through March 31, 2000.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

APPENDIX.—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] Subsidy ($/lb)	Net [2] Subsidy ($/lb)
Austria	European Union Restitution Payments	$0.17	$0.17
Belgium	EU Restitution Payments	0.06	0.06
Canada	Export Assistance on Certain Types of Cheese	0.24	0.24
Denmark	EU Restitution Payments	0.11	0.11
Finland	EU Restitution Payments	0.23	0.23
France	EU Restitution Payments	0.13	0.13
Germany	EU Restitution Payments	0.17	0.17
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.14	0.14
Italy	EU Restitution Payments	0.13	0.13
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.10	0.10
Norway	Indirect (Milk) Subsidy	0.31	0.31
	Consumer Subsidy	0.14	0.14
Total		0.45	0.45
Portugal	EU Restitution Payments	0.10	0.10
Spain	EU Restitution Payments	0.09	0.09
Switzerland	Deficiency Payments	0.12	0.12
U.K.	EU Restitution Payments	0.11	0.11

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 00–16956 Filed 7–3–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815 (alloy), C–122–815 (pure)]

Pure Magnesium and Alloy Magnesium From Canada; Final Results of Full Sunset Reviews Reviews of Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset reviews: Pure magnesium and alloy magnesium from Canada.

SUMMARY: On February 29, 2000, the Department of Commerce ("the Department") published in the **Federal Register** (65 FR 10766) the preliminary results of the full sunset review of the countervailing duty orders on pure magnesium and alloy magnesium from Canada, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results and received comments filed on behalf of domestic and respondent interested parties. As a result of this review, the Department finds that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, NW., Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

EFFECTIVE DATE: July 5, 2000.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Scope

The products covered by these orders are pure magnesium and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. The merchandise is currently classifiable under items 8104.11.0000 and 8104.19.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope remains dispositive. Secondary and granular magnesium are not included in the scope of these orders.

Background

On February 29, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the countervailing duty orders on pure magnesium and alloy magnesium (65 FR 10766) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that revocation of the orders would likely result in continuation or recurrence of a countervailable subsidy. In addition, we preliminarily determined the net countervailable subsidy likely to prevail if the orders were revoked to be 1.84 percent *ad valorem* for Norsk Hydro Canada Inc. ("NHCI") and 4.48 percent *ad valorem* for "all others."

On April 14, 2000, within the deadline specified in 19 CFR 351.209(c)(1)(i), we received a case brief on behalf of the Magnesium Corporation of America ("Magcorp") and respondent interested parties, NHCI and the Government of Quebec ("GOQ"). On April 24, 2000, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from Magcorp and the GOQ. On March 17, 2000, we received a request for a hearing on behalf of the GOQ. Subsequently, on April 28, 2000, the GOQ withdrew its request and the Department canceled the hearing.

We note that the Department issued the preliminary results of countervailing duty administrative reviews covering the period January 1, 1998 through December 31, 1998 on May 4, 2000 (65 FR 25910).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of countervailable subsidies and the net countervailable subsidy likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Canada." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturer/Exporter	Margin (percent)
Norsk Hydro Canada Inc. ("Norsk")	1.84
All Others	4.48

Timminco, which was found to have an estimated net subsidy of zero in the original investigations, remains excluded from the orders.[1]

The program included in our calculation of the net countervailable subsidy likely to prevail if the orders were revoked does not fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

This notice serves as the only reminder to parties subject to

[1] *See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992).

administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16947 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062900A]

Northeast Region Sea Scallop Exemption Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 5, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David M. Gouveia, NMFS, 1 Blackburn Drive, Gloucester, MA 01930 (978–281–9280).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) has established a Sea Scallop Exemption Program (SEP) in the northeast region of the U.S. The SEP allows sea scallop fishermen to fish within certain areas closed to the northeast multispecies fishery. NMFS requires reporting by participants to allow it to enforce regulations and manage the fishery. The Office of Management and Budget (OMB) gave emergency Paperwork Reduction Act clearance to these reporting requirements on June 13, 2000. This Notice solicits public comment on a proposed request to OMB for regular clearance for these requirements. It also solicits comment on a proposal to expand the nature of the requirements. The approval obtained from OMB was limited to specifically identified exemption areas. NMFS proposes to request clearance for these requirements to apply to any other exemption areas that may be named.

The requirements currently approved are: (1) vessels not already equipment with a Vessel Monitoring System (VMS) must install one to allow NMFS to monitor the location of the vessel; (2) vessels installing a new VMS must submit verification of that installation; (3) vessels intending to participate in the SEP must notify NMFS of that intent no later than 15 days prior to the scheduled opening of an exemption area; (4) vessels participating must notify NMFS at least 5 days prior to departing on a trip to an exemption area in order to allow possible assignment of observers; (5) vessels on a trip to an exemption area must provide daily reporting via their VMS unit on their catch and related information; and (6) the VMS unit on vessels on a fishing trip to an exemption area must provide automatic position information twice each hour.

II. Method of Collection

The verification requirement of VMS installation is made by submission of a paper document. Notification requirements and all VMS reporting is done electronically via the VMS unit.

III. Data

OMB Number: 0648–0416.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations; individuals.

Estimated Number of Respondents: 267.

Estimated Time Per Response: 1 hour for an installation of a VMS unit, 5 minutes for a verification of installation of the VMS unit, 2 minutes for a notification of intent to participate or to leave on a fishing trip, and 30 seconds per day for an automated VMS position reports.

Estimated Total Annual Burden Hours: 4,673.

Estimated Total Annual Cost to Public: $195,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 27, 2000.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 00–16941 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062700E]

Draft International Plan of Action To Address Illegal, Unregulated and Unreported Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; public meeting; request for comments.

SUMMARY: The United States, through a collaborative effort of NMFS, the Department of State, the Office of the United States Trade Representative, the Coast Guard, and the United States Customs Service announces the availability of a draft International Plan of Action to address Illegal, Unregulated and Unreported Fishing (IPOA-IUU).

The United States, through NMFS, also announces a public meeting to receive comments from members of the public on the draft IPOA-IUU. To accommodate individuals unable to attend a meeting or wishing, alternatively or in addition, to provide written comments, NMFS solicits written comments on the draft IPOA-IUU.

DATES: A public meeting on the draft IPOA-IUU will be held at 3 p.m. on Thursday, August 3, 2000. Submit comments on the IPOA-IUU to the appropriate address or fax number by 5 p.m., August 1, 2000.

ADDRESSES: The public meeting will be held at NOAA-NMFS Headquarters, 1315 East-West Highway, SSMC, Room 12836, Silver Spring, MD, 20910. Comments on the draft IPOA-IUU may be sent to Robin Tuttle, NOAA-NMFS, Office of Science and Technology, 1315 East-West Highway, Silver Spring, MD 20910, or by fax to 301–713–4057. Comments will not be accepted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle, 301–713–2282, extension 199, or fax 301–713–4057.

SUPPLEMENTARY INFORMATION: The United States, through a collaborative effort of NMFS, the Department of State, the Office of the United States Trade Representative, the Coast Guard, and the United States Customs Service is developing the U.S. position on a voluntary IPOA-IUU elaborated by an Experts Consultation organized by the Government of Australia in cooperation with the Food and Agriculture Organization of the United Nations (FAO). The draft IPOA-IUU will be further considered by a Technical Consultation open to all member countries of the FAO, October 2–6, 2000 at FAO headquarters in Rome.

The draft IPOA-IUU is available on the FAO website at www:fao.org by clicking on "Fisheries," "Meetings," "Expert Consultation on Illegal, Unregulated and Unreported Fishing, Sydney, Australia, May 15–19, 2000" and "Documents" in succession, or by contacting Robin Tuttle (see **FOR FURTHER INFORMATION CONTACT**).

Special Accommodations

The public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aides should be directed to Robin Tuttle at least seven days before the meeting. NMFS will be able to accommodate a limited number of teleconference participants. Requests should be directed to Robin Tuttle by July 31, 2000, (see **FOR FURTHER INFORMATION CONTACT**).

Dated: June 28, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16937 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062800B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a meeting of its Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA) Committee in July, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, July 18, 2000, at 9:00 a.m.

ADDRESSES: The meeting will be held at offices of the Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, RI; telephone: (401)222–6605.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will meet to develop comments on the 2000 reauthorization of the M-SFCMA.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: June 29, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16936 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long and short-range strategies for research, education, and application of science to resource management. SAB activities and advice will provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

DATES: The meeting will be held Wednesday, July 19, 2000, from 8 a.m. to 5:30 p.m., Thursday, July 20, 2000, from 8 a.m. to 4:30 p.m., and Friday, July 21, 2000, from 8 a.m. to 3:30 p.m.

ADDRESSES: On July 19 and 21, the meeting will be held at the Westmark Hotel, 813 Noble Street, Fairbanks, AK. On Thursday, July 20, 2000, the meeting will be held at the International Arctic Research Center (IARC), University of Alaska Fairbanks, Fairbanks, AK.

Status: The meeting will be open to public participation with two 30-minute time periods set aside during the meeting for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35

copies) should be received in the SAB Executive Director's Office by July 5, 2000, in order to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after July 5 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) Overview of NOAA's Alaskan, Arctic and Northern Pacific Region Science and Research programs, (2) NOAA's involvement in the National Oceanographic Partnership Program, (3) Discussion of the SAB Report for the next NOAA Administrator, (4) Public Input Session with SAB discussion, (5) Presentation and SAB discussion of the proposal for Lab and Joint Institute Reviews, (6) SAB Sub-Committee and Working Group Reports, (7) SAB debriefing of NOAA response to SAB commendations on Northwest Salmon, (8) Presentations of University of Alaska Fairbanks Cooperative Institute for Arctic Research (CIFAR) major NOAA activities and research programs.

FOR FURTHER INFORMATION CONTACT: Dr. Michael S. Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910 (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: *Michael.Uhart@noaa.gov);* or visit the NOAA SAB website at www.sab.noaa.gov.

Dated: June 28, 2000.

Louisa Koch,

Deputy Assistant Administrator, OAR.

[FR Doc. 00–16943 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060800C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of photography permit no. 963–1535.

SUMMARY: Notice is hereby given that Wild Things Photography, P.O. Box 34517, 4474 Julep Street, Juneau, Alaska 99803, has been issued a permit to take by Level B harassment one species, harbor seal (*Phoca vitulina*), of non-threatened, non-endangered marine mammals for purposes of commercial photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, 709 W. 9th Street, Federal Building Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7235).

SUPPLEMENTARY INFORMATION: On November 23, 1999, notice was published in the **Federal Register** (64 FR 65687) that the above-named applicant had submitted a request for a permit to take one species of marine mammals by Level B harassment during the course of commercial photographic activities in Glacier Bay National Park, Alaska. The requested permit has been issued, under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: June 27, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–16935 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062700C]

Marine Mammals; File No. 782–1438 and P77–4#2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendments.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE, Seattle, Washington 98115–0070 has been issued an amendment to scientific research Permit No. 782–1438; and that the Northeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water Street, Woods Hole, MA 02546–1026 has been issued an amendment to scientific research Permit No. 917 (File No. P77–4#2).

ADDRESSES: The amendments and related documents are available for review upon written request or by appointment in the following office(s):

File Nos. 782–1438 and P77–4#2: Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

File No. 782–1438: Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001);

File No. 782–1438: Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802 (907/586–7235);

File No. P77–4#2 (Permit No. 917): Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 4, 2000, notice was published in the **Federal Register** (65 FR 25912) that an amendment of Permit No. 782–1438, issued on May 8, 1998 (63 FR 27265) and of Permit No. 917 (File No. P77–4#2), issued on May 11, 1994 (59 FR 25892), as amended on April 16, 1999 (64 FR 6326), had been requested by the above-named institutions. The requested amendments have been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 782–1438 authorizes the National Marine Mammal Laboratory to take various large and small cetacean species through photographic aerial surveys (Project I), biopsy sampling and photo-id (Project II), small cetacean species and pinnipeds through vessel surveys (Project III) and gray whales through biopsy sampling, tagging, photo-id and harassment (Project IV).

The amendment now authorizes the National Marine Mammal Laboratory to satellite-tag, flipper tag, VHF radio/time depth recorder(TDR) suction cup-tag and biopsy sample beluga whales (*Delphinapterus leucas*) in Alaskan waters.

Permit No. 917 (File No. P77–4#2) authorizes the Northeast Fisheries Science Center (NMFS) to conduct three projects: 1) aerial and boat surveys, biopsy sampling and photo-identification of various cetacean species during stock assessment research; 2) capture, sample, tag and release pinnipeds during pinniped stock assessment research; and 3) collection of samples from animals of the Orders Cetacea and Pinnipedia [except walrus] for deposit into a scientific collection for research.

The amendment now authorizes the Northeast Fisheries Science Center to extend the permit to December 31, 2000.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 28, 2000.

Ann Terbush,

Chief, Permits Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–16938 Filed 7–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., App. 2), announcement is made of the following Committee meeting:

Name of Committee: Reserve Officer's Training Corps (ROTC) Program Subcommittee.

Date of Meeting: 11–13 July 2000.

Place: Sheraton Inn, Tacoma, Washington.

Time: 0800–1700 hours, 11 July; 0800–1200 hours 13 July.

Proposed Agenda: Review and discuss status of Army ROTC since the February 2000 meeting held at the Pentagon, Washington, DC.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee. For further information contact: Commander, HQ U.S. Army Cadet Command, ATTN: ATCC–TT (MAJ Hewitt), Fort Monroe, VA 23651 (757) 728–5456.

John W. Corbett,

Colonel, GS, Chief of Staff.

[FR Doc. 00–17010 Filed 7–3–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

[CFDA No. 84.347]

Community Scholarship Mobilization Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000 Under the Community Scholarship Mobilization Program

Purpose of Program: The Community Scholarship Mobilization Program is designed to establish and support regional, State, or community program centers, and to enable such centers to foster the development of local entities in high poverty areas that promote higher education goals for students from low-income families by:

(1) Providing academic support, including guidance, counseling, mentoring, tutoring, and recognition; and (2) Providing scholarship assistance for the cost of postsecondary education.

Eligible Applicants: National organizations as defined in the statute. A National organization may receive funds on a competitive basis to enable it to support the establishment or ongoing work of regional, State or community program centers. These centers foster the development of local entities in high poverty areas to improve secondary school graduation rates and postsecondary attendance through the provision of academic support services, including guidance, counseling, mentoring, tutoring, and recognition, and scholarship assistance for the cost of postsecondary education.

Applications Available: July 10, 2000.

Deadline for Transmittal of Applications: August 16, 2000.

Deadline for Intergovernmental Review: September 15, 2000.

Estimated Available Funds: The amount referenced below is advisory and represents the Department's best estimate at this time. This will be the first year for the program. The estimated FY 2000 average size of an award will be $990,000.

Estimated Range of Awards: Up to $990,000.

Estimated Size of Awards: Up to $990,000.

Estimated Number of Awards: 1 or more.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: Regulations applicable to this program are the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 97, 98, 99 and the Higher Education Amendments of 1998, Title VIII, Part C. That statute defines several key terms used in this notice.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria under 34 CFR 75.210 of EDGAR. The Secretary informs applicants in the application package of the selection criteria and factors, if any, to be used for this competition and of the maximum weight assigned to each criterion.

For Further Information or Applications Contact: Ms. Marion Steward, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW, 6th Floor, Washington, DC 20006–8517. Telephone: (202) 502–7594. The e-mail address for Ms. Steward is:_Marion_Steward@ed.gov.

We encourage applicants to send facsimile requests for applications to (202) 502–7861.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: Pub. L. 105–244, the Higher Education Amendments of 1998, Title VIII, Part C.

Dated: June 29, 2000.

Claudio Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–16906 Filed 7–3–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[Docket No. EA–225]

Application To Export Electric Energy; Split Rock Energy LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Split Rock Energy LLC (Split Rock) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 4, 2000.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 5, 2000, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Split Rock to transmit electric energy from the United States to Canada. Split Rock is a Minnesota limited liability company jointly owned by Minnesota Power, Inc. and Great River Energy, a public power cooperative. Split Rock, a power marketer, intends to export energy produced by Minnesota Power Inc. or purchased from electric utilities and other suppliers in the United States.

Split Rock proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Split Rock, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Split Rock application to export electric energy to Canada should be clearly marked with Docket EA–225. Additional copies are to be filed directly with Steven W. Tyacke, Esq., Split Rock Energy LLC, 30 West Superior Street, Duluth, MN 55802.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC., on June 27, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–16807 Filed 7–3–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

[Docket No. EA–185–A]

Application To Export Electric Energy; Morgan Stanley Capital Group Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Morgan Stanley Capital Group Inc. (Morgan Stanley) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 4, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586-4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: On August 21, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Morgan Stanley to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Company, Minnesota Power, Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That two-year authorization will expire on August 21, 2000. On June 21, 2000, Morgan Stanley filed an application with FE for renewal of this export authority, requested that the Order be issued for an additional five-year term, and also requested that the international transmission facilities of Long Sault be added to the list of authorized export points.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the

FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Morgan Stanley request to export to Canada should be clearly marked with Docket EA–185–A. Additional copies are to be filed directly with William H. Penniman, Esq., Danel E. Frank, Esq. Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415 and William F. McCoy, Esq., Principal and Counsel, Morgan Stanley & Co. Incorporated, 1221 Avenue of the Americas, 27th Floor, New York, NY 10020.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–185. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–185 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on June 28, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–16930 Filed 7–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Condon Wind Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: BPA intends to prepare an EIS on a proposed Condon Wind Project, located northwest of the town of Condon in Gilliam County, Oregon. SeaWest WindPower, Inc. (SeaWest) proposes to construct and operate the 24.3 to 24.75 megawatt (MW) wind generation facility. BPA proposes to purchase the electrical output from the project and to provide transmission services. The EIS will be site-specific as to the potential environmental impacts of the construction and operation of the wind project itself, as well as all related transmission facilities. In addition, the EIS will take a broad programmatic look at the balance of the project study area. This action may involve wetlands located in Gilliam County, Oregon. In accordance with DOE regulations for compliance with wetlands environmental review requirements, BPA will prepare a wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected wetlands. The assessment will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

DATES: BPA has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. Written comments are due to the address below no later than August 7, 2000. Comments may also be made at the EIS scoping meetings to be held on July 19 and 20, 2000.

ADDRESSES: BPA invites comments and suggestions on the proposed scope of the Draft EIS. Send comment letters and requests to be placed on the project mailing list to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. The phone number of the Communications office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland. Comments may also be sent to the BPA Internet address: comment@bpa.gov.

The EIS scoping meetings will be held at the City of Arlington Municipal Building, Council Chambers, Locust and First Streets, Arlington, Oregon, on July 19, 2000, from 4 p.m. to 8 p.m.; and at the Gilliam County Courthouse, Circuit Court Room, 221 S. Oregon Street, Condon, Oregon, on July 20, 2000, from 4 p.m. to 8 p.m. At these informal meetings, SeaWest will provide information, including maps, about the wind project. Written information will be available, and BPA staff will answer questions and accept oral and written comments.

FOR FURTHER INFORMATION CONTACT: Tiffany B. B. Branum, KECP–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–5115, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION:

Background

Restructuring in the electric utility industry has resulted in increased demand for energy produced by new renewable resources. Part of this demand is due to the increased ability consumers have to choose their power provider. Some of these consumers want to encourage the development of renewable energy resources, and want their power provider to give them options for doing this. Some Northwest states (such as Oregon) have passed laws that require utilities to offer their customers a power rate that includes significant new renewable energy resources. In other cases, individual utilities have chosen to dedicate a portion of their wholesale power purchases to new renewable resources and are relying on BPA to supply them. In addition, the Northwest Power Planning Council's Fourth Conservation and Electric Power Plan recommends that Northwest utilities offer green power purchase opportunities as a way to help the region integrate renewable resources into the power system in the future.

Purpose and Need

In the face of regional growth in electrical loads and increasing constraints on the existing energy resource base, BPA needs to acquire resources that will contribute to diversification of the long-term power supply prospects in the region. The purposes of acquiring a diverse resource portfolio include:

- Protecting BPA and its customers against risk;
- Assuring consistency with BPA's responsibility under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) to encourage the development of renewable energy resources;
- Meeting customer demand for energy from renewable energy resources, thereby assuring consistency with BPA's Business Plan EIS (DOE/EIS–0183, June 1995) and Business Plan Record of Decision (ROD);
- Assuring consistency with the resource acquisition strategy of BPA's

Resource Programs EIS (DOE/EIS–0162, February 1993) and ROD; and

• Meeting the objective in the January 2000 Strategic Plan of BPA's Power Business Line to acquire at least 150 average MW of new renewable resources by the end of fiscal year 2006 in order to meet customer demand for new renewable resources.

Proposed Action

BPA proposes to execute one or more power purchase and transmission services agreements to acquire and transmit up to the full electrical output of SeaWest's proposed Condon Wind Project. SeaWest proposes to construct and operate this 24.3 to 24.75 MW wind generation facility, located in southern Gilliam County, Oregon, northwest of the town of Condon. The proposed project site consists of relatively flat plateaus located in an area of rolling, arid hills bisected by canyons. Land uses within the project site consist of non-irrigated agriculture—winter wheat and cattle grazing. The project will be located entirely on private farmland, and no project facilities will be constructed upon lands owned by the State of Oregon or by the United States.

The approximately 26 to 41 turbines will be arranged in several "strings," with generally between 250 to 425 feet between turbines in each string. SeaWest is considering using either 600-kilowatt (kW) turbines similar to those used at the existing Foote Creek Rim Wind Project in Wyoming, or larger, up to 950-kW turbines. If the 600-kW turbines are used, the turbines will be about 165 to 197 feet tall at the turbine hub, and about 236 to 276 feet tall including the turbine blades. The diameter of the "swept area" covered by the rotors will be about 144 to 158 feet. Each turbine will be mounted on a tubular steel tower installed on a reinforced concrete foundation. Foundations will be either tubular or pad foundations, ranging from approximately 15 to 20 feet in width and extending up to 25 to 30 feet underground. If the 750-kW, 900-kW, or 950-kW turbines are used, or an alternative foundation design is utilized, these dimensions may be slightly greater. Agricultural activities generally can continue to take place directly adjacent to the turbine pads.

Power from all turbines in the project will be collected by an underground and overhead cable loop and then fed underground to a proposed substation to be located at the project site. The fenced substation site will occupy approximately one to two acres. From the substation site, power from the project will be transmitted by approximately two to five miles of new above-ground lines (likely single-pole wood structures) to interconnect with the existing BPA De Moss-Condon 69-kilovolt (kV) transmission line. Other facilities required as part of the project are access roads, an operation and maintenance (O&M) building, and onsite storage. Most of the access roads will consist of improved, graveled, existing farm roads, with some construction of new graveled roads in areas where usable farm roads do not exist. The O&M building will be on or near the project site. SeaWest proposes to begin construction in mid to late 2001. The Condon Wind Project is scheduled to begin commercial operation late in 2001, and would operate for at least 20 years.

Process to Date

Some environmental analyses have already been conducted by SeaWest. Surveys for sensitive plant and wildlife species were initiated in the spring of 2000. Scoping will help identify what additional studies will be required.

Alternatives Proposed for Consideration

The alternatives include the proposed action (executing a power purchase agreement with SeaWest for up to 24.75 MW of electrical energy from the proposed Condon Wind Project and authorizing transmission over BPA power lines) and the No Action alternative. In addition, at least two transmission alternatives will be examined in the EIS.

Identification of Environmental Issues

For other wind projects, noise, visual impact, influence on cultural resources, and effects on sensitive plant and animal species have been identified as potential environmental issues. The scoping process will help identify the range of environmental issues that should be addressed in this EIS. Maps and further information are available from BPA at the address above. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public comment meetings for the Draft EIS. BPA will consider and respond to comments received on the Draft EIS in the Final EIS, expected to be published in mid to late 2001. BPA's subsequent decision will be documented in a Record of Decision. The EIS will satisfy the requirements of NEPA.

Issued in Portland, Oregon, on June 27, 2000.

Judith A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 00–16929 Filed 7–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–98–001]

Commonwealth Edison Company; Notice of Filing

June 28, 2000.

Take notice that on June 20, 2000, Commonwealth Edison Company (ComEd) tendered for filing an amendment to the application it filed in this proceeding on May 31, 2000.

ComEd states that it has, by mail, served a copy of the amendment on the Illinois Commerce Commission and on other identified entities.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 11, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–16840 Filed 7–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2566–001

New England Power Company, Massachusetts Electric Company and The Narragansett Electric Company; Notice of Filing

June 28, 2000.

Take notice that on June 27, 2000, New England Power Company, Massachusetts Electric Company and The Narragansett Electric Company submit for filing an amendment to their May 19, 2000 filing in this docket. The amendment consists of a revised Attachment E to the May 19 filing deleting a reference to Eastern Edison Company, Rate Schedule No. 58 in the Notice of Succession for Massachusetts Electric Company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 10, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for asssistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–16841 Filed 7–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–395–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

June 28, 2000.

Take notice that on June 21, 2000, Transcontinental Gas Pipe Line Corporation (Transco), Post Office box 1396, Houston, Texas 77251, filed in Docket No. CP00–395–000 a request pursuant to Sections 157.205 and 157.208 of the Commission's Regulations (18 CFR 157.205 and 157.208) under the Natural Gas Act (NGA) for authorization to modify all of its existing reciprocating engines at Compressor Station No. 40 in Hardin County, Texas under Transco's blanket certificate issued in Docket No. CP82–426–000, *et al.* pursuant to section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Transco requests authorization to install turbochargers and associated equipment on all 6 of the reciprocating engines in order to reduce NO_X emissions and to comply with the State of Texas plan to implement the Clean Air Act Amendments of 1990. Transco states that the facilities will be used to reduce emissions by achieving a true lean air-fuel ratio, inject high pressure fuel directly into the power cylinders and make other engine adjustments. Transco also indicates that the true lean air-fuel ratio coupled with the high pressure fuel injection works by promoting stable combustion characteristics and thus reduces the formation of NO_X. Transco further states that the injection of high pressure fuel directly into the power cylinders significantly improves the combustion process by producing a more homogeneous mixture of air and fuel within the power cylinder. Transco estimates the cost of the facilities at $10,200,000.00.

Any questions regarding the application may be directed to Scott Long, at Transco Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, (713) 215–2731.

Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–16838 Filed 7–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–112–010, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 26, 2000.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket Nos. ER95–112–010 and ER96–586–005 (consolidated)]

Take notice that on June 19, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the "Entergy Operating Companies") tendered its compliance filing in response to the Commission's orders in Entergy Services, Inc., 85 FERC ¶ 61,163 (1998), reh'g denied, 91 FERC ¶ 61,153 (2000).

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Koch Energy Trading Inc.

[Docket No. ER95–218–021]

Take notice that on June 21, 2000, Koch Energy Trading Inc. (KET), tendered for filing a notice of change in status, informing the Commission that KET's parent company Koch Energy, Inc. (Koch) has signed an agreement to form a partnership with Entergy Corporation (Entergy) that will own KET. KET also filed a code of conduct in accordance with the Commission's policies regarding transactions between power marketers and their public utility affiliates.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER00–1655–002]

Take notice that on June 20, 2000, Southern Company Services, Inc. (SCSI), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company

submitted for filing a revised Southern Company System Intercompany Interchange Contract in compliance with the Commission's order issued June 15, 2000.

Comment date: July 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER00–1743–002]

Take notice that on June 19, 2000, Entergy Services, Inc., on behalf of Entergy Corporation and the five Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together "Entergy"), tendered for filing its compliance filing in response to the Commission's May 18, 2000 Order in Entergy Services, Inc., 91 FERC ¶ 61,149 (2000).

Entergy has served a copy of this compliance filing on all persons on the official service list compiled by the Commission.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Potomac Electric and Power Company

[Docket No. ER00–2903–000]

Take notice that on June 19, 2000, Potomac Electric and Power Company (PEPCO), tendered for filing executed netting agreements between PEPCO and Southern Company Energy Marketing, L.P., Reliant Energy Services, Inc. and PG&E Energy Trading—Power, L.P. respectively (the Counterparties).

Copies of the filing were served upon the Counterparties.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER00–2904–000]

Take notice that on June 21, 2000, Commonwealth Edison Company (ComEd), tendered for filing an Interconnection Agreement with Indeck Rockford, LLC (Indeck).

ComEd requests an effective date of June 22 2000 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Indeck and the Illinois Commerce Commission.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Reliant Energy Shelby County, LP

[Docket No. ER00–2905–000]

Take notice that on June 21, 2000, Reliant Energy Shelby County, LP (Reliant Shelby County), tendered for filing a service agreement establishing Reliant Energy Services, Inc. (RES) as a customer under Reliant Shelby County's market-based rate tariff.

Reliant Shelby County requests an effective date of June 4, 2000 for the service agreement.

Reliant Shelby County states that a copy of the filing was served on RES.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, L.L.C.

[Docket No. ER00–2906–000]

Take notice that on June 21, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed interconnection service agreement between PJM and Reliant Energy Services, Inc. (Reliant).

PJM requests a waiver of the Commission's 60-day notice requirement and an effective date of May 12, 2000.

Copies of this filing were served upon Reliant, the Maryland Public Service Commission, the New Jersey Board of Public Utilities, and the Pennsylvania Public Service Commission.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER00–2907–000]

Take notice that on June 21, 2000, Public Service Company of New Mexico (PNM), tendered for filing two executed service agreements and an executed amendment to one of the agreements, with Texas New Mexico Power Company (TNMP). One agreement is a service agreement dated May 26, 2000, for 6 MW of firm point-to-point transmission service (6 MW Agreement) under the terms of PNM's Open Access Transmission Tariff (OATT). The other agreement is a fully executed Control Area Service Agreement, originally filed (and accepted) as a unilaterally executed agreement, which incorporates specific sections of PNM's OATT. The Amendment included in PNM's filing (dated May 30, 2000) includes modifications to the Control Area Services Agreement necessary to incorporate the 6 MW Agreement into all relevant control area services load and resource descriptions and ancillary services calculations. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of PNM's filing were provided to TNMP and to the New Mexico Public Regulation Commission.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Pool

[Docket No. ER00–2908–000]

Take notice that on June 21, 2000, the New England Power Pool (NEPOOL) submitted a filing reflecting approval by the NEPOOL Participants of rate treatment for certain actual costs of the Vermont Electric Power Company (VELCO) for deploying on an interim basis a generating unit to operate primarily as a synchronous condenser to enhance system reliability in light of the failure of a phase angle regulator. The arrangements are to remain in effect only for costs incurred through December 2000.

NEPOOL states that copies of these materials were sent to NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Deseret Generation and Transmission Co-operative, Inc.

[Docket No. ER00–2909–000]

Take notice that on June 21, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing the First Amendment to the Power Sales Confirmation Agreement between Deseret and Constellation Power Source, Inc., regarding a long-term power purchase and sale transaction.

Deseret requests an effective date of June 1, 2000.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Ogden Martin Systems of Union, Inc.

[Docket No. ER00–2910–000]

Take notice that on June 21, 2000, Ogden Martin Systems of Union, Inc. (Ogden Union), tendered for filing an amendment to Service Agreement No. 1 under Ogden Union's FERC Electric Tariff, Original Volume No. 1 (the Power Sales Agreement by and between Sempra Energy Trading Corp. and Ogden Union).

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER00–2911–000]

Take notice that on June 21, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to Schedule 9 (Emergency Procedure Charges) of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to conform to Schedule 11 (Emergency Procedure Charges) of the Reliability Agreement Among Load Serving Entities In The PJM Control Area (RAA).

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER00–2912–000]

Take notice that on June 21, 2000, Potomac Electric Power Company (PEPCO), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and AMP-Ohio, Inc.

An effective date of June 1, 2000 for this service agreement, with waiver of notice, is requested.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Vermont Electric Power Company, Inc.

[Docket No. ER00–2913–000]

Take notice that on June 21, 2000, Vermont Electric Power Company, Inc. (VELCO), tendered for filing a notice pursuant to the Commission's Order issued on May 8, 2000 in the matter of North American Electric Reliability Council, Docket No. ER00–1666–000, stating that: (1) VELCO uses the North American Electric Reliability Council's revised Transmission Loading Relief procedures; and (2) its open access transmission tariff shall be considered so modified.

VELCO requests an effective date of March 1, 2000 for the TLR procedures, and therefore respectfully requests waiver of the Commission's notice requirements.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Electric Company

[Docket No. ER00–2914–000]

Take notice that on June 21, 2000, Commonwealth Electric Company (Commonwealth), tendered for filing a firm point-to-point transmission service agreement between Commonwealth and Entergy Nuclear Generating Company (Entergy). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide firm point-to-point transmission service to Entergy under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Commonwealth requests waiver of the Commission's thirty (30) day notice requirement in order to allow the service agreement to become effective on July 1, 2000.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Panda Paris Power Marketing, L.L.C.

[Docket No. ER00–2916–000]

Take notice that on June 21, 2000, Panda Paris Power Marketing, L.L.C. (Panda Paris), 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, tendered for filing notice that effective June 21, 2000, Rate Schedule FERC No. 1 is to be canceled.

Panda Paris states that it has never entered into any wholesale electric power or energy transactions, and has never utilized its Electric Rate Schedule FERC No. 1.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Calvert Cliffs Nuclear Power Plant, Inc.

[Docket No. ER00–2917–000]

Take notice that on June 21, 2000, Calvert Cliffs Nuclear Power Plant, Inc., tendered for filing a notice of succession indicating that the name Calvert Cliffs, Inc., an indirect subsidiary of Constellation Energy Group, has been changed to Calvert Cliffs Nuclear Power Plants, Inc., effective June 21, 2000. In accordance with Sections 35.16 and 131.51 of the Commission's Regulations, 18 CFR 35.16 and 131.51, Calvert Cliffs Nuclear Power Plant, Inc., has adopted and ratified all applicable rate schedules filed with the FERC by Calvert Cliffs, Inc.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Constellation Power Source Generation, Inc.

[Docket No. ER00–2918–000]

Take notice that on June 21, 2000, Constellation Power Source Generation, Inc., tendered for filing a notice of succession indicating that the name Constellation Generation, Inc., an indirect subsidiary of wholly owned subsidiary of Constellation Energy Group, has been changed to Constellation Power Source Generation, Inc. effective June 21, 2000. In accordance with Sections 35.16 and 131.51 of the Commission's Regulations, 18 CFR 35.16 and 131.51, Constellation Power Source Generation, Inc. has adopted and ratified all applicable rate schedules filed with the FERC by Constellation Generation, Inc.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Madison Gas and Electric Company

[Docket No. ER00–2920–000]

Take notice that on June 21, 2000, Madison Gas and Electric Company (MGE) tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with Commonwealth Edison Company.

MGE requests this agreement be effective the date the agreement was filed with the FERC.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16837 Filed 7–3–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Agency Regulatory Commission

[Project No. 2035–006 Colorado]

City and County of Denver; Notice of Availability of Final Environmental Assessment

June 28, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Gross Reservoir Hydroelectric Project, and has prepared a Final Environmental Assessment (FEA). The project is located on South Boulder Creek, near the city of Boulder, in Boulder County, Colorado. The Project occupies federal lands managed by the U.S. Forest Service, Roosevelt National Forest, and the Bureau of Land Management.

In the FEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The FEA may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–16839 Filed 7–3–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–948; FRL–6590–6]

Notice of Filing of Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–948, must be received on or before August 4, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–948 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production. Animal production. Food manufacturing. Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–948. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–948 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–948. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 26, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represents the view of the petitioner. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

9E6041, 0E6101, 0E6102, 0E6104, 0E6106, and 0E6156

EPA has received pesticide petitions 9E6041, 0E6101, 0E6102, 0E6104, 0E6106, and 0E6156 from the Interregional Research Project No. 4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide imidacloprid, 1-(6-chloro-3-pyridinyl)methyl-*N-nitro*-2-imidazolidinimine in or on the following raw agricultural commodities:

1. PP 9E6041 proposes the establishment of a tolerance for cilantro at 3.5 parts per million (ppm).
2. PP 0E6101 proposes the establishment of a tolerance for edible podded bean at 1.0 ppm.
3. PP 0E6102 proposes the establishment of a tolerance for hops at 4.0 ppm.
4. PP 0E6104 proposes the establishment of a tolerance for succulent shelled bean at 1.0 ppm.
5. PP 0E6106 proposes the establishment of a tolerance for sweet corn at 0.05 ppm, sweet corn forage at 0.1 ppm, and sweet corn stover at 0.2 ppm.
6. PP 0E6156 proposes the establishment of a tolerance for turnip tops (leaves) at 3.5 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by Zeneca Ag Products, Wilmington, DE 19850–5458.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6–chloropyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method*. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6–chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary gas chromatography mass spectrometry (GC/MS) selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and high performance liquid chromatography using ultra-violet detection (HPLC-UV) which has been validated by EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues*— i. *Turnip tops*. IR–4 has received requests from the California, Oregon, Texas, Mississippi, Oklahoma, Florida, Ohio, and Tennessee agricultural experiment stations for the registration of imidacloprid on turnip tops (leaves). No

data are presented in support of this petition; rather, IR–4 requests that the registrant's Brassica vegetable data be used to support this request for turnip tops. Turnips are very closely related to the Brassica vegetables. This request does not include a tolerance for turnip roots.

ii. *Succulent shelled beans.* Seven field trials were conducted in order to provide information on the magnitude of imidacloprid residues on lima beans following planting application plus three foliar applications of imidacloprid. Trials were conducted in Maryland, South Carolina, Georgia, Ohio, California and Washington. Residue levels ranged from <0.05 ppm to 0.67 ppm. A tolerance of 1.0 ppm is being proposed by IR–4.

iii. *Edible podded beans.* Six field trials were conducted in order to provide information on the magnitude of imidacloprid residues on snap beans following the planting application plus 3 foliar applications of imidacloprid. Trials were conducted in South Carolina, Florida, Wisconsin, Ohio, New York, and Washington. Residue levels ranged from <0.05 ppm to 0.89 ppm. A tolerance of 1.0 ppm is being proposed by IR–4.

iv. *Sweet corn.* IR–4 received a request from New York for registration of imidacloprid seed treatment on sweet corn. Imidacloprid is currently registered for use on field corn. Tolerances for kernel + cob with husk removed (K + CWHR), sweet corn forage and sweet corn stover were requested based on field corn data and validation of method on K + CWHR samples.

v. *Cilantro.* The nature of imidacloprid residues is adequately understood and an analytical method is available for enforcement purposes. IR–4 requests that EPA grant an imidacloprid tolerance for cilantro based on the similarity of cilantro to other leafy non-Brassica vegetables (especially fresh parsley) for which imidacloprid is already registered. Based on the available information, and the currently registered use patterns for leafy non-Brassica vegetables on the Admire® and Provado® labels, the establishment of a tolerance for cilantro (fresh leaves and stems) would protect the public health, and would not expose man or the environment to unreasonable adverse effects.

vi. *Hops.* Based on available data, the proposed use, foliar treatment of pirimicarb insecticide at the rate of 1 lb (0.5 lb active) per acre up to a maximum of 1 lb active ingredient/acre (ai/acre) per year, minimum 7–day pre-harvest interval, should be supported. Based on the available information, the establishment of the tolerance proposed in the petition would protect the public health, and would not expose man or the environment to unreasonable adverse effects, while providing growers with a safe and effective insectide.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral lethal dose $(LD)_{50}$ values for imidacloprid-technical ranged from 424 milligrams/kilograms (mg/kg) in the male rat and >450 mg/kg in the female rat. The acute dermal LD_{50} was >5,000 mg/kg in the rat. The 4–hour rat inhalation lethal concentration $(LC)_{50}$ was >5.33 milligram/Liter (mg/L). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs. In an acute neurotoxicity study, the lowest observed adverse effect level (LOAEL) = 42 mg/kg body weight (bwt)/day.

2. *Genotoxicity.* Mutagenicity studies have demonstrated that imidacloprid is non-mutagenic both *in vivo* and *in vitro.*

3. *Reproductive and developmental toxicity.* In a developmental toxicity study with Sprague-Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg bwt/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 mg/kg bwt/day. No treatment-related effects were seen in any of the reproductive parameters (*i.e.*, Cesarean section evaluation). At 100 mg/kg bwt/day, developmental toxicity manifested as wavy ribs (fetus =7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOAEL was 10 mg/kg bwt/day lowest dose tested (LDT) based on decreased body weight gain; a no observed adverse effect level (NOAEL) was not established. For developmental toxicity, the NOAEL was 30 mg/kg bwt/day, and the LOAEL was 100 mg/kg bwt/day based on increased wavy ribs.

In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24, or 72 mg/kg bwt/day during gestation days 6 through 18. For maternal toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities.

In a 2–generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg bwt/day for males and 0, 8.0, 20.5, or 57.4 mg/kg bwt/day for females). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg bwt/day) and the LOAEL was 750 ppm (52 mg/kg bwt/day), based on decreases in body weight in both sexes in both generations. Based on these factors, the parental/systemic/reproductive NOAEL and LOAEL are 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

4. *Subchronic toxicity.* In a dermal toxicity study, groups of 5 male and 5 female New Zealand white rabbits received repeated dermal applications of imidacloprid (95%) at 1,000 mg/kg bwt/day (limit dose), 6–hours/day, 5–days/week for 3–weeks. No dermal or systemic toxicity was seen. For systemic and dermal toxicity, the NOAEL was >1,000 mg/kg bwt/day; a LOAEL was not established.

In an oral toxicity study, groups of Fischer 344 rats (12/sex/dose) were fed diets containing imidacloprid (98.8%) at 0, 150, 1,000, or 3,000 ppm (0, 9.3, 63.3, or 196 mg/kg bwt/day in males and 0, 10.5, 69.3, or 213 mg/kg bwt/day in females, respectively) for 90–days. No treatment-related effects were seen at 150 ppm. Treatment-related effects included decreases in body weight gain during the first 4 weeks of the study at 1,000 ppm (22% in males and 18% in females) and 3,000 ppm (50% in males and 25% in females) with an associated decrease in forelimb grip strength especially in males. The NOAEL was 150 ppm (9.3 and 10.5 mg/kg bwt/day in males and females, respectively) and the LOAEL was 1,000 ppm (63.3 and 69.3 mg/kg bwt/day in males and females, respectively).

In a rat inhalation study (28–day study in which rats were exposed 6 hours/day, 5 days/week for 4 weeks), the NOAEL for imidacloprid was 5.5 mg/m^3.

5. *Chronic toxicity.* In a chronic toxicity study, groups of Beagle dogs (4/sex/dose) were fed diets containing imidacloprid (94.9%) at 0, 200, or 1,250/2,500 ppm (0, 6.1, 15, or 41/72 mg/kg bwt/day, respectively) for 52 weeks. The 1,250 ppm dose was increased to 2,500 ppm from week 17 onwards. The threshold NOAEL was 1,250 ppm (41 mg/kg bwt/day). The LOAEL was 2,500 ppm (72 mg/kg bwt/day) based on increased cytochrome-P–450 levels in both sexes and was considered to be a threshold dose. Due

to the lack of toxicity at 1,250 ppm, a LOAEL was not established in this study; following the dose increase to the 2,500 ppm level, toxicity was observed, thus making 1,250 ppm the threshold NOAEL and 2,500 ppm the threshold LOAEL.

6. *Animal metabolism.* The metabolism of NTN 33893 (imidacloprid) in rats was reported in seven studies. Data showed that imidacloprid was rapidly absorbed and eliminated in the excreta (90% of the dose within 24 hours), demonstrating no biologically significant differences between sexes, dose levels, or route of administration. Elimination was mainly renal (70–80% of the dose) and fecal (17–25%). The major part of the fecal activity originated in the bile. Total body accumulation after 48 hours consisted of 0.5% of the radioactivity with the liver, kidney, lung, skin and plasma being the major sites of accumulation. Therefore, bioaccumulation of imidacloprid is low in rats. Maximum plasma concentration was reached between 1.1 and 2.5 hours. Two major routes of biotransformation were proposed for imidacloprid. The first route included an oxidative cleavage of the parent compound rendering 6–chloronicotinic acid and its glycine conjugate. Dechlorination of this metabolite formed the 6–hydroxynicotinic acid and its mercapturic acid derivative. The second route included the hydroxylation followed by elimination of water of the parent compound rendering NTN 35884. A comparison between [methylene-^{14}C]-imidacloprid and [imidazolidine-4,5-^{14}C]-imidacloprid showed that while the rate of excretion was similar, the renal portion was higher with the imidazolidine-labeled compound. In addition, accumulation in tissues was generally higher with the imidazolidine-labeled compound. Also, a comparison between imidacloprid and one of its metabolites, WAK 3839, showed that the total elimination was the same for both compounds. The proposed metabolic pathways for these two compounds were different. WAK 3839 was formed following pretreatment (repeated dosing) of imidacloprid.

7. *Endocrine disruption.* The toxicology data base for imidacloprid is current and complete. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short-term or long-term exposure. These studies revealed no primary endocrine effects due to imidacloprid.

C. Aggregate Exposure

1. *Dietary exposure.* Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population and selected population subgroups to residues of imidacloprid. These analyses cover all registered crops including rotational crops; uses pending with the EPA on citrus, leafy petiole crop group, corn, and sweet corn; active and proposed Section 18 uses on blueberries, cranberries, table beets, strawberries, turnips; new proposed IR–4 uses on succulent beans, blueberries, turnips and cilantro; and an import tolerance petition on bananas.

Novigen Sciences, Inc.'s dietary exposure evaluation model (DEEM™), which is licensed to Bayer, was used to estimate the chronic and acute dietary exposure. Version 6.76 was used for the chronic analysis and version 6.79 for the acute analysis. This software uses the food consumption data from the 1994–1996 U.S. Department of Argiculture (USDA) continuing surveys of food intake by individuals CSFII 1994–1996.

The endpoint for acute dietary risk assessments is based on neurotoxicity characterized by decreases in motor or locomotor activity in female rats at 42 mg/kg bwt/day (LOAEL) from an acute neurotoxicity study. Based on an uncertainty factor (UF) of 10X for interspecies and 10X for intraspecies the acute reference dose (RfD) = 0.42 mg/kg bwt/day. EPA has determined that an additional UF for FQPA (reduced to 3X) applies to all population subgroups for acute risk. Application of the additional 3X safety factor results in an acute population adjusted dose (aPAD) 0.14 mg/kg bwt/day or a margin of exposure (MOE) of 300.

For chronic dietary analyses, EPA has established the RfD for imidacloprid at 0.057 mg/kg/day based on a NOAEL of 5.7 mg/kg bwt/day from a rat chronic toxicity carcinogenicity study and UFs of 10X for interspecies and 10X for intraspecies. EPA has determined that an UF for FQPA (reduced to 3X) applies to all population subgroups for chronic risk. Application of the additional 3X safety factor results in a chronic population adjusted dose (cPAD) of 0.019 mg/kg bwt/day.

Results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of imidacloprid on currently registered and pending uses.

i. *Food.* Acute and chronic (tier 3) risk assessments were made using the results of field trials conducted at maximum label application rates and the shortest post harvest interval (PHI). For some of the vegetable crops, these residue data were collected at 1.5X or greater than the maximum label rate of 0.5 lb ai/acre per season. In addition, no adjustments were made to account for dissipation of residues during storage, transportation from the field to the consumer, washing or peeling. Therefore, the actual dietary exposure will be less than that presented here.

For the chronic analysis, mean field trial residues were calculated. For the acute Monte Carlo analysis, the entire distribution of residue field trial data was used for the "non-blended" and "partially-blended" foods as determined by EPA. For the foods considered as "blended" by EPA, mean field trial residue data were used. As allowed in EPA's draft guidance for submission of probabilistic human health exposure assessments one half limit of detection/limit of quantitation (LOD/LOQ) values were used for all non-detected values (values below the sensitivity of the method).

ii. *Acute.* Bayer's acute Monte Carlo dietary exposure assessment estimated percent of the aPAD and corresponding margins of exposure (MOE) for the overall U.S. population (all seasons) and various subpopulations. In this analysis, the exposure for the total U.S. population was equal to 6.82% of the aPAD at the 99.9th percentile. The most highly exposed population subgroup, children (1–6 yrs), had an exposure equal to 13.44% of the aPAD at the 99.9th percentile. Therefore, the acute dietary exposure estimates are below EPA's level of concern for the overall U.S. population as well as the various subpopulations.

iii. *Chronic.* Bayer's chronic dietary exposure estimated the percent of the cPAD for the overall U.S. population (all seasons) and various subpopulations. In this analysis, the exposure for the total U.S. population was equal to 1.4% of the cPAD. The most highly exposed population subgroup, children (1–6 yrs), had an exposure equal to 2.7% of the cPAD. Therefore, the chronic exposure estimates are below EPA's level of concern for the overall U.S. population as well as the various subpopulations.

iv. *Drinking water.* EPA has determined that imidacloprid is persistent and could potentially leach into ground water. However, there is no established maximum concentration level (MCL) or health advisory levels established for imidacloprid in drinking water. EPA's "pesticides in ground water data base" has no entry for imidacloprid. In addition, Bayer is not

aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the U.S. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. Therefore, contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

2. *Non-dietary exposure*— i. *Residential turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides application are young children. Margins of safety of 7,587 – 41,546 for 10–year-old children and 6,859 – 45,249 for 5–year-old children were estimated by comparing dermal exposure doses to the imidacloprid NOAEL of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year-old children ranged from 5.6 – 38.2 g/cm^2 and for 5–year-old children from 5.1 – 33.5 g/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 g/cm^2 present immediately after the sprays have dried. According to Bayer, these data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch's (OREB) and Bayer. Data indicate that the margins of safety for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0 x 10^7 and 2.4 x 10^8, respectively. According to Bayer, exposure can be considered negligible.

iii. *Tobacco smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study, only 2% of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOAEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's OREB who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Cumulative Effects

No other chemicals having the same mechanism of toxicity are currently registered, therefore, there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population.* Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that the exposure estimates from all label and pending uses of imidacloprid are 6.82% of the aPAD and 1.4% of the cPAD for dietary exposures. EPA generally has no concerns for exposures below 100% of the PAD. Thus, Bayers concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* In the **Federal Register** (63 FR 49837, September 18, 1998) (FRL–6027–1). EPA has assessed the potential for additional sensitivity of infants and children to residues of imidacloprid. EPA has considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. These studies are discussed under section A (toxicology profile) above. The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless, EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

Although developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, no increased sensitivity in pups as compared to adults was seen in the 2–generation reproduction toxicity study in rats, and the toxicology data base is complete as to core requirements, the EPA has determined that the additional safety factor for the protection of infants and children will be retained but reduced to 3X based on the following weight-of-the-evidence considerations relating to potential sensitivity and completeness of the data:

i. There is concern for structure activity relationship. Imidacloprid, a chloronicotinyl compound, is an analog to nicotine and studies in the published literature suggests that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero.*

ii. There is evidence that imidacloprid administration causes neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2–year carcinogenicity study.

iii. The concern for structure activity relationship along with the evidence of neurotoxicity dictates the need of a developmental neurotoxicity study for assessment of potential alterations on functional development.

Because a developmental neurotoxicity study potentially relates to both acute and chronic effects in both the mother and the fetus, EPA has applied the additional UF for FQPA for all population subgroups, and in both acute and chronic risk assessments.

Based on the exposure assessments described above and on the

completeness and reliability of the toxicity data, it can be concluded that the dietary exposure estimates from all label and pending uses of imidacloprid are 13.44% of the aPAD at the 99.9th percentile and 2.7% of the cPAD for the most highly exposed population subgroup, children (1–6 yrs). Thus, Bayer concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

F. International Tolerances

No CODEX maximum residue levels have been established for residues of imidacloprid on any crops at this time.

[FR Doc. 00–16765 Filed 7–3–00; 8:45 am]
BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Privacy Act System Notices

AGENCY: Farm Credit Administration.

ACTION: Notice of amendment of a system of records maintained on individuals; request for comments.

SUMMARY: Under the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Farm Credit Administration (FCA) is amending Privacy Act systems of records FCA–5, Assignments and Correspondence Tracking System and renaming it FCA–5, Assignments and Communication Tracking System. The amended system of records will help us collect, maintain, use, and disclose information about individuals.

We filed an Altered Systems Report with Congress and the Office of Management and Budget (OMB) on June 29, 2000.

DATES: You should forward written comments by August 4, 2000. We will adopt this notice without further publication on August 28, 2000, unless we change it to incorporate public comments and publish another notice.

ADDRESSES: You may mail written comments (in triplicate) to Debra Buccolo, Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. You may send comments by E-mail to *BuccoloD@fca.gov*. Copies of all comments we receive will be available for review by interested parties at FCA headquarters.

FOR FURTHER INFORMATION CONTACT:

Debra Buccolo, Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4022, TDD (703) 883–4444

or

Jane M. Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia, 22102–5090, (703) 883–4071, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: We are amending FCA–5, Assignments and Correspondence Tracking System and renaming it FCA–5, Assignments and Communication Tracking System. The amendments will allow FCA to track written and oral communications between FCA staff and external parties.

As required by 5 U.S.C. 552a(r) of the Privacy Act, we have notified OMB, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate of the amended system of records. The notice is published in its entirety below.

FCA–5

SYSTEM NAME:

Assignments and Communication Tracking System—FCA.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former FCA employees, and external parties.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains incoming letters, outgoing correspondence, memoranda, documents pertaining to FCA's operations, and communication logs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records for reference, to track employee assignments, and to track oral and written communications between FCA staff and external parties. This information aids Agency management in its deliberations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the "General Statement of Routine Uses."

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

We maintain incoming letters or inquiries and their responses in file folders, on computer disks, and on computers. We store communication logs on a computer.

RETRIEVABILITY:

We file incoming letters or inquiries and their responses by Farm Credit District or alphabetically by requester's name. The automated communication log can sort and retrieve entries by Farm Credit District, subject, and name of FCA staff and external party.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computers, computer disks, and the automated communication log.

RETENTION AND DISPOSAL:

We destroy data in the automated system as well as the file folders after 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR Part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments of a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR Part 603.

RECORD SOURCE CATEGORIES:

Persons making general inquiries or requests for information, persons communicating with the Agency, FCA staff, Farm Credit System institutions, and other external parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 29, 2000.

Jeanette Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 00–16908 Filed 7–3–00; 8:45 am]
BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

June 26, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0895.
Expiration Date: 12/31/2000.
Title: Numbering Resources Optimization, CC Docket No. 99–200.
Form No.: FCC Form 502.
Respondents: Business or other for-profit; State, Local or Tribal Government.
Estimated Annual Burden: 2780 respondents; 57 hours per response (avg.); 158,500 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $6,490,000.
Frequency of Response: On occasion; Semi-annually; One-time requirement; Recordkeeping; Third Party Disclosure.
Description: The ten digit North American Numbering Plan currently being used by the United States and 19 other countries is rapidly being depleted. Management of this resource is impaired by a lack of uniform data. Under the Communications Act of 1934, as amended, the FCC was given "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." Pursuant to that authority the Commission conducted a rulemaking that among other things addressed regular reporting on numbering use by United States carriers. In its Report and Order in CC Docket No. 99–200, In the Matter of Numbering Resource Optimization (rel. Mar. 31, 2000) the Commission found that mandatory data collection is necessary to efficiently monitor and manage numbering use. Requirements adopted in the Report and Order include the following: (a) Utilization/Forecast Report—All carriers that receive numbering resources from the NANPA or that receive numbering resources from a Pooling Administrator in thousands blocks must report forecast and utilization data semi-annually to the NANPA. Carriers that receive intermediate numbers must report forecast and utilization data. Mandatory reporting begins August 1, 2000. See also 47 CFR Section 52.15(f). (No. of respondents: 2700; hours per response: 24 hours per semi-annual filing; total annual burden: 129,600 hours). (b) Application for Initial Numbering Resources—Applications for initial numbering resources must include documented proof that (1) the applicant is authorized to provide service in the area for which the numbering resources are requested and (2) the applicant is or will be capable of providing service within 60 days of the numbering resources activation date. Specifically, carriers must provide, as part of the applications for initial numbering resources, evidence (*e.g.*, state commission order or state certification to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resources. Carriers requesting initial numbering resources must also provide the NANPA appropriate evidence (*e.g.*, contracts for unbundled network elements, network information showing that equipment has been purchased and is operational or will be operational, business plans, or interconnection agreements) that its facilities are in place or will be in place to provide service within 60 days of the numbering resources activation date. These requirements apply to carriers requesting an initial NXX code and those requesting an initial thousands-block. See 47 CFR Section 52.15(g). (No. of respondents: 2730; hours per response: 2 hours; total annual burden: 5460 hours). (c) Application for Growth Numbering Resources—Applications for growth numbering resources must include a Months-To-Exhaust (MTE) worksheet. To ensure that carriers obtain numbering resources when and where they are needed to provide service, carriers are required to provide evidence that, given their current utilization and recent historical growth, they need additional numbering resources. Non-pooling carriers must satisfy a minimum utilization threshold before obtaining additional numbering resources. See 47 CFR Section 52.15(g). (No. of respondents: 2730; hours per response: 2 hours; total annual burden; 5460 hours). (d) Recordkeeping Requirement—To facilitate auditing by the NANPA and by state commissions in the future, carriers are required to maintain detailed internal records of their number usage in categories more granular than the five for which they are required to report. Carriers are required to maintain internal records of their numbering resources for the following subcategories: soft dialtone numbers; ported-out numbers; dealer number pools; test numbers; employee/official numbers; Local Routing Numbers; Temporary Local Directory Numbers; and wireless E911 emergency services routing digits/key numbers. Carriers are required to maintain this data for a period of not less than 5 years. See also Report and Order, para. 62. (No. of respondents: 2730; hours per response: 1 hour; total annual burden: 2730 hours). (e) Notifications by State Commissions—State commissions may reduce the reporting frequency for NPAs in their states to annual. State commissions must notify the Common Carrier Bureau and the NANPA prior to exercising this delegated authority. See 47 CFR Section 52.15(g). State commissions are permitted to substitute the NPA listed in the rollout schedule with an alternative NPA, as long as the substitute NPA has a life span of at least one year and is located within one of the top 100 MSAs. To exercise this option, the state must inform the thousands-block NPA within 15 days of the release of the roll out schedule for that quarter. (No. of respondents: 50; hours per response: 1 hour; total annual burden: 50 hours). (f) Demonstration to State Commission—Carriers that open a clean block prior to utilizing in its entirety a previously-opened thousands-block should be prepared to demonstrate to the state commission: (1) A genuine request from a customer detailing the specific need for telephone numbers; (2) the inability on the part of the carrier to meet the specific customer request for telephone numbers from the surplus of numbers within the carrier's currently activated thousands-block. See 47 CFR 52.15(j). (No. of respondents: 100; hours per response: 1 hour; total annual burden: 100 hours). (g) Petitions for Additional Delegation of Numbering Authority—States requesting pooling authority must include a showing of specific criteria in their petitions. Each petition must demonstrate that: (1) That an NPA in its state is in jeopardy, (2) the NPA in question has a remaining life span of at least a year, and (3) that NPA is in one of the largest 100 MSAs, or alternatively, the majority of wireline carriers in the NPA are LNP-capable. See also Report and Order, para. 170. (No. of respondents: 50; hours per response: 2 hours; total annual burden: 100 hours). (h) Cost Support Data—Carriers are requested to submit cost

support data so that the Commission can determine the cost associated with thousands-block number pooling. Carriers should include an analysis of the differences between the shared industry costs associated with thousands-block number pooling and the shared industry costs, if any, associated with the current practices that result in more frequent area code changes. Carriers should provide cost studies that assign costs according to the following three categories: shared industry costs; carrier-specific costs directly related to thousands/block pooling; and carrier-specific costs not directly related to thousands-block number pooling. See Report and Order, paras. 215–226. (No. of respondents: 1500; hours per response: 10 hours; total annual burden: 15,000 hours). The data collected will be used by the FCC, state regulatory commissions, and the North American Numbering Plan administrator (NANPA) to monitor numbering resource utilization by all carriers using the resource and to project the dates of area code and North American Numbering Plan exhaust. Obligation to respond: Mandatory. Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16818 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 13, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 4, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0817.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 5 respondents; 10 responses.

Estimated Time Per Response: 2–50 hours.

Frequency of Response: On occasion and semi-annual reporting requirements third party disclosure requirement.

Total Annual Burden: 270 hours.

Total Annual Cost: N/A.

Needs and Uses: In CC Docket 95–20, Report and Order, the Commission eliminated outdated, unnecessary regulations, while continuing to protect against potential anticompetitive behavior by the Bell Operating Companies (BOCs) in the provision of information services. BOCs are required to post their CEI plans and amendments on their publicly accessible Internet sites rather than filing them with the Commission to obtain pre-approval before initiating or altering an intraLATA information service.

The requirement extends to CEI plans for new or modified telemessaging or alarm monitoring services and for new or amended payphone services. If the BOC receives a good faith request for a plan from someone who does not have internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection. The CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetitive behavior by the BOCs in the provision of information services.

OMB Control No.: 3060–0906.

Title: Annual DTV Ancillary/ Supplemental Services Report.

Form No.: FCC Form 317.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 100.

Estimated Time Per Response: 2.5 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement.

Total Annual Burden: 130 hours.

Total Annual Cost: $10,000.

Needs and Uses: The Commission has established a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees. Licensees are required to report, using the FCC Form 317, whether they provide ancillary or supplementary services, which services were provided, the services provided which are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. This data is collected annually from commercial digital television licensees. Licensees providing services subject to a fee will also be required to file the FCC Form 159, Remittance Advice. Each licensee will be required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. The data is used by FCC staff to ensure that DTV licensees comply with the requirements of Section 336(e) of the Communications Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16819 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 27, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 4, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0104.

Title: Temporary Permit to Operate a Part 90 Radio Station.

Form No.: FCC Form 572.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 2,000.

Estimated Time Per Response: 6 minutes.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 200 hours.

Total Annual Cost: N/A.

Needs and Uses: Applicants are required to complete FCC Form 572 if they wish to have immediate authorization to operate 2-way radio equipment in Part 90 radio services. Applicants eligible to hold a radio station authorization in the Private Land Mobile Radio Service may use this form as a temporary permit to operate their equipment during processing of an application for license grant. This form is completed and posted at the applicant's station and is not submitted to the FCC.

OMB Control No.: 3060–0746.

Title: Application for Electronic Renewal of Wireless Radio Services Authorizations.

Form No.: FCC Form 900.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 35,255.

Estimated Time Per Response: 10 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 5,852 hours.

Total Annual Cost: $2,155,675.

Needs and Uses: This "generic" renewal application may be used in lieu of FCC Forms 313R, 405A, 452R and 574R, to file electronically for renewal of Wireless Radio Services Authorizations. Concurrent with renewal, applicants may also request a change of licensee name (with no change to corporate structure, ownership or control), change of mailing address, re-instatement of a Land Mobile license, and notify the Commission of a change in the number of mobiles/pagers for a Land Mobile license.

Applicants still desiring to file for renewal of license manually may still do so by submitting the FCC Forms 313R, 405A, 452R, or 574R, depending upon which radio services for which they are licensed.

This generic renewal form displays information from the current authorization as it exists in the Commission's license database based upon the call sign entered by the applicant. Information can be added and edited if necessary and electronically submitted to the Commission. It is estimated that 90% of these applications "auto-grant" within a few days of receipt and only 10% require further examiner review.

The information is used by engineers for enforcement and interference resolution purposes.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16872 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–34–D (Auction No. 34); DA 00–1364]

Clarification of Licenses to be Auctioned for 800 MHz Specialized Mobile Radio (SMR) Service in the General Category Band (851–854 MHz)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document clarifies for licenses to be auctioned in the General Category Band the channels that will be available for use by licensees of spectrum blocks within the Economic Areas (EAs) located near the Canadian and Mexican borders.

DATES: Auction No. 34 is scheduled for August 16, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Garland or Bob Reagle, Auction Operations at (717) 338–2801 or Terry Fishel, Commercial Wireless Division, at (717) 338–2602.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released June 21, 2000 ("*Auction Public Notice*"). The complete text of the *Auction Public Notice* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20035, (202) 857–3800. It is also available on the Commission's website at *http://www.fcc.gov/wtb/auctions.*

1. The Wireless Telecommunications Bureau ("Bureau") issued a Public Notice on May 17, 2000, that set forth the filing requirements, minimum opening bids, and other procedural matters to govern Auction No. 34. See *Auction No. 34 Announcing Public Notice* 65 FR 39388 (June 26, 2000). The Bureau issues this *Auction Public Notice* to clarify the General Category channels that will be available for use

by licensees of spectrum blocks within the Economic Areas (EAs) located near the Canadian and Mexican borders.

2. The licenses available in this auction consist of six contiguous 25 channel blocks (1.25 MHz) in each of 172 EAs and 3 EA-like areas, covering the United States, possessions or territories in the Northern Mariana Islands and Guam, American Samoa, the United States Virgin Islands and Puerto Rico. These licenses are referenced in Attachment A of the *Auction No. 34 Announcing Public Notice.*

3. The following table contains the Block/Frequency Band Limits Cross-Reference List for the 800 SMR General Category Channels:

800 MHz SMR General Category Channels 851–854 MHz

License suffix	Channel no.	Frequencies (base & mobile)
D	1 through 25	851.0125 through 851.6125 806.0125 through 806.6125
DD	26 through 50	851.6375 through 852.2375 806.6375 through 807.2375
E	51 through 75	852.2625 through 852.8625 807.2625 through 807.8625
EE	76 through 100	852.8875 through 853.4875 807.8875 through 808.4875
F	101 through 125	853.5125 through 854.1125 808.5125 through 809.1125
FF	126 through 150	854.1375 through 854.7375 809.1375 through 809.7375

4. By this *Auction Public Notice,* the Bureau clarifies that the allocation of channels available in Spectrum Blocks D through FF are different in the U.S./Mexico and U.S./Canada border areas than noted in the prior table. The tables that follow indicate the channels assignable in the border areas. *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order,* 64 FR 71042 (December 20, 1999). Please note that the channels listed for the U.S./Mexico are offset 12.5 kHz lower in frequency than the same channel specified in § 90.613 of the Commission's rules.

United States-Mexico Border Area, SMR and General Categories

Spectrum m block	Auction 34 designation	Offset channel nos.
[General Category (12 Channels)]		
D	D	275,315
D1	DD	355,395
E	E	276,316
E1	EE	356,396
F	F	277,317
F1	FF	357,397

United States-Canada Border Area, SMR and General Categories

Spectrum m block	Auction 34 designation	Channel nos.
[Regions 1, 4, 5, 6]		
General Category (5 Channels)		
D	D	None
D1	DD	30
E	E	60
E1	EE	90
F	F	120
F1	FF	150
[Region 2]		
General Category (5 Channels)		
D	D	18
D1	DD	36
E	E	54,72
E1	EE	90
F	F	None
F1	FF	None
[Region 3]		
General Category (15 Channels)		
D	D	38,39,40
D1	DD	158,159
E	E	78,79,80
E1	EE	160,198
F	F	118,119,120
F1	FF	199,200
[Region 7, 8]		
General Category (18 Channels)		
D	D	35,36,37
D1	DD	38,39,40
E	E	75,76,77
E1	EE	78,79,80
F	F	115,116,117
F1	FF	118,119,120

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00–16899 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 00–1458]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 29, 2000, the Commission released a public notice announcing the July 18 and 19, 2000, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: June 29, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, July 18, 2000, from 8:30 a.m. until 5 p.m., and on Wednesday, July 19, from 8:30 a.m. until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC.

This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may

submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, June 20, 2000.

1. Approval of May 23–24 and June 20–21, 2000 meeting minutes.
2. North American Numbering Plan Administration (NANPA) Report. Status of data entry mechanisms, paragraph 53, Numbering Resource Optimization *Report and Order*, CC Docket 99–200 (rel. March 31, 2000).
3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Review of NANPA improvement plan, status of future NANPA selection work plan, and auditor requirements document. Review of recommendation for NANPA compensation adjustment due to an increased volume of central office code requests and assignment activity.
4. Numbering Resource Optimization (NRO) Working Group Report. Status of development of report on individual telephone number pooling (ITN) and unassigned number porting (UNP) (paragraph 231, *NRO Order*). Review of recommendation concerning fee structure for reserved numbers (paragraph 25, *NRO Order*). Status of the development of the Numbering Resource Utilization/Forecast Report (NRUF) requirements. Status update on state number pooling trials.
5. Industry Numbering Committee (INC) Report. Status of Thousand Block Pooling Administrator guidelines.
6. Ad Hoc Voluntary UNP Study Group Report. Status of business rule model.
7. Local Number Portability Administration (LNPA) Working Group Report. Status update on NENA request for 911 standard. Wireless Number Portability Subcommittee update.
8. Number Pooling Issue Management Group (IMG) Report. Review of Pooling Administrator (PA) technical requirements (paragraph 155, *NRO Order*).
9. Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activity update.
10. North American Billing and Collection (NBANC) Report.

Wednesday, July 19, 2000

11. Steering Group Report.
12. Cost Recovery Working Group Report.
13. NANC Discussion Group on charging for telephone numbers.
14. Discussion to reconsider creation of an Issue Management Group to focus on the use of numbering resources by emerging Internet-related services, i.e., unified messaging services.
15. Public participation (5 minutes each, if any).
16. Other Business.
17. Action Items and Decisions Reached.

Federal Communications Commission

Diane Griffin Harmon,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 00–16864 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2420]

Petitions for Reconsideration and Clarification of Action In Rulemaking Proceeding

June 28, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by July 20, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Rules and Policies Governing Pole Attachments (CS Docket No. 97–98).

Number of Petitions Filed: 5.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16822 Filed 7–3–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1331–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1331–DR), dated June 12, 2000, and related determinations.

EFFECTIVE DATE: June 12, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 12, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms, tornadoes, and flooding on May 23–31, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles M. Butler of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Anderson, Benton, Cheatham, Davidson, Henry, Hickman, Houston, Jackson, Knox, Lake, Obion, Perry, Pickett, and Stewart Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–16909 Filed 7–3–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1331–DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1331–DR), dated June 12, 2000, and related determinations.

EFFECTIVE DATE: June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 12, 2000: Weakley County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–16910 Filed 7–3–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Field Test of the State Management of the Public Assistance Operations in Small Disasters

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: We (FEMA) give notice that we will field test the devolution of major management responsibility of the Public Assistance Program to interested States in small disasters beginning on or after July 1, 2000. We award Public Assistance grants, which supplement community assets in the recovery of State, local and eligible private non-profit infrastructure when the President declares an emergency or major disaster. The proposed change in the program management does not constitute changes to the process by which assistance is provided nor does it constitute a change in benefits under the law or regulation.

FOR FURTHER INFORMATION CONTACT: James A. Walke, Engineering Branch Chief, Federal Emergency Management Agency, Washington D.C. 20472, 202–646–2751 (phone), 202–646–3304 (fax), or *James.Walke@fema.gov* (e-mail).

EFFECTIVE DATE: July 1, 2000.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act provides for the award of grants to assist in the repair and reconstruction of community infrastructure. With the help of State officials, we have explored the option of having capable States manage the Public Assistance Program in small disasters. However, before formally instituting the option of devolving this responsibility, we will field test the concept in selected disasters occurring on or after July 1, 2000, to validate the concept and to determine whether additional refinements are necessary. State participation in the field test(s) will be voluntary. FEMA and an affected State will enter into an operational agreement for the field test after the State elects to manage the disaster and FEMA determines that the State is capable. The operational agreement will define the roles and responsibilities of both the State and FEMA as well as the processes and procedures in effect under the agreement.

Under this initiative, a capable State will manage the Public Assistance Program operation, including project eligibility reviews, process control, and resource allocation on small disasters. We will retain obligation authority, final approval of environmental and historic preservation reviews, and we will help the State to the extent that the State requests such assistance. We and the State will conduct on-going quality control checks of a sample of Project Worksheets to ensure accurate eligibility decisions, scopes of work, and cost estimates. A Quality Assurance Team consisting of our and State staff will evaluate the Public Assistance recovery operation and determine the level of success of the pilot program. We will develop evaluation criteria before the pilot program and will include the criteria in the operational agreement.

Dated: June 20, 2000.

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–16911 Filed 7–3–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 19, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. James Steve Daniels, Livingston, Tennessee; to retain voting shares of American BancShares Corporation, Livingston, Tennessee, and thereby indirectly retain voting shares of

American Savings Bank, Livingston, Tennessee.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Perry B. Hansen, The Woodlands, Texas; Douglas M. Kratz, The Woodlands, Texas; and Francis P. McCarthy, Bettendorf, Iowa; to acquire voting shares of Second Mid-America Bancorp, Inc., Savanna, Illinois, and thereby indirectly acquire voting shares of First Illinois National Bank, Savanna, Illinois.

Board of Governors of the Federal Reserve System, June 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16834 Filed 7–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–15701) published on pages 38831 and 38832 of the issue for Thursday, June 22, 2000.

Under the Federal Reserve Bank of Chicago heading, the entry for Michael Robert Reese, Appleton, Wisconsin, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Michael Robert Reese, Appleton, Wisconsin; to acquire voting shares of Fox River Valley Bancorp, Inc., Appleton, Wisconsin, and thereby indirectly acquire voting shares of First Business Bank of Fox River Valley, Appleton, Wisconsin.

Comments on this application must be received by July 6, 2000.

Board of Governors of the Federal Reserve System, June 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16835 Filed 7–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–15702) published on page 38832 of the issue for Thursday, June 22, 2000.

Under the entry for Formations of, Acquisitions by, and Mergers of Bank Holding Companies, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

1. Cumberland Bancshares, Inc., Hartsville, Tennessee; to acquire 51 percent of the voting shares of Academy Bank (in organization), Lebanon, Tennessee.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Amana Bancshares, Inc., Southfield, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Amana Bank (in organization), Dearborn, Michigan.

Comments on this application must be received by July 17, 2000.

The correct date this Notice was signed by the Board of Governors of the Federal Reserve System, is June 16, 2000.

Board of Governors of the Federal Reserve System, June 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16832 Filed 7–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. First-West Texas Bancshares, Inc., Midland, Texas; to acquire 100 percent of the voting shares of First Pecos Bancshares, Inc., Midland, Texas, and thereby indirectly acquire voting shares of First National Bank, Pecos, Texas, First National Bank, Alpine, Texas, and First National Bank, Fort Stockton, Texas.

Board of Governors of the Federal Reserve System, June 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16833 Filed 7–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be

obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group), 101 Market Street, San Francisco, California 94105–1579:

1. Zions Bancorporation, Salt Lake City, Utah; to acquire Garban-Intercapital plc, London, United Kingdom, and thereby engage in certain brokerage activities, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16836 Filed 7–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, July 10, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17123 Filed 6–30–00; 3:13 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that based on an investigation by the Office of Research Integrity (ORI) and a decision by the Assistant Secretary for Health, the U.S. Public Health Service (PHS) has made a final finding of scientific misconduct in the following case:

Mr. Jin Qian, New Dimensions Research and Instrument, Inc.: Mr. Qian, Executive Manager for Corporate Planning and Research, New Dimensions Research and Instrument, Inc. (NDRI), committed scientific misconduct by plagiarizing research results and text from other investigators in an application to the National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH), for a Small Business Innovation Research (SBIR) award, "Glass-based neurochip system," 1 R43 NS39266–01.

Specifically, based on ORI's analysis, PHS finds that Mr. Qian: (1) Used research images and descriptions posted on the Internet to create seven figures in the application and used that material, its associated text, and text from other publications obtained from the Internet without attribution; (2) misrepresented research results in two of the plagiarized figures as exemplar applications of NDRI's proprietary technology; and (3) misrepresented his research bibliography in that application and to ORI staff during the investigation. These actions constitute falsifications in the proposing of research because their collective effect was to falsify the basis on which NIH reviewers determine whether NDRI could achieve the goals of the proposed project.

Mr. Qian has accepted the PHS finding and has entered into a Voluntary Exclusion Agreement with PHS in which he has voluntarily agreed for a three (3) year period, beginning on June 12, 2000:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations);

(2) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 00–16876 Filed 7–4–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Public Meeting of the Inter-Tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Name: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9 a.m.–4 p.m., August 16, 2000.

Place: Tamastslikt Cultural Institute, 72789 Highway 331, Pendleton, Oregon, 97801. Telephone: (541) 276–2323

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE

facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, including a continued presentation and discussion on the DOE Richland Indian Office and tribal programs, and agency updates.

Matters To Be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include updating tribal members of the cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Sandee Coulberson, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR (28737), fax 404/639–6075.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–16845 Filed 7–3–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8:30 a.m.–5 p.m., August 17, 2000. 8 a.m.–4 p.m., August 18, 2000.

Place: Tamastslikt Cultural Institute, 72789 Highway 331, Pendleton, Oregon, 97801. Telephone: (541) 276–2323

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters To Be Discussed: Agenda items include a presentation and discussion on the health effects subcommittee evaluations, issues related to combining doses from multiple environmental exposures, and agency updates.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Sandee Coulberson, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR(28737), fax 404/639–6075.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–16848 Filed 7–3–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Translation Advisory Committee for Diabetes Prevention and Control Programs (TACDPCP): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the TACDPCP of the Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through June 15, 2002.

For further information, contact Frank Vinicor, M.D., M.P.H., Executive Secretary, TACDPCP, 4770 Buford Highway, N.E., m/s K–10, Atlanta, Georgia 30341–3724. Telephone 770/488–5000, or fax 770/488–5966.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–16847 Filed 7–3–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00133]

Notice of Availability of Funds; Prevention Program Development and Technical Assistance To Improve Blood Safety and Reduce the Impact of HIV/AIDS in Countries Targeted by the Leadership and Investment in Fighting the Epidemic (LIFE) Initiative

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for HIV/AIDS Prevention Program Development and Technical Assistance Collaboration with Countries Targeted by the LIFE (Leadership and Investment in Fighting an Epidemic) Initiative.

In July 1999, the Administration announced the LIFE Initiative to address the global AIDS pandemic. The LIFE initiative, an effort to expand and intensify the global response to the growing AIDS pandemic and its serious impact, is part of the United States (U.S.) Government's participation in the International Partnership Against HIV/AIDS in Africa (IPAA). A central feature of the LIFE Initiative is a $100 million increase in U.S. support for sub-Saharan African countries and India, which are working to prevent the further spread of HIV and to care for those affected by this devastating disease. This additional funding is a critical step by the U.S. Government in recognizing the impact that AIDS continues to have on individuals, families, communities, and nations and responding to the imperative to do more. The Department of Health and Human Services (HHS), through its agency the Centers for Disease Control and Prevention (CDC) is administering $35 million of the $100 million allocated to the LIFE Initiative by Congress.

The purpose of the program is to support HIV/AIDS prevention program development and technical assistance for countries designated by the U.S. Congress under the LIFE Initiative. At present, those countries are Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda, Rwanda, Zimbabwe, Ethiopia, Mozambique, Malawi, Tanzania, Nigeria, Senegal, Zambia and India. The countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active.

The goals of the program are to address and support three program elements of the LIFE initiative: Primary Prevention, Capacity and Infrastructure Development, and Community and Home-Based Care and Treatment. The program described in this announcement calls for the delivery of HIV/AIDS prevention program development and technical assistance to the LIFE countries through a variety of recipient activities. The result will be an enhancement of the skills of officials from LIFE country national AIDS programs in strategic planning, implementation, evaluation, and communication relating to HIV/AIDS prevention and care programs.

B. Eligible Applicants

Assistance will be provided only to the American Red Cross (ARC) for this project. No other applications are solicited.

ARC is the appropriate and only qualified agency to provide the services specified under this cooperative agreement because:

1. As a member of the International Federation of Red Cross and Red Crescent Societies (the Federation), ARC is the only officially recognized Red Cross society within the United States representing the worldwide network of Red Cross National Societies. As such, it supports and implements Red Cross programs throughout Africa and India, including programs in the LIFE countries with a special focus on designing, implementing, and evaluating HIV/AIDS prevention programs and policy. This places ARC in a unique position to partner with the Federation, Red Cross National Societies and LIFE country public health officials in prevention programs. In addition, the same set of knowledge, skills, and abilities ARC has developed in working with domestic Red Cross entities, African and Indian National Societies, and the Federation are of critical importance in improving the capacity of national AIDS control programs in African countries and India.

2. Because of ARC's relationship to the Federation and Red Cross National Societies in LIFE countries, ARC can provide access to a broad, deep, and unique worldwide network. The Federation is an international humanitarian organization that exists to improve the situation of the world's most vulnerable people, including those impacted by HIV/AIDS. The Federation, founded in 1919, has a presence in more than 176 countries through its national Red Cross and Red Crescent societies. (The Red Crescent is used in place of the Red Cross in many Islamic countries.) The unique strength of the Federation lies in its global network of Red Cross National Societies and its Federation Secretariat with delegations strategically located to support Red Cross and Red Crescent activities in various regions. Red Cross and Red Crescent National Societies act as auxiliaries to the public authorities of their own countries and provide a range of services including health and social programs focusing on community-based outreach and service delivery through a network of volunteers.

3. Unique in its experience and capacity, ARC is the United States' largest supplier of blood, plasma, and tissue products as well as an innovator in blood safety. ARC is uniquely qualified to provide technical assistance to blood safety programs in LIFE countries. ARC Blood Services supplies almost half of the nation's blood by working with more than 4.5 million donors and 3,000 hospitals through its national network of 38 blood regions. In the 50 years since the inception of its national civilian blood services program, ARC has made several important contributions in the health care field, made major improvements to blood safety, and developed new blood products and technologies, helping to satisfy the changing health care needs in the U.S.

4. The American Red Cross has been the lead supporter technically and financially of the Federation-led African Red Cross/Red Crescent Health Initiative (ARCHI) 2010. ARCHI is a strategy to increase the impact of Red Cross National Society health programs Africa-wide. The overall goal of ARCHI is to measurably improve health in Africa. Over the next decade, the Centers for Disease Control and Prevention, the Federation, 53 African Red Cross and Red Crescent Societies and their related in-country Ministries of Health (MOH), United Nations Children's Fund (UNICEF), the World Health Organization (WHO), and multiple others have committed to building and enhancing Red Cross-delivered health programs throughout Africa. The ARCHI Initiative is the most comprehensive and inclusive process ever undertaken by the Federation to serve vulnerable populations throughout Africa.

5. Through participation in ARCHI, ARC has developed strong collaborative relationships with numerous domestic and international organizations. Internationally, ARC and the Federation have spearheaded ARCHI, which

involves numerous collaborations with agencies such as MOHs, WHO, UNICEF, and the World Bank. Domestically, as the largest supplier of blood in the U.S., ARC is uniquely positioned to collaborate with Federal agencies and AIDS control program officials in blood safety.

6. ARC has access to a wealth of HIV/AIDS resources that may be adapted, both from its domestic programs and its international initiatives, such as the ARCHI tool kits and the Federation's Action with Youth, HIV/AIDS STDs: A Training Manual for Young People. Additionally, ARC and the Federation have expertise in establishing regional networking mechanisms for dissemination of information and lessons learned. For example, the "Caribbean Youth HIV/AIDS Network" (CARAN) and the "Asian Red Cross / Red Crescent Task Force on HIV/AIDS" (ART) are models that are being replicated in West Africa.

7. ARC has already developed a range of technical services domestically, including instructor training courses, communication and cooperation in sharing Red Cross HIV/AIDS information and resources on a statewide basis in the U.S., support of home care for people living with HIV/AIDS, and prevention among youth through peer-to-peer education programs. Through the Federation, ARC is uniquely positioned to disseminate this information to national AIDS control program officials in LIFE countries.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $3 million is available in FY 2000 to support this award. It is expected that the award will begin on or about September 1, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Scroll down the page, then click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Yolanda I. Gonzalez-Alvarez, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Room 3000, Mailstop E–15, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2781, E-mail: ybg0@cdc.gov.

For program technical assistance, contact: Leo Weakland, Deputy Coordinator, Global AIDS Activity (GAA), National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop E–07, Atlanta, GA30333, Telephone number (404) 639–8016, Email address: lfw0@cdc.gov.

Dated: June 28, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16850 Filed 7–3–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Centers for Disease Control and Prevention (CDC)and the Agency for Toxic Substances and Disease Registry (ATDSR) Announces the Following Meetings

Name: National HIV Prevention Plan Meetings.

Time and Dates: 9 a.m.–12 p.m. (noon).

Tuesday—July 18, 2000

Hotel Pennsylvania, 401 7th Avenue, New York, NY 10001, Phone: 212–736–5000

Wednesday—July 26, 2000

Crowne Plaza-Houston, 2222 West Loop South, Houston, TX 77027, Phone: 713–961–7272

Thursday—July 27, 2000

Congress Plaza Hotel, 520 South Michigan Avenue, Chicago, IL 60605, Phone: 312–427–3800

Tuesday—August 1, 2000

The Argent Hotel, 50 Third Street, San Francisco, CA 94103, Phone: 415–974–6400

Place: See Above.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: To present the current draft of the Centers for Disease Control and Prevention's National HIV Prevention Strategic Plan and to provide an opportunity for community comment.

Matters To Be Discussed: Agenda items include background and development of the draft National HIV Prevention Strategic Plan; the plan itself; next steps in plan development; and public comments.

Contact Person for More Information: Lydia Ogden, National Center for HIV, STD, and TB Prevention, Office of Planning and Policy Coordination, 1600 Clifton Road, N.E., M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8031.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–16846 Filed 7–3–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Approval of Respiratory Devices Used to Protect Workers in Hazardous Environments

AGENCY: Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (DHHS).

ACTION: Notice of public meetings concerning quality assurance and administrative approval requirements for respiratory protective devices.

DATES: August 8, 2000, 9 a.m.–5 p.m., in the Washington DC Area. August 16, 2000, 9 a.m.–5 p.m., in the San Francisco, CA Area.

PLACES:

Washington DC Area—Quality Hotel & Suites; Courthouse Plaza, Jefferson Room, 1200 N. Courthouse Road, Arlington, VA 22201. Phone: 1–888–987–2555 or 703–524–4000. Phone by July 21, 2000 to receive the NIOSH group rate of $118.00.

San Francisco, CA Area—Embassy Suites, Ambassador Ballroom, 150 Anza Boulevard, Burlingame, California 94010. Phone: 650–340–0327. Phone by July 24, 2000 to receive the NIOSH group rate of $164.00.

The meetings will be open to the public, limited only by the space available. Each meeting room accommodates approximately 120 people.

Requests to make presentations at the public meetings should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513–533–8450, fax 513–533–8285, or e-mail to NIOCINDOCKET@CDC.GOV on or before July 30, 2000.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) is in the process of developing a proposed rule on the quality assurance and administrative requirements for the approval of respirators and is seeking individual stakeholder input for this process. The purpose of these meetings is to provide an opportunity for an exchange of information between the Agency and respirator manufacturers, industry representatives, labor representatives, and others with an interest in respiratory protection. Attendees will be given an opportunity to ask questions; submit verbal and written comments they wish to have included in the regulatory record; and provide individual input into potential changes to the applicable regulations and policies.

Discussion and Comment Topics

NIOSH has not determined the final content of its proposed rulemaking but is considering the regulatory actions listed below. NIOSH is specifically asking for comments on these proposed actions, but would also welcome comments on additional areas that the commenters believe may need to be addressed.

NIOSH is Considering

(1) Proposing quality assurance requirements for the approval holder's manufacturing process that are consistent with international standards, specifically the International Organization for Standards (ISO) 9000 guidelines. These international standards would be supplemented by respirator-specific quality measures.

(2) Proposing new quality requirements, such as mandatory pre-approval audits for new manufacturing sites, more stringent quality sampling plans, critical classification of defects for all types of respirators, and records retention schedules;

(3) Proposing to enhance quality monitoring activities by NIOSH by increasing the frequency of both site and product audits, requiring an approval holder to supply free product audit samples for product audits, requiring approval holders to self-audit their product and present those results to NIOSH, accepting ISO certification in lieu of a NIOSH-performed site audit, employing contract laboratories to do certain tests for the approval program, and requiring the approval holder to report all customer complaints and non-compliance findings to NIOSH; and

(4) Implementing a new fee structure to recover costs of approval application processing (approximately a 2.5 times increase over the current application fees), approval records maintenance (a new annual fee of approximately $36 per approval), and auditing costs (a new charge computed based on the hourly rate of government personnel [approximately $50 per hour] plus expenses) for the chargeable services received by the applicant or approval holder.

Comments on the concepts presented in this notice should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513–533–8450, fax 513–533–8285. Comments may also be submitted by e-mail to: NIOCINDOCKET@CDC.GOV. E-mail attachments should be formatted as WordPerfect 6/7/8/9 or Microsoft Word. Submitted comments should reference docket number, NIOSH–001, in the subject heading.

FOR FURTHER INFORMATION CONTACT: Matt Bowyer or Roland BerryAnn, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone 304–285–5907, fax 304–285–6030 and/or E-mail:respcert@cdc.gov.

In addition to these public meetings, NIOSH invites individuals, organizations and companies to meet with the staff of its Respirator Branch. Requests for such meetings should be made on or before July 31, 2000 to Matt Bowyer or Roland BerryAnn. NIOSH will prepare summaries of these meetings and place them in the regulatory docket.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 00–16849 Filed 7–3–00; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1359]

Agency Information Collection Activities; Proposed Collection; Comment Request; Affirmation of Generally Recognized as Safe (GRAS) Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for reporting and recordkeeping, general and specific requirements, and availability of sample electronic product for manufacturers and distributors of electronic products.

DATES: Submit written comments on the collection of information by September 5, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Affirmation of Generally Recognized As Safe (GRAS) Status (21 CFR 170.35(c)(1))—(OMB Control Number 0910–0132)—Extension

Under authority of sections 201, 402, 409, and 701 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 342, 348, and 371), FDA reviews petitions for affirmation as GRAS that are submitted on a voluntary basis by the food industry and other interested parties. Under section 409 of the act, the agency has the authority to regulate food additives. Section 201(s) of the act, defines "food additive" and expressly excludes from the definition substances GRAS for use in food.

Specifically under section 201(s) of the act, a substance is GRAS if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures or common use in food. The act has historically been interpreted to permit food manufacturers to make their own determination that use of a substance in food is GRAS. To implement the GRAS provisions of the act, FDA has issued procedural regulations under § 170.35(c)(1) (21 CFR 170.35(c)(1)). These regulations establish a process by which a person may obtain FDA concurrence with a GRAS determination; this concurrence is referred to as "GRAS affirmation." These regulations set forth the information to be submitted to FDA to obtain agency concurrence that a substance is GRAS (§ 170.35(c)(1)).

GRAS petitions are reviewed by FDA to ascertain whether the available data establish that the intended use of the substance is GRAS based upon either a history of the safe use of the substance, or upon widely available safety data (scientific procedures). The GRAS affirmation process is a voluntary one, and there is some risk that FDA may not agree with the petitioner's GRAS determination. The GRAS petition process does provide a public procedure for coordinating GRAS determinations. The process reduces the potential for public health problems when substances are marketed based upon unwarranted safety determinations and allows a food manufacturer to rely on the lawful status of a substance that has been affirmed by FDA as GRAS.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
170.35(c)(1)	1	1	1	2,614 (average)	2,614

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that it may receive one GRAS petition annually. Although the burden varies with the type, size, and complexity of the petition submitted, GRAS petitions may involve analytical work, analysis of appropriate toxicological studies, and the work of drafting the petition itself. Since 1980, FDA has not received any petitions for affirmation of GRAS status under 21 CFR part 186—Indirect Food Substances Affirmed As Generally Recognized As Safe. Section 184.1(a) (21 CFR 184.1(a)) affirms the use of those substances affirmed as GRAS in 21 CFR part 184—Direct Food Substances Affirmed As Generally Recognized As Safe, for use as indirect food ingredients.

Dated: June 27, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–16812 Filed 7–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1224]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 4, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds

On November 21, 1997, the President signed into law the Food and Drug Administration Modernization Act (the Modernization Act) (Public Law 105–115). Section 117 of the Modernization Act provides that a written request to FDA from the applicant of an investigation that a clinical hold be removed shall receive a decision in writing, specifying the reasons for that decision, within 30 days after receipt of such request. A clinical hold is an order issued by FDA to the applicant to delay a proposed clinical investigation or to suspend an ongoing investigation for a drug or biologic. An applicant may respond to a clinical hold.

Section 505(i)(3)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(3)(C)) requires that any written request to FDA from the sponsor of an investigation that a clinical hold be removed must receive a decision, in writing and specifying the reasons, within 30 days after receipt of the request. The request must include sufficient information to support the removal of the clinical hold.

In the **Federal Register** of May 14, 1998 (63 FR 26809), FDA published a notice of availability of a guidance that described how applicants should submit responses to clinical holds so that they may be identified as complete responses, and the agency can track the time to respond. FDA is now issuing a revised guidance.

The revised guidance states that FDA will respond in writing within 30 calendar days of receipt of a sponsor's request to release a clinical hold and a complete response to the issue(s) that led to the clinical hold. An applicant's complete response to an investigational new drug application (IND) clinical hold is a response in which all clinical hold issues identified in the clinical hold letter have been addressed.

The guidance requests that applicants type in large, bold letters at the top of the cover letter of the complete response "Clinical Hold Complete Response" to expedite review of the response. The guidance also requests that applicants submit the complete response letter in triplicate to the IND, and that they fax a copy of the cover letter to FDA's contact, listed in the clinical hold letter, who is responsible for the IND. The guidance requests more than an original and two copies, i.e., three copies, of the cover letter in order to ensure that the submission is received and handled in a timely manner.

Based on data concerning the number of complete responses to clinical holds received by the Center for Drug Evaluation and Research (CDER) from July 1, 1998, to June 30, 1999, CDER estimates that approximately 48 responses are submitted annually from approximately 43 applicants, and that it takes approximately 284 hours to prepare and submit to CDER each response.

Based on data concerning the number of complete responses to clinical holds received by the Center for Biologics Evaluation and Research (CBER) in fiscal year 1999, CBER estimates that approximately 134 responses are submitted annually from approximately 110 applicants, and that it takes approximately 284 hours to prepare and submit to CBER each response.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Complete responses to clinical holds	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
CDER	43	approx. 1	48	284	13,632
CBER	110	approx. 1	134	284	38,056
Total					51,688

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of April 13, 2000 (65 FR 19911), the agency requested comments on the proposed collections of information. No significant comments were received.

Dated: June 27, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–16813 Filed 7–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Microbiology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 27, 2000, 10:30 a.m. to 5:30 p.m. and July 28, 2000, 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 27, 2000, the committee will discuss and make recommendations on issues concerning the appropriate types of data and information required to assess the safety and effectiveness of diagnostic tests intended to identify biothreat agents, or to provide evidence of exposure to biothreat agents, when used on different specimen types and under different conditions for use.

The following draft questions are proposed for discussion and may be subject to changes prior to the committee meeting:

1. What types of data and information would be recommended to evaluate effectiveness when the assay is used:

(a) To definitively identify or rule-out identification of isolates;

(b) to identify biothreat agents directly in specimens from individuals suspected (clinically or using other diagnostic procedures) to have been infected with the agent of interest; and

(c) to identify/detect the biothreat agent directly in specimens from individuals without clinical or other diagnostic evidence of infection, who may have been exposed to the biothreat agent.

2. For each of these potential uses what is the level of inaccuracy that can be tolerated, or would the same criteria apply to all?

3. To determine or infer effectiveness for these devices, can specimens from naturally- or experimentally-infected animals be used when appropriate specimens from humans cannot be obtained? What are the constraints/limitations for use of animal data as evidence for effectiveness?

4. Are there any other issues not addressed in the previous questions that would affect the reliable use of these assays for human diagnosis?

FDA will consider these recommendations in the future development of review criteria for in vitro diagnostic devices, developed in response to the threat of bioterrorism, for the identification of biothreat agents, as valid scientific evidence to determine whether there is reasonable assurance that these devices are safe and effective.

On July 28, 2000, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an in vitro diagnostic nucleic acid amplification test for the qualitative detection of hepatitis C virus (HCV) ribonucleic acid (RNA) in human serum or plasma. On the same day the committee will discuss, make recommendations, and vote on a PMA for an automated in vitro diagnostic nucleic acid amplification test for the qualitative detection of HCV RNA in human serum or plasma. These devices are not intended for use in blood or plasma donor screening.

Procedure: On July 27, 2000, from 10:30 a.m. to 5:30 p.m. and on July 28, 2000, from 9 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 12, 2000. Oral presentations from the public will be scheduled between approximately 11:45 a.m. and 12:30 p.m. on July 27, 2000, and between approximately 11:30 a.m. and 12:15 p.m., and 3 p.m. and 3:30 p.m. on July 28, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 12, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 28, 2000, from 8 a.m. to 9 a.m., the meeting will be closed to permit FDA staff to present to the committee trade secret and/or confidential commercial information regarding pending and future device submissions. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 26, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–16809 Filed 7–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 20, 2000, 9:45 a.m. to 5 p.m., and July 21, 2000, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, SMT@CDRH.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12522. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 20, 2000, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for a direct-drive implantable middle ear hearing device intended to provide a useful level of sound perception via mechanical stimulation of the ossicles. On July 21, 2000, the committee will discuss, make recommendations and vote on a PMA for an implant intended to restore useful hearing to individuals with Neurofibromatosis Type II who have become deaf as a result of surgery to remove bilateral auditory nerve tumors.

Procedure: On July 20, 2000, from 9:45 a.m. to 5 p.m., and on July 21, 2000, from 9:15 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 13, 2000. Oral presentations from the public will be

scheduled between approximately 10 a.m. and 10:30 a.m. on July 20, 2000, and between approximately 9:30 a.m. and 10 a.m. on July 21, 2000. On both days, near the end of the committee deliberations on the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 13, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 21, 2000, from 8:30 a.m. to 9:15 a.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information regarding pending issues and applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 26, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–16810 Filed 7–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The FDA Review Process for New Product Applications: An Interactive Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop.

The Food and Drug Administration (FDA), Los Angeles District Office, in cosponsorship with the Orange County Regulatory Affairs Discussion Group (OCRA) is announcing a workshop intended to give the medical products industry (drugs and medical devices) an opportunity to learn and discuss the process by which the FDA centers and district offices review new product applications. Reviewing staff from the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health will make presentations to provide guidance on the elements of submissions to make the review process more effective.

Date and Time: The workshop will be held on July 10 and 11, 2000, from 7:30 a.m. to 5 p.m.

Location: The workshop will be held at the Doubletree Hotel, 3050 Bristol St., Costa Mesa, CA 92626.

Contact: Ramlah Oma, FDA Los Angeles District Office, 19900 MacArthur Blvd., Irvine, CA 92612–2445, 949–798–7612, or FAX 949–798–7771, for further information including a registration form.

Registration: Space is limited. Preregistration and confirmation is required. Registration forms can be obtained on the Internet at http://www.ocra-dg.org by clicking on "OCRA Meetings" or from the contact person listed above. There is a $325 registration fee if postmarked by June 30, 2000 ($375 on or after July 1) payable to OCRA. Send the registration fee and form to PeriAnn DiRocco at OCRA Submissions Conference, PMB 624, 5405 Alton Pkwy., suite 5A, Irvine, CA 92604, FAX and voice 949–348–9141. The registration fee will cover actual expenses including refreshments, lunch, materials, and speaker expenses. After July 4, 2000, please call 949–348–9141 to check for space availability.

If you need special accommodations due to a disability, please contact Ramlah Oma at least 7 days in advance.

Dated: June 28, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–16963 Filed 6–29–00; 4:37 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming joint meeting of two public advisory committees of the Food and Drug Administration (FDA). At least one portion of the joint meeting will be closed to the public.

Names of Committees: Transmissible Spongiform Encephalopathies Advisory Committee and the Vaccines and Related Biological Products Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 27, 2000, 8 a.m. to 4 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: William Freas or Sheila D. Langford; Nancy Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852; 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 12392 and 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 27, 2000, in joint session, the committees will discuss bovine spongiform encephalopathy issues related to the manufacture of vaccines, specifically the use of European fetal calf serum in cell banks and viral seeds, and the use of European beef skeletal muscle and other tissues in manufacturing vaccines.

Procedure: On July 27, 2000, from 9 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 13, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 17, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentations.

Closed Committee Deliberations: On July 27, 2000, from 8 a.m. to 9 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 23, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–16811 Filed 7–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1141–N]

Medicare Program; Open Public Meeting on July 25, 2000 To Discuss the Coverage of Drugs and Biologicals That Cannot Be Self-Administered

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a second public meeting to obtain input on the Medicare program policy for drugs and biologicals that are furnished as an incident to a physician's professional service and which cannot be self-administered. This meeting follows the public meeting held on May 18, 2000 at the Health Care Financing Administration headquarters on the same subject. The meeting will provide an opportunity for providers, suppliers, beneficiaries, beneficiary advocates, and other interested parties to furnish information and to address issues about the Medicare program's policy concerning the self-administration of drugs and biologicals.

DATES: The meeting is scheduled for July 25, 2000 from 9:30 a.m. until 1:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency O'Hare, 9300 West Bryn Mawr, Rosemont, IL, 60018, located three miles from the airport in Chicago. Special arrangements have been made with the Hyatt Regency to hold a limited number of rooms for out of town guests interested in attending. To reserve your room, please call the Hyatt directly at (847) 696–1234. When calling to make a reservation reference the *Health Care Financing Administration Town Hall Meeting.*

FOR FURTHER INFORMATION CONTACT: Heidi Adams, (410) 786–1620 (telephone); (410) 786–0169 (fax); Hadams@hcfa.gov (e-mail). We will accept written comments at the following address: Health Care Financing Administration, Heidi Adams, C4–07–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

SUPPLEMENTARY INFORMATION:

Background

As suggested by the report language accompanying section 219 of the Department of Health and Human Services Appropriations Act, 2000 (Public Law 106–113), we are announcing the second of two town hall meetings to discuss our current policy regarding Medicare coverage of drugs and biologicals that are furnished as an incident to a physician's professional service and which cannot be self-administered. The first meeting was held on May 18, 2000. It raised several issues, in addition to other policy considerations that we believe should be addressed.

The scope of benefits provided to Medicare beneficiaries who are eligible under the Supplemental Medical Insurance program (Part B) includes coverage for certain "medical and other health services." Among those services are two specific provisions that include limited coverage of drugs and biologicals. Sections 1861(s)(2)(A) and (B) provide, in pertinent part, that:

> (A) services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills;
>
> (B) hospital services (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) incident to physicians' services rendered to outpatients * * *

Coverage of drugs and biologicals under these provisions are only covered in the context of items furnished "incident to a physician's service." Moreover, historically, the determination of whether a drug "cannot be self-administered" has been based on the characteristics of the drug itself and not the patient's capacity to self-administer.

When considering self-administration and its effect on the coverage of drugs under Medicare, compelling concerns about Medicare beneficiary access to needed drugs were raised by presenters during the town hall meeting held on May 18, 2000. A report of the May 18, 2000 meeting may be found on the HCFA website (www.hcfa.gov). In addition, other important policy issues including financial, equity, and ethical issues are implicated. Due to time constraints, however, it may not be possible to present all view points on each issue at the public meeting.

Equity

In the area of equity, the main question is around the limitations on coverage.

- If considering "usual medical practice" for specific drugs, then what percentage of patients should constitute a usual practice? Should the universe of patients that is considered be:
  - + Every patient;
  - + Every Medicare patient;
  - + Every patient in the carrier's area; or
  - + Every Medicare patient in the carrier's area.
- Should coverage be limited to beneficiaries whose condition is such that they could not self-administer any drug; for example, the disabled and those with dementia?
- Is it appropriate to consider only the patient's ability to self-administer, exclusive of any other considerations, such as those in this list?
- Should there be information collected on certain drugs to estimate a percentage of patients who could self-administer or who actually self-administer?
- Should psychiatric drugs be considered under special criteria, since patient compliance may be particularly problematic?
- Should coverage be limited only to injectable drugs?
- Should the policy consider whether another person, who is not a health-care professional (for example, the patient's spouse) can administer the drug to the beneficiary?
- Should the policy consider whether the drug is used to treat an acute illness or injury as compared to a chronic condition that requires drug therapy over an extended period?

Ethical Concerns

The ethical issues raised related to dilemmas physicians face in determining treatment practices as they try to follow the Medicare practices and policies when treating their patients with drug therapies.

- In developing criteria for application of this policy, is there a way to address the physician's dilemma of administering medication based on Medicare coverage status versus the most appropriate medical treatment.
- If the criterion is solely that physicians monitor the effects of the drug, then on what basis would oral drugs be excluded? What meaning would "cannot be self-administered" have over and above the meaning for "incident to a physician's service"?
- Should the criterion be solely the method of administration? Or should the nature of the chemical compound and its possible side effects also be considered?
- If the criterion is safe self-administration, then safely by whom? Should this be determined on a patient-by-patient basis?

Financial

The financial issues vary from the stand point of the manufacturer, program, and patient.

• How to address possible incentives for drug manufacturers to make drugs only in the form that cannot be self-administered. How should oral versus injectable drugs be evaluated?

• Considering the marketplace, how should Medicare's policy concerning self-administered drugs take into account a possible competitive disadvantage for oral and subcutaneous drugs that are self-administrable?

The purpose of the meeting on July 25, 2000 is to obtain focused input on how this statutory provision should reasonably be interpreted; how the evolution of medical technology has affected physician practice in self-administration; how different interpretations of the provision might affect considerations of fairness and equity among beneficiary populations; and how physician practice may be affected by different interpretations. We are holding the second meeting to allow the public to address in more detail the issues raised during the first meeting by way of panel presentations and discussion. Due to time constraints, and the need to focus on the above topics, we are unable to undertake a discussion of options or ideas that require a statutory change.

Format

We will begin the meeting with a brief summary of the first meeting and a brief exposition of policy concerns that should be considered when addressing the issue of drugs and biologicals that cannot be self-administered. This will be followed by 15-minute panel presentations by participants who submit a prior request to speak.

Panels will be organized in the following manner to address the general categories of policy concerns:

1. Financial, including incentives/marketplace advantage to manufacturers of non self-administrable forms of drugs.
2. Beneficiary equity.
3. Physicians' ethical dilemmas, including prescription of drugs based on coverage status versus the most appropriate medical treatment.

After the last panel has concluded its presentations the meeting will move to an open dialogue.

Presentations

Individuals interested in making a presentation at the meeting or who need special arrangements should contact Heidi Adams at (410) 786–1620, or via e-mail at HAdams@hcfa.gov, no later than July 14, 2000. Individuals should identify the topics they wish to discuss during their presentation. Because of time constraints, only a limited number of individuals will be able to make presentations. In an effort to assure that all viewpoints are represented, we will notify participants who are selected to make a presentation. We will not assign presentation times until after July 14, 2000.

Registration

The Center for Health Plans and Providers will handle registration for the meeting. Individuals may register by sending a fax to the attention of Heidi Adams at (410) 786–0169. At the time of registration, please provide your name, address, telephone number, company name, and fax number.

Receipt of your fax will constitute confirmation of your registration. Meeting materials will be provided at the time of the meeting. If you have questions regarding registration, please contact Heidi Adams.

We will accept written comments, questions, or other materials specifically dealing with the issue that are received no later than 5 p.m. on July 14, 2000 at the address noted above.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described above. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Heidi Adams at least 10 days before the meeting.

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302) and 5 CFR 1320.3(h)(4).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 28, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–16887 Filed 7–3–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Availability of Funds for Loan Repayment Program for Repayment of Health Professions Educational Loans

AGENCY: Indian Health Service, HHS.

ACTION: Revised notice of availability of funds for loan repayment program for repayment of health professions educational loans for Fiscal Year (FY) 2000.

SUMMARY: The announcement for FY 2000 Availability of Funds for Loan Repayment Program for Repayment of Health Professions Educational Loans was announced in 64 FR 53681 on October 4, 1999. The Indian Health Service (IHS) is republishing the full notice, for the convenience of the public, and in order to add that the IHS Area Offices and Service Units may provide additional funding to make awards to participants in the Loan Repayment Program (LRP), and to describe the policy for administering these funds.

The Administration's budget request for fiscal year (FY) 2000 includes $11,000,000 for the Indian Health Service Loan Repayment Program for health professionals educational loans (undergraduate and graduate) in return for full-time clinical service in Indian health programs. It is anticipated that $11,000,000 will be available to support approximately 275 competing awards averaging $40,000 per award.

This program announcement is subject to the appropriation of funds. This notice is being published early to coincide with the recruitment activity of the IHS, which competes with other Government and private health management organizations to employ qualified health professionals. Funds must be expended by September 30 of the fiscal year. This program is authorized by Section 108 of the Indian Health Care Improvement Act (IHCIA) as amended, 25 U.S.C. 1601 et seq. The IHS invites potential applications to request an application for participation in the Loan Repayment Program.

DATES: Applications for the FY 2000 Loan Repayment Program will be accepted and evaluated monthly beginning January 14, 2000, and will continue to be accepted each month thereafter until all funds are exhausted. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month. Notice of awards will be mailed on the last working day of each month.

Applicants selected for participation in the FY 2000 program cycle will be expected to begin their service period no later than September 30, 2000.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service post mark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

Applications received after the monthly closing date will be held for

consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 2000, will be notified in writing.

Form to be Used for Application: Applications will be accepted only if they are submitted on the form entitled "Application for the Indian Health Service Loan Repayment Program," identified with the Office of Management and Budget approval number of OMB #0917–0014 (expires 11/30/99).

ADDRESSES: Application materials may be obtained by calling or writing to the address below. In addition, completed applications should be returned to: IHS Loan Repayment Program, 12300 Twinbrook Parkway—Suite 100, Rockville, Maryland 20852, PH: 301/443–3396 (between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays).

FOR FURTHER INFORMATION CONTACT: Please address inquiries to Mr. Paul A. Lofgren, Acting Chief, IHS Loan Repayment Program, Twinbrook Metro Plaza—Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, PH: 301/443–3396 (between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays).

SUPPLEMENTARY INFORMATION: Section 108 of the IHCIA, as amended by Public Laws 100–713 and 102–573, authorizes the IHS Loan Repayment Program and provides in pertinent part as follows:

The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to a the "Loan Repayment Program") in order to assure an adequate supply of trained health professions necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

Section 4(n) of the IHCIA, as amended by the Indian Health Care Improvement Technical Corrections Act of 1996, Pub. L. 104–313, provides that:

"Health Profession" means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, an allied health profession, or any other health profession.

For the purposes of this program, the term "Indian health program" is defined in Section 108(a)(2)(A), as follows:

* * * any health program or facility funded, in whole or in part, by the IHS for the benefit of American Indians and Alaska Natives and administered:

a. Directly by the service; or

b. By any Indian tribe or tribal or Indian organization pursuant to a contract under:

(1) The Indian Self-Determination Act; or

(2) Section 23 of the Act of April 30, 1908, (25 U.S.C. 47), popularly known as the Buy Indian Act; or

(3) By an urban Indian organization pursuant to Title V of this act.

Applicants may sign contractual agreements with the Secretary for 2 years. The IHS will repay all, or a portion of the applicant's health profession educational loans (undergraduate and graduate) for tuition expenses and reasonable educational, and living expenses in amounts up to $20,000 per year for each year of contracted service. Payments will be made annually to the participant for the purpose of repaying his/her outstanding health profession educational loans. Repayment of health profession education loans will be made to the participant within 120 days after the entry-on-duty of the participant has been confirmed by the Indian Health Service Loan Repayment Program.

The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. All Indian health program sites are annually prioritized within the Agency by discipline, based on need or vacancy.

All health professionals will receive up to $20,000 per year regardless of their length of contract. Where the amount of the Loan Repayment Program award may result in an increase in Federal income tax liability, the IHS will pay an additional 20 percent of the participant's total loan repayments to the Internal Revenue Service for the increased tax liability.

Pursuant to Section 108(b), to be eligible to participate in the Loan Repayment Program, an individual must:

(1) A. Be enrolled:

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within a State and be scheduled to complete such course of study in the same year such individual applies to participate in the Loan Repayment Program. (This includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau); or

(ii) In an approved graduate training program in a health profession; or

B. Have a degree in a health profession and a license to practice; *and*

(2) A. Be eligible for, or hold an appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service; or

B. Be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service; or

C. Meet the professional standards for civil service employment in the IHS; or

D. Be employed in an Indian health program without service obligation; *and*

(3) Submit to the Secretary an application and contract to the Loan Repayment Program; *and*

(4) Sign and submit to the Secretary, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Secretary; *and*

(5) Sign an affidavit attesting to the fact that they have been informed of the relative merits of the U.S. Public Health Service Commission Corps and the Civil Service as employment options.

Once the applicant is approved for participation in the Loan Repayment Program, the applicant will receive confirmation of his/her loan repayment award and the duty site as which he/she will serve his/her loan repayment obligation.

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those positions in order of priority by developing discipline-specific prioritized lists of sites. Ranking criteria for those sites include the following:

- Historically critical shortages caused by frequent staff turnover;
- Current unmatched vacancies in a Health Profession Discipline;
- Projected vacancies in a Health Profession Discipline;
- Ensuring that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and
- Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached Loan Repayment Program contracts entered into under this section.
- Consistent with this priority ranking, in determining applications to be approved and contracts to accept, the IHS will give priority to applications

made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.

• Funds appropriated for the LRP in FY 2000 will be distributed among the health professions as follows: Allopathic/osteopathic practitioners will receive 30 percent, registered nurses 15 percent, mental health professionals 10 percent, dentists 15 percent, pharamacists 12.5 percent, optometrists 7.5 percent, physician assistants 5 percent, other professions 5 percent. This requirement does not apply if the number of applicants from these groups, respectively, is not sufficient to meet the requirement.

• The IHS will give priority in funding among health professionals to physicians in the following priority specialities: anesthesiology, emergency room medicine, general surgery,. obstetrics/gynecology, ophthalmology, orthopedic surgery, otolaryngology/ otorhinolaryngology, psychiatry, radiology and dentistry. Funding for these priority specialities is within the 30 percent established for allopathic/ osteopathic practitioners.

The following factors are equal in weight when applied, and are applied when all other criteria are equal and a selection must be made between applicants.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, would be selected.

• An applicant's length of current employment in the IHS, tribal, or urban program.

• Availability for service earlier than other applicants (first come, first served); and

• Date the individual's application was received.

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend his/her contract on a year-by-year basis, as determined by the IHS. Participants extending their contracts will receive up to the maximum amount of $20,000 per year plus an additional 20 percent for Federal Withholding. Participants who were awarded loan repayment contracts prior to FY 2000 will be awarded extensions up to the amount of $30,000 a year and 31 percent in tax subsidy if funds are available, and will not exceed the total of the individual's outstanding eligible health profession educational loans.

Any individual who owes an obligation for health professional service to the Federal Government, a State, or other entity is not eligible for the Loan Repayment Program unless the obligation will be completely satisfied before they begin service under this program.

The IHS Area Offices and Service Units are authorized to provide additional funding to make awards to applicants in the LRP, but must be in compliance with any limits in the appropriation and Section 108 of the Indian Health Care Improvement Act not to exceed the amount authorized in the IHS appropriation (up to $17,000,000 for FY 2000.) Federally recognized tribes are also authorized to provide funding to make supplemental awards to participants who are tribal employees. Civil Service or Commission Corps employees are ineligible because it would violate 18 U.S.C. 209(a). The funding source cannot be from appropriated monies pursuant to the Indian Self Determination and Education Assistant Act (ISDEA) or other Federal funds. Tribes who elect to provide additional monies must provide certification in writing that the funds are not from Federal appropriations.

Should an IHS Area Office contribute to the LRP, those funds will be used for only those sites located in that Area. Those sites will retain their relative ranking from the national site-ranking list. For example, the Albuquerque Area Office identifies supplemental monies for dentists. Only the dental positions within the Albuquerque Area will be funded with the supplemental monies consistent with the national ranking and site index within that Area.

Should an IHS Service Unit contribute to the LRP, those funds will be used for only those sites located in that service unit. These sites will retain their relative ranking from the national site-ranking list. For example, Chinle Service Unit identifies supplemental monies for nurses. The Chinle service units consist of two facilities, namely the Chinle Comprehensive Health Care Facility and the Tsaile PHS Indian Health Center. The national ranking will be used for the Chinle Comprehensive Health Care Facility (Score = 63) and the Tsaile PHS Indian Health Center (Score = 46). With a score of 63, the Chinle Comprehensive Health Care Facility would receive priority over the Tsaile PHS Indian Health Center.

The IHS is authorized to accept contributions from tribes to supplement the LRP according to the IHS's conditional gift acceptance authority.

The Director of IHS will accept these gifts on a case-by-case basis using the following criteria: (1) The contribution is not from prohibited 638 funds or federally appropriate funds; (2) the LRP applicant selection and placement is consistent with the national ranking criteria; (3) the extent to which the gift is related to the agency's mission for the loan repayment program; (4) whether the gift would benefit the agency, or instead primarily benefit an individual employee; and (5) the size and nature of the gift.

This program is not subject to review under Executive Order 12372.

The Catalog of Federal Domestic Assistance number if 93.164.

Dated: June 28, 2000.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 00–16875 Filed 7–4–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://wmcare.samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa. KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories ,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232 (Formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc. *, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361 (Formerly: NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559 (Formerly:

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 858–279–2600/800–882–7272
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120/800–444–0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995/858–677–7970
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–339–4299 (Formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–16851 Filed 7–3–00; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4566 N–07]

Notice of Proposed Information Collection: Comment Request, 2000 Survey of Homeless Residential Service Providers

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 5, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/ or OMB Control Number and should be sent to: Sheila Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410

FOR FURTHER INFORMATION CONTACT: Mr. Michael Roanhouse (202) 708–1226 telephone number (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 2000 Survey of Homeless Residential Service Providers.

OMB Control Number, if applicable: N/A.

Description of the need for the information and proposed use:

In 2000, the Department of Housing and Urban Development will undertake a survey of homeless residential service providers in 15 jurisdictions including Atlanta, Ga, Columbus, OH, Grand Rapids, MI, Kansas City, MO, Lafayette, IN, New York City, NY, Philadelphia, PA, San Diego, CA, Spokane, WA, St. Louis, MO, St. Paul, MN, Washington, DC, Montgomery County, MD, State of Massachusetts, and State of Rhode Island. The survey is designed to collect data from providers on the types of services being offered, the number and types of staff employed, the characteristics of the program and its clients, and the provider's sources of revenue. The survey will provide information about the current operation of residential service programs assisting homeless persons in the 15 jurisdictions.

Homeless residential service providers offering emergency shelter, transitional housing, or permanent supportive housing in the 15 jurisdictions will be surveyed by mail. They will be asked to identify their program type and report on their program characteristics including staffing pattern and target population, clients' social-demographic profile, service provision, physical and architectural features of living accommodation, program structure and policy, and sources of revenue. In addition, providers will be asked to report their annual and seasonal capacity, as well as the capacity of their services in 1987 as a baseline of service capacity.

Agency form numbers, if applicable: None.

Members of affected public: Government (state and local), non-profit, and for-profit homeless residential service programs.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Type of Review: Regular submission.

Estimated Number of Respondents: 1000.

Estimated Time Per Response: Approximately 2 hours.

Status of the proposed information collection: Method of Collection-Homeless residential service providers will be asked to complete and return a self-administered mail questionnaire.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C Chapter 35, as amended.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 28, 2000.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 00–16805 Filed 7–3–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–43]

Notice of Submission of Proposed Information Collection to OMB; Assisted Living Conversion Program (ALCP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 4, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Assisted Living Conversion Program (ALCP).

OMB Approval Number: 2502–XXXX.

Form Numbers: HUD–50080–ALCP, SF–269, SF–424, SF–424C, SF–424–D, SF–LLL, and HUD–2880, HUD–50070, HUD–50071, HUD–2991.

Description of the Need for the Information and Its Proposed Use: This package requests OMB approval for use of an application kit and reporting forms for HUD's new ALCP.

Respondents: Not-For-Profit Institutions.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Information Collection	50		1		86		4,300

Total Estimated Burden Hours: 4,300.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 29, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–16958 Filed 7–3–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–41]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request, Section 203(k) Rehabilitation Mortgage Insurance

AGENCY: Office of Insured Single Family Housing Asset Management Division, HUD.

ACTION: Notice of proposed information collection for public comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 12, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number (2502–0527) and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION:

This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to this expanded collection requirement implements recommendations to mitigate program abuses that were cited in an Audit Report of HUD's Office of Inspector General. The expanded information collection focuses on the loan origination process and requires (1) certifications and disclosures concerning identify-of-interest borrowers and program participants, and (2) proficiency testing of home inspectors/consultants.

The purposes of a collection requirement is to help mitigate program abuses cited by the General Accounting Office (GAO) and HUD's Office of Inspector General. The basis for our request for emergency processing is that the 203 (k) Rehabilitation Mortgage Insurance program continues to experience abuses, as cited by GAO and the Inspector General. Without an approved OMB collection of information, we cannot implement the necessary controls to stem program fraud and misuse on a timely basis.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (92) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 203(k) Rehabilitation Mortgage Insurance.

OMB Control Number: 2502–0527.

Agency Form Numbers: HUD–92700.

Members of Affected Public: Individuals or Households, Business or Other-For-Profit, Federal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 321,250, number of respondents is 20,500, frequency response is annually, and the hours of response is 3.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 28, 2000

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–16959 Filed 7–3–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–42]

Notice of Submission of Proposed Information Collection to OMB; Family Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 4, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0083) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410: e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents

submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Family Report.

OMB Approval Number: 2577–0083.

Form Numbers: HUD–50058 and HUD 50058 MTW.

Description of the Need for the Information and Its Proposed Use: Revised forms are necessary for sound management of HUD programs and program changes due to new laws including the Quality Housing and Work Responsibility Act (QHWRA) of 1998.

Respondents: Individuals or Households, State, Local or Tribal Government.

Frequency of Submission: Reporting third party disclosure annually.

Reporting Burden:

	Number of respondents	×	Frequency of of response	×	Hours per response	=	Burden hours
HUD–50058	4521		1,000		.25		1,125,000

Total Estimated Burden Hours: 1,125,000.

Status: Revision of a currently approved collection and extension of a currently approval collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 28, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–16960 Filed 7–3–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–00–1430–PD]

Fivemile Pass and Knolls Special Recreation Area, et al.; Emergency Closure To Discharge or Use of Firearms or Dangerous Weapons for Purposes of Target Shooting

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure notice and supplemental rule.

SUMMARY: Under the authority of 43 CFR 8364.1(a), notice is hereby given that an emergency closure to the discharge or use of firearms or dangerous weapons for the purposes of target shooting is in effect on public lands administered by the Salt Lake Field Office, Bureau of Land Management, as follows:

Fivemile Pass Special Recreation Management Area (SRMA)

T. 5 S., R. 3 W., SLM, Sections 33, 34;
T. 6.S., R. 3 W., SLM, Sections 3, 4, 7–11, 13–24, 26–30, 33–35;
T. 7 S., R. 3 W., SLM, Sections 1, 3–15, 17, 18, 22–27, 34, 35;
T. 8 S., R. 3 W., SLM, Section 3;
T. 6 S., R. 4 W., SLM, Sections 11–15, 22–26, 35;
T. 7 S., R. 4 W., SLM, Sections 1, 10–15.

Knolls Special Recreation Management Area:

T. 1 S., R. 12 W., SLM, Sections 19–23 south of the railroad grade, 26–31, 33–35;
T. 2 S., R. 12 W., SLM, Sections 3–11, 14, 15, 17, 18;
T. 1 S., R. 13 W., SLM, Sections 19–24 south of railroad grade, 25–31, 33–35;
T. 2 S., R. 13 W., SLM, Sections 1–15, 17, 18.

This order is put into effect to protect persons, property, and resources, located in these areas from person(s) engaged in target shooting with firearms or dangerous weapons. This emergency order does not prohibit the discharge of firearms or dangerous weapons while person(s) are engaged in bonafide hunting activities during established hunting seasons and are properly licensed for these activities.

Under the authority of 43 CFR 8365.1–6, a supplementary rule is established to prohibit the discharge or use of firearms or dangerous weapons for the purposes of target shooting on public lands administered by the Salt Lake Field Office, Bureau of Land Management, as follows:

North Oquirrh Management Area

All Existing and Future Federal Land within the following description:

T. 1 S., R. 3 W., SLM
Section 20, SW¼;
Sections 19, 29, 30, 31, 32;
T. 2 S., R. 3 W., SLM
Sections 5, 6, 7, 8;
Section 16, SW¼SW¼;
Sections 17, 18, 19, 20;
Section 21, W½W½;
Section 28, W½, SE¼;
Sections 29, 30, 31, 32, 33;
Section 34, W½W½;
T. 3 S., R. 3 W., SLM
Section 4, 5, 6;
Section 7, N½, N½S½;
Sections 8, 9;
T. 1 S., R. 4 W., SLM
Section 24, SE¼;
Sections 25, 36;

All lands east of the Union Pacific Railroad within:

T. 2 S., R. 4 W., SLM
Sections 1, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 36;
T. 3 S., R. 4 W., SLM
Sections 1, 11;
Section 12, N½.

Simpson Springs Campground

T. 9 S., R. 8 W., SLM
Section 17, W½NW¼, NW¼SW¼;
Section 18, NE¼, E½NW¼, NE¼SW¼, N½SE¼.

DATES: Effective July 5, 2000, this prohibition for Knolls and Fivemile Pass areas will remain in effect until revoked or replaced by supplemental rules pursuant to 43 CFR 8365.1–6.

Effective July 5, 2000, this supplementary rule for North Oquirrh and Simpson Springs Campground areas will remain in effect until revoked.

FOR FURTHER INFORMATION CONTACT: Randy Griffin, BLM Ranger, Salt Lake Field Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah, 84119; (801)–977–4300.

SUPPLEMENTARY INFORMATION: This prohibition on the discharge of firearms or dangerous weapons within the Fivemile Pass and Knolls SRMA will serve to protect the safety and health of individuals and groups visiting and utilizing the network of off highway

vehicle trails located within the lands described above. In addition, this prohibition will also serve to protect the safety and health of individuals and groups visiting and hiking the network of trails in the North Oquirrh Management Area and individuals and groups camping in the Simpson Springs developed campground.

Violations of this closure are punishable by a fine up to $100,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR part 8360.

Dated: June 23, 2000.

Glenn A. Carpenter,

Field Office Manager.

[FR Doc. 00–16827 Filed 7–3–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1020–JL]

Public Meetings on the Great Basin Restoration Initiative

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Public Meetings on the Great Basin Restoration Initiative have been scheduled. The purpose of the meetings is to solicit public comment on this Initiative. The Great Basin Restoration Initiative will implement a set of actions in the Great Basin that will promote both plant community diversity and a structure that allows plant communities to be more resilient to disturbance and invasive species over the long term. The Initiative will increase the ecosystem stability of the Great Basin, and focus on getting the most work done in those areas with the most critical resource values and the highest potential for success through a common approach.

SUMMARY: Public Meetings on the Great Basin Restoration Initiative have been scheduled for:

— July 17 at the Bureau of Land Management, Elko, Nevada, Field Office.
— July 18 at the Bureau of Land Management, Ely, Nevada, Field Office.
— July 19 at the Bureau of Land Management, Nevada State Office in Reno.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, U.S. Department of the Interior, Bureau of Land Management, Office of Communications, PO Box 12000, Reno, Nevada 89520–0006 or telephone (775) 861–6586.

Dated: June 21, 2000.

Robert E. Stewart,

Acting Chief, Office of Communications.

[FR Doc. 00–16828 Filed 7–3–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–66445]

Notice of Realty Action: Change of Use for Existing Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada, were segregated on December 1, 1996 for administrative purposes under serial number N–61855, on September 14, 1990, under serial number N–37313 and on September 22, 1995, under serial number N–59229, both for lease/conveyance for Recreation and Public Purposes. Those segregations on the lands listed below will be terminated upon publication of this notice in the **Federal Register**.

The Clark County School District proposes to construct a middle school on public lands, located at the southwest corner of the intersection of Ann and Campbell Roads, legally described as follows:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Section 32: N½NE¼NW¼,
N½N½SW¼NE¼NW¼,
Containing 22.5 acres, more or less.

The land is not required for any federal purpose. The leases/conveyances are consistent with current Bureau planning for this area and would be in the public interest. The leases/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and each will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Easements in favor of Clark County for roads, public utilities and flood control purposes.

2. All valid and existing rights, which are identified and shown in the case file.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (Pub. L. 105–263).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a middle school site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for the development of middle school.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification become effective.

Dated: June 22, 2000.

Rex Wells,

Assistant Field Manager, Las Vegas, NV.

[FR Doc. 00–16826 Filed 7–3–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0088).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are submitting to OMB for review and approval an information collection request (ICR) titled, Delegation of Authority to States. We are also soliciting comments from the public on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Submit written comments on or before August 4, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0088), 725 17th Street, NW, Washington, DC 20503. Also, submit copies of your written comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

Public Comment Procedure

You may mail your comments and copies of your comments to the offices listed in the **ADDRESSES** section, or you may email us at *RMP.comments@mms.gov*. Please include the title of the information collection and the OMB Control Number in the "Attention" line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact David S. Guzy at (303) 231–3432. We will post all comments for public review on our web site at *http://www.rmp.mms.gov*. Also, to view paper copies of these comments, please contact David S. Guzy at (303) 231–3432, FAX (303) 231–3385. Our practice is to make these paper comments, including names and addresses of respondents, available for public review during regular business hours at our offices in Lakewood, Colorado.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, email Dennis.C.Jones@mms.gov. A copy of the ICR is available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Delegation of Authority to States.

OMB Control Number: OMB 1010–0088.

Bureau Form Number: N/A.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. We perform the royalty management functions and assist the Secretary in carrying out DOI's Indian trust responsibility.

The Royalty Simplification and Fairness Act (RSFA) amendments to section 205 of the Federal Oil and Gas Royalty Management Act of 1982 provide that we may delegate other Federal royalty management functions to requesting States, including:

a. Conducting audits, and investigations;

b. Receiving and processing production and royalty reports;

c. Correcting erroneous report data;

d. Performing automated verification; and

e. Issuing demands, subpoenas (except for solid mineral and geothermal leases), orders to perform restructured accounting, and related tolling agreements and notices to lessees or their designees.

In accordance with RSFA, and to properly administer the delegation of the functions to the requesting States, MMS must collect pertinent information from industry and States. Therefore, a State will have to submit an application requesting to perform these delegable functions.

No proprietary data, confidential information, or items of a sensitive nature will be collected. Responses are voluntary.

Frequency: Monthly, quarterly, and annually.

Estimated Number and Description of Respondents: 4,010 States and royalty payors.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 210,400 hours. Please refer to chart.

Reporting/recordkeeping requirements	Frequency	Number of respondents	X	Burden per reqmnt	=	Annual burden hours
Application, vouchers, work plans, record-keeping.	Monthly Quarterly Annually	4 States		2,000		8,000
Delegated audit functions	Monthly Quarterly Annually	6 States		400		2,400

Reporting/recordkeeping requirements	Frequency	Number of respondents	X	Burden per reqmnt	=	Annual burden hours
Coordination of information reported among/ between MMS and a given State or States.	Monthly Quarterly Annually	4,000 payors and reporters		50		200,000
Total	.....	4,010		52.5		210,400

Estimated Annual Reporting and Recordkeeping: "Non-Hour Cost" Burden: $80,000.

Comments: The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

We published a **Federal Register** Notice on December 3, 1999 (64 FR 67930), with the required 60-day comment period soliciting comments on renewing OMB's approval to continue to collect this information. No comments were received. If you now wish to comment on this ICR, please send your comments directly to the offices listed under the **ADDRESSES** section of this Notice. OMB has up to 60 days after reviewing an ICR to approve or disapprove the information collection. However, OMB may act sooner than that once the 30-day public comment period has ended. Therefore, to ensure maximum consideration, you should submit your comments on or before August 4, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, telephone (202) 208–7744

Dated: June 20, 2000.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 00–16817 Filed 7–3–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the Abandoned Mine Land Contractor Information form.

DATES: Comments on the proposed information collection must be received by September 5, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for review and approval. This collection is found in the Applicant/Violator System (AVS) handbook and is prepared by AML contractors to ensure compliance with 30 CFR 874.16.

OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: AML Contractor Information Form.

OMB Control Number: 1029–xxxx.

Summary: 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed by OSM's automated Applicant/Violator System (AVS) and the contractor must be eligible under the regulations implementing Section 510(c) of the Surface Mining Act to receive permits to conduct mining operations. This form provides a tool for OSM and the States/ Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State.

Bureau Form Number: None.

Frequency of Collection: Once per contract.

Description of Respondents: AML contract applicants and State and tribal regulatory authorities.

Total Annual Responses: 519.

Total Annual Burden Hours: 465.

Dated: June 29, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–16854 Filed 7–3–00; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–856 (Final)]

Certain Ammonium Nitrate From Russia

AGENCY: International Trade Commission.

ACTION: Continuation and scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the continuation and scheduling of the final phase of antidumping investigation No. 731–TA–856 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Russia of certain ammonium nitrate, provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States.[1] The Commission determined that no earlier announcement of this scheduling was possible.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, C, and D (19 CFR part 207).

EFFECTIVE DATE: June 29, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202–708–4101), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

[1] For purposes of this investigation, Commerce has defined the subject merchandise as "solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate.)"

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being continued and scheduled in response to a request by the Committee for Fair Ammonium Nitrate Trade (COFANT),[2] filed with the U.S. Department of Commerce and the Commission, to continue the investigation. This investigation was initiated on July 23, 1999 (pursuant to a petition filed by COFANT), and suspended by Commerce on May 19, 2000, as a result of a suspension agreement between the United States and Russia (65 FR 37759, June 16, 2000).

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on July 11, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 7, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 10, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than July 6, 2000.

Written submissions.—Parties may file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 17, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 17, 2000. On July 28, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 1, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or business proprietary information service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: June 29, 2000.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–17044 Filed 7–3–00; 8:45 am]
BILLING CODE 7020–02–P

[2] COFANT is an ad hoc committee of U.S. producers of fertilizer-grade ammonium nitrate. Its members are: Air Products & Chemicals, Inc., El Dorado Chemical Co., La Roche Industries, Inc., Mississippi Chemical Corp., and Nitram, Inc.

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 11, 2000 at 2 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–201–71 (Crabmeat from Swimming Crabs)(Injury Phase)—briefing and vote. (The Commission will transmit its recommendations to the President on August 29, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 29, 2000.

By order of the Commission
Donna R. Koehnke,
Secretary.
[FR Doc. 00–17041 Filed 6–30–00; 12:58 pm]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under Review; Application for naturalization.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 5, 2000.

This information collection was previously published in the **Federal Register** on January 8, 1999 at 64 FR 1219–1238, allowing for a 60-day public comment period on a proposed revision. Numerous comments were received by the public, prompting further program evaluation of the Form N–400 (Application for Naturalization). In response to the comments, INS is in the process of revising the current form. (See publication of draft N–400 in June 28, 2000 **Federal Register** notice at 65 FR 39936–39942.) Until such draft is finalized and approved by OMB, the INS is requesting a one year extension by OMB on the current form to allow for the necessary time to complete the revision of the form and modify the tracking system.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–400. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected is used by the INS to determine eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 700,000 responses at 4 hours and 30 minutes (4.5) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,031,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice. Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 29, 2000.
Richard A. Sloan,
Department Clearance Officer, Immigration and Naturalization Service, Department of Justice.
[FR Doc. 00–16928 Filed 7–3–00; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

[OJP (BJA)–1282]

Announcement of the Availability of the Defense Procurement Fraud Debarment Program Guide

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Denial of Federal Benefits Program, Justice.

ACTION: Notice of publication.

SUMMARY: Announcement of the publication of the Defense Procurement Fraud Debarment Program Guide.

DATES: The Program Guide will be available after June 30, 2000.

ADDRESSES: Denial of Federal Benefits Program, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice, 810 Seventh St., NW., Washington DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the Defense Procurement Fraud Debarment Program Guide publication, call Robert T. Watkins, Director, Defense Procurement Fraud Debarment Program, 202–616–3507, (This is not a toll-free number), or visit the website at *www.ojp.usdoj.gov/BJA* (Click on "BJA Administered Non-Grant Programs")

SUPPLEMENTARY INFORMATION:

Authority

The Defense Procurement Fraud Debarment Program (DPFD) was established by Section 815 of The National Defense Authorization Act for Fiscal Year 1993 (1993 National Defense Authorization Act), Public Law 102–484, codified at 10 U.S.C. 2408. In particular, the 1993 National Defense Authorization Act requires the Attorney General to establish a single point of contact for Department of Defense (DoD) defense contractors or subcontractors to promptly confirm whether potential employees have been convicted of fraud or any other defense contract-related felony. 10 U.S.C. 2408(c).

Background

In accordance with the National Defense Authorization Act of 1989, Public Law 100–456, individuals who have been convicted of fraud or any other felony arising out of a contract with the DoD, after September 29, 1988, are prohibited from certain forms of employment, contracting and other activities with the DoD. Moreover, the Defense Procurement Fraud Debarment provision of the 1993 National Defense Authorization Act requires the Attorney General to establish a single point of

contact for Department of Defense (DoD) defense contractors or subcontractors to promptly confirm whether potential employees have been convicted of fraud or any other defense contract-related felony. 10 U.S.C. 2408(c).

On April 13, 1995, the Attorney General delegated these point of contact duties to the Assistant Attorney General for the Office of Justice Programs (OJP), who re-delegated them to OJP's Bureau of Justice Assistance (BJA). The Director of BJA established the Denial of Federal Benefits Clearinghouse (Clearinghouse) to perform the administrative requirements of the DPFD, as outlined in the 1993 National Defense Authorization Act.

The Clearinghouse responds to inquiries from Federal agencies, defense-related contractors and first tier subcontractors, as a resource in determining the eligibility of individuals to condition in certain types of employment and engage in certain activities with the DoD.

This Notice provides guidance and refers to the availability of the Program Guide which is used to implement this Program.

Dated: June 19, 2000.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 00–16829 Filed 7–3–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

[OJP (BJA)–1281]

Announcement of the Availability of the Denial of Federal Benefits for Drug Offenders Program Guide

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Denial of Federal Benefits Program, Justice.

ACTION: Notice of publication.

SUMMARY: Announcement of the publication of the Denial of Federal Benefits for Drug Offenders Program Guide.

DATES: The Denial of Federal Benefits for Drug Offenders Program Guide will be available after June 30, 2000.

ADDRESSES: Denial of Federal Benefits Program, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice, 810 Seventh St., NW, Washington DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the Denial of Federal Benefits for Drug Offenders Program Guide publication, call Robert T. Watkins, Director, Denial of Federal Benefits Program; Phone: 202–616-3506, [This is not a toll-free number], or visit the website at *www.ojp.usdoj.gov/BJA* [Click on "BJA Administered Non-Grant Programs"]

SUPPLEMENTARY INFORMATION:

Authority

The Denial of Federal Benefits for Drug Offenders (DFB) Program was established pursuant to section 5301 of the Anti-Drug Abuse Act of 1988 (Section 5301) (Publ. L. 100–690), and codified at 21 U.S.C. 862, and the President's Implementation Plan of August 30, 1989.

Background

The Denial of Federal Benefits for Drug Offenders Program provides Federal and State courts with the discretion to deny all or selected Federal benefits to individuals convicted of drug trafficking or drug possession, for a specified period of time denoted at sentencing. The Program exempts certain benefits from denial such as public housing; welfare; drug treatment; and earned benefits such as retirement; Social Security; health; veterans; and disability. Deniable benefits under the Program include student financial aid; small business loans; media and transportation licenses; medical, engineering, scientific, and academic research grants; along with contracts and purchase orders issued by Federal agencies or those using Federally-appropriated monies. The courts may, at their discretion, restore denied benefits for those who successfully complete drug rehabilitation programs, or for other reasons at the discretion of the court.

The Program Guide

On August 30, 1989 President Bush issued a communication to Congress which authorized and described the procedures for implementation of the Program and restricted the Program's application to convictions occurring on or after September 1, 1989. The Department of Justice was charged by the President with establishing a clearinghouse for all state and Federal courts that notify it of sentences which include a denial of Federal benefits pursuant to section 5301.

General supervision and direction of the Denial of Federal Benefits Program was subsequently delegated by the Attorney General to the Assistant Attorney General for the Office of Justice Programs. In April 1995, the Assistant Attorney General re-delegated the Bureau of Justice Assistance responsibility for the implementation and operation of its Denial of Federal Benefits Program.

This Notice provides guidance and refers to the availability of the Program Guide which is used to implement this Program.

Dated: June 19, 2000.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 00–16830 Filed 7–3–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 27, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration (ESA).

Title: Economic Survey Schedule.

Type of Review: Extension.

OMB Number: 1215–0028.

Frequency: Biennially.

Affected Public: Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 50.

Number of Annual Responses: 50.

Estimated Time Per Response: 45 minutes.

Total Burden Hours: 38.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Form WH–1 is used by the Department of Labor to collect data and prepare an economic report for the industry committee which sets industry wage rates in American Samoa.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–16863 Filed 7–3–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupation Safety and Health Administration

Occupational Safety and Health of Contractor Employees at Energy Department Site; Jurisdiction and Enforcement Responsibilities; Clarification

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice is to advise the public of a recent clarification of the jurisdiction and enforcement responsibilities of the Occupational Safety and Health Administration (OSHA) at various Department of Energy (DOE) sites which are not subject to the Atomic Energy Act (AEA).

EFFECTIVE DATE: This clarification becomes effective on July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Mike Turner, Office of Technical Programs and Coordination Activities, Directorate of Technical Support, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3653, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone (202) 693–2110.

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor (DOL) and the U.S. Department of Energy (DOE) have sought to clarify the regulatory authority over the occupational safety and health of contractor employees at a number of DOE government-owned or leased facilities that are not subject to the Atomic Energy Act (AEA) which provides statutory authority for DOE to regulate occupational safety and health matters relating to private sector employees at facilities subject to the AEA.

Section 4(b)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C., Sec. 653(b)(1), precludes OSHA coverage of working conditions over which other Federal agencies have exercised statutory authority to prescribe or enforce standards for occupational safety or health. A 1992 interagency Memorandum of Understanding acknowledges DOE's extensive regulation of contractor health and safety through safety orders which require contractor compliance with all OSHA standards as well as additional requirements prescribed by DOE. The agreement concludes with provisions stating that the Occupational Safety and Health Act shall not apply to Government Owned-Contractor Operated (GOCO) sites or other facilities for which DOE, pursuant to the AEA, has exercised its authority to regulate occupational safety and health.

By letter of June 18, 1999, DOE, through David Michaels, Assistant Secretary Environment, Safety and Health, provided OSHA with a list of DOE sites that were not covered by the AEA and requested OSHA's concurrence with DOE's views that the sites in question were subject to OSHA's jurisdiction. The letter states, in pertinent part:

> Enclosed is the complete list of DOE facilities and activities that do not involve activities authorized under the AEA, and are therefore under OSHA jurisdiction. Our staffs have concluded that a simple letter of affirmation and acknowledgment of receipt of this list will suffice to fully clarify that OSHA and the State Plan states, as appropriate, do have a valid jurisdiction over these facilities.

OSHA responded by letter of July 13, 1999, from Charles N. Jeffress, Assistant Secretary for Occupational Safety and Health, agreeing with DOE that OSHA has jurisdiction over the working conditions of private sector employers and employees at the noted facilities. Subsequently, on March 21, 2000, DOE provided OSHA with a validated list of ". . . DOE facilities and activities currently having contractors on site for which DOE has not claimed 4(b)(1) exemption status and are under OSHA jurisdiction." (See Exhibit 1.)

The OSHA acknowledgment letter states, in pertinent part:

> OSHA accepts your conclusion that DOE is not exercising AEA authority at these sites and accordingly we generally concur that OSHA has jurisdiction over the working conditions of private sector employers and employees at these facilities. (OSHA would not, of course, have authority for working conditions addressed by other, non-DOE occupational safety or health requirements.) The extent to which OSHA's authority at non-AEA facilities may be preempted by rules of other agencies would have to be determined on a case-by-case basis, in consultation with the concerned agency, applying the principles of 4(b)(1) law. Although not explicitly stated in your letter, it is also our understanding in making this determination that DOE is not exercising safety and health enforcement authority at these sites under any other statute in a manner that would preempt OSHA's jurisdiction under section 4(b)(1) . . . (As noted in your letter, OSHA has jurisdiction for federal employees at these sites, in accordance with Executive Order 12296 and 29 CFR 1960.)

Accordingly, OSHA is giving public notice that private sector employers and employees at the DOE facilities listed in Exhibit 1 are subject to all standards, rules and requirements issued under the Occupational Safety and Health Act.

A number of the non-AEA sites listed in Exhibit 1 are located in States which operate OSHA-approved State Plans. Until a final determination is made, such sites will be deemed "issues not covered by the State plan" and thus subject to Federal enforcement jurisdiction. OSHA will work with its State partners in determining whether State plans or Federal jurisdiction is appropriate for individual facilities and will provide further formal notification, as appropriate. In the interim, Federal OSHA will exercise enforcement jurisdiction over those sites listed in Exhibit 1, which are located in State Plan States, until it is determined whether the State is able to exercise jurisdiction.

Signed at Washington, DC this 23rd day of June, 2000.

Charles N. Jeffress,

Assistant Secretary.

Exhibit 1

Department of Energy (DOE) Non-Atomic Energy Act (AEA) Sites and Facilities

Western Area Power Administration Headquarters, P.O. Box 3402, Golden, CO 80401–0098, Covers all or part of the following States: AZ, CA, CO, IA, KS, MN, MT, NE, ND, NM, NV, SD, TX, UT, WY

Southwestern Power Administration, Headquarters, P.O. Box 1619, Tulsa, OK

74101, Covers all or part of the following States: AR, KS, LA, MO, OK, TX
Southeastern Power Administration, Headquarters, 2 South Public Square, Elberton, GA 30635, Covers all or part of the following States: AL, FL, GA, IL, KY, MS, NC, SC, VA, WV
Bonneville Power Administration, 905 NE 11th Ave., P.O. Box 3621, Portland, OR 97208–3621, Covers all or part of the following States: CA, ID, MT, NV, OR, UT, WA, WY
National Energy Technology Laboratory (NETL), 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880
National Energy Technology Laboratory (NETL), 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940
Strategic Petroleum Reserves (SPR), Project Office, 900 Commerce Road East, New Orleans, LA 70123
National Petroleum Technology Office, Williams Center Tower 1, 1 West Third St., Suite 1400, Tulsa, OK 74103
Albany Research Center, 1450 Queen Ave., SW, Albany, OR 97321–2198
Naval Petroleum & Oil Shale Reserves in CO, UT, & WY., 907 N. Poplar St., Suite 150, Casper, WY 82601
Naval Petroleum Reserves in California, 28590 Highway 119, P.O. Box 11, Tupman, CA 93276

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DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Homeless Veterans' Reintegration Project Competitive Grants for Rural Areas

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of availability of funds and solicitation for grant applications for Rural Homeless Veterans Reintegration Projects (SGA 00–02).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) announces a grant competition for Rural Homeless Veterans Reintegration Projects (HVRP) authorized under the Stewart B. McKinney Homeless Assistance Act. Such projects will assist eligible veterans who are homeless by providing employment, training, supportive and transitional housing assistance where possible. Under this solicitation, VETS expects to award up to eight grants in FY 2000.

This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for Solicitation of Grant Applications (SGA) 00–02. VETS anticipates that up to $1,000,000 will be available for grant awards under this SGA.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. In order to receive any amendments to this Solicitation which may be subsequently issued, *all applicants must register their name and address with the Procurement Services Center.* Please send this information as soon as possible, Attention: Grant Officer, to the following address: U. S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210. Please reference SGA 00–02.

DATES: One (1) ink-signed original, complete grant application (plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210, not later than 4:45 p.m., Eastern Standard Time, August 4, 2000. Hand delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Procurement Services Center, Attention: Jeanette Villa, Reference SGA 00–02, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jeanette Villa, U.S. Department of Labor, Procurement Services Center, telephone (202) 219–9355 [not a toll free number].

SUPPLEMENTARY INFORMATION:

Rural Homeless Veterans Reintegration Project Solicitation

I. Purpose

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) is requesting grant applications for the provision of employment and training services in accordance with the Stewart B. McKinney Homeless Assistance Act (MHAA), as reauthorized and codified at Title 38, Chapter 41, Section 4111 (formerly 42 U.S.C 11448). These instructions contain general program information, requirements and forms for application for funds to operate a Rural Homeless Veterans Reintegration Project (HVRP).

II. Background

The Stewart B. McKinney Homeless Assistance Act of 1987, enacted on July 22, 1987, under Title VII, Subtitle C, Section 738 provides that "The Secretary shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to *expedite the reintegration of homeless veterans into the labor force.*" This program was reauthorized under Section 621 of the McKinney Homeless Assistance Amendments Act of 1990 (Public Law 101–645) for an additional three years, *i.e.*, through FY 1993. Under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102–590—enacted on November 10, 1992) the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995. However, the program was rescinded in FY 1995. Public Law 104–275, dated October 9, 1996, was amended to reauthorize the program through FY 1998. Public Laws 105–41 and 105–114, enacted in 1997, extend the program through FY 1999. Public Law 106–73 dated October 19, 1999, reauthorized and codified at Title 38, Chapter 41, Section 4111 extends the program through FY 2003.

The Homeless Veterans Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. In accordance with the MHAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $1,000,000 of the funds available to award grants for HVRPs in rural areas and all interested homeless service providers who were ineligible to apply for funding under the HVRP Solicitation for Grant Applications (SGA 00–01) that was limited to the largest 75 metropolitan areas in FY 2000.

Bonus points of 15 points will be applied to those proposals for applicants who meet the definition of a rural applicant as specified below in section III., *Application Process.* The bonus points are to encourage rural eligibles to apply, as homeless resources are extremely limited in these areas. Rural projects are expected to provide valuable information on approaches that work in a rural environment.

III. Application Process

A. Rural Areas

Under this announcement, applications will be accepted from eligible applicants, (as defined in Section B. Of this part), to serve homeless veterans.

The Census Bureau has defined "urban" for the 1990 census as provided below, and territory, population, and housing units not classified as urban constitute "rural." Most specifically, "urban" consists of territory, persons, and housing units in:

1. Places of 2,500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns, (except in the six New England States, New York, and Wisconsin), but excluding the rural portions of "extended cities."

2. Census designated places of 2,500 or more persons.

3. Other territory, incorporated or unincorporated, included in urbanized areas.

Those not defined as "urban" likely fall into the rural category. Potential applicants are referred to the Geography Division, U.S. Bureau of the Census, Washington, DC 20233, for any questions or clarification on the Census Bureau's definition. It is expected that an applicant's submission under this solicitation will clearly demonstrate the nature of the area to be served.

B. Eligible Applicants

Applications for funds will be accepted from State and local public agencies, Private Industry Councils, and nonprofit organizations as follows:

1. Private Industry Councils (PICS) and/or Workforce Investment Boards (WIBS), Public Law 97–300, are eligible applicants, as well as State and local public agencies. "Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction. (Although cities are mentioned in the above explanation, this solicitation is targeting cities within a rural jurisdiction.)

Applicants are encouraged to utilize, through subgrants, experienced public agencies, private nonprofit organizations, and private businesses which have an understanding of the unemployment and homeless problems of veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

2. Also eligible to apply are nonprofit organizations who have operated an HVRP or similar employment and training program for the homeless or veterans; or have proven capacity to manage Federal grants; and have or will provide the necessary linkages with other service providers. Nonprofit organizations will be required to submit with their application recent (within one year) financial audit statements that attest to the financial responsibility of the organization.

Entities described in Section 501(c)4 of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

C. Funding Levels

The total amount of funds available for this solicitation is $1,000,000. It is anticipated that up to 8 awards will be made under this solicitation. Awards are expected to range from $75,000 to $125,000. The Federal government reserves the right to negotiate the amounts to be awarded under this competition. *Please be advised that requests exceeding the maximum award amount of $125,000 by 15% or more will be considered non-responsive.*

D. Period of Performance

The period of performance will be for one year from date of award. It is expected that successful applicants will commence program operations under this solicitation on or before September 1, 2000.

E. Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after 4:45 p.m. EST, August 4, 2000, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 4, 2000;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 4, 2000.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

F. Submission of Proposal

A cover letter, an original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts:

Part I—Technical Proposal shall consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program, its understanding of the services and activities proposed to alleviate the need and its capabilities to accomplish the expected outcomes of the proposed project design. The technical proposal shall consist of a narrative not to exceed fifteen (15) pages double-spaced, typewritten on one side of the paper only. Charts and exhibits are not counted against the page limit. Applicants should be responsive to the Rating Criteria contained in Section VI and address all of the rating factors noted as thoroughly as possible in the narrative. The following format is strongly recommended:

1. Need for the project: the applicant should identify the geographical area to be served and the characteristics of the area; provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, and gaps in the local community infrastructure the project would fulfill in addressing the employment and other barriers of the targeted veterans. Include the outlook for job opportunities in the service area.

2. Approach or strategy to increase employment and job retention: The applicant should describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services. Participant flow charts may be provided. Include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) program, and programs under the Workforce Investment Act (WIA). Please include a plan for follow up of participants who entered employment at 30 and 90 days and also a plan for follow up six months after the end of the ninety day period (See discussion on results in Section V.D.) Please include the chart of proposed performance goals and planned expenditures listed in Appendix D. Although the form itself is not mandatory, the information called for in Appendix D must be provided by the applicant.

3. Linkages with other providers of employment and training services to the homeless and to veterans: Describe what linkages these programs will have with other providers of services to veterans and to the homeless in the community outside of the HVRP grant. List the types of services provided by each. Note the type of agreement in place if applicable. Linkages with the workforce development system [inclusive of WIA and State Employment Security Agencies (SESAs)], non-profit organizations and public agencies (*i.e.*, the Department of Housing and Urban Development and with the Department of Veterans Affairs) resources should be delineated.

4. Organizational capability in providing required program activities: The applicant's relevant current or prior experience in operating employment and training or related programs serving the homeless or veterans should be delineated. (For consideration by panel members, the Government reserves the right to have a representative of the Veterans' Employment and Training Service within your state provide programmatic and fiscal information about applicants and forward those findings to the National Office during the review of applications). Provide information denoting outcomes of past programs in terms of enrollments and placements or other measures of success. Applicants who have operated an HVRP program, or more recent Homeless Veterans Employment and Training (HVET) program should include final or most recent technical performance reports. (This information is subject to verification by the Veterans' Employment and Training Service.) Provide evidence of key staff capability. Non-profit organizations should submit evidence of satisfactory financial management capability including recent financial and/or audit statements.

5. Proposed housing strategy for homeless veterans: Describe how housing resources for homeless veterans in the area may be obtained or accessed. These resources may be from linkages or sources other than the HVRP grant such as HUD, community housing resources, DVA leasing or other programs. The applicant should explain whether HVRP resources will be used and why this is necessary.

Part II—Cost Proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and the Budget Information Sheet in Appendix B. In addition the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative." Also to be included in this Part is the Assurance and Certification Page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this solicitation. The Catalog of Federal Domestic Assistance number for this program is 17.805, which should be entered on the SF 424, Block 10. In Block 11, please enter the following: Homeless Veterans Reintegration Project. Please show leveraged resources/outside funds and/or the value of in-kind contributions in Section B of the Budget Information Sheet.

Budget Narrative Information: As an attachment to the Budget Information Sheet, the applicant must provide at a minimum, and on separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates and percent of time of each position to be devoted to the proposed project (including subgrantees);

(b) An explanation and breakout of fringe benefit rates and associated charges. Rates exceeding 35% of salaries and wages require justification;

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subgrants/contracts and any other costs. The applicant should include costs of any required travel described in this Solicitation. Mileage charges shall not exceed 32.5 cents per mile;

(d) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified. Applicants are reminded that equipment purchased is to be used for HVRP purposes only. (HVRP grant funds may not be used for the purchase of motor vehicles); and

(e) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of outside/in-kind Services.

(f) In order that the Department of Labor meet legislative requirements, submit a plan along with all costs associated with retaining participant information pertinent to a longitudinal follow up survey for at least six months after the ninety day closeout period.

IV. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term "homeless or homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (Reference 42 USC 11302).

B. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 USC 101(2)]

V. Project Summary

A. Program Concept and Emphasis

The HVRP grants under Section 738 of the Stewart B. McKinney Homeless Assistance Act are intended to address dual objectives:

Provide services to assist in reintegrating homeless veterans into the

labor force; and stimulate the development of effective service delivery systems that will seek to address the complex problems facing homeless veterans. These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 2000 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of housing resources for veterans entering the labor force, and strategies for employment and retention.

B. Required Features

1. The HVRP has since its inception featured an outreach component consisting of veterans who have experienced homelessness. In recent years this requirement was modified to allow the projects to utilize formerly homeless veterans in other positions where there is direct client contact if outreach was not needed extensively, such as counseling, peer coaching, intake and follow up. This requirement applies to projects funded under this solicitation.

2. Projects will be required to show linkages with other programs and services which provide support to homeless veterans. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists in the jurisdiction is required.

3. Projects will be "employment focused." That is, they will be directed towards (a) increasing the employability of homeless veterans through providing for or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

C. Scope of Program Design

The HVRP project design should provide or arrange for the following services:

—Outreach, intake, assessment, counseling and employment services. Outreach should, to the degree practical, be provided at shelters, day centers, soup kitchens, and/or other locations particular to the rural environment, and other programs for the homeless. Program staff providing outreach services are to be veterans who have experienced homelessness.

Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, Veterans Workforce Investment Program (VWIP)
—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary and other programs, including those offering transitional housing
—Department of Housing and Urban Development (HUD) services, including its Per Diem Grants program.
—Veteran service organizations such as The American Legion, Disabled American Veterans, and the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS)

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug
—Medical
—Post Traumatic Stress Disorder
—Mental Health
—Coordinating with MHAA Title VI programs for health care for the homeless

Referral to housing assistance provided by:

—Local shelters
—Federal Emergency Management Administration (FEMA) food and shelter programs
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV
—Permanent housing programs for the handicapped homeless funded under MHAA Title IV
—Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers
—Transitional housing leased by HVRP funds (HVRP funds cannot be used to purchase housing)

Employment and training services such as:

—Basic skills instruction
—Basic literacy instruction
—Remedial education activities
—Job search activities
—Job counseling
—Job preparatory training, including resume writing and interviewing skills
—Subsidized trial employment (Work Experience)
—On-the-Job Training
—Classroom Training
—Job placement in unsubsidized employment
—Placement follow up services
—Services provided under JTPA Program Titles

D. Results-Oriented Model

Based on past experience of grantees working with this target group, a workable program model evolved which is presented for consideration by prospective applicants. No model is mandatory, and the applicant should design a program that is responsive to local needs, but will carry out the objectives of the HVRP to successfully reintegrate homeless veterans into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for results rather than process. While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs. The following program discussion emphasizes that followup is an integral program component.

The first phase of activity consists of the level of outreach that is necessary in the community to reach veterans who are homeless. This may also include establishing contact with other agencies that encounter homeless veterans such as shelters, soup kitchens and other facilities in the rural area. An assessment should be made of the supportive and social rehabilitation needs of the client and referral may take place to services such as drug or alcohol treatment or temporary shelter. When the individual is stabilized, the assessment should focus on the employability of the individual and they are enrolled into the program if they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should follow in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Transitional housing may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff should be utilized for job development and placement activities for veterans who are ready to enter employment or who are in need of intensive case management services. Many of these staff have received training in case management at the National Veterans' Training Institution

and have as a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

Follow up to determine if the veteran is in the same or similar job at the 30 day period after entering employment is required and important in keeping contact with the veterans and so that assistance in keeping the job may be provided. The 90 day followup is fundamental to assessing the results of the program interventions. Grantees must reflect the planned expenditure for this activity in the cost proposal so that followup can and will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report. If DVOPs/LVERs are responsible for followup, applicant must explicity state this in their proposal.

VETS emphasizes in its Strategic Plan to implement GPRA that suitable outcomes involve careers, not just jobs. Successful results are achieved when the veteran is in the same or similar job after one or more years. Towards that end, VETS solicits the cooperation of successful applicants to budget for the activity of retaining participant information pertinent to a longitudinal follow up survey, *i.e.*, at least for six months after the ninety day closeout period. Retention of records will be reflected in the Special Provisions at time of award.

E. Related HVRP Program Development Activities

1. Community Awareness Activities. In order to promote linkages between the HVRP program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible to local providers of hands-on services to homeless, Federal, State and local entitlement services (such as the Social Security Administration, DVA, HUD, and the local Job Service office(s), and civic and private sector groups to enlist their support for the program.

VI. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below in *Panel Review Criteria*. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify approximately 8 applicants as potential grantees.

Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification or hold discussions, but is not obligated to do so.

The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, demonstration models, and geographical service areas. While points will not be assessed for cost issues, cost per placement *will be* given serious consideration in the final determination in the selecting of awardees. The Grant Officer's determination for award under SGA 00–02 is the final agency action.

The submission of the same proposal from any prior year HVRP or HVET competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 points. The applicant shall document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure the program would fill to effectively address the employment barriers which characterize the target population in the area.

2. Overall Strategy to Increase Employment and Retention: 30 points. The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, placement and post placement follow up services. The supportive services to be provided as part of the strategy of promoting job readiness and job retention should be indicated. The applicant should identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training program such as SESAs (DVOP and LVER Programs), Veterans Workforce Investment Programs (VWIP), and Workforce Development Boards or entities where in place, should be presented. It should be indicated how the activities will be tailored or responsive to the needs of homeless veterans in the area. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, and job retention. (See Appendix D)

3. Quality and Extent of Linkages with Other Providers of Services to the Homeless and to Veterans: 20 points. The application should provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless or veterans in the local community outside of the HVRP grant. For each service, it should be specified who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe to the extent possible, how the project would fit into the community's approach to respond to homelessness and any linkages to HUD and VA programs or resources to benefit the proposed program.

4. Demonstrated Capability in Providing Required Program Services: 20 points. The applicant should describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant should be described in terms of clients placed in jobs, or other outcome measures of success. The applicant must also delineate its staff capability and ability to manage the financial aspects of Federal grant programs. Relevant documentation such as financial and/or audit statements should be submitted (required for applicants who are non-profit agencies). Final or most recent technical reports for HVRP, HVET or other relevant programs should be submitted as applicable. The applicant should also address its capacity for timely startup of the program.

5. Quality of Overall Housing Strategy: 15 points. The application should demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, lease, HVRP or other means unique to the locale. HVRP funds may not be used to purchase housing.

6. Cost Proposal: Applicants can expect that the cost proposal will be

reviewed for allowability, allocability, and reasonableness of costs. While points will not be assessed for cost issues, cost per placement *will be* given serious consideration in the final determination in the selecting of awardees.

Note: Bonus points of 15 points will be applied to those proposals for applicants who meet the definition of a rural applicant as specified in section III., *Application Process.* The bonus points are to encourage rural eligibles to apply, as homeless resources are extremely limited in rural areas.

VII. Post Award Conference

A post-award conference for those awarded FY 2000 HVRP funds will be held by the designated Grant Officer Technical Representative (GOTR) within each state. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements.

VIII. Reporting Requirements

The grantee shall submit the reports and documents listed below:

A. Financial Reports

The grantee shall report outlays, program income, and other financial information on a quarterly basis using SF 269A, *Financial Status Report, Short Form.* These forms shall cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter during the grant period. In addition, a final SF 269 shall be submitted no later than 90 days after the end of the grant period.

B. Program Reports

Grantees shall submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET which contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;
2. Reason for slippage if established goals are not met and identification of the corrective action which will be taken to meet the goals, and the timetable for accomplishment of the corrective action.

A final Technical Performance Report will also be required as part of the final report package due 90 days after the closeout period.

In addition, the grantees will also be required to submit a closeout Technical Performance Report pertinent to the longitudinal follow up efforts due 6 months after the 90 day closeout period.

C. Summary of Final Report Package

The grantee shall submit 90 days after the grant closeout period the following final report package:

1. Final Financial Status Report (SF 269A).
2. Final Technical Performance Report (Program goals).
3. Final Narrative Report—Grantees will be required to submit a final narrative report identifying (a) major successes of the program (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined (directed/assisted) number of veterans placed during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not so employed; and (f) any recommendations to improve the program.

No later than 6 months after the 90 day closeout period, the grantee will submit a follow up report containing the following:

1. Closeout Financial Status Report (SF 269A).
2. Closeout Narrative Report Identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) are the veterans still employed at the same or similar job, if not what are the reasons; (d) was the training received applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendation to improve the program.

IX. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed, may not exceed 20 percent of the total amount of the grant.
2. Indirect costs claimed by the applicant shall be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application. (Do not submit the State cost allocation plan.)
3. Rates traceable and trackable through the SESA Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in MHAA grants to SESAS.
4. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and local government—OMB Circular A–87

Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

All grants shall be subject to the following administrative standards and provisions:

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR Part 95—Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training.

29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

Signed at Washington, DC this 27th day of June, 2000.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424
Appendix B: Budget Information Sheet
Appendix C: Assurances and Certifications Signature Page
Appendix D. Technical Performance Goals Form
Appendix E. Direct Cost Descriptions for Applicant and Sub-Applicants
HVRP Performance Goals Definitions

BILLING CODE 4510–79–P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits**: Indicate the rate and amount of fringe benefits.

3. **Travel**: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment**: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies**: Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual**: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other**: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs**: Add lines 1 through 7.

9. **Indirect Costs**: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested**: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Appendix D

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 30 Days				
Number Retaining Jobs For 90 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Appendix E

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

	Administration	Program
Sub-Total		
Fringe Benefits For All Positions		
Contractual		
Travel		
Indirect Costs		
Equipment		
Supplies		
Total Costs		

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans' Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2000–6]

Registration of Claims to Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Statement of policy.

SUMMARY: The Copyright Office of the Library of Congress issues this statement of policy to clarify the practices relating to examination of copyright claims in music, and the relevance of the "nature-of-work" designation at space 1 of the PA Form.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Charlotte Douglas, Principal Legal Advisor, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office is issuing this statement of policy to clarify its examination practices with respect to the "nature-of-work" space on Form PA, for registration of works of the performing arts. This policy statement is in response to a recent judicial decision by the United States Court of Appeals for the Third Circuit in *Raquel* v. *Education Management Corp.*, 196 F.3d 171 (3rd Cir. 1999) [hereinafter referred to as *Raquel*], in which the court appears to have misunderstood the Copyright Office's longstanding published practices relating to the "nature-of-work"space.

In *Raquel*, the court held that a certificate of registration of a copyright was invalid because the claimants, authors of the copyright in a musical composition, had described the "nature of this work" in space 1 of their Form PA application as "Audiovisual work." The deposit submitted with the application was a videotape of a television commercial in which the claimants' musical composition was performed. The court concluded, and the claimants do not appear to have contested, that the claimants did not own any copyright interest in the television commercial itself. In space 2, the application had correctly designated the nature of authorship as "All music and lyrics and arrangement."

A key element of the court's reasoning in invalidating the registration was the court's conclusion that "[h]ad the Register of Copyrights known that *Raquel* did not author the audiovisual work identified in its registration, it is likely that this rather fundamental misstatement would have occasioned the rejection of Raquel's application." 196 F.3d at 177. Based upon this prediction of what the Copyright Office would have done if it had known the claimants had not authored the television commercial, the court concluded that the claimants had made a material misrepresentation in the application for registration. The court also concluded that this misrepresentation could not have been inadvertent. As a result, the court applied the principle that a plaintiff's knowing failure to advise the Copyright Office, in an application for copyright registration, of material facts which might have led to the rejection of a registration application constitutes grounds for holding the registration invalid and incapable of supporting an infringement action. 196 F.3d at 176 (citing *Masquerade Novelty, Inc.* v. *Unique Indus., Inc.*, 912 F.2d 663, 667 (3d Cir. 1990).

The *Raquel* case raises questions concerning the "nature of this work" space on the Form PA application for copyright registration. If applied strictly, the decision could jeopardize the validity of copyright registrations of musical works in a number of instances. Because of the possibility that other courts will rely on *Raquel* as valid precedent for invalidating copyright registrations under similar circumstances, the Copyright Office is issuing this policy statement to clarify that it was not misled in registering the copyright claim in the *Raquel* case, and that the Copyright Office knew that the copyright claim was in a musical work, and not an audiovisual work. The Office is also issuing this statement to clarify that in the "nature of this work" space on Form PA, it has been and continues to be acceptable to describe the physical nature of the deposit submitted with the application.

While section 409 of the copyright law largely dictates the content of the application form, this statutory section does not require a nature-of-work space. This space was added to the PA and VA forms because these forms cover a number of different categories of works, and it was believed the additional information would clarify the general character or the type or category of the work being registered. In practice, however, the information provided in this space by applicants often does not relate to the nature of the claim; and the Office's practice has always been to look to the "nature of authorship" statement in space 2 as the primary source of such information. See *Compendium of Copyright Office Practices, Compendium II* ("*Compendium II*"), § 619 (1988) ("In general, the nature of authorship defines the scope of the registration; therefore, it represents an important copyright fact"). If, on the basis of the deposit and the nature of authorship statement, the nature of the copyright claim is clear, the Copyright Office will proceed with registration.

Ideally, the nature-of-work space should describe the work being registered. In practice, it has served a variety of functions, *e.g.*, as a substitute for the statement of authorship (when such a statement was lacking) or as a supplementary description augmenting the statement of authorship. It has also served as a description of the physical nature of the deposit, and the Office has treated such a statement as acceptable where the nature of authorship statement and deposit make clear the scope of the copyright claim being registered. The *Compendium* establishes this policy in the following language: "Forms PA and VA contain a nature-of-work space. This space should give a description of the general nature and character of the work being registered. A description of the physical form of the work is generally acceptable. Ordinarily, the Copyright Office will not consider the omission or incorrect completion of information in the nature-of-work space as a reason, in itself, for communicating with the applicant * * *" *Compendium II*, § 614.

In *Raquel*, the nature of authorship line described the copyright claim as "All music and lyrics and arrangement." The deposit consisted of a videotape which contained the musical composition being registered. In the nature of work space, the applicant stated "audiovisual work." Consistent with general Copyright Office practice, the Office regarded the copyright claim to be in a musical composition, and no communication with the applicant was made regarding the reference to "audiovisual work" in the nature-of-work space since it was regarded as a physical description of the work being registered.*

The Office will continue to accept applications in which the "nature of

* Strictly speaking, an "audiovisual work" is one of the categories of works enumerated in section 102 of the Copyright Act, 17 U.S.C. 102. See also 17 U.S.C. 101 (definition of "audiovisual works"). Thus, it is understandable how the court of appeals could have interpreted the entry of "audiovisual work" in the "nature of this work" space as a description of the scope of Raquel's claim. However, given the Office's practice of accepting descriptions of the physical form of the deposit, and given the Office's practice of looking to the "nature of authorship" statement for a description of the scope of the claim, the Office understood the term "audiovisual work" in this context to be a physical description of the deposit.

this work" space describes the physical nature of the deposit rather than the scope of the copyright claim. However, the decision of the Third Circuit in *Raquel* demonstrates that there is some risk in engaging in this practice. It is hoped that this statement of policy, clarifying what the Office's practice has been and will continue to be, will offer guidance to the courts and to litigants about the Office's examination practices with respect to the nature-of-work space, and will prevent other courts addressing situations similar to that in *Raquel* from reaching the same result as in *Raquel*.

Dated: June 27, 2000.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 00–16888 Filed 7–3–00; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–074)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that AVIR, LLC, of Charlottesville, VA 22906, has applied for a partially exclusive license [limited to the field of use defined as "remote sensing, including remote imaging, of the production, stockpiling, use or any other existence of narcotic drugs, their precursors and decay products, whether the drugs are legal or illegal," to practice the inventions described and claimed in: U.S. Patent No. 5,128,797 entitled "NON-MECHANICAL OPTICAL PATH SWITCHING AND ITS APPLICATION TO DUAL BEAM SPECTROSCOPY INCLUDING GAS FILTER CORRELATION RADIOMETRY," U.S. Patent No. 6,008,928 entitled "MULTI-GAS SENSOR," U.S. Patent No. 6,057,923 entitled "OPTICAL PATH SWITCHING BASED DIFFERENTIAL ABSORPTION RADIOMETRY FOR SUBSTANCE DETECTION," NASA Case No. LAR 15361–2 entitled "GAS SENSOR DETECTOR BALANCING," and NASA Case No. LAR 15818–2 entitled "OPTICAL PATH SWITCHING BASED DIFFERENTIAL ABSORPTION RADIOMETRY FOR SUBSTANCE DETECTION," for which United States Patent Application(s) was/were filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199; Telephone 757–864–3230; Fax 757–864–9190.

Dated: June 27, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–16901 Filed 7–3–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–075)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Cytec Industries, Inc., of Five Garret Mountain Plaza, West Paterson, NJ 07424, has applied for an exclusive patent license to practice the invention described and claimed in NASA Case Number LAR 15449–1 entitled "METHOD TO PREPARE PROCESSABLE POLYIMIDES WITH REACTIVE ENDGROUPS USING 1, 3 BIS (3-AMINOPHENOXY) BENZENE," which has been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Hillary W. Hawkins, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199; Telephone (757) 864–8882; Fax (757) 864–9190.

Dated: June 28, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–16902 Filed 7–3–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–073]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Vehicle Enhancement Systems, Inc., of Rock Hill, SC 29731, has applied for an exclusive license to practice the invention described in NASA Case Number LAR 15601–1, entitled "Base Passive Porosity for Drag Reduction," for which a United States Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Helen M. Galus, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199; Telephone 757–864–3227; Fax 757–864–9190.

Dated: June 27, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–16900 Filed 7–3–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, July 11, 2000.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC. 20594.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

6837A—

Safety Recommendations related to Fires on board the passenger ships Universe Explorer on July 27, 1996 and Vistafjord on April 6, 1997.

7178A—Pipeline Accident Report: Natural Gas Pipeline Rupture and Subsequent Explosion in St. Cloud, Minnesota, December 11, 1998.

7271—Railroad Accident Report: Derailment of Burlington Northern Santa Fe Freight Train S–CHILAC–1–31 and Hazardous Material Release near Crisfield, Kansas, September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, July 7, 2000.

Dated: June 30, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–17124 Filed 6–30–00; 3:26 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information pertaining to the requirement to be submitted:

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* DOE/NRC Form 742, "Material Balance Report;" NUREG/BR–0007, "Instructions for Completing Material Balance Report and Physical Inventory Listing;" and DOE/NRC Form 742C, "Physical Inventory Listing."

3. *The form number, if applicable:* DOE/NRC Form 742 and DOE/NRC Form 742C.

4. *How often the collection is required:* DOE/NRC Forms 742 and 742C are submitted semiannually following a physical inventory of nuclear materials.

5. *Who is required or asked to report:* Persons licensed to possess specified quantities of special nuclear or source material.

6. *An estimate of the number of responses:*
DOE/NRC Form 742: 400 responses
DOE/NRC Form 742C: 360 responses

7. *The number of annual respondents:*
DOE/NRC Form 742: 200 licensees
DOE/NRC Form 742C: 180 licensees

8. *The number of hours needed annually to complete the requirement or request:*
DOE/NRC Form 742: 300 hours
DOE/NRC Form 742C: 2,160 hours

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Each licensee authorized to possess special nuclear material totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, and any licensee authorized to possess 1,000 kilograms of source material is required to submit DOE/NRC Form 742. Reactor licensees required to submit DOE/NRC Form 742, and facilities subject to 10 CFR Part 75, are required to submit DOE/NRC Form 742C. The information is used by NRC to fulfill its responsibilities as a participant in US/IAEA Safeguards Agreement and bilateral agreements with Australia and Canada, and to satisfy its domestic safeguards responsibilities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments and questions should be directed to the OMB reviewer by August 4, 2000.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0143), NEOB–10202, Office of Management and Budget,Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 28th day of June, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–16897 Filed 7–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nominations of New Members of the Advisory Committee on the Medical Uses of Isotopes

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is inviting nominations for two existing positions on the Advisory Committee on the Medical Uses of Isotopes (ACMUI): A medical physicist with expertise in nuclear unsealed byproduct material and a health care administrator.

DATES: Nominations are due on or before September 5, 2000.

ADDRESSES: Submit nominations to: The Office of Human Resources, ATTN: Ms. Robin Avent, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Betty Ann Torres, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–415–0191.

SUPPLEMENTARY INFORMATION: The ACMUI advises the NRC on policy and technical issues that arise in regulating the medical use of byproduct material. Responsibilities include providing comments on changes in NRC rules, regulations, and guidance documents concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of NRC for appropriate action.

ACMUI members possess the medical and technical skills needed to address evolving issues. Currently, the ACMUI membership consists of the following: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine unsealed byproduct material; (d) health care administrator; (e) patients' rights and care advocate; (f) Food and Drug Administration representative; and (g) state representative. The staff is in the process of finalizing the appointment of nominees for the following positions: (a) a therapy physicist; (b) a radiation safety officer; (c) a nuclear pharmacist; and (d) two radiation oncologists.

The NRC is inviting nominations for two existing positions on the ACMUI—a medical physicist with expertise in nuclear medicine unsealed byproduct material and a health care administrator. The term of the individual currently occupying the medical physicist position ends September 30, 2000, and the term of the individual currently occupying the health care administrator position ends September 30, 2001.

Nominees must include four copies of their resumes, describing their educational and professional qualifications, and provide their current addresses and telephone numbers.

Committee members serve a 3-year term, with possible reappointment to an additional 3-year term.

Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per-diem in lieu of subsistence) and secretarial and correspondence expenses unless the member is a full-time Federal employee. Full-time Federal employees are only reimbursed for travel expenses. Nominees will undergo a security background check and will be required to complete financial disclosure statements to avoid conflict-of-interest issues.

Dated at Washington, DC this 27th day of June, 2000.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer, Office of the Secretary of the Commission.

[FR Doc. 00–16896 Filed 7–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on the Nuclear Regulatory Commission's Licensing Process for the Mixed Oxide Fuel Fabrication Facility; Notice of Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is hosting two public meetings to discuss the licensing process for the mixed oxide (MOX) fuel fabrication facility. One meeting will be held in Columbia, South Carolina, and the second meeting will be held in N. Augusta, South Carolina. The purpose of both meetings is to explain the NRC's role for MOX, describe the NRC's licensing process, describe opportunities for public participation during the licensing process, and to answer questions from meeting participants.

DATES: The meetings are scheduled for Wednesday, July 12, 2000, (Columbia, South Carolina) and July 13, 2000, (N. Augusta, South Carolina). Each meeting will run from 7 p.m. to 10 p.m. The meetings are open to the public.

ADDRESSES: The Columbia, South Carolina, meeting will be held at the University of South Carolina's Capstone Conference Center, which is located at 900 Barnwell St., Columbia, South Carolina. Parking is available on the street (free after 6 p.m.), or in lots located immediately Northwest of the Capstone building, the southern corner at the intersection of Barnwell and Pendleton, or at the intersection of Pendleton and Barnwell. The lots are free after 5 p.m.

The N. Augusta, South Carolina, meeting will be held at the N. Augusta Community Center. The N. Augusta Community Center is located at 495 Brookside Drive in N. Augusta, South Carolina. Parking is available adjacent to the building.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, contact Andrew Persinko, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6522 or e-mail axp1@nrc.gov.

Dated at Rockville, Maryland, this 23rd day of June, 2000.

For the Nuclear Regulatory Commission.

Michael Tokar,

Acting Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–16898 Filed 7–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 3, 10, 17, 24, 31, and August 7, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 3

There are no meetings scheduled for the Week of July 3.

Week of July 10—Tentative

Monday, July 10

1:25 p.m.
Affirmation Session (Public Meeting)
a: Rulemaking to Modify the Event Reporting Requirements for Power Reactors in 10 CFR 50.72 and 50.73 and for Independent Spent Fuel Storage Installations (ISFSI) in 10 CFR 72.216
b: Final Rule: 10 CFR Parts 30, 31, and 32—"Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material" and Related Change to the Enforcement Policy
c: Hydro Resources, Inc. Petition for Review of LBP–99–18, LBP–99–19, & LBP–99–30

1:30 p.m.
Briefing on Proposed Export of High Enriched Uranium to Canada (Public Meeting)

Tuesday, July 11

9:30 a.m.
Discussion of Intragovernmental Issues (Closed—Ex. 4 and 9)

Week of July 17—Tentative

There are no meetings scheduled for the Week of July 17.

Week of July 24—Tentataive

Tuesday, July 25

3:25 p.m.
Affirmation Session (Public Meeting) (If necessary)

Week of July 31—Tentative

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 30, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–17067 Filed 6–30–00; 2:07 p.m]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 4, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Statement of Personal History.
No: 912.
Frequency: On Occasion.
Description of Respondents: Applicants for loan and other forms of SBA assistance.
Annual Responses: 55,000.
Annual Burden: 13,750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–16800 Filed 7–3–00; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF SPECIAL COUNSEL

Proposed Information Collection Activities; Request for Comment

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C., chapter 35), and implementing regulations at 5 CFR Part 1320, this is the second **Federal Register** notice published by the U.S. Office of Special Counsel (OSC) about proposed information collection activities, consisting of two forms for the collection of information pursuant to OSC regulations at 5 CFR 1800.1 (Filing complaint of prohibited personnel practices or other prohibited activities.) and 5 CFR 1800.2 (Filing disclosures of information). OSC is requesting approval from the Office of Management and Budget (OMB) to extend the use of two previously approved information collections: (1) Form OSC–11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity); and (2) Form OSC–12 (Disclosure of Information), as revised. Revisions include: (1) Style, format, and other minor changes, such as requests for fax numbers, e-mail addresses, and details of certain allegations in a different format; (2) addition of explanatory information about OSC jurisdiction, the elements required to prove some claims, and certain procedural rights; and (3) description of new and revised Privacy Act routine uses published by OSC after the last OMB approval. OSC anticipates that this additional information will add to the burden estimate for Form OSC–11, which has been increased since OMB's last approval from one hour to one hour and 15 minutes. OMB's current approval for these collections of information expires on August 31, 2000.

On April 17, 2000, notice of this request for OMB approval with a request for public comment was published in the **Federal Register** at 65 FR 20504. The notice and the proposed forms were also posted on OSC's Web site (at www.osc.gov) on April 18, 2000. No comments on these information collections were received.

Since the April notices, typographical and other non-substantive have been made to the proposed complaint form. Changes have also been made in the estimated annual number of respondents and corresponding annual burden hours reported in first **Federal Register** notice with respect to both forms, based on recalculations of the number of complaints and disclosures that may be filed during the three-year period for which OMB approval is sought.

Federal employees, other federal agencies, and the general public are invited to comment on OSC's information collection activities relating to possible prohibited employment practices and whistleblower disclosures.

DATES: Comments should be received on or before August 4, 2000.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs at the Office of Management and Budget, Attention: Desk Officer for U.S. Office of Special Counsel, Old Executive Office Building, Washington, DC 20503. A copy of any comments should also be sent to Kathryn Stackhouse, U.S. Office of Special Counsel, Planning and Advice Division, 1730 M Street, NW., Washington, DC 20036–4505.

FOR FURTHER INFORMATION CONTACT: Copies of the collections of information and supporting documentation are available from Kathryn Stackhouse or Marlene M. Cleaveland, U.S. Office of Special Counsel, Planning and Advice Division, 1730 M Street, NW, Suite 300, Washington, DC 20036–4505; telephone (202) 653–8971; facsimile (202) 653–5151.

SUPPLEMENTARY INFORMATION: Comment is requested on the following two collections of information:

Title of Collection: Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity.
Agency Form Number: OSC–11 (OMB Control Number 3255–0002).
Summary of the Collection of Information: This form is intended for use by current and former federal employees, and applicants for federal employment, in filing allegations with OSC of prohibited personnel practices and other prohibited activity with OSC's jurisdiction.
Need for Information and Proposed Use: This information is needed by OSC to investigate and seek any appropriate remedies for allegations of prohibited personnel practices and other prohibited activity, pursuant to its statutory authority at 5 U.S.C. 1211, *et seq.*
Likely Respondents: Current and former federal employees, and applicants for federal employment.
Estimated Annual Number of Respondents: 1771.
Frequency: On occasion.
Estimated Average Burden Per Respondent: 1 hour and 15 minutes.
Estimated Annual Burden: 2214 hours.

Title of Collection: Disclosure of Information.
Agency Form Number: OSC–12 (OMB Control Number 3255–0002).
Summary of the Collection of Information: This form is intended for use by current and former federal employees, and applicants for federal employment, in making whistleblower disclosures of violations of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.
Need for Information and Proposed Use: This information is needed by OSC

to review whistleblower disclosures of wrongdoing in federal agencies, and to refer disclosures in appropriate cases to the head of the agency involved for investigation, pursuant to its statutory authority at 5 U.S.C. 1211, *et seq.*

Likely Respondents: Current and former federal employees, and applicants for federal employment.

Estimated Annual Number of Respondents: 475.

Frequency: On occasion.

Estimated Average Burden Per Respondent: 1 hour.

Estimated Annual Burden: 475 hours.

The two proposed forms described above are available on OSC's Web site (at www.osc.gov).

Dated: June 29, 2000.

Erin M. McDonnell,

Associate Special Counsel for Planning and Advice.

[FR Doc. 00–16945 Filed 7–3–00; 8:45 am]

BILLING CODE 7405–01–P

DEPARTMENT OF STATE

[Public Notice 3357]

Culturally Significant Objects Imported for Exhibition Determinations: "Drink and Be Merry: Wine and Beer in Ancient Times"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Drink and Be Merry: Wine and Beer in Ancient Times" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Jewish Museum, New York, NY from July 30, thru November 5, 2000 is in the national interest. The action of the United States in this matter and the immunity based on the application of the provisions of the law involved does not imply any view o f the United States concerning the ownership of these exhibition objects. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories 1978, of President Jimmy Carter, attached to the Camp David Accords, reprinted in 78 *Dept. of State Bulletin* 11 (October 1978); Statement of September 1, 1982 of President Ronald Reagan, reprinted in 82 *Dept. of State Bulletin* 23 (September 1982). Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 23, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–16905 Filed 7–4–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice #3356]

FY 2000 Funding Under the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983

On April 21, 2000, Secretary of State Madeleine Albright approved the recommendations of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. The Title VIII program, administered by the Department of State, seeks to build expertise among Americans on Russia, Eurasia, and Central and East Europe through support for advanced research, language and graduate training, and other activities both in the US and in the region. FY 2000 grant recipients are listed below.

1. American Council of Learned Societies

Grant: $420,000 (EE).

Purpose: To support dissertation fellowships, institutional grants for language training in the U.S. covering the basic languages of Central and East Europe, the Junior Scholars' Training Seminar, and post-doctoral research fellowships.

Contact: Jason Parker, Executive Associate, American Council of Learned Societies, 228 East 45th Street, New York, NY 10017–3398, (212) 697–1505 (ext. 134/135), Fax (212) 949–8058, e-mail: jason@acls.org.

2. American Councils for International Education

Grant: $420,000 ($355,000–NIS, $65,000–EE/B).

Purpose: To support programs for Advanced Russian Language and Area Studies, Languages of the NIS, Central and East European languages, Individualized Language Training and Research, Field Research Fellowships with the National Council for Eurasian and East European Research, and Policy Forums.

Contact: Graham Hettlinger, American Councils for International Education, 1776 Massachusetts Avenue, NW, Suite 700, Washington, DC 20036, (202) 833–7522, Fax (202) 833–7523, e-mail: Hettlinger@actr.org.

3. The William Davidson Institute of the University of Michigan Business School

Grant: $170,000 ($70,000–NIS; $100,000–EE).

Purpose: To support post-doctoral research fellowships on public policy affecting the development of markets in the Balkans and in Central Asia and the Caucasus.

Contact: Sharon Nakpairat, Administrative Director, The William Davidson Institute, University of Michigan Business School, 724 East University Avenue, Ann Arbor, MI 48109–1234, (734) 936–0041, Fax (734) 763–5850.

4. University of Illinois at Urbana-Champaign

Grant: $125,000 ($95,000–NIS; $30,000–EE/B).

Purpose: To support the Summer Research Laboratory, which provides dormitory housing and access to the University's library for advanced research, and the Slavic Reference Service, which locates materials unavailable through regular interlibrary loan.

Contact: Dianne Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820, (217) 333–1244, Fax (217) 333–1582, e-mail: reec@uiuc.edu.

5. Institute of International Education

Grant: $100,000 ($50,000–NIS; $50,000–EE).

Purpose: To support Professional Development Fellowships for young professionals in fields related to public service and civil policy in the Balkans and in Central Asia and the Caucasus.

Contact: Andrew Small, Program Manager, US Student Programs, Institute of International Education, 809 United Nations Plaza, New York, NY 10017–3580, (212) 984–5326, Fax (212) 984–5325, e-mail: asmall@iie.org.

6. International Research and Exchanges Board

Grant: $565,000 ($315,000–NIS; $250,000–EE/B).

Purpose: To support its programs for Individual Advanced Research Opportunities, Short-term Travel Grants, Black Sea and Caspian Regional Policy Symposia, Dissemination, and Policy Forums.

Contact: Joyce Warner, Director, Academic Exchanges and Research Division, International Research and Exchanges Board, 1616 H Street, NW, Washington, DC 20006, (202) 628–8188, Fax (202) 628–8189, e-mail: jwarner@irex.org.

7. National Council for Eurasian and East European Research

Grant: $1,200,000 ($900,000–NIS; $300,000–EE/B).

Purpose: To support the Research Contract and Fellowship Grant Programs for postdoctoral research, Policy Research Fellowships in the NIS and Central and East Europe, and the Ed. A. Hewett Fellowship Program to allow a scholar to work on a research project for a year while serving in a USG agency.

Contact: Robert Huber, President, National Council for Eurasian and East European Research, 910 17th Street, NW, Suite 300, Washington, DC 20006, (202) 822–6950, Fax (202) 822–6955, e-mail: nceeerdc@aol.com.

8. Social Science Research Council

Grant: $775,000 ($745,000–NIS, $30,000–EE/B).

Purpose: To support dissertation fellowships, advanced graduate fellowships, US-based institutional training in the languages of the NIS, the dissertation workshop on understudied regions, and postdoctoral fellowships.

Contact: Seteney Shami, Program Director, Social Science Research Council, 810 7th Avenue, 31st Floor, New York, NY 10019, (212) 377–2700, Fax (212) 377–2727, e-mail: shami@ssrc.org.

9. The Woodrow Wilson Center for International Scholars

Grant: $720,000 ($470,000–NIS; $250,000–EE/B).

Purpose: To support the Research and Short-term Scholar Programs, internships, meetings, outreach and publications of the Kennan Institute for Advanced Russian Studies and the East European Studies of the European Program, including the Kennan's Workshop on the Role of Women in Post-Communist Transitions and the East European Program's Junior Scholars' Training Seminar.

Contact: Nancy Popson, Deputy Director, Kennan Institute, (202) 691–4100, Fax (202) 691–4247

or

Martin Sletzinger, Director, East European Studies, The Wilson Center, 1300 Pennsylvania Avenue, NW, Washington, DC 20004–3027, (202) 691–4263, Fax (202) 691–4247.

Dated: June 27, 2000.

W. Kendall Myers,

Acting Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 00–16904 Filed 7–4–00; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice: 3355]

Universal Postal Union Reform Initiatives

DEPARTMENT: United States Department of State.

ACTION: Notice of briefing.

SUMMARY: The Department of State will host a briefing on Tuesday, September 26, 2000, to provide an update on reform initiatives at the Universal Postal Union (UPU).

The briefing will be held from 2:00 p.m. until approximately 4:00 p.m., on September 26, 2000, in Room 1105 of the Department of State, 2201 C Street, NW., Washington, DC. The briefing will be open to the public up to the capacity of the meeting room.

The briefing will provide information on the results of the recent meetings of the High-Level Group on the Future of the UPU, and of the UPU Postal Operations Council, as well as on other significant UPU-related issues. The briefing will be chaired by Ambassador E. Michael Southwick of the Department of State.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should, no later than noon on September 25, 2000, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–2752. This request applies to both government and non-government individuals.

All attendees must use the Department of State diplomatic entrance at 22nd and C Streets, NW. One of the following means of identification will be required for admittance: Any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card.

FOR FURTHER INFORMATION CONTACT: Questions concerning the briefing may be directed to Mr. Neil Boyer at (202) 647–1044.

Dated: June 27, 2000.

Neil A. Boyer,

Acting Director, Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 00–16903 Filed 7–4–00; 8:45 am]

BILLING CODE 4710–19–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Deadline for Submission of Petitions for the 2000 Annual Country Eligibility Practices Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the 2000 Annual GSP Country Eligibility Practices Review and Cancellation of the 2000 Annual GSP Product Review.

SUMMARY: The deadline for the submission of petitions for the 2000 Annual GSP Country Eligibility Practices Review is 5 p.m., Monday, August 21, 2000.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

Announcement of 2000 Annual GSP Country Eligibility Practices Review and Cancellation of 2000 Annual GSP Product Review

The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified by a **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2000 Annual GSP Country Eligibility

Practices Review, all petitions to review the GSP status of any beneficiary developing country must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m., Monday, August 21, 2000. Petitions submitted after the deadline will not be considered for review and will be returned to the petitioner.

Notice also is hereby given that the 2000 Annual GSP Product Review is canceled due to the extraordinary work that is required to conduct an accelerated review of products eligible to be designated under GSP for beneficiaries of the Africa Growth and Opportunity Act.

The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended (the "Trade Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

A. 2000 GSP Annual Country Eligibility Practices Review

Interested parties may submit petitions to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c)). Such petitions must comply with the requirements of 15 CFR 2007.01(b).

B. Submission of Petitions and Requests

Petitions to modify GSP treatment should be addressed to GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20508. An original and fourteen (14) copies of each petition must be submitted in English. If the petition contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the business confidential version must be submitted. In addition, the submission containing business confidential information should be clearly marked "business confidential" at the top and bottom of each and every page of the submission. Petitions submitted as "business confidential" must conform to 15 CFR 2003.6 and other qualifying information submitted in confidence must conform to 15 CFR 2007.7. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each (either page "public version" or "nonconfidential").

Only the public versions of the submissions will be available for public inspection and only by appointment. Appointments to review petitions may be made by contacting Ms. Brenda Webb (Tel. 202/395–6186) of the USTR Public Reading Room. The hours of the Reading Room are 9:30 a.m. to 12 noon and 1:00 p.m. to 4 p.m., Monday through Friday.

Jon Rosenbaum,

Assistant U.S. Trade Representative for Trade and Development.

[FR Doc. 00–16873 Filed 7–3–00; 8:45 am]

BILLING CODE 3901–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–202]

WTO Consultations Regarding U.S. Action Under Section 203 of the Trade Act of 1974 Concerning Line Pipe

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on June 13, 2000, Korea requested consultations with the United States under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding the U.S. action under section 203 of the Trade Act of 1974 ("Trade Act") (19 U.S.C. 2253) concerning line pipe. Presidential Proclamation 7274, issued on February 18, imposed safeguards on imports of line pipe, effective March 1, 2000 (65 FR 9193, February 23, 2000). Korea alleges that the U.S. action on line pipe is inconsistent with various provisions of the WTO Agreement on Safeguards and the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding ("DSU"), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Korea. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 21 to be assured of timely consideration by USTR prior to consulting with Korea.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Line Pipe Dispute. Telephone (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Rachel Shub, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–7305.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Korea

On December 22, 1999, the United States International Trade Commission (USITC) transmitted to the President an affirmative determination in its investigation under section 202 of the Trade Act (19 U.S.C. 2252), with respect to imports of certain circular welded carbon quality line pipe (line pipe) provided for in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Schedule of the United States. The USITC determined that line pipe is being imported in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing a like or directly competitive article.

On February 18, 2000, pursuant to section 203 of the Trade Act (19 U.S.C. 2253), Presidential proclamation 7274 imposed increases in duties on imports of line pipe in excess of 9000 short tons (8,164,663 kg) from each country, effective March 1, 2000 through March 1, 2003. Proclamation 7274 exempts products of Canada and Mexico from these duty increases. Korea alleges that "the U.S. procedures and determinations that led to the imposition of the safeguard measure as

well as the measure itself" are inconsistent with U.S. obligations under Articles 2, 3, 4, 5, 11 and 12 of the WTO Agreement on Safeguards and with Articles I, XIII and XIX of the GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; and, if applicable, the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–202, Line Pipe Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–16962 Filed 7–3–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 23, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7549.
Date Filed: June 19, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0316 dated May 23, 2000 (Issuance).
PTC2 EUR 0325 dated June 16, 2000 (Adoption)
Mail Vote 076—Resolution 078y
TC2 Pex Fares Within Europe
Intended effective date: June 23, 2000

Docket Number: OST–2000–7566.
Date Filed: June 22, 2000.
Parties: Members of the International Air Transport Association.
Subject:
CAC/28/Meet/006/00 dated June 8, 2000
Finally Adopted Resos R1–6
Minutes—CAC/28/Meet/005/00 dated June 7, 2000
Intended effective date: October 1, 2000

Docket Number: OST–2000–7579.
Date Filed: June 23, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 USA–EUR 0099 dated June 20, 2000.
North Atlantic USA-Europe Expedited Resolutions 002v and 054s
Intended effective date: August 1, 2000

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–16825 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 23, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–7546.
Date Filed: June 19, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 2000.
Description: Application of Swissjet, Inc. pursuant to 49 U.S.C. 41102 and subpart. Q, applies for a Certificate of Public Convenience and Necessity to authorize Swissjet to engage in foreign charter air transportation of persons, property and mail.

Docket Number: OST–2000–7547.
Date Filed: June 19, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 2000.
Description: Application of Swissjet Inc. pursuant to 49 U.S.C. 41102 and subpart Q, applies for a Certificate of Public Convenience and Necessity to authorize Swissjet to engage in interstate charter air transportation of persons, property and mail.

Docket Number: OST–2000–7548.
Date Filed: June 19, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 2000.
Description: Application of Continental Airlines, Inc. pursuant to 49 U.S.C. 41102 and subpart B, applies for renewal of its Route 682 certificate authorizing Continental to provide scheduled air transportation of persons, property and mail between Newark, New Jersey, and Lima, Peru, via the intermediate point Bogota, Colombia.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–16824 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Advisory Circular 20–143]

Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of Advisory Circular (AC) 20–143.

SUMMARY: This notice announces the issuance of AC 20–143, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines. This AC presents information regarding the inspection, maintenance, and installation of engine controls with emphasis on the airframe portion of these systems. It provides guidance to design and maintenance personnel to reduce the number of airplane accidents and incidents related to the loss of engine power control. This AC provides a supplement, but does not replace the procedures in the manufacturers' maintenance manuals. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: On June 6, 2000, the Small Airplane Directorate issued Advisory Circular No. 20–143.

How to Request Copies: Copies of the AC are available from the U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785. The advisory circular is also available on the internet at http://www.faa.gov/avr/air/airhome.htm.

Issued in Kansas City, Missouri, on June 23, 2000.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16917 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at El Paso International Airport, El Paso, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at El Paso International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 4, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Patrick T. Abeln, Manager El Paso International Airport at the following address: Patrick T. Abeln, Director of Aviation, El Paso International Airport, 6701 Convair Road, El Paso, TX 79925.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Forth Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at El Paso International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 21, 2000 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 5, 2000.

The following is a brief overview of the application.

Total estimated PFC revenue: $5,502,927.

PFC application number: 00–02–U–00–ELP.

Brief description of proposed project(s):

Projects To Use PFC's

1. Extend Runway 4/22 and Parallel Taxiway 1,000 feet.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at El Paso International Airport.

Issued in Fort Worth, Texas on June 21, 2000.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 00–16921 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fayetteville Regional Airport, Fayetteville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on two projects that were inadvertently omitted from the May 25, 2000 **Federal Register** notice contained in the application to impose and use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office,

1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bradley S. Whited, Airport Director, of the City of Fayetteville a the following address: Mr. Bradley S. Whited, Airport Director, Fayetteville Regional Airport, P.O. Box 64218, Fayetteville, NC 28306.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Fayetteville under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lee Kyker, Manager of Airport Programs, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 20227–2747, (404) 305–7161. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 12, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Fayetteville was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 8, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–01–C–00–FAY.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2000.

Proposed charge expiration date: October 1, 2002.

Total estimated net PFC revenue: $942,620.

Brief description of proposed project(s) that were omitted from May 25, 2000 Federal Register Notice:

- Construct general aviation area (design only).
- Acquire handicap lift device.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Federal Aviation Administration.

Issued in Atlanta, Georgia on June 27, 2000.

Scott L. Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 00–16920 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement; Douglas County, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, the FHWA, in cooperation with the Colorado Department of Transportation (CDOT), have jointly prepared a Draft Environmental Impact Statement (EIS) for proposed transportation improvements in the South I–25 Corridor and US 85 Corridor of the Denver, Colorado metropolitan area. The project is within Douglas County. The Draft EIS identifies various alternatives and the associated environmental impacts of the proposed alternatives. Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing the contact person listed below under **ADDRESSES.** Public reading copies of the Draft EIS are available at the locations listed under **SUPPLEMENTARY INFORMATION.**

DATES: A 45-day public review period will begin on July 5, 2000 and conclude on August 21, 2000. Written comments on the alternatives and impacts to be considered must be received by CDOT by August 21, 2000. Three public hearings to receive oral comments on the Draft EIS will be held in Castle Rock, Lone Tree, and Sedalia.

ADDRESSES: Written comments on the Draft EIS should be addressed to Wes Goff, Project Manager, Colorado Department of Transportation, South I–25 and US 85 Corridor, 18500 East Colfax Avenue, Aurora, CO 80011. Requests for a copy of the Draft EIS may be addressed to Mr. Wes Goff at the address above. Please see **SUPPLEMENTARY INFORMATION** section for a listing of the available documents and formats in which they may be obtained. Copies of the Draft EIS are also available for public inspection and review. See **SUPPLEMENTARY INFORMATION** section for locations.

FOR FURTHER INFORMATION CONTACT: To request copies of the Draft EIS or for additional information, contact: Mr. Scott Sands, FHWA, Colorado Division, 555 Zang Street, Room 250, Lakewood, CO, 80228, Telephone: (303) 969–6730 extension 362; or Mr. Wes Goff, Colorado Department of Transportation, Region 1, 18500 East Colfax Avenue, Aurora, CO 80011, Telephone: (303) 757–9647.

SUPPLEMENTARY INFORMATION:

Hearing Dates and Locations:

Tuesday, July 25, 2000: Louviers Village Club House (5 p.m.–7 p.m.)

Wednesday, July 26, 2000: Lone Tree Civic Center (5 p.m.–7 p.m.)

Thursday, July 27, 2000: Douglas County Building (5 p.m.–7 p.m.)

Copies of the Draft EIS are available in hard copy format for public inspection at:

- CDOT Arapahoe Residency, 359 Inverness Drive South, Suite K, Englewood, CO 80112, 303–790–1020
- CDOT Office of Environmental Services, 1325 South Colorado Boulevard, Suite B400, Denver, CO 80222, 303–757–9259
- CDOT Region 1, 18500 E Colfax Avenue, Aurora, CO 80010, 303–757–9371
- Douglas County Planning Department, 100 Third Street, Castle Rock, CO 80104, 303–660–7490
- Federal Highway Administration, 555 Zang Street, Room 250, Lakewood, CO 80228, 303–969–6730
- Highlands Ranch Library, 48 West Springer Drive, Littleton, CO 80129–2314, 303–791–7703
- Lone Tree Library, 8827 Lone Tree Parkway, Lone Tree, CO 80124–8961, 303–799–4446
- Louviers Library, 7885 Louviers Boulevard, Louviers, CO 80131–9900, 303–791–7323
- Parker Library, 10851 South Crossroads Drive, Parker, CO 80134–9081, 303–841–3503
- PBS&J, 5500 Greenwood Plaza Blvd., Suite 150, Englewood, CO 80111, 303–221–7275
- Philip S. Miller Library, 961 S. Plum Creek Road, Castle Rock, CO 80104, 303–688–5157
- The document is also available on the project Website: www.southi25.com

Background

This Draft EIS provides a detailed evaluation of the South I–25 Corridor and US 85 Corridor improvement project. The project corridors both lie within Douglas County, Colorado. The I–25 Corridor extends from C–470 at approximate milepost 195 to the southern limit of Castle Rock at

approximate milepost 178 and the US 85 Corridor extends from C–470 at approximate milepost 200 to Castle Rock at approximate milepost 184. This Draft EIS includes an examination of the purpose and need, alternatives under consideration, travel demand, affected environment, environmental consequences, and mitigation measures as a result of the improvements under consideration. Three alternatives, including the No-Action Alternative, and several other I–25 improvement options are considered for improvements to the I–25 Corridor. Two alternatives, including the No-Action Alternative, and one other US 85 improvement option are considered for improvements to the US 85 Corridor. CDOT was the lead agency for the preparation of the Draft EIS.

The FHWA, the CDOT, and other local agencies invite interested individuals, organizations, and Federal, State, and local agencies to comment on the evaluated alternatives and associated social, economic, or environmental impacts related to the alternatives.

Issued on: June 23, 2000.

James Daves,

Division Administrator, Federal Highway Administration, Lakewood, Colorado.

[FR Doc. 00–16853 Filed 7–3–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6685; Notice 2]

General Motors Corporation, Grant of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain 1999 Chevrolet vehicles are not in compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire selection and rims for motor vehicles other than passenger cars" and 49 CFR Part 567, "Certification" and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on January 19, 2000, in the **Federal Register** (65 FR 3004). NHTSA received no comments.

The purpose of FMVSS No. 120 according to S2 is "to provide safe operational performance of vehicles by ensuring that vehicles to which it applies are equipped with tires of adequate size and load rating, and rims of appropriate size and type designation." Paragraph S5.2 of FMVSS No. 120 requires that each rim be marked with specific information, including the rim size designation which indicates the source of the rim's published nominal dimensions, and the rim size designation. For example: "20 x 5.50," or "20 x 5.5."

Between March 1, 1999, and March 13, 1999, GM produced 5,079 Chevrolet Blazers and Chevrolet S–10 pickup trucks, some of which may be equipped with one or more than one of the 1,658 wheels that are missing the width designation in the rim marking on the back side of the wheel. In the original petition, GM stated that this missing data affected 11,522 vehicles; however, on March 6, 2000, the agency received a follow-up letter from GM stating that only 5,079 vehicles may be affected. GM's wheel supplier, Reynolds-Rualca, Venezuala, produced 3,721 wheels that had an error in the rim size designation. Instead of the correct rim size designation of "15 x 7," these wheels have a rim size designation of "15 x ." The error occurred when one of the wheel casting molds was refurbished. Of the 3,721 mis-marked wheels produced, 2,063 were located and correctly stamped with the missing rim width. The remaining 1,658 wheels were installed on the Chevrolet vehicles. The rim markings other than the rim width designation were not affected by the refurbishing error, and the remainder of the rim marking information, including rim diameter, is correct on all of the 1,658 wheels.

GM supports its application for inconsequential noncompliance by stating the following:

1. "The tire and rim of the affected wheels are properly matched, and are appropriate for the load-carrying characteristics of these vehicles. The lack of complete marking has no effect on the performance of the tire/rim combination of the subject vehicles."

2. "These vehicles have a placard on the left front door that contains the correct and complete tire and rim sizes installed on these vehicles. The placard on the subject vehicles shows rim size completely and correctly as 15x7J."

3. "The owner's manual provided with these vehicles contains a section 'Buying New Tires.' The text of this section advises the customer that they should look at the Certification/Tire Label to find out what kind and size of tires they need. It goes on to tell them that they should get new tires with the same Tire Performance Criteria Specification (TPC Spec) that the vehicle came with, and that they can find the TPC number on each tire's sidewall. Finally it advises them that if they were to replace the tires with those not having the TPC Spec number found on the original equipment tires, they should make sure that the tires they choose are the same size, load range, speed rating and construction type as the original tires. Nowhere are customers told to look at the wheel to determine the appropriate tire."

4. "General Motors believes that very few of these wheels will ever have to be replaced over the life of the vehicle. Nevertheless, the owner's manual provided with these vehicles contains a section 'Wheel Replacement.' This section states that each new wheel should have the same load-carrying, diameter, width, offset and be mounted in the same way as the one it replaces. It also advises customers that their dealer will know the kind of wheel they need. The wheels at issue here are not marked with an incorrect width. Rather, they have no width marking. Therefore a dealer would not be misled by a width marking on the wheel, but would look at the placard if they were not aware of the exact width."

5. "If a customer needs to replace a tire or a wheel, he/she is likely to go to a tire/wheel store, or a vehicle dealer. The skilled personnel at any of these places know how to determine the correct tire or wheel size that they are replacing. For the tire replacement, it is highly probable that they will first look at the tire sidewall to determine the replacement tire size. They also know that the information exists on the placard and may look at the placard. For the wheel replacement, they may look at the tire placard or at the wheel itself to determine the replacement size. The subject wheels do not give incorrect information, however the information is incomplete. Since the information on the wheel is incomplete, the person looking at it will look elsewhere to find the missing information prior to selecting replacement wheel or tire size. For the correct tire selection, rim diameter is of primary importance, and the tire diameter must be the same as the rim diameter. The information on the subject wheels does contain the correct rim diameter, *i.e.*, 15."

The purpose for the rim marking requirements in FMVSS No. 120 is to provide the owner with permanent rim size and type designation information necessary to ensure proper selection and matching of rims and tires. Without

proper labeling, an individual vehicle user cannot readily determine the proper size tire for the rim and the vehicle. Without this required information displayed on the rim, a tire too large or small for the rim could be mounted, resulting in a failure. If the load carrying capabilities of the wheel cannot be readily determined, then the possibility of overloading exists.

In this case, the rims have an incomplete marking, so the individual will have to rely on another source for the correct rim size. The most likely sources for the rim size information are the tire placard on the vehicle, the vehicle owner's manual, or a dealer. The placard in these vehicles shows the rim size correctly at 15 x7J. The owner's manual for these vehicles states that a new wheel should have the same load-carrying, diameter, width, offset and be mounted in the same way as the one it replaces. It also advises customers that their dealer will know the kind of wheel they need. It is extremely unlikely that dealers would attempt to rely on rim markings to determine the appropriate tire or rim sizes.

According to GM, the processes have been extensively reviewed, the causes of these noncompliances have been isolated, and changes in the processes have been instituted to prevent any future occurrences. In addition, the noncompliance is limited to the vehicles addressed in this notice, and GM stated that its future products will comply with the requirements of FMVSS No. 120.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, GM's application is granted, and it is exempted from the duty of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118, delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: June 28, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–16890 Filed 7–4–00; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33889]

State of Texas (Acting by and Through the Texas Department of Transportation)—Acquisition Exemption—West Texas & Lubbock Railroad Company, Inc.

The State of Texas (acting by and through the Texas Department of Transportation), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the right-of-way underlying a rail line (the line) from West Texas & Lubbock Railroad Company, Inc. (WTLR). The line is located between milepost 7.2 and milepost 1.1, in Lubbock, TX, a distance of approximately 6.1 miles.[1]

The transaction was scheduled to be consummated on or shortly after June 27, 2000.[2]

If the notice contains false or misleading information, the exemption is void *ab initio*.[3] Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33889, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles W. Heald, Executive Director, Texas Department of Transportation, 125 E. 11th Street, Austin, TX 78701–2483.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16856 Filed 7–03–00; 8:45 am]

BILLING CODE 4915–00–M

[1] The State of Texas will not provide rail freight service on the line. WTLR will retain ownership of the rail, ties and other track materials and will retain the permanent, irrevocable, exclusive rail freight easement to provide service over the line.

[2] The transaction could be consummated no sooner than the June 23, 2000 effective date of the exemption.

[3] According to the State of Texas, a motion to dismiss will be filed in the near future in this proceeding on the grounds that the Board does not have jurisdiction over this transaction.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Submission for OMB Review; Joint Comment Request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (collectively, the "agencies") hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collections described below. The agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

On April 18, 2000, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the extension, without revision, of the currently approved information collections: the Foreign Branch Report of Condition (FFIEC 030). The agencies, however, are making a minor clarification to the FFIEC 030 general instructions, effective September 30, 2000.

DATES: Comments must be submitted on or before August 4, 2000.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments on the FFIEC 030 should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Third Floor, Attention: 1557–0099, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202)874–5274, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC's Public Reference Room, 250 E

Street, SW, Washington, DC 20219 between 9 a.m. and 5 p.m. on business days. Appointments for inspection of comments may be made by calling (202) 874–5043.

Board: Written comments on the FFIEC 030 should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551, submitted by electronic mail to regs.comments@federalreserve.gov, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments on the FFIEC 030 should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Mary M. West, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Extend for Three Years With Minor Instructional Clarifications the Following Currently Approved Collections of Information

Title: Foreign Branch Report of Condition.

Form Number: FFIEC 030.

Frequency of Response: Annually, and quarterly for significant branches.

Affected Public: Business or other for-profit.

For OCC:

OMB Number: 1557–0099.

Number of Respondents: 143 annual respondents, 56 quarterly respondents.

Estimated Time per Response: 3.9 burden hours.

Estimated Total Annual Burden: 1431 burden hours.

For Board:

OMB Number: 7100–0071.

Number of Respondents: 40 annual respondents, 26 quarterly respondents.

Estimated Time per Response: 3.9 burden hours.

Estimated Total Annual Burden: 468 burden hours.

For FDIC:

OMB Number: 3064–0011.

Number of Respondents: 36 annual respondents, no quarterly respondents.

Estimated Time per Response: 3.9 burden hours.

Estimated Total Annual Burden: 140.4 burden hours.

General Description of Report

These information collections are mandatory: 12 U.S.C. 321, 324, and 602 (Board); 12 U.S.C. 602 (OCC); and 12 U.S.C. 1828 (FDIC). These information collections are given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small banks) are not affected.

Abstract

This report contains asset and liability information for foreign branches of insured U.S. commercial banks and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. commercial banks. All foreign branches of U.S. banks regardless of charter type file this report with the appropriate Federal Reserve District Bank. The Federal Reserve collects this information on behalf of the U.S. bank's primary federal bank regulatory agency.

Current actions: The agencies did not receive any comments in response to the notice published in the **Federal Register** on April 18, 2000, (65 FR 20847) requesting public comment on the extension without revision of these information collections. The agencies, however, are making a minor clarification to the FFIEC 030 general instructions regarding the treatment of intrabank transactions, effective September 30, 2000.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: June 28, 2000.

Mark J Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, June 27, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this 19th day of June, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–16843 Filed 7–3–00; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning an extension, without change, of an information collection titled Investment Securities—12 CFR 1. The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: You should submit your written comments to both OCC and the OMB Reviewer by August 4, 2000.

ADDRESSES: You should send your written comments to the Communications Division, Attention: 1557–0205, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to OMB by contacting Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0200), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Investment Securities—12 CFR 1.

OMB Number: 1557–0205.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

National banks need these collections of information to ensure that they conduct their operations in a safe and sound manner and in accordance with applicable federal banking statutes and regulations. The collections of information provide needed information for examiners and provide protections for national banks. The collections of information are necessary for regulatory and examination purposes and for national banks to ensure their compliance with federal law and regulations.

The information requirements in 12 CFR part 1 are located as follows:

12 CFR 1.3(h)(2): A national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 (the '40 Act) if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC needs the information to determine if circumstances exist where the bank's investment in a certain exempt investment fund would be acceptable under the '40 Act and does not pose unacceptable risk for the bank.

12 CFR 1.7(b): A national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted for up to an additional five years. The OCC uses the information in the request to determine, on a case-by-case basis, that the bank wants to hold the debt for a nonspeculative purpose, whether the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Number of Respondents: 25.

Total Annual Responses: 25.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 460 burden hours.

OCC Contact: Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, OMB No. 1557–0205, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0205, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Comments:

Your comment will become a matter of public record. You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) Whether the OCC's burden estimate is accurate;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Whether the OCC's estimates of the capital or startup costs and costs of operation, maintenance, and purchase of services to provide information are accurate.

Dated: June 28, 2000.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 00–16893 Filed 7–3–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Tax and Loan Program Enhancements

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice: announcement of delay.

SUMMARY: This announces a delay in the availability of new applications in the Treasury Tax and Loan Program.

DATES: We will announce the new implementation date once established.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist on (202) 874–6705 or walt.henderson@fms.treas.gov; Mary Bailey, Financial Program Specialist, at (202) 874–6749 or mary.bailey@fms.treas.gov; Adam Martin, Financial Program Specialist, at (202) 874–6881 or adam.martin@fms.treas.gov; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or cindy.johnson@fms.treas.gov; or Ellen

Neubauer, Senior Attorney, (202) 874–6680 or ellen.neubauer@fms.treas.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On May 24, 2000, the Department of the Treasury (Treasury) announced two new applications in the Treasury Tax and Loan (TT&L) program. These applications—the Treasury Investment Program (TIP) and the Paper Tax System (PATAX)—were scheduled to be available on July 10, 2000. This announcement was published to coincide with the publication of new regulations pertaining to daylight overdrafts by the Board of Governors of the Federal Reserve (Federal Reserve).

B. Reasons for Delaying the Implementation of the New TT&L Applications

Since the publication date of the notice of the new TT&L applications, the Treasury and the Federal Reserve determined the availability date for these applications, July 10, 2000, must be revised. The Treasury and the Federal Reserve made a joint decision to delay implementation of the TIP and PATAX applications to allow for further testing of an internal cash forecasting application that interfaces with TIP. We will announce the new implementation date once established. Until the new implementation date, all TT&L processes will operate as they currently do. While TIP and PATAX have been thoroughly tested and stand ready for implementation, the extra time will allow the Treasury and the Federal Reserve to ensure that interfaces between these systems and other systems are functioning properly.

Additional Information

For more information on the new TT&L applications and the revised implementation date, please visit www.frbservices.org. Financial institutions may also visit www.fm.treas.gov/regs.html for regulations and guidance pertaining to TT&L, EFTPS, and collateral. Financial institutions with questions on the new TT&L applications should contact the TT&L National Customer Service Area on 1–888–568–7343.

Dated: June 28, 2000.

Bettsy H. Lane,

Assistant Commission, Federal Finance, Financial Management Service.

[FR Doc. 00–16831 Filed 7–3–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–4S

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–4S, Request for Federal Income Tax Withholding From Sick Pay.

DATES: Written comments should be received on or before September 5, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Federal Income Tax withholding From Sick Pay.

OMB Number: 1545–0717.

Form Number: W–4S.

Abstract: Section 3402(o) of the Internal Revenue Code allows income tax withholding on sick pay payments made by third parties upon request of the payee. The information is used by payers to determine how much to withhold from each sick pay payment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 1 hr., 23 min.

Estimated Total Annual Burden Hours: 690,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 23, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–16797 Filed 7–3–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5227

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5227, Split-Interest Trust Information Return.

DATES: Written comments should be received on or before September 5, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Split-Interest Trust Information Return.

OMB Number: 1545–0196.

Form Number: 5227.

Abstract: Form 5227 is used to report the financial activities of a split-interest trust described in Internal Revenue Code section 4947(a)(2), and to determine whether the trust is treated as a private foundation and is subject to the excise taxes under Chapter 42 of the Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 88,640.

Estimated Time Per Respondent: 75 hr., 45 min.

Estimated Total Annual Burden Hours: 6,714,796.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 22, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–16798 Filed 7–3–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Thursday July 20, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, July 20, 2000, 6 p.m. to 9 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9 p.m. on Thursday, July 20, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, PO Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 26, 2000.

M. Cathy VanHorn,

Director, CAP, Communications & Liaison.

[FR Doc. 00–16799 Filed 7–3–00; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 65, No. 129
Wednesday, July 5, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA084/101–5045a; FRL–6562–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Format for Materials Being Incorporated by Reference; Approval of Recodification of the Virginia Administrative Code

Correction

In rule document 00–9535 beginning on page 21315 in the issue of Friday, April 21, 2000, make the following correction:

§52.2420 [Corrected]

1. On page 21329, in §25.2420(c), in the table, under the "Article 17" heading, in the 7th line, in the 4th column, "120–4–1709" should read "120–04–1709".

2. On page 21334, under the heading "*Article 29 Paper and Fabric Coating Application Systems [Rule 4-31]*" add the following line to the end of the table:

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
Article 29 Paper and Fabric Coating Application Systems [Rule 4–29]				
5–40–4150	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2915.

3. On page 21335, under the "Article 33" heading, in the 4th line, in the 2nd column, after "Technology" add "Guidelines".

4. On page 21337, under the heading "*Article 38 Dry Cleaning Systems [Rule 38]*" add the following line to end of the table:

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
Article 38 Dry Cleaning Systems [Rule 4–38]				
5–40–5480	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3814.

5. On page 21340, under the "Chapter 80" heading, in the last line, in the 4th column, "N." should read "01N. ".

6. On page 21341, under the same chapter, in the first line, in the 4th column, "O." should read "01O.".

7. On the same page, under the same chapter, in the second line, in the 4th column, "P." should read "01P. ".

8. On page 21346, under the "Part II" heading, in the third line, in the 3rd column, "1/2/97" should read "1/1/97" and in the sixth line, in the 3rd column, "1//97" should read "1/1/97".

9. On page 21347, in §52.2420(d), in the table, in the first column, in the 8th line, "Bended" should read "Blended".

[FR Doc. C0–9535 Filed 7–3–00; 8:45 am]
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Federal Register

Wednesday,
July 5, 2000

Part II

Department of Transportation

Federal Aviation Administration
14 CFR Part 13
Flight Operational Quality Assurance Program; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2000–7554; Notice No. 00–07]

RIN 2120–AF04

Flight Operational Quality Assurance Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to codify an FAA policy encouraging the voluntary implementation of Flight Operational Quality Assurance (FOQA) programs and clarifying the circumstances under which information obtained from voluntary FOQA programs could be used in enforcement actions against air carriers, commercial operators, or airmen. The rule would require air carriers participating in FOQA programs to submit aggregate FOQA data to the FAA for use in monitoring safety trends. Under the proposed rule, the FAA may use aggregate FOQA data as a basis to promulgate safety rulemakings or to address situations calling for remedial enforcement action, *e.g.*, a lack of qualification on the part of an operator or aircraft.

DATE: Comments on this proposal must be submitted on or before October 3, 2000.

ADDRESSES: Address your comments to the Docket Management system, U.S. Department of Transportation Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–7554 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Longridge, Flight Standards Service, AFS–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (703) 661–0260.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposal contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2000–7554." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of this NPRM.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Flight Operational Quality Assurance Program Description

The primary purpose of a Flight Operational Quality Assurance Program (FOQA) is the enhancement of air safety. A FOQA program involves the routine analysis of flight data generated during line operations in order to reveal situations that require corrective action and to enable early corrective action before problems occur. To institute such a program, airlines would need to develop a system that captures flight data, transforms the data into an appropriate format for analysis, and generates reports and visualizations to assist personnel in analyzing the data. The information and insights provided by FOQA programs significantly enhance line operational safety, training effectiveness, operational procedures, maintenance and engineering procedures, ATC procedures, and airport surface issues.

Data is collected and aggregated from numerous operations. The value of using the aggregate FOQA data greatly exceeds that of single flight assessment when trying to determine the root causes of systemic problems that need to be corrected. Individual data records are typically aggregated along various dimensions (*e.g.*, event category as a function of aircraft type, phase of flight, and geographical location) to assist the analyst in looking for trends and patterns. Aggregation is defined as a transformation process that groups and mathematically combines (*e.g.*, count, total, average, standard deviation) individual data elements based on some criterion. Each aggregation is based on factors of interest to the analyst at a particular point in time. For example, the average approach maximum rate of descent below 2000 feet by airport by fleet type (event category) may be useful to better understand the data once counts of related events indicate that this is an area that might be useful to study. This analysis may suggest that all fleets are experiencing high descent rates at a certain airport or just a specific aircraft type is involved. This type of information can be used to pinpoint the potential source of a problem and the nature of the corrective action.

Under the rule, program participations would submit aggregate FOQA data to the FAA. The FAA plans to publish an advisory circular, which would provide program participants with guidance on submission procedures. In general, it is envisioned that aggregate FOQA date would be supplied monthly to the FAA through secure electronic means similar to the existing process for submitting automated operations specifications. The aggregate data would be reviewed by various organizational elements within the FAA to identify trends pertinent to the areas of safety oversight or NAS management for which they are responsible. In particular, the FAA expects the principal operations inspector (POI), his aircrew program managers (APMs), the principal maintenance inspector (PMI) and the principal avionics inspector (PAI) would monitor trends to identify areas in need of corrective action, if any; to review planned strategies for taking corrective action where warranted; and to verify that such corrective action has been effective. In general, the information obtained from aggregate FOQA information would be used to provide an improved basis for agency decisions based on objective data from line operations. Periodic reviews of trends and lessons learned from the FOQA program will help both the airline and FAA inspectors decide where to concentrate future safety efforts.

Background

Since the mid-1940s the civil air transport accident rate has significantly decreased. This decrease is due in part to the air transport industry's practice of discovering, understanding, and eliminating factors that lead to accidents and incidents. For many years, industry, the FAA, and the National Transportation Safety Board (NTSB) have used information from flight data recorders (FDRs) and digital flight data recorders (DFDRs) to identify the causes of accidents and to attempt to eliminate those causes systematically.

Airplanes used in operations conducted under 14 CFR part 121 and certain types of aircraft used in operations conducted under parts 91, 125, and 135 are required to have flight data recorders. Any operator who has installed approved flight recorders is required to keep the recorded information for at least 60 days after an accident or incident requiring immediate notification to the NTSB (14 CFR 91.609(g), 121.343(i), 125.225(g), and 135.152(e)). The flight data recorder information can thus be analyzed to determine causes of an accident or incident.

In the past 10 years, technological advances in cockpit equipment and in data analysis have increased the potential for obtaining and analyzing information on the flight characteristics of an aircraft during its operation. This information can be used to determine the causes of an accident. More importantly, it can also be used to obtain and analyze on a routine basis data that are recorded in line operations in order to prevent an accident. In recent years, many countries have developed programs to encourage the routine recordation and analysis of operational data on a voluntary basis. This NPRM is intended to accomplish the same for the for the United States through an FAA-approved FOQA program. In this NPRM, the term "FOQA program" means an FAA-approved program for the routine collection of in-flight operational data by means of a DFDR and the analysis of that data to discover trends affecting operational safety. It is hoped that by gathering and analyzing this data, the FAA and the aviation industry will be able to develop corrective actions, to improve flight crew performance, air carrier training programs, operating procedures, air traffic control procedures, airport maintenance and design, and aircraft operations and design. The key potential safety benefit of FOQA is that the routine analysis of flight data would enable the FAA and aircraft operators to take early action to prevent accidents. This benefit contrasts with the current situation, where the agency and industry rely on after-the-fact accident- or incident-driven data extraction and analysis used to develop safety fixes to prevent later accidents. Because of its capacity to provide early identification of safety shortcomings, FOQA offers significant potential for accident avoidance.

In 1995, in response to a recommendation of the Flight Safety Foundation, the FAA sponsored a FOQA Demonstration Study. The FOQA Demonstration Study has been conducted over the past several years in cooperation with four major airlines in the U.S. It has provided substantial documentation of the benefits of FOQA. For example, analysis of FOQA data has indicated that for domestic operations to major U.S. cities, the frequency of approaches for which the rate of descent exceeds 1000 feet per minute at 500 feet descent height is generally much higher than was realized previously. Analysis further determined that there is a correlation between the frequency of unstable approaches and specific airport locations. Such information has important implications for airline procedures, pilot training, and FAA Air Traffic Control procedures. Dissemination of FOQA information on this problem to pilots has been effective in reducing the frequency of such events. The data available from the Demonstration Study also provided a basis for the FAA to modify the approved instrument approach procedures for one U.S. airport, and to update the instrument approach equipment available at one runway.

FOQA data also have indicated that the manufacturer's recommended maximum speed for a given flap setting in a given aircraft type is exceeded more frequently than had been realized previously. Although pilots have been required to monitor and report the occurrence of flap exceedences for many years, flight crewmembers can miss them because they can occur for very brief intervals during the busy approach-to-landing phases of flight.

FOQA data have indicated that there are particular procedures and maneuvers that warrant increased emphasis in training. For example, analysis of FOQA data suggests that more emphasis on the safe and proper execution of visual approach maneuvers is needed. This result is of interest since the emphasis in pilot training programs previously has been primarily on the execution of instrument approach procedures. FOQA data indicated, however, that few performance problems are occurring with instrument approaches. Results from the Demonstration Study at one airline have indicated that the modification of recurrent training content to better emphasize the visual approach has produced quantifiable improvements in individual performance on that maneuver during line operations.

The FOQA program has been employed by one U.S. airline to create a database of wake turbulence events, and the information on how to conduct analyses of digital flight data for that purpose has been shared with other U.S. airlines.

FOQA data also have been used to pinpoint runway surface anomalies at U.S. airports. The documentation of these anomalies has been instrumental in correcting a long-standing problem at one such location.

FOQA data have provided a hitherto unavailable means of establishing a database of TCAS alerts, and of documenting specific aircraft responses to the occurrence of TCAS events. This type of hard data is essential to the integration of TCAS technology with air traffic control modernization.

FOQA data from two airlines, related to the impact of wind gusts, turbulence, and landing on airframe lifespan integrity, has proven to be invaluable for use by the FAA for the purpose of updating airframe certification standards.

Results from the Demonstration Study have indicated that, in addition to the utility of FOQA for safety monitoring and corrective action follow-up, there are numerous direct cost-savings benefits to an airline from FOQA. For example, FOQA data acquired by one airline have documented that autothrottle performance in one aircraft type was not in accordance with the manufacturer's specification, and that this circumstance was responsible for chronic engine temperature exceedences in that aircraft type. This information, which had not been available until the implementation of FOQA in that aircraft type, was successfully employed by the airline to modify takeoff power setting procedures in order to compensate for the autothrottle deficiency, as well as to initiate communications with the manufacturer targeted at correcting the problem. As a result, the airline was able to achieve savings from fewer engine removals, as well as increased aircraft availability, for that aircraft type.

Besides reducing engine removals, the Demonstration Study has documented many other examples of savings that are achievable through FOQA. Prominent examples include engine on-wing extension programs, detection of out-of-trim conditions, improved fuel management, reduced hard landing inspections, brake wear reduction, and insurance premium reductions.

The Demonstration Study's findings on the benefits of FOQA for U.S. operators are very similar to the results obtained by European air carriers, many of who have long experience in the use of this technology. A lengthy listing of FOQA benefits that have been observed by the Safety Regulation Group of the United Kingdom Civil Aviation Authority, for example, includes documenting unusual autopilot disconnects, GPWS warnings, hard landings, and rushed approaches. They include use of FOQA data for monitoring fuel efficiency, engine condition, crew procedures, noise violations, in-flight ATC delays, and aircraft structural fatigue. They also include the use of FOQA data for Category III landing certification. These results clearly validate the value of FOQA for both safety enhancement and cost management purposes.

In December 1995, the FAA sponsored a Safety Conference to review progress and to refine the originally proposed safety initiatives. At that conference, industry requested that the FAA codify in the regulations the enforcement protection policy letter on FOQA that had been issued by former Administrator Hinson. The FAA agreed to initiate rulemaking to address this issue. Subject to FAA action on this item, industry representatives committed themselves not only to continue support for voluntary implementation of FOQA at U.S. airlines, but to initiate a process that could ultimately lead to the wide scale sharing of FOQA information among airlines and the FAA to enhance safety. In this way the FAA will see not only the specific trends and corrective actions at an individual carrier, but can look for and correct trends across the industry.

Both air carrier operators and pilot groups have expressed concern about data confidentiality and use. There are significant concerns about increased tort liability as a potential result of the existence of FOQA data, as well as concerns from pilot groups about possible punitive actions by airline management based on FOQA information. Neither of these concerns are within the purview of the FAA to resolve. Both airlines and pilots groups have expressed concern about possible punitive enforcement actions by the FAA for regulatory violations revealed by FOQA data. This issue is addressed later in the preamble. Both airlines and pilots have also expressed concern that FOQA data made available to the government could be subject to public disclosure through the Freedom of Information Act (FOIA). However, Congress included specific provisions pertinent to the latter concern in the Federal Aviation Reauthorization Act of 1996. Specifically, the Reauthorization Act added a new section, 49 U.S.C. 40123, to the FAA's governing statute to protect voluntarily submitted information under certain circumstances. New section 40123 provides:

(a) In General.—Notwithstanding any other provision of the law, neither the Administrator of the Federal Aviation Administration, nor any agency receiving information from the Administrator, shall disclose voluntarily-provided safety or security related information if the Administrator finds that—

(1) the disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and

(2) withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities.

(b) Regulations.—The Administrator shall issue regulations to carry out this section.

In a separate NPRM entitled, *Protection of Voluntarily Submitted Information; Proposed Rule*, published July 26, 1999 in the **Federal Register** (Volume 24, Number 142, pp 40472–40482), the FAA proposes to add a new part to provide that certain information submitted to the FAA on a voluntary basis would not be disclosed to the public. Under proposed 14 CFR part 193, a regulatory procedure would be established for designating certain voluntarily submitted safety related information, such as FOQA aggregate data and trend analyses, as protected from such disclosure. Other types of voluntarily submitted safety related information could also be designated as protected from disclosure to the public.

Congressional Direction

On April 5, 2000, the President signed the Wendell H. Ford Aviation Investment and Reform act for the 21st Century. Section 510 of the Act requires the Administrator to issue a notice of proposed rulemaking proposing "Flight Operations Quality Assurance Rules." The proposed rules in this notice respond to section 510 and provide safeguards that will ensure that aviation safety is not compromised.

Section 510 provides that the protection should be proposed for each voluntary reporting program, such as FOQA and the Aviation Safety Action Program (ASAP). These proposed rules apply only to FOQA. However, as directed by Congress, the FAA invites comments on how the principles presented in this notice might be applied to other voluntary reporting programs, including ASAP. The FAA seeks comments on what would be a reasonable framework for protection of air carriers and their employees who submit information under voluntary programs.

Discussion of the Proposed Rule

The language of the proposed rule is consistent with the intent of the FOQA program, which is to provide air carriers and the FAA with (a) data from line operations that can be analyzed to identify trends for safety assessment; and (b) a basis for initiating corrective action when needed to improve pilot performance, aircraft maintenance practices, standard operating procedures, and aircraft system designs. The proposed rule would require that an

air carrier's FOQA program receive initial and continuing approval from the Administrator. To receive such approval, the rule would require a certificate holder to submit a FOQA Implementation and Operations Plan acceptable to the Administrator. The minimum requirements for a FOQA Implementation and Operations Plan would include (1) a description of the operator's plan for collecting and analyzing flight recorder data from line operations on a routine basis, (2) internal procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety, (3) procedures for providing the FAA with aggregate FOQA data, and (4) procedures for informing the FAA of corrective actions, including providing aggregate trend analyses to the FAA.

In general, the proposed rule would provide that certificate holders will provide the FAA with their aggregate FOQA data (summary statistical indices associated with FOQA event categories) without providing the underlying FOQA data (DFDR data obtained from individual aircraft). Thus, the FAA would be able to (1) monitor the effectiveness of the certificate holder's approved FOQA program, (2) monitor the certificate holder's compliance with its approved FOQA program, and (3) determine whether the certificate holder's aggregate trend analysis indicates a need for rulemaking.

In addition to its use as a self-auditing tool for the certificate holder, the FAA foresees a possible need for underlying FOQA data in two circumstances (although other uses may become apparent as the program develops). The first foreseeable circumstance would arise if the FAA concludes that the aggregate FOQA data obtained from one or more certificate holders indicate that safety rulemaking should be undertaken.

The second circumstance would arise if an aggregate FOQA data indicates a possible need for remedial action. Whenever possible and appropriate, if the certificate holder takes corrective action, this will be taken into consideration by the FAA in determining what, if any, investigation and enforcement action is warranted. With respect to punitive enforcement action, the proposed rule would prohibit the FAA from using FOQA data collected for punitive enforcement action. This prohibition would extend to DFDR data from required parameters that have been downloaded into a FOQA analysis program in accordance with an operator's approved FOQA Implementation and Operations Plan. The FAA would be permitted to use the data in the DFDR itself (*i.e.*, the black box) in any enforcement action if an apparent violation is discovered by means other than a review of the aggregate FOQA data.

Why the FAA Cannot Provide Regulatory Protection From Remedial Enforcement

Remedial enforcement action is most often taken to stop the continued operation of equipment that is not in a condition for safe operation, or to revoke or suspend indefinitely the certificate of an unqualified operator or person. This limited potential use of FOQA data is necessary because the FAA cannot anticipatorily foreclose its ability to take remedial enforcement action. Remedial enforcement action is taken to prevent entities or individuals that the FAA has determined are no longer qualified from operating in air transportation and to halt continuing noncompliance. The availability of remedial enforcement action would also apply to equipment that the FAA has determined is not in a condition for safe operation in air transportation. The agency is required to act in the best way to prevent accidents in air transportation. Often the best way to prevent an accident is to take remedial enforcement action against those who lack qualifications. Likewise, the FAA is statutorily obligated to, at a minimum, issue an order of compliance, which is a remedial action, when the FAA finds continuous violations of the safety rules.

FAA Policy on FOQA

The FAA believes that the likelihood that FOQA data will lead to remedial enforcement action is remote. For example, during the FOQA Demonstration Study there were no occurrences that would have resulted in remedial enforcement action under the provisions of this proposed rule. Nevertheless, if aggregate FOQA data or underlying FOQA data are necessary to resolve an issue involving possible lack of qualifications, the Administrator will seek to obtain that information in an effort to reduce or eliminate the possibility, or recurrence, of accidents in air transportation.

The proposed rule would provide protection from punitive enforcement based policy solely on FOQA data itself. It would not provide protection from punitive enforcement based on information obtained from other sources. For example, it would not provide protection from punitive enforcement where information comes from FAA-initiated activities undertaken when recurring trends in aggregate FOQA data indicate the possibility of a continuing unsafe condition. Such recurring negative safety trends could occur because a participant had failed to take corrective action or because the corrective action taken was not sufficient to resolve the problem. When appropriate, the detection of a recurring negative safety trend in the aggregate FOQA data would lead the FAA to focus its oversight resources on the problem identified to determine the cause of the recurrence and the corrective action necessary to correct it. Initially, this might mean closer scrutiny of a particular program participant's operation, particularly if the negative trend was evident only in a given participant's data. If the trend appeared in more than one program participant's data, however, FAA surveillance activity would be adjusted accordingly. In some circumstances this increased FAA surveillance could lead to an investigation and enforcement for regulatory violations. This rule would provide no protection from punitive enforcement based on information obtained from such FAA investigate or surveillance activities. Based on its experience with the FOQA demonstration program, the FAA anticipates that situations requiring investigation and enforcement would be extremely rare. Experience indicates that certificate holders willing to expend the resources needed to develop a FOQA program are predisposed to taking appropriate corrective action when a problem is identified. Such certificate holders would also be predisposed to working with the FAA to ensure that the corrective action is effective.

As the implementation and continuance of FOQA programs by airlines would be voluntary, the FAA anticipates that the growth of FOQA in the United States will depend upon the development of mutual trust and a shared commitment to preserving the safety enhancement potential of such programs. This proposed rule, together with the FAA's proposed regulations to implement 49 U.S.C. 40123's protections for voluntarily submitted information, would resolve some of industry's concerns regarding enforcement. Other industry concerns about the use of the DFDR data maintained and analyzed in FOQA programs may be resolved through union and management agreements.

Although the FAA-sponsored FOQA Demonstration Study focused on the use of FOQA for airlines operating under part 121, the study determined that operators operating under the regulatory parts could also realize safety benefits from establishing FOQA programs.

Extending the availability of FOQA to any operator of an aircraft equipped with DFDRs would appear to be in the public interest. The FAA therefore proposes to extend FOQA to allow any operator of aircraft equipped with DFDRs to seek approval of a FOQA program.

If FOQA information reveals that a violation of the FAA's statute or regulations is ongoing and that the operator has not taken or will not take appropriate corrective action, the FAA is required to take appropriate steps to stop the violations and to restore the integrity of the aviation system. In such circumstances, the FAA not only could take whatever remedial enforcement action is appropriate to correct the continuing unsafe situation, but also withdraw approval of the certificate holder's FOQA program. The latter action is appropriate because the regulation would require a certificate holder to initiate corrective action in order to maintain continuing approval of its FOQA Implementation and Operations Plan.

Willful misconduct uncovered in a FOQA program would also be unacceptable. In appropriate cases, the FAA would take remedial enforcement or other appropriate action against a certificate holder for one or more violations resulting from a determination of willful misconduct based on information obtained directly from FOQA aggregate data. If the willful misconduct did not lead the FAA to conclude that remedial enforcement action was necessary, it could nonetheless result in the FAA withdrawing approval of that participant's FOQA program.

Nothing in the proposed rule would preclude the FAA from exercising its subpoena authority, and the proposed rule would not preclude a court of law from ordering the release of FOQA data or information where appropriate. To the extent that FOQA data constitutes evidence of a crime and to the extent that the Department of Justice prosecutes a person or entity, this rule would not bar the use of FOQA data in a criminal prosecution.

The FAA believes that the FOQA program will advance public safety by providing an additional means of identifying and correcting potential problems. FAA believes that air carriers are more likely to participate in this voluntary program if the air carriers and pilots believe that FAA will exercise suitable discretion in limiting enforcement actions, based on the voluntarily submitted information. The proposed rule would allow FOQA data to be used in remedial enforcement actions but not in punitive enforcement actions.

It is widely accepted that enforcement actions, among other things, have a deterrent value in encouraging the self-identification and self-correction of violations, thus advancing public safety. During interagency discussion of the proposed rule, concern was raised that limiting FAA discretion to take enforcement action could reduce this deterrent effect. To fully address these concerns FAA solicits comments on the utility and application of FAA's current and proposed enforcement policies concerning self-reporting, in the context of this proposed rule. In particular, comment is solicited on experiences involving (a) Air Carrier Voluntary Disclosure Reporting Procedures, FAA Advisory Circular #120–56 (January 23, 1992); and (b) Policy on the Use for Enforcement Purposes of Information Obtained from an Air Carrier Flight Operational Quality Assurance (FOQA) Program (63 FR 67505—December 7, 1998). Further, FAA solicits comments on whether FAA should retain its discretion to use FOQA aggregated data (and/or to obtain disaggregated data from air carriers participating in the FOQA program) in order to bring punitive or other enforcement actions, and whether there are any factors which should govern the exercise of such discretion. FAA also invites comment on whether, in the exercise of FAA's enforcement discretion, certain uses of FOQA data (or requests for disaggregated data) should require the approval of particular FAA officials.

Paperwork Reduction Act

The proposed amendment to 14 CFR Part 13 contains information collection requirements. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the information collection requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for review. Following is a summary of the information requirement that was sent to OMB.

Title: Flight Operational Quality Assurance (FOQA) Rule.

Summary/Need/Uses: Flight Operational Quality Assurance (FOQA) is a program for the routine collection and analysis of digital flight data from airline operations, including but not limited to digital flight data currently collected pursuant to existing regulatory provisions. By this proposed amendment, the FAA would require certificate holders who voluntarily establish approved FOQA programs to periodically provide aggregate trend analysis information from such program to the FAA.

The purpose of collecting, analyzing, aggregating, and reporting this information is to identify potential threats to safety, and to enable early corrective action before such treats lead to accidents. The submitted aggregate trend information will be reviewed by the FAA principal operations inspector (POI) responsible for oversight of the certificate holding respondent. The POI and his staff make use of this information to monitor operational trends, to identify areas in need of corrective action, and to verify that corrective action is effective.

Respondents and Frequency of Response: The FAA has identified 30 certificate holders who are candidates to take the necessary steps to comply with the rule and gain the benefits of so doing. However, only nine certificate holders have established FOQA programs. Because of the benefits of FOQA participation to both safety and cost containment, it is anticipated that FOQA will be implemented on an industry wide basis in the U.S. within the next twenty years.

Burden Hours: It is estimated that it will take each respondent 1.0 hour to prepare aggregate trend information to be submitted to the FAA. The annual burden per respondent is 12.0 hours for an annual industry burden of 360 hours.

The estimated 1.0 hour burden is the additional time required to send to the FAA the aggregate data already produced monthly by the certificate holder as part of an approved FOQA program.

The FAA considers comments by the public on the proposed collection of information in order to:

a. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

b. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

c. Enhance the quality, utility, and clarity of the information to be collected; and

d. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The agency is soliciting comments to (1) evaluate whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submission of responses).

Comments on the proposed information collection requirements should be submitted to the rulemaking docket at the address indicated in the **ADDRESSES** section of this notice.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after it is approved by the Office of Management and Budget.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefit of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sectors, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that:

(1) The proposed rule has benefits that justify its costs and is significant under Executive Order 12866. It is also "significant" as defined in DOT's Regulatory Policies and Procedures.

(2) The proposed rule will not have a significant impact on a substantial number of small entities.

(3) The proposed rule reduces barriers to international trade.

(4) The proposed rule does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

These analyses are available in the docket and are summarized below. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

Any costs associated with providing the FAA with access to FOQA information is expected to be minimal. The FAA does not propose to require submission of underlying FOQA data to the government. However, this proposed rule would require the participant to provide the FAA with aggregate trend analyses of the data available. The FAA welcomes comments on this issue.

The FAA anticipates that information obtained by airline FOQA programs will be voluntarily submitted to the FAA in the interest of joint goals to promote safety, and that because of the objective nature of FOQA data, this information will be valuable for formulating future policy, NAS procedures, and rulemaking development. This information will enable the FAA to more accurately compute the estimated cost and benefits of agency decisions. This proposed rule is an enabling initiative intended to promote the voluntary establishment of FOQA programs. The FAA has determined that because the establishment of FOQA programs is voluntary and the proposed rule only requires certificate holders who voluntarily establish approved FOQA programs to provide periodically the aggregate trend information from such programs to the FAA, the costs from this proposal are minimal. Therefore, an economic evaluation is not warranted.

International Trade Impact

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis of U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States. In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a significant impact on a substantial number of "small entities" as defined by the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

In accordance with the RFA, the FAA certifies that this proposal would not have a significant economic impact, positive or negative, on a substantial number of small entities.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates reform Act of 1995 (2 U.S.C. 1532–1538) requires the FAA to assess the effects of Federal Regulatory actions on state, local, and tribal governments, and on the private sector of proposed rule that contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year. This action does not contain such a mandate.

Significance

This rule is significant under Executive Order 12866 and is considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Flight operational quality assurance program, Investigations, Law enforcement, Penalties.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 13 of the Federal Aviation Regulations (14 CFR part 13) by adding a new subpart I to read as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461; 49 U.S.C. 106(g); 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Subpart I is added to read as follows:

Subpart I—Flight Operational Quality Assurance Programs

§ 13.401 Flight Operational Quality Assurance Program: Prohibition against use of data for punitive enforcement purposes.

(a) *Applicability.* This section applies to any operator of an aircraft who operates such aircraft under an approved Flight Operational Quality Assurance (FOQA) program.

(b) *Definitions.* For the purpose of this section, the terms—

(1) *Flight Operational Quality Assurance (FOQA) program* means an FAA-approved program for the routine collection and analysis of data gathered during aircraft operations by means of a DFDR, including data currently collected pursuant to existing regulatory provisions.

(2) *FOQA data* means any raw data that has been collected by means of a DFDR pursuant to an FAA-approved FOQA program.

(3) *Aggregate FOQA data* means the summary statistical indices that are associated with FQFA event categories, based on an analysis of FOQA data recorded by digital flight data recorders (DFDRs) during aircraft operations.

(4) *Remedial enforcement action* means an enforcement action other than a civil penalty or a certificate action involving a suspension for a specific period of time.

(5) *Punitive enforcement action* means a civil penalty or certificate action involving a suspension for a specific period of time.

(c) *Requirements.* In order for paragraph (e)(1) of this section to apply, the operator must submit and adhere to a FOQA Implementation and Operations Plan that is approved by the Administrator and which contains the following elements:

(1) A description of the operator's plan for collecting and analyzing flight recorded data from line operations on a routine basis;

(2) Procedures for taking corrective action that analysis of the data indicates if necessary in the interest of safety;

(3) Procedures for informing the FAA with aggregate FOQA data;

(4) Procedures for informing the FAA as to any corrective action being undertaken pursuant to subparagraph (c)(2) of this section.

(d) *Access to data.* The operator will provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator.

(e) *Enforcement.*—(1) The Administrator will not use an operator's FOQA data or aggregate FOQA data in a punitive enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator.

(2) The Administrator may use any operator's FOQA data and/or aggregate FOQA data is a remedial enforcement action.

(f) *Disclosure.* FOQA data and aggregate FOQA data, if submitted in accordance with the provisions of part 193 of this chapter, will be afforded the nondisclosure protections of that part.

(g) *Withdrawal of program approval.* The Administrator may withdraw approval of a previously approved FOQA program for failure to comply with the requirements of this Chapter. Grounds for withdrawal of approval may include, but are not limited to—

(1) Failure to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety; or

(2) Failure to correct a continuing pattern of violations following notice by the agency.

(3) Willful misconduct or willful violation of the regulations.

Issued in Washington, DC, on June 29, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 00–16884 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday,
July 5, 2000

Part III

Department of Education

National Assessment of Educational Progress (NAEP): Foreign Language—Item Development; Office of Educational Research and Improvement; Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.902K]

National Assessment of Educational Progress (NAEP): Foreign Language—Item Development; Office of Educational Research and Improvement; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program

The main purpose is to develop items for the national assessment of foreign language proficiency in 2003. The program will also develop a block design or designs and screening process, assist in field test and scoring activities, and write reports. It is planned that the 2003 NAEP will be conducted at the national level in foreign language at grade 12. The foreign language to be assessed is Spanish. NAEP supports the National Education Goals by providing measures of progress toward student competency over challenging subject matter. For FY 2000, the competition for new awards focuses on projects designed to meet the priority we describe in the PRIORITY section of this application notice.

Eligible Applicants

Public, private, for-profit, and non-profit institutions, agencies, and other qualified organizations or consortia of those institutions, agencies, and organizations.

Applications Available: July 6, 2000.

Deadline for Transmittal of Applications: August 21, 2000.

Estimated Available Funds: Up to $2.5 million.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: 40 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98 and 99.

SUPPLEMENTARY INFORMATION: The framework for the assessment, upon which the assessment items will be based, is formulated by the National Assessment Governing Board (NAGB). The National Assessment of Educational Progress is authorized by section 411 of the National Education Statistics Act 1994, Title IV of the Improving America's Schools Act (20 U.S.C. 9010). Section 412 (20 U.S.C. 9011) of this law requires NAGB, among other responsibilities, to formulate the policy guidelines for the national assessment. Copies of these guidelines are available from the Department.

This notice is limited to seeking applications for item development for the foreign language assessment to be conducted in 2003, and training of scorers for that assessment. This does not include data collection during field testing and actual operation of the 2003 assessment. A separate grantee will field test the items developed under this grant. The grantee under this competition will provide field test information and revise the items for the operational assessment. This grantee will also assist with scoring the 2003 operational assessment.

Priority

This competition focuses on projects designed to meet the priority which implements the policy set by the NAGB under section 412(e)(1)(A) of the National Education Statistics Act of 1994, Title IV of the Improving America's Schools Act (20 U.S.C. 9010, 9011). Under 34 CFR 75.105(c)(2) and 20 U.S.C. 9010–9011, we consider only applications that meet the following priority.

Absolute Priority—Development of the National Assessment of Educational Progress for 2003 for foreign language proficiency.

The grantee must perform this activity in accordance with guidelines developed by NAGB.

For Applications and Further Information Contact: Janis Brown, Ph.D., U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW., Suite 8089, Washington, DC 20006. Telephone: (202) 502–7400. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under For Applications and Further Information Contact.

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 9010, 9011.

Dated: June 29, 2000.

C. Kent McGuire,

Assistant Secretary, Office of Educational, Research and Improvement.

[FR Doc. 00–16907 Filed 7–3–00; 8:45 am]
BILLING CODE 4000–01–U

Federal Register

Wednesday,
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Part IV

Department of Housing and Urban Development

24 CFR Parts 27 and 290

Prohibited Purchasers in Foreclosure Sales of Multifamily Projects With HUD-Held Mortgages and Sales of Multifamily HUD-Owned Projects; Proposed Rules

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 27 and 290

[Docket No. FR–4583–P–01]

RIN 2501–AC69

Prohibited Purchasers in Foreclosure Sales of Multifamily Projects With HUD-Held Mortgages and Sales of Multifamily HUD-Owned Projects

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would prohibit a defaulting mortgagor or related parties to the mortgagor from bidding on or acquiring the multifamily property that was the subject of the mortgagor's default. The purpose of this rule is to prevent a mortgagor from benefitting from its default and failure to meet its obligations.

DATES: *Comment Due Date:* September 5, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Regulations Division, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Marc Harris, Director, Field Asset Management Division, Office of Asset Management, Department of Housing and Urban Development, Room 6164, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 708–2654. Hearing or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule proposes to codify HUD's policy of preventing a defaulting mortgagor on a multifamily project, and the defaulting mortgagor's related parties, from purchasing the property that was the subject of the default. This situation may arise in the foreclosure sale of a multifamily project with a HUD-held mortgage (addressed in 24 CFR part 27), or in the disposition of a HUD-owned multifamily project (addressed under 24 CFR part 290). HUD's policy is intended to prevent a party from benefiting from its default and failure to meet obligations. For example, an owner could avoid prepayment restrictions by defaulting and then buying at the foreclosure, or an owner could default and then buy back the project at foreclosure for less than the amount of the debt on which the default occurred.

The regulations governing nonjudicial foreclosure and the disposition of multifamily projects would be amended by adding, respectively, a new paragraph to § 27.20(f) and a new § 290.18. The new paragraph and section would specifically prohibit the defaulting mortgagor or any principal, successor, affiliate, or any assignee of any of the listed parties from bidding on or otherwise acquiring the defaulted property.

In codifying this general policy in HUD's regulations, the Assistant Secretary for Housing still retains the authority to waive these restrictions, since there may be instances in which it would be in HUD's interest to permit the defaulting mortgagor or the mortgagor's related parties to acquire the defaulted property. For example, it would be in HUD's interest to permit the defaulting mortgagor to bid or purchase at a price that covers the default, or where it could be clearly shown that the default did not occur as a result of the action or inaction of the mortgagor.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only addresses circumstances in which a party may benefit at the public expense by defaulting on its obligations, and does not impose any additional costs or burdens. Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW, Washington, DC 20410.

Executive Order 13132, Federalism

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 27

Administrative practice and procedure, Loan programs—housing and community development.

24 CFR Part 290

Mortgage insurance, Low and moderate-income housing.

Accordingly, parts 27 and 290 of title 24 of the Code of Federal Regulations are amended as follows:

PART 27—NONJUDICIAL FORECLOSURE OF MULTIFAMILY AND SINGLE FAMILY MORTGAGES

1. The authority citation for 24 CFR part 27 continues to read as follows:

Authority: 12 U.S.C. 1715b, 3701–3717; 3751–3768; 42 U.S.C. 1452b, 3535(d).

2. In § 27.20, a new paragraph (f) is added to read as follows:

§ 27.20 Conditions of foreclosure sale.

* * * * *

(f) The defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the property being foreclosed by the Department under this subpart or any other provision of law. A "principal" and an "affiliate" are defined as provided at 24 CFR 24.105 or successor regulation.

PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD-HELD MULTIFAMILY MORTGAGES

3. The authority citation for 24 CFR part 290 continues to read as follows:

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b, 1715z–11a; 42 U.S.C. 3535(d) and 3535(i).

4. In subpart A, a new § 290.18 is added, to read as follows:

§ 290.18 Restrictions on sale to former mortgagors.

The defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the mortgage on the property at the time of the default resulting in acquisition of the property by HUD shall not be eligible to purchase the property. A "principal" and an "affiliate" are defined as provided at 24 CFR 24.105 or successor regulation.

Dated: May 25, 2000.

Andrew Cuomo,

Secretary.

[FR Doc. 00–16804 Filed 7–3–00; 8:45 am]

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Part V

The President

Executive Order 13161—Establishment of the Presidential Medal of Valor for Public Safety Officers

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Presidential Documents

Title 3—

The President

Executive Order 13161 of June 29, 2000

Establishment of the Presidential Medal of Valor for Public Safety Officers

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is ordered:

Section 1. The Presidential Medal of Valor for Public Safety Officers (Medal) is established for the purpose of recognizing those public safety officers adjudged to have shown extraordinary valor above and beyond the call of duty in the exercise of their official duties. As used in this section, the term "public safety officer" means a person serving a public agency with or without compensation:

(1) as a law enforcement officer, including police, correctional, probation, or parole officers;

(2) as a firefighter or emergency responder; and

(3) who is employed by the Government of the United States, any State of the United States, any officially recognized elective body within a State of the United States, or any Federally recognized tribal organization.

Sec. 2. Eligible recipients generally will be recommended to the President by the Attorney General by April 1 of each year. Pursuant to 36 U.S.C. 136–137, the President designates May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week." Presentation of the Medal shall occur at an appropriate time during the commemoration of Police Week, as far as is practicable.

Sec. 3. The President may select for the Medal up to ten persons annually from among those persons recommended to the President by the Attorney General. In submitting recommendations to the President, the Attorney General may consult with experts representing all segments of the public safety sector, including representatives from law enforcement, firefighters, and emergency services.

Sec. 4. Those chosen for recognition shall receive a medal and a certificate, the designs of which shall be submitted by the Attorney General for the President's approval no later than December 1, 2000. The medal and certificate shall be prepared by the Department of Justice.

Sec. 5. The Medal may be given posthumously.

William J. Clinton

THE WHITE HOUSE,
June 29, 2000.

[FR Doc. 00–17174
Filed 7–3–00; 8:45 am]
Billing code 3195–01–P

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Part VI

The President

Proclamation 7326—To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to the Products of Albania and Kyrgyzstan

Notice of June 30, 2000—Continuation of Emergency With Respect to the Taliban

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Presidential Documents

Title 3—

The President

Proclamation 7326 of June 29, 2000

To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to the Products of Albania and Kyrgyzstan

By the President of the United States of America

A Proclamation

1. Albania has made progress, since its emergence from communism, toward democratic rule and the creation of a market economy. Further, I have found Albania to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 (the "Trade Act") (19 U.S.C. 2431, *et seq.*). In 1998, Albania concluded a bilateral investment treaty with the United States. Albania is in the process of acceding to the World Trade Organization (WTO). The extension of unconditional normal trade relations treatment to the products of Albania will permit the United States to avail itself of all rights under the WTO with respect to Albania when that country becomes a member of the WTO.

2. Pursuant to section 301(b) of Public Law 106–200, 114 Stat. 289, and having due regard for the findings of the Congress in section 301(a) of that law, I hereby determine that title IV of the Trade Act should no longer apply to Albania.

3. Since 1991, Kyrgyzstan has made great progress toward democratic rule and toward creating a free-market economic system. Further, I have found Kyrgyzstan to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act. In 1994, Kyrgyzstan concluded a bilateral investment treaty with the United States, and in 1999 Kyrgyzstan became a member of the WTO. The extension of unconditional normal trade relations treatment to the products of Kyrgyzstan will permit the United States to avail itself of all rights under the WTO with respect to Kyrgyzstan.

4. Pursuant to section 302(b) of Public Law 106–200, 114 Stat. 289–90, and having due regard for the findings of the Congress in section 302(a) of that law, I hereby determine that title IV of the Trade Act should no longer apply to Kyrgyzstan.

NOW, THEREFORE, I WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 301(b)(1)(B) and 302(b)(1)(B) of Public Law 106–200, do hereby proclaim that:

(1) Nondiscriminatory treatment (normal trade relations treatment) shall be extended to the products of Albania;

(2) The extension of nondiscriminatory treatment to the products of Albania shall be effective as of the date of signature of this proclamation;

(3) Nondiscriminatory treatment (normal trade relations treatment) shall be extended to the products of Kyrgyzstan;

(4) The extension of nondiscriminatory treatment to the products of Kyrgyzstan shall be effective as of the date of signature of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–17184
Filed 7–3–00; 11:15 am]
Billing code 3195–01–P

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Presidential Documents

Notice of June 30, 2000

Continuation of Emergency With Respect to the Taliban

On July 4, 1999, I issued Executive Order 13129, "Blocking Property and Prohibiting Transactions with the Taliban," to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Taliban in Afghanistan. The order blocks all property and interests in property of the Taliban and prohibits trade-related transactions by United States persons involving the territory of Afghanistan controlled by the Taliban.

The Taliban continues to allow territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Laden and the Al-Qaida organization who have committed and threaten to continue to commit acts of violence against the United States and its nationals. For these reasons, I have determined that it is necessary to maintain in force these emergency authorities beyond July 5, 2000. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared on July 4, 1999, with respect to the Taliban. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
June 30, 2000.

[FR Doc. 00–17185
Filed 7–3–00; 11:15 am]
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S. 1967/P.L. 106–228

To make technical corrections to the status of certain land held in trust for the Mississippi Band of Choctaw Indians, to take certain land into trust for that Band, and for other purposes. (June 29, 2000; 114 Stat. 462)

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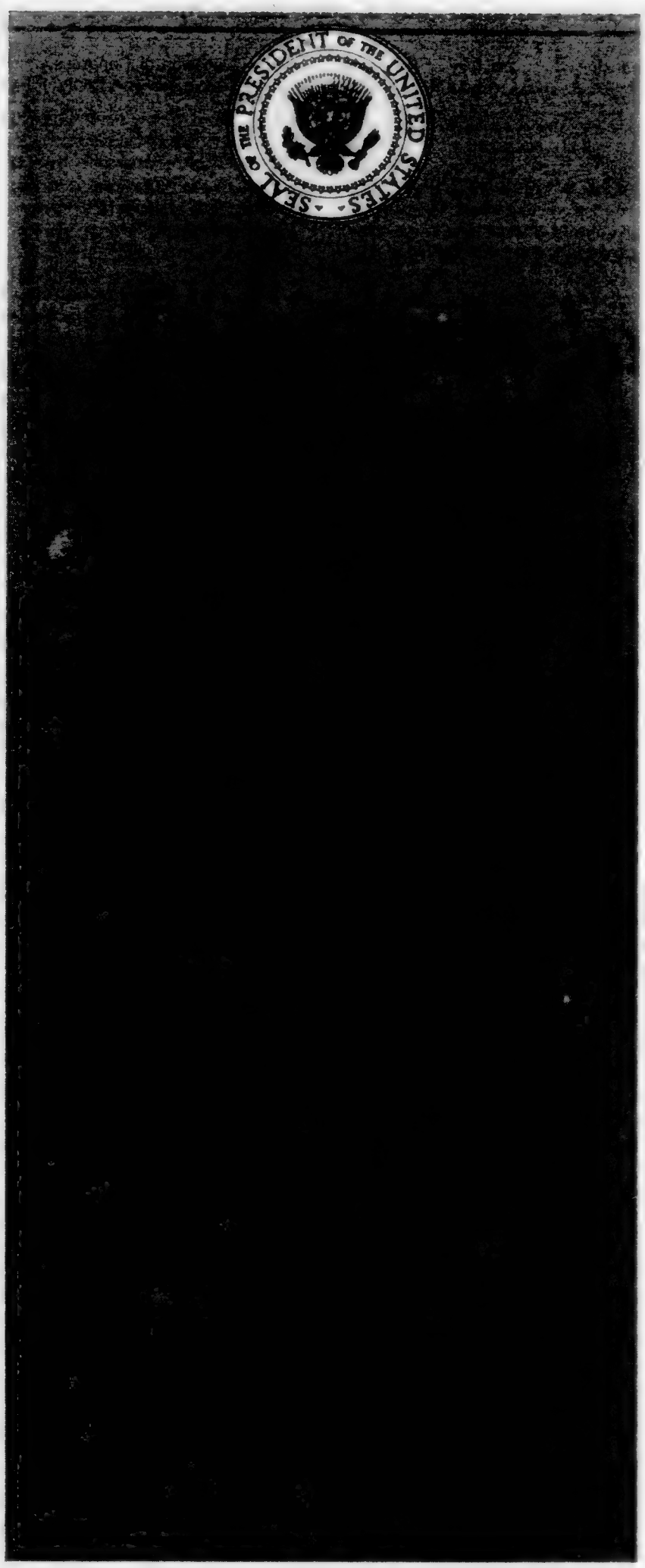

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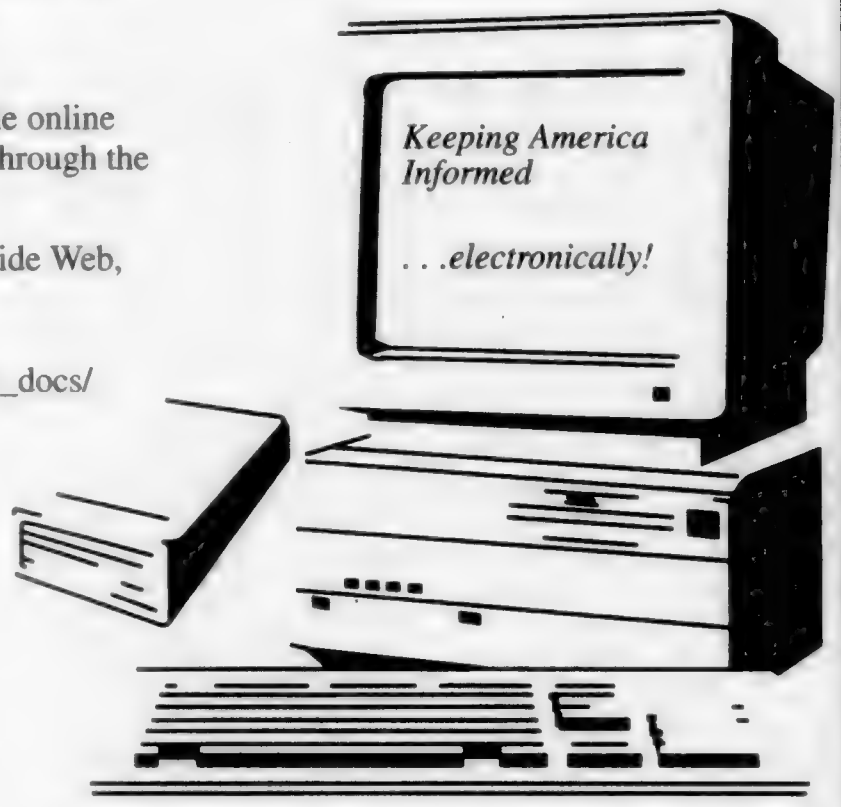

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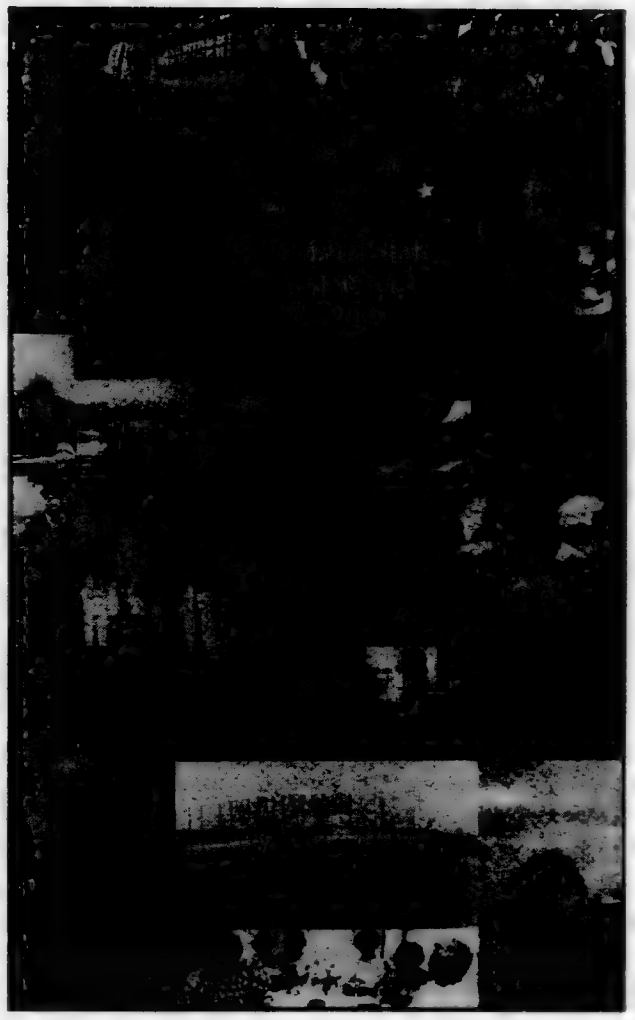

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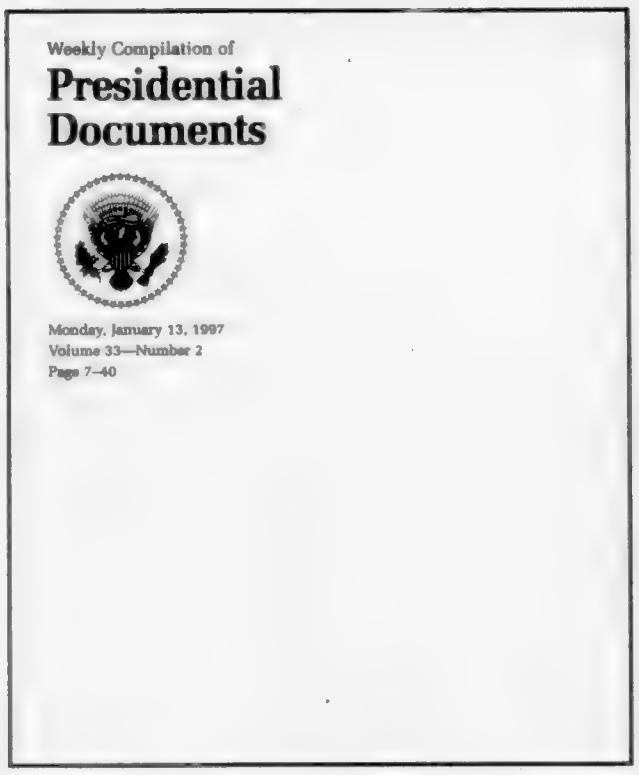

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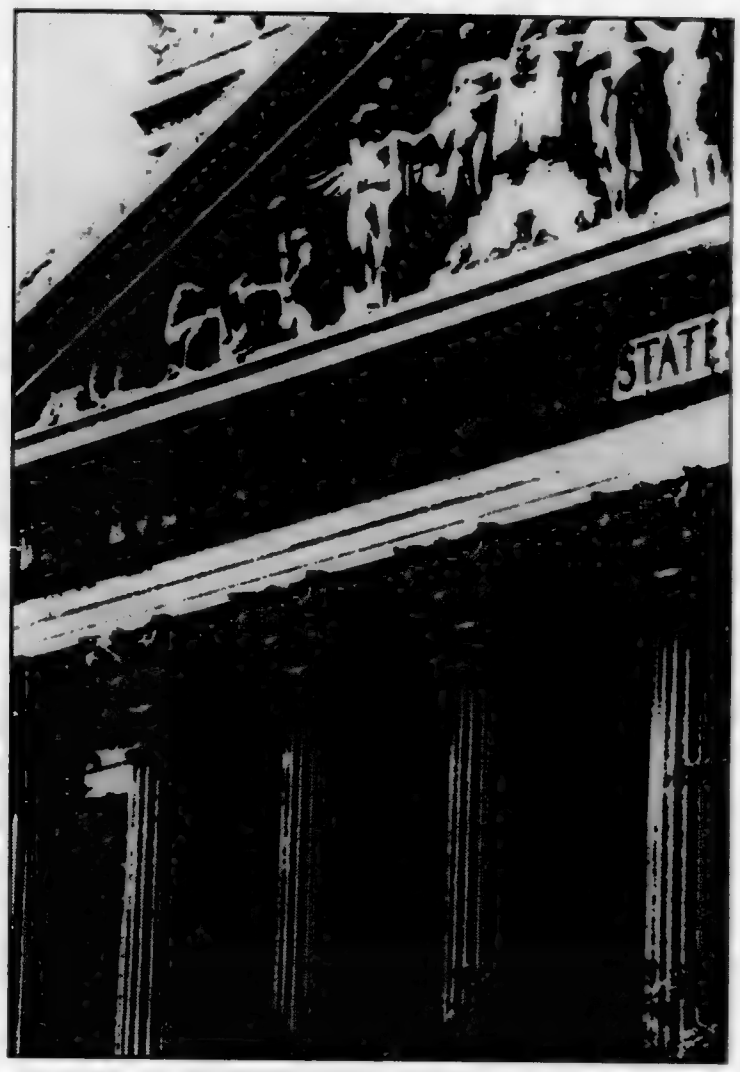

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AF51

1999 Marketing Quotas and Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), and Cigar-Filler and Binder (Types 42–44 and 53–55) Tobaccos

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to codify the national marketing quotas and price support levels for the 1999 crops for several kinds of tobacco announced by press release on March 1, 1999.

In accordance with the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), the Secretary determined the 1999 marketing quotas to be as follows: fire-cured (type 21), 2.6 million pounds; fire-cured (types 22–23), 41.4 million pounds; dark air-cured (types 35–36), 12.8 million pounds; Virginia sun-cured (type 37), 171,000 pounds; and cigar-filler and binder (types 42–44 and 53–55), 4.5 million pounds.

Quotas are necessary to adjust the production levels of certain tobaccos to more fully reflect supply and demand conditions, as provided in the 1938 Act.

In accordance with the Agricultural Act of 1949, as amended (the 1949 Act), the Secretary determined the 1999 levels of price support to be as follows (in cents per pound): fire-cured (type 21), 155.9; fire-cured (types 22–23), 171.6; dark air-cured (types 35–36), 148.1; Virginia sun-cured (type 37), 138.0; and cigar-filler and binder (types 42–44 and 53–55), 123.8.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Tobacco and Peanuts Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514, telephone 202–720–5346, e-mail address Robert Tarczy@wdc.fsa.usda. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Tarczy.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Farm Service Agency (FSA) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Statutory Background

This final rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act.

On March 1, 1999, the Secretary determined and announced the national marketing quotas and price support levels for the 1999 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44 and 53–55) tobaccos. A number of related determinations were made at the same time which this final rule affirms. On the same date, the Secretary also announced that a referendum would be conducted by mail with respect to cigar-filler and binder (types 42–44 and 53–55) tobacco.

During March 15–19, 1999, eligible producers of cigar-filler and binder (types 42–44 and 53–55) tobacco voted in a referendum to determine whether such producers approved marketing quotas for the 1999, 2000, and 2001 marketing years (MY) for this tobacco. Of the producers voting, 77.7 percent favored marketing quotas for cigar-filler and binder (types 42–44 and 53–55) tobacco. Accordingly, quotas and price support for cigar-filler and binder (types 42–44 and 53–55) tobacco are in effect for the 1999 through 2001 MYs.

In accordance with section 312 of the 1938 Act, for tobaccos other than flue-cured tobacco and burley tobacco, the Secretary of Agriculture is required to proclaim not later than March 1 of any MY a national marketing quota for those tobaccos for which marketing quotas have been approved in the prior three years. There is a vote on quotas for each kind in a 3-year cycle. For cigar-filler and binder (types 42–44 and 53–55) tobacco, the 1998 MY was the last year of 3 consecutive years of quota. Accordingly, marketing quotas for cigar-filler and binder (types 42–44 and 53–55) were proclaimed for each of the 3 MYs beginning October 1, 1999; October 1, 2000, and October 1, 2001, but subject to producer approval. As indicated, cigar-filler and binder (types 42–44 and 53–55) producers approved quotas in the referendum. Quotas for the other tobaccos covered by this notice were approved in referenda which are still effective.

Because of producer approval of quotas, sections 312 and 313 of the 1938 Act required that the Secretary also announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar filler and binder (types 42–44 and 53–55) tobaccos for the MY beginning October 1, 1998. The Secretary also announced the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (1) new farms and (2) making corrections and adjusting inequities in old farm allotments.

Under the 1949 Act, price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1999 crops of the kinds of tobacco that are the subject of this notice, the respective maximum levels of price support for these kinds of tobacco is determined in accordance with section 106 of the 1949 Act. Announcement of the price support levels for these five kinds of tobacco are normally made before the planting seasons. Under the provisions of Section 1108 (c), of Pub. L. No. 99–272, the price support level announcements do not require prior rulemaking. For the 1999 crops, the price support announcements were made on March 1, 1999, at the same time the quota announcements were made. Quota and price support determinations for burley and flue-cured tobacco are made separately and are the subject of separate notices.

Statutory Provisions

Section 312(b) of the 1938 Act provides, in part, that the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco that may be marketed such that a supply of such tobacco equal to its reserve supply level is made available during the MY.

Section 313(g) of the 1938 Act provides that the Secretary may convert the national marketing quota into a national acreage allotment for apportionment to individual farms. Since producers of these kinds of tobacco generally produce considerably less than their respective national acreage allotments allow, a larger quota is necessary to make available production equal to the reserve supply level. Further, under section 312 (b) of the 1938 Act, the amount of the national marketing quota may, not later than the following March 1, be increased by not more than 20 percent over the straight formula amount if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(b)(14)(B) of the 1938 Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to ensure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. "Normal supply" is defined in section 301(b)(10)(B) of the 1938 Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover.

Normal year's domestic consumption is defined in section 301(b)(11)(B) of the 1938 Act as the average quantity produced and consumed in the United States during the 10 MYs immediately preceding the MY in which such consumption is determined, adjusted for current trends in such consumption. Normal year's exports is defined in section 301(b)(12) of the 1938 Act as the average quantity produced in and exported from the United States during the 10 MYs immediately preceding the MY in which such exports are determined, adjusted for current trends in such exports.

Also, under section 313(g) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that the national reserve, noted herein, for the 1999 crop of each of these kinds of tobacco is adequate for these purposes.

The Proposed Rule

On February 26, 1999, a proposed rule was published in the **Federal Register** (64 FR 9452) in which interested persons were requested to comment with respect to setting quotas for the tobacco kinds addressed in this notice.

Discussion of Comments

Fourteen written responses were received during the comment period which ended March 1, 1999. A summary of these comments by kind of tobacco follows:

(1) *Fire-cured (type 21) tobacco.* Two comments were received, recommending no change in 1999 quotas.

(2) *Fire-cured (types 22–23) tobacco.* Five comments were received. Four recommended a five percent deduction in 1999 quotas, while one other recommended a 10 percent decrease.

(3) *Dark air-cured (types 35–36) tobacco.* Five comments were received. Four recommended a 10 percent increase in the quota, while one favored a five percent increase.

(4) *Virginia sun-cured (type 37) tobacco.* Two comments were received, recommending no change in quota.

(5) *Cigar-filler and binder (types 42–44 and 53–55) tobacco.* No comments were received.

Quota and Related Determinations

The tobacco program is, through assessments, operated at no net cost to taxpayers other than the costs common to all price support operations. Accordingly, producer comments are given considerable weight in this review. Based on a review of the comments received and the latest available statistics of the Federal Government, which appear to be the most reliable data available, the following determinations were made for the five subject tobacco kinds:

(1) Fire-Cured (Type 21) Tobacco

The average annual quantity of fire-cured (type 21) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1998 MY was approximately 19.3 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1998 MY was 2.0 million pounds (farm sales weight basis). Both domestic use and exports have trended downward. Because of these considerations, a normal year's domestic consumption has been determined to be 0.7 million pounds, and a normal year's exports have been determined to be 1.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 4.6 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1998, of 2.4 million pounds. The 1998 crop is estimated to be 2.4 million pounds. Therefore, total supply for the 1998 MY is 4.8 million pounds. During the 1998 MY, it is estimated that disappearance will total approximately 2.3 million pounds. Deducting this disappearance from total supply results in a 1999 MY

beginning stock estimate of 2.8 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1999, is 2.5 million pounds. This represents the quantity that may be marketed that will make available during the 1999 MY a supply equal to the reserve supply level. More than 95 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a 1999 national marketing quota of 2.116 million pounds is necessary to make available production of 2.1 million pounds. As permitted by section 312(b) of the 1938 Act, it was further determined that the 1999 national marketing quota should be increased by 20 percent over the normal formula amount in order to avoid undue restriction of marketings. This determination took into account the size of last year's quota, the comments, the long storage time for this tobacco and the possibility of changes in demand over expected demand. Thus, the national marketing quota for the 1999 crop is 2.6 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1999 national marketing quota of 2.6 million pounds by the 1994–98, 5-year national average yield of 1,600 pounds per acre results in a 1999 national acreage allotment of 1,625.00 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment for the 1999 MY, less a national reserve of 7.61 acres, by the total of the 1999 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(2) Fire-Cured (Types 22–23) Tobacco

The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1998 MY was approximately 19.3 million pounds. The average annual quantity produced in the United States and exported during the 10 MYs preceding the 1998 MY was 15.5 million pounds (farm sales weight basis). Domestic use has trended upward while exports have varied. Because of these considerations, a normal year's domestic consumption has been determined to be 29.7 million pounds, and a normal year's exports have been determined to be 18.4 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 117.7 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1998, of 84.8 million pounds. The 1998 crop is estimated to be 40.4 million pounds. Therefore, total supply for the 1998 MY is 125.2 million pounds. During the 1998 MY, it is estimated that disappearance will total approximately 40.0 million pounds. Deducting this disappearance from total supply results in a 1999 MY beginning stock estimate of 85.2 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1999, is 32.5 million pounds. This represents the quantity that may be marketed that will make available during the 1999 MY a supply equal to the reserve supply level. About 95 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a 1999 national marketing quota of 34.5 million pounds is necessary to make available production of 32.5 million pounds.

Utilizing section 312(b) of the 1938 Act, it was further determined for the same reason as with fire-cured (type 21) tobacco, that the 1999 national marketing quota should be increased by 20 percent over the normal formula amount in order to avoid undue restriction of marketings. Thus, the national marketing quota for the 1999 crop is 41.4 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1999 national marketing quota of 41.4 million pounds by the 1994–98, 5-year average yield of 2,577 pounds per acre results in a 1999 national acreage allotment of 16,065.19 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.95 is determined by dividing the national acreage allotment for the 1999 MY, less a national reserve of 53.30 acres, by the total of the 1999 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(3) Dark Air-Cured (Types 35–36) Tobacco

The average annual quantity of dark air-cured (types 35–36) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1998 MY was approximately 9.0 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1998 MY was 1.4 million pounds (farm sales weight basis). Both domestic use and exports have been erratic. Because of these considerations, a normal year's domestic consumption has been determined to be 10.2 million pounds, and a normal year's exports have been determined to be 1.4 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 31.9 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1998, of 22.4 million pounds. The 1998 crop is estimated to be 10.1 million pounds. Therefore, total supply for the 1998 MY is 32.5 million pounds. During the 1998 MY, it is estimated that disappearance will total approximately 10.5 million pounds. Deducting this disappearance from total supply results in a 1999 MY beginning stock estimate of 22.0 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1999, is 9.9 million pounds. This represents the quantity that may be marketed that will make available during the 1999 MY a supply equal to the reserve supply level. Over 90 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a national marketing quota of 10.67 million pounds is necessary to make available production of 9.9 million pounds. In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1999 national marketing quota should be increased by 20 percent over the normal formula amount in order to avoid undue restriction of marketings. This determination took into account the same factors as with fire-cured (type 21) tobacco and industry preferences. This results in a national marketing quota for the 1999 MY of 12.8 million pounds. Otherwise, the quota would be below the level for the 1998 crop.

In accordance with section 313(g) of the 1938 Act, dividing the 1999 national marketing quota of 12.8 million pounds by the 1994–98, 5-year average yield of 2,291 pounds per acre results in a 1999 national acreage allotment of 5,587.08 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.10 is determined by dividing the national acreage allotment for the 1999 MY, less a national reserve of 45.60 acres, by the total of the 1999 preliminary farm acreage allotments

(previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(4) Virginia Sun-Cured (Type 37) Tobacco

The average annual quantity of Virginia sun-cured (type 37) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1998 MY was approximately 90,000 pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1998 MY was approximately 100,000 pounds (farm sales weight basis). Both domestic use and exports have shown a sharp downward trend. Because of these considerations, a normal year's domestic consumption has been determined to be 64,000 pounds, and a normal year's exports have been determined to be 20,000 pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 219,000 pounds.

Manufacturers and dealers reported stocks held on October 1, 1998, of 50,000 pounds. The 1998 crop is estimated to be 140,000 pounds. Therefore, total supply for the 1998 MY is 190,000 pounds. During the 1998 MY, it is estimated that disappearance will total approximately 190,000 pounds. Deducting this disappearance from total supply results in a 1999 MY beginning stock estimate of 90,000 pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1998, is 129,000 pounds. This represents the quantity that may be marketed that will make available during the 1998 MY a supply equal to the reserve supply level. Less than three-quarters of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a 1999 national marketing quota of 171,000 pounds is necessary to make available production of 129,000 pounds. Thus, the national marketing quota for the 1999 crop is 171,000 pounds which is greater than the preceding quota by about 5 percent and should not unduly restrict marketings.

In accordance with section 313(g) of the 1938 Act, dividing the 1999 national marketing quota of 171,000 pounds by the 1994–98, 5-year average yield of 1,466 pounds per acre results in a 1999 national acreage allotment of 116.64 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment for the 1999 MY, less a national reserve of 0.35 acres, by the total of the 1999 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(5) Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

The average annual quantity of cigar-filler and binder (types 42–44 and 53–55) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1998 MY was approximately 10.9 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1998 MY was less than 100,000 pounds (farm sales weight). Domestic use has trended downward and exports are very small. Thus, a normal year's domestic consumption has been determined to be 5.9 million pounds, and a normal year's exports have been determined to be zero pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 17.0 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1998, of 16.2 million pounds. The 1998 crop is estimated to be 4.2 million pounds. Therefore, total supply for the 1998 MY is 20.4 million pounds. During the 1998 MY, it is estimated that disappearance will total about 7.0 million pounds. Deducting this disappearance from total supply results in a 1999 MY beginning stock estimate of 13.4 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1999, is 3.6 million pounds. This represents the quantity that may be marketed that will make available during the 1999 MY a supply equal to the reserve supply level. About 80 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a 1999 national marketing quota of 4.5 million pounds is necessary to make available production of 3.6 million pounds. This results in a 1999 national marketing quota of 4.5 million pounds. This determination reflects that there are short reserve supplies and takes into account possible changes in expected demand and the fact that even with this adjustment the 1999 quota will be less than the 1998 crop quota.

In accordance with section 313(g) of the 1938 Act, dividing the 1999 national marketing quota of 4.5 million pounds by the 1994–98, 5-year average yield of 2,054 pounds per acre results in a 1999 national acreage allotment of 2,190.84 acres.

Pursuant to the provisions of section 313(g), of the 1938 Act, a national factor of 0.65 is determined by dividing the national acreage allotment for the 1999 MY, less a national reserve of 2.31 acres, by the total of the 1999 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(6) Referendum Results for Cigar-Filler and Binder (Types 42–44 and 53–55) Tobaccos

Because of the results of the producer referendum, marketing quotas shall be in effect for the 1999 MY for cigar-filler and binder (types 42–44 and 53–55) tobacco. In referenda held March 15–19, 1999, 77.7 percent of cigar filler and binder producers voted in favor of quotas.

REFERENDUM DATA

Kind of tobacco	Total votes	Yes votes	No votes	% yes votes
Cigar-filler and binder (types 42–44 and 54–55)	909	706	203	77.7

Price Support

Statutory Provisions

Section 106(f)(6)(A) of the 1949 Act provides that the level of support for the 1999 crop of a kind of tobacco (other than flue-cured and burley) shall be the level in cents per pound at which the 1998 crop of such kind of tobacco was supported, plus or minus, as appropriate, the amount by which (i) the basic support level for the 1999 crop, as it would otherwise be determined under section 106(b) of the 1949 Act, is greater or less than (ii) the support level for the 1998 crop, as it would otherwise be determined under section 106(b). To the extent that the price support level would be increased as a result of that comparison, section 106(f) provides that the increase may be modified using the provisions of 106(d). Under 106(d), the Secretary may reduce the level of support for grades the Secretary determines will likely be in excess supply so long as the weighted level of support for all grades maintains at least 65 percent of the increase in the price support (from the previous year). The Secretary must consult with the appropriate tobacco associations and take into consideration the supply, and anticipated demand for the tobacco, including the effect of the action on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary is required to consider the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity, and stalk position of such tobacco.

Section 106(b) of the 1949 Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers, including wage rates, interest and taxes (referred to as the "parity index") for the 3 previous calendar years to the average index of such prices paid by farmers, including wage rates, interest and taxes for the 1959 calendar year.

In addition, section 106(f)(6)(B) of the 1949 Act provides that to the extent requested by the board of directors of an association through which price support is made available to producers (producer association), the Secretary may reduce the support level determined under section 106(f)(6)(A) of the 1949 Act for the respective kind of tobacco to more accurately reflect the market value and improve the marketability of such tobacco. Accordingly, the price support level for a kind of tobacco set forth in this rule could be reduced if such a request is made.

Price Support Determinations

The following levels of price support for the 1998 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A) of the 1949 Act, are as follows:

Kind and type	Support level (cents per pound)
Fire-cured (type 21)	153.6
Fire-cured (types 22–23)	168.1
Dark air-cured (types 35–36)	145.0
Virginia sun-cured (type 37)	136.0
Cigar-filler and binder (types 42–44 and 53–55)	121.2

For the 1999 crop year:

(1) Average parity indexes for calendar year periods 1995–1997 and 1996–1998 are as follows:

Year	Index	Year	Index
1995	1,452	1996	1,520
1996	1,520	1997	1,558
1997	1,558	1998	1,532
Average	1,510	Average	1,537

(2) Average parity index, calendar year 1959 = 298.

(3) 1998 ratio of 1,500 to 298 = 5.07; 1999 ratio of 1,537 to 298 = 5.16.

(4) Ratios times 1959 support levels and 1999 increase in basic support levels are as follows:

Kind and type of tobacco	1959 support level	Basic support level [1]		Increase from 1997 to 1998	
	(¢/lb.)	1998 (¢/lb.)	1999 (¢/lb.)	100% (¢/lb.)	65% (¢/lb.)
Fire-cured (type 21)	38.8	196.7	200.2	3.5	2.3
Fire-cured (types 22–23)	38.8	196.7	200.2	3.5	2.3
Dark air-cured (types 35–36)	34.5	174.9	178.0	3.1	2.0
Virginia sun-cured (type 37)	34.5	174.9	178.0	3.1	2.0
Cigar-filler and binder (types 42–44, 53–55)	28.6	145.0	147.6	2.6	1.7

[1] 1998 ratio is 5.07, 1999 ratio is 5.16.

The loan associations for Virginia fire-cured (type 21) and Virginia sun-cured (type 37) tobacco have accepted lower price support levels so their tobacco may remain competitive in world markets. Therefore, for fire-cured (type 21) tobacco and Virginia sun-cured (type 37) tobacco, the 1999-crop support levels were set so as to only add, over 1998-crop levels, 65 percent of the difference between the 1999 crop "basic support level" and the 1998-crop "basic

support level." For the other tobaccos covered in this notice there was no such recommendation and the support levels were set accordingly. Accordingly, the price support levels for fire-cured (types 22–23), dark air-cured (types 35–36) and cigar filler and binder (types 42–44 and 53–55) tobaccos were set to use the MY 1998 level of support increased by 100 percent of the difference between the MY 1999 "basic support level" and the MY 1998 "basic support level." Chewing tobacco, smoking tobacco, and snuff manufacturing formulas limit the substitutability of one of these kinds of tobacco for another. Cigarettes, the principal outlet for flue-cured and burley tobaccos, do not require any of these five kinds of tobacco in their blends.

Accordingly, the following price support determinations were announced on March 1, 1999, for the 1999 crops of the tobaccos which are the subject of this notice:

Kind and type of tobacco	Support level (cents per pound)
Fire-cured (type 21)	155.9
Fire-cured (types 22–23)	171.6
Dark air-cured (types 35–36)	148.1
Virginia sun-cured (type 37)	138.0
Cigar-filler and binder (types 42–44 and 53–55)	123.8

Further Rulemaking

As indicated proviously, price support determination referenced in this notice are exempt from rulemaking. In addition to those and the other determinations addressed in this notice many of which are driven by statutory deadlines and affect the marketing of current crops for which farmer must plan, it was determined that to the extent restrictions might otherwise apply, a delay in the effectiveness of the for determinations additional notice and procedures would be contrary to the public interest, impracticable, and unnecessary. This conclusion is the same as to prior crop years, and for all purposes, including for purposes of the Small Business Regulatory Enforcement Act (Pub. L. No. 104–121).

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Price supports, Tobacco.

Accordingly, 7 CFR parts 723 and 1464 are amended to read as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b-1, 1314b-2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.113 is amended by adding paragraph (g) to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

* * * * *

(g) The 1999-crop national marketing quota is 2.6 million pounds.

3. Section 723.114 is amended by adding paragraph (g) to read as follows:

§ 723.114 Fire-cured (types 22–23) tobacco.

* * * * *

(g) The 1999-crop national marketing quota is 41.4 million pounds.

4. Section 723.115 is amended by adding paragraph (g) to read as follows:

§ 723.115 Dark air-cured (types 35–36) tobacco.

* * * * *

(g) The 1999-crop national marketing quota is 12.8 million pounds.

5. Section 723.116 is amended by adding paragraph (g) to read as follows:

§ 723.116 Sun-cured (type 37) tobacco.

* * * * *

(g) The 1999-crop national marketing quota is 171,000 pounds.

6. Section 723.117 is amended by adding paragraph (g) to read as follows:

§ 723.117 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(g) The 1999-crop national marketing quota is 4.5 million pounds.

PART 1464—TOBACCO

7. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, and 1445–1; 15 U.S.C. 714b and 714c.

8. Section 1464.13 is amended by adding paragraph (g) to read as follows:

§ 1464.13 Fire-cured (type 21) tobacco.

* * * * *

(g) The 1999-crop national price support level is 155.9 cents per pound.

9. Section 1464.14 is amended by adding paragraph (g) to read as follows:

§ 1464.14 Fire-cured (types 22–23) tobacco.

* * * * *

(g) The 1999-crop national price support level is 171.6 cents per pound.

10. Section 1464.15 is amended by adding paragraph (g) to read as follows:

§ 1464.15 Dark air-cured (types 35–36) tobacco.

* * * * *

(g) The 1999-crop national price support level is 148.1 cents per pound.

11. Section 1464.16 is amended by adding paragraph (g) to read as follows:

§ 1464.16 Virginia sun-cured (type 37) tobacco.

* * * * *

(g) The 1999-crop national price support level is 138.0 cents per pound.

12. Section 1464.17 is amended by adding paragraph (g) to read as follows:

§ 1464.17 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(g) The 1999-crop national price support level is 123.8 cents per pound.

Signed at Washington, DC, on June 28, 2000.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–16989 Filed 7–5–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV00–931–1 IFR]

Fresh Bartlett Pears Grown in Oregon and Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 2000–2001 and subsequent fiscal periods from $0.025 to $0.02 per standard box of fresh Bartlett pears handled. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh Bartlett pears grown in Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 2000–2001 fiscal period begins July 1 and ends June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective July 7, 2000. Comments received by September 5, 2000, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Order No. 931 (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, fresh Bartlett pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh Bartlett pears beginning July 1, 2000, and continuing until modified, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.025 to $0.02 per standard box of fresh Bartlett pears handled.

The fresh Bartlett pear marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of fresh Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 1, 2000, and unanimously recommended 2000–2001 expenditures of $81,060 and an assessment rate of $0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $77,231. The assessment rate of $0.02 is $0.005 less than the rate now in effect and will reduce the financial burden on handlers. At the current rate of $0.025 per standard box and with estimated 2000–2001 fresh Bartlett pear shipments of 3,200,000 standard boxes, the projected reserve on June 30, 2001, would exceed the level the Committee believes to be adequate to administer the program. The Committee discussed lower assessment rates, but decided that an assessment rate of less than $0.02 would not generate the income necessary to administer the program with an adequate reserve. The decreased assessment rate is expected to result in an operating reserve of $19,261 on June 30, 2001.

Major expenses recommended by the Committee for the 2000–2001 fiscal period include $44,468 for salaries, $4,847 for office rent, and $3,891 for health insurance. Budgeted expenses for these items in 1999–2000 were $40,433, $5,323, and $4,048, respectively.

The Committee based its recommended assessment rate on the 2000–2001 crop estimate, the 2000–2001 fiscal period expenditures estimate, and the current and projected balance of the operating reserve. With fresh Bartlett pear shipments for 2000–2001 estimated at 3,200,000 standard boxes, the $0.02 per standard box assessment rate should provide $64,000 in assessment income. Income derived from handler assessments, along with $13,060 from the Committee's authorized reserve (currently $32,321) and miscellaneous income ($3,000), will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be $19,261 at the end of the 2000–2001 fiscal period) will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; § 931.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently, about 98.5 percent of the fresh Bartlett pear handlers ship under $5,000,000 worth of fresh Bartlett pears and 1.5 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of fresh Bartlett pear producers, the average annual producer revenue is approximately $9,800. In view of the foregoing, it can be concluded that the majority of fresh Bartlett pear producers and handlers may be classified as small entities, excluding receipts from other sources.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.025 to $0.02 per standard box of fresh Bartlett pears handled. The Committee unanimously recommended 2000–2001 expenditures of $81,060 and an assessment rate of $0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $77,231. The assessment rate of $0.02 is $0.005 less than the rate currently in effect. At the rate of $0.025 per standard box and with 2000 fresh Bartlett pear shipments estimated at 3,200,000 standard boxes, the projected reserve on June 30, 2001, would exceed the level the Committee believes to be adequate to administer the program. The assessment rate reduction would also lessen the financial burden on handlers. The Committee decided that an assessment rate of less than $0.02 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 2000–2001 fiscal period include $44,468 for salaries, $4,847 for office rent, and $3,891 for health insurance. Budgeted expenses for these items in 1999–2000 were $40,433, $5,323, and $4,048, respectively.

With fresh Bartlett pear shipments for 2000–2001 estimated at 3,200,000 standard boxes, the $0.02 rate of assessment should provide $64,000 in assessment income. Income derived from handler assessments, along with $13,060 from the Committee's authorized reserve (currently $32,321) and miscellaneous income ($3,000), will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be $19,261 at the end of the 2000–2001 fiscal period) will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; 931.42).

Recent price information indicates that the grower price for the 2000–2001 marketing season will range between $8.60 and $11.30 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period as a percentage of total grower revenue will range between 0.18 and 0.23 percent.

This action decreases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 1, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large fresh Bartlett pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the

information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate for fresh Bartlett pears; (2) the 2000–2001 fiscal period begins on July 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 931.231 is revised to read as follows:

§ 931.231 Assessment rate.

On and after July 1, 2000, an assessment rate of $0.02 per western standard pear box is established for the Northwest Fresh Bartlett Pear Marketing Committee.

Dated: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16990 Filed 7–5–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 00–14]

RIN 1557–AB86

Other Equity Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is making a technical correction to its regulation on non-controlling equity investments to clarify that a national bank that wishes to use the notice procedure to make a non-controlling investment in an enterprise must certify that its loss exposure is limited, as a legal and accounting matter, and that it does not have open-ended liability for the obligations of the enterprise.

EFFECTIVE DATE: July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, or Karl Betz, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219.

SUPPLEMENTARY INFORMATION:

Description of Change

On March 10, 2000 the OCC published a final rule titled "Financial Subsidiaries and Operating Subsidiaries." 65 FR 12905. The final rule amended 12 CFR 5.36, "Other equity investments," to provide a streamlined, after-the-fact notice procedure for national banks making non-controlling investments in enterprises engaging in specified activities. As part of the notice process, the applicant must certify that it has satisfied the standards and conditions that the OCC applies to investments of this type.[1] These standards and conditions are established by OCC precedents approving non-controlling investments.[2]

[1] *See* 65 FR at 12913 (provisions describing the certifications that the notice must contain).

[2] *See, e.g.*, OCC Corporate Decision No. 97–54 (June 26, 1997); OCC Interpretive Letter No. 692, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (Nov. 1, 1995); OCC Interpretive Letter No. 694, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (Dec. 13, 1995); OCC Interpretive Letter No. 705, *reprinted* in [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,020 (October 25, 1995); OCC Interpretive Letter No. 711, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–026 (Feb. 23, 1996).

The final rule omitted from the notice procedure one standard contained in these precedents. In order to clarify that all of the standards and conditions contained in OCC precedent approving non-controlling investments apply to non-controlling investments that are eligible for the after-the-fact notice procedure, we are amending § 5.36(e) to conform the requirements of the notice procedure with those of the precedents on which it is based. Accordingly, this rule adds the requirement that a national bank certify that its loss exposure is limited, as a legal and accounting matter, and that the bank does not have open-ended unlimited liability for the obligations of the enterprise. The rule is published in final form and takes effect immediately upon publication in the **Federal Register**.

Administrative Procedure Act—Notice and Comment

Pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), the OCC finds good cause for dispensing with the requirements for notice and an opportunity for public comment that the APA would otherwise require. This technical correction conforms the rule with the governing standards that have been available in published OCC precedent for some time. By removing an apparent inconsistency with the precedents in this area, the rule avoids the confusion, and the potential for the filing of incomplete notices, that may otherwise occur when banks compare the requirements of the rule with those in the precedents.

Effective Date

The APA generally requires that a final rule take effect 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). Similarly, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) generally requires that a final rule issued by a Federal banking agency take effect on the first day of the first calendar quarter that begins on or after the date on which the regulation is published in final form. 12 U.S.C. 4802(b)(1). Both requirements are subject to a good cause exception.

For the reasons previously explained, the OCC finds good cause for making this amendment to 12 CFR 5.36(e) effective immediately upon publication. Delaying the effective date of the amendment will delay national banks' ability to rely with certainty on the notice process for non-controlling investments and thus impede the rule's purpose of facilitating national banks' ability to make non-controlling

investments that comport with the standards the OCC has adopted in its published precedents.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the OCC has determined that it is not necessary to publish a notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis are not applicable. In any event, however, since this final rule merely adds one additional element to the notice that the rule permits a national bank to file, this final rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Comptroller of the Currency has determined that this final rule is not a significant regulatory action for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (UMA), applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which the agency published a general notice of proposed rulemaking (2 U.S.C. 1532). As noted previously, the OCC has determined, for good cause, that notice and comment is unnecessary. Accordingly, the UMA does not require a budgetary impact analysis.

Nevertheless, the OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory activities considered.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; and section 5136A of the Revised Statutes, (12 U.S.C. 24a).

2. Section 5.36 is amended by:

A. Redesignating paragraph (e)(7) as (e)(8);

B. Removing "and" from the end of paragraph (e)(6); and

C. Adding a new paragraph (e)(7) to read as follows:

§ 5.36 Other equity investments.

* * * * *

(e) * * *

(7) Certify that the bank's loss exposure is limited, as a legal and accounting matter, and the bank does not have open-ended liability for the obligations of the enterprise; and

* * * * *

Dated: June 27, 2000

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–17008 Filed 7–5–00; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 915

[No. 2000–31]

RIN 3069–AB00

Election of Federal Home Loan Bank Directors

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to address the status of the 1999 and 2000 elections of directors at each Federal Home Loan Bank (Bank), and to provide standards regarding the manner in which the Banks must stagger their boards. The final rule also addresses the consequences to an incumbent director whose directorship is eliminated or is redesignated as representing Bank members located in a different state before the end of his or her term.

EFFECTIVE DATE: The final rule is effective on August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Neil R. Crowley, Deputy General Counsel, (202) 408–2990, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On February 23, 2000, the Finance Board approved a proposed rule to implement provisions of the Gramm-Leach-Bliley Act, Public Law 106–102, 133 Stat. 1338, 1453 (Nov. 12, 1999) (GLB Act) regarding the term of office of Bank directors. 65 FR 17458 (April 3, 2000). The GLB Act amended Section 7(d) of the Federal Home Loan Bank Act (Bank Act) to establish uniform three-year terms for the appointed and elected directors of the Banks and required that the terms of those directors first elected or appointed after enactment of the GLB Act be adjusted as necessary to stagger the board of each Bank into three classes of approximately equal size. 12 U.S.C. 1427(d), *as amended*. Under prior law the appointed directors had served for four-year terms and the elected directors had served for two-year terms. Because the GLB Act amendments took effect upon enactment, they had the effect of extending the terms of all incumbent elected directors by one year. As a result of the extension of the terms of office by the GLB Act, on January 1, 2000, when the two-year terms of the elected directors otherwise would have expired, there were no open elected directorships at any of the Banks. During 1999, each Bank had conducted elections in which the members voted to elect approximately one-half of the elected directors of the Bank, but the candidates elected could not assume office on January 1, 2000 as a consequence of the GLB Act amendments. In previously addressing the effect of the GLB Act on the terms of Bank directorships, the Finance Board expressed its intent to authorize the board of directors of each Bank to decide whether to conduct new elections in 2000 or to adopt the tabulation of votes cast in the 1999 elections for use in the 2000 elections.[1] The Finance Board indicated that it would establish the criteria by which the board of each Bank could make that decision, which was one issue that the Finance Board had addressed in the proposed rulemaking. The proposed rule also addressed the manner in which the terms of the directors assuming office after November 12, 1999 were to be adjusted in order to achieve the one-third staggering required by the GLB Act. The final rule addresses both of those issues, substantially as proposed.

[1] Finance Board Resolution No. 99–65 (Dec. 14, 1999).

II. The Proposed Rule

The GLB Act imposed the staggering requirement without amending existing law, under which the elected directorships of the Banks are allocated among the states based in part on the amount of Bank stock required to be held by the members located in each state as of the end of the prior year, and in part on the number of directorships designated to each state in 1960. Under the existing provisions, it is possible for an elected directorship to be redesignated mid-term to represent the members located in another state. It is also possible that the annual designation of directorships might reduce the number of elected directorships allocated to a particular state, thus causing a directorship to disappear altogether. The proposed rule included provisions intended to maintain a staggered board notwithstanding the possibility that over time one or more directorships might be eliminated. The proposed rule also addressed the consequences to an incumbent director if, in mid-term, his or her seat were eliminated or redesignated to represent members located in another state.

The proposed rule described in detail the provisions of Section 7(b) and (c) of the Bank Act relating to the designation of directorships among the states within each Bank district and the possible scenarios in which an elected directorship may, from time to time, be redesignated to another state or eliminated altogether, as a result of shifts in the stock ownership of the members in the respective states. The proposed rule also described the manner in which the Finance Board may create additional elected or appointed directorships in certain Bank districts and how those "discretionary" directorships may be eliminated. Because of the possibility that certain elected and appointed directorships may be eliminated or, in the case of elected directorships, redesignated to other states, the proposed rule described in some detail the resulting difficulties in establishing a staggered board of directors and maintaining that staggering in future years as the composition of the board may change. Rather than repeat that entire discussion here, the Finance Board is incorporating into this rule by reference the preamble discussion of the background of the proposed rule and of the state-based directorships.

III. Public Comments

The Finance Board received nine comment letters on matters addressed by the proposed rule. Five Banks submitted comment letters, as did two state banking trade associations, one member, and one trade association for community banking institutions. Most of the comments letters were supportive of the proposed rule, though each of the Banks requested that the final rule include certain revisions or clarifications, as noted below.

The member, and one Bank, suggested that the staggering provisions of the final rule not require that certain directorships be assigned one-year terms, as one year is too short a period to be productive for the director or for the Bank. The Finance Board appreciates the concern about a one-year term, but is not changing that aspect of the rule. In establishing the matrices for the Banks, which implement the staggering of the boards required by the GLB Act, the Finance Board was guided by the provisions of the GLB Act that require terms to be adjusted only as necessary to achieve a board that consists of three approximately equal classes. In order to avoid the possibility of any directors having a one-year term, the Finance Board could increase to two years the terms of the 21 directorships throughout the Bank System that otherwise would receive a one-year term under the final rule. In order to achieve the appropriately staggered board, however, the Finance Board likely would have to decrease to two years the terms of up to 21 directorships that otherwise would have a three-year term under the final rule. The Finance Board believes that if it can obtain the same staggering result by adjusting the terms of 21 directorships as it can by adjusting up to 42 directorships, then it is more consistent with the GLB Act to adjust the fewest number of terms necessary, even if some are for one-year. Thus, the final rule retains one-year terms as the initial term for some of the directorships at most of the Banks. Moreover, although the final rule requires 21 directorships System-wide be assigned a one-year term, 14 of those directorships are "non-guaranteed" directorships, which means that neither the director nor the Bank would be assured that the person holding that directorship would be able to serve for more than one year even if the Finance Board were to assign the directorship a two-year term. As noted below, any individuals that are assigned a one-year term will not be considered to have served a "full term" for that year, and thus could seek office for as many as three additional three-year terms, which the Finance Board believes offers some offsetting benefit to both the individual and the Bank.

One Bank asked that the Finance Board clarify whether a one-year term would constitute a "full term" for purposes of the term limits provision in Section 7(d) of the Bank Act, which applies to any person who "has been elected to each of three consecutive full terms as an elective director." The current regulations do not address what constitutes a "full term". The Finance Board believes that a "full term" for these purposes is a three-year term, as authorized by the GLB Act, and that any shorter term that has been adjusted in order to comply with the GLB Act should not count as one of the "three full consecutive terms" for purposes of Section 7(d). To address the concern raised by this comment, the Finance Board has included in the final rule an amendment to § 915.7(c) stating expressly that for purposes of the statutory term limits a term of office that is adjusted as a result of the GLB Act does not constitute a "full term".

Two of the Banks requested that the final rule include a "safe harbor" provision that would allow the interested elected directors to participate in board decisions as to which directorships are to be assigned reduced terms. The final rule includes such a safe harbor provision, which will apply to both the assignment of reduced terms and the possible ratification of the 1999 election results.

One state trade association opposed the rule, apparently because it believes that a Bank would be able to declare elected a nominee who had received fewer votes in the 1999 election than would have been required to be elected, had the results not been rendered moot by the GLB Act. The only way in which the nominee who received the most votes in the 1999 election could not be seated, should the board of the Bank opt to ratify the 1999 election results, would be if that person were no longer eligible to serve as a Bank director, such as through death or by no longer being an officer or director of a member. The treatment under the proposed rule of a candidate for a Bank directorship who becomes ineligible during the course of the election process was consistent with past practice. In the past, if a person were ineligible to serve as a Bank director the Finance Board has not allowed that person to be included on the ballot or to be included in the tabulation of votes. If an individual nominee became ineligible prior to the distribution of the ballots, it had been the practice of the Finance Board to exclude that person from the ballots distributed to the members in that state.

If a nominee became ineligible after the distribution of the ballots but before the close of the election, it had been the practice of the Finance Board to notify the members of the loss of eligibility, distribute a revised ballot to any members who already had cast votes for the ineligible nominee (thus allowing them to vote for an eligible nominee), and, in the case of members that declined to submit a revised ballot, void any votes cast for the ineligible nominee.

The final rule does not alter that practice. The Finance Board believes that the Banks have no authority under the Bank Act to seat an individual that is not eligible to serve as a Bank director. Indeed, the Bank Act expressly states that if an elected director were to cease to be eligible to be a Bank director the office would immediately become vacant and the individual could no longer serve as a Bank director. 12 U.S.C. 1427(f)(3). Moreover, the current regulations expressly preclude a Bank from placing the name of an ineligible person on the ballot. 12 CFR 915.7(a). The final rule clarifies this issue by adding to § 915.7(a) a provision that a Bank shall not declare elected any nominee it has reason to know is ineligible to serve, nor seat a director-elect that it has reason to know is ineligible to serve. Thus, if a loss of eligibility were to occur before an election of directors had closed, the ineligible candidate could not be declared elected. Instead, the Bank should declare elected the eligible nominee who received the most votes. If the loss of eligibility were to occur after the election had closed, *i.e.*, after the Bank had declared elected the nominees with the most votes, then the Finance Board believes that the situation would be the same as if a sitting director had lost his or her eligibility. In that case, the seat would become vacant, in accordance with Section 7(f)(3) of the Bank Act, and the board of the Bank would be required to fill the vacancy by selecting a person who was eligible to serve. Although the GLB Act has created a unique situation with regard to the 1999 election of directors, causing an extended delay between the voting and the declaration of the directors-elect, the Finance Board sees no benefit in establishing a rule that would require the Banks to set aside an election any time that the person receiving the most votes dies or otherwise loses his or her eligibility to serve. Instead, the Finance Board believes that the most appropriate means of addressing a loss of eligibility that occurs before the election closes is for the Bank to declare elected, from among those nominees who remain eligible to serve, the person or persons receiving the most votes, which is consistent with the past practice of the Finance Board and with the provisions of existing law and regulation.

The trade association for community banks contended that the Finance Board has the legal authority to allocate elected directorships based on the type of charters held by members of each Bank, and that the Finance Board could authorize the use of outstanding advances as the basis for allocating directorships. Neither of those methods of allocating directorships was addressed by the proposed rule, and neither method is expressly authorized by the Bank Act. As this comment letter noted, however, the Finance Board will have to address the allocation of directorships in the rules implementing the capital provisions of the GLB Act. In fact, the Finance Board recently has approved a proposed capital rule that would grant the Banks substantial latitude in establishing a voting structure under the new capital regime, which, if adopted as proposed, would be broad enough to accommodate the allocation methods suggested by this commenter. That matter, however, is more appropriately addressed as part of the capital rule and has not been included in this rule.

The commenter also objected to the proposed method for staggering the directorships to comply with the GLB Act as unnecessarily complicated and too difficult for the Banks and the members to implement, though it did not offer alternatives or suggestions for simplifying the methodology. The Finance Board believes that the rule is as straightforward as is possible, given the language of the statute. Although the rule is rather detailed, it is not unduly complicated. To the extent that the proposed rule might be considered complicated, it is only because the Congress was persuaded by this very commenter to add an additional level of complexity to an already multi-layered statutory scheme. Moreover, the member and Bank commenters raised no similar objections. Indeed the only member to address the complexity of the rule characterized it as a reasonable approach, given the complex statutory constraints under which the Banks must conduct the elections. Similarly, the only Bank to address the issue stated that any complexity results from the approach to staggering the terms of the directorships mandated by the GLB Act, and that the proposed rule provided a fair and equitable method for dealing with a difficult situation. The other state trade association raised similar comments, but on this issue, the Finance Board is inclined to accord greater weight to the view of those entities, *i.e.*, the Banks and the members, that are most knowledgeable about the process of electing Bank directors and who will have to implement the provisions.

Two of the Banks raised a number of specific questions on issues such as eligibility, the assignment of guaranteed and non-guaranteed seats, the assignment of non-guaranteed directorships in subsequent years, and the assignment of directorships between a non-guaranteed directorship with a three-year term and a guaranteed directorship with a two-year term. Those issues are addressed below in the discussion of the specific provisions of the final rule.

IV. Description of the Final Rule

A. The 2000 Election

Before a Bank may decide whether to conduct new elections or to ratify the 1999 election results, it must determine which states within its district are to be assigned directorships with reduced terms, as required to implement the staggering provisions of the GLB Act and this rule. In order to create the third class of directorships required by the GLB Act, certain directorships must be assigned shortened terms in connection with the next two elections. Because the number of states within each Bank district varies, in some instances the adjusted terms will be assigned among directorships representing the same state, but for certain Banks the adjusted terms will have to be assigned among directorships representing different states. For certain Banks, the number of states within the district and the distribution of seats among the states are such that those Banks will not need to assign reduced terms to particular states. Where the board of directors of a Bank is required to choose among several different states in assigning the shortened term, the final rule requires that the board make that determination before considering how to proceed with the 2000 election of directors.

For example, the Atlanta Bank has one class of four elected directorships with terms commencing on January 1, 2001, in which each directorship represents a different state. It also has a second class of five elected directorships with terms commencing on January 1, 2002, in which four of the directorships represent different states. For each class, the board of the Atlanta Bank must assign to one state a term of less than three years, and the final rule

requires the board to make that assignment for both classes before determining how to conduct the 2000 election. The Finance Board believes that requiring the Banks to make this determination at the outset is most appropriate, as it will allow individuals running for the directorship from the affected states to know beforehand which directorships will be for less than a full three-year term.

After a Bank has made any necessary assignments of adjusted terms among the states, it must determine the manner in which to elect the directors whose terms are to commence on January 1, 2001. The rule generally allows the board of directors of each Bank either: (i) To conduct new elections during the year 2000 for all states in which an elected directorship is to commence on that date; or (ii) to adopt the results of the 1999 elections for all states that qualify under this rule, and to conduct new elections only in any state for which the rule requires a new election to be held. In either case, the designation of directorships conducted by the Finance Board in 2000 is to control. The Finance Board has completed the 2000 designation of directorships for each Bank, pursuant to § 915.3(b), which is nearly identical to the designation of directorships conducted in 1999, and has provided that information to the Banks. In each case, the Finance Board designated 114 elected directors throughout the Bank System.[2]

In only two states, Oklahoma and Nebraska, does the number of directorships designated in 2000 differ from the number designated to those states in 1999. In 1999, Oklahoma and Nebraska had three and two elected directorships, respectively, designated as representing the members located in those states. In 2000, the designations were reversed, with Oklahoma and Nebraska having two and three elected directorships, respectively. In effect, the constituency of the non-guaranteed stock directorship that formerly had been designated to Oklahoma "migrated" to Nebraska over the past year, as a consequence of an increase in the relative amount of Bank stock held by members located in Nebraska. As a result, the incumbent Oklahoma director holding the non-guaranteed directorship will become ineligible to hold that seat once the designation to Nebraska takes effect, on January 1, 2001. Because both non-guaranteed directorships for the Topeka Bank are in the class of directors with terms expiring on December 31, 2001, the 2000 elections cannot be used to determine which of the two Oklahoma directors in that class is to become ineligible at the end of the year. The issue of how to assign a non-guaranteed directorship between directors from the same state in the absence of an election was not directly addressed by the proposed rule. The final rule includes an amendment to § 915.3(e) that requires the board of the Bank to use the most recent election to determine which of the two incumbent Oklahoma directors with terms expiring on December 31, 2001 is to be assigned to the non-guaranteed directorship that is to be affected by the redesignation. Because neither of the non-guaranteed directorships for the Topeka Bank is up for election in 2000, the change in the designation from Oklahoma to Nebraska will have no effect on the 2000 elections in either state. Similarly, in Connecticut the composition of the one non-guaranteed directorship has changed in the 2000 designation (*i.e.*, from a stock seat to a discretionary seat) but the total allocated to the state remains the same, and thus there is no effect on the 2000 elections for Connecticut even though both of the two Connecticut seats are open in the 2000 election. The Finance Board intends to provide each Bank with additional guidance (such as through a regulatory interpretation) about how the designation of directorships will be applied at each Bank in conjunction with adjustment of the terms to be required by this rule.

Although the final rule generally vests the decision regarding the method of electing directors with the board of directors of each Bank, it requires the Banks to conduct new elections in one case. If the 2000 designation of directorships were to result in a state being allocated a number of directorships with terms commencing on January 1, 2001, that is greater than the number of nominees from that state in the 1999 election who remain eligible to serve as a Bank director, the Bank must conduct an election in that state for all directorships with terms commencing on that date. As described above, the 2000 designation of directorships is, for purposes of the 2000 election, unchanged from the 1999 designation of directorships, and thus the 2000 designation alone cannot trigger the requirement for a new election in any state. It remains possible, however, that the number of nominees from the 1999 election who remain eligible to serve as a Bank director for a particular state may have decreased since the enactment of the GLB Act to below the number of directorships designated to that state that are to be filled this year, which would require the Bank to hold a new election for that state. If a new election is required, the Bank must do so only for the affected state; the rule does not require the Bank to conduct a new election in any other states.

Even if the rule does not require a Bank to conduct a new election for a particular state, it grants to the board of directors of the Bank the discretion to do so. If the board were to determine that the Bank should conduct new elections in 2000, the Bank must conduct elections for every state for which a directorship is to commence on January 1, 2001, in accordance with the 2000 designation of directorships. If the board of directors of a Bank were to require new elections, the Bank would follow the normal procedures for conducting an election, in accordance with Part 915 of the Finance Board regulations, and the 1999 election results would be given no effect.

If a Bank is not required to conduct new elections and its board of directors does not opt to do so, the rule allows the board to adopt the votes cast by the members in 1999 as the basis for electing the directors who are to commence their terms on January 1, 2001. The rule requires that the use of the 1999 elections results be consistent with the 2000 designation of directorships and that there be sufficient eligible nominees remaining from the 1999 elections available to fill the designated seats. The board of each Bank is required to confirm, on a state-by-state basis, that the use of the 1999 election results is permissible, *i.e.*, that this rule does not require that a new election be held for a particular state, and that the nominees remain eligible to serve as Bank directors. As a practical matter, because the 2000 designation of directorships is unchanged from 1999, as applied to the 2000 election, the board of directors of each Bank may ratify the results of the 1999 election, subject only to confirming the eligibility of the directors-elect (or other nominees) to serve.

If the board of directors ratifies the 1999 election results, it must notify the Finance Board, the directors-elect, and each member in the affected state. The notice also must indicate which, if any, terms have been adjusted in order to achieve the staggering required by the GLB Act. This requirement applies to any directorship with a reduced term. Any such term adjustments must comply with § 915.17 of the proposed rule, described below, which addresses staggering the board of directors.

[2] Finance Board Resolutons No. 2000–21 (May 17 2000); No. 99–35 (June 2, 1999).

B. Staggering the Terms of Office

The GLB Act imposed what appears to be a straightforward requirement that the board of directors of each Bank be staggered into three approximately equal classes, i.e., it requires a "class-based" directorship structure for the Banks. Implementing that requirement, however, is not quite so straightforward because the GLB Act also retained the provisions of current law that require a "state-based" directorship structure. To some degree, a "class-based" structure and a "state-based" structure are in conflict. For example, the Banks cannot have and maintain a pure "class-based" staggered directorship structure if other provisions of the Bank Act allow for the possibility that a certain number of directorships may disappear from a given class as a result of shifting stock ownership or at the discretion of the Finance Board. Similarly, the Banks cannot maintain a viable "state-based" directorship structure if the creation, elimination, and redesignation of directorships that are necessary consequences of a system that assigns directorships based on relative stock ownership among the states are constrained by other provisions of the Bank Act that require the maintenance of a strict class structure. The final rule attempts to strike a balance between the two directorship structures by focusing on each Bank's core of "guaranteed" directorships, *i.e.*, those that are allocated to a particular state by statute, and ensuring that they remain staggered even if a certain number of the "non-guaranteed" directorships are eliminated in the future. The Finance Board recently has approved a proposed capital rule under which the Banks would be authorized to establish different directorship and voting structures as part of the capital structure plans required by the GLB Act. That proposal describes the conflict between certain provisions of Section 7 of the Bank Act, regarding Bank directorships, and certain provisions of Section 6 of the Bank Act, regarding capital, and how the Finance Board has proposed to reconcile those conflicts. The manner in which those conflicts are reconciled will be addressed exclusively in the final rule on the capital structure of the Banks, which the GLB Act requires to be adopted no later than November 12, 2000. The provisions of this final elections rule, as they relate to the directorship structure of the Banks, should not be viewed as indicating how the Finance Board ultimately will reconcile the above provisions in the final capital rule.

Guaranteed Directorships. Section 7 of the Bank Act guarantees that the members in each state are to be allocated a certain minimum number of Bank directorships. For most states, the Bank Act guarantees each state one directorship. Under a grandfather provision, however, 20 states are guaranteed a minimum number of seats that ranges from two to six directorships. *See* 12 U.S.C. 1427(c); 12 CFR 915.15. Those directorships cannot be eliminated as a result of shifting stock ownership among the members, nor can they be redesignated as representing members in another state. The final rule defines a core group of directorships that must be allocated to each state as "guaranteed directorships." Ten of the Banks have eight guaranteed directorships each; the other Banks, New York and San Francisco, have nine and five guaranteed directorships, respectively.

Non-guaranteed directorships. The Bank Act also contemplates that certain states may be allocated directorships beyond the minimum number guaranteed by the Bank Act. The additional directorships result either from the amount of Bank stock held by the members located in a particular state or from the Finance Board's exercise of its authority to create discretionary directorships pursuant to Section 7(a) of the Bank Act. Those seats are not permanently allocated to a particular state and may be redesignated from year to year as representing members in another state; they also may be eliminated entirely. Most of the Banks have such directorships allocated to one or more states within their districts, which the final rule defines as "non-guaranteed directorships." The final rule also defines two distinct sub-groups of non-guaranteed directorships: (1) "discretionary directorships," *i.e.*, an elected or appointed directorship created by the Finance Board pursuant to Section 7(a) in districts with five or more states; and (2) "stock directorships," *i.e.*, an elected directorship allocated to a state based on the amount of Bank stock held by the members located in that state, in addition to the minimum number of guaranteed directorships allocated to that state.

Staggering Process. The GLB Act requires that the board of each Bank be staggered into three approximately equal classes. Based on that directive, the rule first divides the guaranteed directorships at each Bank into three groups that are as nearly equal as possible. For each of the ten Banks that has eight guaranteed directorships, the result is three classes of two directors, three directors, and three directors, respectively. For the New York Bank, with nine guaranteed directorships, the result is three classes of three directors; for the San Francisco Bank, with five guaranteed directorships, there are three classes of one, two, and two directors, respectively. Accordingly, for eleven of the Banks the maximum number of guaranteed directorships that may be grouped into a single "class," *i.e.*, a group of directorships with terms expiring on the same date, is three; for the San Francisco Bank, the maximum number is two.

The Finance Board considered attempting to establish a staggering methodology that could apply to the entire board of both appointed and elected directors, rather than the proposed method that focuses on the guaranteed directorships. No commenters suggested any alternative methodology for accomplishing the staggering required by the GLB Act. Because of the differences between the two types of directors, *i.e.*, the different manner of selection, the different interests represented, and the state-based restrictions that apply only to the elected directors, the Finance Board determined that the better approach is to build the staggered board on the foundation of guaranteed directorships, with non-guaranteed directorships and appointed directorships being assigned adjusted terms, as necessary to result in the approximate one-third staggering required by the GLB Act.

With regard to both the non-guaranteed and the appointed directorships, the terms are to be adjusted only as necessary to achieve the appropriately staggered board. For those appointed directorships with terms expiring on the enactment of the GLB Act or on December 31, 1999, the Finance Board has adjusted the terms of the successor directorships, *i.e.*, the first post-GLB Act appointments, only as necessary to ensure that no more than one third of a class of appointed directorships will expire at the same time. For the remaining appointed directorships that will expire at the end of each of the next two years, *i.e.*, the remainder of the first post-GLB Act appointments, the Finance Board intends to adjust the terms of the successor directorships only to the extent necessary to group the appointed directorships at each Bank into three approximately equal classes. Seven of the Banks have six appointed directorships each, and the Finance Board intends ultimately that each of those Banks will have three classes of two appointed directorships each. With regard to the other five Banks (three of

which have eight appointed directorships and two of which have seven), the Finance Board intends to adjust the terms of those additional appointed directorships as necessary to cause the entire board to be appropriately staggered.

Based initially on the maximum number of guaranteed directorships that may be included in a single class, the Finance Board has created a matrix for each Bank that indicates how the existing classes of elected directorships will be divided in order to create three classes of directorships of approximately equal size. The final rule requires the board of directors of each Bank to adjust the terms of directorships that commence on January 1, 2001 and January 1, 2002 in accordance with the matrix for that Bank, as described below. Each matrix groups the directorships based on their current status, *i.e.*, one group whose terms will commence on January 1, 2001, and a second group whose terms will commence on January 1, 2002. Within those two groups, the matrices indicate the states to which each directorship will be designated, the length of the term assigned to each directorship (commencing on January 1, 2001 or January 1, 2002, respectively), and whether the seat is "non-guaranteed," *i.e.*, either a discretionary directorship or a stock directorship. The matrices are based on the designation of directorships conducted in 2000, which is the most recent designation available. The Finance Board also intends to provide updated matrices next year, in conjunction with the then-current designation of directorships.

With regard to the directorships commencing on January 1, 2001, each matrix assigns, or requires the board of directors of the Bank to assign, a three-year term to three of the guaranteed directorships (two directorships, in the case of San Francisco), which is the maximum number of guaranteed directorships allowed for any one class of directors. Each of the remaining guaranteed directorships with terms commencing on January 1, 2001 is assigned a two-year term; those directorships will establish, at least in part, the third class of directorships required by the GLB Act. The matrix applies the same methodology to the class of guaranteed directorships with terms commencing on January 1, 2002, except that the shortened terms will be for one year, rather than for two years. The Finance Board believes that assigning the three-year terms to the maximum number of guaranteed directorships possible in any one class is consistent with the GLB Act, which authorizes the adjustment of the term of a directorship only as necessary to achieve the required one-third staggering of the board.

For example, the Pittsburgh Bank has four guaranteed directorships with terms commencing on January 1, 2001. The matrix indicates that three of those seats—the maximum number of guaranteed directorships in any one class—have a full three-year term and the one remaining directorship has a two-year term. The Pittsburgh Bank has four other guaranteed directorship with terms commencing on January 1, 2002. Again, the matrix indicates that three of those seats—the maximum number of guaranteed directorships per class—receive a full three-year term, with the fourth directorship receiving a one year term. As a result, the Bank will achieve the required "2–3–3" staggering of its guaranteed directorships by adjusting the terms of only two of the eight guaranteed directorships. Thus, the Bank will have one class of two directorships with terms expiring on December 31, 2002, one class of three directorships with terms expiring on December 31, 2003, and one class of three directorships with terms expiring on December 31, 2004. Though not indicated on the matrix, the Finance Board will adjust the terms of the appointed directorships for the Pittsburgh Bank as necessary to create three classes of two directors each, which will result in the entire board being grouped into classes of "4–5–5", which is the closest to the one-third staggering that can be achieved with a fourteen director board.

The matrix for the Pittsburgh Bank also illustrates the different methods by which a directorship is to be assigned a shortened term, one of which is based on the votes cast by the members and the other of which is based on the number of states with directorships at issue. In the case of the four directorships commencing on January 1, 2001, each directorship is designated as representing the members located in Pennsylvania. In such a case, *i.e.*, where a reduced term must be assigned to one of several directorships from the same state, the rule requires that the assignment be based on the number of votes each director-elect receives in the most recent election. Thus, in the class of directorships commencing on January 1, 2001, the director-elect from Pennsylvania who receives the fourth most votes (using either the results of the 1999 election or the results of a new election, as determined by the board of directors) will be assigned the two-year term. The same methodology generally will apply whenever the Bank must make a choice between two or more directorships from the same state, whether the issue is which seat is to receive a reduced term or which seat is to be designated as a "non-guaranteed" directorship. The one exception, noted below, is where the matrix assigns a guaranteed directorship a shorter term than it assigns to a non-guaranteed directorship, which occurs only with regard to New York state. In that case, the final rule provides that the candidate receiving the greater number of votes is assigned to the guaranteed seat and the candidate with the lesser number of votes is assigned the non-guaranteed seat.

In certain cases, it also is possible for directors to be elected without a vote, such as where the number of nominees from a state is equal to or less than the number of directorships to be filled from that state. In that case, a short term or a non-guaranteed directorship could not be assigned on the basis of the number of votes received. This occurred in the 1999 election for directors representing members in Indiana three of whom were declared elected without a vote. In that case, one of the three directorships must be assigned a 2-year term, but the proposed rule did not address how the assignment should be made in such a case. The final rule addresses that issue by providing that if a shortened term must be assigned among directors who have been elected without a vote, the board of the Bank must assign the terms on the basis of the most recent election.

The final rule also includes a conforming amendment to § 915.8(b), the provision authorizing directors to be elected without a vote, to allow such elections to occur only if the term and the status, *i.e.*, whether the directorships are guaranteed or non-guaranteed, are all the same. Thus, if there are three directorships from the same state at issue in an election and there are only three nominees for those directorships, but one directorship is non-guaranteed or is for a reduced term, the Bank still must hold an election to determine how those directorships are to be assigned. One Bank questioned how the proposed rule would apply if the matrix were to assign to a particular state in the same year one guaranteed directorship with a two-year term and one non-guaranteed directorship with a three year term, suggesting that it was not clear from the proposed rule how a Bank would allocate such directorships. The final rule addresses this question in § 915.17(b)(2) by providing that if a matrix assigns a guaranteed directorship a shorter term than it assigns to a non-guaranteed directorship for the same

state in the same year, the Bank shall assign the guaranteed directorship to the candidate receiving the most votes in the election. Because it is possible for a non-guaranteed directorship to be eliminated after one year (or to be redesignated to another state, which for the incumbent would have the same effect as being eliminated), the Finance Board believes that a guaranteed directorship, even if for an initial reduced term, is the more valued directorship and thus should be awarded to the candidate receiving the greater number of votes in the election.

Another Bank raised a question concerning the assignment of individual directors from the same state to the two seats that are allocated to the state, where there is one guaranteed directorship and one non-guaranteed discretionary directorship. In that case, the matrix for that Bank would allow the board of the Bank to assign each directorship from that state to an identical term or to different terms. The Bank was uncertain whether the Finance Board or the board of directors of the Bank would decide which of the two directorships would be guaranteed. The intent of the Finance Board is that the board of the Bank must make that determination in accordance with the matrix for that Bank. Thus, if the board of the Bank places the two directorships into the same class, *i.e.*, it assigns them to the same term, in the first election for that state the Bank would assign the guaranteed directorship to the candidate receiving the most votes, and the non-guaranteed seat to the candidate receiving the second most votes. In each subsequent election, (and assuming that the non-guaranteed directorship, which in this case is a discretionary directorship, remained designated to that state) the candidate receiving the most votes in that election would be assigned to the guaranteed directorship and the candidate receiving the second most votes would be assigned to the non-guaranteed seat. Thus, it would be possible in future elections that the individual receiving the most votes in one election would receive the second most votes in the next election, in which case the individual would switch from the guaranteed directorship to the non-guaranteed directorship for that state. The reference in the rule that a non-guaranteed directorship is to retain that designation for as long as it remains in existence refers only to the directorship itself, and not necessarily to the individual who holds the non-guaranteed directorship at any particular time. If, however, the Bank were to assign different terms to each of those two directorships at the outset, then there would be no issue because the guaranteed directorship and the non-guaranteed directorship would be filled in different years, and any persons running for either directorship would know whether it was guaranteed or non-guaranteed.

The same commenter raised three procedural questions concerning the treatment of those two directorships (*i.e.*, one guaranteed and one non-guaranteed, and both with the same initial term) in subsequent elections. In that case, for each election the Bank would inform its members in that state that two seats are open, that one is guaranteed and the other is non-guaranteed, and that the eligible candidate receiving the most votes will be awarded the guaranteed seat. In the event that no candidates were to be nominated for either seat in a subsequent election, the directorships would become vacant as of the end of the calendar year and the board of directors would select two eligible individuals to fill those vacancies in accordance with the existing provisions for filling vacant elected directorships. See 12 CFR 915.8(b). In doing so, the board of the Bank would designate one individual to fill the guaranteed directorship and one individual to fill the non-guaranteed directorship. In the event that only one person were nominated from that state, that person would fill the guaranteed directorship and the board of the Bank would select another person under the vacancy provisions to fill the non-guaranteed directorship.

With regard to the directorships at the Pittsburgh Bank that have terms commencing on January 1, 2002, the methodology differs somewhat from that used for the prior class. In this case, three of the four guaranteed directorships at issue are from different states: West Virginia, Delaware, and Pennsylvania (which has two guaranteed directorships in this class). Here, again, no more than three of the guaranteed directorships may be assigned a full three-year term, and one must receive a reduced term, which in this case will be for one year. Where the number of states is the same as the number of full-term directorships available, as is the case here, the matrix assigns one full term to each state. The matrices reflect a determination by the Finance Board that to the extent possible each state should be treated equally in the assignment of three-year terms. For that reason, the matrix does not allow both Pennsylvania directorships to receive a full term, as that could not occur unless one of the remaining states—Delaware or West Virginia—were to receive the one-year term. With regard to the two Pennsylvania directorships in this class, the board of directors of the Bank must assign the three-year term to the director-elect from Pennsylvania who receives the highest number of votes, with the one-year term going to the director-elect with the second most votes.

For certain other Banks, the methods used for the Pittsburgh Bank will not work because the number of states with guaranteed directorships is greater than the number of three-year terms available. In that case, the rule requires the board of directors of the Bank to assign the full three-year terms and the reduced terms among the guaranteed directorships from the different states; *i.e.*, the three full three-year terms are to be allocated among four or five states. Where several states are involved, each directorship has a different constituency and thus the number of votes received by each candidate cannot be used to rank them. Also, because the number of states with guaranteed directorships is greater than the number of three-year terms available, not all of the states can be treated equally, as was the case with the Pittsburgh Bank. Where equal treatment for all states is not possible, the Finance Board believes that it is most appropriate, as well as consistent with the GLB Act, for the board of directors of each Bank to make the determination as to which states are assigned the reduced term. The matrices reflect that provision, noting that the board of the Bank is required to select one (and in some cases, two) states to receive a reduced term. (As noted earlier, the boards must make this decision before determining the effect to be given to the 1999 election results.)

For example, the Atlanta Bank has four guaranteed directorships with terms commencing on January 1, 2001, representing the members in the District of Columbia, Alabama, Virginia, and South Carolina, respectively. Only three of those seats may receive a full three-year term; the remaining directorship must receive a two-year term in order to comply with the staggering requirement. In this case, the matrix indicates that the board of the Atlanta Bank must decide which of those four directorships is to be assigned a two-year term. The rule provides that the manner in which the board of directors assigns the reduced term to a particular state is entirely within its discretion, so long as the method is reasonable and is used consistently. Thus, the rule allows the board to adopt some objective basis for making the determination or to assign

the terms randomly, such as through a lottery among the affected states.

The Finance Board recognizes that certain directors may have an interest in which state's directorship is to be assigned a reduced term and requested comment on whether it should require such determinations to be made only by the disinterested directors, or whether it should include a "safe harbor" provision in the final rule that would allow an interested director, *i.e.*, a director whose directorship may be at risk of being assigned a reduced term, to participate in the decision without being deemed to violate the conflict of interest regulations or the conflict policies of the Bank. The only commenters to address that issue endorsed the concept of a safe harbor provision and the Finance Board has included one in the final rule, which applies to both the decision on ratification of the 1999 election results and the assignment of reduced terms among the states.

For some Banks none of the above scenarios will apply because the guaranteed directorships will consist in part of directorships representing different states and in part of multiple directorships from the same state; *i.e.*, there are two or more states with guaranteed directorships at issue, and one or more of those states has more than one directorship open. For example, the Boston Bank has five guaranteed directorships with terms commencing on January 1, 2001: two are designated to Massachusetts, and one each is designated to Connecticut, Rhode Island, and Maine. There also is one non-guaranteed directorship open, which is a discretionary seat allocated to Connecticut. Because there are three three-year terms to be allocated among four states, the board of directors of the Bank first must determine which one of the four states is to receive the two-year term, as described above with regard to the Atlanta Bank. After doing so, the board then would make any necessary distinctions between directorships from the same state on the basis of the votes received, as in the case of the Pittsburgh Bank. Thus, assuming that the board had assigned one of the three-year terms to one of the two Massachusetts directorships, the board would assign the Massachusetts director-elect who received the most votes (either in the 1999 election or in elections conducted in 2000, as determined by the board of the Bank) to the three-year term. The other guaranteed directorship from Massachusetts would be assigned to the director-elect who received the second highest number of votes. Similarly, the matrix indicates that one of the Connecticut directorships is to be a "non-guaranteed" discretionary directorship, while the other is to be a "guaranteed" directorship. The rule requires the board of the Boston Bank to assign the non-guaranteed directorship to the Connecticut director-elect who receives the second highest number of votes in the election; the Connecticut director-elect who receives the most votes is to be assigned to the "guaranteed" directorship.

With regard to the non-guaranteed directorships, the rule also provides that once a directorship is designated as non-guaranteed it retains that status in all subsequent elections unless it is eliminated by the Finance Board (in the case of a discretionary directorship) or as a consequence of a shift in the relative amounts of Bank stock held by members in different states. If, in connection with a subsequent annual designation of directorships, a directorship allocated to a particular state were to be eliminated or redesignated as representing the members in another state, the non-guaranteed directorship from that state would be eliminated or redesignated. As noted above, the "non-guaranteed" designation runs to the directorship itself and not to the individual director, and in any state in which both a guaranteed and non-guaranteed directorship are to be filled in the same election, the guaranteed directorship will be awarded to the candidate receiving the most votes. The final rule provides expressly that in all elections subsequent to 2001 the non-guaranteed directorships are to be assigned based on the number of votes received, with the directors receiving the fewest number of votes receiving the non-guaranteed directorships.

With regard to the non-guaranteed directorships, the matrices have assigned terms to those directorships in a manner that is consistent with the one-third staggering requirement of the GLB Act, as noted previously. For example, the two non-guaranteed directorships at the Boston Bank have been assigned a two- and one-year term, respectively, which both places them into the same class of directors and results in a "4–3–3" class structure, which is consistent with the GLB Act. In the event that one or both of those directorships were to be eliminated, the elected directorships would be grouped either into a "3–3–3" class structure or the "2–3–3" structure of the guaranteed directorships, thus maintaining the one-third staggering of the board.

Eligibility of Directors. The rule also amends provisions regarding the eligibility of directors to remain in office if the directorship to which they have been elected is redesignated as representing members in another state or is eliminated. As noted above, it is possible that shifting stock ownership among the members in different states could cause the designation of a directorship to change during the course of an incumbent's term of office, or for the seat to disappear. The rule provides that an elected director becomes ineligible to remain in office if the directorship is designated to another state during that director's term of office, or if the directorship is eliminated, and that the loss of eligibility takes effect on December 31 of the year in which the directorship is redesignated or eliminated. In the case of an eliminated directorship, the directorship simply disappears at the end of the year, and there is no seat for the incumbent director to fill. In the case of the redesignation of a directorship to another state, the directorship continues after the end of the year, but it becomes vacant as of December 31st (because the incumbent no longer is an officer or director of a member represented by the directorship) and the board of directors of the Bank fills the vacancy for the remainder of the unexpired term, in accordance with Section 7(f) of the Bank Act, with an officer or director of a member located in the newly-designated state. The rule makes a similar change to the provisions regarding appointed directors, providing that any appointed directorship that has been created in conjunction with the creation of additional elected directorships (in accordance with Section 7(a) of the Bank Act) is to terminate on December 31 of the year in which the associated elected directorship is terminated.

Certain commenters raised questions about the loss of eligibility of a person who otherwise would have been elected to the board of a Bank in the 1999 elections. One Bank asked how it should deal with a situation in which the nominee receiving the most votes in the 1999 election is now ineligible to serve, but the nominee receiving the second most votes in that election remains eligible. Another Bank asked a similar question, about how it should deal with the loss of eligibility by a director-elect that occurs after the Bank has declared the results of the 1999 election. As noted previously, the Finance Board believes that a person must be eligible to serve as a Bank director at several points in the election process, such as when nominated, when elected, and when commencing service on the board of the Bank. If a person

ceases to be eligible to serve after being nominated but before the ballots are distributed, the Finance Board expects that the Bank would exclude that person from the ballot. If the loss of eligibility were to occur after the ballots were distributed but before the Bank had tabulated the results of the election, the Finance Board expects that the Bank would not declare that person to have been elected, even if that person received the most votes, but should instead declare elected the eligible nominee who received the most votes. If, after the Bank had declared elected those eligible nominees with the most votes, a director-elect were to become ineligible to serve, the Finance Board believes that the director-elect could not be seated as a member of the Bank's board, which would create a vacancy on the board as of the next January 1st, and that the board would fill the vacancy in accordance with Section 7(f) of the Bank Act. The final rule includes a provision providing that a Bank shall not declare elected a nominee that it has reason to know is ineligible to serve, nor shall it seat a director-elect that it has reason to know is ineligible to serve.

Conforming Amendments. The proposed rule included a number of conforming amendments to other provisions of the regulations to remove references that no longer are accurate in light of the GLB Act and to be consistent with the other elements of the proposed rule. One such amendment addressed the term "bona fide resident" of a Bank district, as used in the definitions included at 12 CFR 915.1. The GLB Act amended Section 7(a) of the Bank Act to provide that a director of a Bank must be either a bona fide resident of the Bank district or an officer or director of a member located in the district. Previously, that provision had simply required that a Bank director be, among other things, a bona fide resident of the district. The proposed rule would have revised the definition of "bona fide resident of a Bank district" to include an officer or director of a member located in that Bank district. As a technical matter, the Bank Act establishes these as alternatives, *i.e.*, an elected Bank director must be either an officer or director of a member located in the Bank district or must be a bona fide resident of the district. As such, the proposed rule should not have treated the "officer or director" requirement as though it were a subset of the term "bona fide resident." The final rule corrects this provision by eliminating from the definition of "bona fide resident" the reference to an individual being an "officer or director of a member" located within that district. The final rule retains the existing provisions of the term "bona fide resident" as applied to appointed directors. Thus, an appointed director will continue to be considered a bona fide resident of the district if he or she maintains a principal residence within the district or owns or leases a residence in his or her own name within the district and also is employed within the district. The statutory change made by the GLB Act with regard to elected directors is more expansive than the prior regulatory definition of bona fide resident as applied to elected directors. Thus, the final rule removes from the definition of bona fide resident the provision allowing an elected director to qualify by owning or leasing a residence (other than a principal residence) within the district so long as he or she was an officer or director of a member in a state within the district. Because the terms "officer" and "director" of a member are well understood, the Finance Board is not including a separate definition of those terms in the final rule. The final rule includes a conforming amendment to § 915.7, which clarifies that an elected director need not be a bona fide resident of the district if he or she is an officer or director of a member located in the district, which reflects the amendments made by the GLB Act. In the event that questions may arise about whether a particular individual is either an officer or director of a member, the Finance Board anticipates that such matters could be addressed on a case by case basis, such as through staff interpretations.

V. Regulatory Flexibility Act

The final rule applies only to the Finance Board and to the Federal Home Loan Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the final rule will not have a significant impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 915

Banks, banking, Conflict of interests, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX, part 915 of the Code of Federal Regulations, as follows:

PART 915—DIRECTORS, OFFICERS, AND EMPLOYEES OF THE BANKS

1. The authority citation for part 915 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432.

2. Amend § 915.1 by removing the paragraph (2) of the definition of "bona fide resident of a Bank district" and redesignating paragraph (3) as paragraph (2), and by adding in alphabetical order definitions of "discretionary directorship", "guaranteed directorship", "non-guaranteed directorship", and "stock directorship" to read as follows:

§ 915.1 Definitions.

* * * * *

Discretionary directorship means an elective or appointive directorship created by the Finance Board pursuant to Section 7(a) of the Act for districts that include five or more states.

Guaranteed directorship means an elective directorship that is required by Section 7(b) of the Act and § 915.15 to be designated as representing Bank members that are located in a particular state.

Non-guaranteed directorship means an elective directorship that is either a discretionary directorship or a stock directorship.

* * * * *

Stock directorship means an elective directorship that is designated by the Finance Board as representing the members located in a particular state based on the amount of Bank stock held by the members in that state, and which is in excess of the number of guaranteed directorships allocated to that state.

* * * * *

3. Amend § 915.3 by:

a. Revising the fourth sentence of paragraph (a);

b. Adding two new sentences at the end of paragraph (b)(5);

c. Revising the second sentence in paragraph (c); and

d. Revising paragraph (e) to read as follows:

§ 915.3 Director elections.

(a) * * * The term of office of each elective director shall be three years, except as adjusted pursuant to Section 7(d) of the Act and § 915.17 of this chapter to achieve a staggered board,

and shall commence on January 1 of the calendar year immediately following the year in which the election is held. * * *

(b) * * *

(5) * * * The annual designation of directorships shall indicate the number of discretionary directorships, if any, to be authorized for the succeeding year. If the Finance Board eliminates an existing discretionary directorship, or designates such a directorship to another state, the term of any appointive or elective director affected by that action shall terminate after the close of business on the immediately following December 31.

(c) * * * If the annual designation of elective directorships results in an existing stock directorship being redesignated as representing members in a different state, the notice also shall state that the directorship must be filled by an officer or director of a member located in the newly designated state as of January 1 of the immediately following year, regardless of whether the term for the incumbent director would have expired by that date.

* * * * *

(e) *2000 designation.* For any stock directorship with a term ending December 31, 2001 that is redesignated from one state to another state by the 2000 designation of directorships, the board of directors of the Bank shall determine which incumbent director from the former state shall become ineligible to serve as a result of the redesignation on the basis of the most recent election.

4. Amend § 915.7 by:

a. Adding a new sentence at the end of paragraph (a);

b. Removing paragraph (b)(2);

c. Revising paragraph (b)(3) and redesignating it as paragraph (b)(2);

d. Adding a new paragraph (c)(4); and

e. Adding a new paragraph (d), to read as follows:

§ 915.7 Eligibility requirements for elective directors.

(a) *Eligibility verification.* * * * A Bank shall not declare elected a nominee that it has reason to know is ineligible to serve, nor shall it seat a director-elect that it has reason to know is ineligible to serve.

(b) *Eligibility requirements.* * * *

(2) A bona fide resident of the Bank district or an officer or director of a member that is located in the voting state to be represented by the elective directorship, that was a member of the Bank as of the record date, and that meets all minimum capital requirements established by its appropriate federal regulator or appropriate state regulator.

(c) *Restrictions.* * * *

(4) For purposes of applying the term limit provision of Section 7(d) of the Act, a term of office that has been adjusted to a period of less than three years in accordance with § 915.17(a)(2) shall not be deemed to be a full term.

(d) *Loss of eligibility.* (1) An elective director shall become ineligible to remain in office if, during his or her term of office, the stock directorship to which he or she has been elected is eliminated or is redesignated by the Finance Board as representing members located in another state, in accordance with § 915.3(b). The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is redesignated or eliminated.

(2) In the case of a redesignation to another state, the stock directorship shall become vacant after the close of business on December 31 of the year in which the directorship is redesignated and the resulting vacancy shall be filled by the board of directors of the Bank for the remainder of the unexpired term with a person who is an officer or director of a member located in the newly designated state, pursuant to Section 7(f) of the Bank Act.

5. Amend § 915.8, by revising the first sentence of paragraph (b) to read as follows:

§ 915.8 Election process.

* * * * *

(b) *Lack of nominees.* If, for any voting state, all directorships to be filled in an election are the same with regard to their respective terms and status as guaranteed or non-guaranteed directorships, and the number of nominees from that state is equal to or less than the number of such directorships, the Bank shall notify the members in the affected voting state in writing (in lieu of providing a ballot) that the directorships are to be filled without an election due to a lack of nominees. * * *

* * * * *

6. Amend § 915.10, by revising paragraph (b), to read as follows:

§ 915.10 Selection of appointive directors.

* * * * *

(b) *Term of office.* The term of office of each appointive directorship shall be three years, except as adjusted pursuant to Section 7(d) of the Act to achieve a staggered board, and shall commence on January 1. In appointing directors for the terms commencing on January 1, 2001 and 2002, respectively, the Finance Board shall adjust the terms of any appointive directorships as necessary to achieve the one-third staggering of the board of directors required by Section 7(d) of the Act, in accordance with the requirements of this Part and the applicable matrix from the Appendix to this Part. In the case of a discretionary appointive directorship that is terminated pursuant to § 915.3(b)(5), the term of office of the directorship shall end after the close of business on December 31 of that year.

7. Add new § 915.16 to read as follows:

§ 915.16 1999 and 2000 Election of Directors.

(a) *In general.* The annual designation of Bank directorships conducted by the Finance Board in 2000 pursuant to § 915.3(b) shall control with respect to the number of elective directorships to be allocated to each state with terms commencing on January 1, 2001.

(b) *Conduct of 2000 elections.* After assigning any adjusted terms that may be required by § 915.17(a)(3), the board of directors of each Bank shall determine either:

(1) To conduct new elections for every state in the district for which an elective directorship is to commence on January 1, 2001, or

(2) To conduct new elections only in those states for which this section requires a new election to be held and, for all other states within the district, to use the results of the 1999 elections for the purpose of electing directors whose terms are to commence on January 1, 2001.

(c) *1999 election results.* If the number of nominees from any state for the 1999 election of directors who remain eligible to serve as a Bank director equals or exceeds the number of directorships designated to that state with terms commencing on January 1, 2001, the board of directors of the Bank may declare elected the nominee receiving the most votes in the 1999 election and, if more than one directorship is to be filled for that state, shall also declare elected each successive nominee receiving the next greatest number of votes, until all directorships designated for that state are filled. Before declaring elected any such nominee, the board of directors of the Bank shall confirm that the nominee is eligible to serve as a director from that state.

(d) *2000 elections.* If the number of directorships designated to any state with terms commencing on January 1, 2001, exceeds the number of nominees from that state in the 1999 election who remain eligible to serve as a Bank director, then the board of directors of the Bank shall conduct a new election for that state for all of the directorships

with terms commencing on January 1, 2001.

(e) *Report of election.* If the board of directors of a Bank adopts the 1999 election results for any state, it shall provide written notice of its decision to the Finance Board, the directors-elect, and to each member in the affected state. The notice shall indicate the date on which the term of office of each director-elect shall expire, and shall indicate which terms have been adjusted in order to stagger the board of directors as required by Section 7(d) of the Bank Act. Any such adjustments shall be made in compliance with § 915.17. Such notice shall be deemed to constitute the report of election for the 2000 election required by § 915.8(e).

(f) *Safe harbor.* In determining whether to ratify the 1999 election results or to hold new elections in 2000, an individual director that would be affected by the decision of the board shall not be deemed to have violated any regulation or Bank policy pertaining to conflicts of interest solely by virtue of having participated in the deliberations or by having voted on the matter.

8. Add new § 915.17 to read as follows:

§ 915.17 Staggered directorships in the 2000 and 2001 elections.

(a) *In general.* (1) In conjunction with the annual designations of directorships for elected directors with terms commencing on January 1, 2001 and January 1, 2002, the Finance Board shall, in addition to allocating directorships among the states, indicate the term of each elective directorship and which directorships are to be designated as non-guaranteed directorships. A non-guaranteed directorship shall retain that designation in all subsequent elections, unless the directorship is eliminated by the Finance Board pursuant to Section 7(a) of the Bank Act or as a consequence of a change in the amount of Bank stock held by members located in that state. In such subsequent elections, any non-guaranteed directorships shall be assigned on the basis of votes received, with the directors-elect who received the fewest votes being assigned the non-guaranteed directorships.

(2) The board of directors of each Bank shall adjust the terms of any directorships that are to commence on January 1, 2001 or January 1, 2002, in accordance with this section and the matrix for that Bank set forth in the appendix to this part, and shall inform the Finance Board which directorships have been assigned adjusted terms.

(3) Where the matrix for a Bank indicates that two or more guaranteed directorships are to be filled by persons elected from different states in the same year, and which are to have different terms, the board of directors of the Bank shall assign the shorter terms among the states on any reasonable basis, as determined by Bank's board, provided that:

(i) It uses the same methodology in making all such adjustments; and

(ii) It assigns the terms to the respective states before determining whether to adopt the 1999 election results, in accordance with § 915.16(b).

(b) *Adjustment of terms.* (1) Where the matrix for a Bank indicates that two or more guaranteed directorships are to be filled from the same state in the same year, but which are to have different terms, the board of directors of the Bank shall assign the terms among the eligible nominees who have received a sufficient number of votes to be elected, such that the nominees receiving the greater number of votes are assigned the longer terms and those nominees receiving the lesser number of votes are assigned the shorter terms. If the directors from any state have been declared elected without a vote, in accordance with § 915.8(b) because the number of nominees from that state was less than or equal to the number of directorships to be filled, then the board of directors of Bank shall assign the terms on the basis of the most recent election.

(2) In the elections occurring in 2000 and 2001, if the matrix for any Bank indicates that both guaranteed and non-guaranteed directorships are to be filled from the same state in the same year, the board of directors shall assign directorships among the eligible nominees who have received a sufficient number of votes to be elected, such that the nominees receiving the greatest number of votes are assigned the guaranteed directorships and those nominees receiving the fewest votes are assigned the non-guaranteed directorships. In the event that the matrix for a Bank assigns a guaranteed directorship for a particular state a shorter term than it assigns to a non-guaranteed directorship for the same state for that year, the board of directors shall assign the guaranteed directorship to the nominee receiving the greatest number of votes.

(c) *Safe harbor.* In determining which directorships shall be assigned a reduced term, an individual director that could be affected by the decision of the board shall not be deemed to have violated any regulation or Bank policy pertaining to conflicts of interest solely by virtue of having participated in the deliberations or by having voted on the matter.

(d) *Other adjustments.* The board of directors of the Bank may not adjust the term of any director other than as provided in this section.

9. Add a new appendix A to part 915 to read as follows:

Appendix A to Part 915 [Added]

Appendix A to Part 915—Staggering For FHLBank Boards of Directors

TABLE 1

Boston FHLBank (10 seats: 8 guaranteed by statute and 2 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
6 Seats to be filled in 2000 Election:			
	*Board must allocate 1 Seat to a 2-year term.		
Mass. Seat	3/2 Years*.		
Conn. Seat	3/2 Years*.		
Maine Seat	3/2 Years*.		
R. I. Seat	3/2 Years*.		
Mass. Seat	2 Years.		
Conn. Seat	2 Years	Not Guaranteed (Discretionary Seat).	

TABLE 1—Continued

Boston FHLBank (10 seats: 8 guaranteed by statute and 2 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
4 Seats to be filled in 2001 Election:			
Mass. Seat	3 Years.		
N.H. Seat	3 Years.		
Vermont Seat	3 Years.		
Mass. Seat	1 Year	Not Guaranteed (Discretionary Seat).	
Class with Terms Expiring Dec. 31, 2002 (4 seats):			
Mass./Conn./Maine/Rhode Island Seat (board to pick 1 of 4)			
Mass. Seat			
Conn. Seat (not guaranteed by statute)			
Mass. Seat (not guaranteed by statute)			
Class with Terms Expiring Dec. 31, 2003 (3 seats):			
Mass./Conn./Maine/Rhode Island Seat (board to pick 3 of 4)			
Class with Terms Expiring Dec. 31, 2004 (3 seats):			
Mass. Seat			
N.H. Seat			
Vermont Seat			

TABLE 2

N.Y. FHLBank (11 Seats: 9 Guaranteed by Statute and 2 Not Guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 3–3–3 Total staggering: 3–4–4
7 Seats to be filled in 2000 election:			
New York Seat	3 Years.		
New Jersey Seat	3 Years.		
Puerto Rico Seat	3 Years.		
New York Seat	3 Years	Not Guaranteed (Stock Seat).	
New York Seat	2 Years.		
New York Seat	2 Years.		
New Jersey Seat	2 Years.		
4 Seats to be filled in 2001 election:			
New York Seat	3 Years.		
New York Seat	3 Years	Not Guaranteed (Stock Seat).	
New Jersey Seat	3 Years.		
New Jersey Seat	3 Years.		
Class with Terms Expiring Dec. 31, 2002 (3 seats):			
New York Seat			
New York Seat			
New Jersey Seat			
Class with Terms Expiring Dec. 31, 2003 (4 seats):			
New York Seat			
New York Seat (not guaranteed by statute)			
New Jersey Seat			
Puerto Rico Seat			
Class with Terms Expiring Dec. 31, 2004 (4 seats):			
New York Seat			
New York Seat (not guaranteed by statute)			
New Jersey Seat			
New Jersey Seat			

TABLE 3

Pitts. FHLBank (8 seats: all guaranteed by statute)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 2–3–3
4 Seats to be filled in 2000 Election:			
Penn. Seat	3 Years.		
Penn. Seat	3 Years.		
Penn. Seat	3 Years.		
Penn. Seat	2 Years.		
4 Seats to be filled in 2001 Election			
West Va. Seat	3 Years.		
Delaware Seat	3 Years.		
Penn. Seat	3 Years.		
Penn. Seat	1 Year.		

TABLE 3—Continued

Pitts. FHLBank (8 seats: all guaranteed by statute)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 2–3–3
Class with Terms Expiring Dec. 31, 2002 (2 seats):			
Penn. Seat			
Penn Seat			
Class with Terms Expiring Dec. 31, 2003 (3 seats):			
Penn. Seat			
Penn. Seat			
Penn. Seat			
Class with Terms Expiring Dec. 31, 2004 (3 seats):			
Penn. Seat			
Delaware Seat			
West Va. Seat			

TABLE 4

Atlanta FHLBank (9 Seats: 8 guaranteed by statute and 1 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 3–3–3
4 Seats to be filled in 2000 Election:			
	*Board must allocate 1 Seat to a 2-year term.		
D.C. Seat	3/2 Years*.		
Alabama Seat	3/2 Years*.		
Virginia Seat	3/2 Years*.		
S. Carolina Seat	3/2 Years*.		
5 Seats to be filled in 2001 Election:			
	*Board must allocate 1 Seat to a 1-year term		
N. Carolina Seat	3/1 Years*.		
Georgia Seat	3/1 Years*.		
Maryland Seat	3/1 Years*.		
Florida Seat	3/1 Years*.		
N. Carolina Seat	1 Year*.	Not Guaranteed (Discretionary Seat).	
Class with Terms Expiring Dec. 31, 2002 (3 seats):			
North Carolina Seat (not guaranteed by statute)			
D.C./Alabama/Virginia/So. Carolina Seat (board to pick 1 of 4)			
No. Carolina/Georgia/Maryland/Florida Seat (board to pick 1 of 4)			
Class with Terms Expiring Dec. 31, 2003 (3 seats):			
D.C./Alabama/Virginia/So. Carolina Seat (board to pick 3 of 4)			
Class with Terms Expiring Dec. 31, 2004 (3 seats):			
No. Carolina/Georgia/Maryland/Florida Seat (board to pick 3 of 4)			

TABLE 5

Cincinnati FHLBank (9 seats: 8 guaranteed by statute and 1 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 3–3–3
4 Seats to be filled in 2000 Election:			
	*Board must allocate 1 Seat to a 2-year term.		
Kentucky Seat	3 Years.		
Ohio Seat	3 Years.		
Kentucky Seat	3/2 Years*.		

TABLE 5—Continued

Cincinnati FHLBank (9 seats: 8 guaranteed by statute and 1 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 3–3–3
Ohio Seat	3/2 Years*.		
5 Seats to be filled in 2001 Election:			
	*Board must allocate 1 Seat to a 1-year term.		
Ohio Seat	3 Years.		
Tennessee Seat	3 Years.		
Tennessee Seat	3/1 Years*.		
Ohio Seat	3/1 Years*.		
Ohio Seat	1 Year	Not Guaranteed (Stock Seat).	
Class with Terms Expiring Dec. 31, 2002 (3 seats):			
Kentucky or Ohio Seat (board to decide)			
Ohio Seat (not guaranteed by statute)			
Tennessee or Ohio Seat (board to decide)			
Class with Terms Expiring Dec. 31, 2003 (3 seats):			
Kentucky Seat			
Ohio Seat			
Kentucky or Ohio Seat (board to decide)			
Class with Terms Expiring Dec. 31, 2004 (3 seats):			
Ohio Seat			
Tennessee Seat			
Tennessee or Ohio Seat (board to decide)			

TABLE 6

Indianapolis FHLBank (10 seats: 8 guaranteed by statute and 2 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
4 Seats to be filled in 2000 Election:			
Indiana Seat	3 Years.		
Indiana Seat	3 Years.		
Michigan Seat	3 Years.		
Indiana Seat	2 Years.		
6 Seats to be filled in 2001 Election:			
	*Board must allocate 1 Seat to a 1-year term.		
Michigan Seat	3 Years.		
Indiana Seat	3 Years.		
Michigan Seat	3/1 Years*.		
Indiana Seat	3/1 Years*.		
Michigan Seat	1 Year	Not Guaranteed (Stock Seat).	
Michigan Seat	1 Year	Not Guaranteed (Stock Seat).	
Class with Terms Expiring Dec. 31, 2002 (4 seats):			
Indiana Seat.			
Michigan or Indiana Seat (board to decide).			
Michigan Seat (not guaranteed by statute).			
Michigan Seat (not guaranteed by statute).			
Class with Terms Expiring Dec. 31, 2003 (3 seats).			
Indiana Seat.			
Indiana Seat.			
Michigan Seat.			
Class with Terms Expiring Dec. 31, 2004 (3 seats).			
Michigan Seat.			
Indiana Seat.			
Michigan or Indiana Seat (board to decide).			

TABLE 7

Chicago FHLBank (10 seats: 8 guaranteed by statute and 2 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
4 Seats to be filled in 2000 Election:			
Illinois Seat	3 Years.		

TABLE 7—Continued

Chicago FHLBank (10 seats: 8 guaranteed by statute and 2 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
Wisconsin Seat	3 Years.		
Wisconsin Seat	3 Years.		
Wisconsin Seat	2 Years.		
6 Seats to be filled in 2001 Election:			
Wisconsin Seat	3 Years.		
Illinois Seat	3 Years.		
Illinois Seat	3 Years.		
Illinois Seat	1 Year.		
Illinois Seat	1 Year.	Not Guaranteed (Stock Seat).	
Illinois Seat	1 Year.	Not Guaranteed (Stock Seat).	
Class with Terms Expiring Dec. 31, 2002 (4 seats)			
Wisconsin Seat			
Illinois Seat			
Illinois Seat (not guaranteed by statute)			
Illinois Seat (not guaranteed by statute)			
Class with Terms Expiring Dec. 31, 2003 (3 seats)			
Illinois Seat			
Wisconsin Seat			
Wisconsin Seat			
Class with Terms Expiring Dec. 31, 2004 (3 seats)			
Wisconsin Seat			
Illinois Seat			
Illinois Seat			

TABLE 8

Des Moines Bank (10 seats: 8 guaranteed by statute and 2 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
6 Seats to be filled in 2000 Election:			
	*Board must allocate 1 Seat to a 2-year term		
Missouri Seat	3/2 Years*.		
South Dakota Seat	3/2 Years*.		
Iowa Seat	3/2 Years*.		
Minnesota Seat	3/2 Years*.		
Iowa Seat	2 Years.		
Minnesota Seat	2 Years	Not Guaranteed (Stock Seat).	
4 Seats to be filled in 2001 Election:			
Missouri Seat	3 Years.		
Minnesota Seat	3 Years.		
North Dakota Seat	3 Years.		
Missouri Seat	1 Year	Not Guaranteed (Discretionary Seat).	
Class with Terms Expiring Dec. 31, 2002 (4 seats):			
Iowa Seat			
Missouri/So.Dakota/Iowa/Minnesota Seat (board to pick 1 of 4)			
Minnesota Seat (not guaranteed by statute)			
Missouri Seat (not guaranteed by statute)			
Class with Terms Expiring Dec. 31, 2003 (3 seats):			
Missouri/So. Dakota/Iowa/Minnesota Seat (board to pick 3 of 4)			
Class with Terms Expiring Dec. 31, 2004 (3 seats):			
Missouri Seat			
Minnesota Seat			
North Dakota Seat			

TABLE 9

Dallas FHLBank (9 seats: 8 guaranteed by statute and 1 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 3–3–3
4 Seats to be filled in 2000 Election:			
Texas Seat	3 Years.		

TABLE 9—Continued

Dallas FHLBank (9 seats: 8 guaranteed by statute and 1 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 3–3–3
Louisiana Seat	3 Years.		
Arkansas Seat	3 Years.		
Louisiana Seat	2 Years.		
5 Seats to be filled in 2001 Election:			
Texas Seat	3 Years.		
Mississippi Seat	3 Years.		
New Mexico Seat	3 Years.		
Texas Seat	1 Year.		
Texas Seat	1 Year	Not Guaranteed (Stock Seat).	
Class with Terms Expiring Dec. 31, 2002 (3 seats):			
Louisiana Seat			
Texas Seat			
Texas Seat (not guaranteed by statute)			
Class with Terms Expiring Dec. 31, 2003 (3 seats):			
Texas Seat			
Louisiana Seat			
Arkansas Seat			
Class with Terms Expiring Dec. 31, 2004 (3 seats):			
Texas Seat			
Mississippi Seat			
New Mexico Seat			

TABLE 10

Topeka FHLBank (10 seats: 8 guaranteed by statute and 2 not guaranteed)	Term	Non-Guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
5 Seats to be filled in 2000 Election:			
Colorado Seat	3 Years.		
Oklahoma Seat	3 Years.		
Kansas Seat	3 Years.		
Colorado Seat	2 Years.		
Kansas Seat	2 Years.		
5 Seats to be filled in 2001 Election:			
Kansas Seat	3 Years.		
Oklahoma Seat	3 Years.		
Nebraska Seat	3 Years.		
Nebraska Seat	1 Year	Not Guaranteed (Stock Seat).	
Nebraska Seat	1 Year	Not Guaranteed (Stock Seat).	
Class with Terms Expiring Dec. 31, 2002 (4 seats):			
Colorado Seat			
Kansas Seat			
Nebraska Seat (not guaranteed by statute)			
Nebraska Seat (not guaranteed by statute)			
Class with Terms Expiring Dec. 31, 2003 (3 seats):			
Colorado Seat			
Oklahoma Seat			
Kansas Seat			
Class with Terms Expiring Dec. 31, 2004 (3 seats):			
Kansas Seat			
Oklahoma Seat			
Nebraska Seat			

TABLE 11

San Francisco FHLBank (8 seats: 5 guaranteed by statute and 3 not guaranteed)	Terms	Non-guaranteed seats	Guaranteed staggering: 1–2–2 Total staggering: 2–3–3
4 Seats to be filled in 2000 Election:			
California Seat	3 Years.		
California Seat	3 Years.		
California Seat	3 Years	Not Guaranteed (Stock Seat).	
California Seat	2 Years	Not Guaranteed (Stock Seat).	

TABLE 11—Continued

San Francisco FHLBank (8 seats: 5 guaranteed by statute and 3 not guaranteed)	Terms	Non-guaranteed seats	Guaranteed staggering: 1–2–2 Total staggering: 2–3–3
4 Seats to be filled in 2001 Election:			
	*Board must allocate 1 seat to a 1-year term		
California Seat	3/1 Years*.		
Nevada Seat	3/1 Years*.		
Arizona Seat	3/1 Years*.		
California Seat	1 Year	Not Guaranteed (Stock Seat).	
Class with Terms Expiring Dec. 31, 2002 (3 seats):			
California/Nevada/Arizona Seat (board to pick 1 of 3)			
California Seat (not guaranteed by statute)			
California Seat (not guaranteed by statute)			
Class with Terms Expiring Dec. 31, 2003 (3 seats):			
California Seat			
California Seat			
California Seat (not guaranteed by statute)			
Class with Terms Expiring Dec. 31, 2004 (2 seats):			
California/Nevada/Arizona Seat (board to pick 2 of 3)			

TABLE 12

Seattle FHLBank (10 seats: 8 guaranteed by statute and 2 not guaranteed)	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
5 Seats to be filled in 2000 Election:			
Hawaii Seat	3 Years.		
Utah Seat	3 Years.		
Alaska Seat	3 Years.		
Washington Seat	2 Years	Not Guaranteed (Discretionary Seat).	
Washington Seat	2 Years	Not Guaranteed (Discretionary Seat).	
5 Seats to be filled in 2001 Election:			
	*Board must allocate 2 seats to 1-year terms		
Montana Seat	3/1 Years*.		
Oregon Seat	3/1 Years*.		
Washington Seat	3/1 Years*.		
Idaho Seat	3/1 Years*.		
Wyoming Seat	3/1 Years*.		
Class with Terms Expiring Dec. 31, 2002 (4 seats):			
Montana/Oregon/Idaho/Wyoming/Washington Seat (board to pick 2 of 5)			
Washington Seat (not guaranteed by statute)			
Washington Seat (not guaranteed by statute)			
Class with Terms Expiring Dec. 31, 2003 (3 seats):			
Hawaii Seat			
Utah Seat			
Alaska Seat			
Class with Terms Expiring Dec. 31, 2004 (3 seats):			
Montana/Oregon/Idaho/Wyoming/Washington Seat (board to pick 3 of 5)			

Dated: June 23, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–16964 Filed 7–5–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–57]

Realignment of Federal Airways; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns five Federal airways in the Marquette, MI, area. This action will realign the affected Federal airways from the Marquette Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Sawyer VOR/DME (previously named Gwinn in the notice). The FAA is taking this action due to the

decommissioning of the Marquette VOR/DME and the commissioning of the Sawyer VOR/DME, which will be located approximately 15 nautical miles (NM) to the southeast of the present location of the Marquette VOR/DME. In addition, this action renames the current VOR/DME from the Gwinn VOR/DME to the Sawyer VOR/DME and amends the legal description of V–316 to include the Newberry VOR/DME.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The location of the new facility (previously named Gwinn) is located on the Sawyer International Airport. Therefore, in accordance with standard procedures the facility is renamed Sawyer. On May 21, 2000, the FAA proposed to amend several VOR Federal airways in the vicinity of Sawyer, MI, due to the decommissioning of the Marquette VOR/DME and the commissioning of the Sawyer VOR/DME (65 FR 21682). During the flight check of V–316 it was determined the route between the Sawyer VOR/DME and the Sault Ste Marie VORTAC was unsatisfactory. As a result, the FAA altered V–316 to the south approximately 3 NM to the Newberry VOR/DME.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, the name change of the facility from "Gwinn" to "Sawyer" and the change to V–316 to include the Newberry VOR/DME, this amendment is the same as that proposed in the notice.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) realigns five Federal airways due to the decommissioning of the Marquette VOR/DME and the commissioning of the new Sawyer VOR/DME. Specifically, V–7, V–133, V–224, V–316, and V–341 are realigned from their former routes to the Sawyer VOR/DME. The Sawyer VOR/DME is located approximately 15 NM southeast of the former Marquette location. In addition, as a result of an unsatisfactory flight check the FAA is amending V–316 to include the Newberry VOR/DME. Additionally, in accordance with standard procedures the facility is renamed Sawyer. The FAA is taking this action to manage the navigable airspace and support navigational requirements in the vicinity of Marquette, MI.

Domestic VOR Federal airways are published in Section 6010(a) of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a significant regulatory action" under Executive Order 12866; (2) is not a significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–7 [Revised]

From Dolphin, FL; INT Dolphin 299° and Lee County, FL, 120° radials; Lee County; Lakeland, FL; Cross City, FL; Seminole, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN; Central City, KY; Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; to Sawyer, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

* * * * *

V–133 [Revised]

From INT Charlotte, NC, 305° and Barretts Mountain, NC, 197° radials; Barretts Mountain; Charleston, WV; Zanesville, OH; Tiverton, OH; Mansfield, OH; INT Mansfield 349° and Detroit, MI, 141° radials; Detroit; Salem, MI; INT Salem 346°and Saginaw, MI, 160° radials; Saginaw; Traverse City, MI; Escanaba, MI; Sawyer, MI; Houghton, MI; Thunder Bay, ON, Canada; International Falls, MN; to Red Lake, ON, Canada. The airspace within Canada is excluded.

* * * * *

V–224 [Revised]

From Saywer, MI; to Schoolcraft County, MI.

* * * * *

V–316 [Revised]

From Ironwood, MI; Sawyer, MI; Newberry, MI; Sault Ste Marie, MI; thence via Sault Ste Marie 091° radial to Elliot Lake, ON, Canada, NDB; thence to Sudbury, ON, Canada, via the 259° radial to Sudbury. The airspace within Canada is excluded.

* * * * *

V–341 [Revised]

From Cedar Rapids, IA; Dubuque, IA; Madison, WI; Oshkosh, WI; Green Bay, WI; Menominee, MI; Iron Mountain, MI; Sawyer, MI; to Houghton, MI.

* * * * *

Issued in Washington, DC, on June 28, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–17063 Filed 7–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30094; Amdt. No. 423]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on June 23, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 10, 2000.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 423, Effective Date: August 10, 2000. Final]

From	To	MEA
Color Routes § 95.4008 Green Federal Airway 8 Is Amended to Read in Part		
DUTCH HARBOR, AK NDB/DME *5,700—MOCA	MORDI, AK FIX	*9,000
MORDI, AK FIX *5,300—MOCA	ELFEE, AK NDB	*8,000
ELFEE, AK NDB *4,100—MOCA	CRACK, AK FIX	*5,000
CRACK, AK FIX *2,300—MOCA	SALDO, AK NDB	*3,000
SALDO, AK NDB *4,900—MOCA	NOSKY, AK FIX	*6,000
NOSKY, AK FIX	KACHEMAK, AK NDB	6,000
§ 95.2099 Red Federal Airway 99 Is Amended to Read in Part		
NOSKY, AK FIX	KACHEMAK, AK NDB	6,000
Victor Routes-U.S. § 95.6005 VOR Federal Airway 5 Is Amended to Read in Part		
LOUISVILLE, KY VORTAC	NERVE, KY FIX	*10000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 423, Effective Date: August 10, 2000. Final]

From	To	MEA
*2500—MOCA NERVE, KY FIX	CINCINNATI, KY VORTAC	2700
§ 95.6006 VOR Federal Airway 6 Is Amended to Read in Part		
TOUHY, NE FIX	OMAHA, NE VORTAC	4,000
§ 95.6007 VOR Federal Airway 7 Is Amended to Read in Part		
MENOMINEE, MI VOR/DME	SAWYER, MI VOR/DME	2900
§ 95.6008 VOR Federal Airway 8 Is Amended to Read in Part		
TOUHY, NE FIX	OMAHA, NE VORTAC	4,000
§ 95.6009 VOR Federal Airway 9 Is Amended to Read in Part		
IRON MOUNTAIN, MI VORTAC *3,300—MOCA	HOUGHTON, MI VOR/DME	*3800
§ 95.6013 VOR Federal Airway 13 Is Amended to Read in Part		
WORRY, TX FIX *2,300—MRA	*AUSTS, TX FIX	1,700
FARMINGTON, MN VORTAC *5,500—MRA *3,400—MOCA	*WAGNR, MN FIX	**5,000
WAGNR, MN FIX *3,400—MOCA	CINCI, MN FIX	*5,500
§ 95.6016 VOR Federal Airway 16 Is Amended to Read in Part		
SPEEL, VA FIX	MAXME, VA FIX	7700
§ 95.6020 VOR Federal Airway 20 Is Amended to Read in Part		
CORPUS CHRISTI, TX VORTAC *2,400—MRA	*COPAN, TX FIX	1,600
§ 95.6070 VOR Federal Airway 70 Is Amended to Read in Part		
CORPUS CHRISTI, TX VORTAC *2,400—MRA	COPAN, TX FIX	1,600
§ 95.6115 VOR Federal Airway 115 Is Amended to Read in Part		
MALIN, TN FIX	ROSAR, KY FIX	5000
§ 95.6133 VOR Federal Airway 133 Is Amended to Read in Part		
ESCANABA, MI VORTAC SAWYER, MI VOR/DME *3400—MOCA	SAWYER, MI VOR/DME HOUGHTON, MI VOR/DME	2800 *4500
§ 95.6136 VOR Federal Airway 136 Is Amended to Read in Part		
SPEEL, VA FIX	MAXME, VA FIX	7700
§ 95.6138 VOR Federal Airway 138 Is Amended to Read in Part		
LINCOLN, NE VORTAC	OMAHA, NE VORTAC	4,000
§ 95.6224 VOR Federal Airway 224 Is Amended to Read in Part		
SAWYER MI VOR/DME *2600—MOCA	SCHOOLCRAFT COUNTY, MI VOR/DME	*3,500
§ 95.6316 VOR Federal Airway 316 Is Amended to Read in Part		
IRONWOOD, MI VORTAC *3100—MOCA	SAWYER, MI VOR/DME	*6000
SAWYER, MI VOR/DME	UZMEF, MI FIX	*3500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 423, Effective Date: August 10, 2000. Final]

From	To	MEA
*2600—MOCA UZMEF, MI FIX	NEWBERRY, MI VOR/DME	*6000
*2500—MOCA NEWBERRY, MI VOR/DME	SAULT STE MARIE, MI VORTAC	*3000
*2300—MOCA		
§ 95.6333 VOR Federal Airway 333 Is Amended to Read in Part		
JELLO, TN FIX	DOLLY, KY FIX	4000
DOLLY, KY FIX	LEXINGTON, KY VORTAC	3800
§ 95.6341 VOR Federal Airway 341 Is Amended to Read in Part		
IRON MOUNTAIN, MI VORTAC	SAWYER, MI VOR/DME	3100
SAWYER, MI VOR/DME	HOUGHTON, MI VOR/DME	*4500
*3400—MOCA		
§ 95.6347 VOR Federal Airway 347 Is Amended to Read in Part		
HINCH MOUNTAIN, TN VORTAC	LONDON, KY VORTAC	4700
§ 95.6375 VOR Federal Airway 375 Is Amended to Read in Part		
PROSE, VA FIX	ROMAN, VA FIX	6000
ROMAN, VA FIX	GORDONSVILLE, VA VORTAC	*5000
*3900—MOCA		
§ 95.6384 VOR Federal Airway 384 Is Added to Read		
LIVINGSTON, TN VORTAC	VOLUNTEER, TN VORTAC	5500
§ 95.6407 VOR Federal Airway 407 Is Amended to Read in Part		
WORRY, TX FIX	*AUSTS, TX FIX	1,700
*2300—MRA		
§ 95.6512 VOR Federal Airway 512 Is Amended to Read in Part		
LOUISVILLE, KY VORTAC	CLEGG, KY FIX	*10000
*2700—MOCA		
§ 95.6517 VOR Federal Airway 517 Is Amended to Read in Part		
SNOWBIRD, TN VORTAC	MIAMI, TN FIX	6900
MIAMI, TN FIX	LONDON, KY VORTAC	*5500

From	To	Distance	From
VOR Changeover Points § 95.8316 VOR Federal Airway 316 Is Amended To Read			
IRONWOOD, MI, VORTAC	SAWYER, MI, VOR/DME	64	IRONWOOD.
SAWYER, MI, VOR/DME	NEWBERRY, MI VOR/DME	50	SAWYER.
§ 95.8133 VOR Federal Airway 133 Is Amended To Delete			
MARQUETTE, MI, VOR/DME	ESCANABW, MI, VORTAC	33	MARQUETTE.

[FR Doc. 00–16450 Filed 7–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM98–10–000]

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

June 29, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule, Notice of Availability of Instruction Manual for Electronic Filing of the Index of Customers.

SUMMARY: On February 9, 2000, the Federal Energy Regulatory Commission issued a final rule in this proceeding adding new information requirements to the Index of Customers to be filed by natural gas companies with the Commission, and posted on the companies' Internet web sites on the first business day of each calendar quarter. This notice announces the availability of the revised Instruction Manual for Electronic Filing of the Index of Customers in the Commission's Public Reference Room and electronically on the Commission's Internet web page.

DATES: Natural gas companies must implement the new reporting requirements by September 1, 2000.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Craig Hill, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0621.

SUPPLEMENTARY INFORMATION: On February 9, 2000, the Federal Energy Regulatory Commission (Commission) issued Order No. 637 amending its regulations in response to the development of more competitive markets for natural gas and the transportation of natural gas.[1] These changes included expanding reporting requirements for the Index of Customers in order to provide shippers with a more useful picture of the structure of the market for decisionmaking and monitoring purposes.

The Commission added the following new reporting requirements to the Index of Customers data collection: the receipt and delivery points held under the contract and the zones or segments in which the capacity is held; the common transaction point codes; the contract number; a shipper identification number, such as DUNS; an indication whether the contract includes negotiated rates; the names of any agents or asset managers that control capacity in a pipeline rate zone; and any affiliate relationship between the pipeline and the holder of capacity.[2]

The Commission issues an Instruction Manual for Electronic Filing of the Index of Customers explaining how pipelines are to report Index of Customer data. This Manual has been revised to incorporate the new reporting requirements.

The revised Instruction Manual for Electronic Filing of the Index of Customers is attached to this notice as an Appendix.[3] The revised manual can be found at the following electronic address: *http://www.ferc.fed.us/public/elec req.htm*. The manual also is available in the Commission's Public Reference Room and on CIPS and RIMs. As indicated in Order No. 637, pipelines are required to implement these new reporting requirements by September 1, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–16997 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 65 FR 10156 (Feb. 25, 2000); III FERC Stats. & Regs. ¶ 31,091 (Feb. 9, 2000).

[2] 18 CFR 284.13(c).

[3] The Revised Instruction Manual (Appendix A) and a summary of the new reporting requirements for the Index of Customers and the revisions to the IOC electronic filing instruction manual (Appendix B) attached to this notice will not be published in the **Federal Register**.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 98C–0212]

Listing of Color Additives Exempt From Certification; Haematococcus Algae Meal

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of haematococcus algae meal as a color additive in the feed of salmonid fish to enhance the color of their flesh. This action is in response to a petition filed by Cyanotech Corp.

DATES: This rule is effective August 8, 2000; except as to any provisions that may be stayed by the filing of proper objections. Submit written objections and requests for a hearing by August 7, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of April 16, 1998 (63 FR 18920), FDA announced that a color additive petition (CAP 8C0256) had been filed by Cyanotech Corp., <73–4460 Queen Kaahumanu Hwy., #102, Kailua-Kona, HI 96740. The petition proposed to amend the color additive regulations to provide for the safe use of haematococcus algae meal as a color additive in salmonid fish feeds.

II. Identity, Technical Effect, and Specifications

Haematococcus algae meal consists of the comminuted and dried cells of the alga *Haematococcus pluvialis* (also known as *H. lacustris*). The major components of haematococcus algae meal are proteins, carbohydrates, and lipids produced by the alga cells. The primary coloring substance in haematococcus algae meal is astaxanthin (3,3′-dihydroxy-β,β-carotene-4,4′-dione), which exists

primarily in esterified forms (Ref. 1). One published (Ref. 2) and several unpublished studies included in the petition showed that haematococcus algae meal satisfactorily pigmented the flesh of the fish when it was fed to salmonid fish.

In the **Federal Register** of April 13, 1995 (60 FR 18736), the agency published a final rule that listed astaxanthin in § 73.35 (21 CFR 73.35) for use in the feed of salmonid fish (hereinafter referred to as the April 1995 final rule). In the preamble to that rule, the agency stated that the new regulation for astaxanthin did not specify the source of astaxanthin or the manufacturing process, because the agency had made its safety determination based on the chemical similarity of synthetic astaxanthin to astaxanthin from natural sources. The agency concluded that any source could be used to produce the color additive as long as the astaxanthin meets the identity, specifications, and stability requirements defined in § 73.35, and it is manufactured in accordance with good manufacturing practice. Furthermore, the agency stated in the astaxanthin rule that the specifications were listed to convey the fact that FDA had evaluated only a particular form of the color additive. The agency also stated that it was concerned that deleterious materials not found in the habitat of salmonids may be included in fish feed from biomass products that contain only a small amount of astaxanthin with the rest of the material being residues from the producing organisms. Thus, the agency said that interested parties should submit information in the form of a new color additive petition if they wish to market a biomass product containing astaxanthin.

Haematococcus algae meal is a biomass product that contains a relatively small amount of astaxanthin with the rest of the material being proteins, carbohydrates, and lipids. In addition, the agency determined that haematococcus algae meal would not meet the specifications in § 73.35(b) for solubility in chloroform, absorption maximum wavelength, and residue on ignition, because some of the algal components in haematococcus algae meal would interfere with the test methods. Furthermore, the petitioner specified the astaxanthin content of haematococcus algae meal to be not less than 1.5 percent, whereas the corresponding specification for astaxanthin in § 73.35(b) is not less than 96 percent. Therefore, the agency concludes that a new regulation is necessary to list haematococcus algae meal.

In the April 1995 final rule, the agency concluded that 80 milligrams per kilogram (mg/kg) of astaxanthin in fish feed would result in adequate pigmentation of the flesh of salmonids. Therefore, in § 73.35(c)(2) the agency limited the astaxanthin content of finished feed to not more than 80 mg/kg. However, the agency now notes that astaxanthin in the feed of farm-raised salmonid fish may come not only from the color additive astaxanthin meeting the specifications of § 73.35, but also from the color additive haematococcus algae meal and other color additives that are sources of astaxanthin the agency may list in the future. Therefore, new § 73.185(c)(2) requires that the quantity of astaxanthin in finished feed, from haematococcus algae meal when used alone or in combination with other astaxanthin color additive sources listed in part 73 (21 CFR part 73), shall not exceed 80 mg/kg (72 grams per ton) of finished feed.

III. Safety Evaluation

In evaluating the safety of the use of haematococcus algae meal in fish feed, the agency considered: (1) The safety of astaxanthin in haematococcus algae meal to humans and fish; and (2) the safety of the other components in haematococcus algae meal to humans and fish.

A. Safety of Astaxanthin

Astaxanthin is the principal pigment that imparts the pink or red coloring characteristic of the flesh of wild salmonids. These fish obtain astaxanthin from the crustaceans that constitute a significant portion of their diet (Ref. 3). A similar flesh color may be obtained in aquacultured salmonids by feeding them a diet supplemented with astaxanthin. In the April 1995 final rule, the agency concluded that astaxanthin was safe for use in the feed of salmonid fish. This conclusion was based on the following facts: (1) The petitioned use of astaxanthin would result in deposition of a very small amount of astaxanthin in salmonid flesh; (2) astaxanthin that was the subject of the April 1995 final rule, differed from astaxanthin present in the flesh of wild salmon only in its optical isomeric distribution; (3) human exposure to astaxanthin from consumption of aquacultured salmon fed synthetic astaxanthin is comparable to the exposure to astaxanthin from wild salmon. In addition, the results of the toxicity studies submitted by the petitioner supported the conclusion that there was reasonable certainty of no harm from the petitioned use of astaxanthin.

The facts upon which the agency concluded, in the April 1995 final rule, that astaxanthin was safe for use in the feed of salmonid fish, are similar to the facts upon which the agency is basing its conclusion that astaxanthin from the petitioned use of haematococcus algae meal is safe for use in the feed of salmonid fish. During the review of the present petition, the agency determined that in both crustaceans and *H. pluvialis*, astaxanthin is mainly in esterified forms that are converted to free astaxanthin during digestion and deposited as such in fish flesh (Ref. 4). The agency also determined that free astaxanthin from *H. pluvialis* differed from astaxanthin present in the flesh of wild salmon only in its optical isomeric distribution and that the petitioned use of astaxanthin would result in deposition of a very small amount of astaxanthin in salmonid flesh. Furthermore, the agency determined that the astaxanthin from haematococcus algae meal will substitute for the fish feed uses of astaxanthin listed in § 73.35, and that the petitioned use of haematococcus algae meal will not increase the estimated daily intake of astaxanthin in humans, which is comparable to the exposure to astaxanthin from wild salmon. Therefore, the agency concludes that astaxanthin from the petitioned use of haematococcus algae meal is safe for use in the feed of salmonid fish.

B. Safety of the Producing Organism

Based on the data in the petition and other relevant material, the agency determined that: (1) Consumers will not be directly exposed to haematococcus algae meal, but to astaxanthin remaining in fish that have consumed the yeast in their diet; (2) there is no evidence that any constituents other than astaxanthin will accumulate in fish maintained on diets supplemented with haematococcus algae meal; (3) the results of studies during which rats and salmon were fed haematococcus algae meal and bacterial mutagenicity tests did not reveal any adverse effects, indicating the absence of toxic impurities in the algae; (4) a literature search uncovered no reports of pathogenicity or toxicogenicity of *H. pluvialis*; and (5) algae are commonly used as feed components in fish aquaculture with no deleterious effects on fish health. Based on this information, FDA concludes that the petitioned use of haematococcus algae meal is safe (Ref. 5).

IV. Stability of Astaxanthin in Haematococcus Algae Meal

Based on the results of stability studies of haematococcus algae meal submitted by the petitioner, FDA concludes that to minimize chemical changes that would result in loss of color of astaxanthin, haematococcus algae meal must be added to fish feed only in the form of a stabilized color additive mixture. Therefore, new § 73.185(a)(2) requires that haematococcus algae meal be added to fish feed only as a component of a stabilized color additive mixture.

V. Labeling Requirements

All color additives, in accordance with § 70.25 (21 CFR 70.25), require sufficient information to assure their safe use and to allow a determination of compliance with any limitations imposed by the agency in other applicable regulations. Therefore, the labeling of the color additive, haematococcus algae meal, and any mixture prepared therefrom, is subject to the requirements of § 70.25.

According to § 70.25(a)(4), an expiration date for a color additive must be stated on its label if stability data require it. FDA finds that because of the instability of astaxanthin in haematococcus algae meal, an expiration date must be stated on the label of sealed and open containers, in accordance with § 70.25(a)(4). FDA also finds that declaration of the expiration date constitutes a material fact that must be disclosed on the label of the color additive mixture under sections 201(n) and 403(a)(1) of the act (21 U.S.C. 321(n) and 343(a)(1)) because failure to do so would constitute a failure to reveal facts material in light of the representations made on the label and material with respect to consequences that may result from the use of the color additive. The use of haematococcus algae meal requires the declaration of expiration dates because astaxanthin in haematococcus algae meal can decompose to products that would not be coloring agents and thus would not affect the color of salmonid flesh.

In addition to the requirements for labeling the color additive or color additive mixture, the ingredient list on fish feed, to which haematococcus algae meal is added, must identify the presence of the color additive under § 501.4 (21 CFR 501.4). New § 73.185(d)(2) references § 501.4 to ensure that the presence of haematococcus algae meal as a color additive in the fish feed will be declared on the ingredient label.

Finally, the presence of the color additive must be declared on the label of any food, including salmonid fish, containing added haematococcus algae meal and food containing such salmonid fish as an ingredient. Section 101.22(b) (21 CFR 101.22(b)) requires a food that bears or contains artificial coloring, such as salmon artificially colored with haematococcus algae meal, to bear labeling even though such food is not in package form. Section 101.22(c) requires that label statements of artificial coloring be "likely to be read by the ordinary person under customary conditions of purchase and use of such food."

Furthermore, § 101.22(k)(2) requires, in the statement of ingredients for a food to which any coloring has been added, and for which the coloring is not subject to certification, a declaration that makes it clear that a color additive has been used in the food. In addition, the presence of a color additive must be declared on any bulk container of food containing a color additive that is held at a retail establishment under the provisions in § 101.100(a)(2) (21 CFR 101.100(a)(2)). The ingredient label would prevent economic fraud in salmonid fish containing added haematococcus algae meal because the ingredient label would notify the consumer that the fish is artificially colored. Without such ingredient labeling, food comprising salmonid fish with added haematococcus algae meal would be deemed to be misbranded under section 403(k) of the act, which states that: "A food shall be deemed to be misbranded * * * If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact * * *."

Therefore, in accordance with §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2), labeling on any salmonid fish containing haematococcus algae meal is required to declare the presence of the color additive or color additive mixture. New § 73.185(d)(3) references §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2) to ensure that, at the retail level, the presence of haematococcus algae meal as a color additive in the fish will be declared, and that the labeling of the bulk fish container, including a list of ingredients, will be displayed on the container or on a counter card with similar information.

In the future, the agency also intends to propose to amend § 73.35(d)(3) to include references to § 101.22(b) and (c).

VI. Conclusion

Based on the data in the petition and other relevant material, FDA concludes that the petitioned use of haematococcus algae meal as a color additive in fish feed to color the flesh of salmonid fish is safe, the additive will achieve its intended technical effect, and therefore, part 73 should be amended as set forth below. In addition, based upon the factors listed in 21 CFR 71.20(b), the agency concludes that certification of haematococcus algae meal is not necessary for the protection of the public health.

VII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VIII. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 8C0256. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IX. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by August 7, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event

that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Renstrom, B., G. Borch, O. M. Skulberg, and S. Liaaen-Jensen, "Optical Purity of (3S,3'S)-Astaxanthin from *Haematococcus pluvialis*," *Phytochemistry*, 20:2561–2564, 1981.

2. Sommer, T. R., W. T. Potts, and N. M. Morrissy, "Utilization of Microalgal Astaxanthin by Rainbow Trout (*Oncorhynchus mykiss*)," *Aquaculture*, 94:79–88, 1991.

3. Kitahara, T., "Carotenoids in the Pacific Salmon During the Marine Period," *Comprehensive Biochemistry and Physiology*, 78B:859–862, 1984.

4. Mori, T., K. Makabe, K. Yamaguchi, S. Konosu, and S. Arai, "Comparison Between Krill Astaxanthin Diester and Synthesized Free Astaxanthin Supplemented to Diets in Their Absorption and Deposition by Juvenile Coho Salmon (*Oncorhynchus kisutch*)," *Comprehensive Biochemistry and Physiology*, 93B:255–258, 1989.

5. Johnson, C. B., Memorandum entitled "*Haematococcus pluvialis* Algae Meal for Use in Feed for Salmonids: Final Toxicology Review" from the Division of Health Effects Evaluation (HFS–225) to the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, FDA, August 12, 1999.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 73.185 is added to subpart A to read as follows:

§ 73.185 Haematococcus algae meal.

(a) *Identity.* (1) The color additive haematococcus algae meal consists of the comminuted and dried cells of the alga *Haematococcus pluvialis*.

(2) Haematococcus algae meal may be added to the fish feed only as a component of a stabilized color additive mixture. Color additive mixtures for fish feed use made with haematococcus algae meal may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Haematococcus algae meal shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Physical state, solid.

Lead, not more than 5 parts per million.

Arsenic, not more than 2 parts per million.

Mercury, not more than 1 part per million.

Heavy metals (as Pb), not more than 10 parts per million.

Astaxanthin, not less than 1.5 percent.

(c) *Uses and restrictions.* Haematococcus algae meal may be safely used in the feed of salmonid fish in accordance with the following prescribed conditions:

(1) The color additive is used to enhance the pink to orange-red color of the flesh of salmonid fish.

(2) The quantity of astaxanthin in finished feed, from haematococcus algae meal when used alone or in combination with other astaxanthin color additive sources listed in this part 73, shall not exceed 80 milligrams per kilogram (72 grams per ton) of finished feed.

(d) *Labeling requirements.* (1) The labeling of the color additive and any premixes prepared therefrom shall bear expiration dates for the sealed and open container (established through generally accepted stability testing methods), other information required by § 70.25 of this chapter, and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The presence of the color additive in finished fish feed prepared according to paragraph (c) of this section shall be declared in accordance with § 501.4 of this chapter.

(3) The presence of the color additive in salmonid fish that have been fed feeds containing haematococcus algae meal shall be declared in accordance with §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2) of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: June 27, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17018 Filed 7–5–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 97C–0466]

Listing of Color Additives Exempt From Certification; Phaffia Yeast

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of phaffia yeast as a color additive in the feed of salmonid fish to enhance the color of their flesh. This action is in response to a petition filed by Archer Daniels Midland Co.

DATES: This rule is effective August 8, 2000; except as to any provisions that may be stayed by the filing of proper objections. Submit written objections and requests for a hearing by August 7, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of November 19, 1997 (62 FR 61823), FDA announced that a color additive petition (CAP 8C0252) had been filed by Archer Daniels Midland Co., P.O. Box 1470, Decatur, IL 62525. The petition proposed to amend the color additive regulations to provide for the safe use of astaxanthin from *Phaffia*

rhodozyma as a color additive in salmonid fish feeds. During its review of the petition, the agency determined that the subject color additive is more accurately described as a dried preparation of the yeast *P. rhodozyma* that contains astaxanthin. Therefore, the agency is establishing phaffia yeast as the common or usual name of the color additive.

II. Identity, Technical Effect, and Specifications

Phaffia yeast consists of the cells of the yeast *P. rhodozyma* that are produced by pure culture fermentation and subsequently killed by heat and dried. *P. rhodozyma* is the asexual form of the yeast species *Xanthophyllomyces dendrorhous* (Ref. 1). The major components of phaffia yeast are proteins, carbohydrates, and lipids produced by the yeast cells. The primary coloring substance in phaffia yeast is astaxanthin (3,3′-dihydroxy-β,β-carotene-4,4′-dione) (Ref. 2). One published (Ref. 3) and several unpublished studies included in the petition showed that phaffia yeast satisfactorily pigmented the flesh of the fish when it was fed to salmonid fish.

In a final rule published in the **Federal Register** of April 13, 1995 (60 FR 18736), the agency listed astaxanthin in § 73.35 (21 CFR 73.35) for use in the feed of salmonid fish. In the preamble to that rule, the agency stated that the new regulation for astaxanthin did not specify the source of astaxanthin or the manufacturing process, because the agency had made its safety determination for astaxanthin based on the chemical similarity of synthetic astaxanthin to astaxanthin from natural sources. The agency concluded that any source could be used to produce the color additive as long as the astaxanthin meets the identity, specifications, and stability requirements defined in § 73.35, and it is manufactured in accordance with good manufacturing practice. Furthermore, the agency stated in the astaxanthin rule that the specifications were listed to convey the fact that FDA had evaluated only a particular form of the color additive. The agency also stated that it was concerned that deleterious materials not found in the habitat of salmonids may be included in fish feed from biomass products that contain only a small amount of astaxanthin with the rest of the material being residues from the producing organisms. Thus, the agency said that interested parties should submit information in the form of a new color additive petition if they wish to market a biomass product containing astaxanthin.

Phaffia yeast is a biomass product that contains a relatively small amount of astaxanthin with the rest of the material being proteins, carbohydrates, and lipids. In addition, the petitioner indicated that phaffia yeast would not meet the specifications in § 73.35(b) for solubility in chloroform, absorption maximum wavelength, and residue on ignition, because some of the yeast components in phaffia yeast would interfere with the test methods. Furthermore, the petitioner specified the astaxanthin content of phaffia yeast to be not less than 0.4 percent, whereas the corresponding specification for astaxanthin in § 73.35(b) is not less than 96 percent. Therefore, the petitioner requested that a new regulation be established for phaffia yeast as a source of astaxanthin. The agency agrees with the petitioner that a new regulation is necessary to list phaffia yeast.

During the fish feeding studies, phaffia yeast was mixed with fish feed in such quantities that the amount of astaxanthin in finished feeds did not exceed 80 milligrams per kilogram. The agency based its safety determination on this amount of astaxanthin and the petitioner requested that this level be specified in the listing regulation. However, the agency notes that astaxanthin in the feed of farm-raised salmonid fish may come not only from phaffia yeast, but also from the use of the color additive astaxanthin meeting the specifications of § 73.35 and other color additives that are sources of astaxanthin the agency may list in the future. Therefore, newly added § 73.355(c)(2) (21 CFR 73.355(c)(2)) requires that the quantity of astaxanthin in finished feed, from phaffia yeast when used alone or in combination with other astaxanthin color additive sources listed in part 73 (21 CFR part 73), shall not exceed 80 milligrams per kilogram (72 grams per ton) of finished feed.

III. Safety Evaluation

In evaluating the safety of the use of phaffia yeast in fish feed, the agency considered: (1) The safety of astaxanthin in phaffia yeast to humans and fish, and (2) the safety of the other components in phaffia yeast to humans and fish.

A. Safety of Astaxanthin

Astaxanthin is the principal pigment that imparts the pink or red coloring characteristic of the flesh of wild salmonids (Ref. 3). These fish obtain astaxanthin from the crustaceans that constitute a significant portion of their diet. A similar flesh color may be obtained in aquacultured salmonids by feeding them a diet supplemented with astaxanthin. In the final rule of April 13, 1995, the agency concluded that astaxanthin was safe for use in the feed of salmonid fish. This conclusion was based on the following facts: (1) The petitioned use of astaxanthin would result in deposition of a very small amount of astaxanthin in salmonid flesh; (2) astaxanthin that was the subject of the final rule of April 13, 1995, differed from astaxanthin present in the flesh of wild salmon only in its optical isomeric distribution; (3) human exposure to astaxanthin from consumption of aquacultured salmon fed synthetic astaxanthin is comparable to the exposure to astaxanthin from wild salmon. In addition, the results of the toxicity studies submitted by the petitioner supported the conclusion that there was reasonable certainty of no harm from the petitioned use of astaxanthin.

In the final rule of April 13, 1995, the facts upon which the agency concluded that astaxanthin was safe for use in the feed of salmonid fish are similar to the facts upon which the agency is basing its conclusion that astaxanthin from the petitioned use of phaffia yeast is safe for use in the feed of salmonid fish. During the review of the present petition, the agency determined that astaxanthin from phaffia yeast differed from astaxanthin present in the flesh of wild salmon only in its optical isomeric distribution and that the petitioned use of astaxanthin would result in deposition of a very small amount of astaxanthin in salmonid flesh. Furthermore, the agency determined that the astaxanthin from phaffia yeast will substitute for the fish feed uses of astaxanthin listed in § 73.35, and that the petitioned use of phaffia yeast will not increase the estimated daily intake of astaxanthin in humans, which is comparable to the exposure to astaxanthin from wild salmon. Therefore, the agency concludes that astaxanthin from the petitioned use of phaffia yeast is safe for use in the feed of salmonid fish.

B. Safety of the Producing Organism

The yeast *P. rhodozyma* naturally produces astaxanthin (Refs. 2 and 3). The parent strain of *P. rhodozyma* used by the petitioner was originally obtained from a natural source. From this parent strain a new strain that produces more astaxanthin was derived using classical mutagenesis (nonrecombinant deoxyribonucleic acid (DNA)) techniques.

Based on the data in the petition and other relevant material, the agency determined that: (1) consumers will not be directly exposed to phaffia yeast, but to astaxanthin remaining in fish that

have consumed the yeast in their diet; (2) there is no evidence that any constituents other than astaxanthin will accumulate in fish maintained on diets supplemented with phaffia yeast; (3) the results of studies during which rats and fish were fed phaffia yeast and bacterial mutagenicity tests did not reveal any adverse effects on these organisms, indicating the absence of toxic impurities in the yeast; (4) a literature search uncovered no reports of pathogenicity or toxicogenicity of *P. rhodozyma*; and (5) various yeasts are commonly used as feed in fish aquaculture with no deleterious effects on fish health. Based on this information, FDA concludes that the petitioned use of *P. rhodozyma* is safe (Ref. 4).

IV. Stability of Astaxanthin in Phaffia Yeast

Based on the results of stability studies of phaffia yeast submitted by the petitioner, FDA concludes that to minimize chemical changes that would result in loss of color of astaxanthin, phaffia yeast must be added to fish feed only in the form of a stabilized color additive mixture. Therefore, newly added § 73.355(a)(2) requires that phaffia yeast be added to fish feed only as a component of a stabilized color additive mixture.

V. Labeling Requirements

All color additives, in accordance with § 70.25 (21 CFR 70.25), require sufficient information to assure their safe use and to allow a determination of compliance with any limitations imposed by the agency in other applicable regulations. Therefore, the labeling of the color additive, phaffia yeast, and any mixture prepared therefrom, is subject to the requirements of § 70.25.

According to § 70.25(a)(4), an expiration date for a color additive must be stated on its label if stability data require it. FDA finds that because of the instability of astaxanthin in phaffia yeast, an expiration date must be stated on the label of sealed and open containers, in accordance with § 70.25(a)(4). FDA also finds that declaration of the expiration date constitutes a material fact that must be disclosed on the label of the color additive mixture under sections 201(n) and 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(n) and 343(a)(1)) because failure to do so would constitute a failure to reveal facts material in light of the representations made on the label and material with respect to consequences which may result from the use of the color additive. The use of phaffia yeast requires the declaration of expiration dates because astaxanthin in phaffia yeast can decompose to products that would not be coloring agents and thus would not affect the color of salmonid flesh.

In addition to the requirements for labeling the color additive or color additive mixture, the ingredient list on fish feed, to which phaffia yeast is added, must identify the presence of the color additive under 21 CFR 501.4. New § 73.355(d)(2) references § 501.4 to ensure that the presence of phaffia yeast as a color additive in the fish feed will be declared on the ingredient label.

Finally, the presence of the color additive must be declared on the label of any food, including salmonid fish, containing added phaffia yeast and food containing such salmonid fish as an ingredient. Section 101.22(b) (21 CFR 101.22(b)) requires a food that bears or contains artificial coloring, such as salmon artificially colored with phaffia yeast, to bear labeling even though such food is not in package form. Section 101.22 requires that label statements of artificial coloring be "likely to be read by the ordinary person under customary conditions of purchase and use of such food."

Furthermore, § 101.22(k)(2) requires, in the statement of ingredients for a food to which any coloring has been added, and for which the coloring is not subject to certification, a declaration that makes it clear that a color additive has been used in the food. In addition, the presence of a color additive must be declared on any bulk container of food containing a color additive that is held at a retail establishment under the provisions in § 101.100(a)(2) (21 CFR 101.100(a)(2)). The ingredient label would prevent economic fraud in salmonid fish containing added phaffia yeast because the ingredient label would notify the consumer that the fish is artificially colored. Without such ingredient labeling, food comprising salmonid fish with added phaffia yeast would be deemed to be misbranded under section 403(k) of the act, which states that: A food shall be deemed to be misbranded "If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact * * *."

Therefore, in accordance with §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2), labeling on any salmonid fish containing phaffia yeast is required to declare the presence of the color additive or color additive mixture. New § 73.355(d)(3) references §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2) to ensure that, at the retail level, the presence of phaffia yeast as a color additive in the fish will be declared, and that the labeling of the bulk fish container, including a list of ingredients, will be displayed on the container or on a counter card with similar information. In the future, the agency also intends to propose to amend § 73.35(d)(3) to include references to § 101.22(b) and (c).

VI. Conclusion

Based on the data in the petition and other relevant material, FDA concludes that the petitioned use of phaffia yeast as a color additive in fish feed to color the flesh of salmonid fish is safe, the additive will achieve its intended technical effect, and therefore, part 73 should be amended as set forth below. In addition, based upon the factors listed in 21 CFR 71.20(b), the agency concludes that certification of phaffia yeast is not necessary for the protection of the public health.

VII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VIII. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 8C0252 (November 19, 1997, 62 FR 61823). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IX. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by August 7, 2000. Each objection shall be separately numbered,

and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

XI. References

1. Golubev, W. I., "Perfect State of *Rhodomyces dendrorhous (Phaffia rhodozyma)*," *Yeast*, 11:101–110, 1995.

2. Andrewes, A. G., H. J. Phaff, and M. P. Starr, "Carotenoids of *Phaffia rhodozyma*, a Red-Pigmented Fermenting Yeast," *Phytochemistry*, 15:1003–1007, 1976.

3. Johnson, E. A., D. E. Conklin, and M. J. Lewis, "The Yeast *Phaffia rhodozyma* as a Dietary Pigment Source for Salmonids and Crustaceans," *Journal of the Fishers Research Board of Canada*, 34:2417–2421, 1977.

4. Johnson, C. B., memorandum entitled "Astaxanthin from *Phaffia rhodozyma:* Final Toxicology Review" from the Division of Health Effects Evaluation (HFS–225) to the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, FDA, August 12, 1999.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. New § 73.355 is added to subpart A to read as follows:

§ 73.355 Phaffia yeast.

(a) *Identity.* (1) The color additive phaffia yeast consists of the killed, dried cells of a nonpathogenic and nontoxicogenic strain of the yeast *Phaffia rhodozyma*.

(2) Phaffia yeast may be added to the fish feed only as a component of a stabilized color additive mixture. Color additive mixtures for fish feed use made with phaffia yeast may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Phaffia yeast shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Physical state, solid.

Lead, not more than 5 parts per million.

Arsenic, not more than 2 parts per million.

Mercury, not more than 1 part per million.

Heavy metals (as Pb), not more than 10 parts per million.

Astaxanthin, not less than 0.4 percent.

(c) *Uses and restrictions.* Phaffia yeast may be safely used in the feed of salmonid fish in accordance with the following prescribed conditions:

(1) The color additive is used to enhance the pink to orange-red color of the flesh of salmonid fish.

(2) The quantity of astaxanthin in finished feed, from phaffia yeast when used alone or in combination with other astaxanthin color additive sources listed in this part 73, shall not exceed 80 milligrams per kilogram (72 grams per ton) of finished feed.

(d) *Labeling requirements.* (1) The labeling of the color additive and any premixes prepared therefrom shall bear expiration dates for the sealed and open container (established through generally accepted stability testing methods), other information required by § 70.25 of this chapter, and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The presence of the color additive in finished fish feed prepared according to paragraph (c) of this section shall be declared in accordance with § 501.4 of this chapter.

(3) The presence of the color additive in salmonid fish that have been fed feeds containing phaffia yeast shall be declared in accordance with §§ 101.22(b), (c), and (k)(2) and 101.100(a)(2) of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: June 27, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17019 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Furazolidone Aerosol Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, a Division of American Cyanamid Co. The supplemental NADA provides for removal of that portion of the approval reflecting topical cattle use of furazolidone aerosol powder.

DATES: This regulation is effective July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6642.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, a 1Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501, is the sponsor of NADA 32–319 for Furox (furazolidone) aerosol powder for use in dogs, horses, ponies, and cattle. The sponsor filed a supplemental NADA requesting removal of topical ocular use of the product in cattle. The supplemental NADA is approved as of November 29, 1999, and the regulations are amended in 21 CFR

524.1005(b)(1), (c)(2)(iii), and (c)(3) to reflect the approval.

The regulations in § 524.1005(b)(1) (21 CFR 524.1005(b)(1)) indicate that Pfizer, Inc., is sponsor of NADA 32–319 for use of a 10 percent furazolidone aerosol powder in dogs, horses, and cattle. The NADA had been acquired by Fort Dodge Animal Health, a Division of American Cyanamid Co. At this time, the regulation is amended in § 524.1005(b) to reflect the sponsor change.

Approval of this supplemental NADA provides for removal of a cattle use. It does not affect the safety or effectiveness data in the application. Therefore, a freedom of information summary is not required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.1005 is amended by revising paragraphs (b)(1) and (c)(3) and by removing and reserving paragraph (c)(2)(iii) to read as follows:

§ 524.1005 Furazolidone aerosol powder.

* * * * *

(b) * * *

(1) See No. 053501 in § 510.600(c) of this chapter for use as in paragraphs (c)(1), (c)(2)(i), (c)(2)(ii), and (c)(3) of this section.

* * * * *

(c) * * *

(2) * * *

(iii) [Reserved]

(3) *Limitations.* For topical application in horses, ponies, and dogs: Clean affected area thoroughly, apply drug once or twice daily, and repeat treatment as required. Use only as recommended by a veterinarian in treatment of puncture wounds, wounds requiring surgical debridement or suturing, those of a chronic nature involving proud flesh, generalized and chronic infections of the skin, and those skin conditions associated with intense itching. If redness, irritation, or swelling persists or increases, discontinue use and consult a veterinarian. Not for use in horses intended for food.

Dated: June 15, 2000.

Andrew J. Beaulieu,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 00–16977 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst Roussel Vet. The supplemental NADA provides for establishing tolerances for residues of fenbendazole in edible tissues of cattle. Also, a tolerance for parent fenbendazole in goat muscle is established.

DATES: This rule is effective July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, Perryville Corporate Park III, P.O. Box 4010, Clinton, NJ 08809–4010, filed a supplement to NADA 128–620 that provides for use of Safe-Guard® (fenbendazole) 10% Suspension for Cattle and Panacur® (fenbendazole) 10% Suspension for Cattle. The supplement provides for establishing a tolerance for parent fenbendazole in cattle muscle. The supplement is approved as of May 9, 2000, and the regulations in § 556.275 (21 CFR 556.275) are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA is reviewing information in the application and it is establishing a tolerance for parent fenbendazole in goat muscle. The regulations are further amended in § 556.275 to reflect this action.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.275 is amended by adding paragraphs (b)(1)(ii) and (b)(3)(ii) to read as follows:

§ 556.275 Fenbendazole.

* * * * *

(b) * * *

(1) * * *

(ii) *Muscle.* The tolerance for parent fenbendazole (the marker residue) is 0.4 ppm.

* * * * *

(3) * * *

(ii) *Muscle.* The tolerance for parent fenbendazole (the marker residue) is 0.4 ppm.

Dated: June 19, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–16976 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate and Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved bacitracin methylene disalicylate and fenbendazole Type A medicated articles to make combination Type B and C medicated feeds for growing and finishing swine and pregnant sows for the removal of various internal parasites, for increased rate of weight gain and improved feed efficiency, for control of swine dysentery associated with *Treponema hyodysenteriae*, and for control of clostridial enteritis in suckling pigs caused by *Clostridium perfringens*. Technical corrections are also being made.

DATES: This rule is effective July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–144 that provides for use of BMD® (10, 25, 30, 40, 50, 60, or 75 grams per pound (g/lb) bacitracin methylene disalicylate) and SafeGuard® (18.1, 36.2, or 90.7 g/lb fenbendazole) Type A medicated articles to make combination Type B and C medicated feeds for growing and finishing swine and pregnant sows.

For growing and finishing swine, the Type A medicated articles are used to make combination Type B medicated feeds that contain 300 to 1,780 grams per ton (g/ton) of bacitracin methylene disalicylate and 300 to 17,740 g/ton of fenbendazole and combination Type C medicated feeds that contain 10 to 30 g/ton of bacitracin methylene disalicylate and 10 to 300 g/ton of fenbendazole. The combination Type C medicated feeds are used for increased rate of weight gain and improved feed efficiency; and for the removal of adult-stage lungworms (*Metastrongylus apri* and *M. pudendotectus*); adult and larvae (L3, 4 stages—liver, lung, and intestinal forms) large roundworms (*Ascaris suum*); adult-stage nodular worms (*Oesophagostomum dentatum*, *O. quadrispinulatum*); small stomach worms (*Hyostrongylus rubidus*); adult and larvae (L2, 3, 4 stages—intestinal mucosal forms) whipworms (*Trichuris suis*); and adult and larvae kidneyworms (*Stephanurus dentatus*).

For growing and finishing swine and for pregnant sows, the Type A medicated articles are used to make Type B medicated feeds that contain 7,460 to 14,837 g/ton of bacitracin methylene disalicylate and 300 to 17,740 g/ton of fenbendazole and Type C medicated feeds that contain 250 g/ton of bacitracin methylene disalicylate and 10 to 300 g/ton of fenbendazole.

The combination Type C medicated growing and finishing swine feeds are used for the control of swine dysentery associated with *T. hyodysenteriae* in growing and finishing swine on premises with a history of swine dysentery but where signs of disease have not yet occurred, or following an approved treatment of the disease; and for the removal of adult-stage lungworms (*M. apri* and *M. pudendotectus*); adult and larvae (L3, 4 stages—liver, lung, and intestinal forms) large roundworms (*A. suum*); adult-stage nodular worms (*O. dentatum*,*O. quadrispinulatum*); small stomach worms (*H. rubidus*); adult and larvae (L2, 3, 4 stages—intestinal mucosal forms) whipworms (*T. suis*); and adult and larvae kidneyworms (*S. dentatus*).

The combination Type C medicated sow feeds are used for the control of clostridial enteritis in suckling pigs caused by *C. perfringens*; and for the removal of adult stage lungworms (*M. apri* and *M. pudendotectus*); adult and larvae (L3, 4 stages—liver, lung, and intestinal forms) large roundworms (*A. suum*); adult-stage nodular worms (*O. dentatum*, *O. quadrispinulatum*); small stomach worms (*H. rubidus*); adult and larvae (L2, 3, 4 stages—intestinal mucosal forms) whipworms (*T. suis*); and adult and larvae kidneyworms (*S. dentatus*).

The NADA is approved as of April 7, 2000, and 21 CFR 558.76 and § 558.258 (21 CFR 558.258) are amended to add new entries to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, § 558.258 is amended to redesignate paragraph (c) as paragraph (d) and add paragraph (c) to reflect a newer format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.76 is amended by adding paragraph (d)(3)(xxii) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xxii) Fenbendazole as in § 558.258.

3. Section 558.258 is amended by redesignating paragraph (c) as paragraph (d) and reserving paragraph (c), and by adding paragraphs (d)(1)(vi) and (d)(1)(vii) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(c) [Reserved]

(d) * * *

(1) * * *

(vi) *Amount.* Fenbendazole, 10 to 300 grams per ton (to provide 9 milligrams per kilogram body weight), and bacitracin methylene disalicylate, 10 to 30 grams per ton.

(A) *Indications for use.* As an anthelmintic (as provided in paragraph

(d)(1)(i)(A) of this section) and for increased rate of weight gain and improved feed efficiency in growing/finishing swine.

(B) *Limitations.* Feed as sole ration. Under conditions of continued exposure to parasites, retreatment may be needed after 4 to 6 weeks. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. Bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) of this chapter.

(vii) *Amount.* Fenbendazole, 10 to 300 grams per ton, and bacitracin methylene disalicylate, 250 grams per ton.

(A) *Indications for use—(1) Growing/finishing swine.* As an anthelmintic (as provided in paragraph (d)(1)(i)(A) of this section) and for control of swine dysentery associated with *Treponema hyodysenteriae* on premises with a history of swine dysentery, but where signs of disease have not yet occurred; or following an approved treatment of the disease condition.

(*2*) *Pregnant sows.* As an anthelmintic (as provided in paragraph (d)(1)(i)(A) of this section) and for control of clostridial enteritis in suckling pigs caused by *Clostridium perfringens.*

(B) *Limitations—(1)Growing/finishing swine.* Feed as sole ration. Not for use in growing and finishing swine that weigh more than 250 pounds. Diagnosis of swine dysentery should be confirmed by a veterinarian when results are not satisfactory. Under conditions of continued exposure to parasites, retreatment may be needed after 4 to 6 weeks. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. Bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) of this chapter.

(*2*) *Pregnant sows.* Feed as sole ration. Diagnosis of clostridial enteritis should be confirmed by a veterinarian when results are not satisfactory. Under conditions of continued exposure to parasites, retreatment may be needed after 4 to 6 weeks. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. Bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: June 19, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–17020 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–00–022]

RIN 2115–AA97

Safety Zone Regulations, Seafair Blue Angels Performance, Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Lake Washington, Seattle, Washington. The Coast Guard is taking this action to safeguard the participants and spectators from the safety hazards associated with Seafair Blue Angels Performance. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This is effective from 8:30 a.m. Pacific Daylight Time on August 3 through 3 p.m. on August 6, 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 7 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Paul Stocklin, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective less than 30 days from date of publication in the **Federal Register**. Due to complex planning and coordination requirements, the Coast Guard was not able to obtain details of the event thirty days prior to its occurrence. Because of this, following normal rulemaking procedures would be impracticable and contrary to the public interest. Prompt regulatory action is needed in order to provide for the safety of spectators and participants during the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Discussion of Proposed Rule

The Coast Guard is adopting a temporary safety zone regulation on the waters of Lake Washington, Seattle, Washington, for the Seafair Blue Angels Performance. The Coast Guard has determined it is necessary to close the area in the vicinity of the air show in order to minimize the dangers that low-flying aircraft present to persons and vessels. These dangers include, but are not limited to excessive noise and the risk of falling objects from any accidents associated with low flying aircraft. In the event that aircraft require emergency assistance, rescuers must have immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation would encompass an area near the middle of Lake Washington, not frequented by commercial navigation. The regulation is established for the benefit and safety of the recreational boating public, and any recreational boating impact is offset by the benefits of allowing the Blue Angels to fly. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities.

"Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of Lake Washington from 8:30 a.m. until 3 p.m., Pacific Daylight Time, August 3rd, 4th, 5th and 6th, 2000. The zone will not have a significant economic impact due to its short duration and small area. It is believed that the only vessels likely to be impacted will be recreational boaters and small passenger vessel operators. The event is held for the benefit and entertainment of those above categories. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for temporary safety zones of less than one week in duration. This rule establishes a temporary safety zone of limited duration which will be within the one-week timeframe.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Rule

For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. From 8:30 a.m. on August 3 through 3 p.m. on August 6, 2000, a temporary § 165.T13–020 is added to read as follows:

§ 165.T13–020 Safety Zone Regulations, Seafair Blue Angels Performance, Seattle, WA.

(a) *Location.* The following area is a safety zone: All waters of Lake Washington, Washington State, enclosed by the following points: All waters of Lake Washington, Washington State, enclosed by the following points: The North-West corner of Faben Point at 47°35″34.5″ N, 122°15″13″ W; thence to 47°35″48″ N, 122°15″45″ W; thence to 47°36″32″ N, 122°15″59″ W; thence to 47°36″26″ N, 122°16″ 38″ W, thence to 47° 35″42″ N, 122°16″24″ W, thence to the East side of the entrance to the West highrise of the Interstate 90 bridge, thence Easterly along the South side of the bridge to a point 1130 yards East of the Western terminus of the bridge, thence Southerly to a point in Andrews bay at 47°33″06″ N, 122°15″32″ W, thence North-East along the shoreline of Bailey Peninsula to its North-East point at 47°33″44″ N, 122°15″04″ W, thence Easterly along the East-West line drawn tangent to Bailey Peninsula, thence northerly along the shoreline of Mercer Island to the point of origin. [Datum: NAD 1983]

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the race course portion of this zone, except for participants in the event, supporting personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels entering the spectator portion of the Safety Zone must proceed at a slow no-wake speed and, upon notice, shall obey the lawful order or direction of the Captain of the Port or his designated representatives.

(c) *Applicable dates.* This section applies from 8:30 a.m. until 3 p.m., Pacific Daylight Time, on August 3, 4, 5 and 6, 2000.

Dated: June 28, 2000.

M.R. Moore,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 00–17042 Filed 6–30–00; 4:24 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA084/101–5045a; FRL–6726–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Format for Materials Being Incorporated by Reference; Approval of Recodification of the Virginia Administrative Code; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendments.

SUMMARY: This document corrects errors in the rule language of a final rule pertaining to EPA's approval of a recodification of and associated administrative revisions to Virginia's air pollution control regulations. This recodification reorganized and renumbered the Virginia SIP to match the numbering system set forth in the Virginia Administrative Code. In this same action, we also revised the format of 40 CFR part 52 for materials submitted by Virginia that are incorporated by reference (IBR) into the Virginia State implementation plan (SIPs).

EFFECTIVE DATE: July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford (215) 814–2108 or by e-mail at frankford.harold@pa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we" or "our" are used, we mean EPA. On April 21, 2000 (65 FR 21315), we published a final rulemaking action announcing our approval of the revised reorganization of the Virginia Administrative Code (VAC), including reorganization of the air pollution control regulations. The intent of the rule was to approve the revised regulatory structure of Virginia's air pollution control regulations, and to list, in chart form, those Virginia regulatory provisions which had been incorporated by reference into the Virginia SIP.

In this document, we discovered incorrect information and omissions related to entries appearing in the summary rulemaking charts published on pages 21322, 21342, and 21346. In one case, we did not clearly delineate the provisions in Virginia's compliance testing requirements (9 VAC 5–40–20) which we had historically approved, and thus incorporated by reference, as part of the Virginia SIP. In the other case, we omitted the listing of eight other Virginia air pollution control rules (either in the 9 VAC 5 or "VR" format) which EPA had incorporated by reference in past rulemaking actions into the SIP. In this action, we are publishing those entries in 40 CFR 52.2420(c) which contained incorrect information or were inadvertently omitted from the document.

At the same time, we had intended to revise the citation of Virginia's compliance testing provision which we had historically disapproved and codified at 40 CFR 52.2423(f) so that it reflects the current 9 VAC 5 citation. This action revises § 52.2423(f) to reflect the correct citation. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of July 6, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The corrections to 40 CFR 52.2420(c) and 52.2423(f) for Virginia are not "major rules" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by

reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 19, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (c) is amended by:

a. Revising entry "5–40–20" under Chapter 40, Part I.

b. Adding in numerical order entry "5–91–40" under Chapter 91, Part II.

c. Removing entry "5–480–20" and adding new entries in its place under 2 VAC 5, Chapter 480.

The revisions and additions read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State Citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 40 Existing Stationary Sources [Part IV]				
Part I Special Provisions				
*	*	*	*	*
5–40–20 (Except A.3)	Compliance	4/17/95	4/21/00 65 FR 21315	120–04–02 (Except A.3).
*	*	*	*	*
Chapter 91 Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area				
*	*	*	*	*
Part II General Provisions				
*	*	*	*	*
5–91–40	Establishment of Regulations and Orders	1/24/97	9/1/99 64 FR 47670	
*	*	*	*	*
2 VAC 5 CHAPTER 480 Regulation Governing the Oxygenation of Gasoline				
VR115–04–28, § 1	Definitions	11/1/93	4/15/94 39 FR 17942	
5–480–20	Applicability	11/1/96	2/17/00 65 FR 8051	SIP Effective Date: 4/3/00.
VR115–04–28, § 3	Minimum oxygenate content	11/1/93	4/15/94 39 FR 17942	
VR115–04–28, § 4	Nature of oxygenates	11/1/93	4/15/94 39 FR 17942	
VR115–04–28, § 5	Record keeping and transfer requirements	11/1/93	4/15/94 39 FR 17942	
VR115–04–28, § 6	Gasoline pump labeling	11/1/93	4/15/94 39 FR 17942	
VR115–04–28, § 7	Sampling, testing and oxygen content calculations	11/1/93	4/15/94 39 FR 17942	
VR115–04–28, § 8	Compliance and enforcement	11/1/93	4/15/94 39 FR 17942	

§ 52.2423 [Amended]

3. In § 52.2423(f), the citation "Section 120–04–02.A.3." is revised to read "Section 9 VAC 5–40–20.A.3."

[FR Doc. 00–16366 Filed 7–5–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6730–6]

RIN 2060–AE86

National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production; Synthetic Organic Chemical Manufacturing Industry; Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of amendment in direct final rule.

SUMMARY: Due to an adverse comment, the EPA is withdrawing an amendment from the May 8, 2000 direct final rule for National Emission Standards for Hazardous Air Pollutants (NESHAP) for Polyether Polyols Production; Synthetic Organic Chemical Manufacturing Industry; Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries. The amendment being withdrawn deals with the definition of equipment leak in the Petroleum Refineries NESHAP. The withdrawal of the amendment from the direct final rule will only affect sources subject to the Petroleum Refineries NESHAP.

DATES: Amendment 6 in the direct final rule, which amends § 63.641, published on May 8, 2000 (65 FR 26491), is withdrawn as of July 6, 2000. The remaining amendments will be effective July 7, 2000, as stated in the May 8 rule.

ADDRESSES: Docket numbers A–90–20 (Hazardous Organic NESHAP); A–92–37 (Epoxy Resins Production and Non-Nylon Polyamides Production); A–93–48 (Petroleum Refineries); and A–96–38 (Polyether Polyols Production) contain supporting information used in developing the standards. The dockets are located at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel at (919) 541–5608, Emission Standards Division (MD–13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, electronic mail address "rosensteel.bob@epa.gov".

SUPPLEMENTARY INFORMATION: On May 8, 2000, the EPA published a direct final rule (65 FR 26491) and a parallel proposal (65 FR 26544) to amend portions of the NESHAP for Polyether Polyols Production; Synthetic Organic Chemical Manufacturing Industry; Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries. The EPA stated in the direct final rule that if relevant, adverse comments were received by June 7, 2000, the EPA would publish a document to withdraw the affected portions of the direct final rule before its effective date of July 7, 2000. The EPA received an adverse comment on Amendment 6 in the direct final rule and, therefore, is withdrawing Amendment 6. This withdrawal of Amendment 6 only affects sources subject to the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC). Amendment 6 would have changed the definition of equipment leak to add the term "connectors" to the equipment leak provisions in the NESHAP.

The adverse comment stated that the EPA's rationale for adding connectors to the list of equipment in the definition of equipment leak was not supported by the record of the rulemaking for the Petroleum Refineries NESHAP. It indicated that meetings with, and correspondence from, EPA and Congress supported flexibility and the New Source Performance Standard (NSPS) option without connectors. Therefore, the EPA is withdrawing this amendment and will decide the appropriate response to this comment. The 19 amendments for which we did not receive adverse comments will become effective on July 7, 2000, as provided in the May 8, 2000 direct final rule (65 FR 26491).

Dated: June 30, 2000.

Robert Brenner,

Acting, Assistant Administrator for Air and Radiation.

[FR Doc. 00–17068 Filed 7–5–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301008; FRL–6590–1]

RIN 2070–AB78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on grapes. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on grapes. This regulation establishes a maximum permissible level for residues of tebufenozide in this food commodity. The tolerance will expire and is revoked on December 31, 2001.

DATES: This regulation is effective July 6, 2000. Objections and requests for hearings, identified by docket control number OPP–301008, must be received by EPA on or before September 5, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301008 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number, 703–305–6463; e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under " FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301008. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the insecticide tebufenozide, in or on grapes at 3 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Tebufenozide on Grapes and FFDCA Tolerances

Grapes are California's number one ranked crop in dollar value, accounting for over 90% of the grapes grown in the United States. The European export market for California wines accounts for well over $250 million. The Grape Leaf folder causes injury in the larval stages by rolling and feeding on the leaves, reducing photosynthetic function. The Omnivorous leaf roller directly reduces grape yields by injuring the flowers and developing berries it feeds on. The Omnivorous leaf roller also allows entry of bunch rot organisms that damage entire clusters which may result in rejection at the winery.

Cryolite is the registered alternative most often used to control both Grape Leaf folders and Omnivorous leaf rollers. However, for the 2000 crop year, nearly all major California wineries with export markets have advised their growers that they will not accept grapes which have been treated with cryolite or any other product which would affect the level of fluorides in wine. The European Community recently established strict tolerance levels of 1 ppm with respect to fluoride residues. There is a direct correlation between even limited use of cryolite on wine grapes which can result in fluoride levels in wine above 3 ppm. Therefore, the State claims that there is no feasible registered alternative available to wine growers to control these pests. EPA has authorized under FIFRA section 18 the use of tebufenozide on grapes for control of Omnivorous leaf roller and Grape leaf folder in California. After having reviewed the submission, EPA concurs that emergency conditions exist for wine grapes for the State. However, the Agency does not believe that an urgent and non-routine finding can be made for table grapes since growers can still use cryolite.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide in or on grapes. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although

this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on grapes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether tebufenozide meets EPA's registration requirements for use on grapes or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for tebufenozide, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of tebufenozide in or on grapes at 3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no observed adverse effect level (NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the dose at which the lowest observed adverse effect level (LOAEL) of concern are identified is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TEBUFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13–50 years of age	None	Not applicable	Not applicable
Acute dietary general population including infants and children	None	Not applicable	Not applicable
Chronic dietary all populations	NOAEL = 1.8 milligram/kilogram/day (mg/kg/day) UF = 100 Chronic RfD = 0.018 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.018 mg/kg/day	Chronic toxicity study in dogs LOAEL = 8.7 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver.
Short-term dermal (1 to 7 days) (residential)	None	Not applicable	Not applicable

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TEBUFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-term dermal (1 week to several months) (residential)	None	Not applicable	Not applicable
Long-term dermal (several months to lifetime) (residential)	None	Not applicable	Not applicable
Short-term inhalation (1 to 7 days) (residential)	None	Not applicable	Not applicable
Intermediate-term inhalation (1 week to several months) (residential)	None	Not applicable	Not applicable
Long-term inhalation (several months to lifetime) (residential)	None	Not applicable	Not applicable
Cancer (oral, dermal, inhalation)	Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans).	Not applicable	Not applicable

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. Tolerances, listed under 40 CFR 180.482, currently exist for residues of tebufenozide on apples, berries, brassica crop group, canola, cotton, cranberries, pome fruits, pecans, mint, sugarcane, turnips, fruiting vegetables, leafy green vegetables, and walnuts. Additionally, time-limited tolerances for eggs, milk, pears, peanuts, peppers, rice, sugarcane, sweet potatoes, and livestock commodities of cattle, goats, hogs, horses, poultry and sheep have been established. Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose or 1 day exposure. Therefore, no toxicological endpoint was identified for acute toxicity and no acute dietary risk assessment is needed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments.

Data included in the application indicate no tebufenozide concentration in grape juice or raisins. For the chronic analysis, tolerance level residues and some percent crop treated (PCT) and some market share assumptions were used. Where market share information was available, it was used in preference over PCT data since it is the larger, more conservative number and therefore more protective of human health.

iii. *Cancer.* Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans).

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not under estimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: < 1% almonds, 2% apples, 1% dry beans/peas, 3% fresh cabbage, 2% cole crops, 4% cotton, 3% fresh spinach, 29% processed spinach, 5% sugarcane and 16% walnuts.

The Agency used Percent Market Share information as follows: 10% pome fruit, 19% cotton, 82% sugarcane, 10% fruiting vegetables, 14% leafy vegetables, 18% cole crop vegetables, and 25% blueberries.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to under estimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. The Agency is reasonably certain that the percentage of the food treated is not likely to be an under estimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant

subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which tebufenozide may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for tebufenozide in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of tebufenozide.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and screening concentration in ground water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to tebufenozide they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of tebufenozide for chronic exposures are estimated to be 17 parts per billion (ppb) for surface water and 1 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Tebufenozide is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety factor for infants and children

1. *Safety factor for infants and children—i. In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Developmental toxicity studies.* In prenatal developmental toxicity studies in rats and rabbits, there was no evidence of maternal or developmental toxicity; the maternal and developmental NOAELS were 1,000 mg/ kg/day (highest dose tested).

iii. *Reproductive toxicity study.* In 2-generation reproduction studies in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses than in the maternal/ parental animals.

iv. *Prenatal and postnatal sensitivity.* The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

v. *Conclusion.* There is a complete toxicity data base for tebufenozide and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide. Based on this, EPA concludes that reliable data support the use of the standard 100-fold uncertainty factor, and that the 10X safety factor to protect infants and children should be removed.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model

estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD—(average food + chronic non-dietary, non-occupational exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA to calculate DWLOCs: 2 Liter/70 kilograms (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to tebufenozide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of tebufenozide on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* No toxicological endpoint was identified for acute toxicity. Therefore, no acute aggregate risk assessment is needed.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to tebufenozide from food will utilize 20% of the cPAD for the U.S. population, 75% of the cPAD for non-nursing infants and 51% of the cPAD for children (1–6 years old). There are no residential uses for tebufenozide that result in chronic residential exposure to tebufenozide. In addition, despite the potential for chronic dietary exposure to tebufenozide in drinking water, after calculating the DWLOCs and comparing them to conservative model estimated environmental concentrations of tebufenozide in surface and ground water. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

Population Subgroup	cPAD mg/kg/day	% cPAD (food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.018	20%	17	1	500
Non-nursing infants (<1 year old)	0.018	75%	17	1	50
Females (13+, nursing)	0.018	23%	17	1	400

3. *Short-term and intermediate-term risk.* Short-term and Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Tebufenozide is not registered for use on any sites that would result in residential exposure. Additionally, no toxicological effects have been identified for short-term and intermediate-term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans).

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to tebufenozide residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no Mexican Maximum Residue Limits (MRL) for tebufenozide in or on grapes. Codex has a 1.0 ppm MRL on grapes for fat soluble tebufenozide. Canada has a tebufenozide MRL on grapes at 0.5 ppm. International harmonization is not feasible for this action.

C. Conditions

Grapes are not rotated; therefore, a discussion of rotational crop requirements is not germane to this action.

VI. Conclusion

Therefore, the tolerance is established for residues of benzoic acid, 3,5-dimethyl-1-(1,1dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, tebufenozide, in or on grapes at 3 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA,

you must identify docket control number OPP–301008 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 5, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301008, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established

by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 6, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In §180.482, by alphabetically adding "Grapes" to the table in paragraph (b) to read as follows:

§ 180.482 Tebufenozide; tolerances for residues

* * * * *

(b) *Section 18 emergency exemptions.*

* * *

Commodity	Parts per million	Expiration/ Revocation Date
* * * * *		
Grapes	3.0	12/31/01
* * * * *		

* * * * *

[FR Doc. 00–17043 Filed 6–30–00; 3:20 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301007; FRL–6590–3]

RIN 2070–AB

Fludioxonil; Extension of Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide fludioxonil in or on strawberries at 2 parts per million (ppm) for an additional 1-year period. This tolerance will expire and is revoked on May 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on strawberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective July 6, 2000. Objections and requests for hearings, identified by docket control number OPP–301007, must be received by EPA on or before September 5, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301007 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 308–9362; and e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301007. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30

a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of April 21, 1999 (64 FR 19484) (FRL–6073–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of fludioxonil in or on strawberries at 2 ppm, with an expiration date of May 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of the product Switch 62.5 WG, containing the active ingredients fludioxonil and cyprodinil on strawberries for this year's growing season due to the urgent and non-routine situation which exists for South Carolina strawberry growers due to the cancellation of vinclozolin use on strawberries and the restriction on iprodione use to pre-bloom only; this reduces the number of fungicide applications available for season-long control below that needed, should disease pressure be heavy. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of fludioxonil on strawberries for control of gray mold in South Carolina.

EPA assessed the potential risks presented by residues of fludioxonil in or on strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 21, 1999 (64 FR 19484). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on May 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301007 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 5, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control

number OPP–301007, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.516 [Amended]

2. In § 180.516, amend the table in paragraph (b) by changing the date "5/31/00" to read "5/31/01".

[FR Doc. 00–17075 Filed 7–5–00; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–97; FCC 00–223]

Removal of LMDS Eligibility Restriction

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allows to sunset as of June 30, 2000, the Local Multipoint Distribution Service (LMDS) eligibility restriction. That restriction prohibits incumbent local exchange carriers and cable companies from having an attributable interest in the LMDS A block license that overlaps with ten percent or more of the population in their service areas. The action is taken to complete the Commission's review of this restriction.

EFFECTIVE DATE: Effective June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Peter Wolfe, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order and Memorandum Opinion and Order (Third R&O/MO&O) in CC Docket No. 92–97; FCC 00–00–223, adopted June 20, 2000, and

released June 27, 2000. The complete text of this Third R&O/MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the Third R&O/MO&O

1. This Third R&O/MO&O completes the Commission's review of the Local Multipoint Distribution Service (LMDS) eligibility restriction, which prohibits incumbent local exchange carriers (LECs) and cable companies from having an attributable interest in the LMDS A block license that overlaps with ten percent or more of the population in their service area. As a result of that review, the Commission allows the scheduled sunset of that restriction to occur as of June 30, 2000. The eligibility restriction was adopted in the Second Report and Order in this proceeding (62 FR 23148, April 29, 1997), subject to an expiration date of June 30, 2000. The Commission, in adopting the restriction, noted that it would undertake a review of the restriction prior to its sunset. (47 CFR 101.1003(a).)

2. In adopting the LMDS eligibility restriction, the Commission considered four factors. First, that LMDS was a likely vehicle for the provision of local telephony, multi-channel video distribution (MVPD) service, or both. Second, the Commission found that the incumbent local exchange carriers (LECs) and incumbent cable companies were dominant in their respective markets, would have a strong incentive to obtain an LMDS license in order to prevent a new entrant from obtaining the license and competing directly in the incumbent's current market, and would have no incentive to use the LMDS spectrum to offer services that would compete with their own services. Third, the Commission determined that a short-term eligibility restriction, with an opportunity for review, would be the best means to increase competition in the local and telephony and MVPD markets, in light of the Commission's belief that there would be sufficient entity and increases in competition to permit sunset within three years. Fourth, the Commission found that efficiencies arising from ownership of an LMDS system by an incumbent LEC or incumbent cable provider had not been shown.

3. As a result of its review, the Commission first concludes that the standard for determining whether to sunset the eligibility restriction should be whether open eligibility poses a significant likelihood of substantial competitive harm in specific markets, and, if so, whether eligibility restrictions are an effective way to address that harm. The Commission determines that the record does not support a conclusion that open eligibility poses such a significant threat of substantial competitive harm in specific markets; indeed, open eligibility may improve the availability of services, especially in rural areas.

4. The Commission, as discussed more fully in the complete text of the Third R&O/MO&O, therefore finds that the LMDS eligibility restriction should be allowed to sunset because open eligibility (1) will not pose a significant likelihood of substantial competitive harm in any market; (2) is likely to provide access to additional capital to fully develop LMDS; (3) will treat LMDS similarly to substitutable spectrum; and (4) should help make services more available in rural areas.

Administrative Matters

Final Regulatory Flexibility Analysis

5. This is a summary of the Final Regulatory Flexibility Analysis. The full Final Regulatory Flexibility Analysis may be found at Appendix D of the complete Third Report and Order and Memorandum Opinion and Order.

6. In order to ensure compliance with the requirements contained in the Regulatory Flexibility Act (RFA) and to alert all affected entities of the repercussions of the Commission's action, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix B of the Sixth Notice of Proposed Rulemaking (Sixth NPRM), 64 FR 71373, December 21, 1999, in this proceeding. Additionally, a Final Regulatory Flexibility Analysis was included in Appendix D of the Second Report and Order in this proceeding. The Commission sought written public comment on the proposals in the Fifth NPRM (62 FR 16514, April 7, 1997), including comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA), contained in the Third Report and Order and Memorandum Opinion and Order (Third R&O), conforms to the RFA.

Need for, and Objectives, of the Third R&O

7. The Commission allows to sunset the Local Multipoint Distribution Service (LMDS) eligibility restriction which prohibits incumbent local exchange carriers (ILECs) and cable companies from having an attributable interest in the LMDS A-block license that overlaps with ten percent or more of the population in their service areas. This restriction was initially imposed because of concern the ILECs and the cable companies would use LMDS spectrum to eliminate the threat of competitive entry in the local exchange telephone and cable markets, in which they are dominant. The Third R&O finds that the LMDS A-block eligibility restriction is no longer necessary to protect LMDS as a source of competition with ILECs and incumbent cable companies, and that the benefits of removing the restriction outweigh any benefits of retaining the restriction.

Summary of Significant Issues Raised By Public Comments in Response to the IRFA or the FRFA

8. The central issue in this proceeding is the continued need for the eligibility restriction. The restriction was adopted subject to an expiration date of June 30, 2000. The expiration date, like the other issues in this proceeding, was the result of notice and comment procedures. The Commission received fourteen comments and eight reply comments in response to the Sixth NPRM.

9. No comments were received directly regarding the IRFA or the FRFA contained in the Second R&O. The Sixth NPRM sought comment on whether the standard for determining whether the restriction is extended should be that the incumbent LECs or cable companies continue to have substantial market power in the provision of local telephone or cable television services, or if a different standard should be used. As discussed in paragraphs 6–7 of the Third R&O, the Sixth NPRM also suggested two alternative standards. Although most of the commenters support allowing the eligibility rule to sunset, those who comment on the standard are somewhat divided. Several commenters argue in favor of using the market dominance standard to decide whether the eligibility should sunset.

10. The Commission agrees with the majority of parties who comment on the standard issue, and either urge the Commission to adopt the 39 GHz standard or at least to reject the "substantial market power" standard. Therefore, the Commission adopts the 39 GHz standard. In paragraphs 8–9 of the Third R&O, the Commission details the rationale for selecting the 39 GHz test as the appropriate standard to apply in determining whether the LMDS restriction should sunset.

11. The Sixth NPRM asked what services are likely to be provided on LMDS. The Commission agrees with the

majority of commenters on this issue who contend that the LMDS A block licensees provide or are expected to provide broadband services, instead of local telephone or cable services. Because the Commission believes that the LMDS A block is not being used to provide services which are primarily local exchange or multi-channel video distribution (MVPD), the Third R&O concludes that it is unlikely that the possible use of LMDS spectrum by incumbents will result in the blocking of entry into those services, and thus allows the restriction to lapse. Commenters also generally contend that the broadband market is robust and competitive, and that incumbent cable companies and incumbent LECs could not use LMDS spectrum to dominate the broadband market. The Commission finds that an increasing number of broadband firms and technologies are providing growing competition to incumbent LECs and cable companies, apparently limiting the threat that they will be able to preclude competition in the provision of broadband services. The Commission also finds no evidence that the incumbent LECs or incumbent cable companies have the incentive to warehouse LMDS licenses in order to protect their control of these markets from competition. These issues are discussed at paragraphs 14—21 in the Third R&O.

12. Although the majority of commenters favor the sunset of LMDS eligibility restrictions, some commenters argue that it is premature to terminate the restriction because the first LMDS products are just becoming available in the United States. Paragraphs 23–33 in the Third R&O explain the Commission's rationale for rejecting this contention. Briefly, the Third R&O sunsets the LMDS eligibility restriction because open eligibility (1) will not pose a significant likelihood of substantial competitive harm in any market; (2) is likely to provide access to additional capital to fully develop LMDS; (3) will treat LMDS similarly to substitutable spectrum; and (4) should help make services more available in rural areas. Paragraphs 14–21of the Third R&O find that the record does not support a conclusion that open eligibility poses a significant threat of substantial competitive harm in specific markets, LEC or MVPD, or that eligibility restrictions are an effective way of addressing potential competitive harm. Paragraph 24 of the Third R&O discusses how removal of the restriction may result in access to capital resources to more fully develop LMDS. Paragraphs 26 and 27 detail why LMDS should be treated no differently from other substitutable spectrum.

13. Paragraphs 28–29 discuss allegations by rural commenters that the LMDS in-region eligibility restriction imposes several disadvantages on small, rural telecommunications carriers. The Third R&O, while recognizing that the eligibility restriction was initially imposed on rural markets because the Commission believed that it could stimulate competition to LEC's in these markets, now finds that this has not occurred, and that allowing the eligibility restriction to sunset will remove possible impediments to small and rural carrier LMDS deployment. The negative effects of the eligibility restriction on small and rural entities and consumers, are discussed more fully in paragraphs 28–32 of the Third R&O.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

Common Carrier Services and Related Entities. According to data in the most recent Commission *Carrier Locator Interstate Service Providers* report, there are 3,528 interstate carriers, including *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. The Commission discusses the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and then attempts to refine further those estimates to correspond with the categories of telephone companies that are commonly used under the rules.

The Commission includes small incumbent LECs in this present RFA analysis. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.

Total Number of Telephone Companies Affected. The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. The Commission finds it reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the action taken in this Third R&O.

Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. The Commission is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small

ILECs that may be affected by the actions taken in this Third R&O.

Local Exchange Carriers, Competitive Access Providers, Competitive Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange service, competitive access providers, or competitive local exchange carriers. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent telecommunications industry revenue data, 1,348 carriers reported that they were engaged in the provision of incumbent local exchange services, and 212 carriers reported that they were providing competitive access or competitive local exchange services. The Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,560 providers of local exchange service, or of competitive access or competitive local exchange services are small entities or small entities that may be affected by the actions taken in this Third R&O.

A-Block LMDS Providers. The total number of A-block LMDS licenses is limited to 493, one for each Basic Trading Area. The Commission has held auctions for all 493 licenses, in which it defined "very small business" (average gross revenues for the three preceding years of not more than $15 million), "small business" (more than $15 million but not more than $40 million), and "entrepreneur" (more than $40 but not more than $75 million) bidders. There have been 99 winning bidders that qualified in these categories in these auctions all of which may be affected by the actions taken in this Third R&O

Cable Services or Systems. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on its most recent information, the Commission estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995, and that there are currently fewer than 1,439 small entity cable system operators.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 66 million subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 660,000 subscribers or less totals 1,450. The Commission does not request or collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 66 million subscribers.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The actions taken in the Third R&O entail no new or revised reporting, recordkeeping or other compliance requirements.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

Although the Commission LMDS eligibility restriction was initially intended to stimulate competition between all sorts of entities, including small entities, only two of the 19 comments that were filed ask that the restriction be retained. The restriction was adopted with a June 30, 2000, sunset date to allow sufficient time for the Commission to conduct a thorough review of the effectiveness of the restriction. The Commission first adopts the 39 GHz approach to determine if the restriction should be extended. Two other alternative standards exist. The first alternative allows that the incumbent LECs or cable companies continue to have substantial market power in the provision of local telephone or cable television services. Two commenters urge the Commission to retain the restriction using the market dominance standard and arguing that LECs and cable companies remain dominant in their respective markets. As discussed in paragraphs 10–11 of the Third R&O, the Commission rejects continued use of the market power standard, because the substantial market power test does not address whether the incumbents are able to preclude competition in other markets which LMDS licensees wish to enter. No comments were submitted in support of the second option that would provide that the incumbent companies possess the incentive and ability to purchase the LMDS block to prevent entry of a competitor.

Thus, the Commission, in the Third R&O concludes that the 39 GHz test is the appropriate standard to apply in determining whether the LMDS eligibility should sunset. The 39 GHz test is a more discerning standard than the standard market power test in that it not only considers the broadest set of market facts and circumstances, but it also will allow the Commission to focus on the issues it needs to decide—whether the incumbents are likely to use their market power to cause substantial competitive harm by preventing the use of LMDS spectrum for services that would otherwise be provided by LMDS licensees, and whether the restrictions will prevent such actions. Paragraphs 8–9 of the Third R&O present a complete discussion of the benefits of the 39 GHz standard.

Finally, as discussed in paragraphs 22–33 of the Third R&O, the Commission has considered the benefits of allowing the eligibility restriction to expire as opposed to the benefits of extending it, and determines, with the support of the large majority of commenters, that allowing the restriction to sunset offers the most benefit to the most parties. Small businesses in particular stand to benefit from removal of the eligibility restriction. Paragraphs 28–32 of the Third MO&O, for example, discuss the effect of the LMDS eligibility restriction on small and rural carrier LMDS deployment, finding that the restriction causes undue hardship for rural carriers,

of which many are small entities, possibly in violation of the Telecommunications Act of 1996. Commenters who argue against retaining the restriction contend that application of the restriction to rural telephone companies imposes significant economic and social costs, that communities served by rural ILEC's are often not sufficiently lucrative markets to attract other providers, that competitive concerns are not applicable in a rural market, and that rural carriers lack the resources to warehouse spectrum. For these reasons, the Commission believes that small businesses will benefit from allowing the LMDS eligibility restriction to sunset rather than to retain the restriction.

Report to Congress: The Commission will send a copy of this Third Report and Order and Memorandum Opinion and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Third Report and Order and Memorandum Opinion and Order and this FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

It is ordered, that 47 CFR 101.1003 is removed. This modification shall become effective on June 30, 2000. (This rule modification may become effective on less than 30 days' notice because it relieves a restriction. *See* 5 U.S.C. 553((d))((1). Moreover, the Commission finds good cause to make this modification effective on less than 30 days' notice because the restriction in the previous rule terminates on June 30, 2000. *See* 5 U.S.C. 553(d)(3).)

The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this MO&O and FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1980).

List of Subjects in 47 CFR Part 101

Communications, Local multipoint distribution service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Change

Accordingly, 47 CFR part 101 is amended as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. § 101.1003 [Removed]

Remove § 101.1003.

[FR Doc. 00–17028 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 130
Thursday, July 6, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV00–905–1 PR]

Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Citrus Administrative Committee (Committee) for the 2000–2001 and subsequent fiscal periods from $0.00385 to $0.0055 per 4/5-bushel carton of citrus handled. The Committee locally administers the marketing order which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Authorization to assess citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins on August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 7, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable oranges, grapefruit, tangerines, and tangelos beginning on August 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.00385 to $0.0055 per 4/5-bushel carton or equivalent of citrus.

The Florida citrus marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida citrus. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 26, 2000, and unanimously recommended 2000–2001 expenditures of $255,500 and an assessment rate of $0.0055 per 4/5-bushel carton or equivalent of citrus. In comparison, last year's budgeted expenditures were $245,425. The assessment rate of $0.0055 is $0.00165 higher than the rate currently in effect. The quantity of assessable oranges, grapefruit, tangerines, and tangelos for

the 2000–2001 fiscal period is expected to be 55,000,000 4/5 bushel cartons. The Committee projected 60,500,000 assessable 4/5-bushel cartons of citrus for the 1999–2000 fiscal period. The actual quantity of assessable citrus for 1999–2000 is expected to be 53,500,000 4/5-bushel cartons. Because of this shortfall, the Committee has had to use money from its authorized reserve fund to cover approved expenses. The increase in assessment rate for 2000–2001 is needed to bring the reserve fund to an acceptable level, and to cover increases in the Committee's budgeted expenditures for the 2000–2001 fiscal period.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $118,300 for salaries, $36,000 for Manifest Department-FDACS, $19,900 for insurance and bonds, $18,500 for retirement plan, $12,450 for miscellaneous and reserve, and $10,000 for telephone. Budgeted expenses for these items in 1999–2000 were $118,300, $14,000, $19,900, $12,600, $9,075, and $9,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida citrus. With citrus shipments for the year estimated at 55 million cartons, assessment income should total $302,500. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (approximately $111,371) would be kept within the maximum permitted by the order (one-half of one fiscal period's expenses; § 905.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of oranges, grapefruit, tangerines, and tangelos in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Florida Agricultural Statistical Service and Committee data for the 1998–99 season, the average annual f.o.b. price for fresh Florida citrus during the 1998–99 season was $8.66 per 4/5-bushel carton for all shipments, and the total shipments for the 1998–99 season were 63.6 million cartons of citrus. Approximately 68 percent of the handlers handled 93 percent of Florida citrus shipments. Using information provided by the Committee, about 60 percent of citrus handlers could be considered small businesses under the SBA definition. Although specific data is unavailable, the Department believes that the majority of Florida citrus producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.00385 to $0.0055 per 4/5-bushel carton of citrus. The Committee unanimously recommended 2000–2001 expenditures of $255,500 and an assessment rate of $0.0055 per 4/5-bushel carton. The proposed assessment rate of $0.0055 is $0.00165 higher than the current rate. The quantity of assessable citrus for the 2000–2001 fiscal period is estimated at 55 million 4/5-bushel cartons. Thus, the $0.0055 rate should provide $302,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Assessment funds in excess of those needed for approved expenses would be used to increase the Committee's operating reserve.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $118,300 for salaries, $36,000 for Manifest Department—FDACS, $19,900 for insurance and bonds, $18,500 for retirement plan, $12,450 for miscellaneous and reserve, and $10,000 for telephone. Budgeted expenses for these items in 1999–2000 were $118,300, $14,000, $19,900, $12,600, $9,075, and $9,000, respectively.

The quantity of assessable oranges, grapefruit, tangerines, and tangelos for the 2000–2001 fiscal period is expected to be much less than in previous seasons. The Committee projected 60,500,000 assessable 4/5-bushel cartons of citrus for the 1999–2000 fiscal period. The actual quantity of assessable citrus for 1999–2000 is expected to be 53,500,000 4/5-bushel cartons. Because of this shortfall, the Committee has had to use money from its authorized reserve fund to cover approved expenses. In an effort to recover from assessment income shortfalls in 1997–98 and 1999–2000, and to bring the reserve fund to an acceptable level, the Committee voted unanimously to increase its assessment rate.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $255,500 that included increases in administrative costs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Budget Subcommittee, the Grapefruit Subcommittee, and the Regulatory Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the estimated number of assessable cartons of citrus. The assessment rate of $0.0055 per 4/5-bushel carton of assessable citrus was recommended to provide enough income to cover the Committee's estimated expenses for 2000–2001 and to increase its operating reserve. This rate is expected to generate $302,500. This is $47,000 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to

the upcoming fiscal period indicates that the grower price for the 2000–2001 fiscal period could range between $4.10 and $19.65 per 4/5-bushel carton of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period as a percentage of total grower revenue could range between .03 and .13 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the citrus production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2000–2001 fiscal period begins on August 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable citrus handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2000, an assessment rate of $0.0055 per 4/5-bushel carton or equivalent is established for assessable Florida citrus covered under the order.

Dated: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16991 Filed 7–5–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107872–99]

RIN 1545–AX18

Coordination of Sections 755 and 1060 Relating to Allocation of Basis Adjustments Among Partnership Assets; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the allocation of basis adjustments among partnership assets under section 755.

DATES: The public hearing originally scheduled for Wednesday, July 12, 2000, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and/or notice of public hearing that appeared in the **Federal Register** on Wednesday, April 5, 2000, (65 FR 17829), announced that a public hearing was scheduled for Wednesday, July 12, 2000, at 10 a.m., in room 2716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 755 of the Internal Revenue Code. The public comment period for these proposed regulations expires on Wednesday, July 5, 2000. The outlines of topics to be addressed at the hearing were due on Wednesday, June 21, 2000.

The notice of proposed rulemaking and/or notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, June 27, 2000, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, July 12, 2000, is cancelled.

Cynthia Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–16972 Filed 7–5–00; 8:45 am]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

RIN 1212–AA96

Title IV Aspects of Cash Balance Plans With Variable Indices

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Request for public comment.

SUMMARY: Many cash balance plans use variable indices to determine future retirement benefits. If such a plan terminates in a distress or involuntary termination under Title IV of ERISA, the PBGC must make assumptions—as of the plan's termination date—about the future performance of the variable index. The PBGC is soliciting public comment on what assumptions it should make about that future performance.

DATES: Comments must be received on or before September 22, 2000.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation,

1200 K Street, NW., Washington, DC 20005–4026, or delivered to suite 340 at the above address. Comments also may be sent by internet e-mail to reg.comments@pbgc.gov. Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Overview

The PBGC administers the termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under that program, the PBGC guarantees, subject to certain limits, the benefits payable by covered defined benefit plans.

Many of the PBGC's regulations were written in the early years of the termination insurance program. Since that time—particularly in recent years—defined benefit plans have undergone significant changes in design. One of the more significant changes for the termination insurance program is the emergence of cash balance and other hybrid plans. These new plan designs raise novel issues for the PBGC when it performs valuations and determines benefit entitlements. This notice focuses on how the PBGC should perform these tasks in the case of a cash balance plan that uses a variable index to determine participants' benefits.

Background

A brief explanation of the PBGC's existing valuation and payment rules and of certain aspects of cash balance plans may be helpful to an understanding of the issues raised in this notice.

Valuation and Payment Rules for Traditional Plans

When a defined benefit plan terminates in a distress or involuntary termination, the PBGC allocates the plan's assets among the plan's participants and beneficiaries based on the priority categories established under section 4044 of ERISA. To do so, the PBGC must value the plan's benefit liabilities and the plan's assets as of the plan's termination date. The valuation affects the amount of the PBGC's employer liability claim for plan underfunding. It also affects the extent to which any nonguaranteed portion of a participant's accrued benefit is funded. (Nonguaranteed benefits may be funded either by plan assets under ERISA section 4044 or by PBGC recoveries on its employer liability claims under ERISA section 4022(c).) The PBGC performs this valuation by making assumptions as to the form of the benefit, when payments will begin (*e.g.*, at early or normal retirement age), interest, mortality, etc.

In the case of a traditional defined benefit plan, when the PBGC completes its valuation it generally can determine, and tell the participant, the amount of the annuity benefit payable (at a specified age, and in a specified form) under the termination insurance program. This is so even if retirement is many years away. (The actual amount of the annuity benefit may vary depending on factors such as when the participant chooses to start receiving the benefit and whether the benefit is paid in a "joint-and-survivor" form.) Similarly, if the PBGC pays a benefit under a traditional defined benefit plan in lump-sum form (generally only when it cashes out a de minimis benefit of $5,000 or less), it can determine its lump-sum value (*i.e.*, the present value, as of the plan's termination date, of the annuity benefit payable by the PBGC) as soon as it completes its valuation. The PBGC cannot make these determinations as easily in many cash balance plans.

Cash Balance Plans

A cash balance plan is a defined benefit plan that defines a participant's retirement benefit by reference to the amount of a hypothetical account balance. The hypothetical account balance is credited each year with a pay credit and an interest credit, both of which must be specified in the plan. A cash balance plan also must specify the annuity conversion factor (*e.g.*, a factor based on specified interest and mortality assumptions) that it will use to convert the hypothetical account balance to an immediate annuity benefit. Participants in ongoing cash balance plans who separate from employment generally have the right to receive their benefits in annuity form, although they typically choose (with spousal consent) to receive their benefits in lump-sum form. In most cases, the plan defines the lump-sum amount as equal to the hypothetical account balance.

In a cash balance plan, the interest credit may be fixed (*e.g.*, 5%) or based on a variable index (*e.g.*, the yield on 30-year Treasury securities). (Similarly, while the annuity conversion factor may be fixed, it may also vary over time, either because the interest rate is tied to a variable index or because the mortality assumption (*e.g.*, the "applicable mortality table" under IRC § 417(e)(3)) may change.) If the plan does not use a fixed interest credit and would not qualify under IRS Notice 96–8 (1996–1 C.B. 359) as a "safe-harbor" plan that may pay out the hypothetical account balance as the present value of the participant's benefit, it must include a method for fixing the value of the indices in order to calculate a participant's accrued benefit (see section III.B.1 of Notice 96–8).

When a cash balance plan terminates in a distress or involuntary termination, the PBGC can perform its plan valuation and make its benefit determinations in the same way it does for a traditional defined benefit plan only if the plan's interest credit and annuity conversion factors are fixed or if the plan provides a method for fixing them. In the absence of fixed factors or a plan method for fixing them, the PBGC must determine how to fix the factors.

Although the discussion in this notice focuses on interest credits that are based on variable indices, similar issues arise with respect to annuity conversion factors that may vary over time.

Future Annuity Payments—Following the Variable Index

A variable index presents fewer problems when the PBGC is determining the annuity amount to actually pay a participant at the time the participant begins to receive benefits. The PBGC can—and anticipates that it will—track the future (actual) performance of a variable index so that it will know, at the time a participant begins to receive benefits, the amount of the participant's annuity benefit under the plan and the extent to which that benefit is guaranteed. (However, in the case of a participant whose benefit is not fully guaranteed, how the PBGC fixes the variable index may affect the extent to which there is funding for the nonguaranteed portion of the benefit, as discussed under Fixing the Variable Index, below.)

Although tracking the actual performance of a variable index over time is consistent with plan provisions, it will prevent the PBGC from being able to tell participants before retirement exactly what they will receive at retirement (just as it is impossible for the plan administrator of an ongoing cash balance that uses a variable index to provide this information to participants in advance). The PBGC is considering what types of estimates it

should give when communicating with participants and how often to update these estimates.

Fixing the Variable Index

Section 4044 Valuation

Tracking the actual performance of a variable index over time is not an option for the PBGC when it performs its plan valuation under ERISA section 4044. This is because the PBGC must perform this valuation as of the plan's termination date and thus cannot take into account the actual performance of the variable index after that date. The PBGC values each participant's plan benefit by first determining the annuity benefit payable at retirement and then determining the present value of that future annuity benefit as of the plan's termination date. Thus, the PBGC must fix the variable index (*i.e.*, make an assumption about the future performance of the variable index) as of the plan's termination date to be able to determine, as of that date, what a participant's annuity benefit will be at a future retirement date.

Future Annuity Payments—Funding of Nonguaranteed Benefits

The way in which the PBGC fixes the variable index will not affect the amount of a participant's annuity benefit under the plan or the extent to which that benefit is guaranteed. However, it can affect the section 4044 valuation, which is performed as of the plan's termination date. That valuation, in turn, can affect the extent to which any nonguaranteed portion of the participant's benefit is funded by plan assets or by PBGC recoveries on its employer liability claims.

Lump Sums

The PBGC also must fix the future performance of a variable index to determine the amounts of its (generally *de minimis*) lump-sum payments. This is so because, under the PBGC's traditional methodology for calculating lump sum amounts, it must know the amount of the participant's future retirement benefit in order to determine the lump sum value (based on PBGC assumptions and methods) of that benefit as of the plan's termination date.

The need to fix the variable index would not disappear even if the PBGC were to depart from its traditional methodology for determining lump sum amounts and were instead to base its lump sum payments in "safe-harbor" cash balance plans on the amount of the hypothetical account balance. This is because the PBGC can pay the hypothetical account balance only to the extent it is payable under Title IV of ERISA, *i.e.*, guaranteed (under ERISA section 4022(a) and (b)) or funded by plan assets (under ERISA section 4044) or by PBGC recoveries on its employer liability claims (under ERISA section 4022(c))—determinations that the PBGC must make as of the plan's termination date. Thus, the PBGC will need to fix the variable index to determine the extent to which the lump sum is payable.

Possible Methods for Fixing the Variable Index

The PBGC can fix the future performance of a variable index in a number of ways—for example, by using a standardized PBGC value that will apply to all plans that terminate on a given date, by making a "best estimate" determination for each plan termination based on generally accepted actuarial principles and practices, by using the index as it stood on the plan's termination date (*i.e.*, the "spot rate"), or by using some "historical average" of the index.

Each approach would present different issues. Using a standardized PBGC value could lead to results that would diverge significantly from what one would expect based on the variable index a plan chose. The "best estimate" approach might leave too much discretion with the PBGC. Although the "spot rate" approach could be viewed as consistent with the use of the termination date as the date to determine various rights and obligations under the termination insurance program, there would be an issue as to whether this was the best approach where the index was at (or near) a historic high or low or where, as in the case of an equity index, the change in the index could be negative. And the "historical average" approach would raise questions as to the period over which the variable index should be averaged and the method of averaging. It also would raise questions as to the data's applicability to the future, particularly where the variable index had existed for only a short time or was volatile (*e.g.*, a stock index).

One option that the PBGC is actively considering, in the common case where a plan uses a variable Treasury index other than the yield on 30-year Treasuries (*e.g.*, the yield on one-year Treasuries), is to combine elements of the "spot rate" and "historical average" approaches by using a "modified spot rate" approach. Under this approach, the PBGC would start with the less volatile spot rate for 30-year Treasuries and adjust it to reflect the historical difference between the yield on 30-year Treasuries and the variable index used.

Request for Comments

The PBGC is soliciting comments on the Title IV aspects of cash balance plans. As detailed in this notice, the PBGC is especially interested in comments on how it should make its valuation and payment determinations under a cash balance plan that uses a variable index to determine benefits, and on what benefit estimates it should give participants in such a plan. While the discussion in this notice focuses on cash balance plans that use variable indices to determine interest credits, the PBGC is also interested in comments on how it should perform these tasks for cash balance plans that use annuity conversion factors that may vary and for other plans that may raise similar issues.

E.O. 12866 Review

The Office of Management and Budget has reviewed this notice under E.O. 12866, Regulatory Planning and Review. However, the PBGC has not yet determined whether there is a need to proceed by rulemaking to address the issues raised in this notice.

Issued in Washington, D.C., this 30th day of June, 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–17039 Filed 7–5–00; 8:45 am]

BILLING CODE 7708–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–4A]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of reply comment period.

SUMMARY: The Copyright Office of the Library of Congress is extending the period for filing reply comments in the proceeding to consider the merits of a petition filed by the Digital Media Association. The petition seeks a determination that a webcasting service is not deemed to be interactive merely because it offers the consumer some degree of influence over the programming offered by the service.

DATES: Written reply comments are due on July 14, 2000.

ADDRESSES: If sent by mail, an original and ten copies of the reply comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, the reply comments, they should be brought to: Office of the General Counsel, James Madison Building, Room LM–403, First and Independence Ave., SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2000, the Copyright Office published a notice of inquiry seeking comments on whether to grant a petition for rulemaking filed with the Copyright Office on April 17, 2000, by the Digital Media Association (DiMA). 65 FR 33266 (May 23, 2000). The petition requests that the Office adopt a rule stating that a webcasting service does not become an interactive service because a consumer exerts some degree of influence over the streamed programming.

Comments in response to the notice of inquiry were filed on June 22, 2000. Two parties filed comments in this proceeding, the Recording Industry Association of America, Inc. and DiMA. On June 30, 2000, DiMA filed a request for an extension of the filing date for reply comments from the initially announced date of July 7, 2000, to July 14, 2000. DiMA asserts that it is in need of more time to develop a meaningful response because the intervening four-day Fourth of July holiday creates logistical difficulties for it and its members. DiMA also suggests that an extension of the filing deadline by a week will create no prejudice to any party interested in filing a reply in this proceeding.

The Office agrees and, therefore, grants the request for a one-week extension of the reply comment filing period. Reply comments are now due on Friday, July 14, 2000.

Dated: June 30, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–17109 Filed 7–5–00; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 434

[FRL–6730–7]

Extension of Comment Period for Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: EPA is extending the comment period for the proposed amendments to effluent limitations guidelines and new source performance standards for the coal mining point source category. The proposed rule was published in the **Federal Register** on April 11, 2000 (65 FR 19439). The comment period for the proposed rule is extended by 60 days, ending on September 8, 2000. This extension is being granted while taking into consideration the court-ordered promulgation deadline for the final rule.

DATES: Comments on the proposed rule will be accepted through September 8, 2000.

ADDRESSES: Send written comments to John Tinger (4303); U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Ave., N.W.; Washington, DC 20460. Comments delivered by hand should be brought to Room 615, West Tower; 401 M Street, S.W.; Washington, DC. Please submit any references cited in your comments. Submit an original and three copies of your written comments and enclosures. No facsimiles (faxes) will be accepted. For information on how to submit electronic comments, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional technical information, contact John Tinger at (202) 260–4992 or at *Tinger.John@epa.gov*. For additional economic information, contact Kristen Strellac at (202) 260–6036 or at *Strellac.Kristen@epa.gov*.

SUPPLEMENTARY INFORMATION: On April 11, 2000, EPA published proposed amendments to effluent limitations guidelines and new source performance standards for the coal mining industry in the **Federal Register** for public review and comment (65 FR 19439). The comment period was scheduled to end July 10, 2000.

EPA has received requests to extend the comment period to allow more time for public comment. While EPA believes the initial comment period of 90 days was adequate, to accommodate these requests EPA is extending the comment period 60 days, through September 8, 2000.

In addition to accepting hard-copy written comments, EPA will also accept comments submitted electronically. Electronic comments must be submitted as a Word Perfect 5/6/7/8 or ASCII file and must be submitted to *Tinger.John@epa.gov*.

Under a consent decree entered by the U.S. District Court for the District of Columbia, EPA is scheduled to promulgate the final rule by December 2001. *See* 65 FR 19442. While this deadline is feasible even with this extension of the comment period, EPA would not support any further extension of the comment period.

Dated: June 29, 2000.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 00–17069 Filed 7–5–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[IB Docket No. 00–106, FCC 00–210]

Review of Commission's Consideration of Applications Under the Cable Landing License Act

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document solicits comments on a proposed mechanism for streamlining the licensing of international submarine cable systems. Under the proposal, applicants would have three options to qualify for streamlined review. The Commission initiated this proceeding as a means of tailoring its licensing process to encourage rapid, facilities-based entry by multiple firms that can bring new capacity to keep up with the increased demand.

DATES: Comments are due on or before August 21, 2000, and reply comments are due on or before September 21, 2000. Written comments by the public on the proposed information collections are due on or before August 21, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections before September 5, 2000.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the proposed information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1499. For additional information concerning the proposed information collections contained in this Notice of Proposed Rulemaking contact Judy Boley at (202) 418–0214, or email at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, FCC 00–210, adopted on June 8, 2000, and released on June 22, 2000. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The document is also available for download over the Internet at http://www.fcc.gov/Bureaus/International/Notices/2000/fcc00210.txt. The complete text of this document also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

This Notice of Proposed Rulemaking contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Summary of Notice of Proposed Rulemaking

1. On June 8, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to initiate a proceeding to establish streamlined rules for processing applications for submarine cable landing licenses. This proceeding is one of the Commission's continuing efforts to streamline the submarine cable landing licensing process. The streamlining proposal is designed to provide guidance for industry in submitting applications and for the Commission in reviewing such applications. The streamlining approach is designed to provide more certainty and flexibility for participants in the application process, to promote increased investment and infrastructure development by multiple providers, and to decrease application processing time. The approach in the NPRM reflects broad input from participants in the submarine cable industry. In November 1999, the International Bureau held a Public Forum (64 FR 56347, Oct. 19, 1999) and has held numerous informal meetings with individual industry participants to solicit views about ways the Commission might improve its regulation of the submarine cable landing licensing process to further promote consumer benefits from increased cable capacity and facilities-based competition. The Commission seeks comments on the proposals and tentative conclusions contained in this NPRM.

2. The Commission proposes a mechanism under which an applicant for a submarine cable landing license will have three options to qualify presumptively for grant on a streamlined basis. The NPRM proposes the following three streamlining options: a demonstration that the route on which the proposed cable would operate is or will become competitive; a demonstration of sufficient independence of control of the proposed cable from control of existing capacity on the route; or the existence of certain pro-competitive arrangements.

3. Under the proposal, an applicant could choose any one of the three options to qualify presumptively for grant on a streamlined basis. The Commission states that if an application does not qualify for streamlining, it will be reviewed on a non-streamlined basis without prejudice.

4. The Commission proposes that, when considering an application to land and operate a submarine cable that will connect to a non-WTO member, it would consider whether the applicant is, or is affiliated with, a carrier that has market power in a market where the cable lands. If so, the Commission proposes to consider whether that destination market offers effective competitive opportunities (ECO) for U.S. companies to land or operate a submarine cable in that country. Therefore, the Commission proposes that such a cable would not qualify presumptively for grant on a streamlined basis, and, in addition to the *de jure* and *de facto* ECO criteria, the Commission would continue to consider other factors consistent with the Commission's discretion under the Cable Landing License Act that may weigh in favor of or against grant of a license. The Commission seeks comment on this proposal.

5. The Commission seeks comment on control of three key submarine facilities: the wet link of a submarine cable system; cable landing stations serving a submarine cable system; and exclusive backhaul facilities associated with the landing stations of a submarine cable system. The Commission tentatively concludes that an examination of a firm's influence over these three key facilities is necessary to determine whether a cable project raises competitive concerns. The Commission seeks comment on this tentative conclusion.

6. In the NPRM, the Commission proposes that, to meet any of the three streamlining options, an applicant must provide sufficient documentation. The Commission states that such documentation should include, for example, cable landing license applications, Commission Orders, the International Bureau's Circuit Status Report, the various Construction & Maintenance Agreements (C&MAs) or capacity purchase agreements for the cables, and industry press releases. The Commission seeks comment on other types of documentation that would be useful for applicants seeking to qualify for the streamlining options. The Commission also proposes that the streamlining options should apply equally for initial applications to land and operate submarine cables and to applications to assign or transfer control of existing submarine cable landing licenses. The Commission seeks comment on this proposal.

7. The first proposed streamlining option is a demonstration that the route in question is, or will become, competitive because there are multiple, independently controlled cables serving the route. The Commission proposes that, when an applicant seeks to make a competitive route demonstration, the Commission would consider a "route" to be the connection between the U.S. and a landing point in a foreign country. The Commission also notes that an applicant could choose to show that there are other economically comparable means to access the destination route through a landline or submarine connection using another cable or facility stemming from a point-to-point route other than the destination route, *i.e.*, hubbing. The Commission

seeks comment on these methods of defining a route. The Commission also notes that in the context of reviewing certain mergers, the Commission has chosen to adopt a regional approach to analyzing the international transport market. The Commission seeks comment on whether it should instead consider adopting a regional route approach in determining whether there are sufficient competitive options within the submarine cable market. The Commission notes that commenters advocating a regional route approach should address how the Commission might define "region."

8. To satisfy the option that the route is or will become competitive, the Commission proposes that an applicant demonstrate that there are at least three independently controlled cables, including the applicant's proposed cable, serving the route on which the applicant wishes to operate the proposed cable. The Commission proposes that an applicant rely only on cables that have become operational within 36 months of the filing of the current application. The Commission seeks comment on whether 36 months is the appropriate cut-off period for cables becoming operational. The Commission also seeks comment on whether three is the appropriate minimum number of independent cables and states that commenters arguing that three is not the appropriate minimum should suggest and support an alternate minimum number.

9. For purposes of the competitive route streamlining option, the NPRM seeks comment on how to attribute control of proposed and existing cables. Specifically, the NPRM seeks comment on the extent of ownership in the three key submarine cable facilities (wet link, cable landing stations, and exclusive backhaul facilities) that would give a firm control of proposed or existing cables for purposes of this streamlining option. The NPRM states that, for example, one approach would be to attribute control of an entire cable to any entity that: owns 50 percent or more of the equity in the wet link of the cable; owns 50 percent or more of the equity in a landing station on the cable; is the exclusive backhaul provider at a landing station of the cable; or exercises de facto control over the wet link of the cable or a landing station on the cable. Alternatively, the NPRM seeks comment on whether there may be other options to consider in determining what level of ownership of key submarine cable facilities would give a firm control of a cable system for purposes of this streamlining option. With regard to the landing station element, the NPRM states that the Commission would not propose to attribute control of any of the cable system to an entity controlling fewer than all of the landing stations in a particular country.

10. Stating that it is concerned that including these demonstrations for all landing points for a proposed cable may create a disincentive for cable landing license applicants seeking to qualify for the competitive route streamlining option to include a loop on the cable that serves a previously underserved country, the Commission seeks comment on whether the Commission should adopt an exception under which a landing point on the route of a proposed cable would not need to be included in the competitive route analysis.

11. The NPRM also seeks comment on whether the Commission should entertain petitions for declaratory ruling regarding the competitiveness of certain routes in lieu of the case-by-case showings as proposed in the NPRM. The NPRM asks commenters to identify specific showings that a petitioner would need to make in order for the Commission to declare a particular route competitive in this manner. The NPRM also asks commenters to address whether the benefits of the proposed 36-month cut-off are so significant that the Commission should not entertain petitions for declaratory ruling regarding the competitiveness of particular routes. The Commission also seeks comment on whether a declaratory ruling should remain effective, if, subsequent to the declaratory ruling, two or more firms that control facilities on the route have merged.

12. The second proposed streamlining option is a demonstration that the proposed cable system will be controlled predominantly by new entrants. For purposes of this streamlining option, the Commission proposes to identify a "key applicant group" of a proposed cable and seeks comment on the extent of ownership in the three key submarine cable facilities (wetlink, cable landing stations, and exclusive backhaul facilities) that would give a firm control of a cable system for purposes of including the firm in the key applicant group of a proposed cable. The Commission states that, for example, one approach would be to include in the key applicant group any entity that: owns 50 percent or more of the equity in the wet link of the proposed cable; owns 50 percent or more of the equity in a landing station on the proposed cable; is the exclusive backhaul provider at a landing station of the proposed cable; or exercises de facto control over the wet link of the proposed cable or a landing station on the proposed cable. Alternatively, the Commission seeks comment on whether there may be other options to consider in determining what level of ownership of key submarine cable facilities would give a firm control of a cable system for purposes of including the firm in the key applicant group of the proposed cable.

13. The proposed streamlining option would consist of a demonstration that entities in the key applicant group of a proposed cable control less than 50 percent of the existing wet link capacity on the route to be served by the proposed cable. The Commission states that an applicant that is providing service on the route for the first time could satisfy this proposed streamlining option simply by certifying that the key applicant group of the proposed cable does not control any existing wet link capacity on the route to be served by the proposed cable. In a situation in which an applicant is proposing to serve previously unserved routes, the Commission seeks comment on whether it should streamline the processing of such an application.

14. For a proposed cable whose key applicant group controls existing capacity on the route to be served by the proposed cable, the NPRM states that an applicant could make a showing that it controls less than 50 percent of the existing wet link capacity on the route. The Commission proposes to attribute the entire capacity of an existing cable system to any entity that owns 50 percent or more of the equity in the wet link of the existing cable or exercises de facto control over the wet link of the existing cable. In addition, the Commission seeks comment on whether and to what extent it should attribute to a firm capacity on an existing cable based on the firm's percentage of control of landing stations in any country in which that existing cable lands. The Commission invites alternative proposals for attributing capacity and seeks comment on the appropriate treatment of joint ventures and affiliates in this context.

15. The NPRM proposes that applicants choosing this streamlining option provide a list of all firms in the key applicant group and a calculation of this group's share of existing capacity on the route. The Commission states that it believes that this information should be readily available through cable landing license applications, Commission Orders, the International Bureau's annual Circuit Status Report, the various C&MAs and capacity purchase agreements for the cables, and

industry press releases. Comments are sought on whether this is the case.

16. Global Crossing submitted a proposal it suggests the Commission use as a basis for addressing competitive issues in the submarine cable market in a Notice of Proposed Rulemaking. Specifically, Global Crossing proposes a structural solution under which, for an applicant to receive a submarine cable landing license, the applicant would need to demonstrate that the landing parties on the U.S. end of the cable do not have a combined share of more than 35 percent of the active half circuits, including half circuits of full circuits, on the U.S. side of the route served by the cable. The NPRM seeks comment on this proposal.

17. The third proposed streamlining option is a demonstration of sufficient pro-competitive arrangements. The Commission states that, as a general matter, the pro-competitive provisions should constrain the ability of major carriers on a cable to set supracompetitive prices by controlling backhaul and the timing of the final capacity upgrade of the cable system, which ultimately would result in higher prices for consumers. The Commission seeks comment on its general conclusions, and whether the Commission's licensing processing processes should reflect these goals.

18. As part of the pro-competitive policy, the Commission proposes that an applicant, in ownership or other documents, include specific provisions regarding landing stations and competitive backhaul. The Commission seeks comment on two alternatives for such provisions. First, the Commission states that, in order to qualify for streamlining, applicants might include in ownership or other documents general provisions allowing for sufficient collocation at a landing station by other owners or their designees and stating that there will be no restrictions on who can provide backhaul. Alternatively, the Commission states that, in order to qualify for streamlining, applicants might be required to make more specific demonstrations. As an example, the Commission notes that it might provide that an applicant include provisions explicitly stating that: sufficient space at all landing stations in the United States, and at each foreign landing station on the route where applicants plan to land the proposed cable, will be made available to any other owner, or the designee of any other owner, for the purpose of collocating equipment to provide backhaul; all owners or designees of owners may use such space for the provision by them of backhaul services to others; and there will be no restrictions on the ability of any owner to subcontract the provision of backhaul. The Commission notes that, to make specific demonstrations regarding backhaul, an applicant could include provisions in ownership or other documents explicitly stating that at least two separate parties will provide backhaul, rather than a single entity, at all landing stations in the United States, and at each foreign landing station on the route where applicants plan to land the proposed cable.

19. The Commission seeks comment on these two alternatives and any other alternative that commenters deem to be more appropriate. The Commission also seeks comment on whether collocation and backhaul rights provided by applicants should apply only to owners of equity or to IRU holders as well. In addition, the Commission notes that there has been some concern expressed about high rates charged for connection to cables and backhaul from cable landing stations, and seeks comment on ways in which the Commission might ensure the ability of carriers to obtain connection to a cable and backhaul to points of presence at competitive rates.

20. The Commission also proposes that, in order to qualify under this streamlining option, an applicant include certain provisions in ownership or other documents about wet link capacity upgrades and use of capacity. The Commission seeks comment on whether, in order to qualify for this streamlining option, a provision should be included in ownership or other documents that would allow the capacity of a cable to be upgraded either by a 51 percent vote of the owners or by any group of owners voting to fully fund the cost of the upgrade. The Commission notes that, in the latter case, ownership or other documents would indicate that all owners, not just owners voting to fully fund the upgrade, will have the right to buy into the upgrade consistent with their contractual rights. The Commission also seeks comment on whether a firm's interest in a cable should be measured in terms of circuits, dollar value of investment or some other measure. In addition, the Commission seeks comment on whether, in order to qualify for this streamlining option, an applicant should include provisions in ownership or other documents explicitly stating that, after the initial capacity has been funded, there will be no restrictions on resale or transfer of capacity and no restrictions on parties reselling their ownership shares and/or reselling or leasing their rights on the cable. The Commission seeks comment on whether an applicant should explicitly state that there will be no unreasonable charges assessed on owners wishing to resell or transfer capacity or ownership shares, or wishing to resell or lease their rights on the cable.

21. The Commission also seeks comment on whether, as an additional pro-competitive arrangement, an applicant should include a provision in ownership or other documents explicitly allowing smaller firms to combine their capacity requirements for the purpose of obtaining volume discounts.

22. The Commission also proposes methods to streamline the process and seeks comment on the proposals. The Commission notes because of the unique role of the Executive Branch with respect to submarine cable landing licenses, and because the Commission we intends to coordinate closely with the Executive Branch, the Commission does not propose a wholesale adoption of the Section 214 streamlining process for submarine cable landing license applications. With respect to timing for review of submarine cable landing license applications, the Commission proposes that, if an application qualifies presumptively for grant on a streamlined basis under one of the three streamlining options, the Commission will grant the application 60 days from the date the International Bureau issues a public notice accepting the application for filing, or indicate in a public notice why grant of the application within 60 days cannot be provided. The Commission seeks comment on this proposal and states that it expects that the period between the filing of an application and the release of a public notice ordinarily would not be lengthy because the International Bureau would put an application out on public notice promptly after determining that the application is complete.

23. The NPRM also discusses the possibility of a conditional grant of a cable landing license whereby the Commission would condition its grant of authority on ultimate approval by the Secretary of State. The Commission also proposes to issue streamlined licenses by public notice, rather than by issuing an Order and seeks comment on whether issuing a public notice would satisfy the requirement under the Cable Landing License Act that grants be issued by "written license."

24. The Commission states its intention to continue its private submarine cable policy in order to further stimulate competition in the market, but states that it does not

propose to abandon the distinction between submarine cable systems which operate on a common carrier and a non-common carrier basis. The Commission also seeks comment on whether, in a situation in which an applicant is proposing to serve previously unserved routes, the Commission should impose conditions, such as a nondiscrimination requirement, on the license, regardless of whether the Commission grants the license on a streamlined basis. The Commission also seeks comment on the types of situations in which it might be appropriate for the Commission to require a cable to be operated on a common carrier basis and asks commenters to address whether the Commission should consider indirect means to a destination point in determining the level of competition on a route and whether a route is a thin route. The Commission also seeks comment on what effect, if any, the imposition of common carrier regulations or common carrier-like obligations may have on a company's business decision whether to build a cable.

25. In addition, the Commission seeks comment on whether any of the routine conditions currently imposed on cable landing licenses should be eliminated or modified. The Commission also notes that Level 3 suggested that the Commission develop special conditions for the licenses of submarine cables whose participants include carriers that are "major suppliers," regardless of whether those carriers are U.S.-licensed carriers, and states that Level 3 defines a "major supplier" as that term is defined in the Reference Paper to the WTO Basic Telecom Agreement. Level 3 argued that to prevent such carriers from acting anticompetitively in the submarine cable market, the Commission should impose conditions relating to: cable station access, requiring a major supplier to provide competing carriers with, for example, physical collocation at the cable station, circuit provisioning and interconnection intervals; backhaul, requiring a major supplier to allow competing carriers to negotiate a backhaul contract with the major supplier on a timely and reasonable basis with nondiscriminatory pricing; and procedures, requiring a major supplier to expedite orders for service with reasonable times and reasonable charges, to ensure freely available information, and, for consortium cables, to separate submarine cable and related operations from terrestrial operations. The Commission seeks comment on Level 3's suggestions and states that commenters advocating that the Commission adopt Level 3's suggestions should indicate whether we should define "major supplier" as Level 3 defines the term, or whether we should adopt an alternative definition, and explain how the proposed definition would work in practice.

26. To provide more certainty to potential cable landing license applicants, the Commission proposes a method for determining who should be included as an applicant for a cable landing license. Specifically, the Commission proposes that an entity should be included as an applicant for a cable landing license for a proposed cable system, regardless of whether the entity also is a Section 214 licensee, if the entity is a landing station owner *or:* the entity has a five percent or greater ownership interest in the proposed cable which includes voting rights, except if the ownership is exclusively at foreign points on the cable system, and the entity will use the U.S. points of the cable system in *any* capacity, unless the capacity merely is "hard-patched" through and is not dropping traffic in the U.S. or using the U.S. points of the cable system to re-originate traffic. Under the Commission's proposal, if an entity, at the time it files the application and the license is granted does not plan to use the U.S.-points of the cable system, but later decides to do so, that entity would need to file an application to be added to the license. The Commission seeks comment on whether a five percent or greater ownership interest would ensure that we include entities with a significant ability to affect the operation of a cable system, but that we not burden smaller carriers or investors and notes that, under a five percent or greater ownership threshold, fewer entities will be required to obtain licenses than under the current practice. The Commission seeks comment on whether a different percentage would be appropriate to accomplish these goals. The Commission notes, that, under this proposal, an entity that is a licensee for an existing submarine cable but does not own a landing station and has less than a five percent ownership interest in the cable, may file with the Commission a request that its license be relinquished.

27. The Commission also seeks comment on whether it would facilitate processing if it encourages or mandates electronic filing for the applications. As the Commission did with respect to streamlined assignments and transfers of control of international Section 214 authorizations, the Commission proposes to delegate to the International Bureau the authority to identify those particular applications that do warrant public comment and additional Commission scrutiny under current stated Commission policies. Comments are solicited on this proposal as well as others described in the NPRM.

28. The Commission declines to propose modifying or waiving licensing or regulatory fees. The Commission does, however, seek comment generally on whether, if the Commission ultimately adopts the streamlining measures proposed in the NPRM, it would be in the pubic interest to propose a modification of the regulatory fees.

Procedural Matters

29. *Ex Parte Presentations.* This NPRM is a permit but disclose notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

30. *Initial Regulatory Flexibility Act Analysis.* Pursuant to the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis was prepared and is incorporated as Attachment A of this summary. Written comments on the Initial Regulatory Flexibility Act Analysis are requested.

31. *Paperwork Reduction Act.* The NPRM contains proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the proposed information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Written comments by the public on the proposed information collections are due the same day as comments on the NPRM, August 21, 2000. Written comments must be submitted by OMB on the proposed information collections September 5, 2000. Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Applications under the Cable Landing License Act.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 55.

Number of Responses: 55.

Estimated Time Per Response: Under Section 1.767(a)–(e), we estimate approximately 10 hours will be imposed on 15 respondents. Under Section 1.767(f), we estimate 1 burden hour per respondent.

Frequency of Response: On Occasion. Third party disclosure.

Total Annual Burden: 95 hours (50% of burden estimated to be contracted to outside assistance).

Total Annual Costs: $208,875.

Needs and Uses: The information will be used by the Commission to determine the qualifications of applicants to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The proposed information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. In addition, the Commission must maintain records that accurately reflect a party or parties that control a carrier's operations, particularly for purposes of enforcing the Commission's rules and policies.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in Section IV, Subpart C of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

In recent years, there has been explosive growth in the number and capacity of submarine cables triggered in large part by increased Internet and data traffic. Because of this increased demand for capacity, the rapid pace of technological development, and the emergence of non-traditional ownership and financing structures in the submarine cable marketplace, the International Bureau has undertaken a review of its policies for licensing submarine cables. The result of this review is the initiation of this proceeding to establish streamlined rules for processing applications for submarine cable landing licenses.

The streamlining proposal in the NPRM is designed to provide guidance for industry in submitting applications and for the Commission in reviewing such applications. The current precedent analyzing competitive issues in the submarine cable market is not extensive. In the absence of extensive precedent, the guidance contained in the proposed streamlining options should help ensure expeditious action on applications. In addition, the streamlining options in this NPRM seek to provide incentives for the development of facilities-based competition and capacity expansion to meet increasing demands.

This approach reflects broad input from participants in the submarine cable industry. In November 1999 the International Bureau held a Public Forum and has held numerous informal meetings with individual industry participants to solicit views about ways the Commission might improve its regulation of the submarine cable landing licensing process to further promote consumer benefits from increased cable capacity and facilities-based competition. Industry participants expressed three objectives: expedited processing of applications, careful review of certain applications to guard against anticompetitive behavior, and encouragement of pro-competitive licensing procedures in other countries. To accomplish and balance these three objectives, the NPRM proposes streamlining that reflects pro-competitive policies. This approach is designed to provide more certainty and flexibility for participants in the application process, to promote increased investment and infrastructure development by multiple providers, and to decrease application processing time.

To achieve these goals, the NPRM proposes a mechanism under which an applicant for a submarine cable landing license will have three options to qualify presumptively for grant on a streamlined basis. The NPRM proposes the following three streamlining options: (1) A demonstration that the route on which the proposed cable would operate is or will become competitive; (2) a demonstration of sufficient independence of control of the proposed cable from control of existing capacity on the route; or (3) the existence of certain pro-competitive arrangements. We believe that, on balance, the streamlining policies proposed in the NPRM are pro-competitive, and that, if an application falls within one of these three categories, we can presume that it is unlikely that we will have competitive concerns about the cable. We note that, if an application does not qualify for streamlining, it will be reviewed on a non-streamlined basis without prejudice.

Our proposal to streamline the submarine cable landing licensing process is part of a continuing streamlining effort. The proposal's structure of identifying categories of applications eligible for streamlined processing is consistent with our process for streamlining Section 214 applications. The Commission continually seeks ways to grant licenses more quickly to allow parties to enter the market rapidly, especially as new technological developments make speed to market crucial for firms competing in the ever changing Internet-driven communications market.

B. Legal Basis

The NPRM is adopted pursuant to Sections 1, 4(i) and (j), 201–255, 303(r) of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–255, and the Cable Landing License Act, 47 U.S.C. 34 through 39 and Executive Order No. 10530, Sec. 5(a), reprinted as amended in 3 U.S.C. 301.

C. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply

The RFA directs agencies to provide a description of, and, where feasible, estimate of the number of small entities that may be affected by the proposals, if adopted. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies.

The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992. According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons. All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 of these wireline companies are small entities that might be affected by these proposals.

Specifically, the streamlining options contained in the NPRM apply to entities applying for a license to land or operate submarine cables under the Cable Landing License Act, (or entities applying to transfer control of existing submarine cable landing licenses). The proposals, however, may affect other entities as well, including users of submarine cable service such as Internet service providers (ISPs) that lease capacity or purchase indefeasible rights of use (IRUs) on cable systems. The Commission, therefore, encourages these entities to comment on the proposals in the NPRM. The proposals are intended to reduce the burden on all applicants regardless of size, by permitting applicants to seek to have their applications qualify presumptively for grant on a streamlined basis. At this time, we are not certain as to the number of small entities that will be affected by the proposals. Agency data indicates there have been approximately 50 cable landing applications filed with the Commission since 1992, but the total number of licensees is difficult to determine, because many licenses are jointly held by several licensees. Based on this information, we would estimate that there could be 50 or fewer applicants that might be a small entity.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The reporting requirements proposed in the NPRM are voluntary and should not impose specific burdens on small entities. If an applicant for a submarine cable landing license wishes its application to qualify presumptively for a grant on a streamlined basis, the applicant could demonstrate that its application conforms to any one of the three streamlining options described in the NPRM. The NPRM seeks comment on the kinds of demonstrations an applicant could make to qualify for streamlining under the proposals.

The documentation proposed by the NPRM is not standardized. The information is unique to the applicant. Although the information could be submitted in a standardized format, creating such a format would impose a burden on an applicant because the applicant has several options from which to choose for streamlined processing. For example, the NPRM suggests types of documentation including cable landing license applications, Commission Orders, the International Bureau's annual Circuit Status Report, the various C&MAs or capacity purchase agreements for the cables, and industry press releases. The NPRM also seeks comment on other types of documentation that would be useful for applicants seeking to qualify for the streamlining options proposed in the NPRM.

In addition, it is not possible or practical to estimate the costs and burdens associated with the documentation applicants would need to submit to demonstrate satisfaction of the streamlining options. We believe that the applicant's documentation would be information that is maintained by the applicant in the normal course of business, and as such would not impose a significant burden on the applicant. We are seeking comments on possible costs and burdens associated with the documentation applicants would need to submit to qualify for streamlining under the options outlined in the NPRM.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliancor reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities.

The proposals in this NPRM are designed to provide more certainty and flexibility for applicants, encourage investment and infrastructure development by multiple providers, expand available submarine cable capacity, and decrease application processing time. This may benefit small entities especially because the proposals would facilitate entry into the submarine cable market and expand international services. The Commission has proposed the following three options from which an entity may choose to qualify presumptively for streamlined processing: (1) A demonstration that the route on which the proposed cable would operate is or will become competitive; (2) a demonstration of sufficient independence of control of the proposed cable from control of existing capacity on the route; or (3) the existence of certain pro-competitive arrangements. We request comment on these three streamlining options.

We request comment on whether small entities would be adversely affected by the proposals herein and whether the proposals will enable small entities to respond to the demands of the market with minimum regulatory oversight, delays, and expenses. We believe that our proposals will promote the rapid expansion of capacity and facilities-based competition, which will result in innovation and lower prices for U.S. consumers of international telecommunications services. We believe that our proposals would have either no impact, or would reduce, any economic burdens on small entities.

The NPRM seeks comment on policies of particular benefit to small entities. First, with respect to the proposal regarding which entities need to apply for cable landing licenses, the NPRM notes that the greater a firm's investment in a cable system, the greater ability the firm has to influence the way in which a cable is operated. The NPRM further notes that firms with a greater ability to affect the operation of a cable system would expect to be subject to all conditions and responsibilities that that come with the right to land or operate the cable system. The NPRM notes that entities with minimal investment in a cable system, on the other hand, do not have the same ability to affect the operation of the cable system. There is not the same need, therefore, to subject these entities to the conditions and responsibilities that come with a cable landing license. Under the proposal in the NPRM, therefore, other than landing station owners, entities with less than a five percent ownership interest in a cable system would not need to be

included as an applicant for the cable landing license for a proposed cable. The NPRM notes that, under a five percent or greater ownership threshold, fewer entities will be required to obtain licenses than under the current practice. This means that fewer entities will be subject to the conditions and responsibilities that come with the right to land or operate a cable. The NPRM seeks comment on whether a different percentage would be appropriate to accomplish these goals. In addition, the NPRM provides that an entity that is a licensee for an existing submarine cable but does not own a landing station and has less than a five percent ownership interest in the cable, may file with the Commission a request that its license be relinquished.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Accordingly, pursuant to Sections 1, 4(i) and (j), 201–255 303(r) of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–255, 303(r), and the Cable Landing License Act, 47 U.S.C. 34 through 39 and Executive Order No. 10530, Sec. 5(a), reprinted as amended in 3 U.S.C. 301, this notice of proposed rulemaking is hereby adopted and comments are requested.

The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this notice of proposed rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications Miscellaneous rules relating to common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17027 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–00–1418, MM Docket No. 00–118, RM–9757]

Digital Television Broadcast Service; Lexington, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WKYT Licensee Corporation, licensee of station WKYT–TV, NTSC Channel 27, Lexington, Kentucky, requesting the substitution of DTV Channel 13 for station WKYT–TV's assigned DTV Channel 59. DTV Channel 13 can be allotted to Lexington, Kentucky, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (38–02–23 N. and 84–24–10 W). DTV Channel 13 can be allotted to Lexington with a power of 5.0 (kW) and a height above average terrain (HAAT) 300 meters.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert A. Beizer, Secretary, WKYT License Corporation, 1201 New York Avenue, NW., Suite 1000, Washington, DC 20005–3917 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–1418, adopted June 26, 2000, and released June 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–17045 Filed 7–5–00; 8:45 am].

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1417, MM Docket No. 00–117, RM–9810]

Digital Television Broadcast Service; Salem, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Paxson Salem License, Inc., licensee of station KPXG(TV), NTSC Channel 22, Salem, Oregon, requesting the substitution of DTV Channel 4 for DTV Channel 20. DTV Channel 4 can be allotted to Salem, Oregon, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (45–30–58 N. and 122–43–59 W.) with a power of 17 (kW) and a height above average terrain (HAT) 455 meters. However, since the community of Salem is located within 400 kilometers of the U.S. Canadian border, concurrence by the Canadian government must be obtained for this proposal.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott S. Patrick, Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036–6802 (Counsel for Paxson Salem License, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–117, adopted June 26, 2000, and released June 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–17046 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1419, MM Docket No. 00–119, RM–9879]

Digital Television Broadcast Service; Hazleton, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WOLF License Corporation, licensee of Station WOLF–TV, NTSC Channel 56, Hazleton, Pennsylvania, requesting the substitution of DTV Channel 45 for its assigned DTV Channel 9. DTV Channel 45 can be allotted to Hazleton, Pennsylvania, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (41–11–00 N. and 75–52–10 W.). However, since the community of Hazleton is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to allot DTV Channel 45 to Hazleton with a power of 546 and a height above average terrain (HAAT) of 488 meters.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, JoEllen Masters, Fisher, Wayland, Cooper, Leader & Zaragoza, 2001 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006 (Counsel for WOLF License Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–119, adopted June 26, 2000, and released June 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–17047 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1485, MM Docket No. 00–121, RM–9674]

Digital Television Broadcast Service; Kingston, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WRNN-TV Associates Limited Partnership, licensee of station WRNN-TV, NTSC Channel 62, Kingston, New York, requesting the substitution of DTV Channel 48 for its assigned DTV Channel 21. DTV Channel 48 can be allotted to Kingston, New York, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (41–29–19 N. and 73–56–52 W). As requested, we propose to allot DTV Channel 48 to Kingston with a power of 200 and a height above average terrain (HAAT) of 388 meters. However, since the community of Kingston is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd M. Stansbury, Wiley, Rein & Fielding, 776 K Street, NW, Washington, DC 20006 (Counsel for WRNN-TV Associates Limited Partnership).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–121, adopted June 30, 2000, and released September 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription

Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–17104 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 062800A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination to issue EFPs to conduct experimental fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The Maine Department of Marine Resources (MEDMR) submitted an application for the issuance of EFPs to conduct experimental fishing with a maximum of 30 commercial fishing vessels, which warrants further consideration. The EFPs would allow commercial vessels to fish for, retain, and land silver hake (whiting) with mesh smaller than currently allowed in a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area. These experiments would continue investigations designed to demonstrate the effectiveness of a bycatch reduction device (separator grate) assembled on small mesh silver hake (whiting) trawls with a raised footrope configuration. Although the number of trips would be capped at 40 1-day trips per vessel, it is anticipated that participation would be dictated by two interrelated factors: market value of whiting at the dock and the availability of the whiting at sea. Approximately 34 vessels were authorized to participate in last year's experiment from July 1–November 31, 1999, although enrollment periods fluctuated due to the factors identified above. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication of this notification to provide interested parties the opportunity to comment on the proposed experimental fisheries.

DATES: Comments on this notice must be received by July 21, 2000.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Proposed EFP Proposal." Comments may also be sent via facisimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The MEDMR submitted an application to continue the experimental whiting separator trawl fishery (Separator Trawl Fishery) in the Small Mesh Northern Shrimp Area, a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area. This will provide an additional opportunity to collect information on the effectiveness of the separator grate in combination with the raised footrope trawl configuration (with roller frames), in an effort to show that the separator trawl fishery results in a low bycatch fishery. Although this would be the sixth consecutive year of the experiment, data from previous years are sparse and inclusive, owing in part to three factors: low abundances of whiting in the experimental fishery area, declining market value of whiting, and patchy vessel participation. While monthly percent average bycatch of regulated multispecies was reported at less than 5 percent for sea sampling trips conducted during the 1999 experiment, there were only 11 sea sampling trips taken over the course of the entire season (July though November), with the majority (6 trips) monitoring the at-sea bait transfer fishing activity. As a result, there were insufficient data from the 1999 experimental fishery to demonstrate that the 5 percent bycatch criteria for establishing exempted fishing status could be met for the entire fishery (food and bait fishery components).

A separate component of last year's experiment was to conduct a series of gear trials with a raised footrope trawl configuration that has proved successful in reducing bycatch of flatfish species in small mesh experimental whiting fisheries in Cape Cod Bay, Massachusetts. While there were only twenty tows total conducted during last year's supplemental gear trials, these demonstrated that the raised footrope trawl could be successfully transferred to nets with roller frames (typically a chain sweep is used), and yielded promising results in demersal finfish bycatch reduction. Furthermore, increased cod end mesh size and grate bar spacing combinations tested by participating vessels in the Separator Trawl Fishery showed a considerable decrease in bycatch of small fish, while the addition of the raised footrope trawl showed an additional decrease in bycatch of small flatfish, whiting and red hake. Therefore, in order to gather sufficient data on the separator grate's ability (with and without the raised footrope trawl) to reduce bycatch of regulated species consistent with the requirement of an exempted fishery, as well as to determine whether the fishery as a whole can reach its economic potential, a continuation of the experiment is necessary.

Participants in the Separator Trawl Fishery will be required to elect either a food fishery or bait fishery component designation. However, the MEDMR has stated that the primary focus of this year's fishery will be on the bait fishery, specifically to provide bait for the tuna fishery. As in years past, participants may designate only one fishery component at a time for a minimum enrollment of 7 days. In order to ensure that the conservation priorities for whiting are continually met, the MEDMR has proposed that program participants be limited to landing up to 2,500 lb (1,134 kg) of whiting per trip and be allowed a maximum of 40 1-day trips per vessel. As an additional control measure, the MEDMR has proposed that participation be capped at 30 vessels. Participants will be required to submit timely catch and bycatch information in the form of specialized logbooks provided by MEDMR and through the completion of the NMFS' vessel trip reports required of all commercial fishers. NMFS will continue to look at

logbook compliance issues—consistency in reporting and/or completeness of reports, when considering eligibility for enrollment into the program or continued participation once enrolled.

The MEDMR proposes to continue testing cod end/grate spacing combinations to reduce the bycatch of demersal finfish species, whiting and red hake as follows: cod end mesh sizes of 2 inch knotless square and 2–1/4 inch diamond mesh, and grate bar spacing of 40 mm and 50 mm. In addition, based on the promising findings from previous gear work, all participating vessels will be required to have a raised footrope trawl with 36 inch (0.91 m) dropper chains. The objective of this year's experiment is to reveal the optimal cod end/grate spacing, dropper chain length and ground gear configurations that would be the most effective in reducing bycatch and more selective in catching the appropriate sized whiting in accordance with whiting resource management strategies. The MEDMR also indicates they plan to use the information gained through the experimental gear work to formulate a request for a framework action in hopes of expanding future whiting fishing opportunities in the Gulf of Maine with small mesh.

The MEDMR intends to provide sea sampling coverage to monitor fishing activity and gear performance throughout the course of the experiment, at an estimated frequency of two trips per week. Because of the importance of sufficient sea sampling, the Regional Administrator is considering whether her approval of the fishery should be conditional, with possible withdrawal of approval if the actual level of coverage does not meet the specified level. Periodic reports on the fishery will be required to ensure that the MEDMR continues to meet the required level of observer coverage. The Regional Administrator seeks comment on this issue.

EFPs would be issued to the participating vessels in accordance with the conditions stated therein, and will exempt vessels from the mesh size, days-at-sea, and other gear restrictions of the Northeast Multispecies Fishery Management Plan.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17112 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 130
Thursday, July 6, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek Renewed Approval To Collect Information

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to request renewed approval for information collection from applicants for Federal financial assistance, in order to ensure compliance with civil rights laws and regulations. The initial **Federal Register** document for the collection of information was published 62 FR 12789, March 18, 1997.

DATES: Comments on this notice must be received by September 11, 2000 to be assured of consideration.

ADDRESSES: Submit comments and or questions to, Bruce Lee, Extramural Agreements Program Manager, Extramural Agreements Division, Administrative and Financial Management, Agricultural Research Service, U.S. Department of Agriculture, George Washington Carver Center, 5601 Sunnyside Avenue, Room 3–2174, Mail Stop 5110, Beltsville, Maryland 20770, (301) 504–1148; fax (301) 504–1262; e-mail comments to: blee@ars.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for ARS funding for grants and assistance-type cooperative agreements.

Type of Request: Renewed approval to collect information from applicants for Federal financial assistance.

Abstract: ARS' Federally assisted programs consist of the following types of extramural awards executed under the requirements of Pub. L. 95–224, Federal Grant and Cooperative Agreement Act of 1977:

1. Grants and Assistance-Type Cooperative Agreements awarded in support of basic or applied research.

2. Grants awarded in support of research conferences and symposiums, and other non-research activity.

The U.S. Department of Justice, Civil Rights Division, has determined that ARS has the responsibility to collect such data from entities that have applied or received Federal assistance in the form of grants or assistance-type cooperative agreements in order to ensure compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, and the Rehabilitation Act of 1973. Together these acts prohibit discrimination on the basis of race, color, national origin, sex, or disability in any program receiving Federal financial assistance.

ARS' data collection duties are pursuant to 28 CFR part 42 (§ § 42.401–42.15), which the Department of Justice references as the legal basis regarding Title VI for all Federal agencies extending Federal assistance. The purpose of part 42 is to insure that Federal agencies which extend financial assistance properly enforce Title VI of the Civil Rights Act of 1964. Part 42 further states that Federal agencies which extend financial assistance have the responsibility to enforce Title VI, in accordance with the authority under Executive Order 12250. In addition, the Department of Agriculture's TItle VI regulations at 7 CFR 15.5(a) require the ARS, as the administering agency, to conduct compliance reviews of the practices of recipients of ARS grants and assistance-type cooperative agreements to determine compliance with requirements of the Title VI.

Furthermore, the Department of Agriculture is responsible for ensuring compliance with Title VI pursuant to Executive Order 12250, 45 CFR 86.1 *et seq.*, and 7 CFR 15a.1 *et seq.*, and compliance with the Rehabilitation Act pursuant to Executive Order 12250, 28 CFR 41.1 *et seq.*, and 7 CFR 15b.1 *et seq.*

Data requested to assure compliance with these Civil Rights Acts and regulations include (1) race, national origin, sex, and disability information on employees conducting the research, and membership of planning and advisory bodies, and (2) other information necessary to effectively enforce Title VI, Title IX, and the Rehabilitation Act.

Information obtained from the public includes: Federal Financial Assistance Civil Rights Assurance Questionnaires; Applications for Funding; Grants and Assistance Type Cooperative Agreement Budget Information; Other Current and Pending Federal Financial Assistance Support; Research Assurance Statements; and Assurances of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance Statements.

Estimated of Burden: Public reporting burden for this collection of information is estimated to average four hours per set, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Universities, animal and plant research scientists, and individuals who perform research relevant to the mission of ARS.

Estimated Number of respondents: 200.

Estimated Total Annual Burden on Respondents: 800 hours.

Comments: Comments are invited on (a) whether the renewed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimated of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of those who respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Beltsville, Maryland.
Dated: June 19, 2000.

Gene P. Spory,

Associated Deputy Administrator, Financial Management Division.

[FR Doc. 00–17064 Filed 7–5–00; 8:45 am]
BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to an extension of currently approved information collections used in support of the FSA, Farm Loan Programs (FLP). This renewal does not involve any revisions to the program regulations.

DATE: Comments on this notice must be received on or before September 5, 2000 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Cathy Quayle, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; Telephone (202) 690–4018; Electronic mail: cquayle@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Operating Loans; Policies, Procedures, and Authorizations.

OMB Control Number: 0560–0162.

Expiration Date of Approval: June 30, 2000.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number is 0560–0162 is necessary to administer the operating loan program in accordance with the requirements in 7 CFR 1941 Subpart A as authorized by the Consolidated Farm and Rural Development Act. Specifically, the Agency uses the information to evaluate loan making or loan servicing proposals. The information is needed for the Agency to evaluate an applicant's eligibility, and to determine if the operation is economically feasible and the security offered in support of the loan is adequate.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average .12 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 49,492.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,014.

Comments are sought on these requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Cathy Quayle, USDA, FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW, STOP 0522, Washington, DC 20250–0522. Copies of the information collection may be obtained from Cathy Quayle at the above address. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on June 28, 2000.

Parks Shackleford,

Acting Administrator, Farm Service Agency.

[FR Doc. 00–16988 Filed 7–5–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). It has been submitted to OMB under emergency clearance procedures. The Department is requesting OMB approval by no later than July 7, 2000.

Agency: National Telecommunications and Information Administration.

Title: Survey Instrument to Support the Annual Minority Broadcast Ownership Report.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection—Emergency Submission.

Burden: Approximately 400 hours.

Number of Respondents: 400 persons.

Average Hours per Response: 1 hour.

Needs and Uses: The Minority Telecommunications Development Program (MTDP), National Telecommunications and Information Administration has developed a survey instrument that it intends to use to collect information for its annual minority broadcast ownership report. The instrument will be the principle method for systematically gathering detailed information about the challenges confronting minority entrepreneurs entering the broadcast industry or expanding operations. The report will provide a basis for major national policies to increase minority participation in this arena, as well as Administration initiatives to promote economic opportunity for minority-owned businesses generally.

Affected Public: Businesses or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503 by no later than July 7, 2000.

Dated: June 30, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17053 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1109]

Approval for Expanded Manufacturing Authority (Postage Franking Machines and Electronic Business Equipment) Within Foreign—Trade Subzone 77B, Brother Industries (U.S.A.) Inc., Bartlett, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u),

the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Memphis, Tennessee, grantee of Foreign-Trade Zone 77, has applied to expand the scope of manufacturing authority for FTZ Subzone 77B (Brother Industries (U.S.A.) Inc. facilities in Bartlett, Shelby County, Tennessee) to include production of postage franking machines and electronic business equipment under FTZ procedures (FTZ Doc. 50–99; filed 10–18–99);

Whereas, notice inviting public comment was given in **Federal Register** (64 FR 60766, 11–8–99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–17107 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: July 6, 2000.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide ("PPD-T aramid") from the Netherlands in response to requests by respondent, Twaron Products V.o.F. (formerly Aramid Products V.o.F.) and Twaron Products Inc. (formerly Akzo Nobel Aramid Products, Inc.) (collectively "Twaron"), and petitioner, E.I. DuPont de Nemours and Company. This review covers sales of this merchandise to the United States during the period June 1, 1998, through May 31, 1999, by Twaron. The results of the review indicate the existence of dumping margins for the above period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Michael Grossman, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0984 or (202) 482–3146, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April 1999).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on PPD-T aramid from the Netherlands on June 24, 1994 (59 FR 32678). On June 9, 1999, we published in the **Federal Register** (64 FR 30962) a notice of "Opportunity to Request an Administrative Review" of this order covering the period June 1, 1998, through May 31, 1999.

In accordance with 19 CFR 351.213(b), Twaron and petitioner requested that we conduct an administrative review for the aforementioned period. On July 29, 1999, the Department published a notice of "Initiation of Antidumping Review" (64 FR 41075). The Department is now conducting this administrative review pursuant to section 751 of the Act.

Scope of Review

The products covered by this review are all forms of PPD-T aramid from the Netherlands. These consist of PPD-T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber, and floc. Tire cord is excluded from the class or kind of merchandise under review. This merchandise is currently classifiable under the *Harmonized Tariff Schedule of the United States* ("*HTSUS*") item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The *HTSUS* item numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Verification

As provided in Section 782(i) of the Act, we verified the information submitted by Twaron Products V.o.F. and Twaron Products Inc. from May 8 through May 12, 2000, in the Netherlands, and on May 17 and May 18, 2000, in the United States. *See* June 9, 2000, *Verification of the Sales Response of Twaron Products V.o.F. Memorandum*. The public version of this verification report is on file in the Central Records Unit ("CRU") of the Department of Commerce (Room B–099).

Transactions Reviewed

In accordance with section 751 of the Act, the Department is required to determine the normal value ("NV") and export price ("EP") or constructed export price ("CEP") of each entry of subject merchandise. *See* section 751(a)(2)(A). Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine U.S. CEP sales during the period of review ("POR"). *See Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 48826 (1993) (the Department did not consider ESP (now CEP) entries which were sold after the POR). The Court of International Trade ("CIT") has upheld the Department's practice in this regard. *See The AD Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States*, 914 F. Supp. 535, 544–45 (CIT 1995).

Comparisons to NV

In accordance with section 771(16) of the Act, we considered all products covered by the Scope of the Review which were sold by the respondent in the home market during the POR to be foreign like products for purposes of product comparisons to U.S. sales.

Pursuant to section 777A(d)(2) of the Act, where there were home market sales that passed the cost of production ("COP") test, as discussed below, we

compared the CEPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product. Where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the constructed value ("CV") of the product sold in the home market during the comparison period.

Constructed Export Price

The Department based its margin calculation on CEP, as defined in sections 772(b), (c), and (d) of the Act, because all sales to the first unaffiliated purchaser in the United States took place after importation.

We calculated CEP based on delivered prices and FOB warehouse prices to unaffiliated purchasers in the United States. Where appropriate, we reduced these prices to reflect rebates. In accordance with section 772(d)(1) of the Act, we deducted direct selling expenses, *i.e.*, credit expenses, technical service expenses, warranty expenses, third-party payments, and repacking, and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We made deductions for movement expenses (international freight, brokerage and handling, U.S. duties, domestic inland freight, U.S. inland freight, and insurance) in accordance with section 772(c)(2) of the Act. We also made deductions for further manufacturing in accordance with section 772(d)(2). Finally, we also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because Twaron's aggregate volume of the home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV on home market sales.

We calculated NV based on packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. We made adjustments for discounts. Where applicable, we deducted home market packing costs and added U.S. packing costs. In accordance with section 773(a)(6) of the Act, where applicable, we made deductions from the starting price for inland freight and inland insurance. In addition, we made a circumstance of sale adjustment for imputed credit expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Prices were reported net of value added taxes ("VAT") and, therefore, no deduction for VAT was necessary. We made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and the subject merchandise.

We derived the CEP offset amount from the amount of the indirect selling expenses on sales in the home market. See *Level of Trade* section of this notice. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted from CEP, pursuant to section 772(d) of the Act.

Cost of Production Analysis

In the most recently completed administrative review of Twaron, we disregarded sales found to be below the COP. Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales below the COP may have occurred during this review period. Thus, pursuant to section 773(b) of the Act, we initiated a COP investigation of Twaron in the instant review.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general and administrative ("SG&A") expenses and packing costs in accordance with section 773(b)(3) of the Act. We used the home market sales data and COP information provided by Twaron in its questionnaire responses.

After calculating a weighted-average COP, we tested whether home market sales of PPD–T aramid were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts, and indirect selling expenses.

Pursuant to section 773(b)(2)(C), where less than 20 percent of Twaron's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." In accordance with section 773(b)(2)(B) and (D) where 20 percent or more of home market sales of a given product during the POR were at prices less than the COP, we found that such sales were made in substantial quantities within an extended period of time. Because the sales prices would not permit recovery of all costs within a reasonable period of time, we disregarded those below-cost sales and used the remaining sales to determine NV in accordance with section 773(b)(1). For those models of PPD–T aramid for which there were no home market sales available for matching purposes, we compared CEP to CV.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Twaron's cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by Twaron in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We used the costs of materials, fabrication, and SG&A as reported in the CV portion of Twaron's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of Twaron's questionnaire response. We based selling expenses and profit on the information reported in the home market sales portion of Twaron's questionnaire response. *See Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average of the home market selling expenses weighted by the respective quantities sold. For actual profit, we first calculated the difference between the home market sales value and home market COP for all home market sales in the ordinary course of trade, and divided the sum of these differences by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive profit amount. Finally, the CEP offset was derived in the same manner described in the *Normal Value* section of this notice.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, the level of trade is based on the transaction between the exporter and the importer for which we construct the price.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment pursuant to section 773(a)(7)(A) of the Act.

Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997) (*"South Africa Final"*).

For purposes of our analysis, we examined information regarding the distribution systems in both the United States and the Dutch markets, including the selling functions, classes of customer, and selling expenses. Upon consideration of the above mentioned factors, the Department determined that there is one level of trade and one channel of distribution in the home market (direct to end users) and a different level of trade in the U.S. market (sales to an affiliated distributor). As such, we were unable to make product comparisons at the same level of trade nor were we able to calculate a level of trade adjustment. We have determined that Twaron's NV sales to end-users/converters in the home market, as well as CV, are at a more advanced stage of distribution than CEP sales. As a result, the Department has preliminarily determined to grant Twaron an adjustment to NV in the form of a CEP offset.

For a detailed description of our level-of-trade analysis for these preliminary results, see the June 29, 2000, *Level of Trade Analysis Memorandum* to The File, on file in the CRU, Room B–099 of the main Commerce building.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996). Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See South Africa Final.* The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate, in accordance with established practice. Therefore, for purposes of the current review, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales based on the methodology discussed above.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Exporter/manufacturer	Weighted-average margin
Twaron	3.20%

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the estimated entered value (provided by respondents) of the same merchandise on an importer-specific basis. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on all entries during the POR by applying the assessment rate to the entered value of the merchandise.

Cash Deposit Requirements

To calculate the cash-deposit rate for Twaron in this administrative review, we divided the total dumping margins for Twaron by the total net value of Twaron's sales during the review period. Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of PPD–T aramid from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Twaron will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV")

investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 66.92 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From The Netherlands*, 59 FR 32678 (June 24, 1994).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17106 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Intent To Not Revoke In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the preliminary results of antidumping duty administrative review and intent not to revoke in part.

SUMMARY: In response to a request from respondent Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. This review covers one manufacturer and exporter of the subject merchandise. The period of review ("POR") is June 1, 1998 through May 31, 1999. We preliminarily determine that sales have been made below normal value ("NV"). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta Chen's merchandise during the period of review, in accordance with the Department's regulations (19 CFR 351.106 and 351.212(b)). The preliminary results are listed in the section titled "Preliminary Results of Review," *infra*.

EFFECTIVE DATE: July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Sally Gannon, or Robert Bolling, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0408, (202) 482–0162 and (202) 482–3434, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On June 16, 1993, the Department published in the Federal Register (58 FR 33250) the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. On June 9, 1999, we published in the **Federal Register** (64 FR 30962) a notice of opportunity to request an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan covering the period June 1, 1998 through May 31, 1999. On June 30, 1999, petitioners, Markovitz Enterprises, Inc. (Flowline Division), Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge, requested that the Department conduct an administrative review of Ta Chen for the period of June 1, 1998 through May 31, 1999. On June 30, 1999, Ta Chen also requested that we conduct an administrative review for the aforementioned period and requested revocation of the Department's antidumping duty order on pipe fittings from Taiwan. On July 29, 1999, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 1998 through May 31, 1999 (64 FR 41075).

On July 29, 2000, the Department issued to Ta Chen its antidumping questionnaire. On September 21, 1999, Ta Chen reported that it made sales of subject merchandise to the United States during the period of review ("POR") in its response to Section A of the Department's questionnaire. On October 13, 1999, Ta Chen submitted its response to Sections B, C, and D of the Department's questionnaire. On January 31, 2000, the Department issued to Ta Chen the supplemental questionnaire to Sections A, B, C and D of the Department's questionnaire. On March 10, 2000 and April 4, 2000, Ta Chen submitted its supplemental responses to Sections A, B, C, and D of the Department's questionnaire. On April 24, 2000, the Department issued to Ta Chen its second supplemental questionnaire to Sections A, B, C and D. On May 16 and 18, 2000, Ta Chen submitted its second supplemental responses to Sections A, B, C, and D of the Department's questionnaire. On June 2, 2000, the Department issued to Ta Chen its third supplemental questionnaire to Sections A, B, C, and D of the Department's questionnaire. On June 7, 2000, Ta Chen submitted its third supplemental response to Sections A, B, C, and D of the Department's questionnaire.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On March 6, 2000, the Department extended the time limits for these preliminary results to June 28, 2000 in accordance with the Act. *See* Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, 65 FR 11766 (March 6, 2000).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products subject to this investigation are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings ("pipe fittings") are used to connect pipe sections in piping systems where conditions

require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub ends", and "caps." The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Period of Review

The POR for this administrative review is June 1, 1998 through May 31, 1999.

Verification

Due to administrative constraints, verification prior to the issuance of this notice of preliminary results was not conducted. The Department's regulations state, at section 351.307(b)(iii), that the Department will verify factual information upon which it relies in the final results of a revocation under section 751(d) of the Act, prior to issuing final results in an administrative review. Accordingly, the Department will verify the information to be used in the final results, after these preliminary results.

Product Comparison

In accordance with section 771(16) of the Act, we considered all pipe fittings produced by Ta Chen, covered by the description in the "Scope of Review" section of this notice, supra, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to pipe fittings sold in the United States. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Ta Chen as follows (listed in order of preference): specification, seam, grade, size and schedule.

Although section 771(16) of the Act states that foreign like products are merchandise produced in the same country by the same person, for purposes of these Preliminary Results, we have also considered merchandise purchased from other Taiwanese manufacturers and re-sold by Ta Chen that matched the aforementioned physical characteristics to be foreign like products because we did not have sufficient information to match subject merchandise to foreign like products on a producer-specific basis. However, we intend to seek further information on this issue at verification and will reconsider the issue for the Final Results based on any additional information obtained at verification. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's March 1, 2000 instructions, or to constructed value ("CV"), as appropriate.

Date of Sale

The Department's regulations state that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If Commerce can establish "a different date [that] better reflects the date on which the exporter or producer establishes the material terms of sale," Commerce may choose a different date. *Id.*

In the present review, Ta Chen claimed that invoice date should be used as the date of sale in both the home market and U.S. market. Ta Chen stated that "for both U.S. and Taiwan sales, there was only one type of sales agreement—*i.e.*, through order confirmation." See Ta Chen's Supplemental Response at 4 (March 10, 2000). Ta Chen reported that there is no lag time between invoice and shipment. *See* Ta Chen's Second Supplemental Questionnaire Response, at 4 (May 16, 2000). Moreover, Ta Chen did not indicate any industry practice which would warrant the use of a date other than invoice date in determining date of sale.

Accordingly, because we have no information demonstrating that another date is more appropriate, we preliminarily based date of sale on invoice date recorded in the ordinary course of business by the involved sellers and resellers of the subject merchandise in accordance with 19 CFR 351.401(i). However, we intend to fully verify information concerning Ta Chen's claims that invoice date is the appropriate date of sale. Based on the outcome of our verification, we will determine whether it is appropriate to continue to use the date of invoice as the date of sale.

Fair Value Comparisons

To determine whether sales of subject merchandise by Ta Chen to the United States were made at below NV, we compared, where appropriate, the CEP to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product where there were sales at prices above the cost of production ("COP"), as discussed in the Cost of Production Analysis section, below.

Export Price/ Constructed Export Price

Ta Chen reported both EP and CEP sales of subject merchandise for the POR. We analyzed the record evidence on Ta Chen's sales made to the United States and preliminarily determined that all sales to the United States should be classified as CEP.

Section 772(a) of the Act defines export price as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for the purchaser for exportation to the United States. * * *" Section 772(b) of the Act defines constructed export price as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the produce or exporter. * * *" Thus, a CEP sale is distinct from an EP sale in that it is a sale or agreement to sell to an unaffiliated customer that takes place in the United States and is executed by or for the producer/exporter or by a seller affiliated with the producer/exporter, whereas a sale is classified as an EP sale where a producer or exporter sells directly to unaffiliated purchasers outside the United States.

In the instant case, all of the sales at issue were "back-to-back" sales; that is, Ta Chen sold pipe fittings to Ta Chen's U.S. affiliate, TCI, and then TCI sold the

pipe fittings to the unaffiliated U.S. customers at a marked-up price to account for TCI's commission and selling expenses. In addition, the record evidence demonstrates that for sales reported by Ta Chen as EP sales, the sale to the first unaffiliated customer was made between TCI and the unaffiliated customer in the United States. TCI takes title to subject merchandise, invoices the U.S. customer, and receives payment from the U.S. customer. In addition, TCI incurs seller's risk, makes agreements with commission agents, relays orders and price requests from the U.S. customer to Ta Chen, and pays for containerization expenses, U.S. customs broker charges, U.S. antidumping duties and international freight. *See* Second Supplemental Questionnaire Response (May 16, 2000) at 5. Ta Chen also stated that on occasion the U.S. customer will initiate the sale with TCI or TCI will initiate the sale with the customer. *Id.*

Based on these facts, we have determined that these sales originally reported as EP by Ta Chen meet the standard for CEP since the first sale to an unaffiliated customer occurred in the United States and was between TCI and the U.S. purchaser. Therefore, we reclassified the EP sales originally reported by Ta Chen as CEP sales.

Having determined such sales are CEP, we calculated the price of Ta Chen's United States sales based on CEP in accordance with section 772(b) of the Act. We calculated CEP based on FOB or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we deducted discounts. Also where appropriate, in accordance with section 772(d)(1), the Department deducted commissions, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. Customs duties. Finally, pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. In accordance with Department practice, we recalculated credit expenses for CEP sales by basing credit on Ta Chen's U.S. dollar-denominated short-term borrowing rate, rather than on Ta Chen's home market currency-denominated short-term borrowing rate. *See* Import Administration Policy Bulletin, Imputed Credit Expenses and Interest rates (February 23, 1998). *See* Analysis Memo at page 9.

Normal Value

After testing home market viability, as discussed below, we calculated normal value ("NV") as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales.

2. Cost of Production Analysis

Because we disregarded sales below the cost of production in our last administrative review, the most-recently completed segment of this proceeding,[1] we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Ta Chen's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A"), interest expenses, and packing costs. We relied on the COP data submitted by Ta Chen in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ta Chen's submitted costs.

B. Test of Home Market Prices

We compared the weighted-average COP for Ta Chen to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Ta Chen's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ta Chen's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ta Chen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production ("COP"), we

[1] *See* Stainless Steel Butt Weld Pipe Fittings from Taiwan; Final Results of the Antidumping Duty Administrative Review, 63 FR 67855 (December 9, 1998). For further discussion, *see* Stainless Steel Butt Weld Pipe Fittings from Taiwan; Preliminary Results of the Antidumping Duty Administrative Review, 63 FR 30710, 30712 (June 5, 1998).

based NV on prices to home market customers. We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted early payment discounts, credit expenses, and inland freight. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where there were no usable contemporaneous matches to a U.S. sale observation, we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See* Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing whether separate LOTs existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market. *See* Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27371 (May 19, 1997).

Ta Chen reported one LOT in the home market based on two channels of distribution: trading companies and end-users. We examined the reported selling functions and found that Ta Chen provides substantially the same selling functions to its home market customers regardless of channel of distribution. These selling functions include research and development and technical assistance, packing, after-sale services, and freight and delivery arrangement. We therefore preliminarily conclude that the selling functions between the reported channels of distribution are sufficiently similar to consider them as one LOT in the comparison market.

Because Ta Chen reported that all of its U.S. sales are made through a single customer category (*i.e.*, TCI acting as a distributor), Ta Chen is claiming that there is only one LOT in the U.S. market. We examined the selling functions for CEP sales, and we preliminarily agree with Ta Chen that its U.S. sales constitute a single LOT.

When we compared the LOT of the CEP to Ta Chen's home market LOT, we found that Ta Chen provided no strategic or economic planning, market research, business system development assistance, personnel-training, engineering, advertising, procurement services, inventory maintenance, or post-sale warehousing at the CEP or home market LOT. Ta Chen reported that it provided moderate-to-low technical assistance at its home market LOT, while providing none at its CEP level. Additionally, Ta Chen reported that it provided low after-sales services at its home market LOT, while providing none at its CEP level. However, our analysis of the selling functions performed by Ta Chen in both markets leads us to conclude that any differences in selling activities are not significant. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same LOT. Therefore, we have not made a LOT adjustment because all price comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate. Additionally, because we found that the LOT in the home market matched the LOT of the CEP transactions, we did not provide a CEP offset by adjusting normal value under section 773(a)(7)(B) of the Act.

Revocation

Under section 351.222(b) of the Department's regulations, the Department may partially revoke an order with respect to a company if that producer or exporter has sold the merchandise at not less than normal value for a period of at least three consecutive years. On June 30, 1999, Ta Chen, in its capacity as a Taiwanese producer and exporter of subject merchandise, requested that the Department revoke the antidumping duty order on pipe fittings from Taiwan with respect to Ta Chen. Ta Chen stated that it sold the subject merchandise at not less than normal value for a period of at least three consecutive years, including the current period under administrative review, and that it sold the subject merchandise in commercially significant quantities to the United States during each of these three years. Ta Chen also stated that it would not sell the subject merchandise at less than normal value to the United States in the future and agreed to reinstatement of the order against Ta Chen, as long as any exporter or producer is subject to the order, if the Department concludes that Ta Chen sold the subject merchandise at less than normal value, subsequent to the revocation.

On May 26, 2000, the Department requested that Ta Chen provide volume and value data on its exports and sales of subject merchandise for the three consecutive years. Ta Chen provided this data in a June 5, 2000 submission, which supported Ta Chen's statement that it sold subject merchandise in commercially significant quantities to the United States during these three years.

The three review periods on which Ta Chen is basing its request for revocation consist of: (1) the period for 6/1/96 through 5/31/97, for which the Department found a *de minimis* margin of 0.34 percent; (2) the period for 6/1/97 through 5/31/98, for which no administrative review was conducted; and (3) the period for 6/1/98 through 5/31/99, for which the Department is currently conducting an administrative review.

The Department is considering Ta Chen's request for revocation, and shall review the relevant information. Because we did not find a *de minimis* margin for these preliminary results, we preliminarily conclude that the criteria for revocation have not been satisfied, and we intend not to revoke the order as to Ta Chen, pending verification after these preliminary results.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as published by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined, as a general matter, that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g.*, Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 8915, 8918 (March 6, 1996) and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434, March 8, 1996. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period June 1, 1998, through May 31, 1999:

CERTAIN STAINLESS STEEL BUTT-WELD PIPE FITTINGS FROM TAIWAN

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ta Chen	8.03

The Department will disclose to any party to the proceeding, within five days of publication of this notice, the calculations performed (19 CFR 351.224(b)). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreicate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

If found that revocation is warranted for Ta Chen, it will apply to all unliquidated entries of subject merchandise produced by Ta Chen, exported to the United States and entered, or withdrawn from warehouse, for consumption on or after June 1, 1999, the first day after the period under review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen, the only reviewed company, will be that established in the final results of this review; (2) For previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all other" rate established in the LTFV investigation, which was 51.01 percent.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 28, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17105 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program (ATP) Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Advance Technology Program Advisory Committee.

SUMMARY: NIST invites and requests nominations of individuals for appointment to the Advanced Technology Program Advisory Committee. NIST will consider nominations received in response to this notice for appointment to the Committee, in additional to nominations already received.

DATES: Please submit nominations on or before July 21, 2000.

ADDRESSES: Please submit nominations to Dr. Brian C. Belander, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1004, Gaithersburg, MD 20899–1004. Nominations may also be submitted via FAX to 301–948–1224.

Additional information regarding the Committee, including its charter and current membership list may be found on its electronic home page at: http://www.atp.nist.gov/atp/adv_com/ac_menu.htm.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, National Institute of

Standards and Technology, 100 Bureau Drive, Mail Stop 1004, Gaithersburg, MD 20899–1004; telephone 301–975–4720, fax 301–948–1224; or via email at brian.belanger@nist.gov.

SUPPLEMENTARY INFORMATION: The Committee will advise the Director of the National Institute of Standards and Technology (NIST) on ATP programs, plans, and policies.

The Committee will consist of not fewer than six nor more than twelve members appointed by the Director of NIST and its membership will be balanced to reflect the wide diversity of technical disciplines and industrial sectors represented in ATP projects.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

Authority: Federal Advisory Committee Act: 5 U.S.C. App. 2 and General Services Administration Rule: 41 CFR Subpart 101–6.10.

Dated: June 26, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–16987 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 00609171–0171–01]

RIN 0693–ZA38

Manufacturing Extension Partnership Program

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Standards and Technology invites proposals from qualified organizations for funding projects to provide manufacturing extension services to small- and medium-size manufacturers in the United States. These projects correspond to the Manufacturing Technology Centers component of the Manufacturing Extension Partnership (MEP). This competition is for the expansion of manufacturing extension service capacity within 2 discrete geographic areas in the United States. The first area encompasses the entirety of the state of Indiana. The second area encompasses 17 counties in the Southeast Ohio area; Athens, Delaware, Fairfield, Fayette, Franklin, Hocking, Licking, Logan, Madison, Meigs, Monroe, Morgan, Noble, Perry, Pickaway, Union, and Washington. The competition is open to all organizations meeting the eligibility requirements provided herein. This includes existing MEP manufacturing extension centers.

Manufacturing extension centers must be affiliated with a U.S.-based not-for-profit institution or organization. MEP interprets not-for-profit organizations to include universities and state and local governments. Applicants are required to provide 50% or more of the operating cost for providing these manufacturing extension services in year 1 through 3 and an increasing percentage in year 4, and in year 5 and beyond.

DATES: Proposals from qualified applicants must be received at the address below by no later than 5 p.m. Eastern Standard Time (September 5, 200). Selection of awards will be made in September 2000.

ADDRESSES: Applicants must submit one signed original and three (3) copies of their proposal along with a Standard Form 424, 424–A, and 424–B (Rev 7/97), Form CD–511 (Rev 7/91), and Form CD–346 to the National Institute of Standards and Technology, Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, Building 301, Room C100, Gaithersburg, MD 20899–4800. Plainly mark on the outside of the package it contains a manufacturing extension center proposal.

FOR FURTHER INFORMATION CONTACT: For information regarding this announcement, contact Margaret Phillips of the Manufacturing Extension Partnership by calling (301) 975–5020; or by mailing information requests to the National Institute of Standards and Technology, Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, Building 301, Room C100, Gaithersburg, MD 20899–4800. Information packets, which include background materials on MEP, existing centers and the necessary application forms, should be requested via a one page fax sent to (301) 963–6556. Please include name, organization, mailing address, telephone number, and fax number on this request. Information is also available on-line at www.mep.nist.gov.

SUPPLEMENTARY INFORMATION: Catalog of Federal Domestic Assistance Name and Number: The catalog number for the award of Manufacturing Technology Centers funds in the Catalog of Federal Domestic Assistance is 11.611

Background

In accordance with the provisions of Section 5121 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), codified in 15 U.S.C. 278k, and final rule 15 CFR 290 published September 17, 1990 and amendment published May 2, 1994, NIST will provide assistance for the creation and support of manufacturing extension centers. The objective of these centers is to enhance productivity, technological performance, and strengthen the global competitiveness of small- and medium-sized U.S.-based manufacturing firms.

These manufacturing extension centers will become part of the MEP national system of extension service providers. Currently, the MEP national system consists of over 400 centers and field offices located throughout the United States and Puerto Rico. Information regarding MEP and these centers is provided in the information packet that can be obtained as explained above or on-line at *www.mep.nist.gov.*

Funding Availability

It is anticipated that approximately $1,500,000 will be available to support manufacturing extension centers under this program. The funding level for individual awards is not prescribed. The funding requested by the applicant should be directly related to the level of activity of the center, which is a function of the number of manufacturers in the designated service region, and to the availability of applicant-provided cash and in-kind contributions to be used as cost share.

Invitation for Proposals

Proposals must be received at the address listed above by September 5, 2000.

Award Period

The projects awarded under this program will have a budget and performance period of one year. These projects may be renewable on an annual basis subject to the review requirements described in 15 CFR 290.8, but only if additional funding is allocated to this program by Congress beyond Federal fiscal year 2000. Renewal of these projects shall be at the sole discretion of NIST and shall be based upon satisfactory performance, priority of the need for the service, existing legislative authority, and availability of funds. Although the MEP regulation (15 CFR Part 290) indicates that Centers are not eligible for MEP funding after six years, this requirement is no longer in effect. Public Law 105–239 amended the MEP's organic legislation to authorize MEP to fund Centers for more that six years under specified circumstances.

Cost Share Requirements

A cost sharing contribution from the applicant is required. The applicant

must provide 50% or more of the total capital, operating and maintenance costs for the center for years 1 through 3. The applicant's cost share requirement increases to 60% or more in year 4 and 66⅔% or more in years 5 and beyond. The applicant's share of the center expenses may include cash and in-kind contributions. However, at least 50% of the applicant's total cost share (cash plus in-kind) must be in cash. The source of the cost share, both cash and in-kind, must be documented in the budget submitted in the proposal.

In all cases, a contribution will only be treated as cash cost share if the center director has suitable authority and discretion to control its expenditure. Acceptable cash cost share, which must come from non-federal sources, includes":

—Dollar contributions from state, county, city, industrial or other sources
—Income from fees charged for services performed
—Revenue from licensing, royalties, dividends, and capital gains
—Contributions of full-time personnel from other organizations
—Other contributions as approved by NIST

To qualify as in-kind cost share, the claimed items must be directly related to the tasks to be accomplished and must be utilized solely for the center activities or the cost share must be prorated based upon the percentage of time they are used for these activities. Acceptable in-kind cost share includes:

—Contributions of full-time personnel for which the center director lacks suitable authority and discretion to qualify as cash cost share
—Contributions of part-time personnel from other organizations
—Contributions of equipment, software, rental value of office, laboratory or other space
—Other contributions as approved by NIST

In addition, recipients are required to comply with the regulations found at 15 CFR 14.23.

Proposal Content

The proposal must, at a minimum, include the following:

A. An executive summary of the proposed project, consistent with the Evaluation Criteria stated in this notice.

B. A description of the proposed project, sufficient to permit evaluation of the proposal, in accordance with the proposal Evaluation Criteria stated in this notice.

C. A detailed budget for the proposed project which breaks out all expenses for year 1 of operation and identifies all sources of funds to pay these expenses.

D. A budget outline for annual costs and sources of funds for potential years 2 through 5 and beyond. It is expected, especially for newly created centers, that year one costs are lower because of a ramp-up of operations from start-up to the point where the center is fully operational and services are being provided. If such a ramp-up of operations is to occur, this should be reflected in the budget outline for years 2 through 5 and beyond. A detailed budget and budget narrative will be required prior to each of years 2 through 5.

E. A description of the qualifications of key personnel who will be assigned to work on the proposed project.

F. A statement of work that discusses the specific tasks to be carried out, including a schedule of measurable events and milestones.

G. A Standard Form 424, 424–A, and 424–B (Rev 7/97) prescribed by 15 CFR 14 (OMB Circular A–110), Form CD–511, Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying, and Form CD–346, Applicant For funding Assistance/Name Check. The 424 and CD series of forms will not be considered part of the page count of the proposal.

In addition, the proposal must contain the requirements identified in 15 CFR 290.5(a)(3), which are:

A. A plan for the allocation of intellectual property rights associated with any invention or copyright which may result from the involvement in the Center's technology transfer or research activities consistent with the conditions of 15 CFR 290.9.

B. A statement which provides adequate assurances that the host organization will contribute the required cost share, 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the following three additional years. (Although the MEP regulation, 15 CFR 290.5(a)(3)(ii), states that applicants should provide evidence that the proposed Center will be self-supporting after six years, this requirement is no longer in effect, as indicated above.)

C. A statement describing linkages to industry, government, and educational organizations within its service region.

D. A statement defining the initial service region including a statement of the constituency to be served and the level of service to be provided, as well as outyear plans.

E. A statement agreeing to focus the mission of the Center on technology transfer activities and not to exclude companies based on state boundaries.

F. A proposed plan for the annual evaluation of the success of the Center by the Program, including appropriate criteria for consideration, and weighting of those criteria.

G. A plan to focus the Center's technology emphasis on areas consistent with NIST technology research programs and organizational expertise.

H. A description of the planned Center sufficient to permit NIST to evaluate the proposal in accordance with section 290.6 of the MEP regulations.

Proposal Format

The proposal must not exceed 25 typewritten pages in length. The proposal must contain both technical and cost information. The proposal page count shall include every page, including pages that contain words, table of contents, executive summary, management information and qualifications, resumes, figures, tables, and pictures. All proposals shall be printed such that pages are single-sided, with no more than fifty-five (55) lines per page. Use 21.6 x 27.9 cm (8½″ x 11″) paper or A4 metric paper. Use an easy-to-read font of not more than about 5 characters per cm (fixed pitch font of 12 or fewer characters per inch or proportional font of point size 10 or larger). Smaller type may be used in figures and tables, but must be clearly legible. margins on all sides (top, bottom, left and right) must be at least 2.5 cm. (1″). The applicant may submit a separately bound document of appendices containing other supporting information. The proposal should be self-contained and not rely on the appendices for meeting criteria. Excess pages in the proposal will not be considered in the evaluation. Applicants must submit one signed original plus three (3) copies of the proposal.

Manufacturing Extension Centers

a. Project Objective

The objective of the projects funded under this program is to provide manufacturing extension services to small- and medium-sized manufacturers in the United States. These services are provided through the coordinated efforts of a regionally-based manufacturing extension center and local technology resources. The management and operational structure of the manufacturing extension center is not prescribed, but should be based

upon the characteristics of the manufacturers in the region and locally available resources. The center should include plans for integration into the MEP national system and linkages to appropriate national resources.

The focus of the center is to provide those manufacturing extension services required by the small- and medium-sized manufacturers in their service region using the most cost effective sources for those services. It is not the intent of the is program that centers perform research and development.

b. Evaluation Criteria

All qualified proposals will be evaluated and rated on the basis of the following criteria by an impartial review panel. Each proposal should address all four evaluation criteria, which are assigned equal weighting.

(1) *Identification of Target Firms in Proposed Regions.* Does the proposal define an appropriate service region with a large enough population of target firms of small- and medium-sized manufacturers that the applicant understands and can serve, and which is not presently served by an existing center?

(i) Market Analysis. Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

(ii) Geographical Location. Physical size, concentration of industry, and economic significance of the service region's manufacturing base. Geographical diversity of the centers will be a factor in evaluation of proposals; a proposal for a center located near an existing center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

(2) *Technology Resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of technology?

(3) *Technology Delivery Mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers?

(i) Linkages. Development of effective partnerships or linkages to third parties such as industry, universities, nonprofit economic organizations, and state governments who will amplify the center's technology delivery to reach a large number of clients in its service region.

(ii) Program Leverage. Provision of an effective strategy to amplify the center's technology delivery approaches to achieve the proposed objectives as described in 15 CFR 290.3(e).

(4) *Management and Financial Plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective center?

(i) Organizational Structure. Completeness and appropriateness of the organizational structure, and its focus on the mission of the center. Assurance of full-time top management of the center.

(ii) Program Management. Effectiveness of the planned methodology of program management.

(iii) Internal Evaluation. Effectiveness of the planned continuous internal evaluation of program activities.

(iv) Plans for Financial Matching. Demonstrated stability and duration of the applicants funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of matching fund sources and the general terms of the funding commitments.

(v) Budget. Suitability and focus of the applicant's detailed one-year budget and budget outline for years 2–5 and beyond.

Eligibility Criteria

- Eligible applicants for these projects must be affiliated with a non-profit institution or organization and may be consortia of non-profits institutions.
- The applicant must provide the necessary cost share as specified above.

Proposal Selection Process

Proposal evaluation and selection will consist of four principal phases: proposal qualification, proposal review, site visits and award determination.

a. Proposal Qualification

All proposals will be reviewed by NIST to assure compliance with the proposal content as described in 15 CFR 290.5 and other basic provisions of this notice. Proposals that satisfy these requirements will be designated as qualified proposals. Non-qualified proposals will not be evaluated and will be returned to the applicant.

b. Proposal Review

NIST will appoint an evaluation panel, consisting of one non-Federal Government employee and at least two Federal Government employees, to conduct an independent and objective review and evaluation of all qualified proposals in accordance with the evaluation criteria set forth in this notice. Based upon this review, the panel will deliberate, and each panelist will rank the proposals based on the scores in relation to the evaluation criteria, as a basis for selecting a group of finalists to be site visited.

c. Site Visits

Finalists will be notified and a day, time, and location for a site visit will be established. The panel will review finalists again on site, based on the evaluation criteria. Subsequently, the panel will deliberate again, and each panelist will rank the proposals again by assigning numeric scores based on the evaluation criteria, assessing equal weight to each of the four criteria. Based upon this rank scores, the panel will submit recommendations to the Director of NIST, or a designee, for final award recommendation to the NIST Grants Officer.

d. Award Determination

The Director of NIST, or a designee, shall make final recommendation of whether an award should be made to the proposing organization based on a review of the panel's adherence to program objectives and program procedures. The final approval of the selected applications and award of cooperative agreements will be made by the NIST Grants Officer based on compliance with program requirements and whether the recommended applicants appear competently managed, responsible, and committed to achieving project objectives. The decision of the Grants Officer is final.

Paperwork Reduction Act

The Standard Form 424 and other Standard Forms in this application kit are subject to the Paperwork Reduction Act and have been approved by OMB under Control Numbers 0348–0043, 0348–0044, 0038–0040, and 0348–0046. Proposals are subject to the requirements of the Paperwork Reduction Act and have been approved by OMB under Control Number 0693–0032.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Additional Requirements

(a) Federal Policies and Procedures. Recipients and sub-recipients are subject to all Federal laws and Federal and NIST policies, regulations, and procedures applicable to Federal

financial assistance awards, including 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and commercial Organizations.

(b) Indirect Costs. Regardless of any approved indirect cost rate applicable to the award, the maximum amount of the indirect costs for which DOC will reimburse the recipient shall be the lesser of:

(1) The Federal share of the total allocable indirect costs of based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or

(2) The line item amount for the Federal share of indirect costs dollar contained in the approved budget of the award.

(c) Pre-award Activities. Applicants (or their institutions) who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government.

Notwithstanding any verbal assurance that may have been received, there is no obligation on the part of NIST to cover pre-award costs.

(d) Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full;

(2) A negotiated repayment schedule is established and at least one payment is received; or

(3) Other arrangements satisfactory to NIST are made.

(e) Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(f) Name Check Review. All non-profit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Form CD–346 must be completed for all personnel with key programmatic or fiduciary responsibilities.

(g) Primary Applicant Certification. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations must be provided.

(1) *Non Procurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) *Drug-free Workplace.* Recipients (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and load guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any application that has paid or will pay for lobbying using any funds must submit as SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

(h) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to NIST in accordance with the instructions contained in the award document.

(i) False Statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(j) Purchase of American-made Equipment and Products. Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program.

(k) North American Free Trade Agreement Patent Notification Procedure. Pursuant to Executive Order 12889, the Department of Commerce (DoC) is required to notify the owner any valid patent covering technology whenever the DoC or its financial assistance recipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. Applicants selected for awards under this program are required to comply with this executive order.

(() intergovernmental Review. Applicants under this program are not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs".

(m) No Obligation for Future Funding. If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion on NIST.

Program Execution

(a) Type of Funding Instrument. The formal agreement between NIST and the applicant will be in the form of a cooperative agreement. Under this agreement, the NIST MEP will have substantial interactions with the applicant in planning and executing this project. This will include the following:

—Assistant in developing required plans
—Providing access to standard manufacturing extension and related tools
—Facilitating partnering with appropriate organizations both within and outside of the MEP national system
—Defining measures for evaluation of performance
—Direct involvement in helping to understanding, define, and resolve problems in the center's operations

(b) Operating Plan. All recipients of awards are required to submit an Operating Plan within ninety (90) days of the project start date. The Operating Plan is a more detailed statement of work based on project objectives and activities the applicant will undertake to achieve the objectives and incorporates recommendations provided by the evaluation panel and the NIST Program Officer. The Operating Plan must be reviewed and approved by NIST and will be incorporated into the cooperative agreement by amendment. Operating Plan guideline will be distributed to award recipients.

(c) Project Reporting. Quarterly reports will be submitted to the NIST Program Officer no later than thirty (30) days after the end of each quarter of the award year. The information provided is used to characterize the projects, develop detailed case studies, and evaluate individual examples of outcomes. Quarterly reporting instructions will be distributed to award recipients.

Executive Order Statement

This funding notice was determined to be "not significant" for purposes of Executive Order 12866.

Dated: June 29, 2000.

Raymond G. Kammer,

Director.

[FR Doc. 00–17085 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052400C]

Endangered and Threatened Species; Notice of Availability for the Draft Recovery Plan for Johnson's Seagrass

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a draft recovery plan; request for comments; correction.

SUMMARY: In the notice of availability of the draft recovery plan for Johnson's seagrass, published on June 26, 2000, the mailing address for comments was inadvertently omitted. Also, the notice did not include a web site address for accessing the draft recovery plan. This document corrects the notice of availability.

DATES: Comments on the draft recovery plan must be received no later than 5 p.m., Eastern standard time, on August 25, 2000.

ADDRESSES: Written comments on the draft recovery plan should be addressed to Mr. Charles Oravetz, Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, Florida 33702–2432. In addition to being available from Layne Bolen, Protected Resources Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2439; the draft plan can also be downloaded from the following site: *http://www.nmfs.gov/prot_res/other/jsrecover.pdf*. Comments may be sent via facsimile (fax) to 727–570–5517, but they will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Layne Bolen at 850–234–6541 ext 237, Dr. Judson Kenworthy at 252–728–8750, or Marta Nammack at 301–713–1401 ext 116, or send a request via electronic mail to jsg.info@noaa.gov.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the notice of availability of the draft recovery plan for Johnson's seagrass, published on June 26, 2000 (65 FR 39369), the mailing address for comments was inadvertently omitted. Also, the notice did not include a web site address for accessing the draft recovery plan. This document provides this information (see **ADDRESSES**).

Authority: 16 U.S.C. 1531–1543 *et seq.*

Dated: June 29, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17113 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062900C]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Observer Committee will meet in Seattle, WA.

DATES: The meeting will be held on July 24–25, 2000.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Bldg. 4, Room 1055, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, NPFMC, 907–271–2809.

SUPPLEMENTARY INFORMATION: The meeting will begin at 9:00 a.m. on Monday, July 24, and continue until business for the day is completed. The meeting will reconvene on Tuesday, July 25, at 9:00 a.m.

The committee's agenda includes the following issues:

1. Review and discuss information on:

A. General observer needs by week;

B. Foreign observer program model; and

C. Updated estimates of observer costs, exvessel value, and potential fee percentage.

2. Review and discuss findings of an independent review of the North Pacific groundfish observer program prepared by MRAG Americas.

3. Discuss baseline program goals and objectives.

4. Discuss and identify major program alternatives

5. Discuss and resolve appropriate wording for Magnuson-Stevens Act reauthorization.

6. Identify additional information needs.

Although non-emergency issues not contained in this agenda may come before this committee for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: June 29, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17111 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–22–F

UNITED STATES PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Invention Promoters/Promotion Firms Complaints.

Form Number(s): PTO/SB/2048.

Agency Approval Number: 0651–0044.

Type of Request: Revision of a collection previously approved under an emergency clearance.

Burden: 50 hours annually.

Number of Respondents: 200 responses per year. The PTO expects to receive 100 complaints concerning invention promoters/promotion firms and 100 responses to such complaints.

Avg. Hours Per Response: The USPTO estimates that it takes an average of 15 minutes (.25 hours) to gather the information, complete the complaint, and submit it to the USPTO. The USPTO estimates that it will take an invention promoter an average of 15 minutes (.25 hours) to gather the information, complete the response, and submit it to the USPTO.

Needs and Uses: The Inventors' Rights Act of 1999 requires the USPTO to publish complaints filed by independent inventors against invention promoters/promotion firms and publish any replies to such complaints. The Inventors' Rights Act requires the USPTO to publish these complaints and replies, but it does not require the USPTO to enforce the Act, to investigate the complaints, or to participate in any legal proceedings against the invention promoters/promotion firms. The USPTO has developed a form that complainants may choose to use to submit their complaints against an invention promoter/promotion firm to the USPTO. Use of this form, PTO/SB/2048 Complaint Regarding Invention Promoter, is not mandatory; however, its use will ensure that all of the necessary information is provided, which in turn enables the USPTO to make the complaint publicly available. At this time, there is no associated form for responses to the complaints. In addition, this information collection enables the invention promoters/promotion firms to respond to such complaints. The USPTO uses the complaint form to ensure that all of the necessary information is provided so that the complaints can be made publicly available. The USPTO then forwards the complaints to the invention promoter/ promotion firm and makes sure that any responses to these complaints are also made publicly available.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, and farms.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Thao P. Nguyen, Acting Records Officer, Office of Data Management, Data Administration Division, (703) 308–7397, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231.

Written comments and recommendations for the proposed information collection should be sent on or before August 7, 2000, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: June 29, 2000.

Thao P. Nguyen,

Acting Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 00–17029 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

RIN 0651–ABXX

Notice of Intellectual Property Symposium of the Americas: Protecting Intellectual Property in the Digital Age

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The United States Patent and Trademark Office (USPTO) is announcing that it will hold a two-day symposium on the enforcement of intellectual property in the Western Hemisphere. The symposium is expected to provide an opportunity for high-ranking government intellectual property officials and members of the business and intellectual property communities in the Western Hemisphere to discuss and formulate an agenda for cooperation in the critical area of intellectual property enforcement. Particular attention during the symposium will be paid to the Internet, Optical Media Piracy, and Business Software and Business Methods Patent enforcement issues, and to developing a basis for closer Hemispheric coordination in the enforcement of intellectual property rights generally.

DATES: The symposium will be held on Monday, September 11, 2000, and Tuesday, September 12, 2000, beginning at 9:30 a.m. and ending at approximately 5:30 p.m. each day. Due to security concerns, attendance at the symposium will be limited to 150 people. Requests to attend the symposium must be made in writing no later than July 31, 2000, and must comply with the requirements set forth in this notice. Because seating is limited, only one request to participate per firm, agency or organization will be granted. For purposes of determining eligibility, affiliates and subsidiaries in different countries will be considered separate organizations.

ADDRESSES: The symposium will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202. Directions to the symposium location will be available inside the lobby of the Sheraton Crystal City.

Requests to attend the symposium should be made to Doris Long by electronic mail to *soa2k@uspto.gov*, by facsimile transmission marked to the attention of Doris Long at (877) 786–4220, or by mail marked to the attention of Doris Long and addressed to the Office of Legislative and International Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231. Symposium attendees will be accepted as their requests are received on a first-come, first-serve basis according to the time and date of receipt of each request, and subject to the restrictions that: (1) Only written requests will be accepted; (2) only one request (one person) per company, firm, agency or organization will be accepted (for purposes of determining eligibility, affiliates and subsidiaries in different countries will be considered separate organizations); (3) only requests which contain the information set forth below under "Further Registration Information" will be accepted; and (4) only requests received on or before July 31, 2000, will be considered.

FOR FURTHER INFORMATION CONTACT: Doris Long by telephone at (877) 786–4220; by electronic mail to *soa2k@uspto.gov*; by fax at (877) 786–4220; or by mail marked to her attention and addressed to the Office of Legislative and International Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

1. Background

Over the past several decades, the global economy has undergone a fundamental change, where the principal engine of economic growth and job creation is not based on raw natural resources, but on the use of knowledge, ideas and innovation. From the Internet and E-commerce, to

computer software and technology, countries increasingly rely on knowledge-based products and services to fuel their economic and technological growth. Intellectual property protection forms an integral part of any knowledge-based economy, since intellectual property laws traditionally serve as a source of protection for knowledge, ideas and innovation. At the same time, the rights of intellectual property owners are being increasingly threatened by the widespread use of the Internet and other digital technologies in facilitating global piracy.

As of January 1, 2000, most countries in the Western Hemisphere are obligated to have domestic laws and enforcement mechanisms that comply with the international standards set forth under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In order to assure continuing growth for the countries of the Western Hemisphere, enforcement mechanisms must be designed to take into account the needs and issues of a knowledge-based economy and be built on traditional methodologies for enforcement of intellectual property rights against infringing physical goods and services. At the same time such mechanisms must be designed to combat the increasing use of the Internet and other digital technologies in the development and distribution of pirated and counterfeit goods.

In light of the Hemispheric importance of effective intellectual property enforcement programs capable of dealing with the challenges posed by digital piracy, this symposium will feature structured dialogues and round-table discussions regarding cutting edge intellectual property enforcement policy issues. These discussions will occur between high-level government officials from every country in the Western Hemisphere with which the United States maintains diplomatic relations.

The goals of the symposium are:

A. To assist government officials from the Western Hemisphere in developing effective enforcement systems based on an interdisciplinary approach in which civil, criminal, administrative, and border (customs) measures work together and separately to aid in protecting and enforcing intellectual property rights in the Digital Age.

B. To strengthen regional cooperation for the improvement of the enforcement of intellectual property rights in order to meet international treaty obligations, including those under TRIPS.

C. To provide Western Hemisphere countries with a detailed review of the emerging intellectual property treaty regimes of the Digital Age. Included among the topics would be the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the enforcement requirements of TRIPS and NAFTA.

D. To discuss ways to generally improve the enforcement of intellectual property rights throughout the Hemisphere.

2. Draft Agenda

A draft agenda for the symposium is set forth below:

Intellectual Property Symposium of The Americas: Protecting Intellectual Property in The Digital Age

Monday, September 11

Plenary Round Table I

E-Commerce and Other Strategies For Turning Intellectual Property Protection into Investment Opportunities.

Break Out Round Table A

Intellectual Property Rights and the Internet: Digital Distribution and the Technological Threat to Intellectual Property.

Break Out Round Table B

Establishing a Workable Enforcement System under TRIPS: Practical Problems and Potential Solutions.

Break Out Round Table C

Adapting "Hard" Goods Enforcement Techniques to Cyberspace.

Break Out Round Table D

Legal and Technological Obstacles to Protecting Intellectual Property in the Digital Age: Practical Problems and Realistic Solution.

Break Out Round Table E

Prevention v. Cure: Creating Effective Educational and Public Awareness Enforcement Campaigns.

Break Out Round Table F

Creating an Effective Enforcement Program With Limited Resources: Some Models for Facilitating Information and Resource Sharing.

Break Out Round Table G

Resolving Domain Name Problems in Cyberspace.

Break Out Round Table H

Copyright and the WIPO Treaties: Protecting Content on the Internet.

Tuesday, September 12

Plenary Round Table II

Technology Transfers, Business Method Patents and the Pitfalls of Licensing.

Break Out Round Table J

Creating an Effective Enforcement Program for New Technologies: Protecting Trade Secrets and Technology Patents.

Break Out Round Table K

Trademark Counterfeiting and the Net: Enforcing Rights on the Internet Frontier.

Plenary Round Table III

Future Issues in Intellectual Property Enforcement: Technology Patents and Confidential Information.

Plenary Round Table IV

An Action Plan for the Future: A Dialogue Among the Participants on Future Problems and Solutions.

3. Further Registration Information

This symposium, and all program-related materials, are offered free of charge. As noted above, due to security concerns, admission to the symposium will be limited to 150 participants who are pre-registered and whose registration has been accepted in accordance with the following guidelines:

1. Requests to attend the symposium should be made to Doris Long by electronic mail to *soa2k@uspto.gov*, by facsimile transmission marked to the attention of Doris Long at (877) 786–4220, or by mail marked to the attention of Doris Long and addressed to the Office of Legislative and International Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231.

2. All requests to attend must be in writing and must contain the following information:

A. Name;

B. Company/ Firm/Agency or Organization Affiliation (if any);

C. Mailing Address;

D. Facsimile, or Email Address where notification of acceptance of registration can be sent.

3. Symposium attendees will be accepted as their requests are received on a first-come, first-serve basis according to the time and date of receipt of each request. To be considered "received," a request to attend must contain all of the information required in this section; and must be received on or before the July 3, 2000, application deadline.

4. Only one request (one person) per company, firm, agency or organization will be accepted. For purposes of determining eligibility, affiliates and subsidiaries in different countries will be considered separate organizations.

5. It would be helpful for purposes of determining space needs, but is not required, if the applicant would also indicate which Break Out sessions he or she intends to attend. For convenience, a registration form has been placed on the USPTO web-site at www.uspto.gov.

Dated: June 29, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–17030 Filed 7–5–00; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Statement of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief To Place Electronic Trading Devices in the United States

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of policy.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has issued a Statement of Policy in which it expresses the view that foreign boards of trade that have placed automated trading systems in the U.S. pursuant to a Commission staff no-action letter shall be permitted to list certain additional futures and option contracts without obtaining supplemental no-action relief, subject to specified filing and certification requirements.

EFFECTIVE DATE: This Statement of Policy is effective immediately.

FOR FURTHER INFORMATION CONTACT: Jocelyn B. Brone, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION: On June 2, 1999, the Commodity Futures Trading Commission ("Commission") issued an order which, among other things, withdrew proposed rules that would have governed automated access to foreign boards of trade ("June 2 Order").[1] The June 2 Order also instructed the Commission staff to "begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the United States, and to issue responses where appropriate, pursuant to the general guidelines included in the Eurex (DTB) no-action process,[2] or other guidelines established by the Commission. * * *"[3] In accordance with these instructions, Commission staff has issued seven no-action letters that permit foreign boards of trade to place in the U.S. electronic trading devices that provide access to those boards of trade, without obtaining contract market designation ("Foreign Trading System No-Action Letters").[4] The relief is subject to the terms and conditions set forth in each no-action letter and applies exclusively to the futures and option contracts delineated therein. Foreign boards of trade that wish to list additional futures and option contracts for trading through their U.S.-located trading systems are require to request and receive supplemental no-action relief ("Supplemental Relief") from Commission staff prior to doing so. To date, Commission staff has granted two requests for Supplemental Relief.[5]

Almost one year has passed since the first Foreign Trading System No-Action Letter was issued.[6] In that time, Commission staff has not learned of any significant problems or concerns regarding the operation of U.S.-located foreign trading systems nor has Commission staff learned that foreign boards of trade are listing impermissible products through such systems. Also within the past year, the Commission has promulgated Rule 5.3 which generally permits domestic boards of trade to list new futures and option contracts for trading without acquiring Commission approval of such contracts or their respective terms and conditions.[7] In light of Commission staff's successful experience with the relief provided by the Foreign Trading System No-Action Letters and in consideration of the relief provided to domestic boards of trade via Rule 5.3, the Commission believes that it is appropriate to permit foreign boards of trade that are operating electronic trading devices in the U.S. pursuant to Commission staff no-action relief to be permitted to list certain new futures and option contracts for trading through those devices, without requiring additional regulatory action. Accordingly, it has issued the following Statement of Policy setting forth this view.

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[1] Access to Automated Boards of Trade, 64 FR 32829 (June 18, 1999).

[2] In February 1996, Commission staff issued no-action relief to Deutsche Termibourse ("DTB"), an automated international futures and options exchange headquartered in Frankfurt, German, that permitted DTB, subject to certain terms and conditions, to place computer terminals in the U.S. offices of its members for principal trading. See CFTC Interpretative Letter No. 96–28 (1996–1997 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 26,669 (Feb. 20. 1996.) In June 1998, DTB changed its name to Eurex Deutschland.

[3] Access to Automated Boards of Trade, 64 FR 32829 (June 18, 1999).

[4] Commission staff has issued Foreign Trading System No-Action Letters to Eurex Deutschland; the Hong Kong Futures Exchange Ltd.; the International Petroleum Exchange of London Limited; LIFFE Administration and Management ("LIFFE"); Parisbourse SBF SA; the Singapore Exchange Ltd. (formerly known as the Singapore International Monetary Exchange); and, collectively, the Sydney Futures Exchange Limited and the New Zealand Futures and Options Exchange Limited. The text of these letters may be accessed through the Commission's website, located at *www.cftc.gov*. See Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Edward J. Rosen, Esq., Cleary, Gottlieb, Steen & Hamilton (Aug. 10, 1999); Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Philip McBride Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom LLP (June 9, 2000); Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Han, Esq., Katten Muchin & Zavis (Nov. 12, 1999); Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Hahn, Esq., Katten Muchin & Zavis (July 23, 1999); Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Catherine Langlais, Senior Vice President, Parisbourse SBF SA (Aug. 10, 1999); Letter from John C. Lawton, Acting Director, Division Trading and Markets, Commodity Futures Trading Commission to Jane Kang Thorpe, Esq., Brown & Wood LLP (Dec. 17, 1999); Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Philip McBride Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom (Aug. 10, 1999).

[5] Commission staff has granted two separate requests from LIFFE to list additional futures and option contracts through LIFFE CONNECT™, its automated trading and order matching system. See Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Han, Esq., Katten Muchin & Zavis (Dec. 10, 1999) and Letter from John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Han, Esq. Katten Muchin & Zavis (Mar. 14, 2000).

[6] The first Foreign Trading System No-Action Letter was issued to LIFFE on July 23, 1999. See Letter from I. Michael Greenberger, Director, Division of Trading and Markets, Commodity Futures Trading Commission, to Arthur W. Han, Esq., Katten Muchin & Zavis (July 23, 1999).

[7] Rule 5.3 allows a domestic board of trade that has been designated as a contract market in at least one non-dormant commodity to list new futures and option contracts for trading upon satisfaction of specified filing and certification requirements. A domestic board of trade is permitted, but not required, to list new contracts through this filing and certification procedure in lieu of compliance with either the regular or fast-track procedure for contract market designation. Revised Procedures for Listing New Contracts, 64 FR 66373 (Nov. 26, 1999).

Issued in Washington, DC on June 30, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

Statement of Policy of the Commodity Futures Trading Commission Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief to Place Electronic Trading Devices in the U.S.

In light of newly-adopted Commodity Futures Trading Commission ("Commission") Rule 5.3 [8] and the lack of difficulties that have arisen regarding the placement of the automated trading systems of foreign boards of trade in the U.S. pursuant to no-action relief issued by Commission staff, the Commission believes that foreign boards of trade generally should be permitted to list additional futures and option contracts through such systems, without obtaining supplemental no-action relief from Commission staff ("Supplemental Relief"). Specifically, the Commission believes that, subject to the exceptions and conditions listed below, a foreign board of trade that has received a no-action letter from Commission staff permitting it to place electronic trading devices in the U.S. that provide access to that board of trade ("Foreign Trading System No-Action Letter") should be permitted to list new futures and option contracts for trading through the devices that are the subject of the particular no-action letter, without requesting or receiving Supplemental Relief.

In order to list new futures and option contracts without acquiring Supplemental Relief, a foreign board of trade should file the following with the Commission's Division of Trading and Markets at the Commission's Washington, D.C. headquarters no later than the close of Commission business on the business day preceding the initial listing of such futures and option contracts for trading through electronic trading devices located in the U.S.: (1) A copy of the initial terms and conditions of the additional futures and option contracts the foreign board of trade intends to list for trading through its U.S.-located electronic devices and (2) a certification from the foreign board of trade that it is in compliance with the terms and conditions of the Foreign Trading System No-Action Letter that it has received and that the additional futures and option contracts will be traded in accordance with such terms and conditions. This Statement of Policy does not apply to futures and option contracts that are covered by section 2(a)(1)(B) of the Commodity Exchange Act.[9] Foreign boards of trade continue to be required to seek and receive written supplemental no-action relief from Commission staff prior to offering such contracts through U.S.-located trading systems.

This Statement of Policy applies only to those foreign boards of trade that have received a Foreign Trading System No-Action Letter from Commission staff. It is intended exclusively to express the Commission's view that foreign boards of trade that have received a Foreign Trading System No-Action Letter be permitted to list futures and option contracts other than those specifically delineated therein without obtaining Supplemental Relief. The trading of all contracts through electronic trading devices that provide access to foreign boards of trade from within the U.S. continue to be subject to the terms and conditions of the Foreign Trading System No-Action Letter issued to the particular foreign board of trade. Moreover, this Statement of Policy does not alter the analysis that the Commission staff uses when considering requests for Foreign Trading System No-Action Letters, dictate the result of that analysis, or alter the authority of Commission staff to condition, modify, suspend, terminate, or otherwise restrict the no-action relief that it issues.

This Statement of Policy is effective immediately. This Statement of Policy and the Foreign Trading System No-Action Letters will cease to be effective in the event that the Commission adopts generally applicable rules or guidelines regarding the issues addressed therein, and foreign boards of trade would be subject to those rules or guidelines.

Chairman William J. Rainer, June 29, 2000.

Commissioner Barbara P. Holum, June 29, 2000.

Commissioner David D. Spears, June 29, 2000.

Commissioner James E. Newsome, June 28, 2000.

Commissioner Thomas J. Erickson, June 28, 2000.

Dissent of Commissioner Erickson to Statement of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that Have Received Staff No Action Relief to Place Electronic Trading Devices in the United States

I respectfully dissent from the Commission's determination to expand, by today's policy statement, the no-action relief previously granted to certain foreign exchanges listing contracts on terminals located in the United States. On June 2, 1999, the Commission issued an order that provided for the issuance of staff no-action relief for the placement of terminals in the United States by foreign boards of trade. Although the June 1999 Order directed staff to "begin immediately processing no-action requests," it also committed the agency to "proceed[ing] expeditiously toward adoption of rules and/or guidelines." Since then, the Commission's staff has issued no-action relief to seven foreign exchanges, yet the Commission has taken no steps to initiate a public rulemaking process. Rather, the Commission today validates staff no-action as the appropriate vehicle for granting relief.

The no-action process is typically used to provide limited relief on discreet matters for individual petitioners. Today's relief extends to numerous exchanges that have not formally petitioned the Commission's staff for the expanded relief. While the expanded relief ultimately may be appropriate, the public policy issues raised by today's Commission action warrant notice to the public and an opportunity for comment. Today's policy statement sanctions a closed process to address matters of broad public policy. One of the fundamental obligations of any federal agency is to ensure that the public and interested parties have the opportunity to comment on policy actions of broad effect. I believe that today's decision fails to uphold that basic tenet of regulation and that the time has come for the Commission to propose rules that would foster the public debate and provide unified guidance through rules, rather than relief on a case-by-case basis.

Dated: June 28, 2000.

Thomas J. Erickson

[FR Doc. 00–17040 Filed 7–5–00; 8:45 am]

BILLING CODE 6351–01–M

[8] Revised Procedures for Listing New Contracts, 64 FR 66373 (Nov. 26, 1999).

[9] 7 USC 2a (1994). For example, this Statement of Policy does not alter requirement that a foreign board of trade seeking to offer in the U.S. a futures or futures option contract based upon a stock index receive a no-action letter from the Commission's Office of General Counsel.

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request; Correction

AGENCY: Department of Education.

ACTION: Notice; correction.

SUMMARY: The Department of Education published a document in the **Federal Register** of June 21, 2000, concerning a request for comments on the Evaluation of the 21st Century Community Learning Centers Program. The reporting and recordkeeping responses on this document were incorrectly stated.

FOR FURTHER INFORMATION CONTACT: Jacqueline Montague, 202–708–5359.

Correction

In the **Federal Register** of June 21, 2000, in FR Doc 00–15573, on page 38521, in the 1st column, correct the "Reporting and Recordkeeping Hour Burden" to read:

Reporting and Recordkeeping Hour Burden: Responses: 18,780; Burden Hours: 41,090.

Dated: June 29, 2000.

John Tressler,

Leader, Regulatory Information Management.

[FR Doc. 00–17009 Filed 7–5–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The Use of Tests When Making High-Stakes Decisions for Students: A Resource Guide for Educators and Policymakers

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of availability of draft document and request for comments.

SUMMARY: The Assistant Secretary for Civil Rights announces the availability for public comment of a draft document entitled "The Use of Tests When Making High-Stakes Decisions for Students: A Resource Guide for Educators and Policymakers." The resource guide is designed to provide educators and policymakers with a useful, practical tool that will assist in their development and implementation of policies that involve the use of tests in making high-stakes decisions for students. The guide provides information about relevant Federal non-discrimination standards and professionally recognized test measurement principles, as well as a collection of resources related to the non-discrimination and test measurement principles discussed in the guide.

DATES: We must receive your comments on the draft document on or before August 7, 2000.

ADDRESSES: Address all comments and requests for copies of the draft document to Jeanette J. Lim, U.S. Department of Education, 400 Maryland Avenue, SW., room 5212 Switzer Building, Washington, DC 20202–1100. Telephone: (202) 205–5557 or 1–800–421–3481. For all comments submitted by letter, you must include the term "Testing Comments." If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 260–0471 or 1–800–USA–LEARN. The draft document is also available through the Internet at the following site: http://www.ed.gov/offices/OCR/testing.

If you prefer to send your comments through the Internet, use the following address: ocr@ed.gov

You must include the term "Testing Comments" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim. Telephone: (202) 205–5557 or 1–800–421–3481. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 260–0471 or 1–800–USA–LEARN.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Office for Civil Rights' Customer Service Team at (202) 205–5557 or 1–800–421–3481.

SUPPLEMENTARY INFORMATION: The purpose of the draft resource guide is to provide educators and policymakers with information about Federal non-discrimination standards and test measurement principles concerning the proper use of tests in making high-stakes decisions for students. The Department is accepting public comments on the draft resource guide.

Earlier versions of the draft resource guide have been reviewed by the National Academy of Science's Board on Testing and Assessment (BOTA), the U.S. Department of Justice's Civil Rights Division (CRD), and dozens of groups and individuals, including educators, parents, teachers, business leaders, policymakers, and others. BOTA conducted a public hearing on the resource guide on January 26, 2000. This draft seeks to respond to BOTA's, CRD's and other stakeholders' comments.

Invitation To Comment

We invite you to submit comments regarding this draft resource guide.

During and after the comment period, you may inspect all comments received during the public comment period in room 5036, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 10:00 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Public Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public record for this draft resource guide. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this notice is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Dated: June 28, 2000.

Norma V. Cantú,

Assistant Secretary for Civil Rights.

[FR Doc. 00–16860 Filed 7–5–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–227]

Application to Export Electric Energy; New York Independent System Operator, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: New York Independent System Operator, Inc. (NYISO) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act. In addition, NYISO is requesting expedited approval for their application.

DATES: Comments, protests or requests to intervene must be submitted on or before July 21, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 27, 2000, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from NYISO to transmit electric energy from the United States to Canada. NYISO is a not-for-profit New York corporation. NYISO does not own or control any electric power generation facilities, nor does it have a franchised electric power service area. NYISO does possess operational control over the transmission facilities in the state of New York. Those facilities continue to be owned by a group formerly known as the Member Systems of the New York Power Pool.

Two types of energy exports are proposed. First, in unforeseen circumstances, NYISO will make available emergency energy from its available generating capacity when a system emergency exists on Ontario's or Quebec's system or on the system of a third-party control area. A second type of energy export that may occur is an inadvertent energy transaction. Inadvertent energy is the difference between the actual metered energy interchange and the scheduled energy interchange between two adjacent control areas during transactions with Canada by others pursuant to their own export authority.

NYISO proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Long Sault, Inc., New York Power Authority, and Niagara Mohawk Power Corporation. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by NYISO, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the NYISO application to export electric energy to Canada should be clearly marked with Docket EA–227. Additional copies are to be filed directly with Michael C. Calimano, Vice President Operations & Reliability, Rob Fernandez, General Counsel, New York Independent System Operator, Inc., 3890 Carman Road, Schenectady, NY 12303 AND Arnold H. Quint, Edwin G. Kichline, Hunton & Williams, 1900 K Street, NW., Suite 1200, Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity" and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on June 30, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–17118 Filed 7–5–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office; Office of Science; Notice of Solicitation for Financial Assistance Applications for the Commercialization Assistance Program (CAP)

AGENCY: DOE, Chicago Operations Office.

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy (DOE), Office of Science (SC), announces its interest in receiving applications for financial assistance. The purpose of this solicitation is to invite applications from small businesses to provide individualized assistance to DOE SBIR Phase II financial assistance award recipients which will lead to the successful commercialization of products, services, or technology developed in the DOE SBIR Phase II program. The individualized assistance may include, but is not limited to, business related areas such as raising capital, preparing business plans, forecasts, product focusing, strategic partnering, and marketing.

DATE: Applications are to be received no later than August 8, 2000, and may be submitted any time prior to this deadline.

FOR FURTHER INFORMATION CONTACT: Tonja L. Stokes, Acquisitions and Assistance Group, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439–4899, by telephone at 630/252–2136, by facsimile at 630/252–5045, or by electronic mail at *tonja.stokes@ch.doe.gov*, or Renee L. Irwin by telephone at 630/252–2566, by facsimile at 630/252–5045, or by electronic mail at *renee.irwin@ch.doe.gov*.

SUPPLEMENTARY INFORMATION:

Qualification and Evaluation Criteria

This solicitation is a restricted eligibility solicitation which is limited to small businesses. For purposes of this solicitation, the definition of a small business may be found at Title 13 of the Code of Federal Regulations (CFR) Part 121.20 and may be viewed or downloaded from the Internet at *http://www.access.gpo.gov/nara/cfr/index.html*. DOE plans to select for award the application(s) judged to be of the highest overall merit, with consideration given to the quality of the technical approach, company and personnel experience and qualifications, business evaluation, and cost factors.

Application Submission

The solicitation will be available on the internet on or about July 1, 2000 and may be accessed at the DOE Chicago Operations Office, Acquisition and Assistance Group home page at *http://www.ch.doe.gov/business/acq.htm* under the heading "Current Solicitations," Soicitation No. DE–SC02–00ER12245. Completed applications referencing Solicitation No. DE–SC02–00ER12245 must be submitted to the U.S. Department of Energy, Chicago Operations Office, Communications Center, Building 201, Room 168, 9800 South Cass Avenue, Argonne, IL 60439–4899, ATTN: Tonja L. Stokes, Acquisition and Assistance Group.

Issued in Argonne, Illinois on June 27, 2000.

John D. Greenwood,

Group Manager, Acquisition and Assistance Group.

[FR Doc. 00–17114 Filed 7–5–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES AND TIMES: Wednesday, July 12, 2000, 10:30 am–4 pm.

ADDRESSES: Renaissance Washington DC Hotel, East Salon Ballroom, 999 9th Street, NW., Washington, DC 20001–4427.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

The agenda for the July 12 meeting has not been finalized. However, the meeting will include a series of briefings and discussions on Department of Energy and Board activities. Members of the Public wishing to comment on issues before the Secretary of Energy Advisory Board will have an opportunity to address the Board during the afternoon period for public comment. The final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on June 29, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–17115 Filed 7–5–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board's Laboratory Operations Board (LOB). The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

NAME: Secretary of Energy Advisory Board—Laboratory Operations Board.

DATES: Thursday, July 13, 2000, 8:30 am–3:15 pm, eastern daylight time.

ADDRESSES: Renaissance Washington D.C. Hotel, East Salon Ballroom, 999 9th Street, NW, Washington, DC, 20001

FOR FURTHER INFORMATION CONTACT: Richard Burrow, Acting Executive Director, or Laurie Keaton, LOB Staff Director, Office of Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7162 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide independent external advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Thursday, July 13, 2000

8:30 a.m.–8:45 a.m. Co-Chairs Opening Remarks
8:45 a.m.–9:30 a.m. Strategic Information Management Study to Modernize the DOE's Corporate R&D Portfolio Management Environment
9:30 a.m.–10:30 a.m. Management Initiatives at DOE Headquarters
10:30 a.m.–10:45 a.m. Break
10:45 a.m.–12:00 p.m. National Nuclear Security Administration Laboratories—Work Relationships
12:00 p.m.–1:00 p.m. Lunch
1:00 p.m.–2:00 p.m. Lab Stories: Performance-Based Management
2:00 p.m.–2:30 p.m. Laboratory Infrastructure Modernization
2:30 p.m.–2:45 LOB Work Plan
2:45 p.m.–3:00 p.m. Revisions to LOB Terms of Reference

3:00 p.m.–3:15 p.m. Public Comment Period
3:15 p.m. Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to monitor the business of the Laboratory Operations Board and to submit written comments or comment during the scheduled public comment period. The meeting will be conducted in a fashion that will, in the Co-Chairs, judgment, facilitate the orderly conduct of business. During its open meeting, the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Richard Burrow, Acting Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays. Further information on the Laboratory Operations Board is available at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on June 29, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–17117 Filed 7–5–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Wednesday, July 26, 2000; 6:00 pm–9 pm.

ADDRESSES: Pueblo Tribal Council Meeting Room, New Mexico Highway 16, Cochiti Pueblo, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;'*or Internet http:www.nnmcab.org.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Opening Activities—6 p.m.–6:30 p.m.;
Public Comment—6:30 p.m.–7 p.m.
Committee Reports:
Environmental Restoration
Monitoring and Surveillance
Waste Management
Community Outreach
Budget

Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on June 29, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–17116 Filed 7–5–00; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Grant Exclusive Copyright License

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of intent to grant exclusive copyright license.

SUMMARY: Notice is hereby given of an intent to grant to Business Commerce Solutions of Gaithersburg, Maryland an exclusive license in the U.S. copyright in the EC–WEB EC/EDI Gateway small purchase software, as well as the right to register the copyright in foreign countries. A Notice to the effect that the computer software was available for license appeared in the February 7, 2000 issue of the **Federal Register** [65 FR 5859]. The two entities which responded to that Notice were asked to respond to a Questionnaire which asked them to detail their plans for maintaining and updating the software, and the resources they were ready, willing and able to commit to the task. Based on these responses, Business Commerce Solutions was chosen as the exclusive licensee. The copyright will be held by the United States of America, as represented by the Department of Energy (DOE). DOE intends to grant the license, unless within 15 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing a statement from any person setting forth a reason or reasons why it would not be in the best interests of the United States to grant the proposed license, together with supporting documents.

DATES: Send written comments to the address listed below no later than July 21, 2000.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Michael P. Hoffman, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–3441.

SUPPLEMENTARY INFORMATION: The above-described software was prepared under Government contract. Business Commerce Solutions, in return for an exclusive royalty-free license in the software, will maintain and revise the software, making the revisions available to the Government free of charge, thereby relieving the Government of part of the labor and expense of doing so.

Issued in Washington, D.C., on June 29, 2000.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 00–17119 Filed 7–5–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–277–001]

Canyon Creek Compression Company; Notice of Compliance Filing

June 29, 2000.

Take notice that on June 19, 2000, Canyon Creek Compression Company (Canyon Creek) filed to comply with the Director letter order issued on June 6, 2000, in Docket No. RP00–277–000, which required Canyon Creek to provide a corrected electronic version of Third Revised Sheet No. 137 to FERC Gas Tariff, Third Revised Volume No. 1. Canyon Creek previously submitted an updated Third Revised Sheet No. 137 in hard copy form but inadvertently did not update the electronic copy of Third Revised Sheet No. 137.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17000 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2885–001]

Cedar Breaks I, L.L.C.; Notice of Filing

June 29, 2000.

Take notice that on June 29, 2000, Cedar Breaks I, L.L.C. (Cedar Breaks), tendered for filing an amendment to its proposed FERC Electric Tariff, Original Volume No. 1, filed with the Commission on June 19, 2000 in the above-referenced docket. The amendment clarifies language concerning the prohibition on sales to affiliates with franchised service territories.

Cedar Breaks intends to engage in wholesale electric power and energy purchases and sales.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 10, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17054 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–354–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 29, 2000.

Take notice that on June 23, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, with a proposed effective date of August 1, 2000.

Columbia states that the purpose of this filing is to update its tariff consistent with Commission policy and decisions on tariff filings made by other interstate pipelines concerning permissible discounting arrangements and negotiated-rate authority related charges. Columbia's proposed tariff changes address an additional permissible discounted rate arrangement, negotiated rates and capacity release billing provisions, conversion of discount arrangements to negotiated rate arrangements, and the negotiation of surcharges and retainage.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17002 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–005]

Dominion Transmission, Inc. (Formerly CNG Transmission Corporation); Notice of Negotiated Rate Compliance Filing

June 29, 2000.

Take notice that on June 26, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing to the Federal Energy Regulatory Commission the following tariff sheet for disclosure of a recently negotiated rate transaction:

Original Sheet No. 399A

DTI requests an effective date of May 19, 2000, for this negotiated rate agreement.

DTI states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16994 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–006

Dominion Transmission, Inc. (Formerly CNG Transmission Corporation); Notice of Negotiated Rate Filing

June 29, 2000.

Take notice that on June 23, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following Letter Agreement and tariff sheets for disclosure of a recently negotiated rate transaction:

Letter Agreement between Dominion Transmission, Inc. and PSEG Power NY Inc. Dated June 14, 2000
Ninth Revised Sheet No. 251 Original Sheet No. 399

DTI requests an effective date of July 1, 2000, for this negotiated rate agreement.

DTI states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16995 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–22–002]

Dominion Transmission, Inc; Notice of Proposed Changes in FERC Gas Tariff

June 29, 2000.

Take notice that on June 22, 2000, Dominion Transmission, Inc. (DTI), filed as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective November 1, 1999

Second Substitute Twenty-Fourth Revised Sheet No. 31
Second Substitute Fifty-Second Revised Sheet No. 32
Substitute Forty-Sixth Revised Sheet No. 33
Second Substitute Twenty-Third Revised Sheet No. 35

Effective January 1, 2000

Second Substitute Twenty-Sixth Revised Sheet No. 31
Third Substitute Twenty-Sixth Revised Sheet No. 31
Substitute Fifty-Third Revised Sheet No. 32

Effective February 1, 2000

Substitute Twenty-Seventh Revised Sheet No. 31
Substitute Twenty-Eighth Revised Sheet No. 31
Substitute Fifty-Fourth Revised Sheet No. 32
Substitute Fifty-Fifth Revised Sheet No. 32
Substitute Forty-Seventh Revised Sheet No. 33
Substitute Twenty-Fourth Revised Sheet No. 35

Effective May 1, 2000

Substitute Fifty-Sixth Revised Sheet No. 32

DTI states that the purpose of this filing is to comply with the Commission's order dated June 16, 2000 (June 16, 2000 Order) which accepted DTI's September 30, 1999 filing to revise its Transportation Cost Rate Adjustment (TCRA) with one exception. Specifically, the Commission ordered DTI to file revised TCRA rates, effective November 1, 1999, which reflect the allocation of unrecovered storage gas losses 74.5 percent to transportation services and 25.5 percent to storage services. DTI states that the revised tariff sheets fully comply with the June 16, 2000 Order.

DTI states that copies of its filing have been served upon DTI's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17006 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–33–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 29, 2000.

Take notice that on June 26, 2000, El Paso Natural Gas Company (El Paso) tendered for filing three firm Transportation Service Agreements (TSAs) between El Paso and MGI Supply, Ltd. (MGI) and Eighteenth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSAs for Commission approval since the TSAs contain provisions which differ from El Paso's Volume No. 1–A Tariff. The tariff sheet, which references the TSAs, is proposed to become effective on August 27, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 6, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.)

David P. Boergers,

Secretary.

[FR Doc. 00–16998 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–356–000]

El Paso Natural Gas Company; Notice of Tariff Filing

June 29, 2000.

Take notice that on June 26, 2000, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets:

Effective March 26, 2000

Third Revised Sheet No. 289
Second Revised Sheet No. 336
Fifth Revised Sheet No. 338
1st Revised Third Revised Sheet No. 339
First Revised Sheet No. 342
Second Revised Sheet No. 346
Fifth Revised Sheet No. 350
Third Revised Sheet No. 350A

Effective June 1, 2000

Second Revised Sheet No. 308

El Paso states that the tariff sheets are being submitted, pursuant to Order No. 637, to (i) remove the rate ceiling for capacity releases of less than one year, (ii) modify El Paso's right-of-first-refusal provisions applicable to long term firm contracts at the maximum rate, and (iii) revise the electronic bulletin board description to refer to El Paso's Internet Web site.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17004 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–8–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

June 29, 2000.

Take notice that on June 26, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective August 1, 2000:

Eleventh Revised Sheet No. 3
Fourth Revised Sheet No. 360
Fourth Revised Sheet No. 361

Natural states that on April 5, 2000, Kinder Morgan, Inc. closed on a transaction with ONEOK, Inc. (ONEOK) whereby various assets and entities were transferred to ONEOK, including all entities that were then marketing affiliates of Natural. As a result of the transaction, Natural states that it no longer has a marketing affiliate and is revising its Tariff accordingly.

Natural respectfully requests waiver of any provisions of its Tariff and/or the Commission's Regulations required to permit the instant filing to become effective as proposed.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the

web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16993 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–358–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

June 29, 2000.

Take notice that on June 27, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Review Volume No. 1, certain tariff sheets to become effective March 27, 2000.

Natural states that on February 9, 2000, the Federal Energy Regulatory Commission (Commission) issued its final rule regarding the regulation of short-term interstate natural gas transportation services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). In the instant filing, Natural is filing to implement provisions of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions.

Natural states that Order No. 637 provides for a waiver of the rate ceiling for short-term (less than one year) capacity release transactions until September 30, 2002, and requires pipelines to file tariff revisions within 180 days of the effective date of the rule, *i.e.*, March 27, 2000, to remove tariff provisions which are inconsistent with the removal of the rate ceiling. Accordingly, Natural is filing revised tariff sheets as required. Natural states that its Order No. 637 compliance plan is not due until July 17, 2000. Therefore, if Natural were to wait until its Order No. 637 compliance filing, the tariff provisions removing the price cap submitted therein would likely not be effective until 2001.

Natural respectfully requests waiver of any provisions of its Tariff and/or the Commission's Regulations required to permit the instant filing to become effective as proposed.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17005 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2887–001]

Newark Bay Cogeneration Partnership, L.P.; Notice of Filing

June 29, 2000

Take notice that on June 29, 2000, Newark Bay Cogeneration Partnership, L.P. (NBCP) tendered for filing with the Commission an amendment to its proposed FERC Electric Tariff, Original Volume No. 1, filed on June 19, 2000 in the above-referenced docket. The amendment clarifies language concerning the prohibition on sales to affiliates with franchised service territories.

NBCP intends to engage in wholesale electric power and energy purchases and sales.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 10, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17055 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–355–000]

Trailblazer Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

June 29, 2000.

Take notice that on June 26, 2000 Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective March 27, 2000.

Trailblazer states that on February 9, 2000, the Federal Energy Regulatory Commission (Commission) issued its final rule regarding the regulation of short-term interstate natural gas transportation services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). In the instant filing, Trailblazer is filing to implement provisions of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions.

Trailblazer states that Order No 637 provides for a waiver of the rate ceiling for short-term (less than one year) capacity release transactions until September 30, 2002, and requires pipeline to file tariff revisions within 180 days of the effective date of the rule, i.e., March 27, 2000, to remove tariff provisions which are inconsistent with the removal of the rate ceiling. Accordingly, Trailblazer is filing revised tariff sheets as required. Trailblazer states that its Order No. 637 compliance plan is not due until August 15, 2000. Therefore, if Trailblazer were to wait until its Order No 637 compliance filing, the tariff provisions removing the price cap submitted therein would likely not be effective until 2001.

Trailblazer respectfully requests waiver of any provisions of its Tariff and/or the Commission's Regulations required to permit the instant filing to become effective as proposed.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web. http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17003 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–224–002]

Transwestern Pipeline Company; Notice of Compliance Filing

June 29, 2000.

Take notice that on June 23, 2000, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective March 27, 2000.

2 Substitute Sixth Revised Sheet No. 95E

Transwestern states that this filing is made to comply with the Commission's June 8, 2000 order accepting the tariff sheets filed by Transwestern in this proceeding, subject to Transwestern specifying that all releases of more than 31 days, but less than 1 year, prearranged or otherwise, must be posted for bidding.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16999 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–282–001]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 29, 2000.

Take notice that on June 23, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective June 1, 2000:

Substitute Second Revised Sheet No. 291

Williston Basin states that on June 9, 2000, the Commission issued its "Order Accepting Tariff Sheets Subject to Conditions", in the above-referenced docket. The Order required Williston Basin to file revised tariff language reflecting the clarification made in Order No. 637–A, providing that a maximum rate contract for more than one year, for a service which is not available for 12 consecutive months, would be subject to the right of first refusal. Williston Basin states it is submitting the instant filing to comply with that Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17001 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–012]

Wyoming Interstate Company, Ltd; Notice of Compliance Filing

June 29, 2000.

Take notice that on June 23, 2000, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part if its FERC Gas Tariff, Second Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective on the dates indicated on each sheet.

WIC asserts that the purpose of this filing is to comply with the Commission's order issued October 13, 1999 in Docket No. RP97–375.

Specifically, this filing documents transportation rates for the periods December 1, 1997 through December 31, 1999 and incorporates changes made pursuant to the Commission's order to WIC's interest tracker, Columbia Exit Fee and negotiated rate and interruptible service revenue crediting provisions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary,

[FR Doc. 00–16996 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–137–000, et al.]

TXU (No. 5) Pty Ltd, et al.; Electric Rate and Corporate Regulation Filings

June 27, 2000.

Take notice that the following filings have been made with the Commission:

1. TXU (No. 5) Pty Ltd.

[Docket No. EG00–137–000]

Take notice that on June 19, 2000, TXU (No. 5) Pty Ltd (TXU (No. 5) filed with the Federal Energy Regulatory Commission (Commission) a supplement to its application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's regulations. TXU No. 5 is an Australian corporation that is an indirect subsidiary of Texas Utilities Company, a Texas corporation which is an exempt holding company under the Public Utility Holding Company Act of 1935, as amended.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Front Range Power Company, LLC

[Docket No. EG00–159–000]

Take notice that on June 21, 2000, Front Range Power Company, LLC, 6647 Generation Drive, Fountain, Colorado 80817, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. The initial application was filed on June 5, 2000, Front Range Power Company filed with the Commission an amendment to its June 5, 2000, application.

Front Range Power Company, LLC is a Colorado limited liability company formed by Coastal Power Company (Coastal), a Delaware corporation and wholly owned affiliate of The Coastal Corporation and Colorado Springs Utilities (CSU), an enterprise of the City of Colorado Springs, Colorado, to develop, design, construct, own, operate and maintain a natural gas-fired combined-cycle electric generation plant with a maximum capacity of approximately 480 MW, located on a 23-acre parcel of land approximately 17 miles south of Colorado Springs, Colorado.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Constellation Power Source Generation, Inc.

[Docket No. EG00–179–000]

Take notice that on June 21, 2000, Constellation Power Source Generation, Inc. (Applicant), a Maryland corporation with its principal place of business at 511 W. Market Street, Baltimore, Maryland 21203–1475, filed with the Federal Energy Regulatory Commission an application for determination, on an expedited basis, of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Calvert Cliffs Nuclear Power Plant, Inc.

[Docket No. EG00–180–000]

Take notice that on June 21, 2000, Calvert Cliffs Nuclear Power Plant, Inc. (Applicant), a Maryland corporation with its principal place of business at 39 W. Lexington Street, Baltimore, Maryland 21203–1475, filed with the Federal Energy Regulatory Commission an application for determination, on an expedited basis, of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Hamakua Energy Partners, L.P.

[Docket No. EG00–181–000]

Take notice that on June 21, 2000, Hamakua Energy Partners, L.P., a Hawaii limited partnership, with its principal office located at J. A. Jones Drive, Charlotte, North Carolina 28287, filed with the Federal Energy Regulatory Commission (Commission) an Application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended. Applicant is a Hawaii limited partnership that will be engaged directly and exclusively in operating an approximately 63 MW net naphtha and distillate oil-fired power plant (the Facility) located in Honakaa, in the northern coastal region of the island of Hawaii, and selling energy at wholesale from the Facility.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. PJM Interconnection, L.L.C.

[Docket No. EL00–85–000]

Take notice that on June 19, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a petition under Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, requesting that the Commission find and declare that PJM may recover from PJM's customers, through PJM's formula rates, PJM's costs to acquire from the PJM transmission owners the information technology and other assets that PJM uses to conduct its operations.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16992 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2616–004 New York]

Erie Boulevard Hydropower L.P.; Notice of Availability of Environmental Assessment

June 30, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new major license for the Hoosic River Hydroelectric Project located on the Hoosic River in Rensselaer and Washington Counties, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental effects of the proposed project and has concluded that approval of the proposed project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, NE., Room 2A, Washington, DC 20426, and may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17056 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Temporarily Draw Down Jersey Reservoir and Soliciting Comments, Motions To Intervene and Protests

June 30, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request to temporarily drawn down the Jersey Reservoir, approximately three feet, for project maintenance purposes.

b. *Project Number:* 2476–018.

c. *Date Filed:* May 22, 2000.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Jersey Hydroelectric Project.

f. *Location:* On the Tomahawk River in Lincoln County, Wisconsin.

g. *Filed Pursuant to:* 18 CFR 12.11.

h. *Applicant Contact:* Charles Schrock, Senior V.P. Energy Supply, Wisconsin Public Service Corporation, 700 North Adams Street, Green Bay, WI 54307–9002.

i. FERC Contact: Any questions on this notice should be addressed to Thomas LoVullo, telephone (202) 219–1168 or e-mail address: thomas.lovullo@ferc.fed.us.

j. Deadline for Filing Comments or Motions: August 7, 2000. All comments or motions must be filed by providing an original and eight copies as required by the Commissions regulations to: David P. Boergers, Secretary; Federal Energy Regulatory Commission; 888 First Street, NE; Washington, DC 20426.

k. Description of Request: Wisconsin Public Service Corporation proposes to draw down the Jersey Reservoir, approximately three feet, in order to repair the intake bullnose piers. The draw down is proposed to begin September 5, 2000 at a rate not to exceed one inch per hour. Maintenance construction is anticipated to take approximately four weeks. Refiling the reservoir would begin no later than October 4, 2000 at a rate not to exceed one inch per hour. Minimum flow through the project would be maintained during the refilling of the reservoir. Under normal historic flows, it is anticipated that the reservoir would be returned to operating level of October 6, 2000.

The purpose of this notice is to invite any comments on Wisconsin Public Service Corporation's request to draw down the reservoir to repair the intake piers.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Comments, Protests, Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION OF INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 00–17057 Filed 7–5–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OEI-100001; FRL-6592-2]

Toxics Release Inventory; Alternate Threshold for Low Annual Reportable Amounts; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12. The ICR is a continuing ICR titled:*Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting* (EPA ICR No. 1704.05, OMB Control No. 2070-0143). This ICR covers the reporting and recordkeeping requirements associated with reporting under the alternate threshold for reporting to the Toxic

Release Inventory (TRI), which appear at 40 CFR part 372. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Written comments, identified by the docket control number OEI-100001, must be received by EPA on or before September 5, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For general information contact: Maria Doa, Director, Toxic Releases Inventory Program Division, Office of Information Analysis and Access, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460,. Telephone: 202-260-1488. For technical information contact: Judith Kendall, Toxic Releases Inventory Program Division, Office of Information Analysis and Access, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; Telephone: 202-260-1802; Fax: 202-401-0237; email: kendall.judith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Affected Entities

Entities potentially affected by this action are those chemical facilities that manufacture, process, or otherwise use certain toxic chemicals listed on the Toxics Release Inventory (TRI) and which are required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), to report annually to EPA their environmental releases of such chemicals.

B. To Obtain Additional Information, Copies of this Document, or Other Support Documents

1. *Electronic availability.* Electronic copies of the ICR are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" http://www.epa.gov/fedrgstr/. An electronic copy of the collection instrument referenced in this ICR and instructions for its completion are available at http://www.epa.gov/tri/report.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OEI-100001. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260-7099.

C. To Submit Comments

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., "OEI-100001") in your correspondence.

1. *By mail.* All comments should be sent in triplicate to : Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Comments may be delivered in person or by courier to: OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260-7093.

3. *Electronically.* Submit your comments electronically by e-mail to: "oppt.ncic@epa.gov." Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI-100001. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

II. Background

The EPA would like to solicit comments to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

EPA is seeking comments on the following ICR, as well as the Agency's intention to renew the corresponding OMB approval, which is currently scheduled to expire on February 28, 2001.

Title: Alternate Threshold for Low Annual Reportable Amounts.

ICR numbers: EPA ICR No. 1704.05, OMB No. 2070-0143, expiring February 28, 2001.

Abstract: EPCRA section 313 requires certain facilities manufacturing, processing, or otherwise using certain toxic chemicals in excess of specified threshold quantities to report their environmental releases of such

chemicals annually. Each such facility must file a separate report for each such chemical.

In accordance with the authority in EPCRA, EPA has established an alternate threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that otherwise meets the current reporting thresholds but estimates that the total amount of the chemical in total waste does not exceed 500 pounds per year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year, can take advantage of reporting under the alternate threshold option for that chemical for that reporting year.

Each qualifying facility that chooses to apply the revised threshold must file the Form A (EPA Form 9350-2) in lieu of a complete TRI reporting Form R (EPA Form 9350-1). In submitting the Form A, the facility certifies that the sum of the amount of the EPCRA section 313 chemical in wastes did not exceed 500 pounds for the reporting year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year. Use of the Form A in place of the Form R represents a substantial savings to respondents, both in burden hours and in labor costs.

The primary function served by the submission of the Form A is to satisfy the statutory requirement to maintain reporting on a substantial majority of releases for all listed chemicals. Without the Form A, users of TRI data would not have access to any information on these chemicals. The Form A also serves as a *de facto* range report, which is useful to any party interested in amounts being handled at a particular facility or for broader statistical purposes. Additionally, the Form A provides compliance monitoring and enforcement programs and other interested parties with a means to track chemical management activities and verify overall compliance with the rule. Responses to this collection of information are mandatory (see 40 CFR part 372) and facilities subject to reporting must either submit a Form A or a Form R.

Burden statement: The annual public burden for this collection of information, which is approved under OMB Control No. 2070-0143, is estimated to average 34.6 hours per each form, for a facility which certifies one chemical per form A. For facilities which choose to certify two chemicals per form A, the estimated burden is 67.8 hours per form. Responding to this information collection requires: (1) Determining whether a listed toxic chemical is eligible for certification under the alternate threshold, and (2) completing the Form A. The burden of determining eligibility for certification is estimated to average 33.2 hours for each chemical that is certified. The burden of completing the Form A is estimated to average 1.4 hours, regardless of the number of chemicals being certified. The total burden per response is the combination of these two, and will vary depending on the number of listed toxic chemicals being certified.

EPA estimates that as many as 7,397 respondents may submit a Form A with these responses containing a total of 14,793 certifications. Total respondent burden and cost for completing those Form As are estimated at approximately 582,000 burden hours and $45.3 million per year. (The alternate threshold may save reporting facilities up to 189,000 hours, with a dollar value of $11 million, compared to the cost of reporting on Form R.) The estimated burden in this supporting statement differs from what is currently in OMB's inventory for alternate threshold reporting (13,157 respondents, 9,072 responses, and 646,875 burden hours) as a result of both an adjustment and a program change. The adjustment was made by calculating the number of eligible respondents and responses from the manufacturing sector based on TRI data from the 1998 reporting year (the most recent TRI data available). This adjustment reduced reporting burden by 62,772 hours. The program change was made by excluding the reporting of PBT chemicals on Form A. This change reduces the burden associated with this collection. The portion of the change due to this regulatory change decreases burden by 2,114 hours.

Estimated number of respondents: 7,397 respondents.

Estimated total annual burden on respondents: 582,000 burden hours.

Frequency of collection: Annual.

List of Subjects

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 23, 2000.

Margaret N. Schneider,

Principal Deputy Assistant Administrator, Office of Environmental Information.

[FR Doc. 00–16967 Filed 7–5–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6730–5]

Program Description of the National Environmental Achievement Track

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On June 26, 2000, EPA announced the design of its National Environmental Achievement Track (Achievement Track). The Achievement Track is the first of a two-tier EPA program that is designed to recognize and encourage top environmental performers. In the spring of 2001, EPA intends to announce the design of the second tier, the National Environmental Stewardship Track. This notice provides a detailed description of the Achievement Track.

FOR FURTHER INFORMATION CONTACT: Julie Spyres, Office of Policy and Reinvention, 202–260–6787 or by email at Spyres.Julie@epa.gov.

ADDRESSES: Office of Policy and Reinvention, U.S. Environmental Protection Agency, Ariel Rios Building, Mailcode 2129, 1200 Pennsylvania Avenue, Washington, DC 20460. Additional information may also be found at the Performance Track Information Center (toll free) 1–888–339 PTRK (7875) or at the EPA Performance Track website at http://www.epa.gov/performancetrack.

SUPPLEMENTARY INFORMATION:

Title: National Environmental Achievement Track Program Description

Abstract:

The National Environmental Achievement Track Program Description

I. Introduction
II. The National Environmental Achievement Track
A. Entry Criteria
1. Environmental Management System (EMS)
2. Demonstrated Environmental Achievements and Commitment to Continued Improvement
3. Public Outreach and Performance Reporting
4. Record of Sustained Compliance with Environmental Requirements
B. Incentives for Participation
C. Implementation
1. Application and Notification Process
2. Continued Compliance
3. Protocol for Site Visits
4. Annual Performance Report
5. Removal from the Achievement Track
D. The State Role and Relationship
E. Small Business Participation

III. The National Environmental Stewardship Track
IV. The EPA Administrator's Environmental Awards Program

I. Introduction

The National Environmental Performance Track program is designed to recognize and encourage top environmental performers—those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that benefit people, communities, and the environment.

Our system of environmental protection continues to evolve. There is a growing recognition that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing costs and spurring technological innovation.

Over the last several years, EPA has joined states, businesses, and community and environmental groups in experimenting with new approaches that achieve high levels of environmental protection with greater efficiency. EPA's Common Sense Initiative was designed to improve environmental results by tailoring strategies for six industry sectors. Project XL offers an opportunity to test alternative management strategies that promise better results. The national Environmental Leadership Program and EPA Region I's Star Track program offer new ways to encourage businesses to do better than required. Likewise, many states have developed innovative programs for improving environmental performance.

This program builds upon the lessons EPA has learned from several state leadership programs and from its own efforts. We learned that innovations in environmental management can be used to create strategic business opportunities and advantages while maximizing the health and productivity of our ecosystems and communities. We learned the importance of keeping innovation programs simple and their transaction costs low. We know that we must focus on performance, not just the means of achieving it, and derive measurable results from our programs.

The Performance Track program is the culmination of these efforts. It will recognize innovation, motivate others to improve, and complement existing regulatory activities. It has been designed so that criteria for participation are proportional to the benefits. It will encourage participation by small, medium, and large facilities. It also emphasizes the importance of effective state/EPA partnerships and the need to inform and involve citizens and communities.

EPA will be implementing the National Environmental Performance Track program at two levels. The first level, the National Environmental Achievement Track (Achievement Track), is designed to recognize facilities that consistently meet their legal requirements and have implemented high-quality environmental management systems, as well as to encourage them to achieve more by continuously improving their environmental performance and informing and involving the public.

The second level, the National Environmental Stewardship Track (Stewardship Track), is still under development. It is being designed to recognize and encourage broader and higher levels of voluntary environmental performance than those expected under the Achievement Track. These may include improvement in several categories of environmental performance; a focus on environmental management and performance with regard to customers, suppliers, and transporters; attention to product stewardship; and even better community engagement and public outreach.

In developing the Achievement Track, EPA has consulted extensively with stakeholders and state environmental agencies. EPA initially proposed to develop a Performance Track program in its report, Aiming for Excellence, which it published in July 1999. In March of this year, EPA released a draft program description and held five public meetings across the country on this proposal. In addition, EPA has consulted closely with state officials, including a national forum to discuss state programs, issues, and participation.

This notice announces the National Environmental Achievement Track.[1] EPA plans to launch the Stewardship Track in May 2001. Although this notice focuses on the Achievement Track, a later section describes the concept of the Stewardship Track and the process EPA will use to develop it.

II. The National Environmental Achievement Track

This section describes the criteria a facility will voluntarily meet to qualify for the Achievement Track, the incentives EPA intends to provide, the approach EPA intends to take to implement the program, and how EPA will manage this program with the states.

A. Entry Criteria

To qualify for the Achievement Track, a facility will demonstrate that it:

- Has adopted and implemented an environmental management system (EMS) that includes the elements specified below;
- Is able to demonstrate specific environmental achievements and commit to continued improvement;
- Commits to public outreach and performance reporting; and
- Has a record of sustained compliance with environmental requirements.

1. Environmental Management System (EMS)

A facility will certify that it has an EMS in place.[2] The EMS will include the elements listed below and will have gone through at least one full cycle of implementation (*i.e.*, planning, setting performance objectives, EMS program implementation, performance evaluation, and management review). A facility that has adopted systems based on EMS models with a Plan-Do-Check-Act framework would meet most of these elements.

EPA recognizes that the scope and level of formality of the EMS will vary, depending on the nature, size, and complexity of the facility. EPA's experience with a variety of programs suggests that these EMS elements are within the capability of small facilities and can be met through a variety of approaches. To help small facilities implement an EMS, EPA will make guidance documents and assistance materials available.

A facility will certify that it has implemented an EMS that includes these elements:

Policy

- A written environmental policy, defined by top facility management, that includes commitments to: (1) Compliance with both legal requirements and voluntary commitments; (2) pollution prevention (based on a pollution prevention hierarchy where source reduction is the first choice); (3) continuous improvement in environmental

[1] EPA will also use this program to implement Section 403(a) of Executive Order 13148, which directs EPA to establish a federal government leadership program "to promote and recognize outstanding environmental management performance in agencies and facilities."

[2] For purposes of the Achievement Track, an EMS represents an organization's systematic efforts to meet its environmental requirements, including maintaining compliance and achieving performance objectives that may be related to unregulated aspects of the organization's activities.

performance, including areas not subject to regulations; and (4) sharing information about environmental performance and the operation of the EMS with the community.

Planning

- Identification of significant environmental aspects [3] and legal requirements, including procedures for integrating anticipated changes to the facility's requirements or commitments into the EMS.
- Measurable objectives and targets to meet policy commitments and legal requirements, to reduce the facility's significant environmental impacts, and to meet the performance commitments made as part of the facility's participation in the program (under Section A.2). In setting objectives and targets, the facility should consider the following criteria: preventing non-compliance, preventing pollution at its source, minimizing cross-media pollutant transfers, and improving environmental performance.
- Active, documented programs to achieve the objectives, targets, and commitments in the EMS, including the means and time-frames for their completion.

Implementation and Operation

- Established roles and responsibilities for meeting objectives and targets of the overall EMS and compliance with legal requirements, including a top management representative with authority and responsibility for the EMS.
- Defined procedures for: (1) Achieving and maintaining compliance and meeting performance objectives; (2) communicating relevant information regarding the EMS, including the facility's environmental performance, throughout the organization; (3) providing appropriate incentives for personnel to meet the EMS requirements; and (4) document control, including where documents related to the EMS will be located and who will maintain them.
- General environmental training programs for all employees, and specific training for those whose jobs and responsibilities involve activities directly related to achieving objectives and targets and to compliance with legal requirements.
- Documentation of the key EMS elements, including the environmental policy, significant environmental aspects, objectives and targets, a top management representative, compliance audit program, EMS audit program, and overall EMS authority.
- Operation and maintenance programs for equipment and for other operations that are related to legal compliance and other significant environmental aspects.
- An emergency-preparedness program.

Checking and Corrective Action

- An active program for assessing performance and preventing and detecting non-conformance with legal and other requirements of the EMS, including an established compliance audit program and an EMS audit program.
- An active program for prompt, corrective action of any non-conformance with legal requirements and other EMS requirements.

Management Review

Documented management review of performance against the established objectives and targets and the effectiveness of the EMS in meeting policy commitments.

Although a third-party audit of the EMS is not necessary to qualify for the Achievement Track, a facility is asked in the application form if it has undergone such an audit. If it has not, it will have conducted a self-assessment. A facility will retain EMS documentation and provide a summary of its performance, including performance against objectives and targets, and a summary of the results of compliance and EMS audits, in its Annual Performance Report (discussed in Section C.4).

2. Demonstrated Environmental Achievements and Commitment to Continued Improvement

A facility will demonstrate specific environmental achievements and commit to continued improvements in its environmental performance. The framework for reporting on performance is based on the Global Reporting Initiative (GRI), which EPA also has used in Region I's StarTrack program. This framework distinguishes two levels of performance: Categories and aspects. A category is a class of environmental impacts (*e.g.*, water discharges). An aspect is an element of an organization's activities, products, or services that can interact with the environment (*e.g.*, discharges of heavy metals). EPA's approach to reporting is consistent not only with the GRI but with generally accepted EMS practice.

The categories and aspects for use in the Achievement Track program are listed in the Application Instructions for the Achievement Track (the Environmental Performance Table) and are available on the Performance Track web site (http://epa.gov/performancetrack). Three of the categories in the Table relate to the use of resources. They are energy use, water use, and materials use. Four of the categories relate to the negative effects of activities or processes. These include air emissions, waste generation, water discharges, and accidental releases. The final two categories relate to efforts to preserve or restore resources and to the environmental performance of products. Within each category, EPA has listed one or more environmental aspects that a facility may choose from in reporting on its performance.

EPA will not specify which categories and aspects a facility should select in making its performance commitments. However, the facility's future performance commitments need to be closely tied to the significant environmental aspects and the related objectives and targets as identified in its EMS. In addition, the facility should take the following factors into account in selecting categories and aspects for future performance commitments:

- Local or regional environmental concerns or priorities;
- Cross-media impacts of performance improvements; and
- Progress that can be made through pollution prevention.

Each applicant will demonstrate past achievements and commit to and report on future improvements. To demonstrate past performance, a facility is asked to select at least two environmental aspects from any of the categories in the Environmental Performance Table and to describe the improvements in its performance during the current and preceding one year. Small facilities have the option of documenting improvement for at least one environmental aspect from any category.[4] Facilities are encouraged to

[3] An environmental aspect is an "element of an organization's activities, products, or services that can interact with the environment. Facilities are asked to use their list of significant environmental aspects in selecting performance commitments under this program (see Section A.2).

[4] EPA recognizes that, depending on the nature and extent of a facility's operations, a small facility may have fewer environmental aspects as well as more limited resources for measuring and committing to specific improvements in performance. For purposes of this program, a facility will be considered to be a "small" facility if the company as a whole is a small business as defined by the Small Business Administration (see FR 30386, Vol. 65, No 94, May 15, 2000) and if the facility itself employs fewer than fifty full-time equivalent employees. A facility will self-certify as to its status as a small business in the application for admission to the Achievement Track. If a facility is part of a larger company, it is the larger company

Continued

document performance achievements beyond the minimum.

In making future performance commitments, facilities should select at least four environmental aspects, drawn from two or more categories. Small facilities should select at least two aspects from two or more categories. Again, facilities are encouraged to commit to more than the minimum. These commitments should cover the three years that the facility will participate in the Achievement Track (the standard term for participation). The aspects selected for past and future performance may or may not be the same, depending on the facility's priorities and the status of its performance improvement efforts.

In documenting past achievements and committing to continued improvement, a facility will not rely on any actions that represent compliance with existing legal requirements at the federal, state, tribal, or local levels. These improvements will represent actions taken by a facility that go beyond existing legal requirements. A facility will be asked to describe its progress in meeting these commitments in an Annual Performance Report (See Section C.4).

There will be no absolute or relative level of improvement in either past or future performance needed to qualify for the program. EPA is asking each facility to document and commit to a level of performance that is consistent with its own situation, capabilities, and goals. However, each facility is encouraged to commit to significant improvements that it is willing to justify publicly as a participant in the Achievement Track.

EPA encourages each facility to use the results of its participation in EPA, state, and other partnership programs to document its achievements in improving performance. Participation in a partnership program would not on its own qualify a facility, but improvements that occur in the context of such a program would. For example, as a result of participation in EPA's WasteWise, ClimateWise, WAVE (Water Alliances for Voluntary Efficiency), Design for the Environment, or Metal Finishing Strategic Goals programs, a facility may be able to document past performance and commit to future improvement. EPA's Partnership Programs coordinators will advise facilities on the best ways to link efforts in these programs with participation in the Achievement Track.

as a whole that needs to meet the Small Business Administration definition.

3. Public Outreach and Performance Reporting

A facility will demonstrate its commitment to public outreach and report periodically on its performance. There is no standard set of outreach activities, beyond what is required in the Annual Performance Report. Each facility's approach to community reporting beyond this Report will depend on its size, scale of operations, and setting.

EPA expects that applicants will already have established a public outreach program. For example, participants in the Responsible Care program or endorsers of the CERES (Coalition for Environmentally Responsible Economies) principles typically have outreach programs that may include a community advisory panel, newsletters, performance reporting, sponsorship of community activities, and other outreach activities. Many small facilities have adopted lower-cost but effective outreach programs.

In the application, each facility will be asked to describe its activities and plans in three areas: identifying and responding to community concerns; informing community members of important matters that affect them; and reporting on the performance of its EMS and other performance commitments. The facility also will be asked to provide a short list of community/local references who are familiar with the facility and to list any ongoing citizen suits against the facility.

During its evaluation process, EPA will list the facility as an applicant on the Performance Track web site. If a facility is accepted, EPA will list it as a participant and make a copy of its application available to the public.

Identifying and Responding to Community Concerns

A facility should be able to demonstrate that it has established mechanisms for identifying and responding to local concerns regarding the environmental effects of its operations. Examples are concerns about emissions, odors, traffic congestion, water discharges, and emergency warnings. At a minimum, a small facility should be able to document that it has designated a point of contact with direct access to facility management and has adopted procedures for responding to questions or concerns of local residents.

Other typical efforts could include a designated community liaison official, periodic public meetings or open houses, and similar mechanisms. The level of public outreach would depend not only on the size of the facility, but also on the degree of community interest and the environmental effects of the facility's operations.

Informing Community Members of Important Matters That Affect Them

Each applicant should describe the mechanisms it uses to inform the community of important issues related to the facility's environmental performance. Many of the mechanisms for identifying and responding to local concerns may meet this objective as well. Open houses, community meetings, web pages, advisory panels, or customer displays could be especially appropriate. Again, these efforts should be appropriate to a facility's size, operations, and setting.

Reporting on the Facility's Performance Commitments

Whatever means a facility employs for community outreach, it should explain specifically how it provides the public with the environmental performance information that it is committed to reporting (described in Section A.2 above). Each facility will provide this information to the local community in its Annual Performance Report.

4. Record of Sustained Compliance With Environmental Requirements

A facility will have a record of compliance with environmental laws and be in compliance with all applicable environmental requirements at the time of application. The facility will maintain its compliance for the duration of its participation in the Achievement Track.

In evaluating the compliance record of an applicant, EPA, along with its state partners, will consult available databases and enforcement information sources. The scope of this screen and the screening criteria are based on the guidelines presented in the Agency's *Compliance Screening for Partnership Programs Guidance*,[5] with certain design changes appropriate for this program. EPA may later add to or modify these criteria, as needed, and as it develops the National Environmental Stewardship Track.

Participation in the Achievement Track will not be appropriate if the compliance screen shows any of the following, under federal or state law.

Criminal Activity

- Corporate criminal conviction or plea for environmentally-related

[5] This guidance is available at http://es.epa.gov/oeca/oc/polover.pdf.

violations of criminal laws involving the corporation or a corporate officer within the past 5 years.

- Criminal conviction or plea of employee at the same facility for environmentally-related violations of criminal laws within the past 5 years.
- Ongoing criminal investigation/prosecution of corporation, corporate officer, or employee at the same facility for violations of environmental law.

Civil Activity

- Three or more significant civil violations at the facility in the past 3 years.[6]
- Unresolved, unaddressed Significant Non-compliance (SNC) or Significant Violations (SV) at the facility.
- Planned but not yet filed judicial or administrative action at the facility.
- Ongoing EPA- or state-initiated litigation at the facility.
- Situation where a facility is not in compliance with the schedule and terms of an order or decree.

In addition, EPA may also consider whether there are significant problems or a pattern of non-compliance in an applicant's overall civil or criminal compliance history.

EPA encourages each facility to assess its own compliance record under these criteria as it makes a decision regarding application to the Achievement Track.

B. Incentives for Participation

To promote participation in the program and the environmental and other benefits that will come with it, EPA intends to offer several incentives and is considering others.

In EPA's March proposal on the Performance Track program, which was the subject of several public meetings and written comment, EPA outlined considerations that would influence its choice of incentives for the Achievement Track. EPA has continued to rely on these considerations. EPA has excluded incentives that would involve a relaxation of substantive standards of performance or that would require statutory change. Many comments indicated a preference for incentives that apply broadly to different types of facilities; that reduce the reporting, monitoring, and other operating costs of the current system; and that can be implemented nationally.

EPA believes it is important to offer the kinds of incentives described here for several reasons. First, the achievements of these facilities deserve public recognition. Second, some of the reporting and other administrative requirements that are necessary for other facilities may not be needed for participants that have met the entry criteria for the Achievement Track. Third, these incentives may offer the opportunity for qualifying facilities to apply their resources to achieving even better environmental performance. And finally, the availability of these incentives should encourage other facilities to make environmental improvements that will enable them to qualify for participation.

EPA intends to offer several incentives that will be available to participants at the time they enter the program. These include recognition, access to information sources, and program incentives that do not require revision of existing guidance documents or rulemaking. Specifically, these include:

- An Achievement Track facility will be a low priority for inspection targeting purposes.
- As a discretionary factor in the assessment of penalties, EPA will consider a facility's good faith participation in the program as an indication of its good faith efforts to comply.
- Use of the Achievement Track logo at a participating facility, in communications with outside parties about the facility, and in other ways (although not in endorsing products).
- Listing on the Performance Track web site and other EPA sites, in promotional materials related to Partnership Programs, in feature articles, and in case studies that profile accomplishments.
- Special recognition for Charter Members at an event to be held in late fall of 2000.
- Participation in Achievement Track peer exchanges, including special invitation conferences, workshops, and networks, in which facilities share successful practices and receive recognition.
- Opportunities to be featured in a Performance Practices Database EPA is developing.
- Information sessions with senior EPA officials to share lessons learned, help design the Stewardship Track, and improve the Achievement Track.

Some incentives that EPA is considering would require actions by the Agency to modify existing guidance documents or administrative procedures; the incentives will be available when those steps have been completed. In some cases, other steps also must be taken before a facility may take advantage of the incentives being considered. For example, responsibility for implementing parts of many environmental programs is delegated to states. In such cases, states may need to revise regulations, agree on a revised delegation package, reissue permits, or take other actions.

EPA would make the following incentives available to facilities in the Achievement Track through administrative actions (other than rulemaking) or by issuing or amending guidance documents:

- More direct access to the reduced reporting and monitoring available under the Discharge Monitoring Reports (DMRs) provisions of the Clean Water Act. EPA intends to modify the current (1996) burden reduction guidance for DMRs to allow Achievement Track membership to substitute for certain screening requirements set out in that document.
- Greater flexibility under the Best Available Control Technology (BACT) requirement of the Clean Air Act. For Achievement Track facilities that may not be able to begin construction within 18 months of their BACT determination, EPA would encourage states to extend the applicability period through a simplified control technology review. EPA intends to recommend that the states adopt this simplified review.
- More advantageous terms for Achievement Track facilities under the State Revolving Funds (SRF) program of the Clean Water Act, such as reduced loan rates and extended payback terms. EPA intends to provide materials to states that will encourage them to incorporate this change into their SRF policies.
- A greater opportunity for expedited review of new reduced risk pesticide products under the Federal Insecticide, Fungicide and Rodenticide Act. If all of a pesticide registrant's U.S. pesticides manufacturing facilities are participants in the Achievement Track, this participation would become an additional factor that EPA would use in granting an expedited review. EPA would add participation to the list of factors through administrative action.

EPA also is considering changes to its current regulatory programs to offer incentives to Achievement Track facilities. These incentives will be developed under a coordinated Performance Track rulemaking. They include:

- Reducing the frequency of reports required under the Maximum Achievable Control Technology (MACT) provisions of the Clean Air Act. In this incentive, EPA intends to reduce significantly the frequency of required

[6] The term "significant" with respect to violations or non-compliance refers to how the violation is characterized under the applicable media enforcement response policy, available at http://www.epa.gov/oeca/main/strategy/.

MACT reporting for all Achievement Track facilities. EPA also intends to further reduce reporting reductions for Achievement Track facilities that achieve MACT or better emission levels through pollution prevention methods such as process changes. EPA intends to accomplish this through a single generic rulemaking covering all MACT standards.

• Streamlined monitoring, reporting, and other procedural requirements for Publicly-Owned Treatment Works (POTWs) in the Achievement Track.

• Reducing the reporting costs for POTWs in the Achievement Track that must publish notices of violations by facilities that use their services. These POTWs would be allowed to use the Internet rather than paid newspaper notices.

• The opportunity for Achievement Track facilities to consolidate reporting under various environmental statutes into a single report. EPA expects that this consolidated reporting would be phased in with a pilot program, and potentially followed with a larger program. This incentive may require rulemaking.

Finally, EPA is determining the feasibility of an additional set of incentives or activities. These include the following provisions:

• The opportunity for expedited review for companies that submit Premanufacturing Notifications (PMNs) under the Toxic Substances Control Act, if the substance is manufactured in an Achievement Track facility and the applicant uses EPA's Pollution Prevention Framework in preparing the PMN submission. This incentive would require rulemaking.

• Granting authority for Achievement Track facilities to accumulate wastes for up to 180 days (double the current limit of 90 days) before triggering the requirement for obtaining a Resource Conservation and Recovery Act (RCRA) Part B storage permit. This incentive would require rulemaking.

EPA will identify and evaluate other incentives that may be made available to participants in the Achievement Track, and later in the Stewardship Track, as the program matures. These would be implemented through the required administrative processes, including notice and comment rulemaking when that is appropriate.

C. Implementation

Application materials are available either from the Performance Track web site or from the Performance Track Information Center.[7] The implementation process is based on the following principles:

• Fair, effective, and timely evaluation of applications;

• Timely response to concerns of participants and community stakeholders;

• Close cooperation among EPA offices and with state and tribal agencies;

• Ongoing evaluation of the Achievement Track, with the goal of continuous improvement as it matures; and

• Low transaction costs, consistent with achieving the goals of the Achievement Track.

This section provides an overview of EPA's approach to implementing the Achievement Track. It covers: (1) The application and notification process; (2) continued compliance; (3) the protocol for site visits; (4) the Annual Performance Report; and (5) removal from the program.

1. Application and Notification Process

A facility formally applies for the Achievement Track by submitting the application form. EPA uses the information on the form (with the appropriate self-certifications), the results of the compliance screening, and information from consultations with EPA regional offices and state agencies in evaluating a facility's qualifications. EPA will not conduct site visits as a part of the formal selection process. However, EPA regional offices and state agencies may, on occasion, request a program site visit with an applicant when more information on a facility's qualifications is needed.

EPA will first review the application for completeness and notify the facility when the substantive review has begun. An EPA committee, made up of representatives from headquarters and regional offices, will conduct a substantive review. Through the appropriate regional office, EPA will consult with the state in which the facility is located to help determine the facility's eligibility for the Achievement Track. As part of this review, EPA will also conduct a compliance screen to evaluate the facility's past performance record.

A facility that is accepted into the Achievement Track will receive written notification from EPA. EPA will announce that a facility has been accepted through the Performance Track web site. A facility will be accepted for participation in the program for a period of three years. A facility that is not accepted will receive a brief explanation for EPA's decision.

Once a facility is accepted, it becomes eligible for the incentives offered in the Achievement Track. It will become eligible for other incentives as they are formally added to the program. EPA's standard acceptance letter will define the specific incentives available at the time of acceptance and the conditions under which they are granted or may be used (*e.g.*, the conditions for the use of the program logo). EPA will notify participants of other incentives as they become available.

A facility should understand that its participation in the Achievement Track program is discretionary with EPA, that it may not challenge a decision to be rejected or removed from the program, and that the fact of its participation is not relevant to any issue of law or fact in any legal enforcement proceeding for violations of environmental requirements.

The first application period for the Achievement Track will begin on July 5, 2000 and end on September 30, 2000. Facilities that submit applications by September 1, 2000 and are accepted will qualify as Charter Members of the Achievement Track. These will be announced in a special recognition ceremony in late November 2000. All other selections from the first application period will be announced in December 2000. EPA plans to open a second application period in the first quarter of 2001.

2. Continued Compliance

This program recognizes and promotes improved environmental performance, but is built on a foundation of sustained compliance. There are several components of this program that help to assure continued compliance, such as an EMS that meets specified criteria (including compliance with legal requirements), compliance self-audits, and an annual certification that the facility is meeting the program entry criteria and is continuing to maintain compliance. In recognition of these and other program elements, and of good faith participation in this program, facilities will not be subject to greater enforcement scrutiny solely as a result of their participation in the Achievement Track.

Compliance issues may arise from time to time at an Achievement Track facility. This notice describes how Achievement Track facilities can quickly and efficiently address these instances. In fact, EPA expects that a vigorous, performance- and compliance-

[7] The Performance Track Information Center can be contacted through email at ptrack@indecon.com or by telephone at 1–888–339–PTRK (7875).

focused EMS will identify for prompt correction any instances of actual or potential non-compliance. In general, facilities are rewarded for their self-identification, correction and prompt disclosure of violations through penalty mitigation under EPA's Audit Policy, and Achievement Track participants will likewise be able to avail themselves of this compliance incentive, under the conditions specified in the Policy. In addition, EPA recognizes that violations may be discovered during the course of an on-site Achievement Track program visit. EPA similarly will allow the application of the Audit Policy to violations discovered in this manner, provided that the facility could not reasonably be expected to have known about or identified the violation prior to the on-site visit. Finally, in the unlikely event that an Achievement Track facility becomes subject to an enforcement action, EPA will consider, as a discretionary factor in the assessment of penalties, the facility's good faith participation in the program as an indication of the facility's good faith efforts to comply.

3. Protocol for Site Visits

To evaluate the effectiveness of the Achievement Track program, EPA will conduct program site visits with a limited number of facilities each year. During a program site visit, a facility will make available materials that directly support its participation in the Achievement Track, including the EMS, progress on performance commitments, and information on community outreach. The protocol for arranging and conducting these site visits is:

- A facility will receive notice in advance of the visit and have an opportunity to schedule the timing with EPA to accommodate facility production schedules and deadlines.
- The scope of the visit will be to assess the facility's implementation of the Achievement Track program, including its EMS, its progress in meeting its performance commitments, and its public outreach efforts.
- The visit may include representatives from EPA headquarters, the EPA regional office, the state environmental agency, and (subject to the approval of the facility) possibly from the local community and other Achievement Track facilities.
- The visit will be conducted according to a written protocol that will be made available to the facility well in advance of the visit. EPA expects that the visits would take from a few hours to a full working day, depending on the size and complexity of the facility.
- EPA will visit up to twenty percent of participants in a given year. Facilities may request a program site visit from EPA.

4. Annual Performance Report

To remain in the Achievement Track, a participant will complete and submit an Annual Performance Report to EPA and the public. The purposes of this report are to provide information on the effectiveness of the program, to demonstrate the facility's progress toward its performance commitments, and to ensure that the facility is maintaining its qualifications under the program. This brief summary report may be submitted electronically or in writing. A draft format will be available on the Performance Track web site. The public will have an opportunity to comment on the format before it becomes final.

The Annual Performance Report will include the following categories of information:

- Summary of the EMS performance (based on objectives and targets), including a summary of the EMS and compliance audits performed and any corrective action taken;
- Brief progress report on the facility's performance commitments;
- Summary of the facility's public outreach activities; and
- Self-certification that the participant continues to meet the Achievement Track criteria.

The report will be due approximately one year after acceptance into the program, and annually thereafter. EPA will notify the facility of the due date in the acceptance letter. EPA is not planning to prescribe a means for public transmission of the report but will provide a menu of options from which participants may choose (*e.g.*, company web site, publication in local press, mailings). EPA is considering providing specialized assistance in this area for small facilities.

A facility should maintain on-site the supporting documentation used to prepare its Annual Performance Report and make this documentation available to EPA upon EPA's request.

5. Removal From the Achievement Track

There may be cases when a facility encounters significant performance problems that may warrant its removal from the Achievement Track. At EPA's discretion, a participant may be removed from the Achievement Track for such reasons as falsifying information in the application or Annual Performance Report, failing to file an Annual Performance Report, misrepresenting environmental performance in advertising or marketing claims, or for compliance problems that would be seen as inconsistent with the Achievement Track entry criteria.

EPA expects that a participating facility will continue to meet the Achievement Track criteria, such as maintaining its EMS and conducting appropriate public outreach, while it is in the program. Failure to meet the EMS and public outreach commitments could constitute grounds for removal. EPA also expects that a facility will strive to meet the performance goals stated in its application to the program. However, facilities are encouraged to establish ambitious goals, which they may not always be able to meet. Inability to meet the facility's performance commitments (as discussed under Section A.2) will not, in and of itself, be a cause for removal from the program. However, an inability to make any progress or a decline in facility performance could result in removal from the Achievement Track.

Should EPA decide that it may be necessary to remove a facility from the Achievement Track, EPA intends to provide the facility with notice of its intention. The facility will be allowed thirty days to respond by taking corrective measures. If corrective measures resolve the issues, EPA will withdraw its notice of intention. A facility may also withdraw from the program at any time by notifying EPA of its intent in writing. Once an entity leaves the Achievement Track, voluntarily or at EPA's discretion, it must relinquish the continued use of any and all incentives associated with participation in the Achievement Track.

D. The State Role and Relationship

The National Environmental Achievement Track will rely on EPA's partnership with state environmental agencies (and, where applicable, Indian tribes) for its long term success. State agencies run many federally-delegated programs and are responsible for important incentives (*e.g.*, changes in permitting, reporting, and inspection policies). States are likely to have more frequent contact with facilities, making each state's relationship with program participants key to overall success. In addition, many states have programs with similar objectives—such as a commitment to improved environmental performance (beyond what is required by law), EMS use, public involvement, and a strong compliance history. Several state programs start with tiers that may serve as an "on-ramp" to the Achievement Track.

EPA has consulted extensively with the states sponsoring programs similar to the Achievement Track, and with many other states that do not have such a program but that are interested in the concept. In May 2000, EPA brought 20 state officials together in a national forum to discuss program design and implementation. Senior EPA officials have also visited or spoken with commissioners from states that are leading the way in offering recognition and incentives to top performers.

EPA will form a joint committee of selected state and EPA officials to monitor and improve this program as it is implemented. Based on discussions with state leaders, EPA has developed specific principles to guide this relationship. EPA will:

- Work closely with designated state contacts, and include states in decisions on facilities within their jurisdiction, with the objective of having no surprises between EPA and the state;
- Minimize duplication with state efforts and build on existing state programs to the extent possible;
- Respect state programs with different policy and environmental objectives, and work with states to minimize inconsistencies with national objectives and actions;
- Encourage participation by all the states, tailored to state interests and capabilities; and
- Work jointly with the states to monitor implementation and seek continuous improvement in the program.

All states will be affected in some way by this program. However, the degree of involvement by each state will vary, based on the number of applicants and the level of state interest. EPA assumes, at a minimum, that states will want to be informed of actions relating to facilities under their jurisdiction and to have the opportunity to conduct their own compliance screening. Conducting even minimal screening and providing a central point of contact poses a new workload on state programs. EPA will seek to provide financial and technical assistance to states.

EPA has been working closely with states that have similar programs, and will continue to work with them to align and integrate national and state programs as much as possible. EPA envisions establishing a form of reciprocity for all equivalent state and national elements. For each element designated as equivalent, qualification at the state level would mean automatic qualification at the national level, and vice versa. EPA welcomes the interest expressed by many states that want to participate actively in the national program. These states can also play a major role in informing participants in existing programs of the opportunities and eligibility requirements of the Achievement Track, as well as in evaluating and monitoring the national program over time.

EPA will work closely with states that are establishing new programs, to achieve maximum compatibility between state and national efforts. For example, EPA could facilitate peer exchanges among states, and facilitate contact with EPA Performance Track and program office personnel. EPA will work with these states to develop complementary application procedures.

EPA will invite all states, including those without similar programs, to support the national program as much as they are able. In these cases, EPA will consider providing support for compliance screening and selected site visits in the event that a state cannot perform these activities. At a minimum, these states will be asked to designate a contact to receive notification of EPA actions.

In the near term, after consulting with states, EPA will decide which applicants qualify for the national program. As the program matures, EPA will work with the states to determine the most appropriate long term state role in implementing the program.

E. Small Business Participation

Any program for improving environmental performance must aim for participation by small businesses and other small entities, such as local governments. EPA is making every effort to make the Achievement Track accessible for small entities. This effort is reflected in several aspects of the design. For example, depending on the nature and extent of a facility's operations, the EMS for a small facility may be simpler than one for a larger, more complex facility. For the same reason, a small facility may have fewer environmental aspects. In addition, a small facility is not asked to make as many performance commitments as other participants.

EPA has held numerous discussions with representatives of small business interests and is encouraging participation by qualified small businesses and their facilities. In addition, EPA may create a more active and focused developmental program for small businesses and other small entities, with the goal of helping to expand their capacities for participation in the Achievement Track and, later, in the Stewardship Track. This program would build upon existing EPA activities, such as the Sustainable Industry Program, Design for the Environment, EMS projects with local governments, other partnership programs, and compliance assistance programs for small entities.

III. The National Environmental Stewardship Track

In the National Environmental Stewardship Track, to be implemented in 2001, EPA envisions a higher level of performance and commitment than in the Achievement Track. The Stewardship Track would also involve more substantial recognition and flexibility for participating facilities and companies. Applicants for the Stewardship Track would be expected to have met the qualifications of the Achievement Track but also to have demonstrated their qualifications in other areas.

EPA considers it appropriate to develop a Stewardship Track that allows for participation by companies as well as individual facilities within a company. These could be designed as two related but separate programs or as an integrated one that links facility- and company-level performance.

The Stewardship Track could also differ from the Achievement Track by incorporating differences among economic sectors in the program's design. In this aspect, EPA will build upon sector-based initiatives already underway, such as Design for the Environment and the Sustainable Industry Program.

EPA intends to develop the Stewardship Track while it is implementing the Achievement Track. In developing the Stewardship Track, EPA intends to follow these steps:

- Hold focus group discussions with stakeholders to discuss design elements, including appropriate incentives.
- Assess existing sector initiatives focused on improving environmental performance among sectors to determine their applicability.
- Hold public meetings to present and discuss the preliminary program design.
- Release a draft document for public comment.
- Make a formal announcement of the Stewardship Track program.
- Solicit the initial round of applications.

IV. The EPA Administrator's Environmental Awards Program

Concurrent with the launch of the National Environmental Performance Track program, EPA is establishing an Administrator's environmental awards program to recognize the highest level of environmental performance and

leadership in the business sector. The awards will be given once a year to a select number of organizations whose exemplary environmental accomplishments deserve special attention and recognition. Building on the tenets of the Performance Track, the Administrator's environmental awards will spotlight companies whose innovations, technological advancements, or integrated management systems achieve significant breakthroughs in environmental performance and management. The criteria for determining winners and the selection process will be announced in the spring of 2001, with the first award presented approximately six months later.

Dated: June 28, 2000.

Richard T. Farrell,

Associate Administrator, Office of Policy and Reinvention.

[FR Doc. 00–17070 Filed 7–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00296; FRL–6596–9]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on July 26–28, 2000, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Acetonecyanohydrin; acrolein; acrylic acid; Agent GA (tabun): ethyl N,N-dimethylphosphoramidocyanidate; Agent GB (sarin): O-isopropyl methylphosphonofluoridate; Agent GD (soman): O-pinacolyl methylphosphonofluoridate; Agent GF: O-cyclohexyl-methylfluorophosphonate; Agent VX: O-ethyl S-(2-diisopropylaminoethyl) methyl-phosphonothiolate; allyl alcohol; boron trichloride; chlorine trifluoride; diborane; epichlorohydrin; ethyleneimine; ethylene oxide; furan; hydrogen cyanide; hydrogen fluoride; iso-butyronitrile; methacrylonitrile; methanol; peracetic acid; perchloromethyl mercaptan; phosgene; propionitrile; propyleneimine; propylene oxide; tetrachloroethylene; uranium hexafluoride; and xylene. There will also be a discussion of public comments as applicable and the setting of interim AEGL values for the following chemicals: Allylamine; cis- and trans-crotonaldehyde; cyclohexylamine; dimethyldichlorosilane; ethylenediamine; hydrogen chloride; iron pentacarbonyl; methyl isocyanate; methyltrichlorosilane; nickel carbonyl; phosphine; and 2,4- and 2,6-toluene diisocyanate. There may also be a discussion regarding any further National Academy of Sciences/National Research Council/Committee on Toxicology/AEGL Subcommittee comments on the NAC/AEGL Committee Standing Operating Procedures.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5:30 p.m. on July 26; from 8:30 a.m. to 5:30 p.m. on July 27, 2000; and from 8:30 a.m. to 1 p.m. on July 28, 2000.

ADDRESSES: The meeting will be held at the U. S. Department of Transportation, DOT Headquarters, Nassif Bldg., Rooms 8236–8240, 400 7th St., SW., Washington, DC (L'Enfant Center Metro stop). Visitors should bring a photo ID for entry into the building and should contact the Designated Federal Officer (DFO) to have their names added to a security entry list. Visitors must enter the building at the Southwest Entrance/ Visitor's Entrance, 7th and E Sts. quadrant.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404 and TDD: (202) 554–055; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, DFO, Office of Prevention, Pesticides and Toxic Substances (7406), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00296. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals

to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is tentatively scheduled for October 2000. The exact date, location of this meeting, and chemicals to be discussed will be published in a future **Federal Register** notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: June 28, 2000.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 00–17074 Filed 7–5–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6730–4]

Notice of Open Meeting of the Environmental Financial Advisory Board on August 7–8, 2000

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in San Francisco, California on August 7–8, 2000. The meeting will be held at the World Trade Club, Ferry Building, in the International Room. The Monday, August 7 session will run from 9:00 a.m. to 5:00 p.m. and the August 8 session will begin at 8:30 a.m. and end at approximately 12 noon.

EFAB is chartered with providing analysis and advice to the EPA Administrator on environmental finance. The purpose of this meeting is to discuss progress with work products under EFAB's current strategic action agenda and to develop an action agenda to direct the Board's activities. Environmental financing topics expected to be discussed include: Financing Issues Related to the Office of Water's Gap Analysis, Environmental and Multi-State Revolving Funds, Cost-effective Environmental Management, Brownfields Redevelopment, and International Environmental Financing.

The meeting is open to the public, but seating is limited. For further information, please contact Vanessa Bowie, EFAB Coordinator, U.S. EPA on (202) 564–5186.

Dated: June 28, 2000.

Ronald Bachand,

Acting Deputy Comptroller.

[FR Doc. 00–17071 Filed 7–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00668; FRL–6567–6]

Pesticide Cumulative Risk Assessment Guidance; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA will hold a public meeting to explain and answer questions concerning its draft guidance document entitled, "Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals that Have a Common Mechanism of Toxicity." Notice of availability of the draft guidance document was issued in the **Federal Register** of June 30, 2000. At the meeting, EPA will explain the hazard and exposure methodology in the proposed guidance. The meeting is intended for informational purposes only.

DATES: The meeting will be held on July 20, 2000, from 9:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at The National Rural Electric Cooperative Association, 4301 Wilson Blvd., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5944; e-mail address: frane.jean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of the cumulative risk assessment guidance document from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for the cumulative risk assessment Guidance document under docket control number OPP–00668. In addition, the documents referred to in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Do I Submit Comments on the Draft Guidance Document?

As described in Unit I.C. of the notice of availability on the draft guidance

document entitled,"Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals that Have a Common Mechanism of Toxicity" published in the **Federal Register** of June 30, 2000 (65 FR 40644) (FRL–6556–4), you may submit your comments through the mail, electronically, or in person. Please follow the detailed instructions for each method provided in the notice of availability. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00658 in the subject line on the first page of your response.

IV. How Can I Request to Participate in This Meeting?

All interested persons may attend the meeting. No request to participate is needed. The meeting is informational only, with presentations followed by an opportunity for the public to ask questions to the EPA staff.

List of Subjects

Environmental protection, Administrative practice & procedure, Agricultural commodities, Pesticides and pests.

Dated: June 29, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

[FR Doc. 00–17073 Filed 7–5–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

June 27, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 5, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0723.

Title: Public Disclosure of Network Information by Bell Operating Companies.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 7.

Estimated Time Per Response: 50 Hours (avg.).

Total Annual Burden: 350 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Needs and Uses: Bell Operating Companies must make public disclosure of network information. This will prevent them from designing new network services or changing network technical specifications to the advantage of their own payphones.

OMB Control No.: 3060–0943.

Title: 47 CFR Section 54.809, Carrier Certification.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 27.

Estimated Time Per Response: 1.5 Hours (avg.).

Total Annual Burden: 41 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Needs and Uses: Section 54.809 of the Commission's rules requires each price cap or competitive local exchange carrier that wishes to receive universal service support to file an annual certification with the Universal Service Administrator Company and the Commission. The certification must state that the carrier will use its interstate access universal service support only for the provision, maintenance, and upgrading of facilities and service for which the support is intended. The Commission and USAC will use the certification to ensure that carriers comply with section 254(e) of the Telecommunications Act of 1996.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17048 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 27, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 5,

2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0942

Title: In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 27.

Estimated Time Per Response: 473.5 Hours (avg.).

Total Annual Burden: 12,785 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Quarterly; Annually; Recordkeeping; Third Party Disclosure.

Needs and Uses: In CC Docket Nos. 96–262, 94–1, 99–249 and 96–45 (FCC 00–193), the Commission adopted an integrated interstate access reform and universal service proposal put forth by the members of the Coalition for Affordable Local and Long Distance Service (CALLS). The CALLS Proposal resolves major outstanding issues concerning access charges. In order to implement the CALLS Proposal, the Commission adopted information collection requirements: (1) For price cap LECs to modify their annual tariff filings to conform with the interstate access reforms in the CALLS Proposal; (2) for price cap LECs to and competitive LECs seeking to receive support from the interstate access universal service support mechanism to file line counts by zone and customer class, revenue data and information regarding zone boundaries. Competitive LECs seeking funds also have to file USAC line counts by zone and customer class; (3) for price cap LECs that elect to file cost support information to calculate their access rates.

OMB Control Number: 3060–0932.

Title: Application for Authority to Make Changes in a Class A TV Broadcast Station.

Form Number: FCC 301–CA.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit; Not-for-profit institutions; state, local or tribal government.

Number of Respondents: 300.

Estimated time per response: 15–20 hours (time is split between contractors and respondents, depending on type of application).

Frequency of Response: Reporting, on occasion.

Total annual burden: 2,100.

Total annual costs: $1,709,400.

Needs and Uses: The FCC 301–CA is to be used in all cases by a Class A television station licensees seeking to make changes in the authorized facilities of such station. The FCC 301–CA requires applicants to certify compliance with certain statutory and regulatory requirements. Detailed instructions provide additional information regarding Commission rules and policies.

Class A applicants are also subject to third party disclosure requirement of Section 73.3580 which requires local public notice in a newspaper of general circulation of the filing of all applications for major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

The FCC 301–CA is designed to track the standards and criteria which the Commission applies to determine compliance and to increase the reliability of applicant certifications. They are not intended to be a substitute for familiarity with the Communications Act and the Commission's regulations, policies, and precedent.

OMB Approval No.: 3060–0928.

Title: Application for Class A Television Broadcast Station Construction Permit or License.

Form No.: FCC 302–CA.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 958.

Estimated Hours Per Response: 2 hours.

Frequency of Response: on occasion.

Cost to Respondents: $210,760.

Estimated Total Annual Burden: 1,916.

Needs and Uses: FCC Form 302–CA is used by LPTV stations that seek to convert to Class A status. The FCC Form 302–CA requires a series of certifications by the Class A applicant as prescribed by the CBPA. Licensees are required to provide weekly announcements to their listeners informing them that the applicant has applied for a Class A license, and announcing the public's ability to comment on the application prior to Commission action. The data is used by FCC staff to confirm that the station has met the eligibility standards to convert their licenses to Class A status. Data is then extracted from FCC Form 302–CA for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17050 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 28, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 5, 2000. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0895.

Title: Numbering Resources Optimization, CC Docket No. 99–200.

Form No.: FCC Form 502.

Type of Review: Extension.

Respondents: Business or Other for Profit; State, Local or Tribal Government.

Number of Respondents: 2780.

Estimated Time Per Response: 57 Hours (avg.).

Total Annual Burden: 158,500 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $6,490,000.

Frequency of Response: On occasion; Semi-annually; One-time Requirement; Recordkeeping; Third Party Disclosure.

Needs and Uses: The ten digit North American Plan currently being used by the United States and 19 other countries is rapidly being depleted. Management of this resource is impaired by a lack of uniform data. Under the Communications Act of 1934, as amended, the FCC was given "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." Pursuant to that authority the Commission conducted a rulemaking that, among other things, addressed regular reporting on numbering use by United States carriers. In its Report and Order in CC Docket No. 99–200, In the Matter of Numbering Resource Optimization (rel. March 31, 2000), the Commission found that mandatory data collection is necessary to efficiently monitor and manage numbering use. All carriers that receive numbering resources from the North American Numbering Plan Administrator (NANPA) or other receiving numbering resources from a Pooling Administrator in thousands blocks must report forecast and utilization data semi-annually to the NANPA. Applications for initial numbering resources must include documented proof that the applicant is authorized to provide service in the area for which the numbering resources are requested and that the application is or will be capable of providing service within 60 days of the numbering resources activation date. Applications for growth numbering resources must include a Months-To-Exhaust Worksheet. To facilitate auditing by the NANPA and by state commissions in the future, carriers are required to maintain detailed internal records of their number usage. State commission must provide notification to reduce the reporting frequency for NPAs in their states to annual. Carriers that open a clean block prior to utilizing in its entirety a previously-opened thousands-block must make a demonstration to the state commission. States requesting pooling authority must include a showing of specific criteria in their petitions. Carriers are requested to submit cost support data so that the Commission can determine the cost associated with thousands-block number pooling. The data collected will be used by the Commission, state regulatory commissions, and the NANPA to monitor numbering resource utilization by all carriers using the resource and to project the dates of area code and NANP exhaust.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17051 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 28, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0049.

Title: Restricted Radiotelephone Operator Permit.

Form No.: FCC Form 753.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 19,000.

Estimated Time Per Response: 20 minutes or .33 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,270 hours.

Total Annual Cost: $540,000.

Needs and Uses: Applicants must possess certain qualifications in order to qualify for a radio operator license. The data is submitted on FCC Form 753 aid the Commission in determining whether the applicant possesses these qualifications. This form is being revised to collect a FCC Registration Number (FRN) which is required from anyone doing business with the Commission.

The data will be used to identify the individuals to whom the license is issued and to confirm that the individual possesses the required qualifications for the license. If the data were not collected, it would be impossible to identify the person to whom the license was issued nor to determine whether the applicant were eligible for the license.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17049 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 26, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0127 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License.

Form Number: 314.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; and not-for-profit institutions.

Number of Respondents: 1,591.

Estimate Time Per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual burden: 2,546 hours.

Total Annual Costs: $12,237,000.

Needs and Uses: Applicants must file FCC Form 314 and applicable exhibits/explanations when applying for consent to assignment of an AM, FM, or TV broadcast station construction permit or license and to comply with the third party disclosure requirements found in Section 73.3580. The applicant must also notify the FCC when an approved assignment of a broadcast station construction permit or license has been consummated. Furthermore, FCC Form 314 now requires applicants to file FCC Form 396–A when filing FCC Form 314. This complies with the Commission's Report and Order in MM Docket Nos. 98–204 and 96–16 which modified the Commission's broadcast and EEO rules and policies consistent with the D.C. Circuit Court's decision in Lutheran Church.

OMB Control Number: 3060–0032.

Title: Application for Consent to transfer Control of Entity Holding Broadcast Station Construction Permit or License.

Form Number: 315.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; and not-for-profit institutions.

Number of Respondents: 1,591.

Estimate Time Per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual burden: 2,546 hours.

Total Annual Costs: $12,237,000.

Needs and Uses: Applicants must file FCC Form 314 and applicable exhibits/explanations when applying to transfer control of a corporation holding an AM, FM, or TV broadcast station construction permit or license, and comply with the third party disclosure requirements found in Section 73,3580. The applicant must also notify the FCC when an approved assignment of a broadcast station construction permit or license has been consummated. Furthermore, FCC Form 315 now requires applicants to file FCC Form 396–A when filing FCC Form 315. This complies with the Commission's Report and Order in MM Docket Nos. 98–204 and 96–16 which modified the Commission's broadcast and EEO rules and policies consistent with the D.C. Circuit Court's decision in Lutheran Church.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17052 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 00–207]

Establishing a Government-to-Government Relationship With Indian Tribes

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document reaffirms the Commission's respect for and commitment to the principles of tribal sovereignty and the federal trust responsibility, and establishes a government-to-government relationship between the Commission and federally-recognized Indian tribes. In an effort to embrace this unique relationship with and responsibility to Indian tribes, the Commission will endeavor to work with Indian tribes on a government-to-government basis to ensure that Indian tribes have adequate access to communications services, and will to the extent practicable consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Indian tribes. Furthermore, this document calls for the FCC to endeavor to identify innovative mechanisms to facilitate tribal consultation and streamline its administrative processes and procedures to remove undue burdens on Indian tribes. In addition, the FCC will also assist Indian tribes in complying with Federal communications statutes and regulations, and educate Commission staff about the fundamental principles governing the relationship between Indian tribes and the federal government.

DATES: Effective June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Steven Rangel at (202) 418–1700 or via internet at *srangel@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Policy Statement, FCC 00–207, adopted June 8, 2000; released June 23, 2000. The full text of the Commission's Policy Statement is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters,

445 12th Street, SW, Washington, D.C. 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at *http://www.fcc.gov/Bureaus/OGC/Orders/2000/fcc00207.doc*. This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audiocassette) by contacting Brian Millin at (202) 418–7426 (Voice), (202) 418–7365 (TTY), or by sending an email to *access@fcc.gov*. *Synopsis of the Policy Statement:*

I. Reaffirmation of Principles of Tribal Sovereignty and the Federal Trust Responsibility

The Commission recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. As domestic dependant nations, Indian Tribes exercise inherent sovereign powers over their members and territory. The federal government has a federal trust relationship with Indian Tribes, and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. In this regard, the Commission recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development as embodied in various federal statutes.

The Commission also recognizes that the Federally Recognized Indian Tribe List Act of 1994, makes a finding that the federal government has a trust responsibility to and a government-to-government relationship with recognized tribes.

Therefore, as an independent agency of the federal government, the Commission recognizes its own general trust relationship with, and responsibility to, federally-recognized Indian Tribes. The Commission also recognizes the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership.

Commission's Proposals. None

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16969 Filed 7–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, July 11, 2000 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, July 13, 2000 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Draft Advisory Opinion 2000–12—Bill Bradley for President, Inc. and McCain 2000, Inc. by counsel, Robert F. Bauer and Trevor Potter.
Draft Advisory Opinion 2000–15—Credit Union National Association, Inc., New York State Credit Union League, Inc., and the Credit Union Legislative Action Committee by counsel, Jan Witold Baran.
Regulations Priorities.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Signed: July 3, 2000.

Darlene Harris,

Acting Secretary of the Commission.

[FR Doc. 00–17258 Filed 7–3–00; 2:38 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011715.

Title: IMC/Colombia Express Space Charter and Sailing Agreement.

Parties: Industrial Maritime Carriers (U.S.A.) Inc. Colombia Express, L.L.C.

Synopsis: The proposed Agreement would permit the parties to charter space to one another and to coordinate their vessel services in the trade between United States Gulf ports, and inland U.S. points via such ports, and ports in Colombia and inland points via such ports.

By Order of the Federal Maritime Commission.

Dated: June 30, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–17059 Filed 7–5–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 99–15]

David P. Kelly and West Indies Shipping & Trading, Inc.—Possible Violations of the Shipping Act of 1984; Notice of Amendment to the Order of Investigation in Docket No. 99–15

This is to give notice that the Commission has amended its Order of Investigation in the above-captioned proceeding.

On August 13, 1999, the Federal Maritime Commission ("Commission") issued an Order of Investigation and Hearing to determine whether West Indies Shipping and Trading, Inc. ("West Indies Shipping"), a non-vessel-operating common carrier ("NVOCC"), and its president and sole shareholder, David P. Kelly ("Kelley"), violated sections 8(a)(1), 10(a)(1), 19(a), 19(b)(1), and former section 23(a) (pre-OSRA) of the Shipping Act of the 1984 ("Act"), 46 U.S.C. app. §§§§ 1707(a)(1), 1709(a)1), 1718(a), and 1718(b)(1), and former §§ 1721(a). Notice of this Order was published in the **Federal Register** on August 18, 1999. 64 FR 44928.

The Commission has determined, in response to a motion filed by the Commission's Bureau of Enforcement, to amend the Order of Investigation and Hearing to encompass section 10(b)(1) of the Act, 46 U.S.C. app Sections 1709(b)(1). The full text of the original Order and the amendment, may be viewed on the Commission's home page at *www.fmc.gov*, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave to

intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–17060 Filed 7–5–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 19, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. L.V. Ritter Trust No. 2, Marked Tree, Arkansas (E. Ritter Arnold, Marked Tree, Arkansas, and Daniel B. Hatzenbuehler, Memphis, Tennessee, as trustees); to retain voting shares of Marked Tree Bancshares, Inc., Marked Tree, Arkansas, and thereby indirectly retain voting shares of Marked Tree Bank, Marked Tree, Arkansas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. The Testamentary Trusts A and B, Houston, Texas, and Constance M. Vickery, Houston, Texas, trustee; to retain voting shares of Texas Coastal Bank, Pasadena, Texas.

Board of Governors of the Federal Reserve System, June 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16983 Filed 7–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Valley National Bancorp, Wayne, New Jersey; to acquire 9.9 percent of the voting shares of Shrewsbury Bancorp, Inc., Shrewsbury, New Jersey, and thereby indirectly acquire Shrewsbury State Bank, Shrewsbury, New Jersey.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. EastBank Corporation, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of EastBank, Minneapolis, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16984 Filed 7–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Grant County State Bancshares, Inc., Employee Stock Ownership Plan, Swayzee, Indiana, to become a bank holding company by acquiring 28 percent of the outstanding common stock of Grant County State Bancshares, Inc., Swayzee, Indiana, and thereby indirectly acquire the common stock of Grant County State Bank, Swayzee, Indiana.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. FNB Financial Corporation, Las Vegas, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Las Vegas, Las Vegas, New Mexico.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Eggemeyer Advisory Corp.; WJR Corp.; Castle Creek Capital, LLC; Castle Creek Capital Partners Fund I, LP; Castle Creek Capital Partners Fund IIa, LP; Castle Creek Capital Partners Fund IIb, LP, all of Rancho Santa Fe, California; to acquire more than 5 percent of the voting shares of Ruidoso Bank Corporation, Ruidoso, New Mexico, and thereby indirectly acquire Ruidoso State Bank, Ruidoso, New Mexico.

2. State National Bancshares, Inc., Lubbock, Texas; to acquire 100 percent of the voting shares of Ruidoso Bank Corporation, Ruidoso, New Mexico, and thereby indirectly acquire voting shares of Ruidoso State Bank, Ruidoso, New Mexico.

Board of Governors of the Federal Reserve System, June 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17084 Filed 7–5–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation; National Travel Conference 2000

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing that significant changes to the Federal Travel Regulation will be discussed at a national travel conference to be held in Orlando, Florida, October 30 through November 1, 2000. Additionally, Travel Managers of the Year Awards will be presented by Government Executive magazine. Federal agencies may hold agency-wide meetings at this conference.

FOR FURTHER INFORMATION CONTACT: Jane Groat, Office of Governmentwide Policy, Travel Management Policy Division, at (202) 501–4318, or by e-mail to *jane.groat@gsa.gov* or at *www.nationaltravel2000.com*.

Dated: June 30, 2000.

William T. Rivers,

Acting Director, Travel Management Policy Division.

[FR Doc. 00–17076 Filed 7–5–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–50–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

National Nosocomial Infections Surveillance (NNIS) System (0920–0012)—Revision—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). The most recent renewal of the NNIS system was in 1997. The NNIS system, which was instituted in 1970, is an ongoing surveillance system currently involving 315 hospitals that voluntarily report their nosocomial infections data to the Centers for Disease Control and Prevention (CDC), who aggregates the data into a national database. The data are collected using surveillance protocols developed by CDC for high risk patient groups (ICU, high-risk nursery, and surgical patients). Instructional manuals, training of surveillance personnel, and a computer surveillance software are among the support that CDC provides without cost to participating hospitals to ensure the reporting of accurate and uniform data.

The purpose of the NNIS system is to provide national data on the incidence of nosocomial infections and their risk factors, and on emerging antibiotic resistance. The data are used to determine the magnitude of various nosocomial infection problems and trends in infection rates among patient with similar risks. They are used to detect changes in the epidemiology of nosocomial infections resulting from new medical therapies and changing patient risks. New to the NNIS system is the monitoring of antibiotic resistance and antimicrobial use in groups of patients to describe the epidemiology of antibiotic resistance and to understand the role of antimicrobial therapy to this growing problem. The NNIS system can also serve as a sentinel system for the detection of nosocomial infection outbreaks in the event of national distribution of a contaminated medical product or device.

The respondent burden is not the same in each hospital since the hospitals can select from a wide variety of surveillance options. A typical hospital will monitor patients for infections in two ICUs and surgical site infections following 3 surgical operations. The respondent burden includes the time and cost to collect data on nosocomial infections in patients in these groups and the denominator data to characterize risk factors in the patients who are being monitored; to enter the data as well as a surveillance plan into the surveillance software; to send the data to CDC by electronic transmission; and complete a short annual survey and administrative forms. The annualized burden is estimated to be 71,259 hours.

Respondent	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Hospitals	315	12	1.30

Dated: June 29, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17092 Filed 7–5–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00138]

Youth-Focused HIV/AIDS Prevention Program Development and Technical Assistance Collaboration With Countries Targeted by the Leadership and Investment in Fighting the Epidemic (LIFE) Initiative; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for HIV/AIDS Prevention Program Development and Technical Assistance Collaboration with Countries Targeted by the LIFE (Leadership and Investment in Fighting an Epidemic) Initiative.

In July 1999, the Administration announced the LIFE Initiative to address the global AIDS pandemic. The LIFE Initiative, an effort to expand and intensify the global response to the growing AIDS pandemic and its serious impact, is part of the United States (U.S.) Government's participation in the International Partnership Against HIV/AIDS in Africa (IPAA). A central feature of the LIFE Initiative is a $100 million increase in U.S. support for sub-Saharan African countries and India, which are working to prevent the further spread of HIV and to care for those affected by this devastating disease. This additional funding is a critical step by the U.S. Government in recognizing the impact that AIDS continues to have on individuals, families, communities, and nations and responding to the imperative to do more. The Department of Health and Human Services (HHS), through its agency, the Centers for Disease Control and Prevention (CDC) is administering $35 million of the $100 million allocated to the LIFE Initiative by the U.S. Congress.

The purpose of the program is to support HIV/AIDS prevention program development and technical assistance for countries designated by the U.S. Congress under the LIFE Initiative. At present, those countries are Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda, Rwanda, Zimbabwe, Ethiopia, Mozambique, Malawi, Tanzania, Nigeria, Senegal, Zambia and India. The countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active.

The goals of the program are to address and support three program elements of the LIFE initiative: Primary Prevention, Capacity and Infrastructure Development, and Community and Home-Based Care and Treatment. The program described in this announcement calls for the delivery of HIV/AIDS prevention program development and technical assistance to the LIFE countries through a variety of recipient activities. The technical assistance will enhance the skills of LIFE country national AIDS program officials in strategic planning, evaluation, and communication relating to youth HIV/AIDS prevention care programs.

B. Eligible Applicants

Assistance will be provided only to a non-profit non-governmental organization. The eligible applicant must meet these criteria:

1. Have been granted tax-exempt status under Section 501(c)(3), as evidenced by an Internal Revenue Service (IRS) determination letter.
2. Have youth representation on their governing body, board, or on an advisory committee.
3. Have a minimum of one year documented experience in operating and centrally administering a coordinated program to serve youth with HIV prevention education and services within a major portion or region (multi-state or multi-territory) of the United States.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $1 million is available in FY 2000 to support one award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicant may contract with other organizations under this cooperative agreement, however, applicant must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Provide technical assistance to national AIDS control programs in LIFE countries on how to collect, synthesize, and disseminate global youth-focused best-practices information. This will also help the youth-serving organizations (YSOs) and non-governmental organizations working with national AIDS control programs in the LIFE countries to meet the needs of young people. Activities could include, but are not limited to, peer education, adolescent development, adolescent sexual and reproductive health issues, and youth development as a prevention strategy.

b. Identify and implement peer-to-peer training opportunities and technical assistance needs for young people and their providers from national AIDS control programs in LIFE countries. This peer-to-peer training and technical assistance will help LIFE country public health providers plan, implement, and evaluate HIV/AIDS prevention and care programs to meet the in-country needs of young people. Such peer-to-peer technical assistance may include, but is not limited to, identifying and facilitating training experiences for young people or their providers from LIFE countries; bringing young people or their providers from LIFE countries to the U.S. to participate in conferences, meetings, and/or developmental experiences; and/or agency or its approved representatives embarking on temporary assignments in LIFE countries. Topics may include but are not limited to counseling and testing with young people, how to make HIV/AIDS medical services youth accessible, mother-to-child transmission, contraception supply and accessibility for youth, and development for vulnerable youth.

c. Provide public health officials, young people, youth-serving providers from national AIDS control programs, NGOs and YSOs in LIFE countries with technical assistance throughout the project period on developing and implementing strategic youth-focused HIV/AIDS prevention and care plans. Such plans will consist of goals and measurable objectives. This technical assistance will include how to monitor implementation of objectives in order to assess effectiveness and how to determine the timing and content of mid-course corrections to accomplish objectives.

d. Provide public health officials from national AIDS control programs, YSOs, and young people in LIFE countries with technical assistance, working with such officials to identify local HIV/AIDS prevention and care program and policy issues as they are evolving, and helping to determine how to use this feedback to refine and improve HIV prevention and care plans and programs.

e. Provide partnering organizations in LIFE countries with technical assistance to develop systems for timely distribution and dissemination of youth-specific HIV/AIDS program and policy information for continuing modification and improvement of AIDS control policies.

f. Develop and sustain, beyond project period, a communications systems to keep all stakeholders (officials from LIFE country national AIDS control programs, U.S. partners, CBOs, young people, YSOs, CDC, and others) informed of project progress and to share technical assistance and capacity building information.

g. Document, monitor, and record outcome indicators of successful activities under this cooperative agreement and include such evaluation information in the required annual progress reports.

2. CDC Activities

a. Provide technical advice to partners and national AIDS control programs of LIFE countries on development of systems to identify and improve youth-focused HIV/AIDS program and policy issues.

b. Provide consultation, scientific and technical assistance to partners and national AIDS control programs of LIFE countries on planning, operating, analyzing, and evaluating youth-focused HIV prevention programs.

c. Provide program and policy information to partners and national AIDS control programs of LIFE countries for rapid dissemination, coordination, and implementation of youth-focused HIV prevention efforts.

d. Assist in assessing program operations and evaluating overall effectiveness of programs.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font. Pages should be numbered and a complete index to the application and its appendixes must be included. Begin each separate section on a new page. The original and each copy of the application set must be submitted unstapled and unbound. The following format should be used when developing your narrative.

Format

1. Abstract
2. Justification of Need
3. Organizational Capacity
4. Staffing Plans
5. Collaboration
6. Management and Evaluation Plan
7. Budget

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before August 21, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be reviewed and evaluated against the following criteria by an independent review group appointed by CDC:

1. Justification of Need (20 Points)

The extent to which the applicant demonstrates understanding of the requirements, problems, objectives, complexities, and interactions required of the cooperative agreement.

2. Organizational Capacity (30 Points)

a. Degree to which the applicant provides evidence of an ability to carry-out the proposed project and the extent to which the applicant institution documents the capability to achieve objectives similar to those of this project.

b. Degree to which applicant has developed their expertise, services, and experience in youth-oriented HIV prevention, rather than just adapting such resources from an adult to a youth perspective.

c. Degree to which applicant has established mechanisms for communicating youth-focused HIV/AIDS prevention information in LIFE countries.

d. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, related to the purpose of this project.

3. Staffing Plan (20 Points)

Extent to which professional personnel involved in this project are qualified, including evidence of past achievements relevant to this project.

4. Collaboration (10 Points)

a. Degree to which applicant possess established networks of contacts and knowledge of youth-serving HIV prevention institutions, people, and resources in order to identify people and programs for technical assistance and capacity building in LIFE countries.

b. Degree to which applicant has already developed national and global networks among officials in governments, non-governmental organizations (NGOs), and community-based organizations (CBOs) throughout the U.S. and in the LIFE countries.

5. Management and Evaluation Plan (20 Points)

Extent to which applicant demonstrates the adequacy of plans for administering and evaluating the project.

6. Budget (Not Scored)

Extent to which project budget is reasonable.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of

1. Annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period;
3. Final financial report and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–4 HIV/AIDS Confidentiality Provisions
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k) (2) of the Public Health Service Act, 42 U.S.C. 247b(k)(2). The Catalog of Federal Domestic Assistance number is 93.941, HIV Demonstration, Research, Public and Professional Education Projects.

J. Where To Obtain Additional Information

This and other CDC [ATSDR] announcements can be found on the CDC home page Internet: http://www.cdc.gov. Click on "Funding", then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Annie H. Camacho, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Room 3000, 2920 Brandywine Road, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2735, Email: atc4@cdc.gov.

For program technical assistance, contact: Leo Weakland, Deputy Coordinator, Global AIDS Activity (GAA), National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop E–07, Atlanta, GA 30333, Telephone number (404) 639–8016, Email address: lfw0@cdc.gov.

Dated: June 29, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control (CDC).

[FR Doc. 00–17011 Filed 7–5–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1353]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirement relating to the regulation of FDA's current good manufacturing practice (CGMP) and related regulations for blood and blood components.

DATES: Submit written comments on the collection of information by September 5, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components—Parts 606 and 640 (21 CFR Parts 606 and 640) (OMB Control Number 0910–0116)—Extension

Under the statutory requirements contained in the Public Health Service Act (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, manufacturer, and expiration date.

The CGMP and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood

and blood components and enable FDA to perform meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Section 606.100(b) (21 CFR 606.100(b)) requires that written standard operating procedures (SOP's) be maintained for the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release of the lot or unit. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) (21 CFR 606.110(a)) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.110(b) requires establishments to request prior Center for Biologics Evaluation and Research (CBER) approval for plasmapheresis of donors who do not meet donor requirements. The regulation in 21 CFR 606.151(e) requires that records of expedited transfusions in life-threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, 21 CFR 606.160 requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. The regulations in 21 CFR 606.165 require that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) (21 CFR 606.170(a)) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(b) requires that fatal complications of blood collections and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days. In addition to the CGMP's in part 606 (21 CFR part 606), there are regulations in 21 CFR part 640 that require additional standards for blood and blood components as follows: Sections 640.2(f), 640.3(a), 640.4(a), 640.25(b)(4) and (c)(1), 640.27(b), 640.31(b), 640.33(b), 640.51(b), 640.53(c), 640.56(b) and (d), 640.61, 640.63(b)(3), (e)(1), and (e)(3), 640.65(b)(2), 640.66, 640.71(b)(1), 640.72, 640.73, and 640.76(a) and (b) (21 CFR 640.2(f), 640.3(a), 640.4(a), 640.25(b)(4) and (c)(1), 640.27(b), 640.31(b), 640.33(b), 640.51(b), 640.53(c), 640.56(b) and (d), 640.61, 640.63(b)(3), (e)(1) and (e)(3), 640.65(b)(2), 640.66, 640.71(b)(1). 640.72, 640.73, and 640.76(a) and (b)). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described below.

Respondents to this collection of information are licensed and unlicensed blood establishments inspected by FDA, and other transfusion services inspected by the Health Care Financing Administration (HCFA) . Based on FDA's registration system, there are an estimated 3,032 registered blood establishments inspected by FDA of which 1,349 perform pheresis. Based on information provided by HCFA, there are an estimated 3,400 transfusion services inspected by HCFA. An estimated 27 million units of Whole Blood and blood components are collected annually. The recordkeeping chart reflects the estimate that 95 percent of the recordkeepers, which collect 98 percent of the blood supply, had developed SOP's as part of their customary and usual business practice. Establishments may minimize burdens associated with the CGMP and related regulations by using model SOP's developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments. The total annual responses in the reporting chart for fatality reporting are based on an annual average of fatality reports submitted to FDA. The annual frequency of recordkeeping and total annual records, and the estimated reporting and recordkeeping burden hours are based on information provided by industry, and FDA's experience. Under § 606.110(b), licensed establishments submit supplements to their biologics license applications to request prior CBER approval of plasmapheresis donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are reported under OMB control number 0910–0315.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section[2]	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.170(b)	75	1	75	20	1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section[2]	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
606.100(b)	322[3]	1	322	24	7,728
606.100(c)	152[4]	26	4,000	1	4,000
606.110(a)	68[5]	5	340	0.5	170
606.151(e)	322[3]	12	3,864	0.083	321
606.160	322[3]	1,677	540,000	0.5	270,000

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section[2]	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
606.165	152[4]	3,553	540,000	0.083	44,820
606.170(a)	322[3]	12	3,864	1	3,864
Total					330,903

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOP's, are included in the estimate for § 606.100(b); the recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for plateletpheresis, are included in the estimate for § 606.110(a); and the recordkeeping requirements in §§ 640.2(f), 640.3(a)(2), 640.3(f), 640.4(a)(2), 640.25(b)(4) and (c)(1), 640.31(b), 640.33(b), 640.51(b), 640.53(c), 640.56(b) and (d), 640.61, 640.63(b)(3), (e)(1), and (e)(3), 640.65(b)(2), 640.71(b)(1), 640.72, and 640.76(a) and (b), which address the maintenance of various records, are included in the estimate for § 606.160.
[3] 5 percent of HCFA and FDA-registered blood establishments (0.05 X (3,400 + 3,032))
[4] 5 percent of FDA-registered establishments (3,032)
[5] 5 percent of pheresis establishments (1,349)

Dated: June 27, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–16978 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1226]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Investigational Device Exemptions, Reports, and Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 7, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Investigational Device Exemptions, Reports, and Records—21 CFR Part 812 (OMB Control No. 0910–0078)—Extension

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) establishes the statutory authority to collect information regarding investigational devices and establishes rules under which new medical devices may be tested using human subjects in a clinical setting. The FDA Modernization Act of 1997 added section 520(g)(6) to the act and permitted changes to be made to either the investigational device or to the clinical protocol without FDA approval of an investigational device exemption (IDE) supplement.

An IDE allows a device, which would otherwise be subject to provisions of the act, such as premarket notification or premarket approval, to be used in investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of part 812 (21 CFR part 812) is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. The IDE regulation is designed to encourage the development of useful medical devices and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards.

To do this, the regulation provides for different levels of regulatory control depending on the level of potential risk the investigational device presents to human subjects. Investigations of significant risk devices, those that present a potential for serious harm to the rights, safety, or welfare of human subjects, are subject to the full requirements of the IDE regulation. Nonsignificant risk device investigations, those that do not present a potential for serious harm, are subject to the reduced burden of the abbreviated requirements.

The regulation also includes provisions for treatment IDE's. The purpose of these provisions is to facilitate the availability, as early in the device development process as possible, of promising new devices to patients with life-threatening or serious conditions for which no comparable or satisfactory alternative therapy is available.

Section 812.10 allows the sponsor of the IDE to request a waiver to all of the requirements of part 812. This information is needed for FDA to determine if waiver of the requirements of part 812 will impact the public's health and safety.

Sections 812.20, 812.25, and 812.27, consist of the information necessary to file an IDE application with FDA. The submission of an IDE application to FDA is required only for significant risk device investigations. Section 812.20 lists the data requirements for the original IDE application, § 812.25 lists the contents of the investigational plan, and § 812.27 lists the data relating to previous investigations or testing. The information in this original IDE application is evaluated by the Center for Devices and Radiological Health to determine whether the proposed investigation will reasonably protect the public health and safety, and for FDA to make a determination to approve the IDE.

Once FDA approves an IDE application, a sponsor must submit certain requests and reports. Under § 812.35, a sponsor who wishes to make a change in the investigation which affects the scientific soundness of the study or the rights, safety, or welfare of

the subjects is required to submit a request for the change to FDA. Under § 812.150, a sponsor is required to submit reports to FDA. These requests and reports are submitted to FDA as supplemental applications. This information is needed for FDA to ensure protection of human subjects and to allow review of the study's progress.

Section 812.36(c) identifies the information necessary to file a treatment IDE application. FDA uses this information to determine if wider distribution of the device is in the interests of the public health. Section 812.36(f) identifies the reports required to allow FDA to monitor the size and scope of the treatment IDE, to assess the sponsor's due diligence in obtaining marketing clearance of the device and to ensure the integrity of the controlled clinical trials.

Section 812.140 lists the recordkeeping requirements for investigators and sponsors. FDA requires this information for tracking and oversight purposes. Investigators are required to maintain records, including correspondence and reports concerning the study; records of receipt, use, or disposition of devices; records of each subject's case history and exposure to the device; informed consent documentation; study protocol and documentation of any deviation from the protocol. Sponsors are required to maintain records, including correspondence and reports concerning the study; records of shipment and disposition; signed investigator agreements; adverse device effects information; and, for a nonsignificant risk device study, an explanation of the nonsignificant risk determination, records on device name and intended use, study objectives, investigator information, institutional review board (IRB) information, and a statement on the extent that good manufacturing practices will be followed.

The most likely respondents to this information collection will primarily be medical device manufacturers, investigators, hospitals, health maintenance organizations, and businesses.

In the **Federal Register** of April 13, 2000 (65 FR 19912), the agency requested comments on the proposed collection of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
812.10	1	1	1	1	1
812.20,812.25, and 812.27	600	0.5	300	80	24,000
812.35 and 812.150 (Significant)	600	7	4,200	6	25,200
812.150 (Nonsignificant)	600	0.017	10	6	60
812.36(c)	6	1	6	120	720
812.36(f)	6	2	12	20	240
Total					50.221

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
812.40	600	0.5	300	10	3,000
Original Supplemental	600	7	4,200	1	4,200
Nonsignificant	600	1	600	6	3,600
Total					10,800

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

I. Reporting

Section 812.10 estimates are based on the fact that FDA has received very few, if any, waiver requests in the past, and estimates that very few will be submitted in the future. Therefore, FDA estimates a minimal burden to account for waiver requests.

Sections 812.20, 812.25, and 812.27 estimates are based on the average of IDE's submitted from fiscal years 1995 through 1999. FDA estimates the annual reporting burden for one IDE original application to be approximately 80 hours, and the annual reporting burden for one IDE supplement to be approximately 6 hours.

Sections 812.35 and 812.150 estimates are based on the average of IDE supplements submitted from fiscal years 1995 through 1999 for significant risk device studies. FDA estimates the annual reporting burden for one IDE supplement to be approximately 6 hours.

The reporting burden for nonsignificant risk device studies (§ 812.150) is negligible. Nonsignificant risk device studies are not reported to FDA unless a problem is reported such as an unanticipated adverse device reaction, failure to obtain informed consent, withdrawal of IRB approval, or a recall of a device. In the past, an average of 10 incidences or less annually have been reported to FDA. Section 812.36(c) and (f) estimates are based on FDA's experience with the treatment use of drugs and knowledge of the types of devices that may meet the treatment use criteria. FDA estimates that an average of six treatment use applications will be submitted each year. FDA estimates that it will take approximately 120 hours to prepare a treatment IDE and the total annual burden for preparing applications will be 720 hours. FDA also estimates that it will take approximately 20 hours to prepare a semiannual report, resulting in a total annual burden of 240 hours for annual reports.

II. Recordkeeping

Section 812.40 estimates are based on conversations with manufacturers, industry trade association groups, and

businesses over the last 3 years. For significant risk device investigations, FDA has estimated that the recordkeeping burden for preparing an original IDE submission averages 10 hours for each original IDE submission. Similarly, through the same conversations mentioned above, FDA has estimated recordkeeping for each supplement requires 1 hour. The recordkeeping burden for nonsignificant risk device investigations is difficult to estimate because nonsignificant risk device investigations are not required to be submitted to FDA. The IDE staff estimates that the number of recordkeepers for nonsignificant risk device investigations is equal to the number for active significant risk device investigations. The recordkeeping burden, however, is reduced for nonsignificant risk device studies. It is estimated that 600 recordkeepers will spend 6 hours each in maintaining these records.

Dated: June 27, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–16974 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0928]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Samples and Protocols

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 7, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Request for Samples and Protocols (OMB Control Number 0910–0206)—Extension

Under section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to issue regulations that prescribe standards designed to ensure the safety, purity, and potency of biological products and to ensure that licenses for such products are only issued when a product meets the prescribed standards. Under § 610.2 (21 CFR 610.2), FDA may at any time require manufacturers of licensed biological products to submit to FDA samples of any lot along with the protocols showing the results of applicable tests prior to marketing the lot of the product. In addition to § 610.2, there are other regulations that require the submission of samples and protocols for specific licensed biological products as follows: Sections 640.101(f) (21 CFR 640.101(f)) (Immune Globulin (Human)), 660.6 (21 CFR 660.6) (Antibody to Hepatitis B Surface Antigen), 660.36 (21 CFR 660.36) (Reagent Red Blood Cells), and 660.46 (21 CFR 660.46) (Hepatitis B Surface Antigen).

Section 640.101(f)(2) requires for each lot of Immune Globulin (Human) product, the submission of all protocols relating to the history of the product and all results of all tests prescribed in the additional standards for the product.

Section 660.6(a) provides requirements for the frequency of submission of samples from each lot of Antibody to Hepatitis B Surface Antigen product, and § 660.6(b) provides the requirements for the submission of a protocol containing specific information along with each required sample. For § 660.6 products subject to official release by FDA, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history or manufacture of the product, including all results of each test for which test results are requested by the Center for Biologics Evaluation and Research (CBER). After official release is no longer required, one sample along with a protocol is required to be submitted at an interval of 90 days. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to FDA if continued evaluation is deemed necessary.

Section 660.36(a) requires, after each routine establishment inspection by FDA, the submission of samples from a lot of final Reagent Red Blood Cell product along with a protocol containing specific information. Section 660.36(a)(2) requires a protocol containing information including, but not limited to, manufacturing records, test records, and test results. Section 660.36(b) requires a copy of the antigenic constitution matrix specifying the antigens present or absent to be submitted to FDA at the time of initial distribution of each lot.

Section 660.46(a) provides requirements for the frequency of submission of samples from each lot of Hepatitis B Surface Antigen product, and § 660.46(b) provides the requirements for the submission of a protocol containing specific information along with each required sample. For § 660.46 products subject to official release by FDA, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history or manufacture of the product, including all results of each test for which test results are requested by CBER. After notification of official release is received, one sample along with a protocol is required to be submitted at an interval of 90 days. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to FDA if continued evaluation is deemed necessary.

Samples and protocols are required by FDA to help ensure the safety, purity, or potency of the product because of the potential lot-to-lot variability of a product produced from living organisms. In cases of certain biological products (e.g., Albumin, Plasma Protein Fraction, and specified biotechnology and specified synthetic biological products) that are known to have lot-to-lot consistency, official lot release is not normally required. However, submissions of samples and protocols of these products may still be required for surveillance, licensing, and export purposes, or in the event that FDA obtains information that the manufacturing process may not result in consistent quality of the product.

The following burden estimate is for protocols required to be submitted with each sample. The collection of samples is not a collection of information under 5 CFR 1320.3(h)(2). Respondents to the collection of information under § 610.2 are manufacturers of any licensed biological product. Respondents to the

collection of information under §§ 640.101(f)(2), 660.6(b), 660.36(a)(2) and (b), and 660.46(b) are manufacturers of the specific products referenced previously. The estimated number of respondents for each regulation is based on the annual number of manufacturers that submitted samples and protocols for biological products, including submissions for lot release, surveillance, licensing, or export. There are an estimated 350 manufacturers of licensed biological products, however, based on information obtained from FDA's data base system, approximately 100 manufacturers submitted samples and protocols in 1998, under the regulations cited previously. FDA estimates that approximately 86 manufacturers submitted protocols under § 610.2, and 14 manufacturers submitted protocols under the regulations for the specific products. FDA had previously estimated 80, instead of 90, manufacturers would submit samples and protocols annually under all the regulations cited previously to account for biotechnology firms that are exempt from lot release requirements. Because biotechnology firms may still be required to submit samples and protocols for purposes other than lot release, as explained previously, the number of respondents for § 610.2 in this estimate includes them. The slight increase in the total estimated number of respondents (100) is due to a normal variation in annual submissions.

The total annual responses are based on FDA's final actions completed in fiscal year 1998, which totaled 7,221, for the various submission requirements of samples and protocols for biological products. The rate of final actions is not expected to change significantly in the next few years. The hours per response are based on information provided by industry. The burden estimates provided by industry ranged from 1 to 5.5 hours. Under § 610.2, the hours per response are based on the average of these estimates and rounded to 3 hours. Under the remaining regulations, the hours per response are based on the higher end of the estimate (rounded to 5 or 6 hours) since more information is generally required to be submitted in the protocol than under § 610.2.

In the **Federal Register** of March 22, 2000 (65 FR 15341), the agency requested comments on the proposed collection of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.2	86	82.72	7,114	3	21,342
640.101(f)(2)	5	4.40	22	5	110
660.6(b)	6	11.33	68	5	340
660.36(a)(2) and (b)	1	1	1	6	6
660.46(b)	2	8	16	5	80
Total	100		7,221		21,878

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 27, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–16975 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1072]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Administrative Detention and Banned Medical Devices; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. This document also corrects several errors that appeared in Table 1 of a notice published in the **Federal Register** of March 31, 2000 (65 FR 17282).

DATES: Submit written comments on the collection of information by August 7, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Administrative Detention and Banned Medical Devices—21 CFR 800.55(g), 800.55(k), 895.21, and 895.22 (OMB No. 0910–0114)—Extension

FDA has the statutory authority under section 304(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 334(g)), to detain during establishment inspections devices that are believed to be adulterated or misbranded. On March 9, 1979, FDA issued a final regulation on administrative detention procedures, which includes, among other things, certain reporting requirements (§ 800.55(g) (21 CFR 800.55(g))) and recordkeeping requirements (§ 800.55(k)). Under § 800.55(g), an applicant of a detention order must show documentation of ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, as well as records of distribution of the detained devices. These recordkeeping requirements for administrative detentions allow FDA to trace devices for which the detention period expired

before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the act (21 U.S.C. 360f) to ban devices that present substantial deception or an unreasonable and substantial risk of illness or injury. The final regulation for banned devices contains certain reporting requirements (§§ 895.21(d) and 895.22(a) (21 CFR 895.21(d) and 895.22(a))). Section 895.21(d) states that if the Commissioner of Food and Drugs (the Commissioner) decides to initiate a proceeding to make a device a banned device, a notice of proposed rulemaking will be published in the **Federal Register**, and this notice will contain the finding that the device presents a substantial deception or an unreasonable and substantial risk of illness or injury. The notice will also contain the reasons why the proceeding was initiated, an evaluation of data and information obtained under other provisions of the act, any consultations with the panel, and a determination as to whether the device could be corrected by labeling or change of labeling, or change of advertising, and if that labeling or change of advertising has been made. Under § 895.21(d), any interested person may request an informal hearing and submit written comments. Under § 895.22, a manufacturer, distributor, or importer of a device may be required to submit to FDA all relevant and available data and information to enable the Commissioner to determine whether the device presents substantial deception, unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals.

Respondents to this collection of information are those manufacturers, distributors, or importers whose products FDA seeks to detain or ban.

In the **Federal Register** of March 31, 2000 (65 FR 17282), the agency requested comments on the proposed collection of information. No significant comments were received. Also, in the notice published in the **Federal Register** of March 31, 2000 (65 FR 17282 at 17283), Table 1 contained several errors. Table 1 of this document corrects those errors.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800.55(g)(1) and (g)(2)	1	1	1	1	1
895.22(a)	26	1	26	16	416
Total					441

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
800.55(k)	1	1	1	20	20

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Over the past 3 years, there has been an average of one new administrative detention action per year. Each administrative detention will have varying amounts of data and information that must be maintained. Historically, FDA's Center for Devices and Radiological Health (CDRH) has had very few or no annual responses for this information collection and normally reports one response per year. CDRH is anticipating a banning action in fiscal year 2000 that will involve 26 firms.

Dated: June 28, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–17021 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration/Industry Exchange Workshop on Scale-Up and Postapproval Changes (SUPAC), Supplements, and Other Postapproval Changes; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of the Commissioner, Office of Regulatory Affairs, Center for Drug Evaluation and Research, and the Central Region Small Business Assistance Office, and the Pacific Region Small Business Office, in cooperation with the International Society for Pharmaceutical Engineering (ISPE) is announcing two workshops entitled FDA/Industry Exchange Workshops on Scale-Up and Postapproval Changes (SUPAC), Supplements, and Other Postapproval Changes. The workshops are intended to review the scientific, regulatory, and quality basis of SUPAC; discuss current issues; and provide attendees with information on the impact of the SUPAC guidances that have been finalized, as well as future agency efforts in this area.

Date and Time: See Table 1 following the *Location* section of this document.

Location: See Table 1 below.

TABLE 1

Workshop Address	Date and Local Time
Long Beach Convention Center, 300 East Ocean Blvd., Long Beach, CA 90802.	Tuesday, September 26, 2000, 9 a.m. to 4:30 p.m. Pacific time.
Embassy Suites, 150 Anza Blvd., Burlingame, CA 94010, 650–340–0327.	Friday, December 8, 2000, 9 a.m. to 4:30 p.m. Pacific time.

Contact: Marcia Madrigal, Industry and Small Business Representative, Food and Drug Administration, Oakland Federal Bldg., 1301 Clay St., suite 1180N, Oakland, CA 94612, 510–637–3980; FAX 510–637–3977 or via e-mail: mmadriga@ora.fda.gov.

Registration: The registration fee is $295 for ISPE members and $450 for nonmembers (which will cover refreshments, lunch, and materials). The ISPE tax number is FEI 59–2009272. Contact ISPE for registration forms, and other registration details at ISPE 3816 W. Linebaugh Ave, suite 412, Tampa, FL 33624, 813–960–2105; FAX 813–264–2816, or visit the ISPE website at http://www.ispe.org. Registrations are due 1 week prior to the start of each course. Space is limited, therefore, interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration. Persons needing hotel rooms for the Embassy Suites location on December 8, 2000, should mention that they are attending the FDA/SUPAC workshop. A special rate is available until November 16, 2000, or until the room block is exhausted, whichever comes first.

If you need special accommodations due to a disability, please contact ISPE at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The workshops are designed to help achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C 393) and discussed in the FDA Plan for Statutory Compliance, which include working more closely with stakeholders; maximizing the availability of, and clarifying information about the process for review and submissions; and ensuring access to needed scientific and technical expertise.

The workshops also are consistent with the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), as outreach activities by Government agencies directed to small businesses.

The topics to be discussed include the following: (1) The history of SUPAC development; (2) the impact of scale-up postapproval change guidances and of the regulation rewrite of 21 CFR 314.70 (Supplements and other changes to an approved application); (3) comparison of SUPAC immediate-release solid dosage forms, modified-release oral dosage forms, and semisolid-topical dosage forms; (4) postapproval changes sterile aqueous solutions; (5) FDA field staff's involvement in SUPAC; (6) description and use of the equipment addenda to SUPAC; and (7) facts, figures, and future directions.

Dated: June 27, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–16979 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Scholarships for Disadvantaged Students Program—New

The Scholarships for Disadvantaged Students (SDS) Program has as its purpose the provision of funds to eligible schools to provide scholarships to full-time, financially needy students from disadvantaged backgrounds enrolled in health professions and nursing programs.

To qualify for participation in the SDS program, a school must be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups (section 737(d)(1)(B) of the PHS Act). A school must meet the eligibility criteria to demonstrate that the program has achieved success based on the number and/or percentage of disadvantaged students who graduate from the school. In awarding SDS funds to eligible schools, funding priorities must be given to schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities (section 737(c) of the PHS Act).

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
SDS	450	1	25.5	11,475
Total	450			11,475

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 29, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–16973 Filed 7–5–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), title 5 U.S.C., as amended. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and programmatic issues would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee A—Clinical Sciences and Epidemiology.

Date: July 24, 2000.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: Discussion of personnel and programmatic issues and Review and evaluate individual Principal Investigators.

Place: National Cancer Institute, Building 31, C Wing, 6th floor, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Abby Sandler, Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7019, Bethesda, MD 20892, (301) 496–7628.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17096 Filed 7–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Program Projects.

Date: August 4, 2000.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Rita Liu, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17097 Filed 7–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Phase II SBIR: "Prevention Activities Handbook: A Practioner's Guide to Selecting and Implementing Interactive Drug Use Prevention Activities for Children and Adolescents".

Date: July 18, 2000.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Clinical Trial Network Administrative Coordinating Center".

Date: July 25–26, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17098 Filed 7–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, (Teleconference).

Date: July 13, 2000.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892.

Contact Person: John R. Lymangrover PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25n, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17099 Filed 7–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Mentored Patient-Oriented Research Career Development Awards (K23s).

Date: July 21, 2000.

Time: 10 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Molecular Epidemiologic Mentored Scientific Development Awards (K01s).

Date: July 28, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Mentored Clinical Scientist Development Awards (K08s).

Date: July 28, 2000.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Mentored Patient-Oriented Research Career Development Awards (K23s).

Date: July 28, 2000.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call)

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Research Grant Applications (R01s) Review.

Date: July 31, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17100 Filed 7–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: July 6, 2000.
Time: 11 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Fred Altman, Scientific Review Administrator, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6220, MSC 9621, Bethesda, MD 20892–9621, 301–443–8962.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: July 7, 2000.
Time: 1:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Asikiya Walcourt, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: July 31, 2000.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: August 9–10, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Robert H. Stretch, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17101 Filed 7–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 7, 2000.
Time: 9:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: J. Scott Osborne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 10, 2000.
Time: 9:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications,
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: J. Scott Osborne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 10–11, 2000.
Time: 2:00 p.m. to 11:00 a.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Shirley Hilden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 11, 2000.
Time: 11:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW. Washington, DC 20007.
Contact Person: Shirley Hilden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 11, 2000.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Michael Nunn, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12–14, 2000.
Time: 8:00 a.m. to 5:00 p.m..
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12–14, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Jefferson, 16th and M Streets, NW., Washington, DC 20036–3295.
Contact Person: David L. Simpson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12–13, 2000.
Time: 8:30 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Angela M. Pattatucci-Aragon, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12–13, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.
Contact Person: Lawrence N. Yager, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12, 2000.
Time: 9:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Michael J. Kozak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, kozakm@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12, 2000.
Time: 11:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12, 2000.
Time: 2:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Camilla E. Day, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12–13, 2000.
Time: 2:00 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin Fairfax Hotel, 2100 Massachusetts Ave., NW., Washington, DC 20008.
Contact Person: Ranga V Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 13–14, 2000.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.
Contact Person: Ron Manning, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 2.
Date: July 13–14, 2000.
Time: 8:00 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 13–14, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., NW., Washington, DC 20007.
Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 13, 2000.
Time: 8:30 a.m. to 9:30 a.m.
Agenda: To review and evaluate grant applications.
Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.
Contact Person: Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, perkins@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 13, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: The Latham Hotel, 3000 M Street, NW:, Washington, DC 20007.

Contact Person: Joanne T. Fujii, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13–14, 2000.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, perkins@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesday, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13–14, 2000

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Washington/Chevy Chase, 5520 Wisconsin Ave., Bethesda, MD 20815.

Contact Person: Nancy Shinowara, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, (301) 435–1173, shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Empasis Panel.

Date: July 13, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group, Biological Sciences Subcommittee 1.

Date: July 13–14, 2000.

Time: 5:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Nancy Pearson, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 14, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Karen Sirocco, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–0676.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 14, 2000.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Panniers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16–17, 2000.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16–18, 2000.

Time: 6:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Best Western University Inn, Highway 54 East, P.O. Box 2118, Chapel Hill, NC 27515–2118.

Contact Person: Eugene Vigil, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16–17, 2000.

Time: 7:00 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17–18, 2000.

Time: 8:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave NW. Washington, DC 20007.

Contact Person: Jerry L. Klein, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limiiations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17–18, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Fairfax Hotel, 2100 Massachusetts Ave., NW.. Washington, DC 20008.

Contact Person: Sally Ann Amero, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–1159, ameros@crs.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 17–18, 2000.
Time: 8:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@crs.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 17, 2000.
Time: 8:30 a.m. to 9:00 a.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, Versailles IV Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 17, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 17–18, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Houston Baker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, (301) 435–1175, bakerh@csr.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 17, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 17, 2000.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Martin L. Padarathsingh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 17–19, 2000.
Time: 6:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Inn at Pen, 3600 Sanson Street, Philadelphia, PA 19104.
Contact Person: Nancy Lamontagne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17095 Filed 7–05–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 28, 2000.
Time: 3:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 29, 2000.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20-892, (301) 435–0912, levinv@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17102 Filed 7–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–09]

Notice of Proposed Information Collection for HOPE VI Survey

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 5, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Office, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, W.W., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128 for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the followinng information:

Title of Proposal: HOPE VI Survey.

OMB Number: 257–7.

Description of the need for the information and proposed use: One hundred original HOPE VI residents at eight sites will be surveyed by telephone using computer-assisted telephone interviewing (CATI). The residents will provide information on housing choices available to and made by original residents, satisfaction with current housing neighborhood locations, current living conditions, attitudes toward services received through the HOPE VI Program, and current employment status. The information will help HUD increase knowledge of the ways in which housing choices and social and economic outcomes for original residents are affected by revitalization efforts at selected HOPE VI sites. Data gathered will be used by the Urban Institute and a contractor to prepare a project report for HUD. HUD and local housing agencies could benefit greatly from learning more about what happens to original families. An incentive payment of $20.00 will be made to respondents participating in this survey in order to ensure a high response rate.

Agency form numbers: None.

Members of affected public: Individuals or households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 100 residents at eight HOPE VI sites, one-time, 20 minutes (16,000 total minutes), 266 total reporting burden.

Status of the proposed information collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 30, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

HOPE VI SURVEY
Group 1 and Group 2 Sites

INTRODUCTION

Hello, my name is _(interviewer name)_ and I am calling from Abt Associates.

We are conducting a research project to find out how families are doing since they moved out of _(name of development)_. The survey includes questions about your new house or apartment, your new neighborhood, and general questions about things that have happened since you moved. Taking this survey will have no effect on your housing subsidy, and all of your answers will be kept private.

We would like to speak with _(name of head of household)_. Is that you?

[If not head of household]
May I please speak with him/her please?
[When head answers, repeat intro materials.]

[If head of household is not home]
When would be a good time for me to try back?
[Record date and time.]

You used to live at _(street address and apartment number)_. Is that right?
Yes [proceed with interview]
No [ask next set of questions]

If No:
Did you ever live at that address?
Yes
No → TERMINATE INTERVIEW

If Yes:
What years did you live there? _____
(If not within a year before or after date above, TERMINATE.)
(If within a year, then ask:)
Did you move because they were renovating the development?
Yes → PROCEED WITH INTERVIEW
No → TERMINATE INTERVIEW

***All questions will include a DK, REFUSED, and NA code ***

HOUSING STATUS

The first few questions ask about you apartment or house where you live now.

1. Is the housing unit you now live in:
   - 1 public housing, →**SKIP TO Q1a**
   - 2 a private market apartment, →**SKIP TO Q1b**
   - 3 a home or condominium you own →**SKIP TO Q2**
   - 4 homeless shelter or shelter for domestic violence, or →**SKIP TO Q2**
   - 5 a mobile home? →**SKIP TO Q2**

1a. Is your current apartment…:
   - 1 …in the same HOPE VI public housing development you lived in before, (name of development) ?
   - 2 …in a different public housing development?, or
   - 3 …a scattered-site public housing unit?

1b. Do you receive a Section 8 voucher to help you pay for your apartment:?
   - 1 Yes
   - 2 No

2. Do you share this apartment/house with other friends and family, besides your own children (and your spouse or partner)?
   - 1 Yes
   - 2 No →**SKIP TO Q3**

2a. Do you share the rent with your family or friends, or are you not responsible for any of the rent?
   - 1 We share the rent
   - 2 I am not responsible for any of the rent.

3. Which of the following best describes your apartment or house? Is it:
   - 1 a one-family house, or →**SKIP TO Q3a**
   - 2 a building with two or more units? →**SKIP TO Q3b**

3a. Is this one-family house:
   - 1 detached from any other house, or
   - 2 attached to one or more houses?

3b. Does this apartment building have:
   - 3 2 apartments
   - 4 3 or 4 apartments
   - 5 5 to 9 apartments
   - 6 10 to 19 apartments
   - 7 20 to 49 apartments

8 50 or more apartments

4. How many years (months) have you lived at your current address?

___ ___ years

IF LESS THAN ONE YEAR: ___ ___ months

5. How many years (months) have you lived in your neighborhood?

___ ___ years

IF LESS THAN ONE YEAR: ___ ___ months

6. How many times have you moved since (year development renovated) when you moved out of (name of development), including your move to your current apartment/house?

1 Once
2 2-3
3 4-5
4 More than 5 times

7. Is the apartment/house you live in now the same place you *first moved to* when you moved from (name of development) in about (year dev. renovated)?

1 Yes → **SKIP TO Q11**
2 No

8. Thinking about that first move out of (name of development), was the housing unit you moved to:

1 public housing, →**SKIP TO Q8a**
2 regular private market apartment or house, →**SKIP TO Q8b**
3 homeless shelter or shelter for domestic violence, or →**SKIP TO Q9**
4 a mobile home? →**SKIP TO Q9**

8a. Was that first apartment...:

1 ...in the same HOPE VI public housing development you lived in before? →**SKIP TO Q9**
2 ...in a different public housing development?, or →**SKIP TO Q9**
3 ...is it a scattered-site public housing unit? →**SKIP TO Q9**

8b. Did you receive a Section 8 voucher to help you pay for your apartment:?

1 Yes
2 No

9. Did you share this apartment/house with other friends and family, besides your own children?
   1 Yes
   2 No →**SKIP TO Q10**

   9a. Did you share the rent with your family or friends, or were you not responsible for any of the rent?
      1 We shared the rent
      2 I was not responsible for any of the rent.

10. Which of the following best describes that first apartment or house? Was it:
   1 a one-family house, or →**SKIP TO Q10a**
   2 a building with two or more units? →**SKIP TO Q10b**

   10a. Was this one-family house:
      1 detached from any other house, or
      2 attached to one or more houses?

   10b. Did this apartment building have:
      1 2 apartments
      2 3 to 4 apartments
      3 5 to 9 apartments
      4 10 to 19 apartments
      5 20 to 49 apartments
      6 50 or more apartments

I would like to ask about the various types of housing counseling and other assistance you may have received from (name of housing agency or other organization) when you first moved from (name of development). Did you receive help... :

	Yes	No	DON'T KNOW	NA
11. ... identifying neighborhoods to search in?	1	2	3	4
12. ... listings of available apartments?	1	2	3	4
13. ... transportation to possible rental units?	1	2	3	4
14. ... paying the security deposit?	1	2	3	4
15. ... financial assistance to help pay for moving costs?	1	2	3	4
16. ... job training or help finding a job?	1	2	3	4

17. ... social services? 1 2 3 4

[If they received Section 8 in first apartment, Q8b=1, then ask Q11.]

18. You have said that you no longer live in this apartment where you first moved to around _ (year development revitalized) _. Why did you move out of that apartment?
    1 Because you wanted to,
    2 Because your apartment failed inspection,
    3 Because you were evicted, or
    4 For some other reason? (please specify: _____)

[If they did not receive Section 8 in first apartment, Q8b=2, then ask Q12.]

19. You have said that you no longer live in this apartment where you first moved to around _ (year development revitalized) _. Why did you move out of that apartment?
    1 Because you wanted to,
    2 Because you were evicted, or
    3 For some other reason? (please specify: _____)

The next few questions ask your apartment/house where you live now.

20. Overall, how satisfied are you with the apartment/house where you live now? Would you say that you are:
    1 Very satisfied
    2 Somewhat satisfied
    3 In the middle
    4 Somewhat dissatisfied
    5 Very dissatisfied

21. Overall, how would you describe the condition of your apartment/house? Would you say it is in:
    1 Excellent condition
    2 Good condition
    3 Fair condition
    4 Poor condition

The next questions ask about the condition of your current apartment/house.

22. How much of a problem are walls with peeling paint or broken plaster?
    1 Big problem
    2 Some problem
    3 No problem at all

23. How much of a problem is plumbing that does not work?
    1 Big problem
    2 Some problem
    3 No problem at all

24. How much of a problem are rats or mice?
    1 Big problem
    2 Some problem
    3 No problem at all

25. How much of a problem are cockroaches or other bugs?
    1 Big problem
    2 Some problem
    3 No problem at all

26. How much of a problem are broken locks or no locks on the door to your unit?
    1 Big problem
    2 Some problem
    3 No problem at all

27. How much of a problem is having too little space?
    1 Big problem
    2 Some problem
    3 No problem at all

How likely is it that your neighbors would do something if they saw . . .

	Very likely,	Likely,	Neither likely nor unlikely,	Unlikely, or	Very unlikely?
28. Children skipping school and hanging out on a street corner? Would you say . . .	1	2	3	4	5
29. Children spray-painting graffiti on a local building?	1	2	3	4	5
30. Children showing disrespect to an adult?	1	2	3	4	5

31. A fight break out in front of their home?	1	2	3	4	5

Please tell me how much you agree or disagree with the following statements about your neighborhood.

	Strongly agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Strongly disagree?
32. People around here are willing to help their neighbors..	1	2	3	4	5
33. People in this neighborhood share the same values.	1	2	3	4	5
34. This is a close-knit neighborhood.	1	2	3	4	5
35. People in this neighborhood can be trusted.	1	2	3	4	5
36. People in this neighborhood generally get along with each other.	1	2	3	4	5

The next questions ask about services in your neighborhood. We would like to know how long it takes you to get to certain places in your neighborhood.

37. How long does it take you to get to the nearest bus or train stop?

1 Less than 15 minutes
2 15 to 30 minutes
3 30 to 45 minutes
4 45 minutes to one hour
5 More than one hour
6 Not applicable
7 Don't know

38. How long does it take you to get to the grocery store you use most of the time?

1 Less than 15 minutes
2 15 to 30 minutes
3 30 to 45 minutes
4 45 minutes to one hour
5 More than one hour
6 Not applicable
7 Don't know

39. How long does it take you to get the nearest park or playground?
- 1 Less than 15 minutes
- 2 15 to 30 minutes
- 3 30 to 45 minutes
- 4 45 minutes to one hour
- 5 More than one hour
- 6 Not applicable
- 7 Don't know

40. How long does it take you to get to your church or place of worship?
- 1 Less than 15 minutes
- 2 15 to 30 minutes
- 3 30 to 45 minutes
- 4 45 minutes to one hour
- 5 More than one hour
- 6 Not applicable
- 7 Don't know

41. How long does it take you to get to the doctor, health clinic, or hospital you use most of the time?
- 1 Less than 15 minutes
- 2 15 to 30 minutes
- 3 30 to 45 minutes
- 4 45 minutes to one hour
- 5 More than one hour
- 6 Not applicable
- 7 Don't know

ADJUSTMENT/TRANSITION

The next questions ask about interactions with your neighbors.

42. During the last 12 months, how often have you loaned things to a neighbor?
- 1 Almost every day
- 2 Once a week
- 3 Once a month
- 4 A few times
- 5 Almost never

43. During the last 12 months, how often have you borrowed things from a neighbor?
- 1 Almost every day
- 2 Once a week
- 3 Once a month
- 4 A few times
- 5 Almost never

44. During the last 12 months, how often have you babysat a neighbor's child?
- 1 Almost every day
- 2 Once a week
- 3 Once a month
- 4 A few times
- 5 Almost never

45. During the last 12 months, how often have you had coffee or a meal with a neighbor?
- 1 Almost every day
- 2 Once a week
- 3 Once a month
- 4 A few times
- 5 Almost never

46. During the last 12 months, how often have you stopped to chat with a neighbor in the street or hallway?
- 1 Almost every day
- 2 Once a week
- 3 Once a month
- 4 A few times
- 5 Almost never

47. How many of your friends live in the same neighborhood as you?
- 1 None
- 2 A few
- 3 Many

48. How many of your family members live in the same neighborhood as you?
- 1 None
- 2 A few
- 3 Many

NEIGHBORS AND NEIGHBORHOOD

The next few questions ask about your neighborhood.

49. Think about the people who live in your neighborhood. Would you say that…
- 1 …most of the people earn more money than you do,
- 2 …most of the people earn about the same money that you do, or
- 3 …most of the people earn less money than you do?

50. How would you describe the racial/ethnic composition of your neighborhood?
- 1 a mix of African-American and White
- 2 a mix of African-American and Hispanic
- 3 a mix of Hispanic and White

4 a mix of African-American, Hispanic, and White
5 mostly African-American
6 mostly Hispanic
7 mostly white
8 [other]

Now, please think about the area you consider your neighborhood and tell me if the following items are a big problem, some problem, or no problem at all in your neighborhood.

	Big problem	Some problem	No problem at all	DK	Refused
51. Unemployment. Is that a	1	2	3	8	9
52. Lack of job training or job placement programs.	1	2	3	8	9
53. Lack of child care. . .	1	2	3	8	9
54. Lack of medical care such as health clinics, dental offices, or eye doctors	1	2	3	8	9
55. Lack of restaurants or grocery stores	1	2	3	8	9
56. Lack of programs for children such as recreational and tutorial programs	1	2	3	8	9
57. Lack of services for seniors	1	2	3	8	9
58. Lack of public transportation	1	2	3	8	9
59. Quality of schools	1	2	3	8	9
60. Police not coming when called	1	2	3	8	9
61. People being attacked or robbed	1	2	3	8	9
62. People selling drugs	1	2	3	8	9
63. People using drugs	1	2	3	8	9
64. Groups of people just hanging out	1	2	3	8	9
65. The number of teenage mothers	1	2	3	8	9
66. Gangs	1	2	3	8	9
67. Graffiti, that is, writing or painting on the walls of the buildings	1	2	3	8	9
68. Shootings and violence	1	2	3	8	9

69. Rape or other sexual attacks	1	2	3	8	9
70. Racial or cultural groups that do not get along with each other	1	2	3	8	9
71. Trash and junk in the parking lots, streets, lawns, and sidewalks	1	2	3	8	9

Employment and Job Training

Next, we have a few questions about work.

725a. Do you currently work for pay?

Yes	1
No	2 → **(SKIP TO Q73a)**
DON'T KNOW	8 → **(SKIP TO Q72d)**
REFUSED	9 → **(SKIP TO Q72d)**

72b. On average, do you work …

20 hours a week or more, or	1
Less than 20 hours a week?	2 → **(SKIP TO Q72d)**
DON'T KNOW	8 → **(SKIP TO Q72d)**
REFUSED	9 → **(SKIP TO Q72d)**

72c. About how many hours a week do you work at your main job?

Less than 35 hours a week	1
35 or more hours a week	2
DON'T KNOW	8
REFUSED	9

72d. Is your (main) job located in your neighborhood, some other part of the city, in the suburbs, or somewhere else?

Your neighborhood	1
Some other part of the city	2
Suburbs	3
Somewhere else	4
DON'T KNOW	8
REFUSED	9

SKIP TO 74a

73a. Have you ever worked for pay?

Yes	1

No	2→(SKIP TO Q.74a)
DON'T KNOW	8→(SKIP TO Q.74a)
REFUSED	9→(SKIP TO Q.74a)

73b. How many months or years has it been since you were last employed full or part time?

_____ years
OR _____ months
DON'T KNOW....98
REFUSED....99

74a. Does anyone else in your household currently work for pay?

Yes 1
No .... 2 → **(SKIP TO Q72)**
DON'T KNOW .... 8 → **(SKIP TO Q72)**
REFUSED .... 9 → **(SKIP TO Q72)**

67b. On average, does that person work ...

20 hours a week or more, or 1
Less than 20 hours a week? 2
DON'T KNOW 8
REFUSED 9

72. Have you looked for a job in the last 12 months?

Yes
No → **(SKIP TO Q82)**

I am now going to read you a list of factors that might cause some people problems when looking for a job. Thinking about your own experience during the last 12 months, please tell me whether any of the following factors has made it difficult for you personally to find a job.

	Yes	No	DK	Refused
73. Work experience	1	2	8	9
74. Child Care	1	2	8	9
75. Transportation	1	2	8	9
76. English-speaking ability	1	2	8	9
77. Having a disability	1	2	8	9
78. Discrimination	1	2	8	9
79. Jobs located in the neighborhood	1	2	8	9
80. Skills employers want	1	2	8	9

81. Information about jobs available..... 1 2 8 9
82. In the last 12 months, did you complete any classes to earn a regular high school diploma or GED?
    1 yes
    2 no

83. In the last 12 months, did you complete any college courses or programs for credit toward a college degree, such as an AA, BA, or advanced degree?
    1 yes
    2 no

84. In the last 12 months, did you complete any welfare-to-work training programs or classes?
    1 yes
    2 no

85. Are you currently taking any classes or enrolled in any training programs?
    1 Yes
    [specify]_____
    2 No

HARDSHIP QUESTIONS

Now I'm going to read you some statements that people have made about their food situation and their housing situation. For these statements, please tell me whether the statement was often, sometimes, or never true for (you/your family) in the last 12 months, that is, since (name of current month) of last year.

86. The first statement is "(I/we) worried whether (my/our) food would run out before (I/we) got money to buy more." Was that often, sometimes, or never true for (you/your family) in the last 12 months?
    1 often true
    2 sometimes true
    3 never true

87. "The food that (I/we) bought just didn't last, and (I/we) didn't have money to get any more." Was that often, sometimes, or never true for (you/your family) in the last 12 months?
    1 often true
    2 sometimes true
    3 never true

88. In the last 12 months, since (name of current month) last year, did you or other adults in your family ever cut the size of your meals or skip meals because there was not enough money for food?
    1 yes
    2 no →**SKIP TO Q89**

    88A. How often did this happen? Was it …
    1 almost every month

2 some months, but not every month, or
3 only 1 or 2 months?

89. During the last 12 months, was there a time when (you/you and your family) were not able to pay mortgage, rent or utility bills?
1 yes
2 no →**SKIP TO Q90**

89A. Did you get any help when you were not able to pay the mortgage, rent or utility bills?
1 yes
2 no →**SKIP TO Q90**

90B. Who did you get help from? (code all that apply)
1 family or friends
2 clergy (minister, priest, rabbi)
3 bank, loan company, other commercial source
4 community program
5 housing authority
6 government program
7 other (specify) _____

90. During the last 12 months, did you or your children move in with other people even for a little while because you could not afford to pay your mortgage, rent or utility bills?
1 yes
2 no

91. During the last 12 months, has your household ever been without telephone service for more than 24 hours because you could not afford to pay the telephone bill?
1 yes
2 no

92. How likely or unlikely do you think it is that you will become homeless in the *next* 12 months? Do you think it is . . .
1 very likely,
2 somewhat likely,
3 somewhat unlikely, or
4 very unlikely?

Welfare Use

These last questions will help us understand some basic information about your household and apartment. In the past 6 months, have you or anyone in your household received . . .

	Yes	No	REFUSED
93. Supplemental security income or SSI?	1	2	9
94. Other disability pay such as SSDI (Social Security Disability Income), a veteran's disability benefit or workers compensation for a work-related injury?	1	2	9
95. Unemployment compensation because you were laid off from a job?	1	2	9
96. Income from casual work or under-the-table jobs? These might include babysitting, housecleaning, or working in exchange for food.	1	2	9
97. Food stamps or money for food on the link card?	1	2	9
98. Cash from public aid including AFDC or TANF (Aid to Families with Dependent Children or Temporary Assistance to Needy Families)?	1	2	9

[If respondent currently receives TANF, Q91=1, then **SKIP to Q100**]

99. Have you ever received cash from [NAME OF STATE WELFARE PROGRAM] including AFDC or TANF as an adult?

1 Yes
2 No **SKIP TO Q101**

100. How many years or months in total have you received public aid (AFDC or TANF)?

_____ _____ years
_____ _____ months

DON'T KNOW 98
REFUSED 99

101. Do you have a valid driver's license?

Yes 1
No 2
DON'T KNOW 8
REFUSED 9

102. Do you own or have access to a car that runs?

Yes 1
No 2

DON'T KNOW 8
REFUSED 9

HEALTH QUESTIONS

The next few questions ask about your health.

103. In general, would you say your health is:

1 Excellent
2 Very good
3 Good
4 Fair
5 Poor

104. Compared to one year ago, how would you rate your health in general now?

1 Much better now than one year ago
2 Somewhat better now than one year ago
3 About the same as one year ago
4 Somewhat worse now than one year ago
5 Much worse now than one year ago

105. Has a doctor or other health professional ever told you that you or anyone in your household has asthma?

1 Yes
2 No
3 Don't Know
4 No Answer

106. During the past 6 months, have you or has anyone in your household had an episode of asthma or an asthma attack?

1 Yes
2 No
3 Don't Know
4 No Answer

107. During the past 6 months, have you or has anyone in your household visited the emergency room or urgent care center because of asthma?

1 Yes
2 No
3 Don't know
4 No Answer

Now, I 'd like to ask you some questions about yourself. For each of these statements do you think, please tell me if you think it is true or false.

	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
108.Good luck is more important than hard work for success	1	2	3	4
109.Every time I try to get ahead, something stops me	1	2	3	4
110.When I make plans, I can usually carry them out	1	2	3	4
111.Planning only makes people unhappy because plans hardly ever work out anyway	1	2	3	4

Background Information
I'd like to end with a few background questions about you and your household.

112.What is your gender?

1 male
2 female

113.In what year were you born?

19 ___ ___

REFUSED 99

114.I'd like you to tell me which category best estimates your total household income for 1999. Please include all income including money earned from jobs, public assistance, or social security. In 1999, what was your income, before taxes?

1 Less than $5,000
2 $5,000 to $9,999
3 $10,000 to $14,999
4 $15,000 to $19,999
5 $20,000 to $29,999
6 $30,000 to $39,999$40,000 or more
7 DON'T KNOW
8 REFUSED

115.Would you describe your ethnicity as

1 Hispanic or Latino/a
2 Non-Hispanic or Latino/a
3 REFUSED

116.How would you describe your race?

1 White
2 Black or African American
3 American Indian or Alaska Native
4 Asian
5 Native Hawaiian or Pacific Islander
6 Other (SPECIFY) _____
7 REFUSED

117.How many children, age 6 or under, live with you? ___ ___ children

118.How many children, between ages 7 and 17, live with you? ___ ___ children

119.How many adults, age 18 or older, live with you? ___ ___ adults

120.What is the highest grade or year of school you have completed?

None 00
Grade School 01 02 03 04 05 06 07 08
High School 09 10 11 12
College 13 14 15 16
Some graduate school 17
Graduate or professional degree 18
DON'T KNOW 98
REFUSED 99

121.And last, are you currently . . .

1 married
2 not married, but living with partner
3 widowed
4 divorced
5 separated
6 never married, living alone

Thank you for taking the time to participate in our survey.

[FR Doc. 00–17083 Filed 7–5–00; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Final Report and Recommendations of the Working Group on the Endangered Species Act and Indian Water Rights

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: The Department of the Interior is making available to the public and seeking comments on the Final Report and Recommendations of the Working Group on the Endangered Species Act (ESA) and Indian Water Rights. This Working Group of five agency employees within the Department was appointed in 1997 to look at implementation of the ESA in relation to the exercise of Indian water rights in the West.

DATES: Comments on the Final Report and Recommendations should be submitted by October 4, 2000.

ADDRESSES: Comments should be submitted to S. Elizabeth Birnbaum, Special Assistant to the Solicitor, U.S. Department of the Interior, 1849 C Street, NW, Room 6352, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: S. Elizabeth Birnbaum at (202) 208–4423 or Timothy A. Vollmann at (505) 346–2700.

SUPPLEMENTARY INFORMATION: In 1997 the Secretary of the Interior asked the Department's Solicitor to put together a Working Group, chaired by Southwest Regional Solicitor Tim Vollmann, to examine the issue of the implementation of the ESA in relation to the exercise of Indian water rights in the West, and evaluate the process and criteria for the development of environmental baselines pursuant to section 7 of the ESA and existing regulations. The Working Group was also asked to prepare a case study of this issue in the upper Colorado River Basin. Beginning in August 1999, a draft of the Working Group's Report and Recommendations and the draft case study were released to Indian tribes, state officials, and members of the public, and comments were solicited. The Working Group has now completed its Final Report and Recommendations and submitted them to the Secretary.

The Department is seeking public comment on this Final Report and Recommendations. The case study on the upper Colorado River Basin is an appendix to the Report. A 90-day period is established for the transmittal of written comments to the above address. No action will be taken to implement any of the Recommendations of the Working Group until all comments have been received and analyzed.

Copies of the Final Report and Recommendations are being mailed to western Indian tribes, State Attorneys General, and the heads of western State water resource departments, in addition to all persons who submitted written comments on the Working Group's draft Report and Recommendations. Additional copies may be requested from S. Elizabeth Birnbaum, Special Assistant to the Solicitor, U.S. Department of the Interior, 1849 C Street, NW, Room 6352, Washington, DC 20240. These documents have also been made available on the U.S. Department of the Interior website at *http://www.doi.gov/feature/es_wr/index1.html*.

John D. Leshy,

Solicitor.

[FR Doc. 00–16986 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act (PRA)

ACTION: Information Collection Renewal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) plans to submit the collection of information requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement and related forms and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Interested parties must submit comments on or before September 5, 2000.

ADDRESSES: Interested parties should send comments and suggestions on the requirement to Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

FOR FURTHER INFORMATION CONTACT: Jack Hicks, (703) 358–1851, fax (703) 358–1837, or *Jack_Hicks@fws.gov* E-mail.

SUPPLEMENTARY INFORMATION:

Title of Forms: Summary Information for Ranking National Coastal Wetlands Conservation Grant Program Proposals.

Description and Use: The Service administers the National Coastal Wetlands Conservation Grant program authorized by the Coastal Wetlands Planning, Protection and Restoration Act. The Service uses the information collected to evaluate proposals under this program. This includes summarized information on habitat, coastal barriers, levels of conservation, watershed management, threatened and/or endangered species potentially involved, benefits of the restoration proposed, partners, cost sharing, education/outreach impact, impact on wildlife-oriented recreation and other benefits and determining if the estimated cost is reasonable.

Service Form Numbers: 3–2179 (Summary Information for Ranking National Coastal Wetlands Conservation Grant Program Proposals).

Supplementary Information: The service plans to submit the following information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Frequency: Generally annually.

Description of Respondents: States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

BILLING CODE 4310–55–M

Summary Information for Ranking National Coastal Wetlands Conservation Grant Program Proposals

Title: _____

Costs: Federal _____ State _____ Other _____

Total _____

Summary: Include a 2-5 sentence paragraph describing the project and its resource benefits.

(1) **Wetlands Conservation: What is the breakdown by habitat type for the wetlands being conserved?**

Habitat type	Number of acres	Percentage of total project area
Declining coastal wetlands		
Stable coastal wetlands		
Total wetlands		
Upland		
Total project acres		

(2) **Maritime Forest on Coastal Barriers: What plant species are present that are indicative of maritime forest as defined in the criteria?**

Common name	Scientific name	Prevalence (rare, common, predominant)

Form 3-2179
06-00

OMB Approval Number 1018-____
Approval Expires xx/xx/xxxx

(3) **Long-term conservation: How long will the habitat benefits be provided by the project?**

	Benefits in perpetuity (number of acres)	Benefits for 26-99 years (number of acres)	Benefits for 10-25 years (number of acres)
Easements			
Fee-title (no restoration)			
Fee-title (that will also be restored)			
Not acquired, Restored only			
Not acquired, Enhanced only			
Other (please explain)			
Total			

(4) **Coastal watershed management: How will this project help achieve the goals of specific management plans and efforts?**

Management plan or effort	How this project helps implement its goals

(5a) **Conservation of threatened and endangered species: What are the benefits to federally listed species, candidates, or recently delisted species?**

Common name	Scientific name	Status	Project benefits	Does the project support goals of a Recovery Plan or HCP? List plan and goal.

(5b) **What are the benefits to State species of concern?**

Common name	Scientific name	Status	Project benefits	Does the project support goals of a specific Recovery Plan? List plan and goal.

(6) **Benefits to fish: What are benefits to anadromous, interjuristictional, and other important species?**

Common name	Scientific name	Project benefits	Does the project help meet specific management goals? List plan and goal.

(7) **Coastal-dependent or migratory birds: What are the benefits to specific coastal-dependent or migratory species?**

Common name	Scientific name	Benefits	Does project help meet the goals of a specific management plan? List plan and goal.

(8) **Prevent or reduce contamination: What are the contaminants benefits?**

Contaminant	Benefits	Does project help meet the goals of a specific management plan? List plan and goal.

(9) **Catalyst for future conservation: What other conservation efforts that would benefit from this project?**

Projects	Benefits

(10) **Partners in conservation: What are the sources and amounts of financial support being provided by partners?**

Organizations/individuals providing match	Monetary value of support

(11) **Federal share reduced: Is the Federal match share reduced by contributions from State and other non-Federal sources? To what extent? (See instructions for guidance on the calculation.)**

Total project costs	
Required State match	
Additional cash contribution	
* Percent increase over required match	

(12) **Education/outreach or wildlife-oriented recreation: What site-specific educational or outreach programs or wildlife-oriented recreation programs or products are made possible by this project?**

Site-specific programs or products	Audience/Participants	Estimated size of audience/participants

(13) **Other factors: What other benefits does the project provide?**

Other factors	How the project addresses them

Other considerations/tie-breakers:

1) **Is the habitat imminently threatened?**

Yes ___ No ___

Threat(s)	Severity

2. **Does the site have unique and significant diversity?**

Yes ___ No ___

Unique biodiversity	Supportive evidence

3) **What are the costs per acre?** (Lesser costs would be preferable, all other factors being equal).

Habitat conservation approach	Costs per acre
Acquisition	
Easements	
Restoration	

4a) **Are there new sources of funds, lands, or services are being applied to this project?** (As opposed to lands already owned by the State or third party that are being offered as match).

Yes ___ No___

(4b) **What percentage of the funds, lands, or services is new?** _____percent.

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INSTRUCTIONS FOR SUMMARY INFORMATION FOR RANKING
NATIONAL COASTAL WETLANDS CONSERVATION GRANT PROGRAM PROPOSALS

A. Prepare your grant proposal and transfer the information from the proposal to this form.

B. Guidance and examples for calculation for question #11.

NOTE TO APPLICANTS AND REVIEWERS: *The purpose of this criteria is to increase the amount of match dollars from non-Federal sources. This decreases the need for Federal match dollars, so that Federal dollars can help more projects.*

Documentation of each partner's financial commitment must accompany the proposal to receive points.

If the State itself provides the excess match they should receive credit for reducing the Federal share.

Each 5 percent above the required match would be approximately equal to 1 point.

The following two examples, using both a 50 and 75 percent Federal match share, define a 10 percent increase in a State's match amount.

EXAMPLE 1 - 50 Percent Federal Match

If the total project costs are:	$ 100,000
Then the required State match share is:	$ 50,000
If the State or a partner provides an additional cash contribution equal to 10 percent of the $50,000*:	$5,000

This is defined as a 10 percent increase in the State match

EXAMPLE 2 - 75 Percent Federal Match

If the total project costs are:	$ 100,000
Then the required State match share is:	$ 25,000
If the State or a partner provides an additional cash contribution equal to 10 percent of the $25,000*:	$2,500

This is defined as a 10 percent increase in the State match.

* *From sources other than Federal agencies. Natural Resource Damage Assessment funds may in some cases be defined as "non-Federal." See discussion under 50 CFR 84.46 "What are the cost sharing requirements?"*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 350 1) and the Privacy Act of 1974 (U.S.C. 552), please be advised that

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i). Information from this form will be used to formalize and execute Grant Agreements and Amendment to Grant Agreements issued under these and other Acts. Your participation in completing this form is required to obtain benefits. Once submitted this form becomes public information and is not protected under the Privacy Act. The public reporting burden for this form is estimated at one hour per response, including time for gathering information, completing, reviewing and obtaining signature. Direct comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ, 1849 C Street N.W., Washington, D.C. 20240, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for the Department of the Interior, (1018-XXXX), 725 17th Street N.W., Washington, D.C. 20503.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed

Completion Time and Annual Response and Burden Estimate:

Form name	Completion time per form	Annual response	Annual burden
Summary Information for Ranking National Coastal Wetlands Conservation Grant Program Proposals.	½ hour	35 Forms	17½ Hours.

While the summary form is five pages long, the ½ hour estimated burden is accurate. Agencies applying for grants will have all of the information readily available in the proposals they have prepared.

Dated: June 15, 2000.

Rebecca Mullin,

Service Information Collection Officer.

[FR Doc. 00–16678 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Approved Information Collection, OMB Number 1018–0093, on Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service is announcing its intention to request renewal of its existing approval to collect certain information from applicants who wish to obtain a permit to conduct activities under a number of wildlife conservation laws, treaties and regulations. We will submit the collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before September 5, 2000.

ADDRESSES: Send your comments and suggestions on specific requirements to the Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ; 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin, Collection Clearance Officer at 703–358–2287, or electronically to *rmullin@fws.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. We plan to submit a request to OMB to renew its approval of the collection of information for the Service's license/permit application form number 3–200–19 through 3–200–25 and 3–200–27 through 3–200–53. We are requesting a 3-year term of approval for this information collection activity.

We modified the format of the first page of the application form so that the information fields on the form correspond to the data fields in our Service-wide permits issuance and tracking computer system. We also modified the format and content of the supplemental page(s) of the application forms for clarity and to be less burdensome to complete.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. The information collections in this program are part of a system of record covered by the Privacy Act [5 U.S.C. 552 (a)].

The information on the application and the attachments will be used by the Service to review permit applications and allow the Service to make an assessment according to criteria established in various Federal wildlife conservation laws, treaties and regulations, on the issuance, suspension, revocation or denial of permits.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0093.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Migratory Bird Treaty Act (15 U.S.C. 704), the Lacey Act (18 U.S.C. 42–44), the Bald and Golden Eagle Protection Act (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), (27 UST 108), the Marine Mammal Protection Act (16 U.S.C. 1361–1407), and Wild Bird Conservation Act (16 U.S.C. 4901–4916), and are contained in Service regulations in Chapter I, Subchapter B of Title 50 Code of Federal Regulations (CFR). Common permit application and record keeping requirements have been consolidated in 50 CFR 13, and unique requirements of the various statutes in the applicable part as described in the table.

Permit No.	Activity	Total number of respondents	Estimated time (in hours)	Total annual burden hours	Regulation
3–200–19	Import of Sport-Hunted Trophies of Southern African Leopard, African Elephant, and Namibian Southern White Rhinoceros.	1,000	[1].333	333	50 CFR 17.40(e), 17.40(f), 23.11, 23.12 and 23.15.
3–200–20	Import of Sport-Hunted Trophies (Appendix I of CITES and/or ESA).	30	1	30	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12 and 23.15.
3–200–21	Import of Sport-Hunted Trophies of Argali	50	[4].750	37.5	50 CFR 17.31, 17.32 and 17.40(j).
3–200–22	Import of Sport-Hunted Bontebok Trophies ..	60	.333	20	50 CFR 17.21 and 17.22.

Permit No.	Activity	Total number of respondents	Estimated time (in hours)	Total annual burden hours	Regulation
3–200–23	Export of Pre-Convention Specimens (Pre-Act or Antiques).	800	[3].666	533	50 CFR 14.22, 17.4, 18.14, 23.11, 23.13(c) and 23.15.
3–200–24	Export of Live Captive-Born Animals (Convention on International Trade in Endangered Species).	800	.666	533	50 CFR 23.11, 23.12 and 23.15.
3–200–25	Export of Raptors	100	2	200	50 CFR 21.21, 21.29, 23.11, 23.12 and 23.15.
3–200–27	Export/Re-export of Wildlife (Convention on International Trade in Endangered Species).	800	.666	533	50 CFR 23.11, 23.12 and 23.15.
3–200–28	Export/Re-export of Trophies by Taxidermist (Convention on International Trade in Endangered Species).	150	[2].5	75	50 CFR 23.11, 23.12 and 23.15.
3–200–29	Export/Re-Export of Wildlife Samples (CITES and/or ESA).	300	1	300	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13 and 23.15.
3–200–30	Circuses and Traveling Animal Exhibitions ...	120	1	120	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13 and 23.15.
3–200–31	Introduction from the Sea (Convention on International Trade in Endangered Species).	40	1	40	50 CFR 23.11, 23.12, and 23.15.
3–200–32	Export/Re-export of Plants	40	1	40	50 CFR 23.11, 23.12, 23.13 and 23.15.
3–200–33	Certificate for Artificially Propagated Plants ..	48	2	96	50 CFR 17.61, 17.62, 17.71, 17.72, 23.11, 23.12, 23.13 and 23.15.
3–200–34	Export of American Ginseng	80	.333	27	50 CFR 23.11, 23.12, 23.13, 23.15 and 23.51.
3–200–35	Import of Appendix-I Plants (Convention on International Trade in Endangered Species).	2	1	2	50 CFR 23.11, 23.12, 23.13 and 23.15.
3–200–36	Export/Import/Interstate and Foreign Commerce of Plants (ESA and/or CITES).	2	1	2	50 CFR 17.61, 17.62, 17.71, 17.72, 23.11, 23.12 and 23.15.
3–200–37	Export/Import/Interstate and Foreign Commerce of Animals (ESA and/or CITES).	60	2	120	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12 and 23.15.
3–200–38	Import of Wildlife Samples (Appendix I of CITES and/or ESA).	30	1	30	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12 and 23.15.
3–200–39	Certificate of Scientific Exchange (Convention on International Trade in Endangered Species).	30	1	30	50 CFR 23.11, 23.13(g) and 23.15.
3–200–40	Export and Re-import of Museum Specimens (U.S. Endangered Species Act).	10	1	10	50 CFR 17.21, 17.22, 17.31, 17.32, 17.61, 17.62, 17.71 and 17.72.
3–200–41	Captive-Bred Wildlife Registration (U.S. Endangered Species Act).	50	5	1,250	50 CFR 17.21(g) and 17.31.
*Note: There is an annual reporting requirement of this registration (3–200–41 50 applicants—3 hours+2hours reporting; and 3–200–41a 500 reporters—2 hours)					
3–200–42	Import/Transport of Injurious Wildlife	20	2	40	50 CFR 16.22
3–200–43	Take/Import/Transport/Export of Marine Mammals.	20	4	120	50 CFR 18.11, 18.22, 18.31, 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13 and 23.15.
*Note: There is an annual reporting requirement. There is not a specific required form. Required information to be submitted is outlined on the permit (20 reporters/year at 2 hours per report).					
3–200–44	Registration of an Agent/Tannery (Marine Mammal Protection Act).	10	.500	35	50 CFR 18.11, 18.12 and 8.23(d).
*Note: There is an annual reporting requirement of this registration (3–200–44—.500 hours; 3–200–44a 30 reporters—1 hours).					
3–200–45	Import of Sport-Hunted Polar Bear Trophies	100	.500	50	50 CFR 18.11, 18.12 and 18.30.
3–200–46	Import/Export of Personal Pets (CITES and/or Wild Bird Conservation Act).	700	.500	350	50 CFR 15.11, 15.12, 15.21, 15.25, 23.11, 23.12, and 23.15.
3–200–47	Import or Birds for Scientific Research or Zoological Breeding and Display (Wild Bird Conservation Act).	25	2	50	50 CFR 15.11, 15.12, 15.21, 15.22 and 15.23.

Permit No.	Activity	Total number of respondents	Estimated time (in hours)	Total annual burden hours	Regulation
3–200–48	Import of Birds Under an Approved Cooperative Breeding Program (Wild Bird Conservation Act).	25	1	50	50 CFR 15.11, 15.12, 15.21 and 15.24.
3–200–49	Approval of a Cooperative Breeding Program (Wild Bird Conservation Act).	25	3	75	50 CFR 15.11, 15.12, 15.21 and 15.26.
3–200–50	Approval of Scientifically Based Sustainable Use Management Plans (Convention on International Trade in Endangered Species).	10	10	100	50 CFR 15.11, 15.12, 15.21 and 15.32.
3–200–51	Approval of Foreign Breeding Facilities Under the Wild Bird Conservation Act.	20	12	240	50 CFR 15.11, 15.12, 15.21 and 15.41.
3–200–52	Reissuance or Renewal of a Permit or Certificate.	400	.250	100	50 CFR 13.21 and 13.22.
3–200–53	Export/Re-export of Captive-Held Marine Mammals (Convention on International Trade in Endangered Species).	30	2	60	50 CFR Part 18, 23.11, 23.12, 23.13 and 23.15.

[1] 20 minutes.
[2] 30 minutes.
[3] 40 minutes.
[3] 45 minutes.

Approval Number: 1018–0093.

Service Form Number: 3–200–19 through 3–200–53.

Frequency of Collection: On Occasion.

Description of Respondents: Individuals, biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, scientists, antique dealers, Exotic pet industry, hunters, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers, local, State, tribal and Federal governments.

Total Annual Burden Hours: 5606.5.

Total Annual Responses: 5987.

Dated: June 23, 2000.

Kenneth Stansell,

Acting Assistant Director—International Affairs.

[FR Doc. 00–16912 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Wildlife Refuge System Improvement Act of 1997, the U.S. Fish and Wildlife Service has published a Revised Draft Comprehensive Conservation Plan and Environmental Assessment for the Edwin B. Forsythe and Cape May National Wildlife Refuges in New Jersey. This plan describes how the Service intends to manage the Forsythe and Cape May Refuges for the next 15 years.

DATES: A formal public hearing will be held at 7 PM on July 19, 2000. The hearing will provide an opportunity for all interested parties to present oral or written testimony on the revised draft document before a hearing officer and court reporter. Those wishing to do so will be able to sign up to speak when they enter the hearing room. This formal public hearing will be held at: Absegami High School, 201 South Wrangleboro Road, Galloway Township, Atlantic County, New Jersey.

All other comments should be sent by either traditional or electronic mail, no later than August 4, 2000, to: The Jersey Coast Refuges Planning Team, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589, or FW5RW_CCP@fws.gov.

ADDRESSES: Additional information or copies of an executive summary of the plan or the complete document may be obtained by contacting Steve Atzert, Edwin B. Forsythe National Wildlife Refuge, P.O. Box 72, Great Creek Road, Oceanville, New Jersey 08231–0072, telephone 609/652–1665.

SUPPLEMENTARY INFORMATION: The Service's Proposed Action and two other alternatives are described, along with the process used to develop them and the environmental consequences of implementing each one. The three alternatives are:

Alternative A. This is the No Action Alternative required by the Council of Environmental Quality's regulations on the implementation of the National Environmental Policy Act (NEPA). Selection of this Alternative would mean that there would be no change from our current management programs and emphasis at both Refuges. Seasonal travel and parking of motor vehicles would continue to be allowed in the Holgate Unit of the Brigantine Wilderness Area, on lands above mean high tide, in violation of the Wilderness Act of 1964.

Alternative B. Alternative B is the Service's Proposed Action. This Alternative would initiate new wildlife population and habitat management programs; provide new wildlife-dependent recreation opportunities; increase our land protection efforts; and provide new office and visitor facilities at both Refuges. All lands above mean high tide in the Holgate Unit of the Brigantine Wilderness Area would be closed to motor vehicle use by the public year-round in compliance with the provisions of the Wilderness Act. We would initiate efforts to establish a seasonal boat concession to ferry anglers and other Refuge visitors to the southern tip of the Holgate Peninsula.

Alternative C. This Alternative would initiate new wildlife population and habitat management programs; provide new wildlife-dependent recreation opportunities Refuge-wide; increase our land protection efforts; and provide new or remodeled office and visitor facilities at both Refuges. All lands above mean high tide in the Holgate Unit of the Brigantine Wilderness Area would be closed to motor vehicle use by the public year-round in compliance with the provisions of the Wilderness Act. We would also seek to further restrict motor vehicle access at the Holgate Unit by obtaining a license from the New Jersey Tidelands Council to close State-owned riparian lands below the mean high tide line. Efforts would be initiated to establish a seasonal boat concession to ferry anglers and other Refuge visitors

to the southern tip of the Holgate Peninsula.

Dated: June 27, 2000.

Mamie A. Parker,

Acting Regional Director, Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 00–17013 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Beaver Creek Tract, Lincoln County, Oregon

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of application.

SUMMARY: This notice advises the public that Coast Range Conifers, LLC (CRC or applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). The application has been assigned permit number TE–028956–0. The proposed permit would authorize the incidental take, in the form of habitat modification (harm) and disturbance (harass), of the bald eagle (*Haliaeetus leucocephalus*) which is federally listed as threatened.

The Service announces the receipt of the applicant's incidental take permit application and the availability of the Coast Range Conifers Beaver Tract Habitat Conservation Plan (Beaver Tract Plan) and draft Implementation Agreement, which accompany the incidental take permit application, for public comment. The Beaver Tract Plan describes the proposed project and the measures the applicant will undertake to minimize for project impacts to the bald eagle. These measures and associated impacts are also described in the background and summary information that follow. The Service is presently conducting the National Environmental Protection Act (NEPA) process and will announce the availability of NEPA compliance documentation soon.

DATES: Written comments on the permit application and Plan should be received on or before August 7, 2000.

ADDRESSES: Individuals wishing copies of the permit application or copies of the full text of the Beaver Tract Plan, should immediately contact the office and personnel listed below. Documents also will be available for public inspection, by appointment, during normal business hours at the address below. Comments regarding the permit application, draft Implementation Agreement or the Beaver Tract Plan should be addressed to State Supervisor, Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266. Please refer to permit number TE–028956–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Rich Szlemp, Fish and Wildlife Service, Oregon State Office, telephone (503) 231–6179.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulation prohibits the "taking" of a species listed as endangered or threatened. However, the Service, under limited circumstances, may issue permits to "incidentally take" listed species, which is take that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

Summary of the Beaver Tract Plan

The applicant is proposing to harvest about 12 acres of mature forest approximately 80 to 140 years old within a 40-acre parcel of land. There are approximately 5 to 10 old growth Sitka spruce and Douglas-fir trees present in the proposed harvest area. The surrounding ownership consists of commercial timber lands containing forests of various age classes. The Beaver Tract Plan area contains one known bald eagle nest tree and several other trees that could be utilized as nest or roost trees. Other listed species that may also be affected by the proposed Beaver Tract Plan, but potentially may not be fully addressed, include the threatened marbled murrelet (*Brachyramphus marmoratus*) and northern spotted owl (*Strix occidentalis caurina*) (spotted owl). Please refer to "Summary of Service's Concerns and Recommendations" below for additional discussion on this topic.

The Beaver Tract Plan contains two alternatives: preferred and no action. Under their preferred alternative, the applicant would harvest 12 acres of mature timber to the extent allowed by the Bald and Golden Eagle Protection Act (Eagle Act), Migratory Bird Act, and Oregon Forest Practice Act (OFPA) Rules. Under the no action alternative, the subject timber would be left standing to provide bald eagle habitat. The applicants rejected the no action alternative because they believe it would deny them of all economically productive use of the subject timber.

The applicants propose the following minimization and mitigation measures:

a. Retaining the bald eagle nest tree and two snags or green trees per acre, 30 feet or greater in height and 11 inches or greater in diameter.

b. Conducting harvest activities outside of the period March 1 to September 15, except for road building.

c. Replant Douglas-fir, western red cedar, and/or western hemlock over the harvest units. As per OFPA Rules, this planting will take place within 12 months after completion of harvest.

d. Meet the current OFPA Rules to leave all snags and standing dead trees unharvested until they have fallen to the ground and rotted away, except when they represent a safety hazard for the logging operation.

Additional Background

CRC submitted a written plan on or about June 30, 1998, to the Oregon Department of Forestry to harvest the Beaver Tract to within 330 feet of the bald eagle nest site. The State Forester rejected that written plan on the basis that it did not provide adequate protection for the bald eagle nest site. The State Forester required that a forested buffer of 400 feet around the nest tree and an additional 100 foot band in which 50 percent of the live trees would be retained. CRC proceeded to harvest the 28 acres surrounding the bald eagle nest site, which retained the 12 acres (400 foot radius circle) that are the subject of this incidental take permit application. Oregon law allows (but does not require) the State Forester to approve logging within these protected 12 acres if a landowner receives an Federal incidental take permit.

Summary of Service's Concerns and Recommendations

The Service received the Plan and application on December 28, 1999. Unlike most Plans, the Beaver Tract Plan was prepared without any opportunities for the Service to provide technical assistance prior to the submission of the application. A revised Beaver Tract Plan was received on May 18, 2000, in response to the Service's April 18, 2000, request for clarification of items in the original Beaver Creek Tract Plan. The revised Beaver Tract Plan lacks much of the biological analysis and information routinely provided by other applicants to expedite processing an incidental take permit.

The Service has reviewed the Beaver Tract Plan and has some concerns with the adequacy of the proposed minimization and mitigation measures. We specifically invite the public to

provide comments on the measures proposed by the applicant.

As stated in the Beaver Tract Plan, the impacts from the proposed harvest would likely eliminate the site as bald eagle habitat, other than the retention of the nest tree. While it is not specifically stated, we believe that few if any of the existing old growth trees would likely be retained under the proposed mitigation (*i.e.*, retaining two trees per acre greater than 11 inches in diameter). Based upon the proposed harvest and the above assumption regarding tree retention, the ability of the site to continue to provide a suitable nest site for bald eagles post-harvest is difficult to accurately assess. However, the harvest is likely to increase the likelihood of the nest tree and any other large standing trees to be subject to blowdown or windthrow due to exposure. Furthermore, it is not uncommon for bald eagles to have more than one nest site and multiple roosting sites in an area. The proposed harvest would diminish the availability of roost sites and alternate nest sites. We believe that the harvest proposed in the Plan would violate the Bald and Golden Eagle Protection Act.

The Service believes that other practicable minimization measures exist. In our April 18, 2000, letter to CRC we suggested adding the following alternative under which we believe we could likely issue an incidental take permit and comply with both the ESA and the Bald and Golden Eagle Protection Act. This alternative protects the bald eagle nest tree from harvest and likely damage associated with harvest in the Beaver tract. The prescription is as follows: the nest tree would not be harvested. All trees that could come in contact with and damage the nest tree if they were felled, would not be harvested. (Directional felling would not exclude any trees from this component). For example, if a tree is 100 feet tall and is located less than 100 feet from the nest tree, then the tree would not be cut. If a tree is 100 feet tall and is located greater than 100 feet from the nest tree, then that tree is eligible to be cut pending a risk analysis for windthrow (see next criteria). The applicant would have to consider whether the removal of any trees in the tract would increase the likelihood of windthrow of the bald eagle nest tree, or any other nearby trees that could be windthrown and result in damage to the bald eagle nest tree. While we understand that windthrow can occur within any stand, regardless of its composition, we know that certain harvest prescriptions can predictably lead to a much greater likelihood of susceptibility to windthrow. Measures can be taken when devising a harvest prescription to limit the increased likelihood of windthrow. We believe this alternative would retain a sufficient area around the nest tree to maintain the integrity of the nest site, alternate nest trees, and multiple roost sites and perches. The intent of this prescription is to maintain a sufficiently sized patch of habitat that is likely to provide important structural components for bald eagle breeding habitat, while also providing some level of confidence that timber operations and future weather events are not likely to effect the existing nest tree and the area immediately surrounding the nest tree. CRC responded through their legal counsel that no further changes would be made to the Beaver Tract Plan. We believe that other alternatives are available. However, these alternatives are likely to require an examination of the stand or a detailed stand inventory, and a discussion with the landowner and/or their legal representative. Because bald eagles are presumed to be nesting as of the date of this notice, we would not suggest visiting the site until after nesting activities are completed for the season.

Any alternative we recommend or consider would have to incorporate a seasonal restriction. We consider the breeding season for bald eagles to be anytime from January 1 through August 31 which is based upon their breeding biology. The seasonal restriction being proposed by the applicant is from March 1 through September 15. This time period does not capture the important period of time in January and Eebruary when bald eagles engage in breeding activities that may include establishing territories, pair bonds, and nest construction.

The Service has not made a determination as to whether the proposed Beaver Tract Plan may affect spotted owls or marbled murrelets. The Beaver Tract Plan concludes that the plan area is not sufficient to support spotted owls and that take of spotted owls was previously addressed in a section 7 consultation under the ESA that was conducted on the exchange of this parcel from the U. S. Forest Service to CRC and was completed on February 13, 1996. The Beaver Tract Plan states that no marbled murrelets have been seen in the area and that incidental take of murrelets was also addressed in the above referenced section 7 consultation.

The land exchange section 7 consultation was based upon protocol-based surveys conducted in 1995 and 1996. At that time, it was determined that no spotted owls were using the area. Also at that time, it was determined that marbled murrelets were not using the area, although there was one detection of murrelets. The nature of this detection did not lead to a determination of occupancy or warrant additional surveys. The "Protocol for Surveying Proposed Management Activities that may Impact Northern Spotted Owls", dated March 17, 1992, and endorsed by the Service, states that 2-year surveys (which were done for the Beaver Tract in 1994–1995) are valid for 2 additional years before resurveying would be required. The "Methods for Surveying Marbled Murrelets in Forests: An Update to the Protocol for Land Management and Research", dated April 15, 2000, by the Pacific Seabird Group, states that for areas surveyed and not determined to be occupied, resurveying is recommended after 5 years. Because 5 years has elapsed since the last known spotted owl and murrelet surveys covering the Beaver Tract, there is some uncertainty as to the likelihood of this property currently providing habitat for either of these two species. Because of this uncertainty, we request that the results of any surveys conducted for spotted owls or murrelets that were completed within the past 5 years and that covered the general vicinity of the Beaver Tract be submitted to the Service and CRC.

The Beaver Tract Plan calls for the harvest of approximately 12 acres. However, the Oregon State Forester required that a 400-foot no-cut buffer (12 acres) with an additional 100-foot buffer in which only 50 percent of the live trees could be removed. A 500-foot radius circle is approximately 18 acres. Therefore, there is some confusion as to what amount of forest is currently left standing on the Beaver Tract and potentially what 12 acres are being proposed for harvest.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the bald eagle.

Dated: June 29, 2000.

David L. McMullen,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–17014 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ballast Water and Shipping Committee of the Aquatic Nuisance Species Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Committee will meet from 10 a.m. to 3 p.m., Tuesday, July 18, 2000.

ADDRESSES: The meeting will be held at the Coast Guard Headquarters, Room 2415, 2100 Second Street, SW, Washington. DC.

FOR FURTHER INFORMATION CONTACT: LT Mary Pat McKeown, U.S. Coast Guard, Chair, Ballast Water and Shipping Committee, at 202–267–0500 or by email at mmckeown@comdt.uscg.mil or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon_gross@fws.gov

SUPPLEMENTARY INFORMATION: Pursuant to sectiotn 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). Topics to be addressed at this meeting include briefings and updates on the Ad-Hoc Environmental Soundness Working Group, the Ad-Hoc Workgroup on Ballast Water Treatment Standards, the status of the Great Lakes Ballast Technology Demonstration Project, and a discussion of how aquatic nuisance species removal efficiency values will be developed.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and the Chair of the Ballast Water and Shipping Committee at the Environmental Standards Division, Office of Operations and Environmental Standards, U.S. Coast Guard (G–MSO–4), 2100 Second Street, SW, room 1309, Washington, DC 20593–0001. Minutes for the meetings will be available at these locations for public inspection during regular business hours, Monday through Friday.

Dated: June 30, 2000.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 00–17017 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compacts between the Augustine Band of Mission Indians and the State of California executed on March 15, 2000.

DATES: This action is effective July 6, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 26, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–16985 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–PC–24 1A]

OMB Approval Number 1004–0165; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On March 30, 2000 BLM published a notice in the **Federal Register** (65 FR 16953) requesting comment on this proposed collection. The comment period ended on May 29, 2000. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0165), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Cave Management: Cave Nominations and Confidential Information (43 CFR Part 37).

OMB Approval Number: 1004–0165.

Abstract: The Department of the Interior, through BLM, proposes to renew the approval of an information collection for an existing rule at 43 CFR part 37. That rule requires that Federal agencies must consult with "cavers" and other interested parties to develop a listing of significant caves. The regulations also integrate cave management into existing planning and management processes and provide for the protection of cave resource information in order to prevent vandalism and disturbance of significant caves.

Agency Form Number: None. There is an unnumbered format which entities may use to nominate caves.

Frequency: Once, when nominating the cave or requesting confidential cave information.

Description of Respondents: Respondents "cavers" and other

interested parties. Estimated completion time: 3 hour(s) for each nomination and ½-hour for each request for confidential cave information.

Annual Responses: 50 cave nominations and 10 requests for confidential cave information.

Annual Burden Hours: 155.

Bureau Clearance Officer: Shirlean Beshir, (202) 452–5033.

Dated: June 19, 2000.

Shirlean Beshir,

Acting BLM Information Clearance Officer.

[FR Doc. 00–17091 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–01–24 1A]

OMB Approval Number 1004–0004; Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On March 20, 2000, the BLM published a notice in the **Federal Register** (65 FR 15000) requesting comment on this proposed collection. The comment period ended on May 19, 2000. The BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM information clearance officer at the telephone number listed below; (202) 452–5033.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0004), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Desert-Land Entry (43 CFR part 2520). OMB approval number: 1004–0004.

Abstract: the BLM is proposing to renew the approval of an information collection for an existing rule at 43 CFR part 2520. That rule provides guidelines and procedures for individuals to make desert-land entries to reclaim, irrigate, and cultivate arid and semiarid public lands of the Western United States under the Desert Land Act as amended (43 U.S.C. 231, 321–323, 325, 327–329).

Bureau Form Number: 2520–1.

Frequency: Once.

Description of Respondents: Respondents are individuals.

Estimated Completion Time: 2 hours.

Annual Responses: 17.

Filing Fee Per Response: $15.

Annual Burden Hours: 34.

Bureau Clearance Officer: Shirlean Beshir (202) 452—5033.

Dated: June 21, 2000.

Shirlean Beshir,

Acting BLM Information Clearance Officer.

[FR Doc. 00–17086 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–01–24–1A]

OMB Approval Number 1004–0011; Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*) On March 20, 2000, the BLM published a notice in the **Federal Register** (65 FR 15002) requesting comment on this proposed collection. The comment period ended on May 19, 2000. The BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM information clearance officer at the telephone number listed below; (202) 452–5033.

The OMB is requested to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0011), Office of Information and Regulatory Affairs, Washington, DC, 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collection the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Color-of-Title (43 CFR part 2540). OMB approval number: 1004–0011.

Abstract: The BLM is proposing to renew the approval of an information collection for an existing rule at 43 CFR part 2540. That rule provides guidelines and procedures for transferring legal title to public lands administered by the BLM from the United States to eligible individuals, groups, or corporations who have valid claims under the Color-of-Title Act of December 22, 1928 (45 Stat. 1069) as amended by the Act of July 28, 1953 Stat. 227), (U.S.C. 1068–1068b).

Bureau Form Number: 2540–3.

Frequency: Once.

Description of Respondents: Respondents are individuals, groups, or corporations.

Estimated Completion Time: 1 hour.

Annual Response: 20.

Filing Fee Per Response: $10.

Annual Burden Hours: 20.

Bureau Clearance Officer: Shirlean Beshir (202) 452–5033.

Dated: June 23, 2000.

Shirlean Beshir,

Acting BLM Information Clearance Officer.

[FR Doc. 00–17088 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–01–24 1A]

OMB Approval Number 1004–0012; Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction ACt (44 U.S.C. 3501 *et seq.*). On March 20, 2000, the BLM published a notice in the **Federal Register** (65 FR 15003) requesting comment on this proposed collection. The comment period ended on May 19, 2000. The BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM information clearance officer at the telephone number listed below; (202) 452-5033.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0012), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Recreation and Public Purposes Act (43 CFR part 2740). OMB approval number: 1004–0012.

Abstract: The BLM is proposing to renew the approval of an information collection for an existing rule at 43 CFR Part 2740. That rule provides guidelines and procedures for the transfer of certain public lands under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 *et seq.*).

Bureau Form Number: 2740–1.

Frequency: Once.

Description of Respondents: Respondents are State and local governments, and nonprofit corporation and associations.

Estimated Completion Time: 40 hours.

Annual Responses: 25.

Filing Fee Per Response: $100.

Annual Burden Hours: 1,000

Bureau Clearance Officer: Shirlean Beshir (202) 452–5033.

Dated: June 21, 2000.

Shirlean Beshir,

Acting BLM Information Clearance Officer.

[FR Doc. 00–17089 Filed 7–05–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–01–24–1A]

OMB Approval Number 1004–0029; Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On March 20, 2000, the BLM published a notice in the **Federal Register** (65 FR 15005) requesting comment on this proposed collection. The comment period ended on May 19, 2000. The BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM information clearance officer at the telephone number listed below; (202) 452–5033.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0029), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collection the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Color-of-Title (43 CFR part 2540). OMB approval number: 1004–0029.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR part 2540. That rule provides guidelines and procedures for transferring legal title to public lands administered by the BLM from the United States to eligible individuals, groups, or corporations who have valid claims under the Color-of-Title Act of December 22, 1928 (45 Stat. 1069) as amended by the Act of July 28, 1953 Stat. 227), (U.S.C. 1068–1068b).

Bureau Form Number: 2540–1.

Frequency: Once.

Description of Respondents: Respondents are individuals, groups, or corporations.

Estimated Completion Time: 30 minutes.

Annual Responses: 20.

Filing Fee Per Response: $10.

Annual Burden Hours: 10 hours.

Bureau Clearance Officer: Shirlean Beshir (202) 452–5033.

Dated: June 23, 2000.

Shirlean Beshir,

Acting BLM Information Clearance Officer.

[FR Doc. 00–17090 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–620–1430–00–24 1A]

Notice of Policy on Mineral Commodity Pricing and Opportunity for Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of policy and opportunity for comment.

SUMMARY: The Bureau of Land Management (BLM) is instituting a policy for calculating the mineral commodity price to use when determining whether a mining claim contains a "discovery" of a valuable mineral deposit. The policy is necessary to establish a consistent approach in determining claim validity.

DATES: The policy statement is effective July 6, 2000, but BLM will accept public comments for 60 days. BLM will consider the comments and decide whether or not to amend this policy statement. If you wish to comment on the policy, you should submit your comments by September 5, 2000.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240.

Personal or messenger delivery: Room 501, 1620 L Street, NW, Washington, DC 20036.

Internet e-mail: WOComment@blm.gov. (Include "Attn: MINERAL PRICING")

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452–0355. For assistance in reaching Mr. Haskins, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–(800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Statement of Policy

I. Public Comment Procedures

How Do I Comment on the Proposed Policy Statement?

Please submit your comments on issues related to the proposed policy statement, in writing, according to the **ADDRESSES** section above. Your comments should explain the need for any changes you recommend and, where possible, refer to specific paragraphs in the statement.

Will My Comments Be Available to Others?

BLM will make your comments, including your name and address, available for public review at the "L Street" address listed in **ADDRESSES** above during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays).

Can BLM Keep My Identity Confidential?

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

The General Mining Law of 1872 establishes the terms by which you may locate and patent mining claims—transfer them to private ownership—on public lands. In order to be valid, your mining claim must contain a "discovery" of a valuable mineral deposit. This means you must have found a mineral deposit and you must have enough evidence to show that the mineral deposit is of such a character that a person of ordinary prudence would be justified in expending additional labor and means, with a reasonable prospect of success, in developing a valuable mine. *Castle* v. *Womble*, 19 Pub. Lands Dec. 455, 457 (1894). You must show that the mineral can be extracted, removed and marketed at a profit. *United States* v. *Coleman*, 390 U.S. 599, 602–603 (1968). When determining the validity of mining claims, Federal land management agencies conduct examinations of your asserted discovery to evaluate whether the mineral deposit can be removed and marketed at a profit given the production costs and the prevailing market on a given date. The Bureau of Land Management, the National Park Service, and the U.S. Forest Service each employ certified mineral examiners who conduct these examinations on behalf of the Secretary of the Interior. Their conclusions may later be reviewed by administrative law judges (ALJ) in the Department of the Interior's Office of Hearings and Appeals, by the Interior Board of Land Appeals (IBLA), and ultimately by the federal courts.

The Secretary must determine the validity of a mining claim when you as the claimant seek to patent the claim, and may also determine the validity of the claim at any other time for any other reason. In any case, you must be able to show that you have discovered a valuable mineral deposit on a particular significant date. We refer to this date as the marketability date. "Marketability date" means the date on which we determine if the mineral deposit you discovered can be removed and marketed at a profit given the production costs and the prevailing market conditions on that date. When we determine the validity of your mining claim, we may determine whether you have discovered a valuable mineral deposit on one or more marketability dates depending, for example, on whether you have filed a patent application or your mining claim is in an area subsequently withdrawn from mining claim location.

An essential element in determining whether a mineral deposit is marketable is the market value of the mineral commodity. For the most part, the commodities subject to the Mining Law—gold, silver, copper, lead, zinc, etc.—have widely reported spot market prices and are traded on public exchanges. Many of these minerals, especially those with volatile prices, are also the subject of "futures" trading based on the projected future market price for the mineral. The major exchanges for mineral commodities are the London Metals Exchange, the New York Commodities Exchange (COMEX) and the Chicago Board of Trade. On these exchanges, the historical spot prices are charted on a monthly basis. Futures prices are often set on a quarterly basis, but monthly futures prices are posted some of the time.

With these published market prices, determining a market value for the mineral to be mined might seem straightforward, but it has not proved a simple matter. While the value must be tied to an appropriate time period, this does not necessarily mean that the market price of the mineral on a specific date must be used to set the mineral's value. The market price on one date may be anomalous, or may represent a rising or falling market that should be taken into account in determining whether a prudent miner may reasonably expect to develop a profitable mine. This problem is obviously more severe in the case of minerals such as gold or molybdenum that historically have markets that may fluctuate substantially, even over a short

period of time. The IBLA summarized these issues in holding that "a mining claimant must show that, as a present fact, considering historic price and cost factors and assuming that they will continue, there is a reasonable likelihood of success that a paying mine can be developed." *In re Pacific Coast Molybdenum Co.*, 90 I.D. 352, 360, 75 IBLA 16 (1983).

Neither BLM nor the Department has ever addressed the mineral pricing issue in published regulations or established a formal policy in handbooks or manuals. Instead, over the years, mineral examiners, ALJs and the IBLA have followed an *ad hoc* approach. The IBLA case law has not established a firm pricing rule. Rather, the IBLA has reviewed the valuation method used by the mineral examiner or the ALJ to determine whether it is reasonably based on the facts of the case before it. The methods for establishing a market price that emerge from the Department's practice have ranged widely, but fall into two basic categories: using the market price on a given date, or averaging the market price over several years.

In several cases, the IBLA has approved using market prices on definite dates to set the value of the minerals. For example, in *U.S.* v. *Shining Rock Mining Corp.*, 112 IBLA 326 (1990), the IBLA affirmed a mineral examiner's decision to set the price of the mineral as the market price on the date of the hearing before the ALJ. In another case, *U.S.* v. *Garner*, 30 IBLA 42 (1977), the IBLA affirmed the ALJ's assessment of marketability based on the market price at the date of the hearing and the market price on the date of the withdrawal of the lands. In *Pacific Coast*, the IBLA concluded that the market price on the date of withdrawal could also be used to determine the profitability of the claim on the date the IBLA decided the appeal, despite a wide swing in molybdenum prices over the intervening four years. 90 I.D. at 360–361.

IBLA has also adopted or affirmed marketability determinations based on average price calculations. In *U.S.* v. *Crowley*, 124 IBLA 374 (1992), the IBLA used the average price for the five years preceding the pertinent date of withdrawal. A longer average period was selected in *U.S.* v. *Laczkowski*, 111 IBLA 165 (1989), where the IBLA adopted a seven-year average price, from the date that the Government first sampled the claim to the date of the hearing before the ALJ. Mineral examiners report using other averaging methods as well—up to ten-year historical averages, or weighted averages that give more weight to more recent prices.

In at least one case, the IBLA ignored both the exact date and the average price methods. In *U.S.* v. *Waters*, 146 IBLA 172 (1998), the IBLA rejected an ALJ's selection of a six-year average price. Instead, the IBLA adopted the mineral examiner's slightly higher price as a "reasonably projected price," noting that the mining claimant had used that price as well. Raising even more questions, the IBLA never actually stated what price would be used in *U.S.* v. *Gold Placers, Inc.*, 25 IBLA 368 (1976). After rejecting the ALJ's decision to use the price of gold on a date after the hearing (the ALJ was attempting to reflect a surge in the market price following the hearing), the IBLA concluded that rising costs for mining had outpaced the increase in the value of gold, so the mine would be uneconomic.

This diversity of approaches to mineral pricing is not good policy. It creates uncertainty in the process—for mineral examiners, for claimants, and for others. It can give rise to distortions and accusations of bias, as a sympathetic or unsympathetic mineral examiner may select the method that yields the highest or lowest value for the mineral. The range of pricing approaches used also encourages speculation before the Office of Hearings and Appeals regarding future market prices; the reported cases commonly describe speculative and contradictory evidence on the future of minerals markets.

In order to reduce uncertainty and establish a consistent and reasonable basis for analyzing the economic marketability of a mineral deposit during a mining claim validity determination, the BLM is adopting the following Statement of Policy on the proper method to determine the market price of the mineral at issue. This policy relies on the prices for minerals set in the free market and avoids the speculative approaches that have reduced the reliability and authority of claim validity determinations in the past.

III. Statement of Policy

The BLM will use the following steps to determine the price of mineral commodities when analyzing the economic marketability of a mineral deposit in determining the validity of a mining claim. This policy will apply to validity determinations for all unpatented mining claims, including those located on lands administered by the BLM, the National Park Service and the U.S. Forest Service. We will use this methodology only for minerals that have a commodity market price established through trading on a public exchange.

1. *Marketability Dates.* The dates described below are the significant dates on which we will determine if the mineral deposit the claimant discovered can be removed and marketed at a profit given the production costs and the prevailing market conditions on that date.

A. *Mining claims on withdrawn lands.* For any claim located before the withdrawal of the affected lands from mineral entry, BLM will determine if it is valid both as of the date of the withdrawal and the date of the mineral examination.

B. *Mining claims in patent applications.* For any claim included in a patent application, BLM will determine the validity of the claim as of the date it determines the claimant met all the requirements for patenting.

C. *All others.* For any mining claim validity determination where there is no patent application and no withdrawal, BLM will determine the validity of the claim as of the date of the mineral examination.

Except for claims subject to paragraph B above, if a mineral examiner concludes that the claim is invalid as of the date of the mineral examination, the examiner must be prepared to address any evidence the claimant might present at the contest hearing regarding validity of the claim on the date of the hearing.

2. *General Policy.* BLM will use a six-year average pricing method. To determine the mineral commodity price to use on any specific marketability date, the mineral examiner will begin with an average of the commodity price of the mineral for the month in which the marketability date occurred. The examiner will then average that price together with: (a) the monthly average commodity prices for each of the 36 months before the marketability date; and (b) the monthly average commodity futures prices for each of the 36 months after the marketability date. To obtain monthly figures for futures prices, the mineral examiner will use the highest volume quarterly futures prices for each of the three months covered by that quarter. For example, if a quarterly price is posted as a first-quarter futures price, that price would establish monthly prices for January, February, and March. The examiner will average a total of 73 monthly averages to arrive at the 6-year average commodity price to use for the marketability date. See paragraphs 3 and 4 for exceptions to the general policy.

The examiner should never use actual commodity prices when determining

the futures prices for each of the 36 months after the marketability date. For example, if the marketability date is February 2, 1996 , the mineral examiner will not use prices at which the mineral commodity actually sold on the market for the 36 months after the marketability date. Instead, the examiner will use the futures data that were reported on February 2, 1996 . This policy is designed to reflect the futures market that the claimant faced on the marketability date. We are using 36 months, or three years, of futures price data because that is all that is usually available.

The monthly average commodity prices can be obtained from the London Metals Exchange (LME) at <www.lme.co.uk>, the New York Commodities Exchange (COMEX) at <www.nymex.com> or the Chicago Board of Trade at <www.cbot.com>. Quarterly futures prices can be obtained at <goldsheet.simplenet.com>, <www.futuresweb.com>, and <www.futuresguide.com>. Other sources of archival data are the LME and <www.kitco.com>. The Uniform Resource Locators for these sites may change frequently. There are many other sites available which post commodity pricing data.

3. *Limited Futures Markets.* In instances where a publicly-traded mineral has no futures prices available on the market, the mineral examiner will average the monthly average commodity price for the month in which the significant marketability date occurred with the monthly average commodity prices for each of the 36 months before the marketability date. The mineral examiner will average a total of 37 numbers in this instance. If quarterly futures prices are available for any of the 36 months following the marketability date, the mineral examiner will average the available futures prices on a monthly basis with the monthly average commodity price for the month in which the significant marketability date occurred and the monthly commodity prices for each of the 36 months before the marketability date.

4. *Operating Mines.* When determining the validity of mining claims that are being developed by an operating mine, the mineral examiner will substitute the prices at which the claimant actually sold the commodity during any of the 36 months preceding the marketability date, and during the month in which the marketability date occurs, for the monthly average commodity price that otherwise would be used under paragraph 2. Also, the mineral examiner will substitute any of the claimant's actual futures sales contract prices for production from the mine for any of the 36 months following the marketability date.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–17016 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–084–1150–EU]

Notice of Realty Action, Sale of Public Land in Custer County, Idaho (IDI–32472)

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public land in Custer County.

SUMMARY: The following-described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value of $24,600. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian

T. 7 N., R. 24 E., sec. 25, Lots 7 and 10.
T. 7 N., R. 24 E., sec. 30, Lot 8.

The area described contains 49.2 acres in Custer County.

The patent, when issued, will contain a reservation to the United States for ditches and canals under the Act of March 30, 1890.

The patent, when issued, will be made subject to the following existing rights of record:

1. IDI–21021—A telephone line right-of-way authorized to ATC Communications.
2. IDI–23188—A road right-of-way authorized to Lost River Highway District.
3. IDI–22582—A power line right-of-way authorized to Bonneville Power Administration.

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

DATES: Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Upper Columbia—Salmon Clearwater District, Challis Field Office, Rt. 2, Box 610, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: For additional detailed information, contact Gloria Romero, Realty Specialist, at the address shown above or (208) 756–5421.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Dave Nelson of Mackay, Idaho, based on historic use and value of added improvements. Failure or refusal by Dave Nelson to submit the required fair market appraisal amount by September 29, 2000, will constitute a waiver of this preference consideration and this land may be offered for sale on a competitive or modified competitive basis. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests will be conveyed simultaneously.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Challis Field Office Manager, Upper Columbia-Salmon Clearwater District, Challis Field Office, at the above address. Any adverse comments will be reviewed by the Field Office Manager, who may vacate or modify this realty action to accommodate the protests. If the protest is not accommodated, the comments are subject to review of the State Director who may sustain, vacate, or modify this realty action. This realty action will become the final determination of the Department of the Interior.

Dated: June 29, 2000.

Fritz Rennebaum,

District Manager.

[FR Doc. 00–17093 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting and Ecosystem Roundtable Amendments Subcommittee Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem

Roundtable will meet on July 19, 2000 to discuss the Restoration Reserve policy, 2001 project selection process, environmental water program, and other topics. The Amendments Subcommittee will also meet on July 19, 2000 to discuss proposed contract modifications for several ongoing ecosystem restoration projects. These meetings are open to the public. Interested persons may make oral statements to the Ecosystem Roundtable and Amendments Subcommittee or may file written statements for consideration.

DATES: The BDAC's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12 p.m. on Wednesday, July 19, 2000. The Ecosystem Roundtable Amendments Subcommittee meeting will be held from 1 p.m. to 3 p.m. on Wednesday, July 19, 2000.

ADDRESSES: The Ecosystem Roundtable and Amendments Subcommittee will meet at the Resources Building, Room 1404–17, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the State of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan that addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 29, 2000.

Kirk C. Rodgers,

Deputy Regional Director, Mid-Pacific Region, Bureau of Reclamation, Department of the Interior.

[FR Doc. 00–17015 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–828 (Final)]

Bulk Acetylsalicylic Acid (Aspirin) From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China of bulk acetylsalicylic acid (aspirin), provided for in subheadings 2918.22.10 and 3003.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that it would not have found material injury but for the suspension of liquidation.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Background

The Commission instituted this investigation effective May 28, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Rhodia, Inc., Cranbury, NJ. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of bulk aspirin from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 4, 2000 (65 FR 5659). The hearing was held in Washington, DC, on May 18, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 30, 2000. The views of the Commission are contained in USITC Publication 3314 (June 2000), entitled Bulk Acetylsalicylic Acid (Aspirin) from China: Investigation No. 731–TA–828 (Final).

By order of the Commission.

Issued: June 29, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17080 Filed 7–5–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No 337–TA–424]

Certain Cigarettes and Packaging Thereof; Notice of Commission Determinations To Extend the Deadline for Determining Whether To Review an Initial Determination Finding a Violation of Section 337 and To Extend the Target Date for Completing the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined: (1) To extend the deadline for determining whether to review the final initial determination (ID) on violation by three weeks, or until August 28, 2000, and (2) to extend the target date for completing the investigation by three weeks, or until October 16, 2000.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3090, e-mail *saranoff@usitc.gov*. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this trademark-based investigation on September 16, 1999, based on a complaint filed by Brown & Williamson Tobacco Corp. alleging violations of section 337 by reason of (a) infringement of 11 federally registered U.S. trademarks; (b) unfair competition under the Lanham Act; (c) improper importation of products under the Lanham Act; and (d) dilution of the registered trademarks.

On June 22, 2000, the presiding administrative law judge ("ALJ") issued her final ID on the merits in this investigation, finding a violation of section 337. The ALJ also issued her recommended determination on remedy and bonding. The Commission has determined to extend its deadline for determining whether to review the final ID from August 7, 2000, to August 28, 2000, and to extend the target date for completion of the investigation from September 25, 2000, to October 16, 2000.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and rules 210.42(h)(2) and 210.51(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)(2) and 210.51(a)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: June 29, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17079 Filed 7–5–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–464 (Review)]

Sparklers From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on sparklers from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on July 1, 1999 (64 FR 35689) and determined on October 1, 1999 that it would conduct a full review (64 FR 55960, October 15, 1999). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 16, 2000 (65 FR 7892). The hearing was held in Washington, DC, on May 11, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on July 10, 2000. The views of the Commission are contained in USITC Publication 3317 (July 2000), entitled Sparklers from China: Investigation No. 731–TA–464 (Review).

By order of the Commission.

Issued: June 28, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17077 Filed 7–5–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–678–679 and 681–682 (Review)]

Stainless Steel Bar From Brazil, India, Japan, and Spain

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined that these grouped reviews are extraordinarily complicated and has decided to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), (C)(iv). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On April 6, 2000, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (65 FR 20834, April 18, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's

statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on January 9, 2001, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules. .

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on January 30, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 23, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 26, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is January 19, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 8, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before February 8, 2001. On March 2, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 6, 2001, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.By order of the Commission.

Issued: June 29, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17078 Filed 7–5–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 25–00

UIPL 25–00 advises State agencies of two provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106–170, which affect the Federal-State Unemployment Compensation program.

Section 405 of Public Law 106–170 permits, but does not require, States to allow employers to submit annual wage reports—as opposed to quarterly reports, as required prior to enactment of Public Law 106–170—with respect to certain domestic service employment. This directive informs States that they may, at their option, permit the annual reporting of wages from domestic service employers. The directive informs States of the definition of domestic service employers used by the Internal Revenue Service as it applies to reporting of wages. It also discusses the implications for experience rating if States decide to permit annual reporting.

Section 506 of Public Law 106–170 extended the exclusion from the FUTA definition of wages for employer-provided educational assistance under Section 127 of the Internal Revenue Code for undergraduate courses from May 31, 2000 to December 31, 2001. This directive informs States of this change in the expiration date.

Dated: June 29, 2000.

Raymond Bramucci,

Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration
Washington, D.C. 20210

CLASSIFICATION: UI
CORRESPONDENCE SYMBOL: TEUL
DATE: May 19, 2000.
DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 25–00
TO: ALL STATE EMPLOYMENT SECURITY AGENCIES
FROM: GRACE KILBANE, Administrator, Office of Workforce Security
SUBJECT: The Ticket to Work and Work Incentives Improvement Act of 1999—Provisions Affecting the Federal-State UC Program
RESCISSIONS: None
EXPIRATION DATE: Continuing

1. *Purpose.* To advise State agencies of the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, P.L. 106–170, which affect the Federal-State Unemployment Compensation (UC) program.

2. *References.* Sections 405 and 506 of P.L. 106–170; Sections 303(f) and 1137 of the Social Security Act (SSA); Sections 3303(a)(1) and 3306(b)(13) of the Federal Unemployment Tax Act (FUTA); Section 127 of the Internal Revenue Code (IRC); Section 3510, IRC; The Social Security Domestic Employment Reform Act of 1994 (P.L. 103–387); Unemployment Insurance Program Letter (UIPL) 29–83; UIPL 29–83, Change 1.

3. *Background.* On December 17, 1999, the President signed into law the Ticket to Work and Work Incentives Improvement Act of 1999 (the Ticket to Work Act), P.L. 106–170, which contains two provisions affecting the UC program:

- States may now permit employers to submit *annual* wage reports with respect to certain domestic service employment. Prior to the enactment of the Act, Federal law required wage data for such employment to be reported on a *quarterly* basis.
- The exclusion from the FUTA definition of wages for employer-provided educational assistance under Section 127, IRC, was extended for undergraduate courses from May 31, 2000 to December 31, 2001.

These amendments are discussed in detail below.

4. *Section 405, Annual Filing of Wage Reports by Domestic Employers.*

a. *In general.* The Social Security Domestic Employment Reform Act of 1994, Pub. L. 103–387, amended Section 3510, IRC, so that domestic service employers were no longer required to file the annual FUTA return or quarterly returns regarding Social Security and Medicare taxes. Instead, domestic service employers could file such returns for Federal tax purposes at the same time as the filing of their personal income tax returns.

This change to annual reporting for Federal purposes did not change the requirement that wage reports be submitted quarterly to States. This quarterly wage report requirement is found in Section 303(f), SSA, which makes operation of an income and eligibility verification system in accordance with Section 1137, SSA, a condition for the receipt of UC administrative grants. Specifically, Section 1137(a)(3), SSA, requires that a State must have in effect an income and eligibility verification system under which—

employers * * * in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) * * *.

Section 405 of the Ticket to Work Act amended Section 1137(a)(3), SSA, by adding the following new exception to the quarterly reporting requirement—

in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis.

As a result of this change, States may, at their option, permit annual wage reporting of domestic service employment by employers making returns under Section 3510, IRC. (Section 3510, IRC, permits returns with respect to domestic service employment taxes to be made on a calendar year rather than a quarterly basis.) This amendment applies only to domestic service employers.

Because the amendments to the SSA refer to Section 3510, IRC, the Internal Revenue Service (IRS) has authority for determining what constitutes domestic service. IRS guidance is found in the instructions for Schedule H, which refers to individuals performing domestic service as "household employees." The Schedule H for tax year 1999 gives the following examples of household employees: Babysitters, caretakers, cleaning people, drivers, health aides, housekeepers, nannies, private nurses, and yard workers.

States electing to use annual wage reporting are not required to grant annual reporting status to all domestic service employers. States may be more restrictive and offer the annual reporting option only to certain domestic service employers. For example, a State could permit annual reporting only for services by nannies while making all other domestic services subject to a quarterly reporting basis.

States also may condition approval of annual filing status on a domestic service employer's compliance with safeguards or other conditions required by State law. For example, a State may require domestic service employers to file "change reports" indicating when wages are increased or decreased, or when a domestic employee is hired or separated. States may also limit annual reporting to domestic service employers who timely pay contributions or make reports.

b. *Experience Rating.* States that choose to permit annual reporting must ensure that domestic service employers are not treated differently from other employers for experience rating purposes. A domestic service employer may not report wage information or pay contributions with respect to the calendar year until April 15 of the following year. However, all other employers would report wage information and make payments throughout the calendar year. As a result, if a State's computation date for a tax year is July 1, information would be available up to the computation date with respect to non-domestic service employers, but it would not be available up to the computation date for domestic service employers, simply because it had not yet been reported or because contributions had not yet been paid. As a result, the non-domestic service employer might have its rate based on current information, while the domestic service employer would have its rate based on older information, simply because State law provides for two different sets of dates for submitting wage data or paying contributions.

Section 3303(a)(1), FUTA, provides, as a condition of receipt of the additional credit by employers in a State, that "no reduced rate of contributions * * * is permitted to a person (or group of persons) * * * except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the three consecutive years immediately preceding the computation date." The Department of Labor interprets this section to require that the "experience

of all employers subject to contributions under a State law must be measured by the same factor throughout the same period of time." This interpretation is referred to as the "uniform method" requirement. See UIPLs 29–83 (56 FR 54891 (1991)) and 29–83, Change 1 (56 FR 54896 (1991)).

A "uniform method" issue is raised if a State has different criteria for including wage and payment data for one group of employers than another group. This will occur if a State grants one group of employers a different filing and payment status than others. States may avoid "uniform method" issues through a variety of means. As they do with other employers where current information is missing, States may provide estimated tax rates which are subject to recomputation once the necessary data has been received. Alternatively, States may delay mailing tax rate notices to domestic service employers filing annually until the necessary information has been obtained.

c. *Effective date.* Under Section 405 of the Ticket to Work Act, this amendment applies to wage reports required to be submitted on and after the date of enactment. The Ticket to Work Act was effective on the signing date, December 17, 1999.

5. *Section 506, Employer-Provided Educational Assistance.* Section 3306(b)(13), FUTA, excludes from the definition of wages "any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129." Under Section 127, IRC, employer-paid educational expenses are excludable from the gross income and wages of an employee if provided under an educational assistance plan. The exclusion for such employer-provided educational assistance expired with respect to graduate courses beginning after June 30, 1996. For undergraduate courses, the exclusion from gross income for employer-provided educational assistance previously had been scheduled to expire with respect to courses beginning after May 31, 2000. Section 506 of the Ticket to Work Act, entitled Employer-Provided Educational Assistance, amended the IRC, to extend the expiration date for employer-provided educational assistance for undergraduate courses. Due to the extension, the expiration of the exclusion is now with respect to courses beginning after December 31, 2001. Thus, the FUTA definition of wages does not exclude employer-provided educational assistance for undergraduate courses beginning after December 31, 2001.

6. *Action Required.* State Administrators should provide this information to the appropriate staff.

7. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

[FR Doc. 00–17036 Filed 7–5–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following information collection: Uniform Health Insurance Claim Form (UB–92). Copies of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 5, 2000.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101, *et seq.*) and the Federal Black Lung Benefits Act (FBLBA) (30 U.S.C. 901 *et seq*). These statutes provide, in addition to compensation for employment-related injury and/or disability, payment to provider institutions for certain medical treatment and diagnostic services related to the injury or disability. The Uniform Health Insurance Claim Form (UB–92), has been approved by the American Hospital Association, the Health Care Financing Administration, and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), by various other government health care programs, and the private sector, for the purpose of payment to institutional providers of medical services. The UB–92 has detailed instructions developed by OWCP that provide the information necessary to providers who file claims for services that may be payable under FECA or FBLA.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The Department of Labor seeks the extension of approval to collect this information in order to carry out its rersponsibility to provide payment for certain covered medical services to injured employees who are covered under the FECA and the FBLBA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Uniform Health Insurance Claim Form.

OMB Number: 1215–0176.

Agency Number: UB–92.

Affected Public: Individuals or households, Businesses or other for-

progit; Not-for-profit institutions; Federal Government.

Total Respondents: 185,550.

Frequency: On occasion.

Total Responses: 185,550.

Time per Response: 6–10.5 minutes.

Estimated Total Burden Hours: 30,430.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $6,665.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 29, 2000.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 00–17035 Filed 7–5–00; 8:45 am]

BILLING CODE 4510–47–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–34; Exemption Application No. D–10712, et al.]

Grant of Individual Exemptions; The Fidelity Mutual Life Insurance Company (In Rehabilitation) (FML)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Fidelity Mutual Life Insurance Company (In Rehabilitation) (FML) Located in Radnor, PA

[Prohibited Transaction Exemption 2000–34; Exemption Application No. D–10712]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) The receipt of certain stock (the Plan Stock) issued by Fidelity Insurance Group. Inc. (Group), a wholly owned subsidiary of FML, or (2) the receipt of plan credits (the Plan Credits), by or on behalf of a mutual member (the Mutual Member) of FML, which is an employee benefit plan (the Plan), other than the Employee Pension Plan of Fidelity Mutual Lift Insurance Company, in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation (the Third Amended Plan of Rehabilitation), approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and a rehabilitator (the Rehabilitator) appointed by the Pennsylvania Insurance Commissioner (the Commissioner).

This exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The Third Amended Plan of Rehabilitation is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner and the Rehabilitator. The Court determines whether the Third Amended Plan of Rehabilitation—

(1) Properly conserves and equitably administers the assets of FML in the interests of investors, the public and others in accordance with the legislatively-stated purpose of protecting the interests of the insureds. creditors and the public; and

(2) Equitably apportions any unavoidable loss through improved methods for rehabilitating FML.

(b) Each Mutual Member has an opportunity to comment on the Third Amended Plan of Rehabilitation at hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

(c) Participation by all Mutual Members in the Third Amended Plan of Rehabilitation, if approved by the Court, is mandatory, although Mutual Members may disclaim Plan Stock.

(d) The decision by a Mutual Member which is a Plan to receive or disclaim Plan Stock or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such plan and not by FML, Group or Fidelity Life Insurance Company (FLIC). Consequently, neither FML nor any of its affiliates will exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3–21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Plan Stock or Plan Credits.

(e) Twenty percent of the Plan Stock is allocated to a Mutual Member based upon voting rights and eighty percent is allocated to a Mutual Member on the basis of the contribution of the Mutual Member's insurance or annuity contract (the Contract) to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (*i.e.*, the net earnings) of FML. The actuarial

formulas are approved by the Court and the Commissioner.

(f) The value of Plan Stock or Plan Credits that will be received by a Mutual Member will reflect the aggregate price paid by an independent investor (the Investor) to Group for common Stock (the Common Stock) and for plan credit shares (the Plan Credit Shares) in convertible preferred stock (the Preferred Stock) issued by Group.

(g) All Mutual Members that are Plans participate in the transactions on the same basis as all other Mutual Members that are not Plans.

(h) No Mutual Member pays any brokerage commissions or fees in connection with the receipt of Plan Stock or Plan Credits.

(i) The Third Amended Plan of Rehabilitation does not affect the rights of a contractholder of the company (the Contractholder), which is a Mutual Member. In this regard, FML's obligations to a Contractholder are discharged and terminated upon their endorsement and assumption by FLIC, thereby making FLIC liable for the obligations under such Contract.

Section III. Definitions

For purposes of this exemption:

(a) The term "FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML as defined in paragraph (c) of this Section III.

(b) The term "FLIC" means Fidelity Life Insurance Company and any affiliate of FLIC as defined in paragraph (c) of this Section III.

(c) An "affiliate" of FML or FLIC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with FML or FLIC; (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.) or

(2) Any officer, director or partner in such person.

(c) The term "Mutual Member" means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the Third Amended Plan of Rehabilitation.

(d) The term "Investor" means the person (*e.g.*, individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to be the purchaser under the Investment Agreement.

(e) The term "Group Stock" refers to shares of Group Common Stock and to Group Preferred Stock, which will have a cumulative, annual dividend equal to 7 percent of its liquidation value. The Preferred Stock will be Series A stock having a par value of $0.01 per share and a liquidation preference and a redemption value of $25 per share.

(f) The term "Plan Stock" means the 3 million shares of Group Common Stock and the 2.8 million of Group Preferred Stock that will be allocated to Mutual Members.

(g) The term "Plan Credit" means either (1) additional paid up insurance for a traditional life policy or (2) credits to the account values for Contracts that are not traditional (such as a flexible premium policy). Under FML's Third Amended Plan of Plan of Rehabilitation, Plan Credits are to be allocated to certain Mutual Members in lieu of Plan Stock.

(h) The term "Plan Credit Shares" includes those shares of Plan Stock (*i.e.*, the 15,000 to 180,000 shares of Group Common Stock) and any shares of Group Preferred Stock to be issued and sold by Group to the Investor to fund Plan Credits.

(i) The term "Policyholder Stock means those shares of Group Common or Group Preferred Stock that will be issued and distributed to Mutual Members, consisting of Plan Stock plus any shares of Group Stock (in excess of Plan Stock) issued for purposes of correcting errors in the allocation of Plan Stock, less Plan Credit Shares and any disclaimed shares.

(j) The term "Investor Stock" means the 3.1 million shares of Group Common Stock (other than Plan Stock) and the Plan Credit Shares which, under the Third Amended Plan of Rehabilitation, are sold to the Investor pursuant to bid procedures and the Investment Agreement.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) that was published on April 7, 2000 at 65 FR 18359.

Written Comments

The department received two written comments with respect to the Notice. The comments were submitted by FML for the purpose of clarifying certain statements made in the Notice and to provide additional information regarding specific issues raised therein. As discussed below, a majority of FML's concerns relate to the general conditions (the General Conditions) set forth in Section II of the Notice while other areas of concern relate to the Summary of Facts and Representations (the summary) of the Notice.

Concerns About the General Conditions

1. *Standard of Review by the Court.* Paragraph (a) of Section II of the Notice states that the Court will determine "* * * whether the Third Amended Plan of Rehabilitation is fair and equitable to Mutual Members." FML states that although this General Condition may convey a broad description of the court's review, "fair and equitable" is a technical standard of review in some states but it is not a statutory requirement under Pennsylvania law. According to FML, the Pennsylvania Supreme court has stated in *Foster* v. *Mutual Fire, Marine & Inland Insurance Co.*, 614 A2d 1086, 1094 (PA 1992) that a rehabilitation plan must "properly conserve and equitably administer the assets of the involved corporation in the interests of investors, the public and others" in accordance with the "legislatively stated purpose [of] 'the protection of the interests of the insureds, creditors and the public generally * * *' and the 'equitable apportionment of any unavoidable loss' through * * * 'improved methods for rehabilitating insurers * * *'"

In response to this comment, the Department has revised Section II(a) of the exemption, as follows, to reflect the decision of the Pennsylvania Supreme Court:

> The Third Amended Plan of Rehabilitation is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner and the Rehabilitator. The Court determines whether the Third Amended Plan of Rehabilitation—
>
> (1) Properly conserves and equitably administers the assets of FML in the interests of investors, the public and others in accordance with the legislatively-stated purpose of protecting the interests of the insureds, creditors and the public; and
>
> (2) Equitably apportions any unavoidable loss through improved methods for rehabilitating FML.

2. *Non-Voting by Mutual Members.* Paragraph (b) of Section II of the Notice states, in part, that "[e]ach Mutual Member has an opportunity to vote and comment on the Third Amended Plan of Rehabilitation." FML points out that each Mutual member has received, and will continue to receive, full written disclosure of the terms of such Plan and each Mutual Member also has the opportunity to comment on the Plan by filing written objections to the Court or providing testimony at the hearings for such Plan.

However, FML notes that Mutual Members do not have an opportunity to

vote, as such, on the Third Amended Plan of Rehabilitation because there is no provision in the Pennsylvania rehabilitation statute requiring or allowing for a vote by such Mutual Members on the Third Amended Plan of Rehabilitation. Additionally, FML explains that Footnote 20 of the Summary states that the Rehabilitator has been advised that the Pennsylvania rehabilitation statute, which does require a vote in certain circumstances, is not applicable to this situation.

Moreover, in Representation 20(b) of the Summary, FML notes that the "Court will review the terms of the Third Amended Plan of Rehabilitation and will approve such Plan following * * * a public hearing * * *" Finally, FML notes that in Representation 20(c) of the Summary "[e]ach Mutual Member will have an opportunity to participate in any hearing or hearings before the Court regarding the approval of the Third Amended Plan of Rehabilitation."

On the basis of the foregoing clarifications, the Department has decided to revise Section II(b) of the exemption to read as follows:

> Each Mutual Member has an opportunity to comment on the Third Amended Plan of Rehabilitation at hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

3. *Receipt of Consideration by Plan Mutual Members.* Paragraph (d) of Section II of the Notice states that —

> Any determination by a Mutual Member which is a Plan to receive Plan Stock or Plan Credits is made by one or more independent fiduciaries of such plan and not by FML, Group or Fidelity Life Insurance Company (FLIC). Consequently, neither FML nor any of its affiliates will exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3–21 (c) with respect to an independent Plan fiduciary's decision to elect Plan Stock or Plan Credits.

FML represents that it is accurate to state that the determination to receive Plan Stock or Plan Credits is not made by FML, Group or FLIC. However, FML points out that there is no "determination or decision" to be made by a Mutual Member because the Third Amended Plan of Rehabilitation provides for Plan Stock to go to all Mutual Members, except for Non-Trusteed Tax-Qualified Retirement Funding Contracts that are described in sections 401(a), 403(a) or (b) or 408 of the Code. FML represents that Non-Trusteed Tax-Qualified Retirement Funding Contracts will automatically receive Plan Credits.

In addition, FML explains that the Third Amended Plan of Rehabilitation sets forth exactly who will receive Plan Stock or Plan Credits, with no option for an election between the two. FML further states that the only election that can be made by a Mutual Member is the disclaimer to receive Plan Stock or Plan Credits, and that decision cannot be made by FML, Group or FLIC.

In consideration of this comment, the Department has decided to revise Section II(d) of the exemption to read as follows:

> The decision by a Mutual Member which is a Plan to receive or disclaim Plan Stock or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such plan and not by FML, Group or Fidelity Life Insurance Company (FLIC). Consequently, neither FML nor any of its affiliates will exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3–21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Plan Stock or Plan Credits.

4. *FML's Obligations to Contractholders.* Paragraph (i) of Section II of the Notice states that "[a]ll of FML's obligations to contractholders (the Contractholders) of the company which are Mutual Members remain in force upon endorsement and transfer to FLIC and are not affected by the Third Amended Plan of Rehabilitation." Nevertheless, FML notes that while this General Condition is technically correct, it is somewhat misleading. In this regard, FML indicates that Representation 11 of the Summary states that "[e]ach Contractholder having a Contract in force on the Closing Date will have his or her Contract assumed and reinsured by FLIC as of the Closing Date." In addition, FML notes that Representation 19 of the Summary states that FML will discontinue its business operations after the Closing Date and will subsequently liquidate and dissolve. Consequently, FML represents that its obligations to the Contractholders will be discharged and terminated upon their assumption by FLIC rather that remaining in force. Under these circumstances, FML explains that FLIC will then be responsible for those contractual obligations under the endorsed or assumed contracts.

Thus, on the basis of this comment, the Department has decided to revise paragraph (i) of Section II of the exemption to read as follows:

> The Third Amended Plan of Rehabilitation does not affect the rights of a contractholer of the company (the Contractholder), which is a Mutual Member. In this regard. FML's obligations to a Contractholer are discharged and terminated upon their endorsement and assumption by FLIC, thereby making FLIC liable for the obligations under such Contract.

Concerns About the Summary

1. *Possible Termination of the Moratorium.* Representation 3 of the Summary states, in pertinent part, that "[u]nder the Order of Rehabilitation, a moratorium was imposed on cash distributions, Contract surrenders, withdrawals and policy loans, except in certain hardship situations." The moratorium, which was imposed by the Court and which placed FML into rehabilitation, was intended to stop the outflow of cash and to afford the Rehabilitator time to stabilize FML's assets.

FML represents that it is currently considering eliminating this moratorium but it has not made a final decision nor has it determined when the end of the moratorium will occur. FML asserts that the Rehabilitator has petitioned the Court for five separate revisions of the moratorium based on FML's improved financial condition. FML notes that these revisions have generally allowed access to a percentage of cash value, included additional hardship criteria and have restored the exercise of various contractual obligations. None of the five petitions has been opposed by the Court.

FML states that although the Rehabilitator is considering a termination of the moratorium, much analysis has to be conducted before a decision can be made. In this regard, FML explains that actuarial information must be presented to the Court to explain the financial and economic effect of ending the moratorium. In addition, notice, an objection period, and possibly a hearing will be required.[1]

As for the effect of the termination of the moratorium on the amount of Plan Stock or Plan Credits a Mutual Member will be entitled to receive, FML states if Contractholders are permitted to surrender their Contracts prior to the Record Date, as defined in the Third Amended Plan of Rehabilitation,[2] and

[1] Although the notice has generally been sent only to FML's creditors and to the "Master Service List," FML states that it will most likely recommend the same scope of notice to the Court assuming the moratorium is to be terminated. However, once a revision of the moratorium is approved, FML explains that notice of the Court's order must also be sent to all Contractholders and this procedure will be followed in the event the moratorium is lifted. Because none of the previous petitions have been opposed, FML states that no hearing has been required. However, if objections are filed, the Court will decide whether to hold a hearing or make a decision based on the pleadings.

[2] According to the Third Amended Plan of Rehabilitation, the "Record Date" means the last day of the month immediately preceding the month

choose to do so, such Contractholders will be terminating their status as Mutual Members. If the Contracts of these Contractholders are not in force on the Record Date, FML explains that the Contractholders will not be entitled to receive Plan Stock or Plan Credits.

FML further represents that if the moratorium is terminated prior to the Record Date, the Contractholders will still have the option of voluntarily surrendering their Contracts. However, FML explains that it will be required to make significant disclosures to these Contractholders to inform them of the benefits they will be foregoing if they surrender their Contracts prematurely. Alternatively, FML states that the Contractholders may choose to hold onto their Contracts until after the Record Date. Under these circumstances, the Contractholders, who would then be considered Mutual Members of FML, would receive their allocable shares of Plan Stock or Plan Credits but without an increase in the amount of consideration.

In any event, FML states it will treat Plan Contractholders no differently from other Contractholders that are not Plans in regard to the decision to surrender a Contract or the effective date of terminating the moratorium, and requisite disclosures. In this regard, FML states that Plan Contractholders will be sent the same notice and disclosure information that is provided to all other Contractholders that are not Plans.

The Department has noted the foregoing clarifications to Representation 3 and the impact of the termination of the moratorium on a Mutual Member's receipt of Plan Stock or Plan Credits. In this regard, the Department notes that no relief is being provided by this exemption for the receipt of cash by a Mutual Member that is a Plan.

2. *Investor Qualifications.* Representation 9 of the Summary sets forth the minimum qualifications for the Investor. FML states that while the substance of Representation 9 is accurate, the qualifications are actually contained in the Bid Procedures filed under the Third Amended Plan of Rehabilitation rather than in the Plan itself.

The Department has noted this clarification to the information contained in Representation 9 of the Summary.

3. *Plans Covered by the Exemption Request.* Representation 12 of the Summary states, in part, that "[u]nder Section 4.05 of the Third Amended Plan of Rehabilitation, any Contract held in connection with a qualified retirement plan or an arrangement described in section[s] 401(a), 403(a) or 408 of the Code. * * * will be allocated Plan Credits in lieu of Plan Stock, in exchange for the relinquishment of the Mutual Member's Membership Interest under such Contract." FML represents that although Section 4.05 of the Third Amended Plan of Rehabilitation references only sections 401, 403 and 408 of the Code, the exemption application specifies Contracts held in connection with a qualified retirement plan or an arrangement described in section 401(a), 403(a) or (b) or 408 of the Code.

The Department acknowledges this comment relating to the information contained in Representation 12 of the Summary.

For further information regarding FML's comment letters and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10712) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including FML's written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Fortis, Inc. Employees' Uniform Profit Sharing Plan (the Fortis Plan) Located in New York, New York

[Prohibited Transaction Exemption 2000–35; Exemption Application Number D–10789]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The restoration payment (the Restoration Payment) by Fortis, Inc. (Fortis), a party in interest with respect to the Fortis Plan, to the Fortis Plan with respect to a certain counterfeit certificate of deposit (the Plan CD); and (2) the potential future payment to Fortis of recapture payments (the Recapture Payments) made to the Fortis Plan pursuant to proceedings involving the issuer of the counterfeit CD. This exemption is subject to the following conditions:

(A) The Restoration Payment consists of:

(i) $501,125, an amount equal to the Plan CD's full face value at the time of the Plan CD's maturity; and

(ii) An amount in cash which is equal to:

(a) a 5.5% annual rate of return on the Plan CD's maturity value of $501,125 for the period beginning October 30, 1997 and ending on December 31, 1998; and

(b) a rate of return on the amount described in (A)(ii)(a) above which is equal to the average annual rate of return of the Fortis Money Market Fund from January 1, 1999 until the date of the Restoration Payment (*i.e.*, the Interest Payment);

(B) The Restoration Payment is a one-time transaction for cash;

(C) The Fortis Plan pays no expenses with respect to the Restoration Payment;

(D) The Fortis Plan retains any amount in excess of the Restoration Payment that it collects in its attempts to recover monies due under the Plan CD; and

(E) Any Recapture Payments paid by the Fortis Plan to Fortis are limited to the amount of the Restoration Payment and are restricted solely to the amounts, if any recovered, by the Fortis Plan with respect to the counterfeit CD in litigation or otherwise.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 4, 2000 at 65 FR 25954.

Written Comments

The Department received two written comments, both of which were in favor of granting the proposed exemption. Accordingly, after giving full consideration to the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara, telephone (202) 219–8881. (This is not a toll-free number).

Canada Life Assurance Company (Canada Life) Located in Toronto, Ontario, Canada

[Prohibited Transaction Exemption 2000–36; Exemption Application No. D–10790]

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in which the Preliminary Approval Order, approving such Plan, is entered by the Court. According to FML's counsel, the Record Date is projected for November 30, 2000.

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 4, 1999, to the (1) receipt of common shares (Common Shares) of Canada Life Financial Corporation, the holding company for Canada Life, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of any eligible policyholder (the Eligible Policyholder) of Canada Life which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and and/or the Code, other than a Plan established by Canada Life or an affiliate for its own employees, in exchange for such Eligible Policyholder's membership interest in Canada Life, in accordance with the terms of a conversion proposal (the Conversion Proposal) adopted by Canada Life and implemented under the insurance laws of Canada and the State of Michigan.

This exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Conversion Proposal was implemented in accordance with procedural and substantive safeguards that were imposed under the insurance laws of Canada and the State of Michigan and was subject to review and/or approval in Canada by the Office of the Superintendent of Financial Institutions (OSFI) and the Minister of Finance (the Canadian Finance Minister) and, in the State of Michigan, by the Commissioner of Insurance (the Michigan Insurance Commission).

(b) OSFI, the Canadian Finance Minister, and the Michigan Insurance Commissioner reviewed the terms of the options that were provided to Eligible Policyholders of Canada Life as part of their separate reviews of the Conversion Proposal. In this regard,

(1) OFSI (i) Authorized the release of the Conversion Proposal and all information to be sent to Eligible Policyholders, (ii) oversaw each step of the conversion process (the Conversion), and (iii) made a final recommendation to the Canadian Finance Minister on the Conversion Proposal;

(2) The Canadian Finance Minister, in his sole discretion, could consider such factors as (i) Whether the Conversion Proposal was fair and equitable to Eligible Policyholders, (ii) whether the Conversion Proposal was in the best interests of the financial system in Canada, and (iii) if sufficient steps had been taken to inform Eligible Policyholders of the Conversion Proposal and of the special meeting on Conversion;

(3) The Michigan Insurance Commission made a determination that the Conversion Proposal was (i) Fair and equitable to all Eligible Policyholders and (ii) consistent with the requirements of Michigan law; and

(4) Both the Canadian Finance Minister and the Michigan Insurance Commissioner concurred on the terms of the Conversion Proposal.

(c) Each Eligible Policyholder had an opportunity to vote to approve the Conversion Proposal after full written disclosure was given to the Eligible Policyholder by Canada Life.

(d) One or more independent fiduciaries of a Plan that was an Eligible Policyholder received Common Shares, Cash or Policy Credits pursuant to the terms of the Conversion Proposal and neither Canada Life nor any of its affiliates exercised any discretion or provided "investment advice," as that term is defined in 29 CFR 2510.3–21(C), with respect to such acquisition.

(e) After each Eligible Policyholder was allocated 100 Common Shares, additional consideration was allocated to such Eligible Policyholder who owned an eligible policy based on an actuarial formula that took into account such factors as the total cash value, the basic annual premium and the duration of such eligible policy. The actuarial formula was reviewed by the Canadian Finance Minister and the Michigan Insurance Commissioner.

(f) All Eligible Policyholders that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Policyholders that were not Plans.

(g) No Eligible Policyholder paid or will pay any brokerage commissions or fees to Canada Life or its affiliates in connection with their receipt of Common Shares, in connection with the implementation of the secondary offering or the assisted sales program.

(h) All of Canada Life's policyholder obligations will remain in force and will not be affected by the Conversion Proposal.

Section III. Definitions

For purposes of this exemption:

(a) The term "Canada Life" means the Canada Life Assurance Company and any affiliate of Canada Life as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Canada Life Includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Canada Life; (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.) or

(2) Any officer, director or partner in such person.

(c) The term "Eligible Policyholder" means a policyholder who—

(i) Was the owner of a voting policy at any time on April 2, 1998 (the Eligibility Day):

(ii) Became the owner of a voting policy, if the voting policy was applied for by that person before the Eligibility Day, and the application was received by Canada Life on or before the close of business on June 30, 1998; or

(iii) Was the owner of a voting policy that lapsed before June 2, 1998 and, where the policy terms provided that, as of June 2, 1998, the owner was entitled to request that the policy be reinstated, the policy was reinstated by the person who was the owner at the time the policy lapsed in accordance with its terms (without regard to when the right to reinstate expired) during the period which began on April 2, 1998 and ended 90 days before the special meeting.

(d) The term "Policy Credit" means—

(1) For an individual life insurance policy with respect to which dividends may be paid, dividend deposits when the dividend deposit option has been selected under the policy and, in all other cases, dividend additions;

(2) For in individual life insurance policy other than a policy with respect to which dividends may be paid, an increase in the fund value (to which no sales or surrender or similar charges will be applied):

(3) For an individual deferred annuity policy with respect to which dividends may be paid, dividend additions;

(4) For an individual deferred annuity policy other than a policy with respect to which dividends may be paid, an increase in accumulation value (to which no sales or surrender or similar charges will be applied); and

(5) For a supplementary contract, settlement option or annuity in annuitization status, an increase in the periodic annuity payment amount. If the periodic annuity payment is on a life basis, the increase will be a life annuity with cash refund basis.

EFFECTIVE DATE: This exemption is effective as of November 4, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption that was published on May 4, 2000 at 65 FR 25956.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fidicuary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of June, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–17066 Filed 7–5–00; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99–3 CARP DD 95–98]

Distribution of 1995, 1996, 1997, and 1998 Digital Audio Recording Technology Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of the schedule for the proceeding.

SUMMARY: The Copyright Office of the Library of Congress is announcing the schedule for the 180-day arbitration period for the Copyright Arbitration Royalty Panel ("CARP") proceeding to determine the distribution of the 1995–98 digital audio recording technology ("DART") royalties in the Musical Works Funds.

DATES: Filings must be submitted according to the announced schedule, except as otherwise provided by Order of the Copyright Arbitration Royalty Panel.

ADDRESSES: If hand delivered, parties shall deliver an original and five copies of all written filings concerning this proceeding to: Office of the Copyright General Counsel, James Madison Memorial Building, First and Independence Avenue, SE., Room LM–403, Washington, DC 20540. If sent by mail, filings should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel ("CARP"), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

A. Background

On May 4, 1999, the Copyright Office published a notice in the **Federal Register** requesting comment as to the existence of a controversy concerning the distribution of the 1995, 1996, 1997, and 1998 DART royalty fees in the Musical Works Funds and consolidating the consideration of the distribution of the 1995–98 Musical Works Funds into a single proceeding. 64 FR 23875 (May 4, 1999). The following parties filed comments and Notices of Intent to Participate: Carl DeMonbrun/ Polyphonic Music, Inc. ("DeMonbrun"); Broadcast Music, Inc. ("BMI"), the American Society of Composers, Authors and Publishers ("ASCAP"), SESAC, Inc. ("SESAC"), the Harry Fox Agency ("HFA"), the Songwriters Guild of America ("SGA"), and Copyright Management, Inc. ("CMI") (collectively the "Settling Parties"); James Cannings/ Can Can Music ("Cannings"); Alicia Carolyn Evelyn ("Evelyn"); and Eugene "Lambchops" Curry/ TaJai Music, Inc. ("Curry").

On September 21, 1999, the Office issued an Order announcing the precontroversy discovery schedule for the proceeding, beginning on November 15, 1999. See Order in Docket No. 99–3 CARP DD 95–98 (September 21, 1999). Prior to commencement of the 45-day precontroversy discovery period, the Office was notified that Cannings and DeMonbrun had settled their respective controversies with the Settling Parties. Thus, the parties who will appear before the CARP in the current proceeding are the Settling Parties, Evelyn, and Curry.

The September 21, 1999, Order also set the initiation of the arbitration for February 28, 2000. However, the Office's duty to publish every two years a new list of arbitrators eligible to serve on a CARP rendered the February 28 initiation date unworkable. See 37 CFR 251.3. On January 14, 2000, in accordance with § 251.3(b), the Office published the list of arbitrators eligible to serve on a CARP initiated during 2000 and 2001. 65 FR 2439 (January 14, 2000). Because the time period between the publication of the arbitrator list and the February 28 initiation date was not sufficient to complete the selection of arbitrators for this proceeding, the Office reset the initiation of the arbitration to April 10, 2000. See Order in Docket No. 99–3 CARP DD 95–98 (March 14, 2000).

On April 10, 2000, the Office published a notice initiating the 180-day arbitration period for this proceeding. 65 FR 19025 (April 10, 2000). Once the arbitrators for this proceeding were selected, the Office scheduled the initial meeting between the arbitrators and the parties for May 16, 2000. However, the chairperson of the panel resigned out of concern that potential conflicts of interest, which were not known to the arbitrator at the time of selection, may exist under § 251.32. Because of these concerns, the Copyright Office canceled the May 16, 2000, meeting between the parties and the original panel of arbitrators. Pursuant to § 251.6(f), the remaining two arbitrators selected a new chairperson. On June 14, 2000, in accordance with § 251.6(f), the Office announced the suspension of the 180-day arbitration period from May 16, 2000, to June 16, 2000, the resumption of the 180-day period on June 16, 2000, the new chairperson of the panel, and the time and place of the rescheduled initial meeting, which took place on June 19, 2000. See 65 FR 37412 (June 14, 2000).

B. The Schedule

Section 251.11(b) of 37 CFR provides: "At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at

least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information."

All meetings of the CARP are open to the public, unless otherwise specified. To ensure that the public receives adequate notice of such meetings, the rule requires that the Office publish a schedule of the meetings at least seven days before the first meeting. See 59 FR 2550 (January 18, 1994). As set forth below, there are no further meetings for this proceeding scheduled at this time; thus, the seven-day advance publication requirement is unnecessary in this instance. Accordingly, this notice fulfills the requirements of § 251.11(b) for the proceeding to determine the distribution of the 1995–98 DART royalties in the Musical Works Funds.

On June 19, 2000, the parties to this proceeding met with the arbitrators for the purpose of setting a schedule and discussing the procedural aspects of this proceeding. The key procedural issue before the Panel at the outset of the proceeding was the consideration of the issue designated to the CARP of whether to suspend formal hearings and make the determination as to the distribution of the 1995–98 DART royalties in the Musical Works Funds on the written pleadings. See Order in Docket No. 99–3 CARP DD 95–98 (December 22, 1999). After hearing argument from all parties, the Panel announced its decision to waive the requirement of oral evidentiary hearings and to proceed upon the written record alone. The Panel stated in its Order that the following schedule would govern the remainder of the proceeding:

Deadline for submission of any revision desired at this time of a party's claim, pursuant to § 251.43(d): July 7, 2000.

Deadline for submission of any rebuttal case desired by a party: July 28, 2000.

Deadline for submission of findings of fact and conclusions of law and proposed orders, including specific calculations of royalty payments: August 18, 2000.

Deadline for submission of reply findings of fact and conclusions of law and proposed orders: August 28, 2000.

Order in Docket No. 99–3 CARP DD 95–98 (June 19, 2000).

At this time, the parties have not moved to close any portion of the proceeding to the public. Further refinements to the schedule will be issued as orders to the parties participating in the proceeding. All changes will be noted in the docket file of the proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).

Dated: June 30, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–17108 Filed 7–5–00; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On May 12, 2000, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on June 28, 2000 to the following applicants:

Norbert Wu, Permit No. 2001–008
Tom Yelvington, Permit No. 2001–010

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 00–17061 Filed 7–5–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978; Notice of Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95–541; Code of Federal Regulations Title 45, Part 670).

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Description of Permit and Modification

1. On September 21, 1999, the National Science Foundation issued a permit (ACA #2000–001) to Dr. Steven D. Emslie after posting a notice in the August 17, 1999 **Federal Register.** Public comments were not received. A request to modify the permit was posted in the **Federal Register** on April 11, 2000. No public comments were received. The modification, issued by the Foundation on May 16, 2000, allows for entry into additional Antarctic Specially Protected Areas for the purpose of conducting surveys and excavations by surveying ice-free areas to locate evidence of a past or modern breeding penguin colony. Access to the Antarctic Specially Protected Areas will be on an opportunity basis only depending upon vessel cruise tracks and schedules.

Location

ASPA 104—Sabrina Island, Balleny Island
ASPA 105—Beaufort Island
ASPA 107—Dion Islands
ASPA 108—Green Island, Berthelot Islands
ASPA 112—Coppermine Peninsula, Robert Island
ASPA 115—Lagotellerie Island, Marguerite Bay
ASPA 116—New College Valley, Caughley Beach, Cape Bird
ASPA 117—Avian Island, Northwest Marguerite Bay
ASPA 126—Byers Peninsula, Livingston Island
ASPA 133—Harmony Point, Nelson Island
ASPA 134—Cierva Point, Danco Coast
ASPA 149—Cape Shirref, Livingston Island
ASPA 150—Ardley Island, King George Island
ASPA 154—Cape Evans, Ross Island

Dates

January 1, 2000 to December 31, 2005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 00–17062 Filed 7–5–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Title 10 of the Code of Federal Regulations, Part 50 (10

CFR Part 50), Appendix R, Section III.J to Facility Operating License No. DPR–65, issued to the Northeast Nuclear Energy Company, et al., (NNECO or the licensee), for operation of the Millstone Nuclear Power Station, Unit 2, located in Waterford, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The licensee has requested an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III. J to the extent that it requires emergency lighting units with at least an 8-hour battery power supply to light all areas needed for operation of safe shutdown equipment and in access and egress routes thereto. The licensee based this exemption request primarily on the security lighting system currently installed at the plant for access and egress route emergency lighting to meet the underlying purpose of the rule. The underlying purpose of the rule is to ensure that lighting of sufficient duration and reliability is provided to allow operation of equipment required for post-fire, safe shutdown of the reactor.

The proposed action is in accordance with the licensee's application for an exemption dated February 14, 2000, as supplemented by letters dated April 5 and May 31, 2000.

The Need for the Proposed Action

The proposed action is needed for the licensee to avoid the burden of full compliance with the regulations. Full compliance with the regulations would require battery powered lights to illuminate a large outdoor area for an 8-hour period. It is not considered practical to illuminate large outdoor areas with battery powered lighting for an 8-hour period. The licensee already has diesel-powered security lighting in the same area and portable lighting equipment is also available. As noted above, the underlying purpose of the rule can be met without the burden of installing additional lighting.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action. The underlying purpose of the rule the licensee is requesting to be exempted from is to ensure that the plant can be safely shut down in the event of a fire.

Based on the availability and reliability of the security lighting and the availability of portable lighting, there is reasonable assurance that the access and egress routes through the yard area that are relied on for safe shutdown of the facility can be accessed in the event of a fire.

On the basis of its review, the staff concludes that the licensee will still have the capability to safely shut down the plant, in the event of a fire, after this exemption has been granted.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit 2.

Agencies and Persons Consulted

In accordance with its stated policy, on March 16, 2000, the staff consulted with the Connecticut State official, Michael Firsick of the Division of Radiation, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 14, 2000, as supplemented by letters dated April 5 and May 31, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Library component of the NRC Web site, <*http://www.nrc.gov*> (the Electronic Reading Room).

Dated at Rockville, Maryland, this 29th day of June, 2000.

For the U.S. Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17033 Filed 7–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2, Environment Assessment and Finding of No Significant Impact

Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating Licenses Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority (TVA, the licensee) for operation of the Sequoyah Nuclear Plant (SQN) Units 1 and 2, respectively. The facility is located in Hamilton County, Tennessee.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise License Condition 2.B.(5) in each of the licenses, which authorizes possession of byproduct and special nuclear materials (SNM). The License Condition states:

> Pursuant to the Act and 10 CFR Parts 30, 40, and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

These proposed amendments change the words "as may be produced by the operation of the facility" to "as may be produced by the operation of the Sequoyah or Watts Bar Unit 1 Nuclear Plants." Upon NRC approval of the

requested license amendments, TVA plans to transport low-level radioactive waste (LLRW) from Watts Bar Nuclear Plant (WBN), Unit 1, to the SQN site for storage in a facility designed for that purpose.

The proposed action is in accordance with TVA's application for license amendments dated December 17,1999.

The Need for the Proposed Action

Byproduct material and small amounts of SNM are present as the radioactive contaminants in certain LLRW that has, in the past, been shipped to the Chem-Nuclear facility near Barnwell, South Carolina, for permanent deep-trench disposal. The LLRW being considered for storage at the SQN site includes ion-exchange resins, pressurized water reactor filters, tank solids, irradiated metal reactor components, and dry active waste.

TVA believes that License Condition 2.B.(5) was intended, consistent with nonproliferation objectives, to restrict licensees from separating nuclides generated in the course of operation of the licensed facility; it was not intended to restrict licensees from possessing low-level by-product and SNM produced by operation of another facility. Nonetheless, TVA is requesting that License Condition 2.B.(5) be modified as stated above to remove any question of interpretation with respect to receipt of LLRW generated at Watts Bar Unit 1 at the SQN site.

TVA has, until now, made regular shipments of Class B and Class C LLRW (as defined in 10 CFR Part 61) to the South Carolina Barnwell permanent disposal facility. Class A dry active waste (the lowest radioactivity level) is routinely shipped to the Envirocare facility in Utah, which is licensed to receive Class A dry active waste, but not other types of Class A, Class B, or Class C wastes. Recent escalating LLRW access and disposal fees at Barnwell, and the prospect of sudden closure of the facility, with no alternative disposal facility for LLRW (other than Class A dry active waste) becoming available in the foreseeable future, have led TVA to develop an alternative solution until such time as a practical off-site repository option again becomes available. The cost to TVA of sending LLRW to Barnwell for disposal has increased 800% over the past 10 years. Furthermore, South Carolina has recently passed legislation to enter into a LLRW disposal pact with the States of Connecticut and New Jersey (known as the Atlantic Compact) and has announced that, ultimately, only those states will be allowed to ship LLRW to Barnwell. TVA has a very large interim storage facility at the SQN site with ample storage space for LLRW from operation of both SQN units and the single WBN unit. The LLRW storage modules were constructed at SQN in the early 1980s but have never been utilized.

The proposed License Condition revision is needed to allow the Watts Bar Nuclear Plant the option to ship LLRW to the SQN site, thereby permitting continued operations of the WBN plant. TVA has stated its intention to ship any stored waste (predominantly Class B and C) to the Envirocare of Utah facility (or any other facility) at such time as that facility is licensed to receive and dispose of such wastes.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that, with regard to radiological impacts to the general public, the proposed action involves activities located entirely within the restricted area as defined in 10 CFR Part 20. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure.

The NRC granted Materials License No. 41–08165–14 (Docket No. 30–19101) on September 17, 1982, for use of the LLRW storage facility at SQN for a period of 5 years. At the same time, the NRC issued a Safety Evaluation Report and Environmental Impact Appraisal to support operation of the storage facility using assumptions consistent with the 40-year plant operating license. However, consistent with the NRC's policy of utilizing permanent off-site disposal of LLRW whenever possible, LLRW shipments were continued to the Barnwell facility. Consequently, no radioactive waste has ever been stored in the SQN LLRW storage facility. The Materials License was renewed once prior to expiration, but TVA requested its termination on April 25, 1990, since there were no plans for use of the storage facility in the foreseeable future. The termination request noted that if use of the facility became necessary, TVA would not need to renew the materials license but would, instead, perform a 10 CFR 50.59 evaluation as allowed in Generic Letter 81–38, "Storage of Low-Level Radioactive Wastes at Power Reactor Sites."

Because of the licensee's ALARA [As Low As Reasonably Achievable] program and significant reductions in generation of LLRW (including coolant chemistry and reactor fuel quality improvements), the amount of LLRW expected to be generated and stored in the SQN LLRW storage facility for two SQN units and one WBN unit is significantly less in volume and radioactivity than the assumptions used in the Environmental Impact Appraisal that supported the Materials License granted by the NRC in 1982 for operation of two SQN units for the life of the plant. Specifically, there would be no incremental increase in occupational radiation exposure over that assumed in previous NRC actions related to operation of this storage facility. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

As stated by the NRC in its Environmental Impact Appraisal for Materials License No. 41–08165–14 for the SQN LLRW on-site storage facility, the quality of the human environment will not be significantly affected and there will be no significant environmental impact from the operation of the existing SQN LLRW interim storage facility. The added LLRW stored as a result of WBN's single-unit operations will remain well within the original design and proposed capacity limitations considered in the above-mentioned Environmental Impact Appraisal.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no action" alternative). Denial of the exemption would result in no change in environmental impacts already analyzed by the NRC and TVA. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Impact Appraisal for Materials License No. 41–08165–14, dated September 17, 1982,

supporting the materials license for the SQN LLRW storage facility.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with an official of the State of Tennessee, Ms. Joelle Key, on May 4, 2000, regarding the environmental impact of the proposed action. Ms. Key had a question regarding the quality of packaging for LLRW material to be stored at this facility. She was advised that the material will be packaged in 300-year high-integrity containers and will not need repackaging prior to shipment to a permanent disposal facility. Ms. Key indicated the State was in general agreement with TVA's request.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's letter dated December 17, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. Publically available records are also accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room) and from the Agencywide Documents Access and Management System.

Dated at Rockville, Maryland, this 29th day of June 2000.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17034 Filed 7–5–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–01–24–1A]

OMB Approval Number 1004–0010; Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On March 20, 2000, the BLM published a notice in the **Federal Register** (65 FR 15001) requesting comment on this proposed collection. The comment period ended on May 19, 2000. The BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM information clearance officer at the telephone number listed below; (202) 452–5033.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0010), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Color-of-Title (43 CFR part 2540). OMB approval number: 1004–0010.

Abstract: The BLM is proposing to renew the approval of an information collection for an existing rule at 43 CFR part 2540. That rule provides guidelines and procedures for transferring legal title to public lands administered by the BLM from the United States to eligible individuals, groups, or corporations who have valid claims under the Color-of-Title Act of December 22, 1928 (45 Stat. 1069) as amended by the Act of July 28, 1953 Stat. 227), (U.S.C. 1068–1068b).

Bureau Form Number: 2540–2.

Frequency: Once.

Description of Respondents: Respondents are individuals, groups, or corporations.

Estimated Completion Time: 1 hour.

Annual Responses: 20.

Filing Fee Per Response: $10.

Annual Burden Hours: 20.

Bureau Clearance Officer: Shirlean Beshir (202) 452–5033.

Dated: June 23, 2000.

Shirlean Beshir,

Acting BLM Information Clearance Officer.

[FR Doc. 00–17087 Filed 7–5–00; 8:45 am]

BILLING CODE 4310–84–M

SMALL BUSINESS ADMINISTRATION

Notice of Sale of Business and Disaster Assistance Loans

AGENCY: Small Business Administration.

ACTION: Notice of sale of business and disaster assistance loans—Loan Sale #2.

SUMMARY: This notice announces the Small Business Administration's ("SBA") intention to sell approximately 25,000 secured and unsecured business and disaster assistance loans, (collectively referred to as the "Loans"). This is the first sale of Disaster Assistance Loans and includes both business and consumer loans. The total unpaid principal balance of the Loans is approximately $1 billion. SBA previously guaranteed some of the Loans under various sections of the Small Business Investment Act, as amended, 15 U.S.C. 695 *et seq.* Any SBA guarantees that might have existed at one time have been paid and no SBA guaranty is available to the successful bidders in this sale. The majority of the loans originated from and are serviced by SBA. The collateral for the secured Loans includes commercial and residential real estate and other businesses and personal property located nationwide. This notice also summarizes the bidding process for the Loans.

DATES: The Bidder Information Package will be available to qualified bidders beginning on or about May 26, 2000. The Bid Date is scheduled for August 1, 2000, and closings are scheduled to occur between August 14, 2000 and September 8, 2000. These dates are subject to change at SBA's discretion.

ADDRESSES: Bidder Information Packages will be available from the SBA's Transaction Financial Advisor, Merrill Lynch Mortgage Capital Inc. ("Merrill Lynch"). Bidder Information Packages will only be made available to

parties that have submitted a completed Confidentiality Agreement and Bidder Qualification Statement and have demonstrated that they are qualified bidders. The Confidentiality Agreement and Bidders Qualification Statement are available on the SBA Website at *www.sba.gov/assets/sale2.html* or by calling the SBA Loan Sale 2 Center toll-free at Merrill Lynch at (888) 590–6872. The completed Confidentiality and Bidder Qualification Statement can be sent to the attention of John Winchester, SBA Loan Sale 2, by either fax, at (212) 449–2450 or by mail, to Merrill Lynch Mortgage Capital Inc., World Financial Center, North Tower, 10th Floor, New York, NY, 10281–1310. The Due Diligence Facility is scheduled to open on or about June 2, 2000 and close on or about July 28, 2000. These dates are subject to change at SBA's discretion.

FOR FURTHER INFORMATION CONTACT: B. John Farmakides, Program Manager, Small Business Administration, 409 Third Street, SW, Washington, DC 20416: 202–205–7134. This is not a toll free number. Hearing or speech-impaired individuals may access this number via TDD/TTY by calling the Federal Information Relay Service's toll-free number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: SBA intends to sell approximately 25,000 secured and unsecured business and disaster assistance loans, collectively referred to as the "Loans". The Loans include performing, sub-performing and non-performing loans. The Loans will be offered to qualified bidders in pools that will be based on such factors as performance status, collateral status, collateral type and geographic location of the collateral. A list of the Loans, loan pools and pool descriptions is contained in the Bidder Information Package. SBA will offer interested persons an opportunity to bid competitively on loan pools, subject to conditions set forth in the Bidder Information Package. SBA shall use its sole discretion to evaluate and determine winning bids. No loans will be sold individually. The Loans to be sold are located throughout the United States as well as Puerto Rico, U.S. Virgin Islands, Guam and other Pacific Islands.

The Bidding Process

To ensure a uniform and fair competitive bidding process, the terms of sale are not subject to negotiation. SBA will describe in detail the procedure for bidding on the Loans in the Bidder Information Package, which will include bid forms, a non-negotiable loan sale agreement prepared by SBA ("Loan Sale Agreement"), specific bid instructions, as well as pertinent loan information such as total outstanding unpaid principal balance, interest rate, maturity term, aggregate payment history and collateral information including geographic location and type. The Bidder Information Package also includes CD–ROMs that contain information pertaining to the Loans.

The Bidder Information Package will be available approximately 9 weeks prior to the Bid Date. It will contain procedures for obtaining supplemental information about the Loans. Any interested party may request a copy of the Bidder Information Package by sending a written request together with a duly executed copy of the Confidentiality Agreement and a Bidder Qualification Statement to the address specified in the **ADDRESSES** section of this notice.

Prior to the Bid Date, a Bidder Information Package Supplement will be mailed to all recipients of the original Bidder Information Package. It will contain the final list of loans included in Sale #2 and any final instructions for the sale.

Deposit And Liquidated Damages

Each Bidder must include with its bid a deposit equal to 10 percent of the amount of the bidder's highest bid. If a successful bidder fails to abide by the terms of the Loan Sale Agreement, including paying SBA any remaining sums due pursuant to the Loan Sale Agreement and closing within the time period specified in the Loan Sale Agreement, SBA shall retain the deposit as liquidated damages.

Due Diligence Facility

A bidder due diligence period will take place beginning on or about June 2, 2000. During the bidder due diligence period, qualified bidders may, for a non-refundable assessment of $500 US, review all asset file documents that have been imaged onto a database by visiting the due diligence facility located at 499 South Capital, SW, Suite 300, Washington, DC 20003 and/or via modem. Bidders that have paid the due diligence assessment of $500 US may also request CD–ROMs that contain substantial due diligence materials such as loan payment history and updated third party reports.

Specific instructions for ordering information in electronic format or making an appointment to visit the due diligence facility are included in the Bidder Information Package.

SBA Reservation of Rights

SBA reserves the right to remove loans from the sale at any time prior to the Bid Date, and add loans prior to the Cut-Off Date for any reason and without prejudice to its right to include any loans in a later sale. SBA also reserves the right to terminate this sale at any time prior to the Bid Date.

SBA reserves the right to use its sole discretion to evaluate and determine winning bids. SBA also reserves the right in it sole discretion and for any reason whatsoever to reject any and all bids.

SBA reserves the right to conduct a "best and final" round of bidding wherein bidders will be given the opportunity to increase their bids. A best and final round shall not be construed as a rejection of any bid or preclude SBA from accepting any bid made by a bidder.

SBA reserves the right to sell less than 100 percent of the Loans offered for sale and "re-offer" the remaining loans subsequent to the initial bid.

Ineligible Bidders

The following individuals and entities (either alone or in combination with others) are ineligible to bid on the Loans included in the sale:

(1) Any employee of SBA, any member of any such employee's household and any entity controlled by a SBA employee or by a member of such employee's household.

(2) Any individual or entity that is debarred or suspended from doing business with SBA or any other agency of the United States Government.

(3) Any contractor, subcontractor, consultant, and/or advisor (including any agent, employee, partner, director, principal, or affiliate of any of the foregoing) who will perform or has performed services for, or on-behalf of SBA, either in connection with this sale or the development of SBA's loan sale program.

(4) Any individual that was an employee, partner, director, agent or principal of any entity, or individual prescribed in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of SBA, either in connection with this sale or the development of SBA's loan sale program.

(5) Any individual or entity that has used or will use the services, directly or indirectly, of any person or entity ineligible under any of paragraphs (1) through (4) above to assist in the preparation of any bid in connection with this sale.

Loan Sale Procedure

SBA plans to use a competitive sealed bid process as the method to sell the Loans. SBA believes this method of sale

optimizes the return on the sale of Loans and attracts the largest field of interested parties. This method also provides the quickest and most efficient vehicle for the SBA to dispose of the Loans.

Post Sale Servicing Requirements

The Loans will be sold servicing released. Purchasers of the Loans and their successors and assigns will be required to service the Loans in accordance with the applicable provisions of the Loan Sale Agreement for the Life of the Loans.

In addition, the Loan Sale Agreement establishes certain requirements that a servicer must satisfy in order to service the Loans.

Scope of Notice

This notice applies to Loan Sale Number #2 and does not establish agency procedures and policies for other loan sales. If there are any conflicts between this Notice and the Bidder Information Package, the Bidder Information Package shall prevail.

Jane Palsgrove Butler,

Associate Administrator for Financial Assistance.

[FR Doc. 00–17038 Filed 7–5–00; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3266]

State of Louisiana (And Contiguous Counties In Texas and Arkansas)

Caddo Parish and the contiguous Parishes of Bossier, De Soto, and Red River in the State of Louisiana; Cass, Harrison, Marion, and Panola Counties in the State of Texas; and Miller and Lafayette Counties in the State of Arkansas constitute a disaster area as a result of damages caused by severe storms and tornadoes that occurred on April 23, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 25, 2000, and for economic injury until the close of business on March 26, 2001, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere—7.375%

Homeowners without credit available elsewhere—3.687%

Businesses with credit available elsewhere—8.000%

Businesses and non-profit organizations without credit available elsewhere—4.000%

Others (including non-profit organizations) with credit available elsewhere—6.750%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere—4.000%

The numbers assigned to this disaster for physical damage are 326612 for Louisiana, 326712 for Texas, and 326812 for Arkansas. For economic injury the numbers are 9H5600 for Louisiana, 9H5700 for Texas, and 9H5800 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 26, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–16982 Filed 7–5–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council Meeting; Public Meeting

The Southeastern States Regulatory Fairness Board will hold a public hearing on August 1, 2000, at 9 a.m. located at Tougaloo College, Health and Wellness Center, 500 W. County Line Road, Tougaloo, Mississippi to receive comments and testimony from small businesses and representatives of trade associations concerning federal regulatory enforcement or compliance actions taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman. For further information, call Elestine Harvey (312) 353–1744.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–16980 Filed 7–5–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The New England States Regulatory Fairness Board will hold a public hearing on August 22, 2000, at 1 p.m. located at Holiday Inn, Manchester Center, 700 Elm Street, Manchester, NH to receive comments and testimony from small businesses and representatives of trade associations concerning federal regulatory enforcement or compliance actions taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman. For further information, call Elestine Harvey (312) 353–1744.

Bettie Baca,

Counselor to the Administrator/Public Liaison

[FR Doc. 00–16981 Filed 7–5–00; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collection would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Survey of Low-Income and Disabled Children–0960–NEW. The Survey of Low-Income and Disabled Children (SOLID KIDS) is designed to collect nationally representative data on children and young adults with Supplement Security Income (SSI) experience, including current and previous SSI recipients and SSI applicants. To solicit information, SSA will employ two versions of the SOLID KIDS survey. One survey will be directed at children under age 17. The other, a young adult version, is designed

for children who are 17 or older at the time of the survey.

The survey is designed to provide SSA with data on SSI recipients in the following areas:

- Disability and health status;
- Health care utilization;
- Health insurance coverage;
- Out-of-pocket health care expenses;
- Education and training;
- Service utilization and cost;
- Employment income assets;
- Child care, and
- Housing and transportation.

This information will allow SSA to answer policy-relevant questions, for example, the impact of welfare reform on SSI children and young adults, cost of caring for children and young adults with disabilities, transition issues for young adults with disabilities, service utilization patterns, health care access, and unmet health care needs.

The data will be used for internal research and policy evaluation, for briefings, in mandated reports to Congress, in published descriptions in the Social Security Bulletin and elsewhere. External researchers will have access to public use files.

Respondents to the SOLID KIDS survey, children's version, will be parents or guardians of the sample children under age 17 at the time of the survey. The young adult version of the SOLID KIDS survey is designed for children who are 17 or older at the time of the survey. For young adults who are still living in their parents' household, the respondent will be the parent or guardian. For young adults who are living away from their parents—for example, in a group home or facility, or in their own home or apartment—the respondent will be the young adults themselves. In cases where the young adult is living outside of the parent's home and is unable to complete the survey due to disability, a proxy respondent will be selected.

Number of respondents: 9,857

Number of Response: 1

Average burden per response: 58 minutes

Estimated Annual Burden: 9,528

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

Dated: June 29, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–17037 Filed 7–5–00; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting.

DATES: July 24, 2000, 1:30 p.m.—5 p.m.–July 25, 2000, 9 a.m.–4:30 p.m.

ADDRESSES: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces the first meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), Public Law 106–170, establishes the Panel to advise the Commissioner of Social Security, the President, and the Congress on issues related to work incentives programs, planning, and assistance for individuals with disabilities as provided under section 101 (f)(2)(A) of TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

This is the first deliberative meeting of the Panel. No public testimony will be heard at this meeting. However, interested parties are invited to attend the meeting. The Panel will meet to hear presentations on the status of TWWIIA implementation, review their charter, and discuss their organization and upcoming agenda.

Agenda: The Panel will meet commencing Monday, July 24, 2000 at, 1:30 p.m. –5 p.m. and Tuesday, July 25, 2000, at 9 a.m.–4:30 p.m. At this meeting, the Panel will use this time to hear presentations on the Status of TWWIIA implementation, review their charter, and discuss their organization and upcoming agenda. Since seating may be limited, persons interested in attending this meeting should contact the Panel staff by E-mailing Reggie Sajauskas, Designated Federal Officer, at "reggie.sajauskas@ssa.gov" or calling (410) 965–5381 by July 17, 2000.

The agenda for the meeting is posted on the Internet at the web site of SSA's Office of Employment Support Programs at "*http://www.ssa.gov/work.*" A copy of the agenda also may be obtained in advance of the meeting by contacting the Panel staff at the mailing address, Email address, telephone or FAX number shown below. Requests for materials in alternate formats, *i.e.*, large print, Braille, computer disc, etc. may be made to the Panel staff at the addresses and numbers shown below.

Records are being kept of all Panel proceedings and will be available for public inspection at the Office of Employment Support Programs' web site at "*http://www.ssa.gov/work*" or by appointment at the office of the Ticket to Work and Work Incentives Advisory Panel staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235;
- Telephone at (410) 965–5381;
- FAX at (410) 966–8597; or
- Email to Reggie Sajauskas, Designated Federal Officer, at "reggie.sajauskas@ssa.gov."

Dated: June 29, 2000.

Kenneth S. Apfel,

Commissioner, Social Security Administration.

[FR Doc. 00–17127 Filed 7–5–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice #3330]

Advisory Committee On Labor Diplomacy Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting from 9:45 a.m. to 4 p.m. on July 18, 2000, in the Loy Henderson Room, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership before the international community in promoting the objectives and ideals of U.S. labor policies now and in the 21st century. The ACLD will make recommendations on how to strengthen the Department of State's ability to respond to the many

challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the July 18 meeting includes discussion of potential recommendations for Committee consideration.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by close of business July 14, to Mark Simonoff at (202) 647–4327 or fax (202) 647–0431 or email simonoff@state.gov: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the 23rd Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Simonoff at the phone and fax numbers provided above.

Dated: June 30, 2000.

Bennett Freeman,

Acting Assistant Secretary, Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. 00–17082 Filed 7–5–00; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Delegation of Authority No. 145–17]

Foreign Assistance Act of 1961 and Certain Related Acts

By virtue of the authority vested in me by Delegation of Authority No. 145–5 of January 22, 1988, 53 FR 5072, pursuant to Executive Order 12163 of September 29, 1971, 44 FR 56673, as amended, and the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq.*, State Department Delegation of Authority No. 145–5–2 of April 4, 1991, is hereby amended to read as follows:

By virtue of the authority vested in me by Delegation of Authority No. 145–5 of January 22, 1988, 53 FR 5072, pursuant to Executive Order 12163 of September 29, 1979, 44 FR 56673, as amended, and the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq.*, I hereby delegate to the Assistant Administrator for Latin America and the Caribbean of the U.S. Agency for International Development (USAID) functions conferred on the President by section 534(b)(3)(A), (B), and (C) for the purpose of including law enforcement agencies and personnel in activities financed by USAID to strengthen the administration of justice. All such activities shall be implemented in coordination with the International Criminal Investigative Training Assistance Program of the U.S. Department of Justice.

This delegation shall be published in the **Federal Register**.

Dated: June 13, 2000.

Peter F. Romero,

Acting Assistant Secretary, Bureau of Western Hemisphere Affairs, Department of State.

[FR Doc. 00–17081 Filed 7–5–00; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33891]

Central Gulf Railway, Inc.—Lease and Operation Exemption—Terminal Railway Alabama State Docks

Central Gulf Railway, Inc. (CGR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease certain rail lines from the Terminal Railway Alabama State Docks (TASD), an agency of the State of Alabama, and operate either directly or through the use of a contract agent approximately 0.46 miles of rail line. The rail lines to be leased are located in TASD's Frascati Yard in Mobile, AL. CGR will be leasing Track Nos. 1, 2, and 4, beginning at a point of interchange with TASD 90 feet east of Ezra Trice Boulevard and extending east 590 feet for Track Nos. 1 and 2 and, 1271 feet for Track No. 4. CGR certifies that its projected revenues will not exceed those that would qualify it as a Class III carrier.

The transaction is scheduled to be consummated on or after June 30, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33891, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Esq., BALL JANIK, LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16857 Filed 7–5–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33890]

The International Paper Company—Acquisition of Control Exemption—Moscow, Camden & San Augustine Railroad and Angelina & Neches River Railroad Company

The International Paper Company (IP), a noncarrier, has filed a notice of exemption to acquire control, through stock purchase, of Moscow, Camden & San Augustine Railroad (MCSA) and Angelina and Neches River Railroad Company (ANR) (collectively rail lines), Class III railroads, operating in the State of Texas.[1]

While IP states that the transaction was consummated on or about June 16, 2000, the exemption will not be effective until June 30, 2000 (7 days after the notice of exemption was filed).

IP states that: (i) The rail lines do not connect; (ii) the transaction is not part of a series of anticipated transactions that would connect these railroads with each other or with any other railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail

[1] IP's acquisition of control of MCSA and ANR was accomplished through an Agreement and Plan of Merger dated May 12, 2000, through which IP acquired over 90% of the outstanding common stock of the Champion International Corporation (Champion). Both prior and subsequent to the acquisition, Champion owned 100% of the stock of MCSA and 50% of the stock of ANR.

IP currently owns the Longview, Portland & Northern Railway Company, which operates in the State of Oregon.

carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33890, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Edward D. Greenberg, Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C., Canal Square, 1054 Thirty-First Street, NW., Suite 200, Washington, DC 20007.

Decided: June 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16858 Filed 7–5–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: In order to comply with the requirements of the Paperwork Reduction Act of 1995, concerning proposed extensions of information collection requirements, FinCEN is soliciting comments concerning Internal Revenue Service ("IRS") Form 8852, Currency Transaction Report by Casinos—Nevada ("CTRC–N"), which is filed for currency transactions conducted by, at, or through Nevada casinos.

DATES: Written comments must be received on or before September 5, 2000.

ADDRESSES: Direct all written comments to the Financial Crimes Enforcement Network, Office of Compliance and Regulatory Enforcement, Attn.: CTRC–N Comments, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to Leonard Senia, Regulatory Program Specialist (Team Leader), Office of Compliance and Regulatory Enforcement, (202) 354–6412, or; Stacie A. Larson, Office of Chief Counsel, (703) 905–3590. A copy of the CTRC–N form, as well as all other forms required by the Bank Secrecy Act, can be obtained through the Internet at http://www.irs.ustreas.gov/prod/forms-pubs/forms.html. (Also, comments maybe submitted by electronic mail to the following Internet address: *"regscomments@fincen.treas.gov"* with the caption in the body of the text, "Attention: PRA Comments—CTRC–N.")

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act (Titles I and II of Public Law 91–508), as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act, codified at 31 U.S.C. 5311–5314, 5316–5330, appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act regulations has been delegated to the Director of FinCEN.

Section 5313(a) authorizes the Secretary to issue regulations that require a report when "a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes." Regulations implementing section 5313(a) are found at 31 CFR 103.22 and 31 CFR 103.45(c)(2)(ii). In general, the regulations require the reporting of transactions in currency in excess of $10,000 a day. Casinos as defined in 31 U.S.C. 5312(a)(2)(X) and 31 CFR 103.11(n)(7)(i) are financial institutions subject to the currency transaction reporting requirement. Card clubs, as defined in 31 CFR 103.11(n)(8)(i), are casinos subject to currency transaction reporting. (See 63 FR 1919, January 13, 1998.)

The Currency Transaction Report by Casinos—Nevada, IRS Form 8852, is the form Nevada casinos use to comply with the currency transaction reporting requirements. Form 8852 was designed to take into account, among other things, that Nevada Regulation 6A, "Cash Transactions Prohibitions, Reporting and Recordkeeping" prohibits Nevada casinos from conducting some of the transaction types reportable on IRS Form 8362, Currency Transaction Report by Casinos.

Information collected on the CTRC–N is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is used for regulatory purposes and in investigations involving international and domestic money laundering, tax violations, fraud, and other financial crimes.

This notice proposes no changes to the current text of the Form 8852 or its instructions.

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on Form 8852 is presented to assist those persons wishing to comment on the information collection. (Since the number of respondents has increased mostly because of new Nevada casinos that have opened for business during 1998 and 1999, the estimates below are based on 1999 filings of Nevada CTRC–Ns.)

Title: Currency Transaction Report by Casinos—Nevada.

Form Number: IRS Form 8852.

OMB Number: 1506–0003.

Description of Respondents: All Nevada casinos, with gross annual gaming revenue in excess of $10 million and having an annual table games statistical win in excess of $2 million.

Estimated Number of Respondents: 110.

Estimated Number of Annual Responses: 128,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = 40,533 hours; recordkeeping burden estimate = 10,667 hours. Estimated combined total of 51,200 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $1,024,400.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: Extension of a currently approved information collection.

Request for Comments

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information

is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Responses to the questions posed by this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: June 27, 2000.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 00–17007 Filed 7–5–00; 8:45 am]

BILLING CODE 4820–03–U

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Meeting

AGENCY: Department of Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and time for the next meeting and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, July 21, 2000 at 9 a.m. at 740 15th Street, NW., Suite 700. Washington, DC. The duration of the meeting will be approximately three hours.

FOR FURTHER INFORMATION CONTACT: John P. Simpson, Deputy Assistant Secretary, Office of Regulatory, Tariff and Trade, Office of the Under Secretary (Enforcement), Room 4308, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220 (ATTN: COAC)—Tel.: (202) 622–0230. Final meeting details, including the meeting time, location, and agency, can be confirmed by contacting the above number one week prior to the meeting date.

AGENDA: At the July 21, 2000 session, a special meeting of the Advisory Committee, the Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

1. Report on Customs Budget for Fiscal Years 2001 and 2002
2. Report from Subcommittee on Merchandise Processing Fee
3. Discussion of the Full Implementation of Mod Act of 1993
4. Brief Update from the Office of Regulations & Rulings Subcommittee
5. Interface Discussion
6. Discussion of the 24/7 U.S. Customs Service at Land Borders

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting should give advance notice by contacting Theresa Manning at (202) 622–0220 or Helen Belt at (202) 622–0230, no later than July 13, 2000.

Dated: June 28, 2000.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 00–16968 Filed 7–5–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8830

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8830, Enhanced Oil Recovery Credit.

DATES: Written comments should be received on or before September 5, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Enhanced Oil Recovery Credit.

OMB Number: 1545–1282.

Form Number: 8830.

Abstract: Internal Revenue Code section 43 allows taxpayers to elect a tax credit of 15% of the qualified oil recovery costs paid or incurred during the year. The credit is phased out as the reference price of crude oil for the prior year exceeds $28 per barrel. Form 8830 is used by taxpayers to compute the credit.

Current Actions: The order of Part II, Tax Liability Limit, was revised for this form. Section 501 of Public Law 106–170 extended the provision that allows individuals to offset the regular tax liability in full for personal credits. Previously filers were allowed to claim credits to the extent that the regular tax liability exceeded the tentative minimum tax. For tax years beginning in 2000 and 2001, personal nonrefundable credits may offset both the regular tax and the minimum tax. Also, the computation was changed in Part II to reflect and to conform to changes that were made to the tax computation on Form 1040. A new line 7 was added to show the sum of the regular tax before credits and the alternative minimum tax.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 3,623.

Estimated Time Per Response: 9 hours, 2 minutes.

Estimated Total Annual Burden Hours: 32,752.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–16970 Filed 7–5–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 3468

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3468, Investment Credit.

DATES: Written comments should be received on or before September 5, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Investment Credit.

OMB Number: 1545–0155.

Form Number: 3468.

Abstract: Taxpayers are allowed a credit against their income taxes for certain expenses they incur for their trades or businesses. Form 3468 is used to compute this investment tax credit. The information collected is used by the IRS to verify that the credit has been correctly computed.

Current Actions: The order of Part II, Tax Liability Limit, was revised for this form. Section 501 of Public Law 106-170 extended the provision that allows individuals to offset the regular tax liability in full for personal credits. Previously filers were allowed to claim credits to the extent that the regular tax liability exceeded the tentative minimum tax. For tax years beginning in 2000 and 2001, personal nonrefundable credits may offset both the regular tax and the minimum tax. Also, the computation was changed in Part II to reflect and to conform to changes that were made to the tax computation on Form 1040. A new line 8 was added to show the sum of the regular tax before credits and the alternative minimum tax.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms, and not-for-profit institutions.

Estimated Number of Respondents: 22,573.

Estimated Time Per Response: 20 hours, 26 minutes.

Estimated Total Annual Burden Hours: 461,392.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–16971 Filed 7–5–00; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 65, No. 130

Thursday, July 6, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0209–2000]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; OSHA Data Initiative (1218–0209)

Correction

In notice document 00–16345, appearing on page 39944, in the issue of Wednesday, June 28, 2000, make the following correction:

On page 39944, in the second column, above the **SUPPLEMENTARY INFORMATION** heading, the web address should read "http://www.osha-slc.gov/OCIS/Info_coll.html".

[FR Doc. C0–16345 Filed 7–5–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AEA-16.FR]

Amendment to Class E Airspace: Brownsville, PA

Correction

In rule document 00–1053 appearing on page 2539 in the issue of Tuesday, January 18, 2000, make the following correction:

§71.1 [Corrected]

In the third column, after the row of stars, and before the paragraph beginning "That airspace extending. . .. ", insert the following:

AEA PA E5,Brownsville, PA

Brownsville Hospital Heliport, PA

(lat. 400013.11, long. 795141.97

[FR Doc. C0–1053 Filed 7–5–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Thursday,
July 6, 2000

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 272 and 273

Food Stamp Program: Recipient Claim Establishment and Collection Standards; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 389]

RIN 0584–AB88

Food Stamp Program: Recipient Claim Establishment and Collection Standards

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: Food stamp recipient claims are established and collected against households that receive more benefits than they are entitled to receive. At the Food and Nutrition Service, we are revising Food Stamp Program regulations that cover food stamp recipient claims. This rule aims to improve claims management in the Food Stamp Program while providing State agencies with increased flexibility in their efforts to increase claims collection. We incorporate into this rule the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that affect recipient claims. In addition, this action is consistent with the President's regulatory reform effort.

The last major revision to the Food Stamp recipient claim regulations was in 1983. Recent legislation, technological advances and changes in Federal debt management procedures have made many parts obsolete.

This rule accomplishes several specific objectives while updating the Food Stamp recipient claims regulations. First, it incorporates changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Second, the presentation of our policies, and, in some cases, the policies themselves are streamlined by this rule. Third, this action incorporates Federal debt management regulations and statutory revisions into recipient claim management. Finally, this rule provides State agencies with additional tools to facilitate the establishment, collection and disposition of recipient claims.

DATES: Sections 273.18(c)(1)(ii)(B), 273.18(f) and 273.18(g) are effective retroactive to August 22, 1996. The remaining amendments of this rule are effective and must be implemented no later than August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service (FNS), 3101 Park Center Drive, Room 820, Alexandria, Virginia 22302, telephone (703) 305–2414.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, we must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Food Stamp Program (FSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V, and related Notice (48 FR 29115), this program is excluded from the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Dates" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have "federalism implications," agencies are directed to provide a statement for inclusion in the preamble of the regulation describing the agency's considerations in terms of the three categories called for under section (6)(a)(B) of Executive Order 13132:

Prior Consultation With State Officials

Prior to drafting this final rule, we received input from State and local agencies at various times. Since the FSP is a State administered, federally funded program, our regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. This arrangement allows State and local agencies to provide feedback that forms the basis for many discretionary decisions in this and other FSP rules. In addition, we presented our ideas and received feedback on current and future claims policy at various regional, State, and professional conferences. Lastly, the comments on the draft rule received from State and local officials were carefully considered in the drafting of this final rule.

Nature of Concerns and the Need To Issue This Rule

State and local agencies generally want greater flexibility in their management of recipient claims. To maximize efficiency, a State agency usually tries to integrate, to the fullest extent possible, its food stamp recipient claims process with claims operations for similar programs. State and local officials have indicated that imposing requirements unique only to food stamp claims hampers this consolidation of effort, thereby leading to inefficiencies.

Extensive prescriptive regulations already exist for food stamp recipient

claims. We must change these regulations to address the concerns of State and local officials. Addressing these concerns is a primary objective of this rule.

Extent to Which We Meet These Concerns

We believe that we adequately address the issue of State flexibility in this final rule. When discretion is allowed and where appropriate, we specifically provide State agencies with the opportunity to develop and use their own procedures to manage recipient claims. In addition, we are also willing to approve a waiver of any discretionary provision in this rule where a State can demonstrate that its own procedure would be more effective and efficient, providing such a waiver would not result in a material impairment of any statutory or regulatory rights of participants or potential participants and would otherwise be consistent with the waiver authority set out at 7 CFR 272.3(c).

Regulatory Impact Analysis

Need for Action

This action is needed to: (1) Implement changes in food stamp recipient claims mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA); (2) incorporate Federal debt management regulations and statutory revisions into recipient claim management; (3) provide State agencies with additional tools for establishing, collecting and disposing of recipient claims; and (4) streamline policies and procedures where appropriate.

Benefits

The Federal government and State agencies are the beneficiaries from the provisions in this rule. The Federal government will benefit from increased recipient claims collections brought about by additional collection tools. In addition to the added retention amounts rendered through these increased collections, State agencies will also benefit by the streamlined requirements and procedures in this rule.

Costs

The increased collections brought about by this rule will reduce Program costs by $392.5 million for the five year period fiscal year 2001 through fiscal year 2005.

II. Paperwork Reduction Act

The information collection requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB Nos. 0584–0069, 0584–0446 and 0584–0492.

Reporting and Record Keeping Burdens

FNS–209 Report (OMB No. 0584–0069)

Claim activity is reported by State agencies on the Status of Claims Against Households (FNS–209) report. The OMB approved the information collection requirements for completing and submitting the FNS–209 report under OMB Control Number 0584–0069. This rule makes some changes to the form and reporting requirements. A revised form FNS–209 and a burden estimate will be submitted to OMB under the currently approved OMB Control Number 0584–0069.

Federal Collection Methods for Food Stamp Program Recipient Claims (0584–0446)

The information collection burden for Federal collections of recipient claims is covered under OMB Control Number 0584–0446. This rule makes some changes to those requirements. An estimate of the revised burden associated with this collection has already been approved by OMB.

Repayment Demand and Program Disqualification (0584–0492)

The burden associated with providing notice and demand for payment to households has been approved under OMB Control Number 0584–0492. This rule does not change this burden.

Recipient Claims and Other Reporting Forms Consolidation and Redesign

The proposed rule contained a 60-day notice proposing to combine and consolidate the FNS–209 with a number of other reports. The purpose of this proposal is to reduce the number of reports and data elements to be reported.

We have suspended all work on this project. Other Federal and State priorities (especially Year 2000 changes) have taken precedence. In addition, postponing this project provides us with an opportunity to further assess our data needs and requirements. We will reannounce our forms consolidation proposal with a new 60-day notice when appropriate. All comments received for the 60-day notice included in the May 28, 1998, proposed rule will be taken into account at that time.

III. Background

A. General

Purpose of Rule

This rule creates new standards for establishing and collecting food stamp recipient claims. We aim to strike the optimal balance among various competing goals including program integrity, fiscal accountability, practical claim management, and the rights of individuals and households. We believe that this rule achieves this goal.

Plain Language Changes

President Clinton's memorandum of June 1, 1998, requires us to write new regulations in plain language. This final rule conforms to this requirement. As a result, the formatting and wording used in the regulatory text of this rule differs from the format and text in the proposed rule. However, unless specifically addressed in the comment discussion below, the changes are only in the presentation of the material and not to the actual requirements. We believe the result is a regulation that is both easier to read and understand.

Overview of Food Stamp Recipient Claims

The claims environment

Households receiving overpayments or misusing food stamp benefits undermine the integrity of the FSP. Individual overpayments are relatively small, usually under $500. However, we estimate that, in fiscal year 1998, over $1.4 billion in benefits were overpaid in the aggregate. The efficient and effective establishment and collection of recipient claims to collect these overpayments is essential to program integrity. Nearly 720,000 claims were established in fiscal year 1999 totaling over $307 million.

Although State agencies administer the FSP and collect overpayments, these benefits are federally funded and claims established from overpayments are Federal debts. This unique arrangement is the reason why we need extensive regulations in this area. A strict application of the standard federal collection rules is not the best solution for recipient claim debt management. The reason for this is two-fold. First, the Food Stamp Act of 1977, 7 U.S.C. 2011–2032, (FSA), which governs the FSP, contains certain collection provisions and household protections that are not included in other Federal laws. Second, we must accommodate State agencies in their efforts to operate their respective claims operations as efficiently as possible. A State agency usually tries to integrate its food stamp recipient claims process with claims operations for similar programs such as Temporary Assistance for Needy Families (TANF). To accomplish this, we need to afford State agencies a certain degree of flexibility while maintaining enough

control to ensure effective claims management.

Claim Types and Establishing Claims

A recipient claim falls into one of three categories:

1. Intentional program violation (IPV) claim—This is a claim that is established because the overpayment was caused by fraudulent activity by the household. State agencies are currently able to retain 35 percent of what they collect for this type of claim.

2. Inadvertent household error (IHE) claim—This is a claim that is established if the overpayment was caused by the household unintentionally violating program rules. State agencies are able to retain 20 percent of what they collect for this type of claim. They retain a somewhat higher amount, 35 percent, if the collection is through unemployment compensation benefit intercept.

3. Agency error (AE) claim—This is a claim that is established because the overpayment was caused by a mistake on the part of the State or local agency. State agencies receive no retention for collecting this type of claim.

State agencies establish a claim by documenting the amount and reason for the overpayment, and issuing a demand letter to the household. Nationwide, claims establishment for fiscal year 1999 includes:

	IPV claim	IHE claim	AE claim	Total
Established				
Number	40,712	441,941	237,298	719,951
Amount	$41.1 million	$212.8 million	$53.9 million	$307.8 million
Avg. claim established	$1,010	$481	$227	$427

Collecting Claims

State agencies use various methods to collect claims. The two primary methods are allotment reduction and the Federal debt collection programs such as the Treasury Offset Program:

1. Allotment Reduction—This is when the household's benefits are reduced each month to collect the claim. Allotment reduction is the primary collection method for households that continue to participate in the FSP.

2. Federal Treasury Offset Program (TOP)—State agencies refer delinquent claims to TOP. This is the most effective collection method for households that no longer participate in the FSP. TOP intercepts federal payments that are to be made to individuals. The sources for these offsets vary but currently they are primarily from Federal income tax refunds and Federal salaries.

3. Other Methods—These include, but are not limited to, lump sum and installment payments, wage garnishments, unemployment compensation benefit intercepts, and state income tax refund and lottery winnings.

This is a breakout by the method of collection for fiscal year 1999:

	Allotment reduction	TOP	Other methods	Total
Amount collected	$83.6 million	$85.1 million	$44.3 million	$213.0 million

Of these amounts collected, State agencies retained about $22.7 million for IPV collections and about $22.0 million for collecting IHE claims.

Welfare Reform

PRWORA amended the FSA in a number of ways. This rule implements the provisions of PRWORA relating to recipient claims. The specific provisions were originally addressed in the proposed rule. We received comments on the implementation of a number of these provisions and these comments are addressed in the following section of this preamble.

B. Comment Discussion

Publication of Proposed Rule and Comments

We published the proposed rule, *Food Stamp Recipient Claim Establishment and Collection Standards,* on May 28, 1998, at 63 FR 29303. A total of 96 comment letters were received on this rule. The letters were from 5 recipient interest groups, 3 governmental associations, 40 State agencies, 46 local agencies (43 from 1 State), and 2 non-FNS Federal agencies. The responses contained 494 separate comments. We thank you for your comments and interest. The final rule is a better rule because of your recommendations. We separated the comments by category and discuss them below.

Recipient Claims as Federal Debts

Food Stamp recipient claims are State-administered Federal claims. We included in the proposed rule that these debts are subject only to this and other federal regulations governing Federal debts. We received one comment on this provision in the proposed rule:

Does this new language in the rule restrict a State agency's ability to manage claims?

One State agency was concerned that the language specifying that recipient claims are Federal debts is too strong and restricts State agencies from performing claims establishment and collection more efficiently. It is a legal fact that these claims are Federal debt and, as such, they are subject to certain requirements. However, State agencies may benefit from this Federal claim status. For example, our intention with this provision is to make clear that food stamp recipient claims are included in many of the collection authorities and methods available for other Federal claims. We do not intend to stifle State agency flexibility. To make this clear, we will revise the provision by removing the word "only" to allow this flexibility. (See § 273.18(a)(i)(2)). We also want to remind State agencies that waivers to these regulations are available and may be requested. We will readily approve waivers that serve the best interest of the FSP by increasing efficiency and effectiveness in claims management. Of course, we cannot approve requests that compromise the statutory or regulatory rights of households or are specifically prohibited by the FSA.

Intentional Program Violations

An intentional Program violation (IPV) exists when a person is found to have intentionally violated program rules. A different section of our regulations (7 CFR 273.16) covers how IPVs are determined. We call any resulting claim an IPV claim. In the

proposed rule, a claim is handled as an IPV claim if one of the following occurs:

(1) A court determines that a household member committed an IPV;

(2) A household member is determined at an administrative disqualification hearing (ADH) to have committed an IPV;

(3) A household member signs a disqualification consent agreement for a suspected IPV referred for prosecution; or

(4) A household member signs a waiver of his/her right to an ADH.

One change that we made in the proposed rule (§ 273.18(c) at 63 FR 29325) is to make it optional for State agencies to establish a suspected IPV claim as an inadvertent household error (IHE) claim. We made this proposal to increase flexibility in this area.

The public submitted several comments on IPV claims:

Should we provide additional criteria to determine what claims should be pursued as IPV claims?

One State agency commented that we should provide additional criteria to determine what other occurrences could be pursued as IPV claims. Another State agency recommended that we recognize hearing formats unique to a particular State agency as acceptable for determining an IPV and the resulting IPV claim.

These comments have merit. However, the recommendations deal more with IPV determinations rather than establishing IPV claims. An IPV claim comes from an IPV. It is the finding of IPV itself that determines whether the claim should be pursued as an IPV claim. To come up with additional criteria, we need to address IPV pursuit and determination rather than IPV claim determination. The requirements for actual pursuit and determination of IPVs are not addressed in the proposed rule or in the regulations affected by this rule. Therefore, we will defer these comments until we propose changes to the section of our regulations (7 CFR 273.16) that covers IPV pursuit and determination.

Do we need to add an additional method for determining an IPV?

One State agency recommended that we add an additional method for determining an IPV and the resulting IPV claim. The State agency requested that a claim be considered an IPV when a client enters into a plea bargain or similar negotiations to avoid being adjudicated as guilty, but agrees to pay the debt without admitting guilt.

This situation is already included as an IPV in our current regulations. State agencies already have the ability to use methods described by the commenter to determine IPVs and establish IPV claims under the paragraph on deferred adjudication at 7 CFR 273.16(h) in our current regulations. Therefore, an additional method for IPV determination is not necessary.

Should we have a sub-category for a suspected IPV?

Instead of providing the option to establish a pending IPV claim as an IHE claim, one State agency recommended that we create a separate sub-category for pending IPV claims. The State agency believes that this would alleviate problems associated with establishing a claim prior to prosecution. The State agency's point is valid and the suggestion is good. However, we decided to take a different approach to resolve issues relating to the claim referral and establishment process. As a result, the final rule does not include many of the claim management requirements found in the proposed rule. In the final rule at § 273.18(d), State agencies may develop their own claim management plan to deal with suspected IPVs (as well as other issues). The *Claim Referral and Establishment* section of this preamble provides a more detailed discussion of this matter.

Why not retain the personal contact requirement when an IPV is established?

Our current policy at 7 CFR 273.18(d)(2) states that, if possible, a personal contact shall be made with the household when beginning collection action on an IPV claim. We eliminated this requirement in the proposed rule. Two recipient interest groups believe that we should retain this requirement. The commenters believe that this rule is beneficial to households by insuring that recipients have time to plan for imminent collection activity, and reduce the likelihood that such collection activity is taken in error.

We disagree with the commenters' assertion that this provision provides added benefits to the household. The household affected by an IPV claim has ample opportunity during the hearing and demand letter process to discuss the overpayment as well as future collection action. The retention of this provision is not necessary and therefore is not included in the final rule.

Calculating the Amount of the Claim

The proposed rule goes into detail on how to calculate a claim caused by an overpayment. The final rule at § 273.18(c) provides this information in a user-friendly table. We received several comments on calculating claim amounts:

Should any underpayments be applied to reduce an overpayment when determining the amount of a claim?

One recipient interest group recommended that all household circumstances should be included when establishing a claim. This includes applying any underpayment occurring because of the change in household circumstances against the overissuance with the difference being the claim. The commenter further believes that fairness dictates that this should be done even for periods beyond those for which an underpayment can be restored. The limit for the restoration of benefits is currently one year prior to when the State agency discovers the underpayment.

We believe that the proposed and final rule adequately cover this situation. When a claim is calculated, the State agency determines the correct amount of food stamp benefits for the months in question. This covers circumstances directly relating to the cause of the claim that cause underpayments as well as overpayments. For example, assume an additional household member with earned income joins the household. In this case, the additional income would cause an overpayment. Conversely, an additional household member with no income would cause an underpayment. The additional income would be offset (to some extent) by the larger household size in determining the amount of the claim. For periods in which there are net monthly underpayments, they may be offset against any resulting claim.

The only situation that is not covered by the final rule is when the underpayment happened more than one year before the State agency learned about it. In this instance, the State agency may not use the underpayment to offset an overpayment when calculating a claim. While we recognize that this may not appear fair to the household, this is the law. Section 11(e)(11) of the FSA (7 U.S.C. 2020(e)(11)) does not allow restoring benefits that are greater than one year old.

We want to make one final point regarding claims calculation. When calculating a claim, a State agency is expected to only use new data that it becomes aware of due to circumstances regarding the claim. A State agency is not required to re-verify all factors pertaining to the household.

Why are we not allowing the earned income deduction when calculating IHE claims?

We proposed to not allow the 20 percent earned income deduction to that part of any earned income that the household failed to report timely. One State agency objected to this proposed policy change. The commenter argued that, since the household inadvertently made the mistake, we should not further penalize the household. The State agency also argued that our proposal would conflict with its TANF policy. While the commenter does make some valid points, we have no choice in this matter. This rule change is set by legislation. Section 809 of the PRWORA, by amending section 5 of the FSA (7 U.S.C. 2014), specifically prohibits the inclusion of the 20 percent earned income deduction for these types of claims. As a result, this provision remains as proposed in the final rule. (See § 273.18(c)(1)(ii)).

Claims for Recipient Trafficking

The proposed rule would provide State agencies with the authority to establish recipient claims for trafficking. The public submitted 41 comments on this proposal. State and local agencies generally supported this proposal with some agencies expressing minor concerns or requesting clarifications. However, several recipient interest groups, along with a few State agencies, questioned the legality as well as the propriety of this proposal.

Are trafficking claims legal and appropriate?

Five commenters disagreed with our assertion in the proposed rule that the FSA allows us to authorize State agencies to establish claims for trafficking. The commenters contend that the FSA only provides for claims due to an actual overpayment and that we have no authority to develop new principles for when a debt is owed. We concur with the commenters that, generally, an overpayment occurs when a household receives more benefits than the household is entitled to receive. However, we still believe that we are able to extend claim establishment authority to instances of trafficking and benefit misuse. Section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) allows us to provide State agencies with " * * * the power to determine the amount of * * * any claim * * * including, *but not limited to,* claims arising from * * * overissuances to recipients * * * (emphasis added)." The "not limited to" language shows that Congress did not intend to specifically limit this authority to overpayments caused by certification and issuance errors. Moreover, Congress directed us to issue such regulations as are necessary or appropriate for the effective and efficient administration of the FSP so long as the regulations are consistent with the FSA, 7 U.S.C. 20139(c). Since the misuse of FSP benefits is clearly inconsistent with the purposes of the Program, and the establishment of claims can deter the misuse of benefits and allow for recovery of such benefits, we believe the establishment of claims for trafficking against recipients is within our authority. Considering this, our proposed provision is authorized by the FSA and therefore remains in this final rule.

Why are all household members, and not just the trafficker, responsible for paying a trafficking claim?

The proposed policy states that all adult household members are jointly and separately responsible for the payment of claims. One commenter remarked that only the trafficker should be responsible for a trafficking claim rather than all adult household members. The commenter points out that each adult in a household cannot reasonably be expected to be present or even aware each time someone in the household transacts the benefits. Therefore, according to the commenter, a responsible adult household member would often have no means of being aware of, much less preventing, the trafficking. While this is a valid point in some cases, we believe that, in most instances, responsible household members are able to control the use of their benefits. First, when the State agency initially issues the electronic benefits transfer (EBT) card, a household undergoes an orientation or receives written training materials on the proper uses of the card. Second, we have no reason to believe that responsible household members are not savvy enough to recognize when the benefits are not properly being used. Finally, EBT cards contain personal identification numbers to specifically limit who has access to benefits. For these reasons, we believe that it is appropriate to hold all adult household members jointly and severally liable for a trafficking claim.

Should a State agency set up a claim against the household when a household member did not conduct the improper transaction?

Two commenters assert that trafficking claims may be inappropriate because EBT transaction printouts (that form the basis for most of the EBT-related claims) do not identify who actually used the EBT card in the improper transaction. As an example, the commenters state that a disabled or temporarily incapacitated person may ask a friend, neighbor, or family member to purchase food. The disabled person would have no way of controlling what these "helpers" do with the benefits. In general, recipients are responsible for preventing benefit misuse by others. However, we agree with the commenters that these instances may in fact occur. Where good cause, such as the household being taken advantage of by an authorized representative, can be established then there should be no trafficking claim. The State agency may then, with the household's assistance, pursue the trafficking violation against the individual who inappropriately used the household's benefits. (See § 273.18(a)(4)(iii).)

Shouldn't this proposal be used only for more serious forms of trafficking?

One State agency commented that the proposal is too severe and it should only be used for some instances of trafficking. The commenter continues by stating that an otherwise responsible household may try to redeem benefits for other than food items due to some emergency. While we recognize that some forms of trafficking may be less objectionable than others, we still must disagree with this comment. With rare exception, the FSA (7 U.S.C. 2013(a)) and longstanding policy is clear in not allowing FSP benefits to be used for anything other than food. Compromising on this policy in this instance would undermine the basis for the FSP itself.

How will this proposal deter trafficking?

One recipient interest group commented that implementing this proposal is unlikely to deter future traffickers. The commenter's reasoning is that the increase in the penalty that this rule would make is quite small in comparison to the other penalties that already exist for trafficking. Existing penalties include program disqualification and, for more grievous offenses, fines and imprisonment. According to the commenter, adding this relatively small penalty with these larger penalties already in place, will have no effect to deter future trafficking. We would first point out that the proposal was not intended to establish a penalty but to authorize claims to recover the value of misused benefits, which could also have a deterrent effect. While we are unable to estimate the magnitude of this deterrent effect, at a minimum, authorizing claims for

trafficking allows us to recover misused FSP benefits. Furthermore, our proposal is an integral part of a comprehensive effort to deter trafficking and, as such, this approach, including all of the applicable penalties, must be looked upon in its entirety. For this reason, the proposal will remain in the final rule.

Why establish a recipient claim when the retailer, rather than the household, "profits" from a trafficking transaction?

One State agency strongly objected to this proposal because it believes that it is the retailer, and not the recipient, that profits from a trafficking transaction. The retailer profits by providing cash at a discounted rate (usually 50–60 percent) for benefits. As a result, the household almost certainly realizes a reduced value from the benefits. The commenter believes that, since the transaction benefits the retailer, it is the retailer, rather than the household that should bear more of the burden for this responsibility.

Trafficking requires both a retailer and a recipient. Severe penalties are already in place for retailers and we are constantly looking for ways, both legislatively and administratively, to further strengthen our efforts against irresponsible retailers. Until now, program disqualifications have been the only recourse against recipients who traffick. We believe that this is not enough. Authorizing State agencies to establish a claim against recipient traffickers provides an additional disincentive for those recipients who do, in fact, traffick.

We also disagree with the commenter's contention that State agencies should not additionally punish recipients because they are not "profiting" from trafficking transactions. We concur with the commenter that a trafficking household is making an unprofitable transaction from a purely financial point of view. However, whether the trafficking household actually "profits" should not be an issue. Fraud and abuse that threatens program integrity is the basis for this provision. Evidently, in their view, recipients profit from these transactions since it provides them with additional cash or material goods.

Can collections be made against both the retailer and the household for the same amount trafficked?

In the preamble to the proposed rule (63 FR 29307) we addressed the fact that there is no correlation between retailer fines and recipient trafficking claims. Retailer fines provide for monetary penalties significantly larger than the amount trafficked. In these instances both the retailer fine and recipient claim can be independently collected with no coordination necessary between the two categories of debt. However, in addition to these larger penalties, we are moving towards administratively establishing claims against retailers for the amount trafficked. Since both this action and recipient trafficking claims directly correspond to the amount trafficked, we must take into account the False Claims Act (31 U.S.C. 3729–3731). The False Claim Act (31 U.S.C. 3729–3731) does not allow a collection to exceed the total amount lost. We are currently looking at ways to make it administratively feasible to collect from both the recipient and the retailer while ensuring that total collections will not exceed total amount lost. For the purposes of this rule, however, no change is necessary.

Can this provision result in a household actually owing more than the household is issued?

Two commenters stated that this proposal may result in households owing more benefits than were actually issued. This would occur when a household receives an overissuance and then trafficks those benefits. In this scenario, the household would essentially repay double the original benefit issued. We agree with the commenter that this is possible. However, we do not believe that this warrants not allowing recipient trafficking claims in these instances. Trafficking is independent of the issuance or certification process and therefore any corresponding claims assessed by the State agency are unrelated. In addition, we have a longstanding policy that an individual may receive more than one IPV for violating two or more unrelated program rules (such as change reporting and trafficking) during the same time period. This same policy is being extended to recipient trafficking claims.

Is this proposal considered an unfunded mandate and will additional funding be made available?

We received seven comments on the added workload imposed by this proposal and whether additional funding or training will be made available. Three commenters consider this proposal an unfunded mandate. Two commenters added that the pursuit of traffickers should be solely a federal responsibility.

The purpose of this proposal is to supplement our existing policy regarding the pursuit of recipient trafficking. State agencies have always been required to pursue any IPV, including recipient trafficking. This is *not* new policy and this rule is *not* introducing new policy regarding additional IPV pursuit. Therefore, this is not an unfunded mandate. The purpose of this proposal is simply to authorize State agencies to establish claims against traffickers that are already being pursued. In many of these instances, the amount trafficked has already been determined. As such, the added costs to establish these claims are minimal.

Establishing claims for trafficking allows State agencies to recover more of the costs associated with the pursuit of fraud. Currently, when a State agency pursues an IPV against a trafficker, the agency receives nothing more than the normal administrative match. Pursuing claims against these traffickers allows the State agency to retain 35 percent of collections for IPVs with minimal additional establishment costs.

As discussed above, the pursuit, prosecution and determination of IPV against recipients who traffic is not new policy. However, we do recognize that, with the advent of EBT (that provides States with the ability to identify potential traffickers), this is a relatively new area for some State agencies. We also recognize that, since this is a new area, some State agencies may be pressed to allocate additional resources. Because of these concerns, we are taking the opportunity in this preamble to address this issue. Obviously, State agencies are not expected to "catch" and subsequently pursue every single questionable EBT transaction. However, State agencies are to pursue potential recipient trafficking incidents referred by us. In addition, while a State may pursue any other trafficking offense, State agencies should prioritize their efforts and concentrate on those trafficking incidents that are more egregious. These include those of a repeated nature that contain high dollar amounts. In addition, States should also concentrate their efforts on incidents that include trafficking for controlled substances, firearms and similar. States agencies are encouraged to set pursuit and prosecutorial standards and dollar thresholds to ensure that their recipient trafficking program is targeted towards these areas. This will result in enhanced program integrity as well as a recipient trafficking pursuit process that is both effective and efficient.

What is considered trafficking?

Three commenters requested clarification on what specifically is considered trafficking. To accommodate this request, we will cross reference the text in this final rule at § 273.18(a)(1)(ii)

with our standard definition found in 7 CFR 271.2 of our regulations.

How should we, as State agencies, calculate trafficking claims?

The proposed rule stated that the amount of a trafficking claim would be the value of the trafficked benefits as determined by the individual's admission, adjudication, or the documentation that forms the basis for the trafficking determination.

One State agency asked whether the claim would be the amount of food stamp benefits that the client expended in the trafficking transaction or the amount of cash the individual realized as a result of the trafficking transaction. The claim would always be for the amount of the food stamp benefits since that was the amount of benefits lost because of the illegal transaction.

Are EBT documentation records sufficient for determining the amount of the claim?

We received one comment stating that EBT transaction records are not sufficient to determine the amount of the claim. In addition, two State agencies commented that, since many times we alert the State agency of the trafficking offense, we should also develop the information to document the fact of trafficking and the claim amount. We disagree that this is a Federal responsibility. Although, at times, we will provide State agencies a good deal of information on specific recipient trafficking incidents, several State agencies have pointed out in comments and at public forums that EBT transaction documentation is a clear indicator of the amount trafficked. These agencies further emphasize that they can easily convert these amounts into the corresponding claim. We are always willing to provide technical assistance upon request to State agencies in this area.

Should we have an inadvertent benefit misuse (Non-IPV trafficking) claim?

The proposed rule includes a provision that allows State agencies to establish "inadvertent" benefit misuse claims against households. State agencies may use this authority in trafficking situations that do not warrant IPV determinations. Three commenters requested more clarification and guidance for this proposal. One commenter disagreed with this proposal and contended that any misuse of benefits is intentional.

The provision was originally proposed to maximize State agency flexibility in this area. However, upon further examination, we do not believe that it is appropriate for State agencies to establish a benefit misuse claim against those households that have not been found to have trafficked. Our purpose in authorizing this type of claim is to deter trafficking. Allowing "inadvertent benefit misuse" claims for unintentional offenses does little to contribute to this goal. Therefore, the final rule does not authorize a State agency to establish a benefit misuse or trafficking claim against a household unless there is an actual determination of IPV. (See § 273.18(a)).

Claim Referral and Establishment

We proposed many changes to improve the management and establishment of claim referrals. A claim referral is the identification of a potential overpayment that needs to be investigated and established as a claim. The current regulations provide no guidance on managing suspected overpayments and claim referrals. As a result, some State agencies were either not establishing claims or they were not developing or enforcing internal time frames, thereby causing a backlog of claim referrals. When a backlog exists, claims are not timely established. Claims that are established timely stand a better chance of being collected.

To address this situation, we proposed standards for claim establishment. The proposed standards included the following:

(1) Defining the discovery and establishment dates for claims;

(2) Requiring the tracking of claim referrals;

(3) Establishing the end of the quarter following the quarter of discovery as the time frame for claim establishment; and

(4) Defining that a backlog exists when over 10 percent of referrals do not meet the establishment time frame.

We received 129 comments from 77 commenters on this proposal. Only four comments supported some aspect of our proposal. The remaining 125 comments generally indicated that we are interfering too much with State-specific processes. These processes are unique and cross program and organizational boundaries. Changing these procedures and processes to conform to our specific rules would cause inefficiencies within State agencies that would be contrary to the spirit of this rule.

Our primary purpose in proposing these changes was to improve claim referral management. However, the comments received clearly show that flexibility is needed in this area. Therefore, in the final rule, we include an optional provision to improve claim referral management that addresses this need for flexibility. This new procedure reflects the collective view of the comments that State agencies can better manage claim referrals if States have latitude to tailor the management of claims establishment and collection to local situations.

The final rule retains the proposed standard for establishing claims. However, in lieu of using this standard, we are allowing State agencies to develop and follow their own standards and procedures subject to our approval (see § 273.18(d)). At a minimum, this procedure, known as a State claim referral management plan, must include the following:

State Claim Referral Management Plan Minimum Requirements

(1) Justification as to why your standards and procedures will be more efficient and effective than our claim referral standard.

(2) Procedures for the detection and referral of potential overpayments or trafficking violations.

(3) Time frames and procedures for tracking regular claim referrals through date of discovery to date of establishment.

(4) A description of the process to ensure that these time frames will be met.

(5) Any special procedures and time frames for IPV claim referrals.

(6) A procedure to track and follow-up on IPV claim referrals when they are referred for prosecutorial or similar action.

This plan will be subject to our approval. We will approve any plan that demonstrates that procedures are in place to ensure that claim referrals are acted on in an effective and efficient manner. In addition, we will provide assistance to those State agencies who need help in developing a plan. A State agency will maintain maximum flexibility in this area, provided it is following its plan and managing claim referrals efficiently. We do reserve the right, however, to step in and impose requirements as part of a corrective action plan if a State agency is not performing this function in an efficient and effective manner.

Our goal, as described above, is to ensure efficient and effective claims referral management while maximizing State agency flexibility. Allowing State agencies to develop their own plan maximizes this flexibility. However, we need to ensure that the State agency's plan results in overall effective and efficient claims management. For this, we believe the best measure is claims collections. A high rate of collection is indicative of a high level of efficiency and effectiveness throughout the claims

process. We will therefore assess State agencies performance by comparing collections with overpayment rates in a State. State agencies whose collections are low compared to past and current national levels will be required to develop a corrective action plan to address any deficiencies. (See § 273.18(a)(3)).

Claims Threshold and Cost-Effectiveness Policy

A claims threshold is the overpayment dollar amount under which State agencies do not need to pursue a particular overpayment. We currently have a $35 claims threshold. This current threshold applies only to non-participating households with non-IPV overpayments. We proposed many changes in the May 28, 1998 rule:

PROPOSED THRESHOLD AND COST-EFFECTIVENESS DETERMINATION POLICY FOR STATE AGENCIES

You May Follow Your Own Cost Effectiveness Plan and		
opt not to establish any claim if . . .	Unless . . .	or . . .
you determine that the claim referral is not cost effective to pursue.	you do not have a cost-effectiveness plan approved by us.	you have already established the claim.
Or You May Follow the FNS Threshold and		
opt not to establish any claim if . . .	Unless . . .	or . . .
You determine that the claim referral is $125 or less.	the household is participating in the FSP	you have already established the claim.

We received 24 comments on this comprehensive proposal. Seven commenters specifically supported our proposal to allow State agencies to develop and use their own cost-effectiveness plan. We derived the following questions from the other comments:

Why not retain the original $35 FNS threshold for IHE claim referrals?

One State agency supported retaining the old $35 threshold for IHE claim referrals. As discussed in the proposed rule (63 FR 29308), we believe that the $35 benchmark is outdated and does not accurately reflect State establishment and collection costs. We continue to believe that the $35 benchmark needs to be updated. We are therefore retaining the proposed $125 threshold amount in the final rule. (See § 273.18(e)(2).) However, the use of this maximum threshold is optional. The final rule does not prevent any State agency from establishing any claim for an amount lower than the $125 threshold. In other words, the State agency submitting this comment is free to establish any claim, regardless of the amount.

Why do we extend the FNS threshold to include IPV claim referrals?

The proposed threshold included IPV referrals. Three commenters believe that the threshold should not include IPV referrals. They believe that it is inappropriate because the overissuance is caused by an individual intentionally breaking program rules. The severity of the offense, according to the commenters, dictates that a claim be established and pursued.

We recognize the commenters' concerns. However, we still believe that this policy should remain a State agency option. The goal of this rule is to maximize flexibility. Even though the overpayment was intentional, there may be instances in which it is in the best interest of the FSP for a State agency not to pursue the resulting IPV claim because of the relatively low dollar amount. This final rule retains this flexibility. (See § 273.18(e)(2).)

Should participating households be excluded from the FNS threshold?

The proposed rule excludes participating households from the threshold. The reasoning behind this is that these claims may be recovered by reducing the household's allotment. Six commenters believe this exclusion is unfair and impractical. It is unfair, according to the commenters, because the poorest households, those still participating in the Program, need to repay every overpayment. On the other hand, those not participating and generally more well-off, are not charged with repaying smaller overpayments. The commenters also argued that the proposal is impractical because of the dynamic nature of the FSP. Since households move on and off the FSP, State agencies are unable to accurately assess which households are actually no longer participating in the FSP.

We recognize the difficulties associated with limiting this threshold to non-participating households. However, allotment reduction is a readily available collection method for participating households. We believe that program integrity would suffer if a relatively large number of overpayments that are easily recoverable are routinely not pursued. In addition, the costs associated with allotment reduction are relatively small. Therefore, we are not extending the FNS threshold to include participating households. (See § 273.18(e)(2)). However, to maximize flexibility, we would consider appropriate a threshold for participating households that is lower than the threshold for non-participating households. State agencies may include such a two-tier threshold when it submits its own cost effectiveness plan for our approval.

Why don't we increase the amount of the FNS threshold to equal the highest amount allowed through waivers?

So far we have approved cost effectiveness waivers for up to $250 for non-participating households. One State agency recommended that we increase our FNS threshold from the proposed $125 to the highest amount ($250) currently approved through waivers. The commenter stated that a review of the currently approved waivers demonstrates that the $125 threshold is too low. We do recognize that a number of State agencies incur costs significantly above the $125 threshold. However, we purposely set this threshold lower to ensure that prudent claims management is maintained among those States that incur relatively low claim establishment and collection costs. States with higher costs are free to develop their own methodology. The $125 FNS threshold in the proposed rule remains. (See § 273.18(e)(2)).

What is meant by not applying the FNS threshold to already established claims?

In the proposed rule, the FNS threshold does not apply to already established claims. One State agency asked for clarification. The $125 FNS threshold covers the combined costs of establishing and collecting the claim.

The threshold no longer applies once the claim is established. Disposing of an already established claim because it is not cost effective to collect is discussed in the *Terminating Claims* section of this preamble.

Shouldn't the FNS threshold automatically increase with inflation?

The proposed FNS threshold is fixed at $125. One commenter recommended that the threshold automatically increase with inflation. The commenter makes a valid point. However, we are reluctant to include this in the final rule because we are unsure if we should tie claim establishment and collection costs directly to inflation. Advances in automation and the introduction of other efficiencies may actually bring down establishment and collection costs in the future. The threshold remains fixed in the final rule (See § 273.18(e)(2)).

Isn't the FNS threshold unfair to larger households?

. Two commenters suggested that the claims threshold take into account both the monthly amount and duration of the overpayment. They felt it was unfair that a larger household can easily have an overpayment well over $125 in just one month, while a smaller household, that receives a smaller issuance, can have an overissuance that extends several months, but does not total over $125. The commenters felt that overpayments of short duration should not be pursued. The real problem is ongoing overpayments. The commenters suggested that a claim must both exceed $125 in total and represent overpayments continuing for more than three months.

We recognize that a larger household, on average, would have a larger claim than a smaller household. However, basing a threshold both on duration and amount systematically excludes large overpayments from collection and removes an incentive for households to report changes timely. We do not believe that this is good claims management. The rule remains unchanged.

Will having different thresholds for some State agencies result in unequal treatment for households?

State agencies have the option in the proposed rule to develop their own cost-effectiveness procedures. One commenter is concerned that this may result in unequal treatment to households across State lines. Unequal thresholds are certain to happen under this rule. However, State agencies have been working with different thresholds based on waivers for many years. Providing this flexibility provides State agencies with an important claims management tool. The fact that some will escape payment does not change the fact that all collections are from those who previously received overpayments. This proposal will remain in the final rule. (See § 273.18(e)(2)).

Will State agencies receive guidance to determine their own cost-effectiveness provisions?

Some State agencies requested technical assistance to develop their cost-effectiveness provisions. We are developing broad guidelines based on prior waiver submissions. You may contact your regional office to obtain these guidelines as well as to receive other technical assistance in this area.

What is meant by "jurisdiction" in the preamble of the proposed rule?

The preamble of the proposed rule (63 FR 29309) states that ". . . no jurisdiction would be prevented from establishing and/or pursuing the collection of any claim that falls under the threshold." One State agency asked whether a "jurisdiction" meant a region, state or a county. The answer is State agency. However, our intent in this passage is not to dictate any further requirements or limitations. The intent is simply to provide that it is up to each State agency to decide how it wishes to use the threshold. We have no problem with State agencies delegating this authority to counties or other local agencies.

How can we be sure that any overissuance has a chance to be developed into a claim?

We are concerned that any claims threshold not create an incentive for households to obtain overpayments below the threshold with impunity. To address this concern, we include in the final rule the stipulation that a claim must be pursued for any overpayment discovered through the quality control system. This ensures the chance that any overpayment, regardless of size, may be subject to establishment and collection. (See § 273.18(e)(2)).

In summary, what changes regarding this proposal are incorporated into the final rule?

There is only one change in threshold and cost-effectiveness determination policy from the proposed rule. That change is that a claim must be pursued if the overpayment is discovered in a quality control review.

Notification of Claim

The proposed rule contains several new requirements regarding notification. These requirements affected either the food stamp application or the initial demand letter. We received 28 comments regarding the new and existing requirements.

Why must we add language to the application form concerning the use of the social security numbers to pursue claims?

Six State agencies and one recipient interest group commented that it is more appropriate to include this information in the demand letter rather than the application form. The recipient interest group commented that the language appeared intimidating and may actually discourage participation in the program.

The purpose of this language is not to be intimidating but rather to inform recipients how their social security number may be used. This notification is required by the Privacy Act of 1974 (5 U.S.C. 552a, note 2) and the Debt Collection Act of 1982 (31 U.S.C. 3716(a)). As a result, we have no choice but to include this notification in the final rule. However, we are simplifying the language to make it appear less intimidating. (See § 273.2(b)(4)).

One State agency asked why we include that claims "may be referred * * * to the Department of Justice (DOJ) for litigation" in the language to be included in the application form. We proposed to add this language because, since food stamp claims are Federal claims, they may, in fact, be referred to DOJ. However, because recipient claims are usually for relatively small amounts, referral to DOJ would be extremely rare. Therefore, we are not including this requirement in the final rule.

Does the household need to have actually received the notice for the notice requirements to have been met?

Three recipient interest groups and two State agencies submitted comments concerning whether the household actually needs to receive the notice. The State agencies requested clarification as we do not address this specific area in the proposed rule. The recipient groups want to ensure that the household does, in fact, receive the notice. These comments are connected to the fact that we deleted a provision in the existing rule at 7 CFR 273.18(d)(1)(i)(B) that allowed State agencies not to pursue a claim if the household cannot be located.

We believe sending the notice via first class mail is an efficient and reliable

method to deliver demand letters. If the mail is not returned by the Postal Service, the State agency can assume that the household received the notice. The State agency may then proceed with collection action.

If the mail is returned, then obviously the household did not receive the notice. Under the existing regulations, the State agency did not need to further pursue this claim. The proposed rule eliminated this option. Considering the comments received above, we are reinstating this option in the final rule. State agencies may (but are not required to) terminate the claim if the household cannot be located. (See § 273.18(e)(8)).

Are State agencies allowed to send the demand letter and notice of adverse action (NOAA) separately?

The proposed rule requires the State agency to provide the household with a NOAA "as part of or along with" the initial demand letter/claim notification. Two commenters stated that they send the NOAA separate from the demand letter. The NOAA is sent subsequent to the demand letter, when it is determined what "adverse action" will take place.

In our proposal, we did not intend to require that the NOAA accompany the demand letter. However, in looking at the proposed language, we see how it could be interpreted in that way. Therefore, we are changing this language in the final rule to clear up this confusion. (See § 273.18(e)(3)(iii)).

Should the household be advised in the demand letter that the State agency can compromise the household's claim?

Two recipient interest groups commented that the State agency needs to notify the household that the State may be able to compromise its claim. The groups cite a recent court case, *Bliek* v. *Palmer*, 102 F. 3d 1472 (8th Cir. 1997). In *Bliek*, the court ruled that the failure to properly advise a household of the agency's compromise authority violates the household's due process rights.

While we do not agree with the court decision that we were violating the due process rights of the household, we do recognize the benefits of including this language in the demand letter. Therefore, we are including language for the demand letter specifying that the State agency may compromise a claim in the demand letter requirements. (See § 278.18(e)(3)(iv)(M)).

Don't we need more information in the demand letter in addition to informing the household of the "type" of claim?

One recipient interest group commented that it is unclear as to what we mean when we require that the household must be informed of the type of overpayment. Our intention is that the household would be informed of the reason for the overpayment and time period involved. This also includes whether it is an IPV, IHE or AE claim as well as a brief explanation (such as unreported income, etc.). We make this intention clear in the final rule at § 273.18(e)(3)(iv).

We also received two comments stating that the demand letter needs to show how the claim was calculated. We agree and will include this as a requirement in the final rule. (See § 273.18(e)(3)(iv)(E)).

Must the demand letter contain a due date?

The purpose of including the due date in the demand letter is to determine delinquency. We received two comments on the proposed requirement to include a due date in the demand letter. One State agency asked whether a specific date is needed or if language such as "30 days from the date of this letter" is sufficient. The commenter believed that a specific date is not needed since: (1) It is clear to the household when payment or a response is due and (2) the State agency would still be able to determine delinquency status. We agree. The second commenter believed that including a due date would confuse participating households. The due date is irrelevant for these households because they are about to have their benefits automatically reduced to pay off the claim. Again, we agree. However, any subsequent notification to the household once it leaves the program must include a due date. The final rule reflects this change. (See § 273.18(e)(3)(iv)(N)).

Can a State agency continue to provide participating households with the choice of how to repay the claim?

The proposed rule requires State agencies to automatically collect any claim from a participating household through allotment reduction. One State agency asked whether they could still give a participating household a choice in the demand letter of how to pay the claim.

We believe that allotment reduction is by far the most efficient way to collect a claim. However, to maintain the spirit of this rule, we do not object if a State agency wishes to give the household other options. The only requirement is that the household pay off the claim at the same or higher level of the amount that would have been collected through allotment reduction. This is reflected in the final rule at § 273.18(e)(3)(iv) and § 273.18(g)(i).

What exactly needs to be included in the initial demand letter/claim notification?

Two recipient interest groups commented that we should spell out exactly what needs to be in the demand letter. We agree. The following table lists what needs to be in the demand letter. The changes discussed above are included in this listing and at § 273.18(e)(3)(iv) in the final rule:

The initial demand letter or NOAA must include . . .

(1) The amount of the claim.
(2) The intent to collect from all adults in the household when the overpayment occurred.
(3) The type (IPV, IHE, AE or similar language) and reason for the claim.
(4) The time period associated with the claim.
(5) How the claim was calculated.
(6) The phone number to call for more information about the claim
(7) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.
(8) The opportunity to inspect and copy records related to the claim.
(9) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim
(10) That, if not paid, the claim will be referred to the Federal government for federal collection action.
(11) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.
(12) That, if the claim becomes delinquent, the household may be subject to additional processing charges.
(13) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.
(14) A due date to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction
(15) If allotment reduction is to be imposed, the percentage to be used and the effective date.

Claims and Fair Hearings

Households have 90 days to request a fair hearing if they believe that some

part of the claim is incorrect. Several comments were received on the interaction between fair hearings and claims.

What must the State agency include in the demand letter/repayment notice sent following a fair hearing decision?

In the proposed rule, when a hearing decision is rendered sustaining an overpayment, the State agency must send a second demand letter to the household. Three State agencies questioned the need for such a letter as the household already received the original letter.

It was not our intention to have the post-fair hearing demand letter be the same as the original demand letter. However, we still believe that some type of notice is necessary. The post-fair hearing demand notice only needs to be a statement saying that the household still owes the claim and what will be the next step (i.e., allotment reduction or demand for payment). The date of delinquency will be based on the time period provided in this notice. This clarification is reflected in the final rule at § 273.18(e)(6)(ii).

In addition, one local agency asked whether the household can request a fair hearing based on this notice. The answer is no. Since the amount of the claim has already been sustained at a hearing, a second hearing on the same issue is not an option.

Does collection action really need to stop when a fair hearing is requested?

In the proposed rule, all collection actions would stop if a fair hearing is requested. Five State agencies disagreed with this proposal. The commenters stated that this procedure would result in collection delays of several months. We recognize the commenters' concerns. However, we believe that the rights of households supersede these concerns. For this reason, our policy to cease collection action when a fair hearing is requested will remain in the final rule.

Delinquency

Referring appropriate claims for TOP and other Treasury reporting requirements make it necessary for us to determine when a claim initially becomes delinquent. In the proposed rule, a claim becomes delinquent if no response or payment is received by the due date in either the demand letter or repayment agreement. A claim remains delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked. We received six comments specifically supporting this definition. We received an additional four comments concerning the applicability of this definition.

Can claims handled through the court ever be considered delinquent?

The proposed rule stated that a claim may not be considered delinquent if collection is coordinated through the court system and the State agency has limited control over the collection action. One State agency commented that we should not make an exception for claims paid through the court. We are not making an overall exception in this case. Our intent is simply to accommodate situations that are unique to some States. In these situations, the State agency has limited contact with the court and is not always able to accurately determine the status of the claim. As a result, the State agency is unable to determine if the claim is delinquent. This policy only pertains to these situations. (See § 273.18(e)(5)(v)).

Is the claim still considered delinquent if the household is making a good faith effort to pay the claim?

The existing rules provide for a comprehensive notice and an opportunity to have a payment plan reinstated if an installment payment is missed.

The proposed rule eliminated this provision. Three recipient interest groups commented that this provision should be reinstated. They contend that there may be many reasons why a payment may be missed, and those who are making a good faith effort to repay the claim should be protected. We agree with the commenters that a single missed or partial payment should not automatically subject the household to the involuntary collection actions brought about by TOP. When a good faith effort is being made to pay the claim, circumstances do exist where it may be appropriate to reinstall or re-negotiate the repayment schedule. However, even though the provision providing for this opportunity is removed, the effect of the provision is still the same. Under both the existing rules and Section 13(b)(4) of the amended FSA (7 U.S.C. 2022(b)(4)), State agencies already determine whether to accept a proposed reinstatement or re-negotiation plan. This final rule in no way prohibits households that are making a good faith effort from requesting reinstatement or re-negotiation of its payment plan and we strongly encourage State agencies to consider such requests on a case-by-case basis. In addition, if hardship exists, a State agency may compromise a claim and/or adjust the installment payment to lower amount.

Should delinquency be pushed back to at least 90 days after the demand letter?

We defined delinquency as when payment is not made by the due date. This due date is not to be more than 30 days after the date of the initial demand letter (see § 273.18(e)(3)(v)). Three recipient interest groups suggested that the delinquency time frame should be at least 90 days. This 90 day period corresponds to the time period when the claim may be appealed as well as providing households with adequate time to determine how to address the claim. The commenters also contend that State agencies will incur unnecessary administrative expenses because they would need to reverse any collection process in place when the claim is appealed.

We disagree with the commenters that 90 days would be more appropriate. The delinquency date is primarily used to determine whether a claim is to be referred for TOP. As specified in this final rule at § 273.18(n)(1)(i), a claim must be delinquent for 180 days before being referred for TOP. Combined with a 30-day delinquency time frame, this already provides the household with up to 210 days after the initial demand letter to adequately address its claim. In addition, relatively few households request fair hearings on claims. State agencies have indicated that those households that do request a fair hearing usually make the request shortly after receiving the notice. Therefore, extending the delinquency time frame to accommodate the fair hearing time frame serves no practical purpose for either the household or the State agency. This proposal is carried over into the final rule. (See § 273.18(e)(5)).

Household Cooperation Waiver Authority

The "Calculating Overissuance Claims" section on page 29307 of the preamble to the proposed rule discussed allowing a State agency to waive up to 20 percent of the claim if the household cooperates with the establishment of its claim. However, we did not include this in the proposed regulatory text. Three commenters supported including this incentive in the final rule. However, eight commenters disagreed with this incentive stating that household cooperation should not be a basis for reducing an overissuance. We concur with the eight commenters and did not include this incentive in this final rule.

Terminating and Writing-Off Claims

A terminated claim is a claim for which all collection action has stopped. A written-off claim is a claim that is no longer subject to our reporting and collection requirements. We proposed that a terminated claim must be immediately written off. The table below summarizes our proposed policy for State agencies on terminating and writing-off claims:

PROPOSED TERMINATION POLICY

If . . .	Then you . . .	Unless . . .
(1) a hearing or court finds the claim to be invalid.	must terminate and write-off the claim or determine if an IHE or AE claim still exists.	
(2) all adult household members die	must terminate and write-off the claim	you plan to pursue the claim against the estate.
(3) the claim balance is $25 or less and the claim has been delinquent for 90 days or more.	must terminate and write-off the claim	
(4) you determine it is not cost effective to pursue the claim any further.	must terminate and write-off the claim if we previously approved your cost-effectiveness criteria.	we have not previously approved your overall cost-effectiveness criteria.
(5) the claim is delinquent for three years or more.	must terminate and write-off the claim	you have received prior collections through the Federal Offset Program, state tax refund offset or any similar collection mechanism.
(6) a new collection method is introduced or an event (such as winning the lottery) occurs to substantially increase the likelihood of further collections.	may reinstate a terminated and written-off claim.	

The public submitted 19 comments regarding this proposal. Four State agencies supported this proposal as written. The other commenters had concerns primarily focusing on accounting treatment, the three year termination time frame, and claim reinstatement.

Can a claim be found to be invalid (and subsequently terminated under the first criterion) only as a result of a hearing?

Two commenters pointed out that terminating an invalid claim should not be limited to hearing decisions. Occasionally, a State agency becomes aware of factual information that negates an already established claim. In these instances, the commenters believe that the State agency should have the authority to terminate the claim. We agree. The final rule at § 273.18(e)(8)(ii)(A) reflects this change by not limiting this termination criterion to hearing and court decisions.

Is writing-off an invalid claim considered proper accounting?

One commenter stated that a claim found to be invalid (see criterion (1) above) should not be written-off but disposed of in another manner. The reason is that only "bad debts" should be written-off. An invalid claim is not a bad debt but rather a debt that never should have existed in the first place. We agree with the commenter. Therefore, in the final rule, we will reflect that all debts terminated because they are invalid will be considered a balance adjustment rather than a write-off. (See § 273.18(e)(8)(ii)(A)).

Why is the time frame for terminating delinquent claims only three years?

Six commenters expressed concern that three years are not long enough to pursue collection before terminating and writing-off the claim. According to the commenters, experience has shown that the nature of the Treasury Offset Program (TOP) is such that significant collections often take place after the claim is delinquent for three years.

The purpose of proposing the three year time frame is to dispose of receivables that are laying idle and the likelihood of further collection action is relatively low. Recent audits and management reviews indicated a need to dispose of these claims. However, after considering these comments, we are going to modify this proposal. The final rule still allows State agencies to terminate claims that have been delinquent for three years. However, a State agency is not required to terminate the claim if it believes it is cost effective to retain the claim in TOP beyond the three years. In this manner, claims will either be terminated or actively pursued in TOP. No claim will be allowed to simply remain idle. (See § 273.18(e)(8)(ii)(E)).

How does the cost-effectiveness criteria for terminating claims (the fourth criterion) differ from the cost-effectiveness criteria for the threshold for establishing and collecting claims?

Clarification is needed in this area. The cost-effectiveness determination for terminating claims applies only to claims that are already established and are delinquent. These claims are relatively low dollar amount claims that are not actively being collected, the regular avenues of collection have been exhausted, and are simply not worth further collection pursuit. This criterion may not be used for claims that are current or are being paid. Claims are not to be automatically terminated when an outstanding receivable drops below a certain dollar amount. State agencies should contact us if they need further guidance in this area.

Why do we allow reinstating terminated and written-off claims?

Five commenters expressed concerns about the proposed policy to reinstate terminated and written-off claims. The commenters generally opposed making this proposal a requirement. Concerns focused around this proposal imposing an unnecessary burden on State agencies for storage and record maintenance for a very small percentage of cases.

We want to stress that this was proposed as an option and is not mandatory. A number of State agencies indicated a great desire to have this ability. This was proposed simply to enhance State agency flexibility. In the final rule, this ability will remain as an option. Only those State agencies that wish to pursue this course need to store and maintain records of terminated claims.

Why don't we establish a termination policy based on dollar amounts?

One State agency commented that it would like to have the latitude to set different time schedules for termination and write-off based upon the amount and the cause of a claim. The commenter stated that notable differences exist between a $200 AE claim and a $10,000 claim caused by an IPV and these differences ought to be recognized when establishing administrative offsetting polices for writing-off delinquent claims. This is a valid point. We believe that the final rule at § 273.18(e)(8)(ii)(E) provides for this flexibility. First, any claim that is delinquent for six months, be it for $200 or $10,000, should be referred for TOP. There will be no requirement to remove either claim from TOP for termination after three years. Second, under § 273.18(e)(8)(ii)(D) in the final rule, the State agency has the authority to create its own cost effectiveness termination criteria. We do not object to any State agency treating IPVs differently from other claims when determining these criteria.

Should the termination policy be expanded to include other situations?

One commenter stated that the termination policy should include bankruptcy cases and in instances where the responsible party is in a nursing home. We recognize that the possibility of collection diminishes in these situations. However, we do authorize State agencies in § 273.18(j) of this final rule to pursue claims that file for bankruptcy. For the nursing home situation and in other instances where household circumstances negate further collection, the State agency can compromise the remaining balance of the claim (see § 273.18(e)(7)), thereby gaining the same result as a termination and write-off. No change in the rule is necessary based on this comment.

What changes regarding this proposal are incorporated into the final rule?

In addition to the changes discussed above, State agencies may also terminate a claim if the household cannot be located. We discuss this in the *Notification of Claim* section of this preamble. All of the changes are reflected in the table at § 273.18(e)(8)(ii) in the final rule.

Compromising Claims

Reducing a claim because a household is unable to pay is known as "compromising" a claim. We proposed two changes in our policy on compromising claims. The first proposed change limits the State agency's authority to compromise claims to under $20,000. The second proposed change reinstates the compromised portion of a claim if the remaining claim balance subsequently becomes delinquent. We received 12 comments on compromised claims. Ten of these comments dealt directly with these two proposed revisions. The remaining two comments addressed other aspects of our policy on compromising claims.

Why propose a $20,000 limit for compromising claims?

Five commenters opposed establishing the $20,000 limit for compromising claims on the basis that the limit was too restrictive. One of the commenters added that attorneys should be allowed to compromise these larger claims through civil or criminal prosecution.

We took the $20,000 limit in the proposed rule directly from Treasury's Federal Claims Collection Standards, 4 CFR 103.1, (FCCS). OMB Circular A–129 increased this limit to $100,000. One of the goals of this rule is to conform, wherever feasible, with the FCCS and other Federal debt collection guidelines. However, we must take into account that recipient claims are unique in that they are State-administered Federal claims. The comments show that there are instances, such as during prosecutions, where it is appropriate to allow States to retain the right to compromise any claim. Past practices by State agencies show that the current compromise policy (that has no dollar limit) is not being abused. Considering this, we have decided to delete this proposal and allow State agencies to continue to compromise any claim. (See § 273.18(e)(7)).

Why mandate reinstatement of compromised amounts if the remaining balance becomes delinquent?

As stated above, a second proposed change reinstates the compromised portion of a claim if the remaining claim balance subsequently becomes delinquent. This proposal provides an added deterrent against a debt becoming delinquent. Five commenters objected to this proposed mandate. The reasons given were: (a) Mandatory reinstatement is too harsh given the household's economic circumstances; (b) reinstating the compromised amount may go against a court order; (c) the proposal is too complex to administer; and (d) costly system changes are needed to implement the proposal.

Considering these comments, we recognize that mandating reinstatement of compromised claims places an added burden on State agencies. This burden goes beyond what we believe is necessary for efficient and effective claims management. Therefore, we are revising this proposal to give State agencies latitude in this area. In the final rule, reinstatement is a State agency option rather than a mandate. (See § 273.18(e)(7)).

Should we even allow State agencies to compromise claims?

One commenter believed that no claims should be compromised. We disagree. Compromising claims is a proven effective claims management tool widely used in both the public and private sectors. With compromising authority, State agencies can manage their outstanding receivables better by pursuing amounts that they can expect to collect.

Accepting Payments

Are State agencies required to accept credit and debit card payments?

The proposed rule allows State agencies to accept payments from credit and debit cards if the agency has the capability to accept such payments. One State agency expressed a concern that claims may need to be waived if agencies do not accept a credit or debit card when it is authorized by us. This is not the case. We only authorize this collection method. We do not require it. No change is needed in the final rule.

Will we reimburse State agencies for credit card processing fees?

One State agency asked whether we will reimburse State agencies for credit card processing fees. Credit card processing fees will be reimbursed at the same rate as all other allowable administrative costs. This rate is currently 50 percent. Since this is consistent with the reimbursement rules at 7 CFR 277.4, no change is needed in this rule.

What about debts that are to be paid for with community service?

One State agency commented that we need to add provisions to accommodate debts being paid through community service. The agency further states that some judges in its State are ordering community service at an hourly rate ranging from $15 to $100. The commenter believes that this rate should not exceed minimum wage.

We concur that a provision is needed to recognize that debts may be settled by community service. This addition can be found in § 273.18(g)(7) of the final rule. Since community service activity varies greatly, we are reluctant to set a specific hourly rate for such work.

Therefore, we leave it up to the State agency, in conjunction with the court, to determine this rate.

Is requiring the pro-rata distribution of non-specified payments now required?

We proposed that each affected assistance program with a claim receive its fair share when the State agency receives an unspecified collection for a combined public assistance/food stamp recipient claim. An unspecified collection is a general payment received in response to a notice or referral in which the food stamp claim is combined with another claim(s). Our primary concern is that, on occasion, State agencies give PA/TANF claims first priority in unspecified collections. The reason for this is because the State agency retains 100 percent of PA/TANF collections. On the other hand, the State agency retains an aggregate of only about 22 percent of FSP claim collections. The remaining 78 percent (consisting of 65 percent of IPV collections, 80 percent of IHE collections and 100 percent of AE collections) is returned to us.

Nine State and local agencies objected to this proposal. One objection is that this proposal will require large-scale system changes. Two State and one local agency believed that the State should be able to assess collections to where they believe it would be most beneficial. Other State agencies commented that prior agreements with households should take precedence.

Our goal with this proposal is to ensure that State agencies are not routinely assigning all unspecified claims collections to non-FSP programs. This provision does not pertain to any existing or future agreements with households or collection methods targeting a payment to a certain program. Only unspecified payments are included and we strongly believe that these collections should be distributed fairly. We do not believe that this places an undue burden on State agencies. Therefore, we have retained this proposal in the final rule at § 273.18(g)(9). Any State that has an alternative distribution system that is equitable or believes that it will take large-scale system changes to comply with this provision can submit a waiver request for our consideration.

Collection of Agency Error Claims

Prior to the enactment of PRWORA, AE claims could only be collected on a voluntary basis. PRWORA amended section 13 of the FSA (7 U.S.C. 2022) to subject all claims—including AE claims—to involuntary collection methods. This change was reflected in the proposed rule. We received a wide range of comments in this area.

Is holding households responsible for an error that was not their fault considered good public policy?

Three State agencies commented that using involuntary collection methods to recoup these claims is not good public policy since the households may not even have been aware of the error prior to the implementation of the involuntary collection actions. One commenter stated that the follow-up work necessary for the State agency to answer inquiries as well as conduct hearings takes up a disproportionate amount of time. In addition, the same commenter believed that the focus of the new provisions affecting AE claims should not be on the household but on the food stamp agency that caused the error.

We recognize the commenters' concerns and are working with State agencies to reduce these types of errors. However, a household with an AE claim did, in fact, obtain more benefits than it was entitled to receive. But most importantly, section 13 of the FSA (7 U.S.C. 2022), as amended by PRWORA, is clear that all overpayments are to be collected. Any stipulations in the law to make special allowances for overpayments caused by agency errors were removed by PRWORA. Therefore, we believe that we are following the intent of Congress by having State agencies vigorously pursue these overpayments.

Why aren't AE claims subject to equitable estoppel?

Equitable estoppel is a legal concept adopted by a number of States that provides that individuals should not be held responsible for errors that were not their fault. The preamble of the proposed rule at 63 FR 29307 clarified that, since food stamps are Federal benefits, Federal law does not allow for an exception for equitable estoppel in AE claims. We received three comments regarding this issue.

Two recipient interest groups disagreed with our position on AE claims and equitable estoppel. They believe that the FSA does not specifically prohibit equitable estoppel, especially since this activity is delegated to State agencies. We disagree. Section 13(a)(2) of the FSA clearly states that a household " . . . shall be . . . liable for the value of any overissuance of coupons." This language establishes that a household must be held accountable for any claim, including those caused by agency errors.

One State agency commented that we need to strengthen the fact that equitable estoppel does not apply to food stamp AE claims. The commenter suggested that we add specific language to the regulations indicating this position. We do not believe that this is necessary. The discussion above and in the preamble of the proposed rule should suffice and no change is needed in the final rule.

Should we have the same rule for dropping AE claims that exists in the Supplemental Security Income Program (SSI)?

We received four comments recommending that we establish a policy similar to SSI for waiving AE claims. In SSI, a claim may be waived if:

(a) The overpaid individual was without fault in connection with the overpayment, and

(b) Adjustment or recovery of the overpayment would either:

(1) Defeat the purpose of the SSI program, or

(2) Be against equity and good conscience, or

(3) Impede efficient or effective administration of the SSI program due to the small amount involved.

The commenters are particularly interested in waiving AE claims that fit criteria (b)(1) and (b)(2) above. We recognize that this recommendation does have some merit. However, we believe that State agencies already have similar authority. State agencies are currently authorized to compromise claims when households are unable to pay because of hardship or similar reasons. Therefore, we do not believe that this change is necessary.

Allotment Reduction

The proposed rule introduced a number of changes in allotment reduction as a means of claims collection. We received a number of comments on these changes and allotment reduction in general.

Is allotment reduction now required for participating households with claims?

The proposed rule states that a State agency must use allotment reduction to collect claims against participating households. Five commenters believe that State agencies should be able to choose whether to invoke allotment reduction against a particular household. Four of the commenters point out that that section 13(b)(4) of the FSA (7 U.S.C. 2022(b)(4)) was amended by PRWORA to specify that claims are to be collected in accordance with ". . . requirements established by the State

agency for . . . electing a means of payment. . . ."

We recognize this passage in the FSA. However, section 4(c) of the FSA (7 U.S.C. 2013(c)) states that we must issue regulations necessary for the effective and efficient administration of the FSP. As discussed earlier in this preamble, allotment reduction is the most efficient collection method. Therefore, we believe that it is within our authority to mandate allotment reduction. However, to maintain the spirit of this rule, we do not object if a State agency wishes to use an alternative collection method. The only requirement is that the household will be paying off the claim at least at the same level as the amount that would have been collected through allotment reduction. This is reflected in § 273.18(g)(1)(i) of this rule.

Doesn't allowing involuntary allotment reduction for AE claims established before PRWORA violate due process?

Section 844 of PRWORA amended section 13 of the FSA (7 U.S.C. 2022) by removing the provision prohibiting State agencies from using involuntary allotment reduction against households with AE claims. The proposed rule allows this type of collection and does not exclude those AE claims that were established prior to the enactment of PRWORA. Four recipient interest groups submitted comments stating that this change should not apply to pre-PRWORA AE claims. The specific concerns of the group are that: (1) The law makes no provision to apply the allotment reduction retroactively and (2) to do so would violate the household's due process rights.

We recognize that PRWORA is silent on the question of whether this provision applies to claims established before the passage of PRWORA. However, we believe that recoupment of all claims regardless of the date of establishment is consistent with and implied by the FSA. Prior to PRWORA, households were still obligated to pay AE claims. By allowing allotment reduction for pre-PRWORA AE claims, we are simply introducing an additional collection procedure. We are not altering the status of the claim.

The commenters were also concerned that this action would violate due process rights. We shared this concern. For this reason, when PRWORA was originally enacted, we instructed State agencies to re-notice households that would be affected by this change in the law. Since this procedure affects a limited number of cases and State agencies have already been notified, we do not believe that this needs to be specified in the final rule.

Why can't State agencies reduce benefits for the first month that a household receives benefits?

The proposed rule carried over our longstanding policy not to reduce an initial allotment to pay off a claim. The reason for this is because the allotment is frequently reduced based on when the household's application was filed. Three State agencies disagreed with this policy. The commenters recommended that a pro-rated reduction be done based on the reduced allotment. The State agencies saw no reason why it should lose this month in which the claim could be collected.

While the commenters do raise valid points, we hesitate to change this longstanding policy. First, as stated above, the household's allotment is already reduced. Second, there was no discussion to change this policy in the proposed rule. The final rule remains unchanged.

As a State agency, why can't I collect a claim from the same household by using TOP in addition to allotment reduction?

The proposed rule does not allow a State agency using allotment reduction to also collect the claim from members of the same household using TOP. One State agency commented that it should be able to use both methods simultaneously. We disagree. TOP is for non-participating household members. We do not believe members in households that are currently receiving benefits should, at the same time, be subjected to the delinquent processing charges imposed by TOP. The final rule remains as proposed.

Can State agencies use additional collection methods against a household at the same time while they are collecting through allotment reduction?

Four commenters believed that State agencies should be able to use additional non-TOP collection methods against a household that is having its allotment reduced. Conversely, five commenters supported not allowing additional collections in this circumstance. State agencies regularly employ their own methods to collect food stamp recipient claims. These methods include but are not limited to lump sum and installment payments, wage garnishments, UCB intercept, and State tax refund and lottery winnings offsets. Although we provide the State agency broad authority in this area, we do not believe that it is fair to the household for the State agency to employ most of these additional collection methods when the household is already having its allotment reduced. This is reflected in this final rule. There are two exceptions to this rule: (1) When the additional payment is voluntary; or (2) when the source of the payment is irregular and unexpected such as a State tax refund or lottery winnings offset. (See § 273.18(g)(1)).

Why did we increase the minimum allotment reduction amount for IPV claims to $20 per month?

Current regulations at 7 CFR 273.18(g)(4)(iii) limit the reduction amount for an IPV claim to the greater of 20 percent of a household's monthly entitlement or $10 per month. The proposed rule increased the $10 to $20. One recipient interest group objected to this increase. The commenter believed that this is unnecessarily punitive to households and adds little increase in collection receipts to State agencies. We disagree. We do not believe that the additional $10 per month, especially when a household member was involved in such a serious infraction, would create a significant household burden. In addition, little additional work is needed by the State agency to collect the additional amounts. The final rule remains unchanged. (See § 273.18(g)(1)).

Can State agencies ever reduce an allotment at a rate greater than the prescribed limits?

The proposed rule set limits for the maximum rate of allotment reduction. For IPV claims, the proposed rate is $20 or 20 percent (whichever is greater) of the entitlement or allotment. For IHE and AE claims, the rate is $10 or 10 percent of the allotment, whichever is greater. Two State agencies recommended that they be given authority to reduce allotments at rates higher than what we proposed. The commenters believe that households with additional income and resources should be able to have their benefits reduced at a greater percentage.

We want to make it clear that, with the household's permission, State agencies are able to reduce an allotment at a rate higher than the prescribed limit. This is carried over into the final rule. We are not, however, allowing State agencies to collect at higher rates without this permission. Section 13(b)(3) of the FSA (7 U.S.C. 2022(b)(3)) establishes these limits (the greater of 10 percent or $10) for IHE and AE claims. This rate cannot be changed. We believe that the doubling of this rate (to the greater of 20 percent or $20) is fair for IPV claims. The final rule remains unchanged. (See § 273.18(g)(1)).

Why allow State agencies to use benefit entitlement rather than the actual allotment for determining how much of a monthly payment to use for IPV allotment reductions?

The current regulations at 7 CFR 273.18(g)(4)(iii) required State agencies to base IPV allotment reduction on entitlement rather than the actual allotment. Entitlement is what the household would have received if the individual who received the IPV was still participating. In the proposed rule, we gave State agencies the option to use the actual allotment as the base. Three recipient interest groups recommended that we just have State agencies use the allotment rather than entitlement. The commenters believe that basing the reduction on entitlement places too much of a burden on households.

As discussed above, State agencies are currently required to base IPV allotment reduction on entitlement. In the final rule, we are allowing State agencies to use the allotment as the basis. This, in itself, would provide relief to some households. Requiring all State agencies to base IPV benefit reductions on allotment at this time would go against the spirit of this rule by reducing the amount of flexibility afforded to State agencies. In addition, some State agencies would incur significant costs for system changes. The final rule remains unchanged.

Can State agencies now use benefit allotment as the basis for reducing allotments against households that are already getting their benefits reduced based on the entitlement?

One State agency asked if it can apply this rule change to households that are already getting their benefits reduced based on the entitlement. We do not place any limits on the applicability of this provision in the final rule and have no objection to the State agency's request.

Collecting a Claim From Individuals in Separate Households

All adults who were members of the household when the overpayment occurred are responsible for repaying the claim. The proposed rule allows the State agency to pursue additional collection activity against any individual liable for the claim who is not currently a member of a participating household that is undergoing allotment reduction. Several commenters supported this provision. One State agency had the following question:

Are State agencies required to reduce the allotments of all affected households when two or more individuals responsible for the claim are now receiving benefits in different households?

The State agency is concerned because many State systems are not set up to accommodate this type of simultaneous collection. The commenter believes that the State agency should have the option to collect from only one of the participating households. While there is a definite benefit to having simultaneous allotment reductions, we recognize and share the State agency's concern. Therefore, to maintain the spirit of this final rule, we are allowing, but not requiring, this type of collection. (See § 273.18(g)(1)).

Using EBT Benefits To Collect a Claim

The current regulations are silent on using EBT benefits to collect a claim. We proposed the following policy in the May 28, 1998 rule:

PROPOSED EBT BENEFITS CLAIMS COLLECTION POLICY FOR STATE AGENCIES

You must . . .	and . . .	and . . .
(1) allow a household to pay its claim using benefits from its active food stamp EBT benefit account.	the household must give you written permission.	the retention rules apply to this collection.
(2) allow payments from stale EBT benefit accounts once the account is reactivated.	the household must give you written permission.	the retention rules apply to this collection.
(3) adjust the amount of the claim by subtracting any amount expunged from the claim balance.	this can be done either when establishing the claim or anytime after.	the retention rules do not apply to this adjustment.

An active EBT account, as referred to in the first row of the table, is one where the household readily has access to the account. Generally, provided the household accesses its benefit account each month, the account remains active. If the account is not accessed for three months or longer, the account is considered dormant or stale. To activate a stale account, the household must first contact the State agency. An expunged account, as referred to in the third row of the table, is when the State agency erases the value of the benefits from the household's account and reports to us the total amount expunged so that we may deobligate the funding. No funds are ever paid. This is usually after no benefits have been accessed from the account for one year. The household permanently loses these benefits.

We received 53 comments on this comprehensive proposal. Six of these comments supported some aspect of this proposal. The remaining 47 comments had specific concerns. Because of the nature of the comments, we are dividing this discussion into two parts: *Collecting Claims Using Active and Stale EBT Benefits* and *Adjusting Claims using Expunged EBT Benefits.*

Collecting Claims Using Active and Stale EBT Benefits

We proposed that State agencies be able to collect claims from active or stale EBT benefit accounts with the household's permission. State agencies would retain the usual amounts for this method of collection. We received a number of comments on the use of collection method:

How can State agencies obtain funding to implement this procedure?

Two State agencies expressed concern about obtaining funding to implement this provision. The commenters noted that some State agencies will need to purchase equipment to access EBT accounts and conduct these transactions. However, the commenters provided no information that these costs are prohibitive. Funding is available in the usual manner with State agencies being compensated according to the reimbursement provisions for administrative costs in section 16(a) of the FSA (7 U.S.C. 2025(a)). In addition, State agencies will also receive the regular retention amounts for these collections.

What procedures must be used when State agencies access households' EBT benefit accounts to collect claims?

State agencies are to develop their own procedures for accessing EBT benefit accounts. One recipient interest group expressed a concern about the security of EBT accounts. We agree with the commenter that security procedures must be in place to ensure that only those workers that are authorized actually gain access to a household's EBT benefit account. To address this, we already have EBT system security regulations in place at 7 CFR 274.12(h)(3). The EBT security regulations include dual controls and access controls such as passwords for those authorized to perform this activity. Therefore, there is no need to duplicate this regulation in § 273.18 of this rule.

Why are these payments treated as non-cash payments?

The proposed rule specifies that a collection using EBT benefits is considered a non-cash collection and corresponding funds are not to be drawn from the Federal EBT account by the State agency. Two State agencies are concerned that this policy will create discrepancies in their account receivable systems. The commenters believe that since this non-settling transaction will not be handled as a cash transaction, the amount drawn from the Federal EBT account will not equal the withdrawals from the households' accounts.

We see no reason why a State agency needs to draw down Federal funds only to return them at a later date. Current EBT systems accommodate this transaction as non-settling without difficulty. The original scheme for EBT repayment of claims was designed to fit within the current reporting and retention processes State agencies have in place for coupons. Payment via coupons has always been considered a non-cash transaction for retention and reporting purposes. The rule remains unchanged. (See § 273.18(g)(2)(iii)). We are available to provide technical assistance if State agencies still believe that they are unable to do this procedure.

Should we provide model household permission forms for State agencies to use for gaining household permission for EBT collections?

In the proposed rule, we require that collections from active EBT benefit accounts be transacted only with the written permission of the household. One recipient interest group recommended that we provide State agencies with model authorization forms to ensure that the household's consent is informed and voluntary. We agree with the commenter that additional guidance is needed in this area. However, in lieu of providing a model form (which stifles State agency flexibility), we are providing a clear listing of the minimum requirements for a household permission form. This listing serves the same purpose as a model form and is found in § 273.18(g)(2)(iv) of this final rule.

Should written permission be for an indefinite period?

The preamble for the proposed rule stated that a signed document is not necessary for each EBT collection if the transaction was provided in accordance with a signed agreement. We received five comments regarding this issue. Two commenters recommended that we place a limit on the length of these agreements. We believe that State agencies should be able to limit the length of these agreements as they wish. However, we do not believe that it would be within the spirit of this rule to mandate that these agreements be limited.

Three commenters recommended that a household be allowed to revoke prior authorizations. Since this type of collection is strictly voluntary, we agree with the commenters. This change is found in § 273.18(g)(2)(iv)(E) of this final rule.

Does permission to collect through EBT benefit accounts always need to be in writing?

One commenter recommended that State agencies be able to use documented verbal authorization on a limited basis. According to the commenter, it is practical and less burdensome for both the household and the State agency to be able to conduct a single transaction while obtaining authorization from the household over the telephone. The household would then be sent a receipt documenting the transaction.

We concur with this recommendation and are including it in the final rule at § 273.18(g)(2). This procedure streamlines the process without sacrificing the rights of the household. In the case of a misunderstanding, the household can always request the return of the benefit in a fair hearing.

Is there any way that State agencies can collect on a stale EBT benefit account without receiving prior authorization?

One commenter recommended that State agencies be able to collect without prior written authorization from stale EBT accounts. They believe that with this authority State agencies could recover, and possibly, close many outstanding claims. We share the commenter's concern and belief. Therefore, we have devised a procedure to allow this type of collection while safeguarding the rights of the household.

In the final rule, State agencies may reduce benefits from stale EBT accounts to collect claims using the following procedure:

(1) The State agency mails or otherwise delivers to the affected household notification that the agency intends to reduce the household's stale EBT benefit to pay off an outstanding claim. (2) The notification specifies a time period for the household to respond if it does not want its benefits to be used to pay off the claim. This time period, which is to be established by the State agency, must be at least 10 days. (3) If the household does not respond by the established time period, the State agency then may reduce the EBT benefit account to pay off the claim.

We believe that this procedure strikes an appropriate balance between efficient claims collection and household rights. With this procedure, households can easily pay off and State agencies dispose of claims. In addition, any household that does not want its benefits to be reduced can simply prevent this by notifying the State agency. (See § 273.18(g)(2)).

Why can't State agencies involuntarily collect from an EBT account when the household was at fault?

Two State agencies believe that permission should not be needed at all to collect IPV or IHE claims through EBT benefit accounts. We disagree. These households are already undergoing allotment reduction. Allowing further involuntary benefit reductions against these households undermines the intent of section 13(b)(3) of the FSA (7 U.S.C. 2022(b)(3)). This section places a limit on the amount that a household's allotment can be reduced to pay a non-fraud claim. We firmly believe that an eligible household actively participating in the program should not have additional benefits involuntarily taken away. The EBT benefit collection methods and procedures discussed above strike a balance between efficient and effective claim collection from EBT benefits while ensuring household rights and access to those benefits.

Collecting Claims using Expunged EBT Benefits

An expunged EBT benefit is a benefit that has been removed from a household's account because the account is not being used. Benefits are expunged when the account is not accessed for one year. Since these benefits were never used, we proposed that they be subtracted from the claim amount and recorded as an adjustment. Also, because this is not considered a collection, there would be no retention. We received a number of comments on the use of expunged benefits to adjust claims.

Should State agencies receive retention when using expunged benefits for claims?

State agencies generally retain 35 percent of IPV collections and 20 percent of IHE collections. In the proposed rule, we do not allow State agencies any retention for reducing claim balances with expunged benefits. We received 15 comments recommending that State agencies receive the retention amount for these transactions. The commenters believe the retention for collecting claims should be a reward for a State agency's comprehensive effort to establish and pursue the claim. The fact that the claim is reduced because it is an expunged (rather than an active or stale) benefit should not matter.

We recognize that establishing and pursuing a claim is labor-intensive and costly. Requesting retention for expunged benefit adjustments is not unreasonable. However, we are unable to comply with this request because we cannot provide retention for "collecting" an amount that no longer exists. This provision remains as proposed. (See § 273.18(g)(2)(ii)(C)).

Is proposing not allowing retention for expunged benefits the first step towards classifying all non-cash payments as non-retention eligible?

Three commenters considered it a dangerous trend to propose not allowing retention for expunged benefits. They believe that this is the first step towards classifying all non-cash payments as non-retention eligible. Non-cash payments currently include payments made from active and stale EBT benefit accounts, allotment reduction, and food coupons.

We proposed not allowing retention for expunged benefits because this is an adjustment rather than a collection. Since the benefits have already been returned to the Federal government, there is no net gain by applying the expunged amount against a claim. This is not the case with non-cash claims collections. As such, State agencies need not be concerned about us classifying non-cash payments as non-retention eligible. Unless we receive a legislative mandate, we cannot foresee us changing this policy. We strongly believe that retention should remain an inherent part of the claims collection process.

Doesn't using expunged benefits to adjust a claim adversely impact basic accounting procedures?

Two commenters are concerned that allowing State agencies to reduce a claim using expunged benefits would adversely impact accounting treatment and procedures. When benefits are expunged, obligations and issuances are reduced. In effect, the benefits no longer exist as if they were never issued. Therefore, according to one of the commenters, it is not logical to reduce a claim balance by benefit amounts that no longer exist.

We agree with the commenters that the benefit amounts no longer exist. However, we do believe that we have the authority and that it is appropriate to allow balance adjustments based on expunged benefits. This ability is based on section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) which clearly provides us with broad authority to adjust any claim. The appropriateness is based on the fact that the funds were available to the household and never actually used.

Are State agencies required to reduce claim balances with expunged benefits?

Six commenters, mostly recipient interest groups, supported making this procedure a requirement. We received 13 comments, mostly from State agencies, that do not want this procedure to be a requirement. These State agencies stated that requiring this procedure for all claims would be burdensome, costly, and require significant system changes. State agencies would need to track benefits issued and subsequently expunged for an extended period.

While we believe that there are definite benefits for using expunged benefits to reduce claims, we recognize that this change may, in fact, create a burden for some State agencies. We also recognize that current system limitations and general household dynamics may make this requirement somewhat difficult for State agencies to implement. Therefore, we are modifying this requirement to include only those expunged benefits for which State agencies become aware. State agencies are to develop their own procedures regarding applicability, limits and use. We are not requiring State agencies to overhaul their EBT systems to conform to this new procedure. (See § 273.18(g)(2)(ii)(C)).

Can State agencies reduce IPV claims by using expunged EBT benefits?

One State agency commented that we should not allow expunged EBT benefits to be used to reduce IPV claims. The commenter believes that this allows violators to avoid their liability. We disagree. Expunged benefits are benefits that a recipient was once entitled to use. By not using the benefits, the household did experience a loss. Therefore, we do not believe that a liability is being avoided by allowing this type of collection for EBT benefits. The final rule allows State agencies to offset all claims with expunged benefits.

Can State agencies reduce trafficking claims by using expunged EBT benefits?

Three recipient interest groups believed that expunged benefits should also be used to reduce trafficking claims. We agree. We believe that it is important to maintain a consistent policy in the application of expunged EBT benefits against claims. Therefore, the final rule reflects that expunged EBT benefits can be applied to any claim. (See § 273.18(g)(2)(ii)(C)).

Do the expunged benefits need to be for the same month of the overissuance to be applied to a claim?

Six comments were received requesting clarification regarding whether the expunged benefits needed to be for the month of the overissuance. Some commenters believed that the expunged benefits should be only for the month of issuance. Other commenters expressed concern about not always being able to match up the expunged benefit with the overpayment. We recognize that for some State agencies matching up the benefits with the overpayment may be difficult and burdensome. For this reason, we are providing latitude in this area by allowing States to apply expunged benefits to any overissuance. (See § 273.18(g)(2)(ii)(C)).

Where in this rule is the final policy on using EBT benefits to collect claims?

The final policy, including changes based on the comments addressed above, is at § 273.18(g)(2).

Intercept of Unemployment Compensation Benefits

The proposed rule gives State agencies the option to reduce a person's unemployment compensation benefit

(UCB) to pay off a claim. Section 13(c)(3) of the FSA (7 U.S.C. 2022(c)(3)), however, requires that the State agency first obtain a court order or authorization from the individual prior to reducing the UCB. One State agency objected to this requirement. We recognize that this requirement makes it more difficult for State agencies to use this method effectively. However, we cannot change this requirement, since it is specified in the FSA. As a result, this requirement remains in the final rule. (See § 273.18(g)(6)).

Offsetting Restored Benefits

The proposed rule continued our longstanding policy that State agencies are to offset restored benefits owed to a household by the amount of any outstanding claim. A restored benefit is a benefit from a prior month that the household was entitled to but never received. Five recipient interest groups objected to this provision. The commenters believe that a households should receive the full amount of any benefits that are restored. They cite a recent court ruling, *Lopez* v. *Espy*, 83 F.3d 1095 (9th Cir. 1996), in which the court made this ruling.

We are aware of this ruling. However, there is another court ruling, *Dunn* v. *Secretary of U.S. Department of Agriculture*, 921 F.2d 365 (1st Cir, 1990), in which our policy was upheld. We continue to believe that it is within our authority to have State agencies offset benefits prior to restoration. The final rule remains unchanged. (See § 273.18(g)(3)).

Collection Limits

The proposed rule did not place a limit on how much can be collected from a household during any given year. Three recipient interest groups recommended that a household should not be subject to collection amounts that total over 15 percent of the household's annual income. The commenters believe that the proposals allowing simultaneous collection methods against the same households will result in some households being subject to onerous collection burdens. We do not believe that this limitation is necessary. State agencies have the ability to compromise the claim if paying off the claim is too much of a burden on the household. In addition, the average claim established in fiscal year 1999 is $427. We do not believe that collecting this claim, especially in installments, is a severe burden. Finally, involuntary allotment reduction is already capped at 20 percent or $20 for IPV claims and 10 percent or $10 for IHE and AE claims. Based on the above, the final rule remains unchanged.

Interstate Claims

The proposed rule at § 273.18(k) required that State agencies accept transfers of claims from other State agencies if it is discovered that the household is receiving food stamp benefits within the receiving State. A total of 17 comments were received regarding this proposal. While all commenters agreed with retaining this proposal (at least) as an option, 15 of the commenters did not support making this proposal a requirement. Six commenters stated that frequent moves by recipients and the absence of a national recipient database make this proposal difficult to manage. In addition, seven commenters expressed concerns with problems associated with fair hearing procedures and coordination involving interstate claims.

We recognize that differences among State agencies and the absence of a national recipient database does make this proposal difficult to manage. In addition, we also recognize that the advent of the Treasury Offset Program has made the collection of interstate claims for the originating State agency much easier. Therefore, we are dropping this proposal from the final rule. Transferring claims between States will remain an option. Even though this will remain an option, we strongly encourage State agencies to work together to utilize this procedure as much as possible.

Providing Refunds for Overpaid Claims

In the proposed rule, a State agency is to provide a refund to the household for an overpaid claim as soon as possible after the State agency becomes aware of the overpayment. Four commenters recommended that "as soon as possible" be defined as 30 days. We agree with the commenters that a refund needs to be prompt. However, the existing language already requires the State agency to do everything within its control to provide a prompt refund. Therefore, the final rule remains unchanged. (See § 273.18(h)).

Retention Rates

Prior to PRWORA, the retention rates for collections by a State agency were 50 percent for IPV claims and 25 percent for IHE claims. Section 844 of the PRWORA changed these rates by amending section 16(a) of the FSA (7 U.S.C. 2025(a)). The new rates are 35 percent for IPVs and 25 percent for IHEs. The proposed rule reflected this change.

Eight State agencies opposed this reduction to the retention rates. In addition, one State agency recommended a 10 percent retention for AE claims. We recognize the effects of the lower retention rates on State agencies. However, since these percentages are set by legislation, we cannot change the rates. As a result, the final rule contains the lower rates mandated by Congress. (See § 273.18(k)).

The proposed rule also authorized 35 percent retention for IHE collections via UCB offset. One State agency recommended that State agencies have an option to retain either 35 percent or 20 percent for these collections. Programming costs to separately track these collections, according to the State agency, outweigh the additional revenue generated by the higher retention rate. We understand the State agency's concern. However, since this percentage is set by legislation, we cannot change this rate. The final rule remains unchanged.

Bankruptcy

The current regulations at 7 CFR 273.18(k) authorize State agencies to act on our behalf when households file for bankruptcy. We did not propose any changes to this policy. Two State agencies did, however, submit comments on bankruptcy.

Can IPV claims be discharged because of bankruptcy?

On March 24, 1998, the Supreme Court in *Cohen* v. *de la Cruz*, 523 U.S. 213 (1998), ruled that a fraud debt cannot discharged in bankruptcy. One State agency asked whether this ruling applies to IPV claims.

The answer to this inquiry depends on how the IPV was initially determined. As discussed earlier in this preamble, there are four ways that State agencies determine IPVs: (1) An ADH, (2) a court hearing, (3) a signed waiver to an ADH and (4) a disqualification consent agreement (DCA). If the IPV was determined through a court hearing or an ADH then we believe that this is a finding of actual fraud and the Cohen decision would apply. Whether this finding of actual fraud applies to the signed ADH waiver or the DCA depends on whether the affected individual is admitting to committing fraud or guilt when he or she signs the document. Our current regulations at 7 CFR 273.16 allow for individuals to accept disqualifications without admitting guilt. In these instances, we believe that, since there is no actual fraud determination, the resulting IPV claim may potentially be dischargeable in a

bankruptcy proceeding. Since this determination must be made on a claim-by-claim basis, being dependent on State-developed notices, we are not specifying any set policy in this final rule.

Why can't food stamp recipient claims be routinely excluded from bankruptcy?

One State agency asked why recipient claims cannot be routinely excluded from bankruptcy like other Federal debts. In view of the complexities involved, we will be examining this issue more closely and address it in a future rulemaking.

Accounting Procedures

Accounting procedures for State agencies to follow for recipient claims were outlined in § 273.18(o) of the proposed rule (63 FR 29329). States use these procedures to obtain the summarized data to be reported on the *Status of Claims Against Households* (FNS–209) report. We received one comment on reporting this data.

How will these new procedures affect the FNS–209 report?

One State agency objects to any additional reporting requirements. The commenter also believes that the FNS–209 needs to be modified to capture the appropriate data and there should be no redundant reporting of data.

The FNS–209 is being revised to reflect the changes brought about by this rule. We will publish a 60-day notice on the new form to provide you with an opportunity to comment. The new FNS–209 will contain only that information that we absolutely need for Federal program management. In addition, there will be no redundancy with any of our other forms or reporting requirements.

Delinquency and Processing Charges

The proposed rule allows for delinquency and processing charges to be charged against households with delinquent claims. We received a number of comments on this issue.

What authority do we have to impose these charges?

One recipient interest group questioned whether imposing these charges on households is authorized by the FSA. The FSA is silent on this issue. The Debt Collection Act of 1982, 31 U.S.C. 3717, as amended, (DCA) allows for a charge to cover the cost of processing or handling a delinquent claim. Since these charges are authorized in the DCA and are not expressly prohibited in the FSA, we are able to include these charges in the final rule.

What do we mean by imposing processing charges on households?

Three commenters questioned the appropriateness of this provision. The commenters believed that imposing these charges is an unfair and unnecessary burden on recipients. Two of the commenters stated that imposing processing charges on recipients was not cost effective and placed an additional burden on State agencies.

We want to clarify that the only charges authorized by this final rule are the processing charges that are imposed by Treasury for activity connected with the TOP. Since these charges are automatically imposed by Treasury, we have no choice but to accept the existence of these charges. As far as passing these charges onto the household, this provision only affects delinquent claims that are submitted to Treasury. Therefore, any household whose claim remains current will not be affected by additional charges. (See § 273.18(n)(3)).

Treasury's Offset Programs

In the proposed rule, we referred to Treasury's methods of collecting delinquent debts as the "Federal Claims Collection Methods." We are now referring to these methods as Treasury's Offset Programs (TOP), which is consistent with the name used by Treasury. TOP is authorized by the section 3701 of the DCA, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, (DCIA).

TOP encompasses several collection methods and approaches. These methods and approaches currently include offsetting Federal payments such as Federal income tax refunds, Federal salary, retirement benefits and other payments. TOP also includes a broad-scope collection effort called cross-servicing.

We began offsetting Federal tax refunds (referred to as FTROP) as a two-State demonstration project in 1992. The program has grown exponentially since that time and FTROP became a permanent collection method in 1995. In calendar year 1998, FTROP collections surpassed $65 million. Like FTROP, Federal salary offset became permanent in 1995. Both FTROP and Federal salary offset were incorporated under TOP with the implementation of DCIA.

The proposed rule introduced administrative offset and cross-servicing into the mix of Federal collection programs under TOP that will affect households and individuals with food stamp recipient claims. Administrative offset is an umbrella name for offsets conducted against Federal payments due to individuals with delinquent debts. An agency in Treasury, the Financial Management Service (FMS), is currently phasing in the implementation of administrative offset. These payments come from a variety of sources, including, with some restrictions, social security and black lung benefits. FMS published a final rule (63 FR 71204) on December 23, 1998, describing what the restrictions will be and how this program will work.

Cross-servicing is a comprehensive collection approach mandated by the DCIA and currently being implemented by Treasury. This approach encompasses administrative offsets as well as vigorously pursuing claims by using other collection actions such as contacting the individual directly and employing collection agencies. Since the best way to implement this provision of the amended DCA is still being determined, we do not include specific instructions or procedures for cross-servicing in this proposed or final rule. However, the specific collection actions used in cross servicing are already authorized by existing agency, Departmental, and Treasury rules. Therefore, we do not believe that any further regulations are necessary to implement cross-servicing.

Changes in Procedures and Inclusion in this Final Rule

TOP has proved to be a dynamic program. Both Treasury's and our procedures are regularly being updated to increase efficiency as well as adapt to the logistics and demands of the program. We did not foresee this degree of change when we originally drafted the proposed rule. We now realize that, because of the dynamic nature of TOP and cross-servicing, any regulation containing prescriptive procedural language on TOP and cross-servicing will soon become obsolete. For this reason, we are taking a different approach in this final rule.

Many of the procedural aspects found in the proposed rule and in the existing regulation at 7 CFR 273.18(g)(5) and (g)(6) are removed from the final rule. The final rule only includes the language necessary to:

(1) Mandate TOP participation;

(2) Follow procedures required by law;

(3) Follow procedures dictated by us and Treasury; and

(4) Protect the rights of households and individuals.

However, this does not mean that State agencies no longer need to follow these procedures. We will be providing these procedures (with any revisions) to

State agencies via memo and similar formats that can be revised as necessary. These procedures will also be available on the Internet, and we welcome the public's comments, questions, and suggestions regarding the procedures. Our Internet address is http://www.usda.gov/fns.

We received a total of 43 comments on TOP. We address all of the comments, including those dealing with the prescriptive procedures that we are not including in this final rule.

Is requiring that State agencies refer all delinquent claims to TOP inconsistent with section 13 of the FSA?

The proposed rule states that a State agency must refer to TOP all claims that are delinquent for at least six months. One commenter believes that this is inconsistent with the FSA. Section 13(b)(1)(C) of the FSA (7 U.S.C. 2022(b)(4)) was amended by PRWORA to provide Federal salary offset and FTROP (now rolled into TOP) as collection methodologies that State agencies may use. Section 13(b)(4) of the FSA (7 U.S.C. 2022(b)(4)) was amended by PRWORA to specify that claims are to be collected in accordance with "... requirements established by the State agency for ... electing a means of payment. ..." The commenter believes that it should be left up to the State agency to determine what claims should be submitted to TOP.

We recognize this language exists in the FSA. However, only delinquent claims are submitted to TOP. The claim would not become delinquent if the State agency was regularly collecting the claim through the other methods. We are tasked by section 4(c) of the FSA (7 U.S.C. 2013(c)) to issue regulations necessary for the effective and efficient administration of the FSP. TOP has proved to be a highly effective and efficient method for collecting delinquent debts. Therefore, we believe that it is within our authority to require that State agencies use TOP for delinquent claims. The final rule remains unchanged. (See § 273.18(n)(1)).

Why do we need to refer AE claims for TOP?

In the proposed rule, claims delinquent for six months or more, including AE claims, must be referred for TOP. One commenter objected to this requirement. According to the commenter, we should not penalize persons who are working and trying to become self-sufficient by taking their tax return and other Federal payments to pay a claim that was the fault of the State agency.

Even though the State agency made the mistake, the household still received more benefits than it was entitled to receive. Section 13(a)(2) of the FSA (7 U.S.C. 2022(a)(2)) clearly states that any overpayment should be pursued. This includes overpayments caused by agency errors. PRWORA amended section 13(b) of the FSA (7 U.S.C. 2022(b)) by removing any restrictions against what involuntary collection methods can be used against AE claims. Since only delinquent claims are referred for TOP, the household has ample opportunity to make arrangements to repay the overpayment prior to the claim becoming delinquent. Therefore, State agencies must refer AE claims for TOP.

When must a State agency remove a debt from the TOP?

Clarification is needed as to when a debt needs to be removed from the TOP. We combine the proposed rule with current policy to reach the following procedure that is reflected in the final rule:

You must remove a debt from TOP if any of the following occurs:

(1) you discover that the debtor is a member of a food stamp household undergoing allotment reduction;

(2) the claim is paid up or the claim is disposed of through a hearing, termination, compromise or any other means;

(3) we or Treasury instruct you to remove the debt;

(4) you discover that the claim was referred in error; or

(5) you make arrangements with the household to resume payments.

We strongly believe that it is improper to keep a debtor in TOP while simultaneously reducing the household's allotment. This is discussed in the *Allotment Reduction* section of this preamble and reflected in § 273.18(n)(4) of this final rule.

Can State agencies submit claims for TOP that are delinquent for less than 180 days?

The proposed rule requires State agencies to refer all claims that are delinquent for 180 days or more to TOP. One State agency proposed that State agencies be allowed to submit claims that are delinquent for less than 180 days.

While this recommendation does have merit, we are hesitant to allow States to submit claims less than 180 days delinquent at this time. The reason for this is that claims referred to TOP incur various processing and collection charges that are passed on to the individual. The six month time frame provides the household and individuals with ample opportunity to pay off the claim without incurring these additional processing and collection charges. The rule remains unchanged. (See § 273.18(n)(1)).

Doesn't TOP remove the ability for State agencies to work with individuals to persuade them to pay regularly?

One State agency commented that requiring claims to be referred to TOP based on our definition of delinquency would impair its ability to persuade clients to pay their claim. We disagree. We believe that, in fact, this will enhance the State agency's ability to secure payment. The threat of referral to TOP will spur, rather than hamper, additional collections. In addition, the State agency is to remove an individual from TOP if it makes arrangements for that person resumes repaying the claim. This is reflected in the final rule at § 273.18(n)(4).

How often are State agencies to submit delinquent claims for TOP?

Section 3716(c)(6) of the DCA requires that State agencies refer to Treasury all claims that are delinquent for more than 180 days. Currently, State agencies submit all delinquent claims at the same time each year to TOP. The proposed rule does not provide specific time frames for this referral. One State agency asked for flexibility in the time frame for submitting claims for TOP. The commenter said that it may be burdensome to submit these claims all at once.

We are currently working with Treasury and State agencies to determine the optimal time frame for all agencies involved in this endeavor. We share the State agency's concern and will try to develop flexible procedures. Our intention is to balance this referral requirement with a State agency's ability to do more frequent submissions. Since this is a procedural rather than a regulatory issue, it is not included in this final rule.

Why can't State agencies combine judgment with non-judgment claims when referring claims to TOP?

A claim reduced to judgment is a claim that is part of a court order. State agencies routinely combine claims for the same individual into one claim for submittal to TOP. In the proposed rule, we do not allow State agencies to combine a claim reduced to judgment with a claim not reduced to judgment. The reason for that is the 10-year limit for referring non-judgment cases.

Since this issue is procedural in nature, we are not including this in the final rule. However, we are currently working with Treasury and State agencies to find a way to accommodate this request.

Do State agencies really need to identify the type of claim when submitting the claim for TOP?

We proposed that State identify the type of claim (IPV, IHE, or AE) when it is referred to TOP. State agencies need to identify the type of claim for retention purposes. Four State agencies responded by stating that this would be a burden and, in some cases, system changes would be needed to comply with this proposal.

We recognize that this may be a problem for some State agencies and, therefore, will not include this as a requirement for TOP referral. Also, since this is procedural rather than regulatory, any further actions regarding this issue will take place outside the realm of these regulations.

Are additional review procedures really needed for salary offset?

In the proposed rule, State agencies must review the records of individuals identified as Federal employees to ensure that the debt is eligible for salary offset. One State agency did not believe that this additional review is necessary. The commenter stated that this activity is already covered when these claims are referred for TOP.

The Office of Personnel Management (OPM) requires that we provide for a hearing upon request of the employee to determine whether Federal salary offset is an appropriate collection method for this individual. We are currently working towards streamlining these procedures as much as possible. However, since this issue is procedural rather than regulatory, the specific procedures will not be included in these regulations.

How does a request for review affect the referral process?

The proposed rule allows for a debtor to request a review before referral of the debt to TOP. One State agency commented that the referral process should not be suspended if the debtor's responses are simply complaints or requests for information. Another State agency stated that stopping the referral is a concern because individuals use this process to circumvent the offset process.

We recognize the commenters' concerns and are in the process of developing a procedure to minimize the effect that a review request will have on TOP referrals. Since this is procedural rather than regulatory, the specific procedure will not be included in these regulations.

Why is the 10-year limit for referral based on the date of the original demand letter rather than on when the claim becomes delinquent?

Currently, the 10-year limit for TOP referral is based on the date of the original demand letter. One State agency recommended that we change this to 10 years from the date of last payment. The 10-year limit for referral is to be based on when the "right to take action" for the claim began. This limit is a requirement set forth by Federal law. The first identifiable "right to take action" for food stamp recipient claims is the demand letter. Since this is a TOP requirement, we have no choice but to use the limit imposed by Treasury. Also, since this is a procedural issue, we will not be addressing it in this final rule.

Do State agencies really need to use the address provided by Treasury when notifying debtors of their TOP referral?

The proposed rule requires that State agencies use a Treasury-provided address to notice debtors of the intention to refer a claim to TOP. Without such an address and notice, the claim cannot be referred. Currently, Treasury provides addresses for about two-thirds of the potential TOP referrals. Three commenters believe that this is too restrictive. They believe that State agencies should be able to access and use valid addresses from any reliable source.

Since this issue is procedural, we are not including it as part of the final rule. The issue, however, must be resolved. While we share the commenters' concern, overriding due process standards must prevail. Using an accurate address ensures these due process standards are met with respect to being properly delivered. We will work with State agencies and Treasury to develop a standard for addresses that will maximize the number of notices sent while ensuring that the addresses are valid.

Since TOP combines FTROP and Federal salary offset, how do we combine and reconcile the difference between the 60-day FTROP notice and the 30-day Federal salary offset notice?

Currently, we have two different appeal procedures in place for TOP. For most of TOP, the debtor receives one notice and has 60 days to request a review of the claim. For Federal salary offset, on the other hand, the debtor receives a different notice and has 30 days to request a Federal hearing. In the proposed rule, these two notices are being combined. Two State agencies asked how we could resolve the conflict between the two types of hearings as well as between the two time frames (60 versus 30 days) allotted for the debtor to respond.

We recognize this conflict and we are working to develop procedures to resolve this situation. These procedures will be addressed separate from this final rule. However, the final rule will safeguard individual rights by specifying that State agencies must follow our procedures regarding reviews and hearings for TOP. (See § 273.18(n)(2)(ii)).

What happens when a debtor who is about to be referred to TOP alleges to have never received the initial demand letter?

One recipient interest group believes that, in cases where a debtor contacts the State agency and claims he or she never received the initial demand letter, the claim should no longer be considered delinquent. The commenter also recommends that the individual be given another opportunity to request a fair hearing on the merits of the claim.

While we recognize the commenter's concern, a competing concern is that making this a requirement will invite abuse by some debtors to delay the process without good cause. Therefore, we are not including this requirement in the final rule. However, a State agency should provide this opportunity for a debtor where the State agency believes the debtor's assertion is justified.

Are we unjustly imposing a burden of proof on debtors when asking for documentation to dispute the claim?

One recipient interest group felt that the proposed rule at § 273.18(p)(2)(iv)(C)(*3*) unjustly places the burden of proof during a request for review on the debtor to show that the claim is not past due or legally enforceable on the household. That is not our intention. The request for review procedure begins with the State agency initially making the past due and legally enforceable determination based on its own records. Once this is done, the State agency then examines what the debtor submits for the request for review. If what the debtor submits does not show how or why the State agency's original determination is wrong, then the claim is still considered past due and legally enforceable. We do not believe that this in any way places an unreasonable burden on the debtor. We will, however, revise this language in our procedures to make this clearer.

What should be included in the TOP notice?

The proposed rule contains the requirements for the TOP notice. We received 18 comments, mostly from recipient interest groups, on the contents of the proposed notice. These comments are summarized in the following table:

Comments on TOP notice	Number of commenters
1. Citing the legal authorities serves no purpose	1
2. Inform debtor to contact State agency if the debtor is participating and can have the claim collected via allotment reduction	1
3. Include the right and opportunity to review applicable records	5
4. List all TOP exemptions and restrictions	4
5. Include rights of spouse for joint tax return	3
6. Retain information of what is needed when the debtor requests a review	1
7. Retain language providing information on the nature of the claim	3

In view of the procedural changes inherent to TOP, we are not including in this final rule an actual listing of exactly what is to be included in the TOP referral notice. The specific language will be provided to State agencies and will also be included on our aforementioned web page. We will take all of these comments into consideration when developing these procedures. In addition, we encourage feedback suggestions from State agencies, debtors and recipient interest groups once the procedures are released.

What are the changes in transmitting TOP collections to State agencies?

The proposed rule does not describe how we are to transmit collections to State agencies. Two State agencies disagree with a procedural change that has recently been implemented. Under the old method of transferring collections to State agencies, we forwarded all TOP collections. At the end of the quarter, State agencies then returned about 78 percent of these collections back to us. (The remaining 22 percent is what the State agencies collectively retained for collecting the claim.)

Under the new method, we would transmit only 35 percent of TOP collections to the State agency. The 35 percent is the maximum percentage of collections that can be retained. At the end of the reporting quarter, the State agency would then return the remainder (about one-third of the 35 percent) of our funds back to us. The remaining amount, about 22 percent of the total collection, would be the State retention. The only change in procedure is in the actual cash flow. Nothing is changing as far as the actual retention amounts received by the State agencies.

The reason for this procedural change is that the old method for transferring collections is poor cash management. It is simply inappropriate to use Federal funds to provide the State agency with TOP collections, allow the agency to float these funds, and then have the State agency return the same funds to us at the end of the quarter.

Since this is procedural rather than regulatory, this procedure is not included in the regulations.

Doesn't the new transmission procedure affect our ability to timely provide refunds?

Two commenters believed that this new policy would affect their ability to timely process refunds. We disagree. Under the new policy, State agencies will immediately receive 35 percent of the amount collected. Refunds reported to us on the FNS–209 report are only about 1 percent of collections. Therefore, we do not believe that this will affect the State agency's ability to provide refunds.

Implementation

PRWORA set August 22, 1996 as the effective date for the provisions of law relating to recipient claims. We proposed that State agencies implement the discretionary aspects of these regulations no later than the first day of the month 180 days after the publication of the final rule. We received the following comment on the 180-day implementation deadline:

Can the implementation deadline be extended to account for all of the necessary changes in this rule?

One State agency had a suggestion that State agencies be given one year to implement the discretionary changes. The commenter said that one year would be needed to make all of the necessary system changes.

We recognize that the automation resources of many State agencies are stretched because of year 2000 considerations. Therefore, we agree with the State agency. The final rule will extend the deadline for implementation of the discretionary changes to the first day of the month, one year after the publication of this rule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, add a new paragraph (g)(160) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(160) Amendment 389. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA) set the date of enactment, August 22, 1996, as the effective date for the provisions of the law relating to recipient claims. These non-discretionary provisions of this rule are at § 273.18(c)(1)(ii)(B), § 273.18(f) and § 273.18(g) and are effective retroactive to August 22, 1996. The remaining amendments of this rule are effective and must be implemented no later than August 1, 2000.

§ 272.2 [Amended]

3. In § 272.2:

a. Remove the last sentence of paragraph (a)(2); and

b. Remove paragraph (d)(1)(xii).

§ 272.12 [Removed]

4. Remove § 272.12.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.2, add paragraph (b)(4) to read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food Stamp application form.*

* * *

(4) *Privacy Act statement.* As a State agency, you must notify all households applying and being recertified for food stamp benefits of the following:

(i) The collection of this information, including the social security number (SSN) of each household member, is authorized under the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2036. The information will be used to determine whether your household is eligible or continues to be eligible to participate in the Food Stamp Program. We will verify this information through computer matching programs. This information will also be used to monitor compliance with program regulations and for program management.

(ii) This information may be disclosed to other Federal and State agencies for official examination, and to law enforcement officials for the purpose of apprehending persons fleeing to avoid the law.

(iii) If a food stamp claim arises against your household, the information on this application, including all SSNs, may be referred to Federal and State agencies, as well as private claims collection agencies, for claims collection action.

(iv) The providing of the requested information, including the SSN of each household member, is voluntary. However, failure to provide this information will result in the denial of food stamp benefits to your household.

* * * * *

5. Revise § 273.18 to read as follows:

§ 273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

(i) Benefits that are overpaid or

(ii) Benefits that are trafficked. Trafficking is defined in 7 CFR 271.2.

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections similar to recent national rates of collection. If you do not meet these standards, you must take corrective action to correct any deficiencies in the plan.

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred;

(ii) A sponsor of an alien household member if the sponsor is at fault; or

(iii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

(b) *Types of claims.* There are three types of claims:

An . . .	is . . .
(1) Intentional Program violation (IPV) claim	any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in § 273.16.
(2) Inadvertent household error (IHE) claim	any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.
(3) Agency error (AE) claim	any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card.

(c) *Calculating the claim amount*—(1) *Claims not related to trafficking.*

(i) As a State agency, you

must calculate a claim . . .	and . . .	and . . .
back to at least twelve months prior to when you become aware of the overpayment.	for an IPV claim, the claim must be calculated back to the month the act of IPV first occurred.	for all claims, don't include any amounts that occurred more than six years before you became aware of the overpayment.

(ii) The actual steps for calculating a claim are

you . . .	unless . . .	then . . .
(A) determine the correct amount of benefits for each month that a household received an overpayment.		
(B) do not apply the earned income deduction to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim.	the claim is an AE claim	apply the earned income deduction.
(C) subtract the correct amount of benefits from the benefits actually received. The answer is the amount of the overpayment.	this answer is zero or negative	dispose of the claim referral.
(D) reduce the overpayment amount by any EBT benefits expunged from the household's EBT benefit account in accordance with your own procedures. The difference is the amount of the claim.	you are not aware of any expunged benefits ..	the amount of the overpayment calculated in paragraph (e)(1)(ii)(C) of this section is the amount of the claim.

(2) *Trafficking-related claims.* Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by:

(i) The individual's admission;

(ii) Adjudication; or

(iii) The documentation that forms the basis for the trafficking determination.

(d) *Claim referral management.*

(1) As a State agency, you

must . . .	and you . . .	unless . . .
establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.	will ensure that no less than 90 percent of all claim referrals are either established or disposed of according to this time frame.	you develop and use your own standards and procedures that have been approved by us (see paragraph (d)(2) of this section).

(2) Instead of using the standard in paragraph (d)(1) of this section, you may opt to develop and follow your own plan for the efficient and effective management of claim referrals.

(i) This plan must be approved by us.

(ii) At a minimum, this plan must include:

(A) Justification as to why your standards and procedures will be more efficient and effective than our claim referral standard;

(B) Procedures for the detection and referral of potential overpayments or trafficking violations;

(C) Time frames and procedures for tracking claim referrals through date of discovery to date of establishment;

(D) A description of the process to ensure that these time frames are being met;

(E) Any special procedures and time frames for IPV referrals; and

(F) A procedure to track and follow-up on IPV claim referrals when these referrals are referred for prosecutorial or similar action.

(e) *Initiating collection action and managing claims*—(1) *Applicability.* State agencies must begin collection action on all claims unless the conditions under paragraph (g)(2) of this section apply.

(2) *Pre-establishment cost effectiveness determination.* A State agency may opt not to establish and subsequently collect an overpayment that is not cost effective. The following is our cost-effectiveness policy for State agencies:

(i) You may follow your own cost effectiveness plan and

opt not to establish any claim if . . .	unless . . .	or . . .
you determine that the claim referral is not cost effective to pursue.	you do not have a cost-effectiveness plan approved by us.	you already established the claim or discovered the overpayment in a quality control review.

(ii) Or you may follow the FNS threshold and

opt not to establish any claim if . . .	unless . . .	or . . .
you determine that the claim referral is $125 or less.	the household is currently participating in the Program.	you already established the claim or discovered the overpayment in a quality control review.

(3) *Notification of claim.* (i) Each State agency must develop and mail or otherwise deliver to the household written notification to begin collection action on any claim.

(ii) The claim will be considered established for tracking purposes as of the date of the initial demand letter or written notification.

(iii) If the claim or the amount of the claim was not established at a hearing, the State agency must provide the household with a one-time notice of adverse action. The notice of adverse action may either be sent separately or as part of the demand letter.

(iv) The initial demand letter or notice of adverse action must include language stating . . .

(A) The amount of the claim.

(B) The intent to collect from all adults in the household when the overpayment occurred.

(C) The type (IPV, IHE, AE or similar language) and reason for the claim.

(D) The time period associated with the claim.

(E) How the claim was calculated.

(F) The phone number to call for more information about the claim.

(G) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.

(H) The opportunity to inspect and copy records related to the claim.

(I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing.

(J) That, if not paid, the claim will be referred to the Federal government for federal collection action.

(K) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.

(L) That, if the claim becomes delinquent, the household may be subject to additional processing charges.

(M) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.

(N) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction.

(O) If allotment reduction is to be imposed, the percentage to be used and the effective date.

(v) The due date or time frame for repayment must be not later than 30 days after the date of the initial written notification or demand letter.

(vi) Subsequent demand letters or notices may be sent at the discretion of the State agency. The language to be used and content of these letters is left up to the State agency.

(4) *Repayment agreements.* (i) Any repayment agreement for any claim must contain due dates or time frames for the periodic submission of payments.

(ii) The agreement must specify that the household will be subject to involuntary collection action(s) if payment is not received by the due date and the claim becomes delinquent.

(5) *Determining Delinquency.* (i) Unless specified in paragraph (e)(5)(iv) of this section, a claim must be considered delinquent if:

(A) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

(B) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(ii) The date of delinquency for a claim covered under paragraph (e)(5)(i)(A) of this section is the due date on the initial written notification/demand letter. The claim will remain delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked.

(iii) The date of delinquency for a claim covered under paragraph (e)(5)(i)(B) of this section is the due date of the missed installment payment. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or if the State agency determines to either resume or re-negotiate the repayment schedule.

(iv) A claim will not be considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction and you, as a State agency, expect to begin collection on the claim once the prior claim(s) is settled.

(v) A claim is not subject to the requirements for delinquent debts if the State agency is unable to determine delinquency status because collection is coordinated through the court system.

(6) *Fair hearings and claims.* (i) A claim awaiting a fair hearing decision must not be considered delinquent.

(ii) If the hearing official determines that a claim does, in fact, exist against the household, the household must be re-notified of the claim. The language to be used in this notice is left up to the State agency. The demand for payment may be combined with the notice of the hearing decision. Delinquency must be based on the due date of this subsequent notice and not on the initial pre-hearing demand letter sent to the household.

(iii) If the hearing official determines that a claim does not exist, the claim is disposed of in accordance with paragraph (e)(8) of this section.

(7) *Compromising claims.* (i) As a State agency, you may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.

(ii) You may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(iii) You may reinstate any compromised portion of a claim if the claim becomes delinquent.

(8) *Terminating and writing-off claims*–(i) *A terminated claim* is a claim in which all collection action has ceased. A *written-off claim* is no longer considered a receivable subject to continued Federal and State agency collection and reporting requirements.

(ii) The following is our claim termination policy:

As a State agency, if . . .	Then you . . .	Unless . . .
(A) you find that the claim is invalid	must discharge the claim and reflect the event as a balance adjustment rather than a termination.	it is appropriate to pursue the overpayment as a different type of claim (e.g., as an IHE rather than an IPV claim).
(B) all adult household members die	must terminate and write-off the claim	you plan to pursue the claim against the estate.
(C) the claim balance is $25 or less and the claim has been delinquent for 90 days or more.	must terminate and write-off the claim	other claims exist against this household resulting in an aggregate claim total of greater than $25.
(D) you determine it is not cost effective to pursue the claim any further.	must terminate and write-off the claim	we have not approved your overall cost-effectiveness criteria.
(E) the claim is delinquent for three years or more.	must terminate and write-off the claim	you plan to continue to pursue the claim through Treasury's Offset Program.
(F) you cannot locate the household	may terminate and write-off the claim.	
(G) a new collection method or a specific event (such as winning the lottery) substantially increases the likelihood of further collections.	may reinstate a terminated and written-off claim.	you decide not to pursue this option.

(f) *Acceptable forms of payment.*

You may collect a claim by:	However . . .
(1) Reducing benefits prior to issuance. This includes allotment reduction and offsets to restored benefits.	You must follow the instructions and limits found in paragraphs (g)(1) and (g)(3) of this section.
(2) Reducing benefits after issuance. These are benefits from electronic benefit transfer (EBT) accounts.	You must follow the instructions and limits found in paragraph (g)(2) of this section.
(3) Accepting cash or any of its generally accepted equivalents. These equivalents include check, money order, and credit or debit cards.	You do not have to accept credit or debit cards if you do not have the capability to accept these payments.
(4) Accepting paper food coupons	You must destroy any coupons or coupon books that are not returned to inventory and document as appropriate.
(5) Conducting your own offsets and intercepts. This includes but is not limited to wage garnishments and intercepts of various State payments. These collections are considered "cash" for FNS claim accounting and reporting purposes.	You must follow any limits that may apply in paragraph (g) of this section.
(6) Requiring the household to perform public service	This form of payment must be ordered by a court and specifically be in lieu of paying any claim.
(7) Participating in the Treasury collection programs	You must follow the procedures found in paragraph (n) of this section.

(g) *Collection methods.* (1) *Allotment reduction.* The following is our allotment reduction policy:

As a State agency, you must . . .	Unless . . .
(i) Automatically collect payments for any claim by reducing the amount of monthly benefits that a household receives.	the claim is being collected at regular intervals at a higher amount or another household is already having its allotment reduced for the same claim (see paragraph (g)(1)(vi) of this section).
(ii) For an IPV claim, limit the amount reduced to the greater of $20 per month or 20 percent of the household's monthly allotment or entitlement.	the household agrees to a higher amount.
(iii) For an IHE or AE claim, limit the amount reduced to the greater of $10 per month or 10 percent of the household's monthly allotment.	the household agrees to a higher amount.
(iv) Not reduce the initial allotment when the household is first certified	the household agrees to this reduction.
(v) Not use additional involuntary collection methods against individuals in a household that is already having its benefit reduced.	the additional payment is voluntary; or the source of the payment is irregular and unexpected such as a State tax refund or lottery winnings offset.
You may . . .	
(vi) Collect using allotment reduction from two separate households for the same claim. However, you are not required to perform this simultaneous reduction.	
(vii) Continue to use any other collection method against any individual who is not a current member of the household that is undergoing allotment reduction.	

(2) *Benefits from EBT accounts.* (i) As a State agency, you must allow a household to pay its claim using benefits from its EBT benefit account. (ii) You must comply with the following EBT benefit claims collection and adjustment requirements:

You . . .	or . . .	and . . .
(A) For collecting from active (or reactivated) EBT benefits . . .		
need written permission which may be obtained in advance and done in accordance with paragraph (g)(2)(iv) of this section;.	oral permission for one time reductions with you sending the household a receipt of the transaction within 10 days.	the retention rules do apply to this collection.
(B) For collecting from stale EBT benefits . . .		
must mail or otherwise deliver to the household written notification that you intend to apply the benefits to the outstanding claim.	give the household at least 10 days to notify you that it doesn't want to use these benefits to pay the claim.	the retention rules apply to this collection.
(C) For making an adjustment with expunged EBT benefits . . .		
must adjust the amount of any claim by subtracting any expunged amount from the EBT benefit account for which you become aware.	this can be done anytime	the retention rules do not apply to this adjustment.

(iii) A collection from an EBT account must be non-settling against the benefit drawdown account.

(iv) At a minimum, any written agreement with the household to collect a claim using active EBT benefits must include:

(A) A statement that this collection activity is strictly voluntary;

(B) The amount of the payment;

(C) The frequency of the payments (i.e., whether monthly or one time only);

(D) The length (if any) of the agreement; and

(E) A statement that the household may revoke this agreement at any time.

(3) *Offsets to restored benefits.* You must reduce any restored benefits owed to a household by the amount of any outstanding claim. This may be done at any time during the claim establishment and collection process.

(4) *Lump sum payments.* You must accept any payment for a claim whether it represents full or partial payment. The payment may be in any of the acceptable formats.

(5) *Installment payments.* (i) You may accept installment payments made for a claim as part of a negotiated repayment agreement.

(ii) As a household, if you fail to submit a payment in accordance with the terms of your negotiated repayment schedule, your claim becomes delinquent and it will be subject to additional collection actions.

(6) *Intercept of unemployment compensation benefits.* (i) As a State agency, you may arrange with a liable individual to intercept his or her unemployment compensation benefits for the collection of any claim. This collection option may be included as part of a repayment agreement.

(ii) You may also intercept an individual's unemployment compensation benefits by obtaining a court order.

(iii) You must report any intercept of unemployment compensation benefits

as "cash" payments when they are reported to us.

(7) *Public service.* If authorized by a court, the value of a claim may be paid by the household performing public service. As a State agency, you will report these amounts in accordance with our instructions.

(8) *Other collection actions.* You may employ any other collection actions to collect claims. These actions include, but are not limited to, referrals to collection and/or other similar private and public sector agencies, state tax refund and lottery offsets, wage garnishments, property liens and small claims court.

(9) *Unspecified joint collections.* When an unspecified joint collection is received for a combined public assistance/food stamp recipient claim, each program must receive its pro rata share of the amount collected. An unspecified joint collection is when funds are received in response to correspondence or a referral that contained both the food stamp and other program claim(s) and the debtor does not specify to which claim to apply the collection.

(h) *Refunds for overpaid claims.* (1) As a household, if you overpay a claim, the State agency must provide a refund for the overpaid amount as soon as possible after the State agency finds out about the overpayment. You will be paid by whatever method the State agency deems appropriate considering the circumstances.

(2) You are not entitled to a refund if the overpaid amount is attributed to an expunged EBT benefit.

(i) *Interstate claims collection.* (1) Unless a transfer occurs as outlined in paragraph (i)(2) of this section, as a State agency, you are responsible for initiating and continuing collection action on any food stamp recipient claim regardless of whether the household remains in your State.

(2) You may accept a claim from another State agency if the household with the claim moves into your State. Once you accept this responsibility, the claim is yours for future collection and reporting. You will report interstate transfers to us in accordance with our instructions.

(j) *Bankruptcy.* A State agency may act on our behalf in any bankruptcy proceeding against a bankrupt household with outstanding recipient claims.

(k) *Retention rates.* (1) The retention rates for State agencies are as follows:

If you collect an . . .	then the retention rate is . . .
(i) IPV claim	35 percent.
(ii) IHE claim	20 percent.
(iii) IHE claim by reducing a person's unemployment compensation benefit	35 percent.
(iv) AE claim	nothing.

(2) These rates do not apply to any reduction in benefits when you disqualify someone for an IPV.

(l) *Submission of payments to us.* A State agency must send us the value of funds collected for IHE, IPV or AE claims according to our instructions. We must pay you for claims collection retention by electronic funds transfer.

(m) *Accounting procedures.* (1) As a State agency, you must maintain an accounting system for monitoring recipient claims against households. This accounting system shall consist of both the system of records maintained for individual debtors and the accounts receivable summary data maintained for these debts.

(2) At a minimum, the accounting system must document the following for each claim:

(i) The date of discovery;

(ii) The reason for the claim;

(iii) The calculation of the claim;

(iv) The date you established the claim;

(v) The methods used to collect the claim;

(vi) The amount and incidence of any claim processing charges;

(vii) The reason for the final disposition of the claim;

(viii) Any collections made on the claim;

(ix) Any correspondence, including follow-up letters, sent to the household.

(3) At a minimum, your accounting or certification system must also identify the following for each claim:

(i) Those households whose claims have become delinquent;

(ii) Those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household; and

(iii) Those households with outstanding claims that are applying for benefits.

(4) When requested and at intervals determined by us, your accounting system must also produce:

(i) Accurate and supported outstanding balances and collections for established claims; and

(ii) Summary reports of the funds collected, the amount submitted to FNS, the claims established and terminated, any delinquent claims processing charges, the uncollected balance and the delinquency of the unpaid debt.

(5) On a quarterly basis, unless otherwise directed by us, your accounting system must reconcile summary balances reported to individual supporting records.

(n) *Treasury's Offset Programs (TOP).*

(1) *Referring debts to TOP.* (i) As a State agency, you must refer to TOP all recipient claims that are delinquent for 180 or more days.

(ii) You must certify that all of these claims to be referred to TOP are 180 days delinquent and legally enforceable.

(iii) You must refer these claims in accordance with our and the Department of the Treasury's (Treasury) instructions.

(iv) You must not refer claims to TOP that:

(A) You become aware that the debtor is a member of a participating household that is having its allotment reduced to collect the claim; or

(B) Fall into any other category designated by us as non-referable to TOP.

(2) *Notifying debtors of referral to TOP.* (i) As a State agency, you must notify the debtor of the impending referral to TOP according to our instructions relating to:

(A) What constitutes an adequate address to send the notice;

(B) What specific language will be included in the TOP referral notice;

(C) What will be the appropriate time frames and appeal rights; and

(D) Any other information that we determine necessary to fulfill all due process and other legal requirements as well as to adequately inform the debtor of the impending action.

(ii) You must also follow our instructions regarding procedures connected with responding to inquiries, subsequent reviews and hearings, and any other procedures determined by us as necessary in the debtor notification process.

(3) *Effect on debtors.* (i) If you, as a debtor, have your claim referred to TOP,

any eligible Federal payment that you are owed may be intercepted through TOP.

(ii) You may also be responsible for paying any collection or processing fees charged by the Federal government to intercept your payment.

(4) *Procedures when a claim is in TOP.* (i) As a State agency, you must follow FNS and Treasury procedures when the claim is in TOP.

(ii) You must remove a claim from TOP if:

(A) FNS or Treasury instruct you to remove the debt; or

(B) You discover that:

(*1*) The debtor is a member of a food stamp household undergoing allotment reduction;

(*2*) The claim is paid up;

(*3*) The claim is disposed of through a hearing, termination, compromise or any other means;

(*4*) The claim was referred to TOP in error; or

(*5*) You make an arrangement with the debtor to resume payments.

(5) *Receiving and reporting.* As a State agency, you must follow our procedures on receiving and reporting TOP payments.

(6) *Security or confidentiality agreements.* As a State agency, you must follow our procedures regarding any security or confidentiality agreements or processes necessary for TOP participation.

Dated: June 21, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 00–16775 Filed 7–5–00; 8:45 am]

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Federal Register

Thursday,
July 6, 2000

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Wintering Piping Plovers; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG13

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for Wintering Piping Plovers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to designate 146 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas as critical habitat for the wintering population of the piping plover (*Charadrius melodus*). This includes approximately 2,691 kilometers (1,672 miles) of shoreline along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

The population of piping plovers that breeds in the Great Lakes States is listed as endangered, while all other piping plovers are threatened species under the Endangered Species Act of 1973, as amended (Act). All piping plovers are considered threatened species under the Act when on their wintering grounds. Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary constituent elements for the piping plover are those habitat components that are essential for the primary biological needs of foraging, sheltering, and roosting.

This proposed rule, if made final, would result in additional review requirements under section 7 of the Act. Federal agencies may not fund, authorize, license, permit, or carry out an action that would destroy or adversely modify critical habitat. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: *Comments:* We will consider comments received by September 5, 2000. Nine public hearings are scheduled for this proposal.

Public Hearings: We have scheduled nine public hearings for this proposal. See **SUPPLEMENTARY INFORMATION** section for hearing dates and addresses.

Public information meetings will be held prior to each public hearing at the hearing location. The public information sessions will start at 5 p.m. and continue through the ends of the hearings. The public hearings will start at 7 p.m. and end at 9 p.m.

ADDRESSES: Send written comments and other materials concerning this proposal to Lee Elliott, Corpus Christi Ecological Services Field Office, U.S. Fish and Wildlife Service, c/o TAMU–CC, Campus Box 338, 6300 Ocean Drive, Corpus Christi, TX 78412, (361)994–9005 or e-mail to winterplovercomments@fws.gov. The complete file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Serota, Field Supervisor, at the above address (telephone 361/994–9005; facsimile 361/994–8262; email tom_serota@fws.gov).

SUPPLEMENTARY INFORMATION:

Background

Description

The piping plover (*Charadrius melodus*), named for its melodic mating call, is a small, pale-colored North American shorebird. It weighs 43–63 grams (1.5–2.25 ounces) and is 17–18 centimeters (cm) (about 8 inches) long (Haig 1992). Its light sand-colored plumage blends in well with the beach and sand flats, part of its primary habitat. During the breeding season, the legs are bright orange, and the short stout bill is orange with a black tip. There are two single dark bands, one around the neck and one across the forehead between the eyes. Plumage and leg color help distinguish this bird from other plovers. In winter, the bill turns black, the legs remain orange but pale, and the black plumage bands on the head and neck are lost. Chicks have speckled gray, buff, and brown down, black beaks, orange legs, and a white collar around the neck. Juveniles resemble wintering adults and obtain their adult plumage the spring after they fledge (Prater *et al.* 1977).

Range and Biology

Piping plovers breed in three discrete areas of North America: the Northern Great Plains, the Great Lakes, and the Atlantic Coast. The Northern Great Plains breeding sites range from Alberta to Ontario, Canada, south to Kansas and Colorado. While Great Lakes breeding sites once ranged throughout the Great Lakes region, recent nesting records are limited to Michigan and Wisconsin. Atlantic Coast breeding sites range from Newfoundland, Canada, to North Carolina. Generally, piping plovers favor open sand, gravel, or cobble beaches for breeding. Breeding sites are generally found on islands, lake shores, coastal shorelines, and river margins.

Piping plovers winter in coastal areas of the United States from North Carolina to Texas. They also winter along the coast of eastern Mexico and on Caribbean islands from Barbados to Cuba and the Bahamas (Haig 1992). The international piping plover winter censuses of 1991 and 1996 located only 63% and 42% of the estimated number of breeding birds, respectively (Haig and Plissner 1993, Plissner and Haig 1997). Of the birds located on the wintering grounds during these two censuses, 89% were found on the Gulf Coast of the United States and 8% were found on the Atlantic Coast of the United States. Information from observation of color-banded piping plovers indicates that the winter ranges of the breeding populations overlap to a significant degree. Therefore, the source breeding population of a given wintering individual cannot be determined in the field unless it has been banded or otherwise marked.

Piping plovers begin arriving on the wintering grounds in July, with some late-nesting birds arriving in September. A few individuals can be found on the wintering grounds throughout the year, but sightings are rare in late May, June, and early July. Migration is poorly understood, but most piping plovers probably migrate non-stop from interior breeding areas to wintering grounds (Haig 1992). However, concentrations of spring and fall migrants have been observed along the Atlantic Coast (USFWS 1996).

Behavioral observations of piping plovers on the wintering grounds suggest that they spend the majority of their time foraging (Nicholls and Baldassarre 1988; Drake 1999a, 1999b). Primary prey for wintering plovers includes polychaete marine worms, various crustaceans, insects, and occasionally bivalve mollusks (Nicholls 1989; Zonick and Ryan 1995), which they peck from on top or just beneath the surface. Foraging usually takes place on moist or wet sand, mud, or fine shell. In some cases, this substrate may be covered by a mat of blue-green algae. When not foraging, plovers undertake various maintenance activities including roosting, preening, and bathing, aggressive encounters (with other piping plovers and other species)

and moving among available habitat locations.

The habitats used by wintering birds include beaches, mud flats, sand flats, algal flats, and washover passes (areas where breaks in the sand dunes result in an inlet). Individual plovers tend to return to the same wintering sites year after year (Nicholls and Baldassarre 1990, Drake 1999a). Wintering plovers are dependent on a mosaic of habitat patches, and move among these patches depending on local weather and tidal conditions. One study of 48 wintering piping plovers in south Texas (Drake 1999a) found a mean home range size (based on a 95% distribution) of 1,262 hectares (ha) (3,117 acres (ac)), with a mean distance moved per individual (averaged across seasons) of more than 3 kilometers (km) (about 2 miles (mi)) for the fall through the spring of 1997–1998.

In late February, piping plovers begin leaving the wintering grounds to migrate back to breeding sites. Northward migration peaks in late March, and by late May most birds have left the wintering grounds (Eubanks 1994).

Population Status

In recent decades, piping plover populations have declined drastically, especially in the Great Lakes area. In the early 1900s, uncontrolled hunting drove them nearly to extinction. Protective legislation helped them to recover by 1925, and populations reached a high in the 1930s (USFWS 1994). These numbers soon plummeted, though, as recreational use of beaches increased. Plover numbers continued to decline in the 1940s and 1950s as shoreline development expanded, resulting in the loss of plover breeding habitat. River flow alteration, channelization, and reservoir construction have also led to loss of breeding habitat.

In 1973, the piping plover was placed on the National Audubon Society's Blue List of threatened species. By that time, the Great Lakes population of piping plovers had been extirpated from shoreline beaches in Illinois, Indiana, Ohio, New York, Pennsylvania, and Ontario, and only a few birds continued to nest in Wisconsin (Russell 1983). At the time the species was listed under the Endangered Species Act in 1985, the Great Lakes population numbered only 17 known breeding pairs, and the breeding areas had been reduced from sites in eight States to only northern Michigan (Stucker and Cuthbert, unpublished data). In recent years, the Great Lakes population has gradually increased and expanded to the south and west as a result of intensive conservation measures. Recent increases in the Atlantic Coast breeding population have also been attributed to intensive management and monitoring of nesting beaches. While overall the Atlantic Coast population is increasing, increases are regionally variable with some areas experiencing declining populations. On the other hand, breeding census results show a marked decline of the population breeding in the Northern Great Plains of the United States (Plissner and Haig 1997).

Previous Federal Actions

On December 30, 1982, we published a notice of review in the **Federal Register** (47 FR 58454) that identified vertebrate animal taxa being considered for addition to the List of Threatened and Endangered Wildlife. The notice included the piping plover as a Category 2 Candidate species, indicating that we believed the species might warrant listing as threatened or endangered, but that we had insufficient data to support a listing at that time. Subsequent review of additional data indicated that the piping plover warranted listing, and in November 1984, a proposal to list the piping plover as endangered and threatened was published in the **Federal Register** (49 FR 44712).

The proposed listing was based on the decline of the species and the existing threats, including habitat destruction, disturbance by humans and pets, high levels of predation, and contaminants. On December 11, 1985, the final rule was published (50 FR 50720), listing the piping plover as endangered in the Great Lakes watershed (Illinois, Indiana, Michigan, northeastern Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario) and as threatened elsewhere within its range. All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. We did not designate critical habitat for the species at that time.

In 1986, two recovery teams were appointed to develop recovery plans for the piping plovers breeding in the Atlantic Coast States and those breeding in the Great Lakes/Northern Great Plains region. We published those plans in 1988 (USFWS 1988a, 1988b). In 1994, we began to revise the plan for the Great Lakes/Northern Great Plains plovers by developing and distributing for public comment a draft that included updated information on the species. More recently, we decided that the recovery of these two regional populations would benefit from separate recovery plans that would direct separate recovery programs. Separate recovery plans for the Great Lakes and Northern Great Plains piping plovers are presently under development. The recovery plan for the Atlantic Coast-breeding plovers was revised in 1996 (USFWS 1996).

In December 1996, Defenders of Wildlife (Defenders) filed a lawsuit against the Department of the Interior and the Service for failing to designate critical habitat for the Great Lakes population of the piping plover. Defenders filed a second similar lawsuit for the Northern Great Plains piping plover population in 1997. These lawsuits were subsequently combined (*Defenders of Wildlife et al.* v. *Bruce Babbitt et al.*, Consolidated Cases Civil No. 1:96–CV–02695AER and Civil No. 1:97–CV00777AER). In February 2000, the court issued an order directing us to publish a proposed critical habitat designation for the Great Lakes population of the piping plover by June 30, 2000. Publication of a similar proposal for nesting areas of the Northern Great Plains population of piping plover by May 31, 2001, was also ordered. A subsequent order, after requesting the court to reconsider its original order relating to final critical habitat designation, directs us to finalize the critical habitat designations for the Great Lakes population by April 30, 2001, and for the Northern Great Plains population by March 15, 2002.

Since we cannot distinguish the Great Lakes and Great Plains birds on their wintering grounds, we felt it was appropriate to propose critical habitat for all U.S.-wintering piping plovers collectively. Further, we determined that the appropriate course of action would be to propose critical habitat for all U.S.-wintering piping plovers on the same schedule required, under court order, for the Great Lakes breeding population.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary. Thus, critical habitat areas should provide sufficient habitat to

support the species at the population level and geographic distribution that are necessary for recovery. Proposed critical habitat for the wintering population of the piping plover includes areas that we know currently support the species, and also areas for which census data may be lacking but which contain habitat essential for the conservation of the species.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, providing the exclusion will not result in the extinction of the species.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat by actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities on these lands.

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans, and through section 7 consultation and section 10 permits.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protections. Areas described in the approved recovery plans (USFWS 1988, 1996) as essential to the conservation of the wintering population of the piping plover are proposed as critical habitat, if recent data supported consistent use and habitat remains suitable. However, the recovery plans did not have available the most recent comprehensive winter survey data and did not identify all possible areas essential to the survival and recovery of the species. Thus, we identified additional areas essential to the species' conservation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements essential for the conservation of wintering piping plovers are those habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements are found in geologically dynamic coastal areas that support or have the potential to support intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide.

Important components of intertidal flats include sand and/or mud flats with no or very sparse emergent vegetation. In some cases, these flats may be covered or partially covered by a mat of blue-green algae. Adjacent unvegetated or sparsely vegetated sand, mud, or algal flats above high tide are also important, especially for roosting piping plovers. Such sites may have debris, detritus (decaying organic matter), or micro-topographic relief (less than 50 cm above substrate surface) offering refuge from high winds and cold weather. Important components of the beach/dune ecosystem include surf-cast algae, sparsely vegetated backbeach (beach area above mean high tide seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road), spits, and washover areas. Washover areas are broad, unvegetated zones with little or no topographic relief, that are formed and maintained by the action of hurricanes, storm surge, or other extreme wave action. Several of these components (sparse vegetation, little or no topographic relief) are mimicked in artificial habitat types used less commonly by piping plovers (*e.g.*, dredge spoil sites).

These habitat components are a result of the dynamic geological processes that dominate coastal landforms throughout the wintering range of piping plovers. These geologically dynamic coastal regions are controlled by processes of erosion, accretion, succession, and sea-level change. The integrity of the habitat components depends upon daily tidal events and regular sediment transport processes, as well as episodic, high-magnitude storm events; these processes are associated with the formation and movement of barrier islands, inlets, and other coastal landforms. By their nature, these features are in a constant state of change; they may disappear, only to be replaced nearby as coastal processes act on these habitats. Given that piping plovers evolved in this dynamic system, and that they are dependent upon these ever-changing features for their continued survival and eventual recovery, our proposed critical habitat boundaries incorporate these natural processes and include sites that we expect will develop appropriate habitat components in the future.

In most areas, wintering piping plovers are dependent on a mosaic of sites distributed throughout the landscape. The annual, daily, and even hourly availability of the habitat patches is dependent on local weather and tidal conditions. For example, a single piping plover may leave a site if it becomes inundated by a high tide or storm event, or if high winds or cold temperatures make the site unsuitable for foraging or roosting. This bird will move to other patches within the landscape mosaic that might provide refuge from inclement weather conditions, or that simply provide a roosting site until conditions become favorable to resume foraging.

Methods

In determining areas that are essential to conserve the wintering population of piping plover, we used the best scientific and commercial data available. We solicited information from knowledgeable biologists and reviewed the available information pertaining to habitat requirements of the species. To map areas essential to the conservation of the species, we used data on known piping plover wintering locations and regional Geographic Information Systems coverages. Sources of data providing these locations include two international piping plover censuses carried out in January of 1991 and 1996, published reports, Christmas Bird Counts, and other data from surveys focusing on shorebird distribution and abundance. Areas that were identified in the approved recovery plans and current draft recovery plans as essential for the recovery of the species were also used to initially identify important areas.

Those areas along the coast for which occurrence data indicate a consistent annual use by piping plovers are included as units in this proposed designation. In some areas, adequate census data are not available to provide reliable presence or absence information for the plover. These areas are in remote locations where censuses are logistically difficult. However, the physical and biological features essential to piping plovers are known to be at least sporadically present in these dynamic areas, and our belief that these areas support piping plovers when essential habitat features are present is biologically sound. In addition, piping plovers are known to change their areas of use with changes in tides and weather, further lending credence to the belief that these areas are at least occasionally used by the species. Thus, we consider these areas essential to the conservation of the species.

Rates of erosion and accretion along the coastal regions within the area considered for designation of critical habitat are highly variable. Simultaneous with shoreline movements are the changes in vegetation and dune structure in these coastal areas. These changes will also result in shifts in the geographic location of primary constituent elements. While the amount of area meeting the description of primary constituent elements will probably change very little over time, its location can vary markedly. In Texas, erosion rates in some areas can be as much as 23 meters (m) (75 feet) per year, while in other areas of the Texas coast, accretion can be occurring at a rate as high as 51 m (167 feet) per year. Changes in the vegetation line along the Texas coast are of a similar order of magnitude (Paine and Morton 1989). The shifting of islands along the Louisiana coast can be extreme. For example, East Timbalier (included in the proposed critical habitat designation) has shifted as much as 2 km (1.2 mi) since 1887 (Louisiana Geological Survey 1992). Erosion in the vicinity of Cape San Blas, Florida, is as much as 9 m (30 feet) per year, and accretion can be as much as 19 m (62 feet) per year (Davis 1997). Likewise, shoreline in the vicinity of Longboat Pass, Florida, has moved 300 m (984 feet) between 1883 and 1970 (Dean 1989). In order to insure that maps adequately capture areas containing primary constituent elements over the foreseeable future, critical habitat boundaries include adjacent areas seaward of areas containing primary constituent elements (to insure capture of accreting shoreline and island shifting) and landward (to insure capture of eroding shorelines and island shifting).

We did not map critical habitat in sufficient detail to exclude all currently developed sites consisting of buildings, marinas, paved areas, boat ramps, and similar structures. These areas do not contain primary constituent elements essential for piping plover conservation, and are not critical habitat even though they are within the mapped boundaries. Designating specific locations for critical habitat for the piping plovers is difficult because the coastal areas they use are constantly changing due to storm surges, flood events, and other natural geo-physical alterations of beaches and shorelines. Areas seaward of the beach and covered by water (e.g., open ocean or bays) will not contain one or more of the primary constituent elements, and are not critical habitat. Because of the dynamics of coastal areas, however, areas now covered by water may in the future become land, and will then under this designation become critical habitat if they fall within the mapped boundaries.

Proposed Critical Habitat Designation/ Land Ownership

The proposed critical habitat areas contained within the conservation units described below constitute our best evaluation of areas needed for the conservation of the wintering piping plover. Proposed critical habitat may be revised should new information become available prior to the final rule, and existing critical habitat may be revised through rulemaking if new information becomes available after the final rule.

Table 1 provides a summary of the land ownership and linear shoreline distances proposed as critical habitat. Table 2 provides land ownership and area measurements. Estimates reflect the total area within the mapped critical habitat conservation unit boundaries, without regard to the presence of primary constituent elements. The area actually affected by this proposal is, therefore, less than that indicated in Table 2.

TABLE 1.—LINEAR SHORELINE DISTANCES MEASURED IN KILOMETERS (MILES) PROPOSED FOR DESIGNATION AS CRITICAL HABITAT FOR WINTERING PIPING PLOVERS, BY STATE (ROWS) AND OWNERSHIP (COLUMNS).

	Federal	State	Private	Total
North Carolina	117	65	65	247
	(73)	(40)	(40	(153)
South Carolina	23	50	38	111
	(14)	(31)	(24)	(69)
Georgia	53	76	30	159
	(33)	(47)	(19)	(99)
Florida	106	150	79	335
	(66)	(93)	(49)	(208)
Alabama	14	23	59	96
	(9)	(14)	(37)	(60)
Mississippi	98		113	211
	(61)		(70)	(131)
Louisiana	100	169	282	551
	(62)	(105)	(175)	(342)

TABLE 1.—LINEAR SHORELINE DISTANCES MEASURED IN KILOMETERS (MILES) PROPOSED FOR DESIGNATION AS CRITICAL HABITAT FOR WINTERING PIPING PLOVERS, BY STATE (ROWS) AND OWNERSHIP (COLUMNS).—Continued

	Federal	State	Private	Total
Texas	459 285)	85 (53)	437 (272)	981 (610)
Total	970 (603)	618 (383)	1,103 (686)	2,691 (1,672

TABLE 2.—TOTAL AREA OF UNITS, EXPRESSED AS HECTARES (ACRES), PROPOSED FOR DESIGNATION AS CRITICAL HABITAT FOR WINTERING PIPING PLOVERS, BY STATE (ROWS) AND OWNERSHIP (COLUMNS).

	Federal	State	Private	Total
North Carolina	6,679 (16,504)	15,917 (39,331)	2,635 (6,511)	25,231 (62,346)
South Carolina	1,585 (3,917)	7,147 (17,660)	1,387 (3,427)	10,119 (25,004)
Georgia	2,461 (6,081)	10,357 (25,592)	2,355 (5,819)	15,173 (37,492)
Florida	17,830 (44,058)	56,867 (140,520)	1,696 (4,191)	76,393 (188,767)
Alabama	168 (415)	1,038 (2,565)	1,561 (3,857)	2,767 (6,837)
Mississippi	28,362 (70,083)	18,517 (45,756)	2,549 (6,299)	49,428 (122,138)
Louisiana	51,480 (127,207)	386,746 (955,660)	81,451 (201,268)	519,677 (1,284,136)
Texas	58,758 (145,1913)	69,416 (171,529)	24.872 (71.435)	153,036 (378,156)
Total	167,323 (413,459)	566,005 (1,398,613)	118,496 (292,807)	851,824 (2,104,879)

Lands proposed as critical habitat have been divided into 146 critical habitat conservation units that contain areas with the primary constituent elements for the piping plover in the wintering range of the species. These units are found in all eight States where the piping plover winters. Below we describe each unit in terms of its location, size, and ownership. Sizes of units that include linear stretches of beach are given in kilometers (miles), whereas broader areas, such as barrier islands, are portrayed in hectares (acres).

North Carolina

Unit NC–1: Oregon Inlet. 11.8 km (7.3 mi) of shoreline in Dare County.

This unit is surrounded by Cape Hatteras National Seashore and Pea Island National Wildlife Refuge, but is mostly privately owned. This unit includes lands on either side of Oregon Inlet.

Unit NC–2: Cape Hatteras Point. 13.0 km (8.1 mi) of shoreline in Dare County.

The majority of the unit is within Cape Hatteras National Seashore. This unit extends from the Cape Hatteras Lighthouse to the Fish Dump.

Unit NC–3: Clam Shoals. 4.5 km (2.8 mi) of shoreline in Dare County.

The entire unit is owned by the State. This unit includes several islands in Pamlico Sound known as Bird Islands.

Unit NC–4: Hatteras Inlet. 19.8 km (12.4 mi) of shoreline in Dare and Hyde Counties.

The majority of the unit is surrounded by Cape Hatteras National Seashore, but is privately owned. This unit includes lands from the end of Highway 12 to Green Island on either side of Hatteras Inlet and all of "Old DOT" spoil island.

Unit NC–5: Ocracoke Island. 5.9 km (3.7 mi) of shoreline in Hyde County.

The majority of the unit is within Cape Hatteras National Seashore. This unit extends from Ocracoke Island Airport to Ocracoke Inlet.

Unit NC–6: Portsmouth Island-Cape Lookout. 54.6 km (33.9 mi) of shoreline in Carteret County.

The entire unit is within Cape Lookout National Seashore. This unit extends southwest from Ocracoke Inlet, and includes Atlantic shoreline to the west sides of islands on Pamlico Sound. Islands include Casey, Sheep, Portsmouth, Whalebone, Kathryne Jane, and Merkle Hammock Islands. This unit also extends from Old Drum Inlet west to New Drum Inlet and from New Drum Inlet west 1.6 km (1.0 mi).

Unit NC–7: South Core Banks. 17.3 km (10.8 mi) of shoreline in Carteret County.

The entire unit is within Cape Lookout National Seashore. This unit extends from Cape Lookout Lighthouse and includes all of Cape Point.

Unit NC–8: Shackleford Banks. 15.7 km (9.8 mi) of shoreline in Carteret County.

The entire unit is within Cape Lookout National Seashore. This unit is in two parts—the eastern 2.4 km (1.5 mi) of Shackleford Banks, including the islands, and the western-most 3.2 km (2.0 mi) of Shackleford Banks.

Unit NC–9: Rachel Carson. 12.6 km (7.8 mi) of shoreline in Carteret County.

The entire unit is within the Rachel Carson National Estuarine Research Reserve. This unit includes islands south of Beaufort including Horse Island, Carrot Island, and Lennox Point.

Unit NC–10: Bogue Inlet. 6.4 km (4.0 mi) of shoreline in Carteret and Onslow Counties.

The majority of the unit is privately owned, with the remainder falling within Hammocks Beach State Park. This unit extends from the roadless areas on the western end of Bogue Banks, including the sandy shoal islands, to Bogue Inlet and the eastern tip of Bear Island, 1.6 km (1.0 mi) from Bogue Inlet west.

Unit NC–11: Topsail. 13.2 km (8.2 mi) of shoreline in Pender County and Hanover County.

The entire area is privately owned. This unit extends from the east tip (0.4 km (.25 mi)) of Figure Eight Island, northeast to the west tip (0.4 km (.25 mi)) of Topsail Beach. It includes both Rich Inlet and New Topsail Inlet.

Unit NC–12: Figure Eight Island. 6.5 km (4.0 mi) of shoreline in New Hanover County.

The majority of the unit is privately owned. This unit includes the west tip of Figure Eight Island (0.8 km (0.5 mi)), including mudflats northwest of Mason Inlet.

Unit NC–13: Masonboro. 3.3 km (2.1 mi) of shoreline in New Hanover County.

The entire unit is within the NC National Estuarine Research Reserve. This unit includes the northern tip of Masonboro Island.

Unit NC–14: Carolina Beach Inlet. 10.3 km (6.4 mi) of shoreline in New Hanover County.

The majority of the unit is within Crowe Sound on Masonboro Island and is owned by the NC National Estuarine Research Reserve. This unit extends approximately 3.2 km (2.0 mi) north of the inlet to 1.2 km (0.75 mi) south of the inlet.

Unit NC–15: Ft. Fisher. 32.9 km (20.4 mi) of shoreline in New Hanover and Brunswick Counties.

The majority of the unit is within Ft. Fisher State Recreation Area. This unit extends from the Ft. Fisher Islands to south of Old Corn Cake Inlet approximately 0.8 km (0.5 mi) on Smith Island.

Unit NC–16: Lockwood Folly Inlet. 1.8 km (1.1 mi) of shoreline in Brunswick County.

The entire unit is on Oak Island and privately owned. This unit extends from the end of West Beach Drive, west to Lockwood Folly Inlet.

Unit NC–17: Shallotte Inlet. 9.5 km (5.9 mi) of shoreline in Brunswick County.

The entire unit is privately owned. This unit extends from Shallotte Inlet and runs east approximately 2.1 km (1.3 mi) on Atlantic Ocean shoreline and Intracoastal waterway side. The island south of Shallotte Inlet is also included.

Unit NC–18: Mad Inlet. 7.9 km (5.0 mi) of shoreline in Brunswick County.

The entire unit is privately owned. This unit extends from the western end of Main Street to Bird Island and includes the marsh areas north of Sunset Beach.

South Carolina

Unit SC–1: Waites Island-North. 4.0 km (2.5 mi) of shoreline in Horry County.

This unit includes the northern end of Waites Island, and the majority of the unit is privately owned.

Unit SC–2: Waites Island-South. 2.4 km (1.2 mi) of shoreline in Horry County.

This unit includes the southern end of Waites Island and is mostly privately owned.

Unit SC–3: Murrells Inlet/Huntington Beach. 6.5 km (4.0 mi) of shoreline in Georgetown County.

The majority of the unit is within Huntington Beach State Park. This unit extends from the groins north of Murrells Inlet and south to the northern edge of North Litchfield Beach.

Unit SC–4: Litchfield. 0.9 km (0.6 mi) of shoreline in Georgetown County.

This unit includes the southern tip of Litchfield Beach and is mostly privately owned.

Unit SC–5: North Inlet. 5.8 km (3.7 mi) of shoreline in Georgetown County.

The majority of the unit is within Tom Yawley Wildlife Center Heritage Preserve (HP). This unit extends to the north of the inlet on Debidue Beach and to the south of the inlet on North Island.

Unit SC–6: North Santee Bay Inlet. 13.8 km (8.7 mi) of shoreline in Georgetown County.

The majority of the unit is within the Tom Yawley Wildlife Center HP and the Santee-Delta Wildlife Management Area. This unit is at the North Santee Bay inlet and includes lands of South Island, Santee Point, Cedar Island, and all of North Santee Sandbar.

Unit SC–7: Cape Romain. 24.9 km (15.5 mi) of shoreline in Charleston County.

The majority of the unit is within Cape Romain National Wildlife Refuge. This unit includes the southern portion of Cape Island, the southernmost portion of Lighthouse Island, and the southern side of the far eastern tip of Raccoon Key.

Unit SC–8: Bull Island. 7.7 km (5.0 mi) of shoreline in Charleston County.

The majority of the unit is within Cape Romain National Wildlife Refuge and land owned by the South Carolina Department of Natural Resources. This unit is the southern portion of Bull Island at the inlet and northeast tip of Capers Island HP at the inlet.

Unit SC–9: Stono Inlet. 16.0 km (9.9 mi) of shoreline in Charleston County.

Most of this unit is privately owned. A portion of the unit is Bird Key-Stono HP.

Unit SC–10: Seabrook Island. 3.5 km (2.5 mi) of shoreline in Charleston County.

This unit extends from Captain Sams Inlet to the southwest approximately 3.5 km (2.5 mi). Most of this unit is privately owned.

Unit SC–11: Deveaux Bank. 6.1 km (3.7 mi) of shoreline in Charleston County.

The entire unit is within Deveaux Bank HP. This unit includes all of Deveaux island.

Unit SC–12: Otter Island. 4.1 km (2.5 mi) of shoreline in Colleton County.

The majority of the unit is within St. Helena Sound HP. This unit includes the southern portion of Otter Island.

Unit SC–13: Harbor Island. 3.9 km (2.5 mi) of shoreline in Beaufort County.

The majority of the unit is State-owned. This unit extends from the northeastern tip of Harbor Island and includes all of Harbor Spit.

Unit SC–14: Caper's Island. 5.7 km (3.7 mi) of shoreline in Beaufort County.

Most of this unit is privately owned. This unit includes the entire Atlantic Coast shoreline of Caper's Island.

Unit SC–15: Hilton Head. 6.0 km (3.7 mi) of shoreline in Beaufort County.

The majority of this unit is State-owned. This unit includes the northeastern tip (Atlantic Ocean side) of Hilton Head Island and all of Joiner Bank.

Georgia

Unit GA–1: Tybee Island. 3.4 km (2.1 mi) of shoreline in Chatham County.

The majority of the unit is privately owned. This unit extends along the northern tip if Tybee Island starting from 0.8 km (.5 mi) northeast from the intersection of Crab Creek and Highway 80 to 0.7 km (.41 mi) northeast from the intersection of Highway 80 and Horse Pen Creek.

Unit GA–2: Little Tybee Island. 12.3 km (7.6 mi) of shoreline in Chatham County.

The majority of the unit is within Little Tybee Island State Heritage Preserve. This unit extends just south of the first inlet to Wassaw Sound along the Atlantic Ocean coastline.

Unit GA–3: North Wassaw Island. 4.0 km (2.5 mi) of shoreline in Chatham County.

The entire unit is within Wassaw National Wildlife Refuge. This unit extends from Wassaw Sound south along the Atlantic Coastline approximately 1.6 km (1.0 mi).

Unit GA–4: South Wassaw Island. 3.3 km (2.0 mi) of shoreline in Chatham County.

The entire unit is within Wassaw National Wildlife Refuge. This unit extends from the last southern 1.6 km (1.0 mi.), around the southern tip of Wassaw Island, up to the first inlet.

Unit GA–5: Ossabaw Island. 15.1 km (9.4 mi) of shoreline in Chatham County.

The entire unit is within Ossabaw Island State HP. This unit includes the northeastern tip (Camp Creek then east) and 12 km (7.5 mi) south along the Atlantic Ocean shoreline to a point 2.8 km (1.75 mi) past the center inlet.

Unit GA–6: St. Catherine's Island Bar. 6.6 km (4.1 mi) of shoreline in Liberty County.

The entire unit is State owned and located east-northeast of St. Catherines Island. This unit includes the entire St. Catherine's Island Bar.

Unit GA–7: McQueen's Inlet. 27.2 km (16.9 mi) of shoreline in Liberty County.

The majority of the unit is private land along the eastern-central coastline on St. Catherines Island. This unit extends from McQueen's Inlet north approximately 3.5 km (2.2 mi) and south approximately 1.6 km (1.0 mi).

Unit GA–8: St. Catherine's Island. 3.5 km (2.2 mi) of shoreline in Liberty County.

The majority of the unit is private land on the southern tip of St. Catherine's Island. This unit starts 1.2 km (0.75 mi) north of Sapelo Sound and stops inland at Brunsen Creek.

Unit GA–9: Blackbeard Island. 6.1 km (3.8 mi) of shoreline in McIntosh County.

The entire unit is within the Blackbeard Island National Wildlife Refuge. This unit includes the northeastern portion of the island.

Unit GA–10: Sapelo Island. 2.4 km (1.5 mi) of shoreline in McIntosh County.

The entire unit is within a State Wildlife Management Unit within Sapelo Island. The unit extends south of Cabretta tip approximately 1.6 km (1.0 mi).

Unit GA–11: Wolf Island. 12.3 km (7.7 mi) of shoreline in McIntosh County.

The majority of the unit is within Wolf Island National Wildlife Refuge and private lands just north of the Refuge. The unit includes the eastern half of Wolf Island.

Unit GA–12: Egg Island Bar. 3.8 km (2.4 mi) of shoreline in McIntosh County.

This unit is State owned and includes all of Egg Island Bar.

Unit GA–13: Little St. Simon's Island. 15.1 km (9.4 mi) of shoreline in Glynn County.

The majority of the unit is private land on Little St. Simon's Island. This unit includes the entire eastern coastline along Little St. Simon's Island.

Unit GA–14: Sea/St. Simon's Island. 3.9 km (2.4 mi) of shoreline in Glynn County.

The majority of the unit is private land on the south tip of Sea Island and on the east beach of St. Simons Island. This unit extends north of Gould's Inlet (Sea Island) and south of Gould's Inlet (St. Simons Island).

Unit GA–15: Jekyll Island. 2.8 km (1.7 mi) of shoreline in Glynn County.

The majority of the unit is within State lands on Jekyll Island. This unit includes the southern region of Jekyll Island.

Unit GA–16: Cumberland Island. 36.6 km (22.7) of shoreline in Camden County.

The majority of the unit is along Cumberland Island Wilderness Area and Cumberland Island National Seashore. This unit includes the majority of the eastern Atlantic Ocean shoreline of Cumberland Island.

Florida

Unit FL–1: Big Lagoon. 1.4 km (0.9 mi) of shoreline in Escambia County.

The majority of the unit is within Big Lagoon State Recreation Area. This unit includes the peninsula areas and islands of the State lands.

Unit FL–2: Big Sabine. 6.7 km (4.2 mi) of shoreline in Escambia County.

The majority of the unit is within Gulf Islands National Seashore. This unit includes areas adjacent to Santa Rosa Sound of Big Sabine Point and adjacent embayment.

Unit FL–3: Navarre Beach. 2.9 km (1.8 mi) of shoreline in Escambia and Santa Rosa Counties.

The majority of the unit is within lands owned by Gulf Islands National Seashore and managed by the Santa Rosa Island Authority. This unit includes lands adjacent to Santa Rosa Island.

Unit FL–4: Marifarms. 12.5 km (7.8 mi) of shoreline in Bay County.

The majority of the unit is a mixture of State and private lands. This unit extends just east of Cedar Point and ends on far east side of the southeastern-most Marifarms impoundment.

Unit FL–5: Shell/Crooked Islands. 46.8 km (29.0 mi) of shoreline in Bay County.

The entire unit is within Tyndall Air Force Base. This unit includes all of Shell Island, Crooked Island West, and Crooked Island East.

Unit FL–6: Upper St. Joe Peninsula. 8.2 km (5.1 mi) of shoreline in Gulf County.

The majority of the unit is within St. Joseph State Park. This unit includes the northern portion of the peninsula.

Unit FL–7: Cape San Blas. 5.1 km (3.2 mi) of shoreline in Gulf County.

The majority of the unit is within Eglin Air Force Base. This unit includes the area known as the cape.

Unit FL–8: St. Vincent Island. 11.6 km (7.2 mi) of shoreline in Franklin County.

The majority of the unit is within St. Vincent National Wildlife Refuge. This unit includes the western end of St. Vincent Island and areas adjacent to West Pass, the eastern end of St. Vincent Island, and the western portion of Little St. George Island.

Unit FL–9: East St. George Island. 27.8 km (17.3 mi) of shoreline in Franklin County.

The majority of the unit is within St. Geroge State Park. This unit includes the State lands on the eastern portion of St. George Island.

Unit FL–10: Yent Bayou. 4.7 km (2.9 mi) of shoreline in Franklin County.

The majority of the unit is State owned. This unit is adjacent to the area known as Royal Bluff.

Unit FL–11: Carabelle Beach. 4.1 km (2.5 mi) of shoreline in Franklin County.

The area within this unit is privately owned. This unit is the peninsula created by Boggy Jordon Bayou.

Unit FL–12: Lanark Reef. 8.8 km (5.5 mi) of shoreline in Franklin County.

The entire unit is State owned. This unit includes the entire island.

Unit FL–13: Phipps Preserve. 4.3 km (2.7 mi) of shoreline in Franklin County.

The majority of the unit is within Phipps Preserve. This unit includes the western portion of Alligator Point.

Unit FL–14: Hagens Cove. 20.3 km (12.6 mi) of shoreline in Taylor County.

The majority of the unit is within Big Bend Wildlife Management Area. This unit extends from Sponge Point to Piney Point.

Unit FL–15: Anclote Keys. 10.4 km (6.4 mi) of shoreline in Pasco and Pinellas Counties.

The majority of the unit is within Anclote Key State Preserve. This unit extends from North Anclote Key to the lighthouse.

Unit FL–16: Three Rooker Island. 7.0 km (4.3 mi) of shoreline in Pinellas County.

The majority of the unit is within Anclote Key State Preserve. This unit includes all the islands of this complex.

Unit FL–17: North Honeymoon Island. 4.6 km (2.9 mi) of shoreline in Pinellas County.

The majority of the unit is within Honeymoon Island State Recreation Area. This unit extends from North Point to the midpoint of Honeymoon Island.

Unit FL–18: South Honeymoon Island. 3.0 km (1.9 mi) of shoreline in Pinellas County.

The majority of the unit is private land. This unit is at the southern end of Honeymoon Island and encompasses the far southeastern tip.

Unit FL–19: Caladesi Island. 4.9 km (3.0 mi) of shoreline in Pinellas County.

The majority of the unit is within Caladesi Island State Park. This unit extends from Hurricane Pass to Dunedin Pass on the Gulf of Mexico side.

Unit FL–20: Shell Key and Mullet Key. 14.9 km (9.2 mi) of shoreline in Pinellas County.

The majority of the unit is within Fort Desoto Park. This unit includes the Shell Key island complex and the northwest portion of Mullet Key.

Unit FL–21: Egmont Key. 6.8 km (4.2 mi) of shoreline in Hillsborough County.

The majority of the unit is within Egmont Key National Wildlife Refuge. This unit includes the entire island.

Unit FL–22: Cayo Costa. 5.6 km (3.5 mi) of shoreline in Lee County.

The majority of the unit is within Cayo Costa State Park, and much of the remaining area is in the Cayo Costa Florida Conservation and Recreation Lands (CARL) acquisition project. This unit extends near the north end of the island and includes Murdock Point.

Unit FL–23: North Captiva Island. 2.9 km (1.8 mi) of shoreline in Lee County.

The unit is within the Cayo Costa CARL land purchase project. This unit extends from Captiva pass at the north to approximately Foster Bay at the south.

Unit FL–24: Captiva Island and Sanibel Island. 2.9 km (1.8 mi) of shoreline in Lee County.

The unit spans the Wulfert Channel that separates Captiva from Sanibel to the south. The large majority of the unit is on Sanibel, extending south to include Bowmans Beach County Park.

Unit FL–25: Bunch Beach. 7.0 km (4.4 mi) of shoreline in Lee County.

This unit is mostly within a CARL Estero Bay acquisition project. It lies along San Carlos Bay, on the mainland between Sanibel Island and Estero Island (Fort Myers Beach). It includes Bunch Beach at the end of John Morris Road on the mainland and the western tip of Estero Island (Bodwitch Point).

Unit FL–26: Estero Island. 4.3 km (2.7 mi) of shoreline in Lee County.

The majority of the unit is privately owned. The unit consists of approximately the southern third of the island's Gulf-facing shoreline (excluding south-facing shoreline at the south end of the island that faces Big Carlos Pass rather than the Gulf).

Unit FL–27: Marco Island. 10.6 km (6.5 mi) of shoreline in Collier County.

The unit is mostly privately owned, except for the Sand Dollar Key area at Tigertail Beach. The unit extends from uninhabited islands on the north side of Big Marco Pas through Sand Dollar Island and Tigertail Beach at the north end of the island, to Marco Island's south end at Caxambas Pass. The islands north of Big Marco Pass are within the Rookery Bay CARL acquisition project.

Unit FL–28: Marquesas Keys. 20.5 km (12.7 mi) of shoreline in Monroe County.

The unit comprises the roughly circular atoll that encloses Mooney Harbor, including Gull Keys and Mooney Harbor Key. The entire unit is within Key West National Wildlife Refuge.

Unit FL–29: Boca Grande/Woman/Ballast Keys. 8.8 km (5.5 mi) of shoreline in Monroe County.

Boca Grande and Woman Keys, east of the Marquesas Keys, are within Key West National Wildlife Refuge. Ballast Key is privately owned.

Unit FL–30: Bahia Honda/Ohio Keys. 12.1 km (7.5 mi) of shoreline in Monroe County.

This unit comprises Bahia Key (including a small island off its southwest shore), which is almost entirely owned by Bahia Honda State Park, plus Ohio Key, which is privately owned.

Unit FL–31: Lower Matecumbe Key. 3.4 km (2.1 mi) of shoreline in Monroe County.

Part of the unit is at Sea Oats Beach, owned by the Village of Islamorada. The remaining is at Ann's Beach.

Unit FL–32: Sandy Key/Carl Ross Key. 2.5 km (1.6 mi) of shoreline in Monroe County.

This unit consists of two adjoining islands in Florida Bay, roughly south of Flamingo in Everglades National Park. The entire area is owned and managed by the National Park Service.

Unit FL–33: St. Lucie Inlet. 4.1 km (2.6 mi) of shoreline in Martin County.

The unit includes a small area on the north shore of St. Lucie Inlet. The great majority of the unit is on the inlet's south side, including Saint Lucie Inlet State Preserve, which is administered by Jonathan Dickinson State Park.

Unit FL–34: Ponce de Leon Inlet. 3.4 km (2.2 mi) of shoreline in Volusia County.

The majority of the unit is within Smyrna Dunes Park and Lighthouse Point Park. This unit extends on either side of the inlet.

Unit FL–35: Huguenot. 25.1 km (15.5 mi) of shoreline in Nassau and Duval Counties.

The majority of the unit is within Big Talbot Island State Park, Little Talbot Island State Park, and the Tinucuan Ecological and Historical Preserve. This unit extends from the Simpson Creek inlet to the inlet of the St. Johns River.

Unit FL–36: Tiger Islands. 4.8 km (3.0 mi) of shoreline in Nassau County.

The entire unit is privately owned. This unit extends the northern tip of Tiger Island running southeast along the Cumberland Sound side of Tiger and Little Tiger Islands including the mouth of Tiger Creek.

Alabama

Unit AL–1: Isle Aux Herbes. 13.3 km (8.3 mi) of shoreline in Mobile County.

This unit includes Mississippi Sound shoreline on Isle Aux Herbes and is State-owned.

Unit AL–2: Dauphin, Little Dauphin, and Pelican Islands. 77.8 km (48.3 mi) of shoreline in Mobile County.

This unit includes areas of Mississippi Sound, Mobile Bay, and Gulf of Mexico shoreline on Dauphin, Little Dauphin, and Pelican Islands. The area is mostly privately owned but includes State and Federal lands.

Unit AL–3: Fort Morgan. 2.82 km (1.7 mi) of shoreline in Baldwin County.

This area includes Mobile Bay and Gulf of Mexico shorelines within Bon Secour National Wildlife Refuge, Fort Morgan Unit. This unit extends from the west side of the pier on the northwest point of the peninsula, following the shoreline southwest around the tip of the peninsula, then east to the terminus of the beach access road. The area is State-owned but is leased by the Federal Government.

Mississippi

Unit MS–1: Lakeshore through Bay St. Louis. 14.6 km (9.1 mi) of shoreline in Hancock County.

This unit extends from the north side of Bryan Bayou outlet and includes the shore of the Mississippi Sound following the shoreline northeast to the southeast side of the Bay Waveland Yacht Club. The shoreline of this unit is privately owned.

Unit MS–2: Henderson Point. 4.3 km (2.7 mi) of shoreline in Harrison County.

This unit extends from 0.2 km (0.13 mi) west of the intersection of 3rd Avenue and Front Street and includes the shore of the Mississippi Sound following the shoreline northeast to the west side of Pass Christian Harbor. The shoreline of this unit is privately owned.

Unit MS–3: Pass Christian. 10.6 km (6.6 mi) of shoreline in Harrison County.

This unit extends from the east side of Pass Christian Harbor and includes the shore of the Mississippi Sound following the shoreline northeast to the west side of Long Beach Pier and Harbor. The shoreline of this unit is privately owned.

Unit MS–4: Long Beach. 4.4 km (2.7 mi) of shoreline in Harrison County.

This unit extends from the east side of Long Beach Pier and Harbor and includes the shore of the Mississippi Sound following the shoreline northeast to the west side of Gulfport Harbor. The shoreline of this unit is privately owned.

Unit MS–5: Gulfport. 4.3 km (2.7 mi) of shoreline in Harrison County.

This unit extends from the east side of Gulfport Harbor and includes the shore of the Mississippi Sound following the shoreline northeast to the west side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS. The shoreline of this unit is privately owned.

Unit MS–6: Mississippi City. 8.1 km (5.0 mi) of shoreline in Harrison County.

This unit extends from the east side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS, and includes the shore of the Mississippi Sound following the shoreline northeast to the west side of President Casino. The shoreline of this unit is privately owned.

Unit MS–7: Beauvoir. 0.6 km (0.4 mi) of shoreline in Harrison County.

This unit extends from the east side of President Casino Broadwater and includes the shore of the Mississippi Sound following the shoreline eastward to the west side of Treasure Bay Casino Resort. The shoreline of this unit is privately owned.

Unit MS–8: Biloxi West. 5.9 km (3.7 mi) of shoreline in Harrison County.

This unit extends from the east side of Treasure Bay Casino Resort and includes the shore of the Mississippi Sound following the shoreline east to the intersection of Interstate 110 and U.S. 90. The shoreline of this unit is privately owned.

Unit MS–9: Biloxi East. 1.5 km (0.9 mi) of shoreline in Harrison County.

This unit extends from the east side of Biloxi Harbor and includes the shore of the Mississippi Sound following the shoreline east to 0.1 km west of the intersection of Oak Street and Beach Boulevard. The shoreline of this unit is privately owned.

Unit MS–10: Ocean Springs West. 1.9 km (1.2 mi) of shoreline in Jackson County.

This unit extends from U.S. 90 and includes the shore of Biloxi Bay following the shoreline southeast to the Ocean Springs Harbor inlet The shoreline of this unit is privately owned.

Unit MS–11: Ocean Springs East. 2.6 km (1.6 mi) of shoreline in Jackson County.

This unit extends from Weeks Bayou and includes the shore of Biloxi Bay following the shoreline southeast to Halstead Bayou. The shoreline of this unit is privately owned.

Unit MS–12: Deer Island. 14.6 km (9.1 mi) of shoreline in Harrison County.

The entire unit is on Deer Island. This unit includes privately owned Mississippi Sound shoreline.

Unit MS–13: Round Island. 2.6 km (1.6 mi) of shoreline in Jackson County.

This unit includes privately owned Mississippi Sound shoreline.

Unit MS–14: Mississippi Barrier Islands. 130.5 km (81.1 mi) of shoreline in Harrison and Jackson Counties.

This unit includes shoreline of the Mississippi Sound and Gulf of Mexico on Cat, East and West Ship, Horn, Spoil and Petit Bois Islands. Approximately 39.9 km (24.8 mi) are privately owned, and 95.6 km (59.4 mi) are part of Gulf Islands National Seashore.

Unit MS–15: North and South Rigolets. 5.9 km (3.7 mi) of shoreline in Jackson County, MS, and Mobile County, AL.

This unit extends from the southwestern tip of South Rigolets Island and includes the shore of Point Aux Chenes Bay, the Mississippi Sound, and Grand Bay following the shoreline east around the western tip, then north to the South Rigolets Bayou; then from the southeastern corner of North Rigolets Island north to the northeastern most point of the island. Approximately 4.3 km (2.7 mi) are in Mississippi and 1.6 km (1.0 mi) are in AL. Almost half the Mississippi shoreline length is in the Grand Bay National Wildlife Refuge.

Louisiana

Unit LA–1: Texas/Louisiana border to eastern Vermilion Parish line.186.9 km (116.1 mi) of shoreline in Cameron and Vermilion Parishes.

This unit extends from the Texas/Louisiana border and includes the shore of the Gulf of Mexico following the shoreline east to the eastern Vermilion Parish line. Approximately 144.8 km (90.0 mi) are privately owned, and 50.7 km (31.5 mi) are part of the State-owned Rockefeller Wildlife Refuge and Cheniere au' Tigre.

Unit LA–2: Wax Lake Outlet and Atchafalaya River Deltas. 35,178 ha (86,927 ac) in St. Mary Parish, LA.

Approximately 78 percent of this unit is part of the State-owned Atchafalaya Delta Wildlife Management Area, with the rest in private ownership. This unit contains various habitats including open water, mudflat, marsh, scrub-shrub, and forest. However, it only contains approximately 1,728 hectares

(4,270 acres) with the primary constituent elements for wintering piping plovers.

Unit LA–3: Point Au Fer Island. 36.7 km (22.8 mi) of shoreline in Terrebonne Parish.

This unit extends from the small island at the northwest tip of Point Au Fer Island, follows the shoreline of Point Au Fer Island southeast, and includes the shore of the Gulf of Mexico following the shoreline southeast to the western side of East Bay Junop. This entire unit is privately owned.

Unit LA–4: Isles Dernieres. 60.7 km (37.7 mi) of shoreline in Terrebonne Parish.

This unit comprises Caillou Bay, Lake Pelto, and Gulf of Mexico shoreline on the State-owned Isles Dernieres chain.

Unit LA–5: Timbalier Islands to Grand Terre Islands. 134.1 km (83.3 mi) of shoreline in Lafourche, Jefferson, and Plaquemines Parishes.

This unit includes 108.8 km (67.6 mi) of privately owned shoreline along West and East Timbalier Islands, from Belle Pass to Cheniere Caminada, Grand Isle, and Grand Terre Island; and 25.3 km (15.7 mi) of State-owned shoreline along West Timbalier, Grand Isle State Park, and Grand Terre Islands. Shoreline includes that of Caillou Bay, Lake Pelto, and the Gulf of Mexico.

Unit LA–6: Mississippi River Delta. 262,730 ha (649,220 ac) in Plaquemines Parish, LA.

This area contains various habitats including open water, mudflat, marsh, scrub-shrub, and forest. The federally owned Delta National Wildlife Refuge and State-owned Pass A Loutre Wildlife Management Area comprise 81 percent of this unit. However, it only contains approximately 1,728 hectares (4,270 acres) with the primary constituent elements for wintering piping plovers. The area with the primary constituent elements is approximately evenly divided among Federal, State, and private ownership.

Unit LA–7: Breton Islands and Chandeleur Island Chain. 132.9 km (82.6 mi) of shoreline in Plaquemines and St. Bernard Parishes, LA.

This unit includes shoreline of Breton Sound, Chandeleur Sound, and Gulf of Mexico on the Breton Islands and Chandeleur Island chain. A total of 100.4 km (62.4 mi) of shoreline are included in the Breton National Wildlife Refuge, and 32.5 km (20.2 mi) of shoreline is owned by the State.

Texas

Unit TX–1: South Bay and Boca Chica. 7,810 ha (9,575 ac) in Cameron County.

Approximately 3,875 ha (4,448 ac) of the unit are owned and managed by the Lower Rio Grande Valley National Wildlife Refuge. Approximately 1, 375 ha (3,398 ac) of the unit falls within the South Bay Coastal Preserve, leased by the Texas General Land Office (TGLO) to Texas Parks and Wildlife Department for management to protect this unique coastal area. In addition, the Texas Parks and Wildlife Department owns and manages 425 ha (1,050 ac) at Boca Chica State Park. The remaining 2,135 ha (5,275 ac) is privately owned and managed. Beaches within the unit reach from the mouth of the Rio Grande northward to Brazos Santiago Pass, south of South Padre Island. The unit includes areas from the Gulf of Mexico at the Rio Grande, west to near Loma de las Vacas, north to the Brownsville Ship Channel near Loma Ochoa, and east to the Gulf of Mexico along the Brownsville Ship Channel.

Unit TX–2: Queen Isabella Causeway. 37 ha (91 ac) in Cameron County.

The area extends along the Laguna Madre west of the city of South Padre Island and is privately owned.

Unit TX–3: Padre Island. 104,550 ha (258,339 ac) in Cameron, Willacy, Kenedy, and Kleberg Counties.

This unit is the largest in Texas. Approximately 45 percent (46,450 ha (114,776 ac)) of the unit is owned and managed by Padre Island National Seashore (PAIS). The TGLO owns and manages about 48 percent (48,900 ha (120,830 ac)), although boundaries between the State-owned lands and private lands are not always well demarcated. The remaining 9,200 ha (22,733 ac) is privately owned with a significant portion of that area being owned and managed by The Nature Conservancy on South Padre Island. The unit spans the breadth of the island from the north end of the City of South Padre Island to mile marker 30 on PAIS where the unit splits to include only bayside flats and beach. This unit probably harbors the single largest number of wintering piping plovers.

Unit TX–4: Lower Laguna Madre Mainland. 15,555 ha (38,436 ac) in Cameron and Willacy, Counties.

This unit constitutes important habitat when flats on Unit TX–3 are inundated. It is a unit with approximately 3,930 ha (9,711 ac) within the Laguna Atascosa National Wildlife Refuge. Approximately 3,855 ha (9,526 ac) is privately owned, with the remaining 7,770 ha (19,199 ac) owned and managed by the TGLO. The unit constitutes a system of mainland flats reaching from El Realito Peninsula to an area south of the City of Port Mansfield.

Unit TX–5: Upper Laguna Madre. 1,245 ha (3,076 ac) in Kleberg County.

This unit includes 170 hectares (420 acres) of PAIS and consists of a series of small flats along the bayside of Padre Island in the Upper Laguna Madre. The remainder of the area is privately owned with adjacent State-owned submerged lands. The unit stretches from just south of the northern boundary of PAIS to the Kleberg/Nueces County line and includes the area from just gulfward of the Gulf Intercoastal Waterway to uplands on Padre Island.

Unit TX–6: Mollie Beattie Coastal Habitat. 935 ha (2,310 ac) in Nueces County.

This unit is primarily composed of submerged land owned and managed by the TGLO. Much of the unit falls within two State tracts that have been designated under a Memorandum of Understanding between the U.S. Fish and Wildlife Service and the TGLO as an Adopt-a-Habitat site. The unit reaches from uplands on Mustang Island, near State Highway 361, to just gulfward of the Gulf Intercoastal Waterway, and from Packery Channel on the south to just north of Corpus Christi Pass on the north. Approximately 54 ha (133 ac) is owned by Nueces County. Approximately 117 ha (289 ac) of uplands are privately owned, and the remaining 764 ha (1,888 ac) are owned and managed by the TGLO.

Unit TX–7: Newport Pass/Corpus Christi Pass Beach. 200 ha (494 ac) in Nueces County.

This unit is along a stretch of Gulf beach approximately 8.5 km (5.3 mi) long. Approximately 5.75 km (3.6 mi) are managed by the Texas Parks and Wildlife Department as part of Mustang Island State Park. The remaining 2.75 km (1.7 mi) are leased from the TGLO by Nueces County. The unit stretches from near the entrance of Zahn Road onto the beach to Fish Pass to the north.

Unit TX–8: Mustang Island Beach. 19.5 km (12.1 mi) in Nueces County.

This is a stretch of Gulf beach between Fish Pass in Mustang Island State Park to the City of Port Arnasas, TX. Approximately 2.5 km (1.5 mi) fall within the State Park, and the remaining 17 km (10.6 mi) are managed by Port Aransas and Nueces County.

Unit TX–9: Fish Pass Lagoons. 175 ha (432 ac) in Nueces County.

This unit is a system of interior lagoons on Mustang Island, within Mustang Island State Park. This system of lagoons falls along either side of Fish Pass and runs northeast to southwest along an axis parallel to the main axis of Mustang Island. The unit encompasses flats approximately 1.0 km (0.6 mi) either side of Fish Pass.

Unit TX–10: Shamrock Island and Adjacent Mustang Island Flats. 880 ha (2,174 ac) in Nueces County.

This unit is made up of privately owned land and adjacent State-owned submerged lands. The Nature Conservancy is the primary private landowner in the unit. The unit encompasses Shamrock Island and includes property gulfward to the entrance of Wilson's Cut, then southwest approximately 3.5 km (2.2 mi). It also includes flats along the margin of lagoons interior to Mustang Island, but adjacent and parallel to Corpus Christi Bay.

Unit TX–11: Blind Oso. 31 ha (77 ac) in Nueces County.

This unit occurs on flats of Oso Bay, from Hans and Pat Suter Wildlife Refuge (owned and managed by the City of Corpus Christi) northeast to Corpus Christi Bay and then southeast along the edge of Texas A&M University—Corpus Christi. The entire unit falls within State-owned submerged lands, but is bordered on all sides by private property.

Unit TX–12: Adjacent to Naval Air Station-Corpus Christi. 88 ha (217 ac) in Nueces County.

This unit also occurs within Oso Bay on flats bordered by Naval Air Station-Corpus Christ on the east. This unit consists of flats near the entrance of Oso Bay to Corpus Christi Bay. The unit occurs within State-owned submerged lands, but is bordered by Federal lands owned and managed by the U.S. Navy.

Unit TX–13: Sunset Lake. 370 ha (914 ac) in San Patricio County.

This unit is owned and managed by the City of Portland within a system of city parks. Some of the described area falls within the jurisdiction of the TGLO. It includes two

city park units referred to as Indian Point and Sunset Lake. Much of the unit is a recent acquisition by the city, and management considerations for the park include the area's importance as a site for wintering and resident shorebirds. The area is bordered on the northwest by State Highway 181 and on the southeast by Corpus Christi Bay. To the north, the unit is bordered by the City of Portland and includes the remainder of the peninsula, which follows along State Highway 181.

Unit TX–14: East Flats. 520 ha (1,284 ac) in Nueces County.

About 240 ha (593 ac) of the west end of this unit falls within State-owned (TGLO) submerged lands. The remainder of the unit is privately owned. It is bordered on the north by dredge placement areas bordering the Corpus Christi Ship Channel, on the west by Corpus Christi Bay, and on the east by the City of Port Aransas. It is bisected by a navigation channel.

Unit TX–15: North Pass. 710 ha (1,754 ac) in Aransas County.

This unit is a washover system, primarily on the privately owned San Jose Island. The unit is bordered on the west by Aransas Bay, just south of Mud Island, and it abuts the beach unit TX–16 to the east. The unit borders TX–16 for approximately 2.0 km (1.2 mi) and stretches landward (to the north and west) to Aransas Bay.

Unit TX–16: San Jose Beach. 32.0 km (19.9 mi) of shoreline in Aransas County.

This unit occupies a stretch of beach on the privately owned island of San Jose. The unit stretches from the jetties on the south end of San Jose Island, just north of Port Aransas, to Cedar Bayou, where San Jose Island is adjacent to Matagorda Island.

Unit TX–17: Allyn's Bight. 109 ha (269 ac) in Aransas County.

This unit is adjacent to and bordered on the east by San Jose Island. It occurs south of a section of the San Jose Island shoreline known as Allyn's Bight, at the northeast end of Mud Island along the east margin of Aransas Bay.

Unit TX–18: Cedar Bayou/Vinson Slough. 3,645 ha (9,007 ac) in Aransas County.

This unit abuts unit TX–17 on San Jose Island and unit TX–19 on Matagorda Island. It includes the highly dynamic area of Cedar Bayou, the pass that separates San Jose Island and Matagorda Island. This area includes a small section of Matagorda Island National Wildlife Refuge (approximately 43 ha (106 acres)) with much of the remaining 3,602 ha (8,154 ac) occurring on the privately owned island of San Jose. The unit is a band adjacent to Aransas Bay, averaging approximately 3.0 km (1.9 mi) wide and stretching from Cedar Bayou to a point about 4.0 km (2.5 mi) south of Long Reef.

Unit TX–19: Matagorda Island Beach. 69.0 km (43.0 mi) of shoreline in Calhoun County.

This stretch of beach on Matagorda Island extends from Cedar Bayou on the southwest (where it abuts TX–18), to Pass Cavallo on the northeast. The unit falls entirely within the boundary of the Matagorda Island National Wildlife Refuge.

Unit TX–20: Ayres Point. 590 hectares (1,458 acres) in Calhoun County.

This unit includes marsh and flats at Ayres Point on Matagorda Island National Wildlife Refuge. The unit is on Ayres Point between Shell Reef Bayou and Big Brundrett Lake.

Unit TX–21: Panther Point to Pringle Lake. 2,629 ha (6,496 ac) in Calhoun County.

This unit represents a narrow band of habitats about 1.0 km (0.6 mi) wide that stretches from Panther Point to the northwest end of Pringle Lake. The unit is entirely within Matagorda Island National Wildlife Refuge.

Unit TX–22: Decros Point. 905 ha (2,236 ac) at the Matagorda/Calhoun County line.

This unit includes about 7.0 km (4.3 mi) of Gulf beach habitat along the tip of Matagorda Peninsula southwest of the Matagorda Ship Channel. The adjacent upland is privately owned.

Unit TX–23: West Matagorda Peninsula Beach. 40.0 km (24.8 mi) of shoreline in Matagorda County.

This unit extends from the jetties at the Matagorda Ship Channel to the old Colorado River channel. This beach is along private lands.

Unit TX–24: West Matagorda Bay/Western Peninsula Flats. 1,165 ha (2,879 ac) in Matagorda County.

This unit is a series of flats, exposed at low tide, along the bayside of Matagorda Peninsula on the margin of West Matagorda Bay. The peninsula is privately owned, and this unit is one of two bayside flats that have been identified on the peninsula. This is the western-most of the two West Matagorda Bay units.

Unit TX–25: West Matagorda Bay/Eastern Peninsula Flats 430 ha (1,062 ac) in Matagorda County.

This unit is the eastern-most of two units on the bayside of West Matagorda Bay along Matagorda Peninsula. The peninsula along which this unit is located is privately owned.

Unit TX–26: Colorado River Diversion Delta. 455 ha (1,124 ac) in Matagorda County.

This unit consists of flats that have formed in the northeast corner of West Matagorda Bay where the Colorado River empties into the bay. It is State-owned.

Unit TX–27: East Matagorda Bay/Matagorda Peninsula Beach West. 22.0 km (13.7 mi) of shoreline in Matagorda County.

This unit is along Gulf beach on the Matagorda Peninsula southeast of East Matagorda Bay. It stretches from the old Colorado River channel northeast along the peninsula.

Unit TX–28: East Matagorda Bay/Matagorda Peninsula Beach East. 9.5 km (5.9 mi) of shoreline in Matagorda County.

This unit runs along the Gulf beach on the northeast end of Matagorda Peninsula from southeast of Brown Cedar Cut to a point on the beach southeast of Carancahua Bend. It is a beach adjacent to private land.

Unit TX–29: Brown Cedar Cut. 270 ha (667 ac) in Matagorda County.

This is a unit on the bayside of Matagorda Peninsula in East Matagorda Bay. It occurs along privately owned land. It encompasses the flats associated with Brown Cedar Cut and abuts unit TX–28 to the southeast.

Unit TX–30: Northeast Corner East Matagorda Bay. 245 ha (605 ac) in Matagorda County.

This is a unit in the northeast corner of East Matagorda Bay. It is a system of flats associated with tidal channels near the Intracoastal Waterway. It abuts unit TX–28 to the southeast.

Unit TX–31: San Bernard NWR Beach. 14.0 km (8.7 mi) of shoreline in Matagorda and Brazoria Counties.

This is a unit composed of Gulf beach, 8.0 km (5.0 mi) of which lies within San Bernard National Wildlife Refuge. The unit stretches from the mouth of the San Bernard River to a point along the beach approximately 14.0 km (8.7 mi) to the southwest.

Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers. 9.0 km (5.6 mi) of shoreline in Brazoria County.

This unit is a stretch of Gulf beach between the Brazos River and the San Bernard River.

Unit TX–33: Bryan Beach and Adjacent Beach. 6.0 km (3.7 mi) of shoreline in Brazoria County.

Part of this unit of Gulf beach lies within the Bryan Beach unit of the Peach Point Wildlife Management Area and is owned and managed by the Texas Parks and Wildlife Department.

Unit TX–34: San Luis Pass. 6.0 km (3.7 mi) of shoreline near the Brazoria/Galveston County line.

This unit is associated with the floodtide delta at San Luis Pass and includes Gulf beach and extensive sand flats associated with the pass. Approximately 57 percent of the unit includes flats in the floodtide delta, which are State-owned and managed by the TGLO. Much of the remainder of the unit is owned by the TGLO, but managed by local government. The unit includes the floodtide delta northwest of the causeway, as well as a 6.0-km (3.7-mi) stretch of beach starting at the causeway and running northeast along the Gulf.

Unit TX–35: Big Reef. 3.0 km (1.9 mi) of shoreline in Galveston County.

This unit is on the southwest side of Bolivar Roads, on the north end of the City of Galveston. It is made up of approximately 85 ha (210 ac) of beach along the inlet and associated sand flats. The area is currently managed by the City of Galveston, and much of the site is under a conservation agreement to further protection of the resources at the site.

Unit TX–36: Bolivar Flats. 670 ha (1,655 ac) in Galveston County.

This unit of flats was formed by accretion behind the jetties at Bolivar Roads near the tip of Bolivar Peninsula. The unit stretches from the jetties on the southwest to a point on the Gulf beach just north of Beacon Bayou. It includes almost 5.0 km of Gulf shoreline. The area is leased from TGLO by Houston Audubon Society and managed for its important avian resources. This unit also includes one of two Western Hemisphere Shorebird Reserve Network sites in Texas.

Unit TX–37: Rollover Pass. 290 ha (717 ac) in Galveston County.

This unit is on the bayside of Rollover Bay on Bolivar Peninsula. It includes flats on State-owned land managed by the TGLO.

Effects of Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. When multiple units of critical habitat are designated, each unit may serve as the basis of a jeopardy analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water Act or a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration (FHA), Environmental Protection Agency (EPA), or Federal Emergency Management Agency (FEMA)), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the wintering piping plover is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Federal activities that have undergone previous section 7 consultation on the effects of the action on wintering piping plover habitat are listed below. The action agencies involved in these consultations have included the USACE, U.S. Coast Guard, and other Department of Defense agencies, National Park Service, FHA, Minerals Management Service, Bureau of Land Management, Federal Energy Regulatory Commission, and others.

(1) Dredging and dredge spoil placement;

(2) Seismic exploration;

(3) Construction and installation of facilities, pipelines, and roads associated with oil and gas development;

(4) Oil and other hazardous material spills and cleanup;

(5) Construction of dwellings, roads, marinas, and other structures, and associated activities including staging of equipment and materials;

(6) Beach nourishment, cleaning, and stabilization (*e.g.*, construction and maintenance of jetties and groins, planting of vegetation, and placement of dune fences);

(7) Certain types and levels of recreational activities, such as vehicular activity that impacts the substrate resulting in reduced prey or disturbance to the species;

(8) Stormwater and wastewater discharge from communities;

(9) Sale, exchange, or lease of Federal land that contains suitable habitat that may result in the habitat being altered or degraded;

(10) Marsh and coastal restoration, particularly restoration of barrier islands and other barrier shorelines;

(11) Military missions; and

(12) Bridge or culvert construction, reconstruction, and stabilization.

With the designation of critical habitat for wintering piping plovers, we would notify the USACE, other permitting agencies, and the public that Clean Water Act section 404 nationwide

permits and other authorizations for activities within these designated critical habitat areas must comply with section 7 consultation requirements. For each section 7 consultation, we already review the direct and indirect effects of the proposed projects on piping plovers, and will continue to do so for critical habitat if it is designated.

Activities that may destroy or adversely modify critical habitat are those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the piping plover is appreciably reduced. These activities may destroy or adversely modify critical habitat by:

(1) Significantly and detrimentally altering the hydrology of tidal flats;

(2) Significantly and detrimentally altering inputs of sediment and nutrients necessary for the maintenance of geomorphic and biologic processes that insure appropriately configured and productive systems;

(3) Introducing significant amounts of emergent vegetation (either through actions such as marsh restoration on naturally unvegetated sites, or through changes in hydrology such as severe rutting or changes in storm or wastewater discharges);

(4) Significantly and detrimentally altering the topography of a site (such alteration may affect the hydrology of an area or may render an area unsuitable for roosting);

(5) Reducing the value of a site by significantly disturbing plovers from activities such as foraging and roosting (sources of such disturbance may include elevated levels of human presence);

(6) Significantly and detrimentally altering water quality, which may lead to decreased diversity or productivity of prey organisms or may have direct detrimental effects on piping plovers (as in the case of an oil spill); and

(7) Impeding natural processes that create and maintain washover passes and sparsely vegetated intertidal feeding habitats.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103–1306. If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, the following Fish and Wildlife Service personnel may be contacted:

Alabama: Darren LeBlanc (334/441–5181)

Florida: Patty Kelly (850/769–0552, extension 228)

Georgia: Robert Brooks (912/265–9336, extension 25)

Louisiana: Debbie Fuller (337/291–3124)

Mississippi: Linda LaClaire (601/321–1126)

North Carolina: Kevin Moody (919/856–4520, extension 19)

South Carolina: Paula Sisson (843/727–4707, extension 18)

Texas: Lee Elliott (361/994–9005, extension 227)

Relationship to Incidental Take Permits Issued Under Section 10

Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Currently, no approved HCPs cover the wintering plover or its habitat.

In the event that HCPs covering the wintering piping plover are developed in the future within the proposed critical habitat, we will work with applicants to ensure the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the piping plover. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species. We fully expect that HCPs undertaken by local jurisdictions (*e.g.*, townships, counties) and other parties will identify, protect, and provide appropriate economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we are required to assess the effects of critical habitat designation on tribal lands and tribal trust resources. No tribal lands are proposed for designation as critical habitat, and no effects on tribal trust resources are anticipated if this proposal is made final.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designating areas as critical habitat will outweigh the benefits of excluding areas from the designation;

2. Specific information on the numbers and distribution of wintering piping plovers and what habitat is essential to the conservation of the species and why;

3. Information on specific characteristics of habitats essential to the conservation of the piping plover on its wintering grounds;

4. Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

5. Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat—in particular, any impacts on small entities or families; and,

6. Economic and other values associated with designating critical habitat for the wintering population of piping plover, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birdwatching, enhanced watershed protection, improved air quality, and "existence values").

Additionally, we are seeking comments on critical habitat designation relative to future HCPs. Future conservation planning efforts may occur within the range of the piping plover in areas we are proposing as critical habitat. We invite comments on the appropriateness of the following alternative approaches we are considering regarding critical habitat designations within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the piping plover.

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the piping plover, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of HCPs when the plans are approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Our practice is to make comments we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Given the large geographic extent covered by this proposal, the high likelihood of multiple requests, and the need to publish a final determination by September 30, 2000, we have scheduled nine public hearings at the following addresses on the dates indicated.

1. Wilmington, North Carolina, on July 17, 2000, Roland-Brise Middle School, 4412 Lake Avenue.
2. Savannah, Georgia, on July 19, 2000, at Savannah Technical Institute, 5717 White Bluff Road.
3. Tallahassee, Florida, on July 21, 2000, at Dale Mabry Conference Center (Tallahassee Airport), 3300 Capital Circle Southwest, Suite 1.
4. Fort Myers, Florida, on July 24, 2000, at Fort Myers Convention Complex, 1375 Monroe Street.
5. Mobile, Alabama, on July 26, 2000, at Ramada Plaza Hotel and Conference Center, 600 South Beltline Highway.
6. Baton Rouge, Louisiana, on July 27, 2000, at The Pennington Center, 6400 Perkins Road.
7. Galveston, Texas, on July 31, 2000, at Texas A & M University at Galveston, 200 Seawolf Parkway, Pelican Island Campus Auditorium—Building 3007.
8. Corpus Christi, Texas, on August 2, 2000, at Texas A & M University at Corpus Christi, Student Center Ballroom, 6300 Ocean Drive.
9. McAllen, Texas, on August 4, 2000, at McAllen Civic Center Auditorium, 1300 10th Street.

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

(a) This rule will not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) This rule will not create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the piping plover since listing in 1985. As shown in Table 3 (below), no additional effects on agency actions are anticipated to result from critical habitat designation. Because of the potential for impacts on other Federal agency actions, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal activities potentially affected [3].	Activities such as removing or destroying piping plover wintering habitat, whether by mechanical, chemical, or other means (*e.g.*, construction, road building, dredging and other navigation projects, boat launch and marina construction or maintenance, beach nourishment, erosion control); recreational activities that significantly deter the use of suitable habitat areas by piping plovers or alter habitat through associated maintenance activities; sale, exchange or lease of Federal land that contains suitable habitat that may result in the habitat being destroyed or appreciably degraded.	None.
Private and other non-Federal activities potentially affected [4].	Activities such as removing or destroying piping plover habitat, whether by mechanical, chemical, or other means (*e.g.*, construction, road building, dredging and other navigation projects, boat launch and marina construction or maintenance, beach nourishment, erosion control) and appreciably decreasing habitat value or quality (*e.g.*, increased vehicular activity on sensitive habitats, increased predators, reduced water quality, modified hydrology) that require a Federal action (permit, authorization, or funding).	None.

[1] This column represents the activities potentially affected by listing the piping plover as a threatened species (December 11, 1985; 50 FR 50720) under the Endangered Species Act.
[2] This column represents the effects on activities resulting from critical habitat designation beyond the effects attributable to the listing of the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(c) The proposed rule, if made final, will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private lands could be affected by critical habitat designation, however, we expect no regulatory effect from this designation since all proposed areas are considered occupied by the species and would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

The rule will not increase or decrease the current restrictions on private property concerning taking of the piping plover as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the piping plover.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in North Carolina, South Carolina, Georgia, Florida,

Alabama, Mississippi, Louisiana, and Texas. We will continue to coordinate any future designation of critical habitat for wintering piping plovers with the appropriate State agencies. The designation of critical habitat for the piping plover is not expected to result in any additional restrictions to those currently in place and, therefore, no incremental impact on State and local governments and their activities are expected. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Corpus Christi Ecological Services Field Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Lee Elliott (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entries for "Plover, piping" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Plover, piping	*Charadrius melodus*	U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf coasts, PR, VI), Canada, Mexico, Bahamas, West Indies.	Great Lakes, watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI and Canada (Ont.).	E	211	17.95(b)	NA
Do	....do	....do	Entire, except those areas where listed as endangered above.	T	211	17.95(b)	NA
*	*	*	*	*	*	*	

3. Section § 17.95(b) is amended by adding critical habitat for the piping plover (*Charadrius melodus*) in the same alphabetical order as the species occurs in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

PIPING PLOVER (*Charadrius melodus*)
Wintering Habitat

North Carolina

Projection: Universal Transverse Mercator, Zone 18.

Unit NC–1: Oregon Inlet.

This unit begins at UTM 451322 E, 3960070 N; thence to 451524 E, 3962634 N; to 454314 E, 3957376 N; to 453728 E, 3957048 N; to 452375 E, 3956783 N; to 449753 E, 3960026 N; to 449962 E, 3961442 N; to 450213 E, 3961972 N; to 451524 E, 3962634 N; and thence to point of beginning.

Unit NC–2: Cape Hatteras Point.

This unit begins at UTM 449759 E, 3898487 N; to 446066 E, 3899834 N; to 448394 E, 3899965 N; to 451219 E, 3899573 N; to 451899 E, 3900148 N; to 452317 E, 3901273 N; to 452893 E, 3902424 N; to 453494 E, 3902502 N; to 452422 E, 3896669 N; to 445988 E, 3898736 N; to 446066 E, 3899834 N; and thence to point of beginning.

Unit NC–3: Clam Shoals.

This unit begins at UTM 439959 E, 3906625 N; to 438429 E, 3905876 N; to 438429 E, 3907210 N; to 441489 E, 3907210 N; to 441489 E, 3905876 N; to 438429 E, 3905876 N; and thence to point of beginning.

Unit NC–4: Hatteras Inlet.

This unit begins at UTM 431685 E, 3895385 N; to 436885 E, 3895920 N; to 429801 E, 3892916 N; to 428187 E, 3892804 N; to 427649 E, 3895337 N; to 430519 E, 3896772 N; to 433702 E, 3896436 N; to 435832 E, 3897400 N; to 436885 E, 3895920 N; and thence to point of beginning.

Unit NC–5: Ocracoke Island.

This unit begins at UTM 410472 E, 3883720 N; to 413103 E, 3884856 N; to 408678 E, 3881291 N; to 408021 E, 3882226 N; to 408931 E, 3883541 N; to 412648 E, 3885615 N; to 413103 E, 3884856 N; and thence to point of beginning.

Unit NC–6: Portsmouth Island-Cape Lookout.

This unit begins at UTM 399950 E, 3877027 N; to 407108 E, 3880149 N; to 393159 E, 3869047 N; to 391260 E, 3871238 N; to 402580 E, 3883253 N; to 406415 E,

3881317 N; to 407108 E, 3880149 N; to 380912 E, 3859049 N; to 383021 E, 3861705 N; to 383324 E, 3861689 N; to 384154 E, 3860987 N; to 380661 E, 3857590 N; to 379959 E, 3856952 N; to 378348 E, 3855644 N; to 377630 E, 3856234 N; to 378061 E, 3857781 N; to 383021 E, 3861705 N; and thence to point of beginning.

Unit NC–7: South Core Banks.

This unit begins at UTM 359081 E, 3831186 N; to 358149 E, 3834204 N; to 358494 E, 3833735 N; to 358322 E, 3831980 N; to 360298 E, 3832944 N; to 361311 E, 3832178 N; to 359483 E, 3827063 N; to 358569 E, 3827187 N; to 356666 E, 3832771 N; to 357580 E, 3834402 N; to 358149 E, 3834204 N; and thence to point of beginning.

Unit NC–8: Shackleford Banks.

This unit begins at UTM 349056 E, 3839547 N; to 347178 E, 3840900 N; to 348834 E, 3840554 N; to 351230 E, 3839961 N; to 351057 E, 3837812 N; to 348488 E, 3838454 N; to 346857 E, 3839245 N; to 347178 E, 3840900 N; to 359535 E, 3834955 N; to 357679 E, 3835020 N; to 358618 E, 3836082 N; to 359680 E, 3836206 N; to 360199 E, 3836601 N; to 360990 E, 3836305 N; to 361361 E, 3834847 N; to 360397 E, 3833191 N; to 359656 E, 3832845 N; to 357679 E, 3835020 N; and thence to point of beginning.

Unit NC–9: Rachel Carson.

This unit begins at UTM 348538 E, 3842087 N; to 347179 E, 3843127 N; to 347530 E, 3842870 N; to 348126 E, 3842590 N; to 349050 E, 3842531 N; to 349611 E, 3842391 N; to 350897 E, 3842064 N; to 351388 E, 3842005 N; to 352136 E, 3841923 N; to 352171 E, 3841631 N; to 349938 E, 3840754 N; to 348033 E, 3841689 N; to 346314 E, 3841970 N; to 346115 E, 3842520 N; to 346501 E, 3842870 N; to 346899 E, 3842823 N; to 347179 E, 3843127 N; and thence to point of beginning.

Unit NC–10: Bogue Inlet.

This unit begins at UTM 307283 E, 3836342 N; to 308198 E, 3835429 N; to 307936 E, 3834962 N; to 306961 E, 3835535 N; to 306535 E, 3836256 N; to 306912 E, 3837116 N; to 307264 E, 3837420 N; to 307936 E, 3837387 N; to 307993 E, 3836338 N; to 307477 E, 3835953 N; to 307895 E, 3835781 N; to 308198 E, 3835429 N; to 305430 E, 3835386 N; to 305339 E, 3836215 N; to 305970 E, 3836027 N; to 306387 E, 3835314 N; to 305699 E, 3834568 N; to 304642 E, 3834322 N; to 304347 E, 3835183 N; to 305142 E, 3836141 N; to 305339 E, 3836215 N; and thence to point of beginning.

Unit NC–11: Topsail.

This unit begins at UTM 253206 E, 3801594 N; to 255487 E, 3804759 N; to 256758 E, 3803655 N; to 250472 E, 3797537 N; to 249068 E, 3798774 N; to 254551 E, 3804491 N; to 255487 E, 3804759 N; and thence to point of beginning.

Unit NC–12: Figure Eight Island.

This unit begins at UTM 244824 E, 3792914 N; to 245958 E, 3793023 N; to 245145 E, 3791715 N; to 244739 E, 3791397 N; to 244145 E, 3792625 N; to 243731 E, 3792934 N; to 243942 E, 3793658 N; to 245170 E, 3794097 N; to 245170 E, 3793446 N; to 245958 E, 3793023 N; and thence to point of beginning.

Unit NC–13: Masonboro.

This unit begins at UTM 240385 E, 3785897 N; to 240260 E, 3786769 N; to 241454 E, 3785773 N; to 241220 E, 3785436 N; to 240173 E, 3784735 N; to 239186 E, 3785220 N; to 239524 E, 3786042 N; to 240164 E, 3786804 N; to 240260 E, 3786769 N; and thence to point of beginning.

Unit NC–14: Carolina Beach Inlet.

This unit begins at UTM 235019 E, 3778673 N; to 235018 E, 3778663 N; to 235012 E, 3778664 N; to 235027 E, 3778695 N; to 235018 E, 3778663 N; to 235301 E, 3776207 N; to 235018 E, 3778663 N; to 237279 E, 3778281 N; to 234797 E, 3773059 N; to 233526 E, 3773503 N; to 235018 E, 3778663 N; and thence to point of beginning.

Unit NC–15: Ft. Fisher.

This unit begins at UTM 227863 E, 3758770 N; to 227285 E, 3761130 N; to 229414 E, 3761819 N; to 230360 E, 3760992 N; to 227660 E, 3754862 N; to 226595 E, 3754980 N; to 226241 E, 3758469 N; to 227108 E, 3760972 N; to 227285 E, 3761130 N; and thence to point of beginning.

Unit NC–16: Lockwood Folly Inlet.

This unit begins at UTM 201227 E, 3757688 N; to 200823 E, 3758337 N; to 201239 E, 3758381 N; to 201640 E, 3758186 N; to 201600 E, 3757375 N; to 201939 E, 3757163 N; to 201674 E, 3756882 N; to 201181 E, 3756801 N; to 200786 E, 3757822 N; to 200823, 3758337; and thence to point of beginning.

Unit NC–17: Shallotte Inlet.

This unit begins at UTM 188067 E, 3756365 N; to 189372 E, 3756093 N; to 188723 E, 3755719 N; to 188187 E, 3755686 N; to 186884 E, 3755740 N; to 186650 E, 3756057 N; to 186852 E, 3756550 N; to 187092 E, 3756825 N; to 186953 E, 3757172 N; to 187838 E, 3757864 N; to 188140 E, 3757846 N; to 189039 E,3757433 N; to 189299 E, 3757432 N; to 189372, 3756093; and thence to point of beginning.

Unit NC–18: Mad Inlet.

This unit begins at UTM 173982 E, 3752907 N; to 173058 E, 3751556 N; to 173369 E, 3752495 N; to 173196 E, 3752754 N; to 173918 E, 3754015 N; to 174269 E, 3754100 N; to 174687 E, 3753774 N; to 174209 E, 3753591 N; to 174236 E, 3753508 N; to 174310 E, 3753426 N; to 174390 E, 3753361 N; to 174461 E, 3753326 N; to 174567 E, 3753230 N; to 174615 E, 3753145 N; to 174661 E, 3752930 N; to 175098 E, 3752417 N; to 173232 E, 3751377 N; to 173058 E, 3751556 N; and thence to point of beginning.

South Carolina

Projection: Universal Transverse Mercator, Zone 17.

Unit SC–1: Waites Island-North.

This unit begins at UTM 725738 E, 3748074 N; to 725022 E, 3748965 N; to 725421 E, 3748836 N; to 726117 E, 3748976 N; to 726635 E, 3748663 N; to 727003 E, 3747708 N; to 724428 E, 3747665 N; to 725022 E, 3748965 N; and thence to point of beginning.

Unit SC–2: Waites Island-South.

This unit begins at UTM 722497 E, 3747416 N; to 721232 E, 3747433 N; to 721637 E, 3747989 N; to 721880 E, 3747881 N; to 722322 E, 3747864 N; to 722652 E, 3747692 N; to 723564 E, 3747800 N; to 723813 E, 3747125 N; to 722587 E, 3746682 N; to 721621 E, 3747319 N; to 721232 E, 3747433 N; and thence to point of beginning.

Unit SC–3: Murrells Inlet/Huntington Beach.

This unit begins at UTM 681799 E, 3710448 N; to 683405 E, 3711863 N; to 683253 E, 3711163 N; to 682806 E, 3710823 N; to 679622 E, 3707732 N; to 679339 E, 3707709 N; to 679152 E, 3707814 N; to 679058 E, 3707991 N; to 679434 E, 3708390 N; to 680068 E, 3709048 N; to 680162 E, 3709436 N; to 680985 E, 3710165 N; to 681360 E, 3710717 N; to 681642 E, 3711521 N; to 681630 E, 3711839 N; to 681726 E, 3712062 N; to 682322 E, 3712585 N; to 683405 E, 3711863 N; and thence to point of beginning.

Unit SC–4: Litchfield.

This unit begins at UTM 675774 E, 3702407 N; to 675960 E, 3701849 N; to 675445 E, 3702217 N; to 675154 E, 3702605 N; to 675351 E, 3702843 N; to 676292 E, 3702499 N; to 675960 E, 3701849 N; and thence to point of beginning.

Unit SC–5: North Inlet.

This unit begins at UTM 670679 E, 3688657 N; to 670915 E, 3690594 N; to 672045 E, 3690325 N; to 671452 E, 3688681 N; to 672078 E, 3688087 N; to 670848 E, 3686174 N; to 670109 E, 3686566 N; to 670366 E, 3687461 N; to 669975 E, 3687628 N; to 669784 E, 3688423 N; to 670422 E, 3689967 N; to 670915; to 3690594; and thence to point of beginning.

Unit SC–6: North Santee Bay Inlet.

This unit begins at UTM 666930 E, 3670041 N; to 668761 E, 3673337 N; to 670056 E, 3672854 N; to 669032 E, 3671114 N; to 664354 E, 3666957 N; to 663812 E, 3665816 N; to 662768 E, 3665817 N; to 662401 E, 3666184 N; to 662478 E, 3666725 N; to 663116 E, 3666938 N; to 663078 E, 3668543 N; to 663445 E, 3668852 N; to 664509 E, 3669992 N; to 665030 E, 3669702 N; to 665030 E, 3669122 N; to 668182 E, 3672003 N; to 668317 E, 3672622 N; to 668761 E, 3673337 N; and thence to point of beginning.

Unit SC–7: Cape Romain.

This unit begins at UTM 650426 E, 3654423 N; to 645739 E, 3653387 N; to 645917 E, 3654156 N; to 647750 E, 3654629 N; to 648164 E, 3654767 N; to 648755 E, 3655102 N; to 649249 E, 3655141 N; to 653349 E, 3655831 N; to 653999 E, 3655496 N; to 654098 E, 3655003 N; to 653309 E, 3652717 N; to 646705 E, 3652618 N; to 645917 E, 3652953 N; to 645739 E, 3653387 N; and thence to point of beginning.

Unit SC–8: Bull Island.

This unit begins at UTM 626370 E, 3638607 N; to 626279 E, 3636892 N; to 624156 E, 3637262 N; to 625149 E, 3638969 N; to 625592 E, 3639566 N; to 627499 E, 3639945 N; to 628203 E, 3639548 N; to 627209 E, 3637217 N; to 626279 E, 3636892 N; and thence to point of beginning.

Unit SC–9: Stono Inlet.

This unit begins at UTM 593829 E, 3610109 N; to 590512 E, 3607811 N; to 590410 E, 3609637 N; to 591273 E, 3610365 N; to 592474 E, 3611430 N; to 594249 E, 3610889 N; to 595433 E, 3612022 N; to

597022 E, 3610517 N; to 594672 E, 3607659 N; to 590512 E, 3607811 N; and thence to point of beginning.

Unit SC–10: Seabrook Island.

This unit begins at UTM 580527 E, 3604821 N; to 581526 E, 3606226 N; to 582236 E, 3605504 N; to 579177 E, 3603020 N; to 578773 E, 3603510 N; to 579201 E, 3603926 N; to 579299 E, 3604415 N; to 579483 E, 3604684 N; to 580229 E, 3605259 N; to 581526 E, 3606226 N; and thence to point of beginning.

Unit SC–11: Deveaux Bank.

This unit begins at UTM 577409 E, 3600595 N; to 576108 E, 3599702 N; to 576042 E, 3601895 N; to 576770 E, 3602567 N; to 578378 E, 3601678 N; to 579011 E, 3599768 N; to 576108 E, 3599702 N; and thence to point of beginning.

Unit SC–12: Otter Island.

This unit begins at UTM 556003 E, 3593013 N; to 555060 E, 3593335 N; to 555155 E, 3593186 N; to 557068 E, 3593749 N; to 557136 E, 3593960 N; to 556993 E, 3594319 N; to 557102 E, 3594624 N; to 557265 E, 3594787 N; to 558059 E, 3594319 N; to 557869 E, 3593295 N; to 557516 E, 3592847 N; to 555481 E, 3592223 N; to 554999 E, 3592209 N; to 554599 E, 3592399 N; to 554368 E, 3592745 N; to 554355 E, 3593132 N; to 555060 E, 3593335 N; and thence to point of beginning.

Unit SC–13: Harbor Island.

This unit begins at UTM 553844 E, 3585199 N; to 553825 E, 3585982 N; to 554466 E, 3585472 N; to 554384 E, 3584628 N; to 553210 E, 3584195 N; to 553249 E, 3585220 N; to 553825 E, 3585982 N; and thence to point of beginning.

Unit SC–14: Caper's Island.

This unit begins at UTM 540394 E, 3571212 N; to 538947 E, 3571753 N; to 539380 E, 3571882 N; to 539696 E, 3571718 N; to 539848 E, 3571390 N; to 541416 E, 3571975 N; to 542470 E, 3572549 N; to 542505 E, 3572911 N; to 542646 E, 3573122 N; to 543020 E, 3573146 N; to 543383 E, 3572701 N; to 543348 E, 3572139 N; to 542856 E, 3571589 N; to 540995 E, 3570629 N; to 539579 E, 3570337 N; to 539029 E, 3570501 N; to 538655 E, 3570887 N; to 538666 E, 3571378 N; to 538947 E, 3571753 N; and thence to point of beginning.

Unit SC–15: Hilton Head.

This unit begins at UTM 531383 E, 3563460 N; to 530298 E, 3563633 N; to 530666 E, 3563923 N; to 531301 E, 3564323 N; to 531168 E, 3564714 N; to 531066 E, 3565224 N; to 532311 E, 3564714 N; to 532390 E, 3563774 N; to 532343 E, 3563414 N; to 531951 E, 3562881 N; to 531622 E, 3562717 N; to 531238 E, 3562662 N; to 530557 E, 3563257 N; to 530298 E, 3563633 N; and thence to point of beginning.

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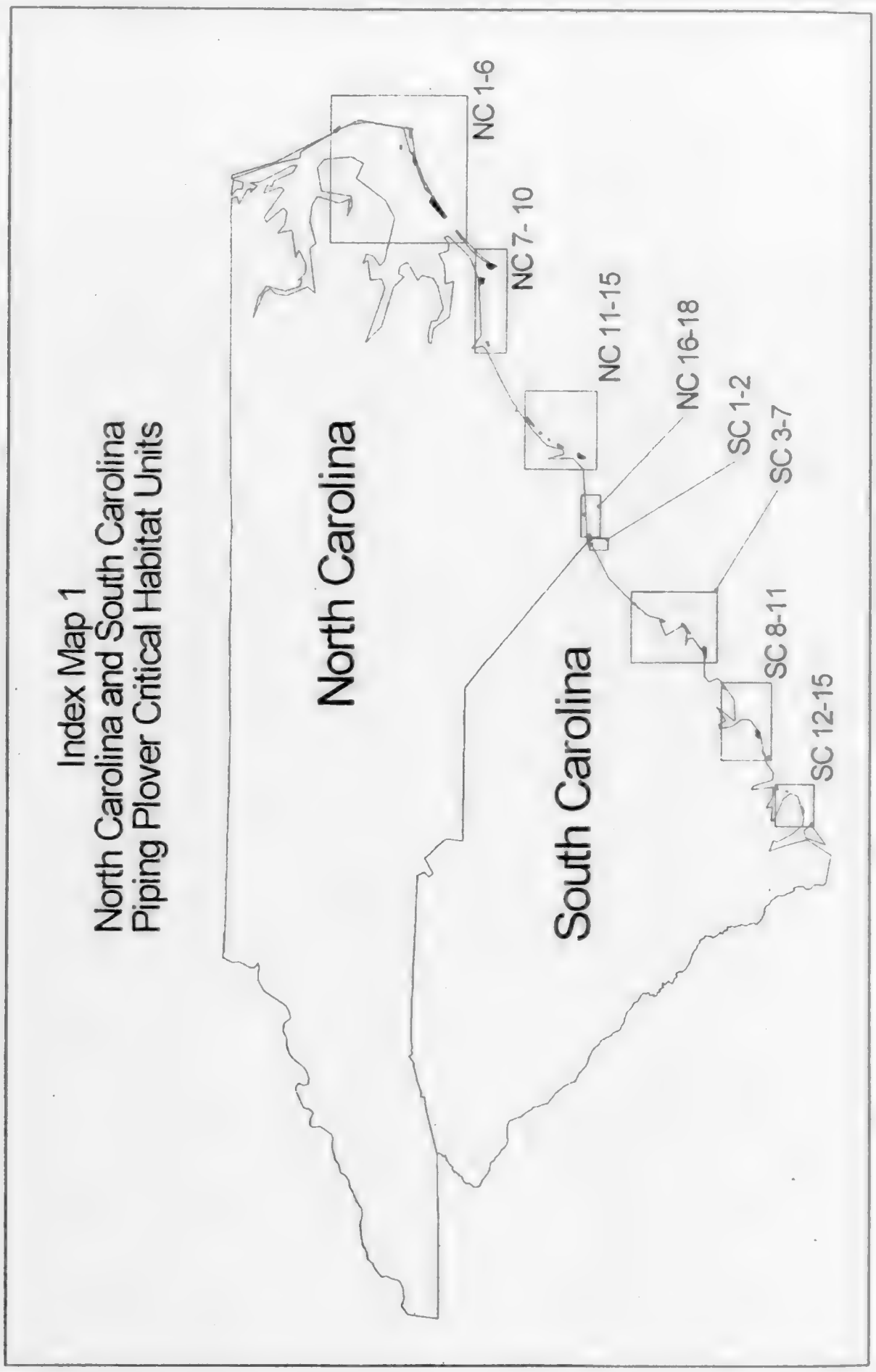
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North Carolina and South Carolina
Piping Plover Critical Habitat Units
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South Carolina
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NC 7- 10
NC 11-15
NC 16-18
SC 1-2
SC 3-7
SC 8-11
SC 12-15

Georgia

Projection: Universal Transverse Mercator, Zone 17.

Unit GA–1: Tybee Island.

This unit begins at UTM 514045 E, 3543880 N; to 512869 E, 3542737 N; to 512863 E, 3542746 N; to 512801 E, 3542709 N; to 512622 E, 3543154 N; to 512962 E, 3543425 N; to 513345 E, 3543605 N; to 513548 E, 3543895 N; to 513715 E, 3544111 N; to 513839 E, 3544204 N; to 514018 E, 3544253 N; to 514271 E, 3544154 N; to 514759 E, 3543679 N; to 514784 E, 3543623 N; to 514926 E, 3543605 N; to 515037 E, 3543561 N; to 515154 E, 3543463 N; to 515234 E, 3543327 N; to 515327 E, 3543117 N; to 515352 E, 3542926 N; to 515389 E, 3542660 N; to 515395 E, 3542425 N; to 515376 E, 3542271 N; to 514984 E, 3542331 N; to 514984 E, 3542331 N; to 514913 E, 3542995 N; to 514843 E, 3543127 N; to 514580 E, 3543152 N; to 514358 E, 3543443 N; to 514003 E, 3543752 N; to 513880 E, 3543606 N; to 513841 E, 3543505 N; to 513562 E, 3543170 N; to 513175 E, 3542992 N; to 512939 E, 3542834 N; to 512869 E, 3542737 N; to 514184 E, 3543484 N; to 512869 E, 3542737 N; to 512939 E, 3542834 N; to 513175 E, 3542992 N; to 513562 E, 3543170 N; to 513841 E, 3543505 N; to 513880 E, 3543606 N; to 514003 E, 3543752 N; to 514358 E, 3543443 N; to 514580 E, 3543152 N; to 514843 E, 3543127 N; to 514913 E, 3542995 N; to 514984 E, 3542331 N; to 514984 E, 3542331 N; to 514938 E, 3542338 N; to 514833 E, 3542802 N; to 514759 E, 3543005 N; to 514488 E, 3543123 N; to 514314 E, 3543302 N; to 514036 E, 3543500 N; to 513901 E, 3543457 N; to 513629 E, 3543166 N; to 513418 E, 3543043 N; to 513178 E, 3542913 N; to 513023 E, 3542790 N; to 512888 E, 3542709 N; to 512869 E, 3542737 N; and thence to point of beginning.

Unit GA–2: Little Tybee Island.

This unit begins at UTM 509343 E, 3534814 N; to 513286 E, 3539174 N; to 513543 E, 3538965 N; to 513832 E, 3537502 N; to 513334 E, 3536859 N; to 511823 E, 3535508 N; to 507305 E, 3532840 N; to 506855 E, 3532856 N; to 506453 E, 3533418 N; to 506227 E, 3534094 N; to 506227 E, 3535187 N; to 506453 E, 3535525 N; to 506854 E, 3535541 N; to 507401 E, 3535091 N; to 507449 E, 3534592 N; to 507337 E, 3534399 N; to 507498 E, 3534303 N; to 507755 E, 3534480 N; to 508285 E, 3535107 N; to 508623 E, 3535476 N; to 510745 E, 3536280 N; to 511003 E, 3536328 N; to 512224 E, 3537213 N; to 512803 E, 3537663 N; to 512642 E, 3538515 N; to 512852 E, 3539174 N; to 512852 E, 3539158 N; to 513286 E, 3539174 N; and thence to point of beginning.

Unit GA–3: North Wassaw Island.

This unit begins at UTM 505704 E, 3530314 N; to 506872 E, 3530309 N; to 506861 E, 3530033 N; to 506769 E, 3529838 N; to 505601 E, 3528947 N; to 505355 E, 3528824 N; to 504997 E, 3528947 N; to 504393 E, 3530750 N; to 504516 E, 3531108 N; to 504997 E, 3531477 N; to 505632 E, 3531354 N; to 506728 E, 3530616 N; to 506872 E, 3530309 N; and thence to point of beginning.

Unit GA–4: South Wassaw Island.

This unit begins at UTM 500497 E, 3525400 N; to 500204 E, 3526469 N; to 500350 E, 3526442 N; to 501364 E, 3525756 N; to 501583 E, 3525546 N; to 501629 E, 3525327 N; to 501602 E, 3525135 N; to 501282 E, 3524596 N; to 500807 E, 3524167 N; to 500468 E, 3524048 N; to 500030 E, 3524030 N; to 499701 E, 3524158 N; to 499345 E, 3524550 N; to 499217 E, 3524916 N; to 499317 E, 3525354 N; to 499948 E, 3525811 N; to 500204 E, 3526469 N; and thence to point of beginning.

Unit GA–5: Ossabaw Island.

This unit begins at UTM 494565 E, 3516852 N; to 488807 E, 3511647 N; to 490483 E, 3513297 N; to 494937 E, 3518190 N; to 494689 E, 3520527 N; to 494882 E, 3521104 N; to 495432 E, 3521599 N; to 496257 E, 3521489 N; to 496779 E, 3521160 N; to 497109 E, 3520500 N; to 497164 E, 3519592 N; to 496614 E, 3518465 N; to 492903 E, 3513489 N; to 489274 E, 3510768 N; to 488944 E, 3510850 N; to 488779 E, 3511152 N; to 488807 E, 3511647 N; and thence to point of beginning.

Unit GA–6: St. Catherine's Island Bar.

This unit begins at UTM 488767 E, 3506356 N; to 487546 E, 3507411 N; to 487906 E, 3507591 N; to 488610 E, 3507442 N; to 488861 E, 3507278 N; to 489464 E, 3506738 N; to 489698 E, 3506378 N; to 489910 E, 3505618 N; to 489934 E, 3505258 N; to 489855 E, 3505078 N; to 489612 E, 3504820 N; to 489252 E, 3504773 N; to 488775 E, 3504960 N; to 487960 E, 3505869 N; to 487546 E, 3507411 N; and thence to point of beginning.

Unit GA–7: McQueen's Inlet.

This unit begins at UTM 486849 E, 3501058 N; to 488316 E, 3499565 N; to 487446 E, 3497726 N; to 485845 E, 3496916 N; to 485469 E, 3497153 N; to 485232 E, 3498102 N; to 485529 E, 3500929 N; to 485944 E, 3502075 N; to 486794 E, 3504091 N; to 487150 E, 3504289 N; to 487486 E, 3504131 N; to 487920 E, 3502629 N; to 488316 E, 3499565 N; and thence to point of beginning.

Unit GA–8: St. Catherine's Island.

This unit begins at UTM 483219 E, 3492370 N; to 483571 E, 3490934 N; to 483221 E, 3490878 N; to 482844 E, 3490926 N; to 482507 E, 3491248 N; to 482298 E, 3491381 N; to 482081 E, 3491779 N; to 482046 E, 3492017 N; to 482075 E, 3492136 N; to 482047 E, 3492695 N; to 482200 E, 3493038 N; to 482655 E, 3493478 N; to 482865 E, 3493534 N; to 483046 E, 3493499 N; to 483123 E, 3493443 N; to 484073 E, 3492513 N; to 484235 E, 3492478 N; to 484388 E, 3492360 N; to 484479 E, 3492220 N; to 484500 E, 3491863 N; to 484032 E, 3491290 N; to 483571 E, 3490934 N; and thence to point of beginning.

Unit GA–9: Blackbeard Island.

This unit begins at UTM 482718 E, 3487827 N; to 482480 E, 3485399 N; to 482275 E, 3485422 N; to 482048 E, 3485558 N; to 481934 E, 3485899 N; to 482059 E, 3486263 N; to 482833 E, 3486946 N; to 481843 E, 3488220 N; to 481081 E, 3488721 N; to 480842 E, 3488573 N; to 480716 E, 3488334 N; to 480341 E, 3488038 N; to 480080 E, 3488357 N; to 479818 E, 3488721 N; to 480216 E, 3489290 N; to 480501 E, 3489551 N; to 481046 E, 3489722 N; to 481331 E, 3489676 N; to 481650 E, 3489540 N; to 482127 E, 3489187 N; to 482833 E, 3488550 N; to 483834 E, 3486957 N; to 483823 E, 3486457 N; to 482480 E, 3485399 N; and thence to point of beginning.

Unit GA–10: Sapelo Island.

This unit begins at UTM 476364 E, 3476367 N; to 476251 E, 3475072 N; to 476177 E, 3474958 N; to 475469 E, 3474930 N; to 475516 E, 3475423 N; to 475873 E, 3476907 N; to 476845 E, 3477487 N; to 477398 E, 3477190 N; to 477230 E, 3476799 N; to 476251 E, 3475072 N; and thence to point of beginning.

Unit GA–11: Wolf Island.

This unit begins at UTM 472441 E, 3469004 N; to 471312 E, 3471617 N; to 472082 E, 3472191 N; to 473170 E, 3470155 N; to 473762 E, 3464919 N; to 470581 E, 3464979 N; to 470522 E, 3465611 N; to 470917 E, 3465986 N; to 472616 E, 3466006 N; to 472597 E, 3467765 N; to 471925 E, 3468219 N; to 471253 E, 3469760 N; to 471095 E, 3470254 N; to 471312 E, 3471617 N; and thence to point of beginning.

Unit GA–12: Egg Island Bar.

This unit begins at UTM 474259 E, 3463796 N; to 472638 E, 3463452 N; to 473852 E, 3464868 N; to 475673 E, 3464041 N; to 475084 E, 3462422 N; to 472914 E, 3462863 N; to 472638 E, 3463452 N; and thence to point of beginning.

Unit GA–13: Little St. Simon's Island.

This unit begins at UTM 473959 E, 3457909 N; to 471057 E, 3461394 N; to 471378 E, 3462168 N; to 471858 E, 3461981 N; to 472365 E, 3462301 N; to 473458 E, 3462568 N; to 475045 E, 3458500 N; to 472458 E, 3451938 N; to 470483 E, 3452258 N; to 470844 E, 3454379 N; to 471671 E, 3453899 N; to 473351 E, 3458593 N; to 472684 E, 3461261 N; to 471057 E, 3461394 N; and thence to point of beginning.

Unit GA–14: Sea/St. Simon's Island.

This unit begins at UTM 465847 E, 3447672 N; to 467440 E, 3449252 N; to 465170 E, 3445115 N; to 464474 E, 3445591 N; to 464963 E, 3445994 N; to 465048 E, 3447568 N; to 466524 E, 3449667 N; to 467440 E, 3449252 N; and thence to point of beginning.

Unit GA–15: Jekyll Island.

This unit begins at UTM 459063 E, 3431131 N; to 458282 E, 3432359 N; to 458654 E, 3432379 N; to 458757 E, 3431439 N; to 459170 E, 3431419 N; to 459470 E, 3431553 N; to 459728 E, 3431894 N; to 460182 E, 3432503 N; to 460657 E, 3432028 N; to 459697 E, 3430510 N; to 458013 E, 3430592 N; to 458075 E, 3432080 N; to 458282 E, 3432359 N; and thence to point of beginning.

Unit GA–16: Cumberland Island.

This unit begins at UTM 459712 E, 3413753 N; to 462435 E, 3425693 N; to 461935 E, 3418756 N; to 459288 E, 3410816 N; to 456498 E, 3404451 N; to 457929 E, 3397513 N; to 454896 E, 3398157 N; to 455297 E, 3398901 N; to 456384 E, 3398844 N; to 455698 E, 3401647 N; to 455812 E, 3406911 N; to 458702 E, 3412147 N; to 460533 E, 3418613 N; to 460504 E, 3422131 N; to 460561 E, 3424020 N; to 460961 E,

3425965 N; to 461305 E, 3426423 N; to 462435 E, 3425693 N; and thence to point of beginning.

Florida

Projection: Albers Equal-Area, Units: Meters, Datum: HPGN, Parameters: 1st Standardparallel: 24 0 0; 2nd Standard parallel: 31 30 0; Central meridian: −84 0 0; Latitude of projection reference: 24 0 0; False easting: 400000; False northing: 0.

Unit FL–1: Big Lagoon.

This unit begins at UTM 72604 E, 704871 N; to 74167 E, 705290 N; to 74912 E, 705403 N; to 74994 E, 704610 N; to 73688 E, 704444 N; to 72981 E, 704354 N; to 72070 E, 704239 N; to 71486 E, 704670 N; to 71247 E, 704847 N; to 71652 E, 704908 N; to 73425 E, 705177 N; to 74167 E, 705290 N; and thence to point of beginning.

Unit FL–2: Big Sabine.

This unit begins at UTM 108301 E, 707635 N; to 109133 E, 711008 N; to 110549 E, 711021 N; to 111989 E, 707573 N; to 104992 E, 706101 N; to 104637 E, 707641 N; to 104449 E, 708456 N; to 104189 E, 709582 N; to 105949 E, 710427 N; to 105964 E, 710434 N; to 107118 E, 710988 N; to 109118 E, 711007 N; to 109133 E, 711008 N; and thence to point of beginning.

Unit FL–3: Navarre Beach.

This unit begins at UTM 126686 E, 711110 N; to 127659 E, 713103 N; to 128179 E, 713103 N; to 128179 E, 712988 N; to 128179 E, 712115 N; to 128179 E, 711547 N; to 128179 E, 710207 N; to 125193 E, 710207 N; to 125193 E, 713091 N; to 125193 E, 713103 N; to 125415 E, 713103 N; to 127659 E, 713103 N; and thence to point of beginning.

Unit FL–4: Marifarms.

This unit begins at UTM 232704 E, 697981 N; to 231359 E, 700066 N; to 233004 E, 698658 N; to 233244 E, 698845 N; to 234097 E, 697832 N; to 233491 E, 697779 N; to 233484 E, 697778 N; to 233657 E, 697272 N; to 233817 E, 697179 N; to 233937 E, 696934 N; to 234471 E, 695845 N; to 233071 E, 695285 N; to 230444 E, 699618 N; to 231338 E, 700085 N; to 231351 E, 700073 N; to 231359 E, 700066 N; and thence to point of beginning.

Unit FL–5: Shell/Crooked Islands.

This unit begins at UTM 247749 E, 671302 N; to 234803 E, 681585 N; to 235353 E, 680799 N; to 238362 E, 678161 N; to 241000 E, 677050 N; to 242434 E, 675662 N; to 244193 E, 675060 N; to 244795 E, 674319 N; to 245037 E, 674259 N; to 245135 E, 674234 N; to 245143 E, 674226 N; to 245176 E, 674205 N; to 245218 E, 674190 N; to 245246 E, 674169 N; to 245263 E, 674141 N; to 245287 E, 674120 N; to 245307 E, 674089 N; to 245339 E, 674071 N; to 245374 E, 674054 N; to 245397 E, 674029 N; to 245417 E, 674009 N; to 245471 E, 673975 N; to 245511 E, 673955 N; to 245559 E, 673925 N; to 245594 E, 673905 N; to 245648 E, 673888 N; to 245683 E, 673865 N; to 245732 E, 673837 N; to 245783 E, 673817 N; to 245821 E, 673814 N; to 245863 E, 673828 N; to 245892 E, 673836 N; to 245943 E, 673814 N; to 245980 E, 673785 N; to 245994 E, 673758 N; to 246028 E, 673722 N; to 246064 E, 673710 N; to 246129 E, 673705 N; to 246171 E, 673701 N; to 246210 E, 673694 N; to 246264 E, 673688 N; to 246269 E, 673691 N; to 247063 E, 673116 N; to 247129 E, 673055 N; to 247988 E, 672271 N; to 249290 E, 670666 N; to 250013 E, 669943 N; to 252472 E, 667339 N; to 255075 E, 665315 N; to 255292 E, 664230 N; to 257462 E, 662928 N; to 257802 E, 662827 N; to 260137 E, 662133 N; to 260351 E, 661791 N; to 260499 E, 661554 N; to 261077 E, 660108 N; to 257172 E, 660180 N; to 252906 E, 662856 N; to 249001 E, 667123 N; to 244517 E, 671606 N; 232874 E, 678404 N; to 233121 E, 680310 N; to 234803 E, 681585 N; and thence to point of beginning.

Unit FL–6: Upper St. Joe Peninsula.

This unit begins at UTM 264202 E, 649954 N; to 263328 E, 646264 N; to 261673 E, 646007 N; to 261523 E, 648630 N; to 261822 E, 650954 N; to 263172 E, 653427 N; to 266320 E, 654851 N; to 267669 E, 654326 N; to 268194 E, 652752 N; to 265045 E, 646531 N; to 264205 E, 646401 N; to 263328 E, 646264 N; and thence to point of beginning.

Unit FL–7: Cape San Blas.

This unit begins at UTM 269729 E, 628433 N; to 271100 E, 630960 N; to 271723 E, 631052 N; to 272235 E, 629456 N; to 271202 E, 627733 N; to 270598 E, 627364 N; to 269830 E, 627247 N; to 269098 E, 627364 N; to 268457 E, 627772 N; to 267433 E, 628862 N; to 266829 E, 629874 N; to 266729 E, 630312 N; to 269114 E, 630666 N; to 271100 E, 630960 N; and thence to point of beginning.

Unit FL–8: St. Vincent Island.

This unit begins at UTM 294248 E, 626986 N; to 294995 E, 630938 N; to 295488 E, 631925 N; to 298443 E, 631500 N; to 298567 E, 629943 N; to 298204 E, 628944 N; to 296169 E, 624998 N; to 295267 E, 624103 N; to 294893 E, 623731 N; to 293675 E, 622522 N; to 290632 E, 624008 N; to 290225 E, 625441 N; to 290357 E, 625459 N; to 293622 E, 625901 N; to 295400 E, 629819 N; to 294975 E, 630899 N; to 294995 E, 630938 N; to 282740 E, 630619 N; to 283176 E, 631015 N; to 283824 E, 630103 N; to 283748 E, 630027 N; to 282939 E, 629218 N; to 280760 E, 630321 N; to 282031 E, 631281 N; to 282653 E, 631751 N; to 283176 E, 631015 N; and thence to point of beginning.

Unit FL–9: East St. George Island.

This unit begins at UTM 327537 E, 637190 N; to 331619 E, 642193 N; to 332318 E, 642718 N; to 333986 E, 641977 N; to 334974 E, 639815 N; to 332812 E, 634255 N; to 322619 E, 628880 N; to 321481 E, 630777 N; to 320580 E, 632278 N; to 320889 E, 634131 N; to 331619 E, 642193 N; and thence to point of beginning.

Unit FL–10: Yent Bayou.

This unit begins at UTM 327217 E, 641936 N; to 328104 E, 643576 N; to 328242 E, 643651 N; to 329854 E, 642490 N; to 326458 E, 639739 N; to 324753 E, 641673 N; to 324737 E, 641691 N; to 324716 E, 641715 N; to 324702 E, 641730 N; to 324696 E, 641738 N; to 325103 E, 641958 N; to 326375 E, 642644 N; to 326446 E, 642682 N; to 326575 E, 642752 N; to 326589 E, 642759 N; to 326715 E, 642827 N; to 326752 E, 642847 N; to 326764 E, 642853 N; to 326877 E, 642915 N; to 327281 E, 643132 N; to 327760 E, 643391 N; to 328104 E, 643576 N; and thence to point of beginning.

Unit FL–11: Carabelle Beach.

This unit begins at UTM 334905 E, 646117 N; to 334194 E, 647675 N; to 334880 E, 648086 N; to 335351 E, 647832 N; to 336872 E, 646655 N; to 336438 E, 645696 N; to 335333 E, 645225 N; to 333576 E, 645460 N; to 332762 E, 646818 N; to 333118 E, 647032 N; to 334194 E, 647675 N; and thence to point of beginning.

Unit FL–12: Lanark Reef.

This unit begins at UTM 344382 E, 651062 N; to 340519 E, 651005 N; to 346705 E, 654054 N; to 347414 E, 653239 N; to 347503 E, 652530 N; to 346989 E, 651360 N; to 342150 E, 649180 N; to 340767 E, 650084 N; to 340519 E, 651005 N; and thence to point of beginning.

Unit FL–13: Phipps Preserve.

This unit begins at UTM 358696 E, 655615 N; to 359499 E, 655877 N; to 359048 E, 653677 N; to 357606 E, 654056 N; to 356217 E, 655336 N; to 355965 E, 656382 N; to 357606 E, 657500 N; to 360022 E, 656653 N; to 359499 E, 655877 N; and thence to point of beginning.

Unit FL–14: Hagens Cove.

This unit begins at UTM 439463 E, 640163 N; to 442273 E, 638847 N; to 439808 E, 636998 N; to 438636 E, 638439 N; to 438060 E, 641782 N; to 440876 E, 642633 N; to 440923 E, 642647 N; to 441672 E, 642493 N; to 443171 E, 639419 N; to 442345 E, 638900 N; to 442273 E, 638847 N; and thence to point of beginning.

Unit FL–15: Anclote Keys.

This unit begins at UTM 512648 E, 465612 N; to 513535 E, 471894 N; to 515000 E, 471826 N; to 516056 E, 460514 N; to 510775 E, 460821 N; to 510707 E, 471997 N; to 513535 E, 471894 N; and thence to point of beginning.

Unit FL–16: Three Rooker Island.

This unit begins at UTM 513409 E, 457484 N; to 512082 E, 459662 N; to 515831 E, 459704 N; to 516087 E, 455870 N; to 511997 E, 455955 N; to 512082 E, 459662 N; and thence to point of beginning.

Unit FL–17: North Honeymoon Island.

This unit begins at UTM 513886 E, 453853 N; to 513365 E, 452398 N; to 512410 E, 452335 N; to 512620 E, 455050 N; to 515884 E, 455099 N; to 515467 E, 454636 N; to 514430 E, 453483 N; to 514397 E, 452465 N; to 513365 E, 452398 N; and thence to point of beginning.

Unit FL–18: South Honeymoon Island.

This unit begins at UTM 516037 E, 450451 N; to 515090 E, 449543 N; to 514527 E, 450348 N; to 515332 E, 450683 N; to 515729 E, 450848 N; to 515944 E, 450937 N; to 515965 E, 450946 N; to 516547 E, 450752 N; to 516698 E, 449817 N; to 516724 E, 449653 N; to 516667 E, 449661 N; to 516267 E, 449721 N; to 516267 E, 449721 N; to 516024 E, 449757 N; to 515965 E, 449766 N; to 515944 E, 449761 N; to 515217 E, 449572 N; to 515092 E, 449540 N; to 515090 E, 449543 N; and thence to point of beginning.

Unit FL–19: Caladesi Island.

This unit begins at UTM 514720 E, 447872 N; to 516267 E, 449721 N; to 516663 E, 449634 N; to 516724 E, 449621 N; to 516645 E, 449532 N; to 516191 E, 449023 N; to 515302 E, 446566 N; to 515325 E, 446430 N;

to 515480 E, 445484 N; to 513266 E, 445564 N; to 513315 E, 445564 N; to 514203 E, 449281 N; to 515076 E, 449540 N; to 515090 E, 449543 N; to 515090 E, 449543 N; to 515092 E, 449540 N; to 515217 E, 449572 N; to 515944 E, 449761 N; to 515965 E, 449766 N; to 516024 E, 449757 N; to 516267 E, 449721 N; and thence to point of beginning.

Unit FL–20: Shell Key and Mullet Key.

This unit begins at UTM 522755 E, 405904 N; to 524490 E, 402622 N; to 522296 E, 402015 N; to 522083 E, 405134 N; to 521682 E, 406859 N; to 522083 E, 408820 N; to 524683 E, 408939 N; to 524730 E, 408561 N; to 525084 E, 408112 N; to 524234 E, 407875 N; to 523903 E, 406670 N; to 524683 E, 405347 N; to 524163 E, 405134 N; to 524177 E, 405090 N; to 524588 E, 403811 N; to 524517 E, 402629 N; to 524490 E, 402622 N; and thence to point of beginning.

Unit FL–21: Egmont Key.

This unit begins at UTM 521928 E, 399050 N; to 524187 E, 396840 N; to 524189 E, 396828 N; to 524063 E, 396829 N; to 520449 E, 396853 N; to 519988 E, 399087 N; to 520498 E, 401102 N; to 523582 E, 401054 N; to 524187 E, 396840 N; and thence to point of beginning.

Unit FL–22: Cayo Costa.

This unit begins at UTM 572184 E, 297955 N; to 573556 E, 299054 N; to 573567 E, 299018 N; to 573572 E, 299002 N; to 573591 E, 298942 N; to 573605 E, 298896 N; to 573629 E, 298817 N; to 573666 E, 298696 N; to 573674 E, 298671 N; to 573716 E, 298533 N; to 573785 E, 298310 N; to 573790 E, 298295 N; to 573795 E, 298277 N; to 573804 E, 298247 N; to 573809 E, 298232 N; to 573828 E, 298171 N; to 573828 E, 298171 N; to 573847 E, 298107 N; to 573851 E, 298095 N; to 573857 E, 298077 N; to 573890 E, 297969 N; to 573896 E, 297948 N; to 573903 E, 297925 N; to 573923 E, 297862 N; to 573932 E, 297831 N; to 573939 E, 297809 N; to 574015 E, 297563 N; to 574029 E, 297515 N; to 574039 E, 297485 N; to 574267 E, 296743 N; to 574781 E, 295073 N; to 574799 E, 295016 N; to 574815 E, 294961 N; to 574756 E, 294950 N; to 574695 E, 294940 N; to 574662 E, 294934 N; to 573024 E, 294644 N; to 570802 E, 298158 N; to 571573 E, 300539 N; to 573138 E, 300275 N; to 573183 E, 300267 N; to 573556 E, 299054 N; and thence to point of beginning.

Unit FL–23: North Captiva Island.

This unit begins at UTM 576601 E, 289017 N; to 577848 E, 287371 N; to 577876 E, 286985 N; to 577877 E, 286979 N; to 577875 E, 286979 N; to 574997 E, 286458 N; to 574770 E, 289201 N; to 575042 E, 290449 N; to 577763 E, 290879 N; to 577695 E, 289451 N; to 577796 E, 288081 N; to 577848 E, 287371 N; and thence to point of beginning.

Unit FL–24: Captiva Island and Sanibel Island.

This unit begins at UTM 580844 E, 275784 N; to 581804 E, 275109 N; to 581117 E, 274510 N; to 579744 E, 276673 N; to 580630 E, 276777 N; to 580809 E, 276798 N; to 580983 E, 276973 N; to 581200 E, 276465 N; to 581882 E, 275176 N; to 581804 E, 275109 N; and thence to point of beginning.

Unit FL–25: Bunch Beach.

This unit begins at UTM 600837 E, 275733 N; to 602992 E, 275407 N; to 602748 E, 274477 N; to 602656 E, 274125 N; to 602609 E, 273948 N; to 597678 E, 276408 N; to 598020 E, 277081 N; to 598028 E, 277095 N; to 598365 E, 277228 N; to 599269 E, 277252 N; to 600813 E, 276890 N; to 601838 E, 276577 N; to 602320 E, 276227 N; to 603068 E, 275696 N; to 602992 E, 275407 N; and thence to point of beginning.

Unit FL–26: Estero Island.

This unit begins at UTM 608152 E, 269492 N; to 607538 E, 271349 N; to 608151 E, 270790 N; to 608840 E, 269977 N; to 608999 E, 269128 N; to 609777 E, 268333 N; to 610000 E, 268285 N; to 610024 E, 268280 N; to 610342 E, 267962 N; to 609423 E, 267149 N; to 606719 E, 270914 N; to 607484 E, 271320 N; to 607538 E, 271349 N; and thence to point of beginning.

Unit FL–27: Marco Island.

This unit begins at UTM 625861 E, 217665 N; to 625978 E, 221782 N; to 626119 E, 221805 N; to 625781 E, 220819 N; to 626654 E, 221073 N; to 626936 E, 221044 N; to 626702 E, 220780 N; to 626288 E, 220312 N; to 625865 E, 219861 N; to 625076 E, 219185 N; to 625076 E, 218565 N; to 625442 E, 218142 N; to 626034 E, 217945 N; to 626401 E, 217240 N; to 626936 E, 216508 N; to 627218 E, 215381 N; to 627274 E, 214648 N; to 627443 E, 213916 N; to 627492 E, 213801 N; to 627528 E, 213718 N; to 628007 E, 212084 N; to 626654 E, 211887 N; to 626062 E, 215522 N; to 624992 E, 217269 N; to 623977 E, 218987 N; to 624569 E, 220594 N; to 624428 E, 221523 N; to 625105 E, 221636 N; to 625978 E, 221782 N; and thence to point of beginning.

Unit FL–28: Marquesas Keys.

This unit begins at UTM 589947 E, 64900 N; to 585588 E, 66994 N; to 586950 E, 68633 N; to 588990 E, 69370 N; to 595167 E, 67613 N; to 592390 E, 59169 N; to 585688 E, 60426 N; to 584230 E, 60700 N; to 583890 E, 64950 N; to 585588 E, 66994 N; and thence to point of beginning.

Unit FL–29: Boca Grande/Woman/Ballast Keys.

This unit begins at UTM 604093 E, 60521 N; to 601724 E, 62876 N; to 608389 E, 60949 N; to 607504 E, 57503 N; to 600251 E, 58727 N; to 599661 E, 61810 N; to 601157 E, 62785 N; to 601724 E, 62876 N; and thence to point of beginning.

Unit FL–30: Bahia Honda/Ohio Keys.

This unit begins at UTM 676754 E, 76504 N; to 673882 E, 76942 N; to 677121 E, 79648 N; to 680417 E, 76790 N; to 674491 E, 73970 N; to 673882 E, 76942 N; and thence to point of beginning.

Unit FL–31: Lower Matecumbe Key.

This unit begins at UTM 729501 E, 100495 N; to 729673 E, 99910 N; to 729627 E, 99849 N; to 728898 E, 100507 N; to 729698 E, 100998 N; to 730225 E, 100321 N; to 730129 E, 100270 N; to 729837 E, 100115 N; to 729718 E, 99968 N; to 729673 E, 99910 N; to 729753 E, 98283 N; to 730155 E, 99108 N; to 730785 E, 98456 N; to 728947 E, 97225 N; to 728371 E, 97915 N; to 728393 E, 97930 N; to 729212 E, 98476 N; to 729321 E, 98488 N; to 729384 E, 98437 N; to 729571 E, 98534 N; to 729680 E, 98431 N; to 729764 E, 98630 N; to 729911 E, 98785 N; to 730049 E, 98993 N; to 730155 E, 99108 N; to 730155 E, 99108 N; and thence to point of beginning.

Unit FL–32: Sandy Key/Carl Ross Key.

This unit begins at UTM 700920 E, 118607 N; to 699036 E, 119411 N; to 700003 E, 120708 N; to 702225 E, 120247 N; to 703456 E, 117278 N; to 699894 E, 115914 N; to 698904 E, 118355 N; to 699036 E, 119411 N; and thence to point of beginning.

Unit FL–33: St. Lucie Inlet.

This unit begins at UTM 781031 E, 355393 N; to 782209 E, 356209 N; to 782486 E, 355067 N; to 780631 E, 353782 N; to 779311 E, 355959 N; to 778791 E, 356297 N; to 777777; to 356957; to 779204 E, 357243 N; to 781666 E, 358456 N; to 782209 E, 356209 N; and thence to point of beginning.

Unit FL–34: Ponce de Leon Inlet.

This unit begins at UTM 699895 E, 567004 N; to 699342 E, 567430 N; to 700394 E, 568058 N; to 701612 E, 566385 N; to 700745 E, 565653 N; to 700560 E, 565768 N; to 699971 E, 566138 N; to 699619 E, 565907 N; to 699573 E, 565877 N; to 699510 E, 565835 N; to 699310 E, 565704 N; to 698309 E, 566778 N; to 698577 E, 566974 N; to 698885 E, 567158 N; to 699134 E, 567306 N; to 699171 E, 567328 N; to 699342 E, 567430 N; and thence to point of beginning.

Unit FL–35: Huguenot.

This unit begins at UTM 648016 E, 718082 N; to 647534 E, 724455 N; to 649878 E, 723134 N; to 650539 E, 715996 N; to 651233 E, 712857 N; to 649278 E, 712969 N; to 648920 E, 712989 N; to 647929 E, 713187 N; to 646739 E, 712791 N; to 646854 E, 713598 N; to 646880 E, 713782 N; to 646937 E, 714179 N; to 646984 E, 714454 N; to 647050 E, 714841 N; to 647168 E, 715534 N; to 647367 E, 716096 N; to 647400 E, 717219 N; to 647340 E, 717289 N; to 647003 E, 717682 N; to 646889 E, 718458 N; to 646834 E, 718825 N; to 646829 E, 718860 N; to 646827 E, 718875 N; to 646798 E, 719069 N; to 646743 E, 719440 N; to 646732 E, 719520 N; to 646574 E, 720590 N; to 646759 E, 722102 N; to 646772 E, 722209 N; to 646668 E, 722341 N; to 646144 E, 723002 N; to 645566 E, 723709 N; to 647524 E, 724474 N; to 647534 E, 724472 N; to 647534 E, 724455 N; and thence to point of beginning.

Unit FL–36: Tiger Islands.

This unit begins at UTM 641314 E, 746934 N; to 639468 E, 748336 N; to 639503 E, 748510 N; to 640092 E, 749177 N; to 641689 E, 747037 N; to 642521 E, 745921 N; to 643266 E, 744920 N; to 642908 E, 744302 N; to 642785 E, 744419 N; to 642631 E, 744546 N; to 641224 E, 745710 N; to 639855 E, 746845 N; to 639259 E, 747334 N; to 639292 E, 747473 N; to 639468 E, 748336 N; and thence to point of beginning. insert p. 111a

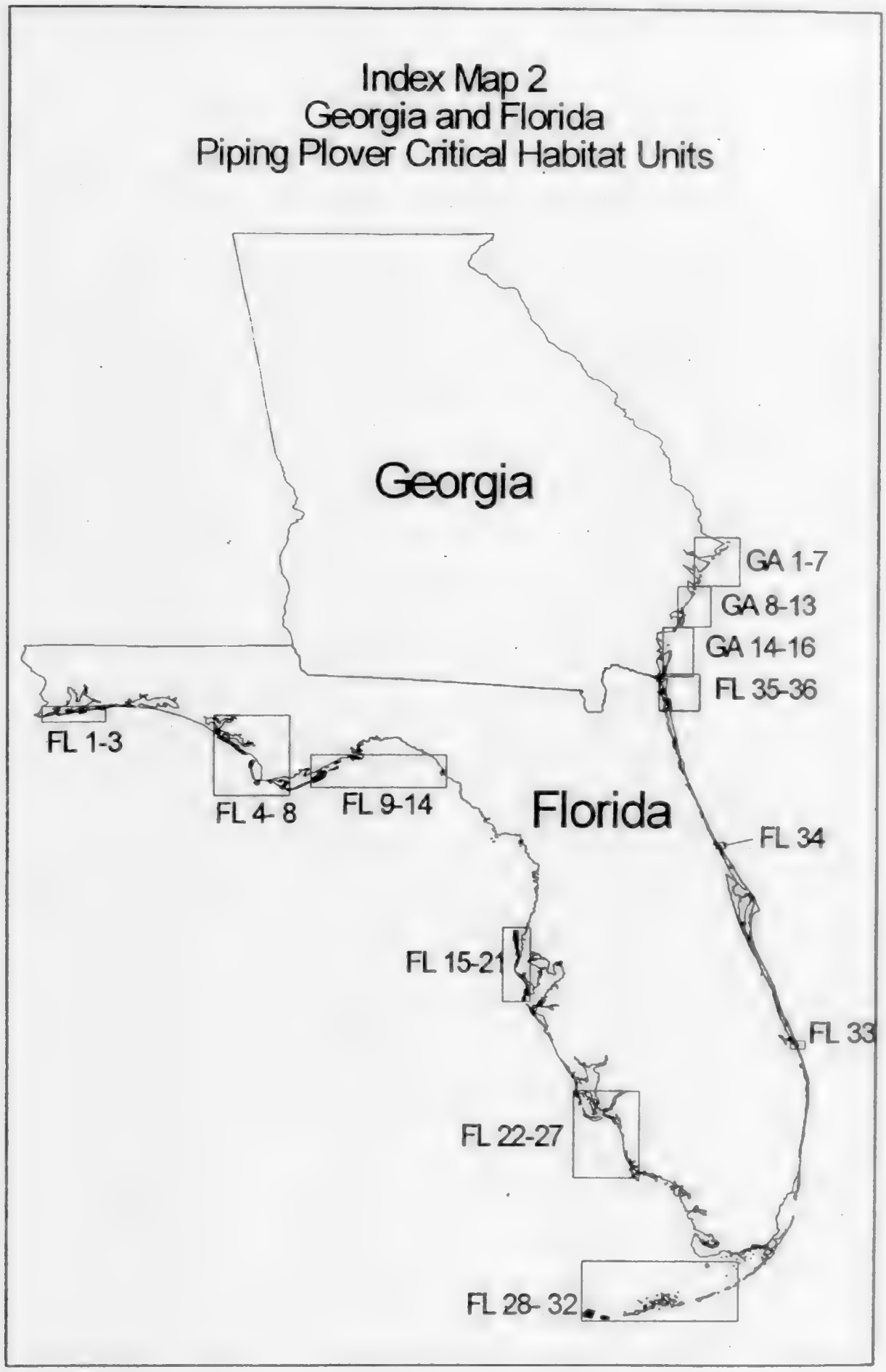
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Alabama

Projection: Universal Transverse Mercator, Zone 16.

Unit AL–1: Isle Aux Herbes.

This unit encompasses Isle Aux Herbes in entirety. This unit begins at UTM 378427 E, 3357011 N; to 378486 E, 3357070 N; to 378279 E, 3357189 N; to 378101 E, 3357411 N; to 378012 E, 3357723 N; to 378086 E, 3358019 N; to 378279 E, 3358182 N; to 378397 E, 3358716 N; to 378427 E, 3358924 N; to 378412 E, 3359443 N; to 378353 E, 3359769 N; to 378397 E, 3360110 N; to 378768 E, 3360391 N; to 379124 E, 3360362 N; to 379420 E, 3360125 N; to 379717 E, 3359635 N; to 379717 E, 3358998 N; to 379643 E, 3358316 N; to 379613 E, 3358123 N; to 379702 E, 3357604 N; to 379924 E, 3357026 N; to 380028 E, 3356641 N; to 379998 E, 3356122 N; to 379954 E, 3355662 N; to 379702 E, 3354728 N; to 379435 E, 3354580 N; to 379124 E, 3354565 N; to 378783 E, 3354698 N; to 378353 E, 3355114 N; to 378204 E, 3355662 N; to 377923 E, 3355899 N; to 377760 E, 3356448 N; to 377775 E, 3356744 N; to 378086 E, 3356996 N; and thence to point of beginning.

Unit AL–2: Dauphin, Little Dauphin, and Pelican Islands.

This unit begins at UTM 371083 E, 3345318 N; to 392178 E, 3351743 N; to 398229 E, 3346603 N; to 395819 E, 3341998 N; to 393999 E, 3341945 N; to 389876 E, 3345746 N; to 371618 E, 3343230 N, thence northwesterly to point of beginning. This unit encompasses Dauphin, Little Dauphin, and Pelican Islands.

Unit AL–3: Fort Morgan.

This unit begins at 401192 E, 3344885 N; to 401534 E, 3345098 N; to 402007 E, 3344340 N; to 401820 E, 3344041 N; to 402876 E, 3344274 N; to 403068 E, 3343313 N; to 402212 E, 3343088 N; to 401562 E, 3343010 N; to 401416 E, 3343019 N; to 401047 E, 3343106 N; to 400885 E, 3343214 N; to 400784 E, 3343360 N; to 400640 E, 3343675 N; to 400602 E, 3343866 N; to 400686 E, 3344143 N; and thence to point of beginning.

Mississippi

Projection: Universal Transverse Mercator, Zone 16.

Unit MS–1: Waveland.

This unit begins at UTM 267756 E, 3349889 N; to 269537 E, 3350370 N; to 270344 E, 3350774 N; to 271296 E, 3351446 N; to 271968 E, 3352365 N; to 272764 E, 3353037 N; to 275060 E, 3354045 N; to 275744 E, 3354617 N; to 276438 E, 3355827 N; to 276450 E, 3356286 N; to 276104 E, 3356761 N; to 276747 E, 3357000 N; to 276899 E, 3356839 N; to 277095 E, 3356504 N; to 277107 E, 3355751 N; to 276170 E, 3354056 N; to 274807 E, 3353025 N; to 273106 E, 3352394 N; to 272361 E, 3351760 N; to 271717 E, 3350899 N; to 270609 E, 3350084 N; to 269762 E, 3349668 N; to 267675 E, 3349042 N; to 267194 E, 3348408 N; to 267225 E, 3347624 N; to 266665 E, 3347301 N; to 266495 E, 3347963 N; to 266579 E, 3348679 N; to 267028 E, 3349452 N; and thence to point of beginning.

Unit MS–2: Henderson Point.

This unit begins at UTM 280338 E, 3354688 N; to 280790 E, 3354728 N; to 281602 E, 3354928 N; to 283013 E, 3355433 N; to 283585 E, 3355606 N; to 283838 E, 3354835 N; to 283678 E, 3354781 N; to 283492 E, 3354835 N; to 283252 E, 3354715 N; to 281988 E, 3354262 N; to 281216 E, 3354063 N; to 280458 E, 3353943 N; to 279433 E, 3353956 N; to 279433 E, 3354715 N; and thence to point of beginning.

Unit MS–3: Pass Christian.

This unit begins at UTM 283925 E, 3355530 N; to 284382 E, 3355904 N; to 285671 E, 3356362 N; to 287168 E, 3356985 N; to 289102 E, 3357422 N; to 290058 E, 3357609 N; to 291139 E, 3358108 N; to 292865 E, 3358815 N; to 293738 E, 3359023 N; to 293863 E, 3358295 N; to 293177 E, 3358129 N; to 292657 E, 3357879 N; to 292137 E, 3357734 N; to 290516 E, 3357006 N; to 287480 E, 3356278 N; to 286503 E, 3355925 N; to 286149 E, 3355759 N; to 284673 E, 3355218 N; to 284403 E, 3355010 N; and thence to point of beginning.

Unit MS–4: Long Beach.

This unit begins at UTM 293933 E, 3359057 N; to 294542 E, 3359478 N; to 295646 E, 3359961 N; to 296402 E, 3360161 N; to 297989 E, 3360791 N; to 298189 E, 3360077 N; to 297411 E, 3359762 N; to 296644 E, 3359467 N; to 295992 E, 3359310 N; to 294658 E, 3358690 N; to 294395 E, 3358427 N; and thence to point of beginning.

Unit MS–5: Gulfport.

This unit begins at UTM 299324 E, 3361159 N; to 300185 E, 3361611 N; to 301919 E, 3362147 N; to 302581 E, 3362168 N; to 303012 E, 3362378 N; to 303475 E, 3362441 N; to 303590 E, 3361727 N; to 303212 E, 3361653 N; to 302781 E, 3361453 N; to 301867 E, 3361359 N; to 300333 E, 3360886 N; to 299702 E, 3360550 N; and thence to point of beginning.

Unit MS–6: Mississippi City.

This unit begins at UTM 303717 E, 3361711 N; to 303536 E, 3362466 N; to 304291 E, 3362647 N; to 305260 E, 3362827 N; to 306163 E, 3363139 N; to 307493 E, 3363468 N; to 311237 E, 3363829 N; to 311286 E, 3363107 N; to 307641 E, 3362729 N; and thence to point of beginning.

Unit MS–7: Beauvoir.

This unit begins at UTM 311549 E, 3363796 N; to 312075 E, 3363895 N; to 312075 E, 3363123 N; to 311533 E, 3363090 N; and thence to point of beginning.

Unit MS–8: Biloxi West.

This unit begins at UTM 312255 E, 3363780 N; to 313536 E, 3363944 N; to 315605 E, 3364043 N; to 317657 E, 3364026 N; to 318051 E, 3363960 N; to 317969 E, 3363189 N; to 316065 E, 3363336 N; to 314652 E, 3363205 N; to 312682 E, 3363107 N; to 312419 E, 3363057 N; and thence to point of beginning.

Unit MS–9: Biloxi East.

This unit begins at UTM 319020 E, 3363813 N; to 319316 E, 3363895 N; to 320498 E, 3363731 N; to 320416 E, 3363024 N; to 319381 E, 3363139 N; to 319119 E, 3363057 N; and thence to point of beginning.

Unit MS–10: Ocean Springs West.

This unit begins at UTM 323027 E, 3365750 N; to 323897 E, 3365438 N; to 324997 E, 3364814 N; to 324554 E, 3364207 N; to 323848 E, 3364617 N; to 323240 E, 3364896 N; to 322698 E, 3365110 N; and thence to point of beginning.

Unit MS–11: Ocean Springs East.

This unit begins at UTM 325670 E, 3364338 N; to 326409 E, 3363796 N; to 326967 E, 3363681 N; to 327427 E, 3363731 N; to 327805 E, 3364043 N; to 328314 E, 3363648 N; to 327723 E, 3363057 N; to 326787 E, 3362942 N; to 326229 E, 3363090 N; to 325736 E, 3363369 N; to 325260 E, 3363747 N; and thence to point of beginning.

Unit MS–12: Deer Island.

This unit encompasses Deer Island in entirety. This unit begins at UTM 321533 E, 3361399 N; to 319662 E, 3362329 N; to 319218 E, 3362691 N; to 318602 E, 3362714 N; to 318711 E, 3363223 N; to 319626 E, 3363546 N; to 324209 E, 3361699 N; to 325499 E, 3360487 N; to 325621 E, 3359759 N; to 325363 E, 3359468 N; to 325016 E, 3359473 N; and thence to point of beginning.

Unit MS–13: Round Island.

This unit encompasses Round Island in entirety. This unit begins at UTM 347673 E, 3353022 N; to 348061 E, 3352672 N; to 348250 E, 3352289 N; to 348222 E, 3351986 N; to 347891 E, 3351594 N; to 347470 E, 3351456 N; to 347233 E, 3351475 N; to 346997 E, 3351745 N; to 346940 E, 3352043 N; to 346651 E, 3352662 N; to 346618 E, 3352852 N; to 346727 E, 3353169 N; to 346888 E, 3353301 N; to 347086 E, 3353348 N; to 347271 E, 3353306 N; and thence to point of beginning.

Unit MS–14: Mississippi Barrier Islands.

This unit begins at UTM 290469 E, 3346115 N; to 302098 E, 3349286 N; to 309998 E, 3345955 N; to 318634 E, 3350074 N; to 338564 E, 3349808 N; to 367130 E, 3344494 N; to 366200, 3338515, to 334046 E, 3343962 N; to 321026 E, 3344892 N; to 310131 E, 3340242 N; to 302558 E, 3344361 N; to 298398 E, 3341534 N; thence northwesterly to point of beginning. This unit encompasses Cat, East and West Ship, Horn, Spoil, and Petit Bois Islands.

Unit MS–15: North and South Rigolets.

This unit begins at UTM 366028 E, 3360924 N; to 366177 E, 3360549 N; to 366219 E, 3359868 N; to 366097 E, 3359298 N; to 366208 E, 3358902 N; to 366614 E, 3359003 N; to 366918 E, 3358853 N; to 367040 E, 3358499 N; to 366984 E, 3358225 N; to 366457 E, 3357633 N; to 366127 E, 3357492 N; to 365157 E, 3356726 N; to 364542 E, 3356772 N; to 364311 E, 3357045 N; to 364280 E, 3357236 N; to 364379 E, 3357547 N; to 364658 E, 3357841 N; to 365121 E, 3357880 N; to 365540 E, 3358226 N; to 365353 E, 3358519 N; to 365291 E, 3359068 N; to 365371 E, 3359333 N; to 365346 E, 3359848 N; to 365312 E, 3360173 N; to 365122 E, 3360414 N; to 365127 E, 3360796 N; to 365364 E, 3361062 N; to 365667 E, 3361140 N; to 365831 E, 3361100 N; and thence to point of beginning.

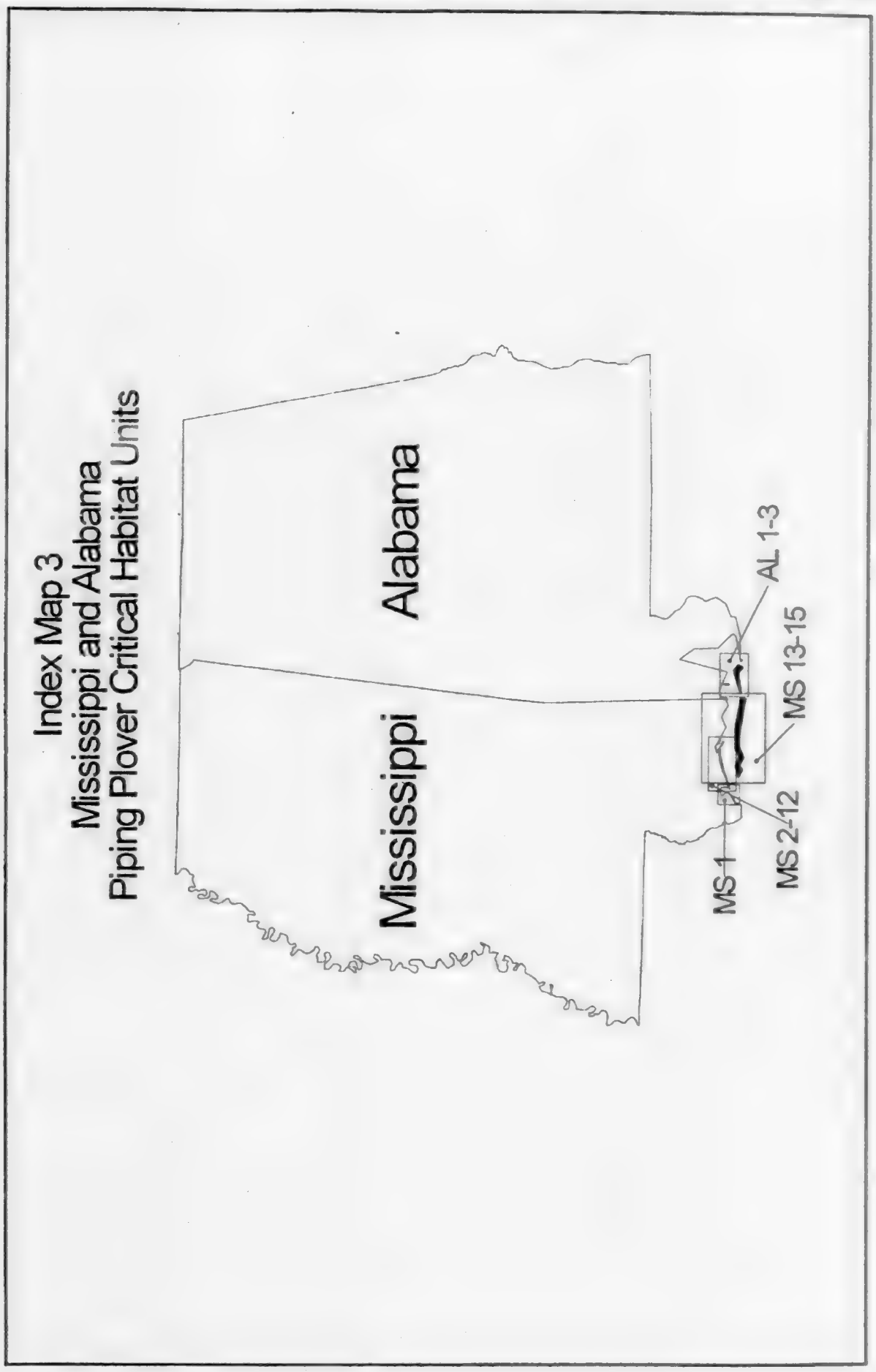
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Piping Plover Critical Habitat Units
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Louisiana

Projections: Universal Transverse Mercator, Zones 15 and 16.

Unit LA–1: Texas/Louisiana border to eastern Vermilion Parish line (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 549921 E, 3270899 N; to 566322 E, 3267417 N; to 571958 E, 3268197 N; to 577923 E, 3271736 N; to 582480 E, 3273402 N; to 592852 E, 3273900 N; to 593548 E, 3273291 N; to 592282 E, 3272379 N; to 582604 E, 3272411 N; to 578272 E, 3270822 N; to 572228 E, 3267247 N; to 564070 E, 3266639 N; to 533684 E, 3272905 N; to 525059 E, 3276025 N; to 501487 E, 3287178 N; to 482367 E, 3292713 N; to 476081 E, 3293464 N; to 467070 E, 3291634 N; to 453754 E, 3292703 N; to 435729 E, 3290424 N; to 426892 E, 3288473 N; to 419648 E, 3284415 N; to 418566 E, 3284630 N; to 418959 E, 3285566 N; to 426625 E, 3289421 N; to 435613 E, 3291411 N; to 453710 E, 3293699 N; to 466987 E, 3292644 N; to 474538 E, 3294391 N; to 478889 E, 3294275 N; to 494448 E, 3290582 N; to 503238 E, 3287582 N; to 525371 E, 3276955 N; to 533044 E, 3274141 N; and thence to point of beginning.

Unit LA–2: Wax Lake Outlet (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 646782 E, 3269766 N; to 652296 E, 3271086 N; to 654392 E, 3271086 N; to 670855 E, 3263787 N; to 671787 E, 33255322 N; to 658547 E, 3247455 N; to 652529 E, 3250973 N; to 656722 E, 3259205 N; to 654936 E, 3262466 N; to 648180 E, 3261069 N; to 644763 E, 3265573 N; thence northeasterly to point of beginning. This unit encompasses the Wax Lake Outlet and Lower Atchafalaya River Deltas.

Unit LA–3: Point Au Fer Island (Universal Transverse Mercator, Zone 15)

This unit encompasses the small island at the western tip of Point Au Fer Island in entirety. This unit has two subunits. The first subunit begins at UTM 660362 E, 3246187 N; to 660677 E, 3245831 N; to 660809 E, 3245294 N; to 660594 E, 3244817 N; to 660164 E, 3244544 N; to 659870 E, 3244668 N; to 659655 E, 3244980 N; to 659598 E, 3245719 N; to 659892 E, 3246267 N; and thence to point of beginning. The second subunit begins at UTM 688276 E, 3230473 N; to 688513 E, 3230493 N; to 689239 E, 3231156 N; to 689719 E, 3230479 N; to 689101 E, 3229629 N; to 688456 E, 3229355 N; to 687982 E, 3229452 N; to 687340 E, 3229933 N; to 686659 E, 3230000 N; to 686483 E, 3230138 N; to 686095 E, 3230037 N; to 685320 E, 3230088 N; to 684886 E, 3230342 N; to 684541 E, 3230938 N; to 683506 E, 3231763 N; to 683116 E, 3232252 N; to 681730 E, 3233236 N; to 681153 E, 3233006 N; to 679008 E, 3233530 N; to 674128 E, 3233699 N; to 667883 E, 3235988 N; to 666497 E, 3236823 N; to 664425 E, 3238610 N; to 663278 E, 3240153 N; to 661418 E, 3242077 N; to 660332 E, 3243790 N; to 660133 E, 3244344 N; to 660844 E, 3244690 N; to 662060 E, 3242757 N; to 663898 E, 3240858 N; to 665026 E, 3239333 N; to 666965 E, 3237663 N; to 667576 E, 3237238 N; to 668081 E, 3237128 N; to 668326 E, 3236866 N; to 674311 E, 3234674 N; to 679071 E, 3234524 N; to 681153 E, 3234037 N; to 681294 E, 3234104 N; to 681381 E, 3234648 N; to 681855 E, 3234763 N; to 682179 E, 3234426 N; to 682221 E, 3234059 N; to 683400 E, 3233242 N; to 684054 E, 3232541 N; to 684844 E, 3231990 N; to 685198 E, 3231636 N; to 685464 E, 3231096 N; to 686967 E, 3231116 N; to 687132 E, 3230975 N; to 687651 E, 3230868 N; and thence to point of beginning.

Unit LA–4: Isles Dernieres (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 698530 E, 3217432 N; to 708782 E, 3216806 N; to 715277 E, 3216806 N; to 731084 E, 3219388 N; to 731084 E, 3216962 N; to 716920 E, 3213363 N; to 707529 E, 3213910 N; to 698530 E, 3214536 N; thence northerly to point of beginning. This unit encompasses the Isles Dernieres chain.

Unit LA–5: Timbalier Islands to Grand Terre Islands (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 737901 E, 3223034 N; to 749533 E, 3219087 N; to 763242 E, 3221995 N; to 803331 E, 3250243 N; to 806862 E, 3246089 N; to 773005 E, 3219087 N; to 763865 E, 3215349 N; to 749325 E, 3213479 N; to 735824 E, 3219295 N; thence northerly to point of beginning. This unit encompasses West and East Timbalier, follows MLW from Belle Pass to Cheniere Caminada, Grand Isle, and Grand Terre Islands.

Unit LA–6: Mississippi River Delta. (Universal Transverse Mercator, Zone 16)

This unit begins at UTM 267834 E, 3247846 N; to 268961 E, 3249198 N; to 271503 E, 3250653 N; to 287395 E, 3254768 N; to 315258 E, 3241711 N; to 317534 E, 3220817 N; to 294326 E, 3197342 N; to 259412 E, 3193296 N; to 251566 E, 3208850 N; to 266348 E, 3225720 N; thence northeasterly following Tiger Pass to the Mississippi River; thence to point of beginning. This unit encompasses the Mississippi River delta.

Unit LA–7: Breton Islands and Chandeleur Island Chain (Universal Transverse Mercator, Zone 16)

This unit begins at UTM 310382 E, 3328490 N; to 327636 E, 3327583 N; to 329708 E, 3302375 N; to 316990 E, 3279632 N; to 293519 E, 3258792 N; to 281941 E, 3258032 N; to 282185 E, 3262771 N; to 307096 E, 3298127 N; thence to point of beginning. This unit encompasses Breton Islands and the Chandeleur Island Chain.

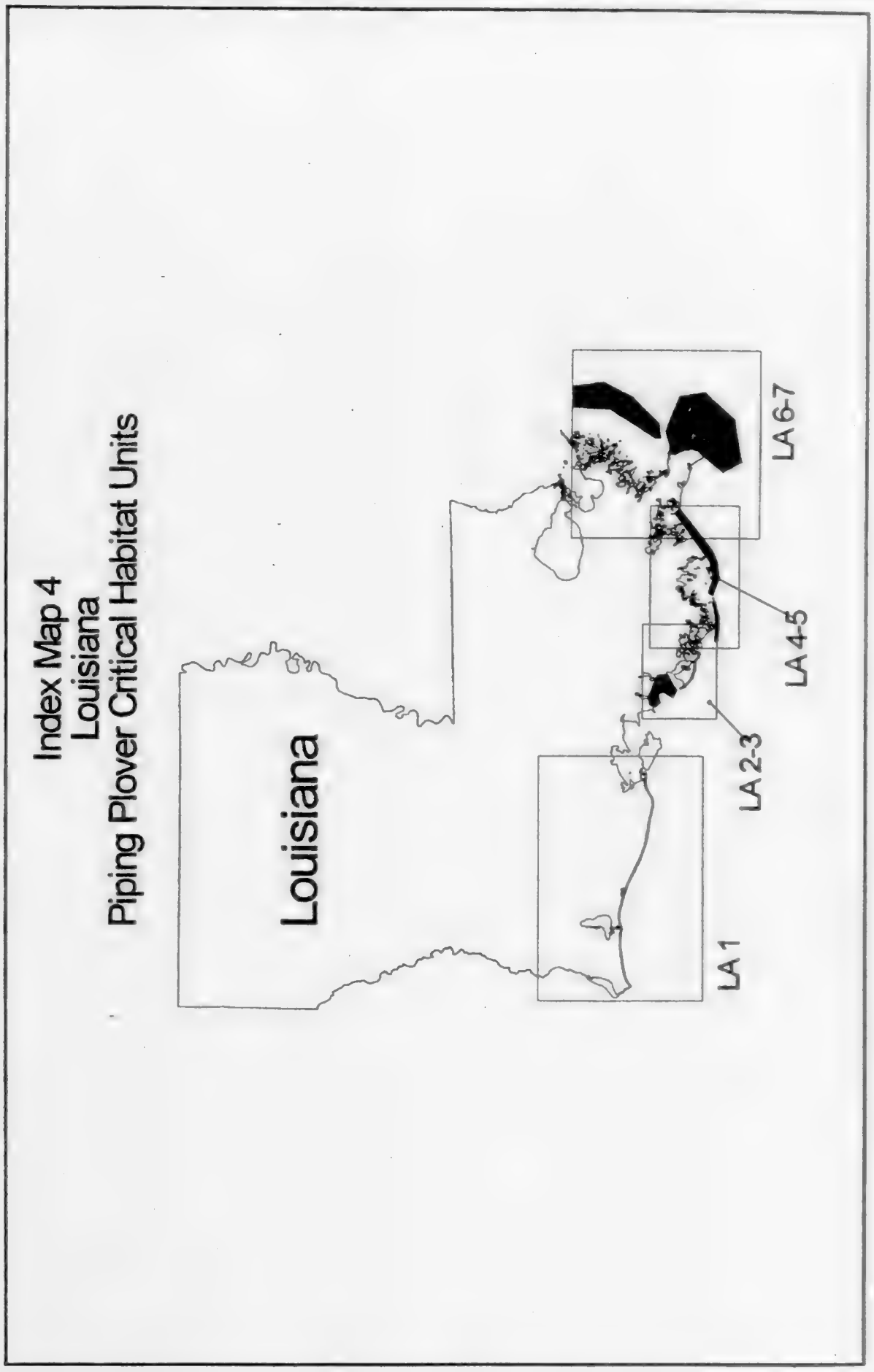
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Texas

Projections: Universal Transverse Mercator, Zones 14 and 15.

Unit TX–1: South Bay and Boca Chica (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 685873 E, 2872207 N; thence southwesterly to 685500 E, 2872000 N; thence to 684447 E, 2873206 N; to 683448 E, 2873264 N; to 682935 E, 2872978 N; to 682479 E, 2873691 N; to 681252 E, 2873891 N; thence westerly to 676573 E, 2873834 N; thence northerly to 675546 E, 2879026 N and thence along the Brownsville Ship Channel to 683862 E, 2884018 N; to 685159 E, 2884283 N; thence southerly parallel to the shoreline to 685041 E, 2882500 N; to 685040 E, 2879649 N; to 685338 E, 2875729 N; to 685873 E, 2872208 N; thence to point of beginning.

Unit TX–2: Queen Isabella Causeway (Universal Transverse Mercator, Zone 14)

This is made up of two sub-units. The more northerly sub-unit begins at UTM 683465 E, 2887073 N; thence southerly to 683454 E, 2886979 N; to 683465 E, 2886565 N; thence westerly to 683087 E, 2886542 N; thence northerly to 683075 E, 2886754 N; thence northeasterly to 683205 E, 2886955 N; to 683288 E, 2887050 N; to 683383 E, 2887109 N; thence southeasterly to the point of beginning. The southerly sub-unit begins at UTM 683454 E, 2886423 N; thence southerly to 683489 E, 2886045 N; to 683489 E, 2885939 N; to 683489 E, 2885844 N; to 683489 E, 2885785 N; thence westerly to 683383, 2885750 N; to 683312 E, 2885750 N; thence northwesterly to 683217 E, 2885785 N; to 683158 E, 2885856 N; thence northerly to 683146 E, 2886045 N; to 683111 E, 2886128 N; to 683111 E, 2886246 N; to 683182 E, 2886412 N; and thence easterly to point of beginning.

Unit TX–3: Padre Island (Universal Transverse Mercator, Zone 14)

This unit includes the beach of Padre Island from UTM 660374 E, 2987111 N; to 660873 E, 2987115 N; to 660747 E, 2992864 N; to 660888 E, 2999146 N; to 661150 E, 3003029 N; to 662048 E, 3010653 N; to 663661 E, 3019205 N; to 665497 E, 3026173 N; to 666273 E, 3028714 N; to 667846 E, 3033212 N; to 668149 E, 3034271 N; to 671567 E, 3042803 N; to 673332 E, 3046907 N; to 674139 E, 3048460 N; to 675420 E, 3051375 N; to 675500 E, 3051284 N; to 675218 E, 3050568 N; to 671295 E, 3041835 N; to 668471 E, 3034725 N; to 666596 E, 3029158 N; to 665587 E, 3025830 N; to 664024 E, 3019800 N; to 662824 E, 3014041 N; to 662148 E, 3010280 N; to 661362 E, 3003513 N; to 661069 E, 2999348 N; to 660868 E, 2992702 N; to 661034 E, 2987105 N; to 661368 E, 2983370 N; to 661807 E, 2980583 N; to 662399 E, 2975676 N; to 663022 E, 2971878 N; to 664648 E, 2964434 N; to 665848 E, 2959511 N; to 668972 E, 2947853 N; to 671919 E, 2939214 N; to 672421 E, 2939087 N; to 672635 E, 2937587 N; to 674836 E, 2930642 N; to 676729 E, 2924226 N; to 680368 E, 2910491 N; to 681467 E, 2905154 N; to 682506 E, 2898584 N; to 683065 E, 2894294 N; to 683071 E, 2891861 N; to 683185 E, 2891886 N; to 682858 E, 2893768 N; thence from this point at the beach westerly to 680000 E, 2893665 N and including the width of the island and into the waters of the Laguna Madre; thence northwesterly, paralleling Padre Island to a point in the Land Cut at 652835 E, 2965385 N; thence westerly to 651755 E, 2965790 N; thence southwesterly to 651619 E, 2957672 N; thence southerly to 652835 E, 2965385 N; thence westerly to 652280 E, 2958438 N; thence northerly to 650549 E, 2961126 N; to 648431 E, 2963764 N; to 646973 E, 2965847 N; to 645029 E, 2967653 N; to 643640 E, 2969319 N; to 643363 E, 2971263 N; thence easterly to 652598 E, 2971263 N; thence northeasterly following the east side of the Gulf Intercoastal Waterway to 661249 E, 3029777 N; thence easterly to 663623 E, 3029895 N; thence southerly to 663207 E, 3021943 N; to 662495 E, 3019451 N; to 661664 E, 3015712 N; to 661308 E, 3011380 N; to 660655 E, 3004971 N; to 660181 E, 2998324 N; to 660121, 2990254 N; to 660121 E, 2987108 N; and thence to point of beginning.

Unit TX–4: Lower Laguna Madre Mainland (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 658444 E, 2935883 N; thence southward to 671624 E, 2904045 N; thence westward to 666802 E, 2903931 N; thence northward to 664748 E, 2908439 N; to 663978 E, 2914002 N; to 661225 E, 2916427 N; to 659585 E, 2921419 N; to 657032 E, 2925071 N; to 656019 E, 2929378 N; to 654664 E, 2932830 N; to 654963 E, 2935227 N; to 655063 E, 2935854 N; and thence eastward to the point of beginning.

Unit TX–5: Upper Laguna Madre (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 673798 E, 3052081 N; thence southward to 672053 E, 3048473 N; to 670653 E, 3045733 N; thence westward to 669263 E, 3046403 N; thence northward to 672112 E, 3053008 N; and thence eastward to the point of beginning.

Unit TX–6: Mollie Beattie Coastal Habitat (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 678172 E, 3059908 N; thence southward to 677405 E, 3058094 N; thence eastward to 677858 E, 3057833 N; to 678119 E, 3057686 N; thence southward to 677767 E, 3056960 N; thence westward to 677053 E, 3057255 N; thence southward to 676671 E, 3056774 N; to 676301 E, 3056162 N; thence northeastward to 676242 E, 3056497 N; to 676104 E, 3056951 N; to 676006 E, 3057286 N; to 675809 E, 3057601 N; to 675477 E, 3058111 N; to 674978 E, 3058560 N; to 674404 E, 3058784 N; thence northward to 674728 E, 3060656 N; and thence eastward to the point of beginning.

Unit TX–7: Newport Pass/Corpus Christi Pass Beach (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 677048 E, 3055202 N; to 678177 E, 3057815 N; to 680170 E, 3061978 N; to 680502 E, 3062531 N; to 680746 E, 3062775 N; to 680834 E, 3062709 N; to 680701 E, 3062399 N; to 680192 E, 3061442 N; to 679468 E, 3059840 N; to 678709 E, 3058435 N; to 677601 E, 3055977 N; to 677469 E, 3055468 N; to 677225 E, 3055069 N; and thence to point of beginning.

Unit TX–8: Mustang Island Beach (Universal Transverse Mercator, Zone 14)

This unit begins at the north side of the jetties at Fish Pass at UTM 691226 E, 3078851 N; to 690776 E, 3078110 N; to 690080 E, 3077455 N; to 688505 E, 3075340 N; to 686613 E, 3072634 N; to 682546 E, 3065647 N; to 680966 E, 3062643 N; to 680881 E, 3062955 N; to 680966 E, 3063309 N; to 682482 E, 3066143 N; to 684870 E, 3070253 N; to 686819 E, 3073399 N; to 687074 E, 3073696 N; to 687315 E, 3074221 N; to 691028 E, 3079167 N; and thence to point of beginning.

Unit TX–9: Fish Pass Lagoons (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 680442 E, 65066 N; thence southwesterly to 679648 E, 64333 N; to 678517 E, 3063863 N; thence westerly to 678231 E, 3064003 N; thence northeasterly to 679550 E, 3065735 N; and thence to point of beginning.

Unit TX–10: Shamrock Island and adjacent Mustang Island Flats (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 681034 E, 3072873 N; thence southeasterly to 681886 E, 3070162 N; thence southerly to 680698 E, 3066887 N; thence westerly to 680028 E, 3067222 N; thence northerly to 679600 E, 3072256 N; and thence to point of beginning. This unit includes Shamrock Island in it's entirety.

Unit TX–11: Blind Oso (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 664615 E, 3067077 N; thence southerly to 664641 E, 3066483 N; thence southeasterly to 665028 E, 3066238 N; thence southerly to 664938 E, 3066122 N; thence northwesterly to 664073 E, 3066612 N; thence northerly to 664241 E, 3066780 N; to 664537 E, 3067142 N; and thence easterly to the point of beginning.

Unit TX–12: Adjacent to Naval Air Station-Corpus Christi (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 667351 E, 3066070 N; thence southerly to 667196 E, 3065347 N; to 667635 E, 3064702 N; thence westerly to 666848 E, 3064457 N; thence northerly to 666706 E, 3066070 N; and thence easterly to the point of beginning.

Unit TX–13: Sunset Lake (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 665015 E, 3083380 N; thence southwesterly to 661801 E, 3081237 N; thence northwesterly to 661246 E, 3081612 N; thence northeasterly to 661801 E, 3082206 N; to 662885 E, 3083083 N; to 664344 E, 3084335 N; to 665015 E, 3083380 N; and thence southeasterly to the point of beginning.

Unit TX–14: East Flats (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 688637 E, 3079701 N; thence southerly to 688650 E, 3078204 N; thence westerly to 687295, 3077868 N; to 686673 E, 3077871 N; to 686532 E, 3077816 N; to 685545 E, 3077621 N; thence northwesterly to 685426 E, 3077643 N; to 685295 E, 3077708 N; to 684519 E, 3078707 N; thence easterly to

686559 E, 3079172 N; to 687036 E, 3079314 N; to 687966 E, 3079546 N; and thence to point of beginning.

Unit TX–15: North Pass (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 695839 E, 3087963 N; thence southerly to 694626 E, 3086194 N; thence westerly to 692974 E, 3086375 N; thence northwesterly to 692626 E, 3086956 N; thence northerly to 693168 E, 3089021 N; thence northeasterly to 694562 E, 3089486 N; and thence southeasterly to the point of beginning.

Unit TX–16: San Jose Beach (Universal Transverse Mercator, Zone 14)

This unit includes the entire Gulf beach of San Jose Island and begins at UTM 697916 E, 3090741 N; to 700216 E, 3093904 N; to 703257 E, 3097615 N; to 705831 E, 3100584 N; to 710300 E, 3105408 N; to 710897 E, 3105618 N; to 710461 E, 3105021 N; to 708356 E, 3102778 N; to 706766 E, 3100906 N; to 705105 E, 3099244 N; to 703096 E, 3096921 N; to 701022 E, 3094420 N; to 699957 E, 3092903 N; to 695841 E, 3087614 N; to 695332 E, 3086917 N; to 694859 E, 3086143 N; to 693890 E, 3084377 N; to 693342 E, 3083367 N; to 692955 E, 3082544 N; to 692535 E, 3080979 N; to 692342 E, 3081012 N; to 692342 E, 3081415 N; to 692745 E, 3082625 N; to 693431 E, 3084061 N; to 694609 E, 3086175 N; to 695835 E, 3087982 N; and thence to point of beginning.

Unit TX–17: Allyn's Bight (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 698887 E, 3094781 N; thence southward to 698101 E, 3093295 N; to 697384 E, 3092596 N; thence northwesterly to 697191 E, 3092969 N; thence northeasterly to 697943 E, 3093872 N; to 698398 E, 3094869 N; and thence easterly to point of beginning.

Unit TX–18: Cedar Bayou/Vinson Slough (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 711954 E, 3107022 N; thence southwesterly to 711432 E, 3106460 N; to 711075 E, 3105869 N; to 710566 E, 3105548 N; thence westerly to 708930 E, 3106574 N; to 708748 E, 3106453 N; to 707307 E, 3106358 N; thence southwesterly to 705867 E, 3105048 N; to 704008 E, 3104106 N; to 701894 E, 3102770 N; to 700367 E, 3100768 N; thence westerly to 699745 E, 3101079 N; thence northeasterly to 700884 E, 3102885 N; to 701966 E, 3104814 N; to 702879 E, 3105294 N; to 703234 E, 3107891 N; to 704336 E, 3109535 N; to 705576 E, 3110323 N; to 707448 E, 3110722 N; thence southeasterly to 708389 E, 3108657 N; to 710986 E, 3107648 N; thence easterly to 711981 E, 3107626 N; and thence southerly to point of beginning.

Unit TX–19: Matagorda Island Beach (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 711679 E, 3106700 N; to 712072 E, 3107143 N; to 719482 E, 3114003 N; to 727781 E, 3120888 N; to 731368 E, 3123559 N; to 732625 E, 3124632 N; to 734907 E, 3126297 N; to 736453 E, 3127359 N; to 738783 E, 3128933 N; to 744276 E, 3132173 N; to 747274 E, 3133613 N; to 751925 E, 3135990 N; to 753306 E, 3137575 N; to 753885 E, 3138902 N; to 754016 E, 3139896 N; to 753970 E, 3141206 N; to 754226 E, 3142689 N; to 754891 E, 3143456 N; to 756294 E, 3142070 N; to 756267 E, 3140080 N; to 753623 E, 3136859 N; to 752353 E, 3135655 N; to 744093 E, 3131440 N; to 738712 E, 3128193 N; to 733096 E, 3124292 N; to 730729 E, 3122457 N; to 726289 E, 3119160 N; to 722048 E, 3115757 N; to 718679 E, 3112894 N; to 715853 E, 3110286 N; to 713342 E, 3107943 N; to 712318 E, 3106961 N; to 711439 E, 3106254 N; to 711350 E, 3106315 N; and thence to point of beginning.

Unit TX–20: Ayres Point. (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 719291 E, 3120010 N; thence southerly to 719459 E, 3119190 N; to 719313 E, 3118595 N; to 718584 E, 3116977 N; thence westerly to 717684 E, 3117280 N; thence northeasterly to 716516 E, 3119572 N; thence northwesterly to 717134 E, 3119920 N; and thence easterly to the point of beginning.

Unit TX–21: Panther Point to Pringle Lake. (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 747208 E, 3136566 N; to 747398 E, 3135618 N; to 746779 E, 3135217 N; to 744211 E, 3135163 N; to 742997 E, 3134973 N; to 741707 E, 3134290 N; to 741290 E, 3133531 N; to 739696 E, 3132583 N; to 738141 E, 3132317 N; to 737117 E, 3131483 N; to 735561 E, 3130951 N; to 734461 E, 3130306 N; to 733740 E, 3129282 N; to 732412 E, 3128789 N; to 730629 E, 3126513 N; to 730212 E, 3125375 N; to 728277 E, 3123819 N; to 726456 E, 3122947 N; to 725773 E, 3121808 N; to 725052 E, 3123516 N; to 726722 E, 3123705 N; to 728922 E, 3125147 N; to 730515 E, 3127613 N; to 732943 E, 3130231 N; to 733816 E, 3131445 N; to 735334 E, 3132507 N; to 737382 E, 3133304 N; to 739658 E, 3133304 N; to 740417 E, 3133873 N; to 740683 E, 3134593 N; to 742580 E, 3135921 N; to 744856 E, 3136187 N; and thence to point of beginning.

Unit TX–22: Decros Point. (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 758150 E, 3144162 N; to 757876 E, 3143728 N; to 757587 E, 3143470 N; to 757555 E, 3143229 N; to 756880 E, 3142747 N; to 755947 E, 3142843 N; to 755272 E, 3143406 N; to 760175 E, 3148148 N; to 761091 E, 3148261 N; to 761332 E, 3147939 N; to 757729 E, 3144573 N; to 757882 E, 3144345 N; to 760539 E, 3146652 N; to 761188 E, 3147069 N; to 761332 E, 3147157 N; to 761558 E, 3147193 N; to 761528 E, 3147054 N; to 760709 E, 3146529 N; to 759310 E, 3145381 N; and thence to point of beginning.

Unit TX–23: West Matagorda Peninsula Beach. (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 762390 E, 3147270 N; to 763800 E, 3148958 N; to 767399 E, 3151653 N; to 771970 E, 3154759 N; to 774347 E, 3156019 N; to 775973 E, 3156956 N; to 782779 E, 3160686 N; to 786739 E, 3162808 N; to 788931 E, 3163921 N; to 790221 E, 3164575 N; to 792095 E, 3165530 N; to 793103 E, 3166025 N; to 793491 E, 3166202 N; to 794030 E, 3166130 N; to 794570 E, 3166591 N; to 794839 E, 3166662 N; to 795024 E, 3166870 N; to 795140 E, 3167170 N; to 795278 E, 3167262 N; to 795324 E, 3166939 N; to 795105 E, 3166546 N; to 794712 E, 3166407 N; to 794388 E, 3166084 N; to 793972 E, 3165899 N; to 793672 E, 3166014 N; to 793509 E, 3165919 N; to 792802 E, 3165636 N; to 786968 E, 3162578 N; to 783221 E, 3160616 N; to 778377 E, 3157946 N; to 777069 E, 3157151 N; to 775443 E, 3156232 N; to 771403 E, 3154089 N; to 770779 E, 3153557 N; to 769023 E, 3152424 N; to 767729 E, 3151408 N; to 766111 E, 3150321 N; to 763661 E, 3148426 N; to 763222 E, 3147964 N; to 762598 E, 3147062 N; and thence to point of beginning.

Unit TX–24: West Matagorda Bay/Western Peninsula Flats. (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 774345 E, 3156133 N; thence southwesterly to 772428 E, 3155203 N; to 771876 E, 3154746 N; to 770867 E, 3154257 N; to 768249 E, 3152806 N; to 765489 E, 3151418 N; thence northwesterly to 765110 E, 3152049 N; thence northeasterly to 771105 E, 3155912 N; to 771973 E, 3156571 N; to 773682 E, 3157269 N; and thence southeasterly to the point of beginning.

Unit TX–25: West Matagorda Bay/Eastern Peninsula Flats. (Universal Transverse Mercator, Zone 14)

This unit begins at UTM 787656 E, 3163708 N; thence southwesterly to 786995 E, 3163152 N; to 783571 E, 3161938 N; thence northeasterly to 783256 E, 3162774 N; thence northwesterly to 784191 E, 3163414 N; to 787165 E, 3164493 N; thence southeasterly to 787719 E, 3164272 N; and thence southerly to the point of beginning.

Unit TX–26: Colorado River Diversion Delta. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 208237 E, 3173005 N; thence southerly to 208268 E, 3172820 N; to 208268 E, 3172279 N; to 207882 E, 3171630 N; to 207882 E, 3171429 N; to 207898 E, 3170750 N; to 207280 E, 3170039 N; thence westerly to 206677 E, 3169931 N; thence northwesterly to 206044 E, 3170672 N; to 205766 E, 3171059 N; thence northeasterly to 206476 E, 3171677 N; thence northerly to 206708 E, 3172712 N; thence easterly to 207002 E, 3172882 N; to 207202 E, 3172866 N; to 207836 E, 3172851 N; and thence northeasterly to point of beginning.

Unit TX–27: East Matagorda Bay/Matagorda Peninsula Beach West. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 226862 E, 3175139 N; to 227500 E, 3175402 N; to 227677 E, 3175329 N; to 227750 E, 3175152 N; to 227603 E, 3174924 N; to 225118 E, 3173669 N; to 222899 E, 3172573 N; to 219782 E, 3171187 N; to 218231 E, 3170379 N; to 214364 E, 3168832 N; to 213023 E, 3168216 N; to 210968 E, 3167468 N; to 208653 E, 3166425 N; to 208462 E, 3166425 N; to 208326 E, 3166560 N; to 208381 E, 3166833 N; to 208702 E, 3167021 N; to 210773 E, 3167929 N; to 212835 E, 3168679 N; to 214169 E, 3169293 N; to 218035 E, 3170840 N; to 219568 E, 3171639 N; to 222686 E, 3173025 N; and thence to point of beginning.

Unit TX–28: East Matagorda Bay/Matagorda Peninsula Beach East. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 236392 E, 3179828 N; to 235729 E, 3179498 N; to 235553 E, 3179571 N; to 235479 E, 3179748 N; to 235609 E, 3179967 N; to 239774 E, 3182423 N; to 240581 E, 3182748 N; to 244007 E, 3184674 N; to 244214 E, 3184681 N; to 244350 E, 3184546 N; to 244350 E, 3184354 N; to 244230 E, 3184226 N; to 240835 E, 3182317 N; to 240003 E, 3181979 N; to 238877 E, 3181350 N; and thence to point of beginning.

Unit TX–29: Brown Cedar Cut. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 238043 E, 3181533 N; thence southwesterly to 236358 E, 3180400 N; to 236358 E, 3180400 N; to 235673 E, 3180032 N; to 235410 E, 3180611 N; to 236068 E, 3181691 N; to 236331 E, 3182086 N; to 237438 E, 3181954 N; to 237912 E, 3181717 N; and thence to point of beginning.

Unit TX–30: Northeast Corner East Matagorda Bay. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 241179 E, 3183462 N; thence southerly to 241147 E, 3182929 N; thence southwesterly to 240585 E, 3182506 N; to 239944 E, 3182291 N; thence northwesterly to 239567 E, 3182891 N; to 239631 E, 3183361 N; to 239665 E, 3183610 N; to 239225 E, 3183483 N; to 239140 E, 3183483 N; to 239145 E, 3183678 N; to 239599 E, 3184486 N; to 240775 E, 3184232 N; and thence to point of beginning.

Unit TX–31: San Bernard NWR Beach. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 251823 E, 3188411 N; to 251424 E, 3188346 N; to 251289 E, 3188482 N; to 251289 E, 3188673 N; to 251424 E, 3188808 N; to 252280 E, 3189177 N; to 254098 E, 3190183 N; to 255035 E, 3190831 N; to 258881 E, 3193084 N; to 260170 E, 3193947 N; to 260998 E, 3194386 N; to 261528 E, 3194537 N; to 262024 E, 3194968 N; to 262215 E, 3194968 N; to 262351 E, 3194833 N; to 262304 E, 3194568 N; to 261791 E, 3194109 N; to 261186 E, 3193922 N; to 260437 E, 3193524 N; to 259954 E, 3193158 N; to 257191 E, 3191562 N; to 254324 E, 3189735 N; and thence to point of beginning.

Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers. (Universal Transverse Mercator, Zone 15)

This units begins at UTM 262548 E, 3194350 N; to 262128 E, 3194624 N; to 262128 E, 3194816 N; to 262264 E, 3194951 N; to 262601 E, 3194863 N; to 264453 E, 3194851 N; to 266249 E, 3195136 N; to 267426 E, 3195461 N; to 267698 E, 3196681 N; to 267929 E, 3196835 N; to 268160 E, 3196681 N; to 268048 E, 3195725 N; to 267920 E, 3195309 N; to 267682 E, 3195019 N; to 266342 E, 3194644 N; to 264500 E, 3194353 N; and thence to point of beginning.

Unit TX–33: Bryan Beach and Adjacent Beach. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 268624 E, 3196451 N; to 268185 E, 3196267 N; to 268009 E, 3196340 N; to 267935 E, 3196517 N; to 268009 E, 3196693 N; to 268293 E, 3196829 N; to 269534 E, 3197956 N; to 271225 E, 3199359 N; to 271664 E, 3199731 N; to 272205 E, 3200086 N; to 272374 E, 3200255 N; to 272509 E, 3200153 N; to 272577 E, 3200018 N; to 270278 E, 3198086 N; to 269289 E, 3197181 N; and thence to point of beginning.

Unit TX–34: San Luis Pass. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 293994 E, 3219228 N; to 293207 E, 3219413 N; to 292404 E, 3219814 N; to 292002 E, 3220484 N; to 292169 E, 3221053 N; to 292960 E, 3221348 N; to 294362 E, 3220852 N; to 294781 E, 3220718 N; to 294647 E, 3220367 N; to 294865 E, 3220283 N; to 294965 E, 3220166 N; to 297057 E, 3221773 N; to 298916 E, 3223246 N; to 299066 E, 3223012 N; to 295250 E, 3219898 N; to 294613 E, 3219396 N; and thence to point of beginning.

Unit TX–35: Big Reef. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 330764 E, 3246116 N; to 330706 E, 3246117 N; to 330669 E, 3246029 N; to 330559 E, 3246024 N; to 330489 E, 3246033 N; to 330393 E, 3246059 N; to 330279 E, 3246050 N; to 330043 E, 3246068 N; to 329895 E, 3246146 N; to 330341 E, 3246304 N; to 330472 E, 3246348 N; to 330542 E, 3246365 N; to 330608 E, 3246377 N; to 330658 E, 3246407 N; to 330710 E, 3246416 N; to 330752 E, 3246415 N; to 330874 E, 3246434 N; to 330954 E, 3246436 N; to 331062 E, 3246433 N; to 331164 E, 3246442 N; to 331586 E, 3246563 N; to 331629 E, 3246569 N; to 331661 E, 3246568 N; to 331717 E, 3246554 N; to 331734 E, 3246545 N; to 331783 E, 3246513 N; to 331803 E, 3246513 N; to 331843 E, 3246524 N; to 331878 E, 3246529 N; to 332046 E, 3246533 N; to 332103 E, 3246519 N; to 332130 E, 3246502 N; to 332152 E, 3246483 N; to 332181 E, 3246432 N; to 332232 E, 3246391 N; to 332243 E, 3246306 N; to 332315 E, 3246165 N; to 332426 E, 3246070 N; to 332516 E, 3245965 N; to 332659 E, 3245879 N; to 332806 E, 3245776 N; to 332972 E, 3245701 N; to 332815 E, 3245718 N; to 332649 E, 3245753 N; to 332378 E, 3245788 N; to 332212 E, 3245797 N; to 332150 E, 3245718 N; to 332058 E, 3245667 N; to 331993 E, 3245753 N; to 331958 E, 3245910 N; to 331967 E, 3246068 N; to 331923 E, 3246181 N; to 331862 E, 3246208 N; to 331861 E, 3246218 N; to 331818 E, 3246213 N; to 331730 E, 3246215 N; to 331673 E, 3246229 N; to 331656 E, 3246239 N; to 331621 E, 3246262 N; to 331233 E, 3246151 N; to 331206 E, 3246146 N; to 331079 E, 3246134 N; to 330955 E, 3246156 N; to 330839 E, 3246126 N; to 330784 E, 3246117 N; and thence to point of beginning.

Unit TX–36: Bolivar Flats. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 333801 E, 3252955 N; thence southerly to 333711 E, 3252850 N; to 333454 E, 3252525 N; to 333344 E, 3252248 N; to 333195 E, 3251778 N; to 333158 E, 3251390 N; to 333158 E, 3251094 N; to 333026 E, 3250221 N; to 333140 E, 3249540 N; to 333251 E, 3249188 N to 333251 E, 3248634 N; thence southerly to the jetties at 333300 E, 3248400 N; thence westerly along the north edge of the north jetties to 330155 E, 3250145 N; thence northeasterly parallel to the shoreline of the island to 333047 E, 3252610 N; to 333510 E, 3253203 N; and thence to point of beginning.

Unit TX–37: Rollover Pass. (Universal Transverse Mercator, Zone 15)

This unit begins at UTM 355135 E, 3267188 N; thence southeasterly to 355227 E, 3267040 N; to 355671 E, 3266781 N; to 355819 E, 3266522 N; to 355764 E, 3266152 N; to 355523 E, 3265689 N; to 355135 E, 3265449 N; to 354654, 3265227 N; to 354358 E, 3265023 N; to 353618 E, 3265708 N; to 353063 E, 3266281 N; and thence northeasterly to the point of beginning.

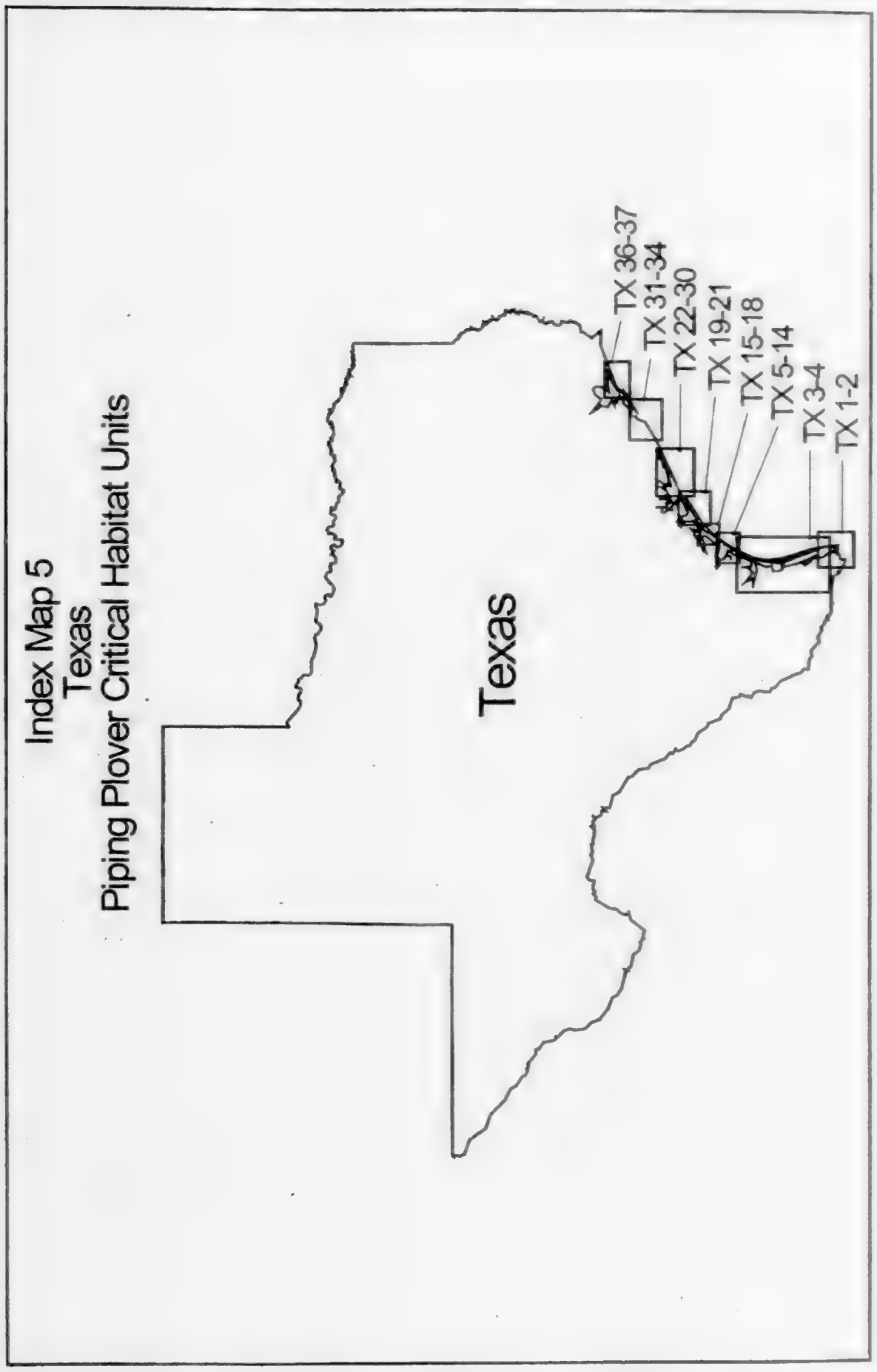
Index Map 5
Texas
Piping Plover Critical Habitat Units
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TX 5-14
TX 3-4
TX 1-2

1. The primary constituent elements essential for the conservation of wintering piping plovers are those habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide. Important components of intertidal flats include sand and/or mud flats with no or very sparse emergent vegetation. In some cases, these flats may be covered or partially covered by a mat of blue-green algae. Adjacent non-or sparsely vegetated sand, mud, or algal flats above high tide are also important, especially for roosting piping plovers, and are primary constituent elements of piping plover wintering habitat. Such sites may have debris, detritus (decaying organic matter), or micro-topographic relief (less than 50 cm above substrate surface) offering refuge from high winds and cold weather. Important components of the beach/dune ecosystem include surf-cast algae, sparsely vegetated backbeach (beach area above mean high tide seaward of the permanent dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road), spits, and washover areas. Washover areas are broad, unvegetated zones, with little or no topographic relief, that are formed and maintained by the action of hurricanes, storm surge, or other extreme wave action.

2. Critical habitat does not include existing developed sites consisting of buildings, marinas, paved areas, boat ramps, and similar structures.

* * * * *

Dated: June 28, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–16816 Filed 6–30–00; 9:00 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG14

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Great Lakes Breeding Population of the Piping Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate 37 units along the Great Lakes shoreline of Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York as critical habitat under the Endangered Species Act of 1973, as amended, for the Great Lakes breeding population of the piping plover (*Charadrius melodus*). We propose to designate critical habitat on fewer than 305 km (189 mi) in 27 counties within these States. Within these areas, only the specific locations that have or could develop the physical and biological features required by piping plovers (primary constituent elements) would be considered critical habitat.

The primary constituent elements for the piping plover are those habitat components that are essential for foraging, sheltering, reproduction, rearing of young, intra-specific communication, roosting, nesting, and dispersal.

This proposed rule, if made final, would result in additional review requirements under section 7 of the Act. Federal agencies may not fund, authorize, or carry out an action that would destroy or adversely modify critical habitat. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including potential economic and other impacts of the designation.

DATES: *Comments:* We will consider comments received by September 5, 2000.

Public Hearings: We have scheduled seven public hearings for this proposal. See Hearings section for hearing dates and addresses.

We will hold public informational open houses at the same locations prior to each public hearing. The informational open houses will start at 6 pm. The public hearings will start at 7 pm and end at 9 pm.

ADDRESSES: Send written comments and other materials concerning this proposal to: Piping Plover Comments, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 or by e-mail to PIPINGPLOVERCOMMENT@FWS.GOV or by facsimile to 612–713–5292.

The complete file for this proposed rule, including comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address and at the U.S. Fish and Wildlife Service, East Lansing Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.

FOR FURTHER INFORMATION CONTACT: Laura J. Ragan; (612) 713–5350.

SUPPLEMENTARY INFORMATION:

Background

The piping plover (*Charadrius melodus*), named for its melodic mating call, is a small, pale-colored North American shorebird. It weighs 43–63 grams (1.5–2.5 ounces) and is 17–18 centimeters (cm) (6–7 inches (in.)) long (Haig 1992). Its light, sand-colored plumage blends in well with its primary sandy beach habitat. Plumage and leg color help distinguish this bird from other plover species. During the breeding season, the legs are bright orange, and the short, stout bill is orange with a black tip. There are two single dark bands, one around the neck and one across the forehead between the eyes. The female's neck band is often incomplete and is usually thinner than the male's (Haig 1992). In winter, the bill turns black, the legs fade to pale orange, and the black plumage band on the head and neck is lost. Chicks have speckled gray, buff, and brown down, black beaks, pale orange legs, and a white collar around the neck. Juveniles resemble wintering adults and obtain their adult plumage the spring after they fledge (Service 1994).

The breeding range of the piping plover extends throughout the northern Great Plains, the Great Lakes, and the Atlantic Coast in the United States and Canada. Based on this distribution, three breeding populations of piping plovers have been described: the Northern Great Plains population, the Great Lakes population, and the Atlantic Coast population.

The northern Great Plains breeding range includes southern Alberta, northern Saskatchewan, and southern Manitoba; south to eastern Montana, the Dakotas, southeastern Colorado, Iowa, Minnesota, and Nebraska; and east to Lake of the Woods in north-central Minnesota. The majority of the United States pairs are in the Dakotas, Nebraska, and Montana (Service 1994). Occasionally, Great Plains birds nest in Oklahoma and Kansas. On the Atlantic coast, piping plovers breed from Newfoundland, southeastern Quebec, and New Brunswick to North Carolina, with 68 percent of all the nesting pairs breeding in Massachusetts, New York, New Jersey, and Virginia (Service 1999).

In the Great Lakes watershed, piping plovers formerly nested throughout much of the region in the north-central United States and south-central Canada, but are currently limited to northern Michigan and one site in northern Wisconsin. Piping plovers nest on shoreline and island sandy beaches with

sparse vegetation and the presence of small stones (greater than 1 cm (0.4 in.)) called cobble. Their nests are concealed by the cobble and are, therefore, very difficult to see. Piping plovers spend approximately 3–4 months a year on the breeding grounds. Nesting in the Great Lakes region begins in early to mid-May. Plovers lay 3–4 eggs in a small depression they scrape in the sand among the cobblestones, and both sexes incubate the eggs for about 28 days. Young plovers can walk almost as soon as they hatch, but remain vulnerable to predation and disturbance for another 21–30 days until they are able to fly.

Nesting piping plovers are highly susceptible to disturbance by people and pets on the beach. Human disturbance disrupts adult birds' care of their nests and young and may inhibit incubation of eggs. Furthermore, adults may leave the nest to lure away an intruder, leaving the eggs or chicks vulnerable to predators and exposure to weather. Also, disturbance may lead to the abandonment of nests. As a result of this disturbance and other natural and human-caused factors such as high water levels, flooding, eroding beaches, and beach-front commercial and recreational development, reproduction of Great Lakes piping plovers has been severely affected, resulting in perilously low numbers of nesting plovers (Service 1994).

Piping plovers are migratory birds. They leave the breeding grounds between late July and early September and head for their wintering grounds, where they spend more than 8 months of the year. Although the breeding ranges of the three piping plover populations are separate, their wintering ranges overlap and extend along the Atlantic and Gulf Coasts from southern North Carolina to Mexico and into the West Indies and Bahamas. Resightings of color-banded birds from the Great Lakes breeding population have occurred along the coastlines of North and South Carolina, Georgia, Florida, Louisiana, and Texas.

Historically, the Great Lakes breeding population of the piping plover nested on beaches in Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin, and in Ontario, Canada. Although piping plovers were never abundant, prior to European settlement, populations in the Great Lakes were estimated at 492–682 breeding pairs (Russell 1983).

In recent decades, piping plover populations have declined drastically, especially in the Great Lakes. In the early 1900s, uncontrolled hunting throughout their range drove them nearly to extinction. Protective legislation helped them to recover by 1925, and populations reached a 20th Century high in the 1930s (Service 1994). These numbers soon plummeted, though, as recreational and commercial use of beaches increased. Piping plover numbers continued to decline in the 1940s and 1950s as shoreline development expanded, resulting in the loss of their breeding habitat.

In 1973, the piping plover was placed on the National Audubon Society's Blue List of threatened species. By that time, piping plovers had been extirpated from shoreline beaches in Illinois, Indiana, Ohio, New York, Pennsylvania, and Ontario, and only a few birds were continuing to nest in Wisconsin (Russell, 1983). By 1979, the Great Lakes breeding population had decreased to 38 pairs. At the time the species was listed under the Endangered Species Act in 1985, the Great Lakes breeding population numbered only 17 breeding pairs, and the breeding areas had been reduced from sites in eight States to northern Michigan.

In recent years, the Great Lakes breeding population has gradually increased and expanded south and west within the Great Lakes watershed. In 1999, 32 pairs of piping plovers nested on the Great Lakes shoreline within the United States, but only one of these pairs was outside of northern Michigan (Stucker and Cuthbert, unpublished data). This population increase is being aided by intense State, tribal, Federal, and private conservation actions directed at the protection of the piping plover. Activities such as habitat surveys, beach restoration, public education, habitat protection and enhancement, and the protection of nests from predators and disturbance through the use of predator exclosure fencing have all contributed to the improving status of the Great Lakes piping plover. This proposal applies only to the breeding range of the Great Lakes population in the United States.

Previous Federal Actions

On December 30, 1982, we published a notice of review in the **Federal Register** (47 FR 58454) that identified vertebrate animal taxa being considered for addition to the List of Threatened and Endangered Wildlife. The notice included the piping plover as a Category 2 Candidate species, indicating that we believed the species might warrant listing as threatened or endangered, but that we had insufficient data to support a proposal to list at that time. Subsequent review of additional data indicated that the piping plover warranted listing, and in November, 1984, we published a proposal in the **Federal Register** (49 FR 44712) to list the piping plover as endangered in the Great Lakes watershed and as threatened along the Atlantic Coast, the Northern Great Plains, and elsewhere in their range. The proposed listing was based on the decline of the species and the existing threats, including habitat destruction, disturbance by humans and pets, high levels of predation, and contaminants. On December 11, 1985, we published the final rule (50 FR 50726), listing the piping plover as endangered in the Great Lakes watershed (Illinois, Indiana, Michigan, northeastern Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario) and as threatened along the Atlantic coast (Quebec, Newfoundland, Maritime Provinces, and States from Maine to Florida), in the Northern Great Plains region (Iowa, northwestern Minnesota, Montana, Nebraska, North Dakota, South Dakota, Alberta, Manitoba, and Saskatchewan), and on migratory routes and on their wintering grounds. All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. The Service did not designate critical habitat for the species at that time.

In 1986, we appointed two recovery teams to develop recovery plans for the Atlantic Coast and Great Lakes/Northern Great Plains breeding populations. The recovery plans that resulted from their efforts were published in 1988 (Service 1988a, Service 1988b). In 1994, we began to revise the plan for the Great Lakes/Northern Great Plains populations by developing and distributing for public comment a draft that included updated information on the species. More recently, we decided that the recovery of these two inland populations would benefit from separate recovery plans that would direct separate recovery programs. Separate recovery plans for the Great Lakes and Northern Great Plains populations are presently under development.

The final listing rule for the piping plover indicated that designation of critical habitat was not determinable. Thus, designation was deferred. No further action was subsequently taken to designate critical habitat for piping plovers. On December 4, 1996, Defenders of Wildlife (Defenders) filed a suit (Defenders of Wildlife and *Piping Plover* v. *Babbitt*, Case No. 96CV02965) against the Department of the Interior and the Service over the lack of designation of critical habitat for the Great Lakes breeding population of the piping plover. Defenders filed a similar suit (Defenders of Wildlife and Piping

Plover v. *Babbitt*, Case No. 97CV000777) for the Northern Great Plains piping plover population in 1997. During November and December 1999 and January 2000, we began negotiating a schedule for piping plover critical habitat decisions with Defenders. On February 7, 2000, before the settlement negotiations were concluded, the United States District Court for the District of Columbia issued an order directing us to publish a proposed critical habitat designation for nesting and wintering areas of the Great Lakes breeding population of the piping plover by June 30, 2000, and for nesting and wintering areas of the Northern Great Plains piping plover by May 31, 2001. A subsequent order, after requesting the court to reconsider its original order relating to final critical habitat designation, directs us to finalize the critical habitat designations for the Great Lakes population by April 30, 2001, and for the Northern Great Plains population by March 15, 2002. For biological and practical reasons, we chose to propose critical habitat for the Great Lakes breeding birds and for all wintering birds in two separate rules to be published concurrently.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary. Thus, critical habitat areas should provide sufficient habitat to support the species at the population level and geographic distribution that is necessary for recovery. Proposed critical habitat for the Great Lakes breeding population of the piping plover includes areas that currently support the species, and also areas that are not currently used by the species but that contain habitat essential for the recovery of the species.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when we determine that benefits of excluding those areas outweigh the benefits of including them, providing the exclusion would not result in the extinction of the species.

Designation of critical habitat helps focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species. Designation of critical habitat alerts the public, as well as land-managing agencies, to the importance of these areas.

Section 7 of the Act requires Federal agencies to ensure, in consultation with us, that any actions they authorize, fund, or carry out do not adversely modify or destroy critical habitat. Section 7 also requires Federal agencies to confer with us on actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Designation of critical habitat affects actions on private lands only when the actions are authorized, funded, or carried out by a Federal agency.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not establish a preserve area where human activities are prohibited, create a management plan, establish numerical population goals, or prescribe specific management practices (inside or outside of critical habitat). Specific management recommendations for areas designated as critical habitat are most appropriately addressed in the Recovery Plan, site-specific management plans, through section 7 consultation on Federal activities, and section 10 incidental take permits.

All of the proposed critical habitat areas are considered essential to the conservation of the Great Lakes breeding population of the piping plover as described in the approved 1988 Recovery Plan for the Great Lakes and Northern Great Plains Piping Plover (Plan) and the 1994 Recovery Plan for the Great Lakes Piping Plover. The proposed designation encompasses those areas considered necessary to achieve the recovery goals for this population, and includes Great Lakes shoreline and island beaches that currently support piping plovers, that historically supported and are still capable of supporting piping plovers, and areas that have the potential to support piping plovers in the future. Not all of the primary constituent elements may be present in all of the areas proposed for designation, but given the dynamic character of shoreline processes, areas currently lacking some of the constituent elements could develop them in the future. Over a period of a few years, these sites may be affected by changes in local water levels, weather, and other external forces, which may in turn change the suitability of such sites for piping plovers.

We considered, and are proposing, a portion of the Bad River Indian Reservation because we believe some shoreline areas on Tribal lands may be essential to the conservation of Great Lakes piping plover. However, the short amount of time provided under the schedule dictated by the court to propose critical habitat prevented us from doing more than initiating coordination with the Bad River Band of the Lake Superior Tribe of the Chippewa Indians. Subsequent to this proposal, we will continue coordinating with the Bad River Band before making a final determination as to whether any Tribal lands should be included as critical habitat for the Great Lakes piping plover. We will consider whether these Tribal lands require special management considerations or protection; we may also exclude some or all of these lands from critical habitat upon a determination that the benefits of excluding them outweigh the benefits of designating these areas as critical habitat, as provided under section 4(b)(2) of the Act. This consultation will take place under the auspices of the Secretarial Order 3206 and the Presidential Memorandum of April 29, 1994, which require us to coordinate with federally recognized Tribes on a Government-to-Government basis.

Methods

In determining areas that are essential to conserve the Great Lakes breeding population of the piping plover, we used the best scientific and commercial data available. We solicited information from knowledgeable biologists and reviewed the available information pertaining to habitat requirements of the species. In an effort to map areas essential to the conservation of the species, we used data of known piping plover breeding locations, records of historical nesting sites, International Census data, and those areas that were identified in the 1988 recovery plan and 1999 draft recovery plan as essential for the recovery of the species. We have chosen the 37 critical habitat units in order to protect adequate habitat to meet the recovery criteria, contained in the Plan and draft Plan, of 100 breeding pairs

in the other Great Lakes States combined.

We did not map critical habitat in sufficient detail to exclude all currently developed sites consisting of buildings, marinas, paved areas, boat ramps, and similar structures. These areas do not contain primary constituent elements essential for piping plover conservation, and are not critical habitat even though they are within the mapped boundaries. Designating specific locations for critical habitat for the piping plovers is difficult because the beach areas they use are constantly changing due to storm surges, flood events, and other natural geo-physical alterations of beaches and shorelines. Areas lakeward of the beach and covered by water (*e.g.*, lakes) will not contain one or more of the primary constituent elements, and are not critical habitat. Because of the dynamics of beach areas, however, areas now covered by water may in the future become land, and will then under this designation become critical habitat if they fall within the mapped boundaries.

The critical habitat units are larger complexes of habitat that contain areas that currently have the primary constituent elements necessary for piping plovers and other areas that may develop these primary constituent elements. During section 7 consultation, we will determine whether an action may affect the primary constituent elements or the ability of the areas to develop them.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include but are not limited to (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The areas we are proposing for designation as critical habitat provide some or all of those habitat components essential for the biological needs of the piping plover or have the capacity to develop these habitat components. These components are also called primary constituent elements.

The primary constituent elements for the Great Lakes breeding population of the piping plover are those habitat components that are essential for the biological needs of foraging, sheltering, reproduction, rearing of young, intra-specific communication, roosting, nesting, and dispersal. Proposed critical habitat for the Great Lakes breeding population of piping plovers includes sites that: (1) Are currently or recently (at least once during the past 5 years) used for breeding, (2) were documented to have been occupied historically and still have most or all of the primary constituent elements, or (3) are not documented to have been occupied historically but are deemed potential breeding habitat because their characteristics are suitable for breeding by piping plovers.

The primary constituent elements required to sustain the Great Lakes breeding population of the piping plover are found on Great Lakes islands and mainland shorelines that support, or have the potential to support, open, sparsely vegetated sandy habitats—sand spits or sand beaches associated with wide, unforested systems of dunes and inter-dune wetlands. In order for habitat to be physically and biologically suitable for piping plovers, it must have a total shoreline length of at least 0.2 km (0.12 mi) of gently sloping, sparsely vegetated (less than 50 percent herbaceous and low woody cover) sand beach with a total beach area of at least 2 hectares (ha) (5 acres (ac)) and a low level of disturbance from human activities and from domestic animals. These appropriately sized sites must also have areas of at least 50–100 meters (m) (165–330 feet (ft)) in length where (1) the beach width is more than 7 m (23 ft), (2) there is protective cover for nests and chicks, and (3) the distance to the treeline (from the normal high water line to where the forest begins) is more than 50 m (165 ft). Beach width is defined as the distance from the normal high water line to the foredune (a low barrier dune ridge immediately inland from the beach) edge, or to the sand/vegetation boundary in areas where the foredune is absent. The beach width may be narrower than 7 m (23 ft) if appropriate sand and cobble areas at least 7 m (23 ft) exist between the dune and the treeline. Protective cover for nests and chicks consists of small patches of herbaceous vegetation, cobble (stones larger than 1 cm (0.39 inches (in)) diameter), gravel (stones smaller than 1 cm (0.39 in) diameter), or debris such as driftwood, wrack, root masses, or dead shrubs.

Dominant plants within these areas include marram grass (*Ammophila brevigulata*), beach wormwood (*Artemesia campestris*), silverweed (*Potentilla anserina*), Lake Huron tansy (*Tanacetum huronense*), pitcher's thistle (*Cirsium pitcheri*), beach pea (*Lathyrus maritimus* var. *glaber*), sea rocket (*Cakile edentula*), sedges (*Carex* spp.), goldenrods (*Solidago* spp.), sand cherry (*Prunus pumila*), bearberry (*Actostaphylus uva-ursi*), creeping juniper (*Juniper horizontalis*), cottonwood (*Populus deltoides*), and willow (*Salix* spp.).

Proposed Critical Habitat Designation

At this time, the proposed critical habitat areas contained within the critical habitat units discussed below constitute our best evaluation of areas needed for the conservation of the Great Lakes breeding population of the piping plover. Very little suitable piping plover habitat remains in the Great Lakes region. Therefore, areas that were historically occupied by piping plover and that still contain suitable habitat or potentially could contain suitable habitat, as well as areas that are not known to have been historically occupied but have potential piping plover habitat, are necessary for the recovery of the species. Proposed critical habitat may be revised should new information become available prior to the final rule. Critical habitat subsequently may be revised if new information becomes available after the final rule. Any subsequent areas of critical habitat will be designated only after a formal proposal and opportunity for public comment.

The approximate length of proposed critical habitat shoreline by land ownership is shown in Table 1. Lands proposed as critical habitat are under private, Federal, State, municipal, and tribal ownership. Estimates reflect the total area within critical habitat unit boundaries, without regard to the presence of primary constituent elements. The area actually proposed for designation by this proposal is therefore less than that indicated in Table 1.

TABLE 1.—KILOMETERS OF GREAT LAKES SHORELINE PROPOSED AS CRITICAL HABITAT UNITS FOR THE PIPING PLOVER IN EACH GREAT LAKES STATE SUMMARIZED BY FEDERAL, STATE, MUNICIPAL, PRIVATE AND OTHER OWNERSHIP

	Ownership					
	km shoreline (percentage within each State)					
	Federal	State	Municipal	Private	Other	Total
Michigan	36.6 (16.9)	103.6 (47.9)	6.1 (2.8)	64 (29.6)	6 TNC (2.8)	216.3
Minnesota	0	1.4 (50.0)	1.0 (35.7)	0.4 (14.3)	0	2.8
Wisconsin	11.0 (33.8)	11.0 (33.8)	5.5 (16.9)	0	5 tribal (15.4)	32.5
Illinois	0	4.7 (46.3)	1.25 (12.3)	4.2 (41.3)	0	10.15
Indiana	5.5 (52.4)	5.0 (47.6)	0	0	0	10.5
Ohio	0	2.0 (50)	0	2.0 (50)	0	4.0
Pennsylvania	0.4 (26.7)	1.1 (73.3)	0	0	0	1.5
New York	0	12.4 (45.3)	0	14.6 (53.3)	0.4 TNC (1.5)	27.4
Total (percentage of)	53.5 (17.5)	141.2 (46.3)	13.85 (4.5)	85.2 (27.9)	11.4 (3.7)	305.1

There is no numerical estimate of the extent of the piping plover's historical range in the Great Lakes, but Russell (1983) indicates that several areas where piping plovers once nested are no longer suitable. Much historically occupied habitat has been destroyed by activities such as marina development, construction of seawalls, and the increased use of recreation areas. Additionally, lake level fluctuations and winter storms periodically alter the quantity and quality of available breeding habitat, making some areas no longer suitable for nesting while potentially creating new areas of suitable habitat. Because of the loss of historical habitat and the dynamic nature of the Great Lakes shoreline, some areas for which there are no historical records of piping plovers but which are potential nesting habitat are being proposed for designation. Without these potential habitat areas, there would not be enough nesting habitat to meet the recovery criteria outlined in the Revised Recovery Plan for Piping Plovers (1994).

Lands proposed as critical habitat have been divided into 37 critical habitat units that contain, or have the potential to develop, areas with the primary constituent elements for the piping plover in the Great Lakes region. All critical habitat unit boundaries extend 1 km (0.62 miles) inland from the normal high water line, although the area that contains the primary constituent elements may vary depending on the extent of the open dune system. This area is needed to provide foraging habitat as well as cobble pans between the dunes where piping plovers occasionally nest. A brief description of each critical habitat unit for the piping plover is given below and in Table 2.

TABLE 2.—LOCATION, OWNERSHIP, PIPING PLOVER USE, AND ESTIMATED LENGTH OF CRITICAL HABITAT AREAS WITHIN MAPPED CONSERVATION UNITS IN THE U.S. GREAT LAKES REGION

Habitat unit	Location name	County	USGS 7.5′ quad map(s) 1:24,000 scale	Land ownership [1]	Plover use [2]	Est. length (km)
MI–1	**Whitefish Point to Grand Marais**					
	Whitefish Point	Chippewa	Whitefish Point (1951)	Federal (Service), private	Recent past, transient.	2.5
	Vermilion/Weatherhogs Beach.	Luce	Vermilion (1951)	Private	Current	2.3
	Crisp Point	Luce	Betsy Lake North (1968)	Municipal, private	Recent past	1.0
	Little Lake Harbor	Luce	Betsy Lake North (1968)	Private	Recent past	1.6
	Deer Park	Luce	Muskallonge Lake East (1968). Muskallonge Lake West (1968).	State, private	Recent past	2.8
	Grand Marais Inner Harbor and Lonesome Point.	Alger	Grand Marais 1968	Multiple private, municipal.	Current	2.9
	Grand Marais Superior Beach.	Alger	Grand Marais 1968	Multiple private, Federal (NPS).	Current	1.2
MI–2	Point Aux Chenes	Mackinac	Pointe Aux Chenes (1964, photorevised 1975).	Federal (USFS), private	Current	1.7
MI–3	Port Inland	Schoolcraft Mackinac	Hughes Point (1972)	Private/State	Current	3.0
MI–4	**Waugoshance Point to beach west of McCort Hill—**					
	Waugoshance Point, Temperance and Crane Islands.	Emmet	Big Stone Bay (1964, photoinspected 1975). Waugoshance Island (provisional 1982).	State	Current	5.0
	Sturgeon Bay	Emmet	Bliss (1982)	State	Current	3.9
	Bliss Township Park	Emmet	Bliss (1982)	Municipal	Current	1.1

TABLE
Habitat unit
MI–5
MI–6
MI–7
MI–8
MI–9
MI–10
MI–11
MI–12
MI–13
MI–14
MI–15
MI–16
MI–17
MI–18
MI–19
MI–20
MI–21
MI–22
MI–23
MN–1

TABLE 2.—LOCATION, OWNERSHIP, PIPING PLOVER USE, AND ESTIMATED LENGTH OF CRITICAL HABITAT AREAS WITHIN MAPPED CONSERVATION UNITS IN THE U.S. GREAT LAKES REGION—Continued

Habitat unit	Location name	County	USGS 7.5′ quad map(s) 1:24,000 scale	Land ownership [1]	Plover use [2]	Est. length (km)
	Sturgeon Bay Point	Emmet	Bliss (1982) Cross Village (1982)	Multiple private	Current	2.4
	Cross Village Beach	Emmet	Cross Village (1982)	Municipal, multiple private.	Current	1.3
	beach west McCort Hill	Emmet	Cross Village (1982)	Multiple private	Current	1.4
MI–5	**Sevenmile Point to Thorneswift Nature Preserve—**					
	Sevenmile Point	Emmet	Forest Beach (1983 provisional).	Multiple private	Potential	0.5
	Thorneswift Nature Preserve.	Emmet	Forest Beach (1983 provisional).	Multiple private	Current	0.4
MI–6	Petoskey State Park	Emmet	Harbor Springs (1983 provisional).	State, private	Historical	2.0
MI–7	North Point	Charlevoix	Ironton (1983) Charlevoix (1983)	Municipal	Potential	1.1
MI–8	Fisherman's Island State Park.	Charlevoix	Charlevoix (1983)	State	Current	1.3
MI–9	**Indian Point to McCauley's Point, Beaver Island—**					
	Donegal Bay-Beaver Island.	Charlevoix	Garden Island West (1980). Beaver Island North (1986).	Multiple private	Current	2.0
	McCauley's Point-Beaver Island.	Charlevoix	Beaver Island North (1986).	State	Recent past	0.6
MI–10	Greenes Bay-Beaver Island.	Charlevoix	Beaver Island North (1986).	State/private	Recent past	0.8
MI–11	High Island	Charlevoix	High Island (1986)	State	Current	1.8
MI–12	**Cathead Bay to Christmas Cove—**					
	Cathead Bay	Leelanau	Northport (provisional 1983).	State	Current	3.4
	Cathead Point to Christmas Cove.	Leelanau	Northport/Northport NW (provisional 1983).	Private	Potential	2.5
MI–13	South Fox Island	Leelanau	South Fox Island (provisional 1986).	State	Historical	1.0
MI–14	North Manitou	Leelanau	North Manitou Island (provisional 1983).	Federal (NPS)	Current	3.3
MI–15	Crystal Run to Empire Beach.	Leelanau	Glen Arbor (1983) Glen Haven (1983) Empire (1983).	Municipal, Federal	Potential	14.3
MI–16	**Esch Road to Sutter Road and Point Betsie—**					
	Platte Bay	Benzie	Empire (1983) Beulah (provisional 1983).	Federal (NPS)	Potential	7.0
	Platte River Point and beach.	Benzie	Beulah (provisional 1983)	Federal (NPS)	Current	5.5
	Point Betsie	Benzie	Frankfort (1983)	Federal (USCG) TNC managed.	Historical	1.0
MI–17	Nordhouse Dunes to Ludington.	Mason	Manistee NW (provisional 1982). Hamlin Lake (1982)	Federal (USFS), State	Transient, historical.	13.4
MI–18	Muskegon State Park	Muskegon	Muskegon West (1972 photoinspected 1980).	State	Historical	2.5
MI–19	Lake Superior State Forest-St. Vital Point.	Chippewa	Albany Island (1964 photoinspected 1976) DeTour Village (1964).	State	Historical	3.0
MI–20	**Lighthouse Point to Cordwood Point—**					
	Lighthouse Point	Cheboygan	Cheboygan (1982)	State	Recent past	1.4
	Grass Bay	Cheboygan	Cordwood Point (1982)	TNC preserve	Historical, transient.	1.6
MI–21	PH Hoeft State Park	Presque Isle	Roger's City (1971) Moltke (1971)	State	Potential	3.7
MI–22	Thompson's Harbor	Presque Isle	Thompson's Harbor (1971).	State forest	Potential	2.8
MI–23	Tawas Point State Park	Iosco	East Tawas (1989)	State	Transient	2.0
MN–1	Duluth Harbor	St. Louis	West Duluth (1953, photorevised 1969).	Municipal, State, and private.	Recent past	2.8

TABLE 2.—LOCATION, OWNERSHIP, PIPING PLOVER USE, AND ESTIMATED LENGTH OF CRITICAL HABITAT AREAS WITHIN MAPPED CONSERVATION UNITS IN THE U.S. GREAT LAKES REGION—Continued

Habitat unit	Location name	County	USGS 7.5′ quad map(s) 1:24,000 scale	Land ownership [1]	Plover use [2]	Est. length (km)
WI–1	Wisconsin Point	Douglas	Parkland (1954, photorevised 1975). Superior (1954, photorevised 1983).	Municipal	Historical	4.0
WI–2	Long Island-Chequamegon Pt.	Ashland	Cedar (1964, photorevised 1975). Chequamegon Point (1964, photorevised 1975). Long Island (1964).	Federal (NPS), tribal (Bad River).	Current	5.0
WI–3	Western Michigan Island	Ashland	Michigan Island (1963)	Federal (NPS)	Potential	6.5
WI–4	Seagull Bar	Marinette	Marinette East (1963, photorevised 1969).	Municipal	Potential	1.5
WI–5	Peshtigo Point	Marinette	Peshtigo Harbor (1974)	State	Potential	2.8
WI–6	Pensaukee	Oconto	Pensaukee (1974)	Federal (ACOE)	Historical	0.5
WI–7	Point Beach State Forest	Manitowoc	Two Rivers (1978)	State	Potential	8.0
IL–1	Illinois Beach State Park to Waukegan Beach.	Lake	Zion, Ill. (1993) Waukegan (1993)	Municipal, State, private	Historical	10.2
IN–1	Indiana Dunes National Lakeshore/Indiana Dunes State Park.	Porter	Ogden Dunes (1991) Dune Acres (1991)	Federal (NPS), State	Historical, transient.	10.5
OH–1	Sheldon Marsh	Erie	Huron (1969) Sandusky (1969, photorevised 1975).	State	Transient	1.2
OH–2	Headlands Dunes	Lake	Mentor (1963, revised 1992).	State	Potential	0.8
PA–1	Presque Isle State Park	Erie	Erie North (1957, revised 1969 and 1975, photoinspected 1977).	State, Federal (USCG)	Historical, transient.	1.5
NY–1	Salmon River to Stony Point.	Oswego Jefferson	Pulaski (1956) Ellisburg (1958) Henderson (1959)	State, multiple private	Historical	27.4

[1] USACE = U.S. Army Corp of Engineers.
NPS = National Park Service.
TNC = The Nature Conservancy.
USFS = U.S. Forest Service.
USFWS = U.S. Fish and Wildlife Service.
USCG = U.S. Coast Guard.
[2] Current = used for nesting since 1995 (49 km).
Recent past = used for nesting since 1985 (11.8 km).
Historical = used for nesting prior to 1985 (65 km).
Transient = Recent (since 1990) sightings of piping plovers (18 km).
Potential = no known record of use but habitat appears suitable for nesting (52 km).

Michigan

Unit MI–1: Whitefish Point to Grand Marais

This unit encompasses approximately 83.5 km (50 mi) of Lake Superior shoreline in Chippewa, Luce, and Alger Counties on the Upper Peninsula of Michigan. It includes long stretches of habitat that have been recently used by piping plovers in addition to areas currently used by plovers. Approximately 47 km (29.2 mi) are part of Muskallonge State Park and Lake Superior State Forest, approximately 36 km (22.4 mi) are privately owned, and approximately 0.5 km (0.3 mi) are part of Whitefish Point National Wildlife Refuge. This unit also includes a small area of municipal property at Crisp Point. This unit extends from the junction of the southern boundary of T50N R5W section 6 to the Pictured Rocks National Lakeshore property boundary.

Unit MI–2: Pointe Aux Chenes

This unit encompasses approximately 2 km (1.2 mi) of Lake Michigan shoreline in Mackinac County on the Upper Peninsula of Michigan. It includes areas that are currently occupied by piping plovers. The majority of the unit (1.1 km (0.7 mi)) is within the Hiawatha National Forest and is being considered for a Research and Natural Area. The rest of the unit (approximately 0.6 km (0.4 mi)) is privately owned land. This unit extends from the mouth of the Pointe Aux Chenes river to the Hiawatha National Forest property boundary.

Unit MI–3: Port Inland to Hughes Point

This unit encompasses approximately 3 km (1.8 mi) of Lake Michigan shoreline in western Mackinac and eastern Schoolcraft Counties on the Upper Peninsula of Michigan. It includes areas that are currently occupied by piping plovers. Approximately 0.8 km (0.5 mi) of the proposed shoreline is owned by Port Inland Stone and Dolomite Quarry and the remaining 2.2 km (1.4 mi) are part of the Lake Superior State Forest. This unit extends from the westernmost breakwall at the Port Inland Gaging Station to the mouth of Swan Creek.

Unit MI–4: Waugoshance Point to McCort Hill Beach

This unit encompasses approximately 32 km (19.2 mi) of Lake Michigan shoreline in Emmet County, Michigan, and includes Temperance and Waugoshance islands. It includes areas that are currently occupied by piping plovers and supports about half of the current Great Lakes piping plover population. Approximately 8.5 km (5.3 mi) are privately owned and 1 km (0.6 mi) is municipal land (Bliss Township beach and Cross Village beach). The remaining 22.5 km (14 mi) are part of Wilderness State Park. This unit extends from the junction of the northeast corner of T39N R5W section 28 and the Lake Michigan shoreline to the southwest boundary of T37N R6W section 5.

Unit MI–5: Sevenmile Point to Thornswift Nature Preserve

This unit encompasses approximately 7 km (4.3 mi) of Lake Michigan shoreline in Emmet County, Michigan. It includes areas of potential piping plover nesting habitat and areas that are currently occupied by piping plovers. The entire proposed area is under private ownership. It extends from the junction of the Lake Michigan shoreline and the northwest boundary of T36N R5W section 30 to the junction of the shoreline and the southwest corner of T35N R5W section 9.

Unit MI–6: Petoskey State Park

This unit encompasses approximately 2 km (1.2 mi) of Lake Michigan shoreline in Emmet County, Michigan. It includes areas of historical piping plover habitat. Approximately 0.7 km (0.4 mi) is privately owned land and 1.3 km (0.8 mi) are part of Petoskey State Park. This unit extends from the mouth of Tannery Creek to Mononaqua Beach.

Unit MI–7: North Point

This unit encompasses approximately 1.1 km (0.7 mi) of Lake Michigan shoreline in Charlevoix County, Michigan. It includes areas of potential piping plover nesting habitat. The entire proposed area is a city park owned by the city of Charlevoix. It includes all Lake Michigan shoreline within T34N R8W section 14.

Unit MI–8: Fisherman's Island State Park

This unit encompasses approximately 1.3 km (0.8 miles) of Lake Michigan shoreline in Charlevoix County, Michigan. It includes areas that are currently occupied by piping plovers. The entire proposed area is within Fisherman's Island State Park. This unit extends from the junction of the line separating T34N R8W section 31 and T33N R8W section 6 from the Lake Michigan shore to the Fisherman's Island State Park property boundary at the end of Lakeshore Drive.

Unit MI–9: Indian Point to McCauley's Point, Beaver Island

This unit encompasses approximately 5 km (3.1 mi) of Lake Michigan shoreline on Beaver Island in Charlevoix County, Michigan. It includes areas that are currently occupied, as well as areas that have been recently used by piping plovers. Approximately 4.4 km (2.7 mi) are privately owned and 0.6 km (0.4 mi) is part of Beaver Islands State Wildlife Research Area. This unit extends from Indian Point to the junction of the dividing line of T39 N R10W and T38N R10W and the Lake Michigan shoreline.

Unit MI–10: Greenes Bay, Beaver Island

This unit encompasses approximately 0.8 km (0.5 mi) of Lake Michigan shoreline on Beaver Island in Charlevoix County, Michigan. It includes areas that have been recently used by piping plovers. Approximately 0.3 km (0.2 mi) is part of the Beaver Islands State Wildlife Research Area and the remaining 0.5 km (0.3 mi) is privately owned land. This unit extends from the junction of Lake Michigan and the northwest corner of T38N R11W section 25 to the junction of the Lake Michigan shoreline and the dividing line between T39N and T38N R10W.

Unit MI–11: High Island

This unit encompasses approximately 1.8 km (1.1 mi) of Lake Michigan shoreline on High Island in Charlevoix County, Michigan. It includes areas that are currently occupied by piping plovers. The entire proposed area is part of the Beaver Islands State Wildlife Research Area. This unit includes all Lake Michigan shoreline within T39N R11W sections 5, 27, and 32.

Unit MI–12: Cathead Bay to Christmas Cove

This unit encompasses approximately 5.9 km (3.7 mi) of Lake Michigan shoreline in Leelanau County, Michigan. It includes areas that are currently occupied by piping plovers and areas of potential piping plover nesting habitat. Approximately 1.9 km (1.2 mi) are part of Leelanau State Park, and the remaining 4.0 km are privately owned land. This unit extends from the intersection of the Lake Michigan shoreline and the line between T32N R11W section 12 and T32N R10W section 7 to the intersection of the shoreline with the southern boundary of T32N R11W section 16 north of Christmas Cove (Northport NW quad).

Unit MI–13: South Fox Island

This unit encompasses approximately 1 km (0.6 mi) of Lake Michigan shoreline on South Fox Island in Leelanau County, Michigan. It includes areas that were historically occupied by piping plovers. The entire proposed area is part of the Beaver Island State Wildlife Research Area. This unit includes all Lake Michigan shoreline within T34N R13W sections 15, 16, and 21 and T35R13W section 30.

Unit MI–14: North Manitou Island

This unit encompasses approximately 3.3 km (2 mi) of Lake Michigan shoreline on North Manitou Island in Leelanau County, Michigan. It includes areas that are currently occupied by piping plovers. The entire proposed area is part of Sleeping Bear Dunes National Lakeshore. This unit includes all Lake Michigan shoreline within T31N R14W sections 22, 23, 27, and 28.

Unit MI–15: Crystal Run to Empire Beach

This unit encompasses approximately 14.3 km (8.9 mi) of Lake Michigan shoreline in Leelanau County, Michigan. It includes areas of potential piping plover nesting habitat. Approximately 4.0 km (2.5 mi) are municipal beach, and the remaining 10.3 km (6.4 mi) are part of Sleeping Bear Dunes National Lakeshore. This unit extends from Crystal Run to the southern Sleeping Bear Dunes National Lakeshore property boundary.

Unit MI–16: Esch Road to Sutter Road and Point Betsie

This unit encompasses approximately 13.5 km (8.4 mi) of Lake Michigan shoreline in Benzie County, Michigan. It includes areas that are currently occupied by piping plovers, areas that were historically occupied, and areas of potential piping plover nesting habitat. The majority of the unit (12.5 km (7.8 mi)) is part of Sleeping Bear Dunes National Lakeshore, and the remaining 1.0 km (0.6 mi) is U.S. Coast Guard land that is managed by The Nature Conservancy, a private conservation organization. This unit extends from Esch Road to T26N R16W section 4.

Unit MI–17: Nordhouse Dunes and Ludington State Park

This unit encompasses approximately 13.4 km (8.3 mi) of Lake Michigan shoreline in Mason County, Michigan. It includes areas that were historically occupied by piping plovers. At least one pair of piping plovers were sighted in

the area in 1999, but no nests were found. Approximately 7.4 km (4.6 mi) are part of the Manistee National Forest/ Nordhouse Dunes Wilderness Area, and the remaining 6.0 km (3.7 mi) are part of Ludington State Park. This unit extends from the mouth of Cooper Creek to the mouth of the Big Sable River.

Unit MI–18: Muskegon State Park

This unit encompasses approximately 2.5 km (1.6 mi) of Lake Michigan shoreline in Muskegon County, Michigan. It includes areas that were historically occupied by piping plovers. In the early 1950s, several pairs of piping plovers were reported nesting in this unit, but the last known nesting was in 1953. The entire proposed area is part of Muskegon State Park. This unit extends from the north breakwall of the canal joining Muskegon Lake and Lake Michigan to the northern Muskegon State Park property boundary at the shoreline.

Unit MI–19: Lake Superior State Forest-St. Vital Point

This unit encompasses approximately 3.0 km (1.9 mi) of Lake Huron shoreline in Chippewa County, Michigan. It includes areas that were historically occupied by piping plovers. The entire proposed area is within Lake Superior State Forest. This unit extends from the Lake Superior State Forest boundary to the mouth of Joe Straw Creek.

Unit MI–20: Lighthouse Point to Cordwood Point

This unit encompasses approximately 8.3 km (5.2 mi) of Lake Huron shoreline in Cheboygan County, Michigan. It includes areas that were historically occupied by piping plovers and currently serve as foraging areas. Approximately 3 km (1.9 mi) are part of Cheboygan State Park, and approximately 1.6 km (1 mi) are Nature Conservancy property. The remaining 0.6 km (0.4 mi) is privately owned land. This unit extends from the junction of the Lake Huron shoreline and the western boundary of T38N R1W section 22 to just west of Cordwood Point (Cordwood Point quad).

Unit MI–21: P.H. Hoeft State Park

This unit encompasses approximately 3.7 km (2.3 mi) of Lake Huron shoreline in Presque Isle County, Michigan. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of P.H. Hoeft State Park. This unit includes Lake Huron shoreline from T35N R5E section 6 to the junction of Nagel Road and Forty Mile Road.

Unit MI–22: Thompson's Harbor State Park

This unit encompasses approximately 2.8 km (1.7 mi) of Lake Huron shoreline in Presque Isle County, Michigan. It includes areas of potential piping plover nesting habitat. Most of this proposed area is within Thompson's Harbor State Park with a small portion of privately owned land. This unit extends along the Lake Huron shoreline from Black Point to Grand Lake Outlet.

Unit MI–23: Tawas Point State Park

This unit encompasses approximately 2.0 km (1.2 mi) of Lake Huron shoreline in Iosco County, Michigan. It includes areas used for foraging by transient piping plovers and potential nesting habitat. The entire proposed area is part of Tawas Point State Park. This unit extends from the Tawas Sate Park boundary on the east side of Tawas Point to T22N R8E section 34.

Minnesota

Unit MN–1: Duluth Harbor

This unit encompasses approximately 2.8 km (1.7 mi) of Lake Superior mainland and island shoreline in St. Louis County, Minnesota, including Erie Pier, Hearding Island, and Interstate Island. It includes areas that have been recently occupied by piping plovers. The approximate 1 km (0.6 mi) of shoreline at Erie Pier is owned by the city of Duluth. The approximate 1.2 km (0.7 mi) of island shore line on Hearding Island is a State Wildlife Management Area and bird sanctuary. A portion of the 0.6 km (0.4 mi) of island shoreline on Interstate Island is in Minnesota, and a portion is in Wisconsin. Approximately 0.2 km (0.1 mi) of Interstate Island shoreline is owned by the State of Minnesota and is a State Wildlife Management Area and bird sanctuary. The remaining 0.4 km (0.2 mi) of Interstate Island shoreline is in Wisconsin and is private land owned by C. Rice Coal and Burlington Northern Railroad. This unit includes the dredge spoil flats bounded by the seawall northeast of the railroad tracks in Duluth as well as Interstate and Hearding Islands.

Wisconsin

Unit WI–1: Wisconsin Point

This unit encompasses approximately 4.0 km (2.5 mi) of Lake Superior shoreline in Douglas County, Wisconsin. It includes areas that were historically occupied by piping plovers. The entire proposed area is municipal land belonging to the city of Superior. This unit extends from the mouth of Dutchman Creek to the Douglas and St. Louis County line.

Unit WI–2: Long Island/Chequamegon Point

This unit encompasses approximately 18 km (11.2 mi) of Lake Superior shoreline in Ashland County, Wisconsin. It includes areas currently occupied by piping plovers. Nesting occurred in this unit in 1998 and 1999. Approximately 13 km (8.1 mi) are part of the Apostle Islands National Lakeshore, and the remaining 5 km (3.1 mi) are Tribal lands belonging to the Bad River Band of Lake Superior Tribe of Chippewa Indians. This unit extends from the mouth of the Newago Creek to Chequamegon Point Light.

Unit WI–3: Western Michigan Island Beach and Dunes

This unit encompasses approximately 6.5 km (4 mi) of Lake Superior shoreline on Michigan Island in Ashland County, Wisconsin. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of the Apostle Island National Lakeshore. This unit includes all Lake Superior shoreline on Michigan Island within T51N R1W sections 28, 20, and 21.

Unit WI–4: Seagull Bar

This unit encompasses approximately 1.5 km (0.9 mi) of Lake Michigan shoreline in Marinette County, Wisconsin. It includes areas of potential piping plover nesting habitat. The entire proposed area is municipal land. This unit extends from the end of Leonard Street at Red Arrow Park to the south end of Seagull Bar including nearshore sand bars.

Unit WI–5: Peshtigo Point

This unit encompasses approximately 2.8 km (1.7 mi) of Lake Michigan shoreline in Marinette County, Wisconsin. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of the Peshtigo Harbor State Wildlife Area. This unit extends from Peshtigo Point to the mouth of the Peshtigo River.

Unit WI–6: Pensaukee Dredge Spoil Island

This unit encompasses less than 0.5 km (0.3 mi) of Lake Michigan island shoreline in Oconto County, Wisconsin. It includes areas that were historically occupied by piping plovers. The island is a U.S. Army Corp of Engineers dredge spoil island. This unit includes the island just south of the mouth of the Pensaukee River in T27N, R21E section 14.

Unit WI–7: Point Beach State Forest

This unit encompasses approximately 8 km (5 mi) of Lake Michigan shoreline in Manitowoc County, Wisconsin. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of the Point Beach State Forest. This unit extends from the southwest property boundary of Point Beach State Forest to Rawley Point.

Illinois

Unit IL–1: Illinois Beach State Park / Nature Preserve to Waukegan Beach

This unit encompasses approximately 10.2 km (6.3 mi) of Lake Michigan shoreline in Lake County, Illinois. It includes areas that were historically occupied by piping plovers. Approximately 4.7 km (2.9 mi) are part of the Illinois Beach State Park and Nature Preserve, approximately 1.3 km (0.8 mi) are municipal property (Zion municipal park and Waukegan municipal beach), and the remaining 4.2 km (2.6 mi) are privately owned. This unit extends from 17th Street and the Lake Michigan shoreline in Illinois Beach State Park to the Waukegan Beach breakwall at North Beach Park.

Indiana

Unit IN–1: Indiana Dunes National Lakeshore and Indiana Dunes State Park Beaches

This unit encompasses approximately 10.5 km (6.5 mi) of Lake Michigan shoreline in Porter County, Indiana. It includes areas that were historically occupied by piping plovers. Approximately 5 km (3.1 mi) are part of Indiana Dunes State Park and the remaining 5.5 km (3.4 mi) are part of Indiana Dunes National Lakeshore. This unit extends from the Burns Harbor eastern breakwall along the Indiana Dunes State Park to Kemil Road at Beverly Shores.

Ohio

Unit OH–1: Sheldon Marsh

This unit encompasses approximately 3.2 km (2.0 mi) of Lake Erie shoreline in Erie County, Ohio. It includes areas that are used by transient piping plovers and potential nesting habitat. Approximately 1.2 km (0.7 mi) are part of Sheldon Marsh State Nature Preserve, and the remaining 2.0 km (1.2 mi) are privately owned land. This unit extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area.

Unit OH–2: Headland Dunes

This unit encompasses approximately 0.8 km (0.5 mi) of Lake Erie shoreline in Lake County, Ohio. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of Headland Dunes State Nature Preserve. This unit extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park.

Pennsylvania

Unit PA–1: Gull Point Natural Area, Presque Isle State Park

This unit encompasses approximately 1.5 km (0.9 mi) of Lake Erie shoreline in Erie County, Pennsylvania. It includes foraging areas for transient piping plovers and areas that were historically occupied. Approximately 1.1 km (0.7 mi) are part of the Presque Isle State Park, and the remaining 0.4 km (0.2 mi) is U.S. Coast Guard property. This unit extends from the lighthouse north of Peninsula Drive on the north side of Presque Isle to the breakwall south of the Coast Guard Station on Thompson Bay. It includes any new beach habitat that may accrete along the present shoreline portion of the unit.

New York

Unit NY–1: Salmon River to Stony Point

This unit encompasses approximately 27.4 km (17 mi) of Lake Ontario shoreline in Jefferson and Oswego Counties, New York. It includes areas that were historically occupied by piping plovers. Approximately 12.4 km (7.7 mi) are State land (New York State Department of Environmental Conservation (DEC) Wildlife Management Area/ New York DEC Unique Area and New York State Park), approximately 14.6 km (9.1 mi) are privately owned, and the remaining 0.4 km (0.2 mi) belong to The Nature Conservancy. This unit extends from the mouth of the Salmon River to the Eldorado Road.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires all Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Individuals, organizations, States, tribes, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires all Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must consult with us.

When we issue a biological opinion concluding that a Federal action is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report on proposed critical habitat if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if the proposed critical habitat were already designated. Conference reports, required for species proposed for listing as threatened or endangered, or for proposed critical habitat designations, provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the agency's proposed action. The conservation recommendations in a conference report are advisory. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the Federal action alter the content of the opinion (see 50 CFR 402.10(d)).

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities that may adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Great Lakes breeding population of the piping plover is appreciably diminished. In the case of occupied habitat, such activities may also jeopardize the continued existence of the Great Lakes population of piping plovers. In the case of unoccupied habitat, such activities may alter the ability of an area to develop the primary constituent elements.

An activity will likely not adversely modify critical habitat within a designated critical habitat unit if the specific area does not contain any primary constituent elements. For example, existing areas such as parking lots, paved roads, and various kinds of human-built structures within critical habitat unit boundaries would not furnish habitat or biological features for piping plovers. Furthermore, some activities would not be restricted by critical habitat designation because they would have no adverse effect on the primary constituent elements or the ability of an area to develop those elements.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, the effects of destruction or adverse modification of critical habitat would almost always be reflected in the effects on the species itself when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the piping plover is not likely to result in regulatory protection of the species above that already in place due solely to the presence of the listed species. However, designation of critical habitat in areas that are not known to be occupied by this species may result in additional consultations between us and other Federal agencies; these additional consultations may affect Federal actions beyond those that are already affected by the listing of the piping plover as endangered.

Federally funded, permitted, or authorized activities that could adversely affect critical habitat of the Great Lakes breeding population of the piping plover include, but are not limited to the following: (1) Marina and boat launch construction and maintenance; (2) harbor dredging and dredge spoil placement and disposal; (3) fill of interdunal wetlands for residence, driveway, or other construction; (4) waste-water discharge from communities; (5) all-terrain vehicular activity on beaches or the construction of facilities that increase such activity; (6) beach stabilization activities that impede natural overwash processes including beach nourishment, planting of vegetation, and construction and maintenance of seawalls, breakwaters, and other off-shore stabilizing devices; and (7) sale, exchange, or lease of Federal land that contains suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded. Additionally, public access may be temporarily or seasonally restricted on beaches having a Federal nexus in order to determine which areas may be utilized for nesting. These beaches could be closed to assess the use by piping plovers in the spring months. Some of these closures may be voluntary by governmental and private land managers. Most closures would end prior to the time the public would frequent these beaches. Designation of critical habitat for piping plovers breeding in the Great Lakes notifies the U.S. Army Corps of Engineers, other permitting agencies, and the public that the Clean Water Act section 404 nationwide permits and other Federal authorizations for activities within these designated critical habitat areas must comply with section 7 consultation requirements. For each section 7 consultation, we will review the direct and indirect effects of the proposed projects on piping plovers and their critical habitat.

Relationship to Incidental Take Permits Issued Under Section 10

One habitat conservation planning effort is currently in progress within the range of the Great Lakes breeding population of piping plovers. The Magic Carpet Woods Association applied to the Service for an Incidental Take Permit for the piping plover. Incidental take is a potential indirect result of the applicant's proposed residential development along a 0.8 km (0.5 mi) section of Lake Michigan beach in Leelanau County, Michigan. A Habitat Conservation Plan (HCP) submitted with the application will likely avoid or minimize incidental take of piping plovers. The proposed development falls within proposed piping plover critical habitat; however, no construction is proposed on the beach portion of the property. We will continue to work with the applicant so as to prevent the project from adversely modifying or destroying proposed critical habitat. The beach on this property currently does not constitute piping plover nesting habitat, but likely provides foraging habitat and potential nesting habitat.

In the event that additional HCPs covering the Great Lakes piping plover are developed in the future within the proposed critical habitat, we will work with applicants to ensure the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the piping plover. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species. We fully

expect that HCPs undertaken by local jurisdictions (*e.g.*, townships, counties) and other parties will identify, protect, and provide appropriate management for lands that are essential for the long-term conservation of the species. We believe that our analyses of future HCPs and future permits under section 7 will show that activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the piping plover and assure that they do not adversely modify or destroy the critical habitat. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(b) permits for the piping plover should trigger revisions of designated critical habitat to exclude lands within HCP areas, and, if so, by what mechanism (see Public Comments Solicited section).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comment on the economic analysis or further comments on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any habitat should or should not be determined to be critical habitat for the Great Lakes breeding population of piping plovers as provided by section 4 of the Act, including whether the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat;
2. Specific information on the amount and distribution of piping plover nesting habitat in the Great Lakes region, and what nesting habitat is essential to the conservation of the Great Lakes breeding population of the species and why;
3. Specific information on the amount and distribution of Great Lakes breeding piping plovers;
4. Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;
5. Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;
6. Economic and other values associated with designating critical habitat for the Great Lakes breeding population of piping plover, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birdwatching, enhanced watershed protection, "existence values," and reductions in administrative costs; and
7. The advisability of designating as critical habitat sites that are not documented to have occupied historically but are deemed potential breeding habitat because their characteristics are suitable for breeding by piping plovers.

Additionally, we are seeking comments on critical habitat designation relative to future HCPs. Future conservation planning efforts may occur within the range of the piping plover in areas we are proposing as critical habitat. We invite comments on the appropriateness of the following alternative approaches we are considering regarding critical habitat designations within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the piping plover.

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the piping plover, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of HCPs when the plans are approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received by September 5, 2000.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Great Lakes breeding population of piping plover was listed as an endangered species in 1985. In fiscal years 1992 through 1999, we conducted only one formal section 7 consultation with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the piping plover.

Approximately 255 km (159 mi) of the areas encompassing proposed critical habitat for the Great Lakes breeding population of piping plovers are currently unoccupied by piping plovers. The remaining 49 km (30 mi) of the total designated critical habitat area are currently occupied by piping plovers. Under the Act, critical habitat may not be adversely modified or destroyed by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 3 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species.

The designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding, but we expect little additional impact from designating these areas as critical habitat. We will evaluate this impact through our economic analysis (see Economic Analysis section of this rule).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of piping plovers since the listing in 1985. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat. Additional restrictions may be imposed in unoccupied areas proposed as critical habitat; we will evaluate this possibility through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any additional effects in areas of occupied habitat. The critical habitat designation may have some additional effects on the unoccupied areas of proposed critical habitat. We will review the effects of this proposed action on Federal agencies or non-Federal persons that receive Federal authorization or funding in the area of critical habitat with unknown occupancy.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 3.—ACTIVITIES POTENTIALLY IMPACTED BY PIPING PLOVER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3]	Direct take and activities such as removing or destroying piping plover breeding habitat, whether by mechanical, chemical, or other means (*e.g.*, construction, road building, boat launch and marina construction or maintenance, beach nourishment); recreational activities that significantly deter the use of suitable habitat areas by piping plovers or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, paved walking paths); sale, exchange, or lease of Federal land that contains suitable habitat that may result in the habitat being destroyed or appreciably degraded (*e.g.*, shoreline development, building of recreational facilities such as off-road vehicle parks, road building); activities that may result in increased human activity and disturbance..	None in occupied habitat. In unoccupied habitat, no additional types of activities will be affected, but consultation will be required on these activities in additional areas.
Private and other non-Federal Activities Potentially Affected [4].	Direct take and activities such as removing or destroying piping plover habitat, whether by mechanical, chemical, or other means (*e.g.*, construction, road building, boat launch and marina construction or maintenance, beach nourishment) and appreciably decreasing habitat value or quality (*e.g.*, increased predation, invasion of exotic species, increased human presence or disturbance) that require a Federal action (permit, authorization, or funding).	None in occupied habitat. In unoccupied habitat, no additional types of activities will be affected, but consultation will be required on these activities by the Federal agency that regulates that Federal action in additional areas.

[1] This column represents the activities potentially affected by listing the piping plover as an endangered species (December 11, 1985; 50 FR 50726) under the Endangered Species Act.

[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

[3] Activities initiated by a Federal agency.

[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. However, we would expect additional restrictions in areas of unoccupied habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, State, tribal, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potentially adversely modifying critical habitat are:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, water delivery, and diversion by Federal agencies;

(3) Sale, exchange, or lease of lands owned by a Federal agency;

(4) Road construction and maintenance and right-of-way designation;

(5) Funding of low-interest loans to facilitate the construction of low-income housing by the Department of Housing and Urban Development;

(6) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(7) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act by the U.S. Environmental Protection Agency;

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service; and

(9) Activities funded, carried out, or authorized by any Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of critical habitat occupied by the species. We expect little additional effect for the unoccupied areas of proposed critical habitat. In the economic analysis, we will evaluate whether designation of critical habitat in the unoccupied areas will have an effect on activities carried out by small entities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat in areas where they have not previously undergone consultation not to jeopardize the species.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property. Critical habitat designation is applicable only to Federal lands and to private lands if a Federal nexus exists. We do not designate private lands as critical habitat unless the areas are essential to the conservation of a species.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the Great Lakes piping plover with the appropriate State agencies. The designation of critical habitat for the piping plover imposes few additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Great Lakes breeding population of piping plover.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's requirement at 512 DM 2, we understand that we must coordinate with recognized Federal Tribes on a Government-to-Government basis. We believe that certain Tribal lands are essential for the conservation of the piping plover because they support essential populations and habitat. Therefore, we are considering designating critical habitat for the piping plover on Tribal lands. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat according to section 4(b)(2) of the Act. However, we cannot exclude such areas from critical habitat if doing so will result in the extinction of the species. Due to the short amount of time allowed under the court order for preparing this proposed rule, we have not yet completed consultation with the affected Tribe, but we will do so before making a final decision on critical habitat.

Public Hearings

We have scheduled seven public hearings at the following addresses on the dates indicated.

1. Newberry, MI on July 19, 2000, at Newberry High School Auditorium, 700 Newberry Avenue.

2. Traverse City, MI on July 20, 2000, at Grand Traverse Civic Center, 1213 West Civic Center Drive.

3. Ashland, WI on July 17, 2000, at the Northern Great Lakes Center, 29270 County Highway G.

4. Green Bay, WI on July 18, 2000, at Brown County Central Library, 515 Pine Street.

5. Indiana Dunes National Lakeshore, IN on July 24, 2000, at the Dorothy Buell Memorial Visitors Center, just west of Beverly Shores on Kemil Road between U.S. Highways 12 and 20.

6. Cleveland, OH on July 25, 2000, at The Great Lakes Science Center, 601 Erieside Avenue.

7. Watertown, NY on July 27, 2000, at Dulles State Office Building, 317 Washington Street, 1st Floor Conference Room.

All comments that we receive at these hearings, both verbal and written, will be considered prior to making our decision on critical habitat designation. Copies of the transcripts from the hearings will be available for review by scheduling an appointment during normal business hours at the locations given above (see **ADDRESSES** section).

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Fort Snelling Regional Office (see **ADDRESSES** section).

Author: The primary author of this notice is Laura J. Ragan (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Plover, piping" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Plover, piping	Charadrius melodus	U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf coasts, PR, VI), Canada, Mexico, Bahamas, West Indies.	Great Lakes watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI and Canada (Ont.).	E	211	17.95(b)	NA
*	*	*	*	*	*	*	

3. In § 17.95, add critical habitat for the Great Lakes piping plover (*Charadrius melodus*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

PIPING PLOVER (*Charadrius melodus*)—Great Lakes Breeding Population

1. Critical habitat units are depicted for St. Louis County, Minnesota; Douglas, Ashland, Marinette, Oconto, and Manitowoc Counties, Wisconsin; Lake County, Illinois; Porter County, Indiana; Erie and Lake Counties, Ohio; Erie County, Pennsylvania; Oswego and Jefferson Counties, New York; and Alger, Schoolcraft, Luce, Mackinac, Chippewa, Iosco, Presque Isle, Cheboygan, Emmet, Charlevoix, Leelanau, Benzie, Mason, and Muskegon Counties, Michigan, on the maps below.

2. The primary constituent elements required to sustain the Great Lakes breeding population of the piping plover are found on Great Lakes islands and mainland shorelines that support, or have the potential to support, open, sparsely vegetated sandy habitats—sand spits or sand beaches associated with wide, unforested systems of dunes and interdune wetlands. In order for habitat to be physically and biologically suitable for piping plovers, it must have a total shoreline length of at least 0.2 kilometers (km) (0.12 miles (mi)) of gently sloping, sparsely vegetated (less than 50 percent herbaceous and low woody cover) sand beach with a total beach area of at least 2 hectares (5 acres) and a low level of disturbance from human activities and from domestic animals. These appropriately sized sites must also have areas of at least 50–100 meters (m) (165–330 feet (ft)) in length where (1) the beach width is more than 7 m (23 ft), (2) there is cover for nests and chicks, and (3) the distance to the treeline (from the normal high water line to where the forest begins) is more than 50 m (165 ft). Beach width is defined as the distance from the normal high water line to the foredune (a low barrier dune ridge immediately inland from the beach) edge or sand/vegetation boundary in areas where the dune is absent. The beach width may be narrower than 7 m (23 ft) if appropriate sand and cobble areas of at least 7 m (23 ft) exist between the dune and the treeline. Protective cover for nests and chicks consists of small patches of herbaceous vegetation, cobble (stones larger than 1 cm (0.39 inches (in)) diameter), gravel (stones smaller than 1 cm (0.39 in) diameter), or debris such as driftwood, wrack, root masses, or dead shrubs.

3. Critical habitat does not include existing developed sites consisting of buildings, marinas, paved areas, boat ramps, and similar structures.

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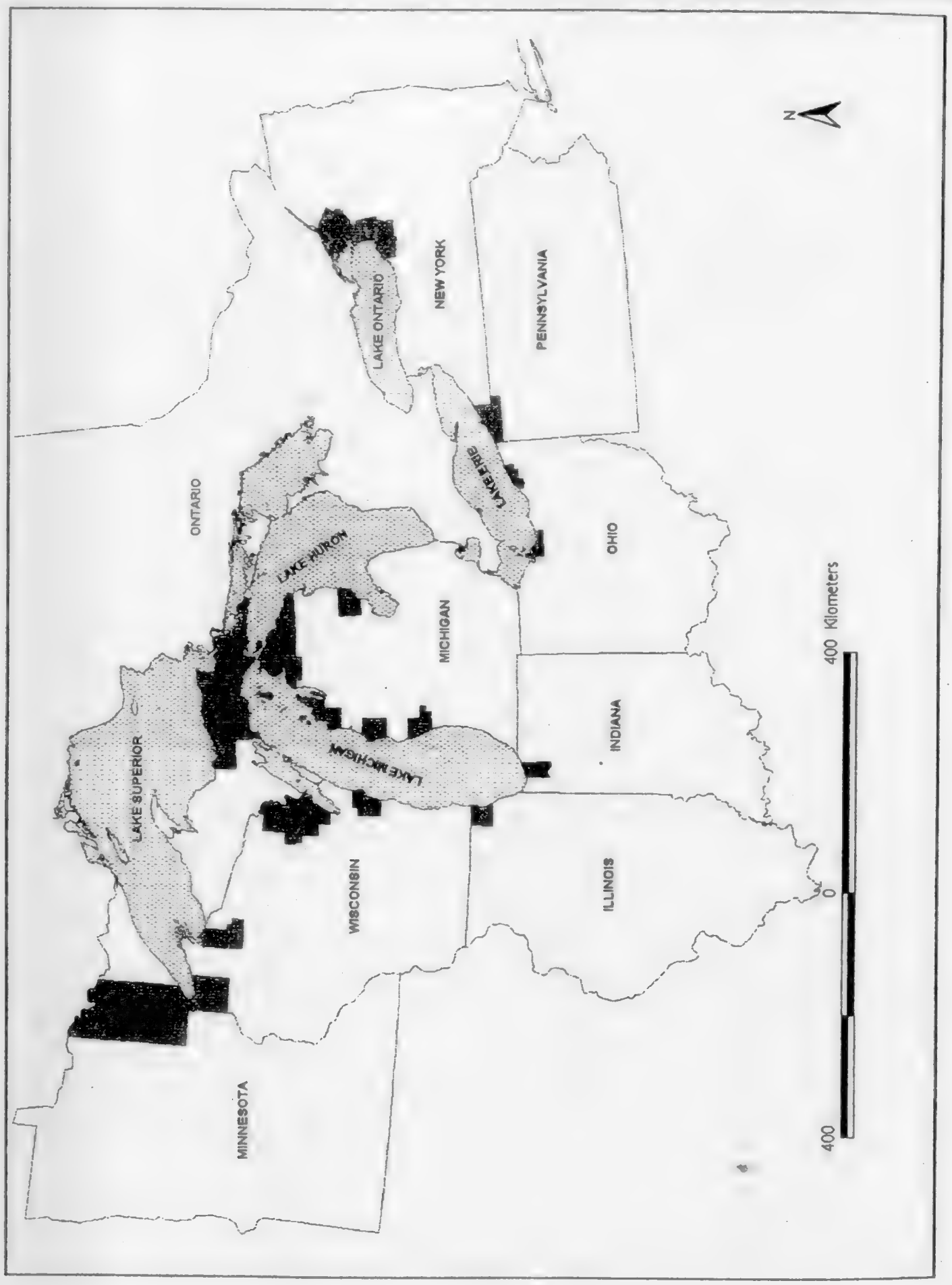
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Proposed Critical Habitat Units in Minnesota and Northern Wisconsin

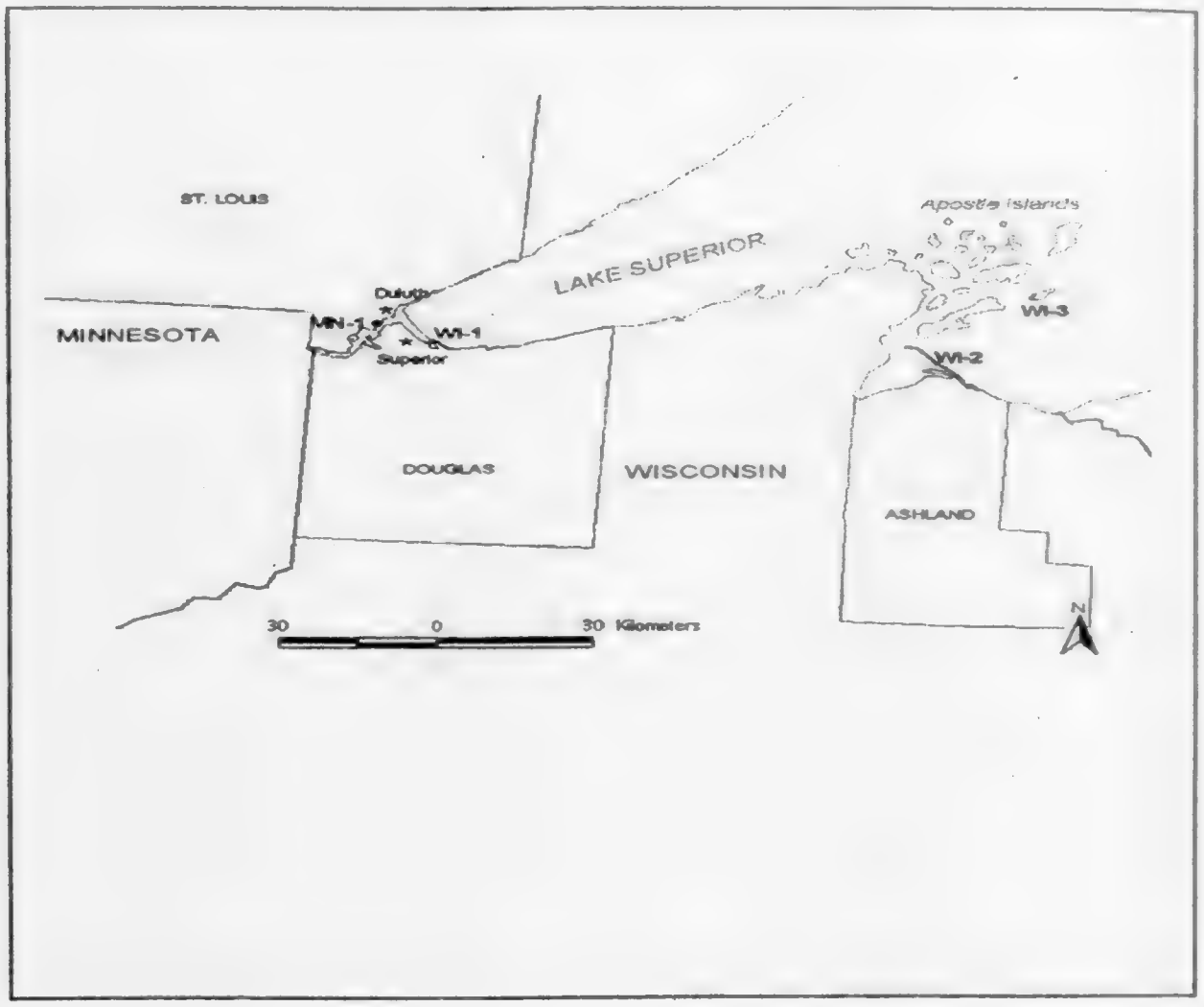

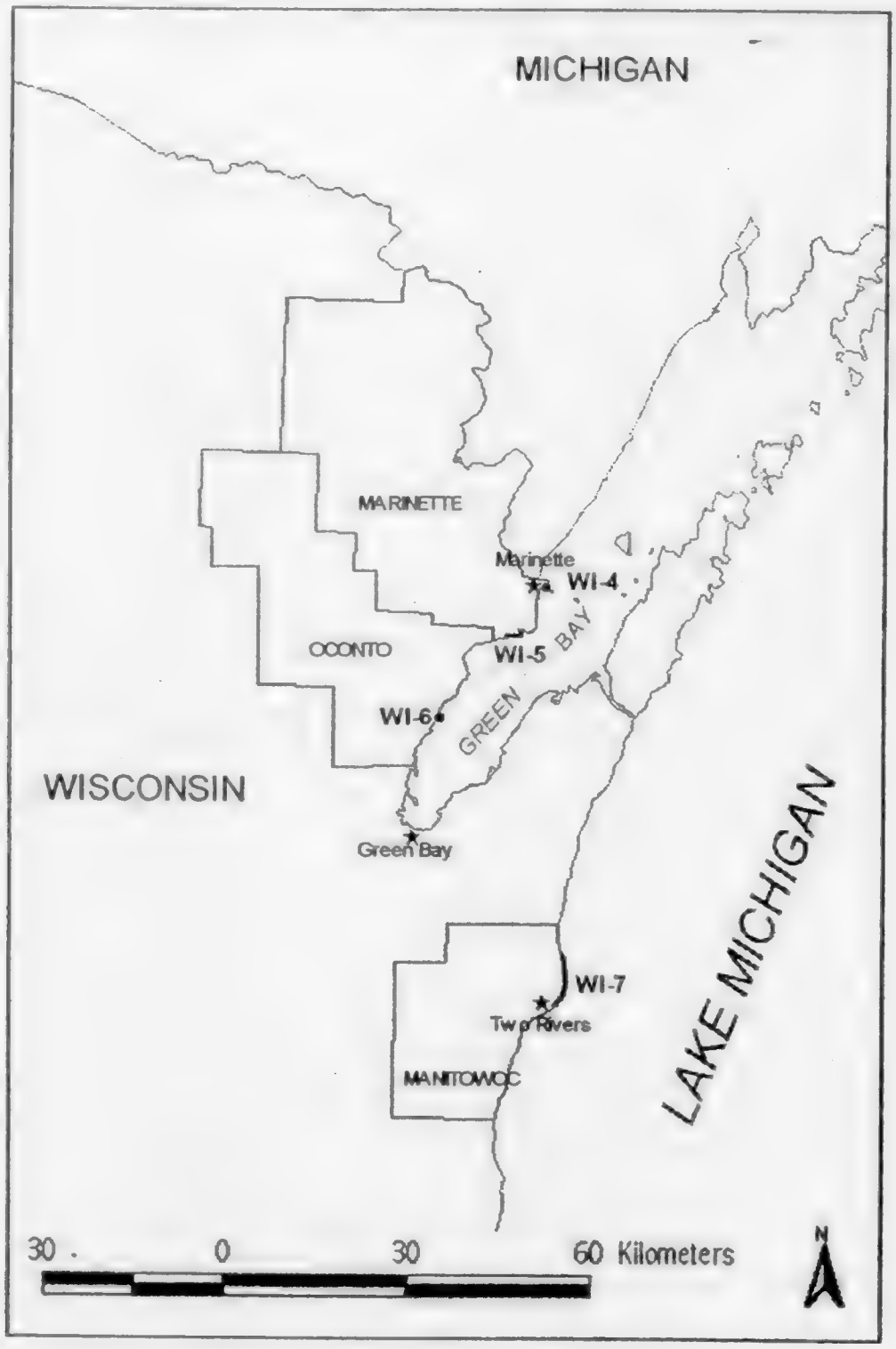
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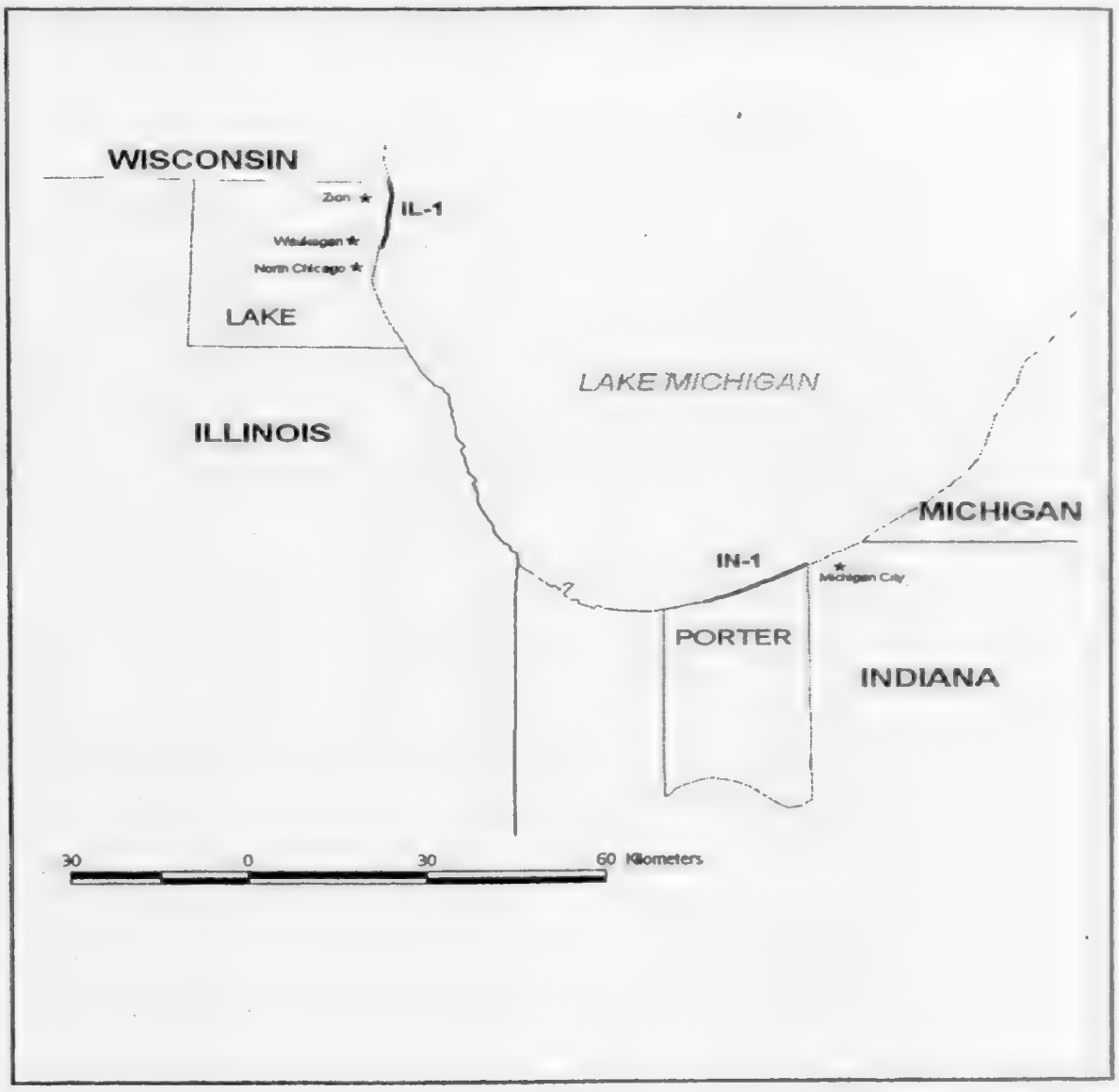
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Proposed Critical Habitat Units in Ohio

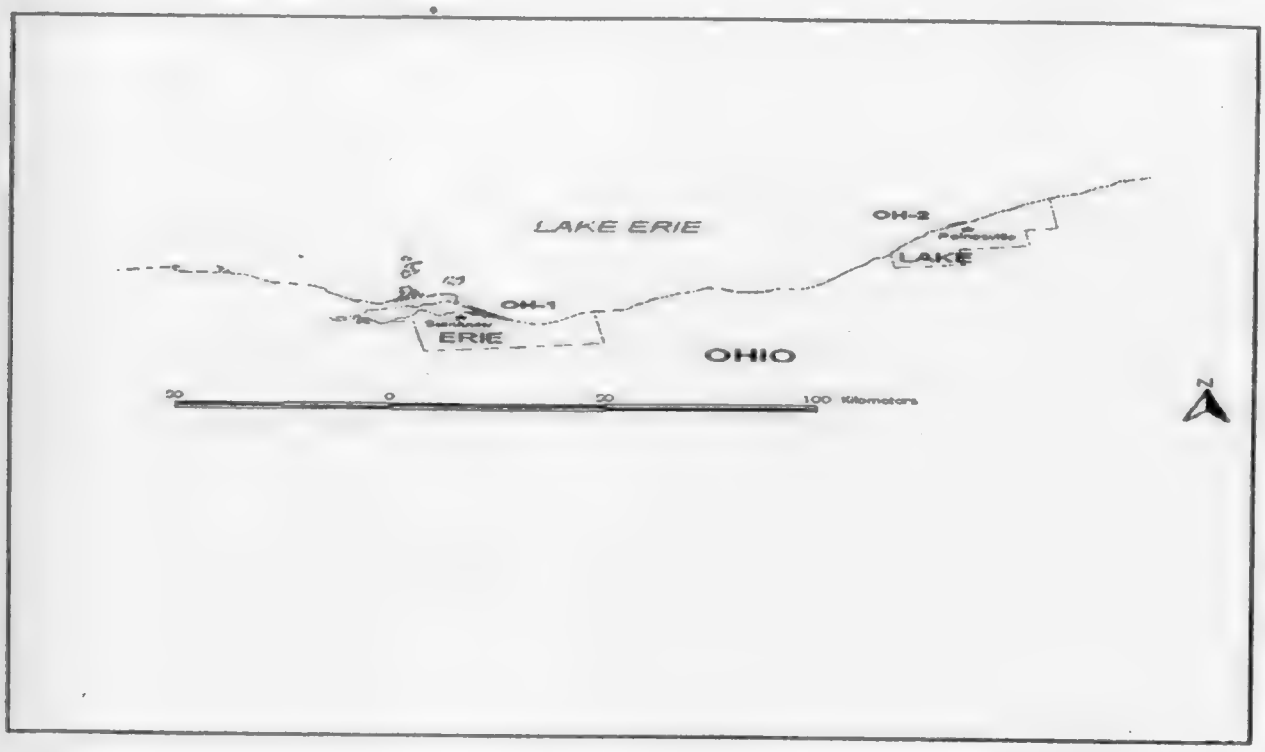

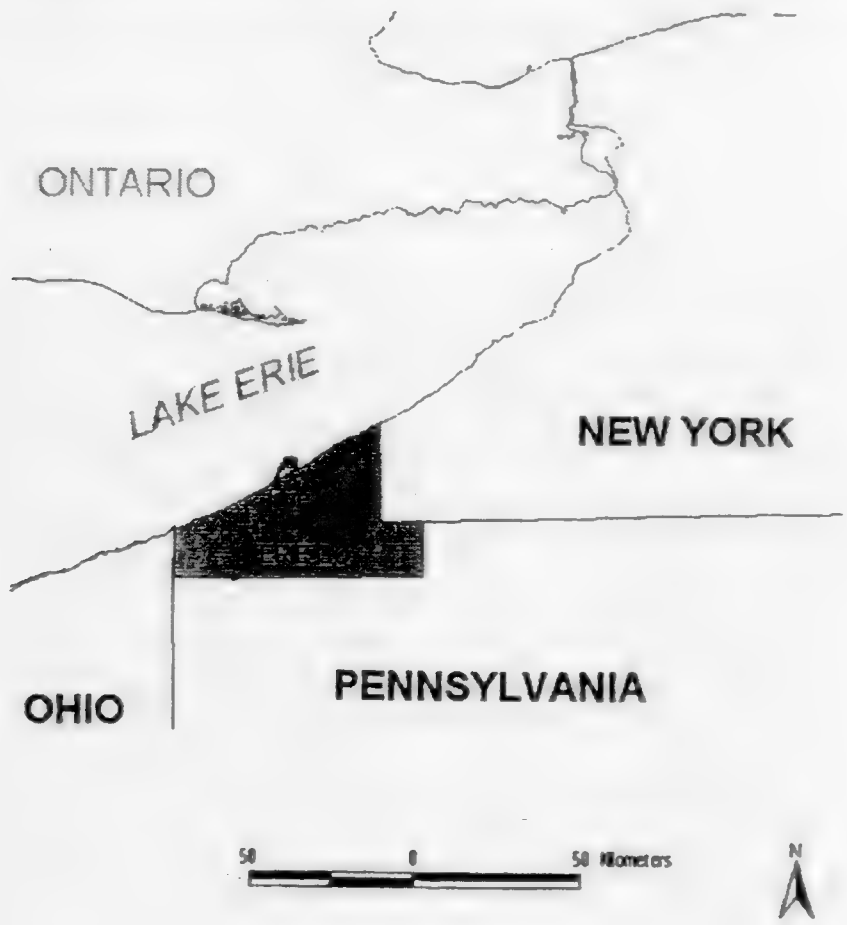
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Proposed Critical Habitat Units in New York

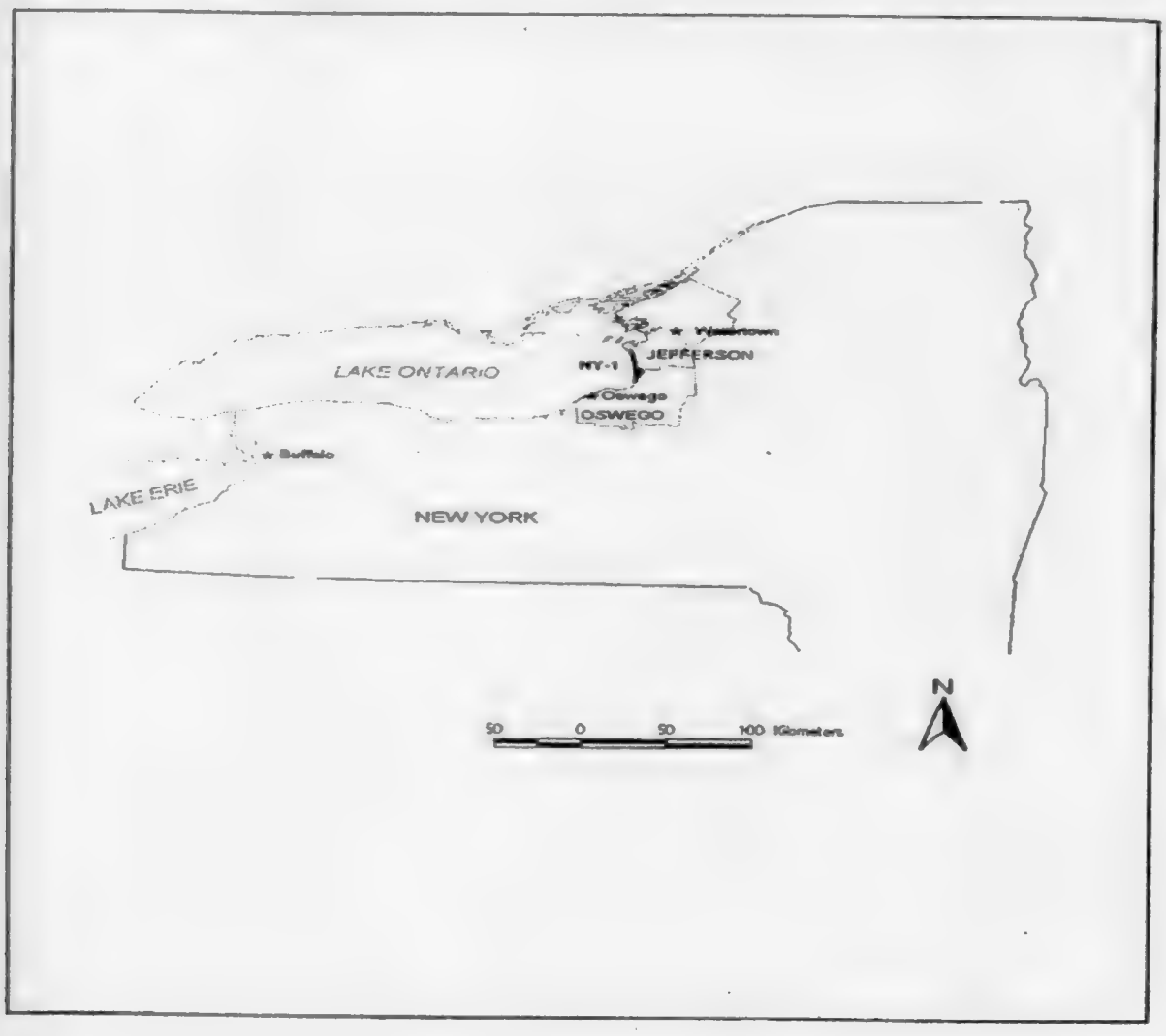

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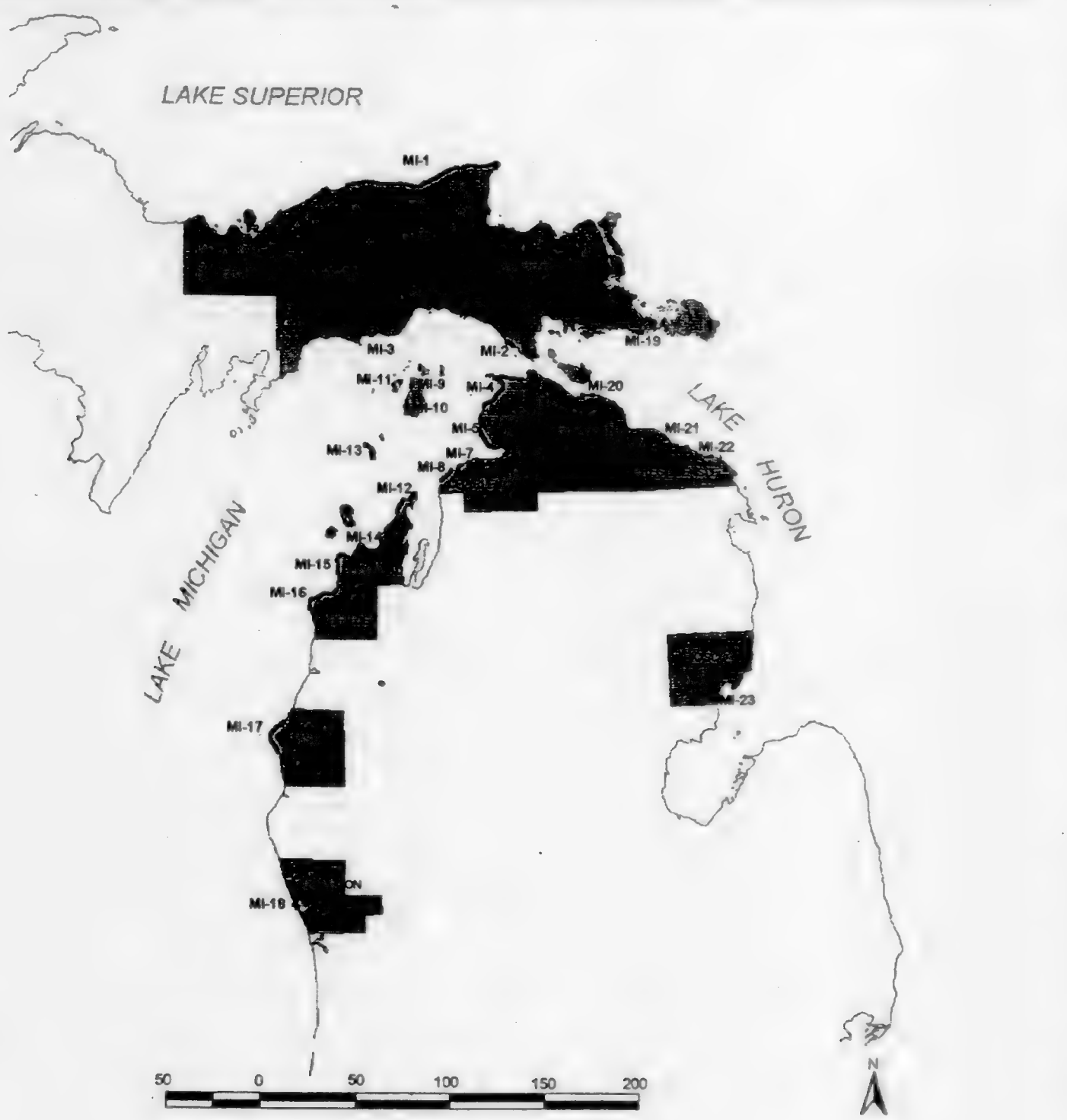

Dated: June 28, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–16815 Filed 6–30–00; 9:00 am]

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Dated: June 28, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–16815 Filed 6–30–00; 9:00 am]

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July 6, 2000

Part IV

Department of Transportation

Federal Railroad Administration

49 CFR 260

Railroad Rehabilitation and Improvement Financing Program; Revisions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 260

[Docket No. FRA 1999–5663]

RIN 2130–AB26

Railroad Rehabilitation and Improvement Financing Program; Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is issuing a final rule which implements the Railroad Rehabilitation and Improvement Financing Program (RRIF) to provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad. Eligible projects include: (1) acquisition, improvement or rehabilitation of intermodal or rail equipment or facilities (including tracks, components of tracks, bridges, yards, buildings, and shops), (2) refinancing outstanding debt incurred for these purposes, or (3) development or establishment of new intermodal or railroad facilities.

The aggregate unpaid principal amounts of direct loans and loan guarantees made under this program cannot exceed $3.5 billion at any one time and not less than $1 billion is to be available solely for projects benefitting freight railroads other than Class I carriers.

EFFECTIVE DATE: The final rule is effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: JoAnne M. McGowan, Chief of Freight Programs Division, RDV–12, Office of Passenger and Freight Services, FRA, 1120 Vermont Avenue, NW, MailStop 20, Washington, D.C. 20590 (202–493–6379), or Joseph R. Pomponio, Senior Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, MailStop 10, Washington, D.C. 20590 (202–493–6065).

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communication software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

Prior to the enactment of the Transportation Equity Act of the 21st Century ("TEA 21"), Pub. L. No. 105–178 (June 9, 1998), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (the "Act"), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 C.F.R. Part 260.

Section 7203 of TEA 21 replaces the existing Title V financing programs. This final rule strikes the language in existing part 260 and replaces it with new procedures and requirements to cover applications of financial assistance in the form of direct loans and loan guarantees consistent with the changes made to Title V of the Act by section 7203 of TEA–21.

The revised program is referred to in TEA 21 as the Railroad Rehabilitation and Improvement Financing Program ("RRIF Program"). The Secretary has delegated his authority under the RRIF Program to the FRA Administrator.

NPRM

The FRA published a notice of proposed rulemaking (NPRM) on May 20, 1999, in the **Federal Register** (64 FR 27488). Comments were filed by 92 commenters. FRA is now issuing this final rule concerning administration of the RRIF Program. This rule reflects the FRA's consideration of the comments filed in response to the NPRM.

Discussion of Rulemaking Text

The following discussion summarizes the comments submitted to the FRA by commenters on the NPRM, notes where and why changes have been made to the rule, and, where relevant, states why particular recommendations or suggestions have not been incorporated into the following regulations. Paragraph references are as designated in the NPRM.

Discussion of Comments and Responses by Section

Section 260.9 Loan terms. Sixty-one commenters urged that the interest rate to be charged on direct loans made under the RRIF Program be set at the cost of money to the Government for debt obligations with terms equal to the term of the loan.

FRA Response: Although FRA anticipated that direct loans would be assessed interest rates equal to the cost of money to the Government, as determined by the rate on Treasury securities of a similar term, the proposed regulations did not so specify. In order to clarify FRA's intent in this regard, section 260.9 has been changed to specify the interest rate to be charged.

Section 260.23(o) Lender of last resort. Seventy-two commenters suggested that, as enacted by Congress, the RRIF Program was not intended to provide financial assistance only as a lender of last resort. Commenters noted that although in certain circumstances loans may be available from the private sector, the terms on which such loans are offered are prohibitive. Railroad assets typically have long economic lives (up to 30 years) while private sector loans, when available, offer no longer than a 7 year repayment period. Therefore, private sector financing of most railroad assets is not economically viable.

Also notably, comments submitted by four members of the Committee on Transportation and Infrastructure, House of Representatives, including: Bud Shuster, Chairman, James L. Oberstar, Ranking Member, Thomas Petri, Chairman, Ground Transportation Subcommittee, and Nick J. Rahall, II, Ranking Member, Ground Transportation Subcommittee, suggest that TEA–21 does not require that the RRIF Program be a lender of last resort and ask that this requirement be deleted. Further, those comments indicate that the "central purpose of the program is to facilitate rail and rail-intermodal infrastructure improvements that will confer public benefits beyond simple considerations of commercial lending, and may not be able to attract sufficient private capital."

FRA Response: Consistent with the intent of Congress FRA intends to implement this program in a way that will meet the needs of the rail industry for long term financing which is not available from the private sector. While FRA need not be a lender of last resort, it does not intend to replace private funding sources already available to the rail industry. Therefore, in order to

establish that private funding on terms necessary to the viability of the applicant's project is not available, FRA will require that railroad applicants provide a letter from a commercial lender denying funding for the project. Section 260.23(o) has been amended accordingly.

Sections 260.23, 25, & 29. Information to be provided with applications. Sixty commenters suggested that the amount of information required to be submitted with applications for assistance under the RRIF Program will prove to be an undue burden on small businesses. Commenters have suggested that FRA should limit the amount of information required and eliminate the requirement that financial statements be audited.

FRA Response: In an effort to reduce the burden on applicants while still assuring that adequate information is available to accurately evaluate each loan application and proposed project, FRA has amended sections 260.23(h) and 260.25(b)(1) of the regulation to provide that audited financial statements will only be required if they are available. Further, FRA has amended sections 260.25(b) and (c), and eliminated section 260.29.

Section 260.31 Investigation charge. Sixty commenters have suggested that the investigation charge set by FRA at ½% as permitted by statute is too high and may prove to be a burden on smaller applicants. Commenters suggested that the investigation charge be assessed based on actual cost to FRA to process each application.

FRA Response: In order to avoid any unnecessary burden of future applicants FRA will estimate the processing costs and advise applicant at the pre-application meeting of the amount of the charge. That charge will still be payable in two installments, ½ at the time the application is submitted and the remaining ½ within 60 days thereafter. Section 260.11 has been amended accordingly. Further, in order to provide applicant more flexibility in controlling the total administrative costs of each application, FRA has included a new Section 260.29, which provides applicants with the option of contracting with a third party financial consultant, with FRA approval, to prepare a financial evaluation of the project and the applicant. Cost savings to FRA as a result of receiving such an evaluation will be reflected as reductions to the investigation charge.

General Comments

Fifty-six commenters asked that the limitation imposed by section 260.53, which provides that the Administrator will only guarantee up to 80% of the total obligation, be deleted so that 100% of an obligation can be guaranteed.

FRA Response: The 80% limitation is imposed on all Federal loan guarantees by the Office of Management and Budget, as iterated in circular A–129. The FRA cannot guarantee more than 80%.

Sixty-four commenters requested that the calculation of the Credit Risk Premium be simplified so as to be easily understood.

FRA Response: The calculation of the Credit Risk Premium is based on a process which evaluates many indicators of the financial viability of the applicant. In order to accurately assess the risk of default associated with each loan or loan guarantee FRA must consider all aspects of the applicant's organization and business. Therefore, this estimation process necessarily is complex. However, FRA will provide potential applicants with estimates of the size of the Credit Risk Premium that may be required based on discussions at the preapplication meeting provided under section 260.19.

One commenter requested that FRA accept a note from an applicant as payment of the Credit Risk Premium in lieu of a cash payment.

FRA Response: Based on FRA's interpretation of the statutory language this option is not permitted. Section 502(e)(3) provides that "the credit risk premium under this section shall be paid to the Secretary before the disbursement of loan amounts". Acceptance of a note would not constitute payment.

Two commenters suggested that priority consideration be given to projects that would avoid the abandonment of a rail line; one commenter asked for priority for projects benefitting railroad employees, and one commenter requested that, FRA provide priority for a project included in a state transportation plan.

FRA Response: The types of projects identified for priority consideration in section 260.7 reflect the areas of priority detailed by the enabling legislation. FRA has elected not to add to these criteria at this time.

Two commenters asked that the cost of a right-of-way be made an eligible cost of the project that receives financial assistance under the RRIF Program.

FRA Response: The statutory language does not clearly state whether the cost of right-of-way acquisition may be considered as part of the project. While it is possible that in certain circumstances such costs could be considered eligible cost of the project, it is also possible that in other situations they would not. A determination regarding whether the costs of rights-of-way may be considered eligible costs will be made in each case after a careful review of the circumstances.

Three commenters suggested that the collection of a Credit Risk Premium is too heavy a burden to be placed on applicants and asked that FRA not charge a Credit Risk Premium.

FRA Response: Before FRA can disburse any direct loan or loan guarantee it must set aside such amounts as are necessary to offset anticipated costs to the Federal government of making such loans and guarantees. Under this program such funds may come from funds appropriated for this purpose by Congress, a Credit Risk Premium, or any combination of appropriated funds and Credit Risk Premium. Where no Congressional appropriation exists, and there is none for RRIF at this time, FRA cannot approve a loan or loan guarantee without collecting a Credit Risk Premium.

One commenter requested that FRA provide financial assistance under this program for terms of up to 30 years.

FRA Response: Section 502(g)(1) of the Act requires that the Administrator (as the Secretary's designee), shall not make a loan or a loan guarantee unless the Administrator has made a finding that repayment of the obligation is required to be made in a term of not more than 25 years.

One commenter questioned our consideration of the "size" of an applicant in determining the credit risk, and suggested that no application should be denied solely because of the applicant's size.

FRA Response: FRA recognizes that the RRIF Program is intended, in part, to provide financial assistance to small railroads and it will not use a small applicant's size as a basis to deny financial assistance. However, the size of the applicant is a significant factor which must be considered along with all other factors outlined in determining the credit risk of providing financial assistance. Size would also be important if the applicant were large and the amount of assistance sought by the applicant together with all other assistance already provided to large applicants would result in less than $1 billion being available to small railroads.

One commenter requested that the term "common carrier" be removed from the definition of a railroad provided in section 260.3(r), in order to permit railroad shortlines providing only contract carrier services to a limited number of small shippers to be

eligible for financial assistance under the RRIF Program.

FRA Response: Section 7203 of TEA–21, which established the RRIF Program by amending Title V of the Act, does not define "railroad." However, section 102 of the Act, as amended, provides that "as used in this Act" * * * "(7) 'railroad' means rail carrier subject to part A of subtitle IV of title 49, United States Code." FRA has no discretion to expand the definition provided by the Act but clarify the definition by incorporating the statutory definition.

One commenter asked that the term "equipment", as used in section 260.5, "Eligible purposes," be defined to clarify that it does include railroad cars and locomotives.

FRA Response: The term "equipment" was not defined in the proposed regulations because it includes a variety of items which are used in the operation of a railroad. While rail cars and locomotives are certainly railroad equipment, further determinations regarding what will be considered "equipment" will be made as necessary.

One commentor suggests that the inclusion of all loans and loan guarantees into one cohort each fiscal year is inappropriate because the default of any obligation within that cohort will reduce the likelihood that other obligations will receive a rebate of their credit risk premium.

FRA Response: A default of any obligation in a cohort will produce losses that must be covered by the credit risk premiums collected from other obligations within that cohort. The fewer obligations a cohort contains, the greater the likelihood that a default will consume all the credit risk premiums and that none will remain to be returned to the borrowers. Similarly, a cohort containing more obligations is more likely to have sufficient credit risk premiums to cover the losses and still be able to provide a rebate. Therefore, FRA has determined that it will not necessarily limit cohorts to a one year period. Rather each cohort will remain open until FRA has determined that it contains an adequate pool of obligations, based on both size of the obligations and the total credit risk premiums collected, to increase the possibility that a rebate will be available upon the repayment of all the obligations contained in the cohort. Also, to that end separate cohorts will be established for direct loans and loan guarantees. Section 260.15 has been amended accordingly.

Regulatory Impact

E.O. 12866, SBREFA and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and is considered to be economically significant within the meaning of Executive Order 12866 and is a significant rule under DOT regulatory policies and procedures (44 Fed. Reg., February 26, 1979). Additionally, this is a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)) because the rule may have an annual effect on the economy of $100 million or more.

Executive Order 12866 requires that for all economically significant regulations, agencies provide an assessment, including the underlying analysis, of the costs and benefits anticipated from the regulatory action. In addition, the agency must analyze the costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulations. While the agency has not produced a quantified analysis of this rule, DOT has produced the following qualitative assessment:

Potential Benefits. The financing made available through this final rule may provide environmental and safety benefits, and avoid increased highway maintenance costs. Of the $3.5 billion made available for direct loans and loan guarantees, $1 billion is reserved for projects benefitting small railroads. Shortline and regional railroads are one of the transportation modes that connect rural America and small communities to the national railroad system. A recent survey by the American Association of State Highway and Transportation Officials has found that 200 small railroads need more than $2 billion in external financing to upgrade their track to safely accommodate the 286,000 pound cars that major carriers are now using. Shortline and regional railroads that cannot safely handle these heavier cars will lose traffic critical to their viability and continued operation. If these railroads are abandoned, the traffic will be moved by less energy efficient trucks. A 1991 FRA study entitled Rail vs. Truck Fuel Efficiency found that on routes typically served by shortline railroads, trains were 5.93 to 9 times more energy efficient than trucks.

Additional truck traffic may increase adverse health and environmental effects. It is unclear how significant the incremental changes in health and environmental effects will be because the agency has not estimated the incremental pollution reductions that may occur from this rule. In addition, some of the reductions that do occur are likely to be in sparsely populated areas.

This rule may also provide safety benefits by reducing track-related accidents. From 1986 through 1991, small railroads experienced over 3 track-related accidents for every million miles operated. During the same period, major railroads had only 1.45 track-related accidents for every million miles operated. Since 1991, the situation has worsened. From 1992 through 1996, shortline and regional railroads experienced more than 5 track-related accidents per million miles operated while major railroads had only 1.28. On the other hand, it is not clear that trucking the traffic carried by shortline and regional railroads would be less safe.

Potential Costs. There are administrative costs associated with this rule. Prospective borrowers will be required to file an application containing certain financial information. This information collection has been approved by the Office of Management and Budget. The approved control number is 2130–0548. The estimated annual burden hours are 5,881 hours and the annual costs are $543,866. The total estimated administrative costs to the Federal government are $325,000.

Default costs also may occur as a result of this rule. If the cost of borrowers' defaults exceeds the credit risk premiums collected there will be a cost to the federal government.

There are also opportunity costs associated with this rule, since it may reallocate finite resources to railroads that necessarily would have been spent elsewhere absent this rule. FRA has observed that the private sector will not provide funds to many railroads on terms that will support long term improvement projects. Under the assumption that private markets are working properly, this rule will displace more valuable investments and will result in costs to society. Because the private credit market generally allocates resources (including credit) efficiently to meet societal demand, only under certain circumstances (see examples below) may government intervention in the credit market increase societal benefits.

If one assumes that the private sector is not providing credit to railroads because an economic market failure exists, then government intervention may improve the outcome. Reasons for economic market failure of the credit market include information failures, externalities, economic disequilibrium, failure of competition and incomplete markets. Under these circumstances,

government intervention may generate positive net societal benefits through a combination of private and social benefits, taking into account the factors identified in the discussion of potential benefits above.

Cost-Benefit Comparison. Under Executive Order 12866, agencies may propose or adopt a regulation only upon a reasoned determination that the benefits of the regulation justify the costs. Based on numerous project benefit-cost analyses completed by State Departments of Transportation, DOT believes that the rule can lead to carefully selected projects that will generate benefits sufficient to outweigh the costs of this rule.

Future Analysis of this Program. FRA will periodically review the public benefits and costs of the RRIF program to ensure that there is a net societal benefit from this program. FRA recognizes that only under certain circumstances will government intervention in the credit market generate net societal benefits. Therefore, FRA will the reason for the failure of the market to provide credit to rail projects, and will assess the private and social costs and benefits of these projects to determine if they are likely to result in net societal benefits.

The Office of Management and Budget Circular A–94 establishes guidelines for analysis of the expected benefits and costs to society of Federal programs. The purpose of A–94 is to promote efficient resource allocation through well-informed decision-making by the Federal Government.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA has conducted a regulatory flexibility assessment of this final rule and FRA certifies that it does not have a significant impact on a substantial number of small entities.

It is not likely that small governmental entities will seek financial assistance under the RRIF Program. In response to a public notice on the enactment of the program, only large metropolitan areas, like the City of Indianapolis and the Memphis and Shelby County Port Commission, indicated an interest in RRIF financing. The cost to governmental entities of applying for the program would be minimal since borrowers will normally have available the information needed to prepare applications for funding.

In addition to small governmental entities, the small entities directly affected by this rule are class III railroads. The cost to small railroads will be minimal since the information needed to complete applications will normally be available. Moreover, participation in the RRIF Program is strictly voluntary. Therefore, FRA has concluded that there are no substantial economic impacts for small units of government, business, or other organizations.

Paperwork Reduction Act

This information collection has been approved by the Office of Management and Budget. The approved control number is 2130–0548. FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number.

Environmental Impact

FRA has evaluated this regulation in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related directives. This regulation meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This rule will not have a substantial effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, input by state and local officials, under Executive Orders 13132, is not warranted.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) each federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Sec. 201. Section 202 of the Unfunded Mandates Reform Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *" detailing the effect on State, local and tribal governments and the private sector. The final rules issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement was not required.

List of Subjects in 49 CFR Part 260

Loan programs—Transportation; Railroads.

The Final Rule

In consideration of the foregoing, Part 260 of Title 49, Code of Federal Regulations, is revised to read as follows:

PART 260—REGULATIONS GOVERNING LOANS AND LOAN GUARANTEES UNDER THE RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM

Subpart A—Overview

Sec.
260.1 Program authority.
260.3 Definitions.
260.5 Eligible purposes.
260.7 Priority consideration.
260.9 Loan terms.
260.11 Investigation charge.
260.13 Credit reform.
260.15 Credit risk premium.

Subpart B—FRA Policies and Procedures for Evaluating Applications for Financial Assistance

260.17 Credit risk premium analysis.
260.19 Preapplication meeting.

Subpart C—Applications for Financial Assistance

260.21 Eligibility.
260.23 Form and content of application generally.
260.25 Additional information for applicants not having a credit rating.
260.27 Additional information for loan guarantees.
260.29 Third party consultants.
260.31 Execution and filing of application.
260.33 Information requests.
260.35 Environmental assessment.

Subpart D—Standards for Maintenance of Facilities Involved in the Project

260.37 Applicability.
260.39 Maintenance standards.
260.41 Inspection and reporting.
260.43 Impact on other laws.

Subpart E—Procedures To Be Followed in the Event of Default

260.45 Events of default for guaranteed loans.
260.47 Events of default for direct loans.
260.49 Avoiding defaults.

Subpart F—Loan Guarantees—Lenders

260.51 Conditions of guarantees.
260.53 Lender's functions and responsibilities.

260.55 Lender's loan servicing.

Authority: 45 U.S.C. 821, 822, 823; 49 CFR 1.49.

Subpart A—Overview

§ 260.1 Program authority.

Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 *et seq.*, authorizes the Secretary of Transportation to provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad. The Secretary's authority has been delegated to the Administrator of the Federal Railroad Administration, an agency of the Department of Transportation.

§ 260.3 Definitions.

As used in this part—

(a) *Act* means the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 *et seq.*

(b) *Administrator* means the Federal Railroad Administrator, or his or her representative.

(c) *Applicant* means any State or local government, government sponsored authority or corporation, railroad, or group of two or more entities, at least one of which is a railroad, participating in a joint venture, that submits an application to the Administrator for a direct loan or the guarantee of an existing obligation under which it is an obligor or for a commitment to guarantee a new obligation.

(d) *Borrower* means an Applicant that has been approved for, and has received, financial assistance under this part.

(e) *Credit risk premium* means that portion of the total subsidy cost to the Government of a direct loan or loan guarantee that is not covered by Federal appropriations and which must be paid by Applicant or its non-Federal infrastructure partner before that direct loan can be disbursed or loan guarantee can be issued.

(f) *Direct loan* means a disbursement of funds by the Government to a non-federal borrower under a contract that requires the repayment of such funds.

(g) *FRA* means the Federal Railroad Administration.

(h) *Financial assistance* means a direct loan, or a guarantee of a new loan issued under this part.

(i) *Holder* means the current owner of an obligation or the entity retained by the owner to service and collect an obligation which is guaranteed under the provisions of this part.

(j) *Including* means including but not limited to.

(k) *Infrastructure partner* means any non-Federal source of the Credit Risk Premium which must be paid to the Administrator in lieu of, or in combination with, an appropriation in connection with financial assistance provided under this part.

(l) *Intermodal* means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which such connection is made.

(m) *Lender* means the non-Federal entity making a loan to an Applicant for which a loan guarantee under this part is sought.

(n) *Loan guarantee* means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal Lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(o) *Obligation* means a bond, note, conditional sale agreement, equipment trust certificate, security agreement, or other obligation.

(p) *Obligor* means the debtor under an obligation, including the original obligor and any successor or assignee of such obligor.

(q) *Project* means the purpose for which financial assistance is requested.

(r) *Railroad* means a rail carrier subject to part A of subtitle IV of title 49, United States Code.

(s) *Subsidy cost of a direct loan* means the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

(1) Loan disbursements;

(2) Repayments of principal; and

(3) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries; including the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

(t) *Subsidy cost of a loan guarantee* means the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

(1) Payments by the Government to cover defaults, delinquencies, interest subsidies, or other payments; and

(2) The payments to the Government including origination and other fees, penalties and recoveries.

§ 260.5 Eligible purposes.

(a) Financial assistance under this part is available solely to:

(1) Acquire, improve, or rehabilitate intermodal or rail freight or passenger equipment or facilities, including track, components of track, bridges, yards, buildings, and shops;

(2) Refinance outstanding debt incurred for purposes described in paragraph (a)(1) of this section; or

(3) Develop or establish new intermodal or railroad facilities.

(b) Financial assistance under this part cannot be used for railroad operating expenses.

§ 260.7 Priority consideration.

When evaluating applications, the Administrator will give priority consideration (but not necessarily in the following order) to projects that:

(a) Enhance public safety;

(b) Enhance the environment;

(c) Promote economic development;

(d) Enable United States companies to be more competitive in international markets;

(e) Are endorsed by the plans prepared under section 135 of title 23, United States Code, by the State or States in which they are located; or

(f) Preserve or enhance rail or intermodal service to small communities or rural areas.

§ 260.9 Loan terms.

The maximum repayment period for direct loans and guaranteed loans under this part is 25 years from the date of execution. The interest rate on direct loans will be equal to the rate on Treasury securities of a similar term. In general, the financial assistance provided will be required to be repaid prior to the end of the useful life of the project it is used to fund.

§ 260.11 Investigation charge.

(a) Applicants for financial assistance under this part may be required to pay an investigation charge of up to one-half of one percent of the principal amount of the direct loan or portion of the loan to be guaranteed.

(b) When an investigation charge is assessed, one-half of the investigation charge shall be paid by Applicant at the time a formal application is submitted to FRA.

(c) Within 60 days after the date of filing of the application, Applicant shall pay to the Administrator the balance of the investigation charge.

§ 260.13 Credit reform.

The Federal Credit Reform Act of 1990, 2 U.S.C. 661, requires Federal agencies to set aside the subsidy cost of new credit assistance provided in the form of direct loans or loan guarantees. The subsidy cost will be the estimated

long term cost to the Government of the loan or loan guarantee. The subsidy cost associated with each direct loan or loan guarantee, which the Administrator must set aside, may be funded by Federal appropriations, direct payment of a Credit Risk Premium by the Applicant or a non-Federal infrastructure partner on behalf of the Applicant, or any combination thereof.

§ 260.15 Credit risk premium.

(a) Where available Federal appropriations are inadequate to cover the subsidy cost, a non-Federal infrastructure partner may pay to the Administrator a Credit Risk Premium adequate to cover that portion of the subsidy cost not covered by Federal appropriations. Where there is no Federal appropriation, the Credit Risk Premium must cover the entire subsidy cost.

(b) The amount of the Credit Risk Premium required for each direct loan or loan guarantee, if any, shall be established by the Administrator. The Credit Risk Premium shall be determined based on the credit risk and anticipated recovery in the event of default, including the recovery of collateral.

(c) The Credit Risk Premium must be paid before the disbursement of a direct or guaranteed loan. Where the borrower draws down the direct or guaranteed loan in several increments, the borrower may pay a portion of the total Credit Risk Premium for each increment equal to the proportion of that increment to the total amount of the direct or guaranteed loan.

(d) Each direct loan and loan guarantee made by the Administrator will be included in one cohort of direct loans or one cohort of loan guarantees, respectively, made during that same fiscal year, or longer period, as may be determined by the Administrator. When all obligations in a cohort have been satisfied or liquidated, the amount of Credit Risk Premiums, paid by applicants or infrastructure partners, remaining in the cohort, after deductions made to mitigate losses from any loan or loan guarantee in the cohort, together with interest accrued thereon, will be repaid on a pro rata basis to each original payor of a Credit Risk Premium for any obligation which was fully satisfied. If the Administrator's estimate of the default risk cost of each loan is accurate, the aggregate of Credit Risk Premiums associated with each cohort of loans will fully offset all losses in the cohort and none will remain to be returned to the payees.

Subpart B—FRA Policies And Procedures For Evaluating Applications For Financial Assistance

§ 260.17 Credit risk premium analysis.

(a) When Federal appropriations are not available to cover the total subsidy cost, the Administrator will determine the Credit Risk Premium necessary for each direct loan or loan guarantee by estimating the credit risk and the potential recovery in the event of a default of each project evaluating the factors described in paragraphs (b) and (c) of this section.

(b) Establishing the credit risk.

(1) Where an Applicant has received a recent credit rating from one or more nationally recognized rating agencies, that rating will be used to estimate the credit risk.

(2) Where an Applicant has not received a credit rating from a credit rating agency, the Administrator will determine the credit risk based on an evaluation of the following factors:

(i) Business risk, based on Applicant's:

(A) Industry outlook;

(B) Market position;

(C) Management and financial policies;

(D) Capital expenditures; and

(E) Operating efficiency.

(ii) Financial risk, based on Applicant?s past and projected:

(A) Profitability;

(B) Liquidity;

(C) Financial strength;

(D) Size; and

(E) Level of capital expenditures; and

(iii) Project risk, based on the proposed project's:

(A) Potential for improving revenues, profitability and cash flow from operations; and

(B) Reliance on third parties for success.

(c) The potential recovery in the event of a default will be based on:

(1) The nature of the Applicant's assets; and

(2) Liquidation value of the collateral offered, including the terms and conditions of the lien securing the collateral.

§ 260.19 Preapplication meeting.

Potential Applicants may request a meeting with the FRA Associate Administrator for Railroad Development to discuss the nature of the project being considered. Applicants must be prepared to provide at least the following information:

(a) Applicant's name, address, and contact person;

(b) Name of the proposed infrastructure partner(s), if any, including the identification of potential amounts of funding from each;

(c) Amount of the direct loan or loan guarantee request, and a description of the technical aspects of the project including a map of the existing railroad lines with the location of the project indicated;

(d) Brief description and estimate of the economic impact, including future demand for service, improvements that can be achieved, the project's relation to the priorities listed in § 260.7, along with any feasibility, market or other studies that may have been done as attachments;

(e) Amount of Applicant's equity and a description of collateral offered, with estimated values, including the basis of such, to be offered as security for the loan;

(f) If applicable, the names and addresses of the Applicant's parent, affiliates, and subsidiary corporations, if any, and a description of the ownership relationship and the level of guarantee, if any, to be offered;

(g) For existing companies, a current balance sheet and an income statement not more than 90 days old and financial statements for the borrower and any parent, affiliates, and subsidiaries for at least the four most recent years; and

(h) Information relevant to the potential environmental impacts of the project in the context of applicable Federal law.

Subpart C—Applications for Financial Assistance

§ 260.21 Eligibility.

The Administrator may make a direct loan to an Applicant, or guarantee the payment of the principal balance and any interest of an obligation of an Applicant prior to, on, or after the date of execution or the date of disbursement of such obligation, if the proceeds of such direct loan or obligation shall be, or have been, used by the Applicant for the eligible purposes listed in § 260.5(a)(1), (2), and (3).

§ 260.23 Form and content of application generally.

Each application shall include, in the order indicated and identified by applicable paragraph numbers and letters corresponding to those used in this section, the following information:

(a) Full and correct name and principal business address of the Applicant;

(b) Date of Applicant's incorporation, or organization if not a corporation, and name of the government, State or territory under the laws of which it was incorporated or organized. If Applicant

is a partnership, association, or other form of organization other than a corporation, a full description of the organization should be furnished;

(c) Name, title, and address of the person to whom correspondence regarding the application should be addressed.

(d) A statement of whether the project involves another railroad or other participant, through joint execution, coordination, or otherwise; if so, description of the relative participation of Applicant and such other railroad or participant, including financial statements (if applicable) and financing arrangements of each participant, portion of the work to be performed by each participant, and anticipated level of usage of the equipment or facility of each participant when the work is completed, along with a statement by a responsible officer or official of the other railroad or participant that the information provided reflects their agreement on these matters;

(e) A detailed description of the amount and timing of the financial assistance that is being requested and its purpose or purposes, including:

(1) Detailed description of the project and its purpose or purposes;

(2) A description of all facilities or equipment and the physical condition of such facilities or equipment included in or directly affected by the proposed project;

(3) Each part or sub-part into which the project may reasonably be divided and the priority and schedule of expenditure for each part or sub-part; and

(4) Proposed dates of commencement and completion of the project and estimated timing of the expenditure of the proceeds of the obligation;

(5) A map of Applicant's existing railroad with location of project indicated, if appropriate.

(f) A listing and description of the collateral to be offered the Administrator in connection with any financial assistance provided; Applicant's opinion of the value of this security and the basis for such opinion; in the case of leased equipment to be rehabilitated or improved with the proceeds of the obligation proposed to be guaranteed, Applicant shall state, in addition to the above, whether the lease provides for, or the lessor will permit, encumbrance of the leasehold or subordination of the lessor's interest in the equipment to the Administrator;

(g) A statement, in summary form, showing financial obligations to or claims against the United States or obligations for which the United States is guarantor, if any, by Applicant or any affiliated corporate entity of the Applicant or the Applicant's parent as of the date of the application, including:

(1) Status of any claims under litigation; and

(2) Any other debits or credits existing between the Applicant and the United States, showing the department or agency involved in such loans, claims and other debts;

(h) To the extent such information is available, an analysis that includes:

(1) a statement, together with supporting evidence including copies of all market analyses and studies that have been performed to determine present and future demand for rail services or facilities, that the financing is justified by present and future probable demand for rail services or facilities, will meet existing needs for such services or facilities, and will provide shippers or passengers with improved service;

(2) Description of the impact of the project upon the projected freight or passenger traffic to be originated, terminated, or carried by the Applicant for at least the five years immediately following completion of the project;

(3) Explanation of the manner in which the project will increase the economical and efficient utilization of equipment and facilities; and

(4) Description of cost savings or any other benefit which would accrue to the Applicant from the project;

(i) A statement as to how the project will contribute to, or enhance, the safe operation of the railroad, considering such factors as the occupational safety and health of the employees and the improvement of the physical and other conditions that have caused or may cause serious injury or loss of life to the public or significant property damage;

(j) A statement of the Applicant's maintenance program for its entire rail system and planned maintenance program for the equipment or facilities financed by the proceeds of the financial assistance;

(k) A certified statement in the form contained in § 260.31(d) that Applicant will pay to the Administrator, in accordance with § 260.11, the investigation charge with respect to the application.

(l) Information relevant to the potential environmental impacts of the project in the context of applicable Federal laws;

(m) Any additional information that the Applicant deems appropriate to convey a full and complete understanding of the project, the project's relations to the priorities listed in § 260.7, and its impact, or to assist the Administrator in making the statutorily prescribed findings; and

(n) Any other information which the Administrator may deem necessary concerning an application filed under this part.

(o) Railroad applicants must also submit a copy of application for financing for the project in the private sector, including terms requested, from at least one commercial lender, and its response refusing to provide such financing.

§ 260.25 Additional information for Applicants not having a credit rating.

Each application submitted by Applicants not having a recent credit rating from one or more nationally recognized rating agencies shall include, in the order indicated and identified by applicable numbers and letters corresponding to those used in this section, the following information:

(a) A narrative statement detailing management's business plan to enhance Applicant's ability to provide rail services including a discussion of the following:

(1) Applicant's current and prospective traffic base, including by commodity and geographic region, major markets served, major interchange points, and market development plans;

(2) Applicant's current operating patterns, and plans, if any, to enhance its ability to serve its current and prospective traffic base;

(3) System-wide plans to maintain equipment and rights-of-way at current or improved levels; and

(4) Specific plans for rationalization of marginal or uneconomic services;

(b) Detailed financial information, including:

(1) Financial statements prepared by a Certified Public Accountant (audited, if available), for the four calendar years immediately preceding the date of filing of the application, including:

(i) A copy of Applicant's most recent year-end general balance sheet and a copy of Applicant's most recent unaudited general balance sheet; and

(ii) Applicant's most recent annual income statement and a spread sheet showing unaudited monthly and year-to-date income statement data up to the date the application is filed;

(2) Projected financial statements, including spread sheets showing for each of the four years subsequent to the year in which the application is filed, both before and after giving effect to the proceeds of the assistance requested in the application:

(i) Forecasted annual income statement;

(ii) Forecasted year-end balance sheets. These spread sheets shall be

accompanied by a statement setting forth the bases for such forecasts; and

(iii) A spread sheet showing changes in financial position for the year in which the application is filed, including the period ending on the date of the application based upon actual data and the period from the date of the application to the end of the year, based upon estimated and forecasted data;

(c) Capital spending plans for the next five years;

(d) Cash flow projections;

(e) Contingency plans for termination of the project before completion, if necessary; and

(f) A narrative description of Applicant's management team, including:

(1) Rail experience of top management;

(2) Management's plans for achieving growth and its long-term capital spending plan; and

(3) A narrative description of Applicant's workforce and the historical rate of employee turnover.

§ 260.27 Additional information for loan guarantees.

Applications for a loan guarantee shall also include in the order indicated and identified by applicable numbers and letters corresponding to those used in this section, the following information:

(a) With respect to each existing obligation to be refinanced or proposed obligation:

(1) A certified copy of proposed or executed obligation agreements;

(2) A detailed description of the obligation, and a description of the series or issue of which the obligation is, or will be, a part, including:

(i) Effective date, or anticipated effective date;

(ii) Where a guarantee is sought for an outstanding obligation being refinanced, actual effective rate of interest; or where the obligation is new, the terms of the proposed obligation including the proposed effective rate of interest; and

(iii) All related documents, whether executed or proposed;

(3) For an existing obligation, the Applicant's payment history on that obligation; and

(b) With respect to each existing Lender, Holder, or prospective Lender, a statement as to:

(1) Full and correct name and principal business address;

(2) Reference to applicable provisions of law and the charter or other governing instruments conferring authority to do business on the Lender, Holder, or prospective Lender;

(3) Brief statement of the circumstances and negotiations leading to the agreement by the Lender, Holder, or prospective Lender to make the loan;

(4) Brief statement of the nature and extent of any affiliation or business relationship between the Lender, Holder, or prospective Lender and the Applicant or any of Applicant's directors, partners, or principal executive officers; and.

(5) Full and complete statement of all sums to be provided by the Lender or Holder, or to be provided by the prospective Lender in connection with the proposed obligation including:

(i) Name and address of each person to whom the payment has been made or will be made and nature of any affiliation, association, or prior business relationship between any person named in this paragraph and the Lender, Holder or prospective Lender or any of its directors, partners, or officers; and

(ii) Amount of the cash payment, or the nature and value of other consideration.

§ 260.29 Third party consultants.

Applicants may utilize independent third-party consultants to prepare a financial evaluation of the proposed project and the applicant, if approved by FRA. Providing such an evaluation would greatly assist FRA in the evaluation of the application and would significantly reduce the time necessary for FRA to process the application. We encourage the use of third party consultants.

§ 260.31 Execution and filing of the application.

(a) The original application shall bear the date of execution, be signed in ink by or on behalf of the Applicant, and shall bear the corporate seal in the case of an Applicant which is a corporation. Execution shall be by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, or if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Persons signing the application on behalf of the Applicant shall also sign a certificate in form as follows:

(Name of official) certifies that he or she is the (Title of official) of the (Name of Applicant); that he or she is authorized on the part of the Applicant to sign and file with the Administrator this application and exhibits attached thereto; that the consent of all parties whose consent is required, by law or by binding commitment of the Applicant, in order to make this application has been given; that he or she has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof relating to the aforesaid (Name of Applicant); that he or she has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his or her knowledge, information, and belief; and that Applicant will pay the balance of the investigation charge in accordance with § 260.11.

(Signature of official)
(Date)

(b) There shall be made a part of the original application the following certificate by the Chief Financial Officer or equivalent officer of the Applicant:

(Name of officer) certifies that he or she is (Title of officer) of (Name of Applicant); that he or she has supervision over the books of accounts and other financial records of the affected Applicant and has control over the manner in which they are kept; that such accounts are maintained in good faith in accordance with the effective accounting practices; that such accounts are adequate to assure that proceeds from the financing being requested will be used solely and specifically for the purposes authorized; that he or she has examined the financial statements and supporting schedules included in this application and to the best of his or her knowledge and belief those statements accurately reflect the accounts as stated in the books of account; and that, other than the matters set forth in the exceptions attached to such statements, those financial statements and supporting schedules represent a true and complete statement of the financial position of the Applicant and that there are no undisclosed assets, liabilities, commitments to purchase property or securities, other commitments, litigation in the courts, contingent rental agreements, or other contingent transactions which might materially affect the financial position of the Applicant.

(Signature of official)
(Date)

(c) The Applicant shall pay the investigation charge in accordance with § 260.11.

(d) The application shall be accompanied by a transmittal letter in form as follows:

Federal Railroad Administrator, c/o Associate Administrator for Railroad Development, Federal Railroad Administration, Washington, D.C. 20590

Re: Application for financial assistance under the Railroad Rehabilitation and Improvement Financing Program.

Dear Sir or Madam: Being duly authorized by (jointly and severally/if more than one) (the "Applicant") to convey the understandings hereinafter set forth, I respectfully submit this application and remit its investigation fee in the amount equal to one-half the total investigation fee established by the Administrator. By this filing, Applicant requests the Administrator to investigate the application and make the necessary findings upon which Applicant's eligibility for a direct loan or loan guarantee may be determined. Applicant understands

that neither the acceptance of this filing, the deposit of the investigation charge, nor the commencement of an investigation acknowledges the sufficiency of the application's form, content or merit. Furthermore, Applicant understands that the Administrator will incur numerous expenses by this filing with respect to the investigation of the application, the appraisal of security being offered, and the making of the necessary determinations and findings, and promises to pay, within 60 days, the remainder of the investigation fee required by the Administrator. Applicant understands that the Administrator will establish the amount of Credit Risk Premium due from Applicant, if any, as provided in § 260.15. Applicant agrees to pay such Credit Risk Premium prior to the disbursement of direct or guaranteed loan, as appropriate. Such Credit Risk Premium may be refunded as provided in § 260.15.

Respectfully submitted.

Applicant(s)
Seal(s) by Its(Their).

(e) The original application and supporting papers, and two copies thereof for the use of the Administrator, shall be filed with the Associate Administrator for Railroad Development of the Federal Railroad Administration, 1120 Vermont Ave., NW., MailStop 20, Washington, DC 20590. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed.

§ 260.33 Information requests.

If an Applicant desires that any information submitted in its application or any supplement thereto not be released by the Administrator upon request from a member of the public, the Applicant must so state and must set forth any reasons why such information should not be released, including particulars as to any competitive harm which would probably result from release of such information. The Administrator will keep such information confidential to the extent permitted by law.

§ 260.35 Environmental assessment.

(a) The provision of financial assistance by the Administrator under this Part is subject to a variety of environmental and historic preservation statutes and implementing regulations including the National Environmental Policy Act ("NEPA") (42 U.S.C. 4332 *et seq.*), Section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)), the National Historic Preservation Act (16 U.S.C. 470(f)), the Coastal Zone Management Act (16 U.S.C. 1451), and the Endangered Species Act (16 U.S.C. 1531). Appropriate environmental/historic preservation documentation must be completed and approved by the Administrator prior to a decision by the Administrator on the applicant's financial assistance request. FRA's "Procedures for Considering Environmental Impacts" ("FRA's Environmental Procedures") (65 FR 28545 (May 26, 1999)) or any replacement environmental review procedures that the FRA may later issue and the NEPA regulation of the Council on Environmental Quality ("CEQ Regulation") (40 CFR Part 1500) will govern the FRA's compliance with applicable environmental/historic preservation review requirements.

(b) The Administrator, in cooperation with the applicant, has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant will be determined by the Administrator in accordance with the CEQ Regulation and Environmental Procedures.

(c) Depending on the type, size and potential environmental impact of the project for which the applicant is seeking financial assistance, FRA will need to determine whether the project is categorically excluded from detailed environmental review under FRA's Environmental Procedures and, if not, to prepare or have prepared an Environmental Assessment leading to an Environmental Impact Statement (EIS) or a Finding of No Significant Impact. At the discretion of the Administrator, Applicants may be required to prepare and submit an environmental assessment of the proposed project or to submit adequate documentation to support a finding that the project is categorically excluded from detailed environmental review. If the applicant is a public agency that has statewide jurisdiction or is a local unit of government acting through a statewide agency, and meets the requirements of section 102(2)(D) of NEPA, the applicant may be requested to prepare the EIS and other environmental documents under the Administrator's guidance.

(d) Applicants are strongly urged to consult with the Associate Administrator for Railroad Development at the earliest possible stage in project development in order to assure that the environmental/historic preservation review process can be completed in a timely manner.

(e) Applicants may not initiate any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives in advance of the completion of the environmental review process. This does not preclude development by applicants of plans or designs or performance of other work necessary to support the application for financial assistance.

Subpart D—Standards for Maintenance of Facilities Involved in the Project

§ 260.37 Applicability.

This subpart prescribes standards governing the maintenance of facilities that are being, or have been, acquired, rehabilitated, improved, or constructed with the proceeds of a direct loan or a guaranteed loan issued under this part for the period during which any portion of the principal or interest of such obligation remains unpaid.

§ 260.39 Maintenance standards.

(a) When the proceeds of a direct loan or an obligation guaranteed by the Administrator under this part are, or were, used to acquire, rehabilitate, improve or construct track, roadbed, and related structures, Borrower shall, as long as any portion of the principal or interest of such obligation remains unpaid, maintain such facilities in at least the highest track class, as defined by FRA Track Safety Standards in part 213 of this chapter, specified in the Application at which the rehabilitated, improved, acquired, or constructed track is to be operated upon completion of the project.

(b) When the proceeds of a direct loan or an obligation guaranteed by the Administrator under this part are, or were, used for equipment or facilities, the Borrower shall, during the period in which any portion of the principal or interest in such obligation remains unpaid, maintain such equipment or facilities in a manner consistent with sound engineering and maintenance practices and in a condition that will permit the level of use that existed upon completion of the acquisition, rehabilitation, improvement or construction of such equipment or facilities.

§ 260.41 Inspection and reporting.

(a) Equipment or facilities subject to the provisions of this subpart may be inspected at such times as the Administrator deems necessary to assure compliance with the standards set forth in § 260.39. Each Borrower shall permit representatives of the FRA to enter upon its property to inspect and examine such facilities at reasonable times and in a reasonable manner. Such representatives shall be permitted to use such testing devices as the Administrator deems necessary to insure that the maintenance standards imposed by this subpart are being followed.

(b) Each Borrower shall submit annually to the Administrator financial

records and other documents detailing the maintenance and inspections performed which demonstrate that the Borrower has complied with the standards in § 260.39.

§ 260.43 Impact on other laws.

Standards issued under this subpart shall not be construed to relieve the Borrower of any obligation to comply with any other Federal, State, or local law or regulation.

Subpart E—Procedures To Be Followed in the Event of Default

§ 260.45 Events of default for guaranteed loans.

(a) If the Borrower is more than 30 days past due on a payment or is in violation of any covenant or condition of the loan documents and such violation constitutes a default under the provisions of the loan documents, Lender must notify the Administrator in writing and must continue to submit this information to the Administrator each month until such time as the loan is no longer in default; and the Administrator will pay the Lender of the obligation, or the Lenders's agent, an amount equal to the past due interest on the guaranteed portion of the defaulted loan. This payment will in no way reduce the Borrower's obligation to the Lender to make all payments of principal and interest in accordance with the note. If the loan is brought current, the Lender will repay to the Agency any interest payments made by the Agency, plus accrued interest at the note rate.

(b) If the default has continued for more than 90 days, the Administrator will pay to the Lender, or the Lender's agent, 90 percent of the unpaid guaranteed principal. If, subsequent to this payment being made, the default is cured and liquidation is no longer appropriate, the Lender will repay such funds to the Administrator, plus interest at the note rate.

(c) After the default has continued for more than 90 days, the Lender shall expeditiously submit to the Administrator, in writing, its proposed detailed plan to resolve the default by liquidating the collateral or by any other means. If the resolution will require the liquidation of the collateral, then the Lender's plan shall include:

(1) Proof adequate to establish that the Lender is legally in possession of the obligation, or is the agent for a Holder who is legally in possession of the obligation, and a statement of the current loan balance and accrued interest to date and the method of computing the interest;

(2) A full and complete list of all collateral, including any personal and corporate guarantees;

(3) The recommended liquidation methods for making the maximum collection possible and the justification for such methods, including recommended action for acquiring and disposing of all collateral and collecting from any guarantors;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the Borrower's latest available financial statements;

(6) Copies of any guarantor's latest available financial statements;

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;

(8) A schedule to periodically report to the FRA on the progress of liquidation;

(9) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined;

(10) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(11) Legal opinions, as appropriate;

(12) The Lender will obtain an independent appraisal on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan that maximizes recovery, the appraisal shall consider the presence of hazardous substances, petroleum products, or other environmental hazards, which may adversely impact the market value of the collateral; and

(13) The anticipated expenses associated with the liquidation will be considered a cost of liquidation.

(d) The Administrator will inform the Lender in writing whether the Administrator concurs in the Lender's liquidation plan. Should the Administrator and the Lender not agree on the liquidation plan, negotiations will take place between the Administrator and the Lender to resolve the disagreement. When the liquidation plan is approved by the Administrator, the Lender will proceed expeditiously with liquidation. The liquidation plan may be modified when conditions warrant. All modifications must be approved in writing by the Administrator prior to implementation.

(e) Lender will account for funds during the period of liquidation and will provide the Administrator with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(f) Within 30 days after final liquidation of all collateral, the Lender will prepare and submit to the Administrator a final report in which the Lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Administrator may audit all applicable documentation to confirm the final loss. The Lender will make its records available and otherwise assist the Administrator in making any investigation.

(g) The Administrator shall be subrogated to all the rights of the Lender, or if Lender is agent for a Holder then to all of the rights of the Holder, with respect to the Borrower to the extent of the Administrator's payment to the Lender under this section.

(h) When the Administrator finds the final report to be proper in all respects:

(1) All amounts recovered in liquidation shall be paid to the Administrator; and

(2) The remaining obligation of the Administrator to the Lender under the guarantee, if any, will be paid directly to Lender by the Administrator.

(i) The Administrator shall not be required to make any payment under paragraphs (a) and (b) of this section if the Administrator finds, before the expiration of the periods described in such subsections, that the default has been remedied.

(j) The Administrator shall have the right to charge Borrower interest, penalties and administrative costs, including all of the United States' legally assessed or reasonably incurred expenses of its counsel and court costs in connection with any proceeding brought or threatened to enforce payment or performance under applicable loan documents, in accordance with OMB Circular A–129 (www.whitehouse.gov/omb.), as it may be revised from time to time.

§ 260.47 Events of default for direct loans.

(a) Upon the Borrower's failure to make a scheduled payment, or upon the Borrower's violation of any covenant or condition of the loan documents which constitutes a default under the provisions of the loan documents, the Administrator, at the Administrator's discretion may:

(1) Exercise any and all remedies available under the provisions of the loan agreement and other loan

documents, including any guarantees, or inherent in law or equity;

(2) Terminate further borrowing of funds;

(3) Take possession of assets pledged as collateral; and

(4) Liquidate pledged collateral.

(b) The Administrator shall have the right to charge Borrower interest, penalties and administrative costs, including all of the United States' legally assessed or reasonably incurred expenses of its counsel and court costs in connection with any proceeding brought or threatened to enforce payment or performance under applicable loan documents, in accordance with OMB Circular A–129, as it may be revised from time to time.

§ 260.49 Avoiding defaults.

Borrowers are encouraged to contact the Administrator prior to the occurrence of an event of default to explore possible avenues for avoiding such an occurrence.

Subpart F—Loan Guarantees—Lenders

§ 260.51 Conditions of guarantee.

(a) The percentage of the obligation for which Applicant seeks a guarantee is a matter of negotiation between the Lender and the Applicant, subject to the Administrator's approval. The maximum percentage of the total obligation that the Administrator will guarantee is 80 percent. The amount of guarantee allowed will depend on the total credit quality of the transaction and the level of risk believed to be assumed by the Administrator.

(b) A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a Lender or Holder has actual knowledge at the time it becomes such Lender or Holder or which a Lender or Holder participates in or condones. In addition, the guarantee will be unenforceable by the Lender or the Holder to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Administrator acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FRA in its guarantee.

(c) The Administrator may guarantee an Applicant's obligation to any Lender provided such Lender can establish to the satisfaction of the Administrator that it has the legal authority and sufficient expertise and financial strength to operate a successful lending program. Loan guarantees will only be approved for Lenders with adequate experience and expertise to make, secure, service, and collect the loans.

(d) The Lender may sell all of the guaranteed portion of the loan on the secondary market, provided the loan is not in default, or retain the entire loan.

(e) When a guaranteed portion of a loan is sold to a Holder, the Holder shall succeed to all rights of the Lender under the loan guarantee to the extent of the portion purchased. The Lender will remain bound to all obligations under the loan guarantee and the provisions of this part. In the event of material fraud, negligence or misrepresentation by the Lender or the Lender's participation in or condoning of such material fraud, negligence or misrepresentation, the Lender will be liable for payments made by the Agency to any Holder.

§ 260.53 Lenders' functions and responsibilities.

Lenders have the primary responsibility for the successful delivery of the program consistent with the policies and procedures outlined in this part. All Lenders obtaining or requesting a loan guarantee from the Administrator are responsible for:

(a) *Loan processing.* Lender shall be responsible for all aspects of loan processing, including:

(1) Processing applications for the loan to be guaranteed;

(2) Developing and maintaining adequately documented loan files;

(3) Recommending only loan proposals that are eligible and financially feasible;

(4) Obtaining valid evidence of debt and collateral in accordance with sound lending practices;

(5) Supervising construction, where appropriate;

(6) Distributing loan funds;

(7) Servicing guaranteed loans in a prudent manner, including liquidation if necessary; and

(8) Obtaining the Administrator's approval or concurrence as required in the loan guarantee documentation;

(b) *Credit evaluation.* Lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The Lender must have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures;

(c) *Environmental responsibilities.* Lender has a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lender must alert the Administrator to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lender must assist borrowers as necessary to comply with the environmental requirements outlined in this part. Additionally, Lender will assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems;

(d) *Loan closing.* The Lender will conduct or arrange for loan closings; and

(e) *Fees and Charges.* The Lender may establish charges and fees for the loan provided they are similar to those normally charged other Applicants for the same type of loan in the ordinary course of business.

§ 260.55 Lender's loan servicing.

(a) The lender is responsible for servicing the entire loan and for taking all servicing actions that are prudent. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the loan documents, obtaining and analyzing financial statements, verification of tax payments, and insurance premiums, and maintaining liens on collateral.

(b) The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually.

(c) At the Administrator's request, the Lender will periodically meet with the Administrator to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan documents are being enforced.

(d) The Lender must obtain and forward to the Administrator the Borrower's annual financial statements within 120 days after the end of the Borrower's fiscal year and the due date of other reports as required by the loan documents. The Lender must analyze the financial statements and provide the Agency with a written summary of the Lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the Borrower.

(e) Neither the Lender nor the Holder shall alter, nor approve any

amendments of, any loan instrument without the prior written approval of the Administrator.

Issued in Washington, DC on June 27.

Jolene M. Molitoris,

Administrator.

[FR Doc. 00–16778 Filed 7–5–00; 8:45 am]

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Part V

Department of Education

34 CFR Part 99

Family Educational Rights and Privacy; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 99

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing the Family Educational Rights and Privacy Act (FERPA). The amendments are needed to implement sections 951 and 952 of the Higher Education Amendments of 1998 (HEA). These amendments permit postsecondary institutions to disclose certain information to the public and to parents of students.

DATES: These regulations are effective August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–4605. Telephone (202) 260–3887. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On June 1, 1999, the U.S. Department of Education (the Department or we) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 29532). In the preamble to the NPRM, we invited interested persons to submit comments and recommendations, particularly on the proposed regulatory definitions of "crime of violence" and "final results" under § 99.39 and the provisions concerning nonconsensual disclosure of information to parents and guardians under § 99.31(a)(14).

We also proposed the following major changes in the NPRM to incorporate statutory provisions added by the HEA:

- Permit disclosure of education records to authorized representatives of the U.S. Attorney General in specified circumstances.
- Permit non-consensual disclosure of the final results of a disciplinary proceeding against a postsecondary student in specified circumstances.
- Permit non-consensual disclosure to parents and legal guardians of students under the age of 21 of information regarding a student's violation of laws or policies governing the use or possession of alcohol or a controlled substance.

These final regulations have significant changes from those proposed in the NPRM. We have provided more detail regarding the crime of violence provision. Specifically, we have included a list of crimes of violence and non-forcible sex offenses. We have also clarified when results become "final" and what categories of information may be disclosed under this provision. These changes are discussed in more detail in appendix B.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 42 parties submitted comments on the proposed regulations. In appendix B, we analyze and summarize these comments and describe changes to the regulations. We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical changes and other suggestions that the law does not authorize us to make.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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You may also find these regulations, as well as additional information about FERPA, on the following Web site:

http://www.ed.gov/offices/OM/fpco/

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http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Number does not apply.)

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Information, Parents, Privacy, Records, Reporting and record-keeping requirements, Students.

Dated: June 28, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble and appendix B, the Secretary amends part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.1 is amended by revising paragraph (a)(2) to read as follows:

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) * * *

(2) The educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.

* * * * *

3. Section 99.3 is amended by adding the definition of "Dates of attendance", revising the definition of "Directory information", and by revising paragraph (b)(1) of the definition of "Education records" to read as follows:

§ 99.3 What definitions apply to these regulations?

* * * * *

Dates of attendance. (a) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter.

(b) The term does not include specific daily records of a student's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the

student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (*e.g.*, undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

* * * * *

Education records.

* * * * *

(b) * * *

(1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

* * * * *

4. Section 99.5 is amended by revising paragraph (c) to read as follows:

§ 99.5 What are the rights of students?

* * * * *

(c) An individual who is or has been a student at an educational institution and who applies for admission at another component of that institution does not have rights under this part with respect to records maintained by that other component, including records maintained in connection with the student's application for admission, unless the student is accepted and attends that other component of the institution.

* * * * *

5. Section 99.31 is amended by revising paragraph (a)(3), revising paragraph (a)(8), revising paragraph (a)(9)(iii), revising paragraph (a)(13), adding new paragraphs (a)(14) and (a)(15), and revising paragraph (b) and the authority citation to read as follows:

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) * * *

(3) The disclosure is, subject to the requirements of § 99.35, to authorized representatives of—

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

* * * * *

(8) The disclosure is to parents, as defined in § 99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

* * * * *

(9) * * *

(iii)(A) If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

(B) If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

* * * * *

(13) The disclosure, subject to the requirements in § 99.39, is to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. The disclosure may only include the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense. The institution may disclose the final results of the disciplinary proceeding, regardless of whether the institution concluded a violation was committed.

(14)(i) The disclosure, subject to the requirements in § 99.39, is in connection with a disciplinary proceeding at an institution of postsecondary education. The institution must not disclose the final results of the disciplinary proceeding unless it determines that—

(A) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(B) With respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.

(ii) The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student.

(iii) This section applies only to disciplinary proceedings in which the final results were reached on or after October 7, 1998.

(15)(i) The disclosure is to a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if—

(A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and

(B) The student is under the age of 21 at the time of the disclosure to the parent.

(ii) Paragraph (a)(15) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from disclosing information.

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B), (b)(6), (h), and (i))

6. Section 99.33 is amended by revising paragraph (c) to read as follows:

§ 99.33 What limitations apply to the redisclosure of information?

* * * * *

(c) Paragraph (a) of this section does not apply to disclosures made to parents of dependent students under § 99.31(a)(8), to disclosures made pursuant to court orders, lawfully issued subpoenas, or litigation under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), to disclosures made to a parent or student under § 99.31(a)(12), to disclosures made in connection with a disciplinary proceeding under § 99.31(a)(14), or to disclosures made to parents under § 99.31(a)(15).

* * * * *

7. A new section 99.39 is added to read as follows:

§ 99.39 What definitions apply to the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses?

As used in this part:

Alleged perpetrator of a crime of violence is a student who is alleged to have committed acts that would, if proven, constitute any of the following offenses or attempts to commit the following offenses that are defined in appendix A to this part:

Arson

Assault offenses

Burglary

Criminal homicide—manslaughter by negligence

Criminal homicide—murder and nonnegligent manslaughter

Destruction/damage/vandalism of property

Kidnapping/abduction

Robbery

Forcible sex offenses.

Alleged perpetrator of a nonforcible sex offense means a student who is alleged to have committed acts that, if proven, would constitute statutory rape or incest. These offenses are defined in appendix A to this part.

Final results means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. The disclosure of final results must include only the name of the student, the violation committed, and any sanction imposed by the institution against the student.

Sanction imposed means a description of the disciplinary action taken by the institution, the date of its imposition, and its duration.

Violation committed means the institutional rules or code sections that were violated and any essential findings supporting the institution's conclusion that the violation was committed.

(Authority: 20 U.S.C. 1232g(b)(6))

8. Section 99.63 is revised to read as follows:

§ 99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202–4605.

(Authority: 20 U.S.C. 1232g(g))

9. Section 99.64 is amended by revising paragraph (d) to read as follows:

§ 99.64 What is the complaint procedure?

* * * * *

(d) The Office may extend the time limit in this section for good cause shown.

10. Appendix A is added to part 99 to read as follows:

Appendix A To Part 99—Crimes of Violence Definitions

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Assault Offenses

An unlawful attack by one person upon another.

Note: By definition there can be no "attempted" assaults, only "completed" assaults.

(a) *Aggravated Assault.* An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious injury if the crime were successfully completed.)

(b) *Simple Assault.* An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

(c) *Intimidation.* To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words or other conduct, or both, but without displaying a weapon or subjecting the victim to actual physical attack.

Note: This offense includes stalking.

Burglary

The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

Destruction/Damage/Vandalism of Property

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

Kidnapping/Abduction

The unlawful seizure, transportation, or detention of a person, or any combination of these actions, against his or her will, or of a minor without the consent of his or her custodial parent(s) or legal guardian.

Note: Kidnapping/Abduction includes hostage taking.

Robbery

The taking of, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of a person or persons by force or threat of force or violence or by putting the victim in fear.

Note: Carjackings are robbery offenses where a motor vehicle is taken through force or threat of force.

Sex Offenses, Forcible

Any sexual act directed against another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent.

(a) *Forcible Rape* (Except "Statutory Rape"). The carnal knowledge of a person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity (or because of his or her youth).

(b) *Forcible Sodomy.* Oral or anal sexual intercourse with another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

(c) *Sexual Assault With An Object.* To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Note: An "object" or "instrument" is anything used by the offender other than the offender's genitalia. Examples are a finger, bottle, handgun, stick, etc.

(d) *Forcible Fondling.* The touching of the private body parts of another person for the purpose of sexual gratification, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Note: Forcible Fondling includes "Indecent Liberties" and "Child Molesting."

Nonforcible Sex Offenses (Except "Prostitution Offenses")

Unlawful, nonforcible sexual intercourse.

(a) *Incest.* Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(b) *Statutory Rape.* Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(Authority: 20 U.S.C. 1232g(b)(6) and 18 U.S.C. 16)

Appendix B

Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Applicability of FERPA to Educational Agencies and Institutions (§ 99.1)

Comments: One commenter suggested that examples of an "educational agency and institution" should be provided in the regulations to resolve any confusion caused by the definition. Another commenter asked if the definition applies to State boards of control and governing boards of multi-campus college and university systems.

Discussion: FERPA applies to educational agencies and institutions to which funds have been made available under any program administered by the Secretary. The term "educational agency or institution" is not defined in the statute. Our revision clarifies that FERPA applies only to those agencies that direct or control the public elementary or secondary, or postsecondary educational institutions. These agencies include local schools districts or local school boards. We have deleted the phrase "and performs service functions for" because it is confusing, and have rewritten the definition to make it clearer.

For example, we would not consider a "State educational agency" (SEA) to be an "educational agency" under FERPA unless an SEA is authorized to direct and control public elementary, secondary or postsecondary educational institutions. Likewise, State boards of control and governing boards of multi-campus college and university systems may be educational agencies under FERPA if they are authorized to direct and control the institutions within their jurisdiction and if they receive Departmental funding. This authority to direct and control institutions varies according to State law.

Changes: We have revised § 99.1(a)(2) to apply to an educational agency that is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.

Definitions (§ 99.3)

Dates of Attendance

Comments: Several commenters supported our more detailed explanation of the meaning of "dates of attendance."

Discussion: We believe that the clarification of the term "dates of attendance" will provide more detailed guidance to educational agencies and institutions because there has been some confusion over the term.

Changes: Although no substantive changes were made to the term "dates of attendance," we have created a separate paragraph for the definition.

Directory Information

Comments: Four commenters suggested that student e-mail addresses be added to the list of examples of records that may be disclosed as "directory information." One of the commenters noted that e-mail is the preferred method of communication at his institution, and that e-mail is now the primary means of communication with respect to many course-related activities. Another commenter also suggested adding class schedules and class rosters to the list. Two commenters, however, expressed concern about the safety of students if these types of information were made public. Both commenters asked that we discuss the opt-out provision because they felt many parents and students are not aware of this provision.

One commenter noted that "photograph" should not be included as "directory information" because some photographs may be taken involuntarily, such as student identification card photos. The commenter contended that institutions and the Department could be liable in an action for invasion of privacy for misappropriation of a person's likeness. The commenters believed that this could occur where an institution used photos in school catalogs.

Discussion: The examples of "directory information" listed in the regulations are not intended to be exhaustive. Rather, the examples illustrate the types of records that would not generally be considered harmful or an invasion of privacy if disclosed. We agree that as methods of communication and record management continue to evolve, it is useful to list additional categories of information that we believe are directory information, such as a student's e-mail address and photograph.

We do not believe that the disclosure of student e-mail addresses will generally be considered harmful or an invasion of privacy. We think that a student's e-mail address is analogous to a student's mailing address, an item already included as directory information.

The Department also has concluded that a student's photograph is a type of identifying information, like a name and address, that would generally not be harmful or an invasion of privacy if disclosed. Unlike social security numbers (SSNs), we do not believe that disclosure of photographs will allow access to other types of sensitive information such as disciplinary files or grades.

For parents or eligible students who do not wish to have institutions disclose photographs or any other category of directory information, FERPA affords them with an additional protection. FERPA requires schools to provide parents and eligible students with an opportunity to opt out of disclosing "directory information."

In response to the comments we received about class rosters and class schedules, we have decided not to include them in the regulations. We will reevaluate our previous advice that defined these items as "directory information" and further consider the concerns raised by commenters about student safety.

In particular, we are concerned that the inclusion of class rosters and class schedules may lead schools to disclose sensitive information. For instance, we believe a school's disclosure of the class schedule of a student enrolled in a special education or remedial class would be harmful or an invasion of privacy. Additionally, many class rosters include students' SSNs or other identification numbers; a disclosure of this information, even if class roster were designated as directory information, would be a violation of FERPA.

Changes: On the basis of comments that we received, we have revised the definition of directory information by adding student e-mail addresses. Additionally, as proposed in the NPRM, we have added as types of directory information enrollment status and photograph.

Sole Possession Records

Comments: Many commenters noted that the proposed definition of "sole possession records" should be clarified. These commenters were particularly concerned about the proposed phrases in the definition such as "typically maintained by the school official unbeknownst to other individuals" and "information taken directly from a student." The commenters contended

that a personal note that is not known to or shared with other staff should be considered a sole possession record, even if the student knows about the note or if the information comes from the student.

One commenter noted that the proposed definition excepted records used to make decisions about the student. The commenter believed that this exception could technically apply to the most minor decision about the student. Another commenter stated that the proposed changes seemed to define "sole possession records" out of existence.

Discussion: We agree that our proposed definition of "sole possession records" requires modification. In the NPRM, we sought to clarify that "sole possession records" do not include evaluations of student conduct or performance. We have decided that some of the requirements in our proposed definition could be confusing.

The main purpose of this exception to the definition of "education records" is to allow school officials to keep personal notes private. For example, a teacher or counselor who observes a student and takes a note to remind himself or herself of the student's behavior has created a sole possession record, so long as he or she does not share the note with anyone else.

Changes: We have decided not to make the revisions we proposed in the NPRM to the definition of "sole possession records" in § 99.3. We have clarified this definition by making minor changes.

Rights of Students (§ 99.5)

Comments: Two commenters asked that the provision address whether a student has access to an admissions file after having been accepted for admission but before enrolling.

Discussion: The amendment clarifies that a student attending an educational institution who applies for admission to a separate component of the institution and is rejected does not have any FERPA rights with respect to records maintained by that separate component of the institution. That student does not have these rights because he or she has not attended that separate component. Similarly, a student who is admitted to a separate component of an institution does not have FERPA rights with respect to the records of that component until he or she enrolls and becomes a student in attendance there. Each institution may determine when a student is in attendance in accordance with its own enrollment procedures.

Changes: We have revised § 99.5 to clarify that a student does not have FERPA rights with respect to records collected and maintained by a separate component of an educational institution, including records concerning the student's application for admission, if the student has not actually attended the other component.

Conditions Under Which Prior Consent Is Not Required To Disclose Information (§ 99.31)

Disclosures to the U.S. Attorney General (§ 99.31(a)(3)(ii))

Comments: A commenter expressed concern that the statutory term "for law enforcement purposes" is confusing and asked for clarification of the term. A commenter asked if "authorized representatives of the Attorney General of the United States" includes only special agents in the Department of Justice or the Federal Bureau of Investigation. This commenter also asked how this provision differs from the exception in FERPA for disclosing education records without consent in compliance with a subpoena. One commenter suggested that the Family Policy Compliance Office (FPCO) work with the Attorney General and educational associations to develop a form to document appropriate demographic information and circumstances supporting the Attorney General's request for education records.

Another commenter was concerned that the amendment may allow the Attorney General to have access to the records of an individual student who is suspected of a crime. The commenter added that this provision should apply only to crimes committed by an institution to defraud the Federal government or Federally funded programs. Another commenter noted that when disclosure is made to another governmental agency without consent, it should be made clear that the agency must protect the information from unauthorized redisclosure.

Discussion: The statutory amendment provides for nonconsensual disclosure of education records to authorized representatives of the Attorney General for law enforcement purposes under the same conditions that apply to the Secretary. In the case of the Attorney General, "law enforcement purposes" refers to the investigation or enforcement of Federal legal requirements applicable to federally supported education programs. For example, under this exception, the authorized representatives of the Attorney General can access education records without consent in order to investigate or enforce Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Equal Educational Opportunities Act of 1974, Title IX of the Education Amendments of 1972, Title IV of the Civil Rights Act of 1964, or the Civil Rights of Institutionalized Persons Act (CRIPA). Authorized representatives of the Attorney General include any employee of the Department of Justice, including the Federal Bureau of Investigation, so long as the employee is authorized to investigate or enforce the Federal legal requirements applicable to federally supported education programs.

This exception does not supersede or modify the exception in § 99.31(a)(9) for disclosure in compliance with a judicial order or lawfully issued subpoena. Rather, this new exception permits non-consensual disclosure of education records in connection with the Attorney General's investigation or enforcement of Federal legal requirements of federally supported education programs. Given the limited nature of the allowable disclosures to the Attorney General, we believe that the development of a form to document the Attorney General's request for education records is not needed.

Finally, in response to the commenter seeking clarification about redisclosure provisions, we agree FERPA's redisclosure provisions apply to disclosures made to authorized representatives of the U.S. Attorney General. Section 99.35(b) provides that officials who collect information under this exception must protect the information, unless Federal law specifically authorizes the collection of that information. Officials must ensure that institutions do not permit personal identification of individuals and that they destroy the records when no longer needed. If another Federal law specifically authorizes the collection of personally identifiable information, then the provisions in that law govern the redisclosure and destruction of information. In addition to the privacy protections afforded parents and students by FERPA, the Privacy Act may afford some protections to some records maintained by Federal agencies. The Privacy Act of 1974 (5 U.S.C. 552a) protects records contained in a system of records maintained by Federal agencies that are retrieved by an individual's name, social security number or some other identifying number.

Changes: We have revised § 99.31(a)(3)(ii) by removing the phrase "for law enforcement purposes." Because disclosures to the Attorney General are subject to § 99.35, those disclosures will only be made to investigate or enforce the Federal legal

requirements applicable to federally supported education programs.

Disclosures to Parents of Dependent Students (§ 99.31(a)(8))

Comments: Several commenters requested guidance on how to determine dependency status because the Internal Revenue Code definition of "dependent" is based on the student's status during the previous year.

One commenter noted that the NPRM assumed that the use of the words "either parent" implies that only two individuals might be responsible for a student's upbringing. The commenter noted that a guardian or stepparent might also be involved along with the biological parents.

Another commenter asked if a divorced parent might use this process to obtain financial information in the student's record about another parent. The same commenter also asked if the parent who claims the student as a dependent could restrict the kind of information that the institution may disclose to the other parent.

One commenter felt that this provision would harm victims of domestic violence by allowing the disclosure of information in a student's record to a domestic violence perpetrator. The commenter worried that providing educational institutions with the discretion to make these releases would not effectively safeguard victims of domestic violence. The commenter suggested that institutions be prevented from disclosing information in a student's record about one parent to another parent who has committed domestic violence.

A commenter noted that the regulations should clarify whether parents who obtain information about a dependent student under this provision are subject to the limits on redisclosure of information under § 99.33 of the FERPA regulations.

Two commenters wondered whether the provision applies to students who are legally adults and in conjunction with disclosures under § 99.31(a)(14). These commenters stated that this exception should be limited to a dependent student who is also legally a minor. Finally, this commenter also asked whether students may find out if their parents have accessed their education records.

Discussion: This amendment clarifies that if a student is claimed as a dependent for tax purposes and the individual seeking education records meets the definition of the student's "parent" under FERPA, then the institution has the discretion to disclose records to the parent. Under FERPA, a "parent" is defined as "a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian." 34 CFR § 99.3 ("Parent").

We have consistently advised that, in order to determine a student's status as a dependent for tax purposes, institutions should look to the most recent year that the parent filed a return. For example, if the parent of a dependent student seeks access to the student's education records in November 1999, the institution should review the taxpayer's 1998 tax return to determine whether the student is a dependent.

Because eligible students—students attending a postsecondary institution or over the age of 18—retain all rights under FERPA, an educational agency or institution must obtain a reasonable assurance that the student meets the requirements as a dependent for tax purposes. If the educational agency or institution is unable to obtain that assurance, then information from the student's education records may not be disclosed. Once the educational agency or institution obtains that assurance, it has the discretion to, although it need not, disclose the student's education records to a parent of the student.

We received several comments concerning the use of this provision by one parent to access information about another parent. In response to these comments, we note that FERPA provides parents with broad rights of access to their children's education records when a child is under 18 and is not attending an institution of postsecondary education. This provision will have a more limited application because it is typically applied by institutions of postsecondary education.

We agree that a divorced parent could attempt to use this exception to obtain financial information in the student's education records about the other parent if the other parent claims the student as a dependent. However, an institution has no obligation to disclose any financial information about one parent to another. Thus, if a parent claims the student as a dependent, and does not want his or her financial information disclosed to his or her spouse or former spouse, the parent may make that request to the institution. The institution has the discretion not to disclose the information to the spouse or former spouse.

Because this provision provides an institution with discretion regarding what information, if any, it discloses to a parent, we do not believe that institutions will release information to known perpetrators of domestic violence. We strongly encourage victims of domestic violence to inform institutions of postsecondary education not to disclose any information from a student's education record to a perpetrator of domestic violence. We believe that institutions will understand the importance of complying with these requests. If a student or parent does not inform an institution of postsecondary education that a parent is a perpetrator of domestic violence, we do not believe it would be reasonable to expect institutions to be aware of this information. We cannot hold schools responsible for disclosures made unknowingly to a perpetrator of domestic violence.

We agree that the regulations should clarify whether parents who obtain information about a dependent student are subject to the limits on redisclosure of information under § 99.33.

This provision applies to education records of students who are legally adults. The plain language of the statute applies to "dependent students" including students who are adults. This provision is not related to disclosures made under the new drug and alcohol provision, contained in § 99.31(a)(14) of these regulations. Finally, dependent students can access their own education records. Under FERPA's recordkeeping requirements, the student's records contain, with some exceptions, documentation of every nonconsensual disclosure made by the institution of personally identifiable information.

Changes: We have revised § 99.31(a)(8) to clarify that it applies to a "parent" as defined under FERPA. We have also clarified in § 99.33(c) that parents who obtain information about a dependent student are not subject to these redisclosure limitations.

Disclosures in Response to Legal Actions (§ 99.31(a)(9)(iii))

Comments: Several commenters support a new provision that allows an educational agency or institution to disclose education records to a court on a nonconsensual basis, without a court order or subpoena, if a parent or eligible student has initiated legal action against the agency or institution and the records are necessary for the agency or institution to defend itself.

Commenters also noted that the Department has issued letters of finding stating that when a parent or student has filed a complaint with a State or Federal government agency, an accrediting agency, or a third party other than a court, an institution may disclose information to that party without consent in order to defend

itself. In particular, one commenter stated that the FPCO reversed its previous position and advised institutions that they could disclose information from a student's education record to a third party if the student alleged wrongdoing by the institution to that third party. Several commenters suggested that the regulations should address these additional instances of permissible nonconsensual disclosure. Finally, another commenter asked if third party recipients of education records, involved in litigation with a parent or student, may disclose the student's education records without consent during the course of the litigation.

Discussion: FERPA allows agencies and institutions to disclose education records without consent to comply with a judicial order or lawfully issued subpoena. The statute, however, requires that institutions first must make a reasonable effort to notify the parent or eligible student in advance of the disclosure. The purpose of this prior notification is to give the parent or eligible student an opportunity to object to the issuance of the judicial order or to move to quash the subpoena.

In 1996, the Department revised § 99.31(a)(9) to allow an educational agency or institution that initiated legal action against a parent or student to disclose relevant education records without consent and without a court order or subpoena, provided that the agency or institution had complied with the notification requirements contained in § 99.31(a)(9)(ii).

We also noted in the 1996 final regulations that we interpreted FERPA to allow an educational agency or institution to infer the parent's or student's implied waiver of the right to consent to the disclosure of information from education records if the parent or student had sued the institution. (61 FR 59292, 59294 (November 21, 1996). This interpretation allowed an educational agency or institution to disclose a student's education records to a court without consent, and without a court order or subpoena, in cases where a parent or the student had sued the agency or institution. While we discussed this interpretation in the preamble, we did not include it in the 1996 regulations.

For two reasons, we have concluded that an educational agency or institution may disclose education records to a court without consent and without a court order or subpoena if a parent or student has sued the agency or institution. First, an agency or institution should not be required to subpoena its own records or seek a judicial order in order to defend itself in a lawsuit initiated by a parent or student. Second, we believe that when a parent or eligible student sues an agency or institution, the parent or eligible student understands that the agency or institution must be able to defend itself. In order to defend itself, the agency or institution must be able to use relevant education records of the student. Thus, we believe that the parent or eligible student waives their FERPA protections under a theory of implied consent.

We have also concluded that the notification requirements contained in § 99.31(a)(9)(ii) are not necessary in any litigation between an educational agency or institution and a parent or student. For this reason, we have deleted the notification requirement in former § 99.31(a)(9)(iii) and have not included it in § 99.31(a)(9)(iii)(B) of these regulations.

The notification requirement is intended to provide a parent or student with an opportunity to object to an order or to move to quash a subpoena before an educational agency or institution discloses education records in compliance with the court order or subpoena. However, there is no such reason to require notification of a parent or student if an educational agency or institution sues a parent or student because the parent or student must be served with the lawsuit. Similarly, if a parent or student sues an educational agency or institution, the parent or student will not need to be notified of the lawsuit.

When an educational agency or institution files a lawsuit against a student or parent, the complaint is likely to disclose personally identifiable information from the student's education records. It does not make sense to require that an educational agency or institution inform a parent or student that it plans to disclose personally identifiable information from a student's education records in a complaint because a parent or student cannot do anything to prevent the complaint from being filed. Further, after a complaint has been filed, we do not think that notification of a parent or student is necessary. A parent or student who has been sued by an educational agency or institution should realize that personally identifiable information from the student's education records might be disclosed in the lawsuit. If the parent or student wants to ensure the student's privacy, the parent or student may petition the court to take measures to protect the student's privacy, such as sealing the court's records.

When a student or parent files a lawsuit against an educational agency or institution, the student or parent should realize that the educational agency or institution might need to disclose personally identifiable information from the student's education records in order to defend itself. We also feel that it is overly burdensome to require that an educational agency or institution notify the parent or student every time that it wants to disclose personally identifiable information from the student's education records in the lawsuit. Notification is also unnecessary because a parent or student who sues an educational agency or institution may petition the court to take measures to protect the student's privacy, such as sealing the court's records.

Several commenters asked the Department to extend the theory of implied waiver of the right to consent to a non-litigation context. Specifically, they alluded to the Department's ruling that when a student has taken an adversarial position against the institution, made written allegations of wrongdoing against the institution, and shared this information with third parties, the institution must be able to defend itself. While we offered this interpretation in a previous letter of finding, we did not propose to regulate on this issue in the NPRM. As a result, we cannot include these guidelines in our final regulations.

Finally, in response to the commenter who asked if third party recipients of education records may release student education records if the student or parent sues the third party, we did not address this issue in the NPRM. Thus we cannot regulate on this issue at this time.

Changes: We have added § 99.31(a)(9)(iii)(B) which allows an educational agency or institution to disclose education records to a court without consent, and without a court order or subpoena, if a parent or eligible student has initiated legal action against an educational agency or institution. We have also deleted the notification requirement in § 99.31(a)(9)(iii)(A) so that an educational agency or institution that has initiated legal action against a parent or student does not have to notify the parent or student before disclosing the student's relevant education records.

Disclosure of the Final Results of a Disciplinary Proceeding (§ 99.31(a)(13), § 99.31(a)(14), and § 99.39)

Comments: We received numerous comments about these provisions. The comments fell into four general categories: scope of the provision; the meaning of its terms; its effective date;

and the applicability of FERPA's redisclosure provisions. Specifically, with respect to the second category, commenters sought clarification of the terms "alleged perpetrator," "crime of violence," "nonforcible sex offense," and "final results."

Scope of the Provision

Commenters asked whether postsecondary institutions are now required to disclose the final results of a disciplinary proceeding conducted against an alleged perpetrator of a crime of violence or a non-forcible sex offense or whether the disclosure is discretionary. Commenters added that many public institutions are subject to State open records laws that require the release of records unless that release is contrary to Federal law. Thus, one commenter contended that an institution's discretion to release the final results of specified disciplinary proceedings is an illusion because the amendment eliminated the protection that FERPA had provided against disclosure.

Some commenters asked whether institutions may disclose the final results of a disciplinary proceeding to anyone or to just the victim. One commenter also noted a change to § 99.31(a)(13). He noted that, as proposed, § 99.31(a)(13) would have limited the disclosure of final results to proceedings in which the institution determines that the student committed the violation. The commenter noted, however, that the Department requires notification of the final results of a disciplinary proceeding, regardless of the outcome, to the victim in a sexual assault case.

Definitions: "Alleged Perpetrator"

We received many comments about the definitions used in this provision. Many comments concerned the term "alleged perpetrator of a crime of violence." These commenters noted that this term is confusing. Several commenters asked who is responsible for making the determination that a student is an "alleged perpetrator" of a crime of violence. Specifically, one commenter wondered whether the complainant, the requester, or the institution determines that a student is an "alleged perpetrator."

Commenters also asked when a student becomes "an alleged perpetrator." One commenter wondered if this determination is made when formal criminal charges are brought or sometime earlier in the criminal process. This commenter also wondered what would happen if the charges were dropped or if the student were found not guilty in a court of law. Several other commenters felt that a student should only become an "alleged perpetrator" of a crime of violence after formal criminal charges have been brought. In contrast, some other commenters suggested that Congress intended to cover disciplinary charges whether or not police or other law enforcement officials are involved. They added that the institution must determine whether a student is an "alleged perpetrator" of a crime of violence through the institution's disciplinary process.

Finally, some commenters expressed concern about libel or slander claims if institutions label a student an "alleged perpetrator of a crime of violence," because institutions do not use the terms "alleged perpetrator" or "crime of violence" in their disciplinary codes.

"Crime of Violence"

Many commenters suggested that the regulations should identify more specifically what offenses constitute "crimes of violence." For example, educational institutions asked whether petty property crimes, technical batteries, and other offenses are crimes of violence. College administrators indicated that they must be free to exercise discretion in categorizing incidents as "crimes of violence" without fear of losing institutional funding. Another commenter liked our proposed use of the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting Program definitions.

One commenter asked that the Secretary remove confusing language and permit the disclosure of information for any student who commits a violation of institutional policies involving behavior that includes an element of violence or physical force. This commenter suggested that the term "felony" (which is used in the statutory definition of "crime of violence") should be replaced with "other serious offense." This commenter also asked that we provide examples of what constitutes a "serious" offense. Finally, this commenter asked that the Department recognize the difference between criminal prosecutions and student disciplinary proceedings by changing the term "student charged" to "student found responsible."

"Non-Forcible Sex Offense"

Many commenters wondered whether the new disclosure provisions apply to disciplinary proceedings against alleged perpetrators of a "non-forcible sex offense." The commenters were concerned that if the regulations do not apply to non-forcible sex offenses, postsecondary institutions could continue to keep proceedings secret, even matters involving such offenses as date rape. In short, these commenters were concerned that the term "crime of violence" may not encompass offenses such as date rape and asked that we include and define the term "non-forcible sex offense." One commenter contended that, without a clear definition of "nonforcible sex offense," the institution would be able to manipulate its disciplinary code in order to shield offenses from disclosure.

A commenter stated that the regulations did not define or include the term "non-forcible sex offense" because such an offense is considered a "crime of violence." Another commenter noted that the FBI's Uniform Crime Reporting (UCR) Program defines non-forcible sex offense as statutory rape and incest. However, one commenter contended that Congress did not intend the term "non-forcible sex offense" to include only statutory rape and incest.

"Final Results"

Many commenters stated that the regulations should define when a result is final. They noted that at many institutions a student has a right to appeal or seek review of a decision before a result is truly final. The commenters suggested that "final results" should be defined as that point when all internal institutional appeals have been exhausted. However, another commenter felt that "final results" should be defined earlier in the disciplinary process so that the public can be informed if there is institutional favoritism in the appeals process.

Several commenters also noted that the proposed definition of "final results" was unclear because it did not offer sufficient guidance as to the type of information that may be released. Because the proposed definition of "final results" includes disclosure of the violation committed, these commenters specifically requested that we define the term "violation committed."

One of these commenters contended that the term "violation committed" calls for a plain language description of the behavior that formed the basis of the disciplinary violation. Another commenter suggested that "violation committed" should be defined to include the nature of the offense, including both the institution's categorization or description of the offense and any criminal offenses to which that categorization corresponds, and the date, time and location of the offense. If the term "violation committed" is not defined, commenters believed that institutions could release

vague summaries of offenses, such as describing an assault as "disorderly behavior."

Commenters also noted that the definition of the term "final results" calls for the "sanction imposed." Consequently, these commenters requested that we define the term "sanction imposed" to include a description of the disciplinary action, the date of imposition and duration, and definitions of any terms used, such as 'disciplinary probation.'

Several commenters had suggestions about the methods that institutions should use to disclose the final results of disciplinary proceedings. The commenters suggested that we should permit disclosure of the final determination, or the updated crime log required under 20 U.S.C. 1092(f), rather than requiring institutions to create a new, one-line record that constitutes final results. The commenters stated that any crime of violence or non-forcible sex offense should have a related entry on the campus crime log, including the nature, date, time, and general location of each crime and the disposition of the complaint, if known. (20 U.S.C. 1092(f)(4)(A)(i) and (ii)). One commenter noted that new information pertaining to a crime or offense, such as the final results of a disciplinary proceeding, must be included in the campus crime log within two business days. (20 U.S.C. 1092(f)(4)(B)(ii)). He stated that the regulations should also clarify that everything other than the final results of the disciplinary process, such as transcripts of proceedings and other documents, remains protected by FERPA as part of a student's education record.

In contrast, one commenter argued that the statute clearly defines final results. The commenter stated that the statute lists the types of information that may be disclosed as part of the final results of the disciplinary proceeding—the student's name, the violation committed, and any sanction imposed. The commenter noted that any amendment to FERPA that takes away the privacy rights of students should be construed narrowly to protect the intent of the law. Under this reasoning, he stated, the proposed regulatory language should not be modified.

Redisclosure

Some commenters asked that the regulations clarify that redisclosure limitations in § 99.33 do not apply to disclosures under § 99.39. Because the statute provides that final results may be disclosed to anyone, these commenters reasoned that limitations on redisclosure are inappropriate.

Effective Date

Several commenters asked us to address the issue of the effective date of the regulations. In particular, they asked us if the statute applies to determinations of the final result reached after October 7, 1998, or to requests dated after October 7, 1998. These commenters explained that students subject to disciplinary proceedings conducted prior to October 7, 1998 had a legitimate belief that Federal confidentiality laws protected their education records generated during these proceedings. The commenters requested that we continue to ensure that these records remain confidential. In contrast, one commenter felt that the statute should apply to any requests dated after October 7, 1998, regardless of when the records were created. Finally, one commenter asked the Secretary to clarify how institutions should handle requests that were made after October 7, 1998, but before the effective date of the final rule.

Discussion: Scope of the Provision

This new exception to the prior written consent rule does not require postsecondary educational institutions to disclose the final results of disciplinary proceedings to anyone. The disclosure is permissive. Thus, the effect of the amendment is that institutions are now free to follow their own policies regarding disclosure of this information. Institutions should consult with their own counsel or State officials regarding whether their State open records law requires disclosure of the final results of disciplinary proceedings in which a student is found to be an alleged perpetrator of a crime of violence. In response to the commenter who was concerned about State open records laws that require disclosure, FERPA does not prevent that disclosure.

Inadvertent Deletion

In section 99.31(a)(13) of the NPRM, we inadvertently deleted a provision that permits postsecondary institutions to disclose to the victim the results of a disciplinary proceeding against the alleged perpetrator of a crime of violence, regardless of the outcome. We have reinstated that provision, designated as § 99.31(a)(13). Sections 99.31(a)(13) and 99.31(a)(14) differ significantly. Victims may be informed of the final results of a disciplinary proceeding against an alleged perpetrator under § 99.31(a)(13), regardless of the outcome of that proceeding. In contrast, under § 99.31(a)(14), the institution may disclose to the public the final results of a disciplinary proceeding only if it has determined that:

(1) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(2) The student has committed a violation of the institution's rules or policies with respect to the allegation.

Definitions: "Alleged Perpetrator" and "Crime of Violence"

We have reviewed the numerous comments we received on these terms. In particular, we have considered the comments from school officials that contend that student codes of conduct are not generally written using criminal terms. We agree that the statutory definition of "crime of violence," as defined in 16 U.S.C. 18, is difficult to apply. Therefore, we have re-written the provision to define "crime of violence." The definition consists of an all-inclusive list of "crimes of violence." This list consists of:

Arson
Assault offenses
Burglary
Criminal homicide—manslaughter by negligence
Criminal homicide—murder and nonnegligent manslaughter
Destruction/damage/vandalism of property
Kidnapping/abduction
Robbery
Forcible sex offenses.

We define these crimes according to the Federal Bureau of Investigation's *Uniform Crime Reporting (UCR) Handbook* (1984) and the *UCR Reporting Handbook: National Incident-Based Reporting System* (NIBRS), Volume I (Data Collection Guidelines) (1996). We have listed these definitions in appendix A following these regulations. We have used the same definitions of murder and nonnegligent manslaughter, manslaughter by negligence, forcible sex offenses, non-forcible sex offenses, robbery, aggravated assault, burglary and arson, that are used in the Student Assistance General Provisions, 34 CFR Part 668, because institutions of postsecondary education already are familiar with these definitions. We have taken from the *UCR Reporting Handbook: NIBRS* the definitions for those crimes of violence that are not defined in the Student Assistance General Provisions regulations. Copies of these UCR publications are available from: Programs Support Section, Criminal Justice Information Services Division, Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0154.

We believe that this list will be easier to apply for institutions and that a standard set of definitions will allow for more uniform application. In response to the commenter who wondered if a petty property crime or a technical battery would constitute a crime of violence, those incidents are crimes of violence if they fall within the definitions of one of the crimes listed above.

We also agree with commenters that the term "alleged perpetrator" is not clear, and should be clearly defined. We define an "alleged perpetrator" as a student who is alleged to have committed acts that would, if proven, constitute any of the offenses that we have stated are crimes of violence or non-forcible sex offenses. As this definition suggests, we believe that institutions will have to use their judgment on a case-by-case basis about whether certain alleged acts constitute a crime of violence or non-forcible sex offense.

In order to determine if someone is an alleged perpetrator, institutions should look at allegations made as part of the disciplinary proceeding. These allegations can be made by a victim, a third-party witness, or by the institution. These allegations can be made at any time during the disciplinary proceeding, beginning from the time that an initial complaint or a charge is filed, until the final result is reached. This disciplinary process is not related to criminal proceedings. The institution does not need to refer the matter to the police or await any criminal proceedings in order to consider a student an alleged perpetrator of a crime of violence or non-forcible sex offense.

In response to the commenters who expressed concern about possible defamation claims if an institution labels a student "an alleged perpetrator of a crime of violence," we note that the provision merely calls for the school to determine that a student has been alleged to have committed a crime of violence. In short, such a determination does not mean that the student committed a crime of violence, but that an allegation was made that the student engaged in the type of behavior that rises to the level described in the definitions of a crime of violence. We do not believe that a school can be found liable on a defamation claim for this type of determination.

"Non-Forcible Sex Offense"

We agree with the commenters who argued that Congress intended to cover the crimes of date rape and acquaintance rape. However, these two crimes fall within the statutory definition of "crime of violence," specifically within the meaning of "forcible sex offense" as defined in the *UCR Reporting Handbook: NIBRS*. We have clarified that the definition of "an alleged perpetrator of a crime of violence" includes forcible sex offenses such as date rape and acquaintance rape. However, in an effort to avoid any confusion caused by not including a definition of "non-forcible sex offense," we also define the term "alleged perpetrator of a non-forcible sex offense" in the regulations. "Alleged perpetrator of a non-forcible sex offense" is defined as "a student who is alleged to have committed acts that, if proven, would constitute statutory rape or incest." This definition is based on the FBI's definition of "non-forcible sex offense." The definition is listed in appendix A, which follows these regulations.

"Final Results"

The Department is concerned about violence on campus. We recognize the need for students to be aware of how an institution responds to these incidents. Therefore, we have defined "final results" to allow institutions to disclose the results of disciplinary proceedings before all internal reviews and appeals have been exhausted. We define "final results" to mean a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. We believe that this definition will benefit students who have been victims of violent crimes and non-forcible sex offenses. Institutions will not be able to claim that FERPA allows them to release results of disciplinary proceedings only after all internal reviews and appeals have been exhausted.

We agree that the regulations should provide additional guidance regarding how much and what type of information may be provided in the final results. We have defined the term "violation committed" and "sanction imposed" in order to help institutions understand what information may be released. We define "violation committed" as the institutional rules or code sections that were violated and any essential findings supporting the institution's conclusion that the violation was committed. We agree with the commenter that "sanction imposed" should be defined as a description of the disciplinary action taken by the institution, the date of its imposition, and its duration.

We believe that institutions generally will be able to disclose the final results of the disciplinary proceeding without creating new records. An institution may disclose its letter of final determination provided that the institution redacts all personally identifiable information in the letter except those portions that contain the student's name, the violation committed, and the sanction imposed. In other words, the institution must not disclose, without consent, any other portions of the letter of final determination that contain personally identifiable information that is directly related to the accused student or to any other student. If, however, the letter of final determination does not contain the violation committed or the sanction imposed, then the institution has discretion to create a new document in order to disclose this information.

Several commenters suggested that the final results of disciplinary proceedings be released in the form of an updated crime log. Because the release of this information is discretionary under FERPA, we agree with these commenters that the release of an existing crime log, as required by the campus security regulations (34 CFR § 668.46(f)), may be a satisfactory way to disseminate this information. It is worth noting that a crime log contains any crime reported to campus police or a campus security department, rather than only crimes of violence or non-forcible sex offenses.

The release of a campus crime log, however, will not disclose some information that is permitted to be disclosed under FERPA. Specifically, a campus crime log does not contain the names of alleged perpetrators of crimes of violence or non-forcible sex offenses. Rather, a campus crime log includes the nature, date, time and general location of each crime and the disposition of the complaint, if known. (20 U.S.C. 1092(f)(4)(A)(i) and (ii).) Final results that can be disclosed under FERPA, however, concern the name of the student, the disciplinary violation that the student committed, and the disciplinary sanction imposed on the student.

Redisclosure

The redisclosure limitations in § 99.33 do not apply to disclosures made under § 99.31(a)(14) because information about the final results of a disciplinary proceeding concerning a crime of violence or a non-forcible sex offense may be disclosed to anyone, including the media. Thus, we have revised § 99.33.

Effective Date

This amendment to FERPA was effective October 7, 1998. We interpret the effective date to mean the date that an institution reaches its final result in a disciplinary proceeding. This result preserves the expectation of students regarding confidentiality of disciplinary proceedings occurring before the effective date of the statute. Thus, institutions may disclose the final results of a disciplinary proceeding under § 99.31(a)(14) so long as the final results are reached on or after October 7, 1998.

With regard to requests for education records received between October 7, 1998, and the effective date of these final regulations, we will not find that institutions violated FERPA for disclosing the final results of disciplinary proceedings, regardless of when these results were reached. We previously had interpreted the effective date as being the date an institution received a request for records, rather than the date that an institution reached its final results. We will not find that institutions that followed our advice regarding this issue violated FERPA.

Changes: We have reinserted § 99.31(a)(13) in the regulations. This provision permits institutions of postsecondary education to disclose to the victim the final results of a disciplinary proceeding conducted against the alleged perpetrator of a crime of violence or a non-forcible sex offense regardless of the outcome of the proceedings. We have explained that an alleged perpetrator of a crime of violence or non-forcible sex offense should be determined by looking at the allegation that a student has committed a crime of violence or non-forcible sex offense. We have revised the definition of crime of violence to reflect an all-inclusive list of crimes. The list includes forcible sex offenses, such as date rape and acquaintance rape, and non-forcible sex offenses.

We have revised the definition of "final results." The definition means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. We have also defined "violation committed" and "sanction imposed."

We have clarified that the redisclosure provisions do not apply to disclosures made in connection with a disciplinary proceeding under § 99.31(a)(14).

We have also explained that only final results determined on or after October 7, 1998, may be disclosed without consent under § 99.31(a)(14).

Disclosures to Parents About Drug and Alcohol Violations (§ 99.31(a)(15))

Comments: Many commenters were confused that § 99.31(a)(15) did not address a student's status as a dependent. They asked that we address the relationship between this exception and § 99.31(a)(8).

One commenter felt that using 21 as a dividing line will result in students being treated differently depending on their age. For example, if the institution disciplines the same student before and after the student turns 21, the institution may only disclose the earlier disciplinary determination. The commenter also believed that parents will not understand why they may be notified in the first instance and not in the second.

Another commenter pointed out that is it not clear how an institution should determine a student's age under the exception. The commenter wondered whether the institution should use the student's age when the incident occurs, when the institution determines that a disciplinary violation occurs, or when the institution makes a disclosure. He argued that the institutions should be able to disclose records to parents about violations if the student is under 21 at the time of the drug or alcohol incident.

Another commenter stated that the statute permits disclosure without consent to a "parent" or "legal guardian" but noted that the FERPA regulations define "parent" to include legal guardian, as well as an individual acting as a parent in the absence of a parent or a legal guardian. The commenter asked that the Department clarify the regulations by using only the term "parent," because use of "legal guardian" is confusing and repetitive. Alternatively, he contended that the regulations should use a special, narrower term such as "natural or adoptive parent" because FERPA is a privacy statute and should be construed narrowly. The commenter stated that the Department should also change the definition of "parent" in § 99.3 specifically to include individuals who adopt children.

Another commenter requested that we clarify that the statute does not apply to determinations of disciplinary violations that were made before October 7, 1998. Similarly, a commenter questioned what rule would apply to disclosures made under this exception after the passage of the statute and prior to the promulgation of these regulations.

A commenter stated that this provision, like the statute, is unclear because the term "disciplinary violation" is not defined. The commenter stated that without a regulatory definition of "disciplinary violation," FERPA will not be implemented uniformly throughout the 50 states, as required under 20 U.S.C. 1232g(c), and will vary based on the whims of campus administrators.

A commenter asked if there is any significance in using the term "determination" in § 99.31(a)(15), while using the term "disciplinary proceeding" in § 99.31(a)(14). He also asked if an institution must make a determination in a disciplinary proceeding, or if an institution can make a determination that there has been a violation of its disciplinary code in some other way. For example, the commenter wondered if an institution could determine that a disciplinary violation has been committed and send information to a parent under this provision if a video camera simply recorded an intoxicated student walking around campus. The commenter expressed concern that the threshold could be set so low as to eliminate the phrase "disciplinary violation" from the statute.

Finally, a commenter asked us to explain that students can find out when their parents have been notified of a drug or alcohol violation.

Discussion: This provision applies only to students under the age of 21 at the time of the disclosure to the parent. We clarify that an institution may disclose information under this exception without regard to whether the student is a dependent for tax purposes.

We have concluded that the student must be under 21 years of age at the time that the institution discloses to the student's parent that the student has committed a disciplinary violation with respect to alcohol or drug use or possession. We reach this conclusion because the statute links the institution's option to disclose with the age of the student and the institution's determination that the student committed a disciplinary violation. The Secretary has no statutory authority to allow institutions to disclose alcohol and drug violations of students after they have turned 21.

We agree with the commenter that the use of the term "legal guardian" is repetitive and unnecessary. The statutory term "parent and guardians" is covered by our regulatory definition of the term "parent." Likewise, it would be redundant to include the term "adoptive parents."

In response to the comment about disciplinary violations occurring before October 7, 1998, we conclude that

institutions are not permitted to disclose any determinations of disciplinary violations reached before October 7, 1998. This conclusion protects the legitimate expectation of confidentiality that students had regarding drug or alcohol disciplinary violations before October 7, 1998.

With regard to institutional disclosures to parents under this exception occurring after October 7, 1998, but prior to the promulgation of these final regulations, we will not find that institutions violated FERPA so long as the disclosure was based on a reasonable interpretation of the statutory amendment.

We recognize that there is confusion over the terms "determination" and "disciplinary violation." Commenters sought guidance on the meanings of these terms and the responsibilities of postsecondary institutions under this exception.

We note that an institution may make a determination under this exception without conducting any sort of disciplinary proceeding. We reached this conclusion for two reasons. First, we compared the language used by Congress in this exception and the "crime of violence" exception. The "crime of violence" exception permits the disclosure of final results of a disciplinary proceeding conducted by the institution. This statutory provision clearly indicates that, before making any disclosures under this exception, an institution must first conduct some type of hearing or proceeding.

However, the drug and alcohol provision is worded very differently. That statutory provision does not use the term "disciplinary proceeding," and we believe Congress' choice of words was deliberate. Therefore, we do not have the authority to require schools to conduct a disciplinary proceeding in order to determine that a student has committed a disciplinary violation with respect to drug or alcohol use. Institutions may establish and follow their own procedures for making these types of determinations.

The limited nature of this disclosure supports our interpretation that this exception does not require institutions to conduct any sort of formal disciplinary proceeding. This exception permits disclosures only to parents. In contrast, disclosures made in accordance with § 99.31(a)(14) can be made to the public. Thus, we believe that Congress intended to make it easier for institutions to inform parents of drug and alcohol violations by allowing the institution to release the information without conducting a formal disciplinary hearing.

Although we recognize that commenters sought a definition of the term "disciplinary violation," we decline to define this term. We recognize that institutions have different codes of conduct. If we imposed a specific standard for a "disciplinary violation," we would be placing a large burden on institutions to conform their codes of conduct to our regulatory definition. We will not impose such a burden.

In response to the concern that an institution could set the threshold so low as to read the phrase "disciplinary violation" out of the statute, we do not believe that institutions will act irresponsibly when making disclosures under this provision. We also emphasize that this disclosure, as with other permissible disclosures under § 99.31(a), is discretionary. Furthermore, the statutory amendment also provides that this new exception does not supersede any provision of State law that prohibits an institution of postsecondary education from making the permitted disclosure.

Finally, FERPA does not require institutions to notify students each time the institution discloses information from their education record. Institutions, however, are required, with some exceptions, to maintain a record of each disclosure of personally identifiable information from an education record along with that education record. Students at postsecondary institutions have the right under FERPA to access and view their own education records which should include a record of any disclosures made. Postsecondary students who wish to know if their parents have been notified of drug or alcohol violations should seek access to their own education records.

Changes: We revised § 99.31(a)15 by removing the term "legal guardian." We have also specified that a student must be less than 21 years of age when the institution discloses to the parent that the institution has determined that a disciplinary violation has occurred.

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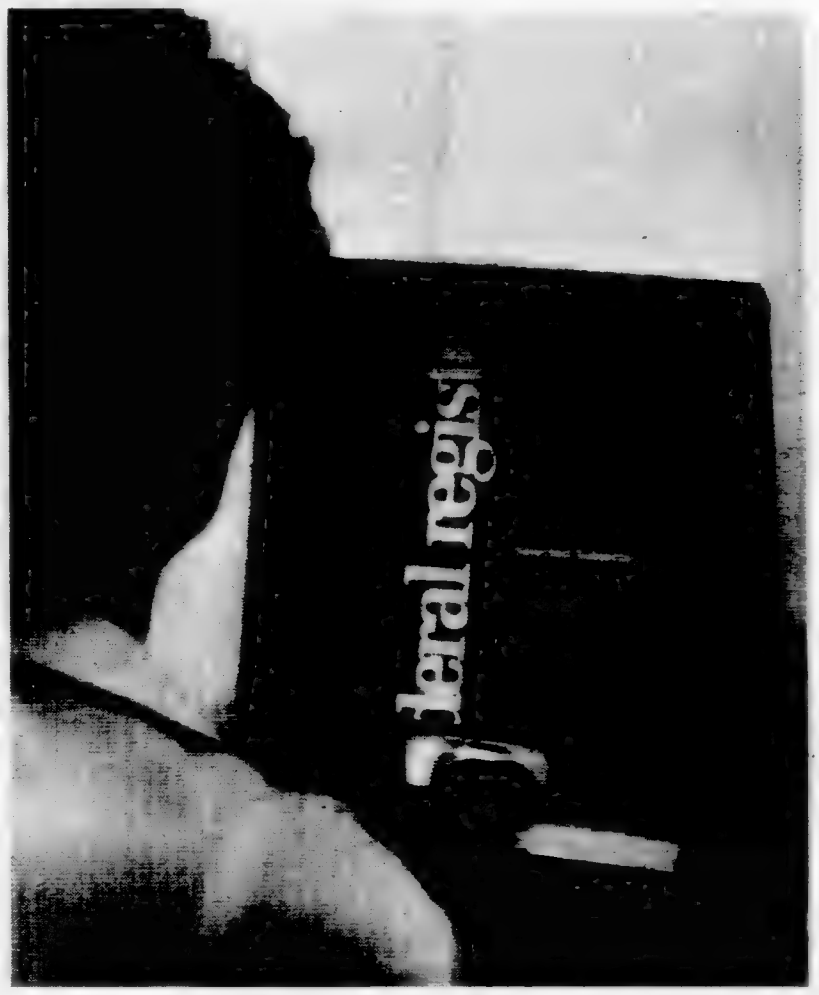

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The President

Proclamation 7327 of July 1, 2000

Spirit of the ADA Month, 2000

By the President of the United States of America

A Proclamation

The enactment of the Americans with Disabilities Act (ADA) 10 years ago this month signaled a transformation in our Nation's public policies toward people with disabilities. America is now a dramatically different—and better—country because of the ADA.

In the last 10 years, we have worked hard to eliminate harmful stereotypes and have grown to understand disability as a natural part of the human experience. We are taking steps, such as renovating and constructing public accommodations to make them fully accessible, to ensure that people with disabilities are fully integrated into our communities and workplaces. And we have come to appreciate that people with disabilities are a key element—and an untapped resource—in sustaining our Nation's historic economic growth.

Throughout our Administration, Vice President Gore and I have worked hard to achieve the ADA's core goals—equality of opportunity, full participation, independent living, and economic self-sufficiency. Our Administration has vigorously defended the ADA in court cases across the Nation; we are collaborating with State Medicaid directors to implement the Supreme Court's 1999 *Olmstead* decision, which prohibits unjustified isolation of institutionalized persons with disabilities; we helped ensure that 80 percent of America's public transit buses are now accessible; we are implementing the Ticket to Work and Work Incentives Improvement Act, which I proudly signed into law last December; we have worked closely with schools and colleges to improve the enrollment, retention, and graduation of students with disabilities; and my Task Force on Employment of Adults with Disabilities is developing far-reaching policies for a comprehensive, coordinated employment agenda.

We still have much to accomplish. Because the many barriers confronting people with disabilities took generations to develop, breaking them down requires consistent, coordinated, and farsighted effort. We must work aggressively to increase the employment rates of people with disabilities by attacking a range of work disincentives, including barriers to education, health care, technology, housing, and transportation. We must provide real choices for people with disabilities to live and work in their communities with the necessary services and supports. And we must be vigilant in protecting the rights we have secured through decades of legal activism. I am encouraged that the first 10 years of the ADA's life have provided us with a solid foundation for meeting these challenges.

To mark the ADA's 10th anniversary and the 25th anniversary of the Individuals with Disabilities Education Act (IDEA), the American Association of People with Disabilities has organized a nationwide "Spirit of ADA" Torch Relay. Twenty-four cities from coast to coast are hosting official relay events, and hundreds of communities are organizing additional local events as part of this national celebration. The Spirit of ADA's organizing theme is "Renew the Pledge" to encourage individuals, organizations, and government entities to reaffirm their commitment to the principles of the ADA and IDEA. Vice

President Gore and I are proud to join in the celebration and to renew our own pledge to help advance the cause of disability rights.

Promoting disability rights not only improves the lives of the 54 million Americans with disabilities, it improves all of our lives, As President Franklin Roosevelt recognized more than 60 years ago, in words that are now inscribed on the FDR Memorial in our Nation's capital: "No Country, however rich, can afford the waste of its human resources."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 2000 as Spirit of the ADA Month, 2000. I urge government officials, business people, community leaders, educators, and all the people of the United States, to celebrate the contributions people with disabilities have made, and continue to make, to the progress and prosperity of our Nation, and to renew our commitment to upholding the nondiscrimination principles of the ADA and IDEA.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PARTS 3, 213, 315

RIN 3206–AI94

Appointments of Persons With Psychiatric Disabilities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations creating a new Governmentwide excepted appointing authority, with noncompetitive conversion to the competitive service authorized by Executive Order 13124, for persons with psychiatric disabilities. The regulations also abolish two excepted service appointing authorities that relate to persons with psychiatric disabilities, and make technical corrections.

EFFECTIVE DATES: August 7, 2000.

Conformity date: For all new appointments under 5 CFR 213.3102(gg), agencies may begin to use the authority on August 7, 2000. All individuals who are currently serving under the 2 authorities that will be abolished by this regulation, 5 CFR 213.3102(h) and 213.3202(k), must be converted to the new appointment, 5 CFR 213.3102(gg), by January 3, 2001.

FOR FURTHER INFORMATION CONTACT: John Riedel-Alvarez or Kitty Kobert on (202) 606–1059, TTY (202) 606–0023, or FAX (202) 606–0927.

SUPPLEMENTARY INFORMATION: The Presidential Task Force on Employment of Adults with Disabilities was created in 1998 to address the underemployment of people with disabilities. Its first report, "Recharting the Course," recommended that OPM look into paralleling the excepted service hiring standards of adults with psychiatric disabilities with the excepted service hiring standards of individuals with mental retardation and severe physical disabilities. After careful review of the standards, we agreed they all should be the same.

As a result, we issued proposed regulations on March 17, 2000, to amend the Civil Service Rules to reflect Executive Order 13124, June 4, 1999, permitting persons with psychiatric disabilities to be converted to the competitive service after 2 years of satisfactory service. In order to ensure that as many people with psychiatric disabilities are covered as possible, we proposed creating a new excepted service appointing authority for persons with psychiatric disabilities. To avoid confusion and duplication, we also proposed abolishing 2 existing excepted service appointing authorities for persons with psychiatric disabilities that were not broadly defined.

We received comments on the regulations from 4 Federal agencies, 2 advocacy organizations, 1 State agency, and 1 individual.

Comments

One Federal agency was confused about how the authority will be implemented based on the proposed wording. Specifically, it was unclear whether those who have certification in subparagraph (2) are the only ones eligible for noncompetitive conversion. It was also unclear whether temporary appointments may be made under the (gg) authority. Therefore, we are revising the authority to clarify a number of items as follows:

(1) We are eliminating the subparagraphs to make it clear that either individuals who served under temporary appointments or those who receive certification may be appointed under the (gg) authority. After 2 years of satisfactory service under the authority, they are eligible for noncompetitive conversion to the competitive service.

(2) On the effective date of this regulation, and through an OPM Notice of Policy Information (being issued concurrently and available on OPM's website, *www.opm.gov*), agencies may use 5 CFR 213.3102(i)(3) to make temporary appointments of persons with psychiatric disabilities. These temporary appointments may be used to fulfill the requirements of the new (gg) authority. [Temporary appointments are defined for the excepted service in 5 CFR 213.104(a)(1).] This flexibility, and adding the language to (gg), will make it clear that temporary appointments are not authorized under (gg), but under (i)(3).

(3) We are also clarifying that noncompetitive conversion of those who have 2 years of satisfactory performance under (gg) is at the discretion of the agency, rather than a right of the individual.

One Federal agency suggested that time under temporary appointments is permissible for noncompetitive conversion to a permanent position in the competitive service, changing the conversion requirement in 5 CFR 315.709. We did not adopt this suggestion. There is no basis for a contention that temporary status in the excepted service confers permanent status in the competitive service.

Two advocacy organizations favored language found in the ADA that refers to certifying individuals under the (gg). We agree it is hard to assess and certify that an individual with a psychiatric illness is "likely to succeed in the performance of duties." Instead, we will use the language suggested by the 2 organizations.

Two advocacy organizations also suggested adding community rehabilitation programs to the list of those who may certify individuals with psychiatric disabilities. We are not changing the authority at this time; we want to research this further before adopting it as an option for agencies.

One Federal agency recommended that OPM add language to describe how the disabilities are evidenced, similar to language in the abolished 5 CFR 213.3202(k). We believe a better place to provide more information is in the "People with Disabilities in the Federal Government—An Employment Guide." OPM will update this resource guide to add more information for agencies on psychiatric disabilities.

Implementation

Agencies must move those who are currently serving under the soon-to-be-abolished 5 CFR 213.3102(h) and 5 CFR 213.3202(k) authorities to the new authority, 5 CFR 213.3102(gg), as soon as possible. Those individuals may serve the remaining time under the (gg) and be eligible for noncompetitive conversion. A current employee's service under 5 CFR 213.3102(h) or [illegible] CFR 3202(k) will count toward the 2-

year period needed for noncompetitive conversion.

OPM's Guide to Personnel Data Standards and The Guide to Processing Personnel Actions will be updated to reflect the new changes. These Guides are available on OPM's website, www.opm.gov.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 3, 213, and 315

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 3, 213, and 315 of title 5, Code of Federal Regulations, as follows:

PART 3—NONCOMPETITIVE ACQUISITION OF STATUS (RULE III)

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302.

2. In § 3.1, paragraph (b)(3) is added to read as follows:

§ 3.1 Classes of persons who may noncompetitively acquire status.

* * * * *

(b) * * *

(3) An employee with a psychiatric disability who completes at least 2 years of satisfactory service in a position excepted from the competitive service.

PART 213—EXCEPTED SERVICE

3. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*, and Pub. L. 105–339.

4. In § 213.3102, paragraph (h) is removed and reserved. Paragraph (gg) is added to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(gg) Positions when filled by persons with psychiatric disabilities who have demonstrated their ability to perform satisfactorily under a temporary appointment [such as one authorized in 213.3102(i)(3)] or who are certified as likely to be able to perform the essential functions of the job, with or without reasonable accommodation, by a State vocational rehabilitation counselor, a U.S. Department of Veterans Affairs Veterans Benefits Administration or Veterans Health Administration psychologist, vocational rehabilitation counselor, or psychiatrist. Upon completion of 2 years of satisfactory service under this authority, the employee can be converted, at the discretion of the agency, to competitive status under the provisions of Executive Order 12125 as amended by Executive Order 13124.

* * * * *

5. In § 213.3202, paragraph (k) is removed and reserved.

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

6. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.611 also issued under Section 511, Pub. L. 106–117.

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

7. Section 315.709 is amended by revising the section heading, the introductory text of paragraph (a), and paragraphs (a)(1), and (b)(2) to read as follows:

§ 315.709 Employees who are mentally retarded, severely physically handicapped, or have psychiatric disabilities serving under Schedule A appointments.

(a) *Coverage.* Employees appointed under §§ 213.3102(t), (u), and (gg) of this chapter may have their appointments converted to career or career-conditional appointments when they:

(1) Complete 2 or more years of satisfactory service, without a break of more than 30 days, under nontemporary Schedule A appointments.

* * * * *

(b) * * *

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under §§ 213.3102(t), (u), or (gg) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

* * * * *

[FR Doc. 00–17125 Filed 7–3–00; 11:20 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AI78

Payments During Evacuation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to raise the age requirement for payment of the maximum per diem rate for a dependent of an evacuated civilian employee from age 11 to age 12. This applies to evacuations in the United States because of natural disasters or for military or other reasons that create an imminent danger to life. This final rule makes OPM's regulations consistent with Department of Defense (DOD) evacuation regulations, which require that an evacuated dependent of a uniformed member be 12 years of age or older to receive the maximum per diem rate.

DATES: *Effective Date:* The regulations are effective and applicable on August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Roger Knadle, (202) 606–2858, FAX: (202) 606–0824, or email at payleave@opm.gov.

SUPPLEMENTARY INFORMATION: Office of Personnel Management (OPM) regulations on payments during evacuation are found in subpart D of 5

CFR part 550. The regulations are based on provisions of law in 5 U.S.C. 5522–5524, 5526, and 5527, and on authority in Executive Order 10982, 3 CFR 1959–1963, p. 502. Federal agencies make evacuation payments under these authorities to employees and/or their dependents who are ordered to be evacuated because of natural disasters or for military or other reasons that create imminent danger to the lives of the employees or their dependents.

On December 15, 1999, OPM published proposed changes in the evacuation pay regulations in the **Federal Register** (64 FR 69936), as requested by the Department of Defense (DOD). We proposed to increase the age requirement for payment of the maximum per diem rate for dependents of evacuated civilian employees from age 11 to age 12. We also proposed to compute the maximum per diem rate by using the "lodgings-plus per diem system," as defined in section 300–3.1 of the Federal Travel Regulation.

The **Federal Register** notice provided that OPM must receive comments on the proposed regulations within 30 days, or by January 14, 2000. We received no comments on the proposed regulations. Therefore, we are adopting the proposed regulations as final without any substantive changes.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management

Janice R. Lachance,

Director.

Accordingly, OPM is amending subpart D of part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart D—Payments During Evacuation

1. The authority citation for subpart D of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963, p. 502.

2. In § 550.401, paragraph (a) is revised to read as follows:

§ 550.401 Purpose, applicability, authority, and administration.

(a) *Purpose.* This subpart provides regulations to administer subchapter III (except sections 5524a and 5525) of chapter 55 of title 5, United States Code. The regulations provide for Governmentwide uniformity in making payments during an evacuation to employees or their dependents, or both, who are evacuated in the United States because of natural disasters or for military or other reasons that create imminent danger to their lives.

* * * * *

3. In § 550.402, the definition of *United States area* is removed, and a new definition of *United States* is added in alphabetical order to read as follows:

§ 550.402 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any territory or possession of the United States.

4. In § 550.405, paragraphs (a) and (b)(1) are revised to read as follows:

§ 550.405 Determination of special allowances.

* * * * *

(a) An agency must determine the travel expenses and per diem for an evacuated employee and the travel expenses for his or her dependents in accordance with the Federal Travel Regulation (FTR) and any applicable implementing agency regulations, whether or not the employee or dependents are actually covered by or subject to the FTR. In addition, an agency may authorize per diem for dependents of an evacuated employee at a rate equal to the rate payable to the employee, as determined in accordance with the FTR (except that the rate for dependents under 12 years of age is one-half this rate), whether or not the employee or dependents are actually covered by or subject to the FTR. Per diem for an employee and his or her dependents is payable from the date of departure from the evacuated area through the date of arrival at the safe haven, including any period of delay en route that is beyond an evacuee's control or that may result from evacuation travel arrangements.

(b) * * *

(1) An agency must compute the applicable maximum per diem rate by using the "lodgings-plus per diem system," as defined in the FTR, for the employee and each dependent who is 12 years of age or over. For each dependent under 12 years of age, the per diem rate is one-half of the applicable maximum per diem rate for employees and dependents who are 12 years of age or over. An agency may pay these maximum rates for a period not to exceed the first 30 days of evacuation.

* * * * *

[FR Doc. 00–17193 Filed 7–6–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–338–AD; Amendment 39–11809; AD 2000–09–01 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects and clarifies information in an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model DC–8 series airplanes. That AD currently requires a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; repetitive inspections of the wire bundle and door latch rollers to detect damage; and repair or replacement of damaged components. That AD also requires, among other actions, modification of the indication and hydraulic systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This document corrects two errors that resulted in the incorrect references of two paragraphs. This correction is necessary to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage.

DATES: Effective June 7, 2000.

The incorporation by reference of National Aircraft Service, Inc. (NASI) Service Bulletin SB–99–01, Revision A, dated October 15, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 7, 2000 (65 FR 25627, May 3, 2000).

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 24, 2000, the Federal Aviation Administration (FAA) issued AD 2000–09–01, amendment 39–11709 (65 FR 25627, May 3, 2000), which applies to certain McDonnell Douglas Model DC–8 series airplanes. That AD supersedes AD 93–20–02, amendment 39–8709 (58 FR 53635, October 18, 1993) to continue to require a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; repetitive inspections of the wire bundle and door latch rollers to detect damage; and repair or replacement of damaged components. That AD also requires, among other actions, modification of the indication and hydraulic systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. That AD was prompted by the FAA's determination that certain main deck cargo door systems do not provide an adequate level of safety; the latching and locking mechanisms are not of adequate design to prevent structural deformation in the event of component jamming; and that there is an absence of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. The actions required by that AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage.

Need for the Correction

Since the issuance of AD 2000–09–01, the FAA has reviewed the wording of paragraphs (a), (b), (g)(2), and (g)(3) of the AD and finds that clarification is necessary. Paragraph (a) of AD 93–20–02 was redesignated as paragraph (b) in AD 2000–09–01. Paragraph (b) of AD 93–20–02 was redesignated as paragraph (a) in AD 2000–09–01. The FAA's intent in paragraph (g)(2) of AD 2000–09–01 was that alternative methods of compliance (AMOC) approved previously to paragraph (a) of AD 93–20–02, are approved as AMOC's with only paragraph (b) of this AD, NOT paragraph (a). In addition, AMOC's approved previously to paragraph (b) of AD 93–20–02, are approved as AMOC's with only paragraph (a) of this AD, NOT paragraph (b). Therefore, this action revises paragraphs (g)(2) and (g)(3) of this AD to correct certain paragraph designations.

Correction of Publication

This document corrects and clarifies the errors and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains June 7, 2000.

Since this action only clarifies and corrects certain paragraph designations, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2000–09–01 R1 McDonnell Douglas: Amendment 39–11809. Docket 99–NM–338–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1802SO or SA421NW; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage, accomplish the following:

Restatement of Requirements of AD 93–20–02

Actions Addressing the Main Deck Cargo Door

(a) Within 7 days after January 21, 1992 (the effective date of AD 92–02–05, amendment 39–8141), and thereafter at intervals not to exceed 100 hours time-in-service, perform the following inspections:

(1) Inspect the cargo door wire bundle between the exit point of the cargo liner and the attachment point on the cargo door to detect crimped, frayed, or chafed wires; and inspect for damaged, loose, or missing hardware mounting components. Prior to further flight, repair any damaged wiring or hardware mounting components in accordance with FAA-approved maintenance procedures.

(2) Inspect the cargo door latch rollers in the lower sill of the cargo door opening of the airplane to ensure that all twelve rollers can be freely rotated by hand. Prior to further flight, replace any discrepant roller components found, and repair any rollers that cannot be rotated freely by hand, in accordance with FAA-approved maintenance procedures.

(b) Within 7 days after November 17, 1993 (the effective date of AD 93–20–02, amendment 39–8709), revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) by replacing item 5 in the AFMS for SA1802SO, and item 6 in the AFMS for SA421NW, with the following. (This may be accomplished by inserting a copy of this AD into the AFMS.)

"Prior to initiating the cargo door closing sequence, a flight crew member must verify that the cargo door warning light is illuminated. After the door closing sequence is complete, and visual verification has been made that the latches are closed and the lockpins are properly engaged, a flight crew member must verify that the cargo door warning light is extinguished, and then conduct a PRESS-TO-TEST of the warning light to ensure that the light is operational. Pull the cargo door circuit breakers labeled 'pump' and 'valve' prior to takeoff. Methods for documentation of compliance with the preceding procedures must be approved by the FAA Principal Maintenance Inspector (PMI)."

New Requirements of This AD

Actions Addressing the Main Deck Cargo Door Powered Lock Systems

(c) Except as provided by paragraph (f) of this AD, within 30 days after the effective date of this AD, unless previously

accomplished within the last 18 months prior to the effective date of this AD, replace the circuit breakers of the main deck cargo door labeled "pump" and "valve" with new circuit breakers.

Actions Addressing the Main Deck Cargo Door Hydraulic Systems

(d) Within 18 months after the effective date of this AD, modify the mechanical and hydraulic systems of the main deck cargo door, in accordance with National Aircraft Service, Inc. (NASI) Service Bulletin SB–99–01, Revision A, dated October 15, 1999.

Actions Addressing the Main Deck Cargo Door Indication System

(e) Within 18 months after the effective date of this AD, modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is closed, latched, and locked; install a means to visually inspect the locking mechanism of the main deck cargo door; install a means to remove power to the door while the airplane is in flight; and install a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked; in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Installation of NASI Vent Door System STC ST01116CH, is an approved means of compliance with the requirements of paragraph (e) of this AD.

(f) Compliance with both paragraphs (d) and (e) of this AD constitutes terminating action for the requirements of both paragraphs (a) and (b) of this AD, and the AFMS revision required by paragraph (b) of this AD may be removed. Compliance with paragraph (e) of this AD within 30 days after the effective date of this AD eliminates the requirement to comply with paragraph (c) of this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance to paragraph (a) of AD 93–20–02, amendment 39–8709, approved previously in accordance with that AD, are approved as alternative methods of compliance with only paragraph (b) of this AD.

(3) Alternative methods of compliance to paragraph (b) of AD 93–20–02, amendment 39–8709, approved previously in accordance with that AD, are approved as alternative methods of compliance with only paragraph (a) of this AD.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) The modification required by paragraph (d) of this AD shall be done in accordance with National Aircraft Service, Inc. (NASI) Service Bulletin SB–99–01, Revision A, dated October 15, 1999. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 7, 2000 (65 FR 25627, May 3, 2000). Copies may be obtained from National Aircraft Service, Inc. (NASI), 9133 Tecumseh-Clinton Road, Tecumseh, MI 49286. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) The effective date of this amendment remains June 7, 2000.

Appendix 1

Excerpt From an FAA Memorandum to Director—Airworthiness and Technical Standards of ATA, Dated March 20, 1992

(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.

Issued in Renton, Washington, on June 28, 2000.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16926 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–368–AD; Amendment 39–11808; AD 2000–13–09]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires repetitive detailed visual and dye penetrant inspections of the backup struts in the left and right nacelles to detect discrepancies; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the backup struts in the left and right nacelles due to fatigue cracking, which could result in loss of fail-safe

redundancy in the design of the nacelle in terms of load capability.

DATES: Effective August 11, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 11, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on May 10, 2000 (65 FR 30023). That action proposed to require repetitive detailed visual and dye penetrant inspections of the backup struts in the left and right nacelles to detect discrepancies; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made to the Final Rule

Paragraphs (a), (b), and (c) of the final rule have been revised to reference Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000, as the appropriate source of service information. Revision 01 of the service bulletin was referenced in the proposed rule as the appropriate source of service information. A new NOTE 2 has also been added to give credit for accomplishment of the required actions in accordance with Revision 01 of the service bulletin prior to the effective date of this AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,440, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–13–09 Saab Aircraft AB: Amendment 39–11808. Docket 99–NM–368–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers –004 through –063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the backup struts in the left and right nacelles due to fatigue cracking, which could result in loss of fail-safe redundancy in the design of the nacelle in terms of load capability, accomplish the following:

Repetitive Inspections

(a) For airplanes on which the dye penetrant inspection of the backup struts in the left and right nacelles specified in Saab Alert Service Bulletin 2000–A54–022, dated October 27, 1999, has not been accomplished prior to the effective date of this AD: Within 200 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000.

Note 2: Accomplishment of the required actions in accordance with Saab Service Bulletin 2000–54–023, Revision 01, dated January 28, 2000, prior to the effective date of this AD, is acceptable for compliance with this AD.

(b) For airplanes on which the dye penetrant inspection of the backup struts in the left and right nacelle specified in Saab Alert Service Bulletin 2000–A54–022, dated October 27, 1999, has been accomplished prior to the effective date of this AD: Within 450 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000.

(1) Perform a detailed visual inspection of the upper areas of the backup strut around the welding in the pipe and in the attachment fittings to detect any discrepancy (including fatigue cracking or a failed backup strut) by accomplishing all actions specified in paragraph B.(1) of the Accomplishment Instructions of the service bulletin, in accordance with the service bulletin. Repeat the detailed visual inspection thereafter at intervals not to exceed 450 flight hours.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids (e.g., mirror, magnifying lenses) may be used. Surface cleaning and elaborate access procedures may be required."

(2) Perform a dye penetrant inspection, using Penetrant Type 1 (fluorescent dye) sensitivity level 2, of the lower areas of the backup strut around the welding in the pipe and in the attachment fittings to detect any discrepancy (including fatigue cracking or a failed backup strut) by accomplishing all actions specified in paragraphs B.(2) and B.(3) of the service bulletin, as applicable, in accordance with the service bulletin.

(i) For airplanes on which all backup struts have accumulated less than 4,500 total flight hours as of the effective date of this AD, repeat the dye penetrant inspection thereafter at intervals not to exceed 1,650 flight hours, until any backup strut on the airplane has accumulated 4,500 total flight hours; then perform the repetitive inspection thereafter at the interval specified by paragraph (b)(2)(ii) of this AD.

(ii) For airplanes on which any backup strut has accumulated 4,500 or more total flight hours as of the effective date of this AD, repeat the dye penetrant inspection thereafter at intervals not to exceed 900 flight hours.

Corrective Actions

(c) If any discrepancy (including fatigue cracking, a failed backup strut, or damage to the surrounding structure of the engine mount) is detected during any inspection required by this AD: Prior to further flight, accomplish the applicable corrective actions (including performing additional inspections of the engine mount surrounding structure, and replacing any discrepant backup strut in the hydraulic or electrical bay areas with a new backup strut) specified by paragraph C. of the Accomplishment Instructions of Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000, in accordance with the service bulletin. For any repair condition for which the service bulletin specifies to contact the manufacturer for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfartsverket (LFV) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Saab Service Bulletin 2000–54–023, Revision 02, dated February 23, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Swedish airworthiness directive No. 1–150R1, dated January 31, 2000.

(g) This amendment becomes effective on August 11, 2000.

Issued in Renton, Washington, on June 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16924 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–014; Order No. 587–L]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued June 30, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order establishing implementation date for imbalance trading.

SUMMARY: The Federal Energy Regulatory Commission is establishing November 1, 2000, as the date by which pipelines are required to comply with the regulation requiring pipelines to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances. (18 CFR 284.12(c)(2)(ii)). This regulation was adopted in Order No. 587-G. (63 FR 20072).

DATES: Pipelines must comply with 18 CFR 284.12(c)(2)(ii) by November 1, 2000.

ADDRESSES: Federal Energy Regulatory Commission 888 First Street, N.E. Washington DC, 20426

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. (202) 208–2294

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission 888 First Street, N.E., Washington, DC 20426. (202) 208–1283

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission 888 First Street, N.E., Washington, DC 20426. (202) 208–0507

SUPPLEMENTARY INFORMATION:

United States of America

Federal Energy Regulatory Commission

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr. Standards For Business Practices Of Interstate Natural Gas Pipelines.

[Docket No. RM96–1–014]

Order No. 587–L

Order Establishing Implementation Date for Imbalance Trading

Issued June 30, 2000.

In Order No. 587–G,[1] the Commission adopted a regulation, 18 CFR 284.12(c)(2)(ii), requiring pipelines to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances. Through trading of imbalances, shippers would be able to avoid penalties, without compromising the operational reliability of the pipeline's system.[2] In Order No. 587–G, the Commission deferred implementation of this regulation until the Gas Industry Standards Board (GISB) had an opportunity to develop standards related to imbalance trading.

The Commission further recognized the importance of imbalance trading in Order No. 637.[3] The Commission found that penalties can operate to distort the workings of the market and that imbalance trading plays an important role in the Commission's overall penalty policy because shippers can use imbalance trading to better manage their penalty exposure without jeopardizing the integrity of the pipeline's operations. The Commission further found that imbalance trading was of sufficient importance to shippers' ability to manage their business that pipelines would not be permitted to implement new imbalance services (such as park and loan services) before they implement imbalance trading.[4]

On February 23, 2000, GISB filed with the Commission a report on its standards development progress. GISB reports that its Executive Committee approved standards for imbalance trading and netting and title transfer tracking and that these standards are awaiting the development of the technical standards for information requirements and technical mapping.

On February 11, 2000, the Executive Committee also established an Expedited Data Development Subcommittee whose first charge is to complete the technical standards for imbalance trading promptly.[5]

Because of the importance of imbalance trading to the overall Commission policy regarding pipeline penalties, the Commission is establishing November 1, 2000 as the date by which pipelines are to comply with the requirement to provide imbalance trading to their shippers. Since GISB has been working since February 2000 on developing the technical standards, this date should provide GISB and the pipelines with sufficient opportunity to complete the technical standards and implement imbalance trading. To implement imbalance trading on their systems, pipelines must file revised tariff sheets not less than 30 days nor more than 60 days prior to November 1, 2000.[6]

The Commission orders:

Each interstate pipeline must comply with § 284.12(c)(2)(ii) of the Commission regulations by November 1, 2000.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 00–17162 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998), *on reh'g*, Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 (Sep. 29, 1998).

[2] Order No. 587–G, 63 FR at 20081, III FERC Stats. & Regs. Regulations Preambles ¶ 31,062, at 30,677–80.

[3] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10156, 10198 (Feb. 25, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,308 (Feb. 9, 2000), Order No. 637–A, 65 FR 35705 (Jun. 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,099 (May 19, 2000).

[4] Order No. 637, 65 FR at 10199, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,311; Order No. 637–A, 65 FR at 35737, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,601–602.

[5] *See http://www.gisb.org/edd.htm* (June 8, 2000) (announcing formation of Expedited Data Development Subcommittee).

[6] 18 CFR 154.207.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–1456]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,6-hexanediamine, *N,N'*-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-1-butanamine and *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine as a stabilizer in olefin polymers intended for use in contact with food. This action responds to a petition filed by Ciba Specialty Chemicals Corp.

DATES: This rule is effective July 7, 2000. Submit written objections and requests for a hearing by August 7, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 27, 1999 (64 FR 28825), FDA announced that a food additive petition (FAP 9B4656) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 1,6-hexanediamine, *N,N'*-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-1-butanamine and *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine as a stabilizer in olefin polymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4656. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human

environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by August 7, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

(b) * * *

Substances	Limitations
* * * * * * *	
1,6-Hexanediamine, *N,N'*-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-1-butanamine and *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine (CAS Reg. No. 192268–64–7)	For use only: 1. At levels not to exceed 0.5 percent by weight of propylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 3.1a, 3.2a, 3.2b, 3.4, or 3.5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories I, II, IV–B, VI–A, VI–B, VII–B, and VIII, and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.3 percent by weight of propylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 3.1a, 3.2a, 3.2b, 3.4, or 3.5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 3. At levels not to exceed 0.5 percent by weight of ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, or 3.6 (where the density of each of these polymers is at least 0.94 gram per cubic centimeter), or 5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories I, II, IV–B, VI–A, VI–B, VII–B, and VIII, and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 4. At levels not to exceed 0.05 percent by weight of ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, or 3.6 (where the density of each of these polymers is at least 0.94 gram per cubic centimeter), or 5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 5. At levels not to exceed 0.5 percent by weight of ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, 3.4, 3.5, or 3.6 (where the density of each of these polymers is less than 0.94 gram per cubic centimeter), or 5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories I, II, IV–B, VI–A, VI–B, VII–B, and VIII, and under conditions of use C through G described in table 2 of § 176.170(c) of this chapter.

Substances	Limitations
	6. At levels not to exceed 0.01 percent by weight of ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, 3.4, 3.5, or 3.6 (where the density of each of these polymers is less than 0.94 gram per cubic centimeter), or 5. The finished polymers may contact food only of the types identified in § 176.170(c) of this chapter, table 1, under categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use C through G described in table 2 of § 176.170(c) of this chapter.

Dated: June 15, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–17203 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Bacitracin Methylene Disalicylate, and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for using approved, single-ingredient salinomycin, bacitracin methylene disalicylate (BMD), and roxarsone Type A medicated articles to make three-way combination Type C medicated feeds used for prevention of coccidiosis, as an aid in the prevention and control of necrotic enteritis, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation in broiler, roaster, and replacement (breeder and layer) chickens.

DATES: This rule is effective July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–121 that provides for use of approved BIO-COX® (30 or 60 grams per pound (g/lb) of salinomycin activity), BMD® (10, 25, 30, 40, 50, 60, or 75 g/lb BMD), and 3-NITRO® (45.4, 90, 227, or 360 g/lb roxarsone) Type A medicated articles to make combination Type C medicated feeds for use in broiler, roaster, and replacement chickens. The combination Type C medicated feeds contain 40 to 60 grams per ton (g/ton) salinomycin, 50 or 100 to 200 g/ton BMD, and 22.7 to 45.4 g/ton roxarsone and are used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*; *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, as an aid in the prevention (at 50 g/ton BMD) or control (at 100 to 200 g/ton BMD) of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation. The NADA is approved as of December 23, 1999, and the regulation in § 558.550 (21 CFR 558.550) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, due to an error in structuring the regulations, the approval entry in § 558.550(a)(3) is removed. Also, § 558.500(d)(1)(xv) and (d)(1)(xvi) are amended under limitations to reflect the change due to the error.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.550 is amended by removing the phrase "through (d)(3)(iii)" from paragraph (a)(2), by removing paragraph (a)(3), by revising the last sentence of paragraphs (d)(1)(xv)(*c*) and (d)(1)(xvi)(*c*), by adding paragraphs (d)(1)(xviii) and (xix), by redesignating paragraphs (d)(3)(i), (d)(3)(ii), and (d)(3)(iii) as paragraphs (d)(3)(i)(A), (d)(3)(i)(B), and (d)(3)(i)(C), respectively, and by adding new paragraphs (d)(3)(ii) and (d)(3)(iii) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(d) * * *

(1) * * *

(xv) * * *

(*c*) *Limitations.* * * * Chlortetracycline as provided by Nos. 046573 and 063238; roxarsone as provided by No. 046573; and salinomycin as provided by Nos. 012799 and 063238 in § 510.600(c) of this chapter.

(xvi) * * *

(*c*) *Limitations.* * * * Chlortetracycline as provided by Nos. 046573 and 063238; salinomycin as provided by Nos. 012799 and 063238 in § 510.600(c) of this chapter.

* * * * *

(xviii)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; bacitracin methylene disalicylate, 50 grams; and roxarsone, 22.7 to 45.4 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(C) *Limitations.* Feed continuously as sole ration. Do not feed to laying chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. May be fatal if fed to adult turkeys or to horses. Withdraw 5 days before slaughter. Salinomycin as provided by Nos. 063238; bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.

(xix)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; bacitracin methylene disalicylate, 100 to 200 grams; and roxarsone, 22.7 to 45.4 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(C) *Limitations.* Feed continuously as sole ration. To control necrotic enteritis, start medication at first clinical signs of disease; vary dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Do not feed to laying chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. May be fatal if fed to adult turkeys or to horses. Withdraw 5 days before slaughter. Salinomycin as provided by No. 063238; bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

(3) * * *

(ii)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; bacitracin methylene disalicylate, 50 grams; and roxarsone, 22.7 to 45.4 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(C) *Limitations.* Feed continuously as sole ration. Discontinue use prior to sexual maturity. Do not feed to laying chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. May be fatal if fed to adult turkeys or to horses. Withdraw 5 days before slaughter. Salinomycin as provided by No. 063238; bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c).

(iii)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; bacitracin methylene disalicylate, 100 to 200 grams; and roxarsone, 22.7 to 45.4 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(C) *Limitations.* Feed continuously as sole ration. To control necrotic enteritis, start medication at first clinical signs of disease; vary dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Discontinue use prior to sexual maturity. Do not feed to laying chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. May be fatal if fed to adult turkeys or to horses. Withdraw 5 days before slaughter. Salinomycin as provided by No. 063238; bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c).

* * * * *

Dated: June 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–17196 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 111

Presentation of First-Class Mail and Standard Mail (A) Automation Letters and Cards for Verification Under New SAVE Verification Procedures and Revisions to Combined Mailing Standards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On December 9, 1999 (64 FR 68965), the Postal Service published a proposed rule amending the Domestic Mail Manual (DMM) to enable adoption of new mail verification procedures, now in the process of being implemented. The Postal Service also proposed one DMM change specific to combined mailings. This notice announces the adoption of these changes. They support the new Standardized Acceptance and Verification (SAVE) procedures for First-Class Mail and Standard Mail (A) automation letters and cards, and limit the weight of First-Class Mail with precanceled stamps in combined mailings. This notice also responds to several comments received.

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Scott Hamel, (703) 329–3660.

SUPPLEMENTARY INFORMATION: In summary, as of July 13, 2000, the following Domestic Mail Manual changes are being adopted to implement the new verification procedures for automation letter mailings and to revise the requirements for combined mailings:

(1) For First-Class Mail and Standard Mail (A) automation letter and card mailings, mixed AADC trays must be physically separated from other trays when the mail is presented to the USPS for verification.

(2) For all First-Class Mail and Standard Mail (A) automation letter and card mailings containing 10,000 or more pieces, documentation must be submitted on paper in a standardized format in accordance with DMM P012. Alternatively, if authorized by the Postal Service, the standardized documentation may be submitted in an easily accessible electronic format.

(3) For combined mailings, mailers may not include First-Class Mail pieces that weigh over 1 ounce and are paid with precanceled stamps.

Comments Received

The Postal Service received three comments in response to the December 9, 1999, Proposed Rule. One came from a professional mailer and two were from

mailer associations. None were received directly from Postal Service customers. The comments fell into two broad categories: those relating to the published policy proposals, and those relating to the actual procedures to be used by Postal Service mail acceptance personnel in the verification process. The procedures were not included in the published notice but instead have been made available to mailers and their associations upon request. In addition, the Manager, Northern Virginia Rates and Classification Service Center has contacted mailer associations directly to discuss them. The procedures were not published with the policy proposals because the procedures do not impact the way mailers prepare mail. They change only the way the Postal Service verifies mail. Nonetheless, mailers did participate in the development of SAVE from its inception. In fact, several of its salient features were introduced by mailers. SAVE continues to evolve as we gain experience and evaluate and apply mailer suggestions.

One of the primary purposes of SAVE is to create a comprehensive, exact description of the procedures for postal clerks to use to verify automation letter and card mailings. The Postal Service committed to make the procedures available to mailers as well. In this way, the process can be monitored for integrity by mailers themselves.

The current version of the SAVE procedures (for MLOCR and barcode sorter mailers) is available from the Postal Service's Web site at www.usps.com/mptqm/downloads.htm. Very minor modifications may be made for other automation letter and card mailers as the result of current field testing. Any resulting changes will appear on the same Web site in late July 2000. The following paragraphs address mailers' comments to the proposed DMM changes.

Segregation of Mixed AADC Trays

Two comments were concerned that the Postal Service planned to scrutinize trays that tend to be error prone and then draw unfair conclusions about a mailing as a whole. A third comment questioned the value of the proposal to the Postal Service, but felt strongly that we needed to be clear in what is intended by "physically segregated."

Regarding the fairness issue, the procedures address the comment by introducing a new "weight factor" when computing error percentages. This approach accomplishes the joint goals of encouraging mailers to improve the admitted lower quality of mixed AADC trays while not unduly penalizing other sort levels for these mixed level errors. Because mailers helped develop this weighting process, we are confident other mailers will agree to its fairness in operation. The Postal Service remains open to ideas for improving SAVE.

The value of this policy proposal is that SAVE requires the postal clerk to be able to locate all of the mixed AADC trays presented in a mailing so that verification can be performed. If these trays are spread throughout the mailing as presented, verification of the mail might be slowed due to the need to search to retrieve them. We do agree with the comment that our proposal, as initially worded, might cause confusion about what the mailer is required to do. Accordingly, we reworded the requirement to make it clearer. The language in DMM M810.1.8 was clarified and appears in this notice. For the purposes of reading that language, a "mailing" is defined as those automation rate pieces that are represented by a single postage statement.

Standardized Documentation for Mailings With 10,000 or More Pieces

One comment supports this change without reservation. Another believes the Postal Service is making it more difficult to present mail; that the old way of mailers segregating identical piece weight mail by rate category for weigh verifications should be continued.

As a general matter, the Postal Service intends to eliminate weigh verification as a means of verifying piece counts, whenever possible. This process is time consuming. Piece counts can be confirmed with documentation. Since all large mailings are computer driven, the needed documentation is available.

Standardization of documentation content and format will contribute to more consistent verification methods and results throughout the postal system. All mailers' computer files contain the necessary data already so that, in some cases, the mailer may simply need to reprogram the mail qualification report to meet DMM standardized formats. Accordingly, the Postal Service is adopting the requirement that mailers provide standardized documentation for automation letter mailings having 10,000 or more pieces.

Eliminating Precanceled Stamped Pieces

The only comment on this portion of the proposal questioned its inclusion. This proposal was included because the Postal Service is striving to simplify mailing processes. Allowing precanceled stamp pieces that weigh more than 1 ounce in combined mailings adds complexity and makes verification extremely difficult. To make SAVE consistent universally, we believe it is important to eliminate this option. The crucial considerations in making this decision were that (1) business mailers have both metered and permit imprint options for this mail, and (2) few mailers are impacted because use of other than 1 ounce precanceled stamps in combined mailings is extremely rare. The Postal Service plans to go forward with this change.

General Comment

In conclusion, one comment suggested a six-month delay in implementing SAVE, so that more mailers can be educated. As it is, this final notice comes a full seven months after the initial notice. In lieu of delaying implementation, the Postal Service will further evaluate and promote awareness of SAVE by:

(1) Addressing national mailer association conferences.

(2) Providing its district offices with PowerPoint presentations to be used at local Postal Customer Council (PCC) meetings.

(3) Offering presentations at the Nashville and Anaheim Postal Forums.

(4) Making the SAVE procedures available to the mailing community via the Postal Service Web site. (MLOCR/barcode sorter procedures are available now; modifications for other automation letter and card mailers will be available in July 2000.)

(5) Testing SAVE at several list mailer sites in June 2000.

This approach recognizes that the bulk of SAVE educational efforts will be borne by the Postal Service. The impact on mailers will be minimal. Mailers need only begin presenting mixed AADC trays together, and many already do this. Some mailers may need to reprogram mail qualification reports to conform to current DMM standardized formats, although all MLOCR/barcode sorter mailers and most list mailers already meet this standard because they use conforming software from equipment and software vendors.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C.553 (b),(c)) regarding proposed rulemaking by 39 U.S.C.410 (a), the Postal Service adopts the following revisions to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual as set forth below:

M Mail Preparation and Sortation

* * * * *

M800 All Automation Mail

M810 Letter-Size Mail

Mail 1.0 BASIC STANDARDS

* * * * *

1.3 Documentation

[Amend 1.3 to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing and must be supported by documentation produced by PAVE-certified (or, except for Periodicals, MAC-certified) software or by standardized documentation under P012. Exception: For mailings of fewer than 10,000 pieces, presort and rate documentation is not required if postage at the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance. Mailers may use a single postage statement and a single documentation report for all rate levels in a single mailing. Standard Mail (A) mailers may use a single postage statement and a single documentation report for both an automation carrier route mailing and a mailing containing pieces prepared at 5-digit, 3-digit, and basic automation rates as applicable, submitted for entry at the same time. Documentation of postage is not required if the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance. Combined mailings of Periodicals publications also must also be documented under M200. First-Class and Standard Mail (A) mailings prepared under the value added refund procedures or as combined mailings of different postage payment methods or different rates of postage affixed must meet additional standardized documentation requirements under P014 and P760.

* * * * *

[Add new 1.8 to read as follows:]

1.8 Presentation

Upon presentation of letter-size automation rate First-Class Mail and Standard Mail (A) mailings to the Postal Service for verification, mailers must present all mixed AADC trays together, and such trays must either be adjacent to one another or side by side, and must be placed as the top layer(s) on any given container. Containerization instructions for First-Class Mail letters and cards may be established by local Postal Service managers.

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P Postage and Payment Methods

* * * * *

P700 Special Postage Payment Systems

* * * * *

P760 First-Class or Standard Mail (A) Mailings With Different Payment Methods

* * * * *

2.0 POSTAGE

* * * * *

2.3 Precanceled Pieces—First-Class Mail

[Amend 2.3 by revising the first sentence to read as follows:]

Pieces with precanceled stamps in a combined mailing must not weigh more than 1 ounce and must bear postage in any denomination of precanceled stamps permitted in a Presorted or automation rate mailing. Additional postage due for precanceled stamp pieces in a combined mailing is deducted from the mailer's postage due advance deposit account. Full postage at single-piece First-Class Mail rates must be paid on accompanying single-piece rate mail using one of the methods under P100. Additional preparation to verify postage due may be required by the Postal Service.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–17094 Filed 7–6–00; 8:45 am]

BILLING CODE 7710–12–U

LEGAL SERVICES CORPORATION

45 CFR Part 1635

Timekeeping Requirement

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's rule on timekeeping to assure that allocations of expenditures of LSC funds are supported by accurate records. The final rule requires that recipient time records for attorneys and paralegals reflect the date as well as the amount of time spent on each case, matter or supporting activity. The final rule also requires that part-time attorneys and paralegals who also work for organizations that engage in restricted activities certify that they have not worked on such restricted activities (except for *de minimis* actions) during any time for which they are compensated with LSC funds nor used recipient resources for restricted activities. Finally, the final rule adds a definition for the term restricted activities.

EFFECTIVE DATE: This final rule is effective on August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, N.E., Washington, DC 20002–4250; 202–336–8817; mcondray@lsc.gov.

SUPPLEMENTARY INFORMATION: The publication of this final rule completes a process dating back to early 1998. In February of that year, the LSC's Office of Inspector General (OIG) issued a Summary Report on Audits of Selected Grantees for Compliance with Selected Regulations which found that timekeeping records could not demonstrate that recipients' part-time attorneys and paralegals do not work on restricted activities during any time for which they are compensated by the recipient for their services. The OIG recommended that the LSC revise its timekeeping rule to require that part-time attorneys and paralegals maintain timekeeping records for all hours worked for the recipient by date and time of day. The Operations and Regulations Committee (Committee) of the LSC Board of Directors (Board) met in September 1998, to consider the OIG recommendation and other proposed revisions to the existing timekeeping rule. Following that meeting, LSC published a Notice of Proposed Rulemaking (NPRM) for public comment on October 22, 1998 (63 FR 56594).

Under the existing rule, all recipients are required to keep contemporaneous records of the amount of time their attorneys and paralegals spend on each case, matter or supporting activity. The NPRM proposed three changes to this

basic requirement. First, LSC proposed that full-time attorneys and paralegals be required to record the date that time was spent on each case, matter or supporting activity, in addition to the amount of time spent. The second proposed change would have required that time records for part-time attorneys and paralegals who also work for organizations which engage in restricted activities (a term of art referring to those activities in which organizations receiving LSC funding may not engage due to statutory and regulatory limitations) provide the date and exact time of day for time spent on each case, matter or supporting activity. The third change proposed that time records for both full-time and part-time attorneys and paralegals be consistent with the recipient's time and attendance records used for payroll purposes.

In addition to the proposed changes to the text of § 1635.3(b)(1), LSC requested comment on whether LSC should, as an alternative to the date and time of day record requirement being proposed for part-time attorneys and paralegals, require such employees to certify in writing that they had not engaged in any restricted activities during any time for which they were paid by the recipient. The NPRM did not contain any proposed language relating to a certification requirement, but invited comment on the matter of certification or other alternatives to the recordkeeping requirement that might address the OIG's concerns.

Most of the comments LSC received on the NRPM preferred the certification option over the date and time of day record proposed on the basis that the requirement to keep records by time of day was too onerous given the typical workday patterns of legal services attorney and paralegals. Some commenters also objected to the proposal that all attorney and paralegal time records reflect the date as well as the amount of time spent as unnecessary and administratively burdensome. Many of the comments also objected to the proposal that time records be consistent with payroll records, fearing that the proposal would place recipients in jeopardy of being in non-compliance with the Fair Labor Standards Act.

The Committee met in February 1999, to consider the comments on the NPRM. After considering the comments received, along with the recommendations of the OIG and staff, the Committee decided to retain certain elements of the NPRM, revise others, and to republish the proposed rule for further public comment. The new proposed rule ("republished NPRM"), issued on April 5, 1999 (64 FR 16383), replaced the previous proposal that part-time attorneys and paralegals be required to record the exact date and time for time worked with a certification requirement. Under a new proposed § 1635.3(e), LSC proposed to require part-time attorneys and paralegals who also work for organizations that engage in restricted activities to certify on a quarterly basis that they had not worked on restricted activities during any time for which they were compensated with LSC funds nor used recipient resources for restricted activities. The proposed certification requirement contained an exception for *de minimis* activities, acknowledging that certain activities, such as opening or briefly screening mail or taking a phone call to schedule another time to discuss restricted activity matters, are often unavoidable. Related to this issue, the republished NPRM added a new § 1635.2 (c), containing a proposed definition of "restricted activities."

The republished NPRM retained the previously proposed requirement that all attorney and paralegal time records provide the date for each timekeeping entry. LSC was not convinced that this requirement would pose an undue administrative burden on recipients and that reference to a particular timeframe was necessary to an understanding of the records. The republished NPRM, however, did invite specific comment from those recipients whose current recordkeeping systems did not include recording by date on the anticipated effect of the proposal.

Finally, LSC deleted the previously proposed requirement that time keeping records be consistent with payroll records. Although LSC did not agree with the comments that the proposal would require recipients to run afoul of the Fair Labor Standards Act, LSC determined that the proposed recordkeeping consistency requirement was not necessary. The original proposal was intended to address a problem related to timekeeping records in a period during which many recipients were divesting themselves of matters which they were no longer permitted to handle as the result of legislative changes to the program in 1996. Since that time, however, the divestitures have been completed and LSC staff and OIG agreed that the risk of non-compliance with the new restrictions has decreased significantly, eliminating the need for consistency between payroll and timekeeping records. Thus, in light of the changed circumstances and the concerns raised by the comments, LSC decided simply to drop this proposal from the republished NPRM.

LSC received three comments on the republished NPRM. All of the comments generally favored the certification approach over the earlier proposal requiring part-time attorneys and paralegals to keep time by recording the exact time of day for each case, matter or supporting activity. The comments suggested making some specific changes to the language in several of the sections to improve what the commenters considered the clarity of the language rather than the substance of the proposed requirements. These comments are discussed at greater length in the Section-by-Section Analysis, below.

After a meeting in November 1999 to consider the comments and staff report on the republished NPRM, the Committee made a number of additional revisions to the rule and voted to recommend to the Board that the rule be adopted as revised. Subsequently, the Board adopted as final the Committee's revised and reported version of the rule, as set forth below.

Section-by-Section Analysis

Section 1635.1 Purpose

The final rule retains the provisions of the current rule. No comments were received on this section.

Section 1635.2 Definitions

The final rule adopts in § 1635.2(c), a modified definition of the term "restricted activities" to clarify the meaning of that term as used in the certification requirement (§ 1635.3(d)). Restricted activities are now defined as those activities that are prohibited in 45 CFR part 1610.

Restricted activities is a term of art which refers to activities which recipients are statutorily prohibited from engaging in by the LSC Act or Section 504 of the 1996 LSC appropriations act. The term is defined at length in the LSC's regulations relating to the use of non-LSC funds, transfer of LSC funds and program integrity at 45 CFR 1610.2 (a) and (b). See 62 FR 27695 (May 21, 1997). Because these definitions cite to the restrictions' statutory sources and each restriction's implementing regulation, if available, LSC proposed to define "restricted activities" as those activities inconsistent with section 504 in 45 CFR 1610.2 (a) and (b).

Several commenters requested that LSC clarify the definition. Upon further reflection, LSC determined that although the § 1610.2 definitions list the types of activities that are restricted by law, other portions of part 1610 provide additional useful information. For

example, part 1610 also contains information which explains the scope of the restrictions, especially in regard to the types of funds that may not be used for various activities. LSC, accordingly, is changing the definition of "restricted activities" in this final rule to refer to the use of that term in the entirety of part 1610. LSC believes that making reference to part 1610 for definition of the "restricted activities" will sufficiently inform recipients as to the intended meaning and scope of the term, as they should be well versed in the provisions of part 1610 whose violations have serious implications for their LSC funding. LSC also believes that the revised definition clarifies that nothing in the proposed rule is intended to expand the scope of any restriction or the type of recipient funds implicated by a particular statutory or regulatory restriction.

The final rule retains, with minor clarifying changes, the definition of matter in 1635.2(b). The term "referral" is added to the list of examples of indirect services to clarify that the process of interviewing an applicant, determining eligibility and making a referral to a PAI attorney or other agency is a matter.

The final rule retains the definitions of case in 1635.2(a) and supporting activity in 1635.2(d).

Section 1635.3 Timekeeping Requirement

Section 1635.3(b)(1) of the final rule adopts a requirement that all recipient attorneys and paralegals provide the date as well as the amount of time spent on each case, matter or supporting activity in their time-keeping records.

LSC believes that timekeeping records have little significance unless put into the context of a particular time frame. The previous rule already implied a connection between timekeeping records and a particular date because it required that timekeeping records be made contemporaneously. In practice, the timekeeping records of most LSC recipients already provide the date in their timekeeping records. Thus, LSC did not consider the proposal to add a date requirement to the regulation to be burdensome. Nonetheless, when the proposed rule was republished, LSC requested those recipients whose records did not provide the date to comment on how the requirement might affect their programs. No comments were received on this particular issue. Rather, one comment on the date requirement stated that it was not an unreasonable additional burden on recipients, in part because most current timekeeping systems used by LSC recipients already include the date in the information routinely collected. Accordingly, LSC has adopted the date requirement in the final rule.

The final rule contains a new paragraph (d) (corresponding to proposed paragraph (e) in the republished NPRM) requiring that any attorney or paralegal who works part-time for a recipient and part-time for an organization that engages in restricted activities to certify in writing that, with the exception of *de minimis* actions, he or she has not worked on restricted activities during the time he or she was being compensated by the recipient, nor used recipient resources for restricted activities. Paragraph (d) also sets forth a standard for determining if an action can be classified as *de minimis*: *de minimis* actions are those that are of little substance; require little time; are not initiated by the part-time attorney or paralegal; and, for the most part, are unavoidable.

Activities that would meet the standard include answering the telephone and establishing another non-LSC program time with the caller to discuss the restricted activity, or opening and briefly screening mail. Actions that would not meet this standard include researching, preparing legal documents, meeting with or providing advice to the client and conferring with third parties on behalf of the client. Although the examples listed above are not intended to provide an exhaustive list of permissible and impermissible actions, LSC cautions recipients that it intends to interpret the *de minimis* standard strictly to permit only a very narrow range of actions. LSC is taking this position in order to ensure that part-time attorneys and paralegals are not engaged in restricted activities while being compensated by the recipient or using recipient resources for restricted activities.

In the republished NPRM, the proposed regulatory text for this paragraph contained examples of *de minimis* actions. Two comments requested that LSC provide additional examples of permitted actions and clarify the meaning of the exception. Rather than cluttering up the regulatory text with additional examples, LSC believes that it is better to set forth a standard for *de minimis* actions in the regulatory text and include a discussion and examples of *de minimis* actions in the preamble. The final rule reflects this judgment.

The proposed regulatory text and the related preamble discussion had stated that the certification requirement did not apply to *de minimis* actions "related to a restricted activity that does not involve working on the restricted activity." LSC received a comment noting that the references to "working on the related activity" constitute a tautology that reiterates the same concept without providing sufficient guidance on the scope of the exception. LSC agrees that the reference to "working on restricted activities" is vague and repetitive. Accordingly, that phrase has been deleted from the final rule.

LSC also received comments suggesting adding the term "non-substantive" after *de minimis*. LSC has determined that the term "non-substantive" should not be added to the regulation because it does not clarify the meaning of *de minimis*. The meaning of *de minimis* (trifling; small matter; of little importance) is sufficiently similar to that of the term "non-substantive" (small amount; having little practical importance) that including both terms would be repetitive and not helpful.

One comment suggested replacing "works" with "is employed" to clarify that the part-time attorney or paralegal has an employee/employer relationship with the recipient. For the purposes of this rule, either term has the same meaning. Accordingly, the final rule retains the term "works" as proposed, without change.

Another comment requested a clarification that the term "time period" refers to the specific hours or work days the part-time attorney or paralegal is expected to work for the recipient rather than payroll periods during which the employee may work part-time for both the recipient and another organization that engages in restricted activities. LSC has deleted the word "period" from the final rule so that the language makes clear that the time referred to is the specific time the attorney or paralegal works for the recipient and for which he or she is paid by the recipient.

The final rule requires that certifications be made quarterly on a form determined by LSC. The republished NPRM proposed that certifications be made to LSC on a quarterly basis on dates established by LSC. One comment questioned the need for quarterly certifications stating that such frequent reporting would put a significant administrative burden on the recipient. The comment also suggested that LSC not establish a specific date on which a certification needs to be made, but require certification on or before a particular date instead. One comment also noted that the LSC has not always provided recipients with the appropriate forms in a timely manner. LSC disagrees that the quarterly requirement would impose a significant

administrative burden on recipients, but agrees that it is unnecessary for LSC to set a date upon which the certification is due. The final rule reflects these determinations. In addition, the final rule requires LSC to provide recipients with an appropriate form by the effective date of the final rule.

LSC received one comment suggesting that LSC require recipients to submit the certifications to LSC. LSC does not believe such a requirement is necessary. The certification requirement is intended to be a recordkeeping rather than a reporting requirement. The information is to be maintained by recipients so that it is available to auditors or LSC staff for annual audits or on-site reviews. A recipient would need to submit certifications to LSC only when requested to do so by LSC. Accordingly, this suggestion has not been adopted in the final rule.

The final rule eliminates the old paragraph (c) because it is outdated. This paragraph required that the time keeping system must be implemented within 30 days of the effective date of the regulation or within 30 days of the effective date of a grant or contract, whichever is later. The preamble states that the final rule becomes effective 30 days after publication. LSC management routinely provides new grantees with deadlines for compliance with various grant requirements, such as governing board composition and reporting requirements. Thus, the continued inclusion of this requirement is not necessary. This change was not contained in either the original or republished NPRMs, but as it is a technical, procedural change that has no adverse effect on recipients subject to this rule it may be made without prior public notice and comment. 5 U.S.C. 553(b).

In the final rule, paragraph (d) is relettered as (c) and contains a minor conforming language change. The final rule deletes the phrase "from the time of implementation." The timekeeping system must be capable of aggregating the time record information on both closed and pending cases by the legal problem type from the commencement of the case. The deleted phrase is confusing and unnecessary.

Section 1635.4 Administrative Provisions

The final rule retains the provisions of the current rule. No comments were received on this section.

For reasons set forth above, LSC revises 45 CFR part 1635 to read as follows:

Sec.
1635.1 Purpose.
1635.2 Definitions.
1635.3 Timekeeping requirement.
1635.4 Administrative provisions.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

§ 1635.1 Purpose.

This part is intended to improve accountability for the use of all funds of a recipient by:

(a) Assuring that allocations of expenditures of LSC funds pursuant to 45 CFR part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the ability of the recipient to determine the cost of specific functions; and

(c) Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) A *case* is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as but not limited to, community education presentations, operating *pro se* clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, referral, intake when no case is undertaken, and tracking substantive law developments.

(c) *Restricted activities* means those activities that recipients may not undertake as set out in 45 CFR part 1610.

(d) A *supporting activity* is any action that is not a case or matter, including management in general, and fund-raising.

§ 1635.3 Timekeeping requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient.

(2) Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type.

(d) Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities. The certification requirement does not apply to a *de minimis* action related to a restricted activity. Actions consistent with the *de minimis* standard are those that meet all or most of the following criteria: actions that are of little substance; require little time; are not initiated by the part-time employee; and, for the most part, are unavoidable. Certifications shall be made on a quarterly basis and shall be made on a form determined by LSC.

§ 1635.4 Administrative provisions.

Time records required by this section shall be available for examination by auditors and representatives of LSC, and by any other person or entity statutorily entitled to access to such records. LSC shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

Victor M. Fortuno,
General Counsel and Vice President for Legal Affairs.

[FR Doc. 00–17130 Filed 7–6–00; 8:45 am]
BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 070300A]

Fisheries of the Exclusive Economic Zone Off Alaska; Open Access Sector Fishing Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the Steller sea lion conservation area (SCA) of the Bering Sea and Aleutian Islands management area (BSAI) by "open access" vessels (i.e., those vessels that are not fishing in cooperatives), which are catching pollock for processing by the inshore component. This action is necessary because the interim C season inside the SCA of allocation of pollock total allowable catch (TAC) specified for the "open access" vessels within the SCA will be reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 2000, until 1200 hrs, A.l.t., August 20, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(B)(2), § 679.20 (a)(5)(i)(D)(*3*), and the revised interim 2000 TAC amounts for pollock in the Bering Sea subarea (65 FR 3892, January 25, 2000; 65 FR 4520, January 28, 2000; and 65 FR 39107, June 23, 2000), the interim C season allocation of TAC specified to the "open access" vessels, not fishing in cooperatives, catching pollock for processing by the inshore component is 2,582 metric tons (mt).

In accordance with § 679.22(a)(11)(iv)(A) and (C)(*3*) the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim C season allocation of pollock TAC specified to the "open access" vessels for harvest within the SCA will be reached.

Consequently, NMFS is prohibiting directed fishing for pollock in the SCA by "open access" vessels catching pollock for processing by the inshore component, as defined at § 679.22(a)(11)(iv).

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the C season allocation of pollock TAC specified to the "open access" vessels, not fishing in cooperatives, of the inshore pollock component, for harvest within the SCA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would result in noncompliance with reasonable and prudent management measures implemented to promote the recovery of the endangered Steller sea lion. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17231 Filed 7–3–00; 2:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 131
Friday, July 7, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–03–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Spey 555–15, –15H, –15N, and –15P Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce (RR) plc Spey 555–15, –15H, –15N, and –15P turbofan engines. This proposal would require modification of the low pressure (LP) turbine stage 2 nozzle guide vane (NGV) support ring seal assembly. This proposal is prompted by two instances of disk drive arm damage. In both cases, heavy damage to the stage 1 LP turbine to stage 2 LP turbine disk drive arm occurred as a result of an out of balance condition following the failure of a stage 2 LP turbine blade. The actions specified by the proposed AD are intended to prevent damage to the disk drive arm which could result in loss of stage 1 LP turbine to stage 2 LP turbine disk drive, a turbine overspeed condition and possible uncontained disk failure and damage to the airplane.

DATES: Comments must be received by September 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–03–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov." Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone No. 011–44–1332–242–424; FAX No. 011–44–1332–245–418. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone No. 781–238–7176; FAX No. 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–ANE–03–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–ANE–03–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (RR) Spey 555–15, –15H, –15N, and –15P turbofan engines. The CAA advises that there have been two occurrences of damage to the disk drive arm.

Manufacturer's Service Information

Rolls-Royce plc has issued Service Bulletin (SB) No. Sp 72–1063, dated May 1999, that specifies instructions for machining existing LP turbine stage 2 NGV support ring seal assemblies. The CAA classified this service bulletin as mandatory and issued AD 007–05–99 in order to ensure the airworthiness of these RR Spey 555–15 series turbofan engines in the U.K.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K., and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other RR Spey 555–15, –15H, –15N, and –15P turbofan engines of the same type design, the proposed AD would require reworking the existing LP turbine stage 2 NGV support ring seal assemblies within three years after the effective date of the proposed AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Economic Impact

There are approximately 310 engines of the affected design in the worldwide fleet. The FAA estimates that 60 engines installed on aircraft of U.S. registry would be affected by this proposed AD. It will take approximately 2.0 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Since this action is a rework of existing parts, there is no required parts cost. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators to be $7,200.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2000–NE–03–AD.

Applicability

This AD is applicable to Rolls-Royce plc Spey 555–15, –15H, –15N, and –15P turbofan engines. These engines are installed on but not limited to Fokker F.28 Mark series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated below, unless it has already been completed.

To prevent damage to the disk drive arm which could result in loss of stage 1 LP turbine to stage 2 LP turbine disk drive, a turbine overspeed condition and possible uncontained disk failure and damage to the airplane, do the following:

Rework Instructions

(a) Within three years after the effective date of this AD, rework the LP turbine stage 2 NGV support ring seal assembly in accordance with paragraphs 2.A. through 2.C. of the Accomplishment Instructions of RR service bulletin (SB) No. Sp 72–1063.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 30, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–17230 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–015]

Standards For Business Practices Of Interstate Natural Gas Pipelines

June 30, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend § 284.12 of its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines. The Commission is proposing to incorporate by reference the most recent version of the standards, Version 1.4, promulgated August 31, 1999 and November 15, 1999 by the Gas Industry Standards Board (GISB). The Commission also is proposing to adopt a regulation requiring pipelines to permit shippers to designate and rank the contracts under which gas will flow on a pipeline's system so that shippers have the flexibility to choose the transportation contract which is the most economical and efficacious to move their gas supplies. Version 1.4 of the GISB standards can be obtained from GISB at 1100 Louisiana, Suite 4925, Houston, TX 77002, 713–356–0060, *http://www.gisb.org.*

DATES: Comments are due August 7, 2000.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory

Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION:

United States of America

Federal Energy Regulatory Commission

Standards For Business Practices of Interstate Natural Gas Pipelines.

[Docket No. RM96–1–015]

Notice of Proposed Rulemaking

June 30, 2000.

The Federal Energy Regulatory Commission (Commission) is proposing to amend § 284.12 of its regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to incorporate by reference the most recent version of the consensus industry standards promulgated by the Gas Industry Standards Board (GISB), Version 1.4. The Commission also is proposing to require pipelines to permit shippers to designate and rank the contracts under which gas will flow on a pipeline's system so that shippers have the flexibility to choose the transportation contract which is the most economical and efficacious to move their gas supplies.

I. Background

In Order Nos. 587, 587–B, 587–C, 587–G, 587–H, 587–I, and 587–K the Commission adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. [1] In those orders, the Commission incorporated by reference consensus standards developed by GISB, a private, consensus standards developer composed of members from all segments of the natural gas industry.

On February 23, 2000, GISB filed with the Commission a letter stating it had adopted a revised version of its business practice and communication standards, Version 1.4. The Version 1.4 standards include the standards for implementing pipeline interactive Internet web sites, which pipelines were required to implement by June 1, 2000, as well as standards for critical notices, and standards for multi-tiered allocations.

GISB also reports on certain issues on which the Commission had requested reports in Order No. 587–G. GISB reports that it has approved standards for multi-tiered allocations, which are included in Version 1.4 of the standards. It reports that its Executive Committee has approved standards for imbalance trading and netting and title transfer tracking, but that these standards are awaiting the development of the technical standards for information requirements and technical mapping. GISB further reports that the Executive Committee has been unable to reach consensus on standards for cross-contract ranking and that its confirmations and cross contract ranking subcommittee is considered inactive. In a letter dated June 15, 2000, GISB filed a follow-up report on cross contract ranking. GISB reports that its Executive Committee was unable to achieve consensus with respect to cross contract ranking due to disagreement on certain policy issues and that in the opinion of the Executive Committee no further progress can be made.

II. Discussion

A. Adoption of Version 1.4 of the Standards

The Commission is proposing to incorporate by reference into its regulations Version 1.4 of GISB's consensus standards with an implementation date on the first day of the month occurring 90 days after publication of the final rule in the **Federal Register**.[2] Pipelines already were required to implement the interactive Internet standards contained in Version 1.4 by June 1, 2000. The other changes included in Version 1.4 update and improve the standards, with the principal changes occurring in the areas of communication of critical notices and multi-tiered allocations. Commission adoption of these standards would keep the Commission regulations current.

GISB approved the standards under its consensus procedures.[3] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act (NTT&AA) of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like GISB, as means to carry out policy objectives or activities.[4]

B. Issues Remaining From Order No. 587–G

In Order No. 587–G, the Commission deferred the adoption of regulations in certain areas in which GISB had not yet reached consensus, including title transfer tracking, multi-tiered allocations, and cross-contract ranking, because the industry asked that GISB be given more time to consider the development of standards on these subjects. In these areas, the Commission provided policy guidance to help facilitate GISB's further consideration and requested a report by GISB on its progress in developing the necessary standards. The Commission further deferred implementation of its regulation requiring pipelines to permit imbalance trading until GISB developed the standards needed to implement the regulation.[5]

While GISB has adopted standards for multi-tiered allocations and is in the process of finalizing standards relating to title transfer tracking, and imbalance trading, GISB has been unable to reach consensus regarding standards for cross-contract ranking. GISB's ability to reach consensus regarding contentious issues such as multi-tiered allocations and title transfer tracking demonstrates that industry self-regulation can successfully bridge gaps between industry members in order to implement policies that improve the efficiency and competitiveness of the gas industry. On the other hand, GISB's inability to reach a consensus on cross-contract ranking demonstrates the continued need for Commission oversight of the standards process to help resolve policy issues

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[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), III FERC Stats. & Regs. Regulations Preambles ¶ 31,072 (Apr. 2, 1999).

[2] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.4 of the standards are available from GISB. 5 U.S.C. 552 (a)(1); 1 CFR 51.

[3] This process first requires a super-majority vote of 17 out of 25 members of GISB's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GISB's general membership must ratify the standards.

[4] Pub L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[5] 18 CFR 284.12(c)(2)(ii).

that impede the development of standards. The Commission will address below its proposal to require pipelines to permit shippers to designate and rank the contracts under which gas will flow on each pipeline's system and will also address the other areas left unresolved in Order No. 587–G.

1. Cross-Contract Ranking

Cross-contract ranking would enable shippers to allocate gas supplies across transportation contracts so that the shipper can choose the contract which provides for the most economical transportation. Shippers today are doing business using a variety of contracts, including their own firm and interruptible contracts, and capacity release contracts with different terms and conditions. The ability to allocate gas supplies among these contracts will enhance shipper flexibility and better enable them to manage their gas supply and capacity portfolios.

From the record submitted by GISB, it is not entirely clear what prevented consensus on this issue. A GISB subcommittee developed a set of rules for permitting cross-contract ranking (CXKR–1). (The proposed standards considered by GISB are reproduced in Appendix A). But when these standards were submitted to the Executive Committee, they did not receive consensus approval.[6] A revised standard (CXKR–2) received votes of 18 in favor and 5 opposed, but under GISB's rules the vote was insufficient because it failed to garner at least two votes from the pipeline segment.[7] The pipelines also submitted a proposal allowing for cross-contract ranking (CXKR–3), but the other industry segments did not vote for this set of standards. The minutes of the Executive Committee meeting do not contain a detailed explanation of the reasons for the opposition, although it appears some members were concerned the pipeline's proposal did not provide sufficient information to LDCs, while the pipelines took the position that the other proposals required them to bear too great an information burden.

Each of the proposed standards uses the same basic approach to achieving cross-contract ranking, by requiring entity to entity confirmation. The differences between the approaches are in the supplemental information pipelines would be required to provide and in the method of confirmation used for production. The two standards that appear at issue are standard 2 and standard 3 of proposal CXKR–2.

Standard 2 states:

> As part of the confirmation and scheduling process upon request, the TSP should make available, via EBB/EDM, supplemental information obtained during or derived from the nomination process. Such supplemental information, if available, should include the TSP's Service Requester Contract and, based upon the TSP's business practice may also, on a mutually agreeable basis, include (1) a derivable indicator characterizing the type of contract and service being provided, (2) Downstream Contract Identifier and/or (3) Service Requester's Package ID.

Standard 3 states:

> Absent mutual agreement to the contrary between the TSP and the Operator for confirmations at a production location, the TSP should support the fact that the operator will confirm with the TSP to only the upstream entity level. These upstream entities should either confirm or nominate (at the TSP's determination) at an entity level with the TSP.

Prior to the filing of the GISB report, Koch Gateway Pipeline Company (Koch) filed a letter on December 17, 1999, explaining its view that the impasse results from the supplemental information requirements in standard 2 of proposal CXKR–2 and the requirement in standard 3 of proposal CXKR–2 that pipelines confirm with working interest owners behind the wellhead. Koch contends that requiring pipelines to provide the supplemental information in standard 2 would improperly subject pipelines to regulation by states, rather than the Commission, and could subject the pipelines to potentially burdensome and inconsistent information requirements from different states. Koch contends that the standard regarding working interest owners may not be the best confirmation procedure for all pipelines. It maintains only a few pipelines now provide confirmation to working interest owners and that, given the number of working interest owners on its system, universal adoption of this standard could be counterproductive by making the confirmation more, rather than less, cumbersome. Koch, however, fully supports contract ranking standards and objects only to the embellishments regarding information requirements and confirmation with working interest owners.

The Commission is proposing to add § 284.12(c)(1)(iii) to its regulations requiring pipelines to permit shippers to designate and rank the transportation contracts under which gas will flow on each pipeline's system. From the record submitted by GISB, it appears a general consensus supports cross-contract ranking as a means by which shippers can better manage their contracts and gas supplies. The impasse is not over the method (entity to entity confirmation) used to achieve cross-contract ranking, but to the supplemental information requirements and confirmation with working interest owners. The Commission, therefore, is proposing to move forward with a regulation requiring pipelines to permit shippers to rank gas supplies across their contracts and to resolve disputes concerning the informational requirements and confirmation with working interest owners after receiving comments. The basic requirements for cross-contract ranking would appear to be encompassed by the standards contained in the pipeline proposal, CXKR–3.

The Commission solicits comments on whether there is a need for a uniform generic standard setting forth additional, limited information pipelines should provide to local distribution companies or shippers. The GISB record does not make clear why LDCs or others need additional information from the pipeline during the confirmation process, and the comments should focus on what specific information is needed and why it is necessary for the pipelines to provide it. Comments also should address whether the need for additional information applies to all pipelines or is limited only to certain pipelines that currently provide such additional information to LDCs.

The reason for the disagreement with respect to working interest owners also is not clear, and the Commission seeks comment that explains the nature of the issue and the differences in viewpoint. Comments should address the need for confirmations at the working interest level, the costs and benefits of adopting such a requirement for pipelines, shippers, and the overall efficiency of the pipeline grid, and whether a uniform requirement is necessary or whether pipelines should be permitted to choose the method of confirmation with producers that best fits their systems.

2. Title Transfer Tracking

GISB's Executive Committee has reached agreement on business standards for title transfer tracking and implementation of these standards await only the development of final technical standards. The Executive Committee, on

[6] Minutes of November 11, 1999, GISB Executive Committee Meeting, 5–8, 12 (Appendix to February 16, 2000 Transmittal Letter).

[7] All five pipeline members opposed the standard. Minutes of November 11, 1999, GISB Executive Committee Meeting, 12 (Appendix to February 16, 2000 Transmittal Letter) (Voting on CXKR–2). To pass the Executive Committee, GISB's rules specify that a standard must be approved by 17 out of 25 votes on the committee, with at least two from each industry segment.

February 11, 2000, established an Expedited Data Development Subcommittee with the charge to promptly finalize the technical standards needed to implement title transfer tracking.[8] The Executive Committee also reached agreement that pipelines would implement these standards within eight months following the adoption of the technical standards in the applicable GISB standards manual.[9] Given GISB's actions with respect to title transfer tracking, the Commission sees no further need to propose additional regulations and will expect pipelines to implement these standards based on the time frame established by GISB.

3. Implementation of Regulation Requiring Pipelines To Permit Imbalance Trading and Netting

In Order No. 587–G, the Commission adopted a regulation [10] requiring pipelines to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances, but deferred pipeline implementation of the regulation to enable GISB to develop the necessary business practice and technical standards relating to imbalance trading. GISB reports that its Executive Committee has approved the necessary business practice standards, and the first task for the Expedited Data Development Subcommittee is to develop the information requirements and technical mapping standards for imbalance trading. In a contemporaneous order, the Commission is requiring pipelines to implement imbalance trading and netting by November 1, 2000.

III. Notice of Proposed Use of Standards

Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a Notice of Proposed Rulemaking (NOPR) when the agency is seeking to issue or revise a regulation that contains a standard identifying whether a voluntary consensus standard or a government-unique standard is being proposed. In this NOPR, the Commission is proposing to use Version 1.4 (August 31, 1999) of the voluntary consensus standards developed by GISB.

IV. Information Collection Statement

The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs for implementing GISB's Version 1.4 standards which update and improve the existing Version 1.3 standards and for complying with the Commission's proposed regulation requiring pipelines to permit cross-contract ranking. The burden estimates are primarily related to start-up for implementing the latest version of the standards and the cross-contract ranking regulation and will not be on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–545	93	1	38	3,534
FERC–549C	93	1	1,810	168,330

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate) = 171,864.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$2,038	$97,066
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	2,038	97,066

[8] See *http:// www.gisb.org/ edd.htm* (June 8, 2000) (announcing formation of Expedited Data Development Subcommittee).

[9] GISB February 16, 2000 Transmittal Letter, at 4.

[10] 18 CFR 284.12(c)(2)(ii); Order No. 587–G, 63 FR at 20081, III FERC Stats. & Regs. Regulations Preambles ¶ 31,062, at 30,677–80.

OMB regulations [11] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collections.

OMB Control No.: 1902–0154, 1902–0174.

Respondents: Business or other for profit, (Interstate natural gas pipelines (Not applicable to small business.)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to the latest edition approved by GISB (Version 1.4) and require pipelines to permit cross-contract ranking. The implementation of these standards and the requirement to permit cross-contract ranking are necessary to increase the efficiency of the pipeline grid.

The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

Internal Review: The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202)273–0873 email: michael.miller@ferc.fed.us].

Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[12] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[13] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[14] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) [15] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The proposed regulations would impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., August 7, 2000. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 and should refer to Docket No. RM96–1–015.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM96–1–015; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM96–1–015. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

[11] 5 CFR 1320.11.

[12] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[13] 18 CFR 380.4.

[14] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[15] 5 U.S.C. 601–612.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE, Washington DC 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to *rimsmaster@ferc.fed.us.*

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C 7101–7532; 43 U.S.C 1331–1356.

2. In § 284.12, paragraphs (b)(1)(i) through (v) are revised and paragraph (c)(1)(iii) is added to read as follows:

§ 284.12 Standards for Pipeline Business Operations and Communications.

* * * * *

(b) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.4, August 31, 1999);

(ii) Flowing Gas Related Standards (Version 1.4, August 31, 1999) with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.4, August 31, 1999);

(iv) Electronic Delivery Mechanism Standards (Version 1.4, November 15, 1999) with the exception of Standard 4.3.4; and

(v) Capacity Release Related Standards (Version 1.4, August 31, 1999).

* * * * *

(c) * * *

(1) * * *

(iii) A pipeline must permit shippers to designate and rank the transportation contracts under which gas will flow on the pipeline's system.

* * * * *

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Cross-Contract Ranking Standards GISB Considered, But Did Not Adopt

Standards considered at the November 11, 1999 GISB Executive Committee Meeting.

CXKR–1

S1 Proposed Standard 1

Absent mutual agreement to the contrary, the standard level of confirmation should be entity to entity.

S2 Revised Proposed Standard 2

As part of the confirmation and scheduling process between a Transportation Service Provider (TSP) and a Local Distribution Company (LDC), upon request by the LDC, the TSP should make available, via EBB/EDM, supplemental information obtained during or derived from the nomination process necessary for the LDC to meet its statutory and/or regulatory obligations. Such supplemental information, if available, should include the TSP's Service Requester Contract and, based upon the TSP's business practice may also, on a mutually agreeable basis, include (1) a derivable indicator characterizing the type of contract and service being provided, (2) Downstream Contract Identifier and/or (3) Service Requester's Package ID.

S3 Proposed Standard 3

Absent mutual agreement to the contrary between the TSP and the Operator for confirmations at a production location, the TSP should support the fact that the operator will confirm with the TSP to only the upstream entity level. These upstream entities should either confirm or nominate (at the TSP's determination) at an entity level with the TSP.

D1 Proposed Definition 1

Production locations includes wellheads, platforms, plant tailgates (excluding straddle plants) and physical wellhead aggregation points.

S4 Proposed Standard 4

When nominated quantities exceed available.capacity, the Transportation Service Provider (TSP) should first utilize its tariff requirements to assign capacity to each service level for each Service Requester (SR). The TSP should then use the SR's provided scheduling ranks to determine how the available quantities should be distributed within a single service level. The SR's provided scheduling ranks (as applicable) should be used as follows:

For reductions identified at or upstream of the constraint location, the order for application of ranks is Receipt Rank (Priority), Upstream Rank (Priority), Delivery Rank (Priority), Downstream Rank (Priority).

For reductions identified at or downstream of the constraint location, the order for application of ranks is Delivery Rank (Priority), Downstream Rank (Priority), Receipt Rank (Priority), Upstream Rank (Priority).

S5 Proposed Standard 5

When applying a confirmation reduction to an entity at a location, the Transportation

Service Provider (TSP) should use the Service Requester's (SR's) scheduling ranks provided on all nominations for that location and entity to determine the appropriate nomination(s) to be reduced, except where superseded by the TSP's tariff, general terms and conditions, or contractual obligations. The SR's provided scheduling ranks (as applicable) should be used as follows:

For receipt side reductions, the order for application of ranks is Upstream Rank (Priority), Receipt Rank (Priority), Delivery Rank (Priority), and Downstream Rank (Priority).

For delivery side reductions, the order for application of ranks is Downstream Rank (Priority), Delivery Rank (Priority), Receipt Rank (Priority), and Upstream Rank (Priority).

P1 Proposed Principle 1

In order to effectuate cross contract ranking, the level of confirmation at a location should occur at the entity to entity level.

S6 Revised Proposed Standard 6

Transportation Service Providers should utilize Standard 1.3.7 for ranks submitted in a nomination.

CXKR–2

Retain all standards in CXKR–1 with the exception of Standard S2 which would be revised to read as follows:

S2 Amended Revised Proposed Standard 2

As part of the confirmation and scheduling process upon request, the TSP should make available, via EBB/EDM, supplemental information obtained during or derived from the nomination process. Such supplemental information, if available, should include the TSP's Service Requester Contract and, based upon the TSP's business practice may also, on a mutually agreeable basis, include (1) a derivable indicator characterizing the type of contract and service being provided, (2) Downstream Contract Identifier and/or (3) Service Requester's Package ID.

CXKR–3

P1 New Principle

In order to effectuate cross contract ranking, the level of confirmation at a location should occur at the entity-to-entity level.

S1 New Standard

The standard level of confirmation should be entity to entity.

S4 New Standard

When nominated quantities exceed available capacity on a Transportation Service Provider's (TSP's) system, such TSP should first utilize its tariff requirements to assign capacity to each service level for each Service Requester (SR). The TSP should then use the SR's provided scheduling ranks as provided in the SR's nomination to determine how the available quantities should be distributed within a single service level.

The SR's provided scheduling ranks (as applicable) should be used as follows:

For reductions identified at or upstream of the constraint location, the order for application of ranks is Receipt Rank (Priority), Upstream Rank (Priority), Delivery Rank (Priority), Downstream Rank (Priority).

For reductions identified at or downstream of the constraint location, the order for application of ranks is Delivery Rank (Priority), Downstream Rank (Priority), Receipt Rank (Priority), Upstream Rank (Priority).

S5 New Standard

When applying a confirmation reduction to an entity (Service Requester (SR)) at a location, the Transportation Service Provider (TSP) should use such SR's scheduling ranks as provided on that SR's nominations at that location to determine the appropriate nominations(s) to be reduced, except where superceded by the TSP's tariff, general terms and conditions, or contractual obligations.

The SR's provided scheduling ranks (as applicable) should be used as follows:

For receipt side reductions, the order for application of ranks is Upstream Rank (Priority), Receipt Rank (Priority), Delivery Rank (Priority), Downstream Rank (Priority).

For delivery side reductions, the order for application of ranks is Downstream Rank (Priority), Delivery Rank (Priority), Receipt Rank (Priority), Upstream Rank (Priority).

[FR Doc. 00–17163 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 Parts 450 and 1410

Federal Transit Administration

23 CFR Part 1410

49 CFR Parts 613 and 621

[FHWA Docket No. FHWA–99–5933]

FHWA RIN 2125–AE62; FTA RIN 2132–AA66

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document extends this rulemaking's comment period until September 23, 2000. This is in response to numerous letters received by the FHWA and the FTA from State Departments of Transportation, transit operators, and metropolitan planning organizations requesting an extension of the comment period from the closing date. These groups based their requests on the time required to access the impact of these rules on the nation's highway and transit systems and provide meaningful comments.

EFFECTIVE DATE: Comments to the NPRM should be received no later than September 23, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Sheldon Edner, Metropolitan Planning and Policies Team (HEPM), (202) 366–4066 (metropolitan planning), Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366–4086 (statewide planning), or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Charles Goodman, Metropolitan Planning Division (TPL–12) (metropolitan planning), (202) 366–1944, Mr. Paul Verchninsk, Statewide Planning Division (TPL–11) (statewide planning), (202) 366–6385, or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, D.C. 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m. e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On May 25, 2000 (65 FR 33922), the FHWA and the FTA published an NPRM proposing to revise their regulations governing the developing of transportation plans and programs for urbanized (metropolitan) areas and statewide transportation plans and programs. These revisions are a product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) enacted on June 9, 1998, and generally would revise existing regulatory language to make it consistent with current statutory requirements.

The FHWA and the FTA have received requests from the American Association of State Highway and Transportation Officials, the American Public Transportation Association, the Association of Metropolitan Planning Organizations, and several State Departments of Transportation to extend the comment period. These groups voiced concerns that the proposed rule

was extremely complex and that 90 days was insufficient time to assess the impact of the proposed rules and provide meaningful comments. We agree that more time for an in-depth analysis of the NPRM would be beneficial to the FHWA and the FTA in this rulemaking. For these reasons, the FHWA and the FTA find good cause to extend this NPRM comment period closing date by 30 days.

Authority: 23 U.S.C. 134, 135 and 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5309; 49 CFR 1.48 and 1.51.

Issued on: June 30, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

Nuria I. Fernandez,

Federal Transit Deputy Acting Administrator.

[FR Doc. 00–17158 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 Parts 771, 1420, and 1430

Federal Transit Administration

23 CFR Parts 1420 and 1430

49 CFR Parts 622 and 623

[FHWA Docket No. FHWA–99–5989]

FHWA RIN 2125–AE64; FTA RIN 2132–AA43

NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document extends this rulemaking's comment period until September 23, 2000. This is in response to numerous letters received by the FHWA and the FTA from State Departments of Transportation, transit operators, and metropolitan planning organizations requesting an extension of the comment period from the closing date. These groups based their requests on the time required to assess the impact of these rules on the nation's highway and transit systems and provide meaningful comments.

DATES: Comments to the NPRM should be received no later than September 23, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To receive notification of receipt of comments you must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Fed Skaer, (202) 366–2058, Office of Planning and Environment, HEPE, or Mr. L. Harold Aikens, (202) 366–0791, Office of the Chief Counsel, HCC–31. For the FTA: Mr. Joseph Ossi, (202) 366–0096, Office of Planning, TPL–22, or Mr. Scott Biehl (202) 366–0952, Office of the Chief Counsel, TCC–30. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On May 25, 2000 (65 FR 33960), the FHWA and the FTA published an NPRM proposing to update and revise their National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) implementing regulation for projects funded or approved by the FHWA and the FTA. The current regulation was issued in 1987 and experience since that time, as well as changes in the legislation, most recently by the Transportation Equity act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107), call for an updated approach to the implementation of NEPA for FHWA and FTA projects and actions. Under this proposed rulemaking, the FHWA/FTA regulation for implementing NEPA would be revised to further emphasize using the NEPA process to facilitate effective and timely decisionmaking.

The FHWA and FTA have received requests from the American Association of State Highway and Transportation Officials, the American Public Transportation Association, the Association of Metropolitan Planning Organizations, and several State Departments of Transportation to extend the comment period. These groups voiced concerns that the proposed rule was extremely complex and that 90 days was insufficient time to assess the impact of the proposed rules and provide meaningful comments. We agree that more time for an in-depth analysis of the NPRM would be beneficial to the FHWA and the FTA in this rulemaking. For these reasons, the FHWA and the FTA find good cause to extend this NPRM comment period closing date by 30 days.

Authority: 23 U.S.C. 134, 135 and 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5309; 49 CFR 1.48 and 1.51.

Issued on: June 30, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

Nuria I. Fernandez,

Federal Transit Deputy Acting Administrator.

[FR Doc. 00–17159 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC65

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Decommissioning Activities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend MMS regulations governing oil and gas operations in the Outer Continental Shelf (OCS) to update decommissioning requirements. The new layout of the rule follows the logical sequence of plugging a well, decommissioning the platform and pipeline, and clearing the lease site. The proposed rule also updates requirements to reflect changes in technology. We restructured the requirements to make the regulations easier to read and understand. The proposed technical changes will help ensure that lessees decommission facilities safely and effectively.

DATES: MMS will consider all comments received by October 5, 2000. We will begin reviewing comments at that time and may not fully consider comments we receive after October 5, 2000.

ADDRESSES: If you wish to comment, you may mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (RPT). The RPT's e-mail address is: *rules.comments@mms.gov*.

Mail or hand-carry comments with respect to the information collection burden of the proposed rule to the Office of Information and Regulatory

Affairs; Office of Management and Budget; Attention: Desk Officer for the Department of the Interior (OMB control number 1010-New); 725 17th Street, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Research Branch, at (703) 787–1147.

SUPPLEMENTARY INFORMATION: In recent years, decommissioning practices have received more attention, which has resulted in changes in technology and practices. In 1996, at the request of MMS, the Marine Board of the National Research Council (NRC) published a report titled "An Assessment of Techniques for Removing Offshore Structures." On April 15–17, 1996, MMS convened an International Decommissioning Workshop in New Orleans, Louisiana, to discuss the recommendations in the NRC report and current decommissioning industry practices. The workshop drew over 475 attendees to discuss and make recommendations on OCS decommissioning operations. On August 8, 1996, MMS published a notice in the **Federal Register** (61 FR 41422) that requested comments on its plans to follow up on recommendations received at the workshop.

We also sponsored several other public workshops, including one in Ventura, California, on September 23–25, 1997. The purpose of the workshops was to continue the process of discussing decommissioning activities and to receive recommendations.

The regulations in this proposed rule were updated to incorporate the following into one subpart:

- Comments from decommissioning workshops;
- Comments from the NRC report;
- Comments from the annual regulatory reviews;
- Applicable Notices to Lessees (NTL);
- Lease document requirements pertaining to removals; and
- The MMS artificial reef policy.

We also support the recommendation from the NRC to require that lessees only install platforms that can be removed. We will be proposing this requirement in a future update of the platform installation requirements.

Research efforts are under way to determine out-of-service pipeline flushing requirements. We will incorporate the results of this research into future updates of pipeline flushing requirements. We also are working on research efforts to improve facility removal technology.

Format of the Proposed Rule

We have written this proposed rule in a plain-language format with frequently asked questions and short answers. We have tried to set out these requirements in a straightforward and uncomplicated manner. The plain-language format uses the terms "you" or "I," which refers to the lessee, the owners of operating rights, and pipeline right-of-way owners. We encourage your comments on our use of the plain-language format in this proposed rule, as well as future rulemaking. We also encourage your comments on including all of the decommissioning requirements from 30 CFR part 250, subparts G, I, and J into new subpart Q (at the end of the current 30 CFR part 250 regulations). We received comments at decommissioning workshops that it was difficult to find our decommissioning requirements because they were listed in three subparts.

New Requirements

Although the focus of this proposed rule is on the plain-language rewrite, and the reorganizing of subpart G into new subpart Q, the rule does propose some new requirements. The following paragraphs identify and briefly discuss these proposed revisions. We welcome your comments on these proposed requirements.

Section 250.1700 What Do the Terms "Decommissioning" and "Obstructions" Mean?

Since we are using the new industry term of "decommissioning," we have defined it. Also, we defined "obstructions" so that we would not need to repeat the list of items that should be removed unless MMS waives the removal requirement case-by-case.

Section 250.1704 When Must I Submit Decommissioning Applications?

We included a new requirement that in the Pacific OCS Region and Alaska OCS Region, a lessee must submit an initial decommissioning application at least 2 years before production ceases with the general information listed in § 250.1705. We are responding to an industry trend to plan decommissioning earlier. We encourage this practice because industry representatives have mentioned that it is the key to a "safe, conscious, and efficient decommissioning project." Also, MMS will need the information so we can be involved with the review on the ground floor planning of the world-class platform removals anticipated to occur on the OCS. We only anticipate a few applications a year for these areas.

Section 250.1710 How Must I Permanently Plug Wells?

We put the requirements in tabular format and added more plugging options to update technology.

Section 250.1711 What Are the Requirements If I Temporarily Plug a Well That I Plan To Re-enter?

To ensure that temporarily abandoned wells are protected and to ensure that those wells do not become an obstruction, we included a requirement that subsea domes must be trawled over after they are installed.

Section 250.1713 When Might MMS Consider Approving an Alternate Removal Depth?

We listed the conditions under which MMS might waive the requirement to clear a well site to 15 feet below the mud line because we have received many questions and comments concerning this topic at decommissioning workshops. However, MMS still conducts a case-by-case analysis of each request. We also added the possibility of allowing an alternate removal depth (above the mud line) for wells in more than 800 meters of water.

Section 250.1714 What Must I Do To Clear a Well Site of Obstructions?

We added the guidance listed in the Gulf of Mexico (GOM) OCS Region NTL 98–26 for site clearance, which was effective on November 30, 1998, into this section.

We also removed the site clearance verification method that uses a diver search around the wellbore because it was infrequently used and not as successful as other methods.

Section 250.718 What Are the Requirements for Removing Platforms and Subsea Facilities?

To be consistent with lease stipulations, we clarified that within 1 year after a lease terminates, a lessee must remove all platforms and subsea facilities according to the approved final decommissioning application. However, a lessee may receive approval to maintain the facilities to conduct operations or a waiver to conserve the structure as an artificial reef.

We also clarified that a lessee must remove subsea facilities in addition to removing the platform, since many additional facilities are used for field development.

Section 250.1719 What Information Must I Include in My Final Platform Removal Application?

We included the guidance from the GOM OCS Region NTL 99–G21, dated

September 13, 1999, to specify what information MMS needs in a platform removal application.

Section 250.1721 When Might MMS Consider Approving an Alternate Removal Depth?

We listed the conditions under which MMS might waive the requirement to clear a platform site to 15 feet below the mud line because we have received questions concerning this topic at decommissioning workshops. However, MMS still conducts a case-by-case analysis of each request.

Section 250.1722 What Is MMS' Policy on Converting a Platform or Other Facility to an Artificial Reef or Other Use?

Because we have received questions concerning MMS' policy on artificial reefs, and in response to a recommendation from the NRC, we propose to codify our policy on converting a platform to an artificial reef.

Section 250.1723 When Might MMS Approve Partial Structural Removals for Conversion to an Artificial Reef or Other Use?

We clarified the criteria that MMS uses to evaluate partial structure removals because we have received questions on the subject. We also added a requirement that the lessee must provide an unobstructed water column to respond to recommendations from the NRC.

Section 250.1726 What Are the Requirements for Removing a Pipeline?

We clarified the requirements concerning information to include in the pipeline decommissioning plan.

Derivation Table

The derivation table below shows where the proposed requirements originate from in the current regulations. The table also provides the section numbers that were used from 1988 up to mid-1998, when MMS assigned new section numbers to assist us in making regulatory updates (see 63 FR 29478, May 29, 1998).

Proposed new section	Current section	Previous number
250.1700	New definitions	New definitions.
250.1701	250.700(b)(2)	250.110(b)(2).
250.1702	250.700(b)(1)	250.110(b)(1).
250.1703	250.700(a); 250.913(a)	250.110(a); 250.143(a).
250.1704	250.701; 250.901(a); 250.1000(b)	250.111; 250.131(a); 250.150(b).
250.1705	New requirement	New requirement.
250.1706	250.700(a)	250.110(a).
250.1707	250.700(a)	250.110(a).
250.1708	250.700(a)	250.110(a).
250.1709	250.701	250.111.
250.1710	250.702	250.112.
250.1711	250.703	250.113.
250.1712	250.702(i)	250.112(i).
250.1713	250.702(i)	250.112(i).
250.1714–1717	250.704; 250.913(c)	250.114; 250.143(c).
250.1718	250.913(a)	250.143(a).
250.1719	250.913(a)	250.143(a).
250.1720	250.913(b)	250.143(b).
250.1721	250.913(b)	250.143(b).
250.1722	New policy statement	New policy statement.
250.1723	New policy statement	New policy statement.
250.1724	250.1006(a)(1)	250.156(a)(1).
250.1725	250.1006(a)(1); 250.1007(c)	250.156(a)(1); 250.157(c).
250.1726	250.1006(a)(2); 250.1007(c)	250.156(a)(2); 250.157(c).

Procedural Matters

Public Comment Procedure: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The proposed rule revises existing operation regulations. It does not prevent any lessee, operator, or drilling contractor from performing operations on the OCS, provided they follow the regulations. This rule updates decommissioning requirements and will not impose costs on States or localities.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the OMB under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The new or expanded requirements are written in plain language and designed to ensure that lessees decommission facilities to protect the environment and minimize obstructions to other uses of the OCS. The economic effects of this rule will be minimal. Lessees planning decommissioning activities in the

Pacific OCS Region and Alaska OCS Region would be required to plan these activities at least 2 years before production ceases and submit an initial decommissioning application. This will impact an estimated two lessees a year, as shown in Table 1. The yearly cost to submit an initial decommissioning plan is estimated at $1,000 per plan.

TABLE 1.—NEW REPORTING COST FOR THE INITIAL DECOMMISSIONING PLAN SUBMITTED IN THE PACIFIC AND ALASKA OCS REGIONS

	Yearly cost @ $1,000 per report	Yearly lessees affected	Yearly plans submitted
Small Businesses	$1,000	1	1
Other Lessees	1,000	1	1
Totals	2,000	2	2

Also, lessees who use domes to protect temporarily abandoned wells would be required to trawl over those domes after they install them. We estimate the cost for trawling would be $3,000 for each of the 45 existing domes and $3,000 to trawl each of the 10 additional domes installed each year. We estimate that 30 lessees will be required to trawl the 45 existing domes, and 5 lessees will trawl the additional 10 domes each subsequent year as shown in Table 2 (located in the Regulatory Flexibility Act section). The total costs are shown in Table 3 (located in the Regulatory Flexibility Act section).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The new or expanded requirements are minimal and apply only to the OCS decommissioning activities.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The new requirements and costs are minimal, and the main purpose of the rule is to write it in plain language.

(4) This rule does not raise novel legal or policy issues. The new requirements are based on the legal authority of the OCS Lands Act and other laws.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interfere with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the Supplementary Information section of this preamble helpful in understanding the rule? What else can we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, N.W., Washington, D.C. 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule was mainly updated to include plain language and to give additional guidance. It contains very few new requirements, and it will not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Takings Implication Assessment

According to Executive Order 12630, the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The new requirements are minor and deal with minimizing obstructions to other uses of the OCS. Thus, a Takings Implication Assessment need not be prepared according to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Regulatory Flexibility (RF) Act

The Department certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The changes proposed in 30 CFR 250, subpart Q, will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under the Standard Industrial Classification (SIC), 1381, Drilling Oil and Gas Wells, MMS estimates that there is a total of 1,380 firms that drill oil and gas wells onshore and offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. According to SBA estimates, 39 companies qualify as large firms, leaving 91 companies qualified as small firms with fewer than 500 employees.

Where there are some additional new or expanded reporting requirements in this rule, they do not impose extensive burdens. The cost to comply with the new requirements is a one-time cost of

approximately $3,000 paid to a trawling organization to trawl over domes of temporarily abandoned wells in shallow water. The OCS has approximately 45 of these domes. In subsequent years, we predict that 10 new domes will be trawled over.

We estimate that 20 of the 30 lessees that will trawl over the 45 existing domes are small businesses and 3 out of the 5 lessees that will trawl over domes in subsequent years will be small businesses. The cost to the small businesses will be $60,000 the first year and $6,000 each subsequent year, as shown in Table 2. However, the fishing industry, another small business, will benefit by having less loss to their fishing equipment.

TABLE 2.—NEW REQUIREMENT COST FOR TRAWLING

	First Year			Subsequent Years		
	Total cost @ $3000 per trawl	Lessees affected	Domes trawled	Total cost @ $3000 per trawl	Lessees affected	Domes trawled
Small Businesses	$60,000	20	20	$9,000	3	3
Other Lessees	75,000	10	25	6,000	2	2
Totals	135,000	30	45	15,000	5	5

TABLE 3.—TOTAL COSTS FOR BOTH THE NEW PLAN AND NEW TRAWLING REQUIREMENT

	First year			Subsequent Years		
	Total cost	Lessees affected	Domes trawled + plans submitted	Total cost	Lessees affected	Domes trawled + plans submitted
Small Businesses	$61,000	21	21	$10,000	4	4
Other Lessees	76,000	11	26	7,000	3	3
Totals	137,000	32	47	17,000	7	7

Also, about 2 lessees per year in the Pacific OCS Region or Alaska OCS Region will need to submit an initial decommissioning plan for a cost of approximately $1,000 each as shown in Table 1 in the Regulatory Planning and Review section.

We estimate that one of these lessees will be a small business. These plans are necessary to ensure that early planning is occurring for these upcoming world-class decommissioning activities.

Based on these calculations, this rule has no significant economic impact on small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small businesses. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The main purpose of this rule is to reorganize the requirements and write them in plain language. The new requirements are minimal and will only affect a few lessees.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The cost to comply with the new requirements is minor and will minimize conflicts with other uses of the OCS.

(c) Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises. The regulation contains a few new requirements that are not burdensome and ensure that decommissioning operations in the OCS are conducted properly.

Paperwork Reduction Act (PRA) of 1995

The proposed rule contains a collection of information that has been submitted to OMB for review and approval under § 3507(d) of the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. You may submit your comments directly to the Office of Information and Regulatory Affairs, OMB. Send a copy of your comments to MMS. Refer to the "Addresses" section for mailing instructions.

The PRA provides that an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by August 7, 2000. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the collection of information for this proposed rule is "Proposed Rulemaking—30 CFR 250, Subpart Q—Decommissioning Activities" (OMB control number 1010-NEW). Respondents include approximately 130 Federal OCS oil and gas or sulphur lessees. The frequency of response is on occasion or annually, depending upon the requirement. Responses to this collection of information are mandatory. MMS will protect proprietary information according to the Freedom of Information Act and 30 CFR 250.196, "Data and

information to be made available to the public."

This rulemaking consolidates information collection requirements on decommissioning from our current regulations in 30 CFR 250, subparts G, I, and J (approved under OMB control numbers 1010–0079, 1010–0058, and 1010–0050, respectively). These approved burdens will be correspondingly reduced when the new subpart Q regulations become final.

This rulemaking imposes only one new information collection burden. Section 250.1705 requires submission of an initial decommissioning plan in the Pacific OCS Region and Alaska OCS Region, which we estimate will require 20 burden hours per plan.

We estimate the total annual reporting "hour" burden for the proposed rule to be 3,222 hours, representing an average burden of 25 hours per respondent. There are no recordkeeping requirements. Following is a breakdown of this burden estimate.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart Q	Requirement	Average number per year	Burden hours	Annual burden hours
1703; 1704	Request approval for decommissioning	Burden included below		0
1705 (New)	Submit initial decommissioning plan in the Pacific OCS and Alaska OCS Regions.	2 plans	20	40
1709; 1711(g); 1712; 1713; 1714(b).	Submit form MMS–124 to plug wells; provide subsequent report; request alternate depth departure; request procedure to protect obstructions above seafloor; or certify area cleared of obstructions.	Burden included under 1010–0045.		0
1711(e), (d); 1717(b)	Identify and report subsea wellheads, casing stubs, or other obstructions; mark wells protected by a dome; mark location to be cleared as navigation hazard.	U.S. Coast Guard requirement.		0
1711(f)	Submit annual report on plans for re-entry to complete or permanently abandon the well..	75 reports	2	150
1714(a)	Request approval of well site clearance method	125 requests	4	500
1715; 1716; 1717(a), (g)	Verify facility and pipeline sites cleared of obstructions and submit certification letter.	120 verifications	12	1,440
1718; 1719; 1720; 1721; 1723.	Submit final application to remove platform or other subsea facility structures (including alternate depth departure) or approval to maintain, to conduct other operations, or to conserve as artificial reef.	120 applications	6	720
1722; 1723	Artificial reef permitting and re-use plan	U.S. Army Corps of Engineers and NARP requirements.		0
1724; 1725; 1726	Submit application to decommission pipeline in place or remove pipeline.	186 applications	2	372
Total Reporting		628 responses		3,222

MMS will summarize written responses to this notice and address them in the final rule preamble. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping "non-hour cost" burden resulting from the collection of information. We have not identified any, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and start-up cost component and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and start-up costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Natural gas, Petroleum, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur, Surety bonds.

Dated: June 22, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

Subpart G—[Removed and Reserved]

2. Subpart G (§§ 250.700–250.704) is removed and reserved.

Subpart I—Platforms and Structures

3. Section 250.913 is revised to read as follows:

§ 250.913 Platform removal and location clearance.

Refer to § 250.1714 through § 250.1723.

Subpart J—Pipelines and Pipeline Rights-of-Way

4. Section 250.1006 is revised to read as follows:

§ 250.1006 What are the requirements for taking a pipeline out of service?

If you take a pipeline out of service, you must:

(a) Blind flange or isolate the pipeline with a closed block valve at each end;

(b) Flush and fill with inhibited seawater any pipelines taken out of service for more than 1 year; and

(c) Return the pipeline to service within 5 years or decommission the pipeline according to § 250.1724 through § 250.1726.

§ 250.1007 [Amended]

5. In § 250.1007 paragraph (c) is removed.

6. Subpart Q is added to read as follows:

Subpart Q—Decommissioning Activities

General Requirements

Sec.

250.1700 What do the terms "decommissioning" and "obstructions" mean?
250.1701 Who must meet the obligations in this subpart?
250.1702 When do I accrue decommissioning obligations?
250.1703 What are the general requirements for decommissioning?
250.1704 When must I submit decommissioning applications?
250.1705 What information must I include in my initial platform removal application for the Pacific OCS Region or Alaska OCS Region?

Well Plugging Requirements

250.1706 Within what timeframe must I permanently plug all wells on a lease?
250.1707 When may MMS order me to permanently plug a well?
250.1708 What must I accomplish with well plugs?
250.1709 What information must I include to plug wells?
250.1710 How must I permanently plug wells?
250.1711 What are the requirements if I temporarily plug a well that I plan to re-enter?
250.1712 To what depth below the mud line must I clear a well site when it will no longer be used for oil, gas, or sulphur operations?
250.1713 When might MMS consider approving an alternate removal depth?

Site Clearance and Platform Decommissioning

250.1714 3What must I do to clear a well site of obstructions?
250.1715 What must I do to clear a facility of obstructions?
250.1716 What must I do to clear a buried pipeline of obstructions?
250.1717 What must I do to clear a trawling operation of obstructions?
250.1718 What are the requirements for removing platforms and subsea facilities?
250.1719 What information must I include in my final platform removal application?
250.1720 To what depth below the mud line must I remove a platform or other facility?
250.1721 When might MMS consider approving an alternate removal depth?
250.1722 What is MMS' policy on converting a platform or other facility to an artificial reef or other use?
250.1723 When might MMS approve partial structural removals for conversion to an artificial reef or other use?

Pipeline Decommissioning

250.1724 When may I decommission a pipeline in place?
250.1725 What are the requirements for decommissioning a pipeline in place?
250.1726 What are the requirements for removing a pipeline?

Authority: 43 U.S.C. 1331. *et seq.*

Subpart Q—Decommissioning Activities

General Requirements

§ 250.1700 What do the terms "decommissioning" and "obstructions" mean?

(a) Decommissioning means:

(1) Ending oil, gas, or sulphur operations; and

(2) Returning the lease or right-of-way to a condition that meets the requirements of regulations of MMS and other agencies that have jurisdiction over decommissioning activities.

(b) Obstructions are objects that were used in oil, gas, or sulphur operations and that, if left behind or abandoned in place, would hinder other users of the OCS. Obstructions include, but are not limited to, wellheads, casing stubs, mud line suspensions, subsea trees, jumper assemblies, umbilicals, manifolds, termination skids, production and export risers, platforms, templates, pilings, pipeline valves, and power cables (in the Pacific OCS Region).

§ 250.1701 Who must meet the obligations in this subpart?

The lessee, the owners of operating rights, and pipeline right-of-way owners are jointly and severally responsible for meeting the obligations as they accrue and until each obligation is met. In this subpart, the terms "you" and "I" refer to each lessee, owner of operating rights, and pipeline right-of-way owner.

§ 250.1702 When do I accrue decommissioning obligations?

You accrue the decommissioning obligations when you do any of the following:

(a) Drill a well;

(b) Install a platform, pipeline, or other facility;

(c) Create an obstruction to other users of the ocean;

(d) Become a lessee or the owner of operating rights of a lease on which there is a well that has not been plugged according to this subpart, a platform or other facility, or an obstruction; or

(e) Re-enter a well that was previously plugged according to this subpart.

§ 250.1703 What are the general requirements for decommissioning?

When the facilities are no longer useful for operations, you must:

(a) Get approval from the District Supervisor before decommissioning wells and from the Regional Supervisor before decommissioning facilities and pipelines;

(b) Squeeze or isolate all open perforations, plug all wellbores, sever all casings, and remove the wellhead;

(c) Remove all platforms and other facilities (including subsea equipment) to the depth required by § 250.1720 of this subpart;

(d) Decommission all pipelines; and

(e) Clear the seafloor of all obstructions created by lease and/or right-of-way operations.

§ 250.1704 When must I submit decommissioning applications?

You must submit decommissioning applications according to the following table.

DECOMMISSIONING APPLICATION SCHEDULE

Decommissioning applications	When to submit	Instructions
(a) Initial platform removal application [not required in the Gulf of Mexico OCS Region].	In the Pacific OCS Region or Alaska OCS Region, submit the application to the Regional Supervisor at least 2 years before production ceases.	Include information required under § 250.1705.
(b) Final platform removal application	Before removing a platform	Include information required under § 250.1719.
(c) Pipeline decommissioning application	Before you decommission the pipeline	Include information required under § 250.1725(a) or § 250.1726(a), as applicable.
(d) Form MMS–124, Sundry Notices and Reports on Wells.	(1) Before you plug each well; and	(i) Include information required under § 250.1709(a).
	(2) Within 30 days after you plug a well	(i) Include information required under § 250.1709(b).

§ 250.1705 What information must I include in my initial platform removal application for the Pacific OCS Region or Alaska OCS Region?

You must include the following information in your initial platform removal application for the Pacific OCS Region or Alaska OCS Region:

(a) Platform or other facility removal procedures, including the types of vessels and equipment to be used;

(b) Facilities (including pipelines) you plan to remove or leave in place;

(c) Platform or other facility transportation and disposal plans;

(d) Plans to protect marine life and the environment during decommissioning operations, including a brief assessment of the environmental impacts of the operations, and procedures and mitigation measures that you will take to minimize the impacts;

(e) Projected decommissioning schedule; and

(f) The consistency of the proposed project with that described in the Development and Production Plan.

Well Plugging Requirements

§ 250.1706 Within what timeframe must I permanently plug all wells on a lease?

You must plug all wells within 1 year after the lease terminates.

§ 250.1707 When may MMS order me to permanently plug a well?

MMS may order you to permanently plug a well if that well:

(a) Poses a hazard to safety or the environment; or

(b) Is not useful for lease operations and is not capable of profitable oil, gas, or sulphur production.

§ 250.1708 What must I accomplish with well plugs?

You must ensure that all well plugs:

(a) Provide downhole isolation of hydrocarbon and sulphur zones;

(b) Protect freshwater aquifers; and

(c) Prevent migration of formation fluids within the wellbore or to the seafloor.

§ 250.1709 What information must I include to plug wells?

(a) Before you plug a well, you must submit the following information on form MMS–124 and receive approval:

(1) The reason you are plugging the well;

(2) Applicable well logs and test data;

(3) Maximum possible surface pressure, and how it was determined;

(4) Type and weight of well-control fluid you will use;

(5) A description of the work; and

(6) A current and proposed well schematic and description that include:

(i) Well depth;

(ii) All perforated intervals;

(iii) Casing and tubing depths and details;

(iv) Subsurface equipment;

(v) Estimated tops of cement (and the basis of the estimate) in each casing annulus;

(vi) Plug locations;

(vii) Plug types;

(viii) Plug lengths;

(ix) Mud and cement use;

(x) Perforating and casing cutting plans;

(xi) Plug testing plans;

(xii) Casing removal (including information on explosives, if used); and

(xiii) Proposed casing removal depth.

(b) Within 30 days after you plug a well, you must submit form MMS–124 (subsequent report) and include the following information:

(1) Information included in paragraph (a) of this section with a final well schematic;

(2) Description of the plugging work;

(3) Nature and quantities of material used in the plugs; and

(4) If you cut and pulled any casing string, you must include the following:

(i) A description of the methods used (including information on explosives, if used);

(ii) Size and amount of casing removed; and

(iii) Casing removal depth.

§ 250.1710 How must I permanently plug wells?

You must permanently plug wells according to the table in this section. The District Supervisor may require additional well plugs as necessary.

PERMANENT WELL PLUGGING REQUIREMENTS

If you have	Then you must use
(a) Zones in open hole	Cement plugs from at least 100′ below the bottom to 100′ above the top of oil, gas, and fresh-water zones to isolate fluids in the strata.
(b) Open hole	(1) Cement plugs, by the displacement method, at least 100′ above and below deepest casing shoe;

PERMANENT WELL PLUGGING REQUIREMENTS—Continued

If you have	Then you must use
	(2) Cement retainers with effective back-pressure control 50′ to 100′ above the casing shoe and a cement plug to extend at least 100′ below the shoe and at least 50′ above the retainer; or (3) Bridge plugs 50′ to 100′ above the shoe with 50′ of cement on top of the bridge plug, for expected or known lost circulation conditions. You must test these plugs by one of the methods shown in paragraphs (k)(1) and (k)(2) of this section.
(c) Perforated zones that are currently open and not previously squeezed or isolated.	(1) A squeeze method to cement; (2) Cement plugs, by the displacement method, at least 100′ above to 100′ below the perforated interval, or down to a casing plug, whichever is less. If the perforated zones are isolated from the hole below, you may use any of the plugs specified in paragraphs (c)(3) through (c)(7) of this section instead of those specified in paragraphs (c)(1) and (c)(2) of this section. (3) Cement retainers with effective back-pressure control 50′ to 100′ above the top of the perforations and a cement plug that extends at least 100′ below the bottom of the perforations with 50′ of cement above the retainer; (4) Bridge plugs set within 50′ to 100′ of top of the perforations and 50′ of cement on top of the bridge plug; (5) Cement plugs at least 200′ in length, set by the displacement method, with the bottom of the plug 100′ above the perforated interval; (6) Through-tubing basket plugs within 100′ of the perforated interval topped with 50′ of cement; or (7) Tubing plugs within 100′ of the perforated interval topped with 50′ of cement and a minimum of 300′ of cement in the tubing and casing immediately above the uppermost packer in the wellbore.
(d) Casing stubs where the stub ends within casing.	(1) Cement plugs at least 100′ above and below the stub; (2) Cement retainers or permanent bridge plugs at least 50′ to 100′ above the stub and 100′ below with at least 50′ cement on top of the retainer; or (3) Cement plugs at least 200′ long with the bottom of the plug within 100′ above the stub.
(e) Casing stubs where the stub ends below the casing.	Plugs specified in paragraph (a) or (b) of this section, as applicable.
(f) Annular space that communicates with an open hole and extends to the mud line.	Cement plugs at least 200′ long in the annular space. For surface wells, pressure test each casing annulus to verify isolation.
(g) Subsea wells with unsealed annuli.	A cutter to sever the casing and you must set a stub plug.
(h) Cement displacement plugs	Tags to verify the position of each plug.
(i) To set a surface plug (all wells except temporarily plugged wells).	A cement surface plug at least 150′ long in the smallest casing that extends to the mud line with the top of the plug within the first 150′ below the mud line.
(j) Permafrost areas	(1) A fluid to be left in the hole that has a freezing point below the temperature of the permafrost, and a treatment to inhibit corrosion; and (2) Cement plugs set before freezing and have a low heat of hydration.
(k) To test a plug (required for the first plug below the surface plug and/or lost circulation area plugs in open hole).	(1) A test to verify plug integrity with 15,000 pounds of pipe weight on the cement plug, cement retainer, or bridge plug; or (2) 1,000 pounds per square inch pump pressure with a result of 10 percent or less pressure drop during 15 minutes. The District Supervisor may require testing other plugs to prevent fluid migration.
(l) Fluid left in the hole	Fluid in the intervals between the plugs dense enough to exert a hydrostatic pressure that is greater than the respective formation pressures.

§ 250.1711 What are the requirements if I temporarily plug a well that I plan to re-enter?

You must do the following:

(a) Set plugs for permanently plugged wells listed in the table in § 250.1710; however, you do not need to sever the casings, remove the wellhead, or clear the site;

(b) Set a bridge plug or a cement plug at least 100 feet long at the base of the deepest casing string unless the casing string has been cemented and has not been drilled out. If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole;

(c) Set a retrievable or a permanent-type bridge plug or a cement plug at least 100 feet long in the casing within the first 200 feet below the mud line;

(d) Identify and report subsea wellheads, casing stubs, or other obstructions that extend above the mud line according to U.S. Coast Guard (USCG) requirements;

(e) Mark wells protected by a dome in less than 100 feet of water with a buoy installed according to USCG requirements;

(f) Provide annual reports to the Regional Supervisor describing your plans for well re-entry to complete or to permanently plug; and

(g) Except in deep water areas or other locations where there are no commercial fishing activities, protect subsea wellheads, casing stubs, mud line suspensions, or other obstructions remaining above the seafloor to allow fishing gear to pass over the structure without damage to the structure or fishing gear by using one of the following or other procedure, as

approved by the Regional or District Supervisor:

(1) A caisson designed according to § 250.906 and equipped with aids to navigation;

(2) A jacket designed according to § 250.906 and equipped with aids to navigation; or

(3) A subsea dome that does not extend more than 10 feet above the seafloor and over which you trawl when you install it and inspect annually.

§ 250.1712 To what depth below the mud line must I clear a well site when it will no longer be used for oil, gas, or sulphur operations?

Unless the District Supervisor approves an alternate depth, you must clear all wellheads and casings to at least 15 feet below the mud line.

§ 250.1713 When might MMS consider approving an alternate removal depth?

MMS may allow you to depart from the requirement for removing subsea wellheads and casings to 15 feet below the mud line when:

(a) The wellheads and casings would not become hazards to other users of the seafloor or area and geotechnical and other information you provide demonstrates that erosional processes capable of exposing the obstructions are not expected; or (b) The water depth is greater than 800 meters.

Site Clearance and Platform Decommissioning

§ 250.1714 What must I do to clear a well site of obstructions?

For each well site you must verify clearance and certify your verification.

(a) For wells, you must verify site clearance by one or more of the following methods as approved by the District Supervisor:

(1) Drag a trawl in a grid-like pattern across a 300-foot-radius circle centered on an exploration or delineation well drilled with a Mobile Offshore Drilling Unit;

(2) Scan across the location with a sonar search of at least 500 kHz frequency; or (3) Use other radii or methods based on particular site conditions.

(b) You must certify that the area was cleared of all obstructions and submit the following information on form MMS–124 within 30 days after you complete the verification activities:

(1) The date the work was performed;

(2) The extent of the area surveyed around the location; and (3) The survey method.

§ 250.1715 What must I do to clear a facility of obstructions?

To clear a facility of obstructions, you must comply with the Regional Supervisor's clearance requirements and, at minimum:

(a) Clear obstructions from:

(1) A 1,320-foot-radius circle centered on the geometric center of the facility; or (2) A 600-foot-radius circle centered on a single well caisson and well protectors.

(b) In less than a 300-foot water depth, trawl 100 percent of the limits described in paragraph (a) of this section in two directions, and in greater than a 300-foot water depth, scan across the location with a sonar of at least 500 kHz frequency;

§ 250.1716 What must I do to clear a buried pipeline of obstructions?

For buried active pipelines, you must trawl without any restrictions; however, you must contact the pipeline owner or operator to determine the condition of the pipelines to be trawled.

§ 250.1717 What must I do to clear a trawling operation of obstructions?

For trawling operations for both facilities and pipelines, you must do all of the following to clear obstructions:

(a) Complete site clearance verification to the specifications of the Regional Supervisor within 60 days after you complete the structure removal;

(b) Mark the location to be cleared as a hazard to navigation according to USCG requirements until you complete the site clearance procedures;

(c) Use a vessel to verify site clearance that is equipped with a navigational positioning system capable of providing position accuracy of (±30 feet and a calibrated navigation system;

(d) Use a trawling contractor with a valid commercial trawling license and no corporate or other financial ties to the company that performed the salvage work;

(e) Use a trawling net that is representative of those used in the commercial fishing industry and having a net strength equal to that provided by No. 18 twine;

(f) Not trawl closer than 300 feet to a shipwreck; and (g) Ensure that the company performing the location clearance sends a letter to the Regional Supervisor certifying it cleared the location of all obstructions. The company must send the letter within 30 days after site clearance is verified and must include the following information:

(1) The date the work was performed and the vessel involved;

(2) The extent of the area surveyed;

(3) The survey method used;

(4) The results of the survey, including a list of any debris removed or statement from the trawling contractor that no objects were recovered;

(5) A post-trawling job plot or map showing trawled area; and (6) An additional letter signed by an authorized lessee/operator company representative stating that they witnessed the trawling survey.

§ 250.1718 What are the requirements for removing platforms and subsea facilities?

(a) You must submit a final platform removal application to the Regional Supervisor with the information listed in § 250.1719 before removing a platform;

(b) You must remove all platforms and subsea facilities in a manner approved by the Regional Supervisor to ensure that the location has been cleared of all obstructions to other activities in the area;

(c) You must retrieve all mooring lines, anchors, and all related equipment that constitute an obstruction;

(d) You must remove subsea trees, jumper assemblies, umbilicals, manifolds, and termination skids in conjunction with well plugging activities;

(e) You must flush and remove all production and export risers with seawater from the seabed; and

(f) Within 1 year after lease termination or right-of-way relinquishment, you must remove all platforms and subsea facilities, including those listed in paragraphs (c) and (d) of this section, according to the approved final platform removal application. This paragraph does not apply if you receive either:

(1) Approval to maintain the platform and subsea facilities to conduct other operations; or

(2) A waiver to conserve the structure as an artificial reef.

§ 250.1719 What information must I include in my final platform removal application?

You must submit three copies of the final platform removal application if you are proposing to use explosives or two copies if you are not using explosives to the Regional Supervisor. Include all of the following information:

(a) Identification of the responsible party including:

(1) Lease operator/right-of-way holder;

(2) Address;

(3) Contact person and telephone number; and

(4) Shore base.

(b) Identification of the structure you are removing including:

(1) Platform Name/Complex ID Number;

(2) Location (lease/right-of-way, area, block, and block coordinates);

(3) Date installed (year);

(4) Proposed date of removal (Month/Year); and

(5) Water depth.

(c) Description of the structure you are removing including:

(1) Configuration (attach a photograph or a diagram);

(2) Size;

(3) Number of legs/casings/pilings;

(4) Diameter and wall thickness of legs/casings/pilings;

(5) Piles grouted inside or outside;

(6) Brief description of soil composition and condition;

(7) The sizes and weights of the jacket, topsides (by module), conductors, and pilings;

(8) The maximum removal lift weight and estimated number of main lifts to remove the structure; and

(9) A description of the vessel(s) that you will use to remove the structure.

(d) Identification of the purpose, including:

(1) Lease expiration/right-of-way relinquishment date; and

(2) Reason for removing the structure.

(e) A description of the removal method including:

(1) Brief description of the method to be used; and

(2) If you are using explosives, provide the following:

(i) Type of explosives;

(ii) Number and sizes of charges;

(iii) List whether you are using single shot or multiple shots;

(iv) If multiple shots, list sequence and timing of detonations;

(v) List whether you are using a bulk or shaped charge;

(vi) Depth of detonation below mud line; and

(vii) List whether you are placing the explosives inside or outside the pilings.

(3) If you will use divers or acoustic devices to conduct a pre-removal survey to detect the presence of turtle and marine mammals, describe the proposed detection method.

(4) A statement telling whether or not you will use transducers to measure the pressure and impulse of the detonations.

(5) A statement telling whether or not you will use divers to survey the area after removal to determine any effects on marine life.

(f) If available, provide the results of any recent biological surveys conducted in the vicinity of the structure and recent observations of turtles or marine mammals at the structure site.

§ 250.1720 To what depth below the mud line must I remove a platform or other facility?

Unless the Regional Supervisor approves an alternate removal depth, you must remove all platforms or other facilities (including templates, and pilings) to at least 15 feet below the mud line.

§ 250.1721 When might MMS consider approving an alternate removal depth?

The Regional Supervisor may approve an alternate removal depth if:

(a) The remaining structure or other facility would not become a hazard to other users of the seafloor or area and geotechnical and other information you provide demonstrates that erosional processes capable of exposing the obstructions are not expected; or

(b) The water depth is greater than 800 meters.

§ 250.1722 What is MMS' policy on converting a platform or other facility to an artificial reef or other use?

MMS supports and encourages the re-use of obsolete offshore petroleum structures as artificial reefs in U.S. waters.

(a) The structure must not pose an unreasonable impediment to existing facilities such as active pipelines or future mineral development.

(b) The re-use plan must comply with the artificial reef permitting requirements of the U.S. Corps of Engineers (Corps) and the criteria in the National Artificial Reef Plan (NARP).

(c) The state agency responsible for managing marine fisheries resources must accept title and liability for the structure before MMS will release the Federal lessee from obligations in the lease instrument.

(d) As appropriate, MMS may facilitate cooperation between Federal lessees, States, and other Federal agencies concerning the re-use of the structure. MMS will share information with others concerning the environmental, social, and economic consequence of re-using the structure.

§ 250.1723 When might MMS approve partial structural removals for conversion to an artificial reef or other use?

The Regional Supervisor may approve a partial structural removal if you meet all of the following conditions:

(a) The remaining structure becomes part of the NARP and the State agency responsible for managing marine fisheries resources acquires a Corps permit and accepts title and liability for the structure; and

(b) You provide an unobstructed water column above the structure sufficient to ensure safety of navigation.

Pipeline Decommissioning

§ 250.1724 When may I decommission a pipeline in place?

You may decommission a pipeline in place when the Regional Supervisor determines:

(a) The pipeline does not constitute a hazard to navigation and commercial fishing operations, unduly interfere with other uses of the OCS, or have adverse environmental effects; and

(b) Technical and environmental information shows that pipelines are not likely to interfere with other uses of the OCS.

§ 250.1725 What are the requirements for decommissioning a pipeline in place?

You must do the following to decommission a pipeline in place:

(a) Submit a pipeline decommissioning application in triplicate to the Regional Supervisor that includes the following information:

(1) Reason for the operation;

(2) Proposed procedures;

(3) Length (feet) of segment to be decommissioned; and

(4) Length (feet) of segment remaining.

(b) Pig the line, unless the Regional Supervisor determines that pigging is not practical;

(c) Flush the line;

(d) Fill the line with seawater;

(e) Cut and plug each end;

(f) Bury each end at least 3 feet below the seafloor or cover with protective concrete mats, if required by the Regional Supervisor;

(g) Remove all valves and other appurtenances that could unduly interfere with other uses of the OCS;

(h) Within 1 year after lease termination or right-of-way relinquishment, decommission the pipeline(s); and

(i) Remove a previously decommissioned pipeline if MMS subsequently determines that a pipeline is a hazard.

§ 250.1726 What are the requirements for removing a pipeline?

Before removing a pipeline, you must:

(a) Submit a pipeline removal application in triplicate to the Regional Supervisor that includes the following information:

(1) Proposed removal procedures, including the types of vessels and equipment to be used;

(2) Pipeline transportation and disposal plans;

(3) Plans to protect marine life and the environment during removal operations,

including a brief assessment of the environmental impacts of the removal operations and procedures and mitigation measures that will be taken to minimize such impacts; and

(4) Projected removal schedule and duration.

(b) Pig the line, unless the Regional Supervisor determines that pigging is not practical; and

(c) Flush the line.

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BILLING CODE 4310–MR–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 102

RIN: 0651–AB21

Public Information, Freedom of Information and Privacy

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking

SUMMARY: The United States Patent and Trademark Office proposes to add regulations implementing the Freedom of Information Act (FOIA), including the Electronic Freedom of Information Act (EFOIA) Amendments of 1996, and the Privacy Act (PA). These proposed rules are based on rules recently proposed by the Department of Commerce.

DATES: Comments must be received on or before August 7, 2000.

ADDRESSES: Send all comments—

1. Electronically to "PBORulemaking@uspto.gov", Subject: FOIA/PA Rules;

2. By mail to Director of the United States Patent and Trademark Office, Box 8, Washington, D.C. 20231, ATTN: FOIA/PA Rules; or

3. By facsimile to 703–305–9373, ATTN: FOIA/PA Rules.

FOR FURTHER INFORMATION CONTACT: Joseph G. Piccolo, 703–305–9035.

SUPPLEMENTARY INFORMATION:

Comment Format

USPTO prefers to receive comments in electronic form, either via the Internet or on a 3¼ inch diskette. Comments submitted in electronic form should be submitted as ASCII text. Special characters and encryption should not be used.

Background

The Patent and Trademark Office Efficiency Act (PTOEA) (Pub. L. 106–113, 113 Stat. 1501A–572) reestablished the Patent and Trademark Office as United States Patent and Trademark Office (USPTO), a performance-based organization with responsibility for its own operations. Consequently, USPTO has or is gaining many functions formerly provided by the Department of Commerce. The rules proposed in this notice adopt the substance of rules recently proposed by the Department of Commerce, 65 FR 34606 (May 31, 2000). Where appropriate, these proposed rules have been streamlined and tailored to reflect the practices of USPTO and its constituencies. In particular, USPTO has no national security classification authority so determinations regarding classified records will be referred to the classifying authority. Moreover, the proposed Commerce rules provide a great deal of guidance to its component bureaus. USPTO will not decentralize its initial action authority to its business units. These proposed rules will apply to FOIA and Privacy Act requests filed after October 1, 2000.

Other Considerations

This rule is not significant under Executive Order 12866.

This rule does not contain a "collection of information" as defined by the Paperwork Reduction Act.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the USPTO General Counsel has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Under FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Moreover, both FOIA and these rules set thresholds below which fees are not charged to reduce the effect of FOIA fees still further. Further, the number of "small entities" (within the meaning of the Regulatory Flexibility Act) that make FOIA requests is relatively small compared to the number of individuals who make such requests.

List of Subjects in 37 CFR Part 102

Administrative practice and procedure, Freedom of Information, Privacy, Public information.

For the reasons stated in the preamble, USPTO proposes to amend 37 CFR Chapter I by adding Part 102 to read as follows:

PART 102—DISCLOSURE OF GOVERNMENT INFORMATION

Subpart A—Freedom of Information Act

Sec.

102.1 General.
102.2 Public reference facilities.
102.3 Records under FOIA.
102.4 Requirements for making requests.
102.5 Responsibility for responding to requests.
102.6 Time limits and expedited processing.
102.7 Responses to requests.
102.9 Business Information.
102.10 Appeals from initial determinations or untimely delays.
102.11 Fees.

Subpart B—Privacy Act

102.21 Purpose and scope.
102.22 Definitions.
102.23 Procedures for making inquiries.
102.24 Procedures for making requests for records.
102.25 Disclosure of requested records to individuals.
102.26 Special procedures: Medical records.
102.27 Procedures for making requests for correction or amendment.
102.28 Review of requests for correction or amendment.
102.29 Appeal of initial adverse determination on correction or amendment.
102.30 Disclosure of record to person other than the individual to whom it pertains.
102.31 Fees.
102.32 Penalties.
102.33 General exemptions.
102.34 Specific exemptions.

Appendix to Part 102—Systems of Records Noticed by Other Federal Agencies and Applicable to USPTO Records, and Applicability of this Part Thereto

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 35 U.S.C. 2(b)(2), 21, 41, 42, 122; 44 U.S.C. 3101.

Subpart A—Freedom of Information Act

§ 102.1 General.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the United States Patent and Trademark Office (USPTO) follows to make publicly available the materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular USPTO activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part. USPTO's policy is to make discretionary disclosures of records or information exempt from disclosure under FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy

does not create any right enforceable in court.

(b) As used in this subpart, *FOIA Officer* means the USPTO employee designated to administer FOIA for USPTO. To ensure prompt processing of a request, correspondence should be addressed to the FOIA Officer, United States Patent and Trademark Office, Washington DC 20231 or delivered by hand to Crystal Park Two, 2121 Crystal Drive, Suite 714, Arlington, Virginia.

§ 102.2 Public reference facilities.

(a) USPTO maintains a public reference facility that contains the records FOIA requires to be made regularly available for public inspection and copying; furnishes information and otherwise assists the public concerning USPTO operations under FOIA; and receives and processes requests for records under FOIA. The FOIA Officer is responsible for determining which of USPTO's records are required to be made available for public inspection and copying, and for making those records available in USPTO's reference and records inspection facility. The FOIA Officer shall maintain and make available for public inspection and copying a current subject-matter index of USPTO's public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), USPTO has determined that it is unnecessary and impracticable to publish quarterly, or more frequently, and distribute copies of the index and supplements thereto. The public reference facility is located in the Public Search Room, Crystal Plaza Three, 2021 South Clark Place, Room 1A01, Arlington, Virginia.

(b) The FOIA Officer shall also make public inspection facility records created by USPTO on or after November 1, 1996, available electronically through USPTO's World Wide Web site (http://www.uspto.gov). Information available at the site shall include:

(1) The FOIA Officer's index of the public inspection facility records, which indicates which records are available electronically; and

(2) The general index referred to in paragraph (c)(3) of this section.

(c) USPTO maintains and makes available for public inspection and copying:

(1) A current index providing identifying information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1967, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;

(2) Copies of records that have been released and that the FOIA Officer determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records;

(3) A general index of the records described in paragraph (c)(2) of this section;

(4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(5) Those statements of policy and interpretations that have been adopted by USPTO and are not published in the **Federal Register**; and

(6) Administrative staff manuals and instructions to staff that affect a member of the public.

§ 102.3 Records under FOIA.

(a) Records under FOIA include all Government records, regardless of format, medium or physical characteristics, and include electronic records and information, audiotapes, videotapes, and photographs.

(b) There is no obligation to create, compile, or obtain from outside USPTO a record to satisfy a FOIA request. With regard to electronic data, the issue of whether records are created or merely extracted from an existing database is not always apparent. When responding to FOIA requests for electronic data where creation of a record or programming becomes an issue, USPTO shall undertake reasonable efforts to search for the information in electronic format.

(c) USPTO officials may, upon request, create and provide new information pursuant to user fee statutes, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. This is outside the scope of FOIA.

(d) The FOIA Officer shall preserve all correspondence pertaining to the requests received under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or a National Archives and Records Administration's General Records Schedule. The FOIA Officer shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under FOIA.

§ 102.4 Requirements for making requests.

(a) A request for USPTO records that are not customarily made available to the public as part of USPTO's regular informational services must be in writing, and shall be processed under FOIA, regardless of whether FOIA is mentioned in the request. Requests should be sent to the USPTO FOIA Officer, United States Patent and Trademark Office, Washington DC 20231 (records FOIA requires to be made regularly available for public inspection and copying are addressed in § 102.2(c)). For the quickest handling, the request letter and envelope should be marked "Freedom of Information Act Request." For requests for records about oneself, § 102.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to the requester or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

(b) The records requested must be described in enough detail to enable USPTO personnel to locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions for the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that USPTO will locate those records. If the FOIA Officer determines that a request does not reasonably describe records, the FOIA Officer will inform the requester what additional information is needed or why the request is otherwise insufficient. The FOIA Officer also may give the requester an opportunity to discuss the request so that it may be modified to meet the requirements of this section.

§ 102.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the USPTO will process FOIA requests directed to USPTO. In determining records responsive to a request, the FOIA Officer shall include only those records within USPTO's possession and control as of the date the FOIA Officer receives the request.

(b) *Consultations and referrals.* If the FOIA Officer receives a request for a record in USPTO's possession in which another Federal agency subject to FOIA

has the primary interest, the FOIA Officer shall refer the record to that agency for direct response to the requester. The FOIA Officer shall consult with another Federal agency before responding to a requester if the FOIA Officer receives a request for a record in which another Federal agency subject to FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(c) *Notice of referral.* Whenever a FOIA Officer refers a document to another Federal agency for direct response to the requester, the FOIA Officer will ordinarily notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the FOIA request was received by the first Federal agency.

(e) *Agreements regarding consultations and referrals.* The FOIA Officer may make agreements with other Federal agencies to eliminate the need for consultations or referrals for particular types of records.

§ 102.6 Time limits and expedited processing.

(a) *In general.* The FOIA Officer ordinarily shall respond to requests according to their order of receipt.

(b) *Initial response and appeal.* Subject to paragraph (c)(1) of this section, an initial response shall be made within 20 working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper FOIA Officer identified in accordance with § 102.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.

(c) *Unusual circumstances.* (1) In unusual circumstances as specified in paragraph (c)(2) of this section, the FOIA Officer may extend the time limits in paragraph (b) of this section by notifying the requester in writing as soon as practicable of the unusual circumstances and of the date by which processing of the request is expected to be completed. Extensions of time for the initial determination and extensions on appeal may not exceed a total of ten working days, unless the requester agrees to a longer extension, or the FOIA Officer provides the requester with an opportunity either to limit the scope of the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or a modified request.

(2) As used in this section, *unusual circumstances means,* but only to the extent reasonably necessary to properly process the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another Federal agency having a substantial interest in the determination of the request.

(3) Unusual circumstances do not include a delay that results from a predictable workload of requests, unless USPTO demonstrates reasonable progress in reducing its backlog of pending requests. Refusal to reasonably modify the scope of a request or arrange an alternate time frame may affect a requester's ability to obtain judicial review.

(4) If the FOIA Officer reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, the FOIA Officer may aggregate them. Multiple requests involving unrelated matters will not be aggregated.

(d) *Multitrack processing.* (1) The FOIA Officer may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (e) of this section.

(2) The FOIA Officer may provide requesters in a slower track with an opportunity to limit the scope of their requests in order to qualify for faster processing. The FOIA Officer may contact the requester by telephone or by letter, whichever is most efficient in each case.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited treatment whenever it is determined they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) The loss of substantial due process rights;

(iii) A matter of widespread and exceptional media interest in which there exist questions about the Government's integrity that affect public confidence; or

(iv) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should be sent to the FOIA Officer.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (e)(1)(iv) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category described in paragraph (e)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of receipt of a request for expedited processing, the FOIA Officer will decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 102.7 Responses to requests.

(a) *Grants of requests.* If the FOIA Officer makes a determination to grant a request in whole or in part, the FOIA Officer will notify the requester in writing. The FOIA Officer will inform the requester in the notice of any fee charged under § 102.11 and disclose records to the requester promptly upon

payment of any applicable fee. Records disclosed in part shall be marked or annotated to show each applicable FOIA exemption and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(b) *Adverse determinations of requests.* If the FOIA Officer makes an adverse determination regarding a request, the FOIA Officer will notify the requester of that determination in writing. An adverse determination is a denial of a request in any respect, namely: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to FOIA (except that a determination under § 102.11(j) that records are to be made available under a fee statute other than FOIA is not an adverse determination); a determination against the requester on any disputed fee matter, including a denial of a request for a fee waiver; or a denial of a request for expedited treatment. Each denial letter shall be signed by the FOIA Officer and shall include:

(1) The name and title or position of the denying official;

(2) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);

(3) An estimate of the volume of records or information withheld, in number of pages or some other reasonable form of estimation. This estimate need not be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and

(4) A statement that the denial may be appealed, and a list of the requirements for filing an appeal under § 102.10(b).

§ 102.9 Business Information.

(a) *In general.* Business information obtained by USPTO from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For the purposes of this section:

(1) *Business information* means commercial or financial information, obtained by USPTO from a submitter, which may be protected from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

(2) *Submitter* means any person or entity outside the Federal Government from whom USPTO obtains business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The FOIA Officer shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity under paragraph (f) of this section to object to disclosure of any specified portion of that information. Such written notice shall be sent via certified mail, return receipt requested, or similar means. The notice shall either describe the business information requested or include copies of the requested records containing the information. When notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(e) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The information has been designated in good faith by the submitter as protected from disclosure under FOIA exemption 4; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under FOIA exemption 4.

(f) *Opportunity to object to disclosure.* The FOIA Officer shall allow a submitter seven working days (i.e., excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the written notice described in paragraph (d) of this section to provide the FOIA Officer with a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any portion of the information under any exemption of FOIA and, in the case of exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* The FOIA Officer shall consider a submitter's objections and specific grounds under FOIA for nondisclosure in deciding whether to disclose business information. If the FOIA Officer decides to disclose business information over the objection of a submitter, the FOIA Officer shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the business information to be disclosed; and

(3) A statement that the FOIA Officer intends to disclose the information seven working days from the date the submitter receives the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the FOIA Officer shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the FOIA Officer shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever a FOIA Officer provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the FOIA Officer shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the FOIA Officer shall notify the requester(s).

§ 102.10 Appeals from initial determinations or untimely delays.

(a) If a request for records is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse initial determination regarding any other matter under this subpart (as described in § 102.7(b)), the requester may file a written appeal, which must be received by the Office of General Counsel within thirty calendar days of the date of the written denial or, if there has been no determination, may be submitted anytime after the due date, including the last extension under § 102.6(c), of the determination.

(b) Appeals shall be decided by a Deputy General Counsel. Appeals should be addressed to the General Counsel, United States Patent and Trademark Office, Washington, DC 20231. Both the letter and the appeal envelope should be clearly marked "Freedom of Information Appeal". The appeal must include a copy of the original request and the initial denial, if any, and may include a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

(c) If an appeal is granted, the person making the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees determined in accordance with § 102.11.

(d) If no determination of an appeal has been sent to the requester within the twenty-working-day period specified in § 102.6(b) or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to the request, giving rise to a right of judicial review under 5 U.S.C. 552(a)(6)(C). If the person making a request initiates a civil action against USPTO based on the provision in this paragraph, the administrative appeal process may continue.

(e) A determination on appeal shall be in writing and, when it denies records in whole or in part, the letter to the requester shall include:

(1) A brief explanation of the basis for the denial, including a list of applicable FOIA exemptions and a description of how the exemptions apply;

(2) A statement that the decision is final;

(3) Notification that judicial review of the denial is available in the United States district court for the district in which the requester resides or has its principal place of business, the United States District Court for the Eastern District of Virginia, or the District of Columbia; and

(4) The name and title or position of the official responsible for denying the appeal.

§ 102.11 Fees.

(a) *In general.* USPTO shall charge for processing requests under FOIA in accordance with paragraph (c) of this section, except when fees are limited under paragraph (d) of this section or when a waiver or reduction of fees is granted under paragraph (k) of this section. USPTO shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. The FOIA Officer shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the FOIA Officer has reasonable cause to doubt a requester's stated use, the FOIA Officer shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses USPTO incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. The FOIA Officer shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution, and that the records are sought to further scholarly research rather than for a commercial use.

(5) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research rather than for a commercial use.

(6) *Representative of the news media, or news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if they can qualify as disseminators of "news") that make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but the FOIA Officer shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare

it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Officer shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) *Fees.* In responding to FOIA requests, the FOIA Officer shall charge the fees summarized in chart form in paragraphs (c)(1) and (c)(2) of this section and explained in paragraphs (c)(3) through (c)(5) of this section, unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) The four categories and chargeable fees are:

Category	Chargeable fees
(i) Commercial Use Requesters.	Search, Review, and Duplication.
(ii) Educational and Non-commercial Scientific Institution Requesters.	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media.	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters.	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search.	Actual direct cost, including operator time.
(iii) Duplication of records:.	
(A) Paper copy reproduction.	$.15 per page
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes preparation for release, i.e. excising).	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(3) *Search.* (i) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. The FOIA Officer will charge for time spent searching even if no responsive records are located or if located records are entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(4) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $.15 cents per page. For copies produced by computer, such as tapes or printouts, the FOIA Officer shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the FOIA Officer will charge the direct costs of that duplication.

(5) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when the FOIA Officer determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, the FOIA Officer will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) Whenever a total fee calculated under paragraph (c) of this section is $20.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of the search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $20.00.

(e) *Notice of anticipated fees over $20.00.* When the FOIA Officer determines or estimates that the fees to be charged under this section will be more than $20.00, the FOIA Officer shall notify the requester of the actual or estimated fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the FOIA Officer shall advise the requester that the estimated fee may be only a portion of the total fee. If the FOIA Officer has notified a requester that actual or estimated fees are more than $20.00, the FOIA Officer shall not consider the request received or process it further until the requester agrees to pay the anticipated total fee. Any such agreement should be in writing. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with USPTO personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, the FOIA Officer shall ordinarily charge the direct cost of special services. Such special services could include certifying that records are true copies or sending records by other than ordinary mail.

(g) *Charging interest.* The FOIA Officer shall charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until payment is received by the FOIA Officer. The FOIA Officer shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* If a FOIA Officer reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer may aggregate those requests and charge accordingly. The FOIA Officer may presume that multiple requests of this type made within a 30-calendar-day period have been made in order to avoid fees. If requests are separated by a longer period, the FOIA Officer shall aggregate them only if a solid basis exists for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, the FOIA Officer shall not require the requester to make an advance payment: a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a payment before copies are sent to a requester) is not an advance payment.

(2) If the FOIA Officer determines or estimates that a total fee to be charged under this section will be more than $250.00, the requester must pay the entire anticipated fee before beginning to process the request, unless the FOIA Officer receives a satisfactory assurance of full payment from a requester who has a history of prompt payment.

(3) If a requester has previously failed to pay a properly charged FOIA fee to USPTO or another responsible Federal agency within 30 calendar days of the date of billing, the FOIA Officer shall require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the FOIA Officer begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which the FOIA Officer requires payment under paragraphs (i)(2) or (3) of this section, the request shall not be considered received and further work will not be done on it until the required payment is received.

(5) Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, the FOIA Officer shall make records available to the requester only upon receipt of full payment of the fee.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute (except for FOIA) that specifically requires USPTO or another responsible Federal agency to set and collect fees for particular types of records. If records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, the FOIA Officer shall inform requesters of how to obtain records from those sources.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if the FOIA Officer determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, the FOIA Officer shall consider the following factors:

(i) *The subject of the request:* whether the subject of the requested records concerns the operations or activities of the Government. The subject of the requested records must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed:* whether the disclosure is "likely to contribute" to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure:* whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration. It shall be presumed that a requester who merely provides information to media sources does not satisfy this consideration.

(iv) *The significance of the contribution to public understanding:* whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities. The public's understanding of the subject in question prior to the disclosure must be significantly enhanced by the disclosure.

(3) To determine whether the second fee waiver requirement is met, the FOIA Officer shall consider the following factors:

(i) *The existence and magnitude of a commercial interest:* whether the requester has a commercial interest that would be furthered by the requested disclosure. The FOIA Officer shall consider any commercial interest of the requester (with reference to the definition of "commercial use request" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure:* whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified if the public interest standard (paragraph (k)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. The FOIA Officer ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) If only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k) (2) and (3) of this section, insofar as they apply to each request.

Subpart B—Privacy Act

§ 102.21 Purpose and scope.

(a) The purpose of this subpart is to establish policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a) (the Act). The main objectives are to facilitate full exercise of rights conferred on individuals under the Act and to ensure the protection of privacy as to individuals on whom USPTO maintains records in systems of records under the Act. USPTO accepts the responsibility to act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a citizen of the United States or an alien lawfully admitted for permanent residence into the United States, regardless of the age of the individual. Further, USPTO accepts the obligations to maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions, to maintain that information with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness in determinations made by USPTO about the individual, to obtain information from the individual to the extent practicable, and to take every reasonable step to protect that information from unwarranted disclosure. USPTO will maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity. An individual's name and address will not be sold or rented by USPTO unless such action is specifically authorized by law; however, this provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(b) This subpart is administered by the Privacy Officer of USPTO.

(c) Matters outside the scope of this subpart include the following:

(1) Requests for records which do not pertain to the individual making the request, or to the individual about whom the request is made if the requester is the parent or guardian of the individual;

(2) Requests involving information pertaining to an individual which is in a record or file but not within the scope of a system of records notice published in the **Federal Register**;

(3) Requests to correct a record where a grievance procedure is available to the individual either by regulation or by provision in a collective bargaining agreement with USPTO, and the individual has initiated, or has expressed in writing the intention of initiating, such grievance procedure. An individual selecting the grievance procedure waives the use of the procedures in this subpart to correct or amend a record; and,

(4) Requests for employee-employer services and counseling which were routinely granted prior to enactment of the Act, including, but not limited to, test calculations of retirement benefits, explanations of health and life insurance programs, and explanations of tax withholding options.

(d) Any request for records which pertains to the individual making the request, or to the individual about whom the request is made if the requester is the parent or guardian of the individual, shall be processed under the Act and this subpart and under the Freedom of Information Act and USPTO's implementing regulations at Subpart A of this part, regardless whether the Act or the Freedom of Information Act is mentioned in the request.

§ 102.22 Definitions.

(a) All terms used in this subpart which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this subpart:

(1) *Act* means the "Privacy Act of 1974, as amended (5 U.S.C. 552a)".

(2) *Appeal* means a request by an individual to review and reverse an initial denial of a request by that individual for correction or amendment.

(3) *USPTO* means the United States Patent and Trademark Office.

(4) *Inquiry* means either a request for general information regarding the Act and this subpart or a request by an individual (or that individual's parent or guardian) that USPTO determine whether it has any record in a system of records which pertains to that individual.

(5) *Person* means any human being and also shall include but not be limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(6) *Privacy Officer* means a USPTO employee designated to administer this subpart.

(7) *Request for access* means a request by an individual or an individual's parent or guardian to see a record which is in a particular system of records and which pertains to that individual.

(8) *Request for correction or amendment* means the request by an individual or an individual's parent or guardian that USPTO change (either by correction, amendment, addition or deletion) a particular record in a system of records which pertains to that individual.

§ 102.23 Procedures for making inquiries.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to USPTO. The inquiry should be made either in person at Crystal Park Two, 2121 Crystal Park Drive, Suite 714, Arlington, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, Washington DC 20231 or to the official identified in the notification procedures paragraph of the systems of records notice published in the **Federal Register**. If an individual believes USPTO maintains a record pertaining to that individual but does not know which system of records might contain such a record, the USPTO Privacy Officer will provide assistance in person or by mail.

(b) Inquiries submitted by mail should include the words "PRIVACY ACT INQUIRY" in capital letters at the top of the letter and on the face of the envelope. If the inquiry is for general information regarding the Act and this subpart, no particular information is required. USPTO reserves the right to require compliance with the identification procedures appearing at § 102.24(d) where circumstances warrant. If the inquiry is a request that USPTO determine whether it has, in a given system of records, a record which pertains to the individual, the following information should be submitted:

(1) Name of individual whose record is sought;

(2) Individual whose record is sought is either a U.S. citizen or an alien lawfully admitted for permanent residence;

(3) Identifying data that will help locate the record (for example, maiden name, occupational license number, period or place of employment, etc.);

(4) Record sought, by description and by record system name, if known;

(5) Action requested (that is, sending information on how to exercise rights under the Act; determining whether requested record exists; gaining access to requested record; or obtaining copy of requested record);

(6) Copy of court guardianship order or minor's birth certificate, as provided in § 102.24(f)(3), but only if requester is guardian or parent of individual whose record is sought;

(7) Requester's name (printed), signature, address, and telephone number (optional);

(8) Date; and,
(9) Certification of request by notary or other official, but only if
(i) Request is for notification that requested record exists, for access to requested record or for copy of requested record;
(ii) Record is not available to any person under 5 U.S.C. 552; and
(iii) Requester does not appear before an employee of USPTO for verification of identity.

(c) Any inquiry which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (b) of this section will be so addressed and marked by USPTO personnel and forwarded immediately to the Privacy Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when an inquiry so forwarded is received, the Privacy Officer shall notify the individual that his or her inquiry was improperly addressed and the date the inquiry was received at the proper address.

(d)(1) Each inquiry received shall be acted upon promptly by the Privacy Officer. Every effort will be made to respond within ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the date of receipt. If a response cannot be made within ten working days, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. The first correspondence sent by the Privacy Officer to the requester shall contain USPTO's control number assigned to the request, as well as a note that the requester should use that number in all future contacts in order to facilitate processing. USPTO shall use that control number in all subsequent correspondence.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above, the requester may ask the General Counsel to take corrective action. No failure of the Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(e) An individual shall not be required to state a reason or otherwise justify his or her inquiry.

(f) Special note should be taken of the fact that certain agencies are responsible for publishing notices of systems of records having Government-wide application to other agencies, including USPTO. The agencies known to be publishing these general notices and the types of records covered therein appear in an Appendix to this part. The provisions of this section, and particularly paragraph (a) of this section, should be followed in making inquiries with respect to such records. Such records in USPTO are subject to the provisions of this part to the extent indicated in the Appendix to this part. The exemptions, if any, determined by an agency publishing a general notice shall be invoked and applied by USPTO after consultation, as necessary, with that other agency.

§ 102.24 Procedures for making requests for records.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for access to records to USPTO. The request should be made either in person at Crystal Park Two, 2121 Crystal Drive, Suite 714, Arlington, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, Washington, DC 20231.

(b) Requests submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by USPTO personnel and forwarded immediately to the Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date when the request was received at the proper address.

(c) If the request follows an inquiry under § 102.23 in connection with which the individual's identity was established by USPTO, the individual need only indicate the record to which access is sought, provide the USPTO control number assigned to the request, and sign and date the request. If the request is not preceded by an inquiry under § 102.23, the procedures of this section should be followed.

(d) The requirements for identification of individuals seeking access to records are as follows:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:
(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);
(ii) A document, preferably issued for participation in a federally sponsored program, bearing the individual's signature (for example, unemployment insurance book, employer's identification card, national credit card, and professional, craft or union membership card); and
(iii) A document bearing neither the photograph nor the signature of the individual, preferably issued for participation in a federally sponsored program (for example, Medicaid card). In the event the individual can provide no suitable documentation of identity, USPTO will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3) recited in § 102.32(a). In order to avoid any unwarranted disclosure of an individual's records, USPTO reserves the right to determine the adequacy of proof of identity offered by any individual, particularly when the request involves a sensitive record.

(2) *Not in person.* If the individual making a request does not appear in person before the Privacy Officer or other employee authorized to determine identity, a certification of a notary public or equivalent officer empowered to administer oaths must accompany the request under the circumstances prescribed in § 102.23(b)(9). The certification in or attached to the letter must be substantially in accordance with the following text:

City of _____
County of _____ :ss
(Name of individual), who affixed (his) (her) signature below in my presence, came before me, a (title), in and for the aforesaid County and State, this ____ day of _____, 20__, and established (his) (her) identity to my satisfaction.
My commission expires _____.
(Signature)

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (d)(1) or (d)(2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the

proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. For purposes of the Act, a parent or legal guardian may represent only a living individual, not a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of § 102.25(f) are satisfied.

(e) When the provisions of this subpart are alleged to impede an individual in exercising his or her right to access, USPTO will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason or otherwise justify his or her request for access to a record.

§ 102.25 Disclosure of requested records to individuals.

(a)(1) The Privacy Officer shall act promptly upon each request. Every effort will be made to respond within ten working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of the date of receipt. If a response cannot be made within ten working days due to unusual circumstances, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the request and asking for any further information that may be necessary to process the request. "Unusual circumstances" shall include circumstances in which

(i) A search for and collection of requested records from inactive storage, field facilities or other establishments is required;

(ii) A voluminous amount of data is involved;

(iii) Information on other individuals must be separated or expunged from the particular record; or

(iv) Consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above, the requester may ask the General Counsel to take corrective action. No failure of the Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(b) *Grant of access*—(1) *Notification.* An individual shall be granted access to a record pertaining to him or her, except where the provisions of paragraph (g)(1) of this section apply. The Privacy Officer will notify the individual of a determination to grant access, and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification;

(iv) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 102.31. In no event shall the estimated date be later than thirty calendar days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(vi) Any additional requirements needed to grant access to a specific record.

(2) *Methods of access.* The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in a location specified by the Privacy Officer during business hours;

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of USPTO or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 102.31. USPTO, on its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records is governed by the provisions of § 102.26.

(d) USPTO will supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) USPTO reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or diskette, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of USPTO be made available to the individual except under the immediate supervision of the Privacy Officer or the Privacy Officer's designee.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing. The authorization shall include the name of the other individual, a specific description of the record to which access is sought, the USPTO control number assigned to the request, the date, and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the Privacy Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) *Initial denial of access*—(1) *Grounds.* Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under § 102.33 or § 102.34, or exempt by determination of another agency publishing notice of the system of records, as described in § 102.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 102.26 pertaining to medical records temporarily have been invoked; or

(iv) The individual has unreasonably failed to comply with the procedural requirements of this part.

(2) *Notification.* The Privacy Officer shall give notice of denial of access to records to the individual in writing and shall include the following information:

(i) The Privacy Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative

consideration, including the identity and address of the responsible official. If no further administrative consideration within USPTO is available, the notice shall state that the denial is administratively final; and

(v) If stated to be administratively final within USPTO, the individual's right to judicial review provided under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* When an initial denial of a request is issued by the Privacy Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of the exemption to the records, review procedures in § 102.25(g)(3)(ii) shall apply; or

(B) If the individual challenges the exemption itself, the procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by USPTO, such petition shall be filed with the General Counsel. If the exemption was determined by another agency (as described in § 102.23(f)), USPTO will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within USPTO, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the General Counsel.

(ii) As to denial under paragraphs (g)(1)(ii) of this section, (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(i)(A) of this section) paragraph (g)(1)(i), the individual may file for review with the General Counsel, as indicated in the Privacy Officer's initial denial notification. The procedures appearing in § 102.28 shall be followed by both the individual and USPTO to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within USPTO is available because the denial is not administratively final until expiration of the time period indicated in § 102.26(a).

(h) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 102.26 Special procedures: Medical records.

(a) No response to any request for access to medical records by an individual will be issued by the Privacy Officer for a period of seven working days (i.e., excluding Saturdays, Sundays, and legal public holidays) from the date of receipt.

(b) USPTO has published as a routine use, for all systems of records containing medical records, consultations with an individual's physician or psychologist if, in the sole judgment of USPTO, disclosure could have an adverse effect upon the individual. The mandatory waiting period set forth in paragraph (a) of this section will permit exercise of this routine use in appropriate cases. USPTO will pay no cost of any such consultation.

(c) In every case of a request by an individual for access to medical records, the Privacy Officer shall:

(1) Inform the individual of the waiting period prescribed in paragraph (a) of this section;

(2) Obtain the name and address of the individual's physician and/or psychologist, if the individual consents to give them;

(3) Obtain specific, written consent for USPTO to consult the individual's physician and/or psychologist in the event that USPTO believes such consultation is advisable, if the individual consents to give such authorization;

(4) Obtain specific, written consent for USPTO to provide the medical records to the individual's physician or psychologist in the event that USPTO believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist, if the individual consents to give such authorization; and

(5) Forward the individual's medical record to USPTO's medical expert for review and a determination on whether consultation with or transmittal of the medical records to the individual's physician or psychologist is warranted. If the consultation with or transmittal of such records to the individual's physician or psychologist is determined to be warranted, USPTO's medical expert shall so consult or transmit. Whether or not such a consultation or transmittal occurs, USPTO's medical officer shall provide instruction to the Privacy Officer regarding the conditions of access by the individual to his or her medical records.

(d) If an individual refuses in writing to give the names and consents set forth in paragraphs (c)(2) through (c)(4) of this section and USPTO has determined that disclosure could have an adverse effect upon the individual, USPTO shall give the individual access to said records by means of a copy, provided without cost to the requester, sent registered mail return receipt requested.

§ 102.27 Procedures for making requests for correction or amendment.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for correction or amendment to USPTO. The request should be made either in person or by mail addressed to the Privacy Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment. The office of the Privacy Officer is open to the public between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday (excluding legal public holidays).

(b) Requests submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by USPTO personnel and forwarded immediately to the Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) Since the request, in all cases, will follow a request for access under § 102.25, the individual's identity will be established by his or her signature on the request and use of the USPTO control number assigned to the request.

(d) A request for correction or amendment should include the following:

(1) Specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which to be inserted or added; and

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials which substantiate the statement. The statement should identify the criterion of the Act being invoked, that is, whether the information in the record is unnecessary, inaccurate, irrelevant, untimely or incomplete.

§ 102.28 Review of requests for correction or amendment.

(a)(1)(i) Not later than ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) after receipt of a request to correct or amend a record, the Privacy Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in § 102.25(a). No acknowledgment will be sent if the request can be reviewed, processed, and the individual notified of the results of review (either compliance or denial) within the ten working days. Requests filed in person will be acknowledged in writing at the time submitted.

(ii) If the Privacy Officer fails to send the acknowledgment within ten working days, as provided in paragraph (a)(1)(i) of this section, the requester may ask the General Counsel to take corrective action. No failure of the Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten working days, the Privacy Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in magnetically recorded computer files); or

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this subpart; and

(D) The procedures for appeal of the denial as set forth in § 102.29, including the address of the General Counsel.

(3) The term *promptly* in this section means within thirty working days (*i.e.*, excluding Saturdays, Sundays, and legal public holidays). If the Privacy Officer cannot make the determination within thirty working days, the individual will be advised in writing of the reason therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the Privacy Officer shall be responsible for notifying all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Officer in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

(3) The relevance and necessity of the information in terms of purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of risk that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) USPTO will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended is part of the official record in a terminated judicial, quasi-judicial, or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial, or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or

(5) The individual has unreasonably failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 102.29 Appeal of initial adverse determination on correction or amendment.

(a) When a request for correction or amendment has been denied initially under § 102.28, the individual may submit a written appeal within thirty working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays) after the date of the initial denial. When an appeal is submitted by mail, the postmark is conclusive as to timeliness.

(b) An appeal should be addressed to the General Counsel, United States Patent and Trademark Office, Washington, DC 20231. An appeal should include the words "PRIVACY APPEAL" in capital letters at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by USPTO personnel when it is so identified and will be forwarded immediately to the General Counsel. An appeal which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time periods in this section until actual receipt by the General Counsel. In each instance when an appeal so forwarded is received, the General Counsel shall notify the individual that his or her appeal was improperly addressed and the date when the appeal was received at the proper address.

(c) The individual's appeal shall include a statement of the reasons why the initial denial is believed to be in error and USPTO's control number assigned to the request. The appeal shall be signed by the individual. The record which the individual requests be corrected or amended and all

correspondence between the Privacy Officer and the requester will be furnished by the Privacy Officer who issued the initial denial. Although the foregoing normally will comprise the entire record on appeal, the General Counsel may seek additional information necessary to assure that the final determination is fair and equitable and, in such instances, disclose the additional information to the individual to the greatest extent possible, and provide an opportunity for comment thereon.

(d) No personal appearance or hearing on appeal will be allowed.

(e) The General Counsel shall act upon the appeal and issue a final determination in writing not later than thirty working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays) from the date on which the appeal is received, except that the General Counsel may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue. The estimated date should not be later than the sixtieth working day after receipt of the appeal unless unusual circumstances, as described in § 102.25(a), are met.

(f) If the appeal is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made and a copy thereof shall be transmitted promptly both to the individual and to the Privacy Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Officer promptly shall take the actions set forth in § 102.28(a)(2)(i) and (b).

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination also shall inform the individual of the following:

(1) The right of the individual under the Act to file a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and USPTO reserves the right to reject a statement of excessive length. Such a statement shall be filed with the General Counsel. It should provide the USPTO control number assigned to the request, indicate the date of the final determination and be signed by the individual. The General Counsel shall acknowledge receipt of such statement and inform the individual of the date on which it was received.

(2) The facts that any such disagreement statement filed by the individual will be noted in the disputed record, that the purposes and uses to which the statement will be put are those applicable to the record in which it is noted, and that a copy of the statement will be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(3) The fact that USPTO will append to any such disagreement statement filed by the individual, a copy of the final determination or summary thereof which also will be provided to persons and agencies to which the disagreement statement is disclosed; and,

The right of the individual to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(h) In making the final determination, the General Counsel shall employ the criteria set forth in § 102.28(c) and shall deny an appeal only on the grounds set forth in § 102.28(e).

(i) If an appeal is partially granted and partially denied, the General Counsel shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(j) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(k) The provisions of paragraphs (g)(1) through (g)(3) of this section satisfy the requirements of 5 U.S.C. 552a(e)(3).

§ 102.30 Disclosure of record to person other than the individual to whom it pertains.

(a) USPTO may disclose a record pertaining to an individual to a person other than the individual to whom it pertains only in the following instances:

(1) Upon written request by the individual, including authorization under § 102.25(f);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and

When permitted under 5 U.S.C. 552a(b)(1) through (12), which read as follows: [1]

(i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552;

(iii) For a routine use as defined in 5 U.S.C. 552a(a)(7) and described under 5 U.S.C. 552a(e)(4)(D);

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(v) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with section 3711(e) of Title 31.

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by USPTO in certain circumstances;

(2) 5 U.S.C. 552a(d) requires disclosure of records to the individual

[1] 5 U.S.C. 552a(b)(4) has no application within USPTO.

to whom they pertain, upon request; and

(3) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by USPTO to the court.

(c) The Privacy Officer shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c) (1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Officer shall make such accounting available to any individual, insofar as it pertains to that individual, on request submitted in accordance with § 102.24. The Privacy Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

§ 102.31 Fees.

The only fees to be charged to or collected from an individual under the provisions of this part are for duplication of records at the request of the individual. The Privacy Officer shall charge fees for duplication of records under the Act in the same way in which they charge duplication fees under § 102.11, except as provided in this section.

(a) No fees shall be charged or collected for the following: Search for and retrieval of the records; review of the records; copying at the initiative of USPTO without a request from the individual; transportation of records and personnel; and first-class postage.

(b) It is the policy of USPTO to provide an individual with one copy of each record corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment.

(c) As required by the United States Office of Personnel Management in its published regulations implementing the Act, USPTO will charge no fee for a single copy of a personnel record covered by that agency's Government-wide published notice of systems of records.

§ 102.32 Penalties.

(a) The Act provides, in pertinent part: Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000. (5 U.S.C. 552a(i)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 102.33 General exemptions.

(a) Individuals may not have access to records maintained by USPTO but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, USPTO will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The general exemption determined to be necessary and proper with respect to systems of records maintained by USPTO, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, is as follows: *Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT.–12.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functions of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

§ 102.34 Specific exemptions.

(a)(1) Some systems of records under the Act which are maintained by USPTO contain, from time-to-time, material subject to the exemption appearing at 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by USPTO which are within this exemption are: COMMERCE/PAT–TM–6, COMMERCE/PAT–TM–7, COMMERCE/PAT–TM–8, COMMERCE/PAT–TM–9.

(2) USPTO hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) to protect materials required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by USPTO, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 102.33(b)(3) is held to be invalid;

(B) Investigative Records—Persons Within the Investigative Jurisdiction of USPTO—COMMERCE/DEPT–13;

(C) Litigation, Claims and Administrative Proceeding Records—COMMERCE/DEPT–14;

(D) Attorneys and Agents Registered to Practice Before the Office—COMMERCE/PAT–TM–1

(E) Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents—COMMERCE/PAT–TM–2; and

(F) Non-Registered Persons Rendering Assistance to Patent Applicants—COMMERCE/PAT–TM–5.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel. Special note is taken of the fact that the proviso clause in this exemption imports due process and procedural protections for the individual. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(2)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the act from which

exempted, and the reasons therefor are as follows:

(A) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 102.33(b)(3) is held to be invalid;

(B) Investigative Records—Persons Within the Investigative Jurisdiction of USPTO—COMMERCE/DEPT–13; and

(C) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(c) At the present time, USPTO claims no exemption under 5 U.S.C. 552a(k) (3), (4), (6) and (7).

Appendix to Part 102—Systems of Records Noticed by Other Federal Agencies [1] and Applicable to USPTO Records and Applicability of This Part Thereto

Category of records	Other Federal agency
Federal Personnel Records.	Office of Personnel Management.[2]
Federal Employee Compensation Act Program.	Department of Labor.[3]
Equal Employment Opportunity Appeal Complaints.	Equal Employment Opportunity Commission.[4]
Formal Complaints/ Appeals of Adverse Personnel Actions.	Merit Systems Protection Board.[5]

[1] Other than systems of records noticed by the Department of Commerce. Where the system of records applies only to USPTO, these regulations apply. Where the system of records applies generally to components of the Department of Commerce, the regulations of that department attach at the point of any denial for access or for correction or amendment.

[2] The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.

[3] The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that department attach at the point of any denial for access or for correction or amendment.

[4] The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.

[5] The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

Dated: June 29, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG28

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Zayante Band-Winged Grasshopper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*) under the Endangered Species Act of 1973, as amended (Act). We propose designation of critical habitat within an approximately 4,230-hectare (10,560-acre) area occupied by the Zayante band-winged grasshopper in Santa Cruz County, California.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary elements of critical habitat for the Zayante band-winged grasshopper are those habitat components that are essential for the primary physical and biological needs of the species. These needs include: food, water, sunlight, air, minerals and other nutritional or physiological needs; cover or shelter; sites for breeding and reproduction and dispersal; protection from disturbance; and habitat that is representative of the historical geographic and ecological distribution of the Zayante band-winged grasshopper.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until September 5, 2000. Public hearing requests must be received by August 21, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may hand-deliver written comments to our Ventura Office, 2493 Portola Road, Suite B, Ventura, California.

3. You may send comments by electronic mail (e-mail) to fw1grasshopper@r1.fws.gov.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

The Zayante band-winged grasshopper (*Trimerotropis infantilis*), Order Orthoptera and Family Acrididae, was first described from near Mount Hermon in the Santa Cruz Mountains, Santa Cruz County, California, in 1984 (Rentz and Weissman 1984). The body and forewings of the Zayante band-winged grasshopper are pale gray to light brown with dark cross-bands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band. The hind tibiae (lower legs) are blue, and the eyes have bands around them. Males range in length from 13.7 to 17.2 millimeters (mm) (0.54

to 0.68 inches (in.)); females are larger, ranging in length from 19.7 to 21.6 mm (0.78 to 0.85 in.) (Otte 1984; Rentz and Weissman 1984). The Zayante band-winged grasshopper is most similar in appearance to *T. occulans* and *T. koebelei*; neither of these species is known from the Santa Cruz Mountains (Otte 1984; Rentz and Weissman 1984). *Trimerotropis thalassica* and *T. pallidipennis pallidipennis* have been observed in the vicinity of Zayante band-winged grasshopper, but are morphologically distinct from it and appear to prefer different microhabitats (Rentz and Weissman 1984; Arnold 1999a,b).

The flight season for adult Zayante band-winged grasshopper extends from late May through October with peak activity during July and August (White, *in litt.* 1993; Morgan, *in litt.* 1994; Arnold 1999a,b). Specimens have been collected as late as November 4 (Arnold 1999a). When flushed, individuals generally fly 1 to 2 meters (m) (3 to 7 feet (ft)), producing a buzzing sound while in flight (Rentz and Weissman 1984). Band-winged grasshoppers often alight on bare ground, and are conspicuous in flight because of the color of the hind wings and the buzzing sound made by the wings (Borror *et al.* 1976). No additional information on the life cycle of this species is available.

The Zayante band-winged grasshopper is known only from Santa Cruz County, California. The species was described in 1984 from specimens collected in 1977 on sparsely vegetated sandy soil above the Olympia Sand Quarry. Between 1989 and 1994, Zayante band-winged grasshoppers were found at 10 of 39 sites sampled during two independent surveys near the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley, California (Hovore 1996; USFWS 1998).

Little is known of the historical distribution of the species. A review of museum specimens yielded Zayante band-winged grasshoppers from "Santa Cruz Mountains, no date", "Alma, 1928", "Felton, 1959", and "Santa Cruz, 1941" (Rentz and Weissman 1984). No subsequent collections have been recorded that substantiate the existence of a population in the vicinity of Alma. Furthermore, the town of Alma is currently beneath a reservoir, and the cited specimens cannot be located in the listed depository for verification (D. Weissman, California Academy of Sciences, pers. comm. 1994, 2000). Therefore, because no specific location or habitat descriptions accompanied these historic specimens, they were not considered in our assessment of the current range and status of the species.

The Zayante band-winged grasshopper occurs in association with the Zayante soil series (USDA Soil Conservation Service 1980). The Zayante soils in the vicinity of the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley are dominated by maritime coast range ponderosa pine (*Pinus ponderosa*) forest and northern maritime chaparral (Griffin 1964; Holland 1986). The distributions of these two plant communities overlap to form a complex and intergrading mosaic of communities variously referred to as ponderosa sand parkland, ponderosa pine sand hills, and silver-leafed manzanita (*Arctostaphylos silvicola*) mixed chaparral. These communities are collectively referred to as "Zayante sand hills habitat" and harbor a diversity of rare and endemic plant species (Thomas 1961; Griffin 1964; Morgan 1983). A unique habitat within the Zayante sand hills is sand parkland, characterized by sparsely vegetated, sandstone-dominated ridges, and saddles that support scattered ponderosa pines and a wide array of annual and perennial herbs and grasses.

The role of landscape-level processes, including hydrology, seed dispersal, succession, fire, and other disturbances, in forming Zayante sand hills habitats is poorly understood. Historically, the Zayante sand hills included a continually changing pattern of habitat patches, each with specific disturbance histories, sizes, and species compositions. At any one time, patches of all possible stages of succession may be present (Lee 1994). Populations of the Zayante band-winged grasshopper evolved within this dynamic landscape and most likely are adapted to disturbance and change.

The habitat of the Zayante band-winged grasshopper was originally described as "sandy substrate sparsely covered with *Lotus* and grasses at the base of pines" (Rentz and Weissman 1984). All of the locations where grasshoppers were found during surveys completed between 1989 and 1994 were on Zayante soils. The habitat at these sites was consistently described as a sparsely vegetated sandy substrate or sand parkland (White, *in litt.* 1993; Morgan, *in litt.* 1994). In 1997, at the time of the listing of this species, all of its known locations occurred within 7 discrete areas of sand parkland habitat as characterized by Lee (1994). Recent studies indicated that the Zayante band-winged grasshopper occurs primarily in early successional sand parkland with widely scattered tree and shrub cover, extensive areas of bare or sparsely vegetated ground, loose sand, and relatively flat relief (Hovore 1996; Arnold 1999a, b). However, Zayante band-winged grasshoppers have also recently been observed in areas with a well-developed ground cover and in areas with sparse chaparral mixed with patches of grasses and forbs (Hovore 1996; Arnold 1999a, b), indicating that Zayante band-winged grasshoppers are not restricted solely to sand parkland.

The primary threat to the Zayante band-winged grasshopper is loss of habitat. Historically, approximately 2,533 ha (6,265 ac) of Zayante sand hills habitat occurred in Santa Cruz County. Over 40 percent of the Zayante sand hills habitat, and 60 percent of the sand parkland within that habitat, is estimated to have been lost or altered due to human activities. These activities include: sand mining, urban development, recreational activities, and agriculture (Marangio and Morgan 1987; Lee 1994; R. Morgan, pers. comm. 1992). Approximately 200 to 240 hectares (ha) (500 to 600 acres (ac)) of sand parkland existed historically (Marangio and Morgan 1987). By 1986, only 100 ha (250 ac) of sand parkland remained intact (Marangio and Morgan 1987). By 1992, sand parkland was reportedly reduced to only 40 ha (100 ac) (Morgan, pers. comm. 1992). A more recent assessment revised that estimate up to 78 ha (193 ac), largely because of identification and inclusion of additional, lower-quality sand parkland (Lee 1994).

The disruption of natural landscape-level processes may also be resulting in shifts in plant communities, which has reduced the extent and quality of habitat available for the Zayante band-winged grasshopper. For example, active suppression of fire has resulted in the encroachment of mixed evergreen forest into ponderosa pine forest (Marangio 1985). Increase shading from the mixed evergreen forest appears to restrict the use of areas by the Zayante band-winged grasshopper and results in lower population numbers (Sculley, USFWS, pers. observation 1999). Historically, fires would have burned in this area and resulted in areas with more exposure to sunlight. In addition, nonnative plant species, including Portuguese broom (*Cystisus striatus*) and sea fig (*Carpobrotus chilensis*), are out-competing native species and encroaching on sites occupied by the Zayante band-winged grasshopper (Rigney 1999). Pesticides and over-collection are also recognized as potential threats to the Zayante band-winged grasshopper (USFWS 1998).

Previous Federal Action

On July 16, 1992, Dr. David Weissman, of the California Academy of Sciences, petitioned us to list the Zayante band-winged grasshopper as an endangered species. During our status review of the Zayante band-winged grasshopper, we examined the available literature and data on the species' life history, ecology, locality records, and range. Sources of information on the status of and threats to the Zayante band-winged grasshopper included reports supplied by proponents of the listing, plans supplied by reviewing agencies for development projects, and published and unpublished data from scientists with expertise on the species and its habitat needs.

On May 10, 1994, we published a proposed rule in the **Federal Register** (59 FR 24112) to list the Zayante band-winged grasshopper and two other insect species as endangered. The proposed rule constituted the final finding for the petitioned actions for the Zayante band-winged grasshopper in accordance with section 4(b)(3)(B)(ii) of the Act. Publication of the proposed rule opened a 60-day public comment period through July 11, 1994, to allow submission of new and additional information on the species and written comments from the public. We held a public hearing on July 18, 1994, in Santa Cruz, California, that included presentations of oral testimony and written comments. We published a notice on September 1, 1994 (59 FR 45254) reopening the public comment period through October 31, 1994, to allow submission of additional comments and information concerning the proposed rule.

Using information received during the cited public comment periods, we published a final rule on January 24, 1997 (62 FR 3616), determining the Zayante band-winged grasshopper and Mount Hermon June beetle (*Polyphylla barbata*), both occurring within the Zayante sand hills habitat, to be endangered species. At the time of listing, we concluded that designation of critical habitat for the Zayante band-winged grasshopper was not prudent because such designation would not benefit the species since all known populations of the species occur on non-Federal lands where Federal involvement in land-use activities would not generally occur. On September 30, 1997, we made a draft recovery plan for the Zayante band-winged grasshopper, Mount Hermon June beetle, and three plants (Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*), Ben Lomond wallflower (*Erysimum teretifolium*), and Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*)) available for public comment (62 FR 51126). We published the final recovery plan in September 1998.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District Court of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior, for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper, the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity* v. *U.S. Fish and Wildlife*, CIV 99–1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit according to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation and management plans, and through section 7 consultations and section 10 permits.

This critical habitat designation identifies an area that has features that are essential to the conservation of the Zayante band-winged grasshopper and that may require special management considerations or protection. The proposed critical habitat contains a mosaic of habitats that provide breeding, foraging, sheltering, and living spaces for the grasshopper.

Methods

In determining areas that are essential to conserve the Zayante band-winged grasshopper, we included data from research and surveys published in peer-reviewed articles and unpublished reports, data submitted by biologists holding section 10(a)(1)(A) recovery permits, data from monitoring reports required for incidental take permits under section 10(a)(1)(B) of the Act, soil maps, and the recovery criteria outlined in the recovery plan (USFWS 1998). The area we are proposing to designate as critical habitat currently provides those habitat components essential for the primary biological needs of the Zayante band-winged grasshopper, as defined by the primary constituent elements, and maintains the ecosystem functions.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, and other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; protection from disturbance; and habitats that are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Zayante band-winged grasshopper are those physical and biological features that provide conditions that are essential for the primary biological needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are: (a) The presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered tree and shrub cover, bare or sparsely vegetated ground, and loose sand (Arnold 1999a, b). Zayante sand hills habitat is often characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral as described by Marangio (1985) and Lee (1994). Plant species that may occur within the boundaries include, but are not limited to: ponderosa pine, silver-leafed manzanita, California lilac (*Ceonothus* sp.), *Adenostoma* sp., yerba santa (*Eriodictyon* sp.), sandwort (*Minuartia* sp.), pussypaws (*Calyptridium umbellatum*), monkeyflower (*Mimulus rattanii*), miniature lupine (*Lupinis bicolor*), gilia (*Gilia tenuiflora*), California aster (*Lessingia filaginifolia*), Ben Lomond buckwheat (*Eriogonum nudum* ssp. *decurrens*), Ben Lomond wallflower, and Ben Lomond spineflower (Lee 1984; USFWS 1998; McGraw *in litt.* 1999). Of these plant species, Ben Lomond wallflower and Ben Lomond spineflower are also federally endangered and are addressed within the same recovery plan as the Zayante band-winged grasshopper and the Mount Hermon June beetle.

Areas where surveys for Zayante band-winged grasshopper have not been conducted, but are adjacent or contiguous with known occupied habitat, are also essential to the species. Not only is there a potential that these areas contain grasshoppers, the areas are necessary because they: (1) Provide and maintain the ecosystem functions, including, but not limited to, hydrologic processes, succession, seed dispersal, and natural disturbance regimes, necessary to support populations of the Zayante band-winged grasshopper; (2) provide a means of connecting occupied areas so that the deleterious effects of isolation are minimized; and (3) increase the area available to the species in case of localized, random catastrophic events, thus decreasing the potential for extirpation of populations. As successional changes occur over time, these adjacent areas will also provide the grasshopper with suitable habitat.

Criteria Used To Identify Critical Habitat

In an effort to identify areas essential for the conservation of the species, we evaluated information on Zayante soils, plant communities associated with these soils, and the distribution, life history, and habitat requirements of the Zayante band-winged grasshopper. Using a geographic information system (GIS), maps of the Zayante soil series were generated. We determined that published maps of the Zayante soil series were imprecise for our needs and did not always account for gradients between soil types. Therefore, a 60-m (200-ft) zone was mapped around the soils to account for possible inaccuracies in the current maps. We arrived at a 60-m zone based on recommendations by the Natural Resources Conservation Service (NRCS), the agency familiar with the techniques used to map soils and the distribution of Zayante soils (R. Casale, NRCS, USDA, pers comm. 2000).

Next, the known locations of the Zayante band-winged grasshopper were overlaid on the map of Zayante soil series. Areas considered occupied by the grasshopper, and included within the boundaries of critical habitat, are areas where grasshoppers have been located and areas with Zayante soils that were adjacent to or contiguous with known locations of the grasshopper. These contiguous and adjacent areas were included in order to create patches large enough in size to maintain ecosystem functions and to connect habitat patches into a larger area so that populations do not become isolated and localized random or catastrophic events do not cause smaller populations to be extirpated. Over time, as succession occurs and vegetation encroaches on areas currently inhabited by the Zayante band-winged grasshopper, populations may disperse into these adjacent patches of habitat.

We considered sites identified in the recovery plan as important for the recovery of the Zayante band-winged grasshopper. While recovery units were not specifically described, the recovery plan recommends protecting the 7 discrete areas of sand parkland (Lee 1994), containing the 10 sites occupied by the species, as one criterion for down-listing to threatened status. These seven areas were included within the boundaries of the proposed critical habitat. Additional areas were also included that have the constituent elements for the species, because new information about the range, distribution, and habitat requirements of the Zayante band-winged grasshopper indicates that the species occupies areas that are outside of these seven discrete areas and that are not considered sand parkland. Furthermore, sand hills habitat adjacent and contiguous with these seven areas is essential to maintain landscape level processes.

We determined that approximately 3,620 ha (8,700 ac) of Zayante soils are scattered throughout Santa Cruz County. The soils occur from west of the community of Bonny Doon east to Corralitos, and from the northern portion of Wilder Ranch State Park

north to the communities of Boulder Creek, Lompico, and Zayante. Several patches are also located near the City of Scotts Valley. The largest cluster of these soils occurs between Highways 9 and 17, surrounding the communities of Scotts Valley, Zayante, Lompico, Ben Lomond, Felton, and Mount Hermon. Surveyors of the Zayante band-winged grasshopper have focused their efforts in this region, and, at present, all of the known locations of this species are from this region. Zayante soils located in the eastern portion of Santa Cruz County in the vicinity of Corralitos do not support vegetation characteristic of the Zayante sand hills habitat.

We excluded from the proposed critical habitat areas that have not been surveyed for the Zayante band-winged grasshopper and that are not part of a continuous corridor of Zayante soils that include known localities of the grasshopper. Although these areas have been excluded, we recognize that they may still include habitat presently or historically occupied by the Zayante band-winged grasshopper. In addition, these unsurveyed areas may include habitat appropriate for introduction of Zayante band-winged grasshoppers in the future. If we determine that areas outside of the boundaries of the designated critical habitat are important for the conservation of this species, we may propose these additional areas as critical habitat in the future.

We defined the boundaries for the proposed critical habitat using township, range, and section numbers from the public land survey. We propose to designate approximately 4,230 ha (10,560 ac) of land as critical habitat for the Zayante band-winged grasshopper. Of this area, 1,600 ha (3,950 ac) are lands with Zayante soils and sand hills habitat. The remaining 2,630 ha (6,610 ac) of critical habitat are areas that either support the processes necessary to maintain ecosystem functions and required habitat conditions or were included due to insufficient mapping detail (as described below).

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other similar lands. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas, do not contain one or more of the primary constituent elements and do not support the processes necessary to maintain the required ecosystem functions. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

We also considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a Habitat Conservation Plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal lands that are covered by an existing operative HCP and executed implementation agreement (IA) for the Zayante band-winged grasshopper under section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and are therefore not proposed for inclusion in critical habitat since they do not meet the definition of critical habitat as defined by section 3(5) of the Act.

We expect that critical habitat may be used as a tool to help identify areas within the range of the Zayante band-winged grasshopper that are essential for the conservation of the species. Critical habitat designation is not intended to discourage the development of HCPs for such areas on non-Federal lands. To the contrary, we consider HCPs to be one of the most important methods through which non-Federal landowners can help conserve listed species while resolving potential land-use conflicts. We provide technical assistance and work closely with applicants throughout the development of HCPs to help identify special management considerations for listed species. We intend that HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat within Santa Cruz County by land ownership is shown in Table 1. The proposed critical habitat includes Zayante band-winged grasshopper habitat throughout the existing known range of the species. Land proposed for critical habitat is under private, local government, and State ownership, and is described within one unit. A brief description of this unit is presented below.

TABLE 1.—APPROXIMATE AREA WITHIN SANTA CRUZ COUNTY ENCOMPASSING PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

County	Federal Land	Local/State Land	Private Land	Total [1]
Santa Cruz	N/A	250 ha (610 ac)	3,980 ha (9,950 ac)	4,230 ha (10,560 ac)

[1] Area estimates reflect critical habitat unit boundaries, not the extent of the primary constituent elements within the unit.

Proposed Critical Habitat Unit

The Proposed Critical Habitat Unit (Unit) encompasses approximately 4,230 ha (10,560 ac) between Highways 9 and 17. Most of the lands designated as critical occur from the southeastern portion of Henry Cowell Redwoods State Park west to the City of Scotts Valley and north to the communities of Ben Lomond, Lompico, and Zayante. A small area proposed for critical habitat is located east of Zayante in the vicinity of Weston Road.

Public lands that occur in this Unit include approximately 130 ha (310 ac) in Henry Cowell Redwoods State Park, owned and managed by the California Department of Parks and Recreation, and all of Quail Hollow Park (120 ha (300 ac)), jointly owned and managed by the County of Santa Cruz and the California Department of Fish and Game. Areas covered in the Revised Habitat Conservation Plan for Quail Hollow Quarry (Graniterock 1998) and the Habitat Conservation Plan for Hanson Aggregates' Felton Plant (Hanson Aggregates 1999) have been excluded from designation as critical habitat. See section "Relationship to Habitat Conservation Plans" for further discussion of these plans.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or

adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species and avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on private or State lands requiring a permit from a Federal agency or some other Federal action, including funding (*e.g.*, Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Zayante band-winged grasshopper is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Excavating, compacting, grading, or discing of soil, and vegetation removal;

(2) Violations of grading, mining, or construction permits within critical habitat;

(3) Recreational activities that crush and remove vegetation or compact soils, including off-trail hiking, horse riding, and off-road motorized and non-motorized vehicular use in critical habitat;

(4) Application of pesticides within critical habitat beyond the boundaries of maintained lawns and gardens or in violation of label restrictions;

(5) Activities that could lead to the introduction of exotic species into critical habitat; and

(6) Activities that cause erosion of soils in critical habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying critical habitat of the listed species. Actions likely to jeopardize the continued existence of a species are those that would appreciably reduce the likelihood of the species survival and recovery. Actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, the ramifications of its designation are few or none. Designation of critical habitat for the Zayante band-winged grasshopper is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. We believe that designation of critical habitat would have little effect on Federal agencies because no proposed critical habitat occurs on Federal lands, and we are not aware of any federally funded or federally permitted actions planned to take place in critical habitat.

Relationship to Habitat Conservation Plans

Two HCPs have been completed within the range of the Zayante band-winged grasshopper. Both HCPs are for sand mining operations and both provide take authorization for the Zayante band-winged grasshopper. The Revised Habitat Conservation Plan for the Quail Hollow Quarry owned and operated by Granite Rock Company provides for the permanent protection and management of three conservation areas known to be occupied by the Zayante band-winged grasshopper and that total 26.3 ha (65.8 ac) in area (Granite Rock 1998). The Habitat Conservation Plan for the Felton Plant owned and operated by Hanson Aggregates provides for the permanent protection and management of two habitat set-asides known to be occupied by the Zayante band-winged grasshopper and that total 8.5 ha (21.3 ac) in area (Hanson Aggregates 1999). In addition, both HCPs provide minimization measures to reduce the potential impacts of the sand-mining operations on the Zayante band-winged grasshopper. Because the habitat for the Zayante band-winged grasshopper preserved in the conservation areas is managed for the benefit of this species, there are no additional management considerations or protections required for those lands covered under the HCP. Therefore, we have determined that non-Federal lands within approved HCP planning areas for the Zayante band-winged grasshopper do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

Habitat conservation plans that may be developed in the future will be intended to provide for protection and management of habitat areas essential for the conservation of the Zayante band-winged grasshopper, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the grasshopper. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.*, cities and counties) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the Zayante band-winged grasshopper should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude such areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will reopen the comment period 30 days at that time to accept comments on the economic analysis or further comments on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

(2) Specific information on the amount and distribution of habitat for the Zayante band-winged grasshopper, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, especially, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the Zayante band-winged grasshopper, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

In this proposed rule, we do not propose to designate critical habitat on non-Federal lands within the boundaries of an existing approved HCP with an executed IA for the Zayante band-winged grasshopper approved under section 10(a)(1)(B) of the Act on or before the date of the final rule designating critical habitat for the grasshopper. We believe that, since an existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the Zayante band-winged grasshopper, such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach, and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat; and

(2) Designate reserves, preserves, and other conservation lands identified by approved HCPs, on the premise that they encompass areas that are essential to conservation of the species within the HCP area and that will continue to

require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the Zayante band-winged grasshopper is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the Zayante band-winged grasshopper in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Zayante band-winged grasshopper:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the Zayante band-winged grasshopper we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

If comments are submitted electronically, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include Attn: RIN 1018-AG28 and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805/644–1766.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or

other units of government. The Zayante band-winged grasshopper was listed as an endangered species in 1997. In fiscal years 1997 through 1999, we received no requests for consultation from other Federal agencies to ensure that their actions would not jeopardize the continued existence of the Zayante band-winged grasshopper.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (Table 2). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning take of the species).

TABLE 2.—IMPACTS OF ZAYANTE BAND-WINGED GRASSHOPPER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional Activities Potentially Affected by Critical Habitat Designation [1]
Federal Activities Potentially Affected [2].	None (there is no Federal land within the range of the species)	None.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy Zayante band-winged grasshopper habitat by mechanical, chemical, or other means (e.g., grading, overgrazing, construction, road building, herbicide application, recreational use) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	None.

[1] These columns represent activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Zayante band-winged grasshopper since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in the proposed critical habitat. However, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of critical habitat. We expect little effect given that there are no Federal lands designated as critical habitat, and no Federal nexuses for lands designated as critical habitat have been identified at this time.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of critical habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we propose designation of property owned by State and local governments and private property and identify the types of Federal actions or authorized activities that are of potential concern. If these activities are sponsored by Federal agencies, they may be carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of critical habitat. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits

or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Zayante band-winged grasshopper. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the Zayante band-winged grasshopper.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. We will continue to coordinate any future designation of critical habitat for the Zayante band-winged grasshopper with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the Zayante band-winged grasshopper imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act, and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Zayante band-winged grasshopper.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis.

We have determined that no Tribal lands are essential for the conservation of the Zayante band-winged grasshopper because they do not support populations or suitable habitat. Therefore, we are not proposing to designate critical habitat for the Zayante band-winged grasshopper on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is Colleen Sculley, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "grasshopper, Zayante band-winged" under "Insects" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * * * * * * *							
INSECTS							
* * * * * * * * * *							
Grasshopper, Zayante band-winged	*Trimerotropis infantilis*	U.S.A. (CA)	NA	E	605	17.95(i)	NA
* * * * * * * * * *							

3. Amend § 17.95(i) by adding critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*), in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

ZAYANTE BAND-WINGED GRASSHOPPER (*Trimerotropis infantilis*)

1. The unit of critical habitat is depicted for Santa Cruz County, California, on the map below.

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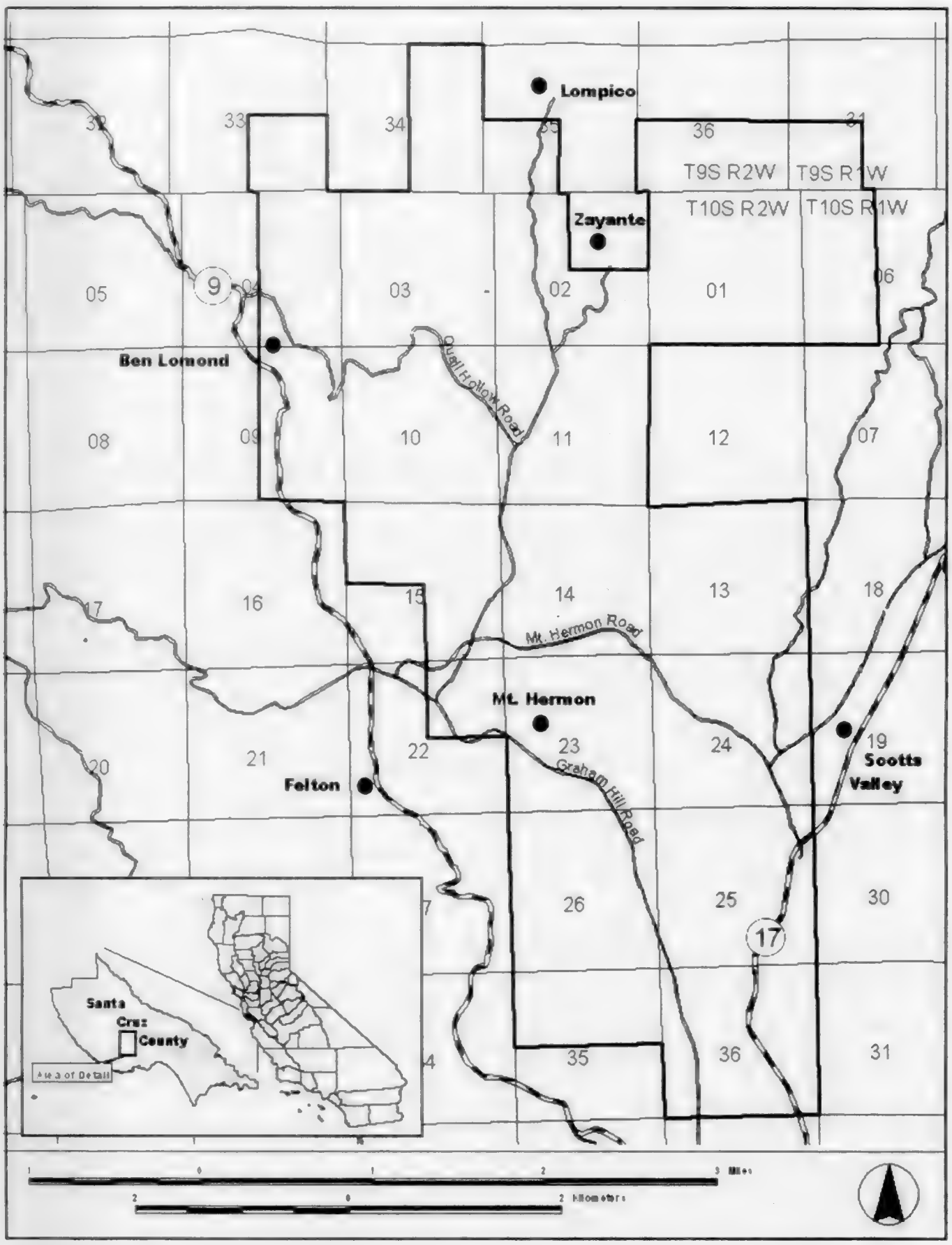

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2. Within this area, the primary constituent elements for the Zayante band-winged grasshopper are those physical and biological elements that provide conditions that are essential for the primary biological needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are: (a) the presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered tree and shrub cover, bare or sparsely vegetated ground, and loose sand. Zayante sand hills habitat is characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral. Plant species that may occur within the boundaries include, but are not limited to: ponderosa pine (*Pinus ponderosa*), silver-leafed manzanita (*Arctostaphylos silvicola*), California lilac (*Ceonothus sp.*), Adenostoma sp., yerba santa (*Eriodictyon sp.*), sandwort (*Minuartia sp.*), pussypaws (*Calyptridium umbellatum*), Ben Lomond spineflower (*Erysimum teretifolium*), monkeyflower (*Mimulus rattanii*), miniature lupine (*Lupinis bicolor*), gilia (*Gilia tenuiflora*), California aster (*Lessingia filaginifolia*), Ben Lomond buckwheat (*Eriogonum nudum ssp. decurrens*), and Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*).

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aquaducts, railroads, airports, paved areas, and similar features and structures.

Santa Cruz County, California. Boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Land Grants of Zayanta, San Augustin, La Carbonera, and Canada Del Rincon En El Rio San Lorenzo De Santa Cruz, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by the Service from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian. The following lands located within Santa Cruz County are being proposed for critical habitat: T.9 S., R.1 W., SE¼ sec. 31; T.9 S., R.2 W., SE¼ sec. 33, E½ sec. 34, SW¼ sec 35, S½ sec 3; T.10 S., R1 W., W½ sec. 6; T.10 S., R.2 W., sec. 1, S½ NW¼ sec. 2, sec. 3, W½ sec. 4, W½ sec 9, sec. 10, sec. 11, sec. 13, sec. 14, N½ SE¼ sec. 15, NE¼ sec. 22, secs. 23–26, N½ sec. 35, sec 36, excluding all lands covered under the Revised Habitat Conservation Plan for the Quail Hollow Quarry and the Habitat Conservation Plan for the Hanson Aggregates' Felton Plant.

Dated: June 28, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–17259 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 131
Friday, July 7, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 00–060–1]

Declaration of Emergency Because of Glassy-Winged Sharpshooter

The glassy-winged sharpshooter (*Homalodisca coagulata*), a primary vector of the bacterium that causes Pierce's disease, is becoming established in areas of the State of California.

Pierce's disease, caused by the bacterium *Xylella fastidiosa*, is an extremely serious plant disease that affects grapes. Infection interferes with the transport of water through grape vines, resulting in severely reduced fruit production and eventually the death of the vine. There is no treatment for the disease; once a grapevine has contracted Pierce's disease, the vine cannot be saved. Pierce's disease is spread over distances by the highly mobile glassy-winged sharpshooter.

Pierce's disease is endemic to States bordering the Gulf of Mexico, as well as mid-Atlantic States in the southeastern United States. Glassy-winged sharpshooter is also indigenous to many of these areas. However, native grapevines in these areas of the southeastern United States appear to be tolerant of Pierce's disease, which limits the effect the disease has on grape production there. Therefore, no regulatory measures have been taken, or will be taken, to control the spread of Pierce's disease in the southeastern United States.

Infestations of Pierce's disease, combined with the recent introduction of glassy-winged sharpshooter, in limited areas of California are presenting a serious threat to grape vineyards in that State. Production grape vines in California have no tolerance for Pierce's disease. Therefore, if glassy-winged sharpshooter is allowed to spread from recently infested areas in California, the overall crop loss and effects on quality as a result of the spread of Pierce's disease could be significant. The estimated annual value of California's grape industry is at least $6 billion. If steps are not taken to eradicate glassy-winged sharpshooter in the recently infested areas in California where it is now known to be present, there is every possibility the disease will eventually spread to other areas of the State, and to other areas of the United States, where susceptible grapes are produced. This would result in substantial losses to producers of grapes, and to those industries that transport, process, or otherwise utilize this fruit. Consumers would also be affected by a reduction in the quantity and quality of grapes available, and by increased prices.

Five distinct strategies have been identified for responding to the glassy-winged sharpshooter in California: (1) A State regulatory program to inspect nursery stock for the presence of glassy-winged sharpshooter before the nursery stock moves from the areas in California where the pest is now known to be present to other areas in the State; (2) a State-wide survey program adequate to detect any additional infestations of glassy-winged sharpshooter that may be present; (3) control operations to establish multi-county pest management areas and apply appropriate insecticide treatments; (4) a research program to identify alternative methods of control and eradication, such as biological controls; and (5) an educational campaign to help the public identify the glassy-winged sharpshooter and the symptoms of Pierce's disease. Initial action was taken by the California Department of Food and Agriculture (CDFA). The Animal and Plant Health Inspection Service, U.S. Department of Agriculture, is working on the detection of glassy-winged sharpshooter in California and on research into new biological control technologies aimed at preventing the spread of Pierce's disease.

Additional funds are needed to conduct the control and eradication programs deemed necessary to protect grape production areas in California.

Therefore, in accordance with section 442, title IV, of the Agricultural Risk Protection Act of 2000 (Public Law 106–224), I declare that there is an emergency that threatens the grape crop of California, and I authorize the transfer and use of such sums as may be necessary from appropriations or other funds available to agencies or corporations of the United States Department of Agriculture for the conduct of a program in California to control and prevent the spread of glassy-winged sharpshooter and Pierce's disease in California and to other noninfested areas of the United States.

Effective Date: This declaration of emergency shall become effective June 23, 2000.

Dan Glickman,
Secretary of Agriculture.

[FR Doc. 00–17151 Filed 7–06–00; 8:45 am]
BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Revenue Assurance

ACTION: Notice of availability.

SUMMARY: In accordance with section 508(h) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) have approved for reinsurance and subsidy the insurance of canola/rapeseed, corn, feed barley, soybeans, sunflowers, spring wheat, and winter wheat in select states and counties under the Revenue Assurance (RA) plan of insurance for the 2001 crop year. This notice is intended to inform eligible producers and the private insurance industry of revisions to the Revenue Assurance Insurance Policy Basic Provisions, deletion of the Revenue Assurance Spring Wheat Crop Provisions, and addition of the Revenue Assurance Wheat Crop Provisions and Revenue Assurance Optional Endorsement Winter Wheat Coverage Endorsement beginning with the 2001 crop year.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Dr., Kansas City, Missouri 64133, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 508(h) of the Act allows for the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of

producers are adequately protected and that premiums charged to producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act.

In accordance with Section 508(h) of the Act, the Board approved a program of insurance known as "Revenue Assurance" (RA) submitted by Farm Bureau Mutual Insurance Company of Iowa as a pilot project covering corn and soybeans beginning with the 1997 crop year.

The RA program was approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses in an amount authorized under section 508(e) of the Act. RA was designed to protect a producer's revenue whenever low prices or low yields, or a combination of both, caused the harvest revenue to fall below a guaranteed level. The producer selected a per-acre revenue guarantee that could not be less than 65 percent, or more than 75 percent, of the expected revenue for a unit. The policy indemnity was finalized when the county harvest price and the producer's actual production were determined. This determination typically occurred in December for corn, and in November for soybeans. The crop prices were established on a county basis.

The RA policy provides coverage for basic units, optional units, enterprise units, and whole-farm units.

For the 1999 crop year, at the request of American Farm Bureau Insurance Services, Inc., the RA program for corn and soybeans was expanded into Illinois, South Dakota, Minnesota, and North Dakota, and spring wheat was approved as a new crop for North Dakota. Producers could select a coverage level percentage up to 80 percent for whole-farm units, and a fall harvest price option that used the greater of the projected harvest price or the fall harvest price in determining the revenue guarantee. The RA program was changed to use the Chicago Board of Trade futures for crop prices rather than using the county crop prices. The Chicago Board of Trade futures and the actual production history were the basis for determining the revenue guarantee and RA premium rates.

For the 2000 crop year, the RA program was expanded for corn and soybeans in Indiana; for spring wheat in Idaho, Minnesota, and South Dakota; for feed barley and canola/rapeseed in Idaho and North Dakota; and for sunflowers in North Dakota. The maximum coverage level for enterprise and whole-farm units was also increased to 85 percent.

American Farm Bureau Insurance Services, Inc., has requested winter wheat coverage in specific states and in counties that currently have MPCI winter wheat coverage beginning with the 2001 crop year, therefore, winter wheat coverage has been added to the wheat policy and a winter wheat coverage endorsement has also been added. Changes for clarification have been added to the Revenue Assurance Insurance Policy Basic Provisions.

Changes in the administrative fees producers must pay, allowing producers to replace low actual production history yields (APH) yields with adjusted transitional yields (T-yields), and changes in the amount of subsidy provided to reduce producers' premium costs have been added to the Revenue Assurance Insurance Policy Basic Provisions as mandated by the Agricultural Risk Protection Act of 2000.

Accordingly, FCIC herewith gives notice of the above stated changes for the 2001 and succeeding crop years.

The RA policies, endorsement, underwriting rules, questions and answers, and actuarial documents for the 2001 crop year will be released electronically to all reinsured companies through FCIC's Website.

Notice: Accordingly, the publication on January 11, 2000, of the Notice of Availability at 65 FR 1677–1702 is adopted for the 2001 crop year as amended to revise the Revenue Assurance Insurance Policy Basic Provisions, delete the Spring Wheat Crop Provisions and add the Revenue Assurance Wheat Crop Provisions and the Winter Wheat Coverage Endorsement, effective beginning with the 2001 RA winter wheat crop program of insurance as follows:

1. Amend the Basic Provisions to:

Revise the definitions of "approved yield," "expected per-acre revenue," and "per-acre revenue guarantee" in section 1;

Revise sections 8(d) and (e); and

Add a new section 35.

Revenue Assurance Insurance Policy Basic Provisions

Approved yield. The actual production history (APH) yield determined in accordance with 7 CFR part 400, subpart G, including any adjustments elected under section 35.

Expected per-acre revenue. The approved yield times the projected harvest price (see section 1 of the Crop Provisions) for optional or basic units. A weighted average is used for enterprise or whole farm units.

Per-acre revenue guarantee. The coverage level percent times your approved yield, times the projected harvest price. If you choose the fall harvest price option provided in the Crop Provisions, the per-acre revenue guarantee equals the coverage level percent, times the approved yield, times the greater of the projected harvest price or the fall harvest price (see section 1 of the Crop Provisions). For basic and optional units, the per-acre revenue guarantee may vary by unit. For an enterprise unit, the per-acre revenue guarantee is a weighted average and will be the same for all insured acres of the crop in the county. For the whole farm unit, the per-acre revenue guarantee is a weighted average and will be the same for all insured acres in the county.

8. Annual Premium and Administrative Fees

(d) The premium subsidy amount depends on the coverage level percent and is calculated by multiplying the premium times the subsidy factor. If the coverage level percent is equal to or greater than .6500 and less than .7500, the premium subsidy factor is .59. If the coverage level percent is equal to or greater than .7500 and less than .8000, the premium subsidy factor is .55. If the coverage level percent is equal to or greater than .8000 and less than .8500, the premium subsidy factor is .48. If the coverage level percent is equal to or greater than .8500, the premium subsidy factor is .38. The producer premium equals the premium less the premium subsidy.

(e) In addition to the premium charged:

(1) You, unless otherwise authorized in 7 CFR part 400, must pay an administrative fee of $30 per crop per county for each crop year in which crop insurance coverage remains in effect;

(2) The administrative fee must be paid no later than the time that premium is due;

(3) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report, you may be subject to criminal and administrative sanctions;

(4) The administrative fee will be waived if you request it and you qualify as a limited resource farmer; and

(5) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

35. Substitution of Yields

You may elect to exclude actual yields used to calculate the APH yield that are less than 60 percent of the applicable transitional yield (T-yield), as defined in 7 CFR 400.52. Each excluded actual yield will be replaced with a yield equal to 60 percent of the applicable T-yield for the county. The replacement yields will be used in the

same manner as actual yields for the purpose of calculating the APH yield. Premium rates for approved yields that are adjusted under this section will be based on your yield prior to replacing the actual yields or such other basis as determined appropriate by us.

2. Add the Revenue Assurance Wheat Crop Provisions as follows:

Revenue Assurance Wheat Crop Provisions

This is a pilot risk management program. This risk management tool will be reinsured under the authority provided by the Federal Crop Insurance Act as amended. If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) these Crop Provisions; and (3) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Adequate stand. A population of live plants per unit of acreage which will produce at least the yield used to establish your revenue guarantee.

CBOT. The Chicago Board of Trade.

Fall harvest price. The price used to value production to count. For spring wheat, the fall harvest price is the simple average of the final daily settlement prices in August for the MGE September hard red spring wheat futures contract. This price will be released on or before September 5. For winter wheat in Idaho, Indiana, Kentucky, Michigan, Ohio and Tennessee, the fall harvest price is the simple average of the final daily settlement prices from July 1 to July 14 for the CBOT July soft red winter wheat futures contract. For Arkansas, Colorado, Iowa, Kansas, Missouri, Oklahoma and South Dakota, the fall harvest price is the simple average of the final daily settlement prices from July 1 to July 14 for the KCBT July hard red winter wheat futures contract. This price will be released on or before August 5.

Fall harvest price option. A coverage option that allows you to use the greater of the projected harvest price or the fall harvest price to determine your per acre revenue guarantee. For basic, optional, and enterprise units, this option applies to all insurable acres of a crop in the county. For the whole-farm unit, this option will apply to all insurable acres of the applicable crops in the county. This option must be selected by the sales closing date and is continuous unless canceled by the crop sales closing date.

Harvest. Combining or threshing the insured crop for grain. A crop which is swathed prior to combining is not considered harvested.

Initially planted. The first occurrence of planting the insured crop on insurable acreage for the crop year.

KCBT. The Kansas City Board of Trade.

Latest final planting date.

(a) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate a final planting date for spring-planted acreage only;

(b) The final planting date for fall-planted acreage in all counties for which the Special Provisions designate a final planting date for fall-planted acreage only; or

(c) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate final planting dates for both spring-planted and fall-planted acreage.

Local market price. The cash grain price per bushel for the U.S. No. 2 grade of wheat offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of wheat. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

MGE. Minneapolis Grain Exchange.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

Planted acreage. In addition to the definition contained in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted.

Prevented planting. In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

Prevented planting guarantee. The prevented planting guarantee for such acreage will be the selected percentage of the per-acre revenue guarantee for timely planted acres.

Projected harvest price. The price used to determine the expected per-acre revenue. For spring wheat the projected harvest price is the simple average of the final daily settlement prices in February for the MGE September hard red spring wheat futures contract. The projected harvest price for spring wheat will be released on or before March 5 of the current crop year. For winter wheat in Idaho, Indiana, Kentucky, Michigan, Ohio and Tennessee, the projected harvest price is the simple average of the final daily settlement prices from August 15 to September 14 for the following year CBOT July soft red winter wheat futures contract. For Arkansas, Colorado, Iowa, Kansas, Missouri, Oklahoma and South Dakota, the projected harvest price is the simple average of the final daily settlement prices from August 15 to September 14 for the following year KCBT July hard red winter wheat futures contract. The projected harvest price for winter wheat will be released on or before September 20 of the current crop year.

Sales closing date. In lieu of the definition contained in the Basic Provisions, a date contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both winter and spring types of the insured crop and you plant any insurable acreage of the winter type, you may not change your crop insurance coverage after the sales closing date for the winter type.

Swathed. Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

2. Unit Division

(a) In addition to the requirements of section 2(b) of the Basic Provisions, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat or only initially planted spring wheat. Optional units may be established in this manner only in counties having both winter and spring type final planting dates as designated in the Special Provisions.

(b) Winter wheat can not be insured under a whole-farm unit.

(c) In lieu of section 2(e) of the Basic Provisions that prohibits you from electing any other unit structure if you elect a whole farm unit, you must elect either a basic, optional, or enterprise

unit for your winter wheat even if you have elected a whole farm unit that includes spring wheat.

(d) If you qualify for and elect either a basic or optional unit for your winter wheat and you elect a whole farm unit on your spring crops, that includes spring wheat, your coverage level for the whole farm unit will be limited to the coverage level you elected for basic and optional units.

(e) If you qualify for and elect either a basic or optional unit for your winter wheat and you elect a whole farm unit on your spring crops, that does not include spring wheat, you may elect any applicable coverage level for the whole farm unit.

3. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is December 31 preceding the cancellation date for counties with a March 15 cancellation date and June 30 preceding the cancellation date for all other counties.

4. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation date	Termination date
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee, and all Wisconsin counties north thereof; all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels and Sheridan; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, Yankton and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee counties, Wisconsin, and all Wisconsin counties north thereof; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; California; Nevada; and Utah	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache counties, Colorado; Maine; Minnesota; Daniels and Sheridan counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie counties, Wyoming.	March 15	March 15.

5. Annual Premium

In addition to the provisions of section 8 of the Basic Provisions, your per-acre premium on a unit is determined using the premium calculator. Your per-acre premiums will differ by crop and unit structure.

(a) Basic unit: The annual premium for a basic unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(b) Optional unit: The annual premium for an optional unit equals the per-acre premium, times an optional unit surcharge factor, times the number of insured acres in the optional unit, times your share. The optional unit surcharge factor is 1.10.

(c) Enterprise unit: The annual premium for an enterprise unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections.

(d) Whole-farm unit: The annual premium for a whole-farm unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The insured per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The per-acre premium also depends on the proportions of insured crop acres on the unit. For example, if the unit contains corn, soybeans, and spring wheat, the per-acre premium will depend on the ratio of corn to soybean insured acres, the ratio of corn to spring wheat insured acres, and the ratio of soybean to spring wheat insured acres.

6. Insured Crop

(a) In accordance with section 9 of the Basic Provisions, the crop insured will be all the spring wheat and winter wheat in the county for which a premium rate is provided by the premium calculator:

(1) In which you have a share;

(2) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area;

(3) That is planted for harvest as grain; and

(4) That is not (unless allowed by the Special Provisions):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

(b) If you anticipate destroying any acreage prior to harvest you:

(1) May report all planted acreage when you report your acreage for the crop year and specify any acreage to be destroyed as uninsurable acreage. (By doing so, no coverage will be considered to have attached on the specified acreage and no premium will be due for such acreage. If you do not destroy such acreage, you will be subject to the under-reporting provisions contained in section 7 of the Basic Provisions); or

(2) If the actuarial documents provide a reduced premium rate for acreage destroyed by a date designated in the Special Provisions, you may report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage. Your premium amount will be reduced

by the amount shown on the actuarial documents for any acreage you destroy prior to a date designated in the Special Provisions if you do not claim an indemnity on such acreage. You must obtain our consent before and give us notice after you destroy any of the insured crop so your acreage report can be revised to make you eligible for this reduction in premium.

(c) In counties for which the Wheat Special Provisions designate both fall and spring final planting dates, you may elect a winter coverage endorsement for wheat. This endorsement provides two options for alternative coverage for wheat that is damaged between the fall final planting date and the spring final planting date. Coverage under the endorsement will be effective only if you designate the coverage option you elect by executing the endorsement by the sales closing date for winter wheat in the county.

7. Insurance Period

In lieu of the requirements under section 12 of the Basic Provisions, and subject to any provisions provided by the Winter Wheat Coverage Endorsement if you have elected such endorsement, the insurance period is as follows:

(a) Insurance attaches on each unit or part thereof on the later of the date we accept your application or the date the insured crop is planted.

(1) The following limitations apply:

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the type (winter or spring) except as allowed in section 12 of these Crop Provisions and section 17 of the Basic Provisions.

(ii) Whenever the Special Provisions designate only a fall final planting date, any acreage of winter wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type unless we agree that replanting is not practical.

(iii) Whenever the Special Provisions designate both fall and spring final planting dates, winter wheat planted on or before the fall final planting date which is damaged:

(A) Before the fall final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(B) On or after the fall final planting date, but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to an appropriate variety of wheat unless we agree that replanting is not practical.

If you have elected coverage under one of the available wheat winter coverage options available in the county, the insurance period for wheat will be in accordance with the selected options.

(iv) Whenever the Special Provisions designate a spring final planting date, any acreage of spring wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type unless we agree that replanting is not practical.

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted wheat is not insured unless you request such coverage and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your revenue guarantee. Insurance will then attach to acreage having an adequate stand on the earlier of the spring final planting date or the date we agree to accept the acreage for insurance. If such fall planted acreage is not to be insured it must be recorded on the acreage report as an uninsured fall planted crop.

(b) Insurance ends on each unit at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on the unit;

(4) October 31 of the calendar year in which the crop is normally harvested; or

(5) Abandonment of the crop on the unit.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period that results in an unavoidable loss of revenue:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply, if applicable, due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or

(i) A decline in the fall harvest price below the projected harvest price.

9. Replanting Payment

(a) A replanting payment for wheat is allowed as follows:

(1) You comply with all requirements regarding replanting payments contained under section 14 of the Basic Provisions and in the Winter Wheat Coverage Endorsement for which you are eligible and which you have elected;

(2) The wheat must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the revenue guarantee for the acreage. The projected harvest price is used to determine if 90 percent of the unit revenue guarantee can be achieved;

(3) The acreage must have been initially planted to spring wheat in those counties with only a spring final planting date;

(4) The damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated;

(5) Replanting must take place not later than 25 days after the spring final planting date; and

(6) The replanted wheat must be seeded at a rate that is normal for initially planted wheat (if new seed is planted at a reduced seeding rate into a partially damaged stand of wheat, the acreage will not be eligible for a replanting payment).

(b) No replanting payment will be made for acreage initially planted to winter wheat in any county for which the Special Provisions contain only a fall final planting date.

(c) In accordance with section 14(c) of the Basic Provisions, the maximum amount of the replanting payment per acre will be your share times the lesser of 20 percent of the per-acre revenue guarantee based on the projected harvest price or an amount equal to 3 bushels, times the projected harvest price.

(d) When wheat is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

In accordance with the requirements of section 15 of the Basic Provisions, if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier

of our inspection or 15 days after harvest of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim using the following procedures:

(1) Basic and Optional units: We will settle your claim on each basic or optional unit by:

(i) Multiplying the unit's per-acre revenue guarantee by the number of insured acres in the unit;

(ii) Multiplying the fall harvest price by the production to count for each unit (see sections 11(c) through (e);

(iii) Subtracting the result of section 11(b)(1)(ii) from the result of section 11(b)(1)(i); and

(iv) Multiplying the results of section 11(b)(1)(iii) by your share.

If the result of section 11(b)(1)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(2) Enterprise units: We will settle your claim on an enterprise unit by:

(i) Multiplying the enterprise unit's per-acre revenue guarantee by the number of insured acres in the enterprise unit;

(ii) Multiplying the fall harvest price by the production to count for the enterprise unit;

(iii) Subtracting the result of section 11(b)(2)(ii) from the result of section 11(b)(2)(i); and

(iv) Multiplying the result of section 11(b)(2)(iii) by your share.

If the result of section 11(b)(2)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(3) Whole-farm units: We will settle your claim on a whole-farm unit by:

(i) Multiplying the per acre revenue guarantee for each crop by the number of insured acres planted to each crop;

(ii) Totaling the results of section 11(b)(3)(i);

(iii) Multiplying the fall harvest price for each crop by the production to count for each crop;

(iv) Totaling the results of section 11(b)(3)(iii);

(v) Subtracting the result of section 11(b)(3)(iv) from the result of section 11(b)(3)(ii); and

(vi) Multiplying the result of section 11(b)(3)(v) by your share.

If the result of section 11(b)(3)(vi) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(c) The total production to count in bushels from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the per-acre revenue guarantee will be used for such acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(d)); and

(iv) Potential production on insured acreage that you intend to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature wheat production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 13.5 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (heat-damaged kernels will not be considered to be damaged), shrunken or broken kernels, defects (foreign material and heat damage will not be considered to be defects), a musty, sour, or commercially objectional foreign odor (except smut odor), or grading garlicky, light smutty, smutty or ergoty;

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed to grade the wheat under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) The wheat production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(e) Any production harvested from plants growing in the wheat may be counted as production of the wheat on a weight basis.

12. Late Planting

A late planting period is not applicable to fall-planted wheat. Any

winter wheat that is planted after the fall final planting date in counties for which the Special Provisions also contain a final planting date for spring wheat will not be insured. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions contain only a fall final planting date will not be insured unless you were prevented from planting the winter wheat by the fall final planting date. Such acreage will be insurable, and the revenue guarantee and premium for the acreage will be determined in accordance with sections 17(b) and (c) of the Basic Provisions

13. Prevented Planting

(a) In addition to the provisions contained in section 18 of the Basic Provisions, in counties for which the Special Provisions designate a spring final planting date, your prevented planting per-acre revenue guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

(b) Your prevented planting coverage will be 60 percent of your per-acre revenue guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

3. Add the Revenue Assurance Optional Endorsement Winter Wheat Coverage Endorsement as follows:

Revenue Assurance Optional Endorsement Winter Wheat Coverage Endorsement

(This is a Continuous Endorsement)

(a) In return for payment of the additional premium as indicated in the premium calculator, this endorsement is attached to and made a part of your Revenue Assurance Wheat Crop Provisions subject to the terms and conditions described herein.

(b) This endorsement is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

(c) This endorsement modifies the provisions of sections 7 and 11 of the Revenue Assurance Wheat Crop Provisions.

(1) You must have the Revenue Assurance Wheat Crop Policy in force.

(2) You may select either Option A or Option B. Failure to select either Option A or Option B means that you have rejected both Options and this endorsement would be void.

(3) Insurance Period. Coverage under this endorsement begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

(4) The provisions under section 15 of the Revenue Assurance Insurance Policy Basic Provisions are amended to require that all notices of damage must be provided to us by the spring final planting date designated in the Special Provisions.

Option A (30 Percent Coverage and Acreage Release)

Whenever any winter wheat is damaged during the insurance period (see section (c)(3) above), and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the Revenue Guarantee for the acreage (to calculate the actual percentage, multiply the appraised production determined in accordance with section 11(c)(1) of the Revenue Assurance Wheat Crop Provisions times the Projected Harvest Price and then divide that quantity by the Revenue Guarantee), you may, at your option, take one of the following actions:

(a) Destroy the remaining crop on such acreage. By doing so, you agree to accept an amount of Calculated Revenue equal to 70 percent of the Revenue Guarantee as revenue to count for the damaged acreage, or an appraisal determined in accordance with section 11(c)(1) of the Revenue Assurance Wheat Crop Provisions if such an appraisal results in a greater amount of Calculated Revenue. This amount will be considered Calculated Revenue to Count in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions under section 11 of the Revenue Assurance Wheat Crop Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner that results in a clear and discernible break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in such a manner that permits us to verify the amount of spring wheat production separately from any winter wheat production. In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

(b) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Revenue Assurance Insurance Policy Basic Provisions, Revenue Assurance Wheat Crop Provisions, and this Option.

(c) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9 of the Revenue Assurance Wheat Crop Provisions. By doing so, coverage will continue under the terms of the Revenue Assurance Insurance Policy Basic Provisions, the Revenue Assurance Wheat Crop Provisions, and this Option, and the Revenue Guarantee for winter wheat will remain in effect

Option B (With Full Winter Damage Coverage)

Whenever any winter wheat is damaged during the insurance period (see section (c)(3) above), and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the Revenue Guarantee for the acreage (to calculate the actual percentage, multiply the appraised production determined in accordance with section 11(c)(1) of the Revenue Assurance Wheat Crop Provisions times the Projected Harvest Price and then divide that quantity by the Revenue Guarantee), you may, at your option, take one of the following actions:

(a) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Revenue Assurance Insurance Policy Basic Provisions, the Revenue Assurance Wheat Crop Provisions, and this Option.

(b) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9 of the Revenue Assurance Wheat Crop Provisions. By doing so, coverage will continue under the terms of the Revenue Assurance Insurance Policy Basic Provisions, the Revenue Assurance Wheat Crop Provisions, and this Option, and the Final Guarantee for winter wheat will remain in effect.

(c) Accept our appraisal of the crop on the damaged acreage as Calculated Revenue to count against the Revenue Guarantee for the damaged acreage, destroy the remaining crop on such acreage, and be eligible for any indemnity due under the terms of the Revenue Assurance Insurance Policy Basic Provisions and the Revenue Assurance Wheat Crop Provisions. The

appraisal will be considered Calculated Revenue in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions of section 11 of the Revenue Assurance Wheat Crop Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner that results in a clear and discernible break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in a manner which permits us to verify the amount of spring wheat production separately from any winter wheat production. In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

Signed in Washington, D.C., on June 29, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–17149 Filed 7–6–00; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Crop Revenue Coverage

ACTION: Notice of availability.

SUMMARY: In accordance with section 508(h) of the Federal Crop Insurance Act (Act), since 1996 the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) has approved for reinsurance and subsidy the insurance of corn, grain sorghum, soybeans, cotton, rice, and wheat in select states and counties under the Crop Revenue Coverage (CRC) plan of insurance submitted by American Agrisurance (AmAg). This notice is intended to inform eligible producers and the private insurance industry of revisions to the Crop Revenue Coverage (CRC) Insurance Policy Basic Provisions, the Crop Revenue Coverage Insurance Policy Wheat Crop Provisions, and the Crop Revenue Coverage Mandatory Actuarial Document Endorsement Commodity Exchange Endorsement—Wheat, for the 2001 and succeeding crop years.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Dr., Kansas City, Missouri 64133, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 508(h) of the Act allows for the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act.

In accordance with section 508(h) of the Act, the Board approved a program of insurance known as CRC, submitted by American Agrisurance, an exclusive marketing agent and wholly owned subsidiary of Acceptance Insurance Companies, Inc. All terms and conditions of the policy and all premium rates are determined by AmAg. FCIC does not have the authority to modify or waive any terms or conditions. FCIC only has the authority to approve or disapprove the terms and conditions submitted by AmAg.

The CRC program has been approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses in an amount authorized under section 508(e) of the Act. CRC is designed to protect producers against both price and yield losses.

On Tuesday, November 30, 1999, FCIC published a Notice of availability in the **Federal Register** at 64 FR 66839–66866 to revise the Basic Provisions, Crop Provisions, and Commodity Exchange Endorsements to be effective beginning with the 2000 CRC spring crop programs.

AmAg has requested the CRC program for winter wheat for the 2001 crop year be changed to remove the CRC base price and harvest price for Winter Durum Wheat in Arizona and California, incorporate changes to allow for continuous rating of crop insurance policies, change the cancellation and termination dates for some counties and make minor edits for clarification. The CRC program for durum wheat is being removed from Arizona and California because of an inability to determine prices from the current market. Other changes made include those changes in the administrative fees and producer subsidies as well as the substitution of yields in the producers's actual production history mandated by the Agricultural Risk Protection Act of 2000.

Accordingly, FCIC herewith gives notice of the above stated changes for the 2001 and succeeding crop years.

The CRC policies, endorsements, underwriting rules, questions and answers, premium calculation worksheet, and actuarial documents for the 2001 crop year will be released electronically to all reinsured companies through FCIC's Website.

Notice: Accordingly, the publication on November 30, 1999, Notice of availability at 64 FR 66839–66866 is adopted with revisions to the Crop Revenue Coverage (CRC) Insurance Policy Basic Provisions, Crop Revenue Coverage Insurance Policy Wheat Crop Provisions, and Crop Revenue Coverage Mandatory Actuarial Document Endorsement Commodity Exchange Endorsement—Wheat, effective beginning with the 2001 crop year as follows:

Crop Revenue Coverage (CRC) Insurance Policy Basic Provisions

1. In section 1, the definitions of "actuarial documents," "additional coverage," "administrative fee," and "approved yield" are revised to read as follows:

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office, and which show the revenue guarantees, coverage levels, practices, insurable acreage, and other related information regarding crop insurance in the county.

Additional coverage. A level of coverage equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the Base Price, or a comparable coverage.

Administrative fee. An amount you must pay for additional coverage for each crop year as specified in section 8.

Approved yield. The actual production history (APH) yield determined in accordance with 7 CFR part 400, subpart G, including any adjustments elected under section 35. This yield is established for basic or optional units. The approved yield for each basic or optional unit comprising an enterprise unit is retained for premium and final guarantee purposes under an enterprise unit.

2. In section 1, the definition of "base premium rate" has been added to read as follows:

Base premium rate. A premium rate used to calculate the risk associated with yield.

3. In section 1, the definition of "CRC rate" has been replaced with "CRC base rate" and is revised to read as follows:

CRC base rate. The premium rate used to calculate the risk associated with revenue.

4. In section 1, the definition of "Limited coverage" is removed.

5. Section 3(b) is revised to read as follows:

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable, (except as stated herein) coverage level, crop, type, variety or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop.

6. Section 3(e)(10) is revised to read as follows:

(10) For example, if crop A, with a termination date of October 31, 2000, and crop B, with a termination date of March 15, 2001, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2000, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 2001. If you enter an agreement to repay the debt on April 25, 2001, you can apply for insurance for crop A by the October 31, 2001, sales closing date and crop B by the March 15, 2002, sales closing date. If you fail to make a scheduled payment on November 1, 2001, you will be ineligible for crop insurance effective on November 1, 2001, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

7. Section 4(a), is revised to read as follows:

(a) For each crop year, the Final Guarantee and coverage level at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the Special Provisions or in the actuarial documents.

8. Section 8(c) is revised to read as follows:

(c) Your annual premium amount is determined by:

(1) Multiplying the Approved Yield times the Coverage Level, times the Base Premium Rate, and times the Base Price as defined in the Commodity Exchange Endorsement;

(2) Multiplying the Approved Yield times the Coverage Level, times the CRC Base Rate, and times the CRC Low Price Factor specified in the actuarial documents;

(3) Multiplying the Approved Yield times the Coverage Level, times the Base Premium Rate, and times the CRC High Price Factor specified in the actuarial documents;

(4) Adding sections 8(c)(1), (2), and (3);

(5) Multiplying the result of section 8(c)(4) times the Acres insured, times your Share at the time coverage begins, and as applicable, times any CRC Option Factor; Yield Adjustment Surcharge; and/or CRC Enterprise Option Factor;

(6) Multiplying the result of section 8(c)(5) times the applicable producer subsidy percentage to calculate the appropriate amount of subsidy. The producer subsidy percentage is based upon the coverage level and is contained in the actuarial documents; and

(7) Subtracting section 8(c)(6) from section 8(c)(5).

9. Section 8(d) is removed and the remaining section is redesignated, accordingly.

10. Section 8(e) redesignated as 8(d) is revised as follows:

(d) In addition to the premium charged:

(1) You, unless otherwise authorized in 7 CFR part 400, must pay an administrative fee each crop year of $30 per crop per county.

(2) The administrative fee must be paid no later than the time that premium is due.

(3) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report, you may be subject to criminal and administrative sanctions.

(4) The administrative fee will be waived if you request it and you qualify as a limited resources farmer.

(5) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

11. Section 34(c) is revised to read as follows:

(c) A written agreement may only be used to insure a CRC crop in a county without a CRC program if the county without a CRC program is adjacent to a county with a CRC program;

12. Section 35 is added as follows:

Section 35. Substitution of Yields

You may elect to exclude actual yields used to calculate the APH yield that are less than 60 percent of the applicable transitional yield (T-yield), as defined in 7 CFR 400.52. Each excluded actual yield will be replaced with a yield equal to 60 percent of the applicable T-yield for the county. The replacement yields will be used in the same manner as actual yields for the purpose of calculating the APH yield. Premium rates for approved yields that are adjusted under this section will be based on your yield prior to replacing the actual yields or such other basis as determined appropriate by us.

Crop Revenue Coverage Insurance Policy Wheat Crop Provisions

13. Section 3 is revised to read as follows:

3. Coverage Level

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of wheat in the county insured as grain under this policy will have the same coverage level.

14. Section 5 is revised to read as follows:

5. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation date	Termination date
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee and all Wisconsin counties north thereof; and all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.

State and county	Cancellation date	Termination date
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt and San Miguel counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware and Dubuque counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels and Sheridan; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, Yankton and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown and Kewaunee counties, Wisconsin, and all Wisconsin counties north thereof; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; California; Nevada; and Utah	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande and Saguache counties, Colorado; Maine; Minnesota; Daniels and Sheridan counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie counties, Wyoming.	March 15	March 15.

15. Section 11(e)(2)(i) is revised to read as follows:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (heat-damaged kernels will not be considered to be damaged), shrunken or broken kernels, defects (foreign material and heat damage will not be considered to be defects), a musty, sour, or commercially objectional foreign odor (except smut odor) or grading garlicky, light smutty, smutty or ergoty;

16. The Crop Revenue Coverage Mandatory Actuarial Document Endorsement Commodity Exchange Endorsement—Wheat, is revised to read as follows:

Crop Revenue Coverage Mandatory Actuarial Document Endorsement Commodity Exchange Endorsement—Wheat

(This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage:

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Wheat crop policy provisions and actuarial documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Wheat policy are determined.

(III) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by totaling all the daily settlement prices for the contract specified in the applicable Base Price or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price or Harvest Price definition, and dividing that sum by the total number of days included in the total. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price or Harvest Price definition. A full active trading day is any day on which there are twenty-five (25) or more open interest contracts of the contract specified in the Base Price or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(IV) This endorsement defines the Base Price and Harvest Price as shown in Section 1 of the Crop Revenue Coverage Basic Provisions by wheat type and state as follows:

Winter Wheat—(Insured as winter wheat), Chicago Board of Trade (CBOT)

Illinois, Indiana, Michigan, Ohio, and Wisconsin

Base Price (CBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (CBOT)—The July 15 to August 14 harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by August 20 of the harvest year.

Winter Wheat—(Insured as winter wheat), (CBOT)

Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia

Base Price (CBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (CBOT)—The June harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by July 10 of the harvest year.

Winter Wheat—(Insured as winter wheat), Kansas City Board of Trade (KCBOT)

Iowa, Montana, Nebraska, South Dakota, and Wyoming

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (KCBOT)—The July 15 to August 14 harvest year's average daily settlement price for the harvest year's KCBOT September hard red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by August 20 of the harvest year.

Winter Wheat—(Insured as winter wheat), (KCBOT)

Arizona, Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, and Texas

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (KCBOT)—The June harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by July 10 of the harvest year.

Spring Wheat—(Insured as spring wheat in counties with a 3/15 cancellation date), Minneapolis Grain Exchange (MGE)

Colorado, Minnesota, Montana, North Dakota, South Dakota, and Wyoming

Base Price (MGE)—The February harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Spring Wheat—(Insured as spring wheat in counties with a 9/30 cancellation date), (KCBOT/MGE)

Colorado, Iowa, Montana, South Dakota, Wisconsin, and Wyoming

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Wheat—Portland Grain Exchange (PGE)

California, Idaho, Oregon, Utah, and Washington

Base Price (PGE)—The Portland Price equals the August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) plus an adjustment equal to the current five-year average difference between the August average daily settlement price for the nearby CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) and the August average daily settlement price for the PGE soft white wheat contract (rounded to the nearest whole cent). The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (PGE)—The August harvest year's average daily settlement price for the PGE soft white wheat contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Durum Wheat—(Insured as durum wheat in counties with a 3/15 cancellation date), (MGE)

North Dakota counties of Benson, Bottineau, Burke, Cavalier, Divide, Mclean, Mountrail, Nelson, Pierce, Ramsey, Renville, Rolette, Towner, Ward, Williams

Base Price (MGE)—The February harvest year's average daily settlement price for the harvest year's MGE September durum wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September durum wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

All other terms and conditions of the Policy remain unchanged.

Signed in Washington, D.C. on June 29, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–17150 Filed 7–6–00; 8:45 am]

BILLING CODE 3410–08–U

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC) Meeting

AGENCY: Forest Service, USDA Forest Service.

ACTION: Action of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday, July 20, 2000. The meeting is scheduled to begin at 9 a.m., and will conclude at approximately 3 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes:

(1) Survey and Manage update,
(2) BLM Off Highway Vehicle strategy,
(3) Public forum,
(4) Forest Service Roadless Area Conservation proposal,
(5) Information sharing.

The Public Forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the June 15 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon, 97401; (541) 465–6924.

Dated: June 30, 2000.

Y. Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 00–17176 Filed 7–6–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 7, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance

Family Housing and Naval Hospital, Marine Corps Base, Camp Lejeune, North Carolina.
NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina.

Janitorial/Custodial

U.S. Army Reserve Center, 180 High Street, Fairfield, Connecticut.
NPA: CW Resources, Inc., New Britain, Connecticut.

Janitorial/Custodial

U.S. Army Reserve Center, AMSA 69, 26 Seamans Lane, Milford, Connecticut.
NPA: CW Resources, Inc., New Britain, Connecticut.

Janitorial/Custodial

U.S. Department of Agriculture, Avian Disease and Oncology Lab, East Lansing, Michigan.
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan.

Switchboard Operation

VA Hudson Valley Health Care System, Castle Point Campus, Castle Point, New York.
NPA: Blind Work Association, Binghamton, New York.

Switchboard Operation

VA Hudson Valley Health Care System, FDR Campus, Albany Post Road, Montrose, New York.
NPA: Blind Work Association, Binghamton, New York.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Paper, Kraft Wrapping

8135–00–160–7752
8135–00–160–7770

Tree Marking Paint and Tracer Element

8010–01–273–3769
8010–01–273–3768
8010–01–273–3767
8010–01–273–3766
8010–01–274–2569
8010–01–274–2568
8010–01–274–2564
8010–01–273–3765
8010–01–273–3764
8010–01–273–3763
8010–01–273–8705
8010–01–274–2567
8010–01–274–7795
8010–01–274–2563
8010–01–274–2574
8010–01–274–2573
8010–01–274–2572
8010–01–274–2571
8010–01–274–2566
8010–01–274–2565
8010–01–274–2562
8010–01–380–1779
8010–01–380–1770
8010–01–380–1706
8010–01–380–1710
8010–01–380–1777
8010–01–380–1781
8010–01–380–1708
8010–01–380–1732
8010–01–380–1700
8010–01–380–1727
8010–01–380–1756
8010–01–380–1702
8010–01–380–1745
8010–01–380–1735
8010–01–380–1766
8010–01–380–1755
8010–01–380–1769

8010–01–380–1763
8010–01–380–1739
8010–01–380–1757
8010–01–380–1753

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–17233 Filed 7–6–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocations in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received requests to revoke four antidumping duty orders in part.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (1999), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Ball Bearings and Cylindrical Roller Bearings from France, Polyvinyl Alcohol from Taiwan, and Ball Bearings from the United Kingdom.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than May 31, 2001.

Antidumping duty proceedings	Period to be reviewed
Belgium: Stainless Steel Plate in Coils, A–423–808:	
ALZ, N.V.	11/4/98–4/30/00
Brazil: Frozen Concentrated Orange Juice, A–351–605:	
Citrovita Agro Industrial Ltda/Cambuhy MC Industrial Ltda/Cambuhy Citrus Comercial e Exportadora	5/1/99–4/30/00
Branco Peres Citrus S.A.	
CTM Citrus S.A.	
Sucorrico S.A.	
Indonesia: Extruded Rubber Thread, A–560–803:	
PT Swasthi Parama Mulya	5/12/99–4/30/00
Italy: Stainless Steel Plate in Coils, A–475–822:	
Acciai Speciali Terni S.p.A.	11/4/98–4/30/00
Japan: Polyvinyl Alcohol, A–588–836:	
Kuraray Co., Ltd.	5/1/99–4/30/00
Republic of Korea: DRAMs, A–580–812:	
LG Semicon Co., Ltd.	5/1/99–4/30/00
Hyundai Electronics Industries Co.	
G5 Corporation	
Wooyang Industry Co.	
Kim's Marketing	
Jewon Trading	
Kae Won Microelectronics	
Techsan Electronics	
Republic of Korea: Stainless Steel Plate in Coils, A–580–831:	
Pohang Iron & Steel Co., Ltd.	11/4/98–4/30/00
South Africa: Stainless Steel Plate in Coils, A–791–805:	
Columbus Stainless Steel Company	11/4/98–4/30/00
Taiwan: Stainless Steel Plate in Coils, A–583–830:	
Ta Chen Stainless Pipe Co., Ltd.	11/4/98–4/30/00
Yieh United Steel Corporation.	
Taiwan: Polyvinyl Alcohol, A–583–824:	
Chang Chun Petrochemical Co., Ltd.	5/1/99–4/30/00
Turkey: Certain Steel Concrete Reinforcing Bars, A–489–807:	
Diler Demir Celik Endustrisi ve Ticaret A.S.[1]	4/1/99–3/31/00

[1] Inadvertently omitted from previous initiation notice.

Anti-friction bearings proceedings and firms[2]	Period/class or kind
France: A–427–801	5/1/99–4/30/00
SKF France S.A. (including all relevant affiliates)	Ball & Spherical
Societe Nouvelle de Roulements (SNR)	Ball & Cylindrical
SNFA S.A./Somecat S.p.A. (including all relevant affiliates)	Cylindrical
Alfateam	Ball
Alpha-Team	Do.
Bearing Discount International GmbH	Do.

Anti-friction bearings proceedings and firms [2]	Period/class or kind
Motion Bearings Pte Ltd	Do.
Yoo Shin Commercial Company Ltd	Do.
Rodamientos Rovi	Do.
Rovi-Valencia	Do.
Rovi-Marcay	Do.
Representaciones Industriales Rodrigues, S.A	Do.
DCD Ball	Do.
EuroLatin Exnport Services Ltd	Do.
Germany: A–428–801	5/1/99–4/30/00
Cerobear GmbH	Ball & Cylindrical
FAG Kugelfischer George Schaefer AG (including all relevant affiliates)	Do.
INA Walzlager Schaeffler KG	Cylindrical
SKF GmbH (including all relevant affiliates)	Ball & Cylindrical
SNR	Do.
Torrington Nadellager GmbH	Do.
Alfateam	Do.
Alpha-Team	Do.
Bearing Discount International GmbH	Do.
Motion Bearings Pte Ltd	Do.
Yoo Shin Commercial Company Ltd	Do.
Rodamientos Rovi	Do.
Rovi-Valencia	Do.
Rovi-Marcay	Do.
Representaciones Industriales Rodrigues, S.A.	Do.
DCD	Do.
EuroLatin Export Services Ltd	Do.
Italy: A–475–801	5/1/99–4/30/00
FAG Italia S.p.A. (including all relevant affiliates)	Ball & Cylindrical
SOMECAT S.p.A./SNFA Italy (including all relevant affiliates)	Ball
Alfateam	Ball
Alpha-Team	Do.
Bearing Discount International GmbH	Do.
Motion Bearings Pte Ltd	Do.
Yoo Shin Commercial Company Ltd	Do.
Rodamientos Rovi	Do.
Rovi-Valencia	Do.
Rovi-Marcay	Do.
Representaciones Industriales Rodrigues, S.A	Do.
DCD	Do.
EuroLatin Export Services Ltd	Do.
Japan: A–588–804	5/1/99–4/30/00
Koyo Seiko Co., Ltd	All
Sapporo Precision Inc	Do.
NSK Ltd. (formerly Nippon Seiko K.K.)	Ball & Cylindrical
NTN Corporation	All
Inoue Jikuuke Kogyo Co., Ltd. (IJK)	Ball
Izumoto Seiko Co., Ltd. (IKS)	Do.
Muro Corporation	Do.
(Initiation of 5/1/98–4/30/99 review deferred, 64 FR 35124, 6/30/99)	
Romania: A–485–801	5/1/99–4/30/00
S.C. Koyo Romania S.A.	Ball
Singapore: A–559–801	5/1/99–4/30/00
NMB Singapore Ltd./Pelmec Industries (Pte.) Ltd	Ball
Sweden: A–401–801	5/1/99–4/30/00
SKF Sverige AB (including all relevant affiliates)	Ball
Alfateam Ball	Do.
Alpha-Team	Do.
Bearing Discount International GmbH	Do.
Motion Bearings Pte Ltd	Do.
Yoo Shin Commercial Company Ltd	Do.
Rodamientos Rovi	Do.
Rovi-Valencia	Do.
Rovi-Marcay	Do.
Representaciones Industriales Rodrigues, S.A	Do.
DCD	Do.
EuroLatin Export Services Ltd	Do.
The United Kingdom: A–412–801	5/1/99–4/30/00
NSK Bearings Europe Ltd./RHP Bearings Ltd	Ball & Cylindrical
Barden Corporation	Do.
SNFA Bearings Limited/Somecat S.P.A. (including all relevant affiliates)	Ball
SNR Roulements	Ball & Cylindrical
Timkern Aerospace UK, Ltd	Ball
Countervailing duty proceedings:	
Belgium: Stainless Steel Plate in Coils, C–423–809: ALZ, N.V	1/1/99–12/31/99

Anti-friction bearings proceedings and firms [2]	Period/class or kind
Italy: Stainless Steel Plate in Coils, C–475–823: Acciai Speciali Terni S.p.A	1/1/99–12/31/99
Suspension Agreements: None.	

[2] These orders are currently undergoing a "sunset" review pursuant to section 751(c) of the Act. If subsequent to publication of this initiation notice the orders should be revoked pursuant to "sunset," any review (if initiated) or automatic liquidation instruction (if no review is initiated) will only cover through the last day prior to the effective date of revocation.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: June 30, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II, for Import Administration.

[FR Doc. 00–17247 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

April 2000 Sunset Reviews: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of five-year ("Sunset") review: Revocation of antidumping duty order on pure magnesium from Russia.

SUMMARY: On April 3, 2000, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on pure magnesium from Russia (65 FR 17484) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking this order.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1995, the Department issued the antidumping duty order on pure magnesium from Russia (60 FR 25691) pursuant to section 736(a) of the Tariff Act of 1930, as amended ("the Act"). The Department initiated a sunset review of this order by publishing a notice of the initiation in the **Federal Register**, April 3, 2000 (65 FR 17484). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of the sunset review on this order.

No domestic interested parties responded to the notice of initiation by the April 18, 2000 deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the order. Because no domestic interested party responded to the notice of initiation by the applicable deadline, April 18, 2000, we are revoking this antidumping duty order.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: June 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 1998–1999 administrative review, partial rescission of the review, and notice of intent to revoke order in part.

SUMMARY: We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 1998, through May 31, 1999. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs

Service to assess antidumping duties based on the differences between the U.S. price and normal value on all appropriate entries.

China National Machinery Import & Export Corporation, Wafangdian Bearing Group Corp. Import & Export Company, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we preliminarily find that three of the four companies qualify for revocation. As such, we intend to revoke the order with respect to the subject merchandise produced and exported by these companies.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Melani Miller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0189 and (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 1999).

Background

On May 27, 1987, the Department published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished ("TRBs"), from the People's Republic of China ("PRC"). The Department notified interested parties of the opportunity to request an administrative review of this order on June 9, 1999 (64 FR 30962). On June 21, 1999, Wafangdian Bearing Group Corp. Import & Export Company ("Wafangdian") and Zhejiang Machinery Import & Export Corp. ("ZMC") requested administrative reviews. On June 24, 1999, Wanxiang Group Corporation ("Wangxiang") and China National Machinery Import & Export Corporation ("CMC") requested administrative reviews. Wafangdian, ZMC, Wangxiang, and CMC also requested that the Department revoke the antidumping duty order as it pertains to them. On June 30, 1999, the petitioner, The Timken Company, requested that the Department conduct an administrative review of the antidumping duty order on hundreds of PRC TRB exporters. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 29, 1999 (64 FR 41075).

On September 1, 1999, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested information relevant to the issue of whether the companies named in the initiation notice are independent from government control. *See* the *Separate Rates Determination* section, below. Courtesy copies of the questionnaire were also sent to companies with legal representation.

We received responses to the questionnaire from the following ten companies: CMC, Liaoning MEC Group Co. Ltd. ("Liaoning"), Luoyang Bearing Corp. (Group) ("Luoyang"), Premier Bearing & Equipment Ltd. ("Premier"), Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory ("Hailin"), Wafangdian, Wanxiang, Weihai Machinery Holding (Group) Co., Ltd. ("Weihai"), ZMC, and Zhuzhou Torch Spark Plug Co., Ltd. ("Torch").

In addition, on October 8, 1999, Zhejiang Changshan Changhe Bearing Corp. ("ZCCBC") reported no shipments of subject merchandise to the United States during the period of review ("POR"), June 1, 1997, through May 31, 1998, other than those shipments already being examined by the Department as part of ZCCBC's new shipper review. Therefore, in accordance with section 351.213(d)(3) of our regulations, we preliminarily conclude that there were no applicable shipments from ZCCBC to the United States during the POR and are rescinding the review with respect to this company. However, we will confirm with the Customs Service that ZCCBC had no shipments prior to issuing the final results.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Merchandise covered by this review includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Separate Rates Determination

As discussed below in the *Normal Value* section of this notice, we are treating the PRC as a nonmarket economy ("NME") country within the meaning of section 773(c) of the Act. We allow companies in NMEs to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in a NME is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other

agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589).

In previous administrative reviews of the antidumping duty order on TRBs from the PRC, we determined that CMC, Liaoning, Luoyang, Hailin, Wafangdian, Wanxiang, Weihai, and ZMC, should receive separate rates (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part*, 63 FR 63842 (November 17, 1998) (*"TRBs X"*)). We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to these companies' exports according to the criteria identified in *Sparklers* and *Silicon Carbide*. The evidence in question consisted of, among other things, the companies' business licenses and copies of relevant PRC laws on trade and incorporation. Therefore, we have continued to assign each of these companies a separate rate.

Premier is a privately owned Hong Kong trading company which purchases TRBs from the PRC for resale throughout the world. Because Premier's PRC-based suppliers do not know the destination of their merchandise, we have determined that Premier, rather than its suppliers, is the proper respondent with respect to its sales of TRBs to the United States. Therefore, Premier's suppliers need not undergo a separate-rates analysis. See the *United States Sales* section, below.

Separate-Rate Determinations for Non-Responsive Companies

We have preliminarily determined that companies which did not respond to the questionnaire should not receive separate rates. See the *Use of Facts Otherwise Available* section, below.

Use of Facts Otherwise Available

We preliminarily determine that companies which did not respond to our requests for information did not cooperate to the best of their ability. Thus, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for such companies. Furthermore, because factors data for certain of Premier's U.S. sales were not provided by Premier's suppliers, we preliminarily determine that such parties did not demonstrate that they cooperated to the best of their ability, and we have applied adverse facts available to calculate a portion of Premier's margin.

1. Companies that did not respond to the questionnaire: Where the Department must base its determination on facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with ■ request for information, section 776(b) of the Act authorizes the Department to use inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action ("SAA") provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

We have preliminarily assigned a margin of 33.18 percent to those companies for which we initiated a review and which did not respond to the questionnaire. This margin, calculated for sales by Xiangfan Machinery Import & Export (Group) Corp. during the 1996–97 review, represents the highest overall margin calculated for any firm during any segment of this proceeding. As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances or documentation indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 33.18 percent rate is corroborated.

As noted in the *Separate Rates Determination* section above, we have also preliminarily determined that the non-responsive companies should not receive separate rates. Thus, they are viewed as part of the PRC-wide entity. Accordingly, the facts available for these companies form the basis for the PRC rate, which is 33.18 percent for this review.

2. Premier: Premier, a Hong Kong-based reseller of TRBs, obtains TRBs from numerous PRC suppliers. Because Premier is only a reseller of TRBs and does not produce the subject merchandise itself, factors data must be obtained from its suppliers. In response to our questionnaire, Premier provided factors data from three of its seventeen suppliers. In addition to requesting factors data from Premier, we also requested factors data directly from Premier's suppliers. However, none responded. Consequently, we do not have factors data for all TRB models sold by Premier in the United States.

As in prior reviews, we have preliminarily determined that there is little variation in factor utilization rates among the TRB producers from which we have received FOP data (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review*, 63 FR 37339, 37342 (July 10, 1998) (*"Preliminary TRBs X"*)). Therefore, for the models for which we have appropriate information, we are using, as facts available, the factors data we received from manufacturers which did not supply Premier during the POR but manufactured the same models of TRBs, in order to calculate normal value.

For the sales of TRB models for which no factors data is available, we have preliminarily determined, in accordance with section 776(a) of the Act, to use facts available. The use of facts available is necessary because the necessary factors data for these models is not available on the record. We also preliminarily find, in accordance with section 776(b) of the Act, that in determining the appropriate facts available an adverse inference is warranted because interested parties did not cooperate to the best of their ability. Interested parties did not cooperate to the best of their ability because they refused to provide information specifically requested by the Department.

Thus, with respect to Premier's U.S. sales for which no corresponding factors data were reported, we are applying, as adverse facts available, a margin of 25.56 percent, the highest overall margin ever applicable to Premier. This approach is consistent with our final results in prior reviews (see, *e.g., TRBs X* 63 FR 63857). As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 25.56 percent rate is corroborated.

United States Sales

Premier reported that it maintains inventories of TRBs in Hong Kong and sells TRBs worldwide. Therefore, its PRC-based suppliers have no knowledge when they sell to the Hong Kong firm that the shipments are destined for the United States. Because Premier is the first party to sell the merchandise to the United States, we have calculated U.S. price of this merchandise based on Premier's sales data.

For certain sales made by Premier and CMC we based the U.S. price on constructed export price ("CEP") in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by other respondents, as well as the other sales made by Premier and CMC, we based the U.S. sales on export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances.

We calculated EP based on the FOB, CIF, or C&F port prices to unaffiliated purchasers, as appropriate. From these prices we deducted amounts, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We valued the deduction for foreign inland freight using surrogate data (Indian freight costs). (We selected India as the surrogate country for the reasons explained in the *Normal Value* section of this notice.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using the surrogate data (amounts charged by international providers). When marine insurance and ocean freight were provided directly by market economy companies and paid for in a market economy currency, we deducted the values reported by the respondents for these services.

We calculated CEP based on the packed, ex-warehouse prices from the U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for international freight, foreign brokerage and handling, foreign inland freight, marine insurance, customs duties, U.S. brokerage, U.S. inland freight insurance and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we made further deductions from the starting price for CEP for the following selling expenses that related to economic activity in the United States: Commissions to unaffiliated agents; credit expenses; indirect selling expenses, including inventory carrying costs; and repacking in the United States. In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production ("FOP") methodology if: (1) The merchandise is exported from an NME, and (2) the information does not permit the calculation of NV under section 773(a) of the Act. The Department has treated the PRC as a non-market economy ("NME") in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC TRB industry is a market-oriented industry. Consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and section 351.408(c) of our regulations.

Similarly, we used factors data to calculate NV for Premier. Section 773(a)(3)(A) of the Act provides that when the merchandise is sold to the United States from an intermediate country, and the producer of subject merchandise knows, at the time of the sale, that its merchandise is destined for exportation, NV may be determined in the country of origin of the subject merchandise. Accordingly, we calculated NV for Premier on the basis of PRC production usage rates and surrogate country factor values.

Under the FOP methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We chose India as the surrogate on the basis of the criteria set out in section 351.408(b) of our regulations. *See* the January 31, 2000, Memorandum to Susan Kuhbach from Jeff May "Tapered Roller Bearings from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection," and the June 29, 2000, Memorandum to Susan Kuhbach "Selection of a Surrogate Country and Steel Value Sources" ("Steel Values Memorandum") for a further discussion of our surrogate selection. We selected Indonesia as a second-choice surrogate based on the same criteria. *Id.* We note that, in past reviews of this and other orders, we have found that both India and Indonesia are significant producers of TRBs (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837, 61840 (November 15, 1999) ("*TRBs XI*") and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Romania; Preliminary Results of Antidumping Administrative Review*, 63 FR 11217 (March 6, 1998)).

We used publicly available information on Indian imports and exports to India to value the various factors with the exception of the following: Cold-rolled steel rods used in the production of rollers and steel scrap from the production of rollers. To value cold-rolled steel rods used in the production of rollers we used publicly available Indonesian import data. We used these data because we found the Indian data for those inputs to be unreliable. (*See* Steel Values Memorandum.) We valued steel scrap

from the production of rollers using Indonesian data in order to value it consistently with the steel used to produce the rollers.

We valued factors as follows (for a complete description of the factor values used, *see* the Memorandum to Susan Kuhbach: "Factors of Production Values Used for the Preliminary Results," dated June 29, 2000):

1. Steel Inputs. For hot-rolled alloy steel bars used in the production of cups and cones, consistent with *TRBs XI*, we used a weighted average of Japanese export values to India from the Harmonized Schedule ("HS") category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. For cold-rolled steel rods used in the production of rollers, we used Indonesian import data under Indonesian tariff subheading 7228.50000 obtained from *Badan Pusat Statistik, Republik Indonesia*. For cold-rolled steel sheet for the production of cages, we used Indian import data under Indian tariff subheading 7206.1600 obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports*. (For further discussion of selection of steel value sources, *see* Steel Values Memorandum.)

As in previous administrative reviews, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, and rollers, we also excluded imports from countries that do not produce bearing-quality steel (*see, e.g., TRBs XI*). We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory (*see Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997), and *Sigma Corporation* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997)).

Certain producers in this review purchased steel from market economy suppliers and paid for the steel with market economy currency. Thus, in accordance with section 351.408(c)(1) of our regulations, we valued all appropriate steel inputs using the actual price reported for directly imported inputs from a market economy. For all other steel inputs, we used a surrogate to value that steel.

We valued scrap recovered from the production of cups and cones using Indian import statistics from HS category 7204.2909. We valued scrap recovered from the production of rollers using Indonesian import data from Indonesian tariff category 7204.29000. Scrap recovered from the production of cages was valued using import data from the Indian tariff subheading 7204.4100.

2. Labor. Section 351.408(c)(3) of our regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate on Import Administration's internet website at www.ita.doc.gov/import_admin/records/wages.

3. Overhead, SG&A Expenses, and Profit. For factory overhead, we used information obtained from the fiscal year 1998–99 annual reports of five Indian bearing producers. We calculated factory overhead and selling, general and administrative ("SG&A") expenses (exclusive of labor and electricity) as percentages of direct inputs (also exclusive of labor) and applied these ratios to each producer's direct input costs. For profit, we totaled the reported profit before taxes for the five Indian bearing producers and divided it by the total calculated cost of production ("COP") of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. Packing. As we did in *TRBs XI (see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1997–1998 Antidumping Duty Administrative Review and Partial Recission of Antidumping Duty Administrative Review*, 64 FR 36853 (July 8, 1999)), for producers that participated in the 1996–1997 review, except for Wafangdian, we calculated packing costs as a percentage of COP for each respondent based on the information submitted in that review. This ratio was applied to the respondents' COP for the current review to derive a POR-specific, company-specific packing expense. Consistent with *TRBs XI*, we calculated the value of packing materials by using Indian import statistics concurrent with the POR from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports* for (1) producers that did not participate in that review and do not have a packing cost percentage already calculated, and (2) Wafangdian since it reported different packing materials from those reported in the 1996–1997 review. We then multiplied these figures by the usage factor reported by the company to calculate company-specific packing costs.

5. Electricity. Consistent with our approach in *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 30067 (May 10, 2000), we calculated our surrogate value for electricity based on a simple average of rates across all Indian states, using the most contemporaneous electricity rate data from the Centre for Monitoring Indian Economy and the *1995 Conference of Indian Industries: Handbook of Statistics*. For each Indian state's rate, we inflated the value from the effective date of the rate quote to the POR using the electricity-specific price index published by the Reserve Bank of India.

6. Inland Freight. We valued truck freight using an average of November 1999 truck freight rate quotes collected from Indian trucking companies by the Department and used in the *Notice of Preliminary Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 116 (January 3, 2000) ("*Bulk Aspirin from the PRC*"). We valued rail freight using two November 1999 rate quotes for domestic bearing quality steel shipments within India that were also used in *Bulk Aspirin from the PRC*. We adjusted the rates for both truck and rail freight to the POR using wholesale price indices ("WPI").

7. Ocean Freight. We calculated a value for ocean freight based on July 1996 rate quotes from Maersk Inc. We adjusted the ocean freight rate to the POR using the U.S. purchase price index.

8. Marine Insurance. We calculated a value for marine insurance based on the CIF value of shipped TRBs. We obtained the rate used through queries we made directly to an international marine insurance provider.

9. Brokerage and Handling. We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering in the *Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 12209 (March 8, 2000). Because this information is contemporaneous with the current POR, no adjustments were necessary.

Torch Spark Plug

Torch shipped TRBs to an affiliated Canadian party during the POR. According to Torch, the TRBs were originally intended for shipment to Canada. However, they entered the United States and, according to Torch, were erroneously categorized as consumption entries. Torch has provided documentation demonstrating that the merchandise has not been sold to an unaffiliated party in the United

States. In situations where an affiliated importer enters merchandise during a review period, but does not sell that merchandise during the POR, our normal practice is to liquidate the entries based on other sales of the merchandise made by the affiliated importer during the POR [1]. In this case, however, the company has indicated that it does not intend to sell this merchandise in the United States. Consequently, we would have no basis to calculate a dumping margin for this merchandise. Accordingly, we intend to liquidate the merchandise in question without regard to any dumping liability if certain requirements are met. For a further discussion of this issue, please see the Memorandum to Susan Kuhbach from Team: "Review of Zhuzhou Torch Spark Plug Company, Ltd.," dated June 29, 2000.

Revocation

Pursuant to 19 CFR 351.222(e)(1), CMC, Wafangdian, Wangxiang, and ZMC requested revocation of the antidumping duty order, in part, based on an absence of dumping for at least three consecutive years. In accordance with 19 CFR 351.222(e), these companies' requests were accompanied by certifications that they had not sold the subject merchandise at less than normal value during the current period of review and would not do so in the future. They further certified that they sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. The companies also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the revocation, the companies sold the subject merchandise at less than normal value.

In light of the above and pursuant to 19 CFR 351.222, as amended by *Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 64 FR 51236 (September 22, 1999), we preliminarily find for CMC, Wangxiang, and ZMC that the subject merchandise was sold at not less than normal value for a period of at least three consecutive years and that dumping is not likely to resume in the future and consequently the continuing imposition of an antidumping duty is not necessary to offset dumping. Therefore, we preliminarily find that these three companies qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b) and intend to revoke the order in part with respect to these companies in our final results. As indicated below, we preliminarily find that a dumping margin exists for Wafangdian. As such, we preliminarily find that Wafangdian does not qualify for revocation.

[1] *Silicon Metal from Brazil; Final Results of Antidumping Duty Administration {sic} Review*, 61 FR 46763 (September 5, 1996).

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 1998, through May 31, 1999:

Manufacturer/exporter	Margin (percent)
Wafangdian	4.54
Wangxiang	0.00
CMC	0.00
ZMC	0.00
Liaoning	0.00
Hailin	0.00
Weihai	0.00
Luoyang	4.16
Premier	5.27
PRC Rate	33.18

Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to EP sales for these preliminary results, we divided the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the order during the review period.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's/customer's entries during the review period.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with de minimis rates, *i.e.*, less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.12 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of our regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17246 Filed 7–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–812]

Grain-Oriented Electrical Steel From Italy; Preliminary Results of Countervailing Duty Administrative Review and Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on grain-oriented electrical steel from Italy for the period January 1, 1998 through December 31, 1998. For information on the net subsidy for the reviewed company, as well as for all non-reviewed companies, see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Darla Brown, Office of AD/CVD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1994, the Department published in the **Federal Register** (59 FR 29414) the countervailing duty order on grain-oriented electrical steel from Italy. On June 9, 1999, the Department published a notice of "Opportunity to Request Administrative Review of Grain-Oriented Electrical Steel from Italy" (64 FR 30962). We received a timely request to conduct a review from Acciai Speciali Terni S.p.A. (AST). We initiated the review covering the period January 1, 1998 through December 31, 1998 on July 29, 1999 (64 FR 41075).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers AST. This review also covers 21 programs.

On January 20, 2000, the Department extended the period for completion of the preliminary results pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). *See Grain-Oriented Electrical Steel from Italy: Extension of Preliminary Results of Countervailing Duty Administrative Review*, 65 FR 3206 (January 20, 2000).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. In addition, unless otherwise indicated, all citations to the Department's regulations reference 19 CFR part 351 (1999).

Scope of the Review

Imports covered by this review are shipments of grain-oriented electrical steel from Italy, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness. The products covered by this review are provided for under the following item numbers of the Harmonized Tariff Schedule of the United States (HTSUS): 7225.10.0030, 7226.10.1030, 7226.10.5015, and 7226.10.5065. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Corporate History of AST

Prior to 1987, Terni Societa' per l'Industria e l'Elettricita' S.p.A. (Terni), an operating company within the Finsider S.p.A. (Finsider) group, produced electrical steel. Finsider was a holding company that controlled all state-owned steel companies in Italy. Finsider, in turn, was wholly-owned by a government holding company, Instituto per la Ricostruzione Industriale (IRI). During 1987, Finsider was restructured into four main operating companies: Terni Acciai Speciali S.p.A. (TAS) (flat-rolled stainless steel, electrical steel); Italsider S.p.A. (carbon steel flat-rolled products); Nuova Deltasider S.p.A. (long products) and Dalmine S.p.A. (pipe and tube). During the restructuring, Terni's steel facilities, including electrical steel were transferred to the newly formed TAS.

In 1988, the Government of Italy (GOI) submitted a new restructuring plan for the steel industry to the European Commission (EC) for approval. Under this plan, which was approved in December 1988, Finsider and its main operating companies (TAS, Italsider S.p.A., and Nuova Deltasider S.p.A.) entered into liquidation and a new company, ILVA S.p.A. (ILVA) was created with some of the assets and liabilities of the liquidating companies. The plan also envisioned the closure of certain plants and the sale of others to private investors, which was carried out by ILVA between 1990 and 1992. With respect to TAS, some of its liabilities, as well as its manufacturing and other assets were transferred to ILVA on January 1, 1989, except for the production of forgings, round bars, and pressure vessels, which remained with TAS in liquidation until April 1, 1990. On April 1, 1990, these production units and certain additional liabilities were also transferred to ILVA. After that date, TAS no longer possessed any operating assets; only certain non-operating assets remained in TAS.

From 1989 to 1993, ILVA S.p.A. consisted of several operating divisions: Carbon Steel Flat Products; Pipe Division; Long Products Division; and the Specialty Steel Division located in Terni, which produced electrical steel. In addition to these operating divisions, the ILVA S.p.A. was the majority owner of a large number of separately incorporated subsidiaries. Some of these subsidiaries produced various types of steel products. Others constituted service centers, trading companies, and an electric power company, among others. ILVA S.p.A. together with its subsidiaries constituted the ILVA Group, which was wholly-owned by IRI. All subsidies received prior to 1994 were received by ILVA or its predecessors.

In September 1993, IRI endorsed a plan for the reorganization and privatization of the ILVA Group through the splitting of ILVA's core business into two new companies, and the rest of the ILVA Group was to be known as ILVA Residua (a.k.a., ILVA in

Liquidation). In accordance with the plan, on December 31, 1993, the Terni division of ILVA was separately incorporated by a demerger of ILVA into Acciai Speciali Terni S.r.l. (AST S.r.l.) (specialty steel), and ILVA Laminati Piani S.R.l. (ILP) (carbon steel flat products). The remainder of ILVA's assets and existing liabilities, as well as much of the redundant workforce, were transferred to ILVA Residua.

On December 31, 1993, AST S.r.l. was established as a separate corporation, with all shares initially owned by IRI. At approximately the same time, a public offering for the sale of AST S.r.l. was made. In preparation for the sale of AST, IRI converted AST S.r.l. from a limited liability company (S.r.l.) to a stock company (S.p.A.) on February 11, 1994. On July 14, 1994, a purchase agreement was signed by IRI and KAI Italia S.r.l. (KAI), a privately-held holding company jointly owned by German steelmaker Krupp AG Hoesch-Krupp and a consortium of private Italian companies called FAR Acciai S.r.l., subject to approval by the EC. The EC's approval was granted on December 21, 1994 , with shares formally changing hands effective December 23, 1994. As of that date, the GOI no longer maintained any ownership interest in AST or its new owners.

In December 1994, AST was sold to KAI. Between 1995 and 1998, there were several restructurings/changes in ownership of AST and its parent companies. As a result, at the end of the POR, AST was owned 90 percent by Krupp Thyssen Stainless GmbH (part of the Krupp AG Hoesch-Krupp group) and 10 percent by Fintad Securities S.A., a private Italian company.

Change in Ownership

The Department is aware that on June 20, 2000, the Court of Appeals for the Federal Circuit (CAFC) denied the Department's petition for rehearing and suggestion for rehearing *en banc* in *Delverde, SRL* v. *United States*, 202 F.3d 1360 (Fed. Cir. 2000) (*Delverde*). Although this decision addressed a purely private change in ownership, it appears that it may impact the Department's privatization methodology. However, because the CAFC's decision denying a rehearing was only issued one week before these preliminary results, the Department has not had a sufficient opportunity to determine how *Delverde* may affect this proceeding. Accordingly, for purposes of these preliminary results, we will continue to determine that a portion of subsidies bestowed on a government-owned company prior to privatization continues to benefit the production of the privatized company, as set forth below.

The Department invites interested parties to comment in their case briefs on the implications of this proceeding, if any, of the *Delverde* decision.

In the General Issues Appendix (GIA), appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37225 (July 9, 1993) (*Certain Steel from Austria*), we set forth the methodology applied to the treatment of subsidies received prior to the sale of a government-owned company to a private entity (*i.e.*, privatization), or the spin-off (*i.e.*, sale) of a productive unit from a government-owned company to a private entity.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We do this by first dividing the sold company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the period of review (POR) and ending one year prior to the sale of the company. We then take the simple average of these ratios. This average serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. Next, we multiply this ratio by the purchase price to derive the portion of the purchase price attributable to the payment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time the company is sold. *See id.* at 37263.

With respect to the spin-off of a productive unit, consistent with the Department's methodology set out above, we analyze the sale of a productive unit to determine what portion of the sales price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. The result of this calculation yields the amount of remaining subsidies attributable to the spun-off productive unit. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the methodology set out above, and deduct it from the maximum amount of subsidies that could be attributable to the spun-off productive unit. *Id.* at 37269.

Extension of Final Results

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period for the final results to 180 days. Due to the complex nature of the issues in this case, we have determined that it is not practicable to complete the final results for this review within the original time limit. Therefore, the Department is extending the time limit for the final results to 180 days from the date of publication of the preliminary results.

Subsidies Valuation Information

Allocation Period

AST was investigated in two recent countervailing duty investigations. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy*, 64 FR 30624, 30627 (June 8, 1999) (*Stainless Sheet and Strip*); *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, 15511, 15520 (March 31, 1999) (*Stainless Plate in Coils*). In those investigations, the Department allocated subsidies received by AST using a 12-year average useful life (AUL). The same subsidies being investigated in this current review of AST were also investigated in *Stainless Sheet and Strip* and *Stainless Plate in Coils*. Therefore, we preliminarily determine that it is reasonable to maintain the same 12-year allocation period for the identical subsidies received by AST.

Equityworthiness

In prior investigations and reviews, we found ILVA/AST's predecessor companies unequityworthy from 1984 through 1988, and from 1991 through 1992. *See, e.g., Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357, 18358 (April 18, 1994) (*Electrical Steel*); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy*, 58 FR 37327, 37328 (July 9, 1993) (*Certain Steel*), *Stainless Plate in Coils*, 64 FR at 15511, and *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40477 (July 29, 1998) (*Wire Rod*). No new

information or evidence of changed circumstances have been submitted in this review that would lead us to reconsider these findings.

Section 351.507(a)(3) of the Department's regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with usual investment practices of private investors. In such cases, the Department will then apply the methodology described in section 351.507(a)(6) of the regulations, and treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993), and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014, 55018 (October 21, 1997). The Department will consider a firm to be uncreditworthy if it is determined that, based on information available at the time of the government-provided loan, the firm could not have obtained a long-term loan from conventional sources. *See* 19 CFR 351.505(a)(4)(i).

TAS and ILVA were found to be uncreditworthy from 1986 through 1993. *See Electrical Steel*, 59 FR at 18358; *Stainless Plate in Coils*, 64 FR at 15511; *Wire Rod*, 63 FR at 40477. No new information has been presented in this review that would lead us to reconsider these findings. Therefore, consistent with our past practice, we continue to find TAS and ILVA uncreditworthy from 1986 through 1993. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295, 37297 (July 9, 1993). We did not analyze AST's creditworthiness in the years 1994 through 1998, because the company did not negotiate new loans with the GOI or the EC during these years, nor did it receive any new subsidies that were allocated over time.

Benchmarks for Long-Term Loans and Discount Rates

Consistent with the Department's finding in *Wire Rod*, 63 FR at 40476–77, *Stainless Plate in Coils*, 64 FR at 15510, and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Italy*, 64 FR 73244, 73247–48 (December 29, 1999) *(CTL Plate)*, we have based our discount rates on the Italian Bankers' Association (ABI) rates. The ABI rate is the average of the short-term interest rates on overdraft facilities commercial banks charge to the segment of high quality borrowers. In calculating the interest rate applicable to a borrower, commercial banks typically add a spread ranging from 0.55 percent to 4.0 percent onto the ABI rate, which is determined by the company's financial health.

In *CTL Plate*, we found that the published ABI rates do not include amounts for fees, commissions, and other borrowing expenses. However, information on the borrowing expenses on overdraft loans for 1998, which was placed on that record, was used as an approximation of expenses on long-term commercial loans. That information shows that expenses on overdraft loans range from 6.0 to 11.0 percent of interest charged. Such expenses, along with the applied spread, raise the effective interest rate that a company would pay. *CTL Plate*, 64 FR at 73248. Because it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates. *See* 19 CFR 351.505(a)(1). Therefore, we have added the average of the spread (*i.e.*, 2.28 percent) and borrowing expenses (*i.e.*, 8.5 percent of the interest charged) to the yearly ABI rates to calculate the effective discount rates.

For the years in which AST or its predecessor companies were uncreditworthy (*see "Creditworthiness"* section above), we calculated discount rates in accordance with the formula for constructing a long-term benchmark interest rate for uncreditworthy companies as stated in section 351.505(a)(3)(iii) of the Department's regulations. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the weighted-average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920—1997" (February 1998).[1] For the probability of default by a creditworthy company, we used the weighted-average cumulative default rates reported for the Aaa to Baa-rated categories of companies in the study. For non-recurring subsidies, we based the average cumulative default rates for both uncreditworthy and creditworthy companies on a 12-year term, since all of AST's allocable subsidies were based on this allocation period.

In addition, AST had one long-term, fixed-rate loan under ECSC Article 54 outstanding during the POR, denominated in U.S. dollars. Therefore, we have selected a U.S. dollar-based interest rate as our benchmark. *See* 19 CFR 351.505(a)(2)(i). Consistent with *Wire Rod*, 63 FR at 40486, and *CTL Plate*, 64 FR at 73248, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since the loan was denominated in U.S. dollars. We used these rates since we were unable to find a long-term borrowing rate for loans denominated in U.S. dollars in Italy. Because ILVA was uncreditworthy in the year the loan was contracted, we calculated the uncreditworthy benchmark rate pursuant to section 351.505(a)(3)(iii) of the Department's regulations.

I. Programs Preliminarily Determined To Be Countervailable Government of Italy Programs

A. *Equity Infusions to TAS and ILVA.*—The GOI, through IRI, provided new equity capital to TAS or ILVA between 1987 and 1992 (although there were no allegations of equity infusions in 1989 and 1990). These equity infusions were found countervailable in *Electrical Steel* and *Stainless Plate in Coils*. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. For equity infusions originally provided to TAS, the predecessor company to ILVA that produced electrical steel, we treated these equity infusions as though they had flowed directly through ILVA to AST when the specialty steel (including subject merchandise) assets were transferred from ILVA to AST. *See Electrical Steel*, 59 FR at 18360; *Stainless Plate in Coils*, 64 FR at 15511–12.

[1] We note that since publication of the regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication dated February 1998.

We have treated these equity infusions as non-recurring grants given in the year the infusion was received because each required a separate authorization. We allocated the equity infusions over a 12-year AUL. Because TAS and ILVA were uncreditworthy in the years the equity infusions were received, we constructed uncreditworthy discount rates to allocate the benefits over time. *See "Subsidies Valuation Information"* section, above.

We applied the repayment portion of our change in ownership methodology to all of the equity infusions described above to determine the subsidy allocable to AST after its privatization. We divided this amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 0.97 percent *ad valorem* for AST.

B. *Debt Forgiveness: 1988–90 Restructuring Plan.*—As discussed above in the *"Corporate History"* section of this notice, the GOI liquidated Finsider and its main operating companies, including TAS, in 1988 and assembled the group's most productive assets into a new operating company, ILVA. Although most of TAS's productive assets were transferred to ILVA, not all of its liabilities were transferred; rather, many liabilities remained with TAS which had to be repaid, assumed or forgiven. In 1990, additional assets and liabilities of TAS, Italsider and Finsider were transferred to ILVA. *See Electrical Steel*, 59 FR at 18359; *Stainless Plate in Coils*, 64 FR at 15508–09; *CTL Plate*, 64 FR at 73249.

In 1989, IRI forgave 99,886 million lire owed to Finsider by TAS. *See Electrical Steel*, 59 FR at 18359. Even with this debt forgiveness, a substantial amount of liabilities remained with TAS. In addition, losses associated with the transfer of assets to ILVA were left behind in TAS. These losses occurred because the value of the transferred assets had to be written down. As TAS gave up assets whose book value was higher than their appraised value, it was forced to absorb the losses. These losses were generated during two transfers as reflected in: (1) An extraordinary loss in TAS's 1988 Annual Report and (2) a reserve account created in 1989 for anticipated losses with respect to the 1990 transfer.

In *Electrical Steel, Stainless Plate in Coils*, and *CTL Plate*, we determined that the debt and loss coverage provided to ILVA in 1989 and 1990, constituted countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To determine the benefit from these subsidies, we have treated IRI's forgiveness of TAS's 1989 debt owed to Finsider and the loss resulting from the 1989 write-down as grants received in 1989. The second asset write-down and the debt outstanding after the 1990 transfer were treated as grants received in 1990. We treated these as non-recurring grants because the company did not receive them on an on-going basis. Because ILVA was uncreditworthy in 1989 and 1990, the years in which the assistance was provided, we used constructed uncreditworthy discount rates to allocate the benefits over time. We allocated the debt coverage provided in 1989 and 1990, over a 12-year AUL. *See* the *"Subsidies Valuation Information"* section, above.

We applied the repayment portion of our change in ownership methodology to the debt forgiveness and loss coverage to determine the amount of the subsidy allocable to AST after its privatization. We divided this amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 2.66 percent *ad valorem* for AST.

C. *Debt Forgiveness: 1993–1994 Restructuring Plan.*—As mentioned in the *"Corporate History"* section above, in September 1993, IRI endorsed a plan for the reorganization and privatization of the ILVA Group, which was submitted to the EC for its approval. The reorganization provided for splitting ILVA's core business into two new companies, AST and ILP, and placing the remaining assets, as well as liabilities and redundant workers in ILVA Residua. Under the restructuring plan, ILVA Residua would sell the productive units, use the proceeds to reduce ILVA's debt prior to liquidation, and IRI (i.e., the Italian government) would absorb any remaining debt.

As of December 31, 1993, the majority of ILVA's viable manufacturing activities had been separately incorporated (or "demerged") into either AST or ILP, thus, ILVA Residua became essentially a shell company with liabilities far exceeding assets. In contrast, AST and ILP, now ready for privatization, had operating assets and relatively modest debt loads. The EC approved the GOI's restructuring and privatization plan for ILVA in its Commission Decision 94/259/ECSC, dated April 12, 1994. This EC decision states that IRI would take over ILVA Residua's residual indebtedness, cover expenditures of 1,197 billion lira, and continue to be involved in ILVA Residua's activities until its liquidation. It further states that if the privatization and reorganization program was strictly implemented, the ILVA group, namely AST and ILP would have a reasonable chance of being viable by the end of 1994. *See Stainless Plate in Coils*, 64 FR at 15512; *CTL Plate*, 64 FR at 73251.

In *Stainless Plate in Coils* and *Stainless Sheet and Strip*, we determined that AST received a countervailable subsidy in 1993, when the majority of ILVA's debt was placed in ILVA Residua, rather than being proportionately allocated to AST and ILP. *See Stainless Plate in Coils*, 64 FR at 15512; *Stainless Sheet and Strip*, 64 FR at 30628. In addition to the debt that was placed in ILVA Residua, we determined that the asset write-downs which ILVA took in 1993, as part of the restructuring/privatization plan, were countervailable subsidies under section 771(5)(B)(i) of the Act. The write-down of the assets in 1993 increased the losses to be covered in liquidation. It is the Department's position that when losses, which are later covered by a government, can be tied to specific assets, those assets bear the liability for the losses that resulted from the write-downs. No new information or evidence of changed circumstances has been submitted in this review that would warrant reconsideration of these findings. *See also, CTL Plate*, 64 FR at 73251.

The amount of debt and losses resulting from the asset write-downs that should have been attributable to AST, but were instead placed with ILVA Residua, was equivalent to debt forgiveness for AST at the time of the ILVA demerger. In accordance with our practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt forgiveness.

In *CTL Plate*, we determined that the liquidation process of ILVA did not occur under the normal application of a provision of Italian law and, therefore, the debt forgiveness is *de facto* specific under section 771(5A)(D)(iii)(II) of the Act. *See CTL Plate*, 64 FR at 73252. As stated above, the liquidation of ILVA was done in the context of a massive restructuring/privatization plan of the Italian steel industry undertaken by the GOI and approved and monitored by the EC. Because ILVA's liquidation was part of an extensive state-aid package to privatize the Italian state-owned steel industry, and the debt forgiveness was received by only privatized ILVA operations, we determined that the assistance provided under the 1993–

1994 Restructuring Plan was *de facto* specific. *See CTL Plate*, 64 FR at 73252.

Consistent with the methodology that we employed in *Stainless Plate in Coils*, 64 FR at 15513, *Stainless Sheet and Strip*, 64 FR at 30628, and *CTL Plate*, 64 FR at 73252, the amount of liabilities that we attributed to AST is based on the gross liabilities left behind in ILVA Residua, as reported in the EC's 10th Monitoring Report.[2] In calculating the amount of unattributable liabilities remaining after the demerger of AST, we started with the most recent "total comparable indebtedness" amount from the 10th Monitoring Report, which represents the indebtedness, net of debts transferred in the privatization of ILVA Residua's operations and residual asset sales, of a theoretically reconstituted, pre-liquidation ILVA. In order to calculate the total amount of unattributed liabilities which amounted to countervailable debt forgiveness, we made adjustments (additions/subtractions) to this figure for the following: the residual assets that had not actually been liquidated as of the 10th and final Monitoring Report; assets that comprised SOFINPAR, a real estate company (because these assets were sold prior to the demergers of AST and ILP); the liabilities transferred to AST and ILP; income received from the privatization of ILVA Residua's operations; the amount of the asset write-downs specifically attributable to AST, ILP, and ILVA Residua companies; and the amount of debts transferred to Cogne Acciai Speciali (CAS), an ILVA subsidiary that was left behind in ILVA Residua and later spun-off, as well as the amount of ILVA's debt attributed to CAS and countervailed in *Wire Rod*, 63 FR at 40478.

The amount of liabilities remaining represents the pool of liabilities that were not individually attributable to specific ILVA assets. We apportioned this debt to AST, ILP, and operations sold from ILVA Residua based on their relative asset values. We used the total consolidated asset values reported in AST's and ILP's financial statements for the year ending December 31, 1993. For ILVA Residua, we used the sum of the purchase price plus debts transferred as a surrogate for the viable asset value of the operations sold from ILVA Residua. Because we subtracted a specific amount of ILVA's gross liabilities attributed to CAS in *Wire Rod*, we did not include its assets in the amount of ILVA Residua's privatized assets. Also, we did not include in ILVA Residua's viable assets the assets of the one ILVA Residua company sold to IRI, because this sale does not represent sales to a non-governmental entity.

We have treated the debt forgiveness to AST as a non-recurring subsidy because it was a one-time, extraordinary event. The discount rate we used in our grant formula was a constructed uncreditworthy benchmark rate based on our determination that ILVA was uncreditworthy in 1993. *See "Benchmarks for Long-Term Loans and Discount Rates"* and *"Creditworthiness"* sections, above. We followed the methodology described in the *"Change in Ownership"* section above to determine the amount appropriately allocated to AST after its privatization. We divided this amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 7.74 percent *ad valorem* for AST.

D. *Interest Contributions on IRI Loans/Bond Issues Under Law 675/77.*—Law 675/77 was designed to provide GOI assistance in the restructuring and reconversion of Italian industries. There are six types of assistance available under this law: (1) Grants to offset interest payable on bank loans; (2) mortgage loans provided by the Ministry of Industry (MOI) at subsidized interest rates; (3) grants to reduce interest payments on loans financed by IRI bond issues; (4) capital grants for the South; (5) value-added taxed (VAT) reductions on capital good purchases for companies in the South; and (6) personnel retraining grants.

Under Law 675/77, IRI issued bonds to finance restructuring measures of companies within the IRI group. The proceeds from the sale of the bonds were lent to IRI companies. During the POR, AST had long-term variable interest rate loans outstanding that were financed by IRI bond issues for which the effective interest rate was reduced by interest contributions made by the GOI.

The Department previously found this program to be countervailable in *Electrical Steel*, 59 FR at 18361 and *Stainless Plate in Coils*, 64 FR at 15513. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To measure the benefit from these loans, we compared the amount of interest that should have been paid at the benchmark interest rate to the amounts paid by AST, less the interest rebates claimed during the POR. We divided the resulting difference by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 0.09 percent *ad valorem*.

E. *Pre-Privatization Retirement Benefits Under Law 451/94.*—Law 451/94 authorized early retirement packages for steel workers for the years 1994 through 1996. The law entitled men of at least 50 years of age and women of 47 years of age with at least 15 years of pension contributions to retire early. Benefits applied for during the 1994–1996 period continue until the employee reaches his/her natural retirement age, up to a maximum of ten years.

In *Wire Rod*, 64 FR at 40480, *Stainless Plate in Coils*, 64 FR at 15514, and *CTL Plate*, 64 FR at 73253, we found this program to be specific, and thus countervailable. In *CTL Plate* and *Stainless Plate in Coils*, the Department stated that at the time the agreement was being reached with the unions and the labor ministry on the terms of the lay offs, ILVA and its workers were aware that government contributions would ultimately be made to workers benefits. In such situations, *i.e.*, where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's practice is to treat half of the amount paid by the government as benefitting the company. *See Countervailing Duties; Final Rule*, 63 FR 65348, 65380 (November 25, 1998). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Consistent with the Department's practice with regard to allocation of worker-related subsidies, we have treated benefits to AST under Law 451/94 as recurring grants expensed in the year of receipt. *See Stainless Plate in Coils*, 64 FR at 15515; *Wire Rod*, 64 FR at 40480. To calculate the benefit received by AST during the POR, we multiplied the number of AST employees by employee type (blue collar, white collar, and senior executive) who retired early by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to AST. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by AST's total consolidated sales during the POR. On

[2] In *CTL Plate*, 64 FR at 73252, we stated that we would prefer to base our calculation on information at the time the relevant portion of ILVA's assets were demerged. However, the information contained in ILVA's financial statement was found to be unreliable by the company's auditors. Therefore, as facts otherwise available, we used the information contained in the EC's 10th Monitoring Report which provides the most reliable data for determining the benefit conferred by this program.

this basis, we preliminarily determine a net countervailable subsidy of 0.69 percent *ad valorem*.

As mentioned in the "*Corporate History*" section of this notice, in September 1993, IRI endorsed a plan for the reorganization and privatization of the ILVA Group. In December 1993, IRI initiated the splitting of ILVA's main productive assets into two new companies, ILP and AST. On December 31, 1993, ILP and AST became separately incorporated firms. The remainder of ILVA's productive assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua. The GOI issued two decrees under Law 451 to place the early retirees from ILVA into ILVA Residua. In *CTL Plate*, the Department found that by the GOI placing much of the redundant workforce in ILVA Residua, ILP and AST were able to begin their respective operations with a relatively "clean slate" in advance of their privatizations. ILP and AST were relieved of having to assume their respective portions of those redundant workers that were placed in ILVA Residua and received early retirement benefits under Law 451/94. *See CTL Plate*, 64 FR at 73254. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, we preliminarily determine that AST has received a countervailable benefit since the company was relieved of a financial obligation that would otherwise have been due.

To calculate the benefit received by AST during the POR, for retired employees that were placed with ILVA Residua under the first decree dated December 7, 1994, we first multiplied the number of employees according to worker type (*i.e.*, blue collar) times the average salary for each employee type, using the same average salaries for AST employees. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to AST. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by AST's total consolidated sales during the POR.

The GOI allocated additional slots to workers in ILVA Residua under a second decree dated December 30, 1996. However, the number of workers attributable to AST or the worker types were not submitted in the questionnaire responses. Therefore, we first needed to determine the appropriate number of early retirees placed in ILVA Residua that should have been apportioned to AST. To determine this number, we took the asset value of AST in relation to the asset value of ILVA at the time of the spin-off of AST. Next, we multiplied this percentage by the total number of ILVA Residua early retirees, pursuant to the second decree. It was then necessary to estimate the number of employees according to worker types. To do this, we calculated the ratio of employees according to worker types under the first decree. We then multiplied the number of employees according to worker type (*i.e.*, blue collar) times the average salary for each employee type, and multiplied the result by 40 percent. We then divided this total amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine a net countervailable subsidy attributable to AST for the retirees placed with ILVA Residua under both decrees to be 0.13 percent *ad valorem*. Therefore, we preliminarily determine the combined rate for retired employees placed directly with AST and those placed with ILVA Residua to be 0.82 percent *ad valorem*.

F. *Exchange Rate Guarantees under Law 796/76.*—Law 796/76 established the exchange risk guarantee on foreign currency loans program to minimize the risk of exchange rate fluctuations on loans contracted in foreign currency. All firms that contract foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CERF) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculates loan payments based on the lire-foreign currency exchange rate in effect at the time the loan is contracted (*i.e.*, the base rate). The program establishes a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent above or below the base rate. If the lire depreciates more than two percent against the foreign currency, a borrower is still able to purchase foreign currency at the established (guaranteed) ceiling rate. The MOT absorbs the loss in the amount of the difference between the guaranteed rate and the actual rate. If the lire appreciates against the foreign currency, the MOT realizes a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992, by Decree Law 333/92. However, the pre-existing exchange rate guarantees continue on any loans outstanding after that date. AST had outstanding ECSC loans during the POR that benefitted from these guarantees. The Department found this program to be countervailable in *Stainless Plate in Coils*, 64 FR at 15513, and *CTL Plate*, 64 FR at 73254. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we are treating the benefits under this program as recurring grants. AST and its predecessor companies from which these loans were transferred, paid a foreign exchange commission fee to the UIC for each payment made. We determine that this fee qualifies as an "* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act. Thus, for the purposes of calculating the countervailable benefit, we have added the foreign exchange commission to the total amount AST paid under this program during the POR. *See Wire Rod*, 63 FR at 40479; *Stainless Plate in Coils*, 64 FR at 15513; *CTL Plate*, 64 FR at 73255.

Under this program, we have calculated the total countervailable benefit as the difference between the total loan payment due in foreign currency, converted at the current exchange rate, less the sum of the total loan payment due in foreign currency converted at the guaranteed rate and the exchange rate commission. We divided this amount by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 0.12 percent *ad valorem*.

European Commission Programs

A. *ECSC Loans Under Article 54.*—Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the member iron and steel industries to finance modernization and purchase new equipment. Eligible companies apply directly to the EC (which administers the ECSC) for up to 50 percent of the cost of an industrial investment project. The Article 54 loans are generally financed on a "back-to-back" basis. In other words, upon granting loan approval, the ECSC borrows funds (through loans or bond issues) at commercial rates in financial markets which it then immediately lends to steel companies at a slightly higher interest rate. The mark-up is to cover the costs of administering the Article 54 program.

The Department has found Article 54 loans to be specific countervailable subsidies in several proceedings, including *Electrical Steel*, 59 FR at 18362, *CTL Plate*, 64 FR at 73256, and *Stainless Plate in Coils*, 64 FR at 15515, because loans under this program are provided only to iron and steel companies. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

AST had one long-term, fixed-rate U.S. dollar denominated loan outstanding during the POR. Consistent with *Wire Rod*, 63 FR at 40486 and *CTL Plate*, 64 FR at 73256, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since this loan was denominated in U.S. dollars. We used this rate because we were unable to find a long-term borrowing rate for loans denominated in U.S. dollars in Italy. The interest rate charged on AST's Article 54 loan, which was contracted in 1978 was reduced in 1987. Therefore, for the purpose of calculating the benefit, we have treated this loan as if it was contracted on the date of the rate adjustment. Because ILVA was uncreditworthy in the year this loan was contracted, 1987, we calculated the uncreditworthy benchmark rate as pursuant to section 351.505(a)(3)(iii) of the Department's regulations. *See "Benchmark for Long-Term Loans and Discount Rates"* section, above.

To calculate the benefit under this program, pursuant to section 351.505(c)(2) of the regulations, we employed the Department's long-term fixed-rate loan methodology. We compared the amount of interest that should have been paid at the benchmark interest rate for uncreditworthy companies to the amount paid by AST during the POR. We then divided the benefit by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 0.01 percent *ad valorem*.

B. *European Social Fund (ESF).*—The ESF, one of the Structural Funds operated by the EC, was established to improve workers' opportunities through training and to raise their standards of living throughout the community by increasing their employability. Like other EC structural funds, there are six different Objectives (sub-programs) identified under ESF: Objective 1 covers projects located in underdeveloped regions; Objective 2 addresses areas in industrial decline; Objective 3 relates to the employment of persons under 25; Objective 4 funds training for employees in companies undergoing restructuring; Objective 5 pertains to agricultural areas; and Objective 6 pertains to regions with very low population (*i.e.*, the far north).

During the POR, AST received ESF assistance under Objective 4. To qualify for Objective 4 funding, AST had to propose programs designed to re-train its workers to increase their productivity. The Department considers training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. In *Stainless Plate in Coils* and *Stainless Sheet and Strip*, the Department found this program to be countervailable. *See Stainless Plate in Coils*, 64 FR at 15516; *Stainless Sheet and Strip*, 64 FR at 30630. No new information or evidence of changed circumstances has been submitted in this review to warrant reconsideration of this finding.

The Department normally considers the benefits from worker training programs to be recurring. However, as determined in *Stainless Plate in Coils*, these grants relate to specific, individual projects which require separate government approval, therefore, the benefits under this program are treated as non-recurring grants. *See Stainless Plate in Coils*, 64 FR at 15517; *Wire Rod*, 63 FR at 40488; *see also Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy*, 61 FR 30288, 30295 (June 14, 1996) (*Pasta*). However, because the benefit received under this program is less than 0.5 percent of AST's sales during the relevant year, we have expensed these grants in the year of receipt. We divided the benefit by AST's total consolidated sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy to be 0.03 percent *ad valorem*.

III. Programs Preliminarily Determined To Be Not Used

1. Rotation Fund
2. Grants Under Law 10/81—Energy Conservation
3. Brite-EuRam Project Grants
4. Loan from IRI to KAI for the Purchase of AST
5. Lending from the Ministry of Industry under Law 675/77
6. Mortgage Loans from the Ministry of Industry Under Law 675/77
7. Personnel Retraining Grants under Law 675/77
8. Capital Grants under Law 675/77
9. Reductions of the VAT under Law 675/77
10. Worker Training under Law 181/89 (Early Retirement Provision)
11. Reindustrialization under Law 181/89
12. Law 488/92 Investment Grants
13. Subsidized Export Financing Under Law 227/77
14. Finsider Loans
15. Interest Subsidies under Law 617/81
16. Financing under Law 464/7
17. Interest Contributions under the Sabatini Law (Law 1329/65)
18. Social Security Exemptions
19. ILOR and IRPEG Exemptions
20. Law 345/92: Benefits for Early Retirement

Preliminary Results of Review

In accordance with section 777A(e)(1) of the Act, we calculated an individual *ad valorem* subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 1998 through December 31, 1998, we preliminarily determine the net subsidy for AST to be 12.44 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties of 12.44 percent of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and the Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT

1993) (interpreting 19 CFR 353.22(e) (now 19 CFR 351.212(c)), the antidumping regulation on automatic assessment, which is identical to 19 CFR section 355.22(g). Therefore, the cash deposit rates for all companies, except those covered by this review, will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed segment of this administrative proceeding under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Electrical Steel*, 59 FR at 18357. These rates shall apply to all non-reviewed companies until a review is requested. In addition, for the period January 1, 1998 through December 31, 1998, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of countervailing duties occurred and the subsequent assessment of double countervailing duties.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: June 29, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17248 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Scope Rulings and Anticircumvention Inquiries.

EFFECTIVE DATE: July 7, 2000.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings completed between October 1, 1998 and March 31, 2000. In conjunction with this list, the Department is also publishing a list of requests for scope determinations pending as of March 31, 2000. We intend to publish future lists within 30 days of the end of each quarter.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0374 or (202) 482–0649.

Background

The Department's regulations provide that, on a quarterly basis, the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months. See 19 CFR 351.225(o).

This notice covers all scope rulings and anticircumvention determinations completed by Import Administration between October 1, 1998 and March 31, 2000, inclusive. It also lists any scope or anticircumvention inquiries pending as of March 31, 2000. The Department intends to publish in July 2000 a list of all completed and pending scope and anticircumvention inquiries for the period April 1, 2000 and June 30, 2000; subsequent lists will follow in the month after the close of each calendar quarter.

Scope Rulings Completed Between October 1, 1998 and March 31, 2000

Belgium

A–423–805, C–423–806 Cut-To-Length Carbon Steel Plate; Duferco Steel Inc.; certain hot-rolled floor plate is within the scope; November 22, 1999.

Canada

C–122–805 New Steel Rail Except Light Rail; L.B. Foster Company; certain steel rail containing radial streaking is within the scope; July 22, 1999.

A–122–823 Certain Cut-to-Length Carbon Steel Plate; Clayson Steel, Inc.; certain dockleveler platforms are within the scope; December 13, 1999.

Chile

A–357–804 Certain Preserved Mushrooms; Coalition for Fair Preserved Mushroom Trade; retorted preserved mushrooms produced in third countries from provisionally preserved mushrooms produced in Chile are within the scope; July 13, 1999.

Germany

A–428–801 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Holland Hitch, Inc.; "Turntable bearings" (slewing rings, gearless slewing rings, or slewing bearings) are outside the scope; February 26, 1999.

A–428–816, C–428–817 Cut-to-Length Carbon Steel Plate; Novosteel, SA; profile slabs produced by Reiner Brach, GmbH, and Co., and sold by Novosteel SA are within the scope; May 18, 1999.

A–428–820 Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe; Chicago P.P.L., Inc.; tubing with circular cross-section and outside diameter that varies from 0.05mm to 25 mm is outside the scope; June 25, 1999.

India

A–533–806, C–533–806 Sulfanilic Acid; 3V Corporation; sodium sulfanilate processed in Italy from sulfanilic acid produced in India is within the scope; May 5, 1999.

Italy

A–475–818, C–475–819 Certain Pasta; self-initiated by the Department; pasta in packages weighing (or labeled as weighing) up to and including five pounds, four ounces is within the scope; May 24, 1999.

Japan

A–588–802 3½-Inch Microdisks and Coated Media Therefor; TDK Electronics Corp. (TKD); TDK's Ultra High-density disk is outside the scope; January 21, 1999.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Nissei Sangyo America, Ltd.; a certain vacuum nozzle assembly, designated as part number 630–063–2316 is outside the scope; January 19, 1999.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Sanden International (USA); certain orbiting and fixed races, and orbiting and fixed rings, used in a "rotation prevention device" in scroll compressors are outside the scope; December 14, 1999; see also 65 FR 18033, April 6, 2000.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Isuzu Motors America, Inc.; fan center assembly, designated as part number 8–97226–2892, imported by Isuzu for primary use as a production part of a V–8 diesel engine is outside the scope; March 13, 2000; see also 65 FR 18033, April 6, 2000.

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; steel coil with aluminum lining is within scope; March 15, 1999.

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; Uchiyama America, Inc.; steel flat products of specific dimensions and with specific zinc-cobalt-molybdenum coatings imported by Uchiyama are outside the scope (see the Department's Final Scope Ruling for a full description of the specific products at issue); March 29, 1999.

A–588–846 Certain Hot-Rolled, Flat-Rolled Carbon-Quality Steel Products; Mitsubishi International Steel, Inc.; cold-reduced steel sheets in coils exported from El Salvador are outside of the scope; April 24, 2000.

Mexico

A–201–805 Certain Circular Welded Non-Alloy Steel Pipe; Galvak, S.A. de C.V.; circular welded non-alloy steel pipe manufactured to ASTM A–787 specifications is within the scope; November 19, 1998.

People's Republic of China

A–570–504 Petroleum Wax Candles; Costco Wholesale; candles containing 81 percent beeswax and 19 percent petroleum wax are outside of the scope; December 10, 1998.

A–570–504 Petroleum Wax Candles; Et Al Imports, Inc.; candles containing 80 percent beeswax and 20 percent petroleum wax are outside of the scope; December 11, 1998.

A–570–504 Petroleum Wax Candles; Target Stores; citronella candle for outdoor use is outside of the scope; December 15, 1998.

A–570–504 Petroleum Wax Candles; Boston Warehouse; citronella candle for outdoor use is outside of the scope; December 18, 1998.

A–570–504 Petroleum Wax Candles; Ocean State Jobbers; candles consisting of 80 percent beeswax and 20 percent petroleum wax are outside of the scope; December 18, 1998.

A–570–504 Petroleum Wax Candles; Endar Corp.; floating round candles are within the scope; December 24, 1998.

A–570–504 Petroleum Wax Candles; Meijer, Inc.; wax-filled porcelain bunny is a wax filled container within the scope of the order; January 6, 1999.

A–570–504 Petroleum Wax Candles; Endar Corp.; 5-inch gold pillar candle is within the scope; six candles (red holiday floating candle, purple eight-points floating "puck" candle, white frosty snowball candle, 3-inch gold pine cone candle, white Christmas star candle, and green Christmas tree ball ornament candle) are outside the scope; April 7, 1999.

A–570–504 Petroleum Wax Candles; Meijer, Inc.; three Halloween figure tapers are outside the scope; October 14, 1999.

A–570–506 Porcelain-on-Steel Cookware; Tristar Products; grill set with aluminum grill plate is outside the scope; March 8, 2000.

A–570–832 Pure Magnesium; Rossborough Manufacturing Company, LP; AZ10A magnesium is off-specification pure magnesium within the scope; July 22, 1999.

A–570–840; Manganese Metal; Kerr-McGee Chemical, LLC; manganese-aluminum briquettes are outside the scope; January 7, 2000.

A–570–850 Collated Roofing Nails; Stanley Bostich Fastener Division of Stanley Works, Inc.; stainless steel collated roofing nails are outside the scope; September 2, 1999.

Taiwan

A–583–826 Collated Roofing Nails; Stanley Bostich Fastener Division of Stanley Works, Inc.; stainless steel collated roofing nails are outside the scope; September 2, 1999.

Turkey

A–489–805, C–489–806 Certain Pasta; self-initiated by the Department; pasta in packages weighing (or labeled as weighing) up to and including five pounds, four ounces is within the scope; May 24, 1999.

Anticircumvention Determinations Completed Between October 1, 1998 and March 31, 2000

Germany

A–428–811, C–428–812 Certain Hot-Rolled Lead and Bismuth Carbon Steel Products; imports of leaded steel billets which are subsequently converted into certain hot-rolled lead and bismuth carbon steel products subject to the order are not circumventing the order; July 26, 1999.

Italy

A–475–818 Certain Pasta; imports of bulk (i.e., greater than five pounds) pasta by Barilla, S.r.L., which are subsequently repackaged into packages of five pounds or less, are circumventing the order; October 13, 1998.

United Kingdom

A–412–810, C–412–811 Certain Hot-Rolled Lead and Bismuth Carbon Steel Products; imports of leaded steel billets which are subsequently converted into certain hot-rolled lead and bismuth carbon steel products subject to the order are not circumventing the order; July 26, 1999.

Scope Inquiries Terminated Between October 1, 1998 and March 31, 2000

Australia

A–603–803 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Canada

A–122–822 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/

lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

France

A–427–808, C–427–810 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Germany

A–428–815, C–428–817 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Japan

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Republic of Korea

A–480–816, C–580–818 Corrosion-Resistant Carbon Steel Flat Products; Taiho Corporation of America; whether steel coil clad with polytetraflourethylene/lead-based lining is outside the scope. Taiho Corporation withdrew its request for inquiry. Terminated December 1, 1999.

Anticircumvention Inquiries Terminated Between October 1, 1998 and March 31, 2000

Mexico

A–201–805 Certain Circular Welded Non-Alloy Steel Pipe; whether imports of pipe certified to API 5L line pipe specifications, or pipe dual-certified to both the API 5L and ASTM A–53 specifications, are circumventing the order. Preliminary affirmative determination released December 19, 1997. Department permanently enjoined from completing inquiry in *Hylsa, S.A. de C.V.* v. *United States*, Slip Op. 98–80 (CIT 1998); appeal withdrawn on January 19, 1999. Anticircumvention inquiry terminated August 12, 1999.

Scope Inquiries Pending as of March 31, 2000

Germany

A–428–821 Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled (LNPP); KBA North America Inc., Web Press Division; various LNPP parts or subcomponents imported for the production of an LNPP system sold to Dayton Newspapers, Inc. were found preliminarily to be outside the scope on December 22, 1997, January 27, 1998, June 17, 1998, and August 4, 1998. Final decisions pending.

A–428–821 Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled (LNPP); KBA North America Inc., Web Press Division; various LNPP parts or subcomponents imported for the production of an LNPP system sold to the Fayetteville Publishing Company were found preliminarily to be outside the scope on December 30, 1998, January 14, 1999, and February 1, 1999. Final decisions pending.

India

A–533–808 Certain Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless wire rod imported from India is within the scope. Requested December 22, 1998.

Italy

A–475–059 Pressure-Sensitive Plastic Tape; CCL Industries LLC, d.b.a. CST Special Tapes; whether "surface protection tape" is covered by the scope of the order. Requested January 28, 2000.

A–475–820, C–475–821 Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless steel wire rod imported from Italy is within the scope. Requested December 22, 1998.

Japan

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; NTN Bearing Corporation of America; whether the "EM coupling" and ring plates used in scroll compressors for automotive air conditioners are antifriction bearing parts covered by the order. Received March 16, 2000.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; NTN Corporation of America; whether certain ball rolling elements used in scroll compressors for automotive air conditioners are antifriction bearing parts covered by the order. Received March 16, 2000.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof and Cylindrical Roller Bearings and Parts Thereof; Subaru-Isuzu Automotive, Inc. (SIA); whether fan bracket assembly, identified as Isuzu part number 8971486750 (prior to October 1, 1999) and 8972317180 (as of October 1, 1999) is within the scope of either order; Received April 11, 2000.

A–588–807 Industrial Belts and Components and Parts Thereof, whether Cured or Uncured; International Business Machines; whether two models of belts imported by IBM for use in the IBM 3900 and IBM 4000 Advanced Function Printing Systems are within the scope of the order. Received January 28, 2000.

A–588–843 Certain Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless steel wire rod imported from Japan is within the scope. Requested December 22, 1998.

People's Republic of China

A–570–504 Petroleum Wax Candles; American Greetings Corporation; whether eight decorated tapers and two decorated pillars are holiday novelty candles, or candles shaped as identifiable objects and, thus, excluded from the order. Requested February 7, 2000.

A–570–504 Petroleum Wax Candles; Endar Corporation; whether three "round Chinese lantern" candles, one silver-studded votive, and one "candy cane floater" are candles shaped as identifiable objects or holiday novelty candles and, thus, excluded from the order. Requested March 27, 2000.

A–570–803 Heavy Forged Hand Tools; Tianjin Machinery Import/Export Corporation; whether Tianjin's Pulaski Tools are outside the scope of the order. Requested July 23, 1999.

A–570–803 Heavy Forged Hand Tools; SMC Pacific Tools, Inc. and Olympia Industrial Inc.; whether certain pry bars are within the scope. Requested October 27, 1999.

A–570–827 Certain Cased Pencils; Dollar General Corporation; whether two stationery sets with pencils are within the scope. Requested December 22, 1999.

A–570–851 Certain Preserved Mushrooms; Mei Wei Food Industry Co., Ltd., Tak Fat Trading Co., Leung Mi International, Tak Yeun Corp., and Genex International Corp; marinated or acidified mushrooms with an acetic acid content under 0.5 percent preliminarily

found to be within the scope; final decision pending.

Russian Federation

A–821–802 Antidumping Suspension Agreement on Uranium; USEC Inc. and its subsidiary, United States Enrichment Corporation; whether enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope. Requested August 6, 1999.

Spain

A–469–807, C–469–004 Certain Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless steel wire rod imported from Spain is within the scope. Requested December 22, 1998.

Taiwan

A–583–828 Certain Stainless Steel Wire Rod; Ishar Bright Steel, Ltd.; whether stainless steel bar produced in the United Arab Emirates from stainless steel wire rod imported from Taiwan is within the scope. Requested December 22, 1998.

Anticircumvention Inquiries Pending as of March 31, 2000

Canada

A–122–823 Cut-to-Length Carbon Steel Plate; Kentucky Electric Steel Company; whether imports of boron-added grader blade and draft key steel, falling within the physical dimensions outlined in the scope of the order, are circumventing the order. Initiated May 28, 1998.[1]

Japan

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; USS-Posco Industries; whether imports of boron-added hot-dipped and electrolytic corrosion-resistant carbon steel sheet, falling within the physical dimensions outlined in the scope of the order, are circumventing the order. Initiated October 30, 1998.[2]

Interested parties are invited to comment on the completeness of this list of pending scope inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Enforcement Group III, Import Administration, International Trade Administration, 14th Street and Constitution Avenue NW, Room 1870, Washington, DC 20230.

This notice is published in accordance with section 351.225(o) of the Department's regulations.

Dated: June 28, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 00–17245 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] The Department was preliminarily enjoined from proceeding with this inquiry in *Co-Steel Lasco and Gerdau MRM Steel* v. *United States*, Ct. No. 98–08–02684 (Ct. Int'l Trade); however, a final and conclusive decision on the merits of this case has not been issued.

[2] The Department was enjoined from proceeding with this inquiry in *Nippon Steel* v. *United States*, Ct. No. 98–10–03102 (Ct. Int'l Trade); however, the case is presently pending before the Court of Appeals for the Federal Circuit, No. 99–1379, 1386 (Fed. Cir.).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 063000B]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Working Group will hold a public meeting.

DATES: The meeting will be held on Monday, July 24, 2000, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Sheraton BWI Airport, 7032 Elm Road, Baltimore, MD; telephone: 410–691–9827.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to consider future management measures and possible actions for the summer flounder fishery.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 30, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17268 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic And Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meetings and intent to prepare a Draft Environmental Impact Statement

SUMMARY: In accordance with the National Environmental Policy Act and with section 315 of the Coastal Zone Management Act of 1972, as amended, San Francisco State University and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct public scoping meetings on the proposed San Francisco Bay National Estuarine Research Reserve to solicit comments on significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS)/Draft Management Plan (DMP). The DEIS/DMP will address research, monitoring, education and resource protection needs for the reserve.

DATE AND TIME: Tuesday, July 25th, 7 to 9 p.m.

ADDRESSES: Marin Civic Center, Marin County Board of Supervisors Chambers, 3501 Civic Center Drive, San Rafael, CA 94903.

DATE AND TIME: Wednesday, July 26th, 7 to 9 p.m.

ADDRESSES: Suisun City, City Hall, Suisun City Council Chambers, 701 Civic Center Blvd, Suisun City, CA 94585.

FOR FURTHER INFORMATION CONTACT: Dr. Todd Hopkins, San Francisco State

University, at (415) 338–3703, or Matt Menashes, Estuarine Reserves Division, Office of Ocean and Coastal Resources Management, NOAA, at (301) 713–3132, extension 165.

SUPPLEMENTARY INFORMATION: In 1993, NOAA approved the nomination of a proposed multi-component National Estuarine Research Reserve (NERR) for San Francisco Bay. Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance scientific understanding of the coastal environment and aid in resource management decision making.

In early 1999 the original proposal approved by NOAA was modified. The modified proposal meets the principles established for inclusion of areas in the National Estuarine Research Reserve System. These include:

1. Biogeographic and typologic contribution,
2. Ecological characteristics,
3. Value of the sites for research, monitoring, education and interpretation,
4. Site management feasibility including (a) land ownership, (b) the ability to sustain reserve resources for long term research and education use, and (c) partnership potential.

The San Francisco Bay NERR is proposed to be administered by San Francisco State University (SFSU) in cooperation with partner agencies including Solano County Farmlands and Open Space Foundation, East Bay Regional Park District, and the California Department of Parks and Recreation.

SFSU has developed an outline of a preliminary draft management plan. That outline identifies specific needs and priorities related to research, monitoring, education, and resource protection at the proposed reserve. It also identifies needs for an administrative plan, volunteer program and facilities development needs, public access, and visitor use policies.

At the public meetings, SFSU and NOAA will provide a synopsis of the process for developing a DEIS/DMP and will solicit comments on significant environmental issues that will be incorporated into a DEIS.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of the proposed DEIS/DMP are invited to attend either of the above meetings. Parties who wish to respond in writing should do so by August 15, 2000, to Dr. Todd Hopkins, Romberg Tiburon Center, San Francisco State University, P.O. Box 855, Tiburon, CA 94920, or Matthew Menashes, NOAA Estuarine Reserves Division, 1305 East-West Highway N/ORM5, Silver Spring, MD 20910.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: June 30, 2000.

John Oliver,

Chief Financial Officer/Chief Administrative Officer, National Ocean Service.

[FR Doc. 00–17157 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–08–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Increase of Base Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

June 30, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and increasing base limits.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, carryforward used, swing and the recrediting of unused carryforward.

In a Memorandum of Understanding, dated May 25, 2000, the Governments of the United States and Pakistan agreed to increase the 2000 base limits for Categories 666–P and 666–S. These limits have been decreased by the amount of carryforward used in 1999. Also, swing into Categories 666–P and 666–S from Category 315 is increased, due to the higher base limits they now have.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68335, published on December 7, 1999.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

In a Memorandum of Understanding, dated May 25, 2000, the Governments of the United States and Pakistan agreed to increase the 2000 limits for Categories 666–P and 666–S.

Effective on July 7, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits	
226/313	123,196,058 square meters.
237	536,663 dozen.
315	86,112,744 square meters.
317/617	43,124,336 square meters.
335/635	520,387 dozen.
336/636	684,608 dozen.
352/652	1,141,014 dozen.
359–C/659–C [2]	2,053,826 kilograms.
369–F/369–P [3]	3,122,624 kilograms.
613/614	30,924,911 square meters.

Category	Adjusted twelve-month limit [1]
625/626/627/628/629	101,182,122 square meters of which not more than 50,591,063 square meters shall be in Category 625; not more than 50,591,063 square meters shall be in Category 626; not more than 50,591,063 square meters shall be in Category 627; not more than 10,467,117 square meters shall be in Category 628; and not more than 50,591,063 square meters shall be in Category 629.
666–P [4]	808,874 kilograms.
666–S [5]	5,076,389 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[4] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[5] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17160 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on July 19, 2000, in the first floor hearing room (Room 1000) of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1151 21st Street, NW, Washington, DC 20581. The meeting will begin at 1:30 p.m. and last until 5 p.m. The agenda will consist of the following:

Agenda

1. Welcoming Remarks
2. CFTC Regulatory Reinvention Proposal
3. Presentation by U.S. Exchange Representatives
4. Legislative Update
5. Recent Innovations in Agricultural Risk Management and Marketing
6. Other business

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner David D. Spears, is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Agricultural Advisory Committee, c/o Commissioner David D. Spears, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Spears in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on June 30, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17132 Filed 7–6–00; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Flammability Standards for Clothing Textiles and Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of April 25, 2000 (65 FR 24187), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval of a collection of information in regulations implementing the flammability standards for clothing textiles and vinyl plastic film. The regulations prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of garments, fabrics, and related materials subject to the Standard for the Flammability of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611). No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for an extension of approval of those collections of information without change for three years from the date of approval by OMB.

Additional Information About the Request for Extension of Approval of the Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Clothing Textiles, 16 CFR part 1610; Standard for the Flammability of Vinyl Plastic Film, 16 CFR part 1611.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of garments, fabrics, and related materials subject to the flammability standards for clothing textiles and vinyl plastic film.

Estimated number of respondents: 1000.

Estimated average number of hours per respondent: 101.6 per year.

Estimated number of hours for all respondents: 101,600 per year.

Estimated cost of collection for all respondents: $1,400,000.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by August 7, 2000 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Written comments may also be sent to the Office

of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0416, ext. 2226.

Dated: June 30, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–17131 Filed 7–6–00; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for AmeriCorps*VISTA/Higher Education and Non-Profit Service-Learning Program Grants

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter "the Corporation") announces the availability of funds for fiscal year 2000 for new AmeriCorps*VISTA (Volunteers in Service to America) Program grants and placements focusing on meeting the needs of low income communities, both urban and rural, through institutions of higher learning and non-profit organizations engaged in service-learning-focused activities, including current Learn and Serve America grantees.

As Harris Wofford, the CEO for the Corporation has stated, "by making the entire community the classroom, service-learning teaches students how to be better students and better citizens." The Corporation for National Service defines service-learning as an educational method:

- Under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community;
- Which is coordinated within an elementary school, secondary school, institution of higher education, or community service program, and with the community;
- Which helps foster civic responsibility;
- Which is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participant is enrolled; and
- Which provides structured time for the students or participants to reflect on the service experience.

AmeriCorps*VISTA/Higher Education and Non-Profit Service-Learning Program Grants will focus on service-learning activities addressing the needs of low-income communities in school districts. AmeriCorps*VISTA Program grant recipients must create sustainable anti-poverty service-learning programs after the AmeriCorps*VISTA resources are withdrawn. Applicants must clearly describe sustainable outcomes in terms of the impact on residents of low-income communities, both urban and rural, through the efforts of these projects.

Up to 10 grants will be funded. Each grant will support a minimum of five AmeriCorps*VISTA members. Grants with a larger number of AmeriCorps*VISTA members are encouraged. It is expected that grants will be awarded in September 2000. Each proposed grant project must be within the jurisdiction of a single Corporation for National Service State Office (state offices cover their own states only, with the following exceptions that are combined: Maine & New Hampshire, Vermont & Massachusetts; North & South Dakotas; Virginia & Washington, DC; Puerto Rico & Virgin islands; Maryland & Delaware).

DATES: Applications must be received by 5:00 p.m. E.D.T., August 4, 2000.

ADDRESSES: Background information, including project applications, are available from the Corporation for National and Community Service, AmeriCorps*VISTA, 1201 New York Ave., N.W., Washington, DC 20525, (202) 606–5000, ext. 134; TDD (202) 565–2799, or TTY via the Federal Information Relay Service at (800) 877–8339. One signed original and two copies of the application should be submitted to the Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, D.C. 20525 Attn: David Gurr. The Corporation will not accept applications that are submitted via facsimile or e-mail transmission. Applications submitted via overnight mail that arrive after the closing date will be accepted if they are postmarked at least two days prior to the closing date. Otherwise, late applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: For further information, contact David Gurr, at 202–606–5000, ext. 212.

SUPPLEMENTARY INFORMATION:

A. Background

The Corporation is a Federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, we strive to foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service. We support a range of national service programs, including AmeriCorps, Learn and Serve America, and the National Senior Service Corps.

AmeriCorps*VISTA, a component of AmeriCorps, is authorized under the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of AmeriCorps*VISTA is "to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups * * * (to) assist in the solution of poverty and poverty-related problems, and * * * to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purpose (of the program)." (42 U.S.C. 4951)

AmeriCorps*VISTA carries out its legislative mandate by assigning individuals 18 years and older, on a full-time, year-long basis, to public and private non-profit organizations. Each AmeriCorps*VISTA project must focus on the mobilization of community resources, the transference of skills to community residents, and the expansion of the capacity of community-based organizations to solve local problems. Programming should encourage permanent, long-term solutions to problems confronting low-income communities rather than short-term approaches for handling emergency needs.

AmeriCorps*VISTA projects must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as to make the activities undertaken by AmeriCorps*VISTA members self-sustaining.

B. Purpose of This Announcement

The purpose of this announcement is to solicit applicants from the service-

learning community who will focus efforts solely on addressing the needs of low-income communities. These efforts should be accomplished through community-based organizations and/or institutions of higher education whose efforts draw upon the unique strengths of service-learning as well as learned best practices. The goal of these efforts is the creation of sustained service-learning opportunities and permanent long-term programming that continues to meet the needs of low-income communities after AmeriCorps*VISTA resources are withdrawn.

C. Eligible Applicants

Institutions of higher learning and non-profit organizations engaged in service learning activities, including current Learn and Serve America grantees.

D. Scope of Grant and Project

Each applicant should include in the Application for Federal Assistance (see E.2, below) funds for: a monthly subsistence allowance for AmeriCorps*VISTA members that is commensurate with the cost-of-living of the assignment area, as determined by AmeriCorps*VISTA, that covers the cost of subsistence, utilities, and incidental expenses; an end-of-service cash stipend payment, accrued at the rate of $100 per month, for those members not selecting the AmeriCorps education award of $4,725; and relocation expenses not to exceed $550, for those AmeriCorps*VISTA members who must relocate in order to serve. Each grant applicant should also include in the Application for Federal Assistance, a request for funds for member in-service training, member supervision, and member/supervisor job-related transportation.

Although there are no matching requirements for the receipt of AmeriCorps*VISTA members, applicants should demonstrate their commitment to matching the Federal contribution toward the operation of the AmeriCorps*VISTA project grant by offsetting all, or part of, the costs of member supervision, transportation, and training, as well as the basic costs of the project itself (*e.g.*, space, telephone, etc.). This support can be achieved through cash or in-kind contributions.

Further, applicants are encouraged to share in the costs of the project, including paying for a specified number of AmeriCorps*VISTA positions, to include all costs except for health insurance, the education award, health care and childcare, which will be paid by the Corporation.

Grants will be awarded on a twelve-month basis with a renewal option subject to need, satisfactory performance, and the availability of Corporation resources. Publication of this announcement does not obligate the Corporation to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the AmeriCorps*VISTA Program, or to approve any specific number of non-grant projects for the placement of AmeriCorps*VISTA members.

E. Submission Requirements

To be considered for funding, applicants must submit one signed original and two copies, of the AmeriCorps*VISTA application form. Each must contain an original signature in all sections where it is required. In addition, applicants must include the following:

1. A one-page narrative summary description, single-spaced, single-sided, of the proposed AmeriCorps*VISTA project including the name, address, telephone number, and contact person for the applicant organization. The summary should include the major objectives and expected long-term outcomes of the project. The summary will be used as a project abstract to provide reviewers with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary that accurately and concisely reflects the proposal.

2. Application for Federal Assistance (SF 424) (OMB Approval No. 0348–0043), including the Part II Budget. This is a standard form used by applicants as a required face sheet for applications requesting Federal assistance. It includes attachments requiring signatures assuring that applicants comply with all other relevant Federal laws, rules and regulations, and certifications that: (a) The applicant has not been debarred from receiving Federal assistance, (b) that it has a drug-free work plan and (c) that it will comply with Federal requirements governing lobbying activities.

3. Part A (CNS Form 1421A) (OMB Control Number 3045–0039) containing a description of the organization's mission, population to be served, experience in the areas of service and specific problems of poverty to be addressed. In addition, the applicant must state the problems it will address, the long-term goals of the project and anticipated outcomes over the entire length of the project and the anticipated impact on the low-income community. Finally, the applicant must describe the activities that the AmeriCorps*VISTA members will perform in accomplishing those goals, the applicant's experience in coordinating the efforts of community volunteers and/or service participants, and the resources that exist to support the project, including the organizations that will serve as collaborators.

4. Part B (CNS Form 1421B) (OMB Control Number 3045–0038) which includes a measurable and quantifiable description of the specific problem(s) the AmeriCorps*VISTA project will address, current activities to address the problem and how AmeriCorps*VISTA members will complement this effort. A work plan must be completed for the first year of the project that contains objectives that are measurable, quantifiable and time-phased by each quarter of the year. Also, there must be a brief description of the applicant organization, its mission and activities, and the low-income population to be served, along with a description of how the project is incorporated into the overall mission of the applicant organization. The applicant must list the tasks and activities of the AmeriCorps*VISTA member assignments, required skills and qualifications of members, and factors to be considered in assigning disabled members. A description is needed of: (a) How project beneficiaries will be involved in the planning of the project, including in its development and implementation and (b) what resources will be provided by the community for a successful project and how the community will be involved in assuring project sustainability. Also, there must be a description of the process for recruiting qualified AmeriCorps*VISTA members, including whether the applicant needs nationally recruited members (members recruited by the Corporation's Office of Recruitment, Selection and Placement), and how members will be supervised. Finally, the applicant needs to state if support will be needed for on-the-job transportation of AmeriCorps*VISTA members, the content of the On-the-Job Orientation of these members, including on-going training and technical assistance available to them, and plans for publicizing the project, recognizing member accomplishments, and community support in sustaining their efforts.

5. Documentation in the form of letters of support from collaborating organizations and/or individuals stating what will be provided by them in the overall project effort.

6. Copy of Articles of Incorporation (not applicable to public entities).

7. List of Board of Directors or governing body (not applicable to public entities).

8. Organizational chart illustrating the location of the AmeriCorps*VISTA project within the overall applicant organization.

9. List of Advisory Council Members if already selected.

10. Tax exempt status: either IRS determination or copy of application to IRS for exemption (not applicable to public entities).

11. Copy of Supervisor's Resume and Job Description.

12. Copy of most recent financial audit if available.

F. Criteria for Project Selection

I. All of the following elements will be used in judging the applications:

a. Getting Things Done

The proposed project must:

1. Address the needs of low-income communities and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951 *et seq.*) applicable to AmeriCorps*VISTA and all applicable published regulations, guidelines, and Corporation policies.

2. Be internally consistent, *i.e.*, the problem statement that demonstrates need, the project work plan, the AmeriCorps*VISTA member assignment description, and all other components must be related logically to each other.

3. Contain clear and measurable objectives/outcomes in the project application for a 12-month period that address the overall objectives of the initiative. Proposed projects must show how the activities of the AmeriCorps*VISTA members contribute to specific outcomes related to increased opportunity for low-income people. It is expected that outcome objectives in the Part B work plan will reflect the evolution of the project over the 12-month period.

4. Indicate how the proposed project complements and/or enhances activities already underway in, or planned for, the community(ies) that will be served by the project. To the extent possible, projects should seek out opportunities to collaborate with other Corporation programs, including Learn and Serve America grantees, as well as with other community partners, including the business sector.

5. Describe how the number of AmeriCorps*VISTA members requested is appropriate for the project goals/objectives, and how the skills requested are appropriate for the assignment(s).

b. Strengthening Communities

The proposed project must:

1. Describe how the project will be sustained after Americorps*VISTA resources are withdrawn from the local low-income community.

2. Demonstrate collaboration with organizations that provide supportive services to enhance project outcomes.

3. Be designed to generate public and/or private sector resources, and to promote local, part-time volunteer service at the low-income community level, not only to assist in the project itself, but also to sustain its efforts after the Corporation ceases its support.

4. Describe in measurable terms the anticipated self-sufficiency outcomes and tangible anti-poverty goals and objectives after AmeriCorps*VISTA resources are withdrawn, including outcomes related to the sustainability and institutionalization of the project activities in addressing and resolving challenges faced by low-income residents of the target community(ies).

c. AmeriCorps*VISTA Member Development

The proposed project must:

1. Clearly state how AmeriCorps*VISTA members will be trained, supervised, and supported to ensure the achievement of project goals and objectives as stated in the Part B work plan.

2. Describe how AmeriCorps*VISTA assignments are designed to utilize the full-time AmeriCorps*VISTA members' time to the maximum extent.

II. Organizational Capacity

The applicant organization must:

1. Ensure that resources needed to achieve project goals and objectives are available.

2. Have the management and technical capability to implement the project successfully.

3. Have an established record or experience in dealing with the issues addressed by the proposed project.

4. Have systems for the evaluation and monitoring of project activities. Applicants must describe the methods that will be used to record progress toward the stated objectives, and procedures that will provide the reporting of project achievement needed to make adjustments and improve program quality.

III. Budget/Cost-Effectiveness

The applicant organization must:

1. Include a budget that adequately supports the program design.

2. Include a budget that adheres to budget guidance provided with the application.

3. Describe how the applicant organization is committing resources necessary for program implementation.

G. Application Review

Proposal Evaluation

To ensure fairness to all applicants, the Corporation reserves the right to take action, up to and including disqualification, in the event that an application fails to comply with any requirements specified in this Notice.

The following weights will be used in judging the elements described above.

1. Program Design (60%) in the following order of importance:

a. Responsiveness to Strengthening Communities Criteria

b. Responsiveness to Getting Things Done Criteria

2. Organizational Capacity (30%).

3. Budget cost-effectiveness (10%).

H. Geographic Diversity

After evaluating the overall quality of the proposal and its responsiveness to the criteria noted above, the Corporation will take into consideration whether funded projects are in areas of high concentration of low-income residents, including for example those in empowerment zones, and enterprise communities.

I. Technical Assistance Conference Call

An informal, technical assistance conference call will be scheduled on Thursday, July 20, 2000, at 2 p.m. E.D.T. All applicants must pre-register by faxing the names, organization and phone number of up to two members planning to participate no later than Tuesday, July 18, 2000. This information should be faxed to Kara Lounsbury at 202–565–2789. Questions may be submitted in advance of the meeting via fax to the above number. If you are unable to participate in the technical assistance conference call but would like the conference materials and a conference transcript, submit your request via fax to the fax number above.

J. Program Authority

Corporation authority to make these grants and approve projects is authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

Dated: June 29, 2000.

Matt Dunne,

*Director, AmeriCorps*VISTA Program.*

[FR Doc. 00–17152 Filed 7–6–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0114]

Submission for OMB Review; Comment Request entitled Right of First Refusal of Employment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0114).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Right of First Refusal of Employment. A request for public comments was published at 65 FR 25315, on May 1, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 5, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Right of First Refusal of Employment is a regulation that establishes policy regarding adversely affected or separated Government employees resulting from the conversion from in-house performance to performance by contract. The policy enables these employees to have an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

B. Annual Reporting Burden

Number of Respondents: 130.
Responses Per Respondent: 1.
Total Responses: 130.
Average Burden Hours Per Response: 3.
Total Burden Hours: 390.

Obtaining Copies of Proposals:

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0114, Right of First Refusal of Employment, in all correspondence.

Dated: July 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–17238 Filed 7–6–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0113]

Submission for OMB Review; Comment Request Entitled Acquisition of Helium

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0113).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Acquisition of Helium. A request for public comments was published at 65 FR 25316, on May 1, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 5, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Federal Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Helium Act (Pub. L. 86–777) (50 U.S.C. 167a, *et seq.*) and the Department of the Interior's implementing regulations (30 CFR parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Land Management, Department of the Interior.

The FAR requires offerors responding to contract solicitations to provide information as to their forecast of helium required for performance of the contract. Such information will facilitate enforcement of the requirements of the Helium Act and the contractual provisions requiring the use of Government helium by agency contractors, in that it will permit corrective action to be taken if the Bureau of Land Management, after comparing helium sales data against helium requirement forecasts, discovers apparent serious discrepancies.

The information is used in administration of certain Federal

contracts to ensure contractor compliance with contract clauses. Without the information, the required use of Government helium cannot be monitored and enforced effectively.

B. Annual Reporting Burden

Number of Respondents: 20.
Responses Per Respondent: 1.
Total Responses: 20.
Average Burden Hours Per Response: 1.
Total Burden Hours: 20.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0113, Acquisition of Helium, in all correspondence.

Dated: July 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–17239 Filed 7–6–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0096]

Submission for OMB Review; Comment Request; Entitled Patents

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0096).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Patents. A request for public comments was published at 65 FR 25316, on May 1, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 5, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract above a dollar value of $25,000 (sections 27.202–1 and 52.227–2). The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (sections 27.204–1, 52.227–6, and 52.227–9). The information collected is to protect the rights of the patent holder and the interest of the Government.

B. Annual Reporting Burden

Number of Respondents: 30.
Responses Per Respondent: 1.
Total Responses: 30.
Average Burden Hours Per Response: .5.
Total Burden Hours: 15.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0096, Patents, in all correspondence.

Dated: July 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division

[FR Doc. 00–17240 Filed 7–6–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection, Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 5, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOP, 550 D Street West, Suite 1, Randolph AFB, TX 78150–4527.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Headquarters AFRS/RSOP, Enlisted Accessions Branch, at (210) 652–6188.

Title, Associated Form, and OMB Number: Non-Prior Service and Prior Service Accessions, AETC Forms 1319, 1325, and 1419 and OMB Number 0701–0079.

Needs and Uses: The information collection requirement is necessary for recruiters to determine applicant qualifications when conducting an interview. Information from the interview will determine if additional

documents on law violations, citizenship verification, and education are needed. Applicants who have reached a certain age, marital status or classification are required to submit financial information.

Affected Public: Individuals or households.

Annual Burden Hours: 69,105.

Number of Respondents: 110,231.

Responses Per Respondent: 1.

Average Burden Per Response: 1.05 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are civilian non-prior and prior service personnel applying for enlistment into the Air Force as enlisted members. The completed forms are used by the recruiter to establish eligibility status of applicants and determine what additional forms are needed to obtain the required information. If the forms are not included in the case file, individuals reviewing the file cannot be readily assured of the qualifications of the applicant.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–17213 Filed 7–6–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 30, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: The Impact of ICT on Learning: Quasi-Experimental Study.

Frequency: Three times a year.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,572.

Burden Hours: 7,572.

Abstract: Under auspices of the Organization for Economic Cooperation and Development, the Department of Education will participate in an international study to examine the impact of information and communication technology (ICT) on student learning. The study will use the following instruments: (a) ICT Skill Test, (b) Learning to Learn Test, (c) ICT Attitudes Survey—Students, (d) ICT Use Survey—Students, (e) ICT Attitude Survey—Teachers, (f) ICT Use Survey—Teachers, (g) Student Background Survey, and (h) Teacher Background Survey. Two thousand four hundred eleventh grade students will participate in this study from 24 schools. In addition, about 100 teachers and 24 school administrators will respond to the ICT Attitude and Use surveys.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–17141 Filed 7–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7. 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing

proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 30, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Targeting Teacher Deferment/ Teacher Shortage Area Collection.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 4,560.

Abstract: Collection of State proposals for Targeted Teacher Deferment/Teacher Shortage Areas, of the Higher Education Act of 1986.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–17142 Filed 7–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–2869–000 and EC00–103–000]

Consumers Energy Company; Notice of Filing

June 30, 2000.

Take notice that on June 16, 2000, Consumers Energy Company (CECo) filed an application under Sections 203 and 205 of the Federal Power Act for approval of an alternative governance structure for the Alliance Regional Transmission Organization (Alliance RTO) once it takes the form of an independent transmission company (Transco).

CECo states that its application is related to and anticipated by the June 3, 1999 applications of the Alliance companies [1] under Sections 203 and 205 of the Federal Power Act to create the Alliance RTO.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 17, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17170 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

[1] The Alliance Companies are: American Electric Power Service Corporation (AEP) on behalf of the public utility operating company subsidiaries of the AEP system (Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company), CECo, The Detroit Edison Company (Detroit Edison), FirstEnergy Corporation (FirstEnergy) on behalf of the transmission-owning FirstEnergy Operating companies (The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and the Toledo Edison Company), and Virginia Electric and Power Company (Virginia Power).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–396–000]

Delmarva Power & Light Company; Notice of Application

June 30, 2000.

Take notice that on June 23, 2000, Delmarva Power & Light Company (Delmarva), 800 King Street, Wilmington, Delaware 19899, filed in Docket No. CP00–396–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by transfer to Texas Eastern Pipeline Company (TETCO) its undivided ownership interest in the Delmarva Lateral, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to I. David Rosenstein, Senior Counsel, Delmarva Power & Light Company, 800 King Street, Wilmington, Delaware 19899.

Specifically, Delmarva proposes to abandon by transfer to TETCO, the Delmarva Lateral,[1] a 3.97 mile 16-inch pipeline extending from an interconnection with TETCO's Line 1–A–1 in Delaware County, Pennsylvania to Delmarva's distribution system in New Castle County, Delaware. The abandonment will enable the completion of a corporate reorganization. Delmarva states that TETCO will acquire ownership of the Delmarva Lateral under its Part 157 blanket construction certificate and will continue to operate and maintain it and provide open access transportation service pursuant to its Part 284 blanket transportation certificate and its FERC Gas Tariff.

Delmarva states that currently it uses all the natural gas that is transports through the Delmarva lateral as either system supply, as supply for retail customers being served by third parties under competitive conditions, or as fuel for its Hay Road and Edge More generating facilities. Delmarva submits that the proposed abandonment of the Delmarva Lateral by transfer to TETCO will not in any way degrade or adversely impact the existing services provided to entities that currently

[1] Certificate was issued in Docket No. CP92–153–000 (59 FERC ¶61,396, amended in 60 FERC ¶62,132 (1992)).

receive service on the Delmarva Lateral since TETCO will provide transportation service on the lateral. After the corporate reorganization, Delmarva will continue to be responsible for the acquisition of system supply, while Conectiv Energy Supply, Inc. will be responsible for gas purchased for resale to competitive retail customers and for fuel for the generating facilities.

Any person desiring to be heard or any person desiring to make any protests with reference to said application should on or before July 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a part in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is time filed, or if the Commission on its own motion believes that a formal hearing is require, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Delmarva to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–17167 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3038–000]

New York Independent System Operator, Inc.; Notice of Filing

July 3, 2000.

Take notice that on June 30, 2000, the New York Independent System Operator, Inc., acting at the direction of its independent Board of Directors (NYISO Board) and pursuant to its "exigent circumstances" authority, unilaterally filed proposed tariff amendments that would implement temporary bid caps in certain NYISO-administered markets.

The NYISO Board requested that the proposed temporary bid caps become effective on July 6, 2000, and expire no later than October 28, 2000.

A copy of this filing was served upon all parties in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4324–000, not consolidated, all parties in Docket No. EL00–70–000, and on all other parties who have executed Service Agreements under the NYISO's Open Access Transmission Tariff or Market Administration and Control Area Services Tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 10, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17321 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2676–000]

Panda Perkiomen Power, L.P.; Notice of Filing

June 30, 2000.

Take notice that on June 21, 2000, Panda Perkiomen Power, L.P. (Panda Perkiomen), tendered for filing a revised FERC Electric Rate Schedule No. 1 as part of its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, which was filed on June 1, 2000, with an effective date of July 31, 2000.

Panda Perkiomen intends to engage in electric power and energy transactions as a marketer. In transactions where Panda Perkiomen sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Panda Perkiomen nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17169 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2971–000]

UtiliCorp United Inc.; Notice of Filing

June 30, 2000.

Take notice that on June 20, 2000, UtiliCorp United Inc., tendered for filing a notice that the open access transmission tariffs of Missouri Public Service and WestPlains Energy-Kansas are modified, effective May 1, 2000, to incorporate the Mid-Continent Area Power Pool's Line Loading Relief procedures.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 11, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17168 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. 5. EC–46–000, ER00–1027–000, ER00–1028–000, and ER00–1029–000]

Vermont Yankee Nuclear Power Corp., Vermont Electric Power Company, Inc., and AmerGen Vermont, L.L.C. Notice of Initiation of Proceeding and Refund Effective Date

June 30, 2000.

Take notice that on June 29, 2000, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. ER00–1029–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. ER00–1029–000 will be 60 days after publication of this notice in the **Federal Register.**

David P. Boergers,

Secretary.

[FR Doc. 00–17172 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–394–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

June 30, 2000.

Take notice that on June 21, 2000, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP00–394–000 an application pursuant to Sections 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities located in Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Williams proposes to abandon approximately 64.3 miles of the Pampa 20-inch pipeline (Line G) and appurtenant facilities located in Butler, Chase and Lyon Counties, Kansas. Williams proposes to abandon the facilities by sale for subsequent reclaim for salvage and abandonment in place. It is explained that the proposed abandonment is part of Williams' ongoing effort to eliminate old, high maintenance pipelines. Williams estimates the sale price at slightly over $1 million and the cost of abandonment at approximately $86,445. It is stated that Williams has a 65-mile 6-inch pipeline which has been idle and which has sufficient capacity to serve the customers that were served by the 20-inch pipeline. It is asserted that Williams has contacted the affected landowners, and that there would be no abandonment of service as a result of the proposed abandonment of facilities.

Any questions regarding the application should be directed to David N. Roberts, Manager, Tariffs & Regulatory Analysis, at (270) 688–6712, P.O. Box 20008, Owensboro, Kentucky 42304.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–17166 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1523–052, et al.]

Central Hudson Gas & Electric Corporation, et al.; Electric Rate and Corporate Regulation Filings

June 29, 2000.

Take notice that the following filings have been made with the Commission:

1. Central Hudson Gas & Electric Corporation

[Docket No. ER97–1523–052]

Take notice that on June 22, 2000, Central Hudson Gas & Electric Corporation, tendered for filing a compliance filing in the above-referenced docket.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–1022–001]

Take notice that on June 22, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light (WPL), tendered for filing a Amendment of Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period January 1, 2000 through December 31, 2000. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket Nos. ER98–992–003; ER98–996–002; ER98–1002–002; ER98–1310–002; ER98–1910–002; ER98–1912–002; ER98–1930–002; ER98–1931–002; ER98–1933–002; ER98–1935–002; and ER98–2115–002]

Take notice that on June 23, 2000, the California Independent System Operator Corporation, tendered for filing numerous Participating Generator Agreements for acceptance by the Commission. The purpose of the filing is to comply with the Commission's Letter Order of February 24, 2000.

The ISO states that this filing has been served on the persons listed on the official service list in Docket Nos. ER98–992–000, *et al.* and the California Public Utilities Commission.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–1023–001]

Take notice that on June 26, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light (WPL), tendered for filing a Amendment of Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period January 1, 2000 through.December 31, 2000. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1262–004]

Take notice that on June 26, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Amendment No. 2 to its revisions to its Open Access Transmission Tariff (OATT) in compliance with the Commission's Order of April 13, 2000 at Docket No. ER00–1262–000, 91 FERC ¶ 61,044.

Amendment No. 2 corrects the effective date of Attachment K and includes changes accepted for filing by the Commission after the initial compliance filing on May 12, 2000.

Copies of the filing have been provided to jurisdictional customers, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2384–001]

Take notice that on June 26, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) and IES Utilities tendered for filing a Amendment to 240 MW Internal Capacity Contract between IPC and IES. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. AES Eastern Energy, L.P.

[Docket No. ER00–2463–001]

Take notice that on June 22, 2000, AES Eastern Energy, L.P. (AES Eastern), tendered for filing an amendment to its filing of two long-term service agreements between AES Eastern and Aquila Risk Management Corporation. The amendment clarifies that there are no charges for transmission or ancillary services included in the contract rates.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. DOW Pipeline Company

[Docket No. ER00–2529–001]

Take notice that on June 22, 2000, Dow Pipeline Company (DPL), tendered for filing a revised FERC Electric Rate Schedule No. 1 as part of its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, which was filed on May 17, 2000, with an effective date of May 18, 2000, the day following the date if its filing.

DPL intends to engage in electric power and energy transactions as a marketer. In transactions where DPL sells electric energy, it proposed to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. Neither DPL nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER00–2827–001]

Take notice that on June 26, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, re-submitted for filing with the Commission a Firm Transmission Service Agreement with Alliant Energy Corporate Services, Inc. (Alliant), dated May 31, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff. MidAmerican states that the purpose of the re-submission is to correct the Service Agreement Designation Cover Sheet and the form of notice.

MidAmerican requests an effective date of June 1, 2000, for the Agreement with Alliant, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Alliant, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Madison Gas and Electric Company

[Docket No. ER00–2932–000]

Take notice that on June 23, 2000, Madison Gas and Electric Company

(MGE), tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with Alliant Energy.

MGE requests this agreement be effective the date the agreement was filed with the FERC.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Otter Tail Power Company

[Docket No. ER00–2933–000]

Take notice that on June 23, 2000, Otter Tail Power Company (OTP), tendered for filing a Service Agreement between OTP and El Paso Merchant Energy, L.P. (El Paso). The Service Agreement allows El Paso to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER00–2934–000]

Take notice that on June 26, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an Amendment to the Interconnected Control Area Operating Agreement (ICAOA) between the ISO and the Los Angeles Department of Water and Power (LADWP). The ISO states that the Amendment modifies the ICAOA to allow the LADWP to supply Scheduling Coordinators with Regulation Service, pursuant to ISO Tariff Amendment No. 25.

The ISO requests that the Amendment be made effective as of June 22, 2000.

The ISO states that this filing has been served on the Los Angeles Department of Water and Power and the California Public Utilities Commission.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Gas and Electric Company

[Docket No. ER00–2935–000]

Take notice that on June 23, 2000, Madison Gas and Electric Company (MGE), tendered for filing with the Federal Energy Regulatory Commission, in accordance with the Commission's May 8, 2000 "Order Accepting Filing" in Docket No. ER00–1666–000, 91 FERC par. 61,122 (2000), notice that MGE's Open Access Transmission Tariff shall be considered modified to conform to the North American Electric Reliability Council's Transmission Loading Relief Procedures accepted by the Commission in its May 8 Order, except that MGE will not be providing Next Hour Market Service.

Copies of the filing have been served on MGE's transmission service customers, on the Public Service Commission of Wisconsin and on the official service list compiled by the Secretary in Docket No. ER00–1666–000.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER00–2936–000]

Take notice that on June 23, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing executed service agreements for firm point-to-point transmission service, and non-firm point-to-point transmission service under the PJM Open Access Transmission Tariff with The Legacy Energy Group, LLC (Legacy).

Copies of this filing were served upon Legacy and the state commissions within the PJM control area.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. ISO New England, Inc.

[Docket No. ER00–2937–000]

Take notice that on June 26, 2000, ISO New England Inc. (the ISO), tendered for filing pursuant to Section 205 of the Federal Power Act, a request for expedited approval of revisions to the NEPOOL Market Rules 6, 8 and 9 in order to extend existing reserve market limitations through December 31, 2000.

Copies of said filing have been served upon the Secretary of the NPC, the Participants in the New England Power Pool, non-Participant transmission customers and upon the New England State Governors and Regulatory Commissions.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER00–2938–000]

Take notice that on June 23, 2000, Virginia Electric and Power Company (Virginia Power or the Company), tendered for filing the following Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Amended Service Agreement for Firm Point-to-Point Transmission Service designated First Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, First Revised Volume No. 5;
2. Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated First Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Original Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

The Company requests an effective date of May 25, 2000, the date service was first provided to the customer under the amended agreements.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. The Dayton Power and Light Company

[Docket No. ER00–2939–000]

Take notice that on June 23, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing with Allegheny Energy Supply Company, LLC and HQ Energy Services US as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with Allegheny Energy Supply Company, LLC and HQ Energy Services US and the Public Utilities Commission of Ohio.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. The Dayton Power and Light Company

[Docket No. ER00–2940–000]

Take notice that on June 23, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Allegheny Energy Supply Company, LLC and HQ Energy Services US as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon establishing Allegheny Energy Supply Company, LLC and HQ Energy Services US and the Public Utilities Commission of Ohio.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Carolina Power & Light Company

[Docket No. ER00–2941–000]

Take notice that on June 23, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Cinergy Services, Inc. and a Service Agreement for Non-Firm Point-to-Point Transmission Service with Cinergy Services, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of June 20, 2000 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER00–2942–000]

Take notice that on June 23, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a notice that the NSP open access transmission tariff has been modified, effective May 1, 2000, to incorporate the revised Mid-Continent Area Power Pool (MAPP) Line Loading Relief (LLR) procedures proposed in Docket No. ER99–2649–002.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Candela Energy Corporation

[Docket No. ER00–2945–000]

Take notice that on June 21, 2000, Candela Energy Corporation (Candela) petitioned the Commission for acceptance of Candela Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Candela intends to engage in wholesale electric power and energy purchases and sales as a marketer. Candela is not in the business of generating or transmitting electric power. Candela is a privately-owned company without affiliates and is not engaged in any other businesses.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER00–2946–000]

Take notice that on June 26, 2000, Commonwealth Edison Company (ComEd), tendered for filing an unexecuted Interconnection Agreement with Rocky Road Power, LLC (Rocky Road).

ComEd requests an effective date of June 27, 2000 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Rocky Road and the Illinois Commerce Commission.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Metropolitan Edison Company

[Docket No. ER00–2947–000]

Take notice that on June 26, 2000, Metropolitan Edison Company (MetEd)(doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 4 under FERC Electric Tariff Volume No 2, between Metropolitan Edison Company and the Borough of Lewisberry.

MetEd requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Pennsylvania Electric Company

[Docket No. ER00–2948–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of Berlin.

Penelec requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Pennsylvania Electric Company

[Docket No. ER00–2949–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing a Notice of Cancellation of Service Agreement No. 8 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of Hooversville.

Penelec requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Metropolitan Edison Company

[Docket No. ER00–2950–000]

Take notice that on June 26, 2000, Metropolitan Edison Company (MetEd) (doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 5 under FERC Electric Tariff Volume No. 2, between Metropolitan Edison Company and the Borough of Royalton.

MetEd requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Pennsylvania Electric Company

[Docket No. ER00–2951–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 3 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of Smethport.

Penelec requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Pennsylvania Electric Company

[Docket No. ER00–2952–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 7 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of East Conemaugh.

Penelec requests that cancellation be effective December 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Pennsylvania Electric Company

[Docket No. ER00–2953–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing a Notice of Cancellation of Service Agreement No. 9 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric

Company and the Borough of Summerhill.

Penelec requests that cancellation be effective December 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Pennsylvania Electric Company

[Docket No. ER00–2954–000]

Take notice that on June 26, 2000, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy), tendered for filing a Notice of Cancellation of Service Agreement No. 2 under FERC Electric Tariff Volume No. 1, between Pennsylvania Electric Company and the Borough of Girard.

Penelec requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Metropolitan Edison Company

[Docket No. ER00–2955–000]

Take notice that on June 26, 2000, Metropolitan Edison Company (MetEd) (doing business as GPU Energy), tendered for filing Notice of Cancellation of Service Agreement No. 1 under FERC Electric Tariff Volume No. 2, between Metropolitan Edison Company and the Borough of Goldsboro.

MetEd requests that cancellation be effective June 1, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Cleco Utility Group Inc.

[Docket No. ER00–2959–000]

Take notice that on June 23, 2000, Cleco Utility Group, Inc., tendered for filling Non-Firm and Short term firm point-to-point transmission service agreements under its Open Access Transmission Tariff with Dynegy Power Marketing, Inc.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Mid-Continent Area Power Pool, Madison Gas and Electric Company

[Docket No. ER00–2960–000]

Take notice that on June 23, 2000, Madison Gas and Electric Company (MGE), tendered for filing Notice of Modification of Tariff in response to the Commission's May 26, 2000 Order Granting Interim Approval in Mid-Continent Area Power Pool (MAPP) Docket ER–2317–000, 91 FERC par. 61,184 (2000). The May 26, Order directed each public utility member of MAPP providing transmission service to file with the Commission a notice that its tariff is modified to incorporate MAPP's proposed line loading relief (LLR) procedures. Accordingly, MGE gave notice that its tariff is deemed modified to incorporate MAPP's LLR procedures.

Copies of the filing have been served on MGE's transmission service customers, on the Public Service Commission of Wisconsin and on the official service list compiled by the Secretary in Docket No. ER00–2317–000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Capital & Trading, Inc., CinCap VI, LLC, Sunbury Holdings, LLC

[Docket No. EC00–109–000]

Take notice that on June 27, 2000, Cinergy Capital & Trading, Inc. (CCT), CinCap VI, LLC (CinCap VI) and Sunbury Holdings, LLC (Sunbury) (collectively, the Applicants), tendered for filing pursuant to Section 203 of the Federal Power Act a joint application for authority for CCT to sell 100 percent of its membership interests in CinCap VI to Sunbury, and to assign CCT's interest in an interconnection agreement with PP&L, Inc. to CinCap VI.

The Applicants request that their joint application be made effective as soon as possible so that the transactions may close by July 31, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Griffiss Local Development Corporation

[Docket No. EL99–73–001]

Take notice that on June 26, 2000, Griffiss Local Development Corporation filed a Notice of Execution of Settlement Agreement Between Oneida County Industrial Development Agency/Griffiss local Development Corporation and Niagara Mohawk Power Corporation.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Fresno Cogeneration Partners, L.P.

[Docket Nos. QF88–134–002 and EL00–87–000]

Take notice that on June 23, 2000, Fresno Cogeneration Partners, L.P. (FCP) filed a request for limited waiver of the operating and efficiency standards of the Commission's regulations for qualifying cogeneration facilities as a result of reduced levels of operation as a result of the ongoing efforts of FCP to restructure the contractual arrangements with its utility purchaser of power.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17210 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1727–002, et al.]

CinCap VI, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 30, 2000.

Take notice that the following filings have been made with the Commission:

1. CinCap VI, LLC

[Docket No. ER99–1727–002]

Take notice that on June 27, 2000, Sunbury Holdings, LLC (Sunbury), on behalf of CinCap VI, LLC (CinCap), tendered for filing a notice of change in status under CinCap's market-based rate authority to reflect Sunbury's acquisition of CinCap from Cinergy Capital & Trading, Inc.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. PJM Interconnection, L.L.C.

[Docket No. ER00–2683–001]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its filing of service agreements in this

docket, adding the required designations.

PJM states that it served a copy of its filing upon all parties to the service agreements and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER00–2709–001]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its filing of the interconnection service agreement between PJM and Commonwealth Chesapeake Company, L.L.C. (Commonwealth) in this docket, adding the required designation.

PJM states that it served a copy of its filing upon Commonwealth, Delmarva Power & Light Company, and the Virginia State Corporation Commission.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. PJM Interconnection, L.L.C.

[Docket No. ER00–2906–001]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its filing of an interconnection service agreement between PJM and Reliant Energy Services, Inc. (Reliant) in this docket, adding the required designation.

PJM states that it served a copy of its filing upon Reliant, the Maryland Public Service Commission, the New Jersey Board of Public Utilities, and the Pennsylvania Public Service Commission.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. PJM Interconnection, L.L.C.

[Docket No. ER00–2936–001]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its filing of service agreements in this docket, adding the required designations.

PJM states that it served a copy of its filing The Legacy Energy Group, LLC and each of the state electric regulatory commissions within the PJM control area.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER00–2943–000]

Take notice that on June 23, 2000, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing the Generator Backup Service Agreement between Mobile Energy Services Company, L.L.C. (MESC) and Southern Companies (the Service Agreement) under Southern Companies' Generator Backup Service Tariff (FERC Electric Tariff, Original Volume No. 9). The Service Agreement supplies MESC with unscheduled capacity and energy in connection with sales from its electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement is dated as of June 16, 2000, and shall terminate upon twelve (12) months prior written notice of either party.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. MidAmerican Energy Company

[Docket No. ER00–2944–000]

Take notice that on June 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Second Amendment to First Amended and Restated Interchange Agreement (Second Amendment), dated May 30, 2000, entered into by MidAmerican and the City of Geneseo, Illinois, pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 28, 2000, for the Second Amendment, and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the City of Geneseo, Illinois, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. CinCap VI, LLC.

[Docket No. ER00–2956–000]

Take notice that on June 27, 2000, CinCap VI, LLC (CinCap VI), tendered for filing pursuant to Section 205 of the Federal Power Act a long-term Power Sale Agreement (PSA) (Original Service Agreement No. 1) with Cinergy Capital & Trading, Inc. (CCT), and a Notice of Cancellation of the same PSA. CCT consents to the cancellation of the PSA.

A Copy of this filing has been served upon CCT.

CinCap VI requests that its filing of the PSA be made effective as of May 1, 1999, and the cancellation of the PSA be made effective as of July 31, 2000, or the date of that CCT's ownership interest in CinCap VI is transferred to Sunbury Holdings, LLC.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER00–2957–000]

Take notice that on June 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing signature pages to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA) for Essential.com, Inc. (Essential.com), and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including Essential.com, and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER00–2958–000]

Take notice that on June 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Dynegy Power Marketing, Inc. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER00–2961–000]

Take notice that on June 27, 2000, Commonwealth Edison Company (ComEd) tendered for filing a Letter Agreement with Rocky Road Power, LLC (Rocky Road). In this Letter Agreement Rocky Road requests that ComEd file an unexecuted Interconnection Agreement between ComEd and Rocky Road (Interconnection Agreement) and agrees to be bound by all terms and conditions of the Interconnection Agreement as such terms may subsequently be modified by the Commission or by an arbitrator's decision pursuant to arbitration under ComEd's Open Access Transmission Tariff (OATT).

Copies of the filing were served on Rocky Road and the Illinois Commerce Commission.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. West Georgia Generating Company L.P.

[Docket No. ER00–2962–000]

Take notice that on June 27, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomaston, Georgia, tendered for filing a Negotiated Contract for the Purchase of Firm Capacity and Energy between West Georgia Generating Company L.P. and Gulf Power Company.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER00–2963–000]

Take notice that on June 27, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing a long-term Service Agreement between Deseret and Constellation Power Source, Inc. Deseret requests that the Commission accept this filing as a service agreement under the Company's Market-Based Rate Tariff, designated Service Agreement No. 5 to FERC Electric Tariff, Original Volume No. 3.

Deseret requests an effective date of June 1, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. West Georgia Generating Company L.P.

[Docket No. ER00–2964–000]

Take notice that on June 27, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomaston, Georgia, tendered for filing a Power Purchase Agreement between West Georgia and Oglethorpe Power Corporation.

West Georgia requests that the Agreement be permitted to become effective June 6, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. West Georgia Generating Company L.P.

[Docket No. ER00–2965–000]

Take notice that on June 27, 2000, West Georgia Generating Company (West Georgia), as successor-in-interest to Cataula Generating Company, L.P., an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomaston, Georgia, tendered for filing a Negotiated Contract for the Purchase of Firm Capacity and Energy between Cataula Generating Company, L.P. and Georgia Power Company.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. West Georgia Generating Company L.P.

[Docket No. ER00–2966–000]

Take notice that on June 27, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomaston, Georgia, tendered for filing a Power Purchase Agreement between West Georgia and Municipal Electric Authority of Georgia.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Minnesota Power, Inc.

[Docket No. ER00–2967–000]

Take notice that on June 26, 2000, Minnesota Power, Inc., tendered for filing a notice that the open access transmission tariff of Minnesota Power, Inc. is modified, effective May 1, 2000, to incorporate the Mid-Continent Area Power Pool's Line Loading Relief procedures.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Indeck-Olean Limited Partnership

[Docket No. ER00–2968–000]

Take notice that on June 27, 2000, Indeck-Olean Limited Partnership submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, its short-term Transaction Agreement Confirmation with Niagara Mohawk Energy Marketing, Inc.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Enron Corp.

[Docket No. ER00–2970–000]

Take notice that on June 26, 2000, Enron Corp. (Enron), tendered for filing notification that Enron is withdrawing from the Southwest Regional Transmission Association effective June 30, 2000.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. NorthWestern Public Service Company

[Docket No. ER00–2982–000]

Taken that on June 26, 2000, NorthWestern Public Service Company, a division of NorthWestern Corporation tendered for filing in compliance with the Commission's May 26, 2000, Commission Order in Docket No. ER00–2317–000, notice that the open access transmission tariff of NorthWestern Public Service Company is modified, effective May 1, 2000, to incorporate the Mid-Continent Area Power Pool's Line Loading Relief (LLR) procedures.

Comment date: July 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17211 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2921–000, et al.]

JPower, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 27, 2000.

Take notice that the following filings have been made with the Commission:

1. JPower, Inc.

[Docket No. ER00–2921–000]

Take notice that on June 13, 2000, JPower, Inc., tendered for filing notice of change in status. JPower requests that the name JPower and JPower's market based rate schedule under ER95–1421–000 be transferred to Great Lakes Energy Trading, LLC effective immediately.

Comment date: July 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Quark Power L.L.C.

[Docket No. ER97–2374–012]

Take notice that on June 21, 2000, Quark Power Service Company (Quark Power), tendered for filing an updated market analysis as required by the Commission's June 6, 1997 order in Docket No. ER97–2374–000 granting Quark Power market-based rate authority.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER00–2783–001]

Take notice that on June 21, 2000, Pacific Gas and Electric Company (the Company), tendered for filing an amendment in FERC Docket No. ER00–2783–000. The Company requests an extension of the termination date of the Interim Short Term Coordination Agreement, as amended, between Pacific Gas and Electric Company and Sacramento Municipal Utility District (SMUD), dated July 28, 1998, Company Rate Schedule FERC No. 201.

Copies of this filing have been served upon SMUD, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Golden Spread Electric Cooperative, Inc.

[Docket No. ER00–2919–000]

Take notice that on June 21, 2000, Golden Spread Electric Cooperative, Inc., tendered for filing an unexecuted service agreement between Golden Spread and Public Service Company of New Mexico under Golden Spread's FERC Electric Tariff, Original Volume No. 1 (Market-Based Rate Tariff).

Golden Spread request an effective date of May 22, 2000, for the service agreement.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Oklahoma Gas and Electric Company

[Docket No. ER00–2915–000]

Take notice that on June 21, 2000, Oklahoma Gas and Electric Company (OG&E), tendered for filing a letter stating that it is adopting the NERC revisions to its TLR procedures approved by the Commission on May 8, 2000 in Docket No. ER00–1666–000, and therefore OG&E' FERC Electric Tariff shall be considered so modified to reflect the revisions described in the Commission order.

A copy of this letter has been served upon the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: July 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17165 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–107.000, et al.]

Merchant Energy Group of the Americas, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Merchant Energy Group of the Americas, Inc.

[Docket No. EC00–107–000]

Take notice that on June 23, 2000, Merchant Energy Group of the Americas, Inc. (MEGA) tendered for filing an application pursuant to section 203 of the Federal Power Act for authorization of a transaction whereby MEGA will assign certain of its wholesale power sales agreements and associated books and records to Morgan Stanley Capital Group Inc. (Morgan Stanley). MEGA requests waiver of the Commission's filing requirements to permit it to file a redacted portion of Exhibit H and pursuant to 18 CFR 388.112 of the Commission's regulations, on behalf of itself and Morgan Stanley, requests privileged treatment of the remainder of Exhibit H.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Colorado

[Docket No. EC00–108–000]

Take notice that on June 23, 2000, Public Service Company of Colorado (PSCo) filed an application under Section 203 of the Federal Power Act for authorization to dispose of transmission facilities. The specific facilities addressed in the application are two 4/115 kV generation step-up transformers interconnecting the powerhouse of PSCo's Boulder Canyon Hydroelectric Project (Boulder Project) to PSCo's transmission system. In its application, PSCo states that it is transferring these facilities to the City of Boulder, Colorado, as part of its proposed sale of the Boulder Project to that City.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Keystone Lessor Genco LLC

[Docket No. EG00–182–000]

Take notice that on June 26, 2000, Keystone Lessor Genco LLC (Keystone Lessor or Applicant) tendered for filing an application for a determination of exempt wholesale generator status,

pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Keystone Lessor is a Delaware limited liability company. Keystone Lessor will own an undivided interest in a generating facility in Pennsylvania, which is an eligible facility. Keystone Lessor will lease under a net lease its undivided interest in the eligible facility to Reliant Energy Mid-Atlantic Power Holdings, LLC, an exempt wholesale generator.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Shawville Lessor Genco LLC

[Docket No. EG00–183–000]

Take notice that on June 26, 2000, Shawville Lessor Genco LLC (Shawville Lessor or Applicant) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Shawville Lessor is a Delaware limited liability company. Shawville Lessor will own an interest in an eligible facility in Pennsylvania. Shawville Lessor will lease under a net lease its interest in the eligible facility to Reliant Energy Mid-Atlantic Power Holdings, LLC, an exempt wholesale generator.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Conemaugh Lessor Genco LLC

[Docket No. EG00–184–000]

Take notice that on June 26, 2000, Conemaugh Lessor Genco LLC (Conemaugh Lessor or Applicant) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Conemaugh Lessor is a Delaware limited liability company. Conemaugh Lessor will own an undivided interest in a generating facility in Pennsylvania, which is an eligible facility. Conemaugh Lessor will lease under a net lease its undivided interest in the eligible facility to Reliant Energy Mid-Atlantic Power Holdings, LLC, an exempt wholesale generator.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. El Paso Electric Company, El Paso Electric Generating Company, El Paso Transmission and Distribution Company

[Docket No. ES00–46–000]

Take notice that on June 16, 2000, El Paso Electric Company, El Paso Electric Generating Company, and El Paso Transmission and Distribution Company (Applicants) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization for El Paso Transmission and Distribution Company to issue 1,000 shares of common stock, assume First Mortgage Bonds, and to engage in certain other securities transactions necessary to effectuate a corporate reorganization.

Applicants also request a waiver from the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER00–2132–001]

Take notice that on June 22, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing a compliance Interconnection and Operating Agreement with Calcasieu Power, LLC, in accordance with the Commission's order in Entergy Services, Inc., 91 FERC ¶ 61,234 (2000).

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket Nos. ER00–2645–000, ER00–2651–000]

Take notice that on June 22, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC tendered for filing a request to withdraw Market Rate Tariff Service Agreement Nos. 68 and 69 filed at the above dockets.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER00–2922–000]

Take notice that on June 22, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing a Letter of Termination of the Service Agreement between Virginia Electric and Power Company and K N Marketing, Inc. dated July 8, 1996 and approved by the FERC in a letter order on August 23, 1996 in Docket No. ER96–2511–000.

Virginia Power requests that the Letter of Termination be designated as First Revised Service Agreement No. 65 under FERC Electric Tariff, Original Volume No. 4. Virginia Power also respectfully requests an effective date of the termination of the Service Agreement of August 22, 2000, which is sixty (60) days from the date of filing of the Letter of Termination.

Copies of the filing were served upon K N Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER00–2923–000]

Take notice that on June 22, 2000, Pacific Gas and Electric Company (PGandE Company), tendered for filing the Emergency Service Agreement between Pacific Gas and Electric Company and City and County of San Francisco (CCSF). This Agreement is intended to facilitate CCSF's supplying of excess energy to the California Independent System Operator (CAISO) to support reliability of the electric grid in California this summer. Under this Agreement, PGandE Company may relay information from CCSF to the CAISO regarding availability of excess energy ahead of the operating day and pass through payments from CAISO to CCSF. PGandE Company has requested certain waivers.

Copies of this filing have been served upon City, the CAISO, the California Electricity Oversight Board, the CPUC and the Service List for Docket No. EL00–75–000.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Green Valley Hydro, LLC

[Docket No. ER00–2924–000]

Take notice that on June 22, 2000, Green Valley Hydro, LLC (Green Valley), tendered for filing a market rate tariff of general applicability under which it proposes to sell capacity and energy at market-based rates all as more fully described in the application.

Green Valley requests an effective date no later than July 1, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER00–2925–000]

Take notice that on June 22, 2000, Commonwealth Edison Company (ComEd), tendered for filing four Non-Firm Transmission Service Agreements with LSP-Nelson Energy, LLC (LSPN), LSP-Kendall Energy, LLC (LSPK), Split Rock Energy LLC (SRE), and OGE Energy Resources, Inc. (OGE), and eight Short-Term Firm Transmission Service Agreements with LSPN, LSPK, SRE, OGE, Delmarva Power and Light Company (DPL), Northern Indiana Public Service Company (NIPS), Constellation Power Source, Inc. (CPS), and MidAmerican Energy Company (MEC) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests that the Commission substitute the Agreement with NIPS for the unexecuted agreement previously filed under the OATT in Docket No. ER00–2564–000 on May 22, 2000. ComEd requests that the Commission substitute the Agreement with CPS for the unexecuted agreement previously filed under the OATT in Docket No. ER00–2260–000 on April 21, 2000. ComEd requests that the Commission substitute the Agreement with MEC for the unexecuted agreement previously filed under the OATT in Docket No. ER00–2536–000 on May 18, 2000.

ComEd requests an effective date of June 22, 2000, for the non-firm agreements with LSPN, LSPK and SRE. ComEd requests an effective date of April 10, 2000, for the non-firm agreement with OGE to coincide with the first day of service to OGE under this Agreement. ComEd requests an effective date of June 22, 2000 for the short-term firm agreements with LSPN, LSPK, SRE, and OGE, and an effective date of June 1, 2000, for the agreement with DPL, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Kentucky Utilities Company/ Louisville Gas and Electric Company

[Docket No. ER00–2926–000]

Take notice that on June 22, 2000, Kentucky Utilities Company/Louisville Gas and Electric Company (KU/LG&E), 220 West Main Street, Louisville, Kentucky 40202, tendered for filing with the Commission a notice that KU/LG&E will explicitly incorporate the revised transmission loading relief (TLR) procedures developed by the North American Electric Reliability Council (NERC) and approved by the Commission in Docket No. ER00–1666–000, as part of its Open Access Transmission Tariff and Joint Open Access Transmission Tariff.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER00–2927–000]

Take notice that on June 22, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., modifying how PJM will distribute accumulated excess congestion charges.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2928–000]

Take notice that on June 22, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing The Legacy Energy Group, LLC as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of June 15, 2000, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER00–2929–000]

Take notice that on June 22, 2000, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an Interconnection and Operating Agreement with Vulcan Chemical (Vulcan), and a Generator Imbalance Agreement with Vulcan.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER00–2930–000]

Take notice that on June 22, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with MissChem Nitrogen, L.L.C. (MissChem), and a Generator Imbalance Agreement with MissChem.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. American Electric Power Service Corporation

[Docket No. ER00–2931–000]

Take notice that on June 22, 2000, American Electric Power Service Corporation (AEPSC), as agent for the operating utility subsidiaries of American Electric Power Company, Inc., tendered service agreements under which British Columbia Power Exchange Corporation (BC Power) will take service under the AEPSC Open Access Transmission Service Tariff.

AEPSC requests a May 23, 2000 effective date for the agreements. Accordingly, AEPSC requests waiver of the Commission's notice requirements.

AEPSC states that a copy of this filing has been served on BC Power and on affected state utility commissions.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a

motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17164 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–000]

Williams Gas Pipelines Central, Inc; Notice of New Location for Informal Settlement Conference

June 30, 2000.

The informal settlement conference scheduled for July 11, 2000, in the above-captioned docket has been relocated. The new location for the informal settlement conference is the Andy Kirk Conference Room, 3rd floor, Kansas City Marriot Downtown, 200 West 12th Street, Kansas City, Missouri 64105. The informal settlement conference will begin at 9:30 a.m.

All interested parties in the above dockets are requested to attend the informal settlement conference. If a party has any questions respecting the conference, please call Richard Miles, the Director of the Dispute Resolution Service. His telephone number is 1 877 FERC ADR (337–2237) or 202–208–0702 and his e-mail address is *richard.miles@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 00–17212 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

June 30, 2000.

This constitutes notice, in accordance with 18 CFR 385.220(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP00–36–000, 6–6–00, James R. Hartwig
2. CP00–14–000, 5–26–00, Todd Potas
3. CP00–14–000, 6–16–00, Todd Potas

David P. Boergers,

Secretary.

[FR Doc. 00–17171 Filed 7–6–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[CO–001–0039; FRL–6731–3]

Adequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy determination.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the submitted Denver ozone maintenance plan are inadequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Denver Regional Council of Governments and the U.S. Department of Transportation cannot use the motor vehicle emissions budgets from the submitted Denver ozone maintenance plan for future conformity determinations.

DATES: This document is effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, ph. (303) 312–6479. The letter documenting our finding is available at EPA's conformity website: http://www.epa.gov/oms/transp/conform/adequacy.htm.

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that we have already made. EPA Region 8 sent a letter to the Colorado Air Pollution Control Division on June 19, 2000 stating that the motor vehicle emissions budgets in the submitted Denver ozone maintenance plan are inadequate. This finding has also been announced on EPA's conformity website: http://www.epa.gov/oms/transp/conform/adequacy.htm.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and

establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 26, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–17191 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6608–8]

Environmental Impact Statement; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed June 26, 2000 Through June 30, 2000.

Pursuant to 40 CFR 1506.9.

EIS No. 000219, Final EIS, FHW, MO, MO–50/West-Central Corridor Location Study. Transportation Improvements, Sedalia to St. Martins, Pettis, Cooper, Morgan and Moniteau and Cole Counties, MO, *Due:* August 07, 2000, *Contact:* Don Neumann (573) 636–7104.

EIS No. 000220, Final EIS, COE, ID, OH, KY, John T. Myers and Greenup Lock Improvements, To Alleviate Commercial Navigation Traffic Congestion, Ohio River Mainstem Systems Study, (ORMSS), Interim Feasibility Report, Indiana, Kentucky and Ohio, *Due:* August 07, 2000, *Contact:* Veronica Rife (502) 625–7034.

EIS No. 000221, Draft EIS, BLM, WY, Jack Morrow Hills Coordinated Activity Plan, Implementation, Rock Springs, Portions of Sweetwater, Fremont and Subelette Counties, WY, *Due:* October 05, 2000, *Contact;* Renee Dana (307) 352–0256.

EIS No. 000222, Final EIS, NPS, CA, Merced Wild and Scenic River Comprehensive Management Plan, Implementation, Yosemite National Park and the EL Portal Administrative Site, Tuolumne, Merced, Mono, Mariposa and Madera Counties, CA, *Due:* August 07, 2000, *Contact:* Alan Schmierer (415) 427–1441.

EIS No. 000223, Draft EIS, COE, CA, Murrieta Creek Flood Control and Protection, Implementation, Riverside County, CA, *Due:* August 21, 2000, *Contact:* Timothy Smith (213) 452–3854.

EIS No. 000224, Final EIS, TVA, TN, Tim Ford Reservoir Land Management and Disposition Plan Implementation, Tim Ford Reservoir, Franklin and Moore Counties, TN, *Due:* August 07, 2000, *Contact:* Helen Rucker (256) 386–3435.

EIS No. 000225, Draft EIS, COE, CA, Rancho Palos Verdes Restoration Project, Implementation, City of Rancho Palos Verdes, Los Angeles County, CA, *Due:* August 21, 2000, *Contact:* Mr. Rey Farve (213) 452–3864.

EIS No. 000226, Final EIS, TVA, TN, Tellico Reservoir Land Management Plan, Implementation of Seven Mainstream and Two Tributary Reservoirs, Blount, Loudon and Monroe, Tn, *Due:* August 07, 2000, *Contact:* Cheryl Ward (865) 632–1531.

EIS No. 000227, Final EIS, TVA, MS, Union County Multipurpose Reservoir/Other Water Supply Alternatives Project, To Provide an Adequate and Reliable Water Supply, COE Section 404 Permit and NPDES Permit, City of New Alban, Union County, MS, *Due:* August 07, 2000, *Contact:* Charles P. Nicholson (865) 632–3582.

EIS No. 000228, Draft EIS, NPS, CA, Anacapa Island Restoration Project, Implementation Implementation, Channel Islands National Park, Ventura County, CA, *Due:* September 05, 2000, *Contact:* Alan Schmierer (415) 427–1441.

EIS No. 000229, Final EIS, FHW, WV, King Coal Highway Project Construction, from the vicinity of Williamson to the vicinity of Bluefield, COE Section 404 Permit, Mango, McDowell Mercer, and Wyoming Counties, WV, *Due:* August 14, 2000, *Contact:* Thomas J. Smith (304) 347–5928.

EIS No. 000230, Draft Supplement, NOA, Tortugas Marine Reserves Fishery Management Plans Establishment, in Seven Fisheries in the Gulf of Mexico, *Due:* August 21, 2000, *Contact:* James Weaver (727)570–5305.

Amendment Notices

EIS No. 200206, Final EIS, NCP, VA, DC, MD, Adoption—Woodrow Wilson Bridge Replacement, I–95/I–495 From West of Telegraph Road to East of MD Routes 210, City of Alexandria and Fairfax County, VA; Prince George's County, MD and DC, *Due:* July 31, 2000, *Contact:* Eugene Keller (202) 482–7251.

U.S. National Capital Planning Commission (NCPC) has adopted certain portion of the Department of Transportation's Federal Highway Administration FEIS #970356 filed 9–5–97 and FSEIS #000127 filed 4–20–00. NCPC was not a Cooperating Agency for the above final EIS. Recirculation of the document Section 1506.3(b) of the Council is necessary under on Environmental Quality Regulations.

Dated: July 3, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–17271 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6608–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–L36113–WA Rating EC2, Upper Charley Subwatershed Ecosystem Restoration Projects, Implementation, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA.

Umatilla National Forest, Garfield County, WA.

Summary: EPA expressed environmental concerns with potential adverse impacts to fish and wildlife populations, including big game and air quality within and surrounding the analysis area. The final EIS should supply information on existing air quality and an analysis of projected air quality impacts.

ERP No. D–AFS–L61223–OR Rating EC2, Mt. Ashland Ski Area Expansion, Implementation, Ashland Ranger District, Rogue River National Forest and Scott River Ranger District, Klamath National Forest, Jackson County, OR.

Summary: EPA expressed concerns with the purpose and need, range of alternatives and potential impacts to water quality, especially Riparian Reserves, and sensitive plants. EPA also commented on the mitigation and monitoring plans, skier demand, and transportation options.

ERP No. D–AFS–L65350 –ID Rating EC2, JJ (Jerry Johnson) Ecosystem Restoration Project, Ranger District (Powell), Idaho County, ID.

Summary: EPA expressed environmental concerns regarding potential adverse impacts of concentrated tree removal, especially old growth, and disturbing highly unstable terrain increasing the risk of sediment delivery to streams. EPA requests that the final EIS further address the ecological impacts, especially cumulative effects, monitoring and CWA Section 303(d) listed waters.

ERP No. D–AFS–L65355–ID Rating EC2 *Summary:* EPA expressed environmental concerns with entry into the Sheep Gulch Roadless Area and potential adverse impacts to water quality, fish and wildlife. The final EIS should clarify how the proposed road treatments will restore soils and hydrologic function, as well as impacts from OHVs and information on landslide events in the project area.

ERP No. D–BLM–L65347–00 Rating EC2, Cascade Siskiyou Ecological Emphasis Area Management Plan, To Maintain, Protect, Restore or Enhance the Ecological Processes, Planning Area for Designation as a National Monument by the President, OR and CA.

Summary: EPA expressed concerns about potential adverse impacts from grazing and OHV use on water quality, soils, sensitive plants and wildlife, especially in non-designated areas.

ERP No. D–SFW–K64019–NV Rating EC2, Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision, Implementation, Churchill and Washoe Counties, NV.

Summary: While EPA supported the preferred alternative, the preferred alternative did not express concerns with the water quality of inflows and management options to help ensure that water entering the wetlands is of sufficient quality to meet water quality standards and protect beneficial uses. EPA urged the Service to commit to implementation of mitigation measures, monitoring, and adaptive management.

ERP No. DS–AFS–J65268–CO Rating EO2, Legislative—DSEIS—North Fork of the South Platte Rivers Wild and Scenic River Study for the Designation or Non-Designation into the National Wild and Scenic Rivers System, Pike and San Isabel National Forests, Comache and Cimarron National Grasslands, Douglas, Jefferson, Park and Teller Counties, Co.

Summary: EPA expressed environmental objections with the selection of the "not suitable" alternative, lack of implementing documents, and absence of protection for recognized attributes of the North Fork.

Final EISs

ERP No. F–AFS–K65345–CA Pendola Fire Restoration Project, Implementation, Tahoe National Forest, Downieville Ranger District, Yuba County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–L65331–WA Whitman Mission National Historic Site, General Management Plan, . Development Concept Plan, Implementation, Walla Walla County, WA.

Summary: EPA expressed lack of objections with the proposed action.

ERP No. F–SFW–K05056–CA High Desert Power Project, Construction and Operation, A Combined-Cycle Natural Gas-Fueled Electrical Generation Power Planet; Approval of Incidental Taking Authorization under Sections 7 and 10 of the Federal ESA, San Bernardino County, CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 3, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities

[FR Doc. 00–17272 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6731–1]

Technical Workshop on Issues Associated With Considering Developmental Changes in Behavior and Anatomy When Assessing Exposure to Children

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Meeting.

SUMMARY: EPA is announcing that ERG, a contractor to EPA's Risk Assessment Forum, is organizing, convening, and conducting a workshop for external scientific peer consultation on issues related to the assessment of childhood exposure. The workshop is being held to discuss issues associated with how to consider important developmental changes in behavior and anatomy when assessing the exposure of children to environmental contaminants.

DATES: The workshop will be held from 8:30 a.m. to 5 p.m. on Wednesday, July 26, 2000 and from 8 a.m. to 4 p.m. on Thursday, July 27, 2000.

ADDRESSES: The workshop will be held at the Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC. Eastern Research Group, Inc., an EPA contractor, will convene and facilitate the workshop. To register to attend the workshop as an observer, contact Eastern Research Group, Inc., Tel: (781) 674–7374, or visit their HomePage at *http://www.erg.com/conf/epa.htm* by July 19, 2000. Space is limited so please register early.

FOR FURTHER INFORMATION CONTACT: For further information concerning the workshop on age groups for assessing exposure to children please contact Steven Knott, U.S. EPA Office of Research and Development (8601–D), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Telephone (202) 564–3359.

SUPPLEMENTARY INFORMATION: The 1993 National Academy of Sciences (NAS) report "Pesticides in the Diets of Infants and Children" highlights important differences between children and adults with respect to risks posed by pesticides. Some of the principles in the NAS report provided the foundation for the Food Quality Protection Act of 1996 (FQPA) and the President's Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risk. FQPA requires the consideration of aggregate exposure to children when establishing pesticide tolerances (legal limits for residues in food). Executive Order 13045 broadens

consideration of impacts on children by stating that "each Federal agency: shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks." Many of the comments the EPA received on the Proposed Guidelines for Carcinogen Risk Assessment relate to the implementation of Executive Order 13045. In response to these comments and regulatory initiatives, EPA has been investigating ways to improve Agency risk assessments for children.

An Agency workgroup convened under the auspices of the Risk Assessment Forum has been exploring children's exposure assessment issues. This workgroup has concluded that a major issue facing Agency assessors is how to consider age related changes in behavior and physiology when preparing exposure assessments for children. Children's behavior changes over time in ways that can have an important impact on exposure. Further, children's physiology changes over time in ways that can impact both their exposures and their susceptibility to certain health effects. There are two aspects to these physiological changes. First, there are anatomical changes resulting from physical growth. Second, there are changes in pharmacokinetics and pharmacodynamics which affect the absorption, distribution, excretion and effects of environmental contaminants. The Agency is examining the pharmacokinetic/pharmacodynamic changes in children through other efforts and future meetings on this topic are anticipated. This ERG hosted workshop will focus on incorporating age related changes in behavior and anatomy into Agency exposure assessments.

Dated: June 29, 2000.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 00–17189 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–940; FRL–6556–8]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–940, must be received on or before August 7, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–940 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8733; e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–940. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–940 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services

Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–940. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, AgriVir, LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by AgriVir, LLC and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

AgriVir, LLC

OF6113

EPA has received a pesticide petition 0F6113 from AgriVir, LLC, 1625 K Street, NW., Washington DC 20006, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide in or on *Indian Meal Moth Granulosis Virus* commodity.

A. Product Name and Proposed Use Practices

The product which contains the microbial pest control agent which is the subject of the present petition for a tolerance exemption is "FruitGuard-V" or "NutGuard-V" (these are alternate names for the same product). This product is a biological insecticide intended to control Indian meal moth, a serious pest of various stored commodities. The product will be used as a protectant for stored, dry commodities such as dried fruits, and nuts, and for crack treatment of facilities where such commodities are handled.

The Indian meal moth (IMM), is a serious cosmopolitan pest of dried commodities. Infestation can occur at any time from harvest to eventual consumption of the commodity. IMM is estimated to be responsible for approximately 90% of the damage done to dried fruits and nuts in storage. In facilities where these types of commodities are handled, fragments and other debris from the commodities get into cracks, crevices, and other places and IMM propagates on this material. This establishes a general infestation and reservoir for the Indian meal moth in such facilities.

Control of IMM by FruitGuard-V/NutGuard-V is by means of a naturally occurring microbial pest control agent (MPCA) which is contained in the product. This MPCA is a granulosis virus (GV) which infects the larvae of the IMM. This virus is, thus, designated as Indian Meal Moth Granulosis Virus (IMMGV). The IMMGV contained in NutGuard-V/FruitGuard-V is a naturally occurring isolate of the IMMGV and has not been genetically modified.

In FruitGuard-V/NutGuard-V, the amount of IMMGV (the MPCA ion in the product) is very small in terms of weight percent. The bulk of the product is, in fact, milled wheat bran (96% +) and brewers yeast (ca. 3%) to which have been added some vitamins (0.1%) and antioxidants (0.4%). All of these carrier ingredients are either OPP List 4A inerts[1], are tolerance exempted under 40 CFR 180.1001, and/or are generally recognized as safe (GRAS) or otherwise approved for direct food use under 21

[1] Per U.S. EPA/OPP: "List 4A inert ingredients are considered to be minimal risk inert ingredients. List 4A is generally reserved for those substances that are common foods or substances that are ubiquitous in nature and are not expected to present a hazard to human health or the environment."

CFR part 184 section 184.1 subpart B pp.446-543.

The product is produced as a milled powder and has the physical appearance of a coarse, off-white to tan powder. Due to the physical characteristics of the powder and of the milled wheat bran which constitutes the bulk of the product, this product does have a potential for producing mild, temporary eye irritation. This has been tested in an eye irritation study which has been submitted by AgriVir in support of this application. The product's labeling, therefore, carries a warning in regard to eye irritation potential.

1. The product can be applied dry or in water suspension. For the latter, it is suspended in water at a concentration of from 2 oz to 4 oz per 10 gallons of water. This provides for a sprayable suspension.

2. The proposed application rate for dried fruits and for nuts is from 30 grams (1 oz) to 140 grams (5 oz) product/ton of commodity to be protected.

3. The proposed application rate for crack, crevice, and surface spot treatments is from 60 grams (2 oz) to 300 grams (10 oz) product/100 square feet.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* This is a microbial pesticide in which the MPCA is IMMGV. This is a naturally occurring insect virus which produced a pathogenic condition termed "granulosis" in larvae of the IMM. Since IMMGV cannot be propagated other than in insect larvae, the pesticide product itself consists of IMMGV viral particles contained in body parts from infected larvae, all of which is mixed in with the wheat bran diet mixture upon which the infected larvae were grown. The residues which would result are:

i. The infected larval parts containing virus.

ii. The wheat bran larval diet mixture.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* The rate of application for this pesticide product is from 1 oz to 5 oz product per ton of treated commodity. The product contains > 0.01% MPCA by weight (expressed for this purpose as viral particles). The MPCA is not metabolized in or on the commodity after application. Therefore, at the maximum application rate, maximum MPCA residues will be > 0.00013% or (> 1.3 parts per billion (ppb)). At the lower rate of application residues will be less than 0.26 ppb.

3. *Analytical method.* A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed. No analytical method is required because:

i. This application is for a tolerance exemption.

ii. Any method which could be developed to detect IMMGV at the very low maximum levels noted above would be a molecular biology method requiring specialized equipment and procedures not readily available in enforcement laboratories.

It is noted that microbial pet control agents which do not trigger Tier II toxicology concerns do not trigger specific residue chemistry requirements. A brief summary of the identity of the microbial pest control agent IMMGV follows:

AgriVir, LLC has applied to EPA for registration of its microbial pest control product "FruitGuard-V/NutGuard-V" (these are alternate names for the same product). This is a biological insecticide intended to control IMM, a serious pest of various stored commodities. The IMM, is a serious cosmopolitan pest of dried commodities. Infestation can occur at any time from harvest to eventual consumption of the commodity. IMM is estimated to be responsible for approximately 90% of the damage done to dried fruits and nuts in storage. In facilities where these types of commodities are handled, fragments and other debris from the commodities gets into cracks, crevices, and other places and IMM propagates on this material. This established a general infestation and reservoir for the IMM in such facilities.

Control of IMM by FruitGuard-V/NutGuard-V is by means of a naturally occurring microbial pest control agent (or MPCA) which is contained in the product.

The MPCA used in NutGuard-V/FruitGuard-V is a Granulosis Virus which infects the larvae of the IMM. This virus is designated IMMGV in the balance of this summary. The MPCA contained in NutGuard-V/FruitGuard-V is a naturally occurring isolate of the IMMGV. It has not been genetically modified.

IMMGV has no hosts other than larvae of the IMM and acts by making the IMM larvae sick, rather than by a toxic mechanism (i.e., IMMGV does not produce any specific toxin which kills the larvae). IMM larvae succumb to granulosis disease due to serious damage to one of their major organs for storage of nutrients.

The above-cited products are equivalent to a technical grade of IMMGV. They are prepared without isolation of IMMGV and, as such, the MPCA which is the subject of the present petition consists, therefore, of IMMGV occlusion bodies ("viral particles") and Indian meal moth larval parts mixed into a production larval diet containing wheat bran, brewer's yeast, vitamins, methyl paraben, and sorbic acid.

C. Mammalian Toxicological Profile

The mode of action for IMMGV in its host, the larval stage of *P. interpunctella*, is pathogenic in nature. IMMGV produces granulosis disease in the larvae of *P. interpunctella*. "Granulosis" disease is so named because cells in infected tissue sections, when observed under light microscopy, are full of minute, refractile bodies termed "granules." The initial signs of granulosis disease occur several days after larval ingestion of the viral occlusion bodies and consist of sluggishness and loss of appetite. These initial signs are followed by a change in the appearance of the larvae. They are normally light brown and semilucent, but when infected become opaque and white. This change is the result of the massive accumulation of viral occlusion bodies in the fat body of the infected larva. The fat body is the site of intermediary metabolism in these larvae and it is in the fat body that fat, protein, and glycogen are primarily stored. The pathogenicity of IMMGV to the larva results from the mode of viral release from cells of the fat body. This release occurs by rupture of the cells of the fat body, thereby leading to degeneration and necrosis of the fat body and, ultimately, death of the infected larva. The mode of action is distinct from a toxicity based mode of action. That is, unlike some microbial pest control agents which produce endo-toxins or exo-toxins which act to kill the target pest, IMMGV produces no toxins as part of its mode of action.

IMMGV is a member of the class of insect viruses known as baculoviruses. There are two known types of baculoviruses: polyhedrosis viruses and granulosis viruses. There is currently no baculovirus known to infect or replicate in any vertebrate host. Among invertebrates, IMMGV itself has no known host other than larvae of *P. interpunctella* and has been shown not to cross-infect lepidopteran or other insects other than *P. interpunctella*.

A number of studies on the toxicity of baculoviruses, inclusive of granulosis viruses, to animals have shown that these agents produced no effects on overall health, gross or micro pathology, hematology, clinical chemistry, and antibody stimulation occur in test animals when exposure is by the oral, dermal, inhalation, and injection routes

of exposure and either single exposure or repeated exposure. These studies have been published in the open literature and were submitted as part of AgriVir, LLC's petition.

Cell culture studies (submitted by AgriVir as part of its submission) have shown that IMMGV which is actively infective and pathogenic to IMM larva, does not produce cytotoxicity in nor does it replicate in or produce pathogenicity in human embryonic lung cells, human embryonic skin cells, and monkey kidney cells. These cell lines are relevant to the safety assessment of IMMGV with regard to hazard potential to humans and domestic animals because the first two (lung and skin) represent tissues which would be the first points of contact with/attack by IMMGV and the renal line is a representative of an organ which can receive parenteral exposure and which can easily harbor infections.

Due to the physical properties of the final product and of the bran carrier, the technical MPCA does have a mild, rapidly reversible eye irritation potential. An eye irritation study has been conducted to further characterize this potential. It is summarized below.

Primary eye irritation. Due to the physical properties of the final product and of the bran carrier, the technical MPCA is expected to have a mild to moderate, reversible eye irritation potential. This has been confirmed in a rabbit eye irritation study sponsored by AgriVir, LLC. Six healthy New Zealand white rabbits (4 males and 2 females) each received 0.1 mL of the IMMGV product placed into the conjunctival sac of their right eye. The upper and lower lids were held together for approximately 1 second. In each test animal, the left eye served as an untreated control. Ocular irritation was evaluated by the Draize *et al.* A 1 hour post-instillation six to six treated eyes showed conjunctival irritation and one to six showed irritation of the iris. No treated eyes showed corneal effects at 1 hour post-instillation. The mean irritation score for treated eyes was 11.5 out of 110 maximum possible. At 24 hrs, the incidence of treated eyes which exhibited conjunctival irritation was five to six with one to six showing irritation of the iris. Also, at 24 hrs three to six treated eyes showed some signs of corneal opacity. This was grade 1 (scattered or diffuse, details of iris clearly visible) with respect to intensity and grade 1 with respect to area (or = to 1/4 of the cornea involved) in each case. The corneal score in each eye which exhibited corneal opacity was 5 out of a maximum possible 80 for corneal effects alone. The mean irritation score at 24 hrs was 8.3 out of a maximum possible 110. At 48 hrs post-instillation, the incidence of treated eyes which exhibited conjunctival irritation was one to six with one to six also showing irritation of the iris. Also, at 48 hrs three to six treated eyes still showed some signs of corneal opacity (same animals as at 24 hrs). This was still grade 1 with respect to intensity and grade 1 with respect to area in each case. The corneal score in each eye which exhibited corneal opacity was 5 out of a maximum possible 80 for corneal effects alone. The mean irritation score at 48 hrs was 4.3 out of a maximum possible 110. By 72 hours post-instillation, no treated eyes exhibited conjunctival or irineal irritation, but two to six treated eyes still showed a minimal corneal effect (two of the animals which had exhibited the same effects at 24 hrs and 48 hrs, still scored 1 for intensity and 1 for area; therefore, 5 out of a possible 80 for each animal). The mean irritation score at 72 hrs was 1.7 out of a maximum possible 110. By day 4 (96 hrs) post-instillation, all treated eyes were free of conjuctival irritation, irineal irritation, and corneal effects. The mean irritation score at day 4 was 0 out of a maximum possible 110. The highest mean irritation score reported (11.5 at 1 hour post-instillation) would be classified as "mildly" irritating per the Draize evaluation method. This score itself would normally be classified as "minimally" irritating, but the absence of complete resolution by 72 hrs requires a one-level increase in the descriptor. The fact that the corneal effects seen were minimal in both intensity and area, were seen in only half of the treated eyes, and resolved fairly rapidly (by 96 hours) suggests that these were probably due to simple mechanical abrasion by the solid test article after instillation into the treated eyes.

D. Aggregate Exposure

1. *Dietary exposure.— i. Food.* The levels of residues in treated commodities will be very low. The application rates for IMMGV are from 1/5 ounces of formulated (i.e., technical) MPCA per ton of commodity to be treated. Maximum theoretical residue concentrations will not, therefore, exceed 1.3 ppb for the MPCA. The types of commodities which are potentially to be treated with IMMGV represent less than 1% of the average total daily diet. With a 2 kilograms (kg) total daily diet the maximum theoretical average dietary exposure to the MPCA is <0.026 (µg)/day. Since IMMGV is a naturally occurring insect virus, there is some, not readily quantifiable, baseline exposure in the daily diet.

ii. *Drinking water.* The proposed use patterns for IMMGV are for indoor food and non-food uses. Therefore, there is no potential for drinking water exposure associated with the approval of this petition.

2. *Non-dietary exposure.* IMMGV only has pest control utility in the treatment of commodities for control of IMM. Therefore, the only potential for non-dietary exposure is to applicators and to mixer/loaders who will use product containing IMMGV. These non-dietary exposures are not covered within the Food Quality Protection Act (FQPA) and they are expected to be low. Information already in EPA's data bases which had been cited by AgriVir, LLC indicates that workers involved with baculovirus production and use do not experience adverse effects as a result of these exposures.

E. Cumulative Exposure

Due to its mechanism of action and extremely limited host specificity, it can be reliably stated that IMMGV does not share a common mechanism of action with any other conventional, biochemical, or microbial pesticide.

F. Safety Determination

1. *U.S. population.* Since the available information reliably supports that IMMGV will not produce adverse effects in humans of any age as a result of exposure by ingestion, dermal contact, or inhalation, AgriVir, LLC concludes that there is a reasonable certainty that no harm to the general adult population, including sensitive individuals, will result from dietary exposure to residues which could occur as a result of approval of this petition.

2. *Infants and children.* Since the available information reliably supports that IMMGV will not produce adverse effects in humans of any age as a result of exposure by ingestion, dermal contact, or inhalation, AgriVir, LLC concludes that there is a reasonable certainty that no harm to infants and children will result from dietary exposure to residues which could occur as a result of approval of this petition.

G. Effects on the Immune and Endocrine Systems

There is no reliable information to indicate that IMMGV has a potential to produce adverse effects on the immune or endocrine systems. In fact, the available studies establish that IMMGV is essentially biologically inactive in any organism other than its natural host, the larva of the Indian meal moth. Due to the natural occurrence and endemic

infestation of dry commodities by the IMM, IMM larval parts and the IMMGV are historically a part of the human diet (although one of which most persons are unaware). Animal safety studies on a closely related granulosis virus (which have been submitted by AgriVir, LLC as part of the support for its registration application and the present tolerance exemption petition) showed, that after inhalation exposure of guinea pigs to an atomized mist containing 2 x 10^{11} granulosis virus (GV) particles ("granula")/L of air, no antibodies to the granula were observed to form and no changes in blood proteins were found. Also, there were no signs of toxicity or other adverse effects noted during the 21–day post-exposure observation period. On pathology, no irritation of lungs or airways was found. This study further supports lack of an IMMGV hazard potential with regard to the immune system. In a different study with the same closely related GV, multiple dose feeding of a total of 5 x 10^{11} granula/mouse, divided into 34 equal doses given every third day over 99 days produced:

1. No signs of toxicity or other adverse effects.

2. No effect on hematology parameters when checked at 45 days and at 99 days.

3. No remarkable pathology findings on terminal sacrifice.

4. No evidence for increased chromosome aberrations were found. This study further supports the lack of an IMMGV hazard potential with regard to the endocrine system.

H. Existing Tolerances

There are no existing tolerances for IMMGV (the MPCA). The present petition is for the establishment of an exemption from a tolerance.

All of the intentionally added inerts in NutGuard-V/FruitGuard-V are either OPP List 4A inerts, are tolerances exempted under 40 CFR 180.1001, and/or are GRAS or are otherwise approved for direct food use under 21 CFR part 184 section 184.1 subpart B pp. 446-543. Therefore, all of the inert ingredients in FruitGuard-V/NutGuard-V are already tolerance exempted and/or are cleared for indirect food contact as a result of their incidental entry into commodities.

I. International Tolerances

There are no Codex maximum residue levels established for residues of IMMGV. IMMGV containing products are presently not registered for pest control outside of the United States.

[FR Doc. 00–17072 Filed 7–6–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 3, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0025.

Title: Application for Restricted Radiotelephone Operator Permit—Limited Use.

Form No.: FCC Form 755.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 1,000.

Estimated Time Per Response: .33 hours or 20 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 330 hours.

Total Annual Cost: $45,000.

Needs and Uses: Applicants must possess certain qualifications in order to qualify for a radio operator license. The data submitted on FCC Form 755 aids the Commission in determining whether the applicant possess these qualifications. The data will be used to identify the individuals to whom the license is issued and to confirm that the individuals possess the required qualifications for the license. If the data were not collected, it would be impossible to identify the person to whom the license was issued.

This form is being revised to include the FCC Registration Number (FRN) which is required from anyone doing business with the Commission.

OMB Control No.: 3060–0481.

Title: Application for Renewal of Private Radio Station License.

Form No.: FCC Form 452R.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 2,700.

Estimated Time Per Response: .166 hours or 10 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 448 hours.

Total Annual Cost: $338,000.

Needs and Uses: In accordance with FCC Rules, Aviation Ground and Marine Coast Radio Station licensees are required to apply for renewal of their radio station authorization every five years. The FCC Form 452R will be used for that purpose. FCC staff will use the data to determine eligibility for a renewed radio station authorization, and to issue a radio station license. The data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolution purposes.

The form is being revised to collect the FCC Registration Number (FRN) which is required from anyone doing business with the Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17250 Filed 7–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 30, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0611

Title: Section 74.783, Station Identification

Form Number: N/A

Type of Review: Extension of a currently approved collection

Respondents: Business or other for-profit entities; State, local, or tribal government

Number of Respondents: 200

Estimate Time Per Response: 0.166 hours (10 mins.)

Frequency of Response: On occasion reporting requirements; Third party disclosure

Total Annual Burden: 33 hours

Total Annual Costs: None

Needs and Uses: The FCC eliminated the call sign requirements from this information collection for which it now has approval under OMD Control No. 3060–0188. Under this revised collection, television translator stations, whose station identification is made by the television station whose signals are being rebroadcast by the translator, must furnish current information on the translator's call letters and location, and the name, address, and telephone number of the licensee to be contacted in the event the translator malfunctions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17251 Filed 7–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1389]

800 MHz Specialized Mobile Radio (SMR) Service in the General Category Band (851–854 MHz) and Upper Band (861–865 MHz) Pre-Auction Seminar, Friday, July 7, 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a free pre-auction seminar scheduled for Friday, July 7, 2000. This seminar will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC remote bidding software.

DATES: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Sanderson of the Auctions Operations Branch at (717) 338–2888, or for Press Inquiries, Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released June 23, 2000. The complete text of the public notice, including the registration form, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov*.

1. The free seminar for the 800 MHz Specialized Mobile Radio (SMR) Service (Auction No. 34) is scheduled for Friday, July 7, 2000. Interested parties must pre-register using the registration form or by calling the FCC's Auctions Hotline at (888)–225–5322, and select option #2, or (717) 338–2888.

2. The seminar will be held at the Federal Communications Commission, 445 12th Street SW, Washington, DC. Registration will begin at 8:30 a.m. and the program will end by 4:00 p.m.

Potential bidders in the auction are strongly encouraged to attend. This seminar provides an opportunity for hands-on demonstrations of the FCC filing and bidding software and access to the FCC staff responsible for the 700 MHz band licensing and auction conduct procedures. It is strongly advised that all potential bidders review the public notices released for this auction prior to the seminar.

3. The following is a timeline of the important events prior to the auction start date:

Deadline to register for Pre-Auction Seminar: July 6, 2000
Seminar Date: July 7, 2000
Short Form Application (FCC Form 175): July 17, 2000, 6:00 p.m. ET
Upfront Payments (via wire transfer): July 31, 2000, 6:00 p.m. ET
Orders for Remote Bidding Software: August 1, 2000, 5:30 p.m. ET
Mock Auction: August 14, 2000
Auction Start Date: August 16, 2000

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Division.

[FR Doc. 00–17252 Filed 7–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2422]

Petition for Reconsideration of Action in Rulemaking Proceeding

June 30, 2000.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must

be filed by July 24, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Sections (Littlefield, Arizona) (MM Docket No. 99–282, RM–9710).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17253 Filed 7–6–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, July 12, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 5, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–17290 Filed 7–5–00; 10:17 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of The Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period perior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans. No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—05/23/2000			
20003000	Sulzer AG	A. Ahlstrom Corporation	Ahlstorm Pumps Corporation
20003015	Vitesee Semiconductor Corporation	SiTera Incorporated	SiTera Incorporated
20003031	Leap Wireless International, Inc	J. Donald G. Garvey	Radiofone PCS, L.L.C.
20003032	Leap Wireless International, Inc	Lawrence D. Garvey	Radiofone PCS, L.L.C.
20003037	Alcatel	Sonoma System, Inc	Sonoma System, Inc.
20003042	AT&T Corp	Holding Company	Holding Company
20003043	Holding Company	AT&T Corp	AT&T Wireless PCS Inc.
20003044	Tritel, Inc	TeleCorp PCS, Inc	TeleCorp PCS, Inc.
20003045	TeleCorp PCS, Inc	Tritel, Inc	Tritel, Inc.
20003074	Tribune Company	Classified Ventures, Inc	Classified Ventures, Inc.
20003076	Tribune Company	CareerPath.com, Inc	CareerPath.com, Inc.
20003079	Wesley Guylay Capital Management, L.P.	Monaco Coach Corporation	Monaco Coach Corporation
20003085	TCV IV, L.P	eLoyalty Corporation	eLoyalty Corporation
20003088	Tritel, Inc	Digital pcs, LLC	Digital pcs, LLC
20003096	Morrison Knudsen Corporation	Raytheon Company	Raytheon Engineers & Constructors
20003103	FairPoint Communications, Inc	Fremont Telecom Co	Fremont Telecom Co.
20003111	Longwood Industries, Inc	Joel P. Wyler	Eagle-Picher Industries, Inc.
20003112	Marital Trust #2	Automotive Systems International, Inc	Automotive Systems International, Inc.
20003115	InSight Health Services Corp	US Diagnostic Inc	Wilkes-Barre Imaging
20003136	Alcatel	Ironbridge Networks Incoporated	Ironbridge Networks Incoporated
20003146	Time Warner, Inc	Electronic Newstand, Inc	Electronic Newstand, Inc.
20003147	BICC USA, Inc	Stout Group Limited	Stout Group Limited
20003150	Chase Manhattan Corporation (The)	Formus Communications, Inc	Formus Communications, Inc.
20003198	Cecilia Ronchetti	Uponor Oyj	Asko Cylinda AB
TRANSACTIONS GRANTED EARLY TERMINATION—05/24/2000			
20003149	Caisse de Depot et placement du Quebec.	Formus Communications, Inc	Formus Communications, Inc.
20003153	Ixchange Technology Holdings	Masterpack International Holdings, Inc	Masterpack International Holdings, Inc.
20003163	Reuters Group PLC	Primark Corporation	Yankee Group Research, Inc.
20003189	Stephen A. Wynn	Starwood Hotels & Resorts Worldwide, Inc.	Starwood Hotels & Resorts Worldwide, Inc.

Trans. No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—05/25/2000			
20003007	Bruckman, Rosser, Sherill & Co., L.P.	M. Francois Pinault	El Torito Franchising Company, El Torito Restaurants, Inc.
20003033	GN Great Nordic AS	Beltone Electronics, Inc.	Beltone Electronics, Inc.
20003071	University Hospitals Health System, Inc.	Primary Health Systems, Inc., Debtor in Possession.	PHS Cleveland, Inc. Primary Health Systems of Ohio, L.P., PHS Mt. Sinai, Inc.,
20003122	Greylock Equity Limited Partnership	Acta Technology, Inc.	Acta Technology, Inc.
20003124	Paine Webber Group, Inc.	J.C. Bradford & Co., LLC	J.C. Bradford & Co., LLC
20003131	Texaco Inc.	Energy Conversion Devices, Inc.	Energy Conversion Devices, Inc.
20003132	Tyco International Ltd.	Lloyd M. Gordon and Diane R. Gordon	Amcel Corp.
20003134	Aktiebolaget Electrolux	E–LUX Holdings, L.L.C.	Electrolux, LLC
20003137	Florida Rock Industries, Inc.	Southern Concrete Construction Co., Inc..	Southern Concrete Construction Co., Inc.
20003139	Louisiana Pacific Corporation	David V. Holli	Sawyer Lumber Company, LLC
20003144	MacDermid, Incorporated	VirtualFund.com, Inc.	VirtualFund.com, Inc.
20003165	Health Management Associated, Inc.	Catholic Health Initiatives	BR Investments, Inc. Neumann Services, Inc. St. Joseph Regional Health Network
20003188	AT&T Corp.	Priceline WebHouse Club, Inc.	Priceline WebHouse Club, Inc.
20003192	Peregrine Systems, Inc.	Harbinger Corporation	Harbinger Corporation
20003195	Brambles Industries Limited	National Recovery Systems, Inc	National Recovery Systems, Inc.
20003207	SDL, Inc.	Photonic Integration Research, Inc.	Photonic Integration Research, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/26/2000			
20003034	ATX Telecommunications Services, Inc.	Voyager.net, Inc.	Voyager.net,Inc.
20003036	RCBA Strategic Partners, L.P.	CB Richard Ellis Services, Inc.	CB Richard Ellis Services, Inc.
20003068	Marsh & Mclennan Companies, Inc.	David A. Nadler	Delta Consulting Group, Inc.
20003078	Swiss Reinsurance Company	Industrial Life Insurance Company	North West Life Assurance Company of America
20003099	GTCR Fund VI, L.P.	Genesis Eldercare Corporation	Genesis Eldercare Corporation
20003108	Isle of Capri Casinos, Inc.	Hilton Hotels Corporation	Flamingo Hilton Riverboat Casino, L.P.
20003130	Michael A. Karp	CoreComm Limited	CoreComm Limited
20003148	Alberta Energy Company Ltd.	McMurry Energy Company	McMurry Oil Company
20003162	Rosemore, Inc.	Crown Central Petroleum Corporation	Crown Central Petroleum Corporation
20003164	Charles B. Wang	Howard P. Milstein	New York Islanders Hockey Club, L.P.
20003166	CRH plc	Hanson plc	Acme Materials and Construction Company
20003171	David H. Murdock	Dole Food Company, Inc.	Dole Food Company, Inc.
20003173	Sunglass Hut International, Inc.	Watch World Licensing Corp.	Watch World Licensing Corp.
20003177	Yaskawa Electric Corporation	David Benson	Huntair Inc.
20003178	M–L Holdings, Inc.	Wayne C. Oldenburg	Contractors Machinery Company, Inc.
20003187	Spartan Stores, Inc.	Seaway Food Town, Inc.	Seaway Food Town, Inc.
20003191	Adventist Health System Sunbelt Healthcare Corporation.	Puerto Rican Union Conference	Bella Vista Yauco, Inc.
20003196	Coloniale S.r.1.	Delicious Brands, Inc.	Delicious Brands, Inc.
20003197	Hewlett-Packard Company	Saliente 3 Communications, Inc.	Saliente 3 Communications, Inc.
20003201	HeadHunter.NET	Omnicom Group, Inc.	Career Mosaic, Inc.
20003202	Omnicom Group, Inc.	HeadHunter.NET	HeadHunter.NET
20003206	MDU Resources Group, Inc.	Kinder Morgan, Inc.	K N Gas Gathering, Inc.
20003208	TeleCorp PCS, Inc.	Kailas J. Rao	Indus, Inc.
20003209	ChipPAC, Inc.	Intersil Holding Corporation	Intersil Technology Sdn. Bhd.
20003212	Leeds Equity Partners III, L.P.	James R. Leininger, M.D.	FOCUS Direct, Inc.
20003219	SuperGen, Inc.	AVI BioPharma, Inc.	AVI BioPharma, Inc.
20003220	Tyco International, Ltd.	Hub Fabricating Company	Hub Fabricating Company
20003221	E.I. du Pont de Nemours & Company	Michael Jaharis	Kos Pharmaceuticals, Inc.
20003246	First Union Corporation	Founders Financial Group, L.P.	Forum Capital Markets, L.L.C.
TRANSACTIONS GRANTED EARLY TERMINATION—05/30/2000			
20003030	Internet Capital Group, Inc.	Purchasing Systems, Inc.	Purchasing Systems, Inc.
20003223	Dynegy Inc.	Canton Fitzgerald, L.P.	eSpeed, Inc.
20003228	Zany Brainy, Inc.	Noodle Kidoodle, Inc.	Noodle Kidoodle, Inc.
20003230	Summit Capital II, L.P.	Rentokil Initial plc	BET Personnel Services, Inc.
20003231	UBS Capital Americas II, LLC	Netrail, Inc.	Netrail, Inc.
20003235	Cletes O. Beshears	Allen A. Meyer	Milk Products Delaware LLC, Milk Products Operating Co., LLC
20003242	Entrust Technologies Inc.	EnCommerce, Inc.	EnCommerce, Inc.
20003244	Macroni plc	Thrucomm, Inc.	Thrucomm, Inc.
20003245	Jaco Electronics, Inc.	Brendon J. Perry	Interface Electronics Corporation
20003253	General Electric Company	Newco	Newco
20003256	The Allstate Corporation	Victor Automotive Products, Inc.	Victor Automotive Products, Inc.

Trans. No.	Acquiring	Acquired	Entities
20003263	CRH plc	Dolomite Products Company, Inc.	Dolomite Products Company, Inc.
20003264	MDU Resources Group, Inc.	Meredith Reiter	Empire Sandi & Gravel Co., Inc.
20003265	Svenska Cellulosa Aktiebolaget SCA (publ).	Johnson & Johnson	McNeil-PPC, Inc.
20003289	Deutsche Bank AG	National Discount Brokers Group, Inc.	National Discount Brokers Group, Inc.
20003301	Capital Z Financial Services Fund II, L.P.	News Alert Investors LLC	NewsAlert, Inc.
20003306	The Prudential Insurance Company of America.	The WMF Group, Ltd.	The WMF Group, Ltd.
TRANSACTIONS GRANTED EARLY TERMINATION—05/31/2000			
20003117	Axcan Pharma, Inc.	QLT Photo Therapeutics Inc.	QLT Photo Therapeutics Inc.
20003129	Warburg, Pincus Equity Partners, L.P.	QuadraMed Corporation	ChartOne, Inc.
20003151	Diehl Stiflung & Co.	Miller Company (The)	Miller Company (The)
20003152	CMGI Corporation	Alibris	Alibris
20003179	The Williams Companies, Inc.	Cantor Fitzgerald, L.P.	eSpeed, Inc.
20003180	AT&T Corp.	Telephone and Data Systems, Inc. Voting.	USCOC of Hawaii 3, Inc.
20003226	Landmark Communications, Inc.	United News & Media plc	National Titles, Inc. UAP Delaware, Inc. UAPnet United Parenting Publications, Inc.
20003229	American Tower Corporation	General Telecom, Inc.	General Telecom, Inc.
20003236	Dean Food Company	Pro-Fac Cooperative, Inc.	Agrilink Foods Inc.
20003252	Patterson Energy, Inc.	Roy T. Oliver, Jr.	High Valley Drilling, Inc.
20003257	General Motors Corporation	Universal Assurors, Inc.	Universal Warranty Corporation
20003262	Affiliated Computer Services, Inc.	The Intellisource Group, Inc.	The Intellisource Group, Inc.
20003267	Barnes & Noble, Inc.	Funco, Inc.	Funco, Inc.
20003270	Forstmann Little & Co. Equity Partnership-V, L.P.	Baptist Hospitals and Health Systems, Inc..	Medical Environments, Inc.
20003272	Jack Henry & Associates, Inc.	Symitar Systems, Inc.	Symitar Systems, Inc.
20003273	Cox Enterprises, Inc.	Peter Steinlauf	Edmunds Holding Company
20003277	Oryx Capital International, Ltd.	J. Herbert Ogden, Jr.	Mold-Ex, LLC
20003278	VIAG AG	Sapa AB	Eurofoil Belgium S.A., Eurofoil Luxembourg S.A. Vetuna AB
20003279	The SKM Equity Fund II, L.P.	Michael A. and Nancy J. Friend	UPT Plastics, Inc., and Owens Packaging, Inc.
20003280	Sonepar, S.A.	David Rosenstein	Brook Electrical Supply Co.
20003281	Banco Santander Central Hispano, S.A.	Patagon.com International, Inc.	Patagon.com International, Inc.
20003286	Summit Ventures V, L.P.	Antonio Salerno	Conxion Corporation
20003287	ReliaStar Financial Corp.	Lexington Global Asset Managers, Inc.	Lexington Global Asset Managers, Inc.
20003290	Cerner Corporation	Citation Computer Systems, Inc.	Citation Computer Systems, Inc.
20003304	Omnicom Group Inc.	Jason Moskowitz	U.S. Marketing Promotions Agency, Inc.
20003305	Omnicom Group Inc.	Michael Napoliello	U.S. Marketing Promotions Agency, Inc.
20003330	Enron Corp.	Enron Corp.	Enron Energy Services, LLC
TRANSACTIONS GRANTED EARLY TERMINATION—06/01/2000			
20003174	TBC Corporation, a Delaware corporation.	TKI Holdings, Inc., a Delaware corporation.	TKI Holdings, Inc., a Delaware corporation
20003294	SCOR U.S. Corporation	Partner Re Ltd.	Partner Re Life Insurance Company
20003296	Applied Digital Solutions, Inc.	Destron Fearing Corporation	Destron Fearing Corporation
20003297	The Titan Corporation	Fredrick S. Yeatts	Sencom Corp.
20003298	Pearson plc	The Family Education Network, Inc.	The FamilyEducation Network, Inc.
20003313	Stichting Pensioenfonds voor de Gezondheid Geestelijke.	Equity Office Properties Trust	Equity Office Properties Trust
TRANSACTIONS GRANTED EARLY TERMINATION—06/02/2000			
20003176	O. Gene Bicknell	Tricon Global Restaurants, Inc.	Tricon Global Restaurants, Inc.
20003363	Oger Pensat Holdings, Ltd.	Telscape International, Inc.	Telscape International, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17225 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—06/05/2000			
20003114	News Corporation Limited (The)	OmniSky Corporation	OmniSky Corporation
20003121	Miami Computer Supply Corporation	Thomas S. Roberts	Midwest Visual Equipment Co., Inc.
20003140	Ted H. McCourtney	Michael Karp	ATX Telecommunications Services, Inc.
20003141	George S. Blumenthal	Michael Karp	ATX Telecommunications Services, Inc.
20003142	J. Barclay Knapp	Michael Karp	ATX Telecommunications Services, Inc.
20003143	Oryx Capital International, Ltd.	Edward C. Lynch and Virginealee Lynch	Pacific Foods, Inc.
20003167	Takata Corporation	Petri Aktiengesellschaft	Petri Aktiengesellschaft
20003190	Horizon Telcom, Inc.	Bright Personal Communications Services, LLC.	Bright Personal Communications Services, LLC
20003249	JD Heiskell & Co.	Tate & Lyle PLC	PM Ag Products Incorporated
20003260	John E. McGrath	Tricon Global Restaurants, Inc.	KFC National Management Company
20003308	Del Mintz	Michael Karp	ATX Telecommunications Services, Inc.
20003310	General Electric Company	Milton M. Smith	TPI Aviation Holdings, Inc.
20003335	Omnicom Group Inc.	MB Techologies Limited	Live Technology Holdings, Inc.
20003336	Omnicom Group Inc.	Wayne Reuvers	Live Technology Holdings, Inc.
20003358	Wayne Jones	Theodore C. Hohman	Progressive Industries, Inc.
20003359	Wayne Jones	James J. Zawacki	Progressive Industries, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/06/2000			
20003276	Sumner M. Redstone	Peter J. Callahan	Palm Beach Radio Broadcasting, Inc.
20003299	President and Fellows of Harvard College.	Merchant's, Inc.	Merchant's, Inc.
20003307	Clarent Corporation	ACT Networks, Inc.	ACT Networks, Inc.
20003309	General Electric Company	H. Porter Burns	TPI Aviation Holdings, Inc.
20003315	Jon Munger	CKE Restaruants, Inc.	Hardee's Food Systems, Inc.
20003316	The Garfield Weston Charitable Foundation.	Lonza Group Limited	Lonnza, Inc.
20003320	Clayton, Dubilier & Rice Fund VI Limited Partnership.	Craig O. McCaw	ICO-Teledesic Global Limited
20003331	Berkshire Hathaway Inc.	U.S. Investment Corporation	U.S. Investment Corporation
20003334	BP Amoco p.l.c.	Motiva Enterprises LLC	First Coast Energy, L.L.P.
20003337	Photobition Group plc	Mark Shriro	Shriro Universal Washington Inc.
20003338	B III Capital Partners, L.P.	Samuels Jewelers, Inc.	Samuels Jewelers, Inc.
20003347	Harsco Corporation	John Mowlem & Company PLC	SGB Group plc
20003351	Warburg, Pincus Equity Partners, L.P.	Transkaryotic Therapies, Inc.	Transkaryotic Therapies, Inc.
20003355	Network Commerce Inc.	Joseph A. Liemandt	IveBeenGood.com, Inc.
20003367	Cardinal Health, Inc.	Rexam PLC	Rexam Cartons Inc.
20003373	Stephens Group, Inc.	StaffMark, Inc.	StaffMark, Inc.
20003377	Vestar Capital Partners IV, L.P.	GS Capital Partners II, L.P.	MCG Credit Corporation
20003378	Quantum Industrial Holdings Ltd.	GS Capital Partners II, L.P.	MCG Credit Corporation
20003381	SLM Holding Corporation	Thomas L. Conland Education Foundation.	Student Loan Funding Resources, Inc.
20003389	Gateway, Inc.	IXL Enterprises, Inc.	Consumer Financial Network
20003395	Ford Motor Company	Bayerische Motoren Werke Aktiengesellschaft AG.	Land Rover Group USA, Inc.; Land Rover Group Limited
20003397	Compagnie Luxembourgeoise pour L'Audiovisuel et la Finance.	Pearson plc	Pearson Television Holdings, Inc. Pearson Television North America, Inc.
20003410	GTCR Fund VII, L.P.	Coinmach Laundry Corporation	Coinmach Laundry Corporation
20003412	Reuters Group PLC	Pedestal Inc.	Pedestal Inc.
20003413	The LCM Irrevocable Trust	Thomas L. Gegax	Team Tires Plus, Ltd.

Trans No.	Acquiring	Acquired	Entities
20003414	Grupo IMSA, S.A. de C.V.	The Broken Hill Proprietary Co., Ltd. (an Australian corp.).	BHP Coated Steel corporation BHP Steel Building Products USA Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/07/2000			
20003113	Stephan Adams	Robert H. Willard	Horizon Outdoor Advertising, Inc.
20003393	MBNA Corporation	Old National Bancorp	Old National Bank
TRANSACTIONS GRANTED EARLY TERMINATION—06/08/2000			
20003326	BP Amoco p.l.c.	GreenMountain.com Company	GreenMountain.com Company
20003327	Enron Corp.	MG plc	MG plc
20003350	OptiCare Eye Health Systems, Inc.	Vision Twenty-One, Inc.	Vision Twenty-One, Inc.
20003368	David H. Murdock	Castle & Cooke, Inc.	Castle & Cooke, Inc.
20003370	Lynda L. Cameron	David A. New, Sr.	American Public Holdings, Inc.
20003375	Radio One, Inc	Sumner M. Redstone	Infinity Broadcasting Corporation of Dallas
20003376	Dan River Inc.	Westdeutsche Landesbank Girozentrale	WesTek Inc.
20003380	The BOC Group plc	Joray Corporation	Joray Corporation
20003419	BBA Group PLC	Volco Filtration Holding, Inc.	Snow Filtration Company, LLC
TRANSACTIONS GRANTED EARLY TERMINATION—06/09/2000			
20002914	Dexia S.A.	White Mountains Insurance Group, Ltd.	White Mountain Holdings, Inc.
20003224	Cox Enterprises, Inc.	United News&Media plc	National Titles, Inc. UAP Delaware, Inc., UAPnet United Parenting Publications, Inc.
20003233	Victor T. DiVello	Allied Waste Industries, Inc.	Allied Waste Industries, Inc.
20003325	Sumner M. Redstone	Bernard Waterman	Waterman Broadcasting Corporation of Texas
20003332	Fariborz Maseeh	Corning Incorporated	Corning Incorporated
20003333	Corning Incorporated	Fariborz Maseeh	IntelliSense Corporation
20003371	William M. Cameron	David A. New, Sr.	American Public Holdings, Inc.
20003394	CRH plc	Ashland Inc.	APAC, Inc. APAC-Alabama, Inc. APAC-Arkansas, Inc.
20003396	W.R. Grace & Co.	E.I. du Pont de Nemours & Company	E.I. du Pont de Nemours & Company
20003408	Charter Oak Partners	Bank of America Corporation	Plastic Engineered Components, Inc.
20003409	Naspers Limited	Spyglass, Inc.	Spyglass, Inc.
20003418	Vignette Corporation	OnDisplay, Inc.	OnDisplay, Inc.
003449	SCM Microsystems, Inc.	Mr. Kazuo Kanayama	Microtech International, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION–06/12/2000			
20003248	Raul Alarcon, Jr.	The Marcos and Sonya Rodriguez Family Trust.	Rodriguez Communications, Inc.
20003324	Code Hennessy & Simmons, LLC	Abington Settlement	Precise Holding Corporation
20003387	Koninklijke Philips Electronics N.V.	International Business Machines Corporation.	International Business Machines Corporation
20003399	The Chase Manhattan Corporation	Beacon Group, LLC	Beacon Group, LLC
20003423	Dura Pharmaceuticals, Inc.	Spiros Development Corporation II, Inc.	Spiros Development Corporation II, Inc.
20003424	Enesco Group, Inc.	Jonathan D. Butcher	Precious Moments by Samuel J. Butcher, Inc. Precious Moments Company Precious Moments, Incorporated
20003427	Centennial Communications Corp.	Marshall W. Pagon	MCT Cablevision, Limited Partnership Pegasus Cable Television of San German, Inc.
20003431	E. Stanley Kroenke	AT&T Corp. Pegasus Media & Communications, Inc.	Colorado Avalanche, LLC The Denver Nuggets Limited Partnership
20003432	GN Great Nordic AS	JABRA Corporation	JABRA Corporation
20003437	America Online, Inc.	Yodlee.com, Inc.	Yodlee.com, Inc.
20003439	First National of Nebraska, Inc.	InfiCorp Holdings, Inc.	InfiCorp Holdings, Inc.
20003441	Haftpflichtverband Der Deutchen Industrie V.a.G..	Acceptance Insurance Companies Inc.	Redland Insurance Company
20003442	GlobeSpan, Inc.	iCompression, Inc.	iCompression, Inc.
20003444	Deutsche Bank AG	Resun Leasing, Inc.	Resun Leasing, Inc.
20003446	The Peninsular and Oriental Steam Navigation Company.	Farrell Lines Incorporated	Farrell Lines Incorporated
20003447	Royal Nedlloyd N.V.	Farrell Lines Incorporated	Farrell Lines Incorporated
20003448	CSR Limited	Grupo Mexico, S.A. de C.V.	American Limestone Company, Inc.
20003451	InterNAP Network Services Corporation	CO Space, Inc.	CO Space, Inc.
20003454	The Interpublic Group of Companies, Inc..	Gordon Gund	Nationwide Advertising Services, LLC

Trans No.	Acquiring	Acquired	Entities
20003455	Societe Cooperative Agricole Limagrain	KWS SAAT AG	Great Lakes Hybrids, Inc.
20003467	HealthCare Ventures V, L.P.	OraSure Technologies, Inc.	OraSure Technologies, Inc.
20003476	Providence Equity Partners III, LP	SoftAware, Inc.	SoftAware, Inc.
20003484	Royal Carribean Cruises Ltd.	Newco	Newco
20003485	First Choice Holidays PLC	Newco	Newco
TRANSACTIONS GRANTED EARLY TERMINATION—06/13/2000			
20003422	Edwards Lifesciences Corporation	Valentine Acquisition Corp.	Valentine Acquisition Corp.
20003458	SBC Communications Inc.	E.N.M.R. Telephone Cooperative	Plateau Telecommunications, Incorporated
20003488	QLogic Corporation	Ancor Communications, Incorporated	Ancor Communications, Incorporated
20003489	Franciscan Missionaries of Our Lady Health System, Inc.	LifePoint Hospitals, Inc.	Riverview Medical Center, LLC
20003490	The Hub Group Limited	Cornelius J. McCarthy	C.J. McCarthy Business Trust
20003491	Exchange Application, Inc.	Customer Analytics Holdings, Inc.	Customer Analytics Holdings, Inc.
20003492	Oak Hill Capital Partners, L.P.	Align Technology, Inc.	Align Technology, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/14/2000			
20003385	John Rutledge Partners II, L.P.	Summit Technology, Inc.	Lens Express, Inc.
20003411	Republic Services, Inc.	Larry J. Schuchman	The recycling Group, Inc., LAJCG, Inc.
20003430	Nippon Telegraph and Telephone Corporation.	Verio, Inc	Verio, Inc.
20003469	Safeguard Scientifics, Inc	OPUS360 Corporation	OPUS360 Corporation
20003471	The Walt Disney Company	Marcos A. Rodriquez	Hibernia Communications, LLC
20003493	Highland 2000, L.P	Adelphia Communication Corporation	Adelphia Communication Corporation
20003495	Rodney L. Hale	Finance Enterprises, Ltd	Grand Pacific Life Insurance, Ltd.
20003498	Koninklijke Phillips Electronics N.V	MedQuist Inc	MedQuist Inc.
20003499	Marconi plc	Miguel G. Winder	Systems Management Specialists, Inc.
20003503	Ledcor Inc	Praha Trust	Meet Me Room, LLC TRES Management, LLC
20003510	Associated Food Stores, Inc	Sibbley Company, Ltd	Dan's Foods, Inc.
20003524	GMP Companies, Inc	Motorola, Inc	Motorola, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/15/2000			
20003237	Carl J. Martignetti	Burton J. Miller and Nesha R. Miller (husband and wife).	Classic Wine Imports, Inc.
20003238	Carmine A. Martignetti	Burton J. Miller and Nesha R. Miller (husband and wife).	Classic Wine Imports, Inc.
20003239	Carl J. Martignetti	Robert W. Hoffman	Classic Wine Imports, Inc.
20003240	Carmine A. Martignetti	Robert Hoffman	Classic Wine Imports, Inc.
20003271	CRH plc	Manitou Construction Company, Inc.	Manitou Construction Company, Inc.
20003415	King Pharaceuticals, Inc	American Home Products Corporation	American Home Products Corporation
20003416	American Home Products Corporation	King Pharmaceuticals, Inc	King Pharmaceuticals, Inc.
20003504	Carlyle Partners III, L.P	Align Technology, Inc	Align Technology, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/16/2000			
20001874	Franklin P. Perdue	Cargill, Incorporated	Cargill, Incorporated
20003440	The Interpublic Group of Companies, Inc.	Capita Technologies, Inc	Capita Technologies, Inc.
20003512	Novartis Pharma AG	Vertex Pharmaceuticals Incorporated	Vertex Pharmaceuticals Incorporated
20003513	Jerry C. Moyes	Simon Transportation Services Inc	Simon Transportation Services Inc.
20003523	Linc.net, Inc	Felix Petrillo	Felix Communications Corp., Felix General Contracting Inc., Felix Equities of Fla., Inc. Felix Equities, Inc., Felix Industries, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17226 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992 3282]

BUY.COM Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Michael Dershowitz, FTC/S–4002, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3153 or 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat., 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 29, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principle office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from BUY.COM Inc. ("respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent advertises, sells, and distributes books, music and video recordings, personal electronic devices, computer software, personal computers and other products through its Internet Website, www.buy.com. This matter concerns allegedly false and deceptive advertising claims regarding the sale of a $269 Compaq Presario 5304 computer system based upon a $400 rebate that required consumers to enter into a three year contract for Internet service.

The Commission's proposed complaint alleges that respondent falsely claimed that the total cost of a Compaq Presario 5304 computer system was $269. In fact, in order to obtain the computer system for $269, consumers were required to subscribe to CompuServe 2000 Internet service for three years at an additional cost of $21.95 per month or a full payment of $790.20. The Complaint also alleges that in representing that the total cost of the computer system was $269, respondent failed to disclose or failed to disclose adequately: (a) That consumers were required to subscribe to CompuServe 2000 Internet service for three years at an additional cost of $21.95 per month or a total cost of $790.20; (b) the amounts of the rebates, $200 and $400, and the total price of the computer system before rebates, $869; (c) that consumers who cancel the Internet service within three years must repay all or a portion of the $400 rebate and pay a $50 cancellation fee; and (d) that CompuServe does not provide local access telephone numbers for its Internet service in all areas, and therefore, that many consumers must either pay long distance telephone charges or surcharges of $6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or internet access service.

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased. Furthermore, if the advertised product or service is sold together with a service, respondent is also required to disclose the length of time that consumers are required to purchase that service. Part II also contains a proviso that permits respondent to use the terms "rebate" or "discount" without making the additional cost disclosures, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close proximity to the after-rebate price or cost representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts (*i.e.*, the before-rebate price). Part III also contains a proviso that states that if there is only one rebate involved in the offer, and no other reductions in the total price of the product or service, respondent need only disclose the amount of that one rebate, and need not also disclose the before-rebate price.

Part IV of the proposed order prohibits the respondent from making any representation about the price or cost of any Internet access service it offers for sale, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not

they would have to incur such costs and the amounts of any such costs. These disclosures must be clear and conspicuous.

Part IV of the proposed order also contains a proviso, that together with the definition of "through the use of a hyperlink," provides a way in which the disclosures required by Part IV can be made on the Internet with hyperlinks. These disclosures may be made through the use of hyperlinks, as long as each hyperlink label contains sufficient information about the nature and importance of the required disclosure, is, itself, clear and conspicuous, is on the same Web page and proximate to the Internet service price or cost representation, and leads directly to the full disclosure. According to the proviso, if a hyperlink is used to disclose information about Internet cancellation terms, it must be labeled as follows: "Early Cancellation of the Internet Service Will Result in Substantial Penalties. Click Here." Similarly, if a hyperlink is used to disclose information about Internet access costs, it must be labeled: "You May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here."

Part V of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in complying with the proposed order.

Part VI of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part VII of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VIII of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part IX of the proposed order is a "sunset" provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17222 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992 3313]

Office Depot, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Michael Dershowitz, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3153 or 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 29, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Office Depot, Inc. ("respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent advertises, sells, and distributes office products, including personal computers. This matter concerns allegedly false and deceptive advertising claims regarding the sale of a $1,049.97 Compaq Presario 5716 computer system based upon a $400 rebate that required consumers to enter into a three year contract for Internet service and the sale of a "free" emachines computer based upon a similar $400 rebate.

The Commission's proposed complaint alleges that respondent falsely claimed that the total cost of a Compaq Presario 5716 computer system was $1,049.97. In fact, in order to obtain the system for $1,049.97, consumers were required to subscribe to CompuServe Internet Service for three years at an additional cost of $21.95 per month or a full payment of $790.20. The complaint also alleges that in representing that the total cost of the computer system was $1,049.97, respondent failed to disclose or failed to disclose adequately that: (a) Consumers were required to subscribe to CompuServe Internet service for three years at an additional cost of $21.95 per month or a full payment of $790.20; (b) consumers who cancel the Internet service within three years must repay the entire $400 rebate and pay a $50 cancellation fee; and (c) CompuServe does not provide local access telephone numbers for its Internet service in all areas, and therefore, that many

consumers must either pay long distance telephone charges or surcharges of $6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

In addition, the complaint alleges that respondent falsely claimed that a "free" *e*machines computer included a monitor at no additional cost. In fact, the monitor cost $139.99 or $199.99, depending on its size. The complaint also alleges that respondent falsely claimed that consumers could obtain the "free" *e*machines computer at no cost after rebates. In fact, in order to obtain the computer at no cost, consumers were required to subscribe to Prodigy Internet Service for three years at an additional cost of $19.95 per month or a full payment of $718.20. The complaint also alleges that in representing that consumers could obtain the "free" *e*machines computer at no cost after rebates respondent failed to disclose or failed to disclose adequately that: (a) Consumers were required to subscribe to Prodigy Internet service for three years at an additional cost of $19.95 per month or a total cost of $718.20; (b) consumers who cancel the Internet service within three years must repay the entire $400 rebate and pay a $50 cancellation fee; and (c) Prodigy does not provide local access telephone numbers for its Internet service in all areas, and therefore, that many consumers must either pay long distance telephone charges or surcharges of $6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or Internet access service.

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased. Furthermore, if the advertised product or service is sold together with a service, respondent is also required to disclose the length of time that consumers are required to purchase that service. Part II also contains a proviso that permits respondent to use the terms "rebate" or "discount" without making the additional cost disclosers, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making any representation about the price or cost of any Internet access service it offers for sale, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not they would have to incur such costs and the amounts of any such costs. These disclosures must be clear and conspicuous.

Part IV of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in disseminating the representations.

Part V of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part VI of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VII of the proposed order is a "sunset" provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by the either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17223 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File Nos. 002–3199; 002–3200; 002–3201; 002–3202; 002–3203; 002–3204; and 002–3205]

Swisher International, Inc.; Consolidated Cigar Corporation; Swedish Match North America, Inc.; General Cigar Holdings, Inc.; Lane Limited; Havatampa, Inc.; and John Middleton, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in these seven matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before July 26, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler or Mamie Kresses, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–3090 or 326–2070.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreements package can be obtained from the FTC Home Page (for June 26, 2000), on the World Wide Web, at "http://

www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements containing consent orders from the following cigar manufacturers, importers or marketers: Swisher International, Inc. (Matter No. 002–3199); Consolidated Cigar Corporation (Matter No. 002–3200); Havatampa, Inc. (Matter No. 002–3204); General Cigar Holdings, Inc. (Matter No. 002–3202); John Middleton, Inc. (Matter No. 002–3205); Lane Limited (Matter No. 002–3203); and Swedish Match North America, Inc. (Matter No. 002–3201).

The proposed consent orders have been placed on the public record for thirty (30) days for the receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and comments received and will decide whether it should withdraw from the agreements and take appropriate action or make final the agreements' proposed orders.

Background

In July 1999, the Federal Trade Commission provided a Report to Congress, entitled *Cigar Sales and Advertising and Promotional Expenditures for Calendar Years 1996 and 1997* ("Commission Report"). The Commission Report recommended that, given the significant increase in cigar smoking prevalence in recent years and the serious health risks posed by cigar smoking,[1] cigars should be regulated in a manner consistent with the current regulation of cigarettes and smokeless tobacco. See *Federal Cigarette Labeling and Advertising Act*, 15 U.S.C. 1331 *et seq.; Comprehensive Smokeless Tobacco Health Education Act of 1986*, 15 U.S.C. 4401 *et seq.* The Commission Report recommended that Congress either enact legislation to require federal health warnings on cigar labeling and advertising or direct the Commission to use its existing authority, under Section 5 of the Federal Trade Commission Act, to require cigar health warnings.

In November 1999, in the Joint Explanatory Note of the Conferees to H.R. 3421 Appropriations Bill, the Congressional Appropriations Committees responded to the Commission Report by directing the FTC to report back to the Committees on Commission plans to establish "uniform Federal health warning label[s]."[2]

After consideration of the National Cancer Institute's findings in its Cigar Monograph on the serious health risks of regular cigar use, and the failure of cigar advertising and labeling to disclose these health risks, the Commission negotiated consent agreements with the seven largest cigar companies to implement health warnings on cigar labeling and advertising nationwide.[3]

The Proposed Complaints and Orders

The proposed complaints each allege that the failure to disclose that regular cigar smoking can cause serious adverse health effects is both unfair and deceptive in violation of Section 5 of the FTC Act. Part I of the proposed orders requires the respondents to make a clear and conspicuous disclosure of the following warning statements on cigar labels and in advertising:

SURGEON GENERAL WARNING: Cigar Smoking Can Cause Cancers Of The Mouth And Throat, Even If You Do Not Inhale.

SURGEON GENERAL WARNING: Cigar Smoking Can Cause Lung Cancer And Heart Disease.

SURGEON GENERAL WARNING: Cigars Are Not A Safe Alternative To Cigarettes.

SURGEON GENERAL WARNING: Tobacco Use Increases The Risk Of Infertility, Stillbirth, And Low Birth Weight.

SURGEON GENERAL WARNING: Tobacco Smoke Increases The Risk Of Lung Cancer And Heart Disease, Even In Nonsmokers.

Part II of the proposed orders sets out specific format requirements for the warnings, which are designed to ensure that the warnings are visible and readable. Part II also requires that the warning statements on labeling and advertising be printed in black print on a solid white background, and be capitalized and punctuated as set forth in Part I.

Part III specifies the location and size requirements for the disclosure of the health warnings on cigar labels. The orders require that the warning be displayed on the principal display panel of the package. For the majority of cigar boxes, the orders define the principal display panel to be the larger of the top or front panel of the package, thus ensuring that the warning is in the most noticeable location. The orders make an exception for boxes of premium (hand-rolled) cigars, providing that the warning can appear on the top or front of the box, depending upon which panel is more likely to be seen by consumers.

Part IV sets forth the specific format and size requirements for the disclosure of the health warnings on cigar advertising. The orders provide that the warning shall be in black print on a white background and be centered in a black ruled rectangular box. Part IV specifies how to calculate the size of the warning and where to place the warning in various types of advertising, including periodicals, merchandisers, functional items, catalogues and cigar packages that also function as point-of-sale displays.

Part V specifies how to make the required disclosures in audio and video advertisements, including radio, television, the Internet, tapes and films. The orders require that in interactive media, such as the Internet, the warnings must be displayed in an unavoidable manner on every Web page.

Part VI of the proposed orders addresses requirements for the disclosure of the warnings on utilitarian items. Utilitarian items are treated like other advertising, and the warning statements must appear in a rectangular box form, in a size based upon the item's total advertising display area.

Part VII provides that cooperative advertisements paid for in whole or in part by a respondent must include the warnings, with the exception of very small print advertisements containing only brand name and price information.

Part VIII sets forth the specific requirements for the rotation, display and distribution of the warning statements on cigar packages. For each

[1] See U.S. Department of Health and Human Services, National Cancer Institute, *Smoking and Tobacco Control Monograph No. 9 Cigars: Health Effects and Trends* (1998), NIH publication no. 98–4302 ("Cigar Monograph").

[2] 145 Cong. Rec. H12230–02 (daily ed. Nov. 17, 1999).

[3] Like all FTC consent orders, these orders are for settlement purposes only and do not constitute an admission by the cigar manufacturers of any law violation.

cigar brand, respondents must display each of the five required warning statements randomly in as equal a number of times as possible, and must distribute the packages randomly in all parts of the U.S.A. in which they are marketed.

Part IX provides that, on most types of advertising, the five warning statements shall be rotated in an alternating sequence every three months. Part IX provides for equal simultaneous display of the warning statements on merchandisers, cigar boxes that can function as open package displays and utilitarian items. Parts VIII and IX of the proposed orders also require the companies to submit to the Commission for approval plans for the display of the warnings on cigar packages and advertisements, and to comply with the plans as approved.

Part X of the proposed orders states that the Commission will consider state or local requirements for different health warnings on any cigar labeling or advertising that is required to display the FTC warning to be in conflict with the orders.

Part XI provides a safe harbor in the event the companies have taken reasonable steps to assure compliance; in the event of labels or advertisements that do not comply with the order, the proposed respondents will bear the burden of establishing that reasonable steps were taken to comply with the order. This same safe harbor provision is included in the Commission's smokeless tobacco regulations.

Part XII of the proposed orders states that the warning requirements shall become effective one hundred and eighty (180) days after issuance of the order.

Part XIII provides that in the event the Federal Cigarette Labeling and Advertising Act or the Comprehensive Smokeless Tobacco Health Education Act or the Commission's Smokeless Tobacco Regulations are amended or modified to change the size or format of the warnings for cigarettes or smokeless tobacco, the cigar orders may be reopened to determine whether the size or format of the warnings for cigars should be modified to conform to such changes.

Parts XIV through XVI of the proposed orders contain standard recordkeeping, reporting and compliance requirements.

The proposed orders do not contain a sunset provision due to the importance of the health warnings required therein.

Objectives of the Proposed Orders

The Commission's intent in obtaining the proposed consent orders is to provide a uniform national system of health warnings on cigar labeling and advertising. National health warnings that are clear and conspicuous benefit consumers. Here, the cigar warnings will prevent future deception and unfairness by providing important information with which consumers nationwide can make more informed choices.[4]

Each of the five warnings conveys a simple and specific message about health risks associated with cigar use. the orders' requirements for display of the warnings on packaging and advertising will provide sufficient repetition of each warning statement to contribute to long-term recall of each message, while decreasing the likelihood that any one message will become so familiar and overexposed that its effectiveness will "wear out." Together, the five warnings provide a comprehensive warning scheme that provides necessary and important information to consumers nationwide.

Because the proposed respondents' cigar packaging and advertising is disseminated in the national marketplace, a comprehensive national system of simple and direct warnings will provide the greatest benefits to consumers. Moreover, multiple, and potentially inconsistent, warnings on individual packages or advertisements could neutralize or negate those benefits. Such multiple warnings may be confusing to consumers and undercut the saliency of the warnings required by these consent orders. Further, they are likely to have the unintended effect of making it more difficult for consumers to process the warning messages required here. And, while diminished effectiveness could result when one state mandates additional warnings on packages or advertisements bearing the Commission warnings, the problem will be exacerbated if more than one state imposes requirements applicable to a single package or advertisement.

In light of the important benefits from a national warning system, Part X of the Commission's orders preempts state or local requirements for different health warnings on any cigar labeling or advertising that is required to display the FTC warnings. At the same time, the Commission recognizes the critically important role that states play in consumer protection and tobacco control. The provision does not affect other state or local requirements. For example, required warnings for types of advertising that are not covered by the proposed orders (such as shelf talkers under a certain size), or state or local restrictions on advertising placement or youth access to tobacco products are not affected. It is the Commission's intent that this provision apply only to state requirements for different health warnings by companies who have entered into the FTC consent orders, and only to packages and advertising required to contain the federally-mandated warnings.

The purpose of the analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way the terms therein.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17221 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

[4] Uniform national health warnings likewise benefit national competition. Multiple different warnings can raise costs and regulatory burdens for national marketers such as the proposed respondents.

FEDERAL TRADE COMMISSION

[File No. 992 3206]

Value America, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Michael Dershowitz, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, D.C. 20580 (202) 326–3153 or 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 29, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/format.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Value America, Inc. ("respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent advertises, sells, and distributes personal electronic devices, computer software, personal computers, and other products through its Internet Web site (reached by <www.va.com> or <www.valueamerica.com>), and through toll-free telephone numbers. This matter concerns allegedly false and deceptive advertising claims regarding the sale of various computer systems based upon a $400 rebate that required consumers to enter into a three year contract for Internet service. This matter also concerns alleged violations of the Mail or Telephone Order Merchandise Rule.

The Commission's proposed complaint alleges that respondent falsely claimed that the total cost of a Toshiba Satellite 2100CDS laptop was $899; that the total cost of a Hewlett-Packard Pavilion 4535 Multimedia PC was $449; that the total cost of a Proteva computer system was $1299; that the total cost of an IBM Aptiva E572 Micro Tower computer was $619; and that an *e*machines etower 366C computer was "free." In fact, in order to obtain these computers at the advertised prices, consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for three years at an additional cost of $19.95 to $21.95 per month or, in the case of CompuServe Internet Service, an optional full pre-payment of $790.20.

The complaint also alleges that when respondent represented that the total cost of the computer was, respectively, $899, $449, $1299, $619, or "free," respondent failed to disclose or failed to disclose adequatley: (a) That consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for three years at an additional cost of $19.95 to 21.95 per month, or in the case of CompuServe Internet Service, an optional full pre-payment of $790.20; (b) the amounts of the rebates, and the total price of the computer systems before rebates with respect to the Hewlett-Packard Pavilion 4535 Multimedia PC, and the *e*machines etower 366C computer; (c) that consumers who cancel the Internet service within three years must repay all or a portion of the $400 rebate and, in the case of the CompuServe and Prodigy rebates offers, also pay a cancellation fee of up to $50; (d) that, in the case of the Prodigy rebates, it can take a total of 12 to 17 weeks to receive the $400 rebate; and (e) that CompuServe, Prodigy, and Microsoft do not provide local access telephone numbers for their respective Internet services in all areas, and therefore, that many consumers must either pay long distance telephone charges or, in the case of CompuServe 2000 or Prodigy Internet, $6.00 per hour to access their Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

In addition, the complaint alleges that respondent falsely claimed that the IBM Aptiva E572 Micro Tower computer included a monitor at no additional cost. In fact, consumers must purchase a monitor separately. The complaint also alleges that in numerous instances, respondent failed to ship some or all of the ordered merchandise to the buyer within the time stated in the solicitation, or if no time was stated, within 30 days after receipt of a properly completed order, as required by the Mail Order Rule. The complaint also alleges that when respondent was not able to ship some or all of the ordered merchandise to the buyer, respondent failed to offer to the buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by the Mail Order Rule. The complaint also alleges that when respondent was not able to ship ordered merchandise to the buyer, and having failed to offer the affected buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by the rule, respondent failed to deem the order canceled and to make a prompt refund the buyer, as required by the Mail Order Rule.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or Internet access service or what is included in the price of any such product or service.

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased, along with the length of time consumers are required to purchase such other service. Part II also contains a proviso that permits respondent to use the terms "rebate" or "discount" without making the additional cost disclosures, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close proximity to the after-rebate price or cost

representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts (*i.e.*, the before-rebate-price). Part III also contains a proviso that states that if there is only one rebate involved in the order, and no other reductions in the total price of the product or service, respondent need only disclose the amount of that one rebate, and need not also disclose the before-rebate price.

In connection with the promotion or sale of any Internet access service, or any computer or computer-related product whose price is conditioned upon the purchase of Internet access service, Part IV of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any Internet access service, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not they would have to incur such costs and the amounts of any such costs. In addition, respondent must disclose the amount of time required for purchasers to receive any rebate. These disclosures must be clear and conspicuous.

Part IV of the proposed order also contains a proviso, that together with the definition of "through the use of a hyperlink," provides a way in which the disclosures required by Part IV can be made on the Internet with hyperlinks. These disclosures may be made through the use of hyperlinks, as long as each hyperlink label contains sufficient information about the nature and importance of the required disclosure, is itself clear and conspicuous, is on the same Web page and proximate to the Internet service price or cost representation, and leads directly to the full disclosure. According to the proviso, if a hyperlink is used to disclosre information about Internet cancellation terms, it must be labeled as follows: "Early Cancellation of the Internet Service May Result in Substantial Penalties. Click Here." Similarly, if a hyperlink is used to disclose information about Internet access costs, it must be labeled: "You May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here." Finally, if a hyperlink is used to disclose information about the time it takes to receive a rebate, it must be labeled: "Time to Receive Rebate. Click Here."

Part V of the proposed order prohibits respondent from violating any provision of the Mail or Telephone Order Merchandise Rule, including the soliciting of orders for merchandise, either by mail or phone, without a reasonable basis to expect to be able to ship some or all of the merchandise within the time stated in the solicitation, or if no time is stated, within 30 days of receiving a properly completed order. Respondent must offer the buyer the option of either consenting to a delay in shipping or canceling the order and receiving a prompt refund when respondent is unable to ship within the applicable time period. Respondent must also deem the order canceled and make a prompt refund in instances where respondent failed to ship on time and failed to offer the buyer the option of either consenting to the delay or canceling the order and receiving a prompt refund.

Part VI of the proposed order requires respondent to maintain and make available to the Commission for five years, business records demonstrating compliance with the terms and conditions of Part V. Part VII of the proposed order requires respondent to compile a list of purchasers who ordered products from respondent and paid for them prior to the service date of the order, and who had not previously received a refund or consented to a delay, but did not receive ordered products more than ten days after the date respondent stated they would be shipped, or the date of the delay notice. Respondent must then cancel each such order and send a refund to each purchaser on the list for the total amount paid, including all taxes and shipping and handling charges, if any. Respondent must furnish the list of purchasers to the Commission, indicating for each the amount and date the refund was paid.

Part VIII of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in complying with the proposed order.

Part IX of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part X of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part XI of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part XII of the proposed order is a "sunset" provision, dictating that the order will terminate twenty years after the date it is issued or twenty years after a compliant is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17224 Filed 7–6–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–00–4]

Fiscal Year 2000 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to develop new Family Friends/Volunteer Senior Aides (VSA) projects and, in addition, to provide training and technical assistance to Family Friends/VSA projects.

SUMMARY: The Administration on Aging announces that it will hold a grant award competition, under this announced priority area, for seven (7) to eight (8) new model projects that demonstrate effective ways of planning, developing, and sustaining Family Friends/VSA programs for one (1) project to provide appropriate training and technical assistance to the Family Friends/VSA projects.

The deadline date for the submission of applications is August 14, 2000. For the model project competition, eligible applicants are restricted to public or nonprofit community-level agencies or organizations. In addition, because the primary focus of this priority area is on the establishment of new model Family Friends/VSA projects in communities other than those which have already

been program sites, those agencies or organizations that have carried out Family Friends/VSA projects are not eligible for this competition. No applicant eligibility restrictions, other than public or nonprofit status, apply to the training/technical assistance competition.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., Room 4261, Washington, DC 20201, or by calling 202–619–2050.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 00–17175 Filed 7–6–00; 8:45 am]

BILLING CODE 4154–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–49–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

Evaluative Research for the National Bone Health Education Campaign—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC), in cooperation with the Office on Women's Health, is developing a national osteoporosis prevention campaign targeting girls ages 9–18—the National Bone Health Campaign (NBHC). The 5-year campaign will begin by targeting girls ages 9–12 and their parents and then expand to girls 13–18 and their parents. Funding for the campaign has been approved for the first two years of the program, so the research presented here is only that to be conducted in the those two years.

The research will consist of: (1) Message tests with representative samples of 200 girls ages 9–12, 200 girls ages 13–18 and 200 parents of girls ages 9–12; (2) Baseline telephone surveys of representative samples of 1000 girls 9–12 and 1000 girls 13–18; (3) Follow-up survey of representative sample of 1000 girls ages 9–12; and (4) Annual surveys of 400 girls 9–12 and annual surveys of 200 parents of girls 9–12 in five "sentinel" sites.

Specifically, the purpose of the research is to (1) Pre-test campaign messages to ensure that they are attention-getting, understandable, personally relevant, and credible for the target audiences; (2) Provide ongoing assessment of campaign events and their effects in five "sentinel" sites; and (3) Provide an overall measure of the campaign's effectiveness over time.

The results of the proposed research will be used to identify and develop effective campaign messages and strategies to promote bone healthy attitudes, knowledge and behaviors among the primary and secondary audiences, and to assist program planners in assessing and refining program tactics. The research will also provide a measure of the success of the program in increasing awareness of bone healthy activities and improving knowledge and attitudes related to those activities among the primary target audience (girls 9–18). The research will also be shared with NBHEC partners (various public and private agencies or organizations) for use in designing and implementing collaborative programs and messages at the national and local levels.

The total annualized burden is estimated to be 2,000 hours.

	No. of respondents	Responses per respondent	Hours per response
National baseline survey of girls ages 9–18	1,000 (9–12)	1	20/60
	1,000 (13–18)	1	20/60
National follow-up survey of girls ages 9–12	1,000	1	20/60
3 sentinel site surveys of girls ages 9–12	2,000	1	20/60
3 sentinel site surveys of parents of girls ages 9–12	1,000	1	20/60

Dated: June 30, 2000.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17227 Filed 7–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–48–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

Evaluating National Dissemination Strategies for Effective HIV Prevention Programs for Youth—NEW—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC) seeks OMB approval for an evaluation of the dissemination of CDC identified effective education programs from national training to the community level to be conducted from 2000 to 2002. The project aims to enhance the adoption and implementation of effective HIV prevention programs. As such, it is directly related to the CDC FY 2000 performance plan to reduce the incidence of HIV/AIDS through the dissemination of HIV prevention education programs. CDC will study the diffusion of two prevention programs. Half of the participants attending the training will be randomly selected, by state, to receive additional technical assistance and diffusion action

planning. This evaluation will follow two cohorts of respondents: *Cohort A* (Master Trainers and Coalition Leaders) includes education and public health agency administrators, health education trainers, and community organization and community media leaders who attended the national training and who will disseminate the program in their states and communities; Cohort B (Local Health Educators and Coalition Members) includes local administrators, teachers, and health educators in local health departments, schools, media groups, and community organizations, who attended a training provided by a Master Trainer/Coalition Leader. Cohort A will complete a 30-minute survey at 6 months and 12 months post-training and also participate in one 90-minute focus group conducted by phone. Cohort B will receive one 45-minute survey six months after they have received training.

We assume that each Cohort A participant will, in turn, train 30 local health educators or coalition members (Cohort B). The total annualized burden is estimated to be 1339.5 hours.

Respondents	Number of respondents	Number of responses per respondent	Burden per response
Cohort A: HIV	57	2	0.50
Cohort B: HIV	1710	1	0.75

Dated: June 30, 2000.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17228 Filed 7–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00142]

Human Immunodeficiency Virus (HIV) Related Applied Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for human immunodeficiency virus (HIV) related applied research for the control and prevention of HIV. The purpose of this program is to encourage new and innovative methods to further the prevention of HIV infection. This program addresses the "Healthy People 2010" priority area of HIV Infection. For the conference copy of "Healthy People 2010" visit the internet site:<http://www.health.gov/healthypeople>.

Projects that will be considered for funding are applied research for the control and prevention of HIV that address only the following Program Priority Areas:

1. Prevent development of opportunistic infections and prevent or delay progression to AIDS and death among HIV-infected persons receiving medical care.

2. Develop, pilot, evaluate, and/or transfer technology of HIV rapid testing and counseling strategies.

3. Identify and characterize recently HIV-infected persons in specific populations or geographic areas; or assess HIV incidence in selected high-risk populations or social networks in geographically-defined communities where HIV incidence is known or expected to be high; or use of HIV incidence data to evaluate prevention interventions.

4. Develop and implement methods to improve access to care of HIV-infected person and to reduce HIV associated morbidity and mortality among persons in medical care.

5. Describe the prevalence and identify demographic and drug use correlates of antibody to HIV, HCV (Hepatitis C Virus), HBV (Hepatitis B Virus) and other bloodborne pathogens among entrants to a correctional facility (CF) and estimate the incidence of transmission of such bloodborne pathogens among recidivists reentering the correctional facility.

B. Eligible Applicants

Applications may be submitted by universities, colleges, research institutions, hospitals, public and private non-profit organizations, community-based, national, and regional organizations, State and local governments or their bona fide agents or instrumentalities, federally recognized Indian Tribal governments, Indian tribes or organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to fund approximately four new and/or competing continuation awards. It is expected that the average award will be $125,000, ranging from $100,000—$300,000. Funding estimates are subject to change. It is expected that awards will begin September 30, 2000, and will be made for a 12 month budget period within a project period of up to four years. Funding estimates are subject to change.

Continued support in future years will be based on the availability of funds and success in demonstrating progress toward achievement of objectives.

Funding Preference

Preference will be given to competing continuation applications to ensure continuity of support for currently funded projects.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities under 2. (CDC Activities). Recipient activities to achieve the purposes of this program will vary by project.

1. Recipient Activities

a. Complete the development of the research protocol.

b. Carry out the activities according to the approved protocol.

c. Ensure that appropriate approvals are secured for the protection of human subjects, Office of Management and Budget and Paperwork Reduction Act, privacy, confidentiality, and data security.

d. Compile and disseminate findings.

2. CDC Activities

a. Monitor and evaluate scientific and operational accomplishments of the project through periodic site visits, frequent telephone calls, and review of technical reports and interim data analysis.

b. Assist in facilitating the planning and implementation of the necessary linkages with local or State health departments and assist with the developmental strategies for applied clinical or prevention oriented research programs, for recipients whose projects involve collaboration with a State or local health department.

c. Facilitate the technological and methodological dissemination of successful prevention and intervention models among appropriate target groups, such as, State and local health departments, community based organizations, and other health professionals.

d. Provide technical assistance in planning and evaluating strategies and protocols, as requested.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative, excluding the budget, should be no more than 11 doubled-spaced pages, printed on one side, with one inch margins, and unreduced font.

The application narrative should consist of:

1. Abstract (Not to exceed 1 page): An executive summary of your program covered under this announcement.

2. Program Plan (Not to exceed 10 pages): In developing the application under this announcement, please review the recipient activities and, in particular, evaluation criteria and respond concisely and completely.

3. Budget: Submit an itemized budget and supporting justification that is consistent with your proposed program plan.

F. Submission and Deadlines

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: www.cdc.gov/ . . . Forms, or in the application kit. On or before August 18, 2000, submit your application to the Grants Management Specialist listed in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applications

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. The inclusion of a brief review of the scientific literature pertinent to the study being proposed and specific research questions or hypotheses that will guide the research. The originality and need for the proposed research, the extent to which it does not replicate past or present research efforts, and how findings will be used to guide prevention and control efforts. (25 points)

2. The quality of the plans to develop and implement the study, including the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits. (25 points)

3. Extent to which proposed activities, if well executed, support attaining project objectives. (25 points)

4. Extent to which personnel involved in this project are qualified, including evidence of past achievements appropriate to the project, and realistic and sufficient time commitments. Evidence of adequacy of facilities and other resources supported to carry out the project. (25 points)

5. Other (not scored)

(a) Budget: Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

(b) Human Subjects: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. an annual progress report;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1—Human Subjects Requirements
AR–2—Inclusion of Women and Racial and Ethnic Minorities in Research Requirements
AR–4—HIV/AIDS Confidentiality Provisions
AR–5—HIV Program Review Panel Requirements
AR–6—Patient Care Prohibitions
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 317(k)(2) [42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number 93.943, Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an

application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Julia L. Valentine, Grants Management Specialist Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone (770) 488–2732 or facsimile at (770) 488–2847 or INTERNET address: HTTP:// WWW.jxv1@CDC.GOV.

You may obtain programmatic technical assistance from: Peggy Bloom, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Atlanta, GA 30333, Telephone (404) 639–0927, INTERNET address: HTTP:\\WWW.PMB1@CDC.GOV

Dated: June 30, 2000.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17178 Filed 7–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00137]

HIV/AIDS Prevention Program Development and Technical Assistance Collaboration for Faith Communities in Countries Targeted by the Leadership and Investment in Fighting the Epidemic (LIFE) Initiative; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for HIV/AIDS Prevention Program Development and Technical Assistance Collaboration with Countries Targeted by the LIFE (Leadership and Investment in Fighting an Epidemic) Initiative.

In July 1999, the Administration announced the LIFE initiative to address the global AIDS pandemic. The LIFE initiative, an effort to expand and intensify the global response to the growing AIDS pandemic and its serious impact, is part of the United States (U.S.) Government's participation in the International Partnership Against HIV/AIDS in Africa (IPAA). A central feature of the LIFE initiative is a $100 million increase in U.S. support for sub-Saharan African countries and India, which are working to prevent the further spread of HIV and to care for those affected by this devastating disease. This additional funding is a critical step by the U.S. Government in recognizing the impact that AIDS continues to have on individuals, families, communities, and nations and responding to the imperative to do more. The Department of Health and Human Services (HHS), through its agency the Centers for Disease Control and Prevention (CDC) is administering $35 million of the $100 million allocated to the LIFE initiative by Congress.

The purpose of this program is to support HIV/AIDS prevention program development and technical assistance for faith communities in countries designated by the U.S. Congress under the LIFE Initiative. At present, those countries are Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda, Rwanda, Zimbabwe, Ethiopia, Mozambique, Malawi, Tanzania, Nigeria, Senegal, Zambia and India. The countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active.

The goals of the program are to address and support three program elements of the LIFE initiative: (1) Primary Prevention, (2) Capacity and Infrastructure Development, and (3) Community and Home-Based Care and Treatment. This program calls for the delivery of HIV/AIDS prevention programs development, and technical assistance to the LIFE countries through a variety of recipient activities. The result will be enhancement of the skills of faith leaders from LIFE country national AIDS programs in strategic planning, implementation, evaluation, and communication relating to HIV/AIDS prevention, capacity building, and care programs.

B. Eligible Applicants

Assistance will be provided only to a U.S. national or regional minority organization (NRMO). Eligible applicants must meet these criteria:

1. Have been granted tax-exempt status under Section 501 (c)(3), evidenced by an Internal Revenue Service (IRS) determination letter.
2. Have a minimum of one year of documented experience in operating and centrally administering a coordinated program to integrate HIV prevention education and services into faith communities.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to support Phase I and Phase II of this award. It is expected that the award will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities. It is anticipated that in the first year of the project, the recipient will perform the activities listed below in Phase I in at least three of the LIFE countries listed in Section A "Purpose". The recipient may target more than, but not less than three LIFE countries.

1. Recipient Activities

Phase I

a. Provide technical assistance to faith community leaders in LIFE countries to explore the benefits, challenges, and rewards of embracing the HIV/AIDS epidemic as an issue within their respective communities.

b. Provide technical assistance to help these faith leaders in LIFE countries develop needs assessments to evaluate opportunities for and barriers to adopting HIV/AIDS prevention as an issue within their communities.

c. Provide technical assistance to help these faith leaders assess resources and linkages available to serve the needs identified in the needs assessments. Such resources and linkages may include materials, peer-to-peer training opportunities and/or technical assistance. These training and technical assistance opportunities may include placements that bring faith leaders from LIFE countries to U.S. churches identified to have model programs, as well as opportunities to bring faith

leaders from LIFE countries to the U.S. for conferences, meetings, partnership development, and/or developmental experiences identified as having relevance to faith-based HIV prevention and care issues.

d. Provide technical assistance to faith leaders from LIFE countries to develop strategic plans which outline priorities, projects, and supporting capital and human resources as identified in the faith leaders' community mobilization needs assessments. This activity should include facilitating the identification of any gaps in available resources and linkages, work requirements to adapt existing resources to be effective and relevant, and any new resources needed.

e. Collaborate with faith leaders in LIFE countries in the selection of strategic plan activities to be performed in Phase II of this cooperative agreement.

f. In collaboration with other partners of the IPAA, the recipient organization will develop a monitoring and evaluation plan to document, monitor, and record process and input/output indicators of successful activities under this cooperative agreement that are consistent with CDC plans for the global monitoring and evaluation framework supporting the LIFE Initiative, and include such evaluation information in the required annual progress reports.

Phase II

a. Provide technical assistance to facilitate and coordinate activities selected from the strategic plans.

b. In collaboration with other partners of the IPAA, the recipient organization will develop a monitoring and evaluation plan to document, monitor, and record process and input/output indicators of successful activities under this cooperative agreement that are consistent with CDC plans for the global monitoring and evaluation framework supporting the LIFE Initiative, and include such evaluation information in the required annual progress reports.

2. CDC Activities

a. Provide technical assistance and expertise toward development of faith leaders' needs assessments and strategic plans.

b. Assess progress of recipient activities during Phase I and II of the program, and provide technical assistance where appropriate.

c. Provide technical assistance in determining recipient activities for Phase II of this cooperative agreement.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font. Pages should be numbered and a complete index to the application and its appendixes must be included. Begin each separate section on a new page. The original and each copy of the application set must be submitted unstapled and unbound. The following format should be used when developing your narrative.

Format

a. Abstract
b. Assessment of Need and Justification for the Program
c. Program plan and narrative
d. Organizational capability
e. Staffing Plan
f. Management and Evaluation of Program
g. Budget

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: http://www.cdc.gov/od/pgo/forminfo.htm. Forms are in the application kit. On or before August 21, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Assessment of Need and Justification (20 points)

Extent to which the applicant demonstrates understanding of the requirements, problems, objectives, complexities, and interactions required of the cooperative agreement.

2. Program Plan and Narrative (20 points)

a. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, related to the purpose of this project, and regularly monitored and evaluated.

b. Degree to which applicant provides a narrative that includes a working outline of the planned needs assessment, survey instrument draft, final report draft outline, names of potential contacts to be interviewed for the research portion of the needs assessment, and a working outline of the strategic plan.

3. Organizational Capacity (20 points)

a. Degree to which the applicant provides evidence of the ability to carry out the proposed project and the extent to which the applicant documents (1) the capability to achieve objectives similar to those of this project, and (2) success in mobilizing leaders of African American faith communities to integrate HIV prevention education and services into faith communities.

b. Degree to which applicant demonstrates the use of established mechanisms for communicating HIV/AIDS prevention information to members of faith communities.

c. degree to which applicant has capacity to identify and develop effective prevention information networks and dissemination systems.

d. degree to which applicant describes the use of established networks of contacts and knowledge of U.S. faith-based institutions, people, and resources in order to identify people and programs domestically for technical assistance and capacity building in targeted LIFE countries.

4. Staffing Plan (20 points)

Extent to which professional personnel involved in this project are qualified, including evidence of past achievements relevant to this project.

5. Management and Evaluation of Program (20 points)

Degree to which the applicant documents the adequacy of plans for administering and evaluating the project.

6. Budget (not scored)

Extent to which the estimated cost of the project (the budget) is reasonable.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. annual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–4 HIV/AIDS Confidentiality Provisions
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, 42 U.S.C. section 247b(k)(2). The Catalog of Federal Domestic Assistance number is 93.941, HIV Demonstration, Research, Public and Professional Education Projects.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Julia L. Valentine, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Room 3000, 2920 Brandywine Road, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2732, E-mail: jxv1@cdc.gov.

For program technical assistance, contact: Leo Weakland, Deputy Coordinator, Global AIDS Activity (GAA), National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, M/S E–07, Atlanta, GA 30333, Telephone number (404) 639–8016, Email address: lfw0@cdc.gov.

Dated: June 30, 2000.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17179 Filed 7–6–00; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–004]

Administration for Native Americans; Availability of Financial Assistance.

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance for information dissemination and strategy development relating to the de-regulation of electricity and its impact upon tribal populations. Projects would be funded in four areas—1 national grant and 3 grants in the following geographic areas: Area I—WA, OR, ID, western MT; Area II—ND, SD, NE, KS, eastern MT, MN, WI; Area III—CA, NV, UT, AZ, NM, CO, WY. This assistance, in the form of competitive grants is to be administered by the Administration for Native Americans.

SUMMARY: The Administration for Native Americans (ANA) announces the availability of fiscal year 2000 funds for information dissemination and strategy development relating to the de-regulation of electricity as it affects Indian Tribes and other Native American communities. Outreach activities would focus primarily on the energy policies established as a result of the Energy Policy Act of 1992, such as: (1) the Energy Planning and Management Program; and (2) the Comprehensive Electricity Competition Plan, implemented by the Clinton administration. The Energy Policy Act also contains provisions affecting Indian Tribes and Native communities and should be included in information dissemination/outreach activities. ANA plans to fund four (4) grants—one at the national level and the others in the following geographic areas: Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, WY. These projects are for the purpose of developing comprehensive electricity de-regulation information dissemination and strategies designed to assist tribal and community leaders in making informed decisions relating to participation in new energy relationships as both a potential supplier and consumer.

Financial assistance provided by ANA in support of projects in this area is intended to promote information dissemination and strategy development concerning the de-regulation of electricity for the benefit of all Indian Tribes and Native communities affected by these changes in the electricity industry.

DATES: The closing data for receipt of applications is August 7, 2000.

ADDRESSES: Application kits, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained from:

RJS & Associates, Inc., Dr. Robert Swan, C.E.O., RR1, Box 694, Box Elder, MT 59521, Tel: 406–395–4727 or 888–838–4757, Fax: 406–395–4759, e-mail: *rjsinc@rjsinc.org*, website: http// www.rjsinc.org/region2.html

Native American Management Services, Inc., Tonya Parker, Project Director, 6858 Old Dominion Drive, Suite 302, McLean, VA 22101, Tel: 703–821–2226 or 800–388–7670, Fax: 703–821–3680 e-mail: *nams@namsinc.org*

Development Associates, Inc., E. Robles, Project Director, 1475 North Broadway, Suite 200, Walnut Creek, CA 94596, Tel: 925–935–9711 or 800–666–9711, Fax: 925–935–0413 e-mail; *ana3@devassoc.com*, website: *http://www.devassoc.com/ana/anaversion2.htm*

FOR FURTHER INFORMATION CONTACT: ANA Help Desk, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop HHH 348F, Washington, D.C. 20447, Tel: (202) 690–7776 or toll free 1–877–922–9262 Fax: (202) 690–7441.

Copies of this program announcement and many of the required forms may be obtained electronically at the ANA web page: *www.acf.dhhs.gov/programs/ana/*

Introduction and Purpose

This Announcement describes the availability of fiscal year 2000 financial assistance for grants to develop and disseminate consistent program

information on the de-regulation of electricity as it affects Indian Tribes and Native communities.

ANA fully supports and assists tribal and Alaska Native Village governments, Native American institutions, and local leadership in exercising local control and decision-making over their resources. Consistent with this policy, ANA will assist Indian Tribes and Native communities in obtaining the most recent and relevant information regarding de-regulation of the electricity industry. This information will assist Tribes in making informed decisions about options under new regulations resulting from the Energy Policy Act of 1992. Outreach materials and activities must fully address the range of options available to Indian Tribes and Native communities under de-regulation. Types of information to be provided include but are not limited to: The latest agreements Tribes have made with federal power marketing agencies such as Western Area Power Administration (WAPA) and Bonneville Power Administration (BPA); federal funding and future potential arrangements among Indian Tribes, Federal agencies, state governments, power companies, and other energy resource entities.

This will be accomplished by funding four (4) information dissemination and strategy development grants, consisting of 1 national grant and 3 grants in the following geographic areas: Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, WY. The emphasis on information dissemination in these geographic areas is based upon: (1) The high concentration of tribal populations in those areas; and (2) the imminent nature of changes relating to electricity de-regulation for Tribes in the those regions, particularly for those Tribes affected by WAPA's power allocation. Eligibility for these grants extends to those listed in PART II, Section D "Eligible Applicants".

Funding authorization is provided under section [803(a) of the Native American Programs Act of 1974, as amended (Pub. L. 93–644, 88 Stat. 2324, 42 U.S.C. 2991b).

Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented in this announcement. Applicants may submit proposals for more than one geographic area, but it is anticipated that no single organization will be awarded a grant for more than one area. However, should a shortage of highly ranked organizations develop, ANA may award more than one grant to an organization or may combine areas under one grant.

This program announcement consists of three parts:

Part I. ANA Policy and Goals

Provides general information about ANA's policies and goals as they relate to electricity de-regulation information dissemination and strategy development grants.

Part II. Electricity De-Regulation Information Dissemination and Strategy Development Grants

Describes the Electricity De-regulation Information Dissemination and Strategy Development Grants under which ANA is requesting applications.

The following sections provide specific information to be used to develop an application for ANA funds:

A. Purpose and Availability of Funds
B. Background
C. Competitive Geographical Areas of Consideration
D. Eligible Applicants
E. Grantee Share of the Project
F. Review Criteria
G. Application Due Date
H. Contacts to Obtain Further Information

Part III. General Application Information and Guidance

Provides important information and guidance that must be taken into account in developing an application for one or more of the four (4) geographic areas. These geographic areas are defined in PART II, Section C. "Competitive Geographic Areas of Consideration".

Part I—ANA Policy and Goals

The mission of the Administration for Native Americans is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians and other Native American Pacific Islanders. ANA believes that the responsibility of achieving self-sufficiency resides with the governing bodies of Indian Tribes, Alaska Native Villages and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize and direct resources in a comprehensive manner consistent with its long-range goals.

ANA fully supports and assists tribal and Alaska Native Village governments, Native American institutions, and local leadership in exercising local control and decision-making over their resources.

Consistent with this policy, ANA is offering federal assistance through grant projects designed to assist Indian Tribes and Native communities to gain information relating to the de-regulation of electricity. Information and analysis to be provided through these four (4) ANA grants must fully address the range of options available to Indian Tribes and Native communities.

ANA will provide financial assistance to successful applicants to disseminate information about de-regulation of electricity in specific geographic areas. These electricity de-regulation information dissemination and strategy development grants will last for up to one year. Applicants must describe concrete strategies to gather, organize and disseminate information. Planning for the project must consider the maximum use of all available resources, including: initial coordination with ANA, other government agencies, and energy related organizations to ensure that the electricity de-regulation information to be provided to Tribes is comprehensive and current; how resources will be directed to information dissemination; and comprehensive strategies for presenting the information, such as meetings, forums, workshops, cluster sessions and on-site presentations. Applicants should explain how they would use their in-house expertise and experience in developing their information dissemination strategies.

An application from a Federally-Recognized Tribe or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger Tribe, unless the application includes a Tribal Resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application.

Part II—Electricity De-Regulation Information Dissemination and Strategy Development Grants

This part describes ANA's funding authority, priorities, requirements and review criteria. The standard requirements necessary for each application as well as the standard ANA program guidance and technical guidance are described in Part III of this announcement.

A. Purpose and Availability of Funds

This Announcement describes the availability of fiscal year 2000 financial assistance for grants to develop and disseminate consistent program information on the de-regulation of electricity as it affects Indian Tribes and Native American communities.

Approximately a total of $850,000 of financial assistance is anticipated to be available for electricity de-regulation information dissemination and strategy development. ANA anticipates awarding four (4) competitive grants divided into (1) nationwide for $250,000

and (3) geographic areas for $200,000 each—Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, SY.

B. Background

The electricity industry in the United States is undergoing a complete restructuring process as a result of the federal government's move to de-regulate interstate electricity markets. Already more than half of the states representing the larger share of electricity consumption in the country have created competitive markets, particularly at the wholesale and industrial levels.

Competition is slowly spreading to the retail, residential market. In previous years, Tribes had little opportunity to seek lower prices or better service, although technically they were exempt from state regulation because all of the other players with whom they would do business were regulated. De-regulation and the opening of markets to competition provide Tribes with an opportunity for future economic and social development.

After passage of the Energy Policy Act of 1992, Tribes saw emerging opportunities arising from the de-regulation of the electricity industry. Tribes, tribal coalitions and organizations began working together with federal power marketing administrations (Bonneville Power Administration and Western Area Power Administration) to assure tribal status as preferred customers and recipients of low cost electricity. Before 1992, Tribes were essentially barred from receiving low-cost, federally-generated hydropower by WAPA's policy which required that a tribe obtain full utility status before receiving WAPA Power. In 1993, however, Deputy Energy Secretary Bill White decreed that Indian Tribes no longer were required to own their own distribution systems to received federal power allocations. Since 1993 Tribes have been designated as non-utility preference customers and are provided an allocation of low-cost, federally-generated hydropower. In 1995, WAPA published their final rule for the Energy Planning and Management (EPAM) Program, the goal of which is: (1) To require planning and efficient electric energy use by WAPA's firm power resource pools when existing resource commitments expire; and (2) to allocate power from these pools to new preference customers. Implications for Tribes include: Recognition of federally recognized Tribes as "preference customers"; contractual arrangements with WAPA and local energy providers to manage energy allocation; tribal collaboration with local energy providers to transmit their energy allocation to end-users.

In order to assist Tribes in maximizing opportunities arising from these historic changes in the electricity industry, as ad hoc National Intertribal Energy Network was formed.

In 1999, representatives from over 200 Tribes met and produced the National Tribal Energy Vision for the Year 2010. Achieving this vision—that every tribe has the right to access a sufficient, reliable electricity supply at a reasonable price to meet its social and economic needs—was projected to come from three strategies: accessing hydropower as preference customers; taking advantage of local conventional and renewable energy resources to produce their own; and working together to purchase power in a competitive electricity market.

Tribes now have an opportunity to access federal hydropower; develop partnerships with other Tribes and private industry; set standards for service while protecting their emerging internal domestic market; develop their own programs and plans responsive to the local vision.

The information will be disseminated through four ANA grants—one (1) at the national level and three (3) in the following geographic areas—Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, WY. These grantees will assist Indian Tribes and Native communities in understanding and assessing their options resulting from the de-regulation of electricity. Such information may include the background and current status of electricity de-regulation; data systems and other administrative requirements needed to enter into collaborative or contractual arrangements such as the EPAM Program; current or anticipated funds available to Indian Tribes and Native communities in designing new energy programs and technologies; implications of the National Tribal Energy Vision for the Year 2010; opportunities for Tribes in energy infrastructure development, accessing outside markets for tribal energy services, purchasing power in a competitive electricity market, and opportunities in creating utility ordinates and operations.

Applications should also address gathering information and assuring that all information provided to Tribes is authoritative, comprehensive and current. Proposals should be as specific as possible in identifying how information will be disseminated to Tribes and how options will be explored. Proposals should also clearly identify the approaches to be taken, such as meetings, forums, cluster groups, and on-site presentations. A recognition of the diversity of local tribal needs and capabilities should also be fully articulated. Information and strategies developed in the three geographic area projects will be shared with the national project, and the national project will work together with an coordinate closely with the three geographic area projects.

C. Competitive Areas of Consideration

In addition to the national project, three projects will cover the following geographic areas:—Area I: WA, OR, ID, western MT; Area II: ND, SD, NE, KS, eastern MT, MN, WI; Area III: CA, NV, UT, AZ, NM, CO, WY.

Applicants may submit one application per grographic area. An applicant may receive only one grant, regardless of the number of areas in which it competes. Should a shortage of highly ranked organizations develop, however, ANA may award more than one grant to an organization or may combine geographic areas under one grant.

D. Eligible Applicants

The following organizations are eligible to apply under this announcement:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native Villages as defined in the Alaska Native Claims and Settlement Act (ANCSA) and/or non-profit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village-specific projects;
- Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these Islands or on the continental United States);
- Public and nonprofit private agencies serving Native peoples from Guam, American Samoa, Palau, or the

Commonwealth of the Northern Mariana Islands (The populations served may be located on these islands or in the United States);

- Tribally controlled community colleges, Tribally controlled post secondary vocational institutions, and Native controlled colleges and universities located in Hawaii, Guam, American Samoa, Palau or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders;
- Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

Note: Current ANA SEDS grantees are eligible to apply under this announcement. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a Tribe or an Alaska Native Village government is proposing a project benefiting Native Americans, Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. To establish compliance with this requirement in the regulations, applicants must provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories; (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. (The total approved cost of the project is the sum of the ACF share and the non-Federal share.) The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions.

Therefore, a project requesting $200,000 in Federal funds must include a match of at least $50,000 (20% total project cost). As per 45 CFR Part 74.2, In-Kind contributions is defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows: Indian self-determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b) of the Native American Program Regulations.

F. Review Criteria

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which, are responsive to this program announcement. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Goals and Available Resources (20 points)

a. the application describes the project goals and strategy, including: how applicant's goals relate to the de-regulation of electricity as it affects Indian Tribes and Native American communities how the proposed project intends to achieve these goals; Applications must clearly explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

b. Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents or commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources. "Letters and other documents of commitment" are binding when they specifically state the nature the amount, and conditions under which another individual, agency or organization will support a project funded with ANA funds.

These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

(2) Organizational Capabilities and Qualifications. (25 points)

a. The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed cope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project. Applicant *must* also explain how organizational experience and expertise in the area of energy resource management will benefit the project.

b. Position descriptions and/or resumes of key personnel, including those of consultants, represented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (30 points)

The application proposes specific project Objective Work Plans with activities related to each specific objective. The Objective Work Plan(s) in

the application includes project objectives and activities for the budget period and demonstrates that each of the objectives and its activities: Identifies the basic approach to be used in collecting, disseminating and presenting electricity de-regulation information; includes initial coordination with ANA; includes strategies and methods for analyzing options available to Indian Tribes and Native communities as a result of electricity de-regulation; is measurable and/or quantifiable in terms of results or outcomes; clearly relates to the applicant's goals and strategies; can be accomplished with the available or expected resources during the proposed project period; indicates when the objective, and major activities under each objective, will be accomplished; specifies who will conduct the activities under each objective;

(4) Results or Benefits Expected. (15 points)

Completion of the proposed objectives will result in specific, measurable results. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of the project.

(5) Budget. (10 points)

A detailed and fully explained budget is provided for the budget period requested which: Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source; Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and Requests funds which are appropriate and necessary for the scope of the proposed project.

Part III—General Application Information and Guidance

A. General Considerations

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. Applicants must show the relationship of non-AnA funded activities to those objectives and activities that are funded with ANA grant funds.

Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. Even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs. All projects funded by ANA must be completed by the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained.

B. Activities That Cannot Be Funded by ANA

The Administration for Native Americans does not fund projects that operate indefinitely or require ANA funding on a recurring basis. The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. "Core administration" is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

However, functions and activities that are clearly project related are eligible for grant funding. For example, management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section H, General Guidance to Applicants, below.

C. Length of Projects awards, on a competitive basis, will be for a one-year project and budget period.

D. Intergovernmental Review of Federal Programs, this program is not covered by Executive Order 12372 or 45 CFR part 100.

E. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from the following Training and Technical Assistance (T/TA) Providers:

RJS & Associates, Inc., Dr. Robert Swan, C.E.O., RR1, Box 694, Box Elder, MT 59521, Tel: 406–395–4727 or 888–838–4757 Fax:406–395–4759, e-mail: *rjsinc@rjsinc.org*, website: http// www.rjsinc.org/region2.html

Native American Management Services, Inc., Tonya Parker, Project Director, 6858 Old Dominion Drive, Suite 302, McLean, VA 22101, Tel: 703–821–2226 or 800–388–7670, Fax: 703–821–3680, e-mail: *nams@namsinc.org*

Development Associates, Inc., E. Robles, Project Director, 1475 North Broadway, Suite 200, Walnut Creek, CA 94596, Tel: 925–935–9711 or 800–666–9711, Fax: 925–935–0413, e-mail: *ana3@devassoc.com*, website: *http://www.devassoc.com/ana/anaversion2.htm*

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop HHH 326–F, Washington, DC 20447, Attention: Lois B. Hodge ANA No. 93612–0004.

Hand delivered applications are accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024.

The application (Form 424) must be signed by an individual authorized (1) to act for the applicant Tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Each eligible applicant may compete in all geographic areas. However, it can receive a grant award in only one of the geographic areas under this announcement. Should a shortage of highly ranked organizations develop, however, ANA may award more than one grant to an organization or may combine geographic areas under one grant.

The Administration for Native Americans will accept only one

application per geographic area from any one applicant. If an eligible applicant sends in two applications for the same geographic area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application. Four (4) separate ranking lists, one for each geographic area, will be utilized in the decision process.

3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review.
- Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section F below).
- Independent review panels consisting of reviewers familiar with American Indian Tribes, Native American communities and organizations, and the de-regulation of electricity evaluate each application using the published criteria. As a result of the review, a numerical score will be assigned to each application.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 30 days. Successful applicants are notified through an official Financial Assistance Award (FAA) document.
- ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.
- The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

F. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that: The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and the application is signed and submitted by the deadline explained in section I, Receipt of Applications, of this announcement.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

3. Appeal of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration.

G. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement. Projects will not be funded on the basis of need alone. In discussing the goals, strategy, and problems being addressed in the application, present sufficient background concerning these issues, including electricity deregulation policy.

This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project. Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For Tribes, a current signed resolution from the governing body of the Tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members Tribes, as well as a resolution from the applicant organization.

The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.

2. Technical Guidance

Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

For purposes of developing an application, applicants should plan for a project start date approximately 60 days after the closing date under which the application is submitted.

For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian Tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian Tribes which, may not yet be included on this list (*e.g.*, those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.

Eligible applicants may submit one application per geographic area. If an eligible applicant sends in two applications for the same geographic area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

An application from a Tribe or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger Tribe, unless the application includes a Tribal resolution which

clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application for the duration of the approved grant period.

The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.

An application with an original signature and two additional copies are required. The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

Line 15a of the Form 424 must specify the Federal funds requested for the Budget Period. The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. "Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit." During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Projects or Activities That Generally Will Not Meet The Purposes of This Announcement

The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. Project goals, which are not responsive to this program announcement.

Proposals from consortia of Tribes that are not specific with regard to support from, and roles of, member Tribes.

Projects that will not be completed by the end of the project period.

ANA will not fund the purchase of real estate (see 45 CFR 1336.50 (e)) or construction.

Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, Tribe or village.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations including program announcements. Information collection through this Program Announcement, including the program narrative statement, are approved by the OMB under control number 0980–0204, which expires April 30, 2003.

I. Receipt of Applications

The closing date for the submission of applications is [30 days from the date of publication in the **Federal Register**]. Applications postmarked after the closing date will be classified as late.

1. Deadline

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop 6C–462, Washington, DC 20447.

Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8 a.m. and 4:30 p.m., at: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024.

(Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

2. Late Applications

Applications, which do not meet the criteria above, are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines

The Administration for Children and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., widespread disruption of the mails, or when it is anticipated that many of the applications will come from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number: 93.612 Native American programs)

Dated: June 30, 2000.

Gary Mounts,

Acting Commissioner, Administration for Native Americans.

[FR Doc. 00–17204 Filed 7–6–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 95F–0092, 95F–0129, 95F–0130, 97F–0175, 97F–0406, 97F–0414, 98F–0053, 98F–0058, 98F–0436, 98F–0714, 98F–1021, 99F–0804, 99F–1419, 99F–2080, 99F–2552, 99F–2908, 99F–2997, 99F–2998, and 99F–4373]

Withdrawal of Food Additive Petitions Subsequently Converted to Food Contact Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to a future filing of 19 food additive petitions proposing that the food additive regulations be amended to provide for the safe use of certain new food additives. The petitioners subsequently requested that their

petitions be converted to food-contact notifications for review under the agency's new premarket notification (PMN) program for food-contact substances. The requested uses are now the subjects of effective notifications.

FOR FURTHER INFORMATION CONTACT: Mark Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register** (FR), on the dates indicated in the table below, FDA announced the filing of 19 food additive petitions. These petitions proposed to amend the food additive regulations in the sections listed in the table to provide for the safe use of the listed substances intended for use in food-contact articles. Since publication of these filing notices, the petitioners have requested that their respective petitions be converted to food-contact notifications for review under the agency's new PMN process for food-contact substances and that their petitions be withdrawn when the corresponding notifications become effective. These petitions were converted to notifications and subsequently reviewed under the the PMN process. The requested uses are now the subjects of effective notifications. The corresponding food additive petitions are now withdrawn without prejudice to a future filing (21 CFR 171.7).

TABLE 1

FAP No.[1] and Docket No.	FCN No.[2]	FR Citation and Date	Company	Section/Part	Additive	Use
9B4662, 99F–1419	1	64 FR 28000, May 24, 1999	Milliken & Co. c/o Keller & Heckman.	Proposed new section in part 178.	Silver sodium hydrogen zirconium phosphate	Antimicrobial for polymers for food packaging.
8B4632, 98F–1021	3	63 FR 67075, Dec. 4,1998	Rohm and Haas Co. c/o Keller & Heckman.	176.170	Styrene acrylic copolymers	Paper and paperboard coating.
8B4564, 98F–0053	5	63 FR 5808, Feb. 4, 1998	Currently, BP Amoco Chemicals, Inc.	177.1480	Nitrile rubber modified acrylonitrile-methyl acrylate copolymers.	Beverage containers.
5B4455, 95F–0092	4	60 FR 22400, May 5, 1995	Currently, BP Amoco Chemicals, Inc.	177.1630	Ethylene terephthalate-isophthalate copolymers with 83–97 weight percent ethylene terephthalate units.	Components of food-contact articles.
5B4450, 95F–0130	8	60 FR 32526, June 22, 1995	Shell Chemicals Co.	177.1630	Ethylene terephthalate polymers containing less than 50 weight percent of polymer units derived from ethylene 2,6-naphthalene.	Components of food-contact articles.
5B4451, 95F–0129	9	60 FR 32159, June 20, 1995	Shell Chemicals Co.	Proposed new section in part 177.	Poly(oxy-1,2-ethanediyloxycarbonyl-2,6-napthalenediylcarbonyl) polymer and the copolymer poly(oxy-1,2-ethanediyloxy carbonyl-2,6-naphthalenediylcarbonyl) with ethylene terephthalate.	Components of food-contact articles.
8B4582, 98F–0058	10	63 FR 6571, Feb. 9, 1998	Currently, Sekisui Plastics Co., Ltd. c/o Ungaretti & Harris.	177.1630	Pyromellitic dianhydride	Modifier in ethylene terephthalate. copolymers.
7B4558, 97F–0406	12	62 FR 51873, Oct. 3, 1997	Sveriges Starkelseproducenter c/o Kirschman Assoc.	178.3520	Industrial starch modified with up to 21 percent 2,3-epoxypropyltrimethyl ammonium chloride.	Component of food-contact articles.
9B4685, 99F–2908	19	64 FR 47843, Sept. 1, 1999	The Goodyear Tire & Rubber Co. c/o Keller & Heckman.	175.300	Piperylene/2-methyl-2-butene/ alpha-methylstyrene terpolymer.	Can end cement.
9B4645, 99F–0804	11	64 FR 19182, Apr. 19, 1999	Rohm and Haas Co.	176.170 and 176.300.	4,5-Dichloro-2-n-octyl 3 (2H)-isothiazolone	Preservative and slimicide for paper and paperboard.

TABLE 1—Continued

FAP No.[1] and Docket No.	FCN No.[2]	FR Citation and Date	Company	Section/Part	Additive	Use
7B4554, 97F–0414	15	62 FR 52137, Oct. 6, 1997	Stilbene Whitening Agent Task Force c/o Keller & Heckman.	176.170	Benzenesulfonic acid, 2,2-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)-amino]-6-[(4-sulfonphenyl)amino]-1,3,5-triazin-2-yl]amino]-,tetrasodium salt.	Optical brightner in paper and paperboard.
8B4617, 98F–0714	20	63 FR 46226, Aug. 31, 1998	Asahi Denka Kogyo, K.K. c/o Japan Technical Information Center, Inc.	178.2010	2,2′-methylenebis(4,6-di-tert-butylphenyl)2-ethylhexyl phosphite.	Antioxidant and/or stabilizer in linear low density polyethylene.
8B4599, 98F–0436	21	63 FR 34188, June 23, 1998	Asahi Denka Kogyo, K.K. c/o Japan Technical Information Center, Inc.	178.2010	2,2′-methylenebis(4,6-di-tert-butylphenyl)2 -ethylhexyl phosphite.	Antioxidant and/or stabilizer in high density polyethylene.
9B4679, 99F–2552	22	64 FR 43189, Aug. 9, 1999	Asahi Denka Kogyo, K.K. c/o Japan Technical Information Center, Inc.	178.2010	Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl) ester.	Antioxidant and/or stabilizer in polyolefins.
9B4667, 99F–2080	23	64 FR 36361, July 6, 1999	Engelhard Corp.	178.3297	Solution of 1-naphthalenesulfonic acid, 12-[(2-hydroxy-6-sulfo-1-naphthalenyl)azo]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[4-chloro-5-ethyl- 2-sulfophenyl)azo]-6-hydroxy-, strontium salt (1:1) (C.I. Pigment Red 277).	Colorant for polymers.
7A4541, 97F–0175	30	62 FR 25633, May 9, 1997	Currently, Betz Dearborn c/o Keller and Heckman	173.310	Copolymer of acrylic acid and polyethylen eglycol allyl ether.	Boiler water additive.
9B4694, 99F–2998	29	64 FR 48654, Sept. 7, 1999	Asahi Denka Kogyo, K.K.	178.2010	Tridecanol phosphite condensation product with butylidenebis[2-(1,1-dimethylethyl)- 5-methyl-4,1-phenylene].	Antioxidant and/or stabilizer in styrene-isoprene-styrene copolymer to be used as a component of pressure-sensitive adhesives.
9B4691, 99F–2997	25	64 FR 49496, Sept. 13, 1999	Engelhard Corp.	178.3297	1-naphthelenesulfonic acid, 2-[(4,5-dihydro-3-methyl-5-oxo-1-(3-Sulfophenyl)-1H-pyrazol-4- yl)azo]-, strontium and calcium salt (1:1)(C.I. Pigment 209 and C.I. Pigment 209:1).	Colorant for polymers.
9B4698, 99F–4373	26	64 FR 58070, Oct. 28, 1999	Engelhard Corp.	178.3297	A solid solution of 2-naphthalene sulfonic acid, 15-[(5-chloro-4-methyl-2-sulfophenyl)azo]- 6-hydroxy]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[(4-chloro-5-ethyl-2-sulfonphenyl)azo]-6- hydroxy]-,strontium salt (1:1)(C.I. Pigment Red 276).	Colorant for polymers.

[1] Food additive petition number.
[2] Food-contact notification number.

Dated: June 28, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for food Safety and Applied Nutrition.

[FR Doc. 00–17199 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83N–0118; DESI 6514]

Oral Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Drug Efficacy Study Implementation; Caramiphen Edisylate; Final Actions on Supplemental New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) refuses to approve supplemental new drug applications (NDA's) for Tuss-Ornade Spansules and Liquid containing caramiphen edisylate and phenylpropanolamine hydrochloride. The basis for FDA's refusal to approve these products is that there is a lack of substantial evidence that caramiphen edisylate is effective.

DATES: Effective July 7, 2000.

ADDRESSES: Requests for applicability of this notice to a specific product should be identified with Docket No. 83N–0118 and reference number DESI 6514 and directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 9, 1973 (38 FR 4006), FDA classified the following drug products as less than effective for their labeled indications:

1. NDA 12–903; Tuss-Ornade Spansules containing caramiphen edisylate 20 milligrams (mg), chlorpheniramine maleate 8 mg, phenylpropanolamine hydrochloride 50 mg, and isopropamide iodide 2.5 mg; SmithKline Beecham Pharmaceuticals, P.O. Box 7929, Philadelphia, PA 19101–7929 (SmithKline).

2. NDA 13–068; Tuss-Ornade Liquid containing caramiphen edisylate 5 mg, chlorpheniramine maleate 2 mg, phenylpropanolamine hydrochloride 15 mg, and isopropamide iodide 0.75 mg; SmithKline.

In a notice published in the **Federal Register** of December 14, 1973 (38 FR 34481), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study implementation (DESI) program, for certain oral prescription drugs offered for relief of cough, cold, allergy, and related symptoms, including the aforementioned products. The exemption was granted because of the close relationship between drugs sold over the counter (OTC)—and thus subject to the ongoing OTC drug review (21 CFR part 330)—and prescription drugs offered for relief of cough, cold, allergies, and related symptoms.

In 1980 SmithKline submitted supplements proposing to reformulate the products listed above and marketed the following reformulated products pending a final determination of effectiveness:

1. NDA 12–903; caramiphen edisylate 40 mg and phenylpropanolamine hydrochloride 25 mg.

2. NDA 13–068; caramiphen edisylate 6.7 mg and phenylpropanolamine hydrochloride 12.5 mg.

In 1976 the OTC drug review panel for cold, cough, allergy, bronchodilator, and antiasthmatic drugs concluded that there were no well-controlled, objective, clinical studies documenting the effectiveness of caramiphen edisylate as an antitussive (41 FR 38312, September 9, 1976). The OTC monograph on antitussives was finalized in 1987 (52 FR 30042 at 30054, August 12, 1987).

Because of the lack of evidence that caramiphen edisylate is an effective antitussive, the Director of what was then the National Center for Drugs and Biologics concluded that there was a lack of substantial evidence that Tuss-Ornade Spansules and Liquid, either as previously formulated or as proposed for reformulation, would have all the effects they purported or were represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. The Director issued a notice of opportunity for hearing on two proposals: (1) To withdraw approval of the original formulations of Tuss-Ornade Spansules and Liquid, and (2) to refuse approval of the supplemental reformulations of the same products (48 FR 40322, September 6, 1983).

Neither SmithKline nor any other interested party requested a hearing on the proposal to withdraw approval of the original formulations of Tuss-Ornade Spansules and Liquid; therefore, approval of the old formulations was withdrawn (49 FR 10707, March 22, 1984). However, in response to the agency's September 6, 1983, proposal to refuse to approve the reformulated products, SmithKline and National Pharmaceutical Manufacturing Company (National) requested hearings. SmithKline submitted data and information in support of its hearing request.

FDA has reviewed these data and determined that there is not substantial evidence of the effectiveness of caramiphen edisylate. SmithKline and National no longer market the products named in their 1983 hearing requests and have withdrawn those hearing requests.

This notice applies to any drug product that is identical, related, or similar to the products named above and is not the subject of an approved NDA (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Prescription Drug Compliance and Surveillance (address above).

The Director of the Center for Drug Evaluation and Research, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and under the authority delegated to her (21 CFR 5.70 and 5.82) finds that, on the basis of new information before her with respect to Tuss-Ornade Spansules and Liquid, evaluated together with the evidence available to her when the applications were approved, there is a lack of substantial evidence that the products as proposed for reformulation will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, based on the foregoing finding, approvals and all the amendments and supplements thereto of NDA 12–903 and NDA 13–068 are withdrawn and refused effective July 7, 2000. Shipment in interstate commerce of the products listed above or of any identical, related, or similar product that is not the subject of an approved NDA will then be unlawful.

Dated: June 20, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–17197 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N–0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators Containing Isosorbide Dinitrate; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing conditional approval of 25 abbreviated new drug applications (ANDA's) for certain single-entity coronary vasodilator drug products containing isosorbide dinitrate. FDA is withdrawing approval because there is a lack of substantial evidence that these drugs are effective for their labeled indications relating to the treatment and prevention of anginal attacks. The sponsors of these conditionally approved products failed to provide required adequate bioavailability/bioequivalence data on the products to support full approval of the applications.

DATES: Effective August 7, 2000.

ADDRESSES: Requests for an opinion on the applicability of this notice to a specific product should be identified with Docket No. 77N–0240 and reference number DESI 1786 and directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1999 (64 FR 13802), FDA published a notice offering an opportunity for a hearing (NOOH) on a proposal to withdraw approval of 25 conditionally-approved ANDA's. The proposal was based on a lack of adequate bioavailability/bioequivalence data to support a finding of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)), 21 CFR 314.126, and 21 CFR part 320.

In response to the NOOH, Zeneca Pharmaceuticals requested a hearing for Sorbitrate Chewable Tablets (ANDA 86–388) and Sorbitrate Oral Tablets (ANDA 88–074). Zeneca later withdrew its hearing request for these products. No other sponsor of the products listed in the March 22, 1999, NOOH requested a hearing. As stated in the NOOH, the failure of an applicant or any other person subject to the notice to request a hearing constitutes an election by that person not to use the opportunity for a hearing and a waiver of any contentions concerning the legal status of that person's drug product(s). Accordingly, this notice withdraws conditional approval of the following ANDA's:

1. ANDA 85–783; Isordil Chewable Tablets containing 10 milligrams (mg) of isosorbide dinitrate per tablet; Wyeth-Ayerst Laboratories, (formerly held by Ives Laboratories, Inc.), P.O. Box 8299, Philadelphia, PA 19101.

2. ANDA 86–045; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726.

3. ANDA 86–186; Isosorbide Dinitrate (controlled release, colored) Capsules containing 40 mg of the drug per capsule; Eon Labs Manufacturing, Inc. (formerly held by The Vitarine Co., Inc.), 227–15 North Conduit Ave., Laurelton, NY 11413.

4. ANDA 86–191; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Bolar.

5. ANDA 86–224; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Geneva Pharmaceuticals, Inc. (formerly held by Cord Laboratories, Inc.), 2555 West Midway Blvd., P.O. Box 446, Broomfield, CO 80038–0446.

6. ANDA 86–362; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Bolar.

7. ANDA 86–388; Sorbitrate (chewable) Tablets containing 10 mg of isosorbide dinitrate per tablet; Zeneca Pharmaceuticals (formerly held by Stuart Pharmaceuticals), 1800 Concord Pike, Wilmington, DE 19897.

8. ANDA 86–788; Isosorbide Dinitrate (controlled release, green) Tablets containing 40 mg of the drug per tablet; Forest Laboratories, Inc., 919 Third Ave., New York, NY 10022.

9. ANDA 86–790; Isosorbide Dinitrate (controlled release, yellow) Tablets containing 40 mg of the drug per tablet; Forest.

10. ANDA 87–314; Isosorbide Dinitrate (chewable) Tablets containing 10 mg of the drug per tablet; D. M. Graham Laboratories, Inc., 58 Pearl St., P.O. Box P, Hobart, NY 13788.

11. ANDA 87–414; Isosorbide Dinitrate (controlled release, scarlet/clear) Capsules containing 40 mg of the drug per capsule; Eon Labs.

12. ANDA 87–461; Isosorbide Dinitrate (controlled release orange/clear) Capsules containing 40 mg of the drug per capsule; Eon Labs.

13. ANDA 87–477; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Ascot Hospital Pharmaceuticals, Inc., 8055 North Ridgeway Ave., Skokie, IL 60076.

14. ANDA 87–482; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Ascot.

15. ANDA 87–507; Isosorbide Dinitrate (controlled release, white/amethyst) Capsules containing 40 mg of the drug per capsule; Eon Labs.

16. ANDA 87–558; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977.

17. ANDA 87–680; Isosorbide Dinitrate (controlled release, white/clear) Capsules containing 40 mg of the drug; Eon Labs.

18. ANDA 87–694; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Vangard Labs, Inc., P.O. Box 1268, Glasgow, KY 42142–1268.

19. ANDA 87–700; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Vangard.

20. ANDA 88–074; Sorbitrate Tablets containing 20 mg of isosorbide dinitrate per tablet; Zeneca.

21. ANDA 88–428; Isosorbide Dinitrate (controlled release) Tablets containing 20 mg of the drug per tablet; Forest.

22. ANDA 88–589; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Barr Laboratories, Inc., Two Quaker Rd., P.O. Box 2900, Pomona, NY 10970–0519.

23. ANDA 88–590; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Barr.

24. ANDA 88–591; Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Barr.

25. ANDA 88–592; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Barr.

The effectiveness conclusions and conditions for marketing described in a notice published in the **Federal Register** of August 3, 1984 (49 FR 31151), also applied to the drug products described below. Although approval of these products was withdrawn previously based on the written requests of the applicants, who no longer market the products, this notice constitutes FDA's final conclusions on the effectiveness of these products.

1. NDA 17–226; Sorbitrate (controlled release) Tablets containing 40 mg isosorbide dinitrate per tablet; Zeneca.
2. ANDA 84–473; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Zenith Goldline Pharmaceuticals, 140 Legrand Ave., Northvale, NJ 07647.
3. ANDA 84–474; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Zenith Goldline.
4. ANDA 86–035; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Zenith Goldline.
5. ANDA 86–044; Isosorbide Dinitrate Tablets, containing 10 mg of the drug per tablet; Circa Pharmaceuticals (formerly held by Bolar Pharmaceutical Co., Inc.), 15 Grand Park Blvd., Athens, OH 45701.
6. ANDA 86–048; Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Bolar.
7. ANDA 86–051; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Bolar.
8. ANDA 86–071; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552.
9. ANDA 86–072; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Chelsea.
10. ANDA 86–073; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Chelsea.
11. ANDA 86–078; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Chelsea.
12. ANDA 86–302; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
13. ANDA 86–304; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Purepac.
14. ANDA 86–855; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Lederle Laboratories, North Middletown Rd., Pearl River, NY 10965.
15. ANDA 86–858; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Lederle.
16. ANDA 86–861; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Lederle.
17. ANDA 86–862; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Lederle.
18. ANDA 86–922; Isosorbide Dinitrate (sublingual) Tablet containing 5 mg of the drug per tablet; Par.
19. ANDA 86–924; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Par.
20. ANDA 87–163; Isosorbide Dinitrate (chewable) Tablets containing 5 mg of the drug per tablet; D. M. Graham.
21. ANDA 87–344; Isosorbide Dinitrate (controlled release) Capsules containing 40 mg of the drug per capsule; Inwood Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
22. ANDA 87–415; Isosorbide Dinitrate (controlled release, green/clear) Capsules containing 40 mg of the drug per capsule; Eon.
23. ANDA 87–469; Isosorbide Dinitrate (sublingual) Tablets containing 10 mg of the drug per tablet; Chelsea.
24. ANDA 87–474; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Ascot.
25. ANDA 87–475; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Ascot.
26. ANDA 87–476; Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Ascot.
27. ANDA 87–478; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Ascot.
28. ANDA 87–486; Isosorbide Dinitrate (controlled release) Capsules containing 40 mg of the drug per capsule; Ascot.
29. ANDA 87–490; Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Chelsea.
30. ANDA 87–491; Isosorbide Dinitrate Tablets containing 30 mg of the drug per tablet; Chelsea.
31. ANDA 87–618; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablets; Vangard.
32. ANDA 87–673; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Vangard.
33. ANDA 87–933; Isosorbide Dinitrate (sublingual) Tablets containing 10 mg of the drug per tablet; Par.
34. ANDA 88–005; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Unit Dose Laboratories, 1718 Northrock Court, Rockford, IL 61103.
35. ANDA 88–006; Isosorbide Dinitrate (sublingual) Tablets containing 10 mg of the drug per tablet; Unit Dose Labs.
36. ANDA 88–123; Sorbitrate (sublingual) Tablets containing 10 mg of isosorbide dinitrate per tablet; Zeneca.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application (NDA) is covered by the applications listed above and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Prescription Drug Compliance and Surveillance (address above).

The Director of the Center for Drug Evaluation and Research, under the act (section 505) and under authority delegated to her (21 CFR 5.82), finds that, on the basis of new information on the drugs and the evidence available when the applications were approved, there is a lack of substantial evidence that the products named above will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, based on the foregoing finding, approval of the applications listed above and all their amendments and supplements is withdrawn effective August 7, 2000. Shipment in interstate commerce of these products or of any identical, related, or similar product that is not the subject of a fully approved NDA will then be unlawful.

Dated: June 20, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–17198 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2145]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Final Guidance on "Impurities in New Veterinary Medicinal Products" (VICH GL11); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#92) entitled "Impurities in New Veterinary Medicinal Products" (VICH GL11). This guidance document has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The guidance is intended to assist in developing registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments at any time.

ADDRESSES: Copies of the final guidance document entitled "Impurities in New Veterinary Medicinal Products" (VICH GL11) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm. Persons without Internet access may submit written requests for a single copy of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the final guidance document to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: sthompso@cvm.fda.gov, or Robert C. Livingston, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5903, e-mail: rlivings@cvm.fda.gov.

Regarding the guidance document: Kevin J. Greenlees, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6977, e-mail: kgreenle@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Impurities in New Veterinary Medicinal Products

In the **Federal Register** of July 22, 1999 (64 FR 39514), FDA published the draft guidance entitled "Impurities in New Veterinary Medicinal Products" (VICH GL11) giving interested persons until August 23, 1999, to submit comments. After consideration of comments received, the final draft guidance was submitted to the VICH steering committee. At a meeting held on November 16 through 19, 1999, the VICH Steering Committee endorsed the final draft guidance, VICH GL11, for industry.

This document is intended to provide guidance for new animal drug applications (referred to as registration applications or marketing authorization in the final guidance) on the content and qualification of impurities in new drug substances intended to be used for new veterinary medicinal products produced by chemical syntheses and not previously registered in a region or member State. (Information collected is covered under OMB Control No. 0910–0032.)

This final guidance document represents current FDA thinking on impurities in new veterinary medicinal products and does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of applicable statutes and regulations.

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: June 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17200 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2215]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Final Guidance on "Impurities in New Veterinary Drug Substances" (VICH GL10); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#92) entitled "Impurities in New Veterinary Drug Substances" (VICH GL10). This guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The guidance is intended to assist in developing registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments at any time.

ADDRESSES: Copies of the final guidance entitled "Impurities in New Veterinary Drug Substances" (VICH GL10) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm. Persons without Internet access may submit written requests for a single copy of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the final guidance to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: sthompso@cvm.fda.gov, or Robert C. Livingston, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5903, e-mail: rlivings@cvm.fda.gov.

Regarding the guidance document: Kevin J. Greenlees, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6977, e-mail: kgreenle@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Impurities in New Veterinary Drug Substances

In the **Federal Register** of July 22, 1999 (64 FR 39516), FDA published the draft guidance entitled "Impurities in New Veterinary Drug Substances" (VICH GL10) giving interested persons until August 23, 1999, to submit comments. After consideration of comments received, the final draft guidance was submitted to the VICH steering committee. At a meeting held on November 16 through 19, 1999, the VICH Steering Committee endorsed the final draft guidance, VICH GL10, for industry.

This document is intended to provide guidance for new animal drug applications (referred to as registration applications or marketing authorization in the final guidance) on the content and qualification of impurities in new drug substances intended to be used for new veterinary medicinal products, produced by chemical syntheses and not previously registered in a region or member State. (Information collected is covered under OMB Control No. 0910–0032.)

This final guidance document represents current FDA thinking on impurities in new veterinary drug substances and does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of applicable statutes and regulations.

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: June 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17201 Filed 7–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–77]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Limitation on Liability and Information Collection Requirements Referenced in 42 CFR 411.404, 411.406, and 411.408;

Form No.: HCFA–R–77 (OMB# 0938–0465);

Use: The Medicare program requires to provide written notification of noncovered services to beneficiaries by the providers, practitioners, and suppliers. The notification gives the beneficiary, provider, practitioner, or supplier knowledge that Medicare will not pay for items or services mentioned in the notification. After this notification, any future claim for the same or similar services will not be paid by the program and the affected parties will be liable for the noncovered services.

Frequency: Other; as needed;

Affected Public: Individuals or Households;

Number of Respondents: 890,826;

Total Annual Responses: 3,563,304;

Total Annual Hours: 296,942.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards. Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 28, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–17214 Filed 7–6–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1140–N]

Medicare Program; Question and Answer Session on July 24, 2000 To Discuss Remaining Concerns About the Implementation of the Hospital Outpatient Prospective Payment System (PPS)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting to provide an opportunity for hospital administrators, hospital industry representatives, hospital professionals, community mental health centers, home health agencies, comprehensive outpatient rehabilitation facilities, beneficiary advocates and other interested parties, to have pre-submitted questions and issues answered regarding remaining concerns they may have about the August, 2000 implementation of the hospital outpatient prospective payment system. Appropriate HCFA staff will be present to ensure that those questions and concerns will be answered.

DATES: The meeting is scheduled for July 24, 2000 from 9:30 a.m. until 4 p.m., E.D.T. The morning session (9:30 a.m. until 12) will be for hospital providers and the afternoon session (1:30 p.m. until 4 p.m.) will be for other providers; that is, community mental health centers (CMHCs, home health agencies (HHAs), and comprehensive outpatient rehabilitation facilities (CORFs).

ADDRESSES: The meeting will be held in the HCFA Central Office Main Auditorium, 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Judy Hunt, (410) 786–7874 or Mary Loane, (410) 786–1405 (for registration information and pre-submitted questions).

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2000 a final rule with comment period on the hospital outpatient prospective payment system (PPS) was published. This new PPS will go into effect for hospital outpatient services designated by the Secretary, certain Part B services furnished to hospital inpatients who have no Part A coverage, and partial hospitalization services furnished by community mental health centers. This outpatient PPS was enacted as part of the Balanced Budget Act of 1997. This meeting will provide a forum, for outpatient facilities, to receive answers to their pre-submitted questions and issues concerning the August, 2000, implementation of hospital outpatient PPS.

The format of the meeting will be a question and answer session. Appropriate HCFA staff will be present to ensure that questions and concerns will be answered.

During this session, major provider organizations are invited to give a brief pre-scheduled statement on the coming implementation of the outpatient PPS. Those organizations wishing to take advantage of this opportunity should submit their statement in writing to HCFA not less than 3 working days prior to this meeting and make copies available to attendees on the day of the conference.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below.

Registration

Individuals may register by following the directions soon to be posted on the HCFA website, www.hcfa.gov. Once individuals are on this website, they will need to highlight the red bullet, in the lower right hand corner, titled "Events, Meetings, and Workgroups." Individuals should also submit questions they would like to have answered, no later than July 14, 2000, by following the directions soon to be posted on the same HCFA website, www.hcfa.gov. The registration site will link you to the site for submission of questions.

Each participant will be provided with a meeting agenda at the time of the meeting.

If individuals have questions regarding registration; would like to register by phone; or would like to submit questions regarding hospital outpatient PPS issue, they should contact Judy Hunt (410) 786–7874 or Mary Loane (410) 786–1405.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 30, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–17136 Filed 7–6–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–27]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest of HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *ENERGY:* Mr. Tom Knox, Department of Energy, Office of Contract & Resource Management, MA–52, Washington, DC 20585; (202) 586–8715; *NAVY:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll free numbers).

Dated: June 29, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 7/7/00

Suitable/Available Properties

Buildings (by State)

Alabama

Residence 1223
204 Akin Drive
Tuskegee Co: Macon AL 36083–
Landholding Agency: GSA
Property Number: 54200020023
Status: Excess
Comment: 1375 sq. ft., brick veneer, most recent use—residential
GSA Number: 4–A–AL–768.

West Virginia

Moundsville Federal Bldg.
7th Street
Moundsville Co: Marshall WV 26041–
Landholding Agency: GSA
Property Number: 54200020024
Status: Excess
Comment: 9674 sq. ft., good condition, presence of asbestos, most recent use—office space
GSA Number: 4–G–WV–535.

Land (by State)

Arizona

0.322 acres
Madison Street Property
Yuma Co: AZ 00000–
Landholding Agency: GSA
Property Number: 54200020025
Status: Excess
Comment: 14,026 sq. ft., irregular in shape, most recent use—former railroad right-of-way
GSA Number: 9–I–AZ–814.

Unsuitable Properties

Buildings (by State)

California

Bldg. 1442
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020106
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020107
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 13162
Marine Corps Base
Camp Pendleton Co: CA 92055–

Landholding Agency: Navy
Property Number: 77200020108
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 14100
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020109
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020110
Status: Unutilized
Reason: Extensive deterioration.

Florida

Bldg. 62
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number : 77200020111
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

Bldg. 94
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020112
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

New Mexico

Bldg. 22, TA–33
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020022
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

Bldg. 23, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reason: Secured Area.

Bldg. 37, TA–53
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reason: Secured Area.

Bldg. 121, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reason: Secured Area.

Ohio

Bldg. 22B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 28A
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020027
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 28B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020028
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

South Carolina

4 Industrial Bldgs.
Naval Weapons Station
Charleston
88, 92, 94, 354
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020113
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

4 Heat Plant Bldgs.
Naval Weapons Station
Charleston
89, 95, 355, 438
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

8 Security Bldgs.
Naval Weapons Station
Charleston
313, 859, 860, 897, 918, 1654, 1655, 3217
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

8 Storage Bldgs.
Naval Weapons Station
Charleston
307, 353, 799, 831, 861, 933, 984, 994
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020116
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

6 Bldgs.
Naval Weapons Station
Charleston
183, 855, 868, 968, 3238, 408
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020117
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

[FR Doc. 00–16961 Filed 7–6–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Dirk Starck, Eagle River, AK, PRT–029559

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Frank S. Monfrey, Anchorage, AK, PRT–029701

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammal

Applicant: W. Stephen Minore, Rockford, IL, PRT–029703

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 30, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–17173 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Gate Keepers Wild Life Sanctuary, Wichita, KS, PRT–029857

The applicant requests a permit to export and re-import leopard (*Panthera pardus*) and tiger (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: July 3, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–17262 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability; Travis County, TX; Golden-cheeked Warbler

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Golden-cheeked Warbler (*Dendroica chrysoparia*) During Construction and Operation of a Residential Development on a Portion of the 98-acre Lake of the Woods Property, Travis County, Texas (Luth).

SUMMARY: Thomas Luth (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–029780–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler. The proposed take would occur as a result of the construction and operation of a residential development on a portion of the 98-acre Lake of the Woods Property, Travis County, Texas.

An Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application has been prepared. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before September 5, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029780–0 (Luth) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Tom Luth plans to construct a residential development on 89.5 acres of the 98-acre Lake of the Woods Property, Travis County, Texas. This action will eliminate 89.5 acres and indirectly impact 32.5 additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of the golden-cheeked warbler by purchasing 286.8 acres worth of participation certificates from the Balcones Canyonlands Preserve, providing approximately $1,147,200 to the BCP for the specific purpose of land acquisition and management within golden-cheeked warbler habitat in Travis County, as identified by the Service.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17229 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Williamson & Associates, to commercialize a new marine induced polarization technology.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact: Jeff Wynn, U.S. Geological Survey, 954 National Center, Reston, VA 20192

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: June 21, 2000.

P. Patrick Leahy,

Chief Geologist.

[FR Doc. 00–17215 Filed 7–06–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–0777–XQ]

Call for Nomination for Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of vacancy on Resource Advisory Council and call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for the Bureau of Land Management's (BLM's) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC) in Nevada, to fill a vacancy on that RAC for an employee of the State of Nevada. The RAC provides advice and recommendations to BLM's Winnemucca and Carson City Field Offices on land use planning and management of the public lands within their geographic areas. Public nominations will be considered for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, the interests represented by the individuals appointed to the RAC must be balanced and representative of the various issues concerned with the management of public lands.

These include three categories, one of which is Category three, holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

The employee of a State agency whose term has not yet expired has resigned from this RAC, and this notice is to solicit nominations for a replacement. Nominations should be sent to Jo Simpson, Nevada State Office, BLM, P.O. Box 12000, Reno, Nevada, 89520–0006; Telephone (775) 861–6586.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, U.S. Department of the Interior, Bureau of Land Management, Office of Communications, P.O. Box 12000, Reno, Nevada, 89520–0006.

Dated: June 20, 2000.

Robert E. Stewart,

Acting Chief, Office of Communications.

[FR Doc. 00–17135 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–00–1020–PB]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on August 23–25, 2000, at the Best Western Inn and Suites, 3009 West Highway 66, Gallup, NM 87301.

There will be an optional all day a field trip on Wednesday, August 23, 2000. Planned for the first stop will be the Pittsburgh and Midway Mine to view the mining process and reclamation/revegetation of the mine area. The tour will proceed to the El Malpais National Conservation Area for an overview of the geology of the area, and a final stop at the bat caves. The optional tour will start at the Best Western Inn and Suites in Gallup, NM, at 8:30 a.m. and return to Gallup by 9 p.m. Transportation will be provided for RAC members. The meeting on Thursday, August 24, 2000, starts at 8:00 a.m. and will end about 5 p.m. The three established RAC Subcommittees may have late afternoon or evening meetings on this day. The exact time and location of the Subcommittee meetings will be established by the Chairperson of each Subcommittee earlier in the day during the RAC meeting.

On Friday, August 25, 2000, the meeting starts at 8 a.m. and will end about 3 p.m. The ending time of 3 p.m. may be changed depending on the work remaining for the RAC. The draft agenda for the RAC meeting includes an agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting on June 14 through 16, 2000, in Taos, NM, a check in from the RAC members, and the following planned presentations that also include discussions; a progress report on House Memorial 15, and a Standards and Guidelines update. The time from 10 a.m. until 12 noon will be taken up with a review of the Off Highway Vehicle issue. There will be a discussion on a handout from the previous meeting and review of the outcome of three Listening Meetings on the topic being held throughout the State during July.

Starting at 1 p.m. on August 24, 2000, there will be a 15 minute Public Comment Period for members of the public who are not able to be present for the regular Public Comment Period on Friday, August 25th, to address the RAC. Following will be presentations on the Pittsburgh and Midway Coal Mine, which also include discussions. The main focus will be on reclamation and revegetation of the mine areas. Planned presentations included will be representatives from the Pittsburgh and Midway Mine, the Navajo Nation, the State of NM, the Bureau of Land Management, and a speaker representing an environmental group. The meeting on Thursday will end about 5 p.m. The three established RAC Subcommittees may have late afternoon or evening meetings on this day. The exact time and location of the Subcommittee meetings will be established by the Chairperson of each Subcommittee earlier in the day during the RAC meeting.

The meeting on Friday, August 25th will start at 8 a.m. with a review of the agenda thus far. At 8:15 a.m., BLM State of the Field Office reports will take place, presented by the Field Office managers. The regular Public Comment Period for the Public to address the RAC is on the Friday, August 25, 2000, from 10 a.m. to 12 noon. The RAC may reduce or extend the end time of 12:00 noon depending on the number of people wishing to address the RAC. Anyone wishing to address the RAC should be present at the 10 a.m. starting time. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its agenda items. At 1 p.m. RAC Subcommittee reports from the Urban and Open Space Subcommittee, the Roads and Trails

Subcommittee, and the Oil and Gas Subcommittee, are scheduled. These reports are followed by RAC discussions and any RAC recommendations, development of draft agenda items and selection of a location for the next RAC meeting, and a RAC assessment of the current meeting.

FOR FURTHER INFORMATION CONTACT: Mary White, Nex Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: June 29, 2000.

M.J. Chávez,

State Director.

[FR Doc. 00–17180 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–AA]

Notice of meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting on August 10 at the Forsyth Country Club, Forsyth, Montana starting at 8:00 a.m. Primary agenda topics include an update on coalbed methane development, continued discussion on access, and the status of the Weatherman Draw proposal.

The meeting is open to the public and the public comment period is set for 11 a.m. on August 10. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: June 27, 2000.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 00–17217 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–00–1220–PA–24 1A]

Notice of Bureau of Land Management National Off-Highway-Vehicle Strategy; Request for Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comment.

SUMMARY: Responding to an increasing public interest in issues surrounding the use of off-highway-vehicles (OHVs) on public lands, the Bureau of Land Management is announcing the public involvement phase of the National Off-Highway Vehicle Strategy, seeking public comments on OHV-related issues.

The Bureau of Land Management (BLM) is seeking ideas and solutions from the public on how best to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands. The BLM will develop a strategy based on public input to address land-management issues prompted by the growing popularity of OHV use.

DATES: You should submit your comments by August 31, 2000. BLM will not necessarily consider comments postmarked or received by messenger or electronic mail after the above date in the decisionmaking process on the OHV strategy.

ADDRESSES: Mail: Director (250), Bureau of Land Management, Administrative Record, Room 204 LS, 1849 C Street, NW., Washington, DC 20240.

Personal or messenger delivery: Room 204, 1620 L Street, NW, Washington, DC 20036.

Internet e-mail: Special comment site at www.blm.gov.

Mailer: We will send you an OHV mailer if you contact the Bureau of Land Management at 1849 C Street NW., LSB 406–C, Washington, DC 20240, Attn: Correspondence—WO 615

Other: We will also accept comments at local or State "listening meetings" which will be held by BLM or BLM Resource Advisory Councils (RACs).

FOR FURTHER INFORMATION CONTACT: Rodger E. Schmitt, National Recreation Group Manager, Bureau of Land Management, Washington, DC, at (202) 452–7771.

SUPPLEMENTARY INFORMATION: The goal of the OHV strategy is to provide local managers a framework for addressing issues such as current OHV designations, executive orders, regulations, trends in management and management approaches, route inventory needs, resource issues, special management and sensitive areas and resources, monitoring, education, law enforcement, and budget.

BLM management of OHVs is guided by Executive Orders 11644 made in 1972 and 11989 made in 1977, when only about five million OHVs were in use nationally. Today, that number has risen dramatically. In addition, technological advances now make it possible for these vehicles to travel over lands that were formerly inaccessible. Many of BLM's land use plans do not adequately address the increases in OHV use. In addition, BLM's budget-related resources—including the number of recreation specialists and law enforcement personnel—have not kept pace with the past decade's growth in OHV use. These factors, plus litigation over OHV management issues, have created the need for a national OHV management strategy.

Comments will be collected through August and will be analyzed and used to help BLM develop guidance for local solutions by November 30. Once the guidance is written, BLM will implement it locally with the help of public and private partners to achieve on-the-ground goals.

Jack Peterson,

Acting National Recreation Group Manager.

[FR Doc. 00–17216 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 1, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 24, 2000.

Beth M. Boland,

Acting Keeper of the National Register.

CONNECTICUT

Hartford County

Coult, Abraham, House, 1695 Hebron Ave., Glastonbury, 00000834

Hartford Electric Light Company Maple Avenue Sub-Station, 686 Maple Ave., Hartford, 00000833

New Haven County

West Haven Green Historic District, Roughly along Main St., Campbell St., Church St. and Savin St., West Haven, 00000832

NEBRASKA

Lancaster County

Herter Farmstead, 4949 S 148th, Walton, 00000835

NEW YORK

Rensselaer County

St. Mark's Episcopal Church, Main St., Hoosick Falls, 00000836

Sullivan County

Hankins Stone Arch Bridge, (Upper Delaware Valley, New York and Pennsylvania, MPS) Sullivan Cty. Rd. 94, E., Hankins, 00000838

Manny, Anthony, House, (Upper Delaware Valley, New York and Pennsylvania, MPS) 6 Hankins Rd., Hankins, 00000840

Tusten Stone Arch Bridge, (Upper Delaware Valley, New York and Pennsylvania, MPS) Tusten Rd. at Ten Mile River, Tusten, 00000839

Westchester County

Scarsdale Railroad Station, Popham Rd. at Bronx River Pkwy., Scarsdale, 00000837

NORTH CAROLINA

Chatham County

Siler City Commercial Historic District, Roughly bounded by Second Ave., Birch Ave., Third St. and Beaver St., Siler City, 00000841

Polk County

Railway Clerks' Mountain House, US 176, 0.6 mi. Se of jct. with Ozone Rd., Saluda, 00000842

PENNSYLVANIA

Berks County

Red Men Hall, 831–833 Walnut St., Reading, 00000843

Chester County

Zook House, (West Whiteland Township MRA) 100 Exton Sq., Exton, W. Whiteland, 00000844

Dauphin County

Star Barn Complex, Nissley Dr. at PA 283, Lower Swatara, 00000845

Lancaster County

New Holland Machine Company, 146 E. Franklin St., New Holland, 00000846

Philadelphia County

Bell Telephone Company Building, 1827–35 Arch St., Philadephia, 00000849

York County

Bixler, Michael and Magdealena Farmstead, 400 Mundis Race Rd., East Manchester, 00000850

Red Lion Borough Historic District, Roughly bounded by Edgewood Ave., Windsor Twp. line, MD&PA RR., Chestnut Rd., Country Club Rd., and York Twp. line., Red Line, 00000847

Sinking Springs Farms, Roughly bounded by Church Rd., Sinking Springs Ln., N. George St., Locust Ln., Susquehanna Trail and PA 238, Manchester, 00000848

WISCONSIN

Ozaukee County

Bigelow School, 4228 W. Bonniwell Rd., Mequon, 00000851

WYOMING

Crook County

Entrance Road—Devils Tower National Monument, (Devils Tower National Monument MPS) Devils Tower National Monument, Devils Tower, 00000854

Entrance Station—Devils Tower National Monument, (Devils Tower National Monument MPS) Devils Tower National Monument, Devils Tower, 00000853

Old Headquarters Area Historic District, (Devils Tower National Monument MPS) Devils Tower National Monument, Devils Tower, 00000852

Tower Ladder—Devils Tower National Monument, (Devils Tower National Monument MPS) Devils Tower National Monument, Devils Tower, 00000855

[FR Doc. 00–17267 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Interim Surplus Criteria

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of availability of a draft environmental impact statement and public hearings for the proposed adoption of Colorado River Interim Surplus Criteria: INT–DES 00–25.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), has issued a Draft Environmental Impact Statement (DEIS) on the proposed adoption of specific criteria under which surplus water conditions may be determined in the Lower Colorado River Basin during the next 15 years. Cooperating agencies are the National Park Service and the International Boundary and Water Commission, United States Section. Information on public hearings may be found below in the **DATES** section.

ADDRESSES: Send comments on the DEIS to Ms. Jayne Harkins, Attention BCOO–4600, PO Box 61470, Boulder City, Nevada, 89006–1470, or fax comments to Ms. Harkins at (702) 293–8042. Comments must be received no later than September 8, 2000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

DATES: Comments on this DEIS must be received no later than September 8, 2000.

Public hearings will be held to receive written or verbal comments on the DEIS from interested organizations and individuals on the environmental impacts of the proposal. The hearings

will be held at the following times and locations:

- August 3, Meeting Room 1 on Level 3, Terminal 4, Phoenix Sky Harbor International Airport, Phoenix, Arizona, 7 p.m.
- August 8, Big Bear Room, Doubletree Hotel, 222 N. Vineyard Ave., Ontario, CA, 7 p.m.
- August 10, Jazz Room, Salt Lake City International Airport, 765 Terminal Drive, Salt Lake City, Utah, 7 p.m.
- August 15, Comfort Dental Conference Room, Las Vegas Chamber of Commerce, 3720 Howard Hughes Parkway, Las Vegas, NV, 7 p.m.

In addition to the public hearings, a separate hydrologic modeling meeting will be held on the same day as the public hearing in Las Vegas, NV. Reclamation will provide detailed assumptions and respond to questions regarding the model runs, use schedules, and post-processing analysis that was completed for this DEIS. The time and location for this technical meeting is as follows:

- August 15, Comfort Dental Conference Room, Las Vegas Chamber of Commerce, 3720 Howard Hughes Parkway, Las Vegas, NV, 9 a.m. to 5 p.m.

The hearings and the hydrologic modeling meeting will accommodate those with hearing impairments or other special requirements upon request by calling Janet Steele at (702) 293–8551 at least 48 hours prior to the hearing.

The DEIS is available for viewing on the Internet at *http://www.lc.usbr.gov* and *http://www.uc.usbr.gov*. Copies of the DEIS, in the form of a printed document or on compact disk, are available upon written request to the following address: Ms. Janet Steele, Attention BCOO–4601, PO Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8785, or by fax at (702) 293–8042.

See **SUPPLEMENTARY INFORMATION** section for a list of libraries where the DEIS is available for public inspection and review.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ms. Jayne Harkins at the above address or telephone Ms. Harkins at (702) 293–8785.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior (Secretary) currently manages the lower Colorado River system in accordance with federal law (including the provisions of the 1964 U.S. Supreme Court decree, as supplemented, in *Arizona* v. *California* (the Decree)), the Colorado River Basin Project Act of 1968 (CRBPA) and Long Range Operating Criteria (LROC) pursuant to the CRBPA. Within this legal framework, the Secretary makes annual determinations regarding the availability of surplus water from Lake Mead by considering various factors, including the amount of water in storage and predictions for natural runoff. The Decree provides that if there exists sufficient water available in a single year for release from Lake Mead to satisfy annual consumptive use in the states of Arizona, California, and Nevada in excess of 7.5 million-acre feet, such water may be determined by the Secretary to be made available as surplus water.

The purpose of and need for establishing interim surplus criteria is to assist the Secretary in making annual determinations of surplus conditions, and will afford entities that have contracted for surplus water a greater degree of predictability with respect to the annual existence of surplus water available for diversion. This greater predictability would assist these entities in the management of their water resources.

The DEIS presents four possible alternatives for implementation, plus a "No Action Alternative." The DEIS does not include a preferred alternative. The interim surplus criteria alternatives have been formulated to be consistent with applicable federal law and the LROC, described above.

The four potential action alternatives are: a "Flood Control Alternative," which would provide surplus water only when flood control releases from Lake Mead are needed, based on the current criteria for making such releases; the "Six States Alternative" and "California Alternative," both of which specify various Lake Mead water surface elevations to be used as "triggers" to indicate when surplus conditions exist; and the "Shortage Protection Alternative," which would permit surplus conditions to be determined above a specific elevation positioned to ensure enough water remains in Lake Mead to provide a one-year water supply to Arizona, California, Nevada, and Mexico, and to protect against dropping the lake's water level below a specified elevation.

Libraries Where the Draft EIS is Available for Public Inspection and Review:

- Department of the Interior, Natural Resources Library, 1849 C Street, NW, Washington, DC 20240.
- Lower Colorado Regional Office, PO Box 61470, Boulder City, Nevada 89006–1470.
- Phoenix Area Office, Concorde Commerce Center, 2222 West Dunlap Ave., Suite 100, Phoenix, Arizona 85069–1169.
- Yuma Area Office, 7301 Calle Aqua Salada, Yuma, Arizona, 85366–7504.
- Upper Colorado Regional Office, 125 South State St., Room 6107, Salt Lake City, Utah 84138–1102.
- Boulder City Library, 813 Arizona, Boulder City, NV 89005. Henderson District Public Library, 280 South Water St., Henderson, NV 89015.
- Los Angeles Central Library, 630 W 5th St. Los Angeles, CA 90071.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- Salt Lake City Public Library, 209 E 500 S., Salt Lake City, UT 84111.
- Albuquerque Public Library, 501 Copper Ave. NW, Albuquerque, NM 87102.
- Denver Public Library, 10 W 14th Ave. Pkwy, Denver, CO 80204.
- Laramie County Library, 2800 Central Ave., Cheyenne, WY 82001.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004.
- Government Reference Library, City Hall, 9th Floor, Tucson, AZ 85701.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ, 86403.
- Parker Public Library, 1001 South Navajo Ave., Parker, AZ 85344.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.

Dated: June 30, 2000.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance, Department of the Interior.

[FR Doc. 00–17194 Filed 7–6–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–872–883 (Preliminary)]

Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–872–883 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela of certain steel concrete reinforcing bars, provided for in subheading 7214.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by August 14, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 21, 2000.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Jeff Clark (202–205–3195), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to petitions filed on June 28, 2000, by the Rebar Trade Action Coalition (RTAC) (Washington, DC) and its individual members.[1]

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 19, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jeff Clark (202–205–3195) not later than July 17, 2000, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17261 Filed 7–6–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The members of RTAC are AmeriSteel (Tampa, FL); Auburn Steel Co., Inc. (Auburn, NY); Birmingham Steel Corp. (Birmingham, AL); Border Steel, Inc. (El Paso, TX); Marion Steel Company (Marion, OH); Riverview Steel (Glassport, PA); Nucor Steel (Darlington, SC); and CMC Steel Group (Seguin, TX). Auburn Steel Co., Inc., is not a petitioner with respect to Indonesia and Japan.

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement In Accordance With the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on June 26, 2000, a proposed Settlement Agreement was lodged with the United States District Court for the Eastern District of Virginia in *Mobil Oil Corporation* v. *United States,* Civil Action No. 99–1467–A. The proposed Settlement Agreement settles all CERCLA contribution claims asserted by Mobil Oil Corporation ("Mobil") against the United States, as well as certain CERCLA claims by the United States against Mobil. These

claims relate to response actions undertaken at certain portions of the Stibnite Mining Area ("Stibnite Area") in Valley County, Idaho.

After carrying out certain response actions pursuant to an Administrative Order on Consent between the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of Agriculture, Forest Service ("FS"), and Mobil, Mobil sued the United States in the United States District Court for the Eastern District of Virginia pursuant to Sections 107(a)(2) and 113(f), (g) (2) of CERCLA, 42 U.S.C. 9607(a)(2) and 9613(f), (g)(2), alleging that the United States, on behalf of certain Federal Agencies, is liable as an owner and operator for a portion of the necessary costs of response that Mobil has incurred in connection with the Stibnite Area. Pursuant to the Settlement Agreement, Mobil will pay $264,000 into the EPA Hazardous Substances Superfund to reimburse a portion of the response costs incurred by the United States, and the United States will pay Mobil $1.55 million, to reimburse Mobil for a portion of the costs Mobil has incurred in carrying out response actions in the Stibnite Area.

Under the Settlement Agreement, the United States covenants not to sue Mobil pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. 9606, 9607(a), and 9613 for certain response costs or for the performance certain response actions for certain discrete portions areas of the Stibnite Area. This covenant not to sue expressly does not include: (1) Claims based on Mobil's failure to meet a requirement of the Agreement; (2) liability arising from disposal, release, or threat of release of hazardous substances outside of the Site; (3) liability for future disposal of hazardous substances at the Site, other than as ordered by EPA; (4) liability for natural resources damages, and for the costs of any natural resource damage assessments; (5) criminal liability; and (6) liability, not to exceed $1.1 million, for the costs of future response actions, including constructing an impermeable cap, at a portion of the Stibnite Area.

Mobil covenants not to sue the United States for: (1) Any claim for reimbursement from the EPA Hazardous Substance Superfund (*see* 26 U.S.C. 9507); (2) any other costs, damages, attorneys fees, or claims arising out of response activities at the site; (3) any claim under Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, relating to the Site, except claims for natural resources damages and for the costs of any natural resource damage assessments; and (4) any claim regarding Mobil's costs incurred in implementing the work required under the VCO.

Under the Settlement Agreement, Mobil and the Settling Federal Agencies are entitled to protection from contribution actions or claims, to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4), as to past response costs incurred by the United States, all response actions taken and to be taken by or at the direction of the United States, and all response costs incurred and to be incurred by the United States in connection with the areas addressed in the Settlement.

The Department of Justice will receive written comments by mail relating to the proposed Settlement Agreement for thirty (30) days from the date of publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *Mobil Oil Corporation* v. *United States,* DOJ. Ref. No. 90–11–6–05768.

The proposed Settlement Agreement may be examined at the following location: U.S. Environmental Protection Agency, 1435 N. Orchard Street, Second Floor, Boise, Idaho 83706, 208–378–5746.

A copy of the Settlement Agreement and exhibits (if requested) may also be obtained by mail from: Allison Booker, U.S. Department of Justice, Environmental Defense Section, Environment and Natural Resources Division, P.O. Box 23986, Washington, D.C. 20026–3986.

* * * * *

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 00–17219 Filed 7–6–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 30, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), by August 7, 2000.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title: Underground Retorts.

Type of Review: Extension.

OMB Number: 1219–0096.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time Per Response: 160 hours.

Total Burden Hours: 160.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Prior to ignition of underground retorts, mine operators must submit a written plan containing site-specific safeguards and safety procedures for the underground areas of the mine affected by the retorts. MSHA uses this information to ensure that safe practices are followed, and to determine that the procedures and safeguards used

protect the safety of all persons in the mine during ignition and operation of a retort.

Agency: Mine Safety and Health Administration (MSHA).

Title: Product Testing by Applicant or Third Party.

Type of Review: Extension.

OMB Number: 1219–0100.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 244.

Number of Annual Responses: 307.

Estimated Time Per Response: 4 hours (weighted average).

Total Burden Hours: 565.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $42,243.

Description: To prevent fire and explosion hazards in underground mines, manufacturers of certain products are required to submit to MSHA applications for product approval. Certain records and reports are required to assure continued product quality.

Agency: Mine Safety and Health Administration (MSHA).

Title: Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

Type of Review: Extension.

OMB Number: 1219–0121.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,203.

Number of Annual Responses: 8,616.

Estimated Time Per Response: 3 minutes.

Total Burden Hours: 431.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Mine operators are required to obtain certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with applicable American Society for Testing and Materials (ASTM) specifications and make the certification available to an authorized representative of the Secretary.

Agency: Employment and Training Administration (ETA).

Title: Employment Service Reporting System.

Type of Review: Revision of a currently approved collection.

OMB Number: 1205–0240.

Affected Public: State, Local, or Tribal Government.

ETA form	Total respondents	Frequency	Total responses	Average minutes per response	Estimated total burden hours
Uses Report 9002A–C	54	Quarterly	216	840	3,024
VETS 200A	54	Quarterly	216	50	180
VETS 200B	54	Quarterly	216	50	180
VETS 300	54	Quarterly	216	60	216
Management Report	1,600	Quarterly	6,400	50	5,333
Totals	1,654		7,264	210	8,933

Total annualized capital/startup costs: $16,000.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Employment Service Program Reporting System will provide data on State public employment service agency program activity and expenditures for use at the Federal level by the U.S. Employment Service and the Veterans' Employment and Training Service in program administration and to provide reports to the Congress, state and local elected officials, and the general public.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–17234 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from

their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
- CT000001 (Feb. 11, 2000)
- CT000002 (Feb. 11, 2000)
- CT000003 (Feb. 11, 2000)
- CT000004 (Feb. 11, 2000)
- CT000005 (Feb. 11, 2000)

Massachusetts:
- MA000001 (Feb. 11, 2000)
- MA000002 (Feb. 11, 2000)
- MA000007 (Feb. 11, 2000)
- MA000018 (Feb. 11, 2000)

New Hampshire:
- NH000001 (Feb. 11, 2000)
- NH000002 (Feb. 11, 2000)
- NH000003 (Feb. 11, 2000)
- NH000007 (Feb. 11, 2000)

New Jersey:
- NJ000002 (Feb. 11, 2000)
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- NJ000004 (Feb. 11, 2000)
- NJ000005 (Feb. 11, 2000)
- NJ000007 (Feb. 11, 2000)
- NJ000009 (Feb. 11, 2000)

New York:
- NY000002 (Feb. 11, 2000)
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- NY000078 (Feb. 11, 2000)
- NY000079 (Feb. 11, 2000)

Vermont
- VT000013 (Feb. 11, 2000)

Volume II

District of Columbia:
- DC000001 (Feb. 11, 2000)
- DC000003 (Feb. 11, 2000)

Maryland:
- MD000001 (Feb. 11, 2000)
- MD000009 (Feb. 11, 2000)
- MD000011 (Feb. 11, 2000)
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- MD000042 (Feb. 11, 2000)
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Pennsylvania:
- PA000002 (Feb. 11, 2000)
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- PA000038 (Feb. 11, 2000)
- PA000042 (Feb. 11, 2000)

Virginia:
- VA000025 (Feb. 11, 2000)
- VA000078 (Feb. 11, 2000)
- VA000079 (Feb. 11, 2000)

Volume III

Florida:
- FL000009 (Feb. 11, 2000)
- FL000013 (Feb. 11, 2000)
- FL000015 (Feb. 11, 2000)
- FL000017 (Feb. 11, 2000)
- FL000049 (Feb. 11, 2000)
- FL000053 (Feb. 11, 2000)
- FL000055 (Feb. 11, 2000)

Georgia:
- GA000004 (Feb. 11, 2000)
- GA000022 (Feb. 11, 200)
- GA000032 (Feb. 11, 200)
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Kentucky:
- KY000001 (Feb. 11, 2000)
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- KY000027 (Feb. 11, 2000)
- KY000028 (Feb. 11, 2000)
- KY000029 (Feb. 11, 2000)
- KY000035 (Feb. 11, 2000)

Volume IV

Illinois:
- IL000001 (Feb. 11, 2000)
- IL000002 (Feb. 11, 2000)
- IL000003 (Feb. 11, 2000)
- IL000006 (Feb. 11, 2000)
- IL000007 (Feb. 11, 2000)
- IL000008 (Feb. 11, 2000)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 29th Day of June 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–17022 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0176 (2000)]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; 29 CFR Part 1904 Recording and Reporting Occupational Injuries and Illnesses (1218–0176)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. The Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the current paperwork requirements of 29 CPR part 1904, Recording and Reporting Occupational Injuries and Illnesses (less 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents). The Agency is in the process of revising these recordkeeping requirements and expects to implement a revised injury and illness recordkeeping system. If the Agency is unable to implement the revised system in January, 2001, it will need to continue the current injury and

illness recordkeeping system. For this reason, OSHA will request OMB reauthorization of the existing Part 1904 under the PRA, and is asking for public comment on burden estimates, practical utility, and other paperwork issues concerning OSHA's existing recordkeeping requirements.

DATES: Written comments must be submitted on or before September 5, 2000. Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 1218–0176 (2000), U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–2350. Written comments limited to 10 pages or less in length may be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistics, Directorate of Information Technology, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–1886. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Todd Owen at (202) 693–2444. For electronic copies of this information collection request, contact OSHA's Web Page on the Internet at http://www.osha-slc.gov/OCIS/Info_coll.html.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act (OSH Act) and 29 CFR part 1904 prescribe that certain employers maintain records of job related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention activities to provide workers a safe and healthy work environment. The data are also needed by the Bureau of Labor Statistics to report on the number and rate of occupational injuries and illnesses in the country.

The data also provide to employers and employees information about the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, employees who are provided information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. Such increased awareness would generally raise the overall level of safety and health in the workplace.

OSHA currently has approval from the Office of Management and Budget (OMB) for information collection requirements contained in 29 CFR part 1904. That approval will expire on December 31, 2000, unless OSHA applies for an extension of the OMB approval. This notice initiates the process of OSHA to request an extension of the current OMB approval. This notice also solicits public comment on OSHA's existing paperwork burden estimates from those interested parties and seeks public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's estimates, which are based upon the most current data available, and to comment on their accuracy or appropriateness in today's workplace situation.

29 CFR 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents (OMB control number 1218–0007) is under a separate Information Collection Request (ICR) package.

II. Current Actions

This notice request public comment on an extension of the current OMB approval of the paperwork requirements in 28 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses.

Type of Review: Extension of currently approved collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Recording and Reporting Occupational Injuries and Illnesses.

OMB Number: 1218–0176.

Agency Number: ICR 1218–0176 (2000).

Frequency: Recordkeeping.

Affected Public: Business or other for-profit; Farms; Not-for-profit institutions; State and Local Government.

Cite/Reference/Form/etc: 29 CFR part 1904; OSHA No. 200; OSHA No. 101.

Number of Respondents: 1,395,516.

Estimated Time Per Respondent: 1,395,516.

Total Burden Hours: 2,070,008 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: July 3, 2000.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 00–17266 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–12]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of approval.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces that the Office of Management and Budget (OMB) approved the Information Collection Request for the Hazard Communication Standard under the Paperwork Reduction Act of 1995. This document provides the OMB approval number and expiration date for this action.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 693–2444.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 11, 1999 (64 FR 43737), the Agency announced its request to OMB to renew its current approval for 29 CFR 1910.1200; 29 CFR 1915.1200, 29 CFR 1917.28, CFR 1918.90, 29 CFR 1926.1200, and 29 CFR 1928.21 the Hazard Communication Standard for the general, shipyard

employment, marine-terminal, longshoring, construction, and agriculture industries. Consistent with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB renewed its approval of the Information Collection Request for this Standard (OMB Control Number 1218–0072). This approval expires February 28, 2002. Under 5 CFR 1320.5(b), and Agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid control number.

Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC on June 30, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–17263 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0085 (2000)]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of approval.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces that the Office of Management and Budget (OMB) approved the Information Collection Request for the 13 Carcinogens Standard under the Paperwork Reduction Act of 1995. This document provides the OMB approval number and expiration date for this action.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 693—2444.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 10, 1999 (64 FR 61369), the Agency announced its request to OMB to renew its current approval for 29 CFR 1910.1003, 29 CFR 1915.1003, and 29 CFR 1926.1103, the 13 Carcinogens Standard for the general, shipyard-employment, and construction industries, respectively. Consistent with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB renewed its approval of the Information Collection Request for this Standard (OMB Control Number 1218–0085). This approval expires March 31, 2003. Under 5 CFR 1320.5(b), an Agency cannot conduct, sponsor, or require a person to respond to a collection of information unless the collection displays a valid control number.

Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC on June 30, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor

[FR Doc. 00–17264 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0128 (2000)]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of approval.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces that the Office of Management and Budget (OMB) approved the Information Collection Request for the Coke Oven Emissions Standard under the Paperwork Reduction Act of 1995. This document provides the OMB approval number and expiration date for this action.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 693–2444.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 25, 2000 (65 FR 3977), the Agency announced its request to OMB to renew its current approval for 29 CFR 1910. 1029, the Coke Oven Emissions Standard. Consistent with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB renewed its approval of the Information Collection Request for this Standard (OMB Control Number 1218–0128). This approval expires May 31, 2003. Under 5 CFR 1320.5(b), an Agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid control number.

Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC on July 3, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–17265 Filed 7–6–00; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317, 50–318, 72–8; Renewed License No. DPR–53; Renewed License No. DPR–69; and License No. SNM–2505]

In the Matter of Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and Calvert Cliffs Independent Spent Fuel Storage Installation; Order Approving Transfer of Licenses and Conforming Amendments

I

Baltimore Gas and Electric Company (BGE or the licensee) is the holder of Renewed Facility Operating Licenses Nos. DPR–53 and DPR–69, which authorize operation of Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (CCNPP or Calvert Cliffs), and Materials License No. SNM–2505, which authorizes operation of the Calvert Cliffs Independent Spent Fuel Storage Installation (Calvert Cliffs ISFSI). The facilities are located at the licensee's site in Calvert County, Maryland. The operating licenses authorize BGE to possess, use, and operate Calvert Cliffs. The materials license authorizes BGE to receive, possess, transfer and store power reactor spent fuel at the Calvert Cliffs ISFSI.

II

By application dated February 29, 2000, as supplemented April 7, April 27, May 2, May 19, and June 20, 2000 (collectively, the application), BGE

requested that the Commission consent to certain proposed license transfers that would be necessary in connection with the corporate restructuring of BGE in accordance with Maryland's Electric Customer Choice and Competition Act of 1999. Under this restructuring, Constellation Energy Group, Inc. ("Constellation Energy"), the parent of BGE, has formed a wholly owned subsidiary, Constellation Nuclear Group, LLC ("CN"). BGE proposes to transfer ownership of and the licenses for CCNPP and the ISFSI to a subsidiary of BGE, Calvert Cliffs Nuclear Power Plant, Inc. ("Company"). BGE will then transfer the ownership of Company to Constellation Energy, which in turn will transfer the ownership of Company to CN. The result will be that CN, as owned by Constellation Energy will own Company, which will be the owner and licensee of CCNPP and the ISFSI. No physical changes to the facilities or operational changes were proposed in the application.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by BGE pursuant to 10 CFR 50.80 and 50.90, and approval of the transfer of the materials license and conforming amendment was requested by BGE pursuant to 10 CFR 72.50 and 72.56. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on May 4, 2000 (65 FR 25963). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. In addition, pursuant to 10 CFR 72.50, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. After reviewing the information in the application from BGE and other information before the Commission and relying upon the representations and agreements contained in the application, the NRC staff has determined that Company is qualified to be the holder of the licenses and that the transfer of the licenses to Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that (1) The application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; (2) the facilities will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; (3) there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; (4) the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and (5) the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated June 30, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the transfer of the licenses, as described herein, to Company is approved, subject to the following conditions:

(1) Company shall, prior to completion of the subject transfers, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Company has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) If the transfer of the licenses is not completed by July 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(3) The decommissioning trust agreement for Calvert Cliffs and the ISFSI, at the time the license transfers are effected and thereafter, is subject to the following:

(a) The decommissioning trust agreement must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Constellation Energy or its affiliates, successors, or assigns shall be prohibited. Except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreement must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the NRC 30-days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(d) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30-days prior written notification to the Director, Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Company shall provide decommissioning funding assurance, to be held in decommissioning trusts for Calvert Cliffs upon the transfer of the licenses to Company, in an amount equal to or greater than the balance in the Calvert Cliffs decommissioning trusts immediately prior to the transfer. In addition, Company shall ensure that all contractual arrangements referred to in the application to obtain necessary decommissioning funds for Calvert Cliffs through a non-bypassable charge are executed and will be maintained until the decommissioning trusts are fully funded, or shall ensure that other mechanisms that provide equivalent assurance of decommissioning funding in accordance with the Commission's regulations are maintained.

(5) Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application, the requirements of this Order, and the related safety evaluation.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued with this Order and shall be made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated February 29, 2000, supplements dated

April 7, April 27, May 2, May 19, and June 20, 2000, and the safety evaluation dated June 30, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 30th day of June, 2000.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17206 Filed 7–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of 10 CFR 140.11 regarding financial protection requirements for Facility Operating License No. DPR–21, issued to Northeast Nuclear Energy Company (the licensee), for the Millstone Nuclear Power Station, Unit 1, a permanently shutdown nuclear reactor facility located in Waterford, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow an exemption from the requirements of 10 CFR 140.11(a)(4) regarding secondary financial protection, due to the permanently shutdown and defueled status of the Millstone Nuclear Power Station, Unit 1.

The proposed action is in accordance with the licensee's application for exemption dated September 28, 1999, as supplemented by letter dated March 2, 2000.

The Need for the Proposed Action

The proposed action is needed because the licensee's required insurance coverage significantly exceeds the potential cost consequences of radiological incidents possible at a permanently shutdown and defueled nuclear power plant with spent fuel that will have cooled since the plant ceased operations on November 4, 1995.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that exemption from 10 CFR 140.11(a)(4) is an administrative action and will not have any environmental impact. Millstone Nuclear Power Station, Unit 1 permanently ceased operations on November 4, 1995, and completed the transfer of all reactor fuel to the spent fuel pool shortly afterwards. The licensee maintains and operates the unit in a configuration necessary to support the safe storage of spent fuel and to comply with the facility operating license and NRC's rules and regulations.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit 1.

Agencies and Persons Contacted

In accordance with its stated policy, on June 2, 2000, the staff consulted with the State of Connecticut official, Mr. Michael Firsick of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 28, 1999, as supplemented by letter dated March 2, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http:www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 29th day of June 2000.

For the Nuclear Regulatory Commission.

David J. Wrona,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17205 Filed 7–6–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24548; 812–10706]

Van Kampen Funds Inc. and Van Kampen Focus Portfolios; Notice of Application

June 29, 2000.

AGENCY: Securities and Exchange Commission "SEC" or "Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A), (B) and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered unit investment trusts to acquire shares of registered management investment companies and unit investment trusts both within and outside the same group of investment companies.

FILING DATES: The application was filed on June 17, 1997, and amended on April 12, 2000, and May 22, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 24, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, One Parkview Plaza, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Branch Chief, and Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102, (202) 942–8090.

Applicants' Representations

1. The Van Kampen Focus Portfolios ("Trust") and its series ("Trust Series") are unit investment trusts registered under the Act and sponsored by Van Kampen Funds Inc. ("Sponsor"). The Sponsor, a Delaware corporation, is an indirect subsidiary of Morgan Stanley Dean Witter & Co.

2. Applicants request relief to permit the Trust Series to invest in (a) registered investment companies that are part of the same "group of investment companies" (as that term is defined in section 12(d)(1)(G) of the Act) as the Trust ("Affiliated Funds"), and (b) registered investment companies that are not part of the same group of investment companies as the Trust ("Unaffiliated Funds," together with the Affiliated Funds, the "Funds"). The Unaffiliated Funds may include unit investment trusts ("Unaffiliated Underlying Trusts") and open-end or closed-end management investment companies ("Unaffiliated Underlying Funds"). Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be "exchanged-traded funds" that are registered under the Act as unit investment trusts or open-end management investment companies and have received exemptive relief to sell their shares on a securities exchange at negotiated prices. Applicants request that the relief also apply to future Trust Series and unit investment trusts registered under the Act and sponsored by the Sponsor that invest in the Funds. [1]

3. Applicants state that the requested relief will benefit unitholders by providing investors with a professionally selected, diversified portfolio of investment company shares through a single investment vehicle.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or unit investment trust acquired by a registered unit investment trust if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that they may not rely on section 12(d)(1)(G) because a Trust Series will invest in Unaffiliated Funds in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Trust Series to acquire shares of a Fund and to permit a Fund to sell shares to a Trust Series beyond the limits set forth in section 12(d)(1)(A), (B), and (C).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying section 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund or funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants state that the proposed arrangement will not result in undue influence by a Trust Series or its affiliates over Funds. To limit the control that a Trust Series may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Sponsors, the Trust Series, and certain affiliate (individually or in the aggregate) from controlling an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over Unaffiliated Funds, applicants propose conditions 2 through 6, stated below, to preclude a Trust Series and its affiliated entities from taking advantage of an Unaffiliated Fund with respect to transactions between the entities and to ensure that transactions will be on an arm's length basis.

6. As an additional assurance that an Unaffiliated Fund understands the implications of an investment by a Trust Series under the requested order, a Trust Series and Unaffiliated Fund will execute an agreement prior to the investment stating that the Unaffiliated Fund understands the terms and conditions of the order and agrees to fulfill its responsibilities under the order. Applicants note that an Unaffiliated Fund may choose to reject an investment from the Trust Series.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that a condition to the order would provide that the aggregate sales charges, distribution-related fees and/or service

[1] All investment companies that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application.

fees of a Trust Series and any Fund in which it invests will not exceed the limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules"). In addition, the trustee to a Trust Series ("Trustee") will waive or offset fees otherwise payable by the Trust Series in an amount at least equal to any compensation (including fees paid pursuant to a plan adopted by an Unaffiliated Underlying Fund under rule 12b–1 under the Act ("12b–1 Fees")) received by the Sponsor or Trustee, or an affiliated person of the sponsor or Trustee, from an Unaffiliated Fund in connection with the investment by a Trust Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that a Trust Series' prospectus and sales literature will contain concise, "plain English" disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 55% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Trust Series and Affiliated Funds might be deemed to be under the common control of the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor. Applicants also state that a Trust Series and a Fund might become affiliated persons if the Trust Series acquires more than 5% of the Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent a Fund from selling shares to and redeeming shares from a Trust Series.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(a) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Funds will be based on the net asset values of the Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Trust Series, as set forth in each Trust Series' registration statement, and with the general purposes of the Act.

Applicant's Conditions

Applicants agree that the requested order will be subjected to the following conditions:

1. (a) The Sponsor, (b) any person controlling, controlled by, or under common control with the Sponsor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act sponsored or advised by the Sponsor or any person controlling, controlled by, or under common control with the Sponsor (collectively, the "Group") will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. A Trust Series and its Sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a "Trust Series Affiliate") will not cause any existing or potential investment by the Trust Series in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Trust Series or a Trust Series Affiliate and the Unaffiliated Fund or its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities.

3. Once an investment by a Trust Series in the securities of an Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, the board of directors of the Unaffiliated Underlying Fund, including a majority of the disinterested directors, will determine that any consideration paid by the Unaffiliated Underlying Fund to a Trust Series or a Trust Series Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

4. No Trust Series or Trust Series Affiliate will cause an Underlying Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is the Sponsor or a person of which the Sponsor is an affiliated person (each an "Underwriting Affiliate"). An offering during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an "Affiliated Underwriting."

5. The board of directors of an Unaffiliated Underlying Fund, including a majority of the disinterested directors, will adopt procedures reasonably designed to monitor any purchases by the Unaffiliated Underlying Fund of securities in Affiliated Underwritings once an investment by a Trust Series in the securities of the Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of directors will review these purchases periodically, but no less frequently than

annually, to determine whether the purchases were influenced by the investment by the Trust Series in shares of the Unaffiliated Underlying Fund. The board of directors will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from Underwriting Affiliates have changed significantly from prior years. The board of directors shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

6. An Unaffiliated Underlying Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period not less than 6 years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first 2 years in an easily accessible place, a written record of each purchase made once an investment by a Trust Series in the securities of an Unaffiliated Underlying Fund exceeded the limits of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

7. Prior to an investment in an Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Trust Series and the Underlying Fund will execute an agreement stating, without limitation, that the Underlying Fund understands the terms and conditions of the order and agrees to fulfill its responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a Trust Series will notify the Unaffiliated Fund of the investment. At such time, the Trust Series also will transmit to the Unaffiliated Fund a list of the names of each Trust Series Affiliate and Underwriting Affiliate. The Trust Series will notify the Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Underlying Fund and the Trust Series will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period not less than 6 years from the end of the fiscal year in which any investment occurred, the first 2 years in an easily accessible place.

8. The Trustee will waive or offset fees otherwise payable by a Trust Series in an amount at least equal to any compensation (including 12b–1 Fees) received by the Sponsor or Trustee, or an affiliated person of the Sponsor or Trustee, from an Unaffiliated Fund in connection with the investment by a Trust Series in the Unaffiliated Fund.

9. Any sales charges, distribution-related fees and/or service fees charged with respect to units of a Trust Series, when aggregated with any sales charges, distribution-related fees and/or service fees paid by the Trust Series with respect to its acquisition, holding, or disposition of shares of a Fund, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17143 Filed 7–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42988; File No. SR–BSE–00–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. Relating to Index Fund Shares

June 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act",[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 9, 2000, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on June 12, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt listing standards and trading rules for Index Fund Shares, including generic listing standards which would permit the Exchange to trade, either by listing or pursuant to unlisted trading privileges ("UTP"), series of Index Fund Shares pursuant to Rule 19b–4(e) under the Act.[4] Once these listing standards are approved, the Exchange intends to trade SPDRs and iShares MSCI[5] pursuant to unlisted trading privileges. Below is the text of the proposed rule change. New language is *italicized.*

* * * * *

Chapter XIV–B

Index Fund Shares

Applicability

Section 1. (a) This Chapter is applicable only to Index Fund Shares. Except to the extent inconsistent with this Chapter, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

Definitions

Section 2. The following terms shall have the meanings specified herein:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which has been incorporated into the proposed rule change, the Exchange made certain typographical corrections, modified several aspects of the proposed rule text, and replaced references to "World Equity Benchmark Shares" ("WEBS") with references to "Morgan Stanley Capital International Index Funds" ("iShares MSCI Index Funds" or "iShares MSCI"). *See* Letter from Esher M. Radovsky, Listings Analyst, BSE, to Andrew Shipe, Attorney, Division of Market Regulation ("Division"), SEC, dated June 9, 2000 ("Amendment No. 1").

[4] 15 U.S.C. 78s(b).

[5] The BSE represents that the American Stock Exchange LLC ("AMEX") has renamed all Index Shares based in individual foreign countries from "World Equity Benchmark Shares" to "Morgan Stanley Capital International Index Funds" ("iShares MSCI Index Funds" or "iShares MSCI"). This proposal extends only to those iShares MSCI that were formerly termed "WEBs." The BSE represents that there has been no substantive change to this product. *See* Amendment No. 1, *supra*, note 3.

(a) *The term "Index Fund Share" means a security (i) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.*

(b) *The term "Reporting Authority" with respect to a particular series of Index Fund Shares means the Exchange, or an institution or reporting service designated by the Exchange, as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading or Index Fund Shares. Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange, the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.*

Disclosure

Section 3. The Exchange requires that members and member organizations provide to all purchasers of newly issued Index Fund Shares a prospectus for the series of Index Fund Shares.

Designation

Section 4. The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares shall be based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person, as shall have authorized use of such index. Such index may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index.

Initial and Continued Listing and/or Trading

Section 5. Each series of Index Fund Shares will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading. For each Series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading. Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances:

(i) If there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days;

(ii) If the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or

(iii) If such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of an open-end management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange Listing.

(c) Voting. Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

** * * Interpretation and Policies:*

.01 The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million;

(ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(iii) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv) The underlying index or portfolio must include minimum of 13 stocks; and

(v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initital Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

(e) Minimal Fractional Trading Variation. The minimum fractional trading variation may vary among different series of Index Fund Shares but will be set at 1/16th, 1/32nd or 1/64th of $1.00.

(f) Hours of Trading. Trading will occur between 9:30 a.m. and either 4:00

p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(h) Applicability of Other Rules. The provisions of Chapter XXIV–B et seq. will apply to all series of Index Fund Shares.

02. The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform members and member organizations regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series.

The Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from[6] your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares]."

A member of member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

.03 The Exchange will trade, pursuant to unlisted trading privileges, Index Fund Shares of Select Sector SPDR Funds, which are known as "Select Sector SPDRs."

.04 The Exchange will trade, pursuant to unlisted trading privileges, Index Fund Shares based on Morgan Stanley Capital International (MSCI) Index Funds, which are known as "iShares MSCI."

.05 The minimum fractional trading variation will be 1/16th of $1.00 for iShares MSCI and 1/64th of $1.00 for Select Section SPDRs.

* * * * *

Chapter XV

Specialists

Section 11. Restrictions on Transactions by Specialist

* * *Interpretation and Policies:

.01 Specialists may only redeem and create Index Fund Shares on the same terms and conditions as any other investor and only at the net asset value ("NAV").

.02 Nothing in Section 11 shall be deemed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issues as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statement concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Listing Requirements for Index Fund Shares

The Exchange proposes to adopt new listing and delisting requirements to accommodate the trading of Index Fund Shares, *i.e.*, securities issued by an open-end management investment company ("Fund") that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index ("Index Fund Shares" or "Fund Shares"). Once the listing standards for Index Funds Shares are approved, the Exchange intends to trade Select Sector SPDRs and iShares MSCI[7] pursuant to UTP.

Index Fund Shares will be issued by an entity registered with the Commission as an open-end management investment company, and which may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index. Issuances of Index Fund Shares by a Fund will be made only in minimum size aggregations or multiples thereof ("Creation Units"). The size of the applicable Creation Unit size aggregation will be set forth in the Fund's prospectus, and will vary from one series of Index Fund Shares to another, but generally will be of substantial size (*e.g.*, value in excess of $450,000 per Creation Unit). It is expected that a Fund will issue and sell Index Fund Shares through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Index Fund Shares in Creation Unit size aggregations is received in proper form. Index Fund Shares will be traded on the Exchange like other equity securities, and Exchange equity trading rules will apply to the trading of Index Fund Shares.

The Exchange expects that Creation Unit size aggregations of Index Fund Shares generally will be issued in exchange for the "in kind" deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. The Exchange anticipates that such deposits will be made primarily by institutional investors, arbitragers, and the Exchange

[6] The Exchange changed the word "for" to "from" in the proposed rule text. Telephone conversation between Esther M. Radovsky, Listings Analyst, BSE, and Heather Traeger and Andrew Shipe, Attorneys, Division, SEC, on June 28, 2000.

[7] *See supra* note 5.

specialist. Redemption of Index Fund Shares generally will be made "in kind", with a portfolio of securities and cash exchanged for Index Fund Shares that have been tendered for redemption. Issuances or redemptions also could occur for cash under specified circumstances (*e.g.*, if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times in the discretion of the Fund.

The Exchange expects that a Fund will make available on a daily basis a list of the names and the required number of shares of each of the securities to be deposited in connection with issuance of Index Fund Shares of a particular series in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

A Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net expenses and liabilities for such period.

Index Fund Shares will be registered in book entry form through the Depository Trust Company. Trading in Index Fund Shares on the Exchange may be effected until either 4 p.m. or 4:15 p.m. (New York time) each business day.

Criteria for Initial and Continued Listing

The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the listing standards for "Hybrid Securities", currently found in Chapter XXVII of the Exchange Rules, as well as the Index Fund Shares listing criteria currently used by the Amex.[8]

Initial Listing. If Index Fund Shares are to be listed on the Exchange, the Exchange will establish a minimum number of Index Fund Shares that must be outstanding at commencement of Exchange trading, and such minimum number will be included in any required submission under Rule 19b–4.

Continued Listing. In connection with continued listing, the Exchange will consider the suspension of trading in, or removal from listing of, an Index upon which a series of Index Fund Shares is based when any of the following circumstances arise: (1) There are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (3) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange will not, however, be required to suspend or delist from trading, based on the above factors, any Index Fund Shares for a period of one year after the initial listing of such Index Fund Shares for trading on the Exchange. The Exchange will require that Index Fund Shares be removed from listing upon termination of the Fund that issued such shares.

b. Standards to Permit Trading, Either by Listing or Pursuant to UTP, of Index Fund Shares Pursuant to Rule 19b–4(e) under the Act

The Exchange proposed to adopt generic listing and delisting standards to permit the trading, either by listing or pursuant to UTP, of Index Fund Shares pursuant to Rule 19b–4(e) under the Act.[9] Rule 19b–4(e) permits self-regulatory organizations ("SROs") to list and trade new derivative products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). Accordingly, the Exchange proposes to approve a series of Index Fund Shares for listing or trading, either by listing or pursuant to UTP, pursuant to Rule 19b–4(e) under the following criteria.

Upon the initial listing of a series of Index Fund Shares, component stocks that in the aggregate account for at least 90% of the weight of the underlying index or portfolio must have a minimum market value of at least $75 million. In addition, the component stocks representing at least 90% of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. Moreover, the most heavily weighted component stocks in an underlying index or portfolio cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks.[10] All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market). Finally, any series of Index Fund Shares must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund.

The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer.

The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading. Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange. The provisions of BSE Chapter XXIV–B *et seq.*, will apply to all series of Index Fund Shares.

c. Exchange Rules Applicable to the Trading of Index Fund Shares

Index Fund Shares are considered "securities" under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of BSE Chapter XXXI, Section 4, Trade-Throughs and Locked Markets, which prohibit Exchange members from initiating trade-throughs for Intermarket Trading System securities, as well as rules governing priority, parity and precedence of

[8] The Amex's listing criteria were approved by the Commission on March 8, 1996. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[9] 17 CFR 240.19b–4(e).

[10] Thirteen stocks is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code. Under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company, the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of such fund's total assets.

orders, market volatility-related trading halt provisions and responsibilities of the assigned specialist firm.[11] Exchange equity margin rules will apply.

The Exchange also intends to utilize its existing surveillance procedures, including procedures adopted for portfolio depositary receipts, to surveil trading in Index Fund Shares. The Exchange will also surveil specialist compliance with BSE Chapter XV, Section 11, "Restrictions on Transactions by Specialist," and proposed interpretation and policies .01 and .02 to Chapter XV, Section 11, which contemplate specialists engaging in transactions with the issuer of Index Fund Shares under certain circumstances.

d. Notice to Members

Prior to the commencement of trading in Index Fund Shares, the Exchange will issue a circular to members highlighting the characteristics of purchases in Index Fund shares. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other issues, will discuss what Index Fund Shares are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing Index Fund Shares prior to or concurrently with the confirmation of a transaction, applicable Exchange Rules, dissemination information, trading information, and the applicability of suitability rules.

In addition, the circular will inform members of Exchange policies about trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in BSE Chapter II, Section 34B have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as the extent to which trading is not occurring in a deposited security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

e. Disclosure

The Exchange will require its members to provide all purchasers of newly issued Index Fund Shares with a Fund prospectus. Because the Units will be in continuous distribution, the prospectus delivery requirements of Section 5(b)(2) of the Securities Act of 1933 (the "1933 Act")[12] will apply to all investors in Index Fund Shares, including secondary market purchases on the Exchange in Index Fund Shares.

With respect to series of Index Fund Shares that are the subject of an order by the SEC exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 ("1940 Act"),[13] the Exchange will inform members and member organizations regarding disclosure obligations with respect to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series.

For these exempted series, the Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares]."

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

f. Minimum Fractional Change

The Index Fund Shares are currently traded on the Amex at a minimum of variation of 1/16th or 1/64th of $1.00. The Exchange proposes the minimum fractional change for Index Fund Shares on the Exchange will be 1/16th, 1/32nd or 1/64th of $1.00 depending on the series of Index Fund Shares. Thus, the Exchange is proposing the same minimum fractional increments for the trading of Index Fund Shares on the BSE, until such time as decimal increments are approved. It is anticipated that some time after August, 2000, the industry minimum-price variations will be converted from fractions to decimals.

g. Description of iShares MSCI and Select Sector SPDRs

Seventeen series of iShares MSCI based on Morgan Stanley Capital International foreign stock indices.[14] and nine investment series of Select SPDRs offered by the Select Sector SPDR Trust are traded on the Amex.[15] The Exchange is not seeking approval to list these iShares MSCI[16] or Select Sector SPDRs[17] at this time, but rather is requesting approval to trade these iShares MSCI and Select Sector SPDRs pursuant to UTP once these listing standards are approved.

Pursuant to Rule 12f–5 under the Act,[18] to trade a particular class or type of security pursuant to UTP, the Exchange must have rules providing for transactions in such class or type of security. The Amex has enacted listing

[11] BSE Chapter VII, Section 2, will also apply to the trading of Index Fund Shares. That rule provides, in part, that every member and allied-member is required to use due diligence to learn the essential facts relative to every customer, including the possible use of a name other than that of the interested party, and to every order or account accepted by him, except when acting as agent for another member.

[12] 15 U.S.C. 77e(b)(2).

[13] 15 U.S.C. 80a–24(d).

[14] *See supra* note 5.

[15] Further information regarding Select Sector SPDRs and iShares MSCI is available at the principal office of the Exchange, and at the Commission's Public Reference Room, as detailed in III, below.

[16] Specifically, the MSCI Australia, MSCI Austria, MSCI Belgium, MSCI Canada, MSCI France, MSCI Germany, MSCI Hong Kong, MSCI Italy, MSCI Japan, MSCI Malaysia, MSCI Mexico, MSCI Netherlands, MSCI Singapore, MSCI Spain, MSCI Sweden, MSCI Switzerland, and MSCI United Kingdom Indices.

[17] Specifically, the Basic Industries Select Sector SPDR, the Consumer Services Select Sector SPDR, the Consumer Staples Select Sector SPDR, the Cyclical/Transportation Select Sector SPDR, the Energy Select Sector SPDR, the Financial Select Sector SPDR, the Industrial Select Sector SPDR, the Technology Select Sector SPDR and The Utilities Select Sector SPDR.

[18] 17 CFR 240.12f–5.

standards for Index Fund Shares, and the BSE's proposed rule change is designed to create similar standards for Index Fund Shares listing and/or trading on the BSE. As stated above, the Exchange proposes to only trade iShares MSCI and Select Sector SPDRs pursuant to UTP upon approval of this rule filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[19] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–00–05 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[20] Specifically, the Commission finds that the BSE's proposal to establish generic standards to permit the trading of Index Fund Shares pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act. Thus, by establishing generic standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[21]

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[22] The Commission's approval of the proposed generic listing standards for Index Fund Shares will allow those series of Index Fund Shares that satisfy those standards to start trading under Rule 19b–4(e), without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for brining these securities to the market and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that Index Fund Shares and like products that it approved for trading under similar rules on other Exchanges would allow investors to: (1) respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities.[23] The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed standards for Index Fund Shares should produce the same benefits to the BSE and to investors.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the trading of Index Fund Shares under Rule 19b–4(e). All series of Index Fund Shares listed under the proposed standards will be subject to the full panoply of BSE rules and procedures that now govern the trading of existing securities on the BSE.[24] Accordingly, any new series of Index Fund Shares listed and traded on the Exchange, or pursuant to UTP, will be subject to BSE rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, and margin. These criteria allow the BSE to consider the suspension of trading and the delisting of a series if an event occurred that made further dealings in such securities inadvisable. This will give the

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[23] *See* Securities Exchange Act Release No. 42975 (June 22, 2000); Securities Exchange Act Release No. 42833 (May 26, 2000), 65 FR 35679 (June 5, 2000); Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000); Securities Exchange Act Release No. 36947) (March 8, 1996), 61 FR 10606 (March 14, 1996).

[24] The Commission notes that although Index Fund Shares are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective Funds. Accordingly, the level of risk involved in the purchase or sale of Index Fund Shares is similar to the risk involved in the purchase or sale of traditional common stock. Nevertheless, the Commission believes there are unique aspects to trading Index Fund Shares, which the Exchange has sufficiently and adequately addressed in this proposal.

BSE flexibility to delist Index Fund Shares if circumstances warrant such action.

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading Index Fund Shares. Members and member organizations will be required to provide to all purchasers of Index Fund Shares a written description of the terms and characteristics of these securities, to include their description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus, when requested by the customer. The proposal also requires a member or member organization carrying an omnibus account for a non-member broker-dealer, to notify the non-member that execution of an order to purchase Index Fund Shares constitutes an agreement by the non-member to provide the product description to its customers.

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any Index Fund Shares, the Exchange will issue a circular to its members explaining the unique characteristics and risk of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and inform members of their responsibilities under BSE Rules in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequate disclosure to investors about the terms and characteristics of a particular series, and is consistent with Section 6(b)(5) of the Act.[25]

In addition, the BSE has developed specific listing criteria for series of Index Fund Shares qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of a series of Index Fund Shares be outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading.

The Commission believes that the proposed generic listing standards ensure that the securities composing the underlying indexes and portfolios are well capitalized and actively traded. These capitalization and liquity criteria serve to prevent fraudulent or manipulative acts, and are therefore consistent with Section 6(b)(5) of the Act.

Furthermore, the Commission finds that the Exchange's proposal to trade Index Fund Shares in increments of 1/16th, 1/32nd, or 1/64th, of $1.00 is consistent with the Act.

The Exchange also represents that the Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which products such as Index Fund Shares are based. The proposed requires that, in such circumstances, the broker dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index, and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

In its proposed generic listing standards, the BSE represents that it will rely upon its existing surveillance procedures for supervision of trading in Index Fund Shares listed or traded pursuant to Rule 19b–4(e). The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading Index Fund Shares, including those listed or traded under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[26] The Commission further notes that the Exchange has represented that it will file Form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) recordkeeping requirements.

The BSE has stated that it intends to trade SPDRs and iShares MSCI[27] pursuant to UTP once this proposal has been approved. The Commission believes that the Exchange's proposal to trade these series to Index Fund Shares could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of SPDRs and iShares MSCI as an investment tool, the BSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

The Commission finds good cause for approving the proposed rule change (SR–BSE–00–05) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the trading requirements of Index Fund Shares at the BSE will be substantially similar to the trading requirements of Index Fund Shares at the Amex, Index Portfolio Shares at the Chicago Board Options Exchange, and Investment Company Units at the Chicago Stock Exchange, which the Commission approved in the past.[28] The Commission also observes that the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to Section 19(b) of the Act.[29] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[30] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–BSE–00–05), as amended, is hereby approved on an accelerated basis.

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(5).

[27] *See supra* note 5.

[28] *See supra* note 5.

[29] 15 U.S.C. 78s(b).

[30] 15 U.S.C. 78f(b)(6).

[31] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17148 Filed 7–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42985; File No. SR–CHX–00–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Execution of Odd-Lot Limit Orders for Nasdaq/NM Securities

June 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on June 9, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XXXI, Rule 9 of the Exchange's rules relating to execution of odd-lot limit orders for Nasdaq/NM Securities. The text of the proposed rule change is as follows. New text is *italicized.*

Article XXXI

* * * * *

Rule 9. Execution of Odd-Lot Orders

(a)–(b) No change in text.

(c)(i–iii) No change in text.

(c)(iv) Buy Limit Orders. Buy limit orders *in Dual Trading System issues* shall be executed at the limit price only after there has been a full lot transaction in the primary market at a price at or below the limit price. *A buy limit order in Nasdaq/NM Securities shall be executed at the limit price, on a share-for-share basis, based on the first to occur of (A) a reported full round lot transaction in any marketplace at a price at or below the limit price, or (B) odd lot transactions on the Exchange at a price at or below the limit price, provided however, that (1) if an odd lot or round lot transaction on the Exchange would cause an execution of a portion of the next odd-lot limit order in the specialist's limit order book, the entire next odd-lot limit order shall be executed; (2) an incoming round lot limit order will only cause execution of a "resting" round lot order (i.e., a round lot order in the specialist's limit order book) if the size of the incoming limit order is greater than or equal to the size of the resting round lot order plus the aggregate size of any odd lot orders that were executed at the limit price; and (3) if the auto-execution threshold is set at 0, odd lot orders shall continue to execute automatically in accordance with the foregoing but round lot orders shall be treated manually in accordance with Article XX, Rule 43(d).*

(c)(v) Sell Limit Orders, Marked "Long." Sell limit orders in *Dual Trading System issues* marked "long" shall be executed at the limit price, only after there has been a full lot transaction in the primary market at a price at or above the limit price. *A sell limit order in Nasdaq/NM Securities marked "long" shall be executed at the limit price, on a share-for-share basis, based on the first to occur of (A) a reported full round lot transaction in any marketplace at a price at or above the limit price, or (B) odd lot transactions on the Exchange at a price at or above the limit price, provided, however, that (1) if an odd lot or round lot transaction on the Exchange would cause an execution of a portion of the next odd-lot limit order in the specialist's book, the entire next odd-lot limit order shall be executed; (2) an incoming round lot limit order will only cause execution of a "resting" round lot order (i.e., a round lot order in the specialist's limit order book) if the size of the incoming limit order is greater than or equal to the size of the resting round lot order plus the aggregate size of any odd lot orders that were executed at the limit price; and (3) if the auto-execution threshold is set at 0, odd lot orders shall continue to execute automatically in accordance with the foregoing but round lot orders shall be treated manually in accordance with Article XX, Rule 43(d).*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XXXI, Rule 9 of the Exchange's rules relating to execution of odd-lot limit orders for Nasdaq/NM Securities. The proposed rule change is intended to place the Exchange's rules in line with existing market pattern and practice relating to the trading of Nasdaq/NM Securities, by reflecting certain distinctions between transactions in Nasdaq/NM Securities and transactions in Dual Trading system securities, *i.e.,* listed issues.

Under the Exchange's current version of Article XXXI, Rule 9, which governs execution of odd-lot limit orders, execution of an odd-lot limit order is conditioned on a full round-lot execution in the primary market. Because a primary market trigger is only available in the case of Dual Trading System securities (for which the New York Stock Exchange generally serves as the primary market), the Exchange proposes a rule change providing that in the case of Nasdaq/NM Securities, automatic execution of odd-lot limit orders would be triggered by the first to occur of a reported full round-lot transaction in any marketplace or an odd-lot transaction on the Exchange. The proposed rule change also contemplates that a round-lot limit order in a specialist's book would only be triggered if an incoming order is of sufficient size to "take out" the entire resting round lot.

The Exchange believes that the net effect of this rule change will be to dramatically increase the number of odd-lot limit orders for Nasdaq/NM securities that are executed on the Exchange. The Exchange contends that this enhancement will be to the benefit of the Exchange's order-sending firms and their investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[3] of the Act in general and furthers the objectives of Section 6(b)(5) of the Act in particular,[4] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in

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[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file No. SR–CHX–00–19 and should be submitted by July 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17146 Filed 7–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42986; File No. SR–CHX–00–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc. Relating to the Listing and Trading of Trust Issued Receipts

June 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On June 7, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its listing standards for Trust Issued Receipts (CHX Article XXVIII, Rule 27) to provide standards that permit listing and trading, or trading pursuant to unlisted trading privileges, of Holding company Depositary Receipts ("HOLDRs")[4] pursuant to Rule 19b–4(e) under the Act.[5] The text of the proposed rule change follows. *Italics* indicate text to be added.

Article XXVIII

Listed Securities

* * * * *

Trust Issued Receipts

Rule 27. No change to Text

** * * Interpretations and Policies*

.01 The Exchange may approve a series of HOLDRs for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934, provided that the following criteria are satisfied:

(a) Each security underlying the HOLDR must be registered under Section 12 of the Exchange Act;

(b) Each company whose securities are underlying securities for the HOLDR must have a minimum public float of at least $150 million;

(c) Each security underlying the HOLDR must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security;

(d) Each company whose securities are underlying securities for the HOLDR must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(e) Each company whose securities are underlying securities for the HOLDR must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million; and

(f) The most heavily weighted security in the HOLDR cannot initially represent more than 20% of the overall value of the HOLDR.

II. Self-regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CHX Article XXVIII, Rule 27 (Trust Issued Receipts) to provide standards

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which has been incorporated into the proposed rule change, the Exchange replaced a reference to "trust issued receipts" with a reference to "a series of HOLDRs" in the text of proposed Interpretation and Policy .01 to CHX Rule 27. *See* Letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Andrew Shipe, Attorney, Division of Market Regulation, SEC, dated June 6, 2000.

[4] "HOLDRs" and "HOLding Company Depositary Receipts" are service marks of Merrill Lynch & Co.

[5] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class. 17 CFR 240.19b–4(e).

that permit listing and trading, or trading pursuant to unlisted trading privileges, of HOLDRs pursuant to Exchange Act Rule 19b–4(e).

On October 22, 1999, the Exchange received Commission approval for a new rule that permits the trading of Trust Issued Receipts.[6] Since that time, the Exchange has begun trading, pursuant to unlisted trading privileges, several different Trust Issued Receipts, including Internet HOLDRs, Biotech HOLDRs, Pharmaceutical HOLDRs, Telecommunications HOLDRs and Broadband HOLDRs.[7] The Exchange believes that it will want the opportunity to similarly trade additional HOLDRs products that are developed from time to time.

To accommodate the efficient listing and trading, or trading pursuant to unlisted trading privileges, of additional HOLDRs, the Exchange proposes to add a new Interpretation to its existing rule to permit the listing and trading of HOLDRs pursuant to Rule 19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change under the Act, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[8]

As described above, the Commission has previously approved rules that permit the listing and trading of individual HOLDRs. In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the Exchange rules and surveillance programs that govern their trading. Indeed, each of the Exchange's proposals to trade these products was set forth in a separate Form 19b–4 and published in the **Federal Register**, thus providing interested parties an opportunity to comment on the proposals. No comments were received.

CHX Article XXVIII, Rule 27 subjects HOLDRs to all of the Exchange's trading rules by expressly providing that the provisions of the Exchange's Constitution and all other rules and policies of the Board of Governors apply to the trading of HOLDRs by the Exchange.[9] Further structure is added to the listing or trading of these products through the initial and continued listing standards established for this product class. These standards confirm that, for each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time trading begins on the Exchange.[10] These standards also confirm that, following the initial twelve month period after trading begins, the Exchange will consider the suspension of trading in, or removal from listing of a Trust Issued Receipt if: (1) The Trust has more than 60 days remaining until termination and there are fewer than 50 record or beneficial holders of Trust Issued Receipts for 30 or more consecutive days; (2) the Trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than $1,000,000; or (4) any other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.[11]

Under the new Interpretation proposed by the Exchange, the Exchange could list or trade, pursuant to Rule 19b–4(e), any HOLDRs that met the following additional criteria: (1) The common stock of each company included as an underlying security in the HOLDR must be registered under Section 12 of the Act; (2) each company whose securities are underlying securities for the HOLDR must have a minimum public float of at least $150 million; (3) each security included as an underlying security must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security; (4) each company whose securities are underlying securities for the HOLDR must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; and (5) each company whose securities are underlying securities for the HOLDR must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million. Finally, no security included as an underlying security may initially represent more than 20% of the overall value of the receipt.[12]

The Exchange believes that these additional criteria will ensure that no security included as an underlying security in a HOLDRs product will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various HOLDRs to meet investors' needs. These criteria also will ensure sufficient liquidity for those investors seeking to purchase and deposit the underlying securities with the trustee to create a new HOLDR.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[13] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and teh public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change. Indeed, the rule change encourages competition among markets by allowing more than one exchange to list and trade the products described in this proposal pursuant to Rule 19b–4(e).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants of Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate upon to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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[6] *See* Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999).

[7] *See, e.g.*, Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (Internet HOLDRs); Securities Exchange Act Release No. 42348 (January 18, 2000), 65 FR 5006 (February 2, 2000) (Biotech HOLDRs).

[8] 17 CFR 240.19b–4(e).

[9] Exceptions exist where a trading rule is inconsistent with the Trust Issued Receipt listing standard or where the context otherwise requires. CHX Article XXVIII, Rule 27(e).

[10] *See* CHX Article XXVIII, Rule 27(c)(1)

[11] *See* CHX Article XXVIII, Rule 27(c)(2).

[12] Each HOLDR product approved by the Commission to date has met these criteria. *See supra*, note 7.

[13] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–16 and should be submitted by July 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17147 Filed 7–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42991; File No. SR–GSCC–00–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Choice of Law Rules

June 29, 2000.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 27, 2000, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been primarily prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend GSCC's rules by specifying that GSCC's rules will be governed by and interpreted under the laws of the State of New York.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC proposes to add a new provision to its rules that will specify that GSCC's rules and the rights and obligations under the rules will be governed by the laws of the State of New York without regard to New York's conflicts of laws principles. Even though GSCC believes that New York law governs its rules since GSCC's membership agreement states that the agreement and rules are expressly governed by New York law, GSCC believes that the proposed rule change will eliminate any doubts as to which law governs its rules.

GSCC believes that being governed by New York law is appropriate and offers numerous advantages, including: (i) New York has well-established commercial law principles; (ii) GSCC is established under the New York Business Corporation Law; (iii) GSCC is located in New York; and (iv) the majority of GSCC's members have their principal office in New York.

GSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F)[3] of the Act and the rules and regulations thereunder because it will clarify GSCC's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

Written comments relating to the proposed rule change have not yet been solicited or received.[4] GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. SR–GSCC–00–03 and should be submitted by July 28, 2000.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] Members will be notified of the rule change filing and comments will be solicited by an Important Notice.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17144 Filed 7–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42990; File No. SR–NYSE–00–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 37

June 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 2000 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend the text of Rule 37 (Visitors) to expand the category of officials authorized to allow visitors access to the Exchange Trading Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE rule 37 prescribes who is authorized to permit visitor admission to the Trading Floor of the Exchange ("Floor"). The proposed amendment to NYSE Rule 37 is designed to expand the categories of officials authorized to allow visitors access to the Floor.

According to the current NYSE Rule 37, authority to allow visitors access to the Floor is vested only in an "Officer of the Exchange." The proposed amendments would extend this authority to three Floor Official designations: Floor Directors, Floor Governors, and Senior Floor Officials between the hours of 10 a.m. and 3:30 p.m. The NYSE believes that broadening authority in this way will result in a more flexible and efficient Floor visitation system. However, during the time period between 9 a.m. to 10 a.m. (30 minutes before and after the opening), and 30 minutes prior to closing the proposed amendments to the NYSE Rule 37 would require that the approval of an Exchange Officer or a Floor Director (or Senior Floor Official or Floor Governor in the absence of a Floor Director) for visitors to be admitted to the Floor. Special attention is accorded these intervals given that they are often the focus of heightened trading activity.

In general, Floor Officials are members of the Exchange who are appointed as Floor Officials. Floor officials provide interpretive advice on auction market procedures and the Exchange's rules and regulations. They play a significant role in handling unusual market situations so that trading may be conducted in a fair and orderly manner. Each Director of the Exchange's Board of Directors who is active on the Floor is appointed as a Floor Official. These Directors are known as Floor Directors. Floor Governors are members who are designated by the Chairman of the Board. They are empowered to perform any duty, make any decision, or take any action assigned to or required of a Floor Director, as prescribed by the Rules of the Board. Senior Floor Officials are former Floor Directors or Floor Governors and are appointed by virtue of their experience.

Exchange policy pursuant to NYSE Rule 37, as reflected in The Floor Conduct and Safety Guidelines, will be amended to conform to these changes in a separate filing.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(6)(5)[4] in particular, in that it is designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market. The amendments to NYSE Rule 37 support these goals by promoting the efficient, undisrupted conduct on the floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE represents that it does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(3)[6] thereunder because the Exchange represents that it is concerned solely within the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statemenets with respect to the prposed rule change

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(3).

that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–28 and should be submitted by July 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17145 Filed 7–6–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25–23, Airworthiness Criteria for the Installation Approval of a Terrain Awareness and Warning System (TAWS) for Part 25 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25–23, Airworthiness Criteria for the Installation Approval of a Terrain Awareness and Warning System (TAWS) for Part 25 Airplanes. The AC provides guidance for designing an acceptable installation for a TAWS that is compliant with Technical Standard Order (TSO) C151. The guidance provided is specific to installations of these systems on transport category airplanes.

DATES: Advisory Circular 25–23 was issued on May 22, 2000, by the Acting Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration.

HOW TO OBTAIN COPIES: A paper copy of AC 25–23 may be obtained by writing to U.S. Department of Transportation, Subsequent Distribution Center, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, Maryland 20785. The AC also will be available on the Internet at *http://www.faa.gov/avr/air/airhome.htm*, at the link titled "Advisory Circulars" under the "Available Information" drop-down menu.

FOR FURTHER INFORMATION CONTACT: For technical issues, contact J. Kirk Baker, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, Systems & Equipment Branch, ANM–130L, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5345; fax (562) 627–5210.

For other information contact: Jill DeMarco, FAA, Transport Airplane Directorate, Program Management Branch, ANM–114, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1313; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

On September 23, 1999, the FAA issued a notice of the availability of proposed Advisory Circular (AC) 25.XX, "Airworthiness Criteria for the Installation Approval of a Terrain Awareness and Warning System (TAWS) Approved under Technical Standard Order (TSO) C151." That notice was published in the **Federal Register** on September 30, 1999 (64 FR 52820) and requested public comment on the proposed AC document. Five commenters submitted comments to the proposed AC. A discussion and disposition of each comment follows.

Format of AC

Some commenters request that the format of the proposed AC be improved. One commenter requests that a table of contents or index be included.

The FAA concurs and has added a table of contents to the final document.

Guidance for Part 23 Airplanes

One commenter requests that the proposed AC be revised to include guidance on TAWS installations for airplanes certificated under 14 CFR part 23 (small airplanes).

The FAA does not concur with the commenter's request. The FAA currently is developing a separate AC that provides guidance specific to TAWS installations for part 23 airplanes. By issuing with two separate AC's, the FAA anticipates that there will be less confusion for applicants.

Definition of Class B TAWS Equipment

One commenter suggests that the definition of Class B TAWS equipment be revised to include a note indicating that Class B TAWS requires a GPS input but does not require a radio altitude input. The commenter states that the inclusion of such a note will help to clarify the composition of Class B TAWS equipment.

The FAA agrees that clarification is appropriate. Paragraph 11.b.(2), "Radio Altimeter," of the final AC has been revised to specify that Class B equipment does not require a radio altitude input.

Regulatory References

One commenter requests that the reference to the requirements of § 91.223 in paragraph 5.a. be revised to add the words "or certified" in the phrase:

"§ 91.223 states that no person may operate a turbine-powered U.S.-registered airplane configured or certified with 6 or more passenger seats * * *."

The FAA disagrees with the addition of these words. The text, as presented in the AC, is quoted directly from § 91.223 of the regulations. An AC is not the vehicle for making changes to the text of current regulations.

System Criticality/Probability

One commenter requests clarification of the descriptions of failure probability that appear in paragraph 5.b., "System Criticality," of the proposed AC. The commenter suggests that the proposed text:

"* * * the applicant must demonstrate that the TAWS possesses a level of reliability commensurate with systems that have a failure probability of 10^{-4} or less per flight hour * * *."

be changed to:

"* * * have a failure probability due to undetected failures (latent failures) of 10^{-4} or less per flight hour."

The commenter also suggests similar changes in the probability descriptions that appear in paragraphs 7.c.(2) and 7.g.(1)(b).

On this same issue, another commenter points out that the reliability value of 10^{-3}, as stated in paragraph 7.c. of the proposed AC, is not consistent with the value of 10^{-4}, specified in paragraph 5.b.

The FAA concurs with these commenters' requests and has revised the final AC accordingly. [Although paragraph 5.b. (as it appeared in the proposed AC) has been eliminated in the final AC, the item noted by the commenter has been clarified and corrected in the final AC in paragraph 9., "System Safety Assessment."]

Project Specific Certification Plan (PSCP)

One commenter suggests that paragraph 7.b. of the proposed AC, concerning the Project Specific

[7] 17 CFR 200.30–3(a)(12).

Certification Plan (PSCP), be revised to include "switches and annunciators" in the list of items that should be included in a comprehensive system description. Additionally, this commenter requests that this paragraph provide guidance on acceptable or desirable locations for the installation of TAWS controls, control panels, annunciators, displays, etc.

The FAA concurs and has revised paragraph 8.b.(1), "System Description," of the final AC accordingly.

Another commenter suggests revising paragraph 7.b. of the proposed AC by deleting the inclusion of information regarding software aspects of any certification and any certification-specific integrated circuits (ASIC). The commenter states that this issue is TSO-related and should be addressed as part of the TSO approval of the Line Replaceable Unit (LRU), not as part of the approval of the TAWS.

The FAA does not agree that the material should be deleted. Instead, the FAA has revised the final AC to clarify this issue. This information appears in paragraph 8.b.(3) of the final AC.

System Safety Assessment

One commenter requests that the text of the lead-in phrase in paragraph 7.c.(2) of the proposed AC, which concerns the System Safety Assessment, be revised to include the phrase highlighted below:

* * * Given that TSO–C151 requires 10^{-5} for unannunciated failure, HMI, and false alerts at the box level *as a result of a TAWS computer failure*, the box as installed must meet the following criteria * * *"

The FAA does not concur. Restricting the annunciations to only those indicated as a result of a TAWS computer failure would be too limiting. The FAA's intent is for this criterion to be more comprehensive. The language as used the proposed AC is more open to the inclusion of other types of avionics architectures, such as modular types, that are being proposed today. This language has been retained in the final AC.

Another commenter suggests that paragraph 7.c.(2)(a) of the proposed AC be revised in the text concerning probability of failure of the availability of the TAWS function. The text in the proposed AC states:

"The probability of failure of the installed system to perform its intended function from a reliability/availability perspective * * * shall be less than or equal to 10^{-3} per flight hour."

However, this commenter requests that the reference to "availability" be deleted. The commenter considers this request reasonable because:

- The FAA in the past has never had any availability requirements for a GPWS system.
- Availability is more dependent on the inputs to the TAWS system than on the TAWS computer itself.
- If an aircraft's only source of air data to the TAWS system is not designed to meet this requirement, then the TAWS system will not meet this requirement.

This commenter further states that the FAA Master Minimum Equipment List (MMEL) policy allows the TAWS function to be inoperative for up to 10 flight days. The commenter questions why the AC guidance would require availability numbers when the MMEL does not require the same.

The FAA does not concur with this commenter's requests. Controlled flight into terrain (CFIT) continues to be a major contributor to commercial jet airplane hull losses and, therefore, constitutes a failure value of at least 10^{-3} for all of the functions of a TAWS system. Furthermore, this value is consistent with the expected value of the inputs to TAWS. If the sensor input does not meet this failure level, it should be replaced with one that does.

The FAA's Flight Standards Service determines the MMEL requirements established for GPWS. The determination is made separate from the determination of hazard level. The process used to establish relief under the MMEL does not consider the use of probabilities. Instead, it is based on the FAA's evaluation of the risks associated with the system's effect on the aircraft and, along with guidance from air traffic control, the pilot's ability to operate the aircraft.

Self-Test Functions

One commenter points out that the proposed AC does not consider self-test functions, and suggests that criteria for activation or inhibition of self-test functions in flight should be provided. [For example, if a self-test function results in a failure to alert, then this should be inhibited during certain (or all) phases of flight.] The commenter suggests that the System Safety Assessment, as described in the AC, should consider whether credit may be taken for self-test functions in meeting the reliability rates provided.

The FAA concurs that self-test functions should be considered and has included reference to them in the final AC in paragraph 19., "Ground Test Considerations."

Software

One commenter suggests that paragraph 7.d. of the proposed AC, which addresses the verification of software requirements, is unnecessary. The commenter states that software requirements are already addressed in TSO–C151a, and requests that either the paragraph be deleted or revised to state that it applies to systems that do not meet TSO–C151a.

The FAA does not agree that the information should be deleted. However, the FAA has revised this information in the final AC to clarify the issue raised. Paragraph 10., "Software," of the final AC now states:

"The applicant should provide evidence that the TAWS software meets the requirements of TSO–C151a and that it meets the appropriate software levels for any added feature(s)."

Position Source

One commenter points out that vertical accuracy is also a consideration for the correct function of TAWS for various phases of flight. However, paragraph 7.e. of the proposed AC, which discusses position source, does not reference any criteria for required vertical accuracy for the correct function of TAWS. The commenter suggests that the AC should include such criteria.

The FAA concurs and has expanded the final AC to include the requested criteria for both vertical and horizontal position sources. This information is located in the final AC in paragraph 11., "Position Source."

Terrain Database

One commenter requests revision to the guidance in paragraph 7.f.(2) of the proposed AC, which addresses verification of the TAWS terrain database. The commenter states that the requirement to "include terrain and airport information of the area of intended operation" may result in additional and undesired STC limitations. For example, if an applicant certifies TAWS equipment on an airplane in the United States (and uses a "U.S. database") there is nothing to keep the operator from moving the airplane to another region of the world and the STC would still be valid. The commenter states that limiting an STC to a region of operation would be non-productive and undesirable. Therefore, the commenter suggests that the AC be revised to require that applicants verify that an obvious TAWS failure condition will be indicated to the pilot whenever an airplane is operated outside of the region that is covered by the terrain/airport database installed on the airplane.

The FAA concurs that clarification is necessary for this item. The final AC now directs applicants to the Instructions for Continued Airworthiness, which should identify the procedures for determining the status of the terrain database. The AC states that operators should use this information to determine if the current terrain database is appropriate for the area of intended operation. This information can be found in the final AC in paragraph 12.b., "Valid Regional Data."

Terrain Display

One commenter notes that paragraph 7.g.(1)(a) of the proposed AC states that any device approved under TSO–C151 must be capable of providing terrain, obstacle, and alerting data to display hardware that is already onboard the airplane. The commenter states that a TAWS designed to use its own proprietary display must also support existing display hardware in the aircraft. The commenter requests that this requirement not exclude dedicated displays.

The FAA concurs and has revised paragraph 13.a.(1), "Terrain Display," of the final AC accordingly.

Another commenter suggests that paragraph 7.g. of the proposed AC, which concerns display presentation criteria, be revised to address situations where the means of display is used for more than only the presentation of the terrain display. The commenter suggests the addition of a new paragraph that states:

> "The applicant should consider the selection of terrain display where the display is utilized for multiple functions. In these cases, a means should be provided to select and deselect the display of terrain."

The FAA concurs with this suggestion and has revised paragraph 13.a.(4) of the final AC accordingly.

One commenter requests a revision to paragraph 7.g.(2) of the proposed AC, which addresses the terrain display presentation. The commenter points out that paragraph 7.g.(2)(g) states that the terrain display should be "viewable in direct sunlight, and at least one display must be viewable by each pilot." The commenter requests that consideration be given for aircraft with only one display. Single displays are common in older aircraft, where weather radar PPI displays may be installed on only one side of the flightdeck. The commenter suggests that the wording be changed to "* * * at least one display must be viewable by one of the pilots."

The FAA concurs and has revised paragraph 13.b.(7), "Terrain Display Presentation," of the final AC accordingly.

One commenter suggests a revision to paragraph 7.g.(2)(h) of the AC, which concerns the display of a "failed and/or inoperative TAWS" indication to the flight crew. The commenter suggests that an "inhibited TAWS" should be indicated as well, and suggests that the text of the AC be changed to include this.

The FAA concurs and has revised paragraph 13.b.(8) of the final AC accordingly.

One commenter points out an inconsistency between guidance provided in paragraph 7.g.(2)(n) of the AC, concerning the selected colors of the terrain display, and the requirements of § 25.1322 ("Warning, caution, and advisory lights"). The commenter notes that § 25.1322 calls for indication lights to be red (for warnings) or amber (for cautions); however, paragraph 7.g.(2) of the AC appears to contradict this where it states, "TAWS equipment shall be designed to interface with a terrain display, either color or monochromatic." The commenter is concerned that the use of a monochromatic display would violate the regulations and, therefore, suggests that acceptability of monochromatic displays must be deleted.

The FAA concurs that clarification of this item is needed. The final AC has been revised to specify that the terrain display feature applies only to color displays. This information is found in paragraph 13.b.(14) of the final AC.

Pop-Up Mode Switching Functionality

One commenter requests that paragraph 7.g.(3)(a) of the proposed AC, which concerns pop-up mode switching functionality, be revised to address display systems that cannot accommodate annunciating the terrain display mode. The commenter suggests that this paragraph be revised to state:

> "The terrain display mode should be annunciated on the display or, if not feasible on the display, with a mode annunciation light near the terrain display, or equivalent."

The FAA concurs with the commenter's suggestion and has revised paragraph 13.c.(1)(d), "Pop-Up Mode-Switching Functionality," of the final AC accordingly.

Another commenter requests that the AC provide guidance on acceptable default display ranges for this mode of operation.

The FAA concurs and has revised the final AC to include a new paragraph 13.c.(1)(f) to provide this guidance.

Another commenter requests that the criteria for automatic pop-up function be revised to state that the pop-up feature should automatically display TAWS-related information when a TAWS caution or warning alert occurs. The proposed AC, however, only mentions the TAWS caution alert.

The FAA disagrees. The required pilot response to a TAWS warning is an immediate climb to clear the terrain/obstacle. Pop-up of the display with a "warning" may distract the pilot. With a "caution" alert, there will be enough time for the pilot to evaluate the information on the display and determine if either a level-off is adequate or the initiation of a climb is necessary.

Alerts Within the Flightcrew's Primary Field of View

One commenter requests that paragraph 7.h.(2) of the proposed AC, which calls for the alerting system to be "within the flightcrew's primary field of view," be revised to include a definition of the "flightcrew's primary field of view." The commenter states that, on many retrofit installations, there is simply not any room available to install lights in today's generally accepted primary field of view. The commenter also requests that, if an applicant is retrofitting an airplane that has previously-installed alert lights, then the applicant should be allowed to use those previously-installed light locations.

The FAA agrees that clarification is appropriate. Paragraph 14, "Alerts," of the final AC has been modified to include the previously-installed light

locations, and to reference the human factors considerations in the applicant's certification plan as a method of determining the flight crew's primary field of view.

Alert Prioritization

One commenter points out what seems to be a conflict in the guidance concerning the number of aural alerts permitted at one time. The commenter notes that paragraph 7.i.(1)(a) of the proposed AC states that, on aircraft equipped with a TAWS, Predictive Windshear System (PWS), and a Traffic Collision Avoidance System (TCAS), "only one aural alert is given at any one time." However, the NOTE at the bottom of Table 2 states, "Voice callouts are allowed simultaneously with TCAS." The commenter requests clarification of this issue.

The FAA concurs that clarification is necessary. The FAA's intent is to prioritize callouts so that only one is given at any time. Therefore, Table 2 ("Recommended Voice Prioritization between the TAWS and Other Systems Installed") of the final AC has been revised to delete the references to simultaneous callouts.

Another commenter questions the material contained in Table 2 of the proposed AC. The commenter asks if the "PDA ('Too Low Terrain') Caution," shown as Priority Level 9 on the table, is considered a separate function or sub-function of the forward-looking terrain-avoidance (FLTA) function. In the table, the term "(FLTA)" follows the term "PDA * * * Caution." The commenter finds the meaning of this unclear. Additionally, this commenter questions whether Table 2 is intended to consider both Class A and Class B TAWS.

The FAA concurs that clarification of the information presented in Table 2 is appropriate. First, the FAA has deleted the term "(FLTA)" that appears in the Priority Level 9 column, as it is inappropriate in that section of the table. Second, the FAA has revised Table 2 to include indications in each Priority Level as to whether the guidance applies to Class A TAWS, Class B TAWS, or both systems.

System Inhibit

One commenter requests that paragraph 7.j. of the proposed AC, concerning system inhibit, be revised to clarify the system inhibit provisions for Class B TAWS systems. The commenter notes that TSO–C151 does not require Class B systems to inhibit the FLTA and PDA functions while maintaining basic GPWS functions, and requests that the AC specify this.

The FAA agrees and has clarified this information in the final AC in paragraph 16., "System Inhibit."

Flight Data Recorders

One commenter suggests deletion of paragraph 7.k. of the proposed AC, which addresses considerations relevant to flight data recorders. The commenter states that this is essentially an LRU issue and should be addressed via the TSO approval process. Since there are no FAA requirements to record TAWS FLTA alerts, this does not need to be addressed in the AC.

Similarly, another commenter notes that paragraph 7.k. implies that flight data recorders certificated under part 91 (and potentially all JAA-certificated flight data recorder installations) should have a means to record FLTA alerts as well as FLTA and/or PDA inhibits. The commenter states that this information is not recorded today in these installations and the format is not defined. The commenter requests that this paragraph be clarified as to its specific installation application.

The FAA does not consider that any change to the information concerning flight data recorders is necessary. The AC clearly specifies that the guidance applies only to aircraft that are defined by the requirements of § 25.1459 ("Flight recorders"). Furthermore, it specifies the recording requirements for the various alerts associated with TAWS. (This information is found in the final AC in paragraph 17, "Flight Data Recorder.")

Human Factors

One commenter requests clarification of paragraph 7.l. of the proposed AC, which addresses inclusion of human factors considerations as part of the certification program. The commenter suggests that the paragraph clarify the requirements for a first-time certification of a display design versus follow-on installations or minor display improvements. The commenter considers that follow-on certifications (i.e., same display design in different aircraft) and minor changes should not require the rigorous human factor review that a new display design should require.

The FAA agrees that clarification on this issue is necessary. The FAA has revised the final AC by eliminating the separate paragraph addressing human factors, and including the pertinent information in paragraph 8.f., "Testing Plan."

Flight Test Requirements

One commenter suggests that paragraph 7.m.(2), of the proposed AC, which concerns flight test requirements, be revised to clarify that the "cases" listed are intended only to assist in determining flight test guidelines for potential TAWS configurations; however, the actual requirement for a flight test needs to be evaluated for each installation. The commenter is concerned that, with the cases written as they are, someone unfamiliar with TAWS may gain the impression that a flight test is required for every possible TAWS installation, which is not the case. To clarify this issue further, the commenter suggests that all of the "cases" listed be changed to "examples." Additionally, the commenter requests that a note be added to state that some installations may be a combination of these examples and, as such, all of the guidance should be considered when determining flight test requirements.

The FAA agrees with this commenter's suggestions and has revised in paragraph 20.a, "Flight Test Considerations," of the final AC accordingly.

One commenter requests clarification concerning the flight test requirements for follow-on installations of a previously approved TAWS in which a required sensor input has not been previously approved. The commenter assumes that bench testing of each model of sensors would be an acceptable means of compliance for these (thus, not requiring flight testing during installation of follow-ons).

The FAA agrees that clarification is required and has modified paragraph 20., "Flight Test," to include guidance in determining the scope of flight testing required.

One commenter requests clarification in paragraph 7.m.(2) concerning Case 5, which pertains to a follow-on installation of a previously-approved TAWS in which the radio altitude to the TAWS equipment has not been previously approved. The commenter states that this case should not be applicable to Class B TAWS, because Class B TAWS does not require a radio altitude input. The commenter suggests that the AC specify this.

The FAA agrees with the commenter and has revised the final AC to specify that this example is not for Class B equipment.

One commenter notes that the proposed AC does not consider systems able to account for altitude variations in cold weather (function similar to the Allied Signal Geometric Altitude), other than a note in the AFMS requirements. The commenter suggests that the AC provide guidance that describes this

function and any testing associated with it.

The FAA agrees with the commenter and has revised the final AC to add this guidance in new paragraph 20.g., "Pressure Altitude Variations in Cold Weather."

Ground Tests

One commenter requests clarification of whether the airworthiness considerations described in paragraph 7. of the proposed AC are to be construed as requiring verification by ground or flight test. The commenter notes that the AC does not explicitly consider any ground testing required for evaluation of an installation. The commenter suggests that some items that should be considered for ground testing are:

- An acceptable location of TAWS controls, displays, an annunciators;
- Exercise of self-test functions;
- Evaluation of identified failure modes;
- Evaluation of all discretes and TAWS interfaces;
- EMI/EMC testing, and
- Electrical transient testing.

The FAA concurs with the commenter's suggestion and has revised the final AC to include a new paragraph 19., "Ground Test Considerations," to include this information.

Forward Looking Terrain Avoidance (FLTA) Flight Test Requirements

One commenter suggests that the text of paragraph 7.m.(3)(a) of the proposed AC, which addresses FLTA flight test requirements, be changed from:

"Two tests are recommended * * *,"

to:

"Test runs are recommended to be level flight at approximately 500 feet above the terrain/obstacle of interest. The test runs should verify that all alerts (cautions and warnings) are given at an appropriate point in the test run; that all pop-up, auto range, or other display features are working; and that the display depicts the terrain accurately."

This commenter states that experience has shown that all FLTA features can be tested with level flight and there is no need to add the risk of descending toward the terrain/obstacle during the test flight.

The FAA concurs with the commenter's suggestion and has revised paragraph 20.b., "FLTA Flight Test Considerations," of the final AC accordingly.

Premature Descent Alert (PDA) Flight Test Requirements

One commenter requests that paragraph 7.m.(4) of the proposed AC, which concerns PDA flight test requirements, be revised to specify that, depending on the system design, PDA flight tests may only need to be accomplished during a system's *initial* certification. The commenter states that, for the Honeywell Enhanced Ground Proximity Warning System (EGPWS) specifically, all of the inputs driving the PDA function can be tested via FLTA testing and altitude callout testing. Thus, once the function has been proven during the initial certification, follow-on certifications can be proven by alternative tests. The commenter requests that text be added to this section to allow such "alternative" means of testing for this system. This same commenter states that, with the Honeywell EGPWS, PDA testing can be performed most safely if the aircraft is more than 15 nautical miles (NM) from the nearest airport. The commenter requests that the AC be revised to allow PDA testing outside of 15 NM from the nearest runway to allow for testing at safer altitudes.

The FAA does not agree with the commenter's suggested changes. The FAA considers the commenter's requests to be too specific to one particular system design, and may not be appropriate for other designs. As for "alternative means of testing," the FAA points out that the guidance provided in this AC applies to one acceptable means, but not the only means, of compliance; therefore, applicants have the prerogative to apply for FAA approval of alternative means of compliance, which may include alternative testing methods.

Basic GPWS Flight Test Requirements

One commenter requests a change in the text of the first sentence of paragraph 7.m.(5)(c) of the proposed AC, which concerns negative climb rate or altitude loss after takeoff. The commenter requests that the text be changed from:

"This test is conducted immediately after takeoff before climbing above 700 AGL or above runway elevation."

to

"This test is conducted immediately after takeoff."

The commenter states that Honeywell has been able to develop tests of its EGPWS systems for this scenario that allow for higher altitude gain, thus reducing the risk of this test flight.

The FAA does not concur. The FAA considers the commenter's requests to be too specific to one particular system design, and may not be appropriate for other designs.

Another commenter suggests paragraph 7.m.(5)(f) of the proposed AC, which concerns the Voice Callout "Five Hundred Feet" function, be revised to include the following note:

"If selected or utilized in the installation, this test should be conducted." The commenter states that not all operators elect the use of the 500-foot callout and, therefore, it is not possible to test this callout in those installations. As an alternative, the commenter suggests that this section could be changed simply to address "altitude callouts," and thus test all of the selected altitude callouts.

The FAA does not concur with this commenter's request. The Voice Callout "Five Hundred Feet" function is required by TSO C–151 for both the Class A and B TAWS.

Terrain Display Flight Test Requirements

One commenter states that, in some new display systems, it is possible to evaluate the new display via ground tests. Therefore, this commenter suggests that paragraph 7.m.(6) of the proposed AC be revised by adding a note to indicate that ground test evaluation of a display may be acceptable if it can be shown that all aspects or performance of the display can be evaluated via ground tests.

The FAA does not concur with the commenter's request. The guidance in this section of the AC is only for first-time evaluations of displays. The commenter's concerns are covered in the guidance contained in paragraph 18. ("System Evaluations with Simulators") and paragraph 19. ("Ground Test Considerations") of the final AC, which provide additional guidance for other types of evaluations.

Another commenter questions whether flight testing is necessary to verify terrain display requirements. This commenter states that the Allied Signal EGPWS allows readout, via an external PC and a terminal program, of all interfaces to the EGPWS LRU. This test will determine that all signals interface properly with the system. This system also will allow simulation of all parameters inside the EGPWS unit, so that different scenarios can be simulated. During this simulation, a check of all aural and visual alerts can be made, and the presentation of terrain on the display can be checked. The commenter considers it unnecessary to require verification of the TSO-ed software with real parameters. Therefore, the commenter requests that paragraph 7.m.(6) of the proposed AC be revised to include the acceptability of ground testing for the evaluation of displays.

The FAA does not concur. The FAA considers the commenter's request to be too specific to one particular system design, and may not be appropriate for other designs.

Issued in Renton, Washington, on June 29, 2000.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 00–17243 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.335–1A, Design Dive Speed

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.335–1A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which sets forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of part 25 of the Federal Aviation Regulations (FAR) related to the minimum speed margin between design cruise speed and design dive speed for transport category airplanes.

DATES: Comments must be received on or before September 15, 2000.

ADDRESSES: Send all comments on the proposed AC 25.335–1A to: Federal Aviation Administration, Attention: James Haynes, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (425) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify proposed AC 25.335–1A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/avr/air/airhome.htm*, at the link titled "Draft AC's." A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Discussion

Section 25.335(b) requires the design dive speed, V_D, of the airplane to be established so that the design cruise speed is no greater than 0.8 times the design dive speed, or that it be based on an upset criterion initiated at the design cruise speed, V_C At altitudes where the cruise speed is limited by compressibility effects, § 25.335(b)(2) requires the margin to be not less than 0.05 Mach. Furthermore, at any altitude, the margin must be great enough to provide for atmospheric variations (such as horizontal gusts and the penetration of jet steams), instrument errors, and production variations. This AC provides a rational method for considering the atmospheric variations.

Issued in Renton, Washington, on June 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–17244 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Albany County, NY

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Town of Bethlehem, Albany County, New York.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Werner, Regional Director, New York State Department of Transportation, 84 Holland Avenue, Albany, New York 12208, Telephone: (518) 474–6178

or

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve State Route 85 in the Town of Bethlehem, Albany County, New York. The proposed improvement will involve the construction and rehabilitation of the existing route from the vicinity of its intersection with Route 140, to the Albany City Line, a distance of about 2.6 miles. Improvements to the highway are necessary to address identified transportation problems within the corridor and to accommodate the existing and projected traffic demands. In addition to the highway improvements, the project may include the widening of the existing Route 85 bridge over the Normanskill or the construction of a new parallel structure, and the rehabilitation or replacement of the existing Route 85 structure over the Thruway and the construction of a new parallel structure over the New York State Thruway.

Alternatives under consideration include (1) taking no action; (2) construction of a two lane limited access highway on new location from the Route 140 intersection to the vicinity of the existing Route 85 over Normanskill bridge (effectively extending the existing two lane facility); (3) providing a four lane facility by the construction of a new four lane limited access highway on new location from the Route 140 intersection to the vicinity of the existing Route 85 bridge over the Normanskill and then the construction of two additional lanes parallel to the existing two lane limited access highway to the vicinity of the Albany City Line. Incorporated into and studied with the various build alternatives will be design variations of grade, alignment, and local access.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. No formal Scoping Meeting is planned at this time. A public information meeting will be held after additional study. After the Draft Environmental Impact Statement (DEIS) is prepared, it will be made available for agency and public review and comment. In addition, a public hearing will be held for which a public notice will be given of the time and place of the hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 23 U.S.C. 771.123

Issued on: June 29, 2000.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 00–17220 Filed 7–6–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33843]

Arkansas and Missouri Railroad Company—Lease and Operation Exemption—Union Pacific Railroad Company

Arkansas and Missouri Railroad Company (A&M), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate 3.2 miles of rail line from Union Pacific Railroad Company (UP) at several locations near UP's Van Buren, Arkansas yard, in Sebastian County, AR. A&M states that there are no mileposts assigned to the area by UP.

Because A&M's projected annual revenues will exceed $5 million, A&M has certified to the Board on June 8, 2000, that the required notice of the transaction was posted at the workplace of the employees on the affected lines on April 6, 2000. *See* 49 CFR 1150.42(e). A&M stated in its verified notice that the transaction was scheduled to be consummated on or about June 14, 2000.[1]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33843, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James E. Howard, 90 Canal Street, Boston, MA 02114.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–17122 Filed 7–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Due to the timing of A&M's certification to the Board, consummation under normal circumstances would have to be delayed until August 7, 2000 (60 days after A&M's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)). In a decision in this proceeding served on June 29, 2000, however, the Board granted the request by A&M for waiver of the remainder of the 60-day period, as measured from the certification date to the Board, to allow consummation to occur as early as June 29, 2000, because rail employees and their unions had been given more than 60 days' actual notice in this case.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33886]

Arizona & California Railroad Company Limited Partnership d/b/a Puget Sound & Pacific Railroad Company—Lease and Operation Exemption—Union Pacific Railroad Company

Arizona & California Railroad Company Limited Partnership (ARZC) d/b/a Puget Sound & Pacific Railroad Company (PS&P),[1] has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 1.8 miles of certain rail lines from the Union Pacific Railroad Company (UP) as follows: (1) From UP milepost 53.83 to UP milepost 54.23; and (2) from UP milepost 55.28 to UP milepost 56.70, in Aberdeen and Hoquiam Counties, WA.

The transaction was scheduled to be consummated on or after June 26, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33886, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Esq,, Weiner, Brodsky, Sidman & Kider, P.C., 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–17121 Filed 7–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] ARZC is an existing Class III rail carrier, and PS&P is an operating division of ARZC. See Arizona & California Railroad Company Limited Partnership—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33448 (STB served Sept. 11, 1997).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33884]

Wisconsin Central Ltd.—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC) has agreed to amend the overhead trackage rights previously granted to Wisconsin Central Ltd. (WCL) over its line of railroad between IC's connection with Union Pacific near 16th Street in Chicago and IC's Markham Yard in Hazel Crest, IL, a distance of approximately 22 miles.[1] Previously, WCL used those rights to interchange traffic with IC and Grand Trunk Western Railroad Incorporated at Markham Yard, and also to interchange traffic at a connection point with Norfolk and Western Railway Company near 95th Street in Chicago, IL.

The transaction is scheduled to be consummated on or shortly after July 5, 2000.

The proposed amendment to the trackage rights would grant additional rights to WCL and will allow WCL to connect directly with lines of the Chicago South Shore and South Bend Railroad (CSS) at 115th Street in Chicago, thus providing for a streamlined route for roofing granules

[1] *See Wisconsin Central Ltd.—Trackage Rights Exemption—The Baltimore and Ohio Chicago Terminal Railroad Company*, Consolidated Rail Corporation, Illinois Central Railroad Company, and Chicago and North Western Transportation Company, Finance Docket No. 31659 (ICC served Oct. 31, 1990).

and other goods originating on the WCL in Kremlin, WI, to reach CSS-served customers and possibly to reach other carriers connecting with CSS.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33884, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., Wisconsin Central Ltd., One O'Hare Centre, 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16859 Filed 7–6–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 27, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0046.
Form Number: ATF F 27–G.
Type of Review: Extension.
Title: Applications—Volatile Fruit-Flavor Concentrate Plants.
Description: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement.
Respondents: Business of other for-profit.
Estimated Number of Recordkeepers: 10.
Estimated Burden Hours Per Recordkeeper: 3 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 30 hours.

OMB Number: 1512–0138.
Form Number: ATF F 5120.20.
Type of Review: Extension.
Title: Certification of Tax Determination—Wine.
Description: ATF F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,000.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 500 hours.

OMB Number: 1512–0191.
Form Number: ATF F 5100.16.
Type of Review: Extension.
Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.
Description: ATF F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. ATF uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 300 hours.

OMB Number: 1512–0192.
Recordkeeping Requirement ID Number: ATF REC 5110/02.
Form Number: ATF F 5110.11.
Type of Review: Extension.
Title: Distilled Spirits Plants Warehousing Records, ATF REC 5110/02 and Reports, ATF F 5110.11.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. It also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 230.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting/Recordkeeping Burden: 5,520 hours.

OMB Number: 1512–0203.
Recordkeeping Requirement ID Number: ATF REC 5110/06.
Type of Review: Extension.
Title: Distilled Spirits Plants—Excise Taxes.
Description: Collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 133.
Estimated Burden Hours Per Recordkeeper: 26 hours.
Frequency of Response: Weekly.
Estimated Total Recordkeeping Burden: 3,458 hours.

OMB Number: 1512–0207.
Form Number: ATF F 5110.43.
Recordkeeping Requirement ID Number: ATF REC 5110/04.
Type of Review: Extension.
Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.
Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 98.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting/ Recordkeeping Burden: 1,176 hours.

OMB Number: 1512–0460.

Recordkeeping Requirement ID Number: ATF REC 5110/12.

Type of Review: Extension.

Title: Equipment and Structures.

Description: Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and the accurate determination of contents..

Respondents: Business or other for-profit.

Estimated Number of Respondents: 281.

Estimated Burden Hours Per Respondent: 0 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0555.

Form Number: None.

Type of Review: Extension.

Title: Recordkeeping Requirements for Importers of Tobacco Products.

Description: Importers of tobacco products are required to maintain records of physical receipts and disposition of tobacco products to be able to prepare ATF Form 5220.6, a monthly report. Importers of tobacco products will consistent of both large and small businesses that operate for profit.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,500.

Estimated Burden Hours Per Recordkeeper: Usual and Customary.

Frequency of Response: Monthly.

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–17235 Filed 7–6–00; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 28, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0006.

Form Number: ATF F 3310.4.

Type of Review: Extension.

Title: Report of Multiple Sales or Other Disposition of Pistols and Revolvers.

Description: The form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

Respondents: Business of other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,000 hours.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–17236 Filed 7–6–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 28, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0043.

Form Number: Customs Form 3311.

Type of Review: Extension.

Title: Declaration for Free Entry of Returned American Products.

Description: This collection of information is used as a supporting documents which substantiates the claim for duty free status for returning American products.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 12,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 51,000 hours.

OMB Number: 1515–0088.

Form Number: None.

Type of Review: Extension.

Title: Foreign Assemblers Declaration (with Endorsement by Importer).

Description: The Foreign Assembler's Declaration with Importer's Endorsement it used by Customs to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the U.S.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 2,730.

Estimated Burden Hours Per Respondent: 50 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 302,402 hours.

OMB Number: 1515–0191.

Form Number: Customs Form 5106.

Type of Review: Extension.
Title: Importer Input Record.
Description: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or refund check upon adjustment of a cash collection.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 100 hours.

Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–17237 Filed 7–6–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning an extension, without change, of an information collection titled Leasing—12 CFR part 23. The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: You should submit your written comments to both OCC and the OMB Reviewer by August 7, 2000.

ADDRESSES: You should send your written comments to the Communications Division, Attention: 1557–0206, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to OMB by contacting Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0206), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Leasing—12 CFR part 23.
OMB Number: 1557–0206.
Form Number: None.
Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information requirements in 12 CFR part 23 are located as follows:

12 CFR 23.4(c)—Reporting: A national bank must liquidate or re-lease property that is no longer subject to lease (off-lease property) as soon as practicable, but no later than five years from the lease expiration. A bank wishing to extend that five-year holding period for up to an additional five years must obtain OCC approval. To ensure that a bank is not holding property for speculative reasons, the OCC requires the bank to provide a clearly convincing demonstration why an additional holding period is necessary. This requirement provides flexibility for a bank when it faces unusual and unforeseen conditions under which it would be imprudent to dispose of the off-lease property. As a result, this requirement confers a benefit on national banks and may result in cost savings.

12 CFR 23.4(c)—Recordkeeping: A national bank must value off-lease property at the lower of current fair market value or book value promptly after the property comes off-lease.

12 CFR 23.5—Recordkeeping: A national bank may engage in two types of lease financing. First, a national bank may acquire tangible or intangible personal property for purposes of lease financing if the lease serves as the functional equivalent of a loan. There is no aggregate volume limitation on a bank's investment in personal property that it leases pursuant to the foregoing authority. Second, a national bank may acquire tangible personal property for purposes of lease financing up to 10 percent of the assets of the bank. Section 23.5 requires that if a bank enters into both types of leases, its records must distinguish between the two types of leases.

National banks need these information collections to ensure that they conduct their operations in a safe and sound manner and in accordance with Federal banking statutes and regulations. These information collections also provide needed information for examiners and protections for banks. The OCC uses this information to verify compliance.

Type of Review: Extension, without change, of a currently approved collection.
Affected Public: Businesses or other for-profit.
Estimated Number of Respondents: 580.
Estimated Total Annual Responses: 625.
Frequency of Response: On occasion.
Estimated Total Annual Burden: 1,610 burden hours.
OCC Contact: Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, OMB No. 1557–0206, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.
OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0206, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.
Comments: Your comment will become a matter of public record. You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) Whether the OCC's burden estimate is accurate;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection

techniques or other forms of information technology; and

(e) Whether the OCC's estimates of the capital or startup costs and costs of operation, maintenance, and purchase of services to provide information are accurate.

Dated: June 30, 2000.

Mark J. Tenhundfeld,

Assistant Director,, Legislative & Regulatory Activities Division.

[FR Doc. 00–17232 Filed 7–6–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–43]

Tuna Fish—Tariff-Rate Quota

The tariff-rate quota for calendar year 2000, on tuna classifiable under subheading 1604.14.20, Harmonized Tariff Schedule of the United States (HTSUS).

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna fish for calendar year 2000.

SUMMARY: Each year, the tariff-rate quota for tuna fish described in subheading 1604.14.20, HTSUS, is based on canned tuna production by the United States for the preceding calendar year. This document sets forth the quota for calendar year 2000.

EFFECTIVE DATES: The calendar year 2000 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Porter, Chief, Quota/Visa Branch, Trade Programs, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, (202) 927–5399.

Background

It has been determined that 28,305,623 kilograms of tuna may be entered or withdrawn from warehouse for consumption during the calendar year 2000, at the rate of 6 percent ad valorem under subheading 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: June 30, 2000.

Raymond W. Kelly,

Commissioner.

[FR Doc. 00–17137 Filed 7–6–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Information Collection; Comment Request

ACTION: Federal Register pre-clearance notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)). Currently, the Treasury Department's Office of Foreign Assets Control is soliciting comments concerning the information collection provisions of the Iraqi Sanctions Regulations, 31 CFR 575.523, 575.524, and 575.525.

DATES: Written comments should be received on or before September 5, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Merete M. Evans, Staff Assistant to the Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (tel.: 202/622–2500).

FOR FURTHER INFORMATION CONTACT: David W. Mills, Chief, Policy Planning and Program Management (tel.: 202/622–2500); Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622–2490); Mrs. B.S. Scott, Chief, Penalties Program (tel.: 202/622–6140); or Barbara C. Hammerle, Acting Chief Counsel (tel.: 202/622–2410); Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Iraqi Sanctions Regulations.

OMB Number: 1505–0130.

Abstract: Sections 575.523, 575.524, and 575.525 in Subpart E, impose information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A) (copies are attached)). Section 575.523 provides a statement of licensing policy for U.S. persons seeking to purchase petroleum and petroleum products from the Government of Iraq or Iraq's State Oil Marketing Organization ("SOMO") pursuant to UNSC Resolution 986, other relevant Security Council resolutions, and guidance provided by the 661 Committee.

Sections 575.524 and 575.525 provide statements of licensing policy for the exportation to Iraq of pipeline parts and equipment necessary for the safe operation of the Iraqi portion of the Kirkuk-Yumurtalik pipeline system, and the sale of humanitarian aid to Iraq.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Businesses and other for-profit institutions/banking institutions/individuals.

Estimated Number of Respondents: 150 respondents.

Estimated Time Per Respondent: 1 hour to process.

Estimated Annual Burden Hours: 150 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Barbara C. Hammerle,

Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury.

[FR Doc. 00–17126 Filed 6–30–00; 3:59 pm]

BILLING CODE 4810–25–U

Corrections

Federal Register
Vol. 65, No. 131
Friday, July 7, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OH–132–2; KY–116–2; KY–84–2; FRL–6717–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio and Kentucky

Correction

In rule document 00–15294 beginning on page 37879 in the issue of Monday, June 19, 2000, make the following correction:

§81.318 [Corrected]

On page 37900, in §81.318, in the table, the title, "OHIO–OZONE" should read "KENTUCKY–OZONE".

[FR Doc. C0–15294 Filed 6–29–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC72

Amendments to Gas Valuation Regulations for Indian Leases

Correction

In proposed rule document 00–15201 beginning on page 37504 in the issue of Thursday, June 15, 2000, make the following correction:

1. On page 37504, in the second column, in the last paragraph, in the second line, "30 CFR 206.174(1)" should read "30 CFR 206.174(l)".

2. On the same page, in the third column, in the first full paragraph, in the first line, "§2096.174(1)" should read "§2096.174(l)".

3. On the same page, in the same column, in the second full paragraph, in the ninth line, "most" should read "more".

4. On the same page, in the same column, in the same paragraph, in the 15th line, "§206.174(1)" should read "§206.174(l)".

5. On page 37505, in the first column, in the first full paragraph, in the 12th line from the bottom, "§206174(l)" should read "§206.174(l)".

6. On the same page, in the same column, in the second full paragraph, in the second line, "§206.174(1)" should read "§206.174(l)".

7. On page 37506, in the third column, in the first paragraph, in the eighth line, "does" should read "Does".

§206.174 [Corrected]

8. On page 37507, in the first column, in §206.174, in amendatory instruction 2., paragraph "(1)" should read "(l)".

[FR Doc. C0–15201 Filed 6–29–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4581–N–01]

Fiscal Year 2000 Notice of Funding Availability for the Assisted Living Conversion Program (ALCP) for Section 202 Projects

Correction

In notice document 00–6572 beginning on page 14694 in the issue of Friday, March 17, 2000 make the following correction:

On page 14701, in the third column, in paragraph (e), in the second line,"inch" should read "¼ inch ".

[FR Doc. C0–6572 Filed 6–30–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42787; File No. SR–Amex–00–14]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Generic Listing Standards Applicable to Listing Portfolio Depository Receipts and Index Fund Shares Pursuant to Rule 19b-4(e) Under the Securities Exchange Act of 1934

May 15, 2000.

Correction

In notice document 00–13004 beginning on page 33598, in the issue of Wednesday, May 24, 2000, make the following correction:

On page 33598, in the first column, the date is added to read as set forth above.

[FR Doc. C0–13004 Filed 6–30–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42767; File No. SR–PCX–99–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Competing Specialist Program

May 9, 2000.

Correction

In notice document 00–12272, beginning on page 31200, in the issue of Tuesday, May 16, 2000, make the following correction:

On page 31200, in the third column, the date is added to read as set forth above.

[FR Doc. C0–12272 Filed 6–30–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24444; File No. 812–11960]

First Allmerica Financial Life Insurance Company, et al.

May 5, 2000.

Correction

In notice document 00–12132, beginning on page 31029, in the issue of Monday, May 15, 2000, make the following correction:

On page 31029, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C0–12132 Filed 6–30–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24443; File No. 812–11858]

Valley Forge Life Insurance Company, et al.

May 5, 2000.

Correction

In notice document 00–11960, beginning on page 30651, in the issue of Friday, May 12, 2000, make the following correction:

On page 30651, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C0–11960 Filed 6–30–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42864; File No. SR–NSCC–99–09]

Self-Regulatory Organizations: National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Additional Procedures for Class A Surveillance of Certain Settling Members and to the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

May 30, 2000.

Correction

In notice document 00–14253, beginning on page 36204, in the issue of Wednesday, June 7, 2000, make the following correction:

On page 36204, in the second column, the date is added to read as set forth above.

[FR Doc. C0–14253 Filed 6–30–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Friday,
July 7, 2000

Part II

Department of Labor

Mine Safety and Health Administration

Department of Health and Human Services

Centers for Disease Control and Prevention

30 CFR Part 72

Determination of Concentration of Respirable Coal Mine Dust; Proposed Rule

30 CFR Parts 70, 75 and 90

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

30 CFR Part 72

RIN 1219–AB18

Determination of Concentration of Respirable Coal Mine Dust

AGENCIES: Mine Safety and Health Administration (MSHA), Labor, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services (DHHS).

ACTION: Proposed rule; notice of hearings.

SUMMARY: This proposal announces that the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) would find in accordance with sections 101 (30 U.S.C. 811) and 202(f)(2) (30 U.S.C. 842(f)(2)) of the Federal Mine Safety and Health Act of 1977 (Mine Act) that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries are proposing to rescind a previous 1972 finding, by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, on the validity of such single-shift sampling. Today's proposal addresses the final decision and order in *NMA* v. *Secretary of Labor,* issued by the United States Court of Appeals for the 11th Circuit on September 4, 1998 (153 F. 3d 1264). That case vacated a 1997 Joint Finding and MSHA's proposed policy concerning the use of single, full-shift respirable dust measurements to determine noncompliance when the applicable respirable dust standard was exceeded.

The Agencies are also announcing that they will hold public hearings on the joint proposed rule within 45 to 60 days of its publication. The hearings will be held in the following locations: Prestonsburg, Kentucky (Jenny Wiley State Park); Morgantown, West Virginia; and Salt Lake City, Utah.

DATES: Comments concerning this proposed rule should be submitted on or before August 7, 2000.

The hearing dates, times and specific locations will be announced by a separate document in the **Federal Register**. The rulemaking record will remain open 7 days after the last public hearing.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send your comments to MSHA. Clearly identify comments as such and send them—(1) By mail to Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director, Office of Standards, Regulations and Variances; MSHA; 703–235–1910. Copies of this proposed rule in alternative formats may be obtained by calling (703) 235–1910. The alternative formats available are large print, electronic file on computer disk, and audiotape. The proposed rule is also available on the Internet at http://www.msha.gov.

SUPPLEMENTARY INFORMATION: In accordance with sections 101 and 202(f) of the Mine Act (30 U.S.C. 811 and 842(f)), this proposed mandatory standard is published jointly by the Secretaries of the Departments of Labor, and Health and Human Services.

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The preamble to this proposed rule on the accuracy of single shift exposure measurements discusses events leading to the proposed rule, health effects of exposure to respirable coal mine dust, degree and significance of the reduction in the number of shifts during which there are overexposures, an analysis of the technological and economical feasibility of this proposed rule, and regulatory impact and regulatory flexibility analyses.

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II. Introduction

For as long as miners have taken coal from the ground, many have suffered respiratory problems due to their occupational exposures to respirable coal mine dust. These respiratory problems, range from mild impairment of respiratory function to more severe diseases, such as silicosis and progressive massive fibrosis (PMF). For some miners, the impairment of their respiratory systems is so severe, they die prematurely. There is a clear dose-response relationship between miners' cumulative exposures (*i.e.*, dose multiplied by the time exposed to the coal mine dust) to respirable coal mine dust and the severity of resulting respiratory conditions. On each and every workshift, it is essential to prevent miners from being exposed to respirable coal mine dust concentrations that exceed the mandated exposure limits.

The Federal Coal Mine Health and Safety Act of 1969 (Coal Act) established the first comprehensive dust standard for underground U.S. coal mines by setting a limit of 2.0 milligrams of respirable coal mine dust per cubic meter of air (mg/m^3). The 2.0 mg/m^3 standard limits the concentration of respirable coal mine dust permitted in the mine atmosphere during each shift to which each miner in the active workings of a mine is exposed. Congress was convinced that the only way each miner could be protected from black lung disease or other occupational dust diseases was by limiting the amount of respirable coal mine dust allowed in the air that miners breathe.

The Coal Act was subsequently amended by the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 *et seq.* The standard limiting respirable dust in the mine atmosphere to 2.0 mg/m^3 was retained in the Mine Act, which also required that "each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air," Section 202(b)(2) (30 U.S.C.842(b)). (Other provisions in the Mine Act, Sections 205 and 203(b)(2) (30 U.S.C. 845 and 843(b)(2)), provide for lowering the applicable standard when quartz is present and when miners with evidence of the development of pneumoconiosis have elected to work in a low-dust work environment).

Today, dust levels in underground U.S. coal mines are significantly lower than they were when the Coal Act was passed. Federal mine inspector sampling results during 1968–1969 showed that the average dust concentration in the environment of a continuous miner operator was 7.7 mg/m^3. Current sampling (FY 1998) indicates that the average dust level for a continuous miner operator has been reduced by 86 percent to 1.1 mg/m^3. Despite this progress, the Secretaries believe that respirable coal mine dust continues to present a serious health risk to coal miners. In November 1995, the National Institute for Occupational Safety and Health (NIOSH) issued a comprehensive review of the literature concerning occupational exposure to respirable coal mine dust in its Criteria Document (NIOSH Criteria Document, 1995). NIOSH concluded, among other things, that coal miners in our country continue to be at increased risk for developing respiratory disease as a result of their exposure to respirable coal mine dust. Although it is beyond the scope of this rulemaking, in its 1995 Criteria Document, NIOSH recommended a time weighted average exposure limit to respirable coal mine dust of 1.0 mg/m^3, up to ten hours per day for a 40-hour work week.

The Secretary of Labor and the Secretary of Health and Human Services believe that miners' health can be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust exceeding the applicable standards. MSHA's improved program to eliminate overexposures on each and every shift includes multiple rulemakings. Through this proposal, MSHA would be able to use single, full-shift respirable coal mine dust samples to more effectively identify overexposures and address them. Other overexposures to respirable coal mine dust would be prevented through finalizing a proposed rule that would require each underground coal mine operator to have a verified mine ventilation plan. MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit (MMU) to controlling respirable dust under typical mining conditions. Furthermore, that proposal would revoke underground operator compliance and abatement sampling. Consequently in underground coal mines, MSHA intends to increase the number of compliance inspections per year, and MSHA would conduct abatement sampling for non-compliance determinations. The notice of proposed rulemaking to promulgate new regulations to require operators to have a verified ventilation plan in underground coal mines is published elsewhere in today's **Federal Register**.

III. General Discussion

The issues related to this notice of proposed rulemaking are complex and highly technical. The Agencies have organized this proposal to allow interested persons to first consider pertinent introductory material on the Agencies' 1972 notice and its 1999 recission, and a short overview of the NIOSH mission and assessment of this proposal, as well as those aspects of MSHA's coal mine respirable dust program relevant to this proposal. Following this introductory material is a discussion of the "measurement objective," or what the Secretaries intend to measure with a single, full-shift measurement, and the use of the NIOSH Accuracy Criterion for determining whether a single, full-shift measurement will "accurately represent" the full-shift atmospheric dust concentration. Next, the validity of

the sampling process is addressed, including the performance of the approved sampler unit, sample collection procedures, and sample processing. The concept of measurement uncertainty is then addressed, and why sources of dust concentration variability and various other factors are not relevant to the proposal. In addition, the proposal summarizes the health effects of occupational exposure to respirable coal mine dust and presents MSHA's quantitative risk assessment (QRA). Finally, the proposal explains how the total measurement uncertainty is quantified, and how the accuracy of a single, full-shift measurement meets the NIOSH Accuracy Criterion. Several Appendices, which contain relevant technical information, are attached and incorporated in this notice. Appendix E contains the references used throughout this notice of proposed rulemaking.

The proposed rule is consistent with Executive Order 12866, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act (SBREFA), the National Environmental Policy Act (NEPA), the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Mine Act.

A. The 1971/1972 Joint Notice of Finding

In 1971, the Secretary of the Interior and the Secretary of Health, Education, and Welfare proposed, and in 1972 issued, a joint finding under the Coal Act. The finding concluded that a single, full-shift measurement of respirable dust would not, after applying valid statistical techniques, accurately represent the atmospheric conditions to which the miner is continuously exposed. For the reasons that follow, the Secretaries believe that the 1972 joint finding was incorrect.

Section 202(b)(2) of the Coal Act provided that "each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below the applicable respirable dust standard." In addition, the term "average concentration" was defined in section 202(f) of the Coal Act as follows:

> * * * the term "average concentration" means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured during an 18 month period following the date of enactment of this Act, over a number of continuous production shifts to be determined by the Secretary of the Interior and the Secretary of Health, Education and Welfare, and (2) as measured thereafter, over a single shift only, unless the Secretary of the Interior and the Secretary of Health, Education and Welfare find, in accordance with the provisions of section 101 of this Act, that such single shift measurements will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

Therefore, 18 months after the statute was enacted, the "average concentration" of respirable dust in coal mines was to be measured over a single shift only, unless the Secretaries found that doing so would not accurately represent mine atmospheric conditions during such shift. If the Secretaries found that a single shift measurement would not, after applying valid statistical techniques, accurately represent mine atmospheric conditions during such shift, then the interim practice of averaging measurements "over a number of continuous production shifts" was to continue.

On December 16, 1969, the U.S. Congress published a Conference Report in support of the new Coal Act. The Report refers to section 202(f) by noting that:

> At the end of this 18 month period, it requires that the measurements be over one production shift only, unless the Secretar[ies] * * * find, in accordance with the standard setting procedures of section 101, that single shift measurements will not accurately represent the atmospheric conditions during the measured shift to which the miner is continuously exposed (Conference Report, page 75).

This Report is inconsistent with the wording of the section 202(f), which seeks to apply a single, full-shift measurement to "accurately represent such atmospheric conditions during such shift." Section 202(f) does not mention continuous exposure. The Secretaries believe that the use of this phrase, "continuously exposed", is confusing, and to the extent that any weight of interpretation can be given to the legislative history, that the Senate's Report of its bill provides a clearer interpretation of section 202(f) when read together with the statutory language. The Senate Committee noted in part that:

> The committee * * * intends that the dust level not exceed the specified standard during any shift. It is the committee's intention that the average dust level at any job, for any miner in any active working place during each and every shift, shall be no greater than the standard. [Standard = 2 mg/m^3]

Following passage of the Coal Act, the Bureau of Mines (MSHA's predecessor Agency within the Department of the Interior) expressed a preference for multi-shift sampling. Correspondence exchanged during that time period of 1969 to 1971 reflected concern over the technological feasibility of controlling dust levels to the limits established, and the potentially disruptive effects of mine closure orders because of noncompliance with the respirable dust limits. Both industry and government officials feared that basing noncompliance determinations on single, full-shift measurements would increase those problems. In June 1971, the then-Associate Solicitor for Mine Safety and Health at the Department of the Interior issued a legal interpretation of section 202(f), concluding that the average dust concentration was to be determined by measurements that accurately represent respirable dust in the mine atmosphere over time rather than during a shift. On July 17, 1971, the Secretaries of the Interior and of Health, Education, and Welfare issued a proposed notice of finding under section 202(f) of the Coal Act. The finding concluded that, "a single shift measurement of respirable dust will not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner is continuously exposed" (36 FR 13286).

In February, 1972, the final finding was issued (37 FR 3833). It concluded that:

> After careful consideration of all comments, suggestions, and objections, it is the conclusion of the Secretary of the Interior and the Secretary of Health, Education, and Welfare that a valid statistical technique was employed in the computer analysis of the data referred to in the proposed notice [footnote omitted] and that the data utilized was accurate and supported the proposed finding. Both Departments also intend periodically to review this finding as new technology develops and as new dust sampling data becomes available.
>
> The Departments intend to revise part 70 of title 30, Code of Federal Regulations, to improve dust measuring techniques in order to ascertain more precisely the dust exposure of miners. To complement the present system of averaging dust measurements, it is anticipated that the proposed revision would use a measurement over a single shift to determine compliance with respirable dust standards taking into account (1) The variation of dust and instrument conditions inherent in coal mining operations, (2) the quality control tolerance allowed in the manufacture of personal sampler capsules, and (3) the variation in weighing precision allowed in the Bureau of Mines laboratory in Pittsburgh.
>
> The proposed finding, as set forth at 36 FR 13286, that a measurement of respirable dust over a single shift only, will not, after applying valid statistical techniques to such measurement, accurately represent the

atmospheric conditions *to which the miner under consideration is continuously exposed,* is hereby adopted without change (emphasis added).

As explained in the 1971 proposed finding, the average concentration of all ten full-shift samples (from one occupation) submitted from each working section under the regulations in effect at the time (these were the "basic samples" referred to in the proposed notice of finding) was compared with the average concentration of the two most recently submitted samples, then to the three most recently submitted samples, then to the four most recently submitted samples, etc. In discussing the results of these comparisons, the Secretaries stated that "* * * the average of the two most recently submitted samples of respirable dust was statistically equivalent to the average concentration of the current basic samples for each working section in only 9.6 percent of the comparisons."

The title of the 1971/1972 notice and the conclusion it reaches are clearly inconsistent. The title states that it is a "Notice of Finding That Single Shift Measurements of Respirable Dust Will Not Accurately Represent Atmospheric Conditions During Such Shift." However, the conclusion states that, "* * * a single shift measurement * * * will not, after applying valid statistical techniques * * * accurately represent the atmospheric conditions to which the miner is *continuously* exposed" (emphasis added).

The Secretaries have determined that section 202(f) would require a determination of accuracy with respect to "atmospheric conditions during such shift," not "atmospheric conditions *to which the miner is continuously exposed"* (37 FR 3833) (emphasis added). The Secretaries believe that the 1972 Finding does not apply the Mine Act's requirement at Section 202(f), 30 U.S.C. 842. The statistical analysis referenced in the 1971/1972 proposed and final findings simply did not address the accuracy of a single, full-shift measurement in representing atmospheric conditions during the shift on which it was taken. For this and other reasons, such as advancements in sampling technology, set forth in the notice, the Secretaries hereby propose to rescind the 1972 joint final finding.

IV. NIOSH Mission Statement and Assessment of the Joint Finding

The National Institute for Occupational Safety and Health (NIOSH) was created by Congress in the Occupational Safety and Health Act in 1970. The Act established NIOSH as part of the Department of Health, Education, and Welfare (currently NIOSH is a part of the Department of Health and Human Services) to identify the causes of work-related diseases and injuries, evaluate the hazards of new technologies, create new ways to control hazards to protect workers, and make recommendations for new occupational safety and health standards. Under section 501 of the Mine Act (30 U.S.C. 951), Congress gave specific research responsibilities to NIOSH in the field of coal and other mine health. These responsibilities include the authority to conduct studies, research, experiments and demonstrations, in order "to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal or other mine," and also "to develop techniques for the prevention and control of occupational diseases of miners * * *"

When the initial finding, issued under section 202(f) of the Coal Act, was published in 1972, both the Secretary of the Interior and the Secretary of Health, Education, and Welfare (the predecessor to the Department of Health and Human Services) indicated that the finding would be reassessed as new technology was developed, or new data became available. The Secretary of Health and Human Services, through delegated authority to NIOSH, has reconsidered the provisions of section 202(f) of the Mine Act (30 U.S.C. 842(f)), reviewed the current state of technology and other scientific advances since 1972, and has determined that the following innovations and technological advancements are important factors in the reassessment of the 1971/1972 joint finding.

In 1977, NIOSH published its "Sampling Strategies Manual," which provided a framework for the statistical treatment of occupational exposure data (DHEW (NIOSH) Publication No. 77–173; Sec. 4.2.1). Additionally, that year, NIOSH first published the NIOSH Accuracy Criterion, which was developed as a goal for methods to be used by OSHA for compliance determinations (DHEW (NIOSH) Publication No. 77–185; pp. 1–5). In 1980, new mine health standards issued by the Secretary of Labor (30 CFR parts 70, 71, and 90) improved the quality of the sampling process by revising sampling, maintenance, and calibration procedures. Through the mid-nineteen-eighties, MSHA continued to refine and improve its sampling process. In 1984, a fully-automated, robotic weighing system was introduced along with state-of-the-art electronic microbalances. Prior to 1984, filter capsules used in sampling were manually weighed by MSHA personnel using semi-micro balances, making precision weights to the nearest 0.1 mg (100 micrograms). In 1994, the balances were further upgraded, and in 1995 the weighing system was again improved, increasing weighing sensitivity to the microgram level. Also, in 1987, electronic flow-control sampling pump technology was introduced in the coal mine dust sampling program with the use of Mine Safety Appliances FlowLite™ pumps.[1] These new pumps compensate for the changing filter flow-resistance that occurs due to dust deposited during the sampling period. The second generation of constant-flow sampling pumps was introduced in 1994, with the introduction of the Mine Safety Appliances Escort ELF® pump. The automatic correction provided by these new pumps improves the stability of the sampler air flow rates and reduces the inaccuracies that were inherent in the 1970–1980s vintage sampling pumps. One further improvement was made in 1992 with the introduction of the new tamper-resistant filter cassettes. Because of these evolving improvements to the sampling process, a better understanding of statistical methods applied to method accuracy, and a reconsideration of the requirements of section 202(f) of the Mine Act (30 U.S.C. 842(f)), the Secretary of Health and Human Services has determined that the previous joint finding should be reevaluated.

V. MSHA Mission Statement and Overview of the Respirable Dust Program

With the enactment of the Mine Act, Congress recognized that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner." Congress further realized that there "is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines." With these goals in mind, MSHA is given the responsibility to protect the health and safety of the Nation's coal and other miners by enforcing the provisions of the Mine Act.

[1] Reference to specific equipment, trade names or manufacturers does not imply endorsement by NIOSH or MSHA.

A. The Coal Mine Respirable Dust Program

In 1970, federal regulations were issued by MSHA's predecessor agency that established a comprehensive coal mine operator dust sampling program for underground mines. The program required the environment of the occupation on a working section exposed to the highest respirable dust concentration to be sampled—the "high risk occupation" concept. All other occupations on the section were assumed to be protected if the high risk occupation was in compliance. Under this program, each operator was required to initially collect and submit ten valid respirable dust samples to determine the average dust concentration across ten production shifts. If the analysis showed the average dust concentration to be within the applicable dust standard, the operator was required to submit only five valid samples a month. If compliance continued to be demonstrated, the operator was required to take only five valid samples every other month. The initial, monthly, and bimonthly sampling cycles were referred to as the "original," "standard," and "alternative sampling" cycles, respectively. When the average dust concentration exceeded the applicable standard, the operator reverted back to the standard monthly sampling cycle.

In addition to sampling the high risk occupation at specified frequencies, each miner was sampled individually at different intervals. However, these early individual sample results were not used for enforcement but were provided to NIOSH for medical research purposes. Also required to be sampled every 90 days in underground mines, beginning in 1971, and in surface mines, beginning in 1974, were individuals who had evidence of the development of pneumoconiosis and exercised their option to transfer to a low dust area.

Federal regulations establishing a comprehensive operator dust sampling program for surface coal mines were issued in 1972. Under this program, each miner was sampled initially prior to July 1, 1972, and then either semiannually, if the initial sample exceeded 1.0 mg/m^3 but was less than 2.0 mg/m^3, or annually if the initial sample was 1.0 mg/m^3 or less.

MSHA revised these regulations in April 1980 (45 FR 23990) to reduce the operator sampling burden, to simplify the sampling process, and to enhance the overall quality of the sampling program. The result was to replace the various sampling cycles in effect in underground and surface coal mines with a bimonthly sampling cycle and to eliminate the requirement that each miner be sampled. Unlike the underground sampling requirements, operators of surface coal mines were required to sample bimonthly only after a "designated work position" (DWP) was established by MSHA. Once established, only one sample is required to be collected each bimonthly period. Under the revised regulations, MSHA could also withdraw the designation of work positions for sampling if samples taken by the operator and by MSHA demonstrated continuing compliance with the applicable dust standard. These are the regulations that currently govern the mine operator dust sampling program at both underground and surface coal mines, and which, in the case of underground mines, continue to be based on the high risk occupation concept, now referred to as the "designated occupation" or "D.O." sampling concept.

It should be noted that the April 1980 preamble to the final rule, amending the regulations for underground coal mines, explicitly refers to the use of single versus multiple samples as it applies to the operator respirable dust sampling program (45 FR 23997):

> Compliance determinations will generally be based on the average concentration of respirable dust measured by five valid respirable dust samples taken by the operator during five consecutive shifts, or five shifts worked on consecutive days. Therefore, the sampling results upon which compliance determinations are made will more accurately represent the dust in the mine atmosphere than would the results of only a single sample taken on a single shift. In addition, MSHA believes the revised sampling and maintenance and calibration procedures prescribed by the final rule will significantly improve the accuracy of sampling results.

At the time of these amendments, MSHA examined section 202(b)(2) of the Coal Act, which was retained unchanged in the 1977 Mine Act. The Agency stated in the preamble to the final rule that:

> Although single-[full] shift respirable dust sampling would be most compatible with this single-shift standard, Congress recognized that variability in sampling results could render single-shift samples insufficient for compliance determinations. Consequently, Congress defined "average concentration" in section 202(f) of the 1969 Coal Act which is also retained in the 1977 Act.

MSHA believes that this interpretation merely recognized the two ways of measurement authorized in section 202(f), and expressed the preference on the part of MSHA in 1980 to retain multi-shift sampling in the operator sampling program. The phrase used in the preamble to the final rule reflects that MSHA understood that the 2.0 mg/m^3 limit was a single-shift standard, meaning that it was not to be exceeded on a shift. The preamble referenced the continuous multi-shift sampling and single-shift sampling conducted by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, and noted that in the 1971/1972 proposed and final findings:

> "It had been determined after applying valid statistical techniques, * * * that a single shift sample should not be relied upon for compliance determinations when the respirable dust concentration being measured was near 2.0 mg/m^3. Accordingly, the [Secretaries] prescribed consecutive multi-shift samples to enforce the respirable dust standard."

The preamble provides no further explanation for the statement that single-shift samples should not be relied on when the respirable dust concentration being measured was near 2.0 mg/m^3. Thus, the 1980 final rule, which reduced the number of samples that operators were required to take for compliance determinations, merely reiterated the rationale behind the 1971/1972 proposed and final findings concerning single-shift samples, and did not address the accuracy of a single, full-shift measurement.

MSHA continues to take an active role in sampling for respirable dust and has recently expanded its sampling to more than once annually at each surface and underground coal mine. During these inspections, MSHA inspectors collect samples on multiple occupations to determine whether miners are being overexposed to respirable coal mine dust; to assess the effectiveness of the operator's dust control program; to quantify the level of respirable crystalline silica (quartz) in the work environment and whether there is a need to adjust the applicable dust standard; and to identify occupations in underground mines, other than the "D.O.", and occupations in surface mines, that are at risk of being overexposed and should be routinely monitored by the mine operator.

Depending on the concentration of respirable coal mine dust measured, an MSHA inspector may terminate sampling after the first day if levels are very low, or continue for up to five shifts or days before making a compliance or noncompliance determination. For example, MSHA inspection procedures require inspectors to sample at least five occupations, if available, on each mechanized mining unit (MMU) on the

first day of sampling. Based on the first shift of sampling, the operator is cited if the average of those measurements exceeds the applicable standard. However, if the average falls below the standard, but one or more of the measurements exceed the applicable standard, additional samples are collected on the subsequent production shift or day. The results of the first and second shift of sampling on all occupations are then averaged to determine if the applicable standard is exceeded. Additionally, when an inspector continues sampling after the first shift because a previous measurement exceeds the standard, MSHA's procedures call for all measurements taken on a given occupation to be averaged within that occupation, across all sampling shifts. If the average of measurements taken over more than one shift on all occupations is equal to or less than the applicable standard, but the average of measurements taken on any one occupation exceeds the value in a decision table developed by MSHA, the operator is cited for violation of the applicable standard.

B. The Spot Inspection Program (SIP)

In response to concerns about possible tampering with dust samples in 1991, MSHA convened the Coal Mine Respirable Dust Task Group (Task Group) to review the Agency's respirable dust program. The Task Group was directed to consider all aspects of the current program in its review, including the role of the individual miner in the sampling program; the feasibility of MSHA conducting all sampling; and the development of new and improved monitoring technology, including technology to continuously monitor the mine environment. Among the issues addressed by the Task Group was the actual dust concentration to which miners are exposed. As part of the Task Group review, MSHA developed a special respirable dust "spot inspection program" (SIP).

This program was designed to provide the Agency with information on the dust levels to which underground miners are typically exposed. Because of the large number of mines and MMUs (mechanized mining units) involved and the need to obtain data within a short time frame, respirable dust sampling during the SIP was limited to a single shift or day, a departure from MSHA's normal sampling procedures. The term "MMU" is defined in 30 CFR 70.2(h) to mean a unit of mining equipment, including hand loading equipment, used for the production of material. As a result, MSHA decided that if the average of multiple occupation measurements taken on an MMU during any one-day inspection did not exceed the applicable standard, the inspector would review the result of each individual full-shift sample. If any individual full-shift measurement exceeded the applicable standard by an amount specified by MSHA, a citation would be issued for noncompliance, requiring the mine operator to take immediate corrective action to lower the average dust concentration in the mine atmosphere in order to protect miners.

During the SIP inspections, MSHA inspectors cited violations of the 2.0 mg/m^3 standard if either the average of the five measurements taken on a single shift was equal to or greater than 2.1 mg/m^3, or any single, full-shift measurement was equal to or exceeded 2.5 mg/m^3. Similar adjustments were made when the 2.0 mg/m^3 standard was reduced due to the presence of quartz dust in the mine atmosphere.[2]

The procedures issued by MSHA's Coal Mine Safety and Health Division during the SIP were similar to those used by the MSHA Metal/Nonmetal Mine Safety and Health Division and the Occupational Safety and Health Administration (OSHA) when determining whether to cite based on a single, full-shift measurement. That practice provides for a margin of error reflecting an adjustment for uncertainty in the measurement process (*i.e.*, sampling and analytical error, "SAE"). The margin of error thus allows citations to be issued only where there is a high level of confidence that the applicable standard has been exceeded.

Based on the data from the SIP inspections, the Task Group concluded that MSHA's practice of making noncompliance determinations solely on the average of multiple-sample results did not always result in citations in situations where miners were known to be overexposed to respirable coal mine dust. For example, if measurements obtained for five different occupations within the same MMU were 4.1, 1.0, 1.0, 2.5, and 1.4 mg/m^3, the average concentration would be 2.0 mg/m^3. Although the dust concentrations for two occupations exceed the applicable standard, under MSHA procedures, no citation would have been issued nor any corrective action required to reduce dust levels to protect miners' health. Instead, MSHA policy required the inspector to return to the mine the next day that coal was being produced and resume sampling in order to decide if the mine was in compliance or not in compliance.

Thus, the SIP inspections revealed instances of overexposure that were masked by the averaging of results across different occupations. This showed that miners would not be adequately protected if noncompliance determinations were based solely on the average of multiple measurements. The process of averaging dilutes a high measurement made at one location with lower measurements made elsewhere.

The Task Group also recognized that the results of the first full-shift samples taken by an inspector during a respirable dust inspection are likely to reflect higher dust concentrations than samples collected on subsequent shifts or days during the same inspection. MSHA's comparison of the average dust concentration of inspector samples taken on the same occupation on both the first and second day of a multiple-day sampling inspection showed that the average concentration of all samples taken on the first day of an inspection was almost twice as high as the average concentration of samples taken on the second day. MSHA recognized that sampling on successive days does not always result in measurements that are representative of everyday respirable dust exposures in the mine because mine operators can anticipate the continuation of inspector sampling and make adjustments in dust control parameters or production rates to lower dust levels during the subsequent sampling.

In response to these findings, in November 1991, MSHA decided to permanently adopt the single, full-shift inspection policy initiated during the SIP for all mining types.

C. The Keystone Decision

In 1991, three citations based on single, full-shift measurements were issued under the SIP to the Keystone Coal Mining Corporation. The violations were contested, and an administrative law judge from the Federal Mine Safety and Health Review Commission (Commission) vacated the citations. The decision was appealed by the Secretary of Labor to the Commission because the Secretary believed that the administrative law judge was in error in

[2] Quartz may be present in the coal seam and therefore may become airborne during coal production. MSHA regulates coal miners' work-shift exposure to quartz since it may be deposited in the lungs of miners and cause silicosis. MSHA's current standard for respirable coal mine dust, 2.0 mg/m^3, also requires quartz levels to be 5% or lower. Otherwise, if the percent of quartz is higher than 5%, the respirable coal mine dust exposure limit must be adjusted downward based on this formula: Respirable dust standard (mg/m^3)= {(10 mg/m^3)/(%Quartz)} For example, if the respirable dust contains 15 percentage of quartz the respirable coal mine dust standard would be 0.67 mg/m^3 since 10 mg/m^3 divided by 15 equals 0.67 mg/m^3.

finding that rulemaking was required under section 202(f) of the Mine Act (30 U.S.C. 842(f)) for the Secretary to use single, full-shift measurements for noncompliance determinations. In addition, the Secretary contended that the 1971/1972 finding pertained to operator sampling and that the SIP at issue involved only MSHA sampling. The Commission, which affirmed the decision of the administrative law judge, found that:

> Title II [of the Mine Act] applies to both operator sampling and to MSHA actions to ensure compliance, including sampling by MSHA. Section 202(g) specifically provides for MSHA spot inspections. Nothing in § 202(f) or § 202(g) suggests that § 202(f) applies differently to MSHA sampling. Thus, the 1971 finding, issued for purposes of title II, applies broadly to both MSHA and operator sampling of the mine atmosphere.

The Commission also held that the revised MSHA policy was in contravention of the 1971/1972 finding and could only be altered if the requirements of the Mine Act and the Administrative Procedure Act, 5 U.S.C. 550, were met. Through this proposed notice of rulemaking, MSHA is now attempting to meet those requirements.

D. The Interim Single-Sample Enforcement Policy (ISSEP)

On February 3, 1998, MSHA published a corrected notice in the **Federal Register** (63 FR 5687) announcing its final policy on the use of single, full-shift measurements to determine noncompliance and issue citations, based on samples collected by MSHA inspectors, when the applicable respirable dust standard is exceeded. The enforcement policy, thereafter referred to as ISSEP, which took effect on May 7, 1998, provides better protection to miners' health because it enabled MSHA to more effectively identify overexposures that were previously masked by the averaging of results across different occupations. Again, through the proposed single, full-shift sample approach, citations for noncompliance with the respirable coal mine dust standard would be able to be made for overexposures which would not be identified through the current procedure of averaging multiple-sample results. For example, if measurements obtained for five different occupations within the same MMU were 4.1, 1.0, 1.0, 2.6, and 0.8 mg/m^3, the average concentration would be 1.9 mg/m^3. Although the dust concentrations for two occupations statistically exceeded the applicable standard, under the current practice, of averaging results, no citation would be issued nor any corrective action required to reduce dust levels to protect miners' health. The ISSEP was in place until September 9, 1998, when MSHA reinstituted its previous procedure of averaging sample results for noncompliance determinations after the 11th Circuit Court of Appeals vacated the Agencies' 1998 Finding and MSHA's final policy.

Under the ISSEP, MSHA followed its existing dust sampling procedures in regard to where and how many samples an inspector collects during a sampling shift at underground and surface coal mines. While the Agency continued its practice of collecting multiple occupational samples at each MMU, the minimum number of occupations monitored was reduced from five to three, focusing only on those occupations at high risk of being overexposed. As part of the ISSEP, inspectors carried with them a control filter when conducting respirable dust sampling. This control filter, which was unexposed, was used to adjust the weight gain obtained on each of the exposed filters. Any change in weight of the unexposed control filter was subtracted from the change in weight of each exposed filter. For the exposed filter to be valid, the control and exposed filter must have been both pre- and post-weighed on the same days. If the control filter was either missing or invalid, the measurement(s) were not used for enforcement purposes and the entity type (*i.e.*, mining section) was to be resampled. An operator was found to be in violation of the applicable dust standard when a single, full-shift measurement met or exceeded the Citation Threshold Value (CTV) corresponding to the dust standard in effect. Each CTV listed in *Chapter 1 of the Coal Mine Health Inspection Procedures Handbook* (PH89–V–1(10)) was calculated to ensure that citations would be issued only when a measurement demonstrated, with at least 95-percent confidence, that the applicable standard had been exceeded.[3] No more than one citation was to be issued based on single, full-shift measurements from the same MMU, if the sampled occupations were exposed to the same dust generating sources. Issuance of separate citations were to be considered only after determining that the affected occupations were exposed to different dust generating sources.

When a single, full-shift measurement exceeded the applicable standard but was less than the CTV, a citation was not to be issued since noncompliance was not demonstrated at a sufficiently high confidence level. Instead, the MMU or other entity type sampled was to be targeted for additional sampling to verify the adequacy of the operator's dust control measures to maintain compliance, with special emphasis directed toward working environments with applicable standards below 2.0 mg/m^3. If subsequent sampling exceeded the applicable standard but not the CTV, the MSHA district responsible for inspecting the mine would thoroughly review the dust control parameters stipulated in the operator's approved ventilation or respirable dust control plan (applicable to surface mines and Part 90 miners) to determine if the parameters should be upgraded.

The process by which a violation of the applicable standard was to be abated by a mine operator remained unchanged. That is, an operator must first take corrective action to reduce the average dust concentration to within the permissible level, and then sample each production or normal work shift until five valid respirable dust samples are taken. MSHA considers a violation to be abated when the average dust concentration measured by these five valid samples was at or below the applicable standard. Under the ISSEP, MSHA inspectors sampled 1,662 MMUs and other entity types, such as roof bolter DAs and Part 90 miners, in underground mines; and some 860 DWPs and over 3,700 nondesignated work positions at surface mining operations. The Agency issued a total of 309 excessive dust citations based on the results of single, full-shift samples, involving 182 MMUs and 113 other underground entity types, and 14 surface work positions. Of the 1,662 MMUs sampled, 182 or 11 percent were cited, compared to the 27 percent MSHA had projected based on inspector sampling results for 1995. Also, it is important to point out that only 14 of the over 4,500 surface entities sampled were found to be out of compliance. These sampling inspections, which showed a significant decline in the number of cited instances of noncompliance compared to previous experience under the SIP and the earlier projections documented in the 1998 notices, reveal that mine operators are capable of maintaining dust concentrations at or below the applicable standard on every shift.

VI. Procedural and Litigation History of This Proposal

On February 18, 1994, the Secretary of Labor and the Secretary of Health and Human Services published a proposed

[3] MSHA plans to issue a revised Coal Mine Health Inspection Procedures Handbook after publication of this proposed standard as a final rule. The Handbook would list the CTVs.

Joint Notice of Finding in the **Federal Register** (59 FR 8357). The Joint Notice proposed to rescind the 1972 finding by the Secretaries of the Interior and Health, Education and Welfare, and instead, find that a single, full-shift measurement will accurately represent the atmospheric conditions with regard to the respirable dust concentration during the shift on which it was taken. Concurrently, MSHA published a separate notice in the **Federal Register** announcing its intention to use both single, full-shift measurements and the average of multiple, full-shift measurements for noncompliance determinations under the MSHA respirable coal mine dust program (59 FR 8356). That notice was published to inform the mining public of how the Agency intended to implement its new enforcement procedure utilizing single, full-shift samples, and to solicit public comment on the procedure.

After a notice and comment procedure extending over some three and one-half years, which also included three public hearings, the Agencies published a final corrected notice of finding in the **Federal Register** (63 FR 5664) on February 3, 1998.

The National Mining Association (NMA) along with the Alabama Coal Association petitioned the United States Court of Appeals for the 11th Circuit to review the 1998 Notice of Finding (Joint Finding) issued by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH), and additionally asked for an emergency motion for stay of the Joint Finding pending review. The motion for an emergency stay was denied by the Court.

On appeal NMA argued, among other things, that the agency had not met the requirements of section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act) (30 U.S.C. 811(a)(6)(A)) because it failed to address material impairment of health and economic and technological feasibility. MSHA and the Department of Labor responded that the agencies addressed the positive effect of the notice on miner health, and also concluded in the course of performing the analysis required under the Regulatory Flexibility Act that the economic impact of the Joint Finding was not significant. On September 4, 1998, the United States Court of Appeals for the 11th Circuit issued a decision in the case of *National Mining Association* v. *Secretary of Labor*, (153 F.3d 1264). The Court of Appeals vacated the Joint Finding and concluded that the agency was required to "satisfy the requirements of Section 811(a)(6)" by "demonstrat[ing] that the new standard (a) adequately assures that no miner will suffer a material impairment of health, on the basis of the best available evidence; (b) uses the latest available scientific data in the field; (c) is feasible [in both an economic and technological sense]; and (d) is based on experience gained under the Mine Act and other health and safety laws," supra, at 1268–1269. The Court then concluded that "the record contains no finding of economic feasibility," and that MSHA therefore "failed to comply with Section 811(a)(6) of the Mine Act." MSHA asked the Court for a clarification of its decision by filing a Motion for Clarification. The Court, without opinion, denied the Secretary's motion on November 11, 1998.

MSHA and NIOSH understand the Court's ruling as requiring the Agencies to comply with all requirements under section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)). Therefore, in response to the Court's ruling, the Secretaries are proposing today to add a new mandatory health standard to 30 CFR part 72. Pursuant to section 202(f) of the Mine Act (30 U.S.C. 842(f)), the 1972 joint notice of finding would be rescinded and a new finding would be made that a single, full-shift measurement will accurately represent atmospheric conditions to which a miner is exposed during such shift. This finding is the basis for the new proposed mandatory health standard.

The Secretaries believe that single, full-shift measurements must be implemented into the MSHA coal mine respirable dust program as quickly as possible in order to better protect miners' health. Therefore, in order to speed the process of reproposing this critical measurement technique, the Secretaries are incorporating the record of the previous 1998 Joint Finding into the record for this proposal and adding appropriate new data and information to support this rulemaking under section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)). The Secretaries have used as much of the original wording as possible from the vacated final finding in this notice of proposed rulemaking. References to previous comments and commenters in the body of this proposal are meant to apply to previous comments received in response to the earlier proposed Joint Finding that was ultimately vacated by the U.S. Court of Appeals for the 11th Circuit.

VII. Health Effects

A. Introduction

Since the 1800s, occupational respiratory disease associated with working in a coal mine has been commonly referred to as "Black Lung." As coal is mined, respirable-sized dust is generated. Depending upon the mine location and its geologic features, silica may also be present in the mine atmosphere. Dust in air that is breathed by miners has the potential to be deposited in their lungs. Some of this dust may be retained. Coal mine dust remaining in the lungs of miners for prolonged periods of time has the potential to result in respiratory diseases, sometimes even after occupational exposure to respirable coal mine dust has stopped. There is a clear and direct relationship between miners' cumulative exposures (*i.e.*, dose multiplied by the time exposed to the coal mine dust) to respirable coal mine dust and the severity of resulting respiratory conditions (as discussed more extensively, later in this section).

Diseases resulting from long-term retention of coal mine dust in the lung include chronic coal workers' pneumoconiosis (simple CWP), progressive massive fibrosis (PMF), silicosis, and chronic obstructive pulmonary disease (COPD) (*e.g.*, asthma, chronic bronchitis, emphysema). Historically, the medical term, "pneumoconiosis", has included simple CWP and PMF and their sub-categories. Chronic, or simple, CWP is partitioned into three levels of severity, proceeding from lowest to highest: Category 1, category 2, and category 3. Progressive Massive Fibrosis is similarly divided into three categories of increasing levels of severity: A, B and C.

Miners with simple CWP have a substantially increased risk of developing PMF. In the advanced stages of pneumoconiosis (*i.e.*, PMF), a significant loss of lung function may occur and respiratory symptoms (*e.g.*, breathlessness, wheezing) may persist. Miners are at risk of increased morbidity and premature mortality due to simple CWP, PMF and various other respiratory diseases.

Factors that are important in the development of simple CWP, PMF and COPD include the type of dust (*e.g.*, coal and/or silica), dust concentration (to which the miner was exposed), number of years of exposure, age of the miner (often measured as age at time of medical examination), and rank of the coal (the higher the rank the greater the risk).

In 1998, MSHA estimated that approximately 45,000 miners and

39,000 miners were employed at underground and surface coal mines, respectively (Mattos, 1999). A small percentage of the mining involved anthracite coal, the highest rank coal, while most involved bituminous coal which is a medium rank coal.

There are complementary data sources, described below, which provide estimates of the prevalence of occupational respiratory disease among coal miners. Together these data demonstrate the progress over the last thirty years in the reduction of occupational respiratory disease among coal miners, as well as the need for further action to reduce occupational lung disease among today's coal miners.

Estimates of the prevalence of simple CWP and PMF among the underground coal miners are gathered from the x-ray program, through which operators are required to provide miners the opportunity to be evaluated periodically for the presence of occupational lung disease, mandated pursuant to Section 203(a) of the Mine Act (30 U.S.C. 843(a)). However, miners are not required to participate. From 1970 to 1995,the prevalence of simple CWP and PMF among miners participating in the mandated x-ray program has dropped from 11 percent to 3 percent (MSHA, Internal Chart, 1998).

In accordance with 30 CFR part 50, those cases of occupational illnesses which both surface and underground coal mine operators learn of must be reported to MSHA. Under this requirement, mine operators reported 224 cases of pneumoconiosis (simple CWP and PMF, combined) in 1998 (Mattos, 1999). Of these, 138 cases occurred among coal miners who worked underground, while the remaining 86 cases occurred among surface coal miners (Mattos, 1999). There were also 14 cases of silicosis, eight in underground mines, reported to MSHA in 1998 in accordance with 30 CFR part 50 (Mattos, 1999). Since miners participate in both these programs at their own discretion, these data do not include the occupational health experience of all coal miners. The prevalence of occupational lung disease among participating miners may significantly differ from the prevalence among non-participants. Thus, the data from these programs may not be representative of the true magnitude of the prevalence of simple CWP and PMF among today's coal miners.

In the 1990s, MSHA conducted a series of one-time medical surveillance programs, in various regions of the country, to develop a more accurate estimate of the prevalence of simple CWP and PMF. Through these special programs, MSHA tried to minimize obstacles which may prevent some miners from either participating in or reporting to operators the results of respiratory diagnostic procedures. Nine geographical cohorts of miners, from around the country, were encouraged to participate in an independent x-ray program (MSHA, Internal Chart, 1999). These cohorts included eight active surface coal mining communities in the states of Pennsylvania, Kentucky and West Virginia, as well as the towns of Poteau, Oklahoma and Gillette, Wyoming. A ninth cohort included underground miners in Kentucky. The process was designed to encourage miner participation by providing for a greater degree of anonymity than may be available under the program provided by Section 203(a) of the Mine Act (30 U.S.C. 843(a)). Across the eight surface cohorts surveyed, the prevalence rate of simple CWP and PMF combined, among participants was 4.8%. The prevalence rate among the participating underground Kentucky miners was 9.2%.

Also, as part of its ongoing effort to "end black lung now and forever," beginning in October 1999, MSHA implemented a pilot program to provide miners at both surface and underground mines with confidential health screening. Referred to as the "Miners' Choice Health Screening", the program addresses the key recommendations of the Secretary's Advisory Committee by (1) increasing participation toward the 85-percent level and (2) expanding the scope of the eligibility to include surface coal miners and surface coal mine independent contractors. The pilot program will operate separately from the existing Coal Workers' X-ray Surveillance Program administered by NIOSH. Since the Miners' Choice Health Screenings' inception, over 7,000 miners have been screened, with the participation rate in most areas exceeding 50 percent. With half of the x-rays taken during the first six months having been processed by NIOSH, preliminary results indicate a prevalence rate of approximately 2.25 percent.

The National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) are concerned about the prevalence of occupational lung disease among today's miners. Epidemiological studies from the U.S. and abroad have consistently shown that underground and surface coal miners are at risk of developing simple CWP, PMF, silicosis, and chronic obstructive pulmonary disease (NIOSH Criteria Document, 1995).

B. Hazard Identification

1. Agent: Coal

Coal is a fossil fuel derived from partial degradation of vegetation. Through its combustion, energy is produced which makes coal a valuable global commodity. It has been estimated that over one-third of the world uses energy provided by coal (Manahan, 1994). Approximately 1,800 underground and surface coal mines are in operation in the United States annually producing slightly over a billion short tons of coal (Mattos, 1999).

Coal may be classified on the basis of its type, grade, and rank. The type of coal is based upon the plant material (*e.g.*, lignin, cellulose) from which it originated. The grade of coal refers to its chemical purity. Although coal is largely carbon, it may also contain other elements such as hydrogen, oxygen, nitrogen, and sulfur. "Hard" coal refers to coal with a higher carbon content (*i.e.*, 90–95%) than "soft" coal (*i.e.*, 65–75%). Coal rank relates to geologic age, indexed by its fixed carbon content, down to 65%, and then by its heating value. Volatile matter varies inversely with the fixed carbon value. The most commonly described coal ranks include lignite (low rank), bituminous coal (medium rank), and anthracite (high rank) (Manahan, 1994).

2. Physical State: Coal Mine Dust

Aerosols are a suspension of solid or liquid particles in air (Mercer, 1973); they may be dusts which are solid particles suspended in the air. Coal dust may be freshly generated or may be re-suspended from surfaces on which it is deposited in mines. As discussed below, coal mine dust may be inhaled by miners, depending upon the particle size.

Coal mine dust is a heterogenous mixture, signifying that all coal particles do not have the same chemical composition. The particles are influenced by the type, grade, and rank of coal from which they were generated (Manahan, 1994). Irrespective of differences in coal characteristics, these dusts are water-insoluble, which is important biologically and physiologically. Unlike soluble dusts which may readily pass into the respiratory system and be cleared via the circulatory system, insoluble dusts may remain in the lungs for prolonged periods of time. Thus, a variety of cellular responses may result that could eventually lead to lung disease.

3. Biological Action: Respirable Coal Mine Dust

The principal route of occupational exposure to respirable coal mine dust occurs via inhalation. As a miner breathes, coal mine dust enters the nose and/or mouth and may pass into the mid airways (*e.g.*, bronchi, terminal bronchioles) and lower airways (*e.g.*, respiratory bronchioles, alveolar ducts).

Coal mine dust has a size distribution that is estimated to range between 1 and 100 micrometer (μm) (1 μm = 10^{-6} m) (Silverman, *et al.*, 1971). The size of coal particles is critical in determining the level of the respiratory tract at which deposition and retention occur (American Conference of Governmental Industrial Hygienists, 1999; American Industrial Hygiene Association, 1997).

Particles that are above 10 μm are largely filtered in the nasal passages, although some of these particles may reach the thoracic (or tracheal-bronchial) region of the lung (*e.g.*, 6% of 20 μm) (American Conference of Governmental Industrial Hygienists, 1999). Thus, there is evidence that "oversized" particles (*i.e.*, >10 μm) can move beyond the nose, deeper into the respiratory tract. Particles below 10 μm may easily move throughout the respiratory tract. As particle size decreases from 10 to 5 μm, however, there is greater penetration into the mid and lower regions of the lung. Particles that are approximately 1–2 μm are the most likely to be deposited in the lung (American Conference of Governmental Industrial Hygienists, 1999; Mercer, 1973). During mouth breathing, there may be a slight upward shift in the particle deposition curve such that 2–3 μm-sized particles are the most likely to be deposited in the respiratory tract (Heyder, *et al.*, 1986). Irrespective of nasal or mouth breathing, the potential respiratory tract penetration of particles whose size is approximately 10 μm or less is important because particles in the respirable size range deposit in the deep lung where clearance is much slower.

For the purposes of this rule, "respirable dust" is defined as dust collected with a sampling device approved by the Secretary of Labor and the Secretary of the Department of Health and Human Services (DHHS) in accordance with 30 CFR Part 74 (Coal Mine Dust Personal Sampler Units). In practice, the coal mine dust personal sampler unit has been used in the U.S. The particles collected with an approved sampler approximate that portion of the dust which may be deposited in the lung (West, 1990; 1992). It does not, however, indicate pulmonary retention (*i.e.*, those particles remaining in the lung). For those particles that are deposited in the lung, clearance mechanisms normally operate to assist in their removal. For example, within the thoracic (tracheal-bronchial) region of the lung, cilia (*i.e.*, hairlike projections) line the airways and are covered by a thin layer of mucus. They assist in particle clearance by beating rhythmically to project particles toward the throat where they may be swallowed, coughed, sneezed, or expectorated. This rhythmic beating action is effective in removing particles fairly quickly (*i.e.*, hours or days). Within the alveolar region of the lung, particles may be engulfed by pulmonary macrophages. These large "wandering cells" may remove particles via the blood or lymphatics. This process, unlike the movement of the cilia is much slower (*i.e.*, months or years). Thus, some particles, particularly those that are insoluble, may remain in the alveolar region for long periods of time, despite the fact that pulmonary clearance is not impaired. It is the pulmonary retention of coal mine dust which may be the impetus for respiratory disease.

It is also important to note that silica may be present in the coal seam, within dirt bands in the coal seam, and in rock above and below coal seams. Of the silica found in coal mines, quartz is the form which is found. Thus, quartz may become airborne during coal removal operations (Manahan, 1994). Miners may inhale dust that is a mixture of quartz and coal. MSHA is concerned with the inhalation of quartz since it may be deposited in the lungs of miners and produce silicosis. This is a restrictive lung disease which is characterized by a stiffening of the lungs (West, 1990; 1992). Silicosis has been seen in coal miners (*e.g.*, surface miners, drillers, roofbolters) (Balaan, *et al.*, 1993). Silicosis may develop acutely (*i.e.*, 6 months to 2 years) following intense exposure to high levels of respirable crystalline quartz. Silicosis has also been observed in coal miners following chronic exposure (*i.e.*, 15 years or more), but may be accelerated (*i.e.*, 7–10 years) in some cases (Balaan, *et al.*, 1993). Silicosis is irreversible and may lead to other illnesses and premature mortality. People with silicosis have increased risk of pulmonary tuberculosis infection and an increased risk of lung cancer (Althouse, *et al.*, 1995; International Agency for Research on Cancer, 1997). MSHA's current standard of 2.0 mg/m^3 for respirable coal dust requires that quartz levels be 5% or lower. Otherwise, the 2.0 mg/m^3 respirable coal dust exposure limit does not apply and must be adjusted downward for percentage of quartz. If coal dust contains more than 5% quartz, then the following formula is applied (30 CFR 70.101; 30 CFR 71.101).

Respirable dust standard (mg/m^3)= {(10 mg/m^3)/(%Quartz)}

The intent of this formula is to maintain miner exposures to quartz below 0.1 mg/m^3 (100 μg/m^3).

C. Health-Related Effects of Respirable Coal Mine Dust

1. Description of Major Health Effects

Consistently, epidemiological studies have demonstrated miners to be at risk of developing respiratory symptoms, a loss of lung function, and lung disease as a consequence of occupational exposure to respirable coal mine dust. As noted previously, risk factors include type(s) of dust, dust concentration, duration of exposure, age of the miner (often measured as age at time of medical examination), and coal rank.

a. Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF)

In earlier stages of pneumoconiosis the term, "simple coal workers' pneumoconiosis" (simple CWP), has been used, while in more advanced stages, the terms "complicated CWP" and PMF have been used interchangeably. Simple CWP and PMF involve the lung parenchyma and are produced by deposition and retention of respirable coal dust in the lung.

To determine if a miner has simple CWP or PMF, chest x-rays are taken and classified by a certified radiologist or reader. Opacities are identified on chest films and then classified using a scale of 0–3 (*e.g.*, simple CWP category 1), where higher category values indicate increasing concentration of opacities. In some instances, two category values may be given. For example, simple CWP category 2/3 signifies that the reader decided the film was category 2, but suspected that it might have been category 3. The International Labour Office (ILO) has provided a full description of the criteria for these classifications (ILO, 1980).

Simple CWP can be associated with a loss of lung function and with premature mortality (Morgan, *et al.*, 1974; Jacobsen, 1976; Cochrane, *et al.*, 1979; Parkes, 1982). MSHA recognizes that simple CWP increases the risk of developing PMF substantially (Cochrane, 1962; Jacobsen, *et al.*, 1971; McLintock, *et al.*, 1971; Balaan, *et al.*, 1993).

Progressive massive fibrosis (PMF) is associated with decreased lung function

and increased premature mortality (Rasmussen, *et al.*, 1968; Atuhaire, *et al.*, 1985; Miller and Jacobsen, 1985; Attfield and Wagner, 1992). Progressive massive fibrosis is also associated with increases in respiratory symptoms such as chest tightness, cough, and shortness of breath. Miners with PMF also have an increased risk of acquiring infections and pulmonary tuberculosis (Petsonk and Attfield, 1994; Yi and Zhang, 1996). Finally, miners with PMF have an increased risk of right-side heart failure (*i.e.*, cor pulmonale) (Cotes and Steel, 1987).

b. Other Health Effects

During a medical examination, a miner may be questioned by his physician about symptoms such as cough, phlegm production, chest tightness, shortness of breath, and wheezing. Occupational physicians may also conduct pulmonary function tests using spirometry or plethysmography. Pulmonary performance may be assessed via repeated measurements of lung volumes and capacities, such as the forced expiratory volume in one second (FEV_1), vital capacity (VC), forced vital capacity (FVC), residual volume (RV), and total lung capacity (TLC) (West, 1990; 1992). Changes in lung volumes and capacities may indicate a loss of the integrity of the lung (*i.e.*, respiratory system). More importantly, they can provide information for diagnosis of diseases affecting the airways and/or elasticity of the lung (*i.e.*, obstructive vs. restrictive lung disease) (West, 1990; 1992).

The term, chronic obstructive pulmonary disease (COPD), refers to three disease processes that are often difficult to properly diagnose and differentiate: chronic bronchitis, emphysema, and asthma (Coggon and Taylor, 1998; Garshick, *et al.*, 1996; West, 1990; 1992). As indicated by several studies, the exposure of miners to respirable coal mine dust place them at increased risk of developing COPD. Furthermore, COPD may occur in miners with or without the presence of simple CWP or PMF.

Chronic Obstructive Pulmonary Disease (COPD) is characterized by airflow limitations, and thus there is a loss of pulmonary function. As in simple CWP or PMF, a miner with COPD may have a variety of respiratory symptoms (*e.g.*, shortness of breath, cough, sputum production, and wheezing) and may be at increased risk of acquiring infections. Chronic Obstructive Pulmonary Disease is associated with increased premature mortality (Hansen, *et al.*, 1999; Meijers, *et al.*, 1997).

Briefly, in chronic bronchitis and in asthma, there is excess mucous secretion in the mid-lower airways (West, 1990; 1992). In contrast, emphysema is characterized by dilatation (enlargement) of alveoli that are distal to the terminal bronchioles, which leads to poor gas exchange (*i.e.*, poor transfer of oxygen and carbon dioxide). Additionally, there is a breakdown of the interstitium between the alveoli. These pathological changes may be confirmed upon autopsy. With asthma, the airflow limitations may be partially or completely reversible, while they are only partially reversible with chronic bronchitis and emphysema.

The Mine Safety and Health Administration (MSHA) and the NIOSH recognize that respiratory symptoms, loss of lung function, and COPD may impair the ability of a miner to perform his job and may diminish his quality of life. Additionally, miners having such health effects are at increased risk of morbidity (*e.g.*, from cardio-pulmonary disease, infections) and premature mortality.

2. Toxicological Literature

To better understand the human health effects of exposure to respirable coal mine dust and to more fully characterize the associated risks, it is important to consider data that have been obtained in animal based toxicological studies. To date, sub-acute studies (a study with a duration of 30 days, or less, in which multiple exposures of the same agent are given) and chronic studies (a study with a duration of more than 3-months, in which multiple exposures of the same agent are given) attempted to mimic miners' exposures. Inhalation was generally the route of exposure, although several studies have also employed instillation techniques (*i.e.*, a method which places a known quantity of dust into the trachea or bronchi).

Most recent toxicological studies have been short-term studies, largely focusing on "lung overload" (Snipes, 1996; Oberdorster, 1995; Morrow, 1988, 1992; Witschi, 1990), species-dependent lung responses (Nikula, *et al.*, 1997a,b; Mauderly, 1996; Lewis, *et al.*, 1989; Moorman, *et al.*, 1975), and particle size-dependent lung inflammation (Soutar, *et al.*, 1997). The data have shown that pulmonary clearance of particles may become impaired, potentially leading to inflammatory and other cellular responses in the lung. Although overloading has not been demonstrated in humans, the finding of reduced lung clearance among retired U.S. coal miners (Freedman and Robinson, 1988) is consistent with this possibility.

The data from Moorman, *et al.* (1975), Lewis, *et al.* (1989), and Nikula, *et al.* (1997a,b) are noteworthy for several reasons. First, these groups of investigators conducted chronic inhalation toxicity studies (*i.e.*, chronic bioassays). This is important since miners' exposures also occur via inhalation, and over a working lifetime. Secondly, the investigators used an exposure concentration of 2.0 mg/m^3 in their bioassays. As noted above, this is the current MSHA standard for respirable coal mine dust. Thirdly, the exposures involved nonhuman primates, whose responses are thought to closely mimic those of man. Some of the key findings of these studies included: deposition of coal dust in the animals' lungs, retention of coal dust in alveolar tissue, altered lung defense mechanisms, reduced pulmonary airflows, and hyperinflation of the lungs. One of the shortcomings of these studies is that complete dose-response relationships were not developed. However, at higher exposure concentrations, greater effects may be expected which is a basic tenet of toxicology. Thus, at exposure concentrations above 2.0 mg/m^3, MSHA and NIOSH believe that more severe obstructive lung disease may occur.

3. Epidemiological Literature

Epidemiology studies have consistently demonstrated the serious health effects of exposure to high levels of respirable coal mine dust (*i.e.*, above 2.0 mg/m^3) over a working lifetime. Table VII–1 lists epidemiology studies since 1986 whose results will be discussed on the basis of the type of observed health effect. Studies completed even earlier including the early work of Cochrane (1962), McLintock, *et al.* (1971), and Jacobsen, *et al.* (1971) demonstrated the adverse health effects (*e.g.*, simple CWP, PMF) of respirable coal mine dust in British coal miners.

Both early and recent studies have shown that the lung is the major target organ (*i.e.*, organ in which toxic effects occur) when exposure to respirable coal mine dust occurs. As seen in Table VII–1, numerous studies of miners have been conducted. Recent U.S. studies were conducted using data from one or more of the first four rounds of the National Study of Coal Workers' Pneumoconiosis (NSCWP), and have provided extensive data on miners' health. Many of these studies demonstrated that miners are at increased risk of multiple, concurrent respiratory ailments (Attfield and

Seixas, 1995; Kuempel, *et al.*, 1997; Meijers, *et al.*, 1997; Seixas, *et al.*, 1992).

TABLE VII–1.—RESPIRABLE COAL MINE DUST EPIDEMIOLOGICAL STUDIES, BY REPORTED OUTCOMES FROM 1986 TO PRESENT

Studies	Reported outcomes
Meijers, *et al.*, 1997	PMF, CWP, COPD, LLF.
Maclaren, *et al.*, 1989	PMF, CWP, LLF, RS.
Kuempel*, *et al.*, 1995	PMF, CWP, COPD.
Bourgkard *et al.*, 1998	PMF, CWP, LLF.
Kuempel*, *et al.*, 1997 Love, *et al.*, 1997 Love, *et al.*, 1992	
Attfield and Morring*,1992b Attfield and Seixas*, 1995 Hodous and Attfield*, 1990 Hurley and Jacobsen, 1986 Hurley and Maclaren, 1987 Hurley, *et al.*, 1987 Starzynski, *et al.*, 1996 Yi and Zhang, 1996	PMF, CWP.
Wang, *et al.*, 1997	CWP, LLF.
Goodwin and Attfield*, 1998. Morfeld, *et al.*, 1997	CWP.
Marine, *et al.*, 1988 Seixas*, *et al.*, 1993 Soutar and Hurley, 1986	COPD, LLF, RS.
Carta, *et al.*, 1996 Henneberger and Attfield*,1997 Henneberger and Attfield*,1996 Seixas*, *et al.*, 1992	LLF, RS.
Attfield and Hodous*, 1992 Lewis, *et al.*, 1996	LLF.

COPD: Chronic obstructive pulmonary disease.
CWP: Simple coal workers' pneumoconiosis.
LLF: Loss of lung function.
PMF: Progressive massive fibrosis.
RS: Respiratory symptoms.
* Studies of U.S. Miners Who Participated in the National Study of Coal Workers' Pneumoconiosis (NSCWP).

a. Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF)

Studies following Cochrane (1962) and McLintock *et al.*, (1971) have confirmed that the risk of PMF increases with increasing category of simple CWP (Hurley and Jacobsen, 1986; Hurley, *et al.*, 1987; Hurley and Maclaren, 1988; Hodous and Attfield, 1990). However, the risk of PMF was greater than previously predicted among miners with simple CWP category 1 or without simple CWP (*i.e.*, category 0) (Hurley, *et al.*, 1987). The risk of PMF increased with increasing cumulative exposure, regardless of the initial category of simple CWP (Hurley, *et al.*, 1987), indicating that reducing dust exposures is a more effective means of reducing the risk of PMF than reliance on detection of simple CWP.

Attfield and Seixas (1995) have demonstrated a relationship between cumulative exposure to respirable coal mine dust and predicted prevalence of pneumoconiosis (*i.e.*, simple CWP, PMF). They studied a group of approximately 3,200 men who worked in underground bituminous coal mines. The U.S. miners and ex-miners had participated in Round 1 (1970–1972) or Round 2 (1972–1975) of the NSCWP and were examined again between 1985 and 1988. Chest x-rays were read to determine the number of cases of simple CWP and PMF. Dust exposure estimates were generated from measurements of dust concentrations as well as from work history. A logistic (or logit) regression model was used to estimate prevalence of simple CWP and PMF. In this statistical analysis, proportions are transformed to natural logarithmic values, *i.e.*, $y = \ln [p/(1-p)]$, before a linear model is fit to the data (Armitage, 1977). The logistic model assumes that the data have a binomial distribution (*e.g.*, presence or absence of PMF) for a given set of covariate values (*e.g.*, age, coal rank, dust exposure, pack-years of smoking). Using logistic modeling, relationships were developed between cumulative dust exposure and prevalence of simple CWP (category 1+, category 2+) and PMF. These relationships were the key strengths of the Attfield and Seixas study and serve as the basis for the Quantitative Risk Assessment of this rule.

The recent paper of Kuempel, *et al.*, (1997) has provided a detailed discussion and quantitative presentation of excess risks associated with respirable coal dust exposures. Their study was based upon results from previous studies of some 9,000 underground coal miners who participated in the NSCWP (Attfield and Morring, 1992b; Attfield and Seixas, 1995). Kuempel, *et al.*, estimated excess (exposure-attributable) prevalence of simple CWP and PMF (*i.e.*, number of cases of disease present in a population at a specified time, divided by the number of persons in the population at that specified time). Point estimates of excess risk of PMF ranged from 1/1000 to 167/1000 among miners exposed at the current MSHA standard for respirable coal mine dust. These estimates were based upon dust exposure that occurred over a miner's working lifetime (*e.g.*, 8 hours per day, 5 days a week, 50 weeks per year, over a period of 45 years). Actual occupational lifetime exposure may be more, due to extended work shifts and work weeks. The point estimates of PMF presented by Kuempel, *et al.*, (1997) were related to coal rank, where higher estimates (*e.g.*, 167/1000) were obtained for high-rank coal (anthracite coal) and somewhat lower estimates were obtained for medium/low rank bituminous coal (*e.g.*, 21/1000). Within each coal rank, the estimates of simple CWP cases were at least twice as high as those for PMF (*e.g.*, 167/1000 PMF vs. 380/1000 simple CWP≥1).

The data of Attfield and Seixas (1995) and Kuempel, *et al.*, (1995; 1997) were consistent with previous data of Attfield and Morring (1992b) who reported relationships between estimated dust exposure and predicted prevalence of simple CWP or PMF. They also noted that exposure-response relationships were steeper for higher ranks of coal such as anthracite, and concluded that the risks for anthracite miners appeared to be greater than for miners exposed to lower rank coal dust. Attfield and Morring (1992b) used similar methods as described above (*i.e.*, logistic modeling), but included miners from Round 1 of the NSCWP (1969–1971); thus representing an earlier time point in the NSCWP when the respirable coal mine dust concentrations were much higher than they are today.

Recently, Goodwin and Attfield (1998) reported that there were concerns regarding methodological inconsistencies across surveys given during the four rounds of the NSCWP. In particular, they noted the discordance in classification of simple CWP and PMF among readers of chest films. Despite potential discordance, Goodwin and Attfield (1998) have confirmed previous findings of a decline in simple CWP prevalence from 1969 to 1988. Yet, these analyses also demonstrated that simple CWP has not been eliminated. The Round 4 prevalence rates were 3.9 percent for simple CWP category 1 and higher, and 0.9 percent for category 2 and higher. This illustrates the need for continued efforts to reduce dust exposures.

Given the current system for monitoring exposures and identifying overexposures in the U.S., miners are at increased risk of developing simple CWP and PMF from a working lifetime exposure to respirable coal mine dust (Kuempel, *et al.*, 1997, 1995; Attfield and Seixas, 1995; Goodwin and Attfield, 1998; Attfield and Morring, 1992b). Whenever overexposures (*i.e.*, excursions above the applicable

standard) occur, the long-term mean exposure of miners may be increased, thereby causing an upward shift on the exposure-response curve. Such a shift then places these overexposed coal miners at increased risk of developing and dying prematurely from simple CWP and PMF.

The Attfield and Seixas epidemiological study (1995) is the most appropriate to use in estimating the benefit of reduction of overexposures. The authors applied scientific rigor to the collection, categorization, and analyses of the radiographic evidence for the group of 3,194 underground bituminous coal miners who participated in Round 4, 1985–1988, of the National Study of Coal Workers' Pneumoconiosis (NSCWP); this study population excludes 86 miners for whom there was missing exposure data or unreadable x-rays. Radiologic evidence was carefully collected and analyzed by multiple independent, NIOSH certified B readers to identify stages of simple CWP and PMF. In the targeted population of 5,557 miners, the participating miners (3,280) were similar to the non-participants (2,277) with regard to age at the first medical examination and prevalence of simple CWP category 1 or greater. The non-participants had worked slightly longer, yet had lower prevalence of simple CWP category 2 or greater, than the participants. This study describes the differences among current miners and ex-miners (health-related or job-related) in the relationships between the estimated cumulative exposure to respirable coal mine dust and prevalence of simple CWP category 1 or greater. Such data and relationships were not available in other U.S. studies and non-U.S. studies.

A potential limitation in the U.S. studies is the possible bias in the exposure data, which has been the subject of several studies (Boden and Gold, 1984; Seixas *et al.*, 1991; Attfield and Hearl, 1996). An advantage of the Attfield and Seixas 1995 study (and the earlier studies based on the same data set) is that the larger mines included in these epidemiological studies were shown to have exposure data with relatively small bias (Attfield and Hearl, 1996). Another limitation in exposure data used in the U.S. studies is that the airborne dust concentrations used to estimate individual miners' cumulative exposures to respirable coal mine dust were based on average concentrations within job category (these average values were combined with data of each individual miner's duration employed in a given job). The earlier U.S. exposure-response studies of miners participating in the first medical survey of the NSCWP (Attfield and Morring, 1992b; Attfield and Hodous, 1992; Kuempel, *et al.*, 1995) relied primarily on exposure measurements from a dust sampling survey during 1968–1969 to estimate miners' exposures before 1970 (Attfield and Morring, 1992a). An advantage of the Attfield and Seixas 1995 study is that, in addition to the pre-1970 exposure estimates, more detailed exposure data were available to estimate miners' exposures from 1970 to 1987, during which the mean airborne concentrations were stratified by mine, job, and year (Seixas, *et al.*, 1991).

The most complete exposure data available are those for coal miners in the United Kingdom (Hurley, *et al.*, 1987; Hurley and Maclaren, 1987; Soutar and Hurley, 1986; Marine, *et al.*, 1988; Maclaren, *et al.*, 1989). These studies include medical examinations and individual estimates of exposure for more than 50,000 miners for up to 30 years. The U.S. studies are consistent with these U.K. studies in demonstrating the risks of developing occupational respiratory diseases from exposure to respirable coal mine dust. These risks increase with increasing exposure concentration and duration, and with exposure to dust of higher ranked coal. The quantitative assessment of risk and associated benefits were based on the Attfield and Seixas (1995) study because, in addition to the advantages described above, it best represents the recent conditions experienced by miners in the U.S. This quantitative assessment follows in Section VIII. The international studies provide an important basis for comparison with the U.S. findings, and several of the recent international studies are described in detail here.

Bourgkard, *et al.*, (1998) conducted a 4-year study of a group of French coal miners who were employed in underground and surface mines. The investigators examined the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP and PMF. Bourgkard, *et al.*, (1998), through selection of a younger worker population (*i.e.*, 35–48 years old at start of study), attempted to focus on the early stages of simple CWP. In essence, they hoped to identify those miners who needed to be relocated to less dusty workplaces or who needed to be clinically monitored. Bourgkard, *et al.*, (1998) concluded that there was an association between cumulative dust exposure and what was termed chest x-ray "worsening" (*i.e.*, increase in reader-designated category signifying progression of simple CWP). Their conclusion, however, was based on pooling of the data (*i.e.*, three combined groups of miners) who had different cumulative exposures (*i.e.*, 20, 66 and 85 mg-yr/m^3).

Love, *et al.*, (1997, 1992) reported on occupational exposures and the health of British opencast (*i.e.*, surface or strip) coal miners. They studied a group of approximately 1,200 miners who were employed at sites in England, Scotland, and Wales. The mean age of the men was 41; many had worked in the mining industry since the 1970s. To determine dust exposure levels, full-shift personal samples were collected. Most were respirable dust samples which were collected using Casella cyclones according to the procedures described by the British Health and Safety Executive (HSE). Thus exposure determinations would be comparable to exposure determinations obtained in U.S. surface coal mines since both measure respirable dust according to the BMRC criteria.

These investigators found a doubling in the relative risk of developing profusion of simple CWP category 0/1 for every 10 years of work in the dustiest jobs in surface mines. These respirable coal dust exposures were under 1 mg/m^3. Love, *et al.*, (1992, 1997), like other investigators, emphasized the need for monitoring and controlling exposures to respirable coal mine dust, particularly in high risk operations (*e.g.*, drillers, drivers of bulldozers).

Meijers, *et al.*, (1997) studied Dutch coal miners who were examined between 1952 and 1963, and who were followed until the end of 1991. They reported an increased risk of mortality from simple CWP and PMF among miners who had generally worked underground for 20 or more years. Their conclusions were based upon dramatic increases in standardized mortality ratios (SMRs). There were several limitations in this study, however.

Morfeld, *et al.*, (1997) published a recent paper that investigated the risk of developing simple CWP in German miners and addressed the occupational exposure limit for respirable coal dust in Germany. Their study included approximately 5,800 miners who worked underground from the late 1970s to mid-1980s. Morfeld, *et al.*, observed increases in relative risks (RRs) of developing early x-ray changes, category 0/1, that were exposure-dependent. Relative risks (RRs) increased with higher dust concentrations.

Starzynski, *et al.*, (1996) conducted a mortality study on a group of 11,224 Polish males diagnosed with silicosis, simple CWP, or PMF between 1970 and 1985. This cohort was subdivided by occupation into four subcohorts: Coal miners (63%); employees of underground work enterprises (8%) (*i.e.*, drift cutting and shaft construction jobs); metallurgical industry and iron, and nonferrous foundry workers (16%); and refractory materials, china, ceramics and quarry workers. The investigators found that coal miners had a slight, statistically significant excess overall mortality (*i.e.*, all causes) as indicated by a Standardized Mortality Ratio (SMR) of 105 (with a 95% Confidence Interval (C.I.) of 100–110). Also, excess of deaths from diseases of the respiratory system among coal miners was nearly four times that of the referent population (SMR of 383 with a 95% C.I. of 345–424). The study of Starzynski, *et al.*, (1996) agrees with others that there is premature mortality among coal miners from simple CWP and PMF. Unfortunately, there is little or no information presented on miner work history, exposure assessment (*e.g.*, respirable coal mine dust, silica), and mine environment (*e.g.*, coal rank(s), underground vs. surface mining).

Yi and Zhang (1996) conducted a study to measure the progression from simple CWP to PMF or death among a cohort of 2,738 miners with simple CWP who were employed at the Huai-Bei coal mine in China. Relative risks (*i.e.*, RRs) were calculated for progression from simple CWP category 1 to simple CWP category 3 and for progression from simple CWP category 3 to death. Their results demonstrated that miners with simple CWP category 1 are at risk of developing simple CWP category 2 and simple CWP category 3 (*e.g.*, RRs of 1.101 and 2.360, respectively). They also found that miners with PMF had a decreased life expectancy. Other risk factors for development of PMF included long-term work underground, and drilling. This study was limited by a lack of exposure assessment, estimation of miner smoking histories, and use of a radiological classification system that differs from that of the ILO.

Hurley and Maclaren (1987) studied British coal miners who were examined between 1953 and 1978, over 5-year intervals. They have shown that exposure to respirable coal dust increases the risks of developing simple CWP and of progressing to PMF. As seen in their data analysis, these responses were dependent upon dust concentration and coal rank. That is, greater responses were seen at higher dust concentrations and with higher rank coal (*i.e.*, increasing per cent carbon). The investigators also noted that estimated risks were unaffected by changes in the proportion of miners with simple CWP who transferred jobs. The authors concluded that "limiting exposure to respirable coal dust is the only reliable way of limiting the risks of radiological changes to miners."

b. Other Health Effects

As noted in Table VII–1, there were 16 studies in which the loss of lung function (LLF) was examined in coal miners. Six of these studies also included an evaluation of respiratory symptoms (RS) in the miners. There were five studies describing chronic obstructive pulmonary disease (COPD) in miners.

Henneberger and Attfield (1997; 1996), Kuempel, *et al.* (1997), Seixas, *et al.*, (1993), Attfield and Hodous (1992), and Seixas, *et al.*, (1992) evaluated data from pulmonary function tests and standardized questionnaires to miners in the NSCWP. A common finding in their studies was an increase in respiratory symptoms such as cough, shortness of breath, and wheezing. The symptoms were dependent upon the dust concentration to which the miners had been exposed, with more pronounced symptoms occurring after long-term exposures to higher exposure levels. These studies also demonstrated that a loss of lung function occurred among miners.

Attfield and Hodous (1992) studied U.S. miners who had spent 18 years underground (on average) and who participated in Round 1 (1969–1971) of the NSCWP. They observed that greater reductions in pulmonary function were associated with exposure to higher ranks of coal (*i.e.*, anthracite vs. bituminous vs. lignite). Using linear regression models, Kuempel *et al.*, (1997) predicted the excess (exposure attributable) prevalence of lung function decrements among miners with cumulative exposures to respirable coal mine dust of 2 mg/m^3 for 45 years (*i.e.*, 90 mg-yr/m^3). The excess prevalence estimates were 315 and 139 cases per thousand for forced expiratory volume in one second (FEV_1) of <80% and <65% of predicted normal values, respectively, among never-smoking miners (a sub-group of 977 NSCWP participants studied in Seixas *et al.*, 1993). Such reductions in FEV_1 are clinically significant; FEV_1 <80% (of predicted normal values) is a measure that is used to determine ventilatory defects (American Thoracic Society, 1991). Three recent studies found impaired FEV_1 to be a predictor of increased pre-mature mortality (Weiss, *et al.*, 1995; Meijers, *et al.*, 1997; Hansen *et al.*, 1999).

Seixas, *et al.* (1993) conducted an analyses of 977 underground coal miners who began working in or after 1970 and were participants of both NSCWP Round 2 (1972–1975) and Round 4 (1985–1988). They found a rapid loss of lung function in miners and further declines in lung function with continuing exposure to coal mine dust. Collectively these studies have shown that the prevalence of decreased lung function was proportional to cumulative exposure. That is, with exposure to higher coal dust levels over a working lifetime, there were more miners who experienced a loss of lung function. Also, the types of respiratory symptoms and patterns of pulmonary function decrements observed by both Attfield and Hodous (1992) Seixas, *et al.* (1992;1993) are characteristic of COPD.

The U.S. findings on respiratory symptoms and loss of lung function in miners have agreed with those of previous British studies by Marine, *et al.*, (1988) and Soutar and Hurley (1986). Marine, *et al.*, (1988) analyzed data from British coal miners and focused their attention on respiratory conditions other than simple CWP and PMF. In particular, they examined the Forced Expiratory Volume in one second (FEV_1) among smoking and nonsmoking miners and, on the basis of reported respiratory symptoms, identified those miners with bronchitis. Using these data, logistic regression models were used to estimate the prevalence of chronic bronchitis and loss of lung function. Marine, *et al.*, concluded that both exposure to respirable coal mine dust and smoking independently cause decrements in lung function; their contributions to COPD appeared to be additive in coal miners.

Soutar and Hurley (1986) examined the relationship between dust exposure and lung function in British coal miners and ex-miners. The men who were studied were employed in coal mines in the 1950s and were followed up and examined 22 years later. These miners and ex-miners were categorized as smokers, ex-smokers, or nonsmokers. The Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and the FEV_1/FVC ratios decreased in all study groups and these reductions in lung function were inversely proportional to dust exposure. Thus, Soutar and Hurley concluded that exposure to respirable coal mine dust can cause severe respiratory impairment, even without the presence of simple CWP or PMF. They speculated that the pathology of coal dust-induced

lung disease differs from that induced by smoking.

Recent studies from China (Wang, *et al.*, 1997) and the European community (Bourgkard, *et al.*, 1998; Carta, *et al.*, 1996; Lewis, S., *et al.*, 1996) have also supported the British and U.S. findings which demonstrated the correlation between occupational exposure to coal dust and respiratory symptoms and loss of lung function in miners.

Wang, *et al.*, (1997) examined lung function in underground coal miners and other workers from several other factories in Chongqing, China. For their study, information was obtained on exposure duration, results of radiographic tests, and smoking history. Pulmonary function tests were performed, providing the Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and FEV_1/FVC data. Additionally, the diffusing capacity for carbon monoxide (DL_{CO}) was measured. This is an indicator of diffusion impairment at the "blood-gas barrier" which may occur, for example, when this barrier becomes thickened (West, 1990; 1992). Wang, *et al.*, (1997) found that there was impairment of pulmonary function among the coal miners and they had evidence of obstructive disease. Like other studies, such effects were observed among coal miners even in the absence of simple CWP. Pulmonary function was further decreased when simple CWP was present. This study did not provide exposure measurements and there was no consideration of exposure-response relationships. Also, silica exposures and their potential effects were not examined in the underground coal miners.

As noted above, Bourgkard, *et al.*, (1998) was interested in the earlier stages of simple CWP (*i.e.*, Categories 0/1 and 1/0) and the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP category 1/1 or higher. Over a 4-year period, they studied French coal miners who were employed in underground and surface mines. Bourgkard, *et al.*, (1998) found that, at the first medical examination, the ratio of the Forced Expiratory Volume in one second (FEV_1) to the Forced Vital Capacity (FVC) (*i.e.*, FEV_1/FVC) and other airflows determined from a forced expiration (West, 1990; 1992) were lower among miners who later developed simple CWP category 1/1 or higher. These miners also experienced more wheezing at the first medical examination. Thus, the results of their study suggested that lung function changes may serve as an early indicator of miners who are at increased risk of developing simple CWP and PMF and who should be monitored more closely.

Carta, *et al.*, (1996) have examined the role of dust exposure on the prevalence of respiratory symptoms and loss of lung function in a group of young Italian coal miners (*i.e.*, mean age at hire 28.9 years, mean age at first survey 31.2 years). These miners worked underground and were exposed to lignite (*i.e.*, low rank coal) which had a 5–7% sulfur content. They were followed for a period of 11 years, from 1983 and 1993. Carta, *et al.*, (1996) found few abnormalities on miner chest x-rays taken throughout the 11-year study. However, there was an increased prevalence of respiratory symptoms and loss of lung function. This was particularly noteworthy since dust exposures were often below 1.0 mg/m^3; the cumulative dust exposure for the whole cohort was 6.7 mg-yr/m^3 after the first survey. Thus, Carta, *et al.*, (1996) demonstrated that miners experience respiratory effects of exposure to dust generated from a lower rank coal and at lower concentrations. They have recommended yearly measurements of lung function for miners.

Lewis, *et al.*, (1996) studied a group of British miners, many of whom entered the coal industry in the 1970s. Based upon chest x-rays, the miners had no evidence of simple CWP or PMF. The objective of this study was to determine whether coal mining (*i.e.*, exposure to respirable coal mine dust) is an independent risk factor for impairment of lung function. Lewis, *et al.* (1996) found that there was a loss of lung function in miners (smokers and nonsmokers), particularly among miners who were under approximately 55 years of age. For miners who smoked, there was a greater loss of lung function than in nonsmoking miners with the same level of exposure to respirable coal mine dust. Above age 55, the loss of lung function was similar for miners and their controls, although all smokers continued to exhibit a greater loss of lung function than nonsmokers. Lewis, *et al.*, (1996) concluded that the deficits in lung function may occur in the absence of simple CWP and PMF, and independent from the effects of smoking.

There have been two recent mortality studies that have demonstrated a relationship between exposure to respirable coal mine dust and development of COPD. This association was reported by Kuempel, *et al.*, (1995) in the U.S., and by Meijers, *et al.* (1997) in the Netherlands. These two groups of investigators have reported that occupationally-induced COPD (*e.g.*, chronic bronchitis, emphysema) can occur in miners, with or without the presence of simple CWP or PMF. They also found that the risk of premature mortality from COPD was elevated among miners and could be separated from the effects of smoking and age.

Kuempel, *et al.* (1995) found an increase in relative risk (RR) of premature mortality from COPD among U.S. coal miners who participated in the NSCWP from 1969 through 1971. In their data analysis, the exposure-response relationship was evaluated using the Cox proportional hazards model. This model assumes that the hazard ratio between nonexposed and exposed groups does not significantly change with time. When fitting a curve to the data (*e.g.*, log-linear), cumulative exposure was expressed as a categorical or continuous variable. Due to model limitations (*e.g.*, less statistical power, influence of category scheme, use of lowest exposure group for comparisons vs. use of non-exposed group), Kuempel, *et al.* (1995) believed that the exposure data should be expressed as a continuous variable. If, for example, the cumulative exposure was 90 mg-yr/m^3 (*i.e.*, 2 mg/m^3 for 45 years), then the relative risk of mortality from chronic bronchitis or emphysema was 7.67. Kuempel, *et al.* (1995) also showed that relative risk decreased with lower cumulative exposures (*i.e.*, below 90 mg-yr/m^3) and increased with higher cumulative exposures (*i.e.*, above 90 mg-yr/m^3. Thus, these investigators demonstrated a statistically significant exposure-response relationship for COPD.

Meijers, *et al.* (1997) have shown, among Dutch miners, reductions in lung volumes and capacities are good predictors of the increased risk of premature mortality from COPD. For example, a diminished forced expiratory volume in one second (FEV_1) or a diminished ratio of the FEV_1 to the forced vital capacity [4] (FVC) (*i.e.*, FEV_1/FVC) upon medical examination was associated with a significantly increased standardized mortality ratio (SMR) for COPD (322 and 212, respectively). In other words, miners with diminished lung capacity based on FEV_1 were two to three times more likely to die prematurely due to COPD than miners who had normal lung function. In contrast, SMRs for COPD were not significantly increased in miners with normal lung volumes and capacities.

[4] Forced vital capacity (FVC) is the total volume of gas that can be exhaled with a forced expiration after a full inspiration; The vital capacity measured with a FVC may be less than that measured with a slower exhalation (West, 1992).

These data support prior conclusions of Seixas, *et al.* (1992, 1993) and Attfield and Hodous (1992) based on morbidity studies.

VIII. Quantitative Risk Assessment

As mentioned previously, in addition to this proposed notice of rulemaking, today's **Federal Register** contains another NPRM, Verification of Dust Control Plan (RIN 1219–AB18), "plan verification." In combination, these rules present MSHA's strengthened plan to meet the Mine Act's requirement that a miner's exposure to respirable coal mine dust be at or below the applicable standard on each and every shift. MSHA's improved program to eliminate overexposures on each and every shift includes the simultaneous implementation of an improved tool to identify overexposures (*i.e.*, inspectors use of single, full-shift samples for noncompliance determinations) and a new regulation requiring operators implement verified ventilation plans in underground coal mines.

Having reviewed the reported health effects associated with exposure to coal mine dust, MSHA and NIOSH have evaluated the evidence to determine whether the current regulatory strategy can be improved. The criteria for this evaluation is established by the Mine Act under section 101(a)(6)(A) [30 U.S.C. 811(a)(6)(A)] which provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on Court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that must be addressed: (1) Whether health effects associated with the current pattern of overexposures on individual shifts constitute a material impairment to miner health or functional capacity; (2) whether the current pattern of overexposures on individual shifts places miners at a significant risk of incurring any of these material impairments; and (3) whether the proposed rules would substantially reduce those risks.

The criteria for evaluating the health effects evidence do not require scientific certainty. The need to evaluate risk does not mean that an agency is placed into a "mathematical straightjacket." *See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607, 100 S.Ct 2844 (1980), otherwise known as the "Benzene" decision. When regulating on the edge of scientific knowledge, certainty may not be possible and,

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * * risking error on the side of overprotection rather than underprotection (Id at 656).

The statutory criteria for evaluating the health evidence do not require MSHA and NIOSH to wait for absolute certainty and precision. MSHA and NIOSH are required to use the "best available evidence" (section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)).

As explained earlier, MSHA's objective in strengthening the requirements for verifying the effectiveness of dust control plans, and in enforcing effective plans through the new enforcement policy proposed in this notice, is to ensure that no miner is exposed to an excessive concentration (*i.e.*, a concentration in excess of the applicable standard) of respirable dust on any individual shift. Annual inspector samples have demonstrated overexposures on individual shifts in many mines. Data compiled from the far more frequent, bimonthly, operator sampling program show that in many mines, the applicable dust standard is exceeded on a substantial percentage of the production shifts. This pattern has persisted for many years, and, since individual shift excursions above the applicable standard are permitted under the existing program, the same pattern can be expected to continue over the working lifetime of affected miners—unless an effort is made to eliminate excess exposures on individual shifts. In this quantitative risk assessment (QRA), MSHA will demonstrate that reducing coal mine dust concentrations, over a 45-year occupational lifetime, to no more than the applicable standard on just that percentage of shifts currently showing an excess, thereby lowering the cumulative exposure to respirable coal mine dust than would otherwise occur, would significantly reduce the risk of both simple CWP and PMF among miners. We have estimated the health benefits of the two rules arising from the elimination of overexposures on all shifts at only those MMUs exhibiting a pattern of recurrent overexposures on individual shifts.[5]

Based on 1999 operator data, there were 704 MMUs (out of 1,251 total) at which dust concentrations for the designated occupation (D.O.) samples exceeded the applicable standard on at least two of the sampling shifts (MSHA, Data file:Operator.ZIP).[6] MSHA considers these 704 MMUs, representing more than half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures.[7] Valid operator D.O. samples were collected on a total of 18,569 shifts at these 704 MMUs, and the applicable standard was exceeded on 3,977 of these shifts, or about 21.4 percent. For this 21.4 percent, the mean excess above the standard, as measured for the D.O. only, was 1.04 mg/m^3.

These results are based on a large number of shifts (an average of more than 26 at each of the 704 MMUs). Therefore, assuming representative operating conditions on these shifts, the results can be extrapolated to all production shifts, including those that were not sampled, at these same 704 MMUs. With 95-percent confidence, the overall percentage of production shifts on which the D.O. sample exceeded the standard was between 20.6 percent and 22.2 percent for 1999. At the same confidence level, again assuming representative operating conditions, the overall mean excess on noncompliant shifts at these MMUs was between 0.96 mg/m^3 and 1.12 mg/m^3. If operators tend to reduce production and/or increase dust controls on sampled shifts, as some commenters to the previous single, full-shift sample rulemaking and the Dust Committee have alleged, then the true values could be higher than even the upper endpoints of these 99-percent confidence intervals.

In 1998, MSHA attempted to enforce compliance on individual shifts. Therefore, to compare the 1999 pattern

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[5] By "exhibiting a pattern of recurrent overexposures," MSHA means that, at a 95-percent confidence level, the applicable standard is exceeded on at least six shifts per year.

[6] If a different definition of "exhibiting a recurrent pattern of overexposures" were used in these analyses the estimate of the reduction in risk and associated benefits would be different. For example, if the criterion were that four or more D.O. bimonthly exposure measurements exceeded the applicable standard then, with 95% confidence, at least 20 shifts would be overexposures in a year of 384 shifts. Using the four as the criterion, this would reduce the population for whom we are estimating benefits, and the estimated number of prevented cases would decrease by 19%.

[7] MSHA estimates an MMU average of 384 production shifts per year. Since mine operators are required to submit five valid designated operator (D.O.) samples to MSHA every two months, there would typically be 30 valid D.O. samples—representing 30 of the 384 production shifts—for each MMU that was in operation for the full year. If dust concentrations on two or more of the sampled shifts exceeded the standard, then it follows, at a 95-percent confidence level, that the standard was exceeded on at least six shifts over the full year.

of excess exposures on individual shifts to that of previous years under the current enforcement policy, MSHA examined the regular bimonthly D.O. sample data submitted to MSHA by mine operators in the eight years from 1990 through 1997. The same three parameters were considered as discussed above for 1999: (1) The percentage of MMUs exhibiting a pattern of recurrent overexposures, as indicated by at least two of the valid measurements above the applicable standard in a given year; (2) for those and only those MMUs exhibiting recurrent overexposures, the overall percentage of production shifts on which the D.O. was overexposed, as estimated by the percentage of valid measurements above the applicable standard; and (3) for the MMUs identified as exhibiting recurrent overexposures, the mean excess above the applicable standard, as calculated for just those valid measurements that exceeded the applicable standard in a given year.

Although MSHA found minor differences between individual years, there was no statistically significant upward or downward trend in any of these three parameters over the 1990–1997 time period (see Table VIII–1). In 1999, the percentage of MMUs exhibiting a pattern of recurrent overexposures (Parameter #1) was approximately 56 percent. Also in 1999, for those MMUs exhibiting a pattern of recurrent overexposures, the overall percentage of production shifts on which the D.O. was overexposed (Parameter #2) was approximately 21 percent. In 1999, the average excess above the applicable standard (Parameter #3) for MMUs exhibiting recurrent overexposures was 1.0 mg/m^3, a significant decrease from prior years. MSHA attributes this decrease to two important changes in the Agency's inspection program, beginning near the end of 1998. These changes, which both resulted in increased inspector presence, were: (1) An increase in the frequency of MSHA dust sampling at underground coal mines; and (2) initiation of monthly spot inspections at mines experiencing difficulty in maintaining consistent compliance with the applicable dust standard.

TABLE VIII–1.—1990–1997, DISTRIBUTION OF PARAMETERS OF ANNUAL OVEREXPOSURE TO RESPIRABLE COAL MINE DUST

1990–1997	Parameter #1 (Percent)	Parameter #2 (Percent)	Parameter #3 (mg/m^3)
Number of Years	8	8	8
Median	52.6	20.5	1.23
Mean (Standard Error)	50.9 (1.62)	20.6 (0.32)	1.25 (0.020)

Parameter #1: percentage of MMUs exhibiting a pattern of recurrent overexposures.
Parameter #2: for those MMUs exhibiting a pattern of recurrent overexposures, the percentage of production shifts on which the D.O. was overexposed.
Parameter #3: for those MMUs exhibiting a pattern of recurrent overexposures, the mean excess above the applicable standard among valid D.O. measurements that exceeded the applicable standard.

The available data suggest that unless changes are made to enforce the dust standard on every shift, the same average pattern of overexposures observed in 1999 will persist into the future. Therefore, we conclude that without the proposed changes:

- More than one-half of all MMUs would continue to have a pattern of recurrent overexposures on individual shifts;
- At those MMUs with recurrent overexposures, full-shift average respirable dust concentrations for the D.O. would continue to exceed the applicable standards on about 21 percent of all production shifts;
- Among those shifts on which D.O. exposure exceeds the applicable standards, the mean excess for the D.O. would continue to be approximately 1.0 mg/m^3.

We invite public comment on whether these three parameters, based on operators' regular 1999 bimonthly samples, under-represent or over-represent the frequency and/or magnitude of excessive dust concentrations on all individual shifts—including those that are not sampled.

If all overexposures on individual shifts are eliminated, the reduction in total respirable coal mine dust inhaled by a miner over a working lifetime will depend on the following factors: The average volume of air inhaled on each shift that would otherwise have exceeded the applicable standard, the degree of reduction in respirable dust concentration in the air inhaled on such shifts, and the number of such shifts per working lifetime. If a miner inhales ten cubic meters of air on a shift (U.S. EPA, 1980), reducing the respirable dust concentration in that air by 1.0 mg/m^3 would result in 10 mg less dust inhaled on that shift alone. Assuming the miner works 240 shifts per year, then reducing inhaled respirable dust by an average of 10 mg on 21 percent of the shifts would reduce the total dust inhaled by 504 mg per year, or nearly 22,700 mg over a 45-year working lifetime:

1.0 mg per m^3 of inhaled air
× 10 m^3 inhaled air per shift
× 50.4 affected shifts (*i.e.*, 21% of 240) per work year
× 45 work years per working lifetime
= 22,680 mg less dust inhaled per working lifetime.

The Secretaries invite comments on the health benefits expected from reducing the total coal mine dust inhaled over a working lifetime by this amount.

In Section VII, the strengths and weaknesses of various epidemiological studies were presented, supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material health impairment with respect to CWP and PMF. Two of the distinguishing qualities of this study are the dose-response relationship over a miners' lifetime and the fact that these data best represent the recent conditions experienced by miners in the U.S. Using this relationship, it is possible to evaluate the impact on risk of both simple CWP and PMF expected from bringing dust concentrations down to or below the applicable standard on every shift. This is the only contemporary epidemiological study of simple CWP and PMF providing such a relationship.

Attfield and Seixas used two or three B readers to identify the profusion of opacities using the ILO classification scheme. If three readings were available, the median value was used. If two readings were available, the higher of the two ILO categories was recorded. Eighty radiographs were eliminated because only one reading was available. The most inclusive category of CWP 1+ includes simple CWP, categories 1, 2, 3, as well as PMF. Category CWP 2+ does

not include simple CWP, category 1, but does include the more severe simple CWP categories, 2 and 3, as well as PMF. The third category used in their report was PMF, denoting any category of large opacities.

Attfield and Seixas (1995) provided logistic regression models for the prevalence for CWP 1+, CWP 2+ and PMF as a function of cumulative dust exposure, expressed as the product of dust concentration measured in the mine atmosphere and duration of exposure at that concentration. These models can be used to estimate the impact on miners' risk of both simple CWP and PMF of reducing lifetime accumulated exposure by eliminating excessive exposures on a given percentage of individual shifts.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures), bringing dust concentrations down to no more than the applicable standard on each and every production shift would reduce D.O. exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 21 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the D.O. level, by 0.22 mg-yr/m^3 over the course of a working year (*i.e.*, 21 percent of shifts in one year, times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected miner would, on average, amount to a reduction in accumulated exposure of approximately 10 mg-yr/m^3 (*i.e.*, 45 years times 0.22 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples currently submitted to MSHA tend to under-represent either the frequency or magnitude (or both) of individual full-shift excursions above the applicable standard, then eliminating such excursions would provide a lifetime reduction of even more than 10 mg-yr/m^3 for each exposed miner.

The Attfield and Seixas models predict the prevalence of CWP 1+, CWP 2+, and PMF for miners who have accumulated a given amount of exposure, expressed in units of mg-yr/m^3, by the time they attain a specified age. Benefits of reducing cumulative exposure can be estimated by calculating the difference between predictions with and without the reduction. For example, suppose a miner begins work at age 20 and retires at age 65. By the year of retirement, that miner is expected to accumulate nearly 10 mg-yr/m^3 less exposure if individual shift excursions are eliminated. For 65-year-old miners, reducing accumulated dust exposure by a total of 10 mg-yr/m^3 reduces the predicted prevalence of CWP 1+ by at least 11 per thousand (See Table VIII–2).

This 11 per thousand, however, applies only to miners of age 65. The Attfield and Seixas models provide different predictions for each year of age that a miner attains. The predicted benefit turns out to be smaller for younger miners and larger for older miners. This is partly because younger miners will have accumulated less exposure reduction from the proposed changes, and partly because the Attfield and Seixas models depend directly on age as well as on cumulative exposure. The health effects of recurrent overexposures can occur long after the overexposures occurred. Even after a miner retires and is no longer exposed to respirable coal mine dust, the extra risk attributable to an extra 10 mg-year/m^3, accumulated earlier, continues to increase with age. Consequently, the benefit to be gained from eliminating individual shift excursions also continues to increase after a miner is no longer exposed. For example, assuming no additional exposure after age 65, the predicted reduction in average prevalence of CWP1+ increases from 12 per thousand at age 65 to 17 per thousand at age 70. Presumably, the increasingly greater predicted reduction in risk of disease after age 65 is due to the latent effects of the reduction in earlier exposure.

To project the benefits of the two rules expected from eliminating overexposures on individual shifts, MSHA applied the Attfield and Seixas models to a hypothetical population of miners who, on average, begin working at age 20 and retire at age 65, assuming different lifetimes. The risks for three different ages have been presented to show a range of risk depending on the lifetime: 65, 73, and 80 years. During the 45 "working years" between 20 and 65, the lifetime benefit accumulates at a rate of 0.22 mg-yr/m^3 of reduced exposure per year, reaching a maximum of about 10 mg-yr/m^3 at age 65. Between ages 65 and 80, the accumulated reduction in dust exposure remains at an estimated average of 10 mg-yr/m^3, but the benefit in terms of both simple CWP and PMF risk continues to increase, as explained previously.

The expected lifetime for all American males conditional on their having reached 20 years of age, is 73 years (calculated from: U.S. Census March 1997, Table 18; U.S. Census March 1997, Table 119).[8] On average, the best estimate of the lifetime benefit to exposed miners is expressed by the reduction in prevalence of disease at age 73. Carrying out the calculation at a 73-year average lifetime, MSHA expects that, at the MMUs under consideration, bringing dust concentrations down to no more than the applicable standard on each shift will:

- Reduce the combined risk of simple CWP and PMF by at least 18.0 cases per 1000 affected D.O. miners; [9]
- Reduce the combined risk of simple CWP (category 2 and 3) and PMF by at least 9.8 cases per 1000 affected D.O. miners;
- Reduce the risk of PMF by at least 5.1 cases per 1000 affected D.O. miners.

Presented in the first row of Table VIII–2 are the average reductions in risk for simple CWP and PMF combined, and PMF alone, over an occupational lifetime, among affected D.O. miners who live to ages 65, 73, and 80, who have worked at an MMU exhibiting a pattern of recurrent overexposures. Across health outcomes, the benefit due to the predicted reduction in cumulative exposure to respirable coal mine dust, through limiting miners' exposure to no more than the applicable standard on each and every shift, increases with age.

When the dust concentration measured for the D.O. exceeds the applicable standard, measurements for at least some of the other miners may also exceed the standard on the same shift, though usually by a lesser amount. Furthermore, although the D.O. represents the occupation most likely to receive the highest exposure, other miners working in the same MMU may be exposed to even higher concentrations than the D.O. on some shifts. Therefore, in addition to the affected D.O. miners, there is a population of other affected miners who are also expected to experience a significant reduction in risk as a result of eliminating overexposures on their individual shifts.

To estimate how many miners other than the D.O. would be substantially affected, MSHA examined the results from all valid dust samples collected by MSHA inspectors in underground MMUs during 1999 (MSHA, Data file:Inspctor.zip). Within each MMU, the inspector typically takes one full-shift sample on the D.O. and, on the same shift, four or more additional samples representing other occupations.

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[8] Since females have a greater life expectancy than males, expected benefits would increase if the proportion of female miners increases substantially in the future.

[9] "affected D.O. miners" include all miners who work at the 56-percent of MMUs under consideration and who are exposed to dust concentrations similar to the D.O. over a 45-year working lifetime.

On 896 shifts, at a total of 450 distinct MMUs, the D.O. measurement exceeded the applicable standard and there were at least three valid measurements for other occupations available for comparison. There was an average of 1.2 non-D.O. measurements in excess of the standard on shifts for which the D.O. measurement exceeded the standard.[10] For non-D.O. measurements that exceeded the standard on the same shift as a D.O. measurement, the mean excess above the standard was approximately (0.8 mg/m^3).[11]

Combining these results with the 21-percent rate of excessive exposures observed for the D.O. on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1.2 other miners, in addition to the one classified as D.O., is currently overexposed on at least 21 percent of all production shifts. Over the course of a working year, the reduction in exposure expected for these other miners is 0.17 mg-yr/m^3 (*i.e.*, 21 percent of one year, times 0.8 mg/m^3).

To assess the reduction in risk expected from eliminating all single-shift exposures for faceworkers experiencing lower exposures than the D.O., MSHA again applied the Attfield and Seixas models to miners who begin working at age 20, retire at age 65, assuming various lifetimes: 65, 73, and 80 years. This time, however, the resulting decrease in predicted prevalence was multiplied by 1.2/7 = 0.171, to reflect the fact that the assumed rate of overexposure applies, on average, to about 17 percent of the faceworkers not classified as the D.O.[12]

In the second row of Table VIII–2, we see that over an occupational lifetime, the beneficial average reduction in risk for simple CWP and PMF combined, and for PMF alone, increases with age. However, the magnitude of the risk reduction is smaller for the affected non-D.O.s than the affected D.O.s. This is expected because the estimated probability that a non-D.O. will be overexposed on a given shift is only 17 percent of the corresponding probability for the D.O. Based on this calculation for the MMUs under consideration, the predicted reduction in risk for faceworkers other than the D.O. who live an expected lifetime of 73 years is at least: 2.3 fewer cases of PMF or simple CWP, per thousand affected miners; 1.3 fewer cases of PMF or simple CWP, categories 2 or 3, per thousand affected miners; and 0.7 fewer cases of PMF per thousand affected miners.

Various data, assumptions and caveats were used to conduct the quantitative risk assessment. Therefore, we request any information which would enable us to conduct more accurate analyses of the estimated health benefits of the single, full-shift sample rule and plan verification rule, both individually, and in combination.

TABLE VIII–2.—BY AGE, AVERAGE REDUCTION IN RISK FOR OCCUPATIONAL RESPIRATORY DISEASE PER 1,000 AFFECTED UNDERGROUND COAL MINERS EXPECTED TO RESULT FROM IMPLEMENTATION OF SINGLE, FULL-SHIFT SAMPLING AND PLAN VERIFICATION RULES

Type of miner	Reduction in risk for occupational respiratory disease per 1,000 affected miners								
	Simple CWP[a] (categories 1, 2 or 3) or PMF[b]			Simple CWP (categories 2 or 3) or PMF			PMF		
	Age			Age			Age		
	65	73	80	65	73	80	65	73	80
Affected Designated Occupation Miners[c]	11.0	18.0	25.0	3.7	9.8	21.0	1.8	5.1	12.0
Affected Non-Designated Occupation Miners[d]	1.4	2.3	3.3	0.5	1.3	2.7	0.2	0.7	1.5

[a] Simple CWP: simple coal workers' pneumoconiosis.
[b] PMF: progressive massive fibrosis.
[c] Affected Designated Occupation (D.O.) Miners: includes all miners who work at the 56-percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the D.O., over a 45-year occupational lifetime.
[d] Affected Non-Designated Occupation (Non-D.O.) Miners: includes all underground faceworkers under consideration who are not classified as the D.O.

IX. Significance of Risk

The criteria for evaluating the evidence to determine whether these proposed standards improve the regulatory strategy for controlling exposures to respirable coal mine dust are established by the Mine Act pursuant to section 101(a)(6)(A) (30 U.S.C. 811(a)(6)(A))which provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on Court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that must be addressed: (1) Whether health effects associated with the current pattern of overexposures on individual shifts constitute a material impairment to miner health or functional capacity; (2) whether the current pattern of overexposures on individual shifts places miners at a significant risk of incurring any of these material impairments; and (3) whether the proposed rules would substantially reduce those risks.

The statutory criteria for evaluating the health evidence do not require MSHA and NIOSH to wait for absolute certainty and precision. MSHA and NIOSH are required to use the "best available evidence" (section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)). The need to evaluate risk does not mean that an agency is placed

[10] With 95-percent confidence, on shifts for which the D.O. measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 1.11.

[11] With 95-percent confidence, the mean excess is at least 0.72 mg/m^3.

[12] There are an estimated 7 non-D.O. miners for each D.O. miner, and an average of 1.2 of these 7 miners are overexposed.

into a "mathematical straightjacket." *See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607, 100 S.Ct 2844 (1980), otherwise known as the "Benzene" decision. When regulating on the edge of scientific knowledge, certainty may not be possible and,

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data . . . risking error on the side of overprotection rather than underprotection (Id at 656).

We have taken steps in our quantitative risk assessment to conduct a balanced analysis using available data. Some of our assumptions were conservative, while others were not.[13]

In identifying the number and percentage of MMUs exhibiting a pattern of recurrent overexposures on individual shifts we choose to include only those MMUs with two or more 1999-operator bimonthly samples in excess of the applicable standard, rather than the population of MMUs with any overexposures.[14] Also, the quantitative risk assessment estimates of reduction in risk are averages across MMUs exhibiting a pattern of recurrent overexposures. For those miners who work at mines exhibiting a pattern of recurrent overexposures which differs from the one applied in the Quantitative Risk Assessment, their reduction in risk would be more than or less than the expected average, depending on whether or not their overexposures are at a higher or lower than average rate and intensity.

Another important decision impacting choice in this risk assessment involves the use of the traditional coal miner work schedule of 8-hours per day, 5-days per week, 48-weeks per year. Many of today's miners work longer hours per day, month, and year than the traditional work schedule. These longer work hours increase miners' cumulative exposure to respirable coal mine dust beyond the parameters of exposure used in our estimates of risk. Even so, to the extent that a proportion of miners may have a more limited work schedule (and occupational exposure), either in number of years, weeks per year, or hours per week, their expected health benefit would have to be adjusted downward, all other variables being constant.

Also, because of heavy, physical work, some miners may work at ventilatory rates in excess of the above-cited 10 cubic meters per 8-hour shift; an estimate of this ventilatory rate is 13.5 cubic meters per 8-hour shift (ICRP, 1994). The sub-population of miners with higher breathing rates would inhale more respirable coal mine dust than would otherwise occur given the same environmental exposures, thereby increasing their risks for the development of simple CWP and PMF.

In the Quantitative Risk Assessment, to estimate average reduction in exposure, we chose the best available data sets: 1999 operator bimonthly samples for D.O.s and N.D.O.s., respectively. Currently, both operator bimonthly and inspector samples[15] may be taken on production shifts that may not reflect typical production levels.[16] Although other factors may mediate the amount of airborne respirable dust such as, ventilation and water sprays, on average, higher production is correlated with increased quantities of airborne respirable coal mine dust (Webster, *et al.,* 1990; Haney, *et al.,* 1993; Green, *et al.,* 1994). Some previous commenters and the Dust Advisory Committee have alleged that operators tend to reduce production and/or increase dust controls on sampled shifts. Based on MSHA's and NIOSH's experience and expertise, and previous comments, we believe the production levels observed on sampling shifts are indeed lower than typical (See discussion in Benefits section). We also believe at some MMUs, more engineering controls at higher levels of efficacy are used during sampling shifts than on the majority of shifts (See discussion in Benefits section). Thus, it is reasonable to conclude that the number of MMUs exhibiting a pattern of recurrent overexposures is greater than the 704 captured in this Quantitative Risk Assessment. Furthermore, the severity and rate of overexposures to respirable coal mine dust among the 704 MMUs exhibiting a pattern of recurrent overexposures are probably also greater than we have estimated. We have derived our best estimate of the risk reduction using the best available data. Yet due to limitations in these data, we believe that we have underestimated the magnitude and frequency of typical respirable coal mine exposures. To the extent that our values underestimate the true reduction in respirable coal mine dust exposures, we have underestimated the benefits of these rules.

Other aspects of our risk assessment methodology reflect more conservative choices including the selection of an occupational lifetime of 45-years. Various factors may affect the consistency of the type and duration of jobs miners hold and hence their associated cumulative exposure levels. For example, some miners who lose their jobs upon mine closure are employed by other mines, sometimes in less-exposed jobs. Some miners may chose to move from job to job over their careers at underground coal mines, sometimes preferring positions away from the mining face. Moreover, if the trend of increasing mechanization continues, there will be fewer miners, and for some of them, their occupational lifetimes will be shorter.

For reasons already explained, we believe these choices are appropriate for this risk assessment. We also recognize that use of the most conservative approach at every step of the risk assessment analysis could produce mathematical risk estimates which, because of the additive effect of multiple conservative assumptions, may overstate the likely risk. We believe this QRA for simple CWP and PMF strikes a reasonable balance based on available data. To the extent that we may have underestimated the magnitude of overexposures which would be prevented, we believe the actual benefits to be greater than we have estimated.

It should be noted that reductions in the prevalence of simple CWP and PMF attributable to eliminating individual shift overexposures are not expected to materialize immediately after the overexposures have been substantially reduced or eliminated. Because these diseases typically arise after many years of cumulative exposure, allowing for a period of latency, the beneficial effects of reducing exposures are expected to become evident only after a sufficient time has passed that the reduction in cumulative exposure could have its effect. The total realized benefits would not be fully evident until after the youngest of today's underground coal miners retire.

Finally, even standing alone without simultaneously requiring that mine

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[13] In the context of the field of risk assessment, a "conservative" assumption is one that results in an estimate of more protection for workers than a less conservative assumption would. Therefore, estimated benefits are greater under assumptions that are "conservative" in this sense.

[14] By "exhibiting a pattern of recurrent overexposures," means that, at a 95-percent confidence level, the applicable standard is exceeded on at least six shifts per year.

[15] Valid MSHA inspector samples require production to be at least 60-percent of the average production for the last 30-days. Valid operator bimonthly samples must be taken on a normal production shift (*i.e.,* a production shift during which the amount of material produced in a MMU is at least 50 percent of the average production reported for the last set of five valid samples) (30 CFR 70.101).

[16] Therefore assuming representative operating conditions on these shifts, in our QRA the results were extrapolated to all production shifts, including those that were not sampled, at those same 704 MMUs.

operators verify the effectiveness of their mine ventilation plans, the proposed standard allowing MSHA to use single, full-shift samples to identify overexposures requiring corrective action would provide miners with health benefits (See detailed discussion in Quantitative Risk Assessment). Both the prospect of being cited for overexposures and actual issuance of additional citations due to this rule would serve to compel mine operators to be more attentive to the level of respirable dust in their mines. Therefore, it is reasonable to expect, over time, a further decline in the number of shifts during which the concentration of respirable coal mine dust is at or above the applicable standard. Thus, the use of full-shift single samples will in and of itself, on average, lower miners' cumulative exposure to respirable coal mine dust. Since cumulative exposure to respirable coal mine dust is the main determinant in the development of both simple CWP and PMF, the Agencies are confident that the use of single, full-shift samples, by itself, and even without the impact of a verified dust control plan, would result in better health protection to miners (Jacobsen, *et al.*, 1977; Hurley, *et al.*, 1987; Kuempel, *et al.*, 1995; Attfield and Morring, 1992; Attfield and Seixas, 1995).

While there may be some concern from mine operators that the use of single, full-shift samples could dramatically increase the number of MSHA citations for overexposure to respirable coal mine dust, MSHA's 1998 Interim Single-Sample Enforcement Policy (ISSEP) has demonstrated that mine operators can maintain coal mine dust concentrations at or below the applicable standard.

As discussed in greater detail later in this notice, under ISSEP (May 7, 1998–September 9, 1998), of the 1,662 MMUs sampled, 182 or 11 percent were cited and only 14 of the 4,600 surface entities sampled were found to be out of compliance.

The anticipated increase in MSHA citations due to the use of single full-shift sampling would be the result of identifying overexposures which the current method of sampling masks due to the averaging of samples. Such overexposures and their prospective medical impact on the health of miners has been the subject of a Federal Mine Safety and Health Review Commission case which was affirmed by the Court of Appeals. *Consolidation Coal Co.* v. *Secretary of Labor*, 5 FMSHRC 378 (March 1983), *aff'd*, 8 FMSHRC 890 (June 1986), 824 F.2d 1071 (D.C. Cir. 1987).

In affirming an MSHA citation designated as "significant and substantial" under Section 104(a) of the Mine Act based on a mine operator's bimonthly dust samples which had an average concentration of respirable dust of 4.1 milligrams per cubic meter of air, the Commissioner quoted the administrative law judge who explained in detail the potentially damaging health effects of respirable coal mine dust:

> It is clear that the exposure covered by the dust samples which resulted in the citation herein *in itself* would neither cause nor significantly contribute to chronic bronchitis or coal workers pneumoconiosis. It is also clear that longer exposure to the same dust levels can in a significant number of instances cause or significantly contribute to chronic bronchitis or to coal workers pneumoconiosis. There is no question that chronic bronchitis and coal workers' pneumoconiosis are illnesses "of a reasonably serious nature." There is no question that each unit of exposure time is important in contributing to the disease. I think it would be illogical and unrealistic to hold that a serious disease results from a long series of insignificant and unsubstantial exposures. Dr. Hodous testified that the disease results from "an aggressive accumulation of dust and every drop in the bucket hurts." How much the drop will hurt may depend in part on the status of the bucket when the drop falls. If the bucket is full or nearly full, the drop may cause it to overflow. If a miner has worked 20 or 30 years in an underground coal mine, a 2 month exposure to excessive dust may be enough to cause the first signs of coal workers' pneumoconiosis, or to transform simple pneumoconiosis to a complicated form of the disease and possibly lead to progressive massive fibrosis. If the bucket is empty when the drop falls, in itself it won't mean much. If the miner exposed to excessive dust for a 2-month period is a new miner with healthy lungs, he probably will not be adversely affected, if his exposure stops. But if the exposure continues for 20 years (six 2-month periods each year), that miner too will be at risk to contract black lung.
>
> I conclude that *every drop in the bucket*, every two month sampling period where excessive dust is present, significantly and substantially contributes to a health hazard—the hazard of contracting chronic bronchitis or coal workers' pneumoconiosis. (emphasis added)

Consolidation Coal, 5 FMSHRC at 389–90 (citations omitted) (footnotes omitted). *See also Consolidation Coal*, 8 FMSHRC at 897 ("There is no dispute, however, that overexposure to respirable dust can result in chronic bronchitis and pneumoconiosis.") and *Consolidation Coal*, 824 F.2d at 1086 (using the legislative history of the Mine Act and the administrative law judge's "drop in the bucket" analogy to strike down the mine operator's argument that "no single violation of the respirable dust standard could ever be designated as significant and substantial.").

While *Consolidation Coal, supra*, dealt with overexposures identified under the operator sampling program, it is obvious that overexposures identified from the MSHA inspector sampling program similarly affect a miner's cumulative exposure to respirable coal mine dust.

Thus, the same analogy would apply to overexposures identified through single, full-shift exposures. MSHA and NIOSH firmly believe that noncompliance determinations based on single, full-shift measurement will improve working conditions for miners because mine operators will be compelled either to implement and maintain more effective dust controls to minimize the chances of being found in noncompliance by an MSHA inspector, or to take corrective actions to lower those dust concentrations that are shown to be in excess of the applicable standard.

To the extent that the use of single, full-shift samples reduce a miner's cumulative exposure to respirable coal mine dust, as compared to the current method of dust sampling, it reduces a miner's risk of developing occupational respiratory disease. The proposed mandatory standard would provide for fewer drops in each miner's exposure bucket. The health benefit that each miner receives from this rule will vary depending on "how full their bucket is" when the rule is implemented as well as other mediating factors, such as the percentage of quartz and rank of the coal.

Yet, all miners, irrespective of their cumulative exposure to respirable coal mine dust, would benefit by having fewer drops (*i.e.*, shifts with overexposures to respirable coal mine dust) placed in their buckets over the course of each miner's working life because this reduction would reduce their occupational hazard—the risk of developing simple CWP or PMF. Therefore, the Agencies reiterate that health benefits would accrue to miners due to single, full-shift sample rule alone even in the absence of a regulatory requirement for a verified dust control plan at each underground coal mine.

X. Issues Regarding Accuracy of a Single, Full-shift Measurement

Some previous commenters questioned the accuracy of single, full-shift measurements, and challenged the Secretaries' assessment of measurement accuracy. Some commenters questioned the Secretaries' interpretation of section 202(b) of the Mine Act (30 U.S.C.

842(b)), while others agreed with the interpretation. The following issues were generally raised: The measurement objective as defined by the Mine Act; the definition of the term "accurately represent", as used in section 202(f) (30 U.S.C. 842(f)); the validity of the sampling process; measurement uncertainty and dust concentration variability; and the accuracy of a single, full-shift measurement.

A. Measurement Objective

Some previous comments reflected a general misunderstanding of what the Secretaries intend to measure with a single, full-shift measurement, *i.e.*, the measurement objective. For example, some previous commenters asserted that the dust concentration that should be measured is dust concentration averaged over a period greater than a single shift. Some previous commenters noted that dust concentrations can vary during a shift and that dust concentrations are not uniform throughout a miner's work area. In order to clarify the intent of the Secretaries, the explanation that follows describes the elements of the measurement objective and how the measurement objective relates to the requirements of section 202(f).

To evaluate the accuracy of a dust sampling method, it is necessary to specify the airborne dust to be measured, the time period to which the measurement applies, and the area represented by the measurement. Once specified, these items can be combined into a measurement objective. The measurement objective represents the goal of the sampling and analytical method to be utilized.

1. The Airborne Dust to be Measured

Section 202(f) of the Mine Act (30 U.S.C. 842(f)) states that "average concentration" means

> * * * a determination [*i.e.*, measurement] which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed * * *

The phrase "atmospheric conditions" is used to refer to the concentration of respirable dust. Therefore, the airborne dust to be measured is respirable dust. Section 202(e) defines the concentration of respirable dust as the dust measured by an approved device.

2. Time Period to Which the Measurement Applies

Section 202(b)(2) provides that each mine operator "* * * shall continuously maintain the average concentra tion of respirable dust in the mine atmosphere during each shift to which each miner *; * * is exposed" at or below the applicable standard. In section 202(f) "average concentration" is defined as an atmospheric condition measured "over a single shift only, unless * * * such single shift measurement will not, after applying valid statistical techniques, accurately represent such atmospheric conditions during such shift."

Some previous commenters argued that Congress intended that the measurement objective be a long-term average. Specifically, some of these commenters stated that because coal dust exposure is related to chronic health effects, the exposure limit should be applied to dust concentrations averaged over a miner's lifetime. These commenters identified the measurement objective as being the dust concentration averaged over a long, but unspecified, term and argued that a single, full-shift measurement cannot accurately estimate this long-term average.

If the objective of section 202(b) were to estimate dust concentration averaged over a lifetime of exposure, then the Secretaries would agree that a single, full-shift sample, or even multiple samples collected during a single inspection, would not provide the basis for an accurate measurement. Section 202(b) of the Mine Act (30 U.S.C. 842(b)), however, does not mention long-term averaging, rather it explicitly requires that the average dust concentration be continuously maintained at or below the applicable standard during *each shift* (emphasis added). Furthermore, in *Consolidation Coal Company* v. *Secretary of Labor* 8 FMSHRC 890, (1986), aff'd 824 F.2d 1071, (D.C. Cir. 1987), the Commission found that each episode of a miner's overexposure to respirable dust significantly and substantially contributes to the health hazard of contracting chronic bronchitis or coal workers' pneumoconiosis, diseases of a fairly serious nature.

If exposure is limited on each shift, then this will ensure that a miner's total lifetime exposure will not be excessive. In the context of the proposed finding, the Secretaries have determined that "atmospheric conditions" means the fluctuating concentration of respirable coal mine dust during a single shift. These are the atmospheric conditions to which a miner at the sampling location would be exposed. Therefore, the proposed finding pertains only to the accuracy in representing the average of the fluctuating dust concentration over a single shift.

3. Area Represented by the Measurement

The Mine Act gives the Secretary of Labor the discretion to determine the area to be represented by respirable dust measurements collected over a single shift. Section 202(a) of the Mine Act (30 U.S.C. 842(a)) refers to "the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed" measured "* * * at such locations * * *" as prescribed by the Secretary of Labor. It is sufficient for the purposes of the Mine Act that the sampler unit accurately represent the amount of respirable dust at such locations only. As articulated by the United States Court of Appeals for the 10th Circuit in *American Mining Congress (AMC)* v. *Marshall*, 671 F.2d 1251 (1982), the Secretary of Labor may place the sampler unit in any area or location "* * * reasonably calculated to prevent excessive exposure to respirable dust."

Some previous commenters submitted evidence that dust concentrations can vary significantly near the mining face, and that these variations may extend into areas where miners are located. That is, the average dust concentration over a full shift is not identical at every point within a miner's work area. These commenters submitted several bodies of data purporting to show significant discrepancies between simultaneous dust concentration measurements collected within a relatively small distance of one another. Several previous commenters maintained that the measurement objective is, or should be, to accurately measure the average concentration within some arbitrary sphere about the head of the miner, and that multiple measurements within this sphere are necessary to obtain an accurate measurement.

The Secretaries recognize that dust concentrations in the mine environment can vary from location to location, even within a small area near a miner. As mentioned earlier, the Mine Act does not specify the area that the measurement is supposed to represent, and the sampler unit may therefore be placed in any location, reasonably calculated to determine excessive exposure to respirable dust.

Because the Secretary of Labor intends to prevent excessive exposures by limiting dust concentrations at every location in the active workings, it is sufficient that each measurement accurately represent the respirable dust concentration at the corresponding sampling location only. Limiting the dust concentration at every such location ensures that no miner in the

active workings will be exposed to excessive respirable dust.

Several previous commenters suggested that the measurement objective should be a miner's "true exposure" or what the miner actually inhales. The Secretaries do not intend to use a single, full-shift measurement to estimate any miner's "true exposure," because no sampling device can exactly duplicate the particle inhalation and deposition characteristics of a miner at any work rate (these characteristics change with work rate), let alone at the various work rates occurring over the course of a shift. Limiting the respirable dust concentration at every location in the active workings to which miners are exposed ensures that the respirable dust concentration actually inhaled by any miner is limited.

4. Justification for the Proposed Measurement Objective

A number of previous commenters identified the dust concentration to be estimated as either the mean dust concentration over some period greater than an individual shift, the mean dust concentration over some spatially distributed region of the mine, or a "grand mean" consisting of some combination of the above. These comments were based on the premise that the measurement objective should be something other than the average atmospheric conditions during a single shift at the sampling location. It is true that the mean quantities described by some commenters cannot accurately be estimated using a single, full-shift measurement, but the Secretaries make no claim of doing so, nor do they believe that a broader measurement objective would be desirable for enforcement purposes.

The Secretaries believe that MSHA's proposed use of single, full-shift samples for enforcement purposes would eliminate an important source of sampling bias due to averaging, as explained in Appendix A. Under MSHA's existing enforcement procedures, measurements made at the dustiest occupational locations or during the dustiest shifts sampled are diluted by averaging them with measurements made under less dusty conditions. This practice has frequently caused failures to cite clear cases of excessive dust concentration. Therefore, the Secretaries believe that enforcement based on averaging does not provide miners with the greatest level of protection possible under the current exposure limit for respirable coal mine dust.

Some previous commenters proposed that MSHA continue to average at least five separate measurements prior to making a noncompliance determination. They stated that abandoning this practice would reduce the accuracy of noncompliance determinations. Several of these commenters maintained that the average of dust measurements obtained at the same occupational location on different shifts more accurately represents dust exposure to a miner than a single, full-shift measurement. These commenters argued that not averaging measurements would reduce accuracy to unacceptable levels.

Other previous commenters agreed with MSHA and NIOSH that the averaging of multiple samples can dilute and mask specific instances of overexposure. Some of these commenters stated that averaging not only distorts the estimate of dust concentration applicable to individual shifts, but also biases the estimate of exposure levels over a longer term. According to these commenters, this is because dust control measures and work practices affecting dust concentrations are frequently modified in response to the presence of an MSHA inspector over more than a single shift. These commenters argued that the presence of the MSHA inspector causes the mine operator to be more attentive to dust control than normal.

Section 202(b) of the Mine Act currently requires each mine operator to "continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner is exposed" at or below the applicable standard. The greater the variation in mining conditions from shift to shift, the less likely it is that a multi-shift average will reflect the average dust concentration to which a miner is exposed on any individual shift. Appendix A contains further discussion of this issue.

Accordingly, the Secretaries would define the measurement objective to be the accurate determination of the average concentration of respirable dust at a sampling location over a single shift.

B. Accuracy Criterion

A "single shift measurement" means the calculated dust concentration resulting from a valid single, full-shift sample of respirable coal mine dust. In reviewing the various issues raised by previous commenters, the Agencies found that the term "accurately represent," as used in section 202(f) (30 U.S.C. 842(f)) in connection with a single shift measurement, was not defined in the Mine Act. Therefore, on March 12, 1996, (61 FR 10012), the Secretaries proposed to apply an accuracy criterion developed and adopted by NIOSH in judging whether a single, full-shift measurement will "accurately represent" the full-shift atmospheric dust concentration. The NIOSH Accuracy Criterion requires that measurements come within 25 percent of the corresponding true dust concentration at least 95 percent of the time (Kennedy, *et al.*, 1995). MSHA and NIOSH again are proposing to use the NIOSH Accuracy Criterion.

One previous commenter opposed the application of the NIOSH Accuracy Criterion since it ignores environmental variability. For reasons explained above, the Secretaries have restricted the measurement objective to an individual shift and sampling location. Therefore, environmental variability beyond what occurs at the sampling location on a single shift would not be relevant to assessing measurement accuracy.

For over 20 years, the NIOSH Accuracy Criterion has been used by NIOSH and others in the occupational health professions to validate sampling and analytical methods. This accuracy criterion was devised as a goal for the development and acceptance of sampling and analytical methods capable of generating reliable exposure data for contaminants at or near the Occupational Safety and Health Administration's (OSHA) permissible exposure limits.

OSHA has frequently employed a version of the NIOSH Accuracy Criterion when issuing new or revised single substance standards. For example, OSHA's benzene standard provides: "[m]onitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of benzene" (29 CFR 1910.1028(e)(6)). Similar wording can be found in the OSHA standards for vinyl chloride (29 CFR 1917), arsenic (29 CFR 1918), lead (29 CFR 1925), 1,2-dibromo-3-chloropropane (29 CFR 1044), acrylonitrile (29 CFR 1045), ethylene oxide (29 CFR 1047), and formaldehyde (29 CFR 1048). Note that for vinyl chloride and acrylonitrile, the accuracy criterion for the method is ±35 percent at 95 percent confidence at the permissible exposure limit.

Some previous commenters contended that the NIOSH Accuracy Criterion does not conform with international standards recently adopted by the European Committee for Standardization (CEN) (European Standard No. EN 482, 1994). Contrary to these assertions, the NIOSH Accuracy Criterion not only conforms to the CEN criterion but is, in fact, more stringent.

The CEN criterion requires that 95 percent of the measurements fall within ±30 percent of the true concentration, compared to ±25 percent under the NIOSH criterion. Consequently, any sampling and analytical method that meets the NIOSH Accuracy Criterion will also meet the CEN criterion. Furthermore, EN 482 imposes no control over inaccuracy in the measurement of sampling and analytical accuracy itself.

The NIOSH Accuracy Criterion is relevant and widely recognized and accepted in the occupational health professions. Further, previous commenters proposed no alternative criteria for accuracy. Accordingly, for purposes of section 202(f) of the Mine Act (30 U.S.C.842(f)), the Secretaries would consider a single, full-shift measurement to "accurately represent" atmospheric conditions at the sampling location, if the sampling and analytical method used meets the NIOSH Accuracy Criterion.

Several commenters suggested that method accuracy should be determined under actual mining conditions rather than in a laboratory or in a controlled environment. Although the NIOSH Accuracy Criterion does not require field testing, it recognizes that field testing "does provide further test of the method." However, in order to avoid confusing real differences in dust concentration with measurement errors when testing is done in the field, "precautions may have to be taken to ensure that all samplers are exposed to the same concentrations" (Kennedy, *et al.*, 1995). Similarly, the CEN criterion for method accuracy specifies that "testing of a procedure shall be carried out under laboratory conditions." (European Standard No. EN 482, 1994)

To determine, so far as possible, the accuracy of its sampling and analytical method under actual mining conditions, MSHA conducted 22 field tests in an underground coal mine. To provide a valid basis for assessing accuracy, 16 sampler units were exposed to the same dust concentration during each field test using a specially designed portable chamber. The data from these field experiments were used by NIOSH in its "direct approach" to determining whether or not MSHA's method meets the long-established NIOSH Accuracy Criterion. (See section X.E.2. of this notice).

In response to the March 12, 1996 notice, a commenter claimed that the supplementary information and analyses introduced into the public record by that notice addressed the precision of a single, full-shift measurement rather than its accuracy. According to this commenter, by focusing on precision, important sources of systematic error had been overlooked. The Secretaries agree with the comment that precision is not the same thing as accuracy. The accuracy of a measurement depends on both precision and bias (Kennedy, *et al.*, 1995). Precision refers to consistency or repeatability of results, while bias refers to a systematic error that is present in every measurement. Since the NIOSH Accuracy Criterion requires that measurements consistently fall within a specified percentage of the true concentration, the criterion covers both precision and uncorrectable bias.

Since the amount of dust present on a filter capsule used by an MSHA inspector is measured by subtracting the pre-exposure weight from the post-exposure weight, any bias present in both weight measurements is mathematically canceled out by subtraction. Furthermore, as will be discussed later, a control (*i.e.*, unexposed) filter capsule has been and would continue to be pre- and post-weighed along with the exposed filter capsules. The weight gain of the exposed capsule would be adjusted by the weight gain or loss of the control filter capsule. Therefore, any bias that may be associated with differences in pre-and post-exposure laboratory conditions, or with changes introduced during storage and handling of the filter capsules would also be mathematically canceled out. Moreover, the concentration of respirable dust is effectively defined by section 202(e) of the Mine Act (30 U.S.C. 842(e)) and the implementing regulations in 30 CFR parts 70, 71, and 90 to be whatever is measured with an approved sampler unit after multiplication by the MRE-equivalent conversion factor prescribed by the Secretary of Labor. Therefore, the Secretaries would conclude that the improved sampling and analytical method is statistically unbiased. This means that such measurements contain no systematic error. It should also be noted that since any systematic error would be present in all measurements, measurement bias would not be reduced by making multiple measurements. Other comments regarding measurement bias are addressed in Appendix B.

For unbiased sampling and analytical methods, a standard statistic—called the coefficient of variation (CV)—is used to determine if the method meets the NIOSH Accuracy Criterion. The CV, which is expressed as either a fraction (*e.g.*, 0.05) or a percentage (*e.g.*, 5 percent), quantifies measurement accuracy for an unbiased method. An unbiased method meets the NIOSH Accuracy Criterion if the "true" CV is no more than 0.128 (12.8 percent). However, since it is not possible to determine the true CV with 100-percent confidence, the NIOSH Accuracy Criterion contains the additional requirement that there be 95-percent confidence that measurements by the method will come within 25 percent of the true concentration 95 percent of the time. Stated in mathematically equivalent terms, an unbiased method meets the NIOSH Accuracy Criterion if there is 95-percent confidence that the true CV is less than or equal to 0.128 (12.8 percent).

C. Validity of Sampling Process

A single, full-shift measurement of respirable coal mine dust is obtained with an approved sampler unit, which is either worn or carried by the miner directly to and from the sampling location and remains operational during the entire shift or for eight hours, whichever time is less. A portable, battery-powered pump draws dust-laden mine air at a flow rate of 2 liters per minute (L/min) through a 10-mm nylon cyclone, a particle-size selector that removes non-respirable particles from the airstream. Non-respirable particles tend to be removed from the airstream by the nose and upper respiratory airways. Such particles fall to the bottom of the cyclone body called the "grit pot," while smaller, respirable particles (of the size that would normally enter into the lungs) pass through the cyclone, directly into the inlet of the filter cassette. This airstream is directed through the pre-weighed filter leaving the particles deposited on the filter surface. This collection filter is enclosed in an aluminum capsule to prevent leakage of sample air around the filter and the loss of any dust dislodged due to impact. The filter capsule is sealed in a protective plastic enclosure, called a cassette, to prevent contamination. After completion of sampling, the filter cassette is sent to MSHA's Respirable Dust Processing Laboratory in Pittsburgh, Pennsylvania, where it is weighed to determine the weight gain in milligrams or the amount of dust collected on the filter surface. The concentration of respirable dust, expressed as milligrams per cubic meter (mg/m3) of air, is determined by dividing the observed weight gain by the volume of mine air passing through the filter and then multiplying this quantity by a conversion factor (discussed in Appendix B) prescribed by the Secretaries.

Some previous comments generally addressed the quality and reliability of the equipment used for sampling.

Specific concerns were expressed about the quality of filter cassettes and the reliability of sampling pumps used by MSHA inspectors, due to their age and condition. Other commenters questioned the effect of sampling and work practices on the validity of a sample.

The validity of the sampling process is an important aspect of maintaining accurate measurements. Since passage of the Coal Act, there has been an ongoing effort by MSHA and NIOSH to improve the accuracy and reliability of the entire sampling process. In 1980, MSHA issued new regulations revising sampling, maintenance and calibration procedures in 30 CFR parts 70, 71, and 90. These regulatory provisions were designed to minimize human and mechanical errors and ensure that samples collected with approved sampler units in the prescribed manner would accurately represent the full-shift, average atmospheric dust concen tration at the location of the sampler unit. These provisions require: (1) Certification of competence of all individuals involved in the sampling process and in maintaining the sampling equipment; (2) calibration of each sampler unit at least every 200 hours; (3) examination, testing, and maintenance of units before each sampling shift to ensure that the units are in proper working order; and (4) checking of sampler units during sampling to ensure that they are operating properly and at the proper flow rate. In addition, significant changes, such as robotic weighing and the use of electronic balances were made in 1984, 1994, and 1995 that improved the reliability of sample weighings at MSHA's Respirable Dust Processing Laboratory. These changes are discussed below in section X.C.3.

All of these efforts improved the accuracy and reliability of the sampling process since the time of the 1971/1972 proposed and final findings. A discussion follows concerning the three elements which constitute the sampling process: sampler unit performance, collection procedures, and sample processing.

1. Sampler Unit Performance

In accordance with the provisions of section 202(e) of the Mine Act (30 U.S.C. 842(e)), NIOSH administers a comprehensive certification process under 30 CFR part 74 to approve dust sampler units for use in coal mines. To be approved for use, a sampler unit must meet stringent technical and performance requirements governing the quantity of respirable dust collected and flow rate consistency over an 8-hour period when operated at the prescribed flow rate. As necessary, NIOSH also conducts performance audits of approved sampler units purchased on the open market to determine if the units are being manufactured in accordance with the specifications upon which the approval was issued.

The system of technical and quality assurance checks currently in place is designed to prevent a defective sampler unit from being manufactured and made commercially available to the mining industry or to MSHA. In the event that these checks identify a potential problem with the manufacturing process, established procedures require immediate action to correct the problem.

In 1992, NIOSH approved the use of new tamper-resistant filter cassettes with features that enhanced the integrity of the sample collected. A backflush valve was incorporated into the outlet of the cassette, preventing reverse airflow through the filter cassette, and an internal flow diverter was added to the filter capsule, reducing the possibility of dust dislodged from the filter surface from falling out of the capsule inlet.

Also, in 1999, based on recent MSHA studies, Kogut, *et al.* (1999), involving the weighing stability of the current filter design and in an effort to standardize the manufacturing process, the filter cassette manufacturer submitted for NIOSH approval a modification to the current design. The change involves replacing the Tyvek" support pad with a stainless steel wheel, similar to the one located on the inlet side of the collection filter. A similar modification was incorporated in sampling filters employed by OSHA over the past several years. Upon NIOSH approval, the new cassette would be used in MSHA inspector sampling, thereby improving the stability of sample weights.

Several previous commenters questioned the quality of the filter cassettes used in the sampling program, expressing concern as to whether the cassettes always meet MSHA specifications. These concerns primarily involve filter-to-foil distance and floppiness of the filters, which are manufacturing characteristics specific to filters and filter capsules, not related to part 74 performance requirements. The Secretaries believe that such characteristics would have no effect on the accuracy of a single, full-shift measurement because, unlike the part 74 requirements, they would not affect the amount of dust deposition.

Previous commenters also questioned the condition of sampling pumps used by MSHA inspectors, stating that many of the pumps are 10 to 20 years old and are not maintained as well as they could be. They claimed that the age and condition of these pumps call into question not only whether the sampling equipment could meet part 74 requirements if tested, but also the accuracy of the measurement.

MSHA believes that this concern is unwarranted, since in 1995, MSHA replaced all pumps in use by inspectors with new constant-flow pumps that incorporate the latest technology in pump design. These pumps provide more consistent flow throughout the sampling period. In addition to using new pumps, inspection procedures require MSHA inspectors to make a minimum of two flow rate checks to ensure that the sampler unit is operating properly. A sample is voided if the proper flow rate was not maintained during the final check at the conclusion of the sampling shift. In fiscal year 1998, only 151 samples or 0.4 percent of the 37,042 inspector samples processed were voided because the sampling pump either failed to operate throughout the entire sampling period or failed to maintain the proper flow rate during the final check. Units found not meeting the requirements of part 74 are immediately repaired, adjusted, or removed from service. Nevertheless, MSHA recognizes that as these pumps age, deterioration of the performance of older pumps could become a concern. However, there is no evidence that the age of the equipment affects its operational performance if the equipment is maintained as prescribed by 30 CFR parts 70, 71, and 90.

Some previous commenters suggested that the accuracy of a dust sample may be compromised when a miner is operating equipment, due to vibration from the machinery. The potential effect of vibration on the accuracy of a respirable dust measurement was recognized by NIOSH in 1981. An investigation, supported by NIOSH, was conducted by the Los Alamos National Laboratory which found that vibration has an insignificant effect on sampler performance (Gray and Tillery, 1981).

2. Sample Collection Procedures

MSHA regulations at 30 CFR parts 70, 71, and 90 prescribe the manner in which mine operators are to take respirable dust samples. The collection procedures are designed to ensure that the samples accurately represent the amount of respirable dust in the mine atmosphere to which miners are exposed on the shift sampled. Samples taken in accordance with these procedures are considered to be valid.

Several previous commenters questioned the effects of sampling and work practices on the validity of a sample. Instances were cited where the sampling unit was accidentally dropped, with the potential for the sample to become contaminated. Previous commenters also pointed out that work activities requiring crawling, duck walking, bending, or kneeling could cause the sampling hose to snag. Such activities could also cause the sampling head assembly to be impacted or torn off a person's garment, possibly contaminating the sample. These commenters stated that sampler units are sometimes treated harshly while being worn by miners, mishandled when being transferred from one miner to another, or handled casually at the end of a work shift.

These commenters also maintained that it is impossible for MSHA inspectors or mine operators to continuously observe collection of a sample in order to ensure its validity, and that, for this reason, the reliability and accuracy of the sampling equipment, when used under actual mining conditions, is not the same as when tested and certified in a laboratory. Averaging multiple samples would, according to these commenters, provide some "leeway" in the system, by reducing the impact of an aberrant sample.

While MSHA and NIOSH would agree that it is not possible to continuously observe the collection of each sample, MSHA inspectors are normally in the general vicinity of the sampling location, and therefore would have knowledge of the specific conditions under which samples are taken. In addition, MSHA inspectors are instructed to ask miners wearing the sampler units whether anything that could have affected the validity of the sample occurred during the shift. If so, the inspector would note this on the data card and request that the sample be examined to determine its validity.

Other previous commenters expressed concern that, if special dust control measures are in effect during sampling, a single, full-shift measurement may fail to represent atmospheric conditions during shifts when samples are not collected. The Secretaries believe that this concern is beyond the scope of this new proposal, which, as described in the discussion of measurement objective, deals solely with the accuracy of a measurement in representing atmospheric conditions on the shift being sampled. One previous commenter recommended that MSHA, NIOSH, or the Bureau of Mines (now a part of NIOSH) should evaluate the need for standardizing the MSHA respirable dust sampling procedures. In fact, the procedures for respirable dust sampling have already been standardized under the revised 1980 MSHA regulations codified at 30 CFR parts 70, 71 and 90.

As previously mentioned, as part of the ISSEP discussion, MSHA inspectors are also using unexposed control filters to eliminate any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules. A control filter is an unexposed filter that was pre-weighed on the same day as the filter used for sampling. This control filter is used to adjust the weight gain obtained on each exposed filter. Any change in weight of the control filter is subtracted from the change in weight of each exposed filter. MSHA began using control filters on May 7, 1998, with the implementation of the ISSEP, and has continued this practice, even after reverting back to basing noncompliance determinations on an average of multiple samples following the ruling of the 11th Circuit Court of Appeals discussed earlier. The control filter, which is carried by the inspector in a shirt or coverall pocket during the sampling inspection, is plugged to prevent exposure to the mine environment. The experience gained from the use of control filters under ISSEP is discussed in section V.D.

Also, once NIOSH approves the modified design mentioned earlier, MSHA inspectors would use only filters incorporating a stainless steel support wheel. These filters, according to MSHA studies, demonstrated better weighing stability as compared to filters employing Tyvek® material for the support pad.

3. Sample Processing

Sample processing consists of weighing the exposed and control (unexposed) filters, recording the weight changes, and examining certain samples in order to verify their validity. Sample processing also includes electronic transmission of the results to MSHA's MIS center where dust concentrations are computed. The results are then transmitted to MSHA enforcement personnel and to mine operators.

(a) Weighing and Recording Procedures

The procedures and analytical equipment, as well as the facility used by MSHA to process respirable coal mine dust samples have been continuously improved since 1970 to maintain a state-of-the-art laboratory. From 1970 to 1984, samples were manually weighed using semimicro balances. This process was automated in 1994 with the installation of a state-of-the-art robotic system and electronic balances, which increased the precision of sample-weight determinations. Weighing precision was further improved in 1994, when both the robotic system and balances were upgraded. Also, beginning in early 1998, all respirable coal mine dust samples were being processed in a new, specially designed clean room facility that maintains the temperature and humidity of the environment at 72 ±2°F and 50 ±5%, respectively. Using a modified HEPA filtration system, the environment is maintained at a clean room classification of 1000 (near optimum for clean room cleanliness).

The full benefit of the 1994 improvements of the weighing system for inspector samples was, however, not attained until mid-1995, when MSHA implemented two modifications to its procedures for processing inspector samples. One modification involved pre- and post-weighing filter capsules to the nearest microgram (0.001 mg) within MSHA's laboratory. Prior to mid-1995, filters had been weighed in the manufacturer's (Mine Safety and Appliances Co.) laboratory before sampling, and then in MSHA's laboratory after sampling. MSHA is currently pre-weighing all such filters in its own laboratory. To maintain the integrity of the weighing process, eight percent of all filters are systematically weighed a second time. If a significant deviation is found, the balance is recalibrated and all filters with questionable weights are reweighed.

The other modification was to discontinue the practice of truncating (to 0.1 mg) the recorded weights used in calculating dust concentrations. This means that MSHA is now using all significant digits associated with the weighing capability of the balance (0.001mg) when processing inspector samples. These modifications improved the overall accuracy of the measurement process.

To eliminate the potential for any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filters, MSHA is also using control filters in its enforcement program. Any change in the weight of the control filter is subtracted from the measured change in weight of the exposed filter.[17]

Since MSHA began pre- and post-weighing filters to the nearest µg, coal

[17] If a control filter either shows a weight gain greater than 100 micrograms (µg) or a weight loss greater than 30 µg, the control filter is voided and the concentration measurement(s) are not used for enforcement purposes.

mine operators have asked to use filters pre-weighed to a µg to collect optional samples that they submit to MSHA for quartz analysis. The use of these pre-weighed filters would eliminate the need to sample multiple shifts in order to obtain sufficient dust mass on the collection filter for quartz analysis. Currently, filters used by coal mine operators to sample in accordance with 30 CFR parts 70, 71, and 90 are pre-weighed by the filter manufacturer, Mine Safety Appliances Co., to the nearest 10 µg. Therefore, only samples taken with filters preweighed to the nearest 10 µg, with a net weight gain of at least 450 µg, contain sufficient dust mass to permit the percentage of quartz to be determined.

In 1996, Mine Safety Appliances Company upgraded their equipment used to pre-weigh filter capsules and now uses the same balance as MSHA's Coal Dust Processing Laboratory, thereby permitting weight determinations to be made to the nearest µg.

The requirement that inspector samples be pre- and post-weighed in the same laboratory was developed prior to adopting control filters and was based on the assumption that no control filters were being used. Since use of the control filters adjusts for differences that may exist in laboratory conditions on the days of pre- and post-weighing, it is no longer necessary to pre- and post-weigh the filters in the same laboratory.

To determine the viability of using exposed filters pre-weighed by Mine Safety Appliances Co. and post-weighed by MSHA in establishing the percentage of quartz, the Agency conducted a study to quantify weighing variability between the Mine Safety Appliances Co. and MSHA laboratories (Parobeck, *et al.*, 1997). Based on this study, the overall imprecision of an interlaboratory weight-gain measurement was estimated to be 11.5 for capsules with a stainless steel filter support pad. This estimate closely matches the 11.6 result reported for capsules with stainless steel support pads in a more recent study (Kogut, *et al.*, 1999). In this more recent study, unexposed capsules were pre-weighed by MSHA, assembled into cassettes by Mine Safety Appliances Co., sent out to the field and carried during an inspection, and then post-weighed by MSHA."

Using the higher of these two estimates, NIOSH has reassessed the accuracy of MSHA's improved sampling and analytical method, which incorporates a control filter adjustment and employs filter capsules with a stainless steel support pad. NIOSH has concluded that the control filter adjustment will correct for any potential biases due to differences in laboratory conditions, so that it is no longer necessary to pre- and post-weigh filter capsules in the same laboratory (Grayson, 1999b). Therefore, in accordance with NIOSH, MSHA is proposing to change the existing processing procedures for inspector samples from pre- and post-weighing in the same laboratory (with adjustment by a control filter) to pre- and post-weighing of samples to the nearest µ in different laboratories (with continued adjustment by a control filter). The Agencies would welcome comments on this proposed change.

To insure the precision and accuracy of the pre-weight of filters used by inspectors, MSHA plans to institute a program to monitor the daily production of filters weighed to the nearest µg by the manufacturer. The program will conform to MIL–STD–105D, which defines the criteria currently used to monitor the quality of pre-weighed filters used in MSHA's operator sampling program.

(b) Sample Validity Checks

All respirable dust samples collected and submitted as required by 30 CFR parts 70, 71, and 90 are considered valid unless the dust deposition pattern on the collection filter appears to be abnormal or other special circumstances are noted that would cause MSHA to examine the sample further. Several previous commenters expressed concern about the potential contamination of samples with "oversized particles." Such contamination, according to one commenter, can result in aberrational weight gains. These commenters noted that current procedures do not systematically ensure that samples collected by MSHA contain no oversized particles. It was recommended that MSHA analyze, for the presence of oversized particles, any dust sample that exceeds the applicable dust standard. Also suggested for such an analysis was any sample with a weight gain significantly different from other samples taken in the same area.

Standard laboratory procedures, involving visual, and microscopic examination as necessary, are used to verify the validity of samples. Samples with a weight gain of 1.4 milligrams (µg) or more are examined visually for abnormalities such as the presence of large dust particles (which can occur from agglomeration of smaller particles), abnormal discoloration, abnormal dust deposition pattern on the filter, or any apparent contamination by materials other than respirable coal mine dust. Also examined are samples weighing 0.1 mg or less for insufficient dust particle count. Similar checks are also performed in direct response to specific inspector or operator concerns noted on the dust data card to which each sample is attached.

The previous commenters' concerns about the contamination of samples with oversized particles are based on the assumption that all oversized particles, defined as dust particles greater than 10 micrometers (µm) in size, are not respirable and therefore should be totally excluded from any sample taken with an approved sampler unit. However, it has long been known that some particles greater than 10 µ *can* be inhaled, and that some of these particles *can* reach the alveoli of the lungs (Lippman and Albert, 1969). According to the British National Coal Board, "particles as large as 20 microns (*i.e.* micrometers) mean diameter may be deposited, although most "lung dust" lies in the range below 10 microns diameter" (Goddard, *et al.*, 1973). Furthermore, it is known that, due to the irregular shapes of dust particles, the respirable dust collected by the MRE instrument (the dust sampler used by the British Medical Research Establishment in the epidemiological studies on which the U.S. coal dust standard was based) may include some dust particles as large as 20 micrometers (Goddard, *et al.*, 1973). Moreover, MSHA studies have shown that nearly all samples taken with approved sampler units, even when operated in the prescribed manner, contain some oversized particles (Tomb, August 31, 1981). Since section 202(e) of the Mine Act (30 U.S.C. 842(e)) defines concentration of respirable dust to be that measured by an approved sampler unit, and because the approved sampler unit will collect some oversized particles, the Secretaries do not consider a sample to be "contaminated" because it contains some oversized particles.

The Secretaries recognize that there are occasions when oversized particles can properly be considered a contaminant. For example, an excessive number of such particles could enter the filter capsule if the sampling head assembly is accidentally or deliberately turned upside down or "dumped" (possibly causing some of the contents of the cyclone grit pot to be deposited on the collection filter), if the pump malfunctions, or if the entire sampler unit is dropped. When MSHA has reason to believe that such contamination has occurred, the suspect sample is examined to verify its validity.

Contrary to the assertions of some previous commenters, checking for

oversized particles is not standard industrial hygiene practice. Nevertheless, MSHA checks any dust sample suspected of containing an excessive number of oversized particles. MSHA's laboratory procedures require any sample exhibiting an excessive weight gain (over 6 mg) or showing evidence of being "dumped" to be examined for the presence of an excessive number of oversized particles (MSHA Method P–4, August 1989). Samples identified by an inspector or mine operator as possibly contaminated are also examined. If this examination indicates that the sample contains an excessive number of oversized particles according to MSHA's established criteria, then that sample is considered to be invalid, is voided and not used. In fiscal year 1998, only one sample of the 37,042 inspector samples processed was found to contain an excessive number of oversize particles and thus was not used.

While rough handling of the sampler unit or an accidental mishap could conceivably cause a sample with a weight gain less than 6 mg to become contaminated, as claimed by some previous commenters, studies show that short-term accidental inclinations of the cyclone will not affect respirable mass measurements made with currently approved sampler units (Treaftis and Tomb, 1974). Sampler units currently used are built to withstand the rigors of the mine environment, and are therefore less susceptible to contamination than suggested by some previous commenters. In any event, the Secretaries believe that the validity checks currently in place, as discussed above, would detect such samples.

D. Measurement Uncertainty and Dust Concentration Variability

Overall variability in measurements collected on different shifts and sampling locations comes from two sources: (1) Environmental variability in the true dust concentration and (2) errors in measuring the dust concentration in a specific environment. The major portion of overall measurement variability reflects real variability in dust concentration on different shifts or at different sampling locations (Nicas, *et al.*, 1991).[18]

Variability in the dust concentration is under the control of the mine operator and does not depend on the degree to which the dust concentration can be accurately measured. Measurement uncertainty, on the other hand, stems from the differing measurement results that could arise, at a given sampling location on a given shift, because of potential sampling and analytical errors. Therefore, unlike variability in dust concentration, measurement uncertainty depends directly on the accuracy of the measurement system. Measurement errors generally contribute only a small portion of the overall variability observed in datasets consisting of dust concentration measurements.

Numerous previous commenters identified sources of measurement uncertainty and dust concentration variability that they believed should be considered when determining whether or not a measurement accurately represents such atmospheric conditions. Because the measurement objective is to accurately represent the average dust concentration at the sampling location over a single shift, it does not take into consideration dust concentration variability between shifts or locations. Sources of dust concentration variability would not be considered by the Secretaries in determining whether a measurement is accurate. Consequently, the Secretaries have concluded that the only sources of variability relevant to establishing accuracy of a single, full-shift measurement for purposes of section 202(f) of the Mine Act (30 U.S.C. 842(f)) would be those related to sampling and analytical error.

1. Sources of measurement uncertainty

Filter capsules are weighed prior to sampling. After a single, full-shift sample is collected, the filter capsule is weighed a second time, and the weight gain (g) is obtained by subtracting the pre-exposure weight from the post-exposure weight, which will then be adjusted for the weight gain or loss observed in the control filter capsule. A measurement (x) of the atmospheric condition sampled is then calculated by Equation 1:

$$x = \frac{1.38 \cdot g}{v} \qquad (1)$$

where:

x is the single, full-shift dust concentration measurement (mg/m³);

1.38 is a constant MRE-equivalent conversion factor; g is the observed weight gain (mg) after adjustment for the control filter capsule; and

v is the estimated total volume of air pumped through the filter during a typical full shift.

The Secretaries recognize that random variability, inherent in any measurement process, may cause *x* to deviate either above or below the true dust concentration. The difference between x and the true dust concentration is the measurement error, which may be either positive or negative. Measurement uncertainty arises from a combination of potential errors in the process of collecting a sample and potential errors in the process of analyzing the sample. These potential errors introduce a degree of uncertainty when *x* is used to represent the true dust concentration.

The statistical measure used by the Secretaries to quantify uncertainty in a single, full-shift measurement is the total sampling and analytical coefficient of variation, or CV_{total}. The CV_{total} quantifies the magnitude of probable sampling and analytical errors and is expressed as either a fraction (*e.g.*, 0.05) or as a percent (*e.g.*, 5 percent) of the true concentration. For example, if a single, full-shift measurement *(x)* is collected in a mine atmosphere with true dust concentration equal to 1.5 mg/m³, and the standard deviation of potential sampling and analytical errors associated with *x* is equal to 0.075 mg/m³, the uncertainty associated with *x* would be expressed by the ratio of the standard deviation to the true dust concentration: $CV_{total} = 0.075/1.5 = 0.05$, or 5 percent.

Based on a review of the scientific literature, the Secretaries in their March 12, 1996 notice concerning the NIOSH Accuracy Criterion identified three sources of uncertainty in a single, full-shift measurement, which together make up CV_{total}:

(a) CV_{weight}—variability attributable to weighing errors or handling associated with exposed and control filter capsules. This covers any variability in the process of weighing the exposed or control filter capsules prior to sampling (pre-weighing), assembling the exposed and control filter cassettes, transporting

[18] Although MSHA and NIOSH accept the finding presented by Nicas, *et al.* (1991) that environmental variability generally exceeds analytical variability, the Agencies do not accept the authors' conclusions with regard to how this finding should affect enforcement policy.

the filter cassettes to and from the mine, and weighing the exposed and control filter capsules after sampling (post-weighing).

(b) CV_{pump}—variability in the total volume of air pumped through the filter capsule. This covers variability associated with calibration of the pump rotameter,[19] variability in adjustment of the flow rate at the beginning of the shift, and variation in the flow rate during sampling. It should be noted that variation in flow rate during sampling was identified as a separate component of variability in MSHA's February 18, 1994, notice. Here, it is included within CV_{pump}.

(c) $CV_{sampler}$—variability in the fraction of dust trapped on the filter. This is attributable to physical differences among cyclones. This component was introduced in the material submitted into the record in September 1994.

These three components of measurement uncertainty can be combined to form an indirect estimate of CV_{total} by means of the standard propagation of errors formula:

$$CV_{total} = \sqrt{CV_{weight}^2 + CV_{pump}^2 + CV_{sampler}^2} \quad (2)$$

These three components are discussed in greater detail, along with responses to specific previous comments, in Appendix B.

2. Sources of Dust Concentration Variability

Previous commenters also raised issues related to sources of dust concentration variability. Some of these commenters maintain that the Secretaries should include in CV_{total} additional components representing the effects of shift-to-shift variability and variability related to location (spatial variability). These comments reflect a misunderstanding of the measurement objective as intended by the Mine Act (see Section X.A. of this notice).

Exposure variability due to job, location, shift, production level, effectiveness of engineering controls, and work practices will be different from mine to mine. This type of variability has nothing to do with measurement accuracy and depends on factors under the control of the mine operator. The sampler unit is not intended to account for these factors.

(a) Spatial Variability

Previous commenters stated that CV_{total} should account for spatial variability, or the differences in concentration related to location. The Secretaries agree that dust concentrations vary between locations in a coal mine, even within a relatively small area. However, real variations in concentration between locations, while sometimes substantial, do not contribute to measurement error. As stated earlier, the measurement objective would be to accurately measure average atmospheric conditions, or concentration of respirable dust, at a sampling location over a single shift.

(b) Shift-to-shift Variability

Previous commenters stated that CV_{total} should take into account the differences or variations in dust concentration that occur shift to shift. Although the Secretaries would agree that dust concentrations vary from shift to shift, the measurement objective is to measure average atmospheric conditions on the specific shift sampled. This result would be consistent with the Mine Act, which requires that concentrations of respirable mine dust be maintained at or below the applicable standard during each shift.

3. Other Factors Considered

(a) Proportion of Oversized Particles

Previous commenters expressed concern that respirable dust cyclones are handled in a rough manner in normal use and occasionally turned upside down. According to one commenter, this type of handling would cause more large particles to be deposited on the filter in the mine environment than when used in the laboratory. This commenter knew of no data that could be used to evaluate the error associated with such occurrences and recommended that a study be commissioned to measure the proportion of non-respirable particles on the filters after they are weighed to MSHA standards.

After considering this recommendation, the Secretaries would conclude that the available evidence shows that short-term inclinations of the cyclone, as might frequently occur during sampling, will not affect respirable dust measurements made with approved sampler units (Treaftis and Tomb, 1974). The weight of the sampler head assembly makes it extremely unlikely that a sampler unit could be turned upside down in normal use. Furthermore, with a field study of the type recommended, variability in the field measurements due to normal handling would be confounded with variability due to real differences in atmospheric conditions. Therefore, the Secretaries believe that such a study would not be useful in establishing variability in measurements due to differences in handling of the sampler unit.

(b) Anomalous Events

Previous commenters asserted that unpredictable, infrequent events, such as a "face blowout" on a longwall (a violent expulsion of coal together with large quantities of coal dust and/or methane gas) or high winds at a surface mine, can cause rapid loading of a filter capsule and thereby distort a measurement to show an excessive dust concentration based on a single, full-shift sample when, they argue, the dust standard had not been exceeded. In fact, if such an occurrence were to cause a measurement above the applicable standard, the dust standard would be violated. No evidence was previously presented to demonstrate that short-term high exposures can overload a dust sampling filter or cause the sampling device to malfunction. Nor was evidence presented to demonstrate that miners are not also exposed to the same high dust concentrations as the sampler unit when such events occur. The Secretaries would conclude that such events are results of the dynamic and ever-changing mine environment—an environment to which the miner is exposed. The sampler unit is designed to measure the atmospheric condition at a specific sampling location over a full shift. If such events occur, the sampler unit will accurately record the atmospheric condition to which it is exposed.

[19] The rotameter consists of a weight or "float" which is free to move up and down within a vertical tapered tube which is larger at the top than the bottom. Air being drawn through the filter cassette passes through the rotameter, suspending the "float" within the tube. The pump is "calibrated" by drawing air through a calibration device (usually what is known as a bubble meter) at the desired flow rate and marking the position of the float on the tube. The processes of marking the position on the tube (laboratory calibration) and adjusting the pump speed in the field so that the float is positioned at the mark are both subject to error.

(c) MRE Conversion Factor Used in the Dust Concentration Calculation

Several previous commenters questioned the 1.38 MRE-conversion factor used in Equation 1. This factor is used to convert a measurement obtained with the type of dust sampler unit currently approved for use in coal mines to an equivalent concentration as measured with an MRE gravimetric dust sampler. The term "MRE instrument" is defined in 30 CFR § 70.2 (i). The conversion factor is necessary because the coal mine dust standard was derived from British data collected with an MRE instrument, which collects a larger fraction of coal mine dust than does the approved dust sampling unit (Tomb, *et al.*, 1973). The 1.38 constant has been established by the Secretaries as applying to the currently approved dust sampler unit described in 30 CFR part 74.

Some previous commenters contended that variability involved in the data analysis used in establishing the conversion factor should be taken into account in determining CV^{total}. This suggestion demonstrates a misunderstanding of the difference between measurement imprecision and measurement bias. The 1.38 factor applies to every sampler unit currently approved under part 74. Since the same conversion factor is applied to every measurement, any error in the value used would cause a measurement bias but would have no effect on measurement imprecision. Since Congress defined respirable dust in section 202(e) of the Mine Act (30 U.S.C. 842(e)) as whatever is collected by a currently approved sampler unit, a measurement incorporating the 1.38 factor is unbiased by definition. Further discussion is provided in Appendix B on why use of the 1.38 factor does not introduce a bias. Appendix B also addresses comments relating to other aspects of the 1.38 conversion factor; comments regarding the fact that MSHA's sampler unit does not conform to other definitions of respirable dust; and questions concerning the effect of static charge on sampler unit performance.

(d) Reduced Dust Standards

One commenter pointed out that in estimating CVtotal, MSHA and NIOSH did not take into account any potential errors associated with silica analysis. The commenter argued that since silica analysis is used to establish reduced dust standards, MSHA and NIOSH had failed to demonstrate "* * * accuracy for all samples 'across the range of possible reduced dust standards.'"

This commenter confuses the accuracy of a respirable dust concentration measurement with the accuracy of the procedure used to establish a reduced dust standard. MSHA has a separate program in which silica analysis is used to set the applicable respirable coal mine dust standard, in accordance with section 205 of the Mine Act (30 U.S.C. 845), when the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz. As shown by Equation 1, no silica analysis is used in a single, full-shift measurement of the respirable dust concentration. Therefore, the Secretaries would not agree with the comment that CV_{total} should include a component representing potential errors in silica analysis.

(e) Dusty Clothing

Several previous commenters pointed out that local factors such as dusty clothing could cause concentrations in the immediate vicinity of the sampler unit to be unrepresentative of a larger area. Dust from a miner's clothing nevertheless represents a potential hazard to the miner. No evidence was previously presented to demonstrate that miners are not also exposed to dust originating from dusty clothing.

E. Accuracy of a Single, Full-shift Measurement

1. Quantification of Measurement Uncertainty

Several previous commenters argued that MSHA underestimated CV_{total} in its February 18, 1994 proposed notice of Joint Finding and suggested alternative estimates ranging from 16 to 50 percent. These commenters cited several published studies and submitted five sets of data in support of these higher estimates. Statistical analyses of the data were also submitted.

MSHA and NIOSH reviewed all of the studies referenced by the previous commenters. The review showed that all of the estimates of measurement variability were from studies carried out prior to improvements mandated by the 1980 MSHA revisions to dust sampling regulations, discussed earlier in "Validity of the Sampling Process" (see Section X.C.). For example, the General Accounting Office (GAO) [20] and the National Bureau of Standards (NBS, now the National Institute of Standards and Technology) studies were conducted in 1975. The National Academy of Sciences report, which analyzed the same data as the NBS and GAO reports, was issued in 1980. The review further showed that the measurement variability quantified in these studies included effects of spatial variability—a component of variability the Secretaries deliberately exclude when determining the accuracy of a sampling and analytical method as discussed in section X.D.2.(a). Additionally, since past studies frequently relied on combining estimates of variability components obtained from different bodies of data, some of them also suffered from methodological problems related to combining individual sources of uncertainty. For example, in 1984, a NIOSH study identified several conceptual errors in earlier studies that had led to double-or even triple-counting of some variability components (Bowman, *et al.*, 1984). Although all the data and analyses submitted by previous commenters included effects of spatial variability, one of these data sets, consisting of paired sample results, contained sufficient information to indicate that weighing imprecision was less than what MSHA had assumed in its February 18, 1994 notice. However, without an independent estimate of spatial variability applicable to these samples, it is not mathematically possible to utilize this data set to estimate variability attributable to the sampler unit or the volume of air sampled. A second data set consisted only of differences in dust concentration between paired samples, making it impossible to use it even for evaluating weighing imprecision. The remaining three data sets included effects of shift-to-shift variability, which, like spatial variability, would not be relevant to the measurement objective. Therefore, none of these data could be used to estimate overall measurement imprecision. Further details are provided in Appendix C.

One of the previous commenters particularly questioned the value MSHA used in its February 18, 1994 proposed notice of Joint Finding to represent variability in initially setting the pump flow rate. In response to this commenter's suggestion, MSHA conducted a study to verify the magnitude of this variability component. This study simulated flow rate adjustment under realistic operating conditions by including a number of persons checking and adjusting initial flow rate under various working situations (Tomb, September 1, 1994). Results showed the coefficient of variation associated with the initial flow

[20] Many of the recommendations in the GAO report were later adopted and implemented by MSHA.

rate adjustment to be 3 ± 0.5 percent, which is less than the 5-percent value used by MSHA in the February 1994 notice. In addition, based on a review of published results, the Secretaries would conclude that the component of uncertainty associated with the combined effects of variability in flow rate during sampling and potential errors in calibration is actually less than 3 percent. As explained in Appendix B, these two sources of uncertainty can be combined to estimate CV_{pump}. After reviewing the available data and the comments submitted, the Secretaries would conclude that the best estimate of CV_{pump} is 4.2 percent. Additional details regarding CV_{pump}, along with the Secretaries' responses to comments, are presented in Appendix B.

Intersampler variability, represented by $CV_{sampler}$, accounts for uncertainty due to physical differences from sampler to sampler. Most of the previous commenters ignored this source of uncertainty. As explained in Appendix B, the Secretaries would adopt a 5-percent estimate of $CV_{sampler}$.

To address previous commenters' concerns that the Agencies had underestimated CV_{total}, MSHA conducted a field study to directly estimate the overall measurement precision attainable when dust samples are collected with currently approved sampler units and analyzed using state-of-the-art analytical techniques. The study involved simultaneous field measurements of the same coal mine dust cloud using sampling pumps incorporating constant flow technology. Using a specially designed portable dust chamber, 22 tests were conducted at various locations in an underground coal mine. Each test consisted of collecting 16 dust samples simultaneously and at the same location. No adjustments in the flow rate were made beyond what would routinely have been done by an MSHA inspector.

Prior to the field study, two modifications to MSHA's sampling and analytical method had been considered by MSHA and NIOSH: (1) Measuring both the pre-and post-exposure weights to the nearest microgram (μg) on a balance calibrated using the established procedure within MSHA's Respirable Dust Processing Laboratory; and (2) discontinuing the practice of truncating the recorded weights used in calculating the dust concentration. These modifications were incorporated into the design of the field study.

One previous commenter characterized the field study as being "woefully incomplete" because it was conducted "in a tightly controlled environment * * * not subject to normal environmental variation." While it is true that the samples within each test were not subject to normal environmental variability, this was because the experiment was deliberately designed to avoid confusing spatial variability in dust concentration with measurement error. However, pumps were handled and flow rates were checked in the same manner as during routine sampling. Furthermore, the sampler units were disassembled and reassembled in the normal manner to remove and replace dust cassettes.

Previous commenters also questioned the value that MSHA used in the February 1994 proposed notice of Joint Finding to represent uncertainty due to potential weighing errors. In September 1994, MSHA submitted into the record an analysis based on replicated weighings for 300 unexposed filter capsules, each of which was weighed once by the cassette manufacturer and twice in MSHA's laboratory (Kogut, May 12, 1994). An estimate of weighing imprecision derived from this analysis was used by NIOSH in its September 20, 1995 assessment of MSHA's sampling and analytical procedure (discussed in more detail later in section X.E.)

In the March 12, 1996 notice concerning the NIOSH Accuracy Criterion, MSHA described the results of an investigation into repeated weighings of the same capsules made over a 218-day period using MSHA's automatic weighing system. It was noted that after approximately 30 days, filter capsules left exposed and unprotected gained a small amount of weight—an average of 0.8 μg (micrograms) per day. Neither NIOSH nor MSHA considered this a problem, since all dust samples are analyzed within 24 hours of receipt and are not left exposed and unprotected. However, more recent data collected to quantify weighing variability between the Mine Safety Appliances Co. and MSHA laboratories showed that filter capsules tend to gain a small amount of weight even when stored in plastic cassettes (Parobeck, *et al.*, 1997). To check this result, 75 unexposed filter cassettes that had been distributed to MSHA's district offices were recalled and the filter capsules were reweighed. On average, the weight gain was about 40 μg over a time period of roughly 150 days. Statistical analyses of these data performed by MSHA and NIOSH confirmed the previous result (Parobeck, *et al.*, 1997; Wagner, May 28, 1997). While the cause has not been established, it is hypothesized that at least some of the observed weight gain may be the result of outgassing from the plastic cassette onto the filter capsule. If uncorrected, any systematic change in weight not due to coal mine dust would introduce a bias in dust concentration measurements.

One commenter had previously stated that the Secretaries were addressing only precision, thereby implying that potential biases were being ignored. To eliminate the potential for any bias due to a spurious gain or loss of filter capsule weight, MSHA has used control filter capsules in its enforcement program since April 30, 1998. Any change in weight observed for the control filter capsule will be subtracted from the measured change in weight of the exposed filter capsule. Each control filter capsule will be pre-weighed with the other filter capsules, will be stored and transported with the other capsules, and will be on the inspector's person during the day of sampling. This 1998 modification to MSHA's inspector sampling and analytical procedure will ensure an unbiased estimate of the true weight gain (Wagner, May 28, 1997).

(a) Experience Gained From Use of Control Filters

As explained above under the headings of "Sample Processing" and "Quantification of Measurement Uncertainty", evidence of relatively small weight gains in unexposed filter capsules led MSHA, in 1998, to begin using unexposed control filters to adjust the weight gains measured for exposed filters. Under the new system, respirable coal mine dust samples taken by MSHA inspectors are matched with unexposed control filter capsules. For an inspector sample to be valid, the matching, unexposed control filter capsule must have been weighed on the same two days as the exposed capsule—initially before exposure and then, for a second time, afterwards.

From April 30, 1998 through December 31, 1998, a total of 5,578 such control filter capsules were weighed for the second time in MSHA's laboratory after having been sent out to the field. Although MSHA's new processing system was not fully implemented before April 30, 1998, many of these control filter capsules which were constructed with Tyvek®, along with the corresponding exposed capsules, were initially weighed prior to 1998. The time intervals between first and second weighings ranged from 32 to 608 days. Excluding six filter capsules that were broken, misidentified, improperly labeled, or contaminated, weight gains measured for the remaining 5,572 unexposed filter capsules ranged from a maximum of 420 μg down to a negative 317 μg (*i.e.*, a weight loss of 317 μg). Approximately 50% of the unexposed

filter capsules showed a weight gain of 15 µg or more. The mean weight gain measurement (counting losses as negative gains) was 14.0 µg, and the standard deviation was 24.6 µg. The initial and second weight measurements for each of these control filter capsules which were constructed with Tyvek® support pads, along with the measurement dates, are being placed into the public record for analysis and comment by interested parties.

As explained earlier, if an unexposed control filter either shows a weight gain greater than 100 µg or a weight loss greater than 30 µg, then, instead of using it to make any adjustment, MSHA simply voids the corresponding coal mine respirable dust sample. This occurred in 126 cases, leaving 5,446 cases in which the control filter was actually used to adjust a dust sample. For these 5,446 control filters, the mean weight gain measurement was 14.8 µg, and the standard deviation was 19.2 µg. Consequently, weight gains observed in exposed filters were reduced by about 15 µg, on average, through the end of 1998. This corresponds to an average reduction in measured dust concentration of about 0.02 mg/m^3 for a 480-minute dust sample. Individual dust concentration measurements, however, were reduced by up to 0.14 mg/m^3 (corresponding to a 100-µg weight gain measured for the control filter) or increased by up to 0.04 mg/m^3 (corresponding to a 30-µg weight loss for the control filter).

Variability in unexposed filter weight gain measurements, as expressed by the standard deviation of 24.6 µg, consists of three components: (1) random weighing errors; (2) spurious but real changes in weight, such as might be due to contamination or outgassing from the plastic filter cassette onto the filter capsule; and (3) effects of any changes in laboratory conditions between the first and second weighings. Each of these three effects also contributes to uncertainty in the amount of coal mine dust accumulated on an exposed filter.

MSHA's purpose in using unexposed control filters to adjust weight gains measured for exposed filters is to eliminate the second and third of these components as sources of measurement uncertainty for the exposed filters. Unfortunately, the control filter adjustment cannot eliminate the first component, comprised of random weighing errors. To the contrary, making the adjustment based on a single control filter doubles the number of weighings required to establish weight gain for an exposed filter. This increases (by a factor of $\sqrt{2}$) uncertainty due to the random error potentially associated with each weighing. Therefore, there is a tradeoff in applying the control filter adjustment: the adjustment improves accuracy only if it succeeds in reducing uncertainty due to changes in laboratory conditions and spurious changes in filter weight by an amount greater than the increase in uncertainty resulting from the additional weighings required.

Estimates representing the first component (*i.e.*, the standard deviation of random errors in measuring the change in weight of a filter capsule) are presented in Appendix C and range from 8.2 µg to 11.3 µg for Tyvek®-supported filters under MSHA's current procedures. Even if the true value were so high as 11.3 µg, then applying the control filter adjustment increased this source of uncertainty to no more than $11.3 \cdot \sqrt{2} = 16.0$ µg. This is still substantially less than the 24.6 µg standard deviation observed in CNTRL_98, which includes, in addition to random weighing errors, the effects of variability in laboratory conditions and spurious but real changes in filter weight (MSHA, Data file: CNTRL_98, 1999). Therefore, so long as the control filter adjustment successfully eliminated these latter sources of variability, its net effect was to reduce uncertainty in the amount of respirable coal mine dust deposited on an exposed filter.

Control filters, however, fully eliminate the effects of day-to-day variation in laboratory conditions and spurious changes in filter weight only if these effects are consistent for all filters weighed on the same days and sent out to the same field location for the same length of time between weighings. In the absence of evidence to the contrary, MSHA and NIOSH consider this to be a reasonable assumption in the case of laboratory effects: any systematic differences in laboratory conditions between the dates of initial and final weighing should have essentially the same effect on weights recorded for unexposed filter capsules as for exposed filter capsules.

The remaining component of uncertainty, resulting from spurious but real weight changes such as might be caused by outgassing or contamination, is eliminated by the control filter adjustment only to the extent that such effects are consistent for all filters pre-weighed on the same day, sent out to the same field location, and then post-weighed on the same day. MSHA checked this assumption for currently approved filter capsules—*i.e.*, those employing Tyvek® support pads—using a body of control filter data being placed into the public record (MSHA, Data file: NHSCP_99, 1999).

The NHSCP_99 dataset consists of 108 "batches" in which several control filter capsules were first weighed on the same day, taken to the same mine site (but left unexposed), and then all weighed again on the same day in 1999. For example, a batch of six capsules may have been initially weighed on December 19, 1997, left unexposed during a mine visit on February 23, 1999, and then weighed for the second time on March 2, 1999. The NHSCP_99 data set contains information on a total of 564 filter capsules, divided into 108 such batches so that, on average, there were about five unexposed filter capsules per batch. The time interval between initial and final weighings averaged 335 days and ranged from 136 to 694 days. Closely matching results from CNTRL_98, the overall mean weight gain recorded for these unexposed filter capsules was about 14 µg, and the overall standard deviation was about 25 µg.

If changes in weight are indeed consistent for control filters subjected to similar handling and aging effects, then variability in weight gains within batches should not significantly exceed variability attributable to random weighing errors alone. MSHA's statistical analysis of NHSCP_99, however, indicated that variability in weight gains within batches was significantly greater than what can be attributed to random weighing errors under current processing procedures (Kogut, *et al.*, 1999). MSHA's estimate of the standard deviation of weight gains measured for unexposed filters within batches was 19.8 µg. This suggests that, for filter capsules employing Tyvek® support pads, the effects on weight gain of handling, aging, and/or environment may not be uniform—even when the filter capsules are treated similarly.

MSHA then performed a field experiment to determine if modifying the filter capsule would reduce variability due to spurious changes in weight (Kogut, *et al.*, 1999). In this experiment, 300 unexposed filter capsules employing the standard Tyvek® support pad were compared with a matched set of 300 unexposed modified capsules employing a stainless steel support pad (MSHA, Data file: MFSC.xls, 1999). Ninety-nine different MSHA inspectors used three of each type of filter capsule as controls during coal mine dust inspections at 100 different MMUs in 100 different mines. All six unexposed capsules used in an inspection were carried and handled by the inspector in the same way as during routine dust inspections. Also in accordance with MSHA's normal practice, all filter capsules in the batch used for an inspection were pre- and

post-weighed on the same pair of days at MSHA's Respirable Dust Weighing Laboratory.

MSHA's statistical analysis of the MFCS data indicated that substituting a stainless steel support pad for the Tyvek® support pad currently in use, in both exposed and unexposed filter capsules, could significantly improve measurement accuracy. This modification reduced the standard deviation of weight gains measured for unexposed filters within batches to 11.6 µg.

MSHA and NIOSH would welcome further statistical analysis of the datasets being placed into the public record with this notice. The Agencies would also welcome suggestions on how MSHA might further modify its analytical procedures to reduce uncertainty in the amount of dust deposited on an individual filter.

2. Verification of Method Accuracy

NIOSH's first independent analysis of MSHA's sampling and analytical method involved MSHA's 1995 field study data.[21] These data incorporated certain improvements that NIOSH had proposed for MSHA's sampling and analytical method. As described elsewhere in this notice, these improvements were later adopted for all MSHA inspector samples. From these data, NIOSH determined, with 95-percent confidence, that the true CV_{total} for MSHA's proposed sampling and analytical method was less than the target maximum value of 12.8 percent for dust concentrations of 0.2 mg/m³ or greater (Wagner, 1995). This demonstrated that MSHA's sampling and analytical method for collecting and processing single full-shift samples would meet the NIOSH Accuracy Criterion whenever the true dust concentration was at least 0.2 mg/m³.

In the same report NIOSH also applied an indirect approach for assessing the accuracy of MSHA's sampling and analytical method. The indirect approach involved combining separate estimates of weighing imprecision, pump-related variability, and variability associated with physical differences between individual sampler units. This indirect approach also indicated that MSHA's sampling and analytical method would meet the NIOSH Accuracy Criterion at concentrations greater than or equal to 0.2 mg/m³, thereby corroborating the analysis of MSHA's field data.

As discussed above, MSHA later obtained data suggesting that filter capsules containing Tyvek® backup pads sometimes exhibit spurious changes in weight. Although the changes observed were relatively small, compared to weight gains required for MSHA's noncompliance determinations, this led MSHA to begin using unexposed control filters in its enforcement program. As explained in Appendices A and B, the use of a control filter adjustment eliminates systematic errors due to such effects, but also affects the precision of a single, full-shift measurement. Consequently, NIOSH reassessed the accuracy of MSHA's sampling and analytical method, taking into account the effects of using a control filter capsule (Wagner, May 28, 1997). After accounting for the effects of control filter capsules on both bias and precision, NIOSH concluded, based on both its direct and indirect approaches, that a single, full-shift measurement will meet the NIOSH Accuracy Criterion at true dust concentrations greater than or equal to 0.3 mg/m³.

As part of its ongoing commitment to improving the sampling and analytical method, MSHA recently compiled data showing that weight stability of the filter capsule would be improved by substituting stainless steel support grids for the Tyvek® support pads currently in use (Kogut *et al.*, 1999). Therefore, NIOSH again reassessed the accuracy of MSHA's method, this time taking into account the proposal to switch to stainless steel support grids (Grayson, 1999a; 1999b). After accounting for the effects of switching to stainless steel support grids, and of using unexposed control filters to adjust for any potential systematic errors that might remain, NIOSH once again concluded that a single, full-shift measurement will meet the NIOSH Accuracy Criterion at true dust concentrations greater than or equal to 0.3 mg/m³.

One previous commenter stated that the Secretaries "have not addressed the 'accuracy' of a single sample collected from an environment where the concentration is unknown." The purpose of any measurement process is to produce an estimate of an unknown quantity. The Secretaries have concluded that MSHA's sampling and analytical method for inspectors meets the NIOSH Accuracy Criterion for true concentrations at or above 0.3 mg/m³, but it is also possible to calculate the range of measurements for which the Accuracy Criterion is fulfilled. Since CV_{total} increases at the lower concentrations, all that is necessary is to determine the lowest measurement at which the NIOSH Accuracy Criterion is met. This is done as follows. If the true concentration exactly equaled the lowest concentration at which MSHA's sampling and analytical method meets the Accuracy Criterion (i.e., 0.3 mg/m³), then no more than 5% of single, full-shift measurements would be expected to exceed 0.36 mg/m³ (Wagner, May 28, 1997). Conversely, if a measurement equals or exceeds 0.36 mg/m³, it can be inferred, with at least 95% confidence, that the true dust concentration equals or exceeds 0.3 mg/m³ (Wagner, May 28, 1997). Consequently, the Secretaries conclude that MSHA's improved sampling and analytical method satisfies the NIOSH Accuracy Criterion whenever a single, full-shift measurement is at or above 0.36 mg/m³.

The Secretaries recognize that future technological improvements in MSHA's sampling and analytical method may reduce CV_{total} below its current value. Also, as additional data are accumulated, updated estimates of CV_{total} may become available. However, so long as the method remains unbiased and CV_{total} remains below 12.8 percent, at a 95-percent confidence level, the sampling and analytical method will continue to meet the NIOSH Accuracy Criterion, and the present finding will continue to be valid.

XI. Proposed New Finding and Proposed Rescission of the 1972 Joint Finding

The Secretaries have concluded that sufficient data exist for determining the uncertainty associated with a single, full-shift measurement; rigorous requirements are in place, as specified by 30 CFR parts 70, 71, and 90, to ensure the validity of a respirable coal mine dust sample; and valid statistical techniques were used to determine that MSHA's improved dust sampling and analytical method meets the NIOSH Accuracy Criterion. For these reasons the Secretaries would find that a single, full-shift measurement at or above 0.36 mg/m³ will accurately represent atmospheric conditions to which a miner is exposed during such shift. Therefore, pursuant to section 202(f) (30 U.S.C. 842(f)) and in accordance with section 101 (30 U.S.C. 811) of the Mine Act, the 1972 joint notice of finding would be rescinded.

XII. Feasibility Issues

Section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)) requires the Secretary of Labor to set standards which most adequately assure, on the basis of the best available evidence, that

[21] With its field study, MSHA exceeded the usual requirements for determining the accuracy of a sampling and analytical method, as described by NIOSH (Kennedy, *et al.*, 1995) and the European Community (European Standard No. EN 482, 1994). Both of these require only a laboratory determination of method accuracy.

no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to such hazards dealt with by such standard over his or her working lifetime. Standards promulgated under this section must be based upon research, demonstrations, experiments, and such other information as may be appropriate. MSHA, in setting health standards, is required to achieve the highest degree of health and safety protection for the miner, and must consider the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

In relation to promulgating health standards, the legislative history of the Mine Act states that:

> * * * This section further provides that "other considerations" in the setting of health standards are "the latest available scientific data in this field, the feasibility of the standards, and experience gained under this and other health and safety laws." While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated.
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> * * * * *
>
> Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of section 102(a)(5)(A), the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure.

S. Rep. No. 95–181, at 21–22 (1977), reprinted in 1977 U.S.C.C.A.N. 3421–22.

In *American Textile Manufacturers' Institute* v. *Donovan*, 452 U.S. 490, 508–509 (1981), the Supreme Court defined the word "feasible" as "capable of being done, executed, or effected." The Court further stated, however, that a standard would not be considered economically feasible if an entire industry's competitive structure were threatened. In promulgating standards, hard and precise predictions from agencies regarding feasibility are not required.

A. Technological Feasibility

MSHA, in consultation with NIOSH, believes that compliance determination based on an inspector, single, full-shift exposure measurement would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA*, (AISI–II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA*, (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dep't., AFL–CIO* v. *Hodgson*, 499 F.2d 467, 478 (D.C. Cir. 1974).

This NPRM would not be a technology-forcing standard. The single, full-shift sample rule when promulgated predominantly affects MSHA's procedures since MSHA alone conducts inspector sampling. After the promulgation of single, full-shift sample rule, coal mine operators would continue to comply with the existing respirable dust concentration limit of 2.0 mg/m^3. Such compliance with the applicable standard has proven feasible over the years. Furthermore, single, full-shift samples were found to be technologically feasible during the prior effective Interim Single-Sample Enforcement Policy (ISSEP), March 2, 1998 through September 4, 1998 (see section V.D. of the preamble detailing the ISSEP).

B. Economic Feasibility

MSHA, in consultation with NIOSH, believes that the single full shift sample (SFSS) rule would be economically feasible for the coal mining industry. The coal mining industry would incur costs of approximately $1.8 million yearly to comply with the proposed SFSS rule. Coal mine operators would also incur approximately an additional $0.2 million yearly in penalty costs associated with the additional citations arising from the proposed SFSS rule. That the total $2.0 million borne yearly by the coal mining industry as a result of the proposed SFSS rule is well less than 1 percent (about 0.01 percent) of the industry's yearly revenues of $19.8 billion provides convincing evidence that the proposed rule is economically feasible.

Economic feasibility does not guarantee the continued existence of individual employers—"A standard is not infeasible simply because it is financially burdensome, * * * or even because it threatens the survival of some companies within an industry:" *United Steelworkers of America* v. *Marshall*, 647 F.22d 1189, 1265 (D.C. Cir. 1981).

This rule would not threaten the industry's competitive structure. After the promulgation of single, full-shift sample rule the Agencies expect that coal mine operators would continue to comply with the existing respirable dust concentration limit of 2.0 mg/m^3. Single, full-shift samples were found to be economically feasible during two prior effective periods—July 15, 1991 through December 31, 1993, and March 2, 1998 through September 4, 1998—when noncompliance determinations were based on the results of MSHA inspector single samples. No disruption in mining activity was attributed to MSHA's single-sample enforcement policy during either of these periods.

XIII. Regulatory Impact Analysis

MSHA's improved program to eliminate overexposures on each and every shift includes (1) the simultaneous implementation of the use of inspector single, full-shift respirable coal mine dust samples to identify overexposures more effectively in both underground and surface coal mines (single, full-shift sample), and (2) in underground coal mines, verified ventilation plans to maintain miners' respirable dust exposure at or below the applicable standard on each and every shift (plan verification). The plan verification NPRM is published elsewhere in today's **Federal Register**. This part of the preamble reviews several impact analyses which the Agencies are required to provide in connection with the single, full-shift sample proposed rulemaking. Since single, full-shift sample and plan verification are complementary NPRMs intended to be promulgated at the same time, the detailed presentation of assumptions and estimates for each are available in the same Preliminary Regulatory Economic Analysis (PREA)(MSHA, December 1999).

Assumptions for single, full-shift sample requirements are based upon information provided by MSHA technical personnel. We encourage the mining community to provide detailed comments in this regard to ensure that single, full-shift sample cost assumptions and estimates are as accurate as possible.

A. Costs and Benefits: Executive Order 12866

In accordance with Executive Order 12866, the Agencies have prepared a detailed PREA of the estimated costs and benefits associated with the proposed rule for the underground and surface coal mining sectors. We have fulfilled this requirement for the proposed rule and determined that this rulemaking is not a significant regulatory action. The key findings of the PREA are summarized below.

1. Compliance Costs

The Agencies estimate that the cost of this NPRM would be approximately $1.8 million annually, of which all but

about $5,200 would be borne by underground coal mine operators (the residual $5,200 to be borne by surface coal mine operators). Table XIII–1 summarizes the estimated compliance costs by provision, for underground and surface coal mines, for the following three mine size categories: (1) those employing fewer than 20 workers; (2) those employing between 20 and 500 workers; and (3) those employing more than 500 workers.

The compliance costs arising from the single, full-shift sample NPRM would occur as a result of a slight increase in the number of MSHA inspector citations issued to underground and surface coal mine operators due to the determination of noncompliance with the respirable coal mine dust standard being based on inspector single, full-shift samples rather than the average of multiple inspector exposure measurements. The additional citations due to single, full-shift sample would require mine operators to undertake the following actions and to incur associated compliance costs: take corrective action(s) in order to get back into compliance with the applicable respirable coal mine dust standard; perform abatement sampling; complete dust data cards; send abatement samples to MSHA; post abatement sample results; write respirable dust plans; and post or give a copy of dust plans.

In addition to these estimated compliance costs, mine operators would incur yearly penalty cost increases of about $0.2 million. Penalty costs conventionally are not considered to be a cost of a rule (and, in fact, are clearly not a compliance cost) but merely a transfer payment from a party violating a rule to the government. Therefore, the penalty costs are not included as part of the compliance costs of the proposed SFSS rule noted above. These penalty costs are relevant, however, in determining the economic feasibility of the proposed SFSS rule.

The derivation of the above cost figures are presented in Chapter IV of the PREA that accompanies this rule.

TABLE XIII–1.—SUMMARY OF COMPLIANCE COSTS FOR SINGLE, FULL-SHIFT SAMPLE PROPOSED RULE

Estimated costs by category	< 20 emp.	> 20 emp. < 500	> 500 emp.	Total
UNDERGROUND COAL MINES				
Corrective Actions	$328,488	$1,266,767	$19,527	$1,614,782
Abatement Sampling	38,658	128,264	1,129	168,051
Dust Data Cards	717	2,588	37	3,343
Send Sample to MSHA	1,200	4,331	62	5,593
Post Sample Results	241	865	12	1,117
Write Dust Plan	151	302	0	453
Post or Give Dust Plan	3	5	0	[illegible]
Total Underground	369,457	1,403,122	20,769	1,793,348
SURFACE COAL MINES				
Corrective Actions	366	2,194	0	2,560
Abatement Sampling	594	1,394	0	1,989
Dust Data Cards	3	13	0	17
Send Sample to MSHA	6	22	0	28
Post Sample Results	4	8	0	12
Write Dust Plan	151	453	0	604
Post or Give Dust Plan	3	8	0	10
Total Underground	1,127	4,094	0	5,220
UNDERGROUND AND SURFACE COAL MINES				
Corrective Actions	328,854	1,268,961	19,527	1,617,342
Abatement Sampling	39,252	129,658	1,129	170,040
Dust Data Cards	720	2,602	37	1,282
Send Sample to MSHA	1,205	4,353	62	5,621
Post Sample Results	245	873	12	1,129
Write Dust Plan	302	756	0	1,058
Post or Give Dust Plan	5	13	0	18
Grand Total	370,584	1,407,215	20,769	1,798,568

* Totals may vary due to rounding.

2. Benefits

Occupational exposure to excessive levels of respirable coal mine dust imposes significant health risks. These include the following adverse health outcomes: simple coal workers' pneumoconiosis (simple CWP), progressive massive fibrosis (PMF), silicosis, and chronic obstructive pulmonary disease (COPD) (e.g., asthma, chronic bronchitis, emphysema) (see the Health Effects section for details). Cumulative exposure to respirable coal mine dust is the main determinant in the development of both simple CWP and PMF although other factors such as the percentage of quartz in the respirable dust and the type of coal also affect the risk of miners developing simple CWP and PMF (Jacobsen, *et al.*, 1977; Hurley, *et al.*, 1987; Kuempel, *et al.*, 1995; Attfield and Morring, 1992; Attfield and Seixas, 1995). The true magnitude of occupationally induced simple CWP and PMF among today's coal miners is unknown, although prevalence estimates are available from various surveillance systems. For example, from 1970 to 1995, the prevalence of simple CWP and PMF

among miners, based on the operator sponsored x-ray program, dropped from 11 percent to 3 percent (MSHA, Internal Chart, 1998). Also, later rounds of the National Study for Coal Worker's Pneumoconiosis consistently demonstrated, through prevalence rates in the range of 2.9–3.9 percent, that simple CWP and PMF have not been eliminated.

Through the joint promulgation of single, full-shift sample and plan verification rules, miners would be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust to no more than the applicable standard on each and every shift.[22] Reducing respirable coal mine dust concentrations over a 45-year occupational lifetime to no more than the applicable standard on just that percentage of shifts currently showing an excess would lower the cumulative exposure, thereby significantly reducing the risk of both simple CWP and PMF among miners. We have estimated the health benefits of the two rules arising from the elimination of overexposures on all shifts at only those MMUs exhibiting a pattern of recurrent overexposures on individual shifts.

Based on 1999 operator data, there were 704 MMUs (out of 1,251) at which regular (not abatement) designated occupational (D.O.) samples exceeded the applicable standard on at least two of the sampling shifts reported in 1999 (MSHA, Data file: Operator.ZIP).[23] MSHA considers these 704 MMUs, representing more than one-half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures. Based on valid D.O. operator samples collected on a total of 18,569 shifts at these 704 MMUs, the applicable standard was exceeded on about on 3,977 of these shifts or 21.4 percent.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures),[24] bringing dust concentrations down to no more than the applicable standard on each and every production shift would reduce D.O. exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 21 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the D.O. level, by 0.22 mg-yr/m^3 over the course of a working year (i.e., 21 percent of shifts in one year times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected D.O. miner would, on average, amount to a reduction in accumulated exposure of approximately 10 mg-yr/m^3 (i.e., 45 years times 0.22 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples currently submitted to MSHA tend to under-represent either the frequency or magnitude (or both) of individual full-shift excursions above the applicable standard, then eliminating such excursions would provide a lifetime reduction of even more than 10 mg-yr/m^3 for each exposed miner.

When the dust concentration measured for the D.O. exceeds the applicable standard, measurements for at least some of the other miners working in the same MMU may also exceed the standard on the same shift, though usually by a smaller amount. Furthermore, although the D.O. represents the occupation most likely to receive the highest exposure, other miners working in the same MMU may be exposed to even higher concentrations than the D.O. on some shifts. Therefore, in addition to the affected D.O. miners, there is a population of other affected miners who are also expected to experience a significant reduction in risk as a result of eliminating overexposures on their individual shifts.

To estimate how many miners other than the D.O. would be substantially affected, MSHA examined the results from all valid dust samples collected by MSHA inspectors in underground MMUs during 1999 (MSHA, Data file: Inspctor.zip). Within each MMU, the inspector typically takes one full-shift sample on the D.O. and, on the same shift, four or more additional samples representing other occupations. On 896 shifts, at a total of 450 distinct MMUs, the D.O. measurement exceeded the applicable standard, and there were at least three valid measurements for other occupations available for comparison. There was an average of 1.2 non-D.O. measurements in excess of the standard on shifts for which the D.O. measurement exceeded the standard.[25] For non-D.O. measurements that exceeded the standard on the same shift as a D.O. measurement, the mean excess above the standard was approximately (0.8 mg/m^3).[26]

Combining these results with the 21-percent rate of excessive exposures observed for the D.O. on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1.2 other miners, in addition to the one classified as D.O., is currently overexposed on at least 21 percent of all production shifts. Over the course of a working year, the reduction in exposure expected for these affected non-designated occupational (N.D.O.) miners, is 0.17 mg-yr/m^3 (i.e., 21 percent of one year, times 0.8 mg/m^3).

The expected lifetime for all American males, conditional on their having reached 20 years of age, is 73 years (U.S. Census March 1997, Table 18; U.S. Census March 1997, Table 119).[27] On average, the best estimate of the lifetime benefit to exposed miners is expressed by the reduction in prevalence of disease at age 73. To project the reduction in risk of simple CWP and PMF among affected D.O.s and N.D.O.s, MSHA applied its best estimate of dose response to a hypothetical cohort of underground coal miners who work on an MMU exhibiting a pattern of recurrent overexposure, and who, on average, begin working at age 20, retire at age 65, and live to age 73. Strengths and weaknesses of various epidemiological studies were presented in the Health Effects section supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material impairment with respect to simple CWP and PMF. Two of the distinguishing qualities of Attfield and Seixas (1995) are the dose-response relationship over a miner's lifetime and the fact that these data best represent the recent conditions experienced by miners in the U.S. Using this relationship, it is possible to evaluate the impact on risk of both simple CWP and PMF expected from

[22] For details, see the Quantitative Risk Assessment and Significance of Risk sections.

[23] If a different definition of "exhibiting a recurrent pattern of overexposures" were used in these analyses the estimate of the reduction in risk and associated benefits would be different. For example, if the criterion were that four or more D.O. bimonthly exposure measurements exceeded the applicable standard then, with 95% confidence, at least 20 shifts would be overexposures in a year of 384 shifts. Using the four as the criterion, this would reduce the population for whom we are estimating benefits, and the estimated number of prevented cases would decrease by 19%.

[24] MSHA estimates an MMU average of 384 production shifts per year. Since miner operators are required to submit five valid designated operator (D.O.) samples to MSHA every two months, there would typically be 30 valid D.O. samples–for each MMU that was in operation for the full year. If dust concentrations on two or more of the sampled shifts exceed the standard, then it follows, at a 95-percent confidence level, that the standard was exceeded on at least six shifts over the full year.

[25] With 95-percent confidence, on shifts for which the D.O. measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 1.11.

[26] With 95-percent confidence, the mean excess is at least 0.72 mg/m^3

[27] Since females have a greater life expectancy than males, the expected benefits would increase if the proportion of female miners increases substantially in the future.

bringing respirable coal mine dust concentrations down to or below the applicable standard on every shift. This is the only contemporary epidemiological study of simple CWP and PMF providing such a relationship.

To estimate the benefits (i.e., number of cases of simple CWP and PMF prevented) of single, full-shift sample and plan verification rules combined, we applied these estimates of risk reduction to the estimated sub-populations of affected miners. As of February 12, 1999, there were 984 producing MMUs;[28] applying the pattern of recurrent overexposures among MMUs as identified in the Quantitative Risk Assessment, 56 percent, by mine size, we estimate there to be 552 affected MMUs (MSHA Table, November 18, 1999; MSHA Table, February 12, 1999). Based on MSHA's experience, we would expect one D.O. and seven N.D.O.s for each shift of production at each MMU. Therefore, among underground coal miners working on an MMU, we estimate 12.5% to be designated occupational miners and 87.5% to be non-designated occupational miners.

The benefits that would accrue to coal miners exposed to respirable coal mine dust and to mine operators, and ultimately to society at large, are substantial and take a number of forms. These proposed rules would reduce a significant health risk to underground coal miners, reducing the potential for illnesses and premature death and their attendant costs to miners, their employers, their families, and society.

The joint promulgation of these rules should realize a positive economic impact on the Department of Labor's (DOL's) Black Lung Program and relatedly on mine operators. The Black Lung Program compensates eligible miners and their survivors under the Black Lung Benefits Act. This program provides monthly payments and medical benefits (diagnostic and treatment) to miners who are found to be totally disabled by black lung disease, including cases of PMF and simple CWP. In 1986, DOL's Employment Standards Administration reported that 12% of approved cases of Black Lung Program were identified as cases of PMF based on chest radiographs, while sixty-four percent had simple CWP based on chest radiographs (ESA, 1986). For miners who stopped working in coal mines after 1969 and for whom the DOL can establish that the miner worked for the same operator for at least one calendar year, and that miner had at least 125 working days in that year, that operator is financially responsible for the miner's Black Lung benefit payment. If a responsible operator cannot be identified for an eligible miner, benefit payments are made by the Black Lung Disability Trust Fund. To the extent that these rules reduce overexposures to respirable coal mine dust, there should be fewer Black Lung Program cases. Therefore, over time, the associated financial outlay by responsible operators through either insurance premiums or direct payments of Black Lung benefits should be lower than would otherwise occur. The financial impact could be substantial (see discussion in Chapter IV, of the PREA). In 1980, the Black Lung Program estimated average lifetime payouts for responsible operators for married miners of about $248,700 dollars, assuming a 7-percent annual increase (ESA, 1980). In fiscal year 1999, 443 claims for Black Lung Benefits were accepted as new cases; sixty-six percent (293) are the financial responsibility of coal mine operators (Peed, 2000).

The most tangible benefit of these rules is the number of cases of simple CWP and PMF which would be prevented. Table XIII–2 presents the estimated number of cases of simple CWP and PMF that would be prevented among the 56 percent of MMUs currently exhibiting a pattern of recurrent overexposures. For all categories of simple CWP and PMF combined, we estimate 37 fewer of these cases among affected miners, than would otherwise occur without the promulgation of single, full-shift sample and plan verification rules. Eleven of these cases would be the most severe form of coal miners pneumoconiosis, PMF, and as such these cases could be interpreted as prevented premature deaths due to occupational exposure to respirable coal mine dust. Since simple CWP predisposes the development of PMF, it is important that it also be prevented (Balaan, *et al.*, 1993).

As discussed in the Significance of Risk sections, MSHA believes this QRA for simple CWP and PMF strikes a reasonable balance based on available data. Yet, our estimates likely understate the true impact of these rules since our analyses are restricted to a sub-population of affected miners, those working at MMUs exhibiting a pattern of recurrent overexposures, not the broader population of coal miners who would benefit from these rules. Furthermore, to estimate the average overexposure which would be prevented, MSHA had to use data collected for compliance purposes, which may not represent typical environmental conditions and the associated respirable coal mine dust exposure in underground coal mines.

The degree to which the exposure level of respirable coal mine dust on sampling shifts may not be representative of typical exposure levels is affected by the following factors:

(1) There exists a positive relationship between coal production and generation of respirable coal mine dust;

(2) Current sampling procedures permit sampling measurements to be taken at the mid-range of the distribution of the level of production—sampling measurements must be taken on shifts with production at least 60% of the average production during the last 30 days and at least 50% of average production for the last valid set of bimonthly samples for inspector and operator samples, respectively;

(3) Miners have reported and MSHA data have demonstrated lower levels of production on sampling shifts versus non-sampling shifts (MSHA, September 1993);

(4) On some sampling shifts, miners have reported that more engineering controls may be used than on other shifts, thus reducing the measured amount of respirable coal mine dust;

(5) MSHA analyses have demonstrated, even when controlling for production, in mines with fewer than 125 employees, on continuous mining MMUs, respirable coal mine dust exposures were much higher during the unannounced Spot Inspection Program (SIP) sampling shifts than on shifts operators sampled—this is consistent with the effect of increasing engineering controls on shifts during which bimonthly samples are conducted compared to the level of use of engineering controls used on shifts for which the operator does not expect sampling to be conducted given the same production level (Denk, 1993);

(6) Across mine size, designated area samples have been found to be larger for shifts on which unannounced compliance sampling occurred compared to operator sampling shifts—in one study they differed by at least a factor of 40 percent in large mines and 100 percent in the smallest mines (Ibid., pp. 211–212); and

(7) Existing MSHA technical information indicates that some reduction in production levels occurs during some sampling periods on longwalls (Denk, 1990).

Therefore, at a bare minimum, over an occupational lifetime (45-years) for miners who live to age 73 who worked

[28] Nine hundred and eighty-four refers to the number of MMUs operating on February 12, 1999. The 1,443 number mentioned previously refers to all MMUs in operation at any time in 1999.

at MMUs exhibiting a pattern of recurrent overexposures, we estimate at least 37 fewer cases of pneumoconiosis (simple CWP and PMF) than would otherwise occur without the promulgation of these rules.

Our current quantitative estimate of benefits demonstrates and qualitative discussions punctuate that these rules would have a significant positive impact on the health of our nation's coal miners when promulgated. Yet, due to the limitations in these data, we believe our benefit estimate may understate the number of cases of simple CWP and PMF which would be prevented over an occupational lifetime.

MSHA believes that cases of simple CWP and PMF would also be prevented among other types of underground miners, such as roofbolters working in designated areas (D.A.). Based on MSHA experience it is reasonable to expect roofbolter D.A.'s pattern of overexposures for respirable coal mine dust to be similar to that for miners with the highest exposure on a MMU. If so, we would expect 13 additional cases of simple CWP and PMF to be prevented. Affected D.A.s include D.A.s who work at the 56 percent of the MMUs under consideration who are exposed to dust concentrations similar to the D.O., over a 45-year occupational lifetime (MSHA Table, November 1999; MSHA Table, February 1999).

Also, it is reasonable to expect surface miners' health to be further protected by the promulgation of the SFSS rule alone since it would identify and require resolution of overexposures not previously identified and may thereby lower some miners' cumulative exposure to respirable coal mine dust. Furthermore, to the extent that cumulative exposure to respirable coal mine dust affects other adverse health outcomes, such as silicosis and chronic obstructive pulmonary disease, it is reasonable to expect a reduction in the number of cases and/or in the severity of cases for these diseases among surface and underground coal miners.

Although the effect cannot readily be quantified, to the extent that these rules would also reduce the cumulative exposure to respirable coal mine dust among some miners working in those MMUs currently not exhibiting overexposures, it is reasonable to expect that we would observe an incremental benefit among that sub-population of coal miners. Moreover, to the extent that the cumulative dust exposure is reduced for miners working in the "outby" areas, away from the mining face (i.e., MMU) where coal is extracted from the coal seam, they too may realize occupational health benefits due to the simultaneous promulgation of these proposals. Therefore, our best estimate of 37 prevented cases of simple CWP and PMF, combined, among all affected miners likely underestimates the true benefit realized by the coal mining workforce through the reduction of overexposures to no more than the applicable standard on each shift.

Clearly, PMF is associated with premature death. Since simple CWP may evolve to PMF, even after occupational exposure has ceased, it has the propensity to become a life-threatening illness. By reducing the total number of simple CWP and PMF cases among affected miners from 259 to 222, over 45 years,[29] these standards are projected to prevent an average of four cases of simple CWP and PMF for each 5-year interval.

For all those reasons previously identified, MSHA believes that its estimate of 37 prevented cases of simple CWP and PMF over a 45 year working life understates the true number of cases of simple CWP and PMF which would be prevented. This belief is further supported by the fact that during the past few years, the Black Lung Benefits Program has been approving roughly 400 claims each year. These claims come from individuals whose exposure for the most part came after the current standard of 2.0 was established in 1972. Thus, we believe the consistent identification, from year to year, of hundreds of new cases of simple CWP and PMF per year into the Black Lung Benefits Program supports our belief that the true lifetime occupational health benefits of the proposed rules are higher than we have estimated. Even assuming that the number of new claims would decline in future years simply due to the continuing decline in the number of coal miners, MSHA expects that assuring that future exposures are maintained below the 2.0 exposure limit will reduce the number of new cases of simple CWP and PMF by considerably more than 1 per year.

In addition to the prevention of simple CWP and PMF, each of the 8,640 affected miners at MMUs exhibiting a pattern of recurrent overexposures will realize some health benefit by limiting his or her cumulative exposure to respirable coal mine dust to no more than the applicable standard on each and every shift.

The expected number of prevented cases of simple CWP and PMF would not be realized for some time even after the pattern of overexposures has been minimized or eliminated. This is due, in part, to the latency (that is, the disease does not develop immediately after exposure) of the development of simple CWP and PMF and the pre-existing occupational exposure histories of members of the current coal mining workforce. Our estimated benefit is based on the estimated number of underground coal miners working at the mine face, 17,280. If the size of this workforce significantly changed in the future and the projected pattern of prevented overexposures remained the same, the number of cases of prevented simple CWP and PMF would need to be adjusted to account for the change.

Finally, even standing alone, without simultaneously requiring that the effectiveness of underground mine ventilation plans be verified (i.e., the Plan Verification NPRM), the proposed standard allowing MSHA to use single, full-shift samples to identify overexposures requiring corrective action would provide miners with health benefits.[30] Both the prospect of being cited for overexposure and the actual issuance of additional citations due to this rule would compel mine operators to be more attentive to the level of respirable dust in their mines. Therefore, it is reasonable to expect, over time, a further decline in the number of shifts during which the concentration of respirable coal mine dust is at or above the applicable standard. Thus, implementation of the single, full-shift sample strategy will, in and of itself, on average, lower miners' cumulative exposure to respirable coal mine dust. Since cumulative exposure to respirable coal mine dust is the main determinant in the development of both simple CWP and PMF, the Agencies are confident that the use of single, full-shift samples, by themselves, even without the help of a verified dust control plan, would result in better health protection to miners.

Various data, assumptions and caveats were used to conduct the quantitative risk assessment, significance of risk discussion, and benefits analyses. Therefore, we request any information which would enable us to conduct more accurate analyses of the estimated health benefits of the single, full-shift sample rule and plan verification rule, both individually, and in combination.

[29] Applying the estimated prevalence rate of 3.0 percent to the estimated population of affected miners (8,640) results in an estimate of 259 cases of simple CWP and PMF.

[30] See detailed discussion in the Significance of Risk section.

TABLE XIII–2.—OVER A WORKING LIFETIME AMONG AFFECTED MINERS, ESTIMATED NUMBER OF CASES OF CWP [A] AND PMF [B] PREVENTED DUE TO THE IMPLEMENTATION OF SINGLE-SAMPLE AND PLAN VERIFICATION

Type of miner	Affected miners, n=	Simple CWP categories 1, 2, 3 or PMF		Simple CWP categories 2 or 3 or PMF		PMF	
		Reduction in risk [c]	Prevented cases, n=	Reduction in risk [c]	Prevented cases, n=	Reduction in risk [c]	Prevented cases, n=
Affected Designated Occupational Miners [d]	1,080	18.0/1,000	19.4	9.8/1,000	10.6	5/1,000	5.5
Affected Non-Designated Occupational Miners [e]	7,560	2.3/1,000	17.4	1.3/1,000	9.8	1/1,000	5.3
Total ..	8,640	na	37	na	20	na	11

[a] Simple CWP: simple coal workers' pneumoconiosis.
[b] PMF: progressive massive fibrosis.
[c] Reduction in risk per 1,000 affected miners, over a 45-year working lifetime.
[d] Affected Designated Occupation (D.O.) Miners: includes all miners who work at the 56-percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the D.O., over a 45-year occupational lifetime.
[e] Affected Non-Designated Occupation (Non-D.O.) Miners: includes all underground faceworkers under consideration who are not classified as the D.O.

B. Regulatory Flexibility Certification and Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires MSHA and NIOSH to conduct an analysis of the effects of the single, full-shift sample rule on small entities. That analysis is summarized here; a copy of the full analysis is included in Chapter V of the Agencies' PREA in support of the proposed rule. The Agencies encourage the mining community to provide comments on this analysis.

The Small Business Administration generally considers a small entity in the mining industry to be one with 500 or fewer workers. MSHA has traditionally defined a small mine to be one with fewer than 20 workers, and has focused special attention on the problems experienced by such mines in implementing safety and health rules. Accordingly, the Agencies have separately analyzed the impact of the joint notice proposed rule both on mines with 500 or fewer workers and on those with fewer than 20 workers.

Pursuant to the Regulatory Flexibility Act, MSHA must determine whether the costs of the joint notice proposed rule constitute a "significant impact on a substantial number of small entities." Pursuant to the Regulatory Flexibility Act, if an Agency determines that a proposed rule would not have such an impact, it must publish a "certification" to that effect. In such a case, no additional analysis is required (5 U.S.C. § 605). In evaluating whether certification is appropriate, MSHA utilized a "screening test," comparing the costs of the joint notice proposed rule to the revenues of the affected coal sector. If the estimated costs are less than 1 percent of revenues for the affected entities, then the rule is assumed not to have a significant impact on small mine operators.

Table XIII–3 compares, for small underground and surface coal mines (using both MSHA's and SBA's definition), MSHA's estimated total annual compliance costs of the joint notice proposed rule to estimated annual revenues.

TABLE XIII–3.—ESTIMATED YEARLY REVENUES AND COSTS FOR SINGLE, FULL-SHIFT SAMPLE PROPOSED RULE FOR UNDERGROUND AND SURFACE COAL MINES

[dollars in thousands]

Mine size	Estimated yearly costs [a]	Estimated revenues [a]	Costs as percentage of revenues
Underground Coal Mines			
<20	$369.0	$249,418	0.1
≤500 [c]	1,770.5	6,883,339	0.03
Surface Coal Mines			
<20	1.1	498,935	<0.01
≤500	5.2	10,864,156	<0.01

[a] Estimated yearly costs are composed of only annual costs. There are no first year costs or annualized costs in the proposed rule.

[b] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations and Variances, based on 1997 Final MIS data (Quarter 1—Quarter 4), CM441, Cycle 1997/84; and U.S. Department of Energy, Energy Information Administration, *Annual Energy Review 1998*, DOE/EIA–0384(98), July 1999, p. 203.
[c] Includes mines with fewer than 20 employees.

Table XIII–3 shows that under either MSHA's or SBA's definition of a small mine, for underground and/or surface coal mines, the estimated costs would be significantly less than one percent of revenues. As a result, MSHA is certifying that the single, full-shift sample rule for underground and surface coal mines would not have a "significant impact on a substantial number of small entities," and has performed no further analyses.

XIV. Other Statutory Requirements

A. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

B. Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). The proposed SFSS rule has annual burden hours beginning in the first year and recurring every year thereafter. Both underground and surface coal mines have paperwork provisions under the proposed SFSS rule. Underground coal mine operators would incur 2,985 annual burden hours and associated costs of $70,822. Surface coal mine operators would incur 29 annual burden hours and associated costs of about $1,009. These burden hours relate to operators performing abatement sampling, completing dust data cards, mailing samples to MSHA for analysis, writing respirable dust plans, and posting respirable dust plans. Table XIV–1 shows the burden hours and associated costs for each SFSS paperwork provision by mine size for underground and surface mines.

TABLE XIV–1.—SUMMARY OF MINE OPERATORS' ANNUAL PAPERWORK BURDEN HOURS AND COSTS ARISING FROM THE SINGLE, FULL-SHIFT SAMPLE PROPOSED RULE *

Detail	<20 emp.		≥20 emp. ≤500		> 500 emp.		Total	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
UNDERGROUND COAL MINES								
Abatement Sampling	575	$13,872	2,080	$50,181	30	$724	2,685	$64,776
Dust Data Cards	14	716	52	2,589	1	37	67	3,342
Send Samples to MSHA	48	910	173	3,292	2	47	224	4,250
Write Dust Plan	3	149	6	299	0	0	9	448
Post or Give Dust Plan	0.1	2	0.2	4	0	0	0	
Total Underground	640	15,649	2,311	54,364	33	809	2,985	70,822
SURFACE COAL MINES								
Abatement Sampling	5	$121	10	$241	0	$0	15	$362
Dust Data Cards	0.1	6	0.3	12	0	0	0.4	19
Send Samples to MSHA	0.4	8	0.8	16	0	0	1.2	24
Write Dust Plan	3	149	9	448	0	0	12	597
Post or Give Dust Plan	0.1	2	0.3	6	0	0	0.4	7
Total Surface	9	286	20	723	0	0	29	1,009
UNDERGROUND AND SURFACE COAL MINES								
Abatement Sampling	580	$13,993	2,090	$50,422	30	$724	2,700	$65,138
Dust Data Cards	15	722	52	2,602	1	37	68	3,361
Send Samples to MSHA	48	918	174	3,308	2	47	225	4,273
Write Dust Plan	6	299	15	747	0	0	21	1,046
Post or Give Dust Plan	0	4	1	9	0	0	1	13
Grand Total	649	15,935	2,332	57,087	33	809	3,014	73,831

* Totals may vary due to rounding.

MSHA invites public comments and is particularly interested in comments which:

1. Evaluate whether the proposed collection of information (presented here and in MSHA's PREA) is necessary for the proper performance of the functions of MSHA, including whether the information will have practical utility;

2. Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.*, permitting electronic submissions of responses.

Submission

MSHA and NIOSH have submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, OMB New Executive Office Building, 725 17th St., NW, Rm. 10235, Washington, DC 20503, Attn: Desk Officer for MSHA. Submit written comments on the information collection not later than September 5, 2000.

MSHA's paperwork submission summarized above is explained in detail in the PREA. The PREA includes the estimated costs and assumptions for each proposed paperwork requirement related to this proposed rule. A copy of the PREA is available from MSHA. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

C. National Environmental Protection Act

The National Environmental Policy Act (NEPA) of 1969 requires each Federal agency to consider the environmental effects of proposed actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. MSHA has reviewed the proposed standard in accordance with the requirements of the NEPA (42 U.S.C. 4321 *et seq.*), the regulation of the Council on Environmental Quality (40 CFR Part 1500), and the Department of Labor's NEPA procedures (29 CFR Part 11). As a result of this review, MSHA has preliminarily determined that this proposed standard will have no significant environmental impact.

Commenters are encouraged to submit their comments on this determination.

D. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

E. Executive Order 12988: Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, protection of children from environmental health risks and safety risks, MSHA has evaluated the environmental health or safety effects of the proposed rule on children. The Agency has determined that this proposal would not have an adverse impact on children.

G. Executive Order 13084 Consultation and Coordination with Indian Tribal Governments

MSHA certifies that this proposed rule does not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13132 (Federalism)

We have reviewed this rule in accordance with Executive Order 13132 regarding federalism, and have determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

XV. Public Hearings

The Agencies will hold public hearings on the proposed rule. The hearings will be held in Prestonsburg, Kentucky, (Jenny Wiley State Resort Park); Morgantown, West Virginia; and Salt Lake City, Utah. The hearing dates, times, and specific locations will be announced by a separate document in the **Federal Register**. The hearings will be held under Section 101 of the Federal Mine Safety and Health Act of 1977.

Appendix A—The Effects of Averaging Dust Concentration Measurements

MSHA's measurement objective in collecting a dust sample is to determine the average dust concentration at the sampling location on the shift sampled. As discussed in the main text, MSHA and NIOSH find that a single, full-shift measurement can accurately represent the average full-shift dust concentration being measured. Nevertheless, because of sampling and analytical errors inherent in even the most accurate measurement process, the true value of the average dust concentration on the sampled shift can never be known with complete certainty. However accurate the representation, a measurement can provide only an estimate of the true dust concentration.

Throughout this appendix, some public comments made to February 18 and June 6, 1994 notices relevant to issues regarding single, full-shift sampling will be cited and addressed to emphasize key findings on accuracy and the effects of averaging dust concentration measurements. Some previous commenters contended that MSHA should not rely on single samples for making noncompliance determinations, because an average of results from multiple samples would estimate the true dust concentration more accurately than any single measurement.

Contrary to the views expressed by these commenters, averaging a number of measurements does not necessarily improve the accuracy of an estimation procedure. Consider, for example, an archer aiming at targets mounted at random and possibly overlapping positions on a long partition. Each arrow might be aimed at a different target. Suppose that an observer, on the opposite side of the partition from the archer, cannot see the targets but must estimate the position of each bull's eye by locating protruding arrowheads.

Each protruding arrowhead provides a measurement of where some bull's eye is located. If two arrowheads are found on opposite ends of the partition, averaging the positions of these two arrowheads would not be a good way of determining where any real target is located. To estimate the location of an actual target, it would generally be preferable to use the position of a single arrow. The average would represent nothing more than a "phantom" target somewhere near the center, where the archer probably did not aim on either shot and where no target may even exist.

The archery example can be extended to illustrate conditions under which averaging dust concentration measurements does or does not improve accuracy. If each arrowhead is taken to represent a full-shift dust sample, then the true average dust concentration at the sampling location on a given shift can be identified with the location of the bull's eye at which the corresponding arrow was aimed. The accuracy of a measurement refers to how closely the measurement can be expected to come to the quantity being measured. Statistically, accuracy is the combination of two distinct concepts: precision, which pertains to the consistency or variability of replicated measurements of exactly the same quantity; and bias, which pertains to the average amount by which these replicated measurements deviate from the quantity being measured. Bias and precision are equally important components of measurement accuracy.

To illustrate, arrows aimed at the same target might consistently hit a sector on the

lower right side of the bull's eye. The protruding arrowheads would provide more or less precise measurements of where the bull's eye was located, depending on how tightly they were clustered; but they would all be biased to the lower right. On the other hand, the arrows might be distributed randomly around the center of the bull's eye, and hence unbiased, but spread far out all over the target. The protruding arrowheads would then provide unbiased but relatively imprecise measurements.

More complicated situations can easily be envisioned. Arrows aimed at a second target would provide biased measurements relative to the first target. Alternatively, if the archer always aims at the same target, the first shot in a given session might tend to hit near the center, with successive shots tending to fall off further and further to the lower right as the archer's arm tires; or shots might progressively improve, as the archer adjusts aim in response to prior results.

Averaging reduces the effects of random errors in the archer's aim, thereby increasing precision in the estimation procedure. If the archer always aims at the same target and is equally adept on every shot (i.e., if the arrowheads are all randomly and identically distributed around a fixed point), then averaging improves the estimate's precision without introducing any bias. Averaging in such cases provides a more accurate method of estimating the bull's eye location than reliance on any single arrowhead. If, however, the archer intentionally or unintentionally switches targets, or if the archer's aim progressively deteriorates, then averaging can introduce or increase bias in the estimate. If the gain in precision outweighs this increase in bias, then averaging several independent measurements may still improve accuracy. However, averaging can also introduce a bias large enough to offset or even surpass the improvement in precision. In such cases, the average position of several arrowheads can be expected to locate the bull's eye less accurately than the position of a single arrowhead.

I. Multi-Locational Averaging

Some previous commenters opposed MSHA's use of a single, full-shift measurement for enforcement purposes, claiming that determinations based on such measurements would be less accurate than those made under MSHA's existing enforcement policy of averaging multiple measurements taken on an MMU. There are two distinctly different types of multi-locational measurement averages that could theoretically be compiled on a given shift: (1) the average might combine measurements taken for different occupational locations and (2) the average might combine measurements all taken for the same occupational location. For MMUs, the averages used in MSHA's sampling program usually involve measurements taken for different occupational locations on the same shift. These are averages of the first type. MSHA's sampling program has never utilized averages of the second type. Therefore, those commenters who claimed that reliance on a single, full-shift measurement would reduce the accuracy of noncompliance determinations, as compared to MSHA's existing enforcement policy, are implicitly claiming that accuracy is increased by averaging across different occupational locations.

Averaging measurements obtained from different occupational locations on an MMU is like averaging together the positions of arrows aimed at different targets. The average of such measurements is an artificial, mathematical construct that does not correspond to the dust concentration for any actual occupational location. Therefore, this type of averaging introduces a bias proportional to the degree of variability in actual dust concentration at the various locations averaged.

The gain in precision that results from averaging measurements taken at different locations outweighs this bias only if variability from location to location is smaller than variability in measurement error. However, commenters opposed to MSHA's use of single, full-shift measurements for enforcement purposes argued that this is not generally the case and even submitted data and statistical analyses in support of this position. Commenters in favor of noncompliance determinations based on a single, full-shift measurement agreed that variability in dust concentration is extensive for different occupational locations and argued that MSHA's existing policy of measurement averaging is not sufficiently protective of miners working at the dustiest locations.

Since an average of the first type combines measurement from the dustiest location with measurements from less dusty locations, it must always fall below the best available estimate of dust concentration at the dustiest location. In effect, averaging across different occupational locations dilutes the dust concentration observed for the most highly exposed occupations or dustiest work positions. Therefore, such averaging results in a systematic bias against detecting excessive dust concentrations for those miners at greatest risk of overexposure.

A somewhat better case can be made for the second type of multi-locational averaging, which combines measurements obtained on the same shift from a single occupational location. As some previous commenters pointed out, however, there is ample evidence that spatial variability in dust concentration, even within relatively small areas, is frequently much larger than variability due to measurement error. Therefore, the same kind of bias introduced by averaging across occupational locations would also arise, but on a lesser scale, if the average measurement within a relatively small radius were used to represent dust concentration at every point in the atmosphere to which a miner is exposed. A miner is potentially exposed to the atmospheric conditions at any valid sampling location. Consistent with the Mine Act and implementing regulations, MSHA's enforcement strategy is to limit atmospheric dust concentration wherever miners normally work or travel. Therefore, the more spatial variability in dust concentration there is within the work environment, the less appropriate it is to use measurement averaging to enforce the applicable standard by averaging measurements obtained at different sampling locations.

Some of the previous comments implied that instead of measuring average dust concentration at a specific sampling location, MSHA's objective should be to estimate the average dust concentration throughout a miner's "breathing zone" or other area near a miner. If estimating average dust concentration throughout some zone were really the objective of MSHA's enforcement strategy, then averaging measurements made at random points within the zone would improve precision of the estimate without introducing a bias. This type of averaging, however, has never been employed in either the MSHA or operator dust sampling programs. MSHA's current policy of averaging measurements obtained from different zones does not address spatial variability in the area immediately surrounding a sampler unit. Therefore, even if averaging measurements from within a zone were somehow beneficial, this would not demonstrate that MSHA's existing enforcement policy is more reliable than basing noncompliance on a single, full-shift measurement.

Furthermore, if the objective were really to estimate average dust concentration throughout some specified zone on a given shift, then it would often be necessary to obtain far more than five simultaneous measurements within the zone. This is not only because of potentially large local differences in dust concentration. In order to use such measurements for enforcement purposes, variability in dust concentration within the sampled area would have to be estimated along with the average dust concentration itself. As some previous commenters correctly pointed out, doing this in a statistically valid way would generally require at least twenty to thirty measurements. One of these commenters also pointed out that such an estimate, based on even this many measurements in the same zone, could be regarded as accurate only under certain questionable assumptions about the distribution of dust concentrations. This commenter calculated that hundreds of measurements would be required in order to avoid these tenuous assumptions. Clearly, this shows that the objective of estimating average dust concentration throughout a zone is not consistent with any viable enforcement strategy to limit dust concentration on each shift in the highly heterogeneous and dynamic mining environment. The large number of measurements required to accurately characterize dust concentration over even a small area merely demonstrates why it is not feasible to base enforcement decisions on estimated atmospheric conditions beyond the sampling location.

MSHA and NIOSH recognize that a single, full-shift measurement will not provide an accurate estimate of average dust concentration anywhere beyond the sampling location. The Mine Act, however, does not require MSHA to estimate average dust concentration at locations that are not sampled or to estimate dust concentration averaged over any zone or region of the mine.

Instead, the Mine Act requires that a miner will not be exposed to excessive dust wherever he/she normally works or travels. This can be accomplished by maintaining the average dust concentration at each valid sampling location at or below the applicable standard during each shift.

II. Multi-Shift Averaging

Some previous commenters maintained that in order to reduce the risk of erroneous noncompliance determinations, MSHA should average measurements obtained from the same occupation on different shifts. These commenters contended that the average of measurements from several shifts represents the average dust concentration to which a miner is exposed more accurately than a single, full-shift measurement. Other commenters, who favored noncompliance determinations based on single, full-shift measurements, claimed that conditions are sometimes manipulated so as to produce unusually low dust concentrations on some of the sampled shifts. These commenters suggested that, due to these unrepresentative shifts, multi-shift averaging can yield unrealistically low estimates of the dust concentration to which a miner is typically exposed. Some of these commenters also argued that the Mine Act requires the dust concentration to be regulated on each shift, and that multi-shift averaging is inherently misleading in detecting excessive dust concentration on an individual shift.

Those advocating multi-shift averaging generally assumed that the measurement objective is to estimate a miner's average dust exposure over a period longer than an individual shift. This assumption is flawed, as shown by the fact that section 202(b) of the Mine Act specifies that each operator will continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift at or below the applicable standard. Some of those advocating multi-shift averaging, however, suggested that MSHA should average measurements obtained on different shifts even if the quantity of interest is dust concentration on an individual shift. These commenters argued that averaging smooths out the effects of measurement errors, and that therefore the average over several shifts would represent dust concentration on each shift more accurately than the corresponding individual, full-shift measurement.

The Secretaries recognize that there are circumstances, not experienced in mining environments, under which averaging across shifts could improve the accuracy of an estimate for an individual shift. Just as averaging the positions of arrows aimed at nearly coinciding targets might better locate the bull's eye than the position of any individual arrow, the gain in precision obtained by averaging dust concentrations observed on different shifts could, under analogous circumstances, outweigh the bias introduced by using the average to estimate dust concentration for an individual shift. This would be the case, however, only if variability in dust concentration among shifts were small compared to variability due to measurement imprecision. It would do no good to average the location of arrows aimed at different targets unless the targets were at nearly identical locations.

To the contrary, several previous commenters pointed out that variability in dust concentration from shift to shift tends to be much larger than variability due to measurement error and introduced evidence in support of this observation. Measurements on different shifts are like arrows aimed at widely divergent targets. The more that conditions vary, for any reason, from shift to shift, the more bias is introduced by using a multi-shift average to represent dust concentration for any individual shift. Under these circumstances, any improvement in precision to be gained by simply averaging results is small compared to the bias introduced by such averaging. Therefore, the Secretaries have concluded that MSHA's existing practice of averaging measurements collected on different shifts does not improve accuracy in estimating dust concentration to which a miner is exposed on any individual shift. To paraphrase one previous commenter, averaging Monday's exposure measurement with Tuesday's does not improve the estimate of Monday's average dust concentration.

Some previous commenters argued that since the risk of pneumoconiosis depends on cumulative exposure, the measurement objective should be to estimate the dust concentration to which a miner is typically exposed and to identify cases of excessive dust concentration over a longer term than a single shift. Other previous commenters claimed that a multi-shift average does not provide a good estimate of either typical dust concentrations or exposures over the longer term. These commenters claimed that different shifts are not equally representative of the usual atmospheric conditions to which miners are exposed, implying that the average of measurements made on different shifts of a multi-day MSHA inspection tends to systematically underestimate typical dust concentrations.

The Secretaries interpret the Mine Act as requiring that dust concentrations be kept at or below the applicable standard on each and every shift. Nevertheless, the Secretaries recognize that, under certain conditions, the average of measurements from multiple shifts can be a better estimate of "typical" atmospheric conditions than a single measurement. This applies, however, only if the sampled shifts comprise a random or representative selection of shifts from whatever longer term may be under consideration. As shown below, evidence to the contrary exists, supporting those commenters who maintained that measurements collected over several days of a multi-day MSHA inspection do not meet this requirement. Therefore, the Secretaries have concluded that averaging such measurements is likely to be misleading even for the purpose of estimating dust concentrations to which miners are typically exposed.

Whether the objective is to measure average dust concentration on an individual shift or to estimate dust concentration typical of a longer term, the arguments presented for averaging across shifts all depend on the assumption that every shift sampled during an MSHA inspection provides an unbiased representation of dust exposure over the time period of interest.[31] To check this assumption, MSHA performed a statistical analysis of multi-shift MSHA inspections carried out prior to the SIP. This analysis, placed into the record in September 1994, examined the pattern of dust concentrations measured over the course of these multi-shift inspections and compared results from the final shift with results from a subsequent single-shift sampling inspection (Kogut, September 6, 1994b).

The analysis found that dust concentrations measured on different shifts of the same MSHA inspection were not randomly distributed. The later samples tended to show significantly lower results than earlier samples, indicating that dust concentrations on later shifts of a single inspection may decline in response to the presence of an inspector. Furthermore, the analysis provided evidence that the reduction in dust concentration tends to be reversed after the inspection is terminated. These two results led to the conclusion that averaging dust concentrations measured on different shifts of a multi-day MSHA inspection introduces a bias toward unrealistically low dust concentrations.

One previous commenter questioned the validity of this analysis, stating that "there is absolutely no basis in the * * * report for the assertion that the trend is reversed after the inspection is terminated." This commenter apparently overlooked Table 3 of the report. That table shows a statistically significant reversal at those mine entities included in the analysis that were subsequently inspected under MSHA's SIP. Dust concentrations measured at these mine entities had declined significantly between the first and last days of the multi-shift inspection. It was primarily to address the commenter's implication that these reductions reflected permanent "adjustments in dust control measures" that the analysis included a comparison with the subsequent SIP inspection. An increase, representing a reversal of the previous trend, was observed on the single shift of the subsequent inspection, relative to the dust concentration measured on the final shift of the previous multi-shift inspection. This reversal was found to be "statistically significant at a confidence level of more than 99.99 percent."

The same commenter also stated that MSHA "* * * fails to address the systematic [selection] bias of the study. MSHA only does multiple day sampling when the initial results are higher, but not out of compliance." It is true that in order to be selected for revisitation, a mine entity must have shown relatively high concentrations on the first shift—though not, in the case of an MMU, so high as to warrant a citation on first shift. Since no experimental data were available on mine entities randomly selected to receive multi-shift inspections, the only cases in which patterns over the course of a multi-shift inspection could be examined

[31] Technically, the assumption is that dust concentrations on all shifts sampled are independently and identically distributed around the quantity being estimated.

were cases selected for multi-shift inspection under these criteria.

Although the impact of the selection criteria was not explicitly addressed, it was recognized that entities selected for multi-day inspections do not constitute a random selection of mine entities. This recognition motivated, in part, the report's comparison of the final shift measurement to the dust concentration measured during a subsequent single-shift inspection. The magnitude of the average reversal indicates that most of the reduction observed over the course of the multi-shift inspection cannot be attributed to the selection criteria. Furthermore, it was not only mine entities with relatively low dust concentration measurements that were left out of the study group. Mine entities with the highest dust concentration measurements were immediately cited based on the average of measurements taken and excluded from the group subjected to multi-shift dust inspections. Therefore, the effect on the analysis of selecting mine entities with relatively high initial dust concentration measurements was largely offset by the effect of excluding those entities with even higher initial measurements. In any event, the magnitude of the average reduction between first and last shifts of a multi-shift inspection was significantly greater than what can be explained by selection for revisitation due to measurement error on the first shift sampled.

The assumption that multiple shifts sampled during a single MSHA inspection are equally representative is clearly violated if, as some commenters alleged, operating conditions are deliberately altered after the first shift in response to the continued presence of an MSHA inspector and then changed back after the inspector leaves. However, if samples are collected on successive or otherwise systematically determined shifts or days, the assumption can also be violated by changes arising as part of the normal mining cycle. As one commenter pointed out, multi-shift averaging within a single MSHA inspection potentially introduces biases typical of "campaign sampling," in which observations of a dynamic process are clustered together over a relatively narrow time span. In order to construct an unbiased, multi-shift average for each phase of mining activity, it would be necessary to collect samples from several shifts operating under essentially the same conditions. Alternatively, to construct an unbiased, multi-shift estimate of dust concentration over a longer term, it would be necessary to collect samples from randomly selected shifts over a period great enough to reflect the full range of changing conditions. Neither requirement is met by multi-shift MSHA inspections because (1) the mine environment is dynamic and no two shifts are alike and (2) MSHA inspectors are not there long enough to observe every condition in their inspection.

Based on the analysis presented by Kogut (September 6, 1994b) and also on public comments received in response to the February 18 and June 6, 1994, notices, the Secretaries have concluded that it should not be assumed that multiple shifts sampled during a single MSHA inspection are equally representative of atmospheric conditions to which a miner is typically exposed. This conclusion undercuts the rationale for multi-shift averaging within a single MSHA inspection, regardless of whether the objective is to estimate dust concentration for the individual shifts sampled as it is for MSHA inspector sampling or for typical shifts over a longer term as implied by some commenters. Measurements collected by MSHA on consecutive days or shifts of the same inspection do not comprise a random or otherwise representative sample from any larger population of shifts that would properly represent a long-term exposure or a particular phase of the mining cycle. Therefore, there is no basis for assuming that multi-shift averaging improves accuracy or reduces the risk of an erroneous enforcement determination.

Appendix B—Why Individual Measurements are Unbiased

The accuracy of a measurement depends on both precision and bias (Kennedy, *et al.*, 1995). Precision refers to consistency or repeatability of results, and bias refers to an error that is equally present in every measurement. Since the amount of dust present on a filter capsule is measured by subtracting the pre-exposure weight from the post-exposure weight, any bias present in both weight measurements is mathematically canceled out by subtraction. A control filter capsule is pre- and post-weighed along with the exposed filter capsules. The weight gain of each exposed capsule is adjusted by subtracting the weight gain or loss of the control filter capsule. Consequently, any bias due to differences in pre- and post-exposure laboratory conditions, or to changes introduced during storage and handling of the filter capsules, is also mathematically canceled out. Therefore, since respirable dust is defined by section 202(e) of the Mine Act (30 U.S.C. 842(e)) to be whatever is measured by an approved sampler unit, the Secretaries have concluded that a single, full-shift measurement made with an approved sampler unit provides an unbiased representation of average dust concentration for the shift and sampling location sampled. Some previous commenters, however, suggested that MSHA's sampling and analytical method is subject to systematic errors that would have the same effect on all measurements. These comments are addressed in this appendix.

I. The Value of the MRE Conversion Factor

The current U.S. coal mine dust standard is based on studies of British coal miners. In these studies, full-shift dust measurements were made using a sampler employing four horizontal plates which removed the large-sized particles by gravitational settlement (simulating the action of the nose and throat) and collecting on a pre-weighed filter those particles which are normally deposited in the lungs (Goddard, *et al.*, 1973). This instrument, known as the Mining Research Establishment (MRE) sampler, was designed to collect airborne dust according to a collection efficiency curve, developed by the British Medical Research Council (BMRC) to approximate the deposition of inhaled particles in the lung. Because the MRE instrument was large and cumbersome, other samplers using a 10-mm nylon cyclone were developed for taking samples of respirable dust in U.S. coal mines. However, these cyclone-based samplers collected less dust than the MRE instrument. Therefore, a factor was derived (1.38) to convert measurements obtained with the cyclone-based samplers to measurements obtained with the MRE instrument.

Two previous commenters noted that the 1.38 conversion factor was derived from a comparison of MRE measurements to measurements obtained using pumps made by two manufacturers: Mine Safety Appliances Co. and Unico. These commenters noted that there was some variability in these comparisons that MSHA and NIOSH did not consider in estimating CV_{total}, and stated that MSHA and NIOSH should therefore make allowances for any error or uncertainty in the conversion factor. It was also noted that the report deriving the conversion factor showed that Mine Safety Appliances Co. pumps more closely approximated MRE concentrations than Unico pumps, indicating that the 1.38 conversion factor (derived empirically using both types of pumps) may systematically overestimate the MRE-equivalent dust concentration for Mine Safety Appliances Co. samplers specifically. This commenter argued that such potential bias in the conversion factor should be addressed in order to account for the possibility of a systematic error in the conversion.

The study referred to these previous commenters involved collecting side-by-side samples using MRE and cyclone-based samplers (Tomb, *et al.*, 1973). The data showed that multiplying the cyclone sample concentrations by a constant factor of 1.38 gave values in reasonable agreement with MRE measurements. Consequently, a conversion factor of 1.38 was adopted for use with approved sampler units equipped with the 10-mm nylon cyclone.

Variability in the operating characteristics of individual sampler units is expressed by $CV_{sampler}$. In response to the comment on potential bias, MSHA and NIOSH reviewed the original report recommending the 1.38 MRE conversion factor. This report contained both an empirical determination, using side-by-side comparison data collected in underground coal mines, and a theoretical determination of the conversion factor. Two sets of field data were collected: one set was collected by mine inspectors who visited 200 coal mines across the U.S.; the other set was collected by investigators from MSHA's Pittsburgh laboratory at 24 coal mines. Linear regression was used to analyze both sets of data, with the slope of the regression line representing the conversion factor. The theoretical determination suggested that the conversion factor should be close to a value of 1.35. Analysis of the district mine inspector data resulted in a conversion factor of 1.38, while analysis of the laboratory investigator data suggested a greater conversion factor of 1.45.

Because the conversion factor derived from the inspector data came closer to the theoretical value, the former U.S. Bureau of Mines' Pittsburgh Technical Support Center

(in the Department of Interior) recommended that 1.38 be the value adopted for any approved sampler unit operating at 2.0 L/min and equipped with a 10-mm nylon cyclone. This recommendation was subsequently accepted. The 1.38 conversion factor was not, as implied by the commenters, meant to represent the average value to be used with two different types of sampler unit, one of which is no longer in use. Instead, based largely on the theoretical value, it was meant to represent the appropriate value to be used with any approved sampler unit operating at 2.0 L/min and equipped with a 10-mm nylon cyclone. No data or analyses were submitted to suggest that this conversion factor, which has been accepted and used for over twenty years, should be any other value.

II. Conforming to the ACGIH and ISO Standard

One commenter implied that the respirable dust cyclone specifications used by MSHA result in a different particle collection efficiency curve than that specified by the American Conference of Governmental Industrial Hygienists (ACGIH) and the International Organization for Standardization (ISO) for a respirable dust sampler. Other previous commenters questioned whether the 2.0 L/min flow rate used by MSHA was appropriate, since a NIOSH study recommended using a 1.7 L/min flow rate when conforming to the recently adopted ACGIH/ISO specifications for collecting respirable particulate mass.

It is true that MSHA's respirable dust cyclone specifications result in a different particle size distribution than that specified by ACGIH and ISO. However, this fact has no bearing on the conversion to a respirable dust concentration as measured by an MRE sampler, which is the basis of the respirable dust standard. The 1.38 factor used to obtain an MRE-equivalent concentration was derived for a cyclone flow rate of 2.0 L/min. If a flow rate of 1.7 L/min were used, then this would correspond to some other factor for converting to an MRE-equivalent dust concentration. Therefore, the particle size distribution obtained at 2.0 L/min governs the relationship derived between an approved respirable coal mine dust sampler and an MRE sampler. The appropriate dust fraction (*i.e.*, the fraction corresponding to the 1.38 conversion factor) is sampled so long as the specified 2.0 L/min flow rate is maintained.

III. Effects of Other Variables

The effects of any other variables on the sampled dust fraction are covered by the 1.38 conversion factor, so long as these effects were present in the data from which the conversion factor was obtained. For example, one commenter expressed concern that nylon cyclones are subject to performance variations due to static charging phenomena. Any systematic effect of static charging on the performance characteristics of the nylon cyclone is implicitly accounted for in the conversion factor, because the same static charging effect would have been present when the comparative measurements were obtained for deriving the relationship between an approved sampler unit and an MRE instrument. Random effects of static charging, *i.e.*, effects that vary from sample to sample, are included in CV_{total}.

Appendix C—Components of CV_{total}

I. Weighing Uncertainty

(a) Derivation of CV_{weight}

The weight of a dust sample is determined by weighing each filter capsule before and after exposure and then determining the weight gain by subtraction. This weight gain is adjusted by subtracting any change in weight observed for the unexposed, control filter capsule. This practice eliminates potential biases due to any possible outgassing of the plastic cassette or other time-related factors but introduces two additional weighings. The weighing process is designed to control potential effects of temperature, humidity, and contamination. However, because the initial and final weighings of both the exposed and the control filter capsules are each still subject to random error, there is some degree of uncertainty in the computed weight of dust collected on the filter.

For both the control and the exposed filter capsule, the error in the weight-gain measurement results from combining two independent weighing errors. For example, suppose that the true pre- and post-exposure weights of a filter capsule are $W_1 = 392.275$ mg and $W_2 = 392.684$ mg, respectively. The true weight gain (G) would then be:

$$G = W_2 - W_1 = 0.409 \text{ mg.}$$

If, due to weighing errors, pre- and post-exposure weights were measured at $w_1 = 392.282$ mg and $w_2 = 392.679$ mg, respectively, then the measured weight gain (g) would be:

$$g = w_2 - w_1 = 0.397 \text{ mg.}$$

The error (e) in this particular weight-gain measurement, resulting from the combination of a 7 μg error in w_1 and a5 μg error in w_2, would then be:

$$\begin{aligned} e &= g - G \\ &= (w_2 - w_1) - (W_2 - W_1) \\ &= (w_2 - W_2) - (w_1 - W_1) \\ &= -5 - 7 = -12 \ \mu g^{32} \end{aligned}$$

Imprecision in the true weight gain is expressed by Qe, the standard deviation of e. When a weight-gain measurement (g) is converted to an MRE-equivalent concentration (in units of mg/m^3) based on a 480-minute sample at 2.0 L/min, both the actual weight gain (G) and the weight-gain error (e) are multiplied by the same factor:

$$\frac{1.38}{480 \text{ min} \cdot \frac{2 \text{ liters}}{\text{min}} \cdot \frac{1 \text{ m}^3}{1000 \text{ liters}}} = \frac{1.438}{\text{m}^3}$$

[32] Prior to mid-1995 there were two additional sources of uncertainty in the weight gain recorded for MSHA inspector samples. First, filter capsules were routinely weighed in different laboratories before and after exposure, without use of blank filters or control filters, thus subjecting them to interlaboratory variability. Second, the pre- and post-exposure weights were both truncated down to the nearest exact multiple of 0.1 mg, below the weight actually measured, prior to recording weight gain and calculating dust concentration.

Therefore, the standard deviation of the propagated weighing error component in a single, full-shift measurement ($x = g \cdot 1.438/m^3$) is $1.438\sigma_e$ mg/m³, assuming no adjustment for weight change in the control filter capsule.

Since a control filter capsule will is used to eliminate potential bias, the weight gain measured for the exposed filter (g) is adjusted by subtracting the change in weight (which may be positive or negative) observed for the control filter capsule (g′). Therefore, the adjusted measurement of dust concentration is

$$x' = (g - g') \cdot 1.438 / m^3.$$

Any change in weight observed for the control filter capsule is subject to the same measurement imprecision due to random weighing errors, represented by σ_e, as the weight gain measurement for an exposed filter. In addition to the weight-gain error for the exposed filter whose measured weight gain is g, x′ will also contain a weight-gain error contributed by the measured change in weight of the control filter capsule (g′). Using a standard propagation-of-errors formula, the imprecision is represented by

$$\sqrt{\sigma_e^2 + \sigma_e^2} = \sqrt{2\sigma_e^2} = \sigma_e\sqrt{2}.$$

Therefore, the standard deviation of the propagated weighing error component in the adjusted measurement is $1.438\sigma_e\sqrt{2}$ mg/m³.

To form an estimate of CV_{weight} when control filter capsules are used, the estimated value of $1.438\sigma_e$ is multiplied by $\sqrt{2}$ and expressed as a percentage of the true dust concentration being measured (X):

$$CV_{weight} = \frac{1.438 \cdot \sigma_e\sqrt{2}}{X} \cdot 100\% \qquad (3)$$

Since σ_e is essentially constant with respect to dust concentration, CV_{weight} decreases as the dust concentration increases.

(b) Values Expressing Uncertainty Due to Random Errors in Weight-Gain Measurements

Table C–1 summarizes 13 different estimated values for σ_e. Six of these values were mentioned during earlier proceedings related to this notice, and two additional values for σ_e are derived in this appendix from data introduced during these earlier proceedings. Three other values for σ_e are derived from data and statistical analyses placed into the record along with the **Federal Register** notices published by MSHA and NIOSH on February 3, 1998 (Parobeck, *et al.*, 1997; Wagner, May 28, 1997). The remaining two values of σ_e are derived in an analysis being placed into the record in connection with the present **Federal Register** notice (Kogut, *et al.*, 1999). The 13 values listed in Table C–1 are not inconsistent, but as explained below, represent estimates of weight-gain imprecision during different historical periods or under different sample processing procedures. Eleven of these values are based on weight gains measured for capsules employing a Tyvek; filter support pad. Two are based on capsules with stainless steel support pads.

TABLE C–1.—STANDARD DEVIATION OF ERROR IN WEIGHT GAIN (σ_e)

Description	Reference	σ_e (μg)
MSHA's historical estimate of upper bound	59 FR 8356; Kogut, September 6, 1994a	97.4
1981 measurement assurance estimate;† older technology, truncation of weights	Parobeck, *et al.*, 1981; Bartley, September 7, 1994.	81
300 unexposed tamper-resistant capsules pre- and post-weighed in different labs;† no truncation.	Kogut, May 12, 1994	29
Inspector samples processed between late 1992 and mid 1995;† capsules pre- and post-weighed in different labs with truncation; estimate adjusted for differences between labs.	Appendix C	51.7
NMA data obtained from samples collected by Skyline Coal, Inc.†	Appendix D	76
Value used in NIOSH "indirect approach" based on repeated measurements on same day and in same lab;† derived from Kogut.	61 FR 10012; Kogut, May 12, 1994	5.8
1995 MSHA field study;† capsules pre-weighed, assembled, and post-weighed by MSHA.	Kogut, *et al.*, 1997; Wagner, 1995	9.1
1996 measurement assurance estimate †	61 FR 10012; Tomb, February 16, 1996	6.5
75 unexposed capsules recalled from MSHA field offices †	Wagner, May 28, 1997	8.2
50 replicate weighings of 16 unexposed filter capsules †	Parobeck, *et al.*, 1997	10.3
50 replicate weighings of 16 unexposed filter capsules †	Parobeck, *et al.*, 1997	11.2
2,640 unexposed "quality control" capsules pre-weighed by MSHA, assembled by MSA, and subsequently post-weighed by MSHA †.	Kogut, *et al.*, 1999	11.3
300 unexposed capsules pre-weighed by MSHA, assembled by MSA, carried during MSHA inspection, and subsequently post-weighed by MSHA‡.	Kogut, *et al.*, 1999	11.6

† Tyvek support pad.
‡ stainless steel support pad.
MSA Mine Safety Appliances Co.

In MSHA's February 1994 notice, $1.438\sigma_e$ (identified as "variability associated with the pre- and post-weighing of the filter capsule") was presented as 0.14 mg/m³, or 7 percent of 2.0 mg/m³, as described in Kogut (September 6, 1994a). It follows that the value of σ_e

implicitly assumed in MSHA's February 1994 notice (obtained by dividing 0.14 by 1.438) was 0.0974 mg (97.4 μg). Seven percent of 2.0 mg/m³ had been used by MSHA from the inception of its dust enforcement program to represent an upper bound on weighing imprecision in a dust concentration measurement.

After publication of the February 1994 notice, several other candidate values for σ_e were placed into the public record. In 1981, based on data collected to implement a measurement assurance program in MSHA's weighing laboratory, σ_e was estimated using a method developed by the NBS to be 0.0807 mg (80.7 μg) (Parobeck, *et al.*, 1981). The published NBS estimate reflected weighing technology in place at the time the article was published (1981), as well as the practice (no longer in effect for MSHA inspector samples) of truncating both the pre- and post-exposure weights down to an exact multiple of 0.1 mg. This estimate was used to calculate CV_{weight} by Bartley (September, 1994).

Some previous commenters misread or misunderstood the published NBS estimate. One of these previous commenters claimed that "the only published report of the weighing error in MSHA's laboratory * * * was 0.16 mg of variation, which would convert to a concentration of 0.20 mg/m³ compared to the 0.14 mg/m³ * * * MSHA and NIOSH used." This is incorrect, since the standard deviation of weight-gain errors (including the effect of truncation) is actually identified as 0.0807 mg in the Appendix to Parobeck, *et al.*, (1981). The 0.16-mg figure quoted by the commenter is presented in that paper as defining a 2-tailed 95-percent confidence limit, for use in establishing process control limits. It is derived by multiplying σ_e by 2.0. As explained above, the published value of σ_e = 0.0807 mg is multiplied by 1.438 m^{-3} to propagate an MRE-equivalent concentration error of 0.116 mg/m³. Contrary to the commenters' assertion, this is less—not more—than the quantity (0.14 mg/m³) assumed in the February 1994 notice.

In September 1994, a more recent analysis was placed into the public record, based on repeated weighings of 300 unexposed filter capsules, each of which was weighed once in the Mine Safety Appliances Co. laboratory and twice in MSHA's laboratory using current equipment (Kogut, May 12, 1994). Based on this analysis, σ_e was estimated to be 29 μg for pre- and post-weighings on different days at different laboratories, or 5.8 μg for pre- and post-weighings on the same day within MSHA's laboratory. The 5.8-μg value was used as part of the NIOSH "indirect approach" in its 1995 accuracy assessment (Wagner, 1995). Neither of these two estimates, however, reflects the effects of truncation or of a mean difference of about 12 μg discovered between weighings in the two laboratories. Combining these two additional effects with the 29-μg estimate results in an adjusted estimate of σ_e = 51.7 μg for weighings made in different laboratories and truncated to a multiple of 0.1 mg. MSHA and NIOSH regard this 51.7-μg value to be the best available estimate of σ_e for inspector samples processed between late 1992, when the current style of (tamper-resistant) cassette was introduced, and mid-1995, changes in inspector sample processing were implemented.

Some previous commenters suggested that the estimates of σ_e, placed into the record in September 1994, did not adequately account for potential errors in the weighing process as it existed at that time. One of these previous commenters asserted that truncation error was an additional source of uncertainty that had not been accounted for. As explained above, however, σ_e accounts for uncertainty deriving from both the pre- and post-exposure weighings. Both the 80.7-μg NBS estimate and the 97.4-μg value assumed in the February 1994 notice included the effects of truncating weight measurements to 0.1 mg. Truncation effects are also included in the 51.7-μg estimate.

Some previous commenters expressed special concern over the accuracy of pre-exposure filter capsule weights as measured by Mine Safety Appliances Co. One commenter expressed "grave concern" with regard to the 12-μg systematic difference in weights found between Mine Safety Appliances Co. and MSHA weighings of the same unexposed capsules, as described in MSHA's 1994 analysis (Kogut, May 12, 1994). These concerns became moot, at least with respect to MSHA's inspector sampling program, when MSHA began pre- and post-weighing all inspector samples at MSHA's laboratory. Furthermore, any potential bias resulting from differences in laboratory conditions on the days of pre- and post-exposure weighings should now be eliminated by the use of control filter capsules. However, contrary to this commenter's interpretation, the analysis submitted to the record in September 1994 resulted in a substantially lower estimate of σ_e than that assumed in the February 1994 notice—even after adjustment for the 12-μg systematic difference observed between weighing laboratories. The 51.7-μg estimate discussed above includes this adjustment.

MSHA and NIOSH also analyzed data submitted by the NMA in connection with these proceedings. An important result of that analysis, described in Appendix D, was an estimate of σ_e equal to 76 μg ± 15 μg.[33] This estimate is not significantly different, statistically, from either the 97.4-μg value assumed in the February 1994 notice, the 80.7-μg NBS estimate, or the 51.7-μg value estimated for samples collected between late 1992 and mid-1995. Since the NMA data were obtained from samples collected by Skyline Coal, Inc. prior to 1995, the Secretaries believe these data confirm the 51.7-μg value of σ_e applicable to the Skyline samples. The estimate of σ_e obtained from the Skyline data is, however, significantly greater than the value estimated for weight-gain measurements under MSHA's current inspection program. This is explained by the fact that when the Skyline samples were collected, all samples were weighed in different laboratories before and after sampling, and the weights were truncated to 0.1 mg. before calculating the weight gain.

Both truncation of weights and the practice of pre- and post-weighing samples in different laboratories were discontinued for inspector samples in mid-1995. Under MSHA's revised procedures for processing inspector samples, filter capsules were weighed both before and after sampling in MSHA's laboratory. Furthermore, MSHA began to use weights recorded to the nearest μg in calculating dust concentrations. Therefore, the 5.8-μg estimate of σ_e described above, applying to pre- and post-exposure weighings in the same laboratory using current equipment and no truncation, was used by NIOSH to calculate CV_{weight} as part of the NIOSH "indirect" evaluation of CV_{total}, placed into the public record on March 12, 1996.

Based on the results of MSHA's 1995 field study, σ_e was estimated to be 9.12 μg (Kogut, *et al.*, 1997). The filter capsules involved in this study were used to collect respirable coal mine dust samples in an underground mine between pre- and post-exposure weighings in MSHA's laboratory, potentially subjecting them to unknown sources of variability in weight gain not covered by the laboratory estimates. Substituting the estimated value of σ_e = 9.12 μg into Equation 3 results in a corresponding estimate of CV_{weight} that declines as the sampled dust concentration increases—ranging from 9.3 percent at dust concentrations of 0.2 mg/m³ to less than one percent at concentrations greater than 2.0 mg/m³. This estimate of CV_{weight} applies to the procedure utilizing control filter capsules.

An updated estimate of σ_e = 6.5 μg was also calculated using the published NBS procedure for filter capsules processed with the current equipment and procedures for inspector samples. This estimate, derived from weighing the same group of 55 unexposed filter capsules 139 times over a 218-day period, was described in material placed into the public record on March 12, 1996 (Tomb, February 16, 1996). The 6.5 μg estimate applies to filter capsules pre- and post-weighed robotically on different days within MSHA's laboratory, but it does not reflect any potential effects of removing the capsule from the laboratory and exposing it in the field between weighings.

The estimate of imprecision in measured weight gain derived from MSHA's 1995 field study discussed earlier (9.1 μg), falls only slightly above the 6.5-μg laboratory estimate. This suggested that the process of handling and actually exposing the filter capsule in a mine environment does not add appreciably to the imprecision in measured weight gain.

In February 1997, 75 unexposed filter capsules that had been pre-weighed in MSHA's laboratory and distributed to MSHA district offices were recalled and reweighed. After adjusting for variability attributable to the date of initial weighing (*i.e.*, variability that would be eliminated by use of a control filter capsule), these data provided an estimate of σ_e equal to 8.2 μg (Wagner, May 28, 1997). This estimate, based on weighings separated by a span of about four to five months, corroborated the 9.1-μg estimate obtained from MSHA's 1995 field study.

[33] To construct a 90-percent confidence interval for σ_e, based on the Skyline data, the 15-μg "standard error of the estimate" must be multiplied by a confidence coefficient of 1.64.

An MSHA report placed into the public record with the December 31, 1997 **Federal Register** notices described results from an experiment in which 32 filter capsules were each weighed on 50 different days, alternating between the MSHA and Mine Safety Appliances Co. laboratories. Sixteen of these capsules employed a Tyvek® filter support pad of the type approved under 30 CFR part 74. The remaining sixteen were of the modified type, in which the Tyvek® support pad was replaced by a stainless steel support pad. The residual variance associated with an individual weight measurement was found to be 53.5 μg^2 for filter capsules employing a Tyvek® support pad and 62.9 μg^2 for capsules employing a stainless steel support pad (Parobeck, *et al.*, 1997, Table 3.) These figures represent the squared residual variability not "explained" by repeated handling, elapsed time, changes in laboratory conditions, or other terms of the model used in the report. The other sources of variability reported (*i.e.*, those "explained" by the model) are all eliminated by the use of a control filter. Therefore, since measurement of a weight gain requires two measurements of weight, the corresponding estimates of σ_e are $(2 \cdot 53.5)^{1/2} = 10.3$ µg for Tyvek®-supported filters and $(2 \cdot 62.9)^{1/2} = 11.2$ µg for stainless steel.

The final two values for σ_e presented in Table C–1 of this appendix are based on filter capsules pre-weighed in MSHA's laboratory, sent to Mine Safety Appliances Co. for assembly into standard plastic cassettes, and then later weighed a second time in MSHA's laboratory. This is currently the normal practice for filter capsules used by MSHA inspectors. Both of these values, summarized below, are derived in a statistical analysis being placed into the public record along with this notice (Kogut, *et al.*, 1999, Table A–2). In that analysis, "σ_n" represents the portion of uncertainty in a weight gain measurement that a control filter correction cannot be expected to eliminate. This includes both weighing imprecision and spurious but unsystematic changes in weight, such as might be due to random contamination. Therefore, in the present context, σ_e can conservatively be identified with σ_n.

In 1998, to maintain quality control for the production of filter capsules used in MSHA's enforcement program, 2,640 unexposed filter capsules were weighed at MSHA's laboratory before and after assembly by Mine Safety Appliances Co. All of these capsules employed a Tyvek® filter support pad. The estimated value for σ_n (here identified with σ_e) associated with these capsules was 11.3 µg.

In 1999, MSHA performed a special Modified Filter Capsule Study (MFCS) in which the Tyvek® filter support pad was replaced by a stainless steel support pad. The purpose of the MFCS was to quantify the impact of such a substitution on the accuracy of respirable coal mine dust measurements. Based on an analysis of weight gains measured for 300 modified filter capsules, σ_n (here identified with σ_e) was estimated to be 11.6 µg. All of these capsules were initially weighed in MSHA's laboratory, assembled into cassettes by Mine Safety Appliances Co., distributed to MSHA inspectors, carried but not exposed during a mine inspection, and then weighed for a second time in MSHA's laboratory. The 11.6 µg value represents the combined effects of weighing imprecision and random contamination during assembly, distribution, and field use. It therefore provides a conservative estimate of σ_e for filter capsules employing stainless steel support pads.

(c) Negative Weight-Gain Measurements

Some previous commenters pointed out that MSHA routinely voids samples when the measured pre-exposure weight of a filter capsule is greater than the measured post-exposure weight. According to these commenters, such occurrences reflect an unacceptable degree of inaccuracy in weight-gain measurements. One commenter asserted that such cases are "of particular significance when only one sample is relied upon." This commenter attributed such occurrences solely to errors in the capsule pre-weight and implied that they should not be expected to occur under MSHA's quality assurance program. It was, therefore, implied that negative weight-gain measurements are not consistent with the degree of uncertainty being attributed to weighing error.

Prior to implementation of the 1995 processing modifications, a significant fraction of samples with less than 0.1 mg of true weight gain (*i.e.*, $G < 0.10$ mg) could be expected to exhibit negative weight gains (*i.e.*, $g \leq -0.1$ mg). Contrary to the commenter's implication, however, negative weight-gain measurements do not arise exclusively from positive pre-exposure weighing errors (*i.e.*, $w_1 > W_1$). They can also arise, with equal likelihood, from negative post-exposure weighing errors (*i.e.*, $w_2 < W_2$).

What is required for a negative weight gain ($w_2 < w_1$) is that $e < -G$. Since the true weight gain (G) is always greater than or equal to zero, this means that a negative weight gain is observed when e is sufficiently negative. Under standard assumptions of normally distributed errors, σ_e fully accounts for the probability of such occurrences. Naturally, this probability becomes smaller as G increases and also as σ_e decreases.

The occasional negative weight-gain measurements that have been observed are consistent with values of σ_e estimated for previous processing procedures. Table C–2 contains the probability of a negative weight-gain measurement for true weight gains (G) ranging from 0.0 mg to 0.08 mg, assuming σ_e = 51.7 µg and the previous practice of truncation, which has now been discontinued for inspector samples. Since the purpose here is to evaluate the probability of negative weight gains under MSHA's previous processing procedures, it is also assumed that no control filter capsules are used to adjust weight gains.

TABLE C–2.—PROBABILITY OF NEGATIVE WEIGHT-GAIN MEASUREMENT, ASSUMING TRUNCATION AND σ_e = 51.7 µG

True weight gain G = $W_2 - W_1$ (mg)	Estimated probability of negative measurement, %
0.00	12.9
0.01	8.4
0.02	5.1
0.03	2.8
0.04	1.5
0.05	0.7
0.06	0.4
0.07	0.2
0.08	0.1

Note: Tabled probabilities (in percent) were obtained from a simulation of 35,000 weight-gain measurements at each value of G, assuming normally distributed weighing errors and the now discontinued practice of measurement truncation.

One commenter suggested the use of a test based on the frequency of negative weight-gain measurements to check the magnitude of the MSHA/NIOSH estimate of CV_{total}. As proposed by the commenter, the test of CV_{total} would consist of comparing the observed proportion of samples voided due to a negative recorded weight gain to the proportion expected, given CV_{total} equal to the MSHA/NIOSH estimate. If the observed proportion were to exceed the expected proportion, then this would constitute evidence that CV_{total} was being underestimated.

The commenter miscalculated the expected proportion, because he mischaracterized the MSHA/NIOSH estimate of CV_{total} as constant over the continuum of dust concentrations. The MSHA/NIOSH estimate of CV_{total} increases as dust concentrations decrease. This would cause a higher proportion of negative results than what the commenter projected under the MSHA/NIOSH estimate, regardless of what statistical distribution of dust concentrations is assumed. The commenter's projection also neglected to take into account the effects of truncating pre- and post-exposure weights to multiples of 0.1 mg. Although this practice has now been discontinued for MSHA inspector samples, it is a factor in the available historical data.

In principle, if the statistical distribution of true dust concentrations were known, the expected proportion of samples voided for negative weight gain could be recalculated to reflect both a variable CV_{total} and, when applicable, truncation of recorded weights. However, under the commenter's proposal, deriving the expected proportion of negative measurements would involve not only CV_{total}, but also an estimate of the distribution of true dust concentrations. Such an estimate would rely on the tenuous assumption that a mixture of dust concentrations in different environments is closely approximated by a lognormal distribution far into the lower tail—*i.e.*, even at concentrations extremely near zero. Furthermore, valid estimation of the lognormal parameters, applicable to dust concentrations near zero, would be

complicated by measurement errors, especially those resulting in negative or zero values. Depending on the data used, truncation effects could also confound the analysis.

Before truncation was discontinued, negative weight-gain measurements were caused by various combinations of pre- and post-exposure weighing and truncation error. Before MSHA began adjusting weight gains using an unexposed control filter, differences in laboratory conditions on the two weighing days and/or unexplained but real systematic weight losses over time may also have contributed to the observed frequency of negative weight gains. Now that truncation has been removed as a source of error in weight-gain measurements for inspector samples, and control filters are used to correct for systematic changes, the frequency of negative weight gains observed historically is largely irrelevant. Significant negative weight-gain measurements—*i.e.*, those that cannot be explained by normal weighing imprecision—are expected to occur less frequently than in the past.

(d) Comparing Weight Gains Obtained From Paired Samples

Some previous commenters maintained that "although there may be slight differences between how the samples are dried * * *" differences between the weight gain observed in MSHA samples and simultaneous samples collected nearby (and processed at an independent laboratory) indicated a greater degree of weighing uncertainty than what was being assumed. In response to the Secretaries' request for any available data supporting this position, results from paired dust samples were provided by two coal companies.

In comparing measurements obtained from paired samples, there are several important considerations that some previous commenters did not take into account. First, if two different sampler units are exposed to identical atmospheres for the same period of time, the difference between weight-gain measurements g_1 and g_2 arises, in part, from two independent weight-gain measurement errors, e_1 and e_2. If uncertainty due to each of these errors is represented by σ_e, then the difference between g_1 and g_2 has uncertainty due to weighing error equal to $\sigma_e\sqrt{2}$. Consequently, weight gains measured in the same laboratory, on the same day, for different filter capsules exposed to identical atmospheres can be expected to differ by an amount whose standard deviation is $1.41\sigma_e$.

Furthermore, if the two exposed capsules are processed at different laboratories, the difference in weight gains contains an additional error term arising from differences between laboratories. Evidence was presented that this term (in the notation of Kogut, May 12, 1994) is far more significant than the intra-lab, intra-day weighing error in MSHA's laboratory. Moreover, the additional uncertainty introduced by use of a third laboratory also depends on unknown weighing imprecision within that laboratory, which may differ from that maintained by MSHA's measurement assurance process. (See Appendix D for analysis of paired sample data submitted by NMA).

However, the most important consideration in comparing weight gains from two different samples is that under real mining conditions, the atmospheres sampled may not be identical—even if the sampler units are located near one another. Differences in atmospheric dust concentrations over relatively small distances have been documented (Kissell, *et al.*, 1993). Such differences would be expected to produce corresponding differences in weight gain that are unrelated to the accuracy of a single, full-shift measurement as defined by the measurement objective explained earlier in this notice.

II. Pump Variability

The component of uncertainty due to variability in the pump, represented by CV_{pump}, consists of potential errors associated with calibration of the pump rotameter, variation in flow rate during sampling, and (for those pumps with rotameters) variability in the initial adjustment of flow rate when sampling is begun. The Secretaries believe that CV_{pump} adequately accounts for all uncertainty identified by previous commenters as being associated with the volume of air sampled.

In deriving the Values Table published in MSHA's February 1994 notice, MSHA used a value of 5 percent to represent uncertainty associated with initial adjustment of flow rate at the beginning of the shift and another value of 5 percent to represent flow rate variability. The 5-percent value for variability in initial flow rate adjustment was estimated from a laboratory experiment conducted by MSHA in the early 1970s, while the value for flow rate variability was based on the allowable flow rate tolerance specified in 30 CFR part 74. This part requires that the flow rate of all sampling systems not vary by more than ±5 percent over a full shift with no more than two adjustments. MSHA did not include a separate component of variability for pump rotameter calibration because it was already included in the 5-percent value used to represent flow rate variability.

Based on a review of published results by Bowman *et al.* (1984), the Secretaries concluded that the component of uncertainty associated with the combined effects of variability in flow rate during sampling and potential errors in calibration is less than 3 percent. Therefore, as proposed in the March 12, 1996 notice, the Secretaries are now estimating uncertainty due to variability in flow rate to be 3 percent.

Because MSHA could not provide the experimental data supporting the 5-percent value used to represent uncertainty associated with the initial adjustment of flow rate, one commenter recommended that MSHA conduct a new experiment. In response to that request, MSHA conducted a study to establish the variability associated with the initial flow rate adjustment. The study, placed into the public record on September 9, 1994, attempted to emulate realistic operating conditions by including a variety of sampling personnel making adjustments under various conditions. Results showed the coefficient of variation associated with the initial adjustment to be 3 ± 0.5 percent (Tomb, September 1, 1994). The Secretaries consider this study to provide the best available estimate for uncertainty associated with the initial adjustment of a sampler unit's flow rate. Therefore, as proposed in the March 12, 1996 notice, the Secretaries are now estimating uncertainty due to variability in the initial adjustment to be 3 percent.

One previous commenter expressed concern regarding how representative MSHA's study on initial flow rate adjustment was of actual sampling conditions. The Secretaries consider the conditions under which the study was conducted to have adequately mimicked conditions under which the flow rate of a coal mine dust sampling system is adjusted. This was more rigorous than the original study, from which MSHA estimated the 5-percent value assumed in the February 12, 1994 notice. The tests were conducted in an underground mine, using both experienced and inexperienced persons to make the adjustments. Also, the only illumination was supplied by cap lamps worn by the person making the adjustments. Tests were conducted for adjustments made in three different physical positions: standing, kneeling and prone. Inspection personnel participating in the study provided guidance as to the methods typically used by inspection personnel in adjusting pumps. In fact, environmental conditions under which the test was conducted were generally more severe than those normally encountered by inspection personnel, since initial adjustment of the pumps normally occurs on the surface just before the work shift begins.

The same commenter also questioned why only the variability associated with initial adjustment of the flow rate was estimated and not the variability associated with subsequent adjustments during the shift. This is because the variability associated with the subsequent flow rate adjustments of an approved sampler unit is already included in the 3-percent value estimated for variability in flow rate over the duration of the shift.

Since variability in the initial flow rate adjustment is independent of calibration of the pump rotameter and variability in flow rate during sampling, these two sources of uncertainty can be combined through the standard propagation of errors formula:

$$CV_{pump} = \sqrt{(3\%)^2 + (3\%)^2} = 4.2\%$$

This estimate accords well with a more recent finding based on 186 measurements in an underground mine, using constant flow-control pumps (Kogut *et al.*, 1997). That study estimated CV_{pump} = 4.0 percent and concluded that CV_{pump} was unlikely to exceed 4.4 percent.

Three previous commenters stated that there are reports of sampling pumps being calibrated and used at altitudes differing by as much as 3,000 feet and that, for many pumps, this could result in more than a 3-percent change in flow rate per 1,000 feet of altitude. MSHA recognized this as a potential problem as early as 1975. As a result, MSHA conducted a study to ascertain the effect of altitude on coal mine dust sampler calibration (Treaftis, *et al.*, 1976). The study showed that both pump performance and rotameter calibration were affected by changes in altitude but that an approved Mine Safety Appliances Co. sampling system, calibrated and adjusted at an altitude of 800 feet to a flow rate of 2.0 L/min, would meet the requirement of 30 CFR 74.3(11) when sampling at an altitude of 10,000 feet, even if no adjustment were made to the pump. The study also provided equations for adjusting the calibration mark on the pump rotameter so that, when sampling at an altitude different from the one at which the rotameter was calibrated, the appropriate flow rate would be obtained. These procedures are used by MSHA inspectors in instances where the sampling altitude is significantly different from the altitude where the sampling system is calibrated.

Some previous commenters questioned the ability of the older Mine Safety Appliances Co. Model G pumps to meet the same flow rate specifications as new pumps. MSHA has discontinued the use of these older pumps in its sampling program and will be using only flow-control pumps. More recent MSHA studies show that these pumps continue to meet the flow rate requirement of 30 CFR 74.3(11) at altitudes up to 10,000 feet (Gero, *et al.*, 1995). As a result, the flow-control pumps currently used by inspectors can be calibrated at one altitude and used at another altitude with no additional adjustments made to the pumps. Furthermore, all sampler units used to measure respirable dust concentrations in coal mine environments are required to be approved in accordance with the regulatory requirements of 30 CFR part 74, which require flow rate consistency to be within ± 0.1 L/min of the 2.0 L/min flow rate.[34] MSHA's experience over the past 20 years has demonstrated that flow rate consistency of older sampling systems will continue to meet the requirements specified in part 74, provided the systems are regularly calibrated and maintained in approved condi tion. To ensure that sampling systems continue to meet the specification of part 74, MSHA's policy requires calibration and maintenance by specially trained personnel in accordance with MSHA Informational Report No. 1121 (revised).

[34] Section 74.3(13) requires that flow rate in an approved sampler unit deviate from 2.0 L/min by no more than 5 percent over an 8-hour period, with no more than 2 readjustments after the initial setting. However, this is a maximum deviation, and the uncertainty associated with pump flow rate, as quantified by its coefficient of variation, is 3 percent.

III. Intersampler Variability

Intersampler variability, represented by $CV_{sampler}$, accounts for uncertainty due to physical variations from sampler to sampler. Most of the previous commenters ignored this source of uncertainty. One commenter, however, stated that 10-mm nylon cyclones are subject to performance variations due to static charging phenomena (discussed in Appendix B).

Intersampler variability was investigated by Bowman, *et al.*, (1984), Bartley, *et al.* (1994), and Kogut, *et al.* (1997). Bowman, *et al.* designed a precision experiment to determine the contribution to CV_{total} from differences between individual coal mine dust sampler units. Based on their experiment, they reported $CV_{sampler}$ = 1.6 percent, which included variation in both the 10-mm nylon cyclone and the Mine Safety Appliances Co. Model G pump. They concluded that this low degree of component variability indicates there is excellent uniformity in the mechanical components of dust sampler units. Bartley, from his experimental investigation of eight 10-mm nylon cyclones, estimated $CV_{sampler}$ to be no more than 5 percent for aerosols with a size distribution typical of those found in coal mine environments. Based on an analysis involving 32 different sampler units, Kogut, J., *et al.*, (1997) found that $CV_{sampler}$ was unlikely to exceed 3.1 percent. Unlike Bartley's study, however, this analysis relied on new cyclones, which might be expected to exhibit less variability than older, heavily used cyclones. Therefore, NIOSH used the more conservative estimate of 5 percent, with an upper 95-percent confidence limit of 9 percent, in its "indirect approach" for estimating CV_{total} and evaluating method accuracy (Wagner, 1995).

Appendix D—Data Submitted by Previous Commenters

During the public hearings, several previous commenters indicated they had data showing that MSHA and NIOSH had underestimated the overall magnitude of uncertainty associated with a single, full-shift measurement. These data and accompanying analyses were submitted to the record and evaluated by MSHA and NIOSH. Some of the data sets consisted of paired samples, where two approved sampler units were placed nearby one another and operated for a full shift. One of the resulting samples was analyzed in MSHA's laboratory and the other by an independent laboratory. These data were represented as showing that single, full-shift measurements cannot be used to accurately estimate dust concentrations. Other data sets submitted consisted of unpaired measurements collected from miners at intervals over varying spans of time. These data sets were represented as showing that exposures vary widely between shifts and between occupations.

I. Paired Sample Data Submitted by the NMA

The American Mining Congress and National Coal Association [AMC and NCA have since merged into the National Mining Association, (NMA)] submitted at the request of MSHA and NIOSH a data set consisting of 381 pairs of exposure measurements. These measurements had been obtained from the "designated occupations" on two longwall and six continuous mining sections belonging to Skyline Coal, Inc. Two sampling units were placed on each participating miner and operated for the full shift. After sampling, one sample cassette was sent to MSHA for analysis while the other was analyzed at a private laboratory. All samples were reported to be "portal to portal" samples as required by MSHA regulations. Using these data, the NMA estimated an overall CV of 16 percent. Based on this 16-percent estimate, the NMA suggested that MSHA had underestimated measurement uncertainty in its February 1994 notice by 60 percent at dust concentrations of 2.0 mg/m^3.

The NMA estimate of 16 percent for overall CV includes not only sampling and analytical error, but also variability arising from two additional sources: (1) Spatial variability between the locations where the two samples were collected; and (2) interlaboratory variability introduced by the fact that a third laboratory was involved in weighing exposed filter capsules.

Since the two dust samples within each pair submitted were not collected at precisely the same location, differences observed between paired samples in the Skyline data are partly due to spatial variability. The Secretaries fully recognize and acknowledge that, as suggested by the Skyline data, spatial variability in mine dust concentrations can exist, even within a relatively small area such as the so-called breathing zone of a miner. Consistent with general industrial hygiene practice, however, the Secretaries do not consider such variability relevant to the accuracy of an individual dust concentration measurement.

The NMA expressed sampling and analytical error as a single percentage relative to the average of all dust concentrations that happened to be observed in the data analyzed. Contrary to the NMA analysis, sampling and analytical error cannot be expressed as a constant percentage of the true dust concentration. Because σ_e is constant with respect to dust concentration, CV_{weight} declines with increasing dust concentration, as explained in Appendix C. The value of CV_{total} assumed by MSHA and NIOSH for the period when the Skyline samples were collected (*i.e.*, prior to 1995) is approximately 7.5 percent when the true dust concentration (μ) is 2.0 mg/m^3 and approximately 16.2 percent when μ=0.5 mg/m^3. This is based on applying Equations 2 and 3 to σ_e=51.7 μg, CV_{pump}=4.2 percent, and $CV_{sampler}$=5 percent.

Even if the effects of spatial variability and the third laboratory are ignored, and the overall CV is interpreted as an average over the range of concentrations encountered, the 16-percent value reported by the NMA makes no allowance for the paired covariance structure of the data. Therefore, MSHA and NIOSH consider the 16-percent value to be erroneous, even under NMA's assumptions.

MSHA and NIOSH re-analyzed the Skyline data in order to check whether these data were consistent with the value of σ_e (*i.e.*, 51.7

µg) estimated for the time when the Skyline samples were collected. To distinguish the NMA interpretation of sampling and analytical error (including spatial variability) from the Secretaries' interpretation (excluding spatial variability), SAE will denote sampling and analytical error according to the Secretaries' interpretation, and SAE* will denote sampling and analytical error according to the NMA interpretation. If $CV_{spatial}$ denotes the component of SAE* attributable to spatial variability for each measurement, it follows that

$$SAE^* = \left(CV_{total}^2 + CV_{spatial}^2\right)^{1/2}.$$

To estimate SAE* as a function of dust concentration from the data provided, a least-squares regression analysis was performed on the square of the difference between natural logarithms of dust concentrations x_1 and x_2 observed within each pair. Let μ^* denote the true mean dust concentration, not only over the full shift sampled, but also over the two locations sampled. The expected value ($E\{\cdot\}$) of each squared difference forms the ordinate of the regression line at each value of the abscissa $(1/\mu^*)^2$:

$$\begin{aligned} E\left\{\left(Ln(X_1) - Ln(X_2)\right)^2\right\} &\approx 2\left(SAE^*\right)^2 \\ &= 2\left(CV_{total}^2 + CV_{spatial}^2\right) \\ &= 2\left[CV_{pump}^2 + CV_{sampler}^2 + CV_{weight}^2 + CV_{spatial}^2\right] \\ &= 2\left(CV_{pump}^2 + CV_{sampler}^2 + CV_{spatial}^2\right) + 2\left(1.438\sigma_e / \mu^*\right)^2 \\ &= a_0 + a_1\left(1/\mu^*\right)^2 \end{aligned}$$

Since no control filter capsules were used in processing the Skyline dust samples, CV_{weight} does not, in this analysis, contain the $\sqrt{2}$ factor shown in Equation 3 of Appendix C. The intercept of the regression line is: $a_0 = 2(CV^2_{pump} + CV^2_{sampler} + CV^2_{spatial})$, and the slope is $a_1 = 2(1.438\sigma_e)^2$. To carry out the regression analysis, μ^* was approximated by $(x_1+x_2)/2$. Regression estimates of the parameters a_0 and a_1 were used to generate corresponding estimates of $_e$ and $CV^2_{spatial}$.

The least squares estimate of σ_e obtained from this analysis is 76.0 µg, with standard error of ±15 µg. This is not significantly different, statistically, from the 51.7-µg value estimated for the time period when the Skyline samples were collected. Assuming CV_{pump} = 4.2 percent and $CV_{sampler}$ = 5 percent, the value of $CV_{spatial}$ obtained from the least squares estimate of a_0 is 19.7 percent, with standard error of ± 2.9 percent.

II. Paired Sample Data Submitted by Mountain Coal Company

Mountain Coal Company submitted a data set consisting of the difference (expressed in mg/m^3) between paired samples collected from miners over roughly a one-year period. Two sampler units were placed on each participating miner (presumably one on each collar or shoulder) and operated for roughly a full shift. One sample cassette was sent to MSHA for analysis (post-weighing) while the other was analyzed at a private laboratory.

Mountain Coal Company provided only the differences between measurements within each pair and not the concentration measurements themselves. Since CV_{total} varies with dust concentration, and the dust concentrations were not provided, it was impossible to form a valid estimate of measurement variability from these data, or to determine what part of the observed differences could be attributed to weighing error and what part to spatial variability or variability attributable to operation of the pump and physical differences between sampler units.

III. Exposure Data Submitted by Jim Walter Resources, Inc.

Jim Walter Resources, Inc. submitted a data set consisting of exposure measurements collected from all miners working on two longwall sections. Measurements were collected from each miner on five consecutive days. This procedure was repeated during five sampling cycles over a two-year period. During each sample cycle the five measurements for each miner were averaged and compared to the respirable dust standard. According to Jim Walter Resources, Inc., the sampling plan "eliminates the effect of the variability of the environment and minimizes the error due to the coefficient of variation of the pump because *all miners* [original emphasis] are sampled for five shifts," and these data "show the variability of the sample pump and of the worker's exposure to respirable dust."

In its submission, Jim Walter Resources, Inc. apparently assumed that the quantity being measured is average dust concentration across a number of shifts, rather than dust concentration averaged over a single shift at the sampling location. The Secretaries agree that dust concentrations do vary from shift to shift and from job to job, as these data illustrate. This variability, however, is largely under the control of the mine operator and should not be considered when evaluating the accuracy of a single, full-shift measurement.

IV. Exposure Data Submitted by the NMA

The NMA submitted data consisting of recently collected and historical measurements collected from the designated occupations (continuous miner operator for continuous mining sections and either the headgate or tailgate shearer operator for longwall mining sections) for three continuous mining sections and five longwall mining sections. According to the NMA analysis, there is a 17-percent probability that these mines would be cited, even though the long-term average is less than the respirable dust standard.

The NMA failed to recognize that the quantity being measured is dust concentration averaged over a single shift at the sampling location. The Secretaries agree that exposures do vary from shift to shift, as these data illustrate. This variability, however, is largely under the control of the mine operator and should not be considered when evaluating the accuracy of a single, full-shift measurement.

V. Sequential Exposure Data Submitted by Jim Walter Resources, Inc.

Jim Walter Resources, Inc. submitted data collected from several longwall faces. For each longwall, seven dust samples were collected, using sampler units placed on the longwall face at least 48″ from the tailgate at the MSHA 061 designated location. Pumps were successively turned off in one hour increments, resulting in samples covering progressively longer time periods over the course of the shift, from one to eight hours. This was repeated on a number of days at each longwall.

Many of the samples showed either the same or less weight gain than the previous sample (collected over a shorter time period) within a sequence. In the cover letter and written comments accompanying these data, it was claimed that the weight gains observed for samples within each sequence should progressively increase, irrespective of variations in air flow and production levels, and that the patterns observed exemplify

"the variability of sample results with today's equipment and weighing techniques."

MSHA and NIOSH have concluded that these data cannot be used to estimate or otherwise evaluate measurement accuracy for the following reasons: First, a highly sensitive and accurate sampling device would be expected to produce variable results when exposed to even slightly different environments. Since the samples within each sequence of seven were not collected at exactly the same point, they are subject to spatial variability in dust concentration. It is well known that dust concentrations can vary even within small areas along a longwall face. Therefore, variability in sample results is attributable not only to measurement errors but also to variations in dust concentration due to spatial variability.

Second, even on a production shift, variations in air flow and production levels over the course of the shift can result in periods within the shift during which the true dust concentration to which a sampler is exposed is low or near zero. If a sampler unit is exposed to a relatively low dust concentration during the final hour in which it is exposed, any difference between that sample and the previous sample will tend to be dominated by spatial variability. In such cases the increase in weight accumulated during the final hour would be statistically insignificant as compared to variability in dust concentration at different locations. Without detailed knowledge of the airflow and production levels as they varied over each shift, it is impossible to determine how many cases of this type would be expected. However, approximately one-half of such samples would be expected to exhibit less weight gain than the previous sample.

Further, because sample weights were truncated to 0.1 mg at the time these data were collected, and because expected weight gains of less than 0.1 mg are not uncommon over a one-hour period, there would be no apparent increase in recorded weight gain in many cases where the two sample results actually differed by a positive amount. Therefore, some unknown number of cases showing no difference in successive weight gains are attributable to truncation effects. Truncation has now been discontinued for samples collected under MSHA's inspection program.

Finally, as has been shown in Appendix C, a certain percentage of negative weight-gain measurements at low dust concentrations is consistent with the weighing imprecision experienced at the time these samples were collected. However, since these data were not collected in a controlled environment, it is impossible to determine what that percentage should be. Because the weight gain for each sample is determined as the difference between two weighings, comparison of weight gains between two samples involves a total of four independent weighing errors. Therefore, variability attributable purely to weighing error in the difference between weight gains in two successive samples is greater (by a factor equal to "2) than variability due to weighing error in a single sample. Furthermore samples collected over less than a full shift are subject to more variability due to random fluctuations in pump air flow and cyclone performance than samples collected over a full shift. Both of these considerations increase the likelihood that a sample will exhibit less weight gain than its predecessor, as compared to the likelihood of recording a negative weight gain for a single, full-shift sample.

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XVI. Regulatory Text

List of Subjects in 30 CFR Part 72

Coal, Health standards, Mine safety and health, Underground mines, Miscellaneous.

Dated: May 31, 2000.

Alexis M. Herman,

Secretary, Department of Labor.

Dated: May 31, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

Accordingly, it is proposed by the Department of Labor, Mine Safety and Health Administration, to amend chapter I of title 30 of the Code of Federal Regulations as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, 961.

2. Section 72. 500 is added to subpart E of part 72 to read as follows:

§ 72.500 Single, full-shift measurement of respirable coal mine dust.

The Secretary may use a single, full-shift measurement of respirable coal mine dust to determine average concentration on a shift if that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift.

[FR Doc. 00–14075 Filed 7–6–00; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75 and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of hearings.

SUMMARY: MSHA is proposing to revoke existing operator respirable dust sampling procedures under parts 70 and 90, and to implement new regulations that would require each underground coal mine operator to have a verified mine ventilation plan. Under this proposal, MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit (MMU) in controlling respirable dust under typical mining conditions. MSHA would collect full-shift respirable dust samples, called "verification samples," to demonstrate the adequacy of the dust control parameters specified in the mine ventilation plan in maintaining the concentration of respirable coal mine and quartz dust at or below 2.0 mg/m^3 and 100 µg/m^3, respectively. The adequacy of these parameters would be demonstrated on shifts during which the amount of the material produced is at or above the "verification production level" (VPL) or the tenth highest production level recorded in the most recent 30 production shifts.

The proposal would require mine operators to: First, set and maintain the dust control parameters during MSHA verification sampling at levels specified in the plan; second, maintain and make available to MSHA records of the amount of material produced by each mechanized mining unit during each production shift; and third, additional information in mine ventilation plans. For longwall mine operations, MSHA is also proposing to permit the use of either approved powered, air-purifying respirators (PAPRs) or verifiable administrative controls as a supplemental means of compliance if MSHA has determined that further reduction in respirable dust levels cannot be achieved using all feasible engineering or environmental controls appropriate for the operational conditions involved. In addition, through this rule, MSHA would conduct all compliance and abatement sampling under existing parts 70 and 90.

DATES: Comments on the proposed rule should be submitted on or before August 7, 2000.

We are also announcing that we will hold public hearings on the proposed rule within 30 to 45 days of the publication of this rule. The hearing dates, times and specific locations will be announced by a separate document in the **Federal Register**. The rulemaking record will remain open 7 days after the last public hearing.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send your comments to MSHA. Clearly identify comments as such and send them—(1) By mail to: Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to: comments@msha.gov. Written comments on the information collection requirements may be submitted directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for MSHA; and to Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; by facsimile to MSHA, at 703–235–5551; or by electronic mail to comments@msha.gov.

The hearings will be held in the following locations: Prestonsburg, Kentucky, (Jenny Wiley State Resort Park); Morgantown, West Virginia; and Salt Lake City, Utah. The hearing dates, times and specific locations will be announced by a separate document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

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The preamble discusses: revocation of existing operator respirable dust sampling requirements, revised procedures for adjusting the respirable dust standard when quartz is present, the proposed rule, engineering controls for respirable coal mine dust, dust control parameters, supplemental controls, health effects of exposure to respirable coal mine dust, degree and significance of the reduction in the number of shifts during which there are overexposures, an analysis of the technological and economical feasibility of this proposed rule, and regulatory impact and flexibility analyses.

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II. Background

Maintaining a work environment free of excessive levels of respirable coal mine dust and quartz dust (respirable dust) is essential for long-term health protection. Through the joint promulgation of the single, full-shift sample and plan verification proposals, miners would be further protected from the debilitating effects of occupational

respiratory disease by limiting their exposures to respirable coal mine dust to no more than the applicable standard on each shift.[1]

Section 202(b)(2) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires each operator to continuously maintain the average concentration of respirable dust in the mine atmosphere, during each shift to which each miner in the active workings of such mine is exposed, at or below 2.0 milligrams of respirable dust per cubic meter of air (mg/m^3). Under current MSHA regulations, when coal mine dust contains more than five percent quartz, the respirable coal mine dust standard is further reduced, by means of a formula. Although MSHA does not currently enforce a separate standard for respirable quartz dust, the formula (10 divided by the percentage quartz) used to establish an applicable dust standard, in effect, limits quartz concentrations to 100 $\mu g/m^3$.

Consistent with the Mine Act and MSHA regulations, the primary focus of the federal respirable dust program is on controlling the concentrations of respirable dust in the work environment where miners work or travel through the application of feasible environmental or engineering control measures. Engineering or environmental control of respirable dust in the mine environment is the ultimate dust-control technique and the principal method for protecting miners' health. These include all methods that control respirable dust levels in the air that a miner breathes by either reducing dust generation, or by suppressing, diluting, capturing or diverting the dust that is being generated by the mining process. Under the Mine Act, the mine operator has primary responsibility for implementing a program to control respirable dust so that all miners work in an environment free of excessive levels of respirable dust. For full compliance, mine operators must develop, implement, and maintain effective engineering or environmental control measures, and evaluate them at regular intervals to assure that they function as intended. These control measures or "dust control parameters," are specified in the dust control portion of the operator's mine ventilation plan currently required under § 75.370.

Mine ventilation plans are a long-recognized means of addressing health issues that are mine specific and for achieving work environments that are free of excessive concentrations of respirable dust. Currently, section 75.370 requires each operator of an underground coal mine to develop and follow a ventilation plan that is designed to control methane and respirable dust in the mine. The plan must be suitable to the conditions and mining systems employed at the mine. Although ventilation plans must be designed to control respirable dust, there is no requirement that the plan's effectiveness be verified.

The dust control portion of the mine ventilation plan is a key element of the operator's strategy to control respirable dust in the working environment of each mechanized mining unit (MMU) during each shift. Section 70.2 defines an MMU to mean "a unit of mining equipment including hand loading equipment used for the production of material." The plans provide a description of specific engineering control measures in use. The plans also contain procedures for maintenance of specific dust control equipment, such as scrubbers, dust collectors on roof bolters, and spray nozzles, or for the replacement of cutting picks to minimize dust generation. Once approved by the District Manager, the dust control parameters must be employed on a continuous basis. By monitoring the parameters, one can be assured that respirable dust levels are being adequately controlled without needing to rely on repeated dust sample analyses.

Implementing dust control parameters, which have been determined effective under typical mining conditions, and maintaining these controls in proper working order provides reasonable assurance that no miner will be overexposed. Because technology that continuously monitors respirable dust and displays dust concentrations in real-time is not currently used in underground coal mines, adhering to effective ventilation plans is the only practical means of reasonably assuring, on a continuous basis, that miners are not overexposed. In 1996, MSHA implemented revised ventilation standards which, among other provisions, required an on-shift examination of the dust control parameters before coal production begins on each MMU. Based on the recommendations of the MSHA Task Group (MSHA, 1992), this requirement is intended to focus attention on the need for properly functioning dust controls before production begins. On-shift examinations of dust control parameters under existing § 75.362 are important for an effective respirable dust control strategy.

Recent advances in technology may make it feasible to continuously monitor certain parameters such as, air quantity and velocity, and spray water flow rate and pressure (Spencer, *et al.* 1996). Section 75.362 encourages the use of such monitors as it would eliminate the need for periodic physical measurements of some dust controls to verify if they are operating properly. Although current technology allows for real-time data on the performance, the condition of key dust control parameters, and for immediate modification of controls, MSHA is not aware of its use by any operator.

Since establishment of the first comprehensive dust standards in 1969, the implementation of ventilation plans by mine operators and their enforcement by MSHA has had a significant impact on control of dust levels in underground coal mines. For example, based on federal mine inspector sampling results, the average dust concentration in the environment of a continuous miner operator (occupation code—036) has been reduced by 86 percent over the past 30 years, from 7.7 mg/m^3 to approximately 1.1 mg/m^3. This accounts for the significant decline in the percentage of operator continuous miner designated occupation (DO) samples exceeding 2.0 mg/m^3, from 49 percent (over 32,000 samples/shifts) in 1971, to 10 percent (over 2,500 samples/shifts) in 1999. Analysis of all valid operator DO samples indicates that in 1971, the 2.0 mg/m^3-dust standard was exceeded on 53,463 (44 percent) of the 122,404 shifts sampled, compared to 3,002 (10 percent) of the 28,727 shifts sampled in 1999 (MSHA, DO Samples by Calendar Year, 1999). Despite this progress, MSHA has found evidence that a significant number of overexposures still occur on the shifts sampled during which the approved dust control parameters are operating at or above approved levels. This evidence suggests that it is highly probable that some miners are overexposed to respirable dust on shifts not sampled by either the operator or by MSHA. In addition, recent medical surveillance data suggests that miners continue to be at risk of developing simple coal workers' pneumoconiosis (CWP), progressive massive fibrosis (PMF) and silicosis (Elam, April 1999).

Certain aspects of the current respirable dust program limit MSHA's ability to assure the adequacy of the dust control parameters under typical mining conditions according to two expert panels which reviewed the federal program designed to prevent pneumoconiosis among coal miners. Both the *Coal Mine Respirable Dust Task Group*, an interagency task group

[1] For details, see Quantitative Risk Assessment and Significance of Risk Sections.

established in 1991 by the Assistant Secretary for Mine Safety and Health, and the *Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers,* established in 1995 by the Secretary of Labor, considered all aspects of the respirable coal mine dust control program and made recommendations for improvement.

A. Coal Mine Respirable Dust Task Group

In response to concerns about the Federal coal mine dust program (MSHA, 1992), MSHA's *Coal Mine Respirable Dust Task Group* (the Task Group) undertook an extensive review of the program to control respirable coal mine dust and made recommendations to improve the program in 1991. As part of that review, MSHA developed a special respirable dust "spot inspection program" (SIP). This program was designed to provide the Agency and the Task Group with information on the dust levels to which underground miners are typically exposed. Among other recommendations, the Task Group recommended that MSHA require mine ventilation plans to be effective under typical mining conditions.

The Task Group found that MSHA's current program did not promote the development and implementation of quality plans. Based on its review of a representative number of dust control plans, the Task Group found that some plans lacked specificity or did not include all the dust control parameters actually used. For example, the plans for three major underground coal mines listed the air quantity, the primary means of controlling concentrations of respirable coal mine dust, to be 18,000 cubic feet per minute (cfm) in the mining section. The actual quantities measured by MSHA inspectors at these mines during the SIP varied from 40,000 cfm to over 120,000 cfm.

Based on a review of MSHA Form 2000–86 (Revised), *Respirable Dust Sampling and Monitoring Data,* similar differences were found between air quantity specified in approved ventilation plans and the levels observed at a number of longwall MMUs inspected in 1999. For example, 20 of the 47 longwall MMUs were using significantly more air than specified in the ventilation plan (MSHA, September 1999). Under these circumstances, it would be impossible to assess whether the air volume specified in the plan was adequate to maintain dust concentrations at or below the applicable dust standard. It should be noted that air volume quantities, air velocities, water spray pressures, etc., specified in the plan are considered to be a minimum and MSHA encourages mine operators to exceed their plan parameters, but only after the levels specified in the plan have been shown to be effective under the conditions in effect during sampling. In addition, a lack of specificity in some plans made it difficult for MSHA inspectors to determine whether the operator was complying with the approved plan. Although several plans indicated that the mining equipment was to be provided with water sprays, the plan did not specify the location of the sprays or the water pressure at the spray nozzle.

The Task Group determined that the use of minimum production levels for evaluating the effectiveness of dust control parameters can result in marginal or inadequate plans. A more detailed discussion of the impact of production on the quality of dust control parameters specified in mine ventilation plans is provided later in this document (in sections III.C.1. and IV.B.). Currently, MSHA relies on information provided by the operator to determine at what production level the plan should be evaluated. No production records are required for each MMU. Although operators must submit production data on a quarterly basis, the data is compiled for the entire mine. In addition, these quarterly reports provide information on the amount of clean coal produced, which are much lower than the tonnage of total material produced, and are not useful for establishing what constitutes a "normal production shifts" for sampling purposes.

A follow-up survey conducted by MSHA in 1994 found that 43 percent or 539 of the 1,245 producing MMUs, worked at least a 9-hour shift. The Task Group also concluded that current regulations limiting the duration of sampling to eight hours do not provide for adequate assessment of respirable dust exposure during nontraditional shifts of more than eight hours.

Implementation of the Task Group recommendations would have required regulatory change. The effort to implement these changes was suspended pending the recommendations of Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, which was convened in 1995.

B. Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers

On January 31, 1995, the Secretary of Labor established the *Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers* (the Advisory Committee). The Advisory Committee was chartered to "make recommendations for improving the program to control respirable coal mine dust in underground and surface mines in the United States." The Advisory Committee identified and addressed many of the same issues considered by the Task Group. Findings and consensus recommendations were developed for each issue (MSHA, 1996). The Advisory Committee concluded that the dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment. They concluded that the initial evaluation, approval, in-mine verification and monitoring to demonstrate the effectiveness of the operator's proposed dust control plan is critical for the protection of miners from lung disease. Also, believing that the credibility of the current system of mine operator sampling to monitor compliance with exposure limits has been severely compromised, the Advisory Committee concluded that restoration of miner and mine operator confidence in the respirable coal mine dust sampling program should be one of MSHA's highest priorities. Accordingly, there was unanimous agreement that in order to restore confidence in the program MSHA should take full responsibility for all compliance sampling currently being carried out by mine operators under 30 CFR parts 70 and 90.

The November 1996 Advisory Committee Report recommended numerous improvements for the federal program to protect miners from simple CWP, PMF, and silicosis. Of these, the following have been incorporated in this proposal:

1. MSHA should take full responsibility for all compliance sampling at a level which assures representative samples of respirable dust exposures under usual conditions of work without adversely impacting the remainder of the Agency's resources and responsibilities.

2. MSHA should, in consultation with the operator, perform scheduled independent dust monitoring to verify the operator's plan.

3. MSHA should redefine the range of production levels which must be maintained during sampling to verify the plan. The value should be sufficiently close to maximum anticipated production level in order to reasonably assure that the plan would be effective under typical operations.

4. MSHA should review compliance and production records to determine when there is a need for plan verification and modification.

5. MSHA should require that the results and monitoring of dust control parameters and production be recorded in order to correlate dust control parameters with dust measurements.

This proposal is intended to eliminate overexposures on individual shifts and to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program by addressing the shortcomings identified by the Task Group and the Advisory Committee in the current respirable coal mine dust program. The proposal would revoke the operator dust sampling programs under 30 CFR parts 70 and 90 and require the implementation of mine ventilation plans demonstrated to be effective in maintaining respirable dust at or below the applicable standard on each shift. These ventilation plans would be verified by MSHA using single, full-shift respirable dust samples. The plans' effectiveness would be monitored on a regular basis by the use of inspector single, full-shift samples. The proposed rule regarding the use of single, full-shift measurements of respirable coal mine dust to determine average concentration is also published in today's **Federal Register**.

MSHA recognizes that the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers made several recommendations that also impact on surface coal mine workers. These surface coal mine issues will be addressed by the agency in a separate rulemaking which is currently underway. The scope of that rulemaking will include many of the issues that are addressed in this underground rule including requirements for duct control plans, verification of dust control plans prior to approval, on shift examination of dust control measures, and the elimination of operator sampling for compliance purposes.

III. General Discussion

This section describes the current respirable coal mine dust program and the role of mine ventilation plans in safeguarding the health of miners. Specifically, this section details:

(1) The reasoning behind MSHA's decision to revoke the operator dust sampling programs under 30 CFR parts 70 and 90 and to take full responsibility for all compliance sampling;

(2) The proposed procedures for arriving at an average quartz percentage that is used to establish an applicable dust standard under §§ 70.101 and 90.101;

(3) The existing means for evaluating the effectiveness of dust control parameters stipulated in mine ventilation plans;

(4) The plan approval process;

(5) Methods of assuring compliance with plan requirements; and

(6) MSHA's efforts to monitor plan effectiveness on a regular basis.

There is also a detailed discussion of the hierarchy of dust controls and the continued need for mine ventilation plans to specify dust control parameters in order to preserve the primacy of engineering controls. Finally, as a possible alternative to plan verification, we have included a discussion and a request for comments on the application of personal continuous monitoring technology which is, or may become available, to prevent overexposure on individual shifts.

A. Revocation of the Operator Dust Sampling Program

Under the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) coal mine operators were required to take accurate dust samples at periodic intervals to measure the amount of respirable dust in the mine atmosphere where miners work or travel. The Coal Act also required that citations be issued whenever respirable dust samples collected either by an operator or by federal mine inspectors showed noncompliance with the applicable dust standard. The Coal Act was amended in 1977 (Mine Act), but the respirable dust provisions remained essentially unchanged.

1. Pre-1980 Sampling Program

In 1970, federal regulations were issued that established the first comprehensive coal mine operator dust sampling program. Those regulations required the environment of the occupation on a working section, or MMU, exposed to the highest respirable dust concentration to be sampled—the "high risk" occupation concept. All other miners working in the MMU in less risky occupations were assumed to be protected from excessive concentrations of respirable coal mine dust if the high risk occupation was in compliance. Under the program, each operator was required to initially collect and submit ten valid respirable dust samples to determine the average dust concentration (across ten production shifts). If analysis showed the average dust concentration to be within the applicable dust standard, the operator was required to submit only five valid samples a month. If compliance continued to be demonstrated, the operator was required to submit only five valid samples every other month. The initial, monthly, and bimonthly sampling cycles were referred to as the "original," "standard," and "alternative" sampling cycles, respectively. When the average dust concentrations exceeded the standard, the operator reverted back to the standard sampling cycle.

Additionally, each working miner was sampled individually every 120 or 180 days, depending on the miner's work assignment, or every 90 days for each miner (now referred to as a part 90 miner) who had a positive chest x-ray for coal workers' pneumoconiosis (CWP) and who elected to exercise the option of transferring to a less dusty area. However, except for the part 90 miner results, these early individual sample results were not used for enforcement, but were forwarded to the National Institute for Occupational Safety and Health (NIOSH) to develop a comprehensive exposure data base for research concerning black lung disease. Each sample was accompanied by a completed mine data card that included, among other things, the occupation and social security number of the sampled miner. This information was also included in the Agency's computer print-out of sampling results that was sent to mine operators.

2. Post-1980 Sampling Program

In 1980, following hearings held throughout the coal fields (in 1977 and 1978), regulations governing operator sampling were substantially revised by reducing the operator sampling burden, to simplify the sampling process, and to enhance the overall quality of the sampling program. The result was to replace the various sampling cycles with a bimonthly sampling cycle and to eliminate the requirement that each working miner be sampled. These are the regulations that currently govern the mine operator dust sampling program. Like the 1970 rules, the current regulations continue to rely on sampling the environment of the DO in the MMU that is exposed to the greatest concentration of respirable coal mine dust, but reduced the number of shifts required to be sampled from ten to five.

Other changes included replacing the requirement that each working miner be sampled individually with the bimonthly collection of one sample from each "designated area" (DA) to measure the dust concentrations associated with dust-generating sources in the active workings of the mine, such as along haulage ways, at underground crushers, or at transfer points. These locations are strategically selected so that the environment where miners normally work or travel is monitored for compliance with the applicable dust

standard. The operator's approved ventilation plan identifies the specific locations where DA samples are required to be collected and the dust control measures used at these locations. Another change was to increase the frequency of sampling part 90 miners from every 90 days to one sample every 60 days.

The revised regulations also eliminated the reporting of personal identifiers on the dust data card due to miner concerns that the data may be used by mine operators to characterize the exposure of an individual miner in future black lung claims. It also provided for sampling equipment to be properly maintained and calibrated, and examined during the shift. Additionally, operators' were required to demonstrate a certain level of competence by passing a test administered by MSHA. Since proper use of sampling equipment is essential to the integrity of the sampling process, the certification requirement was intended to provide reasonable assurance that the person conducting sampling was competent to perform the task. After samples have been collected, certified persons are required to properly fill out the dust data card that accompanies each filter cassette. These samples must then be transmitted unaltered to MSHA within 24 hours after the end of each sampling shift, to expedite compliance determinations and minimize periods of miner overexposure.

While not specified in the regulations, operators are permitted by practice to note on the dust data card any reason why they believe the sample(s) transmitted are not valid and should not be used by MSHA to determine compliance. Generally, such samples are voided by MSHA and the operator is required to submit a substitute sample within that bimonthly sampling period.

MSHA may also determine that an operator sample is invalid for many of the same reasons. MSHA may also void operator samples for technical and administrative reasons, such as samples submitted in excess of the number required, or DO samples if they were not taken during a "normal production shift." "Normal production shift" is defined in existing §§ 70.2(k)(1), 70.207(a) and (d) as a "production shift during which the amount of material produced * * * is at least 50 percent of the average production for the last set of five valid samples * * *"

After MSHA has processed the samples, the operator is provided with a report of the sample results, which must be posted on the mine bulletin board for a period of 31 days to provide miners ready access to current information on respirable dust conditions in the mine. Operators are also required to report to MSHA in writing any change in the operating status of the mine, mining unit, or designated area that affects the sampling requirements, within three working days after the change occurs.

An operator who is found to be in violation of the reduced dust standard is issued a citation and must take steps to reduce the dust levels. After corrections have been made, the operator must collect five additional samples within a time period specified by MSHA to demonstrate compliance.

During the development of the 1980 regulations for operator sampling requirements, we received comments that indicated a lack of confidence in our reliance on operator samples for enforcement purposes. In response to these concerns, MSHA published a proposed regulation in 1980 that would have provided miners' representatives the right to observe each phase of the operator dust sampling process with no loss in pay. The proposal intended to promote better cooperation between mine operators and miners in order to improve the effectiveness of the program. In 1985, the Agency decided not to finalize regulations to provide miners' representatives the right to observe operator sampling, stating that compliance with the 1980 revisions to the sampling program had resulted in greater confidence in the overall dust program.

3. Issues Affecting the Credibility of Operator Compliance Sampling

As noted earlier in this proposal, there is general agreement that significant efforts have been made during the past 30 years to reduce dust levels in our Nation's mines. While most mine operators have conscientiously attempted to sample miners' exposure to respirable coal mine dust as required by regulation, because of the actions of some, the operator sampling program continues to be plagued by allegations of fraudulent sampling practices. Despite MSHA's efforts to improve the quality of the operator dust sampling program and to vigorously investigate such allegations and prosecute violators, sampling irregularities continue to be documented involving the physical alteration of the weight of dust collected on the filter, or the collection of samples in low-dust areas of the mine or even outside of the mine.

The Advisory Committee found that during the 10 years prior to the publication of their report, serious questions had been raised regarding the representativeness of respirable dust levels measured by mine operators, the handling of filter cassettes, and the changing of work assignments and/or working conditions during sample collection. The credibility of the operator sampling program was questioned by almost all the representatives of miners who testified before the Advisory Committee. Since 1990, more than 160 mine operators, agents and contractors have pled or been found guilty of submitting fraudulent samples to MSHA. These disclosures correspond with the concerns expressed by critics of the operator sampling program.

Detailed reviews of the respirable dust program by the Task Group and the Advisory Committee identified aspects of the current program that have the potential to negatively affect validity of sampling results which could impact miner health protection and, consequently, its credibility in the minds of the very people the program was designed to protect, the miner. For example, to effectively monitor the mine environment where miners work or travel, it is essential that respirable dust samples are "representative," in that they reflect typical dust conditions to which miners are exposed. The recurrent pattern of disclosures of tampering with the sampling process has highlighted the vulnerability of the current monitoring system to the submission of unrepresentative samples. For example, during the period 1980 to 1990, over 137,000 of the 750,000, or approximately 18 percent of the operator DO samples showed extremely low concentrations (less than or equal to 0.1 mg/m^3), compared to 10 percent for the MSHA samples. Since 1990, 14 percent of the operator DO samples and 3 percent of the MSHA samples were equal to 0.1 mg/m^3.

The fact that sampling is controlled by the mine operator also allows the operator to determine when and under what conditions samples will be collected during all current bimonthly and abatement sampling. This permits the operator to conduct sampling during those periods in the mining cycle when conditions are anticipated to result in lower dust levels in the mine environment. For example, the operator may choose to sample during periods when the volume of air on the MMU is greatest or when ventilation controls are operating at optimum efficiently. Accordingly, these sample results may not be representative of typical exposure levels. Other aspects of the monitoring system that may allow the submission of unrepresentative samples were reported by the Task Group in its report of

findings. Because some operators do not sample every bimonthly period or fail to submit the required number of bimonthly samples, miners may be potentially exposed to excessive levels of respirable dust.

4. Proposed Reforms to the Respirable Dust Monitoring Program

Believing that one of MSHA's highest priorities must be to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program, one of the Advisory Committee's key recommendations was that MSHA take full responsibility for all compliance sampling at a level which assures representative samples of respirable dust exposure under usual conditions of work. It also recommended that compliance sampling should be carried out at a number and frequency at least at the level required of operators and MSHA.

Accordingly, MSHA is proposing to revoke the operator dust sampling programs under 30 CFR parts 70 and 90 and to take full responsibility for all compliance sampling (i.e., bimonthly and abatement sampling), in a manner that it believes will be more protective than the current operator sampling program. MSHA intends to monitor miners' dust exposure and compliance with the dust control provisions of the approved mine ventilation plan, or with the respirable dust control plan for a part 90 miner at underground mines, in accordance with the procedures and guidelines established in Chapter 1 of the Coal Mine Health Inspection Procedures Handbook, as modified herein.

(a) Bimonthly Sampling

MSHA would collect a full-shift sample from the working environment of at least five different occupations, if available, on each producing MMU, instead of sampling only the DO for five consecutive shifts or on shifts worked on five consecutive days as under the current bimonthly sampling program. Proposed revised § 70.2(j) defines full shift, for purposes of bimonthly compliance sampling, as the entire work shift including travel time but excluding any time in excess of 480 minutes. A full-shift sample would also be collected from each DA located inby the section dumping point (*i.e.*, intake air and roof bolter DAs) bimonthly, and from all other DAs once each year. All part 90 miners would be sampled bimonthly as under the current program.

MSHA would issue a citation for noncompliance when a single, full-shift measurement demonstrates, at a high level of confidence, that the applicable dust standard is exceeded. Although MSHA would collect multiple occupational samples from each MMU, we would issue only one citation on a single shift on any one MMU unless more than one dust-generating source was involved.

(b) Abatement Sampling

Under this proposal, MSHA would also assume responsibility for all abatement sampling. As recommended by the Advisory Committee, MSHA would utilize single, full-shift samples to demonstrate abatement. Since the criteria under which the effectiveness of ventilation plans are required to be verified are significantly more stringent than those for bimonthly sampling, MSHA does not anticipate issuing many citations to MMUs and sectional DAs. However, should an MMU be cited for violation of the applicable dust standard, and a determination be made by the inspector who was onsite that the dust control parameters are no longer adequate for the present operating conditions, MSHA would require the operator to revise the dust control portion of the mine ventilation plan under proposed § 70.219. MSHA would then verify the effectiveness of the revised plan. Citations for violating the applicable dust standard would not be based on verification sampling.

If on the other hand, a determination is made that a change in the plan is not warranted, the operator would take corrective action to prevent miners from being exposed on subsequent shifts. MSHA would then sample the MMU, similarly to bimonthly compliance purposes described previously in paragraph (a) of this section. All five of the occupational samples taken on a single shift would have to be below the applicable standard to demonstrate abatement. If any sample result exceeds the applicable standard, but not at a sufficiently high level of confidence to warrant a citation, then MSHA may sample additional shifts or initiate the plan verification process.

We solicit comments on whether MSHA should require a higher level of confidence that the applicable standards are being complied with before abating a citation for excessive dust. Specifically, should abatement determinations be based on the critical values specified in § 70.209? We also solicit comments on whether abatement sampling should be conducted at or above the Verification Production Level (VPL) as defined in § 70.2(aa). Requiring that abatement be demonstrated under more typical production conditions, as represented by the VPL, would provide assurance that miners will continue to be protected on a majority of the production shifts.

MSHA proposes to conduct abatement sampling involving non-MMU DAs and part 90 miners in the same way as it conducts bimonthly sampling. A violation would be abated if the result of an abatement sample was less than the applicable standard. If sample results exceed the applicable standard but not at a sufficiently high level of confidence to warrant a citation, MSHA may collect additional single, full-shift samples.

As in the case of MMU abatement samples, we solicit comments on whether MSHA should require a higher level of confidence that abatement samples for non-MMU DAs and for part 90 miners demonstrate compliance with the applicable standards before abating a citation for excessive dust. Specifically, should abatement determinations be based on the critical values specified in § 70.209?

(c) Advantages of MSHA Compliance Sampling Over Existing Program

According to section 101(a)(9) of the Mine Act, no health standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health standard.

For the reasons listed below, MSHA believes that, through the joint promulgation of this proposed rule and the proposed single, full-shift sample rule, miners would be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust and quartz dust on every shift.

- Providing and maintaining a work environment free of excessive levels of respirable dust is essential for long-term health protection. While monitoring of the work environment provides an indication of how effective the existing dust control measures are, monitoring alone does not control dust levels. Requiring mine operators to implement and maintain dust control parameters which, for the first time, have been determined effective under typical mining conditions, will provide reasonable assurance that no miner will be overexposed on individual shifts.
- Implementing single, full-shift sample determinations will more likely detect excessive dust concentrations and thus protect miners. Averaging samples taken on multiple shifts can mask overexposures on individual shifts. Although MSHA would be sampling fewer shifts, MSHA believes the proposed sampling methodology

would provide a more accurate representation of dust conditions to which miners are exposed.

- Under the existing operator sampling program, only the DO is sampled. Under the proposed program, MSHA would sample multiple occupations on the same shift. This would provide a more comprehensive assessment of dust conditions to which miners are exposed.
- Since MSHA will be doing all the sampling, we will be able to monitor the dust control parameters and work practices in effect during sampling. This will enable MSHA to determine the effectiveness of the operator dust control program.
- Unlike the current sampling program, which allows operators control over when to sample and under what operating conditions, MSHA's visits will be unannounced. As a result, all phases of the mining cycle are likely to be sampled eventually (*i.e.*, construction activity, longwall start-up, turning crosscuts, etc.), and samples should be more representative of typical mining conditions.
- The miners' representative will have walkaround rights during sampling, thereby increasing miners' confidence in the dust sampling program.

B. Procedures for Setting the Applicable Dust Standard When Quartz is Present

Section 202(b)(2) of the Mine Act and the implementing MSHA regulations require each operator to continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 mg/m^3. Under current MSHA regulations in §§ 70.101, and 90.101, the applicable coal mine dust standard is lowered further, by means of a formula (10 divided by the percentage of quartz) prescribed by Secretary of Health, Education, and Welfare in 1971, whenever the respirable coal mine dust in the mine atmosphere of the active workings contains more than five percent quartz. [2] This is based on the recognition that the toxicity of coal mine dust increases when higher levels of quartz are present. Consequently, as the quartz content of respirable coal mine dust present in the mine atmosphere increases over five percent, the applicable respirable coal mine dust standard is correspondingly lowered. For example, if 10 percent quartz was present, the mine operator would have to continuously maintain respirable dust at or below 1.0 mg/m^3.

The following provides an overview of MSHA's current and proposed revised procedures for arriving at an average quartz percentage that is used to establish an applicable dust standard.

1. Current Procedures

Until 1985, the applicable dust standard was adjusted based on the percentage of quartz determined from a single, full-shift (8 hours or less in duration) respirable dust sample taken by an MSHA inspector. Since MSHA sampled less frequently than we currently do, a reduced standard could remain in place anywhere from 12 to 24 months. During that period the level of quartz could have either increased or decreased significantly. As a result in December 1985, MSHA implemented the procedures in effect. This program, for the first time, enabled mine operators to participate voluntarily in the process of setting reduced dust standards. These procedures are contained in Chapter 1 of MSHA's Coal Mine Health Inspection Procedures Handbook.

The most significant program change involved the use of individual quartz percentages determined from one MSHA and, under certain conditions, up to two coal mine operator full-shift respirable dust samples, referred to as "optional samples," to arrive at an average quartz percentage. It also provides for the automatic reevaluation of work areas and occupations on a reduced dust standard every six months.

Under the existing system, if an MSHA sample contains more than five percent quartz, an operator is afforded the opportunity to submit an optional sample. Provided it has sufficient weight gain (0.45 mg), the quartz content will be averaged with the MSHA sample when sample results do not differ by more than ± 2.0 percent, and the standard set accordingly. If an operator fails to submit an optional sample or it contains insufficient weight for analysis, the standard is adjusted based on the MSHA sample alone. Operators are afforded the ability to submit a second optional sample whenever sample results differ by more than ± 2.0 percent. All three results are then used to compute the average quartz percentage.

Also, in November 1994, MSHA refined its analytical procedure enabling us to analyze inspector low-mass respirable dust samples (0.100 to 0.449 mg) for quartz. Only those samples containing 25 micrograms or more of quartz were used in the standard-setting process. However, this change applied only to filters that were preweighed to 0.001 mg for use by MSHA enforcement personnel. It did not apply to operator-submitted optional samples, which were collected with filters preweighed to 0.01 mg, for which we required a minimum of 0.45 mg of dust to be analyzed for quartz. The ability to accurately analyze samples containing small amounts of dust reinforced MSHA's views about the severity of quartz exposures in some coal mining operations.

A review of MSHA data for FY 1999 shows that of the 778 entities (*i.e.*, MMUs, DAs, designated work positions (DWPs), roof bolters, and part 90 miners) (MSHA, Results of Quartz Sampling Operator Involvement, 1999) placed on an initial reduced standard as a result of an MSHA sample containing more than five percent quartz, 753 (96 percent) of the entities submitted an optional sample. One would expect the level of participation to be high since failure to respond would result in the setting of a lowered dust standard based on the result of the MSHA sample, which first triggered the standard-setting process. Of the 753 entities submitting an optional sample, 231 were afforded the ability to submit a second optional sample (Ibid.). Again, as expected, over 73 percent (170) of those 231 entities submitted a second optional sample, probably because doing so could reduce the quartz average quartz percentage used to establish the applicable dust standard. For comparison, in FY 1992, 93 percent of the operators afforded the opportunity submitted an optional first sample, and 82 percent of the operators given the opportunity submitted a second optional sample.

However, as the following data show, operator participation tended to decline significantly when operators were given the opportunity to submit samples involving established entities on reduced standards. Of the 1122 entities given the option to submit a sample, only 450 or 29 percent responded, compared to 96 percent for entities placed on an initial reduced standard. In 1992, 32 percent of the operators elected to participate.

2. Proposed Revised Procedures

Consistent with MSHA's decision to assume full responsibility for compliance sampling, the Agency is also proposing to rely only on MSHA samples as the basis for setting the applicable dust standard when quartz is present. As discussed below, while the proposed scheme reduces the burden and cost on mine operators to take and

[2] The applicable dust standard for intake air in § 70.100(b) and for miners who have exercised rights under part 90 regulations in § 90.100 is 1.0 mg/m^3. Those standards are also lowered if quartz exceeds 5 percent. However, no effect occurs until the quartz content exceeds 10 percent.

submit optional samples, it does not diminish the protections afforded operators under the current program. It continues to consider temporal variability associated with quartz determinations by averaging three MSHA samples collected on different shifts. MSHA recently published a proposed "Program Policy Letter (PPL) on Samples Used to Determine the Respirable Dust Level When Quartz is Present" for public comment [64 FR 65671, November 23, 1999] whereby the applicable dust standard would be set based on the results of multiple MSHA samples. It proposes that mine operator samples would no longer be used in combination with MSHA samples to determine the average quartz percentage that is used to set an applicable dust standard. In the proposed rule, MSHA is adopting the sampling approach set out in the PPL. The proposed rule supercedes the proposed PPL, and consequently, the proposed PPL is withdrawn.

We believe that results under the proposed process will be more representative of the quartz level to which miners are exposed. Unlike the current process, which may cause a standard to be set based on the quartz content of a single MSHA sample, three valid MSHA samples would be used to set a reduced standard under the proposed revised procedures [64 FR 65671].[3] Since MSHA is sampling underground mines bimonthly and surface mines semi-annually, we will have no difficulty in collecting the required number of samples to arrive at the average quartz percentage. If initial sampling shows that miners may be exposed to excessive levels of quartz, MSHA intends to sample at a greater frequency to ensure that miners are being protected. This level of sampling should also allay any operator concerns regarding the collection of "misleadingly high" samples during atypical periods. MSHA would also begin reporting quartz levels to the nearest tenth of a percent. This is intended to be more protective for the miner than the current truncation of results to a full percentage point.

Under the proposed revised procedures, when an MSHA sample contains more than five percent quartz, we would average the percent of quartz present in three most recent MSHA respirable coal mine dust samples to set the applicable dust standard. If an MMU, DA, DWP, or part 90 miner is already on a reduced standard, a new applicable dust standard will be established by averaging the results of the first two MSHA samples taken under the proposed procedures with the quartz percentage associated with the reduced standard in effect. If fewer than two MSHA samples are taken, the existing reduced standard will continue to remain in effect.

Assume an MMU is on a 1.0 mg/m^3-standard (10 percent quartz). If the first MSHA sample contains 7.2 percent of quartz, the existing standard of 1.0 mg/m^3 would continue to remain in effect. If, however, the next sample contains 16.1 percent, the average quartz percentage would be 11.1 percent [(10.0% + 7.2% + 16.1%) ÷ 3 = 11.1%], resulting in a 0.9 mg/m^3≤-standard (10 ÷ 11.1% = 0.9 mg/m^3). For MMUs, DAs, DWPs, or part 90 miners not on a reduced standard, MSHA would collect and analyze three samples for quartz to determine if a reduced standard was warranted.

Under the proposed procedures, if the newly-established standard is lower than the one in effect, the new standard would become effective seven days after the date of the notice informing the mine operator of the change in the applicable dust standard. However, if it is higher than the current standard, the newly-established dust standard would become effective on the date of the notice.

As published elsewhere in today's **Federal Register**, MSHA is also proposing to take enforcement actions on the basis of inspector single, full-shift, respirable dust measurements. For entities on a reduced standard, MSHA would delay any enforcement action until the sample is analyzed for quartz. If an exposure measurement significantly exceeds the existing standard and the quartz content of that sample would cause the standard to be lowered below the existing reduced standard, the operator would be cited for violation of the applicable standard currently in effect. On the other hand, if the quartz content of the sample would cause the dust standard and the corresponding citation threshold value (CTV) to increase so that the single, full-shift measurement would no longer indicate noncompliance, no citation would be issued. This is illustrated by way of the following example.

For example, suppose that the MMU is on a 1.3-mg/m^3 standard and a single, full-shift measurement of 1.6 mg/m^3 is obtained. Since this measurement exceeds the applicable standard, the operator is in violation of the standard. However, analysis of the DO sample shows that the sample contained 6 percent quartz which, if used, would result in a 1.7-mg/m^3 standard. This indicates that the quartz level in the environment of the DO has changed, suggesting that the current standard may no longer be valid. Therefore, since the original measurement of 1.6 mg/m^3 is less than the 1.7-mg/m^3 standard that should have been in effect on the shift sampled, a citation should not be issued.

Since MSHA samples are viewed to be more representative of the respirable dust concentration to which miners are exposed, MSHA is proposing to revise section 70.101 to clarify that the Secretary will determine the quartz level by sampling. Operator samples may no longer be submitted for determining the applicable standard. It is our belief that the procedures being proposed for setting reduced standards should be more protective for the miners than those in effect. The proposed approach provides for stringent monitoring exposure to quartz which is consistent with Advisory Committee's recommendation that MSHA increase surveillance and reduce exposure to this serious health hazard.

As under the current program, if operating conditions should change following establishment of a lowered dust standard that affect the level of quartz in the working environment, mine operators or miners' representatives will be able to request MSHA to conduct a quartz reevaluation. In the absence of continuous monitoring, mine operators should be cautious in preventing overexposures when abnormal conditions (such as cutting rock to install an overcast or other frequent but short-lived events involving cutting of rock) are encountered between MSHA sampling visits.

3. Validity of Averaging Percentages

The average quartz percentage used to set the applicable dust standard for a particular sampling location or area of a mine is determined in accordance with accepted mathematical procedures for arriving at an average value from a set of values (*i.e.*, adding together the individual quartz percentages and dividing by the number of analyses that are in the set). MSHA believes that this is the most appropriate method to use.

One commenter who responded to the PPL (op cit.) contended that MSHA's approach of arriving at the average quartz percentage was mathematically incorrect. This commenter recommended that, to more accurately

[3] Unlike MSHA's objective in compliance sampling, the objective in measuring quartz content is to establish a reduced standard that will apply to all shifts. This enables an operator to design a ventilation plan that will be protective on every shift. Therefore, it is appropriate to estimate the quartz content by averaging quartz measurements obtained over an extended time period.

reflect the true quartz concentration, the average quartz percentage be calculated by dividing total mass of quartz in micrograms by the total mass of dust collected (based on three samples in the example submitted). In the commenter's example, the average percentage obtained using MSHA's proposed averaging method was larger than that obtained using the commenter's approach.

The following two scenarios in Table III–1 clearly demonstrate that MSHA's averaging method does not always result in a larger average quartz percentage value.

TABLE III–1.—FOR TWO SCENARIOS, USING ALTERNATE METHODS, PERCENT OF QUARTZ IN RESPIRABLE DUST

Scenario I			Scenario II		
Dust mass	SiO_2 mass	% SiO_2	Dust mass	SiO_2 mass	% SiO_2
1.7	0.136	8	1.7	0.17	10
1.0	0.04	4	1.0	0.08	8
2.5	0.3	12	2.5	0.15	6
MSHA's Method	Average of % SiO_2 = E		MSHA's Method	Average of % SiO_2 = 8	
Commenter's Method	Sum (SiO_2 Mass) ÷ Sum (Dust Mass) = 9.2%		Commenter's Method	Sum (SiO_2 Mass) ÷ Sum (Dust Mass) = 7.7%	

These examples show that for situations where MSHA would have determined a quartz percentage of 8 percent, the commenter's method would yield 9 percent in one case and 7 percent in the other.

C. Respirable Dust Control Program for Underground Coal Mines

The primary focus of the underground coal mine respirable dust program is to limit the concentration of respirable dust to which miners are exposed in the work environment. To ensure that miners are not being exposed to excessive concentrations of respirable dust, current regulations require mine operators to:

- Design a mine ventilation plan that effectively controls respirable dust under typical mining conditions;
- Implement the plan's dust control parameters when approved by MSHA before commencing production;
- Maintain the dust control parameters specified in the approved plan and to monitor their function and operation through required on-shift examinations; and
- Evaluate their effectiveness with bimonthly samples in order to provide reasonable assurance that the dust control parameters continue to function as intended.

To control dust in the work environment, existing § 75.370 requires mine operators to develop and submit ventilation plans that are designed to control methane and respirable dust in the mine to MSHA for approval. Each plan must be suitable to the conditions and mining system in use at the mine. These plans provide detailed requirements for the protection of miners by specifying engineering controls. These engineering controls may include:

- The quantity and the velocity of the air current used to ventilate the MMU;
- The number, type, and location of water sprays;
- The pressure and quantity of water delivered by the sprays; and
- Additional environmental controls, such as dust scrubbers or devices which collect mine air and filter out dust particles.

Plans also contain procedures for maintenance of dust control equipment used on the mining machine and roof bolter. Mine operators frequently do not fully describe all dust controls in use at the mine. If such information is not fully disclosed, it is impossible for MSHA to fully enforce the plan provisions and to determine when the MMU is out of compliance with the ventilation plan.

When an operator submits a proposed mine ventilation plan or revision in accordance with § 75.370, the MSHA district office reviews it for completeness and adequacy. The District Manager will approve the plan if it meets MSHA requirements, and he is confident that the dust control parameters specified will have a reasonable likelihood of maintaining dust concentrations within the allowable limits. Most proposed plans or revisions are approved immediately, or tentatively approved, based on engineering judgement, or experience, or both, until they are assessed by MSHA inspector sampling or, to a lesser extent and only under certain circumstances, by mine operator bimonthly sampling. Generally, MSHA samples within 60 days of plan approval. Current regulations prohibit a mine operator from initiating any mining activity without an approved ventilation plan. MSHA allows operators to commence mining by granting tentative approval. However, plans may be implemented which are later determined to be inadequate under typical mining conditions under the existing process.

1. Evaluating and Approving Plan Requirements for Respirable Dust Control

Under the current program, the effectiveness of the plan's dust control parameters is assessed through sampling of the DO and other occupations associated with the MMU. Since there is no requirement for verifying plan effectiveness, we have had to rely on samples that may not be representative of dust concentrations to which miners are exposed.

MSHA sampled annually at each underground mine until recently. The Agency now samples bimonthly in each underground coal mine. This increased sampling effort is part of MSHA's initiative to increase confidence in the federal respirable dust program and to eliminate simple CWP, PMF, and silicosis among coal miners. During sampling inspections, we monitor compliance with the applicable dust standard, measure the concentration of respirable quartz dust; and identify occupations other than the DO that the mine operator should routinely monitor because they are at risk of exposure to excessive concentrations of respirable dust.

Under current inspection procedures, MSHA inspectors sample at least five different occupations, if available, on each MMU on each shift. Samples are normally taken under the mining conditions in effect during sampling. In conjunction with this sampling, the MSHA inspector checks and measures the dust control parameters early in the shift to determine whether the ventilation plan is being followed. The inspector records the findings, and all

the dust controls and work practices in use during sampling on MSHA Form 2000–86 (Revised), *Respirable Dust Sampling and Monitoring Data*. MSHA will issue a citation if the mine operator fails to follow any of the dust control parameters specified in the plan. Normally, the citation requires immediate corrective action to abate the violation. This may involve, for example, unplugging some water sprays or increasing the amount of ventilating air delivered to the MMU. At the conclusion of the sampling shift for an MMU, the inspector determines the total amount of material that was mined (in tons) during the shift.

If the average concentration of the samples taken in one shift is less than, or equal to, the applicable standard, and the actual production is at least 60 percent of the average production over the last 30 production shifts, the MSHA inspector will normally terminate sampling after the first day and will recommend that the plan parameters be approved by the District Manager. This would occur even if the samples were found to contain more than 5 percent of quartz. Such a finding could result in MSHA lowering the dust standard below that in effect at the MMU. Since 1985, MSHA has provided mine operators the opportunity to participate in the process to establish a lower dust standard based on the level of quartz. Mine operators can submit up to two optional samples which are averaged with the MSHA sample to determine the average percentage of quartz which is used to establish a new dust standard for the MMU. MSHA published a proposed Program Policy Letter for comment (64 FR 65671, November 23, 1999) whereby the standard would be determined based solely on the results of multiple MSHA samples. Under that proposal, mine operator samples would no longer be used to calculate a reduced dust standard. Instead, applicable dust standards will be set based solely on the results of MSHA samples.

If the average concentration falls below the standard in effect, but one or more samples exceed it, no decision is made regarding the plan's effectiveness or regarding compliance with the applicable standard. Instead, the inspector must collect additional samples on subsequent production days or shifts to establish that the dust control provisions of the ventilation plan are adequate.

To a lesser extent, if MSHA is unable to schedule a mine visit within the period established by the individual district, the District Manager may rely on the results of operator bimonthly sampling to approve a plan. Generally, this occurs in the case where a plan is upgraded with a change which has been established as effective. MSHA does not routinely approve plans based on operator bimonthly sampling because these samples may be collected during periods when production is not reflective of typical production levels. The current program permits the operator to submit samples which may not be representative of normal dust conditions in the working environment. Under current regulations, operator bimonthly samples will be considered valid, unless voided by MSHA, when the MMU produces at least 50 percent of the average level reported for the last set of five valid bimonthly samples. Since a mine's "normal production" level for sampling purposes and the typical production level may diverge greatly over the course of several sampling periods, granting approval under these conditions may not reflect the plan's effectiveness under more typical mining conditions.

2. Compliance with Plan Requirements for Respirable Dust Control

Once MSHA determines that the dust control measures are adequate and approves the mine ventilation plan, the specified dust control parameters are to be employed on a continuous basis to safeguard the health of miners. Since maintaining the approved dust control parameters provides reasonable assurance that respirable dust can be controlled, failure to comply with these requirements would defeat the purpose of the mine ventilation plan and needlessly expose miners to excessive concentrations of respirable dust. Section 75.362 requires mine operators to perform an on-shift examination of the dust control parameters before the MMU begins production in order to assure full compliance. Any deficiencies must be corrected before production begins.

Compliance with approved plan parameters is checked during MSHA's routine sampling inspections: as part of six-month plan reviews, during other non-sampling inspections or investigations, or in conjunction with an ongoing sampling inspection.

3. Monitoring Effectiveness of Plan Requirements for Respirable Dust Control

Because of the dynamic nature of mining, conditions can change significantly in a short period of time. For example, an increase in the concentration of respirable quartz dust will require the applicable standard to be reduced below the level that was effective when the dust control parameters were first evaluated. Such changes can directly impact the effectiveness of the dust-control measures. It is important to regularly monitor the adequacy of the approved dust control requirements to ensure that they remain suitable for the current conditions at the mine and to determine whether the plan should be upgraded. Currently, both MSHA and the mine operator regularly monitor the operator's dust control program. However, for MMUs the mine operator is responsible for making sure that all provisions of the ventilation plan are in effect on every shift.

(a) *Monitoring by Mine Operators.* Since 1980, the current regulations have required mine operators to take five valid samples from the DO in each MMU on a bimonthly basis and submit them to MSHA for processing, to determine compliance with the applicable dust standard. Section 70.207(e) identifies the DO for each method of mining. These are collected either on consecutive normal production shifts, or on production shifts worked on consecutive days, during which the amount of material produced by the MMU is at least 50 percent of the average production reported for the last bimonthly sampling period. These samples must be collected portal-to-portal during the entire shift or for 8 hours, whichever time is less.

Bimonthly samples have provided a periodic evaluation of the quality of the air miners breathe. They also have provided some insight into the effectiveness of the operator's dust control system on the days in which the samples are taken. Mine operators may exceed their minimum plan requirements once they have been approved as effective under current evaluation criteria. Currently, there is no requirement for mine operators to record the dust control measures in use as part of the on-shift examination. Because there is no requirement for such records, MSHA cannot assess the continued adequacy of the approved dust control requirements unless the inspector observes the sampling process.

Although the current operator sampling program may limit the utility of bimonthly samples for plan approval purposes, they allow MSHA to identify approved plans that may no longer be suitable to the conditions at a mine. If multiple individual samples, or their average, exceed the applicable dust standard after the required on-shift examination has been conducted, the approved plan parameters may no longer be effective and may need to be upgraded. If cited, the operator must

take corrective action to lower the concentration of respirable dust to within the permissible concentration as described in current § 70.201(d). The operator must demonstrate, through sampling, that the underlying condition(s) which caused the violation has been corrected. Since MSHA inspectors are not present to observe the action(s) taken by the operator to abate the violation, the ventilation plan is usually not amended to include the changes the operators make to the parameters in order to abate the violation. However, if the operator has a record of noncompliance and MSHA determines that the approved plan parameters may no longer be adequate, MSHA will notify the operator to submit an improved plan. Under current plan approval procedures, if the operator fails to address MSHA's concerns after receiving the second notification, MSHA will move to revoke the operator's mine ventilation plan. If the plan is revoked, the mine must not operate.

As discussed earlier, MSHA is proposing to revoke operators' sampling program in underground mines and assume full responsibility for all compliance sampling.

(b) *Monitoring by MSHA*. One of the objectives of MSHA's dust sampling program is to verify that the controls specified in the approved mine ventilation plan continue to control concentrations of respirable dust under existing mining conditions. As part of this program, the dust control parameters must be checked and measured early in the shift to assure compliance with the approved plan. These checks also verify that the operator is performing the required on-shift examinations. Operators have the opportunity to adjust their dust controls to reflect that which has been approved so the plan can be evaluated. However, most operators choose not to make adjustments for a number of reasons. While inspection procedures require the ventilation plan to include the dust control measures in use during the evaluation, most approved plans do not incorporate all the measures that were actually in place during MSHA sampling. This makes it difficult for MSHA to assess the continued adequacy of the approved dust control parameters. Frequently, decisions must be based only on prior experience or engineering judgment.

When an operator is cited based on MSHA samples, the inspector may require the operator to describe what type of corrective action will be taken. However, if a plan change is required, MSHA must follow similar plan approval procedures. The operator must be notified in writing that the plan is inadequate. In this case, MSHA has sample results and a record of the actual parameters in place which can be used to document the need for a plan change. Most plans which are revised simply incorporate only those dust controls that were in use when MSHA sampled.

MSHA reviews each mine ventilation plan every six months under § 75.370. The review includes: all plan revisions, respirable dust inspection reports, citations for exceeding the applicable dust standard, and comments from representatives of miners. When a deficiency in the respirable dust control portion of the plan is found, the MSHA inspector records comments on MSHA Form 2000–86. MSHA sends these results to the mine operator along with an explanation of whether the operator must make any changes, the reasons for the changes, and the date for submitting a plan revision. MSHA will send a second notification if the operator fails to respond. MSHA may revoke the operator's mine ventilation plan if the operator does not comply.

4. Proposed Procedures for Evaluating, Approving, and Monitoring Ventilation Plan Requirements

The dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment, thereby protecting miners. In recognition of this, MSHA's proposal makes a number of changes to the process for evaluating, approving, and monitoring mine ventilation plans, many of which are based on the Advisory Committee's recommendations.

Consistent with the Advisory Committee recommendations, MSHA proposes to add provisions to verify the effectiveness of the ventilation plan in controlling dust, at a production level high enough to demonstrate the plan's effectiveness under typical operating conditions. This would require that MSHA implement procedures for reviewing compliance and production records. It would also require that dust control parameters and production associated with samples on a given shift be recorded in order to demonstrate that parameters specified continue to be effective in controlling dust.

This proposal would require a ventilation plan to include all engineering or environmental controls necessary for maintaining dust concentrations at acceptable levels. A plan must also include any specific work practices or other means used to supplement these controls in order to minimize the dust exposure of individual miners. Unlike plans under the current program, you would have to identify all measures necessary for achieving continuous compliance with the applicable dust standard in the plan.

MSHA proposes to require you to include information on the length of each normal production shift in § 75.371(f) and to specify the VPL as defined in § 70.2 in every ventilation plan. The VPL is the tenth highest production level recorded in the most recent 30 production shifts. This value will represent the minimum production level at which effectiveness of the plan must be demonstrated.

We believe that the production criteria used to evaluate plan effectiveness may not adequately represent typical conditions under which miners work. Requiring that plans be verified at or above the VPL would provide assurance that excessive dust concentrations will be avoided, even on shifts with higher-than-average production. This is more protective of miners than the current practice of evaluating plan adequacy based on MSHA inspector samples taken when production can be as low as 60 percent of the average production.

MSHA would require you to maintain records of the amount of material produced by each MMU during each shift. This would enable you to establish the VPL. Because verification of a plan's effectiveness is conditioned on the VPL, these records are necessary to ensure that the VPL continues to represent higher-than-average production. Although a VPL would be included in the ventilation plan, MSHA would not cite you for producing at levels exceeding the VPL.

Under the proposed plan verification procedures, MSHA will notify you of when we intend to initiate verification sampling. To enable MSHA to evaluate the effectiveness of the plan parameters at or above the VPL, you must make sure that all the dust control parameters specified in your ventilation plan are fully implemented. On the date scheduled for verification sampling, you should arrange to be producing at or above the VPL specified in the plan, using only the dust control parameters and other measures listed in the plan.

Under the proposal, MSHA would perform the sampling necessary to verify your plan. We will collect full-shift samples from the work environment of multiple occupations on each MMU, including the DO. We will collect all samples in accordance with procedures described in Chapter 1 of MSHA's Coal Mine Health Inspection Procedures Handbook (op cit.). In addition, on every shift on which we

collect verification samples, we would measure and record all of the quantitative engineering or environmental parameters. We would also record any other means used to reduce miners' dust exposure on the sampled shift. We will provide you with this information, along with verification sample results, for posting on your mine bulletin board.

In accordance with section 103(f) of the Mine Act, you must provide miners and their representatives the same walkaround rights during plan verification sampling as they are provided during any other physical inspection made pursuant to the provisions of section 103(a) by an authorized representative of MSHA.[4]

Unlike the existing program, the proposal would allow you, for the first time, to use either approved PAPRs or verifiable administrative controls to supplement your engineering or environmental controls for compliance purposes at longwall mining operations. This would be permitted only on an interim basis and only after MSHA determined that you had exhausted all feasible engineering or environmental controls.

Finally, under this proposal, MSHA has established rigorous criteria for determining when to approve a plan. We would approve a plan only when a sufficient number of verification samples demonstrate, at a high level of confidence, that the plan is effective at production levels at or above the VPL.

D. Hierarchy of Dust Controls

Consistent with the Mine Act, engineering or environmental controls have been the principal method used for preventing or minimizing miners' exposure to these primary and secondary dust sources in the workplace over the past 30 years. Control of dust throughout the work environment gives reasonable assurance that all miners in the area will be adequately protected. Well-designed engineering or environmental controls provide consistent and reliable protection to all workers because they are not dependent upon constant human supervision or intervention, except for the periodic checks, to insure that they are functioning as intended. MSHA requires mine operators to utilize all feasible engineering or environmental controls, which are specified in the mine ventilation plan, to maintain concentrations of respirable dust in the work environment of MMUs at or below the applicable dust standard. Engineering or environmental controls include all methods that control the level of respirable dust by reducing dust generation (*e.g.*, machine parameters) or by suppressing (*e.g.*, water sprays, wetting agents, foams, water infusion, etc.), diluting (*e.g.*, ventilation), capturing (*e.g.*, dust collectors) or diverting (*e.g.*, shearer clearer, passive barriers, etc.) the dust being generated by the mining process. The importance of using engineering or environmental controls was not only recognized by the Advisory Committee, but also by NIOSH in its criteria document: *Occupational Exposure to Respirable Coal Mine Dust* (NIOSH, 1995), when it recommended that such controls must continue to be relied upon as the primary means of protecting coal miners. The primacy of engineering or environmental controls is preserved under this proposal. The proposal requires mine operators to utilize all feasible engineering or environmental controls to reduce concentrations of respirable dust to a level at or below the applicable standard.

Administrative controls are another method of avoiding overexposure. Administrative controls refer to work practices that reduce miner's daily exposure to respirable dust hazards by altering the way in which work is performed. They consist of such actions as rotation of miners to areas having lower dust concentrations, rescheduling of tasks, and modifying work activities. The Task Group found that administrative controls were used increasingly, even when it was feasible to implement additional engineering or environmental controls. The use of administrative controls was found to be increasing at mines employing longwall mining systems. The most frequent administrative control in use consisted of restricting the activities of miners required to work downwind of the longwall operator, or the occupation designated as 044 by MSHA. This particular form of administrative control is in use at some of the 51 longwall MMUs that were operating on October 28, 1999. MSHA has observed the use of this particular administrative control, even after changing the location of the DO from the 044 to the 060 occupation—the miner who works nearest the return air side of the longwall working face. Unlike engineering or environmental controls, to be effective, administrative controls rely on the ability of miners to follow specified procedures. However, difficulty in ensuring that miners adhere to the administrative controls, labor/management agreements, and limitations on the number of qualified miners capable of handling specific tasks may limit the use and effectiveness of such controls. The Advisory Committee Report states that the use of administrative controls does not reduce the operator's responsibility to maintain ambient dust levels in active workings at or below the standard. However, the Advisory Committee noted that "while not a substitute for engineering controls, administrative controls, which restrict the amount of time that miners spend in an area with uniform exposure level, can result in lower personal exposures (MSHA, 1996)."

Under the Mine Act and current regulations, mine operators are required to make approved respiratory equipment available to all affected underground miners whenever exposure to concentrations of respirable dust exceeds the applicable dust standard. However, miners are not compelled to use them. While required for interim protection, mine operators cannot use respirators as a substitute for engineering or environmental control measures. Engineering or environmental controls have been found to provide more consistent and reliable protection to all workers. In comparison to respirator programs, the effectiveness of engineering or environmental controls does not rely heavily upon constant supervision or miners' consistent and correct use of the equipment. Furthermore, we can measure dust concentrations to which miners are exposed when engineering or environmental controls are in use. It is more difficult to monitor the effectiveness of a respirator program because the assessment methods are indirect. For these reasons, MSHA's longstanding policy has been that respirators should be used in underground coal mines only as an interim method of protection until feasible engineering or environmental controls are available.

Approved respirators are not acceptable substitutes for feasible engineering or environmental controls.

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[4] MSHA believes that under the guidance of the Interpretive Bulletin 43 FR 17546 (April 25, 1978) these rights arise when: (1) an "inspection" is made for the purposes set forth in section 103(a), and (2) the inspector is physically present at the mine to observe or monitor safety and health conditions as part of direct safety and health enforcement activity.

Verification sampling is necessary to obtain information related to approval of the mine's ventilation plan and whether coal mine dust will be adequately controlled to protect miners health. Consequently, miners and their representative would have the right to accompany the inspector with no loss of pay for the time during which the representative exercises this right. However, this right is limited by Section 103(f) to only one such representative of miners.

It is MSHA's position that technology is available to control respirable dust to at or below the applicable standard at MMUs employing continuous and conventional methods of mining. However, MSHA recognizes that, unlike other mining systems, longwall MMUs may have acute dust problems caused by the face-ventilation airstream carrying the shearer-generated face dust over the miners working along the face downwind of the shearer operator (occupation code 044). This makes it more difficult to control the work environment on a consistent basis.

Improvements in dust control technology have not kept pace with increases in production technology associated with high-production longwall MMUs. Average longwall shift production reported during bimonthly sampling has increased more than five-fold since 1980, from approximately 890 tons per shift (tps) to more than 4,900 tps in 1998. In fact, 49 percent of the shifts sampled averaged 4,000 to 8,000 tps, while approximately 8 percent of the shifts exceeded 8,000 tps. A major milestone in mining history was achieved in 1997, when a single longwall mine produced more than 1 million tons of coal in a single month (Fiscor, 1998).

Unfortunately, as more coal is mined, greater quantities of respirable dust are generated. The increase in longwall production levels has resulted in the generation of far more dust which must be controlled (Webster, *et al.*, 1990; Haney, *et al.*, 1993; O'Green, 1994). According to published literature, several thousand milligrams of respirable dust per ton of coal cut can be formed and liberated during the cutting process (National Research Council, 1980). Of course, the quantity of respirable dust produced by the cutting process can vary greatly, depending on the type of coal, its moisture content, the amount of rock bands in the coal, sharpness of the cutting bits, the particular mining machine, and many other factors. Although a considerable amount of respirable dust is formed by the cutting operation, most of these particles do not become airborne. Nevertheless, given the amount of dust that is produced per ton of coal mined, a larger quantity of respirable dust would be generated from cutting 8,000 tons of coal than from cutting 4,000 tons. An operator is not required to produce, on a sampled shift, more than 50 percent of the average production reported during the last bimonthly period. Therefore, dust concentrations on sampled shifts may be substantially lower than what is typical and therefore not reflect the dust exposure on that shift.

While significant efforts have been made to implement available control technology, no significant new advancements in longwall control technology have been reported since 1989 (U.S. Bureau of Mines, undated). From 1989 to 1999, the percentage of operators' longwall DO samples exceeding 2.0 mg/m^3 dropped from 34 percent to 20 percent, reflecting the impact of the implementation of those advances in longwall control technology. Although this represents a significant improvement, especially in view of the five-fold increase in average shift production, the 1999 data clearly show that miners continue to be overexposed on a significant number of shifts.

Over the past ten years, MSHA and the former U.S. Bureau of Mines, now part of NIOSH, have made unsuccessful efforts to conduct a joint research program that would evaluate the effectiveness of available longwall dust control technology. The objective of such research would have been to quantify the effects of employing all state-of-the-art dust-control technology available for a longwall operation. Unfortunately, such a study has never been undertaken because no industry partner has agreed to participate. Based on our experience, MSHA's position remains that feasible engineering and environmental controls exist for maintaining dust exposures at or below the applicable standard, even at longwall operations. MSHA has concluded that the proposed plan verification process will lead to further improvements in the design and quality of mine ventilation plans. At some high-producing longwall MMUs, however, the engineering or environmental controls available may not succeed in sustaining continuous compliance with the applicable dust standard at certain locations downwind of the longwall operator (occupation code—044).

Mining industry representatives have repeatedly urged MSHA to accept the use of powered, air-purifying respirators (PAPRs) (*e.g.*, Racal® Airstream helmets),[5] as an alternative means of complying with the applicable dust standard when engineering or environmental controls failed or were not feasible. The Airstream helmet originated in the early 1970s at the Safety in Mines Research Establishment in England which developed it primarily for mining use to provide protection for head, eyes, and lungs in a single convenient unit. Because these devices provide a continuous stream of filtered air over the miner's face, it has been suggested that they be viewed as miniature environmental controls, rather than respirators. In September 1997, Energy West Mining Company (Energy West) petitioned the Secretary of Labor to amend the mandatory health standards for underground coal mines at 30 CFR part 70 to allow Airstream helmets or other types of PAPRs to be used as a supplemental means of complying with the applicable dust standard. The petition for rulemaking proposed that the Secretary issue a standard which would supersede the current interim statutory standard, specified in Section 202(h) of the Mine Act. Energy West contended that PAPRs are necessary as a supplemental means of controlling respirable dust because even the most diligent application of feasible engineering/environmental controls could not always prevent overexposure. MSHA has consistently acknowledged that PAPRs can be effective as an interim method of protecting miners when properly selected, used, and maintained. However, MSHA has never considered the Racal® Airstream helmet (or the 3M™ Airstream™ Helmet-Mounted PAPR), or any other respiratory protective device approved and labeled as such by the National Institute for Occupational Safety and Health (NIOSH), to be an engineering, environmental, or administrative control. Hence, it cannot be used as an environmental control to comply with the respirable dust standard.

In order to provide the greatest possible protection for all miners under typical mining conditions, MSHA is proposing to permit, under certain circumstances, the limited use of either approved loose-fitting PAPRs or verifiable administrative controls for compliance purposes. This would provide you with the flexibility to select the most appropriate option for supplementing your engineering or environmental controls. We believe that permitting longwall mine operators to use loose-fitting PAPRs or verifiable administrative controls for compliance purposes will not reduce the level of protection afforded longwall miners by the existing standard.

This aspect of the proposal is limited to longwall mine operations because technology is available to control respirable dust at or below the applicable standard at MMUs employing continuous and conventional methods of mining. Their use at longwall operations would be permitted

[5] References to specific equipment, trade names or manufacturers does not imply endorsement by MSHA.

only after MSHA determines that for a specific MMU, excessive dust concentrations cannot be prevented in the environment of miners required to work downwind of the longwall shearer operator (occupation code—044) by implementing all feasible engineering or environmental controls. We solicit comments concerning the availability of feasible engineering or environmental controls to lower dust levels.

1. Selection of Respirators: Loose-Fitting PAPRs

Loose-fitting PAPRs completely surround the head and cover the face with a full visor or shield. The functional and physical characteristics of loose-fitting PAPRs as described below make them especially well-suited to underground coal mining conditions, and it is for these reasons that MSHA determined that loose-fitting PAPRs are the most suitable type of respirator protection for these conditions.

A loose-fitting PAPR protects the wearer from excessive levels of respirable dust by providing a continuous flow of filtered air and imposing minimal breathing resistance upon the wearer. Loose-fitting PAPRs do not require fit-testing,[6 7] unlike tight-fitting respirators. Furthermore, it is not necessary to be clean shaven for this type of PAPR to be protective.

Loose-fitting PAPRs provide safety advantages over other forms of PAPRs or tight-fitting respirators. In addition to protecting the lungs, the helmet and visor of a PAPR can simultaneously protect the eyes and head from high-velocity nuisance dust, spray, and small pieces of coal from the cutting drums and face and from loose coal falling from the roof. Loose-fitting PAPRs provide easier communication between miners, rather than the muffled communication between workers which is experienced between miners wearing tight-fitting facepieces.

The Racal® Airstream helmet has been in use in underground coal mines since the late 1970s. Over 50 percent of the longwall mines operating have miners who wear Airstream helmets for added protection. This respirator was developed primarily for mining use by the Safety in Mines Research Establishment (SMRE) in England. It combines face, head, and respiratory protection in a single convenient unit. The support hardware which provides the filtered air is packaged in the helmet. Power for the system is provided by a belt-mounted battery. Dusty air enters the helmet through a rear entrance port, passes through a pre-filter assembly that removes the coarse material, and then passes through the fan and into a final-filter assembly that is located between the head of the wearer and the outer helmet shield. The filtered air then sweeps down across the wearer's face, behind the face-shield visor, and exits at the chin. Soft plastic seals join the face-shield visor to the sides of the head and jaw limiting entry of unfiltered mine air (Greenough, 1979). The original Airstream helmet has undergone numerous design improvements since it was first introduced in British coal mines in the mid 1970s. The Airstream helmet is produced by 3M (3M™ Helmet-Mounted Airstream™ series).

2. Protection Factor for Loose-fitting Powered, Air-Purifying Respirators

The type and degree of protection of any respirator depends on the ability of a respirator to prevent hazards from entering the worker's breathing zone. In an underground coal mine, the level of protection afforded by a loose-fitting PAPR to protect a miner depends on the type and condition of the filter material of the air-purifying element, the nature and concentration of the respirable coal mine dust, proper maintenance of the PAPR and battery pack, and especially, how consistently the miner properly wears the PAPR, including having the visor properly lowered. The protection factor, the ratio of the respirable dust concentration outside the respirator to the concentration inside, measure how much protection a respirator might provide to the wearer.

In the *NIOSH Respirator Decision Logic* (May 1987), based on simulated laboratory tests and some workplace protection tests (none of which replicated conditions in underground coal mines) NIOSH assigned loose-fitting, helmeted PAPRs, properly worn, a protection factor (APF) of 25. NIOSH made the following cautionary statement:

> Despite the fact that some of the PF's [APFs] have a statistical basis, they are still only estimates of the approximate level of protection. It must not be assumed that the numerical values of the APF's presented in this decision logic represent the absolute minimum level of protection that would be achieved for all workers in all jobs against all respiratory hazards. The industrial hygienist or other professional responsible for providing respiratory protection or evaluating respiratory protection programs is therefore encouraged to evaluate as accurately as possible the actual protection being provided by the respirator (NIOSH, May 1987).

Furthermore, in its *Guide to Industrial Respiratory Protection* (September 1987), published after the *NIOSH Respirator Decision Logic*, NIOSH offered an additional caveat with regard to the effectiveness of PAPRs:

> Until recently, powered air-purifying respirators were considered positive pressure devices. Field studies by NIOSH as well as others, have indicated that these devices are not positive pressure, and that their assigned protection factors are inappropriately high (NIOSH, September 1987).

There is virtually no positive pressure in the PAPR. Respirable dust may invade the miners' breathing zone through openings along the side and bottom of the visor, even when it is maintained in the full lowered position. The extent to which respirable dust invades a miner's breathing zone, depends, in part, on the MMU's ventilation air velocity and on the miner's work rate and his angle of orientation to the airflow.

Questions have arisen concerning the applicability of NIOSH's APF of 25 for loose-fitting PAPRs to some work environments. It has been contended that NIOSH overestimates the minimum level of protection provided in the workplace even when used within the context of a good respirator program (Myers, *et al.*, 1984). The environmental conditions assumed in NIOSH's estimation of the APF for loose-fitting PAPRs are not consistent with those in underground longwall mining operations. For example, various unique conditions of coal mining (obstructed views and difficulty communicating) may compel miners to lift their visors. Once the visor is raised, the respirator is no longer being worn in accordance with conditions required for an APF of 25. Also, the high velocities of air customarily found on longwall mining faces, are not comparable to the air velocities experienced in most industry sectors nor in those represented in the studies used to determine the APF of 25. The actual fit or seal of the respirator helmet to the wearer, repeated work-task motions in confined work spaces, raising the visor, and high air velocities along the longwall face all may significantly reduce the actual degree of protection provided in the workplace. Unlike an APF, an effective protection factor (EPF) reflects the protection provided by a respirator over an actual work shift given specific occupational environmental conditions such as ventilation velocity, when the wearer performs typical work activities and uses the respirator in a typical manner.

Laboratory and in-mine studies (EPF studies) show that mine ventilation air flow or velocity, the primary means

[6 7] Quantitative fit testing and qualitative fit testing are methods used to determine the facepiece seal and fit of a tight-fitting respirator.

longwall operators use to control respirable dust levels, may be the single biggest factor affecting the level of protection provided by the PAPR on a longwall mining face. Cecala, *et al.*, (1981) found protection of loose fitting PAPRs (Racal® Airstream helmets) to be inversely related to ambient air velocity in both laboratory and in-mine settings (Ibid). In other words, increased air velocity leads to decreased effectiveness of the PAPR.

The level of protection from a loose-fitting PAPR is also affected by the orientation of the helmet to the airflow. Cecala's wind tunnel tests clearly showed that, at the higher flow rates, helmet efficiency was greatest when facing directly against the airflow and was reduced when the helmet was oriented in other directions. This is extremely important since miners are more likely to orient their heads at an angle to the airflow, or to face downwind, than to face directly into the airflow.

Cecala's in-mine testing of the loose-fitting, helmeted PAPRs produced an EPF confirming the inverse relationship between wind speed and the level of protection provided by PAPRs shown during wind tunnel testing. Air velocity in underground mines is measured in units of feet per minute (fpm). Under normal face-velocity conditions (less than 400 fpm), the Airstream helmet averaged a respirable dust reduction of 84 percent, which is equivalent to an EPF of 6.4. However, under high face-velocity conditions (1,200 fpm), the helmet's dust reduction efficiency decreased significantly, averaging only 49 percent, which is equivalent to an EPF of 2.

Other researchers have reported that helmeted PAPR systems are vulnerable to inward leakage into the wearer's breathing zone (Howie, *et al.*, 1987; Sherwood, 1991). For example, Howie, *et al.*, found that increasing airflow velocities from approximately 400 to 800 fpm doubled the inward leakage of the helmet when the airflow impinged on the wearer's head only, and increased the leakage further when the airflow impinged on the wearer's body and head (Howie, 1987). Subsequent testing of a redesigned unit at a wind velocity of approximately 700 fpm showed decreased inward leakage, yielding a protection factor of 6.3. This met the target protection factor of 5, which was subsequently proposed by the European Community to be the standard for powered helmet respirators.

More recent studies conducted by Bhaskar, *et al.* (1994) at four medium-velocity western longwalls indicated loose-fitting PAPRs had an average dust reduction efficiency of 83.8 percent (Ibid.). Although a different sampling procedure was used, this result is consistent with the average value of 84 percent obtained by Cecala, *et al.*, under normal mine face-velocity conditions. During the test period, the headgate velocity ranged from 345 to 500 fpm, with approximately 88 percent of the recorded velocities falling below 500 fpm. The tailgate velocities ranged from 280 to 550 fpm and only one exceeded 500 fpm. No tests were conducted under high mine face-velocity conditions.

The headgate and tailgate velocities observed by MSHA inspectors at 55 longwall MMUs were reviewed in 1999. The headgate and tailgate velocities ranged from 365 to 1,645 fpm and from 200 to 1,400 fpm, respectively. More importantly, headgate velocities at 60 percent of the MMUs exceeded 500 FPM and some 18 percent exceeded 800 fpm. Approximately 55 percent of tailgate velocities exceeded 500 fpm and 11 percent exceeded 800 fpm.

PAPRs have been demonstrated to be effective on longwall MMUs when air velocities do not exceed 500 fpm, but, as described above, there is evidence that their effectiveness is reduced when air velocities are increased. Therefore, given the range of observed longwall face air velocities to which miners are exposed and the proposed requirement that the verified ventilation plan demonstrate that the longwall shearer operator (occupation code—044) be at or below the applicable standard, MSHA is proposing to grant a protection factor of two for loose-fitting PAPRs used under this proposal. Multiplying either the respirable dust standard or the verification limit (whichever is applicable) by the protection factor yields the maximum concentration of respirable dust against which a particular type of respirator can be used. In other words, if MSHA permits a longwall operator to use PAPRs, then the maximum concentration of respirable coal mine dust and quartz dust against which these particular respirators can be used are 4.0 mg/m^3 and 200 µg/m^3, respectively. A complete respiratory protection program is required to assure that a respirator's protective value is not compromised by improper fitting or usage.

MSHA's determination is based on the best scientific and technical information available as well as sound engineering judgment. However we encourage you to submit comments on the protection factor. We are particularly interested in obtaining more recent data that may be available concerning protection factors as well as the conditions for the use of PAPRs. If you believe MSHA should establish a different protection factor, please submit these data supporting your position.

E. Guidelines for Determining What Is a Feasible Dust Control

The proposal would require a mine operator to implement all feasible engineering or environmental controls that are technologically and economically feasible. The Federal Mine Safety and Health Review Commission (Commission) has addressed the issue of what MSHA must consider, when determining what is a feasible control for enforcement purposes. In cases involving the noise standard for metal and nonmetal mines, the Commission has held that a control is feasible when it: (1) reduces exposure, (2) is economically achievable, and (3) is technologically achievable. See *Secretary of Labor* v. *Callanan Industries, Inc.*, 5 FMSHRC *19 00 (1983), and Secretary of Labor* v. *A. H. Smith*, 6 FMSHRC 199 (1984).

In determining technological feasibility of an engineering control, the Commission has ruled that a control is deemed achievable if through reasonable application of existing products, devices, or work methods with human skills and abilities, a workable engineering control can be applied to the exposure source. The control does not have to be "off-the-shelf" or already available but, it must have a realistic basis in present technical capabilities. Further, the Commission has held that MSHA must assess whether the cost of the control is disproportionate to the "expected benefits," and whether the cost is so great that it is irrational to require its use to achieve those results. The Commission has expressly stated that cost-benefit analysis is unnecessary in order to determine whether an engineering control is feasible. According to the Commission, an engineering control may be feasible even though it fails to reduce the exposure to permissible levels in the standard, as long as there is a significant reduction in exposure.

Consistent with the Commission case law, MSHA would consider three factors in determining whether engineering or environmental controls are feasible at a particular mine: (1) the nature and extent of the overexposure; (2) the demonstrated effectiveness of available technology; and (3) whether the committed resources are disproportionate to the expected results. As explained in the discussion of proposed § 70.211 in Section IV of the

proposal, the formal determination of whether all feasible engineering or environmental controls have, in fact, been implemented at a specific mine to prevent excessive dust concentrations would be made by the Administrator for Coal Mine Safety and Health based on the best available information, experience, and engineering judgment.

F. Application of Continuous Monitoring Technology to Prevent Overexposures on Individual Shifts

Because approved technology that continuously monitors respirable dust and displays dust concentrations in real-time is not available, effective ventilation plans remain the only practical means to provide reasonable assurance, on a continuous basis, that miners are not overexposed on individual shifts. However, MSHA recognizes that person-wearable continuous respirable dust monitors under development may lead to significant improvements in monitoring the work environment in order to improve miner health protection. In an effort to reduce occupational respiratory disease among underground coal miners, MSHA encourages mine operators to adopt new and better dust monitoring technology as part of the approved ventilation plan.

Unlike the current monitoring system, which relies on periodic sampling and requires that corrective action be taken after the necessary delay in obtaining dust level information, continuous monitoring would allow mine operators and miners to be aware of the actual dust conditions at all times, thereby enabling immediate action to avert possible overexposure. The ability to monitor dust exposure continuously during the shift, predict end-of-shift cumulative exposures, and to display the actual end-of-shift exposure would be far more effective in preventing simple CWP and PMF than the current system.

The health benefits of continuous monitoring were clearly recognized by both the Task Group and the Advisory Committee. Both recommended development, field testing, and immediate deployment of such monitors for a variety of purposes. The Task Group concluded that continuous monitoring of the mine environment and dust control parameters offered the best long-term solution for improving the existing federal program designed to prevent simple CWP and PMF among coal miners. Similarly, the Advisory Committee stated in its report that:

> Worker exposure to excessive levels of dust can be prevented by implementing a hazard surveillance program that provides mine personnel with current information on actual dust levels in the work environment at all times, and on the status of key dust control parameters. The availability of this information on a real-time basis would enable mine personnel to focus attention immediately on the need to adjust control parameters to avert possible overexposure. The recent development of continuous dust and continuous dust control parameter monitors, which have both direct reading and data recording/processing capabilities, offers the potential to improve monitoring of the work environment significantly and contribute to the effective control of exposure. (MSHA, 1996).

MSHA has sought a means to measure the concentration of respirable coal mine dust in coal mines on a continuous basis for nearly two decades. Beginning in the 1970's, at the request of MSHA, the former U.S. Bureau of Mines funded several developments of fast-response, direct-readout respirable dust monitors for measuring the concentration of respirable dust.

One type of fast-response respirable dust monitor determined the mass of respirable dust particles collected on a grease-coated disk by the attenuation of beta radiation caused by the dust spot on the impaction disk. The unit was capable of operating for long periods, taking up to 450 1-minute samples, and printing the individual and time-integrated concentrations on a tape.

Other devices have used light-scattering technology to measure and provide an immediate direct readout of dust concentrations. Since light scattering is often dependent on particle characteristics such as size, surface properties, and refractive index, this type of dust monitor does not measure a mass concentration directly and can provide only a relative measurement. However, it can be calibrated in the laboratory to give an approximate mass concentration.

The light-scattering technology was later incorporated in a machine-mounted, continuous respirable dust monitor for use in underground mines. In the early 1980's, however, it was determined that this technology was not effective for monitoring compliance with the applicable dust standard. Nevertheless, instruments which used the light scattering principle were found to be useful tools to locate dust sources and to determine its magnitude. Such instruments continue to be especially useful for evaluating dust-control techniques such as dust collectors and water sprays that can be turned on and off quickly and repeatedly.

The 1992 Task Group report recommended the accelerated development of a fixed-site underground dust monitor, capable of providing continuous information on dust levels and personal sampling devices capable of providing both short-term and full-shift exposure measurements. In response to this recommendation, the former Bureau of Mines, with MSHA's assistance, again evaluated existing technology that could be used in the development of a fixed-site underground mine dust monitor. This was made possible because of advances in sensing and electronic signal processing technology that had occurred since development of the first generation machine-mounted dust monitor in the late 1970's. Eventually a fixed site/machine-mounted continuous respirable dust monitor based on the proprietary mass-measurement technology known as the tapered element oscillating microbalance (TEOM®) was developed and field tested.

The TEOM technique is capable of continuously weighing a filter upon which dust is collected. It provides a real-time record and a permanent record of the total mass collected on the filter. The device can display the time-weighted average (TWA) concentration of respirable coal mine dust (total mass of dust collected divided by the length of time the unit was operated), the instantaneous (real-time) concentration, and the projected full-shift concentration. This would allow a mine operator to adjust control measures or optimize mining procedures to prevent miner overexposure. The full-shift concentration of respirable coal mine dust would be available at the end of the shift. The developer of the fixed-site monitor is also working on a person-wearable, end of shift/continuous respirable dust monitor using the same TEOM technology.

In addition to the TEOM technology, NIOSH is developing another person-wearable device that has the potential for continuously monitoring the mine environment. This device measures the mass of respirable dust indirectly based on the amount of pressure drop detected across the collection filter.

MSHA is seeking ways to encourage voluntary deployment of this technology, once it has been verified as reliable. MSHA has considered allowing mine operators to adopt a continuous personal monitoring strategy as part of the approved ventilation plan, in lieu of plan verification. Under this approach, the operator would have the flexibility of choosing from several technologies available for continuous personal monitoring. If an operator adopts continuous personal monitoring, the following additional information, at a

minimum, would be required for the mine ventilation plan:

1. The specific continuous personal monitoring device the operator intends to use which has been approved by the Secretary;

2. The DO and other occupations or individuals, including part 90 miners, that will be sampled on every production shift and the length of the production shift to be sampled;

3. The procedures for preventing exposure above the applicable dust standard;

4. The manufacturer's calibration and maintenance requirements, and a description of how records of calibration and maintenance will be made available to MSHA, miners and the miner's representatives; and

5. A description of how end-of shift measurements will be recorded, who will certify that such records are accurate and properly taken, how long such records will be maintained, where such records will be made available for inspection by MSHA, miners and the miner's representatives, and how miners will be notified on each production shift of the end-of-shift measurements.

At the present time, we do not believe that technology to enable continuous monitoring of respirable dust has advanced to the point where it could be relied upon as an alternative to plan verification. In the future, when this technology is available, MSHA will consider the implementation of such an alternative to the proposed plan verification program. We request comments on this approach as a possible alternative to plan verification. MSHA is specifically interested in any proposals for the use of continuous personal monitoring, as well as any information which may be available concerning developing technology. Should an operator be interested in implementing a continuous personal monitoring program at a specific mine, MSHA will review the plan and consider development of a pilot program to develop information which may be useful for future rulemaking. MSHA is interested in comments concerning the specific provisions which should be included in the ventilation plan to assure that, if an operator does develop a continuous monitoring program, miners will not be overexposed on any individual shift.

IV. Discussion of Proposed Rule

A. Summary

As recommended by the Advisory Committee in 1996, MSHA is proposing to assume responsibility for all compliance sampling for respirable dust in underground coal mines as required under CFR parts 70 and 90. This proposal includes revocation of bimonthly compliance sampling requirements, abatement sampling requirements, the process for establishing a reduced standard when quartz is present, and operator sampling requirements for miners who have evidence of the development of pneumoconiosis under part 90. In order to provide a greater level of protection than that provided under these sampling requirements, MSHA is proposing to require each underground coal mine operator to have a verified mine ventilation plan. Under this proposal, MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit (MMU) in controlling respirable dust under typical mining conditions.

Mine ventilation plans have long been recognized as a means of addressing mine-specific health and safety issues. Existing § 75.370 requires that each mine operator design a ventilation plan to control methane and respirable dust in the mine. It further requires that the plan be suitable to the conditions and mining system at the mine. However, there is no current provision requiring the effectiveness of mine ventilation plans to be verified under typical mining conditions.

Since 1970, beginning with enforcement of the Federal Coal Mine Health and Safety Act of 1969, the level of respirable dust in underground coal mines has been significantly reduced. Although much progress has been made, MSHA sampling data indicate that some work environments continue to have excessive concentrations of respirable dust. It is MSHA's position that excessive dust levels can be substantially reduced, if not eliminated, by implementing the Advisory Committee's recommendations to enhance plan quality and strengthen the plan approval process. Toward this end, this proposal would revise 30 CFR by revising part 70, subparts A, B, and C amending two existing sections of part 75.

This proposal would require evidence that the mine ventilation plan is effective in controlling respirable dust as required by § 75.370. Within the first 30 days of operating a new MMU, or when required to do so by the District Manager, mine operators would have to specify the operating parameters of an effective plan and then MSHA would verify the plan's effectiveness based on a sufficient number of full-shift samples taken at designated locations.

Under this proposal, we would collect full-shift respirable dust samples, called "verification samples," to demonstrate the adequacy of the dust control parameters specified in the mine ventilation plan in maintaining the concentration of respirable coal mine and quartz dust at or below 2.0 mg/m^3 and 100 µg/m^3, respectively.

For purposes of plan verification, "full-shift" would refer to the entire work shift during which material is produced by an MMU. Currently, many mining operations have work shifts of more than 8 hours. Miners working extended shifts should be protected from the hazards of respirable dust and quartz by the ventilation plan. Accordingly, the proposed verification samples would not be limited to 8 hours or less, as under the current bimonthly operator sampling regulations.

A sample would be valid for verification purposes only if the shift on which it was taken met certain requirements. This is necessary in order to verify that dust controls specified in the plan are sufficient to prevent excessive dust concentrations, even when a higher-than-average amount of material is produced. The proposed operator's requirements for a shift used for verification sampling are:

(1) The dust controls and work practices utilized must be those listed in the mine ventilation plan;

(2) MSHA's measurements of the engineering or environmental control parameters must not exceed 115% of the quantities specified in the plan; and

(3) The amount of material produced must be at least the "verification production level" or VPL.

The VPL is defined as the tenth highest production level recorded in the most recent 30 production shifts.

The proposed rule would require mine operators to: (1) Set and maintain the dust control parameters during MSHA verification sampling at levels specified in the plan; (2) maintain and make available to MSHA records of the amount of material produced by each mechanized mining unit during each production shift; and (3) provide additional information in mine ventilation plans.

The number of samples necessary to verify that the dust control parameters proposed for an MMU are effective would depend on the individual sample. Since all such measurements are subject to potential sampling and analytical errors, some of them may fall slightly below the verification limit even when the true concentration of respirable coal mine dust or quartz does not. Therefore, to ensure that the verification limits have actually been met, it is necessary to provide for a margin of error in each measurement.

The "critical values" established by MSHA provide this margin of error. If the VPL is achieved and dust concentrations are sufficiently low, the District Manager could approve a plan based on as few as one shift of sampling. However, if dust concentration measurements are higher, or if the actual production was less than the VPL MSHA would sample additional shifts.

Consistent with the Mine Act and its implementing regulations, MSHA's longstanding policy has been to preserve the primacy of engineering controls, to the extent that they are technologically and economically feasible. Consequently, MSHA has not accepted the use of approved respiratory protection or administrative controls as a means of achieving compliance with the respirable dust standard. In order to provide all miners with the highest possible level of health protection, as intended by the Mine Act, MSHA is now proposing to permit the use of approved PAPRs or verifiable administrative controls to supplement engineering or environmental controls under certain circumstances for compliance purposes. Their use would be limited to longwall mining operations and permitted only after MSHA has determined, upon request of the operator, that all feasible engineering or environmental controls cannot maintain the mine atmosphere within applicable standards. In such cases, specific requirements governing the use of PAPRs or verifiable administrative controls would be specified in the mine ventilation plan.

Finally, the proposal would require you to maintain, and make available to MSHA inspectors, records of the amount of material produced by each MMU during each production shift over a running six-month period. This, along with routine bimonthly and other sampling data, would enable us to review the suitability of the plan parameters on an ongoing basis.

Although a VPL would be included in the ventilation plan, we would not cite you for producing at levels exceeding the VPL. We would expect production on an MMU to exceed the VPL on about 33 percent of all production shifts. If the District Manager determines that your production exceeds the VPL on more than about 33 percent of the production shifts over a six-month period, then this may trigger the plan verification process using a higher VPL.

These and other provisions of the proposed rule are explained in more detail in the following section-by-section discussion.

B. Section-by-Section Discussion

This section of the preamble explains, section-by-section, the provisions of the proposed rule. The text of the proposed rule is included at the end of the document.

Section 70.2 Definitions

The existing definitions of certified person, concentration, and designated area (DA) are being modified to more clearly convey the intended meaning under the proposal. These modifications reflect necessary changes as a result of the removal of existing paragraphs and the transfer of other paragraphs, as well as the addition of new references. The proposal also includes definitions of new terms to clarify the mine ventilation plan verification process as it applies to mechanized mining units (MMUs). Some of the definitions are for technical terms developed specifically for this proposal, such as "verification limit" and "verification production level." Finally, the definitions of "certified person," "normal production shift," and "valid respirable dust sample" would be removed.

We explain these new and revised definitions of terms below. You should also closely examine each proposed section where the term is used to review the context in which it is used.

The following existing definitions are being modified:

Concentration

The existing definition would be modified so that "concentration" refers to an 8-hour Mining Research Establishment (MRE) equivalent measure of the amount of sampled material contained per unit volume of air. The proposed revision would include the constant factor of 1.38 which the Secretary currently uses to convert concentration of respirable dust measured with approved sampling devices to an equivalent concentration as measured with an MRE instrument.

MSHA developed the existing coal mine dust standards from 8-hour shift exposure measurements. Therefore, if you take a sample over a period other than eight hours, you must adjust the concentration measurement to be equivalent to an eight-hour exposure. This will protect miners working shifts longer than eight hours, and would be accomplished by multiplying the sampler flow rate by 480 minutes, regardless of the length of time during which the sample was actually collected. (In these examples, to determine equivalent concentrations of respirable coal mine dust: MRE equivalent concentration (mg/m^3)=

$$\left(\frac{\text{accumulated dust (mg)}}{\text{sampling time (min)} * \text{rate of sampling}\left(m^3\right)}\right) * 1.38$$

where: rate of sampling = 0.002 m^3/min).

For example, suppose a DO sample is collected over a 9-hour shift that includes one hour of travel time. Suppose that the amount of dust accumulated during travel is negligible, and the amount of dust accumulated during production is 1.5 mg. If the concentration were not adjusted to an 8-hour equivalent, it would be diluted by the time spent traveling and calculated as 1.92 mg/m^3. Under the proposed definition, the calculated concentration would be 2.16 mg/m^3.

The proposed definition does not change the daily limit on accumulated exposure intended by the existing exposure limit for coal mine dust. Since the current limit was based on an assumption that exposure occurs over an 8-hour shift, it corresponds to a daily cumulative exposure limit of $8 \times 2.0 = 16$ mg-hr/m^3. The proposed definition of concentration would maintain this same MRE-equivalent 16 mg-hr/m^3 daily limit, regardless of the length of any shift worked.

To continue the example, the exposure accumulated during a day is the same, whether from 8 hours at an average of 2.16 mg/m^3 or from 9 hours at an average of 1.92 mg/m^3. In either case, the MRE-equivalent exposure accumulated for the day is 17.3 mg-hr/m^3, which exceeds the intended daily limit of 16 mg-hr/m^3. Under the proposed definition, this would be reflected by the fact that the calculated concentration exceeds 2.0 mg/m^3. MSHA solicits comments on this method of adjusting concentrations to an 8-hour equivalent.

Designated Area (DA)

The existing definition would be modified to permit the Secretary to identify designated areas and to remain consistent with existing procedures which have been in effect since 1980. Once identified, the location of these DAs and the respirable dust measures to be used at the dust generating sources for these locations must be contained in the operator's mine ventilation plan as provided for under § 75.371(t). However, the operator would not be required to sample these DA's under the proposal. MSHA is also proposing to transfer the requirement for identifying each DA specified in existing § 70.208(e), which will be removed, to revised § 70.2(e).

Mechanized Mining Unit (MMU)

The existing definition would be modified by removing § 70.207(e) (Bimonthly sampling; mechanized mining units) which will be deleted, and revising § 70.207; and by transferring the requirements for identifying each MMU specified in existing §§ 70.207(f)(1) and (f)(2), to revised § 70.2(o).

Quartz

The existing definition of quartz would be modified by specifying the analytical method that MSHA has been using since 1983 to determine the quartz content of respirable dust samples. The reason for this modification is to standardize the procedure, thereby enabling other laboratories to reproduce quartz determinations made by MSHA.

The following new definitions are being proposed:

Critical Value

"Critical value" would mean the maximum acceptable full shift dust concentration measurement demonstrating that the applicable verification limit has been met at a high level of confidence. Appendix A explains how each critical value was derived. The specific critical values and their use are detailed in §§ 70.209 and 70.213.

Dust Control Parameters

"Dust control parameters" would mean the respirable dust control requirements of a mine ventilation plan, including engineering or environmental controls, maintenance procedures, and any other requirements described in a ventilation plan. These requirements are intended for the protection of miners from excessive levels of respirable dust and must be in place on every production shift. To assure compliance with the ventilation plan, you must check the dust control parameters on each MMU before beginning production, as required under § 75.362(a)(2). This term has not been formally defined until now.

Engineering or Environmental Controls

"Engineering or environmental controls" would mean all methods that control the level of respirable dust in the work environment by either reducing dust generation or by suppressing, diluting, capturing or diverting the dust being generated during the mining process. Throughout the proposal, the terms "engineering" and "environmental" controls are used interchangeably. The Racal® Airstream helmet (or the 3M™ Airstream™ Helmet-Mounted PAPR), or any other respiratory protective device approved and labeled as such by the National Institute for Occupational Safety and Health (NIOSH), is not defined as an engineering or environmental control.

Full Shift

"Full shift" is defined differently for purposes of plan verification and abatement sampling, and for bimonthly compliance determinations. For purposes of abatement and plan verification, "full shift" would mean an entire work shift, including travel time to and from the MMU. Because of the way MSHA intends to define "concentration," this would be equally protective regardless of the production and travel times. For example, suppose miners at one MMU travel for one hour and mine for eight hours. Miners at another travel for two hours and also mine for eight hours. Suppose, further, that the dust concentration during travel is negligible and that the dust concentrations are identical during production at the two MMUs. Then the amount of dust accumulated on a filter will be the same, say 1.0 mg, in both cases. Applying the proposed definition, the dust concentration calculated for both MMUs would be 1.44 mg/m^3.

For purposes of bimonthly compliance determination, MSHA would continue its current practice of limiting sampling to a 480-minute maximum. MSHA solicits comments on whether "full shift" for compliance sampling purposes should be defined in the same way as for abatement and plan verification purposes. MSHA also solicits comments on whether "full shift" should be defined, as proposed, in the same way for abatement and plan verification purposes.

Material Produced

"Material produced" would mean the total amount of coal and/or other substance extracted by an MMU during any production shift. In order to properly assess the effectiveness of the mine ventilation plan requirements for respirable dust control and for subsequent monitoring purposes, MSHA proposes to require that the operator record and make available records of the amount of material produced by each MMU each shift under a new paragraph (h) of § 75.370.

MRE

"MRE" would mean Mining Research Establishment of the National Coal Board, London, England.

Powered Air-Purifying Respirators (PAPRs)

"Powered, air-purifying respirators (PAPR)" would mean a NIOSH approved loose-fitting respirator that uses a blower to force the ambient air through air-purifying elements to deliver filtered air to the miner's breathing area. Under the proposal, an operator who employs longwall mining has the option of using either powered, air-purifying respirators (PAPRs) or verifiable administrative controls as a supplemental means of control once MSHA has determined that concentrations of respirable dust have been reduced as low as is feasible with engineering and environmental controls. This may include RACAL® Airstream helmets or similar devices that are available now or in the future. The reason for excluding other types of approved respirators is discussed in section II.B.1.

Verifiable Administrative Control

"Verifiable administrative control" would mean a work practice intended to reduce the miner's full shift exposure to respirable dust hazards by altering the way in which work is performed. Examples include rotation of miners to areas having lower concentrations of respirable dust, rescheduling of tasks, and modifying work activities to reduce exposure. A "verifiable administrative control" must be (1) capable of review to confirm proper implementation; (2) clearly understood by miners; and (3) applied consistently over time.

Verification Limits

"Verification limits" would mean the maximum dust concentration for which the ventilation plan has been verified as effective in maintaining during the full shift. There are two separate verification limits: An MRE-equivalent concentration of 2.0 mg/m^3 for respirable coal mine dust and an MRE-equivalent concentration of 100 µg/m^3 for respirable quartz dust. Both of these

limits apply to dust concentrations measured over a full shift.

MSHA does not enforce a separate standard for quartz dust. It regulates exposures to quartz and coal mine dust by reducing the applicable standard for coal mine dust, by means of a formula, when quartz content of the respirable dust is above 5 percent. This formula (10 divided by the concentration of quartz, expressed as a percentage) establishes an applicable coal mine dust standard that, in effect, limits quartz concentrations in the mine environment to no more than 100 $\mu g/m^3$. For example, when the quartz content is 5 percent, the applicable standard is 2.0 mg/m^3; when the quartz content is 10 percent, the applicable standard is 1.0 mg/m^3. Five percent of 2.0 mg/m^3 and 10 percent of 1.0 mg/m^3 are each 0.100 mg/m^3 or 100 $\mu g/m^3$.

The Advisory Committee recognized that a significant quartz exposure hazard continues to exist in coal mines, especially for operations such as roof bolting. Based on MSHA data, 66 percent of underground coal mines are operating on a reduced dust standard due to the respirable dust in the mine environment containing a high percentage of quartz. MSHA data also indicates that 73 percent of the over 600 roof bolters and over 29 percent of the MMUs sampled bimonthly by mine operators are operating under reduced dust standards. The number of reduced standards in effect indicates that a significant potential health risk due to quartz exposure continues to exist. Under the current program, miners can be exposed to excessive quartz levels while the dust standard-setting process takes place. For example, consider a recent situation where an MSHA dust sample of a roof bolter was 0.9 mg/m^3; a level that was in compliance with the applicable standard, 1.3 mg/m^3. However, when the sample was analyzed for quartz the results indicated that the actual concentration of quartz dust in the mine environment exceeded 270 $\mu g/m^3$; or more than two and a half times above the permissible level of 100 $\mu g/m^3$. The only action that could be taken in this particular situation was to initiate the dust standard-setting process, which, on average, can take at least one month or longer. The existing standard-setting process continues from the time the operator is cited for violating the reduced standard through the time MSHA enforces final corrective action.

Under this proposal, MSHA would require operators to anticipate the potential for quartz exposure and to incorporate controls prior to approval of the mine ventilation plan. In order to verify that the operator has incorporated such controls, MSHA would determine the mass of quartz contained in each verification sample and express the concentration of quartz in the mine air as an airborne concentration and not as percent quartz in the dust during the verification process.

This process would require operators to address both the potential for respirable coal mine dust and quartz dust exposure. As recommended by the Advisory Committee, the proposed plan verification process would establish a monitoring and compliance framework to aid MSHA and the coal mine operator in targeting mining situations where quartz exposure constitutes a significant hazard and enhanced dust control procedures are required.

Verification Production Level (VPL)

The "VPL" would mean the tenth highest production level recorded in the most recent 30 production shifts. It is an estimate of the 67th production percentile within an MMU. (§ 70.208 explains how to establish the VPL if you do not have records for 30 production shifts.)

We believe that the production criteria used to evaluate plan effectiveness may not adequately represent typical conditions under which miners work. Requiring that plans be verified at or above this VPL would provide assurance that excessive dust concentrations would be avoided on a majority of production shifts. MSHA believes that using this VPL is more protective of miners' health than the current practice of evaluating plan adequacy based on MSHA inspector samples taken when production can be as low as 60 percent of the average production. We note however, that a VPL defined as a higher production percentile than is being proposed would likely assure that miners would be more protected on a majority of production shifts. The Agency welcomes comments on both the use of a VPL and the appropriate production percentile to use to define it.

Since approximately 50 percent of all production shifts are expected to exceed average production, it follows that the vast majority of all production shifts exceed 60 percent of average production. Therefore, by using 60 percent of average production as the lower range of the production criteria for plan evaluation purposes, as required under current inspection procedures, we have no assurance that the plan would be effective under the vast majority of production conditions.

If you do not have records for 30 production shifts, you can use the minimum production actually achieved on a shift used to verify the plan's effectiveness as your VPL.

Verification Sample

"Verification sample" would mean a sample collected for purposes of plan verification. In order to be valid the sample must be collected on a full shift during which the amount of material produced is at or above the VPL. Only those engineering or environmental controls and other measures listed in the mine ventilation plan may be employed, at levels not exceeding 115% of the quantities specified in the plan during the shift in which the sample is collected. For example, if the plan specifies an air quantity of 4,000 cfm, the quantity measured during verification must not exceed 4,600 cfm (4,000 cfm x 1.15 = 4,600).

Section 70.100 What are the respirable dust standards when quartz is not present?

MSHA is proposing no substantive changes to existing § 70.100(a) and (b), except for removing the reference to § 70.206 (Approved sampling devices; equivalent concentrations) from existing paragraphs (a) and (b) and replacing it with revised § 70.2(c). The requirements of revised § 70.2(c) are similar to the previous standard in § 70.206. The proposal retains the respirable dust standard of 2.0 mg/m^3 in existing paragraph (a) and the intake air standard for respirable dust of 1.0 mg/m^3 in existing paragraph (b).

Section 70.101 What is the respirable dust standard when quartz is present?

MSHA is proposing to retain the existing formula (10 divided by the concentration of quartz, expressed as a percentage) for reducing the respirable dust standard below 2.0 mg/m^3 when the quartz content of the respirable dust in the mine atmosphere is above 5 percent. However, the Agency is proposing to change how it arrives at an average quartz percentage that is used to establish an applicable dust standard.

MSHA recently published a proposed "Program Policy Letter (PPL) on Samples Used to Determine the Respirable Dust Level When Quartz is Present" for public comment [64 FR 65671, November 23, 1999] whereby the standard would be determined based solely on the results of multiple MSHA samples. Under this proposal, as in the PPL, MSHA would no longer be using a combination of MSHA and mine operator sampling for determining the average quartz percentage, which has been the practice since 1985. Instead, as discussed in section III.B, this proposal

would establish MSHA sampling as the exclusive basis for determining the reduced standard and require three valid MSHA samples to set a reduced standard. Since we are sampling underground mines bimonthly, we will have no difficulty in collecting the required number of samples to arrive at the average quartz percentage. We believe our samples will be more representative of the level of quartz to which miners are exposed than as determined currently. This increased level of sampling should also allay any operator concerns regarding the collection of "misleadingly high" samples during atypical periods. We would also begin reporting quartz levels to the nearest tenth of a percent. This is intended to be more protective for the miner than under the current program of truncating results to the nearest full percent. We believe that the method for establishing reduced standards will be more protective for the miners than the current program.

Verification of Ventilation Plan Effectiveness.

Existing § 75.370 requires you to develop an underground coal mine ventilation plan that is designed to control methane and respirable dust in the mine. It further requires that the plan be suitable to the conditions and mining systems at the mine. Proposed §§ 70.201 to 70.211 sets forth the steps that MSHA will follow to demonstrate that your mine ventilation plan required by § 75.370 is effective in controlling respirable dust under typical mining conditions. This demonstration would be required before MSHA approves the mine ventilation plan.

Under §§ 70.201 to 70.211, MSHA would verify the effectiveness, for the control of respirable dust, of all mine ventilation plans submitted to the District Manager for approval under § 75.370. To do this, MSHA would collect full shift samples, called "verification samples." For MSHA to approve the plan, these samples would have to demonstrate that the plan's dust control parameters are effective in maintaining concentrations of respirable coal mine dust and quartz dust in the working environment of MMUs at or below 2.0 mg/m^3 and 100 µg/m^3, respectively, under typical mining conditions.

MSHA has drafted the regulatory text of this proposal in a question and answer format. The remainder of the Section-by-Section discussion also follows this format. As discussed in Chapter IV paragraph A below, we request your comments on this format.

Section 70.201 Who must have a verified ventilation plan?

Section 75.370 requires all underground coal mine operators to submit a mine ventilation plan for approval. The proposed § 70.201 would require the verification of these plans in terms of their effectiveness in controlling dust.

Section 70.202 What is a verified ventilation plan?

A ventilation plan submitted under § 75.370 must be designed to control respirable dust and must be suitable to the conditions and mining systems at the mine. In order for the plan to be verified under this proposal, the plan's dust control parameters must be demonstrated to be effective, at a high level of confidence, in maintaining the concentration of respirable coal mine dust and quartz dust in each MMU at or below 2.0 mg/m^3 and 100 µg/m^3, respectively. This demonstration would be based on MSHA full shift verification samples, which are collected when the amount of material produced is at or above the VPL and only the engineering or environmental controls and other measures included in the ventilation plan are in place, at levels not exceeding 115% of the quantities specified in the plan.

Section 70.203 What will trigger the plan verification process?

There are several ways in which the plan verification process could be initiated. You would trigger the process by submitting a new ventilation plan under § 75.370, or amending a previously approved ventilation plan under § 75.371(f). The verification process could also be triggered if the District Manager requires you to change your plan after determining that your dust control parameters are no longer effective. Finally the verification process could be triggered if you propose revisions to a previously verified ventilation plan and the District Manager determines that the proposed revisions may cause the plan to be inadequate.

Once your ventilation plan has been verified as effective, it should not be necessary to reverify your plan every six months. However, you may be required to change your plan parameters based on (1) results of the MSHA six-month review of the ventilation plan as required by § 75.370(g), (2) excessive dust concentrations measured by MSHA sampling, or (3) a new reduced applicable dust standard which is less than the highest respirable coal mine dust concentration that was previously used to verify the plan. For example, if you are cited by MSHA for exceeding the applicable dust standard the District Manager may have cause to question the adequacy of the previously-approved plan.

Also, depending on sampling results and production records, if your production exceeds the VPL during MSHA sampling, the District Manager may require you to verify the ventilation plan at the higher production level. For example, suppose your VPL is 10,000 tons and all five MSHA concentration measurements exceed the applicable standard on a shift for which the production is 12,000 tons. Then, if your production records indicate that you have exceeded the VPL on more than 33 percent of all production shifts during the previous six months, MSHA would initiate the verification process.

Section 70.204 When will MSHA conduct verification sampling?

The District Manager will notify you of the schedule for verification sampling after granting provisional approval of your ventilation plan. However, before you receive provisional approval, you may be required to change your plan if the District Manager determines that your dust control parameters are inadequate or unsuitable for the current mining conditions. If provisional approval is not granted, you may not operate the affected MMUs. Since more than 700 existing mine ventilation plans may require verification, MSHA will not be able to verify all plans immediately. Under proposed § 70.204 the District Manager would notify you of the date when MSHA intends to collect verification samples.

Section 70.205 What must I (the operator) do to comply this standard?

When the District Manager notifies you that your mine has been scheduled for verification sampling, you would need to make sure that all the dust control parameters specified in your ventilation plan are fully implemented. Since the objective of plan verification is to determine the effectiveness of the plan's dust control parameters in controlling respirable dust under typical mining conditions, paragraph (a) would require you to utilize only the dust control parameters listed in the ventilation plan that was provisionally approved by the District Manager. On the date scheduled for verification sampling, you should establish production levels at or above the VPL specified in the plan, using only the dust control parameters and other measures listed in the plan.

Recognizing that engineering or environmental controls such as air quantity and velocity are subject to measurement error and cannot easily be controlled with absolute precision, MSHA would allow the measured levels to be up to 115% of the levels specified in the plan. If, on the date of verification sampling, a measured quantity exceeds the corresponding quantity specified in the plan by more than 15 percent, you will have the option to either (1) adjust the parameter(s) to what is specified in the plan before verification sampling begins or (2) make no adjustment to the parameter(s) prior to verification sampling. Under the second option, plan approval will be contingent on incorporating into your plan the maximum values of parameters in effect during verification sampling. If verification samples were taken when a parameter measurement exceeded 115 percent of the level specified in the plan, then (assuming none of the verification samples exceeded the critical values) that parameter quantity, as measured, would be incorporated in the plan ultimately approved by the District Manager.

As of the effective date of the final rule, you would be required to begin maintaining records of the amount of material produced by each MMU during each shift. This would enable you to establish the "verification production level" (VPL)—the minimum production level at which you must demonstrate the plan's effectiveness.

Before you submit a previously approved ventilation plan to the District Manager for review and approval, proposed paragraph (c) would require you to provide additional information. This additional information is described under § 75.371(f) of this proposal.

To enable us to maximize our inspection resources and to promote an orderly verification process, proposed paragraph (d) would require you to notify the District Manager in a timely manner if you are unable to meet the conditions for verification sampling on the scheduled date. Failure to provide notification may be cause for revocation of the provisional approval of your ventilation plan.

In accordance with section 103(f) of the Mine Act and the recommendations of the Advisory Committee, miners and their representatives would be provided the same walkaround rights during plan verification sampling as they are provided during any other physical inspection made pursuant to the provisions of section 103(a) by an authorized representative of MSHA.

MSHA believes that under the guidance of the Interpretive Bulletin (43 FR 17546, April 25, 1978) these rights arise when: (1) An "inspection" is made for the purposes set forth in section 103(a), and (2) the inspector is physically present at the mine to observe or monitor safety and health conditions as part of direct safety and health enforcement activity.

The process of plan verification sampling is necessary to obtain information related to approval of the mine's ventilation plan and whether coal mine dust will be adequately controlled to protect miners health. Consequently, miners and their representative would have the right to accompany the inspector with no loss of pay for the time during which the representative exercises this right. However, this right is limited by Section 103(f) to only one such representative of miners.

Section 70.206 Who will MSHA sample and where will MSHA place the sampling device(s) when conducting verification sampling?

MSHA will sample specific occupations within an MMU to demonstrate your plan's adequacy. These occupations would be selected because, based on past experience, within an MMU they would likely be exposed to the highest respirable coal mine dust concentration and, therefore, would be at greatest risk of overexposure. Therefore, MSHA would sample the environment of the DO (as under existing § 70.207), the roof bolter operator(s) (occupation codes—012, 014 or 046), the longwall jack setters (occupation code—041), and any other occupation that the District Manager may designate for sampling after reviewing your ventilation plan.

Section 70.207 How many shifts will MSHA sample to verify my ventilation plan?

This proposed section would explain that the number of shifts required to verify your ventilation plan would depend on two factors: first, the actual operating conditions during the shift that is sampled; and, second, the sample results. To qualify as a verification sample, the amount of material produced by the MMU must equal or exceed the VPL, and the dust control parameters must be at levels not exceeding 115 percent of the quantities specified in the plan. Therefore, the number of shifts depends largely on how quickly and consistently you are able to achieve these operating conditions. We may need to sample several production shifts before the production level on any single shift qualifies for verification purposes. We may verify the plan based on this single shift—but only if all concentration measurements on the sampled shift are at or below the appropriate critical values proposed in § 70.209. This would demonstrate the plan's effectiveness at a high level of confidence. If any of the measurements exceed the appropriate critical value, then we would collect verification samples taken on one to three additional shifts, depending on the concentrations measured on those shifts. Since these additional shifts must also meet the criteria for production, and use only the engineering or environmental controls and other measures specified in the ventilation plan, we may have to sample a total of more than four shifts.

Assuming that you make no special effort to meet the VPL during verification sampling, there is a 67-percent probability that a randomly selected production shift would not meet the VPL. Consequently, if you made no special production effort, there would be a 13-percent chance we would need to sample more than five shifts and a 1.7-percent chance we would have to sample more than 10 shifts.[8] On the other hand, again assuming no special production effort, there would be a 98-percent chance we would need 10 or fewer shifts and a 70-percent chance that we would need three or fewer shifts.[9] This assumes that the dust concentration measurement for each shift does not exceed the critical value corresponding to the number of shifts sampled. If you make a special effort to achieve high production on the sampled shifts, then fewer shifts would be required.

Section 70.208 What if 30 shifts of production data are not to establish the verification production level (VPL)?

If you are starting a new MMU or mine, you may not have 30 shifts of production data available when you submit a new ventilation plan. In such cases, proposed § 70.208 requires you to establish the VPL as the minimum production level actually achieved on a shift used to verify the plan's effectiveness. For example, assume we initiate verification sampling of your longwall MMU. Based on the dust

[8] Assuming no special production effort, the probability of needing more than n shifts to be sampled before you met the minimum production level required to verify the plan: $P(X>n)= (.667)^n$; for example, the probability of more than 10 shifts being needed, $P(X>10) = (.667)^{10} = 1.7$ percent.

[9] Assuming no special production effort, the probability of needing n or fewer shifts to be sampled before you met the minimum production level required to verify a plan: $P(X\leq n)=1-P(X\geq n)$; for example, the probability of 10 or fewer shifts being needed, $(1-(.667)^{10}) = 98$ percent.

concentration measurements obtained on the first shift sampled, your MMU happens to exceed either 1.85 mg/m³ for respirable coal mine dust or 93 µg/m³ for quartz dust but not the verification limits. According to the applicable critical values table in § 70.209, we would need to sample at least two more shifts to verify your plan's effectiveness, provided that no sample exceed 1.93 mg/m³ for respirable coal mine dust or 97 µg/m³ for quartz dust. Assume that the highest production level was achieved on the third shift sampled and the dust concentration measurements obtained on that shift were low enough, according to the applicable critical values table in § 70.209, to verify plan effectiveness based on a single shift. In this case, you would establish a VPL equal to the production achieved on that shift. If, on the other hand, the dust concentration measurements obtained on the third shift with the highest production level were not low enough to verify the plan on a single shift and a determination of the plan's adequacy was based on these three shifts, your VPL would be the minimum production achieved during verification sampling. In any case, the VPL would become part of your ventilation plan.

Section 70.209 When will MSHA approve my ventilation plan?

This is a new section that proposes "critical values" that the District Manager would use to determine whether your plan's dust control provisions should be approved. These critical values, which differ according to the number of shifts used for verification, are listed in Table IV–1. When verification sample results do not exceed the appropriate critical value for respirable coal mine dust or quartz dust, we can be confident that the engineering or environmental controls in place during verification sampling successfully prevented excessive dust concentrations at the sampled locations. Therefore, MSHA would approve your plan when the dust control parameters are in place during verification sampling and none of the measurements obtained from your verification samples exceeded the appropriate critical value. Appendix A explains how the critical values were derived.

TABLE IV–1.—CRITICAL VALUES FOR VERIFYING PLAN EFFECTIVENESS. THE RESULT OF EACH VERIFICATION SAMPLE COLLECTED MUST BE LESS THAN OR EQUAL TO THE APPROPRIATE CRITICAL VALUE

Number of shifts meeting criteria for verification sampling	Critical value for coal mine dust (mg/m³)	Critical value for quartz dust (µg/m³)
1	1.71	87
2	1.85	93
3	1.93	97
4 or more	2.0	100

The proposed approval process would allow the District Manager to base verification sampling on a reasonably small number of shifts, while maintaining a high level of confidence that approved ventilation plans adequately prevent excessive dust concentrations. We would have to sample at least one full shift under the operating conditions specified in the mine ventilation plan before we could make any determination of the plan's adequacy. The plan would be approved if all samples on that shift meet the criteria for a verification sample as defined in § 70.2, and none of the sample results exceed the appropriate critical value for a single shift listed in Table IV–1. However, if any verification sample resulted in a coal mine dust measurement greater than 1.71 mg/m³ or a quartz dust measurement greater than 87 µg/m³, samples would be taken on additional shifts.

The following two examples illustrate how we would determine if your plan's dust control provisions should be approved:

Example 1: Suppose samples were taken on two shifts. We would approve the dust control provisions of your plan if all quartz and coal mine dust measurements obtained on the two shifts were less than 1.85 mg/m³ or 93 µg/m³, respectively. On the other hand, if one of the roof bolter samples resulted in a quartz concentration measurement of 95 µg/m³, then we would not approve your plan, based on these two shifts alone. Instead, at least one additional shift would be needed. Verification samples from only one additional shift would be sufficient if none of the coal mine dust measurements on that shift exceeded 1.93 mg/m³, and none of the quartz measurements exceeded 97 µg/m³. (Dust control parameters and production on this additional shift, as well as on the first two shifts, would need to meet the criteria for verification samples in proposed § 70.2 (bb).)

Example 2: Suppose verification samples were taken on four or more shifts. We would approve the dust control provisions as proposed if no measurement exceeded 2.0 mg/m³ of coal mine dust or 100 µg/m³ of quartz dust.

Section 70.210 What must I (the operator) do if one or more verification samples exceed either verification limit?

This is a new section that would require you to take certain actions whenever a verification sample results in a measurement exceeding the verification limit for either respirable coal mine dust (2.0 mg/m³) or quartz dust (100 µg/m³). You would be required to immediately identify the cause of the high dust concentration and prevent miners from being overexposed on subsequent shifts.

When you receive notice from MSHA that you have exceeded either verification limit, you must immediately take corrective action. You must lower excessive respirable dust concentrations, so that none of your full shift measurements exceed verification limits in any of the identified occupational environments or sampling locations. At the same time, you must make approved respiratory equipment available to affected miners in accordance with § 70.300.

You would also be required to document the corrective actions taken for the District Manager, within five days of MSHA's notification that you have exceeded a verification limit. This documentation must describe all of your corrective actions, including proposed changes in dust control parameters. You would be encouraged to seek technical assistance from the District Manager to help you determine what additional corrective measures would be reasonably likely to reduce excessive dust concentrations.

The District Manager will notify you if your ventilation plan is provisionally approved and when MSHA will again commence verification sampling. The District Manager may require you to make additional changes in your plan parameter(s) based on the results of verification sampling before starting sampling over again. If no changes are required, MSHA will continue

verification sampling from the point at which it stopped.

The District Manager would choose, on a case-by-case basis, between resuming verification sampling or starting plan verification anew. MSHA would not necessarily require a revision of the ventilation plan nor start the ventilation verification process over again because a verification sample exceeded the verification limit by a small amount, such as 0.05 mg/m^3. The decision to continue with your current ventilation plan or start over again with a new ventilation plan, would be based on the information you provide regarding the cause of any excessive dust concentration measurements and the steps you have taken to prevent similar occurrences in the future. For example, suppose dust concentration measurements are excessive due to a deviation in your established operating procedures. It should be possible for you to prevent such occurrences in the future without changing the ventilation plan. If the District Manager finds this to be the case, and accepts your proposed action to prevent similar occurrences, MSHA would resume verification sampling. However, the District Manager may determine that the ventilation plan is not adequate for current operating conditions and require you to change the plan parameters. If so, MSHA would start the verification sampling process over again.

MSHA would not issue citations for exceeding verification limits during the plan verification process. However, MSHA will issue citations under proposed § 70.210(a) for failure to take action required to address the cause of the excessive dust levels once you have been notified by MSHA.

Section 70.211 What if verification samples continue to exceed either verification limit even though I (the operator) believe all feasible engineering and environmental controls are in place?

This proposed section would, continue to require you to use all feasible engineering or environmental controls before implementing any supplemental means of control at longwall mining operations. For continuous and conventional mining operations MSHA would suggest additional engineering and environmental controls. Even if these controls do not prevent full shift respirable dust concentrations from exceeding the verification limits, you must continue to use them to reduce respirable dust to the lowest feasible level. Engineering or environmental controls have been the primary form of dust control for the past 30 years. The Advisory Committee recommended that engineering or environmental controls remain the primary means of protecting coal miners. Consistent with the Mine Act and the Advisory Committee's recommendation, under this proposal engineering or environmental controls continue to be recognized the primary means to control exposure to respirable dust.

If you operate an MMU employing either a continuous or conventional mining method, we believe feasible engineering or environmental controls are available to control respirable dust to an acceptable level. Controls include better design of water spray systems for dust suppression and air movement, use of dust collectors, and improved face ventilation systems.

Of approximately 800 continuous miner MMUs operating in over 500 underground mines, over 90 percent employ extended cut techniques and are being operated remotely (Elam, August 1999). As a result, the continuous miner operator, the occupation normally identified as the DO for bimonthly sampling purposes, is no longer required to work close to the face area where material is being extracted.

Roof bolting machines, a major generator of respirable quartz dust on continuous miner MMUs, must be equipped with suitable drill dust controls. Under § 72.630, drill dust must be controlled by permissible dust collectors, by water, water with a wetting agent, by ventilation, or by any other method approved by MSHA.

These and other approaches, as well as results of laboratory and field studies of the effectiveness of various dust controls, can be found in several detailed compilations prepared by the former U.S. Bureau of Mines, whose responsibilities have now been transferred to NIOSH. (U.S. Bureau of Mines various reports, undated). If you exceed either verification limit, the District Manager will suggest that you implement additional controls.

As discussed in section II. B., MSHA recognizes that improvements in control technology have not kept pace with the increase in production technology associated with high-production longwall MMUs. Average longwall shift production reported during bimonthly sampling has increased from 890 tons per shift in 1980, to over 4900 tons per shift in 1999. Given the state of longwall dust control technology, the currently-available engineering or environmental controls may not succeed in sustaining continuous compliance at certain locations downwind of the longwall operator (occupation code—044) at some high-production longwall MMUs under typical mining conditions.

For your longwall operation, if you believe that you have implemented all feasible engineering or environmental controls, you may submit a written request to MSHA's Administrator for Coal Mine Safety and Health in Arlington, Virginia, to request for MSHA to review your longwall mining operation and determine if you have, in fact, implemented all feasible engineering controls.

Upon receipt of such a request, MSHA would solicit guidance from a panel of experts which would be established for making such determinations. Members of this panel would have extensive knowledge in respirable dust control and would represent the following organizations within MSHA: Technical Support, Division of Health, the MSHA District having jurisdiction over your mine, and one other MSHA District. In some cases, we may solicit advice from NIOSH. As part of their deliberations, the expert panel may visit your mine to observe the various controls in operation. Any decisions reached by this panel would be based on the review of available information, their combined experience in dust control, and sound engineering judgement.

If the Administrator determines that you are using all feasible engineering or environmental controls, we would notify you in writing that you have been granted approval to use either PAPRs approved under 42 CFR 84 or verifiable administrative controls as a supplemental means of control to protect miners required to work downwind of the longwall operator. You would also be informed that the location of the DO would be changed from the 060 to the 044 occupation, or other occupation designated by the District Manager depending on how your longwall MMU is ventilated. You must continue to maintain the work environment of the new DO at or below the verification limits using engineering or environmental controls, as demonstrated during plan verification. As discussed earlier, while it may be difficult to make the environment safe for some miners working on the longwall face under certain mining conditions, MSHA believes that an acceptable work environment can be provided for the longwall operator (occupation code—044) and other miners on a continuing basis. You must choose either PAPRs or verifiable administrative controls for your ventilation plan. The notification would grant approval of an interim verification plan allowing the use of PAPRs or administrative controls as a

supplemental means of compliance. You must introduce additional engineering or environmental controls as they become available and feasible. Every six months, as part of our regular review of your mine ventilation plan, we would follow-up on your efforts to comply with this requirement.

Sections 70.212 through 70.215

Use of Approved Powered, Air Purifying Respirators

These sections would establish the requirements for utilizing PAPRs to supplement engineering or environmental controls.

Section 70.212 For my longwall operation, what must I (the operator) do in order to use approved PAPRs to supplement engineering or environmental controls?

This proposed section would require you to submit a revised ventilation plan to MSHA within five days of receipt of MSHA's written approval in accordance with § 70.211 if you choose to use approved PAPRs to supplement engineering or environmental controls. Your revised plan must specify the engineering or environmental controls you believe are capable of maintaining respirable dust concentrations (1) at or below the verification limits in the environment of the new DO (previously occupation 060, and currently occupation 044 or another occupation designated by the District Manager), and (2) at or below two times the verification limits in the environment of any miner working on the longwall face (downwind of the DO) who is required to wear a PAPR.

This is based upon the demonstrated effectiveness of PAPRs on longwall MMUs and the range of longwall air velocities observed by MSHA inspectors discussed earlier in section II.B.2, which led MSHA to reduce the protection factor assigned to loose fitting, helmeted PAPRs from 25 to two. In other words, the maximum full shift, MRE-equivalent concentration of respirable dust allowed in the environment of any miner working on the longwall face (downwind of the DO) who is required to wear a PAPR cannot exceed 4.0 mg/m^3 of respirable coal mine dust and 200 µg/m^3 of respirable quartz dust.

In addition to specifying all feasible engineering or environmental controls to be used, you would be required to include in your plan a written respiratory protection program for PAPRs for all affected miners as described in § 72.710. MSHA's District Manager may require you to modify the respiratory protection program before granting provisional approval of your ventilation plan.

Once MSHA grants provisional approval, we will verify the effectiveness of the revised dust control provisions of the ventilation plan. We will sample the environment of the DO and of those miners that your plan requires to wear approved PAPRs. If effectiveness of the plan is verified, it would become your interim ventilation plan.

In order to continue using PAPRs for compliance purposes, you would be required to maintain the effectiveness of your engineering or environmental controls, as well as the effectiveness of your approved PAPR respiratory protection program. We believe that the effectiveness of a PAPR is dependent upon proper training and continued maintenance. Training and maintenance procedures are part of an effective respiratory protection program. The provision 30 CFR 72.710 requires all respirators used in an underground coal mine to be selected, fitted, used, and maintained in accordance with the provisions of the American National Standards Institutes "Practices for Respirator Protection ANSI Z88.2–1969." These provisions include training miners in the use and maintenance of respirators and the limitations of the specific respirator worn. Necessary maintenance includes examining it for defects prior to use, charging the batteries properly, and appropriate replacement of parts including, but not limited to, the filter elements, visors, batteries, blowers, and face seals. Furthermore, all respiratory equipment used in an underground coal mine must be approved by the National Institutes for Occupational Safety and Health (NIOSH) under 42 CFR part 84.

The use of PAPRs is not intended to be permanent. Their use as a supplemental control would be permitted only on an interim basis, until feasible engineering or environmental controls become available. You would have to implement any feasible engineering and environmental controls, as they become available.

Section 70.213 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating a PAPR respiratory protection program?

Approval of your interim mine ventilation plan would depend on the results of verification sampling and the operating conditions in effect for each sample. Paragraph (b) adds additional criteria or "critical values" for coal mine dust and quartz dust to those specified in § 70.209. These additional critical values, listed in Table IV–2, would apply to the environments of workers required to wear PAPRs under the plan. The critical values given in § 70.209 would continue to apply to DO samples. However, once an interim ventilation plan is approved, the position of the DO will change. Your plan would be approved if it reflects the dust control parameters in place during verification sampling and none of the verification samples exceed the corresponding critical values. No DO dust sample obtained during the verification process can exceed 2.0 mg/m^3 (respirable coal mine dust) or 100 µg/m^3 (respirable quartz dust). Since we estimate a protection factor of two, no verification sample from the environment where workers are required to wear PAPRs could exceed 4.0 mg/m^3 (coal mine dust) or 200 µg/m^3 (quartz dust).

TABLE IV–2.—CRITICAL VALUES FOR VERIFYING PLAN EFFECTIVENESS IN THE ENVIRONMENT OF WORKERS REQUIRED TO WEAR PAPRS. THE RESULT OF EACH SAMPLE USED TO VERIFY PLAN EFFECTIVENESS FOR SUCH WORK ENVIRONMENTS MUST BE LESS THAN OR EQUAL TO THE APPROPRIATE CRITICAL VALUE

Number of shifts meeting criteria for verification sampling	Critical value for coal mine dust (µg/m^3)	Critical value for quartz dust (µg/m^3)
1	3.54	174
2	3.77	187
3	3.89	194
4 or more	4.0	200

Section 70.214 For my longwall operation, under what circumstances may I (the operator) continue to use PAPRs to supplement engineering or environmental controls?

In order to continue use of PAPRs to supplement your engineering or environmental controls, you must comply at all times with the dust control provisions of your interim mine ventilation plan. This includes: (1) implementing and maintaining all feasible engineering or environmental controls on each shift; and (2) complying with all provisions of your approved PAPR respiratory protection program. In addition, to ensure the continued effectiveness of your approved dust control parameters, no DO sample taken by an MSHA inspector could exceed the applicable dust standard. Furthermore, no MSHA measurement for any miner working downwind of the DO could exceed twice the applicable dust standard.

Finally, you would be required to continue to seek improvements and implement, when they became available, any feasible engineering or environmental controls. MSHA will follow-up on your efforts in this regard as part of its regular six-month review of your mine ventilation plan under § 75.370.

Respirator programs require continuous administrative attention to assure continued effectiveness. MSHA's District Manager would evaluate, at least quarterly, the effectiveness of all installed engineering or environmental controls, the effectiveness of your PAPR respiratory protection program, and your performance in complying with all other plan provisions.

Section 70.215 What if an MSHA DO sample exceeds the applicable dust standard, or an MSHA sample for a miner required to wear a PAPR exceeds twice the applicable dust standard.

This proposed section would require you to review your dust control procedures and promptly take action which would prevent similar occurrences in the future. Also, you must review your approved PAPR respirator program to assure its continued effectiveness. Dust levels in excess of the applicable standard could result from a change in operating conditions, because of an abnormal condition or work practice, or due to production exceeding the VPL. If you determine that you cannot comply with the dust standard, you would need to amend your interim ventilation plan and submit it to the District Manager for review and approval.

If you are cited under § 75.371 for failure to comply with your approved interim plan, the District Manager may conduct an investigation to determine if you are complying with the dust control provisions of your approved interim ventilation plan. If the investigation discloses that you are not following your plan, MSHA may revoke approval of your plan.

Finally, the District Manager may revoke your interim plan and withdraw permission to use PAPRs for compliance purposes if you have a record of noncompliance with your interim ventilation plan, or if MSHA samples indicate that miners are not adequately protected. If this occurs, your revised interim plan must include a VPL at which you can comply with the applicable standard.

Sections 70.216 Through 70.218

Use of Verifiable Administrative Controls

These sections establish requirements for using verifiable administrative controls to supplement engineering or environmental controls.

Section 70.216 For my longwall operation, what must I (the operator) do in order to use verifiable administrative controls to supplement engineering or environmental controls?

"Verifiable administrative controls" are work practices that reduce miners' daily exposure to respirable dust by altering the way in which work is performed such as rotating miners to areas having lower concentrations of respirable dust. To be considered verifiable administrative controls, it is necessary that the practices: (1) Can be reviewed to confirm proper implementation, (2) are clearly understood by miners, and (3) can be applied consistently over time. If you choose to use verifiable administrative controls for compliance purposes, paragraph (a) requires you to submit a revised ventilation plan to MSHA's District Manager within five days of receiving MSHA's written approval in accordance with § 70.211. This plan must specify: (1) the feasible engineering or environmental controls to be used for reducing respirable dust concentrations to the lowest possible level; (2) the verifiable administrative controls to be implemented on the longwall MMU; and (3) the procedures to be employed for ensuring compliance with the verifiable administrative controls on every shift.

Once MSHA grants provisional approval, we will verify the effectiveness of the revised dust control provisions of the ventilation plan. We will sample *all* miners working on the longwall face, including the DO (occupation code 044 or other occupation designated by the District Manager), to demonstrate effectiveness of the proposed dust control provisions. If effectiveness of the plan is verified, it would become your interim ventilation plan.

The use of verifiable administrative controls is not intended to be permanent. Their use for compliance purposes would be permitted only on an interim basis, until feasible engineering or environmental controls become available. You would have to implement any feasible engineering and environmental controls, as they become available. You must make sure that you continue to comply with your approved administrative controls, and you must maintain the effectiveness of your engineering or environmental controls. Finally, you must implement any feasible engineering or environmental controls methods that become available, and that would prevent full shift dust concentrations from exceeding the applicable dust standard at any location at which miners normally work at the longwall face.

Section 70.217 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating verifiable administrative controls?

Approval of the dust control provisions of your interim ventilation plan depends on the results of your verification samples and on the actual operating conditions under which each sample was taken. None of the samples obtained during the verification process may exceed 2.0 mg/m^3 (coal mine dust) or 100 $\mu g/m^3$ (quartz dust). Under paragraph (b), MSHA's District Manager may approve the dust control provisions of your interim plan if (1) the plan reflects all dust controls, including administrative controls in effect during verification sampling and (2) none of the samples used to verify plan effectiveness exceed the appropriate critical values as specified and explained in § 70.209.

Section 70.218 For my longwall operation with an approved interim ventilation plan, what if an MSHA sample exceeds the applicable dust standard?

Under this section, you must immediately review your dust control procedures, including the effectiveness of your administrative controls, and take action to prevent similar occurrences in the future if any MSHA compliance sample exceeds the applicable dust

standard. Dust levels in excess of the applicable standard could result from a change in operating conditions, because of an abnormal condition or work practice, or due to production levels which exceed the VPL. If changes are made in your interim ventilation plan, you must submit them to the District Manager for review and approval.

If you are cited under § 75.371 for failure to comply with your approved plan, the District Manager may conduct an investigation to determine if you are complying with the dust control provisions of your approved interim ventilation plan. If the investigation discloses that you are not following your plan, approval of your plan may be revoked.

Finally, the District Manager may revoke your interim plan and withdraw permission to use administrative controls for compliance purposes if you have a record of noncompliance with your interim ventilation plan, or if MSHA samples indicate that miners are not adequately protected. If this occurs, your revised interim plan must include a VPL at which you can comply with the applicable standard.

Actions Necessary When You Are in Violation of Respirable Dust Standards

Section 70.219 What must I (the operator) do if I am cited for exceeding the applicable dust standard?

If you are cited for violating § 70.100 or § 70.101, you would be required to promptly review your dust control practices to determine the cause of the excessive dust concentration. You would also be required to take corrective action to prevent miners from being overexposed in the future by lowering the concentration of respirable dust to comply with the applicable dust standard. You would be required to take these actions within the abatement period fixed in a citation.

After reviewing your dust control practices and taking corrective action, you would be required to incorporate changes reflecting these actions into your ventilation plan in accordance with § 75.370(a)(2). If, in your opinion, the corrective actions taken do not warrant a change in your plan's dust control parameters, you would need to explain that in your response to the District Manager. This will enable the District Manager to determine if the ventilation plan should be changed and re-verified.

Based on the dust parameters that were in use for the results of the compliance sample(s) dust concentrations measured by MSHA samples, and the information submitted by the operator regarding the type(s) of corrective action that were taken, MSHA may elect to sample the cited entity to determine the effectiveness of your abatement actions. If these samples indicate compliance with the applicable dust standard, you would be required to incorporate your corrective actions in your mine ventilation plan. At a minimum you would be required to incorporate in your plan the actual parameters that were in effect when MSHA sampled. If the MSHA samples indicate continued noncompliance, then MSHA may revoke approval of your ventilation plan.

Information To Be Posted on the Mine Bulletin Board

Section 70.220 What information must I (the operator) post on the mine bulletin board?

This proposed section would provide ready access to current information relating to the plan verification process and to the respirable dust conditions in the mine. You would be required to post on the mine bulletin board the actual values of specific dust control parameters measured by MSHA on shifts used for plan verification and all sample results. For the same reason, the proposal would require that all written notifications received from the District Manager regarding any aspect of the plan verification process. You could remove the information from the mine bulletin board after the plan is approved by the District Manager.

Also, you would also be required to post the results of MSHA compliance sampling on the bulletin board. These results must be posted for at least 31 days. These posting requirements are intended to promote miner awareness of the conditions under which the mine ventilation plan has been shown to be effective in controlling dust levels in their work environment. The goal is consistent with the statutory intent that miners play a role in preventing unhealthy conditions and practices where they work.

Status Change Reports

Section 70.221 What action must I (the operator) take if the operational status of my mine, MMU, or DA changes?

In order to conduct verification and compliance sampling, it is essential that you provide current information to us concerning the production status of MMUs and DAs within those mines that are in producing status. Therefore, to reduce the chances of visiting a mine whose operating status prevents the MSHA inspector from sampling, you would continue to be required to report the change in operational status of the mine, MMU, or DA to the MSHA District Office or to any other MSHA office designated by the District Manager. You would also be required to report a change in operational status if it would affect the verification sampling requirements under this proposal. Status changes would be reported in writing within three working days after the status change occurred. The reporting of changes in operational status is not a new requirement and is contained in existing § 70.220. MSHA is renumbering existing § 70.220 as § 70.221.

Changes to Part 75

Section 75.370 Mine Ventilation Plan; Submission and Approval

This proposal would amend § 75.370 by adding a new paragraph (h). Paragraph (h) would require that records of the amount of material produced each production shift by each MMU during the previous six-month period be made available for inspection by authorized representatives of the Secretary and the miners' representative.

These records are essential for the plan verification process. The records are needed to establish the verification production level (VPL) required under proposed § 75.371(f) and to confirm that the 30-shift period on which the VPL is based represents typical production conditions for the MMU. Additionally, MSHA and the miners' representative need these records to monitor changes in production levels that may affect the plan's adequacy. Finally, because verification of a plan's effectiveness is conditioned on the VPL, these records are necessary to determine if the VPL used in approving a plan continues to reflect typical production levels at the mine.

The production records for each MMU may be maintained in any form utilized by the operator to measure the total amount of material produced, so long as the method is the same as that used to establish the VPL required for plan verification. For example: number of loaded shuttle cars, feet of advance, raw tonnage, or number of longwall passes would each be an acceptable method of recording production—so long as the same method was consistently used.

Section 75.371 Mine Ventilation Plan; Contents

The proposal would revise paragraphs (f) and (t). Existing paragraph (f) would be revised to require the ventilation plan to include any specific work practices used to minimize the dust

exposure of individual miners, information on the location of the roof bolter(s) during the mining cycle for each continuous miner section, and the cut sequence for each longwall mining section.

Also, every ventilation plan would be required to include information on the length of each normal production shift and to specify the VPL as defined in § 70.2. Although a VPL would be included in the ventilation plan, MSHA would not cite you for producing at levels exceeding the VPL. We would expect production on an MMU to exceed the VPL on about 33 percent of all production shifts. If the District Manager determines that your production exceeds the VPL on more than 33 percent of the production shifts over a six-month period, then this may trigger the plan verification process using a higher VPL.

For interim plans involving the use of powered, air purifying respirators (PAPRs) or verifiable administrative controls, the plan must also include the information respectively required under § 70.212(b) or § 70.216(a). This additional information is necessary to fully assess the adequacy of mine ventilation plans.

Since MSHA is proposing to revoke existing §§ 70.207 and 70.208 which require sampling by mine operators, existing paragraph (t) would be revised to remove the provision that mine operators identify in the mine ventilation plan the locations where samples for designated areas (DA) will be collected, including the specific location of each sampling requirement, and the reference to § 70.208. However, to ensure that the mine atmosphere where miners are normally required to work or travel is continuously maintained in compliance, proposed paragraph (t) would continue to require mine operators to identify in the mine ventilation plan the location of each DA, defined in proposed § 70.2(e), and the particular dust control measures that would be used at the dust generating sources for these locations. These locations would continue to be sampled by MSHA inspectors as discussed earlier (see Background Section) to determine compliance with the applicable standard and to assess the adequacy of the operator's dust control measures.

Part 90

The proposed rule would revoke all operator sampling requirements associated with coal miners who have evidence of the development of pneumoconiosis under Part 90. MSHA is republishing the entire regulatory text of Part 90 as it would appear under the proposal for ease of review. Aside from a few technical clarifications which are described below, the only change to Part 90 would be to remove all references to operator sampling.

Section 90.1 Scope.

The scope of part 90 would not change under the proposal. However, the phrase "including respirable dust sampling for Part 90 miners" would be removed from the end of the sentence which states that "the rule also sets forth the operator's obligations."

Section 90.2 Definitions.

All definitions would remain unchanged under the proposal with the exception of those for "concentration" and "mechanized mining unit" which have been clarified as described below. The definition for "valid respirable dust sample" would be removed because mine operators would no longer collect Part 90 samples under the proposal. No discussion has been included below if the definition would not change under the proposal. For ease of reference, subsection references have been added for each definition.

Concentration is a measure of the amount of substance contained per unit volume of air.

The existing definition would be modified so that "concentration" refers to an 8-hour Mining Research Establishment (MRE) equivalent measure of the amount of sampled material contained per unit volume of air. The proposed revision would include the constant factor of 1.38 which the Secretary currently uses to convert concentration of respirable dust measured with approved sampling devices to an equivalent concentration as measured with an MRE instrument.

The existing coal mine dust standards were developed from 8-hour shift exposure measurements. Therefore, if a sample is taken over a period other than eight hours, the concentration measurement must be adjusted to be equivalent to an eight-hour exposure. This is necessary in order to provide equal protection to miners working shifts greater than eight hours and would be accomplished by multiplying the sampler flow rate by 480 minutes, regardless of the length of time that the sample was actually collected.

For this example, suppose a DO sample is collected over a 9-hour shift that includes one hour of travel time. Suppose that the amount of dust accumulated during travel is negligible, and the amount accumulated during production is 1.5 mg. If the concentration were not adjusted to an 8-hour equivalent, it would be diluted by the time spent traveling and calculated as 1.92 mg/m^3. Under the proposed definition, the calculated concentration would be 2.16 mg/m^3.

The proposed definition does not change the daily limit on accumulated exposure intended by the existing exposure limit for coal mine dust. Since the current limit was based on an assumption that exposure occurs over an 8-hour shift, it corresponds to a daily cumulative exposure limit of $8 \times 2.0 = 16$ mg-hr/m^3. The proposed definition of concentration would maintain this same MRE-equivalent 16 mg-hr/m^3 daily limit, regardless of the length of any shift worked.

To continue the example, the exposure accumulated during a day is the same, whether from 8 hours at an average of 2.16 mg/m^3 or from 9 hours at an average of 1.92 mg/m^3. In either case, the MRE-equivalent exposure accumulated for the day is 17.3 mg-hr/m^3, which exceeds the intended daily limit of 16 mg-hr/m^3. Under the proposed definition, this would be reflected by the fact that the calculated concentration exceeds 2.0 mg/m^3. MSHA solicits comments on this method of adjusting concentrations to an 8-hour equivalent.

Mechanized mining unit has been revised to refer to the proposed rule new § 70.205. The definition also clarifies that each MMU is assigned a four digit identification number by MSHA. The MMU retains the identification number regardless of where the unit relocates within the mine. When two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment are to be identified as a single MMU. When two or more MMUs are simultaneously engaged in the production of material within the same working section, each such MMU is identified separately.

Section 90.100 Respirable dust standard.

The Part 90 respirable dust standard would not change. Since MSHA would collect all Part 90 samples under the proposal, the sentence which provides that "concentrations shall be measured with an approved sampling device and expressed in terms of an equivalent concentration determined in accordance with § 90.206" would be removed.

Section 90.101 Respirable dust standard when quartz is present.

Because MSHA would collect all Part 90 samples, this section would be

changed by removing the sentence which provides that "concentrations shall be measured with an approved sampling device and expressed in terms of an equivalent concentration determined in accordance with § 90.206."

An example has been added to explain how a reduced standard is established when respirable dust associated with a part 90 miner contains quartz in the amount of 20%.

Section 90.102 Transfer; notice.

This section would remain unchanged.

Section 90.103 Compensation.

This section would remain unchanged.

Section 90.104 Waiver of rights; re-exercise of option.

This section would remain unchanged.

Section 90.201 MSHA Respirable dust sample reports; Operator status change reporting requirement.

Under the proposal, mine operators would no longer collect respirable dust samples under Subpart C of Part 90. Consequently, all of Subpart C, "Sampling Procedures," including §§ 90.201–209 would be removed. Existing § 90.210 would be renumbered as § 90.201. The requirements of this section would remain unchanged.

Section 90.202 Operator status change reports.

Under the proposal, mine operators would no longer collect respirable dust samples under Subpart C of Part 90. Consequently, all of Subpart C, "Sampling Procedures," including §§ 90.201–209 would be removed. Existing § 90.220 would be renumbered as § 90.202. The requirements of this section would remain unchanged.

Section 90.300 Respirable dust control plan; filing requirements.

There would be no change in the filing requirements for respirable dust control plans under the proposal.

Section 90.301 Respirable dust control plan; approval by District Manager; copy to part 90 miner.

There would be no change in the approval process or notice requirements for respirable dust control plans under the proposal.

V. Health Effects

A. Introduction

Since the 1800s, occupational respiratory disease associated with working in a coal mine has been commonly referred to as "Black Lung." As coal is mined, respirable-sized dust is generated. Depending upon the mine location and its geologic features, silica may also be present in the mine atmosphere. Dust in air that is breathed by miners has the potential to be deposited in their lungs. Some of this dust may be retained. Coal mine dust remaining in the lungs of miners for prolonged periods of time has the potential to result in respiratory diseases, sometimes even after occupational exposure to respirable coal mine dust has stopped. There is a clear and direct relationship between miners' cumulative exposures (*i.e.*, dose multiplied by the time exposed to the coal mine dust) to respirable coal mine dust and the severity of resulting respiratory conditions (as discussed more extensively, later in this section).

Diseases resulting from long-term retention of coal mine dust in the lung include chronic coal workers' pneumoconiosis (simple CWP), progressive massive fibrosis (PMF), silicosis, and chronic obstructive pulmonary disease (COPD) (*e.g.*, asthma, chronic bronchitis, emphysema). Historically, the medical term, "pneumoconiosis," has included simple CWP and PMF and their sub-categories. Chronic, or simple, CWP is partitioned into three levels of severity, proceeding from lowest to highest: category 1, category 2, and category 3. Progressive Massive Fibrosis is similarly divided into three categories of increasing levels of severity: A, B and C.

Miners with simple CWP have a substantially increased risk of developing PMF. In the advanced stages of pneumoconiosis (*i.e.*, PMF), a significant loss of lung function may occur and respiratory symptoms (*e.g.*, breathlessness, wheezing) may persist. Miners are at risk of increased morbidity and premature mortality due to simple CWP, PMF and various other respiratory diseases.

Factors that are important in the development of simple CWP, PMF and COPD include the type of dust (*e.g.*, coal and/or silica), dust concentration (to which the miner was exposed), number of years of exposure, age of the miner (often measured as age at time of medical examination), and rank of the coal (the higher the rank the greater the risk).

In 1998, MSHA estimated that approximately 45,000 miners and 39,000 miners were employed at underground and surface coal mines, respectively (Mattos, 1999). A small percentage of the mining involved anthracite coal, the highest rank coal, while most involved bituminous coal which is a medium rank coal.

There are complementary data sources, described below, which provide estimates of the prevalence of occupational respiratory disease among coal miners. Together these data demonstrate the progress over the last thirty years in the reduction of occupational respiratory disease among coal miners, as well as the need for further action to reduce occupational lung disease among today's coal miners.

Estimates of the prevalence of simple CWP and PMF among the underground coal miners are gathered from the x-ray program, through which operators are required to provide miners the opportunity to be evaluated periodically for the presence of occupational lung disease, mandated pursuant to Section 203(a) of the Mine Act (30 U.S.C. 843(a)). However, miners are not required to participate. From 1970 to 1995, the prevalence of simple CWP and PMF among miners participating in the mandated x-ray program has dropped from 11 percent to 3 percent (MSHA, Internal Chart, 1998).

In accordance with 30 CFR part 50, those cases of occupational illnesses which both surface and underground coal mine operators learn of must be reported to MSHA. Under this requirement, mine operators reported 224 cases of pneumoconiosis (simple CWP and PMF, combined) in 1998 (Mattos, 1999). Of these, 138 cases occurred among coal miners who worked underground, while the remaining 86 cases occurred among surface coal miners (Mattos, 1999). There were also 14 cases of silicosis, eight in underground mines, reported to MSHA in 1998 in accordance with 30 CFR part 50 (Mattos, 1999). Since miners participate in both these programs at their own discretion, these data do not include the occupational health experience of all coal miners. The prevalence of occupational lung disease among participating miners may significantly differ from the prevalence among non-participants. Thus, the data from these programs may not be representative of the true magnitude of the prevalence of simple CWP and PMF among today's coal miners.

In the 1990s, MSHA conducted a series of one-time medical surveillance programs, in various regions of the country, to develop a more accurate estimate of the prevalence of simple CWP and PMF. Through these special programs, MSHA tried to minimize obstacles which may prevent some miners from either participating in or reporting to operators the results of respiratory diagnostic procedures. Nine

geographical cohorts of miners, from around the country, were encouraged to participate in an independent x-ray program (MSHA, Internal Chart, 1999). These cohorts included eight active surface coal mining communities in the states of Pennsylvania, Kentucky and West Virginia, as well as the towns of Poteau, Oklahoma and Gillette, Wyoming. A ninth cohort included underground miners in Kentucky. The process was designed to encourage miner participation by providing for a greater degree of anonymity than may be available under the program provided by Section 203(a) of the Mine Act (30 U.S.C. 843(a)). Across the eight surface cohorts surveyed, the prevalence rate of simple CWP and PMF combined, among participants was 4.8%. The prevalence rate among the participating underground Kentucky miners was 9.2%.

Also, as part of its ongoing effort to "end black lung now and forever," beginning in October 1999, MSHA implemented a pilot program to provide miners at both surface and underground mines with confidential health screening. Referred to as the "Miners' Choice Health Screening," the program addresses the key recommendations of the Secretary's Advisory Committee by (1) increasing participation toward the 85-percent level and (2) expanding the scope of the eligibility to include surface coal miners and surface coal mine independent contractors. The pilot program operates separately from the existing Coal Workers' X-ray Surveillance Program administered by NIOSH. Since the Miners' Choice Health Screenings' inception, over 7,000 miners have been screened, with the participation rate in most areas exceeding 50 percent. With half of the x-rays taken during the first six months having been processed by NIOSH, preliminary results indicate a prevalence rate of approximately 2.25 percent.

The National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) are concerned about the prevalence of occupational lung disease among today's miners. Epidemiological studies from the U.S. and abroad have consistently shown that underground and surface coal miners are at risk of developing simple CWP, PMF, silicosis, and chronic obstructive pulmonary disease (NIOSH Criteria Document, 1995).

B. Hazard Identification

1. Agent: Coal

Coal is a fossil fuel derived from partial degradation of vegetation. Through its combustion, energy is produced which makes coal a valuable global commodity. It has been estimated that over one-third of the world uses energy provided by coal (Manahan, 1994). Approximately 1,800 underground and surface coal mines are in operation in the United States annually producing slightly over a billion short tons of coal (Mattos, 1999).

Coal may be classified on the basis of its type, grade, and rank. The type of coal is based upon the plant material (*e.g.*, lignin, cellulose) from which it originated. The grade of coal refers to its chemical purity. Although coal is largely carbon, it may also contain other elements such as hydrogen, oxygen, nitrogen, and sulfur. "Hard" coal refers to coal with a higher carbon content (*i.e.*, 90–95%) than "soft" coal (*i.e.*, 65–75%). Coal rank relates to geologic age, indexed by its fixed carbon content, down to 65%, and then by its heating value. Volatile matter varies inversely with the fixed carbon value. The most commonly described coal ranks include lignite (low rank), bituminous coal (medium rank), and anthracite (high rank) (Manahan, 1994).

2. Physical State: Coal Mine Dust

Aerosols are a suspension of solid or liquid particles in air (Mercer, 1973); they may be dusts which are solid particles suspended in the air. Coal dust may be freshly generated or may be re-suspended from surfaces on which it is deposited in mines. As discussed below, coal mine dust may be inhaled by miners, depending upon the particle size.

Coal mine dust is a heterogenous mixture, signifying that all coal particles do not have the same chemical composition. The particles are influenced by the type, grade, and rank of coal from which they were generated (Manahan, 1994). Irrespective of differences in coal characteristics, these dusts are water-insoluble, which is important biologically and physiologically. Unlike soluble dusts which may readily pass into the respiratory system and be cleared via the circulatory system, insoluble dusts may remain in the lungs for prolonged periods of time. Thus, a variety of cellular responses may result that could eventually lead to lung disease.

3. Biological Action: Respirable Coal Mine Dust

The principal route of occupational exposure to respirable coal mine dust occurs via inhalation. As a miner breathes, coal mine dust enters the nose and/or mouth and may pass into the mid airways (*e.g.*, bronchi, terminal bronchioles) and lower airways (*e.g.*, respiratory bronchioles, alveolar ducts).

Coal mine dust has a size distribution that is estimated to range between 1 and 100 micrometer (μm) (1 μm = 10^{-6} m) (Silverman, *et al.*, 1971). The size of coal particles is critical in determining the level of the respiratory tract at which deposition and retention occur (American Conference of Governmental Industrial Hygienists, 1999; American Industrial Hygiene Association, 1997).

Particles that are above 10 μm are largely filtered in the nasal passages, although some of these particles may reach the thoracic (or tracheal-bronchial) region of the lung (*e.g.*, 6% of 20 μm) (American Conference of Governmental Industrial Hygienists, 1999). Thus, there is evidence that "oversized" particles (*i.e.*, >10 μm) can move beyond the nose, deeper into the respiratory tract. Particles below 10 μm may easily move throughout the respiratory tract. As particle size decreases from 10 to 5 μm, however, there is greater penetration into the mid and lower regions of the lung. Particles that are approximately 1–2 μm are the most likely to be deposited in the lung (American Conference of Governmental Industrial Hygienists, 1999; Mercer, 1973). During mouth breathing, there may be a slight upward shift in the particle deposition curve such that 2–3 μm-sized particles are the most likely to be deposited in the respiratory tract (Heyder, *et al.*, 1986). Irrespective of nasal or mouth breathing, the potential respiratory tract penetration of particles whose size is approximately 10 μm or less is important because particles in the respirable size range deposit in the deep lung where clearance is much slower.

For the purposes of this rule, "respirable dust" is defined as dust collected with a sampling device approved by the Secretary of Labor and the Secretary of the Department of Health and Human Services (DHHS) in accordance with 30 CFR Part 74 (Coal Mine Dust Personal Sampler Units). In practice, the coal mine dust personal sampler unit has been used in the U.S. The particles collected with an approved sampler approximate that portion of the dust which may be deposited in the lung (West, 1990; 1992). It does not, however, indicate pulmonary retention (*i.e.*, those

particles remaining in the lung). For those particles that are deposited in the lung, clearance mechanisms normally operate to assist in their removal. For example, within the thoracic (tracheal-bronchial) region of the lung, cilia (*i.e.*, hairlike projections) line the airways and are covered by a thin layer of mucus. They assist in particle clearance by beating rhythmically to project particles toward the throat where they may be swallowed, coughed, sneezed, or expectorated. This rhythmic beating action is effective in removing particles fairly quickly (*i.e.*, hours or days). Within the alveolar region of the lung, particles may be engulfed by pulmonary macrophages. These large "wandering cells" may remove particles via the blood or lymphatics. This process, unlike the movement of the cilia is much slower (*i.e.*, months or years). Thus, some particles, particularly those that are insoluble, may remain in the alveolar region for long periods of time, despite the fact that pulmonary clearance is not impaired. It is the pulmonary retention of coal mine dust which may be the impetus for respiratory disease.

It is also important to note that silica may be present in the coal seam, within dirt bands in the coal seam, and in rock above and below coal seams. Of the silica found in coal mines, quartz is the form which is found. Thus, quartz may become airborne during coal removal operations (Manahan, 1994). Miners may inhale dust that is a mixture of quartz and coal. MSHA is concerned with the inhalation of quartz since it may be deposited in the lungs of miners and produce silicosis. This is a restrictive lung disease which is characterized by a stiffening of the lungs (West, 1990; 1992). Silicosis has been seen in coal miners (*e.g.*, surface miners, drillers, roofbolters) (Balaan, *et al.*, 1993). Silicosis may develop acutely (*i.e.*, 6 months to 2 years) following intense exposure to high levels of respirable crystalline quartz. Silicosis has also been observed in coal miners following chronic exposure (*i.e.*, 15 years or more), but may be accelerated (*i.e.*, 7–10 years) in some cases (Balaan, *et al.*, 1993). Silicosis is irreversible and may lead to other illnesses and premature mortality. People with silicosis have increased risk of pulmonary tuberculosis infection and an increased risk of lung cancer (Althouse, *et al.*, 1995; International Agency for Research on Cancer, 1997). MSHA's current standard of 2.0 mg/m^3 for respirable coal dust requires that quartz levels be 5% or lower. Otherwise, the 2.0 mg/m^3 respirable coal dust exposure limit does not apply and must be adjusted downward for percent quartz. If coal dust contains more than 5% quartz, then the following formula is applied (30 CFR 70.101; 30 CFR 71.101):

Respirable dust standard (mg/m^3) = [(10 mg/m^3)/(%Quartz)]

The intent of this formula is to maintain miner exposures to quartz below 0.1 mg/m^3 (100 µg/m^3).

C. Health-Related Effects of Respirable Coal Mine Dust

1. Description of Major Health Effects

Consistently, epidemiological studies have demonstrated miners to be at risk of developing respiratory symptoms, a loss of lung function, and lung disease as a consequence of occupational exposure to respirable coal mine dust. As noted previously, risk factors include type(s) of dust, dust concentration, duration of exposure, age of the miner (often measured as age at time of medical examination), and coal rank.

a. *Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF).* In earlier stages of pneumoconiosis the term, "simple coal workers' pneumoconiosis" (simple CWP), has been used, while in more advanced stages, the terms "complicated CWP" and PMF have been used interchangeably. Simple CWP and PMF involve the lung parenchyma and are produced by deposition and retention of respirable coal dust in the lung.

To determine if a miner has simple CWP or PMF, chest x-rays are taken and classified by a certified radiologist or reader. Opacities are identified on chest films and then classified using a scale of 0–3 (*e.g.*, simple CWP category 1), where higher category values indicate increasing concentration of opacities. In some instances, two category values may be given. For example, simple CWP category 2/3 signifies that the reader decided the film was category 2, but suspected that it might have been category 3. The International Labour Office (ILO) has provided a full description of the criteria for these classifications (ILO, 1980).

Simple CWP can be associated with a loss of lung function and with premature mortality (Morgan, *et al.*, 1974; Jacobsen, 1976; Cochrane, *et al.*, 1979; Parkes, 1982). MSHA recognizes that simple CWP increases the risk of developing PMF substantially (Cochrane, 1962; Jacobsen, *et al.*, 1971; McLintock, *et al.*, 1971; Balaan, *et al.*, 1993).

Progressive massive fibrosis (PMF) is associated with decreased lung function and increased premature mortality (Rasmussen, *et al.*, 1968; Atuhaire, *et al.*, 1985; Miller and Jacobsen, 1985; Attfield and Wagner, 1992). Progressive massive fibrosis is also associated with increases in respiratory symptoms such as chest tightness, cough, and shortness of breath. Miners with PMF also have an increased risk of acquiring infections and pulmonary tuberculosis (Petsonk and Attfield, 1994; Yi and Zhang, 1996). Finally, miners with PMF have an increased risk of right-side heart failure (*i.e.*, cor pulmonale) (Cotes and Steel, 1987).

b. *Other Health Effects.* During a medical examination, a miner may be questioned by his physician about symptoms such as cough, phlegm production, chest tightness, shortness of breath, and wheezing. Occupational physicians may also conduct pulmonary function tests using spirometry or plethysmography. Pulmonary performance may be assessed via repeated measurements of lung volumes and capacities, such as the forced expiratory volume in one second (FEV_1), vital capacity (VC), forced vital capacity (FVC), residual volume (RV), and total lung capacity (TLC) (West, 1990; 1992). Changes in lung volumes and capacities may indicate a loss of the integrity of the lung (*i.e.*, respiratory system). More importantly, they can provide information for diagnosis of diseases affecting the airways and/or elasticity of the lung (*i.e.*, obstructive vs. restrictive lung disease)(West, 1990; 1992).

The term, chronic obstructive pulmonary disease (COPD), refers to three disease processes that are often difficult to properly diagnose and differentiate: chronic bronchitis, emphysema, and asthma (Coggon and Taylor, 1998; Garshick, *et al.*, 1996; West, 1990; 1992). As indicated by several studies, the exposure of miners to respirable coal mine dust place them at increased risk of developing COPD. Furthermore, COPD may occur in miners with or without the presence of simple CWP or PMF.

Chronic Obstructive Pulmonary Disease (COPD) is characterized by airflow limitations, and thus there is a loss of pulmonary function. As in simple CWP or PMF, a miner with COPD may have a variety of respiratory symptoms (*e.g.*, shortness of breath, cough, sputum production, and wheezing) and may be at increased risk of acquiring infections. Chronic Obstructive Pulmonary Disease is associated with increased premature mortality (Hansen, *et al.*, 1999; Meijers, *et al.*, 1997).

Briefly, in chronic bronchitis and in asthma, there is excess mucous

secretion in the mid-lower airways (West, 1990; 1992). In contrast, emphysema is characterized by dilatation (enlargement) of alveoli that are distal to the terminal bronchioles, which leads to poor gas exchange (*i.e.*, poor transfer of oxygen and carbon dioxide). Additionally, there is a breakdown of the interstitium between the alveoli. These pathological changes may be confirmed upon autopsy. With asthma, the airflow limitations may be partially or completely reversible, while they are only partially reversible with chronic bronchitis and emphysema.

The Mine Safety and Health Administration (MSHA) and the NIOSH recognize that respiratory symptoms, loss of lung function, and COPD may impair the ability of a miner to perform his job and may diminish his quality of life. Additionally, miners having such health effects are at increased risk of morbidity (*e.g.*, from cardio-pulmonary disease, infections) and premature mortality.

2. Toxicological Literature

To better understand the human health effects of exposure to respirable coal mine dust and to more fully characterize the associated risks, it is important to consider data that have been obtained in animal based toxicological studies. To date, sub-acute studies (a study with a duration of 30 days, or less, in which multiple exposures of the same agent are given) and chronic studies (a study with a duration of more than 3-months, in which multiple exposures of same agent are given) attempted to mimic miners' exposures. Inhalation was generally the route of exposure, although several studies have also employed instillation techniques (*i.e.*, a method which places a known quantity of dust into the trachea or bronchi).

Most recent toxicological studies have been short-term studies, largely focusing on "lung overload" (Sipes, 1996; Oberdorster, 1995; Morrow, 1988, 1992; Witschi, 1990), species-dependent lung responses (Nikula, *et al.*, 1997a,b; Mauderly, 1996; Lewis, *et al.*, 1989; Moorman, *et al.*, 1975), and particle size-dependent lung inflammation (Soutar, *et al.*, 1997). The data have shown that pulmonary clearance of particles may become impaired, potentially leading to inflammatory and other cellular responses in the lung. Although overloading has not been demonstrated in humans, the finding of reduced lung clearance among retired U.S. coal miners (Freedman and Robinson, 1988) is consistent with this possibility.

The data from Moorman, *et al.* (1975), Lewis, *et al.* (1989), and Nikula, *et al.* (1997a,b) are noteworthy for several reasons. First, these groups of investigators conducted chronic inhalation toxicity studies (*i.e.*, chronic bioassays). This is important since miners' exposures also occur via inhalation, and over a working lifetime. Secondly, the investigators used an exposure concentration of 2.0 mg/m^3 in their bioassays. As noted above, this is the current MSHA standard for respirable coal mine dust. Thirdly, the exposures involved nonhuman primates, whose responses are thought to closely mimic those of man. Some of the key findings of these studies included: deposition of coal dust in the animals' lungs, retention of coal dust in alveolar tissue, altered lung defense mechanisms, reduced pulmonary airflows, and hyperinflation of the lungs. One of the shortcomings of these studies is that complete dose-response relationships were not developed. However, at higher exposure concentrations, greater effects may be expected which is a basic tenet of toxicology. Thus, at exposure concentrations above 2.0 mg/m^3, MSHA and NIOSH believe that more severe obstructive lung disease may occur.

3. Epidemiological Literature

Epidemiology studies have consistently demonstrated the serious health effects of exposure to high levels of respirable coal mine dust (*i.e.*, above 2.0 mg/m^3) over a working lifetime.

Table V–1 lists epidemiology studies since 1986 whose results will be discussed on the basis of the type of observed health effect. Studies completed even earlier including the early work of Cochrane (1962), McLintock, *et al.* (1971), and Jacobsen, *et al.* (1971) demonstrated the adverse health effects (*e.g.*, simple CWP, PMF) of respirable coal mine dust in British coal miners.

Both early and recent studies have shown that the lung is the major target organ (*i.e.*, organ in which toxic effects occur) when exposure to respirable coal mine dust occurs. As seen in Table V–1, numerous studies of miners have been conducted. Recent U.S. studies were conducted using data from one or more of the first four rounds of the National Study of Coal Workers' Pneumoconiosis (NSCWP), and have provided extensive data on miners' health. Many of these studies demonstrated that miners are at increased risk of multiple, concurrent respiratory ailments (Attfield and Seixas, 1995; Kuempel, *et al.*, 1997; Meijers, *et al.*, 1997; Seixas, *et al.*, 1992).

TABLE V–1.—RESPIRABLE COAL MINE DUST EPIDEMIOLOGICAL STUDIES, BY REPORTED OUTCOMES FROM 1986 TO PRESENT

Studies	Reported outcomes
Meijers, *et al.*,1997	PMF, CWP, COPD, LLF
Maclaren, *et al.*,1989	PMF, CWP, LLF, RS
Kuempel*, *et al.*,1995	PMF, CWP, COPD
Bourgkard *et al.*,1998	PMF, CWP, LLF
Kuempel*, *et al.*,1997	
Love, *et al.*,1997	
Love, *et al.*,1992	
Attfield and Morring*,1992b	PMF, CWP
Attfield and Seixas*, 1995	
Hodous and Attfield*, 1990	
Hurley and Jacobsen, 1986	
Hurley and Maclaren, 1987	
Hurley, *et al.*, 1987	
Starzynski, *et al.*, 1996	
Yi and Zhang, 1996	
Wang, *et al.*,1997	CWP, LLF
Goodwin and Attfield*, 1998	CWP
Morfeld, *et al.*, 1997	

TABLE V–1.—RESPIRABLE COAL MINE DUST EPIDEMIOLOGICAL STUDIES, BY REPORTED OUTCOMES FROM 1986 TO PRESENT—Continued

Studies	Reported outcomes
Marine, *et al.*,1988	COPD, LLF, RS
Seixas*, *et al.*, 1993 Soutar and Hurley, 1986	
Carta, *et al.*,1996	LLF, RS
Henneberger and Attfield*, 1997 Henneberger and Attfield*, 1996 Seixas*, *et al.*, 1992	
Attfield and Hodous*, 1992	LLF
Lewis, *et al.*, 1996	

COPD: Chronic obstructive pulmonary disease
CWP: Simple coal workers' pneumoconiosis
LLF: Loss of lung function
PMF: Progressive massive fibrosis
RS: Respiratory symptoms
*: Studies of U.S. Miners Who Participated in the National Study of Coal Workers' Pneumoconiosis (NSCWP)

a. *Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF).* Studies following Cochrane (1962) and McLintock *et al.* (1971) have confirmed that the risk of PMF increases with increasing category of simple CWP (Hurley and Jacobsen, 1986; Hurley, *et al.*, 1987; Hurley and Maclaren, 1988; Hodous and Attfield, 1990). However, the risk of PMF was greater than previously predicted among miners with simple CWP category 1 or without simple CWP (*i.e.*, category 0) (Hurley, *et al.*, 1987). The risk of PMF increased with increasing cumulative exposure, regardless of the initial category of simple CWP (Hurley, *et al.*, 1987), indicating that reducing dust exposures is a more effective means of reducing the risk of PMF than reliance on detection of simple CWP.

Attfield and Seixas (1995) have demonstrated a relationship between cumulative exposure to respirable coal mine dust and predicted prevalence of pneumoconiosis (*i.e.*, simple CWP, PMF). They studied a group of approximately 3,200 men who worked in underground bituminous coal mines. The U.S. miners and ex-miners had participated in Round 1 (1970–1972) or Round 2 (1972–1975) of the NSCWP and were examined again between 1985 and 1988. Chest x-rays were read to determine the number of cases of simple CWP and PMF. Dust exposure estimates were generated from measurements of dust concentrations as well as from work history. A logistic (or logit) regression model was used to estimate prevalence of simple CWP and PMF. In this statistical analysis, proportions are transformed to natural logarithmic values, *i.e.*, $y = \ln [p/(1-p)]$, before a linear model is fit to the data (Armitage, 1977). The logistic model assumes that the data have a binomial distribution (*e.g.*, presence or absence of PMF) for a given set of covariate values (*e.g.*, age, coal rank, dust exposure, pack-years of smoking). Using logistic modeling, relationships were developed between cumulative dust exposure and prevalence of simple CWP (category 1+, category 2+) and PMF. These relationships were the key strengths of the Attfield and Seixas study and serve as the basis for the Quantitative Risk Assessment of this rule.

The recent paper of Kuempel, *et al.* (1997) has provided a detailed discussion and quantitative presentation of excess risks associated with respirable coal dust exposures. Their study was based upon results from previous studies of some 9,000 underground coal miners who participated in the NSCWP (Attfield and Morring, 1992b; Attfield and Seixas, 1995). Kuempel, *et al.* estimated excess (exposure-attributable) prevalence of simple CWP and PMF (*i.e.*, number of cases of disease present in a population at a specified time, divided by the number of persons in the population at that specified time). Point estimates of excess risk of PMF ranged from 1/1000 to 167/1000 among miners exposed at the current MSHA standard for respirable coal mine dust. These estimates were based upon dust exposure that occurred over a miner's working lifetime (*e.g.*, 8 hours per day, 5 days a week, 50 weeks per year, over a period of 45 years). Actual occupational lifetime exposure may be more, due to extended work shifts and work weeks. The point estimates of PMF presented by Kuempel, *et al.* (1997) were related to coal rank, where higher estimates (*e.g.*, 167/1000) were obtained for high-rank coal (anthracite coal) and somewhat lower estimates were obtained for medium/low rank bituminous coal (*e.g.*, 21/1000). Within each coal rank, the estimates of simple CWP cases were at least twice as high as those for PMF (*e.g.*, 167/1000 PMF vs. 380/1000 simple CWP≥1).

The data of Attfield and Seixas (1995) and Kuempel, *et al.* (1995; 1997) were consistent with previous data of Attfield and Morring (1992b) who reported relationships between estimated dust exposure and predicted prevalence of simple CWP or PMF. They also noted that exposure-response relationships were steeper for higher ranks of coal such as anthracite, and concluded that the risks for anthracite miners appeared to be greater than for miners exposed to lower rank coal dust. Attfield and Morring (1992b) used similar methods as described above (*i.e.*, logistic modeling), but included miners from Round 1 of the NSCWP (1969-1971); thus representing an earlier time point in the NSCWP when the respirable coal mine dust concentrations were much higher than they are today.

Recently, Goodwin and Attfield (1998) reported that there were concerns regarding methodological inconsistencies across surveys given during the four rounds of the NSCWP. In particular, they noted the discordance in classification of simple CWP and PMF among readers of chest films. Despite potential discordance, Goodwin and Attfield (1998) have confirmed previous findings of a decline in simple CWP prevalence from 1969 to 1988. Yet, these analyses also demonstrated that simple CWP has not been eliminated. The Round 4 prevalence rates were 3.9 percent for simple CWP category 1 and higher, and 0.9 percent for category 2 and higher. This illustrates the need for continued efforts to reduce dust exposures.

Given the current system for monitoring exposures and identifying overexposures in the U.S., miners are at

increased risk of developing simple CWP and PMF from a working lifetime exposure to respirable coal mine dust (Kuempel, *et al.* 1997, 1995; Attfield and Seixas, 1995; Goodwin and Attfield, 1998; Attfield and Morring, 1992b). Whenever overexposures (*i.e.*, excursions above the applicable standard) occur, the long-term mean exposure of miners may be increased, thereby causing an upward shift on the exposure-response curve. Such a shift then places these overexposed coal miners at increased risk of developing and dying prematurely from simple CWP and PMF.

The Attfield and Seixas epidemiological study (1995) is the most appropriate to use in estimating the benefit of reduction of overexposures. The authors applied scientific rigor to the collection, categorization, and analyses of the radiographic evidence for the group of 3,194 underground bituminous coal miners who participated in Round 4, 1985–1988, of the National Study of Coal Workers' Pneumoconiosis (NSCWP); this study population excludes 86 miners for whom there was missing exposure data or unreadable x-rays. Radiologic evidence was carefully collected and analyzed by multiple independent, NIOSH certified B readers to identify stages of simple CWP and PMF. In the targeted population of 5,557 miners, the participating miners (3,280) were similar to the non-participants (2,277) with regard to age at the first medical examination and prevalence of simple CWP category 1 or greater. The non-participants had worked slightly longer, yet had lower prevalence of simple CWP category 2 or greater, than the participants. This study describes the differences among current miners and ex-miners (health-related or job-related) in the relationships between the estimated cumulative exposure to respirable coal mine dust and prevalence of simple CWP category 1 or greater. Such data and relationships were not available in other U.S. studies and non-U.S. studies.

A potential limitation in the U.S. studies is the possible bias in the exposure data, which has been the subject of several studies (Boden and Gold, 1984; Seixas *et al.*, 1991; Attfield and Hearl, 1996). An advantage of the Attfield and Seixas 1995 study (and the earlier studies based on the same data set) is that the larger mines included in these epidemiological studies were shown to have exposure data with relatively small bias (Attfield and Hearl, 1996). Another limitation in exposure data used in the U.S. studies is that the airborne dust concentrations used to estimate individual miners' cumulative exposures to respirable coal mine dust were based on average concentrations within job category (these average values were combined with data of each individual miner's duration employed in a given job). The earlier U.S. exposure-response studies of miners participating in the first medical survey of the NSCWP (Attfield and Morring, 1992b; Attfield and Hodous, 1992; Kuempel, *et al.*, 1995) relied primarily on exposure measurements from a dust sampling survey during 1968–1969 to estimate miners' exposures before 1970 (Attfield and Morring, 1992a). An advantage of the Attfield and Seixas 1995 study is that, in addition to the pre-1970 exposure estimates, more detailed exposure data were available to estimate miners' exposures from 1970 to 1987, during which the mean airborne concentrations were stratified by mine, job, and year (Seixas, *et al.*, 1991).

The most complete exposure data available are those for coal miners in the United Kingdom (Hurley, *et al.*, 1987; Hurley and Maclaren, 1987; Soutar and Hurley, 1986; Marine, *et al.*, 1988; Maclaren, *et al.*, 1989). These studies include medical examinations and individual estimates of exposure for more than 50,000 miners for up to 30 years. The U.S. studies are consistent with these U.K. studies in demonstrating the risks of developing occupational respiratory diseases from exposure to respirable coal mine dust. These risks increase with increasing exposure concentration and duration, and with exposure to dust of higher ranked coal. The quantitative assessment of risk and associated benefits were based on the Attfield and Seixas (1995) study because, in addition to the advantages described above, it best represents the recent conditions experienced by miners in the U.S. This quantitative assessment follows in Section VI. The international studies provide an important basis for comparison with the U.S. findings, and several of the recent international studies are described in detail here.

Bourgkard, *et al.* (1998) conducted a 4-year study of a group of French coal miners who were employed in underground and surface mines. The investigators examined the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP and PMF. Bourgkard, *et al.* (1998), through selection of a younger worker population (*i.e.*, 35–48 years old at start of study), attempted to focus on the early stages of simple CWP. In essence, they hoped to identify those miners who needed to be relocated to less dusty workplaces or who needed to be clinically monitored. Bourgkard, *et al.* (1998) concluded that there was an association between cumulative dust exposure and what was termed chest x-ray "worsening" (*i.e.*, increase in reader-designated category signifying progression of simple CWP). Their conclusion, however, was based on pooling of the data (*i.e.*, three combined groups of miners) who had different cumulative exposures (*i.e.*, 20, 66 and 85 mg-yr/m^3).

Love, *et al.* (1997, 1992) reported on occupational exposures and the health of British opencast (*i.e.*, surface or strip) coal miners. They studied a group of approximately 1,200 miners who were employed at sites in England, Scotland, and Wales. The mean age of the men was 41; many had worked in the mining industry since the 1970s. To determine dust exposure levels, full shift personal samples were collected. Most were respirable dust samples which were collected using Casella cyclones according to the procedures described by the British Health and Safety Executive (HSE). Thus exposure determinations would be comparable to exposure determinations obtained in U.S. surface coal mines since both measure respirable dust according to the BMRC criteria.

These investigators found a doubling in the relative risk of developing profusion of simple CWP category 0/1 for every 10 years of work in the dustiest jobs in surface mines. These respirable coal dust exposures were under 1 mg/m^3. Love, *et al.* (1992, 1997), like other investigators, emphasized the need for monitoring and controlling exposures to respirable coal mine dust, particularly in high risk operations (*e.g.*, drillers, drivers of bulldozers).

Meijers, *et al.* (1997) studied Dutch coal miners who were examined between 1952 and 1963, and who were followed until the end of 1991. They reported an increased risk of mortality from simple CWP and PMF among miners who had generally worked underground for 20 or more years. Their conclusions were based upon dramatic increases in standardized mortality ratios (SMRs). There were several limitations in this study, however.

Morfeld, *et al.* (1997) published a recent paper that investigated the risk of developing simple CWP in German miners and addressed the occupational exposure limit for respirable coal dust in Germany. Their study included approximately 5,800 miners who worked underground from the late

1970s to mid-1980s. Morfeld, *et al.* observed increases in relative risks (RRs) of developing early x-ray changes, category 0/1, that were exposure-dependent. Relative risks (RRs) increased with higher dust concentrations.

Starzynski, *et al.* (1996) conducted a mortality study on a group of 11,224 Polish males diagnosed with silicosis, simple CWP, or PMF between 1970 and 1985. This cohort was subdivided by occupation into four subcohorts: coal miners (63%); employees of underground work enterprises (8%) (*i.e.*, drift cutting and shaft construction jobs); metallurgical industry and iron, and nonferrous foundry workers (16%); and refractory materials, china, ceramics and quarry workers. The investigators found that coal miners had a slight, statistically significant excess overall mortality (*i.e.*, all causes) as indicated by a Standardized Mortality Ratio (SMR) of 105 (with a 95% Confidence Interval (C.I.) of 100–110). Also, excess of deaths from diseases of the respiratory system among coal miners was nearly four times that of the referent population (SMR of 383 with a 95% C.I. of 345–424). The study of Starzynski, *et al.* (1996) agrees with others that there is premature mortality among coal miners from simple CWP and PMF. Unfortunately, there is little or no information presented on miner work history, exposure assessment (*e.g.*, respirable coal mine dust, silica), and mine environment (*e.g.*, coal rank(s), underground vs. surface mining).

Yi and Zhang (1996) conducted a study to measure the progression from simple CWP to PMF or death among a cohort of 2,738 miners with simple CWP who were employed at the Huai-Bei coal mine in China. Relative risks (*i.e.*, RRs) were calculated for progression from simple CWP category 1 to simple CWP category 3 and for progression from simple CWP category 3 to death. Their results demonstrated that miners with simple CWP category 1 are at risk of developing simple CWP category 2 and simple CWP category 3 (*e.g.*, RRs of 1.101 and 2.360, respectively). They also found that miners with PMF had a decreased life expectancy. Other risk factors for development of PMF included long-term work underground, and drilling. This study was limited by a lack of exposure assessment, estimation of miner smoking histories, and use of a radiological classification system that differs from that of the ILO.

Hurley and Maclaren (1987) studied British coal miners who were examined between 1953 and 1978, over 5-year intervals. They have shown that exposure to respirable coal dust increases the risks of developing simple CWP and of progressing to PMF. As seen in their data analysis, these responses were dependent upon dust concentration and coal rank. That is, greater responses were seen at higher dust concentrations and with higher rank coal (*i.e.*, increasing per cent carbon. The investigators also noted that estimated risks were unaffected by changes in the proportion of miners with simple CWP who transferred jobs. The authors concluded that "limiting exposure to respirable coal dust is the only reliable way of limiting the risks of radiological changes to miners."

b. *Other Health Effects.* As noted in Table V–1, there were 16 studies in which the loss of lung function (LLF) was examined in coal miners. Six of these studies also included an evaluation of respiratory symptoms (RS) in the miners. There were five studies describing chronic obstructive pulmonary disease (COPD) in miners.

Henneberger and Attfield (1997; 1996), Kuempel, *et al.* (1997), Seixas, *et al.* (1993), Attfield and Hodous (1992), and Seixas, *et al.* (1992) evaluated data from pulmonary function tests and standardized questionnaires to miners in the NSCWP. A common finding in their studies was an increase in respiratory symptoms such as cough, shortness of breath, and wheezing. The symptoms were dependent upon the dust concentration to which the miners had been exposed, with more pronounced symptoms occurring after long-term exposures to higher exposure levels. These studies also demonstrated that a loss of lung function occurred among miners.

Attfield and Hodous (1992) studied U.S. miners who had spent 18 years underground (on average) and who participated in Round 1 (1969–1971) of the NSCWP. They observed that greater reductions in pulmonary function were associated with exposure to higher ranks of coal (*i.e.*, anthracite vs. bituminous vs. lignite). Using linear regression models, Kuempel *et al.*, (1997) predicted the excess (exposure attributable) prevalence of lung function decrements among miners with cumulative exposures to respirable coal mine dust of 2 mg/m^3 for 45 years (*i.e.*, 90 mg-yr/m^3). The excess prevalence estimated were 315 and 139 cases per thousand for forced expiratory volume in one second (FEV_1) of <80% and <65% of predicted normal values, respectively, among never-smoking miners (a sub-group of 977 NSCWP participants studied in Seixas *et al.*, 1993). Such reductions in (FEV_1 are clinically significant; (FEV_1 <80% (of predicted normal values) is a measure that is used to determine ventilatory defects (American Thoracic Society, 1991). Three recent studies found impaired (FEV_1 to be a predictor of increased pre-mature mortality (Weiss, *et al.*, 1995; Meijers, *et al.*, 1997; Hansen *et al.*, 1999).

Seixas, *et al.* (1993) conducted an analyses of 977 underground coal miners who began working in or after 1970 and were participants of both NSCWP Round 2 (1972–1975) and Round 4 (1985–1988). They found a rapid loss of lung function in miners and further declines in lung function with continuing exposure to coal mine dust. Collectively these studies have shown that the prevalence of decreased lung function was proportional to cumulative exposure. That is, with exposure to higher coal dust levels over a working lifetime, there were more miners who experienced a loss of lung function. Also, the types of respiratory symptoms and patterns of pulmonary function decrements observed by both Attfield and Hodous (1992) Seixas, *et al.* (1992;1993) are characteristic of COPD.

The U.S. findings on respiratory symptoms and loss of lung function in miners have agreed with those of previous British studies by Marine, *et al.* (1988) and Soutar and Hurley (1986). Marine, *et al.* (1988) analyzed data from British coal miners and focused their attention on respiratory conditions other than simple CWP and PMF. In particular, they examined the Forced Expiratory Volume in one second (FEV_1) among smoking and nonsmoking miners and, on the basis of reported respiratory symptoms, identified those miners with bronchitis. Using these data, logistic regression models were used to estimate the prevalence of chronic bronchitis and loss of lung function. Marine, *et al.* concluded that both exposure to respirable coal mine dust and smoking independently cause decrements in lung function; their contributions to COPD appeared to be additive in coal miners.

Soutar and Hurley (1986) examined the relationship between dust exposure and lung function in British coal miners and ex-miners. The men who were studied were employed in coal mines in the 1950s and were followed up and examined 22 years later. These miners and ex-miners were categorized as smokers, ex-smokers, or nonsmokers. The Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and the (FEV_1/FVC) ratios decreased in all study groups and these reductions in lung function were inversely proportional to dust exposure. Thus, Soutar and Hurley concluded that exposure to respirable coal mine dust can cause severe respiratory

impairment, even without the presence of simple CWP or PMF. They speculated that the pathology of coal dust-induced lung disease differs from that induced by smoking.

Recent studies from China (Wang, *et al.*, 1997) and the European community (Bourgkard, *et al.*, 1998; Carta, *et al.*, 1996; Lewis, S., *et al.*, 1996) have also supported the British and U.S. findings which demonstrated the correlation between occupational exposure to coal dust and respiratory symptoms and loss of lung function in miners.

Wang, *et al.* (1997) examined lung function in underground coal miners and other workers from several other factories in Chongqing, China. For their study, information was obtained on exposure duration, results of radiographic tests, and smoking history. Pulmonary function tests were performed, providing the Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and (FEV_1/FVC) data. Additionally, the diffusing capacity for carbon monoxide (DL_{CO}) was measured. This is an indicator of diffusion impairment at the "blood-gas barrier" which may occur, for example, when this barrier becomes thickened (West, 1990; 1992). Wang, *et al.* (1997) found that there was impairment of pulmonary function among the coal miners and they had evidence of obstructive disease. Like other studies, such effects were observed among coal miners even in the absence of simple CWP. Pulmonary function was further decreased when simple CWP was present. This study did not provide exposure measurements and there was no consideration of exposure-response relationships. Also, silica exposures and their potential effects were not examined in the underground coal miners.

As noted above, Bourgkard, *et al.* (1998) was interested in the earlier stages of simple CWP (*i.e.*, Categories 0/1 and 1/0) and the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP category 1/1 or higher. Over a 4-year period, they studied French coal miners who were employed in underground and surface mines. Bourgkard, *et al.* (1998) found that, at the first medical examination, the ratio of the Forced Expiratory Volume in one second (FEV_1) to the Forced Vital Capacity (FVC) (*i.e.*, (FEV_1/FVC) and other airflows determined from a forced expiration (West, 1990; 1992) were lower among miners who later developed simple CWP category 1/1 or higher. These miners also experienced more wheezing at the first medical examination. Thus, the results of their study suggested that lung function changes may serve as an early indicator of miners who are at increased risk of developing simple CWP and PMF and who should be monitored more closely.

Carta, *et al.* (1996) have examined the role of dust exposure on the prevalence of respiratory symptoms and loss of lung function in a group of young Italian coal miners (*i.e.*, mean age at hire 28.9 years, mean age at first survey 31.2 years). These miners worked underground and were exposed to lignite (*i.e.*, low rank coal) which had a 5–7% sulfur content. They were followed for a period of 11 years, from 1983 and 1993. Carta, *et al.* (1996) found few abnormalities on miner chest x-rays taken throughout the 11-year study. However, there was an increased prevalence of respiratory symptoms and loss of lung function. This was particularly noteworthy since dust exposures were often below 1.0 mg/m^3; the cumulative dust exposure for the whole cohort was 6.7 mg-yr/m^3 after the first survey. Thus, Carta, *et al.* (1996) demonstrated that miners experience respiratory effects of exposure to dust generated from a lower rank coal and at lower concentrations. They have recommended yearly measurements of lung function for miners.

Lewis, *et al.* (1996) studied a group of British miners, many of whom entered the coal industry in the 1970s. Based upon chest x-rays, the miners had no evidence of simple CWP or PMF. The objective of this study was to determine whether coal mining (*i.e.*, exposure to respirable coal mine dust) is an independent risk factor for impairment of lung function. Lewis, *et al.* (1996) found that there was a loss of lung function in miners (smokers and nonsmokers), particularly among miners who were under approximately 55 years of age. For miners who smoked, there was a greater loss of lung function than in nonsmoking miners with the same level of exposure to respirable coal mine dust. Above age 55, the loss of lung function was similar for miners and their controls, although all smokers continued to exhibit a greater loss of lung function than nonsmokers. Lewis, *et al.* (1996) concluded that the deficits in lung function may occur in the absence of simple CWP and PMF, and independent from the effects of smoking.

There have been two recent mortality studies that have demonstrated a relationship between exposure to respirable coal mine dust and development of COPD. This association was reported by Kuempel, *et al.* (1995) in the U.S., and by Meijers, *et al.* (1997) in the Netherlands. These two groups of investigators have reported that occupationally-induced COPD (*e.g.*, chronic bronchitis, emphysema) can occur in miners, with or without the presence of simple CWP or PMF. They also found that the risk of premature mortality from COPD was elevated among miners and could be separated from the effects of smoking and age.

Kuempel, *et al.* (1995) found an increase in relative risk (RR) of premature mortality from COPD among U.S. coal miners who participated in the NSCWP from 1969 through 1971. In their data analysis, the exposure-response relationship was evaluated using the Cox proportional hazards model. This model assumes that the hazard ratio between nonexposed and exposed groups does not significantly change with time. When fitting a curve to the data (*e.g.*, log-linear), cumulative exposure was expressed as a categorical or continuous variable. Due to model limitations (*e.g.*, less statistical power, influence of category scheme, use of lowest exposure group for comparisons vs. use of non-exposed group), Kuempel, *et al.* (1995) believed that the exposure data should be expressed as a continuous variable. If, for example, the cumulative exposure was 90 mg-yr/m^3 (*i.e.*, 2 mg/m^3 for 45 years), then the relative risk of mortality from chronic bronchitis or emphysema was 7.67. Kuempel, *et al.* (1995) also showed that relative risk decreased with lower cumulative exposures (*i.e.*, below 90 mg-yr/m^3) and increased with higher cumulative exposures (*i.e.*, above 90 mg-yr/m^3). Thus, these investigators demonstrated a statistically significant exposure-response relationship for COPD.

Meijers, *et al.* (1997) have shown, among Dutch miners, reductions in lung volumes and capacities are good predictors of the increased risk of premature mortality from COPD. For example, a diminished forced expiratory volume in one second (FEV_1) or a diminished ratio of the FEV_1 to the forced vital capacity [10] (FVC) (*i.e.*, FEV_1/FVC) upon medical examination was associated with a significantly increased standardized mortality ratio (SMR) for COPD (322 and 212, respectively). In other words, miners with diminished lung capacity based on FEV_1 were two to three times more likely to die prematurely due to COPD than miners who had normal lung function. In contrast, SMRs for COPD were not

[10] Forced vital capacity (FVC) is the total volume of gas that can be exhaled with a forced expiration after a full inspiration; The vital capacity measured with a FVC may be less than that measured with a slower exhalation (West, 1992).

significantly increased in miners with normal lung volumes and capacities. These data support prior conclusions of Seixas, *et al.* (1992, 1993) and Attfield and Hodous (1992) based on morbidity studies.

VI. Quantitative Risk Assessment

As mentioned previously, in addition to this proposed notice of rulemaking, today's **Federal Register** contains another NPRM, Determination of Concentration of Respirable Coal Mine Dust, RIN 1219–AB18. In combination, these rules present MSHA's strengthened plan to meet the Mine Act's requirement that a miner's exposure to respirable coal mine dust be at or below the applicable standard on each and every shift. MSHA's improved program to eliminate overexposures on each and every shift includes the simultaneous implementation of an improved tool to identify overexposures (*i.e.*, inspectors use of single, full–shift samples for noncompliance determinations) and this proposed regulation, requiring operators to verify ventilation plans in underground coal mines.

Having reviewed the reported health effects associated with exposure to coal mine dust, we have evaluated the evidence to determine whether the current regulatory strategy can be improved. The criteria for this evaluation is established by the Mine Act under section 101(a)(6)(A) [30 U.S.C. 811(a)(6)(A)] which provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on Court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that must be addressed: (1) Whether health effects associated with the current pattern of overexposures on individual shifts constitute a material impairment to miner health or functional capacity; (2) whether the current pattern of overexposures on individual shifts places miners at a significant risk of incurring any of these material impairments; and (3) whether the proposed rules would substantially reduce those risks.

The criteria for evaluating the health effects evidence do not require scientific certainty. The need to evaluate risk does not mean that an agency is placed into a "mathematical straightjacket." *See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607, 100 S.Ct 2844 (1980), otherwise known as the "Benzene" decision. When regulating on the edge of scientific knowledge, certainty may not be possible and,

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * * risking error on the side of overprotection rather than underprotection (Id at 656).

The statutory criteria for evaluating the health evidence do not require MSHA and NIOSH to wait for absolute certainty and precision. MSHA and NIOSH are required to use the "best available evidence" (section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)).

As explained earlier, MSHA's objective in strengthening the requirements for verifying the effectiveness of dust control plans, and in enforcing effective plans through the new enforcement policy proposed in this notice, is to ensure that no miner is exposed to an excessive concentration (*i.e.*, a concentration in excess of the applicable standard) of respirable dust on any individual shift. Annual inspector samples have demonstrated overexposures on individual shifts in many mines. Data compiled from the far more frequent, bimonthly, operator sampling program show that in many mines, the applicable dust standard is exceeded on a substantial percentage of the production shifts. This pattern has persisted for many years, and, since individual shift excursions above the applicable standard are permitted under the existing program, the same pattern can be expected to continue over the working lifetime of affected miners—unless an effort is made to eliminate excess exposures on individual shifts. In this quantitative risk assessment (QRA), MSHA will demonstrate that reducing coal mine dust concentrations, over a 45-year occupational lifetime, to no more than the applicable standard on just that percentage of shifts showing an excess, thereby lowering the cumulative exposure to respirable coal mine dust than would otherwise occur, would significantly reduce the risk of both simple CWP and PMF among miners. We have estimated the health benefits of the two rules arising from the elimination of overexposures on all shifts at only those MMUs exhibiting a pattern of recurrent overexposures on individual shifts.[11]

Based on 1999 operator data, there were 704 MMUs (out of 1,251 total) at which dust concentrations for the designated occupation (DO) exceeded the applicable standard on at least two of the sampling shifts (MSHA, Datafile:Operator.ZIP).[12, 13] MSHA considers these 704 MMUs, representing more than one-half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures. Valid operator DO samples were collected on a total of 18,569 shifts at these 704 MMUs, and the applicable standard was exceeded on 3,977 of these shifts, or 21.4 percent. For this 21.4 percent, the mean excess above the standard, as measured for the DO only, was 1.04 mg/m^3.

These results are based on a large number of shifts (an average of approximately 26 at each of the 704 MMUs). Therefore, assuming representative operating conditions on these shifts, the results can be extrapolated to all production shifts, including those that were not sampled, at these same 704 MMUs. With 99-percent confidence, the overall percentage of production shifts on which the DO sample exceeded the standard was between 20.6 percent and 22.2 percent for 1999. At the same confidence level, again assuming representative operating conditions, the overall mean excess on noncompliant shifts at these MMUs was between 0.96 mg/m^3 and 1.12 mg/m^3. If operators tend to reduce production and/or increase dust controls on sampled shifts (as some commenters to the previous single, full-shift sample rulemaking and the Dust Advisory Committee have alleged) then the true values could be

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[11] By "exhibiting a pattern of recurrent overexposures," MSHA means that, at a 95-percent confidence level, the applicable standard is exceeded on at least [six] shifts per year. Using a different definition of "recurrent pattern of overexposures" in these analyses would change the estimate of the reduction in risk and associated benefits. For example, if the definition were that four or more DO bimonthly exposure measurements exceeded the applicable standard, we could state, with 95% confidence, that the standard was exceeded on at least 20 shifts in a year of 384 shifts. This would reduce the population for whom we are estimating benefits, and decrease the estimated number of prevented cases by 19%.

[12, 13] MSHA estimates an MMU average of 384 production shifts per year. Since mine operators are required to submit five valid designated operator (DO) samples to MSHA every two months, there would typically be 30 valid DO samples—representing 30 of the 384 production shifts—for each MMU that was in operation for the full year. If dust concentrations on two or more of the sampled shifts exceeded the standard, then it follows, at a 95-percent confidence level, that the standard was exceeded on at least [six] shifts over the full year.

higher than the upper endpoints of these 99-percent confidence intervals.

In 1998, MSHA attempted to enforce compliance on individual shifts. Therefore, to compare the 1999 pattern of excess exposures on individual shifts to that of previous years under the current enforcement policy, MSHA examined the regular bimonthly DO sample data submitted to MSHA by mine operators in the eight years from 1990 through 1997. The same three parameters were considered as discussed above for 1997: (1) The percentage of MMUs exhibiting a pattern of recurrent overexposures, as indicated by at least two of the valid measurements above the applicable standard in a given year; (2) for those and only those MMUs exhibiting recurrent overexposures, the overall percentage of production shifts on which the DO was overexposed, as estimated by the percentage of valid measurements above the applicable standard; and (3) for the MMUs identified as exhibiting recurrent overexposures, the mean excess above the applicable standard, as calculated for just those valid measurements that exceeded the applicable standard in a given year.

Although MSHA found minor differences between individual years, there was no statistically significant upward or downward trend in any of these three parameters over the 1990–1997 time period (see Table VI–1). In 1999, however, there was a significant decrease in the average excess above the applicable standard (Parameter #3) for MMUs exhibiting recurrent overexposures. MSHA attributes this decrease to two important changes in the Agency's inspection program, beginning near the end of 1998. These changes, which both resulted in increased inspector presence, were: (1) An increase in the frequency of MSHA dust sampling at underground coal mines; and (2) initiation of monthly spot inspections at mines that were experiencing difficulty in maintaining consistent compliance with the applicable dust standard.

TABLE VI–1.—1990–1997, DISTRIBUTION OF PARAMETERS OF ANNUAL OVEREXPOSURE TO RESPIRABLE COAL MINE DUST

1990–1997	Parameter #1 (percent)	Parameter #2 (percent)	Parameter #3 (mg/m^3)
Number of Years	8	8	8
Median	52.6	20.5	1.23
Mean (Standard Error)	50.9 (1.62)	20.6 (0.32)	1.25 (0.020)

Parameter #1: Percentage of MMUs exhibiting a pattern of recurrent overexposures.
Parameter #2: For those MMUs exhibiting a pattern of recurrent overexposures, the percentage of production shifts on which the DO was overexposed.
Parameter #3: For those MMUs exhibiting a pattern of recurrent overexposures, the mean excess above the applicable standard among valid DO measurements that exceeded the applicable standard.

MSHA invites public comment on whether these three parameters, based on operators' 1999 samples, under-represent or over-represent the frequency and/or magnitude of excessive dust concentrations on *all* individual shifts—including those that are not sampled. These data suggest that, unless changes are made to enforce the dust standard on every shift, the same average pattern of overexposures observed in 1999 will persist into the future. Therefore, we conclude that without the proposed changes:

- Approximately 56 percent of all MMUs would continue to have a pattern of recurrent overexposures on individual shifts;
- At those MMUs with recurrent overexposures, full shift average respirable dust concentrations for the DO would continue to exceed the applicable standards on about 21 percent of all production shifts;
- Among those shifts on which DO exposure exceeds the applicable standards, the mean excess for the DO would continue to be *approximately* 1.0 mg/m^3.

If all overexposures on individual shifts are eliminated, the reduction in total respirable coal mine dust inhaled by a miner over a working lifetime will depend on the following factors: the average volume of air inhaled on each shift that would otherwise have exceeded the applicable standard, the degree of reduction in respirable dust concentration in the air inhaled on such shifts, and the number of such shifts per working lifetime. If a miner inhales ten cubic meters of air on a shift (U.S. EPA, 1980), reducing the respirable dust concentration in that air by 1.0 mg/m^3 would result in 10 mg less dust inhaled on that shift alone. Assuming the miner works 240 shifts per year, then reducing inhaled respirable dust by an average of 10 mg on 21 percent of the shifts would reduce the total dust inhaled by 504 mg per year, or nearly 22,700 mg over a 45-year working lifetime:

1.0 mg per m^3 of inhaled air
× 10 m^3 inhaled air per shift
× 50.4 affected shifts (*i.e.*, 21% of 240) per work year
× 45 work years per working lifetime
= 22,680 mg less dust inhaled per working lifetime.

The Secretaries invite comments on the health benefits expected from reducing the total coal mine dust inhaled over a working lifetime by this amount.

In Section V, the strengths and weaknesses of various epidemiological studies were presented, supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material health impairment with respect to CWP and PMF. Two of the distinguishing qualities of this study are the dose-response relationship over a miners' lifetime and the fact that these data best represent the recent conditions experienced by miners in the U.S. Using this relationship it is possible to evaluate the impact on risk of both simple CWP and PMF expected from bringing dust concentrations down to or below the applicable standard on every shift. This is the only contemporary epidemiological study of CWP and PMF providing such a relationship.

Attfield and Seixas used two or three B readers to identify the profusion of opacities using the ILO classification scheme. If three readings were available, the median value was used. If two readings were available, the higher of the two ILO categories was recorded. Eighty radiographs were eliminated because only one reading was available. The most inclusive category of CWP 1^+ includes simple CWP, categories 1, 2, 3, as well as PMF. Category CWP 2^+ does not include simple CWP, category 1, but does include the more severe simple

CWP categories, 2 and 3, as well as PMF. The third category used in their report was PMF, denoting any category of large opacities.

Attfield and Seixas (1995) provided logistic regression models for the prevalence for CWP 1^+, CWP 2^+ and PMF as a function of cumulative dust exposure, expressed as the product of dust concentration measured in the mine atmosphere and duration of exposure at that concentration. These models can be used to estimate the impact on miners' risk of both simple CWP and PMF of reducing lifetime accumulated exposure by eliminating excessive exposures on a given percentage of individual shifts.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures), bringing dust concentrations down to no more than the applicable standard on each and every production shift would reduce DO exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 21 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the DO level, by 0.22 mg-yr/m^3 over the course of a working year (*i.e.*, 21 percent of shifts in one year, times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected miner would, on average, amount to a reduction in accumulated exposure of approximately 10 mg-yr/m^3 (*i.e.*, 45 years times 0.22 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples submitted to MSHA tend to under-represent either the frequency or magnitude (or both) of individual full shift excursions above the applicable standard, then eliminating such excursions would provide a lifetime reduction of even more than 10 mg-yr/m^3 for each exposed miner.

The Attfield and Seixas models predict the prevalence of CWP 1^+, CWP 2^+, and PMF for miners who have accumulated a given amount of exposure, expressed in units of mg-yr/m^3, by the time they attain a specified age. Benefits of reducing cumulative exposure can be estimated by calculating the difference between predictions with and without the reduction. For example, suppose a miner begins work at age 20 and retires at age 65. By the year of retirement, that miner is expected to accumulate nearly 10 mg-yr/m^3 less exposure if individual shift excursions are eliminated. For 65-year-old miners, reducing accumulated dust exposure by a total of 10 mg-yr/m^3 reduces the predicted prevalence of CWP 1^+ by at least 11 per thousand (See Table VI–2).

This 11 per thousand, however, applies only to miners of age 65. The Attfield and Seixas models provide different predictions for each year of age that a miner attains. The predicted benefit turns out to be smaller for younger miners and larger for older miners. This is partly because younger miners will have accumulated less exposure reduction from the proposed changes, and partly because the Attfield and Seixas models depend directly on age as well as on cumulative exposure. The health effects of recurrent overexposures can occur long after the overexposures occurred. Even after a miner retires and is no longer exposed to respirable coal mine dust, the extra risk attributable to an extra 10 mg-year/m^3, accumulated earlier, continues to increase with age. Consequently, the benefit to be gained from eliminating individual shift excursions also continues to increase after a miner is no longer exposed. For example, assuming no additional exposure after age 65, the predicted reduction in average prevalence of CWP1^+ increases from 12 per thousand at age 65 to 17 per thousand at age 70. Presumably, the increasingly greater predicted reduced risk of disease after age 65 is due to the latent effects of the reduction in earlier exposure.

To project the benefits of the two rules expected from eliminating overexposures on individual shifts, MSHA applied the Attfield and Seixas models to a hypothetical population of miners who, on average, begin working at age 20 and retire at age 65, assuming different lifetimes. The risks for three different ages have been presented to show a range of risk depending on the lifetime: 65, 73, and 80 years. During the 45 "working years" between 20 and 65, the lifetime benefit accumulates at a rate of 0.22 mg-yr/m^3 of reduced exposure per year, reaching a maximum of about 10 mg-yr/m^3 at age 65. Between ages 65 and 80, the accumulated reduction in dust exposure remains at an estimated average of 10 mg-yr/m^3, but the benefit in terms of both simple CWP and PMF risk continues to increase, as explained previously.

The expected lifetime for all American males conditional on their having reached 20 years of age, is 73 years (calculated from: U.S. Census March 1997, Table 18; U.S. Census March 1997, Table 119).[14] On average, the best estimate of the lifetime benefit to exposed miners is expressed by the reduction in prevalence of disease at age 73. Carrying out the calculation at a 73-year average lifetime, MSHA expects that, at the MMUs under consideration, bringing dust concentrations down to no more than the applicable standard on each shift will:

- Reduce the combined risk of simple CWP and PMF by at least 18 cases per 1000 affected DO miners; [15]
- Reduce the combined risk of simple CWP (category 2 and 3) and PMF by at least 9.8 cases per 1000 affected DO miners;
- Reduce the risk of PMF by at least 5.1 cases per 1000 affected DO miners.

Presented in the first row of Table VI–2 are the average reductions in risk for simple CWP and PMF combined, and PMF alone, over an occupational lifetime, among affected DO miners who live to ages 65, 73, and 80, who have worked at an MMU exhibiting a pattern of recurrent overexposures. Across health outcomes, the benefit due to the predicted reduction in cumulative exposure to respirable coal mine dust, through limiting miners' exposure to no more than the applicable standard on each and every shift, increases with age.

When the dust concentration measured for the DO exceeds the applicable standard, measurements for at least some of the other miners may also exceed the standard on the same shift, though usually by a lesser amount. Furthermore, although the DO represents the occupation most likely to receive the highest exposure, other miners working in the same MMU may be exposed to even higher concentrations than the DO on some shifts. Therefore, in addition to the affected DO miners, there is a population of other affected miners who are also expected to experience a significant reduction in risk as a result of eliminating overexposures on their individual shifts.

To estimate how many miners other than the DO would be substantially affected, MSHA examined the results from all valid dust samples collected by MSHA inspectors in underground MMUs during 1999 (MSHA, Data file: Inspctor.zip). Within each MMU, the inspector typically takes one full-shift sample on the DO and, on the same shift, four or more additional samples representing other occupations. On 896 shifts, at a total of 450 distinct MMUs, the DO measurement exceeded the applicable standard and there were at least four valid measurements for other

[14] Since females have a greater life expantancy than males, expected benefits would increase if the production of female miners were to increase substantially in the future.

[15] "affected DO miners" include all miners who work at the 56-percent of MMUs under consideration and who are exposed to dust concentrations similar to the DO over a 45-year working lifetime.

occupations available for comparison. There was an average of 1.2 non-DO measurements in excess of the standard on shifts for which the DO measurement exceeded the standard.[16] For non-DO measurements that exceeded the standard on the same shift as a DO measurement, the mean excess above the standard was approximately 0.8 mg/m^3.[17]

Combining these results with the 21-percent rate of excessive exposures observed for the DO on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1.2 other miners, in addition to the one classified as DO, is overexposed on at least 21 percent of all production shifts. Over the course of a working year, the reduction in exposure expected for these other miners is 0.17 mg-yr/m^3 (*i.e.*, 21 percent of one year, times 0.8 mg/m^3).

To assess the reduction in risk expected from eliminating all single-shift exposures for faceworkers experiencing lower exposures than the DO, MSHA again applied the Attfield and Seixas models to miners who begin working at age 20, retire at age 65, assuming various lifetimes: 65, 73, and 80 years. This time, however, the resulting decrease in predicted prevalence was multiplied by 1.2/7=0.171, to reflect the fact that the assumed rate of overexposure applies, on average, to about 17 percent of the faceworkers not classified as the DO.[18]

In the second row of Table VI–2, we see that over an occupational lifetime, the beneficial average reduction in risk for simple CWP and PMF combined, and for PMF alone, increases with age. However, the magnitude of the risk reduction is smaller for the affected non-DOs than the affected DOs. This is expected because the estimated probability that a non-DO will be overexposed on a given shift is only 17 percent of the corresponding probability for the DO. Based on this calculation for the MMUs under consideration, the predicted reduction in risk for faceworkers other than the DO who live an expected lifetime of 73 years is at least: 2.3 fewer cases of PMF or simple CWP per thousand affected miners; 1.3 fewer cases of PMF or simple CWP, categories 2 or 3, per thousand affected miners; and 0.7 fewer cases of PMF per thousand affected miners.

Various data, assumptions and caveats were used to conduct the quantitative risk assessment and benefits analyses. Therefore, we request any information which would enable us to conduct more accurate analyses of the estimated health benefits of the single, full-shift sample rule and plan verification rule, both individually and in combination.

TABLE VI–2.—BY AGE, AVERAGE REDUCTION IN RISK OF OCCUPATIONAL RESPIRATORY DISEASE PER 1,000 AFFECTED UNDERGROUND COAL MINERS EXPECTED TO RESULT FROM IMPLEMENTATION OF SINGLE, FULL-SHIFT SAMPLE AND PLAN VERIFICATION

Type of miner	Reduction in risk of occupational respiratory disease per 1,000 affected miners								
	Simple CWP,[a] (categories 1, 2 or 3) or PMF[b]			Simple CWP (categories 2 or 3) or PMF			PMF		
	Age			Age			Age		
	65	73	80	65	73	80	65	73	80
Affected Designated Occupation Miners[c]	11.0	18.0	25.0	3.7	9.8	21.0	1.8	5.1	12.0
Affected Non-Designated Occupation Miners[d]	1.4	2.3	3.3	0.5	1.3	2.7	0.2	0.7	1.5

[a] Simple CWP: Simple coal workers' pneumoconiosis.
[b] PMF: Progressive massive fibrosis.
[c] Affected Designated Occupation (DO) Miners: Includes all miners who work at the 56-percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the DO, over a 45-year occupational lifetime.
[d] Affected Non-Designated Occupation (Non-DO) Miners: Includes all underground faceworkers under consideration who are not classified as the DO.

VII. Significance of Risk

The criteria for evaluating the evidence to determine whether these proposed standards improve the regulatory strategy for controlling exposures to respirable coal mine dust are established by the Mine Act pursuant to section 101(a)(6)(A) (30 U.S.C. 811(a)(6)(A))which provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on Court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that must be addressed: (1) Whether health effects associated with the current pattern of overexposures on individual shifts constitute a material impairment to miner health or functional capacity; (2) whether the current pattern of overexposures on individual shifts places miners at a significant risk of incurring any of these material impairments; and (3) whether the proposed rules would substantially reduce those risks.

The statutory criteria for evaluating the health evidence do not require MSHA to wait for absolute certainty and precision. MSHA is required to use the "best available evidence" (section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)). The need to evaluate risk does not mean that an agency is placed into a "mathematical straightjacket." *See Industrial Union Department, AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 607, 100 S.Ct 2844 (1980), otherwise known as the "Benzene" decision. When regulating on the edge of scientific knowledge, certainty may not be possible and,

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data . . . risking error on the

[16] With 95-percent confidence, on shifts for which the DO measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 1.11.

[17] With 95-percent confidence, the mean excess is at least 0.72 mg/m^3.

[18] There are an estimated 7 non-DO miners for each DO miner, and an average of 1.2 of these 7 miners are overexposed.

side of overprotection rather than underprotection (Id at 656).

We have taken steps in our quantitative risk assessment to conduct a balanced analysis using available data. Some of our assumptions were conservative, others were not.[19]

In identifying the number and percentage of MMUs exhibiting a pattern of recurrent overexposures on individual shifts we chose to include only those MMUs with two or more 1999-operator bimonthly samples in excess of the applicable standard, rather than the population of MMUs with any overexposures.[20] Also, the Quantitative Risk Assessment estimates of reduction in risk are averages across MMUs exhibiting a pattern of recurrent overexposures. For those miners who work at mines exhibiting a pattern of recurrent overexposures which differs from the one applied in the Quantitative Risk Assessment, their reduction in risk would be more than or less than the expected average, depending on whether or not their overexposures are at a higher or lower than average rate and intensity.

Another important decision impacting choice in this risk assessment involves the use of the traditional coal miner work schedule of 48-weeks per year. Many of today's miners work longer hours per day, month, and year than the traditional work schedule. These longer work hours increase miners' cumulative exposure to respirable coal mine dust beyond the parameters of exposure used in our estimates of risk. Even so, to the extent that a proportion of miners may have a more limited work schedule (and occupational exposure), either in number of years, weeks per year, or hours per week, their expected benefit would have to be adjusted downward, all other variables being constant.

Also, because of heavy, physical work, some miners may work at ventilatory rates in excess of the above-cited 10 cubic meters per 8-hour shift; an estimate of this ventilatory rate is 13.5 cubic meters per 8-hour shift (ICRP, 1994). The sub-population of miners with higher breathing rates would inhale more respirable coal mine dust than would otherwise occur given the same environmental exposures, thereby increasing their risks for the development of simple CWP and PMF.

In the QRA, to estimate average reduction in exposure, we chose the best available data sets: 1999 operator bimonthly samples for DOs and NDOs, respectively. Currently, both operator bimonthly and inspector samples[21] may be taken on production shifts that may not reflect typical production levels.[22] Although other factors may mediate the amount of airborne respirable dust such as, ventilation and water sprays, on average, higher production is correlated with increased quantities of airborne respirable coal mine dust (Webster, *et al.*, 1990; Haney, *et al.*, 1993; O'Green, *et al.*, 1994). Some previous commenters and the Dust Advisory Committee have alleged that operators tend to reduce production and/or increase dust controls on sampled shifts. To the extent that our values underestimate the true reduction in respirable coal mine dust exposures, we have underestimated the benefits of these rules.

Based on MSHA's and NIOSH's experience and expertise, and previous comments, we believe the production levels observed on sampling shifts are indeed lower than typical (See discussion in Benefits section). We also believe at some MMUs, more engineering controls at higher levels of efficacy are used during sampling shifts than on the majority of shifts (See discussion in Benefits section). Thus, it is reasonable to conclude that the number of MMUs exhibiting a pattern of recurrent overexposures is greater than the 704 captured in this Quantitative Risk Assessment. Furthermore, the severity and rate of overexposures to respirable coal mine dust among the 704 MMUs exhibiting a pattern of recurrent overexposures are probably also greater than we have estimated. We have derived our best estimate of the reduced risk using the best available data. Yet due to limitations in the data, we believe that we have underestimated the magnitude and frequency of typical respirable coal mine exposures. To the extent that our values underestimate the true reduction in respirable coal mine dust exposures, we have underestimated the benefits of these rules.

Other aspects of our risk assessment methodology reflect more conservative choices including the selection of an occupational lifetime of 45-years. Various factors may affect the consistency of the type and duration of jobs miners hold and hence their associated cumulative exposure levels. For example, some miners who lose their jobs upon mine closure are employed by other mines, sometimes in less-exposed jobs. Some miners may chose to move from job to job over their careers at underground coal mines, sometimes preferring positions away from the mining face. Moreover, if the trend of increasing mechanization continues, there will be fewer miners, and for some of them, their occupational lifetimes will be shorter.

For reasons already explained, we believe these choices are appropriate for this risk assessment. We also recognize that use of the most conservative approach at every step of the risk assessment analysis could produce mathematical risk estimates which, because of the additive effect of multiple conservative assumptions, may overstate the likely risk. We believe this QRA for simple CWP and PMF strikes a reasonable balance based on available data. To the extent that we may have underestimated the magnitude of overexposures which would be prevented, we believe the actual benefits to be greater than we have estimated.

It should be noted that reductions in the prevalence of simple CWP and PMF attributable to eliminating individual shift overexposures are not expected to materialize immediately after the overexposures have been substantially reduced or eliminated. Because these diseases typically arise after many years of cumulative exposure, allowing for a period of latency, the beneficial effects of reducing exposures are expected to become evident only after a sufficient time has passed that the reduction in cumulative exposure could have its effect. The total realized benefits would not be fully evident until after the youngest of today's underground coal miners retire.

VIII. Feasibility Issues

Section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)) requires the Secretary of Labor to set standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to such hazards dealt with by

[19] Following terminology used in the Benzene Decision, a "conservative" assumption is one that results in more protection for miners than a less conservative assumption. Therefore, estimated benefits are greater under assumptions that are "conservative" in this sense.

[20] By "exhibiting a pattern of recurrent overexposures," means that, at a 95-percent confidence level, the applicable standard is exceeded on at least six shifts per year.

[21] Valid MSHA inspector samples require production to be at least 60-percent of the average production for the last 30-days. Valid operator bimonthly samples must be taken on a normal production shift (*i.e.*, a production shift during which the amount of material produced in an MMU is at least 56 percent of the average production reported for the last set of five valid samples) (30 CFR 70.101).

[22] Therefore assuming representative operating conditions on these shifts, in our QRA the results were extrapolated to all production shifts, including those that were *not* sampled, at those same 704 MMUs.

such standard over his or her working lifetime. Standards promulgated under this section must be based upon research, demonstrations, experiments, and such other information as may be appropriate. MSHA, in setting health standards, is required to achieve the highest degree of health and safety protection for the miner, and must consider the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

In relation to promulgating health standards, the legislative history of the Mine Act states that:

> * * * This section further provides that "other considerations" in the setting of health standards are "the latest available scientific data in this field, the feasibility of the standards, and experience gained under this and other health and safety laws." While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated.
>
> * * * * *
>
> Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of section 102(a)(5)(A), the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure.

S. Rep. No. 95–181, at 21–22 (1977), *reprinted* in 1977 U.S.C.C.A.N. 3421–22.

In *American Textile Manufacturers' Institute* v. *Donovan*, 452 U.S. 490, 508–509 (1981), the Supreme Court defined the word "feasible" as "capable of being done, executed, or effected." The Court further stated, however, that a standard would not be considered economically feasible if an entire industry's competitive structure were threatened. In promulgating standards, hard and precise predictions from agencies regarding feasibility are not required.

A. Technological Feasibility

MSHA believes that the plan verification rule would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA*, (AISI–II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA*, (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dep't., AFL–CIO* v. *Hodgson*, 499 F.2d 467, 478 (D.C. Cir. 1974).

In designing the plan verification rule, MSHA has taken into account its experience and those of the operators to ensure that the rule provides additional protection from occupational exposure to respirable coal mine dust using current compliance technology (while encouraging technological improvements). For this reason, MSHA believes the proposed plan verification rule is technologically feasible. MSHA requires mine operators to utilize all *feasible* engineering or environmental controls, which are specified in the mine ventilation plan, to maintain concentrations of respirable dust in the work environment of MMUs at or below the applicable dust standard. Mine operators therefore would not be required to implement engineering or environmental controls that were not technologically feasible.

Based on its vast experience in the sampling of respirable dust levels in the MMU work environment, MSHA believes that technology is currently available to control respirable dust to levels at or below the applicable level at MMUs employing continuous and conventional methods of mining. However, MSHA recognizes that, unlike other mining systems, longwall MMUs may have acute dust problems caused by the face-ventilation airstream carrying the shearer-generated face dust over the miners working downwind along the face. In these high-production longwall MMUs, improvements in dust control technology have not kept pace with increases in production technology. For this reason, the proposed plan verification rule would allow longwall operators who have trouble in meeting MSHA's respirable dust standard and who have exhausted all feasible engineering and environmental controls to use administrative controls or loose-fitting powered air-purifying respirators (PAPRs), until other feasible controls become available.

B. Economic Feasibility

The plan verification rule would clearly be economically feasible for the underground coal mining industry since the underground coal mining industry would derive net compliance cost savings of approximately $2.04 million yearly from the proposed plan verification rule. (Although implementing the plan verification rule would cost about $4.75 million yearly, there would be the following offsetting yearly savings: $2.19 million from reduced mine operator citations based on results from inspector single, full-shift samples and associated abatement sampling, $1.61 million from reduced mine operator citations on results from operators' bi-monthly samples and associated abatement sampling, $2.73 million from the elimination of operator bi-monthly sampling, and $0.27 million from reduced payouts by mine operators for Black Lung cases.) Underground coal mine operators would also obtain a yearly cost savings of approximately $0.42 million in reduced penalty costs associated with the reduction in mine operator citations arising from the proposed plan verification rule. The proposed plan verification rule would therefore provide a total yearly cost savings of about $2.46 million to the underground coal mining industry.

IX. Regulatory Impact Analysis

MSHA's improved program to eliminate overexposures on each and every shift includes (1) the simultaneous implementation of the use of inspector single, full-shift respirable coal mine dust samples to identify overexposures more effectively in both underground and surface coal mines (single, full-shift sample), and (2) in underground coal mines, verified ventilation plans to maintain miners' respirable dust exposure at or below the applicable standard on each and every shift (plan verification). The single, full-shift sample NPRM is published elsewhere in today's **Federal Register**. This part of the preamble reviews several impact analyses which MSHA is required to provide in connection with the proposed plan verification rulemaking. Since single, full-shift sample and plan verification are complementary NPRMs intended to be promulgated at the same time, the detailed presentation of assumptions and estimates for each are available in the same Preliminary Regulatory Economic Analysis (PREA)(MSHA, January 2000).

Assumptions for the requirements of the plan verification rule are based upon information provided by MSHA technical personnel. We encourage the mining community to provide detailed comments in this regard to ensure that plan verification cost assumptions and estimates are as accurate as possible.

A. Costs and Benefits: Executive Order 12866

In accordance with Executive Order 12866, we have prepared a detailed PREA of the estimated costs and benefits associated with the proposed rule for the underground coal mining sector. We have fulfilled this

requirement for the proposed rule and determined that this rulemaking is not a significant regulatory action. The key findings of the PREA are summarized below.

1. Compliance Costs

The proposed plan verification rule would provide yearly *net* compliance cost savings to underground coal mine operators of about $2.04 million. Although implementing the proposed rule would cost about $4.75 million yearly, there would be offsetting yearly savings of: $2.19 million from reduced mine operator citations issued based on MSHA inspectors' single, full-shift sample results and the elimination of associated underground operator abatement sampling; $1.61 million from reduced mine operator citations issued based on bi-monthly sampling results and the elimination of associated underground operator abatement sampling; $2.73 million resulting from underground operators no longer having to perform bi-monthly operator sampling; and $0.27 million from reduced payouts by mine operators for Black Lung cases.

Table IX–1 summarizes the estimated net compliance costs by provision for underground coal mines, for the following three mine size categories: (1) those employing fewer than 20 workers; (2) those employing between 20 and 500 workers; and (3) those employing more than 500 workers.

In addition to these estimated compliance costs, mine operators would derive yearly penalty cost reductions of about $0.4 million (See Table IX–1(a)). Penalty costs conventionally are not considered to be a cost of a rule (and, in fact, are clearly not a compliance cost) but merely a transfer payment from a party violating a rule to the government. Therefore, the penalty costs are not included as part of the compliance costs of the proposed plan verification rule. These penalty costs are relevant, however, in determining the economic feasibility of the proposed plan verification rule.

The derivation of the above cost figures are presented in Chapter IV of the PREA that accompanies this rule.

TABLE IX–1.—PV COST SUMMARY FOR UNDERGROUND COAL MINE OPERATORS*

Detail	<20 Emp.				≥20 Emp. ≤500				>500 Emp.				Total			
	Adj first year costs	Annualized costs	Annual costs	Yearly costs[a]	Adj first year costs	Annualized costs	Annual costs	Yearly costs[a]	Adj first Year costs	Annualized costs	Annual costs	Yearly Costs[a]	Adj first year costs	Annualized costs	Annual costs	Yearly costs[a]
UNDERGROUND COAL MINES																
PV Rule:																
Compliance Costs	$1,013,905	$70,973	$346,688	$417,661	$7,599,324	$566,960	$3,285,067	$3,852,027	$749,927	$58,653	$420,105	$478,758	$9,363,156	$696,586	$4,051,860	$4,748,446
Reduced Inspector Citations[b]	$234,374	$16,406	−$534,712	−$518,306	$746,981	$52,289	−$1,658,063	−$1,605,774	$33,603	$2,352	−$71,301	−$68,949	$1,014,958	$71,047	−$2,264,076	−$2,193,029
Reduced Operator Citations[c]	$106,512	$7,456	−$247,790	−$240,334	$596,040	$41,723	−$1,334,380	−$1,292,657	$39,325	$2,753	−$76,901	−$74,148	$741,877	$51,932	−$1,659,071	−$1,607,139
Eliminate Bi–Mo.—Sampling	$0	$0	−$556,538	−$556,530	$0	$0	−$2,057,540	−$2,057,540	$0	$0	−$113,712	−$113,712	$0	$0	−$2,727,790	−$2,727,790
Black Lung Savings	$0	$0	−$32,570	−$32,570	$0	$0	−$217,896	−$217,896	$0	$0	−$15,196	−$15,196	$0	$0	−$265,662	−$265,662
Net PV Rule	$1,354,791	$94,835	−$1,024,922	−$930,345	$8,942,345	$660,972	−$1,982,812	−$1,321,840	$822,855	$63,758	$142,995	$206,753	$11,119,991	$819,565	−$2,864,739	−$2,045,174

*Data from Preliminary Regulatory Economic Analysis Table IV–16, Table IV–63, Table IV–81, Table IV–100, Table IV–105, and Table IV–106. Note that these costs do not include penalty costs, which are shown in Table IX–1(a) in this document.
[a] Yearly costs equals annualized costs plus annual costs.
[b] Reduced costs related to: (1) Reduction in citations issued based on MSHA inspector sample results due to better mine ventilation plans arising from PV rule, and (2) reduction in abatement sampling and associated costs due to elimination of bi-monthly operator sampling.
[c] Reduced costs related to: (1) Reduction in citations issued based on operator sample results due to better mine ventilation plans arising from the PV rule, and (2) reduction in abatement sampling and associated costs due to elimination of operator bi-monthly sampling.

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TABLE IX–1(A).—PV ANNUAL PENALTY COST SUMMARY*

[Yearly penalties]

Detail	<20 Emp.	≥20 Emp. ≤500	>500 Emp.	Total
Underground Coal Mines				
PV Rule:				
Reduced Inspector Citations	−$28,468	−$202,334	−$5,263	−$236,065
Reduced Operator Citations	−13,309	−160,956	−4,960	−179,225
Total PV Rule Reduction	−41,777	−363,290	−10,223	−415,290

*Data from Preliminary Regulatory Economic Analysis Table IV–16(a), Table IV–82, and Table IV–101.

2. Benefits

Occupational exposure to excessive levels of respirable coal mine dust imposes significant health risks. These include the following adverse health outcomes: simple coal worker's pneumoconiosis (simple CWP), progressive massive fibrosis (PMF), silicosis, and chronic obstructive pulmonary disease (COPD) (e.g., asthma, chronic bronchitis, emphysema) (See the Health Effects section for details). Cumulative exposure to respirable coal mine dust is the main determinant in the development of both simple CWP and PMF although other factors such as the percentage of quartz in the respirable dust and the type of coal also affect the risk of miners developing simple CWP and PMF (Jacobsen, *et al.*, 1977; Hurley, *et al.*, 1987; Kuempel, *et al.*, 1995; Attfield and Morring, 1992; Attfield and Seixas, 1995). The true magnitude of occupationally induced simple CWP and PMF among today's coal miners is unknown, although prevalence estimates are available from various surveillance systems. For example, from 1970 to 1995, the prevalence of simple CWP and PMF among miners, based on the operator sponsored x-ray program, dropped from 11 percent to 3 percent (MSHA, Internal Chart, 1998). Also, later rounds of the National Study for Coal Worker's Pneumoconiosis consistently demonstrated, through prevalence rates in the range of 2.9—3.9 percent, that simple CWP and PMF have not been eliminated.

Through the joint promulgation of single, full-shift sample and plan verification rules, miners would be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust to no more than the applicable standard on each and every shift.[23] Reducing respirable coal mine dust concentrations over a 45-year occupational lifetime to no more than the applicable standard on just that percentage of shifts showing an excess would lower the cumulative exposure, thereby significantly reducing the risk of both simple CWP and PMF among miners. We have estimated the health benefits of the two rules arising from the elimination of overexposures on all shifts at only those MMUs exhibiting a pattern of recurrent overexposures on individual shifts.

Based on 1999 operator data, there were 704 MMUs (out of 1,251) at which regular (not abatement) designated occupational (DO) samples exceeded the applicable standard on at least two of the sampling shifts reported in 1999 (MSHA, Data file:Operator.ZIP). MSHA considers these 704 MMUs, representing more than one-half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures. Based on valid DO operator samples were collected on a total of 18,569 shifts at these 704 MMUs; the applicable standard was exceeded on 3,977 of these shifts or 21.4 percent.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures),[24] bringing dust concentrations down to no more than the applicable standard on each and every production shift would reduce DO exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 21 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the DO level, by 0.22 mg-yr/m^3 over the course of a working year (i.e., 21 percent of shifts in one year times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected DO miner would, on average, amount to a reduction in accumulated exposure of approximately 10 mg-yr/m^3 (i.e., 45 years times 0.22 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples submitted to MSHA tend to under-represent either the frequency or magnitude (or both) of individual full-shift excursions above the applicable standard, then eliminating such excursions would provide a lifetime reduction of even more than 10 mg-yr/m^3 for each exposed miner.

When the dust concentration measured for the DO exceeds the applicable standard, measurements for at least some of the other miners working in the same MMU may also exceed the standard on the same shift, though usually by a smaller amount. Furthermore, although the DO represents the occupation most likely to receive the highest exposure, other miners working in the same MMU may be exposed to even higher concentrations than the DO on some shifts. Therefore, in addition to the affected DO miners, there is a population of other affected miners who are also expected to experience a significant reduction in risk as a result of eliminating overexposures on their individual shifts.

To estimate how many miners other than the DO would be substantially affected, MSHA examined the results from all valid dust samples collected by MSHA inspectors in underground MMUs during 1999 (MSHA, Data file: Inspctor.zip). Within each MMU, the inspector typically takes one full-shift sample on the DO and, on the same shift, four or more additional samples representing other occupations. On 896 shifts, at a total of 450 distinct MMUs, the DO measurement exceeded the applicable standard and there were at least three valid measurements for other occupations available for comparison. There was an average of 1.2 non-DO

[23] For details, see Quantitative Risk Assessment and Significance of Risk sections.

[24] MSHA estimates an MMU average of 384 production shifts per year. Since miner operators are required to submit five valid designated operator (DO samples to MSHA every two months, there would typically be 30 valid DO samples—for each MMU that was in operation for the full year. If dust concentrations on two or more of the sampled shifts exceed the standard, then it follows, at a 95-percent confidence level, that the standard was exceeded on at least six shifts over the full year.

measurements in excess of the standard on shifts for which the DO measurement exceeded the standard.[25] For non-DO measurements that exceeded the standard on the same shift as a DO measurement, the mean excess above the standard was approximately (0.8 mg/m^3).[26]

Combining these results with the 21-percent rate of excessive exposures observed for the DO on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1.2 other miners, in addition to the one classified as DO, is overexposed on at least 21 percent of all production shifts. Over the course of a working year, the reduction in exposure expected for these affected non-designated occupational (NDO) miners, is 0.17 mg-yr/m^3 (*i.e.*, 21 percent of one year, times 0.8 mg/m^3).

The expected lifetime for all American males, conditional on their having reached 20 years of age, is 73 years (U.S. Census March 1997, Table 18; U.S. Census March 1997, Table 119).[27] On average, the best estimate of the lifetime benefit to exposed miners is expressed by the reduction in prevalence of disease at age 73. To project the reduction in risk of simple CWP and PMF among affected DOs and NDOs, MSHA applied its best estimate of dose response to a hypothetical cohort of underground coal miners who work on an MMU exhibiting a pattern of recurrent overexposure, and who, on average, begin working at age 20, retire at age 65, and live to age 73.[28] Strengths and weaknesses of various epidemiological studies were presented in the Health Effects section supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material impairment with respect to simple CWP and PMF. Two of the distinguishing qualities of Attfield and Seixas (1995) are the dose-response relationship over a miner's lifetime and the fact that these data best represent the recent conditions experienced by miners in the U.S. Using this relationship, it is possible to evaluate the impact on risk of both simple CWP and PMF expected from bringing respirable coal mine dust concentrations down to or below the applicable standard on every shift. This is the only contemporary epidemiological study of simple CWP and PMF providing such a relationship.

To estimate the benefits (i.e., number of cases of simple CWP and PMF prevented) of single, full-shift sample and plan verification combined, we applied these estimates of risk reduction to the estimated sub-populations of affected miners. As of February 12, 1999, there were 984 producing MMUs;[29] applying the pattern of recurrent overexposures among MMUs as identified in the Quantitative Risk Assessment, 56 percent, by mine size, we estimate there to be 552 affected MMUs (MSHA Table, November 18, 1999; MSHA Table, February 12, 1999). Based on MSHA's experience, we would expect one DO and seven NDOs for each shift of production at each MMU. Therefore, among underground coal miners working on an MMU, we estimate 12.5% to be designated occupational miners and 87.5% to be non-designated occupational miners.

The benefits that will accrue to coal miners exposed to respirable coal mine dust and to mine operators, and ultimately to society at large, are substantial and take a number of forms. These proposed rules would reduce a significant health risk to underground coal miners, reducing the potential for illnesses and premature death and their attendant costs to miners, their employers, their families, and society.

The joint promulgation of these rules should realize a positive economic impact on the Department of Labor's (DOL's) Black Lung Program and relatedly on mine operators. The Black Lung Program compensates *eligible* miners, and *their* survivors under the Black Lung Benefits Act. This program provides monthly payments and medical benefits (diagnostic and treatment) to miners who are found to be totally disabled by black lung disease, including cases of PMF and simple CWP. In 1986, DOL's Employment Standards Administration reported that 12% of approved cases of Black Lung Program were identified as cases of PMF based on chest radiographs, while sixty-four percent had simple CWP based on chest radiographs. For miners who stopped working in coal mines after 1969 and for whom the DOL can establish that the miner worked for the same operator for at least one calendar year, and that miner had at least 125 working days in that year, that operator is financially responsible for the miner's Black Lung benefit payment. If a responsible operator cannot be identified for an eligible miner, benefit payments are made by the Black Lung Disability Trust Fund. To the extent that these rules reduce overexposures to respirable coal mine dust, there should be fewer Black Lung Program cases. Therefore, over time, the associated financial outlay by responsible operators through either insurance premiums or direct payments of Black Lung benefits should be lower than would otherwise occur. The financial impact could be substantial see discussion in Chapter IV, of the PREA. In 1980, the Black Lung Program estimated average lifetime pay-outs for responsible operators for married miners of about $248,700 dollars, assuming a 7 percent annual rate increase (ESA, 1980). In fiscal year 1999, 443 claims for Black Lung Benefits were accepted as new cases; sixty-six percent (293) are the financial responsibility of coal mine operators (Peed, 2000).

Table IX–2 presents the estimated number of cases of simple CWP and PMF that would be prevented among the 56 percent of MMUs exhibiting a pattern of recurrent overexposures. For all categories of simple CWP and PMF combined, we estimate 37 fewer of these cases, among affected miners, than would otherwise occur without the promulgation of single, full-shift sample and plan verification rules. Eleven of these cases would be the most severe form of coal miners pneumoconiosis, PMF, and as such this benefit could be interpreted as prevented premature deaths due to occupational exposure to respirable coal mine dust. Since simple CWP predisposes the development of PMF, it is important that it also be prevented (Balaan, *et al.*, 1993).

As discussed in the Significance of Risk sections, MSHA believes this QRA for simple CWP and PMF strikes a reasonable balance based on available data. Yet, our estimates likely understate the true impact of these rules since our analyses are restricted to a sub-population of affected miners, those working at MMUs exhibiting a pattern of recurrent overexposures, not the broader population of coal miners who will benefit from these rules. Furthermore, to estimate the average

[25] With 95-percent confidence, on shifts for which the DO measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 1.11.

[26] With 95-percent confidence, the mean excess is at least 0.72 mg/m^3.

[27] Since females have a greater life expectancy than males, the expected benefits would increase if the proportion of female miners were to increase substantially in the future.

[28] If a different definition of "exhibiting a recurrent pattern of overexposures" were used in these analyses, the estimate of the reduction in risk and associated benefits would be different. For example, if the criterion were that four or more DO bimonthly exposure measurements exceeded the applicable standard, we could state, with 95% confidence, that the standard was exceeded on at least 20 shifts in a year of 384 shifts. Using four as the criterion would reduce the population for whom we are estimating benefits, and decrease the estimated number of prevented cases by 19%.

[29] Nine hundred and eighty-four refers to the number of MMUs operating on February 12, 1999. The 1,443 number mentioned previously refers to all MMUs in operation at any time in 1999.

overexposure which would be prevented, MSHA had to use data collected for compliance purposes which may not represent typical environmental conditions.

The degree to which the exposure level of respirable coal mine dust on sampling shifts may not be representative of typical exposure levels is affected by the following factors:

(1) There exists a positive relationship between coal production and generation of respirable coal mine dust;

(2) Current sampling procedures permit sampling measurements to be taken at the mid-range of the distribution of level of production—sampling measurements must be taken on shifts with production at least 60% of the average production during the last 30 days and at least 50% of average production for the last valid set of bimonthly samples for inspector and operator samples, respectively;

(3) Miners have reported and MSHA data have demonstrated lower levels of production on sampling shifts versus non-sampling shifts (MSHA, September 1993);

(4) On some sampling shifts, miners have reported that more engineering controls may be used than on other shifts, thus reducing the measured amount of respirable coal mine dust;

(5) MSHA analyses have demonstrated, even when controlling for production, in mines with fewer than 125 employees, on continuous mining MMUs, respirable coal mine dust exposures were much higher during the unannounced Spot Inspection Program (SIP) sampling shifts than on shifts operators sampled—this is consistent with the effect of increasing engineering controls on shifts during which bimonthly samples are conducted compared to the level of use of engineering controls used on shifts for which the operator does not expect sampling to be conducted given the same production level (Denk, 1993);

(6) Across mine size, designated area samples have been found to be larger for shifts on which unannounced compliance sampling occurred compared to operator sampling shifts—in one study they differed by at least a factor of 40 percent in large mines and 100 percent in the smallest mines (ibid. p 211–212); and

(7) Existing MSHA technical information indicates that some reduction in production levels occurs during some sampling periods on longwalls (Denk, 1990).

Therefore, at a bare minimum, over an occupational lifetime (45-years) for miners who live to age 73 who worked at MMUs exhibiting a pattern of recurrent overexposures, we estimate at least 37 fewer cases of pneumoconiosis (simple coal workers pneumoconiosis (CWP) and progressive massive fibrosis (PMF)) than would otherwise occur without the promulgation of these rules.

Our current quantitative estimate of benefits demonstrates and qualitative discussions punctuate that these rules will have a significant positive impact on the health of our Nation's coal miners when promulgated. Yet, *due to the limitations on these data,* we believe our benefit estimate *may understate* the number of cases of simple CWP and PMF which would be prevented over an occupational lifetime.

MSHA believes that cases of simple CWP and PMF would also be prevented among other types of underground miners, such as roofbolters working in designated areas (DA). Based on MSHA experience it is reasonable to expect roofbolter DA's pattern of overexposures for respirable coal mine dust to be similar to that for miners with the highest exposure on an MMU. If so, we would expect 13 additional cases of simple CWP and PMF to be prevented. Affected DAs include DAs who work at the 56 percent of the MMUs under consideration who are exposed to dust concentrations similar to the DO, over a 45-year occupational lifetime (MSHA Table, November 18, 1999; MSHA Table, February 12, 1999).

Although the effect cannot readily be quantified, to the extent that these rules would also reduce the cumulative exposure to respirable coal mine dust among some miners working in those MMUs not exhibiting overexposures, it is reasonable to expect that we would observe an incremental benefit among that sub-population of coal miners. Moreover, to the extent that the cumulative dust exposure is reduced for miners working in the "out by" areas, away from the mining face (i.e., MMU) where coal is extracted from the coal seam, they too may realize occupational health benefits due to the simultaneous promulgation of these proposals. Therefore, our best estimate of 37 prevented cases of simple CWP and PMF, combined, among all affected miners *likely* underestimates the true benefit realized by the coal mining workforce through the reduction of overexposures to no more than the applicable standard on each shift.

Clearly PMF is associated with premature death. Since simple CWP may evolve to PMF, even after occupational exposure has ceased, it has the propensity to become a life threatening illness. By reducing the total number of simple CWP and PMF cases among affected miners from 259 to 222, over 45 years, these standards, at a minimum, are projected to prevent an average of four cases of simple CWP and PMF for each 5-year interval.[30]

For all those reasons previously identified, MSHA believes that its estimate of 37 prevented cases of simple CWP and PMF over a 45 year working life understates the true number of cases of simple CWP and PMF which would be prevented. This belief is further supported by the fact that during the past few years, the Black Lung Benefits Program has been approving roughly 400 claims each year. These claims come from individuals whose exposure for the most part came after the current standard of 2.0 was established in 1972. Thus, we believe the consistent annual approval by the Black Lung Benefits Program, of hundreds of new cases of simple CWP and PMF per year, supports our belief that the true lifetime occupational health benefits of the proposed rules are higher than we have estimated. Even assuming that the number of new claims would decline in future years simply due to the continuing decline in the number of coal miners, MSHA expects that assuring that future exposures are maintained below the 2.0 exposure limit will reduce the number of new cases of simple CWP and PMF by considerably more than 1 per year.

In addition to the prevention of simple CWP and PMF, each of the 8,640 affected miners at MMUs exhibiting a pattern of recurrent overexposures will realize some health benefit by limiting his or her cumulative exposure to respirable coal mine dust to no more than the applicable standard on each and every shift.

The expected number of prevented cases of simple CWP and PMF would not be realized for some time even after the pattern of overexposures has been minimized or eliminated. This is due, in part, to the latency—that is, the disease does not develop immediately after exposure—of the development of simple CWP and PMF and the pre-existing occupational exposure histories of members of the current coal mining workforce. Our estimated benefit is based on the estimated number of underground coal miners working at the mine face, 17,280. If the size of this workforce significantly changed in the future and the projected pattern of prevented overexposures remained the same, the number of cases of prevented

[30] Applying an estimated prevalence rate of 3.0 percent to the estimated population of affected miners (8,640) results in an estimate of 259 cases of simple CWP and PMF.

simple CWP and PMF would need to be adjusted to account for the change.

Various data, assumptions and caveats were used to conduct the quantitative risk assessment, significance of risk discussion, and benefits analyses. Therefore, we request any information which would enable us to conduct more accurate analyses of the estimated health benefits of the single, full-shift sample rule and plan verification rule, both individually, and in combination.

TABLE IX–2.—OVER A WORKING LIFETIME AMONG AFFECTED MINERS, ESTIMATED NUMBER OF CASES OF CWP [A] AND PMF [B] PREVENTED DUE TO THE IMPLEMENTATION OF SINGLE, FULL-SHIFT SAMPLE AND PLAN VERIFICATION

Type of Miner	Affected Miners, n=	Simple CWP categories 1, 2, 3 or PMF		Simple CWP categories 2 or 3 or PMF		PMF	
		Reduction in risk [c]	Prevented cases, n=	Reduction in risk [c]	Prevented cases, n=	Reduction in risk [c]	Prevented Cases, n=
Affected Designated Occupational Miners [d]	1,080	18/1000	19.4	9.8/1000	10.6	5.1/1000	5.5
Affected Non-Designated Occupational Miners [e]	7,560	2.3/1000	17.4	1.3/1000	9.8	0.7/1000	5.3
Total	8,640	NA	37	NA	20	NA	11

[a] Simple CWP: Simple coal workers' pneumoconiosis.
[b] PMF: Progressive massive fibrosis.
[c] Reduction in risk per 1,000 affected miners, over a 45-year working lifetime.
[d] Affected Designated Occupation (DO) Miners: Includes all miners who work at the 56-percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the DO, over a 45-year occupational lifetime.
[e] Affected Non-Designated Occupation (Non-DO) Miners: Includes all underground faceworkers under consideration who are not classified as the DO.

B. Regulatory Flexibility Certification and Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires MSHA to conduct an analysis of the effects of the proposed plan verification rule on small entities. That analysis is summarized here; a copy of the full analysis is included in Chapter V of our PREA in support of the proposed single, full-shift sample and plan verification rules. We encourage the mining community to provide comments on this analysis.

The Small Business Administration generally considers a small entity in the mining industry to be one with 500 or fewer workers. MSHA has traditionally defined a small mine to be one with fewer than 20 workers, and has focused special attention on the problems experienced by such mines in implementing safety and health rules. Accordingly, we have separately analyzed the impact of the joint notice proposed rule both on mines with 500 or fewer workers and on those with fewer than 20 workers.

Pursuant to the Regulatory Flexibility Act, MSHA must determine whether the costs of the joint notice proposed rule constitute a "significant impact on a substantial number of small entities." Pursuant to the Regulatory Flexibility Act, if an Agency determines that a proposed rule would not have such an impact, it must publish a "certification" to that effect. In such a case, no additional analysis is required (5 U.S.C. § 605). In evaluating whether certification is appropriate, MSHA utilized a "screening test," comparing the costs of the proposed plan verification rule to the revenues of the affected coal sector. If the estimated costs are less than 1 percent of revenues for the affected entities, or they are negative (that is, they provide a cost savings), then the rule is assumed not to have a significant impact on small mine operators.

Table IX–3 compares, for small underground coal mines (using both MSHA's and SBA's definition), MSHA's estimated total annual compliance costs of the proposed plan verification rule to estimated annual revenues.

Table IX–3 shows that under either MSHA's or SBA's definition of a small mine, the proposed plan verification rule would provide a net cost savings to small underground coal mines. As a result, MSHA is certifying that the proposed plan verification rule for underground coal mines would not have a "significant impact on a substantial number of small entities," and has performed no further analyses.

TABLE IX–3.—ESTIMATED YEARLY COSTS OF PROPOSED PLAN VERIFICATION RULE RELATIVE TO YEARLY REVENUES FOR UNDERGROUND COAL MINES

[Dollars in thousands]

Mine size	Proposed rule net costs [a]	Underground coal mine revenues [b]	Costs as percentage of revenues
< 20 employees	($930.1)	$249,418	(0.4%)
< 500 employees [c]	($1,251.9)	$6,883,339	(0.03%)

[a] Estimated yearly costs are composed of "adjusted" first year costs that have been annualized plus annual costs.
[b] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on 1997 Final MIS data (quarter 1–quarter 4), CM441, cycle 1997/184; and U.S. Department of Energy, Energy Information Administration, Annual Energy Review 1998, DOE/EIA–0384(98), July 1999, p 203.
[c] Includes mines with fewer than 20 employees.

X. Other Statutory Requirements

A. Plain Language

We (MSHA) wrote appropriate portions of this proposed rule in the more personal style advocated by the President's Memorandum on "plain language." "Plain language" encourages the use of personal pronouns (we and you); sentences in the active voice; a greater use of headings, lists, and questions, as well as charts, figures, and tables.

In this proposed rule, "you" refers to production-operators and independent contractors because they have the primary responsibility for compliance with MSHA regulations. In addition, we recognize and appreciate the value of comments, ideas, and suggestions from labor organizations, industry associations, and other parties who have an interest in health and safety training for miners.

We would appreciate comments and suggestions from all parties on this proposed rule and on our use of "plain language." How could we improve the clarity of this style?

B. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

C. Paperwork Reduction Act of 1995

The proposed plan verification rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). The proposed rule has first year burden hours (those that occur *only* in the first year) and, annual burden hours which occur in the first year and every year thereafter.

How some types of burden hours and costs were handled requires explanation. In a few cases, the proposed plan verification rule imposes burden hours and costs that would be the same every year, beginning with the first year that the rule takes effect. These are "annual" burden hours and costs, as traditionally defined.

In most cases, however, the proposed plan verification rule imposes burden hours and costs which would be the same each year starting with the second year the proposed rule is in effect, but whose first year burden hours and costs would be different. MSHA transformed these first year burden hours and costs and annual burden hours and costs starting in Year 2 into adjusted first year burden hours and costs (first year burden hours and costs minus an amount equal to annual burden hours and costs starting with Year 2 after the rule takes effect) and true annual burden hours and costs starting in Year 1 after the rule takes effect.[31]

[31] A hypothetical example might help to explain this procedure. Suppose that compliance costs are $2,000 the first year and $400 each year thereafter. The adjustment procedure simply splits first year compliance costs into two parts: (1) $400, for the first year of annual costs; and (2) the residual $1,600. Consequently, adjusted first year costs would be $1,600 and annual costs (starting in year 1) would be $400.

First Year Burden Hours

In the first year the plan verification rule is in effect, there would be a total *net* burden hour savings, for underground coal mine operators, of 44,750, which is composed of 7,912 first year burden hours (from Table X–1) and 52,662 annual burden hour savings (from Table X–2). The 44,750 net burden hour savings have associated cost savings of $847,236, which is composed of $360,820 of adjusted first year costs (from Table X–1) and $1,208,056 of annual cost savings (from Table X–2).

Annual Burden Hours in Second Year and Every Year Thereafter

There would be a total *net* annual burden hour savings, for underground coal mine operators, in the second year the proposed plan verification rule is in effect and every year thereafter of 52,662, which has associated cost savings of approximately $1.21 million annually (from Table X–2). These net burden hours and costs include annual burden hour and cost savings due to: reduced mine operator citations based on MSHA inspectors' single, full-shift sample results and the elimination of associated operator abatement sampling; reduced mine operator citations issued based on bi-monthly sampling results and the elimination of associated operator abatement sampling; and savings from operators no longer having to perform bi-monthly operator sampling.

TABLE X–1.—SUMMARY OF PV PROPOSED RULE FIRST YEAR PAPERWORK BURDEN HOURS AND RELATED COSTS THAT OCCUR ONLY IN THE FIRST YEAR*

Detail	<20 emp.			≥20 emp. ≤500			>500 emp.			Total		
	Adjusted first year hours	Adjusted first year costs	Adjusted first year costs annualized	Adjusted first year hours	Adjusted first year costs	Adjusted first year costs annualized	Adusted first year hours	Adjusted first year costs	Adjusted first year costs annualized	Adjusted first year hours	Adjusted first year costs	adjusted first year costs annualized
UNDERGROUND COAL MINES												
PV Rule:												
Increase	1,359	$61,059	$4,274	6,140	$280,581	$20,372	398	$18,425	$1,399	7,897	$360,065	$26,045
Reduced Inspector Citations[a]	3	$151	$11	6	$302	$21	0	$0	$0	9	$453	$32
Reducted Operator citations[b]	3	$151	$11	3	$151	$11	0	$0	0	6	$302	$22
Elimination of Bi-Mo. Sampling	0	$0	$0	0	$0	$0	0	$0	$0	0	$0	$0
Net PV Rule	1,365	$61,361	$4,296	6,149	$281,034	$20,404	398	$18,425	$1,399	7,912	$360,820	$26,099

* Source: Preliminary Regulatory Economic Analysis Tables VII-32, VII-43, and VII-53.
[a] Related to reduced citations issued based on inspector sample results due to better mine ventilation plans arising from the PV rule.
[b] Related to reduced citations issued based on operator sample results due to better mine ventilation plans arising from the PV rule.

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TABLE X–2.—SUMMARY OF ANNUAL PAPERWORK BURDEN HOURS AND RELATED COSTS THAT OCCUR IN THE FIRST YEAR AND EVERY YEAR THEREAFTER*

Detail	<20 emp.		≥20 emp. ≤500		>500 emp.		Total	
	Annual hours	Annual costs	Annual hours	Annual costs	Annual hours	Annual costs	Annual hours	Annual costs
UNDERGROUND COAL MINES								
PV Rule:								
Increase	315	$14,126	1,458	$63,236	111	$4,550	1,884	$81,912
Reduced Inspector Citations[a]	−1,012	−$24,678	−2,941	−$71,911	−111	−$2,695	−4,064	−$99,285
Reduced Operator Citations[b]	−474	−$11,606	−2,394	−$58,386	−105	−$2,561	−2,973	−$72,553
Elimination of Bi-Mo. Sampling	−9,084	−$212,901	−35,350	−$830,435	−3,075	−$74,794	−47,509	−$1,118,130
Net PV Rule	−10,255	−$235,059	−39,227	−$897,496	−3,180	−$75,500	−52,662	−$1,208,056

* Source: Preliminary Regulatory Economic Analysis Tables VII–7, VII–33, VII–43, VII–53, and VII–57.
[a] Reduction related to: (1) Reduced citations issued based on inspector sample results due to better mine ventilation plans arising from the PV rule and (2) reduced abatement sampling and associated costs due to the elimination of bi-monthly operator sampling.
[b] Reduction related to: (1) Reduced citations issued based on operator sample results due to better mine ventilation plans arising from the PV rule and (2) reduced abatement sampling and associated costs due to the elimination of bi-monthly operator sampling.

We invite public comments and are particularly interested in comments which:

1. Evaluate whether the proposed collection of information (presented here and in the PREA for the proposed single, full-shift sample and plan verification rules) is necessary for the proper performance of the functions of MSHA, including whether the information will have practical utility;

2. Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

We have submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, OMB New Executive Office Building, 725 17th St., NW, Rm. 10235, Washington, DC 20503, Attn: Desk Officer for MSHA. Submit written comments on the information collection not later than September 5, 2000.

Our paperwork submission summarized above is explained in detail in the PREA. The PREA includes the estimated costs and assumptions for each proposed paperwork requirement related to this proposed rule. A copy of the PREA is available from us. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

D. National Environmental Protection Act

The National Environmental Policy Act (NEPA) of 1969 requires each Federal agency to consider the environmental effects of proposed actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. We have reviewed the proposed standard in accordance with the requirements of the NEPA (42 U.S.C. 4321 *et seq.*), the regulation of the Council on Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). As a result of this review, we have preliminarily determined that this proposed standard will have no significant environmental impact.

Commenters are encouraged to submit their comments on this determination.

E. Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

F. Executive Order 12988 (Civil Justice)

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, protection of children from environmental health risks and safety risks, we have evaluated the environmental health or safety effects of the proposed rule on children. The Agency has determined that this proposal would not have an adverse impact on children.

H. Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

We certify that this proposed rule does not impose substantial direct compliance costs on Indian tribal governments.

I. Executive Order 13132 (Federalism)

We have reviewed this rule in accordance with Executive Order 13132 regarding federalism, and have determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government."

XI. Public Hearings

MSHA plans to hold public hearings on the proposed rule. The hearings will be held in Prestonsburg, Kentucky (Jenny Wiley, State Resort Park); Morgantown, West Virginia; and Salt Lake City, Utah. The hearing dates, times, and specific locations will be announced by a separate document in the **Federal Register**. The hearings will be held under Section 101 of the Federal Mine Safety and Health Act of 1977.

Appendix A—Derivation of the Critical Values

All measurements of respirable dust concentration are subject to potential sampling and analytical errors. Because of such errors, a measurement may fall slightly below the verification limit even when the true concentration of respirable coal mine dust or crystalline silica does not. Therefore, to ensure that the verification limits have actually been met, it is necessary to provide for a margin of error in each measurement. The critical values provide this margin of error. When valid measurements do not exceed the appropriate critical values, we can be confident that the verification limits have not been exceeded at the sampled locations.

To explain how the verification limits were derived, it is helpful to define some symbolic notation. Let X represent a measurement, and let μ represent the true value of whatever quantity is being measured—i.e., the full shift average concentration, at a specific sampling location, of either respirable coal mine dust or respirable crystalline silica dust. The difference between X and μ is the measurement error and is denoted by ε. $X = \mu + \varepsilon$.

In accordance with standard statistical and industrial hygiene practice, ε (but not μ) is assumed to be normally distributed. Since the approved sampling and analytical methods for measuring concentrations of respirable coal mine dust and respirable silica dust are both statistically unbiased, ε has a mean value of zero and a degree of variability represented by its standard deviation, denoted by σ_ε. The ratio of σ_ε to μ is called the measurement *coefficient of variation* (CV) due to sampling and analytical errors.[1] The CV relates entirely to variability due to measurement errors and not at all to variability in actual dust concentrations.

For respirable coal mine dust, the value of CV used in calculating critical values was chosen to be consistent with the value proposed at $\mu = 2.0$ mg/m³ in the Coal Mine Respirable Dust Standard Noncompliance Determinations Notice, (63 FR 5700, February 3, 1998):

$$CV = \sqrt{(7\%)^2 + (5\%)^2 + (5\%)^2} = 10\%$$

The 7-percent term in this formula accounts for uncertainty due to potential weighing error, and the two 5-percent terms account for differences between individual cyclones and for variability in the exact volume of air pumped through the filter during a 480-minute shift.

For respirable silica dust, the value of CV used in calculating critical values is:

$$CV = \sqrt{(5.3\%)^2 + (4.2\%)^2 + (5.6\%)^2} = 9\%$$

The 5.3-percent term in this formula accounts for imprecision in the Infrared (Infrared Spectrophotometer or IR) measurement of crystalline silica mass deposited on the filter, the 4.2-percent term represents variability in air volume, and the final 5.6-percent term accounts for uncertainty due to variability between individual cyclones, given the size distribution of crystalline silica dust encountered in mining environments (Bartley, November 1999).

Each critical value (c) was calculated to provide a confidence level of at least 95 percent that the ventilation plan was effective in preventing dust concentrations from exceeding the verification limits. Using a confidence coefficient of 1.645, based on the standard normal probability distribution, knowledge of the CV makes it possible to calculate a 1-tailed, 95-percent upper confidence limit (UCL) for μ, given a single measurement X. The UCL is $X \cdot (1 + 1.645 \cdot CV)$. When $X \leq c$, the UCL for μ is less than or equal to the verification limit. When $X > c$, the UCL for μ exceeds the verification limit.

For example, suppose $X = 1.71$ mg/m³ respirable dust. Then the UCL for μ would be $1.71 \cdot (1 + (10\% \text{ of } 1.645)) = 1.99$ mg/m³, which is less than the verification limit for respirable coal mine dust. If, however, $X = 1.72$ mg/m³, then the UCL for μ would be $1.72 \cdot 1.1645$ mg/m³, which slightly exceeds the verification limit. Similarly, for respirable crystalline silica dust, the UCL for μ is $87 \cdot (1 + (9\% \text{ of } 1.645)) = 99.9$ µg/m³ when $X = 87$ µg/m³ and slightly above the verification limit of 100 µg/m³ when $X = 88$ µg/m³.

If more than one measurement is available, then the confidence coefficient changes to reflect multiplication of the tail probabilities for independent measurement errors. When n measurements are available, the objective is to calculate a critical value (c) such that if each of the n measurements is $\leq c$, then the 1-tailed 95-percent UCL for μ is $\leq$ the verification limit. Since the product of the n individual tail probabilities must equal 0.05, the appropriate 1-tail probability for each measurement individually is the n^{th} root of 0.05.

For example, if $n = 3$, then the appropriate 1-tail probability for each measurement is the cube root of 0.05, or 0.3684. The standard normal confidence coefficient corresponding to this tail probability is 0.336. Therefore, when all three measurements have the same value (X), the UCL is $X \cdot (1 + 0.336 \cdot CV)$. Substituting the appropriate CV estimate, the UCL is $X \cdot 1.0336$ for coal mine dust or $X \cdot 1.0302$ for crystalline silica. Consequently, to obtain the critical value, the verification limit is first divided by 1.0336 (coal mine dust) or 1.0302 (crystalline silica dust) and then truncated to the desired number of decimal digits. This yields 1.93 mg/m³ for coal mine dust and 97 µg/m³ for respirable crystalline silica dust.

The confidence coefficients used to establish critical values by this method are as follows:

n—Confidence Coefficient	
1	1.645
2	0.760
3	0.336
4	0.068

For $n > 4$, the confidence coefficient is less than 0.068.

It should be noted that although the critical value calculated for $n \geq 4$ is slightly below the verification limit for both types of dust, for simplicity it was set equal to the verification limit as a close approximation.

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[1] In some publications, this ratio is called the relative standard deviation (RSD). It is sometimes also denoted by CV_{total}, where "total" refers to all sources of potential sampling and analytical error but does not cover variability in μ itself.

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XII. Regulatory Text

List of Subjects

30 CFR part 70

Coal, Mine safety and health, Underground coal mines, Respirable dust.

30 CFR part 75

Coal, Mine safety and health, Underground coal mines, Ventilation.

30 CFR part 90

Coal, Mine safety and health.

Dated: June 20, 2000.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, it is proposed to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 70—MANDATORY HEALTH STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957 and 961, unless otherwise noted.

2. Section 70.2 is revised to read as follows:

Subpart A—General

Sec.
70.2 Definitions.

Subpart A—General

§ 70.2 Definitions.

(a) *Act* means the Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164, 30 U.S.C. 801 *et. seq.*

(b) *Active workings* means any place in a coal mine where miners are normally required to work or travel.

(c) *Concentration* means an 8-hour MRE equivalent measure of the amount of respirable dust per unit volume of air. The concentration of respirable dust is determined in two steps. First, divide the weight of dust in milligrams collected on the filter of an approved sampling device by 480 minutes times the sampler flow rate. Second, multiply that concentration by a constant factor prescribed by the Secretary for the approved sampling device used. The product is the equivalent concentration as measured with an MRE instrument.

(d) *Critical value* means the highest full shift dust concentration measurement that MSHA will accept in approving a mine ventilation plan or interim plan.

(e) *Designated area* (DA) means an area of a mine identified by the operator under § 75.371(t) of this title and approved by the District Manager, or identified by the Secretary. Each DA will be identified by a four-digit identification number assigned by MSHA.

(f) *Designated occupation* (DO) means the occupation or work location on a mechanized mining unit that has been determined by results of respirable dust samples to have the greatest respirable dust concentration.

(g) *District Manager* means the manager of the Coal Mine Safety and Health District in which the mine is located.

(h) *Dust control parameters* means the engineering or environmental controls, maintenance procedures, and any other requirements specified in each ventilation plan that are being used on the mechanized mining unit and throughout the mine to control the level of respirable coal mine dust and respirable quartz dust in the work environment.

(i) *Engineering or environmental controls* means any method to control the level of respirable coal mine dust and quartz dust in the work environment by either reducing dust generation or by suppressing, diluting, capturing or diverting the dust being generated during the mining process. It does not include powered, air-purifying respirators (PAPRs) or any other type of personal protection equipment.

(j) *Full shift* means an entire work shift including travel time but excluding, for purposes of bimonthly sampling only, any time in excess of 480 minutes.

(k) *Interim ventilation plan* means a ventilation plan for a longwall operation under which operators are allowed to use PAPRs or verifiable administrative controls.

(l) *Longwall face* means a working place in a coal mine where coal is extracted from the exposed face or seam using the longwall method of mining.

(m) *Longwall mining section* means the area of the coal mine employing longwall mining, from the loading point of the section up to and including the longwall face. The loading point is also included.

(n) *Material produced* means coal and/or any other substance extracted by a mechanized mining unit during any production shift.

(o) *Mechanized mining unit (MMU)* means a unit of mining equipment including hand loading equipment used for the production of material; or a specialized unit which utilizes mining equipment other than specified in § 70.206 for the production of material. MSHA assigns each MMU a four digit identification number. The MMU retains the identification number regardless of where the unit relocates within the mine. When two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment are identified as a single MMU. When two or more MMUs are simultaneously engaged in the production of material within the same working section, each such MMU is identified separately.

(p) *MRE* means the Mining Research Establishment of the National Coal Board, London, England.

(q) *MRE instrument* means the gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

(r) *MSHA* means the Mine Safety and Health Administration of the Department of Labor.

(s) *Powered, air-purifying respirator (PAPR)* means a type of loose-fitting helmet respirator with a visor that uses a blower to force the ambient air through air-purifying elements to deliver filtered air into the miner's breathing area.

(t) *Production shift* means:

(1) With regard to a mechanized mining unit, a shift during which material is produced, or

(2) With regard to a designated area of a mine, a shift during which material is produced and routine day-to-day activities are occurring in the designated area.

(u) *Provisional ventilation plan* means a ventilation plan which has been approved by the District Manager pending verification by MSHA of the effectiveness of the plan's dust control parameters.

(v) *Quartz* means crystalline silicon dioxide (SiO_2) as measured by MSHA's Analytical Method P–7: Infrared Determination of Quartz in Respirable Coal Mine Dust.

(w) *Respirable dust* means dust collected with a sampling device approved by the Secretary and the Secretary of Health and Human Services in accordance with part 74 (Coal Mine Dust Personal Sampler Units) of this title. Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education, and Welfare are continued in effect.

(x) *Secretary* means the Secretary of Labor or delegate.

(y) *Verifiable administrative control* means any work practice that can significantly reduce daily exposure to respirable dust hazards by altering the way in which work is performed and which:

(1) Can be reviewed to confirm its proper implementation,

(2) Is clearly understood by miners, and

(3) Can be applied consistently over time.

(z) *Verification limits* means 2.0 mg/m^3 of respirable coal mine dust and 100 µg/m^3 of respirable quartz dust (MRE-equivalent concentrations) measured over a full shift.

(aa) *Verification production level (VPL)* means the tenth highest production level recorded in the most recent thirty production shifts.

(bb) *Verification sample* means a valid sample taken on a full shift during which the amount of material produced is at or above the VPL and using only the engineering or environmental controls and other measures included in the ventilation plan, at levels not exceeding 115% of the quantities specified in the plan.

3. Subpart B is revised to read as follows:

Subpart B—Dust Standards

70.100 What are the respirable dust standards when quartz is not present?
70.101 What is the respirable dust standard when quartz is present?

Subpart B—Dust Standards

Authority: 30 U.S.C. 811 and 813(h).

§ 70.100 What are the respirable dust standards when quartz is not present?

When quartz is not present:

(a) Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 70.2(c).

(b) Each operator shall continuously maintain the average concentration of respirable dust within 200 feet outby the working faces of each section in the intake airways at or below 1.0 milligrams of respirable dust per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 70.2(c).

§ 70.101 What is the respirable dust standard when quartz is present?

When the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz as determined by samples taken by the Secretary, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed at or below a concentration of respirable dust, expressed in milligrams per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 70.2(c), computed by dividing the percent of quartz into the number 10.

Example: The respirable dust associated with a mechanized mining unit or a designated area in a mine contains quartz in the amount of 20%. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that mechanized mining unit or designated area shall be continuously maintained at or below 0.5 milligrams of respirable dust per cubic meter of air (10/20=0.5 mg/m^3).

4. Subpart C is revised to read as follows:

Subpart C—Verification of Underground Coal Mine Ventilation Plan Effectiveness; Use of Approved Powered, Air-Purifying Respirators; Use of Verifiable Administrative Controls; Actions Necessary When in Violation of Respirable Dust Standard; and Status Change Reports

Verification of Underground Coal Mine Ventilation Plan Effectiveness

70.201 Who must have a verified ventilation plan?
70.202 What is a verified ventilation plan?
70.203 What will trigger the plan verification process?
70.204 When will MSHA conduct verification sampling?
70.205 What must I (the operator) do to comply with this standard?
70.206 Who will MSHA sample and where will MSHA place the sampling device(s) when conducting verification sampling?
70.207 How many shifts will MSHA sample to verify my ventilation plan?
70.208 What if 30 shifts of production data are not available to establish the verification production level (VPL)?
70.209 When will MSHA approve my ventilation plan?
70.210 What must I (the operator) do if a verification sample exceeds either verification limit?
70.211 What if verification samples continue to exceed either verification limit even though I (the operator) believe all feasible engineer and environmental controls are in place?

Use of Approved Powered, Air-Purifying Respirators

70.212 For my longwall operation, what must I (the operator) do in order to use approved PAPRs to supplement engineering or environmental controls?
70.213 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating a PAPR respiratory protection program?
70.214 For my longwall operation, under what circumstances may I (the operator) continue to use PAPRs to supplement engineering or environmental controls?
70.215 What if an MSHA DO sample exceeds the applicable dust standard, or an MSHA sample for a miner required to wear a PAPR exceeds twice the applicable dust standard?

Use of Verifiable Administrative Controls

70.216 For my longwall operation, what must I (the operator) do in order to use verifiable administrative controls to supplement engineering or environmental controls?
70.217 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating verifiable administrative controls?
70.218 For my longwall operation with an approved interim ventilation plan, what must I (the operator) do if an MSHA sample exceeds the applicable dust standard?

Actions Necessary When in Violation of Respirable Dust Standards

70.219 What must I (the operator) do if I am cited for exceeding the applicable dust standard?

Information to Be Posted on the Mine Bulletin Board

70.220 What information must I (the operator) post on the mine bulletin board?

Status Change Reports

70.221 What action must I (the operator) take if the operational status of my mine, MMU, or DA changes?

Subpart C—Verification of Underground Coal Mine Ventilation Plan Effectiveness; Use of Approved Powered, Air-Purifying Respirators; Use of Verifiable Administrative Controls; Actions Necessary When in Violation of Respirable Dust Standard; and Status Change Reports

Authority: 30 U.S.C. 811, 813(h), and 957.

Verification of Underground Coal Mine Ventilation Plan Effectiveness

§ 70.201 Who must have a verified ventilation plan?

All underground coal mine operators must have a verified ventilation plan.

§ 70.202 What is a verified ventilation plan?

A verified ventilation plan is a plan that has been demonstrated as effective, at a high level of confidence, in maintaining the concentration of respirable coal mine dust and quartz dust in each MMU at or below 2.0 mg/m^3 and 100 µg/m^3, respectively. This demonstration is based on MSHA verification samples.

§ 70.203 What will trigger the plan verification process?

MSHA will initiate the plan verification process when:

(a) You submit a new ventilation plan under § 75.370 or you amend a previously approved ventilation plan under § 75.371(f); or

(b) The District Manager requires you to change the ventilation plan after determining that your dust control parameters no longer effectively control the concentration of respirable dust in the working environment of an MMU under the current mining conditions; or

(c) You propose revisions to a previously verified ventilation plan and the District Manager determines that the proposed revisions may cause the plan to be inadequate.

§ 70.204 When will MSHA conduct verification sampling?

The District Manager will notify you of the schedule for verification sampling after granting provisional approval of your ventilation plan. Before you receive provisional approval, however, you may be required to change your plan if the District Manager determines that your dust control parameters are inadequate or unsuitable for the current mining conditions.

§ 70.205 What must I (the operator) do to comply with this standard?

To comply with this standard, at the time the District Manager notifies you that MSHA will conduct verification sampling you must:

(a) Set your operating conditions so as to mine at or above the VPL and use only the dust control parameters and other measures listed in your plan on the date scheduled for verification sampling;

(b) For each MMU to be sampled, make available records of the amount of material produced each shift during the previous six-month period as prescribed in § 75.370(h);

(c) Provide the additional information described under § 75.371(f); and

(d) Notify the District Manager if you cannot meet the conditions described in paragraph (a) on the scheduled date.

§ 70.206 Who will MSHA sample and where will MSHA place the sampling device(s) when conducting verification sampling?

(a) MSHA will sample the environment of:

(1) The designated occupation (DO); roofbolter operators; longwall jack setters; and

(2) Any other occupation designated by the District Manager.

(b) Unless otherwise directed by the District Manager, MSHA will take DO samples by placing the sampling device(s) in the following locations:

(1) Conventional section using cutting machine—on the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(2) Conventional section shooting off the solid—on the loading machine operator or on the loading machine within 36 inches inby the normal working position;

(3) Continuous mining section other than auger-type—on the continuous mining machine operator or on the continuous mining machine within 36 inches inby the normal working position;

(4) Continuous mining machine; auger-type—on the jacksetter who works nearest the working face on the return air side of the continuous mining machine or at a location that represents the maximum concentration of dust to which the miner is exposed;

(5) Scoop section using cutting machine—on the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(6) Scoop section shooting off the solid—on the coal drill operator or on the coal drill within 36 inches inby the normal working position;

(7) Longwall section—on the miner who works nearest the return air side of the longwall working face or along the working face on the return side within 48 inches of the corner:

(8) Hand loading section with a cutting machine—on the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(9) Hand loading section shooting off the solid—on the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed; and

(10) Anthracite mine sections—on the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed.

§ 70.207 How many shifts will MSHA sample to verify my ventilation plan?

MSHA can approve your ventilation plan based on only one shift of sampling, provided all the samples taken on that shift meet the criteria for a verification sample and none of them exceed the critical values for a single shift specified in §§ 70.209 and 70.213. We will sample additional shifts if one verification sample exceeds the specified critical values, or if any of the samples taken do not meet the criteria for a verification sample.

§ 70.208 What if 30 shifts of production data are not available to establish the verification production level (VPL)?

If you do not have 30 shifts of production data to establish a VPL, the VPL will be the minimum production level attained on a shift that was sampled to verify the plan's effectiveness. This production level must be incorporated into the ventilation plan that is ultimately approved by the District Manager.

§ 70.209 When will MSHA approve my ventilation plan?

MSHA will approve your ventilation plan when:

(a) None of the verification samples exceed the following critical values for respirable coal mine dust and quartz dust:

(1) For respirable coal mine dust, the critical value is:

(i) 1.71 mg/m^3 if samples are collected for only one shift;

(ii) 1.85 mg/m^3 if samples are collected for two shifts;

(iii)1.93 mg/m^3 if samples are collected for three shifts; and

(iv) 2.0 mg/m^3 if samples are collected for four or more shifts.

(2) For respirable quartz dust, the critical value is:

(i) 87 "μg/m^3 if samples are collected for only one shift;

(ii) 93 "μg/m^3 if samples are collected for two shifts;

(iii) 97 "μg/m^3 if samples are collected for three shifts; and

(iv) 100 "μg/m^3 if samples are collected for four or more shifts.

(b) You adjust your plan, if necessary, to include all the dust control parameters that were in effect during verification sampling.

§ 70.210 What must I (the operator) do if a verification sample exceeds either verification limit?

If a verification sample exceeds either verification limit, you must:

(a) Immediately take corrective action to lower the concentration of respirable dust in the work environment of the affected occupation or location to a level no greater than the applicable verification limit;

(b) Make approved respiratory equipment available to affected miners following the procedures in § 70.300; and

(c) Within 5 days of receiving results of verification sampling, submit changes in your dust control parameters and any other corrective actions you implemented to the District Manager for review. The District Manager will notify you if your ventilation plan is provisionally approved under § 70.210 (c).

(1) If your ventilation plan is provisionally approved, the District Manager will notify you when MSHA will start verification sampling over again, or continue verification sampling.

(2) If your ventilation plan is not provisionally approved, the District Manager will require you to make additional changes in your plan parameters. Once you have made all required changes to your plan parameters, you will receive provisional approval of your ventilation plan. Then, the District Manager will notify you when MSHA will start verification sampling over again, or continue verification sampling from the point at which it stopped.

§ 70.211 What if verification samples continue to exceed either verification limit even though I (the operator) believe all feasible engineering and environmental controls are in place?

If verification samples continue to exceed the verification limit and you believe all feasible engineering and environmental controls are in place, then:

(a) If the ventilation plan being verified is for an MMU that uses a mining system other than longwall mining, MSHA may suggest additional controls for you to implement.

(b) If the MMU employs a longwall mining system, MSHA may suggest additional controls for you to implement; and, you may request in writing that the Administrator for Coal Mine Safety and Health determine whether or not you are using all feasible engineering or environmental controls to reduce concentrations of respirable dust to as low a level as possible; and

(c) If MSHA determines that you are using all feasible engineering or environmental on your longwall, based on its assessment of the suitability of available control measures to your particular MMU, MSHA will notify you that you may use either powered, air-purifying respirators (PAPRs) approved under 42 CFR 84, or verifiable administrative controls on an interim basis to supplement the engineering or environmental controls you have implemented to achieve compliance, until additional feasible engineering or environmental controls become available. If you use these supplements, the DO would be changed from the 060 to the 044 occupation.

Use of Approved Powered, Air-Purifying Respirators

§ 70.212 For my longwall operation, what must I (the operator) do in order to use approved PAPRs to supplement engineering or environmental controls?

In order to use PAPRs to supplement engineering or environmental controls, you must:

(a) Submit a revised ventilation plan to the District Manager within 5 days of receiving notification allowing you to supplement the engineering or environmental controls on your longwall for compliance purposes. Your plan must include feasible engineering or environmental controls capable of maintaining concentrations of respirable dust in the environment of:

(1) The DO (Occ 044—longwall operator or the occupation selected by the District Manager) at or below the verification limits; and

(2) Any miner working downwind of the DO, who is required to wear a PAPR,

at or below two times the verification limits.

(b) Incorporate in your plan a respiratory protection program for the use of PAPRs following the procedures specified in § 72.710. MSHA's District Manager may require you to make modifications to your respiratory protection program before granting provisional approval;

(c) Obtain provisional approval of your ventilation plan from the District Manager;

(d) Have MSHA verify your plan's effectiveness by sampling the environment of the DO (Occ 044—longwall operator) or other occupation directed by the District Manager and those miners working downwind of the DO who are required to wear approved PAPRs on the longwall face following the verification sampling procedures in §§ 70.205 and 70.206;

(e) Maintain and monitor compliance with the revised ventilation plan; and

(f) Continue to look for improvements that you can make and implement feasible solutions when they become available that would maintain the environment of the miners required to wear PAPRs at or below the verification limits.

§ 70.213 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating a PAPR respiratory protection program?

MSHA will approve your interim ventilation plan when:

(a) None of the verification samples for the DO exceed the critical values for respirable coal mine dust and quartz dust specified in § 70.209;

(b) None of the verification samples for the miners working downwind of the DO, who are required to wear approved PAPRs, exceed the following critical values for respirable coal mine dust and quartz dust:

(1) For respirable coal mine dust, the value is:

(i) 3.54 mg/m^3 if samples are collected for only one shift;

(ii) 3.77 mg/m^3 if samples are collected for two shifts;

(iii)3.89 mg/m^3 if samples are collected for three shifts;

(iv) 4.0 mg/m^3 if samples are collected for four or more shifts.

(2) For respirable quartz dust, the value is:

(i) 174 $\mu g/m^3$ if samples are collected for only one shift;

(ii) 187 $\mu g/m^3$ if samples are collected for two shifts;

(iii) 194 $\mu g/m^3$ if samples are collected for three shifts;

(iv) 200 $\mu g/m^3$ if samples are collected for four or more shifts; and

(c) You adjust your plan, if necessary, to include all the dust control parameters that were in effect during verification sampling.

§ 70.214 For my longwall operation, under what circumstances may I (the operator) continue to use PAPRs to supplement engineering or environmental controls?

You may continue to use approved PAPRs for compliance purposes under the following conditions:

(a) You implement and maintain all feasible engineering or environmental controls on each shift;

(b) You implement and maintain the PAPR respiratory protection program as approved by the District Manager;

(c) No MSHA DO sample exceeds the applicable dust standards, and no MSHA sample for any miner working downwind of the DO and required to wear a PAPR exceeds two times the applicable dust standards; and

(d) You continue to look for improvements that you can make and implement feasible solutions when they become available that would maintain the environment of the miners required to wear PAPRs at or below the verification limits.

§ 70.215 What if an MSHA DO sample exceeds the applicable dust standard, or an MSHA sample for a miner required to wear a PAPR exceeds twice the applicable dust standard?

If an MSHA DO sample exceeds the dust standard you must:

(a) Promptly review your dust control procedures to determine the cause of the high dust concentration levels and take appropriate action to prevent similar occurrences in the future;

(b) Promptly review the continued effectiveness of your approved PAPR respiratory protection program; and

(c) If necessary, make changes to your dust control parameters and submit them to the District Manager for review and approval.

Use of Verifiable Administrative Controls

§ 70.216 For my longwall operation, what must I (the operator) do in order to use verifiable administrative controls to supplement engineering or environmental controls?

In order to use administrative controls for longwall operations you must:

(a) Submit a revised ventilation plan to the District Manager within 5 days of receiving notification allowing you to supplement the engineering or environmental controls on your longwall for compliance purposes. The plan must include the feasible engineering or environmental controls being used to reduce the concentrations of respirable dust on your longwall to as low a level as possible, the verifiable administrative controls to be implemented on the MMU, and a method for ensuring that the administrative controls are complied with at all times;

(b) Obtain provisional approval of your ventilation plan from the District Manager;

(c) Have MSHA verify your plan's effectiveness by sampling all miners working along the longwall face, including the DO (Occ 044—longwall operator) or other occupation designated by the District Manager;

(d) Maintain and monitor compliance with the revised ventilation plan; and

(e) Continue to look for improvements that you can make and implement feasible solutions when they become available that would maintain the environment of the miners required to work downwind of the DO and whose exposure is being controlled by administrative controls at or below the verification limits.

§ 70.217 For my longwall operation, when will MSHA approve my interim ventilation plan incorporating verifiable administrative controls?

MSHA will approve your interim ventilation plan and use of administrative controls on your longwall when:

(a) None of the verification samples exceed the critical values for respirable coal mine dust and quartz dust specified in § 70.209; and

(b) Adjust your plan if necessary, to include all the dust control parameters that were in effect during verification sampling.

§ 70.218 For my longwall operation with an approved interim ventilation plan, what must I (the operator) do if an MSHA sample exceeds the applicable dust standard?

If an MSHA sample exceeds the dust standard you must:

(a) Promptly review your dust control procedures to determine the cause of the excessive dust concentration(s) and take appropriate action to prevent similar occurrences in the future;

(b) Promptly review the continued effectiveness of the administrative controls in use; and

(c) If necessary, make changes to your dust control parameters and submit them to the District Manager for review and approval.

Actions Necessary When in Violation of Respirable Dust Standards

§ 70.219 What must I (the operator) do if I am cited for exceeding the applicable dust standard?

If you are cited for exceeding the dust standard, you must:

(a) Promptly review your dust control procedures to determine the cause of the excessive dust concentration(s); and

(b) Take corrective action to lower the concentration of respirable dust to comply with the applicable standard and notify the District Manager within 24 hours after implementing the corrective action(s). MSHA will then sample to determine the effectiveness of your abatement actions or require reverification of your ventilation plan under proposed § 70.203. If MSHA samples demonstrate:

(1) Compliance—you must incorporate these corrective actions in your mine ventilation plan. MSHA may re-verify your ventilation plan after determining that your dust control parameters originally approved may be ineffective in controlling the concentrations of respirable dust in the working environment of the MMU under the current mining conditions.

(2) Noncompliance—the District Manager may revoke approval of your mine ventilation plan.

Information to Be Posted on the Mine Bulletin Board

§ 70.220 What information must I (the operator) post on the mine bulletin board?

You must post the following information on the mine bulletin board:

(a) All MSHA sample results;

(b) For each MMU, the engineering and environmental controls and other practices in effect on each shift of the verification process, along with the associated values of the dust control parameters measured;

(c) All written notifications from the District Manager regarding any aspect of the plan verification process.

(d) You may remove the posted verification results after the District Manager approves the plan. You must post the results of MSHA respirable dust compliance samples upon receipt for 31 days.

Status Change Reports

§ 70.221 What action must I (the operator) take if the operational status of my mine, MMU, or DA changes?

(a) You must report the change in operational status of the mine, MMU, or DA to the MSHA District Office or to any other MSHA office designated by the District Manager. You must report status changes in writing within 3 working days after the status change has occurred.

(b) Each specific operational status is defined as follows:

(1) Underground mine:

(i) Producing—has at least one mechanized mining unit producing material.

(ii) Nonproducing—no material is being produced.

(iii) Abandoned—the work of all miners has been terminated and production activity has ceased.

(2) Mechanized Mining Unit:

(i) Producing—producing material from a working section.

(ii) Nonproducing—temporarily ceased production of material.

(iii) Abandoned—permanently ceased production of material.

(3) Designated Area:

(i) Producing—activity is occurring.

(ii) Nonproducing—activity has ceased.

(iii) Abandoned—the dust generating source has been withdrawn and activity has ceased.

PART 75—[AMENDED]

6. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

7. Paragraph (h) of § 75.370 of Subpart D is added to read as follows:

§ 75.370 Mine ventilation plan; submission and approval.

* * * * *

(h) The operator must record the amount of material produced by each MMU during each production shift, retain the records for six months, and make the records available to authorized representatives of the Secretary and the miners' representative.

8. Section 75.371 of Subpart D is amended by revising paragraphs (f) and (t) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(f) Section and face ventilation systems used, including drawings illustrating how each system is used; and a description of each different dust suppression system used on equipment on working sections, including any specific work practices used to minimize the dust exposure of individual miners, along with information on the location of the roof bolter(s) during the mining cycle for each continuous miner section, and the cut sequence for each longwall mining section. For plans required to be verified pursuant to § 70.201, the length of each normal production shift, the verification production level (VPL) as defined in § 70.2, and additional provisions for the use of powered, air purifying respirators (PAPRs) or verifiable administrative controls required under § 70.212–215 and § 70.216–218, respectively, must be included for each working section.

* * * * *

(t) The location of each "designated area," and the respirable dust measures used at the dust generating sources for these locations.

PART 90—[Amended]

9. The authority citation for part 90 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h).

10. Subpart A is revised to read as follows:

Sec.
90.1 Scope.
90.2 Definitions.
90.3 Part 90 option; notice of eligibility; exercise of option.

§ 90.1 Scope.

This part 90 establishes the option of miners who are employed at underground coal mines or at surface work areas of underground coal mines and who have evidence of the development of pneumoconiosis to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below 1.0 milligrams per cubic meter of air. The rule sets forth procedures for miners to exercise this option, and establishes the right of miners to retain their regular rate of pay and receive wage increases. The rule also sets forth the operator's obligations. This part 90 is promulgated pursuant to section 101 of the Act and supercedes section 203(b) of the Act.

§ 90.2 Definitions.

(a) *Act* means the Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164, 30 U.S.C. 801 *et seq.*

(b) *Active workings* means any place in a coal mine where miners are normally required to work or travel.

(c) *Concentration* means an 8-hour MRE equivalent measure of the amount respirable dust per unit volume of air. The concentration of respirable dust is determined in two steps. First, divide the weight of dust in milligrams collected on the filter of an approved sampling device by 480 minutes times the sampler flow rate. Second, multiply that concentration by a constant factor prescribed by the Secretary for the approved sampling device used. The product is the equivalent concentration as measured with an MRE instrument.

(d) *District Manager* means the manager of the Coal Mine Safety and Health District in which the mine is located.

(e) *Mechanized mining unit* (MMU) means:

(1) A unit of mining equipment including hand loading equipment used for the production of material; or

(2) A specialized unit which utilizes mining equipment other than specified in § 70.206(c). MSHA assigns each MMU a four digit identification number. The MMU retains the identification number regardless of where the unit relocates within the mine. When two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment are be identified as a single MMU. When two or more MMUs are simultaneously engaged in the production of material within the same working section, each such MMU is identified separately.

(f) *MRE* means the Mining Research Establishment, of the National Coal Board, London, England.

(g) *MRE instrument* means the gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

(h) *MSHA* means the Mine Safety and Health Administration of the Department of Labor.

(i) *Normal work duties* means duties which the part 90 miner performs on a routine day-to-day basis in his or her job classification at a mine.

(j) *Part 90 miner* means a miner employed at an underground coal mine or at a surface work area of an underground coal mine who has exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or under § 90.3 (part 90 option; notice of eligibility; exercise of option) of this part to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air, and who has not waived these rights.

(k) *Quartz* means crystalline silicon dioxide (SiO_2) as measured by MSHA's Analytical Method P–7: Infrared Determination of Quartz in Respirable Coal Mine Dust.

(l) *Respirable dust* means dust collected with a sampling device approved by the Secretary and the Secretary of Health and Human Services in accordance with part 74 (Coal Mine Dust Personal Sampler Units) of this title. Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education, and Welfare are continued in effect.

(m) *Secretary* means the Secretary of Labor or a designee.

(n) *Secretary of Health and Human Services* means Secretary of Health and Human Services or Secretary of Health, Education, and Welfare.

(o) *Surface work area of an underground coal mine* means the surface areas of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting bituminous coal, lignite, or anthracite from its natural deposits underground by any means or method, and the work of preparing coal so extracted, and includes custom coal preparation facilities.

(p) *Transfer* means any change in the work assignment of a part 90 miner by the operator and includes:

(1) Any change in occupation code of a part 90 miner;

(2) Any movement of a part 90 miner to or from a mechanized mining unit; or

(3) Any assignment of a part 90 miner to the same occupation in a different location at a mine.

(q) *Underground coal mine* means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted.

§ 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at an underground coal mine or at a surface work area of an underground coal mine who, in the judgment of the Secretary of Health and Human Services, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of Health and Human Services, or based on other medical examinations shall be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air. Each of these miners shall be notified in writing of eligibility to exercise the option.

(b) Any miner who is a section 203(b) miner on January 31, 1981, shall be a part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment, shift and respirable dust protection.

(c) Any part 90 miner who is transferred to a position at the same or another coal mine shall remain a part 90 miner entitled to full rights under this part at the new work assignment.

(d) The option to work in a low dust area of the mine may be exercised for the first time by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who was eligible for the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(e) The option to work in a low dust area of the mine may be re-exercised by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who exercised the option under the old section 203(b).

12. Subpart B is revised to read as follows:

Subpart B—Dust Standards, Rights of Part 90 Miners

Sec.

90.100 Respirable dust standard.
90.101 Respirable dust standard when quartz is present.
90.102 Transfer; notice.
90.103 Compensation.
90.104 Waiver of rights; re-exercise of option.

Subpart B—Dust Standards, Rights of Part 90 Miners

§ 90.100 Respirable dust standard.

After the twentieth calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the part 90 miner in the active workings of the mine is exposed at or below 1.0 milligrams per cubic meter of air.

§ 90.101 Respirable dust standard when quartz is present.

When the respirable dust in the mine atmosphere of the active workings to

which a part 90 miner is exposed contains more than 5 percent quartz, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which a part 90 miner is exposed at or below a concentration of respirable dust computed by dividing the percent of quartz into the number 10. The application of the formula shall not result in a respirable dust standard in excess of 1.0 milligrams per cubic meter of air.

Example: The respirable dust associated with a part 90 miner contains quartz in the amount of 20%. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that part 90 miner shall be continuously maintained at or below 0.5 milligrams of respirable dust per cubic meter of air (10/20=0.5 mg/m^3).

§ 90.102 Transfer; notice.

(a) Whenever a part 90 miner is transferred in order to meet the respirable dust standard in § 90.100 (Respirable dust standard) or § 90.101 (Respirable dust standard when quartz is present), the operator shall transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. The operator may transfer a part 90 miner to a different coal mine, a newly-created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer.

(b) On or before the twentieth calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall give the District Manager written notice of the occupation and, if applicable, the mechanized mining unit to which the part 90 miner will be assigned on the twenty-first calendar day following receipt of the notification from MSHA.

(c) After the twentieth calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall give the District Manager written notice before any transfer of a part 90 miner. This notice shall include the scheduled date of the transfer.

§ 90.103 Compensation.

(a) The operator shall compensate each part 90 miner at not less than the regular rate of pay received by that miner immediately before exercising the option under § 90.3 (part 90 option; notice of eligibility; exercise of option).

(b) Whenever a part 90 miner is transferred, the operator shall compensate the miner at not less than the regular rate of pay received by that miner immediately before the transfer.

(c) The operator shall compensate each miner who is a section 203(b) miner on January 31, 1981, at not less than the regular rate of pay that the miner is required to receive under section 203(b) of the Act immediately before the effective date of this part.

(d) In addition to the compensation required to be paid under paragraphs (a), (b) and (c) of this section, the operator shall pay each part 90 miner the actual wage increases that accrue to the classification to which the miner is assigned.

(e) If a miner is temporarily employed in an occupation other than his or her regular work classification for two months or more before exercising the option under § 90.3 (part 90 option; notice of eligibility; exercise of option), the miner's regular rate of pay for purposes of paragraph (a) and (b) of this section is the higher of the temporary or regular rates of pay. If the temporary assignment is for less than two months, the operator may pay the part 90 miner at his or her regular work classification rate regardless of the temporary wage rate.

(f) If a part 90 miner is transferred, and the Secretary subsequently notifies the miner that notice of the miner's eligibility to exercise the part 90 option was incorrect, the operator shall retain the affected miner in the current position to which the miner is assigned and continue to pay the affected miner the applicable rate of pay provided in paragraphs (a), (b), (c) and (d) of this section, until:

(1) The affected miner and operator agree in writing to a position with pay at not less than the regular rate of pay for that occupation; or

(2) A position is available at the same coal mine in both the same occupation and on the same shift on which the miner was employed immediately before exercising the option under Sec. 90.3 (Part 90 option; notice of eligibility; exercise of option) or under the old section 203(b) program (36 FR 20601, October 27, 1971).

(i) When such a position is available, the operator shall offer the available position in writing to the affected miner with pay at not less than the regular rate of pay for that occupation.

(ii) If the affected miner accepts the available position in writing, the operator shall implement the miner's reassignment upon notice of the miner's acceptance. If the miner does not accept the available position in writing, the miner may be reassigned and protections under Part 90 shall not apply. Failure by the miner to act on the written offer of the available position within 15 days after notice of the offer is received from the operator shall operate as an election not to accept the available position.

§ 90.104 Waiver of rights; re-exercise of option.

(a) A part 90 miner may waive his or her rights and be removed from MSHA's active list of miners who have rights under part 90 by:

(1) Giving written notification to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, that the miner waives all rights under this part;

(2) Applying for and accepting a position in an area of a mine which the miner knows has an average respirable dust concentration exceeding 1.0 milligrams per cubic meter of air or the respirable dust standard established by § 90.101 (Respirable dust standard when quartz is present); or

(3) Refusing to accept another position offered by the operator at the same coal mine that meets the requirements of §§ 90.100, 90.101 and 90.102(a) after MSHA dust sampling shows that the average respirable dust concentration in his or her present position exceeds 1.0 milligrams per cubic meter of air or the respirable dust standard established by § 90.101 (Respirable dust standard when quartz is present).

(b) If rights under part 90 are waived, the miner gives up all rights under part 90 until the miner re-exercises the option in accordance with § 90.3(e) (part 90 option; notice of eligibility; exercise of option).

(c) If rights under part 90 are waived, the miner may re-exercise the option under this part in accordance with § 90.3(e) (part 90 option; notice of eligibility; exercise of option) at any time.

13. Subpart C is revised to read as follows:

90.201 MSHA respirable dust sample reports; operator status change reporting requirement.
90.202 Operator status change reports.

§ 90.201 MSHA Respirable dust sample reports; Operator status change reporting requirement.

(a) The Secretary shall provide the operator with a report of the following data on the MSHA respirable dust samples as soon as practicable:

(1) The mine identification number;

(2) The mechanized mining unit, if any, within the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed in milligrams per cubic meter of air, for each valid sample;

(4) The average concentration of respirable dust, expressed in milligrams

per cubic meter of air, for all valid samples;

(5) The occupation code;

(6) The reason for voiding any samples; and,

(7) The Social Security Number of the part 90 miner.

(b) Upon receipt, the operator shall provide a copy of this report to the part 90 miner. The operator shall not post the original or a copy of this report on the mine bulletin board.

§ 90.202 Operator status change reports.

If there is a change in the status of a part 90 miner (such as entering a terminated, injured or ill status, or returning to work), the operator must report the change in the status of the part 90 miner to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing within 3 working days after the status change has occurred.

[FR Doc. 00–16149 Filed 7–6–00; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

30 CFR Part 72

RIN 1219–AB18

Determination of Concentration of Respirable Coal Mine Dust

AGENCIES: Mine Safety and Health Administration (MSHA), Labor. National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Proposed rule; notice of public hearings; close of record.

SUMMARY: The Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) will hold public hearings to receive comments on the joint notice of proposed rulemaking published in the **Federal Register** on July 7, 2000.

The proposal announced that the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) would find in accordance with sections 101 and 202(f)(2) (30 U.S.C. §§ 811 and 842(f)(2)) of the Federal Mine Safety and Health Act of 1977 (Mine Act) that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift (single, full-shift sampling). The Secretaries are proposing to rescind a previous 1972 finding by the Secretary of the Interior and the Secretary of Health, Education and Welfare, on the accuracy of single-shift sampling.

These hearings will be held pursuant to section 101 of the Mine Act.

Please also see the public hearing notice addressing verification of dust control plans (plan verification) published separately by MSHA in today's **Federal Register**.

DATES: If individuals or organizations wish to make an oral presentation for the record at the hearing, please submit your request at least five days prior to the hearing date. However, you do not have to make a written request to speak. Any unalloted time will be made available to persons making same-day requests.

The public hearings will be held on the following dates and locations:

(1) August 7, 2000 from 8:30 a.m.—5:00 p.m. (Day 1)
August 8, 2000 from 8:30 a.m.—12:00 p.m. (Day 2)(if necessary)
Morgantown, West Virginia

(2) August 10, 2000 from 8:30 a.m.—5:00 p.m. (Day 1)
August 11, 2000 from 8:30 a.m.—12:00 p.m. (Day 2) (if necessary)
Prestonsburg, Kentucky

(3) August 16, 2000 from 8:30 a.m.—5:00 p.m. (Day 1)
August 17, 2000 from 8:30 a.m.—12:00 p.m. (Day 2) (if necessary)
Salt Lake City, Utah

To the extent possible, we would like to hear comments on the notices of proposed rulemaking in sequence. At each hearing site during the first part of Day 1 (until approximately 12:00 p.m.) we would like to hear comments on the single, full-shift sampling proposed rule. The second part of Day 1 we would like to hear comments on the plan verification proposal. If a second day of hearings is necessary at a hearing site, we would devote this time to hear comments on the plan verification proposal.

If necessary, the time can be extended each day to give all interested parties an opportunity to present testimony.

The rulemaking record will close on August 24, 2000.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send us your requests to make oral presentations at the public hearings. Clearly identify your requests and send them— (1) By mail to Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

The hearings will be held on the following dates and the following locations:

1. August 7 and 8,* 2000, Holiday Inn, 1400 Saratoga Avenue, Morgantown, West Virginia 26505, 304–599–1680.
2. August 10 and 11,* 2000, Holiday Inn, 1887 N US 23, Prestonsburg, Kentucky 41653, 606–886–0001.
3. August 16 and 17,* 2000, Hilton Salt Lake City Center, 255 S West Temple, Salt Lake City, Utah 84101, 801–328–2000.

*if necessary

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director; Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984; 703–235–1910.

I. Background

On July 7, 2000, the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) jointly published a notice of proposed rulemaking finding in accordance with sections 101 (30 U.S.C. 811) and 202(f)(2) (30 U.S.C. 842(f)(2)) of the Federal Mine Safety and Health Act of 1977 (Mine Act) that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries are proposing to rescind a 1972 finding by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, on the accuracy of such single-shift sampling.

II. Conduct of Public Hearings

The hearings will be conducted in an informal manner with a panel of MSHA and NIOSH representatives, chaired by Marvin W. Nichols, Jr. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA and NIOSH, followed by an opportunity for members of the public to make oral

presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentations may be limited. In the interest of conducting productive hearings, MSHA and NIOSH will schedule speakers in a manner that allows all points of view to be heard as effectively as possible. If necessary, the hearing time will be extended into the evening to allow interested parties an opportunity to speak.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. MSHA and NIOSH will make available copies of the hearing transcripts for public review.

MSHA and NIOSH will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA and NIOSH will be included in the rulemaking record.

III. Close of Rulemaking Record

To allow for the submission of post-hearing comments, the rulemaking record will close on August 24, 2000.

Dated: June 30, 2000.

Robert A. Elam,

Deputy Assistant Secretary for Mine Safety and Health.

Dated: June 30, 2000.

Linda Rosentock,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 00–17129 Filed 7–6–00; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75 and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearings; close of record.

SUMMARY: We will hold public hearings to receive public comments on a proposed rule published in the **Federal Register** on July 7, 2000. The proposal would revoke existing operator respirable dust sampling procedures under 30 CFR parts 70 and 90, and would require underground mine operators to verify the effectiveness of mine ventilation plans (plan verification).

These hearings will be held pursuant to section 101 (30 U.S.C. 811) of the Federal Mine Safety and Health Act of 1977 (Mine Act).

Please also see the joint public hearing notice published in today's **Federal Register** by the Department of Labor and the Department of Health and Human Services addressing single, full-shift sampling.

DATES: If individuals or organizations wish to make an oral presentation for the record, submit your request at least five days prior to the hearing date. However, you do not have to make a written request to speak. Any unalloted time will be made available to persons making same-day requests.

The public hearings will be held on the following dates and locations:

(1) August 7, 2000 from 8:30 a.m.–5:00 p.m. (Day 1)
August 8, 2000 from 8:30 a.m.–12:00 p.m. (Day 2) (if necessary)
Morgantown, West Virginia

(2) August 10, 2000 from 8:30 a.m.–5:00 p.m. (Day 1)
August 11, 2000 from 8:30 a.m.–12:00 p.m. (Day 2) (if necessary)
Prestonsburg, Kentucky

(3) August 16, 2000 from 8:30 a.m.–5:00 p.m. (Day 1)
August 17, 2000 from 8:30 a.m.–12:00 p.m. (Day 2) (if necessary)
Salt Lake City, Utah

To the extent possible, we would like to hear comments on the notices of proposed rulemaking in sequence. At each hearing site during the first part of Day 1 (until approximately 12:00 p.m.) we would like to hear comments on the single, full-shift sampling proposed rule. The second part of Day 1 we would like to hear comments on the plan verification proposal. If a second day of hearings is necessary at a hearing site, we would devote this time to hear comments on the plan verification proposal.

If necessary, the time can be extended each day to give all interested parties an opportunity to present testimony.

The rulemaking record will close on August 24, 2000.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send us your requests to make oral presentations at the public hearings. Clearly identify your requests and send them— (1) By mail to Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

The hearings will be held on the following dates at the following locations:

1. August 7 and 8,* 2000, Holiday Inn, 1400 Saratoga Avenue, Morgantown, West Virginia 26505, 304–599–1680.
2. August 10 and 11,* 2000, Holiday Inn, 1887 N US 23, Prestonsburg, Kentucky 41653, 606–886–0001.
3. August 16 and 17,* 2000, Hilton Salt Lake City Center, 255 S West Temple, Salt Lake City, Utah 84101, 801–328–2000.

* if necessary

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director; Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On July 7, 2000, we published a proposed rule which would revoke existing operator respirable dust sampling procedures under 30 CFR parts 70 and 90. The proposal would implement new regulations under which MSHA would verify the effectiveness of a mine operator's dust control parameters for mechanized mining units (MMUs) specified in the mine ventilation plan before these plans are approved. Verification sampling would be conducted under more typical production levels and for the actual length of the production shift. Please see the proposal published elsewhere in today's **Federal Register** for more information.

II. Conduct of Public Hearings

The hearings will be conducted in an informal manner, and chaired by Marvin W. Nichols, Jr. on behalf of MSHA. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentations may be limited. In the interest of conducting

productive hearings, we will schedule speakers in a manner that allows all points of view to be heard as effectively as possible. If necessary, the hearings will continue into the evening to allow all interested parties an opportunity to speak.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. We will make available copies of the hearing transcripts for public review.

We will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments and data submitted to us will be included in the rulemaking record.

III. Close of Rulemaking Record

To allow for the submission of post-hearing comments, the rulemaking record will remain open until August 24, 2000.

Dated: June 30, 2000.

Robert A. Elam,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 00–17128 Filed 7–6–00; 8:45 am]

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Part III

Department of Health and Human Services

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: General notice

SUMMARY: HRSA announces the availability of funds in the HRSA Preview for Summer 2000. This edition of the HRSA Preview is a comprehensive review of HRSA's Fiscal Year 2001 competitive grant programs.

The purpose of the HRSA Preview is to provide the general public with a single source of program and application information related to the Agency's competitive grant offerings. The HRSA Preview is designed to replace the multiple **Federal Register** notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs. In this edition of the HRSA Preview, HRSA's programs which provide funding for outpatient Hansen's Disease medical services and special projects for schools of public health have been included in the section "Other HRSA Programs." It should be noted that additional program initiatives responsive to new or emerging issues in the health care area and unanticipated at the time of publication of the HRSA Preview may be announced through the **Federal Register** from time to time. Requirements appearing elsewhere in the **Federal Register** are not changed by this notice.

This notice contains nearly all of the content of the HRSA Preview. The HRSA Preview contains a description of competitive and other grant programs scheduled for awards in Fiscal Year 2001, and includes instructions on how to contact the Agency for information and receive application kits for all programs. Specifically, the following information is included in the HRSA Preview: (1) program title; (2) legislative authority; (3) purpose; (4) eligibility; (5) funding priorities and/or preferences; (6) estimated dollar amount of competition; (7) estimated number of awards; (8) estimated project period; (9) Catalog of Federal Domestic Assistance (CFDA) identification number; (10) application availability date; (11) letter of intent deadline (if any); (12) application deadline; (13) projected award date; and (14) programmatic contact, with telephone and e-mail addresses. Certain other information, including how to obtain and use the HRSA Preview and grant terminology can also be found in the HRSA Preview.

This issue of the HRSA Preview describes funding for the following HRSA discretionary authorities and programs (receipt deadlines are in parentheses):

Health Professions Programs

- Model State-Supported Area Health Education Centers (12/18/00)
- Basic/Core Area Health Education Centers (12/18/00)
- Preventive Medicine Residency Programs (09/18/00)
- Centers of Excellence (12/01/00)
- Podiatric Residency Training in Primary Care (10/27/00)
- Allied Health Projects (01/16/01)
- Advanced Education Nursing Grants (01/29/01)
- Partnerships for Developing Public Health Nursing Leadership (11/17/01)
- Residencies in the Practice of Pediatric Dentistry and Residencies and Advanced Education in the Practice of General Dentistry (09/08/00)
- Public Health Training Centers Grant Program (12/11/00)
- Advanced Education Nursing Traineeship Grants (11/01/00)
- Basic Nurse Education and Practice Grants (02/22/01)
- Advanced Education Nursing—Nurse Anesthetist Traineeship Grant Program (11/01/00)
- Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Baccalaureate Nursing Students (09/08/00)
- Health Careers Opportunity Program (01/10/01)
- Residency Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) (10/02/00)
- Physician Assistant Training in Primary Care (01/12/01)
- Academic Administrative Units in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) (12/08/00)
- Faculty Development Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) (10/06/00)
- Predoctoral Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) (11/03/00)
- Faculty Loan Repayment Program (05/31/01)
- Scholarships for Disadvantaged Students (12/15/00)
- Geriatric Education Centers (01/04/01)

Primary Health Care Programs

- National Primary Care Technical Assistance Grants and Cooperative Agreements (03/01/01 and 05/01/01)
- National Health Service Corps Student/Resident Experiences and Rotations in Community Health (SEARCH) (05/01/01)
- Health Care for the Homeless (deadline varies)
- Grants to States for Loan Repayment Programs (05/15/01)
- New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act (11/30/00; 2/28/01; and 5/15/01)
- Community and Migrant Health Centers (deadline varies)
- Nursing Education Loan Repayment Program (06/30/01)

HIV/AIDS Programs

- Ryan White IV: Existing Geographic Areas (04/02/01)
- Ryan White IV: New Geographic Areas (04/02/01)
- Ryan White IV for Adolescent Services (04/02/01)
- Funding for Early Intervention Services Grants: Existing Geographic Areas (10/02/00)
- Funding for Early Intervention Services Grants: New Geographic Areas (07/16/01)
- Funding for Early Intervention Services Planning Grants (06/01/00)

Maternal and Child Health Programs

- Genetic Services, Improving Health of Children:
  - Implementation of the State Grants for the Integration of Programs and their Information Systems (02/28/01)
- Genetic Services, Developing Models for the Use of New and Evolving Technology within Newborn Screening Programs (02/28/01)
- Genetic Services, State Development Grants for Newborn Screening Efforts and Infrastructure Development (02/28/01)
- Nationwide Blood Lead and Erythrocyte Protoporphyrin (EP) Proficiency Testing Program (09/15/00)
- Integrated Health and Behavioral Health Care for Children, Adolescents, and their Families (01/31/01)
- Innovative Models to Analyze and Address Racial, Ethnic, and Geographic Disparities in Maternal and Child Health Outcomes (02/05/01)
- Integrated Comprehensive Women's Health Services in State MCH Programs (03/23/01)
- Assuring Adequate Health Insurance for Children with Special Health Care Needs (02/02/01)

Healthy and Ready to Work (HRTW) Services for Children and Youth with Special Health Needs (CYSHN) (02/23/01)
Integrated Services (01/22/01)
Medical Home Development Grants (10/16/00)
Partnership for Information and Communication (PIC) (01/02/01)
MCH Cooperative Agreements (01/02/01)
Breastfeeding Promotion in Pediatrician's Office Practices (05/01/01)
Partners in Program Planning for Adolescent Health (04/20/01)
Maternal and Child Health Research Program (08/01/00 and 03/01/00)
Health Care Information and Education for Families of Children with Special Health Care Needs (12/01/00)
Graduate Medical Education in Obstetrics/Gynecology, Pediatrics and Family Practice in Historically/Predominately Black Medical Schools (02/01/01)
Public Health Training in Maternal and Child Health (12/15/00)
Long Term Training in Leadership Education in Neurodevelopmental and Related Disabilities (LEND) (10/12/00)
Continuing Education and Development (01/12/01)
Public Policy Analysis and Education Center for Infant and Early Childhood Health (03/26/01)
Public Policy Analysis and Education Center for Middle Childhood and Adolescent Health (03/26/01)
Continuing Education and Development Cooperative Agreement to Advance Education and Public Policy Development in Maternal and Child Health (02/01/01)
Continuing Education/Distance Learning (01/12/01)
Healthy Tomorrows Partnership for Children (10/02/00)
Healthy Tomorrows Partnership Cooperative Agreement (06/01/01)
State Systems Development Initiative (SSDI), MCH Services Federal Set-Aside Program (07/13/01)
EMSC Implementation (11/01/00)
EMSC Partnerships (11/01/00)
EMSC Targeted Issue (11/01/00)
Pediatric Injury Surveillance System (04/02/01)
Clinical practice Guidelines for Emergency Care of Children (06/01/01)
A Color-coded System for Equipment and Medication for Pediatric Resuscitation (03/01/01)
Traumatic Brain Injury (TBI), State Implementation Grants (12/01/01)
Traumatic Brain Injury (TBI), State Planning Grants (12/01/01)
State Mortality Review Support Program (01/29/01)
Perinatal Systems and Women's Health National Resource Center (02/23/01)
Healthy Start Initiative—Eliminating Disparities in Perinatal Health (02/06/01)
Interconception Care for High Risk Women and their Infants (02/16/01)
Improving Women's Health through Screening and Intervention for Depression during or around the Time of Pregnancy (12/21/00)
Healthy Start Initiative—State Infrastructure Initiatives (12/08/00)
Eliminating Disparities in Perinatal Health—Border Health (02/06/01)

Office of the Administrator

Community Access Program (06/01/00)
National Conference of State Legislatures (NCSL) (TBA)
Association of State and Territorial Health Officials (ASTHO) (TBA)
Public Health Foundation (PHF) (TBA)
National Association of County and City Health Officials (NACCHO) (05/30/00)
Pacific Islands Health Officers Association (06/01/00)

Rural Health Programs

Rural Health Roundtable, George Mason University (07/31/00)
State Rural Hospital Flexibility Program (05/25/01)
Rural Health Outreach Grant (10/16/00)
Rural Health Network Development (10/23/00)

Special Programs

Extramural Support Program for Projects to Increase Organ and Tissue Donations (05/01/01)

Other HRSA Programs

Outpatient Hansen's Disease Medical Services (09/01/00)
Special Projects for Schools of Public Health (TBA)
Lawton Chiles Foundation (N/A)

Individuals may obtain the HRSA Preview by calling the toll free number at 1–877–477–2123 (1–877–HRSA123). The HRSA Preview may also be accessed on HRSA's World Wide Web Home Page at http://www.hrsa.gov/grantsf.htm.

Dated: June 28, 2000.

Claude Earl Fox,

Administrator.

How To Use and Obtain Copies of the HRSA Preview

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions before contacting the toll-free number 1–877–477–2123 (1–877–HRSA–123). Likewise, we urge applicants to fully assess their eligibility for grants before requesting kits. As a general rule, no more than one kit per category will be mailed to applicants.

To Obtain a Copy of HRSA Preview

To have your name and address added to or deleted from the HRSA Preview mailing list, call the toll free number above or send a message by e-mail to hrsagac@hrsa.gov.

To Obtain an Application Kit

Applications kits differ depending on the grant program. Determine which kit(s) you wish to receive and call 1–877–477–2123 to be placed on the mailing list. Be sure to provide the information specialist with both the CFDA number and the title of the grant program. You may also request application kits using the e-mail address above. Application kits are generally available 60 days prior to application deadline. If kits are available earlier, they will be mailed immediately. The guidance contained in the various kits contains detailed instructions, background on the grant program, and other essential information, such as the applicability of Executive Order 12372 and 45 CFR Part 100, and additional inforamtion pertinent to the intergovernmental review process, as appropriate.

World Wide Web Access

The HRSA Preview is available on the HRSA Homepage via the World Wide Web at: www.hrsa.gov/grantsf.htm. You can download this issue in Adobe Acrobat format.

Application materials are also available for downloading for some HRSA programs. HRSA's goal is to post application forms and materials for all programs in future cycles.

You can register on-line to be sent grant application materials by following the instructions on the web page. Your mailing information will be added to our database and materials will be sent to you as they become available.

Grant Terminology

Application Deadlines

Applications will be considered on time if they are received on or before the established deadline, or postmarked on or before the deadline given in the program announcement or in the application kit materials. Applications sent to any address other than that specified in the application guidance are subject to being returned.

Authorization

The citation of the law authorizing the various grant programs is provided immediately following the title of the programs.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal programs, projects, services, and activities which provide assistance. Programs listed therein are given a CFDA Number. Be sure to use both the CFDA number and the title of the grant program when requesting an application kit. Note that CFDA numbers with alpha suffixes have different titles than the same CFDA numbers without suffixes.

Cooperative Agreement

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient is anticipated by the funding agency during performance of the project. The nature of that involvement will always be specified in the offering or application guidance materials.

Eligibility

The status an entity must possess to be considered for a grant. Authorizing legislation and programmatic regulations specify eligibility for individual grant programs, and eligibility may be further restricted for programmatic reasons. In general, assistance is provided to nonprofit organizations and institutions, State and local governments and their agencies, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The funding level listed is provided only as an estimate, and is subject to the availability of funds, Congressional action, and changing program priorities.

Funding Priorities and/or Preferences

Funding preferences, priorities, and special considerations may come from legislation, regulations, or HRSA program leadership decisions. They are not the same as review criteria. Funding preferences are any objective factors that would be used to place a grant application ahead of others without the preference on a list of applicants recommended for funding by a review committee. Some programs give preference to organizations which have specific capabilities such as telemedicine networking, or have established relationships with managed care organizations. Funding priorities are factors that cause a grant application to receive a fixed amount of extra rating points—which may similarly affect the order of applicants on a funding list. Special considerations are other factors considered in making funding decisions that are neither review criteria, preferences, or priorities, e.g., ensuring that there is an equitable geographic distribution of grant recipients, or meeting requirements for urban and rural proportions.

Key Offices

The Grants Management Office serves as the focal point for questions concerning business matters. In the HRSA Preview, a "key" symbol indicates the appropriate grants management office for each program area and the main telephone number for the office.

Letter of Intent

To help in planning the application review process, many HRSA programs request a letter of intent from the applicant in advance of the application deadline. Letters of intent are neither binding nor mandatory. Details on where to send letters can be found in the guidance materials contained in the application kit.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching or other cost-sharing requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Project Period

The total time for which support of a discretionary project has been programmatically approved. The project period usually consists of a series of budget periods of one-year duration. Once approved through initial review, continuation of each successive budget period is subject to satisfactory performance, availability-of funds, and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

- That the estimated costs to the Government of the project are reasonable considering the level and complexity of activity and the anticipated results.
- That project personnel or prospective fellows are well qualified by training and/or experience for the support sought, and the applicant organization or the organization to provide training to a fellow have adequate facilities and manpower.
- That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.
- That the project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.
- That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.
- That, in so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which their applications will be judged by the reviewers.

Technical Assistance

A contact person is listed for each program and his/her e-mail address and telephone number provided. Some programs have scheduled workshops and conference calls as indicated by the "magnifying glass" in the HRSA Preview. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA web site at http://www.hrsa.dhhs.gov/ for the latest technical assistance information.

Frequently Asked Questions

1. Where do I submit grant applications?

The address for submitting your grant application will be shown in the guidance document included in the application kit.

2. How do I learn more about a particular grant program?

If you want to know more about a program before you request an application kit, an e-mail/telephone contact is listed. This contact person can provide information concerning the specific program's purpose, scope and

goals, and eligibility criteria. Usually, you will be encouraged to request the application kit so that you will have clear, comprehensive, and accurate information available to you. When requesting application materials, you must state the CFDA Number and title of the program. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide information about your program of interest if you are unable to find the information within the written materials provided.

In general, the program contact person provides information about the specific grant offering and its purpose, and the grants management specialist provides information about the grant mechanism and business matters, though there is often overlap of their responsibilities.

Information specialists at the toll-free number provide only basic information and administer mailings.

3. The dates listed in the HRSA Preview and the dates in the application kit do not agree. How do I know which is correct?

HRSA Preview dates for application kit availability and application receipt deadlines are based upon the best known information at the time of publication, often nine months in advance of the competitive cycle. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is generally correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit, and also posted on the HRSA home page.

4. Are programs announced in the HRSA Preview ever canceled?

Infrequently, announced programs may be withdrawn from competition. If this occurs, a cancellation notice will be provided through the HRSA Preview at the HRSA Homepage at http://www.hrsa.dhhs.gov/. If practicable, an attempt will be made to notify by mail those who have requested a kit for the canceled program.

If you have unanswered questions, please contact John Gallicchio of the Grants Policy Branch at 301–443–6507 (jgallicchio@hrsa.gov).

Bureau of Health Professions

Kids Into Health Careers Initiative

The Bureau of Health Professions announces a new initiative to increase diversity and cultural competency of the health professions workforce. The Kids Into Health Careers initiative is designed to expand the pool of qualified and interested applicants from minority and disadvantaged populations. The Bureau will give Special Consideration to qualified applicants to appropriate grant programs who participate in the Kids Into Health Careers initiative by working with primary and secondary schools that have a high percentage of minority and disadvantaged students. To receive this Special Consideration, applicants must establish linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

The programs with this Special Consideration include: Model State-supported Area Health Education Centers, Preventive Medicine Residency Programs, Centers of Excellence, Podiatric Residency Training in Primary Care, Allied Health Projects, Residencies in the Practice of Pediatric Dentistry * * * Public Health Training Grant Program, Health Careers Opportunity Program, Faculty Development Training in Primary Care, Residency Training in Primary Care, Predoctoral Training in Primary Care, Physician Assistant Training in Primary Care, Basic/Core Area Health Education Centers, Geriatric Education Centers, Advanced Education Nursing Grants, Basic Nurse Education and Practice Grants, Academic Administrative Units in Primary Care, and Partnerships for Developing Public Health Nursing Leadership.

All recipients of Bureau of Health Professions grants will receive a packet of information and guidance materials that can be used in working with local school systems.

Model State-Supported Area Health Education Centers 93.107

Legislative Authority: Public Health Service Act, Title VII, section 751, 42 U.S.C. 294a.

Purpose: The program assists schools to improve the distribution, supply, and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the development and operation of AHECs to implement educational system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational and clinical resources, the AHEC program establishes a network of health-related institutions to provide educational services to students, faculty and practitioners and ultimately to improve the delivery of health care in the service area. These programs are collaborative partnerships which address current health workforce needs within a region of a State or in an entire State.

Eligibility: The types of entities eligible to apply for this program include public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools, or the parent institutions of such schools. Applicants must also have previously received funds, but are no longer receiving funds under Section 751(a)(1) of the Public Health Service Act, and are operating an AHEC program.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Funds shall be awarded to approved applicants in the following order: (1) competing continuations, (2) new starts in States with no AHEC program, (3) other new starts, and (4) competing supplementals.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after

school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Matching Requirements: Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) recurring non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the Model State-Supported AHEC Program.

Estimated Amount of This Competition: $5,500,000.

Estimated Number of Awards to be Made: 13.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.107.

Application Availability Date: 10/02/00.

Letter of Intent Deadline: None.

Application Deadline: 12/18/00.

Projected Award Date: 05/01/01.

Program Contact Person: Louis D. Coccodrilli, MPH.

Phone Number: 301/443–6950.

e-mail address: *lcoccodrilli@hrsa.gov*

Basic/Core Area Health Education Centers 93.824

Legislative Authority: Public Health Service Act, Title VII, section 751, 42 U.S.C. 294a

Purpose: Cooperative Agreements are awarded to assist schools to improve the distribution, supply and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the planning, development and operation of AHECs to initiate education system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health sciences center with local planning, educational and clinical resources, the AHEC program establishes a network of community-based training sites to provide educational services to students, faculty and practitioners in underserved areas and ultimately, to improve the delivery of health care in the service area. The program embraces the goal of increasing the number of health professions graduates who ultimately will practice in underserved areas.

Eligibility: The types of entities eligible to apply for this program include public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools, or the parent institutions of such schools. Also, in States in which no AHEC program is in operation, an accredited school of nursing is an eligible applicant.

Funding Priorities or Preferences: As provided in section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Funds shall be awarded to approved applications in the following order: (1) competing continuations; (2) new starts in States with no AHEC program; (3) other new starts; and (4) competing supplementals.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Matching Requirements: Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the AHEC Program except that the Secretary may grant a waiver for up to 75 percent of the amount required in the first three years in which an awardee receives funds under Section 751(a)(1) of the Public Health Service Act.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards to be Made: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.824.

Application Availability Date: October 2, 2000.

Letter of Intent Deadline: None.

Application Deadline: December 18, 2000.

Projected Award Date: May 1, 2001.

Program Contact Person: Louis D. Coccodrilli, MPH.

Phone Number: 301 443–6950

E-Mail: lcoccodrilli@hrsa.gov

Preventive Medicine Residency Programs 93.117

Legislative Authority: Public Health Service Act, Title VII, section 768, 42 U.S.C. 295c

Purpose: The Secretary may make grants to and enter into contracts with accredited schools of medicine, osteopathic medicine, and public health to meet the cost to: (1) plan and develop new residency training programs and to maintain or improve existing residency programs in preventive medicine, and (2) to provide financial assistance to residency trainees enrolled in such program.

Eligibility: Eligible applicants are schools of medicine, osteopathic medicine and public health. An applicant must demonstrate to the Secretary that it has or will have available full-time faculty members with training and experience in the fields of preventive medicine and support from other faculty members trained in public health and other relevant specialties and disciplines.

Funding Priorities or Preferences: Under section 765 of the Public Health Service Act, a preference will be applied for applicants: (1) serving individuals who are from disadvantaged backgrounds (including underrepresented racial and ethnic minorities) and (2) graduating large proportions of individuals who serve in underserved communities. For established programs (who have graduated three or more classes), supporting information will be requested to determine qualification for the Preference.

For new programs (those having graduated three or fewer classes), applicant proposals will be evaluated by the criteria in the Public Health Service Act used to define a "new program" and must meet at least four of the following criteria to qualify for the funding preference:

(A) The mission statement of the program identifies a specific purpose of

the program as being the preparation of health professionals to serve underserved populations.

(B) The curriculum of the program includes content which will help to prepare practitioners to serve underserved populations.

(C) Substantial clinical training experience is required under the program in medically underserved communities.

(D) A minimum of 20 percent of the clinical faculty of the program spend at least 50 percent of their time providing or supervising care in medically underserved communities.

(E) The entire program or a substantial portion of the program is physically located in a medically underserved community.

(F) Student assistance that is linked to service in medically underserved communities following graduation is available to the students in the program.

(G) The program provides a placement mechanism for deploying graduates to medically underserved communities.

A priority will be applied for any applicant who: (1) requests funding for a "new program", as defined under Section 791[295j] of the Public Health Service Act as a program that has graduated less than three classes; or (2) meets the matching option of providing non-Federal matching funds obtained from public or private entities as set forth under Section 798 [295o] of the Public Health Service Act.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: 1.8 million dollars.

Estimated Number of Awards to be Made: Approximately 10–15 awards.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.117.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: September 18, 2000.

Projected Award Date: April 15, 2001.

Program Contact Person: Lee Norman Muecke, MD, MPH.

Phone Number: 301–443–0582.

E-mail: LMUECKE@HRSA.GOV

Centers of Excellence 93.157

Legislative Authority: Section 736 of The Public Health Service Act, 42 U.S.C. 293

Purpose: The goal of this program is to assist eligible schools in supporting programs of excellence in health professions education for under-represented minority individuals. The grantee is required to use the funds awarded: (1) To develop a large competitive applicant pool through linkages with institutions of higher education, local school districts, and other community-based entities and establish an education pipeline for health professions careers; (2) to establish, strengthen, or expand programs to enhance the academic performance of under-represented minority students attending the school; (3) to improve the capacity of such school to train, recruit, and retain under-represented minority faculty including the payment of stipends and fellowships; (4) to carry out activities to improve the information resources, clinical education, curricula and cultural competence of the graduates of the schools as it relates to minority health issues; (5) to facilitate faculty and student research on health issues particularly affecting under-represented minority groups, including research on issues relating to the delivery of health care; (6) to carry out a program to train students of the school in providing health services to a significant number of under-represented minority individuals through training provided to such students at community-based health facilities that provide such health services and are located at a site remote from the main site of the teaching facilities of the school; and (7) to provide stipends as appropriate.

Eligibility: Eligible applicants are accredited schools of allopathic medicine, osteopathic medicine, dentistry, pharmacy, graduate programs in behavioral or mental health, or other public and private nonprofit health or educational entities. Historically Black Colleges and Universities as described in section 736(c)(2)(A) and which received a contract under section 788B of the Public Health Service Act (Advanced Financial Distress Assistance) for fiscal year 1987 may apply for Centers of Excellence (COE) grants under section 736 of the Act.

Funding Preferences: NA.

Special Consideration: Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $7 million.

Estimated Number of Awards to be Made: 12.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.157.

Application Availability Date: 07/01/00.

Letter of Intent Deadline: NA.

Application Deadline: 12/01/00.

Project Award Date: 06/30/01.

Program Contact Person: Capt. Richard C. Valse, Jr.

Phone Number: 301–443–2100.

E-mail: Rvause@hrsa.gov

Podiatric Residency Training in Primary Care 93.181

Legislative Authority: Public Health Service Act, Title VII, Section 755, 42 U.S.C. 293k

Purpose: Grants are awarded to plan and implement projects in preventive and primary care training for podiatric physicians in approved or provisionally approved residency programs that shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

Eligibility: Schools of podiatric medicine or public or private nonprofit hospitals or other public or private nonprofit entities are eligible to apply.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically

underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $492,000.

Estimated Number of Awards to be Made: 4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.181.

Application Availability Date: July 1, 2000.

Application Deadline: October 27, 2000.

Projected Award Date: June 29, 2001.

Program Contact Person: Eleanor Crocker.

Phone Number: 301–443–1467.

E-mail: ecrocker@hrsa.gov

Allied Health Projects 93.191

Legislative Authority: Public Health Service Act, Title VII, section 755, 42 U.S.C. 294e.

Purpose: Grants are awarded to assist eligible entities in meeting the costs associated with expanding or establishing programs that will: (1) expand enrollments in allied health disciplines that are in short supply or whose services are most needed by the elderly; (2) provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences; (3) establish community-based training programs that link academic centers to rural clinical settings; (4) provide career advancement training for practicing allied health professionals; (5) expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained; (6) develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics; (7) expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly; (8) expand or establish demonstration centers to emphasize innovative models to link allied health, clinical practice, education, and research; and (9) meet the costs of projects to plan, develop, and operate or maintain graduate programs in behavioral and mental health practice.

Eligibility: Eligible entities are health professions schools, academic health centers, State or local governments or other public or private nonprofit entities. Eligible academic institutions shall also be required to use funds in collaboration with two or more disciplines.

Funding Priorities or Preferences: As provided in section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations so that new applicants may also compete equitably. A funding priority will be given to qualified applicants who provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900, 13021, and 13125. These will include such applicants as Asian-American and Pacific Islander Serving Institutions, Hispanic Serving Institutions, Historically Black Colleges and Universities, Tribal Colleges and Universities serving American Indians and Alaska Natives.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $1,200,000.

Estimated Number of Awards to be Made: 10–12.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 Years.

CFDA Number: 93.191.

Application Availability Date: 07/31/00.

Letter of Intent Deadline: N/A.

Application Deadline: 01/16/01.

Projected Award Date: 09/30/01.

Program Contact Person(s): Captain Norman L. Clark; Lt. Commander Young Song.

Phone Number: (301) 443–1346 or (301) 443–3353

E-mail address: nclark@hrsa.gov or *ysong@hrsa.gov.*

Partnerships for Developing Public Health Nursing Leadership 93.247A

Legislative Authority: Public Health Service Act, Title VII and Title VIII, 42 U.S.C.; Sections 765 and 811.

Purpose: The purpose of this program is to improve State and local public health infrastructure by enhancing the production and distribution of a highly qualified, diverse public health nurse workforce. A school of nursing and a school of public health are expected to collaborate in developing a program for public health nurse leaders. These cooperative agreements are expected to enhance master's educational programs (such as MSN and MPH) that prepare nurses for leadership in public health nursing with an emphasis on interdisciplinary practice in State and local public health agencies.

Eligibility: Eligible applicants are public and nonprofit private accredited collegiate schools of nursing and

accredited schools of public health. The applicant is required to document a partnership or plan for a partnership for cooperation between a school(s)/college(s) of nursing and a school of public health to meet project objectives. If the applicant is a school of nursing the partnership is to be with a school of public health; and if the applicant is a school of public health the partnership is to be with one or more schools of nursing.

The school of nursing, school of public health, and joint program of study are to include core public health sciences and strategies for interdisciplinary academic and practice learning experiences. The project plan is to address strategies for strengthening the nursing component in appropriate departments in the school of public health and strengthen interdisciplinary and population focused content offered by the school of nursing or jointly with the school of public health. The graduate is expected to be awarded a master's degree (in nursing and/or public health such as MPH, MHS, MSN or dual degree options) upon successful completion of the program of study.

Priorities or Preferences: Section 805 of the Public Health Service Act states that the Secretary shall give preference to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

The Secretary will grant a preference (as per Section 765 of the Public Health Service Act) to entities: (1) serving individuals who are from disadvantaged backgrounds (including underrepresented racial and ethnic minorities); and (2) graduating large proportions of individuals who serve in underserved communities.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $800,000 for FY 2001 depending on available funds.

Estimated Number of Awards to be Made: 4.

Estimated or Average Size of Each Award: $200,000 per year per grantee.

Estimated Project Period: Five (5) years, depending on approval of progress reports, availability of funds, and program priorities.

CFDA Number: 93.247A.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: Not required.

Application Deadline: November 17, 2000.

Projected Award Date: July 1, 2001.

Program Contact Persons: Irene Sandvold (301–443–6333) and Jennifer Burks (301–443–6853).

Application Availability: July 1, 2000.

Application Deadline: November 17, 2000.

Projected Award Date: July 1, 2001.

E-mail Address: jburks@hrsa.gov

Phone Numbers: 301–443–6333 and 301–443–6853.

Residencies in the Practice of Pediatric Dentistry 93.248 and Residencies and Advanced Education in the Practice of General Dentistry 93.897

Legislative Authority: Public Health Service Act, Title VII, section 747(a)(6), 42 U.S.C. 293k.

Purpose: These programs shall provide grants to assist schools in planning, developing, or operating programs, and to increase the number of training opportunities and to provide financial assistance to residents in post doctoral general and pediatric dentistry. These programs place particular emphasis on support of applications which encourage: (1) Practice in underserved areas; (2) provision of a broad range of pediatric and/or general practice dental services; (3) coordination and integration of care; (4) meeting the needs of special populations; and (5) recruitment and retention of under-represented minorities. Applicants are encouraged to detail manners in which the graduates of general dentistry residency will be well trained in meeting the treatment needs of the pediatric patient populations. For the upcoming grant cycle, all applications will be reviewed together as a single group during the peer review process.

Eligibility: To be eligible for a grant for residency training in the practice of pediatric or general dentistry, the applicant shall include entities that have programs in dental schools, approved residency programs in the pediatric or general practice of dentistry, approved advanced education programs in the pediatric or general practice of dentistry.

Funding Priorities and/or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings and has the principal focus of serving residents of medically/dentally underserved communities; or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Priority shall be given to qualified applicants that have a record of training the greatest percentage of providers, or that have demonstrated significant improvements in the percentage of providers which enter and remain in general or pediatric dentistry.

Priority shall be given to qualified applicants that have a record of training individuals who are from disadvantaged backgrounds (including racial and ethnic minorities under-represented in general or pediatric dentistry.)

An Administrative Priority shall be given to new programs that have enrollees and no graduates at the time of application, and newly initiated programs that have neither enrollees nor graduates at the time of application.

Special Consideration: Special Consideration will be given to projects that prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $1,500,000.
Estimated Number of Awards to be Made: 12.
Estimated or Average Size of Each Award: See the application guidance materials.
Estimated Project Period: 3 Years.
CFDA Numbers:
General Dentistry: 93.897.
Pediatric Dentistry: 93.248.
Application Availability Date: July 1, 2000.
Letter of Intent Deadline: N/A.
Application Deadline: September 8, 2000.
Projected Award Date: April 30, 2001.
Program Contact Person: Susan Goodman, DDS; Stan Bastacky, DMD, MHSA.
Phone Number: 301 443–6326.
E-mail: sgoodman@hrsa.gov and *sbaskacky@hrsa.gov*.

Public Health Training Centers Grant Program 93.249.

Legislative Authority: Public Health Service Act, Title VII, Section 766, 42 U.S.C. 295a.

Purpose: The goal of the Public Health Training Centers Grant Program is to improve the Nation's public health system by strengthening the technical, scientific, managerial and leadership competencies and capabilities of the current and future public health workforce. Emphasis is placed on developing the existing public health workforce as a foundation for improving the infrastructure of the public health system and helping achieve the Healthy People 2010 Objectives. With respect to a public health training center, applicants must agree to: (1) Specifically designate a geographic area, including medically underserved populations, *e.g.*, elderly, immigrants/refugees, disadvantaged, to be served by the Center that shall be in a location removed from the main location of the teaching facility of the school participating in the program with such Center; (2) assess the public health personnel needs of the area to be served by the Center and assist in the planning and development of training programs to meet such needs; (3) establish or strengthen field placements for students in public or nonprofit private public health agencies or organizations; and (4) involve faculty members and students in collaborative projects to enhance public health services to medically underserved communities.

Eligibility: Eligible applicants include accredited schools of public health or other public or nonprofit private institutions accredited for the provision of graduate or specialized training in public health.

Funding Priorities And/or Preferences: In awarding grants or contracts under this authority, the Secretary shall give preference to accredited schools of public health.

Special Consideration: A Special Consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $5,000,000.
Estimated Number of Awards: 10–12.
Estimated or Average Size of Each Award: See the application guidance materials.
Estimated Project Period: 5 Years.
Application Deadline: 12/11/00.
CFDA Number: 93.249.
E-mail: jkress@hrsa.gov and *rmerrill@hrsa.gov*

Health Careers Opportunity Program 93.822.

Legislative Authority: Section 739 of the Public Health Service Act, 42 U.S.C. 293c

Purpose: The goal of the Health Careers Opportunity Program (HCOP) is to assist individuals from disadvantaged backgrounds to undertake education to enter a health profession. The HCOP program works to build diversity in the health fields by providing students from disadvantaged backgrounds an opportunity to develop the skills needed to successfully compete, enter, and graduate from health professions schools. The legislative purposes for which HCOP funds may be awarded are: (1) identifying, recruiting, and selecting individuals from disadvantaged backgrounds for education and training in a health profession; (2) facilitating the entry of such individuals into such a school; (3) providing counseling, mentoring, or other services designed to assist such individuals to complete successfully their education at such a school; (4) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education and health research training designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; (5) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program; (6) paying scholarships, as the Secretary may determine, for such individuals for any period of health professions education at a health professions school; (7) paying such stipends for such individuals for any period of education in student-enhancement programs (other than regular courses), except that such a stipend may not be provided to an individual for more than 12 months; (8) carrying out programs under which such individuals gain experience regarding a career in a field of primary health care through working at facilities of public or private nonprofit community-based providers of primary health services; and (9) conducting activities to develop a larger and more competitive applicant pool through partnerships with institutions of higher education, school districts, and other community-based entities.

Eligibility: Eligible applicants include schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatric medicine, public or nonprofit private schools that offer graduate programs in behavioral and mental health, programs for the training of physician assistants, and other public or private nonprofit health or educational entities.

Funding Preferences or Priorities: A funding preference will be given to approved applications for programs that involve a comprehensive approach by several public or nonprofit private health or educational entities to establish, enhance and expand educational programs that will result in the development of a competitive applicant pool of individuals from disadvantaged backgrounds who desire to pursue health professions careers. A comprehensive approach means a network of entities which are formally linked programmatically. The network must include a minimum of four entities: a health professions school, an undergraduate institution, a school district, and a community-based entity.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary,

middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Up to one third of available competitive funds will be reserved for applicants with approved proposals who have not received funding under this authority during the previous three years.

Estimated Amount of this Competition: $9,000,000.00.

Estimated Number of Awards to be Made: 23.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years and up to five years for approved applications that rank in the upper twentieth percentile.

CDFA Number: 93.822.

Application Availability Date: 07/01/00.

Letter of Intent/Pre-application Deadline: N/A.

Application Deadline: 01/10/01.

Projected Award Date: 08/01/01.

Contact Person: Capt. Richard C. Valse Jr.

Phone Number: 301–443–2100.

E-mail address: Rvause@hrsa.gov

Faculty Development Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) 93.895

Legislative Authority: Public Health Service Act, Title VII, Section 747,42 U.S.C. 293k.

Purpose: Grants are awarded to plan, develop and operate a program for the training of physicians who plan to teach in family medicine (including geriatrics), general internal medicine, general pediatrics, and to provide financial assistance (in the form of traineeships and fellowships) to physicians who are participating in any such program.

Eligibility: Accredited schools of medicine or osteopathic medicine, public or private nonprofit hospitals, or other public or private nonprofit entities are eligible to apply.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Special Consideration: Special consideration will be given to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Estimated Amount of This Competition:

Family Medicine: $4,435,366.

General Internal Medicine/General Pediatrics: $3,000,000.

Estimated Number of Awards to be Made:

Family Medicine: 31.

General Internal Medicine/General Pediatrics: 19.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period:

Family Medicine: 3 years.

General Internal Medicine/General Pediatrics: 3 years.

CFDA Number: 93.895.

Application Availability Date: July 1, 2000.

Application Deadline: October 6, 2000.

Projected Award Date: June 29, 2001.

Program Contact Person:

Family Medicine: Elsie Quinones.

General Internal Medicine/General Pediatrics: Elsie Quinones.

Phone Number: 301 443–1467.

E-mail:

Family Medicine: equinones@hrsa.gov

General Internal Medicine/General Pediatrics: equinones@hrsa.gov

Residency Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) 93.884.

Legislative Authority: Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose: Grants are awarded to assist graduate training programs in family medicine, general internal medicine and general pediatrics to expand and improve the quality of residency training programs that prepare graduates to enter primary care practice. Residency training programs should emphasize national innovations aimed at primary care residency education across disciplines.

Eligibility: Applicant must be an accredited public or private nonprofit school of allopathic medicine or osteopathic medicine or a public or private nonprofit hospital or other public or private nonprofit entity. Each allopathic program must be fully or provisionally accredited by the Accreditation Council for Graduate Medical Education. Each osteopathic program must be approved by the American Osteopathic Association.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A funding priority will be made available for applicants that can demonstrate training the greatest percentage of providers or demonstrating significant improvements in the percentage of providers which enter and remain in primary care practice. A second priority will be offered to applicants who can demonstrate a record of training individuals from disadvantaged backgrounds (including racial/ethnic minorities, under-represented in primary care practice).

Special Consideration: Special consideration will be given to projects that prepare practitioners to care for underserved populations and other high risk groups (i.e., elderly, HIV/ AIDS,

substance abusers, homeless and victims of domestic violence).

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition:

Family Medicine: $4,621,600

General Internal Medicine/General Pediatrics: $3,102,000.

Estimated Number of Awards to be Made:

Family Medicine: 28.

General Internal Medicine/General Pediatrics: 32.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period:

Family Medicine: 3 years.

General Internal Medicine/General Pediatrics: 3 years.

CFDA Number: 93.884.

Application Availability Date: July 1, 2000.

Application Deadline: October 2, 2000.

Projected Award Date: June 29, 2001.

Program Contact Persons:

Family Medicine: Ed Spirer

General Internal Medicine/General Pediatrics: Eleanor Crocker.

Phone Number: 301 443–1467.

E-Mail:

Family Medicine: espirer@hrsa.gov

General Internal Medicine/General Pediatrics: ecrocker@hrsa.gov

Predoctoral Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) 93.896

Legislative Authority: Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose: Grants are awarded to assist schools of medicine or osteopathic medicine to promote predoctoral training. The program assists schools in meeting the costs of projects to plan, develop and operate or participate in an approved predoctoral training program in the field of family medicine, general internal medicine, and general pediatrics. Proposed projects should seek to expand and enhance the quality of predoctoral initiatives: (1) Innovation, (2) Comprehensive Models, and (3) Establishment and Expansion of Required Clerkships.

Eligibility: Any accredited public or nonprofit private school of allopathic medicine or osteopathic medicine is eligible to apply.

Funding Priorities or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Special Consideration: Special consideration will be given to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition:

Family Medicine: $4,500,200.

General Internal Medicine/General Pediatrics: $750,000.

Estimated Number of Awards to be Made:

Family Medicine: 28.

General Internal Medicine/General Pediatrics: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period:

Family Medicine: 3 years.

General Internal Medicine/General Pediatrics: 3 years.

CFDA Number: 93.896.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: September 4, 2000.

Application Deadline: November 3, 2000.

Projected Award Date: June 29, 2001.

Program Contact Person: Brenda Williamson.

Phone Number: 301 443–1467.

E-mail: bwilliamson@hrsa.gov

Physician Assistant Training in Primary Care. 93.886

Legislative Authority: Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose: Grants are awarded for projects for the training of physician assistants, and for the training of individuals who will teach in programs to provide such training. The program assists schools to meet the costs of projects to plan, develop and operate or maintain such programs.

Eligibility: Accredited schools of medicine, osteopathic medicine or other public or private nonprofit entities are eligible to apply. Eligible physician assistant programs are those which are either accredited by the American Medical Association's Committee on Allied Health Education and Accreditation (AMA–CAHEA) or its successor organization, the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

Funding Priorities and/or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A priority will be offered to applicants that can demonstrate a record of training individuals from disadvantaged backgrounds (including racial/ethnic minorities under-represented in primary care practice).

Special Consideration: Special Consideration will be given in awarding grants to projects which prepare

practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $2,353,000.

Estimated Number of Awards to be Made: 15.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.886.

Application Availability Date: July 1, 2000.

Application Deadline: January 12, 2001.

Projected Award Date: June 29, 2001.

Program Contact Person: Ellie Grant.

Phone Number: 301 443–1467.

E-mail: egrant@hrsa.gov

Academic Administrative Units in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) 93.984

Legislative Authority: Public Health Service Act, Title VII, section 747, 42 U.S.C. 293k

Purpose: Title VII authorizes funds to establish or expand teaching capacity in family medicine, general internal medicine and general pediatrics. Grant support is awarded to meet the costs of projects to establish, maintain or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine, general internal medicine, or general pediatrics. An academic unit in family medicine means a department or division of a school. Applications are being solicited for projects to address one or more of the following program purposes: (1) establishment of an academic unit, (2) expansion of an academic unit, and (3) research infrastructure development within the academic unit.

Eligibility: Public or private nonprofit accredited schools of allopathic medicine or osteopathic medicine are eligible to apply.

Funding Priorities and/or Preferences: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A second preference is offered to qualified applicants for the establishment or the substantive expansion of an academic unit.

A priority will be available to those applicants that present collaborative projects between departments of primary care. The collaboration should involve the academic units of any two disciplines of family medicine, general internal medicine, and general pediatrics. There is a second priority (administrative) for establishment or expansion of research infrastructure proposals.

Special Consideration: Special consideration will be given to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of this Competition:

Family Medicine: $4,587,292.

General Internal Medicine/General Pediatrics: $1,300,000.

Estimated Number of Awards to be made:

Family Medicine: 29.

General Internal Medicine/General Pediatrics: 9.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period:

Family Medicine: 3 years.

General Internal Medicine/General Pediatrics: 3 years.

CFDA Number: 93.984.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: October 15, 2000.

Application Deadline: December 8, 2000.

Projected Award Date: June 29, 2001.

Program Contact Person: Lafayette Gilchrist.

Phone Number: 301 443–1467.

E-mail lgilchrist@hrsa.gov.

Faculty Loan Repayment Program 93.923

Legislative Authority: Public Health Service Act, Title VII, section 738(a), 42 U.S.C. 293b.

Purpose: The Faculty Loan Repayment Program (FLRP) encourages expansion of disadvantaged representation in health professions faculty positions. The program provides loan repayment, in amounts not to exceed $20,000 for each year of service, for individuals from disadvantaged backgrounds who agree to serve as members of the faculties of eligible health professions and nursing schools. Each recipient of loan repayment must agree to serve as a faculty member for at least two years.

Eligibility: Schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, nursing and graduate programs in behavioral and mental health are eligible to apply.

An individual is eligible to compete for participation in the FLRP if the individual is from a disadvantaged background and: (1) has a degree in medicine, osteopathic medicine, dentistry, nursing, or another health profession; (2) is enrolled in an approved graduate training program in one of the health professions listed above; or (3) is enrolled as a full-time student in an accredited (as determined by the Secretary) school listed above and is in the final year of training leading to a degree from an eligible school.

Funding Priorities or Preferences: Special consideration will be given to first-time applicants, applicants with a commitment from the employing institution to match the FLRP award, and to applicants who contribute to an even distribution of program participants with respect to geography and health care discipline.

Estimated Amount of This Competition: $800,000.

Estimated Number of Awards to be Made: 25.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: Not less than two years.

CFDA Number: 93.923.

Application Availability Date: 01/03/2001.

Letter of Intent Deadline (if applicable): N/A.

Application Deadline: 05/31/2001.

Projected Award Date: 9/01/2001.

Program Contact Persons: Jeff Potts, Barry Dubrow, Lorraine Evans.

Phone Numbers: 301–443–4240; 301–443–4021; 301–443–0785.

E-mail address: flrpinfo@hrsa.gov

Internet address: http://www.hrsa.gov/bhpr/dsa/flrp

Scholarships for Disadvantaged Students 93.925.

Legislative Authority: Public Health Service Act, Title VII, Section 737, 42 U.S.C. 293a.

Purpose: The Scholarships for Disadvantaged Students (SDS) program contributes to the diversity of the health professions student and practitioner populations. The program provides funding to eligible health professions and nursing schools to be used for scholarships to students from disadvantaged backgrounds who have financial need for scholarships and are enrolled, or accepted for enrollment, as full-time students at the eligible schools.

Eligibility: (1) Schools of allopathic medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, veterinary medicine, public health, nursing, chiropractic, or allied health, graduate programs in behavioral and mental health practice, or an entity providing programs for the training of physician assistants are eligible to apply and (2) Schools with a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups.

Funding Priorities or Preferences: An applicant must provide assurances that preference in providing scholarships will be given to students for whom the costs of attending the schools would constitute a severe financial hardship and to former recipients of Exceptional Financial Need and Financial Assistance for Disadvantaged Health Professions Students Scholarships.

A priority will be given to eligible entities that are health professions and nursing schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities.

Estimated Amount of This Competition: $38,000,000.

Estimated Number of Awards to be Made: 500.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 Year.

CFDA Number: 93.925.

Application Availability Date: 11/01/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 12/15/2000.

Projected Award Date: 03/31/2001.

Program Contact Person: Angie Lacy or Andrea Castle.

Phone Numbers: 301–443–5353; 301–443–1701.

E-mail address: dpolicy@hrsa.gov.

Geriatric Education Centers 93.969

Legislative Authority: Public Health Service Act, Title VII, section 753(a), 42 U.S.C. 294c.

Purpose: Grants are given to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, prevention of disease, disability, and other health problems of the aged. Projects supported under these grants must offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine. These projects must address one or more of the following statutory purposes: (a) improve the training of health professionals in geriatrics, including geriatric residencies, traineeships or fellowships; (b) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals; (c) support the training and retraining of faculty to provide instruction in geriatrics; (d) support continuing education of health professionals who provide geriatric care; and (e) provide students with clinical training in geriatrics in nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers.

Eligibility: Grants may be made to accredited health professions schools as defined by section 799B(1) of the PHS Act, which include schools of medicine, schools of dentistry, schools of osteopathic medicine, schools of pharmacy, schools of optometry, schools of podiatric medicine, schools of veterinary medicine, schools of public health, and schools of chiropractic; programs for the training of physician assistants as defined by section 799(B)(3), or schools of allied health as defined by section 799B(4), or schools of nursing as defined by section 801(2).

Applicants must be located in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

As provided in section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations.

A funding priority will be given to qualified applicants who provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900, and 13021. These will include such applicants as Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities serving Native Americans.

Special Consideration: A Special Consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and

disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $2,500,000.

Estimated Number of Awards to be Made: 14–18.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 years.

CFDA Number: 93.969.

Application Availability Date: 07/01/00.

Letter of Intent Deadline: N/A.

Application Deadline: 01/04/01.

Projected Award Date: 06/01/01.

Program Contact Person: Diane Hanner.

Phone Number: 1–301–443–6887.

e-mail address: dhanner@hrsa.gov.

Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Baccalaureate Nursing Students 93.359A

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose: The purpose of this request for applications is to provide seed money (up to $25,000 per grant) to assist eligible entities to strengthen the geriatric nursing didactic content and clinical components of the baccalaureate nursing program. Funds will be used to assist the applicant to plan, implement, and evaluate a geriatric nursing experience that will expose senior nursing students to: (1) increased course content in geriatric nursing and concepts of age sensitive care; (2) application of this content to geriatric patients with chronic illness residing in long term care facilities; and (3) use of assessment skills in the setting selected in order to accurately complete appropriate assessments using standardized tools such as the Minimum Data Set (MDS) required by Medicare regulations. This project should be implemented through a planned partnership with a geriatric long-term care facility.

Eligibility: Schools of nursing.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards to be Made: 10.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 Year.

CFDA Number: 93.359A.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: NA.

Application Deadline: September 8, 2000.

Projected Award Date: March 30, 2001.

Program Contact Person: Madeline Turkeltaub, PhD, CRNP, RN.

Phone Number: (301) 443–6193.

E-mail: mturkeltaub@hrsa.gov.

Advanced Education Nursing Grants 93.247

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions for projects that support the enhancement of advanced nursing education and practice. For the purpose of this section, advanced education nurses means individuals trained in advanced degree programs including individuals in combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse midwives, in certificate programs in existence on November 12, 1998, to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other appropriate public or private nonprofit entities.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $13,500,000.

Estimated Number of Awards to be Made: 61.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 Years.

CFDA Number: 93.247.

Application Availability: 07/01/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 01/29/2001.

Projected Award Date: 06/30/2001.

Program Contact Person: Joan Weiss, PhD, CRNP, RN.

Phone Number: 301–443–5486.

E-mail: jweiss@hrsa.gov

Advanced Education Nursing Traineeship Grants 93.358

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions to meet the cost of traineeships for individuals in advanced nursing education programs. Traineeships are awarded to individuals by participating educational institutions offering Master's and doctoral degree programs, combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse midwives, certificate programs in existence on November 12, 1998 to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses. The traineeship program is a formula program and all eligible schools will receive awards.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other appropriate public or private nonprofit entities.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Special Consideration: Traineeships for individuals in advanced education programs are provided under Section

811(a)(2) of the Public Health Service (PHS) Act. A statutory special consideration, as provided for in Section 811(f)(3) of the PHS Act, will be given to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under Section 332 of the PHS Act.

Estimated Amount of This Competition: $15,813,000.

Estimated Number of Awards to be Made: 300.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 Year.

CFDA Number: 93.358.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: NA.

Application Deadline: November 1, 2000.

Projected Award Date: April 30, 2001.

Program Contact Person: Marjorie Hamilton.

Phone Number: 301–443–6193.

e-mail address: mhamilton@hrsa.gov

Basic Nurse Education and Practice Grants 93.359

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose: Grants are awarded to enhance the educational mix and utilization of the basic nursing workforce by strengthening programs that provide basic nurse education, such as through: (1) Establishing or expanding nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities; (2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV–AIDS, substance abusers, the homeless, and victims of domestic violence; (3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems; (4) developing cultural competencies among nurses; (5) expanding the enrollment in baccalaureate nursing programs; (6) promoting career mobility for nursing personnel in a variety of training settings and cross-training or specialty training among diverse population groups; or (7) providing education for informatics, including distance learning methodologies.

Eligibility: Eligible applicants for purposes one and five are schools of nursing. Eligible applicants for purposes two, three, four, six, and seven are schools of nursing, nursing centers, academic health centers, State or local governments, and other appropriate public or private nonprofit entities.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Special Consideration: A Special Consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. Further information on the Kids Into Health Careers Initiative can be obtained on the Bureau of Health Professions website at http://www.hrsa.gov/bhpr/.

Estimated Amount of This Competition: $4,300,000.

Estimated Number of Awards to be Made: 20.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 Years.

CFDA Number: 93.359.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: February 22, 2001.

Projected Award Date: 06/30/2001.

Program Contact Person: Madeline Turkeltaub, PhD, CRNP, NP.

Phone Number: 1–301–443–6193.

e-mail address: mturkeltaub@hrsa.gov.

Advanced Education Nursing—Nurse Anesthetist Traineeship 93.124

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions for projects that support traineeships for licensed registered nurses enrolled as full-time students beyond the twelfth month of study in a Master's nurse anesthesia program. The traineeship program is a formula program and all eligible entities will receive awards.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other public and private nonprofit institutions which provide registered nurses with full-time nurse anesthetist education and have evidence of earned pre-accreditation or accreditation status from the American Association of Nurse Anesthetists (AANA) Council on Accreditation of Nurse Anesthesia Educational Programs.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Considerations: Traineeships for individuals in advanced education programs are provided under Section 811(a)(2) of the Public Health Service (PHS) Act. A statutory special consideration, as provided for in Section 811(f)(3) of the PHS Act, will be given to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under Section 332 of the PHS Act.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards to be Made: 70.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 Year.

CFDA Number: 93.124.

Application Availability Date: July 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: November 1, 2000.

Projected Award Date: April 30, 2001.

*Program Contact Person:*Marcia Starbecker, MSN, RN.

Phone Number: 301 443–6193.

e-mail address: mstarbecker@hrsa.gov

Bureau of Primary Health Care

Community and Migrant Health Centers 93.224, 93.246

Legislative Authority: Public Health Service Act, Title III, Section 330, 42 U.S.C. 254b and 254b(g).

Purpose: The Community Health Center and Migrant Health Center (C/MHC) programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations. It is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their provision of services to medically underserved

populations. HRSA is committed to 100 percent access to primary care services with zero percent health disparities for the underserved. HRSA will open competition for awards under Section 330 of the Public Health Service Act (U.S.C. 254b for CHCs and U.S.C. 254b(g) for MHCs) to support health services in the areas served by these grants. Two hundred fifty-five C/MHC grantees will reach the end of their project period during FY 2001. Applications are due 120 days before the expiration date.

Matching or Cost Sharing Requirement: See the application guidance.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2001 and new organizations proposing to serve the same areas or populations currently being served by these existing programs.

Funding Priorities or Preferences: None.

Special Considerations: Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a C/MHC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Estimated Amount of This Competition: $254,000,000.

Estimated Number of Awards to be Made: 255.

Estimated or Average Size of Each Award: $1,000,000.

Estimated Project Period: 1–5 Years.

CFDA Number: 93.224 & 93.246.

Application Availability Date: Continuous.

Letter of Intent Deadline: N/A.

Application Deadline: Varies.

Projected Award Date: Varies.

Program Contact Person: 93.224 Cephas Goldman; 93.246 George Ersek.

Phone Number: Goldman—301–594–4300; Ersek—301–594–4301.

E-mail: gersek@hrsa.gov

City	State	Expiration date
HRSA Boston Field Office—(617) 565–1482		
Providence	RI	11/30/2000
Hope Valley	RI	11/30/2000
Boston	MA	12/31/2000
Willimantic	CT	12/31/2000
Pawtucket	RI	12/31/2000
Lubec	ME	12/31/2000
Woonsocket	RI	1/31/2001
Roxbury	MA (2)	1/31/2001
Truro	MA	1/31/2001
Lynn	MA	1/31/2001
Holyoke	MA	1/31/2001
Dorchester	MA	3/31/2001
Augusta	ME	3/31/2001
Bucksport	ME	3/31/2001
Lowell	MA	3/31/2001
Boston	MA	3/31/2001
St. Johnsbury	VT	3/31/2001
Eagle Lake	ME	3/31/2001
Worcester	MA	3/31/2001
Salem	MA	3/31/2001
Parsonfield	ME	5/31/2001
Newmarket	NH	5/31/2001
Waterville	ME	5/31/2001
HRSA New York Field Office—(212) 264–2664		
Ponce	PR	11/30/2000
Cortland	NY	11/30/2000
Newark	NJ	11/30/2000
Brooklyn	NY	11/30/2000
New York	NY	11/30/2000
Paterson	NJ	12/31/2000
Ossining	NY	12/31/2000
Rochester	NY (2)	12/31/2000
Florida	PR	12/31/2000
Pulaski	NY	12/31/2000
Buffalo	NY	12/31/2000
Bridgeton	NJ	12/31/2000
Jersey City	NJ	11/30/2000
Peekskill	NY	1/31/2001
Cidra	PR	1/31/2001
Hammonton	NJ	1/31/2001
Ciales	PR	1/31/2001
Brooklyn	NY	1/31/2001
Castaner	PR	3/31/2001
Patillas	PR	3/31/2001
Lares	PR	3/31/2001
Trenton	NJ	3/31/2001
Rincon	PR	3/31/2001
Albany	NY	3/31/2001
New York	NY	3/31/2001
Syracuse	NY	3/31/2001
Barceloneta	PR	5/31/2001
Newburgh	NY	5/31/2001
Bronx	NY	5/31/2001
Plainfield	NJ	5/31/2001
Jersey City	NJ	6/30/2001
HRSA Philadelphia Field Office—(215) 861–4422		
Baltimore	MD	11/30/2000
Newport News	VA	11/30/2000
Axton	VA	1/31/2001
Fredericktown	PA	1/31/2001
Hyndman	PA	1/31/2001
Stony Creek	VA	1/31/2001
Union	WV	1/31/2001
Wilkes-Barre	PA	1/31/2001
Sharon	PA	1/31/2001
Philadelphia	PA	1/31/2001
Broad Top City	PA	1/31/2001
Bastian	VA	1/31/2001
Martinsburg	WV	3/31/2001
Emporia	VA	3/31/2001
Lancaster	PA	3/31/2001
Baltimore	MD	3/31/2001
Beckley	WV	3/31/2001
Greensboro	PA	3/31/2001
York	PA	3/31/2001
Grantsville	WV	5/31/2001
Baker	WV	5/31/2001
Huntington	WV	5/31/2001
Roanoke	VA	6/30/2001
Baltimore	MD	6/30/2001
HRSA Atlanta Field Office—(404) 562–2996		
Chattanooga	TN	11/30/2000
Manson	NC	11/30/2000
Evergreen	AL	11/30/2000
Jackson	MS	11/30/2000
Louisville	KY	11/30/2000
Mound Bayou	MS	11/30/2000
Irvington	AL	11/30/2000
Morgantown	GA	11/30/2000
Raleigh	NC	11/30/2000
Fairfax	SC	11/30/2000
West Palm Beach	FL	12/31/2000
Faison	NC	12/31/2000
Wartburg	TN	12/31/2000
Biloxi	MS	12/31/2000
Sanford	FL	12/31/2000
Greenville	SC	1/31/2001
Lexington	KY	1/31/2001
Miami	FL(3)	1/31/2001
Pearl	MS	1/31/2001
Eastover	SC	1/31/2001
Richland	GA	1/31/2001
Columbia	SC	1/31/2001
Wade	NC	1/31/2001
Apopka	FL	1/31/2001
Benton	TN	1/31/2001
Meridian	MS	3/31/2001
Windsor	NC	3/31/2001
Charlotte	NC	3/31/2001
Warrenton	GA	3/31/2001
Rogersville	TN	3/31/2001
Tallahassee	FL	3/31/2001
Tampa	FL	3/31/2001
McClellanville	SC	3/31/2001
Ashland	MS	3/31/2001
Conway	SC	3/31/2001
Byhalia	MS	3/31/2001
Tuskegee	AL	3/31/2001
Laurel	MS	3/31/2001
Immokalee	FL	3/31/2001
Ruskin	FL	3/31/2001
Newton Grove	NC	3/31/2001
Johns Island	SC	3/31/2001
Lexington	KY	3/31/2001
Atlanta	GA	5/31/2001
Albany	GA	5/31/2001
McKee	KY	5/31/2001
Wadesboro	NC	5/31/2001
Ridgeland	SC	5/31/2001
Scottsboro	AL	5/31/2001
Hartsville	SC	5/31/2001
Yanceyville	NC	5/31/2001
Swainsboro	GA	6/30/2001
Lexington	MS	6/30/2001
Wilson	NC	6/30/2001
Ocilla	GA	6/30/2001
HRSA Chicago Field Office—(312) 353–1715		
Chicago	IL (2)	11/30/2000
Waukegan	IL	11/30/2000
Rockford	IL	11/30/2000
Baldwin	MI	11/30/2000
Oquawka	IL	12/31/2000
Chillicothe	OH	12/31/2000
Cincinnati	OH (3)	12/31/2000

City	State	Expiration date
Houghton Lake	MI	12/31/2000
Hillman	MI	1/31/2001
Barnesville	OH	1/31/2001
Piketon	OH	1/31/2001
Lakewood	WI	1/31/2001
Carterville	IL	3/31/2001
East Jordan	MI	3/31/2001
Grand Rapids	MI	3/31/2001
Greenville	OH	3/31/2001
Ironton	OH	5/31/2001
Cairo	IL	5/31/2001
Decatur	IL	5/31/2001
Marshfield	WI	5/31/2001
Algonac	MI	5/31/2001
Chicago	IL	6/30/2001
Springfield	IL	6/30/2001
Matteson	IL	6/30/2001
Indianapolis	IN	6/30/2001
HRSA Dallas Field Office—(214) 767–3872		
Plainview	TX	11/30/2000
El Paso	TX	11/30/2000
Dallas	TX	11/30/2000
Marianna	AR	11/30/2000
Sicily Island	LA	12/31/2000
Santa Fe	NM	12/31/2000
San Angelo	TX	12/31/2000
Rio Grande City	TX	1/31/2001
Lake Charles	LA	1/31/2001
Natchitoches	LA	1/31/2001
Oklahoma City	OK	1/31/2001
Portales	NM	1/31/2001
Portland	AR	1/31/2001
Pleasanton	TX	1/31/2001
Tulsa	OK	3/31/2001
Hatch	NM	3/31/2001
Hampton	AR	3/31/2001
Newton	TX	3/31/2001
Eagle Pass	TX	5/31/2001
Las Cruces	NM	5/31/2001
Santa Fe	NM	5/31/2001
Espanola	NM	5/31/2001
Dallas	TX	5/31/2001
Pine Bluff	AR	5/31/2001
Nacogdoches	TX	5/31/2001
Waco	TX	6/30/2001
HRSA Kansas City Field Office—(816) 426–5296		
Des Moines	IA	1/31/2001
Davenport	IA	1/31/2001
Mound City	MO	1/31/2001
Waterloo	IA	1/31/2001
Kansas City	MO(2)	3/31/2001
Pineville	MO	6/30/2001
Columbia	MO	6/30/2001
HRSA Denver Field Office—(303) 844–3203		
Alamosa	CO	11/30/2000
Howard	SD	11/30/2000
Rapid City	SD	12/31/2000
Sioux Falls	SD	12/31/2000
Colorado Springs	CO	12/31/2000
Denver	CO	12/31/2000
Billings	MT	1/31/2001
Lafayette	CO	1/31/2001
Billings	MT	3/31/2001
Pueblo	CO	5/31/2001
Green River	UT	5/31/2001
Black Hawk	CO	5/31/2001
HRSA San Francisco Field Office—(415) 437–8090		
Surprise	AZ	11/30/2000
Parlier	CA	11/30/2000
Stockton	CA	11/30/2000
Los Angeles	CA	11/30/2000
Tucson	AZ	12/31/2000
Marana	AZ	12/31/2000
San Diego	CA	12/31/2000
San Ysidro	CA	12/31/2000
Waianae	HI	1/31/2001
Los Angeles	CA (2)	1/31/2001
Ventura	CA	3/31/2001
Lamont	CA	3/31/2001
Buttonwillow	CA	3/31/2001
Merced	CA	3/31/2001
Oakland	CA (2)	3/31/2001
Los Angeles	CA	3/31/2001
Laytonville	CA	5/31/2001
Casa Grande	AZ	5/31/2001
Hilo	HI	6/30/2001
Gualala	CA	6/30/2001
San Pablo	CA	6/30/2001
Maui	HI	6/30/2001
Honolulu	HI	6/30/2001
HRSA Seattle Field Office—(206) 615–2491		
Othello	WA	11/30/2000
Portland	OR	11/30/2000
Salem	OR	11/30/2000
Klamath Falls	OR	12/31/2000
Toppenish	WA	1/31/2001
Seattle	WA (4)	1/31/2001
Chewelah	WA	1/31/2001
Payette	ID	1/31/2001
Nampa	ID	3/31/2001
Okanogan	WA	3/31/2001
Pasco	WA	5/31/2001
Tacoma	WA	5/31/2001
Roseburg	OR	6/30/2001
Sitka	AK	6/30/2001
Talkeetna	AK	6/30/2001
Spokane	WA	6/30/2001

Health Care for the Homeless 93.151

Legislative Authority: Public Health Service Act, Title III, Section 330(H), 42 U.S.C. 254B(H).

Purpose: The Health Care for the Homeless (HCH) program is designed to increase the access of homeless populations to cost-effective, case managed, and integrated primary care and substance abuse services provided by existing community-based programs/providers. It is the intent of HRSA to continue to support health services to the homeless people in these areas/locations given the continued need for cost-effective, community-based primary care services. Eighty-five HCH grantees will reach the end of their project period during FY 2001. Applications are due 120 days before the expiration date.

Matching or Cost Sharing Requirement: See the application guidance.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2001 and new organizations proposing to serve the same areas or populations currently being served by these existing programs.

Funding Priorities or Preferences: None.

Special Considerations: Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a HCH. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Estimated Amount of This Competition: $37,995,000.

Estimated Number of Awards to be Made: 85.

Estimated or Average Size of Each Award: $447,000.

Estimated Project Period: 1–5 Years.

CFDA Number: 93.151.

Application Availability Date: Continuous.

Letter of Intent Deadline: N/A.

Application Deadline: Varies.

Projected Award Date: Varies.

Program Contact Person: Monica Toomer.

Phone Number: 301–594–4430.

E-mail: mtoomerz@hrsa.gov

City	State	Expiration date
HRSA Boston Field Office—(617) 565–1482		
Boston	MA	10/31/2000
Providence	RI	10/31/2000
Springfield	MA	10/31/2000
Portland	ME	10/31/2000
Manchester	NH	10/31/2000
Worcester	MA	10/31/2000
Willimantic	CT	12/31/2000
Woonsocket	RI	1/31/2001
HRSA New York Field Office—(212) 264–2664		
New York	NY	10/31/2000
Santurce	PR	10/31/2000
New York	NY (5)	10/31/2000
Newark	NJ	10/31/2000
Peekskill	NY	1/31/2001
Trenton	NJ	3/31/2001
Jersey City	NJ	3/31/2001
HRSA Philadelphia Field Office—(215) 861–4422		
Richmond	VA	10/31/2000
Philadelphia	PA	10/31/2000
Baltimore	MD	10/31/2000
Newport News	VA	11/30/2000
Wilkes-Barre	PA	1/31/2001
Hunington	WV	5/31/2001

City	State	Expiration date
HRSA Atlanta Field Office—(404) 562–2996		
Clearwater	FL	10/31/2000
Nashville	TN	10/31/2000
Atlanta	GA	10/31/2000
Birmingham	AL	10/31/2000
Chattanooga	TN	10/31/2000
Ft. Lauderdale	FL	10/31/2000
Charleston	SC	10/31/2000
Raleigh	NC	11/30/2000
Louisville	KY	11/30/2000
Jackson	MS	11/30/2000
Lexington	KY	1/31/2001
Eastover	SC	1/31/2001
Tampa	FL	3/31/2001
HRSA Chicago Field Office—(312) 353–1715		
Green Bay	WI	10/31/2000
Dayton	OH	10/31/2000
Cleveland	OH	10/31/2000
Chicago	IL	10/31/2000
Lansing	MI	10/31/2000
Milwaukee	WI	10/31/2000
Minneapolis	MN	10/31/2000
Rockford	IL	11/30/2000
Cincinnati	OH	12/31/2000
Ironton	OH	5/31/2001
Algonac	MI	5/31/2001
HRSA Dallas Field Office—(214) 767–3872		
Albuquerque	NM	10/31/2000
New Orleans	LA	10/31/2000
Dallas	TX	10/31/2000
Houston	TX	10/31/2000
Plainview	TX	11/30/2000
Oklahoma City	OK	1/31/2001
Tulsa	OK	3/31/2001
HRSA Kansas City Field Office—(816) 426–5296		
Waterloo	IA	1/31/2001
Davenport	IA	1/31/2001
Kansas City	MO	3/31/2001
HRSA Denver Field Office—(303) 844–3203		
Denver	CO	10/31/2000
Casper	WY	10/31/2000
Colorado Springs	CO	12/31/2000
Rapid City	SD	12/31/2000
Billings	MT	3/31/2001
Pueblo	CO	5/31/2001
HRSA San Francisco Field Office—(415) 437–8090		
Sacramento	CA	10/31/2000
Honolulu	HI	10/31/2000
Oakland	CA (2)	10/31/2000
Santa Cruz	CA	10/31/2000
Santa Barbara	CA	10/31/2000
San Francisco	CA	10/31/2000
Martinez	CA	10/31/2000
Tucson	AZ	12/31/2000
San Diego	CA	12/31/2000
Merced	CA	3/31/2001
Lamont	CA	3/31/2001
Carson City	NV	5/31/2001
HRSA Seattle Field Office—(206) 615–2491		
Eugene	OR	10/31/2000
Tacoma	WA	10/31/2000
Salem	OR	11/30/2000
Portland	OR	11/30/2000
Anchorage	AK	11/30/2000
Nampa	ID	3/31/2001
Spokane	WA	6/30/2001

Grants to States for Loan Repayment Programs 93.165

Legislative Authority: Public Health Service Act, Title III, Section 338I, 42 U.S.C. 254Q–1.

Purpose: The purpose of these grant funds is to assist States in operating programs for the repayment of educational loans of health professionals in return for their practice in federally-designated Health Professional Shortage Areas to increase the availability of primary health services in health professional shortage areas. Of the estimated 38 awards, 9 are project period renewals. Further information about these activities can be obtained from the contact person.

Matching or Cost Sharing Requirement: States seeking support must provide adequate assurances that, with respect to the costs of making loan repayments under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for $1 of Federal funds provided in the grant. In determining the amount of non-Federal contributions in cash that a State has to provide, no Federal funds may be used in the State's match.

Eligibility: Any State is eligible to apply for funding.

Funding Priorities or Preferences: None.

Special Considerations: See "Matching or Cost Sharing Requirement" above.

Estimated Amount of This Competition: $3,000,000.

Estimated Number of Awards to be Made: 15.

Estimated or Average Size of Each Award: $200,000.

Estimated Project Period: 3 Years.

CFDA Number: 93.165.

Application Availability Date: 3/1/2001.

Letter of Intent Deadline: N/A.

Application Deadline: 5/15/2001.

Projected Award Date: 8/31/2001.

Program Contact Person: Susan Salter.

Phone Number: 301–594–4400.

E-mail: ssalter@hrsa.gov

National Primary Care Technical Assistance Grants and Cooperative Agreements 93.129A, 93.129B, 93.130A, 93.224

Legislative Authority: Public Health Service Act, Title III, Section 330 and Section 333, 42 U.S.C. 254B(K).

Purpose: The health center and National Health Service Corps (NHSC) programs deliver cost effective, high quality primary health care services to over 10 million underserved, vulnerable, low income, and minority populations. For more than twenty five years, these programs have been working toward ensuring the availability and accessibility of essential primary health services to the people in this country who have the most limited access to services. HRSA supports technical and non-financial assistance to federally-funded health centers and NHSC sites. It is the intent of HRSA to continue to support technical assistance for health center and NHSC site development and operations in the areas of increasing access to preventive and primary care, reduction of disparities of health outcomes, and improving the environmental/ occupational health of migrant and seasonal farmworkers.

HRSA will open competition for awards under Sections 330 and 333 of the Public Health Service Act, 42 U.S.C. 254B(k) to support national primary care technical assistance grants and cooperative agreements which will address access to health services, reductions in health disparities, and improvements in environmental/ occupational health for migrant and seasonal farmworkers. In addition to the application guidance, information about the activities associated with these opportunities can be obtained from the contact person listed below.

Matching or Cost Sharing Requirement: N/A.

Eligibility: Public and private nonprofit entities are eligible to apply.

Funding Priorities or Preferences: None.

Special Considerations: None.

Estimated Amount of This Competition: $10,000,000.

Estimated Number of Awards to be Made: 15.

Estimated or Average Size of Each Award: $665,000.

Estimated Project Period: 1–5 Years.

CFDA Numbers: 93.129A, 93.129B, 93.130A, 93.224.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: There will be two or more competitions under this

announcement. March 1, 2001 is the receipt deadline for the competition for projects to assist Migrant Health Centers and programs, and May 1, 2001 is the deadline for one or more other competitions for specific types of assistance to health centers. Application materials will contain separate guidances for each competition. Each guidance will indicate the applicable deadline as well as other relevant information.

Projected Award Date: Varies.
Program Contact Person: Lynn Specter.
Phone Number: 301–594–4488.
E-mail: lspector@hrsa.gov

Nursing Education Loan Repayment Program 93.908

Legislative Authority: Section 846(h) of the Public Health Service Act, 42 U.S.C. 297

Purpose: Under the Nursing Education Loan Repayment Program (NELRP), registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary, under which the Public Health Service agrees to repay up to 85 percent of the nurse's indebtedness for nursing education loans. In exchange, the nurse agrees to serve for a specified period of time in certain types of health facilities identified in statute.

Matching or Cost Sharing Requirement: N/A

Eligibility: Applicants must have completed all of their training requirements for registered nursing and be licensed prior to beginning service. Individuals eligible to participate must: (a) have received, prior to the start of service, a baccalaureate or associate degree in nursing; (b) have unpaid education loans obtained for nurse training; (c) be a citizen or National of the U.S.; (d) have a current unrestricted license in the State in which they intend to practice; and (e) agree to be employed for not less than two years in a full-time clinical capacity in: (1) an Indian Health Service Health Center; (2) a Native Hawaiian Health Center; (3) a public hospital (operated by a State, county, or local government); (4) a health center funded under Section 330 of the Public Health Service Act (including migrant, homeless, and public housing centers); (5) a rural health clinic (Section 1861 (aa)(2) of the Social Security Act); or (6) a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses.

Funding Priorities or Preferences: None.

Special Considerations: None.

Estimated Amount of This Competition: $2,279,000.

Estimated Number of Awards to be Made: 200.

Estimated or Average Size of Each Award: $11,400.

Estimated Project Period: N/A.

CFDA Number: 93.908.

Application Availability Date: 10/1/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 6/30/2001.

Projected Award Date: 9/30/2001.

Program Contact Person: Ms. Freddie Lapp.

Phone Number: 1–800–435–6464.

E-mail: flapp@hrsa.gov

National Health Service Corps Student/Resident Experiences and Rotations in Community Health (SEARCH) 93.130B

Legislative Authority: PHS Act, Subpart II, Sect.331[254d](a)(1).

Purpose: The purpose of the Student Resident Experiences and Rotations in Community Health (SEARCH) program is to assist States in increasing the availability of primary health care in urban and rural Federally designated health professional shortage areas by assisting public or non-profit community organizations to facilitate and strengthen community-academic linkages, and to increase the recruitment and retention of health care professionals in health professional shortage areas and medically underserved areas by expanding the number of high quality service-linked training opportunities available in these communities.

Matching or Cost Sharing Requirement: States seeking support are strongly encouraged to promote and seek outside funding to support other aspects of service-linked training opportunities such as leadership development. Such sources may include insurance companies, civic organizations, State and local governments, foundations, and network members.

Eligibility: Any State is eligible to apply for funding.

Funding Priorities or Preferences: Funds awarded under the National Health Service Corps SEARCH program are to be used to develop/support community-oriented practices which will offer service-linked training opportunities available in underserved communities for primary care students and residents.

Special Considerations: None.

Estimated Amount of This Competition: $3,300,000.

Estimated Number of Awards to be Made: 24.

Estimated or Average Size of Each Award: $140,000.

Estimated Project Period: 3 Years.

CFDA Number: 93.130B.

Application Availability Date: 10/1/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 5/1/2001.

Projected Award Date: 9/1/2001.

Program Contact Person: Jannette O'Neill-Gonzalez.

Phone Number: 301–594–4161.

E-mail: JOneill-Gonzalez@hrsa.gov.

New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act of 1996 93.224, 93.246, 93.151

Legislative Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 254b and 254b(h).

Purpose: The HRSA anticipates supporting the establishment of new service delivery sites for existing centers and/or new health centers in the Community and Migrant Health Centers and Health Care for the Homeless programs. The purpose of the Community/Migrant Health Centers program is to extend preventive and primary health services to populations currently without such services and to improve the health status of medically underserved individuals by supporting the establishment of new points of access to care. The Health Care for the Homeless program is designed to increase the homeless populations' access to cost-effective community-based programs/providers.

Matching or Cost Sharing Requirement: Communities seeking support are strongly encouraged to promote and seek outside funding and are required to maximize third party revenue to establish and maintain new service delivery sites.

Eligibility: Public and private non-profit entities are eligible to apply.

Funding Priorities or Preferences: Final priorities and/or preferences are included in the application materials.

Special Considerations: None.

Estimated Amount of This Competition: $10,000,000.

Estimated Number of Awards to be Made: 20–25.

Estimated or Average Size of Each Award: $200,000–450,000.

Estimated Project Period: 2 years or consistent with existing project period for currently funded organizations.

CFDA Numbers: 93.224, 93.246, 93.151.

Application Availability Date: 7/2000.

Letter of Intent Deadline: Ongoing. Letters of intent are encouraged for organizations seeking funding for a new delivery site. Letters of intent will be accepted beginning July 31, 2000. The submission of a letter of intent is recommended but not required in order

to submit an application to compete for funds in FY 2001. Information requirements to be included in the letter of intent submissions will be available in the application guidance.

Application Deadlines: Applications will be accepted beginning October 1, 2000. Applications received by November 30, 2000, will be reviewed with funding decisions announced by March 31, 2001. Applications received by February 28, 2001, will be reviewed with funding decisions announced by June 30, 2001. Applications received by May 15, 2001, will be reviewed with funding decisions announced by September 15, 2001. Applications received after May 15, 2001 will be considered for funding in FY 2002, depending on the availability of funds.

Projected Award Date: See above.

Program Contact Person: 93.224: Cephas Goldman 93.246: George Ersek 93.151: Jean Hochron.

Phone Numbers: 301–594–4300 Goldman; 301–594–4301 Ersek; 301–594–4437 Hochron.

E-mail: cgoldman@hrsa.gov, gersek@hrsa.gov, jhochron@hrsa.gov.

HIV/AIDS Bureau

Funding for Early Intervention Services Grants: Existing Geographic Areas 93.918A

Legislative Authority: PHS Act, Public Law 104–146, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Purpose: The purpose of Title III funding is to provide, on an outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected. All Title III programs must provide: HIV counseling and testing; counseling and education on living with HIV; appropriate medical evaluation and clinical care; and other essential services such as oral health care, outpatient mental health services and nutritional services, and appropriate referrals for specialty services.

Eligibility: Eligible applicants are public or nonprofit private entities that are 330 health centers, grantees funded under section 1001 regarding family planning, comprehensive hemophilia diagnostic and treatment centers, Federally qualified health centers, or nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV disease.

Limited Competition: Applicants are limited to public or nonprofit private entities that are currently funded Title III programs whose project periods expire in FY 2001 and new organizations proposing to serve the same populations currently being served by these existing projects. These areas are:

State	Service area
Alabama	Counties of Mobile and Baldwin.
	Counties of Calhoun, Etowah, Tallapoosa, Talladega, Dekalb, Cherokee, Cleburne, Randolph, St. Clair, Shelby, Blount and Chambers.
	Counties of Montgomery, Autaugua, Lowndes, Butler, Dallas, Chilton, Elmore, Macon, Bullock, Lee, Russell, Pike, Barbour, Dale, Geneva, Houston, Crenshaw, Conecuh, Coffee, Chambers, Tallapoosa, Wilcox and Monroe.
Alaska	Anchorage County, Anchorage Borough, Valdez-Cordova Census Area, Fairbanks North Star Borough.
Arkansas	Counties of Jefferson, Arkansas, Ashley, Chicot, Desha, Drew, Lincoln and Pulaski.
Arizona	Counties of Maricopa, Yavapai, Gila and Pinal.
	Counties of Santa Cruz, Greenlee, Cochise and Yuma.
	Pima County.
California	Counties of Santa Cruz and Monterey.
	Counties of San Bernardino, Riverside, Imperial and Sacramento.
	City of San Francisco.
	Alameda County.
	Kern County.
	Los Angeles County.
	Orange County.
	San Diego County.
	Santa Clara County.
	Ventura County.
Connecticut	Fairfield County.
	New Haven County.
District of Columbia	District of Columbia.
Florida	Counties of Collier, Hendry and Glades.
	Broward County.
	Dade County.
	Monroe County.
	St. Lucie County.
Georgia	Counties of Chatham, Effingham, Liberty, Bryan and Glynn.
	Counties of Fulton and Dekalb.
	Counties of Dougherty, Calhoun, Baker, Lee, Mitchell, Worth, Terrell, Colquitt, Thomas, Grady, Seminole, Miller, Early and Decatur.
	Counties of Ware, Bulloch, Candler, Evans, Toombs, Tattnall, Jeff Davis, Appling, Wayne, Coffee, Bacon, Pierce, Brantley, Atkinson, Charlton and Clinch.
	Fulton County.
	Richmond County.
Idaho	Counties of Ada, Boise, Elmore, Valley, Owyhee, Canyon, Gem, Payette, Washington, Adams, Butte, Bingham, Power, Bannock, Caribou, Oneida, Franklin and Bear Lake.
Illinois	Counties of Winnebago, Jo Daviess, Stephenson, Whiteside, Lee, Ogle, Boone, McHenry, Dekalb.
	Cook County.

State	Service area
Indiana	Marion County.
Iowa	Counties of Polk, Dallas, Story and Warren.
	Counties of Appanoose, Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jackson, Jefferson, Keokuk, Lee, Louisa, Mahaska, Monroe, Muscatine, Poweshiek, Scott, Van Buren, Wapello and Washington.
	Johnson County.
	Woodbury County.
Kansas	Sedgwick County.
Kentucky	Counties of McCracken and Pike.
Louisiana	Parishes of Calcasieu, Cameron, Beauregard, Allen, Jefferson and Davis.
	Parishes of Orleans, East Baton Rouge, St. Tammany, Washington, Iberville, St. Bernard, Acadia, Ascension, Assumption, Beuregard, Calcasieu, Concordia, East Feliciana, Iberia, Jackson and Lafayette.
Massachusetts	Counties of Bristol and Plymouth.
	Counties of Essex and Middlesex.
	Counties of Hampden and Franklin.
	Barnstable County.
	Norfolk County.
	Suffolk County.
	Worcester County.
Michigan	Counties of Oakland, Macomb, Lapeer, St. Clair and Monroe.
	Wayne County.
Mississippi	Counties of Quitman, Coahoma, Tate, Tallahatchie, Leflore, Lowndes, Bolivar, Tunica, Panola, Desoto and Marshall.
Missouri	Counties of Greene, Vernon, Barton, Jasper, Newton, McDonald, Cedar, St. Clair, Dade, Lawrence, Barry, Hickory, Polk, Christian, Stone, Taney, Dallas, Webster, Douglas, Ozark, Laclede, Wright, Pulaski, Texas, Howell, Phelps, Dent, Shannon and Oregon.
	Jackson County.
Montana	Counties of Yellowstone, Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Judith Basin, Lake, Lewis & Clark, Liberty, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Musseshell, Park, Petroleum, Phillips, Pondera, Powell, Prairie, Ravalli, Roosevelt, Rosebud, Sanders, Silver Bow, Stillwater, Sweet Grass, Teton, Tool, Treasure, Valley, Wheatland, Wibaux and Yellowstone National Park.
New Jersey	Counties of Middlesex, Union, Monmouth, Mercer and Somerset.
	Bergen County.
	Essex County.
	Passaic County.
New Mexico	Bernalillo.
Nevada	Washoe.
New York	Albany County.
	Bronx County.
	Erie County.
	Kings County.
	Monroe County.
	New York City/County.
	Onandaga County.
	Peekskill County.
	Queens County.
North Carolina	Counties of Durham, Wake, Orange, Granville, and Vance.
Ohio	Hamilton County.
Oklahoma	Oklahoma County.
Pennsylvania	City of Philadelphia.
	Lehigh County.
	Allegheny County.
	York County.
Puerto Rico	Humacao.
	Lares and Quebradillas Health Region.
	Gurabo and Caguas Health Region.
	Western Region-Anasco, Cabo Rojo, Guanica, Hormigueros, Isabela, Lajas, Las Marias, Maricao, Mayaguez, Moco, Sabana Grande, San German and San Sebastian.
Rhode Island	Counties of Providence, Bristol, Kent, Newport and Washington.
South Carolina	Fairfield County.
	Richland County.
	Sumter County.
Texas	Bexar County.
	Dallas County.
	Houston County.
	Tarrant County.
	Travis County.
Utah	Salt Lake County.
Vermont	Chittenden County.
Virginia	Charlottesville County.

State	Service area
Washington	King County. Yakima County.
Wisconsin	Counties of Adams, Calumet, Columbia, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Lafayette, Marquette, Richland, Rock, Sauk, Sheboygan, Waupaca, Waushara and Winnebago, Milwaukee County.

Funding Priorities and/or Preferences: Preference for funding will be given to projects that offer comprehensive primary care and support services to underserved people living with HIV and AIDS.

Estimated Amount of this Competition: $80,030,226.

Estimated Number of Awards to be Made: 108.

Estimated Project Period: 3 years.

CFDA Number: 93.918A.

Application Availability Date: June 19, 2000.

Letter of Intent: N/A.

Application Deadline: October 2, 2000.

Projected Award Date: January 1, 2001 and July 1, 2001.

Program Contact Person: Lois Eldred.

Phone Number: 301 443–3327.

E-mail: leldred@hrsa.gov

Funding for Early Intervention Services Grants: New Geographic Areas 93.918B.

Legislative Authority: PHS Act, Public Law 104–146, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Purpose: The purpose of Title III funding is to provide, on an outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected. All Title III programs must provide: HIV counseling and testing; counseling and education on living with HIV; appropriate medical evaluation and clinical care; and other essential services such as oral health care, outpatient mental health services and nutritional services, and appropriate referrals for specialty services.

Eligibility: Eligible applicants are public or nonprofit private entities that are 330 health centers, grantees funded under section 1001 regarding family planning, comprehensive hemophilia diagnostic and treatment centers, Federally qualified health centers, or nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV disease.

Funding Priorities or Preferences: In awarding these grants, preference will be given to approved/ unfunded applicants who submitted an application for funding in FY 2000 and to applicants who previously received Title III planning grants. Preference for funding may also be given to applicants which help to achieve an equitable geographic distribution of programs across all States and Territories, especially programs that provide services in rural or underserved communities where the HIV/AIDS epidemic is increasing.

Estimated Amount of this Competition: $26,100,000.

Estimated Number of Awards to be Made: 87.

Estimated Project Period: 3 years.

CFDA Number: 93.918B

Application Availability Date: April 16, 2001.

Letter of Intent: N/A.

Application Deadline: July 16, 2001.

Projected Award Date: September 28, 2001.

Program Contact Person: Lois Eldred.

Phone Number: 301 443–0735.

E-Mail Address: leldred@hrsa.gov

Funding for Early Intervention Services Planning Grants 93.918C

Legislative Authority: PHS Act, Public Law 104–146, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Purpose: The purpose of this grant program is to support communities and health care service entities in their planning efforts to develop a high quality and broad scope of primary health care services for people in their service areas who are living with HIV or at risk of infection. Applications must propose planning activities which will lead to the establishment of comprehensive outpatient HIV primary care services. This grant program supports activities of the planning process and does not fund any service delivery or patient care.

Eligibility: Eligible applicants must be public or nonprofit private entities that are, or intend to become, eligible to apply for the Title III Early Intervention Services grant. Applicants for these funds cannot be current Ryan White Title III Early Intervention Service Program grant recipients and must be located in rural or underserved communities where HIV primary health care resources remain insufficient to meet the need for services or plan for such services.

Funding Priorities and/or Preferences: In awarding these grants, preference will be given to applicants located in rural or underserved areas where emerging or ongoing HIV primary health care needs have not been adequately met.

Estimated Amount of this Competiton: $1,700,000.

Estimated Number of Awards to be Made: 34.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1 year.

CFDA Number: 93.918C.

Application Availability Date: February 5, 2001.

Letter of Intent Deadine: N/A.

Application Deadline: June 1, 2000.

Projected Award Date: September 30, 2001.

Program Contact Person: Andrew Kruzich.

Phone Number: 301 443–0759.

E-Mail: akruzich@hrsa.gov

Funding for Early Intervention Services Planning Grants (CBC) 93.918D

Legislative Authority: PHS Act, Public Law 104–146, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Purpose: The purpose of this grant program is to support communities and health care service entities in their planning efforts to develop a high quality and broad scope of primary health care services for people in their service areas who are living with HIV or at risk of infection. Applications must propose planning activities which will lead to the establishment of comprehensive outpatient HIV primary care services. This grant program supports activities of the planning process and does not fund any service delivery or patient care.

Eligibility: Eligible applicants must be public or nonprofit private entities that are, or intend to become, eligible to apply for the Title III Early Intervention Services grant. Applicants for these funds cannot be current Ryan White Title III Early Intervention Service

Program grant recipients unless they are propose to open a new site in their current service area or in a new service area to serve communities of color highly impacted by HIV/AIDS. Applicants must also be organizations indigenous to the community of color which is defined as "a community-based or public organization local to and supported by the community of color population proposed to be served."

Funding Priorities and/or Preferences: In awarding these grants, preference will be given to applicants located in rural or underserved areas where there are many HIV+ community of color populations and ongoing HIV primary health care needs have not been adequately met. As indicated above, preference will also be given to applicants that are not currently Ryan White Title III Early Intervention Service Program grant recipients.

Estimated Amount of this Competition: $3,000,000.

Estimated Number of Awards to be Made: 60.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: One year with possibility of second year transition grant.

CFDA Number: 93.918D.

Application Availability Date: February 5, 2001.

Letter of Intent: N/A.

Application Deadline: June 1, 2001.

Projected Award Date: September 30, 2001.

Program Contact Person: Andrew Kruzich.

Phone Number: 301 443–0759.

E-Mail: akruzich@hrsa.gov

Ryan White Title IV: Existing Geographic Areas 93.153A

Legislative Authority: Section 2671 of the Public Health Service Act, 42 U.S.C. 300FF–51—330FF–67.

Purpose: The purpose of the Title IV funding is to improve access to primary medical care, research, and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that: (1) Cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved at-risk and limited populations. Activities under these grants should address the goals of enrolling and maintaining clients in HIV primary care; increasing client access to research by linking development and support of comprehensive, community-based and family centered care infrastructures, and emphasizing prevention within the care system particularly the prevention of perinatal HIV transmission.

Eligibility: Eligible organizations are public or private non-profit entities that provide or arrange for primary care. Applicants are limited to currently funded Title IV programs whose project periods expire in FY 2001 and new organizations proposing to serve the same populations currently being served by these existing projects. These areas are:

State	Areas
AZ	Phoenix.
CA	Los Angeles.
CO	Denver.
FL	Jacksonville.
	Tampa.
GA	Atlanta.
MO	St. Louis.
NY	New York City (except Northern Manhattan).
	Albany.
	Bronx.
	Brooklyn.
NV	Las Vegas.
NC	Washington.
TN	Memphis.
TX	Dallas.
WI	Milwaukee.

Funding Priorities and/or Preferences: Preference for funding will be given to projects that support a comprehensive, coordinated system of HIV care serving children, youth, women and families and are linked with or have initiated activities to link with clinical trials or other research.

Estimated Amount of this Competition: $12,149,255.

Estimated Number of Awards to be Made: 16.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.153A.

Application Availability Date: December 18, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: April 2, 2001.

Projected Award Date: August 1, 2001.

Program Contact Person: Lydia Soto-Torres, MD.

Phone Number: 301 443–9051.

E-Mail: lsoto-torres@hrsa.gov

Ryan White Title IV: New Geographic Areas 93.153B

Legislative Authority: Section 2671 of the Public Health Service Act, 42 U.S.C. 300FF–51—330FF–67.

Purpose: Organizations should be able to demonstrate expertise in the coordination or provision of comprehensive medical and social services to children, youth, women and families. The purpose of the Title IV funding is to improve access to primary medical care, research and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that: (1) cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved, at-risk and limited populations. Activities under these grants should address the goals of: enrolling and maintaining clients in HIV primary care; increasing client access to research by linking HIV/AIDS clinical research trials and activities with comprehensive care; fostering the development and support of comprehensive, community-based and family centered care infrastructures; and emphasizing prevention within the care system particularly the prevention of perinatal HIV transmission

Eligibility: Eligible organizations are public or private nonprofit entities that provide or arrange for primary care. Applicants are limited to applicants in geographic areas where the HIV/AIDS epidemic is increasing among women, children and adolescents and where other resources targeted to these populations are limited or non-existent. Applications to serve the geographic areas listed below are NOT eligible for funding:

State	Areas
AL	Birmingham.
AK	Pine Bluff.
CA	Oakland.
	Fresno.
	San Diego.
	San Francisco.
CT	Bridgeport, New Haven, Stamford, Hartford.
DC	Statewide.

State	Areas
FL	Orlando.
	Ft Lauderdale.
	Miami.
	Palm Beach.
IL	Chicago.
LA	New Orleans.
	Baton Rouge.
MA	Boston.
	Brockton, New Bedford, Springfield, Worcester.
MD	Statewide.
MI	Detroit.
NH	Statewide.
NJ	Statewide.
NY	Queens/Elmhurst.
	New York City/Northern Manhattan.
	New York City/Lower Manhattan & Staten Island.
	Stonybrook/Suffolk.
NC	Charlotte.
	Asheville.
OH	Columbus.
PA	Philadelphia.
PR	San Juan.
RI	Statewide.
SC	Columbia.
TX	Ft. Worth.
	Houston.
	San Antonio.
WA	Seattle.

Funding Priorities and/or Preferences: Preference for funding may be given to applicants which help to achieve an equitable geographical distribution of programs across all States and Territories, especially programs that provide services in rural or underserved communities where the HIV/AIDS epidemic is increasing.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards To Be Made: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.153B.

Application Availability Date: 12/18/00.

Letter of Intent Deadline: Not applicable.

Application Deadline: April 2, 2001.

Projected Award Date: August 1, 2001.

Program Contact Person: Lydia Soto-Torres, MD.

Phone Number: (301) 443–9051.

E-Mail: lsoto-torres@hrsa.gov.

Ryan White Title IV for Adolescent Services 93.153C

Legislative Authority: Section 2671 of the Public Health Service Act, 42 U.S.C. 300FF–51—330FF–67.

Purpose: The purpose of this initiative is to foster and expand systems of health care and social support services for youth (age 13–24) at risk for or infected with HIV in order to identify infected youth and enroll them in HIV primary care. Grantees will identify additional HIV infected youth and develop, coordinate and provide support services to enroll and maintain them in primary medical care. Adolescent clients should be enrolled into care early in the spectrum of disease and managed throughout the infection. In partnership with other Ryan White funded programs or other agencies, applicants will integrate youth services into existing systems of care to provide access to comprehensive, coordinated primary care, research and social support services.

Eligibility: Eligible organizations are public or private nonprofit entities that provide or arrange for primary care.

Funding Priorities and/or Preferences: Priority will be given to applicants with a history of working with youth, especially youth infected with HIV. Priority will be given to projects proposed in geographic areas where epidemiologic data demonstrate high numbers of infected youth. Preference will be given to currently funded adolescent programs that have enrolled significant numbers of HIV infected youth into a primary care system during the previous project period.

Estimated Amount of This Competition: $1,973,000.

Estimated Number of Awards To Be Made: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

CFDA Number: 93.153C.

Application Availability Date: 12/18/2000.

Letter of Intent Deadline: not applicable.

Application Deadline: 04/02/01.

Projected Award Date: 08/01/01.

Program Contact Person: Lydia Soto-Torres, MD.

Phone Number: 301 443–9051.

E-Mail: lsoto-torres@hrsa.gov.

Maternal and Child Health Bureau

Genetic Services, Improving Health Of Children: Implementation of the State Grants for the Integration of Programs and their Information Systems 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this grant activity is to provide support for implementation activities to grantees who participated in the FY 1999 Genetic Services Branch's (GSB) "Planning Grants for State Newborn Screening Efforts and Infrastructure Development." Specifically, these grants will fund the implementation of State Plans for integrated state information systems around newborn genetic screening developed under those planning grants. The ultimate purpose is to allow States to be able to provide preventive health data for public health functions and individual providers for improved clinical decision-making at the point of service delivery. States funded by this initiative must build on their planning grant activity and address the technical obstacles, legal barriers, partnerships required for the initiative, sustainability of the projects beyond Federal funding, and a plan for program evaluation.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: State health agencies with a previous GSB grant under, "Planning Grants for State Newborn Screening Efforts and Infrastructure Development."

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards: 5 to 7 States.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.110A.

Application Availability Date: December 15, 2000.

Letter of Intent Deadline: January 15, 2001.

Application Deadline: February 28, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Michele A. Lloyd-Puryear, M.D., Ph.D.

Phone Number: 301 443–1080.

E-Mail: Cdiener@hrsa.gov

Genetic Services—Developing Models for the Use of New and Evolving Technology Within Newborn Screening Programs 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this grant activity is to fund two projects that will address issues confronting newborn genetic screening programs that have emerged from the use of new and evolving technologies such as DNA-based and tandem mass technology within these newborn screening programs. One project will identify models and materials for addressing the financial, ethical, legal and social issues surrounding the use of this new technology. The other project will identify models and materials for addressing the clinical validity and utility of this new technology within

newborn screening programs. All projects must also address the assurance of informed consent, patient privacy rights, and protection against discrimination. It is proposed that the projects utilize the recommendations developed by the Newborn Screening Task Force, Serving the Family: From Birth to the Medical Home, Newborn Screening: A Blueprint for the Future: Recommendations from the Newborn Screening Task Force. It is expected that the projects will develop models and materials for the MCHB and for State newborn genetic screening programs.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $600,000.

Estimated Number of Awards: 2 States.

Estimated Project Period: 3 years.

CFDA Number: 93.110A.

Application Availability Date: December 15, 2000.

Letter of Intent Deadline: January 15, 2001.

Application Deadline: February 28, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Michele A. Lloyd-Puryear, M.D., Ph.D.

Phone Number: 301 443–1080.

E-Mail: Cdiener@hrsa.gov

Genetic Services, State Development Grants for Newborn Screening Efforts and Infrastructure Development 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of these development grants is to facilitate collaborative efforts and the development of integrated state information systems around newborn genetic screening. The grant activity would support the development of plans for: (1) The integration of the newborn genetic screening program with other points of early identification of children with genetic conditions and special health needs, (2) the integration of those systems of early identification with systems of early intervention, (3) the retrieval of information from State newborn genetic screening programs by private sector primary care providers, (if allowed by legislation), and (4) the facilitation of collaborative efforts among public health agency entities and between public health agencies and the private sector around newborn genetic screening.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: Community/State agency partnerships in coalition with public and private community-based providers.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,250,000.

Estimated Number of Awards: 15 States.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number: 93.110A.

Application Availability Date: December 15, 2000.

Letter of Intent Deadline: January 15, 2001.

Application Deadline: February 28, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Michele A. Lloyd-Puryear, M.D., Ph.D.

Phone Number: 301 443–1080.

E-Mail: Cdiener@hrsa.gov

Nationwide Blood Lead and Erythrocyte Protoporphyrin (EP) Proficiency Testing Program 93.110AA

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to improve nationwide the performance of laboratories which provide erythrocyte protoporphyrin (EP) screening tests and blood lead determinations for childhood lead poisoning prevention programs and, on request provide technical assistance and consultation to health care programs and providers responsible for the treatment and management of children and adults with elevated blood lead levels (EBBL). Accurate, timely EP and blood lead testing are critical to the prevention, diagnosis, treatment and management of children and adults with EBBL. The applicant organization must demonstrate: (1) The capacity to prepare, distribute and process proficiency testing samples for more than 400 participating laboratories, (2) the ability to remain current and knowledgeable in response to advancements in blood lead collection and testing technology, and (3) competence in the provision, as requested, of consultation and technical assistance nationwide to laboratories, programs and providers responsible for the delivery of health and health-related services to at-risk populations.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 1 year.

CFDA Number: 93.110AA.

Application Availability Date: July 14, 2000.

Application Deadline: September 15, 2000.

Projected Award Date: January 1, 2001.

Program Contact Person: Stuart Swayze.

Phone Number: 301 443–2917.

E-Mail: sswayze@hrsa.gov

Integrated Health and Behavioral Health Care for Children, Adolescents, and Their Families 93.110AF

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: These two-year planning grants are designed to initiate and formalize a working relationship among community resources, in order to detail arrangements for establishing an integrated program of health service delivery for children, adolescents and their families, in a targeted area with a total population of 100,000 to 250,000. The combined services are to include physical and psychosocial primary health care, comprehensive mental health services and substance abuse prevention and treatment services. The plan that is produced is to include attention to organizational structure, staffing, facilities, information systems including protection of confidentiality and fiscal arrangements.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $200,000.

Estimated Number of Awards: 4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number: 93.110AF.

Application Availability: November 29, 2000.

Letter of Intent Deadline: December 21, 2000.

Application Deadline: January 31, 2001.

Projected Award Date: May 1, 2001.

Program Contact Person: Sue Martone.

Phone Number: 301 443–4996.

E-Mail: smartone@hrsa.gov

Innovative Models to Analyze and Address Racial, Ethnic, and Geographic Disparities in Maternal and Child Health Outcomes 93.110AJ

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: Racial, ethnic, and geographic disparities in maternal and

child health outcomes continue to exist. The Maternal and Child Health Bureau is committed to identifying strategies for reducing the disparities. These two-year grants are designed to develop innovative models in the States to analyze and then address these disparities. The grants would cover both the analysis of data, and the development of a model program for addressing disparities. The collection, analysis, and presentation of data should serve as the basis for the implementation of a model program. Emphasis should be placed on innovative models both in terms of analysis and program implementation. Examples of grant activities could include: (1) Conducting trend analyses on maternal and child health outcomes for the purposes of needs assessments; (2) using data linkages and data sharing to obtain and analyze new information on disparities for the purposes of program development; or (3) innovative uses of geographic information systems for targeting vulnerable populations with plans for initiatives to reduce disparities.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities or Preferences: Any State or Jurisdiction or their designees.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $325,000 annually for two years.

Estimated Number of Awards to be Made: 4–6.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number: 93.110AJ.

Application Availability Date: December 4, 2000.

Letter of Intent Deadline: January 2, 2001.

Application Deadline: February 5, 2001.

Projected Award Date: May 1, 2001.

Program Contact Person: Dr. Michael Kogan.

Phone Number: 301 443–8041.

E-Mail: mkogan@hrsa.gov

Integrated Comprehensive Women's Health Services in State MCH Programs 93.110AK

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701

Purpose: The purpose of this program is to expand capacity in State MCH programs to improve women's health by providing a focal point for women's health and establishing linkages and building partnerships with community-based organizations, academic institutions, and federal agencies. This focal point will also identify gaps and establish an infrastructure for women's health services. Linkages will be established across programs, e.g., family planning, breast and cervical cancer, domestic violence, chronic disease, perinatal health, mental health, etc. The resulting integrated and coordinated system of care will provide comprehensive and continuous health services to women of reproductive age in general, as well as to those women who are pregnant or who have recently delivered to improve the overall health of women, their infants and families.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C.450b) is eligible to apply.

Funding Priorities or Preferences: State/Territorial MCH Title V agencies, tribal health agencies or their designees (details will be given in the application guidance). There may be only one application per State.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $800,000.

Estimated Number of Awards to be Made: 8.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.110 AK.

Application Availability Date: February 1, 2001.

Letter of Intent Deadline: February 23, 2001.

Application Deadline: March 23, 2001.

Projected Award Date: July 1, 2001.

Program Contact Person: Lisa King.

Phone Number: (301) 443–9739.

E-Mail: lking@hrsa.gov

Assuring Adequate Health Insurance for Children with Special Health Care Needs (CSHCN) 93.110C

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701

Purpose: This initiative will provide national leadership to assure that by the year 2010, all families of CSHCN will have adequate private and/or public insurance to pay for the services they need. Three key action steps have been identified to accomplish this objective: (1) Expand insurance for CSHCN without coverage; (2) assure access to services for insured CSHCN; and (3) strengthen the financing and reimbursement system.

Two cooperative agreements will engage in critical activities to achieve and monitor this objective:

- One cooperative agreement will focus on policy analysis of national and state legislative proposals to expand or improve health insurance to CSHCN; analysis of multiple national data sets to provide relevant policy information and monitor access to care for CSHCN in the public and private sector; and provide technical support to States on Medicaid and Child Health Improvement Program proposals impacting CSHCN.
- The second cooperative agreement will support the development and dissemination of financing strategies to assure adequate reimbursement for managed care organizations and providers. This includes analyzing the impact of various reimbursement methodologies on provider networks, access to care and risk selection; and developing partnerships with key stakeholders on financing care for CSHCN, especially in managed care.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities or Preferences: Public or nonprofit private entities involved in the study of insurance coverage and financing strategies for children with special health care needs.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $725,000.

Estimated Number of Awards: 2.

Estimated Project Period: 4 Years.

CFDA Number: 93.110C.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: January 2, 2001.

Application Deadline: February 2, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Lynda E. Honberg.

Phone Number: 301 443–2370.

E-Mail: Lhonberg@hrsa.Gov

Healthy and Ready to Work (HRTW) Services for Children and Youth with Special Health Needs (CYSHN) 93.110D

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: Establish 5 State HRTW model programs with funds targeted to prepare: (1) Youth and adolescents; (2) families; and (3) service systems for the transition of CYSHN to adult health care and related services, employment and independence. The funded models must assure that services go beyond medical rehabilitation to include engaged dialogue and counseling with CYSHN and their families that supports the setting of future goals and achieving ambitions for education, employment and independence. This should be provided developmentally from early childhood through age 25, with discussions and goal setting appropriate

to the child/adolescent/youth's age and maturity level and in a culturally competent context and setting. States will be required to confront the duplication of effort and lack of coordination that currently exists among state agencies serving this population. Services should include, but not be limited to: long-term health and disability management; access to independent living and personal assistance services (when not paid for by Medicaid); pre-vocational counseling and training; oral health; preparation of families for a changing role as CYSHN transition; and capacity building and training of the adult health care provider system to receive transitioning CYSHN.

Eligibility: 42 CFR Part 51a.3

Funding Priorities or Preferences: State Title V Children with Special Health Care Needs programs or their designees (details will be given in the application guidance).

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.110D.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: January 2, 2001.

Application Deadline: February 23, 2001.

Projected Award Date: June 30, 2001.

Program Contact Person: Thomas L. Gloss.

Phone Number: 301 443–2370.

E-Mail: tgloss@hrsa.gov

Integrated Services 93.110F

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701

Purpose: This initiative will support grants to states in partnership with communities to establish community integrated service systems for children with special health care needs (CSHCN), birth-8, and their families. States will be required to document coordination of effort among at least three of the six agencies of the State Interagency Coordinating Council (SICC) providing services to children. This must include common eligibility/enrollment application materials, shared data systems, blended funding, and a single coordinator with whom a family communicates. Applications must include documentation of partnerships with at least five communities which will model the community integrated service systems developed through this project.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $700,000.

Estimated Number of Awards: 4–6.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.110F.

Application Availability Date: November 15, 2000.

Letter of Intent Deadline: December 15, 2000.

Application Deadline: January 22, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Irene Forsman, M.S., R.N.

Phone Number: 301 443–2370.

E-Mail: iforsman@hrsa.gov

Medical Home Development Grants 93.110F

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701

Purpose: This initiative will support 3 year grants to develop a model of statewide medical home implementation for children with special health care needs (CSHCN) and their families. These models will serve as mentors for other States in the national delivery of comprehensive health care to children with special health care needs and their families. Projects will provide for coordination with the Title V needs assessment activities related to medical home, and project outcomes and evaluation will be incorporated into ongoing activities of the State Title V Block Grant.

Eligibility: 42 CFR 51a.3.

Funding Priorities or Preferences: Projects that can demonstrate statewide provision of medical homes for children with special health care needs.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $888,371.

Estimated Number of Awards: 6.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 Years.

CFDA Number: 93.110F.

Application Availability Date: August 15, 2000.

Letter of Intent Deadline: September 15, 2000.

Application Deadline: October 16, 2000.

Projected Award Date: March 31, 2001.

Program Contact Person: Tom Castonguay.

Phone Number: 301 443–2370.

E-mail: tcastonguay@hrsa.gov.

Health Care Information and Education for Families of Children with Special Health Care Needs 93.110S

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this competition is to support activities which will assist families and states with the implementation of a national network of State based centers comprised of families and professionals that will provide:

a. Health care information and education to families of children with special health care needs; and

b. Information that will assist the Division of Services for Children with Special Health Needs (DSCSHN) integrate these activities/outcomes into the Division's 2010 Strategic Planning activities.

Applicants must address the broad population of children with special health care needs by MCHB.

One Cooperative Agreement for a national organizational structure which will provide technical assistance, coordinate data collection nationwide, provide national training, related materials and other support as deemed necessary to all current state-based information centers and assist other states in planning for or implementing new state-based information centers. In addition, the Cooperative Agreement will be responsible for providing requested data concerning these state-based centers to DSCSHN for program planning purposes.

Funding is contingent upon the availability of funds.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: Nationally recognized family organizations with clearly demonstrated national expertise and capacity in addressing health issues related to CSHCN and their families.

Estimated Amount of This Competition: $500,000 per year.

Estimated Number of Awards to be Made: 1.

Estimated Project Period: 4 Years.

CFDA Number: 93.110S.

Application Availability Date: September 11, 2000.

Letter of Intent Deadline: October 16, 2000.

Application Deadline: December 1, 2000.

Projected Award Date: June 1, 2001.

Program Contact Person: Diana Denboba.

Phone Number: 301 443–2370.

E-mail: Ddenboba@HRSA.gov.

Partnership for Information and Communication (PIC) MCH Cooperative Agreements 93.110G

Purpose: To provide cooperative agreements with governmental, professional and private organizations represented by leaders concerned with issues related to maternal and child health and involved in sustaining systems of care and/or providing family support to persons affected by severe illness or injury. Specifically, this program is designed to facilitate the dissemination of new information in a format that will be most useful to them when developing MCH policies and programs in the private and public sectors at local state and national levels, and provides those individuals and organizations with a means of communicating issues directly to the Maternal and Child Health program and to each other. Organizations currently receiving support as part of this cooperative agreement represent State governors and their staffs; State and territorial health officials, nonprofit and/or for-profit managed care organizations and coalitions of organizations promoting the health of mothers and infants, national membership organizations representing survivors of traumatic brain injury (TBI), providers of emergency medical care for children and representing State Emergency Medical Services programs..

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Eligibility: 42 CFR Part 51a.3. To ensure continuity, membership for the organizations participating in PIC is rotated so that not all project periods coincide. For this year, only national membership organizations representing the following groups will be considered for funding: County health policymakers, municipal health policymakers, and State Head Injury Program Directors.

Funding Priorities and/or Preferences: N/A.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $800,000.

Estimated Number of Awards: 3.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 years.

Application Availability Date: November 1, 2000.

Letter of Intent Deadline: December 1, 2000.

Application Deadline: January 2, 2001.

Projected Award Date: April 1, 2001.

Program Contact Person: Sue Martone.

Phone Number: 301–443–4996.

E-mail: smartone@hrsa.gov.

Breastfeeding Promotion in Pediatrician's Office Practices 93.110H.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This grant program is designed to: (1) facilitate preparation of providers of obstetrical and pediatric health care in office settings to effectively promote and manage breastfeeding with the goal to move breastfeeding initiation and duration rates toward the Healthy People 2010 national health objectives; (2) implement strategies to enroll health care providers working with underserved population in breastfeeding promotion, support, and technical assistance programs; and (3) encourage collaborations between obstetrical, pediatric, and primary health care providers at the local, state, and regional levels.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: This competition is limited to:

- Nationally recognized organizations with clearly demonstrated national expertise and capacity for addressing breastfeeding promotion, support, and technical assistance issues related to providers of obstetrical and pediatric medical care to consumers and their families; and
- Applicants building upon current breastfeeding promotion and support partnerships with professional organizations and federal agencies.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $200,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 Years.

CFDA Number: 93.110H.

Application Availability Date: January 3, 2001.

Letter of Intent Deadline: March 1, 2001.

Application Deadline: May 1, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Carolyn Sharbaugh.

Phone Number: 301 443–9709.

E-mail: csharbaugh@hrsa.gov

Partners in Program Planning for Adolescent Health 93.110N

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The goal of this partnership with a group of national, membership organizations is to promote an adolescent health agenda among key professional disciplines likely to have encounters with adolescents and their families. It promotes the development of organizational infrastructure at national and state levels that can effectively address adolescent health issues; enhances intra- and inter-disciplinary communication, education and training needs relevant to adolescent health; and encourages the growth of collaborative effort across disciplines and professional organizations on behalf of adolescent health and well-being. In particular, member organizations will be expected to use the twenty critical adolescent health objectives contained in Healthy People 2010 as a framework for addressing selected adolescent health issues, based on the disciplinary expertise of the organization, and to contribute to States' efforts to improve the health status of adolescents. The organizational collaborative will approach its efforts from the perspective of positive youth development.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: National membership organizations representing the following disciplines: Health Education, Law, Medicine, Nutrition/Dietetics, Oral Health, Psychology, Psychiatry, Social Work, and Youth Services. Organizations representing a coalition of professional membership organizations affiliated with the specific discipline.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $500,000.

Estimated Number of Awards: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 years.

CFDA Number: 93.110N.

Application Availability Date: January 22, 2001.

Letter of Intent Deadline: February 23, 2001.

Application Deadline: April 20, 2001.

Projected Award Date: August 1, 2001.

Program Contact Person: Trina Menden Anglin, M.D., Ph.D.

Phone Number: 301 443–4291.

E-mail: Tanglin@HRSA.GOV

Maternal and Child Health Research Program 93.110RS

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to support applied research relating to maternal and child health services, which show promise of substantial contribution in knowledge, that when used in States and communities will result in health and health services improvements.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: Fifteen priority issues/questions selected from 11 broadly demarcated areas of program concern, and keyed to goals and objectives of the Bureau and HRSA strategic plans, will be given special consideration for funding. The special consideration consists of a 0.5 point adjustment to the priority score assigned to an application when recommended for support by the MCH Research Review Committee. Priority scores range from 1.0 to 5.0, with 1.0 representing the best score, and 5.0, the poorest. The 15 issues/questions selected from the 11 broadly demarcated areas of program concern are detailed in the guidance material contained in the application kit.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,900,000.

Estimated Number of Awards: 10.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 to 5 years.

CFDA Number: 93.110RS.

Application Availability Date: Continuously.

Letter of Intent Deadline: N/A.

Application Deadline: August 1, 2000 & March 1, 2001.

Projected Award Date: January 1, 2001 & July 1, 2001.

Program Contact Person: Gontran Lamberty, Dr.P.H.

Phone Number: 301 443–2190.

E-Mail: glamberty@hrsa.gov

Graduate Medical Education in Obstetrics/Gynecology, Pediatrics and Family Practice in Historically/ Predominately Black Medical Schools 93.110TD

Legislative Authority: Social Security Act, Title V, Section 502, 42 U.S.C. 701.

Purpose: The primary purpose of this program is to enhance the education and training of residents in obstetrics, adolescent gynecology, family practice, and/or pediatrics in order to help them provide effective primary care for at-risk, underserved populations in community-based settings, reduce racial and cultural disparities in the health status of these populations, and address the special needs of children, adolescents, and families of African-American and Hispanic-American descent. These grants are also intended to stimulate the interest of high school and undergraduate students from traditionally underserved populations in careers in MCH-related health professions by improving the mentoring skills of residents in these education and training programs. This program is part of a longstanding Health Resources and Services Administration (HRSA) Initiative that is coordinated with other HRSA Bureaus and with HRSA's Office of Minority Health.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preference: Preference will be given to Departments of OB/GYN, Pediatrics and Family Medicine in Historically/Predominantly Black medical schools.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of this Competition: $685,000.

Estimated Number of Awards: 4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 years.

CFDA Number: 93.110TD.

Application Availability Dated: November 1, 2000.

Letter of Intent Deadline: December 1, 2000.

Application Deadline: February 1, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Aaron Favors, Ph.D.

Phone Number: 301 443–0392.

E-Mail: afavors@hrsa.gov

Public Health Training in Maternal and Child Health 93.110TK

Legislative Authority: Social Security Act, Title V, Section 502, 42 U.S.C. 702.

Purpose: The purpose of the Public Health Training in Maternal and Child Health program is to strengthen the Nation's maternal and child health public health system by broadening the leadership base of the current and future MCH workforce. Emphasis will be placed on developing the public health workforce through innovative strategies that address the special educational needs of health professionals who: live in isolated geographic communities; need to enhance or advance their skills while continuing to meet their daily on site work and family responsibilities; or are from underserved or underrepresented populations.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: Accredited schools of public health or other public or nonprofit private institutions accredited for the provision of graduate or specialized training in public health which are not currently receiving a grant under the MCH Training in Schools of Public Health grant program.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of this Competition: $324,000.

Estimated Number of Awards: 2.

Estimated Project Period: 3 Years.

CFDA Number: 93.110TK.

Application Availability Date: September 15, 2000.

Letter of Intent Deadline: October 16, 2000.

Application Deadline: December 15, 2000.

Projected Award Date: June 1, 2001.

Program Contact Person: Nanette Pepper, BSRN, M. Ed.

Phone Number: 301 443–2190.

E-Mail: npepper@hrsa.gov

Long Term Training in Leadership Education in Neurodevelopmental and Related Disabilities (Lend) 93.110TM

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of the Maternal and Child Health Interdisciplinary Leadership Education in Neurodevelopmental and Related Disabilities (LEND) program is to improve the health status of infants, children, and adolescents with, or at risk for, neurodevelopmental and related disabilities, including mental retardation, neurodegenerative and acquired neurological disorders, and multiple handicaps. The educational curricula emphasize the integration of services supported by State, local agencies, organizations, private providers and communities. The LEND programs will prepare health professionals to assist children and their families to achieve their developmental potentials by forging a community-based partnership of health resources and community leadership.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities or Preferences: Universities with an accredited medical school which have defined working departments providing graduate training in all requisite core disciplines identified in the program elements and requirements for MCH Interdisciplinary Leadership Education for Children with Neurodevelopmental and Related Disabilities. Such agreements may be either with components of the applicant institution or with one or more other institutions of higher learning through formal affiliation agreements. Although multiple institutions and programs may, and are encouraged to participate, the application must be submitted by the university at which the major medical and other health professions schools or departments are located. Programs must already be established in the specialization area for which application is made with documented graduates.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $10,300,000.

Estimated Number of Awards: 17 to 19.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 years.

CFDA Number: 93.110TM.

Application Availability Date: July 7, 2000.

Letter of Intent Deadline: August 7, 2000.

Application Deadline: October 12, 2000.

Projected Award Date: July 1, 2001.

Program Contact Person: Denise Sofka, M.P.H.

Phone Number: 301 443–0344.

E-Mail: dsofka@hrsa.gov

Continuing Education and Development 93.110TO

Legislative Authority: Social Security Act, Title V, Section 502, 42 U.S.C. 702.

Purpose: Continuing Education and Development (CED) focuses on increasing leadership skills of MCH professionals; facilitating timely transfer and application of new information, research findings and technology related to MCH; and updating and improving the knowledge and skills of health and related professionals in programs serving mothers and children. CED programs will support conduct of short-term, non-degree related courses, workshops, conferences, symposia, institutes, and distance learning strategies and/or development of curricula, guidelines, standards of practice, and educational tools/strategies intended to assure quality health care for the MCH population.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $300,000.

Estimated Number of Awards: 8–10.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1–3 Years.

CFDA Number: 93.110TO.

Application Availability Date: November 1, 2000.

Letter of Intent Deadline: December 1, 2000.

Application Deadline: January 12, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Diana L. Rule, M.P.H.

Phone Number: 301 443–2190.

E-Mail: drule@hrsa.gov

Continuing Education and Development Cooperative Agreement to Advance Education and Program/Policy Development in Maternal and Child Health 93.110TP.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of the cooperative agreement(s) is to support a national program of continuing education and development (CED) focusing on education, information, and public health policy & programs in maternal and child health. This project will serve as an information/education resource that supports efforts in Title V data collection and analysis to assist in policy and program development and evaluation. Further, this project will provide continuing education and program/policy development efforts to improve standards/guidelines (i.e., Bright Futures); to improve practices/delivery of health care such as nutrition, oral health and mental health services for the MCH population; and support additional MCH program activities through workshops, institutes, seminars, and distance learning ventures.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $4,000,000.

Estimated Number of Awards to be Made: Up to 2.

Estimated Project Period: 5 years.

CFDA Number: 93.110TP.

Application Availability Date: November 1, 2000.

Letter of Intent Deadline: December 1, 2000.

Application Deadline: February 1, 2001.

Projected Award Date: July 1, 2001.

Program Contact Person: Carol Galaty.

Phone Number: 301 443–2778.

E-Mail Address: cgalaty@hrsa.gov

Public Policy Analysis and Education Center for Infant and Early Childhood Health 93.110TP.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this Center is to analyze the effects of public policies, regulations, and practices at the community, State, and Federal levels on the health and well-being of infants and young children and their families. The Center's efforts will enhance the knowledge and inform the practices of practitioners and policy and decision-makers regarding the short and long-term consequences of public policies on the health, behavior and well-being of infants and young children. The Center's work will include the development of conceptual models for health and related services as well as analysis of the utility of various indicators of health status and well being for these age groups.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application.

Estimated Amount of this Competition: $250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.110TP.

Application Availability Date: January 22, 2001.

Letter of Intent Deadline: February 19, 2001.

Application Deadline: March 26, 2001.

Projected Award Date: August 1, 2001.

Program Contact Person: Phyllis E. Stubbs-Wynn, M.D.

Phone Number: (301) 443–4489.

E-Mail: pstubbs@hrsa.gov.

Public Policy Analysis and Education Center for Middle Childhood and Adolescent Health 93.110TP

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this Center is to analyze the effects of public policies, regulations and practices at the community, State and Federal levels on the health, safety and well-being of school-aged children, adolescents and their families. As part of its analytical effort, the Center will use the framework of the twenty critical adolescent health objectives contained in Healthy People 2010 as it considers the effects of States' policies on adolescent health status. It will examine the following domains of health and related services for these age groups: content, organization, financing, quality, and accountability. The Center's efforts will enhance the knowledge and inform the practices of practitioners and policy and decision-makers regarding the short and long-term consequences of public policies on the health, behavior and well-being of different populations of school-aged children and adolescents. The Center's work will include the development of conceptual models for health and related services as well as analysis of the utility of various indicators of health status and well-being for these age groups. Given the importance of adolescence to the shaping of adult behavior and health, the Center will include a focus on developmental and institutional transitions between childhood and

adolescence and between adolescence and adulthood.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.110TP.

Application Availability Date: January 22, 2001.

Letter of Intent Deadline: February 19, 2001.

Application Deadline: March 26, 2001.

Projected Award Date: August 1, 2001.

Program Contact Person: Trina Menden Anglin, M.D., Ph.D.

Phone Number: 301 443–4291.

E-Mail: Tanglin@HRSA.GOV.

Continuing Education/Distance Learning 93.110TQ.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: Alternative education methodologies provide effective and efficient means by which maternal and child health (MCH) professionals can enhance and advance their managerial, analytical, administrative and clinical skills while continuing to meet their daily on-site responsibilities. These functions include assessing need; utilizing data; developing policies and programs; addressing and resolving problems; monitoring progress and evaluating performance. This grant program supports the development, implementation, creative utilization, application and evaluation of distance education opportunities for MCH health professionals. Projects will work collaboratively with each other and the MCH Bureau to provide technical assistance in distance education and technology to the MCH community.

Eligibility: 42 CFR Part 51a.3.

Funding Preferences and/or Priorities: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of Competition: $713,000.

Estimated Number of Awards: 3–4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.110TQ.

Application Availability Date: November 1, 2000.

Letter of Intent Deadline: December 1, 2000.

Application Deadline: January 12, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Aaron Favors, Ph.D.

Phone Number: 301 443–0392.

E-Mail: afavors@hrsa.gov

Healthy Tomorrows Partnership for Children 93.110V

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to support projects for mothers and children that improve access to health services and utilize preventive strategies. The initiative encourages additional support for the private sector and from foundations to form community-based partnerships to coordinate health resources for pregnant women, infants and children.

Eligibility: 42 CFR Part 51a.3.

Matching Requirement: The applicant must demonstrate the capability to meet cost participation goals by securing matching funds for the second through fifth years of the project. The specific requirements are detailed in the application materials.

Funding Priorities and/or Preferences: In the interest of equitable geographic distribution, special consideration for funding will be given to projects from States without a currently funded project in this category. These States are: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, South Carolina, Texas, Virginia, West Virginia, Wisconsin, Wyoming, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, and the Virgin Islands.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $450,000.

Estimated Number of Awards to be Made: Up to 9.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 5 Years.

CFDA Number: 93.110V.

Application Availability Date: August 1, 2000.

Letter of Intent Deadline: September 1, 2000.

Application Deadline: October 2, 2000.

Projected Award Date: March 1, 2001.

Program Contact Person: Maurice Bryant.

Phone Number: 301 443–2340.

E-Mail: mbryant@hrsa.gov.

Healthy Tomorrows Partnership Cooperative Agreement 93.110VA

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: To support activities which improve access and delivery of maternal and child health services through governmental and professional partnerships. Specifically, the program is designed to promote problem-solving approaches which enhance community and provider participation. This provider partnership will encourage private sector and other support for improved coordination of and access to health resources at the community-level for pregnant women, infants and children. Any national membership organization able to demonstrate that it represents a significant group(s) of providers of pediatric services will be considered for funding.

Eligibility: 42 CFR Part 51a.3.

Funding Priorities and/or Preferences: N/A.

Specific program requirements include:

—Analysis of obstacles (issues and contributing factors) to provider participation in the delivery of maternal and child health services to low-income pregnant women and children, as well as involvement in problem-solving at the community level.

—Development of strategies to improve maternal and child health status and systems through collaboration with the Maternal and Child Health Bureau which promote problem solving at the community level; encourage provider participation; and encourage private sector and other support for improved coordination of and access to health resources at the community level.

—Dissemination and effective communication of concerns and information pertaining to the issues and strategies employed to their members and other national organizations.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $180,000.

Estimated Number of Awards to be Made: 1.

Estimated Project Period: Up to 5 years.

CFDA Number: 93.110VA.

Application Availability Date: April 2, 2001.

Letter of Intent Deadline: May 1, 2001.

Application Deadline: June 1, 2001.

Projected Award Date: September 30, 2001.

Program Contact Person: Maurice Bryant.

Phone Number: 301 443–2340.
E-Mail: mbryant@hrsa.gov.

State Systems Development Initiative (SSDI)—MCH Services Federal Set-Aside Program 93.110W

Legislative Authority: Social Security Act, Title V, Section 502(A)(1) 42 U.S.C. 701.

Purpose: The purpose of the State Systems Development Initiative is to assist State Agency MCH and CSHCN programs in the building of State and community infrastructure that results in comprehensive, community-based systems of care for all children and their families. During this time of government performance results accountability and demand for more accurate program data, the SSDI Program will be very focused. FY 01 applications must concentrate on Title V Block Grant needs assessment, performance and outcome measures, and the core Health Status Indicator #8 regarding Data Capacity. HRSA's strategic goal is "Assure 100% access to health care and zero health disparities for all Americans." As part of their ongoing needs assessment activities, states will be expected to make vigorous and determined efforts to identify and eliminate health disparities. States will be expected to focus SSDI resources on establishing or improving the data linkages between birth records and (1) infant death certificates, (2) Medicaid eligibility or paid claims files, (3) WIC eligibility files, and (4) newborn screening files; and establishing or improving access to (1) hospital discharge surveys, (2) a birth defects surveillance system, (3) survey of recent mothers at least every two years, and (4) survey of adolescent health and behaviors at least every two years.

Eligibility: 42 CFR 51a.3. Competition is limited to competing renewal applications from the 59 State Title V agencies.

Funding Priorities and/or Preferences: N/A.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $5,300,000.

Estimated Number of Awards To Be Made: 59.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number: 93.110W.

Application Availability Date: February 13, 2001.

Letter of Intent Deadline: N/A.

Application Deadline: July 13, 2001.

Projected Award Date: September 30, 2001.

Program Contact Person: Jerry Hood, M.A.

Phone Number: 301–443–0870.
E-Mail: jhood@hrsa.gov.

EMSC Implementation 93.127A

Legislative Authority: Public Health Service Act Title XIX, Section 1910, 42 U.S.C. 300W–9.

Purpose: This implementation grant will improve the capacity of a State's EMS program to address the particular needs of children. The implementation grant is used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS, MCH, and CSHCN systems, using the experience and products of previous EMSC grantees. The applicant is encouraged to consider activities that: (1) address identified needs within their State EMS system and that lay the groundwork for permanent changes in that system; (2) develop or monitor pediatric EMS capacity; and (3) will be institutionalized within the State EMS system.

Eligibility: States and accredited schools of medicine are eligible applicants.

Funding Priorities or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.127A.

Application Availability Date: September 1, 2000.

Letter of Intent Deadline: October 2, 2000.

Application Deadline: November 1, 2000.

Projected Award Date: March 1, 2001.

Program Contact Person: Maria T. Baldi.

Phone Number: 301–443–6192.

E-Mail: mbaldi@hrsa.gov.

EMSC Partnerships 93.127C

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.

Purpose: State partnership grants will fund activities that represent the next logical step or steps to take to institutionalize EMSC within EMS and to continue to improve and refine EMSC. Proposed activities should be consistent with documented needs in the State and should reflect a logical progression in enhancing pediatric capabilities. For example, funding might be used to address problems identified in the course of a previous implementation grant; to increase the involvement of families in EMSC; to improve linkages between local, regional, or State agencies; to promulgate standards developed for one region of the State under previous funding to include the entire State; to devise a plan for coordinating and funding poison control centers; or to assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources.

Eligibility: States and accredited schools of medicine are eligible applicants.

Funding Priorities or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $700,000.

Estimated Number of Awards: 7.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.127C.

Application Availability Date: September 1, 2000.

Letter of Intent Deadline: October 2, 2000.

Application Deadline: November 1, 2000.

Projected Award Date: March 1, 2001.

Program Contact Person: Maria T. Baldi.

Phone Number: 301 443–6192.

E-Mail: mbaldi@hrsa.gov

EMSC Targeted Issue 93.127D

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.

Purpose: Targeted issue grants are intended to address specific, focused issues related to the development of EMSC knowledge and capacity with the intent of advancing the state-of-the-art, and creating tools or knowledge that will be helpful nationally. Proposals must have well-conceived methodology for analysis and evaluation. Targeted issue priorities have been identified based on the EMSC Five Year Plan. The targeted issue priorities are: cost-benefit analysis related to EMSC, implications of managed care for EMSC, evaluations of EMSC components, models for improving the care of culturally distinct populations, evaluation of systems for provision of emergency health care within day care and/or school settings, and evaluation of family-centered care models. Proposals may be submitted on emerging issues that are not included in the identified priorities. However, any such proposal must demonstrate relevance to the Plan and must make a persuasive argument that the issue is particularly critical.

Eligibility: States and accredited schools of medicine are eligible applicants.

Funding Priorities or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,200,000.

Estimated Number of Awards: 8.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2–3 years.

CFDA Number: 93.127D.

Application Availability Date: September 1, 2000.

Letter of Intent Deadline: October 2, 2000.

Application Deadline: November 1, 2000.

Projected Award Date: March 1, 2001.

Program Contact Person: Cindy Doyle.

Phone Number: 301 443–3888.

E-Mail: cdoyle@hrsa.gov.

Pediatric Injury Surveillance System 93.127J

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.

Purpose: To develop an infrastructure for the purpose of collecting and analyzing information on pediatric injuries to develop effective prevention and treatment strategies. Data collection sites included in the sampling frame will be dispersed throughout the U.S., providing a mechanism to generate national estimates of childhood injury. Data elements contained within the database will be map-able to elements in other national injury registries, allowing large databases to be easily consolidated. A subset of the surveillance data points will include both prehospital and short-term functional status data collected at hospital discharge. Data will be linked to vital statistics records, extending the data collection window and facilitating research questions associated with the continuum of care among injured children.

Eligibility: States and accredited schools of medicine.

Funding Priorities or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $500,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.127J.

Application Availability Date: February 1, 2001.

Letter of Intent Deadline: March 1, 2001.

Application Deadline: April 2, 2001.

Projected Award Date: July 1, 2001.

Program Contact Person: Cindy Doyle.

Phone Number: 301 443–3888.

E-Mail: Cdoyle@hrsa.gov

Clinical Practice Guidelines for Emergency Care of Children 93.127i

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.

Purpose: To develop a set of clinical practice guidelines applicable to all medical personnel who are responsible for treating children's emergency conditions (*e.g.*, pediatricians, family practitioners, nurse practitioners, emergency department physicians, physician associates). The purpose of these guidelines will be to improve care for common problems that children present in emergency departments and doctors' offices. These guidelines will be based on an assessment of published research and will permit accumulating valid summary statistics.

Eligibility: States and accredited schools of medicine are eligible applicants.

Funding Priorities and/or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $500,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.127i.

Application Availability Date: April 2, 2001.

Letter of Intent Deadline: May 1, 2001.

Application Deadline: June 1, 2001.

Projected Award Date: September 1, 2001.

Program Contact Person: Cindy Doyle.

Phone Number: 301 443–3888.

E-Mail: cdoyle@hrsa.gov

A Color-Coded System for Equipment and Medication for Pediatric Resuscitation 93.127H

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300W–9.

Purpose: To demonstrate the effectiveness of a color-coded system, which allows access to accurate precalculated medication doses and equipment sizes, and emergency treatments for critically ill and injured children. The effectiveness of implementing a color-coding system in the clinical setting will be appropriately evaluated using scientifically based data collection and analysis techniques.

Eligibility: Accredited Schools of Medicine and States.

Funding Priorities or Preferences: None.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.127H.

Application Availability Date: January 2, 2001.

Letter of Intent Deadline: February 1, 2001.

Application Deadline: March 1, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Cindy Doyle.

Phone Number: 301–443–3888.

E-Mail: Cdoyle@hrsa.gov

Traumatic Brain Injury (TBI)—State Implementation Grants 93.234A

Legislative Authority: Public Health Service Act, Title XII, Section 1242, 42 U.S.C. 300d–42.

Purpose: The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Implementation grants provide funding to assist States in moving toward statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility: State governments.

Funding Priorities or Preferences: None.

Matching Requirement: The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.234A.

Application Availability Date: September 1, 2000.

Letter of Intent Deadline: November 1, 2000.

Application Deadline: December 1, 2000.

Projected Award Date: April 1, 2001.

Program Contact Person: Betty Hastings, MSW.

Phone Number: 301 443–5599.

E-Mail: bhastings@hrsa.gov

Traumatic Brain Injury (TBI)—State Planning Grants 93.234B

Legislative Authority: Public Health Service Act, Title XII, Section 1242, 42 U.S.C. 300d–42.

Purpose: The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI).

Implementation grants provide funding to assist States in moving toward statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility: State governments.

Funding Priorities or Preferences: None.

Matching Requirement: The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of this Competition: $375,000.

Estimated Number of Awards: 5.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 2 years.

CFDA Number; 93.234B.

Application Availability Date: September 1, 2000.

Letter of Intent Deadline: November 1, 2000.

Application Deadline: December 1, 2000.

Projected Award Date: April 1, 2001.

Program Contact Person: Betty Hastings, MSW.

Phone Number: 301 443–5599.

E-Mail: bhastings@hrsa.gov

State Mortality Review Support Program 93.926C

Legislative Authority: Section 301, Public Health Service Act, 42 U.S.C. 241.

Purpose: The purpose of this program is to enable State Maternal and Child Health programs to stimulate, promote, coordinate, and sustain mortality and morbidity review programs at state and local levels. The findings and recommendations from these review programs are used to build MCH capacity by enhancing needs assessment, policy development, and quality improvement efforts. The intent of this program is two-fold: (1) use local findings at State MCH level for capacity building, and (2) improve coordination between two or more types of review processes that co-exist in the State. In particular, these programs will assist states in improving the health of mothers and children through MCH programming and infrastructure building. Fetal and Infant Mortality Review (FIMR), maternal mortality review, and child fatality review are priorities for the focus of this program.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply. There may be only one application per state (details will be given in the application guidance).

Funding Priorities and/or Preferences: State/Territorial MCH Title V agencies, tribal health agencies or their designees, or state/territorial programs that have not previously been awarded a state Mortality/Morbidity Review Support Program grant and where at least two or more review processes co-exist and multiple review committees exist for a given process within the State.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $600,000.

Estimated Number of Awards To Be Made: 4.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 3 years.

CFDA Number: 93.926C.

Application Availability Date: November 20, 2000.

Letter of Intent Deadline: December 18, 2000.

Application Deadline: January 29, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Brenda Lisi.

Phone Number: 301 443–9991.

E-Mail: Blisi@hrsa.gov

The Perinatal Systems and Women's Health National Resource Center 93.926D

Legislative Authority: Section 301 of the Public Health Service Act, 42 U.S.C. 241.

Purpose: The Division of Perinatal Systems and Women's Health provides national leadership in coordinating and disseminating resources developed through innovative national programs that focus on perinatal and women's health. These resources contribute to reduction in disparities in perinatal health and improvement of the quality and comprehensiveness of systems of perinatal and women's health care. The National Resource Center will serve communities and community-based organizations; professional, academic, and provider organizations; and the general public. The resource center will focus on the following functions: library and resource development, dissemination, communication and continuing education.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Priorities and/or Preferences: N/A.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $800,000.

Estimated Number of Awards To Be Made: 1.

Estimated Project Period: 2 years.

CFDA Number: 93.926D.

Application Availability Date: December 21, 2000.

Letter of Intent Deadline: January 29, 2001.

Application Deadline: February 23, 2001.

Projected Award Date: July 1, 2001.

Program Contact Person: Beverly Wright.

Phone Number: 301–443–8427.

E-Mail: bwright@hrsa.gov

Healthy Start Initiative—Eliminating Disparities in Perinatal Health 93.926E

Legislative Authority: Section 301, Public Health Service Act, 42 U.S.C. 241.

Purpose: The purpose of this program is to address significant disparities in perinatal health indicators including disparities among Hispanics, American Indians, African Americans, Alaska Natives, Asian/Pacific Islanders, immigrant populations, or differences occurring by education, income, disability, or living in rural/isolated areas by enhancing a community's service system. To address these indicators, it is anticipated that the proposed scope of project services will cover preconceptional, pregnancy, and interconceptional phases for women and infants residing in the proposed project area. To promote longer interconceptional periods and prevent relapses of unhealthy risk behaviors, services are to be given to both mother and infant through the infant's second year of life. Funding would be made available to community-based projects which have: (1) significant disparities in perinatal indicators which contribute to high infant mortality rates, among one or more subpopulations; (2) an existing active consortia of stakeholders which have underway a perinatal disparity reduction initiative for at least one year; and, (3) a feasible plan to reduce barriers, improve the local perinatal system of care, and work towards eliminating existing disparities in perinatal health. These sites must have or plan to implement/adapt Healthy Start strategies of consortium, case management, and outreach services in a culturally and linguistically sensitive manner. In addition, they must demonstrate existing/planned collaborations with key State and local services and resource systems. Such key State and local resources include Title V, Title X, Title XIX, Title XXI, WIC, Enterprise Communities/ Empowerment Zones, federally funded Community and Migrant Health Centers, federally funded Health Care for the Homeless

projects, and Indian/Tribal Health Services.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Preferences/Priorities: Communities in States and Territories which will not have a federally-funded Healthy Start project after July 1, 2001 (details will be given in the application guidance).

Special Considerations: National geographic distribution as well as urban/rural.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of this Competition: Up to $59,840,000.

Estimated Number of Awards To Be Made: Up to 59.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.926E.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: January 5, 2001.

Application Deadline: February 6, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Maribeth Badura.

Phone Number: 301–443–8283.

E-Mail: mbadura@hrsa.gov

Interconception Care for High-Risk Women and Their Infants 93.926K

Legislative Authority: Section 301, Public Health Service Act.

Purpose: The purpose of this program is to improve the health of high-risk women and their infants and to avoid future adverse pregnancy outcomes. This initiative will support communities to enroll high-risk women at the time of delivery in the hospital and follow these high-risk women and their infants for two years or through the next pregnancy, ensuring they are enrolled in the health care system for appropriate care and follow-up. Proposals must target postpartum women who delivered a live infant or who sustained a fetal loss without receipt of prenatal care. Funded programs must demonstrate a significant need in their population and may be statewide or focused on a smaller geographic area. Required project activities include early identification of these high-risk women and increasing the sustained participation of these women and infants in existing health and related services beyond the postpartum period. All proposed activities must be provided in a culturally and linguistically sensitive manner.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Priorities and/or Preferences: None.

Special Considerations: National geographic distribution.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $7,000,000.

Estimated Number of Awards To Be Made: Up to 25.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.926K.

Application Availability Date: December 8, 2000.

Letter of Intent Deadline: January 12, 2001.

Application Deadline: February 16, 2001.

Projected Award Date: July 1, 2001.

Program Contact Person: Brenda Lisi.

Phone Number: 301–443–9991.

E-Mail: blisi@hrsa.gov

Improving Women's Health Through Screening and Intervention for Depression During or Around the Time of Pregnancy 93.926L

Legislative Authority: Section 301, Public Health Service Act.

Purpose: The purpose of this program is to promote systems of care that address gaps in routine screening and skilled assessment for depression during or around the time of pregnancy and to enhance linkages to community-based intervention services for depression that are age and culturally specific for women of reproductive age. Proposals must target pregnant and postpartum women but may also target women contemplating pregnancy (*e.g.*, pre-conceptional). Funded programs may be statewide or target a geographic area within a particular state. Activities considered for funding include but are not limited to statewide or community needs assessment, system planning and program implementation based on needs assessment findings and other data (e.g. evidence-based), outreach, provider training, consumer education, program evaluation and an infrastructure building network of community prenatal and family planning providers and mental health service providers that will lead to early identification and increased capacity to effectively screen, perform skilled assessment and successfully engage pregnant, postpartum and pre-conceptional women who are experiencing depression and other disorders in appropriate mental health services. The result of these activities will be improved health outcomes for women and their families.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Priorities and/or Preferences: State/Territorial Title V agencies, tribal health agencies or their designees (details will be given in the application guidance). Only one application will be accepted per State/Territory.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $2,000,000.

Estimated Number of Awards To Be Made: Up to 10.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.926L.

Application Availability Date: October 18, 2000.

Letter of Intent Deadline: November 17, 2000.

Application Deadline: December 21, 2000.

Projected Award Date: April 1, 2001.

Program Contact Person: Karen Hench.

Phone Number: 301–443–9708.

E-Mail: khench@hrsa.gov

Healthy Start Initiative—State Infrastructure Initiatives 93.926M

Legislative Authority: Section 301, Public Health Service Act.

Purpose: This grant is intended to facilitate State infrastructure/capacity development to address and support local communities funded under federal Healthy Start, disparities in perinatal health, including disparities among Hispanics, American Indians, African Americans, Alaska Natives, Asian/Pacific Islanders, immigrant populations, or differences occurring by education, income, disability or living in rural/isolated areas. Activities may include: technical assistance to communities in particular those communities with Healthy Start programs; integration of existing State service systems to support comprehensive perinatal and women's health systems in communities; consortium/council development; dissemination of best practices developed nationally and within the state; professional and paraprofessional development; increased data capacity; and enhanced capacity for community-based planning.

Eligibility: Any public or private entity, including an Indian Tribe or Tribal Organization (as defined at 25 U.S.C. 450b) is eligible to apply.

Funding Priorities or Preferences: State/Territorial MCH Title V agencies, tribal health agencies or their designees (details will be given in the application guidance).

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $7,500,000.

Estimated Number of Awards To Be Made: 59.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 4 years.

CFDA Number: 93.926M.

Application Availability Date: October 6, 2000.

Letter of Intent Deadline: November 9, 2000.

Application Deadline: December 8, 2000.

Projected Award Date: May 1, 2001.

Program Contact Person: Angela Hayes-Toliver.

Phone Number: (301) 443–5136.

E-Mail Address: ahayes@hrsa.gov

Healthy Start Initiative (HSI)—Eliminating Disparities in Perinatal Health—Border Health 93.926N

Legislative Authority: Section 301, Public Health Service Act.

Purpose: To enhance a border community's perinatal service system to address significant disparities and deficiencies in perinatal health which contribute to infant mortality. To address these indicators, it is anticipated that the proposed scope of project services will cover preconceptional, pregnancy, and interconceptional phases for women and infants residing in the proposed project area. Services are to be given to both mother and infant through the infant's second year of life to promote longer interconceptional periods and lower recidivism/prevent relapses of unhealthy risk behaviors. The selected communities must be within 62 miles of the US-Mexican border, have high incidence of poor perinatal indicators, have an active consortia of stakeholders and consumers, and plan to implement or adapt Healthy Start methods of intervention in a culturally and linguistically sensitive manner.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) that directly serves the target population in the communities within 62 miles of the US-Mexican border and who meet the established HSI Border Health criteria is eligible to apply.

Funding Priorities or Preferences: Communities meeting the established HSI Border Health criteria in States which will not have a federally-funded Healthy Start border project after July 1, 2001 (details will be given in the application guidance).

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: Up to $1,000,000.

Estimated Number of Awards to be Made: Up to 2 projects.

Estimated Project Period: 4 years.

CFDA Number: 93.926N.

Application Availability Date: December 1, 2000.

Letter of Intent Deadline: January 5, 2001.

Application Deadline: February 6, 2001.

Projected Award Date: June 1, 2001.

Program Contact Person: Donna Hutten.

Phone Number: 301–443–8427.

E-Mail Address: dhutten@hrsa.gov

Office of the Administrator

Community Access Program 93.252

Legislative Authority: PHS Act, Section 301 [A legislative proposal for program-specific authority has been submitted to Congress by the Administration. If program authority is not enacted this year, the program would continue to operate under the demonstration authority in Section 301.]

Purpose: To assist communities and consortia of health care providers to develop the infrastructure necessary to fully develop or strengthen integrated health systems of care that coordinate health services for the uninsured.

Eligibility: Applications may be submitted by public or non-profit entities who demonstrate a commitment to and experience with providing a continuum of care to uninsured individuals. Each applicant must represent a community-wide coalition that includes local health care providers who have traditionally provided care to the community's uninsured and underinsured regardless of ability to pay. The consortium may include private sector health care providers and organizations.

Funding Priorities and/or Preference: None.

Estimated Amount of This Competition: $100 million.

Estimated Number of Awards To Be Made: 100 new awards.

Estimated Project Period: 1 year.

CFDA Number: 93.252.

Application Availability Date: December 1, 2000 (Approximate).

Letter of Intent Deadline: January 15, 2001 (Approximate).

Application Deadline: June 1 (Approximate).

Projected Award Date: September 1 (Approximate).

Program Contact Person: Julia Tillman.

Phone Number: 301–443–0536.

E-Mail Address: jtillman@hrsa.gov

Association of State and Territorial Health Officials (ASTHO) 93.000

Legislative Authority: Section 301 of the Public Health Service Act [42 U.S.C. 241], as amended.

Purpose: The purpose of this project is to address the health care needs of the underserved and vulnerable populations, the needs of health care providers who serve vulnerable populations, and related public health issues. The cooperative agreement will support HRSA's mission by assisting the Association of State and Territorial Health Officials (ASTHO) in developing and convening State and territorial policy forums and provide educational and resource materials emanating from these forums for State and territorial policymakers on the above areas.

Eligibility: Assistance will be provided only to the ASTHO. No other applications are solicited. There is no ongoing group that can convene the high-ranking decision-makers representing State and Territorial health officials' interests around an issue of importance to HRSA. This group will facilitate communication on current and emerging strategies addressing common priorities, and will enable HRSA to better leverage limited resources by improving planning and program design to complement other public and private sector initiatives serving the needs of the same populations.

Funding Priorities or Preferences: None.

Estimated Amount of This Competition: $100,000.

Estimated Number of Awards To Be Made: 1.

Estimated Project Period: In anticipation of Fiscal Year (FY) 2001 funding, HRSA announces its intention to award a cooperative agreement which will begin on or after October 1, 2000, and will be for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

CFDA Number: 93.000.

Application Availability Date: (To be determined).

Application Deadline: (To be determined).

Projected Award Date: On or after October 1, 2000.

Program Contact Person: Diane Rodill, Ph.D.

Phone Number: 301 443–4034.

E-Mail: drodill@hrsa.gov

National Association of County and City Health Officials (NACCHO) 93.000

Legislative Authority: Section 301 of the Public Health Service Act (2 U.S.C. 241), as amended.

Purpose: The purpose of this project is to address the health care needs of the underserved and vulnerable populations, the needs of health care providers who serve vulnerable populations, and related public health issues; and support HRSA's mission by assisting NACCHO in developing and convening county and city policy forums and provide educational and resource materials emanating from these forums for county and city policymakers on the above areas.

Eligibility: Assistance will be provided only to the National Association of County and City Health Officials. No other applications are solicited. There is no other ongoing group that can convene the high-ranking decision-makers representing county and city health officials' interests around an issue of importance to HRSA. This group will facilitate communication on current and emerging strategies addressing common priorities, and will enable HRSA to better leverage limited resources by improving planning and program design to complement other public and private sector initiatives serving the needs of the same populations.

Funding Priorities and/or Preferences: N/A.

Estimated Amount of This Competition: $100,000.

Estimated Number of Awards to Be Made: 1.

Estimated Project Period: In anticipation of Fiscal Year (FY) 2001 funding, HRSA announces its intention to award a cooperative agreement which will begin on or after October 1, 2000, and will be for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

CFDA Number: 93.000.

Application Availability Date: (To be determined).

Letter of Intent Deadline: N/A.

Application Deadline: May 30, 2000.

Projected Award Date: On or after October 1, 2000.

Program Contact Person: Diane Rodill, Ph.D.

Phone Number: 301 443–4034.

E-Mail: drodill@hrsa.gov

National Conference of State Legislatures (NCSL) 93.000

Legislative Authority: Section 301 of the Public Health Service Act [42 U.S.C. 241], as amended.

Purpose: The purpose of this project is to address the health care needs of the underserved and vulnerable populations, the needs of health care providers who serve vulnerable populations, and related public health issues. The cooperative agreement with NCSL will support HRSA's mission in developing and convening State Legislative policy forums and provide educational and resource materials emanating from these forums for State Legislature policymakers on the above areas.

Eligibility: Assistance will be provided only to the National Conference of State Legislatures. No other applications are solicited. There is no ongoing group that can convene the high-ranking decision-makers representing State Legislatures' interests around an issue of importance to HRSA. This group will facilitate communication on current and emerging strategies addressing common priorities, and will enable HRSA to better leverage limited resources by improving planning and program design to complement other public and private sector initiatives serving the needs of the same populations.

Funding Priorities and/or Preference: NA.

Estimated Amount of This Competition: $100,000.

Estimated Number of Awards to Be Made: 1.

Estimated Project Period: In anticipation of Fiscal Year (FY) 2001 funding, HRSA announces its intention to award a cooperative agreement which will begin on or after October 1, 2000, and will be for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

CFDA Number: 93.000.

Application Availability Date: (To be determined).

Letter of Intent Deadline: N/A.

Application Deadline: (To be determined).

Projected Award Date: On or after October 1, 2000.

Program Contact Person: Diane Rodill, Ph.D.

Phone Number: 301 443–4034.

E-Mail: drodill@hrsa.gov

Public Health Foundation (PHF) 93.000

Legislative Authority: Section 301 of the Public Health Service Act [42 U.S.C. 241], as amended.

Purpose: The purpose of this project is to support HRSA's mission by assisting the Public Health Foundation (PHF) in clearinghouse and infrastructure activities, including but not limited to: Expanding and maintaining a workforce development clearinghouse for use by health agencies and other community health system organizations on issues that relate to health care access for underserved and vulnerable populations, to include the prevention, early detection, and control of disease, and strengthening the public health infrastructure in the health agencies and other community health system organizations; developing, printing, and distributing articles, reports, tools, or other documents relating to health care access, unmet population needs, provider capacity, the uses of existing data systems to address health care needs, other infrastructure issues, and private sector population-based initiatives.

Eligibility: Assistance will be provided only to the PHF. No other applications are solicited. PHF is the only national, non-profit, and non-membership organization that serves as a public health "think tank" around public health infrastructure issues, and is also dedicated to supporting and advancing efforts of local, state, and Federal public health agencies and health systems to promote and protect the health of people within their respective jurisdictions.

Funding Priorities and/or Preference: NA.

Estimated Amount of This Competition: $50,000.

Estimated Number of Awards to Be Made: 1.

Estimated Project Period: In anticipation of Fiscal Year (FY) 2001 funding, HRSA announces its intention to award a cooperative agreement which will begin on or after October 1, 2000, and will be for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

CFDA Number: 93.000.

Application Availability Date: (To be determined).

Letter of Intent Deadline: N/A.

Application Deadline: (To be determined).

Projected Award Date: On or after October 1, 2000.

Program Contact Person: Diane Rodill, Ph.D.

Phone Number: 301 443–4034.

E-Mail: drodill@hrsa.gov

Pacific Islands Health Officers Association 93.000

Legislative Authority: Sections 301, 330(A), 330(k), 761(b), 767 of the Public Health Service Act, as amended, and Sections 509 and 711 of the Social Security Act, as amended.

Purpose: This is a grant program for the Research Corporation of the University of Hawaii Special Projects program to support the Pacific Islands Health Officers Association (PIHOA), which serves as a regional health policy body for the six Pacific Basin jurisdictions. PIHOA was established in 1986 as a formal mechanism to discuss common health interests, problems and concerns, and to promote and enhance a regional approach for cost-effective sharing of resources, information, and human expertise to advance health care improvements in the Pacific Basin. The U.S. Public Health Service (PHS) has used PIHOA to coordinate PHS agencies' programs and the provision of technical assistance to the Pacific Basin.

Matching or Cost Sharing Requirement: None.

Eligibility: Assistance will be provided only to PIHOA through the Research Corporation of the University of Hawaii Special Projects program, which serves as the Executive Directorate for PIHOA. No other applications are solicited.

PIHOA is the only Pacific Basin health policy organization that represents the six jurisdictions, which include, the U.S. flag territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, and the three U.S.-associated jurisdictions of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. It is the only regional conduit for the governments to communicate with each other to share ideas and resources.

Funding Priorities and/or Preferences: None.

Special Considerations: None.

Estimated Amount of This Competition: $100,000.

Estimated Number of Awards To Be Made: 1.

Estimated or Average Size of Each Award: $100,000.

Estimated Project Period: 3 years.

CFDA Number: 93.000.

Application Availability Date: June 1, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: June 1, 2000.

Projected Award Date: October 1, 2000.

Program Contact Person: Lynnette S. Araki.

Phone Number: 301 443–6204.

E-Mail: LAraki@hrsa.gov

Office of Rural Health Policy

State Rural Hospital Flexibility Program 93.241

Legislative Authority: Section 1820 of the Social Security Act (42 U.S.C. 1395I–4) as amended in Public Law 105–33 sec. 4201.

Purpose: The purpose of this grant program is to help states work with rural communities and hospitals to develop and implement a rural health plan, develop integrated networks of care, improve emergency medical services, designate critical access hospitals and improve quality.

Matching or Cost Sharing Requirement: None.

Eligibility: 50 States.

Funding Priorities and/or Preferences: Most programs have none—enter only approved priorities or preferences that will be applied beyond the review criteria.

Special Considerations: These are grants to States and only one application will be accepted from each eligible state.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards To Be Made: 3.

Estimated or Average Size of Each Award: $470,000.

Estimated Project Period: 2 Years.

CFDA Number: 93.241.

Application Availability Date: February 1, 2001.

Letter of Intent Deadline: N/A.

Application Deadline: May 25, 2001.

Projected Award Date: August 31, 2001.

Program Contact Person: Forrest Calico.

Phone Number: 301 443–0835.

E-Mail: fcalico@hrsa.gov

Rural Health Network Development 93.912B

Legislative Authority: Section 330a of the Public Health Service Act, 42 U.S.C. 254c.

Purpose: The purpose of this program is to support the planning and development of integrated health care networks in rural areas. Networks must be composed of three different types of providers. The emphasis of the program is on projects to develop the organizational capabilities of these networks. The network is a tool for overcoming the fragmentation of health care delivery services in rural areas. As such, the network provides a range of possibilities for structuring local delivery systems to meet health care needs of rural communities.

Matching or Cost Sharing Requirement: None.

Eligibility: Rural public or nonprofit private organization that is or represents a network which includes three or more health care providers or other entities that provide or support the delivery of health care services. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or an organization constituted exclusively to provide services to migrant and seasonal farm workers in rural areas and supported under Section 330(g) of the Public Health Service Act. The last type of organization is eligible regardless of the urban or rural location of the administrative headquarters.

Funding Priorities or Preferences: Funding preference may be given to applicant networks that include: (1) a majority of the health care providers serving in the area or region to be served by the network; (2) any federally qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program (WIC), to improve access to and coordination of health care services.

Special Considerations: Applicant Organization's Central Headquarters Must Be Located in a Rural Area. (List of Eligible Rural Areas is Included in Application Packet.)

Estimated Amount of This Competition: $1,908,000.

Estimated Number of Awards To Be Made: 12.

Estimated or Average Size of Each Award: $159,000.

Estimated Project Period: 3 years.

CFDA Number: 93.912B.

Application Availability Date: July 17, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: October 23, 2000.

Projected Award Date: May 01, 2001.

Program Contact Person: Lilly Smetana.

Phone Number: 301 443–0835.

E-Mail: lsmetana@hrsa.gov

Rural Health Outreach Grant 93.912A

Legislative Authority: Section 330a of the Public Health Service Act, 42 U.S.C. 254c.

Purpose: The purpose of this grant program is to expand access to, improve coordination of, restrain the cost of, and improve the quality of essential health care services, including preventive and

emergency services, through the development of integrated health care delivery systems or networks in rural areas and regions. Funds are available for projects to support the direct delivery of health care and related services, to expand existing services, or to enhance health service delivery through education, promotion, and prevention programs. The emphasis is on the actual delivery of specific services rather than the development of organizational capabilities. Projects may be carried out by networks of the same providers (e.g. all hospitals) or more diversified networks.

Matching or Cost Sharing Requirement: None.

Eligibility: Rural public or nonprofit private organization that is part of a network of at least three entities that provide or support the delivery of health care services and will work together to complete the proposed project. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or an organization constituted exclusively to provide services to migrant and seasonal farm workers in rural areas and supported under Section 330(g) of the Public Health Service Act. This last type of organization is eligible regardless of the urban or rural location of the administrative headquarters.

Funding Priorities or Preferences: Funding preference may be given to applicant networks that include: (1) a majority of the health care providers serving in the area or region to be served by the network; (2) any federally qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program (WIC), to improve access to and coordination of health care services.

Special Considerations: Applicant Organization's Central Headquarters Must Be Located in a Rural Area. (List of Eligible Rural Areas is Included in Application Packet.).

Estimated Amount of This Competition: $5,642,000.

Estimated Number of Awards To Be Made: 31.

Estimated or Average Size of Each Award: $182,000.

Estimated Project Period: 3 years.

CFDA Number: 93.912A.

Application Availability Date: July 17, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: 10/16/00.

Projected Award Date: 05/01/01.

Program Contact Person: Lilly Smetana.

Phone Number: 301 443–0835.

E-Mail: lsmetana@hrsa.gov.

Rural Health Roundtable 93.223

Legislative Authority: Section 301 of the Public Health Service Act.

Purpose: A single award will be made to George Mason University, Center for Health Policy, to support the Rural Health Roundtable. The purpose of this cooperative agreement is to increase awareness of rural health issues among the many associations and organizational health interest groups in the Washington, D.C. area through a series of educational forums. Funds are available to stage four educational forums a year that focus on specific rural health issues such as recruitment and retention of health care providers in rural areas, the impact of Medicare payment policy on rural health care providers and various other policy and program issues that affect the rural health care delivery system. Funds can also be used to provide background papers and supporting documents for the individual educational forums. These materials can also be disseminated through the World Wide Web and Rural Health Roundtable Listserve.

Matching or Cost Sharing Requirement: None.

Eligibility: A single award will be made to George Mason University's Center for Health Policy. The Center for Health Policy at George Mason University is the only local entity that focuses exclusively on rural health issues. The Center has a proven record of providing educational forums on rural issues. Both its administration and staff are experts in the rural health field and uniquely positioned to provide a focal point of educational programming on rural health issues to the many health associations and organizations that are located in the Washington D.C. area.

Funding Priorities or Preferences: None.

Special Considerations: N/A.

Estimated Amount of This Competition: $280,000.

Estimated Number of Awards To Be Made: 1.

Estimated or Average Size of Each Award: $280,000.

Estimated Project Period: 4 years.

CFDA Number: 93.223.

Application Availability Date: June 30, 2000.

Letter of Intent Deadline: N/A.

Application Deadline: July 31, 2000.

Projected Award Date: September 15, 2000.

Program Contact Person: Tom Morris.

Phone Number: 301 443–0835.

E-Mail: tmorris@hrsa.gov.

Office of Special Programs

Extramural Support Program for Projects To Increase Organ and Tissue Donations 93.134

Legislative Authority: Section 371 (a)(3) of the Public Health Service (PHS) Act, 42 U.S.C. 273(a)(3), as amended.

Purpose: Funds for this program will provide financial assistance to Federally designated OPOs and other private non-profit entities to increase organ and tissue donation. The program's goal is to assist eligible entities in the evaluation, or implementation and evaluation, of promising strategies that can serve as model interventions for increasing donation. Development of interventions also may be supported but shall not exceed 20 percent of project funding and staff time. For purposes of this program, models are defined as interventions which are: (1) effective in producing a verifiable and demonstrable impact on donation; (2) replicable; (3) transferable; and (4) feasible in practice. All projects must have rigorous methodology and evaluation components capable of ascertaining the effectiveness of the intervention(s). Projects can employ qualitative and/or quantitative research. Applications may describe single-site pilot projects or replications of interventions shown to be effective in pilot studies.

Eligibility: Federally designated organ procurement organizations (OPOs), private non-profit organizations.

Funding Priorities and/or Preferences: None.

Estimated Amount of this Competition: $5,000,000.00.

Estimated Number of Awards To Be Made: 20–25.

Estimated or Average Size of Each Award: See the application guidance materials.

Estimated Project Period: 1–3 years.

CFDA Number: 93.134.

Application Availability Date: March 15, 2001.

Letter of Intent Deadline: April 2, 2001.

Application deadline: May 1, 2001.

Projected Award Date: August 31, 2001.

Program Contact Person: Dr. Mary Ganikos.

Phone Number: 301 443–7577.

E-mail: mganikos@hrsa.gov.

Other Programs

Outpatient Hansen's Disease Medical Services 93.215

Legislative Authority: Public Health Service Act, Title III, Section 320.

Purpose: The Outpatient Hansen's Disease Medical Services program is designed to prevent disability through early diagnosis and treatment of Hansen's Disease. The program supports research into Hansen's Disease and outpatient health care services. Service delivery locations are in areas of the United States and Puerto Rico where there are concentrations of persons with Hansen's Disease to assure access by persons needing services. It is the intent of HRSA to continue to support health services in priority areas. Currently and historically, services have been offered in Arizona, California, Florida, Illinois, Massachusetts, New York, Puerto Rico, Texas and the State of Washington.

Matching or Cost Sharing Requirement: N/A.

Eligibility: Public or private nonprofit entities which currently are not receiving funding directly from Congress for Hansen's Disease services are eligible to apply.

Funding Priorities or Preferences: Applicants who utilize facility and community resources for the indigent and uninsured patients with Hansen's Disease in their area will be given preference.

Special Considerations: Communication with the Ambulatory Care Program at the National Hansen's Disease Program is essential in deciding whether to pursue funding as a grantee under this program. Information about specific geographic areas can be obtained from this office.

Estimated Amount of This Competition: Up to $2 million.

Estimated Number of Awards to Be Made: Approximately 10–12.

Estimated or Average Size of Each Award: Applicants with 100 or more patients will be eligible for grants ranging from $100,000 to $400,000. Applicants with 50 to 100 patients will be eligible for grants from $25,000 to $100,000.

Estimated Project Period: 1–5 Years.

CFDA Number: 93.215.

Application Availability Date: 6/15/2000.

Letter of Intent Deadline: N/A.

Application Deadline: 9/1/2000.

Projected Award Date: 1/1/01.

Program Contact Person: Irma E. Guerra.

Phone Number: 1–800–642–2477.

Lawton Chiles Foundation 93.000

Legislative Authority: Publ. L. 106–113.

Purpose: A single award will be made to the Lawton Chiles Foundation in Tallahassee, Florida to stimulate and facilitate communities' capacity to develop comprehensive care for children and families. In 1999, the Health Resources and Services Administration was directed by the U.S. Congress in Public Law 106–113 to make funds available to the Foundation.

Matching or Cost Sharing Requirement: None.

Eligibility: A single award will be made to the Lawton Chiles Foundation of Tallahassee, Florida in accordance with the provisions of Public Law 106–113.

Funding Priorities or Preferences: None.

Special Considerations: N/A.

Estimated Amount of This Competition: $1,840,000.

Estimated Number of Awards To Be Made: 1.

Estimated Project Period: 28 Months.

CFDA Number: 93.000.

Application Availability Date: N/A.

Letter of Intent Deadline: N/A.

Application Deadline: N/A.

Projected Award Date: July 2000.

Program Contact Person: Marylin Stone.

Phone Number: 301 443–1433.

E-Mail: mstone@hrsa.gov.

Special Projects for Schools of Public Health (Cooperative Agreement With The Association of Schools of Public Health) 93.XXX

In Fiscal Year 2001, schools of public health may submit letters of intent to apply for HRSA funding to support special projects to address: health disparities in the U.S. population; assuring access to quality health care; and educating the next generation of public health leaders. A current cooperative agreement between HRSA's Bureau of Health Professions and the Association of Schools of Public Health (ASPH) will assist in matching HRSA interests and the expertise at schools of public health. There is no guarantee that funding will become available to support any projects, and whether projects are funded is at HRSA's discretion. The ASPH will provide additional information to the schools of public health about HRSA and its priorities, and ASPH will receive all letters of intent relative to this initiative. For further information, contact Barry S. Stern at (301) 443–6758 or bstern@hrsa.gov.

HRSA has Exhibits at the Following Meetings/Conferences in 2000

American Academy of Physician Assistants' (AAPA), 28th Annual Physician Assistants Conference, May 27–June 1, Chicago, IL, HRSA POC: Jan Aamodt (301) 443–0205

Association of Women's Health, Obstetric & Neonatal Nurses, June 4–7, Seattle, WA, HRSA POC: Jan Aamodt (301) 443–0205

17th Annual Meeting of the Association for Health Services Research (AHSR), June 25–27, Westin Bonaventure Hotel, Los Angeles, CA, HRSA POC: Steve Merrill (301) 443–3376

2000 National Council of La Raza (NCLR) Conference, July 1–5, San Diego Convention Center, San Diego, CA, HRSA POC: Iveliesse de Ororbia (301) 443–3228

National Conference of State Legislatures (NCSL) 26th Annual Meeting, July 16–20, Navy Pier, Chicago, IL, HRSA POC: Steve Merrill (301) 443–3376

Combined National Association of County and City Health Officials (NACCHO) and Association of State and Territorial Health Officials (ASTHO) Annual Meeting, July 19–22, Regal Biltmore Hotel, Los Angeles, CA, HRSA POC: Steve Merrill (301) 443–3376

8th Annual National Association of Local Boards of Health (NALBOH) Conference, July 26–29, Sheraton Capitol Center, Raleigh/Durham, NC, HRSA POC: Steve Merrill (301) 443–3376

Annual Distance Learning Conference, August 6–10, New Orleans, LA, HRSA POC: Steve Merrill (301) 443–3376

National Latina Institute for Reproductive Health National Conference, September 28–October 2, Washington, DC, HRSA POC: Iveliesse de Ororbia (301) 443–3228

American Academy of Pediatrics (AAP) Annual Meeting, October 28–November 1, Chicago Hilton & Towers/Lakeside Center, Chicago, IL, HRSA POC: Jan Aamodt (301) 443–0205

Hispanic National Association of Colleges and Universities National Conference, November 4–7, Albuquerque, NM, HRSA POC: Iveliesse de Ororbia (301) 443–3228

Association of Military Surgeons of the United States (AMSUS) 107th Annual Meeting, November 5–10, Las Vegas Convention Center, Las Vegas, NV, HRSA POC: Steve Merrill (301) 443–3376

128th Annual American Public Health Association (APHA) Meeting, November 12–16, Hynes Convention Center, Boston, MA, HRSA POC: Steve Merrill (301) 443–3376

National Health Service Corps Exhibit Schedule

National Rural Health Association, May 25–27, New Orleans, LA, NHSC POC: Gretchen Jones (301) 594–4158

American Academy of Physician Assistants, May 27–June 1, Chicago, IL, NHSC POC: Gretchen Jones (301) 594–4158

National Conference of State Legislatures (NCSL) 26th Annual Meeting, July 16–20, HRSA Booth #1430, Navy Pier, Chicago, IL, NHSC POC: Gretchen Jones (301) 594–4158

Bureau of Primary Health Care Annual Primary Care Symposium, July 18–20, Hyatt Bethesda Hotel, Bethesda, MD, NHSC POC: Gretchen Jones (301) 594–4158

Combined National Association of County and City Health Officials (NACCHO) and Association of State and Territorial Health Officials (ASTHO) Annual Meeting, July 19–22, HRSA Booth #308, Regal Biltmore Hotel, Los Angeles, CA, NHSC POC: Gretchen Jones (301) 594–4158

AAFP National Congress of Family Practice Residents, August 2–6, Kansas City, MO, NHSC POC: Gretchen Jones (301) 594–4158

HRSA Supports Healthy People 2010

The Health Resources and Services Administration is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a national program to reduce morbidity and mortality and improve the quality of life of the American people. The programs included in this document are supportive of many of the Healthy People 2010 areas of emphasis. Grantees and potential grantees are encouraged to be supportive of these areas as well.

Focus areas in which HRSA has a primary interest include:

Access to Quality Health Services (#1)
Educational and Community-Based Programs (#7)
HIV and AIDS (#13)
Maternal, Infant, and Child Health (#16)
Oral Health (#21)
Public Health Infrastructure (#23)

Volumes I and II of Healthy People 2010: Conference Edition (B0074) are for sale at $22 per set by the ODPHP Communication Support Center, P.O. Box 37366, Washington, D.C. 20013–7366. Each of the 28 chapters of Healthy People 2010 is priced at $2 per copy. Telephone orders can be placed to the Center at (301) 468–5690. The center also sells the complete Conference Edition in CD-ROM format (B0071) for $5.

This publication is available as well on the Internet at www.health.gov/healthypeople. Web site viewers should proceed to "Publications".

Access and Cost Containment Relative to Pharmaceuticals

Within available resources, HRSA is willing to provide technical assistance to "safety net" providers regarding pharmacy affairs. HRSA's Office of Pharmacy Affairs (OPA), previously known as the Office of Drug Pricing, is responsible for administering a major program of drug discounts, the 340B Drug Pricing Program and its Prime Vendor. Many HRSA grantees, as well as some other entities, are eligible to participate in this major program. HRSA grantees that are eligible to participate in the 340B Drug Pricing Program and its Prime Vendor are subject to a notice of grant award statement regarding an assessment of potential savings from doing so. OPA is aware of other drug discount programs, and other options for stretching funds for pharmaceuticals, that various safety net providers may be eligible for, and can assist entities in accessing these resources. For further information, OPA may be contacted by telephone at 1–800–628–6297 or 301–594–4353; or by mail at Room 10–1A1, East West Towers, 4350 East-West Highway, Bethesda, MD 20814.

Opportunity to Comment—Simplification of Federal Grant Programs

On November 20, 1999, the President signed into law the Federal Financial Assistance Management Improvement Act (Public Law 106–107) whose purposes are to improve the delivery of services to the public and the effectiveness and performance of Federal grant programs. HRSA and other Federal agencies are working with OMB to: develop uniform administrative rules and common application and reporting systems; replace paper with electronic processing in administration of grant programs; and identify statutory impediments to grant program simplification.

Consultation with the recipient community is an important part of the grant program simplification effort. We welcome ideas to make it easier for State, local, and tribal governments and nonprofit organizations to apply for and report on Federal grants. Please send your comments via email to: PL106107@os.dhhs.gov and be sure to include the name of the organization you represent.

We want to know which processes in the grants life cycle need streamlining and/or improvement, and your suggestions for achieving improvements. We need to know what is most important to you in terms of grants simplification. Finally, we want you to identify the specific grant program(s) that you find to be most burdensome, with some detail about why they are burdensome, individually or collectively, because we need to focus our efforts on those programs that are in the greatest need of review and streamlining.

Your input is valued, and is part of the larger process of achieving the goals of P. L. 106–107, namely simplification of Federal grant programs for the benefit of our recipients. Please note there will not be any individual response to the input, however we intend to periodically provide summary information relating to implementation of the law, under the "What's New" link in GrantsNet (www.hhs.gov/grantsnet). Thank you for your participation.

HRSA's Field Offices

Northeast Cluster

Philadelphia Field Office—Field Director, Vincent C. Rogers (215) 861–4422

Boston Field Office—Assistant Field Director, Kenneth Brown (617) 565–1420

New York Field Office—Assistant Field Director, Ron Moss (212) 264–3032

Southeast Cluster

Atlanta Field Office—Field Director, Ketty M. Gonzalez (404) 562–7972

Midwest Cluster

Chicago Field Office—Field Director, Deborah Willis-Fillinger (312) 353–6835

Kansas City Field Office—Assistant Field Director, Hollis Hensley (816) 426–5226

West Central Cluster

Dallas Field Office—Field Director, Frank Cantu (214) 767–3872

Denver Field Office—Assistant Field Director, Jerry Wheeler (303) 844–3203

Pacific West Cluster

San Francisco Field Office—Field Director, Thomas Kring (415) 437–8090

Seattle Field Office—Assistant Field Director, Richard Rysdam (Acting) (206) 615–2491

Related World Wide Web Addresses

HRSA Preview online
http://www.hrsa.gov/grantsf.htm
HRSA Home Page
http://www.hrsa.dhhs.gov/
DHHS Home Page
http://www.os.dhhs.gov/
Grantsnet

http://www.hhs.gov/progorg/grantsnet/index.html
PHS Grants Policy Statement
http://www.nih.gov/grants/policy/gps/
Catalog of Federal Domestic Assistance (CFDA)
http://www.gsa.gov/fdac/
Code of Federal Regulations
http://www.access.gpo.gov/nara/cfr/cfr-table-search.html
OMB Circulars
http://www.whitehouse.gov/WH/EOP/omb
http://www.whitehouse.gov/omb/grants/index.html#circulars
Federal Register
http://www.access.gpo.gov/su_docs/aces/aces140.html
Healthfinder
http://www.healthfinder.gov/
Fedworld Information Network
http://www.fedworld.gov/
State Single Points of Contact (SPOC)
http://thomas.loc.gov/

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Part IV

Environmental Protection Agency

40 CFR Part 146
Revision to the Federal Underground Injection Control (UIC) Requirements for Class I—Municipal Wells in Florida; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL–6729–2]

RIN 2040–AD40

Revision to the Federal Underground Injection Control (UIC) Requirements for Class I—Municipal Wells in Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing changes to the Underground Injection Control (UIC) regulations that would affect specific Class I municipal wells in Florida. Groundwater monitoring has revealed that injected or native formation fluids have migrated into underground sources of drinking water (USDW) as a result of Class I municipal well injection activity in areas of Florida with unique geological conditions. Such fluid migration is not allowed under current Federal UIC regulations. The proposed changes would allow for continued injection by existing Class I municipal wells that have caused or may cause such fluid movement into USDWs in specific areas of Florida if certain requirements are met which provide adequate protection for underground sources of drinking water. This proposed rule would only affect wells in certain parts of Florida that dispose of treated domestic wastewater through Class I injection wells.

DATES: Comments must be submitted on or before September 5, 2000.

Public hearings will be held:

August 22, 2000, 1:00 p.m. to 4:00 p.m., Tampa, Florida

August 22, 2000, 6:00 p.m. to 9:00 p.m., Tampa, Florida

August 24, 2000, 1:00 p.m. to 4:00 p.m., West Palm Beach, Florida

August 24, 2000, 6:00 p.m. to 9:00 p.m., West Palm Beach, Florida

ADDRESSES: Send written comments to Nancy H. Marsh: U.S. Environmental Protection Agency, Region 4; 61 Forsyth St., SW, Atlanta, GA, 30303. Comments may be submitted electronically to marsh.nancy@epa.gov. For additional information see Additional Docket information in the **SUPPLEMENTARY INFORMATION** section of this **Federal Register**.

Public hearing locations are:

Travelodge, 820 East Busch Boulevard, Tampa, Florida 33612

The Sheraton West Palm Beach Hotel, 630 Clearwater Park Road, West Palm Beach, Florida 33401

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Nancy H. Marsh, Ground Water & UIC Section, EPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303 (phone: 404–562–9450; E-mail: marsh.nancy@epa.gov) or Howard Beard, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W.,Washington, DC 20460 (phone: 202–260–8796; E-mail: *beard.howard@epa.gov*). For general information, contact the Safe Drinking Water Hotline, phone 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern daylight-saving time.

SUPPLEMENTARY INFORMATION:

Additional Docket Information

When submitting written comments (see **ADDRESSES** section above) please submit an original and three copies of your comments and enclosures (including any references). For an acknowledgment that we have received your information, please include a self-addressed, stamped envelope. EPA will not accept facsimiles (faxes).

The record is available for inspection from 8 a.m. to 3:30 p.m. Eastern daylight-saving time, Monday through Friday, excluding legal holidays at the Environmental Protection Agency, Region 4 Library (9th Floor), Sam Nunn Atlanta Federal Center, 61 Forsyth St., S.W., Atlanta, GA 30303–8960. For information on how to access Docket materials, please call (404) 562–8190 and refer to the Florida UIC docket.

Regulated entities. This proposed regulation is limited in application to the owners and/or operators of existing Class I underground injection wells that inject domestic wastewater effluent in certain parts of Florida. Regulated categories and entities include:

Category	*Examples of regulated entities*
Municipalities and Local Government.	Class I municipal injection wells disposing of domestic wastewater effluent in certain parts of Florida.
Private	Class I municipal injection wells disposing of domestic wastewater effluent in certain parts of Florida.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 146.15 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Preamble Outline

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D. Proposed Regulations
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2. What the proposal will allow
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II. Regulatory Impact/Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
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E. Executive Order 13132: Federalism
F. Unfunded Mandates Reform Act
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I. Plain Language

I. Background

A. Statutory and Regulatory Framework

Class I underground injection wells are regulated under the authority of Part C of the Safe Drinking Water Act ("SDWA" or "the Act") (42 U.S.C. 300h *et seq.*). The SDWA is designed to protect the quality of drinking water sources in the United States and prescribes that:

> Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons. (Section 1421(d)(2) of the SDWA, 42 U.S.C. 300h(d)(2).)

Part C of the Act specifically mandates the regulation of underground injection. The Agency has promulgated a series of UIC regulations under this authority at 40 CFR Parts 144–147. The

chief goal of any Federally-approved UIC Program (whether administered by the State or EPA) is the protection of underground sources of drinking water (USDWs). This includes not only those aquifers which are presently being used for drinking water, but also those which may potentially be used in the future. EPA has established through its UIC regulations that underground aquifers with less than 10,000 mg/l total dissolved solids (TDS) which contain a sufficient quantity of ground water to supply a public water system are USDWs. (40 CFR 144.3)

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for effective State programs to prevent underground injection that endangers drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 CFR Parts 144 and 146, on May 19, 1980 (45 FR 33290), and technical requirements, in 40 CFR Part 146, on June 24, 1980 (45 FR 42472). The regulations were subsequently amended on August 27, 1981 (46 FR 43156), February 3, 1982 (47 FR 4992), January 21, 1983 (48 FR 2938), April 1, 1983 (48 FR 14146), July 26, 1988 (53 FR 28118), December 3, 1993 (58 FR 63890), June 10, 1994 (59 FR 29958), December 14, 1994 (59 FR 64339), June 29, 1995 (60 FR 33926) and December 7, 1999 (64 FR 68546). Section 1421(b)(3)(A) of the Act also provides that EPA's UIC regulations shall "permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State."

When EPA promulgated its UIC regulations, it defined five classes of injection wells in § 144.6. Class I wells are defined as wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, a USDW. Class I wells can be hazardous, industrial or municipal waste disposal wells. EPA is only discussing existing Class I municipal wells in this proposed rule. Class I municipal wells can be owned by public and private entities.

Section 1422 of the Act provides that States may apply to EPA for national primary enforcement responsibility to administer the UIC program. Those States receiving such authority are referred to as "Primacy States." Florida received national primary enforcement responsibility for the UIC program for Class I, III, IV and V wells on March 9, 1983. UIC regulations specific to Florida's primacy program are established in Part 147, Subpart K. For the remainder of this preamble, references to the UIC Program "Director" means the Secretary of the Florida Department of Environmental Protection (FDEP). Currently, all UIC Programs in Indian Country for Florida are directly implemented by EPA. There are no known Class I municipal wells in Florida in Indian Country.

B. Domestic Wastewater Disposal in Florida Through Class I Wells

Beginning more than 20 years ago, municipalities in Florida began to pursue the use of underground injection as an alternative to surface disposal of treated wastewater from domestic wastewater treatment facilities. Underground injection technology was employed to relieve stress to surface water environments because it was technologically feasible to inject large volumes of wastewater into deep cavernous formations. Through technical and monetary assistance, EPA supported construction of many of these facilities in an effort to safeguard surface waters. Through injection technology, domestic wastewater facilities have been able to dispose of large quantities of domestic effluent, with the resulting benefit of reducing impacts to surface ecosystems. Facilities that inject domestic wastewater into wells below the lowermost USDW, are considered to have a Class I municipal injection well and in Florida inject into zones ranging from 650 to 3,500 feet below land surface.

The volumes of domestic wastewater permitted for injection at Class I municipal well facilities presently range from less than one million gallons per day (MGD) at the Gasparilla Island Water Utilities to about 110 MGD at Miami-Dade Water & Sewer Department, South District Wastewater Treatment Plant. Florida requires that domestic wastewater must be treated to secondary wastewater treatment (See 40 CFR Part 133) standards at a minimum prior to injection.

At the time Florida permitted the currently operating Class I municipal wells, characterization of the geology indicated that there was adequate confinement to separate the injection fluids from the USDW. Because it was thought there was adequate confinement, it was believed that injection fluids would never migrate upwards into the shallower geologic formations containing USDWs. However, monitoring of injection operations over the past several years has indicated some deep geologic zones provide less confinement between formations than originally thought. In a few cases, fluid movement has occurred into the base of the lowermost USDW.

1. Fluid Migration Requirements

In addition to municipal wells, Class I wells also include hazardous or nonhazardous industrial wells which inject into geologic formations below the lowermost USDW. (Hazardous waste injection must meet additional Resource Conservation and Recovery Act (RCRA) requirements. *See* 40 CFR Part 148.)

When EPA promulgated its regulations for the UIC program, it established different requirements for each class of wells, based upon the uses and risks of various types of wells. All classes of wells are required to comply with § 144.12(a) which states:

> No owner and/or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons.

Then, for Class I, II and III wells, § 144.12(b) more specifically provides that:

> if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement.

In contrast to subsection (a), which, for all classes of wells, prohibits fluid movement that endangers USDWs, Section 144.12(b) requires for Class I, II and III wells, that a State or Federal UIC program director, upon detection of contaminant movement into a USDW, prescribe requirements to prevent any such movement, regardless of whether the movement may endanger the USDW.

In addition to § 144.12(b), EPA established technical and other requirements for specific classes of wells in Parts 144 and 146 regulations. The Parts 144 and 146 regulations address siting, construction, operation, and closure of wells. Section 144.12(b) and the specific technical requirements of Parts 144 and 146 regulate the activities through which fluid movement may result and impose requirements designed to ensure that Class I, II and III wells will not endanger USDWs by prohibiting movement of *any* fluid into the USDW.

Today's proposed change to the technical requirements in Part 146 for Class I municipal wells in certain parts of Florida will be implemented through

the addition of § 146.15 pursuant to the authority of Section 1421(b)(3)(A) of the SDWA. Section 1421(b) of the SDWA requires that EPA promulgate regulations which provide the minimum requirements for an effective UIC program: such regulations "shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources." (Section 1421(b)(1), 42 U.S.C. § 300h(b)(1).) Section 1421(b)(3)(A) also provides that EPA regulations "shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State." (Section 1421(b)(3)(A), 42 U.S.C. § 300h(b)(3)(A).) The proposed change in the technical requirements for Class I municipal wells in certain parts of Florida is being undertaken pursuant to Section 1421(b)(3)(A) in recognition of the appropriateness of a different standard of USDW protection in light of Florida's unique geology, hydrogeology and historical (as well as present and future) wastewater disposal needs.

2. Florida Geology

In Florida, as in most areas of the country, sedimentary rocks are the predominant rock type, although the specific types of sedimentary rocks are different. In other areas, the underlying rock consists of clastic rock (sandstone, siltstone, and shale) and carbonate rock (limestone and dolomite). Limestone and dolomite are often classified as carbonate rock because of their mineral composition. Limestone is often formed by accumulation of organic remains such as corals or shells, and consists mainly of calcium carbonate. Dolomite is composed of the mineral calcium magnesium carbonate and is generally formed by alteration of limestone. Clastic rocks are formed from weathering and erosion and are made up of fragments of sand, silt, and clay. This eroded clastic material is transported and deposited at locations where it becomes the subsurface rock after burial and compression.

Where sedimentary rocks exist, clastic rocks (sandstones, siltstones, shales) and carbonate rocks (limestones and dolomites) comprise the geologic formations that serve as the injection zones and confining zones for underground injection activity. Whether a rock layer can serve as an injection zone or a confining zone depends on its porosity (the amount of pore space between grains of sand) and its permeability (the interconnectivity of this pore space). In general, rocks with higher porosity and permeability usually serve as injection zones because these characteristics readily allow for the fluids that naturally exist in the pore spaces (known as native, formation, or connate fluids) to be displaced by injection fluids. Rock layers with lower permeability or porosity do not allow such movement, and typically serve as confining zones. Sandstones usually serve as injection zones because their porosity and permeability allows for native formation fluids to move freely and be displaced by injection fluids. Siltstones generally are not good injection zones because they have less permeability than needed for injection operations. However, they also generally have too much permeability to serve as a confining unit. Shales often serve as confining zones for underground injection purposes because they have high porosity but low permeability (fluids do not move freely through the zone).

Limestone and dolomite sequences can be lithologically complex because, within a carbonate rock layer, the porosity and permeability may be greatly affected by geologic processes that occur after the rocks are formed. These include tectonic fracturing and chemical interactions between carbonate rock and fluids traveling through these fractures. The porosity and permeability of carbonate rock has been enhanced, reduced, and, in places, eliminated. The porosity and permeability variations of the carbonate rocks of peninsular Florida, which define their confining ability, may be quite local in nature.

That is, even within the same geological horizon or geological deposit of a particular time, there may be areas of high porosity and permeability close to low-porosity areas of porosity and permeability. This can complicate or compromise the use of carbonate rocks as injection or confining zones.

Sedimentary rock types in a given location vary based on changes in the environment at the time they were deposited. Carbonate sediments may develop in many environmental settings, but the most prolific accumulations occur in warmer climates which are conducive to the development of corals and other skeletal marine organisms with shells composed of calcium carbonate minerals. A lack of clastic deposition also favors carbonate deposition. If clastic sediments start to be deposited on a coral formation, the sediments would bury and kill the organisms, thereby preventing further growth of the coral formation.

In many areas of the country, sequences of sediment deposition alternate between clastic and carbonate rocks, reflecting changes in the depositional environment. Clastic sediments usually accumulate near the medium that transported the sediments, such as the mouth of a river. Carbonate sediments, on the other hand, generally accumulate near where they are formed, such as a coral formation. The thickest deposits of carbonate rocks occur where there are warm climates and limited media (rivers for example) to transport clastic sediment.

The current injection and confining zones in peninsular Florida exist in what is known as the Floridan Aquifer System. The Floridan Aquifer System is made up of carbonate rocks. Parts of the Floridan Aquifer System also are USDWs. The rocks were formed on a broad, marine shelf with a warm climate, which was distant from sources of clastic sediment such as rivers. This setting allowed for the development of thick deposits of limestone and dolomite (carbonate rock) without significant amounts of sandstones, siltstones, and shales (clastic rock) found in other areas of the country. Because of the absence of shales in peninsular Florida, which are frequently the confining zones in other areas of the country, the carbonate rocks themselves must serve as both the confining and injection zone. This is unusual and unique, but possible because of the variability in the porosity and permeability of carbonate rocks as discussed previously as well as the existence of numerous vertical and horizontal faults within the formations.

The porosity and permeability variations of the carbonate rocks of peninsular Florida and the existence of fractures within the formation determine their confining ability. The porosity varies greatly, even within the same horizon or geological deposit of a particular time. While the confining ability within the rock sequences that comprise the Floridan Aquifer appears adequate for most injection facilities, there are some injection well locations where the carbonate formation does not appear to provide adequate confinement. This is substantiated by water quality analysis of monitoring wells at selected injection facilities. While most of the country can depend on clastic shales for confinement, Florida's geology has very different characteristics which were not considered during original promulgation of the Class I regulations.

It now appears, from recent well monitoring data, that upward fluid movement from some Class I municipal operations occurs in Florida because the injection fluid from Class I municipal wells has a lower density (lower total

dissolved solids) than the native formation fluids. This tends to cause the less dense injection fluids to rise to the top of the injection zone preferentially through fractures that may exist within the formations. Because of its buoyancy, the injectate may also rise above the injection zone if these migration pathways exist. This monitoring data also indicates that injection fluid has migrated vertically into USDWs.

The application of the proposed rule is limited to both certain geologic conditions and certain geographic areas in Florida. It is limited geographically to the following counties: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. These counties are included in this proposed rule because they have the unique geologic conditions that are predominated by carbonate rocks discussed previously. The counties were selected using a map adapted from Florida Geological Survey map series 94 "Potential Subsurface Zones for Liquid-Waste Storage in Florida," created by James A. Miller of the United States Geological Survey in 1979. The geological conditions considered are those where the injection and confining zones are both in the Floridan Aquifer, and no clastic confining unit separates the injection zone from the lowermost USDW. EPA requests comment on whether these are the appropriate counties to target in this proposal or whether additional (or fewer) counties in Florida should be included. See United States Geological Survey's website for specific information on Florida's geology at http://www.usgs.gov.

C. 1999 Stakeholder Meeting

To assist in developing an approach to deal with the Class I municipal wells in Florida, EPA held a stakeholder meeting on July 7, 1999, in West Palm Beach, Florida to solicit stakeholder input. Over 100 people attended the meeting in person or via conference call with 30 people giving oral comments. Additional written statements have been received since the meeting. Municipalities, industry, environmental groups and private citizens participated. At that meeting, EPA presented four general options then being considered: (1) Make no regulatory change, (2) reclassify the wells from Class I municipal to Class V municipal, (3) convert the wells directly to Class V by allowing injection directly into the USDW, and (4) make some regulatory change. The following is a discussion of each of these options.

Option 1: Make no regulatory change. This option would require those facilities where it has been shown that fluids are migrating into a USDW to either cease Class I injection and find another disposal alternative or obtain an aquifer exemption to allow continued injection. Some facilities indicated that, because of other state laws and rules, there is no surface water disposal option available to them. Other facilities said they would have to treat the effluent to a much higher standard than is currently required in order to use surface waters as a disposal option. If a facility would choose to obtain an aquifer exemption, they would need to show that the aquifer is not reasonably expected to supply a public water system, which would be very difficult to show.

Option 2: Reclassify the wells from Class I municipal wells to Class V wells. This option would have involved the determination that the facility no longer meets the regulatory definition of a Class I well, *i.e.*, a well injecting below the lowermost formation containing a USDW (40 CFR 144.6). Under this option, EPA and stakeholders discussed whether facilities with fluid movement could seek reclassification in a permit action from Class I to Class V on the basis that injection is taking place into (rather than below) the formation that contains the USDW. Under current Florida requirements, if a Class V well is discharging into a USDW, the facility must meet the national primary drinking water standards at the point of discharge. Compliance at the point of discharge could make this option more costly to the discharger than Option 1. The Agency is not planning to allow reclassification unless the well was misclassified in the first instance. Misclassification might have occurred if the well did not originally meet the definition of a Class I well. The facility could demonstrate this if new information has become available that proves that the well originally was injecting into a USDW and therefore would meet the definition of a Class V well.

Option 3: Convert the wells to Class V by allowing injection directly into the USDW. Under this option, wells would inject municipal wastewater directly into or above the formation containing the lowermost USDW. This option is different from the reclassification option (Option 2) because the well would have to be physically altered to inject into the USDW. Similar to the previous option, under current Florida rules, a facility would have to meet national primary drinking water standards at the point of discharge under this option. Several stakeholders commented that the formations within the USDW do not have sufficient capacity to accept the quantities of fluid currently injected into the deeper formations which, because of their unique hydrogeologic characteristics, can accept large quantities of fluid. This option has always been available to the facilities but has not been used because of these limitations and the extensive treatment that would be required for the discharge to meet the State's standards.

Option 4: Make some regulatory change. This is the option that is being proposed today and will be discussed in Section D.

Participants in the stakeholder meeting suggested that protecting ground water was a high priority. Some municipalities advocated reclassification to Class V wells while others said a regulatory change would be more beneficial. Municipalities advocated the reclassification of the wells to Class V. Environmental groups generally wanted to require the facilities to apply higher levels of treatment prior to injection. Many felt that injection was still a viable option but attention should be paid to protect the future use of the ground water resource.

D. Proposed Regulations

1. Flexibility Provided in SDWA Section 1421

The SDWA requires EPA to promulgate regulations that contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources. The Act further states that:

> Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons. (42 U.S.C. 300h (d)(2))

EPA responded to the SDWA mandate (1421(b)(5)) that underground injection not endanger USDWs by requiring that Class I wells prevent the movement of *any* fluids into a USDW. However, EPA prescribed no limits on the quality or quantity of the fluids being injected. EPA established a "no fluid movement" requirement for all Class I wells even though such wells are different with respect to their design, construction, and operation. EPA believed a uniform standard would be easier to interpret,

comply with, and enforce, and such a standard was generally accepted among the regulated community. This acceptance was based upon the assumption that specific strata existed around the country that could generally serve as a barrier to fluid movement and that, therefore, there was no need for additional limits on effluent quantity or quality. This was also thought to be true in Florida, even though Florida's geology does not fit the "classic" model.

Since the original UIC regulations were passed, information from several deep monitoring wells placed at the base of the lowermost USDW near certain municipal injection wells in Florida have shown evidence that there has been fluid migration out of the designated injection zone. Through evaluation of this information, it is suspected that sufficient geologic strata separating the injection zones and the USDW do not exist in certain parts of Florida. Therefore, considering the State's unique geology, the assumption underlying the development of the fluid movement prohibition for Class I municipal wells needs (i.e., availability of adequate confinement) to be reviewed for Florida. Since current Federal UIC regulations do not provide Class I municipal wells with the flexibility to demonstrate that injection and any subsequent fluid movement would not endanger underground drinking water sources, EPA has decided that such flexibility should now be built into the Florida-specific UIC regulations for existing municipal Class I wells.

The Act permits EPA, under Section 1421(b)(3)(A), to consider specific State geologic, hydrological and historical conditions when passing regulations to prevent endangerment. Section 1421(b)(3)(A) states, "The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State." The proposed rule is being developed based on South Florida's unique carbonate—rock geology, discussed previously, the vast hydrological capacity that characterize the formations where wastewater is injected and the extent to which municipalities in South Florida have turned to Class I wells as a very important method for wastewater disposal. Florida is currently also the only State in the country that disposes of treated domestic waste through Class I municipal injection wells. EPA believes that all these conditions support the regulatory approach being proposed here for existing Class I municipal wells in certain parts of Florida.

2. What the Proposal Will Allow

EPA is now considering a regulatory approach for existing Class I municipal wells in certain counties in Florida that addresses the lack of sufficient confinement of Class I municipal injection while continuing to meet the requirement of the Act to prevent underground injection that endangers underground drinking water sources. These counties are: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. The proposed rule provides an option for qualified operators of domestic wastewater facilities in these counties to continue disposal underground rather than relying on surface and/or ocean disposal of effluent. Further, the proposed rule would compel facilities to provide more advanced wastewater treatment that will raise the economic value of the treated effluent and in turn promote greater wastewater reuse.

The proposed rule creates, for certain Florida Class I wells that inject domestic wastewater, an authorization to inject, regardless of fluid movement into the USDW, so long as the facility can demonstrate that it will meet certain protective criteria relating to the quality of the injected fluid, and that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards. The proposed rule is consistent with the mandate of the SDWA, as it establishes requirements which prevent endangerment of USDWs. The conditions placed upon wells receiving this authorization to inject are designed to prevent endangerment of USDWs, while providing for the possibility of continued injection operations. In order to further ensure that the authorization to inject is consistent with the goals of the SDWA, the proposal specifies that EPA participate in the review and approval of the facility's application for this authorization, even though the State of Florida has primacy for the Class I UIC program. EPA will have 90 days to disapprove the State's approval of any authorization under this proposed rule. If EPA does not respond within 90 days, the demonstration is approved.

EPA is co-proposing for public comment two approaches for regulating Class I municipal wells in specific areas of Florida where injection has caused or may cause fluid movement into a USDW. The two options are: Option 1—Facilities must provide advanced wastewater treatment with a demonstration that the injectate will not cause a USDW to exceed any primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.*, Federal or State health advisories); and Option 2—Facilities must conduct an in-depth hydrogeologic demonstration and must provide advanced treatment, as necessary, to ensure that injectate will not cause a USDW to exceed any primary drinking water regulations in Part 141 of this chapter and other health based standards. The requirements of these options are in paragraph (d).

The difference between these two options is that Option 2 would require a much more extensive demonstration than in Option 1 because a high level of treatment before injection provides a safety net of contaminant removal. Both of these proposals apply to existing municipal wells which inject domestic wastewater effluent.. An existing well is defined as a well for which a complete UIC construction permit application has been received by the Director on or before the date of publication of this proposed rule in the **Federal Register**. This rule is proposed for existing wells only because, given current knowledge of the existing fluid migration problems, future well applications will be reviewed with more scrutiny than wells that have already been permitted and such review will ensure that adequate confinement exists so that fluid movement should not occur. The Agency is requesting comments on whether this proposed rule should apply to existing wells only, or if this proposed rule should also apply to new wells.

Although the municipal wells that are covered by this proposed rule receive primarily domestic wastewater, they also receive some wastewater from industrial sources. This rulemaking does not specifically require that these industrial facilities have a pretreatment program in place that would require them to pretreat the wastewater that enters the facility's treatment system. Such a program may be necessary to address contaminants that enter a facility's wastewater treatment system and are not sufficiently removed by the treatment system to prevent concentrations of the contaminant from entering a USDW and causing the USDW to exceed drinking water regulations or other health based standards. Although Florida requires that publicly owned treatment works (POTWs) greater than 5 million gallons

per day (MGD) meet certain pretreatment requirements, this may not sufficiently address contaminants in fluids that move into a USDW as a result of underground injection from smaller POTWs or others that could be exempt from existing pretreatment requirements. EPA therefore solicits public comment on the need by the Agency to require pretreatment as an additional condition of authorization under today's proposal and, whether to extend the pretreatment standards presently required by the State to injection facilities with less than 5 MGD.

3. Rule Applicability

This proposed rule applies only to existing Class I municipal wells which inject treated domestic wastewater effluent that have caused or may cause fluid movement into USDWs in specific counties in Florida. These counties are: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. This rule applies to both publically and privately owned facilities. The definition of domestic wastewater can be found in paragraph (c) of this proposed rule.

4. Monitoring

EPA is considering adding more specific monitoring requirements for the effluent and the ground water than specified in § 146.13. The effluent will be characterized initially to determine the level of contaminants in the wastewater and then at least annually to ensure that the treatment process is meeting its objectives. This monitoring, at a minimum, would be for all contaminants regulated under the national primary drinking water regulations and other health based standards. The Director shall also require that the owner and/or operator develop and implement an ambient/ ground water monitoring program. The ground water monitoring program will, at a minimum, analyze the ground water to determine if any primary drinking water regulations in Part 141 of the chapter or other health based standards have been violated. The monitoring is to verify that the injection operation shall not endanger the USDW through movement of the injectate or formation fluids. These requirements would be incorporated as permit conditions of an operation permit under the Florida UIC program. Additional requirements, such as the construction of additional monitoring wells may be needed on a case-by-case basis. EPA is requesting comments on any additional monitoring requirements for the final rule.

5. Operating Conditions

Operating conditions determined necessary to prevent endangerment of the USDW by the demonstration will be incorporated by the Director as permit conditions to either a permit modification or permit issuance. Conditions may include, but are not limited to, treatment requirements including pretreatment (if any), monitoring criteria and frequency, and reporting frequency.

The options which are being co-proposed for paragraph (d) are as follows:

Option 1—Advanced wastewater treatment with a non-endangerment demonstration. The authorization to inject under Option 1 requires that the owner and/or operator of a Class I municipal well injecting domestic wastewater effluent treat their wastewater by advanced treatment methods and high-level disinfection and demonstrate that the injection of the wastewater effluent would not cause fluids that exceed the national primary drinking water regulations or other health based standards to enter the USDW. The non-endangerment demonstration would focus on any contaminants that still exceed national drinking water regulations or other health based standards after advanced wastewater treatment. The demonstration would identify any such contaminants and demonstrate that they would not cause similar exceedances in the USDW.

EPA solicits public comment on four alternatives for the appropriate level of advanced wastewater treatment, nutrient removal, and high-level disinfection that should be required of these facilities. The final rule will specify only one alternative.

Advanced treatment options reflect a wide range of biochemical oxygen demand (BOD) removal and nutrient removal capabilities. In designing the Clean Water Needs Survey, States and EPA identified four advanced treatment options that represent a range of treatment scenarios commonly used by municipalities for advanced wastewater treatment. These include plants designed to meet BOD levels of 10–24 mg/l with and without nutrient removal capability, and plants designed to meet more stringent BOD levels of less than 10 mg/l with and without nutrient removal capability. EPA is considering a range of advanced treatment alternatives, and is seeking comment on which alternative to specify in the final rule if Option 1 is selected. The alternatives evaluated and proposed are:

Treatment to 10–24 mg/l BOD with disinfection;
Treatment to 10–24 mg/l BOD with disinfection and nutrient removal;
Treatment to <10 mg/l BOD with disinfection;
Treatment to <10mg/l BOD with disinfection and nutrient removal.

Advanced treatment is any level of treatment in excess of secondary treatment and may include processes to remove nutrients such as nitrogen and phosphorus and other pollutants found in the wastewater stream entering the municipal treatment plant. To achieve high level disinfection, a process designed to kill most microorganisms in water including pathogenic (disease causing) bacteria, owners and/or operators must allow the wastewater to remain in contact with at least 1.0 mg/ l of free chlorine for at least 15 minutes of contact with no fecal coliform. Facilities will also be required to provide dechlorination, if necessary, as part of the advanced wastewater treatment to ensure that USDWs are not endangered from disinfection by-products.

Option 2—In-depth hydrogeologic demonstration and advanced treatment, as necessary. The authorization to inject under Option 2 requires that the owner and/or operator of a Class I municipal well injecting domestic wastewater effluent provide a hydrogeologic demonstration that the injection operation would not cause fluids that will migrate into the USDW to exceed the national primary drinking water regulations or other health based standards. EPA anticipates that this hydrogeologic demonstration would be similar in detail to that required for a RCRA land ban no-migration petition and consist of an evaluation of the results of sampling and analysis for contaminants in wastewater prior to injection and in water samples from deep monitoring wells at the base of the USDW and would also include detailed hydrogeologic modeling of fluid transport from the injection zone to those areas of the subsurface including USDWs to which the fluid and contaminants in the fluid have migrated and may migrate. This demonstration would include at a minimum: ground-water modeling, geochemical analysis and effluent and ground-water monitoring and analysis. The items included in the demonstration are intended to characterize how the effluent is expected to move vertically and horizontally after it is injected into the subsurface and to determine if the

effluent or the formation fluids will enter the USDW. If it is anticipated that the fluids may enter the USDW, the demonstration must show that the fluids will not endanger the USDW and exceed primary drinking water regulations in Part 141 or other health based standards.

If the owner and/or operator cannot successfully demonstrate that the injection operation meets these criteria, the owner and/or operator must treat the injectate to address the contaminants of concern and satisfy the criteria of paragraph (d) that the injectate would not cause a USDW to exceed the national primary drinking water regulations or other health based standards prior to receiving an authorization for permit authorizing continued injection pursuant to this rule. The Agency also solicits comments as to whether this hydrogeologic demonstration, and the determination of what level of advanced wastewater treatment may be necessary, should include a requirement for pretreatment as may be necessary to address contaminants that may move through a treatment system and enter into a USDW at concentrations of concern.

The differences between the two options proposed under paragraph (d) are that the first option gives a higher level of confidence that any fluids that migrate into the USDW will meet the applicable standards. This is because the facilities must design, construct and operate a specific level of advanced wastewater treatment and also demonstrate that, after the effluent is treated, any constituent which exceeds any primary drinking water regulations in Part 141 or other health based standards at the point of injection will not exceed the standards when the fluid enters the base of the USDW.

For Option 1, this demonstration could be as simple as referencing technical literature describing die-off rates for viruses and other pathogens, or how metals bind in soils compared to the results of ground water sampling and analysis pursuant to § 146.13. EPA expects that there would be fewer parameters (contaminants in concentrations of concern) requiring a demonstration in Option 1 since the effluent would be subject to advanced treatment and disinfection and less ground water modeling.

For Option 2 under paragraph (d), the facility is afforded the opportunity to demonstrate the necessity for additional treatment and tailor the level of treatment to the quality of fluid that has migrated or may migrate into the base of the USDW. The level of treatment needed to make a successful demonstration under Option 2 could vary from facility to facility. Constituents in the effluent that exceed primary drinking water regulations in Part 141 or other health based standards would need to be sampled at the base of the USDW, analyzed and evaluated to ensure that the requirements of this proposed rule are met. EPA solicits comments on each of these options for ensuring that any fluid that does migrate into the base of a USDW will meet applicable standards. In particular, EPA solicits comments on the ability of owners and operators to provide the kind of hydrogeologic and other information necessary for a successful hydrogeologic demonstration.

If it adopts Option 2, EPA also proposes to require that all facilities qualifying for authorization to inject under this section must have advanced wastewater treatment and high level disinfection in place by the year 2015. This requirement is to address water shortages in Florida and encourage water reuse. The year 2015 is being proposed in order to provide the wastewater treatment facilities with adequate time to evaluate all of their municipal wastewater reuse and disposal options and to plan for any construction of treatment facilities needed. Prior to the year 2015, under Option 2, the owner/operator of the wastewater treatment facility would still have to demonstrate that they will not endanger USDWs. EPA is soliciting comment on the appropriate level of advanced wastewater treatment and nutrient removal to be required by the facilities by 2015. The levels of treatment being considered are the same as those listed in Option 1 above.

6. Demonstration Review

The demonstration under paragraph (d) must be submitted to both the State and EPA for review. The authorization to continue to inject under a permit shall become final 90 days after the State Director approves the demonstration and submits the approval in writing to the Regional Administrator if he or she does not disapprove the authorization within the 90 days. Any disapproval by the Regional Administrator shall state the reasons and shall constitute final Agency action. The owner and/or operator must update the required demonstration with each subsequent Class I operation permit application, every five (5) years, as required in paragraph (f). The update shall include an analysis of all monitoring results since the original demonstration and verification that the original demonstration is still valid for the disposal operation.

EPA is soliciting comments on all aspects of this proposal, and in particular on whether to select either Option 1 or 2 or, if it would be more appropriate, to select a combination of both options. In addition the Agency requests comments on EPA's regulatory approach to continue to allow facilities with fluid movement to inject by improving the quality of the injected fluid. In particular, the Agency invites comment and data on any commenters' preference among the various means of domestic wastewater disposal in Florida, the effects that those methods have on Florida's fragile environment, and the extent to which this proposal may result in the increased or decreased use of reuse or other disposal practices such as ocean or other surface water disposal.

E. The Cost of Compliance

The proposed rule does not impose any new requirements on Class I municipal wells in Florida, but merely provides an alternative authorization to inject for which a well owner and/or operator may apply if the well falls within the narrow criteria of the proposed rule. Because continued operation of Class I municipal injection wells which result in movement of fluids into or between USDWs is contrary to existing Federal UIC regulations, the proposed rule offers such facilities an ability to continue to operate legally provided they meet the new requirements.

The proposed rule presents owners and/or operators of such Class I wells with options for continued authorization to inject should fluid movement occur. In the absence of the proposed regulatory changes, facilities that exhibit fluid movement would need to close their wells and adopt alternative disposal practices. The economic analysis for this proposed rule compares the costs of compliance under this proposed rule with the costs of compliance under the current regulations. Small private and governmental entities are the likely owners and/or operators of Class I wells in Florida disposing of domestic wastewater effluent.

The factors taken into account in estimating these costs include the number of existing facilities that are potentially affected by the proposed rule, the current regulatory requirements for Florida Class I municipal facilities, and the current extent of treatment at each facility. Many of the cost estimates are presented as a range, with the lower figures representing an assumption that 25% of the existing facilities will experience

fluid movement and the upper figures representing an assumption that 100% of the facilities will experience fluid movement. Specific to Option 2, of the facilities that do not currently provide advanced wastewater treatment and high level disinfection, 25% are assumed to be able to make the hydrogeologic demonstration with the addition of high-level disinfection only and 75% will have to provide both high-level disinfection and advanced wastewater treatment. The baseline assumes the costs associated with complying with the current UIC regulations. These costs include closing the wells and adopting alternative disposal practices, which could consist of surface water disposal, ocean outfall, and/or reuse.

Four different treatment scenarios have been evaluated with each of the proposed options. The target contaminant removal levels are based on the pollutant parameter biochemical oxygen demand (BOD) removal:

Treatment to 10–24 mg/l BOD with disinfection

Treatment to 10–24 mg/l BOD with disinfection and nutrient removal

Treatment to <10 mg/l BOD with disinfection

Treatment to <10mg/l BOD with disinfection and nutrient removal

Given these assumptions, the costs to Class I municipal facilities , including monitoring costs, in Florida are estimated to be as follows (in millions of dollars):

Baseline Scenario: Total Capital Costs $721–2,882
Total Annualized Costs (Capital & Operating) $203–811
Regulatory Option 1: Total Capital Costs $254–1,678
Total Annualized Costs (Capital & Operating) $131–587
Total Annualized Savings from Baseline $72–224
Regulatory Option 2: Total Capital Costs $201–1,329
Total Annualized Costs (Capital & Operating) $101–453
Total Annualized Savings from Baseline $102–358

EPA is soliciting comments on the assumptions used in the economic analysis that was developed for this proposed rule. The economic analysis is part of the record for this proposed rule (see Additional Docket Information in the **SUPPLEMENTARY INFORMATION** section above).

EPA notes that a facility may choose to cease underground injection and, as permitted under State or Federal law, opt to discharge to surface waters, either to fresh waters, estuaries or through an outfall to ocean waters. EPA solicits comments regarding whether these are preferred disposal methods. In particular, EPA solicits comments about what disposal actions municipalities may take if there is no regulatory change or in the event either one of the two proposed options is promulgated. EPA also solicits comments on the potential economic or environmental impact of either making no change or choosing either of the proposed options.

II. Regulatory Impact/Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Executive Order 13045: Children's Health Protection

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed rule provides an optional authorization for certain Class I wells in Florida to inject domestic wastewater effluent only if the practice is demonstrated not to endanger underground sources of drinking water. The criteria established in the rule safeguards these resources for all potential users, including but not limited to children.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to secondarily treated wastewater injected into the subsurface through Class I municipal wells in Florida.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 317.17) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The proposed ICR estimates monitoring, demonstration, reporting and recordkeeping burdens and costs for Class I underground injection well operators in Florida under the proposed rule. Information regarding wastewater quality, treatment and migration will be collected as outlined in the rule for review by the State of Florida as primacy agent. Under the proposed rule, the primacy State would be required to revise and resubmit a UIC program application for Class I wells. EPA is also requesting that facility owners and/or operators demonstrate, using a modeling study, that by the time effluent reaches the USDW, it is in compliance with the SDWA national primary drinking water standards. Wells for which it cannot be demonstrated that sufficient water

quality exists at the bottom of the USDW would have to upgrade their wastewater treatment to qualify for the proposed authorization to inject.

Information collected under SDWA and, by extension, this ICR is expected to be used by EPA and the State of Florida to help insure the maintenance of clean, safe public drinking water supplies.

Operators of injection wells may claim confidentiality, as provided in § 144.5, Confidentiality of Information. If confidentiality is requested, the information is treated in accordance with the provisions of 40 CFR Part 2, Public Information.

Information collected under this ICR is intended for the Agency's and/or State's internal use and there are no plans to routinely release or publish any of the data. However, if no claim of confidentiality is made at the time of submission, the information can be made available to the public without further notice.

EPA estimates that the average annual burden on Class I municipal well operators (which includes public and private entities) and the State of Florida will be 1,556 hours for Option 1 of the proposed rule and 2,265 hours for Option 2. This is based on an estimate that 1 State, Florida, will need to provide 44 responses each year at 10 hours per response for Option 1 and 44 responses at 10.6 hours per response for Option 2. It is also estimated that 9 Class I municipal well operators will need to provide an average of 15.7 responses each year at an average of 7.9 hours per response for Option 1 and an average of 15.7 responses each year at an average of 12.8 hours per response for Option 2. The labor burden is estimated for activities associated with reading and understanding the rule, performing and reviewing monitoring, performing and reviewing engineering demonstrations, and meeting primacy requirements. In addition to the recordkeeping and reporting burden, it is estimated that an average annual cost of $688,678 will be incurred for capital and operations and maintenance (O&M) costs for Option 1, and $884,943 annually for Option 2. Capital costs are for installation of monitoring wells and associated equipment needed to collect data under the rule requirements. O&M costs are for acquisition of contracting services to perform analysis and demonstrations required by the proposed rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 7, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by August 7, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose annual revenue is less than $5 million according to SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. EPA estimates there are approximately 42 existing Class I municipal wells that at some point during their operating life could cause fluid movement into a USDW and fall within the scope of this proposed rule. Of these 42 facilities, 13 are small governmental entities and one is a small business.

As discussed in section I.E., the economic impact of this proposed rule actually results in a cost savings to the Class I municipal facilities compared to the baseline, *i.e.*, complying with current regulations. Because Class I wells which may seek the authorization to inject provided by the proposed rule are only affected if they cause fluid movement prohibited by present law, EPA has determined that the effect on small entities will be positive to the extent they are impacted. If the entity chooses not to seek the authorization to inject, the legal status of its continued operations is not impacted by the proposed rule. We have therefore concluded that today's proposed rule either will have no effect on or, in the alternative, will provide regulatory relief for small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome

comments on issues related to such impacts.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule allows for an optional alternate method for the State of Florida to use to ensure that no owner and/or operator would endanger a USDW by injection of domestic wastewater effluent into a Class I municipal well. EPA is not proposing that an owner and/or operator must use this proposed authorization, but rather is proposing options that owners and/or operators of existing Class I municipal wells may wish to explore in order to maintain the use of their injection operations. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with the Florida Department of Environmental Protection in developing this rule and they agree with EPA's strategy.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Because the authorization to inject provided for by the proposed rule is optional on applicants, the costs incurred by an entity in conjunction with such authorization to inject under the proposed rule are discretionary, not mandated. The total cost impact, in comparison to other alternatives to provide effective wastewater disposal, is anticipated to be positive for those entities that choose to avail themselves of the option provided by this proposed rule. This rule will reduce the burden imposed by the current regulations. Thus, today's rule is not subject to the requirements of Section 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule is not targeted at small governments. It offers owners and operators of Class I wells in certain parts of Florida which inject domestic wastewater effluent an alternative method of compliance with the existing UIC rule, which prohibits injection that endangers USDWs, without requiring the facilities to cease injection and abandon their existing Class I municipal injection wells. This rule will provide them with a less burdensome alternative for compliance. Thus, today's rule is not subject to the requirements of Section 203 of UMRA.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal

governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them. At present, there are no Class I UIC wells used for domestic wastewater effluent disposal in Florida that are owned or operated by an Indian tribal community. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

List of Subjects in 40 CFR Part 146

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and Recordkeeping requirements, Water Supply.

Dated: June 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Regulations is proposed to be amended as follows:

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 146.15 is added to read as follows:

§ 146.15 Class I municipal well alternate authorization in Florida.

(a) Authorization to inject pursuant to this section is limited to existing Class I municipal wells in specific geographic regions as defined in paragraph (h) of this section that inject domestic wastewater effluent as defined in paragraph (c) of this section and that have caused or may cause fluid movement into USDWs. Pursuant to this section, an existing Class I well does not violate the regulatory prohibitions in Parts 144 and 146 of this chapter against the movement of injection or formation fluids into a USDW, provided that such well operates consistently with the requirements of this section.

(b) For purposes of this section, an existing Class I well is defined as a well for which a complete UIC construction permit application has been received by the Director on or before the date of publication of this proposed rule in the **Federal Register**.

(c) For purposes of this section, injected fluids shall be considered domestic wastewater effluent if they are injected by a facility that:

(1) Is a publicly or privately owned and operated domestic wastewater treatment facility;

(2) Receives wastewater derived principally from dwellings, business buildings, institutions, and the like, commonly referred to as sanitary wastewater or sewage, and

(3) Provides at least secondary treatment, as described in § 133.102 of this chapter, of the waste prior to injection.

Option 1 for Paragraph (d)

(d) In order for a Class I municipal well to qualify for authorization pursuant to paragraph (a) of this section, the owner and/or operator shall treat the well's injectate prior to injection using advanced wastewater treatment and high-level disinfection and shall also provide a non-endangerment demonstration that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.*, Federal and State health advisories). This demonstration would focus on any contaminants that are expected to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.*, Federal and State health advisories) after treatment and would include, at a minimum, effluent monitoring and an analysis of any such contaminants following injection. To achieve high level disinfection, a process designed to kill most microorganisms in water including pathogenic (disease causing) bacteria, owners and/or operators must allow the wastewater to remain in contact with at least 1.0 mg/l of free chlorine for at least 15 minutes of contact with no fecal coliform. The minimum level of advanced wastewater treatment that must be provided is:

Option a: 10–24 mg/l BOD with disinfection.
Option b: 10–24 mg/l BOD with disinfection and nutrient removal.
Option c: <10 mg/l BOD with disinfection.
Option d: <10 mg/l BOD with disinfection and nutrient removal.

Option 2 for Paragraph (d)

(d) In order for a Class I municipal well to qualify for authorization pursuant to paragraph (a) of this section, the owner and/or operator must provide a hydrogeologic demonstration to the satisfaction of the Director and EPA that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.*, Federal and State health advisories). This demonstration would include at a minimum: ground-water modeling, geochemical analysis and effluent and ground-water monitoring and analysis. If they cannot make this demonstration, the owner and/or operator must provide sufficient advanced wastewater treatment, nutrient removal and high-level disinfection to enable them to demonstrate that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (e.g., Federal and State health advisories).

(e) The demonstration pursuant to paragraph (d) of this section must be submitted to both the State and EPA for review. The demonstration shall be reviewed and either approved or disapproved in writing by the Director. If the Director disapproves the demonstration, the applicant shall not have met the requirements of paragraph (d) of this section. If the Director

approves the demonstration, he or she shall promptly mail a copy of the approval to the Regional Administrator. The authorization shall become final if the State Director submits the approval in writing to the Regional Administrator and the Regional Administrator has not disapproved the authorization within 90 days. Any disapproval by the Regional Administrator shall state the reasons for disapproval and shall constitute final Agency action. In the event the Regional Administrator exercises this authority to disapprove the demonstration, the applicant shall not have met the requirements of paragraph (d) of this section. The Director's approval and any conditions of the authorization shall be included as part of the permit decision.

(f) *Monitoring and reporting.* In addition to meeting the requirements of § 146.13, the owner/operator must perform such monitoring, analysis, and reporting as specified by the Director in the permit authorization. The monitoring required under this section will include, at a minimum, initial characterization and annual analysis of the injectate for contaminants covered by the primary drinking water regulations in Part 141 of this chapter or other health based standards. The Director shall also require that the owner/operator develop and implement an ambient/ground water monitoring program.

The ground water monitoring program will, at a minimum, analyze the ground water to determine if any primary drinking water regulations in Part 141 of the chapter or other health based standards have been violated. The monitoring is to verify that the injection operation shall not endanger the USDW through movement of the injectate or formation fluids. These requirements would be incorporated as permit conditions of an operation permit under the Florida UIC program. Additional requirements, such as the construction of additional monitoring wells may be needed on a case-by-case basis.

(g) Owners and/or operators of Class I injection wells which are operating under the authority of paragraph (d) of this section shall update and resubmit their demonstration under paragraph (d) of this section with each subsequent Class I operation permit application, every five (5) years. The owner and/or operator shall submit, as part of such subsequent demonstrations, all monitoring results not available at the time of the prior permit review and verification that the original demonstration is still valid for the disposal operation.

(h) Authorization to inject domestic wastewater through existing Class I wells pursuant to this section is limited to municipal wells in Florida in the following counties: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia.

Proposed only if Option 2 for paragraph (d) of this section is selected:

(i) Beginning on January 1, 2015, owners and/or operators of Class I injection wells operating under the authority of this section may not qualify for authorization pursuant to this section unless the injectate has been subject to advanced wastewater treatment and high-level disinfection.

The minimum level of advanced wastewater treatment that must be provided is:

Option a: 10–24 mg/l BOD with disinfection, or

Option b: 10–24 mg/l BOD with disinfection and nutrient removal, or

Option c: <10 mg/l BOD with disinfection, or

Option d: <10 mg/l BOD with disinfection and nutrient removal.

(2) The owners and/or operators would still have to demonstrate that the injected fluids will not cause any USDWs to exceed primary drinking water regulations in Part 141 of this chapter and other health based standards (*e.g.*, Federal and State health advisories).

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Part V

Department of Labor

Pension and Welfare Benefits Administration

Proposed Exemptions; Bank of Oklahoma (the Bank) and First Tennessee National Corporation; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10590, et al.]

Proposed Exemptions; Bank of Oklahoma (the Bank) and First Tennessee National Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No.__ , stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Bank of Oklahoma (the Bank) Located in Tulsa, OK

[Application No. D–10590]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase or redemption of shares by an employee benefit plan (the Plan), in certain mutual funds that are either affiliated with the Bank (the Affiliated Funds) or are unaffiliated with the Bank (the Third Party Funds),[1] in connection with the participation by the Plan in the Bank-sponsored Foundations Program (the Foundations Program).

In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply to the provision, by the Bank, of asset allocation services to an independent fiduciary of a participating Plan (the Primary Independent Fiduciary) or to a participant (the Directing Independent Fiduciary) of a Plan that provides for participant investment direction (the Participant-Directed Plan), which may result in the selection of portfolios in the Foundations Program for the investment of Plan assets, by the Primary Independent Fiduciary or the Directing Independent Fiduciary, and the receipt of fees by the Bank and/or its affiliates.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The participation by a Plan in the Foundations Program is approved by a Primary Independent Fiduciary or a Directing Independent Fiduciary, in the case of a Participant-Directed Plan, and, no Plan covering employees of the Bank or any of its affiliates is eligible to participate in the Foundations Program.

(b) As to each Plan, the total fees that are paid to the Bank and its affiliates constitute no more than reasonable compensation for the services provided.

(c) With the exception of distribution-related fees that are paid to the Bank pursuant to Rule 12b–1 (the Rule 12b–1 Fees) of the Investment Company Act of 1940 (the Investment Company Act) which are offset, no Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Funds.

(d) The terms of each purchase or redemption of shares in the Funds remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Bank provides written documentation to each Plan's Primary Independent Fiduciary or Directing Independent Fiduciary of its recommendations, as well as on the design and parameters with respect to an asset allocation model (the Asset Allocation Model) based upon objective criteria that are uniformly applied.

(f) Any recommendation or evaluation made by the Bank to a Primary Independent Fiduciary or a Directing Independent Fiduciary is implemented only at the express direction of such fiduciary.

(g) The Bank retains an independent financial analyst (the Independent Financial Analyst) to—

(1) Review the investments of Plan assets in a Third Party Fund for purposes of performance and suitability;

[1] The Affiliated Funds and the Third Party Funds are collectively referred to herein as the Funds.

(2) Review determinations by the Bank to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund; and

(3) Ensure that only one Fund fits an asset segment (the Asset Segment) such that there is no overlap between a Third Party Fund and an Affiliated Fund. Further, such Independent Financial Analyst may not derive more than 5 percent of its total annual revenues from the Bank and/or its affiliates.

(h) The quarterly fee that is paid by a Plan to the Bank and its affiliates for asset allocation and related services (the Wrap Fee) rendered to such Plan under the Foundations Program is offset by—

(1) All investment management fees (the Advisory Fees) that are paid to it and/or its affiliates by the Affiliated Funds;

(2) All non-advisory fees, including custodial fees, Rule 12b–1 Fees or subadministration fees (collectively, the Administrative Fees) that are paid to the Bank and/or its affiliates by the Affiliated Funds; and

(3) All Administrative Fees which include, but are not limited to, Rule 12b–1 Fees and sub-transfer agency fees, that are paid to the Bank and/or its affiliates by the Third Party Funds, such that the sum of the offset and the net Wrap Fee will always equal the aggregate Wrap Fee, thereby making the Bank's selection of Affiliated Funds or Third Party Funds for the Asset Allocation Models a "fee-neutral" decision.

(i) The Plan is automatically rebalanced on a quarterly basis (using net asset values of the affected Funds as of the close of business) on a pre-established date to the Asset Allocation Model previously prescribed by such fiduciary if authorized in writing by the Primary Independent Fiduciary, and if one or more Fund allocations deviates from the Asset Allocation Model prescribed by such fiduciary because—

(1) At least one transaction required to rebalance the Plan among the Funds involves a purchase or redemption of securities valued at $100 or more; and

(2) The net asset value of the Fund affected would be more than 5 percent of the Plan's investment in such Fund.

(j) The Bank may make adjustments to the composition of the Asset Allocation Model (the Model Adjustments) unilaterally only within certain authorized parameters approved by the Primary Independent Fiduciary, or upon the consent of the Primary Independent Fiduciary, if the Bank proposes to exceed the parameters.

(1) If the Model Adjustment is made unilaterally pursuant to Section II(j) above, the Bank may only deviate from the Normal Position of a given Asset Allocation Model within a specified range, not to exceed 15 percent (above and below) the Normal Position under Section III(1), which is applied to the Asset Allocation Model's entire allocation.

(2) With respect to a Model Adjustment requiring independent fiduciary consent, the Bank may not change the asset mix outside the limits authorized by the Primary Independent Fiduciary unless it provides the Primary Independent Fiduciary and the Directing Independent Fiduciary, upon the request of the Primary Independent Fiduciary, 30 days' advance written notice of the impending change.

(k) The notice referred to above in Section II(j) includes a termination advisory form (the Termination Advisory) which—

(1) Advises the Primary Independent Fiduciary of the right to withdraw from the Foundations Program or, in the case of the Directing Independent Fiduciary, of the right to transfer to a different Asset Allocation Model without penalty; and

(2) States that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the Plan will be reallocated within the revised Normal Positions for the Asset Allocation Model, effective as of a given date.

(l) The Bank provides the Termination Advisory to the Primary Independent Fiduciary and, if applicable, the Directing Independent Fiduciary, at least annually; and provides the Termination Advisory in all cases whenever the Bank—

(1) Makes a Model Adjustment where fiduciary consent is needed;

(2) Adds a new Fund to an Allocation Model;

(3) Removes an existing Fund within an Allocation Model; or

(4) Increases its Wrap Fee. Under such circumstances, the notice and Termination Advisory are provided at least 30 days prior to the implementation of the change.[2]

(m) With respect to its participation in the Foundations Program, prior to purchasing shares in the Affiliated Funds and the Third Party Funds, each Primary Independent Fiduciary, and, if applicable, each Directing Independent Fiduciary, receives the following written or oral disclosures from the Bank:

(1) A brochure describing the Foundations Program;

(2) A Foundations Program Asset Allocation Account Application;

(3) A Foundations Program Asset Allocation Account Purchase Order;

(4) A Foundations Program Account Agreement (the Account Agreement) providing detailed information on the Foundations Program; the fee structure of the Foundations Program; procedures and limitations imposed on the Bank with respect to Model Adjustments; rebalancing of a participating Plan investor's account; and the Bank's affiliation or non-affiliation with the Funds, including a copy of the executed Account Agreement between the Plan and the Bank, to the Primary Independent Fiduciary rather than to the Directing Independent Fiduciary;

(5) The Bank's Form ADV—Part II which contains a description of the Bank's affiliation, if any, with the sponsors, distributors, administrators, investment advisers, sub-advisers, custodians and transfer agents of each Affiliated Fund and Third Party Fund; and

(6) Copies of the proposed and final exemptions with respect to the exemptive relief described herein. (In the case of a Participant-Directed Plan, this information may be provided directly by the Bank to the Primary Independent Fiduciary for distribution to the Directing Independent Fiduciaries.)

(n) Having acknowledged receipt of the documents described in paragraph (m) of Section II, the Primary Independent Fiduciary submits a completed Account Agreement to the Bank and represents in writing to the Bank that such fiduciary is—

(1) Independent of the Bank and its affiliates;

(2) Knowledgeable with respect to the Plan in administrative matters;

(3) Able to make an informed decision concerning the Plan's participation in the Foundations Program; and

(4) Knowledgeable with respect to funding matters related to the Plan.

(o) In addition to the initial disclosures described above in paragraph (m) of this Section II, prior to investment in an Asset Allocation Model, the Primary Independent Fiduciary or, if applicable, the Directing Independent Fiduciary—

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[2] For an annual mailing of the Termination Advisory or in the event the Bank makes a Model Adjustment that is outside of current parameters or a Fund is added or substituted, the Termination Advisory will include language similar to that contained in Section II(k)(1) and (2). In the event the Bank proposes an increase in its Wrap Fee, the Termination Advisory will also include language similar to that contained in Section II(k)(1). However, under such circumstances, Section II(k)(2) will be modified state that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the revised Wrap Fee will be effective as of a specified date.

(1) Receives a written analysis from the Bank based on the fiduciary's Investor Profile as well as a description of the Asset Allocation Model recommended by a Bank's investment counselor which includes a description of the actual fee structure and the actual basis points to be rebated to such Plan fiduciary;

(2) Receives a prospectus for each Affiliated Fund and Third Party Fund in which the Plan may be invested and, upon such fiduciary's request, is provided a Statement of Additional Information which supplements the prospectus; and

(3) Acknowledges receipt of the foregoing documents in writing to the Bank.

(p) With respect to their ongoing participation in the Foundations Program, each Primary Independent Fiduciary and/or Directing Independent Fiduciary receives the following continuing disclosures from the Bank:

(1) Copies of applicable prospectuses;

(2) Written confirmations of each purchase or redemption of shares of an Affiliated Fund or a Third Party Fund, including transactions implemented as a result of a realignment of the Asset Allocation Model's investment mix or from the rebalancing of a Plan's investments in conformity with the selected Asset Allocation Model;

(3) Telephone quotations of such Plan's balance (or if relevant, individual account balances of Directing Independent Fiduciaries) under the Foundations Program;

(4) Periodic, but at least quarterly, account statements showing the Plan's value (or if relevant, individual account balances of Directing Independent Fiduciaries), a summary of purchase, sale and exchange activity and dividends received or reinvested and a summary of cumulative realized gain and/or loss;

(5) Semiannual or annual reports that include financial statements for the Funds as well as a description of the fees paid to the Bank and its affiliates;

(6) At least annually, a written or oral inquiry from the Bank to ascertain whether the information provided on the Investor Profile is still accurate and to determine if such information should be updated;

(7) A Termination Advisory provided on an annual basis as well as at other times noted in paragraph (1) of this Section II; and

(8) The Bank's investment advisory and other agreements with any Affiliated Fund as well as its distribution agreement pertaining to the Third Party Funds, upon request of the Primary Independent Fiduciary.

(Communications received from the Funds (e.g., prospectuses, annual reports, quarterly reports, notices regarding changes in Fund managers, proxy mailings, etc.) will be distributed to the Primary Independent Fiduciary, who may elect to pass them through to the Directing Independent Fiduciaries.)

(q) The Bank maintains, for a period of six years, the records necessary to enable the persons described in paragraph (r) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (r) of this Section II below.

(r)(1) Except as provided in section (r)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) of this Section II are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(r)(2) None of the persons described above in paragraphs (r)(1)(B)–(r)(1)(D) of this paragraph (r) are authorized to examine the trade secrets of the Bank or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "Bank" means the Bank of Oklahoma, N.A., a subsidiary of BOK Financial Corporation and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of the Bank includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Bank.

(2) Any individual who is an officer, director or partner in the Bank or a person described in subparagraph (b)(1) of this Section III, and

(3) Any corporation or partnership of which the Bank or an affiliate or person described in subparagraphs (b)(1) or (b)(2) of this Section III, is a 10 percent or more partner or owner.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(e) The term "Plan" refers to an employee benefit plan which is eligible to participate under the Foundations Program. Such Plans are qualified under sections 401(a) and 501(a) of the Code and include Keogh plans (Keogh Plans); individual retirement accounts (IRAs); simplified employee pension plans (SEP–IRAs); Salary Reduction Simplified Employee Pensions (SARSEPs), provided that the SARSEP was established prior to January 1, 1996, the date as of which the Code provision authorizing such plans was repealed); and savings incentive match plans for employees (SIMPLEs); and, in the case of a Participant-Directed Plan, the individual account of a Directing Independent Fiduciary.

(f) The term "Directing Independent Fiduciary" means, as to a participating Plan, a participant in a Participant-Directed Plan that is authorized to direct the investment of his or her account balance.

(g) The "Administrative Fees" refer to custodial, Rule 12b–1 Fees, and sub-administration fees that are paid to the Bank or its affiliates from or on behalf of the Affiliated Funds on account of the Bank's services to the Affiliated Funds, as well as Rule 12b–1 Fees, sub-transfer agency fees and other fees that may be paid to the Bank or its affiliates on account of the investment of participating Plans in the Third Party Funds.

(h) The "Advisory Fees" refer to investment advisory fees that are paid by the Affiliated Funds to the Bank and its affiliates.

(i) The term "Affiliated Fund" means a portfolio of an investment company registered under the Investment Company Act for which the Bank or an affiliate of the Bank acts as the investment adviser, and may also serve as custodian or sub-administrator.

(j) The term "Asset Segment" refers to a subdivision of each asset class (the Asset Class) into which the Asset Allocation Model is divided (*e.g.*, international equities is an Asset Segment under the Asset Class "stocks"). Asset Segments are determined by the Bank with reference to recognized investment objectives and styles established by independent mutual fund analysts such as Morningstar, Inc. (Morningstar) and Lipper Analytical Services, Inc. (Lipper).

(k) The "Investment Management Group" refers to a committee comprised of the Bank's senior investment professionals.

(l) The term "Model Adjustment" means an adjustment to the Normal Position of an Asset Allocation Model (*i.e.*, a change in the Asset Allocation Model among the three Asset Classes, the division of the Asset Class into Asset Segments, and the identity of the Funds which represent the various Asset Segments).

(m) The "Normal Position" refers to the initial allocation of each Asset Allocation Model among the various Asset Classes, Asset Segments and Funds.

(n) The "Offset Fees" refer to the Advisory Fees and Administrative Fees that are paid by, or on behalf of, the Funds to the Bank and/or its affiliates and which are offset against the Wrap Fee.

(o) The term "Participant-Directed Plan" refers to a qualified Plan under which participants direct the investments of their individual accounts.

(p) The term "Primary Independent Fiduciary" refers to a plan fiduciary within the meaning of section 3(21)(A) of the Act who has (1) investment discretion and authority over the Plan's assets and (2) is not an affiliate of the Bank. Typically, the Primary Independent Fiduciary will be the plan administrator, the employer which sponsors the Plan, an investment committee appointed under the Plan document or an IRA account holder.

(q) The term "Termination Advisory" refers to the notice advising the Primary Independent Fiduciary or the Directing Independent Fiduciary of the right to withdraw from the Foundations Program without penalty. The Termination Advisory, which will contain instructions on its use, will be provided to such participants on an annual basis, or whenever the Bank makes a Model Adjustment that is outside of a current Allocation Model, in the event a new Fund is added to an Allocation Model or an existing Fund is removed from an Allocation Model, or the Bank's Wrap Fee is increased. Depending on the circumstances precipitating its distribution, the Termination Advisory will include a provision advising the Primary Independent Fiduciary or the Directing Independent Fiduciary that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the authorization of the Plan's participation in the Foundations Program will continue, or the participating Plan will be reallocated in accordance with the revised Normal Position for the Asset Allocation Model in which the Plan's assets are invested, or the Bank's Wrap Fee will be increased. The Bank will provide the Termination Advisory to the Primary Independent Fiduciary and/or the Directing Independent Fiduciary at least 30 days prior to the implementation of the proposed change.

(r) A "Third Party Fund" is a portfolio of an investment company that is registered under the Investment Company Act for which neither the Bank nor any affiliate of the Bank acts as investment adviser, custodian and/or sub-administrator.

(s) The term "Wrap Fee" refers to the Plan or account-level fee the Bank, BOSC, Inc. (BOSC) and/or their affiliates charge each Plan for the asset allocation, custodial and related services under the Foundations Program.

(t) The term "Independent Financial Analyst" means an independent third party which has entered into a written contract with the Bank to (1) review the investment of Plan assets in a Third Party Fund, (2) review the Funds each time the Bank determines to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund, and (3) determine that only one Fund fits an Asset Segment such that there is no overlap between a Third Party Fund and an Affiliated Fund. The Independent Financial Analyst may not derive more than 5 percent of its total annual revenues from the Bank or its affiliates, including its fee for serving as the Independent Financial Analyst.

As for minimum credentials, the Independent Financial Analyst will be a Chartered Financial Analyst and will be employed by a firm which has at least a regional presence in the investment products and services industry. In addition, the individual assigned the duties of the Independent Financial Analyst must alone, or with his or her employer, have a certain minimum number of years experience in the investment products and services industry and must not be affiliated with the Bank, BOSC or BISYS Fund Services, Inc. (BISYS). Should the Bank replace the Independent Financial Analyst, that entity must meet the same requirements applicable to the current Independent Financial Analyst. In addition, the Bank will be required to provide the Department with advance written notification of the change in Independent Financial Analysts and the qualifications of the successor. Unless the Department objects to the change, the Foundations Program will operate with the new Independent Financial Analyst.

Summary of Facts and Representations

Description of the Parties

1. The parties to the transactions discussed herein are described as follows:

(a) *The Bank* is a national bank headquartered in Tulsa, Oklahoma and a wholly owned subsidiary of BOK Financial Corporation, an Oklahoma corporation. The Bank maintains 60 branch banks in the Oklahoma City and Tulsa, Oklahoma metropolitan areas. It is the largest financial institution headquartered in Oklahoma and provides a full array of commercial banking and retail banking services while its non-bank subsidiaries engage in various bank-related services, including mortgage banking and providing credit life, accident and health insurance on certain loans originated by its subsidiaries. The Bank also offers a variety of trust and investment services for both corporate and individual customers. For corporate clients, these services include custodianship, trusteeship, management, administration and recordkeeping of pension plans, profit sharing plans (including 401(k) plans) and master trusts.

In addition, the Bank serves as custodian of IRAs, SEP–IRAs, SARSEPs and SIMPLE Plans and it sponsors non-standardized prototype plans. Further, the Bank and its subsidiaries provide investment advisory services to trust customers and mutual funds and they manage collective investment funds. As of December 31, 1999, the Bank and its affiliates had over $8.1 billion in assets under management.

The Bank serves as each Affiliated Fund's investment adviser. Subject to the general supervision of the Affiliated Funds' Board of Trustees (the Trustees)

and in accordance with the investment objectives and restrictions of each Affiliated Fund, the Bank manages the Affiliated Funds, makes decisions with respect thereto, places orders for all purchases and sales of portfolio securities, and maintains each Affiliated Fund's records relating to such purchases. Neither the Bank nor any affiliate serves as the named distributor for any Fund.

(b) *BOSC* is a wholly owned subsidiary of the Bank and a full-service broker-dealer and investment adviser registered with the SEC and the National Association of Securities Dealers (NASD). The Bank utilizes members of BOSC's sales force who have appropriate securities licenses to market the Foundations Program. However, BOSC will not perform any brokerage transactions on behalf of the Funds.

(c) *BISYS* and its wholly owned affiliate, BISYS Fund Services Ohio, Inc. (BISYS Ohio) are not affiliated with the Bank. BISYS is the administrator and distributor of each Affiliated Fund. BISYS Ohio, a registered transfer agent, serves as the transfer agent and performs fund accounting for the Affiliated Funds. For its administrative services, BISYS may receive, from the Affiliated Funds, an annualized fee of up to 0.20 percent of each Affiliated Fund's average daily net assets. Under each Affiliated Fund's Distribution and Shareholder Services Plan (the Distribution Plan), BISYS receives Rule 12b–1 Fees on a monthly basis. The current maximum annualized Rule 12b–1 Fees paid to BISYS is 0.25 percent of the average daily net assets of each Affiliated Fund. For its transfer agency and fund accounting services, BISYS Ohio may receive annual fees of up to 0.05 percent of each Affiliated Fund's average daily net assets.

(d) *CoreLink Financial, Inc. (CoreLink)* is an affiliate of BISYS. It is a full service broker-dealer and investment adviser registered with the SEC and the NASD. It is the clearing broker for all Foundations Program transactions and maintains custody of all of the securities held under the Foundations Program.

(e) *AMR Investments* of Fort Worth, Texas, has been retained by the Bank to serve as the Independent Financial Analyst for the Foundations Program. AMR Investments is a wholly owned subsidiary of AMR Corporation, the parent company of American Airlines, Inc. Incorporated in 1986, AMR Investments is directly responsible for the investment management and oversight of AMR Corporation's defined benefit and defined contribution plans, as well as fixed income investments. AMR Investments also provides investment advisory services to institutional and retail clients and acts as manager of the American AAdvantage Funds, a family of diversified mutual funds. Further, AMR Investments offers customized fixed income portfolio management services. As a multibillion dollar asset management firm, AMR Investments has clients that include defined benefit plans, defined contribution plans, foundations, endowments, corporations and other institutional investors.

AMR Investments is not affiliated with the Bank, BOSC or BISYS. For services rendered to the Bank as the Independent Financial Analyst, AMR Investments may not derive more than 5 percent of its total annual revenues from the Bank and/or its affiliates, including its services as the Independent Financial Analyst.

(f) *The Plans* that are eligible to participate in the Foundations Program will consist of employee benefit plans that are qualified under sections 401(a) and 501(a) of the Code. The Plans will include Keogh Plans, IRAs, SEP–IRAs, SARSEPs (provided that the SARSEP was established prior to January 1, 1996, the date as of which the Code provision authorizing such plans was repealed) and SIMPLE plans as defined under 401(k)(11)(A) of the Code. The Bank may serve as an eligible Plan's trustee, custodian, recordkeeper or prototype sponsor. However, no Plan in which employees of the Bank or any of its affiliates participate will be eligible to invest in the Foundations Program.

The Funds

2. The Affiliated Funds consist of portfolios of the American Performance Funds, a diversified, open-end management investment company registered under the Investment Company Act. The Funds were organized as a Massachusetts business trust and began active operations in August 1990. Although the Affiliated Funds currently consist of ten separately-managed portfolios, it is represented that additional portfolios may be added in the future. Initially, eight Affiliated Fund portfolios will be available to investors under the Foundations Program.

Overall management and supervision of each Affiliated Fund rests with such Fund's Board of Trustees. Individual Trustees may be removed by the Board of Trustees or by the shareholders. The Trustees manage the Affiliated Funds in accordance with Massachusetts law governing business trusts. There are currently four Trustees, three of whom are not "interested persons." The Trustees elect the officers of the Affiliated Funds who supervise such Funds' day-to-day operations. The members of the Board of Trustees receive fees and are reimbursed for their expenses in connection with each meeting of the Board of Trustees they attend, except that no Trustee who is an officer or employee of the Bank, any sub-adviser or BISYS receives any compensation from the Affiliated Fund for acting as a Trustee. The Affiliated Funds' officers receive no compensation from the Funds for performing the duties of their offices.

The Bank, in its capacity as investment adviser, and BISYS, in its capacity as administrator, bear all expenses incurred in connection with the performance of their duties, other than the cost of securities (including brokerage commissions) purchased for the Affiliated Funds. Such expenses may include, but are not limited to, taxes, interest, brokerage fees and commissions, fees and travel expenses for the Trustees of the Fund, SEC fees, state securities qualification fees, and the costs of preparing and printing prospectuses for regulatory purposes and for distribution to current shareholders.

3. The Third Party Funds are portfolios of diversified, open-end management investment companies registered under the Investment Company Act. They currently consist of the Federated Tax-Free Instruments, the Federated GNMA Trust, the Federated Bond Fund, Franklin Insured Tax-Free Income Fund, Federated Equity Income Fund, the Neuberger Berman Genesis Fund and the Templeton Foreign Fund. No Third Party Fund's sponsor, administrator, distributor, investment adviser or sub-adviser is affiliated with the Bank.

The Proposed Transactions

4. The Foundations Program is designed to make no-load Affiliated Funds and Third Party Funds available to an eligible Plan, thereby affording the Plan the opportunity to diversify its investments. The Foundations Program will also make professional asset allocation management available to a smaller Plan which may not have the benefit of such services. Moreover, by participating in the Foundations Program, a Primary Independent Fiduciary or a Directing Independent Fiduciary will receive a single, consolidated statement and pay a single asset management fee. Finally, all dealings between a Plan participating in the Foundations Program, the Funds and the Bank will remain on a basis which is at least as favorable to the Plan

as such dealings are with other shareholders of the Funds holding the same classes of shares as the Plan.

Accordingly, the Bank and BOSC (together, the Applicants) request an administrative exemption from the Department in order to implement the Foundations Program for Plan investors. If granted, the exemption will provide relief from section 406(a) of the Act in order to permit the purchase or redemption of shares in the Affiliated Funds and the Third Party Funds by a Plan, in connection with the Plan's participation in the Foundations Program. In addition, the exemption will provide relief from section 406(b) of the Act to allow the Bank to provide asset allocation services to a Primary Independent Fiduciary or to a Directing Independent Fiduciary of a Participant-Directed Plan, which may result in the selection of portfolios by the Primary Independent Fiduciary or the Directing Independent Fiduciary in the Foundations Program for the investment of Plan assets and the receipt of fees by the Bank and/or its affiliates.

The Applicants are concerned that the Bank's fiduciary activities under the Foundations Program (*e.g.*, recommending an Asset Allocation Model, making a Model Adjustment or rebalancing a participating Plan's account) will cause the Plan to pay additional fees (*i.e.*, Advisory Fees and Administrative Fees) to the Bank or an affiliate of the Bank or cause the Bank or a Bank affiliate to receive consideration from a third party in connection with a transaction involving the Plan. The Applicants are concerned that the combination of services the Bank will provide under the Foundations Program, particularly, recommending an Asset Allocation Model, making Model Adjustments and rebalancing participating Plan accounts, may be deemed to constitute prohibited acts of self-dealing in violation of section 406(b)(1) of the Act. Therefore, the Applicants request exemptive relief from the Department for the transactions that are described above.

Operation of the Foundations Program

5. An eligible Plan's Primary Independent Fiduciary may decide to enroll a Plan in the Foundations Program. The minimum investment required to establish an account in the Foundations Program is $10,000. In the case of a Participant-Directed Plan, the minimum applies to each account in the participating Plan. From time to time, however, the Bank may lower or waive the minimum investment amount.

At any time, a Primary Independent Fiduciary or a Directing Independent Fiduciary may add or withdraw assets of a Plan to or from the Foundations Program (subject to a $100 minimum redemption and purchase requirement per participating Plan which will continue to apply after the first year). In the case of a Participant-Directed Plan, the $100 limit will apply to each account in the Plan and the contributions will be held in the American Performance U.S. Treasury Fund, an Affiliated Fund, until such amounts reach $1,000,[3] at which time the contributions will be liquidated and the proceeds invested pursuant to the appropriate Asset Allocation Model.[4] The $100 limit will not apply if the participating Plan is completely liquidated (*e.g.*, the participant terminates employment with the plan sponsor).

6. Each participating Plan's Primary Independent Fiduciary or Directing Independent Fiduciary will complete an Investor Profile and submit it to an investment counselor employed by the Bank or an affiliate who will interact with the Plan investor. The Investor Profile is a written questionnaire designed by BISYS and the Bank to assess such fiduciary's risk tolerance and financial objectives as they apply to the participating Plan. In the case of a single-participant Plan such as an IRA, the Bank will distribute the Investor Profile and other materials directly to the Primary Independent Fiduciary. In the case of a Participant-Directed Plan, the Bank will provide Investor Profiles and other information on the Foundations Program, at the Primary Independent Fiduciary's discretion, either to the Primary Independent Fiduciary for distribution to the Directing Independent Fiduciary or, directly to the Directing Independent Fiduciary. If requested by a Primary Independent Fiduciary, the Bank may also provide additional information or documentation that is provided to such Primary Independent Fiduciary to the Directing Independent Fiduciaries.

The responses to the Investor Profile will be analyzed by investment counselors, employed by the Bank or an affiliate, utilizing software developed and maintained by BISYS. Applying objective criteria to the results of the analysis, the Bank will recommend a particular Asset Allocation Model which is appropriate for the participating Plan. The Asset Allocation Model will also describe the fee structure to be applied and the actual number of basis points to be rebated to the Plan investor and will use a spreadsheet to show how the rebate is determined.

In conjunction with the recommendation, the Bank will provide each Primary Independent Fiduciary or Directing Independent Fiduciary with written materials explaining (a) market risk, (b) what to consider when assessing one's own risk tolerance and investment objectives, (c) historical risk and return characteristics of various Asset Classes and Asset Segments, (d) the advantage of diversifying to reduce market risk, and (e) historical risk and return characteristics of various strategically-allocated portfolios. The Bank, through the investment counselor, may also describe other Asset Allocation Models that are available to the Plan and provide additional educational materials to the Primary Independent Fiduciary or the Directing Independent Fiduciary.

Before participating in the Foundations Program, each Primary Independent Fiduciary or Directing Independent Fiduciary will also be shown the historical performance of the recommended Asset Allocation Model, including the number of years in which it has produced a negative return, the average loss in each such year, the average annual return, and the performance during the Model's five best and worst years. The Primary Independent Fiduciary or the Directing Independent Fiduciary may then accept the Bank's recommendation or invest the Plan in another Asset Allocation Model. The Plan will not be permitted to invest under the Foundations Program until the Primary Independent Fiduciary or the Directing Independent Fiduciary affirmatively directs the Bank to invest Plan assets under a particular Asset Allocation Model.

At any time, a Primary Independent Fiduciary or a Directing Independent Fiduciary may submit a new Investor Profile or choose a different Asset Allocation Model. At least annually, the Bank will ask each Primary Independent Fiduciary or Directing Independent Fiduciary, in writing, whether any information included on the Investor Profile has changed. The Bank will analyze and respond to a new Investor Profile in the same manner that it responds to the original Investor Profile.

7. Currently, the Bank has developed five Asset Allocation Models. They are the Capital Preservation Model, the

[3] Because of the regularly scheduled rebalancing of each Plan investor s account, the $1,000 threshold for contributions will not apply each year to new employer or employee contributions.

[4] The Department is not providing, nor have the Applicants requested relief from the provisions of section 404(c) of the Act with respect to the Bank's temporary holding of contributions by a Participant-Directed Plan in the American Performance U.S. Treasury Fund.

Income Model, the Growth & Income Model, the Growth Model and the Aggressive Growth Model. In addition to the present Asset Allocation Models, the Bank proposes to add more Asset Allocation Models to the Foundations Program in the future.

Each Asset Allocation Model will allocate a participating Plan's assets among three major Asset Classes: cash equivalents, bonds and stocks. For example, the Bank's Capital Preservation Model is invested in Asset Classes in the following percentages: Cash Equivalents (15 percent), Bonds (60 percent) and Stocks (25 percent). Each Asset Class will be further allocated into one or more Asset Segments, each of which represents a class of investment that the Bank believes is necessary to achieve the proper mix of risk and return in an Asset Class. To this end, the Bank will use a current list of mutual fund investment objectives and investment styles developed by Morningstar and Lipper, independent mutual fund analysts to determine the appropriate Asset Segments for a particular Asset Class.[5] The Bank will utilize Morningstar to classify equity Asset Segments and Lipper to classify fixed-income Asset Segments (including money market funds which Morningstar does not classify). For example, the Stock Asset Class under the Bank's Capital Preservation Model will include investments in three Funds (the Templeton Foreign Fund, the American Performance Equity Fund and the American Performance Growth Equity Fund) representing three Asset Segments (international stocks, income-producing stocks and growth equity stocks), respectively.

The Bank's Investment Management Group, which is comprised of the Bank's senior investment professionals, will determine the allocation of each Asset Allocation Model among the major Asset Classes, as well as the allocation of the major Asset Classes among the Asset Segments. In effect, the Investment Management Group will follow the classification systems devised by Morningstar and/or Lipper in order to fill particular Affiliated Funds or Third Party Funds within the given Asset Segments.

Model Adjustments

8. The Bank's Investment Management Group creates and monitors the composition of the Asset Allocation Models and reviews each Model's composition at least monthly. As noted in Representation 7, the Investment Management Group also determines the Asset Allocation Model's division among the three Asset Classes, the division of each Asset Class into Asset Segments and the allocation of each Asset Segment among the Affiliated Funds and the Third Party Funds.[6] The breakdown among the Asset Classes and the Funds which comprise those classes when a participating Plan is first invested pursuant to the Asset Allocation Model is the Model's "Normal Position." The Investment Management Group may adjust the Normal Position periodically as dictated by changing economic and market conditions. There are two types of Model Adjustments: (a) Those that the Bank may make unilaterally and (b) those that require the consent of the Primary Plan fiduciary. Any deviation from the Normal Position will apply to the Plan assets invested pursuant to the Asset Allocation Model both prior to and after the deviation (*i.e.*, both old and new money).[7]

A Model Adjustment does not include the substitution of a Fund but is deemed necessary to effect a change to an Allocation Model due to market conditions. The Bank anticipates that Funds will be substituted only under extraordinary circumstances (see Representation 14) whereby advance notice will be given to the Primary Independent Fiduciary to effect the change. Accordingly, a Model Adjustment and a Fund substitution are treated as a separate process by the Bank.

With respect to unilateral Model Adjustments, the Account Agreement entered into by each Primary Independent Fiduciary will authorize the Bank to deviate from the Normal Position of a given Asset Allocation Model within a specified range, not exceeding 15 percent above or below the Normal Position. The Model Adjustment will be made for all clients having the same Asset Allocation Model. The percentage will be applied to the Model's entire allocation, so the adjusted stock position of, for example, the Capital Preservation Model (the Normal Position of which has 25 percent invested in stocks), could range from 10 percent to 40 percent. The specified range may be higher for a deviation from the Asset Allocation Model's cash position which will be governed by the Account Agreement. Any change to an Asset Class will be separately allocated among the Asset Segments.

A corresponding decrease in an Asset Class must also fall within the authorized deviation parameters. Further, the original Normal Position will remain the standard for determining whether future Model Adjustments fall within the acceptable range.

9. The Bank may not change the Normal Position (*i.e.*, deviate more than the range specified in the Account Agreement) without providing the Primary Independent Fiduciary of each participating Plan that is invested pursuant to the affected Asset Allocation Model with a written notice of the impending change at least 30 days in advance of its effective change. If requested by the Primary Independent Fiduciary of a Participant-Directed Plan, the Bank will provide this notice to each Directing Independent Fiduciary. The 30 day notice period is intended to give the Primary Independent Fiduciary or the Directing Independent Fiduciary time to withdraw from the Foundations Program if he or she elects not to have the change made. The notice will include a Termination Advisory which will advise the Primary Independent Fiduciary or the Directing Independent Fiduciary (a) of his or her right to withdraw from the Foundations Program without penalty and (b) that

[5] The Bank will use the classification services provided by Morningstar and Lipper unless circumstances beyond its control require that the Bank select another independent, established mutual fund analyst.

[6] As discussed in Representation 11, the Investment Management Group will select a Third Party Fund to fill an Asset Segment only when (a) an Affiliated Fund representing that Asset Segment does not exist or (b) an Affiliated Fund representing the Asset Segment exists but it is not an "equivalent" to the Third Party Fund. To be equivalent to a Third Party Fund, an Affiliated Fund must have been publicly offering shares for at least one year. The total return performance for the Affiliated Fund must be equal to or exceed the total return performance of the Third Party Fund for either the most recent one year reporting period or the annualized three, five or ten year reporting periods. Further, the total expense ratio for the Affiliated Fund, determined in accordance with SEC rules for performance, must not be higher than the relevant Third Party Fund. In addition, as noted above, the Bank will determine which Fund fits within an Asset Segment based upon criteria developed by Morningstar and Lipper as to what type of Fund should fill that Asset Segment. As discussed in Representation 13, the Independent Financial Analyst, using Morningstar or Lipper classification criteria, will compare the Third Party Funds with the Affiliated Funds.

[7] In this regard, once the Normal Position is adjusted, the revised Normal Position will be applied to the entire Plan rather than only to amounts contributed to the Plan after the effective date of the adjustment. For example, assume that a Plan has invested $100,000 in Asset Allocation Model X, which is equally divided between Funds A and B. Because the Plan has been rebalanced, it has almost equal amounts invested in Funds A and B, despite their uneven earnings. When Asset Allocation Model X is adjusted to provide for a 55 percent investment in Fund A and a 45 percent allocation to Fund B, the entire $100,000 in the plan will be invested, accordingly—*i.e.*, $55,000 in Fund A and $45,000 in Fund B. Future contributions to the Plan will be allocated in a similar manner.

absent affirmative action by the Primary or Directing Independent Fiduciary, the Plan will be reallocated in accordance with the revised Normal Positions for the Asset Allocation Model, effective as of a given date.

If the Bank makes a Model Adjustment outside of the specified limits, the new allocation percentages will become the revised Normal Position for the Asset Allocation Model. The Account Agreement will then authorize the Bank to again deviate within the specified ranges and will require the 30 day notice and Termination Advisory described above for a shift outside the revised Normal Position.

Rebalancing

10. After a participating Plan is invested in an Asset Allocation Model, varying performance results among the Funds that comprise the Asset Allocation Model will eventually cause a Plan to fail to meet the Normal Position set forth in the applicable Asset Allocation Model. Therefore, prior to the end of each calendar quarter, the Bank will review each participating Plan to determine whether its allocation among the Funds will be materially out of line with the parameters prescribed by the Asset Allocation Model. The Bank will apply the net asset value of the affected Funds as of the end of each calendar quarter. A Plan is materially out of line with the Asset Allocation Model parameters if at least one transaction required to rebalance the participating Plan among the Funds (a) would involve a purchase or sale of securities valued at $100 or more, or (b) the net asset value of the Fund affected would represent more than 5 percent of the Plan's investment in such Fund. If a participating Plan is rebalanced, the Bank will buy and sell Fund shares from the distributor at net asset value, as of the close of business on a pre-established date within 5 business days prior to the end of the calendar quarter, in the amounts necessary to bring the participating Plan back into conformity with the appropriate Asset Allocation Model at the Asset Segment level. There will be no cross-trading of securities between the Funds. Neither the Bank nor its affiliates will receive commissions from such sales and the participating Plans will not be charged a redemption fee.

The Account Agreement will disclose the circumstances under which a participating Plan will be rebalanced and the date on which the necessary trades will occur. It is represented that rebalancing will not involve the exercise of any investment discretion by the Bank.

The Primary Independent Fiduciary or the Directing Independent Fiduciary will not be given the option of not having their account in the Plan rebalanced because this, according to the Bank, will undermine the Asset Allocation Model concept. As noted herein, each Primary Independent Fiduciary or Directing Independent Fiduciary will, however, have the option of selecting another Asset Allocation Model or withdrawing from the Foundations Program.

Fund Monitoring

11. The Bank's Investment Management Group will select and periodically review the performance and continued suitability of the Affiliated and Third Party Funds that are included within each Asset Allocation Model. The Investment Management Group will select an Affiliated Fund to fill an Asset Segment when there is an appropriate Affiliated Fund but will select Third Party Funds when (a) an Affiliated Fund representing that Asset Segment does not exist or (b) an Affiliated Fund representing the Asset Segment exists but it is not an "equivalent" of the Third Party Fund. As noted above, an Affiliated Fund is deemed the equivalent of a Third Party Fund if (a) the Affiliated Fund has been publicly offering shares for at least one year, (b) total return performance of the Affiliated Fund is equal to or exceeds the total return performance of the Third Party Fund for either the most recent one year reporting period or the annualized three, five or ten year reporting periods, and (c) the total expense ratio, determined in accordance with SEC rules for performance, is not higher than the relevant Third Party Fund.[8]

12. To review the selection by the Investment Management Group of a Third Party Fund to fill an Asset Segment, the Bank will retain the Independent Financial Analyst. As stated previously, the Independent Financial Analyst may not derive more than 5 percent of its total annual revenues from the Bank or its affiliates, including its fee for serving as the Independent Financial Analyst. As for minimum credentials, the Independent Financial Analyst must be a Chartered Financial Analyst and employed by a firm which has at least a regional presence in the investment products and services industry. In addition, the individual assigned the duties of the Independent Financial Analyst must alone, or with his or her employer, have a certain minimum number of years experience in the investment products and services industry and must not be affiliated with the Bank, BOSC or BISYS.

Should the Bank replace the Independent Financial Analyst, that entity must meet the same requirements applicable to the current Independent Financial Analyst. Under such circumstances, the Bank will be required to inform the Department 60 days in advance of the change. In addition, the Bank will also be required to describe the qualifications of the successor. Unless the Department objects to the change within 60 days of notification, the Foundations Program will continue to operate with the new Independent Financial Analyst.

13. On an annual basis, the Independent Financial Analyst will determine whether the use of a Third Party Fund during the previous year has satisfied the selection criteria set forth in Representation 11. (To recap, no Affiliated Fund is in existence and if in existence, the Affiliated Fund is not equivalent to the Third Party Fund.) The Independent Financial Analyst will also determine that the Third Party Fund considered by the Bank represents the correct Asset Segment based upon Morningstar or Lipper classifications. If the Independent Financial Analyst determines that a Third Party Fund has been used under circumstances which do not satisfy these criteria, an appropriate Affiliated Fund will be substituted after appropriate notice (*i.e.*, the Termination Advisory) is given to the Primary Independent Fiduciary or the Directing Independent Fiduciary, if applicable. (See Representation 14.)

Additionally, the Independent Financial Analyst will review the Funds each time the Bank determines to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund. In this regard, the Independent Financial Analyst will be required to certify that the proposed change satisfies the "in existence" and "equivalence" criteria set forth above in Representation 11 before the effective date of the change.

Further, the Independent Financial Analyst will be required to determine that for an Asset Segment there is no overlap between a Third Party Fund and an Affiliated Fund. Specifically, the Independent Financial Analyst will determine (a) that the array of Third

[8] As noted previously, assuming there are 75 Small Cap International Funds within the universe of Third Party Funds, the Independent Financial Analyst will examine all of the relevant Funds using the Morningstar or Lipper classification systems.

Party and Affiliated Funds does not include two or more Funds which are in the same classification under both the Morningstar and Lipper classification systems; and (b) that no Third Party Fund which is to be added is in the same Asset Class as an existing Affiliated Fund under both the Morningstar and Lipper classification systems.

14. If the Investment Management Group determines that an Affiliated Fund or a Third Party Fund should be replaced with another Fund, the Bank will give written notice to the Primary Independent Fiduciary of each participating Plan which is invested in the affected Asset Allocation Model at least 30 days in advance of the effective date of the Fund change. If requested by the Primary Independent Fiduciary, the Bank will also provide this notice to each Directing Independent Fiduciary. The notice will also include a Termination Advisory that will advise the Primary Independent Fiduciary of the right to withdraw from the Foundations Program or allow the Directing Independent Fiduciary to transfer to a different Asset Allocation Model without penalty.

Fee Structure

15. As to each investing Plan, the total fees that are paid to the Bank and its affiliates will constitute no more than reasonable compensation for the services provided to the participating Plans. In this regard, the Bank and its affiliates will receive four types of fees: (a) Advisory Fees from the Affiliated Funds,[9] (b) Non-Advisory Fees from the Affiliated Funds (*i.e.*, Administrative Fees), (c) Administrative Fees from the Third Party Funds, and (d) the Wrap Fee paid by each participating Plan at the Plan-level. All fees received from sources other than the participating Plan or the Plan's sponsor will be applied to offset the Plan's legal obligation to the Bank and its affiliates. Under no circumstances will such fees increase the compensation received by the Bank or its affiliates.[10]

(a) *Advisory Fees.* The annualized Advisory Fees of the Affiliated Funds, which range from 0.40 percent to 0.69 percent, are calculated daily and paid monthly on the Affiliated Fund's average daily net assets. However, the Bank may, from time to time, waive all or a portion of the Advisory Fee. Each fee arrangement between the Bank and an Affiliated Fund must be approved by the Board of Trustees of the Affiliated Fund, including a majority of the Trustees who are not "interested persons."

(b) *Administrative Fees from the Affiliated Funds and BISYS,* The Bank is compensated for acting as custodian to the Affiliated Funds. For its custodial services, the Bank currently receives an annual fee of 0.03 percent of the average daily net assets of each of the Affiliated Funds.

In addition, the Bank may receive Administrative Fees from BISYS in the form of annualized Rule 12b–1 Fees, pursuant to each Affiliated Fund's Distribution Plan. Such Rule 12b–1 Fees will not exceed 0.25 percent of the average daily net assets of each Affiliated Fund.[11]

Further, BISYS currently retains the Bank as sub-administrator to the Affiliated Funds. BISYS presently pays the Bank an annualized fee of 0.05 percent of each Affiliated Fund's daily net assets.

(c) *Administrative Fees from the Third Party Funds.* The Third Party Funds may pay Administrative Fees such as Rule 12b–1 Fees or similar fees to the Bank or its affiliates for shareholder services (*e.g.*, fund recordkeeping, accounting in connection with a participating Plan's purchase or redemption of shares of the Third Party Fund, processing purchase and redemption transactions involving the Plans and providing mutual fund enrollment material to Primary or Directing Independent Fiduciaries). The annualized Administrative Fees range from 0.08 percent to 0.50 percent.

(d) *The Plan-Level Wrap Fee.* For their asset allocation, custodial and related services, the Bank, BOSC, and/or their affiliates will charge each participating Plan an annual investment fee (*i.e.*, the Wrap Fee). If the Plan's average daily value (including amounts invested in either the Third Party Funds or Affiliated Funds) is less than $25,000, the Wrap Fee will equal 1.80 percent of $25,000, unless the minimum investment amount is lowered, in which case the Wrap Fee will equal 1.80 percent of the minimum investment. For balances greater than the minimum investment, the fee will be calculated as follows: 1.80 percent on $1–$99,999; 1.55 percent on $100,000–$249,999; and 1.45 percent on any balance above $250,000. Breakpoints will be calculated on a per-participating Plan basis rather than on each account in that Plan.

From time to time, the Bank may increase or reduce the Wrap Fee. In the event of a Wrap Fee increase, the Bank will notify the Primary Independent Fiduciary or, if applicable, the Directing Independent Fiduciary, of the impending increase at least 30 days prior to its effective date of the change. The written notification will include a Termination Advisory and remind the Primary Independent Fiduciary of the impending increase at least 30 days prior to its effective date. The written notification will include a Termination Advisory which will (a) advise the Primary Independent Fiduciary or the Directing Independent Fiduciary of the right to withdraw from the Foundations Program without penalty; and (b) state that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the new Wrap Fee will be effective no earlier than 30 days after the receipt of the notice and the Termination Advisory.

The Wrap Fee is assessed quarterly in arrears on the Plan's average daily net asset value during the quarter. The Wrap Fee will be deducted directly from the Plan.

Fund Fees and Offset

16. As noted in Representation 15, the Bank and its affiliates may receive, either directly or indirectly, various fees from the Affiliated Funds and the Third Party Funds which will be fully disclosed to investors in applicable prospectuses. The Bank proposes to offset all Advisory Fees, Administrative Fees and Rule 12b–1 Fees that are paid to it and its affiliates with respect to a Plan's investment in a Fund (collectively, the Offset Fees), from the

[9] It should be noted that Advisory Fees may also be paid by the Affiliated Funds to unrelated sub-advisers who may be retained by the Bank in the future to perform investment management and/or advisory services to Plans investing under the Foundations Program. These sub-advisory fees are not applied to offset the Plan's legal obligation to the Bank and should be considered by the appropriate Plan fiduciary in evaluating the appropriateness of the Foundations Program.

[10] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions Primary Independent Fiduciaries of Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Plans to assure that the services remain appropriate and that the fees paid by the Plans for such services are reasonable in relation to the value of the services provided. In considering whether to enter into the arrangement for the provision of asset allocation services, the Department emphasizes that it expects the Primary Independent Fiduciary to fully understand the operation of the Foundations Program and the compensation paid thereunder, following disclosure by the Bank of all relevant information pertaining to the Program.

[11] Under each Affiliated Fund's Distribution Plan, the Fund pays BISYS Rule 12b–1 Fees on a monthly basis [see Representation 1(c)] in order to provide distribution assistance to, or compensate financial intermediaries, broker-dealers or similar entities (including the Bank and affiliates or subsidiaries of BISYS and/or the Bank) for providing shareholder services.

quarterly Wrap Fee charged to that Plan. The Bank believes that the offset will eliminate any conflict of interest which may exist as a result of the fact that an investment in certain Funds would generate higher overall fees for the Bank and its affiliates, and will also eliminate any indirect benefit that the Bank may gain by including Funds that pay higher Advisory or Administrative Fees in the Asset Allocation Models.

The Bank will deduct the Offset Fees as follows. At the end of each quarter, the Bank will calculate the revenues that it received during the quarter in the form of Offset Fees on a *pro rata* basis for each Plan invested in the Foundations Program. These figures will be a percentage of the average daily net value of participating Plan assets in each Affiliated and Third Party Fund. The Bank will reduce the Wrap Fee charged to each Plan for that quarter by that Plan's allocable portion of the Offset Fees for the Asset Allocation Model in which the Plan's assets were invested during the quarter. Thus, the sum of the Wrap Fee which the Bank and its affiliates actually receive with respect to each Plan (following the offset) and the Offset Fees will always equal the total Wrap Fee to which the Primary Independent Fiduciary agreed to in the Account Agreement and the selection of Affiliated or Third Party Funds will always be revenue-neutral.

17. The Bank has provided the following example to demonstrate how the Offset Fee mechanism will work:

Mr. Smith meets with a Bank investment counselor on April 3, 2000. After going through the education, profiling and recommendation process, he decides to invest his IRA through the Foundations Program. Mr. Smith accepts the Bank's recommendation that, based on the results of his Investor Profile, the Growth and Income Model is the appropriate vehicle for the IRA. So, on April 3, 2000, Mr. Smith invests $47,928.76 in that Asset Allocation Model. This initial investment is allocated as follows:

Fund	Allocation (percent)	Dollar amount	Price	Shares
American Performance Treasury Money Market	5	$2,396.44	$1.00	2,396.440
American Performance Short-Term Income Fund	10	4,792.88	10.02	478.331
American Performance Intermediate Bond Fund	5	2,396.44	10.36	231.317
American Performance Bond Fund	5	2,396.44	9.53	251.463
Federated GNMA Fund	10	4,792.88	11.32	423.399
Federated Bond Fund	10	4,792.88	10.05	476.903
Federated Equity Income Fund	9	4,313.59	19.21	224.549
American Performance Equity Fund	29	13,899.34	17.96	773.905
American Performance Growth Equity Fund	9	4,313.57	12.12	355.905
Templeton Foreign Fund	3	1,437.86	11.10	129.537
Neuberger & Berman Genesis Assets Fund	5	2,396.44	14.33	167.232
Total	100	47,928.76	.....	.....

Wrap Fee

Three business days prior to the end of the calendar quarter (*i.e.*, June 28, 2000), the Bank takes the following steps to calculate the fee charged to Mr. Smith's account for the second quarter of 2000:

- The Bank calculates the average balance of Mr. Smith's account during the quarter as $48,124.44.
- The annual Wrap Fee on accounts of up to $99,000 is 1.80 percent. Therefore, the quarterly fee is 45 basis points or 0.45 percent of the average daily balance during the quarter. Mr. Smith's quarterly Wrap Fee is $216.56 ($48,124.44 × 0.45%). This amount is deducted from the account based on the Fund/fee hierarchy. [12] The Fund/fee hierarchy determines which position(s) will be liquidated to pay fees. Because Mr. Smith has enough assets in the American Performance Treasury Money Market Fund to pay the fee, a liquidation of $216.56 is posted to this Fund.

Offset Fees

- The Bank prepares a spreadsheet detailing the annualized compensation it received from the Affiliated Funds and the Third Party Fund during the quarter. For example,

Fund	Allocation (percent)	Basis points received
American Performance Treasury Money Market	5	2
American Performance Short-Term Income Fund	10	1
American Performance Intermediate Bond Fund	5	3
American Performance Bond Fund	5	3
Federated GNMA Fund	10	3
Federated Bond Fund	10	3
Federated Equity Income Fund	9	2
American Performance Equity Fund	29	24
American Performance Growth Equity Fund	9	7
Templeton Foreign Fund	3	1
Neuberger & Berman Genesis Assets Fund	5	3
Total	100	52

[12] It is represented that Funds are liquidated to pay fees in the following order: American Performance U.S. Treasury Fund, American Performance Intermediate Bond Fund, American Performance Bond Fund, Federated Bond Fund, Federated GNMA Trust Fund, Federated Equity Income Fund, American Performance Equity Fund, Templeton Foreign Fund, Neuberger and Berman Genesis Asset Fund and the American Performance Aggressive Growth Fund.

Because each Asset Allocation Model, other than the Aggressive Growth Model, includes an investment in a money market fund, the Bank anticipates that almost all of the Wrap Fee will be taken from the American Performance Treasury Money Market Fund. An Account's entire holding in a particular Fund will be liquidated before any portion of the next Fund in the hierarchy is liquidated. If the liquidation is more than $1,000, the Account automatically will be rebalanced. If the liquidation is for $100 to $1,000, the Account will be rebalanced at the next quarter's end. If the liquidation is for less than $100, the Account will not be rebalanced on account of the fee payment, although it may be rebalanced in the regular course of the Foundations Program.

• The rebate to be credited to Mr. Smith's account is calculated by multiplying his average daily balance ($48,124.44) by the basis points received (52) and then dividing the result by 4. The rebate ($62.56) [($48,124.44 × 0.52%/4)] is credited to the American Performance Treasury Money Market Fund. [13]

Disclosures

18. Aside from the Investor Profile described in Representation 6, Primary Independent Fiduciaries and Directing Independent Fiduciaries will receive several types of disclosures: (a) Initial disclosures which are made to the Primary Independent Fiduciary and, if applicable, the Directing Independent Fiduciary before a Plan is enrolled under the Foundations Program; (b) subsequent disclosures which are made exclusively to the Primary Independent Fiduciary; (c) specific disclosures which are made to the Primary Independent Fiduciary or the Directing Independent Fiduciary; and (d) continuing disclosures that are made to the Primary Independent Fiduciary or the Directing Independent Fiduciary throughout the time that the participating Plan is enrolled under the Foundations Program.

(a) *Initial Disclosures for the Primary Independent Fiduciary or the Directing Independent Fiduciary.* Before a Plan's assets are invested under the Foundations Program, the Primary Independent Fiduciary or, if applicable, the Directing Independent Fiduciary, will receive a brochure describing the Foundations Program, a Foundations Asset Allocation Account Application, a Foundations Asset Allocation Purchase Order, and a Foundations Program Account Agreement. The Account Agreement will provide detailed information on the Foundations Program, including the way in which fees are calculated and charged, the procedure for and limitations on the Bank's ability to make Model Adjustments and its rebalancing of a participating Plan, and the procedure to be followed in the event that the Primary or Directing Independent Fiduciary objects to a Model Adjustment. In addition, the Bank will disclose, through the Form ADV-Part II, its affiliation or non-affiliation with the Funds to the Primary Independent Fiduciary prior to such fiduciary's enrolling an eligible Plan in the Program. Further, the Bank will provide to the Primary Independent Fiduciary the executed Account Agreement and copies of the proposed exemption and the grant notice. Assuming the Bank provides copies of the proposed exemption and the grant notice directly to the Primary Independent Fiduciary, such disclosures may be distributed by the Primary Independent Fiduciary to the Directing Independent Fiduciaries.

To participate in the Foundations Program, the Primary Independent Fiduciary will submit a completed Account Agreement to the Bank. In addition, the Primary Independent Fiduciary will be required to represent in writing that such fiduciary is (1) independent of the Bank and its affiliates; (2) knowledgeable with respect to the Plan in administrative matters; (3) able to make an informed decision concerning the participating Plan's participation in the Foundations Program; and (4) knowledgeable with respect to funding matters related to the Plan.

Once the Plan is enrolled in the Foundations Program, the Primary Independent Fiduciary or, if applicable, the Directing Independent Fiduciary, will complete an Investor Profile and submit it to an investment counselor in the manner described herein in Representation 6.

(b) *Subsequent Disclosures Exclusively for the Primary Independent Fiduciary.* In addition to the initial disclosures described above in Representation 18(a), the Bank will provide each Primary Independent Fiduciary with the following materials and/or oral disclosures: (1) A copy of the executed Account Agreement between the Plan and the Bank; and (2) a description of the Bank's affiliation, if any, with the sponsors, distributors, administrators, investment advisers, sub-advisers, custodians and transfer agents of each Affiliated and Third Party Fund. In addition, the Primary Independent Fiduciary will acknowledge in writing that he or she has received copies of the aforementioned documents prior to investing in the Foundations Program.

(c) *Specific Disclosures for the Primary Independent Fiduciary or the Directing Independent Fiduciary.* The Bank will provide each Primary Independent Fiduciary or Directing Independent Fiduciary with the following materials and/or oral disclosures prior to investing in an Asset Allocation Model: (1) a written analysis based on such fiduciary's Investor Profile, (2) a description of the Asset Allocation Model recommended by the Bank's investment counselor, which includes a description of the actual fee structure and the actual number of basis points that will be rebated to such Plan fiduciary; (3) a prospectus for each Affiliated Fund and Third Party Fund in which the Plan may be invested, showing, among other things, the internal fees for the Fund; and (4) upon the request of the Primary Independent Fiduciary or the Directing Independent Fiduciary, a Statement of Additional Information which supplements the prospectus. The Primary Independent Fiduciary or the Directing Independent Fiduciary will also acknowledge in writing to the Bank that he or she has received copies of the aforementioned documents prior to the Plan's investment in an Asset Allocation Model.

(d) *Continuing Disclosures for the Primary Independent Fiduciary or the Directing Independent Fiduciary.* In addition to the disclosures described above, the Bank will provide each Primary Independent Fiduciary and Directing Independent Fiduciary with the following continuing disclosures: (1) Copies of applicable prospectuses; (2) written confirmation of each purchase and redemption of shares of an Affiliated Fund or a Third Party Fund, including transactions implemented as a result of a realignment of the Asset Allocation Model's investment mix or from the rebalancing of a participating Plan's investments in conformity with the selected Asset Allocation Model; (3) telephone quotations of the Plan's balance under the Foundations Program; (4) periodic, but at least quarterly, account statements showing the Plan's value, a summary of purchase, sale and exchange activity and dividends received or reinvested, a summary of cumulative realized gain and/or loss, and rebated amounts; (5) semiannual or annual reports that include financial

[13] For each Fund represented in the foregoing Asset Allocation Model, the Bank will determine the total number of basis points received on an annual basis from all fee sources within that Fund. As noted above, these fees include Rule 12b-1 Fees, Advisory Fees and Administrative Fees. For example, for the American Performance Equity Fund, the total annual basis points received is 83.

The Bank will then multiply this amount (83) by the percentage of the Fund contained in the Asset Allocation Model. In this Asset Allocation Model, 29 percent of the investor's money is allocated to the American Performance Equity Fund. Accordingly, under the Bank's fee-offset arrangement, 29 percent of 83 basis points (or 24 basis points) will be rebated to Mr. Smith's account.

The Bank represents that this method of allocation will be repeated for all Funds shown in this particular Asset Allocation Model. The total rebated amounts attributable to each Fund will be added together to arrive at the total number of basis points that will be rebated to investors in this Asset Allocation Model. Accordingly, Mr. Smith and other investors in this Asset Allocation Model, will be rebated 52 basis points on an annual basis.

In addition, Mr. Smith and other investors will receive full disclosure from the Bank regarding the fees and the fee-offset arrangement, including the actual number of basis points to be rebated under an applicable Allocation Model. To show how the rebate is calculated, a spreadsheet will be utilized. Finally, an investor will see rebated amounts in their performance statements. (See also Representations 6 and 18.)

statements for the Funds, as well as a description of the fees that are paid by the Funds to the Bank and its affiliates; (6) at least annually, a written or oral inquiry from the Bank to ascertain whether information provided on the Investor Profile is still accurate and to determine if such information should be updated; (7) an annual Termination Advisory; and (8) the Bank's investment advisory and other agreements with any Affiliated Fund as well as its distribution agreement pertaining to the Third Party Funds, upon request. Communications received from the Funds will be distributed to the Primary Independent Fiduciary, who may elect to pass this information through to Directing Independent Fiduciaries.

Finally, for a period of six years, the Bank will maintain records necessary to enable the Department, Plan fiduciaries, participants and others to determine whether the conditions of the requested exemption have been met.

More Steering Concerns

19. The Applicants state that the Asset Allocation Models used in the Foundations Program were designed to meet very specific risk tolerances and investment objectives developed by Morningstar and Lipper. The Applicants note that each Asset Segment in an Asset Allocation Model performs a role in addressing those tolerances and objectives. In this regard, the Applicants explain that each Asset Segment is represented by only one Fund—an Affiliated Fund or a Third Party Fund. Therefore, the Applicants state that the Bank cannot steer assets within an Asset Allocation Model to a Third Party Fund rather than an Affiliated Fund representing the same Asset Segment.

20. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an administrative exemption under section 408(a) of the Act because:

(a) The investment of a Plan s assets under the Foundations Program will be made by a Primary Independent Fiduciary or a Directing Independent Fiduciary who is independent of the Bank and its affiliates such that the Plan fiduciary will maintain complete discretion with respect to participating under the Foundations Program.

(b) No Plan will pay a fee or commission by reason of the acquisition or redemption of shares of the Funds.

(c) As to each Plan, the total fees that are paid to the Bank and its affiliates will constitute no more than reasonable compensation for the services provided.

(d) Prior to investing under the Foundations Program, each Primary Independent Fiduciary or Directing Independent Fiduciary will receive offering materials and disclosures from the Bank which set forth all material facts concerning the purpose, fee structure, rebate arrangement, operation, rebalancing, risks and participation in such Program.

(e) The Bank will provide written documentation to a Primary Independent Fiduciary or a Directing Independent Fiduciary of its recommendations based upon objective criteria that will be uniformly applied.

(f) The quarterly Wrap Fee that is paid by a Plan to the Bank for asset allocation and related services rendered to such Plan under the Portfolio Advisor Program will be offset by—(1) All Advisory Fees received by the Bank and/or its affiliates from the Affiliated Funds; (2) all Administrative Fees that are received by the Bank from the Affiliated Funds; and (3) all Administrative Fees that are paid by the Third Party Funds to the Bank and/or its affiliates, such that the sum of the Wrap Fee and the Offset Fees will always equal the total Wrap Fee and the selection of Affiliated or Third Party Funds will always be revenue-neutral.

(g) No Plan assets will be invested according to a Model Adjustment without the consent of the Primary Independent Fiduciary if the Model Adjustment is outside the range specified in the Account Agreement.

(h) The periodic rebalancing of a Plan investor's account will not involve an exercise of discretionary management or control over the Plan by the Bank.

(i) The Bank will retain the Independent Financial Analyst to (1) review the investment of Plan assets in a Third Party Fund to ensure adequate performance and suitability, (2) review the Funds each time the Bank determines to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund; and (3) ensure that there is no overlap between the Funds.

(j) Although the Primary Independent Fiduciary or the Directing Independent Fiduciary may withdraw from the Foundations Program at any time, any authorizations made by such Plan investors with respect to increases in the Wrap Fee, Model Adjustments that are outside of an Asset Allocation Model, the addition or substitution of a Fund, will be terminable at will and without penalty to the Plan.

(k) Each Primary Independent Fiduciary or Directing Independent Fiduciary will receive ongoing disclosures from the Bank regarding the continued participation of the Plan in the Foundations Program.

(l) All dealings between a Plan, the Funds and the Bank will remain on a basis which is at least as favorable to the Plan as such dealings are with other shareholders of the Funds holding the same classes of shares as the Plan.

Notice to Interested Persons

The Applicants represent that because potentially interested participants and beneficiaries of eligible Plans which might choose to participate in the Foundations Program cannot be identified at this time, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by publication of the notice of pendency in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department no later than 30 days from the date of the publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

First Tennessee National Corporation Located in Memphis, Tennessee

[Application No. D–10898]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice

with respect to the assets of that Excluded Plan.[14]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[15] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[16]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for

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[14] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[15] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[16] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this proposed exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986; and

(b) That is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which FTNC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) Are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) Are credited to a capitalized interest account (as defined in section III.X.); and

(iii) Are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption.

C. "Underwriter" means:

(1) First Tennessee National Bank (the Bank) or First Tennessee Securities Corporation (FTSC);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with FTNC; or

(3) Any member of an underwriting syndicate or selling group of which FTNC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption (if granted) applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Rating Agency" means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch IBCA, Inc. (Fitch), or their successors.

X. "Capitalized Interest Account" means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. "Closing Date" means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. "Pre-Funding Account" means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. "Pre-Funding Period" means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. "FTNC" means First Tennessee National Corporation, a Tennessee corporation, and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (see 60 FR at 35932).

Summary of Facts and Representations

1. FTNC, a Tennessee corporation, is a Memphis, Tennessee based bank holding company, which has assets of over $18 billion and through its subsidiaries, including the Bank, operates 419 branches in various cities in Tennessee, Arkansas and Mississippi. FTNC also owns and operates subsidiaries that engage in trust, brokerage, investment management, mortgage banking and consumer finance, including First Tennessee ABS, Inc.

FTSC is a subsidiary of the Bank. On April 12, 1999, the Office of the Controller of the Currency (OCC) granted approval for the Bank to establish FTSC as a wholly-owned subsidiary of the Bank. The OCC approval permitted FTSC to engage in certain securities activities which are permissible for national banks to engage in directly, and also to underwrite and deal in municipal revenue bonds. On January 28, 2000, the OCC granted approval for FTSC to expand its activities in underwriting and dealing activities with respect to all types of debt and equity securities other than interests in open-end investment companies. On March 13, 2000, the OCC approved a certification and notice filed by the Bank for FTSC to become a "financial subsidiary" as permitted by the Gramm-Leach-Bliley Act (G–L–B Act) and OCC regulation. As a financial subsidiary, FTSC may conduct securities activities which are permissible for the Bank to engage in directly as well as securities activities which the G–L–B Act has defined as "financial in nature," such as underwriting, dealing in, and making a market in, all types of securities, including interests in open-end investment companies.

Trust Assets

2. FTNC seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;[17] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[18]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mort gages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[19]

Trust Structure

4. Each trust is established under a pooling and servicing agreement

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[17] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. FTNC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, FTNC has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[18] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of "plan assets" (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[19] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

between a sponsor, a servicer and a trustee.[20] The sponsor or servicer of a trust selects assets to be included in the trust.[21] These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[22]

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

FTNC, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by FTNC on a firm commitment basis. In addition, FTNC anticipates that it may privately place certificates on both a firm commitment and an agency basis. FTNC may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive distributions of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable. These distributions will be made monthly, quarterly, semi-annually, or at such other intervals and dates as specified in the related prospectus or private placement memorandum.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. FTNC requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/ slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[23]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[24]

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to

[20] The Department is of the view that the term "trust" includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

[21] It is the Department's view that the definition of "trust" contained in section III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[22] It is the view of the Department that section III.B.(4) includes within the definition of the term "trust" rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreements or other notional principal contracts.

[23] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this proposed exemption.

[24] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust ("FASIT"), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure With Pre-Funding Account

Pre-Funding Accounts:

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to an underwriter for cash or to the certificateholders directly if the certificates are sold through a placement agent. The cash received by the sponsor from the certificateholders (or the underwriter) from the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (*i.e.*, servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the rating agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the rating agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In such situations, the sponsor could sell the receivables into the trust at a discount, and more receivables would be used to fund the trust in order to support the pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a

repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account:

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate.

In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments:

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period:

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such

trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will be either: (i) Monitored by a credit support provider or other insurance provider which is independent of the sponsor; or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, FTNC and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer. The originator may be an affiliate of FTNC.

12. The *sponsor* will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to FTNC, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). FTNC represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* (*i.e.*, FTNC, its affiliate, or a member of an underwriting syndicate or selling group of which FTNC or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to FTNC. In

other cases, however, affiliates of FTNC may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[25] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

22. The certificates will have received one of the three highest ratings available from a rating agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain

[25] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (*i.e.* act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the certificates; and

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

28. FTNC may contemplate entering into forward delivery commitments in connection with the offering of pass-through certificates. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and FTNC may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. FTNC may attempt to make a market for securities for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times, FTNC will facilitate sales by investors who purchase certificates if FTNC has acted as agent or principal in the original private placement of the certificates and if such investors request FTNC's assistance.

Summary

30. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which FTNC seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) FTNC anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or

disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; .

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of June, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–17065 Filed 7–6–00; 8:45 am]

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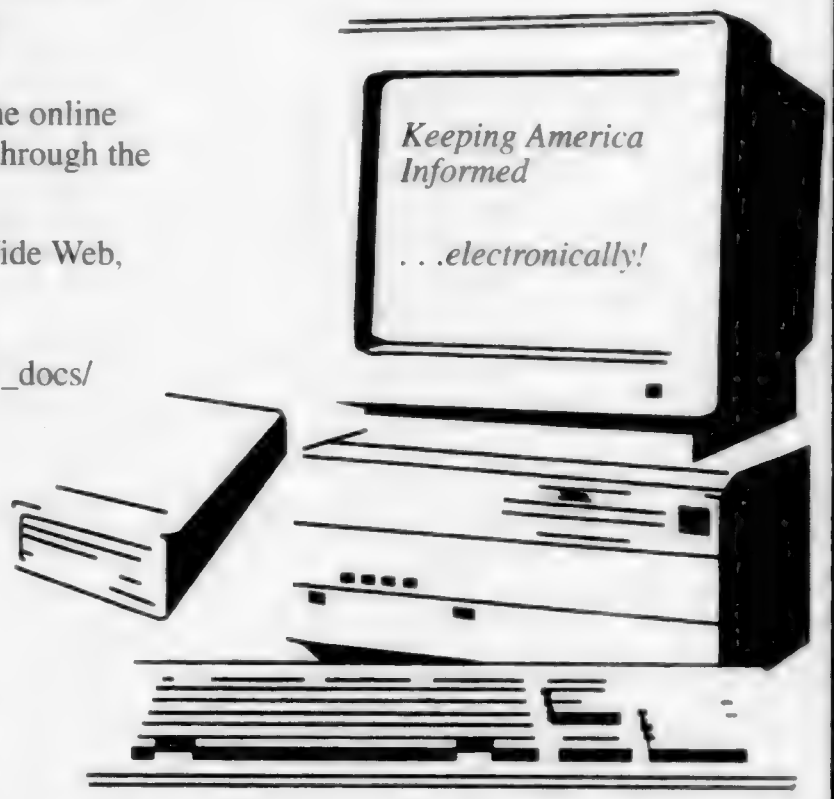

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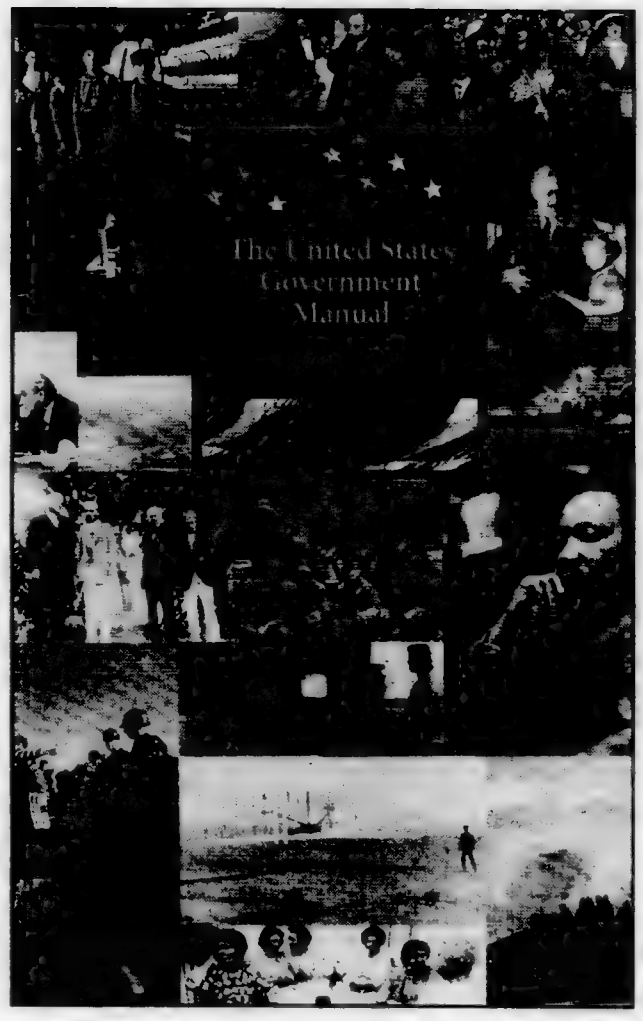

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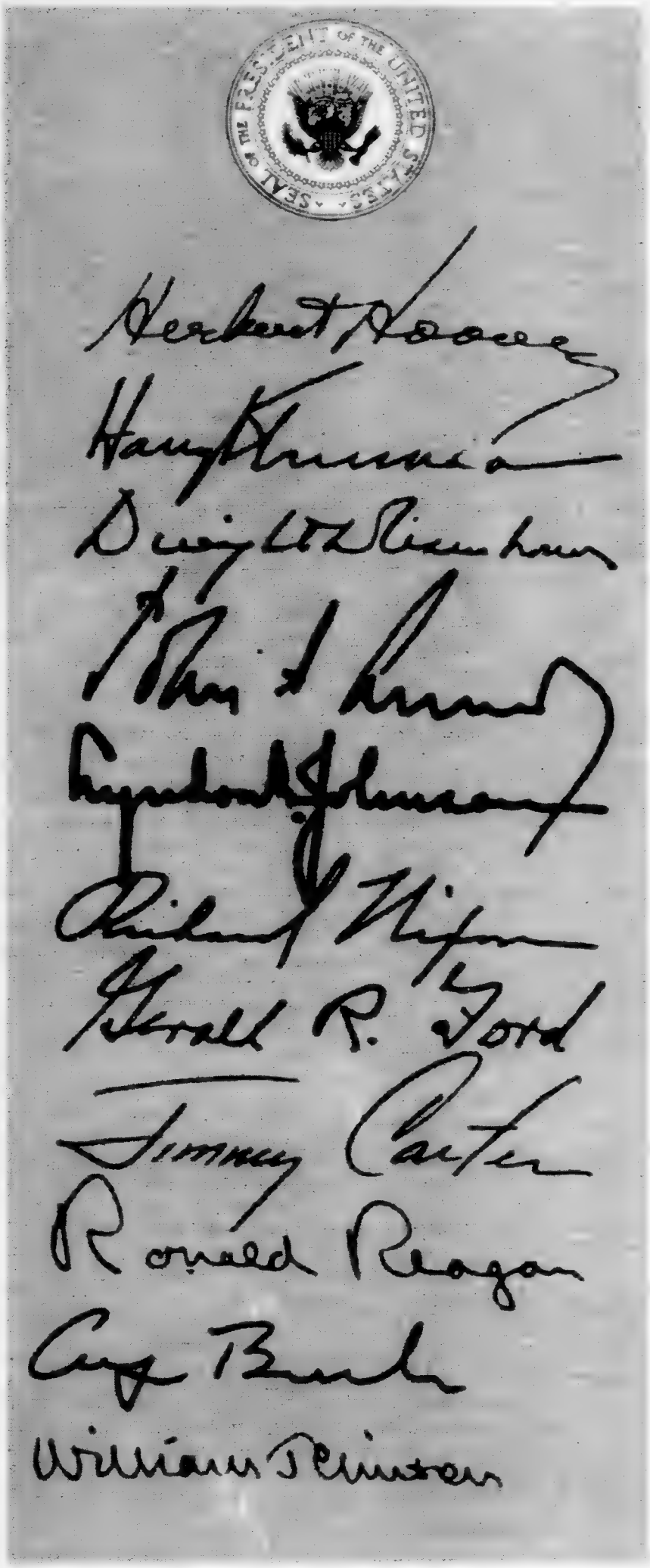

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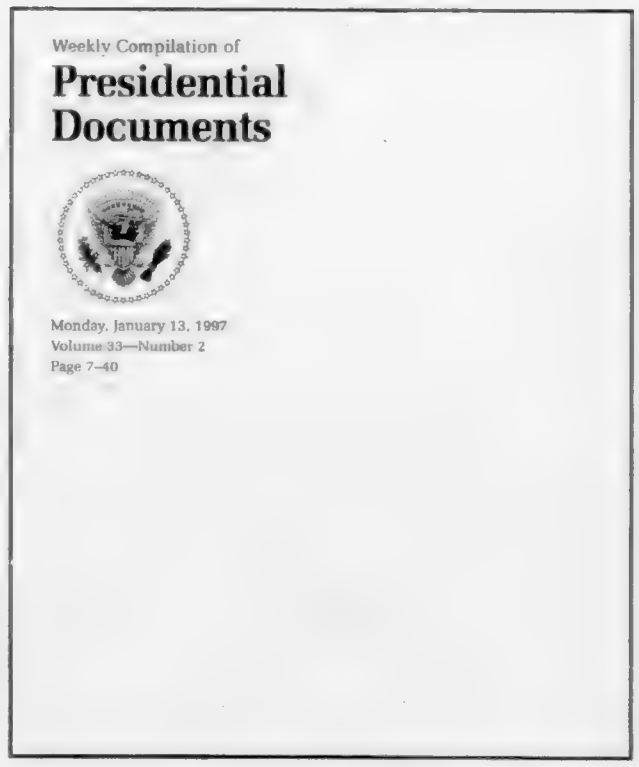

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–25 of June 29, 2000

U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO): Certification and Waiver

Memorandum for the Secretary of State

Pursuant to section 576(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as enacted in Public Law 106–113, (the "Act"), I hereby certify that:

(1) the effort to can and safely store all spent fuel from North Korea's graphite-moderated nuclear reactors has been successfully concluded;

(2) North Korea is complying with its obligations under the agreement regarding access to suspect underground construction; and

(3) the United States has made and is continuing to make significant progress on eliminating the North Korean ballistic missile threat, including further missile tests and its ballistic missile exports.

Pursuant to the authority vested in me by section 576(d) of the Act, I hereby determine that it is vital to the national security interests of the United States to furnish up to $20 million in funds made available under the heading "Nonproliferation, Anti-terrorism, Demining and Related Programs" of that Act, for assistance for KEDO and therefore I hereby waive the requirement in section 576(c)(3) to certify that: North Korea has terminated its nuclear weapons program, including all efforts to acquire, develop, test, produce, or deploy such weapons.

You are hereby authorized and directed to report this certification and wavier to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 29, 2000.

[FR Doc. 00–17471
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AGENCY: A
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV00–947–1 IFR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County; Suspension of Handling, Reporting, and Assessment Collection Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends for the 2000–2001 and future seasons the minimum grade, size, quality, maturity, pack, inspection, and other related requirements prescribed under the Oregon-California potato marketing order. It also suspends all reporting and assessment collection requirements. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee (Committee). This rule will reduce industry-operating expenses.

DATES: Effective July 1, 2000. Comments received by September 8, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California, and in all counties in Oregon, except Malheur County, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule maintains continuity with the current suspension. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule suspends the minimum grade, size, quality, maturity, pack, inspection, and other related requirements prescribed under the Oregon-California potato marketing order. It also suspends all reporting and assessment collection requirements. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee. This rule will reduce industry expenses, as it decides whether the marketing order should be continued.

Section 947.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety of potatoes grown in the production area during any period. Section 947.51 authorizes the modification, suspension, or termination of regulations issued under part 947. Termination or suspension authority also is specified in § 947.71.

Section 947.60 provides that whenever potatoes are regulated pursuant to § 947.52, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Prior to the 1999–2000 season, minimum grade, size, quality, maturity, and pack requirements for potatoes regulated under the order were specified in § 947.340 *Handling Regulation* [7 CFR part 947.340]. This regulation, with modifications and exemptions for different varieties and types of shipments, provided that all potatoes grade at least U.S. No. 2; be at least 2 inches in diameter or weigh at least 4

ounces, and be not more than moderately skinned. Additionally, potatoes packed in cartons had to be U.S. No. 1 grade or better, with an additional tolerance allowed for internal defects, or U.S. No. 2 grade weighing at least 10 ounces. Section 947.340 also included waivers of inspection procedures, reporting and safeguard requirements for special purpose shipments, and a minimum quantity exemption of 19 hundredweight per day. Related provisions appear in the regulations at § 947.130, *Special Purpose Certificates—application and issuance;* § 947.132 *Reports;* § 947.133 *Denial and appeals;* and § 847.134 *Establishment of list of manufacturers of potato products.*

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Oregon-California potatoes that have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its March 31, 2000, meeting, the Committee recommended suspending the handling and inspection regulations and related sections for the 2000–2001 and future seasons. It also recommended that all reporting and assessment collection requirements be suspended, too. The Committee requested that this rule be effective on July 1, 2000, which is the date shipments of the 2000 Oregon-California potato crop are expected to begin.

The objective of the handling and inspection requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived. It would like to further assess this matter during the 2000–2001 and future seasons.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee continues to explore various alternatives for reducing costs.

The Committee recommended suspending the handling regulations for a one-year trial from July 1, 1999, through June 30, 2000. The Committee was concerned that the elimination of current requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there was some concern that the Oregon-California potato industry could lose sales to other potato producing areas that were covered by quality and inspection requirements. For these reasons, the Committee recommended the one-year suspension of the requirements for the 1999–2000 marketing season.

The Committee believes that this one-year trial was successful and recommended continuing the suspension of the handling and inspection requirements indefinitely. Last season's suspension was implemented by the Department with an interim final rule published in the **Federal Register** on June 25, 1999 (64 FR 34113) and finalized on September 13, 1999 (64 FR 49352). Continuation of the suspension for the 2000–2001 and subsequent seasons will enable the Committee to further study the impacts on the industry and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements, and continue to decrease handler costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of removing the minimum requirements on marketing and on producer returns at its annual spring meetings.

Consistent with the suspension of § 947.340, this rule also suspends §§ 947.120, 947.123, 947.130, 947.132, 947.133, and 947.134 of the rules and regulations in effect under the order. Sections 947.120 and 947.123 provide authority for hardship exemptions from inspection and certification, and establish reporting and recordkeeping requirements when such exemptions are in place. Sections 947.130, 947.132, 947.133, and 947.134 are safeguard and reporting provisions of the order that are applicable to special purpose shipments when inspection and certification requirements are in place. Section 947.125 regarding minimum quantity assessment exemptions, and § 947.180 regarding monthly assessment reports expire by their own terms on June 30, 2000.

The September 13, 1999, interim final rule also established reporting requirements for the 1999–2000 season so the Committee could obtain information on which to collect assessments. In previous seasons, it had obtained this information from inspection reports. However, these reports were eliminated with the suspension of mandatory inspection. The reporting requirements will not be needed during the 2000–2001 and future seasons because the Committee recommended that no assessments be collected from handlers during these seasons.

Section 947.247 of the marketing order currently prescribes an assessment rate of $0.004 per hundredweight of assessable potatoes for the Oregon-California Potato Committee. Authorization to assess potato handlers enables the Committee to incur expenses that are necessary to administer the marketing order. With the suspension of handling, inspection, and reporting requirements, a limited Committee budget will be needed for program administration during the 2000–2001 and future seasons. For 2000–2001, the Committee recommended a budget of $2,000 for management and its spring meetings. It has about $10,000 in operating reserves to cover approved Committee expenses.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of Oregon-California potatoes who are subject to regulation under the marketing order and approximately 450 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The Committee estimates that about 83 percent of the handlers ship under $5,000,000 worth of Oregon-California

potatoes and about 17 percent of the handlers ship over $5,000,000 worth of Oregon-California potatoes on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Oregon-California potato producers, average annual producer receipts are approximately $294,000, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

At its March 31, 2000, meeting, the Committee recommended suspending the handling and related regulations. It also recommended suspending all reporting and assessment collection regulations. The Committee requested that this rule be effective on July 1, 2000, which is the date shipments of the 2000 Oregon-California potato crop are expected to begin. This rule will allow the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements.

The objective of the handling requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee continues to explore various alternatives for reducing costs. The Committee recommended suspending the handling regulations for a one-year trial from July 1, 1999, through June 30, 2000. The Committee was concerned that the elimination of current requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there was some concern that the Oregon-California potato industry could lose sales to other potato producing areas that were covered by quality and inspection requirements. For these reasons, the Committee recommended the one-year suspension of the requirements for the 1999–2000 marketing season.

The Committee believes that this one-year trial was successful and recommends continuing the suspension that was finalized by the Department on September 13, 1999 (64 FR 49352). This will enable the Committee to further study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, inspection, and related requirements. It will decrease handler costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of removing the minimum requirements on marketing and on producer returns at its annual spring meetings.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will suspend minimum grade, size, quality, maturity, pack, and inspection requirements. Further, this rule will allow handlers and producers the choice to obtain inspection for potatoes, as needed, thereby reducing costs for the industry. The total cost of inspection and certification for fresh shipments of Oregon-California potatoes during the 1998–99 marketing season was estimated at $600,000. The 1998–99 marketing season was the most recent year for mandatory inspection. This is approximately $20,000 per handler. The Committee expects, however, that most handlers will continue to have some of their potatoes inspected and certified by the Federal-State Inspection Service.

The suspension of the assessment collection requirements for the 2000–2001 and future seasons also will result in some cost savings. Assessment collections during the 1999–2000 season totaled $25,500. Absent the suspension of § 947.247, assessments collected during the 2000–2001 season would have been about $26,000, according to Committee estimates.

The Committee investigated the use of other types of inspection programs as another option to reduce the cost of inspection, but believed they were not viable at this time.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. Suspension of all of the reporting requirements is expected to reduce the reporting burden on small or large Oregon-California potato handlers by almost 300 hours, and should further reduce industry expenses. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Oregon-California potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 31, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on suspension of the handling, reporting, and assessment collection regulations under the Oregon-California potato marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the regulations suspended by this action no longer tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule suspends the current handling and related regulations for Oregon-California potatoes beginning July 1, 2000; (2) this rule was recommended by the Committee at an open public meeting and all interested persons had an opportunity to express their views and provide input; (3) Oregon-California potato handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) this rule should be in effect by July 1, 2000, the date 2000–2001 season shipments of the Oregon-California potato crop are expected to begin, and this action should apply to the entire season's

shipments; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Part 947, §§ 947.120, 947.123, 947.125, 947.130, 947.132, 947.133, 947.134, 947.141, 947.180, 947.247, and 947.340 are suspended in their entirety effective July 1, 2000.

Dated: July 5, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–17415 Filed 7–6–00; 9:48 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. NE–120; Special Conditions No. 35–001–SC]

Special Conditions: Hamilton Sundstrand, Model NP2000 Propeller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Hamilton Sundstrand model NP2000 constant speed propeller. This eight-bladed propeller uses a dual acting digital electro-hydraulic propeller control system and has blades constructed of composite materials. These design features are novel and unusual. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective date August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, Engine and Propeller Directorate, Aircraft Certification Service, ANE–110, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone (781) 238–7116; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1999, Hamilton Sundstrand applied for type certification for a new model NP2000 propeller. The NP2000 propeller uses a digital electro-hydraulic control system and blades that are constructed of composite material.

Conventional propellers on turboprop aircraft use a mechanical governor in the propeller control system that senses propeller speed and adjusts the pitch by directing hydraulic oil to the propeller actuator to increase or decrease pitch to maintain the propeller at the correct revolutions per minute (RPM). When the mechanical governor fails, the propeller pitch is controlled by a backup mechanical overspeed governor.

The Hamilton Sundstrand model NP2000 propeller uses a digital electronic governor in the propeller control system. The digital electronic governor is designed to operate a hydro-mechanical interface to direct hydraulic oil to the propeller actuator to increase or decrease pitch. The digital electronic governor logic commands speed governing, synchrophasing, failure monitoring and provides beta scheduling. The digital electronic governor introduces potential failures associated with electrical power, software commands, data, and environmental effects that can result in hazardous propeller effects. In addition to these features, the system has a backup mechanical overspeed governor.

The special conditions address the following airworthiness issues for the Hamilton Sundstrand model NP2000 propeller:

1. Safety assessment;
2. Propeller control system;
3. Centrifugal load tests;
4. Fatigue limits and evaluation;
5. Bird impact; and
6. Lightning strike.

The Hamilton Sundstrand model NP2000 propeller incorporates propeller blades constructed of composite material. This material has fibers that are woven or aligned in specific directions to give the material directional strength properties. These properties depend on the type of fiber, the orientation and concentration of fiber, and the resin matrix material that binds the fibers together. Composite materials introduce fatigue characteristics and failure modes that differ from metallic materials.

The requirements of part 35 were established to address the airworthiness considerations associated with metal propeller blades. Propeller blades constructed using composite material may be subject to damage due to the high impact forces associated with a bird strike. Thus, composite propellers must demonstrate propeller integrity following a bird strike.

Part 35 does not require a demonstration of propeller integrity following a lightning strike. Composite blades may not safely conduct or dissipate the electrical current from a lightning strike. Severe damage can result if the propellers are not properly protected. Therefore, composite blades must demonstrate propeller integrity following a lightning strike.

The existing certification requirements only address structural and fatigue evaluation of metal propeller blades or hubs, and those metal components of non-metallic blade assemblies. Allowable design stress limits for composite blades must consider the deteriorating effects of the environment and in-service use, particularly those effects from temperature, moisture, erosion and chemical attack. Composite blades also present new and different considerations for retention of the blades in the propeller hub.

The applicable airworthiness requirements do not contain adequate or appropriate safety standards for these novel and unusual design features.

Type Certification Basis

Under § 21.17, Hamilton Sundstrand must show that the model NP2000 propeller meets the applicable provisions of § 21.21 and part 35.

If the Administrator finds that the applicable airworthiness regulations (*i.e.* part 35), do not contain adequate or appropriate safety standards for the model NP2000 propeller because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions

would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The NP2000 propeller will incorporate the following novel and unusual design features: dual acting digital electro-hydraulic propeller control system and blades constructed of composite materials. Special conditions for a safety assessment, the propeller control system, centrifugal load tests, fatigue limits and evaluation, bird impact, and lightning strike address the novel and unusual design features. The special conditions are discussed below.

Safety Assessment

The special conditions require the applicant to conduct a safety assessment of the propeller in conjunction with the requirements for evaluating the digital electro-hydraulic control system. A safety assessment is necessary due to the increased complexity of these propeller designs and related control systems. The ultimate objective of the safety assessment requirement is to ensure that the collective risk from all propeller failure conditions is acceptably low. The basis is the concept that an acceptable total propeller design risk is achievable by managing the individual risks to acceptable levels. This concept emphasizes reducing the risk of an event proportionally with the severity of the hazard it represents.

The special conditions are written at the propeller level for a typical aircraft. The typical aircraft may be the aircraft intended for installation of the propeller. It is advised that the propeller applicant have an understanding of the intended aircraft, not to show compliance with this requirement, but to design a propeller that will be acceptable for the intended aircraft. For example, a part 25 aircraft may require different failure effects and probability of failure than a part 23 aircraft. Showing compliance with the requirement without consideration of the intended aircraft may result in a propeller that cannot be installed on the intended aircraft.

Propeller Control System

Currently, part 35 does not adequately address propellers with combined mechanical, hydraulic, digital, and electronic control systems. Propeller mechanical control systems certified under the existing requirements incorporate a mechanical governor that senses propeller speed and adjusts the pitch to absorb the engine power to maintain the propeller at the selected rotational speed. Propellers with digital electronic control components perform the same basic function but use software, electronic circuitry, and electro-hydraulic actuators. The electronic control systems may also incorporate additional functions such as failure monitoring, synchrophasing and beta scheduling. This addition of electronics to the control system may introduce new failure modes that can result in hazardous propeller effects.

Centrifugal Load Tests

Section 35.35 currently requires that the hub and blade retention arrangement of propellers with detachable blades be tested to a centrifugal load of twice the maximum centrifugal force to which the propeller would be subjected during operation. This requirement is limited to the blade and hub retention capacity and does not address composite materials and composite construction of the propeller assembly or changes in materials due to service degradation and environmental factors.

Fatigue Limits and Evaluation

The current requirement does not adequately address composite materials and is limited to metallic hubs and blades and primary load-carrying metal components of non-metallic blades. The special conditions expand the requirements to include all materials and components whose failure would cause a hazardous propeller effect and to take into account material degradation expected in service, material property variations, manufacturing variations, and environmental effects. The special conditions clarify that the fatigue limits may be determined by tests or analysis based on tests. The components whose failure may cause a hazardous propeller effect include control system components, when applicable.

The special conditions require the applicant to conduct fatigue evaluation on a typical aircraft or on an aircraft used during aircraft certification to conduct the vibration tests and evaluation required by either §§ 23.907 or 25.907. The typical aircraft may be one used to develop design criteria for the propeller or another appropriate aircraft.

Bird Impact

Currently there are no bird impact requirements in part 35. The existing requirements only address the airworthiness considerations associated with propellers that use wood and metal blades. Propeller blades of this type have demonstrated good service experience following a bird strike. Propeller blade and spinner construction now use composite materials that have a higher potential for damage from bird impact.

The need for bird impact requirements was recognized when composite blades were introduced in the 1970's; the safety issue has been addressed by special tests and special conditions for composite blade certifications. These special conditions were unique for each propeller and effectively stated that the propeller will withstand a four-pound bird impact without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over four million flight hours. There have not been any accidents attributed to bird impact on composite propellers. The selection of a four-pound bird has been substantiated by the extensive service history of blades that have been designed using the four-pound bird criteria.

Lightning Strike

Currently there are no lightning strike requirements in part 35. The need for lightning strike requirements was recognized when composite blades were first introduced in the 1970's; the safety issue has been addressed by special tests and special conditions for each design using composite blades. The special tests and special conditions, which were unique for each propeller, effectively stated that the propeller must be able to withstand a lightning strike without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over four million flight hours. There have not been any accidents attributed to a lightning strike on composite propellers.

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. No comments were received on the special conditions as proposed. After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the special conditions without change.

Applicability

As discussed above, these special conditions are applicable to the Hamilton Sundstrand model NP2000 propeller. Should Hamilton Sundstrand apply at a later date for a change to the type certificate to include another model incorporating the same or novel or unusual design features, the special conditions would apply to that model as

well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of propellers. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the propeller.

List of Subjects in 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions are as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Hamilton Sundstrand model NP2000 propellers.

In addition to the requirements of part 35, the following requirements apply to the propeller.

(a) *Definitions.* Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, for the purpose of these special conditions the following definitions apply to the propeller:

(1) Propeller. The propeller is defined by the components listed in the type design.

(2) Propeller system. The propeller system consists of the propeller plus all the components necessary for its functioning, but not necessarily included in the propeller type design.

(3) Hazardous propeller effects. The following are regarded as hazardous propeller effects:

(i) A significant overspeed of the propeller.

(ii) The development of excessive drag.

(iii) Thrust in the opposite direction to that commanded by the pilot.

(iv) A release of the propeller or any major portion of the propeller.

(v) A failure that results in excessive unbalance.

(vi) The unintended movement of the propeller blades below the established minimum in-flight low pitch position.

(4) Major propeller effects. The following are regarded as major propeller effects:

(i) An inability to feather.

(ii) An inability to command a change in propeller pitch.

(iii) A significant uncommanded change in pitch.

(iv) A significant uncontrollable torque or speed fluctuation.

(b) *Safety analysis.*

(1)(i) An analysis of the propeller system must be carried out to assess the likely consequence of all failures that can reasonably be expected to occur. This analysis must consider the following:

(A) The propeller system in a typical installation. When the analysis depends on representative components, assumed interfaces, or assumed installed conditions, the assumptions must be stated in the analysis.

(B) Consequential secondary failures and latent failures.

(C) Multiple failures referred to in paragraph (b)(4) or that result in hazardous propeller effects.

(ii) A summary must be made of those failures that could result in major propeller effects or hazardous propeller effects, together with an estimate of the probability of occurrence of those effects.

(iii) It must be shown that hazardous propeller effects are not predicted to occur at a rate in excess of that defined as extremely remote (probability of 10^{-7} or less per propeller flight hour). The estimated probability for individual failures may be insufficiently precise to enable the total rate for hazardous propeller effects to be assessed. For propeller certification, it is acceptable to consider that the intent of this paragraph has been achieved if the probability of a hazardous propeller effect arising from an individual failure can be predicted to be not greater than 10^{-8} per propeller flight hour. It will also be accepted that, in dealing with probabilities of this low order of magnitude, absolute proof is not possible and reliance must be placed on engineering judgment and previous experience combined with sound design and test philosophies.

(iv) It must be shown that major propeller effects are not predicted to occur at a rate in excess of that defined as remote (probability of 10^{-5} or less per propeller flight hour).

(2) If significant doubt exists as to the effects of failures or likely combination of failures, any assumption of the effect may be required to be verified by test.

(3) It is recognized that the probability of primary failures of certain single elements (for example, blades) cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous propeller effects, reliance must be placed on meeting the prescribed integrity requirements of part 35 and these special conditions. These instances must be stated in the safety analysis.

(4) If reliance is placed on a system or device, such as safety devices, feathering and overspeed systems, instrumentation, early warning devices, maintenance checks, and similar equipment or procedures, to prevent a failure from progressing to hazardous propeller effects, the possibility of a safety system failure in combination with a basic propeller failure must be covered. If items of a safety system are outside the control of the propeller manufacturer, the assumptions of the safety analysis with respect to the reliability of these parts must be clearly stated in the analysis and identified in the installation and operation instructions required under § 35.3.

(5) If the acceptability of the safety analysis is dependent on one or more of the following, it must be identified in the analysis and appropriately substantiated.

(i) Performance of mandatory maintenance actions at stated intervals required for certification and other maintenance actions. This includes the verification of the serviceability of items that could fail in a latent manner. These maintenance intervals must be published in the appropriate manuals. Additionally, if errors in maintenance of the propeller system could lead to hazardous propeller effects, the appropriate procedures must be published in the appropriate propeller manuals.

(ii) Verification of the satisfactory functioning of safety or other devices at pre-flight or other stated periods. The details of this satisfactory functioning must be published in the appropriate manuals.

(iii) The provisions of specific instrumentation not otherwise required.

(iv) A fatigue assessment.

(6) If applicable, the safety analysis must include the assessment of indicating equipment, manual and automatic controls, governors and propeller control systems, synchrophasers, synchronizers, and propeller thrust reversal systems.

(c) *Propeller control system.* The requirements of this section are applicable to any system or component that controls, limits or monitors propeller functions.

(1) The propeller control system must be designed, constructed and validated to show that:

(i) The propeller control system, operating in normal and alternative operating modes and transition between operating modes, performs the intended functions throughout the declared operating conditions and flight envelope.

(ii) The propeller control system functionality is not adversely affected by the declared environmental conditions, including temperature, electromagnetic interference (EMI), high intensity radiated fields (HIRF) and lightning. The environmental limits to which the system has been satisfactorily validated must be documented in the appropriate propeller manuals.

(iii) A method is provided to indicate that an operating mode change has occurred if flight crew action is required. In such an event, operating instructions must be provided in the appropriate manuals.

(2) The propeller control system must be designed and constructed so that, in addition to compliance with paragraph (b), Safety analysis:

(i) A level of integrity consistent with the intended aircraft is achieved.

(ii) A single failure or malfunction of electrical or electronic components in the control system does not cause a hazardous propeller effect.

(iii) Failures or malfunctions directly affecting the propeller control system in a typical aircraft, such as structural failures of attachments to the control, fire, or overheat, do not lead to a hazardous propeller effect.

(iv) The loss of normal propeller pitch control does not cause a hazardous propeller effect under the intended operating conditions.

(v) The failure or corruption of data or signals shared across propellers does not cause a major or hazardous propeller effect.

(3) Electronic propeller control system imbedded software must be designed and implemented by a method approved by the Administrator that is consistent with the criticality of the performed functions and minimizes the existence of software errors.

(4) The propeller control system must be designed and constructed so that the failure or corruption of aircraft-supplied data does not result in hazardous propeller effects.

(5) The propeller control system must be designed and constructed so that the loss, interruption or abnormal characteristic of aircraft-supplied electrical power does not result in hazardous propeller effects. The power quality requirements must be described in the appropriate manuals.

(6) The propeller control system description, characteristics and authority, in both normal operation and failure conditions, and the range of control of other controlled functions must be specified in the appropriate propeller manuals.

(d) *Centrifugal load tests.* It must be demonstrated that a propeller, accounting for environmental degradation expected in service, complies with paragraphs (d)(1), (d)(2) and (d)(3) of these special conditions without evidence of failure, malfunction, or permanent deformation that would result in a major or hazardous propeller effect. Environmental degradation may be accounted for by adjustment of the loads during the tests.

(1) The hub, blade retention system, and counterweights must be tested for a period of one hour to a load equivalent to twice the maximum centrifugal load to which the propeller would be subjected during operation at the maximum rated rotational speed.

(2) If appropriate, blade features associated with transitions to the retention system (e.g., a composite blade bonded to a metallic retention) may be tested either during the test required by paragraph (d)(1) or in a separate component test.

(3) Components used with or attached to the propeller (*e.g.*, spinners, de-icing equipment, and blade erosion shields) must be subjected to a load equivalent to 159 percent of the maximum centrifugal load to which the component would be subjected during operation at the maximum rated rotational speed. This must be performed by either:

(i) Testing at the required load for a period of 30 minutes; or

(ii) Analysis based on test.

(e) *Fatigue limits and evaluation.* (1) Fatigue limits must be established by tests or analysis based on tests, for propeller:

(i) Hubs;

(ii) Blades;

(iii) Blade retention components; and

(iv) Other components that are affected by fatigue loads and that are shown under paragraph (b), Safety analysis, as having a fatigue failure mode leading to hazardous propeller effects.

(2) The fatigue limits must take the following into account:

(i) All known and reasonably foreseeable vibration and cyclic load patterns that are expected in service; and

(ii) Expected service deterioration, variations in material properties, manufacturing variations, and environmental effects.

(3) A fatigue evaluation of the propeller must be conducted to show that hazardous propeller effects due to fatigue will be avoided throughout the intended operational life of the propeller on either:

(i) The intended aircraft, by complying with §§ 23.907 or 25.907 as applicable; or

(ii) A typical aircraft.

(f) *Bird impact.* It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding the impact of a four pound bird at the critical location(s) and critical flight condition(s) of the intended aircraft without causing a major or hazardous propeller effect.

(g) *Lightning strike.* It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding a lightning strike without causing a major or hazardous propeller effect.

Issued in Burlington, Massachusetts on June 27, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–17242 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–20–AD; Amendment 39–11817; AD 2000–14–08]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all The New Piper Aircraft, Inc. (Piper) PA–42 series airplanes that are equipped with pneumatic deicing boots. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident (on airplanes other than the affected Piper airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The Piper PA–42 series airplanes have a similar type design (as it relates to airframe pneumatic deice boots) to the incident and accident airplanes. The actions specified by this AD are intended to assure that flight crews activate the pneumatic wing and

tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: This AD becomes effective on August 21, 2000.

ADDRESSES: You may examine information related to this AD at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–20–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What caused this AD?

This AD is the result of reports of in-flight incidents and an accident (on airplanes other than the affected Piper airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The Piper PA–42 series airplanes have a similar type design (as it relates to airframe pneumatic deice boots) to the incident and accident airplanes.

What is the potential impact if the FAA took no action? The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Piper PA–42 series airplanes that are equipped with pneumatic deicing boots. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 30, 2000 (65 FR 16845). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

What is FAA's Final Determination on this Issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—will not change the meaning of the AD; and

—will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 120 airplanes in the U.S. registry.

What is the cost impact of the affected airplanes on the U.S. Register? There is no dollar cost impact. We estimate 1 workhour for you to insert the AFM revision. You can accomplish this action if you hold at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–14–08 The New Piper Aircraft, Inc.: Amendment 39–11817; Docket No. 2000–CE–20–AD.

(a) *What airplanes are affected by this AD?* Models PA–42, PA–42–720, PA–42–720R, and PA–42–1000 airplanes, all serial numbers, that are:

(1) equipped with pneumatic deicing boots; and

(2) certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after August 21, 2000 (the effective date of this AD), unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode,

if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after:

—leaving known or observed/detected icing that the flight crew has visually observed on the aircraft or was identified by the on-board sensors; and

—after the airplane is determined to be clear of ice."

Note: The FAA recommends periodic treatment of deicing boots with approved ice release agents, such as ICEX,™ in accordance with the manufacturer's application instructions.

(e) *Can the pilot accomplish the action?* Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on August 21, 2000.

Issued in Kansas City, Missouri, on July 3, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17295 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AF20

Administrative Procedure for Imposing Penalties for False or Misleading Statements

AGENCY: Social Security Administration (SSA).

ACTION: Interim final rules with a request for comments.

SUMMARY: We are issuing these interim final rules to reflect and implement section 207 of the Foster Care Independence Act of 1999 (Public Law (Pub. L.) 106–169). This provision amended the Social Security Act (the Act) by adding a new section 1129A which provides for the imposition by SSA of a penalty on any person who knowingly (knew or should have known or acted with knowing disregard for the truth) makes a statement that is false or misleading or omits a material fact for use in determining any right to or the amount of monthly benefits under titles II or XVI. The penalty is nonpayment for a specified number of months of benefits under title II that would otherwise be payable to the person and ineligibility for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

Although we are issuing these rules as interim final rules, we are also asking for public comments on the changes made by these rules.

DATES: These regulations are effective July 10, 2000. To be sure your comments are considered, we must receive them by September 8, 2000.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703, sent by telefax to (410) 966–2830, sent by E-mail to "*regulations@ssa.gov*," or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Gareth Dence, Social Insurance Specialist, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9872 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

Section 207 of the Foster Care Independence Act of 1999 (Pub. L. 106–169) amended title XI of the Act by adding section 1129A to help prevent and respond to fraud and abuse in SSA's programs and operations. Section 1129A provides for the imposition by SSA of a penalty on an individual who makes, or causes to be made, a statement or representation of a material fact that the person knows or should know is false or misleading or omits a material fact, or that the person makes with a knowing disregard for the truth. The statement must be made for use in determining eligibility for or the amount of benefits under title II or XVI. The penalty is nonpayment for 6, 12 or 24 months of benefits under title II that would otherwise be payable to the person and ineligibility for the same period of time for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

Section 207 of Pub. L. 106–169 directs the Commissioner of Social Security to develop rules prescribing the administrative process for making determinations under section 1129A, including when periods of penalty shall commence, and providing guidance on the exercise of discretion as to whether the penalty should be imposed in particular cases. Consequently, we are adding new rules at §§ 404.459 and 416.1340 to reflect and implement section 1129A.

Section 1129A of the Act applies to statements and representations made on or after December 14, 1999, the date of enactment of the Foster Care Independence Act of 1999.

Explanation of Changes

We are adding new §§ 404.459 and 416.1340 to our regulations. The organization and wording of these two sections are essentially identical. These sections make it clear, and as Congress provided, that if an individual knowingly (knew or should have known

or acted with knowing disregard for the truth) made a false or misleading statement with respect to one program, the penalty shall apply to benefits under both the title II and XVI programs. Applying the penalty to both programs helps protect the integrity of both programs from further fraud by the same person and helps to maintain public confidence in the integrity of our programs. A subsection-by-subsection discussion of these rules follows.

Subsection (a) describes the conditions under which you will be subject to a penalty by SSA for knowingly making a false or misleading statement of a material fact.

Subsection (b) explains that the penalty is both nonpayment of benefits under title II and ineligibility for cash benefits under title XVI. When we impose a penalty on you, you cannot receive benefits under either title II or title XVI even if the false or misleading statement was made in connection with benefits under only one of the two programs. We further explain that, as provided by the law, if we impose a penalty on your title XVI benefits, you also will not be eligible to receive State supplementary payments that SSA pays by agreement with the State.

Subsection (c) explains how long the penalty for making a false or misleading statement will last. As provided in section 1129A, the penalty will last six consecutive months the first time we penalize you, twelve consecutive months the second time we penalize you, and twenty-four consecutive months the third or subsequent time we penalize you. The penalty will not begin to run until you would otherwise be eligible for payment of benefits under either title II or title XVI. You will be ineligible to receive benefits at any time during the penalty period. If more than one penalty period has been imposed but they have not yet run, the penalties will not run concurrently.

Subsection (d) explains, as provided in section 1129A, that the imposition of a penalty will affect only your own eligibility for benefits under titles II and XVI. If we impose a penalty on you, the penalty will not affect the eligibility or amount of benefits payable under titles II or XVI to another person. For example, another person (such as your spouse or child) may be entitled to benefits under title II based on your earnings record. Benefits would still be payable to that person to the extent that you would be receiving such benefits if the penalty had not been imposed. As another example, if you are receiving title II benefits that are limited under the family maximum provision (§ 404.403) and we stop your benefits because we impose a penalty on you, we will not increase the benefits of other family members who are limited by the family maximum provision simply because you are not receiving benefits as a result of the penalty. As a third example, if you and your spouse are receiving title XVI benefits, those benefit payments to your spouse based on the benefit rate for a couple will not be affected because of the penalty. Your spouse will continue to receive one half of the couple rate.

Section 1129A also specifically provides that the imposition of a penalty will not affect your eligibility for Medicare and Medicaid benefits (titles XVIII and XIX of the Act).

Subsection (e) explains that to impose a penalty on you, we must find that you knowingly made a false or misleading statement or omitted a material fact. "Knowingly" means that you knew or should have known that the statement was false or misleading or omitted a material fact, or you made the statement with a knowing disregard for the truth. We will base our decision to impose a penalty on the evidence and the reasonable inferences that can be drawn from that evidence, not on mere speculation or suspicion. In determining whether you knowingly made a false or misleading statement or omitted a material fact, we will consider all of the evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the statement in terms of its likely impact on your benefits under titles II and/or XVI.

Your false or misleading statement may be investigated for fraud by the Office of the Inspector General for civil monetary penalty purposes (see section 1129 of the Act) or prosecuted by the United States Attorney's Office. We may impose a penalty under these rules in addition to any other penalties that may be prescribed by law.

Subsection (f) explains that if you disagree with our initial determination to impose a penalty, you have the right to request reconsideration of the penalty decision, as discussed in §§ 404.907 and 416.1407. If you do request reconsideration, you will be able to present your case in one of three ways:

1. Case review—We will give you an opportunity to review the evidence in our files and then to present oral and written evidence to us;

2. Informal conference—In addition to following the procedures of a case review, we will give you an opportunity to present witnesses; and

3. Formal conference—In addition to following the procedures of an informal conference, we will give you an opportunity to request us to subpoena adverse witnesses and relevant documents and to cross-examine adverse witnesses.

After reconsideration, if you do not agree with our reconsidered determination you may follow the normal administrative and judicial review process by requesting a hearing before an administrative law judge, Appeals Council review and Federal court review, as described in § § 404.900 and 416.1400.

Subsection (g) explains when the penalty period begins and ends. That section explains that the penalty period will not begin until the month you would otherwise be eligible to receive payments under either title II or title XVI. In addition, the point at which the penalty period begins may depend on whether you request reconsideration of our initial determination to penalize you. If you do not request reconsideration, the penalty period will begin no earlier than the first day of the second month following the month in which the time limit for requesting reconsideration ends. If you request reconsideration and our reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period ends on the last day of the final month of the penalty period. Once a sanction period begins it will run continuously even if payments are intermittent.

Clarity of These Regulations

Executive Order (E.O.) 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. In addition to your substantive comments on these rules, we invite your comments on how to make these rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?

• Could we improve clarity by adding tables, lists, or diagrams?

• What else could we do to make the rules easier to understand?

Electronic Version

The electronic file of this document is available on the internet at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the internet site for SSA (*i.e.*, SSA Online) at *http://www.ssa.gov/*.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Pub. L. 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, for the reasons discussed below, good cause exists under 5 U.S.C. 553(b)(B) for dispensing with the notice and public comment procedures in this case.

Pub. L. 106–169 was signed into law on December 14, 1999. Section 207 applies to statements and representations made on or after this date of enactment. Moreover, section 207 requires the Commissioner to issue regulations prescribing the administrative process for making determinations under this section within 6 months after enactment. Accordingly, issuing these rules as a notice of proposed rulemaking would have delayed issuance of final rules until well past the statutory effective date and the regulatory issuance date specified by Congress. Therefore, issuing these regulations as interim final rules allows us to come as close as possible to that specified date.

In light of the immediacy of the effective date and the Congressional direction that we issue regulations needed to carry out these statutory provisions within 6 months, we believe that, under the APA, good cause exists for waiver of the prior notice procedures since issuance of proposed rules would be impracticable. Although we are issuing these rules as interim final regulations, we are requesting public comments regarding the substance of these interim final rules and will issue revised rules if necessary.

For the same reasons, we also find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d).

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these interim final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998. However, as noted earlier, we invite your comments on how to make the rules easier to understand.

Regulatory Flexibility Act

We certify that these interim final regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These interim final regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002. Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: June 28, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending subpart E of part 404 and subpart M of part 416 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart E—[Amended]

1. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a).

2. Section 404.459 is added to read as follows:

§ 404.459 Penalty for false or misleading statements.

(a) *Why would SSA penalize me?* You will be subject to a penalty if you make, or cause to be made, a statement or representation of a material fact for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI and:

(1) You know or should know that the statement or representation—

(i) Is false or misleading; or

(ii) Omits a material fact; or

(2) You make the statement with a knowing disregard for the truth.

(b) *What is the penalty?* The penalty is nonpayment of benefits under title II that we would otherwise pay you and ineligibility for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

(c) *How long will the penalty last?* The penalty will last—

(1) Six consecutive months the first time we penalize you;

(2) Twelve consecutive months the second time we penalize you; and

(3) Twenty-four consecutive months the third or subsequent time we penalize you.

(d) *Will this penalty affect any of my other government benefits?* If we penalize you, the penalty will apply only to your eligibility for benefits under titles II and XVI (including State supplementary payments made by us according to § 416.2005). The penalty will not affect—

(1) Your eligibility for benefits that you would otherwise be eligible for under titles XVIII and XIX but for the imposition of the penalty; and

(2) The eligibility or amount of benefits payable under titles II or XVI to another person. For example, another person (such as your spouse or child) may be entitled to benefits under title II based on your earnings record. Benefits would still be payable to that person to

the extent that you would be receiving such benefits but for the imposition of the penalty. As another example, if you are receiving title II benefits that are limited under the family maximum provision (§ 404.403) and we stop your benefits because we impose a penalty on you, we will not increase the benefits of other family members who are limited by the family maximum provision simply because you are not receiving benefits because of the penalty.

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted a material fact. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission in terms of its likely impact on your benefits.

(f) *What should I do if I disagree with SSA's initial determination to penalize me?* If you disagree with our initial determination to impose a penalty, you have the right to request reconsideration of the penalty decision as explained in § 404.907. We will give you a chance to present your case, including the opportunity for a face-to-face conference. If you request reconsideration of our initial determination to penalize you, you have the choice of a case review, informal conference, or formal conference, as described in § 416.1413(a) through (c). If you disagree with our reconsidered determination you have the right to follow the normal administrative and judicial review process by requesting a hearing before an administrative law judge, Appeals Council review and Federal court review, as explained in § 404.900.

(g) *When will the penalty period begin and end?* Subject to the additional limitations noted in paragraphs (g)(1) and (g)(2) of this section, the penalty period will begin the first day of the month for which you would otherwise receive payment of benefits under title II or title XVI were it not for imposition of the penalty. Once a sanction begins, it will run continuously even if payments are intermittent. If more than one penalty has been imposed, but they have not yet run, the penalties will not run concurrently.

(1) If you do not request reconsideration of our initial determination to penalize you, the penalty period will begin no earlier than the first day of the second month following the month in which the time limit for requesting reconsideration ends. The penalty period will end on the last day of the final month of the penalty period. For example, if the time period for requesting reconsideration ends on January 10, a 6-month period of nonpayment begins on March 1 if you would otherwise be eligible to receive benefits for that month, and ends on August 31.

(2) If you request reconsideration of our initial determination to penalize you and the reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period will end on the last day of the final month of the penalty period. For example, if we notify you of our reconsidered determination on August 31, 2001, and you are not otherwise eligible for payment of benefits at that time, but would again be eligible to receive payment of benefits on October 1, 2003, a 6-month period of nonpayment would begin on October 1, 2003 and end on March 31, 2004.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart M—[Amended]

3. The authority citation for subpart M of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1129A, 1611–1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382–1382d, 1382h, 1383 and 1320a–8a).

4. Section 416.1340 is added to read as follows:

§ 416.1340 Penalty for false or misleading statements.

(a) *Why would SSA penalize me?* You will be subject to a penalty if you make, or cause to be made, a statement or representation of a material fact for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI and:

(1) You know or should know that the statement or representation

(i) Is false or misleading; or

(ii) Omits a material fact; or

(2) You make the statement with a knowing disregard for the truth.

(b) *What is the penalty?* The penalty is ineligibility for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005) and nonpayment of any benefits under title II that we would otherwise pay you.

(c) *How long will the penalty last?* The penalty will last—

(1) Six consecutive months the first time we penalize you;

(2) Twelve consecutive months the second time we penalize you; and

(3) Twenty-four consecutive months the third or subsequent time we penalize you.

(d) *Will this penalty affect any of my other government benefits?* If we penalize you, the penalty will apply only to your eligibility for benefits under titles II and XVI (including State supplementary payments made by us according to § 416.2005). The penalty will not affect—

(1) Your eligibility for benefits that you would otherwise be eligible for under titles XVIII and XIX but for the imposition of the penalty; and

(2) The eligibility or amount of benefits payable under titles II or XVI to another person. For example, if you and your spouse are receiving title XVI benefits, those benefit payments to your spouse based on the benefit rate for a couple will not be affected because of the penalty. Your spouse will receive one half of the couple rate.

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted a material fact. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether

you acted knowingly, we will also consider the significance of the false or misleading statement or omission in terms of its likely impact on your benefits.

(f) *What should I do if I disagree with SSA's initial determination to penalize me?* If you disagree with our initial determination to impose a penalty, you have the right to request reconsideration of the penalty decision as explained in § 416.1407. We will give you a chance to present your case, including the opportunity for a face-to-face conference. If you request reconsideration of our initial determination to penalize you, you have the choice of a case review, informal conference, or formal conference, as described in § 416.1413(a) through (c). If you disagree with our reconsidered determination you have the right to follow the normal administrative and judicial review process by requesting a hearing before an administrative law judge, Appeals Council review and Federal court, review as explained in § 416.1400.

(g) *When will the penalty period begin and end?* Subject to the additional limitations noted in paragraphs (g)(1) and (g)(2) of this section, the penalty period will begin the first day of the month for which you would otherwise receive payment of benefits under title II or title XVI were it not for imposition of the penalty. Once a sanction begins, it will run continuously even if payments are intermittent. If more than one penalty has been imposed, but they have not yet run, the penalties will not run concurrently.

(1) If you do not request reconsideration of our initial determination to penalize you, the penalty period will begin no earlier than the first day of the second month following the month in which the time limit for requesting reconsideration ends. The penalty period will end on the last day of the final month of the penalty period. For example, if the time period for requesting reconsideration ends on January 10, a 6-month period of nonpayment begins on March 1 if you would otherwise be eligible to receive benefits for that month, and ends on August 31.

(2) If you request reconsideration of our initial determination to penalize you and the reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period will end on the last day of the final month of the penalty period. For example, if we notify you of our reconsidered determination on August 31, 2001, and you are not otherwise eligible for payment of benefits at that time, but would again be eligible to receive payment of benefits on October 1, 2003, a 6-month period of nonpayment would begin on October 1, 2003 and end on March 31, 2004.

[FR Doc. 00–17270 Filed 7–7–00; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–130]

RIN 2115–AA97

Safety Zone: USS John F. Kennedy, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving safety zones around the aircraft carrier USS *John F. Kennedy* as it transits Boston Harbor on July 10, and 17, 2000. The safety zones will be in effect Monday, July 10, 2000 from 5 a.m. to 8 a.m. Eastern Daylight Time (EDT) as the vessel transits inbound from the "NC" buoy to the North Jetty and Monday, July 17, 2000 from 12 noon to 2 p.m. on July 17, 2000 from North Jetty to the "NC" buoy as the vessel departs the Port of Boston. The safety zones are needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the ship's limited maneuverability.

DATES: This rule is effective from 6 a.m. on Monday, July 10, 2000 until 2 p.m. on Monday, July 17, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–00–130 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Brian Downey, Marine Safety Office Boston, 617–223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

As authorized by 5 U.S.C. 553(b)(B), a notice of proposed rulemaking (NPRM) was not published for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in the **Federal Register**. Due to the complex planning and coordination involved with naval scheduling, final details for the temporary closure were not provided to the Coast Guard in time to draft and publish a NPRM or a final rule 30 days in advance of its effective date. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close a portion of Boston Harbor waterway and protect the maritime public from the hazards associated with the limited maneuverability of an aircraft carrier.

Background and Purpose

This regulation establishes two moving safety zones extending 300 yards in all directions from the aircraft carrier USS *John F. Kennedy*. The first safety zone will be enforced during the ship's transit from the Boston Harbor Entrance lighted whistle buoy "NC" (LLNR 10680) en route to North Jetty on July 10, 2000 from 6 a.m. to 8 a.m. or until the ship is safely moored. The second safety zone will be enforced on July 17, 2000 from 12 noon to 2 p.m. during the ship's outbound transit from North Jetty to the Boston Harbor Entrance lighted whistle buoy "NC" (LLNR 10680).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone temporarily closes portions of North Channel, President Roads, and Boston Inner Harbor. Due to the limited duration of the event, and the Coast Guard's advance marine advisories, the safety zone will minimally affect vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Boston Harbor during the periods the safety zones will be enforced. These safety zones will not have a significant economic impact on a substantial number of small entities because traffic may be permitted to pass through the zone with the permission of the Captain of the Port (COTP). Additionally, since the safety zone will be moving with the USS *John F. Kennedy*, no single portion of the harbor will be closed for an extended time as the safety zone passes. Traffic in the affected channels may still be able transit in the harbor provided they remain outside the safety zone. The Coast Guard will issue maritime advisories widely available to users of Boston Harbor and the affected channels before and during the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 follows:

PART 165—REGULATED NAVIATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01–138 to read as follows:

§ 165.T01–038 Safety Zones: USS John F. Kennedy, Boston Harbor, Massachusetts

(a) Safety Zones:

(1) USS *John F. Kennedy* inbound transit:

(i) *Location.* The following area is a safety zone: All waters extending three hundred (300) yards in any direction from the inbound aircraft carrier USS *John F. Kennedy* during its transit from the Boston Harbor Entrance Lighted Whistle Buoy "NC" to its berth at North Jetty, Boston Harbor, MA.

(ii) *Enforcement Period.* This section is enforced from 6 a.m. until 8 a.m. on Monday, July 10, 2000.

(2) USS *John F. Kennedy* outbound transit:

(i) The following area is a safety zone: All waters extending three hundred (300) yards in any direction from the outbound aircraft carrier USS *John F. Kennedy* during its transit from its berth at North Jetty, Boston Harbor, to Boston Harbor Entrance Lighted Whistle Buoy "NC".

(ii) *Enforcement Period.* This section is enforced from 12 noon until 2 p.m. on Monday, July 17, 2000.

(b) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP) Boston.

(2) All persons and vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in section 165.23 of this part apply.

(c) Effective date: This section is effective from 6 a.m. on July 10, 2000 until 2 p.m. July 17, 2000.

Dated: June 27, 2000.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 00–17337 Filed 7–5–00; 3:21 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Memphis, TN Regulation 00–014]

RIN 2115–AA97

United States Army Bridge Exercise Across the Arkansas River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Arkansas River mile 290.0 to 293.0. The zone is needed because of a bridge exercise being held by the United States Army. To ensure the safety of life and property on the navigable waters during this exercise, no vessels may enter or remain within this safety zone unless specifically authorized by the Captain of the Port, Memphis.

DATES: This rule is effective from 8:00 A.M. CST to 4:00 P.M. CST on July 25, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket 00–014 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Memphis between 7:30 A.M. and 4:00 P.M., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: COTP Memphis representative, LTJG Brian Meier, at (901) 544–3941, ext. 232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. After speaking with the Chairman of the Arkansas River Emergency Reaction Team, both the Coast Guard and local industry agreed that the exercise would cause minimal commercial disturbance. Under 5 U.S.C. (d)(3), the Coast Guard also finds good cause to make this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The United States Army Reserve Command (USARC) has identified the 493rd Engineer Group to be the Executing Command for BRIDGEX 2000 to be conducted at Ft. Chaffee, AR. Two floating ribbon bridges will be constructed across the Arkansas River. These two bridges will be made up of approximately 100 pieces of floating road or raft bays, and will be connected together using approximately 60 boats. These two bridges will then be used to cross military vehicles from both shores in both directions. After the bridges are disassembled and the river is cleared of all army equipment, the river will be reopened to commercial and recreational traffic. The purpose of any river crossing is to project combat power across a water obstacle to accomplish a mission. The 493rd Engineer Group and its attached units will utilize this exercise to sharpen skills in preparation for doing this mission in times of peace or in times of war. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of Part 165.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This regulation will only be in effect for eight hours and the impacts on small entities are expected to be minimal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)g, of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 1605; 49 CFR 1.46.

2. A new § 165.T08–029 is added to read as follows:

§ 165.T08–029 Safety Zone: Arkansas River Mile 290 to 293.

(a) *Location.* The following area is a safety zone: the waters of the Arkansas River between miles 290.0 and 293.0. The zone is needed because of a bridge exercise being held by the United States Army.

(b) *Effective date.* This section is effective on July 25, 2000, from 8 a.m. (CST) until 4 p.m. (CST) unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Memphis.

Dated: May 19, 2000.

Michael S. Gardiner,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port.

[FR Doc. 00–17366 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–042–01–6990a; A–1–FRL–6727–9]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire, Rhode Island, and Vermont; Aerospace Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving negative declarations submitted by the States of New Hampshire, Rhode Island, and Vermont for aerospace coating operations. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This direct final rule is effective on September 8, 2000 without further notice, unless EPA receives adverse comment by August 9, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England, One Congress Street, 11th floor, Boston, MA, 02114–2023. Copies of New Hampshire's submittal are also available at Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095. Copies of Rhode Island's submittal are also available at Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767. Copies of Vermont's submittal are also available Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What action is EPA taking?
What are the relevant CAA requirements?
What is a control techniques guideline (CTG)?
What is the aerospace CTG?
How have New Hampshire, Rhode Island, and Vermont addressed the CAA requirements for aerospace coating operations?
What is EPA's response to the states' submittals?

What Action Is EPA Taking?

EPA is approving negative declarations for aerospace coating operations submitted by New Hampshire on September 11, 1998, by Rhode Island on March 28, 2000, and by Vermont on July 28, 1998. EPA is also correcting Table (e) in 40 CFR 52.2070 to include Rhode Island's negative declaration for the synthetic organic chemical manufacturing industry (SOCMI) distillation and reactor processes control techniques guideline categories. EPA approved the SOCMI distillation and reactor processes negative declaration for Rhode Island on December 2, 1999 (64 FR 67495) but neglected to add the appropriate entry to Table (e) at that time.

What Are the Relevant CAA Requirements?

Sections 182(b)(2) and 184(b) of the Clean Air Act contain the requirements relevant to today's action. Section 182(b)(2) requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing Control Techniques Guideline (CTG)—*i.e.*, a CTG issued prior to the enactment of the 1990 amendments to the CAA; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, *i.e.*, non-CTG sources.

Pursuant to the CAA Amendments of 1990, all of Rhode Island and portions of New Hampshire were classified as serious nonattainment for ozone. 56 FR 56694 (Nov. 6, 1991). These areas were, thus, subject to the section 182(b)(2) RACT requirement.

In addition, the States of New Hampshire, Rhode Island, and Vermont are located in the Northeast Ozone Transport Region (OTR). These states are, therefore, subject to section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented in the entire state for all VOC sources covered by a CTG issued before or after the enactment of the CAA Amendments of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

What Is a Control Techniques Guideline (CTG)?

A CTG is a document issued by EPA which establishes a "presumptive norm" for RACT for a specific VOC source category. Under the pre-amended CAA, EPA issued CTG documents for 29 categories of VOC sources. Section 183 of the amended CAA requires that EPA issue 13 new CTGs. Appendix E of the General Preamble of Title I (57 FR 18077) lists the categories for which EPA plans to issue new CTGs.

What Is the Aerospace CTG?

EPA issued a CTG for aerospace coating operations on March 27, 1998 (63 FR 15006). This CTG applies to aerospace coating operations with the potential to emit 25 tons of VOC or more per year.

How Have New Hampshire, Rhode Island, and Vermont Addressed the CAA Requirements for Aerospace Coating Operations?

In response to the CAA requirement to adopt RACT for all sources covered by a new CTG, New Hampshire, Rhode Island, and Vermont submitted negative declarations to EPA for the aerospace coating operations CTG category. Through the negative declaration, New Hampshire, Rhode Island, and Vermont are asserting that there are no sources within their respective states that would be subject to a rule for aerospace coating operations.

What Is EPA's Response to the States' Submittals?

EPA is approving these negative declaration submittals as meeting the CAA section 182(b)(2) and section 184(b) requirements, as applicable, for this source category. However, if evidence is submitted by August 9, 2000 that there are existing sources within the States of New Hampshire, Rhode Island, or Vermont that, for purposes of meeting the RACT requirements, would be subject to a rule for aerospace coating operations, if developed, such comments would be considered adverse and EPA would withdraw its approval action on that State's negative declaration.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective September 8, 2000 without further notice unless the Agency receives adverse comments by August 9, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 8, 2000 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Final Action

EPA is approving negative declarations submitted by New Hampshire, Rhode Island, and Vermont for aerospace coating operations. EPA is also correcting Table (e) in 40 CFR 52.2070 to include Rhode Island's negative declaration for the SOCMI distillation and reactor processes CTG categories.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2000. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone.

Dated: June 12, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(67) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(67) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on September 11, 1998.

(i) Additional materials.

(A) Letter from the New Hampshire Department of Environmental Services dated September 11, 1998 stating a negative declaration for the aerospace coating operations Control Techniques Guideline category.

Subpart OO—Rhode Island

3. Section 52.2070 is amended as follows:

In paragraph (e), the table is amended by adding at the end of the table new citations for two negative declarations to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(e) Non Regulatory.

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approved date	Explanations
Negative Declaration for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation and Reactor Processes Control Techniques Guideline Categories.	Statewide	Submitted 4/5/95	12/2/99, 64 FR 67495	
Negative Declaration for Aerospace Coating Operations Control Techniques Guideline Category.	Statewide	Submitted 3/28/00	July 10, 2000 [Insert FR citation from published date].	

Subpart UU—Vermont

4. Section 52.2370 is amended by adding paragraph (c)(26) to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

(26) Revisions to the State Implementation Plan submitted by the Vermont Air Pollution Control Division on July 28, 1998.

(i) Additional materials.

(A) Letter from the Vermont Air Pollution Control Division dated July 28, 1998 stating a negative declaration for the aerospace coating operations Control Techniques Guideline category.

[FR Doc. 00–16626 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, 261, and 270

[FRL–6720–9]

RIN 2050–AE01

NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On September 30, 1999 the Environmental Protection Agency (EPA) published the Hazardous Waste Combustors NESHAP Final Rule. On November 19, 1999 EPA published the first technical correction of that rule to address a time sensitive situation. Today's rule corrects numerous typographical errors and clarifies several issues from the September 30, 1999 rule, one issue from a closely-related June 19, 1998 rule, and makes one adjustment to the November 19, 1999 technical correction. These corrections and clarifications will make the NESHAP final rule easier to understand and implement.

DATES: This rule is effective on July 10, 2000.

ADDRESSES: The public may obtain a copy of this technical correction at the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll free) or (703) 412–9812 in the Washington, D.C. metropolitan area. For information on this rule contact David Hockey (5302W), Office of Solid Waste, Ariel Rios

Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, at e-mail address hockey.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Good Cause Exemption

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because it merely corrects errors and clarifies certain requirements in the Hazardous Waste Combustors NESHAP Final Rule (64 FR 52828, September 30, 1999). Today's action also supplies one omission from the emergency technical correction published on November 19, 1999 (64 FR 63209) and makes one correction to the related June 19, 1998 (63 FR 33783) final rule. With the exception of the emergency technical correction published November 19, 1999, the final rules were subject to notice and comment. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

II. Reasons and Basis for Today's Action

The Agency has received numerous comments from the regulated community requesting clarification and correction of the rule finalizing NESHAPS for hazardous waste combustors (64 FR 52828, September 30, 1999). The Agency is correcting typographical errors and misprints, as well as clarifying several matters related to preamble statements and regulatory provisions. Today's action also supplies one omission from the emergency technical correction published on November 19, 1999 (64 FR 63209) and makes one correction to the related June 19, 1998 (63 FR 33783) final rule.

The regulated community has also raised other issues and questions through informal comments as well as through litigation that will in many cases require notice and comment rulemaking. The Agency plans to propose changes in the **Federal Register** as quickly as possible that will address many of these other issues.

III. Corrections and Clarifications

A. Corrections to the September 30, 1999 Final Rule

1. Units for Particulate Matter in Appendix A, Method 5i Are Corrected

The unit for particulate matter (PM) concentration given in section 12.2 of Method 5i in appendix A of part 60 is "mg/unit volume" (see 64 FR 53030). However, in the preamble discussion on pages 52927–52928, the PM concentration is expressed as "mg/dscm." The Agency is revising the mg/unit volume in Appendix A, because the PM criteria would change depending on the volume measured. Dry standard cubic meter (dscm) is the intended and more precise measure.

2. Sources That Have Initiated RCRA Closure Requirements Are Exempt: Table 1 to § 63.1200

Table 1 in § 63.1200 (see page 64 FR 53038) explains the exemptions from these regulations for hazardous waste combustors. According to (1)(ii) of that table, previously affected sources have to be in compliance with the closure requirements of subpart G of 40 CFR part 63, 40 CFR part 264, or 40 CFR part 265 to be exempt from the requirements of subpart EEE of part 63. The Agency agrees with commenters that, under our existing regulations, previously affected sources need only have initiated these closure requirements to be exempt, and today we are revising Table 1 of § 63.1200 to reflect this change.

3. Continuous Monitoring of Both Hydrocarbons and Carbon Monoxide Is Not Required: §§ 63.1203, 63.1204, 63.1205, and 63.1209

The preamble to the September 30, 1999 rule states on page 52848 that, to comply with the carbon monoxide and hydrocarbon emission standard, you must continuously monitor and comply with the emission standard for either carbon monoxide or hydrocarbons. If you choose to continuously monitor carbon monoxide, however, you must document compliance with the hydrocarbon standard only during the destruction and removal efficiency (DRE) test or its equivalent.

Several stakeholders note that the regulatory language implementing this provision could be interpreted to mean that continuous monitoring and compliance with both the carbon monoxide and hydrocarbon emissions standards are required. The Agency is today revising the regulatory language to clarify as intended that continuous monitoring and compliance with either the carbon monoxide or hydrocarbon standard is required. See revised §§ 63.1203(a)(5)(i), 63.1203(b)(5)(i), 63.1204(a)(5)(i)(A), 63.1204(a)(5)(ii)(B), 63.1204(b)(5)(i)(A)(*1*), 63.1205(a)(5)(i), 63.1205(b)(5)(i), 63.1209(a)(1)(i), and 63.1209(a)(7).

4. References to Subparts BB and CC of Part 264 Are Redundant: §§ 63.1203(e), 63.1204(g), 63.1205(e)

The regulatory sections that prescribe emission standards for hazardous waste burning incinerators (§ 63.1203), cement kilns (§ 63.1204), and lightweight aggregate kilns (§ 63.1205) each reference subparts BB and CC of 40 CFR part 264 that prescribe emission standards for equipment leaks, tanks, surface impoundments, and containers. Several commenters assert that is is redundant and unnecessary to reference these subparts because they are separately applicable under part 264. We agree and, to avoid redundancy, therefore delete the references from this rule.

5. The 720 Hour Operating Limit is Renewable: §§ 63.1206(b)(5)(i)(C)(1) and 63.1207(h)(2)

The preamble to the September 30, 1999 rule states that the rule allows you to operate after a failed test for purposes of pretesting or performance testing for up to a total of 720 hours of operation, renewable at the discretion of the Administrator. See 64 FR 52914 and § 63.1207(k)(2). We explain in the preamble that the 720 operating period is renewable at the discretion of the Administrator in response to commenters concerns about unforeseen delays in pretesting and testing activities and given that current RCRA rules allow renewals.

Several stakeholders noticed that we did not include allowance for renewals of the 720 hour periods in two other similar provisions of the rule: § 63.1206(b)(5)(i)(C)(*1*) pertaining to restrictions on waste burning after a change in design, operation, or maintenance that may adversely affect compliance; and § 63.1207(h)(2) pertaining to pretesting and performance testing under waived operating limits to satisfy the periodic comprehensive performance testing requirements. This was a drafting oversight and we are today correcting the rule to allow the Administrator to extend the 720 hours of operations for pretesting and performance testing as warranted in these situations as well.

6. Average Limits Are Calculated as the Average of the Test Run Averages: § 63.1209

The preamble to the September 30, 1999 rule states that feedrate limits for mercury, semi-volatile metals, low-volatile metals, and hydrochloric acid/chlorine gas must be determined by establishing the "average of the test run averages" from the comprehensive performance test (see pages 64 FR 52943, 52946, and 52952, respectively). However, in § 63.1209, the requirement is incorrectly expressed as the "average of the average hourly rolling averages for each run" from the comprehensive performance test. Today's rule amends the regulatory language to read "the average of the test run averages," which was the intended phrase. We are also clarifying that the preamble summary tables for semi-volatile metals and low-volatile metals (64 FR 52945) and hydrochloric acid/chlorine gas (64 FR 52951) should state that feedrate limits for 12-hour averaging periods are established by the average of test run averages rather than the average of the average hourly rolling averages for each run.

7. The Table in § 63.1211 Summarizing Recordkeeping Requirements Is Corrected

Today's rule corrects the reference to § 63.1206(c)(7), as well as adding a new reference to for § 63.1206(c)(5), to the table of recordkeeping requirements found in § 63.1211 (see 64 FR 53065). No substantive recordkeeping changes are made by this action; we are merely updating the table's references to other sections where the substantive recordkeeping requirements are lodged.

8. The Definition of Rolling Average in the Appendix to Subpart EEE of Part 63 Is Corrected

In the definitions section of the appendix to subpart EEE, the definition for a "rolling average" includes a sentence on continuous emissions monitoring systems (CEMS) other than carbon monoxide and total hydrocarbons CEMS. This sentence is unnecessary because we did not finalize other CEMS-based emission standards; therefore, we are removing this sentence from the appendix to subpart EEE.

9. The Citation in § 270.42 of the Notification of Compliance Is Corrected

The September 30, 1999 final rule moved the Notification of Intent to Comply (NIC) requirements from § 63.1211 to § 63.1210, but failed to revise the citation of § 63.1211 in § 270.42. We are correcting this citation in today's rule.

10. Information Required To Be Included in the Performance Test Plan Is Consolidated: § 63.1207(f)(1)

The rule lists information that must be included in the comprehensive performance test plan under § 63.1207(f)(1). Several stakeholders note, however, that the list is not complete. Several types of additional information that must be included in the comprehensive performance test plan were inadvertently omitted from the summary list in § 63.1207(f)(1). Accordingly, to avoid a misleading summary list, we are revising the summary list to include all information that various provisions of the rule require to be included in the comprehensive performance test plan.

11. Definition of a Responsible Official Is Revised: § 63.1212(a)(2)

We are revising the definition of a "responsible official" provided in § 63.1212(a)(2) of the final rule so that it conforms to the definition in the Clean Air Act implementing regulations of § 63.2. We did not intend to alter the statutory definition though § 63.1212(a)(2).

12. Several Citations Are Corrected

In the § 63.1201(a) definition of an automatic waste feed cutoff system, we incorrectly cited § 63.1206(c)(2)(viii) rather than § 63.1206(c)(3)(viii). In § 63.1210(c)(2), we incorrectly cited paragraph (b)(1) rather than (c)(1). In §§ 63.1212(b)(1) and (2), we incorrectly cited requirements for § 63.1206(a)(2) rather than § 63.1206(a)(3). These citations are corrected in today's action.

13. Citation in Table 1 to § 63.1200 Is Corrected

Table 1 to § 63.1200 (3) (see 64 FR 53038) provides an exemption from the requirements of subpart EEE if you burn certain wastes exempt from regulation under section 266; however, the exemption in the table incorrectly cites section 266.100(b). The correct cite is section 266.100(c). We revised the regulations at section 266.100 as part of the HWC MACT final rule, to include a new section 266.100(b) and inadvertently failed to revise the corresponding cite in Table 1 to reflect the change made to section 266.100. Today's action revises Table 1 to reflect the correct cite to section 266.100(c).

B. Correction to the November 19, 1999 Technical Correction

In the November 19, 1999 rule, the Agency amended § 63.1210(b)(1)(iv) by replacing the word "intent" with "intend" (see 64 FR 63212). However, the Agency inadvertently deleted the words "do not." Today's rule reinstates the words "do not" before "intend" in § 63.1210(b)(1)(iv).

C. Corrections to the Related June 19, 1998 Final Rule

1. Gas Turbines Are Added to the List of Approved Burners for Comparable Fuels

The June 19, 1998 (63 FR 33783) final rule establishing the comparable fuels exclusion allows the burning of comparable fuels and syngas fuels in certain combustion sources. We intended comparable fuels and syngas fuels to be burned only in those units capable of managing the excluded hazardous waste. Commenters noted that gas turbines are capable of managing and burning syngas fuels. However, we inadvertently excluded gas turbines from the list of approved comparable/syngas fuel burners. Today's action adds gas turbines to the list of approved comparable/syngas burners under § 261.38(c)(ii)(2).

D. Clarifications of the September 30, 1999 Final Rule

1. Clarification That the Emergency Safety Vent Operating Plan Is To Be Kept in the Operating Record

The preamble to the September 30, 1999 rule states on page 52907 that if you use an emergency safety vent (ESV) in your system design, then you must develop and submit an ESV operating plan with the DOC and NOC. However, there are no requirements in § 63.1206(c)(4)(ii) for submitting the plan because we intended that an ESV operating plan must only be kept in the facility's operating record. The Agency wishes to clarify today that the preamble language requiring submittal of the plan with the DOC and NOC is incorrect and should be disregarded. The ESV operating plan need only be kept in the source's operating record.

2. Preamble Language Regarding a Ten-Minute Average Limit for pH for HCl and Cl_2 Is Incorrect

In § 63.1209, paragraph (o)(3)(iv) requires owners/operators of combustion facilities using wet scrubbers to control hydrochloric acid and chlorine gas to establish a limit on the minimum pH on an hourly rolling average basis (see 64 FR 53062). However, the preamble states that the minimum pH must be established by a dual ten-minute and hourly rolling average (see 64 FR 52952). As several stakeholders pointed out, earlier in the preamble (64 FR 52920) the Agency concluded that, although there may be site-specific circumstances that warrant

shorter than one hour in duration, the ten-minute rolling average is not appropriate for a national regulation. The Agency wishes to clarify that the regulatory language is correct, and that the preamble language found on page 52952 is incorrect and should be disregarded.

3. Preamble Language Regarding Manual Stack Methods for Compliance With the HCl and Cl_2 Standards Is Incorrect

On page 52958, we state that for compliance with the hydrochloric acid and chlorine standards, you must use Method 26A in 40 CFR part 60, appendix A. We also go on to say that we reject other methods for HCl and Cl_2 compliance. These preamble statements are in error and should be disregarded. In the final regulatory language we allow the use of Methods 261, 320, or 321 for compliance.

4. The Response to Comments Associated With Combustion System Leaks Is Incorrect

The September 30, 1999 rule states that a source must control combustion system leaks by: (1) Keeping the combustion zone sealed to prevent combustion system leaks; (2) maintaining the maximum combustion zone pressure lower than ambient pressure using an instantaneous monitor; or, (3) upon written approval of the Administrator, using an alternative means of control to provide control of combustion system leaks equivalent to maintenance of combustion pressure lower than ambient pressure (see § 63.1206(c)(5)). In our response to comments on the proposed rule (see US EPA, "Final Response to Comments to the Proposed HWC MACT Standards: Volume II," July 1999) we incorrectly implied that it would be appropriate for a source to use a one-minute averaging period to comply with the provisions of option 2 above.[1]

The Agency today clarifies that the response to comments language is incorrect. We considered the commenters' suggested approach of allowing the use of one-minute averaging periods to comply with option 2 (*i.e.*, § 63.1206(c)(5)(i)(B)), but later rejected the approach because it did not assure fugitive emissions would be adequately controlled. The response to comments document represents an earlier point of view and inadvertently was not updated to reflect our final position.[2]

5. Clarification of Applicability of Subpart EEE to Facilities Previously Subject to Title V Permitting

Following promulgation of the September 30, 1999 rule, we received a number of questions regarding the applicability of subpart EEE to sources that operate, or are being constructed/reconstructed, at facilities previously subject to, or in possession of, a title V permit. These questions arise in response to the rule language of 40 CFR 63.1200 (a)(2) where we state that, "Both area sources and major sources, not previously subject to title V permitting, are immediately subject to the requirement to apply for and obtain a title V permit in all States, and in areas covered by part 71 of this chapter." In today's correction document we are clarifying that the provisions of subpart EEE apply to each hazardous waste burning incinerator, cement kiln, and lightweight aggregate kiln individually firing hazardous waste on, or following, the effective date of the final rule (September 30, 1999).[3] This includes individual affected sources operating at facilities currently in possession of a title V permit due to other regulated activities at the facility. The language of § 63.1200(a)(2) in no way limits the need for facilities currently in possession of a title V permit to fulfill the requirements of subpart EEE as they apply to each affected source operating at the facility. Section 63.1200(a)(2) is only meant to state that facilities in possession of a title V permit do not have to apply for a new title V permit for the hazardous waste burning activities regulated by subpart EEE. Our presumption in promulgating § 63.1200(a)(2) is that sources currently in possession of a title V permit must follow the applicable requirements of the general provisions found at 40 CFR part 63, subpart A, and the permit revision provisions of 40 CFR part 71, subpart A.

6. Operator Training and Certification Requirement Is Clarified

Many stakeholders have expressed concern that the operator training and certification requirements under § 63.1206(c)(6) could be interpreted to require virtually every employee at the facility to pass a technical training and certification program equivalent to that of the American Society of Mechanical Engineers (ASME) QHO–1 program. These stakeholders note that a formal technical training and certification program is not necessary or appropriate for employees holding positions not related to the emissions control aspects of facilities operations—such as some of the administrative staff, quarry workers and raw material handlers.

We agree and are clarifying today that we neither intended the facility to subject all personnel to the training and certification program requirements nor intended the facility to establish a single training and certification program applicable to all categories of personnel whose activities may reasonably be expected to directly affect emissions of hazardous air pollutants. Instead, we contemplated a source having several programs suitable for each category of personnel, and that for control room operators and shift supervisors, the training and certification program would certainly be of a technical level similar to ASME QHO–1. For personnel whose activities may reasonably be expected to directly affect emissions, the certification may simply consist of documentation that they successfully completed a training program commensurate with the level of responsibility for the particular position. Personnel such as quarry operators, raw material workers, finished product handlers, some types of process monitoring operations, and much of the administrative staff whose activities are not expected to directly affect emissions of hazardous air pollutants from the source are exempted from the operator training and certification requirements of § 63.1206(c)(6).

7. Part 60, Appendix A, Method 5i, Section 12.2b—Relative Standard Deviation (RSD) Criteria for Emissions Less Than 1 mg/dscm Are Clarified

Part 60, appendix A, Method 5i, section 12.2b includes a graduated precision criteria for eliminating imprecise data. Section 12.2a includes a simplified equation for calculating the precision criteria, called the Relative Standard Deviation, or RSD. The proposal to include a precision criteria in Method 5i was widely endorsed.

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[1] For instance, one of the sections in this document states "therefore, we have decided to follow commenters suggestions and allow a one-minute averaging period to account for small fluctuations in combustion chamber pressure due to inaccurate readings of the monitor or feeding practices that lead to brief increases in combustion pressure." See Final Response to Comments to the Proposed HWC MACT Standards, Volume II, Section Titled "Combustion Fugitive Emissions Maximum Pressure Limit," pages 5 and 6.

[2] We note that the decision not to allow the use of averaging periods to comply with § 63.1206(c)(5)(i)(B) is reflected in the September 30, 1999 preamble (see 64 FR 52920) and the July 1999 Final Technical Support Document, Volume IV, Chapter 2, Section 2.2.1, and Chapter 8.

[3] The provisions of subpart EEE apply to each source firing hazardous waste on the effective date of the rule unless a source can demonstrate that it is exempt from subpart EEE because the source is in compliance with one of the three provisions identified in table 1 to § 63.1200.

The precision criteria currently state that if the average of paired train data is greater than 10 mg/dscm, the resulting RSD must not be greater than 10%. At a paired train data average of 1 mg/dscm, the RSD must not be greater than 25%. Between 1 and 10 mg/dscm, the RSD is linearly scaled from 25 to 10% based on the actual mean value recorded. The method is silent about what the RSD is if the mean emissions are less than 1 mg/dscm.

We intended there to be no RSD criteria if the average emissions from the paired data trains is less than 1 mg/dscm. In other words, no precision criteria exist and all average results less than 1 mg/dscm are acceptable.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding, see Section I above, that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Our compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 30, 1999 **Federal Register** document.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 10, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Immediate Effective Date

EPA is making this rule effective immediately. The rule adopts amendments which are purely technical in that they correct mistakes which are clearly inconsistent with the Agency's stated intent. This rule also clarifies ambiguities or errors in preamble statements to help stakeholders better understand the regulations themselves. Comment on such changes is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reasons, there is good cause to make the rule effective immediately pursuant to 5 U.S.C. 553 (d)(3).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Comparable fuels, Syngas fuels, Excluded hazardous waste, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 13, 2000.

Michael Shapiro,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

2. Appendix A in part 60 is amended by revising paragraph 12.2(b) in test method 5i to read as follows:

Appendix A—Test Methods

* * * * *

Method 5I—Determination of Low Level Particulate Matter Emissions From Stationary Sources

* * * * *

12.2 * * *

b. A minimum precision criteria for Reference Method PM data is that RSD for any data pair must be less than 10% as long as the mean PM concentration is greater than 10 mg/dscm. If the mean PM concentration is less than 10 mg/dscm higher RSD values are acceptable. At mean PM concentration of 1 mg/dscm acceptable RSD for paired trains is 25%. Between 1 and 10 mg/dscm acceptable RSD criteria should be linearly scaled from 25% to 10%. Pairs of manual method data exceeding these RSD criteria should be eliminated from the data set used to develop a PM CEMS correlation or to assess RCA. If the mean PM concentration is less than 1 mg/dscm, RSD does not apply and the mean result is acceptable.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors

4. Section 63.1200 is amended by revising Table 1 in paragraph (b) to read as follows:

§ 63.1200 Who is subject to these regulations?

* * * * *

(b) * * *

TABLE 1 TO § 63.1200.—HAZARDOUS WASTE COMBUSTORS EXEMPT FROM SUBPART EEE

If	And if	Then
(1) You are a previously affected source.	(i) You ceased feeding hazardous waste for a period of time greater than the hazardous waste residence time (i.e., hazardous waste no longer resides in the combustion chamber);. (ii) You have initiated the closure requirements of subpart G, parts 264 or 265 of this chapter;. (iii) You begin complying with the requirements of all other applicable standards of this part (Part 63); and. (iv) You notify the Administrator in writing that you are no longer an affected source under this subpart (Subpart EEE).	You are no longer subject to this subpart (Subpart EEE).
(2) You are a research, development, and demonstration source.	You operate for no longer than one year after first burning hazardous waste (Note that the Administrator can extent this one-year restriction on a case-by-case basis upon your written request documenting when you first burned hazardous waste and the justification for needing additional time to perform research, development, or demonstration operations.).	You are not subject to this subpart (Subpart EEE). This exemption applies even if there is a hazardous waste combustor at the plant site that is regulated under this subpart. You still, however, remain subject to § 270.65 of this chapter.
(3) The only hazardous wastes you burn are exempt from regulation under § 266.100(c) of this chapter.	.....	You are not subject to the requirements of this subpart (Subpart EEE).

* * * * *

5. Section 63.1201 is amended by revising the definition of *Automatic waste feed cutoff (AWFCO) system* in paragraph (a) to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Automatic waste feed cutoff (AWFCO) system means a system comprised of cutoff valves, actuator, sensor, data manager, and other necessary components and electrical circuitry designed, operated and maintained to stop the flow of hazardous waste to the combustion unit automatically and immediately (except as provided by § 63.1206(c)(3)(viii)) when any operating requirement is exceeded.

* * * * *

6. Section 63.1203 is amended by revising paragraphs (a)(3), (a)(4), (a)(5)(i), and (b)(5)(i) and removing paragraph (e) to read as follows:

§ 63.1203 What are the standards for hazardous waste incinerators?

(a) * * *

(3) Lead and cadmium in excess of 240 μg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 97 μg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) * * *

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

(b) * * *

(5) * * *

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also

document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

7. Section 63.1204 is amended by revising paragraphs (a)(5)(i)(A), (a)(5)(ii)(B), and (b)(5)(i)(A)(*1*) and by removing and reserving paragraph (g) to read as follows:

§ 63.1204 What are the standards for hazardous waste burning cement kilns?

(a) * * *

(5) * * *

(i) * * *

(A) Carbon monoxide in the by-pass duct or mid-kiln gas sampling system in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(i)(B) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons in the by-pass duct or mid-kiln gas sampling system do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

(ii) * * *

(B) Carbon monoxide in the main stack in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii)(A) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons in the main stack do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(A) * * *

(*1*) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(i)(A)(2) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

8. Section 63.1205 is amended by revising paragraph (a)(5)(i); by redesignating paragraph (b)(5) introductory text as paragraph (b)(5)(i) and revising it; and by removing paragraph (e), to read as follows:

§ 63.1205 What are the standards for hazardous waste burning lightweight aggregate kilns?

(a) * * *

(5) * * *

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

(b) * * *

(5) *Carbon monoxide and hydrocarbons.* (i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

9. Section 63.1206 is amended by revising paragraph (b)(5)(i) introductory text, (b)(5)(i)(C)(*1*), (b)(5)(iii), and (c)(6)(i) to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

* * * * *

(b) * * *

(5) *Changes in design, operation, or maintenance.* (i) *Changes that may adversely affect compliance.* If you plan to change (as defined in paragraph (b)(5)(iii) of this section) the design, operation, or maintenance practices of the source in a manner that may adversely affect compliance with any emission standard that is not monitored with a CEMS:

* * * * *

(C) * * *

(*1*) Except as provided by paragraph (b)(5)(i)(C)(2) of this section, after the change and prior to submitting the notification of compliance, you must not burn hazardous waste for more than a total of 720 hours (renewable at the discretion of the Administrator) and only for the purposes of pretesting or comprehensive performance testing. Pretesting is defined at § 63.1207(h)(2)(i) and (ii).

* * * * *

(iii) *Definition of "change."* For purposes of paragraph (b)(5) of this section, "change" means any change in design, operation, or maintenance practices that were documented in the comprehensive performance test plan, Notification of Compliance, or startup, shutdown, and malfunction plan.

* * * * *

(c) * * *

(6) *Operator training and certification.* (i) You must establish training programs for all categories of personnel whose activities may reasonably be expected to directly affect emissions of hazardous air pollutants from the source. Such persons include, but are not limited to, chief facility operators, control room operators, continuous monitoring system operators, persons that sample and analyze feedstreams, persons that manage and charge feedstreams to the combustor, persons that operate emission control devices, and ash and waste handlers. Each training program shall be of a technical level commensurate with the person's job duties specified in the training manual. Each commensurate training program shall require an examination to be administered by the instructor at the end of the training course. Passing of this test shall be deemed the "certification" for personnel, except that for control room operators and shift supervisors, the training and certification program shall be as specified in paragraphs (c)(6)(iii) and (iv) of this section.

* * * * *

10. Section 63.1207 is amended by revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ix), (f)(1)(x), (f)(1)(xi), (f)(1)(xii), (h)(2) introductory text, and (j)(1)(i); redesignating paragraph (f)(1)(xiii) as (f)(1)(xxvi); and adding paragraphs (f)(1)(xiii) through (f)(1)(xxv), to read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) An identification of such organic hazardous air pollutants that are present in the feedstream, except that you need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8).;

(B) An approximate quantification of such identified organic hazardous air pollutants in the feedstreams, within the precision produced by the analytical procedures of § 63.1208(b)(8); and

* * * * *

(ix) A determination of the hazardous waste residence time as required by § 63.1206(b)(11);

(x) If you are requesting to extrapolate metal feedrate limits from comprehensive performance test levels under §§ 63.1209(l)(1)(i) or 63.1209(n)(2)(ii))(A):

(A) A description of the extrapolation methodology and rationale for how the approach ensures compliance with the emission standards;

(B) Documentation of the historical range of normal (*i.e.*, other than during compliance testing) metals feedrates for each feedstream;

(C) Documentation that the level of spiking recommended during the performance test will mask sampling and analysis imprecision and inaccuracy to the extent that extrapolation of feedrates and emission rates from performance test data will be as accurate and precise as if full spiking were used;

(xi) If you do not continuously monitor regulated constituents in natural gas, process air feedstreams, and feedstreams from vapor recovery systems under § 63.1209(c)(5), you must include documentation of the expected levels of regulated constituents in those feedstreams;

(xii) Documentation justifying the duration of system conditioning required to ensure the combustor has achieved steady-state operations under performance test operating conditions, as provided by paragraph (g)(1)(iii) of this section;

(xiii) For cement kilns with in-line raw mills, if you elect to use the emissions averaging provision of § 63.1204(d), you must notify the Administrator of your intent in the initial (and subsequent) comprehensive performance test plan, and provide the information required under § 63.1204(d)(ii)(B).

(xiv) For preheater or preheater/precalciner cement kilns with dual stacks, if you elect to use the emissions averaging provision of § 63.1204(e), you must notify the Administrator of your intent in the initial (and subsequent) comprehensive performance test plan, and provide the information required under § 63.1204(e)(2)(iii)(A).

(xv) For incinerators and lightweight aggregate kilns equipped with a baghouse, you must submit the baghouse operation and maintenance plan required under § 63.1206(c)(7)(ii) with the initial comprehensive performance test plan.

(xvi) If you are not required to conduct performance testing to document compliance with the mercury, semivolatile metal, low volatile metal, or hydrochloric acid/chlorine gas emission standards under paragraph (m) of this section, you must include with the comprehensive performance test plan documentation of compliance with the provisions of that section.

(xvii) If you propose to use a surrogate for measuring or monitoring gas flowrate, you must document in the comprehensive performance test plan that the surrogate adequately correlates with gas flowrate, as required by paragraph (m)(7) of this section, and § 63.1209(j)(2), (k)(3), (m)(2)(i), (m)(5)(i), and (o)(2)(i).

(xviii) You must submit an application to request alternative monitoring under § 63.1209(g)(1) not later than with the comprehensive performance test plan, as required by § 63.1209(g)(1)(iii)(A).

(xix) You must document the temperature location measurement in the comprehensive performance test plan, as required by §§ 63.1209(j)(1)(i) and 63.1209(k)(2)(i).

(xx) If your source is equipped with activated carbon injection, you must document in the comprehensive performance test plan:

(A) The manufacturer specifications for minimum carrier fluid flowrate or pressure drop, as required by § 63.1209(k)(6)(ii); and

(B) Key parameters that affect carbon adsorption, and the operating limits you establish for those parameters based on the carbon used during the performance test, if you elect not to specify and use the brand and type of carbon used during the comprehensive performance test, as required by § 63.1209(k)(6)(iii).

(xxi) If your source is equipped with a carbon bed system, you must include in the comprehensive performance test plan:

(A) A recommended schedule for conducting a subsequent performance test to document compliance with the dioxin/furan and mercury emission standards if you use manufacturer specifications rather than actual bed age at the time of the test to establish the initial limit on bed age, as required by § 63.1209(k)(7)(i)(C); and

(B) Key parameters that affect carbon adsorption, and the operating limits you establish for those parameters based on the carbon used during the performance test, if you elect not to specify and use the brand and type of carbon used during the comprehensive performance test, as required by § 63.1209(k)(7)(ii).

(xxii) If you feed a dioxin/furan inhibitor into the combustion system, you must document in the comprehensive performance test plan key parameters that affect the effectiveness of the inhibitor, and the operating limits you establish for those parameters based on the inhibitor fed during the performance test, if you elect not to specify and use the brand and

type of inhibitor used during the comprehensive performance test, as required by § 63.1209(k)(9)(ii).

(xxiii) If your source is equipped with a wet scrubber and you elect to monitor solids content of the scrubber liquid manually but believe that hourly monitoring of solids content is not warranted, you must support an alternative monitoring frequency in the comprehensive performance test plan, as required by § 63.1209(m)(1)(i)(B)(*1*)(*i*).

(xxiv) If your source is equipped with a particulate matter control device other than a wet scrubber, baghouse, or electrostatic precipitator, you must include in the comprehensive performance test plan:

(A) Documentation to support the operating parameter limits you establish for the control device, as required by § 63.1209(m)(1)(iv)(A)(*4*); and

(B) Support for the use of manufacturer specifications if you recommend such specifications in lieu of basing operating limits on performance test operating levels, as required by § 63.1209(m)(1)(iv)(D).

(xxv) If your source is equipped with a dry scrubber to control hydrochloric acid and chlorine gas, you must document in the comprehensive performance test plan key parameters that affect adsorption, and the limits you establish for those parameters based on the sorbent used during the performance test, if you elect not to specify and use the brand and type of sorbent used during the comprehensive performance test, as required by § 63.1209(o)(4)(iii)(A); and

* * * * *

(h) * * *

(2) Current operating parameter limits are also waived during pretesting prescribed in the approved test plan prior to comprehensive performance testing for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Administrator). Pretesting means:

* * * * *

(j) * * *

(1) * * *

(i) Within 90 days of completion of a comprehensive performance test, you must postmark a Notification of Compliance documenting compliance or noncompliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under § 63.1209.

* * * * *

11. Section 63.1209 is amended by revising the word "standards" in the first sentence of paragraph (a)(7) to read "standard" and by revising paragraphs (a)(1)(i), (a)(1)(iii), (a)(6)(iii)(A), (b)(2) introductory text, (l)(1), (l)(3), (l)(4), (m)(3), (n)(2)(i)(A), (B) and (C), (n)(4), and (o)(1) to read as follows:

§ 63.1209 What are the monitoring requirements?

(a) * * *

(1)(i) You must use either a carbon monoxide or hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standard under this subpart. You must also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

* * * * *

(iii) You must install, calibrate, maintain, and operate a particulate matter CEMS to demonstrate and monitor compliance with the particulate matter standards under this subpart. However, compliance with the requirements in this section to install, calibrate, maintain and operate the PM CEMS is not required until such time that the Agency promulgates all performance specifications and operational requirements applicable to PM CEMS.

* * * * *

(6) * * *

(iii) *Calculation of rolling averages when the hazardous waste feed is cutoff.* (A) Except as provided by paragraph (a)(6)(iii)(B) of this section, you must continue monitoring carbon monoxide and hydrocarbons when the hazardous waste feed is cutoff if the source is operating. You must not resume feeding hazardous waste if the emission levels exceed the standard.

* * * * *

(b) * * *

(2) Except as specified in paragraphs (b)(2)(i) and (ii) of this section, you must install and operate continuous monitoring systems other than CEMS in conformance with § 63.8(c)(3) that requires you, at a minimum, to comply with the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system:

* * * * *

(l) * * *

(1) Feedrate of total mercury. You must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages, unless mercury feedrate limits are extrapolated from performance test feedrate levels under the following provisions.

* * * * *

(3) Activated carbon injection. If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits prescribed by paragraph (k)(6) of this section.

(4) Activated carbon bed. If your combustor is equipped with a carbon bed system, you must establish operating parameter limits prescribed by paragraph (k)(7) of this section.

* * * * *

(m) * * *

(3) Maximum ash feedrate. Owners and operators of hazardous waste incinerators must establish a maximum ash feedrate limit as the average of the test run averages.

* * * * *

(n) * * *

(2) * * *

(i) * * *

(A) You must establish a 12-hour rolling average limit for the feedrate of cadmium and lead, combined, in all feedstreams as the average of the test run averages;

(B) You must establish a 12-hour rolling average limit for the feedrate of arsenic, beryllium, and chromium, combined, in all feedstreams as the average of the test run averages; and

(C) You must establish a 12-hour rolling average limit for the feedrate of arsenic, beryllium, and chromium, combined, in all pumpable feedstreams as the average of the test run averages. Dual feedrate limits for both pumpable and total feedstreams are not required, however, if you base the total feedrate limit solely on the feedrate of pumpable feedstreams.

* * * * *

(4) Maximum total chlorine and chloride feedrate. You must establish a 12-hour rolling average limit for the feedrate of total chlorine and chloride in all feedstreams as the average of the test run averages.

* * * * *

(o) * * *

(1) Feedrate of total chlorine and chloride. You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages.

* * * * *

12. Section 63.1210 is amended by revising paragraphs (b)(1)(iv) introductory text and (c)(2) to read as follows:

§ 63.1210 What are the notification requirements?

* * * * *

(b) * * *

(1) * * *

(iv) If you do not intend to comply, but will not stop burning hazardous waste by October 1, 2001, a certification that:

* * * * *

(c) * * *

(2) You must submit a summary of the meeting, along with the list of attendees and their addresses, developed under paragraph (c)(1) of this section, and copies of any written comments or materials submitted at the meeting, to the Administrator as part of the final NIC, in accordance with paragraph (b)(1)(iii) of this section.

* * * * *

13. Section 63.1211 is amended by revising the table in paragraph (c) to read as follows:

§ 63.1211 What are the recordkeeping and reporting requirements?

* * * * *

(c) * * *

Reference	Document, data, or information
63.1201(a), 63.10(b) and (c)	General. Information required to document and maintain compliance with the regulations of this Subpart EEE, including data recorded by continuous monitoring systems (CMS), and copies of all notifications, reports, plans, and other documents submitted to the Administrator.
63.1211(d)	Documentation of compliance.
63.1206(c)(3)(vii)	Documentation and results of the automatic waste feed cutoff operability testing.
63.1209(c)(2)	Feedstream analysis plan.
63.1204(d)(3)	Documentation of compliance with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(3)	Documentation of compliance with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(1)(ii)(B)	If you elect to comply with all applicable requirements and standards promulgated under authority of the Clean Air Act, including Sections 112 and 129, in lieu of the requirements of this Subpart EEE when not burning hazardous waste, you must document in the operating record that you are in compliance with those requirements.
63.1206(c)(2)	Startup, shutdown, and malfunction plan.
63.1206(c)(3)(v)	Corrective measures for any automatic waste feed cutoff that results in an exceedance of an emission standard or operating parameter limit.
63.1206(c)(4)(ii)	Emergency safety vent operating plan.
63.1206(c)(4)(iii)	Corrective measures for any emergency safety vent opening.
63.1206(c)(5)(ii)	Method used for control of combustion system leaks.
63.1206(c)(6)	Operator training and certification program.
63.1206(c)(7)(i)(D)	Operation and maintenance plan.
63.1209(k)(6)(iii), 63.1209(k)(7)(ii), 63.1209(k)(9)(ii), 63.1209(o)(4)(iii).	Documentation that a substitute activated carbon, dioxin/furan formation reaction inhibitor, or dry scrubber sorbent will provide the same level of control as the original material.

* * * * *

14. Section 63.1212 is amended by revising paragraphs (a)(2), (b)(1), and (b)(2) introductory text to read as follows:

§ 63.1212 What are the other requirements pertaining to the NIC and associated progress reports?

(a) * * *

(2) An authorized representative is the same as a "responsible official" as defined under § 63.2.

(b) * * *

(1) If you begin to burn hazardous waste after September 30, 1999 but prior to June 30, 2000 you must comply with the requirements of §§ 63.1206(a)(3), 63.1210(b) and (c), 63.1211(b), and paragraph (a) of this section, and associated time frames for public meetings and document submittals.

(2) If you intend to begin burning hazardous waste after June 30, 2000 you must comply with the requirements of §§ 63.1206(a)(3), 63.1210(b) and (c), 63.1211(b), and paragraph (a) of this section prior to burning hazardous waste. In addition:

* * * * *

15. The appendix to subpart EEE of part 63 is amended by revising sections 1.1, and 2.8, redesignating sections c and d as 3 and 4, respectively, by revising the header for section 5, and by revising section 6.5.1 to read as follows:

Appendix to Subpart EEE of Part 63—Quality Assurance Procedures for Continuous Emissions Monitors Used for Hazardous Waste Combustors

* * * * *

1.1 Applicability. These quality assurance requirements are used to evaluate the effectiveness of quality control (QC) and quality assurance (QA) procedures and the quality of data produced by continuous emission monitoring systems (CEMS) that are used for determining compliance with the emission standards on a continuous basis as specified in the applicable regulation. The QA procedures specified by these requirements represent the minimum requirements necessary for the control and assessment of the quality of CEMS data used to demonstrate compliance with the emission standards provided under this subpart EEE of part 63. Owners and operators must meet these minimum requirements and are encouraged to develop and implement a more extensive QA program. These requirements supersede those found in part 60, Appendix F, of this chapter. Appendix F does not apply to hazardous waste-burning devices.

* * * * *

2.8 Rolling Average. The average emissions, based on some (specified) time period, calculated every minute from a one-minute average of four measurements taken at 15-second intervals.

* * * * *

5. Performance Evaluation for CO, O_2, and HC CEMS

* * * * *

6.5.1 *One-Minute Average for CO and HHC CEMS.* One-minute averages are the arithmetic average of the four most recent 15-second observations and must be calculated using the following equation:

$$\bar{c} = \sum_{i=1}^{4} \frac{c_i}{4}$$

Where:

$\bar{c}$ = the one minute average

c_i = a fifteen-second observation from the CEM

Fifteen second observations must not be rounded or smoothed. Fifteen-second observations may be disregarded only as a result of a failure in the CEMS and allowed in the source's quality

assurance plan at the time of the CEMS failure. One-minute averages must not be rounded, smoothed, or disregarded.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

16. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

17. Section 261.38 is amended by adding paragraph (c)(2)(iv) to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

* * * * *

(c) * * *

(2) * * *

(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

18. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

19. Section 270.42 is amended by revising paragraph (j)(1) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(j) * * *

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and (c) before a permit modification can be requested under this section.

* * * * *

[FR Doc. 00–16515 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000623193–0193–01; I.D. 060800D]

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Catch in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 2000 harvest specifications; technical amendment.

SUMMARY: NMFS issues a technical amendment to the Final 2000 Harvest Specifications for Groundfish for the Bering Sea and Aleutian Islands (BSAI). A revision to Table 7 of the Final 2000 Harvest Specifications, which is prohibited species bycatch allowances for the BSAI trawl and non-trawl groundfish fisheries, is necessary to reflect reduced prohibited species bycatch allowances under Amendment 57 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective June 15, 2000, through 2400 hrs A.l.t. December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Council, at its December 1999 meeting, recommended that the Final 2000 Harvest Specifications include prohibited species bycatch allowances proportionally reduced to reflect reduced prohibited species catch (PSC) limits under pending Amendment 57. Because the Final Harvest Specifications for Groundfish of the BSAI (65 FR 8282, February 18, 2000) were issued prior to Amendment 57 being approved by NMFS and implemented by regulations, the specifications set forth prohibited species bycatch allowances for the BSAI trawl fisheries based on the following pre-FMP Amendment 57 PSC limits: Pacific halibut, 3,775 mt; Zone 1 red king crab, 100,000 animals; *Chionoecetes* (*C.*) *opilio*, 4,500,000 animals; *C. bairdi* Zone 1, 900,000; and *C. bairdi* Zone 2, 2,550,000 animals.

Under the regulations implementing Amendment 57 to the FMP (65 FR 31105, May 16, 2000), which became effective June 15, 2000, the 2000 Pacific halibut and crab PSC limits for the BSAI trawl fisheries were reduced to the following amounts: Pacific halibut, 3,675 mt; Zone 1 red king crab, 97,000 animals; *C. opilio*, 4,350,000 animals; *C. bairdi* Zone 1,830,000; and *C. bairdi* Zone 2, 2,520,000 animals. The corresponding prohibited species bycatch allowances were reduced proportionally.

This technical amendment revises Table 7 of the Final 2000 Harvest Specifications for Groundfish of the BSAI accordingly to read as follows:

TABLE 7.—PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES [1]

[All amounts are in metric tons]

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1	*C. opilio* (animals) COBLZ [2]	*C. bairdi* (animals)	
					Zone 1	Zone 2
Trawl Fisheries:						
Yellowfin sole	886	169	11655	2,876,579	288,750	1,514,683
January 20–March 31	262					
April 1–May 20	196					
May 21–July 3	48					
July 4–December 31	380					
Rocksole/oth. flat/flat sole [3]	779	24	42,090	869,934	309,326	504,894
January 20–March 31	448					
April 1–July 31	64					
July 4–December 31	167					
Turbot/sablefish/arrowtooth [4]		11		41,043		

TABLE 7.—PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES [1]—Continued

[All amounts are in metric tons]

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1	*C. opilio* (animals) COBLZ [2]	*C. bairdi* (animals) Zone 1	*C. bairdi* (animals) Zone 2
Rockfish (July 4–December 31) [5]	69	9		41,043		10,024
Pacific cod	1,434	24	11,656	123,529	154,856	275,758
Pollock/Atka/other [6]	232	1,616	1,660	71,622	14,818	25,641
RKC savings subarea [3]		22,665				
Total Trawl PSC	3,400	1,853	89,725	4,023,750	767,750	2,331,000
Non-Trawl Fisheries:						
Pacific cod—Total	748					
Jan. 1–April 30 [7]	7457					
May 1–August 31	0					
Sept. 1–Dec. 31	291					
Other non-trawl—Total	84					
May 1–December 31	84					
Groundfish pot & jig	Exempt					
Sablefish hook-&-line	Exempt					
Total Non-Trawl	833					
PSQ Reserve [8]	343		7,275	326,250	62,250	189,000
Grand Total	4,675	1,853	97,000	4,350,000	830,000	2,520,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21(e)(7)(iv)(B).
[3] The Council at its December 1999 meeting recommended limiting red king crab for trawl fisheries within the RKCSS to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] The Council at its December 1999 meeting recommended apportioning the rockfish PSC amounts from July 4–December 31, to prevent fishing for rockfish before July 4, 2000.
[6] Pollock, Atka mackerel, and "other species" fishery category.
[7] Any unused halibut PSC from the first trimester may be rolled over into the third trimester.
[8] With the exception of herring, 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

Classification

Because this technical amendment merely revises a table in the specifications to reflect new allowances under a previous final rule, pursuant to 5 U.S.C. 5539(b)(B), the Assistant Administrator for Fisheries, NOAA, finds, for good cause, that it is unnecessary to provide prior notice and opportunity for public comment in that no useful purpose would be served.

In addition, because this is a non-substantive rule, under 5 U.S.C. 553(d), a 30-day delay in effectiveness is not required.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 533, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17269 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 65, No. 132
Monday, July 10, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 00–005–1]

Animal Welfare; Definitions for and Reporting of Pain and Distress

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Request for comments.

SUMMARY: We are considering several changes to the Animal Welfare regulations to promote the humane treatment of live animals used in research, testing, and teaching and to improve the quality of information we report to Congress concerning animal pain and distress. Specifically, we are considering adding a definition for the term "distress." Although this term is used throughout the Animal Welfare regulations, it is not defined. The addition of such a definition would clarify what we consider to be "distress" and could help assist research facilities to recognize and minimize distress in animals in accordance with the Animal Welfare Act (AWA).

We are also considering replacing or modifying the system we use to classify animal pain and distress. Professional standards regarding the recognition and relief of animal pain and distress have changed significantly since we established our classification system. Some biomedical research professionals and animal welfare advocates believe our classification system is outdated and inadequate. A different categorization system could produce data that more accurately depict the nature of animal pain or distress and provide a better tool to measure efforts made to minimize animal pain and distress at research facilities.

We are soliciting public comments on the changes we are considering. We are also interested in obtaining information on specific pain and distress classification systems other than the one we now use.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 8, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–005–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–005–1. You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Jodie Kulpa, Staff Veterinarian, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA). Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in title 9, parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 contains general requirements for regulated parties. Part 3 contains specific requirements for the care and handling of certain animals.

We are soliciting comments on an approach, discussed below, for amending the regulations by defining "distress" in part 1 and by modifying or replacing the animal pain and distress classification system in part 2.

Definition for Distress

In the regulations, we define a "painful procedure" as any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied. Although we use the term "distress" in this definition and elsewhere in the regulations, there is no definition for distress in the regulations. We are considering adding such a definition because of requests from the biomedical research community and animal advocacy groups. These parties have asked USDA to provide guidance on what is considered to be distress in a procedure involving research animals in order to improve recognition of animal distress, to classify and report it more accurately, and to create a heightened awareness of the regulations' requirement to minimize animal distress and pain.

Pain and Distress Classification System

Section 13(a)(7)(B) of the AWA requires research facilities to annually provide "information on procedures likely to produce pain or distress in any animal." In accordance with the AWA, the regulations at § 2.36 require facilities that use or intend to use live animals for research, tests, experiments, or teaching to submit an annual report to the Animal Care Regional Director for the State where the facility is located. Among other things, the report must state the common names and the numbers of animals upon which teaching, experiments, research, surgery, or tests were conducted involving: (1) No pain, distress, or use of pain-relieving drugs; (2) accompanying pain or distress to the animals and for which appropriate anesthetic, analgesic, or tranquilizing drugs were used; and (3) accompanying pain or distress to the animals and for which the use of appropriate anesthetic, analgesic, or tranquilizing drugs would have adversely affected the procedures, results, or interpretation of the teaching, research, experiments, surgery, or tests.

To provide these data, each research facility must assess the potential for animal pain or distress associated with the proposed procedures. This assessment is performed prospectively (*i.e.*, before the procedure) and typically forms the basis for the pain and distress report provided by the facility to USDA. The assessment, therefore, is an estimate based on professional judgment, knowledge, and experience, and the resulting report may or may not accurately reflect the conditions the animals actually experience. The research facility can, as an option, retrospectively (*i.e.*, during or after the procedure) assess the animal pain and distress observed and report these results. We do not know how often facilities perform retrospective reporting.

There is no provision in the current classification system to address some areas identified by the research community and animal advocacy groups. For example, the current system does not include a means to report:

- An assessment of the relative intensity or duration of pain or distress either observed in the animal or anticipated to be experienced by the animal;
- An assessment of the anticipated or observed efficacy of the pain- or distress-relieving agent provided to animals undergoing a painful or distressful procedure;
- A distinction between procedures causing animal pain and procedures causing animal distress;
- Animals that were prevented from experiencing pain or distress by the appropriate and effective use of pain- or distress-relieving methods or procedures (*e.g.*, well-anesthetized animals that undergo terminal surgery);
- Animals that did not experience pain or distress due to the appropriate and effective use of pain- or distress-relieving methods or procedures other than anesthetic, analgesic, or tranquilizing agents;
- Animals that experience unrelieved pain or distress for a reason other than that the use of anesthetic, analgesic, or tranquilizing drugs would have adversely affected the procedures, results, experiments, surgery, or tests; or
- Animals that experience pain or distress without having been used in a procedure (*e.g.*, illness in animals that have been genetically altered to develop disease).

We are aware of several alternative pain and distress classification systems. For example, the system adopted by the Canadian Council on Animal Care, "Categories of Invasiveness in Animal Experiments," may be viewed on the Internet at http://www.ccac.ca/english/categ.htm. The system proposed by the Humane Society of the United States may be viewed on the Internet at http://hsus.org/programs/research/usda_proposed_scale.html.[1] Other classification systems, varying greatly in complexity, are in use in other countries, such as Switzerland and Sweden.

Modifying the current USDA system, in lieu of replacing it, could also be an option. This could involve replacing or redefining the existing categories to:

- Separately report pain and distress;
- Quantify pain and distress intensity and duration;
- Separately classify anesthetized or otherwise treated animals undergoing potentially painful procedures but not experiencing pain or distress; or
- Modify the system in other ways.

We invite your comments on adding a definition for distress to the regulations and replacing or modifying our animal pain and distress classification system. We are particularly interested in soliciting comments addressing the following questions:

1. Would adding a definition for distress to the regulations help institutions using animals for research, testing, or teaching better recognize, minimize, and report animal distress?
2. If a definition for distress is added to the regulations, what key elements should be included in that definition?
3. What are the benefits and limitations of our pain and distress classification system?
4. Should our animal pain and distress classification system be modified or replaced? If so, what specific modifications or alternate classification systems should we consider?
5. Should animal pain and distress be prospectively or retrospectively reported?

Written comments should be submitted within the 60-day comment period specified in this document (see **DATES** and **ADDRESSES**).

Executive Order 12866

This action has been reviewed under Executive Order 12866. The action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

[1] If you do not have access to the Internet, you may obtain a copy of the system adopted by Canadian Council on Animal Care or the system proposed by the Humane Society of the United States by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this document.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 3rd day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–17280 Filed 7–7–00; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM–54–1]

Union of Concerned Scientists; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Union of Concerned Scientists (petitioner). The petition has been docketed by the Commission and has been assigned Docket No. PRM–54–1. The petitioner requests that the NRC regulations governing requirements for renewal of operating licenses for nuclear power plants be amended to address potential concerns about aging degradation of liquid and gaseous radioactive waste systems. The petitioner believes the degradation from aging of piping and components of liquid and gaseous radioactive waste systems at nuclear power facilities may result in an increased probability and/or consequences from design and licensing bases events.

DATES: Submit comments by September 25, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Documents related to this action

are available for public inspection at the NRC Public Document Room (PDR) located at the Gelman Building, 2012 L Street, NW, Washington, DC 20555. Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 202–634–3273, or by email to *pdr@nrc.gov*.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://ruleforum.llnl.gov*). This site provides the availability to view and upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking dated May 3, 2000, submitted by the Union of Concerned Scientists (petitioner). The petitioner requests that the regulations governing renewal of operating licenses for nuclear power plants in 10 CFR parts 51 and 54 be amended to address potential concerns relating to degradation through aging of piping and components of liquid and gaseous radioactive waste systems at operating nuclear power plants. This petition was included as part of a document in which the petitioner details concerns related to the review of the license renewal application submitted by the owner of the Hatch Nuclear Plant. Specifically, the petitioner is concerned that the license renewal application for the Hatch facility has not addressed deficiencies it believes exists in the aging management of the liquid and gaseous radioactive waste (radwaste) systems. The petitioner concludes that the requirements pertaining to renewal of operating licenses for nuclear power plants do not adequately address degradation from aging of liquid and gaseous radioactive waste systems. The petitioner requests that the regulations in 10 CFR part 51 and part 54 be amended to clarify that liquid and gaseous radioactive waste systems must be covered by aging management programs during license renewal periods.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–54–1. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner states that in 10 CFR part 51, appendix B to subpart A, "Environmental Effect of Renewing the Operating License of a Nuclear Power Plant," the NRC concluded that radiation exposures to the public and occupational exposures to workers during the license renewal term will continue at levels below regulatory limits. The petitioner believes that this conclusion is based on an assumption that the piping and components of the liquid and gaseous radioactive waste systems at nuclear power plants do not experience greater failure rates during the license renewal term.

Using the case of a recent license renewal application, the petitioner cites the Hatch Nuclear Plant as an example in contending that the plant is being operated outside its design and licensing bases because the material condition of piping and components of the liquid (Contention No. 1) and gaseous (Contention No. 2) radioactive waste systems are not being properly inspected and maintained. In its request for a generic communication by the NRC to all nuclear power plant owners about potential aging degradation of liquid and gaseous radioactive waste systems, the petitioner indicates that the Millstone facility received an Information Notice in 1979 regarding liquid radwaste system problems that the petitioner believes was ignored. The petitioner notes that in 1996 the Millstone facility received another Information Notice also regarding degradation problems with the liquid radwaste system.

The petitioner believes that from its review of the license renewal applications submitted by the owners of the Calvert Cliffs, Oconee, and Hatch facilities, it appears that 10 CFR 54.4(a)(1)(iii) has been interpreted to exclude the liquid and gaseous radioactive waste systems from aging management consideration. The petitioner requests that NRC amend 10 CFR parts 51 and 54 to clarify that the liquid and gaseous radioactive waste systems must be covered by aging management programs during the license renewal term. The petitioner believes that regulations imposing aging management for these systems are necessary to ensure that these systems do not experience greater failure rates that could result in an increased probability and/or consequences from design bases events.

The Petitioner's Conclusions

The petitioner has concluded that the NRC requirements governing renewal of operating licenses of nuclear power facilities do not adequately address degradation that may result from aging of liquid and gaseous radioactive waste systems. The petitioner has also concluded that the degradation by aging of these systems may result in an increased probability of adverse consequences from design and licensing bases events. The petitioner requests that the regulations in 10 CFR part 54 and part 51, if appropriate, be amended to clarify that liquid and gaseous radwaste systems must be covered by aging management programs during the license renewal term of an operating nuclear power facility.

Dated at Rockville, Maryland, this 3rd day of July, 2000.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 00–17340 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–365–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes powered by Pratt & Whitney engines. This proposal would require modification of the nacelle strut and wing structure. This action is necessary to prevent fatigue cracking in primary

strut structure and consequent reduced structural integrity of the strut. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–365–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–365–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–365–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–365–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the airplane manufacturer has accomplished a structural reassessment of the damage tolerance capabilities of the Boeing Model 767 series airplane powered by Pratt & Whitney engines. This reassessment indicates that the actual operational loads applied to the nacelle strut and wing structure are higher than the analytical loads that were used during the initial design. Subsequent analysis and service history, which includes numerous reports of fatigue cracking on certain strut and wing structure, indicate that fatigue cracking can occur on the primary strut structure before an airplane reaches its design service objective of 20 years or 50,000 flight cycles. Analysis also indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. Fatigue cracking in primary strut structure would result in reduced structural integrity of the strut.

Other Relevant Rulemaking

This proposed AD is related to AD 94–11–02, amendment 39–8918 (59 FR 27229, May 26, 1994), which is applicable to all Boeing Model 767 series airplanes, and requires repetitive detailed visual and eddy current inspections to detect cracks of certain midspar fuse pins, and replacement of any cracked midspar fuse pin with a new fuse pin.

This proposed AD also is related to AD 99–07–06, amendment 39–11091 (64 FR 14578, March 26, 1999), which is applicable to certain Boeing Model 767 series airplanes, and requires repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary.

Accomplishment of the actions required by this AD would terminate the repetitive inspections required by AD 94–11–02 and AD 99–07–06.

Explanation of Relevant Service Information

Boeing recently has developed a modification of the strut-to-wing attachment structure installed on Model 767 series airplanes powered by Pratt & Whitney engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvement also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachment assembly.

The FAA has reviewed and approved Boeing Service Bulletin 767–54–0080, dated October 7, 1999, which describes procedures for modification of the nacelle strut and wing structure. The modification consists of replacing many of the significant load-bearing components of the strut (*e.g.*, the side link fittings assemblies, the midspar fittings, the side load fittings, certain fuse bolt assemblies, etc.) with improved components.

The service bulletin contains a formula for calculating an optional compliance threshold for the specified modification. This formula is intended to be used as an alternative to the 20-year calendar threshold specified in the service bulletin.

In addition, Table 2 of the service bulletin also identifies six related service bulletin modifications that must be accomplished before or at the same time as the modification specified in Boeing Service Bulletin 767–54–0080:

- *Boeing Service Bulletin 767–53–0069:* The FAA has reviewed and approved Boeing Service Bulletin 767–53–0069, Revision 1, dated January 29, 1998, which describes procedures for replacement of the existing midspar fuse pins with new higher-strength fuse pins; installation of new higher-strength tension bolts and radius fillers in the side load fittings and backup support structure; and replacement of the existing fasteners located in the front

spar and rib number eight rib post with new higher-strength fasteners.

• *Boeing Service Bulletin 767–54–0083:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0083, dated September 17, 1998, which describes procedures for replacement of the upper link with a new, improved part that will increase the strength and durability of the upper link installation. That service bulletin also describes procedures for modification of a wire support bracket attached to the upper link.

• *Boeing Service Bulletin 767–54–0088:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0088, Revision 1, dated July 29, 1999, which describes procedures for replacement of the upper link fuse pin and aft pin with new, improved pins that will increase the strength and durability of the upper link installation.

• *Boeing Service Bulletin 767–54A0094:* The FAA has reviewed and approved Boeing Service Bulletin 767–54A0094, Revision 1, dated September 16, 1999, which describes procedures for repetitive detailed visual inspections of the one-piece diagonal brace lugs to detect cracking, and installation of a new three-piece diagonal brace or rework of the existing brace. Installation of the new three-piece diagonal brace would constitute terminating action for the repetitive inspections described in this bulletin.

• *Boeing Service Bulletin 767–57–0053:* The FAA has reviewed and approved Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999, which describes procedures for repetitive ultrasonic and eddy current inspections of the pitch load fitting lugs of the wing front spar for cracking, and rework of the fittings, if necessary.

• *Boeing Service Bulletin 767–29–0057:* The FAA has reviewed and approved Boeing Service Bulletin 767–29–0057, dated December 16, 1993, including Notice of Status Change NSC 1, dated November 23, 1994, which describes procedures for modification of the electrical wiring located in the aft fairing area of the strut and installation of wire support brackets on the strut bulkhead.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although Boeing Service Bulletin 767–54–0080 specifies that the manufacturer may be contacted for disposition of certain damage conditions that may be detected during accomplishment of the modification, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 233 airplanes of the affected design in the worldwide fleet. The FAA estimates that 76 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 708 work hours per airplane to accomplish the proposed modification of the nacelle strut and wing structure described in Boeing Service Bulletin 767–54–0080, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $3,228,480, or $42,480 per airplane.

It would take approximately 106 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–53–0069, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $483,360, or $6,360 per airplane.

It would take approximately 1 work hour per airplane to accomplish the actions described in Boeing Service Bulletin 767–54–0083, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $4,560, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–54–0088, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $9,120, or $120 per airplane.

It would take approximately 20 work hours per airplane to accomplish the proposed actions described in Boeing Service Bulletin 767–54A0094, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $91,200, or $1,200 per airplane.

It would take approximately 5 work hours per airplane to accomplish the proposed actions described in Boeing Service Bulletin 767–57–0053, Revision 2, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $22,800, or $300 per airplane.

It would take approximately 16 work hours per airplane to accomplish the proposed actions described in Boeing Service Bulletin 767–29–0057, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $72,960, or $960 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–365–AD.

Applicability: Model 767 series airplanes powered by Pratt & Whitney engines, line numbers 1 through 663 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Modifications

(a) When the airplane has reached the flight cycle threshold as defined by the flight cycle threshold formula on page 67 of Boeing Service Bulletin 767–54–0080, dated October 7, 1999, or within 20 years since the date of manufacture, whichever occurs first: Modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with the service bulletin. Use of the flight cycle threshold formula described on page 67 of the service bulletin is an acceptable alternative to the 20-year threshold, provided the conditions described in paragraphs 1 and 2 of page 67 have been met.

(b) Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD; as specified in paragraph 1.D., Table 2, on page 8 of Boeing Service Bulletin 767–54–0080, dated October 7, 1999; accomplish the actions specified in Boeing Service Bulletins 767–53–0069, Revision 1, dated January 29, 1998; 767–54–0083, dated September 17, 1998; 767–54–0088, Revision 1, dated July 29, 1999; 767–54A0094, Revision 1, dated September 16, 1999; 767–57–0053, Revision 2, dated September 23, 1999; and 767–29–0057, dated December 16, 1993, including Notice of Status Change NSC 1, dated November 23, 1994; as applicable; in accordance with those service bulletins. Accomplishment of this paragraph constitutes terminating action for the repetitive inspections required by AD 94–11–02, amendment 39–8918, and AD 99–07–06, amendment 39–11091.

Note 2: Paragraph (b) of this AD specifies prior or concurrent accomplishment of Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999; however, Table 2, on page 8 of Boeing Service Bulletin 767–54–0080, dated October 7, 1999, specifies prior or concurrent accomplishment of the original issue of the service bulletin. Therefore, accomplishment of the applicable actions specified in Boeing Service Bulletin 767–57–0053, dated June 27, 1996, or Revision 1, dated October 31, 1996, prior to the effective date of this AD, is considered acceptable for compliance with the actions required by paragraph (b) of this AD.

Repair

(c) If any damage to airplane structure is found during the accomplishment of the modification required by paragraph (a) of this AD; and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 3, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17302 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB19

Treatment of Unlocatable Application and Patent Files

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office is proposing to amend the rules of practice to provide for the replacement of application and patent files that cannot be located after a reasonable search. This change is designed to expedite the process of application and patent file reconstruction to minimize the processing or examination delays resulting when the Office cannot locate an application or patent file after a reasonable search.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before August 9, 2000. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: reconstruct.comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231; or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of Patent

Legal Administration in the Office of the Deputy Commissioner for Patent Examination Policy, Room 3–C23 of Crystal Plaza 4, 2201 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: http://www.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: Over 330,000 patent applications (provisional and nonprovisional) were filed in the United States Patent and Trademark Office (Office) in fiscal year 1999. On occasion, an application or patent file cannot be located.

When an application or patent file cannot be located after a reasonable search and the application or patent file is necessary to conduct business before the Office, the Office will "reconstruct" the application or patent file. This involves placing a duplicate of the original application papers and duplicates of all of the correspondence between the Office and applicant or patentee in a new file wrapper. The Office currently (since the spring of 1997) uses its Patent Application Capture and Review (PACR) system to image scan the application papers submitted on the filing date of the application (except for any appendix or information disclosure statement) and to create an electronic database (PACR database) containing the Office's archival record of the original application papers (application papers were microfilmed prior to the spring of 1997). Thus, the Office can obtain a copy of the original application papers from its archival PACR database (or microfilm records). The Office, however, does not possess a duplicate copy of subsequent correspondence from the applicant or patentee (*e.g.*, applicant replies or other papers) concerning the application or patent. While the Office may have a copy of some Office correspondence (Office actions saved on a disc or computer hard drive), the Office often does not possess a complete copy of the Office correspondence concerning the application or patent (*e.g.*, paper-based forms or notices). Thus, to accurately reconstruct a file, the Office must request that the applicant or patentee either provide a complete copy of his or her record of the correspondence between the Office and the applicant or patentee, or produce his or her record of the correspondence between the Office and the applicant or patentee for the Office to copy.

In a pending application, the request that applicant provide a copy of (or produce) his or her record of the correspondence between the Office and the applicant does not, under current practice, require a reply within any set time period. This adds to the delay in processing and examination resulting from the inability to locate the application. To expedite the process of reconstructing the file of an application or patent file, the Office is proposing to amend the rules of practice to provide that the Office will now set a time period within which applicant or patentee must either provide a complete copy of his or her record of the correspondence between the Office and the applicant or patentee, or produce his or her record of the correspondence between the Office and the applicant or patentee for the Office to copy. Since it is axiomatic that the Office cannot continue to examine an application that it does not have a complete copy of, the failure to timely provide a copy of (or produce) his or her record of the correspondence between the Office and the applicant in a pending application will result in abandonment of the application.

Corresponding with an applicant or patentee in an abandoned application or patent is often difficult because address information is often not kept up-to-date in abandoned applications and patents. There are many good reasons for keeping correspondence information up-to-date in an abandoned application or patent. Some examples follow: Patent applicants and patent owners should keep the correspondence address and any fee address for the patent up-to-date to ensure that correspondence is mailed to applicant's or patentee's current address. In an abandoned application, the Office may attempt to communicate with applicant regarding a petition for access. If the address has not been updated, then the Office may not be able to consider applicant's views in deciding whether to release the application to a member of the public. The Customer Number Practice described in section 403 of the Manual of Patent Examining Procedure (7th ed. 1998) (Rev. 1, Feb. 2000)(MPEP) provides a procedure where a patent applicant or owner can easily change the correspondence address for a number of patents or patent applications. In addition, the "Fee Address" Indication Form (PTO/SB/47) (reproduced at MPEP 2595) enables a patent owner to complete one form to designate a single fee address for any number of patents or applications in which the issue fee has been paid.

When changing the address(es) associated with a patent, the patent owner should bear in mind that the Office has a number of addresses related to the patent: (1) An application correspondence address; (2) the return address for the assignment documents; and (3) the fee address for maintenance fee purposes. *See* MPEP 2540. The correspondence address is generally the address to which the patent application prosecution was sent and is often not up-to-date within a few years of patent issuance. As a result, the regulations related to reexamination proceedings require that a patent owner be served with a copy of a Reexamination Request at the Office of Enrollment and Discipline address for the attorney or agent of record, if there is an attorney or agent of record. *See* MPEP 2220. If there is no attorney or agent of record, the copy is required to be served upon the patent owner. *See* § 1.33(c). In the procedure to obtain a copy of a patent file set forth in this notice, the request will be directed to the correspondence address.

The Office is planning for full electronic submission of applications and related documents by fiscal year 2003. Once the Office is able to transition to a total Electronic File Wrapper environment, the inability to locate a paper application file (and the consequent need for the Office to obtain a copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee) should no longer be a significant issue. However, this rule change is necessary to provide for the replacement of unlocatable application and patent files until the Office has completely transitioned to a total Electronic File Wrapper environment.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1 is proposed to be amended as follows:

Section 1.251 is proposed to be added to set forth a procedure for the reconstruction of the file of a patent application, patent, or other patent-related proceeding that cannot be located after a reasonable search.

Section 1.251(a) provides that in the event the Office cannot locate the file of an application, patent, or other patent-related proceeding after a reasonable search, the Office will notify the

applicant or patentee and set a time period within which the applicant or patentee must comply with § 1.251(b). The phrase "an application" applies to any type of application (national or international), and regardless of the status (pending or abandoned) of the application.

Section 1.251(b) provides that if an applicant or patentee has been given notice under § 1.251(a) that the Office cannot locate the file of a patent, application, or other patent-related proceeding after a reasonable search, applicant or patentee must do one of the following within the time period set in the notice: (1) Provide a copy of his or her record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, a list of such correspondence, and a statement that the copy is a complete and accurate copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding; or (2) produce his or her record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy, and provide a statement that the papers are a complete and accurate record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding. Any appendix or information disclosure statement submitted with an application is not contained in the Office's archival PACR database; therefore, the applicant or patentee must also provide a copy of any appendix or information disclosure statement submitted with the application.

Section 1.251(b) also provides for the situation in which an applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee. In such a situation, the applicant or patentee must provide: (1) A copy of his or her record (if any) of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding; (2) a list of such correspondence; and (3) a statement that applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding and that the copy is a complete and accurate copy of his or her record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

Thus, if the applicant or patentee possesses some (but not all) of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee is to reply by providing a copy of all the correspondence contained in applicant's or patentee's records. If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee is to reply with a statement to that effect.

Section 1.251(c) provides that with regard to a pending application, the failure to provide a timely reply to such a notice will result in abandonment of the application.

Classification

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

Executive Order 13132

This notice does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been submitted for approval by OMB under control number 0651–0031. The United States Patent and Trademark Office is resubmitting this information collection package to OMB for its review and approval because the changes in this notice affect the information collection requirements associated with that information collection package.

The title, description, and respondent description of this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice is to set forth the procedures for obtaining a copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for an application, patent, or other proceeding when necessary to reconstruct the file of such application, patent, or other proceeding.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08/21–27/31/42/43/61/62/63/64/67/68/91/92/96/97.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, business or other for-profit institutions, not-for-profit institutions and Federal Government.

Estimated Number of Respondents: 2,231,365.

Estimated Time Per Response: 0.46 hours.

Estimated Total Annual Burden Hours: 1,018,736 hours.

Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, D.C. 20503 (Attn: Desk Officer for the United States Patent and Trademark Office).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the

requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.251 is added immediately following § 1.248 to read as follows:

§ 1.251 Unlocatable file.

(a) In the event that the Office cannot locate the file of an application, patent, or other patent-related proceeding after a reasonable search, the Office will notify the applicant or patentee and set a time period within which the applicant or patentee must comply with one of paragraphs (b)(1), (b)(2), or (b)(3) of this section.

(b) If an applicant or patentee has been given notice under paragraph (a) of this section that the Office cannot locate the file of a patent, application, or other patent-related proceeding after a reasonable search, applicant or patentee must do one of the following within the time period set in the notice:

(1) Provide a copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, a list of such correspondence, and a statement that the copy is a complete and accurate copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding;

(2) Produce the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy, and provide a statement that the copy is a complete and accurate copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding; or

(3) If applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, provide a copy of the applicant's or patentee's record (if any) of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, a list of such correspondence, and a statement that applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding and that the copy provided is a complete and accurate copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

(c) With regard to a pending application, failure to timely comply with one of paragraphs (b)(1), (b)(2), or (b)(3) of this section will result in abandonment of the application.

Dated: June 30, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–17182 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–16–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–042–01–6990b; A–1–FRL–6727–8]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire, Rhode Island, and Vermont; Aerospace Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve negative declarations submitted by the States of New Hampshire, Rhode Island, and Vermont for aerospace coating operations. In the Final Rules section of this **Federal Register**, EPA is approving the State's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 9, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the States submittals are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England, One Congress Street, 11th floor, Boston, MA 02114–2023. Copies of New Hampshire's submittal are also available at Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095. Copies of Rhode Island's submittal are also available at Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767. Copies of Vermont's submittal are also available Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 12, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–16627 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 103–1b; FRL–6731–9]

Approval and Promulgation of Implementation Plans; Ohio, Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a maintenance plan and redesignation of Cuyahoga and Jefferson Counties, Ohio, to attainment for particulate matter, specifically for particles known as PM_{10}.

Ohio requested this action on May 22, 2000. In proposing this action, EPA proposes to conclude that these areas are meeting the standard and have plans for assuring continued attainment. Although for administrative convenience EPA is only proposing action on the Ohio portion of the Steubenville area, this action reflects a review of air quality for the entire area and Ohio's fulfillment of its portion of an area-wide attainment plan that it developed jointly with West Virginia. EPA anticipates receiving and rulemaking in the near future on a similar request from West Virginia for redesignation of its portion of the Steubenville area.

This action reflects parallel processing of Ohio's request. Ohio has proposed to request redesignation of the above two counties. Ohio held a hearing on its proposed request on June 12, 2000, and anticipates making a final request for redesignation shortly thereafter. Since Ohio's final redesignation request will likely be similar to its proposed request, EPA is proposing approval action on Ohio's request. If the final request differs significantly from the proposed request, EPA will repropose action on the request. Otherwise, EPA anticipates proceeding directly to final action.

DATES: Written comments on this proposed rule must arrive on or before August 9, 2000.

ADDRESSES: Send comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. Review of Redesignation Request
1. What criteria is EPA using?
2. Are the areas attaining the standards?
3. Has EPA fully approved the plans?
4. Is attainment due to permanent emission reductions?
5. Does the maintenance plan assure continued attainment?
6. Has the State met Section 110 and Part D?
II. Proposed Rulemaking Action
III. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility
F. Unfunded Mandates

I. Review of Redesignation Request

1. What Criteria Is EPA Using?

Ohio's letter of May 22, 2000, requests rulemaking on redesignation of Cuyahoga and Jefferson Counties from nonattainment to attainment for PM_{10}. The central criteria for redesignations from nonattainment to attainment are in section 107(d)(3)(E) of the Clean Air Act. EPA may not promulgate such a redesignation unless: (A) the area has attained the applicable NAAQS, (B) the area has a fully approved SIP under section 110(k) of the Act, (C) EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions, (D) EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act, and (E) the state has met all requirements applicable to the area under section 110 and part D of the Act.

EPA has issued a variety of relevant guidance. The most relevant guidance on redesignations is given in a September 4, 1992, memorandum issued by the Director of EPA's Office of Air Quality Planning and Standards. Guidance relevant to the evaluation of monitoring data is given in Appendix K of Title 40 Code of Federal Regulations Part 50 (40 CFR 50). Guidance relevant to maintenance plan review is included in the September 4, 1992, memorandum.

2. Are the Areas Attaining the Standards?

At issue in this rulemaking are designations promulgated on November 6, 1991, based on the PM_{10} standards as given in 40 CFR 50.6. EPA also set newer standards for PM_{10} as well as new standards for $PM_{2.5}$, promulgated on July 18, 1997, and codified at 40 CFR 50.7. EPA expected to promulgate designations for the newer PM_{10} standards and rescind the designations for the older PM_{10} standards, but the Circuit Court of Appeals for the District of Columbia has vacated the newer PM_{10} standards. While this court decision is under appeal, Ohio has requested that the still extant designations for Cuyahoga and Jefferson Counties for the older PM_{10} standards be changed from nonattainment to attainment.

The September 4, 1992 guidance recommends evaluating three years of representative monitoring data. Ohio monitors PM_{10} concentrations at numerous locations in Cuyahoga and Jefferson Counties, including locations expected to observe the highest concentrations in these counties. Detailed results of this monitoring are available in EPA's Air Information Retrieval System (AIRS) and on the internet at http://www.epa.gov/airsdata/monsum.htm. Ohio's submittal summarizes this air quality data and analyzes the expected likelihood of exceeding the air quality standards.

For Cuyahoga County, Ohio's submittal includes information from eight monitoring sites, six of which are located in the central part of Cleveland where emissions are highest and the highest concentrations are expected. Ohio provided data for the most recent three years, *i.e.*, 1997 to 1999. All sites recorded annual average concentrations below the annual average standard in all three years. Six of these eight sites also recorded no exceedances of the 24-hour standard. Two sites in central Cleveland recorded exceedances and must be analyzed with respect to expected exceedances.

The monitoring site in Cuyahoga that has been most likely to exceed air quality standards is site number 39–035–0013, at 2785 Broadway. During 1997 to 1999, this site recorded concentrations above the 24-hour average standard of 150 $\mu g/m^3$ on two days—once in 1998 and once in 1999. Therefore, Ohio analyzed expected exceedances for this site in accordance with Appendix K of 40 CFR 50. Appendix K provides procedures for estimating a probability number of exceedances expected for days without valid monitoring data. These procedures generally assume that the probability of an exceedance on days without valid monitoring data equals the probability of an exceedance among days with valid data for the same calendar quarter. For the 2785 Broadway site, for 1998, the monitor recorded 1 exceedance among the 86 days during the second quarter with valid data. Therefore, the 5 days during that quarter without valid data were estimated to have an additional ($5 \times {}^{1}/_{86}$) or .06 expected exceedances, for a total of 1.06 expected exceedances. For 1999, this monitor recorded 1 exceedance during the 85 days of the first quarter with valid data, so the remaining 5 days were estimated to have ($5 \times {}^{1}/_{85}$) or .06 expected exceedances, for a total of 1.06 expected exceedances. The three year average at

this site is therefore 0.7 expected exceedances. Since the 24-hour standard is met when the average number of expected exceedances of 150 μg/m³ is 1.0 or less, this indicates attainment of this standard.

The other monitoring site with a measured exceedance is site number 39–035–0060, at East 14th Street and Orange Avenue. This site has two operating instruments: a high volume sampler which collects samples once every six days, and a continuous instrument which operates every day. This site is 1 kilometer from the 2785 Broadway site.

One exceedance of 150 μg/m³ was recorded at the 14th and Orange site in 1997 to 1999, recorded by the high volume sampler in the first quarter of 1999. Appendix K and related guidance authorizes an exemption from the missing data adjustment if daily sampling is initiated at the site or daily sampling occurs at another site in the area that is a worst concentration site. The 2785 Broadway site makes daily readings and is a nearby worst concentration site, having concentrations similar to those at the 14th and Orange site but being somewhat more prone to observe exceedances. Indeed, on the day that the 14th and Orange site observed an exceedance, the 2785 Broadway site observed an exceedance as well. Therefore, a missing data adjustment need not be done for the 1999 exceedance at this site. Instead, EPA evaluates the 14th and Orange site as having 1.0 expected exceedance in 1999, zero expected exceedances for 1997 and 1998, and thus a three year average of 0.3 expected exceedances.

Further justification for exempting the 14th and Orange site from evaluation of expected exceedances for days lacking high volume sampler data is the availability of daily concentration measurements by another instrument at the same site. Data from this other instrument support EPA's belief that the likelihood of measured exceedances at this location is low and that the percentage of high volume samples found to exceed the standard (one day among 14 samples for the first quarter of 1999) overstates the actual likelihood of exceedances at this location.

The two instruments at this site use different methods, but both methods give valid indication of whether an exceedance of the standard has occurred. Conceptually, one could evaluate the data from the two instruments on a day-by-day basis to assess the number of days that are above or below the standard at this location and the number of days for which the air quality there is unknown. Of the 90 days in the first quarter of 1999, 74 days had only continuous sampler data, 13 days had both high volume sampler data and continuous sampler data, 1 day had only high volume sampler data, and 2 days had no data. For the 74 days with only continuous sampler data, all days were below the level of the standard; in fact, all days had concentrations below 80 μg/m³. Similarly, for the 13 days with both continuous sampler and high volume sampler data, both instruments showed concentrations that in all cases were below 60 μg/m³. The one day with only high volume sampler data showed a concentration above the standard (at 233 μg/m³). That is, the 88 days with data from either or both instruments included one day that exceeded the standard and 87 days in which one or both instruments indicated were below the standard. This suggests that the location had one day with a known exceedance and 2 days without data which could be estimated to have a 1 in 88 likelihood of exceeding the standard. When considered in combination with the two years with no measured exceedances, this further supports the view that the standard was attained at this location.

For the Steubenville area, the assessment must address air quality in the West Virginia as well as the Ohio portion of the area. Although this rulemaking only addresses the Ohio portion of the area, the first requirement is that the entire area meet the air quality standard. Therefore, the analysis of Steubenville area air quality addressed the one monitor in Follansbee, West Virginia, as well as the five monitoring locations in Jefferson County, Ohio. Monitors at all six locations have recorded no 24-hour average values above 150 μg/m³ and no annual average values above 50 μg/m³ since 1990. Although the record has a significant data gap in the third and fourth quarters of 1997, complete data for 1994 to 1996 as well as for 1998 and 1999 show attainment. The data that are available for 1997 also show no exceedances, so these data are consistent with the conclusion based on the other years' data that this area has been attaining the standard.

Beginning in 1998, Ohio has taken less frequent samples at some sites. EPA concurred with this change, concluding on the basis of prior data that the reduced sampling frequency would provide sufficient data to evaluate the area's attainment status. EPA believes the data are adequate to conclude that all portions of the Steubenville area are attaining both the 24-hour and the annual average standards.

In summary, Cuyahoga County has recorded no recent exceedances of the annual standard, no exceedances of the 24-hour standard at six of eight sites, and below the acceptable 1.0 expected exceedances of the 24-hour standard at the other two sites. The Steubenville area has recorded no recent exceedances of either PM_{10} air quality standard. Therefore, both areas are attaining both of the applicable PM_{10} air quality standards.

3. Has EPA Fully Approved the Plans?

EPA approved most of Ohio's particulate matter regulations on May 27, 1994, at 59 FR 27464. This rulemaking approved numerous statewide regulations as well as rules for Cuyahoga and Jefferson Counties. Nevertheless, EPA concluded that Ohio had not satisfied selected requirements. Ohio provided a supplemental submittal to EPA on November 3, 1995. On June 12, 1996, at 61 FR 29662, EPA concluded that Ohio had satisfied all requirements for both Cuyahoga and Jefferson Counties. Although EPA is not rulemaking on redesignation of the West Virginia portion of the Steubenville area, EPA approved the companion plan for West Virginia's portion of the area on November 15, 1996, at 61 FR 58481. Ohio's and West Virginia's plans were developed jointly and include the same attainment strategy. Thus, with respect to redesignation of the Ohio portion of the Steubenville area, EPA has approved Ohio's portion of a collectively accepted and approved plan for assuring attainment in this area.

4. Is Attainment Due to Permanent Emission Reductions?

Ohio's plan requires permanent emission reductions at a wide range of facilities. The emission reductions include installation of air pollution control equipment to capture and control particulate matter that was previously emitted. The reductions also include required efforts to reduce emissions from plant roadways and storage piles. These reductions have led to these counties now attaining the standards.

5. Does the Maintenance Plan Assure Continued Attainment?

Ohio's maintenance plans for Cuyahoga County and the Steubenville area consist mainly of the emission limits in the attainment plan noted above that EPA approved in 1996. That plan included an inventory of maximum allowable emissions from the most significant sources of particulate matter emissions in these areas, and demonstrated that the areas would

achieve and maintain attainment even if the sources operated at maximum capacity. The only remaining issue is whether background impacts from sources that lack such limits, such as diesel vehicles and home heating, will increase sufficiently to cause violations of the air quality standard.

Ohio provided census information indicating a declining population in Cuyahoga and Jefferson Counties. This indicates that the minor source types not regulated in Ohio's rules will likely have declining emissions. Ohio also notes the expected decline in diesel emissions as cleaner new vehicles required by EPA regulations come to replace dirtier older vehicles. These declines can be expected to continue throughout the 10 years that must be included in maintenance plans. Ohio also noted that coke oven emissions have declined and will remain below SIP levels due to EPA regulations requiring maximum achievable control technology. Therefore, EPA concludes that Ohio's maintenance plan provides adequate assurance that the particulate matter standards will continue to be attained in Cuyahoga County and the Steubenville area.

Maintenance plans must include contingency measures in case the areas have problems staying below the air quality standards. Ohio has contingency measures in conjunction with its attainment plan that EPA approved on May 6, 1996, at 61 FR 20142. These measures have air quality triggers that are independent of attainment status, so they are also valid contingency measures for maintenance purposes.

Maintenance plans further must include commitments to continued air quality monitoring and to submittal of a reassessment of maintenance in 8 years. Ohio's monitoring plan is part of its SIP and must continue to be implemented to continue to satisfy section 110 of the Clean Air Act. Ohio's maintenance plan is in most respects a permanent maintenance plan, but EPA expects Ohio to reassess its maintenance plan in 8 years if the relevant standard is still in effect at that time.

6. Has the State Met Section 110 and Part D?

The rulemaking on Ohio's particulate matter plan cited above, published on June 12, 1996, at 61 FR 29662, concludes that Ohio has met the requirements of Section 110 and Part D with respect to particulate matter planning in Cuyahoga and Jefferson Counties.

II. Proposed Rulemaking Action

Cuyahoga and Jefferson Counties in Ohio are currently designated nonattainment for the PM_{10} standards given at 40 CFR 50.6. EPA proposes to approve Ohio's maintenance plan for these areas.

Clean Air Act section 107(d)(3)(E) identifies five prerequisites for redesignation of areas from nonattainment to attainment. EPA proposes to conclude that these criteria are met with respect to PM_{10} in Cuyahoga and Jefferson Counties. Therefore, EPA proposes to redesignate these two counties to attainment for PM_{10}.

For the Steubenville area, EPA is today proposing action only on the Ohio portion of this area. This approach is for administrative convenience and in no way signifies any splitting of the area into separate air quality planning areas. EPA's action today reflects a review of the air quality for the full Steubenville area as well as Ohio's fulfillment of its portion of an attainment plan that Ohio and West Virginia jointly developed. This administrative approach is the same as the administrative approach used in rulemaking on the attainment plan, in which separate Ohio versus West Virginia rulemaking was based on fulfillment by each State of its share of a jointly developed area-wide plan. EPA has not yet received a redesignation request for the West Virginia portion of the Steubenville area. EPA anticipates receiving and rulemaking on such a request in the near future. In the future, if the standard is violated in either portion of the area, such that redesignation back to nonattainment is warranted, EPA will reinstate nonattainment status for the entire area.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The action being proposed will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve a change that the State requested in the attainment status of two areas, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The action being proposed will not have a significant impact on a substantial number of small entities because redesignations under section 107 of the Clean Air Act do not create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve a change in the attainment status of two areas, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2000.

Norman Niedergang,

Regional Administrator, Region 5.

[FR Doc. 00–17192 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Revise Critical Habitat for the Cape Sable Seaside Sparrow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to revise critical habitat for the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*), under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that the petition presents substantial information indicating that revising critical habitat for this species may be warranted.

DATES: The finding announced in this notice was made on June 21, 2000. Send your comments and materials to reach us on or before September 8, 2000. We may not consider comments received after the above date in making our decision for the 12-month finding.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-deliver comments to the Field Supervisor, U.S. Fish and Wildlife Service, 1360 U.S. Hwy 1, Suite 5, Vero Beach, Florida 32961. You may also comment via the Internet to heather_mcsharry@fws.gov. See Supplementary Information for comment procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Slack at 561/562–3909, extension 234.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D)(i) of the Act and our listing regulations (50 CFR 424.14 (c)(1)) require that we make a finding on whether a petition to revise critical habitat of a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. We are to base this finding on all information available to us at the time the finding is made. To the maximum extent practicable, we are to make this finding within 90 days of the date we received the petition, and we are to publish the finding promptly in the **Federal Register**. Our regulations (50 CFR 424.14 (c)(2)(i)) further require that, in making a finding on a petition to revise critical habitat, we consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved.

On October 22, 1999, we published Listing Priority Guidance for Fiscal Year 2000 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings, giving highest priority to processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is the processing of final determinations on proposed additions

to the lists of endangered and threatened wildlife and plants. Third priority (Priority 3) is the processing of new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. This 90-day petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

On August 26, 1999, the Biodiversity Legal Foundation submitted a petition to us to revise the critical habitat designation for the Cape Sable seaside sparrow. We received the petition on August 31, 1999. On September 29, 1999, we sent a letter to Mr. Sidney B. Maddock, Biodiversity Legal Foundation, acknowledging receipt of the petition.

The petition requested that critical habitat be revised for the Cape Sable seaside sparrow. The petitioner stated that the current designated critical habitat for the Cape Sable seaside sparrow is now inadequate and that part of the critical habitat has been destroyed by conversion to agricultural use. The petitioner asserted that substantial scientific evidence supports designation of marl prairie areas (short-to moderate-hydroperiod areas supporting sparse, clumped vegetation and producing marl soils) historically occupied by the western subpopulation of the sparrow as critical habitat and removal of privately owned agricultural areas from the critical habitat designation. This scientific information, gathered since the listing of the species, indicates that currently designated critical habitat encompassing the marl prairie areas historically occupied by the eastern subpopulations of the sparrow should also include the marl prairie areas historically occupied by the western subpopulation of the sparrow. As part of conservation of the sparrow, protection and management of the western subpopulation habitat area is essential to ensuring the continued existence of the species. The petitioner further asserted that the current designation of critical habitat does not include a detailed discussion of the constituent elements and special management considerations necessary for conservation of the species, as required by the Endangered Species Act, and that sufficient scientific evidence is now available to describe these constituent elements and any special management considerations and protection measures. The petitioner did not provide specific locations for areas to be included in or removed from the critical habitat, but referred to marl prairie areas historically occupied by the western subpopulation of the Cape Sable seaside sparrow and privately owned habitat areas that had been converted to agricultural use.

Since the listing of the Cape Sable seaside sparrow, we have been funding scientific studies and otherwise seeking and soliciting information regarding its status, life-history, and ecology. We also have participated in and funded conservation efforts including habitat protection and management. These efforts have expanded and refined our knowledge about critical habitat for the Cape Sable seaside sparrow. We have conducted numerous section 7 consultations concerning the effects of land and water management plans on the Cape Sable seaside sparrow. Research and monitoring required for these consultations has also contributed to our database regarding critical habitat.

In 1998 we issued a draft revised recovery plan for the sparrow as part of the draft Multi-Species Recovery Plan (MSRP) for South Florida. This document provides a detailed justification for the need to review and redesignate critical habitat. We state in the document that critical habitat, as designated, does not adequately account for the distribution of the present-day core subpopulations, or the areas necessary for the birds to maintain a stable population. An important area west of Shark River Slough, which until 1993 supported one of two critical subpopulations (nearly half of the entire population), is not included within the designation and has been undergoing detrimental changes in habitat structure as a result of water management practices. Additionally, other parts of the designated critical habitat have been converted to agriculture and are no longer occupied by sparrows. Thus, the extent of the critical habitat requires significant review and redesignation. We also state that when we redesignate critical habitat, the constituent elements must be defined. We included a specific task in the draft MSRP that called for a review and revision of the current critical habitat designation based on distribution surveys.

We have reviewed the petition, the information provided in the petition, other literature, and information available in our files. The petition includes much of the information already present in our files. Available information and data indicate that marl prairies along the western flank of Shark River Slough may be essential to the survival and recovery of the Cape Sable seaside sparrow. Therefore, based on the best scientific and commercial information available, we find the petition presents substantial information that revision of critical habitat for the Cape Sable seaside sparrow may be warranted.

We solicit information, including additional comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties, concerning revision of the critical habitat for the Cape Sable seaside sparrow.

After consideration of additional information, submitted during the indicated time period (see **DATES** section), we will prepare a 12-month finding, as required by section 4(b)(3)(D)(ii) of the Act and 50 CFR 424.14(c)(3).

Comment Procedures

Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include "Attention: [Cape Sable Seaside Sparrow]" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the address given in the **ADDRESSES** section or by telephone at 561/562–3909. Finally, you may hand-deliver or mail comments to the address given in the **ADDRESSES** section. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Author

The primary author of this document is Heather McSharry, South Florida Field Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 21, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–17260 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25 and 32

RIN 1018–AG01

2000–2001 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to add national wildlife refuges (refuges) to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities; and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2000–2001 season.

DATES: You should submit comments on or before August 9, 2000.

ADDRESSES: Submit written comments to Chief, Branch of Planning and Policy, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240. See **SUPPLEMENTARY INFORMATION** for information on electronic submission.

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 (NWRSAA) closes national wildlife refuges to all uses until we open them. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or fishing upon a determination that such uses are compatible with the purposes of the refuge. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound fish and wildlife management and administration, and otherwise must be in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System (System) for the benefit of present and future generations of Americans.

We review refuge hunting and fishing programs annually to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications, deletions, or additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to ensure the continued compatibility of hunting and fishing programs and that these programs will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.

You may find provisions governing hunting and fishing on national wildlife refuges in 50 CFR part 32. We regulate hunting and fishing on refuges to:

- Ensure compatibility with the purpose(s) of the refuge;
- Properly manage the fish and wildlife resource;
- Protect other refuge values; and
- Ensure refuge user safety.

On many refuges where we decide it is proper to open them for hunting and fishing, our general policy of adopting regulations identical to State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under the section entitled "Statutory Authority." We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to either migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or those species subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and fishing in 50 CFR part 32. In this rulemaking, we are promulgating many of the amendments to these sections to standardize and clarify the existing language of these regulations.

Some refuges make seasonal information available in brochures or leaflets to supplement these refuge-specific regulations, which we provide for in 50 CFR 25.31.

Plain Language Mandate

In this rule the vast majority of the revisions to the individual refuge units are to comply with a Presidential mandate to use plain language in regulations and do not modify the substance of the previous regulations. These types of changes include using "you" to refer to the reader and "we" to refer to the Service and using the word "allow" instead of "permit" when we do not require the use of a permit for an activity.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of national wildlife refuges.

The National Wildlife Refuge System Improvement Act (NWRSIA) of 1997 is the latest amendment to the NWRSAA. It amends and builds upon the NWRSAA in a manner that provides an improved "Organic Act" for the System similar to those that exist for other public lands. It serves to ensure that we effectively manage the System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The NWRSAA states first and foremost that we focus the mission of the System on conservation of fish, wildlife, and plant resources and their habitat. This Act requires the Secretary, before initiating or allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible and promotes public safety. The NWRSIA establishes as the policy of the United States that wildlife-dependent recreation, when it is compatible, is a legitimate and appropriate public use of the System, through which the American public can develop an appreciation for fish and wildlife. The NWRSIA establishes six compatible wildlife-dependent recreational uses as the priority general public uses of the System. Those priority uses are: hunting, fishing, wildlife observation, wildlife photography, environmental education, and environmental interpretation.

The RRA authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. This act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not

inconsistent with other previously authorized operations.

The NWRSAA and RRA also authorize the Secretary to issue regulations to carry out the purposes of the acts and regulate uses.

We develop hunting and sport fishing plans for each refuge prior to opening it to hunting or fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purposes for which we established the refuge. We have ensured initial compliance with the NWRSAA and the RRA for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at the time of acquisition. This policy ensures that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. We ensure continued compliance by the development of Comprehensive Conservation Plans, long-term hunting and sport fishing plans, and by annual review of hunting and sport fishing programs and regulations.

In preparation for new openings, we include the following documents in the refuges' "opening package": an interim hunting and fishing management plan; a Section 7 determination pursuant to the Endangered Species Act that these openings will have no effect, or are not likely to have an adverse effect, on listed species or critical habitats; a letter of concurrence from the affected State(s); interim compatibility determinations; and refuge-specific regulations to administer the hunting and/or fishing programs. Upon review of these documents, we have determined that the opening of these national wildlife refuges to hunting and fishing is compatible with the principles of sound fish and wildlife management and administration and otherwise will be in the public interest.

We propose to allow the following wildlife-dependent recreational activities for the first time:

Hunting of migratory game birds on:

- Grand Bay National Wildlife Refuge, Alabama
- Mandalay National Wildlife Refuge, Louisiana
- Lake Umbagog National Wildlife Refuge, Maine and New Hampshire
- McNary National Wildlife Refuge, Oregon
- Balcones Canyonland National Wildlife Refuge, Texas
- Lower Rio Grande Valley National Wildlife Refuge, Texas
- Arid Lands National Wildlife Refuge Complex, Washington

Upland game hunting on:

- Grand Bay National Wildlife Refuge, Alabama
- Cameron Prairie National Wildlife Refuge, Louisiana
- Lake Umbagog National Wildlife Refuge, Maine and New Hampshire
- McNary National Wildlife Refuge, Oregon
- Arid Lands National Wildlife Refuge Complex, Washington

Big game hunting on:

- Grand Bay National Wildlife Refuge, Alabama
- Mandalay National Wildlife Refuge, Louisiana
- Lake Umbagog National Wildlife Refuge, Maine and New Hampshire
- San Andres National Wildlife Refuge, New Mexico
- McNary National Wildlife Refuge, Oregon and Washington
- Lower Rio Grande Valley National Wildlife Refuge, Texas
- Mackay Island National Wildlife Refuge, Virginia
- Arid Lands National Wildlife Refuge Complex, Washington

Sport fishing on:

- Atchafalaya National Wildlife Refuge, Louisiana
- Bayou Cocodrie National Wildlife Refuge, Louisiana
- Rachel Carson National Wildlife Refuge, Maine
- Sand Lake National Wildlife Refuge, South Dakota
- Trinity River National Wildlife Refuge, Texas
- Mackay Island National Wildlife Refuge, Virginia
- Arid Lands National Wildlife Refuge Complex, Washington

In accordance with NWRSAA and the RRA, we have determined that these openings are compatible and consistent with the primary purposes for which we established the respective refuges.

We propose to remove Ankeny National Wildlife Refuge, Oregon, which had been open for migratory game bird hunting, from the list of refuges open for wildlife-dependent recreational activities.

We are correcting an administrative error that occurred when we inadvertently dropped "Sport Fishing" as an activity open to the public in Sand Lake National Wildlife Refuge in the State of South Dakota from 50 CFR 32.61. Sand Lake National Wildlife Refuge has been open to "Sport Fishing" since December 22, 1978.

We are making a technical correction to update 50 CFR 25.23 to reflect current information collection clearance numbers that the Office of Management and Budget (OMB) approved for: "Special Use Permit Application on National Wildlife Refuges Outside Alaska" (1018–0102 which expires December 31, 2001), and "Special Use Permit Applications on National Wildlife Refuges In Alaska" (1018–0014, which expires August 31, 2000, and is currently at OMB for renewal).

Request for Comments

You may comment on this proposed rule by any one of several methods:

1. You may mail comments to: Chief, Branch of Planning and Policy, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

2. You may comment via the Internet to: Refuge_Specific_Comments@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: "Attn: 1018–AG01" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–1744.

3. You may fax comments to: Chief, Branch of Planning and Policy, Division of Refuges, (703) 358–2248.

4. Finally, you may hand-deliver comments to the address mentioned above.

We seek comments on this proposed rule and will accept comments by any of the methods described above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We considered providing a 60-day rather than a 30-day comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and

fishing regulations would hinder the effective planning and administration of our hunting and fishing programs. That delay would jeopardize establishment of hunting and fishing programs this year, or shorten their duration. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time provide for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

When finalized, we will incorporate this regulation into Title 50 Code of Federal Regulations (50 CFR) parts 25 and 32. Part 25 contains the administrative provisions for the National Wildlife Refuge System. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on national wildlife refuges.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Regulatory Planning and Review

This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866. See explanation under Regulatory Flexibility Act.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative, legal, technical, and procedural in nature and makes minor modification to existing refuge public use programs. The rule will allow hunting on 10 refuges where we had prohibited hunting and allow fishing on 7 refuges where we had prohibited that activity. We estimate that these changes will result in 9,440 additional visitor-hunting-days and 49,200 visitor-fishing-days. The appropriate measure for the net benefits of these changes is the additional net economic value experienced by the participants. The 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation measured net economic values by activity and region. Applying these estimates to the number of additional activity-days permitted by this rule yields an estimate of the national benefits from increased hunting of $368,000 and from increased fishing of $1.6 million (both in 1999 dollars). These estimates are below the threshold for a significant rule.

b. This rule will not create inconsistencies with other agencies' actions. Before proposing regulations, we coordinate recreational use on national wildlife refuges with State governments as well as other Federal agencies having adjoining or overlapping jurisdiction. The regulation is consistent with, and not less restrictive than, other agencies' rules.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The provisions of this rule only apply to persons involved in wildlife-dependent public use, including regulated hunting and sport fishing, on national wildlife refuges, which is a privilege and not a right. User fees will not change as a result of this rule.

d. This rule will not raise novel legal or policy issues. This rule continues the practice of requiring public use of refuges to be compatible with the primary purpose of the refuge.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities such as businesses, organizations, and governmental jurisdictions in the area as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis is not attached, and a Small Entity Compliance Guide is not required.

This rulemaking will not have a significant economic impact on a substantial number of small entities (refer to paragraph a. above for the net economic values). Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats. They facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including hunting, fishing, wildlife observation, wildlife photography, environmental education, and environmental interpretation as priority public uses on national wildlife refuges and to better appreciate the value of, and need for, fish and wildlife conservation.

This rule is administrative, legal, technical, and procedural in nature and provides for minor changes to the methods of hunting and fishing permitted but does not stop the overall use allowed. This rule will not significantly change the number of visitors using refuges or their spending and, therefore, will have no significant impact on the local economies in their vicinity.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Regulatory Planning and Review section above. This rule:

a. Does not have an annual effect on the economy of $100 million or more [This regulation will affect only visitors at national wildlife refuges. It will cause a slight change in the number of visitors using the refuge (9,440 additional visitor-hunting days and 49,200 visitor-fishing days).];

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and limit what they can do while they are on a refuge.

Federalism (Executive Order 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. In preparing this proposed rule, we worked with State governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act. See 50 CFR 25.23 for information concerning that approval.

Section 7 Consultation

In preparation for new openings, we include Section 7 consultation documents approved by the Services' Ecological Services program in the refuge's "openings package" for Regional review and approval from the Washington Office. We reviewed the changes in hunting and fishing regulations herein with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). For the national wildlife refuges proposed to open for hunting and/or fishing the Service has determined that Bayou Cocodrie, Lake Umbagog, Grand Bay, Lower Rio Grande, and McNary will not likely adversely affect and Rachel Carson, Atchafalaya, San Andres, and Mandalay will not affect the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species within the System.

Arid Lands is opening with no Section 7 under an existing record of decision with the Department of Energy, who has primary jurisdiction.

We comply with Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) when developing Comprehensive Conservation Plans, management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations required by the Endangered Species Act on a case-by-case basis before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation covers this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge Comprehensive Conservation Plans and/or step-down management plans, pursuant to our refuge planning guidance in 602 FW 1–3. We prepare these plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the Regional offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5401.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145.

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author

Leslie A. Marler, Management Analyst, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub. L. 102–402, 106 Stat. 1961.

2. By revising § 25.23 to read as follows:

§ 25.23 What are the general regulations and information collection requirements?

The Office of Management and Budget has approved the information collection requirements contained in subchapter C, parts 25, 32, and 36 under 44 U.S.C. 3501 *et seq.* and assigned the following clearance numbers: Special Use Permit Applications on National Wildlife Refuges in Alaska (SUP–AK), clearance number 1018–0014; Special Use Permit Applications on National Wildlife Refuges Outside Alaska (SUP), clearance number 1018–0102. See § 36.3 of this subchapter for further information on Special Use Permit Applications on National Wildlife Refuges in Alaska. We are collecting the information to assist us in administering these programs in accordance with statutory authorities that require that recreational uses be compatible with the primary purposes for which the areas were established. We require the information requested in the application form for the applicant to obtain a benefit. We estimate the public reporting burden for the SUP application form to be 30 minutes per response. This includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, Washington, DC 20240 (1018–0014 or 1018–0102).

PART 32—[AMENDED]

3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

§ 32.7 [Amended]

4. In § 32.7 by:

a. Alphabetically adding "Grand Bay National Wildlife Refuge" in the State of Alabama;

b. Revising the listing of "Walnut Creek National Wildlife Refuge" under the State of Iowa to read "Neal Smith National Wildlife Refuge;"

c. Alphabetically adding "Lake Umbagog National Wildlife Refuge" in the State of Maine;

d. Alphabetically adding "Lake Umbagog National Wildlife Refuge" in the State of New Hampshire;

e. Alphabetically adding "San Andres National Wildlife Refuge" in the State of New Mexico;

f. Removing "Ankeny National Wildlife Refuge" in the State of Oregon;

g. Revising the listing of "Klamath Forest National Wildlife Refuge" to read "Klamath Marsh National Wildlife Refuge" in the State of Oregon.

h. Alphabetically adding "McNary National Wildlife Refuge" in the State of Oregon;

i. Alphabetically adding "Lower Rio Grande Valley National Wildlife Refuge" in the State of Texas;

j. Alphabetically adding "Trinity River National Wildlife Refuge" in the State of Texas;

k. Alphabetically adding "Mackay Island National Wildlife Refuge" in the State of Virginia; and

l. Alphabetically adding "Arid Lands National Wildlife Refuge Complex" in the State of Washington.

5. In § 32.20 Alabama by alphabetically adding Grand Bay National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Grand Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting of squirrel and rabbits on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. [Reserved]

* * * * *

6. In § 32.23 Arkansas by revising paragraphs B. and D.1. of Wapanocca National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Wapanocca National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, beaver, nutria, raccoon, and opossum on designated areas of the refuge subject to the following condition: We require permits.

* * * * *

D. Sport Fishing. * * *

1. We allow fishing from March 15 through October 31 from sunrise to sunset.

* * * * *

7. In § 32.24 California by:

a. Adding paragraphs A.5., A.6., B.6., and B.7. of Colusa National Wildlife Refuge;

b. Adding paragraphs A.8., A.9, B.6, and B.7. of Delevan National Wildlife Refuge;

c. Revising paragraph A.2., and adding paragraphs A.2.a., A.2.b. of Lower Klamath National Wildlife Refuge;

d. Adding paragraphs A.8., A.9., B.6., and B.7. of Sacramento National Wildlife Refuge;

e. Adding paragraphs A.5., A.6., B.5., and B.6. of Sutter National Wildlife Refuge; and

f. Revising paragraph A.2., adding paragraphs A.2.a. and A.2.b. of Tule Lake National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

* * * * *

5. You may enter or exit only at designated locations.

6. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

B. Upland Game Hunting. * * *

* * * * *

6. You may enter or exit only at designated locations.

7. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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8. You may enter or exit only at designated locations.

9. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment, or stopping between designated parking areas.

B. Upland Game Hunting. * * *

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6. You may enter or exit only at designated locations.

7. Vehicles may stop only at designated parking areas. We prohibit

the dropping of passengers or equipment, or stopping between designated parking areas.

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Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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2. Shooting hours end at 1:00 p.m. on all California portions of the refuge with the following exceptions:

a. The refuge manager may designate up to 6 afternoon special youth or disabled hunter waterfowl hunts per season; and

b. The refuge manager may designate up to 3 days per week of afternoon waterfowl hunting for the general public after December 1.

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Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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8. You may enter or exit only at designated locations.

9. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

B. Upland Game Hunting. * * *

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6. You may enter or exit only at designated locations.

7. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

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Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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5. You may enter or exit only at designated locations.

6. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

B. Upland Game Hunting. * * *

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5. You may enter or exit only at designated locations.

6. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

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Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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2. Shooting hours end at 1:00 p.m. on all California portions of the refuge with the following exceptions:

a. The refuge manager may designate up to 6 afternoon special youth or disabled hunter waterfowl hunts per season; and

b. The refuge manager may designate up to 3 days per week of afternoon waterfowl hunting for the general public after December 1.

* * * * *

8. In § 32.27 Delaware by revising paragraphs A.5., A.7., B.3., the introductory text of paragraph C., paragraphs C.1., C.3., and C.4. and removing paragraphs A.8. and B.4 of Bombay Hook National Wildlife Refuge to read as follows:

§ 32.27 Delaware.

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Bombay Hook National Wildlife Refuge

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A. Hunting of Migratory Game Birds.

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5. The maximum number of hunters permitted per blind is as follows: West Waterfowl Area—4; South Waterfowl Area—3; Young Waterfowlers Area—2.

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7. Waterfowl hunters may not possess more than 15 shotgun shells per day on the West and Young Waterfowlers Hunt Areas.

B. Upland Game Hunting. * * *

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3. You may possess only approved nontoxic shot while in the field.

C. Big Game Hunting. We allow hunting of turkey and deer on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit except on the South Upland Hunting Area.

* * * * *

3. We require a valid State permit for turkey hunting.

4. During firearms deer season, hunters must wear in a conspicuous manner as an outer layer on the head, chest, and back a minimum of 400 square inches (2,600 cm2) of solid-colored orange clothing or material.

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9. In § 32.28 Florida by:

a. Revising paragraph D. of Chassahowitzka National Wildlife Refuge; and

b. Revising paragraphs A.1., A.5., and A.7. of Merritt Island National Wildlife Refuge to read as follows:

§ 32.28 Florida.

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Chassahowitzka National Wildlife Refuge

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D. Sport Fishing. We allow fishing on the refuge year round subject to the following condition: You must fish in accordance with State regulations.

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Merritt Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. You must possess a valid refuge hunting permit at all times while hunting on the refuge. In addition, we annually require a quota permit for hunt areas 1 and 4 from the beginning of the regular waterfowl season through December 31.

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5. You must complete and carry proof of completing an approved hunter safety training course in all hunt areas.

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7. The public may not enter the refuge between sunset and sunrise except: You may access the refuge for waterfowl hunting only after 4:00 a.m. each hunting day during waterfowl hunting season, and a valid refuge hunting permit must be in your possession.

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10. In § 32.31 Idaho by:

a. Revising paragraph B. of Bear Lake National Wildlife Refuge;

b. Revising paragraph B. of Camas National Wildlife Refuge;

c. Revising paragraph B. of Kootenai National Wildlife Refuge; and

d. Revising paragraph B.2. of Minidoka National Wildlife Refuge to read as follows:

§ 32.31 Idaho.

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Bear Lake National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of partridge, grouse, and cottontail rabbits, including pygmy rabbits, on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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Camas National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of pheasant and grouse on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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Kootenai National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of forest grouse on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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Minidoka National Wildlife Refuge

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B. Upland Game Hunting. * * *

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2. You may possess only approved nontoxic shot while in the field.

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11. In § 32.32 Illinois by:

a. Revising paragraph D. of Chautauqua National Wildlife Refuge;

b. Revising paragraph A.4.and adding paragraph A.5. of Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

§ 32.32 Illinois.

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Chautauqua National Wildlife Refuge

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D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing on Lake Chautauqua from January 15 through October 15. You may not fish in the Waterfowl Hunting Area during waterfowl hunting season.

2. You may not leave private boats in refuge waters overnight.

3. We restrict motorboats to "slow speed/minimum wake."

4. The public may not enter Weis Lake on the Cameron-Billsbach Unit of Chautauqua National Wildlife Refuge from October 16 through January 14, to provide sanctuary for migratory birds.

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Upper Mississippi River National Wildlife and Fish Refuge

A. Hunting of Migratory Game Birds. * * *

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4. On Pools 4 through 11, you may not place or leave decoys on the refuge during the time from ½ hour after the close of legal shooting hours, until 1 hour before the start of legal shooting hours.

5. This condition applies to Pools 4 through 11 only. We prohibit construction of permanent hunting blinds using manmade materials. You must remove all manmade blind materials from the refuge at the end of each day's hunt. Any blinds containing manmade materials left on the refuge are subject to immediate removal and disposal. Manmade materials include, but are not limited to: wooden pallets, lumber, railroad ties, fence posts (wooden or metal), wire, nails, staples, netting, or tarps. We allow you to leave only seasonal blinds, made entirely of natural vegetation and biodegradable twines, on the refuge. We consider all such blinds public property and open to use by any person on a first-come basis. We allow you to gather only willow, grasses, marsh vegetation, and dead wood on the ground from the refuge for blind-building materials. We prohibit cutting or removing any other refuge trees or vegetation.

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12. In § 32.33 Indiana by revising paragraph D.1. of Muscatatuck National Wildlife Refuge to read as follows:

§ 32.33 Indiana.

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Muscatatuck National Wildlife Refuge

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D. Sport Fishing. * * *

1. You may fish from the bank and from nonmotorized boats on Stanfield Lake from May 15 through October 15. You may not boat at other times. Stanfield Lake is open to ice fishing when ice conditions permit.

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13. In § 32.34 Iowa by revising the heading of Walnut Creek National Wildlife Refuge to read as follows and placing the listing in alphabetical order:

§ 32.34 Iowa.

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Neal Smith National Wildlife Refuge

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14. In § 32.37 Louisiana by:

a. Revising Atchafalaya National Wildlife Refuge;

b. Revising paragraphs B., C., and D. of Bayou Cocodrie National Wildlife Refuge;

c. Revising Cameron Prairie National Wildlife Refuge;

d. Removing paragraphs D.3. and D.4. of Grand Cote National Wildlife Refuge;

e. Revising the introductory text of paragraph A. of Lacassine National Wildlife Refuge;

f. Revising the introductory text of paragraph C. of Lake Ophelia National Wildlife Refuge; and

g. Revising paragraphs A., C., and D. of Mandalay National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

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Atchafalaya National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, snipe, and woodcock on designated areas of the refuge subject to the following conditions:

1. Hunting must be in accordance with Sherburne Wildlife Management Area regulations.

2. For the Indian Bayou Area, we require an Army Corps of Engineer permit.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, raccoon, opossum, nutria, muskrat, mink, fox, bobcat, beaver, and otter on designated areas of the refuge subject to the following conditions:

1. Hunting must be in accordance with Sherburne Wildlife Management Area regulations.

2. For the Indian Bayou Area, we require an Army Corps of Engineer permit.

C. Big Game Hunting. We allow hunting of deer and turkey on designated areas of the refuge subject to the following conditions:

1. Hunting must be in accordance with Sherburne Wildlife Management Area regulations.

2. For the Indian Bayou Area, we require an Army Corps of Engineer permit.

D. Sport Fishing. We allow finfishing and shellfishing year round in accordance with Sherburne Wildlife Management Area regulations:

1. We require refuge permits for commercial shellfishing.

2. For the Indian Bayou Area, we require an Army Corps of Engineer permit for commercial shellfishing.

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Bayou Cocodrie National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of squirrels, rabbit, raccoon, and coyote on designated areas of the refuge subject to the following condition: We require refuge permits.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. Each boat/vehicle entering the refuge must possess an entrance pass.

2. We allow fishing during daylight hours only.

3. We allow fishing on the Cross Bayou Cut and all tributaries that fill with water from Cocodrie Bayou during high water stages.

4. We prohibit camping.
5. We allow only cotton limb lines.
6. You may not use trotlines, slat traps, or nets while fishing.

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Cameron Prairie National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds in designated areas of the refuge subject to the following conditions:

1. We require refuge permits.
2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the appropriate refuge brochure.

B. Upland Game Hunting. We allow upland game hunting in designated areas of the refuge subject to the following conditions:

1. We require refuge permits.
2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the appropriate refuge brochure.

C. Big Game Hunting. We allow hunting of white-tailed deer in designated areas of the refuge subject to the following conditions:

1. We require refuge permits.
2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the appropriate refuge brochure.

D. Sport Fishing. We allow sport fishing in designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for fishing must abide by all terms and conditions in the appropriate refuge brochure.

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Lacassine National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, duck, gallinules, and coots on designated areas of the refuge subject to the following conditions:

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Lake Ophelia National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

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Mandalay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds in designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for fishing must abide by all terms and conditions in the refuge fishing brochure.

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15. In § 32.38 Maine by:

a. Alphabetically adding Lake Umbagog National Wildlife Refuge;

b. Revising paragraph D. of Rachel Carson National Wildlife Refuge; and

c. Revising paragraph D. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

§ 32.38 Maine.

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Lake Umbagog National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, common snipe, sora, Virginia rail, common moorhen, and woodcock on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.
2. Designated permanent blinds will be available by reservation. We allow no other permanent blinds. You must remove temporary blinds, boats, and decoys from the refuge following each day's hunt.
3. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material, except when hunting ducks or geese.
4. We allow pre-hunt scouting, however, we will not allow dogs during pre-hunt scouts.
5. We prohibit dog training.
6. You must unload all firearms outside of legal State hunting hours.
7. We prohibit the use of all-terrain vehicles (ATV's).
8. The Refuge will be open to hunting during the hours stipulated under Maine hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

B. Upland Game Hunting. We allow hunting of coyote, fox, raccoon, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, American crow, showshoe hare, ring-necked pheasant, ruffed grouse, and northern bobwhite in designated areas subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.
2. You may only use pursuit or trailing dogs to hunt coyote or snowshoe hare.
3. We allow hunting of snowshoe hare with dogs from November 20 to January 1.
4. We allow hunting of coyote with dogs from October 20 to November 9.
5. We allow a maximum of four dogs per hunter.
6. Dogs may only be on the refuge when the hunter is present.
7. You must equip dogs used to hunt coyote with operational radiotelemetry collars. You must be in possession of a working radiotelemetry receiver that can detect and track the frequency(ies) emitted by each radio collar used.
8. We do not allow hunting for coyote and raccoon from ½ hour after sunset to ½ hour before sunrise.
9. We allow pre-hunt scouting, however, we do not allow dogs during pre-hunt scouts.
10. We prohibit dog training.
11. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material.
12. You must unload all firearms outside of legal State hunting hours.
13. We prohibit the use of all-terrain vehicles (ATV's).
14. The refuge will be open to hunting during the hours stipulated under Maine hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

C. Big Game Hunting. We allow hunting of white-tailed deer, moose, black bear, and wild turkey on designated areas of the refuge subject to the following conditions:

1. We allow bear hunting with dogs from October 20 to October 29.
2. You must equip dogs used to hunt bear with operational radiotelemetry collars. You must be in possession of a working radiotelemetry receiver that can detect and track the frequency(ies) emitted by each radio collar used.
3. We allow a maximum of four dogs per hunter.
4. Dogs may only be on the refuge when the hunter is present.
5. You must take the first bear you tree, except in the case of cubs or a sow with cubs.
6. You must report where you took the bear to the State of Maine.

7. We allow pre-hunt scouting, however, we will not allow dogs during pre-hunt scouts.

8. We prohibit dog training.

9. You may use only portable tree stands, and you must remove them from the refuge each day.

10. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material, except when hunting turkey.

11. You must unload all firearms outside of legal State hunting hours.

12. We prohibit the use of all-terrain vehicles (ATV's).

13. The refuge will be open to hunting during the hours stipulated under Maine hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

D. Sport Fishing. [Reserved]

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Rachel Carson National Wildlife Refuge

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D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following condition: We allow fishing from sunrise to sunset.

Sunkhaze Meadows National Wildlife Refuge

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D. Sport Fishing. You may fish on the waters of and from the banks of Baker Brook, Birch Stream, Buzzy Brook, Johnson Brook, Little Birch Stream, Little Buzzy Brook, Sandy Stream, and Sunkhaze Stream.

16. In § 32.40 Massachusetts by:

a. Revising paragraph D. of Monomoy National Wildlife Refuge;

b. Adding paragraph D.3. to Nantucket National Wildlife Refuge; and

c. Revising the introductory text of paragraph B and revising paragraph B.3. and adding paragraph B.4. to Oxbow National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

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Monomoy National Wildlife Refuge

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D. Sport Fishing. We allow fishing in designated areas of the refuge subject to the following condition: In addition to daytime fishing, we allow fishing after sunset in accordance with State regulations.

Nantucket National Wildlife Refuge

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D. Sport Fishing. * * *

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3. In addition to daytime fishing, we allow fishing after sunset in accordance with State regulations.

Oxbow National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of upland game birds, turkey, and small game on designated areas of the refuge subject to the following conditions:

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3. You may possess only approved nontoxic shot while in the field, except while hunting turkey.

4. Hunters will comply with all State hunting regulations.

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17. In § 32.42 Minnesota by adding introductory text to paragraph A, revising the introductory text of paragraph B. and adding paragraphs B.2., B.3., and C.3. to Big Stone National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

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Big Stone National Wildlife Refuge

A. Hunting of Migratory Game Birds. You may not hunt any migratory game birds on the refuge. You may retrieve waterfowl taken outside the refuge boundary up to 100 yards (90 m) inside the refuge.

B. Upland Game Hunting. You may hunt partridge, pheasant, wild turkey, gray and fox squirrel, cottontail and jack rabbit, red and gray fox, raccoon, and striped skunk on designated areas of the refuge subject to the following conditions:

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2. You may hunt fox, raccoon, and striped skunk only during open seasons for other small game species. You may not use dogs while raccoon hunting.

3. You may hunt only turkey if you have a valid State turkey hunting permit in your possession.

C. Big Game Hunting. * * *

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3. You may hunt only deer if you have a valid State permit in your possession.

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18. In § 32.44 Missouri by revising paragraphs A., B., and C. of Big Muddy National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

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Big Muddy National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to posted regulations and the following conditions:

1. Shotgun hunters may use only approved nontoxic shot while in the field.

2. You must remove all boats, decoys, and blinds from the refuge following each day's hunt except for blinds made entirely of marsh vegetation. You may not cut woody vegetation on the refuge for blinds.

B. Upland Game Hunting. We allow hunting of upland game animals on designated areas of the refuge subject to posted regulations and the following conditions:

1. You may use only approved nontoxic shot while hunting for upland game, except wild turkeys. You may use lead shot while hunting for wild turkey.

C. Big Game Hunting. We allow big game hunting on designated areas of the refuge subject to posted regulations and the following conditions:

1. You may not use tree spikes to help you climb trees or hunt on the refuge.

2. You must remove tree stands from the refuge within 24 hours of the close of the deer hunting season.

3. You may not hunt over or place on the refuge any salt or other mineral blocks.

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19. In § 32.47 Nevada by:

a. Revising paragraphs A. and B. of Ash Meadows National Wildlife Refuge;

b. Revising paragraphs A., B., and D.1. of Pahranagat National Wildlife Refuge; and

c. Adding paragraph A.3. and revising the introductory text of paragraph D. and paragraph D.2. of Ruby Lake National Wildlife Refuge.

§ 32.47 Nevada.

Ash Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, snipe, and doves in accordance with State and refuge-specific regulations on designated areas of the refuge subject to the following conditions:

1. We allow hunting only on designated days.

2. We allow only nonmotorized boats or boats with electric motors on the refuge hunting area during the migratory waterfowl hunting season.

B. Upland Game Hunting. We allow hunting of quail and rabbit in accordance with State and refuge-specific regulations on designated areas of the refuge subject to the following conditions:

1. We allow hunting of quail and rabbit only on designated days during the regular State season for quail.

2. We prohibit the discharging of rifles or handguns.

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Pahranagat National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, snipe, and doves in accordance with State and refuge-specific regulations on designated areas of the refuge subject to the following conditions:

1. We allow hunting only on designated days.

2. We allow only nonmotorized boats or boats with electric motors on the refuge hunting area during the migratory waterfowl hunting season.

B. Upland Game Hunting. We allow hunting of quail and rabbit in accordance with State and refuge-specific regulations on designated areas of the refuge subject to the following condition: We allow hunting of quail and rabbit only on designated days during the regular State season for quail.

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D. Sport Fishing. * * *

1. We allow fishing year round with exception of North Marsh, which we close October 1 to February 1.

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Ruby Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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3. The refuge is open to the public from 1 hour before sunrise to 2 hours after sunset.

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D. Sport Fishing. We allow fishing on designated areas of the refuge subject to Federal and State laws and the following conditions:

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2. We allow fishing on dikes in the areas north of the Brown Dike and east of the Collection Ditch with the exception that you may fish by wading and from personal flotation devices (float tubes) in designated areas.

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20. In § 32.48 New Hampshire by adding Lake Umbagog National Wildlife Refuge to read as follows:

§ 32.48 New Hampshire.

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Lake Umbagog National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, common snipe, and woodcock on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. Designated permanent blinds will be available by reservation. We will allow no other permanent blinds. You must remove temporary blinds, boats, and decoys from the refuge following each day's hunt.

3. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material, except when hunting ducks or geese.

4. You must unload all firearms outside of legal State hunting hours.

5. We prohibit use of all-terrain vehicles (ATV's).

6. We allow pre-hunt scouting, however, we do not permit dogs during pre-hunt scouts.

7. We prohibit dog training.

8. The refuge will be open to hunting during the hours stipulated under New Hampshire hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

B. Upland Game Hunting. We allow hunting of coyote, fisher, fox, raccoon, woodchuck, red squirrel, porcupine, skunk, weasel, American crow, mink, muskrat, snowshoe hare, ring-necked pheasant, ruffed grouse, and northern bobwhite in designated areas subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. You may only use pursuit or trailing dogs to hunt coyote or snowshoe hare.

3. We allow hunting of snowshoe hare from November 20 to January 1.

4. We allow hunting of coyote with dogs from October 20 to November 9.

5. We allow a maximum of four dogs per hunter.

6. Dogs may only be on the refuge when the hunter is present.

7. You must equip dogs used to hunt coyote with operational radiotelemetry collars. You must be in possession of a working radiotelemetry receiver that can detect and track the frequency(ies) emitted by each radio collar used.

8. We do not allow hunting for coyote and raccoon from ½ hour after sunset to ½ hour before sunrise.

9. We allow pre-hunt scouting, however, we will not allow dogs during pre-hunt scouts.

10. We prohibit dog training.

11. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material.

12. You must unload all firearms outside of legal State hunting hours.

13. We prohibit the use of all-terrain vehicles (ATV's).

14. The refuge will be open to hunting during the hours stipulated under New Hampshire hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

C. Big Game Hunting. We allow hunting of white-tailed deer, moose, and black bear on designated areas of the refuge subject to the following conditions:

1. We allow hunting of bear with dogs from October 20 to November 9.

2. You must equip dogs used to hunt bear with operational radiotelemetry collars. You must be in possession of a working radiotelemetry receiver that can detect and track the frequency(ies) emitted by each radio collar used.

3. We allow a maximum of four dogs per hunter.

4. Dogs may only be on the refuge when the hunter is present.

5. You must take the first bear you tree, except in the case of cubs or a sow with cubs.

6. You must report where you took the bear to the State of New Hampshire.

7. We allow pre-hunt scouting, however, we do not allow dogs during pre-hunt scouts.

8. We prohibit dog training.

9. You may use only portable tree stands, and you must remove them from the refuge each day.

10. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material.

11. You must unload all firearms outside of legal State hunting hours.

12. We prohibit the use of all-terrain vehicles (ATV's).

13. The refuge will be open to hunting during the hours stipulated under New Hampshire hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

D. Sport Fishing. [Reserved]

21. In § 32.49 New Jersey by revising paragraphs A., C.1., and D.1., revising the introductory text of paragraphs C. and D., and adding paragraph D.4 of Edwin B. Forsythe National Wildlife Refuge.

§ 32.49 New Jersey.

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Edwin B. Forsythe National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of waterfowl, coots, moorhens, and rails on designated areas of the refuge subject to the following conditions:

1. You must remove all hunting blind materials, boats, and decoys at the end of each hunting day. We do not allow permanent and pit blinds.

2. We may restrict use of Hunting Unit 3 of the Brigantine Division to certified Young Waterfowl Program trainees for up to 30 days as posted.

3. You may not possess more than 25 shells per day in Hunting Units A, B, and C in the Barnegat Division. You may not possess more than 50 shells per day in Unit 1 of the Brigantine Division.

4. In Hunting Unit B of the Barnegat Division, we restrict hunting to designated sites, with each site limited to one party of hunters. We require a minimum of six decoys per site.

5. In Hunting Unit D of the Barnegat Division, we require a minimum of six decoys and do not allow jump shooting. Access is by boat only; we do not allow foot access.

6. Access is by boat only in all Units except the portion of Unit A that is south of West Creek Dock Road, in the Barnegat Division, and Unit 5 in the Brigantine Division. You may access these Units by foot or boat.

7. You may occupy no sites or Units before 4:00 a.m. Access is by boat only.

8. You may possess only approved nontoxic shot while in the field.

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We require a State permit for the appropriate New Jersey Deer Management Zone. You must have this permit stamped and validated in person at the Refuge Headquarters.

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow saltwater fishing from the Holgate beach and Little Beach Island with the exception of those areas posted as closed. We may close the Holgate Unit and Little Beach Island to all public use during the migratory bird nesting season. We require a saltwater fishing permit to fish from Little Beach Island. You may obtain permits from the Refuge Headquarters.

* * * * *

4. We allow bank fishing and crabbing at designated areas. Contact the Refuge Headquarters for locations.

* * * * *

22. In § 32.50 New Mexico by alphabetically adding San Andres National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

* * * * *

San Andres National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of oryx or gemsbok (*Oryx gazella*) on designated areas of the refuge subject to the following conditions:

1. We require hunters to check in and out of the hunt area.

2. We require hunters to attend unexploded ordnance (UXO) training prior to entering the hunt area.

3. We require State permits and payment of a hunt fee.

D. Sport Fishing. [Reserved]

* * * * *

23. In § 32.51 New York by revising paragraphs A.1., B.1., C., and D.4, deleting paragraph A.3, and redesignating paragraphs A.4., A.5., A.6., and A.7., and A.8. as paragraphs A.3., A.4., A.5., A.6., and A.7. of Iroquois National Wildlife Refuge to read as follows:

§ 32.51 New York.

* * * * *

Iroquois National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

1. We require refuge permits.

* * * * *

B. Upland Game Hunting. * * *

1. We require refuge permits.

* * * * *

C. Big Game Hunting. We allow hunting of deer and turkeys on designated areas of the refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. * * *

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4. We do not allow the use of boats or other flotation devices with the exception that you may use nonmotorized boats on Oak Orchard Creek east of Route 63.

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24. In § 32.52 North Carolina by:

a. Revising paragraphs A.2., B.3., and C.3. of Pocosin Lakes National Wildlife Refuge; and

b. Revising paragraphs A. and B. of Roanoke River National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Pocosin Lakes National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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2. Firearms in transport by vehicle or boat under power must remain unloaded.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Firearms in transport by a vehicle or boat under power must remain unloaded.

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. Firearms in transport by a vehicle or boat under power must remain unloaded.

* * * * *

Roanoke River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks and coots on designated areas of the refuge subject to the following condition: We require refuge permits.

B. Upland Game Hunting. We allow hunting of squirrel, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

1. We require refuge permits.

2. You may possess only approved nontoxic shot while in the field.

* * * * *

25. In § 32.53 North Dakota by:

a. Revising paragraphs B. and C. of Lake Zahl National Wildlife Refuge; and

b. Revising paragraph C. of Upper Souris National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

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Lake Zahl National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of ring-necked pheasants, sharp-tailed grouse, and gray partridge on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. The upland game bird season opens annually on the day following the close of the regular firearm deer season through the end of the State season.

3. Hunters may enter the refuge on foot only.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following conditions:

1. We allow archery hunting through the day before the opening of the State waterfowl season and allow it following the deer gun season.

2. We allow deer gun hunting concurrent with the State deer gun season.

3. Hunters may enter the refuge on foot only.

* * * * *

Upper Souris National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of big game on designated areas of the refuge as per State law with certain restrictions as posted.

* * * * *

26. In § 32.54 Ohio by revising paragraph D. of Cedar Point National Wildlife Refuge to read as follows:

§ 32.54 Ohio.

* * * * *

Cedar Point National Wildlife Refuge

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D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to the following conditions:

1. You may fish only during daylight hours during designated dates.

2. We do not allow boats or flotation devices.

* * * * *

27. In § 32.55 Oklahoma by:

a. Revising paragraph A.4., adding paragraph B.5, and revising paragraph D. of Little River National Wildlife Refuge; and

b. Adding paragraph C.4. and revising paragraphs B.2. and D.9. of Tishomingo National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Little River National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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4. You must possess a refuge permit.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

5. You must possess a refuge permit.

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge.

1. We prohibit off-road vehicle use.

2. You must possess a refuge permit.

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Tishomingo National Wildlife Refuge

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B. Upland Game Hunting. * * *

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2. We allow only bows and arrows and shotguns using approved nontoxic shot.

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C. Big Game Hunting. * * *

* * * * *

4. We prohibit baiting on the refuge and the Wildlife Management Unit.

D. Sport Fishing. * * *

* * * * *

9. You may only take bait for personal use while fishing in the refuge in accordance with Oklahoma State law. We do not allow removal of bait from the refuge for commercial sales. You cannot release bait back into the water.

* * * * *

28. In § 32.56 Oregon by:

a. Removing Ankeny National Wildlife Refuge;

b. Revising paragraphs A.2. and B.2. and adding paragraphs A.7. and B.5. of Cold Springs National Wildlife Refuge;

c. Revising the heading of "Klamath Forest National Wildlife Refuge" to read "Klamath Marsh National Wildlife Refuge;"

d. Revising paragraphs A.2. and B.2. of McKay Creek National Wildlife Refuge;

e. Adding McNary National Wildlife Refuge; and

f. Revising paragraph A. of William L. Finley National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

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Cold Springs National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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2. We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

* * * * *

7. We allow hunting in the Memorial Marsh Unit by designated blind sites only.

B. Upland Game Hunting. * * *

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2. We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

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5. We do not allow hunting of upland game birds until noon of each hunt day.

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Klamath Marsh National Wildlife Refuge

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McKay Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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* * * * *

2. We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

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B. Upland Game Hunting. * * *

* * * * *

2. We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

* * * * *

McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of doves on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. We allow dove hunting on the State Line and Juniper Canyon Units on legal hunt days in accordance with State regulations.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. We allow hunting on State Line and Juniper Canyon Units in accordance with State regulations.

C. Big Game Hunting. We allow deer hunting on designated areas of the refuge subject to the following conditions:

1. We allow shotguns and archery only.

2. We allow hunting on State Line and Juniper Canyon Units in accordance with State regulations.

D. Sport Fishing. [Reserved]

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William L. Finley National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

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29. In § 32.60 South Carolina by:

a. Revising paragraph D. of Cape Romain National Wildlife Refuge; and

b. Revising paragraphs C. and D. of Carolina Sandhills National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

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Cape Romain National Wildlife Refuge

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D. Sport Fishing. We allow fishing, crabbing, and shell fishing in accordance with State regulations, as specifically designated in refuge publications, and as posted. Except as posted, we close refuge islands at night. We do not allow shrimp baiting from refuge islands or above the low tide mark.

Carolina Sandhills National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer, turkey, and feral hogs on designated areas of the

refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. We allow fishing on all areas of the refuge, except Martins Lake and those areas marked by signs as closed to the public for fishing, subject to the following conditions:

1. We allow fishing from ½ hour before sunrise to ½ hour before sunset.

2. We allow nonmotorized boats and boats with electric motors. You must hand load and unload boats except at designated boat ramps.

3. We do not allow fish baskets, net, set hooks, and trotlines.

* * * * *

30. In § 32.61 South Dakota by:

a. Revising paragraph B. of Pocasse National Wildlife Refuge; and

b. Revising paragraphs B. and D. of Sand Lake National Wildlife Refuge to read as follows:

§ 32.61 South Dakota.

* * * * *

Pocasse National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of pheasant, sharp-tailed grouse, and Hungarian partridge on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

* * * * *

Sand Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of sharp-tailed grouse, Hungarian partridge, and pheasant on designated areas of the refuge.

* * * * *

D. Sport Fishing. We allow sport fishing in accordance with State law and as specifically designated in refuge publications.

31. In § 32.63 Texas by:

a. Revising paragraphs A., B., and C. of Balcones Canyonlands National Wildlife Refuge;

b. Alphabetically adding Lower Rio Grande Valley National Wildlife Refuge; and

c. Alphabetically adding Trinity River National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

Balcones Canyonlands National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning, white-wing, rock, and Eurasian-collared doves on designated areas of the refuge subject to the following conditions:

1. The length of the hunting season will be concurrent with the State season in September and October.

2. We allow hunting in designated areas, from noon to sunset, Saturdays and Sundays.

3. You may possess only approved nontoxic shot while in the field.

4. We require refuge permits and payment of a hunt fee by all hunters.

5. We prohibit dogs.

6. All hunters must be 10 years old or older. An adult 21 years of age or older must supervise hunters ages 10–17 (inclusive).

7. We prohibit use or possession of alcohol.

8. We may immediately close the entire refuge or any portion thereof to hunting for the protection of resources, as determined by the refuge manager.

B. Upland Game Hunting. We allow hunting of turkey on designated areas of the refuge subject to the following conditions:

1. We allow hunting in November, December, and/or January.

2. We require hunters to check in and out of a hunt area.

3. We allow bows and arrows, shotguns, and rifles.

4. We may immediately close the entire refuge or any portion thereof to hunting for the protection of resources, as determined by the refuge manager.

5. Hunters must be at least 12 years of age. An adult 21 years of age or older must supervise hunters between the ages of 12 and 17 (inclusive).

6. The refuge will set bag limits.

7. We require hunters to visibly wear 400 square inches (2,600 cm^2) of hunter orange on the outermost layer of the head, chest and back, which must include a hunter orange hat or cap.

8. We require refuge permits and the payment of a hunt fee.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following conditions:

1. We allow hunting in November, December, and/or January.

2. We require hunters to check in and out daily at designated check stations.

3. We allow bows and arrows, shotguns, and rifles.

4. We may immediately close to hunting the entire refuge or any portion thereof for the protection of resources as determined by the refuge manager.

5. Hunters must be at least 12 years of age. An adult 21 years of age or older must supervise hunters between the ages of 12 and 17 (inclusive).

6. The refuge will set bag limits.

7. We require hunters to wear 400 square inches (2,600 cm2) of hunter orange on the outermost layer of the head, chest, and back, which must include a hunter orange hat or cap.

8. We require refuge permits and the payment of a hunt fee.

* * * * *

Lower Rio Grande Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning, white-winged, and white-tipped doves in the months of September, October, and November on designated areas of the refuge, subject to the following conditions:

1. We require a refuge permit and payment of a fee.

2. We limit hunting to the months of September, October, and November in accordance with the State hunting season.

3. We allow only shotguns.

4. You may possess only approved nontoxic shot while in the field.

5. All hunters must be 12 years of age or older. An adult 21 years old or older must accompany hunters 12–17 years of age.

6. You may park at designated locations only.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hogs, and nilgai antelope on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit and payment of a fee.

2. We will offer hunting during portions of the State hunting season.

3. We enforce a two-deer (one buck only) limit on white-tailed deer and no limit on feral hogs and nilgai antelope.

4. All hunters must be 12 years of age or older. An adult 21 years old or older must accompany hunters 12–17 years of age.

5. We will determine location and method of hunt each year.

6. You may park at designated locations only.

7. We prohibit the use of dogs and baiting for hunting.

D. Sport Fishing. [Reserved]

* * * * *

Trinity River National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. We allow fishing on Champion Lake subject to the following conditions:

1. We allow fishing only with pole and line, rod and reel, or hand-held line.

2. We do not allow the use of trotlines, setlines, bows and arrows, gigs, spears, or fish traps.

3. We do not allow use of frogs or turtles.

4. We allow fishing from sunrise to sunset.

5. We limit motors to a maximum of 10 horsepower. You may not fish or enter within 200 yards (180 m) of an established bird rookery from March through the end of May. Check at refuge headquarters for rookery location(s).

32. In § 32.65 Vermont by revising paragraphs A.1., A.2., A.4., A.5., C.1., C.4., and D. of Missisquoi National Wildlife Refuge to read as follows:

§ 32.65 Vermont.

* * * * *

Missisquoi National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. We require refuge permits to hunt in the Long Marsh Channel—Metcalfe Island Controlled Hunting Area, the Junior Waterfowl Hunting Area, and the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area.

2. You may not possess more than 25 shells per day on the Long Marsh Channel-Metcalfe Island Controlled Hunting Area, the Junior Waterfowl Hunting Area, and the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area.

* * * * *

4. Within any controlled hunting area, you must hunt within 100 feet (30 m) of the blind or blind stake for the area except to retrieve crippled birds.

5. You must hunt with one retriever per hunting party of up to two hunters per party within the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area, the Long Marsh Channel-Metcalfe Island Hunting Area, and the Maquam Swamp Hunting Area.

* * * * *

C. Big Game Hunting. * * *

1. You may use only shotguns and muzzleloaders on that part of the refuge east of the Missisquoi River during the State regular season or on that part of the refuge north and east of Route 78 during the Youth Hunt.

* * * * *

4. You may use only portable tree stands. You may leave them in place during deer seasons with proper notation on the big game permit.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following condition: We allow fishing from refuge lands along Lake Champlain and the Missisquoi River, except from any refuge dike or from or within any refuge water management unit.

33. In § 32.66 Virginia by:

a. Adding paragraph D.3. of Back Bay National Wildlife Refuge;

b. Revising paragraph A. of Chincoteague National Wildlife Refuge; and

c. Adding the alphabetical listing of Mackay Island National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

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Back Bay National Wildlife Refuge

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D. Sport Fishing. * * *

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3. We require a refuge permit to fish in "D" Pool.

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Chincoteague National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory waterfowl and rails on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit to hunt in designated public hunting areas.

2. We allow guided hunting in designated areas of Wildcat Marsh with refuge-designated commercial guides.

* * * * *

Mackay Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing only from sunrise to sunset from March 15 through October 15.

2. You must attend all fishing lines.

3. We do not allow airboats.

* * * * *

34. In § 32.67 Washington by:

a. Alphabetically adding Arid Lands National Wildlife Refuge Complex;

b. Revising paragraphs A.1., A.3., and C. of Columbia National Wildlife Refuge;

c. Revising McNary National Wildlife Refuge;

d. Removing paragraphs A.4. and B.4., redesignating paragraphs A.5, A.6., and B.5. as A.4., A.5., and B.4. and revising newly redesignated paragraphs A.4., A.5., and B.4. of Toppenish National Wildlife Refuge; and

e. Revising paragraphs A. and D. of Willapa National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Arid Lands National Wildlife Refuge Complex

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on the Wahluke Wildlife Recreation Unit of the Complex subject to the following condition: You may possess only approved nontoxic shot while in the field.

B. Upland Game Hunting. We allow hunting of upland game on the Wahluke Wildlife Recreation Unit of the Complex subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. We allow only shotguns.

C. Big Game Hunting. We allow hunting of big game on the Wahluke Wildlife Recreation Unit of the Complex subject to the following condition: We allow only shotgun, muzzle loader, and archery hunting.

D. Sport Fishing. We allow fishing on designated areas of the Wahluke Wildlife Recreation Unit of the Complex.

Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In Marsh Unit 1 and Farm Units 226–227, we allow hunting only on Wednesdays, Saturdays, Sundays, and Federal holidays.

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3. In Marsh Unit 1, concurrent with the State's designated Youth Day prior to the opening of the waterfowl season, an adult at least 18 years of age who is not hunting must accompany hunters under 16 years of age.

* * * * *

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following conditions:

1. We allow only shotgun and archery hunting.

2. We allow hunting of deer only during State seasons that run concurrently with the State waterfowl season.

* * * * *

McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, doves, and snipe on designated areas of the refuge subject to the following conditions:

1. On the McNary Division, we allow hunting by refuge permit only. On the

first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

2. We allow dove hunting only on the Wallula, Two Rivers, Peninsula, State line, and Juniper Canyon Units on legal hunt days in accordance with State regulations.

3. We allow waterfowl hunting on the Wallula and Two Rivers Units 7 days a week during State waterfowl season.

4. We allow waterfowl hunting on the Peninsula Unit Friday through Monday during State waterfowl season subject to the following condition: Hunting on the east side of the Peninsula and in the goose pits is by assigned blinds on a first-come, first-served basis.

5. The refuge is open from 5 a.m. to 1½ hours after sunset. You may not leave decoys and other personal property on the refuge overnight.

6. You may not possess more than 25 approved nontoxic shells while in the field.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. On the McNary Division, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day. We do not allow hunting until noon of each hunt day. Hunting is for pheasant and quail only. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

2. You may not possess more than 25 approved nontoxic shot shells while in the field.

3. We allow upland game hunting on the Wallula, Two Rivers, State line, and Juniper Canyon Units in accordance with State regulations.

4. We do not allow hunting on the Peninsula Unit until noon on legal goose hunting days.

C. Big Game Hunting. We allow hunting of deer only on the Wallula, Two Rivers, Peninsula, State line, and Juniper Canyon Units subject to the following condition: We allow shotguns and archery only in accordance with State regulations.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. On the McNary Division, visiting hours are from sunrise to sunset. We do not allow the use of boats and other flotation devices.

2. We allow fishing only with hook and line.

3. We allow fishing on the Wallula, Two Rivers, and Peninsula Units in accordance with State regulations.

* * * * *

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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4. Snipe hunters may possess only approved nontoxic shot while in the field.

5. On the Halvorson and Webb Units, you may hunt on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day only. On the Robbins Road Unit, you may hunt on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day only. Pumphouse, Isiri, Petty, and Chambers Units are open 7 days a week during waterfowl season.

B. Upland Game Hunting. * * *

* * * * *

4. On the Halvorson and Webb Units, you may hunt on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day only. On the Robbins Road Unit, you may hunt on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day only. Pumphouse, Isiri, Petty, and Chambers Units are open 7 days a week during waterfowl season.

* * * * *

Willapa National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, and coots on designated areas of Riekkola and Lewis Units, in accordance with State hunting regulations and subject to the following conditions:

1. Prior to entering the hunt area at the Riekkola Unit, we require you to obtain a refuge permit, pay a recreation user fee, and obtain a blind assignment.

2. At the Riekkola Unit, you may take ducks and coot only coincidental to hunting geese. We do not allow exclusive hunting of ducks in the Riekkola Unit.

3. We allow hunting in the Riekkola Unit only from established blinds on Wednesdays and Saturdays.

4. You may possess no more than 25 approved nontoxic shells per day while in the field.

* * * * *

D. *Sport Fishing.* We allow sport fishing along the shoreline of Willapa Bay and Bear River on refuge-owned lands in accordance with State regulations.

35. In § 32.68 West Virginia by adding paragraph C.2. in Canaan Valley National Wildlife Refuge to read as follows:

§ 32.68 West Virginia.

* * * * *

C. Big Game Hunting. * * *

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2. We allow shotgun and muzzleloader hunting only with the possession of approved nontoxic shot size #4 or smaller for hunting of wild turkey. We prohibit rifle hunting.

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36. In § 32.69 Wisconsin by revising paragraphs B.2., C.1., and C.2. of Necedah National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

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Necedah National Wildlife Refuge

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B. Upland Game Hunting. * * *

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2. During the spring turkey season, we allow unarmed hunters who have an unexpired spring turkey permit in their possession to scout the hunt area. We allow this scouting beginning on the Saturday immediately prior to the opening date listed on their State turkey hunting permit.

* * * * *

C. Big Game Hunting. * * *

1. You may not possess a loaded firearm or a nocked arrow on a bow within 50 feet (15 m) of the centerline of all public roads. Also, during the gun deer season, you may not possess a loaded firearm within 50 feet (15 m) of the center of refuge trails, nor may you discharge a gun from across, down, or alongside these trails.

2. You may not construct or use permanent blinds, stands, or ladders.

* * * * *

37. In § 32.71 United States Unincorporated Pacific Insular Possessions by revising paragraph D. of Johnston Atoll National Wildlife Refuge to read as follows:

§ 32.71 United States Unincorporated Pacific Insular Possessions.

Johnston Atoll National Wildlife Refuge.

* * * * *

D. Sport Fishing. We allow fishing only in accordance with posted regulations (Conservation of Natural Resources and Protection of Fish and Wildlife on Johnston Atoll National Wildlife Refuge), which are available at refuge headquarters. Other special restrictions apply on this refuge, and we outline them in the regulations.

* * * * *

Dated: June 20, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–16677 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 132
Monday, July 10, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 3, 2000

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Request for Release of Lien and/or Approval of Sale
OMB Control Number: 0572–0041.
Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. The RUS loan portfolio totals nearly $42 billion. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended (RE Act). A 1949 amendment to the RE Act established the telephone program in RUS with the purpose of making loans to furnish and improve rural telephone service. Section 201 of the RE Act provides that loans shall not be made unless RUS finds and certifies that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. In addition to providing loans and loan guarantees, one of RUS's main objectives is to safeguard loan security until the loan is repaid.
Need and Use of the Information: A borrower's assets provide the security for a Government loan. The selling of assets reduces the security and increases the risk of loss to the Government. RUS Form 793 allows the telephone program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system.
RUS telephone borrowers fill out the form to request RUS approval in order to sell capital assets. Specifics to the sale of capital assets, including the use of Form 793 and submission of supporting documentation, are covered in REA Bulletin 415–1, "Sale of Property by Telephone Borrowers." If the information in Form 793 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level. This increases the risk of loss to the Government in the case of a default.
Description of Respondents: Business or other for-profit; not-for-profit institutions.
Number of Respondents: 75.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 206.

Rural Utilities Service

Title: 7 CFR Part 1786, Prepayment of RUS Guaranteed and Insured Loans to Electric and Telephone Borrowers
OMB Control Number: 0572–0088.
Summary of Collection: The Rural Electrification (RE) Act of 1936, as amended, authorizes and empowers the Administrator of RUS to make loans in the several States and Territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and for the purpose of assisting electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. This information collection package contains the paperwork and reporting burden for 7 CFR Part 1786, subpart E, "Discounted Prepayments on RUS Notes in the Event of a Merger of Certain RUS Electric Borrowers," subpart F, "Discounted Prepayments on RUS Electric Loans," and subpart G, "Refinancing and Prepayment of RUS Guaranteed Federal Financing Bank (FEB) Loans Pursuant to Section 306(C) of the RE Act." 7 CFR 1786, subparts E and F are authorized by Section 306(B) of the RE Act of 1936, as amended, and subpart G is authorized by Section 306(C) of the RE Act of 1936, as amended. 7 CFR Part 1786 also contains subpart B and C, for which authority has expired.
Need and Use of the Information: The overall goal of Subparts E and F is to allow RUS borrowers to prepay their RUS loan and the overall goal of Subpart G is to refinance. Subpart E allows certain electric borrowers to prepay outstanding RUS Notes at the Discounted Present Value of the RUS Notes with private financing. Subpart F allows borrowers to prepay, with private financing or internally generated funds, outstanding RUS Notes evidencing electric loans at the Discounted present value of the RUS Note. Subpart G allows the borrower of an electric or telephone loan made by the FEB and guaranteed by RUS to prepay and refinance a loan or an advance on the loan, or any portion of the loan or advance, after meeting certain conditions using the procedures prescribed in the borrower's

note. The information will be collected from borrowers requesting to prepay their notes and will be used to determine that the borrower is qualified to prepay under the authorizing statutes.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 28.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 62.

Rural Utilities Service

Title: Distance Learning and Telemedicine Loan and Grant Program (7 CFR 1703, Subpart D, E, F and G).

OMB Control Number: 0572–0096.

Summary of Collection: The Distance Learning and Telemedicine Loan and Grant (DLT) Program provides loans and grants for advanced telecommunications services to improve rural areas' access to educational and medical services.

Need and Use of the Information: The various forms and narrative statements required are collected from eligible applicants (7 CFR Section 1703.103) such as rural community facilities, schools, libraries, hospitals, and medical facilities. The purpose of this information is to determine such factors as: eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and compliance with applicable laws and regulations.

Description of Respondents: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 300.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 17,741.

Rural Utilities Service

Title: State Telecommunications Modernization Plan.

OMB Control Number: 0572–0104.

Summary of Collection: The Rural Electrification Loan Restructuring Act (RELRA, Pub. L. 103–129), November 1, 1993, amended the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (the RE Act). RELRA required that a State Telecommunications Modernization Plan (Modernization Plan or Plan), covering at a minimum the Rural Utilities (RUS) borrowers in a State, be prepared in a State or RUS could not make hardship or concurrent cost-of-money and Rural Telephone Bank (RTB) loans for construction in that State. The Modernization Plan must meet all the statutory requirements of RELRA (Part 1751, Subpart B). The minimum requirements for a Plan are: (1) The Plan must provide for the elimination of party line service; (2) The Plan must provide for the availability of telecommunications services for improved business, educational, and medical services; (3) The Plan must encourage computer networks and information highways for subscribers in rural areas; (4) The Plan must provide for: (i) Subscribers in rural areas to be able to receive through telephone lines: (a) Conference calling; (b) Video images; and (c) Data at a rate of 1 million bits of information per second; and, (ii) The proper routing of information to subscribers; (5) The plan must provide for uniform deployment schedules to ensure that advanced services are deployed at the same time in rural and non-rural areas; (6) The plan must provide for such additional requirements for service standards as may be required by the Administer.

Need and Use of the Information: Modernization Plans will be reviewed by the RUS telecommunications program staff to ensure that it complies with the requirements of the regulation. If the proposed Modernization Plan does comply, RUS will approve it and notify the developer of the approval. If not, RUS will make specific written comments and suggestions for modifying the proposed Modernization Plan so that it will comply with the requirements of the regulation. If the information is not collected, RUS' authority to make loans under the Rural Electrification Act will be restricted.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 350.

Rural Housing Service

Title: Rural Housing Loans, 7 CFR 1980–D.

OMB Control Number: 0575–0078.

Summary of Collection: The Rural Housing Service (RHS) is a credit agency for rural development for the U.S. Department of Agriculture. The purpose of the Guaranteed Rural Housing (GRH) program is to assist low and moderate-income individuals and families in acquiring or constructing a single-family residence in a rural area with loans made by private lenders. The information requested by RHS includes borrower financial information such as household income, assets and liabilities, and monthly expenses. RHS will collect information using several agency forms.

Need and use of the Information: All information collected is vital for RHS to determine if borrowers qualify for loans and to ensure they receive all assistance for which they are eligible. Information requested from lenders is required to ensure they are eligible to participate in the GRH program and are in compliance with OMB Circular A–129.

Description of Respondents: Individuals or households; business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 47,200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 154,250.

Rural Housing Service

Title: 7 CFR 1951–F, Analyzing Credit Needs and Graduation of Borrower.

OMB Control Number: 0575–0093.

Summary of Collection: Section 333 of the Consolidated Farm and Rural Development Act and Section 502 of the Housing Act of 1949, require the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), and the Farm Service Agency (FSA) to graduate their direct loan borrowers to other credit when they are able to do so. Graduation is an integral part of Agency lending, as Government loans are not meant to be extended beyond a borrower's need for subsidized rates of non-market terms. The notes, security instruments, or loan agreements of most borrowers require borrowers to refinance their Agency loans when other credit becomes available at reasonable rates and terms. If a borrower finds other credit is not available at reasonable rates and terms, the Agency will continue to review the borrower for possible graduation at periodic intervals. Information will be collected from the borrowers concerning their loans.

Need and Use of the Information: The information collected will include financial data such as amount of income, farm operating expenses, asset values, and liabilities. The information collected is submitted by FSA, RBS, or RHS borrowers to Agency offices. The information will be used in the Agency's effort to graduate direct borrowers to private credit with or without the use of Agency loan guarantees.

Description of Respondents: Individuals or households; Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 25,047.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 75,361.

Agricultural Marketing Service

Title: Farmers' Market Questionnaire.

OMB Control Number: 0581–0169.

Summary of Collection: The Transportation and Marketing (T&M) Program, Agricultural Marketing Service (AMS) conducts research to find better designs, development techniques, and operating methods for modern farmers' markets under the Agency's Wholesale and Alternative Markets Program. Recommendations are made available to local decision-makers interested in constructing modern farmers' markets to serve area producers and consumers. Individual studies are conducted in close cooperation with local interested parties. The information will be collected using form TM–6 "Farmers' Market Questionnaire."

Need and Use of the Information: Conventional wisdom states that the number and size of farmers' markets has grown over the last several years. Research has not been done to prove that point. The form submitted for approval will serve as a survey instrument to obtain a clearer picture of existing farmers' market structure to provide a basis for the future design of modern direct marketing facilities and will provide a measure of growth over the last 4 years. T&M researchers will survey by mail, with telephone follow-up, the managers of farmers' markets identified in the 2000 National Farmers' Market Directory. In addition, provision will be made for e-mail reporting. These markets represent a varied range of sizes, geographical locations, types, ownership, and structure. These markets will provide a valid overview of farmers' markets in the United States. Information such as the size of markets, operating times and days, retail and wholesale sales, management structure, and rules and regulations governing the markets are all important questions that need to be answered in the design of a new market. The information developed by this survey will support better designs, development techniques, and operating methods for modern farmers' markets and outline improvements that can be applied to revitalize existing markets.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 1,200.

Frequency of Responses: Reporting: Biennially.

Total Burden Hours: 300.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–17378 Filed 7–7–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Quality Incentives Program in the Five States Grazing Emphasis Geographic Priority Area

AGENCY: USDA—Natural Resources Conservation Service.

ACTION: "Notice of a Finding of No Significant Impact".

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Environmental Quality Incentives Program in the Five States Grazing Emphasis Geographic Priority Area, Colfax, Curry, Harding, Lea, Mora, Quay, Roosevelt, San Miguel, Union Counties, New Mexico.

FOR FURTHER INFORMATION CONTACT: Rosendo Trevino, State Conservationist, Natural Resources Conservation Service, 6200 Jefferson NE, Albuquerque, New Mexico, 87109, telephone (505) 761–4400.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rosendo Trevino, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for land cover improvement. The planned works of improvement involve brush management, grazing management, and facilitating practices.

The Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rosendo Trevino.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.912, Environmental Quality Incentives Program)

Dated: June 28, 2000.

Kenneth B. Leiting,

Acting State Conservationist.

[FR Doc. 00–17283 Filed 7–7–00; 8:45 am]

BILLING CODE 3410–16–P

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of Special Public Business Meeting in Washington, D.C., and a Special Outreach Hearing for the New England states in Burlington, VT.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (ARC) gives notice of a special public two-day meeting of the Council. The first day of the meeting will be a public business meeting at which the Council will receive presentations on Florida's state rail program for the development of passenger rail services; developments in financing rail passenger rail equipment; and Amtrak's marketing strategy and its relation to the Corporation's strategic business plan. (Portions of this discussion may be closed to the public if issues requiring the discussion of proprietary information are raised.). The Council staff will also discuss its progress in implementing the Council's work plan for FY 2000.

On the second day the Council will hold an Outreach Hearing for the New England states to discuss Amtrak's services in New England outside of rail services on the Northeast Corridor. The Council has invited various state transportation officials, rail corridor officials, and Amtrak executives. They will discuss aspects of current and future intercity railroad passenger service in New England outside of the Northeast Corridor.

DATES: The Business Meeting will be held on Monday, July 17, 2000 from 9:00 a.m. to 5:00 p.m. The Council will hold its Outreach Hearing in Burlington, VT on Tuesday, July 18, 2000 from 9:00 a.m. to 3:00 p.m. Both the Business Meeting and Hearing are open to the general public unless propriety information is introduced.

ADDRESSES: The July 17, 2000, Business Meeting will take place Room 2230 in the headquarters of Department of Transportation (Nassif Building), 400 Seventh Street, SW, Washington, DC 20590. The July 18, 2000, Outreach

Hearing will take place in the Best Western Windjammer, 1076 Williston Road, Burlington, VT 05403. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's upcoming events, the agenda for meetings, the ARC's First Annual Report, information about ARC Council Members and staff, and much more, you can also visit the Council's website at www.amtrakreformcouncil.gov.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The ARAA prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC—July 3, 2000.

Thomas A. Till,

Executive Director.

[FR Doc. 00–17286 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–06–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9 a.m. local time on July 18, 2000, at the Paterson, New Jersey, City Hall Council Chambers, Third Floor, 155 Market Street, Paterson, New Jersey.

The purpose of the meeting is to allow the CSB Investigation team to present to the Board, in open session, its findings of fact concerning the April 1998 explosion at Morton Specialty Chemical's Paterson facility.

The meeting will be open to the public, and public comments will be accepted following the presentation by investigators.

For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202) 261–7600, or visit our website at: *http://www.chemsafety.gov.*

Christopher W. Warner,

Chief Operating Officer.

[FR Doc. 00–17438 Filed 7–5–00; 5:03 pm]

BILLING CODE 6351–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070500B]

Information Needed for Wreckfish Share Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 8, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington, DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Sadler, Southeast Regional Office, 9721 Executive Center Drive, St. Petersburg, Florida 33702, phone 727–570–5326.

SUPPLEMENTARY INFORMATION:

I. Abstract

This mandatory reporting requirement expires November 30, 2000, and is being renewed under authority of 50 CFR Part 622.4. The wreckfish fishery for the South Atlantic is managed under an Individual Transferable Quota System. Under this system fishermen are issued a share of the fishery and an individual annual quota. Shares are issued by certificate and may be bought and sold. Buying and selling of shares are not completed until the transfer is recorded by the National Marine Fisheries Service (NMFS). The information in this collection is necessary so the NMFS can record the sale and thereby monitor the fishery to provide for better conservation and management.

II. Method of Collection

When shares in the wreckfish fishery are sold, information concerning the sale is recorded on the back of the share certificate and sent to the NMFS. The transfer of ownership is recorded and new share certificates issued.

III. Data

OMB Number: 0648–0262.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business and other for-profit, individuals.
Estimated Number of Respondents: 4.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 1 hour.
Estimated Total Annual Cost to Public: Shareholders are charged for the administrative cost of the share transfer. This annual cost is expected to be $160.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 30, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17372 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070500A]

State of Alaska Commercial Operator's Annual Report (COAR)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 8, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington, DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, telephone number 907–586–7008.

SUPPLEMENTARY INFORMATION:

I. Abstract

Existing recordkeeping and reporting requirements for participants in the groundfish fisheries of the exclusive economic zone off Alaska (Bering Sea and Aleutian Islands and the Gulf of Alaska) would be revised to require owners of catcher/processors and motherships to complete the State of Alaska, Department of Fish and Game (ADF&G) Commercial Operator's Annual Report (COAR), which provides information on ex-vessel and first wholesale values for statewide fish and shellfish products. This information currently is submitted to ADF&G by shoreside processors under State of Alaska regulations. The intent of this data collection is to require at-sea groundfish processors to submit these reports as well.

II. Method of Collection

ADF&G would provide the COAR to each mothership and catcher/processor on an annual basis to collect information from the previous year. The completed COAR and certification page would be sent by the processor to ADF&G for computer data entry. If no receipt or production took place, the processor would submit only a certification page that indicates no receipt or production took place for that year. Use of the COAR information would be coordinated between NMFS and the State of Alaska.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 134.

Estimated Time Per Response: 8 hours.

Estimated Total Annual Burden Hours: 1,072.

Estimated Total Annual Cost to Public: $268.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 30, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17373; Filed 7–7–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

July 3, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current Guaranteed Access Levels for textile products in Categories 338/638, 339/639 and 633.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also

see 64 FR 50495, published on September 17, 1999.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 3, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 10, 2000, you are directed to increase the Guaranteed Access Levels for the categories listed below for the period beginning on January 1, 2000 and extending through December 31, 2000.

Category	Guaranteed access level
338/638	5,150,000 dozen.
339/639	3,150,000 dozen.
633	100,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17288 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 8, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOC, 550 D Street West, Suite 1, Randolph AFB, TX 78150–4527.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call HQ AFRS/RSOC, Officer Accessions Branch, at (210) 652–4334.

Title, Associated Form, and OMB Number: Air Force Officer Training School Accession Forms, AETC Forms 1413 and 1422, OMB Number 0701–0080.

Needs and Uses: These forms are used by Air Force field recruiters and education counselors in the processing of Officer Training School (OTS) applications.

Affected Public: Civilian and Active Duty OTS Applicants.

Annual Burden Hours: 2,200.

Number of Respondents: 1,700.

Responses Per Respondent: 1.

Average Burden Per Response: 1 Hour (AETC Form 1413)/ 2 Hours (AETC Form 1422).

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are civilian and active-duty candidates applying for a commission in the United States Air Force. These forms provide pertinent information to facilitate selection of candidates for a commission.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–17284 Filed 7–7–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee will meet to discuss basic and advanced research and technology. All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to an assessment of current and projected operational requirements, deficiencies and vulnerabilities of the Navy and Marine Corps command and control systems in order to recommend a Department of the Navy strategy for developing a next generation maritime command and control capability, and an examination of quality of work life issues for Sailors and Marines in order to anticipate what they will be for the 21st century and recommend Navy and Marine Corps responses to the new challenges.

DATES: The meetings will be held on Monday, July 17 through Friday, July 21, 2000, from 8 a.m. to 5 p.m.; Monday, July 24 through Thursday, July 27, 2000, from 8 a.m. to 5 p.m.; and Friday, July 28, 2000, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Space and Naval Warfare Systems Center San Diego, 53560 Hull Street, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meetings is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to an assessment of command and control technical options, including technical risk/benefits and functional ramifications; examination of lessons learned from the naval operating forces in the context of network-centric options; identification of information infrastructure framework to support advanced command, control communications, computers, intelligence, surveillance and reconnaissance (C4ISR) concepts and mission capabilities; identification of emerging science and technology opportunities to meet joint command center C4ISR requirements; assessment

of historical and current quality of work life areas and institutional responses; identification of quality of work life issues that arise as consequences of changes in population characteristics and job demands; determination of quality of work life requirements for the 21st century; evaluation of analytical quality of work life assessment methods for identifying the impact of problems and measuring the impact of efforts for problem mitigation; assessment of the current institutionalized responses to emerging challenges; and assessment of the focus areas. These briefings and discussions will contain classified and proprietary information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1) and (4).

Dated: June 30, 2000.

C.G. Carlson,

Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 00–17367 Filed 7–7–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 3, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Written Request for Assistance or Application for Client Assistance Program.

Frequency: 3-year cycle for State Assurances or plan for CAP formula grant.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 9.

Abstract: This document is used by States to request funds to establish and carry out Client Assistance Programs (CAP). CAP is mandated by the Rehabilitation Act of 1973, as amended (Act), to assist vocational rehabilitation clients and applicants in their relationships with projects, programs, and services provided under the Act.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–17285 Filed 7–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Web-based Education Commission; Hearing

AGENCY: Office of Postsecondary Education, Education.

SUMMARY: This notice announces the next hearing of the Web-based Education Commission. Notice of this hearing is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend this hearing.

DATES: The hearing will be held on July 19–20, 2000. The session on July 19 is scheduled for 1 p.m.–5 p.m. The session on July 20 is scheduled for 9 a.m.–12 noon. Both sessions will be held on Capitol Hill in room 628 of the Dirksen Senate Office Building.

FOR FURTHER INFORMATION CONTACT: David Byer, Executive Director, Web-based Education Commission, U.S. Department of Education, 1990 K Street, NW, Washington, DC 20006–8533. Telephone: (202) 219–7045. Fax: (202) 502–7675.

Email: web_commission@ed.gov.

SUPPLEMENTARY INFORMATION: The Web-based Education Commission is authorized by Title VIII, Part J of the Higher Education Amendments of 1998, as amended by the Fiscal 2000 Appropriations Act for the Departments of Labor, Health, and Human Services, and Education, and Related Agencies. The Commission is required to conduct a thorough study to assess the critical pedagogical and policy issues affecting the creation and use of web-based and other technology-mediated content and learning strategies to transform and improve teaching and achievement at the K–12 and postsecondary education levels. The Commission must issue a

final report to the President and the Congress, not later than 12 months after the first meeting of the Commission, which occurred November 16–17, 1999. The final report will contain a detailed statement of the Commission's findings and conclusions, as well as recommendations.

The July 19–20 hearing will cover a range of higher education technology-related issues. The hearing will examine online access, courses and programs, accreditation and assessment, distributive learning, costs and financial assistance, postsecondary education regulations, faculty issues, and the postsecondary education marketplace.

The hearing is open to the public. Records are kept of all Commission proceedings and are available for public inspection at the office of the Web-based Education Commission, Room 6131, 1990 K Street, NW, Washington, DC 20006–8533, from the hours of 9 a.m. to 5:30 p.m.

Assistance to Individuals With Disabilities: The hearing site is accessible to individuals with disabilities. Individuals who will need an auxiliary aid or service to participate in the hearing (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should contact the person listed in this notice at least two weeks before the scheduled hearing date. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news/html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previously mentioned sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/indes.html*.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–17291 Filed 7–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice; deadline and submission dates for receipt of applications, reports, and other documents for the 2000–2001 award year.

SUMMARY: The Secretary announces the deadline and submission dates for receiving documents from persons applying for assistance under the Federal Perkins Loan, Federal Work-Study (FWS), Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Family Education Loan (FFEL), William D. Ford Federal Direct Loan (Direct Loan), Federal Pell Grant, and Leveraging Educational Assistance Partnership (LEAP) programs for the 2000–2001 award year.

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan, FWS, FSEOG, FFEL, Direct Loan, Federal Pell Grant, and LEAP programs, administered by the U.S. Department of Education (Department), provide assistance to students attending eligible institutions of higher education to help them pay for their educational costs.

A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs)

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Deadline Date for Receipt?
Student	Free Application for Federal Student Aid (FAFSA) on the Web, Renewal FAFSA on the Web, or FAFSA Express electronic application	Electronically to the Department's Central Processing System (CPS)	July 2, 2001*
	Signature Page (if required)	The address printed on the signature page	August 16, 2001
Student through an Institution	An electronic original or renewal application	Electronically to the Department's Central Processing System (CPS)	July 2, 2001*
Student	A paper original Free Application for Federal Student Aid (FAFSA) or paper Renewal FAFSA	The address printed on the FAFSA, Renewal FAFSA, or envelope provided with the form	July 2, 2001
Student through an Institution	Electronic corrections and duplicate requests	Electronically to the Department's Central Processing System (CPS)	August 27, 2001*
Student	Corrections submitted using Part 2 of a SAR	The address printed on Part 2 of the SAR	August 16, 2001
Student	Change of address, change of institutions, and duplicate requests	The address printed on Part 2 of the SAR	August 16, 2001
		The Federal Student Aid Information Center by calling 1-800-433-3243	August 27, 2001

A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs)

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Deadline Date for Receipt?
Student	Valid SAR	Institution	The earlier of: - the student's last date of enrollment; or - August 31, 2001
Student Through the Central Processing System	Valid ISIR****	Institution receives ISIR from the Department's Central Processing System (CPS)	
Student	Verification documents	Institution	The earlier of:** - 90 days after the student's last date of enrollment; or - August 31, 2001
Student	Verified SAR	Institution	The earlier of:*** - 90 days after the student's last date of enrollment; or - August 31, 2001
Student Through the Central Processing System	Verified ISIR****	Institution receives ISIR from the Department's Central Processing System (CPS)	

* The deadline for electronic transactions is 7:00 PM (Central Time) on the deadline date. Transmissions must be completed and accepted by 7:00 PM to meet the deadline. If transmissions are started before 7:00 PM but are not completed until after 7:00 PM, those transmissions will not meet the deadline. In addition, any transmission picked up on or just prior to the deadline date that gets rejected may not be able to be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the reject.

** Although the Department has set this deadline date for the submission of verification documents to the institution, if corrections are required, the earlier deadline dates for submission of paper or electronic corrections must still be met.

*** The institution must have already received a SAR or ISIR with an eligible EFC while the student was enrolled and eligible for payment. Students completing verification while no longer enrolled will be paid based on the higher of the two EFCs.

**** For this purpose, the date the ISIR transaction was processed by the Central Processing System is considered to be the date the institution received the ISIR.

The following table provides the earliest submission and deadline dates for submitting Federal Pell Grant Disbursement Records to the Department's Recipient Financial Management System (RFMS). The 2000–

2001 award year is the second year of RFMS. A disbursement record: (1) reports a disbursement or expected disbursement for each student, and (2) requests funds for those institutions that participate in the Just-in-Time payment method pilot. The "regular" disbursement record includes an origination record unique identifier and the amount and date of the disbursement. RFMS uses totals of the accepted disbursement record data in the funding process as either the basis for adjusting an institution's authorization level or as a request for funds. An institution may submit a disbursement record earlier than the reported disbursement date in the record. The Department considers a disbursement of Federal Pell Grant funds to have occurred on the earlier of the date that the institution: (a) credits a student's account at the institution's general ledger or any subledger of the general ledger, or (b) pays a student directly with funds received from the Department. The Department considers a disbursement to have occurred even if institutional funds are used in advance of receiving the program funds from the Department (34 CFR ?? 668.164(a)).

Table B provides the earliest date an institution can submit a disbursement record to the Department. Any disbursement record received prior to the earliest submission date is rejected. Table B also includes the latest date an institution may submit a disbursement record. The Department may impose an adverse action such as a fine or other penalty for an institution's failure to submit a Federal Pell Grant disbursement record within the required 30-day timeframe. Also, failing to submit a disbursement record within the required 30-day timeframe may result in an audit or program review finding for an institution.

B. Earliest Submission and Deadline Dates for Submitting Federal Pell Grant Disbursement Records			
Who Submits?	What is Submitted?	Where is it Submitted?	What is the Earliest Submission and Deadline Date for Receipt?
Institution	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient at the institution by: Electronic Data Exchange (EDE)*	To RFMS using EDE or custom software: Title IV Wide Area Network	An institution may submit disbursement records as early as June 21, 2000, but can not submit a disbursement record any earlier than: (a) 30 calendar days prior to the disbursement date under the Advance payment method; (b) 5 calendar days prior to the disbursement date under the Just-in-time payment method; or (c) the date of disbursement under the Reimbursement or Cash Monitoring payment Methods. An institution is required to submit a disbursement record not later than the earlier of: (a) 30 calendar days after the institution - makes a payment; or - becomes aware of the need to make an adjustment to previously reported disbursement data; or (b) October 1, 2001.

B. Earliest Submission and Deadline Dates for Submitting Federal Pell Grant Disbursement Records

Who Submits?	What is Submitted?	Where is it Submitted?	What is Deadline Date for Receipt?
Institution	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient at the institution by: Electronic Data Exchange (EDE)*	To RFMS using EDE or custom software: Title IV Wide Area Network	After October 1, 2001, an institution may submit a disbursement record only: (a) for a downward adjustment of a previously reported award; or (b) based upon a program review or initial audit finding per 34 CFR 690.83.
	Requests for Year-To-Date Records	1. Pell Grant User Support Hotline: 1-800-474-7268 2. http://www.pellgrantsonline.ed.gov 3. Title IV Wide Area Network	August 16, 2001**
	Request for administrative relief based on a natural disaster or an administrative error by the Department or Departmental contractors	U.S. Department of Education Institutional Financial Management Division, AFMS P.O. Box 23781 Washington, D.C. 20026-0781	January 31, 2002

* An institution must ensure that its transmission of disbursement records is completed before midnight (local time at the institution's EDE destination point) on October 1, 2001.

** Year-To-Date records may be requested after this date, however, there may not be sufficient time for institutions to receive the file, create a disbursement record batch and submit to the Department by the October 1, 2001 deadline date for receipt of all 2000-2001 requests for payment.

NOTE: RFMS must accept a student origination record for a student from an institution before it accepts a disbursement record from the institution for that student. An institution may submit an origination and a disbursement record for a student in the same transmission.

Proof of Delivery

The Department accepts as proof of delivery, if the documents were submitted by mail or by non-U.S. Postal Service courier, one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly-dated U.S. Postal Service postmark.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, check with the post office at which the submission was mailed. The Department strongly encourages the use of First Class Mail.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

When submitting a written request for administrative relief, the Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday except Federal holidays. The address for hand deliveries is listed in Table B.

Other Sources for Detailed Information on the Application and Automated Processes

A more detailed discussion of the student application process for the Federal Pell Grant Program is contained in the *2000–2001 Student Guide, Funding Your Education*, the *2000–2001 High School Counselor's Handbook, A Guide to 2000–2001 SARs and ISIRs*, and the *2000–2001 Student Financial Aid Handbook*. A more detailed discussion of the institutional reporting requirements for the Federal Pell Grant Program is contained in the *Federal Student Financial Aid Handbook* and the Information for Financial Aid Professionals web site at *http://www.ifap.ed.gov*.

Applicable Regulations

The following regulations apply: (1) Federal Pell Grant Program, 34 CFR part 690, (2) Student Assistance General Provisions, 34 CFR part 668, and (3) Institutional Eligibility, 34 CFR part 600.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, Program Specialist, U.S. Department of Education, Office of Student Financial Assistance Programs, 400 Maryland Avenue, SW (ROB–3, Room 3045), Washington, DC 20202–5447. Telephone: (202) 708–8242. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of Alternate Format Center, U.S. Department of Education, 400 Maryland Avenue, SW (Switzer Bldg., Room 1000), Washington, DC 20202–4560. Telephone: (202) 260–9895.

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Program Authority: 20 U.S.C. 421–429, 1070a, 1070b–1070b–3, 1070c–1070c–4, 1071–1087–2, 1087a, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant (FSEOG) Program; 84.032 Federal Family Education Loan (FFEL) Programs; 84.033 Federal Work-Study (FWS) Program; 84.038 Federal Perkins (Perkins) Loans; 84.063) Federal Pell Grant (Pell) Program; 84.069 Leveraging Educational Assistance Partnership (LEAP) Program; and 84.268 William D. Ford Federal Direct Loan (Direct Loan) Programs)

Dated: July 5, 2000.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 00–17383 Filed 7–7–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–363–019]

El Paso Natural Gas Company; Notice of Implementation Filing

July 3, 2000.

Take notice that on June 28, 2000, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, with an effective date of July 1, 2000:

Fourth Revised Sheet No. 37
Fourth Revised Sheet No. 38
Fourth Revised Sheet No. 310
Fourth Revised Sheet No. 320

El Paso states that the filing is being made in compliance with the Commission's order issued November 10, 1999 at Docket No. RP95–363–002, *et al.*

El Paso states that the filing implements the pro forma tariff rates and provisions applicable to South California Edison Company contained in El Paso's August 4, 1999 Offer of Settlement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17325 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–359–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

July 3, 2000.

Take notice that on June 29, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective July 31, 2000.

Fourteenth Revised Sheet No. 1
Fourth Revised Sheet No. 4000
Second Revised Sheet No. 4001
Original Sheet No. 4002
Original Sheet No. 4003

Koch states that it is proposing to create a new auction process for its

Interruptible Storage Service (ISS) and Parking and Lending Service (PAL). The proposed tariff changes will create an interactive auction whereby interested shippers will be able to bid on ISS and PAL capacity and thus, will provide a more efficient process and greater price transparency to Koch's customers. Koch states that any PAL and ISS transaction beginning in future months will be included in the new auction process, however, any transaction involving the cash market will not be included.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17326 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2670–000]

MultiFuels Marketing Company; Notice of Issuance of Order

July 3, 2000.

MultiFuels Marketing Company (MultiFuels) submitted for filing a rate schedule under which MultiFuels will engage in wholesale electric power and energy transactions as a marketer. MultiFuels also requested waiver of various Commission regulations. In particular, MultiFuels requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MultiFuels.

On June 27, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs, and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MultiFuels should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MultiFuels is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful objective within the corporate purposes of MultiFuels, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MultiFuels issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 27, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17273 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–398–000]

Reliant Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2000.

Take notice that on June 29, 2000, Reliant Energy Gas Transmission Company (REGT), 111 Louisiana Street, Houston, Texas 77002–5231, filed a request with the Commission in Docket No. CP00–398–000, pursuant to Section 157.205, 157.211 and/or 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon certain facilities in Arkansas authorized in blanket certificates issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

REGT proposes to abandon Line KM–50, in its entirety, in Union County, Arkansas. REGT proposes to sell and transfer this line at net book value to Reliant Energy Arkla, a distribution division of Reliant Energy Incorporated (Arkla). Arkla will operate this segment of line as part of its low pressure distribution system. Net book value of this 2-inch line is $6,418.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 00–17324 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2429–000]

Unicom Energy, Inc.; Notice of Issuance of Order

July 3, 2000.

Unicom Energy, Inc. (Unicom) filed with the Commission a rate schedule in the above-captioned proceeding, under which Unicom will engage in wholesale electric power and energy transactions at market-based rates, and for certain

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waivers and authorizations. In particular, Unicom also requested in its application that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Unicom. On July 28, 2000, the Commission issued an order that accepted the rate schedule for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's June 28, 2000 Order granted, approved Unicom's request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Unicom should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Unicom is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Unicom, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approved of Unicom's issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 28, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. This issuance may also be viewed on the Internet at *http:/www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17274 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–185–000, et al.]

FPL Energy Cape, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 3, 2000.

Take notice that the following filings have been made with the Commission:

1. FPL Energy Cape, LLC

[Docket No. EG00–185–000]

Take notice that on June 28, 2000, FPL Energy Cape, LLC, 100 Middle Street, Portland Maine 04101, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

FPL Energy Cape, LLC, a Delaware limited liability company proposes to engage in the business of owning and operating the Cape Station, consisting of two combustion turbine units in South Portland, Maine. The Maine Public Utilities Commission has found that allowing these facilities to be eligible facilities will benefit consumers, is in the public interest and does not violate state law. *Central Maine Power Company,* Docket No. 98–058, Nov. 25, 1998. The applicant seeks a determination of its exempt wholesale generator status. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Automated Power Exchange, Inc.

[Docket No. ER00–1439–002]

Take notice that on June 29, 2000, Automated Power Exchange, Inc. (APX) tendered for filing a revised annual report for 1999.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Electric Cooperative, Inc., Complainant, v. Pennsylvania Electric Company, doing business as GPU Energy, Respondent.

[Docket No. EL00–88–000]

Take notice that on June 30, 2000, Allegheny Electric Cooperative, Inc. (Allegheny), tendered for filing in the above-referenced docket a complaint under Section 206 of the Federal Power Act against Pennsylvania Electric Company (Penelec) concerning the wholesale rates and charges Penelec collects from Allegheny pursuant to a 1993 Wheeling and Supplemental Power Agreement between Allegheny and Penelec.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be filed on or before July 20, 2000.

4. Nevada Power Company and Sierra Pacific Power Company

[Docket No. ER00–2015–002; and Docket No. ER00–2018–002]

Take notice that on June 29, 2000, Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra), tendered for filing pursuant to Section 205 of the Federal Power Act and the Commission's Order in the above-referenced proceeding dated May 31, 2000, nine revised Transition Power Purchase Contracts that will apply to sales from the divested generation to Nevada Power and Sierra. The revisions are intended to comply with the requirement in the Commission's May 31, Order regarding the notice that must be given of the amount of capacity taken under the contracts. With respect to four of the contracts, the revisions also include language designed to implement the Request for Rehearing of the May 31, Order filed by Nevada Power and Sierra.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Alcoa Power Generating Inc.

[Docket No. ER00–2972–000]

Take notice that on June 28, 2000, Alcoa Power Generating Inc. (APGI) tendered for a filing service agreement between Aquila Energy Marketing Corporation and APGI under APGI's Market Rate Tariff No. 1 (MR–1). This Tariff was accepted for filing by the Commission on July 13, 1999, in Docket No. ER99–2932–000.

The service agreement with Aquila Energy Marketing Corporation is proposed to be effective June 1, 2000.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southwest Power Pool, Inc.

[Docket No. ER00–2973–000]

Take notice that on June 28, 2000, Southwest Power Pool, Inc. (SPP), on behalf of its members, tendered for filing an executed signature page to the SPP Membership Agreement signed by Southwestern Public Service Company (SPS), and revised sheets to its currently

effective tariff in order to reflect a change in the revenue requirements and transmission loss factor for SPS, and a change in the revenue requirement for Western Farmers Electric Cooperative (Western Farmers).

SPP requests an effective date of June 29, 2000 for these changes.

Copies of this filing have been served on all affected state commissions, SPP customers and SPP members.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER00–2974–000]

Take notice that on June 28, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an Interconnection and Operating Agreement with The Goodyear Tire & Rubber Company (Goodyear), and a Generator Imbalance Agreement with Goodyear.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Avista Corporation

[Docket No. ER00–2975–000]

Take notice that on June 28, 2000, Avista Corporation (AVA) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 35.12 of the Commission's Regulations, 18 CFR Part 35.12, an executed Net Settlement Agreement with Engage Energy US, L.P.

Avista Corporation (AVA) requests that the Net Settlement Agreement be made effective April 1, 2000.

A copy of this filing has been served upon Engage Energy US, L.P.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER00–2976–000]

Take notice that on June 28, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Suite 2900, Des Moines, Iowa 50309, filed with the Commission a First Amendment to the Power Sales Agreement Between MidAmerican Energy Company and Waverly Light and Power (Amendment), dated February 10, 1999, entered into by MidAmerican and the Municipal Electric Utility of Waverly, Iowa, pursuant to MidAmerican's Service Agreement No. 12 with Waverly, effective February 1, 1997, and pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5.

MidAmerican requests an effective date of June 29, 2000 for the Amendment and seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the Municipal Electric Utility of Waverly, Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER00–2977–000]

Take notice that on June 28, 2000 Florida Power & Light Company (FPL) filed a Service Agreement with City of Lakeland, Florida for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light and a Service Agreement with Allegheny Energy Supply Company, LLC for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on June 1, 2000.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER00–2978–000]

Take notice that on June 28, 2000, Commonwealth Edison Company (ComEd) tendered for filing an executed service agreement for Central Illinois Light Company (CILCO) under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests and effective date of May 30, 2000 for the service agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on CILCO.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. CinCap VIII, LLC and Cinergy Capital & Trading, Inc.

[Docket No. ER00–2979–000]

Take notice that on June 28, 2000, CinCap VIII, LLC (CinCap VIII) and Cinergy Capital & Trading, Inc. (CC&T), tendered for filing a Master Power Purchase and Sale Agreement dated June 1, 2000 under which CinCap VIII and CC&T may sell and purchase electric power pursuant to their respective rate schedules authorizing them to sell power at market-based rates.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER00–2980–000]

Take notice that on June 28, 2000, Commonwealth Edison Company (ComEd) tendered for filing agreements establishing Peoples Energy Services Corporation (Peoples), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of June 6, 2000 for the agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Peoples.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. New Century Services, Inc.

[Docket No. ER00–2981–000]

Take notice that on June 28, 2000, New Century Services, Inc. (NCS), on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (SPS) (collectively the NCE Operating Companies), filed amended tariff sheets to the NCE Operating Companies' open-access transmission tariff (NCE Tariff). NCS states that the purpose of the filing is to amend the NCE Tariff to make clear that it does not apply to transmission service on the SPS transmission system that will be available under the Southwest Power Pool open-access transmission tariff.

NCS requests that the revised tariff sheets be made effective on June 29, 2000.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–2983–000]

Take notice that on June 28, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Second Revised Service Agreement No. 3 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. The Service Agreement portion of Second Revised Service Agreement No. 3 will maintain the effective date of November 29, 1999, in accordance with the Commission's Order at Docket No. ER00–907–000.

Allegheny Energy requests a waiver of notice requirements to make the Netting Agreement effective as of May 2, 2000 to DTE Energy Trading, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Rockingham Power, L.L.C.

[Docket No. ER00–2984–000]

Take notice that on June 29, 2000, Rockingham Power, L.L.C., tendered for filing a long-term power sales agreement between Rockingham Power, L.L.C. and Duke Power, a Division of Duke Energy Corporation, to be in effect as of May 30, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. PPL Electric Utilities Corporation

[Docket No. ER00–2985–000]

Take notice that on June 29, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.), tendered for filing notice of cancellation of the Power Sales Tariff—Market Rates Service Agreement, dated June 15, 1998, between American Electric Power Service Corporation (as agent for the AEP Companies) and PPL Utilities.

PPL Utilities requested an effective date of this cancellation of August 28, 2000.

Notice of the proposed cancellation has been served upon American Electric Power Service Corporation.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Western Systems Coordinating Council

[Docket No. ER00–2986–000]

Take notice that on June 29, 2000, the Western Systems Coordinating Council (WSCC), tendered for filing with the Commission an First Amendment to the Reliability Criteria Agreement under the WSCC's Reliability Management System. The amendment modifies the time period under the Disturbance Control Standard to fifteen minutes.

The WSCC requests that the Commission make such amendment effective July 1, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER00–2987–000]

Take notice that on July 29, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement with The Legacy Group, LLC providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be accepted for filing and made effective on June 27, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Avista Corp.

[Docket No. ER00–2988–000]

Take notice that on June 29, 2000, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Public Service Company of Colorado.

AVA requests the Service Agreements be given a respective effective date of June 12, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Public Service Corporation

[Docket No. ER00–2989–000]

Take notice that on June 29, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Firm Transmission Service Agreement with Public Service of Colorado providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be accepted for filing and made effective on June 27, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Public Service Corporation

[Docket No. ER00–2990–000]

Take notice that on June 29, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Firm Transmission Service Agreement with The Legacy Group, LLC providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be accepted for filing and made effective June 27, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Electric Power Company

[Docket No. ER00–2991–000]

Take notice that on June 29, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Conectiv Energy Supply, Inc.

Wisconsin Electric respectfully requests an effective date of June 16, 2000 to allow for economic transactions.

Copies of the filing have been served on Conectiv Energy Supply, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Electric Power Company

[Docket No. ER00–2992–000]

Take notice that on June 29, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing notice that effective June 30, 2000, Service Agreement No. 20, effective August 22, 1995 under Wisconsin Electric Power Company's Coordination Sales Tariff, FERC Electric Tariff First Revised Volume 2 is to be canceled as requested by the customer Utility 2000 Energy Corp. (U2K).

Copies of the filing have been served on U2K Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. PJM Interconnection, L.L.C.

[Docket No. ER00–2993–000]

Take notice that on June 29, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to permit and accommodate requests to schedule and dispatch generation to meet voltage limits more restrictive than that which PJM determines is required for the reliable operation of transmission system in the PJM control area.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. PJM Interconnection, L.L.C.

[Docket No. ER00–2994–000]

Take notice that on June 29, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to the PJM Open Access Transmission Tariff (PJM Tariff) to add a new Section 2.3 setting forth procedures for transmission customers to exercise the transmission reservation priority rights specified in Section 2.2 of the PJM Tariff.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. PJM Interconnection, L.L.C.

[Docket No. ER00–2995–000]

Take notice that on June 29, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed service agreement for network integration transmission service under the PJM Open Access Transmission Tariff with Conectiv Energy Supply, Inc. (Conectiv).

Copies of this filing were served upon Conectiv and the state commissions within the PJM control area.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Williams Energy Marketing & Trading Company

[Docket No. ER00–2996–000]

Take notice that on June 29, 2000, Williams Energy Marketing & Trading Company (Williams EM&T), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35, its Fourth Revised FERC Electric Rate Schedule No. 1.

The primary purpose of this filing is to clarify that Williams EM&T has authority to sell wholesale ancillary services to entities located in California that do not self-supply ancillary services to the California Independent System Operator Corporation (CAISO).

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Sierra Pacific Power Company and Nevada Power Company

[Docket No. ER00–2997–000]

Take notice that on June 29, 2000, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power), tendered for filing pursuant to Section 205 of the Federal Power revised tariff sheets applicable to their Joint Open Access Transmission Tariff. Certain of the revisions are intended to revise the charges for Energy Imbalances and to provide for Generation Imbalance Service.

Sierra and Nevada Power request that these changes be made effective as of July 1, 2000. Sierra and Nevada Power also have filed Generation Interconnection Procedures, which they request be made effective September 1, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17323 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of License Surrender, and Soliciting Comments, Motions To Intervene, and Protests

July 3, 2000.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Surrender of License.

b. Project No: 2954–020.

c. Date Filed: May 31, 2000.

d. Applicant: City of Santa Barbara, California.

e. Name of Project: Gibraltar Hydroelectric Project.

f. Location: At Lauro Reservoir, located at the north end of San Roque Road, Santa Barbara, California. The project utilizes federal lands managed by the U.S. Department of the Interior, Bureau of Reclamation.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: David H. Johnson, Public Works Director, City of Santa Barbara, 630 Garden Street, P.O. Box 1990, Santa Barbara, CA 93102, (805) 546–5387.

i. FERC Contact: Any questions concerning this notice should be addressed to Paul Friedman at (202) 208–1108; e-mail: paul.friedman@ferc.fed.us.

j. Deadline for filing comments, motions, or protests: August 7, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Commission, 888 First Street, NE, Washington, D.C. 20426. Please include the Project No. (2954–020) on any comments or motions filed.

k. Description of Project: The project consists of: (1) A 600-foot-long, 180-foot-high, concrete arch dam; (2) a reservoir with a surface area of 8,500-acre-feet; (3) the 19,650-foot-long Mission Tunnel; (4) a 6,200-foot-long penstock; (5) a powerhouse containing a single generating unit with an installed capacity of 750kW; and (6) appurtenant facilities. The licensee requests surrender of the license, stating that the project is no longer economically viable.

l. Locations of this application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The filing may be viewed on http://www/ferc.fed.us/online/rims/htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must

be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters that title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–17327 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 5, 2000.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: July 12, 2000, 10:00 a.m.

Place: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

Status: Open.

Matters To Be Considered: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

Contact Person for More Information: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

745th—Meeting July 12, 2000, Regular Meeting (10:00 a.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
Docket# ER00–2360, 000, Pacific Gas and Electric Company
Other#s ER00–2360, 001, Pacific Gas and Electric Company

CAE–2.
Docket# ER00–2485, 000, New England Power Pool
Other#s ER00–1572, 001, USGEN New England, Inc.

CAE–3.
Docket# ER00–2581, 000, California Independent System Operator Corporation
Other#s ER00–2582, 000, California Independent System Operator Corporation
ER00–2583, 000, California Independent System Operator Corporation

CAE–4.
Docket# ER00–2621, 000, Entergy Louisiana, Inc.

CAE–5.
Docket# ER00–1820, 000, Commonwealth Edison Company
Other#s ER00–1820, 001, Commonwealth Edison Company of Indiana

CAE–6.
Docket# EC00–27, 000, Utilicorp United, Inc.
Other#s EC00–27, 001, Utilicorp United, Inc.
EC00–28, 000, Utilicorp United, Inc.
EC00–28, 001, Utilicorp United, Inc.

CAE–7.
Docket# EC00–91, 000, Conectiv and NRG Energy, Inc.

CAE–8.
Docket# EC00–75, 000, Nisource, Inc.

CAE–9.
Docket# ER94–736, 001, Washington Water Power Company
Other#s ER94–760, 001, Puget Sound Energy, Inc.
ER94–759, 001, Puget Sound Energy, Inc.
ER94–752, 001, Puget Sound Energy, Inc.
ER94–750, 001, Puget Sound Energy, Inc.
ER94–749, 001, Puget Sound Energy, Inc.
ER94–685, 001, Pacificorp

CAE–10.
Docket# ER00–800, 001, California Independent System Operator Corporation
Other#s EL00–58, 000, Western Power Trading Forum v. California Independent System Operator Corporation
ER00–900, 001, Pacific Gas and Electric Company

CAE–11.
Omitted

CAE–12.
Docket# EC00–57 001, Baltimore Gas and Electric Company, Calvert Cliffs, Inc., Constellation Enterprises, Inc. and Constellation Generation, Inc.

CAE–13.
Docket# ER00–1933, 001, Entergy Services, Inc.

CAE–14.
Docket# RM00–10, 000, Open Access Same-Time Information System Phase II

CAE–15.
Omitted

CAE–16.
Docket# EL00–70, 000, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
Other#s EL00–70, 001, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
ER00–2624, 000, New York Independent System Operator, Inc.

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
Docket# RP00–317, 000, Mississippi Canyon Gas Pipeline, LLC

CAG–2.
Docket# RP00–330, 000, Dauphin Island Gathering Partners

CAG–3.
Docket# RP00–348, 000, Canyon Creek Compression Company

CAG–4.
Omitted

CAG–5.
Docket# RP00–353, 000, Black Marlin Pipeline Company

CAG–6.
Docket# RP00–2, 000, Overthrust Pipeline Company

CAG–7.
Docket# IS00–233, 000, Alpine Transportation Company

CAG–8.
Docket# RP00–310, 000, Discovery Gas Transmission LLC
Other#s RP00–310, 001, Discovery Gas Transmission LLC

CAG–9.
Docket# CP96–152, 026, Kansas Pipeline Company

CAG–10.
Docket# RP00–239, 001, Pine Needle LNG Company, LLC

CAG–11.
Omitted

CAG–12.
Omitted

CAG–13.
Docket# RP93–5, 037, Northwest Pipeline Corporation
Other#s RP93–5, 038, Northwest Pipeline Corporation
RP93–5, 039, Northwest Pipeline Corporation
RP93–96, 015, Northwest Pipeline Corporation
RP93–96, 016, Northwest Pipeline Corporation
RP93–96, 017, Northwest Pipeline Corporation

CAG–14.
Docket# RM00–6, 000, Well Category Determinations

CAG–15.
Docket# RP00–212, 000, NUI Corporation (City Gas Company of Florida Division) v. Florida Gas Transmission Company

CAG–16.
Docket# MG00–7, 000, Texas Gas Transmission Corporation

CAG–17.
Docket# PR00–7, 000, Duke Energy Texas Intrastate Pipeline, LLC

Other#s PR00–7, 001, Duke Energy Texas Intrastate Pipeline, LLC

Consent Agenda—Energy Projects—Hydro

CAH–1.
Docket# P–2609, 014, Curtis/Palmer Hydroelectric Company LP and International Paper Company
CAH–2.
Docket# P–2114, 083, Public Utility District No. 2 of Grant County, Washington

Consent Agenda—Energy Projects—Certificates

CAC–1.
Docket# CP99–76, 001, Transcontinental Gas Pipe Line Corporation
CAC–2.
Docket# CP98–131, 003, Vector Pipeline L.P.
Other#s CP98–133, 004, Vector Pipeline L.P.
CP98–134, 003, Vector Pipeline L.P.
CP98–135, 003, Vector Pipeline L.P.
CP00–26, 000, Laura Lee Reesor V. Vector Pipeline L.P.
CAC–3.
Docket# CP99–522, 001, Transwestern Pipeline Company
CAC–4.
Docket# RM00–5, 000, Optional Certificate and Abandonment Procedures for Applications for new Service Under Section 7 of the Natural Gas Act
CAC–5.
Docket# RP00–220, 000, Town of Neligh, Nebraska v. Kinder Morgan Interstate Gas Transmission, L.L.C. and KN Energy, a Division of Kinder Morgan, Inc.
CAC–6.
Docket# CP97–315, 000, Independence Pipeline Company
Other#s CP97–319, 000, ANR Pipeline Company
CP97–320, 000, Independence Pipeline Company
CP97–321, 000, Independence Pipeline Company
CP98–200, 000, National Fuel Gas Supply Corporation

Energy Projects—Hydro Agenda

H–1.
Reserved

Energy Projects—Certificates Agenda

C–1.
Omitted

Markets, Tariffs and RATES—Electric Agenda

E–1.
Reserved

Markets, Tariffs and Rates—Gas Agenda

G–1.
Reserved

David P. Boergers,

Secretary.

[FR Doc. 00–17442 Filed 7–6–00; 10:54 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00666; FRL–6594–9]

Public Meeting on the Mechanisms for Limiting Quantities of Pesticides Used

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In its efforts to reduce risk from pesticide exposure, EPA on occasion has made agreements with pesticide registrants to cap the annual production of a particular pesticide active ingredient. In an August 1999 Memorandum of Agreement (MOA) between EPA and the registrants of azinphos-methyl (AZM), the total volume of AZM available for use each year was capped. In the MOA, a temporary approach for allocating the cap among the producers of AZM was agreed upon for 2000 with the understanding a clear mechanism for allocating the cap would be in place for subsequent years. Because EPA has restricted the quantities of certain pesticides in the past and may do so in the future, the Agency agreed to hold a public meeting to get input on establishing a mechanism for accomplishing this and any future chemical-specific quantity limits. The purpose of this notice is to announce a public meeting to discuss mechanisms for chemical-specific quantity limits and to solicit comment on EPA's preliminary thinking on the allocation of chemical-specific quantity limits.

DATES: Comments, identified by docket control number OPP–00666, must be received on or before August 24, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00666 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Richard Dumas, Special Review and Reregistration Division, 7508C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8015; fax number: (703) 308–8041; e-mail address: dumas.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to pesticide registrants, pesticide user groups, and environmental groups. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00666. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is

imperative that you identify docket control number OPP–00666 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00666. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

1. *Meeting announcement.* The purpose of this notice is to announce a public meeting on September 7, 2000, from 9:00 a.m. to 12:00 p.m. at the National Rural Electric Cooperative Association Conference Center, 4301 Wilson Blvd, Arlington, VA 22203; telephone number: (703) 907–5933, to get input on mechanisms for allocating chemical specific production caps. This notice also announces the opening of a public comment period to solicit comment on EPA's preliminary thoughts concerning the allocation of quantity limits. The public comment period will end on August 24, 2000.

2. *Overview.* Through a 1999 Memorandum of Agreement (MOA) between EPA and the registrants of technical grade azinphos-methyl (AZM), EPA sought to reduce the risks associated with AZM use. The extent of the required risk reduction measures was based, in part, on data concerning the percentage of each crop that was treated with AZM over the 1995–1998 growing seasons. Recognizing that increases in AZM use could raise the aggregate dietary risk to unacceptable levels, EPA and the registrants of technical grade AZM agreed that the volume of AZM available for use each year would be subject to a finite limit. EPA determined that the most expeditious and effective means of limiting AZM use would be through a cap on production (import) of technical grade AZM.

In the MOA, a temporary approach for allocating production among the producers of technical grade AZM was agreed upon for 2000 with the understanding that EPA would reexamine the allocation of AZM production under the cap for subsequent years. Because persons other than the present AZM registrants may have interests in the allocation of AZM production, and because chemical-specific quantity limits may be used for other pesticides in the future, the Agency agreed to hold a public meeting to get input on mechanisms for implementing chemical-specific quantity limits. Below are the characteristics that the Agency believes are needed for any chemical-specific quantity limit and some preliminary ideas on the issues that the Agency needed feedback.

3. *EPA's Goals.* The Agency has identified some characteristics that it believes are desirable in a chemical-specific quantity limit where there is more than one registrant producing manufacturing use products. First, the mechanism should provide reasonable assurance that the quantities of AZM used in the U.S. will not exceed EPA's targets. The mechanism should allow for economic competition between registrants that is comparable to the amount that would exist without the cap. The mechanism should neither create monopolies nor prevent new entrants into the market. The mechanism should minimize the disruption in the market. For example, EPA wants a mechanism that minimizes the incentive to flood the market with product on the first day of the year or to supply more product than the market actually needs, and minimizes the chance of shortages. Finally, any mechanism adopted must be verifiable, timely, and simple to administer.

4. *Soliciting comment.* There are a number of areas that the Agency is seeking input. In addition to the issues specified below, the Agency is interested in the public's input on any other areas, that may help the Agency develop a mechanism for implementing chemical-specific quantity limits that meets the goals above.

Input on how to apportion chemical-specific quantity limits. EPA could set a limit on the total quantity to be produced (imported), and leave all allocation issues to the workings of the free market. Alternatively, EPA could assign each registrant a quota, or designate quotas by crop. Each of these approaches have advantages and disadvantages. Allocating by registrant

would allow the registrants to plan production and distribution more precisely than they could if EPA left allocation to the workings of the free market. However, a mechanism that allocates production (imports) by registrant may reduce price competition, and may raise anti-trust statutes concerns. Another potential weakness with allocation by registrant, is that there will be less of the pesticide available in the market place, there is no assurance that those who have the greatest need for the pesticide will have access to it. Historically, those who have the greatest need for a specific pesticide are those who grow minor use crops, such as fruits, vegetables and nursery crops. To deal with the minor use concern, the pesticide could be allocated by crop or crop groups. This approach could help direct the pesticide where the economic benefits are greatest. It potentially would require significant effort by USDA and/or the user community. This approach is likely to be administratively more cumbersome and more difficult to enforce relative to allocation by registrant. Whether or not the apportioning is by registrant or crop, it can be allocated by any number of mechanisms including a free market, a predetermined allocation set by EPA, or prescription based on pest pressure or other criteria.

Input on frequency and timing of reporting. To verify that the cap is not exceeded, some reporting is necessary. The amount and frequency of reporting will depend on the allocation mechanism used. For example, if EPA does not make any allocation between registrants, a production (import) limit would require frequent reporting of production (import) volumes in order that EPA might notify all registrants when the limit has been reached. A system where each registrant has a predetermined quota would require significantly less reporting.

Input on which 12–month period should be used. A cap implemented on a calendar year basis may pose difficulties if the calendar year does not correspond to the production, distribution and use cycles of a particular pesticide. Distributors and users may have to purchase the pesticide out of season and store it until use. Manufacturers and distributors may have difficulty anticipating demand. EPA may have difficulty ascertaining whether the risk management goal of limiting the quantity used has been achieved in a particular growing season. Accordingly, EPA seeks input on what 12–month period should be used for the AZM cap. EPA also seeks input on whether one time period could be suitable for all future caps. For simplicity, a specific time frame that can be used in all future cases would be desirable, but differing crop or production cycles may warrant setting time frames on a case-by-case basis.

Input on potential impacts to the market. As mentioned in the goals above, the Agency wants to minimize the impact on the market place. In particular, EPA wants to avoid structures that would significantly reduce price competition or that would increase barriers to new competitors entering the market.

Input on what should be capped. The current AZM cap is expressed in pounds of active ingredient imported because the present sources of technical grade AZM are overseas. EPA seeks comment on alternative approaches; for example, caps could be established for imports, production of technical or of end use products, or sales of end use product. EPA also seeks comment on whether, and how, AZM isomers should be addressed in the cap. Commenters should address how such alternatives would further, or detract from, the goals of having a mechanism that is easy to administer, verifiable, and timely.

Input on other areas that would be helpful for developing an allocation mechanism that meets the goals described above. The issues above represent some preliminary ideas on what types of things need to be considered before developing an allocation system that meets the broad goals mentioned in Unit II.A. Commenters are encourage to identify other factors that they believe would be important to develop a fair and manageable allocation mechanism.

B. What is the Agency's Authority for Taking this Action?

FIFRA section 3(c)(5)(D) allows the Administrator to register a pesticide only upon finding that the pesticide when used in accordance with widespread and commonly recognized practice will not generally cause unreasonable adverse effects on the environment. In instances where a pesticide causes adverse effects that closely approach being unreasonable, and which would become unreasonable if the pesticide were more widely used, limitations to prevent the pesticide from becoming more widely used may be necessary to maintain registration. Measures which would limit the total quantity applied are therefore consistent with EPA's statutory authority. Special Review and Reregistration Division, Office of Pesticide Programs.

List of Subjects

Environmental protection, Pesticide production caps

Dated: June 30, 2000.

Lois Rossi,

Director,

[FR Doc. 00–17355 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–5]

Scientific Peer-Review Meeting To Review Draft Document on Ecological Soil Screening Level Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of Peer-Review Panel Workshop.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will organize, convene, and conduct an external peer-review panel workshop to review the external review draft document titled, *Ecological Soil Screening Level Guidance.* The document was prepared by an EPA-lead multi-stakeholder process with participants from EPA (the Office of Solid Waste and Emergency Response (OSWER), the Office of Research and Development (ORD), and the Regions), Environment Canada, the U.S. Department of Energy (DOE), the U.S. Department of Defense (DoD), states, academia, industry, and consultants. The EPA will consider the peer-review advice and comments in revising the document.

DATES: The peer-review panel workshop will be held Wednesday, July 26, 2000, from 8:30 a.m. until 5:00 p.m. and Thursday, July 27, from 8:30 a.m. until Noon. Members of the public may attend as observers, and there will be a limited time for comments from the public.

ADDRESSES: The external peer-review panel workshop will be held at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia. Versar, Inc., an EPA contractor, is organizing, convening, and conducting the peer-review workshop. To attend the workshop, please register by July 24, 2000, by calling Mr. Amanjit Paintal, Versar, Inc., 6850 Versar Center, Springfield, VA 22151 at 703–750–3000 extension 449, or send a facsimile to 703-642–6954. You can also register via email at paintama@versar.com. Space is

limited, and registrations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the workshop. Please let Versar, Inc., know if you wish to make comments.

The draft guidance document on ecological soil screening levels is available on the Internet at http://www.epa.gov/superfund/programs/risk/tooleco.htm. A limited number of paper copies are available from Versar. If you are requesting a paper copy, please provide your name, mailing address, and the document title, *Ecological Soil Screening Level Guidance.* Copies are available from Versar, Inc. by calling Mr. Amanjit Paintal, Versar, Inc., 6850 Versar Center, Springfield, VA 22151 at 703–750–3000 extension 449, or send a facsimile to 703–642–6954. You can also request a copy by e-mail by writing to paintama@versar.com.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact Mr. Amanjit Paintal, Versar, Inc., 6850 Versar Center, Springfield, VA 22151, at 703–750–3000 extension 449 or via email at paintama@versar.com.

For technical information, contact Steve Ells, OSWER, telephone: 703–603–8822, facsimile: 703–603–9100, e-mail: ells.steve@epa.gov; or Randy Wentsel, ORD, telephone: 202-564–3214, facsimile: 202–565–0050, e-mail: wentsel.randy@epa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the document is to put forward procedures to develop scientifically sound, ecologically based, soil screening levels that are protective of the terrestrial environment for up to 24 chemicals of concern. As part of the process, methodologies and models that use site-specific exposure data to modify these screening levels are presented.

Although several different entities (Oak Ridge National Laboratory, the Canadian Council of Ministers of the Environment, the Dutch National Institute of Public Health and the Environment, and the Ontario Ministry of Environment and Energy) have developed sets of soil screening levels, benchmarks, or preliminary remediation goals for many contaminants, EPA has not embraced any specific approach for use nationally at all Superfund sites. Although some EPA Regional Offices, Federal agencies, states and contractors use one or more of these approaches, many do not and instead perform literature searches for toxicity data on each of the chemicals of potential concern and develop site-specific soil concentrations to be used as screening levels for the site under investigation. This repetitious approach can be very costly and time-consuming.

In order to improve national consistency and to conserve resources, an effort was made to form a multi-stakeholder process to develop scientifically sound, ecologically-based, soil screening levels, and many have participated, e.g., EPA, DoD, DOE, states, industry, and consultants. This collaborative project is expected to result in a Superfund guidance document that includes generic ecological soil screening levels (Eco-SSLs) for up to 24 chemicals that are frequently of ecological concern at Superfund sites. These Eco-SSLs will be soil concentrations that are expected to be protective of the mammalian, avian, plant, and soil invertebrates communities that could be exposed to the chemicals of concern. These Eco-SSLs will be conservative in order to be confident that chemicals that could present an unacceptable risk are not screened out early in the risk assessment process. The process used to develop this first set of Eco-SSLs can also be used to develop additional screening levels for other chemicals.

The participants produced draft Eco-SSLs for mammals, birds, plants, and soil biota. The plant and soil biota values were developed from available plant and soil invertebrate toxicity test data. The mammal and bird benchmarks were back-calculated from a hazard quotient of 1.0 using animal toxicity data and a small number of generic food chain models. The lowest reasonable Eco-SSL for each chemical will then be used to screen chemicals found at sites. These generic (i.e., not site-specific) Eco-SSLs will be used during Step 2 of the Superfund Ecological Risk Assessment (ERA) process (Ecological Risk Assessment Guidance for Superfund; Process for Designing and Conducting Ecological Risk Assessments, 1997), when there often are only limited site-specific data available. These levels represent a set of screening ecotoxicity values that can be used routinely to identify those chemicals of potential concern (COPCs) in soils requiring further evaluation in a baseline ecological risk assessment; they are not national cleanup standards.

Dated: July 3, 2000.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 00–17350 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–6]

Science Advisory Board; Notification of Change in Location of a Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a change in location for the Science Advisory Board's (SAB's) Executive Committee meeting scheduled for Wednesday and Thursday, July 12–13, 2000. This meeting was previously noticed in 65 FR 39614, June 27, 2000. The only change from that previous notice is the meeting location. Both days of the meeting will now be held at the US Environmental Protection Agency, Environmental Research Center (ERC), Highway 54 and T.W. Alexander Drive, Research Triangle Park, NC. On July 12, the meeting will be in ERC Classroom Two, and on July 13, the meeting will be in ERC Classroom One. The meeting will convene each day at 8:30 am and adjourn no later than 5:30 pm. All times noted are Eastern Daylight Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Dated: June 30, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–17336 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–954; FRL–6594–5]

Notice of Filing of Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–954, must be received on or before August 9, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is

imperative that you identify docket control number PF–954 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–954. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–954 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov,*" or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–954. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that the petitions contain data or information regarding the elements set forth in

section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represents the view of the petitioner. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

I. Huntsman Petrochemical Corporation

PP 0E6098

EPA has received a pesticide petition PP 0E6098 from Huntsman Petrochemical Corporation, 3040 Post Oak Blvd., Houston TX 77056 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2- propenoic acid, 2-methyl-, methyl ester, for use as a surfactant in formulations when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops or on the raw agricultural commodity (RAC) after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. Huntsman is petitioning that poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl-and 2-propenoic acid, 2-methyl-, methyl ester be exempt from the requirement of a tolerance based upon the definition of a low risk polymer as per 40 CFR 723.250. Therefore, an analytical method to determine residues of poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester in RACs has not been proposed.

B. Toxicological Profile

1. *Acute toxicity.* In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are typically not readily absorbed, and are relatively unreactive and stable compounds in comparison to other chemical substances. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers.

i. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is not a cationic polymer, nor is it capable of becoming a cationic polymer in the natural aquatic environment.

ii. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen.

iii. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(iii).

iv. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.

v. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is manufactured using monomers and/or other reactants that are already included on the TSCA Chemical Substance Inventory or covered under an applicable TSCA section 5 exemption.

vi. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000.

vii. The number average molecular weight of poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is 3,700. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

viii. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester contains approximately 0.03% oligomeric material below molecular weight 500 and approximately 0.22% oligomeric material below 1,000 molecular weight.

ix. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester does not contain reactive functional groups.

2. *Endocrine disruption.* There is no evidence that poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is an endocrine disrupter, where as substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-

oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is not absorbed through the intact GI tract and is considered incapable of eliciting a toxic response.

ii. *Drinking water.* Based upon the aqueous insolubility of poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester, there is no reason to expect human exposure to residues in drinking water.

2. *Non-dietary exposure.* Although there may be exposures to the compound through dietary, and/or non-occupational sources, the chemical characteristics of this compound are such that there is reasonable certainty of no harm from aggregate exposure.

D. Cumulative Effects

There is no reasonable expectation of any increased risk due to cumulative exposure to poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester, since polymers with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

E. Safety Determination

1. *U.S. population.* Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there would be additional risk.

2. *Infants and children.* Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where infants and children would be at additional risk.

F. International Tolerances

Huntsman is not aware of any country requiring a tolerance for poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester, nor have there been any CODEX maximum residue levels established for any food crops at this time.

II. Huntsman Petrochemical Corporation

PP 0E6099

EPA has received a pesticide petition PP 0E6099 from Huntsman Petrochemical Corporation, 3040 Post Oak Blvd., Houston, TX 77056 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt for use as a surfactant in formulations when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops or on the RAC after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. Huntsman is petitioning that 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt be exempt from the requirement of a tolerance based upon the definition of a low risk polymer as per 40 CFR 723.250. Therefore, an analytical method to determine residues of 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt in RACs has not been proposed.

B. Toxicological Profile

1. *Acute toxicity.* In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that typically are not readily absorbed and are relatively unreactive and stable compounds in comparison to other chemical substances. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers.

i. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not a cationic polymer, nor is it capable of becoming a cationic polymer in the natural aquatic environment.

ii. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt contains, as an integral part of its composition, the atomic elements carbon, hydrogen, oxygen and monovalent sodium.

iii. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250 (d)(2)(iii).

iv. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.

v. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not manufactured from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

vi. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000.

vii. The number average molecular weight of 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt is 15,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

viii. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt contains less than 0.1% oligomeric material below 1,000 molecular weight. The amount of oligomeric material less than 500 molecular weight is essentially nil.

ix. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt does not contain reactive functional groups.

2. *Endocrine disruption.* There is no evidence that 2,5-furandione, polymer

with (1-methylethenyl)benzene, sodium salt is an endocrine disrupter, where as substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not absorbed through the intact GI tract and is considered incapable of eliciting a toxic response.

ii. *Drinking water.* Based upon the aqueous insolubility of 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt, there is no reason to expect human exposure to residues in drinking water.

2. *Non-dietary exposure.* Although there may be exposures to the 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt through dietary, and/or non-occupational sources, the chemical characteristics of this compound are such that there is reasonable certainty of no harm from aggregate exposure.

D. Cumulative Effects

There is no reasonable expectation of any increased risk due to cumulative exposure to 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt since polymers with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

E. Safety Determination

1. *U.S. population.* 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there would be additional risk.

2. *Infants and children.* 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where infants and children would be at additional risk.

F. International Tolerances

Huntsman is not aware of any country requiring a tolerance for 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt, nor have there been any CODEX maximum residue levels established for any food crops at this time.

[FR Doc. 00–17357 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–7]

Proposed CERCLA Prospective Purchaser Agreement; Green Industries Site; City of Sharonville (Cincinnati), Hamilton County, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States as delegated, notice is hereby given of a proposed prospective purchaser agreement concerning the Green Industries Corporation site at 3603 East Kemper Road, in Sharonville (Cincinnati), Hamilton County, Ohio 45241, with the Port Authority for Brownfield Redevelopment in Cincinnati and Hamilton County ("the Port Authority"). The agreement requires the Port Authority to pay $500.00 to the EPA Hazardous Substance Superfund; to commence participation in the Ohio EPA Voluntary Action Program ("VAP") and, thereafter, to use its best efforts to perform such investigation, characterization and remediation activities as are necessary to attain VAP cleanup standards and/or attain a VAP Covenant Not to Sue; and to provide to U.S. EPA access to the site and to records kept by the Port Authority, retaining any such records for at least five (5) years after the effective date of the agreement. The agreement includes U.S. EPA's covenant not to sue or to take any other civil or administrative action against the Port Authority for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with respect to existing contamination at or from the site. The United States will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. Please contact Richard R. Wagner at (312) 886–7947 to make arrangements to inspect the comments.

DATES: Comments must be submitted on or before August 9, 2000.

ADDRESSES: The proposed settlement is available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. A copy of the proposed agreement may be obtained from Richard R. Wagner, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–7947. Comments should reference the Green Industries Corporation prospective purchaser agreement, and should be addressed to Richard R. Wagner.

FOR FURTHER INFORMATION CONTACT: Richard R. Wagner, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–7947.

Dated: March 27, 2000.

William E. Muno,

Director, Superfund Division, U.S. EPA Region 5.

[FR Doc. 00–17349 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–3]

BMI Textron Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: The Environmental Protection Agency is proposing to enter into a settlement with the BMI Textron Corporation for response cost pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the BMI Textron Site located in Lake Park, Florida.. EPA will

consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–PSB), 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: June 12, 2000.

James L. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–17353 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–4]

Chemfax Resin Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: The Environmental Protection Agency is proposing to enter into a settlement with Mr. Marshall J. Williams and Williams Paving Company, LLC for response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Chemfax Resin Superfund Site located in Gulfport, Harrison County, Mississippi. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from:

Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: June 20, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–17352 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: Wednesday, July 19, 2000, at 9 a.m. to 1 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

AGENDA: This meeting will include an update on telecommunications and technology and a discussion on the Africa Growth and Opportunities Act in Sub-Saharan Africa.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to July 14, 2000, Teri Stumpf, Room 1215, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1215, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

John M. Niehuss,

General Counsel.

[FR Doc. 00–17382 Filed 7–7–00; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATONS COMMISSION

[CC Docket No. 00–65; FCC 00–238]

Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Service in the State of Texas

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants the section 271 application of Southwestern Bell (SWBT) for authority to enter the interLATA toll market in the State of Texas. The Commission grants SWBT's application based on our conclusion that SWBT has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective date of approval of section 271 application is July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Audrey Wright or William Dever, Attorneys, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418–1580, or via the Internet at *awright@fcc.gov* or *wdever@fcc.gov*, respectively. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, CY–A257, 445 12th Street, Washington, DC 20554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This document is a brief description of the Commission's Memorandum Opinion and Order adopted June 30, 2000, and released June 30, 2000. The full text also may be obtained through the World Wide Web, at *http://www.fcc.gov/ccb/Orders/index6.html*, or may be purchased from the Commission's copy contractor, International Transcription Service Inc. (ITS), CY B–400, 445 12th Street, SW, Washington, DC.

Synopsis of the Memorandum Opinion and Order

1. *History of the Application.* On January 10, 2000, SWBT filed an application with the Federal Communications Commission to provide in-region, interLATA service in the State of Texas. On April 5, 2000, SWBT filed an extensive supplement to its January 2000 application. On April 6,

2000, the Commission announced that, at SWBT's request, it would consider the January 2000 application as withdrawn, and would treat the supplemental filing as a new application incorporating the record from the initial proceeding.

2. *The Texas Commission's Evaluation.* The Texas Commission advised the Commission that, following extensive review, testing, and process improvements, SWBT met the checklist requirements of section 271(c) and had taken the statutorily required steps to open its local markets to competition. Specifically, the Texas Commission stated that SWBT met its obligation under section 271(c)(1)(A) by entering into interconnection agreements with at least 17 competing carriers that are serving residential and business customers either exclusively or predominantly over their own facilities. The Texas Commission found that SWBT had fully complied with section 271, and voted without qualification to support the application.

3. *The Department of Justice's Evaluation.* The Department of Justice submitted evaluations of SWBT's application on May 12 and June 13, 2000. In its May 12 evaluation, the Department of Justice concluded that SWBT's performance with respect to interconnection trunking had sufficiently improved to alleviate its concerns with respect to that issue. In its June 13, 2000 evaluation, the Department of Justice recommended approval of SWBT's application to provide long distance service in Texas. Specifically, the Department of Justice concluded that SWBT had significantly improved the process by which it measures and reports its performance in providing unbundled loops for DSL services, and had demonstrated improvement in its ability to provision DSL-capable loops in a nondiscriminatory manner. The Department of Justice further found that SWBT had demonstrated improvement in cutting over a loop to a competing carrier, specifically through the coordinated hot cut (CHC) process, and to a lesser degree, through the frame due time (FDT) processes. Finally, the Department of Justice stated that commercial data with respect to competing carriers' ability to compete via the UNE-platform are encouraging, and noted that order volumes in this area had increased steadily over the last few months.

4. *Compliance with Section 271(c)(1)(A).* We conclude that SWBT demonstrates that it satisfies the requirements of section 217(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Texas. Specifically, we find that AT&T, Birch, CoServ, ETS, Optel, Sage and KMC all provide telephone exchange service either exclusively or predominantly over their own facilities to residential subscribers and to business subscribers. The Texas Commission also concludes that SWBT has met the requirements of section 271(c)(1)(A). None of the commenting parties, including the competitors cited by SBC in support of its showing, challenges SWBT's assertion in this regard.

5. *Checklist Item 1—Interconnection.* We conclude that SWBT satisfies the requirements of checklist item 1. Pursuant to this checklist item, SWBT must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic, using any available method of interconnection at any available point in SWBT's network. We find that SWBT demonstrates that it provides interconnection at all technically feasible points on its network. We likewise find that SWBT adequately demonstrates that it provides collocation in Texas in accordance with the Commission's rules. Furthermore, interconnection between networks must be equal in quality whether the interconnection is between SWBT and an affiliate, or between SWBT and another carrier. SWBT demonstrates that it provides interconnection that meets this standard.

6. SWBT also offers interconnection in Texas to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1. SWBT offers interconnection at the total element, long-run incremental cost (TELRIC)-based rates that are just, reasonable, and nondiscriminatory, pursuant to our rules. SWBT complies with our rules because it pro-rates its site preparation charges and allocates them according to our rules.

7. SWBT meets the standards for interim collocation rates set forth in our order approving Bell Atlantic's section 271 application. *See Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act,* 64 Fed. Reg. 73555 (1999). The mere presence of interim rates will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set. Here, the state has made reasonable efforts to set interim collocation rates in accordance with the Act and the FCC's rules. Moreover, the Texas Commission based the majority of the interim rates, at least with regard to physical collocation, on a TELRIC model. The Texas Commission has set up a schedule to set permanent rates, and has indicated to the parties that the interim rates are subject to a refund or true-up.

8. *Checklist Item 2—Access to Unbundled Network Elements.* We conclude that SWBT satisfies the requirements of checklist item 2. For the purposes of the checklist, SWBT's obligation to provide "access to unbundled network elements," or the individual components of the telephone network, is comprised of three aspects. First, to fulfill its nondiscrimination checklist obligation, SWBT must provide access to its operations support systems (OSS)—the term used to describe the systems, databases and personnel necessary support the network elements or services. Nondiscriminatory access ensures that new entrants have the ability to order service for their customers and communicate effectively with SWBT regarding basic activities such as placing orders, providing maintenance and repair service for customers. For each of the primary OSS functions, including pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance, SWBT must provide access that enables competing carriers to perform the function in substantially the same time and manner as SWBT or, if there is not an appropriate retail analogue in SWBT's systems, in a manner that permits an efficient competitor a meaningful opportunity to compete.

9. As an initial matter, SWBT demonstrates that it provides documentation and technical assistance necessary for new entrants to connect with its OSS, and a change management process that provides information necessary for competing carriers to modify their systems and procedures when SWBT changes its OSS. With respect to pre-ordering, or the activities that a competing carrier undertakes to gather and verify the information necessary to place an order, SWBT demonstrates (primarily through evidence of actual commercial usage) that it has deployed operationally ready interfaces and systems that offer nondiscriminatory access to pre-ordering OSS functions. Specifically, SWBT's pre-ordering interfaces and systems enable competing carriers to

retrieve customer service records, validate addresses, select and reserve telephone numbers, assess the services and features available to customers, retrieve due date information, determine whether a loop is capable of supporting advanced services (such as DSL), and view a customer's directory listing. Also, just as SWBT's own pre-ordering systems are "integrated" with its ordering systems, competing carriers may also integrate the pre-ordering and ordering interfaces, and pass information electronically from one to the other.

10. In terms of the interfaces and systems that enable competing carriers to place an order for service, SWBT demonstrates through performance data and third-party testing that it its systems return timely order confirmation and rejection notices, provide jeopardy and order completion notification, flow through a high percentage of orders without manual handling, and are capable of handling reasonably foreseeable demand volumes. In terms of provisioning, performance data demonstrates that SWBT provisions orders for competing carriers' customers in substantially the same time and manner that it provisions orders for its own retail customers.

11. In addition, with respect to maintenance and repair, SWBT demonstrates through commercial usage that its interfaces and systems enable competing carriers to create, modify, and cancel trouble tickets, and to request that SWBT test a customer's circuit, in substantially the same time and manner as SWBT's retail operations. Similarly, SWBT resolves problems associated with customers of competing carriers in substantially the same time and manner and at the same level of quality that it performs repair work for its own customers. Finally, with respect to billing, SWBT demonstrates that it provides complete and accurate reports on the service usage of competing carriers' customers in the same manner that SWBT provides such information to itself.

12. Pursuant to this checklist item, SWBT must also provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Based on evidence of actual commercial usage, and upon SWBT's legal obligations under interconnection agreements offered in Texas, SWBT demonstrates that it provides to competitors combinations of already-combined network elements as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

13. We also find that SWBT satisfies the pricing requirements of checklist item 2. In fulfilling its obligations under this checklist item, SWBT demonstrates that it provides nondiscriminatory access to unbundled network elements (UNEs) at any technically feasible point at rates, terms and conditions that are just, reasonable, and nondiscriminatory. This checklist item ensures that new entrants are not placed at a competitive disadvantage due to discriminatory prices for network elements.

14. We do not find that the SWBT's assessment of nonrecurring charges on UNE orders causes it to fail this checklist item. First, we find that the a central office access charge (COAC) is not subject to the Commission's forward-looking methodology because the Supreme Court held only that incumbent local exchange carriers (LECs) cannot separate already combined elements before providing them, not that they must combine separate UNEs. *AT&T* v. *Iowa Utilities Board*, 525 U.S. 366 (1999). Second, we have not examined the prices associated with UNE combinations that SWBT is not required to provide. Third, the Texas Commission is presently considering whether SWBT may impose the nonrecurring charges on competitive LEC orders for existing UNE combinations and whether these charges are adequately supported by cost documentation. SWBT is not presently collecting nonrecurring charges on pre-combined residential platform containing a two-wire analog loop, and thus is effectively imposing an interim charge of zero while the Texas Commission examines these charges. The Texas Commission has established a schedule to set permanent rates for all nonrecurring charges, and has indicated to the parties that the interim rates are subject to a true-up. We find that SWBT's interim solution is reasonable and meets the test set forth in prior section 271 orders.

15. We reach the same conclusion regarding SWBT's interim rates for charges relating to the installation and conditioning of xDSL-capable loops. The Texas Commission is now conducting a proceeding to set permanent xDSL rates based on cost studies that SWBT submitted at the direction of the Texas Commission arbitrator, and this interim solution is reasonable under the circumstances. We also find that SWBT's promotional discounts on unbundled loop and platform orders for telecommunications carriers serving residential customers arise out of SBC's merger with Ameritech and do not cause it to fail this checklist item. We also found that these promotional offerings are offered to all telecommunications carriers on a nondiscriminatory basis.

16. *Checklist Item 3—Poles, Ducts, Conduits and Rights of Way.* Based on the evidence in the record, we conclude that SWBT provides nondiscriminatory access to the poles, ducts, conduits, and rights-of-way at just and reasonable rates in compliance with our rules and satisfies the requirements of checklist item 3. The Texas Commission concludes that SWBT provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way at just and reasonable rates that comply with the Act and Commission rules. No commenter raised allegations challenging SWBT's compliance with this checklist item.

17. *Checklist Item 4—Unbundled Local Loops.* SWBT satisfies the requirements of checklist item 4. Local loops are the wires that connect the telephone company end office to the customer's home or business. To satisfy the nondiscrimination requirement under checklist item 4, SWBT must demonstrate that it can efficiently furnish unbundled local loops to other carriers within a reasonable time frame, with a minimum level of service disruption, and of a quality similar to that which it provides for its own retail customers. Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business.

18. SWBT provides evidence and performance data establishing that it can efficiently furnish unbundled loops, for the provision of both traditional voice services and various advanced services, to other carriers in a nondiscriminatory manner. More specifically, SWBT establishes that it provides coordinated cutovers of voice grade loops, *i.e.*, hot cuts, to competing carriers in a manner that permits efficient competitors to have a meaningful opportunity to compete. Through its CHC process, SWBT provisions 93 percent of hot cut lines within a one-hour interval, with less than five percent of hot cut lines resulting in a service disruption, and with less than two percent of hot cut lines the subject of installation trouble reports. In addition, SWBT establishes that it provides competing carriers with voice grade unbundled loops through new stand-alone loops in substantially the same time and manner as SWBT does for its own retail services. For both hot cut loops and new stand-alone loops, SWBT demonstrates that it

provides maintenance and repair functions for competing carriers in substantially the same time and manner as it provides for SWBT retail customers.

19. SWBT also demonstrates that it provides DSL-capable loops to competing carriers in a nondiscriminatory manner. Specifically, SWBT demonstrates that for both DSL and BRI loops used for advanced services, SWBT provides timely advanced services order processing and installation comparable to that which it provides SWBT retail advanced services customers. For both DSL and BRI loops, SWBT also demonstrates that it provides maintenance and repair functions for competing carriers in substantially the same time and manner that it provides such services for SWBT retail customers. In addition, SWBT demonstrates that it provides high capacity loops (*e.g.*, DS1 loops) to competing carriers in a nondiscriminatory manner.

20. *Checklist Item 5—Unbundled Local Transport.* Based on the evidence in the record, the Commission concludes that SWBT provides both shared and dedicated transport in compliance with the requirements of this checklist item. The Texas Commission also finds that SWBT is in compliance with this checklist item.

21. *Checklist Item 6—Unbundled Local Switching.* SWBT satisfies the requirements of checklist item 6. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services. We find that SWBT satisfies the requirements of checklist item 6, because SWBT demonstrates that it provides competing carriers all of the features, functions, and capabilities of the switch.

22. *Checklist Item 7—911/E911/ Directory Assistance/Operator Services.* Based on the evidence submitted in the record, the Commission concludes that SWBT demonstrates that it is providing nondiscriminatory access to 911/E911 services, and thus satisfies the requirements of checklist item 7. We note that no commenter disputes SWBT's compliance with this portion of checklist item 7, and the Texas Commission concludes that SWBT is providing nondiscriminatory access to 911/E911. We further conclude, as the Texas Commission concluded, that SWBT provides directory assistance services and operator services in accordance with the requirements of this checklist item. We are not persuaded by commenters' allegations that SWBT violates the checklist by charging competitive LECs non-cost-based rates for access to directory assistance listings of customers that reside within its region, but outside of Texas. For purposes of this application, we consider only whether SWBT meets the requirements of section 271 in the State of Texas, not whether SWBT's out-of-state directory assistance meets this checklist item.

23. *Checklist Item 8—White Pages Directory Listings.* SWBT satisfies the requirements of checklist item 8. White pages are the directory listings of telephone numbers of residences and businesses in a particular area. This checklist item ensures that white pages listings for customers of different carriers are comparable, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider. SWBT demonstrates that its provision of white pages listings to customers of competitive LECs is nondiscriminatory in terms of their appearance and integration, and that it provides white pages listings for competing carriers' customers with the same accuracy and reliability that it provides to its own customers.

24. *Checklist Item 9—Numbering Administration.* SWBT satisfies the requirements of checklist item 9. Telephone numbers are currently assigned to telecommunications carriers based on the first three digits of the local number, known as "NXX" codes. To fulfill the nondiscrimination obligation in checklist item 9, SWBT must comply with the numbering administration guidelines, plan, or rules. This checklist item ensures that other carriers have the same access to new telephone numbers as SWBT. SWBT demonstrates that it has adhered to industry guidelines and the Commission's requirements.

25. *Checklist Item 10—Databases and Associated Signaling.* SWBT satisfies the requirements of checklist item 10. Databases and associated signaling refer to the call-related databases and signaling systems that are used for billing and collection or the transmission, routing, or other provision of a telecommunications service. To fulfill the nondiscrimination obligation in checklist item 10, SWBT must demonstrate that it provides new entrants with the same access to these call-related databases and associated signaling that it provides itself. This checklist item ensures that other carriers have the same ability to transmit, route, complete, and bill for telephone calls as SWBT. SWBT demonstrates that it provides other carriers nondiscriminatory access to its: (i) Signaling networks, including signaling links and signaling transfer points; (ii) certain call-related databases necessary for call routing and completion or, in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (iii) Service Management Systems; and to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment.

26. *Checklist Item 11—Number Portability.* SWBT satisfies the requirements of checklist item 11. Number portability enables consumers to take their phone number with them when they change local telephone companies. SWBT demonstrates that it provides number portability to consumers without impairment of quality, reliability, or convenience.

27. *Checklist Item 12—Dialing Parity.* Based on the evidence in the record, we find that SWBT demonstrates that it provides local dialing parity in accordance with the requirements of section 251(b)(3) and thus satisfies the requirements of this checklist item. Furthermore, the Texas Commission concludes that SWBT meets the requirements of this checklist obligation.

28. *Checklist Item 13—Reciprocal Compensation.* SWBT satisfies the requirements of checklist item 13. Pursuant to this checklist item, SWBT must compensate other carriers for the cost of transporting and terminating a local call from SWBT. Alternatively, SWBT and the other carrier may enter into an arrangement whereby neither of the two carriers charge the other for terminating local traffic that originates on the other carrier's network. This checklist item is important to ensuring that all carriers that originate calls bear the cost of terminating such calls. SWBT demonstrates that it has reciprocal compensation arrangements in accordance with section 252(d)(2), and that it is making all required payments in a timely manner.

29. We believe that SWBT has made a concerted effort to resolve a traffic reporting dispute it has had with competing carriers, has continued to exchange traffic records with carriers during the course of this dispute, and has implemented a reasonable interim traffic reporting mechanism while industry groups work toward a permanent industry-wide solution. We

also find that SWBT's Extended Area Service (EAS) additive charge meets our reciprocal compensation requirements because EAS additives are reciprocal in nature and entirely optional. We also decline to set reciprocal compensation rates for Internet-bound traffic from an end user.

30. *Checklist Item 14—Resale.* SWBT demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements of checklist item 14. This checklist item requires SWBT to offer other carriers all of its retail services at wholesale rates without unreasonable or discriminatory conditions or limitations so that other carriers may resell those services to an end user. This checklist item ensures a mode of entry into the local market for carriers that have not deployed their own facilities. SWBT also makes its retail telecommunications services available for resale without unreasonable or discriminatory conditions or limitations. We also find that SWBT satisfies the provisioning requirements of checklist item 14. SWBT provisions competitive LECs' orders for resale in substantially the same time and manner as for its retail customers.

31. *Section 272 Compliance.* SWBT demonstrates that it will comply with the requirements of section 272. Pursuant to section 271(d)(3), SWBT must demonstrate that it will comply with the structural, transitional, and nondiscriminatory requirements of section 272, as well as certain requirements governing its marketing arrangements. SWBT shows that it will provide interLATA telecommunications through structurally separate affiliates, and that it will operate in a nondiscriminatory manner with respect to these affiliates and unaffiliated third parties. In addition, SWBT demonstrates that it will comply with public disclosure requirements of section 272, which requires SWBT to post on the Internet certain information about transactions with its affiliates. Finally, SWBT demonstrates compliance with the joint marketing requirements of section 272.

32. *Public Interest Standard.* We conclude that approval of this application is consistent with the public interest, convenience, and necessity. While no single factor is dispositive in our public interest analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition. We note that a strong public interest showing cannot overcome failure to demonstrate compliance with one or more checklist items.

33. Among other factors, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this Application. We find that, consistent with our extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. We also find that the record confirms our view that a Bell Operating Company's (BOC's) entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

34. Another factor that could be relevant to our analysis is whether we lack sufficient assurance that markets will remain open after grant of the application. We find that the performance monitoring and enforcement mechanisms developed in Texas, in combination with other factors, provide meaningful assurance that SWBT will continue to satisfy the requirements of section 271 after entering the long distance market. Where, as here, a BOC relies on performance monitoring and enforcement mechanisms to provide such assurance, we review the mechanisms involved to ensure that they are likely to perform as promised. We conclude that these mechanisms have a reasonable design and are likely to provide incentives sufficient to foster post-entry checklist compliance.

35. *Section 271(d)(6) Enforcement Authority.* Congress sought to create incentives for BOCs to cooperate with competitors by withholding long distance authorization until they satisfy various conditions related to local competition. We note that these incentives may diminish with respect to a given state once a BOC receives authorization to provide interLATA service in that state. The statute nonetheless mandates that a BOC comply fully with section 271's requirements both before and after it receives approval from the Commission and competes in the interLATA market. Working in concert with state commissions, we intend to monitor closely post-entry compliance and to enforce vigorously the provisions of section 271 using the various enforcement tools Congress provided us in the Communications Act. Swift and effective post-approval enforcement of section 271's requirements is essential to Congress' goal of achieving last competition in local markets.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17287 Filed 7–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:30 p.m. on Monday, July 10, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory, corporate, and receivership activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW, Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 6, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–17441 Filed 7–6–00; 10:22 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

[Notice 2000–14]

Status of Civil Enforcement Actions Involving Coordinated Party Expenditures

AGENCY: Federal Election Commission.

ACTION: Notice.

SUMMARY: The Commission has adopted a policy statement that provides guidance to candidates and political party committees on the status of certain civil enforcement actions under the Federal Election Campaign Act pending Supreme Court resolution of the issues presented in the Tenth Circuit's decision in *FEC* v. *Colorado Republican Federal Campaign Committee.*

DATES: June 20, 2000.

FOR FURTHER INFORMATION CONTACT: Louise Wides, Assistant Staff Director,

999 E Street, NW., Washington, DC 20463, (202) 694–1100 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In a split decision, the United States Court of Appeals for the Tenth Circuit recently held that 2 U.S.C. 441a(d)(3), which limits the amount of a political party's coordinated expenditures in congressional elections, violates the First Amendment. *FEC* v. *Colorado Republican Federal Campaign Committee*, __F.3d __, 2000 WL 554688 (10th Cir. May 5, 2000). The Solicitor General has decided to seek review of that decision by the United States Supreme Court. Until the Supreme Court resolves the case, the Federal Election Commission will not file any action in the courts in the Tenth Circuit to enforce section 441a(d)(3). The Commission will, however, generally continue the administrative processing of matters concerning section 441a(d)(3).

Only the Tenth Circuit has found section 441a(d)(3) unconstitutional, and its decision is not controlling outside that court's geographic jurisdiction. Furthermore, if the United States Supreme Court overrules the Tenth Circuit, the Court's decision upholding section 441a(d)(3) will apply retroactively to any activities in the interim that violate section 441a(d)(3), even in the Tenth Circuit. *See James B. Beam Distilling Co.* v. *Georgia*, 501 U.S. 529 (1991); *Harper* v. *Virginia Dep't of Taxation*, 509 U.S. 86 (1993). Therefore, anyone who chooses to act in contravention of section 441a(d)(3)—within or without the Tenth Circuit—before the Supreme Court rules in *Colorado* could be subject to liability for violating the statute if the *Colorado* decision is reversed.

Dated: July 5, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–17328 Filed 7–7–00; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Residential Basement Floodproofing Certification.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0235.

Form(s): FEMA Form 81–78.

Abstract: The certificate provides licensed design professionals a standard means of certifying the construction of floodproofed basements below the Base Flood Elevation. This certificate is only used in communities participating in the National Flood Insurance Program, who have been granted a "basement" exception. The homeowner must pay for the cost of the certification. Homeowners must have a registered professional engineer or architect to complete FEMA Form 81–78 for development or inspection of the structural design basement, and certify that the basement design and methods of construction are in accordance with floodplain management ordinances. Homeowners also provide FEMA Form 81–78 to their insurance agent to receive discounted flood insurance under the National Flood Insurance Program (NFIP).

Affected Public: Individuals or Households.

Number of Respondents: 50.

Estimated Time per Respondent: 3.25 hours.

Estimated Total Annual Burden Hours: 163 hours.

Frequency of Response: On occasions.

Cost to Respondents: $16.250.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625, FAX number (202) 646–3524, or e-mail address: muriel.anderson@fema.gov.

Dated: June 28, 2000.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–17363 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Loan Information Verification.

Type of Information Collection: Reinstatement, without change of a previously approved collection for which approval has expired.

OMB Number: 3067–0125.

Abstract: Temporary Housing Assistance (Disaster Housing Assistance) uses mobile homes, travel trailers, or other forms of readily fabricated housing. FEMA Form 90–68 is used to obtain information required to determine a fair and equitable sales price of a mobile home to a disaster victim. The ability to borrow money commercially is an important factor in determining the final sales price.

Affected Public: Individuals or households; Business or other for profit.

Number of Respondents: 520.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 86 hours.

Frequency of Response: On occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operation Support Directorate, Federal Emergency Management Agency, 500 C Street, SW,

Room 316, Washington, DC 20472, telephone number (202) 646–2625, FAX number (202) 646–3524, or e-mail address: muriel.anderson@fema.gov.

Dated: June 28, 2000.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–17364 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–01–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1333–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: June 27, 2000

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 27, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe storms and flooding on May 17, 2000, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Theodore Monette of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Dodge, Faribault, Fillmore, Freeborn, Houston, Mower, and Winona Counties for Public Assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–17359 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1333–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include Individual Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

The counties of Becker, Clay, Norman and Mahnomen and the White Earth Indian Reservation for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Laurence W. Zensinger,

Division Director, Human Services Division, Response and Recovery Directorate.

[FR Doc. 00–17362 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1334–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1334–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 27, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms, flooding, and ground saturation beginning on June 12, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act). I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steven R. Emory of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Benson, Bottineau, Cass, Eddy, Foster, Grand Forks, Griggs, Kidder, McHenry, McLean, Nelson, Pierce, Ramsey, Ransom, Sheridan, Traill, Walsh, Wells, and the Indian Reservations of the Spirit Lake Tribal Reservation and the Turtle Mountain Band of Chippewa for Individual Assistance.

Bottineau, Cass, Eddy, Foster, Grand Forks, Griggs, Kidder, McHenry, McLean, Nelson, Pierce, Ransom, Sheridan, Traill, Walsh, Wells, and the Indian Reservations of the Spirit Lake Tribal Reservation and the Turtle Mountain Band of Chippewa for Public Assistance.

All counties within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–17360 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 23, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms, flooding and tornadoes on May 26, 2000, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James Roche of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

The counties of Adams, Crawford, Dane, Grant, Green, Iowa, Juneau, Lafayette, Monroe, Richland, Sauk, and Vernon for Public Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–17358 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000:

The counties of Columbia, Kenosha, Jackson and Walworth for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public

Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Human Services Division, Response and Recovery Directorate.

[FR Doc. 00–17361 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Emergency Management Performance Grants

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of change to cost share policy.

SUMMARY: We (FEMA) are standardizing the cost share for the Emergency Management Performance Grant in order to bring about a fair and equitable distribution of grant funds and cost-share requirements among the States.

DATES: The cost share change is effective October 1, 2000 for FY 2001 grants.

FOR FURTHER INFORMATION CONTACT: Jonna M. Long, Federal Emergency Management Agency, 500 C Street SW., room 717, Washington, DC 20472, telephone (202) 646–7057; facsimile (202) 646–4157; or email jonna.long@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

In FY 2000, we consolidated funding for certain non-disaster programs into the Emergency Management Performance Grant (EMPG). Programs consolidated include State and Local Assistance (SLA); Superfund Amendments and Reauthorization Act (SARA) Title III; Mitigation Assistance Program (MAP); Disaster Preparedness Improvement Grants (DPIG); Pre-disaster Mitigation (Project Impact) to States; and Terrorism Consequence Management Preparedness Assistance (TCMPA).

We offered the grants in FY 2000 at composite cost shares based on the cost share policies associated with the programs consolidated into the EMPG. The composite cost shares for the non-terrorism portion of the EMPG ranged from approximately 51 percent Federal/49 percent State to approximately 54 percent Federal/46 percent State. The TCMPA portion was 100 percent federally-funded.

The composite cost shares were dependent upon which of the six programs a State participated in before consolidation, and for some programs how many years a State participated. The result of this varied participation by States is that the consolidation process has the potential to lock-in an uneven distribution of cost-share requirements.

Phase-In Procedure

We used the composite cost shares during the transition from the multiple programs to the unified EMPG. To complete the transition, and in order to bring about a fair and reasonable distribution of the funds for emergency management, we are phasing in implementation of a Federal cost share of 50 percent that will apply equally to all States for the non-TCMPA portion of the EMPG. This will be more equitable and easier to manage than previously, both at the Federal and State levels. States will have a simpler and more predictable means of planning for their share of the costs of emergency management than now, which will help their long-term budgeting process. The complete phase-in of the standard cost share will take approximately four years, with some States arriving at the 50 percent level each year.

The TCMPA portion will continue to be 100 percent federally-funded.

FY 2001 Procedure

For FY 2001 grants, we will pay a cost share one percentage point less than the composite share that we paid in 2000. For example, if a particular State's EMPG was shared in FY 2000 at 52 percent Federal/48 percent State, in FY 2001 the grant will be shared at 51 percent Federal/49 percent State. Such phasing in of the standard cost share will ease the financial burden to the State (by avoiding too large an adjustment in any one year) and will enable it to budget better for outyear cost shares.

Authority: P.L. 106–74, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000, 113 Stat. 1086.

Dated: June 15, 2000.

Patricia A. English,

Acting Chief Financial Officer.

[FR Doc. 00–17365 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President), 33 Liberty Street, New York, New York 10045–0001:

1. M & T Bank Corporation, Buffalo, New York and Olympia Financial Corp., Buffalo, New York; to acquire 100 percent of the voting shares of, and thereby merge with Kaystone Financial, Inc., Harrisburg, Pennsylvania, and thereby indirectly acquire Keystone Financial Bank, N.A., Harrisburg, Pennsylvania. In addition M&T Bank Corporation has applied to acquire an option to purchase up to 19.9 percent of the shares of Keystone. This option will expire upon consummation of the merger.

In connection with this application, Applicants also have applied to acquire Keystone CDC, Inc., and thereby engage in community development activities, pursuant to § 225.28(b)(12) of Regulation Y; Keystone Financial Life Insurance Company, and thereby engage in credit life and disability life reinsurance activities related to home equity loan products, pursuant to § 225.28(b)(11) of Regulation Y; Keystone Financial Mid-Atlantic Funding Corporation, and thereby engage in issuing medium-term debt instruments, pursuant to § 225.28(b)(1) of Regulation Y; Martindale Andres &

Company, LLC, and thereby engage in investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; and MMC&P Retirement Benefit Services, Inc., and thereby provide employee benefit third party administrator and actuarial consulting services, pursuant to § 225.28(b)(9)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–17275 Filed 7–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 4, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. The Industrial Bank of Japan, Tokyo, Japan; to acquire 11.8 percent of the voting shares of The Dai-Ichi Kangyo Fuji Trust & Banking Company, Ltd, Tokyo, Japan, and thereby indirectly acquire voting shares of DKF Trust Company (USA), New York, New York.

Board of Governors of the Federal Reserve System, July 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board:

[FR Doc. 00–17371 Filed 7–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 4 p.m., Thursday, July 13, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17487 Filed 7–6–00; 2:06 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Publication of Recommendations Relating to HIPAA Health Data Standards

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Health Insurance Portability and Accountability Act of 1996, (Section 1172 (f), Subtitle F of Pub. L. 104–191), requires the Secretary of Health and Human Services to publish in the **Federal Register** any recommendation of the National Committee on Vital and Health Statistics (NCVHS) regarding the adoption of a data standard under that law. Accordingly, the full text of the NCVHS comments on the Notice of Proposed Rulemaking issued by HHS entitled "Standards for the Privacy of Individually Identifiable Health Information" is reproduced below. The text of the comments has also been available on the NCVHS website and the HHS Administrative Simplification website: http://ncvhs.hhs.gov/.

SUPPLEMENTARY INFORMATION: Under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified administrative health care transactions to enable information to be exchanged electronically, as well as security standards. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses and health care providers who choose to conduct these transactions electronically must comply with these standards. In addition, the law outlined a process leading to the development of standards to protect the privacy of individually identifiable health information.

In preparing these reports and recommendations, the Secretary is required to consult with the NCVHS, the statutory public advisory body to HHS on health data, privacy and health information policy. On February 7, 2000 the Committee submitted a set of public comments on the Notice of Proposed Rulemaking issued by HHS entitled "Standards for the Privacy of Individually Identifiable Health Information."

In accordance with the law, the full text of the NCVHS comments is published below.

February 7, 2000, U. S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Attention: Privacy-P, Room G–322A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, D. C. 20201.

Dear Sirs:

On behalf of the National Committee on Vital and Health Statistics (NCVHS), I am pleased to forward to you our recommendations on the notice of proposed rule-making for standards for

privacy of individually identifiable health information. The NCVHS congratulates the Department for the solid work done in drafting this notice of proposed rule-making. The NCVHS is also pleased that many of its recommendations on health information privacy in its June 1997 report have been incorporated into the proposed rule.

While the scope of the proposed rule addresses many health information privacy issues, it should be noted that there is still a need for anti-discrimination legislation. The NCVHS previously urged the Secretary to propose legislation expanding the anti-discrimination provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to cover all aspects of discrimination based on health status and condition.

While the proposed rule meets the requirements of HIPAA, the NCVHS strongly believes that there is a need for comprehensive federal legislation to address the privacy of individually identifiable health information. The proposed rule is limited in scope and does not cover all records or all entities with access to individually identifiable health information.

Applicability

The NCVHS agrees that the scope of the rule should be extended to all individually identifiable health information, including purely paper records. The privacy regulations should be uniform across all forms of identifiable health information and across all holders of such information. Having uniform regulations apply to all medical records would simplify the burden for covered entities to comply with.

The NCVHS also recommends that HHS use all available authority (or all available means to extend HHS authority) to try to achieve uniform regulations across medical records, types of records, and types of covered entities. For example, the conditions of participation under Medicare and Medicaid could be utilized to achieve uniform regulation.

Definitions

The definition of protected health information raises serious problems outside the treatment and payment process. Within the treatment and payment process, we can safely assume that all information about data subjects is protected health information. As a result, we do not encounter major line drawing problems. However, for employers or life insurers, the same assumption does not work. These non-medical record keepers routinely maintain other, non-health, information on individuals. How can they tell when personal information is protected health information within the meaning of the rule? Schools would present the same problem, except that the rules unfortunately and inappropriately exempt most schools from the health privacy rules altogether. We believe that there is a lot of confusion in the definition and this needs to be clarified.

The definition of health plan excludes health care payment under property and casualty insurance. Putting aside the issue of workers compensation, the definition creates a significant loophole for insurers who want to avoid the scope of the privacy rules in order to use health information for marketing or other uses unrelated to health. From the perspective of a patient, the nature of the policy is not relevant. When a casualty insurance company pays for health care, the patient will think that the company looks the same as other insurance companies. Yet the rule denies a patient privacy rights for property and casualty insurance information. Sometimes, treatment may continue while the ultimate source of payment (property policy vs. health policy) remains unknown, perhaps for months or years. Will information be subject to the privacy rule in the interim, and how will covered entities or others know?

Workers compensation is a complex subject that requires special treatment and reasonable accommodation. However, like other casualty insurance, it is not entitled to a complete exemption. The Department should not evade its responsibility to address these difficult issues by simply exempting them. If necessary, a separate and subsequent rulemaking should consider how to meet confidentiality interests of patients while allowing workers' compensation to be administered efficiently.

The definition of designated record set has two fundamental problems. First, record keepers will find it impossible to determine how to apply this term under the privacy rule. Second, the definition relies upon an outmoded and discredited concept from the Privacy Act of 1974. The Privacy Protection Study Commission recommended abandoning the "retrieved in fact" standard in the Privacy Act of 1974 more than twenty years ago. We believe that this definition will be difficult to operationalize and recommend that this definition should be revisited.

The definition of individual excludes foreign military and foreign diplomatic personnel and their dependents. The commentary offers no adequate justification for this exclusion. If it only applied to records maintained directly by the federal government, then the problems inflicted by the exclusion would fall exclusively on the federal government. But it includes care paid for by the Department of Defense, and this means providers, plans, and clearinghouses will have some records. This is a specific problem which needs to be addressed in the rule.

The term research information unrelated to treatment is not clear. The need for the term is elusive. There is an inability to understand the point of the term and its associated substantive provision. Regular research information is subject to IRB oversight. This category of research information is apparently not. The recognition of two separate categories of research information is confusing and potentially troublesome. There is a need for more explanation. The NCVHS recommends that there be no distinction in the categories of research. All research should be treated the same.

The definition of treatment includes disease management as an included function. Disease management is not a defined term and this creates one of the biggest loopholes in the rule. Protected health information could be disclosed to virtually anyone—including marketers and employers—under the guise of disease management. It is essential that this loophole be closed. The potential breadth of the term is evident from a definition recently adopted by the Disease Management Association of America:

Disease management is a multidisciplinary, continuum-based approach to health care delivery that proactively identifies populations with, or at risk for, established medical conditions that: supports the physician/patient relationship and plan of care; emphasizes prevention of exacerbations and complications utilizing cost-effective evidence-based practice guidelines and patient empowerment strategies such as self-management education; and continuously evaluates clinical, humanistic, and economic outcomes with the goal of improving overall health.

It is difficult to imagine any privacy-invasive use or disclosure of patient information that could not be justified as disease management under this definition. The definition fails to recognize that patient privacy and patient consent are relevant limiting factors in disease management activities. We do not recommend the adoption of this definition in the

regulations. Rather, we recommend that functions that might be called disease management and are prohibited under this rule be identified.

Treatment, Payment and Health Care Operations

There was a divergence of opinion among the Committee regarding informed consent versus statutory authorization. Concern was expressed that statutory authorization undercut traditional codes of medical ethics and that informed consent should be preserved. However, many NCVHS members felt that statutory authorization provided a better, more uniform level of protection than the case by case application of informed consent. Some NCVHS members expressed concern that the proposed rules will interfere with good clinical care. The issue of how much access physicians should have to the records of non-patients and whether consent is required needs to be clarified.

Minimum Necessary

The NCVHS supports the concept of minimum necessary use and disclosure. The Committee, however, would add an additional standard: minimum identifiable form. Minimum identifiable form would limit the amount of identifiable data. For example, rather than using name, one would use another identifier. Therefore, any use or disclosure would be the minimum amount of protected health information necessary to accomplish the intended purpose of use or disclosure in a minimum identifiable form.

Statutorily mandated public health requests are recurring and routine and involve a broad range of information for epidemiological investigations. This rule should not unduly interfere with these requests. These requests are established by a state law and rules that are published with public comment. This requirement should also not require duplication between tasks that are already accomplished by an IRB and Privacy Board approved research. It does not make sense to ask a covered entity to create (or contract) with an IRB or privacy board and then also have to review the board's findings itself.

The covered entity is not likely to have the expertise needed to make fine distinctions regarding minimum necessary in the research context. The regulation could accomplish their purpose by simply requiring covered entities to verify that the research received IRB (or privacy board) approval.

Several members of the NCVHS recommend exempting treatment from the concept of minimum necessary use and disclosure. Some members believe that the concept is appropriate for treatment, payment and health care operations.

The following language is a suggested addition to the minimum necessary rule:

> All procedures and policies that covered entities develop should take into consideration the minimum necessary principle. However this rule should never compromise patient safety, and requests for protected data for patient treatment, and operations and payment and public health should be exempted from the requirement of individual application of this rule to each specific request. Further research requests will be deemed to have satisfied these requirements if the covered entity has verified receipt of the signed approval of an IRB or privacy board.

Right to Restrict

The choice made by the rule to allow disclosures without authorization for payment and treatment is a compromise that only works if the small percentage of patients who want additional restrictions on routine disclosures can be reasonably accommodated. Giving individuals a realistic opportunity to seek restrictions on payment and treatment disclosures authorized by the rule is crucial. However, the proposed rule does not strike an adequate balance.

A health plan or provider might simply refuse all patient requests for additional restrictions because of a plan's or provider's noncompliance or administrative convenience. The commentary goes too far in telling covered entities that they can decline to even consider requests. Nevertheless, patients still need more consideration of their requests.

The solution is to require that covered entities negotiate with patients over disclosure restrictions in good faith and that they must provide a written reason for rejecting the request of a patient. Fairer negotiations and clearer explanations will provide those patients whose requests cannot reasonably be accommodated with an opportunity to make other arrangements for their health care.

Covered entities should also be required to keep track of how they handle patient requests for restrictions so that HHS can review the degree of good faith shown in handling requests. Without a record-keeping requirement, those at HHS charged with enforcement may be unable to determine if an entity treats patients' requests fairly and honorably.

Creation of De-Identified Data

The regulations could use further clarity defining what rules apply to what data. How do the rules about de-identified data interact with the rules about research and the rules about minimum necessary? If research is done on de-identified data is it exempt from all requirements? Are requests for de-identified data exempt from all reviews related to minimum necessary? The introductory section suggests that none of the other rules apply to de-identified data but it would be good to see that stated explicitly.

Business Partners

This section is confusing. Why is an exemption made to communications related to consultations and referrals for treatment under this section? The goal obviously is to facilitate traditional clinical communications. We would have presumed that this exemption was already provided by the exemption for treatment, operation and payment purposes. If this exemption is needed for consultations and referrals then it is also needed for a host of many other clinical communications between business partners, *i.e.* between commercial laboratory services and (these are not usually consultations or referrals for treatment), between pharmacies so they could transmit prescriptions, between Hospital A and Hospital B when the patient is under care at Hospital A, but Hospital B carries relevant clinical data. If this exemption is needed it should be broadened beyond the limited exemption for consultation and treatment.

The requirement to control information received from the covered entity for the purpose of consultation and treatment could be very difficult to implement. It is understandable why special protection might be required, but a consulting physician's history and physical, recorded as narrative (often dictated) text, will intermingle with the narrative information they obtain from the referring physician. How would one segregate the information obtained from the referring MD from that collected by the consult when it is buried in pure narrative text. Further, if read literally, the rule would preclude the sharing of such data with the physician who takes night call for the consulting physician. This also suggests that the broad example given for the sharing of data for patient care does not apply in many care situations.

The constraint would be more easily applied if the treating physician's summary of such data rolled into their

note were exempted from the strict requirements. Then, the separate records sent from another practice could be treated just as they are in many hospitals, as "correspondence" which goes into a special section of the chart. This correspondence section part of the chart has all of the protection of the medical record and can be used for "treatment purposes" but has additional restrictions on disclosure.

Covered entities disclose protected health information to many different business partners. Written contracts are appropriate for many of these disclosures in the way that the rule provides. However, the same procedure is not appropriate or practical for all relationships. For example, patient records may technically be "disclosed" to companies providing telephone service, delivery service (the law protects Postal Service mail against opening for inspection, but courier services have no similar legal restrictions), Internet service, credit card support, equipment repair, financial audits and legal service. Records may even be "disclosed" to moving companies hired to haul boxes from one location to another.

Telling each covered entity to negotiate an agreement with every company providing routine, standard services is unnecessary. The Department should identify as many standard disclosures as possible and should develop language that meets the requirements and intent of the privacy rule for service providers to incorporate in standard contracts. This will avoid the need for tens of thousands of individual negotiations. The idea is similar to the proposal to exempt disclosures for consultations for treatment. A similar approach for selected other disclosures will be the most efficient way of solving common problems and will reduce the costs of compliance significantly. It will also benefit contractors who will not find it necessary to repeat identical negotiations with their subcontractors.

Individual Authorization

The collection of authorizations for marketing uses and disclosures is fraught with potential abuses. In the past, disclosure of patient information for marketing purposes was unethical. The demands of marketers combined with the allure of profits for record keepers and growth of health plans that operate without any of traditional provider ethical constraints have significantly weakened disclosure standards to the detriment of patients. An unfortunate consequence of standardizing procedures for authorizations may be that demands on patients for marketing authorizations will increase as covered entities learn how to pressure patients into signing authorizations.

The Department should use the rule to stop the trend toward increased trafficking by marketers in patient data. Most patients strongly object to marketing activities based on identifiable patient data, but sick or inattentive individuals may not be able to understand or resist pressure from health plans or others to sign authorizations for marketing. One easy change is to expressly prohibit any clearinghouse from seeking patient authorization for marketing disclosures.

For plans and providers, there are several ideas. First, a covered entity should be prohibited from seeking consent from patients for any marketing disclosures that benefit a third party. Third parties that want patient information for marketing should be forced to obtain the authorizations directly from patients and without the assistance or intervention of a covered entity. The purpose is to remove any incentive that a plan or provider might have to do business with marketers.

Note that this suggestion applies only to disclosures and not to uses. A covered entity that seeks to market its own products or services directly to patients should be able to do so with notice and consent. However, any use that involves a disclosure of any type to a third party should not be permitted. Further, the marketing use must be for a service or product provided directly by the covered entity and not by the affiliated company. This type of restriction is necessary to prevent consumer marketing companies or others from purchasing health care providers just for the ability to access patient records for marketing purposes.

Second, it is not sufficient for an authorization to reveal that the covered entity requesting the authorization will gain financially from the disclosure. The identity of the person providing the financial incentive should be included on the authorization, along with the amount of the financial gain. If these requirements inhibit the marketing uses of identifiable health information, that would be appropriate.

Third, the rule should require full public disclosure of all marketing arrangements between covered entities and others. The details should be disclosed on the website of the covered entity or available upon the request of any person. If disclosure inhibits a covered entity from seeking authorizations for marketing, so much the better. No one should be permitted to hide a marketing campaign based on identifiable patient information behind a business confidentiality screen. Here too, the goal should be to discourage marketing using identifiable patient information.

Fourth, the rule should provide that all authorizations for marketing expire in six months. A short, fixed period for these authorizations is essential so that a casual agreement by a patient in a weak or confused moment will not result in a lifetime of marketing disclosures by an avaricious covered entity.

Additionally, accounting for marketing disclosures should include not only the person who received the information but the actual party in interest as well. For example, if a pharmacy disclosed patient data to a lettershop for a marketing campaign funded by a drug manufacturer, the accounting should identify both the lettershop and the manufacturer. Telling the patient that the XYZ Lettershop received the data is not as meaningful as telling the patient that the ABC Pharmaceutical Company benefited from the disclosure.

The proposed rule states that a covered entity may not condition treatment or payment on a patient's authorization. This is a step in the right direction, but it does not go far enough. The rule does not prohibit the use of financial incentives to induce a patient to sign an authorization. For example, a health plan could offer a discount to patients who sign an authorization. If allowed, financial incentives could be used unfairly. For example, a health plan could establish a high copayment but reduce it drastically for patients who sign an authorization. This conduct should be prohibited.

The rule does not require the use of a contract between a provider and a pharmaceutical company, but it requested comment on the idea. In our view, a contract that identifies the patient as a third party beneficiary is valuable. At best, the Department's enforcement will be able to identify, investigate and sanction only a small fraction of abuses. By giving patients enforcement rights as third party beneficiaries under contracts, patients will be able to supplement the work of the Department by seeking enforcement of their own rights in court. The rule should not only require contracts with third party beneficiary clauses for arrangements between providers and pharmaceutical companies, but it should require such contracts for all allowable arrangements between covered entities and anyone seeking information for a marketing purpose.

The rule should provide that all authorizations be dated on the day they are signed. No one should be allowed to collect an authorization to become valid on a date in the future to be designated by the person seeking the authorization.

The provision in section 164.508(a)(2)(iv) that prohibits a covered entity from seeking an authorization covering treatment, payment, or health care operations needs to be rethought. At times, a patient or provider may need a signed consent to comply with a state or foreign law, or in other special circumstances. In other cases, a provider (*e.g.* a psychiatrist) that shares a patient's concern about confidentiality may affirmatively seek an authorization narrowing the provider's ability to disclose information. The proposed rule prevents that from happening. We suggest amending the provision to prevent a provider from routinely requiring a patient authorization for treatment, payment or oversight that permits more disclosures than allowed by the rule. If a provider wants either a narrower authorization or an authorization identical to the rule, the patient should be allowed to agree.

Health Oversight

The definition of health oversight activities includes almost any activity pertaining to government benefit programs. The rule should make it clear that government benefit programs requiring health information about applicants need authorizations. The authority to use health information in the oversight process should not be construed to include the initial collection of benefit information for routine health or welfare programs. Applicants should know when an eligibility decision requires health information. They should be asked to consent. Consent should be the default method for obtaining access to records.

The commentary says that the regulation allowing a health oversight agency to obtain health information does not create any new right of access to records. That point is absent from the rule. It is crucial to make this point clearly in the body of the rule.

Disclosures for health oversight can be a significant invasion of personal privacy. When they are necessary to serve a broader societal interest, patients deserve better protection. Some legislative proposals introduced in recent years include a policy that prevents information disclosed for a purpose such as health oversight from use in any administrative, civil, or criminal action or investigation against the subject of the record unless the action or investigation arises out of and relates to receipt of or payment for health care. It would be appropriate for the Department to include this policy in its rule.

Admittedly, there is some doubt about the authority of the Secretary to impose this type of patient protection through the rule to all oversight agencies. However, the Secretary has more than enough power to order all components of the Department to follow the policy. Accordingly, we recommend that the Secretary issue an administrative order prohibiting all Department components from using any patient records obtained for oversight activities in any administrative, civil, or criminal action or investigation against the subject of the record. It may be appropriate to allow an exception if the action or investigation develops evidence that the patient is engaged in health care fraud or abuse. The same order should cover law enforcement, public health, and other non-consensual disclosures. An administrative order of this type could be issued immediately and without waiting for the privacy rule to take effect.

Judicial and Administrative Proceedings

The proposed rule permits a covered entity to disclose protected health information that relates to a party whose health condition is at issue in a proceeding and where the disclosure is pursuant to a lawful process such as a discovery order. The rule assumes that because the subject of the record is a party to the proceeding, the subject will have notice of discovery orders. This is not always true. The rule needs to be modified to require actual notice to the record subject or to the subject's lawyer. Further, access through this method should be limited to instances in which the record subject placed his or her medical condition or history at issue. If another party to litigation raised a medical question, then the party seeking the record should be required to obtain a court order rather than a routine discovery request.

The rule should establish a process that offers appropriate assurance to record keepers as well as adequate notice to the subject of the record. A person seeking protected health information through discovery should be required to notify the subject or the subject's attorney of the request for information. The person seeking the information should be required to provide the covered entity holding the information with a signed document attesting (1) that the subject of the record is a party to the litigation; (2) that the individual has placed his or her medical condition or history in issue; (3) the date on which the subject of the record received notice of the request; and (4) that ten days have passed after the notice and the subject of the record has not objected.

This procedure will assure that the subject of protected health information receives actual notice of a discovery request and that the subject can object in a timely fashion. Just because litigation involves an individual's medical condition, the individual's entire medical file will not necessarily be relevant. If litigation involves a broken leg, the disclosure of the plaintiff's psychiatric history may not be relevant. The general rule limiting disclosures to the minimum amount of information necessary to accomplish the purpose should be fully applicable. Patients can use the rule to contest the scope of discovery requests. Of course, if a dispute arises over a discovery disclosure, the notice procedure allows the tribunal considering the matter to resolve it without any involvement on the part of the covered entity.

Law Enforcement

The NCVHS believes that the current proposal for law enforcement access is overly broad. The proposal allows any law enforcement agent to obtain health information without requiring a written request.

The rule should require that any routine request for information from the police be in writing and signed by a supervisory official. The proposed three-part test is useful and should be retained. However, unless law enforcement agencies make their determinations in a written and signed document, the requirement will be an ineffective barrier to appropriate access. An oral representation that the request qualifies under the test has little significance.

Law enforcement agencies should be obliged to state with some precision the information that they require. If the police need only the location of a patient, they should not obtain access to the complete medical record. The police must provide enough information about their needs to allow application of the minimum purpose rule.

The commentary says that substance abuse records continue to be covered by 42 U.S.C. 290dd–2. That statement belongs clearly in the rule itself or else it will create unnecessary confusion.

The rule governing disclosures for intelligence and national security activities needs reconsideration. As written, the provision allows a large number of employees of many different

agencies to make requests for health records. The rule requires no writing or involvement by supervisory personnel of the requesting agency. The rule offers no protections to patients. It is far from apparent why any personnel of the National Reconnaissance Office or the other agencies identified in the law as part of the intelligence community need the ability to seek health records.

Nothing in the Privacy Act of 1974 allows such broad and unrestricted access by intelligence agencies to health records or even to less sensitive records about individuals. The intelligence community needs to make its case for access to federally maintained health records in a public way. The rule should be revised to permit disclosures only for those specific needs. Further, all requests for access should be accompanied by a written request signed by a supervisory official of the agency.

Governmental Health Data Systems

The commentary tries to make the case for permitting open-ended authority for the collection of health information for health data systems with a variety of functions. We do not oppose allowing legitimate health data systems to obtain patient information under defined circumstances when information in the data system has adequate protection. The rule, however, imposes no procedural or substantive requirements on disclosures to health data systems. Indeed, the rule allows disclosure of health data for policy, planning, regulatory, or management functions unrelated to health care.

Requiring verification of identity, as provided in section 164.518(c) is appropriate, but the suggestion that verification presents a significant barrier to access is wrong. The standard for access is so broad that dozens of federal and state agencies with no direct health responsibilities could legitimately obtain information. Virtually any government agency in the United States could use this provision to seek health records unless expressly prohibited by law from doing so. Under the verification rule, agency personnel need only show an identification card and orally state that they qualify for access.

The rule needs several changes to address access by agencies that do not have express statutory authority to obtain patient data. First, an agency seeking data should be required to inform the public of its request. Many requests will be routine and continuing so a public notice requirement will not be onerous. The notice should allow for public comment before any actual disclosures. Second, if data collected for a governmental health data system can be used in any way against a patient, then the public notice should be required to explain all of the possible consequences. Third, the requesting agency should be required to make a written request, state the reason for the request, and identify all planned uses of the information. Fourth, the rule should require the removal of identifiers at the earliest opportunity consistent with the purpose of access. Finally, the purposes for authorized disclosure need to be much more carefully defined and limited to health care functions.

Directory Information

The proposed rule is far too impractical. The rule requires agreement by patients. Lawyers are likely to interpret this to require writing. How else can a covered entity document patient approval when a dispute arises? The commentary says that verbal agreement is adequate. The rule itself says no such thing. Even if it did, providers would still face the practical requirement of documenting that the patient was asked. A failure to check a box on an admission form could open providers to liability.

Allowing verbal agreement is impractical in other ways. Spend time in an Emergency Department where dozens of patients await care. When a physician is ready for the next patient, a nurse enters the waiting room and calls the name of the patient. The presence of the patient in an emergency room is directory information, and the announcement is a disclosure. If a patient objected to the release of directory information, then how would the nurse find the next patient?

When disclosing directory information, privacy must yield to the practicalities of the world. Telling emergency department personnel that they must ask each patient for permission to call his or her name will only create burdens and unnecessary liability for providers. The same will be true in any physician's office. It is sufficient to allow a patient with a special concern about directory information to step forward with that concern and make a special arrangement. The Department should reexamine the lesson from the Maine health privacy law that the state legislature withdrew and revised because it imposed impractical limitations on the operations of the health care system. The public will not tolerate a privacy law that is not practical and that imposes unreasonable burdens on patients and their families.

Banking and Payment Processes

The proposed rule addresses a problem, but the rule is too broad.

Disclosures to a bank or other financial institution without express patient consent should only be permitted after a patient offers a check, credit card or other payment method to the provider. The presentation of a payment method is the moral equivalent of consent for disclosures necessary to complete the transaction. The rule should expressly make payment disclosures contingent on a prior patient action. Presentation of a check or credit card or a standing authorization of a payment method would suffice. However, it should be improper to assume that a patient who previously paid by credit card intended to continue that payment method without evidence supporting the intention.

No provider should be able to query banks or other institutions looking for someone who has funds to pay a bill. Further, the provision should expressly exclude bill collectors from receiving information. Bill collectors should be business partners and fully subject to the rule because of their relationship with providers. Disclosures to credit bureaus by covered entities should require patient consent unless a limited disclosure reveals no protected health information at all. However, a credit card company should be able to disclose an unpaid bill to a credit bureau under applicable law even if the bill covers health care services. A disclosure to the credit bureau would not normally identify the nature of the transaction that gave rise to the debt, unless the credit card is exclusively for health expenses.

Finally, the rule should expressly ban the disclosure to financial institutions of any diagnostic information or other detailed treatment information. If questions arise about a transaction that might justify any detailed disclosure, the patient involvement and express consent should be required. The suggestion in the commentary that disclosures be limited to specific data elements is entirely appropriate, but the rule should expressly list the elements.

Research

For most part, this is a good and well-balanced proposal. However, clarification is needed about how the other rules in this regulation interact with the research rules. There is a potential problem with placing all the burden in the covered entity. That could be a real disincentive for covered entities to participate in research—especially if the covered entity was not

a research hospital and not culturally attuned to the value of research. Instead of placing the full burden on the covered entities would it be possible to create a contract relationship between the researcher and the covered entity, as the regulations require for business partners?

The justification for the additional requirements beyond the existing IRB requirements is also hard to understand. Much traditional medical research involves medical data and often involves medical records. The strong distinction between medical research and medical record research is arbitrary and contrived. Further, most of the "new" and additional requirements are contained in, or implicit to, the existing IRB requirements. Patient confidentiality must always be addressed for current IRB protocols to apply. Finally, the argument that not adding the former new rules to the common rules on the basis of creating differences between IRBs and privacy boards is not convincing. The two are different in many dimensions even after these added requirements.

The business of destroying identifiers is repeatedly described as a good thing. We are unaware of any defense of that position or any experience that suggests destroying such links is good. There are many clinical situations where new information about a patient could interact positively with information previously collected about a patient. With the regulations as it stands we could not. It would be better to find another solution to the previous concern (e.g. require heavy encryption of the entire files when they were no longer needed for the research and leaving the keys in the hands of NIH or some other group).

Next-of-Kin

The rule's next of kin provision is another example of a policy that is impractical. We recommend that next-of-kin disclosures be allowed for oral disclosures of protected health information about an individual to the next of kin or to a person with whom the individual has a close personal relationship if (a) the entity has no reason to believe that the individual would consider the information to be especially sensitive; (b) the individual has not previously objected; (c) the disclosure is consistent with good medical or other professional practice; and (d) the disclosure is limited to information about current health treatment.

Requiring verbal agreement by patients will not work well in the real world. Lawyers for covered entities are still likely to insist on a writing to prove that the entity asked and that the patient agreed. Without documentary evidence, an entity faces the prospect of liability for any disclosure just on procedural grounds.

It is easy to envision circumstances in which the failure to obtain verbal consent will create real world disruptions. The commentary seeks to deal with some (*e.g.* disclosures by a pharmacist) but the attempt to create exceptions in this fashion is directly inconsistent with the stated rule. If the Department can tolerate these "loopholes", it should do so more generally. The overwhelming impracticality of the requirement for verbal agreements will increase cost, create enormous disruptions and impositions, and ultimately undermine the privacy effort. Once again, we refer to the recent Maine example where the state legislature withdrew a rule that violated the expectations of patients and unduly burdened patients and their families.

Application to Specialized Classes

The special rules provided in this section are too broad, except the rule for the Department of Veterans Affairs. The VA exception is the only one that seems narrow and specifically responsive to an apparent need. In the other cases, the government may have some legitimate needs for access to health records for individuals in the military and intelligence community, and less likely, the Foreign Service. However, the permitted disclosures are too broad and do not include adequate procedural protections for patients.

In most cases, the consent of the record subject should be sought as a first resort, except in emergency circumstances. Only where there is demonstrable reason that consent is inappropriate should the rule authorize other methods of access. The requirement for publication of a notice by the Armed Forces is a step in the right direction, although it does not go far enough by requiring public comment. At a minimum, intelligence agencies and the State Department should be required to publish a similar rule defining the scope and circumstances of access to health records.

The Foreign Service disclosures are especially troublesome. We cannot imagine why the State Department needs to obtain health records of Foreign Service members or of family members of those who may serve abroad without any notice or consent. The State Department has no comparable authority today to obtain health records without consent. If the State Department's current inability to obtain records without consent creates insurmountable difficulties, the case has not been presented publicly. Consent should be the preferred and only method for access for Foreign Service disclosures. The same policy should apply to family members of employees in the intelligence community. If consent for necessary disclosures cannot be obtained, the proper remedy is to deny the foreign assignment. Obtaining information without consent is inappropriate, and it will likely conflict with state laws and policies on confidentiality. Because stronger state laws will continue to apply, the best that this rule could accomplish is to authorize requesting disclosures in some states but not others. Regardless, it is difficult to envision circumstances that would prompt a physician to disclose patient records to the State Department.

Notice of Information Practices

Any covered entity that maintains a website for public use should be required to post its current notice of information practices on the web for public inspection. If an entity does not maintain a website, the public posting rule should not apply until the covered entity otherwise establishes a website.

The rule proposes to allow a covered entity to change its notice any time. This is a difficult issue, and the rule takes a practical position. However, the Department should consider efficient ways to make covered entities more accountable for their privacy policies and changes to privacy notices.

First, a covered entity should be required to maintain for public inspection a log of all past notices with changes highlighted. Second, if a covered entity maintains a website for use by patients or the public, it should be required to put a log of all notices and changes on the website. Public disclosure of changes will provide some degree of accountability by inhibiting entities from making unreasonable or unnecessary changes. Third, covered entities that have Internet capabilities should be required to establish listservs for sending email notification of any change to the standard patient notice. Mail notices would probably be too expensive to justify. Email notices would be nearly cost-free.

Access for Inspection or Copying

The rule permits a covered entity to deny access when a disclosure would be reasonably likely to endanger life or physical safety of the individual or another person. We disagree with the

policy, at least in so far as it permits the withholding of information from a patient, because that patient would be placed in danger. The circumstances that would trigger this type of denial are so unlikely that the exception is not worth keeping. There is no evidence from experience with the Privacy Act of 1974 or state laws or policies regarding patient access that this exception is justified. Patients should be able to obtain access to their own records without any concern about the consequences to themselves.

By allowing a covered entity to deny access on the basis that disclosure will harm the subject of the record (no matter the standard), the rule allows for a complex and expensive administrative process. Record keepers may simply refuse all requests until the provider who created the record determines in writing that disclosure will not cause harm. An insurer or health plan that is not a provider could use this excuse to delay or deny all patients with access. Providers who are most capable of making the determination may have no incentive to do so, and they may simply ignore or delay responding to requests from covered entities for opinions. The result will be that any covered entity can use potential harm to the patient as an excuse for not complying with an access request.

The availability of procedural denials and delays creates an opportunity for covered entities to deny patients their rights. If retained, the exception should include these safeguards: (1) The exceptions should be considered to be permanently waived if not properly invoked within thirty days; (2) the rule should expressly provide that the exception cannot be used to withhold an entire record; (3) covered entities should be required to use the exception in good faith; (4) the burden of justifying the exception should expressly belong to the record keeper, and the record keeper should be expressly prohibited from asking the record subject to obtain approval from previous providers; and (5) all determinations of harm must be made by health professionals who must be identified by name if an individual is denied access to a record on the basis of a finding of harm.

By creating an exception that requires record keepers to exercise judgment, the rule creates an unnecessary liability. Covered entities that receive requests will worry that they will be liable if a disclosure results in harm, no matter how unlikely it may be. A rule that did not allow for an exception based on harm to the record subject would not present the same concern about liability. The result would be a simpler administrative process, more ready patient access, and less stress for covered entities.

The rule permits a covered entity to charge a reasonable, cost-based fee for copying. The rule should be more specific. We have enough experience from the early days of the Freedom of Information Act to know that a loosely drafted fee schedule will result in high fees that impede access to records. A fee that is three times the direct and indirect cost may qualify as "cost-based" and still be excessive. We suggest that the fee be limited so that it does not exceed the lowest standard charge imposed by the covered entity for providing copies in other circumstances. In the alternative, the fee should be limited to direct costs of copying under a published fee schedule.

Accounting of Disclosures

The rule does not require disclosure to the record subject of any accounting records for disclosures for treatment, payment, and health care operations. If audit trails of disclosures for treatment, payment, and health care operations exist, then record subjects should have the right to see the audit trails. Some institutions already maintain complete audit trails, and there is no reason to deny record subjects access to the trails when they exist.

Whether audit trails are valuable enough to require for all disclosures is a more complex decision. Routine activities for a single hospitalized patient may result in dozens or even hundreds of audit trails a day. An enormous volume of records would be created if the rule required recording all accesses. On the other hand, audit trails have great potential for preventing abuse of records. Because most abuses are the result of activity by insiders, excluding disclosures for treatment, payment, and health care operations from an audit trail requirement would destroy the deterrent value of the audit trails. The rule should not discourage institutions from maintaining full audit trails. However, when the audit trails exist, record subjects should have access to them.

Audit trails for paper records are too expensive to require. Similarly, disclosures of information between providers through personal communications would also be expensive and cumbersome to record in an audit trail. However, when access to records comes through a computer, maintaining an audit trail is simple because it can be accomplished automatically. We recommend that the rule encourage cost-effective and practical audit trails for treatment, payment and oversight (as well as all other disclosures) for computer systems. This should be prospective so that it only applies to new computer systems placed in service at some time in the future. If record-keepers have sufficient notice of the requirement, it will be relatively easy to include an audit trail capability at little additional cost.

The rule allows an exclusion from the audit trail requirement for law enforcement or health oversight disclosures on written request. Under this rule, it will be routine for law enforcement and oversight agencies to seek exclusion from accounting every time they request a health record. This should not be acceptable. If there is an adequate reason for exclusion, the rule should require a court order. Obtaining a court order will establish a sufficiently high procedural barrier so that exclusions will not be sought casually. In the alternative, if a written request for exclusion is acceptable, the request should be dated, signed by supervisory official, and contain a certification that the official is personally familiar with the purpose of the request and the justification for exclusion from accounting. It would be better if the rule required that the entire request for exclusion be handwritten by the supervisory official.

Amendment or Correction

The rule permits a covered entity to refuse a request for correction if it did not create the information at issue. This limitation makes the amendment process ineffective. For example, many records at insurance companies will not be correctable because insurance company records mostly consist of claims from providers. The insurance company can refuse most requests for correction on strictly procedural grounds. At hospitals, incorrect records created by providers long-since dead or by health plans no longer in operation could remain uncorrected. The proposed rule for correcting a record may force a patient back through a trail of record-keepers that extends for decades. It will be an impossible challenge.

Even worse, the rule actually provides a defense to the hospital that does not want to correct a record that came from another source. Ethically, a provider would have an obligation to make sure that the questioned record is accurate. Under the rule, not only does a provider have no such obligation, it has a defense should it choose to deny a request for correction.

If a covered entity uses health information to make decisions about an individual, it must be required to

consider in good faith any request for correction or amendment. The proposed rule establishes a policy that allows a covered entity to use information to affect the rights, benefits, or treatment of an individual but it does not require the entity to even consider a request for amendment in some circumstances. It is not necessary to require a covered entity to change a record that it did not create in some circumstances, but the covered entity must be required to consider the request in good faith if it is using the information to make decisions about the record subject.

Relationship to State Laws

While a State may submit a written request to the Secretary to except a provision of State law from preemption, it is recommended that the Secretary prior to granting the waiver give notice to the citizens of the State.

Definition of Protected Health Information (Sec. 164.504)

The definition of protected health information excludes individually identifiable health information of inmates of correctional facilities and detainees in detention facilities. The NCVHS is opposed to exempting inmates and detainees from the proposed rule. Information about this vulnerable population should be protected to the extent possible without jeopardizing the safety of the facilities or inmates. For example, access to schedules that would jeopardize security would not be provided.

We appreciate the opportunity to offer these comments and again congratulate the Department on a comprehensive regulation.

Sincerely,

John R. Lumpkin,

Chairman, National Committee on Vital and Health Statistics.

CONTACT PERSON FOR MORE INFORMATION:

Information about the Committee as well as the text of the HIPAA recommendations is available on the NCVHS website (http://ncvhs/hhs/gov or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–7245.

Dated: June 28, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation, Executive Staff Director, National Committee on Vital and Health Statistics.

[FR Doc. 00–17339 Filed 7–7–00; 8:45 am]

BILLING CODE 4151–05–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research Quality

AGENCY: Agency for Healthcare Research and Quality.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, July 28, 2000, from 8:30 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland, 20852.

FOR GENERAL INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–7216. For press-related information, please contact Karen Migdail at 301–594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6662 no later than March 10, 2000.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce costs of health care services, improve access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. Donald M. Berwick, M.D., the Council chairman, will preside.

II Agenda

On Friday, July 28, 2000, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Director, AHRQ, will present the status of the Agency's current research, programs and initiatives. Tentative agenda items include technology assessment, international health, research on health insurance and costs, and the Agency's grant process. The official agenda will be available on AHCPR's website at *www.ahrq.gov* no later than July 10, 2000. The meeting will adjourn at 4 p.m.

Dated: June 27, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–17370 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee to the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Community/Tribal Subcommittee (CTS).

Times and Dates: 9 a.m.–4:30 p.m., July 26, 2000; 9 a.m.–3 p.m., July 27, 2000.

Place: Tulane University, School of Public Health, CAEPH, Suite 800, 1440 Canal Street, New Orleans, Louisiana 70112

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 35 people.

Purpose: This subcommittee brings to the Board of Scientific Counselors advice and citizen input, as well as recommendations on community and tribal programs, practices, and policies of the Agency. The subcommittee reports directly to the Board of Scientific Counselors.

Matters To Be Discussed: Issues and concerns of the Community/Tribal Subcommittee as related to ATSDR's community and tribal programs. ATSDR will provide an update on the Environmental Health Research Agenda, initiate a discussion on how recently finalized Public Health Assessments (PHAs) have addressed community concerns (more extensive discussion of this topic will occur at a future meeting); the process for conducting an evaluation of PHAs; and, the CTS will give an update on cultural sensitivity training.

Contact Person for More Information: Sandra Coulberson, Principal ATSDR

Contact, ATSDR, M/S E–56, 1600 Clifton Road, NE, Atlanta, GA 30333, telephone 404/639–6002.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 3, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–17292 Filed 7–7–00; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–47–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

AIDS Prevention and Surveillance Project Reports (0920–0208)—extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC)—proposes to continue data collection for the AIDS Prevention and Surveillance Project Reports, previously approved under OMB No. 9020–0208. This request is for a 3-year extension of clearance. CDC funds cooperative agreements for 65 HIV Prevention Projects (50 states, 6 cities, 7 territories, Washington, D.C., and Puerto Rico). The cooperative agreements support counseling, testing, referral, and partner notification programs conducted by official public health agencies of states, territories, and localities (project areas). HIV counseling and testing in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health agencies has been described as a primary prevention strategy of the national HIV Prevention Program. These project areas have increased HIV counseling and testing activities to specifically reach more minorities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention activities conducted under the cooperative agreement. Counseling and testing programs are a major component of the HIV Prevention Program. Without data to measure the impact of counseling and testing programs, priorities cannot be assessed and redirected to prevent further spread of the virus in the general population. CDC needs information from all project areas on the number of at-risk persons tested and the number positive for HIV. The HIV Counseling and Testing Report Form provides a simple yet complete means to collect this information.

Respondents will be able to use either a manual or an electronic scan form. Seventeen respondents (project areas) will use the manual data collection tool. It takes approximately 2 hours to complete the form. The respondents will complete the form 4 times each year for a total burden of 8 hours per year per project area. Forty-eight (48) respondents (project areas) will use the scan form or client record format. It will take approximately 15 minutes for each project area to transfer data electronically on a quarterly basis for a total burden per project area of 1 hour per year. Therefore, the total annualized burden hours are 184. This request is for a 3 year extension.

Respondents	Number of respondents	Number of responses per respondent	Average burden response (in hrs.)
Manual Form Project Areas	17	4	2
Scan Form Project Areas	48	4	.25

Dated: June 30, 2000.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17177 Filed 7–7–00; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00006]

Intervention Epidemiologic Research Study of HIV/AIDS; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to support a prospective study to develop and evaluate the role of different levels of assistance with and observation of the administration of antiretroviral (ARV) therapy for the treatment of HIV–1 infection. This program addresses the "Healthy People 2010" focus area of HIV.

The purpose of the program is to investigate whether different levels of support have an impact on: improving virologic, immunologic, and clinical outcomes of HIV disease; on the development of HIV–1 ARV drug resistance; and on therapeutic plasma drug concentrations. Innovative applications are invited that assess the impact of three different levels of administration and oversight of antiretroviral treatment: (1) Directly observed antiretroviral therapy (DART), the relative "gold standard" of what is achievable with maximum adherence support—any setting or system in which antiretroviral medications are routinely dispensed by dose and per-dose medication record is kept. Possible examples of such settings include but

are not limited to residential treatment facilities, prisons, and methadone clinics; (2) Standard of care: provision of the level of support typically available through comprehensive HIV care clinics, and may include measures such as individual counseling, group counseling, and use of ancillary aids; (3) Intensive adherence support: any setting or system for support in which the HIV-infected person has at least weekly, and ideally more frequent, contact with the adherence support model. Possible settings include but are not limited to day health centers, methadone clinics, or visiting/home services. This arm could allow for the development or refinement of creative adherence support systems that may be integrated into ongoing care and services.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $400,000 is available in FY 2000 to fund approximately 2 awards. It is expected that the average award will be approximately $200,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period, within a project period of up to four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of these programs, the recipient will be responsible for the activities listed under 1. Recipient Activities, and CDC will be responsible for conducting activities listed under 2. CDC Activities.

1. Recipient Activities

Successful applicants addressing the same research issue should be willing to jointly develop the study protocol in collaboration with other CDC-sponsored researchers. This will include developing and using common data collection instruments, specimen collection protocols, and data management procedures, as determined in post-award grantee planning conferences. Recipients will be encouraged to work collaboratively as a study group to:

a. Develop the research study protocols and standardized data collection forms, specimen collection, and laboratory testing across sites. This includes transfer of certain specimens to a central repository and transfer of other specimens to designated laboratories for specific laboratory studies.

b. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocols and the program requirements.

c. Continue to follow study participants as determined by the study protocols.

d. Establish procedures to maintain the rights and confidentiality of all study participants.

e. Contribute blood specimens of study participants as determined by the protocol requirements for shipment and storage at a centralized repository system.

f. Conduct data analysis with all collaborators as well as present and publish research findings.

2. CDC Activities

a. Provide technical assistance in the design and conduct of the research.

b. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist in designing a data management system.

d. Assist in performance of selected laboratory tests.

e. Work collaboratively with investigators to help facilitate research activities across sites involved in the same research project.

f. Assist in the analysis of research information and the presentation and publication of research findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Follow the directions for completing the application that are found in the Public Health Service (PHS) 398 form.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before August 17, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof or timely mailing.

Late Applications: Applications that do not meet the criteria in (1) and (2) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applicants will be ranked on a scale of 100 maximum points according to the research area identified. Applications must demonstrate the applicant's ability to address the research in a collaborative manner with other recipients. Applications will be reviewed and evaluated based on the evidence submitted, as they specifically describe the applicant's abilities to meet the following criteria:

1. Recruitment, Retention, and Adherence to Study Protocol (35 Points)

a. Extent of applicant's experience in HIV infection epidemiologic research.

b. Evidence of ability to successfully recruit and follow HIV-infected persons in longitudinal research studies.

c. Evidence of ability to provide at least two or preferably three types of adherence support: DART (each dose dispensed and per-dose medication record kept); intensive adherence support (at least weekly and ideally more frequent contact with care model);

and standard of care (such as support provided at comprehensive HIV treatment clinics).

d. Ability to recruit and retain at least 50 and ideally 100 HIV-infected persons in each adherence model annually (150–300 persons total) fulfilling the objectives of the study. Multiple sites may be used to accomplish these goals.

e. Evidence of availability of comparable populations among the three adherence models, especially with regards to stage of disease, quality of clinical care, and antiretroviral experience.

f. Evidence of ability to collect complete data and to obtain regular blood samples and sufficiently large blood samples from HIV-infected persons for testing as will be determined in the study protocol.

g. Ability to oversee specimen collection for the timely processing, storage, and retrieval of laboratory specimens as needed for the study.

h. Ability to measure costs associated with adherence interventions as well as those associated with HIV care provision.

2. Description and Justification of Research Plans (25 Points)

a. Extent of familiarity and quality of experience pertinent to proposed research activities.

b. Understanding of research objectives as evidence by the high quality and scientific rigor of the proposed plan for research and a study design that is appropriate to answer research questions.

c. The inclusion of innovative approaches to provide intensive adherence support. These approaches may be existing or may be designed and implemented specifically for this study.

d. As more than one applicant may be funded, extent to which the applicant demonstrates willingness to work with all successful applicants to develop a common core research protocol across funded sites.

e. Feasibility of plans to follow study participants particularly treatment experienced patients. This includes demonstration of the experience of the investigator in following HIV-infected persons, and the comprehensiveness of the plan to protect the rights and confidentiality of all participants.

f. Thoroughness of plans for data management, data analysis, and laboratory analysis; reasonableness of data collected; and statistical rigor.

g. Extent to which the application demonstrates feasible plans for coordinating research activities of multiple local study sites, where appropriate, and with CDC. Letters of support from cooperating organizations that demonstrate the nature and extent of such cooperation should be included.

h. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

3. Research and Intervention Capability (20 Points)

a. Applicant's ability to carry out the proposed research as demonstrated by the training and experience of the proposed research team and organizational setting, including demonstration of ability to collect, manage, and analyze accurate data in a timely manner.

b. Demonstration of working relationships with the proposed investigators and extent to which services to be provided by external experts or consultants are documented by memoranda of agreement.

c. Demonstration of epidemiologic, behavioral, clinical, administrative, laboratory, data management and statistical analysis expertise needed to conduct proposed research.

d. Ability to sustain adherence support mechanisms at the cessation of study.

4. Staffing, Facilities, and Time line (20 Points)

a. Availability of qualified and experienced personnel with sufficient time dedicated to the proposed project.

b. Clarity of the described duties and responsibilities of project personnel.

c. Adequacy of plans for project oversight to assure quality of data.

d. Adequacy of facilities, equipment, data management resources, and systems for ensuring data security and patient confidentiality.

e. Adequacy of time line for completion of project activities.

5. Other (Not Scored)

a. Budget: the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

b. Human Subjects: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. section 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00006, Centers for Disease Control and Prevention (CDC), Grants Management Office Room 3000, Attn: Colgate Building, 2920 Brandywine Rd., Mailstop E–15, Atlanta, GA 30341, telephone (770) 488–2741, Email address bkh4@cdc.gov

For program technical assistance, contact: Jeff Efird, MPA, Deputy Chief, Epidemiology Branch, Division of HIV/AIDS Prevention, Surveillance & Epidemiology, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–45, Atlanta, Georgia 30333, Telephone (404) 639–6130, E-mail jle1@cdc.gov

Dated: July 3, 2000.

Ron Van Duyne,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17294 Filed 7–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grant for Research on the Impact of Laws and Policies on Public Health, Program Announcement #00051

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grant for Research on the Impact of Laws and Policies on Public Health, Program Announcement #00051.

Times and Dates: 7 p.m.–7:30 p.m., August 1, 2000 (Open); 7:30 p.m.–9:30 p.m., August 1, 2000 (Closed); 8 a.m.–4:30 p.m., August 2, 2000 (Closed).

Place: Airport Crowne Plaza Hotel, Virginia Avenue, Atlanta, Georgia 30344. Telephone 404/768–6660.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #00051.

Contact Person for More Information: Richard A. Goodman, M.D., M.P.H., Senior Advisor for Science and Policy, Centers for Disease Control and Prevention, 1600 Clifton Road m/s D03, Atlanta, Georgia 30333. Telephone 404/639–7400, email rag4@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 3, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–17293 Filed 7–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety Research: Availability of Cooperative Agreements; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of research funds for fiscal year (FY) 2000 to support research in the following areas of produce safety, egg safety, development of extraction procedures of foodborne viruses from foods to enhance detection, and food service, transportation, and consumer practices. Approximately $600,000 will be available in FY 2000. FDA anticipates making three to four awards at $100,000 to $200,000 (direct and indirect costs) per award per year. Support of these agreements may be up to 3 years. The number of agreements funded will depend on the quality of the applications received and the availability of Federal funds to support the project. After the first year, additional years of noncompetitive support are predicated upon performance and the availability of Federal fiscal year funds.

DATES: Submit applications by August 24, 2000.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Maura C. Stephanos, Grants Management Specialist, Grants Management Office (HFA–520), Division of Contracts and Procurement Management, Office of the Director, Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7183, FAX 301–827–7106, e-mail: mstepha1@oc.fda.gov. (Applications hand-carried or commercially delivered should be addressed to rm. 2129, 5630 Fishers Lane, Rockville, MD 20852).

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Maura C. Stephanos (address above).

Regarding the programmatic aspects of this notice: Marianna D. Miliotis, Food Safety Initiative Extramural Research Coordinator, Office of Plants, Dairy Foods, and Beverages (HFS–327), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4824, e-mail: mmilioti@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: FDA will support the research studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and to improve the quality of life. Applicants may obtain a hard copy of the "Healthy People 2010" objectives, vols. I and II, conference edition (B0074) for $22 per set, by writing to the Office of Disease Prevention and Health Promotion (ODPHP) Communication Support Center (Center), P.O. Box 37366, Washington, DC 20013–7366. Each of the 28 chapters of "Healthy People 2010" is priced at $2 per copy. Telephone orders can be placed at the Center on 301–468–5690. The Center also sells the complete conference edition in CD–ROM format (B0071) for $5. This publication is available as well on the Internet at www.health.gov/healthypeople. Internet viewers should proceed to "Publications."

I. Background

FDA is mandated by the President's Food Safety Initiative (FSI) to reduce the incidence of foodborne illness to the greatest extent feasible. Research in food safety seeks to reduce the incidence of foodborne illness by improving our ability to detect and enumerate pathogens in the food supply and to find new ways to control them. In FY 1998, the Center for Food Safety and Applied Nutrition (CFSAN) obligated $2 million to support eight multiyear cooperative agreements. This extramural program inaugurated a novel collaborative research effort between CFSAN and academic scientists, and leveraged expertise, not found within FDA, to accelerate ongoing research. Collaborations such as these provide information critical to food safety guidance and policymaking, and stimulate fruitful interactions between FDA scientists and those within the greater research community.

In continuation of this effort, CFSAN/FSI will provide FY 2000 funds to be used for research to help ensure produce and egg safety, develop extraction methods for viruses in foods, and determine food storage practices from processing to consumption.

II. Research Goals and Objectives

The goals and objectives of this program will be to: (1) Ensure produce safety by standardizing inoculation methods for determining the efficacy of antimicrobial chemicals or technologies or for validation of Hazard Analysis Critical Control Point (HACCP) systems, particularly in fresh or minimally processed produce; (2) evaluate surrogate microorganisms for use in HACCP validation; (3) ensure egg safety by developing improved sampling and detection methods for detection of low-levels of and enumeration of *Salmonella* Enteritidis (*S.* Enteritidis) in eggs; (4) develop extraction and processing methods suitable for reverse-transcription polymerase chain reaction (RT–PCR) based identification/detection of foodborne viruses; and (5) obtain information to support the science behind the U.S. Public Health Service Food Code, which provides guidance to the retail and food service industry, as well as information to support guidance to the consumer.

Projects that fulfill any one of the following specific objectives will be considered for funding. Applications may address only one project objective; however, applicants may submit more than one application for any of the project objectives. The project objectives are listed below in order of priority.

A. Project Objective 1 (Priority #1)

The first priority is to develop extraction and processing methods suitable for RT–PCR based identification/detection of foodborne viruses, such as Hepatitis A virus (HAV) and Norwalk virus. Commodities of interest include raw or minimally processed foods, such as strawberries, raspberries, grapes, tomatoes, and seafood. Extraction and sample processing methods must not interfere or inhibit RT–PCR based detection of the virus(es) and be applicable for analysis of large or bulk quantities of foods. The entire methodology, from extraction to detection, must include appropriate and exhaustive positive and negative controls to ensure validity of the extraction, processing, and detection (RT–PCR based) methods. These controls must also include those designed to confirm or exclude the absence of viral particle/genome contamination among and/or between food samples and reagents.

B. Project Objective 2 (Priority #2)

The second priority is to determine the effect of different inoculation procedures (e.g. dipping, spraying, spotting) on the efficacy of disinfectants and intervention technologies to remove or inactivate microorganisms, and determine how procedures perform under practical conditions. Ensuring produce that is safe for the consumer to eat is a major priority. Research needed to address this issue includes standard inoculation methods for performing challenge studies. FDA has continually sponsored research in intervention strategies to mitigate the risk of foodborne illness and reviewed applications for new antimicrobial agents and intervention technologies. The initiative provides an opportunity to expand the range of research questions addressed by FDA in intervention strategies for standardization of inoculation procedures for testing efficacy of intervention strategies. Currently, challenge inoculation methods tend to allow limited times for attachment of cells to food surfaces (and often under unrealistic conditions). This makes interpretation of the results difficult. Published studies have also demonstrated problems with statistical reproducibility when the attachment period is lengthened. An ideal inoculation protocol would permit sufficient time for cell attachment under conditions simulating those encountered in food growing and processing environments, such as low nutrient levels and ambient temperatures. The protocol tests must include a comparison of application techniques including spot, spray, and dip inoculation methods.

C. Project Objective 3 (Priority #3)

To determine whether consumer and industry practices are sufficient to protect the consumer from foodborne illness, research is needed in the following areas:

(1) Examine acceptability of the U.S. Public Health Service Food Code's requirements for: (a) Four-hour holding limit for all foods at ambient temperature, (b) the appropriateness for cooling foods from 140 to 41 ½F in [redacted] hours, and (c) the potential impact for human health risks if hot foods are held at 130 ½F.

(2) Quantitatively describe whether cooking practices used in the home are sufficient to inactivate pathogenic bacteria, viruses, or parasites that may be present in specific foods.

(3) Explore consumer practices related to storage of selected food products, including when and where it is stored in the refrigerator, refrigerator temperatures, length of time refrigerated food is kept, and consumer knowledge and beliefs related to food safety and refrigeration.

D. Project Objective 4 (Priority #4)

To ensure that eggs are safe, there is a need to study egg safety, specifically sampling and detection methods for *S.* Enteritidis in eggs and layer flocks. Current egg sampling practices may fail to detect low levels of *S.* Enteritidis. Therefore, there is a need to:

(1) Develop improved sampling and detection methods to detect low-levels of, and more significantly enumerate, *S.* Enteritidis in eggs and layer flocks. The development of a sampling plan should be based on known incidence data to ensure that a negative test result from a sample, indicates with a high level of confidence that the organism is not present in the entire lot or shipment. The sampling plan should consider not only occurrence of *S.* Enteritidis, but also dispersion or distribution of this pathogen among groups of eggs, and should be statistically superior to present sampling and detection techniques.

(2) Develop better on-farm indicators for predicting whether eggs are contaminated with *S.* Enteritidis.

E. Project Objective 5 (Priority #5)

The fifth priority is to determine which microorganisms are most suitable for use as surrogates for foodborne pathogens and are appropriate for specific commodities in challenge

studies to validate microbial hazard reduction technologies. The experimental use of pathogenic microorganisms in food establishments or pilot plants is generally contraindicated, but it is necessary to perform challenge studies to validate microbial hazard reduction technologies. In order to overcome this problem, the comparison of surrogate microbes to pathogenic counterparts (bacteria, viruses, and parasites) is necessary. Surrogates that are appropriate for specific commodities should be proposed. They should exhibit similar growth and binding characteristics, on a target commodity, of the foodborne pathogen represented, and should exhibit equivalent resistance to common classes of disinfectants. Successful projects will recommend surrogates based on a range of comparative physiological, genetic, and kinetics studies.

III. Human Subject Protection and Informed Consent

A. Protection of Human Research Subjects

Some activities carried out by a recipient under this announcement may be governed by the Department of Health and Human Services (DHHS) regulations for the protection of human research subjects (45 CFR part 46). These regulations require recipients to establish procedures for the protection of subjects involved in any research activities. Prior to funding and upon request of the Office for Protection from Research Risks (OPRR), prospective recipients must have on file with OPRR an assurance to comply with 45 CFR part 46. This assurance to comply is called an Assurance document. It includes the designated Institutional Review Board (IRB) for review and approval of procedures for carrying out any research activities occurring in conjunction with this award. If an applicable Assurance document for the applicant is not already on file with OPRR, a formal request for the required Assurance will be issued by OPRR at an appropriate point in the review process, prior to award, and examples of required materials will be supplied at that time. No applicant or performance site, without an approved and applicable Assurance on file with OPRR, may spend funds on human subject activities or accrue subjects. No performance site, even with an OPRR-approved and applicable Assurance, may proceed without approval by OPRR of an applicable Assurance for the recipients. Applicants may wish to contact OPRR by facsimile (301–402–0527) to obtain preliminary guidance on human subjects issues. When contacting OPRR, applicants should provide their institutional affiliation, geographic location, and all available Request for Applications (RFA) citation information.

Applicants are advised that the section on human subjects in the application kit entitled "Section C. Specific Instructions—Forms, Item 4, Human Subjects," on pages 7 and 8 of the application kit, should be carefully reviewed for the certification of IRB approval requirements. Documentation of IRB approval for every participating center is required to be on file with the Grants Management Officer, FDA. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review. Those approved applicants who do not have a current Multiple Project Assurance with OPRR will be required to obtain a Single Project Assurance from OPRR prior to award.

B. Informed Consent

Consent and/or assent forms, and any additional information to be given to a subject, should accompany the grant application. Information that is given to the subject or the subject's representative must be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

C. Elements of Informed Consent

The regulations on informed consent are set forth in 45 CFR 46.116 and 21 CFR 50.25. The basic elements of informed consent are as follows:

1. Basic Elements of Informed Consent

In seeking informed consent, the following information shall be provided to each subject.

- A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.
- A description of any reasonably foreseeable risks or discomforts to the subject.
- A description of any benefits to the subject or to others which may reasonably be expected from the research.
- A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.
- A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained, and that notes the possibility that FDA may inspect the records.
- For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained.
- An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research-related injury to the subject.
- A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional Elements of Informed Consent

When appropriate, one or more of the following elements of information shall also be provided to each subject.

- A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.
- Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.
- Any costs to the subject that may result from participation in the research.
- The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.
- A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject.
- The approximate number of subjects involved in the study.
- The informed consent requirements are not intended to preempt any

applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

• Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

IV. Reporting Requirements

A Program Progress Report and a Financial Status Report (FSR) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Grants Management Officer (address same as given above for Grants Management Specialist) within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR (SF–269) on time may be grounds for suspension or termination of the agreement. Progress reports will be required quarterly within 30 days following each fiscal year quarter (January 31, April 30, July 30, October 31), except that the fourth report will serve as the annual report and will be due 90 days after the budget expiration date. CFSAN program staff will advise the recipient of the suggested format for the Program Progress Report at the appropriate time. A final FSR (SF–269), Program Progress Report and Invention Statement, must be submitted within 90 days after the expiration of the project period, as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least quarterly by the Project Officer and the Project Advisory Group. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be duly recorded in the official file and may be available to the recipient upon request.

V. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These cooperative agreements will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive awards.

C. Length of Support

The length of support will be for up to 3 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year, and/or (2) the availability of Federal FY funds.

VI. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Substantive involvement includes but is not limited to the following:

1. FDA will provide guidance and direction with regard to the scientific approach and methodology that may be used by the investigator.

2. FDA will participate with the recipient in determining and executing any: (a) Methodological approaches to be used, (b) procedures and techniques to be performed, (c) sampling plans proposed, (d) interpretation of results, and (e) microorganisms and commodities to be used.

3. FDA will collaborate with the recipient and have final approval on the experimental protocols. This collaboration may include protocol design, data analysis, interpretation of findings, coauthorship of publications and the development and filing of patents.

VII. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. Applications will be considered nonresponsive if they are not in compliance with sections VII.B and VIII of this document. If applications are found to be nonresponsive to this announcement, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. Final funding decisions will be made by the Commissioner of FDA or his designee.

B. Review Criteria

The funding priority categories are as follows: Project Objective 1—first priority; Project Objective 2—second priority; Project Objective 3—third priority; Project Objective 4—fourth priority, and Project Objective 5—fifth priority.

Applicants must clearly state in their applications which of the above-established funding priority categories is relevant to their proposed project. Applications will be grouped, reviewed, and ranked within each funding priority category. Funding priority will start with the highest ranked applications under each of the five objectives, then the second highest, etc., until available funds have been exhausted. All applications will be evaluated by program and grants management staff for responsiveness. Applications considered nonresponsive will be returned to the applicant without being reviewed. Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or scientific nature must be directed to the CFSAN program staff, and all questions of an administrative or financial nature must be directed to the grants management staff (see the Information Contact section at the beginning of this document for addresses.) Applications will be reviewed and scored on the following criteria:

1. For Project Objective 3 only—Research should be proposed on commercial time/temperature practices, Food Code requirements, home cooking practices, or home refrigeration practices, that is within Project Objective 3 in Section II. Research Goals and Objectives of this document;

2. For Project Objective 4 only—Research should be proposed on sampling and detection of *S.* Enteritidis in eggs, or on farm indicators for predicting whether eggs are contaminated with *S.* Enteritidis, that is within Project Objective 4 in Section II. Research Goals and Objectives of this document;

3. For all Project Objectives—Whether the proposed study is within the budget,

and costs have been adequately justified and fully documented;

4. For all Project Objectives—Soundness of the rationale for the proposed study and appropriateness of the study design to address the objectives of the RFA;

5. For all Project Objectives—Availability and adequacy of laboratory facilities and equipment;

6. For all Project Objectives—Availability and adequacy of support services, e.g., biostatistical computer, data bases, etc., and;

7. For all Project Objectives—Research experience, training, and competence of the principal investigator and support staff.

VIII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 4/98) or the original and two copies of PHS 5161 (Rev. 6/99) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Maura C. Stephanos (address above). State and local governments may choose to use the PHS 398 application form in lieu of PHS 5161. The application receipt date is August 24, 2000. No supplemental or addendum material will be accepted after the receipt date. The outside of the mailing package and item 2 of the application face page should be labeled: "Response to RFA FDA CFSAN–00, Project Objective 1 (1–5)."

IX. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

Do not send applications to the Center for Scientific Research (CSR), NIH. Any application that is sent to NIH, that is then forwarded to FDA and not received in time for orderly processing, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet at http://www.nih.gov.grants/phs398/phs398.html; the forms can be found at http://www.nih.gov/grants/phs398/forms—toc.html. However, as noted above, applications are not to be mailed to NIH. Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH on its applications. Applications must be submitted via mail delivery as stated above. FDA is unable to receive applications via the Internet.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address.

The face page of the application should reflect the request for applications number RFA–FDA–CFSAN–00, Project Objective 1 (2, 3, 4, or 5).

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: June 27, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17276 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Wireless Technology Research; Effects of Radiofrequency Energy on Micronucleus Formation; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Radiofrequency Micronucleus Working Group. This is the initial meeting of a working group of national and international scientific experts convened to review the results of studies, previously conducted by Wireless Technology Research, L.L.C., on the effects of radiofrequency energy on micronucleus formation, and to recommend a statement of work for additional research. This meeting is being convened as the initial step in a Cooperative Research and Development Agreement (CRADA) between the Center for Devices and Radiological Health of FDA and the Cellular Telecommunications Industry Association (CTIA), consistent with Appendix A of the CRADA. The meeting will be open to the public.

Date and Time: The meeting will be held on August 1, 2000, 8:30 a.m. to 5 p.m., and on August 2, 2000, 8:30 a.m. to 11:30 a.m.

Location: 9200 Corporate Blvd., rm 020-B, Rockville, MD 20850.

Contact: Russell Owen, Center for Devices and Radiological Health, Food and Drug Administration (HFZ–114), 12709 Twinbrook Pkwy., Rockville, MD 20857, 301–443–7118, FAX 301–594–6775. Further information about the CRADA is available at http://www.fda.gov/cdrh/ocd/wlessphonecrada.html on the Internet.

Agenda: On August 1, 2000, the working group will hear presentations related to radiofrequency exposure systems and dosimetry and prior reports of micronucleus formation in cells exposed to radiofrequency. On August 2, 2000, the working group will discuss the types of studies needed to further investigate and refine prior reports of micronucleus formation caused by radiofrequency exposure.

Procedure: Interested persons may present data, information, or views on issues to be discussed by the working group. Written submissions may be made to the contact person by July 14, 2000. Oral presentations from the public will be scheduled on August 1, 2000,

between approximately 3 p.m. and 5 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 14, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

If you need special accommodations due to a disability, please contact Ms. Toni Fennell, 301–443–7118 at least 7 days in advance.

Dated: June 29, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–17277 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1350]

Draft Guidance for Industry on Combined Oral Contraceptives—Labeling for Healthcare Providers and Patients; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Combined Oral Contraceptives—Labeling for Healthcare Providers and Patients." FDA's Center for Drug Evaluation and Research is issuing this draft guidance for drug products in the combined oral contraceptives class. When finalized, the guidance should result in uniform labeling among combined oral contraceptive products. Uniform labeling is important to physicians and patients when they read and try to understand efficacy claims and safety risks associated with drug products in this class. In addition, this draft guidance is intended to provide sponsors of new combined oral contraceptive drug products with a labeling template.

DATES: Submit written comments on the draft guidance by September 8, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lana L. Pauls, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4260.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Combined Oral Contraceptives—Labeling for Healthcare Providers and Patients." The draft guidance is intended to produce uniform labeling among combined oral contraceptive products. Uniform labeling is important to physicians and patients in understanding efficacy claims and safety risks associated with drug products in this class. The draft guidance, which outlines recommendations for the physician insert, also includes a labeling template for physician labeling and instructions for use that can be used for new drug applications and abbreviated new drug applications. Among the labeling recommendations is a black box warning explaining the increased risk of serious cardiovascular side effects associated with the concomitant use of cigarettes and combined oral contraceptives. Once the draft guidance is finalized, the recommended text should be included in all approved, pending, and future applications. This labeling guidance is intended to supersede the "Labeling Guidance for Combination Oral Contraceptives, Physician and Patient Labeling," revised in August 1994.

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on combined oral contraceptive labeling for healthcare providers and patients. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17278 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Correction

AGENCY: Health Resources and Services Administration.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** notice of Monday, June 5, 2000, in FR Doc. 00–13951, on page 35657, beginning in the first column under grant category (2) "Partnership for State Oral Health Leadership Cooperative Agreement (MCHB)," reference is made to "Funding Priorities and/or Preferences: A funding preference will be given to institutions of higher learning with extensive experience in early discharge research, linkage with the Secretary's Advisory Committee on Infant Mortality, and published research and recognition in the relevant field." This reference was erroneous and should be corrected to read: "Funding Priorities and/or Preferences: None."

FOR FURTHER INFORMATION CONTACT: David Heppel, M.D., Director, Division of Child, Adolescent, and Family Health, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–30, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 1–301–443–2250.

Dated: June 30, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–17279 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Eligibility Criteria for the Centers of Excellence Program in Health Professions Education for Under-represented Minority Individuals

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice requests comments on proposed eligibility criteria for the Center of Excellence (COE) program in health professions education for under-represented minority (URM) individuals. When finalized, these eligibility criteria, will be used to determine the eligibility of designated health professions schools in Fiscal Year 2001. The designated health professions schools are schools of allopathic and osteopathic medicine, dentistry, pharmacy, and graduate programs in behavioral and mental health. The COE program is authorized by section 736 of the Public Health Service Act (the Act) (42 U.S.C. 293).

DATES: Interested persons are invited to comment by August 9, 2000. All comments received on or before August 9, 2000, will be considered in the development of the final eligibility criteria for the COE program. Comments will be addressed individually or by group in the final notice published in the **Federal Register**.

ADDRESSES: All written comments concerning this notice should be submitted to Mario A. Manecci, Acting Director, Division of Health Professions Diversity, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mario A. Manecci, Acting Director, Division of Health Professions Diversity; telephone (301) 443–2100.

SUPPLEMENTARY INFORMATION:

Purpose

The COE program supports programs of excellence in health professions education for under-represented minority (URM) individuals in designated health professions schools. These designated health professions school COE categories are: certain Historically Black Colleges and Universities, Hispanic, Native American, and other health professions schools that meet the program requirements. The COEs are innovative resource and education centers to recruit, train, and retain URM students and faculty at health professions schools. They carry out activities to improve information resources, clinical education, curricula and cultural competence, focusing on minority health issues. The COEs also focus on facilitating faculty and student research on health issues particularly affecting under-represented minority groups. The ultimate goal of the COE program is to strengthen the national capacity to produce a culturally competent healthcare workforce diversity that represents the U.S. population.

Proposed Eligibility Criteria

The Act requires the designated schools to meet each of four general conditions as part of their eligibility requirements. The schools must: (1) Have a significant number of URM students enrolled; (2) have been effective in assisting its URM students to complete the educational program and receive the attached degree; (3) have been effective in recruiting URM students to enroll in and graduate from the school, including providing financial assistance and encouraging URM students at all levels of education to pursue health professions careers; and (4) have made significant recruitments efforts to increase the number of URM students serving in faculty or administrative positions at the school.

The intent of the COE statute is to identify and support institutions with a commitment to URM's and who have attained, as demonstrated by meeting minimum standards, the expertise in recruiting, teaching, training, and retaining the URM health professional, both as practitioners and as faculty. The proposed criterion is to ascertain that eligible institutions have demonstrated progress in improving the school's information resources, clinical education, and curricula and cultural competence of their graduates with respect to minority health issues. The criteria is to ensure that COE applicants will contribute effectively to the attainment of the HRSA goals of increased diversity in the health care workforce and improving the capacity of designated schools to support programs of excellence in health professions education for URMs. Beginning in FY 2001, the Secretary proposes to establish the following criteria to determine these four eligibility conditions.

A. First Condition

The school must have a significant number of URM students enrolled, including students who have been accepted for enrollment at the school. The Secretary will determine the "significant number" for Hispanic and Native American COEs based on a percentage of the current number of URM students enrolled in these schools. This determination is unnecessary, however, for Historically Black Colleges and Universities which meet the "significant number" condition by virtue of their definition. With respect to the "other" COE health professions schools, the Act requires these schools to have a current enrollment of URMs above the national average.

Given the relatively low number of URMs enrolled in health professions schools, a significant number of URMs would be the number that the Secretary views as a critical mass of URM students. The variation in health professions schools class size and total school enrollment also impacts on the determination of the critical mass of URM students. These figures are as follows:

ALLOPATHIC MEDICINE: TOTAL SCHOOLS = 125

Hispanic Significant Number = 20

There are 39 schools (31%) out of 125 with 20 or more Hispanic students enrolled.

Native American Significant Number = 8

There are 24 schools (20%) out of 125 with 8 or more Native American students enrolled.

OSTEOPATHIC MEDICINE: TOTAL SCHOOLS = 19

Hispanic Significant Number = 20

There are 8 schools (40%) out of 19 with 20 or more Hispanic students enrolled.

Native American Significant Number = 5

There are 6 schools (30%) out of 19 with 5 or more Native American students enrolled.

PHARMACY: TOTAL SCHOOLS = 73

Hispanic Significant Number = 20

There are 10 schools (14%) out of 73 with 20 or more Hispanic students enrolled.

Native American Significant Number = 5

There are 4 schools (6%) out of 73 with 5 or more Native American students enrolled.

DENTISTRY: TOTAL SCHOOLS = 54

Hispanic Significant Number = 20

There are 12 schools (22%) out of 54 with 20 or more Hispanic students enrolled.

Native American Significant Number = 6

There are 2 schools (5%) out of 54 with 6 or more Native American students enrolled.

Behavioral or Mental Health (CLINICAL SOCIAL WORK) = 115

Since there are no current figures available for this category, Schools of Social Work (Direct Services or Clinical Social Work) total URM enrollment will be used as representative of this category.

Hispanic Significant Number = 30

There are 13 schools (11%) out of 115 with 30 or more students enrolled.

Native American Significant Number = None available at this time.

Due to the very limited number of Native Americans enrolled in a Behavioral or Mental Health School/ Program, Behavioral or Mental Health graduate programs will be incorporated as part of a consortium with other Native American COEs. The Secretary is authorized to approve a consortium of health profession schools to carry out the purpose of Native American COEs programs.

B. Second Condition

The second condition requires designated health professions schools to assist URMs students to be effective in assisting its URM students to complete the program of education and to receive the attached degree. During the past 6 years, the twenty federally-funded COE programs had an average graduation rate of 93 percent. Accordingly, the Secretary views "effective" as a 90% URM graduation rate over a 5-year period.

C. Third Condition

The third condition requires designated health professions schools to have effectively recruited URMs including providing scholarships and other financial assistance for individuals enrolled in the school. One of the major barriers for URMs to enroll in health professions schools is the financial debt burden. The majority of URM students need financial assistance to pursue careers in the health professions. The availability of URM scholarships are limited and most resort to long term loans as the mechanism to pay for their professional education. The debt burden of these outstanding loans after graduation, inhibits URMs from practicing in needy areas where reimbursement is dominated by reduced medicaid payments, and options for junior faculty appointments with limiting starting salaries are not competitive to increase URM faculty in health professions schools. The need for financial assistance is a critical issue for URMs. Accordingly, the proposed COE criteria for "effective" recruitment and provision of financial assistance is that the school secures financial assistance in the form of scholarships, tuition waiver, and /or loans for 100% of the URM students who need this aid.

D. Fourth Condition

The fourth condition requires designated health professions schools to have made a significant effort to increase the number of URM faculty or administrative positions at the school. A major COE program focus is to improve the capacity of the school to recruit, train, and retain URM faculty and administrative personnel. Recognizing that institution's faculty and administrative positions may vary from one academic year to another, it would be inappropriate to establish any numerical goal for meeting this condition. However, a health professions school should be able to demonstrate over a 5-year period a "significant effort" to recruit URM faculty and administrative positions based on the number of vacancies over this period. The school must provide the Secretary with a description of the school's policies and activities showing how the school has made a "significant effort" to increase the number of URM faculty and administrative personnel given the number of vacancies for the last 5-year period.

The catalog of Federal Domestic Assistance Number for the COE program is 93.157. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

These programs are not subject to the Public Health Systems Reporting Requirements.

Dated: July 3, 2000.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

[FR Doc. 00–17322 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Bay Mills Indian Community of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 12.50 acres, more or less, as an addition to the reservation of the Bay Mills Indian Community on June 19, 2000.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Terrance L. Virden, Bureau of Indian Affairs, Director, Office of Trust Responsibilities, MS–4513/MIB/Code 200, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–5831.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tracts of land described below. The land was proclaimed to be an addition to and part of the reservation of the Bay Mills Indian Community for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Bay Mills Indian Community

Chippewa County, Michigan

PARCEL 1

The North 100 feet of the South 430 feet of Government Lot 2, Section 31, Town 47 North, Range 2 West, Superior Township, Chippewa County, Michigan.

PARCEL 2

The South 330 feet of Government Lot 2, Section 31, Town 47 North, Range 2 West, Superior Township, Chippewa County, Michigan. Containing in the aggregate of 5.98 acres of land, more or less.

PARCEL 3

That part of Section 31, Town 47 North, Range 2 West of Government Lot 2, which are particularly described in Exhibit A, as Parcels A, B, C, and D.

EXHIBIT A

Parcel A: Part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake and the point of beginning of this description; thence South 87° 07′ East along the said East and West ¼ line 18 feet, more or less, to the water's edge; thence Southeasterly 270 feet, more or less, along the water's edge to a point; thence South 13° 14′ West 3 feet, more or less, to a point on a traverse line called Point "C", said Point "C" being North 08° 12′ East 52.09 feet and South 34° 57′ East 334.45 feet from the aforementioned point of beginning; thence continuing South 13° 14′ West 202.23 feet to a point; thence North 77° 08′ West 176.29 feet to a point; thence North 02° 53′ East 380.66 feet to the point of beginning.

Parcel B: Part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02° 53′ West 591.15 feet to an iron stake and the point of beginning; thence North 02° 53′ East 210.49 feet to a point; thence South 77° 08′ East 200 feet to a point; thence South 01° 59′ West 161.71 feet to a point; thence South 88° 50′ West 200 feet to the point of beginning.

Parcel C: Part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02° 53′ West 880.00 feet to an iron stake and the point of beginning; thence North 02° 53′ East 288.85 feet to a point; thence North 88° 50′ East 555.01 feet to a point later referred to in this description as Point "A"; thence continuing North 88° 50′ East 8 feet, more or less, to the water's edge; thence Southeasterly along the water's edge 346 feet, more or less, to a point; thence North 87° 07′ West 20 feet, more or less, to a point on a traverse line, said point being South 15° 23′ East 345.46 feet from the aforementioned Point "A"; thence continuing North 87° 07′ West 661.09 feet to the point of beginning.

Parcel D: Part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as follows: Commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02°53′ West 380.66 feet to an iron stake; thence South 77°08′ East 176.29 feet to an iron stake and the point of beginning of this description; thence North 13°14′ East 202.23 feet to a point on a traverse line later referred to in this description as Point "C"; thence continuing North 13°14′ East, 3 feet more or less to the water's edge; thence Southeasterly 328 feet more or less along the water's edge to a point; thence North 77°08′ West, 9 feet more or less on a point traverse line called Point "B", said Point "B" being South 34°57′ East 20.13 feet and South 39°17′ East, 307.60 feet from aforementioned Point "C"; thence continuing North 77°08′ West, 259.11 feet to the point of beginning.

And part of Government Lot 2, Section 31, Town 47 North, Range 2 West described as follows: Commencing at the West ¼ corner of said Section 31, thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02°53′ West 591.15 feet to an iron stake; thence North 88°50′ East 200 feet to an iron stake and the Point of Beginning of this description; thence North 01°59′ East 161.71 feet to a point; thence South 77°08′ East 235.4 feet to a point later referred to in this description as Point "B"; thence continuing South 77°08′ East, 9 feet more or less to the water's edge; thence Southeasterly along the water's edge, 155 feet, more or less to a point; thence South 88°50′ West, 11 feet more or less to a point on a traverse line, said point being South 49°37′ East, 157.34 feet from aforementioned Point "B", thence continuing South 88°50 West 355.01 feet to the point of beginning.

Together with the right of ingress and egress over gravel driveway across part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as follows: Commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02°53′ West 591.15 feet to an iron stake and the point of beginning of this description; thence North 02°53′ East, 210.49 feet to a point; thence South 77°08′ East 200 feet to a South 88°50′ West 200 feet to the point of beginning of this description. Containing in the aggregate of 6.52 acres of land, more or less. Containing in the aggregate of 6.53 acres of land, more or less.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: June 19, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–17377 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–00–1410–00; AA–082237]

Realty Action; FLPMA Section 302 Lease, Knik River Road

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease of public land.

SUMMARY: F.K. (Red) Starr (Applicant) has submitted an application for authorization to construct a driveway and parking lot on public lands to be used in conjunction with his commercial recreational river boat business. This land has been examined and found suitable for lease under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 and regulations at 43 CFR Part 2920.

The land is described as follows:

Seward Meridian, Alaska

Lot 3, Sec. 14, T. 16 N., R. 3 E.

Containing approximately 2 acres.

The subject lands were withdrawn on February 7, 1964, by Public Land Order (PLO) 3324, for use as public recreation area and preservation of public resource values. The subject lands have also been selected by Eklutna, Inc. under section 12 (a) of the Alaska Native Claims Settlement Act (ANCSA). Lands are scheduled for conveyance as early as FY 2001. Upon conveyance of all right, title, and interest under ANCSA, PLO 6590 then revokes PLO 3324 for lands conveyed. Eklutna, Inc. has concurred with the proposed lease.

SUPPLEMENTARY INFORMATION: The Applicant shall reimburse the United States for reasonable administrative fees and for monitoring of construction, operation, maintenance, and rehabilitation of the land authorized. The reimbursement of cost shall be in accordance with the provisions of 43 CFR 2920.6. The lease will be offered for a term of 5 years or 60 days after Eklutna, Inc. receives title to the land, whichever occurs first. The Applicant will be required to pay rent annually at no less than fair market value.

The Applicant has also applied for a Special Recreation Permit.

DATES: Interested parties may submit comments for a period of 45 days from the publication of this Notice to the Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. In the absence of a timely objection, this proposal shall become the final decision of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Callie Webber, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska, 99507–2599; (907) 267–1272 or (800) 478–1263.

Dated: June 29, 2000.

Nick Douglas,

Field Manager.

[FR Doc. 00–17368 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES00–28]

Contra Costa Water District's Multi-Purpose Pipeline Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Environmental Impact Report/ Final Environmental Impact Statement (FEIR/FEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and Contra Costa Water District (CCWD or District) prepared a joint FEIR/FEIS for CCWD's Multi-Purpose Pipeline (MPP) Project. The MPP Project would increase the reliability and capacity of the District's raw water delivery system. The MPP Project is being designed not only to remedy immediate canal capacity constraints but also to help meet long-term (year 2020) water demands for raw water, improve firefighting flows following an emergency or natural disaster such as an earthquake, provide an emergency water supply to municipal customers from either the east side or west side of the service area, provide alternate water conveyance capacity to facilitate temporary canal shut-downs and maintenance during low demand periods, increase operational flexibility by providing the capability of delivering water from the west side of the system or the east side of system, and minimize cost and environmental impacts to existing and new customers.

DATES: Reclamation will not make a decision on the proposed action until 30 days after this notice of release of the FEIR/FEIS. After August 10, 2000, the end of the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: Copies of the FEIR/FEIS may be requested from Dr. Gregory Gartrell, Director of Planning, CCWD, 2300 Stanwell Drive, Concord CA 94524; telephone: (925) 688–8100 or Ms. Rossana Riggs, Administrative Secretary, CCWD, 2300 Stanwell Drive, Concord CA 94524; telephone: (925) 688–8147.

Copies of the FEIR/FEIS are available for public inspection and review. These locations are listed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dr. Gregory Gartrell, CCWD, telephone: (925) 688–8100; or Mr. Robert B. Eckart, Environmental Specialist, Bureau of Reclamation, 2800 Cottage Way, Sacramento CA 95825; telephone: (916) 978–5051.

SUPPLEMENTARY INFORMATION: The proposed action is to implement a Multi-Purpose Pipeline Project to increase the capacity and reliability of the District's raw water delivery system. The District currently transports raw (untreated) water through the Contra Costa Canal, which is owned by Reclamation and, under contract, is operated and maintained by the District. The canal is the District's only raw water conveyance facility; it is vulnerable to damage in an earthquake or other emergency, which could result in extended water shortages. In addition, the canal does not have adequate conveyance capacity to deliver water to meet existing plus projected future demands within the District's service area. The District proposes to increase the capacity and reliability of the raw water delivery system through the construction of the MPP, a Raw Water Pipeline, and ancillary facilities in northern Contra Costa County. The 20-mile MPP would carry treated water from the Randall-Bold Water Treatment Plant in Oakley to the District's Treated Water Service Area. With a capacity of 25 million gallons per day, the MPP would free up capacity in the canal that is currently used to meet customer demands in the Treated Water Service Area. The proposed 4-mile-long Raw Water Pipeline would be constructed to bypass an existing bottleneck along the canal.

CCWD was formed in 1936 under the authority of the State Water Code. CCWD obtains raw water primarily from Reclamation's Contra Costa Canal, an element of the Central Valley Project. CCWD's raw water comes primarily from Rock Slough and Old River, east of Oakley, the source of which is the Sacramento-San Joaquin Delta. The water is pumped the first 7 miles of the Contra Costa Canal and then flows by gravity approximately 20 miles to Mallard Reservoir and Martinez Reservoir. Mallard Reservoir, north of the City of Concord, provides raw water storage for the adjacent Bollman Water Treatment Plant, which supplies potable water to the Treated Water Service Area. Martinez Reservoir provides flow regulation for the Contra Costa Canal.

The FEIR/FEIS (consisting of the DEIR/DEIS and the Response to Comments Document) evaluates in detail two alternatives, one of which is the proposed action, two subalternatives, and a No-Action Alternative. The FEIR/FEIS considers the environmental effects of the these alternatives in all topical areas required under NEPA and CEQA. CCWD and Reclamation have identified the Canal Alignment as the preferred alternative. The MPP Project EIR/EIS focuses on the impacts of pipeline construction and operation, including impacts on land use, traffic, recreation facilities, threatened and endangered species, surface water, and ground water.

Notice of the draft environmental impact report/draft environmental impact statement (DEIR/DEIS) was published in the **Federal Register** on September 10, 1998 (64 FR 3974). A public hearing was held on September 22, 1998. The written comment period closed on November 25, 1998. The Response to Comments Document contains responses to all comments received and changes made to the text of the DEIR/DEIS as a result of those comments.

Locations for Inspecting/Reviewing the FEIR/FEIS

Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street, NW, Washington DC 20240; telephone: (202) 208–4662

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, at the Denver Federal Center, 6th and Kipling in Denver CO 80225; telephone: (303) 445–2072.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way in Sacramento CA 95825–1898; telephone: (916) 978–5100.

• Contra Costa Water District, Public Reading Room at 1331 Concord Ave in Concord CA 94524; telephone: (925) 688–8312.
• Antioch Branch Library at 501 W. 18th Street in Antioch CA 94509.
• Bay Point Branch Library at 205 Pacifica Avenue in Pittsburg CA 94565.
• Pittsburg Branch Library at 80 Power Avenue in Pittsburg CA 94565.
• Oakley Branch Library at 118 East Ruby in Oakley CA 94561.
• Concord Branch Library at 2900 Salvio in Concord CA 94519.
• Contra Costa County Public Library at 1750 Oak Park Boulevard in Pleasant Hill CA 94523.

Dated: June 28, 2000.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 00–17376 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

United States Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10:00 a.m., Wednesday, July 12, 2000.

PLACE: 300 Indiana Avenue, NW., Main Floor, Washington, DC 20001.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion of proposed changes to the Interim Rules and Proposed Rules for District of Columbia Code offenders and Approval of the Proposed Rules as Final Rules.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: July 5, 2000.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 00–17439 Filed 7–6–00; 10:21 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

United States Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 3 p.m., Wednesday, July 12, 2000.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately two cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission. (301) 492–5962.

Dated: July 5, 2000.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 00–17440 Filed 7–6–00; 10:21 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,190 and NAFTA–3621]

Tempset, Inc., St. Louis, Missouri; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Tempset, Inc., St. Louis, Missouri. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,190 and NAFTA–3621; Tempset, Inc., St. Louis, Missouri (June 19, 2000)

Signed at Washington, DC this 19th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17320 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 6/26/00]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,812	Amway Corp (Wrks)	Ada, MI	06/09/00	Jewelry, Cookware, Foods, Crystal Prod.
37,813	Seton Co (Co)	Saxton, PA	06/05/00	Cut-To-Pattern Leather Pieces.
37,814	Allied Signal (Wrks)	Torrance, CA	06/08/00	Turbo Chargers for Vehicles.
37,815	Tetra Pipe Sales (Wrks)	Midland, TX	06/15/00	Pipeyard-Oil.
37,816	Multiplex Technology, Inc (Co)	Brea, CA	06/13/00	Audio, Video, Data & Telecommunication.
37,817	DHL (Wrks)	Houston, TX	06/14/00	Data Entry Billing.
37,818	Arco Marine, Inc (Wrks)	Long Beach, CA	06/16/00	Transport Oil.
37,819	Modern Engineering Co (Wrks)	Gallman, MS	06/15/00	Welding and Cutting Tips.
37,820	Ametek US Gauge (IAMAW)	Sellersville, PA	06/06/00	Component Parts—Compressed Gas Gages.
37,821	Cross Huller (Wrks)	Sterling Height, MI	06/14/00	Casting Weldments.
37,822	Kalkstein Silk Mills (UNITE)	Paterson, NJ	05/30/00	Silk Polyester Fabric.
37,823	Carleton Woolen Mills (PACE)	Winthrop, ME	06/14/00	Wool Cloth.
37,824	Avian Farms (Wrks)	Waterville, ME	06/12/00	Chickens for the Breeder.
37,825	Georgia Pacific Corp (PACE)	Woodland, ME	06/15/00	2×4's and 2×6's.
37,826	Blastco (Wrks)	Odessa, TX	06/10/00	Plant Demolition.
37,827	Kym Co (The) (Comp)	Jackson, GA	05/15/00	Pants and Shorts.
37,828	Johnstown Corp (USWA)	Johnstown, PA	06/09/00	Steel Castings, Rolling Mill Rolls.
37,829	Bucilla Corp (Wrks)	Hazleton, PA	06/01/00	Handstitched Needlework.
37,830	Grand Haven Brass Foundry (Wrk)	Grand Haven, MI	06/13/00	Plumbing Fixtures.
37,831	Occidental Chemical Corp (Co)	Niagara Falls, NY	06/15/00	Chemicals.

[FR Doc. 00–17305 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,789]

Art Craft Optical Company, Inc., Rochester, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 19, 2000, in response to a petition filed on the same date on behalf of workers at Art Craft Optical Company, Rochester, New York.

The company official who filed the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 19th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17308 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 19th day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 6/19/2000]

TA–W	Subject Firm (Petitioners)	Location	Date of petition	Product(s)
37,789	Art Craft Optical Co. (Co.)	Rochester, NY	05/08/2000	Eye Glass Frames.
37,790	Empire Steel Castings (USWA)	Reading, PA	06/05/2000	Steel Castings.

APPENDIX—Continued

[Petitions instituted on 6/19/2000]

TA–W	Subject Firm (Petitioners)	Location	Date of petition	Product(s)
37,791	Erie Controls (Co.)	Milwaukee, WI	04/25/2000	Electronic Components, Controls Assembly.
37,792	Southwire Company (Wkrs)	Carrollton, GA	05/23/2000	Copper Cathode.
37,793	Data Products (Wkrs)	Simi Valley, CA	06/02/2000	Computer Cartridges.
37,794	American Fabrics (Wkrs)	Tylertown, MS	05/12/2000	Lace.
37,795	Arlington Apparel (Co.)	Arlington, GA	06/02/2000	Ladies and Girls' Underwear.
37,796	Invensys Best Power (Wkrs)	Necedan, WI	06/01/2000	Power Supplies.
37,797	Craft House (Co.)	Kalaska, MI	06/06/2000	Children's Toys and Adult Crafts.
37,798	KPT, Inc. (Wkrs)	Bloomfield, IN	05/31/2000	Ceramic Floor Tile.
37,799	Swann Embroidery (Co.)	Florence, AL	05/31/2000	Embroidered Logos.
37,800	Mar Kel Lighting (IAMAW)	Paris, TN	06/09/2000	Ceramic and Metal Lamps.
37,801	Kountry Kreations (Co.)	Towanda, PA	06/05/2000	Dried & Preserved Floral Products.
37,802	Lydall Westex (Wkrs)	Hamptonville, NC	06/08/2000	Non Woven Heat and Sound Insulation.
37,803	MNCO, LLC (Wkrs)	Commerce, GA	05/23/2000	Leather Aprons, Support & Tool Belts.
37,804	Kellwood Company (UNITE)	Spencer, WV	05/22/2000	Ladies' Knitwear.
37,805	Eastern Tool and Die (Wkrs)	Newington, CT	06/02/2000	Jigs, Fixtures, and Service Tools.
37,806	W.E. Bassett (Co.)	Derby, CT	06/09/2000	Fingernail Clippers and Tweezers.
37,807	Southern Trim, Inc (Co.)	Opp, AL	06/09/2000	Men's and Ladies' Jeans.
37,808	Edgewater Steel Co. (Wkrs)	Oakmont, PA	06/05/2000	Forged Rings, Wheels and Gear Blanks.
37,809	Aly Wear (Wkrs)	Ephrata, PA	06/09/2000	Women's Tops, Bottoms, Dresses.
37,810	Buckeye Apparel (UNITE)	Coldwater, OH	06/02/2000	Men's Pants and Swimwear.
37,811A	Portland General Electric (Co.)	Portland, OR	06/19/2000	Decommissioning Nuclear Power Plant.
37,811	Portland General Electric (Co.)	Rainier, OR	06/19/2000	Decommissioning Nuclear Power Plant.

[FR Doc. 00–17313 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,841]

Black Warrior Wireline Corp., Boone Wireline Co., Inc., Odessa, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 10, 1998 applicable to workers of Black Warrior Wireline Corp. located in Odessa, Texas. The notice was published in the **Federal Register** on September 28, 2998 (63 FR 51605).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in occupations related to the production of crude oil and natural gas. New information shows that Boone Wireline Co., Inc. is a wholly owned subsidiary of Black Warrior Wireline Corp. located in Odessa, Texas. The company also reports that workers separated from employment at Black Warrior had their wages reported under a separate unemployment insurance (UI) tax account for Boone Wireline Co., Inc. also located in Odessa, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Black Warrior Wireline Corp. who were adversely affected by increased imports.

The amended notice applicable to TA–W–34,841 is hereby issued as follows:

"All workers of Black Warrior Wireline Corp., Boone Wireline Co., Inc., Odessa, Texas who became totally or partially separated from employment on or after July 22, 1997 through September 10, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 22nd day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–17314 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,547 and TA–W–37,547A]

Donnkenny Apparel, Inc., Floyd, Virginia and Donnkenny Apparel, Inc., Independence, Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 6, 2000, applicable to workers of Donnkenny Apparel, Inc., Floyd and Independence, Virginia. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce ladies' sportswear (pants and skirts). New information shows that the Department inadvertently included the workers of the Floyd, Virginia location of Donnkenny Apparel in its certification. Findings show that a previous certification, TA–W–34,806B, was issued on October 22, 1998, covering the same worker group, who were engaged in employment related to the production of ladies' sportswear (pants and skirts). That certification expires October 22, 2000.

Based on these findings, the Department is amending the certification to limit coverage to only workers of Donnkenny Apparel, Inc., Independence, Virginia.

The intent of the Department's certification is in include all workers of Donnkenny Apparel, Inc., Independence, Virginia adversely affected by increased imports.

The amended notice applicable to TA–W–37,547 is hereby issued as follows:

All workers of Konnkenny Apparel, Inc., Independence, Virginia who became totally or partially separated from employment on or after March 16, 1999 through June 6, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 23rd day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–17312 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,619]

Furniture Crafters, Grants Pass, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 24, 2000, in response to a worker petition which was filed on the same date on behalf of workers at Furniture Crafters Grants Pass, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 9th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17317 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,734]

Glacier Gold Compost, Incorporated, Olney, Montana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 30, 2000, in response to a petition filed on the same date on behalf of workers at Glacier Gold Compost, Incorporated, Olney, Montana.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 5th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17316 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,682]

Johnson Controls, Incorporated, Goshen, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 15, 2000, in response to a petition filed by a company official on behalf of workers at Johnson Controls, Incorporated, Goshen, Indiana.

The company official and union official submitting the petition have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 12th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17319 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,778]

Shepherd Operating, Inc., Midland, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 12, 2000 in response to a petition filed by a company official on behalf of workers at Shepherd Operating, Inc., Midland, Texas.

The workers of the subject facility were separated from the subject firm more than one year prior to the date of the petition. In accordance with section 223(b)(1) of the Trade Act of 1974, no certification may apply to any worker whose last total or partial separation occurred more than one year before the date of the petition. The date of the petition is June 2, 2000, and the company closed March 31, 1999. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC., this 23rd day of June, 2000.

Edward A. Tomchick,

Program Management, Division of Trade Adjustment Assistance.

[FR Doc. 00–17307 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—03972]

Ametek U.S. Gauge Division, Sellersville, Pennsylvania; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on June 12, 2000 in response to a petition filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers at Ametek U.S. Gauge, U.S. Division, Sellersville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of June 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–17309 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03876]

Chavez Signs, Incorporated, El Paso, Texas; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 1, 2000 in response to a petition filed on behalf of workers at Johnson Controls, Incorporated, Goshen, Georgia.

In a letter dated June 5, 2000, the petitioners requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 13th day of June 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17318 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003869]

Cooper Energy Services, C–B Reciprocating Products Division, Grove City, Pennsylvania; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 27, 2000, in response to a petition filed on behalf of workers at Cooper Energy Services, C–B Reciprocating Products, Grove City, Pennsylvania. Cooper Energy Services is a division of Cooper Cameron Corporation. Workers produced cast and ductile iron castings.

The Department has determined upon reconsideration that the worker group for which the petition was filed is eligible to apply for transitional adjustment assistance (NAFTA–003527). Due to the foregoing determination, an active certification exists for these workers. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 30th day of June 2000.

Edward A. Tomchick,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17311 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03952]

Invensys Best Power, Necedah, Wisconsin; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 2, 2000, in response to a petition filed on behalf of workers at Invensys Best Power, Necedah, Wisconsin.

In a statement dated June 26, 2000, an employee submitting the petition requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 29th day of June, 2000.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–17310 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03927]

Mediacopy; San Leandro, CA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 22, 2000 in response to a petition filed on behalf of workers at Mediacopy.

In a letter dated June 27, 2000, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC., this 30th day of June 2000.

Edward A. Tomchick,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17306 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003894]

Southland Manufacturing Company Incorporated, Ashland, Alabama; Notice of Termination

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–1 concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on May 8, 2000, in response to a petition filed on behalf of workers at Southland Manufacturing Company, Inc., Ashland, Alabama. Workers produce men's slacks.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation has been terminated.

A Trade Adjustment Assistance investigation (TA–W–37, 719) to determine worker eligibility for benefits under the Trade Act of 1974, was instituted on May 30, 2000. A

determination should be made within sixty (60) days of the institution date.

Signed in Washington, D.C., this 19th day of June 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17315 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

MARINE MAMMAL COMMISSION

Sunshine Act Meeting

TIME AND DATES: The Marine Mammal Commission will meet in executive session on July 10, 2000.

PLACE: 901 17th Street, N.W., Washington, D.C. 20006

SUBJECT MATTER AND STATUS: This meeting of the Marine Mammal Commission will consider candidates for the position of Executive Director of the Commission and, as provided for in subsection (c)(2) and (c)(6) of the Government in the Sunshine Act, will be closed to the public.

FOR FURTHER INFORMATION CONTACT: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, 301/504–0087.

Dated: July 6, 2000.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 00–17517 Filed 7–6–00; 3:00 pm]

BILLING CODE 6820–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–076)]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee, Goals Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Goals Subcommittee.

DATES: Monday, August 14, 2000, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Revised Office of Aerospace Technology (OAT) Goals & Objectives
—Planning for the Aerospace Transportation System After Next
—Analysis of the OAT FY 00 Progress Towards the Goals
—Strategy for the FY 01 Review of Progress Towards the Goals

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 3, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–17303 Filed 7–7–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–77)]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee.

DATES: Tuesday, August 15, 2000, 8:30 a.m. to 5:00 p.m.; and Wednesday, August 16, 2000, 8:00 a.m. to 12:00 Noon.

ADDRESSES: National Aeronautics and Space Administration, Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of Aerospace Technology Programs
—Revolutionary Concepts (REVCON)
—Status of National R&D Investment Plan for "Aviation Systems After Next"
—Integrated Presentation on NASA's Aviation Safety Program
—Government Performance Results Act (GPRA) Status
—National Transonic Facility (NTF)
—Subcommittee Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 3, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–17304 Filed 7–7–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting; Quarterly Meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability, Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

QUARTERLY MEETING DATES: August 7–9, 2000, 8:30 a.m. to 5:00 p.m.

LOCATION: Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: The National Council on disability is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session (closed)
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 6, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–17499 Filed 7–6–00; 2:12 pm]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20563; ASLBP No. 00–779–01–CivP]

Western Soil, Inc.,Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and §§ Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Western Soil, Inc., Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of Western Soil, Inc., for a hearing regarding an Order issued by the Director, Office of Enforcement, dated April 12, 2000, entitled "Order Imposing Civil Monetary Penalty" (65 FR 21,489 (Apr. 21, 2000)).

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR § 2.701.

Issued at Rockville, Maryland, this 3rd day of July 2000.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–17341 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–170]

Armed Forces Radiobiology Research Institute; Nuclear Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Facility Operating License No. R–84, issued to Armed Forces Radiobiology Research Institute (the licensee) for operation of their research reactor.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow extension of the license expiration time from November 8, 2000, to August 1, 2004, for the Armed Forces Radiobiology Research Institute Research Reactor. The proposed action is in accordance with the licensee's application for amendment dated February 28, 2000. The licensee submitted an Environmental Report with its request for license extension.

Need for the Proposed Action

The proposed action is needed to allow continued operation of the Armed Forces Radiobiology Research Institute Research Reactor in order to continue training, radiobiology research, and activation analysis activities beyond the current term of the license.

Environmental Impact of the Proposed Action

The Armed Forces Radiobiology Research Institute Research Reactor is located near the center of the National Naval Medical Center in Bethesda, Maryland in a metal and concrete building.

The Armed Forces Radiobiology Research Institute Research Reactor is a moderate power (1 megawatt), pool-type research reactor. The NRC licensed the facility in 1962 and the facility license was renewed in 1984. Since about 1981, the facility has operated about 28.8 megawatt-hours per year on average. During that time, the gaseous Argon-41 radiological release has been on average of 3.236×10^9 becquerel per year (8.747 curies per year). Since 1981, the facility has had no radiological liquid releases. Solid releases of radioactive material have been transferred and disposed of in accordance with the requirements of the licensee's byproduct license. Currently, there are no plans to change any operating characteristics of the reactor during the license extension period.

The NRC concludes that the radiological effects of the continued operation will be minimal based on past radiological releases. The radiological exposures for facility operations have been within regulatory limits. Conditions are not expected to change.

As for potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological effluents and has no other environmental impact. Therefore, no significant non-radiological environmental impacts associated with the proposed action.

In addition, the environmental impact associated with operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that no significant environmental impact is associated with the operation of research reactors licensed to operate at power levels up to and including 2 megawatts thermal. We have determined that this generic evaluation is applicable to operation of the Armed Forces Radiobiology Research Institute Research Reactor and that there are no special or unique features that would preclude reliance on the generic evaluation.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

An alternative to the proposed action for the research reactor facility is to deny the application (*i.e.*, "no action" alternative). If the application is denied, the licensee has indicated that it would apply for license renewal and operate under the timely renewal provisions of 10 CFR 2.109 until the NRC renewed or denied the license renewal application. With operation under timely renewal or renewal, the actual conditions of the reactor would not change. If the NRC denied license renewal, Armed Forces Radiobiology Research Institute Research Reactor operations would stop and decommissioning would be required with a likely small impact on the environment. The environmental impacts of the proposed action and alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Assessment prepared for the renewal of Armed Forces Radiobiology Research Institute's license in January 1985.

Agencies and Persons Contacted

On May 8, 2000, the staff consulted with the Maryland Department of Natural Resources Official, Rich McLean, regarding the environmental impact of the proposed action. Mr. McLean also contacted and coordinated review with Roland Fletcher, Manager Radiological Health Program, Air and Radiation Management Administration, Maryland Department of the Environment. The State officials had no comment.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 28, 2000. A hard copy is available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. Publicly available records will also be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 2nd day of June 2000.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

Environmental Considerations Regarding the Licensing of Research Reactors and Critical Facilities

Introduction

This discussion deals with research reactors and critical facilities which are designed to operate at low power levels, 2 MWt and lower, and are used primarily for basic research in neutron physics, neutron radiography, isotope production, experiments associated with nuclear engineering, training and as a part of a nuclear physics curriculum. Operation of such facilities will generally not exceed a 5-day week, 8-hour day, or about 2000 hours per year. Such reactors are located adjacent to technical service support facilities with convenient access for students and faculty.

Sited most frequently on the campuses of large universities, the reactors are usually housed in already existing structures, appropriately modified, or placed in new buildings that are designed and constructed to blend in with existing facilities. However, the environmental considerations discussed herein are not limited to those which are part of universities.

Facility

There are no exterior conduits, pipelines, electrical or mechanical structures or transmission lines attached to or adjacent to the facility other than for utility services, which are similar to those required in other similar facilities, specifically laboratories. Heat dissipation is generally accomplished by use of a cooling tower located on the roof of the building. These cooling towers typically are on the order of 10′ x 10′ x 10′ and are comparable to cooling towers associated with the air-conditioning systems of large office buildings.

Make-up for the cooling system is readily available and usually obtained from the local water supply. Radioactive gaseous effluents are limited to Ar-41 and the release of radioactive liquid effluents can be carefully monitored and controlled. Liquid wastes are collected in storage tanks to allow for decay and monitoring prior to dilution and release to the sanitary sewer system. Solid radioactive wastes are packaged and shipped offsite for storage at NRC-approved sites. The transportation of such waste is done in accordance with existing NRC–DOT regulations in approved shipping containers.

Chemical and sanitary waste systems are similar to those existing at other similar laboratories and buildings.

Environmental Effects of Site Preparation and Facility Construction

Construction of such facilities invariably occurs in areas that have already been disturbed by other building construction and, in some cases, solely within an already existing building. Therefore, construction would not be expected to have any significant effect on the terrain, vegetation, wildlife or nearby waters or aquatic life. The societal, economic and aesthetic impacts of construction would be no greater than those associated with the construction of a large office building or similar research facility.

Environmental Effects of Facility Operation

Release of thermal effluents from a reactor of less than 2 MWt will not have a significant effect on the environment. This small amount of waste heat is generally rejected to the atmosphere by means of small cooling towers. Extensive drift and/or fog will not occur at this low power level.

Release of routine gaseous effluents can be limited to Ar-41, which is generated by neutron activation of air. Even this will be kept as low as practicable by using gases other than air for supporting experiments. Yearly doses to un-restricted areas will be at or below established guidelines in 10 CFR Part 20 limits. Routine releases of radioactive liquid effluents can be carefully monitored and controlled in a manner that will ensure compliance with current standards. Solid radioactive wastes will be shipped to an authorized disposal site in approved containers. These wastes should not require more than a few shipping containers a year.

Based on experience with other research reactors, specifically TRIGA reactors operating in the 1 to 2 MWt range, the annual release of gaseous and liquid effluents to unrestricted areas should be less than 30 curies and 0.01 curies, respectively.

No release of potentially harmful chemical substances will occur during normal operation. Small amounts of chemicals and/or high-solid content water may be released from the facility through the sanitary sewer during periodic blowdown of the cooling tower or from laboratory experiments.

Other potential effects of the facility, such as aesthetics, noise, societal or

impact on local flora and fauna are expected to be too small to measure.

Environmental Effects of Accidents

Accidents ranging from the failure of experiments up to the largest core damage and fission product release considered possible result in doses that are less than 10 CFR Part 20 guidelines and are considered negligible with respect to the environment.

Unavoidable Effects of Facility Construction and Operation

The unavoidable effects of construction and operation involve the materials used in construction that cannot be recovered and the fissionable material used in the reactor. No adverse impact on the environment is expected from either of these unavoidable effects.

Alternatives to Construction and Operation of the Facility

To accomplish the objectives associated with research reactors, there are no suitable alternatives. Some of these objectives are training of students in the operation of reactors, production of radioisotopes, and use of neutron and gamma ray beams to conduct experiments.

Long-Term Effects of Facility Construction and Operation

The long-term effects of research facilities are considered to be beneficial as a result of the contribution to scientific knowledge and training. Because of the relatively small amount of capital resources involved and the small impact on the environment, very little irreversible and irretrievable commitment is associated with such facilities.

Costs and Benefits of Facility Alternatives

The costs are on the order of several millions of dollars with very little environmental impact. The benefits include, but are not limited to, some combination of the following: conduct of activation analyses, conduct of neutron radiography, training of operating personnel, and education of students. Some of these activities could be conducted using particle accelerators or radioactive sources which would be more costly and less efficient. There is no reasonable alternative to a nuclear research reactor for conducting this spectrum of activities.

Conclusion

The staff concludes that there will be no significant environmental impact associated with the licensing of research reactors or critical facilities designed to operate at power levels of 2 MWt or lower and that no environmental impact statements are required to be written for the issuance of construction permits or operating licenses for such facilities.

[FR Doc. 00–17344 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

Consideration of License Amendment Request for BWX Technologies, Inc., and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact and Opportunity to Request a Hearing on Amendment of Materials License SNM–42, BWX Technologies, Inc.

SUMMARY: The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–42 to exempt BWX Technologies, Inc. from the beryllium-to-fissile mass ratio limit specified in the fissile material exemption standards of 10 CFR 71.53.

Environmental Assessment

1.0 Introduction

1.1 Background

The Nuclear Regulatory Commission (NRC) staff has evaluated the environmental impacts of the exemption of BWX Technologies, Inc. (BWXT) from the beryllium-to-fissile mass ratio limits specified in the fissile material exemption standards of 10 CFR 71.53 . This Environmental Assessment (EA) has been prepared pursuant to the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and NRC regulations (10 CFR part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The BWXT facility in Lynchburg, VA is authorized under SNM–42 to possess nuclear materials for the fabrication and assembly of nuclear fuel components. The facility supports the U.S. naval reactor program, fabricates research and university reactor components, and manufactures compact reactor fuel elements. The facility also performs recovery of scrap uranium. Research and development activities related to the fabrication of nuclear fuel components are also conducted.

1.2 Review Scope

In accordance with 10 CFR part 51, this EA (1) presents information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fulfills the NRC's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary; and (3) facilitates preparation of an EIS if one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

1.3 Proposed Action

The proposed action is to amend NRC Materials License SNM–42 to exempt the licensee from the beryllium-to-fissile mass ratio limit specified in the fissile material exemption standards of 10 CFR 71.53.

1.4 Need for Proposed Action

The proposed action would allow the licensee to transport uranium-beryllium waste with fission and activation products under the requirements of 10 CFR part 71. The licensee may use the fissile material exemption specified in 10 CFR 71.53 with an exemption to the 0.1 percent beryllium-to-fissile mass ratio limit.

The provisions of 10 CFR 71.53 exempt the shipment of material with limited fissile mass from the fissile material package standards in 10 CFR 71.55 and 71.59. The fissile material exemption in 10 CFR 71.53 is only valid for materials that contain a mass of beryllium that is less than 0.1 percent of the mass of fissile material. BWXT has identified waste material with a limited amount of fissile material, but with beryllium quantities that exceed the 0.1 percent beryllium-to-fissile mass ratio limit. BWXT needs to ship these wastes, which consist of large physical objects (*e.g.*, ductwork). BWXT does not want to ship the waste in transportation packages that are approved by the NRC because the waste materials would require significant cutting and processing that would increase the risk of beryllium exposure to personnel. The uranium and beryllium content of the waste objects is in the form of surface contamination. Both uranium and beryllium contamination levels are expected to be relatively low. The NRC staff has determined that the shipments by BWXT would be nuclearly safe with certain license conditions applied; however, given there is no uranium level below which the 0.1 percent beryllium to uranium ratio does not

apply, this material can not be classified as fissile exempt under the current regulation.

1.5 Alternatives

The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Deny the amendment request.

2.0 Affected Environment

The affected environment for Alternative 1 would be the immediate vicinity of the vehicle used to transport the material to a licensed disposal facility.

The affected environment for Alternative 2 is the BWXT site. A full description of the site and its characteristics is given in the 1995 Environmental Assessment for the Renewal of the NRC license for BWXT. The BWXT facility is located on a 525 acre (2 km^2) site in the northeastern corner of Campbell County, approximately 5 miles (8km) east of Lynchburg, Virginia. This site is located in a generally rural area, consisting primarily of rolling hills with gentle slopes, farm land, and woodlands. The Navy Nuclear Fuel Division (NNFD) facility is centrally located on the site with the main manufacturing complex contained in a 19 acre (0.08 km^2) fenced area.

3.0 Effluent Releases and Monitoring

Alternative 1: No changes to the effluents and monitoring program are expected as a result of approving this amendment request.

Alternative 2: No changes to the effluents and monitoring program are expected as a result of denying this amendment request. The licensee would construct a containment area to process and repackage the waste material. This containment area would effectively prevent the release of waste material to the environment.

4.0 Environmental Impacts of Proposed Action and Alternatives

4.1 Public Health

Alternative 1: The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The principal radiological environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR part 20 requirement of 100 mrem for a member of the public.

Occupational health was also considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The average annual occupational dose to the driver(s) is estimated to be 8.7 mSv (870 mrem), which is below the 10 CFR part 20 requirement of 50 mSv (5000 mrem). The Department of Transportation (DOT) regulations in 49 CFR 177.842(g) require that the radiation dose may not exceed 0.02 mSv (2 mrem) per hour in any position normally occupied in a motor vehicle. Shipment of these materials would not affect the assessment of environmental impacts or the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

Alternative 2: The risk to the public health is not expected to increase as a result of denying this amendment request, under normal operating conditions. The licensee already has controls in place to prevent the migration of material off-site.

The occupational health impacts associated with the denial of this amendment request were evaluated. The material to be shipped is currently packaged and stored in containers which are not approved by the NRC. In order to ship the material in NRC-approved packages, the material will need to be processed and repackaged. The licensee would need to construct a containment area in order to limit personnel exposure to airborne beryllium. Actions would be taken to control occupational exposure such as limited exposure times, bioassays, and respirator use. The risk for worker exposure to uranium and beryllium would increase as a result of denying this amendment request.

4.2 Water Resources

Alternative 1: The NRC staff has determined that the proposed amendment will not impact the quality of water resources as a result of normal transport.

Alternative 2: The NRC staff has determined that denial of the proposed amendment request will not impact the quality of water resources at or near the BWXT site.

4.3 Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources

Alternative 1: The NRC staff has determined that the proposed amendment will not impact geology, soils, air quality, demography, biota, or cultural or historic resources under normal transport conditions.

Alternative 2: The NRC staff has determined that denial of the proposed amendment will not impact geology, soils, air quality, demography, biota, or cultural or historic resources at or near the BWXT site.

4.4 Alternatives

The action that the NRC is considering is approval of an amendment request to a Materials license issued pursuant to 10 CFR part 70. The proposed action is to amend NRC Materials License SNM–42 to exempt the licensee from the beryllium-to-fissile mass ratio limit specified in the fissile material exemption standards of 10 CFR 71.53. The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant denial of the license amendment. In addition, the denial of the amendment request would require the licensee to ship the waste in packages approved by the NRC, thereby increasing the risk of beryllium exposure to personnel due to significant cutting and processing. The staff considers that Alternative 1 is the appropriate alternative for selection.

5.0 Agencies and Persons Contacted

The NRC contacted a representative from the Virginia Department of Health in correspondence dated May 25, 2000.

6.0 References

U.S. Nuclear Regulatory Commission (NRC), December 1977, "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes." U.S. Nuclear Regulatory Commission (NRC), August 1995, "Environmental Assessment for Renewal of Special Nuclear Material License SNM–42."

7.0 Conclusions

Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**. The NRC staff considered the environmental consequences of exempting the licensee from the beryllium-to-fissile mass ratio limit specified in the fissile material exemption standards in 10 CFR 71.53, and have determined that the approval

of this exemption will have no adverse effect on public health and safety or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License SNM–42. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, the Commission is making a Finding of No Significant Impact.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Based on the Environmental Assessment and Finding of No Significant Impact, and a staff safety evaluation to be completed, NRC is preparing to amend License SNM–42. The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, BWX Technologies, P.O. Box 785, Lynchburg, VA; and

2. The NRC staff, by delivering it to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The NRC contact for this licensing action is Thomas Cox. Mr. Cox may be contacted at (301) 415–8107 or by e-mail at THC@nrc.gov for more information about this licensing action.

Dated at Rockville, Maryland, this 3rd day of July, 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17342 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Southern California Edison, San Onofre Nuclear Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of 10 CFR part 73 for Facility Operating License No. DPR–13, issued to Southern California Edison, (the licensee), for the San Onofre Nuclear Generating Station, Unit 1, a permanently shutdown nuclear reactor facility located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would modify security requirements to eliminate certain equipment, to relocate certain equipment, to modify certain procedures, and reduce the number of armed responders, due to the permanently shutdown and defueled status of the San Onofre Nuclear Generating Station, Unit 1.

The proposed action is in accordance with the licensee's application for exemption dated April 28, 2000. The requested action would grant an exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," specifically from 10 CFR 73.55(a), (c)(1), (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), (d)(1), (e)(1), (e)(2), (h)(3) and (h)(6) as identified in the licensee's application for exemption dated April 28, 2000.

The Need for the Proposed Action

San Onofre Nuclear Generating Station Unit 1 was permanently shut down on November 20, 1992. The reactor was permanently defueled and the possession-only license became effective on March 9, 1993. In this permanently shutdown condition, the facility poses a reduced risk to public health and safety. Because of this reduced risk, certain requirements of 10 CFR 73.55 are no longer appropriate. An exemption is required from portions of 10 CFR 73.55 to allow the licensee to implement a revised security plan that is appropriate for the permanently shutdown and defueled reactor facility.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that granting an exemption to those portions of 10 CFR 73.55 identified above would not have a significant impact on the environment. Unit 1 has not operated since November 1992. As demonstrated by the licensee in its exemption application, the consequences of any possible act of sabotage are thus reduced, due to the reduced amount of radioactive material available for possible release from the Unit 1 spent fuel pool.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there

are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the San Onofre Nuclear Generating Station, Unit 1.

Agencies and Persons Contacted

In accordance with its stated policy, on May 31, 2000, the staff consulted with the State of California official, Mr. Steven Hsu of the Radiologic Health Services, State Department of Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 28, 2000 (Accession No. ML003709607), which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 3rd day of July 2000.

For the Nuclear Regulatory Commission.

David J. Wrona,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17343 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rules 1(a), 1(b), Forms U5A and U5B—SEC File No. 270–168—OMB Control No. 3235–0170

Rule 3, Form U–3A3–1—SEC File No. 270–77—OMB Control No. 3235–0160

Rule 26—SEC File No. 270–78—OMB Control No. 3235–0183

Rule 44—SEC File No. 270–162—OMB Control No. 3235–0147

Rule 62, Form U–R–1—SEC File No. 270–166—OMB Control No. 3235–0152

Rule 88, Form U–13–1—SEC File No. 270–80—OMB Control No. 3235–0182

Rule 95, Form U–13E–1—SEC File No. 270–74—OMB Control No. 3235–0162

Form U–7D—SEC File No. 270–75—OMB Control No. 3235–0165

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission ("Commission") requests comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rules 1(a) and 1(b) [17 CFR 250.1(a), 250.1(b)] and forms U5A and U5B [17 CFR 259.5a, 259.5b] implement Sections 5(a) and 5(b) of the Public Utility Holding Company Act of 1935, as amended ("Act") which require any holding company or any person proposing to become a holding company to file with the Commission a notification of registration and registration statement, respectively. The information is necessary for the Commission to determine whether a new registrant is in compliance with the requirements of the Act. The initial burden of this requirement is approximately 80 hours per respondent. Thereafter there is no annual burden. The Commission has been receiving four filings each year, with a total annual burden of 320 hours. Companies filing under this rule are required to retain records for a period of 10 years, and provision of the information is mandatory. The retention time period allows the Commission the opportunity to perform its audit functions. Responses are not kept confidential.

Rule 3 [17 CFR 250.3] permits a bank that is also a public utility holding company to claim an exemption from the requirements of the Act, through the submission of an annual statement on Form U–3A3–1 [17 CFR 259.403]. The rule and the form are used by the Commission staff to expedite its review of compliance with Section 3(a)(4) of the Act. Rule 3 and form U–3A3–1 permit a bank that is also a public utility holding company to avoid the burdens associated with an application for an exemption from the requirements of the Act. An application for an exemption would involve a formal order, which might require an administrative hearing and which otherwise would consume a significant amount of Commission resources. Each year the Commission receives five submissions from banks, each takes about two hours to complete. Thus a total annual burden of ten hours is imposed. Provision of this information is required. Banks that file under this rule are required to retain records for a period of ten years. This retention period is consistent with requirements imposed by federal agencies that regulate banks. Banks are allowed to request confidential treatment of information filed under this rule.

Rule 26 [17 CFR 250.26] sets forth the financial statement and recordkeeping requirements for registered holding companies and their subsidiaries. This information collection is of fundamental importance to the Commission in the review of financial statements of registered public utility holding companies. The Commission reviews financial statements in connection with its review of proposals submitted for approval under several provisions of the Act. Provision of this information is required. The rule imposes no annual burden because there is no form, as such, under Rule 26 and because the information is required for Form U5S, which is subject to separate OMB review. In addition, there is no requirement for record retention under this rule.

Rule 44 [17 CFR 250.44] prohibits sales of utility securities or of utility assets owned by registered public utility holding companies, not otherwise exempt under Commission regulations, except under a declaration that notifies the Commission of the proposed sale and that becomes effective. The information is essential to Commission administration of Section 12(d) of the Act and is not otherwise available. The Commission analyzes the information to determine if the proposed sale is consistent with the public interest. Provision of this information is

required. The rule imposes a burden of about 96 hours each year on 4 respondents, each of which makes one submission. There is no requirement for record retention under this rule. Submissions are not kept confidential.

Rule 62 [17 CFR 250.62] prohibits the solicitation of authorization regarding any security of a regulated company in connection with reorganization subject to Commission approval or regarding any transaction which is the subject of an application or declaration, except under a declaration regarding the solicitation which has become effective. The information is necessary to permit the Commission to adequately enforce Sections 12(e) and 11(g) of the Act. The rule and Form U–R–1 [17 CFR 259.221] impose a total annual burden of 35 hours on 7 companies, who each spend 5 hours, and file as necessary.

Rule 88 [17 CFR 250.88] requires the filing of Form U–13–1 [17 CFR 259.113] for a mutual or subsidiary service company performing services for affiliate companies of a holding company system. Twenty-two respondents initially spend a total of approximately eighty-eight hours meeting this requirement. Thereafter, there is no annual burden. Service companies filing under this rule are required to retain records for a period of 10 years, and provision of the information is mandatory. The retention time period allows the Commission the opportunity to perform its audit functions. Responses are not kept confidential.

Rule 95 [17 CFR 250.95] requires service companies to file reports on Form U–13E–1 [17 CFR 259.213] with the Commission prior to their performance of contracts for registered holding companies or their subsidiaries, for services, construction, or sales of goods. The Commission requires this information to enforce the provisions of Section 13(e) and of Section 13(f) of the Act. The enforcement of these statutes would be compromised without the collection of this information, which is not available from other sources. Provision of this information is required. Companies that file under this rule are required to retain records for a period of six years. This retention period allows the Commission to perform its audit functions. One company meets this requirement on an annual basis with an estimated average burden of 2 hours. This information is not kept confidential.

Form U–7D [17 CFR 259.404] establishes the filing company's right to the exemption authorized for financing entities holding title to utility assets leased to a utility company. The information is necessary for the Commission to determine whether a company is exempt from, or governed by, the Act. The form imposes a total annual burden of 72 hours on 24 respondents, who each spend 3 hours annually preparing and filing 1 response. Companies filing under this rule are required to retain records for a period of 10 years, and provision of the information is mandatory. The retention time period allows the Commission the opportunity to perform its audit functions, and generally coincides with companies' obligation period under their respective leases. Responses are not kept confidential.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

It should be noted that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: June 28, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17329 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27195]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 30, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 25, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 25, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9625)

Allegheny Energy, Inc. ("Allegheny"), 10435 Downsville Pike, Hagerstown, Maryland 21470, a registered public utility holding company, Monongahela Power Company ("Monongahela Power"), 1310 Fairmont Avenue, Fairmont, West Virginia 23219, a wholly owned combination gas and electric utility subsidiary of Allegheny and Mountaineer Gas Company ("Mountaineer Gas"), 414 Summers Street, Charleston, West Virginia 25301, an indirectly owned gas utility subsidiary of Energy Corporation of America ("ECA"), a Colorado public utility holding company claiming exemption from registration under section 3(a)(1) by rule 2 under the Act (collectively, "Applicants"), have filed an application-declaration under sections 3(a)(2), 6, 7, 9(a), 10, 11(b),

12(b) and 13(b) of the Act and rules 45, 54, 90 and 91 under the Act.

Allegheny proposes to acquire 100% of the outstanding securities of Mountaineer Gas. Mountaineer Gas is a directly owned subsidiary of Eastern Systems Corporation ("ESC"), a West Virginia holding company claiming exemption from registration under section 3(a)(1) by rule 2 under the Act and an indirectly owned subsidiary of ECA. Allegheny, ESC and ECA have entered into a stock purchase agreement under which Monongahela Power, as Allegheny's assignee, proposes to acquire 100% of the outstanding securities of Mountaineer Gas for approximately $223 million in cash and the assumption of $100 million in long-term debt ("Transaction"). The purchase price is subject to adjustment after closing based upon the closing date balance sheet.

Allegheny has three regulated public utility companies: Mononghela Power, a combination electric and gas utility which provides service to customers in West Virginia and Ohio; West Penn Power Company, an electric utility which provides service to customers in Pennsylvania; and The Potomac Edison Company, an electric utility which provides services to customers in Maryland, West Virginia, and Virginia. Collectively, the Allegheny system utilities do business as Allegheny Power. Allegheny Power, operating as a combination electric and gas system, delivers electric and gas to 1.4 million customers. Allegheny has several nonutility subsidiaries as well. For the twelve months ended December 31, 1999, Allegheny's revenues were approximately $2.8 billion.

Monongahela Power is headquartered in Fairmont, West Virginia. Monongahela Power provides electric service to approximately 351,000 West Virginia customers and approximately 28,000 Ohio customers. Monongahela Power, through its West Virginia Power gas division, provides natural gas service to approximately 24,000 customers in West Virginia.[1] For the twelve months ended December 31, 1999, Monongahela Power contributed $673 million or 24% of Allegheny's revenues.

Mountaineer Gas provides utility service to approximately 200,000 customers throughout West Virginia, including the cities of Wheeling, Martinsburg, Beckley, Huntington and Charleston. Mountaineer Gas' principal place of business is located in Charleston, West Virginia. Mountaineer Gas wholly owns Mountaineer Gas Services, which is primarily engaged in providing energy procurement and marketing services to Mountaineer Gas and owns approximately 375 wells and has gas storage facilities under contract. For the twelve months ended December 31, 1999, Mountaineer Gas had revenues of approximately $174 million. Mountaineer Gas' regulated activities contributed $162 million, or 94% of those revenues.

Allegheny seeks authorization to issue up to $162 million in long-term debt securities. Additionally, Allegheny seeks authorization to make a capital contribution of up to $165 million to Monongahela Power. The contribution will be funded through the requested debt securities issuance and $3 million in general funds. The contribution will be made in a combination of cash, guarantees or loans.

Monongahela Power seeks authority to issue up to $165 million in long-term debt securities for the purpose of acquiring Mountaineer Gas. Additionally, Monongahela Power seeks authorization to issue loans and guarantees to Mountaineer Gas in an aggregate amount up to $100 million. The amount of loans and guarantees issued is contingent upon the amount of Mountaineer Gas' debt assumed in the Transaction.

Upon completion of the acquisition, Mountaineer Gas seeks authority to issue up to $100 million in short-term debt. The short-term debt will be in the form of commercial paper and bank borrowings. The Applicants state that the short-term debt will be used primarily for financing ongoing operations.

All of the requested financing authority will have interest rates, fees, and expenses comparable to those obtainable by comparable entities issuing comparable securities with the same or similar terms and maturities.

The acquisition of the securities of Mountaineer Gas will be accounted for under the purchase method of accounting.

Following the acquisition of 100% of the securities of Mountaineer Gas, Mountaineer Gas will become a wholly owned subsidiary of Monongahela Power. Because Monongahela Power will acquire more than 10% of the stock of Mountaineer Gas, the Applicants are requesting an order under section 3(a)(2) of the Act exempting Monongahela Power from the provisions of the Act applicable to holding companies.[2]

Once Mountaineer Gas becomes a subsidiary of Monongahela Power, the Applicants propose that Allegheny Energy Service Corporation, Allegheny's service company, will act as a service company for Mountaineer Gas.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17281 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

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[1] *See Allegheny Energy, Inc., et al.*, Holding Co. Act Release No. 27121 (Dec. 23, 1999) (approving the retention of the purchased electric and gas assets of West Virginia Power).

[2] A "holding company" is defined in section 2(a)(7) of the Act to include any company that directly or indirectly owns 10% or more of the outstanding voting securities of a public utility company. Section 2(a)(5) defines a "public-utility company" to mean an electric utility company or a gas utility company. Section 3(a)(2) provides an exemption if the holding company is "predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto."

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24552]

Notice of Application for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 30, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of

Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Oppenheimer Core Equity Fund [File No. 811–8807]; Oppenheimer Large Cap Value Fund [File No. 811–8810]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make any public offering or engage in business of any kind.

Filing Dates: Each application was filed on June 12, 2000.

Applicants' Address: Two World Trade Center, New York, New York 10048–0203.

Corefunds, Inc. [File No. 811–4107]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 24, 1998, applicant transferred its assets to Evergreen Equity Trust, Evergreen Select Equity Trust, Evergreen International Trust, Evergreen Fixed Income Trust, Evergreen Select Fixed Income Trust, Evergreen Municipal Trust, Evergreen Money Market Trust and Evergreen Select Money Market Trust (the "Acquiring Funds") based on net asset value. Expenses of $1,040,489 incurred in connection with the reorganization were paid by First Union National Bank.

Filing Date: The application was filed on May 20, 2000.

Applicant's Address: 530 East Swedesford Road, Wayne, Pennsylvania 19087.

Shepmyers Investment Company [File No. 811–2798]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 20, 2000, applicant transferred its assets to The National Portfolio of Smith Barney Muni Funds, based on net asset value. Expenses of $123,580 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on May 26, 2000.

Applicant's Address: P.O. Box 339, Route 194 South, Hanover, Pennsylvania 17331.

Congress Street Associates, L.P. [File No. 811–8801]

Summary: Applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. By March 21, 2000, applicant had distributed all of its assets to its shareholders based on net asset value. Expenses of $4,722 incurred in connection with the liquidation were paid by applicant's general partner and investment adviser, Congress Street Management, L.L.C.

Filing Date: The application was filed on May 17, 2000.

Applicant's Address: c/o PaineWebber Incorporated, 1285 Avenue of the Americas, New York, New York 10019.

Merrill Lynch Fund for Tomorrow, Inc. [File No. 811–3871]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 23, 1998, applicant transferred its assets to Merrill Lynch Fundamental Growth Fund, Inc. based on net asset value. Expenses of approximately $319,620 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on May 15, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536–9011.

Templeton Global Real Estate Fund [File No. 811–5844]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 1999, applicant transferred its assets to Franklin Real Estate Securities Fund, a series of Franklin Real Estate Securities Trust, based on net asset value. Expenses of $61,021 incurred in connection with the reorganization were paid equally by applicant, the acquiring fund, and their respective investment advisers.

Filing Date: The application was filed on June 2, 2000.

Applicant's Address: 500 East Broward Boulevard, Fort Lauderdale, Florida 33394–3091.

Investment Services for Education Associations Trust [File No. 811–7967]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 31, 1999, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on March 10, 2000, and amended on April 25, 2000, and June 9, 2000.

Applicant's Address: 1201 North Market Street, P.O. Box 1347, Wilmington, Delaware 19899–1347.

INVESCO Industrial Income Fund, Inc. [File No. 811–893]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 28, 1999, applicant transferred its assets to INVESCO Equity Fund, formerly named INVESCO Industrial Income Fund, a series of INVESCO Combination Stock & Bond Funds, Inc., based on net asset value. Expenses of $968,388 incurred in connection with the reorganization were paid equally by Invesco Funds Group, Inc., applicant's investment adviser, and applicant.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 7800 E. Union Avenue, Denver, Colorado 80237.

INVESCO Emerging Opportunity Funds, Inc. [File No. 811–6234]; INVESCO Growth Funds, Inc. [File No. 811–352]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On July 15, 1999, applicants transferred their assets to INVESCO Small Company Growth Fund and INVESCO Blue Chip Growth Fund, respectively, each a series of INVESCO Stock Funds, Inc., based on net asset value. Expenses of $81,674, and $234,237, respectively, incurred in connection with the reorganizations were paid equally by applicants' investment adviser and the acquiring fund.

Filing Date: The applications were filed on May 23, 2000.

Applicants' Address: 7800 E. Union Avenue, Denver, Colorado 80237.

INVESCO Tax-Free Income Funds, Inc. [File No. 811–3177]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 16, 1999, INVESCO Tax-Free Bond Fund (formerly named INVESCO Tax-Free Long-Term Bond Fund), a series of applicant, transferred its assets to INVESCO Tax-Free Bond Fund, a new series of INVESCO Bond Funds, Inc., based on net asset value. Expenses of $31,084 incurred in connection with the reorganization were divided equally between INVESCO Funds Group, Inc., applicant's investment adviser, and INVESCO Tax-Free Bond Fund.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 7800 E. Union Avenue, Denver, Colorado 80237.

INVESCO Value Trust [File No. 811–4595]

Summary: Applicant seeks an order declaring that it has ceased to be an

investment company. On May 28, 1999, INVESCO Total Return Fund, a series of applicant, transferred its assets to INVESCO Total Return Fund, a series of INVESCO Combination Stock & Bond Funds, Inc. On June 4, 1999, INVESCO Intermediate Government Bond Fund, a series of applicant, transferred its assets to INVESCO U.S. Government Securities Fund, a series of INVESCO Bond Funds, Inc. On July 15, 1999, INVESCO Value Equity Fund, a series of applicant, transferred its assets to INVESCO Value Equity Fund, a series of INVESCO Stock Funds, Inc. Expenses of $137,084 incurred in connection with the reorganization of applicant's INVESCO Total Return Fund series were paid equally by applicant's investment adviser and INVESCO Total Return Fund. Expenses of $87,458 were incurred in connection with the reorganization of applicant's INVESCO Intermediate Government Bond Fund series, with applicant's investment adviser paying $43,729, INVESCO Intermediate Government Bond Fund paying $13,524, and INVESCO U.S. Government Securities Fund paying $30,204. Expenses of $69,319 incurred in connection with the reorganization of applicant's INVESCO Value Equity Fund series were paid equally by applicant's investment adviser and INVESCO Value Equity Fund.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 7800 E. Union Avenue, Denver Colorado 80237.

INVESCO Diversified Funds, Inc. [File No. 811–7984]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 4, 1999, applicant transferred its assets to INVESCO Small Company Growth Fund, a series of INVESCO Emerging Opportunity Funds, Inc., based on net asset value. Expenses of $86,881 were incurred in connection with the reorganization, of which applicant's investment adviser paid $43,440, applicant paid $11,596, and the acquiring fund paid $31,844.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 7800 E. Union Avenue, Denver, Colorado 80237.

Farm Bureau Life Variable Account II [File No. 811–8639]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 5400 University Avenue, West Des Moines, Iowa 50266.

Farm Bureau Life Annuity Account II [File No. 811–8667]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 5400 University Avenue, West Des Moines, Iowa 50266.

Pegasus Variable Funds [File No. 811–8854]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 1999, Applicant distributed all of its shares at net asset value to its shareholders in connection with Applicant's liquidation. Applicant's liquidation was completed pursuant to an in-kind substitution of securities permitted under Section 17(a) and 26(b) of the Investment Company Act of 1940 by a March 17, 1999 SEC exemptive order. Legal expenses of $33,689.37 incurred in connection with the liquidation were paid by Pegasus Variable Funds ($4,361.87) and One Group Investment Trust, the substituted Fund ($29,327.50). No other expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on June 12, 2000.

Applicant's Address: 1111 Polaris Parkway, P.O. Box 710211, Columbus, OH 43271–0211.

Select Advisors Portfolios [File No. 811–8778]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 1998, applicant, the master fund in a master/feeder structure, made a liquidating distribution to its shareholders, based on net asset value. Expenses of $206,646 incurred in connection with the liquidation were paid by Touchstone Advisors, Inc., applicant's investment adviser.

Filing Dates: The application was filed on February 7, 2000, and amended on May 25, 2000, and June 27, 2000.

Applicant's Address: 311 Pike Street, Cincinnati, Ohio 45202.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17282 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 10, 2000.

A closed meeting will be held on Thursday, July 13, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) ad 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, July 13, 2000 will be:

(1) Institution and settlement of injunctive actions; and

(2) Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 5, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17443 Filed 7–6–00; 10:55 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42999; File No. SR–BSE–00–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Mandatory Decimal Pricing Testing

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2000, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to add rules relating to decimal pricing testing in order to prepare for the industry-wide conversion to decimal pricing. The text of the proposed rule change is available at the BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add Section (10) (Decimal Pricing Testing) to Chapter XXXIII, Boston Exchange Automated Communication Order-routing Network (BEACON). Specifically, the Exchange seeks to change its rules to require member firms to participate in industry-wide testing of computer systems, as required, in order to prepare for the conversion to decimal pricing.

The Exchange, in cooperation with other self-regulatory organizations ("SROs") has been preparing for a successful industry-wide conversion to decimal pricing. As several other SROs have proposed rules to require decimal testing by their members, the Exchange seeks to codify this requirement as well. The new Rule will require mandatory participation of Exchange members in the testing which will be taking place, and will require any firm which has an electronic interface with the Exchange to conduct testing between the electronic interface and the Exchange ("point-to-point testing"). In the case of a member firm that has an electronic interface through a third party service provider, point-to-point testing with the Exchange will not be required if (i) the member firm conducts successful testing with the service provider, (ii) the service provider conducts successful testing with the Exchange (on behalf of the member firm) and (iii) the Exchange agrees that no further testing is necessary.

The proposed Rule also details the reporting and documentation requirements for all members participating in either the point-to-point testing or the industry-wide testing. Specifically, member firms will be asked to provide reports as determined necessary by the Exchange throughout the course of testing. Additionally, all member firms will be required to keep, and make available for inspection, documentation of all the testing they do as part of the requirements of this Rule.

2. Statutory Basis

The Exchange represents that the statutory basis for the proposed rule change is Section 6(b)(5)[4] of the Act, in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

[4] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(3) of Rule 19b–4 thereunder[6] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(3).

available for inspection and copying in the Commission's Public Reference Room in Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–00–07 and should be submitted by July 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17331 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43000; File No. SR–CBOE–00–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to a Reduction in the Value of the Nasdaq 100 Stock Index

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On June 30, 2000, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to trade options on the Nasdaq 100 Index based on reduced-value level equal to one-tenth of its present value by multiplying the divisor used in calculating the Index by a factor of 10. In seeking approval to trade options based upon one-tenth of the value of the Nasdaq 100 Index, the Exchange represents that it is planning to list options on the reduced value Nasdaq 100 Index value at the same time it continues to list and trade options on the full value of the Nasdaq 100 Index. In connection with this change, the Exchange proposes to multiply by a factor of 10 the position and exercise limits for the one-tenth level index. When the Exchange trades full value and reduced value Nasdaq 100 options at the same time, the Exchange will require that the positions in the full value and reduced value contracts be aggregated for the purpose of determining compliance with the position and exercise limits. In addition, the Exchange proposes to amend Exchange Rule 24.9, Interpretation .01 to provide that the reduced-value Nasdaq 100 options will have a strike price interval of no less than $2.50. The text of the proposed rule change is available at the CBOE and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE began trading Nasdaq 100 Index ("NDX") options in February 1994.[4] NDX options are European-style, cash-settled options on the Nasdaq-100 Index. The Nasdaq-100 Index is a modified capitalization-weighted index of 100 of the largest non-financial securities traded on the Nasdaq Stock Market. In recent years, on the strength of a sustained bull market, the value of the NDX has tripled since the mid-1998, such that the value of the Index stood at 4,034.17 as of April 4, 2000. As a result of the significant increase in the value of the underlying index, the premium for NDX options has also increased. The CBOE believes that this has caused NDX options to trade at a level that may be uncomfortably high for retail investors.

As a result, Nasdaq (the reporting authority for the Index) has approved CBOE's request to trade options based on a reduced index level equal to one-tenth of the Nasdaq-100 Index. In seeking approval to trade options based upon one-tenth of the value of the Nasdaq 100 Index, the Exchange represents that it is planning to list options on the reduced value Nasdaq 100 Index value at the same time it continues to list and trade options on the full value of the Nasdaq 100 Index. In addition, the trading symbol for options on the reduced-value Nasdaq 100 Index will no longer be NDX.

In addition to the strike price being reduced by one-tenth, the CBOE proposes to increase the position and exercise for the reduced value Nasdaq 100 Index by a factor of 10.[5] The CBOE believes that this increase in the position and exercise limits is justified because the reduction contract size would result in each contract overlying only one-tenth of the value of a current Nasdaq 100 Index contract. Consequently, the revised position and exercise limits would be equivalent to the current levels in terms of the value of the Index, which the option positions would overlie. Further, when a person trades full value and reduced value Nasdaq 100 options at the same time, the Exchange will require that the positions in the full value and reduced value contracts be aggregated for the purpose of determining compliance with the position and exercise limits.

According to the Exchange, position limits were intended to prevent a particular customer or firm from manipulating the value of an index by limiting the notional value of an index that any particular person or firm could control. The proposed nominal increase (by ten times in the case of one-tenth value options) does not change the notional value that any particular

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 30, 2000, the CBOE submitted a letter from Timothy Thompson, Assistant General Counsel, CBOE, to Joe Corcoran, Attorney, Division of Market Regulation, Commission, amending the proposal ("Amendment No. 1"). In Amendment No. 1 the CBOE requested that the Commission review the proposal under Rule 19b–4(f)(6). The CBOE also expressed its intent to list and trade options on the Nasdaq 100 Index at one-tenth its value, even though it initially sought approval to list options on the Nasdaq 100 Index based upon a reduced index level equal to one-tenth and/or one-fortieth of the Nasdaq 100 Index. Moreover, the CBOE clarified that it will also continue to trade the full value Nasdaq 100 Index options. The Commission notes that filings submitted under Section 19(b)(3)(A) of the Act must be complete upon filing. Because CBOE amended this proposal to file it under Section 19(b)(3)(A) of the Act, the date of the amendment is deemed the date of the filing of the proposal.

[4] *See* Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994).

[5] The Exchange has separately filed for an increase in the position and exercise limits for NDX in SR–CBOE–00–14.

person or firm may control. Based on the current contract notional value of approximately $400,000 and the 25,000 contract position limit, and particular person or firm could control a portfolio valued roughly at $10 billion. By reducing the contract size by a factor of 10 of $40,000 while increasing the position limit to 250,000 contracts would have no effect on the value of the portfolio that could be controlled by a particular person or firm. In addition, the 100 stocks comprising the Nasdaq 100 Index are among the largest and most liquid stocks listed on the Nasdaq National Market System, and are frequently among the daily most active securities. Like other broad-based indexes, the Nasdaq 100 is sufficiently diversified and liquid so as to minimize the possibility of manipulation. Moreover, given that technology has grown to become a major component of the U.S. economy and investment portfolios, the Exchange believes that a position limit increase, if it were proposing one, for options on the Nasdaq 100 Index is justified and consistent with the limits applied to other broad-based products.

The Exchange currently intends to begin trading the reduced value contracts beginning on July 10, 2000. It is possible that the exchange will delay the introduction of the reduced value contracts until some later time depending on whether any business or operational issues arise. In any event, the Exchange will provide adequate advance notice to its member firms so that they may be prepared for the introduction of the reduced value contracts and so that they may in turn provide adequate notice to their customers. The Exchange has a strong interest in publicizing the introduction of the reduced value contracts and will take a number of measures to inform the firms and potential customers including publication of a regulatory circular, marketing brochures and notification through the Exchange's web site.

The Exchange expects that the proposed change will attract additional customer business in Nasdaq 100 Index options in those series in which retail customers are most interested in trading. For example, an April 4040 (at the money) call option series currently trades at approximately $20,500 per contract. With the index split, the same option series (once adjusted), with all else remaining equal, would trade at approximately $2,050 per contract. The Exchange believes that the proposed change will permit some investors to trade these options who have otherwise been priced out of the market due to the recent market surge. The Exchange believes that NDX options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the stocks comprising this broad-based and widely followed index. By reducing the value of the index, such investors will be able to utilize this trading vehicle while extending a smaller outlay of capital. This should attract additional investors, and, in turn, create a more active and liquid trading environment.

The Exchange believes that reducing the value of the index does not raise manipulation concerns and will not cause adverse market impact, because the Exchange will continue to employ the same surveillance procedures and has proposed an orderly procedure to achieve the index split, including adequate prior notice to market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[6] of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] Although Rule 19b–4(f)(6) requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the CBOE's request.

The Commission also notes that under Rule 19b–4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The CBOE requests a waiver of this 30-day period to begin trading the reduced-value options on July 10, 2000. The CBOE believes that acceleration of the operative date of the proposed rule is appropriate because it will allow the Exchange to offer investors a more affordable alternative to hedge their exposure to the Nasdaq 100 Index. According to the Exchange, the Nasdaq 100 Index has been especially volatile in the last few weeks and the acceleration of the proposed change will allow the Exchange to offer this more affordable hedging alternative to a time when it is most needed. In addition, the Exchange notes that the American Stock Exchange has a rule (Commentary .03 to Amex Rule 901C) that allows it to split an index without first submitting a filing. For the reasons discussed above, the Commission finds that the waiver of the 30-day period is consistent with the protection of investors and the public interest.[9]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] The Commission notes that this proposal is similar to another CBOE proposal that the Commission approved in 1993. In the 1993 proposal, the CBOE proposed to trade options on the S&P 500 Index ("SPX") based on reduced-value level equal to one-tenth of its then-present value. In the order approving the proposal, the Commission determined that potential manipulation concerns were minimized by the fact that positions in the reduced value SPX options and full value SPX options would be aggregated for position and exercise limit purposes. *See* Release No. 34–32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (File No. SR–CBOE–93–12).

statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–15 and should be submitted by July 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17332 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43005; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Trade on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago, Philadelphia and Cincinnati Stock Exchanges

June 30, 2000.

I. Introduction

On June 27, 2000, the National Association of Securities Dealers, Inc. ("NASD"), on behalf of itself and the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange ("CSE") and the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposal to extend the operation of a joint transaction reporting plan ("Plan") [1] for Nasdaq/National Market ("Nasdaq/NM") (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.[2] The proposal would extend the effectiveness of the Plan, as amended by Amendment No. 10, through March 31, 2001.[3] The Commission also is extending certain exemptive relief as described below. The June 2000 Extension Request also request that the Commission approve the Plan, as amended, on a permanent basis on or before March 31, 2001. During the extension of the Plan, the Commission will consider whether to approve the proposed Plan, as amended, on a permanent basis.

II. Background

The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[4] The Commission approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. The Commission originally approved the Plan on June 26, 1990.[5] Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.[6] The Plan has since been in operation on an extended pilot basis.[7]

III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in "eligible securities." [8] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access, Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer ("BBO"); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.[9]

IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis, the Commission

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[10] 17 CFR 200.30–3(a)(12).

[1] *See* Letter from Robert E. Aber, Vice President and General Council, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated June 27, 2000 ("June 2000 Extension Request"). The June 2000 Extension Request also requests that the Commission continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1–2 and 11Aa3–1 under the Securities Exchange Act of 1934, as amended ("Act"). 15 U.S.C. 78a *et seq.* The signatories to the Plan are the Participants for purposes of this release, however, the BSE joined the Plan as a "limited participant" and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange Inc. ("Amex") was a Participant but withdrew its participation from the Plan in August 1994.

[2] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges ("UTP") under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Exchange Order, *infra* note 7.

[3] On December 23, 1999, the Commission approved the addition of CSE as a Participant to the Plan. The Plan was also changed to reflect that the Midwest Stock Exchange is now called the Chicago Stock Exchange. *See* Securities Exchange Act Release No. 42269 (December 23, 1999), 65 FR 799 (January 6, 2000).

[4] *See* Section 12(f)(2) of the Act.

[5] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

[6] *See* letter from David R. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation. ("Division"), dated May 9, 1994.

[7] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995); 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) ("November 1995 Extension Oder"); Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); Securities Exchange Act Release No. 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); Securities Exchange Act Release No. 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); and Securities Exchange Act Release No. 42268 (December 23, 2999), 65 FR 1202 (January 6, 2000).

[8] The Plan defines "eligible security" as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or that is listed on a national securities exchange. On May 12, 1999, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. *See* May 1999 Approval Order, *supra* note 7.

[9] The full text of the Plan, as well as "Concept Paper" describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

granted an exemption to vendors from Rule 11Ac1–2 under the Act regarding the calculation of the BBO [10] and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. As discussed further below in the Summary of Comments, the Participants ask in the June 2000 Extension Request that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is fully resolved. In addition, in the June 2000 Extension Request, the Participants request that the Commission grant an extension of the exemptive relief described above to the BSE for as long as the BSE is a Limited Participant under the Plan.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. The Commission continues to solicit comment regarding the BBO calculation, the trade through rule and any issues presented by changes occurring in the market place. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by July 31, 2000.

VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through March 31, 2001, is appropriate and in furtherance of Section 11A of the Act.[11] The Commission believes that the extension will provide the Participants with additional time to seek Commission approval of pending proposals concerning the BBO calculation and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. With respect to a trade through rule, the Commission notes that it has recently expanded the ITS linkage to all securities, thereby expanding the coverage of the ITS trade through rule.[12] While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants on or before December 31, 2001 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by March 31, 2001.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1–2 under the Act until the earlier of March 31, 2001, or until such time as the calculation methodology of the BBO is based on a price/size/time algorithm pursuant to a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3–1 under the Act, that requires transaction reporting plans to include market identifiers for transaction reports and last sale data, to the BSE through March 31, 2001. The Commission believes that the extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

VII. Conclusion

It Is Therefore Ordered, pursuant to Section 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through March 31, 2001, and certain exemptive relief through March 31, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17330 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

[10] Rule 11Ac1–2 under the Act requires that the best bid or best offer be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11Ac1–2 under the Act provides that "in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or offer . .. shall be computed by ranking all such identical bids or offers * * * first by size * * * then by time." The exemption permits vendors to display the BBO for Nasdaq securities subject to the Plan on a price/time/size basis.

[11] In approving this extension, the Commission has considered the extension's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[12] Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42998; File No. SR–PCX–00–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange Inc., Relating to Mandatory Decimal Pricing Testing

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designed this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to adopt new Rule 1.15(b), *Mandatory Decimal Pricing Testing,* which would require member organizations to participate in industry testing of computer systems designed to prepare for the industry conversion to decimal pricing. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As the securities industry prepares for the conversion to decimal pricing, testing by and among the various securities industry constituents will be necessary to avoid widespread systems problems. The PCX, in cooperation with the Commission and other self-regulatory organizations has been working toward a successful transition to decimal pricing. The purpose of proposed rule change is to require PCX member firms to participate in testing of computer systems designed to prepare for the industry conversion to decimal pricing.

Proposed Rule 1.15(b) would require PCX members to participate in testing of computer systems, in a manner and frequency prescribed by the Exchange. It is the PCX's understanding that other self-regulatory organizations, including the National Association of Securities Dealers, the New York Stock Exchange, the American Stock Exchange and the Chicago Board Options Exchange, are also proposing rules to require decimal pricing testing by their member organizations.

To ensure that the securities industry is adequately prepared to convert to decimals, the Securities Industry Association has undertaken to coordinate industry-wide testing. Testing will include, among others, exchanges, registered clearing corporations, data processors and broker-dealers. There are multiple industry-wide tests, the first of which occurred in April 2000. New Rule 1.15(b) will be employed to require mandatory testing of PCX member organizations in these tests, and further provides that any firm with an electronic interface with the Exchange will be required to conduct point-to-point testing with the Exchange. Point-to-point testing means testing between two entities, in this case between the member with the electronic interface and the Exchange.[4]

The Exchange will require its members to participate in industry-wide testing to the extent those firms can be accommodated into the testing schedule. The Exchange would exercise its authority under this Rule to the extent it is deemed important for particular member organizations to participate and to the extent those member organizations choose not to participate voluntarily.

The proposed rule would also require member organizations to file reports with the PCX concerning the required tests in the manner and frequency required by the Exchange. A member organization that is subject to the Rule and fails to participate in the tests or fails to file any required reports will be subject to disciplinary action pursuant to Rule 10 of the Exchange's rules.

It should be noted that the Exchange believes that it currently has the authority without the approval of this Rule to require testing and reporting with respect to the implementation of decimal pricing under its broad authority to enforce the provisions of the Act and to ensure the safety of its marketplace. The Exchange believes, however, that its membership is better served by having the specifics of its intentions with respect to this matter defined in a stand-alone rule.

This Rule will expire automatically upon the full completion of decimal pricing implementation.

2. Statutory Basis

The Exchange represents that by adopting a new rule to help ensure the participation of Exchange members in important industry testing to prepare for the conversion to decimal pricing, the proposed rule change is consistent with Section 6(b) of the Act[5] in general and further the objectives of Section 6(b)(5)[6] in particular, in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(3) of Rule 19b–4 thereunder[8] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–17 and should be submitted by July 31, 2000.

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[4] A member organization can be exempted from this requirement if the member organization has its electronic interface through a service provider if the service provider conducts successful tests with the Exchange on behalf of the firms it serves, if the member firm conducts successful point-to-point testing with the service provider by a time designated by the Exchange, and if the Exchange agrees that no further testing is necessary.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17334 Filed 7–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43002; File No. SR–Phlx–00–45]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Eliminating References to the Semi-Annual Payment of Dues in By-Law Article XIV, Section 14–1

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to eliminate a reference to the semi-annual billing of dues in By-law Article XIV, Section 14–1 to reflect a recent amendment to the schedule of dues, fees and charges.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate a reference to the semi-annual billing of dues in Article XIV of the By-laws to make Article XIV consistent with the recently amended schedule of dues, fees and charges.[4] The amendment eliminates a provision in the By-laws that requires the payment of dues and foreign currency options users fees on a semi-annual basis. The Board, when it amended the fee schedule, authorized the billing of dues and foreign currency options users fees on a monthly basis. The Phlx believed that the amended fee schedule would improve the efficiency of the billing process, allow members, member organizations, participants, and participant organizations to more accurately measure operating expenses on a monthly basis, and reduce operational cash flow burdens that may have resulted from the semi-annual billing schedule. To make Article XIV, Section 14–1 consistent with the amended fee schedule, Phlx proposes to eliminate the reference to semi-annual billing.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act,[5] in general, and with Section 6(b)(4),[6] in particular, in that it provides for an equitable allocation of dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were received in response to Circular 57–00, dated March 29, 2000.[7]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–45 and should be submitted by July 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17333 Filed 7–7–00; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 42457 (March 3, 2000) (SR–Phlx–99–61).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] According to the Phlx, the proposed amendment to By-Law Article XIV Section 14–1 was initially approved by the Board on March 22, 2000 and was noticed to the membership in Circular 57–00 on March 28, 2000 in compliance with Exchange By-law Article XXII, Section 22–2. No written request for a special meeting regarding the proposed amendment was filed with Office of the Secretary. On April 11, 2000 the Secretary conducted a poll of the Board of Governors which resulted in unanimous consent in writing to adopt the proposed amendment to the By-Law and authorized the filing of the amendment with the Commission.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42993; File No. SR–Phlx–99–51]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Assessing a $1,500 Monthly Capital Funding Fee on a Permanent Basis

June 29, 2000.

I. Introduction

On November 26, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] a proposed rule change to assess seat owners a monthly capital funding fee of $1,500 per seat owned for a period of 36 months ("permanent fee proposal"). The proposed rule change was published for comment in the **Federal Register** on February 17, 2000.[3] The Commission received twenty-two comment letters from fourteen commenters regarding the proposal. [4] On May 19, 2000, the Phlx filed Amendment No. 1 to the proposal. [5]

During the pendency of the permanent fee proposal, the Commission approved another proposed rule to implement the fee on a pilot basis. Specifically, on January 5, 2000, the Commission granted accelerated approval of the capital funding fee on a three-month pilot basis. [6] On April 24, 2000, a proposed rule change extending the pilot program until July 6, 2000 became immediately effective under Section 19(b)(3)(A) of the Act. [7]

This order approves the permanent fee proposal, accelerates approval of Amendment No. 1, and solicits comments from interested persons on that Amendment.

II. Description of the Proposal

a. The Original Filing

The Phlx proposed to amend its schedule of dues, fees, and charges to charge a monthly capital funding fee of $1,500 per Exchange seat to seat owners [8] for a period of 36 months. The Phlx represents that the capital funding fee will be imposed on each of the 505 Exchange seat owners on the last business day of the calendar month. In order to be charged the fee, a seat owner must own a seat on the last business day of the month preceding the month that is being billed. Thus, at the beginning of each month, the seat owner will be billed for that entire month. [9] The Exchange represents that it intends to segregate the funds generated from the $1,500 fee from Phlx's general funds.

The Phlx represents that the capital funding fee is a part of its long-term financing plan.[10] The fee will be charged for 36 consecutive months beginning on July 6, 2000. This monthly fee will provide funding for technological improvements and other capital needs.[11] Specifically, it is intended to fund capital purchasers, including hardware for capacity upgrades, development efforts for decimalization, and trading floor expansion. The Phlx also represents that revenue raised from the fee will be utilized over a three-year period, after which time the Phlx intends to reevaluate its financing plan to determine whether to continue assessing the fee. The Phlx represents that the revenue generated from the fee will assist it in remaining competitive in the capital markets environment. The Exchange reserves the right to suspend the fee or to cease charging it altogether at any time.

b. Amendment No. 1

In Amendment No. 1, the Phlx represents that it is a Delaware non-stock corporation, and states that it believes that assessing the capital funding fee on the owners of the Exchange's 505 memberships is appropriate under Delaware law. Amendment No. 1 states that Section 102(a)(4) of the Delaware General Corporation Law ("DGCL") provides that the certificate of incorporation or by-laws of a non-stock corporation shall state the "conditions of membership of such corporations." [12] The Phlx represents that its Certificate Incorporation authorizes its Board of Governors to impose fees on the owners of the Exchange's memberships, including owners who are lessors of memberships.[13] The Phlx asserts that its By-Laws already impose various fees on lessors of memberships and other persons and entities that own equitable title to Exchange memberships.[14]

Amendment No. 1 further states that, under Section 102(a)(3) of the DGCL, the certificate of incorporation of a Delaware corporation must state the "nature of the business or purposes to be conducted or promoted" by the corporation. The Phlx represents that Article Third of its Certificate of Incorporation provides that the nature of the business and the objects and purposes of the Exchange include the authority:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42405 (February 8, 2000), 65 FR 8226. The capital funding fee was originally proposed on October 1, 1999, in SR–Phlx–99–43. *See* Securities Exchange Act Release No. 42058 (October 22 1999), 64 FR 58878 (December 15, 1999). However, on November 17, 1999, the Exchange withdrew SR–Phlx–99–43. This proposed rule change replaces SR–Phlx–99–43.

[4] *See* Section III below for a discussion of the comment letters. The comments received in response to SR–Phlx–99–43 are included, to the extent relevant, in the discussion contained in Section III.

[5] *See* Letter from Cindy Hoekstra, Attorney, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 18, 2000 (Amendment No. 1). In Amendment No. 1, the Phlx represents that it believes that assessing the capital funding fee on the Exchange's seat owners is appropriate under Delaware law. The Phlx's arguments are more fully described below.

[6] *See* Securities Exchange Act Release No. 42318 (January 5, 2000), 65 FR 2216 (January 13, 2000) (SR–Phlx–99–49).

[7] *See* 15 U.S.C. 78s(b)(3)(A); Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000) (SR–Phlx–00–29).

[8] The term "owner" is defined in Phlx's Certificate of Incorporation as "any person or entity who or which is a holder of equitable title to a membership in the Phlx." *See* Phlx's Certificate of Incorporation, Article Twentieth; Securities Exchange Act Release No. 42773 (May 11, 2000) 65 FR 31622 (May 18, 2000) (approving proposal to add definition of "owner" to Certificate of Incorporation). Although the term "seat owner" is not defined in the Phlx's By-Laws or Certificate of Incorporation, the term "seat" refers to a membership in the Phlx. Telephone conservation between Maria Chidsey, Attorney, Division of Market Regulation, Commission, and Bob Ackerman, Senior Vice President, Chief Regulatory Officer, Phlx (January 5, 2000).

[9] For example, owners of record on September 30 will be billed $1,500 for the month of October.

[10] The other part of that financing plan is a credit to qualified members against certain member fees, dues, and other amounts owned to the Phlx. On May 15, 2000, a proposed rule change implementing that credit on a six-month pilot basis became immediately effective under Section 19(b)(3)(A) of the Act. *See* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000) (SR–Phlx–00–44).

[11] This fee is distinguished from the Exchange's technology fee in that the technology fee was intended to cover system software modifications, Year 2000 modifications, specific system development (maintenance) costs, SIAC and OPRA communication charges, and ongoing system maintenance charges. The technology fee became effective upon filing in March 1997. *See* Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR–Phlx–97–09).

[12] *See* Amendment No. 1, at 5.

[13] The Phlx cites Article Twentieth of its Certificate of Incorporation, which authorizes the Board of Governors to impose fees on "owners [and] lessors and lessees of memberships." *See* Amendment No. 1, at fn. 9.

[14] The Phlx cites Section 12–8 of its By-Laws, as authorizing the Board of Governors to assess initiation, application, and transfer-of-title fees on lessors. *See* Amendent No. 1, at fn. 10.

To act as and to provide a securities exchange where the corporation's members and other persons authorized by it can buy, sell, pledge, exchange, trade and deal in any article of commerce, including, without limitation, stocks, bonds, and other securities * * * and generally to operate as and perform all of the functions of a national securities exchange.[15]

The Exchange also represents that Section 121(a) of the DGCL gives a corporation and its director's broad powers to conduct the operations and achieve the objects and purposes of the corporation. In addition to powers expressly granted by law or the certificate of incorporation, the corporation and its directors may exercise "any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation." Further, the Phlx asserts that under Section 141(a) of the DGCL, a corporation's board of directors has the legal obligation to manage the business and affairs of the corporation.

Based on these provisions of the DGCL and the nature and purpose of the Exchange, the Exchange maintains that it has the general power to assess a fee on the owners of Exchange seats and that the capital funding fee is an appropriate exercise of that power. The Phlx represents that the owners of the 505 memberships on the Exchange benefit both from the value of their seats and from doing business on the Exchange's facilities (either directly or through agents or lessees who pay fees to owners). Under these circumstances, the Exchange asserts that it believes that assessing the capital funding fee on owners is warranted.

III. Summary of Comments

The Commission received twenty-two comment letters from fourteen commenters regarding the proposed rule change. All of the commenters opposed the proposed rule change. Although the comments specifically expressed concern about the capital funding fee, they also expressed general disapproval of the Phlx financing plan, which consists of the capital funding fee and the monthly credit of up to $1,000 for qualified members. The monthly credit is available to members who own their memberships ("member-owners") and other members who are so closely connected to the owners that the Phlx believes they should be treated as member-owners (collectively, "qualified members").[16]

One commenter raised concerns that the capital funding fee in conjunction with the credit would be an inequitable allocation of fees, dues and other charges.[17] Seven other commenters[18] also expressed concerns that the Phlx financing plan would inequitably assess fees on seat owners. One of those seven commenters complained that his income from the seat he owned would be substantially reduced after paying the capital funding fee.[19]

Several commenters argued that the $1,500 capital funding fee is excessive and lacks justification. One commenter stated that the amount of the fee is an excessive initial sum.[20] Another characterized the fee as an onerous financial burden on seat owners. He argued that the fee is unjustified because of the vague purpose of providing technological improvements and other capital needs.[21] Four commenters argued that the Phlx should consider other means of raising capital and reducing expenses, such as reducing salaries, bonuses, entertainment costs, and other operating costs.[22]

Four commenters expressed concern that the management of the Exchange was not serving the best interests of members, customers, seat owners, or the public.[23] One commenter requested that he be appointed to the Board of Governors of the Phlx.[24] Another commenter complained specifically about the actions and management decisions of the Chairman of the Phlx.[25]

Several commenters stated that the Phlx is attempting to reduce the value of seats on the Exchange, thus jeopardizing the future of the Exchange.[26] One such commenter argued that there is too much volatility in the seat prices and complained that the Phlx is deliberately attempting to dilute the value of the seats.[27]

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes the proposed rule change is consistent with the requirement of Section 6(b)(4)[28] that the rules of an exchange provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities; and the requirement of Section 6(b)(5)[29] that the rules of the exchange are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[30]

The Commission finds that the Phlx's capital funding fee is consistent with the Act because it is an across-the-board assessment on all seat owners intended to raise revenues to provide capital improvements to the Exchange. The capital funding fee is assessed uniformly to each seat owner per seat owned. Thus, it conforms to the requirements in the Act that the rules of the exchange provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities; and are not designed to permit

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[15] *See* Amendment No. 1, at 6.

[16] *See supra* note 10. For an explanation of the credit, *see* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000).

[17] *See* Letter from Mark Desiderio to Jonathan G. Katz, Secretary, Commission, dated October 16, 2000 ("Letter from Desiderio").

[18] *See* Letters from: Harry Green to Jonathan G. Katz, Secretary, Commission, dated November 30, 1999, and December 21, 1999 ("Letters from Green"); Gilbert Goldstein to Jonathan G. Katz, Secretary, Commission, dated December 23, 1999 ("Letter from Goldstein"); George Nassar to Jonathan G. Katz, Secretary, Commission, dated December 17, 1999 ("Letter from Nassar"); Stanley Miller to Jonathan G. Katz, Secretary, Commission, dated January 3, 2000 ("Letter from Miller"); Michel Mesirov to Jonathan G. Katz, Secretary, Commission, dated October 15, 1999, and December 20, 1999 ("Letters from M. Mesirov"); Matthew Wayne, Vanacso, Wayne & Genelly, to Jonathan G. Katz, Secretary, Commission, dated October 15, 1999 and December 17, 1999 ("Letters from Wayne"); and William Kramer to Jonathan G. Katz, Secretary, Commission, undated ("Letter from Kramer").

[19] *See* Letter from Miller.

[20] *See* Letter from Doris Elwell to Arthur Levitt, Chairman, Commission, dated October 4, 1999 ("Letter from Elwell").

[21] *See* Letter from Desiderio.

[22] *See* Letters from Goldstein; Elwell; Letter from Karen Janney to Arthur Levitt, Chairman, Commission, undated ("Letter from Janney"); and Letters from Richard Mesirov to Jonathan G. Katz, Secretary, Commission, dated October 15, 1999 and December 20, 1999 ("Letters from R. Mesirov").

[23] *See* Letters from: Green; Paul Liang to Jonathan G. Katz, Secretary, Commission, dated October 15, 1999, and to Arthur Levitt, Chairman, Commission, dated October 25, 1999 ("Letters from Liang"); Charles Hayes to Jonathan G. Katz, Secretary, Commission, dated December 16, 1999 ("Letter from Hayes"); and Steven Taylor to Jonathan G. Katz, Secretary, Commission, dated October 19, 1999 and to the Honorable Senators Mitch McConnell, Richard Durbin, and Peter Fitzgerald (forwarded to Arthur Levitt, Chairman, Commission), dated November 29, 1999, January 13, 2000, and February 13, 2000) ("Letters from Taylor").

[24] *See* Letter from Liang.

[25] *See* Letter from Taylor.

[26] *See* Letters from Miller, Green, Desiderio, M. Mesirov, Wayne, Liang, and Elwell.

[27] *See* Letter from M. Mesirov.

[28] 15 U.S.C. 78f(b)(4).

[29] 15 U.S.C. 78f(b)(5).

[30] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

unfair discrimination between customers, issuers, brokers, or dealers.[31]

We note the concern expressed by several commenters that the Phlx financing plan treats owner-lessors unfairly and thus contravenes Sections 6(b)(4) and 6(b)(5) of the Act. These concerns, however, are addressed to the credit and not to the fee. As discussed above, the credit is currently being implemented on a six-month pilot basis; the Commission will consider the commenters' concerns in determining whether to approve the credit on a permanent basis. The Commission does not believe that these concerns apply to the fee, which is an across-the-board assessment against all seat owners. Thus, the fee does not appear to raise concerns about unfair treatment of owner-lessors under the Act.

Other commenters contend that the proposed fee is unnecessary and excessive. The Exchange represents that to compete in the current capital market environment, the Exchange needs funding to make technological and capital improvements, and that the revenues raised from this fee will be used to fund those technological and capital improvements. The Exchange also represents that the owners of the 505 memberships on the Exchange benefit both from the value of their seats and from doing business on the Exchange's facilities (either directly or through agents or lessees who pay fees to owners). The Commission finds these representations to be persuasive. The rapid changes occurring in the options markets, including the trend towards greater automation of trading and increased competition among options markets—as evidenced by the move last fall to multiply trade options previously traded by only one exchange and the commencement of operations by the International Securities Exchange—have put pressure on all markets to evolve and compete. The Phlx believes that it needs this capital funding fee to make technological and capital improvements in this competitive environment, and the Commission sees no reason to second-guess the decision of the Phlx's properly constituted Board of Governors. Accordingly, the Commission finds that this proposed fee is reasonable and, as stated above, is equitably allocated.[32]

The Commission is not required under Section 19(b)(2) of the Act to find that a proposed rule change by a self-regulatory organization is lawful under state corporation law; in approving this proposal, the commission is relying on the Phlx's representation that it has the general power under applicable provisions of Delaware law to assess a fee on the owners of Exchange seats, and that the capital funding fee is an appropriate exercise of that power. The Commission has not independently evaluated the accuracy of Phlx's representations about Delaware law.

In addition, the Commission funds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice and filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[33] Amendment No. 1 does not fundamentally change the operation or scope of the capital funding fee; matters such as who will be subject to the fee, the amount of the fee, and when the fee will be charged remain unchanged by Amendment No. 1. Instead, Amendment No. 1 provides additional representations and justification concerning the Phlx's authority to assess the fee on seat owners under applicable provisions of Delaware law. Further, the capital funding fee has been operational on a pilot program basis. That pilot program expires on July 6, 2000. Absent approval of Amendment No. 1, the Phlx's ability to collect the fees would lapse because the pilot program will expire. In view of the Commission's finding that the proposed rule change is consistent with the Act, it believes that the Phlx should be able to assess this fee on an uninterrupted basis so that it may raise the revenue it needs to make technological and capital improvements.

In the Commission's view, Amendment No. 1 constitutes appropriate and necessary justification for the proposed rule change, but raises no new or novel issues under the federal securities laws. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(4),[34] 6(b)(5),[35] and 19(b)(2)[36] of the Act to accelerate approval of Amendment No. 1 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning whether Amendment No. 1 to the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–51 and should be submitted by July 31, 2000.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–Phlx–99–51) is approved and that Amendment No. 1 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17335 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

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[31] 15 U.S.C. 78f(b)(4), (b)(5).

[32] *See* 15 U.S.C. 78f(b)(4). The Commission has separately considered whether seat owners are "members" or "other persons using [the] facilities [of the Exchange]" under Section 6(b)(4) of the Act. 15 U.S.C. 78f(b)(4). Not all seat owners are "members" under Section 3(a)(3) of the Act or under Exchange Rules. *See* 15 U.S.C. 78c(a)(3); Phlx Certificate of Incorporation, Article 20 and Phlx Rules of Board of Governors, Rules 3, 5, 17, and 18; and telephone conversation between Marla Chidsey, Attorney, Division of Market Regulation, Commission, and Bob Ackerman, Senior Vice President, Chief Regulatory Officer, Phlx (January 5, 2000). If seat owners are not "members" of the Exchange, they may be "other persons using [the] facilities [of the Exchange]." If so, the Commission believes Phlx's proposal equitably allocates the capital funding fee by assessing the fee against all seat owners across-the-board. If, on the other hand, seat owners are not "other persons using [the] facilities [of the Exchange]," the Commission is not required under Section 6(b)(4) of the Act to find that the capital funding fee is equitably allocated. 15 U.S.C. 78f(b)(4). Under either analysis, the capital funding fee is consistent with the Act.

[33] 15 U.S.C. 78s(b)(2).

[34] 15 U.S.C. 78f(b)(4).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of open meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold an open meeting on July 17, 2000, from 9:30 a.m. to 3:20 p.m.

DATES: The meeting is scheduled for July 17, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, Room 3884, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Cory Churches, Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, (202) 482–4792 or Emory Mayfield, Office of the United States Trade Representative, 1724 F St., NW., Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold an open meeting on July 17, 2000, from 9:30 a.m. to 3:20 p.m. Agenda topics to be addressed will be:

1. A Security Briefing for current and new members.
2. An Ethics Briefing for current and new members.
3. A briefing on new Carousel Legislation.
4. A briefing on implementation of infrastructure to monitor China's compliance with agreements.
5. A briefing by the Bureau of Economic Analysis regarding the survey on services export figures.
6. A briefing by the U.S. Trade Representative's WTO Services negotiator regarding developments in the WTO services agreement.
7. Committee Business.

Dominic Bianchi,

Acting Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–17183 Filed 7–7–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the July 6, 2000, meeting of the Trade and Environment Policy Advisory Committee will be held from 8:30 a.m. to 12 noon. The meeting will be closed to the public from 8:30 a.m. to 11:30 a.m. and open to the public from 11:30 a.m. to 12 noon.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on July 6, 2000 from 8:30 a.m. to 12 noon. The meeting will be closed to the public from 8:30 a.m. to 11:30 a.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 11:30 a.m. to 12 noon, when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for July 6, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Christina Sevilla, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–17374 Filed 7–6–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of Receipt of Notice of Proposed Restriction on Stage 2 Operations at Naples Municipal Airport, Naples, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Restriction on Stage 2 Operations.

The Federal Aviation Administration (FAA) has been notified by the Naples Municipal Airport that it proposes to prohibit operations by aircraft certificated as Stage 2 under the Federal Aviation Regulations (FAR) Part 36. The Naples Municipal Airport has provided notice of the proposed restriction and an opportunity to comment to the public pursuant to the Airport Noise and Capacity Act of 1990 and 14 CFR Part 161.

In its published notice scheduled to be printed on June 30, July 10 and August 13, 2000, in the Naples Daily News and the FT. Myers News Press, the Naples Municipal Airport proposes to prohibit all Stage 2 jet aircraft operations effective January 1, 2001.

Further information, copies of the complete text of the proposed restriction, and copies of the supporting analysis may be obtained at the offices of the City of Naples Airport Authority, 160 Aviation Drive North, Naples, Florida 34104–3568 during regular business hours.

Comments on the proposed restriction may be submitted to: City of Naples Airport Authority, ATTN: Lisa LeBlanc-Hutchings, 160 Aviation Drive North, Naples, Florida 34104–3568, Email: administration@flynaples.com, FAX (941) 643–4084.

All comments must be received by August 21, 2000, to be considered.

Issued in Orlando, Florida on June 30, 2000.

John W. Reynolds, Jr.

Acting Manager, Orlando Airports District Office.

[FR Doc. 00–17379 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice

is hereby given for a Special Committee 192 meeting to be held July 18, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Welcome and Introductory Remarks; (2) Review/Approval of Meeting of Previous Plenary Minutes; (3) Discuss Document Comment Form on Working Group 3 (User Recommendations on FAA Order 7400.2—Procedures for Handling Airspace Matters) Product and Reach Final Product Approval Consensus; (4) Discuss Document Comment Form on Working Group 2 (Special-Use Airspace in National Airspace Redesign) Product and Reach Final Product Approval Consensus; (5) Discuss Document Comment Form on Working Group 1 (High Altitude Procedures for Handling Airspace Matters) Product and Reach Final Product Approval Consensus; (6) Date and location of Next Meeting; and (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 3, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–17381 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Okaloosa Regional Airport, Eglin AFB, Valpairaiso, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Okaloosa Regional Airport, Eglin AFB, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 9, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerry Sealy, Airport Director of the Okaloosa Regional Airport, Eglin AFB at the following address: Okaloosa Regional Airport, State Road 85, Eglin AFB, FL 32542–1413.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Okaloosa County under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Bud Jackman, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024, (407) 812–6331, x22. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Okaloosa Regional Airport, Eglin AFB, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).]

On June 30, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Okaloosa County, Florida was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 18, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–01–C–00–VPS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 2000.

Proposed charge expiration date: May 14, 2028.

Total estimated net PFC revenue: $38,358,314.

Brief description of proposed project(s):

Project VPS001: Terminal Bldg. Renovation & Expansion
Project VPS002: Terminal Aircraft Apron Expansion
Project VPS003: Widen Taxiway D–1
Project VPS004: Construct Taxiway D–2
Project VPS005: Expand Terminal Access Roadway
Project VPS006: PFC Program and Administration Costs

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Charter Operators, primarily military-related charters that (1) do not enplane or deplane passengers at the airport's main passenger terminal building and (2) enplane less than 500 passengers per year at the airport. This class of carriers represents less than 1% of total passengers enplaned annually as recorded on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Okaloosa County, Florida.

Issued in Orlando, Florida on June 30, 2000.

John W. Reynolds, Jr.,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–17380 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hardy County, West Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that it is revising the original notice of intent published in the **Federal Register** on September 30, 1996 (Volume 61, Number 190, Pages 51135–51136). The original notice stated that an environmental impact statement would be prepared for a proposed Moorefield transportation Improvement Project in Hardy County, West Virginia. After further analysis, it has been determined there will be no significant environmental impacts and the appropriate NEPA document would be an environmental assessment.

FOR FURTHER INFORMATION CONTACT: Henry E. Compton, Division Environmental Coordinator, Federal Highway Administration, West Virginia Division, Geary Plaza, Suite 200, 700

Washington Street East, Charleston, West Virginia, 25301, Telephone: (304) 347–5268

SUPPLEMENTARY INFORMATION: In lieu of preparation of an environmental impact statement, the FHWA, in cooperation with the West Virginia Division of Highways (WVDOH), will prepare an environmental assessment for the proposed Moorefield Transportation Improvement Project. The project is proposed to relieve traffic congestion associated with heavily industrialized areas within and surrounding the downtown area of Moorefield. Alternatives under consideration include (1) taking no action; (2) improve the existing highway system by constructing a four lane, limited access highway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in this proposal. An additional public meeting will be held in Moorefield when appropriate. Public notice will be given of the time and place of the meeting. An environmental assessment will be available for public and agency review and comment prior to the public meeting.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited. Comments or questions concerning this proposed action or the modification of environmental document type should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 30, 2000.

Henry E. Compton,

Environmental Coordinator, Charleston, West Virginia.

[FR Doc. 00–17369 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 202X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Mecklenburg County, NC

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over a 1.1-mile line of railroad under lease with the North Carolina Railroad Company (NCRC) between Station 11110+45 and Station 11158+29, in Charlotte, Mecklenburg County, NC. The line traverses United States Postal Service Zip Codes 28209 and 28227.[1]

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 9, 2000,[2] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] must be filed by July 20, 2000. Petitions to reopen must be filed by July 31, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–17241 Filed 7–7–00; 8:45 am]

BILLING CODE 4915–00–P

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[1] The lease was executed in 1895 by NCRR and Southern Railway Company (NS's predecessor). *See Norfolk Southern Railway Company and Atlantic and East Carolina Railroad Company—Lease and Operation Exemption—North Carolina Railroad Company,* Finance Docket No. 32820 (ICC served Dec. 22, 1995).

Through a transaction that was the subject of a notice of exemption, The City of Charlotte, North Carolina (City) proposed to acquire from the North Carolina Railroad Company a 1.1-mile line of railroad. The City simultaneously filed a motion to dismiss the notice of exemption. The City purchased the 1.1-mile line of railroad and the notice of exemption was dismissed for lack of jurisdiction. *See City of Charlotte, North Carolina—Acquisition Exemption—Certain Assest of the North Carolina Railroad Company,* STB Finance Docket No. 33529 (STB served Dec. 29, 1997, and Feb. 24, 1998).

A Board staff member consulted with NS's representative concerning the mileage stated in its verified notice. On June 23, 2000, NS informed the Board that it is its view that the line conveyed to the City is the same line for which the discontinuance authority is being requested and that, recognizing the possibility that approximations might have been used in the past, track realignments might have changed the mileage, or that an outdated reference might have been used, while it cannot account for the length of the line stated in its notice, it does not object to describing the line as 1.1 miles in length, instead of 0.91-mile in length, as stated in its verified notice.

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(b)(3) and (c)(5).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. See 49 CFR 1002.2(f)(25).

Federal Register

Monday,
July 10, 2000

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 223

Endangered and Threatened Species; Salmon and Steelhead; Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 991207324–0148–02; I.D. 081699C]

RIN 0648–AK94

Endangered and Threatened Species; Final Rule Governing Take of 14 Threatened Salmon and Steelhead Evolutionarily Significant Units (ESUs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS now issues a final ESA 4(d) rule adopting regulations necessary and advisable to conserve fourteen listed threatened salmonid ESUs. This final rule applies the prohibitions enumerated in section 9(a)(1) of the ESA to one coho salmon ESU, three chinook salmon ESUs, two chum salmon ESUs, one sockeye salmon ESU and seven steelhead ESUs. NMFS does not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to specified categories of activities that contribute to conserving listed salmonids or are governed by a program that adequately limits impacts on listed salmonids. This final rule includes 13 such limits on the application of the ESA section 9(a)(1) take prohibitions.

DATES: Effective September 8, 2000. Applicability dates: In § 223.203 for the Snake River Basin, Lower Columbia River, Middle Columbia River, Upper Willamette River, Central Valley, California, Central California Coast, and South-Central California Coast steelhead ESUs, this final rule is applicable September 8, 2000. In § 223.203 for the Snake River spring/summer, Snake River fall, Puget Sound, Lower Columbia River and Upper Willamette River chinook, Oregon Coast, Central California Coast, and South/Central California Coast coho, Hood Canal summer-run and Columbia River chum, and Ozette Lake sockeye ESUs, this final rule is applicable January 8, 2001.

ADDRESSES: Branch Chief, NMFS, Northwest Region, Protected Resources Division, 525 NE. Oregon St., Suite 500, Portland, OR 97232–2737; Regional Administrator, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0070; Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; Regional Administrator, NMFS, Southwest Region, 501 West Ocean Blvd., Long Beach, CA 90802–4213; Salmon Coordinator, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at 503-231-2005 or Craig Wingert at 562–980–4021.

Electronic Access

Reference materials regarding this rule can also be obtained from the internet at www.nwr.noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1997, NMFS published a final rule listing the Snake River Basin (SRB), Central California Coast (CCC), and South/Central California Coast (SCCC) steelhead (*Onchorynchus mykiss*) ESUs as threatened species under the ESA (62 FR 43937). On March 19, 1998, NMFS published a final rule listing the Lower Columbia River (LCR) and Central Valley, California (CVC) steelhead ESUs as threatened species under the ESA (63 FR 13347). On March 25, 1999, NMFS published a final rule listing the Middle Columbia River (MCR) and Upper Willamette River (UWR) steelhead ESUs as threatened (64 FR 14517). Those final listing documents describe the background of the steelhead listing actions and provide summaries of NMFS' conclusions regarding the status of the listed steelhead ESUs. On August 10, 1998 (63 FR 42587), NMFS, on behalf of the Secretary, published a final rule listing the Oregon Coast (OC) ESU of coho salmon (*Oncorhynchus kisutch*, or *O. kisutch*) as threatened. By a final rule published on March 24, 1999 (64 FR 14308), NMFS listed as threatened the Puget Sound (PS), Lower Columbia River (LCR) and Upper Willamette River (UWR) ESUs of west coast chinook salmon (*Oncorhynchus tshawytscha*, or *O. tshawytscha*) in Washington and Oregon. By a final rule published on March 25, 1999 (64 FR 14508), NMFS listed as threatened the Hood Canal Summer-run (HCS) and Columbia River (CR) chum salmon ESUs (*Oncorhynchus keta*, or *O. keta*) in Washington and Oregon. By a final rule published on March 25, 1999 (64 FR 14528), NMFS listed as threatened the Ozette Lake ESU of sockeye salmon (*Oncorhynchus nerka*, or *O. nerka*) in Washington. Those final rule listing notifications describe the background of the listing actions and provide a summary of NMFS' conclusions regarding the status of the threatened coho, chinook, chum, and sockeye salmon ESUs.

Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a)(1). Those section 9(a)(1) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, without written authorization. It is also illegal under ESA section 9(a)(1) to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

Whether section 9(a)(1) prohibitions or other protective regulations are necessary and advisable is in large part dependent upon the biological status of the species and potential impacts of various activities on the species. These threatened species are likely to become endangered species within the foreseeable future. Their current threatened status cannot be explained by natural cycles in ocean and weather conditions. NMFS has concluded that threatened chinook, coho, chum, sockeye, and steelhead are at risk of extinction primarily because their populations have been reduced by human "take". West Coast populations of these salmonids have been depleted by take resulting from harvest, past and ongoing destruction of freshwater and estuarine habitats, hydropower development, hatchery practices, and other causes. "Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead" (NMFS, 1996) and "Factors Contributing to the Decline of Chinook Salmon: An Addendum to the 1996 West Coast Steelhead Factors for Decline Report" (NMFS, 1998)

concludes that all of the factors identified in section 4(a)(1) of the ESA have played some role in the decline of the species. It is necessary and advisable then to apply the ESA section 9(a)(1) prohibitions to these listed ESUs, in order to provide for their conservation.

These listings have created a great deal of interest among states, counties, and others in adjusting their programs that may affect the listed species to ensure they are consistent with salmonid conservation. Although the primary purpose of state, local, and other programs is generally to further some activity other than conserving salmon, such as maintaining roads, controlling development, ensuring clean water or harvesting trees, some entities have adjusted one or more of these programs to protect and conserve listed salmonids. NMFS believes that with appropriate safeguards, many such activities can be specifically tailored to minimize impacts on listed threatened salmonids to an extent that makes additional Federal protections unnecessary for conservation of the listed ESU.

NMFS, therefore, proposes a mechanism whereby entities can be assured that an activity they are conducting or permitting is consistent with ESA requirements and avoids or minimizes the risk of take of listed threatened salmonids. When such a program provides sufficient conservation for listed salmonids, NMFS does not find it necessary and advisable to apply ESA section 9(a)(1) take prohibitions to activities governed by those programs. In those circumstances (see descriptions to follow), additional Federal ESA regulation through imposing the take prohibitions is not necessary and advisable because it would not enhance the conservation of the listed ESUs. In fact, declining to apply take prohibitions to such programs likely will result in greater conservation gains for a listed ESU than would blanket application of section 9(a)(1) prohibitions, through the program itself and by demonstrating to similarly situated entities that practical and realistic salmonid protection measures exist. NMFS will monitor the activities under a program where NMFS has granted a "limit" on the application of the ESA take prohibitions for unexpected harm, as well as for harmful activities resulting in take that do not obey the requirements of the limit and, therefore, are subject to NMFS ESA enforcement. An additional benefit of this approach is that NMFS can focus its enforcement efforts on activities and programs that have not yet adequately addressed the conservation needs of listed ESUs.

Substantive Content of Final Regulation

NMFS had previously proposed protective regulations for three of the salmonid ESUs subject to this final rule. When NMFS first proposed the Oregon Coast coho for listing (60 FR 38026, July 25, 1995), it proposed to apply the prohibitions of ESA section 9(a)(1) to that ESU. When NMFS first proposed the LCR and SRB steelhead ESUs for listing (61 FR 41541, August 9, 1996), it also proposed to apply the prohibitions of ESA section 9(a)(1) to those ESUs. These proposed protective regulations, however, were never finalized. NMFS has since proposed application of the section 9(a)(1) prohibitions for seven listed steelhead ESUs (64 FR 73479, December 30, 1999), and seven listed salmonid ESUs (65 FR 170, January 3, 2000). This final rule applies the prohibitions of ESA section 9(a)(1) to all 14 listed ESUs.

NMFS concludes that the prohibitions generally applicable for endangered species are necessary and advisable for conservation of these listed ESUs. Additionally, NMFS determines that section 9(a)(1) prohibitions on listed salmonids in the 14 listed ESUs need not be applied when it results from a specified subset of activities described herein. These are activities that are conducted in a way that contributes to conserving the listed ESUs and where NMFS determines that added protection through Federal regulation is not necessary and advisable for conservation of an ESU. Therefore, NMFS will now apply ESA section 9(a)(1) prohibitions to these 14 threatened salmonid ESUs, but will not apply the take prohibitions to the 13 programs described in this document as meeting that level of protection. Of course, the entity responsible for any habitat-related programs might equally choose to seek an ESA section 10(a)(1)(b) permit, or be required to satisfy ESA section 7 consultation if Federal funding, management or approval is involved. This final rule does not impose restrictions beyond those applied in other sections of the ESA, but provides another option beyond the section 7 and 10 tools to authorize incidental take.

Working with state and local jurisdictions and other resource managers, NMFS has identified 13 programs and criteria for future programs for which it is not necessary and advisable to impose ESA section 9(a)(1) prohibitions because they contribute to conserving the ESU. Under specified conditions and in appropriate geographic areas, these programs and criteria include: (1) activities conducted in accord with ESA incidental take authorization; (2) ongoing scientific research activities, for a period of 6 months from the publication of this final rule; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management programs; (6) activities in compliance with joint tribal/state plans developed within *United States* (U.S.) v. *Washington* or *U.S.* v. *Oregon*; (7) scientific research activities permitted or conducted by the states; (8) state, local, and private habitat restoration activities; (9) properly screened water diversion devices; (10) routine road maintenance activities; (11) certain park pest management activities; (12) certain municipal, residential, commercial, and industrial (MRCI) development and redevelopment activities; and (13) forest management activities on state and private lands within the State of Washington. The language which follows describes each limit. These are programs or criteria for future programs where NMFS will limit the application of the section 9(a)(1) prohibitions. More comprehensive descriptions of each limit and discussions regarding the scientific basis for this final rule are contained in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000). In the future, NMFS anticipates adding new limits for more activities that are deemed necessary and sufficient for the conservation of the species.

NMFS emphasizes that these limits are not prescriptive regulations. The fact of not being within a limit does not mean that a particular action necessarily violates the ESA or this regulation. Many activities do not affect these species, and thus, need not be included in the 13 limits listed earlier. The limits describe circumstances in which an entity or actor can be certain it is not at risk of violating the take prohibitions or of consequent enforcement actions, because the take prohibitions would not apply to programs or activities within those limits. Jurisdictions, entities, and individuals are encouraged to evaluate their practices and activities to determine the likelihood of take occurring. NMFS can provide ESA coverage through section 4(d) rules, section 10 research and enhancement permits, or incidental take permits; or through section 7 consultations with Federal agencies. If take is likely to occur, then the jurisdiction, entity or individual should modify its practices to avoid take of a threatened species or seek protection from potential ESA

liability through section 7, section 10, or section 4(d) processes.

Jurisdictions, entities, and individuals are not required to seek inclusion in a section 4(d) limit from NMFS. In order to reduce its liability, a jurisdiction, entity, or individual may also informally comply with a limit by choosing to modify its programs to be consistent with the evaluation considerations described in an individual limit. Finally, a jurisdiction, entity, or individual may seek to qualify its plans or ordinances for inclusion in a limit by obtaining the 4(d) limit authorization from the appropriate NMFS Regional Administrator (see **ADDRESSES**).

NMFS wishes to continue to work collaboratively with all affected jurisdictions, entities, and individuals to recognize management programs that conserve and meet the biological requirements of salmonids, and to strengthen other programs toward conservation of listed salmonids. This final rule may be amended to add new limits on the take prohibitions, or to amend or delete limits as circumstances warrant.

State, county and local efforts such as Clark, Cowlitz, Kitsap, the Puget Sound Tri-County Initiative in Washington state; and the City of Portland and Clackamas County in Oregon are working with NMFS to make their ordinances and practices fish friendly and to be adopted in future 4(d) rulemaking. NMFS also acknowledges the important progress being made by Metro, the directly-elected regional government in Portland, Oregon. NMFS is enthusiastic about Metro's current planning efforts and encourages its progress in regional planning to address salmonid conservation.

NMFS acknowledges, and is participating in, the State of Washington's Agricultural, Fish, and Water negotiation process currently underway in Washington State. The process currently underway is intended to address the requirements of the ESA and the Clean Water Act (CWA). The negotiations are designed to address agricultural practices and processes including but not limited to: Field Office Technical Guides (FOTGs), Comprehensive Irrigation District Management Plans (CIDMP), Ditch Maintenance Plans (DMPs) and Pesticide Management as needed to comply with ESA and CWA. It is anticipated that completed FOTGs, CIDMPs, DMPs, and Pesticide Management, if acceptable to NMFS, will be included in future ESA 4(d) rulemaking.

NMFS strongly encourages comprehensive conservation planning for programs at the state level. State level conservation programs can be one of the most efficient methods to implement effective conservation practices across the board and achieve comprehensive benefits for listed fish and their habitats. Other examples of these state-based conservation programs include the completed forestry agreement in Washington state; ongoing reviews of Oregon and California forestry practices; and development of coastal states' shoreline management programs. NMFS is working with Washington State Department of Ecology on development of a model shoreline program. Alternatively, a local jurisdiction seeks inclusion in a limitation of the take prohibition by adopting this model program, NMFS expects to address the potential "take" issues associated with the shorelines program through an ESA section 7 consultation with the National Ocean Service in the coming months. This may obviate the need for a 4(d) limit for shoreline-related activities under the authority of the Department of Ecology.

Concurrent with this final rule, NMFS is publishing a final rule describing a limit on the section 9(a)(1) prohibitions for actions in accord with any tribal resource management plan that the Secretary has determined will not appreciably reduce the likelihood of survival and recovery of a threatened ESU (published elsewhere in this **Federal Register** issue).

Following is a section entitled "Notice of Availability" which lists seven documents referred to in the regulation. The purpose of making these documents available to the public is to inform governmental entities and other interested parties of the technical components NMFS expects to be addressed in programs submitted for its review. These technical documents provide guidance to entities as they consider whether to submit a program for a 4(d) limit. The documents represent several kinds of guidance, and are not binding regulations requiring particular actions by any entity or interested party.

For example, NMFS' Viable Salmonid Policy (VSP) paper referenced in the fishery and harvest management limits provides a framework for identifying populations and their status as a component of developing adequate harvest or hatchery management plans. This rule asks that FMEPs and HGMPs "utilize the concepts of 'viable' and 'critical' salmonid population thresholds, consistent with the concepts contained in the [VSP paper]." Thus, state fishery agencies preparing such programs are put on notice of the technical analysis needed to support decisions within a program. Similarly, NMFS' Fish Screening Criteria explicitly recognize that they are general in nature and that site constraints or particular circumstances may require adjustments in design, which must be developed with the NMFS staff member, or authorized officer, to address site specific considerations and conditions. Finally, research involving electrofishing comes within the scientific research limit only if conducted in accordance with NMFS' Guidelines for Electrofishing. The guidelines recognize that other techniques may be appropriate in particular circumstances, and NMFS can recognize those as appropriate during the approval process.

Of the state or local documents referenced in the rules, two (Oregon Department of Transportation's (ODOT) road maintenance program to govern routine maintenance activities and Portland Parks' integrated pest management program) are existing programs already being implemented that NMFS has found adequate and made effective as limits. Those entities, thus, need no further approval for the programs. Other jurisdictions may come within the road maintenance limit if they use the ODOT program or provide other practices found by NMFS to be equivalent or more protective of salmonids. The State of Washington's Forests and Fish Report will not trigger a limit until the Washington Board of Forestry adopts regulations that NMFS finds are at least as protective as the report. Thus, the report indicates a set of conditions that will allow NMFS to approve the limit, but recognizes that the Board may design regulations that are not identical to, but are at least as protective as, the report language.

In sum, where the rule cites a document, a program's consistency with the guidance is "sufficient" to demonstrate that the program meets the particular purpose for which the guidance is cited. However, the entity or individual wishing a program to be accepted as within a particular limit has the latitude to show that its variant or approach is, in the circumstances where it will apply and affect listed fish, equivalent or better.

NMFS will continue to review the applicability and technical content of its own documents as they are used in the future and make revisions, corrections or additions as needed. NMFS will use the mechanisms of the rule to take comment on revisions of any of the referenced state programs. If any of

these documents is revised and NMFS relies on the revised version to provide guidance in continued implementation of the rule, NMFS will publish in the **Federal Register** a notice of its availability stating that the revised document is now the one referred to in the specified 223.203(b) subsection.

Notice of Availability

The following is a list of documents cited in the regulatory text of this final rule. Copies of these documents may be obtained upon request (see **ADDRESSES**).

1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (June, 1999).

2. City of Portland, Oregon Parks and Recreation Department Pest Management Program (March 1997) with Waterways Pest Management Policy updated December 1, 1999.

3. State of Washington, Forests and Fish Report (April 29, 1999).

4. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (NMFS, 2000a).

5. Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996.

6. Fish Screening Criteria for Anadromous Salmonids (January 1997).

7. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. (NMFS, 2000b).

Copies of all references, reports, related documents and "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000) are also available upon request (see **ADDRESSES**).

The limits on the take prohibitions do not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect listed species. To the extent that actions subject to section 7 consultation are consistent with a circumstance for which NMFS has limited the take prohibitions, a letter of concurrence from NMFS will greatly simplify the consultation process, provided the program is still consistent with the terms of the limit.

Applicability to Specific ESUs

In the regulatory language in this final rule, the limits on applicability of the take prohibitions to a given ESU are accomplished through citation to the Code of Federal Regulations' (CFRs') enumeration of threatened marine and anadromous species, 50 CFR 223.102. For the convenience of readers of this notice, 50 CFR 223.102 refers to threatened salmonid ESUs through the following designations:

(a) (1) Snake River spring/summer chinook
(a) (2) Snake River fall chinook
(a) (3) Central California Coast coho
(a) (4) Southern Oregon/Northern California Coast coho
(a) (5) Central California Coast steelhead
(a) (6) South-Central California Coast steelhead
(a) (7) Snake River Basin steelhead
(a) (8) Lower Columbia River steelhead
(a) (9) Central Valley, California steelhead
(a) (10) Oregon Coast coho
(a) (12) Hood Canal summer-run chum
(a) (13) Columbia River chum
(a) (14) Upper Willamette River steelhead
(a) (15) Middle Columbia River steelhead
(a) (16) Puget Sound chinook
(a) (17) Lower Columbia River chinook
(a) (18) Upper Willamette River chinook
(a) (19) Ozette Lake sockeye

Summary of Comments in Response to the Proposed Rules

Between January 10, 2000, and February 22, 2000, NMFS held 25 public hearings to solicit comments on the proposed ESA 4(d) rules: 7 in Washington, 8 in Oregon, 3 in Idaho, and 7 in California (64 FR 73479, December 30, 1999; 65 FR 170, January 3, 2000; 65 FR 7346, February 14, 2000; 65 FR 7819, February 16, 2000). During the 65-day public comment period, NMFS received 1,146 written comments on the proposed rules from Federal, state, and local government agencies; Indian tribes; non-governmental organizations; the scientific community; and individuals. In addition, numerous individuals provided oral testimony at the public hearings.

Based on these public hearings and comments, NMFS now issues its final protective regulations for these 14 salmon and steelhead ESUs. The preamble section of this rule refers to the prohibitions of ESA section 9(a)(1). In addition to the commonly referred to take prohibitions of section 9(a)(1)(B) and 9(a)(1)(C), section 9(a)(1), also includes prohibitions on the import, export, sale, delivery, or transport in interstate commerce of endangered species. The public comments NMFS received almost exclusively focused on the section 9 take prohibitions. The following comments and responses, therefore, refer to the "take" prohibitions of section 9(a)(1)(B) and 9(a)(1)(C), not to the other prohibitions described in section 9(a)(1). Accordingly, for the rest of this preamble and in the regulation, the term "prohibition" refers to the prohibition of take within the 13 specified limits.

New information and a summary of comments received in response to the proposed rules are summarized as follows.

Comments and Responses

Take Guidance

Comment 1: Some commenters stated that a primary focus of the proposal was to encourage development of local tailor-made measures that protect salmonids and they requested further guidance on how their programs could be included in future ESA 4(d) rules.

Response: Credible local initiatives are indeed needed to help save these species, and guidance on how local programs can be included in 4(d) rules is available in *The ESA and Local Governments: Information on 4(d) Rules, May 7, 1999*. In addition, NMFS staff will be available to offer advice and otherwise help individual jurisdictions and entities ensure that their actions do not take listed fish.

Comment 2: Some commenters wanted a simplified process (e.g., a "letter of approval" from NMFS staff) for including local programs in future ESA 4(d) rules.

Response: NMFS worked with state and local authorities to identify several categories of activities where local programs can be certified to comply with ESA requirements if they meet the conditions described in the rule. This simplified process would be available for land-use development activities, water diversion screening, road maintenance, hatchery operations, fisheries harvest, fisheries related research, and habitat restoration activities. Other governmental entities are encouraged to step forward and work with NMFS. First, to ensure that local programs meet the salmon's biological requirements and the mandates of the ESA, and second, to streamline the administration of any program.

Comment 3: A number of commenters stated that the proposed take guidance was too vague (e.g., guidance in the limit for new urban density development). Others commented that the guidance was too prescriptive, and still others stated that the guidance was less stringent for some categories of activities and more stringent for others.

Response: To be approved for a limit from ESA take prohibitions, a program

must conserve salmon and meet their biological requirements. This criterion is the same for all programs. These species span the entire west coast from coastal rainforests to arid inland areas to high mountain regions nearly a thousand miles from the ocean and, thus, specific requirements will naturally differ from place to place. Some jurisdictions have asked for NMFS' help in learning how to avoid or limit adverse impacts on these species. General guidance is provided in this rule. This final 4(d) rule addresses concerns about vague guidance by providing additional specificity and by requiring that once specific programs designed to meet NMFS' criteria are produced (and before determining whether they are adequate), NMFS will publish the proposed program for review and comment.

Comment 4: Some commenters stated that NMFS must wait to apply take prohibitions until more specific guidance is published on how other programs can qualify for a limit on the take prohibitions. Others requested that NMFS delay take prohibitions until many more local programs were ready to be included in an ESA 4(d) rule, or that NMFS phase in the take prohibitions as programs qualify for a limit.

Response: These species are, by definition, likely to become endangered in the foreseeable future and undue delay in protecting them would likely increase the difficulty and expense of recovering them. At the same time, NMFS recognizes these rules are novel and complicated and some time is needed for regulated parties to better understand them. NMFS has balanced these considerations by adopting a final rule that puts needed regulations in place within 60 days for the steelhead ESUs and within 180 days for the salmon ESUs, which allows a reasonable period before they become effective (6 months).

Comment 5: A few commenters wanted NMFS to grant a grace period from the take prohibitions to those jurisdictions making good faith efforts to conserve the species.

Response: The proposed rule already states that while enforcement may be initiated against activities that take protected salmonids, NMFS' clear preference is to work with persons or entities to promptly shape their programs and activities to include credible and reliable conservation measures.

Comment 6: Some commenters asked NMFS to apply prohibitions against take to all programs without exception.

Response: Any jurisdiction or individual under United States authority is subject to the take prohibitions. Jurisdictions or individuals wanting assurance that an activity they are conducting or permitting is consistent with ESA requirements can be covered under a section 7 consultation (if Federal funding, authorization, or management is involved), seek an ESA section 10 permit, or qualify for a limit under a 4(d) rule. To qualify for any of these options, the activity must show that it sufficiently conserves the listed species.

Comment 7: Some commenters wanted NMFS to define the action types and magnitudes that would constitute illegal take. Others held that the array of activities described in the proposed rule that are "likely to injure or kill listed salmonids" was overly inclusive and discussed actions that exceeded NMFS' authority to regulate. Still others requested that NMFS assert that state and local governments are not required to use their regulatory authorities to satisfy ESA requirements.

Response: It is NMFS' policy to increase public awareness of and identify those activities that would or would not likely injure or kill a protected species. Take guidance appearing at the end of this document does just that. It is only possible in this final rule to describe categories of actions that may have adverse impacts on fish and describe their consequences (e.g., blocking fish from reaching their spawning grounds, dewatering incubating eggs, etc.). NMFS understands that there is considerable interest in knowing as much as possible about what constitutes "take" and changes have been incorporated in this final rule to accommodate this interest. Determining whether an individual local program or activity is likely to injure or kill a protected species will require credible assessments that take into account local factors and conditions. Regarding the issue of authority, regulations against killing or injuring protected species apply to any person subject to the jurisdiction of the United States (section 9(a)(1) of the ESA). The term "person" means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; and State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States (ESA section 3(12)).

Comment 8: A few commenters requested that NMFS make clear that "take" prohibitions would not be violated unless a protected species were injured or killed, and that determinations of whether "take" is likely to occur will be handled on a case-by-case basis.

Response: The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, a listed species or to attempt to engage in any such conduct (ESA section 3(18)). The term "harm" refers to an act that actually kills or injures a protected species (64 FR 215 (November 8, 1999). Harm can arise from significant habitat modification or degradation where it actually kills or injures protected species by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering. After conducting a self- assessment to determine whether an activity is likely to "take" a listed species, persons or entities may choose to adjust their program to avoid take, or pursue ESA coverage through a section 10 permit, a section 7 consultation with Federal agencies, or through a 4(d) rule.

Comment 9: Commenters requested that adequate monitoring and oversight be required to ensure that programs included in an ESA 4(d) rule are effective.

Response: A program is incomplete without a mechanism to track its implementation and effectiveness. NMFS reiterates language in the proposed rule which states that for any program included in an ESA 4(d) rule, "NMFS will evaluate on a regular basis the effectiveness of the program in protecting and achieving a level of salmonid productivity and/or habitat function consistent with the conservation of the listed salmonids." If a program does not meet its objectives, NMFS will work with the relevant jurisdiction to adjust the program accordingly. If the responsible entity chooses not to adjust the program accordingly, NMFS will publish notification in the **Federal Register** and announce that the program will no longer be free from ESA take prohibitions because it does not sufficiently conserve listed salmonids.

Comment 10: There were a number of requests for NMFS to grant limits on the take prohibitions to additional programs. Examples included, the Natural Resources Conservation Service's FOTGs, California's Lake and Streambed Alteration Program, Oregon Concrete and Aggregate Producer's suggestions for a limit focused on Department of Geology regulation, Washington's Tri-County initiative, and

The Oregon Plan for Salmon and Watersheds.

Response: The ESA 4(d) rule provides an option for state and other jurisdictions to assume leadership for species conservation at the state and local level over and above the conventional tools for processing state and local conservation planning under the ESA through section 7 consultations and section 10 permitting. NMFS is assembling all the Federal, tribal, state, and local programs needed to save salmonids and has offered to collaborate with any entity interested in this 4(d) option. NMFS is especially interested in state-level conservation efforts because state-level programs tailored to meet the needs of the listed stocks can be a very efficient and comprehensive method to provide for the conservation of listed stocks and their habitat. A number of state and local entities have stepped forward to work with NMFS and we are anxious to work with them. However, limits that were not outlined in the proposed rule for public comment will have to be dealt with in a future amendment.

Comment 11: Commenters requested that NMFS clarify that activities conducted pursuant to an approved state or Federal permit are free from the ESA section 9 take prohibitions.

Response: Activities conducted pursuant to an approved state or Federal permit are subject to take prohibitions. Individual programs can seek relief from any take liability through a section 7 consultation, a section 10 permit process, or a program approved under a 4(d) limit.

Comment 12: Commenters argued that the nature of some programs (e.g., road construction, gravel mining, water withdrawals, levee construction, and certain development) should disqualify them from consideration for limits on take prohibitions under an ESA 4(d) rule.

Response: Under the proposal, all programs must fulfill the same standard to be included in an ESA 4(d) rule (i.e., they must conserve the species and meet their biological requirements). The important issue here is that threatened salmonids need meaningful, practical, and reliable conservation measures. Some programs will naturally have more difficulty meeting that standard than others. The ESA 4(d) rule simply applies the take prohibitions and allows for the development and implementation of conservation measures.

Comment 13: Several commenters suggested that the use of pesticides and herbicides should be considered a resource management tool and, therefore, be included as a limit by NMFS in the 4(d) rule. Several commenters argued that the proposed take guidance violates the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and, thereby, trespasses unlawfully into Environmental Protection Agency (EPA) authorities and violates the take exemption provided for FIFRA-registered pesticides.

Response: NMFS acknowledges that some view the current use of pesticides as essential to successful commercial crop production on agricultural lands, certain types of habitat restoration projects, and dealing with invasive exotic species. NMFS does not currently have specific information on the potential effects on listed salmonids of the very large number of pesticide products currently in use. Accordingly, NMFS is not able to conclude that the otherwise lawful use of these products is sufficiently benign to warrant an explicit limitation of the take prohibition in this rule. NMFS, therefore, has not incorporated such a limit.

For the same reason, NMFS is also unable to make an affirmative finding that the otherwise-lawful use of these products may cause harm to listed salmonids in potential violation of this final rule.

NMFS will continue to conduct scientific research into the potential for adverse effects upon salmonids of a variety of pesticides. NMFS intends to work closely with EPA and state authorities which have primary responsibility for ensuring the proper use of these products under relevant Federal and state regulatory regimes. Should information come forward to suggest that the otherwise lawful use of a pesticide harms or injures listed salmonids and might be in violation of this rule, NMFS anticipates addressing the concern through a section 7 consultation with EPA, NRCS, or United States Fish and Wildlife Service (FWS) as appropriate, or corresponding discussions with responsible state authorities. NMFS prefers this approach rather than use its enforcement authorities against an individual applicator for the otherwise-lawful use of the pesticide. Similarly, if NMFS, with due consideration of any more restrictive state requirements for a pesticide's use, finds that a limitation on the prohibition against take for the use of selected pesticides is necessary and advisable for the conservation of listed salmonids, it may amend this rule accordingly. Through such a programmatic approach, NMFS believes that it will be able to achieve an orderly and comprehensive analysis of the use of pesticides and their effects on listed salmonids.

Comment 14: A few commenters argued that ESA Habitat Conservation Plans (HCPs) should not be free from take prohibitions under a 4(d) rule.

Response: A section 10 incidental take permit (issued after analyzing the accompanying habitat conservation plan) authorizes a specified level of take. Including incidental take permits in the first limit of this rule is, thus, consistent with the structure and intent of the ESA.

Comment 15: A few commenters requested that NMFS prescribe standards (temporary or otherwise) for agricultural activities to be included in an ESA 4(d) rule.

Response: Different entities (including agricultural interests) have expressed a strong preference for standards developed at the local level (not one-size-fits-all standards). The 4(d) rule was written to foster local interest and support tailor-made programs and NMFS stands ready to work with any interested entity in forging such standards. On the issue of agricultural practices in particular, NMFS is working with a number of agricultural entities to explore conservation practices which might contribute to the conservation of salmonids and their habitats, and is hopeful that these discussions will yield further details on proper conservation practices to help conserve salmon.

Comment 16: A few commenters asked NMFS to work closely with FWS to clarify each other's roles to establish universal standards that cover all listed species.

Response: The two services do work closely together on ESA implementation. For example, NMFS and FWS share identical definitions of "harm" and the proposed rule does state that "as it evaluates any program against the criteria in this rule to determine whether the program warrants a limitation on take prohibitions, NMFS will coordinate closely with FWS regional staffs." This comment, however, is well taken and NMFS will continue to work closely with FWS to coordinate and streamline ESA implementation. NMFS notes that it is commonly requested to distinguish biological requirements of salmonids from biological requirements of other species (some under the jurisdiction of FWS).

Comment 17: Commenters asked NMFS to establish a funding mechanism (e.g., an escrow account) to support habitat restoration activities.

Response: Millions of dollars in Federal funding have been granted to

state programs that fund specific habitat restoration projects. NMFS will continue to support funding for these programs in the future.

Comment 18: Several commenters argued that current conditions are a result of past practices, not current practices. They believed that NMFS has failed to justify why the little remaining habitat is important to listed fish and failed to provide detailed scientific rationale to support the agency's contention that certain activities (e.g., urban development) result in take.

Response: NMFS disagrees. The list of examples in this final rule (see Take Guidance) as well as those provided in the proposed rule give general guidance on the types of current activities that are very likely to take threatened salmonids. While not exhaustive, this list was based on direct experience with managing salmonid populations in their natural environment and a thorough understanding of the scientific literature. The ESA listing process for these threatened salmonids has documented the decline of salmonid populations in the four western states and has identified the historic and current causes of these declines. The commenters correctly note that past practices have caused the decline of salmonid populations; however, current human activity can also kill or injure listed salmonids. Development and other human activities within riparian areas or elsewhere in the watershed alter the properly functioning condition of riparian areas. These activities can alter shading (and hence stream temperature), sediment transport and supply, organic litter and large wood inputs, bank stability, seasonal streamflow regimes, and flood dynamics. The natural functions of riparian areas and the ways in which human activities affect those processes and functions are described in the publication entitled "An Ecosystem Approach to Salmonid Conservation" (NMFS, 1996).

Comment 19: Some commenters requested maps of "sensitive resource sites" at a large scale so local jurisdictions that deal with small land parcels may use them. Some commenters stated that NMFS should focus on areas where redds or fish are actually present, not on general definitions such as "spawning gravels."

Response: NMFS acknowledges the value of producing maps that identify resource sites important for the different salmonid life cycle stages. NMFS will continue to work with state entities, local jurisdictions, co-managers and citizens to increase our knowledge of threatened salmonids. NMFS will also continue to increase its own capabilities for mapping resource areas and watersheds. Because there were so many comments requesting that NMFS identify which activities have a high likelihood of resulting in take and will be priorities for enforcement action, the take guidance has been revised to focus on high risk activities. The language referring to "spawning gravels" has, therefore, been removed.

Comment 20: One commenter requested that NMFS add the word "intentional" to clarify the take guidance regarding promotion of predator populations associated with habitat alterations.

Response: NMFS must respectfully disagree. Whether the action is intentional or unintentional, NMFS considers habitat alterations that promote predation on listed species to be undesirable. Such actions may in fact cause injury or harm to listed salmonids.

Comment 21: Several commenters recommended adding sediment discharge to the list of toxic chemicals and other pollutants that are very likely to injure or kill salmonids. Other commenters requested that NMFS clarify which chemicals and pollutants it is referring to in this section.

Response: NMFS refers to toxic chemicals or other pollutants being discharged or dumped and then gives examples by listing sewage, oil, gasoline, and others. Sedimentation from timber harvest and other land use activities may plug the interstitial spaces in gravel spawning areas reducing salmon egg survival during their incubation period as well as many other deleterious effects. Based on these comments and the fact that sediment discharge may harm listed salmonids by physically disturbing or blocking streambed gravels, NMFS added soil disturbances to the list of actions that are likely to kill or injure salmonids.

Comment 22: One commenter urged NMFS to add language in the activity category dealing with the chemical and pollutant discharge or dumping to recognize that take can also occur when these activities are carried out with a valid permit. Another commenter recommended that NMFS clarify which permits are considered "valid," and one commenter stated that this potential "take" should only apply to waters supporting the listed salmonids.

Response: NMFS agrees that chemical and pollutant discharge may take listed fish whether or not there is a valid permit for the discharge. In order to clarify this point, NMFS has deleted the words "particularly when done outside of a valid permit for the discharge" from the take guidance. Regarding the suggestion that take prohibitions should only be applied to waters supporting listed salmonids, the take guidance applies throughout the ESU for the listed species whether or not there are salmonids present in individual rivers or streams.

Comment 23: One commenter noted that the introduction of non-native species likely to prey upon or displace listed species should be expanded to include non-native species that may adversely affect salmonid habitat.

Response: NMFS agrees that non-native species may alter salmonid habitat to such an extent that the habitat may no longer provide all the functions and characteristics that support listed salmonids. The take guidance language now reflects this suggestion.

Comment 24: Numerous commenters argued for language changes and refinements in the descriptions of actions that may injure or kill listed salmonids. The first suggestion is to expand the list of ways fish passage can be blocked to include human-induced physical, chemical, and thermal blockages.

Response: NMFS has revised the take guidance to address this comment and to clarify its enforcement priorities.

Comment 25: Several commenters suggested adding language to the list of activities "very likely to injure or kill salmonids" to address activities that further contribute to or maintain water quality impairments in those water bodies on the 303(d) list of the CWA.

Response: NMFS agrees that this is an important issue and that activities that degrade water quality or maintain degraded conditions can injure listed species. This issue is already addressed in the section on discharging or dumping toxic chemicals or other pollutants into water or riparian areas and in the language changes discussed in the previous comment.

Comment 26: Some commenters urged NMFS to state that water withdrawals can affect salmonids in more ways than adversely modifying spawning and rearing habitat. One commenter also requested that NMFS note that water withdrawals can adversely affect groundwater by capturing flow that might otherwise discharge to surface waters.

Response: NMFS considers "spawning, rearing, and migrating" to be "essential behavioral patterns." The word "migrating" will be added to the take guidance regarding water withdrawals. Regarding the second comment about the potential impact of water withdrawals on groundwater and surface water, NMFS cannot provide

further detail in this take guidance because the actual impacts of a given act depend on situation-specific conditions.

Comment 27: Several commenters asked NMFS to expand the discussion of impacts arising from water diversion and flow discharges to include impacts other than changes in stream temperature.

Response: NMFS agrees that water diversions and discharge may have other deleterious effects on salmonid habitat. These may include impacts on sediment transport, turbidity, and stream flow alterations. The actual likelihood that these actions would result in take depends on situation-specific conditions. Based on public comments, the take guidance in the final rule has been revised to clarify NMFS' intent regarding which activities are very likely to injure or kill salmonids and to identify priorities for NMFS enforcement action.

Comment 28: Several commenters recommended moving the topics "water withdrawals" and "violation of federal or state CWA discharge permits" from the section where actions may injure or kill listed fish to the section where actions are "very likely to injure or kill salmonids."

Response: NMFS has revised the take guidance. One change is that water withdrawals have been added to the list of activities that are very likely to injure or kill salmonids. However, the likelihood that take will actually occur depends on the individual action. The issue of actions that violate Federal and state CWA discharge permits is not specifically addressed in the new take guidance language.

Comment 29: One commenter urged NMFS to consider land use activities that affect more than just salmonid habitat. They highlighted the fact that adverse effects include impacts on floodplain function, natural hydrologic patterns, riparian function, and water quality. They also recommended expanding the list of land use activities identified in the proposed rule.

Response: In a section of the preamble of the proposed rule entitled Aids for Understanding the Limits on the Take Prohibition, under Issue 2: Population and Habitat Concepts, NMFS describes properly functioning habitat conditions that create and sustain the physical and biological features essential to conserving the species. These habitat conditions recognize the importance of floodplain function and channel migration and emphasize the dynamic nature of natural systems. NMFS intends the term "salmonid habitat" to be consistent with the habitat functions and processes described in the Habitat Concepts preamble language. NMFS recognizes that different types of land use activities can impact salmonid habitat to such an extent that take may occur. Language has been added to the revised take guidance to address floodplain gravel mining and floodplain development.

Comment 30: Several commenters argued that the take guidance needs to be clarified so that the public can understand what NMFS means in its different categories of take.

Response: NMFS agrees that the take guidance language in the proposed rule caused confusion about which activities can result in take and what actions will be priorities for enforcement. NMFS has revised the take guidance section to focus on those activities that are very likely to injure or kill salmonids.

Comment 31: One commenter suggested amending the proposed language concerning take due to water withdrawals by using Oregon Department of Fish and Wildlife (ODFW) minimum flows to regulate water withdrawals.

Response: NMFS does not reference specific state, local, or private regulations or programs that might prevent take because there is such a large number of programs (and partial programs) in the different states that could be cited. Absent a program approved under section 7 or 10 of the ESA or under this rule, individual jurisdictions and private entities will need to develop, adopt, and implement programs that prevent take.

Comment 32: One commenter suggested that NMFS clarify its intent by using the language "actually impact water quality" in the context of take occurring due to violations of Federal or state CWA discharge permits.

Response: NMFS notes the comment. However, due to changes in the final rule's take guidance language, this specific category of activity has been eliminated.

Comment 33: Some commenters asserted that rural areas were unfairly singled out for engaging in activities that take listed species while urban areas were given ESA 4(d) limits.

Response: NMFS applies the prohibition against take uniformly across the landscape encompassed by the threatened species' ESUs. This take prohibition applies equally to rural areas and urban areas and the take guidance identifies activities that can occur in urban and rural areas. Limits on the take prohibitions were given to complete programs that were shown to conserve salmon and steelhead.

Comment 34: One commenter asked that NMFS clarify the relationship between take avoidance and the designation of critical habitat.

Response: Critical habitat is a geographic description of the areas essential for a species' conservation. These designations highlight important habitat features as well as management actions that may require special management considerations. Take avoidance relates to critical habitat in that special management actions taken (or authorized) by Federal agencies must avoid adversely modifying critical habitat.

Viable Salmonid Populations (VSP)

Comment 35: Several commenters said that NMFS should not base policy on a document that is not complete and has not been reviewed in its final form.

Response: Comments on the December 13, 1999, VSP draft were solicited from over 50 peer reviewers plus tribal and state co-managers. In addition, the document has been available for public comment since the draft ESA 4(d) rules were released. We have received approximately 20 peer and co-manager reviews, plus numerous public comments. These reviews, particularly those from peer-reviewers, have generally been very positive, and the document will require little substantive revision before publication as a NOAA Technical Memorandum in June of 2000.

Comment 36: Several commenters stated that populations are generally smaller than a "distinct population segment" as defined in the ESA and NMFS has "gone too far" in proposing protection of individual populations.

Response: In applying the VSP principles, NMFS does not mean to require equal protection of every single population. The unit requiring protection under the ESA is a "distinct population segment" (i.e., ESU). Therefore, it is the ESU that NMFS must ensure has a minimal risk of extinction. A population is the appropriate biological unit for scientifically evaluating salmonid extinction risk. The status of an ESU can be determined in large part by analyzing the individual populations that constitute the ESU, and determining how their individual statuses combine to affect ESU viability.

Comment 37: Many commenters said that VSP is too vague to be implemented.

Response: Where possible, NMFS has endeavored to provide numerical guidelines for viability thresholds. However, VSP generally does not provide generic quantitative criteria that can be applied to all salmonid populations because the thresholds vary by species and location. This means that

applying the VSP principles will require population- and ESU-specific evaluations. This will not be very satisfying to managers looking to VSP for "the answer," but is the only scientifically sound course at this time. NMFS will continue to explore whether generic guidelines (or modeling approaches) may be appropriate for some criteria (e.g., minimum population size), but this requires further analysis and will not be a part of the VSP paper finalized in June. As geographically-specific VSP applications are completed, more general numerical guidelines may be possible.

Comment 38: Several commenters noted that NMFS does not define the relationship of the VSP terms "viable" and "critical" to the ESA terms "threatened" and "endangered."

Response: The VSP paper does not attempt to define "threatened" and "endangered" under the ESA. Defining "threatened" and "endangered" requires policy decisions about the acceptable levels of risk to an ESU that the VSP concept does not address. It is also important to note that the terms viable and critical in VSP are often applied to populations, whereas the unit of interest with regard to the ESA is the ESU.

Comment 39: Several commenters wanted the effects of potential actions to be evaluated on scales other than the population (some desired smaller, some larger).

Response: Although a population is the appropriate unit for studying many biological processes, it may also be appropriate to evaluate management actions that affect units at smaller or larger spatial and temporal scales. For example, ocean harvest plans may affect multiple populations, while a habitat restoration plan only affects a small portion of a single population's habitat. The VSP concept does not preclude establishing goals at these different scales. However, management actions ultimately need to be related to population and ESU viability.

Comment 40: Several commenters said that VSP does not adequately consider the importance of freshwater habitat.

Response: VSP does not attempt to establish the habitat requirements for recovering populations. Habitat criteria are captured, generally, in the concept of Properly Functioning Conditions (PFC) discussed within this rule.

Comment 41: A few commenters said that VSP does not consider important components of recovery planning, such as ecological interactions.

Response: The VSP concept attempts to describe the population level attributes of viable salmonid populations; it does not prescribe how to recover populations. Recovery will require the entire suite of factors that impact salmon throughout their life cycle to be considered and evaluated—including ecological interactions and habitat needs. These are important issues that will need to be dealt with during recovery planning.

Comment 42: Several commenters said that data needed to evaluate VSP parameters will not be available and, therefore, VSP concepts cannot be applied.

Response: Data will generally not be available to thoroughly evaluate every VSP parameter. In developing the VSP guidelines, NMFS tried to consider all the processes that need to be evaluated in order to determine a population's status. If all of these processes cannot be evaluated, the VSP guidelines suggest the type of data that need to be collected. If a VSP guideline cannot be evaluated, managers must explicitly recognize the uncertainty associated with current management decisions because of a data-poor environment. The fact that VSP facilitates this recognition is, in itself, a valuable contribution.

Comment 43: A few commenters said that VSP makes several references to "historic conditions" for evaluating population status, but does not define the time frame for "historic."

Response: Historic conditions are used as a reference point in evaluating population status because under historic conditions populations were assumed to have been viable. The time frame, then, refers to a period in time where the population or ESU was considered self-sustaining and may represent different eras for different groups of fish. However, it should be noted that while historical data can be a valuable tool in evaluating population status, it should not suggest that NMFS will require all populations to be at historic levels in order to be viable. The value placed on historic data and the relationship between recovery goals and historic levels will be ESU- and population-specific.

Comment 44: One commenter argued that given the high levels of uncertainty associated with the ESU viability guidelines, the default assumption should be that all populations need to be viable in order to produce a viable ESU.

Response: This seems to be an appropriately precautionary approach, but responses to uncertainty entail policy decisions that can only be made after carefully analyzing a specific situation.

Comment 45: One commenter said that by defining populations, VSP claims that straying always has negative effects on viability.

Response: In the process of identifying populations, there is no blanket assumption that straying has a negative effect on viability. Straying is a natural process, and appropriate levels of straying within and among viable populations will depend on a balance between the risks and benefits of straying. Indeed, the VSP document acknowledges the potentially critical role that straying plays in extinction and recolonization dynamics among salmonid subpopulations and populations. It should also be noted that human factors (such as stock transfers, blockage of migratory routes, and other habitat alterations) have the potential to increase rates of genetic exchange by one to two orders of magnitude over historic levels. These changes are unlikely to be beneficial.

Comment 46: Several commenters stated that VSP does not consider certain factors to be important when evaluating population status. These factors included (1) marine-derived nutrients, (2) diversity, (3) temporal and spatial structure, and (4) genetic drift.

Response: These topics are covered in the current draft of the VSP document, and some topics may be clarified or expanded during the revision process.

Comment 47: A few commenters said that in evaluating VSP parameters, juvenile fish counts should be considered as well as (or instead of) adult spawner counts.

Response: Although the VSP paper discusses using juvenile fish counts, the guidelines generally focus on adult spawners counts—and not other life stages—because spawner count data sets are prevalent throughout the region and they can be related to the extensive body of conservation biology principles with relative ease. However, NMFS does not go into great detail on monitoring and evaluation programs and should consider any scientifically defensible strategy that allows population status to be evaluated. In some cases, it may be more feasible to collect data on juveniles than adults and it may be possible to assess population viability based primarily on juvenile counts. However, the population evaluation would still need to address the principles outlined in VSP regarding all four parameters (i.e., abundance, productivity, spatial structure, and diversity).

Comment 48: One commenter said NMFS does not take an "ecosystem approach."

Response: It is true that VSP focuses only on Pacific salmonid populations and the ecological processes that directly or indirectly affect them. The paper does not deal explicitly with other species or ecosystem processes that do not affect salmonids. However, given the large geographic scale and the presumed keystone role of salmonids in many ecosystems, an "ecosystem approach" is likely to emerge. Defining the management processes that may support an "ecosystem approach" is outside VSP's scope and intent.

Comment 49: One commenter said that VSP is a framework, not a benchmark, and asserted that the states should have the latitude to develop some of their own benchmarks within this framework.

Response: As noted in a previous response, VSP generally does not provide generic quantitative criteria. Quantitative criteria will be required in setting recovery goals for specific ESUs. In some contexts (often in reference to broad landscapes), the standard is expressed as "seeking to attain or maintain PFC." "Contribute to PFC" is a phrase often used in reference to near-term actions that put habitat on a course to attain PFC over time and is consistent with the standard. Finally, in some circumstances (often in referring to more site-scale decisions), the standard may be expressed as "not precluding PFC." There is no distinction in practice between these expressions of the standard.

Evaluating Habitat Conditions--Properly Functioning Conditions (PFC)

Comment 50: Several commenters opined that PFC should be more clearly defined. Others suggested that specific numeric criteria be included.

Response: Both the preamble and rule texts have been modified to more clearly define PFC and its central role in habitat evaluations. Proper functioning conditions create and sustain over time the physical and biological characteristics that are essential to conservation of the species, whether important for spawning, breeding, rearing, feeding, migration, sheltering, or other functions. Habitat-affecting processes include, but are not limited to vegetation growth, bedload transport through rivers and streams, rainfall runoff patterns, and river channel migration. The concept of proper function recognizes that natural patterns of habitat disturbance, such as through floods, landslides and wildfires, will continue.

NMFS measures conditions on the landscape to evaluate whether and how PFC is likely to be affected, attained or maintained by an activity. The indicators vary between different landscapes based on unique physiographic, geologic or other features. Although the indicators used to assess functioning condition may entail instantaneous measurements, they are chosen, using the best available science, to detect the health of underlying processes, not static characteristics.

The scope of any given activity is important to NMFS' analysis. The scope of the activity may be such that only a portion of the habitat forming processes in a watershed are affected by it. For NMFS to find that an activity is consistent with the conservation of the listed salmonids, only the effects on habitat functions that are within the scope of that activity will be evaluated. For example, an integrated pest management program may affect habitat forming processes related to clean water, but have no effect on physical barriers preventing access by fish to a stream.

NMFS' evaluation of an activity includes an analysis of both direct and indirect effects of the action. "Indirect effects" are those that are caused by the action and are later in time but are still reasonably certain to occur. They include the effects on species or critical habitat of future activities that are induced by the original action and that occur after the action is completed. The analysis also takes into account direct and indirect effects of activities that are interrelated or interdependent with the proposed action. "Interrelated actions" are those that are part of a larger action and depend on the larger action for their justification. "Interdependent actions" are those that have no independent utility apart from the action under consideration. NMFS has published an extensive discussion of the effects of activities in its Consultation Handbook—Procedures for Conducting Consultation and Conference Activities Under section 7 of the Endangered Species Act (March, 1998).

Though there is more than one valid analytical framework for determining effects of an activity, NMFS has developed an analytic methodology it has documented in a Matrix of Pathways and Indicators (MPI; often called "The Matrix"). The MPI can help NMFS and others identify any risks to PFC. The pathways for determining the effects of an action are represented as six conceptual groupings (e.g., water quality, channel condition, and dynamics) of 18 habitat condition indicators (e.g., temperature, width/depth ratio). Default indicator criteria (mostly numeric, though some are narrative) are laid out for three levels of environmental baseline condition: properly functioning, at risk, and not properly functioning. The effect of the action upon each indicator is classified by whether it will restore, maintain, or degrade the indicator.

The MPI provides a consistent, but geographically adaptable, framework for effects determinations. The pathways and indicators, as well as the ranges of their associated criteria, are amenable to alteration through the process of watershed analysis. The MPI, and variations on it, are widely used in consultations under Section 7 of the ESA on the effects of federal actions and will be similarly used to evaluate activities pursuant to this rule. The MPI is also used in other venues to determine baseline conditions, identify properly functioning condition, and estimate the effects of individual management prescriptions. While this assessment tool originally was developed to address forestry activities, NMFS intends to work with state, tribal, and other experts to facilitate its use in other ecological settings such as lakes, estuaries and urban settings.

Comment 51: One commenter objected that the conservation standard for PFC was "jeopardy" or survival, which is inadequate for ESA 4(d) rules and for recovery.

Response: PFC is not calibrated to provide for population persistence at some level less than full recovery, nor does NMFS believe that the best available science holds out the possibility of such an incremental approach to habitat conservation. Land and resource managers are required to demonstrate that their proposed activities will allow for the recovery of all essential functions of salmon habitat.

Comment 52: Several letters addressed the applicability of the "properly functioning conditions" concept to urban settings and questioned whether PFC could ever be attained in urban environments.

Response: It is widely recognized that urbanization alters the hydrologic behavior of once unpaved, undeveloped lands. Within this context, common goals for the management of urban landscapes include controlling stormwater runoff and protecting water quality. An urban watershed can become properly functioning if the ecological functions essential for listed salmonids within the watershed--such as storage, attenuation of peak flows, and water quality mitigation—can be restored by increasing watershed storage and providing buffers to attenuate water quality problems emanating from urban landscapes. In this context, the PFC goal

is to restore the hydrologic function in the urban watershed by modifying peak flow events, providing storage, protecting water quality and habitat, and allowing passage.

Comment 53: One commenter stated that the draft VSP concept and NMFS' established PFC approach were inconsistent.

Response: The VSP concept is being developed to serve as a population management analog to PFC's role in evaluating habitat-affecting actions. The intent of VSP is to serve as a consistent conservation standard, equivalent to PFC, that can be applied in diverse analyses. The VSP emphasizes measurable fish population parameters because that is how fish harvest and culture activities' environmental effects are most immediately and evidently expressed. Conversely, PFC indicators are typically physical habitat characteristics because they most readily and measurably show the effects of land and water management regimes. In essence, PFC is a description of conditions that support salmonid productivity at a viable level. However, because the standards are applied at widely different geographic scales, NMFS cannot currently describe the quantitative relationships between fine-scale habitat characteristics and salmon population levels. Though the two approaches measure effects on different salmonid biological requirements, they consistently strive toward the same end: determining the effects of various activities, placing them in the context of the species' life histories, and using that data to ascertain the best means of recovering the salmon.

Legal/National Environmental Policy Act (NEPA)/Reg Flex/Direct Take

Comment 54: Commenters asserted that the proposed rule exceeds NMFS' authority, either by reaching too far in protections or failing to meet ESA mandates by not being protective enough. Many commenters raised questions about the legal standards underlying limits and about the relationship between section 4(d) and section 7 consultations or section 10 habitat conservation plans. Several asserted that the standards for all three functions should be the same; others emphasized that the standard for 4(d) is more protective, stating that it must conserve the listed species.

Response: Many of those comments focus more on the limits provided than on the legally enforceable outcome of the rule (the take prohibitions). This response will first set forth in a general fashion the basis for this final rule, and then respond to the remainder of legal issues that are not included in the overall description.

First, section 4(d) regulations are those "necessary and advisable to provide for conservation" of the threatened salmonids. This final rule imposes one major regulatory prohibition (in addition to the less significant prohibitions of section 9(a)(1) or interstate commerce and import/export): that is, that actors are to avoid taking threatened salmonids of the 14 listed ESUs. The take prohibitions are what the ESA imposes by statute to protect endangered species and, if perfectly implemented, would provide the most protection possible. There is no question but that take prohibitions "provide for the conservation" of the species.

Nor can there be any real question about the advisability of imposing take prohibitions at all. NMFS' listings were based on findings that the ESUs are at risk and specifically that there are factors (set forth in ESA section (4(a)(1)) that have caused and are continuing to cause the listed ESUs' populations to decline. See "Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead" (NMFS, 1996); Coastal Coho Habitat Factors for Decline and Protective Efforts in Oregon" (NMFS, 1997), and "Factors Contributing to the Decline of Chinook Salmon: An Addendum to the 1996 West Coast Steelhead Factors for Decline Report" (NMFS, 1998). Many of these factors (habitat destruction, overutilization, inadequate regulatory systems) are state, local, or private, and have no link to Federal actions. Prohibiting take for these ESUs is, therefore, the most direct way of protecting the listed species. NMFS listed two additional chinook ESUs as threatened in September of 1999 and will be proposing ESA 4(d) protections for them in the near future.

This final rule also establishes 13 circumstances in which NMFS does not find it necessary and advisable to apply the take prohibitions. NMFS believes that by describing (wherever possible) a program or the components of a program that will adequately protect the species, it provides valuable guidance to agencies or individuals wishing to play a part in salmonid protection and will minimize their legal risks under the ESA as well. NMFS further believes that it is appropriate to limit the take prohibitions for such programs provided that NMFS' salmonid conservation goal (and legal responsibility) is not compromised—that is, so long as the rule provides for conservation of the listed ESUs. Thus, this final rule limits the application of the take prohibitions selectively. NMFS is confident that given the stringency of the fish protections in the programs receiving limits on the take prohibitions, this final rule meets the section 4(d) conservation standard.

In determining that take prohibitions are not necessary and advisable for a particular program, NMFS has ensured that each program—including programs that NMFS will evaluate in the future to determine whether they fit within one of the 13 limits—will not jeopardize the species. That is, none will appreciably reduce the likelihood of survival and recovery of any of the ESUs in the wild.

Further, for some programs involving sectors which have had particularly destructive impacts on habitat or bear other significant responsibility for decline of the species, there must be a demonstration above and beyond "not jeopardizing." Just as a Federal agency has a responsibility not only to conduct its affairs in a way that does not jeopardize but also to use its authorities in furtherance of the conservation of the species, ESA 4(d) regulations as a whole must provide measures necessary and appropriate to conserve the species. Hence, while for many actions or programs "not jeopardizing" may be equivalent to not precluding or impairing recovery, for others it may be necessary to include commitments for specific positive contributions that are vital to recovery because of past impacts from those sectors. NMFS has taken those considerations into account when evaluating potential programs (or establishing approval criteria) to determine if they qualify for inclusion in one of the limits.

By statutory definition, species conservation equates to those methods and procedures that will bring a species to the point at which it no longer needs the protections of the ESA and may be delisted. Those methods and procedures encompass the full array of actions that will contribute to recovery: Federal efforts to avoid jeopardy and conserve the species under section 7; efforts taken in accord with section 10 conservation plans; state, tribal, local, or private initiatives undertaken to improve the prospects of listed fish quite independent of any ESA requirement; efforts to avoid taking listed species; and habitat improvements accomplished under numerous regulatory programs for protecting other resources, such as the CWA, state and Federal regulations governing fill and removal in waterways, and the like.

NMFS believes this final rule reflects the necessary and appropriate level of protections for conserving these threatened ESUs given our current

knowledge. As the preamble to the proposed rule noted, NMFS recognizes that new information may lead to changes in the final rule. NMFS has not yet completed recovery planning for the species subject to this final rule, nor does the ESA command that recovery planning precede enactment of 4(d) regulations. Once recovery planning is complete, NMFS may amend the 4(d) protections with any combination of new or amended limits, impose the take prohibitions if a limit were found not to be consistent with a necessary and appropriate recovery measure, or require enhancements or prescriptions.

Comment 55: A few commenters asserted that NMFS gives no indication that it intends to comply with ESA sections 7 or 10 in promulgating or implementing these rules.

Response: Promulgation of a section 4(d) rule is a Federal action requiring consultation under section 7 of the ESA. NMFS must ensure through its internal consultation process that the 4(d) rule being promulgated is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitat. NMFS completed the required consultation and concluded that promulgation of this rule greatly improves protections for threatened salmonids and their habitat, and is not likely to adversely affect either those ESUs or other listed species. NMFS has complied with its section 7 consultation requirements.

Where take prohibitions are imposed, those pursuing actions that may take listed salmonids may choose to apply for a section 10 permit at any time. Section 10 permits are issued on a case-by-case basis supported by individual analysis and section 7 consultation. Where NMFS has found it not necessary to impose take prohibitions, there would be no basis for issuing research or enhancement or incidental take permits through section 10, provided the action is carried out in accordance with the requirements of the applicable limit.

Comment 56: One commenter urged that NMFS make clear that no state or local rule shall hinder NMFS or citizens from taking legal actions to ensure salmon recovery. Another asked that NMFS provide for citizen enforcement and appeal of local government permits re ESA issues. A third commenter suggested that the limits be revised to reflect the idea that they extend only so far as local governments' reasonable interpretation and application of its own rules.

Response: This final rule does not in any way alter the ESA's enforcement provisions, including the rights of third parties to enforce under appropriate circumstances. Second, NMFS believes the proposed rules clearly established that in any enforcement proceeding where there is a question whether an action is "in compliance with" one of the described limits, it is ultimately the defendant's (or respondent's) responsibility to assert that issue as an affirmative defense and establish facts that show compliance. In order to dispel any confusion by the public on this point, NMFS has added a subsection, "Affirmative defense," to spell out that it will be the defendant's or respondent's obligation to plead application of and compliance with a limit as an affirmative defense. This approach is consistent with the structure of the proposed rule and with ESA section 1539(g) which states "In connection with any action alleging a violation of section 1538 [the section 9 prohibitions] of this title, any person claiming the benefit of any exemption or permit under this chapter shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation." NMFS anticipates that in most cases, the applicability of individual limits will be resolved early in an enforcement investigation. Enforcement personnel will make reasonable efforts to attempt to rule out the applicability of 4(d) limits by, for example, evaluating circumstantial evidence, or through direct contact with the potential violator and subsequent confirmation through reliable third party sources. However, ultimately it is not the agency's responsibility to determine the existence or nonexistence of every exculpatory fact relating to an alleged ESA violation. This clarification is also consistent with existing case law, which generally holds that the burden of raising and proving affirmative defenses rests with the defendant, not with the government (see, e.g., *Patterson* v. *New York*, 97 S.Ct. 2319 (1977)).

As to the third comment, once a state or local government program comes within a limit (for instance, local development ordinances found by NMFS to meet the standards of the rule), it will be up to the local government to implement that ordinance, including any necessary exercise of reasonable judgement. If monitoring or other information indicates that the ordinance, as implemented, is not providing adequate protections, then the adaptive mechanisms in the 4(d) rule will trigger changes in the ordinance, imposition of the take prohibitions, or imposition under the ESA of affirmative requirements.

Comment 57: One commenter suggested that the standards set in the 4(d) rule to qualify for a limit are higher than landowners would otherwise be required to meet to avoid take. Another stated that there was no consistent conservation standard applied in evaluating potential limits.

Response: NMFS must respectfully disagree. The limits described in this final rule do not in every circumstance avoid all take. To do so would require much more stringent steps in some cases. Rather, the limits reflect NMFS' judgement that activities in compliance with such a program or approach are what current information indicates will be necessary and advisable for that activity sector to conserve the ESUs. Activities in compliance with such a program or approach will not appreciably reduce the likelihood of survival and recovery of the species in the wild and, where necessary, will include other conservation measures to repair or improve conditions. Nonetheless, it is expected—and in some cases demonstrable—that activities satisfying the conditions for inclusion within one of the limits will still take listed salmonids.

In evaluating fishery management programs to determine if they qualify for a limit, NMFS relies on the concept of viable salmonid populations and its associated use of viable and critical thresholds for management decisions. The limits require that relevant biological parameters be identified so individual population status can be evaluated and the program may be placed in an appropriate context for determining whether it will support population viability. Land management related programs being considered for limits are assessed according to their ability to help attain or maintain properly functioning conditions (i.e., those conditions NMFS considers necessary for supporting viable salmonid populations).

Comment 58: Several commenters noted that NMFS had not made the case that take prohibitions (or any ESA 4(d) rules) are needed for these ESUs, or for specific sectors of activity. Some assert that NMFS should first demonstrate that conservation activities applicable to Federal activities have been fully tapped before applying 4(d) rules to private lands.

Response: NMFS must respectfully disagree. While the contribution of non-Federal actions to the overall decline of the ESUs affected by this final rule varies, depending in part on the ratio of Federal to non-Federal lands and in part

on the concentration of habitat modifications and non-Federal hatchery or harvest impacts, NMFS could not justify placing all hope of sustaining and recovering these ESUs on Federal agency actions alone. The record upon which NMFS listed these ESUs is abundantly clear that the decline of the ESUs is substantially influenced by actions other than those with some Federal nexus. While section 4(d) provides the Secretary some discretion in determining what protective regulations are necessary and advisable in a given circumstance, the structure of the section strongly supports the appropriateness of a determination to impose take prohibitions.

Comment 59: At least one commenter, while agreeing that the limits are not prescriptive rules, states that the rule making record does not support "this wide-ranging prescriptive rule" which the commenter believes prohibits "a very wide variety of activities that might occasionally "take" listed species" without NMFS' permission.

Response: To repeat the preamble text from the proposed rules, "[t]he fact of not being within a limit would not mean that a particular action necessarily violates the ESA or this regulation." NMFS has attempted to make even clearer in this final rule that activities that are not within a limit are not prohibited. What is prohibited is taking a threatened salmonid through any activities not within a limit. Those conducting activities that are not within a limit are subject to liability only if it can be demonstrated that their activities in fact have taken a threatened salmonid. An actor believing that its actions result in incidental take may apply for an incidental take permit under ESA section 10 to ensure that no enforcement liability accrues.

Comment 60: Two commenters noted that they had requested the decision-making record (for the proposed rule) and were told that it was "unavailable for public review."

Response: Both proposed 4(d) rules included a "References" section that offered a list of the references relied on. These documents were available to the public. That is all that informal rulemaking requires.

Comment 61: A few commenters noted that it is inconsistent with the ESA to apply the "jeopardy" standard (to not appreciably reduce the likelihood of survival and recovery in the wild) in a 4(d) rule; also, doing so for tribal plans is inconsistent with the standard applied for other "exemptions." One commenter urged that NMFS model all of the limits after the limit for tribal plans, which provides a process for NMFS to determine a plan's consistency with ESA standards, but does not set out specific requirements or standards.

Response: NMFS believes that none of the limits will jeopardize the listed species' survival or recovery and that each habitat-related limit will contribute to placing habitat on a trajectory toward proper function and populations on a trajectory toward viability. It is worth noting that in practical application, distinctions between what is needed for survival and recovery and between providing for recovery and not jeopardizing the likelihood of survival and recovery are speculative at best and perhaps specious. The limit for tribal plans applies that same standard but without specific requirements or standards, in deference to tribal sovereignty and the government-to-government basis on which NMFS interacts with tribes. It is important to note that while there is less specific guidance with respect to tribal resource management plans, they will be assessed against the fundamental ESA standard (whether they will appreciably reduce the likelihood of survival and recovery in the wild), as have the other limits, and that any determination regarding tribal resource management plans will be accompanied by a description of the biological rationale for its outcome.

Comment 62: One commenter believed that the ESA 4(d) limits are "negotiated," "second class" HCPs appropriate only to larger governmental entities and that they consign jurisdictions with smaller population bases to the fringes of the process. Another urged that all limits should be drafted so that they are made available to any government wanting to participate and get coverage under the limit.

Response: While NMFS does not agree with the commenter's characterization of the limits, we have broadened some of the limits' availability and modified others in such a way that they are more adaptable for smaller or more rural jurisdictions. For instance, the development limit no longer targets only to "urban density" development, and the road maintenance limit is available to any jurisdiction. These sorts of adjustments are the very heart of the 4(d) limit process—they illustrate NMFS' intention to create an open process of public review and adapt our proposals (when we may) in accordance with the feedback we receive.

Comment 63: One commenter suggested that NMFS should create "categorical exclusions" for activities not requiring the ongoing review and monitoring required in the proposed rules. The commenter points to FWS regulations that permit the Utah prairie dog to be taken under Utah state permits.

Response: In this final rule NMFS has made a number of adjustments to make limits more broadly available and to minimize requirements for oversight. However, the prairie dog provision the commenter cites makes very clear that if those takings interfere with conserving the species, FWS may immediately prohibit further such takings. Similarly, NMFS believes that the level of "tracking" required in this final rule will ensure that impacts from non-prohibited activities are consistent with conserving the threatened salmonids.

Comment 64: Some commenters asserted that the "proposed requirement" for protecting flows for listed species should be addressed in a local government's ordinance is beyond the scope and authority of a local government.

Response: Evaluation consideration "J" for the MRCI limit asks that the local government ordinances ensure that [new] development-related water supply demands can be met without impacting flows needed for threatened salmonids. This request does not require local government to regulate water rights or otherwise control flows; it asks only that new development demonstrate that its new water demands can be satisfied without undercutting flows required by threatened salmonids.

Comment 65: One commenter suggested NMFS should delegate to state and local officials authority to limit the take prohibition or provide a "certificate of safe harbor." Another commenter suggested that ESA section 9 take prohibitions cannot apply within a state unless the state has also adopted those regulations. This comment relies on the reference within 4(d) to section 6(c)(" ...such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State").

Response: The approach NMFS takes in this final rule aims to recognize and encourage state and local programs wherever NMFS finds them adequate. Nothing within the ESA would give NMFS the authority to delegate the functions suggested, unless a state had the full set of authorities required under section 6 of the ESA for state "assumption" of a program. No state has as yet met those qualifications, which would include having all authorities necessary to conserve the listed species

(such as the ESA provides through section 9, etc.). Therefore, the cited text of section 4(d) does not apply.

Comment 66: Another commenter suggested NMFS lacked authority to "delegate" scientific research permit authority to the states.

Response: As discussed in response to an earlier comment, this final rule does not delegate permit authority to states. For a subset of all research activities, this final rule does not apply take prohibitions, leaving those research activities subject only to state permitting. For other research, ESA constraints are still in place and researchers should seek ESA section 10 permits (for instance, for research in which private parties intentionally take listed fish.)

Comment 67: Several comments assert that the ESA 4(d) rules will result in takings of private property. One asked that the rule provide greater flexibility for redevelopment to prevent takings of private property.

Response: The legal effect of this final rule is to prohibit take of threatened salmonids. Complying with that mandate will certainly cause some changes in land management and use and that may affect the economic value of certain activities on the land to a greater or lesser extent—depending on the circumstance. This final rule does not, on its face, prohibit property use in any way that would rise to the level of a constitutional taking, nor does NMFS believe that the adjustments necessary to avoid taking threatened salmonids will be so draconian as to amount to a constitutional taking in any case.

Although NMFS does not agree that this final rule would likely cause a constitutional taking of property, NMFS did intend that the development limit should be broadly available and has amended and clarified the regulation to accomplish that purpose, including specifically naming redevelopment as one of the activities that individual ordinances could cover within the limit.

Comment 68: Many commenters desired that NMFS clarify the status of the limits: either wanting to be sure they are not prescriptive, or believing they should be hard requirements. Commenters also wanted to know if activities outside a limit constituted a violation of the rule.

Response: The limits are not prescriptive. They are not even enforceable requirements; rather, an entity wishing assurance that its actions are consistent with the ESA may take the necessary steps—as outlined in the regulations—to come within a limit on the take prohibitions. No enforcement action can be taken based on a charge that someone has failed to follow a limit. Enforcement actions must allege (and ultimately prove) that a listed fish has been taken.

NMFS understands that some commenters would prefer the agency to promulgate specific, detailed regulations to govern particular sectors of activity. For a variety of reasons, NMFS has not chosen that course at this time. Specific proscriptions are an effective protective mechanism where, as with threatened sea turtles, a very specific cause of mortality can be addressed with precision. In the case of Pacific salmonids, where impacts are caused by a large array of activities and where the circumstances leading those impacts to constitute a take are extremely site- or circumstance-specific, NMFS believes it extremely difficult to design a single set of prescriptive rules to cover all of those situations. In addition, prescriptive regulations would likely impose unnecessary costs on some individuals. This is because state, local and individual strategies for avoiding take can be more closely adapted to the local geography or fishery opportunities than can rules that cover an entire landscape. Thus they are equally as effective (or more so) at avoiding take of listed species and less costly than regionwide, blanket prescriptions. The approach taken in this final rule, recognizing limits but not requiring all entities or actors to be within a limit, offers an opportunity to test particular combinations of approaches without requiring everyone to invest in them immediately. Finally, as noted elsewhere in these responses, once recovery planning is complete it may identify specific areas needing more prescriptive attention.

Comment 69: Numerous comments suggested that the rule intrudes impermissibly on state water law. Commenters questioned NMFS' understanding of western water law and authority to regulate water.

Response: First, as discussed elsewhere, this rule does not directly regulate water use or water rights in any way. Rather, water diversion was identified as an activity likely to result in take under particular circumstances. There is nothing in the ESA that would carve water use out of the bundle of activities that might lead to an enforceable take of salmonids, nor that would excuse senior water users from responsibility for any take that occurs as a result of their actions. NMFS does not disagree that on a case-by-case basis, questions or priority may be germane to determining causal responsibility for particular impacts. In "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000), NMFS provides more information on how water users may evaluate the level of risk of take associated with their diversions and explores options for reducing that risk.

Comment 70: One commenter asked NMFS to clarify whether ESA section 7 compliance "is a substitute for" compliance under the rule. Another requested that NMFS include an explicit limit for any entity whose actions have been the subject of an informal consultation in which NMFS has concurred that the action is not likely to adversely affect the threatened species.

Response: Section 7 compliance is an adequate substitute for compliance under this rule. So long as an entity is acting within a completed formal ESA section 7 consultation and compliant with terms and conditions imposed, if any, then section 7(o)(2) provides an exception to the prohibitions on taking. Actions subject to informal consultation have a very low probability of take and are thus in the category of activities that do not need to pursue a limit.

Comment 71: Take prohibitions should be applied to California's Central Valley, especially the Yuba River area.

Response: The Central Valley steelhead ESU is subject to this final rule. NMFS expects to propose ESA 4(d) protections for the Central Valley spring chinook ESU (listed in September of 1999) within the coming months. Meanwhile, that ESU will benefit from habitat protection afforded by steps taken to avoid taking Central Valley steelhead.

Comment 72: One commenter stated that contrary to the Executive Order on Federalism (E.O. 13132), this final rule's intervention (monitoring and reporting/adjustment of limitations) in state and local land use governance exceeds NMFS' authority by unnecessarily infringing on state sovereignty. Another suggested that the final rule should state that NMFS is not requiring consistency between state and local regulatory programs and objectives of the ESA.

Response: NMFS does not agree that this rule intrudes upon state or local authorities or sovereignty. This rule does not require states to undertake any particular set of actions. It requires that states (like all other actors) refrain from taking threatened salmonids. It provides one mechanism that actors (including states for some of the limits) may pursue to ensure that they do not violate take prohibitions. A state could instead choose to pursue ESA section 10 permits. Where there is a Federal nexus, state actions may receive ESA scrutiny and legal assurance through an ESA section 7 consultation initiated by the action agency. Or, in appropriate cases,

a state may determine in its own judgement that particular activities do not carry a risk of taking listed fish, or it may modify its activities in such a way as to reduce any risk of take to an acceptable level.

Comment 73: One commenter argues that the VSP paper is inconsistent with the statutory requirements of the ESA, because of the statement in the preamble to the proposed rules that a "viable population threshold refers to a condition where the population is self sustaining, and not at risk of becoming endangered in the foreseeable future." The commenter suggests this implies a threatened species can be allowed to remain in threatened condition perpetually, and still be considered viable.

Response: The commenter has identified an imprecise characterization that was included in the preamble to the proposed rules. This statement has been removed. As explained in response to other comments on VSP, the VSP paper does not attempt to define "threatened" or "endangered" under the ESA.

Comment 74: Some commenters stated that NMFS is abusing its discretion by not invoking section 9 prohibitions, and instead relying upon promised conservation efforts and future actions that are not currently operational.

Response: This final rule relies upon a determination that a conservation program approved for a limit of the take prohibition has a high degree of certainty that it will be implemented. NMFS may require a commitment to mitigate if implementation of a program is terminated prior to completion.

Comment 75: One commenter asserted that NMFS should not or cannot incorporate guidance by reference unless it has undergone ESA section 7 analysis.

Response: First, because of modifications made in response to comments, this final rule incorporates far fewer documents by reference. Second, while there is no requirement for a section 7 consultation on such documents, those referenced in the final rule have been analyzed to ensure that actions under them will not appreciably reduce the likelihood of survival and recovery of the listed ESUs in the wild.

Comment 76: One commenter wanted the rules modified to prohibit Federal agencies from activities that "take" threatened salmonids.

Response: In most cases this final rule does not specifically address Federal agency actions. Once take prohibitions are in effect, they apply to all actors—Federal and non-Federal alike. Second, the ESA requires that Federal actions be assessed under section 7(a)(2), and nothing written in a 4(d) rule would excuse that obligation. Once NMFS has issued a biological opinion and incidental take statement for Federal agency actions, section 7(o) of the ESA relieves the agency of liability for take.

Comment 77: One commenter asserted that the rules could make the controllers of certain activities (such as noxious weed control) vulnerable to third-party lawsuits. Commenters expressed concern about municipal and irrigation district liability for issuing permits that result in take. One commenter stated that municipal entities cannot be held liable for take if the entity does not have discretion in issuing a permit.

Response: The first commenter is correct that under the ESA the take prohibitions are enforceable by NMFS or by third parties. This final rule does not create any enforcement routes not specified in the ESA. The take prohibitions apply to all actors, so municipalities and irrigation districts certainly face the possibility of liability; actual liability would depend on specific factual circumstances and the degree of connection between the permit and the take that actually occurs. As to the suggested legal interpretation that a municipal entity's lack of discretion in deciding to issue a permit would be an absolute defense to liability, NMFS believes that question must be addressed in the specific enforcement context in which it arises.

Comment 78: One commenter noted that in cases where documents create new legal rights or duties, they are considered "substantive rules" and must be either published in the **Federal Register** or be incorporated by reference through the Director of the Federal Register. Therefore, NMFS should clarify how subsequent amendments to these referenced documents will be treated.

Response: There are seven documents referred to in the regulatory text of this final rule. The purpose of making these documents available to the public is to inform governmental entities and other interested parties of the technical components NMFS expects to be addressed in programs submitted for its review. These technical documents provide guidance to entities as they consider whether to submit a program for a 4(d) limit. The documents represent several kinds of guidance, and are not binding regulations requiring particular actions by any entity or interested party. NMFS will continue to review the applicability and technical content of its own documents as they are used in the future and make revisions, corrections or additions as needed. NMFS will use the mechanisms of this final rule to take comment on revisions of any of the referenced state programs. If any of these documents is revised and NMFS relies on the revised version to provide guidance in continued implementation of the rule, NMFS will publish in the **Federal Register** a notice of its availability stating that the revised document is now the one referred to in the specified 223.203(b) subsection.

Comment 79: One commenter suggested that NMFS clarify the regulation regarding withdrawal of a take limit, believing those in the proposed rule to be unnecessarily harsh.

Response: NMFS has modified the language throughout this final rule to clarify this point.

Comment 80: One commenter stated that the final rule should be non-severable, so that if any or all limits are overturned in a legal challenge, the take prohibitions will not remain in effect. Another suggested that no take prohibition should be imposed until broad limits are available for virtually all sectors of human activity.

Response: A fundamental precept of this final rule is NMFS' determination that the subject ESUs require 4(d) protections. Given that, it would be inconsistent with NMFS' ESA responsibilities to the threatened fish to defer any protections in that manner. NMFS has clarified this point by making it explicit that the agency intends the provisions of this rule to be severable.

Comment 81: Because NMFS broadly applies PFC as standards with a regulatory effect, PFC guidance and supporting science should be subject to public notice and comment before it is formally applied to ESA 4(d) limitation approvals.

Response: PFC requires the maintenance of habitat functions essential to the survival and recovery of listed salmonids. As such, the use of the PFC approach as an analytical tool adds no standard to that already established in the ESA, but rather assists NMFS and the users in evaluating effects of activities on conservation of the species.

Comment 82: One commenter asked NMFS to clarify whether the take prohibition applies throughout the range of the ESUs or only in designated critical habitat. Another asserted that NMFS has created a de facto extension of critical habitat.

Response: The take prohibition applies throughout the range of the affected ESUs. Critical habitat designation gives guidance to Federal agencies, and is not directly linked to ESA section 4(d) in any way. As to the

assertion that the rule creates "de facto" critical habitat, NMFS must respectfully disagree. Contrary to the commenter's perception, this rule does not suggest that "highly burdensome and expensive 'safe harbors' are what it takes to avoid ESA section 9 take liability." The rule provides one method of ensuring that no ESA section 9 take liability accrues, but there are other methods such as section 10 permits. Or, an actor may determine in its own judgement that particular activities do not carry a risk of taking listed fish, or modify its activities in such a way as to reduce any risk of take to an acceptable level.

Direct Take

Comment 83: Some commenters contended that under the ESA, and court decisions interpreting it, NMFS does not have the discretion to "allow" or "authorize" direct take of listed species through 4(d). The commenters cite cases in which the courts have determined that FWS could not authorize hunting of threatened wolves or grizzly bears unless it had first determined that "population pressures within the animal's ecosystem cannot otherwise be relieved."

Response: In these rules the Secretary is making an initial determination as to what protective regulations are "necessary and advisable to provide for the conservation of" the listed salmonids. In making that determination, the Secretary is not required to impose take prohibitions. In fact, section 4(d) goes on to state that "[t]he Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1)..." Thus, the Secretary has discretion to assess the status of the listed ESUs and to determine, as he has here, that blanket application of the take prohibitions is not necessary and advisable, and to describe the circumstances in which take prohibitions will not be applied. The Secretary has found that in certain circumstances, activities are sufficiently regulated by other entities or processes that Federal take prohibitions are not necessary and advisable.

In a variety of circumstances, take prohibitions might not be found necessary and advisable to provide for the conservation of a threatened species. For instance, if a threatened species is located almost exclusively on Federal lands and impacted largely by a Federal activity on those lands, the Secretary might determine that section 7 consultations will provide all the protections necessary to allow the species to recover. Or, a threatened species might be threatened because of negative impacts from a narrow class of human activity. In that circumstance, the Secretary might choose to impose prescriptive regulations tailored specifically to alter those activities in a manner that would allow the species to recover.

More importantly, the biological impact of take on the ESU is the same, whether a particular number of listed fish are lost as a result of incidental impacts or intentional (directed) impacts. Situations in which this final rule would limit the application of take prohibitions for intentional taking of threatened salmonids are extremely limited and consistent with the conservation and recovery goals of the ESA. Scientific research activities conducted by fisheries experts, in accord with specific guidance, and permitted by a state, can be within the limit. Harvest activity will have direct impacts in very few situations—generally where the status of the affected population is already considered viable, even though the status of the larger ESU is not. Taking listed broodstock for artificial propagation might occur for conservation purposes (or, only after the species' conservation needs are met, for secondary purposes such as fisheries).

Comment 84: A few commenters stated that in excusing direct take through harvest, NMFS is placing a far more demanding burden on other sectors (such as land use) in terms of minimizing and avoiding incidental take. They asserted that the demands/standards should be equivalent.

Response: This final rule is far from "excusing direct take through harvest" in any blanket fashion, as the comment may be read to suggest. Rather, in setting out the standards by which any fishery harvest program will be judged, NMFS has emphasized the means by which a management scheme maintains or achieves viable status for a population rather than on the specific mechanism by which that impact may be incurred. This final rule does not give a pass to any specific management plan at this time; each plan must be made available for public comment and reviewed against the standards for an Fishery Management and Evaluation Plan (FMEP). NMFS anticipates few instances, especially in the early stages of recovery, where such plans will include impacts targeted on threatened salmonids.

The standards by which NMFS will judge the suitability of any program for a limit are the same, whether the program manages fishery harvest or some type of land management activity. In both instances, such a program may have some impact on the listed ESU, but at a level that will not appreciably reduce the likelihood of its survival and recovery in the wild. Because current habitat conditions are in most cases far below those needed to support viable populations in the wild, additional impacts on habitat must be carefully constrained and in many cases, accompanied by mitigative measures.

Comment 85: One commenter stated that the proposed rule does not (but should) address commercial harvest and noted that NMFS recently increased the allowable commercial take of salmon which will unavoidably include some listed fish.

Response: The prohibition against take applies to all activities subject to U.S. jurisdictions, including commercial, recreational, and tribal harvest. The commenter refers to commercial harvest in the marine context, which is evaluated through section ESA 7 consultations. Any commercial activity in non-ocean fisheries would have to be governed by an FMEP in compliance with all of the standards of these rules.

NEPA

Comment 86: Some commenters wanted NMFS to clarify the extent to which NEPA applies to the ESA 4(d) rules.

Response: NEPA applies to the ESA 4(d) rules and, as the proposed rule states, NMFS completed environmental assessments (EAs) for this action. Those EAs were made available upon request and on NMFS' web site during the comment period.

Comment 87: Several commenters suggested that the EAs failed to examine a full range of alternatives (such as the Oregon Plan) or that they did not adequately discuss and evaluate the impacts of the proposed action.

Response: While none of the alternatives focus specifically on the Oregon Plan by name, Alternative B contemplates that a state "would have developed a fully adequate comprehensive salmon conservation plan ...to ameliorate all factors for decline for ...an ESU." The EA assesses what impacts a fully adequate plan would have on the environment, assuming that NMFS recognized such a plan by not applying the take prohibitions to actions in conformance with it. NMFS has reexamined the EAs in light of these comments and believes they explored an appropriate set of alternatives.

Comment 88: One commenter noted that NEPA requires a quantitative assessment of consequences of the proposed rule and that agencies should

ensure the scientific integrity of discussions and analyses in NEPA documentation—including explicit reference to the sources relied upon in making the determination.

Response: The comment would be appropriate to an Environmental Impact Statement (EIS). However, an EA should not contain long descriptions or detailed data. Rather, it should contain a brief discussion of the need for the proposal, alternatives, and the environmental impacts of the proposed action and the alternatives. Hence, NMFS believes the level of detail provided is adequate for an EA, which is expected to be a concise, brief document.

Comment 89: Some commenters asserted that the ESA 4(d) rules will allow significant negative impacts from logging, water withdrawal, agriculture, etc. to continue; hence, NMFS should draft an EIS disclosing these significant impacts. Others stated that the simple act of proposing the 4(d) rules required documentation in an EIS and that the final rules should be delayed until such an EIS has been written.

Response: While such activities may have significant negative impacts on the human environment, they do not occur as a result of the ESA 4(d) rules. The comment argues for regulations that will reduce those negative impacts. As the EAs reflect, the take prohibitions will do that. While the commenters may question whether the take prohibitions are the best tool for reining in those negative impacts, the final 4(d) rules as written do not cause any of those impacts. Therefore, no EIS is required for the 4(d) rules.

Take prohibitions are the sole legally enforceable component of these 4(d) rules, and will impact the environment in a positive manner, phasing in over a long period of time (especially with regard to habitat impacts). The Council of Environmental Quality regulations make clear that the fact that an action will have net beneficial environmental impacts does not excuse preparation of an EIS where there are also significant negative impacts (40 CFR 1508.27—definition of "significantly"). In this case the EAs reveal no significant negative environmental impacts, and NMFS believes the EAs satisfactorily address NEPA. Economic impacts need be evaluated only when required as part of the process of preparing an EIS, not as a reason for doing one. (See 40 CFR 1508.14, "This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.") Finally, a belief that the take prohibitions do not go far enough to stop activities that harm the environment is not an argument for an EIS.

Comment 90: One commenter stated that NMFS incorrectly asserts in the EAs that all environmental effects resulting from actions that respond to the ESA 4(d) rule are the independent analytical burden of state and local governments and NMFS will not need to consider or address them. They further stated that NMFS must grapple with the environmental effects of its proposed actions, many of which will be negative for irrigation, noxious weed control, use of pesticides, livestock grazing, etc.

Response: NMFS agrees that this statement in the EAs should have been drafted more clearly. It must be read in the context in which it appeared. The immediately preceding sentence stated "In addition, any future regulation, policy, program, or plan that NMFS feels is protective of [listed salmonids] and for which NMFS limits the section 9(a) prohibitions, will further reduce the impacts of the 4(d) rule." In that context, the following modified statement would have been clearer: "All of the potential impacts attributable to any future limits will be due to those state or other governmental regulations, policies, programs, or plans, rather than to the 4(d) take prohibitions."

Economics/Regulatory Flexibility Analysis

Comment 91: Several commenters raised issues related to E.O. 12866, and stated that NMFS should do a cost/benefit analysis on the promulgation of this rule.

Response: NMFS has prepared a Regulatory Impact Review (RIR), which is available on our web site at www.nwr.noaa.gov. Some of the comments, however, were based on a misunderstanding of the legal effect of this 4(d) rule and were made in the belief that the rule mandated compliance with particular limits. That is not so; this 4(d) rule does not (for instance) mandate watershed conservation plans. This final rule provides a limit on the take prohibitions for habitat restoration activities consistent with watershed conservation plans that meet certain standards, but does not require any person or entity to prepare watershed plans or pursue that limit; they may avoid violating the take prohibition by whatever mechanism they choose.

Comment 92: One commenter stated that in addition to demonstrating how each limit contributed to recovery, NMFS should discuss economic and social impacts of each limit.

Response: It is NMFS' responsibility to assess the economic impacts of the regulation overall; those impacts accrue from the take prohibition, not from the limits. NMFS completed an initial regulatory flexibility analysis (IRFA) and made it available for public comment through the proposed rules. Based on comments received, NMFS has broadened many of the limits to make them available to more jurisdictions, or to simplify the processes associated with them. For instance, the road maintenance limit is now available to any state, city, county or port. The development limit is available for any city, county, or regional ordinances or plans that cover development, or categories such as wetland or shoreline regulation. NMFS has supplemented the IRFA to consider some additional categories of economic activity, such as real estate, as well. The Final Regulatory Flexibility Act concludes that at the present time there is no legally viable alternative to the modified rule that would have less impact on small entities and still fulfill the agency's obligations to protect listed salmon and steelhead.

Comment 93: One commenter stated that NMFS should (and failed to) consult with every state and local entity regarding effects of the rules on those entities.

Response: The huge number of such entities within the geographic range covered by this rule makes such consultation far beyond NMFS' resources. However, NMFS held 25 public hearings, accepted comment on the rules for 60 days, and after publishing the proposed rules, held three workshops for state and local government officials in Olympia and the Tri-Cities in Washington and in Salem, Oregon. More than 150 city, county, and state jurisdictions participated in these workshops.

Comment 94: One commenter stated that the IRFA was inadequate in its analysis of alternatives, and that it "fails to even list" the small businesses related to residential and commercial development in its Table of Sectors.

Response: NMFS stands by the IRFA and affirms that it presents as much information on the possible effects of the take prohibition as could be obtained through any reasonable means. Moreover, comments were solicited on the proposed rules, but NMFS received none suggesting additional sources of relevant data. The IRFA Table of Sectors

included Heavy Construction and Highway and Street Construction, which would encompass a large proportion of the activity related to residential and commercial development. We have also added information on real estate and rental leasing to the Final Regulatory Flexibility Analysis. In addition, the RIR discusses the implications of the 4(d) rule in the urban setting—including activities associated with residential and commercial development.

Comment 95: One commenter stated that an independent third party should perform an analysis of the ESA 4(d) rules' economic impacts using economic information developed by the Federal Reserve. The commenter further stated that provisions for landowner compensation and exemption from property tax assessments must also be included as part of this rule.

Response: There is no requirement for third party analyses, nor that NMFS use information from any particular source in its analyses. In fact, NMFS has searched broadly for economic information that might provide more quantitative estimates of the potential costs of avoiding take. The Federal Reserve does not develop such data. NMFS has no authority to provide for landowner compensation or to alter property tax assessments. One of the reasons for the approach taken in this final rule is NMFS' hope that by working with local and state government entities toward comprehensive ESA solutions, there will be smaller impacts on individual actors than might accrue from take-avoidance strategies they might otherwise adopt. Also, as is the case for small landowners under the Forests and Fish Report strategy adopted by Washington and recognized in this final rule, in some circumstances local or state governments may elect to provide offsetting compensation.

Comment 96: Several commenters disagreed with aspects of the IRFA prepared for the proposed rules. A major concern was that the rule requires extensive reporting and paperwork.

Response: This final rule requires only one thing: that actors refrain from taking listed fish. That performance standard does not require reporting. While taking advantage of a limit does require some level of paperwork, that course is not required; an individual or entity may choose simply to modify its actions to avoid take. Nonetheless, NMFS is aware that in some circumstances the paperwork burden is likely to increase and we stand ready to help streamline the process, give technical advice, and in general decrease that burden wherever we can.

Recovery/Delisting

Comment 97: Many commenters raised issues regarding the timing of and relationships between ESA 4(d) rules and recovery planning. Several stated that NMFS should move forward quickly to develop recovery plans for listed species. Some requested that NMFS publish de-listing goals concurrent with the publication of the final 4(d) rules or withdraw the 4(d) rules until a recovery plan was complete. Related comments questioned whether, in the absence of recovery goals, NMFS could adequately assess the contribution to recovery made by the programs approved as limits on the take prohibition. Other commenters wondered whether the establishment of de-listing goals would require NMFS to reevaluate limits already approved or change the standards for evaluating additional limits. One commenter expressed concern that future recovery plans would simply "rubber stamp" 4(d) rules and their limits.

Response: Recovery planning, as required by ESA section 4(f), is one of NMFS' highest priorities, and NMFS agrees that it is important to move forward quickly to establish recovery plans for listed species. NMFS does not agree that it is either necessary or advisable to publish de-listing goals and final recovery plans concurrently with, or prior to, the final 4(d) rules.

There are no statutory or regulatory requirements regarding the timing or relationships between 4(d) rules and section 4(f) recovery plans. In fact, the basic structure of the ESA itself provides that the protective mechanisms of sections 7 and 10 take effect upon the listing of a species as threatened or endangered while recovery planning follows its course through subsequent activities. Recovery plans will provide biological goals for recovery and identify an entire suite of actions needed for recovery. Thus, they may provide a more specific framework for future 4(d) rules or amendments, but the essential protective function of 4(d) rules is independent of recovery plans; that function is to prohibit take of listed species where needed. If the 4(d) rules were not promulgated until de-listing goals were developed or recovery plans completed, the species would be placed at unacceptable risk, and more stringent and costly measures would be necessary to save them.

Moreover, by applying the VSP and PFC concepts it is possible to make judgments about the contributions certain programs make to recovery. These judgments will not prejudice the comprehensive recovery planning process.

For habitat actions, NMFS may find that it is not necessary or advisable to apply the take prohibition to programs that will help attain or protect properly functioning habitat. For FMEPs, NMFS may find it is not necessary or advisable to apply the take prohibition when the program contains specific management measures that adequately limit take and otherwise protect the ESU. For Hatchery and Genetic Management Plans (HGMPs), NMFS may find that it is not necessary or advisable to apply the take prohibition when a plan is designed to minimize and adequately limit take and promote species conservation. NMFS believes that these standards are all consistent with recovery, and expects that most programs approved as limits will provide a foundation for later recovery planning measures. NMFS also anticipates that the VSP and PFC concepts will continue to evolve and provide the analytical framework for evaluating potential limits and recovery measures.

Through the process of recovery planning, NMFS may develop more specific information about measures needed for recovery or about specific areas needing more prescriptive attention. In addition, each take limit incorporated into the 4(d) rules includes provisions for continued review of its implementation and effectiveness. Thus, NMFS intends to continually reevaluate the limits. If these evaluations, or information developed through recovery planning, or any other information, indicates that a limit is inadequate for recovery, NMFS will revisit the limit.

Finally, NMFS is moving forward as quickly as resources allow to develop recovery plans. NMFS has appointed Technical Recovery Teams (TRTs) for Puget Sound and for the Willamette/Lower Columbia River Basins and Southwest Washington. These teams have begun to identify delisting goals. To conduct the more policy-oriented aspects of recovery planning, NMFS will work with state, local, tribal, and private entities to craft a recovery planning process suited to specific areas and situations. Formal recovery planning efforts will be expanded to additional geographic domains as resources permit.

Comment 98: Several commenters addressed the issue of federal trust responsibilities to tribes in developing protection and conservation goals, plans, and measures. These commenters held that NMFS needs to make every effort to ensure that treaty rights and trust responsibilities are met through its

regulatory actions, and that thresholds, goals, and recovery plans support healthy, productive, and harvestable fish populations.

Response: NMFS approaches the ESA 4(d) rules as a vital component of conserving the species until the protections of the ESA are no longer needed. These protections will no longer be needed only if the abundance of fish is sufficient to satisfy treaty fishing rights and to fulfill the trust obligations of the United States.

Cumulative Impacts

Comment 99: A number of commenters questioned the reasoning behind NMFS including in the take guidance a category of activities that, while individually unlikely to injure or kill listed salmonids, may collectively have significant detrimental impacts. Commenters asserted that regulating such activities was beyond NMFS' purview. Others questioned how NMFS would enforce the prohibitions when take resulted from such activities.

Response: NMFS agrees somewhat with this comment. The discussion of activities that do not cause take individually but that cumulatively may have significant detrimental impacts on salmonids was intended to be advisory and informative in nature and no enforcement actions in response on these activities were being contemplated. The category of activities raised a number of concerns however, and the language has been struck from the rule. Nonetheless, it is important to note that a myriad of decisions made by individuals and institutions on a daily basis, while negligible in the individual case, may have, in the aggregate, a significant detrimental impact on the ecosystem processes that support salmon and steelhead.

Comment 100: Many commenters raised the issue of cumulative impacts. Some expressed concern that the 4(d) proposed rules did not assess the cumulative impact of all the take limits combined. Some also expressed concern that the individual take limits did not address cumulative impacts of activities covered under that limit. Several commenters requested that the final rules include an analysis of cumulative impacts as well as a mechanism for evaluating cumulative impacts caused by any future take limits. One commenter asked how and when NMFS would provide opportunities for the public to review and comment on ESU-wide assessments of cumulative take.

Response: The suggestions regarding cumulative impacts have great merit, and NMFS is moving toward implementing a method for assessing total take across broad sectors. That function, however, would not be specific to the 4(d) context. Impacts on listed species accumulate from natural conditions as well as from illegal and unauthorized take and from actions to which the take prohibition does not apply because they fall in the realm of some other ESA mechanism (section 10 permits; section 7 consultations, or specific provisions of a 4(d) rule). Cumulative impact assessment is problematic because there are very few methods for adequately assessing cumulative impacts of habitat-modifying activities. Nonetheless, NMFS has explicitly incorporated consideration of cumulative impacts into the 4(d) rules where feasible. For example, FMEPs will evaluate the cumulative mortality of all fisheries, and HGMPs will track the number of listed fish taken as broodstock. In addition, NMFS believes that by requiring habitat-modifying activities within a limit to attain or maintain properly functioning condition, and all activities within a limit to contribute to viable salmonid populations, cumulative impacts are, to an extent, accounted for. Moreover, during the process of developing comprehensive recovery plans, NMFS and recovery teams will address the issue of cumulative impacts more systematically. The public will have the opportunity to comment on ESU-wide assessments of cumulative levels of take during the recovery plan public review process.

Comment 101: A number of commenters recommended ways for NMFS to assess cumulative effects. One commenter asserted that meaningful assessments of cumulative risk at the ESU level would require linkage between VSP and PFC and development of a common method for evaluating the effects various activities have on populations and habitats. Another urged that NMFS adopt comprehensive habitat productivity standards to evaluate cumulative effects of habitat programs granted limits on the take prohibition. One commenter suggested that NMFS require all habitat-modifying activities to account for habitat-modification-related mortality. Another suggested that NMFS focus on cumulative take rather than dealing with take in its various permutations individually. Another suggested that the rules should mandate an annual cumulative take assessment (based on life cycle stages) for each population in an ESU. In addition, they desired that NMFS (a) examine mortality in the various populations and determine whether take from a particular sector is placing them at risk, and (b) separate human-induced mortality from that attributable to fluctuating environmental conditions and thereby adjust take regulations to provide more protection during times of environmental stress.

Response: NMFS agrees that all of these suggestions have great merit and, as mentioned previously, NMFS is moving toward implementing a method for assessing total take across broad sectors. Also, as mentioned earlier, assessing cumulative impacts is a difficult process. In most cases, there are no adequate standards for habitat productivity and developing them is a complex and long-term task. NMFS intends to work with co-managers to develop the necessary standards and assessment techniques. In addition, during the ESA recovery planning process, NMFS will assess the mortality burdens for each ESU and life-cycle stage.

Comment 102: One commenter asserted that limits for urban development should be analyzed within the cumulative impact context.

Response: NMFS agrees that cumulative effects should be an important consideration in analyzing the effects of MRCI development and redevelopment. To the extent that NMFS must prioritize the evaluation process, comprehensive MRCI plans with relatively broader scopes of activities, authorities, effects, and geography (and therefore greater cumulative effects) will generally be evaluated before plans with relatively smaller scopes. Applicants with smaller-scale plans should take particular care that their effects analyses take cumulative impacts into account.

Comment 103: Several commenters questioned whether NMFS had completed requisite cumulative effects analysis under ESA section 7 and NEPA.

Response: NMFS has complied with section 7 consultation requirements on the adoption of the 4(d) rules by consulting both internally and with FWS. In addition, NMFS has completed an EA for this action pursuant to NEPA.

Comment 104: One commenter asserted that the cumulative impacts consideration required by § 223.203(b)(8)(iii)(A) is unreasonable due to lack of clear scientific consensus on how to do so.

Response: Cumulative impacts analysis has been routinely required by NEPA, ESA, and many other Federal and state authorities for several decades and NMFS does not believe it presents an insurmountable obstacle to development of acceptable watershed

conservation plans (WCPs). In fact, it would be difficult to complete an adequate watershed analysis without having considered cumulative impacts. NMFS is confident that state WCP guidelines will be able to offer sufficient technical advice so that entities developing WCPs will be able to meet the cumulative impacts requirement.

Comment 105: Some commenters held that the rules failed to regulate activities consistent with their incremental effects, and that the effect of the rules would be to focus NMFS staff time on urbanized areas, while greater benefit could be gained by identifying habitat areas where the most good could be achieved at the least cost, and then bringing Federal, state, and local resources to bear upon those areas. Other commenters expressed concern that the rules would disproportionately regulate the impacts of habitat modification compared to the impacts of harvest activities.

Response: NMFS does not believe that the 4(d) rules fail to regulate activities consistent with their incremental effects. The 4(d) rules "regulate" primarily by putting into place the ESA section 9 take prohibitions. This take prohibition applies to all activities, regardless of their incremental impact on a listed species. The rules then identify certain activities that already conserve the species and for which no additional ESA regulation (i.e., take prohibitions) are necessary. These activities span a broad range and include research, aiding stranded salmonids, managing harvest and hatcheries, and land uses such as forestry, development, and road maintenance. NMFS hopes to continually expand the scope of these limits to encompass additional activities not currently addressed by limits, wherever such efforts are biologically warranted.

Limits for Scientific Research and Rescue/Salvage

Comment 106: Several commenters stated that the ESA 4(d) limit for scientific research activities (research limit) would place excessive reporting requirements on state fisheries agencies and that these agencies lacked the funding and staffing to accommodate the additional workload.

Response: NMFS acknowledges that, as a result of promulgating the take prohibitions, state fisheries agencies will now have a higher level of accountability for reporting take of listed salmonids and that some ESA-related reporting will be new for these agencies. However, all of the affected agencies currently oversee research permit processes for fish sampling in state waters and NMFS believes that the workload associated with this limit should be comparable with state reporting/recordkeeping requirements already in place. Much of the information NMFS is requiring under the research limit is currently generated by the state's permit process, which presently covers all entities (e.g., Federal, academic, private, and other state agency researchers) other than biologists employed by the state fisheries agency. However, these agency biologists typically produce research summaries that NMFS believes could be efficiently translated into the annual state reports supporting this limit.

Moreover, a major impetus for providing the research limit is to allow the state fisheries agencies to continue to oversee and coordinate research efforts for listed salmonids. The ESA's section 10 permitting process does not always facilitate state oversight/coordination and NMFS believes that it is advisable to minimize research impacts by streamlining the research review process in a manner that fosters active participation by state fisheries agencies. It is worth noting that as a result of previous 4(d) rulemaking (50 CFR 223.204(a)(4)), ODFW has successfully coordinated and reported scientific takings per a 1997 research limit involving listed coho salmon in southern Oregon. NMFS will work closely with all of the affected states and research entities to expand on this success while minimizing the reporting workload by incorporating existing state processes into those supporting the 4(d) limit for scientific research.

Comment 107: Some commenters asked whether research involving direct take of listed salmon and steelhead would still require a section 10 permit and whether incidental take would be covered under the ESA 4(d) rule.

Response: Research and monitoring activities involving either directed or incidental take of the 14 ESUs identified in this rule are covered by this 4(d) limit. Therefore, state-approved activities covered by this limit would not need to go through a separate section 10 permit process. However, if the research is not covered by the research limit, then an applicant would need to obtain an ESA section 10 permit before conducting research that could take a listed salmonid.

Comment 108: Several commenters were confused by the language describing provisions under "Continuity of Scientific Research" and requested clarification as to what applications were needed and when take prohibitions would become effective.

Response: As described in the proposed rules, NMFS is concerned with the potential for disrupting ongoing scientific research, monitoring, and conservation activities, especially during the coming summer/fall field seasons. Therefore, the agency is providing a temporary limit on the take prohibitions to allow such activities to continue until March 7, 2001 so that the necessary paperwork can be processed. However, to qualify for this "temporary" limit, researchers must submit a section 10 permit application to the Assistant Administrator for Fisheries (AA), NOAA by October 10, 2000 for research activities affecting listed fish in any of the 14 salmon or steelhead ESUs identified in this rule. Applicants would be subject to take prohibitions only after their permit application is denied, rejected as insufficient, or the "temporary" limit period expires, whichever occurs earliest. Researchers failing to submit an application by October 10, 2000 would be subject to take prohibitions beginning on September 8, 2000 for the seven steelhead ESUs and on January 8, 2001 for the seven salmon ESUs. NMFS will make every effort to respond to applicants in a timely fashion. However, researchers are advised to prepare for unavoidable delays that may result from the anticipated load of section 10 permit applications that will be presented to NMFS.

Parties requesting coverage under the ESA 4(d) limit on scientific research activities should consult with the ODFW, the California Department of Fish and Game (CDFG), the Idaho Department of Fish and Game (IDFG), or the Washington Department of Fish and Wildlife (WDFW) to determine when related applications are due to these oversight/coordination agencies. By October 10, 2000, NMFS will expect these agencies to submit a letter of intent to the AA, NOAA, summarizing the types of research to be covered under the 4(d) limit for any of the 14 salmon or steelhead ESUs identified in this rule. This letter will serve as a placeholder for these agencies (and the entities identified in their letter) until they can submit to NMFS a more comprehensive assessment of scientific research activities planned for the 2001 research season. Take prohibitions for these applicants would become effective after their application for the 4(d) limit is either rejected by NMFS or the "temporary" limit period expires, whichever occurs earliest. Applicants failing to submit a letter of intent by October 10, 2000 would be subject to take prohibitions beginning on

September 8, 2000 for the seven steelhead ESUs and on January 8, 2001 for the seven salmon ESUs. NMFS will work closely with the affected state agencies and researchers to select suitable reporting time frames and minimize the disruption of research efforts.

Comment 109: Several commenters requested that NMFS expand the ESA 4(d) limit on scientific research activities to include research by tribal fisheries biologists. Others requested that NMFS include a regulatory obligation for the states and NMFS to include tribes in reviewing scientific research and monitoring efforts subject to the ESA 4(d) limit.

Response: NMFS has provided a separate 4(d) rule for Tribal Plans (including research and monitoring activities) (published elsewhere in this **Federal Register** issue) the purpose of which is to establish a process that will meet the conservation needs of listed species while respecting tribal rights, values, and needs. A tribe intending to conduct research-related actions that may take threatened salmonids could submit a Tribal Plan to NMFS for consideration under the 4(d) rules. In addition, tribes have the opportunity to have tribal research activities covered under the research limit for salmon and steelhead, so long as the activities are in accord with state reporting requirements specified in that limit.

NMFS does not believe it is necessary to include a regulatory obligation under 4(d) that requires states to include a tribal co-manager review and concurrence process for research/monitoring activities. There are ample opportunities—both formal and informal—for Federal, state, and tribal co-managers to coordinate salmonid research and monitoring efforts and NMFS will continue to encourage such collaborative efforts. In addition, NMFS recognizes its responsibilities to confer with the tribes on ESA issues and will use this dialogue to ensure that tribal concerns are addressed. NMFS will make available to interested parties the documents describing the research and monitoring conducted under either the tribal 4(d) limit or the salmon/steelhead research limit.

Comment 110: Some commenters stated that the research limit was too narrowly defined and should be expanded to apply to other state and non-governmental entities (e.g., state water quality agencies, watershed councils, and sportsman groups). Others requested that NMFS clarify what is meant in the research limit by "oversight" and "coordinated."

Response: NMFS believes that the state fisheries agencies are in the best position to oversee and coordinate scientific research and monitoring efforts involving listed salmonids. While other entities (e.g., other state agencies, academics, consultants, etc.) have considerable expertise in fisheries research, none have the clear management responsibility for salmonids that is vested with the state fisheries agencies. Moreover, NMFS is concerned that expanding this limit to include numerous entities would hinder the coordination of research efforts. NMFS encourages coordination as a means to minimize research impacts on listed salmonids while facilitating data exchange and interpretation.

NMFS agrees that minor modifications to this limit's description will help clarify the agency's intent for "oversight" and "coordination." For example, with respect to "oversight," NMFS does not believe that a state fishery agency must directly supervise or inspect every research project. Instead, NMFS intended that research efforts covered by the ESA 4(d) limit should merely be identified and approved by the appropriate state fishery agency. The identification and approval processes should constitute nominal extensions of the pre-existing system for obtaining a state research/collection permit. In addition, NMFS' emphasis on "coordination" was to encourage the state fisheries agencies to establish and improve upon mechanisms for organizing research and monitoring of listed salmonids. Such coordination could occur at a state-wide level (e.g., the Oregon Plan for Salmon and Watersheds), at a level addressing a particular ESU (e.g., Washington's Hood Canal and Eastern Strait of Juan de Fuca Summer Chum Recovery Plan), or watershed. No matter what the level, however, the state fisheries agencies will still need to provide NMFS with the requisite annual reports. NMFS will continue to work with the affected states to better define the reporting requirements supporting this limit, maximize the information being gathered on fish and wildlife species (while minimizing impacts on threatened and endangered species), and ensure that sound research proceeds unencumbered by regulatory/permitting requirements.

Comment 111: Some requested that this limit be made available to Federal researchers and asked for clarification on the relationship between this limit and ESA section 10 permits.

Response: NMFS clarifies that Federal research and monitoring activities could be covered under the research limit. Federal lands encompass vast areas of salmonid habitat in the Pacific Northwest and California, and Federal research efforts contribute vital information about these species. Therefore, NMFS believes it is necessary and advisable to provide the opportunity for Federal researchers to receive coverage under the research limit. Such coverage would obviate the need for an ESA section 10 permit for these Federal researchers. Still, in deference to the need for close coordination with state and other efforts (plus the fact that Federal researchers will still need research and collection permits from the state fisheries agencies), Federal research will only be covered under the ESA 4(d) limit when that research is overseen by or coordinated with a state fisheries agency that is willing and able to report on the Federal research effort. Also, it is important to note that coverage under the research limit would not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect listed species.

Comment 112: Some commenters contended that NMFS was placing unnecessary constraints on electrofishing as a sampling technique. Several requested clarifications and revisions to specific protocols described in NMFS' "Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act" (NMFS, 2000a), in particular they sought revisions in the guidelines pertaining to numeric standards/settings and documenting crew experience and sampling history. One commenter requested that NMFS expand the limit and guidelines to address electrofishing from boats.

Response: NMFS contends that the guidelines are both reasonable and necessary for the conservation of listed salmon and steelhead ESUs. The literature is replete with evidence to support NMFS' concerns that electrofishing can be particularly harmful to salmonids and other fishes (see review by Nielsen, 1998). Before distributing the existing guidelines in 1998, NMFS held a workshop and distributed the subsequent guidelines for peer review. The resulting guidelines reflect reasonable and prudent measures for minimizing the adverse effects of electrofishing. NMFS will continue to encourage researchers to use other less invasive techniques (e.g., traps and snorkeling surveys), but recognizes that electrofishing has utility, or is the only practical alternative in certain study designs.

With respect to specific concerns about the electrofishing guidelines, NMFS disagrees with most of the issues raised and believes that only minor modifications are warranted in these protocols. For example, the agency disagrees with several commenters that requiring conductivity measurements would impose an onerous and costly burden on researchers. It is well known that water conductivity is one of the most critical parameters determining electrofishing impacts and conductivity meters are both inexpensive and readily available. The concerns that NMFS is requiring too much documentation (e.g., logging crew experience and data on sampling results) are also unsound. Most, if not all, researchers record the time spent (e.g., time counters are an integral part of most backpack units) and results of electrofishing surveys (e.g., numbers of fish encountered, injuries observed, site conditions, etc.). These logs aid fish by helping to improve the researcher's technique and can form the basis for training new operators.

With respect to boat electrofishing, NMFS has serious concerns with this technique because it has even greater potential for seriously injuring listed salmonids. For example, the technique can employ electrical output that is an order of magnitude greater than backpack electrofishing units, and environmental conditions can seriously limit a researcher's ability to minimize impacts on listed fish (e.g., adult salmonids in large and turbid stream reaches). NMFS has not developed suitable guidelines for this sampling technique and will continue to request that researchers desiring to employ electrofisher boats apply to NMFS via the ESA section 10 permit process.

Comment 113: Some commenters requested that NMFS clarify which entities would be covered under the limit for rescue and salvage actions and better define what constitutes an "emergency" under this limit. One commenter requested that NMFS specifically allow electrofishing under the rescue/salvage limit.

Response: The regulations pertaining to this limit state that rescue/salvage can be conducted by "any employee or designee of NMFS, FWS, any Federal land management agency, IDFG, WDFW, ODFW, CDFG, or any Tribe." A designee of the listed entities is any individual that the Federal or state fishery agency, or other co-manager has authorized in writing to perform the rescue/salvage.

While it is not possible to characterize all scenarios constituting an "emergency" for listed salmonids, fish strandings resulting from natural or human-induced events are probably the most common type encountered. For example, an emergency condition may exist as a result of dewatering (e.g., for irrigation), damming, drought conditions, or when listed fish become stranded in channels or ponds following a flood event, landslide, or debris torrent. Chemical spills associated with industrial effluents or vehicular accidents (e.g., train or automobile accidents) have also been known to create an emergency for salmon and steelhead. These are just a few examples of scenarios that the employees or designees might face. Obviously professional judgement will need to be applied at the scene of an emergency to determine if and how listed fish should be rescued.

NMFS concurs that electrofishing is permissible when there is no better technique for safely removing stranded fish under the rescue/salvage limit. However, the electrofishing should be conducted in accordance with NMFS' backpack electrofishing guidelines.

Fishery, Hatchery, and Genetic Management Activities

Comment 114: Some commenters stated that the proposed ESA 4(d) rules potentially grant broad exemptions for taking listed species in hatchery programs and fisheries and that these limitations should be omitted or tightened to better control hatchery and harvest practices.

Response: The final rules establish explicit criteria and standards that hatcheries and harvest activities must adhere to in order for them to be eligible for limitations on section 9 take prohibitions. The criteria include detailed plans, risk assessments, and monitoring and evaluation and are similar to what has been required for section 10 permits in the past. The Fishery Management Evaluation Plans (FMEPs) and Hatchery Genetic Management Plans (HGMPs) will be evaluated using the same standards used to examine section 10 permit applications. The limits for hatcheries and harvest will not decrease the level of protection for listed species.

Comment 115: There was general support for the concepts detailed in the technical document "Viable Salmonid Populations." However, there was much concern over how to apply these concepts in actuality. A number of commenters stated that in most cases there would not be enough information to determine population structure and abundance thresholds. Many commenters thought VSP should be implemented through NMFS' recovery planning efforts.

Response: NMFS realizes that a substantial amount of information needs to be generated in order for FMEPs and HGMPs to be consistent with the "Viable Salmon Populations" technical document. Ideally, that information would arise out of the technical phase of the recovery planning process. However, even if all the data are not yet available, the concepts contained in VSP are valid and will still be used to help develop and evaluate FMEPs and HGMPs. Determining "critical" and "viable" thresholds in the management plans allows actions to be tied to the status of listed fish in a particular population or management unit. If a population or management unit is at critical levels, actions must be strictly controlled and not impede recovery. At viable levels, the population or management unit is healthy and more flexibility exists for fisheries and hatchery management. NMFS will work with the co-managers to apply VSP to the greatest extent possible for any given management unit. As additional monitoring and evaluation are completed in the future and as recovery plans are developed, the FMEPs and HGMPs will be revised.

Comment 116: Some commenters suggested that no progeny of listed fish that were spawned in a hatchery should be considered listed under the ESA.

Response: Listed fish may be taken into a hatchery for spawning as a last resort to conserve the species. Before this can occur, an approved HGMP or ESA section 10 permit must be obtained. The HGMP or section 10 permit specifies the number of listed fish that can be taken into the hatchery. The status of the (artificially propagated) progeny of these fish is determined at the time the species is listed (i.e., stated in the final listing determination). If the hatchery program is part of an ESU where the progeny of listed fish spawned in a hatchery are considered to be listed, NMFS may proceed through rulemaking to delist hatchery progeny once an HGMP or section 10 permit is in place.

Comment 117: Some commenters questioned the strategy of restricting steelhead fisheries to areas where only hatchery-marked steelhead are expected to occur and prohibiting the retention of listed steelhead. It was asserted that this policy could be a disincentive for local recovery efforts because healthy, naturally reproducing populations of fish could not be utilized if the population recovers.

Response: NMFS agrees that recreational fisheries should not be

limited to streams where only hatchery fish are present. NMFS intends to manage fisheries based upon a listed ESU's status and a given fisheries' impacts on that status. The ultimate goal is to recover and maintain natural, self-sustaining ESUs so that ESA protections are no longer necessary. Under the VSP concept, if a steelhead population has recovered to viable abundance levels, more harvest impacts could be allowed than would be advisable for an adjacent population whose status is poor.

Comment 118: Several commenters requested clarification on the meaning and purpose of sanctuary areas, and some questioned the rationale for not requiring the designation of sanctuary areas in FMEPs under the salmon ESA 4(d) rule, but requiring them in FMEPs under the steelhead 4(d) rule. (Note: the proposed 4(d) rule for salmon (65 FR 170, January 3, 2000) was published separately from the proposed rule for steelhead (64 FR 73479, December 30, 1999). The two proposed rules have been combined in this final rule.)

Response: NMFS defines sanctuary areas in the FMEPs as areas that are closed to fishing. NMFS' intent is to provide areas where juvenile and adult fish are not exposed to any fishing-related pressure or mortality (including catch and release fisheries, which can have an associated incidental mortality). Tributary streams or stream reaches that are the primary, core areas where listed fish spawn and rear in a given watershed would be good areas to designate as sanctuaries.

Establishing sanctuary areas is especially important for species (like steelhead) that can spend several years rearing in fresh water and may be exposed to multiple fishing seasons. Juvenile salmon are generally less vulnerable to fishing because they typically emigrate to the ocean by the time they are one year old. However, some juvenile salmon (e.g., sockeye) can also exhibit extended freshwater residence. NMFS agrees that sanctuaries should also be included in the FMEPs developed for the listed salmon ESUs. The extent of the existing (and future) sanctuary areas for juvenile and adult fish will be evaluated on an ESU-by-ESU basis when the FMEPs are reviewed.

Comment 119: One commenter contended that sanctuaries may be difficult to establish in many California river systems (e.g., Central Valley streams) and asked how many sanctuaries would be needed to get NMFS' approval of an FMEP.

Response: NMFS agrees that it may be difficult to designate sanctuaries in the Central Valley system given that the majority of historical habitat is now inaccessible to fish. However, there are other accessible river systems inhabited by the three steelhead ESUs covered by this ESA 4(d) rule that currently do not offer sanctuary protection in critical spawning and rearing habitats. The FMEP process will allow NMFS to work with co-managers in establishing angling sanctuaries in these areas to further protect and conserve steelhead while still allowing appropriate angling opportunities to proceed. The appropriate numbers of sanctuaries will arise out of the FMEP development process.

Comment 120: Some commenters questioned whether the FMEP process is necessary for sport angling and contended that developing elaborate FMEPs is not the best use of limited technical and restoration resources.

Response: The FMEP process will make it easier to work with the co-managers in making sure that sport fishing activities comply with the intent of this limit. While the amount of information that NMFS requires for FMEP approval will be similar to information required for an ESA section 10 incidental take permit, the FMEP route provides a longer-term framework for fisheries management and is thus more efficient over time in addressing recreational fishing impacts on listed species.

Comment 121: Some commenters requested that recreational fisheries in California receive a limit on the take prohibitions because they are likely to have only minor impacts on listed species.

Response: NMFS recognizes that CDFG has instituted conservative fishing regulations in many of the steelhead-bearing streams found in California. These regulations allow for continued angling opportunities, where appropriate, while providing some level of protection for listed steelhead through gear, season, and area restrictions. Although take associated with modern recreational fisheries has not been identified as a major reason for the depressed status of many California steelhead ESUs (NMFS, 1996), there is still a general lack of monitoring from which to derive reliable quantitative estimates of impacts in selected steelhead streams (e.g., Antelope, Deer, and Mill Creeks in the Central Valley steelhead ESU). In addition, take provisions and angling regulations may need to be more restrictive in areas where habitat conditions are not properly functioning and angling pressure would exacerbate the risks faced by a listed population. An approved FMEP would provide the means to identify these monitoring gaps and open the way for agreements with co-managers on instituting appropriate measures and securing funding sources.

Comment 122: NMFS should not require FMEP monitoring that is physically or fiscally impractical.

Response: NMFS agrees with this comment and will make every effort to work cooperatively with co-managers to identify resource monitoring and assessment requirements on an ESU-by-ESU basis. The required level of monitoring will be tied to a population's status and the degree to which a specific fishery poses risks to that population. There is sufficient flexibility in the ESA 4(d) rule to accommodate the immediate staffing and funding shortfalls. One of the integral parts of the FMEP process, however, will be to identify the level of monitoring and assessment needed to adequately address the impacts of recreational angling on listed species in a given ESU. Strategies for prioritizing monitoring needs based on funding and staffing capabilities will be stipulated in letter of concurrence NMFS crafts in response to an approved FMEP.

Comment 123: Several comments addressed the use of barbed hooks in recreational fisheries for trout and steelhead. One commenter questioned the scientific basis for disallowing barbed hooks in adult steelhead fisheries. Other commenters believed that catch and release mortality could be significantly reduced by requiring the use of barbless hooks.

Response: The available scientific data have not shown that using barbless hooks consistently or significantly reduces catch and release mortality in trout and steelhead fisheries, and the ESA 4(d) rule does not require barbless hooks in recreational fisheries. However, NMFS believes certain fishery situations could warrant the use of barbless hooks to minimize potential impacts on listed fish.

Comment 124: Several commenters were concerned with language in the ESA 4(d) rules relating to restrictions on resident species fisheries. Some contended that restrictions should be placed on any fishery (resident or anadromous species) that substantially affects listed fish. Others believed the restrictions to be excessive and stated that NMFS should more fully assess the impacts of resident species fisheries on listed salmon and steelhead.

Response: All fisheries that potentially affect listed salmon and steelhead must be evaluated in the appropriate FMEP. NMFS' intent is to point out the fact that some resident species fisheries can affect listed fish. In these circumstances, the FMEP must

include angling regulations for resident species fisheries that minimize any take of listed species. An FMEP may also include restrictions on anadromous fisheries to ensure that listed species are conserved.

Comment 125: One commenter stated the need to clarify certain definitions used in relation to the hatchery programs. It was asserted that several hatchery programs still have definitions of "natural" fish that seriously obscure the differences between wild and hatchery-produced fish. The commenter stated that the HGMPs should address this problem.

Response: NMFS agrees with this comment. Therefore, to clarify, NMFS generally uses the terms "natural" and "hatchery" to describe the origin of anadromous fish following the definitions found in Bjornn and Steward (1990): hatchery fish are those that, regardless of parent stock, have been spawned, incubated, hatched or reared in a hatchery or other artificial production facility. Naturally produced fish are those that result from natural spawning in streams. As Waples (1991) stated, the terms wild and natural are used synonymously to refer to naturally produced fish without regard to the origin of the parent stock.

Comment 126: The HGMP and FMEP templates should be referenced in the 4(d) rules.

Response: This suggestion has merit and language in this final rule has been duly altered. The templates are available on NMFS' Northwest Region website (www.nwr.noaa.gov).

Comments related to the criteria established for FMEPs and HGMPs

Comment 127: Some commenters questioned the assertion in the harvest limit that at critical threshold levels, harvest actions must not appreciably increase the genetic and demographic risks facing the population. They stated that this policy does not ensure the conservation of listed species and that any populations that are at critical threshold levels should not be put at risk. They asserted that harvest should be very restricted or totally eliminated when a population reaches critical levels.

Response: When a population within a listed ESU is at critical levels, impacts from fisheries must be strictly controlled. No fishery will be allowed under the ESA which jeopardizes the continued existence of an ESU. In some cases it may be necessary to close or curtail fisheries to protect listed fish. The intent of this language was to realize that incidental harvest may occur even under a tightly regulated fishery regime. Anadromous salmonids have a vast migratory distribution and may be incidentally intercepted in fisheries occurring in other regions. NMFS will evaluate FMEPs to ensure that the harvest regime will protect individual populations and allow the ESU to recover before being approved.

Population-level assessments under the ESA are meant to provide information on abundance, productivity, structure and diversity specific to each population, and are essential to determining an ESU's overall health. However, under some circumstances the ESU as a whole may be viable even though some individual populations have not fully recovered. NMFS and the TRTs appointed to help develop de-listing criteria will determine which, where, and to what degree populations within an ESU must have "viable salmonid population" status to render adequate ESA protection at the ESU level.

Comment 128: One commenter stated that no transgenic or genetically engineered fish should be allowed in waters where listed fish reside.

Response: No action that jeopardizes the continued existence of listed species is permitted under the proposed 4(d) rules or any other section of the ESA. If NMFS assumes that "transgenic or genetically engineered fish" are not native species and determines that their introduction into waters where listed fish reside would not help recover listed species, these fish would likely be prohibited.

Comment 129: Some commenters believed that the final rules should contain citations that demonstrate the validity (including associated risks) of supplementation as a tool for recovery. Some organizations are doubtful that supplementation is effective.

Response: There is considerable scientific uncertainty regarding the extent to which benefit can be derived from supplementing naturally spawning populations with hatchery-produced fish. There are well-publicized examples of domesticated, hatchery-produced salmon and steelhead having negative effects on natural production (Kalama River-Skamania summer steelhead). There are also examples where artificial propagation of the local, indigenous, stock appears to have increased or sustained the number of naturally spawning fish (Imnaha and South Fork Salmon River summer chinook, Upper Columbia steelhead, Rogue River coho). The proposed HGMPs require programs to be designed using the best current scientific knowledge in order to identify and manage risks and provide benefits to the listed species. The HGMPs are required to identify goals, adopt performance standards, and conduct comprehensive monitoring and evaluation in order to help evaluate supplementation success and resolve any uncertainties about the practice.

Comment 130: Some commenters stated that artificial propagation has failed to maintain wild fish populations and all hatchery programs should be discontinued.

Response: Few of the original artificial propagation programs were designed to maintain wild populations. By developing and implementing HGMPs under the ESA, these programs will address wild population conservation and recovery. The risks and negative effects associated with artificial propagation programs are being identified and managed. It is true that artificial propagation has not been able to maintain wild anadromous fish when dam building, habitat loss, and fishing has continued at the established pace. Reforming hatchery practices is advisable, but discontinuing all artificial propagation is not necessary to restore natural fish under all circumstances. In many cases, hatchery programs are managed to minimize risks to wild populations while providing other benefits, such as supplying harvestable numbers of fish to meet treaty trust responsibilities.

Comment 131: One commenter stated that NMFS should not use HGMPs to police compliance with court orders.

Response: NMFS cannot approve an HGMP that does not comply with legal mandates established by statute or court order. This criterion is intended to remind the applicants that an HGMP must be legally as well as biologically complete.

Comment 132: Several comments addressed the experimental nature of supplementation programs and the need for hatchery program goals to protect genetic diversity and individual wild fish stocks. Furthermore, specific concerns were raised about the need to ensure that monitoring and evaluation activities adequately protect listed fish.

Response: NMFS agrees with the general thrust of these comments. Supplementation programs are viewed as being experimental; they can vary from program to program depending on the purpose of the program, the species targeted, stock status, and location. Because of supplementation's experimental nature, HGMPs assume an adaptive management approach for such programs by requiring extensive monitoring and evaluation. These activities must be able to identify deleterious effects on listed fish so the program can be modified. Furthermore,

HGMPs are designed to protect genetic diversity in wild populations (both listed and non-listed) by improving hatchery management, monitoring, and evaluation.

Comment 133: Some commenters questioned how mining wild fish populations for broodstock contributes to recovery when a population is at or below the critical threshold.

Response: When populations reach critical levels and the best available scientific information indicates that the demographic risks are greater than the genetic risks, using artificial propagation to prevent imminent extinction may be the least risky alternative. When populations are at or below the critical level, the only hatchery programs NMFS is likely to approve would be for the sole objective of enhancing the listed species' propagation and survival. If the cause of the decline is short-term, then the hatchery program could be reduced once the population exceeds the critical threshold. If the cause for the decline cannot be remedied in the short-term, the hatchery can act as a genetic broodstock bank and maintain the population until the causes for decline can be addressed.

Comment 134: Some commenters had concerns about NMFS' decision making process in determining whether an HGMP adequately avoids or minimizes any deleterious effects. They desired to know how the standards for this determination would be set and sought an exact description of the monitoring program.

Response: NMFS has developed a detailed HGMP template in collaboration with scientists from the other state and Federal agencies and treaty Indian tribes. The template is available on the NMFS Northwest Region's website at www.nwr.nmfs.gov. The template references many documents that provide guidance on artificial propagation in terms of setting performance objectives, identifying, evaluating, and managing risks, and monitoring results. NMFS' fishery scientists will review the HGMPs for completeness and adequacy. The HGMPs are also being used in sub-basin planning and in the Northwest Power Planning Council (NPPC) funding process where they may be subject to review by fishery scientists employed by Council staff as well as one or more layers of independent scientific review. The HGMPs will be available for public comment and peer review before they are approved. NMFS believes this process will help ensure deleterious effects are being adequately managed. However, all hatchery programs pose some degree of unavoidable risk to natural populations.

Comment 135: One commenter suggested that hatcheries should produce as many fish as possible and held that there is no scientific basis for favoring natural fish over hatchery fish.

Response: NMFS strongly disagrees. Hatchery fish have been identified as one of the factors causing population declines in a number of ESUs. There is a substantial body of scientific evidence to show that hatchery fish can harm natural fish by preying on them, competing with them for food, shelter and mates, displacing them from their native habitats, and creating other effects.

Comment 136: One commenter stated that NMFS failed to address the issue of hatchery structures that can block fish passage.

Response: Each HGMP will include a section describing the hatchery facilities. It will identify passage issues and water withdrawals and screening facilities. If passage is an issue, it can be addressed through HGMP implementation. Passage is also evaluated in ESA section 10 permits for hatcheries.

Comment 137: One commenter recommended that hatchery fish be protected in the 4(d) rules, not just wild fish.

Response: The ESA emphasizes the restoration of listed species in their natural habitats. However, section 3(3) of the ESA specifically recognizes the potential for artificial propagation to help achieve rebuilding objectives. Specific protections for hatchery and natural fish reared in a hatchery are detailed in the HGMPs, especially if the hatchery program is used to supplement natural populations. In certain cases, NMFS has determined hatchery fish stocks to be essential to recovering the ESU and has listed them under the ESA.

Comment 138: One commenter questioned how NMFS will determine whether a catch and release fishery is allowable.

Response: Any selective fishery proposal, including those requiring that listed fish be released after being caught, will be evaluated based on its impacts on listed ESUs. The sum total of all fishery-related impacts on a listed ESU will be considered in terms of its effects on population viability and, when applicable, within the structure of any existing HCP or recovery plan. No fishery that jeopardizes an ESU's continued existence or poses risk to key populations in that ESU will be allowed.

Specific Comments Related to FMEPs

Comment 139: Several commenters desired to know how fishery mortality would be allocated and asked what the mechanism would be for treating ocean, mainstem river, and tributary harvest consistently. They asserted that all fishery related mortality should be accounted for.

Response: Once take prohibitions are in effect, any fishery with the potential to impact listed fish is subject to NMFS' ESA review and approval process. All agencies proposing fisheries that have a potential to affect listed stocks are required to quantify these impacts. These agencies are required to comply with ESA review requirements and obtain take authorization through a 4(d) rule limit, a section 7 consultation, or section 10 permit application. Compliance is determined by tallying all fishery related incidental take from all agencies. Rigorous monitoring and evaluation programs ensure that impacts remain within acceptable limits.

The FMEPs will specify adult escapement targets and harvest rates for each ESU. The purpose of the ESA 4(d) rules is to accommodate the listed species' biological needs, not to allocate harvestable surplus. That is a co-manager responsibility and is undertaken in a number of different venues.

Comment 140: Numerous comments related to specific information and requirements included in actual FMEPs. The comments mainly addressed specific gear and season restrictions and the need to regularly review the FMEPs to ensure that they protect listed species.

Response: The FMEPs will be evaluated under the same standard used for ESA section 10 permits: the proposed action(s) must not jeopardize the continued existence of the listed ESU. The FMEPs will specify the maximum exploitation rates—depending on listed fish abundance—or will specify escapement levels. Each FMEP will include the time frames for regularly reviewing it. Depending on the fishery's location and circumstance, specific angling regulations may be detailed in the FMEP (e.g., minimum length and bag limits for trout fisheries). In other cases (e.g., some salmon fisheries), the specific regulations may be adopted once the exploitation rate or catch quota is determined by examining pre-season run forecasts.

Comment 141: Some commenters stated that maximum escapement objectives and reasonable exploitation rates should be specified in the FMEPs.

Response: NMFS strongly agrees that escapement objectives must be determined for each fish stock and those objectives must be the fundamental drivers of fishery harvest management. Parties to *U.S.* v *Washington* and *U.S.* v *Oregon* should develop—through regional management plans and based on biological requirements and fishery needs—escapement objectives and exploitation rate targets for each stock or management unit.

Comment 142: Several commenters suggested that all hatchery chinook should be marked and that selective fisheries should be required.

Response: From an ESA perspective, several obvious and significant benefits derive from applying a visual mark to hatchery chinook—most notably the ability to easily monitor hatchery stray rates and differentiate hatchery fish from natural fish for stock assessment purposes. In addition, marking all hatchery fish can help managers evaluate productivity among hatchery and wild fish—an important piece of data for recovery planning. Because it now can be accomplished with machines on a massive scale and with relatively little impact on survival, the adipose fin clip achieves these benefits in a very cost-effective and efficient manner.

By enabling selectivity, mass marking may also provide the means for sustainable fisheries—clearly a very important objective. However, because a number of critical issues related to ongoing coded wire tag (CWT) programs remain unresolved, NMFS shares the view of its co-managers that decisions made now to mass mark hatchery chinook are separate from decisions to be made later regarding selective fisheries. Even in cases where NMFS has required that a hatchery production run be mass-marked because of ESA concerns, this does not imply that a selective fishery will subsequently be endorsed. It is not NMFS' policy to require that all hatchery production be mass marked. Rather, our policy is that mass marking must be decided on a case-by-case basis after taking into account, among other things, the specific objectives of the hatchery production, the intended purposes of the mark, and the effect the hatchery production would have on fish listed under the ESA.

Comment 143: One commenter asserted that any rulemaking must ensure that treaties will be respected and that harvestable numbers of fish result.

Response: NMFS agrees. As several court cases have found, conserving and recovering listed stocks under the ESA to the point where they no longer need the protections of the ESA is entirely consistent with the long-term objective of having healthy harvestable populations and the exercise of treaty rights to fish and hunt. From a larger perspective, the greatest improvements in tribal fishing opportunity will not accrue over the short term but through the long-term recovery of the populations. Federal trust responsibility is best fulfilled at this time by engaging in conservative fisheries management. At the same time, hatchery production can be used to provide harvestable fish if such programs can be shown to be consistent with recovering wild fish.

Comments Related to the Time Frame for Developing and Commenting on FMEPs and HGMPs

Comment 144: Numerous agencies, organizations, and individuals commented that enough time must be allowed to develop and review the FMEPs and HGMPs. Several commenters suggested providing a grace period from several months to several years after the final rules are published for developing and approving FMEPs and HGMPs.

Response: NMFS realizes the significant amount of work and time required to develop and process FMEPs and HGMPs. Therefore, NMFS is providing 6 months until take prohibitions go into effect for the listed steelhead ESUs to allow additional time to develop and approve FMEPs and HGMPs.

In addition, NMFS has also provided a transition period of 6 months for recreational fisheries that affect listed steelhead. NMFS has assessed the angling regulations currently in effect for juvenile and adult steelhead in California, Oregon, Washington, and Idaho and has concluded that listed steelhead will be sufficiently protected during this 6-month period. This will allow additional time to develop and approve FMEPs for the steelhead ESUs. Some fisheries and hatchery programs will not need ESA coverage immediately after take prohibitions go into effect because the actions do not affect listed species. NMFS will work with the co-managers to prioritize fisheries and hatchery programs on the basis of how urgently each needs ESA coverage.

Comments Related to the Process of Reviewing/approving/implementing FMEPs and HGMPs

Comment 145: Some commenters suggested that NMFS include a provision for independent scientific review of the FMEPs and memorandum of agreement (MOAs) between NMFS and the action agency.

Response: As stated in the rules, the public will have the opportunity to review and comment on FMEPs and HGMPs for at least 30 days before NMFS acts on them. During this comment period, independent scientific entities are invited to review and comment on FMEPs and HGMPs. NMFS intends to address the public comments with the appropriate co-manager before approving any plan.

Comment 146: Some commenters wanted NMFS to define the "regular basis" on which limits will be evaluated. They also wanted to know what the time frames for reporting would be.

Response: NMFS and the individual co-manager will decide on a case-by-case basis the review and evaluation requirements for an approved FMEP or HGMP. The FMEPs and HGMPs will specify the time frames for regularly reviewing the plans and that information will be included in NMFS' letter of concurrence on the management plans. Depending on the circumstances, management plans may be evaluated every year or after analyses are complete. This will reasonably accommodate the time needed to prepare post-season catch and effort reports as well as any analyses the co-managers need for adjusting fishing regulations. However, whenever practical, the evaluation and review process should embrace an annual time frame so that appropriate adjustments may be made before the next fishing season.

Comment 147: Some commenters were concerned that a final HGMP was not available at the time of the proposed rules and that the final criteria for HGMPs may be substantially different from those cited in the proposed ESA 4(d) rules.

Response: The final draft of the HGMP template has been available to co-managers and posted on NMFS' web site since January of 2000. This template includes the information that must be included in the HGMPs for approval. Based on the public comments received, the criteria and the template for HGMPs have not changed substantially in the final rule.

Comment 148: A few commenters stated that the process for approving a hatchery broodstock program should be clearly described.

Response: NMFS believes the process is clearly described in the proposed and final rules. A state or Federal co-manager who wishes to utilize the ESA 4(d) process rather than the section 10 process must develop a detailed HGMP.

The HGMP must address the criteria in the 4(d) rule and follow the template NMFS has provided. The draft HGMP will be made available for public comment for at least 30 days. If NMFS determines the HGMP adequately addresses the established criteria, we will issue a written concurrence or, in the case of a Federal action, we will conduct a section 7 consultation. NMFS believes this process allows the public an adequate amount of time to review and evaluate a hatchery broodstock program before it is approved.

Comment 149: One commenter pointed out that the assumption that average hooking mortality is less than 5 percent is based on only one study (Hooton,1987). Based on the scientific literature, they felt this rate to be low and recommended that NMFS further evaluate hook and release mortality rates in the literature.

Response: NMFS agrees that hooking mortality deserves further investigation and we are committed to doing so. However, for now the 5 percent rate reported in Hooton (1987) seems to constitute a reasonable average. Other studies do show higher mortality rates for salmonids when stream temperatures are elevated (Klein, 1965; Dotson, 1982; Titus and Vanicek, Taylor and Barnharnt, 1997), but for most conditions, Hooton's estimates are reasonably accurate.

Habitat Restoration Activities

Comment 150: One commenter stated that NMFS itself should develop the WCP guidelines.

Response: NMFS believes that the states are in the best position to perform the lead role in developing these guidelines. The geographic scope of this rule covers four states, an area over which biological and geological factors vary considerably. Even more importantly, each state's agencies, regulations, and conservation programs are unique and the WCP guidelines, to be effective, should be designed to fit within that unique context. The states' natural resource agencies have relatively large and expert staffs that are better prepared to interact with the entities that will use these guidelines. For these reasons, this limit remains founded upon the development of state WCP guidelines.

Comment 151: Numerous commenters stated that the interim provisions of § 223.203(b)(8)(ii) (in the proposed rule, 65 FR 170, January 3, 2000) should be extended beyond 2 years, or were too permissive, or too restrictive. Many of these commenters proposed inclusion of specific activities that were not included in the six proposed interim provisions.

Response: NMFS observes that the interim provisions of § 223.203(b)(8)(ii) have been misunderstood to such an extent that NMFS has dropped these provisions from the final rule. The intent of these proposed interim provisions was to acknowledge that getting WCP guidelines and plans in place will require time, and the potential benefit to listed salmonids of allowing certain relatively low risk habitat restoration projects to proceed in the near term might outweigh the risk entailed by those activities not being part of a WCP.

However, the interim provisions had been widely misperceived as detailed regulation of habitat restoration activities. NMFS did not intend to provide for the direct regulation of habitat restoration activities under the terms of this rule and regrets that the earlier proposal created this false impression. Accordingly, NMFS now deems it advisable to simply drop the interim provisions from this final rule. Many low risk activities (e.g., riparian exclosure fencing or native vegetation planting), simply do not carry an appreciable risk of taking. Activities involving instream construction or modification of the streambed or banks require CWA section 404 permits which carry ESA section 7 coverage. All habitat restoration activities will entail less risk and more benefit if they are part of an approved WCP, and NMFS encourages the timely development of WCP guidelines and plans. Habitat restoration projects are less likely to be successful if undertaken without supporting analyses that disclose habitat impairments and absent resource management adjustments within the watershed to redress the underlying causes of those impairments.

NMFS strongly encourages jurisdictions, entities, and citizens to use the habitat restoration guidelines and technical manuals referenced in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000) as readily available techniques to reduce the risks of harm or injury to the listed stocks. In the event that an allegation arose about a potential ESA section 9 violation, NMFS would furthermore take into account the efforts of the watershed group or entity to adhere to the relevant guidelines. Where injury or harm was resulting in such a circumstance, NMFS believes that the proper and most effective remedy would be an orderly adjustment in the relevant guidelines and not the prosecution of a section 9 violation against an individual project.

Comment 152: Several commenters had questions regarding what entities are responsible for developing and implementing WCPs and what state agency is responsible for certifying the plans.

Response: This final rule intentionally leaves these questions unanswered. There are potentially many different entities that may be responsible for developing WCPs in different circumstances—watershed councils, soil and water conservation districts, city or county governments, regional authorities, and so forth. NMFS finds it unnecessary to limit by rule what types of entities may produce and carry out WCPs. Likewise, NMFS leaves it to the individual states to determine the appropriate agencies for developing guidelines and certifying plans.

Comment 153: Many commenters had concerns about the clarity and intent of the approval criteria for the WCP guidelines.

Response: The criteria have been modified in this final rule to make them clearer and more effective.

Comment 154: Some commenters suggested that Federal activities—particularly habitat restoration activities—should receive a limit on the take prohibitions. CDFG suggested that restoration activities conducted under the Department's Fishery Habitat Restoration Program are already covered by their incidental take permit associated with their Corps of Engineer (COE) 404 permit consultation.

Response: Federal agencies that engage in, permit, or fund activities that may affect listed species are required under section 7 of the ESA to consult with NMFS. The ESA contains no provision to exempt Federal actions that involve habitat restoration activities from their section 7 obligations. Habitat restoration activities would only need to seek approval under this limit if they have more than a negligible likelihood of taking listed salmonids, and are not covered by any section 10 permit or section 7 incidental take statement.

Comment 155: Several commenters were concerned that neither the states nor NMFS will have the necessary resources to handle such a large number of written approvals; also, some stated that it was inappropriate for a state or NMFS to review individual projects after having approved an overall plan.

Response: NMFS agrees that the workload associated with approving all individual restoration projects and activities could overwhelm state and NMFS staff resources. In addition, activity-level review could defeat much of the process efficiency gained in the WCP approach. This final rule has been

changed to require only state certification of WCPs, and NMFS' approval of the state guidelines (with a periodic review of the state certification process to ensure that WCPs are adequately analyzed). Provisions for clearly identifying whether particular activities are part of an approved plan must be part of the plans themselves and need not necessarily involve state or NMFS staff directly.

Comment 156: One commenter asserted that it is unclear which criteria NMFS will use in concurring with a state certification of a WCP.

Response: NMFS has amended the final version of this rule to drop the requirement of NMFS concurrence with the certification of individual WCPs. NMFS expects the criteria for the relevant state certifications will be contained in the state restoration guidelines anticipated by this final rule, and will periodically review the states' certification process for appropriate rigor.

Comment 157: One commenter proposed a stepwise approach toward making the transition from the specified activities of § 223.203(b)(8)(ii) interim period to allow development of state guidelines and WCP to the WCP context of § 223.203(b)(8)(i).

Response: NMFS agrees with the commenter, and in response the interim provisions proposed as 223.203(b)(8)(ii) have been deleted from the rule.

Comment 158: One commenter suggested integrating FMEPs and WCPs. Another stated that WCPs should be a part of the recovery planning process and not be evaluated piecemeal.

Response: In essence, the first commenter is suggesting recovery plans, which NMFS agrees are necessary for the conservation of the species and intends to develop for listed salmon. However, NMFS does not believe that completed recovery plans are a necessary prerequisite for all habitat restoration activities. While the existence of an overarching recovery plan could make constituent watershed conservation planning both easier and more effective, it does not follow that adequate watershed conservation planning cannot be done prior to the existence of a recovery plan.

Comment 159: Numerous commenters suggested that local governments should be recognized and allowed to develop guidelines and WCPs without state or Federal approval or the 2-year time line. A few commenters further questioned the scope and scale of the plans or pointed out the burden the process would place on local governments.

Response: The 2-year interim period has been deleted from this final rule, so the time line for developing guidelines and WCPs is now entirely up to the states and the entities desiring to perform habitat restoration activities. NMFS recognizes and appreciates the efforts local authorities are putting forth in watershed planning and habitat restoration projects. Nevertheless, NMFS is not prepared to individually review and approve WCPs, and has dropped that requirement from the final rule. State technical guidance can certainly assist localities in watershed conservation planning, and local governments having the wherewithal to independently develop and implement WCPs should not have undue difficulty navigating the revised approval process.

Comment 160: Several commenters suggested that NMFS should give more recognition to local watershed restoration efforts.

Response: NMFS recognizes the importance of local efforts, and will, by accepting approved watershed assessments, WCPs, and restoration projects developed through cooperative local efforts, acknowledge the contributions made by local watershed conservation groups. These efforts, in conjunction with regional and ESU-specific recovery efforts, will be crucial components of species recovery.

Comment 161: Several commenters pointed out that the assured funding criterion § 223.203(b)(8)(i)(A)(10) could present difficulties for some local governments and watershed councils.

Response: NMFS recognizes that securing funding to reliably implement the WCPs will be a challenging undertaking for many entities. Therefore, NMFS remains open to trying different means to flexibly deal with any difficulties that may arise—particularly with regard to funding.

Comment 162: One commenter objected to a requirement that WCPs be monitored to determine whether they increase listed salmonid productivity. The commenter was concerned that the cost and difficulty of monitoring fish populations would discourage local efforts at habitat restoration.

Response: NMFS realizes it is difficult and expensive to monitor population response and that acceptable methods have generally not been developed. While increased fish productivity is the ultimate goal (from NMFS' perspective) of a WCP, NMFS recognizes that monitoring programs will focus on habitat functions and processes as indicators of watershed health.

Comment 163: One commenter suggested that the **Federal Register** document and comment period prior to NMFS' approval of watershed conservation plan guidelines was unrealistic and contrary to the goal of salmon recovery.

Response: NMFS considers it necessary to provide for appropriate public review of the guidelines that NMFS expects to be addressed in programs submitted for its review. Ensuring complete and open public scrutiny will improve the guidelines through broad input and enhance their value through dissemination to all parties interested in the role of the guidelines in salmon recovery.

Comment 164: A number of commenters suggested there was a need for greater clarification in the scope and purpose of WCPs and watershed analyses, and that more specific direction was required in order to identify the information needs of the plans and analyses.

Response: Analyses and plans must ensure that habitat restoration activities will help place the overall habitat on a trajectory towards a self sustaining condition that provides high quality ecosystem function. NMFS believes that projects planned and carried out based on a watershed-scale analysis and conservation plan are likely to be the most beneficial. Watershed analyses identify problems that are impairing watershed processes and functions and supply base information needed to develop watershed plans and restoration activities. Without the context provided by watershed analyses, habitat restoration efforts are likely to focus on symptoms rather than on the underlying impaired ecosystem processes. NMFS identified 10 standards in the ESA 4(d) rule that characterize the WCPs' scope and intent.

Comment 165: Two commenters indicated that the restoration programs receiving limits on the ESA section 9 prohibitions should be expanded, and further, that the guidance should be made ESU-specific.

Response: NMFS works with state and local jurisdictions and other resource managers to identify programs for which it is not necessary and advisable to impose take prohibitions because they contribute to conserving the ESU or are governed by a program that adequately limits impacts on listed salmonids. This ESA 4(d) rule may be amended to add new limits on the take prohibitions or to alter or delete limits as circumstances warrant. NMFS wishes to continue to work collaboratively with state and local jurisdictions and other resource managers to recognize existing and potential management programs that conserve listed salmonids and meet their biological requirements. As more programs that meet these objectives are developed or identified, greater

geographic and ESU specificity may be possible.

Comment 166: One commenter suggested that WCPs should be required to protect existing high quality habitat.

Response: NMFS agrees that the best available science supports the concept of protecting existing high quality habitat as a cornerstone of a WCP (provided there is high quality habitat within the scope of the WCP). But the criteria provided at § 223.203(b)(8)(iii) will be used only to evaluate state WCP guidelines, which will include much more technical detail. Those guidelines will then be used to evaluate WCPs.

Comment 167: One commenter stated that conservation plans should not be limited to salmonid recovery but must be broad enough to encompass other watershed functions and goals.

Response: In freshwater ecosystems, NMFS' legal authorities are limited to the conservation and recovery of listed anadromous salmonids and their habitats. To help conserve listed salmonids, restoration actions should put the aquatic habitat on a trajectory towards such a naturally self sustaining system (i.e., properly functioning habitat). Properly functioning habitat condition consists of the sustained presence of the natural processes that provide high quality ecosystem function. This complex system is composed of the stream, the riparian area, and upslope areas. All three components of this system are interconnected. The WCPs that guide restoration activities intended to conserve salmonids will also benefit other aquatic, riparian dependent, and upland species and their habitats.

Comment 168: Two commenters suggested that WCPs should also serve as CWA section 303 Total Maximum Daily Loads (TMDLs) for waters listed as impaired. Another suggested that NMFS work with the Oregon Department of Agriculture to coordinate the SB 1010 water quality management process with the watershed conservation planning process.

Response: NMFS believes these are excellent ideas and recommends the approach. However, NMFS does not deem it necessary for the conservation of the species to require such a consolidation of mandates in this final rule. Incorporating water quality management plans, such as SB 1010 plans or TMDL Water Quality Management plans, into the watershed conservation planning effort is a logical and pragmatic approach towards watershed-scale recovery.

Comment 169: Numerous commenters stated that the habitat restoration portion of the rule was too permissive and unclear in its objectives, definition, criteria, and implementation. One commenter believed it would create new programs that would divert attention from the loss of viable habitat which is the root cause of salmonid decline. Others cautioned against allowing state programs a limit on the take prohibitions because existing state programs have proven to be poorly designed and implemented. Several commenters noted general loopholes in the limits section.

Response: The six specific interim provisions of the proposed rule were intended to strike a balance between the possible benefit to listed salmonids of allowing incidental take associated with some habitat restoration activities (while WCPs were being developed) against the risk that those activities might have deleterious consequences that a WCP context would have prevented. To accomplish this, NMFS selected six categories of common and relatively low risk restoration activities, and provided specific guidance and a list of references to further reduce the risk. In light of the numerous comments asserting that the interim provisions were both too permissive and too restrictive, NMFS now concedes that attempting to strike this balance was overly ambitious, and so has deleted the interim provisions from the limit for habitat restoration. Instead, NMFS offers three approaches for individuals who are contemplating habitat restoration actions but are concerned about their take liability: (1) Many of the most effective long-term restoration activities (e.g., riparian livestock exclosure fencing, native vegetation planting, cessation of ground or vegetation disturbing activities, cessation of water diversion) have extremely low probabilities of take, and the actors should not be concerned about take liabilities; (2) most higher-risk activities (e.g., instream construction activities, modification of stream bed or banks) require a CWA 404 permit from COE which provides incidental take permission through section 7 of the ESA; and (3) NMFS recommends the habitat restoration limit on take prohibition included in this rule as the best solution for encouraging effective restoration activities consistent with science based guidelines.

Comment 170: A commenter suggested that the rule holds habitat restoration to a much higher standard (in some cases so high as to render such activities impossible) in terms of avoiding impacts than it requires for development activities.

Response: NMFS disagrees. As stated in the rule, all 13 of the limits contribute to the conservation of listed salmon or are governed by programs that adequately limit their impacts. Moreover the same standard applies to both habitat restoration and development activities; they must achieve PFC of the habitat.

Comment 171: Several commenters believe that NMFS' approach with this limit is to treat habitat restoration activities as a significant threat to the very species they are trying to protect. They believe that NMFS is overreaching its authority and this approach is bureaucratic, unrealistic, unnecessary, and will, as a result, be counterproductive to species recovery. Many stated that NMFS should give a limit to any activity carried out in accordance with state and Federal Laws. Another general sentiment was that NMFS should take a "hands-off" approach to restoration activities and simply provide landowners with technical expertise.

Response: We agree that bureaucracy should be kept to a minimum wherever possible and we will consistently seek ways to streamline all the processes this final rule entails. Nonetheless, the final rule includes a limit for habitat restoration activities because, absent the limit, some of these activities could result in prohibited taking. NMFS does indeed want to avoid the tragic irony of having a protective regulation impede habitat restoration that might otherwise contribute to recovery. However, good intentions alone will not adequately protect listed salmonids from the unintended negative consequences of poorly designed habitat restoration projects. Such projects often entail physical modification of currently used habitat of listed salmonids, and have significant potential to further damage impaired habitats and populations. The probability and consequences of project failure can be particular severe when projects attempt to redress the symptoms of habitat impairments before the underlying causes have been reversed. NMFS does not believe that it can disengage from its ESA responsibilities and simply rely on other state and Federal laws for approval to carry out restoration activities.

Comment 172: A few commenters stated that emergency exemptions and a specific scope of rules should be included for bank stabilization and flood repair operations.

Response: NMFS believes altering and hardening stream banks, removing riparian vegetation, constricting channels and flood plains, and regulating flows are primary causes of anadromous fish declines. Section 404 of the CWA—implemented through COE

regulatory authority—provides conditions for permitting stream channel and bank activities. Section 7 of the ESA provides emergency consultation procedures which allow Federal action agencies to incorporate endangered species concerns into their actions during the response to an emergency (50 CFR 402.05). For these reasons, NMFS asserts that existing regulations are sufficiently flexible to enable emergency work without limiting take prohibitions for flood control or repair activities.

Comment 173: One commenter suggested that "artificial bank stabilization" should be defined.

Response: We agree that the usage in the proposed rule may have been confusing. The term is meant to be read in context with "primary purpose" of the habitat restoration activity definition. The primary purpose of the vast majority of bank stabilization projects is not to restore natural aquatic or riparian habitat processes or conditions, but to protect economic development and then try to "fix" habitat remnants in an artificial manner. Such use of artificial materials and means in a piecemeal approach to control a river (or enhance an already controlled river) clearly fits the definition of artificial bank stabilization.

Comment 174: Numerous commenters stated that marine and estuarine habitats should be included in the habitat protections and that connectivity issues and restoration activities should receive similar attention.

Response: NMFS agrees estuarine habitats should be protected, but believes the rule adequately prohibits take and destruction of habitat in marine and estuarine areas. This final rule text provides sufficient examples (i.e., destruction of freshwater and estuarine habitat, altering stream or tidal channels, altering habitat) as take guidance. Lists of how prohibited take may occur are not designed to be exhaustive. Regarding limits for habitat restoration activities in marine/estuarine areas, NMFS believes such projects are of large enough scale and complexity to require project by project technical review at least until watershed planning is complete. NMFS not only agrees with the commenters stating that near shore marine and estuarine habitats should be included in watershed planning but expects that these areas will be included in applicable state guidelines and WCPs.

Comment 175: A number of commenters requested that NMFS define the spatial scales appropriate for watershed analyses and conservation plans.

Response: NMFS recognizes that the four states covered by the ESA 4(d) rule delineate watershed boundaries using different hydrologic and administrative criteria. Consequently, the size of individual watersheds varies among the states and often across programs within a state, though there are a number of basic similarities in terms of watershed function and boundary. Each state's regulations and conservation programs are unique and the WCPs will most effectively conserve anadromous fish and their habitats if watershed boundaries are delineated within each administrative context.

Comment 176: A number of commenters indicated that the state guidance documents developed to help steer restoration activities were not complete or were not ESA compliant.

Response: NMFS recognizes that some of the identified state guidance documents are not finalized, and that some of the included activities may have an appreciable risk of taking. However, NMFS notes that these documents do provide guidance that will reduce risk and increase benefits of habitat restoration activities. Therefore, NMFS still recommends use of the guidance documents: Oregon Aquatic Habitat Restoration and Enhancement Guide (1999); A Guide to Placing Large Wood in Streams, Oregon Department of Forestry and Department of Fish and Wildlife (May, 1995); WDFW's Fish Passage Design at Road Culverts (March 3, 1999); and Oregon Road/Stream Crossing Restoration Guide (Spring 1999). Further, NMFS encourages the states to compile and expand these valuable guidance documents into WCP guidelines which NMFS may find qualifying under § 223.203(b)(8)(iii) of this rule.

Comment 177: Some comments reflected a concern that a report cited by NMFS in the proposed rule, "Steelhead Restoration and Management Plan for California" was not a peer-reviewed document and should not be included as guidance.

Response: The report cited in these comments has been adopted as an integral part of the Cal-Fed ecosystem plan, and was subject to extensive peer review before being adopted.

Comment 178: Several commenters questioned how the rule affected Indian Tribes' habitat restoration efforts. Most comments were directed at tribal participation in watershed planning, the potential for conflict between state guidelines and tribal restoration plans, and the lack of specific limits for tribal habitat restoration projects.

Response: As co-managers, the Tribes may participate in any forum for developing conservation guidelines and specific WCPs. Tribes may also submit their own watershed conservation guidelines and plans under the Tribal plan limit. This final rule text describes a process wherein four western states are tasked because NMFS believes the states are responsible for conserving natural resources and native species within their geographic boundaries, and that sufficient infrastructure is in place to expeditiously develop guidelines. No further or specific limits for tribal restoration projects were included in the rule because limits for tribal trust resource management actions that take threatened salmonids are promulgated in a separate rulemaking (65 FR 108, January 3, 2000).

Comment 179: One commenter requested that the removal of sinker logs (which can sometimes constitute a navigational hazard) should receive a limit on the take prohibitions.

Response: Removal of navigational hazards is under the authority of COE and it is their responsibility to consult with NMFS when they propose to engage in an activity that may affect listed salmonids. Federal projects that are approved through ESA section 7 consultation need not also qualify under a 4(d) rule limit.

Comment 180: One commenter suggested that physical fish habitat is not being fully utilized now, and questions the need to create more.

Response: NMFS respectfully disagrees and believes the commenter may have oversimplified the multifaceted problem of habitat productivity as being only a matter of finite capacity. This is a less-than-accurate portrayal of the habitat factors for decline which include both pervasive loss of habitat quality and loss of access to historic habitat because of barriers. It is NMFS' position that habitat degradation and loss have contributed substantially to the decline of anadromous salmonids, and opportunities to regain both habitat function and extent should be sought.

Comment 181: Some commenters felt NMFS should recognize that it may not be advisable or possible to protect or restore historic stream channels/processes, especially in urban settings.

Response: NMFS recognizes that, especially in the urban setting, stream channel habitats are often impaired and are not functioning properly. NMFS would further acknowledge that not all stream segments may be recoverable. However, NMFS maintains that all tools for salmon recovery must be retained in the toolbox. Urban development, open space, or green space designations provide opportunity to protect

important riparian settings. Likewise, urban redevelopment may provide future opportunities for communities to protect or restore historically important stream channel settings.

Properly Screened Water Diversions

Comment 182: One commenter wanted to know who determines whether fish screens are adequate.

Response: The proposed rule states that NMFS' engineering staff will agree in writing that a diversion facility is screened, maintained, and operated in compliance with NMFS- approved Juvenile Fish Screen Criteria. The proposed limit has been revised based on public comments and by the fact that the projected workload associated with approving potentially thousands of water diversion facilities in four states has the potential to overwhelm NMFS staff resources. Consequently, this final rule has been changed to allow NMFS-authorized state agency engineers and screen inspectors to review and recommend screen design certifications and to allow NMFS-authorized screen inspectors to check screens for operational and maintenance compliance. This approval process will augment NMFS staff review. NMFS' Northwest Region (NWR) Juvenile Fish Screen Criteria have been adopted by the Columbia Basin Fish and Wildlife Authority (with participants from the states of Oregon, Washington, and Idaho) for use in waters with anadromous salmonids. NMFS' Southwest Region (SWR) Juvenile Fish Screen Criteria was developed in close coordination with CDFG criteria and the two sets of criteria are compatible. As a result, in all four states affected by this final rule, NMFS' Juvenile Fish Screen Criteria will form the basis for a design review and inspection program. It is proposed that a design specification check-off form and an operational screen inspection report form be developed and used consistently in the four states. NMFS will establish and maintain a data base to record who reviewed a particular screen design, when it was inspected, any problems associated with poorly designed screens being approved, and other relevant information. A key component of this process will be important training to certify inspectors and design reviewers. New language has been added to the regulation to reflect this change.

Comment 183: Some commenters stated that the final rule should acknowledge other screen technologies, especially non-conforming technologies, that have been demonstrated to meet or exceed levels of protection provided by technologies that do meet NMFS screen criteria.

Response: NMFS' engineering staff is frequently asked to assess other screen technologies that are not compliant with NMFS' screen criteria. As a result, NMFS staff has developed a standard protocol for evaluating non-conforming technologies, and has published an agency position paper titled "Experimental Fish Guidance Devices," November 1994, that can be found on the NMFS web page at www.nwr.noaa.gov/1hydrop/exp__tech1.htm. This position paper describes the process NMFS requires for a proponent of experimental technology to demonstrate that a particular non-conforming technology meets or exceeds the level of protection offered by a facility designed using NMFS' Juvenile Fish Screen Criteria. We are not aware of any non-conforming technology that demonstrably protects fish as well as or better than NMFS' criteria for the variety of operating conditions present at any typical water diversion site. If evidence is provided that a non-conforming technology exceeds the level of protection provided by NMFS criteria (as described in the position paper referenced above), NMFS would welcome and approve this technology.

Comment 184: One commenter stated that water withdrawal and diversion activities that take listed salmon should not be granted limits.

Response: The intent of the limit for a water diversion equipped with a screen constructed to NMFS' standard is to minimize take associated with diversion activities once water is diverted from the stream. NMFS intends to enforce the take prohibition for other forms of take that may be associated with water diversions (e.g., dewatering streams, building gravel push-up dams, or creating other passage impediments).

Comment 185: A few commenters stated that requiring screens on all diversions in the Sacramento Delta regardless of whether or not the particular diversion affects steelhead is unjustified.

Response: The intent of providing juvenile fish screen facilities is to minimize the prospect of take once the water has been diverted. It is extremely unlikely that it can be conclusively demonstrated that any particular diversion in a river basin containing listed steelhead will never entrain a listed steelhead. It may sometimes be true that listed fish are not present at a diversion site. It is more likely that—due to a variety of circumstances—the listed fish simply escape observation at a given site. This should not be construed as a total absence of listed fish at a site. It should also be remembered that fish are at critically low levels now and that their presence at diversions and other sites is likely to increase as we proceed with their recovery.

Comment 186: Some commenters asserted that agencies and individuals making good faith efforts to install screens should receive a grace period during which take prohibitions would not be enforced.

Response: NMFS acknowledges that certain complex screen facilities can take several years to finance, design, and construct. NMFS will, therefore, change the proposed rule to include a provision for addressing selected facilities on a case-by-case basis. In these instances, a facility will be eligible for approval under the limit if it has an approved design construction plan and schedule that includes interim operation measures to minimize take. In the event that this schedule is not met, or if a schedule modification is made that is not approved by NMFS engineering staff, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions. In all other cases, as stated in the proposed rule, NMFS will apply the prohibition against take and the limit is available to those who have their diversion facility approved and inspected as stated in this final rule.

Comment 187: One commenter stated that diversion activities that substantially benefit the public should be included in the limit.

Response: It can be argued that any diversion activity confers public benefit to one degree or another. However, water diversions are screened to protect fish and allow them safe egress from the diverted flow—an activity which has little to do with how much the diversion itself benefits the public. Therefore, it is not possible to grant a blanket approval for water diversions—regardless of the amount of benefit that may putatively accrue from an individual facility.

Comment 188: Several commenters asserted that NMFS' screening criteria are not well defined, have not received enough scientific review, and are not flexible enough.

Response: On the contrary, NMFS' juvenile fish screen criteria are extensively detailed and do include sufficient flexibility to deal with site-specific constraints and other concerns. There is no set of juvenile fish screen criteria in the world that is as well defined, or has undergone a higher degree of scientific scrutiny. In addition, NMFS' juvenile fish screen criteria are based on decades of operational

experience that have yielded the best screen designs for salmonid protection in existence. Several state agencies have adopted NMFS' screen criteria and use them in water bodies containing anadromous fish. Lastly, extensive biological screen evaluations have revealed little or no injury to fish when testing screen facilities constructed to NMFS' criteria. This is a primary indicator that NMFS' juvenile fish screen criteria are the best option for protecting listed fish entrained by a water diversion.

Comment 189: One commenter suggested that screened diversions approved under the limit should be reviewed annually as to their physical condition.

Response: This is a good suggestion. NMFS agrees with this comment, and will seek to incorporate this issue into the check-off form and inspection process for a screen design and inspection program that NMFS be developed with the states.

Comment 190: One commenter stated that there should be no violation of the rule for inadequately screened diversions if no take can be proven.

Response: There are no liabilities under ESA if take does not occur.

Comment 191: One commenter thought that "enforcement official" should be replaced with "authorized officer."

Response: NMFS agrees with this recommendation and has made this language change.

Comment 192: One commenter stated that unscreened agricultural diversions in the Sacramento River delta are not the problem, and that NMFS should concentrate its efforts on the export pumps that dry up the river.

Response: Water diversions in critical habitat have the potential to take listed salmonids and, are therefore, subject to take prohibitions. Even properly screened diversions may take fish by drying up the river. NMFS intends to enforce take prohibitions against diversions that dewater river beds.

Comment 193: One commenter wanted to know if the limit applies to all diversions or just irrigation diversions.

Response: As stated previously, diversion of water in critical habitat has the potential to take listed salmonids and is therefore subject to take prohibitions. Thus the limit applies to all diversions that may affect the listed species.

Comment 194: One commenter identified the need for detailed operation and maintenance guidance if maintenance is to be a requirement in this limit.

Response: NMFS' engineering staff will provide this guidance in general for all juvenile fish screens and will develop site-specific operations and maintenance plans for sites with particular concerns. Our intent is to develop this guidance in conjunction with regional forums on screen activities (e.g., the Fish Screen Oversight Committee of the Columbia Basin Fish and Wildlife Authority). Both the general and the site-specific guidance will be included in the proposed training program for state-authorized officers.

Comment 195: One commenter wanted to know if the ESA 4(d) rule applies to temporary diversions during construction.

Response: NMFS will need to review each situation on a case-by-case basis and the answer will depend on the nature of the diversion. Some construction activities provide a temporary diversion around a construction site, and safely return fish and flow to the stream downstream of the site. Other activities may be required to provide a screen and bypass for a temporary diversion if biological review determines that the activity will place the fish at risk. These decisions will be made when developing a Biological Opinion on a particular in-stream activity.

Comment 196: One commenter urged NMFS not to apply the ESA 4(d) rule take prohibitions in areas upstream of fish barriers.

Response: The ESA 4(d) rule take prohibition applies to the land and ocean area within the 14 designated ESUs. All operators of water diversions within these ESUs need to review their activities and modify any activity that may take a threatened species.

Comment 197: One commenter noted that NMFS does not credit compliance with existing fish protection requirements, but appears to require continual updating to new fish screen standards and individual sign-off from NMFS staff that the screen complies. The commenter also stated that individual screen certification creates certain practical obstacles and NMFS should use this as an incentive and limit the take prohibitions on water use in general, not just on the physical diversion structure.

Response: The intent of the ESA 4(d) water diversion screening limit is to allow a water diversion to be made as safe as possible for listed fish species. Therefore, as new biological information becomes available, it may drive a modification in the screen criteria. Nonetheless, NMFS recognizes that it is unnecessary to retro-fit all existing screen facilities with new features every time new information comes to light because the criteria that are currently in place do an excellent job protecting all salmonid life stages. NMFS has updated their juvenile fish screen criteria only once in the last 11 years. The change came about as a result of new biological evidence that certain previously untested aspects of the old criteria did not adequately protect certain life stages of fish. While this set a standard for new installations, NMFS did not expect retro-fits of recently constructed facilities. NMFS intends to certify screen designs that meet the criteria in place at the time of construction—providing there is no evidence to show that the device is actively taking listed species. In addition, NMFS intends that when screen components need to be replaced due to wear, materials will be used consistent with current criteria. However, if a screen is installed that is out of compliance with NMFS criteria, no limit from the take prohibition will be allowed.

Comment 198: One commenter argued that the practical effect of the ESA 4(d) rules with respect to water diversions is to eliminate incentives for water users to screen their diversions.

Response: The intent of this limit is to offer diverters protection from take enforcement when fish are protected by a properly installed, well-designed, and well-maintained screen. There are clearly other issues (e.g., stream dewatering) that can not be solved by screen installation, and these activities will continue to diminish critical habitat and take listed fish and thus be subject to take prohibition.

Comment 199 : One commenter urged NMFS to apply this limit to water pumping devices as well as diversions.

Response: Water pumping devices are included in this limit.

Comment 200: One commenter wanted to know the details of NMFS' enforcement strategy for non-compliant screens and diversions.

Response: NMFS' enforcement strategy is specified in the section of this final rule entitled "Take Guidance." Unscreened water diversions that cause take of a threatened species are subject to NMFS take enforcement action.

Road Maintenance Activities

Comments Relating to the Oregon Department of Transportation (ODOT) Limit

Comment 201: Several commenters wanted the limit provided to the ODOT for the Routine Road Maintenance Water Quality and Habitat Guide Best Management Practices July 1999 (Guide)

to apply to other cities and counties as well so they would not have to develop their own. Many of these commenters also requested that the limit be expanded to other jurisdictions and departments of transportation—with appropriate revisions to the best management practices (BMPs).

Response: There are two issues reflected in this and other road maintenance comments and NMFS has organized its responses accordingly. The first is that some local jurisdictions would like to adopt the ODOT manual without modification with the understanding that it will provide proper functioning habitat conditions. NMFS agrees that local jurisdictions can adopt the BMPs in the manual; however, the local maintenance programs will need to be examined further to assess any differences between them and ODOT's program and determine how those differences would affect the success in contributing to Properly Functioning Condition (PFC). Also, NMFS and ODOT have spent several years evaluating this program so that NMFS has a clear understanding of ODOT's ability to fulfill training, tracking, and reporting requirements. Other jurisdictions wishing to be covered under this limit would have to demonstrate their ability to make similar commitments and would also need to define the circumstances under which an individual BMP would not be followed.

The second issue pertains to the potential application of the limit to similar activities of other jurisdictions besides ODOT and Oregon cities and counties. NMFS agrees that under the conditions that meet or exceed those described above, the limit for routine road maintenance could be applied to other jurisdictions such as ports, other state transportation agencies, and cities and counties in other states which also, like ODOT, have programs that are determined to meet PFC. This final rule describes the procedure for public comment and determination of inclusion within the limitation on the take prohibition.

Comment 202: One commenter focused on how NMFS would respond if the ODOT program had compliance problems or if new information demonstrated that the program no longer provided sufficient protection. They stated that allowing ODOT to correct the matter "within a mutually determined period of time" was too vague a standard.

Response: NMFS agrees, and the wording of the rule has been changed to reflect this comment.

Comment 203: Some reviewers stated that the ODOT guide is completely inadequate to the task of protecting fish in that it allows far too many potentially harmful activities and contains far too much ambiguous language. Similarly a number of commenters asked that ODOT remove the "hedge" words ("where feasible," etc.) from the road maintenance limit.

Response: NMFS believes that the ODOT program, as designed, will adequately protect the listed species and their habitat. NMFS also intends this final rule to be somewhat flexible in terms of allowing combinations of measures that avoid or sufficiently minimize take. Further, this final rule has been designed to take into account a range of circumstances wherein hard constraints relating to physical, safety, weather, equipment, or other project aspects make it impossible to follow the BMP to the letter. In addition, ODOT has stated that the discretionary language will not be used for convenience or for ease of operation. Therefore, based on NMFS' working relationship with ODOT, we expect that the standard BMPs will be used in most circumstances and situations. To help ensure that this occurs, the ODOT crews will be extensively trained and NMFS will regularly review the program.

Comment 204: One commenter stated that the ODFW, not the ODOT regional environmentalist, should review ODOT activities and decide if they need a biological assessment. The commenter was concerned by the fact that the proposed rule seemed to mandate consultation with the regional environmental coordinator for any in-water work and that the regional environmental coordinator would not have the specialized knowledge to make good decisions during in-water work.

Response: The ODOT coordinates with the ODFW on all in-water work for ODOT bridge repairs, and usually the regional environmental coordinator is involved in the discussions as well. The "and/or" language is not intended to exclude the ODFW, but rather to exclude the regional environmental coordinator in instances where that office's participation is deemed unnecessary. Two ODFW biologists are assigned to coordinate exclusively with ODOT on transportation issues and work closely with ODOT regional environmental coordinators. In addition, district biologists assist ODOT on a variety of construction and road maintenance issues and projects.

Comment 205: One commenter stated that the final rule should allow NMFS to approve minor variations from ODOT procedures.

Response: NMFS will exercise reasonable judgement as to whether any minor adjustment in the ODOT road maintenance guidance requires formal approval from NMFS and, therefore, also warrants **Federal Register** publication and public comment. However to stay consistent with the spirit of the limit, any change that would affect the substantive protections the program provides for the environment will require a written approval. NMFS has clarified this point by adjusting the language in the rule.

Comment 206: One commenter provided multiple, detailed, suggestions and critiques of the ODOT program. Each suggestion (in quotations) is covered in the following discussion unless it is discussed in another response.

(1) "To the maximum extent possible, the manual should contain enforceable standards." *Response*: Based on NMFS' extensive review of the ODOT manual, we believe the standards described are enforceable. For example, the first BMP for surface work requires (a) eliminating diesel as a releasing or cleaning agent and using only environmentally sensitive agents, (b) using heat sources to clean tack nozzles, (c) carrying adequate erosion control supplies to keep materials out of water bodies, and (d) disposing of excess material at appropriate sites. All these are enforceable. The same is true for the great majority of the BMPs for other activities.

(2) "Protective and mitigation measures for work conducted outside of the BMPs should be required, and they should be described." *Response*: We agree with portions of this statement. NMFS is continuing to work with ODOT on its maintenance BMPs. In most cases, the changes would have only minor (short-term) or no effects on habitat or fish. In situations where not following the BMPs would adversely affect fish or their habitat, NMFS will work with ODOT to ensure appropriate alternative protective measures and mitigation are applied.

(3) "The manual should describe an effective, proactive, monitoring program for maintenance projects." *Response*: Page 3 of the guide describes ODOT's monitoring program and it is also described in the draft rule. Research is being conducted on several high-risk activities such as culvert cleaning, culvert replacements, and winter maintenance in order to gain more information about maintenance project impacts and develop better BMPs.

(4) "The manual should contain specific timetables for project reviews and manual updates." *Response*: The

manual can be revised by ODOT in consultation with NMFS at any time. The draft rule states that ODOT has committed to review the guide and revise as necessary, at least every 5 years. In addition, ODOT will annually make any necessary BMP modifications.

(5) "Terms not in common usage should be clearly defined." *Response*: Uncommon terms are defined at the beginning of the guide (pages ii through iv).

(6) "Effective erosion controls and a list of specific techniques should be defined, including a description of methods to be used during emergencies." *Response*: Erosion control measures are described as BMPs under each activity. Erosion control measures for emergencies are being developed under a programmatic biological assessment.

(7) "Mandatory work windows should be defined to protect vulnerable life stages of salmonids." *Response*: As stated in the guide (e.g., pages 8, 12, and 13), ODOT must use in-water work windows for all in-water work, unless the ODFW specifically agrees otherwise. The ODFW's in-water work guidelines are part of the guide, in Appendix C.

(8) "Criteria for the use of bioengineering methods should be described." *Response*: The guide states that bioengineering will be used where possible. The ODOT currently has multiple research projects focusing on the use of bioengineering to stabilize slopes; as the results of the research become known, NMFS and ODOT will develop criteria.

(9) "Riparian management zones should be defined by water type or the criteria used to determine riparian buffer widths [should be] identified." *Response*: Standard buffer widths are defined on page iv of the guide. NMFS determined that these widths provide sufficient protection from road maintenance activities. The standard buffers also are implementable by maintenance staff without requiring detailed knowledge of fish presence/absence. Also, ODOT is developing detailed maps that identify sensitive resource areas based on criteria described in the draft rule; they will include information on overstory values, salmonid presence, spawning habitat, off-channel areas, etc. The maps will thus delineate areas where only certain activities may be allowed and the ODOT maintenance staff will modify their activities accordingly.

Comment 207: One commenter asked whether ODOT standards apply to all streams, just water quality limited streams, or just fish-bearing streams.

Response: The ODOT standards apply to all streams. The guide is a statewide document for all maintenance areas, even where no listed fish are present.

Comment 208: Several commenters stated that any routine road maintenance program should have been included in this limit. In particular, routine road maintenance under the Oregon Department of Forestry's Forest Practices Act was suggested.

Response: In the final rule, the limit for road maintenance is broadened beyond the ODOT and Oregon cities and counties to include other jurisdictions within and outside of Oregon based upon the ODOT's manual or which otherwise contribute to achieving or maintaining PFC. However, road maintenance for forestry roads will not be included because the road use and required BMPs are very different for this type of road.

Comment 209: One commenter stated that ODOT should provide criteria and steps to avoid, minimize, and mitigate all impacts when their guidance cannot be followed.

Response: The ODOT's manual is intended to avoid, minimize, and mitigate all impacts. NMFS chose to preserve ODOT's flexibility in choosing the most practicable methods for avoiding, minimizing, and mitigating for impacts because of ODOT's demonstrated commitment to protecting aquatic resources.

Comment 210: Several commenters requested the elimination of the requirement to prohibit any sediment input into the stream resulting from routine road maintenance activities.

Response: The ODOT routine road maintenance program does not prohibit sediment input into streams, although it presents measures to minimize and avoid the input.

Comment 211: One commenter stated that ODOT needs to allow for road repair during winter/wet seasons if emergency conditions dictate.

Response: The ODOT will implement BMPs when practicable, and is responsible for coordinating repair and mitigation measures with appropriate resource agencies in the event fishery or water resources are damaged during a response to an emergency.

Comment 212: One commenter requested that ODOT's program be removed as a limit because the tribes had not been given an opportunity to review it. They stated that the guide was not available for review through the notice.

Response: There were a total of 52 days to review the ODOT guide. It was available through the ODOT web site and the NMFS Northwest Region's website. This was cited in the **Federal Register** document within the section titled Electronic Access. Moreover, it is NMFS' intent to work closely with the tribes of the region to develop improved information exchange and consultation opportunities.

Comments on the Potential Application of the Limit to Other Jurisdictions

Comment 213: One commenter stated that the limit's requirements for developing an Memorandum of Agreement (MOA) under which road maintenance programs for other jurisdictions would be approved are not specific and should be revised to provide clear direction.

Response: NMFS intentionally did not provide a detailed description of what the MOA should include or how it should be prepared. The MOA was intended to provide the mechanism for negotiating with various jurisdictions about how to make sure that their program is equivalent to the effectiveness of ODOT program in contributing to achieving or maintaining PFC, including the tasks of training, tracking, and reporting, and how to best apply comparable measures identified in the ODOT guide. Based on this and other comments, NMFS has revised the regulatory language to require "a written agreement" rather than a formal MOA. That written agreement is intended to be flexible enough so there is no need to recreate a new maintenance program or amend the rule.

Comment 214: One commenter suggested that each jurisdiction seeking coverage under the limit for routine road maintenance should be able to develop its own BMPs.

Response: NMFS does not object to the use of BMPs that may be different from those presented in the ODOT guide. NMFS is satisfied that road maintenance activities in compliance with the ODOT guide and program contribute to achieving or maintaining PFC. NMFS expects that each jurisdiction seeking to apply the routine road maintenance limit to its program will clearly demonstrate how that program either applies equivalent measures to those specified in the ODOT guide or how it otherwise contributes to PFC. NMFS does not necessarily expect each jurisdiction to adopt the ODOT guide.

Comment 215: One commenter indicated that compliance and effectiveness monitoring and adaptive management are essential to ensure adequate protection of listed species. This commenter expressed concern that the monitoring may not be adequate and that without specific monitoring criteria

and protocols, the ability to evaluate and modify conservation measures would be limited.

Response: NMFS agrees that monitoring is essential for assuring that the routine road maintenance programs are being properly implemented and that the outcomes are as expected (i.e., contributing to PFC). The monitoring and feedback approach contained in the ODOT program, while being somewhat non-specific, is practicable and can provide enough information to assess compliance and effectiveness.

Comment 216: NMFS received one comment requesting that the limit set standards for road restoration and maintenance, as well as goals for maximum road densities.

Response: This comment is referring to forested watersheds and watershed conservation plans. NMFS is addressing those areas primarily through ESA mechanisms other than the road maintenance limits of the rule (i.e., application of ESA sections 7 and 10 for Federal and non-Federal land management practices, respectively).

Comment 217: One comment stated that there should be no specific limits for roads—just the normal section 9 prohibitions. The commenter was concerned that erosion caused by steep slopes and incorrectly built roads could potentially harm listed salmon populations.

Response: NMFS agrees that soil erosion from road projects can have adverse effects on salmon populations and their habitats. However, the limit only applies to routine road maintenance activities; that is, road repairs that increase the material profile are not covered under the rule. Any activity for which a COE permit is required is not covered by the routine maintenance program and would, in any event, require a section 7 consultation. The ODOT's manual recognizes the problems associated with erosion and addresses erosion repair (MMS 122). To minimize impacts, ODOT requires that erosion repair work consider bioengineering solutions. The maintenance program requires that ODOT maintenance staff take precautionary measures on identified erodible areas—provided the measures can be safely applied. Taken together with other measures ODOT is carrying out (e.g., mapping landslide-prone areas throughout the Oregon coast), the routine road maintenance program protects threatened salmon and steelhead adequately to warrant a limit.

Integrated Pest Management (IPM) Activities in Portland, Oregon

Comment 218: Several commenters indicated that NMFS led them to believe that pesticides would not be considered in this rulemaking and that it was, therefore, unfair to proceed with a limit that accounts solely for the Portland Parks and Recreation (PP&R) program. It was generally expressed that various states, local entities, and agencies should be allowed their own limit on take prohibitions as they relate to pesticide use. Other commenters stated that the PP&R IPM program was inadequate because it was too ambiguous, did not list the actual amounts of pesticide being used, allowed broadcast spraying in riparian buffers, and did not adequately address all potential pathways of contamination.

Response: The PP&R IPM program received a limit at this time because it is a fully-formed, conservative program. NMFS' decision process was based on careful scientific review, investigation of potential pathways of contamination (specific to PP&R-planned activities), and analysis. NMFS concluded that PP&R's plan addresses potential impacts and protects listed salmonids to an adequate degree. A subsequent review process will be conducted one year after PP&R's plan is adopted, additional reviews will occur every two years, and appropriate adjustments will be made throughout the process. As NMFS noted in the preamble to the proposed rule rates of application in buffer strips under the PP&R IPM program range from 8 percent to 100 percent of the individual chemical label restrictions. Moreover, these chemicals are not applied annually, rather only as needed and only as the last resort for controlling unwanted vegetation. Use of the term "broadcast spraying" may be misleading. The listed chemicals must be applied at low pressure (which results in large droplets to reduce airborne mists), by hand wand, and only in the area where a dense broadleaf outbreak is occurring—not the entire buffer area.

NMFS believes that with restrictions such as the ones cited here, and looking at the program as a whole, it sufficiently protects the listed salmonids.

Comment 219: One commenter asked if the PP&R IPM was intended to apply to maintenance activities adjacent to all streams, just water quality limited streams, or just fish-bearing streams.

Response: The PP&R IPM applies to all waters—regardless of their designation (moving, water quality compromised, fish/non-fish-bearing)—associated with PP&R managed lands. The use of pesticides near flowing waters is more restricted than near still water (isolated ponds).

Comment 220: One commenter stated that the PP&R IPM should require public notice 48 hours before spraying.

Response: Currently PP&R does notify the public of tree spraying by posting signs in the affected area 24 hours in advance. Also, on any day other types of pesticides are being applied, signs are placed in the park and remain there until the application is complete and any product has dried. It should be noted, however, that this is essentially a public health issue and is, therefore, outside the scope of a rule making for threatened salmon and steelhead.

Comment 221: Several commenters stated that data generated by Oregon's pesticide tracking law should be integrated with the limit.

Response: We agree that it would be useful information. The PP&R's IPM requires an annual report to NMFS. When NMFS reviews PP&R's annual report it will take into account new scientific data on pesticides and their effects on listed fish (and the habitats that support them) when making its decision whether to continue with the program as written or require changes. Over the next year, NMFS will examine the question of whether incorporating the information collected through Oregon's pesticide tracking law (ORS 192.502, ORS 634.306, and ORS 634.372) into the review process would improve that annual analysis.

Comment 222: One commenter requested that NMFS clarify that the PP&R IPM applies only to city parks managed by PP&R.

Response: The commenter is correct. The PP&R IPM program limit applies only to activities conducted by PP&R in Portland city parks.

Comment 223: One commenter expressed concern that the list of chemicals does not appear to take into account chemicals already present in surface waters. It was also stated that NMFS needs to do more research on the impacts pesticides have on anadromous fish.

Response: NMFS agrees with the need for more research in this area. The NMFS Northwest Fisheries Science Center (NWFSC) has recently begun a research program to evaluate in greater detail the effects of pesticides in the environment and their effects on anadromous fish. This program will expand on earlier investigations by the NWFSC and will look at the sublethal effects, synergistic effects, cumulative effects, and effects of inert ingredients in pesticides in the aquatic environment. NMFS will work closely

with EPA and state authorities which have primary responsibility for ensuring the proper use of these products under relevant Federal and state regulatory regimes. Should information come forward to suggest that the otherwise-lawful use of a pesticide harms listed salmonids and is in violation of section 9 or this rule, NMFS anticipates addressing the concern through amendment of this rule, a section 7 consultation with EPA, or corresponding discussions with responsible state authorities. NMFS will employ this approach rather than favor enforcement actions against an individual applicator for the otherwise lawful use of the pesticide. Similarly, if NMFS finds that a limitation on the prohibition against take for the use of selected pesticides is necessary and advisable for the conservation of listed salmonids, it may amend this rule accordingly. Through such a programmatic approach NMFS believes that it will be able to achieve an orderly and comprehensive analysis of the use of pesticides and their effects on listed salmonids.

Comment 224: One commenter suggested that the best approach to evaluating pesticide use under the ESA was a toxicological risk assessment protocol based principally on the dose-response theory. Under this approach, the commenter concludes that "there is no evidence that take of salmon or steelhead has actually occurred as a result of pesticide use." The commenter further asserts that under a program managed by the California EPA's Department of Pesticide Regulation (DPR), "there should be zero take of any listed fish, including salmonids under NMFS' jurisdiction" if the protocols developed by the DRP are followed.

Response: NMFS disagrees. The NWFSC has been actively investigating the sublethal effects of pesticides on listed salmonids for more than two years. This research is specifically tailored to examine pesticide effects on the life histories of anadromous fish in California and the Pacific Northwest, and is designed to reduce the considerable scientific uncertainty associated with pesticides. NMFS will use the data arising out of this process to guide future decision making under the ESA.

Comment 225: Several commenters felt the rules may unduly restrict the critical function of noxious weed control. It was suggested that NMFS may be discouraging lawful and environmentally beneficial use of pesticides and herbicides.

Response: NMFS recognizes the importance of noxious weed control. The final rule encourages development of local programs that conserve fish while placing priority on preventing pests (weeds, insects, disease) through non-chemical means. Noxious weeds may be controlled in a number of ways—both with and without the use of herbicides.

Comment 226: Some commenters asserted that a regional invasive species prevention program is needed—one that includes a protocol for addressing expedited responses to invasive species.

Response: NMFS agrees that a regional invasive species prevention program that includes response protocols would be beneficial. Such a program should be developed in cooperation with state and local government agencies, FWS, and EPA.

Comment 227: Several commenters stated that if a pesticide is used according to the directions on the label, or in compliance with various other state or Federal regulations, the applicator should receive a limit on the take prohibitions.

Response: Please see earlier responses on the same general subject. Currently, EPA has not consulted with NMFS on the use of pesticides and their impact on listed anadromous fish and their habitat. Therefore, applying pesticides in accordance with current label directives, EPA guidelines, or interim state measures for pesticide use, is not, de facto, exempt from the possibility of "take." EPA's Office of Pesticides Program will initiate consultation on a limited number of EPA-registered pesticides with NMFS SWR later this year and, depending on the outcome of that process, NMFS will continue to seek such consultations on registered pesticides. NMFS also hopes to begin consultations on those pesticides being considered for registration. In any case, NMFS recognizes that the above restrictions (labels, state guidance, etc.) constitute the only protective guidelines currently available to applicators. Therefore, NMFS will work with the responsible agencies to determine the extent to which restrictions on pesticide use need to be adapted to meet listed salmonid needs and, as that process goes forward, individual applicators may look to those agencies and NMFS to provide appropriate guidance in the future.

Comment 228: Two commenters suggested that NMFS should not rely on local solutions for pesticides, since three of the four states have laws preempting local pesticide regulation.

Response: The PP&R IPM program does not regulate pesticides. It directs the limited application of pesticides by a local government agency. NMFS is confident that PP&R has the authority to direct its application program.

Comment 229: One commenter asked that NMFS clarify its definition of a pesticide to include any substance that is considered an herbicide.

Response: The commenter is correct about the definition of a pesticide. According to EPA, the term "pesticide" includes all herbicides, insecticides, fungicides, rodenticides, repellents, disinfectants, and other compounds that kill, control, or otherwise affect pests. The final 4(d) rule will incorporate this definition for the term "pesticide."

Municipal, Residential, Commercial, and Industrial Development Limit

a. Clarification of Where and How This Limit Applies

Comment 230: Many commenters requested that the final rule clarify where and how "this limit" applies. One commenter asserted that the rule was so unclear as to require that the limit be removed entirely.

Response: NMFS has attempted to remove vague and confusing language from this final rule and to clarify where the limit applies. This particular limit is intended to apply to a broad range of planning efforts, ordinances, regulations, and programs (promulgated by city, county, and regional governments) that conserve listed salmon and steelhead by regulating or otherwise limiting activities associated with MRCI development. Some examples are wetland protection ordinances, shoreline management and development programs, and urban growth management plans. Such activities are not necessarily limited to "urban" areas, because city, county, and regional governmental jurisdictions extend to suburban and rural areas as well. NMFS has, therefore, clarified the intended scope of this limit by replacing the term "new urban density development" with "municipal, residential, commercial and industrial (MRCI) development" to signify activities undertaken by cities, counties, and regional governmental entities in urban, suburban, and rural areas.

Comment 231: One commenter requested that the ESA 4(d) limit for urban development be more streamlined than the process for developing and approving an HCP.

Response: Once local ordinances or plans are approved, the process of implementing MRCI development activities will be very streamlined. The responsibility for subsequent project review, approval compliance, monitoring, and enforcement will rest with the local jurisdiction. NMFS will

review each project's monitoring plans; however, we will not have a role in individual project reviews. In addition, any subsequent ESA section 7 consultations for individual projects for which there is a Federal nexus should be greatly simplified because the consultation will be able to tier off the local jurisdiction's initial analysis. The initial ordinance approval process, while subject to the same review standard as a section 7 consultation or section 10 permit application (i.e., individual ordinances must allow for properly functioning habitat conditions) should be considerably more streamlined than the HCP process because the procedural requirements are less complex (e.g., implementing agreements and NEPA analysis are not required for programs under the take limit).

Comment 232: Several commenters questioned whether the limit applies to the redevelopment of areas that no longer support salmon, and recommended that development along piped segments of low gradient streams should receive a limit on the take prohibitions. Others contended that the rule should address current and ongoing impacts from urban developments.

Response: If a stream segment or aquatic feature does not currently and has not historically supported salmonids, the limit only applies to the extent that downstream areas which do support salmonids rely on appropriate input of ecological element (litter fall, gravel recruitment, cold water, large wood, etc.) from above to achieve PFC. As a local project goes through the permit process, the existing condition of a stream segment within a watershed and its contribution to the ecological conditions essential to listed fish must be taken into account when determining whether and how a redevelopment project meets the local ordinances. It is the local jurisdiction's responsibility to determine how ordinances are implemented during the redevelopment of degraded areas. At a minimum, the ordinances must delineate the process for considering the redevelopment of degraded areas.

Comment 233: Several commenters observed that recovering PFC in large urban core areas is unrealistic.

Response: PFC requires the maintenance of habitat functions essential to the survival and recovery of listed salmonids, wherever those requirements may be found. NMFS agrees that many of the rivers and streams that flow through heavily industrialized or otherwise developed city centers cannot practically be expected in the near-term to resemble a rural river reach in PFC. The concept of PFC recognizes and accommodates the fact that essential ecological functions may be different in spawning and rearing habitats often found in forested environments, for instance, than in migratory corridors, often found in urban settings. Nevertheless, the highly modified habitat in urban settings still must maintain certain ecological functions that remain crucial to the listed species' survival and recovery. In the long run, most parcels in existing urban areas will eventually be redeveloped and restoration opportunities pursued. Urban rivers and streams will thus gradually recover more and more habitat functions over the upcoming decades.

Comment 234: Many commenters contended that the rules should include any (not just new) development (or redevelopment) inside or outside of the Urban Growth Boundary (UGB) or Urban Reserve Area (URA) in any of the affected states. In addition, many others stated that the proposed rule does not adequately distinguish between what is expected of the various kinds of development and redevelopment.

Response: NMFS agrees with the commenters that it is the activity, not necessarily the jurisdiction, that must contribute to achieving or maintaining PFC and has renamed and modified this limit to apply to MRCI development.

Comment 235: Some commenters questioned the need to treat development limits for urban and rural landscapes differently. They argued for the need to accommodate mature urban areas to protect the rural areas.

Response: NMFS agrees that properly functioning habitat, as described in section § 223.203(b)(12)(ii) of the regulatory language of this final rule, must be found in both urban and rural landscapes and is the foundation of this limit. NMFS also understands, however, that development in rural landscapes often requires different considerations than it does in urban landscapes. It is true that some rural developments, such as destination resorts or high-density residential development along rural shorelines, are quasi-urban in nature and have similar effects on salmonids and their habitats. The reverse can also be true. Conserving and restoring functional habitats depends largely on allowing natural processes to increase their ecological function, while at the same time removing adverse impacts from current practices. Those functional requirements apply regardless of where or how development takes place.

Comment 236: Some commenters requested that NMFS make clear that simply because the rule references the Metro Functional Plan, it does not mean that local jurisdictions must follow that proprietary program.

Response: Metro's Urban Growth Management Functional Plan applies only to the Metro region, that is Clackamas, Multnomah, and Washington Counties and the 24 cities in the Portland, Oregon metropolitan area. In order to accomplish the Plan's goals, local jurisdictions will have to take a number of actions—primarily by changing local government comprehensive plans and implementing ordinances. Other jurisdictions wishing to apply for an ESA 4(d) limit must craft their own plans in the context of local circumstances. NMFS notes that Metro has not yet submitted its Urban Growth Management Functional Plan to NMFS for consideration as a limit to the take prohibition, nor has NMFS approved it for that purpose. If Metro applies for a limit under this final rule, it will be evaluated at that time using the review process described in this rule.

Comment 237: Some commenters stated that NMFS should not allow this limit for the Tri-County planning effort in Washington State because Tri-County's proposal is "business as usual," and because the Tri-County implementation process would take too long to provide for salmonid recovery. Others felt linkages should be created between the Urban Development limit and the watershed plans in the proposed Tri-County framework.

Response: NMFS strongly disagrees with the general tenor of this comment and continues to actively support and encourage the Tri-County process. Certainly the negotiations are addressing difficult and complex issues. NMFS remains hopeful that these negotiations will yield agreements consistent with the requirements of the ESA and the listed fish. If Tri-County applies for a limit under this final rule, it will be evaluated at that time using the review process published in this final rule.

Comment 238: One commenter urged NMFS to include a limit for the CALFED-Bay Delta Program and other California programs.

Response: Applying for a limit under the ESA 4(d) rule is a voluntary process. Any jurisdiction or organization may negotiate with NMFS to create a plan and submit that plan for consideration under the MRCI limit. Such entities are also encouraged to bring to the table other types of limits that could be covered in a subsequent 4(d) rule and develop other plans to conserve the listed species.

b. Local Government Cost and Staffing Resources

Comment 239: One commenter expressed concern that the cost of mandatory setbacks would discourage redevelopment of brownfield areas.

Response: Different jurisdictions have the flexibility to tailor riparian management areas in urban brownfield areas to match local needs and conditions, provided they result in properly functioning habitat conditions.

Comment 240: Many commenters expressed concern that smaller jurisdictions do not have the staff and resources needed to comply with the urban development limits. One commenter asked for an explanation of "adequate funding."

Response: Ordinances or plans under which activities will be evaluated must be shown to meet PFC as illustrated by the applicable 12 considerations listed in this final rule, including the fact that the jurisdiction in question must demonstrate that it has the ability to enforce, monitor, and fund its obligations under the ordinance.

c. Implementation of the 12 Considerations

Comment 241: Many commenters asked NMFS to clarify how the 12 considerations are to be implemented or applied. Some thought the rule was too cumbersome and onerous, and, therefore, should be delayed or phased in. Others requested that NMFS not allow a phase-in approach.

Response: As the rule describes, NMFS evaluates activities that produce or result in conditions on the landscape that contribute to properly functioning (habitat) condition. Under this limit, NMFS will analyze MRCI ordinances and plans and determine if they will affect a condition on the landscape that is important to essential habitat functions. NMFS will then determine if that effect actually results in conditions that are likely to provide essential habitat functions; if it does, then the ordinance or plan may qualify for a limitation of the take prohibition.

The 12 considerations described in the MRCI development limit describe specific considerations that NMFS will evaluate when looking at MRCI development ordinances and plans. They are based on current scientific understanding of salmonid biological requirements (e.g., Spence *et al.*, 1996; NMFS, 1996). By assessing these 12 considerations, NMFS expects to evaluate the ordinances' efficacy in attaining (or maintaining) essential habitat functions or properly functioning conditions in various physical settings.

Comment 242: Several commenters questioned whether the proposed rule requires compliance with all 12 considerations. Some stated that NMFS should not require that all 12 considerations in the urban limit be satisfied at once.

Response: NMFS acknowledges that in addition to the comprehensive Functional Plan being developed by the Metro regional government in Oregon, other local planning entities are making significant progress in developing innovative MRCI ordinances and programs (e.g., the efforts by the Tri Counties and Kitsap County in Washington State). Not all local or regional governments have the resources to assemble all of their relevant ordinances and planning provisions into a comprehensive MRCI growth management program. NMFS is willing to assist such entities by reviewing individual ordinances or regulations that local governments may choose to submit for consideration under this MRCI limit. NMFS will still apply the 12 considerations in evaluating the likelihood that any given ordinance or regulation will achieve properly functioning conditions for salmonid habitat, but will recognize that some criteria may be less relevant than others—depending on the scope of the particular ordinance.

Because NMFS has a relatively limited number of staff members to review a potentially significant number of individual MRCI planning ordinances, plans, and regulations, NMFS strongly encourages local and regional governments to assemble comprehensive planning packages such as Metro's Functional Plan. Not only is this a more expeditious and efficient approach, it results in a greater likelihood that the MRCI growth management program will protect the full suite of essential habitat functions. In any case, because staff resources are limited NMFS will generally give comprehensive plans rather than individual ordinances priority in the review process.

Comment 243: One commenter requested that NMFS state whether the Metro plan meets the 12 considerations.

Response: Metro has not yet submitted its Urban Growth Management Functional Plan to NMFS for consideration as a limit to the take prohibition, nor has NMFS approved it for that purpose. If Metro applies for a limit under this final rule, it will be evaluated at that time using the review process described in this final rule.

d. NMFS' Approval

Comment 244: Many commenters wanted to know how NMFS would approve applications for inclusion in the take limit. Some commenters suggested that NMFS needs to establish a rule with a minimum set of clear and objective performance standards. Other comments suggested that NMFS should work with state agencies to develop state programs that meet some or all of the limit in order to help small, financially challenged jurisdictions.

Response: The 12 considerations represent evaluation considerations that, if addressed, will help conserve listed salmonids. When a local jurisdiction has an MRCI ordinance or plan it believes will attain or maintain properly functioning conditions, it is encouraged to pursue approval. NMFS will work directly with that entity to develop a product that meets the listed species' needs. However, as noted earlier, local jurisdictions are strongly encouraged to assemble, to the greatest extent practicable, all relevant MRCI development ordinances, regulations, or plans into comprehensive packages that NMFS can review in total. Such an approach is not only more efficient, it has a much greater likelihood of ensuring adequate conservation of salmonid habitat conservation than do individual ordinances. Before approving any application, NMFS will publish a notice in the **Federal Register** announcing the availability of the application for public review and comment. The comment period will be not less than 30 days.

Comment 245: Some commenters desired to know what NMFS meant when it said it would evaluate the limit on a regular basis.

Response: NMFS anticipates that each limit will be monitored during the life of the plan to ensure that management actions are meeting their intended purposes. Specific management actions arising under the plan will be compared with the conservation objectives to ensure consistency with the intent of the plan. Annual monitoring reports will be required and formal plan evaluations will take place at broader intervals—though not greater than 5 years. These evaluations will assess the progress of the plan toward meeting PFC, determine if the management actions are making satisfactory progress toward achieving the stated objectives, ensure that the actions are consistent with current policy, check the original assumptions to see if they were correctly applied, assess whether the impacts were correctly predicted, ensure that the mitigation measures are

satisfactory, and determine whether new data are available that would require altering the plan.

e. Level of Protection Provided

Comment 246: Many commenters asked NMFS to clarify what parts of the limit are binding and what are not.

Response: The final rule does not establish any binding requirements or regulations on any prospective applicants with respect to measures that must be followed to qualify for the take limit. Instead, the final rule defines both the considerations and the process NMFS will use when reviewing any particular ordinance or plan. Once NMFS has reviewed and approved a proposal for inclusion in the limit, the applicant is bound by the substantive requirements established in the subject ordinance or plan; these will be documented in the relevant monitoring, reporting, and enforcement provisions. The final rule clearly describes NMFS' authority to withdraw the limit in instances where the applicant does not diligently implement the approved measures.

Comment 247: Many stated that the Metro Functional Plan was far too restrictive; many others thought it not restrictive enough.

Response: The limit does not hold out the Metro Functional Plan as a standard. Metro has not yet submitted its Urban Growth Management Functional Plan to NMFS for consideration as a limit to the take prohibition, nor has NMFS approved it for that purpose. In fact, NMFS understands that the plan is not yet complete. If Metro applies for a limit under this rule, it will be evaluated at that time using the review process described in this final rule.

Comment 248: One commenter asked NMFS to identify and give take prohibition limits to land development activities that will not harm listed salmonids.

Response: Development actions that do not harm salmonids or their habitats are not affected by the take prohibition. It is not within the scope of this final rule to identify the vast number of activities (including many development activities) that do not harm listed species. However, unmanaged development activities could frequently frustrate attempts to meet the 12 evaluation considerations within this rule and commonly are among those that have historically destroyed or adversely modified critical habitats. On the other hand, activities that are carried out according to limits provided by this final rule are expected to adequately protect listed salmonids and contribute to their conservation.

Comment 249: One commenter expressed concern that giving local jurisdictions a ESA 4(d) limit would not, by itself, help enforce local actions necessary to conserve listed salmonids.

Response: Local jurisdictions are charged with developing and carrying out land use programs within the range of listed salmonids. Although those plans can be revised to be consistent with scientific information used to develop this limit, those same plans are still defined and administered through laws and regulations. Ensuring compliance with these laws and regulations is a key factor in making the plans successful. Eligibility for this limit, therefore, requires those plans to include effective enforcement programs and measures to educate local citizens, encourage voluntary compliance, and detect and address violations.

Comment 250: One commenter asserted that limits for urban development should be analyzed within the cumulative impact context.

Response: NMFS agrees that cumulative effects should be an important consideration in MRCI effects analyses. NMFS is aware that comprehensive MRCI development plans frequently will rely upon watershed scale efforts to achieve PFC by managing rural and agricultural activities in coordination with the cumulative effects of more-urban development. To the extent that NMFS must prioritize the evaluation process, comprehensive MRCI plans with relatively broader scopes of activities, authorities, effects, and geography (and therefore greater flexibility in dealing with cumulative effects) will generally be evaluated before plans with relatively smaller scopes. Applicants with smaller-scale plans should take particular care that their effects analyses take cumulative impacts into account.

f. Habitat Restoration

Comment 251: One commenter felt the new urban density development limit should require local governments to address habitat restoration and rehabilitation.

Response: This limit applies to jurisdictions that carry out development in a way that adequately limits impacts on listed salmonids or contributes to their conservation. Habitat restoration would be applicable when it is necessary to rehabilitate former poorly designed or implemented practices to achieve properly functioning conditions for listed salmonids within that jurisdiction. A specific limit for habitat restoration activities is provided in this final rule.

g. Scientific Justification

Comment 252: Some commenters assert that NMFS has not provided adequate scientific justification for this limit. For example, one comment requested that NMFS justify why the little remaining habitat is important to listed fish, and specifically, what evidence exists to support the need for vegetative cover for the entire length of a stream.

Response: Neither **Federal Register** documents nor U.S. Code is written in scientific style, with its thorough support of factual assertions through citations. Nevertheless, NMFS is confident that its conservation approach in the MRCI limit (and elsewhere in this final rule) is scientifically credible. As starting points for investigators, NMFS recommends Simenstad *et al*, 1982, NRCC, 1996, Palmisano *et al*, 1993, Gregory and Bisson, 1997, Spence *et al*, 1996. Essential features of salmonid habitats include adequate substrate, water quality, water quantity, water temperature, water velocity, cover/shelter, food, riparian vegetation, space and safe passage conditions In designating critical habitats, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, mineral, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of the species (65 FR 7764, February 16, 2000).

Vegetative cover is good for a number of essential habitat features such as water quality, water temperature, bank stability, stream complexity, cover/shelter, and food. In MRCI environments, the loss of riparian vegetation, coupled with reduced base flows, causes streams to heat up more during summer. In addition, the lack of large wood recruitment combined with increased peak flows heightens the severity of streambed scouring and downstream wood transport. This causes stream channel simplification and greater instability. In order to reverse the downward population trend for listed salmonids and steelhead, the structure and function of their aquatic habitats must be restored to whatever degree possible.

h. Specific Comments on the 12 Considerations

12.i.A. Siting Development

Comment 253: One commenter requested a definition of "area of high habitat value."

Response: This phrase refers to an area in a PFC, one that is better functioning than neighboring sites, or one with the potential to be fully restored. To achieve properly functioning condition and high habitat values within an MRCI area, new and existing riparian management areas need to be connected across land ownerships and political jurisdictions whenever land is developed or redeveloped, or brought into an urban growth boundary.

Development activities should be sited in appropriate areas. They should avoid unstable slopes, wetlands, areas already in a PFC, areas that are more functional than neighboring sites, and areas with the potential to be fully restored. A description of particularly sensitive areas is included in the Fish and Forest Report cited elsewhere in this final rule. Such sites include, but are not limited to, soils perennially saturated from a headwall or a sideslope seep or spring, permanent initiation points of perennial (stream) flow, alluvial fans, the intersections of two perennial streams. Development activities in any particular jurisdiction need to be open to coordination with adjacent jurisdictions to ensure landscape-scale conditions are providing essential habitat function.

12.i.B. Stormwater Management

Comment 254: Many commenters asserted that the stormwater consideration was poorly defined and urged that NMFS establish stronger and more specific stormwater standards. Others felt that NMFS should allow flexibility in regional performance standards and in areas where avoiding stormwater impacts is not feasible. One comment suggested replacing stormwater discharge language with specific methods for reducing development effects.

Response: NMFS believes that applying the same standards and considerations to all jurisdictions will not provide the most effective stormwater management because different methods will be more effective in different jurisdictions—depending on factors such as the existing land use in the subbasin or watershed, soil types, rainfall patterns, the degree to which the natural stream hydrograph has been altered, etc. NMFS will consider these factors, methodologies, and standards when reviewing city, county, and regional government ordinances for approval.

Comment 255: Some commenters stated that in an urban setting, it may not be advisable or feasible to protect or restore historic stream hydrographs and meandering processes. They asserted that the phrase "where feasible" should be added to stormwater and meander provisions.

Response: It is NMFS' intention to use the best available technologies to determine the most economic means to contribute to the achievement and maintenance of properly functioning conditions. NMFS believes this provision is justified by the need to significantly improve habitat conditions in a given MRCI area and thereby reduce the risks to listed species and ensure that they have an adequate potential for recovery. This can be accomplished by guiding land use practices on the watershed scale in order to reduce impervious surfaces, maintain forest cover, and natural soils. These conditions will, in turn, maintain essential habitat processes such as natural water infiltration rates, transpiration rates, stormwater run-off rates, sediment filtering, and provide hydrographic conditions that maintain and sustain listed salmonids. Where stream hydrographs cannot be restored, compensatory mitigation should be provided to offset the loss of habitat function. Mitigation may include stream corridor restoration by reestablishing pre-development hydrological regimes, controlling pollution sources, stabilizing channel morphologies, engaging in sediment remediation, restoring instream structure, and reestablishing riparian cover. Many of these activities may be guided by watershed scale planning and analysis which includes management of rural and agricultural activities.

Comment 256: Some commenters requested further clarification on peak flows and desired that NMFS place emphasis on biologically significant flows (i.e., water velocities suitable for juvenile fish) instead of peak flows.

Response: Changes in hydrological processes associated with the effects of MRCI development typically result in a flow regime that is more episodic and generates higher peak flows, faster runoff, and reduced base flows during periods without precipitation. Peak flows and base flows are both ecologically significant. Peak flows are primary agents of instream and riparian habitat change during storm events. Base flows sustain aquatic life during dry portions of the year. Other hydrological characteristics are also significant in the design of stormwater systems, for example, the need for water velocities suitable for juvenile salmonids.

Stormwater management programs associated with MRCI development activities should avoid impairing water quality and quantity. Such programs should preserve or move stream flow patterns (hydrograph) closer to historic hydrologic conditions (e.g., peak flows, base flows, durations, volumes, and velocities) that maintain properly functioning habitat conditions. This can be accomplished by guiding land-use practices at the watershed scale in order to reduce impervious surfaces, maintain forest cover, and retain natural soils. These conditions will, in turn, maintain essential habitat processes such as natural water infiltration rates, transpiration rates, stormwater run-off rates, sediment filtering, and provide hydrographic conditions that sustain aquatic life. NMFS will evaluate the effects that city and county ordinances (submitted for approval under this limit) have on relevant hydrologic processes.

12.i.C. Riparian Management Areas

Comment 257: Many commenters were concerned that the riparian management requirements were vague and uncertain. Some viewed this as creating opportunities to evade the intent of the riparian provision, while others wanted NMFS to make clear the fact that the intent was to be flexible and non prescriptive.

Response: The goal of MRCI riparian management is to protect and restore properly functioning riparian condition. To achieve this goal, programs must protect and restore soil quality—including controlling erosion and conserving soil productivity—and ensure that a diverse plant community with a vigorous age class distribution is well-distributed across a riparian management area. This contributes to the natural succession of riparian vegetation, produces habitat features essential to fish health, and protects water quality and flow conditions needed to meet fish habitat needs downstream. In MRCI areas, where riparian areas are usually subject to frequent and pervasive disturbance, the overland movement of nutrients, pesticides, and sediment can be pervasive. Thus, properly functioning MRCI riparian areas must also intercept and immobilize large pollutant loads, reduce runoff energy, and decrease the amount of nutrients being delivered to the streams. NMFS is not able to define the specific management strategies needed to achieve PFC in every conceivable situation involving a

riparian area, particularly where a restoration component is necessary. The basic goal of riparian management is to establish management that allows the riparian area to proceed on a growth and succession pathway toward a mature riparian condition. As noted earlier, mitigation should be developed for functions that cannot be maintained or restored at the site level and may likely require watershed-scale planning. As several commenters requested, this allows different jurisdictions the flexibility to tailor riparian and wetland management to match local needs and conditions.

Comment 258: A large number of commenters addressed the appropriate width of urban riparian management areas. Many comments focused on management area width without regard for location, riparian composition, or management strategy. One comment noted that the width of the urban riparian management area was greater than for lands affected by the Washington forest practice limit.

Response: There are differences in ecological function among riparian areas in the MRCI and forest management settings. These include the relative importance of pollutant and runoff control, the distribution of nutrient cycling and energy flow, and the efficiency of natural recovery mechanisms. However, the need to define properly functioning condition based on the salmon's biological requirements does not vary by land use type.

NMFS' evaluations of MRCI development are significantly influenced by a body of science indicating that essential habitat functions are affected to varying (but significant) degrees by streamside activities conducted within a distance equal to the height of the tallest tree that can grow on that site (known as the site potential tree height). This was the basis for the example in the preamble to the proposed rule that used 200 feet (60.9 meters) as the approximate span of a site potential tree height. The distance is measured not from the stream itself, but from the edge of the area within which a stream naturally migrates back and forth over time (the channel migration zone).

NMFS believes that the most effective way to ensure PFC is to manage MRCI development activities in riparian areas so that their impacts on habitat functions are minimal at the streamside, but may gradually increase with distance from the stream. For example, the riparian area is often managed with two zones, an inner zone that has the highest level of protection and is managed primarily to provide stream function by avoiding disturbance, and an outer zone managed for both stream function and as a transition to more heavily used upland areas. The width of each zone should be commensurate with the functions they are intended to provide and, in MRCI settings, reflect the need to buffer an upland disturbance regime that may be more severe than in forest lands; e.g., more frequent entry by humans and domestic animals or exposure to large amounts of nutrients, pesticides, and sediment.

Comment 259: Several commenters supported a preference for using native riparian vegetation.

Response: NMFS agrees that to meet the final rule's intent, existing native trees and other native vegetation in riparian areas should be protected and native vegetation should be used for restoration plantings wherever appropriate native stock are available to meet the project needs. Non-native stock or seed should only be used after a good faith attempt has been made to locate native materials. If native materials are unavailable, ecologically functional equivalents that are known not to be aggressive colonizers may be substituted. When the scope of an MRCI redevelopment activity may include modifying a riparian site with existing, non-native vegetation, it may be important to restore native vegetation on the site in order to generate the essential habitat functions discussed above.

12.i.D. Stream Crossings

Comment 260: Several commenters requested clearer criteria for culvert installation and bridge crossings. Some wanted the referenced guidance document to be included in the final rule.

Response: Activities such as road and stormwater system design and construction or placement of utility corridors should avoid stream crossings wherever possible in order to prevent soil disturbance and sediment and flow problems in the stream. Where a crossing is unavoidable, the condition of the crossing should minimize its affect by preferring bridges over culverts; sizing bridges to a minimum width; designing bridges and culverts to pass at least the flow level and debris associated with a 100-year flood event; and meet ODFW or WDFW criteria (ODFW's Oregon Road/Stream Crossing Restoration Guide, Spring, 1999 and WDFW's Fish Passage Design at Road Culverts, March 3, 1999). These two documents will be included in a guidance document to be published by NMFS at the same time as this final rule.

Comment 261: Many commenters stated that new and existing linear facilities—such as utility corridors—that cross rivers and streams should be included in this section. Other commenters wanted the language "wherever possible" used in the sentence "avoid stream crossings by roads wherever possible" to be strengthened or deleted because it creates a loophole. In general, they desired that NMFS establish criteria to determine if a crossing is necessary.

Response: Linear facilities will be included in the stream crossing section of this final rule. As to the necessity of individual crossings, NMFS believes the city or county jurisdictions should perform the lead role in developing these criteria. The applicable state fish and wildlife agency can provide considerable guidance in developing these criteria—both through their existing codes and regulations and in their guidance documents (listed previously in this rule).

12.i.E. Channel Migration Zones

Comment 262: One commenter requested an explanation of the term "channel migration zone" (CMZ) and asked that it be linked to landscape features that developers and planners can understand.

Response: A CMZ is defined by the lateral extent of active channel movement along a stream reach over the past 100 years. Evidence of active movement over the 100-year time frame can be inferred from aerial photos or from specific channel and valley bottom characteristics and it was chosen for that reason. Also, this time span typically represents the time it takes to grow mature trees that can provide functional large woody debris to streams. A CMZ is not typically present if the valley width is generally less than two bankfull widths, is confined by terraces, no current or historical aerial photographic evidence exists of significant channel movement, and there is no field evidence of secondary channels with recent scour from stream flow or progressive bank erosion at meander bends.

Comment 263: One commenter requested that no bank hardening be allowed within the CMZ.

Response: Gradual bank erosion and meander migration within the CMZ are important ecological processes that provide geomorphic diversity and enable habitat development. Constructing rigid bank protection structures within the CMZ can prevent properly functioning conditions from being attained because it disrupts natural channel processes and initiates

a cycle of altered erosion patterns flanked by new bank protection measures. The end result can be an entire reach being lined with rigid bank protection.

Where erosion within a CMZ is an issue, bank erosion should be controlled through vegetation, carefully bioengineered solutions, or other innovative "soft" bank protection techniques that allow eventual deformation by channel forming processes. Rip-rap blankets or similar hardening techniques should be avoided unless bioengineered solutions are not possible because of particular site constraints. NMFS finds that WDFW's publication, Integrated Streambank Protection Guidelines" (June, 1998) can provide sound guidance with respect to controlling bank erosion, particularly in the area of mitigation for gravel recruitment.

Comment 264: One commenter supported the concept of protecting the CMZ in streams and floodplains, and requested that the same protection be extended to prevent bank hardening in lake, estuarine, and marine shorelines.

Response: NMFS agrees that natural geomorphic diversity and habitat development are important in all fish-bearing waters, including estuarine and marine systems where the habitat formation processes of many wetlands, shorelines, and waterways have been impaired by the construction of dikes, levees, breakwaters, sea walls, shore protection systems, ports, moorages, and other hardened structures. While the CMZ concept itself is only applicable to systems with a definable channel, it is NMFS' intent to address, avoid, and minimize these habitat threats whenever such structures are constructed or maintained.

12.i.F. Wetlands

Comment 265: One commenter recommended that some wetlands be excluded from the take prohibitions and suggested that not every disturbance in a wetland management area should be prohibited.

Response: Take is prohibited. In general, MRCI development activities should protect wetlands and the vegetation surrounding them and thereby conserve natural wetland succession and function. The reason for this is that wetlands and their associated ecotypes support salmonid food chains, protect shorelines, purify water, store water during flood events, recharge groundwater, and provide specialized habitat for rearing and migrating salmonids.

Drained hydric soils that are now incapable of supporting hydrophytic vegetation because of a change in a water regime are not considered wetlands. The basic goal is to establish management that allows wetlands to maintain ecological functions, not to exclude all disturbances. Activities conducted in a wetland management area are generally subject to the COEs' permitting process under section 404 of the CWA and are necessarily subject to ESA section 7 consultation.

12.i.G. Hydrologic Capacity

Comment 266: Some commenters requested that NMFS clarify its intent in protecting hydrologic capacity.

Response: MRCI development activities should preserve intermittent and perennial streams' hydrologic capacity to pass peak flows. Decreasing the hydrologic capacity of stream systems by filling in the stream channel for road crossings or other development can increase water velocities, flood potential, and channel erosion, degrade water quality, disturb soils and groundwater flows, and alter vegetation adjacent to the stream. Preserving hydrologic capacity provides conditions needed to maintain essential habitat processes such as water quantity and quality, streambank and channel stability, groundwater flows, and riparian vegetation succession. Filling and dredging in stream channels should be avoided unless they occur in conjunction with an unavoidable stream crossing.

Comment 267: One commenter referred to the need to strengthen the Metro Title 3 flood management standards and ensure that riverine and floodplain systems are reconnected and historic floodplain functions are restored.

Response: Metro is currently seeking to improve Title 3 as part of a broader effort to comply with Oregon's statewide Planning Goal 5—the state's land use goal for natural resource and open space protection, and Oregon Administrative Rule 660, Division 23 (the "Goal 5 rule"). This effort is focused specifically on strengthening Title 3 by adding a program to protect, restore, and enhance fish and wildlife habitat functions in urban riparian corridors. NMFS is participating in a technical advisory role. Metro has not yet submitted its Urban Growth Management Functional Plan to NMFS for consideration as a limit to the take prohibition, nor has NMFS approved it for that purpose. If Metro applies for a limit under this final rule, it will be evaluated at that time using the review process described in this final rule.

12.i.H. Landscaping

Comment 268: Two commenters suggested more stringent standards for landscaping. One commenter proposed that watering, as well as fertilizers, pesticides, and herbicides, be eliminated in urban landscapes; the second proposed regulations requiring the use of native vegetation to reduce water use.

Response: Residential and commercial landscaping can be designed, installed, and maintained to reduce the need for water, herbicides, pesticides and fertilizer. Doing so will help maintain essential habitat processes by conserving water, reducing flow demands that compete with fish needs, and decreasing the amount of chemicals that contribute to water pollution in streams and other water bodies that support salmonids. NMFS relies on local ordinances to address planting and water use.

12.i.I. Erosion/Sedimentation

Comment 269: One commenter asked that NMFS clarify its expectations for erosion control measures.

Response: MRCI development activities should prevent erosion and sediment run-off during and after construction and thus prevent sediment and pollutant discharges. At a minimum, these activities should include detaining flows, stabilizing soils, protecting slopes, stabilizing channels and outlets, protecting drain inlets, maintaining BMPs, and controlling pollutants. This can be accomplished by applying seasonal work limits, phasing land clearing, maintaining undisturbed native top soil and vegetation, etc.

12.i.J. Water Supply/Screening

Comment 270: Several comments called for caution and flexibility concerning water supply development and water diversion screening; others wanted specific restrictions not identified in the proposed rule or mandatory conservation measures for existing developments.

Response: Water supply development can profoundly affect surface and groundwater hydrological processes. Water supply demands should be met without impacting flows needed for threatened salmonids—either through direct withdrawals from the streams or through groundwater withdrawals. Water diversions should be positioned and screened to prevent salmonid injury or death. When existing regulations do not protect the stream flows that salmon need, appropriate additional measures will need to be identified before NMFS

approves an MRCI development ordinance.

12.i.K. Enforcement, Funding, Reporting, etc.

Comment 271: Several commenters supported the monitoring provisions and requested that specific monitoring and implementation programs be described. In contrast, others concluded that by including all necessary enforcement, reporting, and implementation mechanisms NMFS has the potential to be arbitrary in its review of programs. It was suggested that NMFS make the reporting requirement biennial instead of annual.

Response: During the ordinance or plan development and approval process, NMFS will work closely with the local jurisdiction to identify and develop those monitoring mechanisms applicable to the listed species, their habitat, and the local jurisdiction. The existing condition of the salmonid habitat in the watersheds, the rate of projected growth, and other factors will be used as a baseline for the monitoring.

12.i.L. Comply with Other State and Federal Laws

Comment 272: Some commenters wanted to exclude this provision because they believed it exceeded NMFS' authority and because other programs exist to assure compliance.

Response: This subsection notifies applicants of the continuing obligation to ensure that their developments comply with existing state and Federal rules and regulations, as well as with this final rule in order to be eligible for the limit to the take prohibition. Further, an applicant should automatically assume that compliance with the this final rule necessarily meets existing regulatory requirements of local and state agencies.

Forest Management Activities in Washington

Comment 273: Many commenters wanted to know how the April 29, 1999, Forest and Fish Report (FFR) process under section 4(d) of the ESA compares with the process for issuing an incidental take permit issued under section 10. Some of these commenters misunderstood the intent of the FFR and others mistakenly believed that the proposed limit could result in issuing an incidental permit, or could be in effect for 50 years.

Response: While an ESA section 10 HCP may be developed by a non-Federal entity using many of the elements of the FFR, that process has not yet progressed to the point that NMFS has become involved. In other words, it would be many months before anyone applies for an HCP based on the FFR. At this time, NMFS is simply describing the circumstances in which an entity or actor can be certain it is not at risk of violating the take prohibition or of consequent enforcement actions, because the take prohibition would not apply to programs within those limits. And, unlike an HCP with "No Surprises" assurances, under the 4(d) limit NMFS may require FFR to be adjusted in the future. For habitat-related limits on the take prohibitions, changes may be required if the program is not achieving desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU.

Comment 274: Some commenters wanted to know what role NMFS played in developing the FFR. Some commenters believed that NMFS had already approved the Washington State Forest Practice Emergency Rules without following the National Environmental Policy Act (NEPA), and other commenters wanted to know how NMFS interacted with other resource agencies.

Response: Along with other natural resource agencies at the state, tribal, and Federal levels, NMFS participated in multi-party negotiations with representatives of the commercial forest managers in Washington State from about April of 1997 through April of 1999. NMFS staff provided technical assistance to several of the work groups tasked with providing the scientific underpinnings for various elements of the FFR. Also, NMFS staff helped explain ESA procedures and implications to the entire negotiating group.

While NMFS considers the product of those negotiations—the FFR—to form the core of the ESA 4(d) limit for forestry on non-Federal lands in Washington State, the report will continue to be worked on for at least another year as various sections are refined and completed. Since the FFR was initially published in April of 1999, NMFS staff have made technical and policy contributions to many sections of the report. These include, but are not limited to, FFR "Schedules" (essentially, technical appendices) for Channel Migration Zones, Road Management, Placement of Large Woody Debris, Conversion of Hardwood Riparian Zones, Adaptive Management, and Resource Objectives. Some of these products are formalized as Washington Forest Practice Board (WFPB) Manuals associated with the Emergency Forest Practice Rules (that became effective March 20, 2000) and have been evaluated by the Department of Natural Resources (DNR) in their State Environmental Policy Act Draft Environmental Impact Statement (SEPA DEIS). This document may be found on the web at www.wa.gov/dnr/htdocs/fp/fpb/pdfiles/>.

Comment 275: Many commenters stated that the FFR was severely flawed. As evidence, they pointed to a critique organized by the Society for Ecological Restoration.

Response: Four individual scientists participated in a review of the FFR that the Society for Ecological Restoration (SER) organized. The American Fisheries Society (AFS) was solicited to review SER's material, but contrary to purported statements on behalf of SER, AFS did not review or endorse any of the reviewers' work products. The AFS repeatedly asked the SER to retract and correct this inappropriate attribution. NMFS believes that, while there are useful parts of the report, the Society's critique of the FFR was flawed by: (1) a limited understanding of the policies, regulations and intent of the ESA (2) an incomplete understanding of all the elements of FFR, which led to (3) overstatements of the perceived weaknesses in the FFR.

Specifically, the report claimed the FFR could result in: too-warm waters flowing from some non-fish bearing streams into fish-bearing waters; a failure to identify some small fish-bearing streams; inadequate assessment of some potentially unstable slopes; potential increases in peak-flows that could generally harm incubating fish eggs; a potential reduction in future recruitment of woody material from some non-fish-bearing streams into fish-bearing streams; excessive disturbance and potential delivery of sediments from some non-fish-bearing streams into fish-bearing streams; and, inadequate identification of impaired watershed conditions that may need extra protection. NMFS has assessed all these concerns in light of the best available scientific and commercial information and generally agrees with the environmental analysis summarized in the SEPA DEIS. The moderate environmental risks and levels of uncertainty associated with the FFR are directly addressed by the adaptive management program and the adjustable nature of the ESA 4(d) limit.

Comment 276: Several commenters wanted pesticide application covered in the FFR 4(d) limitation while another commenter did not.

Response: The FFR proposes certain guidelines for pesticide applications

which can be found at: www.wa.gov/dnr/htdocs/fp/fpb/forests&fish.html#APPE. Due to the lack of information on specific pesticides proposed for use under the FFR and their potential for lethal and sub-lethal effects on fish or, as one commenter put it, an uncertainty that needs to be addressed, the limitation associated with the FFR does not include pesticide application.

Comment 277: Many commenters questioned how NMFS could ensure that the riparian conditions essential to listed fish survival and recovery would continue to function properly. Other commenters asked for a clear description of Desired Future Condition for riparian forests. Some commenters asked that NMFS prepare forest management standards for watersheds.

Response: The riparian conservation elements in the FFR are expected to play a major role in conserving salmonids and creating properly functioning conditions on non-Federal forest lands in Washington State. The FFR offers detailed, protective management strategies for three different forest land ecotypes in Washington as well as for fish- and non-fish-bearing streams throughout the state. NMFS has carefully examined these protections and management strategies and has determined that they sufficiently conserve the listed salmonids and will promote properly functioning habitat condition wherever they are applied. The best place to examine these management measures is in the FFR itself.

Comment 278: Many commenters expressed the need to improve forest road management and desired to know how the question was addressed in the FFR.

Response: Forest roads have the potential to affect aquatic ecosystems primarily by: generating and delivering fine sediments from road surfaces and ditches; delivering catastrophic sediment inputs as a result of road-related slope failures; blocking fish passage; disrupting the downstream routing of sediments and organic materials; reducing floodplain function; and modifying hydrologic patterns (e.g., the timing and intensity of peak flows). The FFR addresses all of these effects through a revised set of BMPs that govern road construction and maintenance. The BMPs require road maintenance and abandonment plans, set a functional resource objective for hydrology that virtually disconnects road drainage from stream systems, and describe a functional resource objective for road-related fine sediment that limits the length of ditch line that can deliver sediment to streams. Moreover, the FFR addresses existing road problems by requiring every forest landowner to produce a Washington State DNR-approved Road Maintenance and Abandonment Plan by 2005.

Comment 279: Many commenters did not believe that FFR or the Emergency Rules offered enough protection with regard to unstable slopes to meet the intent of the proposed limit.

Response: The goal for managing unstable slopes is to avoid increasing or accelerating the naturally occurring landslide rate (and volume) in forested watersheds, while still recognizing that mass-wasting is an essential watershed process element that helps route large woody debris through the stream system. The FFR provides general guidance about slope hazard by identifying four primary groups of land forms generally understood to be at risk for failure and potential sediment delivery: (1) Inner gorges, convergent headwalls, and bedrock hollows steeper than 70 percent; (2) toes of deep-seated landslides with slopes steeper than 65 percent; (3) groundwater recharge areas for deep-seated landslides in glacially formed terrain; and (4) the outer bends of meandering channels. The FFR lays out a detailed process for scrutinizing any proposed forest management activities in such areas and commits to support a team of geologists that will map any other potentially unstable areas in the state. NMFS has carefully considered these and the other basic protections set forth in the FFR and believes that the overall approach fits with the limit. Moreover, the risk from unstable slopes is expected to decrease as the adaptive management process moves forward and more and better tools are brought to bear on the problem of avoiding sediment inputs.

Comment 280: Some commenters stated that the FFR used a faulty system of stream-typing. They were concerned that an out dated system would continue to be used and, as a result, some fish-bearing streams might not be identified for protection.

Response: The FFR classifies streams and dictates levels of riparian and other protections based on the potential for a given channel to support fishes of any species at any time of the year. Seasonal fish-bearing streams are protected as if they were perennial. This habitat-based stream typing will replace the current emergency rule as GIS-based stream habitat models are developed (they are expected to be complete by June of 2001). For now, the older stream typing system—based on fish presence—will continue to be used; though it will also be upgraded through the WFPB Emergency Rule (March 20, 2000). Both of these stream-typing systems are based on judgements of the geographic threshold of perennial flow. These are considered to be: a sub-watershed of 13 acres in western coastal Washington, 52 acres in all other regions of Western Washington, and 300 acres in eastern Washington.

Comment 281: How does the FFR address potential changes in watershed hydrology resulting from forest practices? Some commenters thought NMFS should add provisions that would help maintain natural hydrology by limiting clear cut areas. Others urged NMFS to set standards for tree regrowth to aid watershed recovery after logging.

Response: The FFR proposed that forested watersheds be managed to meet a functional Resource Objective (Schedule L–1, in the FFR) that limits increases in peak flows and other consequences of altered hydrology. This Hydrology Resource Objective is still undergoing development. When complete, it will provide both a quantitative approach (based on changes in peak flow intensity or duration) and an objective based on the actual streambed effects arising from altered hydrology to choose from—depending on which is appropriate to the area in question. In both cases the emphasis will be on those watershed portions susceptible to rain-on-snow events, which are widely considered to have the greatest potential to alter peak stream flows and cause scour.

The BMPs for roads are also closely related to this issue (see earlier discussion for road-related hydraulic and sediment effects). In addition, the parties to the FFR committed to revising the Hydrology Module in the Washington Forest Practice Board's (FPB's) Watershed Analysis Methodology in order to more accurately assess hydrologic effects. Finally, the DNR also maintains authority to place conditions on any proposed Forest Practice if there is cause to believe that altered hydrologic conditions are of concern. Therefore, NMFS does not believe it necessary at this time to proposed additional conservation measures relating to watershed hydrology.

Comment 282: Many commenters wanted to know how NMFS would monitor activities under the FFR and use that data to determine whether rule adjustments were necessary.

Response: The FFR proposes an elaborate process for designing and implementing a monitoring and research program that will be used to adapt forestry activities through changes in the Washington Forest Practice Rules.

The adaptive management process is presented in Appendix L of the FFR. Essentially, the protocols and procedures for conducting adaptive management research and monitoring must be approved by Washington's FPB. An administrator employed by Washington DNR will oversee the program and assist the FPB in its task.

Comment 283: Many commenters stated that the FFR was too cumbersome for the Washington DNR to be able to implement.

Response: The Washington Forest Practices Board described their version of FFR, as Alternative 2, in the space of about 18 pages in the SEPA DEIS. The agency responsible for ensuring compliance with state Forest Practices—the Washington DNR—was a full participant in the negotiating process that led to FFR development. Part of their role was to codify and implement the proposed conservation measures. The first step of that codification was completed in February, 2000, when the FFR was substantially instituted as "emergency rules" for state forest practices. All necessary Washington DNR staff have undergone extensive training to implement the Emergency Rules.

Comment 284: Several commenters were concerned about the level of protection provided to wetlands, specifically forested wetlands. Other wetland concerns revolved around potential impacts on hydrology and water temperature as a result of effects on groundwater in up-slope areas. Also, some commenters indicated that the CMZ definition was too narrow and would not provide adequate protection.

Response: NMFS agrees there is uncertainty associated with forest management activities near wetlands in terms of how those activities might impact fish habitat. NMFS generally agrees with the analysis provided in the Washington State SEPA DEIS, section 3.5.2. That document can provide commenters with further information about the effects certain activities may have on wetland areas. In addition, the rule outlines the process for adjusting itself—a process that may be necessary as new information on the effects of specific forest practices comes to light.

The March 2000, Board Manual for Emergency Rules, section 2, explains the standard method for measuring CMZs and offers revised Standard Methods guidance. In it, several different ways of determining the CMZ are described, e.g., using historic aerial photographs, intensive field exercises, and field review by a channel expert.

Comment 285: Several commenters wanted the limit to include alternative plans that would give landowners managing areas less than 20 acres in size more operational flexibility. One commenter asked for clarification and requested that the limit include alternative plans that would help avoid any take liability.

Response: Within the construct of the FFR, alternate plans for forest management are allowed provided that the effect of these actions, as judged by the Washington DNR, conserves physical and biological processes at least as well as the base prescriptions. The purpose of this allowance was to address unique sites and operational configurations that required some departure from standard approaches. The alternative plan management strategy must protect public resources at least as effectively as the basic rules. If approved, the prescriptions set forth in an alternative plan would be substituted for the prescriptions in the corresponding basic rules. NMFS includes in this limit only those alternative plans in the FFR that have been demonstrated to adequately protect listed salmon, and that provide NMFS—or any resource agency or tribe NMFS designates—review opportunity at every stage of development and implementation. Such review may cause a plan to be excluded from this limit.

Comment 286: Many commenters asserted that NMFS had no scientific basis to expect that the limit would contribute to salmon recovery.

Response: As the proposed rule states, "this proposed rule restricts application of the take prohibitions when land and water management activities are conducted in a way that will help attain or protect properly functioning habitat. Properly functioning habitat conditions create and sustain the physical and biological features that are essential to conservation of the species. Properly functioning habitat conditions are conditions that sustain a watershed's natural habitat-affecting processes (bedload transport, riparian community succession, precipitation runoff patterns, channel migration, etc.) over the full range of environmental variation, and that support salmonid productivity at a viable population level." After carefully evaluating the various components of the FFR—as described in the proposed rule and discussed in pervious responses, NMFS has concluded that applying the FFR will help maintain and attain properly functioning habitat conditions and will, therefore, contribute to recovery.

Comment 287: A number of commenters suggested that NMFS should include the state forest practice rules from Oregon, California, and Idaho in the limit.

Response: At the time the limit was proposed for the FFR in Washington state, NMFS had not been presented with any other forest practices regulatory framework that was designed to conserve listed anadromous fish. For several years, NMFS has been discussing with state agencies in Oregon and California ways to strengthen the fish conservation aspect of forest practice rules in those states. NMFS wishes to continue working with all affected governmental entities in strengthening, identifying, and creating management programs that fulfill the listed salmonids' biological requirements. For programs that meet those needs, NMFS can provide ESA coverage through 4(d) rules, section 10 research and enhancement permits or incidental take permits, or through section 7 consultations with Federal agencies. A 4(d) rule may be amended to add new limits on the take prohibitions, or to amend or delete limits as circumstances warrant.

General

Comment 288: A broad array of interests asserted that their activities were, at most, only minimally harmful to salmonids and that natural environmental fluctuations and activities being conducted by others were responsible for the recent drastic declines in salmonid numbers throughout the Northwest and California. Among the activities and causes listed as most harmful were logging, grazing and other agricultural practices, pesticide use, various habitat-altering actions, urban development, sport fishing, commercial fishing, drift net fishing, tribal fishing, recreational fishing, ocean and estuarine conditions, hydropower development, marine mammals, avian predators, other predators, and so forth.

Response: Comments of this nature have been made in response to essentially every listing and critical habitat proposal NMFS has put forth over the last decade. As a result there is a great deal of information on these factors available in any one of a number of **Federal Register** documents and it need not be repeated in detail here. Nonetheless, it should be pointed out that the very number of commenters and the range of the causes cited are themselves indicative of the breadth and depth of the problems facing Pacific salmonids. Therefore, NMFS acknowledges that all of these factors have played a role in the species' recent declines; as evidence, most of the factors that commenters identified were

specifically cited as risk agents in the West Coast Chinook Salmon Status Review (Myers *et al.*, 1998).

The two primary themes that repeatedly arise in these comments revolve around whether the massive declines in salmonid abundance are brought on by natural conditions or human alteration of the environment. NMFS recognizes that natural environmental fluctuations and increasing numbers of natural predators have recently had negative impacts on the species. However, NMFS believes human-induced impacts (e.g., harvest and widespread habitat modification) have played at least an equally significant role in the salmonid declines up and down the West Coast. And because the very nature of this rule-making—the codification of take prohibitions and the limits placed on them—cannot apply to natural processes (by definition, the ocean cannot not "take" species), the rules necessarily address human activities.

Comment 289: Many commenters stated that the language of the rules needed to be more clear in a number of respects, particularly with regard to the terms found in the take guidance sections. Others felt there was too much detail in the rules and that NMFS should simply stick to principles and not offer too much in the way of specific guidance.

Response: In publishing the proposed rules, NMFS tried to strike a balance between these opposing views. The point was to avoid making the rules overly prescriptive—and thus allow local initiative to play a strong role—yet still give valuable guidance on how to proceed with numerous human activities in the areas inhabited by threatened salmonids. To continue in this spirit, NMFS has gone to some lengths to clarify the guidance language and it may be found in this final rule.

Comment 290: Several commenters requested clarification on NMFS' use of the term "stock," the definition of population segments, and the implications of these concepts for species conservation.

Response: The use of the term "stock," following Ricker's definition, is critical because it defines the appropriate management units for conserving the species. According to Ricker, stocks are made up of numerous populations which become uniquely adapted to specific environmental conditions, leading to local variations in morphology, behavior, and life history traits. As amended in 1978, the ESA allows the listing of "distinct population segments" where groups of populations are assembled for conservation management purposes. NMFS' policy states that a salmon population is considered "distinct" for purposes of the ESA if it represents an ESU of the biological species, where an ESU represents an important component of the evolutionary legacy of the species. Thus the health of an ESU depends upon the health of its component parts. This argues for developing protective regulations across an ESU's entire range, even though some local populations may be thriving. The ESA 4(d) protective approach offers the flexibility to develop local protection programs which are cognizant of the species condition in the area.

Comment 291: A large number of commenters voiced general and specific support for and opposition to various rules.

Response: The proposed ESA 4(d) rules generated an amount of substantive public comment unprecedented since NMFS first began rule-making activities for salmonids on the West Coast 10 years ago. Many thousands of individual comments contained within the letters from well over one thousand respondents reflected the broadest possible spectrum of feeling—from full support to total opposition to the proposed rules. Though the very nature of the questions surrounding salmonid management in the Northwest and California precludes any possibility of pleasing everyone, NMFS has striven to use this public comment period—as well as every other input avenue at our disposal—to adapt the rules in a manner that more fully reflects the basic objectives to encourage state and local conservation efforts and to clear up the substantial confusions associated with certain elements of the earlier proposed rule.

Comment 292: Several commenters stated that NMFS should consult with tribal governments regarding actions by non-tribal entities, particularly those actions and limits contained in the salmon and steelhead ESA 4(d) rules.

Response: Throughout the development of the tribal and salmon/steelhead 4(d) rules NMFS has made a concerted effort to notify and confer with tribal representatives and technical staff throughout the Pacific Northwest and California. Contact regarding these rules goes back to before December of 1998, when draft rules were submitted for review by the affected tribes well in advance of the proposed rules. During that review, NMFS coordinated and attended a number of meetings and working sessions with tribal governments and representatives (including staff from inter-tribal fisheries commissions) to discuss particular aspects of the ESA 4(d) rules. These meetings allowed NMFS to develop proposed ESA 4(d) rules that the agency believes address a wide range of issues highlighted by the tribes. Similar efforts were made to discuss the proposed 4(d) rules with key staff and tribal council members after the rules were published.

Clearly, NMFS recognizes the need to work closely with the tribes of the region to develop and improve upon information exchange and consultation opportunities relating to salmon and steelhead conservation. Since beginning work on these 4(d) rules NMFS has added a tribal liaison position to its staff to focus on improving communications with the tribes and developing consultation procedures that will meet both NMFS and tribal needs. It is the agency's intent to continue working with tribal governments to develop regularly scheduled meetings between NMFS and tribal technical staff and policy makers to both provide more timely notice regarding NMFS activities and discuss how consultation might occur for future fisheries issues and ESA rulemaking. There remains the opportunity for the tribes and the agency to hold future discussions on applying the ESA 4(d) rules. Such future discussions can include identifying cultural and economic issues requiring the agency's attention and ideas about how such analyses should be conducted. In response to tribal requests, NMFS will correspond with each commenting tribal government, clarify how its comments were addressed, and identify the need for additional meetings to discuss potential rule amendments and modifications.

Comment 293: Many people stated that any activities conducted in accordance with the Oregon Plan for Salmon and Watersheds should receive a specific limitation on the take prohibitions.

Response: NMFS has carefully reviewed the various versions of the Oregon Plan since its genesis over 4 years ago and remains a strong supporter of it as a hugely ambitious and comprehensive effort. While many portions of the Plan may sufficiently protect the salmon resource as they now stand, other components need further work and refinements, as is widely understood and altogether understandable. Therefore, because certain parts of the Plan do not offer the salmon enough protection, NMFS cannot adopt it wholesale as a limitation on the take prohibitions.

Comment 294: Several commenters requested that NMFS clarify how it will

add new limits and adjust programs that are already within a limit.

Response: NMFS will continue to work with local jurisdictions and other entities to develop and adopt new ESA 4(d) rule limits. In general, local entities will develop a proposed limit based on the guidance set forth in the rule and will bring it to NMFS for technical assistance and to undergo a negotiation and approval process. The approach is a flexible one and there are different time frames and administrative procedures for each limit—depending on the type being proposed (see the regulatory text of this final rule). Existing limits will be reviewed and evaluated according to the schedule established at the time the limit is finalized.

Comment 295: One commenter requested that NMFS identify in the final rules the "replicable" elements of any of the agency-specific programs.

Response: There are two types of limits available through the ESA 4(d) rule: (1) Stand alone programs, and (2) a set of criteria that will form the basis for future programs that NMFS will evaluate for further limits on the take prohibition. The first category of limits is made up of programs that can be adopted or adapted as "replicable" elements for other jurisdictions or entities. The criteria in the latter type of limit also serve as replicable elements that other programs can adapt to meet.

Comment 296: A number of respondents expressed a general concern that the ESA 4(d) rules were too coercive. They stated that the rules would engender third-party lawsuits or simply fragment and undermine local efforts rather than bolster them. A recurring theme was that NMFS should be more flexible in its approach than the rules would seem to indicate.

Response: One of the primary reasons NMFS has taken this ground-breaking approach in publishing ESA 4(d) rules is to allow for a maximum of local input and Federal flexibility. Rather than simply impose blanket take prohibitions of the sort normally promulgated under a final rule listing a species, NMFS has attempted to create a regulatory environment within which local initiatives and programs have sufficient leeway to remain focused on their own goals while simultaneously working toward the ultimate end of preserving salmonid stocks—both now and in the future. No agency can alter the simple fact that certain activities that harm listed salmonids must be regulated. Nonetheless, as the rules themselves demonstrate, NMFS is committed to an approach that focuses more on aiding local efforts that conserve listed salmon and steelhead.

Comment 297: Some commenters stated that local entities should have little or no authority to carry out the measures because local initiatives have a very poor track record with respect to protecting salmonids.

Response: The task of protecting salmonids in the Pacific Northwest and California is perhaps the most complicated and far-reaching attempt to restore a species ever undertaken. In practical terms, the Federal government alone, using only Federal authorities and dollars, cannot hope to accomplish this ambitious task of salmon recovery without the additional active efforts of state and local authorities and the private sector. A wide mosaic of activities affect salmon habitat. Those activities fall under the responsibility of a range of Federal, state and local authorities. The practical ability to make changes in those activities will depend in part upon the willingness and ability of those separate authorities to encourage change. Therefore, NMFS is attempting, to the greatest extent practicable, to build opportunities for state and local initiatives in the implementation of the ESA program. This strategy has already proven successful in a few areas where watershed councils and other local bodies have made great strides in salmon conservation through habitat rehabilitation, community awareness seminars, and other projects. NMFS anticipates and welcomes further expansions of these efforts over time.

Comment 298: Many commenters stated that individual landowners should receive assurances in the rules that if they cooperated and followed the measures outlined, they would be free from any further restrictions under the ESA.

Response: As a matter of law, listed species may not be taken without legal authorization. Therefore, it is incumbent upon every individual and organization to be vigilant in terms of minimizing the impacts their activities have on listed salmonids. The 4(d) rules establish take prohibitions; that is their purpose. Secondarily they are an attempt to allow landowners and every other interested party a path by which they can have some assurance that their activities are in concert with the letter and intent of the ESA. It should be noted that no one will be forced to seek a 4(d) limitation, and no one need necessarily follow the limitations laid out in the rule. They are optional, flexible methods for ensuring that individual entities adhere to the mandated take prohibitions. The other routes for complying with the ESA are still open; for example, landowners may still seek ESA section 10 incidental take permits through the process of developing habitat conservation plans—a process that offers them a good deal of assurance that their activities will continue to be in compliance with the ESA. Any program or activity that adheres to the criteria found in the limits described in these rules will receive a similar sort of assurance. Further, it is very likely that other programs will come forth in the future that similarly protect the salmon and, as a consequence, will receive their own limitations on the take prohibitions. Nonetheless, it must be stressed that the primary purpose of these rules is to fulfill the mandate of the ESA in issuing regulations deemed necessary and advisable to provide for the conservation of threatened species.

Comment 299: A number of commenters asserted that the original listings were in error—most the reasons given fell into two categories: either (a) the science was inaccurate, or (b) the concept of listing ESUs is faulty.

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data after reviewing the status of the species and taking into account any efforts being made to protect such species. NMFS believes that information contained in the agency's status review (Myers *et al.*, 1998), together with information cited in the final rule (NMFS, 1998a), represent the best scientific information presently available for the ESUs addressed in this final rule. NMFS made every effort to conduct an exhaustive review of all available information and solicited information and opinion from all interested parties in making the listing decisions. If in the future new data become available to change these conclusions, NMFS will act accordingly.

As to the validity of listing ESUs in the first place, general issues relating to ESUs and the ESA have been discussed extensively in past **Federal Register** documents—most recently in the final rule listing 4 ESUs of chinook salmon (64 FR 14308, September 9, 1999) and they need not be reiterated at length here. Nonetheless, the utility of the ESU concept is laid out in a 1991 document in which NMFS describes how it will apply the ESA definition of "species" to Pacific salmon (56 FR 58612, November 20, 1991). Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled "Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon" (Waples, 1991) and in

a recent scientific paper by Waples (1995). It should also be pointed out that the National Research Council generally endorses the concept (NRC, 1995).

Comment 300: Several commenters were concerned about the scientific standards used to justify the inclusion of the 13 limits and to judge future limits, and suggested the generation of uniform standards.

Response: NMFS evaluated the current limits based on best available science and the concepts of VSP and PFC, and will evaluate any future limit using the same and other, more site specific guidelines. Recognizing the variable nature of the geologic, hydrologic and aquatic ecosystems across all ESUs, and the consequent variability in strategies for salmon recovery, NMFS proposes an approach that allows local innovation through the development of local and regional programs that are protective of salmon and steelhead. These programs are monitored and evaluated for their effectiveness in meeting the conservation goal of the survival and recovery of the species. While NMFS offers general guidelines, the 13 limitations and new programs offer additional specificity and strategies for meeting the conservation goal.

Comment 301: Some commenters expressed the opinion that the rules are too costly and will involve too much red tape.

Response: Saving a species is neither an easy task nor a cheap one. Nonetheless, NMFS is committed to finding the most efficient and cost-effective way of preserving salmon and steelhead on the West Coast. To assist us in this, we have prepared initial regulatory flexibility analyses of the effects the rules are likely to have on small businesses, non-profit organizations, local governments, and other small entities. The purpose of these analyses is to help the agency consider all reasonable regulatory alternatives that would minimize the rules' economic impacts on affected small entities. It is thus our intent to make full use of these analyses and keep economic impacts to a minimum.

In addition, because this is a new approach to promulgating 4(d) rules under the ESA, we are aware that the process may impose some unforseen burdens in terms of time investment and paperwork for all involved parties—including NMFS. To counter this, we will use the principles of adaptive management to streamline the process wherever and whenever possible.

Comment 302: A number of people stated that more time was needed for completing and commenting on the rules.

Response: NMFS has been working with individual programs, tribes, and local governments all over the Northwest for well over 2 years to complete the 4(d) rule proposals. Twenty-five public meetings were held in order to get input. The statutory time line for commenting on the rules was doubled so that every interested person in the region would have a reasonable amount of time in which to formulate and submit their comments.

It is important to note, however, that one of the main premises of promulgating these rules is to build a maximally adaptive process for managing salmon on the West Coast. Therefore, it is expected that these rules will continue to change in response to incoming monitoring data, further public input, other proposed limitations on the take prohibitions, and the developing recovery plans for the listed species.

Comment 303: One commenter requested that the reference to a public comment period of 30 days for various plans and programs be included in every section of the rule in order to provide consistency in process between limits.

Response: All programs that are accepted as ESA 4(d) limits will be published in the **Federal Register** and the usual comment period is 30 days. NMFS makes clear in the regulatory text of this final rule where and when the 30-day comment period applies.

Comment 304: Many commenters agreed with various portions of the rules, but stated that it is imperative that they be enforced and that monitoring and oversight need to be accounted for in every limit. Further, monitoring must be built into the system in a way that allows the limits to be altered when evolving science shows it necessary.

Response: Change in response to new data is the very heart of the adaptive management process. NMFS is committed to continually bringing the best and latest information to bear on the question of how to best preserve declining salmon stocks—monitoring is a critical path for developing that information. Most of the programs given limitations in the 4(d) rules feature monitoring as an integral part. The language in the final rules has been changed slightly to further stress the importance of monitoring and to make clear that it will be used to alter the programs where necessary.

Comment 305: Some commenters suggested that the results from monitoring data for programs implemented under different limits should be available for public comment. Another commenter urged that the process for reviewing the effectiveness of the fish protection measures include tribal managers, independent scientists, and the public.

Response: The results of monitoring data from programs within ESA 4(d) limits will be available for public review at the appropriate NMFS office. At this time, however, NMFS does not have a mechanism to seek formal public comment on the data. NMFS will continue to seek monitoring data, input, and other relevant information from co-managers and others as the programs are reviewed, evaluated, and adjusted.

Comment 306: Some commenters wanted to know why NMFS believes it is necessary to have such a detailed review and reporting process for the limits when FWS does not require anything like it for wildlife.

Response: As stated previously, this is a ground-breaking approach to managing threatened species. Its intent is to allow a maximum of local input while simultaneously offering the largest possible degree of protection for the species. It has never been tried before and, as a result, it is imperative that we keep a very close eye on its progress. Aside from the need for monitoring to allow the process to adapt, these rules will eventually become part of the larger recovery planning process. By closely examining the success of the proposed measures, we can get a much better idea of what it will take to fulfill the ultimate portion of our mandate: to recover the species.

Comment 307: One commenter recommended that NMFS work with FWS to make sure that Federal activities receive take prohibition limits under our ESA 4(d) rules similar to the ones being proposed for Bull trout. In addition, another commenter urged close coordination with FWS to prevent different interpretations of take and different limits being offered.

Response: NMFS always seeks to cooperate with FWS, and procedures have been established for joint consultation on ESA rulemaking and for reviewing Federal programs through section 7 of the ESA. NMFS anticipates that this cooperation will be strengthened as the 4(d) rule is implemented. NMFS will further work with FWS to ensure that the existing bull trout take prohibitions might be modified to reflect appropriate state or local efforts in parallel to this final rule.

Comment 308: Some tribal commenters were concerned that the 4(d) rules could serve as a "back door" to unfairly allocate the conservation burden on tribal governments. The

concern is that if the program is not scientifically rigorous enough, the Agency would be forced to turn to the tribes for additional conservation burden (i.e., limit fishing or development activities).

Response: NMFS intends to review all new proposed limitations rigorously for their contribution to the conservation of the species using existing criteria and additional site-specific tools. In addition, before any program is accepted, it will be published in the **Federal Register** for public review and comment. NMFS expects this process to be rigorous and open enough to permit the development of effective protective regulations and programs.

Comment 309: Some commenters stated that NMFS should delineate specific population parameters for several named populations (e.g., the Yuba River) so it can be determined if they may be excepted from having any take prohibitions placed on them. Some commenters wanted the rules to be eased when a viable population size is reached in order to give landowners an incentive to continue using protective measures.

Response: The limits on take prohibitions are given for specific activities, not for populations. If an activity helps conserve salmonids or if it adequately limits impacts on salmonids, it may receive a limitation on the take prohibitions. In the spirit of adaptive management, there may well come a point in the future where a population (and its ESU) has rebounded to the point where it is healthy enough, viable enough, that alternative management actions would be allowable. Of necessity, this would first take place in a highly controlled experimental environment that would allow researchers to determine the impacts of any new management scheme. Until that time, however, it is necessary to protect the salmonids while we get a better measure of population viability and place it firmly in the context of managing West Coast salmon. NMFS scientists are working diligently to accomplish that goal and will continue to use their results to adapt the agency's ongoing salmon management programs.

Comment 310: Some commenters stated that the overall regulatory scheme was too fragmented. They stated the need for a clear pathway for local and state governments to synthesize their programs with the ESA 4(d) approach. They also stated there should be a better recognition of the limitations local governments face in terms of staffing, funding, and ability to monitor.

Response: One of this final rule's purposes is to develop a process that is flexible, adaptable, and receptive to greater participation from local entities. In order to accomplish this, the regulatory scheme must remain somewhat open as well. Nonetheless, though NMFS desires to remain open to new approaches, we have also included a good deal of guidance as to what we believe any program should contain in terms of protective measures for salmon. Also, we will continue to do what we can to assist local entities, watershed councils, and others with instruction, technical assistance, and, whenever possible, funding.

Comment 311: Some commenters asserted that NMFS cannot anticipate how many states or local governments will be affected by the rule or how many entities or jurisdictions will apply for coverage under the new ESA 4(d) limits. Others commented that NMFS will be inundated and overwhelmed with requests for programs to come under a 4(d) limit and suggested simplified procedures streamlining the review and approval of future potential take limitations.

Response: NMFS is anticipating strong interest from state and local governments in the ESA 4(d) limits. We are encouraging jurisdictions to work together in developing plans that cover wide geographic scales and multiple activities—thus reducing the number of individual programs that need to be reviewed. Also, we anticipated that promulgating these rules would increase workloads and, as a result, we are evaluating our resource needs and are fully committed to meeting future program demands.

Comment 312: Several commenters suggested that NMFS provides no scientific basis to categorically apply the take prohibition to an entire category of activities such as agriculture, and that the agency provides no technical guidance on take avoidance.

Response: The take prohibitions do not apply to categories of activities, but to any activities that take listed species. The section on "Take Guidance" provides further information on those activities that have a high risk of take. NMFS stands ready to work with interested parties to provide further guidance, including guidance that could ultimately be included as a 4(d) limitation.

Comment 313: Several commenters were confused by multiple **Federal Register** documents and didn't realize that there were several separate ESA 4(d) rules.

Response: For the final rules, we have combined the chinook and the steelhead rules to help reduce some of the confusion. We hope this, along with several changes in the rule' language will make things a bit more clear.

Changes to the Proposed ESA 4(d) Rules

The proposed rules included a lengthy preamble where NMFS provided technical guidance, description of the scientific principles upon which the limits on the take prohibition were based, and a description of the background and content of the 13 limits. The proposed regulatory language was included in sections 223.203 and 223.208. Modifications to the proposed preamble sections based on written comments will be reflected in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000), while the actual changes to the regulatory language are described as follows.

An important change to highlight is that the final 4(d) rules for the different ESUs have different effective dates. In the final steelhead and salmon 4(d) rule the effective date for the steelhead ESUs (§ 223.102(a)(5) through (a)(9) and (a)(14) and (a)(15)) is September 8, 2000. The effective date for the salmon ESUs (§ 223.102(a)(10), (a)(12), (a)(13) and (a)(16) through (a)(19)) is January 8, 2001. NMFS recognizes that the final 4(d) rules are complex and that even the proposed rules created a certain amount of confusion among those who commented on them. The court-ordered settlement date requires NMFS to adopt protective regulations for the steelhead ESUs by June 19, 2000. NMFS, however, is not under a similar court-mandated time line for the salmon ESUs. Therefore, because of the rule's length and complexity, the diverse range of human activities that will potentially be affected, and the continued need to educate all sectors of the public, the effective date for the salmon ESUs will be six months after publication of this **Federal Register** document. This 6-month period will allow NMFS to educate and work with all jurisdictions, entities, and individuals affected by the rule. It will also provide additional time for them to review their activities and programs and adjust them (if needed) to avoid taking threatened species.

The general format of the proposed regulations included the prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538) relating to endangered species being applied to the 14 listed threatened salmonid ESUs, except as provided in the 13 limits on application of the section 9(a)(1)(B) and 9(a)(1)(C) take prohibitions that are included in the regulation. The proposed rules listed the following 13 limit categories: (1) Activities conducted in accord with

ESA incidental take authorization; (2) ongoing scientific research activities, for a period of 6 months from the publication of the final rule; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management programs; (6) activities in compliance with joint tribal/state plans developed within *U.S.* v. *Washington* or *U.S.* v. *Oregon*; (7) scientific research activities permitted or conducted by the states; (8) state, local, and private habitat restoration activities; (9) properly screened water diversion devices; (10) routine road maintenance activities in Oregon; (11) certain park maintenance activities in the City of Portland, Oregon; (12) certain municipal, residential, commercial and industrial (MRCI) development and redevelopment activities; and (13) forest management activities within the state of Washington.

NMFS is modifying the final ESA 4(d) protective regulations for these 14 ESUs based on comments and new information received on the proposed rules. The following section summarizes how the regulatory language for each limit and technical issues did or did not change. The actual regulatory descriptions of each limit and technical information can be found in the regulatory text at the end of this **Federal Register** document.

Viable Salmonid Populations Paper

The proposed rules solicited public comments on the draft NMFS VSP paper. The VSP paper is not a separate limit, but provides a technical framework for the fishery management and hatchery management limits. Based on public comments regarding the draft VSP paper, changes were made in the regulatory language for the fishery and hatchery management limits to clarify how the VSP data requirements will be addressed. Additional compliance guidance is available in"A Citizen's Guide to the 4(d) Rule" (NMFS, 2000).

Properly Functioning Conditions

For the reasons identified in the Comment and Responses section, language was added to the limits addressing habitat issues, i.e., habitat restoration, pest management and routine road maintenance, in order to define properly functioning condition and how NMFS will evaluate the limits with regard to meeting this biological standard.

Legal and Affirmative Defense

For the reasons identified in the Comment and Responses section, regulation language was modified to: (1) add new language to make explicit that it would be the defendant's obligation to plead and prove application of and compliance with a limit as an affirmative defense; (2) clarify the question about whether the rule should be non-severable, by making it explicit that NMFS intends the provisions of this rule to be severable.

Limit for Activities Conducted in Accord with ESA Incidental Take Authorization

No changes were made to the regulations pertaining to this limit. Additional compliance guidance is available from NMFS in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000).

Limit for Ongoing Scientific Research Activities

No changes were made to the regulations pertaining to this limit. Additional compliance guidance is available from NMFS in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000).

Limit for Rescue and Salvage Actions

No changes were made to the regulations pertaining to this limit. Additional compliance guidance is available from NMFS in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000).

Limit for Fishery Management Activities

For the reasons identified in the comment and response section, this limit was modified to: (1) change the use of a MOA between states and NMFS to a letter of concurrence from NMFS; (2) clarify the use of viable and critical salmonid population thresholds consistent with the VSP paper; (3) clarify the timing of reports describing take of listed salmonids; and (4) explain that the prohibitions on take of threatened steelhead in recreational fisheries managed solely by the states of Oregon, Washington, Idaho and California will go into effect January 8, 2001.

Limit for HGMPs

For the reasons identified in the comment and response section, this limit was modified to change the use of a MOA between states and NMFS to a letter of concurrence from NMFS.

Limit for Joint Tribal and State Plans

No changes were made to the regulations pertaining to this limit. Additional compliance guidance is available from NMFS in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000).

Limit for Scientific Research Activities Permitted or Conducted by the States

NMFS has revised the limit to reflect commenter concerns about the feasibility of adequate oversight by state fishery agencies. Additional compliance guidance is available from NMFS in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000).

Limit for Habitat Restoration

For the reasons identified in the Comment and Responses section, this limit was modified to: (1) clarify that take prohibitions do not apply to habitat restoration activities provided the activity is part of a WCP that meets criteria listed in the regulation; (2) change the time frame to complete a watershed conservation plan from 2 years to an undetermined time, so that the limit is available whenever the criteria described in the regulation are met; (3) delete the list of six categories of habitat restoration activities that would not have the ESA section 9 take prohibitions applied to them for 2 years; (4) clarify and revise the criteria NMFS will use to evaluate a state's watershed conservation plan guidelines; and (5) clarify that NMFS will not approve individual WCPs; instead, NMFS will approve the WCP guidelines with each state and periodically review the state watershed planning programs for consistency with the guidelines. Additional compliance guidance is available from NMFS in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000).

Limit for Water Diversion Screening

For the reasons identified in the comment and response section, this limit was modified to: (1) allow NMFS-authorized state agency engineers ("authorized officers") to review and recommend certification of screen designs to NMFS rather than NMFS' engineers solely having this responsibility; and (2) allow NMFS, on a case by case basis, to grant this limit to water diversion projects where NMFS has approved a design construction plan and schedule, including interim operation measures to reduce the likelihood of take. NMFS may also require a commitment of compensatory mitigation if implementation of a plan and schedule is terminated prior to completion.

Limit for Routine Road Maintenance Activities

For the reasons identified in the comment and response section, this limit was modified to: (1) allow this limit to be available to any state, county, city, or port once they have demonstrated in writing that their routine road maintenance activities are equivalent to those in the ODOT Guide which adequately protect threatened salmonid species; or by employees or

agents of a state, county, city or port that complies with a routine road maintenance program that meets proper functioning habitat conditions; (2) add language referring to state, city, county, and ports; (3) change the time frame for ODOT or another jurisdiction to respond to new information in the shortest amount of time feasible, but not longer than one year; (4) clarify that prior to approving any state, city, county, or port program as within this limit, or approving any substantive change in a program within this limit, NMFS will publish notification in the **Federal Register**; (5) clarify that any jurisdiction should first commit in writing to apply the management practices in the ODOT Guide, rather than the proposed language, which first required the jurisdiction to enter into a memorandum of agreement with NMFS; and (6) add new language regarding properly functioning condition. Additional compliance guidance is available from NMFS in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000).

Limit for Certain Integrated Pesticide Management Activities

For the reasons identified in the Comment and Responses section, this limit was modified to: (1) add new language regarding properly functioning conditions; and (2) clarify language regarding how NMFS will address future program changes and provide public notice that the limit is withdrawn. Additional compliance guidance is available from NMFS in "A Citizen's Guide to the 4(d) Rule" (NMFS, 2000).

Limit for Municipal, Residential, Commercial and Industrial (MRCI) Development and Redevelopment Activities

For the reasons identified in the Comment and Responses section, this limit was modified to: (1) clarify that this limit applies to MRCI development and redevelopment undertaken by cities, counties, and regional governmental entities; (2) expand and clarify the content of the 12 evaluation considerations NMFS will use to review MRCI development ordinances and plans; (3) add new language to emphasize the properly functioning habitat conditions NMFS considers adequate to conserve listed salmonids; (4) clarify that NMFS notes that not all 12 considerations described in the regulation will necessarily be relevant to all ordinances and plans submitted for review and approval; and (5) include language which clarifies the process NMFS will use to provide notice of availability of ordinances and plans for public review, and NMFS' process to amend or withdraw limits.

Limit for Forest Management Activities in the State of Washington

For the reasons identified in the Comment and Responses section, this limit was modified to add new language stating that actions taken under alternative plans are included in this limit provided that they meet the requirements stated in the regulation and are submitted and approved by the authorized Washington state agency.

Take Guidance

These threatened species are in danger of becoming extinct in the foreseeable future. They have been depleted by over-fishing, past and ongoing freshwater and estuarine habitat destruction, hydropower development, hatchery practices, and other causes. It is, therefore, necessary and advisable to put into place ESA section 9(a)(1) prohibitions to aid in their conservation. Section 9(a)(1) prohibitions make it illegal for any person subject to the United States' jurisdiction to "take" these species without written authorization ("take" is defined to occur when a person engages in activities that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a species or attempt to do any of these). Impacts on a protected species' habitat may harm members of that species and, therefore, constitute a "take" under the ESA. Such an act may include significant habitat modification or degradation that actually kills or injures listed fish by significantly impairing essential behavioral patterns including breeding, spawning, rearing, migrating, feeding, or sheltering.

On July 1, 1994 (59 FR 34272), NMFS and FWS published a policy committing both agencies to identify, to the extent possible, those activities that would or would not violate section 9 of the ESA. The intent of this policy is to increase public awareness about ESA compliance and focus public attention on those actions needed to protect species.

Based on available information, NMFS believes the categories of activities listed here are those activities which as a general rule may be most likely to result in injury or harm to listed salmonids. NMFS wishes to emphasize at the outset that whether injury or harm is resulting from a particular activity is entirely dependent upon the facts and circumstances of each case. The mere fact that an activity may fall within one of these categories does not at all mean that that specific activity is causing harm or injury. These types of activities are, however, those that may be most likely to cause harm and thus violate this rule. NMFS' ESA enforcement will therefore focus on these categories of activities.

Activities listed in A thru J below are as cited in NMFS' harm rule 64 FR 215 (November 8, 1999).

A. Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat or ability to migrate.

B. Discharging pollutants, such as oil, toxic chemicals, radioactivity, carcinogens, mutagens, teratogens or organic nutrient-laden water including sewage water into a listed species' habitat.

C. Removing, poisoning, or contaminating plants, fish, wildlife, or other biota required by the listed species for feeding, sheltering, or other essential behavioral patterns.

D. Removing or altering rocks, soil, gravel, vegetation or other physical structures that are essential to the integrity and function of a listed species' habitat.

E. Removing water or otherwise altering streamflow when it significantly impairs spawning, migration, feeding or other essential behavioral patterns.

F. Releasing non-indigenous or artificially propagated species into a listed species' habitat or where they may access the habitat of listed species.

G. Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species' habitat.

H. Constructing, maintaining, or using inadequate bridges, roads, or trails on stream banks or unstable hill slopes adjacent to or above a listed species' habitat.

I. Conducting timber harvest, grazing, mining, earth-moving, or other operations which result in substantially increased sediment input into streams.

J. Conducting land-use activities in riparian areas and areas susceptible to mass wasting and surface erosion, which may disturb soil and increase sediment delivered to streams, such as logging, grazing, farming, and road construction.

K. Illegal fishing. Harvest in violation of fishing regulations will be a top enforcement concern.

L. Various streambed disturbances may trample eggs or trap adult fish preparing to spawn. The disturbance could be mechanical disruption caused by constructing push-up dams, removing gravel, mining, or other work in a stream channel. It may also take the form of egg trampling or smothering by livestock in the streambed or by vehicles or equipment being driven

across or down the streambed (as well as any similar physical disruptions).

M. Interstate and foreign commerce dealing in listed salmonids and importing or exporting listed salmonids may harm the fish unless it can be shown—through an ESA permit—that they were harvested in a manner that complies with ESA requirements.

N. Altering lands or waters in a manner that promotes unusual concentrations of predators.

O. Shoreline and riparian disturbances (whether in the riverine, estuarine, marine, or floodplain environment) may retard or prevent the development of certain habitat characteristics upon which the fish depend (e.g., removing riparian trees reduces vital shade and cover, floodplain gravel mining, development, and armoring shorelines reduces the input of critical spawning substrates, and bulkhead construction can eliminate shallow water rearing areas).

P. Filling or isolating side channels, ponds, and intermittent waters (e.g., installing tide gates and impassable culverts) can destroy habitats that the fish depend upon for refuge areas during high flows.

The list provides examples of the types of activities that could have a high risk of resulting in take but it is by no means exhaustive. It is intended to help people avoid violating the ESA and to encourage efforts to save the species. Determination of whether take has actually occurred depends on the circumstances of a particular case.

Many activities that may kill or injure salmonids are regulated by state and/or Federal processes, such as fill and removal authorities, NPDES or other water quality permitting, pesticide use, and the like. For those types of activities, NMFS would not intend to concentrate enforcement efforts on those who operate in conformity with current permits. Rather, if the regulatory program does not provide adequate salmonid protection, NMFS intends to work with the responsible agency to make necessary changes in the program.

For instance, concentrations of pesticides may affect salmonid behavior and reproductive success. Current EPA label requirements were developed in the absence of information about some of these subtle but real impacts on aquatic species such as salmonids. Where new information indicates that label requirements are not adequately protective of salmonids, NMFS will work with EPA through the section 7 consultation process to develop more protective use restrictions, and thereby provide the best possible guidance to all users. Similarly, where water quality standards or state authorizations lead to pollution loads that may cause take, NMFS intends to work with the state water quality agencies and EPA to bring those standards or permitting programs to a point that does protect salmonids.

Persons or entities who conclude that their activity is likely to injure or kill protected fish are encouraged to immediately adjust that activity to avoid take (or adequately limit any impacts on the species) and seek NMFS' authorization for incidental take under (a) an ESA section 10 incidental take permit; (b) an ESA section 7 consultation; or (c) a limit on the take prohibitions provided in this rule. The public is encouraged to contact NMFS (see **FOR FURTHER INFORMATION CONTACT**) for assistance in determining whether circumstances at a particular location (involving these activities or any others) constitute a violation of this rule.

State and local efforts like the Oregon Plan for Salmon and Watersheds, the State of Washington's Extinction is Not an Option Plan, Metro's Functional Plan, the Puget Sound Tri-County Initiative and Lower Columbia Fish Recovery Board in Washington state, the Eugene, Oregon-area Metro ESA Coordinating Team, and the Willamette Restoration Initiative (WRI) have stepped forward and assumed leadership roles in saving these species. NMFS reiterates its support for these efforts and encourages them to resolve critical uncertainties and further develop their programs so they can take the place of blanket ESA take prohibitions.

Impacts on listed salmonids resulting from actions in compliance with a permit issued by NMFS pursuant to section 10 of the ESA are not violations of this rule. Section 10 permits may be issued for research activities, enhancement of a species' survival, or to authorize incidental take occurring in the course of an otherwise lawful activity. NMFS consults on a broad range of activities conducted, funded, or authorized by Federal agencies. These include fisheries harvest, hatchery operations, silviculture activities, grazing, mining, road construction, dam construction and operation, discharge of fill material, and stream channelization and diversion. Federally-funded or approved activities that affect listed salmonids and for which ESA section 7 consultations have been completed and any take authorized, will not constitute violations of this rule—provided the activities are conducted in accord with all reasonable and prudent measures, terms, and conditions stated in the consultation and incidental take permit.

References

A list of references cited in this final rule is available upon request (see **ADDRESSES**).

Classification

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) was designed to ensure that agencies carefully assess whether aspects of a proposed regulatory scheme (record keeping, safety requirements, etc.) can be tailored to be less burdensome for small businesses while still achieving the agency's statutory responsibilities. NMFS prepared an initial regulatory flexibility analysis (IRFA) which was made available through the proposed rule. Several public comments were received related to the IRFA or to economic impacts generally. Those comments and NMFS responses to them are summarized in the Response to Comments section. NMFS has prepared a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA), taking into consideration the public comments received. A summary of the final FRFA follows. The FRFA is available upon request (see **ADDRESSES**), or may be accessed on NMFS web site at www.nwr.noaa.gov.

This ESA 4(d) rule has no specific requirements for regulatory compliance; it essentially sets an enforceable performance standard (do not take listed fish) that applies to all entities and individuals within the ESU unless that activity is within a carefully circumscribed set of activities on which NMFS will not impose the take prohibitions. Hence, the universe of entities reasonably expected to be directly or indirectly impacted by the prohibition is broad.

The geographic range of these regulations crosses four states and the number of entities potentially affected by imposition of take prohibitions is substantial. Activities potentially affecting salmonids are those associated with agriculture, forestry, fishing, mining, heavy construction, highway and street construction, logging, wood and paper mills, electric services, water transportation, tourism, real estate, and other industries. As many of these activities involve local, state, and Federal oversight, including permitting, governmental activities from the smallest towns or planning units to the largest cities will also be impacted. The activities of some nonprofit organizations will also be affected by these regulations.

NMFS examined in as much detail as practical the potential impact of the

regulation on a sector by sector basis. Unavailable or inadequate data leaves a high degree of uncertainty surrounding both the numbers of entities likely to be affected, and the characteristics of any impacts on particular entities. The problem is complicated by differences among entities even in the same sector as to the nature and size of their current operations, proximity to waterways, the degree to which the operation is already protective of salmonids, and individual strategies for dealing with the take prohibitions.

There are no recordkeeping or reporting requirements associated with the take prohibition and, therefore, it is not possible to simplify or tailor recordkeeping or reporting to be less burdensome for small entities. Some limits, for which NMFS has found it not necessary to prohibit take, involve recordkeeping and/or reporting to support that continuing determination. NMFS has attempted to minimize any burden associated with programs for which the take prohibitions are not enacted. The final rule does not duplicate, overlap, or conflict with any other relevant Federal rules.

In formulating this rule, NMFS considered several alternative approaches, described in more detail in the FRFA. These included:

(1) Enacting a "global" protective regulation for threatened species, through which section 9 take prohibitions are applied automatically to all threatened species at the time of listing; (2) ESA 4(d) protective regulations with no limits, or only a few limits, on the application of the take prohibition for relatively uncontroversial activities such as fish rescue/salvage; (3) take prohibitions in combination with detailed prescriptive requirements applicable to one or more sectors of activity; (4) ESA 4(d) protective regulations similar to the existing interim 4(d) protective regulations for Southern Oregon/ Northern California coast coho, which includes four limits on the take prohibition for harvest plans, hatchery plans, scientific research, and habitat restoration projects, when in conformance with specified criteria; (5) a protective regulation similar to the interim rule, but with recognition of more programs and circumstances in which application of take prohibitions is not necessary and advisable; (6) an option earlier advocated by the State of Oregon and others, in which ESA section 9 take prohibitions would not be applied to any activity addressed by the Oregon Plan for Salmon and Watersheds, fundamentally deferring protections to the state; and (7) enacting no protective regulations for threatened steelhead. The first four alternatives would place greater burdens on small entities. Alternative 6 would not provide sufficient protections (see response to comments), while alternative 7 would leave the ESUs without any protection other than provided by ESA section 7 consultations for actions with some Federal nexus. NMFS could not support that approach as being consistent with the obligation to enact such protective regulations as are "necessary and advisable to provide for the conservation of" the listed steelhead. Alterative 5 is the approach taken in this rule.

As a result of comments received related to the proposed rules and IRFAs, NMFS has modified the regulations to broaden the applicability of some limits, and to make them more flexible. For instance, the road maintenance limit is now generally available. The limit for development has been broadened to cover a greater range of types of plans or ordinances, and has been modified to allow for circumstances where a jurisdiction's ordinances may not address all of the evaluation criteria, but nonetheless are adequate for a limit for those aspects addressed. These types of adjustments provide additional options for jurisdictions that may wish to seek ESA compliance assurances.

NMFS concludes that at the present time there are no legally viable alternatives to the final rule, as modified from the proposals, that would have less impact on small entities and still fulfill the agency's obligations to protect listed salmonids. The first four alternatives may result in unnecessary impacts on economic activity of small entities, given NMFS' judgment that more limited protections would suffice to conserve the species.

Executive Order 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), NMFS has prepared a Regulatory Impact Review (RIR) which considers costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits where estimates cannot be meaningfully made for impacts that are essential to consider. We cannot quantify the economic effect of this rule, given the geographic scope and the size and economic dimensions of the potentially affected economic sectors that operate within the ESUs, but have considered costs and benefits qualitatively in structuring the rule. Although only a share of the benefits from the recovery of threatened salmonids to a sustainable level would be attributable to this rule, it is clear that the potential costs associated with imposing take prohibitions to protect those salmonids are associated with substantial potential tangible and intangible returns.

The ESA limits NMFS to alternatives that lead to recovery, but in choosing among alternatives, we are obligated to consider taking the least cost path. NMFS has concluded that among the alternative regulatory approaches, the approach in this final rule (with changes made in response to public comment) will maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts; and equity) and minimize costs, within the constraints of the ESA. Because this alternative exempts activities that fall within adequate state or local programs, NMFS' involvement will be more collaborative and less often require enforcement actions. This alternative has the greatest probability that compliance burdens will be equally shared, that economic incentives will be employed in appropriate cases, and that practical standards adapted to the particular characteristics of a state or region will aid citizens in reducing the risks of take in an efficient way. For these reasons, it is likely that this alternative will minimize the financial burden on the public of avoiding take over the long term.

Executive Order 13084 Consultation and Coordination with Indian Tribal Governments

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this final rule.

Nonetheless, NMFS took several steps to inform tribal governments and solicit their input during development of the proposed rule, and made numerous adjustments to the proposal as a result of those contacts. A number of Indian tribal governments, as well as both the Columbia River Intertribal and Northwest Indian Fisheries

Commissions, commented formally on the proposed rules. In addition, NMFS has continued both informal exchanges with tribal representatives and meetings with tribal officials. These exchanges have resulted in some refinements of the rule, as well as greater appreciation by NMFS of the challenges ahead as it implements the rule. NMFS has proposed an ongoing, regular meeting schedule to assure continued exchange of information with the numerous tribal governments on matters of interest, including matters associated with this rule.

Executive Order 13132—Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this rule. In fact, this rule provides a route by which NMFS may defer to state and local government programs, where they provide necessary protections for threatened salmonids.

Although not required by E.O. 13132, in keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS conferred with numerous state, local and other governmental entities while preparing the proposed rules, and has had continued informal and formal contacts with all affected states. We have held workshops explaining the rule to interested local or regional entities and exploring possible implementation strategies as well as options for future limits with those attending.

In addition to these efforts, NMFS staff have given numerous presentations to interagency forums, community groups, and others, and served on a number of interagency advisory groups or task forces considering conservation measures. Many cities, counties and other local governments have sought guidance and consideration of their planning efforts from NMFS, and NMFS staff have met with them as rapidly as our resources permit. Finally, NMFS' Sustainable Fisheries Division staff have continued close coordination with state fisheries agencies toward development of artificial propagation and harvest plans and programs that will be protective of listed salmonids and ultimately may be recognized within this rule. NMFS expects to continue to work with all of these entities in implementing this rule.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648-0399. Public reporting burden per response for this collection of information is estimated to average 5 hours for a submission on diversion screenings or for a report on salmonids assisted, disposed of, or salvaged; 20 hours to prepare a road maintenance agreement; 30 hours for an urban ordinance development package; and 10 hours for an urban development annual report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA), as defined under the authority of the National Environmental Policy Act (NEPA) of 1969, in connection with this regulation. Based on review and evaluation of the information contained in the EA, we determined that the proposed action to promulgate protective regulations for 14 threatened salmonid ESUs, and to create limits on the applicability of the prohibition on taking any of those salmonids would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of NEPA of 1969. NMFS received a number of comments related to NEPA compliance, which are summarized together with responses elsewhere in this notice. NMFS believes the EA examined appropriate alternatives, and that preparation of an EIS is not required. Accordingly, we adhere to our prior Finding of No Significant Impact (FONSI) for this action. The EA and FONSI are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation,

Dated: June 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531-1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. Section 223.203 is revised to read as follows:

§ 223.203 Anadromous fish.

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(19), except as provided in paragraph (b) of this section and § 223.209(a).

(b) *Limits on the prohibitions.* (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter II implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(19).

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than October 10, 2000. The prohibitions of paragraph (a) of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or March 7, 2001, whichever occurs earliest.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(4) through (a)(10), and (a)(12) through (a)(19) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish

and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,

(ii) Dispose of a dead salmonid, or

(iii) Salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units, describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the listed ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Utilize the concepts of "viable" and "critical" salmonid population thresholds, consistent with the concepts contained in the technical document entitled "Viable Salmonid Populations (NMFS, 2000b)." The VSP paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population.

(C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

(F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

(G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

(I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS' letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS' approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit for activities associated with that FMEP. Such an announcement will

provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS Northwest Region's website (www.nwr.noaa.gov).

(v) The prohibitions of paragraph (a) of this section relating to threatened species of steelhead listed in § 223.102 (a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to fisheries managed solely by the states of Oregon, Washington, Idaho, and California until January 8, 2001.

(5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program's success or failure.

(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in the technical document entitled "Viable Salmonid Populations" (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Taking into account health, abundances, and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS such for secondary purposes, as to sustain tribal, recreational, and commercial fisheries.

(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP evaluates, minimizes, and accounts for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish.

(F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For programs whose purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and any risks potentially impairing the recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed;

(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For Federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose.

(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS' letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP.

(iv) Prior to final approval of an HGMP. NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS' approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, the NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions, likeall other activity not within a limit, would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region's website (www.nwr.noaa.gov).

(6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(7), (a)(8), (a)(10), and (a)(12) through (a)(19) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of *United States* v. *Washington* or *United States* v. *Oregon*, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that:

(i) The Secretary has determined pursuant to 50 CFR 223.209 and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs.

(ii) The joint plan will be implemented and enforced within the parameters set forth in *United States* v. *Washington* or *United States* v. *Oregon*.

(iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in § 223.203(b)(4), or on how any hatchery and genetic management plan addresses the criteria in § 223.203(b)(5).

(iv) The Secretary shall publish notice in the **Federal Register** of any determination whether or not a joint plan, will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.

(v) On a regular basis, NMFS will evaluate the effectiveness of the joint plan in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the plan is not effective, then NMFS will identify to the jurisdiction ways in which the joint plan needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit on activities associated with that joint plan. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions would then apply to that joint plan as to all other activity not within a limit.

(7) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to scientific research activities provided that:

(i) Scientific research activities involving purposeful take is conducted by employees or contractors of the ODFW, WDFW (Agencies), IDFG, or CDFG (Agencies), or as a part of a monitoring and research program overseen by or coordinated with that Agency.

(ii) The Agencies provide for NMFS' review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) The Agencies annually provide to NMFS the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by agency personnel, or are in accord with a permit issued by the Agency.

(v) The Agencies provide NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS "Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act" (NMFS, 2000a).

(vii) NMFS' approval of a research program shall be a written approval by NMFS Northwest or Southwest Regional Administrator.

(8) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(10), and (a)(12), through (a)(19) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and:

(i) The watershed conservation plan has been certified by the State of Washington, Oregon, Idaho, or California (State) to be consistent with the state's watershed conservation plan guidelines.

(ii) The State's watershed conservation plan guidelines have been found by NMFS to provide for plans that:

(A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species and populations.

(B) Will not reduce the likelihood of either survival or recovery of listed species in the wild.

(C) Ensure that any taking will be incidental.

(D) Minimize and mitigate any adverse impacts.

(E) Provide for effective monitoring and adaptive management.

(F) Use the best available science and technology, including watershed analysis.

(G) Provide for public and scientific review and input.

(H) Include any measures that NMFS determines are necessary or appropriate.

(I) Include provisions that clearly identify those activities that are part of plan implementation.

(J) Control risk to listed species by ensuring funding and implementation of the above plan components.

(iii) NMFS will periodically review state certifications of Watershed Conservation Plans to ensure adherence to approved watershed conservation plan guidelines.

(iv) "Habitat restoration activity" is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. "Primary purpose" means the activity would not be undertaken but for its restoration purpose.

(v) Prior to approving watershed conservation plan guidelines under paragraph (b)(8)(ii) of this section, NMFS will publish notification in the **Federal Register** announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of no less than 30 days.

(9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS' engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS' Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" or with any subsequent revision.

(ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) On a case by case basis, NMFS or an Authorized Officer will review and approve a juvenile fish screen design

and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is made that is not approved by NMFS or Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation.

(iv) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

(10) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance activity conducted by ODOT employees or agents that complies with ODOT's Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999); or by employees or agents of a state, county, city or port that complies with a program substantially similar to that contained in the ODOT Guide that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of a state, county, city or port that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in subparagraph (ii) following. NMFS' approval of state, city, county, or port programs that are equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. Any jurisdiction desiring its routine road maintenance activities to be within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(ii) NMFS finds the routine road maintenance activities of any state, city, county, or port to be consistent with the conservation of listed salmonids' habitat when it contributes, as does the ODOT Guide, to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than one year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iii) Prior to implementing any changes to a program within this limit the jurisdiction provides NMFS a copy of the proposed change for review and approval as within this limit.

(iv) Prior to approving any state, city, county, or port program as within this limit, or approving any substantive change in a program within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

(11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to activities within the City of Portland, Oregon Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that:

(i) Use of only the following chemicals is included within this limit on the take prohibitions: Round Up, Rodeo, Garlon 3A, Surfactant LI–700, Napropamide, Cutrine Plus, and Aquashade.

(ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department's Pest Management Policy, including the Waterways Pest Management Policy, updated December 1, 1999.

(iii) Any chemical use within a 25 ft. (7.5 m) buffer complies with the buffer application constraints contained in PP&R's Waterways Pest Management Policy (update December 1, 1999).

(iv) Prior to implementing any changes to this limit, the PP&R provides NMFS with a copy of the proposed change for review and approval as within this limit.

(v) Prior to approving any substantive change in a program within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(vi) NMFS' approval of amendments shall be a written approval by NMFS Northwest Regional Administrator.

(vii) NMFS finds the PP&R Pest Management Program activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate the effectiveness of an approved program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not

protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of listed species; or within the jurisdiction of the Metro regional government in Oregon and pursuant to ordinances that Metro has found comply with its Urban Growth Management Functional Plan (Functional Plan) following a determination by NMFS that the Functional Plan is adequately protective. NMFS approval or determinations about any MRCI development ordinances or plans, including the Functional Plan, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve listed salmonids by maintaining and restoring properly functioning habitat conditions:

(A) MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.

(C) MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to PFC due to MRCI development impacts to riparian management areas.

(D) MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimize impacts through choice of mode, sizing, and placement.

(E) MRCI development ordinance or plan adequately protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines.

(F) MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands.

(G) MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.

(H) MRCI development ordinance or plan includes adequate provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.

(I) MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction.

(J) MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.

(L) MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits.

(ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of listed salmonids' habitat when it contributes to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as within this limit, or approving any substantive change in an ordinance or plan within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(13) The prohibitions of paragraph (a) of this section relating to threatened

species of salmonids listed in § 223.102 (a)(12), (a)(13), (a)(16), (a)(17), and (a)(19) do not apply to non-Federal forest management activities conducted in the State of Washington provided that:

(i) The action is in compliance with forest practice regulations adopted and implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies.

(ii) All non-regulatory elements of the Forests and Fish Report are being implemented.

(iii) Actions involving use of herbicides, pesticides, or fungicides are not included within this limit.

(iv) Actions taken under alternative plans are included in this limit provided that the Washington Department of Natural Resources (WDNR) finds that the alternate plans protect physical and biological processes at least as well as the state forest practices rules and provided that NMFS, or any resource agency or tribe NMFS designates, has the opportunity to review the plan at every stage of the development and implementation. A plan may be excluded from this limit if, after such review, WDNR determines that the plan is not likely to adequately protect listed salmon.

(v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the **Federal Register** announcing the availability of the Report and regulations for public review and comment.

(vi) NMFS finds the activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Programs must meet this biological standard in order for NMFS to find they qualify for a habitat-related limit. NMFS uses the best available science to make these determinations. NMFS may review and revise previous findings as new scientific information becomes available. NMFS will evaluate the effectiveness of the program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. If the program is not adequate, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit on activities associated with the program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) take prohibitions.

(vii) NMFS approval of regulations shall be a written approval by NMFS Northwest Regional Administrator.

(c) *Affirmative defense.* In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19), any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.209(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section (a)(1)(G) of the ESA with respect to the alleged violation.

(d) *Severability.* The provisions of this section and the various applications thereof are distinct and severable from one another. If any provision or the application thereof to any person or circumstances is stayed or determined to be invalid, such stay or invalidity shall not affect other provisions, or the application of such provisions to other persons or circumstances, which can be given effect without the stayed or invalid provision or application.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 991207318–0159–02; I.D. No 092799G]

RIN 0648–AG15

Limitation on Section 9 Protections Applicable to Salmon and Steelhead Listed as Threatened under the Endangered Species Act (ESA), for Actions Under Tribal Resource Management Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing a final rule to modify the ESA section 9 take prohibitions applied to threatened salmon and steelhead. The modification will create a section 4(d) limitation on those prohibitions for tribal resource management plans (Tribal Plans), where the Secretary of Commerce (Secretary) has determined that implementing that Tribal Plan will not appreciably reduce the likelihood of survival and recovery for the listed species. This rule intends to harmonize statutory conservation requirements with tribal rights and the Federal trust responsibility to tribes.

DATES: Effective September 8, 2000.

ADDRESSES: Branch Chief, NMFS, Northwest Region, Protected Resources Division, 525 NE. Oregon St., Suite 500, Portland, OR 97232–2737; Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; Salmon Coordinator, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at 503-231-2005; Craig Wingert at 562–980–4021.

Electronic Access

Reference materials regarding this final rule can also be obtained from the internet at www.nwr.noaa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

Indian Tribe—Any Indian tribe, band, nation, pueblo, community or other organized group within the United States which the Secretary of the Interior has identified on the most current list of tribes maintained by the

Bureau of Indian Affairs (65 FR 13298, March 13, 2000).

Tribal rights—Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies.

Tribal trust resources—Those natural resources, either on or off Indian lands, retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by fiduciary obligation on the part of the United States.

Indian lands—Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Background

For the past decade NMFS has been conducting ESA status reviews for salmon and steelhead throughout the Pacific Northwest and California. To date, these reviews have identified 20 population groups, or "evolutionarily significant units" (ESUs), that warrant threatened status under the ESA. Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations (i.e., "4(d) rules") as he deems necessary and advisable for the conservation of the species. Such 4(d) rules may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a). Those section 9(a) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, unless with written authorization for incidental take. NMFS has promulgated ESA 4(d) rules that apply the section 9 take prohibitions to nearly all threatened salmon and steelhead ESUs. In a recent ESA 4(d) rule addressing 14 of these ESUs (i.e., the salmon/steelhead 4(d) rules published elsewhere in this **Federal Register** issue), NMFS determined it is not necessary and advisable to apply the section 9 take prohibitions to specified categories of activities that contribute to conserving listed salmonids or are governed by a program that adequately limits impacts on listed salmonids. NMFS also determined it is not necessary or advisable to prohibit activities associated with Tribal resource management activities when those activities conserve listed salmonids or adequately limit impacts on listed salmonids. NMFS accordingly proposed a parallel ESA 4(d) rule for Tribal Plans (i.e., a tribal plan limit) (65 FR 111, January 3, 2000). In that proposal, NMFS announced a process whereby a tribe could conduct tribal trust resource management actions that may take threatened salmonids, without the risk of violating take prohibitions adopted under ESA section 4(d). Eligibility for such limits on take prohibitions would require a determination by the Secretary that implementing a specific Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed species. The purpose of this rule is to establish a process that will enable the Secretary to meet the conservation needs of listed species while respecting tribal rights, values and needs, and not causing an abridgement of any treaties, rights, executive orders, or statutes. The limit on take prohibitions would encompass a variety of types of Tribal Plans, including but not limited to, plans that address fishery harvest, artificial propagation, research, or water or land management. Tribal Plans could be developed by one tribe or jointly with other tribes. Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal court proceeding.

This final rule acknowledges that the United States has a unique legal relationship with Indian tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions. The appropriate exercise of its trust obligation commits the United States to harmonize its many statutory responsibilities with the tribal exercise of tribal sovereignty, tribal rights, and tribal self-determination. NMFS believes that this final rule recognizes the unique legal and political relationships between tribes and the United States, and is in keeping with the trust responsibility to Indian tribes. Furthermore, NMFS believes that additional Federal protections are not needed for activities carried out under those Tribal Plans deemed by the Secretary to not appreciably reduce the likelihood of survival and recovery of an ESU.

Summary of Comments and Information Received in Response to the Proposed Rule

Between January 10 and February 22, 2000, NMFS held 25 public hearings in Washington, Oregon, Idaho, and California to allow for public testimony and to discuss the proposed tribal plan limit and salmon/steelhead ESA 4(d) rules. The agency also requested comments from all interested parties and conferred with affected tribes throughout the Pacific Northwest and California. The agency received approximately 20 written comments pertaining to the proposed tribal plan limit. New information, comments, and responses are summarized here. Copies of references, reports and related documents are available upon request (see **ADDRESSES**).

Comment 1: Numerous tribal commenters addressed the issue of government-to-government consultation. Commenters cited concerns that consultation had not occurred during the development of the tribal plan limit and salmon/steelhead ESA 4(d) rules and underscored the need for NMFS to consult with tribes as these rules are implemented.

Response: Throughout the development of the tribal plan limit and salmon/steelhead ESA 4(d) rules NMFS has made a concerted effort to notify and confer with tribal representatives and technical staff throughout the Pacific Northwest and California. Contact regarding these rules began before December 1998, when a draft steelhead ESA 4(d) rule was submitted for review to affected tribes well in advance of the proposed rules. During a 2-year period, NMFS coordinated and attended a number of meetings and working sessions with tribal governments and representatives (including staff from inter-tribal fisheries commissions) to discuss particular aspects of the rules. These meetings allowed NMFS to develop proposed ESA 4(d) rules that the agency believes address a wide range of issues highlighted by the tribes. Since publication of the proposed 4(d) rules NMFS and tribal staffs and tribal council members have met to discuss these rules.

NMFS recognizes the need to work closely with the tribes of the region to develop and improve upon information exchange and consultation opportunities relating to salmon and steelhead conservation. Since beginning work on these ESA 4(d) rules, NMFS' Northwest Region has added a tribal liaison position to its staff to focus on improving communications with the

tribes and developing consultation procedures that will meet both NMFS and tribal needs. It is the agency's intent to continue working with tribal governments to develop regularly scheduled meetings between NMFS and tribal technical staff and policy makers to provide more timely notice regarding NMFS' activities and to discuss how consultation might occur for future fisheries issues and ESA rulemaking.

There remains the opportunity for the tribes and the agency to hold future discussions on application of the ESA 4(d) rules. Such future discussions can include the identification of cultural/economic issues requiring the agency's attention and ideas on how such analyses should be conducted. In response to tribal requests, NMFS will correspond with each commenting tribal government, clarify how its comments were addressed, and identify the need for additional meetings to discuss potential amendments and/or modifications to the rules.

Comment 2: Many commenters challenged the basis for a Secretarial review of Tribal Plans. Their comments ranged in scope from questioning the appropriateness of Secretarial review and public notification (e.g., the disclosure of confidential tribal information), to specific comments on Tribal Plan contents, standards and time frames. One commenter suggested that the time period covered by a Tribal Plan be fixed (e.g., a 1-year plan with annual reviews) while another suggested that the period covered by the plan be similar to that for ESA section 10 Habitat Conservation Plans (HCPs), which can extend for a number of years. Another commenter suggested that the scope covered by the tribal plan limit be expanded (e.g., to include all listed species and ESUs versus the four stocks specifically identified in the Tribal 4(d) proposed rule's Summary Section).

Some commenters addressed the Secretarial review process, in particular the need to take into account the impacts of non-tribal activities on the listed species so that any assessment of Tribal Plans would accurately assess impacts that are beyond tribal control. After such review has been completed, and if a Tribal Plan was found to be insufficient, some commenters stated the Secretary should provide specific comments to the affected tribe(s) so that they have an opportunity to respond. These and other commenters noted that NMFS has an obligation to abide by Principle 3(C) (i.e., the "Conservation Necessity Principle") of the June 1997 Secretarial Order No. 3206 entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (Secretarial Order). Additionally, some commenters suggested the Secretarial review have specific time constraints (e.g., 60 days) so tribes could plan on implementing approved actions in a timely manner.

Response: The nature of some of these comments suggests a general misunderstanding regarding the purpose of Secretarial review. Secretarial review will determine if implementation of the plan will appreciably reduce the likelihood of survival and recovery of the listed species. The Secretary will not review the Tribal Plan to determine adequacy of meeting tribal goals and objectives. A determination that an action may or may not reduce the likelihood of survival or recovery will be made in the context of the operative environmental conditions at the local (site-specific) and ESU levels. There are legitimate concerns about disproportionate conservation requirements being placed on the tribes when surrounding non-Indian lands are in extremely degraded conditions. These concerns are addressed in other comments/responses in this document.

NMFS respectfully disagrees with the suggestion that tribes should have the ultimate responsibility for making a determination that a Tribal Plan will not appreciably reduce the likelihood of survival and recovery of threatened salmon or steelhead. This determination cannot be delegated by the Secretary to a tribal government. However, NMFS agrees that in making the determination it must work closely with the tribes to determine the level of impact, if any, on threatened species. As suggested by one tribal commenter, this means the Secretary shall consider data and analysis provided by the tribe and shall defer, where appropriate, to the tribe's conclusion that a Tribal Plan does not appreciably reduce the likelihood of survival and recovery of the species. If the Secretary determines a Tribal Plan should be modified, the tribe will be informed as soon as possible with a detailed explanation of what changes are recommended and the reason for the changes.

It is NMFS' view that, given the sovereign status of the tribes it is inappropriate to describe in this final rule the specific qualifying criteria for Tribal Plans. The plans will be held to the same fundamental ESA standard as any other activity, and will be evaluated consistent with principles outlined in the Secretarial Order. NMFS will work with tribes to the maximum extent practicable to craft plans that will meet the needs of listed species and accomplish the goals of the tribes. Furthermore, NMFS recognizes, as stated in the Secretarial Order, that it has a trust obligation to minimize impacts on tribes as much as possible while still meeting agency responsibilities under the ESA.

With respect to reporting requirements, NMFS believes it would be inappropriate to require a specific time period for all Tribal Plans, and instead prefers to allow tribes to suggest schedules that meet their needs. Also, it is not feasible to place mandatory time limits on the Secretary's review since the Tribal Plans themselves will likely vary considerably in size and complexity. Regarding the scope of the tribal plan limit, the proposed rule states this rule would apply to all existing and future listings of threatened salmonids promulgated by NMFS "whenever final protective regulations make the take prohibitions of ESA section 9(a) applicable" to the particular species/ESU.

Finally, regarding the process for public notification, NMFS is obliged to make public the determinations made under section 4 of the ESA. This is in contrast with other statutory provisions (e.g., ESA section 7 consultations) that do not include public review and comment processes. If the tribes elect to develop and submit plans under the tribal plan limit, the pending determination of the Secretary regarding survival and recovery of listed species is subject to public review and comment. However, public notification will focus on those features of a Tribal Plan needed to understand the Secretary's pending determination and NMFS will take all appropriate actions to ensure confidential information is protected to the maximum extent possible under applicable law. Furthermore, the public notification process will focus on the Secretary's pending decision, not on the Tribal Plan. In other words the agency will consider only those comments concerning the adequacy of the Secretary's pending determination that a Tribal Plan will or will not result in an appreciable reduction in the likelihood of survival and recovery.

Comment 3: While a number of commenters questioned the applicability of the ESA to tribal actions, other commenters contended that the tribal plan limit fails to meet the standards necessary for compliance with the ESA. Several commenters reminded NMFS of its trust relationship with tribal governments and the need to comply with existing judicially mandated procedures/processes (e.g., harvest issues) concerning trust resource management. One commenter questioned the applicability of the rule

to "all Federally recognized tribes" and expressed concern that the agency would be in the position of expanding "off-reservation rights."

Response: The tribal plan limit was developed to be consistent with the agency's obligation to conserve listed species under the ESA and meet trust obligations to Indian tribes. NMFS concludes this final rule responds to both mandates, but it is clearly the prerogative of any tribe to choose whether to submit a Tribal Plan for review under the tribal plan limit. By meeting its responsibility under ESA, in conjunction with obligations under the Secretarial Order, NMFS can meet its trust responsibilities to the tribes while improving the condition of salmon, steelhead, and other trust resources as well. NMFS is fully cognizant of these trust responsibilities and notes that the agency routinely consults with affected tribes on harvest and hatchery actions via section 7 of the ESA. This occurs in court mandated procedures such as *U.S.* v. *Oregon* and *U.S.* v. *Washington*, as well as for actions not covered by judicial requirements.

The unique political and constitutional relationship between the United States and Indian tribes as described in this rule involves Federally recognized tribes. It would be inappropriate to base the tribal plan limit's applicability on some other characteristic such as possession of off-reservation fishing rights. The agency's compliance with the ESA, the Secretarial Order, and its trust obligations to the tribes will not expand any rights held by the tribes. Those rights and authorities exist by virtue of the tribe being a sovereign entity; NMFS does not have the ability to limit or expand them.

Comment 4: A number of commenters expressed views regarding tribal treaty rights, tribal impacts on listed species, and the conservation burden placed on both tribal and non-tribal entities. While some commenters were concerned the tribal plan limit may give the tribes a "blank check" to conduct activities as they please, others were concerned the rule may infringe upon pre-existing tribal rights (e.g., fishing and water rights). Some commenters agreed that NMFS needs to find a way to harmonize ESA and tribal trust responsibilities, in particular relating to issues concerning terminal fisheries (i.e., fisheries typically occurring near river mouths or hatchery release sites where the targeted species is returning to spawn) and harvest/hatchery management. Other commenters stated they did not agree with NMFS' assertion that tribal actions have not been major factors contributing to the decline of salmon and steelhead.

Response: NMFS believes that by meeting its responsibilities under the ESA, in conjunction with the obligations under the Secretarial Order, it will not only meet its trust responsibilities to the tribes, but improve the status of trust resources. It is the agency's intent to continue working with the tribes to identify how best to meet these responsibilities without infringing upon pre-existing tribal rights. Similarly, NMFS believes this rule will assist the agency in ensuring there is not a disproportionate conservation burden placed on either tribal or non-tribal parties. As noted previously in this document, NMFS expects an equitable balance can be achieved by holding all parties to a standard that supports the concepts of viable salmonid populations and properly functioning habitat conditions.

NMFS disagrees with comments suggesting the tribal plan limit will provide a "blank check" to the tribes to conduct activities that may affect listed species. Although the tribes and Federal government maintain a unique relationship, NMFS has an important role in administering the ESA. This includes reviewing Tribal Plans to assess and determine that proposed actions do not appreciably reduce the likelihood of survival and recovery.

NMFS strongly concurs that tribes in terminal fisheries areas are placed at a significant disadvantage when they attempt to exercise their treaty or trust rights to harvest fish. The majority of salmon or steelhead harvested in these fisheries are likely to be listed under the ESA, offering little or no opportunity to pursue a NMFS authorization for incidental take. It is difficult to characterize such harvest as "incidental" take. This is in contrast to harvest that occurs in fisheries in which listed fish intermingle with unlisted fish ("mixed-stock fisheries"). This issue was an important motivation for NMFS to develop the tribal plan limit. Adoption of this limit will enable NMFS to authorize tribal harvest in terminal fisheries, so long as NMFS concludes that harvest will not impair the survival and recovery of the listed ESU. Tribes exercising their rights to fish will no longer be held to a different standard than others who have opportunities to harvest fish in mixed-stock fisheries, or who take listed fish when conducting other non-harvest activities.

Finally, in stating that "[T]ribal activities have not been identified as major factors contributing to the decline of threatened species," the agency considered the totality of tribal actions in the context of all historic impacts on the species. Tribes have a long history of promoting sound resource management in a manner that takes into account a wide variety of environmental values, including ESA-listed species.

Comment 5: Numerous commenters voiced concerns about the construct of the proposed rule both in general and specific terms. Some stated a separate 4(d) rule for Tribal Plans was unnecessary and undesirable. Others referenced a court decision indicating that, absent direct legislative language, NMFS' trust obligations would be fulfilled by compliance with general regulations and statutes. Others were concerned with the lack of specific standards.

Response: The tribal plan limit is an affirmative expression of NMFS' trust relationship with the tribes. The judicial case cited by several commenters involved the Federal Aviation Administration which, unlike NMFS' management authority over imperiled trust resources (e.g., marine mammals and listed salmon and steelhead), is not likely to involve a constant, almost daily interaction with numerous Indian tribes. Therefore, developing a rule that pertains to the daily interaction of the agency and the tribes seems to be most appropriate.

Changes to the Proposed Rule

NMFS is modifying the proposed rule based on comments and new information received. The regulatory language has been modified to: (1) include the phrase "tribal employee" in the list of entities subject to the tribal plan limit; and (2) clarify that a Tribal Plan could address "water management" activities.

Procedures for Implementing the ESA 4(d) Limit for Tribal Plans

This final rule recognizes and implements the commitment to government-to-government relations made by the President and the Secretary of Commerce. A tribe intending to exercise a tribal right to fish or undertake other resource management actions that may impact threatened salmonids could create a Tribal Plan that would assure that those actions would not appreciably reduce the likelihood of survival and recovery of the species. The Secretary stands ready to the maximum extent practicable to provide technical assistance to any tribe that so requests in examining impacts on listed salmonids and other salmonids and in the development of Tribal Plans that meet tribal management responsibilities and needs. In making a determination whether a Tribal Plan will appreciably reduce the likelihood

of survival and recovery of threatened salmonids, the Secretary, in consultation with the tribe, will use the best available scientific and commercial data (including careful consideration of any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species. The Secretary will also assess the effect of the Tribal Plan on survival and recovery in a manner consistent with tribal rights and trust responsibilities. Before making a final determination, the Secretary shall seek comment from the public on his pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids. The Secretary shall publish notification in the **Federal Register** of any determination regarding a Tribal Plan and the basis for that determination.

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified that this rule would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required. This rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13084—Consultation with Indian Tribal Governments

The United States has a unique relationship with tribal governments as set forth in the Constitution, treaties, statutes, and Executive Orders. In keeping with this unique relationship, with the mandates of the Presidential Memorandum on Government to Government Relations With Native American Tribal Governments (59 FR 22951), and with Executive Order 13084, NMFS has developed this final rule in close coordination with tribal governments and organizations. This final rule reflects many of the suggestions brought forth by tribal representatives during that process. NMFS' coordination during development of this tribal rule has included meetings with tribes and tribal organizations, and individual staff-to-staff conversations. Moreover, NMFS will continue to give careful consideration to all tribal comments and will continue its contacts and discussions with interested tribes as this final rule is implemented.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648-0399. Public reporting burden per response for this collection of information is estimated to average 20 hours for a tribal plan. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act

This final rule does not require the preparation of Tribal Plans. For most plans on which tribes request a NMFS determination under this limit, the Bureau of Indian Affairs or another agency, will have performed an NEPA analysis at the time they are developed. In the case of any tribal plan for which NEPA analysis has not been performed by another agency, NMFS will prepare an environmental analysis. Hence, NMFS has determined that this rule will not of its own force result in any changes to the human environment. Any plans determined to come within this limit will be evaluated under NEPA either by NMFS or another federal agency, prior to that determination. Therefore, this rule is categorically excluded from the need to prepare an Environmental Assessment, in accord with NOAA Administrative Order 216–6 (3)(d) and (f).

References

A list of references cited in this final rule is available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Fish, Fisheries, Imports, Indians, Intergovernmental relations, Marine mammals, Treaties.

Dated: June 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. Section 223.209 is added to read as follows:

§ 223.209 Tribal plans.

(a) *Limits on the prohibitions.* The prohibitions of § 223.203(a) of this subpart relating to threatened species of salmonids listed in § 223.102 do not apply to any activity undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes.

(b) *Consideration of a Tribal Plan.* (1) A Tribal Plan may include but is not limited to plans that address fishery harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide to the maximum extent practicable technical assistance in examining impacts on listed salmonids and other salmonids as tribes develop Tribal resource management plans that meet the management responsibilities and needs of the tribes. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions.

(2) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the

Tribal Plan's terms shall be determined within that Federal Court proceeding.

(3) The Secretary shall seek comment from the public on the Secretary's pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids.

(4) The Secretary shall publish notification in the **Federal Register** of any determination regarding a Tribal Plan and the basis for that determination.

[FR Doc. 00–16932 Filed 7–7–00; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 990

Allocation of Operating Subsidies Under the Operating Fund Formula; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–P–11]

RIN: 2577–AB88

Allocation of Operating Subsidies Under the Operating Fund Formula

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is the first stage in HUD's rulemaking process to implement an interim Operating Fund Formula for determining the payment of operating subsidies to public housing agencies (PHAs). As required by statute, this proposed rule was developed through negotiated rulemaking procedures. The policies and procedures described in this proposed rule would govern the determination of funding distributions to PHAs under the Operating Fund until a final rule, reflecting the results of a congressionally requested public housing cost study, is developed and published. Pending the completion of the cost study and the issuance of superseding rules based on the study, HUD will proceed to consider the public comments received on this proposed rule and to issue, in the next stage of this rulemaking process, an interim rule based on this proposed rule and the public comments received on the proposed rule.

DATES: *Comments Due Date:* August 9, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Room 10276, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Steve Sprague, Funding and Financial Management Division, Office of Public and Indian Housing, Room 4216, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Performance Funding System (PFS)

HUD currently uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to public housing agencies (PHAs). HUD's regulations implementing the PFS can be found at 24 CFR part 990. Generally, the amount of operating subsidy received by a PHA is the difference between projected expenses and projected income, with the PFS regulations detailing how these projections will be made. PHAs calculate their PFS eligibility annually and submit a request for funding as part of their budget process. While the amount varies, this subsidy represents a substantial amount of revenue to a PHA. For example, in 1999, HUD distributed approximately $2.9 billion in operating subsidies to PHAs.

The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (referred to as the "1937 Act") establishes the statutory framework for HUD's public housing programs. The 1937 Act limits eligibility to public housing to low income families, and caps public housing rents at 30 percent of a family's income. PHAs must therefore rely on the HUD operating subsidies (rather than rental income) to cover a significant amount of the costs associated with the operation of their public housing units.

B. Public Housing Reform

On October 21, 1998, the Congress enacted the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, approved October 21, 1998) (referred to as the "Public Housing Reform Act"). The Public Housing Reform Act makes sweeping changes to HUD's public and assisted housing programs. Among other changes, section 519 of the Public Housing Reform Act amended section 9 of the 1937 Act (42 U.S.C. 1437g). Amended section 9 establishes an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. Section 9(f) of the 1937 Act, as amended by the Public Housing Reform Act, requires that the assistance to be made available from that fund be determined using a formula developed through negotiated rule-making procedures as set forth in subchapter III of chapter 5 of title 5, United States Code (5 U.S.C. 561 *et. seq.*), commonly referred to as the Negotiated Rulemaking Act of 1990.

II. Negotiated Rulemaking

A. The Convening Report

Negotiated rulemaking, or "neg-reg," is a relatively new process for HUD. The basic concept of neg-reg is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations that are open to the public. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems.

In anticipation of possible congressional action, HUD entered into an interagency agreement in June 1998 with the Federal Mediation and Conciliation Service (FMCS) for convening and facilitation services associated with a negotiated rulemaking regarding a possible operating fund proposed rule. FMCS submitted its Convening Report in November 1998. The report provided a list of individual PHAs and organizations, representing a wide range of interests, that were willing and able to work within a consensus framework on a new Operating Fund formula.

B. HUD's Negotiated Rulemaking Committee on Operating Fund Allocation

On February 3, 1999 (64 FR 5570), HUD published a notice announcing its intent to establish a negotiated rulemaking committee for the Operating Fund. This notice identified a list of possible interested individuals and organizations to serve on the negotiated rulemaking committee. The list of possible interested individuals and organizations included PHAs, national organizations representing PHAs, residents organizations, advocates for low-income housing, and other housing experts.

On March 16, 1999 (64 FR 12920), HUD published a notice announcing the establishment of its Negotiated Rulemaking Committee on Operating Fund Allocation (the "Committee"). The notice also provided the list of Committee members and announced its first set of meetings. The members participating in the negotiated rulemaking procedure for the Operating Fund are:

- Large Housing Authorities
  1. Atlanta Housing Authority, Atlanta, GA
  2. Chicago Housing Authority, Chicago, IL
  3. New York City Housing Authority, NYC, NY

4. Pittsburgh Housing Authority, Pittsburgh, PA
5. Seattle Housing Authority, Seattle, WA

- Medium Housing Authorities
  1. Akron Metro Housing Authority, Akron, OH
  2. Athens Housing Authority, Athens, GA
  3. Indianapolis Housing Agency, Indianapolis, IN
  4. Oakland Housing Authority, Oakland, CA
  5. Reno Housing Authority, Reno, NV
- Small Housing Authorities
  1. Marble Falls Housing Authority, Marble Falls, TX
  2. Meade County Housing and Redevelopment Commission, Sturgis, SD
  3. York Housing Authority, York, NE
- Non-PFS Housing Authority
  1. Puerto Rico Public Housing Administration, San Juan, PR
- Resident Organizations
  1. Massachusetts Union of Public Housing Tenants, Dorchester MA
  2. New Jersey Association of Public and Subsidized Housing Residents, Inc., Newark, NJ
- Public Interest Groups
  1. National Low Income Housing Coalition, Washington, DC
  2. Housing and Development Law Institute, Washington, DC
  3. Center for Community Change, Washington, DC
  4. National Organization of African-Americans in Housing (NOAAH)
- National PHA Associations
  1. Public Housing Authorities Directors Association (PHADA)
  2. National Association of Housing and Redevelopment Officials (NAHRO)
  3. Council of Large Public Housing Authorities (CLPHA)
- Federal Government
  1. U.S. Department of Housing and Urban Development

Additionally, two FMCS representatives served as facilitators. The Committee first convened on March 23–24, 1999. Additional Committee meetings were held on April 13–14, May 13–14, June 15–16, July 7–8, September 14–15, November 30–December 2, 1999; February 16–17, 2000; and March 7–8, 2000. All Committee meetings were held in the Washington, DC metro area. The Committee meetings were announced in the **Federal Register**. Members of the public were invited to attend the meetings and to submit their views and recommendations.

III. This Proposed Rule

This proposed rule is the product of the Committee's successful negotiations, and reflects the consensus decisions reached over nearly a year's worth of deliberations. The proposed rule is the first stage in the rulemaking process that will establish an Operating Fund formula, to replace the current PFS regulations located in 24 CFR part 990. The rule thus represents a partnership among HUD, the PHAs, public housing residents, and advocates of public housing. The policies and procedures described in this proposed rule would govern the determination of funding distributions to PHAs under the Interim Operating Fund Formula until a final rule, reflecting the results of a Congressionally requested public housing cost study, is developed and published (see Section XIII. of this preamble for further information regarding the cost study).

It became apparent to the Committee during its deliberations that sufficient data were not available to either establish the true costs of operating public housing or to develop final modifications to the existing PFS regulations without an unacceptable degree of unpredictability. The Committee determined, therefore, to recommend that a comprehensive cost study be undertaken to provide data and recommendations necessary for finalizing an Operating Fund Formula. A consensus also became apparent that, pending the results of the housing cost study, there exist urgent needs and tangible benefits from implementing the proposed Interim Operating Fund Formula. Accordingly, the Interim Operating Fund Formula that would be established by this proposed rule is largely based on the policies and procedures that have heretofore governed the PFS. The Committee has decided to recommend several important modifications to the existing PFS regulations. These modifications would address, to the extent feasible under data presently available to the public, five specific proposals considered important by members of the Committee.

The proposed rule would: (1) Modify the method by which "small PHAs" are funded in order to assure an adequate minimum level funding, based on nationally averaged operating costs for multifamily housing projects insured by the Federal Housing Administration (FHA), adjusted for unit size differences and locational cost differences; (2) implement statutory changes permitting PHAs to retain certain rental and non-rental income without offset against operating subsidy; (3) retain the current method of estimating utility expenses, but would eliminate year-end adjustments, for the costs of utilities, reflecting the adjustments instead, in the PHA's operating subsidy calculation for the second PHA fiscal year following the year being adjusted, and in order to encourage energy efficiency, it would replace the current 50–50 split of savings or increase in cost due to changes in utilities consumption to a 75–25 split between PHAs and HUD, respectively; (4) require each PHA to include in its operating subsidy calculation, $25 per occupied unit per year for resident participation activities as an add on expense component for subsidy eligibility; and (5) include flood insurance costs in the computation of the Allowable Expense Level (AEL) by permitting a one-time permanent adjustment to reflect this cost. The proposed rule would also make several clarifying and technical changes to the PFS regulations and would remove several obsolete provisions.

The most significant amendments made by this proposed rule to the current part 990 regulations are described in the following sections of this preamble. For the convenience of readers, this proposed rule republishes the text of subpart A of the part 990 regulations in its entirety. Except for the changes identified in this preamble, no additional revisions would be made to 24 CFR part 990.

IV. FHA-Based AEL (FHAEL) Adjustment for Small PHAs (§ 990.105(e))

The proposed rule would modify how non-utility Allowable Expense Levels (AELs) are calculated. AELs were initially set in 1975 for most PHAs and have subsequently been updated only for inflation. In 1992, PHAs with AELs that fell significantly below a statistical regression-based formula were allowed to receive increases up to 85% of the formula value. Many of those familiar with public housing have argued that the original AEL determinations had the effect of freezing into place whatever funding inequities then existed, and that the 1992 revisions did little to correct this problem because the formula was based on an analysis of the existing distribution of AELs. The most common concerns relate to small PHAs.

The Committee sought a proxy measure of the adequacy of small PHA funding; one not based upon public housing operating expense data since such data fails to provide an objective measure as to whether small PHA funding is adequate, inadequate, or excessive. The most readily accessible proxy information comes from HUD's Real Estate Management data system. This data system contains detailed time-series financial statements and project

characteristics for approximately 11,000 multifamily housing projects insured by the FHA and/or assisted by HUD, of which approximately 90% have some form of housing subsidies.

In reviewing applications for multifamily housing insurance, FHA requires that an applicant submit detailed budget estimates that demonstrate that the proposed project is financially feasible. Operating expense levels are normally required to be close to industry norms for similar projects in the area. This is done to reduce FHA's insurance risk—under-estimating operating expenses increases the risk that a project will go into default. Available data suggest that there is limited variability in normal operating expense levels for similar projects in similar locations.

The Committee adopted an approach that used a national FHA-based operating cost average (referred to as the "FHAEL") for a two-bedroom public housing unit based on line-item expenses for non-utility operating costs that excluded property taxes. This figure was then used to calculate a PHA-specific equivalent factor by adjusting for average unit size differences and for locational cost differences. The unit size differential was calculated using Fair Market Rent (FMR) cost relationships (*e.g.*, a one-bedroom costs 85% of a two-bedroom and a three-bedroom costs 125% of a two-bedroom). The location differential was based on the R.S. Means construction cost index, which effectively measures wage and material price differentials for a constant quality product. The R.S. Means and bedroom size adjustments had a high correlation with actual FHA operating expense differentials and a significant but lower unit-weighted correlation (83%) with PHA AELs.

The FHA operating cost data used in the comparisons of FHA and public housing operating costs consisted of all FHA multifamily insured or subsidized projects for which audited operating expense data for fiscal year (FY) 1996 were available. Data for 1996 were selected because they had been extensively tested and used for other purposes (*e.g.*, to develop operating cost standards and factors for FHA-managed properties). Comparisons with other years were made to eliminate projects which appeared to have atypical annual expenditures. A total of 8,651 projects were used for most analyses. Most of the projects for which all needed variables were available were assisted by some form of HUD subsidy.

In practice, it was found that the AEL/FHA cost ratio was 101% for the public housing program as a whole, but that many small PHAs had AELs significantly below estimated FHA-based operating cost averages. Conceptually, there is no reason to expect a PHA to be able to provide maintenance levels typical of private market projects with significantly less funding. Therefore, this proposed rule would establish a one-time adjustment to AELs for certain PHAs with less than 500 units.

AELs for small PHAs would be set at the higher of a small PHA's current AEL or 70% of the FHAEL, and the AEL would be increased to the higher of their current AEL or 85% of the FHAEL for PHAs under 250 units. The cost of these increases would be achieved by reducing the AELs of PHAs with more than 500 units. The proposed rule would provide an exception to this determination for small PHAs with AELs that are greater than 120% of the FHAEL, in which case the small PHAs will use an AEL equivalent to 120% of the FHAEL.

PHAs with more than 500 units and AELs in excess of 85% of their FHAEL will use 98.64% of the FY 2000 AEL (which represents a 1.36% reduction in the FY 2000 AEL value) for purposes of calculating their FY 2001 subsidy determinations. This reduction offsets the cost of establishing minimum AELs for PHAs with less than 250 units at 85% of the value of the FHAEL, and of establishing minimum AELs for PHAs with 250–499 units at 70% of their FHAEL values.

V. Treatment of Revenues (§§ 990.102, 990.109, 990.110, and 990.116)

A. Treatment of Non-Rental Income—Exclusion of Investment Income and Revised Definition of "Other Income" (§§ 990.102, 990.109 and 990.110)

As noted above, the amount of operating subsidy received by a PHA is generally calculated by determining the difference between projected expenses and projected income. Projected income is categorized as being either dwelling rental income, investment income, or "other income." This proposed rule would revise the definition of other income (for purposes of calculating subsidy) to only include income from: (1) Rents billed for dwelling units rented for non-dwelling purposes; and (2) charges to residents for excess utility consumption of PHA supplied utilities.

Under the proposed definition, investment income would not be used to determine operating subsidy eligibility. Accordingly, the proposed rule would make a conforming amendment to § 990.109, which governs the calculation of projected operating income levels. Specifically, the proposed rule would remove paragraph (e)(1) of that section, which regards a PHA's estimate of investment income for purposes of the operating subsidy calculation. The proposed rule would also remove the provisions dealing with adjustments for investment income located at § 990.110(b). This regulatory change would codify HUD's revised policy regarding the treatment of non-rental income for FY 2000 and beyond, which was announced through an earlier issued Public and Indian Housing (PIH) Notice 2000–04 (HA), issued on February 3, 2000.

B. Computation of Projected Monthly Dwelling Rental Income (§ 990.109)

The proposed rule would amend § 990.109 to revise the method for calculating projected monthly dwelling rental income. Under the proposed rule, a PHA would determine its average monthly dwelling charge for the month that is six months before the start of its budget year (the "current year average") as well as the average monthly charge for the comparable month of its two previous years. An average would be computed for these three amounts (the "three year average") and compared with the current year average.

If the current year average is not higher than the three year average, rental income has not increased and the current year average will be used to calculate projected rental income.

If the current year average is higher than the three year average, the PHA shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased revenue for the provision of resident-related improvements and services as described in new § 990.116 (see Section V.C. of this preamble below). The retained income will not be recognized in the PHA's calculation under the Interim Operating Fund Formula. The projected dwelling rental income for PHAs with increased rental income will be based on the three year average plus 50% of the increase.

A change factor of 3% will then be applied. HUD intends to revise the 3% adjustment factor, for the duration of the interim rule, beginning in FY 2002, to more accurately reflect the inflationary pressure on the projection of monthly dwelling rental income. In determining such a factor for FY 2002, HUD will also take into consideration any negative impacts on incentives for PHAs to increase resident earned income, relevant and available indices of rental income inflation, historical trends in rental income changes, and the proportion and amount of increased

income retained by PHAs using the rolling base method. There will be consultation with the appropriate stakeholders regarding the methodology for determining change factors to be used by HUD followed by publication of written notice and an opportunity for public comment.

The PHA must adjust the rent rolls used for purposes of these calculations to reflect any change from PHA-paid utilities to resident-paid utilities, or vice versa, between the rent roll date and the projected budget year.

C. Use of Increases in Dwelling Rental Income (§ 990.116)

The proposed rule would replace the current § 990.116 (which concerns three year incentive adjustments) with a new section concerning the eligible uses of increases in dwelling rental income, as calculated under § 990.109 (see Section V.B. of this preamble above). The uses of the retained income must be described in the PHA's Plan submissions under 24 CFR part 903. The uses for the retained income must be developed with front end resident participation and ongoing input, and shall be made part of the PHA Plan submission. The proposed rule provides several examples of eligible uses for the retained income, including, but not limited to:

1. Physical and management improvements that benefit residents;
2. Resident self-sufficiency services;
3. Maintenance operations;
4. Resident employment and training services;
5. Resident safety and security improvements and services; and
6. Optional earned income exclusions.

VI. Utility Adjustments (§§ 990.107 and 990.110)

After consideration of various options for the treatment of utilities, the Committee decided to retain the current methodology for estimating utility expenses (located in § 990.107). However, the proposed rule would make several changes to the regulations concerning utility adjustments (located in § 990.110).

First, the proposed rule would eliminate the so-called "year-end adjustments." Under the current PFS regulations, a PHA must conduct a comparison of the differences between the actual costs and consumption of utilities during the immediate preceding year with the estimates used to determine the allowable utilities expense level for that year. The comparison of actual and estimated utility costs is to be reported to HUD within 45 days after the end of a PHA's fiscal year. Under the proposed rule, a PHA will continue to report its comparison of actual and estimated utility costs within 45 days after the end of the PHA's fiscal year. The adjustment would normally be made in the operating subsidy calculation for the second PHA fiscal year following the year being adjusted. These adjustments would be applicable to PHA fiscal years beginning on or after January 1, 1999.

In order to strengthen the regulatory incentives to conserve energy, the current "50–50" sharing of additional costs or savings resulting from changes in consumption levels would be revised to a "75–25" split. Under the proposed rule, if actual consumption levels are lower than estimated, PHAs would retain 75% of the savings resulting from decreased consumption. The remaining 25% of the savings would be deducted by HUD when determining future subsidy eligibility. Conversely, if actual consumption levels are higher than anticipated, HUD would allow 25% of the resulting cost. The remaining 75% of the increased consumption cost would be absorbed by the PHA.

The risks associated with utility rates increasing after the estimate of utility costs has been approved will continue to be absorbed by HUD. In return, savings in utility costs due to decreases in rates that occur after the estimate of utility costs has been approved will accrue to HUD.

By permitting PHAs to retain a greater share of the savings from decreased utilities consumption, the Committee expects to encourage energy conservation. PHAs are urged to implement policies and procedures that foster conservation and to reduce energy costs. The savings resulting from such cost reductions can more appropriately be used to improve existing living conditions in public housing. The Committee strongly recommends that energy conservation become a central component of each PHA's Annual and Five Year Plans.

VII. Resident Participation (§ 990.108(e))

In its development of the proposed rule, the Committee discussed at substantial length the importance of resident participation to the success of public housing, including the Interim Operating Fund formula. The Committee noted that the Public Housing Reform Act places value on resident participation by requiring, with certain exceptions, at least one resident on the PHA Board of Commissioners, resident involvement in the PHA Plan process (through Resident Advisory Boards) and additional involvement as reflected in HUD's resident participation regulations (24 CFR part 964). Accordingly, the proposed rule would require each PHA to include, in its operating subsidy eligibility calculation, $25 per occupied unit per year for resident participation activities. These activities include (but are not limited to) those described in 24 CFR part 964. For purposes of this section, a unit may be occupied by a public housing resident, a PHA employee, or a police officer.

The proposed rule would also authorize HUD to approve the use of vacant rental units for resident participation purposes and allow PHAs to receive subsidy support for those units. HUD will approve the use of vacant units for such purposes only if the PHA can demonstrate that safe and suitable space for the resident participation activities is not otherwise readily available. Only one site per public housing development, involving one or more contiguous units, may be used for resident participation activities. Further, the number of units must be the minimum necessary to support the resident participation activities. Any rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

HUD is also taking various steps to promote resident involvement in creating and maintaining a positive living environment. For example, HUD is developing a proposed rule that will revise the part 964 regulations in their entirety. HUD is committed to developing this proposed rule with the active participation of public housing residents. HUD will solicit resident input through the scheduling of public forums, solicitations for written comments, and/or other appropriate means. HUD's goal in undertaking this rulemaking is to develop a set of easy-to-understand regulations that reflect the meaningful contributions of public housing residents. Accordingly, the proposed rule will not only implement statutory amendments made by the Public Housing Reform Act, but will also streamline and reorganize 24 CFR part 964 to simplify and improve the clarity of HUD's resident participation requirements.

HUD is taking several other steps to increase resident participation in public housing. For example, HUD will conduct training for resident organizations and PHAs on the Public Housing Reform Act.

VIII. Flood Insurance Adjustment to AEL (§ 990.105(f))

To simplify the calculation of operating subsidy, this proposed rule

would include flood insurance costs in the AEL computation. Specifically, the proposed rule would require that the AEL be adjusted by adding the flood insurance charge per unit month, as reflected in the last HUD approved subsidy calculation for FY 2000. This adjustment would be a one-time permanent adjustment made only in FY 2001. However, if the flood map is changed at a future date, HUD will adjust the AEL for the affected PHAs to reflect the revised flood insurance charges.

IX. Removal of Obsolete Provisions and Other Streamlining Changes

In addition to the changes discussed above, this proposed rule would make several clarifying and technical changes to part 990. For example, the proposed rule would replace all outdated reference to the PFS with references to the Interim Operating Fund Formula. The proposed rule would also remove several obsolete provisions, which continue to be unnecessarily codified. HUD has also taken this opportunity to re-format or clarify certain other provisions. These proposed changes are not substantive, and do not alter or modify existing requirements. Rather, these changes are designed to make the part 990 regulations easier to comprehend.

X. Treatment of Utility and Waste Management Savings

Amended section 9 of the 1937 Act requires that "the treatment of utility and waste management costs under the [Operating Fund] formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects" (42 U.S.C. 1437g(e)(2)(C)).

The proposed rule would address this statutory requirement by retaining the current PFS provisions at § 990.107(f), which describes PHA incentives for non-HUD financed energy conservation improvements. Under this provision, a PHA, whose energy conservation measures have been approved by HUD as satisfying certain regulatory requirements, may retain 100% of the savings from decreased energy consumption after payment of the amount due the contractor until the term of the financing agreement is completed.

With regard to waste management, these costs are treated as a maintenance expense (not a utilities expense) under the PFS and this proposed rule. The Allowable Expense Level (AEL) covers non-utility costs and is not adjusted when costs are reduced. Should a PHA be able to reduce its waste management costs below the amount assumed in its AEL, the PHA would retain all of the savings. This is true under the existing PFS, and would continue to apply under this proposed rule.

XI. Moving To Work PHAs

Moving To Work (MTW) PHAs will continue to be funded under the provisions of their existing MTW agreements. These agreements may be renegotiated in view of the new Interim Operating Fund Formula, as requested by MTW PHAs and as agreed to by HUD. If MTW PHAs choose to be included under the new Interim Operating Fund Formula, then both the redistribution and funding benefits will apply. (See § 990.104(d) of this proposed rule.)

XII. Applicability of the Interim Operating Fund Formula to Non-PFS PHAs

This proposed rule would revise § 990.103 (which concerns the applicability of the Interim Operating Fund Formula) to provide that the amendments described in sections IV. through X. of this preamble would be applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska (the "non-PFS PHAs"). Otherwise, the Interim Operating Fund Formula would not be applicable to these PHAs. Operating subsidy payments to these PHAs would continue to be made in accordance with subpart B of 24 CFR part 990. The non-PFS PHAs would not be subject to the AEL reductions necessary to offset the cost of establishing minimum AELs for small PHAs (see Section IV. of this preamble).

XIII. The Operating Fund Cost Study

The Conference Report to the FY 2000 HUD Appropriations Act (Public Law 106–74, approved October 20, 1999) states, in part, that ". . . before a proposed rule is published in the **Federal Register**, the conferees direct HUD to contract with the Harvard University Graduate School of Design ("Harvard") to conduct a study of the cost incurred in operating well-run public housing and provide the results to the negotiated rulemaking committee and the appropriate congressional committees. . . ." (Congressional Record of October 13, 1999, H10007).

HUD has contracted for the study. HUD has also directed Harvard, as the cost-study contractor, to provide public opportunities (such as periodic forums, status reports, and other means) for interested persons and organizations to be informed of the study's research design, methodologies, and progress, and to provide input and feedback for consideration in the development of the study. Harvard, as the contractor for the cost study, will consult with interested individuals and organizations in developing the cost study findings and recommendations.

During the period that the cost study is underway, HUD will proceed to consider the public comments received on this proposed rule and to issue an interim rule based on this proposed rule and the public comments received on the proposed rule. As part of the rulemaking process, HUD will submit the rule to the Office of Management and Budget (OMB) for review and clearance (as required under Executive Order 12866), and to HUD's Congressional committees for 15-day pre-publication review (as required under section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*)).

XIV. Development of Final Rule

Following and based upon the findings and recommendations of the completed cost study and the Public Housing Reform Act, HUD will develop the additional rulemaking to finalize the Operating Fund Formula, using the procedures of the Negotiated Rulemaking Act of 1990, subject to compliance with applicable legal requirements prerequisite to the establishment of a negotiated rulemaking committee for such purposes and to the appropriate approvals of any proposed or final rule as referenced in Section XII of this preamble above.

XV. Justification for Reduced Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. In an effort to have an interim Operating Fund Formula in place as close to beginning of FY 2001, and given that the formula was developed through the negotiated rulemaking process, in which representatives of all affected parties participated, the Department believes that a 30-day public comment period is justified under these circumstances.

XVI. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in 24 CFR part 990 have been approved by the Office of Management (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). While this proposed rule would make several modifications to the existing regulatory requirements (described above), the rule would not increase the total reporting and recordkeeping burden related to the payment of operating subsidies to PHAs. The information collection requirements contained in §§ 990.104, 990.105, 990.107, 990.108, 990.110, 990.111, and 990.117 of this proposed rule correspond to information collections contained in HUD's current part 990 regulations. These information collection requirements have been assigned OMB control numbers 2577–0029 (expiration date May 31, 2001), 2577–0026 (expiration date June 30, 2001), and 2577–0066 (expiration date September 30, 2002). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order. Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would implement a new system for formula allocation of funds to PHAs for their operating needs. The new system is established to provide minimum impact on all PHAs, small and large. Accordingly, the formula will not have a significant economic impact on any PHA. Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this program is 14.850.

List of Subjects in 24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

. For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 990 as follows:

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

1. Revise the heading of part 990 to read as set forth above.

2. The authority citation for part 990 is revised to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

3. Subpart A is revised to read as follows:

Subpart A—The Operating Fund Formula

Sec.

990.101 Purpose.
990.102 Definitions.
990.103 Applicability of the Operating Fund Formula.
990.104 Determination of amount of operating subsidy under the Operating Fund Formula.
990.105 Computation of allowable expense level.
990.106 Transition funding for excessively high-cost PHAs.
990.107 Computation of utilities expense level.
990.108 Other costs.
990.109 Projected operating income level.
990.110 Adjustments.
990.111 Submission and approval of operating subsidy calculations and budgets.
990.112 Payments procedure for operating subsidy under the Operating Fund Formula.
990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.
990.114 Phase-down of subsidy for units approved for demolition.
990.116 Increases in dwelling rental income.
990.117 Determining actual and requested budget year occupancy percentages.
990.120 Audits.
990.121 Effect of recission.

§ 990.101 Purpose.

This subpart implements section 9(f) of the United States Housing Act of 1937 (42 U.S.C. 1437g) (referred to as "the 1937 Act"). Section 9(f) establishes an Operating Fund for the purposes of making assistance available to public housing agencies (PHAs) for the operation and management of public housing. The assistance made available from the Operating Fund is determined using a formula developed through negotiated rulemaking procedures. This subpart describes the policies and procedures for operating subsidy calculations under the Operating Fund Formula.

§ 990.102 Definitions.

Allowable Expense Level (AEL). The per unit per month dollar amount of

expenses (excluding Utilities and expenses allowed under § 990.108) computed in accordance with § 990.105, which is used to compute the amount of operating subsidy.

Allowable Utilities Consumption Level (AUCL). The amount of utilities expected to be consumed per unit per month by the PHA during the Requested Budget Year, which is equal to the average amount consumed per unit per month during the Rolling Base Period.

Base Year. The PHA's fiscal year immediately preceding its first fiscal year of receipt of operating subsidy under this part (either under the Operating Fund Formula or its predecessor, the Performance Funding System (PFS)).

Base Year Expense Level. The expense level (excluding utilities, audits and certain other items) for the Base Year, computed as provided in § 990.105.

Current Budget Year. The fiscal year in which the PHA is currently operating.

Dwelling rent. The amount charged monthly for a dwelling unit occupied by a resident or family eligible for public housing as determined in § 960.253 of this title. For purposes of determining subsidy eligibility, the dwelling rent will not reflect decreases resulting from the PHA's implementation of any optional earned income exclusions.

Formula. The revised formula derived from the actual expenses of the sample group of PHAs receiving assistance under the Operating Fund Formula, which is used to determine the Formula Expense Level and the Range of each PHA (see § 990.105(c)).

FHA-based operating expense level (FHAEL). The per unit per month dollar amount of expenses (excluding utilities and expenses allowed under § 990.108) computed in accordance with § 990.105(e), which is used on a one-time basis to adjust the AEL for selected PHAs.

Formula Expense Level. The per unit per month dollar amount of expenses (excluding utilities and audits) computed under the Formula, in accordance with § 990.105.

HUD Field Office. The HUD Field Office that has been delegated authority under the U.S. Housing Act of 1937 to perform functions pertaining to this subpart for the area in which the PHA is located.

Local Inflation Factor. The HUD-supplied weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses.

Long-term vacancy. This term means the same as it is used in the definition of "Unit Months Available" in this section.

Nondwelling rent. The amount charged monthly, including utility and equipment charges, to a lessee for a dwelling unit that is being used for nondwelling purposes. For purposes of determining operating subsidy:

(1) If the nondwelling unit has been approved for subsidy (e.g., the unit is being used for economic self-sufficiency services or anti-drug activities) at the rate of the PHA's AEL, the PHA will include all charges as nondwelling rent;

(2) If the nondwelling unit has not been approved for subsidy, a PHA will include as nondwelling rent only that portion of the charge that exceeds the rate of the PHA's AEL.

Operating budget. The PHA's operating budget and all related documents, as required by HUD, approved by the PHA Board of Commissioners.

Other income. Income from rent billed to lessees of dwelling units rented for nondwelling purposes, and from charges to residents for excess utility consumption for PHA supplied utilities.

Project. Each project under an Annual Contributions Contract to which the Operating Fund Formula is applicable, as provided in § 990.103.

Project Units. All dwelling units of a PHA's Projects.

Projected Operating Income Level. The per unit per month dollar amount of dwelling rental income plus other income, computed as provided in § 990.109.

Requested Budget Year. The budget year (fiscal year) of a PHA following the Current Budget Year.

Rolling Base Period. The 36-month period that ends 12 months before the beginning of the PHA Requested Budget Year, which is used to determine the Allowable Utilities Consumption Level used to compute the Utilities Expense Level.

Top of Range. Formula Expense Level multiplied by 1.15.

Transition funding. Funding for excessively high-cost PHAs, as provided in § 990.106.

Unit Approved for Deprogramming. (1) A dwelling unit for which HUD has approved the PHA's formal request to remove the dwelling unit from the PHA's inventory and the Annual Contributions Contract but for which removal, i.e., deprogramming, has not yet been completed; or

(2) A nondwelling structure or a dwelling unit used for nondwelling purposes which the PHA has determined will no longer be used for PHA purposes and which HUD has approved for removal from the PHA's inventory and Annual Contributions Contract.

Unit months available. Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. For purposes of this part, a unit is considered available for occupancy from the date established as the End of the Initial Operating Period for the Project until the time the unit is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. In the case of a PHA development involving the acquisition of scattered site housing, see also § 990.104(b). A unit will be considered a long-term vacancy and will not be considered available for occupancy in any given PHA Requested Budget Year if the PHA determines that:

(1) The unit has been vacant for more than 12 months at the time the PHA determines its Actual Occupancy Percentage;

(2) The unit is not either:

(i) A vacant unit undergoing modernization; or

(ii) A unit vacant for circumstances and actions beyond the PHA's control, as these terms are defined in this section; and

(3) The PHA determines that it will have a vacancy percentage of more than 3% and will have more than five vacant units, for its Requested Budget Year, even after adjusting for vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control, as defined in this section. (Reference in this part to "more than five units" or "fewer than five units" shall refer to a circumstance in which five units equals or exceeds 3% of the number of units to which the 3% threshold is applicable.)

Units vacant due to circumstances and actions beyond the PHA's control. Dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing vacant units and are beyond the PHA's control. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) Litigation. The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are being held vacant as part of a court-ordered or HUD-approved desegregation plan.

(2) Laws. Federal or State laws of general applicability, or their implementing regulations. Units vacant

only because they do not meet minimum standards pertaining to construction or habitability under Federal, State, or local laws or regulations will not be considered vacant due to circumstances and actions beyond the PHA's control.

(3) Changing market conditions. For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after the PHA has taken aggressive marketing and outreach measures.

(4) Natural disasters.

(5) RMC Funding. The failure of a PHA to fund an otherwise approvable RMC request for Federal modernization funding.

(6) Casualty Losses. Delays in repairing damage to vacant units due to the time needed for settlement of insurance claims.

Utilities. Electricity, gas, heating fuel, water and sewerage service.

Utilities expense level. The per unit per month dollar amount of utilities expense, computed as provided in § 990.107.

Vacant unit undergoing modernization. A vacant unit in a project not considered to be obsolete (as determined using the indicia in § 970.6 of this chapter), when the project is undergoing modernization that includes work that is necessary to reoccupy the vacant unit, and in which one of the following conditions is met:

(1) The unit is under construction (.e., the construction contract has been awarded or force account work has started); or

(2) The treatment of the vacant unit is included in a HUD-approved modernization budget (or its successor under the public housing Capital Fund program), but the time period for placing the vacant unit under construction has not yet expired. The PHA must place the vacant unit under construction within two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved.

§ 990.103 Applicability of the Operating Fund Formula.

(a) *General.* The Operating Fund Formula will be used in determining the amounts of operating subsidy payable to PHAs.

(b) *Applicability of the Operating Fund Formula.* The Operating Fund Formula is applicable to all PHA rental units under Annual Contributions Contracts. The Operating Fund Formula applies to PHAs that have not received operating subsidy payments previously, but are eligible for such payments under the Operating Fund Formula.

(c) *Inapplicability of the Operating Fund Formula.* The Operating Fund Formula, as described in this part, is not applicable to Indian Housing, the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual Help Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs.

(d) *Applicability of the Operating Fund Formula to the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska.* (1) The following provisions of this subpart A are applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska:

(i) The definition of "other income" at § 990.102;

(ii) Section 990.105 (Computation of allowable expense level). However, § 990.105(e) (Computation of FHA-based operating expense level for application in FY 2001) does not apply to these PHAs;

(iii) Section 990.105(f) (Flood insurance adjustment for FY 2001);

(iv) Section 990.108(e) (Funding for resident participation activities);

(v) Section 990.109(b) (Computation of projected average monthly dwelling rental income);

(vi) Section 990.110(b) (Adjustments to utilities expense level); and

(vii) Section 990.116 (Increases in dwelling rental income).

(2) With the exception of the provisions listed in paragraph (d)(1) of this section, the Operating Fund Formula is not applicable to the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska. Operating subsidy payments to these PHAs are made in accordance with subpart B of this part.

(e) *Financial management, monitoring and reporting.* The financial management system, monitoring and reporting on program performance and financial reporting will be in compliance with 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures which are determined by HUD to be necessary for the proper management of the program in accordance with the requirements of the U.S. Housing Act of 1937 and the Annual Contributions Contracts between the PHAs and HUD.

§ 990.104 Determination of amount of operating subsidy under the Operating Fund Formula.

(a) The amount of operating subsidy for which each PHA is eligible shall be determined as follows: The Projected Operating Income Level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per unit per month dollar amounts, and must be multiplied by the Unit Months Available. Transition Funding, if applicable, and other costs as specified in § 990.108 are then added to this total in order to determine the total amount of operating subsidy for the Requested Budget Year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, a PHA may receive operating subsidy in an amount, approved by HUD, equal to the actual cost of an independent audit to be prorated to operations of the PHA-owned rental housing. See § 990.110 regarding adjustments.

(b) In the case of a PHA development involving the acquisition of scattered site housing, the PHA may submit, and HUD shall review and approve, a revised Development Cost Budget (or its successor under the public housing Capital Fund program) reflecting the number of units that were occupied during the previous six months, and the Unit Months Available used in the calculation of operating subsidy eligibility shall be revised to include the number of months the new/acquired units are actually occupied.

(c) A special phase-down of subsidy to PHAs is applicable when demolition of units is approved by HUD. See § 990.114.

(d) The calculation of operating subsidy for a PHA in the Moving to Work demonstration program shall be made in accordance with the applicable Moving to Work Agreement, and any amendments to such agreements, as may be approved by HUD.

§ 990.105 Computation of allowable expense level.

The PHA shall compute its Allowable Expense Level using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes Payments in Lieu of Taxes (PILOT) required by a Cooperation Agreement even if PILOT is not included in the Operating Budget for the Base Year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the PHA's Operating Budget for the Base Year except the following:

(1) Utilities expense;

(2) Cost of an independent audit;

(3) Adjustments applicable to budget years before the Base Year;

(4) Expenditures supported by supplemental subsidy payments

applicable to budget years before the Base Year;

(5) All other expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures which were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the above six exclusions, the PHA shall adjust the AEL by excluding any of these items from the Base Year Expense Level if this has not already been accomplished. If such adjustment is made in the second or some subsequent fiscal year of receipt of operating subsidy under this part, the AEL shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the PHA does not make these adjustments, the HUD Field Office shall compute the adjustments.

(c) *Computation of Formula Expense Level.* The PHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular PHA's inventory. It uses weights and a Local Inflation Factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The formula is the sum of the following six numbers and the weights of the formula and the formula are subject to updating by HUD:

(1) The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954. This census-based statistic applies to the county of the PHA, except that, if the PHA has 80% or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(2) The Local Government Wage Rate multiplied by a weight of 116.496. The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA standard of 1.0. For multi-county PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85% or more than 115% of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85% or more than 115% of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Construction Cost Index.

(3) The lesser of the current number of the PHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.

(4) The current ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy multiplied by a weight of 37.294. For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(5) The current ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of all the PHA's units available for occupancy multiplied by a weight of 22.303.

(6) An equation calibration constant of −.2344.

(d) *Computation of Allowable Expense Level (AEL).* The PHA shall compute its Allowable Expense Level as follows:

(1) *AEL for first budget year of operating subsidy under this part where Base Year Expense Level does not exceed the top of the range.* Every PHA whose Base Year Expense Level is less than the top of the range shall compute its AEL for the first budget year of operating subsidy under this part by adding the following to its Base Year Expense Level (before adjustments under § 990.110):

(i) Any increase approved by HUD in accordance with § 990.110;

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year of operating subsidy under this part; and

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *AEL for first budget year of operating subsidy under this part where Base Year Expense Level exceeds the top of the range.* Every PHA whose Base Year Expense Level exceeds the top of the range shall compute its AEL for the first budget year of operating subsidy under this part by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

(i) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year of operating subsidy under this part;

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the AEL, computed as provided above, the PHA may be eligible for Transition Funding under § 990.106.)

(3) *AEL for first budget year of operating subsidy under this part for a new project.* A new project of a new PHA or a new project of an existing PHA that the PHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the Base Year to have a level of operations representative of a full fiscal year of operation is considered to be a "new project." The AEL for the first budget year of operating subsidy under this part for a "new project" will be based on the AEL for a comparable project, as determined by the HUD Field Office. The PHA may suggest a project or projects it believes to be comparable. In determining what constitutes a "new project" under this paragraph, HUD will be guided by its public housing development regulations at 24 CFR part 941.

(4) *Adjustment of AEL for budget years after the first budget year of operating subsidy under this part.* HUD may adjust the AEL of budget years after the first year of operating subsidy under this part, in accordance with the provisions of § 990.105(b) or § 990.108(c).

(5) *Allowable Expense Level for budget years after the first budget year of operating subsidy under this part.* For each budget year after the first budget year of operating subsidy under this part, the AEL shall be computed as follows:

(i) The AEL shall be increased by any increase to the AEL approved by HUD under § 990.108(c).

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5%); and

(B) If the PHA has experienced a change in the number of units in excess of 5% or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph, it shall use the increase (decrease) between the Formula Expense Level calculated using the PHA's characteristics that applied to the Requested Year when the last adjustment to the AEL was made based

on this paragraph and the Formula Expense Level calculated using the PHA's characteristics for the Requested Budget Year.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Adjustment of AEL for budget years after the first budget year of operating subsidy under this part.* HUD may adjust the AEL of budget years after the first year of operating subsidy under this part, in accordance with the provisions of § 990.105(b) or § 990.108(c).

(e) *Computation of FHA-based operating expense level (FHAEL) for application in FY 2001.* (1) *HUD calculation of FHAEL.* For every PHA that is eligible to receive operating subsidy under the Operating Fund Formula, HUD will calculate an FHAEL (based upon FY 2000 data and for application in FY 2001) as follows:

(i) *Step 1: Calculation of average national operating cost.* HUD will calculate an FHA-based national average cost of operating a two-bedroom public housing unit, exclusive of utility costs and property taxes. The average national cost will be calculated using privately managed (FHA multifamily insured and/or assisted) rental housing financial data available to HUD for the most recent year of full reporting and adjusted to reflect a two-bedroom size by using Section 8 Fair Market Rent (FMR) relationships (i.e., increase or decrease the national average cost depending on whether the average cost-weighted bedroom size is greater or less than 2.0 bedrooms per unit). (See 24 CFR part 888 for additional information regarding FMRs.)

(ii) *Step 2: Adjustment of average national two-bedroom operating cost for local cost differences.* HUD will adjust the average national two-bedroom operating cost for local cost differences using the location adjustment factors provided in the R.S. Means Residential Construction Costs Index.

(iii) *Step 3: Adjustment of average national operating cost for PHA-specific bedroom-size distribution.* For each PHA, HUD will further adjust the average national operating cost for the bedroom size distribution of the PHA using Section 8 FMR cost relationships (i.e., increase or decrease the average national cost depending on whether the average cost-weighted bedroom size for the PHA's inventory is greater or less than 2.0 bedrooms per unit).

(iv) *Step 4: Update of PHA-specific average operating cost to reflect FY 2000 costs.* HUD will update this PHA-specific operating cost to reflect increased FY 2000 operating costs by using the Public Housing AEL inflation factor.

(2) *Availability of FHAEL to PHA.* HUD will make the following information available to each PHA:

(i) *FHAEL.* The FHAEL for the PHA;

(ii) *PHA bedroom distribution.* The PHA bedroom distribution used to make the PHA-specific bedroom adjustment under paragraph (e)(1)(iii) of this section; and

(iii) *Base average national cost.* The two-bedroom base average national cost calculated under paragraph (e)(1)(i) of this section.

(3) *Use of FHAEL for FY 2000 for PHAs with less than 500 units under contract.* Each PHA with less than 500 units shall review the FHAEL and bedroom distribution provided by HUD, and do the following:

(i) *The PHA will determine if the bedroom size distribution used by HUD was appropriate.* (A) *Mandatory recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by more than .02 from the weighted average used by HUD, the PHA shall recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(B) *Discretionary recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by less than .02 from the weighted average used by HUD, the PHA may recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(ii) *Comparison of FHAEL to AEL.* The PHA shall compare its FHAEL with its approved FY 2000 AEL.

(iii) *If the PHA has less than 250 units.* PHAs with less than 250 units shall use the higher of their current AEL or 85% of the FHAEL. However, in no case will the PHA use an amount that exceeds 120% of its FHAEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula (see paragraph (e)(3)(v) of this section).

(iv) *If the PHA has 250–499 units.* PHAs with 250–499 units shall use the higher of their current AEL, or 70% of FHAEL. However, in no case will the PHA use an amount that exceeds 120% of its FHAEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula (see paragraph (e)(3)(v) of this section).

(v) *If the PHA with less than 500 units has an AEL greater than 120% of its FHAEL.* If a PHA with less than 500 units has an FY 2000 AEL that is greater than 120% of its FHAEL, the PHA shall use 120% of its FHAEL in place of its actual FY 2000 AEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula.

(4) *Use of FHAEL for FY 2000 for PHAs with more than 500 units under contract.* Each PHA with more than 500 units shall review the FHAEL and bedroom distribution provided by HUD and do the following:

(i) *The PHA shall determine if the bedroom size distribution used by HUD was appropriate.* (A) *Mandatory recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by more than .02 from the weighted average used by HUD, the PHA shall recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(B) *Discretionary recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by less than .02 from the weighted average used by HUD, the PHA may recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(ii) *Comparison of FHAEL to AEL.* The PHA shall compare its FHAEL with its approved FY 2000 AEL.

(iii) *If the PHA's FY 2000 AEL is less than or equal to 85% of its FHAEL.* If the PHA's FY 2000 AEL is less than or equal to 85% of its FHAEL, the PHA shall use its FY 2000 AEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula.

(iv) *If the PHA's FY 2000 AEL is greater than 85% of its FHAEL.* If the PHA's FY 2000 AEL is greater than 85% of its FHAEL, the PHA shall use 98.64% of its FY 2000 AEL for purposes of calculating its FY 2001 subsidy determinations under the Operating Fund Formula.

(v) *Inapplicability of AEL reduction to certain PHAs.* The AEL reduction described in paragraph (e)(4)(iv) of this section does not apply to the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska. These PHAs will use their FY 2000 AELs for purposes of FY 2001 subsidy determinations, regardless of whether the PHA's AEL is greater than 85% of its FHAEL.

(vi) *Cap on AEL value reduction.* In no instance shall a PHA subject to an AEL reduction, reduce the FY 2000 AEL value used in calculating its FY 2001 AEL for purposes of operating subsidy determinations to a value less than 85% of its FHAEL.

(f) *Flood insurance adjustment for FY 2001.* To simplify the calculation of

operating subsidy, the AEL computation for the PHA's fiscal year beginning in 2001 will include an additional step following the determination made in accordance with paragraphs (a) through (e) of this section: the AEL per unit month derived in accordance with those paragraphs is to be adjusted by adding the flood insurance charge per unit month, as reflected in the last HUD approved subsidy calculation for FY 2000. This adjustment is a one-time permanent adjustment made only in FY 2001. However, if the flood map is revised at a future date, HUD will adjust the AEL for the affected PHAs in accordance with this paragraph.

§ 990.106 Transition funding for excessively high-cost PHAs.

(1) *Eligibility.* If a PHA's Base Year Expense Level exceeds its AEL for any budget year under the Operating Fund Formula, the PHA may be eligible for Transition Funding.

(2) *Amounts.* Transition Funding shall be an amount not to exceed the difference between the Base Year Expense Level and the AEL for the Requested Budget Year, multiplied by the number of Unit Months Available.

(3) *Reduction in transition funding.* HUD shall have the right to discontinue payment of all or part of the Transition Funding in the event HUD at any time determines that the PHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 990.107 Computation of utilities expense level.

(a) *Computation of the utilities expense level.* The PHA's Utilities Expense Level for the requested Budget Year shall be computed by multiplying the Allowable Utilities Consumption Level (AUCL) per unit per month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* (1) The current applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the Operating Budget is submitted to HUD will be used as the utilities rates for the Requested Budget Year, except that, when the appropriate utility commission has, prior to the date of submission of the Operating Budget to HUD, approved and published rate changes to be applicable during the Requested Budget Year, the future approved rates may be used as the utilities rates for the entire Requested Budget Year.

(2) If a PHA takes action, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the PHA will be permitted to retain one-half of the cost savings during the first 12 months attributable to its actions. Upon determination that the action was cost-effective in the first year, the PHA may be permitted to retain one-half the annual cost savings, if the actions continue to be cost-effective. See also paragraph (e) of this section and § 990.110(b).

(c) *Computation of Allowable Utilities Consumption Level.* The Allowable Utilities Consumption Level used to compute the Utilities Expense Level of PHAs for the Requested Budget Year generally will be based on the availability of consumption data. For project utilities where consumption data are available for the entire Rolling Base Period, the computation will be in accordance with paragraph (c)(1) of this section. Where data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project where the PHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (f)(1) of this section, the computation of the Allowable Utilities Consumption Level may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of a PHA's projects is the sum of the amounts determined using all of these subparagraphs, as appropriate.

(1) *Rolling Base Period System.* (i) For project utilities with consumption data for the entire Rolling Base Period, the AUCL is the average amount consumed per unit per month during the Rolling Base Period adjusted in accordance with paragraph (d) of this section. The PHA shall determine the average amount of each of the utilities consumed during the Rolling Base period (i.e., the 36-month period ending 12 months prior to the first day of the Requested Budget Year).

(ii) An example of a rolling base is as follows:

PHA Fiscal Year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1–1–01	12–31–01 (1st year)	1–1–97	12–31–99
1–1–02	12–31–02 (2nd year)	1–1–98	12–31–00

(2) *Alternative method where data is not available for the entire Rolling Base Period.* (i) If the PHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole Rolling Base Period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its Rolling Base Period to the HUD Field Office for approval. If this is not possible, it shall submit consumption data for the last 12 months of its Rolling Base Period. The PHA also shall submit a written explanation of the reasons that data for the whole Rolling Base Period is unavailable.

(ii) In those cases where a PHA has not maintained or cannot recapture consumption data for a utility for the entire Rolling Base Period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the Rolling Base Period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each PHA, other than those PHAs defined as New Projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month Rolling Base Period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all PHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If a PHA cannot develop the consumption data for the Rolling Base Period or for 12 or 24 months of the

Rolling Base Period, either from its own project(s) data, or by using comparable consumption data the actual per unit per month (PUM) utility expenses stated in paragraph (d) of this section shall be used as the Utilities Expense Level.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A New Project, for the purpose of establishing the Rolling Base Period and the Utilities Expense Level, is defined as either:

(A) A project which had not been in operation during at least 12 months of the Rolling Base Period, or a project which enters management after the Rolling Base Period and prior to the end of the Requested Budget Year; or

(B) A project which during or after the Rolling Base Period, has experienced conversion from one energy source to another; interruptable service; deprogrammed units; a switch from resident-purchased to PHA-supplied utilities; or a switch from PHA-supplied to resident-purchased utilities.

(ii) The actual consumption for New Projects shall be determined so as not to distort the Rolling Base Period in accordance with a method prescribed by HUD.

(4) *Freezing the Allowable Utilities Consumption Level.* (i) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if a PHA undertakes energy conservation measures that are approved by HUD under paragraph (f) of this section, the Allowable Utilities Consumption Level for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (f) of this section.

(ii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

(d) *Utilities expense level where consumption data for the full Rolling Base Period is unavailable.* If a PHA does not obtain the consumption data for the entire Rolling Base Period, or for 12 or 24 months of the Rolling Base Period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Field Office approval to use actual PUM utility expenses. These expenses shall exclude Utilities Labor and Other Utilities Expenses. The actual PUM utility expenses shall be taken from the year-end Statement of Operating Receipts and Expenditures, Form HUD–52599, (Office of Management and Budget approval number 2577–0067) prepared for the PHA fiscal year which ended 12 months prior to the beginning of the PHA Requested Budget Year (e.g., for a PHA fiscal year beginning January 1, 2001, the PHA would use data from the fiscal year ended December 31, 1999). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual PUM utility expenses.

(e) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 990.110(b), which requires an adjustment based upon a comparison between actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If a PHA undertakes energy conservation measures (including those covering water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the PHA may qualify for one of the two possible incentives under this part. For a PHA to qualify for these incentives, HUD approval must be obtained. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the PHA's payments to be dependent on the cost savings it realizes, the PHA must use at least 50% of the cost savings to pay the contractor. With this type of contract, the PHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 990.110(b)(2)(ii).

(2) If the contract does not allow the PHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the PHA will be able to retain part of the cost savings, in accordance with § 990.110(b)(2)(i); and the PHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the cost of the energy conservation measures during the term of the contract, in accordance with § 990.110(c).

§ 990.108 Other costs.

(a) *Cost of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the Operating Fund Formula. However, the PHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has already been funded by subsidy in a prior year.

(2) A PHA that is required by the Single Audit Act (31 U.S.C. 7501–7507) (see 24 CFR part 85) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The actual cost of an independent audit, applicable to the operations of PHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 990.104, above.

(3) A PHA that is exempt from the audit requirements under the Single Audit Act (24 CFR part 85) may receive operating subsidy to offset the actual cost of an independent audit chargeable to operations (after the End of the Initial Operating Period) if the PHA chooses to have an audit.

(b)(1) Costs attributable to units that are approved for deprogramming and vacant may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because the units are utilized for PHA-related activities are not eligible for inclusion.

In determining operating subsidy calculations under the Operating Fund Formula, these units shall not be included in the calculation of Unit Months Available. Units approved for deprogramming shall be listed by the PHA, and supporting documentation regarding direct costs attributable to such units shall be included as a part of the Operating Fund Formula calculation in which the PHA requests operating subsidy for these units. If the PHA requires assistance in this matter, the PHA should contact the HUD Field Office.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to these units are to be included in the operating budget. If a unit satisfies the conditions stated below, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than 3 years. HUD may renew the approval to allow payments after that period only if the PHA can demonstrate that no other sources for paying the non-utility operating costs of the unit are available. The conditions the unit must satisfy are:

(i) The unit must be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities must be directed toward and for the benefit of residents of the development.

(ii) The PHA must demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that the resources are committed to make the space safe and suitable.

(iii) The PHA must demonstrate satisfactorily that other funding is not available to pay for the non-utility operating costs. All rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per public housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The PHA must submit a certification with its Operating Fund Formula Calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The PHA must maintain specific documentation of the units covered. Such documentation should include a listing of the units, the street addresses, and project/management control numbers.

(3) Long-term vacant units that are not included in the calculation of Unit Months Available are eligible for operating subsidy in the Requested Budget Year at the rate of 20% of the AEL. Allowable utility costs for long term vacant units will continue to be funded in accordance with § 990.107.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, HUD may in HUD's sole discretion decide to prescribe a procedure under which the PHA may apply for or may receive an increase in operating subsidy.

(d)(1) *Costs resulting from combination of two or more units.* When a PHA redesigns or rehabilitates a project and combines two or more units into one larger unit and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula ((2 x No. of Bedrooms) minus 1), which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

(2) An exception to paragraph (d)(1) of this section is made when a PHA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year.

(e) *Funding for resident participation activities*—(1) *Funding amount.* Each PHA shall include in the operating subsidy eligibility calculation, $25 per occupied unit per year for resident participation activities, including (but not limited to) those described in part 964 of this title. For purposes of this section, a unit may be occupied by a public housing resident, a PHA employee, or a police officer. If, in any fiscal year, appropriations are not sufficient to meet all funding requirements under this part, then the $25 will be subject to pro-ration.

(2) *Use of vacant rental units.* If there is no community or rental space available for providing resident participation activities, HUD may approve, at the request of the PHA, the use of one or more vacant rental units for resident participation purposes. A unit that satisfies the following conditions will be eligible for operating subsidy at the rate of the AEL for the number of months the unit is devoted to such use:

(i) The PHA must demonstrate that safe and suitable space for the resident participation activities is not otherwise readily available;

(ii) One or more contiguous units may be used for resident participation activities. However, the units must be located on a single site per public housing development. Further, the number of units involved must be the minimum necessary to support the resident participation activities;

(iii) The PHA must submit a certification with its Operating Fund Formula calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation; and

(iv) The PHA must maintain specific documentation of the units covered. Such documentation must include a listing of the units, the street addresses, and project/management control numbers.

§ 990.109 Projected operating income level.

(a) *Policy.* The Operating Fund Formula determines the amount of operating subsidy for a particular PHA based in part upon a projection of the actual dwelling rental income and other income for the particular PHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the PHA, and applying an upward trend factor (subject to updating). This amount is then multiplied by the Projected Occupancy Percentage for the Requested Budget Year. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income*—(1) *General.* The projected average monthly dwelling rental income per unit for the PHA is calculated as follows:

(i) *Step 1: Calculation of the current year and three year averages.* The PHA calculates:

(A) The average monthly dwelling rental charge per unit for the current budget year (the "current year average" calculated in accordance with paragraph (b)(2) of this section); and

(B) The average monthly dwelling rental charge per unit for the current budget year and the immediate past two budget years (the "three year average" calculated in accordance with paragraph (b)(3) of this section).

(ii) *Step 2: Adjustment for any increase in dwelling rental income.* If the current year average is greater than the three year average, the PHA has increased dwelling rental income. If a PHA has increased dwelling rental income, it shall perform the following calculation. The PHA shall:

(A) Subtract the three year average from the current year average;

(B) Divide the result by 2; and

(C) Add this sum to the three year average.

(iii) *Step 3: Calculating the amount of increased rental revenue that may be retained.* PHAs shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased revenue for the provision of resident-related improvements and services as described in § 990.116. The retained income will not be recognized in the PHA's calculation under the Operating Fund Formula. The annual amount of increased revenue retained by the PHA is calculated by subtracting the three year average from the current year average and multiplying the result by the projected occupancy percentage (see § 990.109(b)(6)), and the unit months available (see § 990.102).

(iv) *Step 4: Applying the rental income adjustment factor.* The lower of the amount calculated under paragraph (b)(i)(A) or (b)(ii) of this section is then adjusted by the dwelling rental income adjustment factor described in paragraph (b)(5) of this section.

(2) *Average monthly dwelling rental charge per unit.* (i) The average monthly dwelling rental charge per unit shall be computed using the total dwelling rental charges for all Project Units, as shown on the Tenant Rent Rolls which the PHA is required to maintain, for the first day of the month which is six months before the first day of the Requested Budget Year. However, if a change in the total of the Rent Rolls has occurred in a subsequent month which is before the beginning of the Requested Budget Year, and before the submission of the Requested Budget Year calculation of operating subsidy eligibility, the PHA may use the latest changed Rent Roll for the purpose of the computation.

(ii) This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(iii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the PHA's implementation of an optional earned income exclusion authorized by the explanation of "annual income" in 24 CFR 5.609.

(3) *Three year average monthly dwelling rental charge per unit.* The three year average monthly dwelling rental charge shall be computed by averaging the amounts calculated under paragraph (b)(2) of this section for the current budget year and the immediate past two budget years.

(4) *Changes in supply of utilities.* The PHA must adjust the rent rolls used for purposes of the calculations described in paragraphs (b)(2) and (b)(3) of this section to reflect any change from PHA-paid utilities to resident-paid utilities, or vice versa, between the rent roll date and the projected budget year.

(5) *Dwelling rental income adjustment factor.* An adjustment factor will be applied to the calculations described in paragraphs (b)(2) and (b)(3) of this section. In FY 2001, the inflation factor will be 3%. In subsequent years, the average monthly dwelling rental charge per unit will be increased for inflation using a HUD supplied adjustment factor for the requested budget year to obtain the projected average monthly dwelling rental charge per unit of the PHA for the Requested Budget Year.

(6) *Projected occupancy percentage.* The PHA shall determine its projected percentage of occupancy for all Project Units (Projected Occupancy Percentage), as follows:

(i) *General.* Using actual occupancy data collected before the start of the budget year as a beginning point, the PHA will develop estimates for its Requested Budget Year (RBY) of: how many units the PHA will have available for occupancy; how many of the available units will be occupied and how many will be vacant, and what the average occupancy percentage will be for the RBY. The conditions under which the RBY occupancy percentage will be used as the projected occupancy percentage for purposes of determining operating subsidy eligibility are described below.

(ii) *High Occupancy PHA—No adjustments necessary.* If the PHA's RBY Occupancy Percentage, calculated in accordance with § 990.117, is equal to or greater than 97%, the PHA's Projected Occupancy Percentage is 97%. If the PHA's RBY Occupancy Percentage is less than 97%, but the PHA demonstrates that it will have an average of five or fewer vacant units in the requested budget year, the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(iii) *Adjustments in determining occupancy.* If the PHA's RBY Occupancy Percentage is less than 97% and the PHA has more than 5 vacant units, the PHA will adjust its estimate of vacant units to exclude vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. After making this adjustment, the PHA will recalculate its estimated vacancy percentage for the RBY.

(A) *High Occupancy PHA after adjustment.* If the recalculated vacancy percentage is 3% or less (or the PHA would have five or fewer vacant units), the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(B) *Low Occupancy PHA—adjustment for long-term vacancies.* If the recalculated vacancy percentage is greater than 3% (or the PHA would have more than 5 vacant units), the PHA will then further adjust its RBY Occupancy Percentage by excluding from its calculation of Unit Months Available (UMAs), those unit months attributable to units that have been vacant for longer than 12 months that are not vacant units undergoing modernization or are not units vacant due to circumstances and actions beyond the PHA's control.

(iv) *Low Occupancy PHA after all adjustments.* A PHA that has determined its RBY Occupancy Percentage in accordance with paragraph (b)(6)(iii)(B) of this section will be eligible for operating subsidy as follows:

(A) Long-term vacancies removed from the calculation of UMAs will be eligible to receive a reduced operating subsidy calculated at 20% of the PHA's AEL.

(B) If the recalculated RBY Occupancy Percentage is 97% or higher, the PHA will use 97%.

(C) If the recalculated RBY Occupancy Percentage is less than 97%, but the vacancy rate after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control is 3% or less (or the PHA has five or fewer vacant units), the PHA may use its recalculated RBY

Occupancy Percentage as its projected occupancy percentage.

(D) If the recalculated RBY Occupancy Percentage is less than 97% and the vacancy percentage is greater than 3% (or the PHA has more than five vacant units) after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control, the PHA will use 97% as its projected occupancy percentage, but will be allowed to adjust the 97% by the number of vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. For a small PHA using five vacant units as its occupancy objective for the RBY, the PHA will determine what percentage five units represents as a portion of its units available for occupancy and subtract that percentage from 100%. The result will be used as the PHA's projected occupancy percentage, but the PHA will be allowed to adjust the projected occupancy percentage by vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control.

(c) *Projected average monthly dwelling rental charge per unit for new Projects.* The projected average monthly dwelling rental charge for new Projects which were not available for occupancy during the budget year prior to the Requested Budget Year and which will reach the End of the Initial Operating Period (EIOP) within the first nine months of the Requested Budget Year, shall be calculated as follows:

(1) If the PHA has another Project or Projects under management which are comparable in terms of elderly and nonelderly resident composition, the PHA shall use the projected average monthly dwelling rental charge for such Project or Projects.

(2) If the PHA has no other Projects which are comparable in terms of elderly and nonelderly resident composition, the HUD Field Office will provide the projected average monthly dwelling rental charge for such Project or Projects, based on comparable Projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken subsequent to the effective date of these regulations, which affects rents paid by residents of Projects, HUD may adjust the projected average monthly dwelling rental charge per unit to reflect such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the PHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *PHA's estimate of other income.* All PHAs shall estimate Other Income based on past experience and a reasonable projection for the Requested Budget Year, which estimate shall be subject to HUD approval. The estimated total amount of Other Income, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount.

(f) *Projected operating income level.* The projected average dwelling rental income per unit (calculated under paragraphs (b), (c), and (d) of this section) shall be added to the estimated Other Income (calculated under paragraph (e) of this section) to obtain the Projected Operating Income Level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

§ 990.110 Adjustments.

Adjustment information submitted to HUD under this section must be accompanied by an original or revised calculation of operating subsidy eligibility.

(a) *Adjustment of base year expense level*—(1) *Eligibility.* A PHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the Operating Fund Formula for the first time, may, during its first budget year under the Operating Fund Formula, request HUD to increase its Base Year Expense Level. Included in this category are existing PHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC, for which operating subsidy has never been paid, except for independent audit costs. This request may be granted by HUD, in its discretion, only where the PHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 990.105(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the lesser of the per unit per month amount by which the top of the Range exceeds the Base Year Expense Level.

(2) *Procedure.* A PHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the calculation of operating subsidy eligibility for the first budget year under the Operating Fund Formula. Such request shall be submitted to the HUD Field Office, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph must include a calculation of the amount per unit per month of requested increase in the Base Year Expense Level, and must show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to Utilities Expense Level.* A PHA receiving operating subsidy under § 990.104, excluding those PHAs that receive operating subsidy solely for independent audit (§90.108(a)), must submit an adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the PHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This adjustment, applicable to PHA fiscal years beginning on or after January 1, 1999, shall be submitted to the HUD Field Office within 45 days after the close of the PHA fiscal year that is being adjusted. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies and/or a delay in the recognition of the adjustment. Adjustments under this section normally will be made in the operating subsidy calculation for the second PHA fiscal year following the year being adjusted, unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) *Rates.* A change in the Utilities Expense Level because of changes in utility rates-to the extent funded by the operating subsidy-will result in an adjustment of future operating subsidy payments. However, where the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the PHA, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings, then the PHA will be permitted to retain one-half of the cost savings attributable to its actions for the first year and, upon determination that the action was cost-effective in the first year, for as long as the actions continue to be cost-effective, and the other one-half of the cost savings will be deducted from operating subsidy otherwise payable.

(2) *Consumption.* (i) Generally, 75% of any decrease in the Utilities Expense Level attributable to decreased consumption after adjustment for any utility rate change, will be retained by

the PHA; 25% will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of a PHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 990.107(f)(1) (regarding non-HUD financed incentives for energy conservation improvements), the PHA operating fund eligibility shall reflect the retention of 100% of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The decreased consumption is to be determined by adjusting for any utility rate changes and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities. The savings realized must be applied in the following order:

(A) Retention of up to 50% of the total savings from decreased consumption to cover training of PHA employees, counseling of residents, PHA management of the cost reduction program and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) 25% of an increase in the Utilities Expense Level attributable to increased consumption, after adjustment for any utility rate change, will be reflected in the operating subsidy eligibility for the second PHA fiscal year following the year being adjusted, in accordance with § 990.111.

(iv) PHAs are encouraged to:

(A) Provide conservation incentives and training to residents in order to realize increased utility savings;

(B) Share information with residents regarding changes in utility costs related to rate changes and to changes in consumption; and

(C) Explain to residents conservation benefits and impacts of excess consumption on the operating budget.

(3) *Documentation.* Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

(c) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 990.107(f)(2), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year and a maximum contract period of 12 years.

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for any change in utility rate and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities;

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (b)(2)(i) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (c) to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

(d) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the PHA's operating subsidy as a result of data subsequently available to HUD which alters projections upon which the approved operating subsidy was based. If a downward adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

§ 990.111 Submission and approval of operating subsidy calculations and budgets.

(a) *Required documentation.* (1) Prior to the beginning of its fiscal year, the PHA shall prepare an operating budget in a manner prescribed by HUD. The Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit to the HUD Field Office, in a time and manner prescribed by HUD, the approved board resolution and the required operating subsidy eligibility calculation forms. The PHA shall submit revised calculations in support of any adjustments based on procedures prescribed by HUD.

(2) HUD may direct the PHA to submit its complete operating budget if the PHA has failed to achieve certain specified operating standards, or for other reasons which in HUD's determination threaten the PHA's future serviceability, efficiency, economy, or stability.

(b) *HUD operating budget review.* (1) The HUD Field Office will perform a detailed review on operating budgets that are subject to HUD review and approval. If the HUD Field Office finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Field Office may at any time require the submission by the PHA of further information regarding an operating budget or operating budget revision.

(2) When the PHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing it operates, HUD will notify the PHA that it no longer is required to submit a complete operating budget to HUD for review and approval.

(c) *Compliance with environmental review requirements*—(1) *General.* Operating subsidy funds made available to a PHA to support the operation and management of public housing are generally for activities that are not subject to environmental review requirements. A PHA, however, may use public housing program resources (including operating subsidy funds, rental and nonrental income, and operating reserves) to carry out non-routine maintenance and capital expenditure activities that may require an environmental review, as those activities are defined in HUD's prescribed Chart of Accounts.

(2) *Initial operating budget.* The ACC requires that operating expenditures may not be incurred except pursuant to an approved operating budget. Before the funding of non-routine maintenance and capital expenditure activities may be incorporated into the PHA's initial operating budget, and before the PHA may commit any funds to such activities, the PHA must obtain either:

(i) An environmental review from the Responsible Entity and submit and receive HUD approval of a Request for Release of Funds under part 58 of this title, or, in cases where HUD has determined to do an environmental review under part 50 of this title, the

PHA must obtain an environmental approval from HUD; or

(ii) A determination from the Responsible Entity under part 58 of this title that the PHA's proposed non-routine maintenance and capital expenditure activities are exempt from environmental review in accordance with § 58.34(a)(12) of this title.

(3) *Revisions to operating budget.* If subsequent to adoption of its initial operating budget, a PHA determines to undertake a new non-routine maintenance or capital expenditure activity, the PHA must obtain an environmental review and release of funds, HUD environmental approval, or an exemption from such review, as described in paragraph (c)(2) of this section, before the funding of the activity may be incorporated into a revised operating budget and before the PHA may commit any funds to such activities.

(4) *Determination of exempt activities.* If the Responsible Entity documents that a proposed non-routine maintenance or capital expenditure activity is an exempt activity, as described in (c)(2)(ii) of this section, no further action is required from the PHA and the activity may be incorporated into the PHA's initial or revised operating budget, as appropriate.

§ 990.112 Payments procedure for operating subsidy under the Operating Fund Formula.

(a) *General.* Subject to the availability of funds, payments of operating subsidy under the Operating Fund Formula shall be made generally by electronic funds transfers, based on a schedule submitted by the PHA and approved by HUD. The schedule may provide for several payments per month. If a PHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make an informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of a PHA's budget year under this part, annual or monthly or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the PHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under the Operating Fund Formula for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to PHAs.

§ 990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income of each family must be reexamined at least annually. PHAs must be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *PHAs in compliance with requirements.* Each submission of the original calculation of operating subsidy eligibility for a fiscal year shall be accompanied by a certification by the PHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with current HUD requirements.

(c) *PHAs not in compliance with requirements.* Any PHA not in compliance with annual income reexamination requirement at the time of the submission of the calculation of operating subsidy eligibility shall furnish to the HUD Field Office a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the date of the Operating Budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Field Office Director determines that the PHA is not substantially in compliance with the annual income reexamination requirement, he or she shall withhold payments to which the PHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the PHA resulting from its failure to comply with those requirements.

§ 990.114 Phase-down of subsidy for units approved for demolition.

(a) *General.* Units that have both been approved by HUD for demolition and been vacated in FY 1995 and after will be excluded from a PHA's determination of Unit Months Available when vacated, but they will remain eligible for subsidy in the following way:

(1) For the first twelve months beginning with the month that a unit meets both conditions of being approved for demolition and vacant, the full AEL will be allowed for the unit.

(2) During the second twelve-month period after meeting both conditions, 66% of the AEL will be allowed for the unit.

(3) During the third twelve-month period after meeting both conditions, 33% of the AEL will be allowed for the unit.

(b) *Special case for long-term vacant units.* Units that have been vacant for longer than 12 months when they are approved for demolition are eligible for funding equal to 20% of the AEL for a 12-month period.

(c) *Treatment of units replaced with Section 8 Certificates or Vouchers.* Units that are replaced with Section 8 Certificates or Vouchers are not subject to the provisions of this section.

(d) *Treatment of units replaced with public housing units.* When replacement conventional public housing units become eligible for operating subsidy, the demolished unit is no longer eligible for any funding under this section.

(e) *Determination of what units are "replaced."* For purposes of this section, replacements are applied first against units that otherwise would fall in paragraph (a) of this section; any remaining replacements should be used to reduce the number of units qualifying under paragraph (b) of this section.

(f) *Treatment of units combined with other units.* Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

§ 990.116 Increases in dwelling rental income.

(a) *General.* As described in § 990.109(b)(1), PHAs shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased income for the provision of resident-related improvements and services. The retained income will not be recognized in the PHA's calculation under the Operating Fund Formula.

(b) *Eligible uses for increased rental revenue.* The uses for the retained income must be developed with front end resident participation and ongoing input and shall be made part of the PHA plan submission. (*See* 24 CFR part 903). Examples of eligible uses for the retained income include, but are not limited to:

(1) Physical and management improvements that benefit residents;

(2) Resident self-sufficiency services;

(3) Maintenance operations;

(4) Resident employment and training services;

(5) Resident safety and security improvements and services; and

(6) Optional earned income exclusions.

§ 990.117 Determining actual and requested budget year occupancy percentages.

(a) *Actual occupancy percentage.* When submitting Operating Fund Formula calculations for Requested Budget Years, the PHA shall determine an Actual Occupancy Percentage for all Project Units included in the Unit Months Available. The PHA shall have the option of basing this option on either:

(1) The number of units occupied on the last day of the month that ends 6 months before the beginning of the Requested Budget Year; or

(2) The average occupancy during the month ending 6 months before the beginning of the Requested Budget Year. If the PHA elects to use an average occupancy under this paragraph (a)(2), the PHA shall maintain a record of its computation of its Actual Occupancy Percentage.

(b) *Requested budget year occupancy percentage.* The PHA will develop a Requested Budget Year Occupancy Percentage by taking the Actual Occupancy Percentage and adjusting it to reflect changes up or down in occupancy during the Requested Budget Year due to HUD-approved activities such as units undergoing modernization, new development, demolition, or disposition. If after the submission and approval of the Operating Fund Formula calculations for the Requested Budget Year, there are changes up or down in occupancy because of modernization, new development, demolition or disposition that are not reflected in the Requested Budget Year Occupancy Percentage, the PHA may submit a revision to reflect the actual change in occupancy due to these activities.

(c) *Documentation required to be maintained.* The PHA must maintain and, upon HUD's request, make available to HUD specific documentation of the occupancy status of all units, including long-term vacancies, vacant units undergoing modernization, and units vacant due to circumstances and actions beyond the PHA's control. This documentation shall include a listing of the units, street addresses, and project/management control numbers.

§ 990.120 Audit.

PHAs that receive financial assistance under this part shall comply with the audit requirements in 24 CFR part 85.26. If a PHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the PHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the PHA's books and records into auditable condition. The costs to place the PHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

§ 990.121 Effect of rescission.

If there is a rescission of appropriated funds that reduces the level of funding under the Public Housing Capital Fund program, to the extent that the PHA can document that it is not possible to complete all the vacant unit rehabilitation in the PHA's approved Annual Statement, the PHA may seek and HUD may grant a waiver for 1 fiscal year to permit full eligibility under the Operating Fund Formula for those units approved but not funded. (See part 905 of this title for additional information regarding the Capital Fund program.)

Dated: June 7, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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24 CFR Part 982
Section 8 Housing Choice Voucher Program; Expansion of Payment Standard Protection; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4586–I–01]

RIN 2577–AC18

Section 8 Housing Choice Voucher Program; Expansion of Payment Standard Protection

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: On October 21, 1999, HUD published a final rule implementing the statutory merger of the Section 8 tenant-based and certificate programs into the new Housing Choice Voucher program. This interim rule amends HUD's regulations governing this new merger program to expand the regulatory payment standard protection against subsidy reduction. The October 21, 1999 final rule limited payment standard protection to the first 24 months of the lease term. The interim rule provides that a family is not subject to a subsidy reduction until the second regular reexamination of family income and composition following the payment standard reduction. This protection extends for the duration of the lease term. This interim rule also corrects a typographical error contained in the October 21, 1999 final rule.

DATES: *Effective Date:* August 9, 2000. *Comment Due Date:* September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1999 (64 FR 56894), HUD published a final rule implementing the Section 8 tenant-based program provisions of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub.L. 105–276, approved October 21, 1998) (referred to as the "Public Housing Reform Act"). Of particular significance, the October 21, 1999 final rule implemented section 545 of the Public Housing Reform Act. Section 545 provides for the complete merger of the Section 8 tenant-based certificate and voucher programs. HUD's regulations for the new Section 8 merger program (known as the "Housing Choice Voucher program") are located at 24 CFR part 982.

The October 21, 1999 final rule became effective on November 22, 1999. The final rule was preceded by HUD's publication of an interim rule on May 14, 1999 (64 FR 56894). The final rule took into consideration the public comments received on the interim rule, and most of the changes made at the final rule stage were in response to public comment.

II. This Interim Rule

The October 21, 1999 final rule amended the part 982 regulations to provide that payment standard protection will only apply during the first two years of the lease term. After the first two years of the lease, a family's subsidy would be based on the appropriate payment standard determined at the last regular annual reexamination of family income.

On reconsideration, HUD believes that this provision is too restrictive. HUD wishes to provide the benefit of protected subsidy levels to a greater number of assisted families—not just to new participants in the Housing Choice Voucher program, or assisted families moving to a new unit. HUD believes payment standard protection should extend for the duration of the lease term, and not be restricted to a limited number of years.

Accordingly, HUD is amending 24 CFR part 982 to expand the regulatory payment standard protection. This interim rule provides that a family is not subject to a subsidy reduction until the second regular reexamination of family income and composition following the payment standard reduction. This protection extends for the duration of the lease term.

This final rule also corrects a typographical error contained in the October 21, 1999 final rule. Specifically, the interim rule corrects § 982.501(c), which mistakenly provides that the provisions of § 982.521 apply solely to a tenancy under the Section 8 rental certificate program.

III. Justification for Interim Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The reasons for HUD's determination are as follows.

HUD believes that the limits on payment standard protection established by the October 21, 1999 final rule are too restrictive. The interim rule corrects this error by providing assisted families with broader and more equitable regulatory safeguards against reductions in subsidy. Specifically, the interim rule extends the regulatory payment standard protection to all assisted families, not just to new program participants and assisted families moving to a new unit.

Delaying the effectiveness of this interim rule to solicit prior public comment would result in uncertainty among PHAs and affected families, as PHAs consider adjustments in payment standards under the existing requirements of the October 21, 1999 final rule without knowing the full scope of the additional regulatory changes to be made by HUD. Immediate effectiveness of this interim rule will reduce this uncertainty, and will allow PHAs to make payment standard adjustments knowing the likely implications of these decisions. Neither PHAs nor Section 8 residents will be disadvantaged by the change.

HUD also notes that the new Housing Choice Voucher program was implemented through an extensive public process, including three public forums across the nation, as well as the customary notice and comment rulemaking procedures.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comment on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined

that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was prepared on the October 21, 1999 final rule in accordance with the HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4223). That Finding is applicable to this interim rule, and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary has reviewed this interim rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this interim rule would not have a significant economic impact on a substantial number of small entities. The interim rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under Section 8 of the United States Housing Act of 1937. Specifically, the final rule would establish requirements governing tenant-based assistance for an eligible family. The interim regulatory amendments would not change the amount of funding available under the Section 8 voucher program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Domestic Assistance number for this program is 14.855.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Rent subsidies.

Accordingly, for the reasons discussed in the preamble, HUD is amending 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. In § 982.501(c), revise the reference to "982.520, and 982.521" to read "and 982.520."

3. Amend § 982.505 by revising paragraphs (c)(3), (c)(4), and (c)(5) to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * *

(3) *Decrease in the payment standard amount during the HAP contract term.* If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. The PHA must determine the payment standard for the family as follows.

(i) *Step 1:* At the first regular reexamination following the decrease in the payment standard amount, the PHA shall determine the payment standard for the family in accordance with paragraphs (c)(1) and (c)(2) of this section (using the decreased payment standard amount).

(ii) *Step 2 (first reexamination payment standard amount):* The PHA shall compare the payment standard amount from step 1 to the payment standard amount last used to calculate the monthly housing assistance payment for the family. The payment standard amount used by the PHA to calculate the monthly housing assistance payment at the first regular reexamination following the decrease in the payment standard amount is the higher of these two payment standard amounts. The PHA shall advise the family that the application of the lower payment standard amount will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard amount.

(iii) *Step 3 (second reexamination payment standard amount):* At the second regular reexamination following the decrease in the payment standard amount, the lower payment standard amount shall be used to calculate the monthly housing assistance payment for the family unless the PHA has subsequently increased the payment standard amount, in which case the payment standard amount is determined in accordance with paragraph (c)(4) of this section.

(4) *Increase in the payment standard amount during the HAP contract term.* If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

(5) *Change in family unit size during the HAP contract term.* Irrespective of any increase or decrease in the payment standard amount, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard amount for the family beginning at the family's first regular reexamination following the change in family unit size.

Dated: June 15, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–17024 Filed 7–7–00; 8:45 am]

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Part V

Department of Housing and Urban Development

24 CFR Part 964

Direct Funding of Public Housing Resident Management Corporations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 964

[Docket No. FR–4501–F–02]

RIN 2577–AC12

Direct Funding of Public Housing Resident Management Corporations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: On October 21, 1999, HUD published a proposed rule to revise its regulations regarding resident participation and resident opportunities in public housing. The rule proposed that a resident management corporation (RMC) may receive capital and operating funds from HUD if the RMC has primary management responsibility for the public housing project and HUD determines that the RMC has the capacity to effectively discharge such responsibility. This rule makes final the policies and procedures contained in the October 21, 1999 proposed rule, and takes into consideration the public comments received on the proposed rule. After careful consideration of all the public comments received on the October 21, 1999 proposed rule, HUD has decided to adopt the proposed rule without change.

DATES: *Effective Date:* August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Paula Blunt, Associate Deputy Assistant Secretary, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4226, Washington, DC 20410; telephone (202) 619–8201 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

I. Statutory Background

A. Resident Management of Public Housing

Section 20 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (referred to as the "1937 Act") encourages resident management of public housing projects as a means of improving existing living conditions in public housing. HUD has implemented section 20 in its regulations at 24 CFR part 964 (entitled "Tenant Participation and Tenant Opportunities in Public Housing").

Under section 20, and 24 CFR part 964, public housing residents may form resident management corporations (RMCs) for the purposes of managing public housing. The RMC enters into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the RMC and the PHA. The contract may provide for the RMC to perform any or all of the management functions for which the PHA is responsible to HUD. The performance of the RMC is subject to periodic review by the PHA to ensure that the RMC complies with all applicable requirements and standards of performance.

B. Public Housing Reform

On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998 (Title V of the Fiscal Year 1999 HUD Appropriations Act; Public Law 105–276; 112 Stat. 2461, 2522) (referred to as the "Public Housing Reform Act"). The Public Housing Reform Act constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. The changes made by the Public Housing Reform Act are directed at revitalizing and improving HUD's public housing and Section 8 tenant-based programs. These changes are also designed to provide for more resident involvement, and to increase resident participation and awareness in creating and maintaining a positive living environment.

II. The October 21, 1999 Proposed Rule

On October 21, 1999 (64 FR 56890), HUD published a proposed rule to amend 24 CFR part 964. The purpose of the proposed rule was to implement the statutory changes made to section 20 of the 1937 Act made by section 532 of the Public Housing Reform Act. Section 532 of the Public Housing Reform Act provides for the direct provision of capital and operating assistance to an RMC if: (1) The RMC petitions HUD for the release of the funds; (2) the management contract between the RMC and the PHA provides for the RMC to assume the primary management responsibilities of the PHA; and (3) HUD determines that the RMC has the capability to effectively discharge such responsibilities.

The proposed rule provided that HUD would consider this third requirement to be satisfied if the RMC is designated at least a "standard performer" under the Public Housing Assessment System (PHAS) (see 24 CFR part 902); and the RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing, or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

In all other cases where direct funding to an RMC is not provided, operating and capital funding would be provided to the RMC by the PHA. If HUD provides direct funding to an RMC, the PHA would not be responsible for the actions of the RMC.

In addition to implementing section 532 of the Public Housing Reform Act, the October 21, 1999 proposed rule also proposed to make one clarifying change to 24 CFR part 964. Specifically, the rule proposed to revise § 964.225 (entitled "Resident management requirements") to clarify that an RMC must be in compliance with any local licensing requirement, or other local requirement governing the qualifications or operations of a property manager.

The preamble to the October 21, 1999 proposed rule provides additional information regarding the changes to 24 CFR part 964.

III. This Final Rule

This final rule makes effective the policies and procedures contained in the October 21, 1999 proposed rule. The public comment period for the proposed rule closed on December 20, 1999. HUD received three public comments on the proposed rule. Comments were submitted by a national RMC organization, a law firm representing several RMCs, and a public housing resident council. HUD appreciates the suggestions offered by the commenters and carefully considered the issues raised by them. For the reasons discussed below, however, HUD has chosen not to implement their suggestions. After careful consideration of the public comments, HUD has decided to adopt the October 21, 1999 proposed rule without change. This following section of the preamble presents a discussion of the significant issues raised by the public commenters and HUD's responses to their comments.

IV. Discussion of the Public Comments Received on the October 21, 1999 Proposed Rule

A. Support for Proposed Rule

One of the commenters expressed support for the proposed rule. The commenter wrote that it "strongly support[s] the regulations to permit direct funding of resident management corporations by HUD." The commenter also wrote that the "direct funding of resident management corporations is essential."

B. Comments Beyond Scope of Proposed Rule

As discussed above, the purpose of the October 21, 1999 proposed rule was to implement section 532 of the Public Housing Reform Act. Several of the commenters submitted comments that did not concern the direct funding of RMCs and, therefore, were beyond the scope of the proposed rule. For example, one of the commenters recommended that HUD should clarify what comprises a duly constituted RMC. Two commenters suggested that the final rule should provide for RMC participation on the PHA's board of commissioners, or similar governing body. Another commenter suggested that public housing management contracts should be developed with the full participation of RMCs and their national organizations. There were also several other public comments that, although suggesting general changes to HUD's resident participation regulations at 24 CFR part 964, did not concern the proposed regulatory amendments described in the October 21, 1999 proposed rule.

HUD thanks these commenters for their helpful comments and recommendations. However, since these comments do not concern the direct funding of RMCs, HUD has not revised the proposed rule to incorporate the suggestions made by the commenters. These comments will be taken into consideration during HUD's development of a future proposed rule that will implement the other resident related amendments made by the Public Housing Reform Act.

In addition to providing for the direct funding of RMCs, the Public Housing Reform Act makes various other amendments to the statutory requirements regarding resident participation and resident opportunities in public housing. For example, the Public Housing Reform Act requires the participation of residents on the governing board of a PHA (section 505 of the Act) and provides for grant funding of services for public housing residents (section 538 of the Act).

The resident board membership requirements established by section 505 of the Act have been implemented through a separate final rule published on October 21, 1999 (64 FR 56870). The other changes made by the Public Housing Reform Act affecting the part 964 requirements will be the subject of a separate proposed rulemaking. HUD is committed to the development of this proposed rule with the active participation of public housing residents. HUD will solicit resident input through the scheduling of public forums, solicitations for written comments, and/or other appropriate means.

HUD's goal in undertaking this future rulemaking is to develop a set of easy-to-understand regulations that reflect the meaningful contributions of public housing residents. Accordingly, the proposed rule will not only implement statutory amendments made by the Public Housing Reform Act, but will also streamline and reorganize 24 CFR part 964 to simplify and improve the clarity of HUD's resident participation requirements.

In addition to rulemaking, HUD is also taking several other steps to promote effective resident participation in public housing (see Section V. of this preamble, below).

C. Comments on the October 21, 1999 Proposed Rule

Comment: Standards for determining RMC eligibility for direct funding should be revised to allow for innovative changes and concepts. Two commenters objected to the eligibility standards described in the proposed rule. The commenters suggested that the final rule should provide greater flexibility in determining RMC eligibility for direct funding.

HUD Response. As noted above, section 532 of the Public Housing Reform Act establishes the conditions that an RMC must satisfy in order to receive direct funding. Specifically, the statute provides that an RMC may directly receive capital and operating assistance, if: (1) The RMC petitions HUD for the release of the funds; (2) the management contract between the RMC and the PHA provides for the RMC to assume the primary management responsibilities of the PHA; and (3) HUD determines that the RMC has the capability to effectively discharge such responsibilities. The language of the October 21, 1999 proposed rule, and this final rule, merely track the statutory language of section 532.

Only the third requirement described above provides HUD with discretion in determining whether an RMC is eligible to receive direct funding. This final rule provides that HUD will consider this third requirement to be satisfied if the RMC is designated at least a "standard performer" under the PHAS, and the RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing, or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

This third requirement will not impose any new requirements on RMCs. The final rule reflects existing performance measures and program requirements that RMCs must already comply with. For example, RMCs are already subject to the PHAS performance measures described in 24 CFR part 902. Further, RMCs are currently required to comply with all applicable program, civil rights, and financial requirements as a condition of assistance under HUD's public housing programs.

Although HUD welcomes "innovative changes and concepts" in the development of its regulations, the commenters did not provide specific recommendations for HUD's consideration. Further, HUD believes that the use of the existing measures described above will allow HUD to accurately determine RMC management capability, while minimizing the burdens imposed on RMCs. Accordingly, the proposed rule has not been revised.

Comment: Determination of eligibility for direct funding should be made in consultation with RMCs. One commenter suggested that HUD should be required to consult with RMCs currently receiving direct funding, or with an RMC national organization, before making a determination on an RMC's request to receive direct funding.

HUD Response. Section 532 of the Public Housing Reform Act provides that an RMC is eligible for direct funding if (among other requirements) "the Secretary determines that the [RMC] has the capability to effectively discharge" the primary management responsibilities of the PHA. This statutory language makes clear that the responsibility for determining whether an RMC is eligible to receive direct capital and operating assistance rests with the Secretary.

Further, as noted in the response to the preceding comment, section 532 establishes very specific criteria that HUD must use in determining whether an RMC is eligible for direct funding. Where the statute provides HUD with discretion, HUD has chosen to rely on current and familiar requirements (such as compliance with the PHAS and applicable civil rights requirements). The use of already existing measures will allow HUD to accurately and expeditiously determine whether an RMC has the required management capability to directly receive funding. The establishment of an additional consultation procedure has the potential to unnecessarily delay HUD eligibility determinations. Accordingly, HUD has

not adopted the suggestion made by the commenter.

Comment: Final rule should establish time frame for HUD approval of direct funding requests. Two commenters suggested that the final rule should provide a time frame "under which HUD must respond to a RMC's request for direct funding." One of the commenters recommended that the time period not be longer than thirty (30) days.

HUD Response. HUD has not adopted the revision recommended by these commenters. HUD will endeavor to process all RMC petitions for direct funding as expeditiously as possible. As noted above, HUD will rely on current and well-known measures in determining whether an RMC is eligible for the direct receipt of capital and operating assistance. The use of these existing requirements will facilitate HUD's processing of RMC petitions, and help to ensure that HUD's eligibility determinations are made on a timely basis. Therefore, HUD believes that the establishment of the suggested deadline is unnecessary.

Comment: The final rule should provide mechanism for an RMC to appeal a HUD denial of request for direct funding. Two commenters made this suggestion.

HUD Response. HUD has not adopted the revision recommended by these commenters. HUD would prefer to solicit public comment before establishing the suggested appeals process, or any other similar procedural remedy available to an RMC that has been denied direct assistance. Rather than delay the effectiveness of this final rule in order to solicit additional public comment, HUD is proceeding to finalize the October 21, 1999 proposed rule without incorporating the commenter's recommendation. HUD will more fully consider the suggested appeals mechanism during its development of the future proposed rule amending 24 CFR part 964 in its entirety.

V. HUD's Ongoing Efforts To Promote Effective Resident Participation

To further promote effective resident participation in public housing, HUD is taking various steps to promote resident involvement in creating and maintaining a positive living environment. As discussed above, HUD is developing a proposed rule that will implement the resident related amendments made by the Public Housing Reform Act. HUD is committed to developing this proposed rule with the active participation of public housing residents. HUD is taking several other steps to increase resident participation in public housing. For example, HUD will conduct training for resident organizations and PHAs on the new Public Housing Reform Act.

VI. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The final rule is exclusively concerned with public housing agencies that contract with RMCs for the management and operation of specific public housing projects. Specifically, the rule would make various conforming amendments to 24 CFR part 964 (captioned "Tenant Participation and Tenant Opportunities in Public Housing") to reflect statutory changes made by the Public Housing Reform Act. Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The Public Housing Reform Act improves and simplifies the way in which PHAs and RMCs are funded. Specifically, section 519 of the Public Housing Reform replaces funding under the existing Performance Funding System (PFS) with formula funding under the new Operating Fund and the Capital Improvement Assistance Program (CIAP) and the Comprehensive Grant Program with formula allocations under the new Capital Fund. The implementation of section 519 is beyond the scope of this proposed rule. Accordingly, the economic impact of this final rule is not significant, and it will not affect a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule will not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 964 as follows:

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

1. The authority citation for part 964 is revised to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

2. Amend § 964.225 as follows:

a. Redesignate paragraphs (h), (i), (j), and (k) as paragraphs (i), (j), (k), and (l), respectively;

b. Add new paragraph (h); and

c. Revise newly designated paragraph (j).

The addition and revisions to § 964.225 read as follows:

§ 964.225 Resident management requirements.

* * * * *

(h) *Direct provision of operating and capital assistance to RMC.* (1) *Direct provision of assistance to RMC.* The ACC shall provide for the direct provision of operating and capital assistance by HUD to an RMC if:

(i) The RMC petitions HUD for the release of funds;

(ii) The contract provides for the RMC to assume the primary management responsibilities of the PHA;

(iii) The RMC has been designated as at least a "standard performer" under the Public Housing Assessment System (PHAS) (see 24 CFR part 902); and

(iv) The RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

(2) *Use of assistance.* Any direct capital or operating assistance provided to the RMC must be used for purposes of performing eligible activities with respect to public housing as may be provided under the contract.

(3) *Responsibilities of PHA.* If HUD provides direct funding to a RMC under paragraph (h)(1) of this section, the PHA is not responsible for the actions of the RMC.

* * * * *

(j) *Bonding, insurance, and licensing.* (1) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the PHA) to protect HUD and the PHA against loss, theft, embezzlement, or fraudulent acts on the part of the RMC or its employees.

(2) *Licensing and other local requirements.* An RMC must be in compliance with any local licensing, or other local requirement, governing the qualifications or operations of a property manager.

* * * * *

Dated: May 8, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–17025 Filed 7–7–00; 8:45 am]

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Part VI

Department of Housing and Urban Development

24 CFR Part 960

Pet Ownership in Public Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960

[Docket No. FR–4437–F–02]

RIN 2577–AB94

Pet Ownership in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to permit public housing residents to own pets, subject to reasonable requirements that the public housing agency may establish in consultation with the residents. This rule implements pet ownership policies and general requirements for residents of public housing other than public housing developments for the elderly or persons with disabilities. HUD published a proposed rule on June 23, 1999, and this final rule takes into consideration the public comments received on the proposed rule. This rule does not affect the pre-existing regulations covering pet ownership requirements for residents of public housing developments for the elderly or persons with disabilities.

DATES: *Effective Date*: August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia S. Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Room 4222, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–5000; telephone (202) 708–0744 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The June 23, 1999 Proposed Rule

The June 23, 1999 rule proposed to implement section 526 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (referred to as the "Public Housing Reform Act"), which added new section 31 (captioned "Pet Ownership in Public Housing") to the United States Housing Act of 1937 (see 42 U.S.C. 1437z–3) (the Act). Section 31 establishes pet ownership requirements for residents of public housing other than public housing developments for the elderly or persons with disabilities. The proposed rule can be found at 64 FR 33640 (June 23, 1999).

The June 23, 1999 rule proposed to amend 24 CFR part 960 by adding a new subpart G, consisting of the following new sections: § 960.701 (captioned "Purpose"), stating that the purpose of subpart G is to permit pets in public housing; § 960.703 (captioned "Applicability"), limiting the applicability of the subpart G regulations to public housing other than public housing developments for the elderly or persons with disabilities (pet ownership in such housing is covered in 24 CFR part 5, subpart C); § 960.705 (captioned "Animals that assist, support, or provide service to persons with disabilities"), exempting service animals for people with disabilities; and § 960.707 (captioned "Pet ownership"), implementing the primary requirements of section 31 of the Act.

The main substantive regulatory section in the proposed rule, § 960.707, consisted of four paragraphs. Paragraph (a) provided that a public housing resident may own one or more common household pets if the resident maintains each pet responsibly, in accordance with applicable State and local public health, animal control and animal anti-cruelty laws and regulations, and in accordance with the policies established in the Public Housing Agency (PHA) Plan. Paragraph (b) provided examples of reasonable requirements that PHAs may impose on pet owners, such as limits on the number of animals in a unit and certain fees, specifically non-refundable nominal fees to cover costs to the development and refundable pet deposits. The non-refundable nominal fee is intended to cover the reasonable operating costs to the development relating to the presence of pets, and the refundable pet deposit is intended to cover additional costs not otherwise covered, such as damage to the unit, for example, attributable to a resident's pet. Paragraph (c), as proposed, provided for placing pet deposits into an escrow account from which the unused portion would be refunded. Finally, paragraph (d) provided that a PHA's pet policies under this rule must be included in the agency's Annual Plan under 24 CFR part 903.

II. This Final Rule

This final rule adopts most of the core provisions of the proposed rule, but makes some changes to the proposal in response to public comments received. Specifically, in response to comments stating that the rule did not fully implement Congressional intent, HUD has revised the purpose section, § 960.701, to more fully express Congress' intent that PHAs permit pet ownership subject to reasonable rules.

HUD has made editorial changes to § 960.703 to more properly distinguish this rule from the existing rule that is found in 24 CFR part 5, subpart C, that pertains to pet ownership by the elderly and persons with disabilities. Because of these changes, a cross-reference has been removed.

Additionally, in response to comments that applicable State or local law should govern pet deposits, HUD has modified the proposed refundable escrow requirement in § 960.707(d), to provide that State or local laws applicable to pet deposits or, if applicable, rental security deposits apply.

Section 960.705 has been recaptioned and slightly revised to conform to fair housing requirements regarding animals that assist, support, or provide service to persons with disabilities. As before, the section generally states that this section does not apply to such animals, and does not affect either a PHAs right to require residents to comply with other existing requirements regarding such animals, or existing protections for such assistive animals. The primary difference from the proposed rule is that different language is used to define such animals, including the idea that these animals are necessary as a reasonable accommodation to persons with disabilities.

Section 960.707(b), which lists examples of reasonable requirements that PHAs may impose on pet owners, has been revised to add a provision specifying that PHAs may require pet owners to register their pets, and have them spayed or neutered. Also, a slight modification was made to paragraph (b)(3) of § 960.707 to clarify the applicability of State and local law to the issue of classifying certain animals as dangerous. A new paragraph (c) has been added to prohibit PHAs from requiring that pet owners remove their pet's vocal chords, in response to comments on that issue.

In § 960.707(b)(1), the distinction between nonrefundable nominal pet fees and refundable pet deposits has been clarified. Specifically, the nonrefundable fee is for general costs to the development associated with pet ownership, and the deposit is for costs attributable to particular pets that are not otherwise covered. This distinction is further explained in responses to comments.

Finally, further specificity has been added regarding the Annual Plan process in what is now § 960.707(e) to specify that, unless otherwise provided by 24 CFR 903.11, Annual Plans are required to contain information regarding the PHA's pet policies, as described in 24 CFR 903.7(n), beginning

with PHA fiscal years that commence on or after January 1, 2001.

III. Discussion of the Public Comments

The comment period for this rule closed on August 23, 1999. HUD received 3,777 comments. The commenters included public housing residents, resident organizations, public housing authorities, legal aid organizations, public interest animal advocacy groups, and individuals interested in issues involving animal welfare. HUD received approximately 3,000 additional comments after the close of the comment period. To the extent possible, HUD reviewed these comments to determine if any raised issues not already covered by the almost 4,000 timely comments.

HUD received a number of comments from commenters opposed to this rulemaking as a whole and to the idea of allowing pet ownership in public housing. This rulemaking is required by section 31 of the Act and because the issue of whether to allow pet ownership in public housing is not within HUD's discretion to change, there is no further discussion of this issue in the preamble. A summary of the remaining comments follows.

General Comments

Comment: The regulation is so general that it fails to implement Congressional intent. While the proposed rule allowing PHAs broad discretion comports with the 1998 public housing reform, the rule may be so general that it does not implement Congress' intent that PHAs permit pet ownership. The rule should do more than merely restate the general guidance given by Congress, and therefore HUD should publish another proposed rule.

Response: In order to more clearly state the intent of the rule to allow public housing residents to own pets, HUD has modified the purpose section to state that PHAs must allow pet ownership, subject to reasonable requirements. Insofar as portions of the rule mirror the statutory language, the rule therefore reflects Congressional intent that PHAs must permit pet ownership subject to reasonable requirements. HUD acknowledges that the rule leaves important aspects to local decision-making. This, however, is also consistent with Congressional intent, as the statute provides that applicable State and local public health, animal control and animal anti-cruelty laws and regulations, as well as policies established by the PHA, govern pet ownership in public housing. The fact that the rule requires information regarding pet policies to be included in the agency's Annual Plan as provided in 24 CFR 903.7 and thus subject to public hearing, Resident Advisory Board consultation and HUD review requirements applicable to the plan insures that the intent of the provision will be implemented with substantial community input, to provide guidance. Furthermore, HUD believes that the proposed rule gave adequate public notice of the issues involved, by providing examples of the types of guidelines PHAs could institute and specifying that PHAs and residents could also make local decisions on pet policy as part of the Annual Plan process under 24 CFR part 903. This approach is similar to the discretion PHAs have in administering pet policies in public housing developments for the elderly or persons with disabilities. At this time, HUD does not plan to publish another proposed rule.

Comment: HUD's pet rules should be combined. HUD should integrate the proposed public housing pet rules (24 CFR part 960) with the pet rules for pet ownership for the elderly or persons with disabilities (24 CFR part 5).

Response: The pet rules for the elderly or persons with disabilities are placed in part 5 because they apply both to HUD's public housing and assisted housing programs. Rather than repeating them in a number of different CFR sections, HUD places such cross-cutting rules in part 5. This rule, however, belongs in part 960 because it only applies to public housing.

Comment: HUD should use the Massachusetts Guidelines for State-Aided Elderly Housing to develop its pet regulations. These guidelines provide a good basis to develop pet regulations.

Response: While elements of the Massachusetts Guidelines may be appropriate for certain PHAs, other PHAs, in consultation with their residents through the Annual Plan process under 24 CFR part 903, may wish to institute different or varying guidelines as locally appropriate. Indeed, section 31 of the Act requires that pet policies comport with local law and with the policies established in the Plan for each PHA, and these local laws and plans may vary. Therefore, rather than requiring each PHA to implement the specific Massachusetts Guidelines, HUD has determined that it is important and in accordance with Congressional intent to preserve local options. At a later date HUD may provide to PHAs, as technical assistance, examples of pet policies for PHAs to consider in developing their pet rules.

Comment: Clarify formal procedures for adopting pet rules. This rule should state formal procedures for adopting and changing pet rules as do §§ 5.350 and 5.353 of HUD's pet regulations for developments for the elderly and persons with disabilities.

Response: Because information regarding PHA's requirements relating to pet ownership are to be included in the PHA's Annual Plan under 24 CFR part 903, which covers HUD review and approval requirements, additional formal requirements are not necessary, except that HUD has revised the rule to specify that PHAs must start including information regarding their pet policies in their PHA Plans beginning on January 1, 2001.

Comment: The rule should impose requirements on assistance animals for persons with disabilities. The final rule should impose requirements on assistance animals for persons with disabilities in public housing complexes that are not complexes designated for the elderly or persons with disabilities, such as certification that the household contains a person with disabilities that would benefit from the assistance of the animal, that the animal has been appropriately trained, and that the animal actually provides assistance to the person with disabilities.

Response: The statute, legislative history and the proposed rule all indicate that section 31 intends to regulate only "common household pets." Therefore, regulation of animals that provide assistance, support, or service to persons with disabilities is beyond the scope of this rulemaking. In this regard, HUD believes that animals that provide assistance, service or support to persons with disabilities, and are needed as a reasonable accommodation to such individuals, are not "common household pets." Rather, they are assistive animals, necessary to provide the individual with an opportunity to use and enjoy the dwelling to the same extent as residents without disabilities. Section 960.705 of the final rule clarifies that the provisions of subpart G and any PHA pet policies established under subpart G do not apply to such animals.

Comment: Because pet ownership policies will be approved by HUD staff through the PHA Plan approval process, HUD should conduct a "minimalist" review of PHA pet policies. This rule should provide that HUD will conduct this minimalist review of PHA pet policies.

Response: The only review of PHA pet policies contemplated by this regulation is through the PHA Annual Plan process under 24 CFR part 903. Therefore, no change to the regulation is necessary as a result of this comment.

Comment: Certain terms should be defined in the rule. Some commenters requested that the rule define the term "common household pet." One commenter asked that the term "responsibly" (used in § 960.707(a)(1)) be defined to ensure a common understanding among PHAs. Another commenter stated that the term should not be defined since it is not defined in section 31 of the Act. Other commenters stated that the final rule should define the concept of "nominal fee" as used in § 960.707(b)(1). Another commenter stated that the rule should clarify what the word "reasonable" means in § 960.707(b).

Response: Because of variations among local communities, HUD agrees that the regulation should not define these terms. Each PHA should define "allowable household pets," the elements of "responsible pet ownership," the concept of "nominal fee," and what regulations are "reasonable" as part of its pet policies that will be part of the PHA Plan and hence developed in consultation with the Resident Advisory Board. Permitting PHAs to define terms is consistent with the administration of pet rules in public housing developments for the elderly and persons with disabilities.

Comment: Banning of dangerous animals. HUD should neither encourage nor permit PHAs to ban specific breeds of dogs. The final rule should require that an animal behaviorist make any final decision that an animal is dangerous. The final rule should either define the term "dangerous animal" or provide a list of dangerous animals.

Response: Section 31 of the Act provides that a PHA's reasonable requirements may include prohibitions on types of animals that are classified as dangerous. Thus, the rule contains a provision implementing that statutory provision. In some cases, State or local law may govern the classification and treatment of "dangerous animals" and whether to ban specific breeds; in those cases, the PHA's pet policy must be consistent with State or local law.

Pet Deposits

Comment: State and local law should govern pet deposits. A number of commenters stated that PHAs should be allowed to hold pet deposits in accordance with State and local laws. Another commenter opposed the proposed rule on the basis that HUD's proposed regulation could have the effect of preempting local laws that give pet owners greater protection.

Response: Because most States already have laws regulating such deposits, HUD agrees that State or local laws relating to pet deposits or security deposits (if applicable) should apply, and has revised the rule accordingly.

Comment: Pet deposits should not have to be placed in escrow accounts. The rule should not require escrow accounts or interest because the administrative burden outweighs the small amounts of funds involved. The pet rule for housing for the elderly and persons with disabilities does not require them, and payment of interest is not required by the statute.

Response: Section 31 of the Act permits PHAs to charge a non-refundable nominal fee to cover the reasonable operating costs to the development related to the presence of pets, a refundable pet deposit to cover additional costs not otherwise covered, or both. Thus, PHAs have the discretion to establish fees, deposits, or both. With respect to deposits, legislative history indicates that Congress expects such accounts to be interest-bearing. However, rather than trying to impose a new scheme in an area where States generally already have laws and regulations governing either pet deposits, security deposits, or both, HUD has revised the proposed rule to state that local legal requirements will govern any such escrow accounts as to interest and other matters.

Comment: Pet deposits should be used for specified purposes. One commenter stated that accrued interest on pet deposits should be placed in the PHA's resident services and activities fund. Another comment stated that the final rule should authorize PHAs to use all pet deposits and nominal fees for costs of maintenance related to pet ownership.

Response: Section 31 specifies the uses of pet fees and deposits. The statute indicates that the purpose of fees is to cover the "reasonable operating costs to the project relating to the presence of pets," and deposits are for additional costs not otherwise covered. HUD believes that, in accordance with the overall purpose of this section, "additional costs not otherwise covered" refers to pet-related costs not covered by the nominal fee, not overall maintenance or operating costs of the development, which are covered by other HUD funding. PHAs may use pet deposits and interest for items not covered by the fee, which HUD interprets to refer to costs for damage attributable to a particular pet and not covered by the fee, and may use nominal pet ownership fees for purposes of maintenance of the development related to pet ownership.

PHA Requirements for Pet Ownership

Comment: Certain requirements should be included or mandated in the rule. A number of commenters sought to have various specific requirements added to the rule. These include the following described in this comment.

The following recommendations should be added to the rule to provide sufficient guidance: Mandate the spaying and neutering of dogs and cats; establish pet committees in all housing complexes that will be responsible for enforcement of the pet rules; ensure that pet rules protect the safety, health and well-being of pets as well as people in the community; and prohibit PHAs from requiring inhumane procedures, such as debarking or declawing.

A Pet Ombudsman should be appointed to oversee Federal pet policies; pets found roaming at large should be "microchipped" for future identification; residents should be allowed to temporarily keep foster pets received from an animal welfare agency or rescue group for companion animals.

Additional comments were as follows:

Outside pets should have adequate fencing and shelter;

The rule should prohibit outdoor pets;

The rule should prohibit or allow PHAs to prohibit pets based on climate-related factors;

There should be a limit on the number of different species of pet in a unit;

The rule should prohibit specific pets, such as certain kinds of dogs, birds, non-human primates and pot-bellied pigs;

The rule should require that dogs and cats be on leashes when outside;

The rule should prohibit the tethering or chaining of any animals;

PHA should have the right to take certain actions if there is evidence of an animal in distress, including entry into the unit, impoundment of the animal, and alerting authorities;

The rule should impose a limitation on the number of pets allowed per unit;

The rule should require that pets wear identification at all times;

The rule should prohibit tail and ear docking;

The rule should require that a PHA's pet regulations along with a telephone number to report violations should be posted;

The rule should require that all pets be spayed and neutered;

The rule should not allow requirements that pets be spayed and neutered; and

The rule should include specific requirements for ensuring the health of pets.

Response: Under the rule, PHAs can institute reasonable requirements addressing any or all of these issues. Because many commenters on the specific issue of spaying and neutering requirements made strong arguments that such requirements are desirable as policy, the final rule specifies that PHAs have the discretion to adopt such requirements.

HUD also agrees with a number of comments regarding "debarking" pets, and so has added a provision in the final rule to prohibit a PHA from requiring that any pet's vocal chords be removed. This matches a provision of the current regulations regarding pets in public housing developments for the elderly and persons with disabilities.

As to the concept of an ombudsman, to the extent disputes occur, HUD expects PHAs to settle disputes with their residents reasonably and in accordance with the law and regulations. HUD field staff can assist by answering questions.

In addition, the statute and rule require residents to maintain pets in accordance with State and local public health, animal control, and anti-cruelty laws and regulations, most of which address health and safety concerns.

Comment: Rule should make clear that public housing residents must obtain PHA approval before owning a pet. The final rule should clarify this point.

Response: As one of its "reasonable requirements," a PHA may now require that pet owners register their pets. Such registration may include such matters as, for example, the certification of a licensed veterinarian or a State or local authority (or agent of such authority) empowered to inoculate animals, that the pet has received all inoculations required by applicable State and local law; information sufficient to identify the pet and to demonstrate that it is a common household pet; and the name, address and telephone number of one or more responsible parties who will care for the pet if the owner is unable to do so for any reason.

Comment: Eliminate certain language from the rule. Section 960.707(b)(4) of the proposed rule reads "[Reasonable requirements may include] * * * (4) Restrictions or prohibitions based on size and type of building or project or other relevant conditions." One commenter states that the phrase "or prohibitions" is overly broad and could be used to negate the intent of section 31. Another commenter states that the phrase "or other relevant conditions" is too vague.

Response: The referenced language is statutory and so is retained in the final rule (see section 31(b)(4) of the Act). Since the overall intent of the statute is to permit pet ownership in public housing, this language should not be used to negate the intent of the rule, and PHAs should apply this section consistently with that intent.

Comment: The final rule should provide that PHAs may demand proof of liability insurance or evidence of financial responsibility as a condition of pet ownership. The final rule should include this as a reasonable requirement in § 960.707(b).

Response: The lower-income population served by PHAs is not likely to have access to liability insurance. At best, such insurance would pose a further financial hardship on PHA residents. When section 31 refers to "reasonable requirements," it means reasonable requirements relating to pet ownership. Reasonable requirements include, for example, limiting the number of pets per unit and prohibiting dangerous animals (see sections 31(b)(2) and (3) of the Act). However, a requirement to have liability insurance could well make it impossible for most PHA residents to have pets, thus frustrating the intent of the statute. Liability insurance, therefore, is not a "reasonable requirement" within the intent of section 31. Thus, the PHA may not require evidence of liability insurance.

Comment: PHAs should be able to follow the pet rules for private multifamily housing. PHAs should not be required to allow pets where private housing of a similar density would not. PHAs must not be forced to accept conditions that go beyond that which is standard in the private market. The final rule must give PHA's the authority to designate areas for pets and areas where pets are not allowed.

Response: Section 31(d) of the Act requires HUD to promulgate regulations requiring PHAs to permit pet ownership, and this fact distinguishes PHAs from private housing in respect to pet ownership. The statute and § 960.707(b)(4) of the regulations permit "restrictions or prohibitions based on the size and type of building * * * or other relevant conditions." Where appropriate to local conditions, and in consultation with the Resident Advisory Board as part of the PHA's Plan, an individual PHA could institute some pet-free areas. However, HUD expects PHAs, consistent with statutory intent, to generally allow pet ownership.

Comment: Rule needs to address adequate care of pets. In the final rule, HUD should provide guidance regarding adequate care of pets.

Response: The rule refers to applicable State and local animal control and anti-cruelty laws. Such laws provide guidance relevant in each jurisdiction regarding animal welfare. Also, PHAs and pet owners may obtain information from organizations, such as local humane societies.

Comment: The rule should allow individual developments to vote on whether or not to allow pets. Allowing residents to vote on whether to allow pets could be considered a "reasonable requirement" under § 960.707(b).

Response: The purpose of section 31 of the Act is to permit pet ownership by those residents who wish to own pets and comply with reasonable requirements. Reasonable requirements include, for example, limiting the number of pets per unit and prohibiting dangerous animals (see sections 31(b)(2) and (3) of the Act). Legislative history indicates that pet-free areas could be instituted, for example, to accommodate residents who are allergic to pets (see H.R. Report No. 105–76, at 132). In other words, the reasonable requirements contemplated by the statute impose conditions under which pets may be owned, and have some relation to the proper care of the pet or the welfare of the community. Allowing those residents who prefer not to have pets to prohibit all residents from having pets on the basis of a vote would go beyond imposing reasonable conditions on pet ownership and would amount to a contravention of the statutory intent to allow pet ownership. Of course, residents of particular housing could argue to their PHA that there are characteristics of that housing which make various limitations on pet ownership appropriate.

Comment: The rule should provide guidance regarding unit size. Section 960.707(b)(2) provides for limitations on the number of animals in a unit, based on unit size. The commenters state that PHAs could effectively prohibit all pet ownership by characterizing all of their units as too small to accommodate pets. Thus, guidelines from HUD regarding unit size and number of pets are needed.

Response: Information regarding the PHA's pet policy must be part of the PHA's Plan under 24 CFR part 903, which is subject to public hearing, Resident Advisory Board consultation, and HUD review. As a result, HUD believes that PHAs will promulgate reasonable pet rules.

Comment: Only certain animals should be allowed as pets. One comment stated that farm animals, exotic pets, breeding animals, wild or feral animals, and dangerous animals should not be allowed. Another

comment stated that only cats and dogs should be allowed.

Response: As to the keeping of farm, exotic, and dangerous animals, many States and localities have laws regarding such animals, with which PHAs will have to comply. Also, as to types of animals not covered by such laws, PHAs and Resident Advisory Boards will decide which animals are appropriate as pets as part of the PHA Plan process.

IV. Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides for pet ownership in public housing, and allows PHAs to collect pet deposits to defray the costs to the development of pet ownership.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969 at the proposed rule stage. That Finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

For the reasons discussed in the preamble, HUD amends 24 CFR part 960 as follows:

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

1. The authority citation for 24 CFR part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

2. Add subpart G to read as follows:

Subpart G—Pet Ownership in Public Housing

Sec.
960.701 Purpose.
960.703 Applicability.
960.705 Animals that assist, support, or provide service to persons with disabilities.
960.707 Pet ownership.

Subpart G—Pet Ownership in Public Housing

§ 960.701 Purpose.

The purpose of this subpart is, in accordance with section 31 of the United States Housing Act of 1937 (42 U.S.C. 1437z–3), to permit pet ownership by residents of public housing, subject to compliance with reasonable requirements established by the public housing agency (PHA) for pet ownership.

§ 960.703 Applicability.

This subpart applies to public housing as that term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)), except that such term does not include public housing developments for the elderly or persons with disabilities. Regulations that apply to pet ownership in such developments are located in part 5, subpart C, of this title.

§ 960.705 Animals that assist, support, or provide service to persons with disabilities.

(a) This subpart G does not apply to animals that assist, support or provide service to persons with disabilities. PHAs may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support or provide service to persons with disabilities. This exclusion applies to such animals that reside in public housing, as that term is used in § 960.703, and such animals that visit these developments.

(b) Nothing in this subpart G:

(1) Limits or impairs the rights of persons with disabilities;

(2) Authorizes PHAs to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that PHAs may have to regulate service animals that assist, support or provide service to persons with disabilities, under Federal, State, or local law.

§ 960.707 Pet ownership.

(a) *Ownership Conditions.* A resident of a dwelling unit in public housing, as that term is used in § 960.703, may own one or more common household pets or have one or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the PHA, if the resident maintains each pet:

(1) Responsibly;

(2) In accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations; and

(3) In accordance with the policies established in the PHA Annual Plan for the agency as provided in part 903 of this chapter.

(b) *Reasonable requirements.* Reasonable requirements may include but are not limited to:

(1) Requiring payment of a non-refundable nominal fee to cover the reasonable operating costs to the development relating to the presence of pets, a refundable pet deposit to cover additional costs attributable to the pet and not otherwise covered, or both;

(2) Limitations on the number of animals in a unit, based on unit size;

(3) Prohibitions on types of animals that the PHA classifies as dangerous, provided that such classifications are consistent with applicable State and local law, and prohibitions on individual animals, based on certain factors, including the size and weight of animals;

(4) Restrictions or prohibitions based on size and type of building or project, or other relevant conditions;

(5) Registration of the pet with the PHA; and

(6) Requiring pet owners to have their pets spayed or neutered.

(c) *Restriction.* A PHA may not require pet owners to have any pet's vocal chords removed.

(d) *Pet deposit.* A PHA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits or, if State or local law has no requirements regarding pet deposits, for rental security deposits, if applicable. The PHA shall comply with such applicable law as to retention of the deposit, interest, and return of the deposit or portion thereof to the resident, and any other applicable requirements.

(e) *PHA Plan.* Unless otherwise provided by § 903.11 of this chapter, Annual Plans are required to contain information regarding the PHA's pet policies, as described in § 903.7(n) of this chapter, beginning with PHA fiscal years that commence on or after January 1, 2001.

Dated: June 30, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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Part VII

Department of Transportation

Federal Railroad Administration

Federal Transit Administration

49 CFR Parts 209 and 211

Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems; Notice and Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Transit Administration

[FRA Docket No. FRA–1999–5685, Notice No. 6]

RIN 2130–AB33

Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

AGENCIES: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Policy statement.

SUMMARY: On May 25, 1999, FRA and FTA published a proposed joint statement of agency policy concerning safety issues related to light rail transit operations that take place, or are planned to take place, on the tracks of the general railroad system. 64 FR 59046. In the same docket, on November 1, 1999, FRA published a separate proposed statement of policy providing details on its railroad safety jurisdiction and a detailed explanation of issues that will be addressed in its waiver process related to shared use of the general system. FRA also addressed the process of obtaining waivers of its safety regulations. After consideration of the nearly 50 written comments received and discussions of these issues in a variety of public forums, the agencies now issue this final joint statement of agency policy that explains generally how the two agencies intend to coordinate use of their respective safety authorities with regard to such shared-track operations. FRA is separately publishing today its final Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Operations, which includes a discussion of the comments received in this docket.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, FTA, TCC–2, Room 9316, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 366–4063); and Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6029).

Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

In many areas of the United States, local communities are considering, planning, or developing light rail, street-level transit systems similar to those now in operation in Portland, Oregon; Sacramento, California; Dallas, Texas; San Diego, California; Baltimore, Maryland; and Salt Lake City, Utah. Patterned on the trolleys that operated along the streets of hundreds of American cities and towns earlier in the century, these newer light rail systems promote more livable communities by serving those who live and work in urban areas without increasing congestion on the nation's already crowded highways.

Some of these existing light rail systems, such as those in San Diego, Baltimore, and Salt Lake City, like some of those now contemplated for the future, would in addition to service provided along community streets, take advantage of underutilized urban freight trackage to provide service that, in the absence of the existing right of way, would be prohibitively expensive. These potential passenger services usually envision light rail operations during the day and freight operations during the night.

FRA has long regulated the nation's railroads for safety purposes. FRA's railroad safety jurisdiction extends to all types of railroads except for "rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. 20102. A complete discussion of FRA's safety jurisdiction can be found at 49 CFR part 209, Appendix A. In this context, "rapid transit operations" refers to rail systems that are devoted in substantial part to moving people from point to point within a city's boundaries. Such systems may use heavy subway and elevated, or light rail, equipment and will be covered in this statement by the general terms "local rail transit" or "light rail transit." FRA's safety jurisdiction covers all commuter railroad operations (even if they use equipment that might be considered light rail or transit equipment) without regard to their general system connections. This statement of policy does not apply to commuter railroad operations.

Until the 1990's, there was no Federal program for addressing the safety of local rail transit systems that are not subject to FRA's safety jurisdiction (i.e., those not connected to the general railroad system). However, faced with the growing movement to develop new rail transit systems, Congress addressed the safety of such systems in the Intermodal Surface Transportation Efficiency Act of 1991, requiring that FTA issue regulations requiring that states having rail fixed guideway mass transportation systems "not subject to regulation by the Federal Railroad Administration" establish a state safety oversight program. 49 U.S.C. 5330. Those regulations, which appear at 49 CFR part 659, provide that they apply where FRA does not regulate. Thus, Congress has now defined the Federal role with respect to the oversight of both railroads subject to FRA's safety jurisdiction and rail transit systems not connected to the general railroad system.

The primary issue addressed by this policy statement is the means by which FRA and FTA propose to coordinate their safety programs with regard to rail transit systems that share tracks with freight railroads. Although compatible in terms of track gage, these two forms of rail service are incompatible in terms of equipment. A collision between a light rail transit vehicle with passengers aboard and heavy-duty freight or passenger equipment would likely result in catastrophe.

In general, FRA provides safety oversight of all railroad operations except rapid transit operations that have no significant connection to the general railroad system, such as the Chicago Transit Authority (CTA) in Chicago, the Washington Metro, and the subway systems in New York, Boston, and Philadelphia. As noted, the safety rules of FRA and FTA are mutually exclusive. If FRA regulates a rail system, FTA's rules on state safety oversight do not apply. Conversely, if FRA does not regulate a system, FTA's rules do apply, assuming that the system otherwise meets the definition of a "rail fixed guideway system" under 49 CFR 659.5.

This joint statement is intended to: (1) Explain the nature of the most important safety issues related to shared use of the general railroad system by conventional and rail transit equipment; (2) summarize the application of FRA and FTA safety rules to such shared-use operations; and (3) help transit authorities, railroads, and other interested parties understand how the safety programs of the two agencies will be coordinated.

1. Safety Issues Related to Shared Use of the Tracks of the General System

The expansion of rail passenger transportation promises significant benefits to America's communities in

terms of reduced highway congestion, reduced pollution, lower commuting times, and increased economic opportunities. However, the expansion of rail transit systems operating over portions of conventional railroad trackage poses major safety issues that must be addressed if such service is to be provided within a suitably safe transportation environment.

Potential for a Collision

The most important safety issue related to shared use of general railroad system trackage is the potential for a catastrophic collision between conventional rail equipment and rail transit equipment of lighter weight. Because of the significantly greater mass and structural strength of conventional equipment, the two types of equipment are simply not designed to be operated in a setting where there is any appreciable risk of their colliding.

Shared Use of Highway-Rail Grade Crossings

For decades, the greatest cause of death associated with railroading in America has been collisions between railroad vehicles and highway vehicles at grade crossings. Unlike traditional rapid transit operations, existing and contemplated shared-trackage light rail operations on the general system will typically involve train movements through highway grade crossings. To the extent train movements through grade crossings increase, the collision exposure to the highway user increases. We want to ensure that local rail transit operations are designed and operated to address these serious risks and to prevent grade crossing collisions involving light rail equipment.

A related issue is the prevalence of death and serious injury to trespassers on railroad property. Trespasser fatalities have recently outpaced grade crossing accidents as the leading cause of death on the nation's railroads. To the extent that shared use of general system trackage results in a substantial increase in the number of pedestrians crossing by foot in the path of trains, the potential for additional deaths to trespassers is very real and should be addressed in planning these operations.

Shared Infrastructure

Light rail operations on general railroad system tracks will affect and be affected by the track, bridges, signals, and other structures on the line. The light rail and conventional systems may also share a communications system. The responsibility for operating and maintaining this shared infrastructure may vary according to the agreements reached between the parties. However, even if the light rail operator has no direct responsibility for maintenance, there will need to be sufficient coordination to alert the light rail operator to related safety problems and to ensure the light rail operator conveys relevant information (*e.g.*, readily apparent track defects or signal failures) to the party responsible for operation and maintenance.

Employee Safety

Employees who operate trains on general system track, control movements over that system, or maintain its infrastructure are provided certain protections under the Federal railroad safety laws. Light rail employees will be entitled to appropriate protections during shared-track operations. In addition, the light rail operators will need to observe rules designed to protect employees of other organizations who may be working along the right-of-way.

2. Approaches to Various Forms of Shared Use

Operations on the General System

Local rail transit operations conducted over the track of the general system become part of that system and necessitate FRA safety oversight of rail transit operations to the extent of such shared use. This does not mean that all of FRA's regulations will be applied to all aspects of these operations. First, FRA has no intention of overseeing rail transit operations conducted separate and apart from general system tracks, *i.e.*, the street portion of that service. (As noted above, FRA regulates commuter operations without regard to their general system connections.) Second, FRA anticipates granting appropriate waivers of its rules to permit shared use of general system track by light rail and conventional equipment where the applicant transit systems and railroads commit to alternative safety measures and FRA finds that those measures will ensure safety. FRA has now granted two such waivers: Utah Transit Authority on December 2, 1999 and the New Jersey Transit Corporation on December 3, 1999, and is currently evaluating a waiver request filed by the Santa Clara Valley Transportation Authority.

Where complete temporal separation between light rail and conventional operations is achieved, the risk of collision between the two types of equipment can be minimized or eliminated. Temporal separation involves operating conventional and light rail equipment at completely distinct periods of the day (in San Diego, for example, conventional rail movements occur only between 1:30 a.m. and 4 a.m.) and establishing procedures to ensure strict observation of the defined operating windows. Under these circumstances, FRA will grant necessary waivers concerning rules related to design of the passenger equipment, although other safety concerns (*e.g.*, highway grade crossings) not addressed by temporal separation may not permit waivers. As FRA's separate statement of policy makes clear, FRA may permit simultaneous joint use of track by conventional and light rail equipment where the petitioner meets the steep burden of demonstrating that alternative safety measures will reduce the risk of a collision between these types of equipment to an acceptable level.

Operations Outside the Shared-Track Area

Where local rail transit operations consist of segments that involve shared track with conventional equipment connected to segments that do not involve shared track (*e.g.*, street railway segments), FRA does not currently intend to exercise its jurisdiction over operations outside the shared-track area. Instead, FRA will coordinate with the state oversight agency to ensure effective and non-duplicative monitoring of the safety of the different segments of the operation. FRA will make every effort in its waiver process to give due weight to elements of the operation's system safety plan that carry over into the shared-track portion of the system.

Operations Within a Shared Right-of-Way

Although this policy statement addresses shared-track operations, it is important to also acknowledge the situations in which light rail transit operations share a right-of-way, but no trackage with conventional railroads. An example is a light rail system whose tracks run parallel to but between the tracks of a freight line. Where such systems share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions. In addition, and apart from their safety regulatory programs, FRA and FTA are eager to coordinate with rapid transit agencies and railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit trains and conventional equipment.

Operations Through a Rail-Rail Crossing at Grade and Other Limited Connections

Similarly, where a rail transit system crosses a conventional railroad at grade, but has no other connection to the general system, FRA and FTA will coordinate with the transit system and railroad to ensure safety at the crossing. FRA does not consider a switch that merely permits the transit system to receive shipments for its own use a connection significant enough to warrant application of FRA's rules.

3. FTA and FRA Safety Partnership

FTA and FRA have been working closely together for several years to ensure proper coordination of their safety programs. In October 1998, FRA and FTA entered into an agreement designed to enhance their efforts in identifying and resolving safety issues in rail-related projects funded by FTA. Under the agreement, the agencies agreed to take actions that will ensure that FRA's rail safety expertise is brought to bear on safety issues inherent in commuter rail grant proposals early in the planning and development process.

Coordination on Rail Safety Waiver Requests

Light rail transit operators who intend to share track of the general railroad system with conventional equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. FRA may grant a waiver "if the waiver is in the public interest and consistent with railroad safety." 49 U.S.C. 20103(d). FRA intends to make its waiver process as smooth and comprehensive as possible. FTA will assist FRA in that effort. In its separate final statement of policy issued today, FRA provides detailed guidance on what factors the petition should address.

Note: FRA and FTA have grave concerns about whether, given their structural incompatibility, light rail and conventional equipment can ever be operated safely on the same trackage at the same time. In the event that petitioners nevertheless seek approval of simultaneous joint use, the petitioners will face a steep burden of demonstrating that extraordinary safety measures will be taken to adequately reduce the likelihood and/or severity of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable.

Like all waiver petitions, a Petition for Approval of Shared Track is reviewed by FRA's Railroad Safety Board. FTA has a non-voting liaison to that board who participates in the board's consideration of all such petitions. This close cooperation between the two agencies ensures that FRA benefits from the insights, particularly with regard to technological, operational, and financial issues, that FTA can provide about light rail operations, as well as from FTA's knowledge of and contacts with state safety oversight agencies. This working relationship also ensures that FTA has a fuller appreciation of the safety issues involved in each specific shared use operation and a voice in shaping the safety requirements that apply to such operations.

In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. It is the intention of FTA and FRA to maintain the level of safety typical of conventional rail passenger operations while accommodating the character and needs of light rail transit operations.

FRA and FTA believe that they can give light rail operators a high degree of confidence that FRA will provide the waivers they need to operate on a time-separated basis in shared-use situations, as already demonstrated in the three cases cited above. To facilitate the waiver process, FRA includes in its final statement of policy issued today a detailed statement of the rules light rail operators should expect to comply with and those rules from which they can expect to receive waivers, provided that the planned light rail operations will be wholly separated in time from conventional rail operations. With this information, light rail operators can plan and design their projects in such a way that they can be confident, absent unusual facts about a particular project presenting some atypical safety hazard, of receiving the waivers needed to operate.

In its petition, the light rail operator may want to certify that the subject matter addressed by the rule to be waived is addressed by the system safety plan and that the light rail operation will be monitored by the state safety oversight program. That is likely to expedite FRA's processing of the petition. FRA will analyze information submitted by the Petitioner to demonstrate that a safety matter is addressed by the light rail operator's system safety plan. Where FRA grants a waiver, the state agency will oversee the area addressed by the waiver, but FRA will actively participate in partnership with FTA and the state agency to address any safety problems. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

Conclusion

Expanded use of existing railroad lines to provide increased transportation opportunities for passengers in metropolitan areas is a development that FTA and FRA strongly wish to encourage. Working together, the two agencies intend to ensure that these efforts go forward smoothly and in a way that guarantees that the blending of light rail and conventional rail operations continues their excellent safety records.

Issued in Washington, DC, on June 30, 2000.

Jolene M. Molitoris,

Federal Railroad Administrator.

Nuria I. Fernandez,

Acting Federal Transit Administrator.

[FR Doc. 00–17209 Filed 7–5–00; 10:43 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209 and 211

[FRA Docket No. FRA–1999–5685, Notice No. 7]

RIN 2130–AB33

Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule and policy statement.

SUMMARY: FRA and the Federal Transit Administration (FTA) have jointly developed a policy concerning safety issues related to light rail transit operations that share use of the general railroad system track with conventional trains. That policy, published elsewhere in today's **Federal Register**, describes how the two agencies will coordinate use of their respective safety authorities over shared track operations. FRA is issuing its own separate policy statement to describe the extent of its statutory jurisdiction over railroad passenger operations (which covers all railroads except urban rapid transit operations not connected to the general railroad system) and explain how it will exercise that jurisdiction. The statement also explains FRA's waiver process and discusses factors that should be addressed in any petition submitted by light rail operators and other railroads seeking approval of shared use of general railroad system track.

DATES: This statement of policy is effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6029) or David H. Kasminoff, Trial Attorney, FRA, RCC–12, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6043).

Introduction

DOT strongly encourages increased use of railroads to serve the nation's passenger transportation needs. Many communities are using or planning to use railroad lines on which conventional freight and passenger trains operate to move commuters and other passengers in "light rail" vehicles. This development holds great promise for enhancing transportation alternatives in metropolitan and suburban areas. However, this shared use of conventional rail lines, which are within FRA's broad safety jurisdiction, also poses some significant safety issues. FTA provides a substantial share of the funding for many of these passenger operations, some of which straddle the jurisdictional line between FRA's and FTA's statutory safety authority. Therefore, FRA and FTA have decided to explain jointly, in a notice published elsewhere in today's **Federal Register**, how they will work to ensure that they exercise jurisdiction in a complementary way over these shared use operations. In this notice, FRA explains in greater detail the extent of its safety jurisdiction and how it will exercise that authority in the shared use context. FRA also explains how those light rail operations that may desire waivers of certain of FRA's rules may go about seeking such waivers.

This notice does not amend any of FRA's substantive safety rules or impose any regulatory burdens not already imposed by those rules. Those rules cover a wide range of safety issues such as equipment, track, signals, grade crossings, and operating practices. By their own terms, they already apply to at least those rail operations, like those addressed here, that occur on lines where conventional trains operate. Nothing in this statement expands the applicability provisions of those rules. The only rules that FRA is amending are its statement of policy on safety jurisdiction, found in appendix A to 49 CFR part 209, and 49 CFR part 211, to which FRA is adding a new appendix containing its statement of policy concerning waivers related to shared use of the general system. FRA believes it is important to ensure that the agency's current thinking on these subjects can be readily located in the CFR.

Although agencies are not required to provide notice and an opportunity to comment on interpretive rules and statements of policy, FRA did so here to ensure that it had the benefit of the views of interested parties in developing its policy. Because of the substantial overlap in subject matter between FRA's proposed statement of policy (published November 1, 1999, at 64 FR 59046) and the joint FRA/FTA statement (published May 25, 1999, at 64 FR 28238), we concluded it made sense to have the comment periods on both statements run concurrently. Therefore, we extended the original comment period on the joint statement to coincide with the comment period on this statement (64 FR 58124). Then, based on a request from the major organization representing rail commuter and transit operations, we extended the comment deadline again, to February 14, 2000. We think this public process gave all concerned ample opportunity to develop and convey their views, and we have spent a great deal of time reviewing the many comments we received.

I. Discussion of Comments

FRA received nearly 50 responses concerning its proposed statement of agency policy, including comments from: state and local governments and transportation authorities; transit agencies; transportation planners and consultants; citizen groups; a railroad labor union; the association representing the interests of conventional railroads; and the association representing the interests of the rail transit industry. Discussions follow with respect to the primary issues raised by the commenters. In light of the comments received, FRA has reconsidered some aspects of its proposed policy and has elected to adopt certain portions of the policy without substantive change from what FRA proposed.

The commenters addressed many of the important topics discussed in FRA's proposal, including the extent and exercise of FRA's jurisdiction, shared use of the general railroad system of transportation by light rail and conventional rail equipment, shared use of railroad rights of way by light rail and conventional rail equipment, and the nature of the waiver process involving shared-use operations. Several commenters applauded the agencies' efforts to clarify how FRA and FTA will exercise their respective authorities and provide guidance on how to use FRA's waiver process in this context. Many commenters had suggestions on how FRA could improve its expression of its policy, and a few simply opposed FRA's exercise of its jurisdiction, whether generally over light rail operations on the general system or specifically over their own operation. The major themes that emerged from FRA's review of the comments are as follows:

- FRA's proposed definitional distinction between "commuter railroad" and "rapid transit," which involves determining the primary purpose of the operation and whether a substantial portion of the operation is devoted to moving people within a city's boundaries, is viewed by some commenters as improperly based in FRA's statutory authority or too vague.

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• FRA should establish an administrative process to resolve jurisdictional questions, especially those involving light rail projects still in the planning stages.

• The "proposed restrictions" (apparently some commenters did not realize that FRA's rules already apply to these operations) on shared use of the same trackage by light rail and conventional rail equipment are unjustified because of added compliance costs and the possible discouraging effect on the development and expansion of light rail transit service. Certain commenters asked FRA to emulate what they understand as the European approach and permit simultaneous joint use of the same trackage by light rail and freight trains.

• The shared-use waiver petition process is too burdensome to transit system operators.

• FRA needs to explain its regulatory role in cases of a light rail transit operation sharing a right-of-way but no trackage with a conventional railroad.

FRA Jurisdiction

General Issues

Several commenters, including the Maryland Transit Administration (MTA) and the New Starts Working Group (NSWG),[1] question the way in which FRA stated the extent of its jurisdiction over light rail operations in the proposed policy statement. MTA concludes that, under 49 U.S.C. 20101, FRA's jurisdictional authority must be based upon the nature of the operational connection between two systems, and that FRA's jurisdictional authority does not derive from a mere connection of a rapid transit operation to the general system. In response, FRA notes that the statute excludes only rapid transit systems "not connected to" the general system and does not elaborate on the characteristics of a sufficient connection, which could reasonably lead to the conclusion that any connection (even a "mere" one) will suffice. Nevertheless, as its proposed policy makes clear, FRA takes into account the nature of the connection in determining where to exercise its jurisdiction, and generally construes "connected to" as meaning that a rapid transit system is operated as a part of, or over the lines of, the general system. Of course, the general system may include tracks owned by the rapid transit system over which conventional passenger or freight trains operate.

The NSWG notes that its suggested changes to the policy statement do not "offer a different view of FRA's jurisdiction than the one FRA itself offers." Instead, NSWG takes issue with particular aspects of how FRA has expressed its jurisdictional reach. NSWG contests FRA's suggestion that "urban rapid transit" is an exception to or special category of "commuter and other short-haul railroad passenger operations" instead of a completely separate category over which FRA lacks jurisdiction. The commenter does not wish to see the final policy statement imply a presumption that a rail operation is automatically a commuter or short-haul operation under FRA's jurisdiction unless it is an exceptional and special type of short-haul operation. FRA appreciates NSWG's close reading of 49 U.S.C. 20102, but believes that reading would not produce jurisdictional conclusions different from those rendered under FRA's reading. Whether "rapid transit operations in an urban area" are a type of "short-haul railroad passenger service" or a separate subset of the larger group of "railroads," the statute excludes only one category of rapid transit operations, i.e., those that are "in an urban area" and not connected to the general system. Under either reading, a rail operation is presumptively covered by the statute unless the conditions of the exception apply.

The NSWG also requests that FRA correct some statements in the policy statement that NSWG believes blur the distinction between questions of jurisdiction and questions of the agency's discretionary enforcement. For example, under the section describing FRA's policy on the exercise of its safety jurisdiction, FRA states on page 59049 that it "currently exercises jurisdiction over all railroad passenger operations in the nation except: (1) Urban rapid transit operations not operated on or over the general railroad system; . . . ." The NSWG requests deletion of this statement from a discussion of the *exercise* of FRA's jurisdiction because FRA does not have statutory jurisdiction to regulate urban rapid transit operations not operated on or over the general railroad system. In addition, the NSWG objects to FRA's statement on page 59050 that "it considers some connections to the general system to be insufficient to warrant *exercise* of its jurisdiction over a transit operation." (Emphasis added.) The NSWG finds this statement to be misleading, arguing that some rapid transit connections to the general system are so incidental and insufficient that FRA legally does not even "have" the jurisdiction over the rapid transit system that FRA says it is choosing not to "exercise."

In response, FRA notes that its final statement of agency policy concerning jurisdiction included in Appendix A to part 209 of the CFR, as amended by this notice, is perfectly clear as to where FRA believes it lacks jurisdiction. Nothing FRA has said suggests that FRA could exercise jurisdiction it does not have. Moreover, it is correct in literal terms to say that FRA does not exercise jurisdiction where it either lacks jurisdiction or chooses not to exercise it, and it is sometimes useful in certain contexts to combine those two categories to give the reader a clear picture of what FRA believes is outside of both the extent and exercise of its jurisdiction. For example, most of FRA's rules contain an applicability section that, among other things, excludes urban rapid transit systems not connected to the general system, but also contain the statutory definition of "railroad" that removes such operations from its jurisdiction. *See, e.g.,* 49 CFR 240.3 and 240.7. Based on NSWG's comment, however, we have taken pains in this document to distinguish the existence of jurisdiction from its exercise.

Definitions of Commuter Railroad and Rapid Transit

As FRA acknowledged in its proposal, the statutory definition of "railroad" uses the terms "commuter or other short-haul railroad passenger service" and "rapid transit operations in an urban area" without providing a definition of either type of service. For a transit system planning to build a new operation that will *not* be connected to the general railroad system, resolution of the question of whether the service will be labeled as commuter or rapid transit service is crucial.[2] Several commenters objected to FRA's definitions of commuter service and rapid transit in an urban area, and some suggested that FRA's definitions did not include certain factors they considered vital. However, except for one commenter that offered a definition of "rapid transit," none of the commenters actually recommended specific alternative definitions.

The Southeastern Pennsylvania Transportation Authority (SEPTA) contends that FRA's definition of "commuter railroad" is arbitrary and

[1] NSWG indicates in its comments that it is a coalition of nearly 40 transit properties, cities, and private sector companies committed to the continued growth of rail transit in the United States.

[2] If the operation is a commuter railroad, FRA has jurisdiction even if there is no connection to any other railroad, and in fact considers the operation itself to be part of the general railroad system.

generic, and bears little or no relation to the underlying safety and policy concerns embodied in the statute. SEPTA expressed concern that under what it considers FRA's sweeping and somewhat vague definition of commuter service, the overwhelming majority of transit operations of all types operated by SEPTA (bus, trolley, streetcar, and rapid transit) could be viewed as possessing commuter characteristics. SEPTA stressed that discerning jurisdiction from whether a transit system's primary purpose is transporting commuters to and from work within a metropolitan area ignores not only various unrelated characteristics of the service, such as type of equipment and frequency of service, but also historical and widely held notions regarding the limited scope of Federal regulation of transit operations. In response, FRA notes that its proposed definitions were designed to give life to the sparse statutory language with a very keen sense of Congress' concerns. As explained at length in the proposed statement and as is clear from the statutory language, Congress specifically intended that FRA not make jurisdictional determinations based on the type of rail equipment being used but rather on the nature of the operation.

The Port Authority of New York & New Jersey (PATH) commented that FRA is ignoring the plain meaning of words when it states on page 59049 of the proposal that "it is the nature and location of the [rapid transit] operation, not the nature of the equipment, that determines whether FRA has jurisdiction under the safety statutes." In this regard, PATH argues that FRA is creating an arbitrary distinction between "commuter railroads" and "rapid transit operations" by looking to the primary purpose of each type of service. PATH believes that since commuter railroads and rapid transit operations both transport people, the distinction between a "commuter railroad" transporting commuters to and from work within a metropolitan area and a "rapid transit operation" moving people from point to point within an urban area has no relevance to the determination of jurisdiction under the Federal railroad safety laws. Even assuming that the basis for the distinction is legally correct, PATH is concerned that FRA's decision as to what constitutes a "substantial portion" of an operation will be made in an arbitrary manner.

In response, FRA again notes that it believes that Congress intended that the type of equipment used in a rail operation not be a jurisdictional factor, and that the word "railroad" be read to include "any form of nonhighway ground transportation that runs on rails or electromagnetic guideways." 49 U.S.C. 20102. That statute speaks of commuter "service" and rapid transit "operations," not the equipment used in either service. Given the vast range of rail passenger equipment already in use in this country and available from suppliers around the world, basing jurisdictional decisions on the type of equipment is an impossible task. There is simply no rational basis for drawing clear jurisdictional lines between types of equipment or for thinking that Congress intended FRA to do so. More important, if equipment were the deciding factor, the equipment outside of FRA's jurisdiction could run anywhere at any time, including mixed in with conventional freight and passenger operations without regard to the attendant safety risks of collisions between equipment of vastly different structural strengths, and yet avoid FRA's regulatory program. There is no evidence of such an intent in the statute.

PATH also cites in its comments to the Transportation Research Board's (TRB) definition of rapid transit. TRB defines a rapid transit system as:

> A transit system that generally serves one urban area, using high speed, electrically powered passenger rail cars operating in trains in exclusive rights-of-way without grade crossings (Chicago is an exception) and with high platforms. The tracks may be in underground tunnels, on elevated structures, in open cuts, at surface level, or any combination thereof. Some local terms use for rail rapid transit are the elevated, the metro, the metropolitan railway, the rapid, the subway, the underground.

PATH did not provide a citation to the TRB document in which this definition appears. FRA notes that the definition begins in a circular fashion by defining rapid transit as a "transit system" without explaining what makes a system "transit." Arguably, then, this definition merely describes the typical physical characteristics of a rail transit system without addressing what operational characteristics make it transit. The definition states that such systems generally operate in an urban area in "exclusive rights-of-way without grade crossings." That is certainly true with regard to most systems FRA considers to be urban rapid transit. However, if FRA adopted this definition, the vast majority of the light rail systems (including those in operation in San Diego, Baltimore, and Salt Lake City) would be outside the definition of urban rapid transit (and, therefore, outside the sole statutory exception) so that even their street railway portions outside of the area of shared use would not be considered "rapid transit." None of these light rail systems operates in an exclusive right-of-way, and they all have grade crossings. FRA's rationale for not exercising jurisdiction over their non-shared-use segments is that these are, at least in some cases, rapid transit systems that would be outside of FRA's jurisdiction but for their operation over the general system, and that the portions where use is not shared can be effectively regulated under FTA's program. Adoption of PATH's preferred definition would point in the direction of FRA's assertion of jurisdiction over those entire systems rather than just their shared use portions. Moreover, the TRB definition provides no help with reading the phrase "commuter or other short-haul railroad passenger service" in the statute. Under TRB's definition, a system would be considered rapid transit based on its physical characteristics even if its exclusive business was hauling commuters. Of course, FRA believes that Congress has clearly directed the agency to assert jurisdiction over commuter operations.

While we appreciate PATH's being the only commenter to offer an alternative to FRA's definitions, we find PATH's suggestion inappropriate for use in this context. FRA has struggled to develop definitions of these terms that embody what we believe was the intent of Congress. We think that Congress flatly wanted FRA to have and exercise jurisdiction over all commuter operations and to not have or exercise jurisdiction over urban railroad transit operations that stand apart from the general rail system. We doubt that Congress considered how difficult it may be to draw the line where systems have characteristics of both types of operations. We have based our definitions, as best we could, on the plain meaning and legislative history of the statutory terms as used in the railroad safety statutes. Also, in a non-safety context, Congress has listed certain specific rail systems as commuter authorities in the Northeast Rail Service Act of 1981 ("NERSA"), Pub. L. No. 97–35, 45 U.S.C. 1104(3).[3] In subsequently defining "railroad" in the safety statutes, Congress clearly intended to include "commuter service." 49 U.S.C. 20102. We think the

[3] The statute provides that "commuter authority" includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, and the Port Authority Trans-Hudson Corporation.

1981 statute is a useful guide as to Congress' concept of commuter service, at least with regard to the listed systems. The same committees of the same Congress produced both NERSA in 1981 and the 1982 safety legislation and used very similar terminology to refer to commuter operations, and the legislative history of the 1982 safety amendments expressly acknowledges what was then the recent transition of some commuter service to new commuter authorities, which NERSA had authorized. We see no reason to conclude that Congress intended that the particular systems it identified as commuter operations in 1981 be considered anything but commuter operations under the safety statutes. Therefore, we have amended our definition of commuter operations to include, at a minimum, the systems Congress listed in 1981. Of course, we recognize that the listed authorities could undertake new operations that differ substantially from those existing at the time of NERSA, and that the statute would not provide guidance with respect to such new and different operations.

We are also revising the definitions of "commuter railroad" and "urban rapid transit" to remove as a consideration whether "a substantial portion" of a system's operations is devoted to moving people from station to station within a city, and to focus instead on whether such service is a "primary function" of the system or "an incidental function" of its service. The "substantial portion" language suggested that there could be some numerical threshold of intra-urban service that could provide a bright line. Unfortunately, FRA is not aware of any such quantitative bright line, and must instead focus in a more qualitative way on how a system functions and whether such intra-urban service is truly a primary or incidental function of a system.

Although none of the commenters offered an effective alternative to the definitions we had proposed, they did give us several factors to consider and articulated a strong desire for greater clarity on the commuter/rapid transit distinctions. Toward that end, we have refined the definitions of those terms by noting which types of service are presumptively commuter or rapid transit and what criteria to apply in determining the proper characterization of a system that falls outside of the presumptions. Under the final policy, FRA's jurisdictional determinations will begin with two basic presumptions. First, if there is a statutory determination (such as NERSA) that Congress considers a particular service to be commuter rail, FRA will respect that determination and consider the service to be a commuter railroad. Second, a system to which the first presumption does not apply will be presumed to be an urban rapid transit system if it is a subway or elevated operation with its own track system on which no other railroad may operate, has no highway-rail crossings at grade, operates within an urban area, and moves passengers within the urban area as one of its major functions.

Where neither of the two presumptions applies, FRA will look at each system on a case-by-case basis and apply the following criteria:

Indicators of urban rapid transit:

- Serves an urban area and may also serve its suburbs.
- Moving passengers from station to station within the urban boundaries is a major function of the system and there are multiple station stops within the city for that purpose.
- The system provides frequent train service even outside the morning and evening peak periods.

Indicators of a commuter railroad:

- Serves an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area.
- The system's primary function is moving passengers back and forth between their places of employment in the city and their homes within the greater metropolitan area, and moving passengers from station to station within the immediate urban area is, at most, an incidental function.
- The vast bulk of the system's trains are operated in the morning and evening peak periods with few trains at other hours.

As several commenters recommended, this more refined analysis looks at factors such as the system's geographical reach within a metropolitan area and the frequency of service. The presumptions also resolve many issues without the need for further analysis.

Process for Resolving Jurisdictional Questions

Several commenters suggested that, in addition to setting forth meaningful criteria for determining the scope of its jurisdiction over light rail in shared corridors, the policy statement should also describe what administrative options are available within FRA for resolving jurisdictional questions. The American Public Transportation Association (APTA) urged FRA to adopt a pre-waiver review process to discuss FRA's jurisdiction. Consistent with APTA, the NSWG suggested that FRA establish an informal process for transit systems to secure jurisdictional determinations without submitting to FRA jurisdiction. The NSWG stated that FRA could offer transit systems the option to use a bifurcated approach for the submission of waiver petitions. In part one, the transit system could offer facts and legal arguments sufficient to permit FRA to render a threshold jurisdictional determination, and in part two (assuming that FRA has jurisdiction) the transit system would submit its comprehensive waiver petition.

In response to these comments, FRA stresses that it is always willing to meet with transit agency officials at the earliest stages of a project to determine if the proposed operation would be subject to FRA jurisdiction, and welcomes the opportunity to periodically consult with these individuals throughout the entire planning and implementation of a project under our jurisdiction. FRA recognizes that the equipment choices and right-of-way alignment options are complex issues, the resolution of which may be aided if a transit agency receives early guidance from the agency concerning FRA jurisdiction. Accordingly, FRA has amended its policy to include an informal method for obtaining jurisdictional determinations from FRA early in the process before preparation of a waiver application. The mere submission of a request for FRA's views on whether it has jurisdiction over an entity would not constitute submission to FRA's jurisdiction or acquiescence in FRA's eventual determination. Of course, FRA would have to base such determinations on the facts presented to it, and any significant changes in the system after its determination could require revisiting that ruling.

Jurisdiction Over Particular Operations

Four commenters directed their comments to the issue of whether FRA has statutory jurisdiction over their particular rail operations.

MTA considers the proposal to be an unwarranted and improper exercise of FRA's jurisdiction as it relates to MTA's light rail system. MTA states that it will use every available safety measure to ensure the safety of its system, and will proceed with its dialogue with FRA, but continues to believe that FRA's attempt to exercise jurisdiction over its light rail system is inappropriate under existing law. MTA argues that it is not the mere connection to the general system through which FRA's jurisdictional

authority flows, but rather the nature of the operational connection between two systems. In this regard, MTA believes that the minimal intrusion caused by the operation of one freight train every other night on its central light rail line does not abrogate the statutory exclusion for rail rapid transit systems set forth in 49 U.S.C. 20101.

PATH indicates in its comments that it is concerned with only the issue of jurisdiction, and not with the policy statement's discussion of shared facilities, since the PATH system does not share track with any other operator. PATH stresses that since, in its view, it shares virtually no common characteristics with the Long Island Railroad, MARC, or VRE, it should not be included by FRA as an example of a "commuter railroad." PATH concludes that, when applied to its operation, FRA's proposed definition of a transit system as an operation that devotes a substantial portion of its operations to moving people from point to point within an urban area would clearly result in the classification of PATH as a rapid transit system. At the same time, PATH argues that FRA has no reasonable basis for looking at the characteristics of the passengers who ride PATH rather than the characteristics of the equipment to determine if it has jurisdiction. PATH's comments do not mention that a federal appellate court ruled that FRA had not abused its discretion when, in 1996, it determined that PATH is a railroad within its jurisdiction. *Port Authority Trans-Hudson Corp.* v. *Federal Railroad Administration.*, No. 97–1103 (D.C. Cir., Dec. 15, 1997), *cert. denied,* 525 U.S. 818 (1998).

The Port Authority Transit Corporation (PATCO) in Philadelphia, Pennsylvania states that because it is an intra-urban mass transit system not connected to the general railroad system, it is subject only to FTA's authority. Since PATCO is regulated by FTA, and the respective jurisdictions of FTA and FRA are mutually exclusive, PATCO requests that the final joint policy statement make clear that it is not subject to FRA's regulations.

SEPTA devotes much of its comments to arguing that its planned passenger operation between Philadelphia and Reading, Pennsylvania, a distance of 62 miles, should not be subject to FRA's jurisdiction. One alternative being considered for that line is a light rail operation sharing a corridor with a freight line. SEPTA contends that, despite being primarily a commuter line, this operation would be outside of FRA's jurisdiction because it would serve other transit needs, have separate trackage in the freight corridor, and use light rail equipment.

While FRA is including a summary in this document of each operation's assertions for public informational purposes, this policy statement is not the appropriate vehicle for resolving the jurisdictional issues involving the peculiar facts of particular operations. Instead, FRA has addressed or will address each operation's concerns in the course of separate meetings and/or written correspondence.

Effect of FRA Jurisdiction on the Applicability of Other Railroad Laws

Two commenters, APTA and the NSWG, requested that FRA add language to the policy statement to clarify that if a rail operation is subject to FRA jurisdiction for rail safety purposes, it does not necessarily mean that the operation is also covered by other Federal railroad statutes such as the Federal Employers' Liability Act, the Railway Labor Act, and the Railroad Retirement Act. Likewise, the commenters argue that being within the scope of those other railroad laws should have no relevance to FRA in determining whether a railroad system is deemed a railroad for rail safety purposes. FRA agrees with the points made. These other Federal statutes have their own definitions, purposes, and legislative histories. FRA does not consult them in making jurisdictional determinations under the safety statutes. Moreover, FRA does not intend that its jurisdictional determinations have any bearing on whether a rail operation is a "railroad" for purposes of those other statutes. While there are some specific links in the safety statutes to some of those other laws (e.g., the rail safety statutes incorporate the dispute resolution process of the Railway Labor Act for handling certain disputes related to safety-based discrimination against employees, 49 U.S.C 20109(c), and the Federal Employers' Liability Act contains a provision precluding a finding of contributory negligence against any employee where the railroad's violation of any safety statute contributed to the employee's injury or death, 45 U.S.C. 53, we do not believe that those links indicate a Congressional intent that FRA's safety jurisdiction would be affected by the reach of those statutes.

Shared Use and Temporal Separation.

Simultaneous Joint Use Of Track by Light Rail and Conventional Equipment

In the discussion of "Waiver Petitions Concerning Shared Use of the General System by Light Rail and Other Railroads," in which FRA explained the general factors that should be addressed in a Petition for Approval of Shared Use, FRA indicated that light rail operators intending to share trackage on the general railroad system with conventional rail equipment must either comply with FRA's safety rules or obtain a waiver of appropriate rules. 64 FR at 59050. FRA explained that a collision between an occupied light rail transit vehicle and conventional freight or passenger equipment would have catastrophic consequences because the light rail vehicles are not designed to withstand such a collision. 64 FR 59049. FRA stated that the surest way to ensure that such collisions do not occur is to strictly segregate light rail and conventional operations by time of day, and that the agency is likely to grant waivers of many of its rules where complete temporal separation between the incompatible equipment is demonstrated. 64 FR 59055. Some commenters welcomed FRA's preference for temporal separation, while others saw it as too restrictive and not sufficiently open to the possibility that light rail and conventional equipment can operate safely and simultaneously on the same track.

Among the comments received, APTA stressed that the final policy statement should reflect the principles of promoting more livable communities and taking advantage of underutilized freight corridors to provide service that would otherwise be too expensive, and noted that the expansion of rail passenger transportation would benefit America's communities in terms of reduced highway congestion, reduced pollution, short commuting times, and increased economic opportunities. APTA requested that the shared-use waiver process be flexible, expeditious, and recognize already existing state safety oversight procedures in order to permit local authorities the maximum flexibility in designing, building, and operating new light rail systems.

APTA believes that a broad approach examining relative risk is vital to developing an appropriate long-term policy promoting light rail. In addition to assessing the safety impact of diverting traffic to highways, FRA and FTA should explore European system safety techniques which permit operation of differing equipment designs on the same track based on crash avoidance philosophies (e.g., advanced train control systems). FRA should be open to new approaches for shared-use operations, e.g., fail safe separation, train orders and track warrants, positive train control, and operating practices and technological

improvements that may warrant waivers from certain rules after sufficient risk analysis.

Various members of the Committee for Better Transit, Inc. (CBTI) commented that FRA did not justify the need to restrict shared use of the same track by freight and light rail service, and concluded that added compliance costs will prevent the expansion of rail transit systems. The commenters urged adoption of more flexible European-style requirements involving positive train separation between light rail/rapid transit and conventional freight/passenger trains operating on the same trackage. CBTI also urged FRA and FTA to consider operational factors such as speed and traffic volume. With the exception of traffic on the Northeast Corridor, a full mixing of conventional railroad and light rail traffic should occur with the use of proper train control methods (e.g., positive train stop and speed control). CBTI also contended that FRA is proposing to adopt a double standard, since automobiles, taxicabs, and school buses currently share the road with heavy trucks that may be transporting hazardous materials.

The City of Santa Clarita, California requested that FRA permit shared use of rail lines by freight and passenger vehicles during the same time of day, noting that to do otherwise would hinder the potential development of electric and diesel light rail lines in urban and rural areas. The commenter also noted that although light rail vehicles in European countries simultaneously share trackage with heavy trains, no injuries or deaths have occurred.

The Joint Policy Advisory Committee on Transportation (JPACT) stated that the imposition of total temporal separation as a condition for granting a waiver is too restrictive and costly, and recommended considering factors such as positive train separation, safety standards, signal system quality, dispatch procedures and coordination, train speeds, and overall line usage. JPACT also recommended that FRA work with FTA and APTA to study transit systems in Europe that operate on the same trackage as freight without absolute temporal separation.

The State of Delaware Department of Transportation (Delaware) expressed concern in its comments about the policy statement's de facto effect of discouraging increased shared use of tracks for light rail transit systems and stressed the need to avoid hampering implementation of light rail projects. Although waivers are an option, Delaware contends that FRA provides no insight into what types of alternative measures would be acceptable in lieu of complete temporal separation of light rail service from freight traffic. In this regard, the commenter stated that advances in train car designs can increase the crashworthiness of light rail vehicles, and that positive train stop technology can help avoid collisions. Delaware also noted concern about the steep evidentiary burden facing a petitioner that seeks a waiver.

Mr. Gordon J. Thompson, an urban transportation planner and consultant, believes that issuance of the policy as proposed would be an insult to the American transit industry and to state transportation regulatory agencies. He contends that the proposal could stymie electric rail transit development at a time when the need to encourage the use of public transportation is a growing concern. The policy could make capital and operating costs higher than necessary to implement and operate new rail transit systems, at a time when transit improvement funds remain scarce.

In its comments, SEPTA stressed that a shared-use option with freight railroad carriers is fundamental to developing a cost effective and environmentally sound solution to mobility challenges. The commenter states that temporal separation should not be viewed as the only option, and FRA should allow separation that employs a combination of track switches, interlocking signals, advanced control technology, and other technical safeguards. In this regard, SEPTA notes that the proposed policy statement discusses physical safety standards for different vehicle types and safety considerations with respect to different operating strategies, yet cites no standards for measuring the safe execution of various operating strategies in delivering transportation services. The phrase "the safety typical of conventional rail passenger operations" lacks a definition of what it means or how it should be measured.

The North Central Texas Council of Governments expressed support and approval of the shared use policy for light rail transit operating on conventional railroad tracks. The commenter believes that the proposed policies concerning passenger and rail employee safety, coordinated operations of track infrastructure, and temporal separation are well reasoned and will allow for the development of new transit opportunities in abandoned or lesser used rail corridors.

The North (San Diego) County Transit District (NCTD) believes that temporal separation provides a level of safety for train crews and the public that can permit optimal use of the infrastructure, but acknowledges that this approach must be supported by a detailed operating plan with appropriate procedures to ensure that no concurrent track usage occurs. NCTD strongly endorses the concept of guidance for the shared use of the general railroad system by conventional and light rail operations, and agrees with FRA and FTA that the primary purpose of the guidance should be the coordination of safety programs.

New Jersey Transit (NJT) urged FRA to exercise its jurisdiction over those elements of shared trackage used by conventional rail operations (e.g., track, signals, grade crossing warning devices, dispatching), but not over light rail operating practices or light rail car design standards. In this regard, NJT believes that time separation, operating practices (including the unambiguous transition from one service to another), and safety technologies should provide FRA with adequate assurances of the safety of light rail operations on the general system. NJT requests that the final policy statement state that there would be no requirement to file a waiver petition when light rail cars operate on the general system provided that the transit agency can demonstrate that adequate safety measures are in place to eliminate the risks presented by shared use. Moreover, the commenter recommended that the final policy statement specifically provide that once a transit agency demonstrates that there will be temporal separation through a safe operating plan and appropriate technology, and indicates that the light rail operations will be subject to an FTA-approved State Safety Oversight Program, FRA would not exercise jurisdiction.

In support of its contention that FRA should not require the filing of waivers for light rail equipment used in a temporally-separated operation, NJT indicates that it would be burdensome and inappropriate to expect the transit agency to explain how it will provide for an equivalent level of safety. Completion of a detailed waiver application would be particularly burdensome to a small project, especially if the interaction between heavy and light rail is minimal or nonexistent.

Finally, NJT urges FRA to study whether shared use operations can be permitted without temporal separation. In this regard, the commenter states that the proposed policy statement is concerned with crashworthiness, but fails to give equal consideration to crash avoidance technology (e.g., derails, signaling systems, and dispatching).

FRA has carefully considered all of the comments. However, many of them are based on what FRA believes are two critical misunderstandings, i.e., the view that FRA's policy will somehow impose new compliance burdens, and the notion that FRA has ruled out simultaneous use of track by light rail and conventional equipment under all circumstances.

Several commenters seem not to understand that FRA's policy statement imposes no new burdens, but rather suggests how relief from existing regulatory burdens might be obtained by waiver. Wholly independent of this policy, FRA's rules apply to these systems today and would continue to apply whether or not FRA issued a statement of policy on shared use. If waivers are not obtained, those rules apply as they are written. For example, FRA's passenger safety standards (49 CFR part 238) alone would preclude all light rail operations on the general system, since light rail vehicles do not meet the structural and other standards found in that rule. (Of course, the rule has a grandfathering provision that, under certain conditions, makes one basic structural requirement inapplicable to certain equipment already in use in 1999.) Therefore, it is very much in the commenters' interest for FRA to provide guidance on how its waiver process will work in this context and how best to address the issues of concern to FRA. Although the waiver process will entail some cost to the light rail operation, that cost is occasioned by FRA's existing waiver rules (49 CFR part 211) rather than this statement, and the alternative is the full cost of compliance with existing substantive rules.

Various commenters who oppose the concept of temporal separation contend that FRA fails to recognize the sophisticated operational and technological safeguards that can eliminate the risks associated with shared use of the general railroad system, particularly for operations involving simultaneous joint use. These commenters generally maintain that FRA is preoccupied with crashworthiness of the vehicles and not sufficiently focused on crash avoidance.

In response, FRA points out that temporal separation is actually a crash avoidance measure, and the one most likely to prove fully successful. FRA's discussion of the disparate crashworthiness features of light rail and conventional equipment was intended to highlight the likely severity of a collision between those types of vehicles. Because safety risk is a function of the likely severity of an accident and the likelihood of its occurrence, the greater the predictable severity the more interested FRA is in reducing the likelihood of the occurrence. FRA has made clear that it has not ruled out the possibility that methods of collision avoidance such as sophisticated train control systems may provide an acceptable level of safety. 64 FR 59055. However, FRA has stated that a petitioner seeking to use these types of equipment on the same track at the same time will face a steep burden in demonstrating that the likelihood of such a catastrophic accident is remote.

FRA would expect the waiver applicant to demonstrate that the risk of such an event is extremely remote by discussing the types of extraordinary safety measures that would be taken to adequately reduce the likelihood of a catastrophic collision between the two types of equipment to an acceptable level. The waiver application would also need to include a quantitative risk assessment concerning the risk of a collision under the applicant's proposed operating scenario and an engineering analysis of the light rail equipment's resistance to damage in various collision scenarios. 64 FR 59051. FRA recognizes that a 100 percent risk reduction cannot be assigned to any individual risk countermeasure, and that there are risks associated with the adoption of any new technology.[4] However, because simultaneous joint use of trackage by structurally incompatible equipment inherently involves significant risk of severe consequences, FRA believes it is simply being reasonable to insist that the proponent of such an operation meet a steep burden of demonstrating a corresponding risk reduction through the use of highly competent methods of collision avoidance.

European Experience With Simultaneous Joint Use of the Same Trackage

As discussed above, many of the commenters urge FRA to study the success of mixed operations in parts of Europe, where passenger and freight vehicles of different strengths operate on the same track at the same time. The commenters stress that joint use of tracks by transit and standard railroad vehicles has proved to be an important innovation in Europe that should be permitted here.

In response, FRA observes that the agency is very familiar with the European systems. FRA has studied European high speed passenger systems in detail for many years, and more recently has directly observed the mixed use operations in places such as Karlsruhe, Germany. If some of those systems were replicated in the United States in every detail, FRA would very likely approve them by rule or waiver. However, FRA is not aware of any current or proposed light rail system in the United States that is fully comparable to the European systems the commenters offer as a model.

The successful European experience with mixed light rail and freight traffic is best exemplified by the system in Karlsruhe, Germany. FRA and FTA officials (including FRA safety experts) have personally observed that operation twice in the last several months, most recently as part of a joint visit in April 2000. In Karlsruhe, the light rail system shares some trackage with freight and intercity passenger trains, and the different operations are not segregated by time of day. However, unlike many candidate lines for new light rail starts in the United States, the predominant traffic in Karlsruhe is scheduled passenger trains, rather than a mix of local and through freight trains. More important, the Karlsruhe system involves certain features critical to its safety: all trains that operate in the shared use portions must be equipped with automatic train control; the light rail vehicles have very high braking capacities (as compared to light rail vehicles used in the United States); all trains use a common communications system that permits radio communication with the control center and all types of other trains; all trains operate under the same operating rules; train crews are part of an integrated work force that is trained to operate all types of vehicles in use on the line and in fact operates different vehicles during the average work week; all dispatching is done centrally for all trains; all train crews are limited to less than 40 hours of work per week; the different types of rail equipment that operate in the shared use area differ less in mass and structural strength than do conventional and light rail vehicles in the United States; and grade crossings, which are not as common as in the United States, are protected by four-quadrant gates.

The combination of all of these features has produced what appears to be a very safe, integrated system in Karlsruhe. The commenters who advocate that system as a model for shared, simultaneous use of track in this country imply that FRA is unwilling to permit such innovation here. That is not correct. Instead, FRA is unwilling to permit simultaneous use of track that

[4] These points are made in a report to FRA from its Railroad Safety Advisory Committee. *See* page 47 of "Report of the Railroad Safety Advisory Committee to the Federal Railroad Administrator—Implementation of Positive Train Control Systems," dated September 8, 1999.

does not entail the full complement of Karlsruhe's most important safety features or comparable protections. Automatic train control, for example, entails a significant investment in infrastructure, both in the right-of-way and on board each train. While many light rail systems may have comparable train control technology, FRA has not seen a proposal to equip all trains (freight, passenger, and light rail) with this technology in the shared use area. Yet there is no reason to believe that the Karlsruhe system would exist without it. Nor is FRA aware of any proposal that involves an integrated workforce operating all the trains, with all crews working less than 40 hours per week. The idea of a freight railroad and a light rail operation using exactly the same operating rules has not commonly been a feature of proposed shared use operations in this country.

FRA admires the integrated rail system in Karlsruhe, which has begun to be replicated elsewhere in Europe. However, we ask that anyone who invokes that system as a model be fully cognizant of its traffic mix and basic safety features and what it would take to replicate them on America's freight lines. Corporate structures, labor agreements, and differing railroad and transit cultures make some of these features extremely hard to replicate in this country. We think that the future of simultaneous joint use in this country will likely depend on safety innovations specifically crafted for the rail network we have, such as positive train control systems that are being tested in various locations, and the development of light rail vehicles that are compliant with FRA's passenger equipment standards. However, we are open to consideration of any reasonable proposal.

Minor Connections to the General Railroad System

The AAR expressed concern about FRA's exercise of jurisdiction in cases where the only connection between the rail transit system and the conventional railroad is an at-grade crossing. The AAR believes that FRA should impose no restrictions on these operations, and that both should be permitted to operate during the same time of day. In addition, the commenter contends that complying with restrictions would be prohibitively expensive and compromise service to freight customers.

As FRA stated in its proposal on page 59058, when a rapid transit operation and a general system railroad have a railroad crossing at grade, "FRA will exercise its jurisdiction sufficiently to assure safe operations over the at-grade crossing." Since the existence of a crossing represents a sufficient commingling of the rapid transit and general system operations to pose potentially significant safety hazards to one or both operations, FRA must reject the AAR's request that FRA decline to exercise its safety jurisdiction over this type of connection. In fact, because all of FRA's rules apply to all portions of the general system railroad, they apply to particular locations where the conventional railroad has a crossing with a light rail line. For example, the track and any signal devices at those locations must be maintained in accordance with FRA's rules. However, FRA notes that its rules apply only with respect to the general system portion of the rapid transit system's operation; if the non-general system portion of the rapid transit line is considered a "rail fixed guideway system" under 49 CFR part 659, FTA's rules apply to that portion.

AAR's comment points out the need for FRA to clarify when and how it will exercise jurisdiction over these railroad crossings at grade. In brief, FRA will work to ensure proper coordination of movements at these locations. FRA expects the general system railroad to comply with all applicable safety rules at that location, such as 49 CFR part 236 where the crossing is protected by a signal system. If FRA detects a safety problem at such a point that strict adherence to FRA rules on the part of the conventional railroad will not address, FRA will work with the conventional railroad and rapid transit line to develop a solution. As explained more fully in the statement of policy below, FRA does not expect to receive comprehensive Petitions for Approval of Shared Use concerning isolated conventional/light rail crossings that constitute the only connection a rapid transit system has to the general system. FRA does not consider those isolated connections to the general system as constituting shared use of general system trackage. However, given the fact that the crossing does constitute a connection to the general system that poses some risk to safety, FRA does expect to receive a brief waiver petition from the rail transit operator seeking relief from all of FRA's rules based on the safety protections in place at the crossing. On the other hand, where a light rail line crosses one or more conventional lines at grade and also shares trackage with one or more of those railroads, FRA will expect the Petition for Approval of Shared Use to explain how the light rail operation's systems safety plan addresses safety at the railroad crossings. In those situations, FRA will continue to look primarily to the conventional railroad for compliance with all applicable rules, but may use the waiver process to address any additional safety issues presented by the crossings.

Definitions

The Central Puget Sound Regional Transit Authority (Sound Transit) recommends that FRA clarify its definitions of the terms "shared use" and "shared track." Sound Transit urges FRA to define "shared track" to mean cases where rail modes of differing vehicle strengths do, or intend to, operate on the same track, and would require strict temporal separation to receive FRA waivers. Sound Transit suggests that FRA define "shared use" to mean facilities that rail modes of differing vehicle strengths may use or share during the same operating hours, but whose nature precludes the simultaneous use or occupancy of those facilities; an example would be a crossing for freight and light rail. In cases of "shared use," Sound Transit contends that temporal separation would not be needed, provided that there is compliance with existing FRA regulations.

In response to Sound Transit's comments, we don't believe that "shared use" and "shared track" are sufficiently distinguishable to provide added clarity. However, in an attempt to enhance clarity, FRA is revising the final policy statement to explain that "shared use of track" refers to situations where light rail transit operators conduct their operations over the lines of the general system, and includes light rail operations that are wholly separated in time (temporally separated) from conventional rail operations as well as light rail operations operating on the same trackage at the same time as conventional rail equipment (simultaneous joint use). As discussed above, in instances where a rail transit system crosses a conventional railroad at grade, FRA's safety rules will cover this point of connection to the general system, but FRA will not categorize this crossing, in itself, as a case of two operations sharing use of the general system. Accordingly, when these two rail operations cross at grade, the same set of rules apply regardless of whether the light rail operation and the conventional rail operation operate during the same times of day.

Coordination Between FTA and FRA Concerning Their Respective Regulatory Roles

Several commenters expressed concern that if FRA requires transit agencies to actively work in partnership with FRA and the state regulatory agency to address safety problems, a transit agency could be required to coordinate various aspects of its operation with up to three different Federal and state agencies. In this regard, San Diego Trolley stated that imposing such a requirement would lead to unnecessary duplication of effort and varying interpretations of rules, regulations and procedures. The California Transit Association (California Transit) commented that since FRA's jurisdiction is interpreted very broadly, it is unclear how the potential overlap of FRA, FTA, and state safety oversight jurisdiction will be coordinated to avoid confusion and duplicative efforts. California Transit also stressed that since the state safety oversight program is already in place in California, it would be premature to consider expanding FRA's role in transit operations.

FRA recognizes that light rail systems that meet the definition of rapid transit and are planning to operate on the general system, particularly those with segments off the general system, will be required to interact with FRA, FTA, and state agencies. Were FRA to somehow choose not to exercise its jurisdiction even over the shared use portion of these operations (which would eventually require amendments to all of its rules that apply to the general system), these operators would still have to deal with FTA and the states. FRA has no intention of doing that, of course. On the other hand, were FRA to exercise jurisdiction over the non-shared-use portions of these rapid transit lines under theory that they are connected to the general system, there would be no need to deal with FTA and the states. FRA has no intention of doing that, either, as it has made clear in its proposed statement and the proposed FRA/FTA joint statement.

Accordingly, the light rail operator's need to deal with three governments is both a byproduct of FRA's decision not to exercise jurisdiction as far as it may possibly reach (i.e., to the non-shared-use portions of rapid transit lines connected to the general system) and a major reason for the issuance of the joint FRA/FTA policy statement. That is, one of the purposes of that statement is to explain how FRA and FTA intend to coordinate their respective authorities, and the state safety oversight agency's authority is a derivative of FTA's program.

As set forth in detail in this final policy statement, light rail operators intending to share use of the general railroad system with conventional rail equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. As FRA noted on page 59058 of its proposed policy statement, whenever FRA grants or denies a petition for a waiver of its safety rules, it will indicate whether its rules do not apply to any segments of the petitioning transit system's operation so that it is clear where FTA's rules on rail fixed guideway systems (49 CFR part 659) apply.

During the course of the waiver process, FRA will explain the transit system operator's compliance responsibilities for all segments of its operation and resolve ambiguities as to which agency's rules must be followed. With regard to FRA rules where no waiver is issued, there will be no potential for confusion: FRA will enforce and interpret its own rules. In the case of many of the regulations that FRA will likely waive, during its review of the waiver petition FRA will analyze information submitted by the petitioner to demonstrate that a particular safety matter is addressed in a state system safety plan and will be monitored by the state safety oversight program. Assuming FRA is satisfied that effective implementation of such a plan has occurred, FRA may conclude that adequate safety measures are in place to warrant waiver of certain FRA rules. The transit system operator would then be subject to the state safety oversight program in lieu of complying with these waived rules.

The prospect of FRA's continuing role even in those areas where it has granted a waiver seems to be the greatest concern of some commenters who fear duplicative regulation. However, all involved need to understand that FRA's issuance of a waiver does not constitute a relinquishment of its statutory jurisdiction. Whenever FRA grants a waiver to a railroad, FRA continues to regulate that railroad and merely applies the standard embodied in the waiver in place of the waived rule. A waiver may be withdrawn or modified if its conditions are violated. In the situations where FRA grants a waiver on the condition that the state safety oversight program will address the safety issue, FRA will defer to the state agency to the greatest degree possible, but will retain its jurisdiction. As to the regulations waived, this deference means that FRA's involvement will not entail regular inspection for adherence to the waiver conditions but will instead consist of periodic coordination with the state agency (perhaps including joint inspection) to ensure FRA is aware of any significant safety issues. FRA's involvement will vary with the degree of interface between the conventional and transit operations. Should any serious safety issues arise, especially issues likely to impact conventional operations, FRA would become more actively involved, working closely with the state oversight agency and FTA. The nature of this coordination with the state agency will vary somewhat depending on the working relationship FRA develops with each state agency. FTA will lend its good offices to promote that relationship. The greater FRA's confidence in the will and ability of the state agency to monitor the light rail operation with regard to the safety areas covered by waivers and keep FRA informed, the less FRA will need to become involved with those areas.

The FRA Waiver Process

FRA may grant a waiver of any rule or order only "if the waiver is in the public interest and consistent with railroad safety." 49 U.S.C. 20103(d). The waiver petitions are reviewed by FRA's Railroad Safety Board (Safety Board) under the regulatory provisions of 49 CFR part 211.

Each waiver petition is considered on its own merits, and the applicant is not limited as to format or content, provided that the minimum procedural requirements of 49 CFR part 211 are satisfied. The waiver process provides the applicant with wide latitude in discussing each of the specific safety issues involved in the specific shared use operation, and the opportunity to help shape the conditions that FRA will deem necessary to assure the safety of the operation. Since FRA's procedural rules only give a general description of what any waiver petition should contain (*see* 49 CFR 211.9), and are not specifically tailored to situations involving light rail operations over the general system, the proposed policy statement provided detailed suggestions and guidance as to what general factors each petition should seek to address (these factors also appear in the final policy statement).

Use of the Term "Waiver" and Alternatives to Waivers

APTA commented that its member organizations are concerned about the negative perception that the term "waiver" creates at the local level, and requests that FRA instead describe the waiver process as "authorized use" subject to FRA review and approval.

APTA stresses that the term "waiver" implies the violation of a rule, and carries an unnecessarily pejorative connotation.

While FRA is sensitive to problems of perception, the agency urges all concerned to help correct any misperceptions about the nature of a waiver. As noted above, FRA may grant a waiver only if doing so "is in the public interest and consistent with railroad safety." There is simply no reasonable basis on which to construe a waiver petition as a request from the petitioner for formal permission to flagrantly violate the requirements of a regulation, or to conclude that a transit system receiving a waiver will be less safe than a conventional railroad that operates in full compliance with FRA regulations. The publication of this policy statement and well constructed announcements by the petitioners of the granting of any waivers should help dispel any negative connotations that surround the use of the word "waiver" in some localities. FRA will continue to use the statutory term "waiver" to avoid any confusion as to the authority it is exercising. Of course, FRA has offered the suggestion that, where shared use of track is contemplated, the petition be called a "Petition for Approval of Shared Use." FRA devised this term to make these sorts of waiver petitions readily identifiable and to address the concerns of those who dislike the term "waiver."

Moreover, APTA hopes that eventually FRA will classify certain categories of equipment and operating practices as "accepted," rather than as "waivers" of its regulations, thereby eliminating the need for the filing of most individual waiver requests. APTA recommends that FRA then merely verify compliance with such accepted practices through review and inspection. In the alternative, APTA asks FRA to consider "class waivers" or a "presumptive waiver," or perhaps permit self certification.

In a similar vein, NJT requests that, rather than issuing a waiver, FRA decline to exercise jurisdiction over a temporally separated operation if the transit agency implements a safe operating plan, involving the use of appropriate technology, and indicates that the operation is subject to an FTA-approved state safety oversight program. NJT also recommends that FRA exempt transit agencies from even being required to file waiver petitions if they can demonstrate that adequate safety measures are in place to eliminate the safety risks posed by shared use operations.

Given FRA's statutory authority, which includes providing the public notice of, and opportunity to comment on, the requested waiver before it is granted, FRA cannot agree to eliminate the formal review of waiver petitions by the Safety Board and, instead, simply grant presumptive waivers to entire classes of light rail equipment and operations without the benefit of full proceedings. FRA's analysis of a waiver petition provides it with a detailed understanding of the overall level of safety of a proposed operation, including consideration of the unique operating conditions concerning each operation (e.g., frequency and speeds of all operations on the shared use trackage, equipment specifications that relate to the crash survivability of the light rail equipment). FRA does not believe that an informal self-certification by the light rail operator, subject only to FRA review *after* the fact, would comport with FRA's responsibilities under the law.

Similarly, NJT's suggestion that FRA simply not assert jurisdiction over whole categories of general system operations does not fit with FRA's concept of its safety role with regard to the general system operations or the text of FRA's existing rules. Consistent with the statutory definition of "railroad" at 49 U.S.C. 20102, FRA will exercise jurisdiction over any rapid transit system that operates as a part of, or over the lines of, the general railroad system of transportation, but only to the extent that it is connected to the general system, not over the entire transit system. Even where complete temporal separation exists, there are still safety issues (e.g., grade crossing safety and accident reporting) concerning the light rail operation that FRA can address only by exercising its jurisdiction. Moreover, since all of FRA's rules apply to operations on the general system, any categorical exemption of types of operations would require amendments to those rules.

Of course, petitioners interested in alternatives to the waiver process should be aware of two possibilities. First, to the extent that extremely similar light rail systems are developed, the waiver petition for one can provide a very helpful model for the later system. As patterns like this emerge, the waiver process can become much less burdensome than it may be when each new system is the first of its kind. Second, FRA could eventually amend its various rules to permit light rail operations on the general railroad system under certain specified general conditions (e.g., temporal separation as ensured by meeting particular standards, or even particular forms of simultaneous joint use that satisfy the need to all but eliminate the risk of a catastrophic collision) and to conform certain of its rules to standards more appropriate to the rapid transit environment. Such regulatory revision can take very long, and FRA's experience with these systems to date has not revealed patterns of similarities among active or proposed systems that would warrant new rules of general applicability. However, the day will likely arrive when such rule revisions are in order. When completed, the new rules would obviate the need for waiver petitions on the part of any operation that could comply with their terms.

Submission, Review, and Processing of the Waiver Petition

Some commenters expressed concern with the length of time required by FRA to review and resolve each waiver petition, and indicated that financial decisions involving the planning of a light rail project often cannot be made until FRA determines the types of conditions that would be necessary to permit granting of a waiver. FRA believes that encouraging applicants to submit petitions that comprehensively address each of the general factors set forth in the policy statement will lessen the likelihood that FRA will require supplemental information during its review of the petition. If a petitioner submits a petition that specifies exactly which rules are requested to be waived and explains precisely how a level of safety at least equal to that afforded by the FRA rule will be provided by alternative measures, FRA will be able to expedite the waiver process. FRA is also willing to meet with transit agency officials at an early stage in a project, and may grant conditional approval of waivers subject to future review of the system safety plan to determine readiness to commence operations.

As an additional means of streamlining the waiver process, FRA's policy statement includes a rule-by-rule discussion of factors of great interest to FRA in considering waiver requests concerning each rule. FRA is also including a detailed chart in the final policy statement that will assist operators of rail transit operations on the general system that are completely separated in time from conventional railroad operations, and that pose no atypical safety hazards. The chart lists each of FRA's railroad safety rules and states the likelihood of such light rail systems receiving waivers from compliance.

As FRA noted in the proposed policy statement (as well as elsewhere in this

final policy statement), most light rail operations planning to operate on the general railroad system will also have segments off the general system which will be subject to FTA's rules for rail fixed guideway systems (49 CFR part 659). See 64 FR at 59051. To the extent that a waiver applicant can demonstrate that compliance with a state safety oversight program will satisfy FRA's safety concerns, this will likely expedite FRA's processing of the petition.

Whether All Affected Railroads Must Jointly File the Waiver Petition

Several commenters objected to FRA's suggestion that the light rail operator "and all other affected railroads jointly file" a petition for approval of shared use. 64 FR 59050. In particular, APTA argues that while the freight operator should be made aware of the waiver application, with agreements reached to ensure a safe operating environment, it is unnecessary to explicitly require the freight operator in all cases to approve the transit agency's application. Moreover, APTA is concerned that such a requirement may give the freight operator unfair leverage in negotiations with the transit agency over shared-use operations on the general system. The NSWG recommended adopting a procedure whereby the waiver applicant would have the burden to demonstrate that all users had a clear understanding of how operations will be conducted and how temporal separation would be strictly maintained.

Based upon careful consideration of the comments, FRA is revising the final policy statement to indicate that, while the conventional railroad(s) operating on a line will always be an interested party concerning a light rail operator's waiver petition for shared use of the general system, the conventional operator need not be a joint filer. FRA's rules on waiver petitions (49 CFR 211.7 and 211.9) do not require joint filing, and FRA's suggestion of joint filing was not intended to alter the rules. However, while FRA will not require joint filing as a prerequisite for evaluating the light rail operator's application, since FRA expects the transit applicant to thoroughly describe the alternative safety measures to be employed in lieu of each rule for which a waiver is sought, the input of the freight (or other conventional) operator is imperative. Accordingly, FRA anticipates that before a light rail operator submits a shared-use petition, the transit agency will effectively communicate with the affected freight or other railroad to coordinate interaction of the two operations on the same trackage, including what the respective hours of operation will be for each type of equipment. If the light rail and conventional operations will occur only under time-separated conditions, FRA will expect all of the affected railroads to jointly determine what means of protection will ensure that the different types of equipment will not operate simultaneously on the same track, and how protection will be provided to ensure that where one set of operations begins and the other ends there will be no overlap that could result in a collision. Unless a petition thoroughly explains how the light rail operation will interact with conventional operations on the line and documents the agreement of those other railroads to any necessary safety arrangements to coordinate their operations with the light rail operation, FRA is likely to conclude that the petition does not contain "sufficient information to support the action sought." 49 CFR 211.9. As a condition of any waiver, the conventional railroad must subscribe to these responsibilities that are relevant to its operations in connection with the shared use arrangement. Accordingly, FRA's policy statement suggests that the petition contain documentation of the precise terms of the agreement between the light rail operator and the conventional railroad concerning any actions that the conventional railroad must take to ensure effective implementation of alternative safety measures. Of course, FRA will not grant a waiver to a light rail operator that is based on conditions concerning another railroad's operations without providing notice and an opportunity for a hearing, which will permit that other railroad to fully explain its views.

However, where the "other affected railroads" are legally responsible for compliance with the regulation sought to be waived by the light rail operator, these other railroads must also petition for relief, whether jointly with the light rail operator or separately. For example, if a light rail operator is seeking a waiver of the Signal System Reporting Requirements of 49 CFR part 233 but the conventional railroad is currently responsible for maintaining some of the signal systems, both parties have compliance obligations concerning the light rail operation. In some areas, the freight operator will essentially be relieved of certain of its obligations if the light rail operator receives a waiver. For example, FRA's rule on passenger equipment generally makes a railroad liable for permitting the use or haul on its line of non-complying equipment. 49 CFR 238.9. If the light rail operator obtains a waiver for its equipment, that equipment will no longer be considered not in compliance. However, the freight operator may want to participate in the waiver process from the beginning.

Duration of the Waiver

The NSWG urged FRA to grant waivers for shared-use operations in perpetuity, subject to FRA's authority to modify or withdraw a waiver if the conditions imposed are not met or if unanticipated safety issues arise that merit such action. In this regard, the NSWG stated that transit systems likely to seek temporal separation waivers will seek them in connection with rail projects funded in part with Federal funds administered by FTA. Since FTA will require these transit systems to demonstrate that they will have control of, and the ability to use, all of the assets (e.g., the rail right-of-way and passenger vehicles) acquired with the Federal funds for the 20 to 40 year useful life of the assets, a five year limitation on the duration of a waiver is, in NSWG's view, inadequate.

FRA is mindful of the transit agency's need for a degree of long-term certainty about the safety-related conditions that may apply to its operation, and recognizes that a rail project represents a long term commitment of a transit agency's resources. However, FRA cannot accept NSWG's recommendation that the Safety Board issue waivers for indefinite periods of time, since this would hinder FRA's opportunity to determine if circumstances have changed or if issues have arisen that were not contemplated when the relief was last granted or renewed. FRA notes that the agency typically issues waivers of limited duration and has not adopted a unique policy here. FRA intends to grant waivers for periods of sufficient length (e.g., five years) to permit long-term planning. Moreover, FTA is well aware of the reasons for FRA's reluctance to grant permanent waivers, and will not consider the need to renew a safety waiver an indication that the transit system lacks control of, and the ability to use, its assets for their useful life.

While FRA retains the authority to modify or withdraw a waiver in the interest of rail safety, such action is generally limited to instances when FRA uncovers a substantial change in the conditions under which the waiver was granted or determines that a significant unforeseen safety issue exists. FRA will ordinarily become aware of such developments during the term of the waiver through its coordination with the state safety agency that oversees the subjects on which FRA has granted waivers, and

will work with the waiver recipient to sufficiently address our safety concerns. However, the renewal process will provide a periodic opportunity to determine if such important changes in circumstances have occurred. FRA does not view a waiver as a temporary measure that will jeopardize a rail project's continued operation once the waiver expires. Rather, FRA expects to routinely renew waivers where the conditions underlying the waiver have not changed substantially and no major unforeseen safety issues have arisen, and where FTA and the state safety oversight agency affirm that the operation is in compliance with FTA requirements.

The Role of FTA in the Waiver Process

Four of the five commenters on this issue objected to the fact that FRA will not permit FTA's liaison to FRA's Safety Board to vote. The consensus of the commenters was that the proposed approach will not effectively ensure that FTA's knowledge and insights with respect to transit operations, financial issues, and state safety oversight are adequately considered by the Safety Board. The commenters believe that the two DOT agencies have different perspectives on non-safety related topics, and the best decisionmaking between two parties with diverse interests occurs with shared equal authority. However, the fifth commenter, San Diego Trolley, stated that while it would be inappropriate to allow FTA to participate in voting on waiver applications, FTA's representative should have more direct authority in the decisionmaking process.

Under delegation from the Secretary of Transportation, see 49 CFR 1.49, FRA administers the Federal railroad safety statutes, and all waivers requested from FRA's Safety Board involve exclusively FRA's regulations. FTA is not charged with administering the Federal railroad safety laws. Rather, FTA is responsible for: developing comprehensive and coordinated mass transportation systems to serve metropolitan and other urban areas; administering urban mass transportation programs, including its rule on the safety of rail fixed guideway systems; and assuring appropriate liaison and coordination with other governmental organizations with respect to the foregoing. Since FTA's statutory authority does not include administration of the Federal railroad safety laws, it would be inappropriate and outside the scope of FTA's legal authority if the FTA liaison to the Safety Board can veto the waiver conditions that FRA elects to impose on an applicant. Similarly, while FRA provides its rail safety expertise to FTA on safety issues inherent in FTA's review of rail grant proposals, FRA cannot vote on FTA's funding decisions, and it would not be appropriate for FRA to do so. FRA may have contributed to some confusion on this issue by using the description "non-voting" without explaining how the Safety Board works. FRA's Safety Board is not a collegial body like an independent agency; the chairperson of the board is the sole deciding official and acts by delegation from the Administrator. Other board members, all of whom are FRA staff, participate in the deliberations and offer advice and counsel, but do not vote. Under FRA's arrangement with FTA, the FTA representative will have a voice in deliberations equal to that of FRA staff.

In response to concerns from the commenters that without an official vote FTA's role with the Safety Board be ineffective, FRA stresses that the reason it is including an FTA official as an invited participant in the consideration of Petitions for Approval of Shared Use is to receive FTA's, and through it, the transit industry's perspective on the many unique and complex issues involving light rail operations. Since FRA recognizes that its expertise is in matters related to railroad safety, the agency wants FTA's expert advice on the facts presented in the petition concerning the project's special characteristics and operating considerations prior to selecting appropriate waiver conditions. Under FRA's safety partnership with FTA, not only will FTA have the opportunity to shape the safety requirements that will apply to light rail operations on the general system, but FTA will gain a fuller appreciation of the rail safety issues involved in each shared-use operation considered by the Safety Board.

Examples of Two Petitions for Approval of Shared Use Already Granted by FRA

Before FRA's proposed policy statement was published in the **Federal Register** last November, the agency received two petitions for approval of shared use, both seeking waivers of compliance with certain requirements of the Federal railroad safety regulations and exemption of certain statutory provisions in connection with planned light rail systems. Transit agencies planning to request similar waivers and/or exemptions are encouraged to review the electronic dockets for these petitions as helpful examples in preparing their own submissions. The first petition was submitted by NJT on July 13, 1999, and was docketed as FRA Waiver Petition No. FRA–1999–6135. *See* 64 FR 45996 (August 23, 1999). The second petition was submitted by the Utah Transit Authority (UTA) on August 19, 1999, and was docketed as FRA Waiver Petition No. FRA–1999–6253. *See* 64 FR 53435 (October 1, 1999). Each docket includes a copy of the petition itself, the letter granting the petition, and a discussion of the waiver conditions. While these petitions may serve as useful examples for future waiver applicants to follow, FRA also expects transit agencies to review the guidance included in this final policy statement in conjunction with the regulatory requirements contained in 49 CFR part 211. FRA granted each waiver for a period of five years, and conditioned each waiver on the operator's submission for FRA approval of procedures for ensuring temporal separation. The NJT waiver was an example of FRA's willingness to grant a waiver early in the planning process, subject to conditions such as subsequent submission of evidence concerning state approval of the system safety plan.

Operations Within Shared Rights-of-Way

FRA received 11 comments on the issue of FRA's jurisdiction over a light rail transit operation sharing a right-of-way but no trackage with a conventional railroad. In general, the commenters request clarification in the final policy statements as to how FRA and FTA intend to coordinate their programs with respect to a rail transit system that operates within the same right-of-way as conventional equipment, without shared trackage. Many of the commenters stress that any standards adopted by FRA for sharing the right-of-way need to be as clear and explicit as possible to assist the transit systems in evaluating potential light rail projects and planning those deemed desirable.

SEPTA believes that it is unnecessary for FRA to assert jurisdiction over light rail operations running parallel to freight service because transit agency systems are covered under existing state safety oversight program plans. SEPTA states that the proposed joint policy statement is unclear as to the limits of FRA's jurisdiction, other than to indicate that FRA's safety rules cover points of connection where a light rail operation crosses the tracks of a freight railroad at grade. In this regard, SEPTA seeks guidance as to what safety issues FRA believes will exist where light rail operations are conducted on separate tracks within a shared right-of-way. The commenter also notes that the policy statement doesn't address the issue of

physical barrier or distance separation between shared use trackage.

Similarly, APTA stated that instead of covering shared corridors, the final policy statements should be limited to scenarios where transit vehicles operate on or over the actual tracks of the general system. However, APTA agrees that the final policy statements should cover areas where there is no shared use of general system track if the operations include public highway/rail grade crossings or rail crossings at grade (diamond interlockings).

The AAR requests that FRA include a definition of the term "shared right-of-way" in the final policy statement, and also recommends that FRA address shared right-of-way operations on a case-by-case basis. In addition, the commenter states that intrusion detectors are often appropriate in shared rights of way, and notes that relevant factors to be considered include configuration of the right-of-way, elevation changes, and track separation distances.

The NSWG urges FRA to issue further guidance as to the likelihood of waiver being granted in a shared right-of-way situation where FRA has jurisdiction, including a chart setting forth which regulations could presumptively be waived. Also, the NSWG recommends that FRA and FTA develop guidelines with respect to track center lines. For example, the joint policy statement could state that transit trackage located 20 feet or more from the closest general system trackage, measured from center lines, normally would not require intrusion detection or extraordinary safety measures designed to avoid collisions.

San Diego Trolley contends that the proposal is unclear as to what intrusion detection steps will be required. The commenter notes that while there is the potential for derailments and other accidents to occur within a common corridor, this condition exists at many other locations where commuter rail, intercity passenger services, or freight services operate within a common corridor.

The California Transit Association commented that the proposal is unclear as to the issue of FRA jurisdiction over shared rights-of-way. The commenter stated that the potential hazard of intrusion in a shared corridor situation is better addressed by existing state safety oversight regulation and appropriate safety analysis covered in transit agency system safety program plans.

FRA appreciates the need for greater clarity with regard to shared rights-of-way. Several basic principles deserve emphasis. FRA exercises jurisdiction over all commuter operations, even if they use equipment considered light rail. All of FRA's regulations apply to such operations, absent a waiver. Therefore, how FRA exercises its jurisdiction in a corridor shared by light rail and conventional equipment is an issue only if the light rail operation meets the definition of urban rapid transit. The operation of rapid transit on track parallel to the tracks of a conventional railroad (i.e., parallel to track traversed by freight, intercity passenger, or commuter service) will not, in and of itself, trigger FRA jurisdiction. Where a rapid transit line merely shares a right-of-way with a conventional line but the two share no track, FRA does not consider that situation to involve shared use of the general system by the rapid transit line, and would not expect to receive a Petition for Approval of Shared Use. Nevertheless, even when a rapid transit operation and a conventional railroad share only a right-of-way, without sharing trackage, certain limited connections to the general system may still exist, and FRA will then have a regulatory role by ensuring safety at these points of connection. Three types of connections are of greatest concern: highway/rail grade crossings, railroad crossings at grade, and shared systems of train control at specific points.

For example, if the same tower operator authorizes and controls the movement of the trains of both a transit line and a freight railroad operating over a movable bridge, FRA will exercise jurisdiction at this point of connection, but only to the extent necessary to ensure safety. We have discussed our exercise of jurisdiction over rail crossings at grade above, under the heading of "Minor connections to the general railroad system" in the discussion of comments on "Shared Use and Temporal Separation." Further, in the case of a rapid transit system and a conventional railroad sharing ■ highway-rail grade crossing, FRA will expect both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions, and, with the exception for brightness of the lights discussed below, will expect both operations to observe its rules concerning locomotive conspicuity (ditch lights). If a rapid transit system desires a waiver of the very few FRA rules that will apply at these points of connection, it should file a waiver request tailored to the specific rule(s) in question rather than the much more comprehensive Petition for Approval of Shared Use that FRA has recommended for situations involving shared trackage.

FRA sees no need to define "shared rights-of-way." If the types of connections FRA has identified as triggering a limited exercise of its jurisdiction exist with regard to adjacent rapid transit and conventional lines, there is obviously a shared right-of-way. Where such operations take place on parallel tracks but lack any such connections, there may still be a shared right-of-way, but it has no regulatory significance.

Although FRA will limit its direct exercise of jurisdiction over transit systems operating in shared rights-of-way in the manner described above, FRA will, under the provisions of the partnership agreement entered into with FTA in October 1998, use its rail safety expertise in an advisory capacity to identify and make recommendations for the resolution of safety issues inherent in grant proposals seeking Federal funds from FTA. This working relationship will ensure that FTA has a fuller understanding of the safety risks involved in each shared right-of-way operation, and relevant information to shape the contents of the system safety plan that will be monitored by the state safety oversight program. With respect to the specific comments received concerning the use of intrusion detectors and recommendations to FRA about appropriate distances to require between transit trackage and the closest general system trackage, it would be beyond the scope of this policy statement to adopt regulations concerning track centers (the distance between the center lines of adjacent tracks) or intrusion detection. FRA has no rules on these subjects now. Should FRA deem it necessary to regulate intrusion detectors and/or track separation distances between transit and conventional equipment within a common right-of-way, FRA will initiate a notice-and-comment rulemaking aimed at setting standards. In the meantime, FRA and FTA will coordinate with rapid transit agencies and conventional railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit and conventional equipment.

Miscellaneous Comments

Employee Qualifications

The BLE, the only commenter to address this issue, limited its comments to waivers of 49 CFR part 240, because of an overriding concern for the manner in which light rail vehicle operators are

to be trained and certified. The BLE contends that the proposed joint policy statement leaves a gaping regulatory hole by contemplating a mixture of Federal and state oversight of those who will operate the light rail vehicles. The commenter notes that the standardization fostered by part 240 has enhanced safety in the railroad industry, and believes that the proposal retreats from the progress of the last decade with respect to operators of light rail equipment. In this regard, the BLE argues that a blanket waiver for light rail vehicle operators from industry qualification and certification requirements would fly in the face of the standard articulated by FRA and FTA. The operating environment in which light rail vehicle operators find themselves, rather than the type of equipment they operate, must dictate the appropriate degree of FRA oversight. Safety and consistency demand continued Federal preemption in the area of training, qualification, and certification of all transportation employees who operate on the general system.

FRA recognizes the safety implications of permitting light rail vehicle operators to operate on the general system without receiving proper training and qualification. Waivers of the engineer certification requirements would be most likely in the case of temporally-separated operations on the general system that are part of a unified transit system with segments outside the shared use area. There, the basic reason for a waiver would be to ensure that the light rail operators are trained with the entire light rail system in mind, including its non-shared-use portions. In those situations, however, FRA is particularly concerned about what means of protection the waiver applicant would use to ensure that operator error does not result in different types of equipment being operated on the same track, and how the light rail system would ensure that when one set of operations begins, and the other one ends, there can be no overlap that would cause a collision. In response to the comment, FRA stresses that before a transit system could receive a waiver, it must satisfy FRA that the system safety plan developed under FTA's rules will provide for operators of light rail equipment to receive the necessary training and skills to safely operate on the general system. The transit system would have the burden to show that the light rail operators would receive a level of training, testing, and monitoring on the rules governing train operations appropriate for light rail operations on the general system. Any light rail system unable to meet this burden would have to fully comply with the requirements of part 240. Moreover, where a transit system intends to operate simultaneously on the same track with conventional equipment, FRA will not be inclined to waive the part 240 requirements. In that situation, FRA's paramount concern would be uniformity of training and qualifications of all those operating trains on the general system, regardless of the type of equipment.

Ditch Lights

The Delaware Valley Association of Rail Passengers supports most of the proposals in the policy statement, particularly the waiver concept. However, the commenter believes that waivers should not be granted under 49 CFR part 229, pertaining to ditch lights (also known as auxiliary lights; see 49 CFR 229.125, 133). Joint railroad-transit operations are often found in urban areas with many grade crossings, and these lights have been proven to reduce collisions between trains and highway traffic. Moreover, installation of such lights on light rail vehicles is not burdensome.

FRA shares the commenter's safety concerns. As noted in the chart contained in each proposed policy statement (explaining the likely treatment of waivers sought under part 229), and in FRA's discussion of likely waivers under part 229, FRA is unlikely to completely waive the requirement for auxiliary lights due to their importance for grade crossing safety. See 64 FR at 28241, 59053, and 59056. In this regard, FRA believes that the risk of accidents at grade crossings decreases if the equipment used by both conventional and light rail trains present the same distinctive profile to motor vehicle operators approaching grade crossings (i.e., a triangular arrangement of lights). Safety could be compromised if FRA permitted light rail systems to operate through the same grade crossings as conventional equipment with light arrangements that do not provide highway users with the same warning that a rail vehicle is approaching. However, as discussed in the section below concerning factors to address when seeking a waiver of part 229, waiver of the intensity requirement, so as to permit lights of a lesser candela, seems appropriate.

Whistle Bans

The City of Boca Raton, Florida commented that FRA should develop rules to allow and promote the installation of four-quadrant gate systems at all railroad grade crossings, and provide for funding mechanisms. The commenter states that if the gates have been installed, FRA's rules should allow whistle bans, at least at night, at these four-quadrant gate system locations.

FRA recently initiated a rulemaking concerning the use of locomotive horns at highway-rail grade crossings. On January 13, 2000, FRA published in the **Federal Register** a notice of proposed rulemaking to add a new part 222, entitled "Use of Locomotive Horns at Public Highway-Rail Grade Crossings," to require that a locomotive horn be sounded while a train is approaching and entering a public highway-rail crossing. 65 FR 2230. The proposed rules provide for an exception to the general requirement in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or supplementary safety measures fully compensate for the absence of the warning provided by the horn. Among the proposed options available to state and local governments seeking to provide a substitute for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings, is the four-quadrant gate system. See proposed 49 CFR 222.41, 222.43, and Appendix A. Under this system, gates are installed at a crossing which are sufficient to fully block highway traffic from entering the crossing when the gates are lowered, including at least one gate for each direction of traffic on each approach. This policy statement has no relationship to that rulemaking.

Definition of "Heavy Rail"

One commenter contends that FRA improperly defines the terms "heavy rail" and "light rail" in the proposed policy statement. The commenter states that the term "heavy" has nothing to do with crashworthiness or car weight, but rather applies to the construction of the right-of-way, and suggests that it would be clearer to use the terms "rail rapid transit" for what is incorrectly called heavy rail, and "urban electric transit" for light rail.

Contrary to the commenter's statements, FRA's proposal properly distinguished between the terms "heavy rail" and "light rail." After observing that some current and planned passenger operations in metropolitan areas are often referred to as "light rail," FRA indicated that the term usually refers to lightweight passenger cars operating on rails in a right-of-way that is not separated from other traffic, such

as street railways and trolleys. 64 FR at 59049. FRA also stated that "heavy rail" generally refers to trains operating on rails that are in separate rights-of-way from which all other vehicular traffic is excluded, and observed that in transit terms, heavy rail is also known as "rapid rail," "subway," or "elevated railway." FRA noted that conventional rail equipment such as that used by freight railroads, Amtrak, and many commuter railroads is different from, and considerably heavier and structurally stronger than either light or heavy rail equipment, as those terms are used in the transit industry. FRA advised that although this equipment is sometimes referred to as "heavy" rail, it would use the term "conventional" to avoid confusion between the different ways "heavy" is used in the transit and general railroad communities.

II. Changes From the Proposed Statement of Policy Concerning the Extent and Exercise of FRA'S Safety Jurisdiction Over Passenger Operations

To ensure that the regulated community is fully aware of how FRA views the extent of its jurisdiction over passenger operations and how it intends to exercise that jurisdiction, FRA is amending the discussion of its jurisdiction in its Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, which is found in at appendix A of 49 CFR part 209. In its proposed policy, FRA included an extensive discussion of its legal authority over railroad safety, including the extensive legislative history of the term "railroad" as used in the Federal railroad safety statutes. 64 FR 59047–59049. FRA does not repeat that discussion here, but incorporates it by reference as the basis for its policy on the extent and exercise of its jurisdiction over passenger operations.

Based on comments received, FRA is making some changes to its proposed policy. The definition of "commuter railroad" is being amended to make clear that certain specific operations named as commuter authorities by statute are considered commuter railroads under the safety laws regardless of how the criteria that distinguish other railroads as "commuter" in nature may apply to them. FRA believes this change is necessary in order to ensure that railroads that Congress considers commuter railroads are within FRA's exercise of its jurisdiction without the need for extensive debate about the nature of their operations.

For reasons explained in the discussion of comments, we are also revising the definitions of "commuter railroad" and "urban rapid transit" to remove as a consideration whether "a substantial portion" of a system's operations is devoted to moving people from station to station within a city, and to focus instead on whether such service is a "primary function" of the system or "an incidental function" of its service.

We are further revising the jurisdictional statement to facilitate determinations about whether a system is a commuter railroad or urban rapid transit system. We have included two presumptions, one that adopts statutory determinations of a system's characterization, and the other that presumes a system is rapid transit if it meets a certain description. Where neither presumption applies, we have provided a list of criteria that need to be considered in making the commuter/rapid transit determination.

FRA is also revising its statement of policy to make clear that highway-rail grade crossings used by both a conventional railroad and a light rail operation provide a sufficient connection to warrant a limited exercise of FRA's jurisdiction over the light rail operator. In the proposal, that point was made, but under a heading concerning connections not sufficient to trigger the exercise of jurisdiction. The final policy statement places the discussion more appropriately and slightly expands it.

III. Changes to Proposed Policy Concerning Petitions for Approval of Shared Use of the General System by Light Rail and Other Railroads

Much of FRA's proposed statement of policy concerned how the agency intended to address waiver requests concerning shared use of the general system by light rail and conventional operations. FRA provided guidance on how interested parties could file such waiver requests, what they should address, and what waivers are likely under particular circumstances. FRA has amended its policy to reflect various comments received on the proposal. Moreover, FRA has concluded that this policy, like its policy on the extent and exercise of its safety jurisdiction, should reside in the CFR for easy future reference. Therefore, we are adding a new appendix to 49 CFR part 211, which contains FRA's rules of practice, including those concerning waivers.

Several commenters requested that FRA provide a means by which those developing light rail systems could obtain a jurisdictional determination from FRA without first preparing an entire waiver petition. This makes good sense, because an early jurisdictional determination could affect planning for a system in significant ways. Of course, anyone is always free to request such determinations from FRA. The revised policy statement merely reiterates this point, recommends where such requests should be submitted, and suggests that requesting such determinations may be a useful step to take well before filing a waiver petition.

Another subject of great interest to commenters was whether the light rail operator must always get the general system railroad to join in any petition for waiver or approval of shared use. Our proposed statement included a request that the light rail operator and "all other affected railroads" file the petition jointly. In the discussion of comments, above, we explained why this would be very useful but is not required, and pointed out that other affected railroads may need to file their own petitions if the planned operations somehow preclude their compliance with FRA's rules. Even if they do not need to file a petition, of course, all affected railroads will have an opportunity to comment and appear at any hearing that is requested on the light rail operator's petition. Our final policy statement explains these points.

Many commenters indicated the need for greater clarity in FRA's policy concerning situations where the light rail operator and conventional railroad do not share trackage but have operations that are otherwise sufficiently connected to warrant a limited exercise of FRA's jurisdiction. FRA has included a more thorough discussion of this subject to the final policy statement. The statement makes clear that, where minimal connections exist in a common right-of-way (even where the two operations use their respective tracks simultaneously), the light rail operator will be subject to only those safety rules pertinent to the connection that exists, and that any waiver request should be limited to just those rules.

The new Appendix A to part 211, therefore, will include a discussion of which railroads need to file waiver petitions in shared use or shared right-of-way situations, the general factors that should be addressed in a Petition for Approval of Shared Use, general considerations concerning petitions for waiver where the right-of-way is shared but the connections are limited, factors to address in any petition concerning specific rules, and the areas where waivers are likely in shared use situations (including a chart).

List of Subjects

49 CFR Part 209

Railroad safety, Enforcement Procedures.

49 CFR Part 211

Railroad safety, Rules of Practice.

The Policy Statement

In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114, and 49 CFR 1.49.

Appendix A to 49 CFR part 209 is amended as follows.

Appendix A—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

2. The title of Appendix A is revised to read, as set forth above.

3. Under the heading "The Extent and Exercise of FRA's Safety Jurisdiction," the seventh paragraph (which begins, "For example, all of FRA's regulations") of the appendix is removed, and the following paragraphs are added in its place:

The Extent and Exercise of FRA's Safety Jurisdiction

* * * * *

For example, all of FRA's regulations exclude from their reach railroads whose entire operations are confined to an industrial installation (i.e., "plant railroads"), such as those in steel mills that do not go beyond the plant's boundaries. E.g., 49 CFR 225.3(a)(1) (accident reporting regulations). Some rules exclude passenger operations that are not part of the general railroad system (such as some tourist railroads) only if they meet the definition of "insular." E.g., 49 CFR 225.3(a)(3) (accident reporting) and 234.3(c) (grade crossing signal safety). Other regulations exclude not only plant railroads but all other railroads that are not operated as a part of, or over the lines of, the general railroad system of transportation. E.g., 49 CFR 214.3 (railroad workplace safety).

By "general railroad system of transportation," FRA refers to the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas. Much of this network is interconnected, so that a rail vehicle can travel across the nation without leaving the system. However, mere physical connection to the system does not bring trackage within it. For example, trackage within an industrial installation that is connected to the network only by a switch for the receipt of shipments over the system is not a part of the system.

Moreover, portions of the network may lack a physical connection but still be part of the system by virtue of the nature of operations that take place there. For example, the Alaska Railroad is not physically connected to the rest of the general system but is part of it. The Alaska Railroad exchanges freight cars with other railroads by car float and exchanges passengers with interstate carriers as part of the general flow of interstate commerce. Similarly, an intercity high speed rail system with its own right of way would be part of the general system although not physically connected to it. The presence on a rail line of any of these types of railroad operations is a sure indication that such trackage is part of the general system: the movement of freight cars in trains outside the confines of an industrial installation, the movement of intercity passenger trains, or the movement of commuter trains within a metropolitan or suburban area. Urban rapid transit operations are ordinarily not part of the general system, but may have sufficient connections to that system to warrant exercise of FRA's jurisdiction (*see* discussion of passenger operations, below). Tourist railroad operations are not inherently part of the general system and, unless operated over the lines of that system, are subject to few of FRA's regulations.

The boundaries of the general system are not static. For example, a portion of the system may be purchased for the exclusive use of a single private entity and all connections, save perhaps a switch for receiving shipments, severed. Depending on the nature of the operations, this could remove that portion from the general system. The system may also grow, as with the establishment of intercity service on a brand new line. However, the same trackage cannot be both inside and outside of the general system depending upon the time of day. If trackage is part of the general system, restricting a certain type of traffic over that trackage to a particular portion of the day does not change the nature of the line—it remains the general system.

4. Appendix A to 49 CFR part 209 is further amended by adding the following paragraphs immediately before the section called "Extraordinary Remedies:"

FRA's Policy on Jurisdiction Over Passenger Operations

Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except "rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. 20102. Within the limits imposed by this authority, FRA exercises jurisdiction over all railroad passenger operations, regardless of the equipment they use, unless FRA has specifically stated below an exception to its exercise of jurisdiction for a particular type of operation. This policy is stated in general terms and does not change the reach of any particular regulation under its applicability section. That is, while FRA may generally assert jurisdiction over a type of operation here, a particular regulation may exclude that kind of operation from its reach. Therefore, this statement should be read in conjunction with the applicability sections of all of FRA's regulations.

Intercity Passenger Operations

FRA exercises jurisdiction over all intercity passenger operations. Because of the nature of the service they provide, standard gage intercity operations are all considered part of the general railroad system, even if not physically connected to other portions of the system. Other intercity passenger operations that are not standard gage (such as a magnetic levitation system) are within FRA's jurisdiction even though not part of the general system.

Commuter Operations

FRA exercises jurisdiction over all commuter operations. Congress apparently intended that FRA do so when it enacted the Federal Railroad Safety Act of 1970, and made that intention very clear in the 1982 and 1988 amendments to that act. FRA has attempted to follow that mandate consistently. A commuter system's connection to other railroads is not relevant under the rail safety statutes. In fact, FRA considers commuter railroads to be part of the general railroad system regardless of such connections.

FRA will presume that an operation is a commuter railroad if there is a statutory determination that Congress considers a particular service to be commuter rail. For example, in the Northeast Rail Service Act of 1981, 45 U.S.C. 1104(3), Congress listed specific commuter authorities. If that presumption does not apply, and the operation does not meet the description of a system that is presumptively urban rapid transit (see below), FRA will determine whether a system is commuter or urban rapid transit by analyzing all of the system's pertinent facts. FRA is likely to consider an operation to be a commuter railroad if:

- The system serves an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area,
- The system's primary function is moving passengers back and forth between their places of employment in the city and their homes within the greater metropolitan area, and moving passengers from station to station within the immediate urban area is, at most, an incidental function, and

• The vast bulk of the system's trains are operated in the morning and evening peak periods with few trains at other hours.

Examples of commuter railroads include Metra and the Northern Indiana Commuter Transportation District in the Chicago area; Virginia Railway Express and MARC in the Washington area; and Metro-North, the Long Island Railroad, New Jersey Transit, and the Port Authority Trans Hudson (PATH) in the New York area.

Other Short Haul Passenger Service

The federal railroad safety statutes give FRA authority over "commuter or other short-haul railroad passenger service in a metropolitan or suburban area." 49 U.S.C. 20102. This means that, in addition to commuter service, there are other short-haul types of service that Congress intended that FRA reach. For example, a passenger system designed primarily to move intercity travelers from a downtown area to an airport, or from an airport to a resort area, would be one that does not have the transportation of commuters within a metropolitan area as its primary purpose. FRA would ordinarily exercise jurisdiction over such a system as "other short-haul service" unless it meets the definition of urban rapid transit and is not connected in a significant way to the general system.

Urban Rapid Transit Operations

One type of short-haul passenger service requires special treatment under the safety statutes: "rapid transit operations in an urban area." Only these operations are excluded from FRA's jurisdiction, and only if they are "not connected to the general railroad system." FRA will presume that an operation is an urban rapid transit operation if the system is not presumptively a commuter railroad (see discussion above) the operation is a subway or elevated operation with its own track system on which no other railroad may operate, has no highway-rail crossings at grade, operates within an urban area, and moves passengers from station to station within the urban area as one of its major functions.

Where neither the commuter railroad nor urban rapid transit presumptions applies, FRA will look at all of the facts pertinent to a particular operation to determine its proper characterization. FRA is likely to consider an operation to be urban rapid transit if:

• The operation serves an urban area (and may also serve its suburbs),

• Moving passengers from station to station within the urban boundaries is a major function of the system and there are multiple station stops within the city for that purpose (such an operation could still have the transportation of commuters as one of its major functions without being considered a commuter railroad), and

• The system provides frequent train service even outside the morning and evening peak periods.

Examples of urban rapid transit systems include the Metro in the Washington, D.C. area, CTA in Chicago, and the subway systems in New York, Boston, and Philadelphia. The type of equipment used by such a system is not determinative of its status. However, the kinds of vehicles ordinarily associated with street railways, trolleys, subways, and elevated railways are the types of vehicles most often used for urban rapid transit operations.

FRA can exercise jurisdiction over a rapid transit operation only if it is connected to the general railroad system, but need not exercise jurisdiction over every such operation that is so connected. FRA is aware of several different ways that rapid transit operations can be connected to the general system. Our policy on the exercise of jurisdiction will depend upon the nature of the connection(s). In general, a connection that involves operation of transit equipment as a part of, or over the lines of, the general system will trigger FRA's exercise of jurisdiction. Below, we review some of the more common types of connections and their effect on the agency's exercise of jurisdiction. This is not meant to be an exhaustive list of connections.

Rapid Transit Connections Sufficient to Trigger FRA's Exercise of Jurisdiction

Certain types of connections to the general railroad system will cause FRA to exercise jurisdiction over the rapid transit line *to the extent it is connected.* FRA will exercise jurisdiction over the portion of a rapid transit operation that is conducted as a part of or over the lines of the general system. For example, rapid transit operations are conducted on the lines of the general system where the rapid transit operation and other railroad use the same track. FRA will exercise its jurisdiction over the operations conducted on the general system. In situations involving joint use of the same track, it does not matter that the rapid transit operation occupies the track only at times when the freight, commuter, or intercity passenger railroad that shares the track is not operating. While such time separation could provide the basis for waiver of certain of FRA's rules (see 49 CFR part 211), it does not mean that FRA will not exercise jurisdiction. However, FRA will exercise jurisdiction over only the portions of the rapid transit operation that are conducted on the general system. For example, a rapid transit line that operates over the general system for a portion of its length but has significant portions of street railway that are not used by conventional railroads would be subject to FRA's rules only with respect to the general system portion. The remaining portions would not be subject to FRA's rules. If the non-general system portions of the rapid transit line are considered a "rail fixed guideway system" under 49 CFR Part 659, those rules, issued by the Federal Transit Administration (FTA), would apply to them.

Another connection to the general system sufficient to warrant FRA's exercise of jurisdiction is a railroad crossing at grade where the rapid transit operation and other railroad cross each other's tracks. In this situation, FRA will exercise its jurisdiction sufficiently to assure safe operations over the at-grade railroad crossing. FRA will also exercise jurisdiction to a limited extent over a rapid transit operation that, while not operated on the same tracks as the conventional railroad, is connected to the general system by virtue of operating in a shared right-of-way involving joint control of trains. For example, if a rapid transit line and freight railroad were to operate over a movable bridge and were subject to the same authority concerning its use (*e.g.*, the same tower operator controls trains of both operations), FRA will exercise jurisdiction in a manner sufficient to ensure safety at this point of connection. Also, where transit operations share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its signal rules. For example, FRA expects both railroads to observe the provision of its rule on grade crossing signals that requires prompt reports of warning system malfunctions. *See* 49 CFR part 234. FRA believes these connections present sufficient intermingling of the rapid transit and general system operations to pose significant hazards to one or both operations and, in the case of highway-rail grade crossings, to the motoring public. The safety of highway users of highway-rail grade crossings can best be protected if they get the same signals concerning the presence of any rail vehicles at the crossing and if they can react the same way to all rail vehicles.

Rapid Transit Connections Not Sufficient to Trigger FRA's Exercise of Jurisdiction

Although FRA could exercise jurisdiction over a rapid transit

operation based on any connection it has to the general railroad system, FRA believes there are certain connections that are too minimal to warrant the exercise of its jurisdiction. For example, a rapid transit system that has a switch for receiving shipments from the general system railroad is not one over which FRA would assert jurisdiction. This assumes that the switch is used only for that purpose. In that case, any entry onto the rapid transit line by the freight railroad would be for a very short distance and solely for the purpose of dropping off or picking up cars. In this situation, the rapid transit line is in the same situation as any shipper or consignee; without this sort of connection, it cannot receive or offer goods by rail.

Mere use of a common right-of-way or corridor in which the conventional railroad and rapid transit operation do not share any means of train control, have a rail crossing at grade, or operate over the same highway-rail grade crossings would not trigger FRA's exercise of jurisdiction. In this context, the presence of intrusion detection devices to alert one or both carriers to incursions by the other one would not be considered a means of common train control. These common rights of way are often designed so that the two systems function completely independently of each other. FRA and FTA will coordinate with rapid transit agencies and railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit trains and conventional equipment.

Where these very minimal connections exist, FRA will not exercise jurisdiction unless and until an emergency situation arises involving such a connection, which is a very unlikely event. However, if such a system is properly considered a rail fixed guideway system, FTA's rules (49 CFR part 659) will apply to it.

Coordination of the FRA and FTA Programs

FTA's rules on rail fixed guideway systems (49 CFR part 659) apply to any rapid transit systems or portions thereof not subject to FRA's rules. On rapid transit systems that are not sufficiently connected to the general railroad system to warrant FRA's exercise of jurisdiction (as explained above), FTA's rules will apply exclusively. On those rapid transit systems that are connected to the general system in such a way as warrant exercise of FRA's jurisdiction, only those portions of the rapid transit system that are connected to the general system will generally be subject to FRA's rules.

A rapid transit railroad may apply to FRA for a waiver of any FRA regulations. *See* 49 CFR part 211. FRA will seek FTA's views whenever a rapid transit operation petitions FRA for a waiver of its safety rules. In granting or denying any such waiver, FRA will make clear whether its rules do not apply to any segments of the operation so that it is clear where FTA's rules do apply.

5. The authority citation for part 211 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

Appendix A

6. A new Appendix A is added to part 211 to read as follows.

Appendix A to Part 211—Statement of Agency Policy Concerning Waivers Related to Shared Use of Trackage or Rights-of-Way by Light Rail and Conventional Operations

1. By statute, the Federal Railroad Administration (FRA) may grant a waiver of any rule or order if the waiver "is in the public interest and consistent with railroad safety." 49 U.S.C. 20103(d). Waiver petitions are reviewed by FRA's Railroad Safety Board (the "Safety Board") under the provisions of 49 CFR part 211. Waiver petitions must contain the information required by 49 CFR 211.9. The Safety Board can, in granting a waiver, impose any conditions it concludes are necessary to assure safety or are in the public interest. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

2. Light rail equipment, commonly referred to as trolleys or street railways, is not designed to be used in situations where there is a reasonable likelihood of a collision with much heavier and stronger conventional rail equipment. However, existing conventional railroad tracks and rights-of-way provide attractive opportunities for expansion of light rail service.

3. Light rail operators who intend to share use of the general railroad system trackage with conventional equipment and/or whose operations constitute commuter service (*see* Appendix A of 49 CFR part 209 for relevant definitions) will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. Light rail operators whose operations meet the definition of urban rapid transit and who will share a right-of-way or corridor with a conventional railroad but will not share trackage with that railroad will be subject to only those rules that pertain to any significant point of connection to the general system, such as a rail crossing at grade, a shared method of train control, or shared highway-rail grade crossings.

4. Shared use of track refers to situations where light rail transit operators conduct their operations over the lines of the general system, and includes light rail operations that are wholly separated in time (temporally separated) from conventional operations as well as light rail operations operating on the same trackage at the same time as conventional rail equipment (simultaneous joint use). Where shared use of general system trackage is contemplated, FRA believes a comprehensive waiver request covering all rules for which a waiver is sought makes the most sense. FRA suggests that a petitioner caption such a waiver petition as a Petition for Approval of Shared Use so as to distinguish it from other types of waiver petitions. The light rail operator should file the petition. All other affected railroads will be able to participate in the waiver proceedings by commenting on the petition and providing testimony at a hearing on the petition if anyone requests such a hearing. If any other railroad will be affected by the proposed operation in such a way as to necessitate a waiver of any FRA rule, that railroad may either join with the light rail operator in filing the comprehensive petition or file its own petition.

5. In situations where the light rail operator is an urban rapid transit system that will share a right-of-way or corridor with the conventional railroad but not share trackage, any waiver petition should cover only the rules that may apply at any significant points of connection between the rapid transit line and the other railroad. A Petition for Approval of Shared Use would not be appropriate in such a case.

I. Preliminary Jurisdictional Determinations

Where a light rail operator is uncertain whether the planned operation will be subject to FRA's safety jurisdiction and, if so, to what extent, the operator may wish to obtain FRA's views on the jurisdictional issues before filing a waiver petition. In that case, the light rail operator (here including a transit authority that may not plan to actually operate the system itself) should write to FRA requesting such a determination. The letter should be addressed to Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 10, Washington, DC 20590, with a copy to the Associate Administrator for Safety at the same address at Mail Stop 25. The letter should address the criteria (found in 49 CFR part 209, appendix A) FRA uses to determine whether it has jurisdiction over a rail operation and to distinguish commuter from urban rapid transit service. A complete description of the nature of the contemplated operation is essential to an accurate determination. FRA will attempt to respond promptly to such a request. Of course, FRA's response will be based only on the facts as presented by the light rail operator. If FRA subsequently learns that the facts are different from those presented or have changed substantially, FRA may revise its initial determination.

II. General Factors to Address in a Petition for Approval of Shared Use

1. Like all waiver petitions, a Petition for Approval of Shared Use will be reviewed by the Safety Board. A non-voting FTA liaison to the Safety Board will participate in an

advisory capacity in the Safety Board's consideration of all such petitions. This close cooperation between the two agencies will ensure that FRA benefits from the insights, particularly with regard to operational and financial issues, that FTA can provide about light rail operations, as well as from FTA's knowledge of and contacts with state safety oversight programs. This working relationship will also ensure that FTA has a fuller appreciation of the safety issues involved in each specific shared use operation and a voice in shaping the safety requirements that will apply to such operations.

2. FRA resolves each waiver request on its own merits based on the information presented and the agency's own investigation of the issues. In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. While FRA cannot state in advance what kinds of waivers will be granted or denied, we can provide guidance to those who may likely be requesting waivers to help ensure that their petitions address factors that FRA will no doubt consider important.

3. FRA's procedural rules give a general description of what any waiver petition should contain, including an explanation of the nature and extent of the relief sought; a description of the persons, equipment, installations, and locations to be covered by the waiver; an evaluation of expected costs and benefits; and relevant safety data. 49 CFR 211.9. The procedural rules, of course, are not specifically tailored to situations involving light rail operations over the general system, where waiver petitions are likely to involve many of FRA's regulatory areas. In such situations, FRA suggests that a Petition for Approval of Shared Use address the following general factors.

A. *Description of operations.* You should explain the frequency and speeds of all operations on the line and the nature of the different operations. You should explain the nature of any connections between the light rail and conventional operations.

- If the light rail line will operate on any segments (*e.g.*, a street railway portion) that will not be shared by a conventional railroad, describe those segments and their connection with the shared use segments. If the petitioner has not previously sought and received a determination from FRA concerning jurisdictional issues, explain, using the criteria set out in 49 CFR part 209, Appendix A, whether the light rail operation is, in the petitioner's view, a commuter operation or urban rapid transit.
- You should describe precisely what the respective hours of operation will be for each type of equipment on the shared use segments. If light rail and conventional operations will occur only at different times of day, describe what means of protection will ensure that the different types of equipment are not operated simultaneously on the same track, and how protection will be provided to ensure that, where one set of operations begins and the other ends, there can be no overlap that would possibly result in a collision.
- If the light rail and conventional operations will share trackage during the same time periods, the petitioners will face a steep burden of demonstrating that extraordinary safety measures will be taken to adequately reduce the likelihood of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable. You should explain the nature of such simultaneous joint use, the system of train control, the frequency and proximity of both types of operations, the training and qualifications of all operating personnel in both types of operations, and all methods that would be used to prevent collisions. You should also include a quantitative risk assessment concerning the risk of collision between the light rail and conventional equipment under the proposed operating scenario.

B. *Description of equipment.* (1) You should describe all equipment that will be used by the light rail and conventional operations. Where the light rail equipment does not meet the standards of 49 CFR part 238, you should provide specifics on the crash survivability of the light rail equipment, such as static end strength, sill height, strength of corner posts and collision posts, side strength, etc.

(2) Given the structural incompatibility of light rail and conventional equipment, FRA has grave concerns about the prospect of operating these two types of equipment simultaneously on the same track. If the light rail and conventional operations will share trackage during the same time periods, you should provide an engineering analysis of the light rail equipment's resistance to damage in various types of collisions, including a worst case scenario involving a failure of the collision avoidance systems resulting in a collision between light rail and conventional equipment at track speeds.

C. *Alternative safety measures to be employed in place of each rule for which waiver is sought.* The petition should specify exactly which rules the petitioner desires to be waived. For each rule, the petition should explain exactly how a level of safety at least equal to that afforded by the FRA rule will be provided by the alternative measures the petitioner proposes.

(1) Most light rail operations that entail some shared use of the general system will also have segments that are not on the general system. FTA's rules on rail fixed guideway systems will probably apply to those other segments. If so, the petition for waiver of FRA's rules should explain how the system safety program plan adopted under FTA's rules may affect safety on the portions of the system where FRA's rules apply. Under certain circumstances, effective implementation of such a plan may provide FRA sufficient assurance that adequate measures are in place to warrant waiver of certain FRA rules.

(2) In its petition, the light rail operator may want to certify that the subject matter addressed by the rule to be waived is addressed by the system safety plan and that the light rail operation will be monitored by the state safety oversight program. That is likely to expedite FRA's processing of the petition. FRA will analyze information submitted by the petitioner to demonstrate that a safety matter is addressed by the light rail operator's system safety plan. Alternately, conditional approval may be requested at an early stage in the project, and FRA would thereafter review the system safety program plan's status to determine readiness to commence operations. Where FRA grants a waiver, the state agency will oversee the area addressed by the waiver, but FRA will actively participate in partnership with FTA and the state agency to address any safety problems.

D. *Documentation of agreement with affected railroads.* Conventional railroads that will share track with the light rail operation need not join as a co-petitioner in the light rail operator's petition. However, the petition should contain documentation of the precise terms of the agreement between the light rail operator and the conventional railroad concerning any actions that the conventional railroad must take to ensure effective implementation of alternative safety measures. For example, if temporal separation is planned, FRA expects to see the conventional railroad's written acceptance of its obligations to ensure that the separation is achieved. Moreover, if the arrangements for the light rail service will require the conventional railroad to employ any alternative safety measures rather than strictly comply with FRA's rules, that railroad will have to seek its own waiver (or join in the light rail operator's petition).

III. Waiver Petitions Involving No Shared Use of Track and Limited Connections Between Light Rail and Conventional Operations

Even where there is no shared use of track, light rail operators may be subject to certain FRA rules based on limited, but significant connections to the general system.

1. *Rail crossings at grade.* Where a light rail operation and a conventional railroad have a crossing at grade, several FRA rules may apply to the light rail operation at the point of connection. If movements at the crossing are governed by a signal system, FRA's signal rules (49 CFR parts 233, 235, and 236) apply, as do the signal provisions of the hours of service statute, 49 U.S.C. 21104. To the extent radio communication is used to direct the movements, the radio rules (part 220) apply. The track rules (part 213) cover any portion of the crossing that may affect the movement of the conventional railroad. Of course, if the conventional railroad has responsibility for compliance with certain of the rules that apply at that point (for example, where the conventional railroad maintains the track and signals and dispatches all trains), the light rail operator will not have compliance responsibility for those rules and would not need a waiver.

2. *Shared train control systems.* Where a light rail operation is governed by the same train control system as a conventional railroad (e.g., at a moveable bridge that they both traverse), the light rail operator will be subject to applicable FRA rules (primarily the signal rules in parts 233, 235, and 236) if it has maintenance or operating responsibility for the system.

3. *Highway-Rail Grade Crossings.* Light rail operations over highway-rail grade crossings

also used by conventional trains will be subject to FRA's rules on grade crossing signal system safety (part 234) and the requirement to have auxiliary lights on locomotives (49 CFR 229.125). Even if the conventional railroad maintains the crossing, the light rail operation will still be responsible for reporting and taking appropriate actions in response to warning system malfunctions.

In any of these shared right-of-way situations involving significant connections, the light rail operator may petition for a waiver of any rules that apply to its activities.

IV. Factors to Address Related to Specific Regulations and Statutes

Operators of light rail systems are likely to apply for waivers of many FRA rules. FRA offers the following suggestions on factors petitioners may want to address concerning specific areas of regulation. (All "part" references are to title 49 CFR.) Parts 209 (Railroad Safety Enforcement Procedures), 211 (Rules of Practice), 212 (State Safety Participation), and 216 (Special Notice and Emergency Order Procedures) are largely procedural rules that are unlikely to be the subject of waivers, so those parts are not discussed further. For segments of a light rail line not involving operations over the general system, assuming the light rail operation meets the definition of "rapid transit," FRA's standards do not apply and the petition need not address those segments with regard to each specific rule from which waivers are sought with regard to shared use trackage.

1. Track, structures, and signals.

A. *Track safety standards (part 213).* For general system track used by both the conventional and light rail lines, the track standards apply and a waiver is very unlikely. A light rail operation that owns track over which the conventional railroad operates may wish to consider assigning responsibility for that track to the other railroad. If so, the track owner must follow the procedure set forth in 49 CFR 213.5(c). Where such an assignment occurs, the owner and assignee are responsible for compliance.

B. *Signal systems reporting requirements (part 233).* This part contains reporting requirements with respect to methods of train operation, block signal systems, interlockings, traffic control systems, automatic train stop, train control, and cab signal systems, or other similar appliances, methods, and systems. If a signal system failure occurs on general system track which is used by both conventional and light rail lines, and triggers the reporting requirements of this part, the light rail operator must file, or cooperate fully in the filing of, a signal system report. The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the signal system. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the signal system, that entity is the logical choice to file each signal failure report, and a waiver is very unlikely. Moreover, since a signal failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. Even if the conventional railroad is responsible for maintaining the signal systems, the light rail operator must still assist the railroad in reporting all signal failures by notifying the conventional railroad of such failures.

C. *Grade crossing signal system safety (part 234).* This part contains minimum standards for the maintenance, inspection, and testing of highway-rail grade crossing warning systems, and also prescribes standards for the reporting of system failures and minimum actions that railroads must take when such warning systems malfunction. If a grade crossing accident or warning activation failure occurs during light rail operations on general system track that is used by both conventional and light rail lines, the light rail operator must submit, or cooperate with the other railroad to ensure the submission of, a report to FRA within the required time frame (24 hours for an accident report, or 15 days for a grade crossing signal system activation failure report). The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the grade crossing devices. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the grade crossing devices, that entity is the logical choice to file each grade crossing signal failure report, and a waiver is very unlikely. Moreover, since a grade crossing warning device failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. However, if the conventional railroad is responsible for maintaining the grade crossing devices, the light rail operator will still have to assist the railroad in reporting all grade crossing signal failures. Moreover, regardless of which railroad is responsible for maintenance of the grade crossing signals, any railroad (including a light rail operation) operating over a crossing that has experienced an activation failure, partial activation, or false activation must take the steps required by this rule to ensure safety at those locations. While the maintaining railroad will retain all of its responsibilities in such situations (such as contacting train crews and notifying law enforcement agencies), the operating railroad must observe requirements concerning flagging, train speed, and use of the locomotive's audible warning device.

D. *Approval of signal system modifications (part 235).* This part contains instructions governing applications for approval of a discontinuance or material modification of a signal system or relief from the regulatory requirements of part 236. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operator) owns or has responsibility for maintaining the signal system. If the conventional railroad does the maintenance, then that railroad would file any application submitted under this part; the light rail operation would have the right to protest the application under § 235.20. The petition should discuss whether the light rail operator or conventional railroad is responsible for maintaining the signal system.

E. *Standards for signal and train control systems (part 236).* This part contains rules, standards, and instructions governing the installation, inspection, maintenance, and repair of signal and train control systems, devices, and appliances. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operation) owns or has responsibility for installing, inspecting, maintaining, and repairing the signal system. If the light rail operation has these responsibilities, a waiver would be unlikely because a signal failure would jeopardize the safety of both the light rail operation and the conventional railroad. If the conventional railroad assumes all of the responsibilities under this part, the light rail operation would not need a waiver, but it would have to abide by all operational limitations imposed this part and by the conventional railroad. The petition should discuss whether the light rail operator or conventional railroad has responsibility for installing, inspecting, maintaining, and repairing the signal system. 2.

2. Motive power and equipment.

A. *Railroad noise emission compliance regulations (part 210).* FRA issued this rule under the Noise Control Act of 1972, 42 U.S.C. 4916, rather than under its railroad safety authority. Because that statute included a definition of "railroad" borrowed from one of the older railroad safety laws, this part has an exception for "street, suburban, or interurban electric railways unless operated as a part of the general railroad system of transportation." 49 CFR 210.3(b)(2). The petition should address whether this exception may apply to the light rail operation. Note that this exception is broader than the sole exception to the railroad safety statutes (i.e., urban rapid transit not connected to the general system). The greater the integration of the light rail and conventional operations, the less likely this exception would apply.

If the light rail equipment would normally meet the standards in this rule, there would be no reason to seek a waiver of it. If it appears that the light rail system would neither meet the standards nor fit within the exception, the petition should address noise mitigation measures used on the system, especially as part of a system safety program. Note, however, that FRA lacks the authority to waive certain Environmental Protection Agency standards (40 CFR part 201) that underlie this rule. See 49 CFR 210.11(a).

B. *Railroad freight car safety standards (part 215).* A light rail operator is likely to move freight cars only in connection with maintenance-of-way work. As long as such cars are properly stenciled in accordance with section 215.305, this part does not otherwise apply, and a waiver would seem unnecessary.

C. *Rear end marking devices (part 221).* This part requires that each train occupying

or operating on main line track be equipped with, display, and continuously illuminate or flash a marking device on the trailing end of the rear car during periods of darkness or other reduced visibility. The device, which must be approved by FRA, must have specific intensity, beam arc width, color, and flash rate characteristics. A light rail operation seeking a waiver of this part will need to explain how other marking devices with which it equips its vehicles, or other means such as train control, will provide the same assurances as this part of a reduced likelihood of collisions attributable to the failure of an approaching train to see the rear end of a leading train in time to stop short of it during periods of reduced visibility. The petition should describe the light rail vehicle's existing marking devices (e.g., headlights, brakelights, taillights, turn signal lights), and indicate whether the vehicle bears reflectors. If the light rail system will operate in both a conventional railroad environment and in streets mixed with motor vehicles, the petition should discuss whether adapting the design of the vehicle's lighting characteristics to conform to FRA's regulations would adversely affect the safety of its operations in the street environment. A light rail system that has a system safety program developed under FTA's rules may choose to discuss how that program addresses the need for equivalent levels of safety when its vehicles operate on conventional railroad corridors.

D. *Safety glazing standards (part 223).* This part provides that passenger car windows be equipped with FRA-certified glazing materials in order to reduce the likelihood of injury to railroad employees and passengers from the breakage and shattering of windows and avoid ejection of passengers from the vehicle in a collision. This part, in addition to requiring the existence of at least four emergency windows, also requires window markings and operating instructions for each emergency window, as well as for each window intended for emergency access, so as to provide the necessary information for evacuation of a passenger car. FRA will not permit operations to occur on the general system in the absence of effective alternatives to the requirements of this part that provide an equivalent level of safety. The petition should explain what equivalent safeguards are in place to provide the same assurance as part 223 that passengers and crewmembers are safe from the effects of objects striking a light rail vehicle's windows. The petition should also discuss the design characteristics of its equipment when it explains how the safety of its employees and passengers will be assured during an evacuation in the absence of windows meeting the specific requirements of this part. A light rail system that has a system safety program plan developed under FTA's rule may be able to demonstrate that the plan satisfies the safety goals of this part.

E. *Locomotive safety standards (part 229).* (1) This part contains minimum safety standards for all locomotives, except those propelled by steam power. FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail equipment, and that others may not fit properly in the context of light rail operations. A waiver petition should explain precisely how the light rail system's practices will provide for the safe condition and operation of its locomotive equipment.

(2) FRA is not likely to waive completely the provision (section 229.125) of this rule concerning auxiliary lights designed to warn highway motorists of an approaching train. In order to reduce the risk of grade crossing accidents, it is important that all locomotives used by both conventional railroads and light rail systems present the same distinctive profile to motor vehicle operators approaching grade crossings on the general railroad system. If uniformity is sacrificed by permitting light rail systems to operate locomotives through the same grade crossings traversed by conventional trains with light arrangements placed in different locations on the equipment, safety could be compromised. Accordingly, the vehicle design should maintain the triangular pattern required of other locomotives and cab cars to the extent practicable.

(3) FRA is aware that light rail headlights are likely to produce less than 200,000 candela. While some light rail operators may choose to satisfy the requirements of section 229.125 by including lights on their equipment of different candlepower controlled by dimmer switches, the headlights on the majority of light rail vehicles will likely not meet FRA's minimum requirement. However, based on the nature of the operations of light rail transit, FRA recognizes that waivers of the minimum candela requirement for transit vehicle headlights seems appropriate.

F. *Safety appliance laws (49 U.S.C. 20301–20305).* (1) Since certain safety appliance requirements (e.g., automatic couplers) are statutory, they can only be "waived" by FRA under the exemption conditions set forth in 49 U.S.C. 20306. Because exemptions requested under this statutory provision do not involve a waiver of a safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for an exemption under § 20306 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

(2) FRA may grant exemptions from the statutory safety appliance requirements in 49 U.S.C. 20301–20305 only if application of such requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." 49 U.S.C. 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that "other types of railroad equipment might similarly benefit." S. Rep. 96–614 at 8 (1980), reprinted in 1980 U.S.C.C.A.N. 1156,1164.

(3) FRA recognizes the potential public benefits of allowing light rail systems to take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right-of-way, would be prohibitively expensive. Any petitioner requesting an exemption for technological improvements should carefully explain how being forced to comply with the existing statutory safety appliance requirements would conflict with the exemption exceptions set forth at 49 U.S.C. 20306. The petition should also show that granting the exemption is in the public interest and is consistent with assuring the safety of the light rail operator's employees and passengers.

G. *Safety appliance standards (part 231).* (1) The regulations in this part specify the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (e.g., handbrakes, ladders, handholds, steps), and directly implement a number of the statutory requirements found in 49 U.S.C. 20301–20305. These very detailed regulations are intended to ensure that sufficient safety appliances are available and able to function safely and securely as intended.

(2) FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail operation, and that others may not fit properly in the context of light rail operations (e.g., crewmembers typically do not perform yard duties from positions outside and adjacent to the light rail vehicle or near the vehicle's doors). However, to the extent that the light rail operation encompasses the safety risks addressed by the regulatory provisions of this part, ■ waiver petition should explain precisely how the light rail system's practices will provide for the safe operation of its passenger equipment. The petition should focus on the design specifications of the equipment, and explain how the light rail system's operating practices, and its intended use of the equipment, will satisfy the safety purpose of the regulations while providing at least an equivalent level of safety.

H. *Passenger equipment safety standards (part 238).* This part prescribes minimum Federal safety standards for railroad passenger equipment. Since a collision on the general railroad system between light rail equipment and conventional rail equipment could prove catastrophic, because of the significantly greater mass and structural strength of the conventional equipment, a waiver petition should describe the light rail operation's system safety program that is in place to minimize the risk of such a collision. The petition should discuss the light rail operation's operating rules and procedures, train control technology, and signal system. If the light rail operator and conventional railroad will operate simultaneously on the same track, the petition should include ■ quantitative risk assessment that incorporates design information and provide an engineering analysis of the light rail equipment and its likely performance in derailment and collision scenarios. The petitioner should also demonstrate that risk mitigation measures to avoid the possibility of collisions, or to limit the speed at which a collision might occur , will be employed in connection with the use of the equipment on a specified shared-use rail line. This part also

contains requirements concerning power brakes on passenger trains, and a petitioner seeking a waiver in this area should refer to these requirements, not those found in 49 CFR part 232.

3. Operating practices.

A. *Railroad workplace safety (part 214).* (1) This part contains standards for protecting bridge workers and roadway workers. The petition should explain whether the light rail operator or conventional railroad is responsible for bridge work on shared general system trackage. If the light rail operator does the work and does similar work on segments outside of the general system, it may wish to seek a waiver permitting it to observe OSHA standards throughout its system.

(2) There are no comparable OSHA standards protecting roadway workers. The petition should explain which operator is responsible for track and signal work on the shared segments. If the light rail operator does this work, the petition should explain how the light rail operator protects these workers. However, to the extent that protection varies significantly from FRA's rules, a waiver permitting use of the light rail system's standards could be very confusing to train crews of the conventional railroad who follow FRA's rules elsewhere. A waiver of this rule is unlikely. A petition should address how such confusion would be avoided and safety of roadway workers would be ensured.

B. *Railroad operating rules (part 217).* This part requires filing of a railroad's operating rules and that employees be instructed and tested on compliance with them. A light rail operation would not likely have difficulty complying with this part. However, if a waiver is desired, the light rail system should explain how other safeguards it has in place provide the same assurance that operating employees are trained and periodically tested on the rules that govern train operation. A light rail system that has a system safety program plan developed under FTA's rules may be in a good position to give such an assurance.

C. *Railroad operating practices (part 218).* This part requires railroads to follow certain practices in various aspects of their operations (protection of employees working on equipment, protection of trains and locomotives from collisions in certain situations, prohibition against tampering with safety devices, protection of occupied camp cars). Some of these provisions (*e.g.*, camp cars) may be irrelevant to light rail operations. Others may not fit well in the context of light rail operations. To the extent the light rail operation presents the risks addressed by the various provisions of this part, a waiver provision should explain precisely how the light rail system's practices will address those risks. FRA is not likely to waive the prohibition against tampering with safety devices, which would seem to present no particular burden to light rail operations. Moreover, blue signal regulations, which protect employees working on or near equipment, are not likely to be waived to the extent that such work is performed on track shared by a light rail operation and a conventional railroad, where safety may best be served by uniformity.

D. *Control of alcohol and drug use (part 219).* FRA will not permit operations to occur on the general system in the absence of effective rules governing alcohol and drug use by operating employees. FTA's own rules may provide a suitable alternative for a light rail system that is otherwise governed by those rules. However, to the extent that light rail and conventional operations occur simultaneously on the same track, FRA is not likely to apply different rules to the two operations, particularly with respect to post-accident testing, for which FRA requirements are more extensive (e.g., section 219.11(f) addresses the removal, under certain circumstances, of body fluid and/or tissue samples taken from the remains of any railroad employee who performs service for a railroad). (FRA recognizes that in the event of a fatal train accident involving a transit vehicle, whether involving temporal separation or simultaneous use of the same track, the National Transportation Safety Board will likely investigate and obtain its own toxicology test results.)

E. *Railroad communications (part 220).* A light rail operation is likely to have an effective system of radio communication that may provide a suitable alternative to FRA's rules. However, the greater the need for radio communication between light rail personnel (*e.g.*, train crews or dispatchers) and personnel of the conventional railroad (*e.g.*, train crews, roadway workers), the greater will be the need for standardized communication rules and, accordingly, the less likely will be a waiver.

F. *Railroad accident/incident reporting (part 225).* (1) FRA's accident/incident information is very important in the agency's decisionmaking on regulatory issues and strategic planning. A waiver petition should indicate precisely what types of accidents and incidents it would report, and to whom, under any alternative it proposes. FRA is not likely to waive its reporting requirements concerning train accidents or highway-rail grade crossing collisions that occur on the general railroad system. Reporting of accidents under FTA's rules is quite different and would not provide an effective substitute. However, with regard to employee injuries, the light rail operation may, absent FRA's rules, otherwise be subject to reporting requirements of FTA and OSHA and may have an interest in uniform reporting of those injuries wherever they occur on the system. Therefore, it is more likely that FRA would grant a waiver with regard to reporting of employee injuries.

(2) Any waiver FRA may grant in the accident/incident reporting area would have no effect on FRA's authority to investigate such incidents or on the duties of light rail operators and any other affected railroads to cooperate with those investigations. See sections 225.31 and 225.35 and 49 U.S.C. 20107 and 20902. Light rail operators should anticipate that FRA will investigate any serious accident or injury that occurs on the shared use portion of their lines, even if it occurs during hours when only the light rail trains are operating. Moreover, there may be instances when FRA will work jointly with FTA and the state agency to investigate the cause of a transit accident that occurs off the general system under circumstances that raise concerns about the safety of operations on the shared use portions. For example, if a transit operator using the same light rail equipment on the shared and non-shared-use portions of its operation has a serious accident on the non-shared-use portion, FRA may want to determine whether the cause of the accident pointed to a systemic problem with the equipment that might impact the transit system's operations on the general system. Similarly, where human error might be a factor, FRA may want to determine whether the employee potentially at fault also has safety responsibilities on the general system and, if so, take appropriate action to ensure that corrective action is taken. FRA believes its statutory investigatory authority extends as far as necessary to address any condition that might reasonably be expected to create a hazard to railroad operations within its jurisdiction.

G. *Hours of service laws (49 U.S.C. 21101–21108).* (1) The hours of service laws apply to all railroads subject to FRA's jurisdiction, and govern the maximum work hours and minimum off-duty periods of employees engaged in one or more of the three categories of covered service described in 49 U.S.C. 21101. If an individual performs more than one kind of covered service during a tour of duty, then the most restrictive of the applicable limitations control. Under current law, a light rail operation could request a waiver of the substantive provisions of the hours of service laws only under the "pilot project" provision described in 49 U.S.C. 21108, provided that the request is based upon a joint petition submitted by the railroad and its affected labor organizations. Because waivers requested under this statutory provision do not involve a waiver of a safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for a waiver under § 21108 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

(2) If such a statutory waiver is desired, the light rail system will need to assure FRA that the waiver of compliance is in the public interest and consistent with railroad safety. The waiver petition should include a discussion of what fatigue management strategies will be in place for each category of covered employees in order to minimize the effects of fatigue on their job performance. However, FRA is unlikely to grant a statutory waiver covering employees of a light rail operation who dispatch the trains of a conventional railroad or maintain a signal system affecting shared use trackage.

H. *Hours of service recordkeeping (part 228).* This part prescribes reporting and recordkeeping requirements with respect to the hours of service of employees who perform the job functions set forth in 49 U.S.C. 21101. As a general rule, FRA anticipates that any waivers granted under this part will only exempt the same groups of employees for whom a light rail system has obtained a waiver of the substantive provisions of the hours of service laws under

49 U.S.C. 21108. Since it is important that FRA be able to verify that a light rail operation is complying with the on- and off-duty restrictions of the hour of service laws for all employees not covered by a waiver of the laws' substantive provisions, it is unlikely that any waiver granted of the reporting and recordkeeping requirements would exclude those employees. However, in a system with fixed work schedules that do not approach 12 hours on duty in the aggregate, it may be possible to utilize existing payroll records to verify compliance.

I. *Passenger train emergency preparedness (part 239).* This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. FRA's expectation is that by requiring affected railroads to provide sufficient emergency egress capability and information to passengers, along with mandating that these railroads coordinate with local emergency response officials, the risk of death or injury from accidents and incidents will be lessened. A waiver petition should state whether the light rail system has an emergency preparedness plan in place under a state system safety program developed under FTA's rules for the light rail operator's separate street railway segments. Under a system safety program, a light rail operation is likely to have an effective plan for dealing with emergency situations that may provide an equivalent alternative to FRA's rules. To the extent that the light rail operation's plan relates to the various provisions of this part, a waiver petition should explain precisely how each of the requirements of this part is being addressed. The petition should especially focus on the issues of communication, employee training, passenger information, liaison relationships with emergency responders, and marking of emergency exits.

J. *Qualification and certification of locomotive engineers (part 240).* This part contains minimum Federal safety requirements for the eligibility, training, testing, certification, and monitoring of locomotive engineers. Those who operate light rail trains may have significant effects on the safety of light rail passengers, motorists at grade crossings, and, to the extent trackage is shared with conventional railroads, the employees and passengers of those railroads. The petition should describe whether a light rail system has a system safety plan developed under FTA's rules that is likely to have an effective means of assuring that the operators, or "engineers," of its equipment receive the necessary training and have proper skills to operate a light rail vehicle in shared use on the general railroad system. The petition should explain what safeguards are in place to ensure that light rail engineers receive at least an equivalent level of training, testing, and monitoring on the rules governing train operations to that received by locomotive engineers employed by conventional railroads and certified under part 240. Any light rail system unable to meet this burden would have to fully comply with the requirements of part 240. Moreover, where a transit system intends to operate simultaneously on the same track with conventional equipment, FRA will not be inclined to waive the part 240 requirements. In that situation, FRA's paramount concern would be uniformity of training and qualifications of all those operating trains on the general system, regardless of the type of equipment.

V. Waivers That May be Appropriate for Time-Separated Light Rail Operations

1. The foregoing discussion of factors to address in a petition for approval of shared use concerns all such petitions and, accordingly, is quite general. FRA is willing to provide more specific guidance on where waivers may be likely with regard to light rail operations that are time-separated from conventional operations. FRA's greatest concern with regard to shared use of the general system is a collision between light rail and conventional trains on the same track. Because the results could well be catastrophic, FRA places great emphasis on avoiding such collisions. The surest way to guarantee that such collisions will not occur is to strictly segregate light rail and conventional operations by time of day so that the two types of equipment never share the same track at the same time. This is not to say that FRA will not entertain waiver petitions that rely on other methods of collision avoidance such as sophisticated train control systems. However, petitioners who do not intend to separate light rail from conventional operations by time of day will face a steep burden of demonstrating an acceptable level of safety. FRA does not insist that all risk of collision be eliminated. However, given the enormous severity of the likely consequences of a collision, the demonstrated risk of such an event must be extremely remote.

2. There are various ways of providing such strict separation by time. For example, freight operations could be limited to the hours of midnight to 5 a.m. when light rail operations are prohibited. Or, there might be both a nighttime and a mid-day window for freight operation. The important thing is that the arrangement not permit simultaneous operation on the same track by clearly defining specific segments of the day when only one type of operation may occur. Mere spacing of train movements by a train control system does not constitute this temporal separation.

3. FRA is very likely to grant waivers of many of its rules where complete temporal separation between light rail and conventional operations is demonstrated in the waiver request. The chart below lists each of FRA's railroad safety rules and provides FRA's view on whether it is likely to grant a waiver in a particular area where temporal separation is assured. Where the "Likely Treatment" column says "comply" a waiver is not likely, and where it says "waive" a waiver is likely. Of course, FRA will consider each petition on its own merits and one should not presume, based on the chart, that FRA will grant or deny any particular request in a petition. This chart is offered as general guidance as part of a statement of policy, and as such does not alter any safety rules or obligate FRA to follow it in every case. This chart assumes that the operations of the local rail transit agency on the general railroad system are completely separated in time from conventional railroad operations, and that the light rail operation poses no atypical safety hazards. FRA's procedural rules on matters such as enforcement (49 CFR parts 209 and 216), and its statutory authority to investigate accidents and injuries and take emergency action to address an imminent hazard of death or injury, would apply to these operations in all cases.

4. Where waivers are granted, a light rail operator would be expected to operate under a system safety plan developed in accordance with the FTA state safety oversight program. The state safety oversight agency would be responsible for the safety oversight of the light rail operation, even on the general system, with regard to aspects of that operation for which a waiver is granted. (The "Comments" column of the chart shows "State Safety Oversight" where waivers conditioned on such state oversight are likely.) FRA will coordinate with FTA and the state agency to address any serious safety problems. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety. On certain subjects where waivers are not likely, the "Comments" column of the chart makes special note of some important regulatory requirements that the light rail system will have to observe even if it is not primarily responsible for compliance with that particular rule.

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POSSIBLE WAIVERS FOR LIGHT RAIL OPERATIONS ON THE GENERAL RAILROAD SYSTEM BASED ON SEPARATION IN TIME FROM CONVENTIONAL OPERATIONS

Title 49 CFR part	Subject of rule	Likely treatment	Comments
Track, Structures, and Signals			
213	Track safety standards	Comply (assuming light rail operator owns track or has been assigned responsibility for it).	If the conventional RR owns the track, light rail will have to observe speed limits for class of track.
233, 235, 236	Signal and train control	Comply (assuming light rail operator or its contractor has responsibility for signal maintenance).	If conventional RR maintains signals, light rail will have to abide by operational limitations and report signal failures.
234	Grade crossing signals	Comply (assuming light rail operator or its contractor has responsibility for crossing devices).	If conventional RR maintains devices, light rail will have to comply with sections concerning crossing accidents, activation failures, and false activations.
213, Appendix C	Bridge safety policy	Not a rule. Compliance voluntary.	
Motive Power and Equipment			
210	Noise emission	Waive	State safety oversight.
215	Freight car safety standards	Waive	State safety oversight.
221	Rear end marking devices	Waive	State safety oversight.
223	Safety glazing standards	Waive	State safety oversight.
229	Locomotive safety standards	Waive, except for arrangement of auxiliary lights, which is important for grade crossing safety.	State safety oversight.
231*	Safety appliance standards	Waive	State safety oversight; see note below on statutory requirements.
238	Passenger equipment standards	Waive	State safety oversight.
Operating Practices			
214	Bridge worker	Waive	OSHA standards.
214	Roadway worker safety	Comply	
217	Operating rules	Waive	State safety oversight.
218	Operating practices	Waive, except for prohibition on tampering with safety devices related to signal system, and blue signal rules on shared track.	State safety oversight.
219	Alcohol and drug	Waive if FTA rule otherwise applies	FTA rule may apply.
220	Radio communications	Waive, except to extent communications with freight trains and roadway workers are necessary.	State safety oversight.
225	Accident reporting and investigation	Comply with regard to train accidents and crossing accidents; waive as to injuries; FRA accident investigation authority not subject to waiver.	Employee injuries would be reported under FTA or OSHA rules.
228**	Hours of service recordkeeping	Waive (in concert with waiver of statute); waiver not likely for personnel who dispatch conventional RR or maintain signal system on shared use track.	See note below on possible waiver of statutory requirements.
239	Passenger train emergency preparedness.	Waive	State safety oversight.
240	Engineer certification	Waive	State safety oversight.

* *Safety Appliance Statute.* Certain safety appliance requirements (*e.g.*, automatic couplers) are statutory and can only be waived under the conditions set forth in 49 U.S.C. 20306, which permits exemptions if application of the requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." If consistent with employee safety, FRA could probably rely on this provision to address most light rail equipment that could not meet the standards.

** *Hours of Service Statute.* Currently, 49 U.S.C. 21108 permits FRA to waive substantive provisions of the hours of service laws based upon a joint petition by the railroad and affected labor organizations, after notice and an opportunity for a hearing. This is a "pilot project" provision, so waivers are limited to two years but may be extended for additional two-year periods after notice and an opportunity for comment.

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Issued in Washington, DC on June 30, 2000.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 00–17208 Filed 7–5–00; 10:43 am]

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Part VIII

Department of Commerce

Bureau of the Census

Bureau of Export Administration

15 CFR Parts 30, 732, et al.
Foreign Trade Statistics Regulations; Shipper's Export Declaration or Filing Export Information Electronically Using Automated Export System; Clarification; Final Rule
Export Administration Regulations; Parties to Transaction and Their Responsibilities, Routed Export Transactions, Shipper's Export Declarations, and Export Clearance; Final Rule

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 980716180–0030–03]

RIN 0607–AA20

Foreign Trade Statistics Regulations: Amendment to Clarify Exporter (U.S. Principal Party in Interest) and Forwarding or Other Agent Responsibilities in Preparing the Shipper's Export Declaration or Filing Export Information Electronically Using the Automated Export System and Related Provisions

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to clarify the responsibilities of exporters and forwarding or other agents in completing the Shipper's Export Declaration (SED), or filing the information electronically using the Automated Export System (AES), and to clarify provisions for authorizing forwarding or other agents to prepare and file a paper SED or file the export information electronically using the AES on behalf of a principal party in interest. This rule also clarifies provisions on electronic transmissions of intangible transfers of software and technology; updates provisions related to mail shipments and certain related SED exemptions; notifies the public that in the near future the Census Bureau will revise appropriate "exporter" fields on the paper SED forms and the AES record to read "U.S. principal party in interest," and require the reporting of the U.S. principal party in interest Employer Identification Number (EIN) or other identification number on the SED or AES record; clarifies what information should be listed in these newly revised blocks and the equivalent fields on the AES record; and clarifies provisions for providing import verification information to the Census Bureau.

DATES: *Effective Date:* This rule is effective July 10, 2000.

Grace Period: A 90 day grace period will apply to the requirements set forth in this rule. Until October 10, 2000, Shipper's Export Declarations will be accepted with information that complies with the rules prior to July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233–6700, by telephone on (301) 457–2255, or by fax on (301) 457–2645.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing trade statistics for the United States. These data are used by various Federal Government agencies and the private sector for planning and policy development. In order to accomplish its mission, the Census Bureau must receive accurate statistical information from the trade community. The Shipper's Export Declaration (SED) and the Automated Export System (AES) records are the primary vehicles used for collecting such trade data, and the information contained therein is used by the Census Bureau for statistical purposes only and is confidential under the provisions of Title 13, United States Code (U.S.C.), Section 301(g). The Census Bureau's primary objective in this rule is to ensure the accuracy of its trade statistics and to clarify reporting responsibilities for all parties involved in export transactions.

As such, the Census Bureau is amending the Foreign Trade Statistics Regulations (FTSR), 15 Code of Federal Regulations (CFR) Part 30, to clarify responsibilities of exporters and forwarding or other agents in completing the SED, to notify the public that in the near future the Census Bureau will revise the title of the "exporter" blocks on the paper SED forms and the "Exporter" field on the AES record from reading "Exporter" to read "U.S. principal party in interest," and to clarify in this rule what information should be listed in these newly revised blocks and the equivalent fields on the AES record. This rule defines new terms, including "U.S. principal party in interest" and "routed export transaction," and clarifies existing ones (notably the definition of "exporter") for purposes of completing the SED or AES record. The rule clarifies provisions for authorizing a forwarding or other agent to prepare and file an SED or the AES record on behalf of a principal party in interest.

The Census Bureau initially published a notice of proposed rulemaking on this subject in the **Federal Register** on August 6, 1998 (63 FR 41979). As a result of comments received on that proposed rulemaking and subsequent discussions with the Bureau of Export Administration (BXA), the Census Bureau decided to issue a supplementary notice of proposed rulemaking to address the issues raised during the comment period and to further clarify provisions contained in that notice of proposed rulemaking. The Census Bureau published a supplementary notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53861). The BXA also published a notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53854) revising the Export Administration Regulations (EAR) regarding the responsibilities of the parties to an export transaction, routed export transactions, SEDs, and export clearance. Subsequent to the publication of those notices in the **Federal Register**, the Census Bureau and BXA participated in numerous meetings, conferences, and seminars with the trade community to explain more clearly the provisions of the proposed rules and to resolve questions and concerns of the trade community. BXA is also revising appropriate sections of the EAR in a final rule published elsewhere in this issue of the **Federal Register**. The EAR will conform to the provisions of the FTSR in reference to clarifying the responsibilities of exporters and forwarding or other agents in completing the SED, and BXA also will issue changes to the EAR to simplify export clearance.

In addition to issuing final rules on the provisions addressed in the proposed rulemakings, the Census Bureau and BXA also are issuing final rules in these notices to amend provisions regarding the reporting of value of exports in export transactions, exports of mail shipments via the U.S. Postal Service, amending certain provisions for miscellaneous exemptions and exports transhipped through Canada to a third destination, provisions regarding the electronic transmission of software and technology and other intangible transfers, and provisions for providing import information to the Census Bureau.

The Census Bureau is amending the FTSR to specify that electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software and technology, are not subject to the FTSR, but may be subject to export control requirements under other laws and regulations. The Census Bureau is further amending the FTSR to clarify making corrections to SEDs submitted to the U.S. Postal Service and to increase the value limitation for mail shipments that do not require an SED or AES record from $500 or under to $2,500 or under. The Census Bureau is also amending the FTSR to clarify certain

miscellaneous exemption provisions and provisions for exports transshipped through Canada to be consistent with the EAR and to include a provision requiring importers to provide certain import information to the Census Bureau to verify the accuracy of import data.

Response to Comments

The Census Bureau received 18 comments on the supplementary notice of proposed rulemaking published in the **Federal Register** on October 4, 1999 (64 FR 53861). A general response was sent to each respondent addressing their concerns with a notation that a more detailed response to the comments would be contained in the final rule. The Census Bureau revised certain provisions in the final rule to address the concerns of the respondents and to more clearly explain our requirements. The major concerns addressed in the comments and the Census Bureau's response are as follows:

1. *Specify that the information required on the SED or AES record is for statistical purposes.* There is concern among commentors that the Census Bureau did not clearly specify that the information reported on the SED or AES record is for statistical purposes. The Census Bureau is specifying in the regulation text of this rule, in § 30.4(a), that the information reported on the SED or AES record is used by the Census Bureau for statistical purposes only. The provisions contained in this part apply only to statistical reporting requirements. However, it must be understood that the SED or AES record is a dual purpose document/format used by the Census Bureau for statistical purposes and by the BXA and other government agencies for export control purposes.

2. *Specify and clarify the documentation and documentation sharing responsibilities of the forwarding or other agents in a routed export transaction.* There is some concern and confusion among commentors that the Census Bureau did not clearly specify the documentation and documentation sharing responsibilities of forwarding or other agents, especially in a routed export transaction. The Census Bureau is specifying, in the regulation text of this rule in § 30.4(b)(c), the reporting and documentation responsibilities of all parties involved in export and routed export transactions. The Census Bureau is further specifying, in the regulation text of this rule in § 30.4(c)(2), the documentation sharing responsibilities of the forwarding or other agent in a routed export transaction. In a routed export transaction the forwarding or other agent, upon request by the exporter (U.S. principal party in interest), is responsible for providing the exporter (U.S. principal party in interest) with documentation verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record. The Census Bureau will not dictate the format by which this documentation should be made available between the parties. The new regulation does not impose any additional documentation requirements on any party. The documentation provisions stated in the regulation are provisions currently specified in § 30.11 of this Part.

3. *Clarify the liability concerns of the Exporter (U.S. principal party in interest) in a routed transaction.* There is concern among commentors regarding the liability of the exporter (U.S. principal party in interest) especially in a routed export transaction, when the foreign principal party in interest (foreign buyer) authorizes a U.S. forwarding or other agent to act on its behalf in facilitating the export transaction and prepare and file the SED or AES record. The new regulations clearly address the liability concerns of all parties in an export and routed export transaction and provide more protection to the exporter (U.S. principal party in interest) than they have under the current regulations. The new regulations, for the first time, clearly specify in writing, in the regulation text itself, the specific reporting and documentation responsibilities of the exporter (principal party in interest) in § 30.4(c)(1) and the forwarding or other agent in § 30.4(c)(2) in a routed export transaction. Specifically, in a routed export transaction, the exporter (U.S. principal party in interest) is only responsible for providing basic commodity information and their Internal Revenue Service (IRS), Employer Identification Number (EIN) to the forwarding or other agent. The forwarding or other agent is responsible for obtaining a power of attorney or written authorization from the foreign principal party in interest and preparing, signing, and filing the SED or AES record based on the information obtained from the exporter (U.S. principal party in interest) and other parties to the transaction. The exporter (U.S. principal party in interest) is only responsible and liable for the information it is required to provide the forwarding or other agent in § 30.4(c)(2) of the FTSR.

4. *Add a second block/field to the SED or AES record for the manufacturer/seller or other responsible party.* There was a request from some commentors for the Census Bureau to add another block to the paper SED and another field to the AES record for the manufacturer/seller or other related party to the transaction. This addition would essentially duplicate information the Census Bureau currently collects and would increase the reporting burden on the public. For statistical reporting purposes the Census Bureau is only interested in capturing data on the entity that either sold or made available the goods for export abroad. That person is considered the exporter (U.S. principal party in interest), or for statistical reporting purposes on the SED or AES record, the U.S. principal party in interest. In addition, the Census Bureau believes that the public comments requesting the addition of another block on the SED were based upon the misconception that the party listed in the "Exporter" block of the SED or AES record was the person liable for the export under the EAR and the FTSR. The fact of the matter is that all parties that participate in an export transaction are liable for their own actions or inactions, whether they are listed on the export forms or not. In the near future, a revision to the title of the exporter blocks on the paper SED and equivalent fields of the AES record will be revised from reading "Exporter" to read "U.S. principal party in interest," and "Exporter's EIN (IRS) No." to read "U.S. principal party in interest's EIN (IRS) No." Both BXA and the Census Bureau have the same definition for "principal party in interest," therefore this revision will alleviate the confusion over the "Exporter" block of the SED or AES record.

5. *Exporter's concern on providing their Internal Revenue Service Employer Identification Number (EIN) to the forwarding or other agent in a routed transaction.* There is some concern among commentors about providing their EIN to a U.S. forwarding or other agent especially in a routed transaction. The requirement for reporting the exporter's EIN has been part of export regulatory requirements since 1980. The Census Bureau uses the EIN to identify the specific company exporting merchandise from the United States. Company names are usually varied and the Census Bureau needs a more definitive identifier for this purpose. The appropriate fields on the SED and AES record will be revised to require the reporting of the U.S. principal party in interest's EIN or other ID number. In

addition, a company's EIN is reported on numerous business and financial documents to verify the identity of a specific business entity. The EIN on the SED or AES record is kept strictly confidential and is not released to any other party. Section 30.91 of the FTSR specifically prohibits the disclosure of information on the SED or AES record to anyone except the exporter or his agent by those having possession of or access to any copy for official purposes. The forwarding or other agent is not permitted to release copies of the SED or AES record to any other party for unofficial purposes.

6. *Clarify provisions on preparing SEDs for consolidated or containerized shipments.* There is some concern among commentors on the implication the new regulations will have on consolidated or containerized shipments. The current regulations require the consolidator or forwarding or other agent to prepare a separate SED or AES record for each shipment in the container, i.e., all merchandise being sent from one exporter to one consignee, to a single country of destination, on a single carrier, on the same day. Under the new regulation, the consolidator or forwarding or other agent cannot be listed as exporter on the SED or AES record, but will need a separate SED or AES record by individual exporter (U.S. principal party in interest) for each shipment in the container.

7. *Clarify conformity of documents provisions.* There is also some concern among commentors about the conformity of documentation requirements for export documents. The only conformity of documents requirement is contained in § 758.4(b) of the EAR and states that when a license is issued by BXA, the information entered on related export control documents (*e.g.*, the SED, bill of lading or air waybill) must be consistent with the license. Complying with the conformity of documents requirement in the EAR would have been a problem with the term "Exporter" in the exporter blocks on the paper SED and on the equivalent field of the AES record, but with the pending revision of the paper SED and AES record to revise the title of this block/field to "U.S. principal party in Interest," this will no longer be a concern.

Program Requirements

The Census Bureau is amending Title 15, Code of Federal Regulations (CFR), Part 30, to address the issues raised by commentors to the supplementary notice of proposed rulemaking to: (A) Define the term "exporter," for purposes of completing the SED or AES record, as the U.S. principal party in interest in the export transaction; (B) Clarify the reporting responsibilities of the U.S. principal party in interest and the forwarding or other agent in completing the SED or AES record; (C) Clarify provisions for authorizing a forwarding or other agent to prepare and file an SED or file the information electronically using the AES; and (D) Clarify the documentation and compliance responsibilities of parties involved in the export transaction. For purposes of this rule, all references to preparing and filing the paper SED also pertain to preparing and filing the AES electronic record.

This rule clarifies the responsibilities of the exporter (U.S. principal party in interest) and the forwarding or other agent in preparing the SED or AES record. For export shipments, the Census Bureau recognizes "routed export transactions" as a subset of "export transactions." A routed export transaction is where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States.

The "exporter" and "EIN" fields on the SED and AES records are being revised to read U.S. principal party in interest." For purposes of completing the SED or AES record, use the definition found in section 30.4(a)(1) of the FTSR for "Exporter (principal party in interest)" to determine who should be listed in the new "U.S. principal party in interest" block/field of the SED or AES record. The FTSR defines the term exporter (U.S. principal party in interest) as the person in the United States that receives the primary benefit, monetary or otherwise, of the export transaction. Generally, that person is the U.S. seller, manufacturer, order party, or foreign entity. The foreign entity must be listed as the U.S. principal party in interest on the SED or AES record, if it is *in the United States* when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 of the FTSR, pertaining to the U.S. principal party in interest. In most cases, the forwarding or other agent is not a principal party in interest.

Keep in mind, however, that the EAR defines the exporter as the person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States (see EAR 15 CFR Part 772). In some transactions, this definition permits the forwarding or other agent to apply for a license and be the exporter, as defined in the EAR.

The person who signs the SED must be in the United States at the time of signing. If a U.S. manufacturer sells merchandise directly to a foreign principal party in interest for export, the U.S. manufacturer must be listed as the U.S. principal party in interest on the SED or AES record. If a U.S. manufacturer sells merchandise, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the merchandise to a foreign principal for export, the U.S. buyer (wholesaler/distributor) must be listed as the U.S. principal party in interest on the SED or AES record. If a U.S. order party, as defined in § 30.4(a)(1)(iii) of this rule, arranges for the sale and export of merchandise to a foreign principal party in interest directly, the U.S. order party must be listed as the U.S. principal party in interest on the SED or AES record. When a foreign entity is *in the United States* when the items are purchased or obtained for export it is the exporter (U.S. principal party in interest) and must be listed as the U.S. principal party in interest on the SED or AES record. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest.

The forwarding or other agent is that person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of items from the United States. The forwarding or other agent must be authorized by the exporter (U.S. principal party in interest), or in the case of a routed export transaction, the foreign principal party in interest. In a routed export transaction, the forwarding or other agent may be the exporter for compliance purposes under the EAR. However, the forwarding or other agent is never the "U.S. principal party in interest" on the paper SED or in the "U.S. principal party in interest" field of the AES record, except when the forwarding or other agent acts as an "order party."

The exporter (U.S. principal party in interest) can prepare and file the SED or AES record, or it can authorize a forwarding or other agent to prepare and file the SED or AES record on its behalf. If the exporter (U.S. principal party in interest) authorizes a forwarding or other agent to complete the SED or AES record on its behalf, the exporter (U.S. principal party in interest) is responsible for: (A) Providing the forwarding or other agent with the information necessary to complete the SED or AES record; (B) Providing the

forwarding or other agent with authorization to complete the SED or AES record, in the form of a power of attorney or written authorization, or signing the authorization block printed on the paper SED (block 23 on Commerce Form 7525–V or block 29 on Commerce Form 7525–V–ALT); and (C) Maintaining documentation to support the information provided to the forwarding or other agent for completing the SED or AES record.

The forwarding or other agent, if authorized by a principal party in interest, is responsible for: (A) Preparing the SED or AES record, based on information received from the exporter (U.S. principal party in interest) or other parties in the transaction; (B) Maintaining documentation to support the information reported on the SED or AES record; and (C) Upon request, providing the exporter (U.S. principal party in interest) with a copy of the export information filed in the form of a completed SED, an electronic facsimile, or in any other manner prescribed by the exporter (U.S. principal party in interest).

In a routed export transaction, where a foreign principal party in interest designates a U.S. forwarding or other agent to act on its behalf to prepare and file the SED or AES record, the exporter (U.S. principal party in interest) must provide the forwarding or other agent with the following information to assist them in preparing the SED or AES record: (1) Name and address of the U.S. principal party in interest; (2) U.S. principal party in interest's IRS, EIN; (3) Point of origin (State or Foreign Trade Zone (FTZ)); (4) Schedule B description of commodities; (5) Domestic (D), foreign (F), or Foreign Military Sale (FMS) (M) code; (6) Schedule B Number; (7) Quantity/unit of measure; (8) Value; (9) Upon request by the foreign principal party in interest or its agent, the Export Control Classification Number (ECCN) or with sufficient technical information to determine the ECCN; and (10) Any information that it knows will affect the determination of license authority.

Note: For Items 9 and 10, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

In a routed export transaction, the forwarding or other agent is responsible for preparing, signing, and filing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction. In addition to reporting the information provided by the exporter (U.S. principal party in interest) on the SED or AES record, the forwarding or other agent must provide the following export information on the SED or AES record: (1) Date of exportation; (2) Bill of lading/airway bill number; (3) Ultimate consignee; (4) Intermediate consignee; (5) Forwarding or other agent name and address; (6) Country of ultimate destination; (7) Loading pier; (8) Method of transportation; (9) Exporting carrier; (10) Port of export; (11) Port of unloading; (12) Containerized; (13) Weight; (14) ECCN; (15) License Authority; and (16) Signature in the certification block on the paper SED (block 24 on Commerce Form 7525–V and block 36 on Commerce Form 7525–V–ALT). In a routed export transaction, the exporter (U.S. principal party in interest) must be listed as the U.S. principal party in interest on the SED or the AES record.

Note: For items 14 and 15 where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

In a routed export transaction, the forwarding or other agent is responsible for: (A) Obtaining a power of attorney or written authorization from the foreign principal party in interest to act on its behalf; (B) Preparing, signing, and filing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction; (C) Maintaining documentation to support the information reported on the SED or AES record, and (D) Upon request, providing the exporter (U.S. principal party in interest), with appropriate documentation verifying that the information provided by the exporter (U.S. principal party in interest) in interest was accurately reported on the SED or AES record.

The FTSR places primary responsibility for compliance of the SED and AES requirements on the exporter (U.S. principal party in interest) in an export transaction and on the forwarding or other agent in a routed export transaction. However, the FTSR also considers all parties involved in the transaction responsible for the truth, accuracy, and completeness of the information reported on the SED or AES record. The parties to the transaction must provide the forwarding or other agent with the information necessary to correctly prepare the paper SED or to file the data electronically using the AES. As always, documentation must be maintained by all parties involved in the transaction to support the information reported on the SED or the AES record.

All parties that participate in transactions subject to the FTSR are responsible for compliance with the FTSR. In all cases where a violation of the FTSR occurs, the documentation of all parties involved in the transaction must be made available to the proper enforcement officials to determine the liability and responsibility for the export violation pursuant to FTSR § 30.11. Acting through a forwarding or other agent or delegating or redelegating authority does not in and of itself relieve anyone of their compliance responsibility.

This notice further clarifies provisions for using a power of attorney or written authorization when a principal party in interest authorizes a forwarding or other agent to prepare and file the SED on its behalf and when the SED information is filed electronically using the AES. Suggested formats for a power of attorney and a written authorization for executing a SED are available upon request from the U.S. Census Bureau, Foreign Trade Division.

This rule further specifies in § 30.4(f) the requirement that the SED be prepared in English. This provision is already included in the Census Bureau's instructions for completing the SED and this rule will simply include that requirement in the CFR.

In addition, this amendment clarifies the provision in § 30.7(d)(2) that a foreign entity, if in the United States when the items are purchased or obtained for export, must be listed as the U.S. principal party in interest on the SED or AES record and follow the provisions as specified in this part pertaining to the U.S. principal party in interest. In such situations, when the foreign entity does not have an EIN or Social Security Number (SSN), a border crossing number, passport number, or any number assigned by U.S. Customs is required to be reported on the SED or the AES record. On the paper SED, the appropriate number should be preceded by the symbol "T." On the AES record, the appropriate AES identifier code, as specified in the Automated Export System Trade Interface Requirements (AESTIR) must be reported. Using another's EIN or SSN is prohibited.

In addition to addressing the issues contained in the supplementary notice of proposed rulemaking (addressed above), this rule is also amending the FTSR to: (A) Include provisions on electronic transmission of software and technology; (B) Amend the provision for reporting value in an export transaction; (C) Include revisions to provisions

concerning mail shipments and certain related SED miscellaneous exemptions; (D) Clarify provisions for exports of items subject to the EAR that are transhipped through Canada to a third destination; and (E) Clarify provisions for providing import verification information to the Census Bureau. The specific revisions to the FTSR to include these changes are detailed in this rule.

In order to clarify the provisions of the FTSR with regards to the export reporting requirements for electronic transmissions and intangible transfers of software and technology, the Census Bureau is including a new section, 30.1(d), to the FTSR to state that electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software, and technology, are not subject to the provisions of the FTSR, but may be subject to export control requirements under other laws and regulations. Such transmissions and transfers are outside the scope and control of the Census Bureau and the FTSR. The FTSR only covers shipments of tangible/physical merchandise.

The Census Bureau is amending § 30.7(q), Value, to clarify the provision for reporting value information on the SED or AES record in an export transaction. In all export transactions the selling price or value to be reported on the SED or AES record is the U.S. principal party in interest's price to the foreign principal party in interest.

In order to update the Census Bureau's provisions on mail shipments currently included in the FTSR, the Census Bureau is clarifying provisions contained in § 30.16 for submitting corrections to SEDs that were initially submitted through the U.S. Postal Service. The Census Bureau is directing that all corrections to SEDs filed through the U.S. Postal Service be sent directly to the Census Bureau's National Processing Center in Jeffersonville, Indiana. The Census Bureau is also increasing the value limitation for goods exported through the mail that do not require a SED or AES record from $500 or under to $2,500 or under. This will bring all mail exports under the same provisions as for all other exports. Therefore, the Census Bureau will remove and reserve § 30.54, Special exemptions for mail shipments, as it is no longer necessary.

The Census Bureau is amending § 30.55, Miscellaneous exemptions, by revising paragraphs (g) and (h), and by adding paragraphs (n) and (o). Paragraphs (g) and (h) are being revised to make the FTSR language consistent with EAR revisions. Paragraph (n) will state that a SED or AES record is not required for exports of software and technology that does not require an export license, except that a SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold from stock at retail selling points or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier. Paragraph (o) will state that a SED or AES record is not required for any intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and mass market software exported electronically.

This rule is amending § 30.58 to revise the phrase "validated export license" to read "license" in paragraph (c)(1) and by adding paragraph (c)(6) for exports of items subject to the EAR that will be transhipped through Canada to a third country.

This rule also will include a provision to § 30.70, Statistical information required on import entries, to require importers to provide certain import information to the Census Bureau to verify the accuracy of import data. This is being included to ensure the cooperation of the importer in responding to requests from the Census Bureau when resolving problems or errors on import documents.

The revisions contained in this final rule are consistent with the provisions contained in the final rule issued by the BXA in its revisions to the EAR regarding the export control responsibilities of exporters and forwarding or other agents. The Department of the Treasury concurs with the provisions contained in this final rule.

Changes to the Proposed Rule

In order to comply with comments received from the trade community, and to update the FTSR to clarify all of the items discussed above, minor revisions were made to the proposed rule. These revisions are not substantial and reflect changes required to clarify the concerns of commentors to the supplementary notice of proposed rulemaking and to make minor updates to the FTSR to reflect changes the Census Bureau and the BXA are making to harmonize the FTSR and the EAR. The changes to the proposed rule are as follows:

(1) Section 30.1 is amended by adding paragraph (d) to clarify that electronic transmissions and other intangible transfers of software and technology are not subject to the provisions of the FTSR.

(2) Section 30.4(a) is amended by including clarifying language to specify that the information reported on the SED or AES record is used by the Census Bureau for statistical reporting purposes only and that for purposes of this part the provisions apply only to statistical reporting requirements.

(3) Section 30.4(a)(1) is amended by including clarifying language to specify that the person listed in the previously designated "exporter" block of the paper SED or in the "exporter" field on the AES record must be the U.S. principal party in interest; and adding paragraph (iv) to clarify provisions for when a foreign entity must be listed as U.S. principal party in interest on the SED or AES record.

(4) Section 30.4(a)(1)(iii) is amended by adding the definition for order party in the regulation text and removing order party as a footnote.

(5) Section 30.4(b)(1) *Designating a forwarding or other agent* in export transactions is removed and the provisions included in the *Exporter (U.S. principal party in interest) responsibilities* in export transactions, which is now designated Section 30.4(b)(1).

(6) Section 30.4(b)(3) is now designated Section 30.4(b)(2) *Forwarding or other agent responsibilities.*

(7) Section 30.4(c)(1) *Designating a forwarding or other agent* in routed export transactions is removed and the provisions included in the *Forwarding agent responsibilities* in routed export transactions, that is now designated Section 30.4(c)(2). Section 30.4(c)(2) *Exporter (U.S. principal party in interest) responsibilities* in routed export transactions is now designated section 30.4(1). Section 30.4(c)(3) *Forwarding agent responsibilities* in routed export transactions is now designated Section 30.4(c)(2).

(8) Section 30.4(c)(1) is amended by adding clarifying language to specify the documentation requirements of the exporter (U.S. principal party in interest) in a routed export transaction and to reference the current documentation provisions as specified in § 30.11.

(9) Section 30.4(c)(2) is amended by clarifying the responsibilities of the forwarding or other agent in a routed export transaction, and by adding specific language, in the regulation text, to clarify the documentation and

documentation sharing responsibilities of the forwarding or other agent in a routed export transaction, as referenced in § 30.11. In a routed export transaction, upon request of the exporter (U.S. principal party in interest), the forwarding or other agent must provide the exporter (U.S. principal party in interest) with documentation verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record.

(10) Section 30.7(d)(1) and (2) is amended by clarifying that for purposes of completing the SED or AES record, the exporter (U.S. principal party in interest) must be listed as the "U.S. principal party in interest," that the U.S. principal party in interest's EIN or other identification number be reported on the SED or AES record, and clarifying reporting responsibilities of a foreign entity who is in the United States when conducting an export transaction, and not possessing an EIN or SSN. In such situations, the foreign entity is required to report a border crossing number, a passport number, or any other number assigned by U.S. Customs on the SED or AES record in lieu of the EIN or SSN.

(11) Section 30.7(q) Value, is amended by clarifying the provision for reporting value information in an export transaction. In all export transactions the selling price or value to be reported on the SED or AES record is the U.S. principal party in interest's price to the foreign principal party in interest.

(12) Section 30.16 is amended by revising provisions for submitting corrections to SEDs for mail exports filed with the U.S. Postal Service. The Census Bureau will require that, in the case of mail exports, exporters submit corrections to SEDs directly to the Census Bureau's National Processing Center in Jeffersonville, Indiana. Current regulations require that corrections be submitted through the Postmaster at the post office where the export was mailed.

(13) Section 30.54, Special exemptions for mail shipments, is removed and reserved from this part. This section is no longer necessary since the Census Bureau is raising the value limitation for when a SED or AES record is not required from $500 or under to $2,500 or under. This change in the value requirement for mail exports, brings mail exports under the same provisions as for all other exports and no further special exemptions are required.

(14) Section 30.55(g) is amended by updating and clarifying language to reflect the Bureau of Export Administration's, Export Administration Regulations for License Exception GFT for single gift parcels.

(15) Section 30.55(h) is amended by making the FTSR language consistent with EAR provisions.

(16) Section 30.55 is further amended by adding paragraphs (n) and (o). Paragraph (n) will state that a SED or AES record is not required for exports of technology and software that does not require a license, except that a SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold from stock at retail selling points or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier. Paragraph (o) will state that a SED or AES record is not required for any intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and intangible mass market software exported electronically.

(17) Section 30.58 is amended by revising the phrase "validated export license" to read "license" in paragraph (c)(1) and by adding paragraph (c)(6) to include provisions for the export of items subject to the EAR that will be transshipped through Canada to a third destination.

(18) Section 30.70 is amended by adding provisions to require importers to provide certain import information to the Census Bureau to verify the accuracy of import data.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedure Act because it deals with a foreign affairs function (5 U.S.C.), 553(a)(1)).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be significant for purposes of Executive Order (E.O.) 12866. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, this rule's collections of information are cleared by the OMB under OMB Control Number 0607–0152. This rule will not impact the current reporting-hour burden requirements as approved under that OMB Control Number. We will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 15 CFR Part 30 is amended as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 CFR 42765.

Subpart A—General Requirements—Exporters

2.–3. Section 30.1 is amended by adding paragraph (d) to read as follows:

§ 30.1 General statement of requirement for Shipper's Export Declarations.

* * * * *

(d) *Electronic transmissions and intangible transfers.* Electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software, technical data, and technology, are not subject to this part, but may be subject to export control requirements under other laws and regulations. See 15 CFR parts 730 through 774 of the EAR.

4. Section 30.4 is revised to read as follows:

§ 30.4 Preparation and signature of Shipper's Export Declaration (SED).

(a) *General requirements (SED).* For purposes of this part, all references to

preparing and filing the paper SED also pertain to preparing and filing the AES electronic record. The SED or AES record is a dual purpose document used by the Census Bureau for statistical reporting purposes only, and by the Bureau of Export Administration (BXA) and other government agencies for export control purposes. For purposes of this part, the provisions apply only to statistical reporting requirements. The Shipper's Export Declaration (SED) or the AES record must be prepared and signed by a principal party in interest or by a forwarding or other agent authorized by a principal party in interest. The person who signs the SED must be in the United States at the time of signing. That person, whether exporter (U.S. principal party in interest) or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others. The Census Bureau recognizes "routed export transactions" as a subset of export transactions. A routed export transaction is where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States. See paragraph (c) of this section for responsibilities of parties in a routed export transaction.

(1) *Exporter (U.S. principal party in interest).* For purposes of completing the paper SED or AES record in all export transactions, the exporter (U.S. principal party in interest) is listed as the "U.S. principal party in interest" on the SED or AES record. In all export transactions, the person listed in the U.S. principal party in interest block on the paper SED or in the U.S. principal party in interest field of the AES record is the exporter (U.S. principal party in interest) in the transaction. The U.S. principal party in interest is the person in the United States that receives the primary benefit, monetary or otherwise, of the transaction. Generally that person is the U.S. seller, manufacturer, order party, or foreign entity. The foreign entity must be listed as the U.S. principal party in interest on the SED or AES record, if it is *in the United States* when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest. In most cases, the forwarding or other agent is not a principal party in interest.

(i) If a U.S. manufacturer sells merchandise directly for export to a foreign principal party in interest, the U.S. manufacturer must be listed as the U.S. principal party in interest on the SED or AES record.

(ii) If a U.S. manufacturer sells merchandise, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the merchandise for export to a foreign principal party in interest, the U.S. buyer (wholesaler/distributor) must be listed as the U.S. principal party in interest on the SED or AES record.

(iii) If a U.S. order party directly arranges for the sale and export of merchandise to a foreign buyer, the U.S. order party must be listed as the U.S. principal party in interest on the SED or AES record. The order party is that person in the United States who conducted the direct negotiations or correspondence with the foreign principal party in interest and who, as a result of these negotiations, received the order from the foreign principal party in interest.

(iv) If a foreign entity is *in the United States* when the items are purchased or obtained for export, it is the exporter (U.S. principal party in interest) and must be listed as the U.S. principal party in interest on the SED or AES record (see § 30.4(a)(1)).

Note to paragraph (a)(1): The EAR defines the "exporter" as the person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States (see 15 CFR Part 772 of the EAR). For statistical purposes the Foreign Trade Statistics Regulations (FTSR) have a different definition of "exporter" from the Export Administration Regulations (EAR). Under the FTSR the "exporter" will always be the U.S. principal party in interest. For purposes of licensing responsibility under the EAR, the U.S. agent of the foreign principal party in interest may be the "exporter" or applicant on the license, in certain routed export transactions (see 15 CFR 758.3 of the EAR).

(2) *Forwarding or other agent.* The forwarding or other agent is that person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of items from the United States. The forwarding or other agent must be authorized by the exporter (U.S. principal party in interest) or, in the case of a routed export transaction, the foreign principal party in interest to prepare and file the SED or the AES record. In a routed export transaction, the forwarding or other agent can be the exporter for export control purposes under the EAR. However, the forwarding or other agent is never the "U.S. principal party in interest" in the U.S. principal party in interest block on the paper SED or in the "U.S. principal party in interest" field of the AES record unless the forwarding or other agent acts as an "order party." (See paragraph (a)(1)(iii) for definition of order party)

(3) *Principal parties in interest.* Those persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, a forwarding or other agent is not a principal party in interest.

(b) *Responsibilities of parties in export transactions.* (1) *Exporter (U.S. principal party in interest) responsibilities.* (i) The exporter (U.S. principal party in interest) can prepare and file the SED or AES record itself, or it can authorize a forwarding or other agent to prepare and file the SED or AES record on its behalf. If the exporter (U.S. principal party in interest) prepares the SED or AES record itself, the exporter (U.S. principal party in interest) is responsible for the accuracy of all the export information reported on the SED or AES record, for signing the paper SED, filing the paper SED with U.S. Customs, or transmitting the AES record to U.S. Customs.

(ii) When the exporter (U.S. principal party in interest) authorizes a forwarding or other agent to complete the SED or AES record on its behalf, the exporter (U.S. principal party in interest) is responsible for:

(A) Providing the forwarding or other agent with the export information necessary to complete the SED or AES record;

(B) Providing the forwarding or other agent with a power of attorney or written authorization to complete the SED or AES record, or signing the authorization block printed on the paper SED (block 23 on Commerce Form 7525–V and block 29 on Commerce Form 7525–V-ALT); and

(C) Maintaining documentation to support the information provided to the forwarding or other agent for completion of the SED or AES record, as specified in § 30.11.

(2) *Forwarding or other agent responsibilities.* The forwarding or other agent, when authorized by an exporter (U.S. principal party in interest) to prepare and sign the SED or prepare and file the AES record in an export transaction, is responsible for:

(i) Accurately preparing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction;

(ii) Obtaining a power of attorney or written authorization to complete the SED or AES record, or obtaining a paper SED with a signed authorization from

the exporter (U.S. principal party in interest);

(iii) Maintaining documentation to support the information reported on the SED or AES record, as specified in § 30.11; and

(iv) Upon request, providing the exporter (U.S. principal party in interest) with a copy of the export information filed in the form of a completed SED, an electronic facsimile, or in any other manner prescribed by the exporter (U.S. principal party in interest).

(c) *Responsibilities of parties in a routed export transaction.* (1) *Exporter (U.S. principal party in interest) responsibilities.* In a routed export transaction where the foreign principal party in interest authorizes a U.S. forwarding or other agent to prepare and file the SED or AES record, the exporter (U.S. principal party in interest) must maintain documentation to support the information provided to the forwarding or other agent for preparing the SED or AES record as specified in § 30.11 and provide such forwarding or other agent with the following information to assist in preparing the SED or AES record:

(i) Name and address of the U.S. principal party in interest;

(ii) U.S. principal party in interest's, IRS, EIN;

(iii) Point of origin (State or FTZ);

(iv) Schedule B description of commodities;

(v) Domestic (D), foreign (F), or FMS (M) code;

(vi) Schedule B Number;

(vii) Quantity/unit of measure;

(viii) Value;

(ix) Upon request from the foreign principal party in interest or its agent, the Export Control Classification Number (ECCN) or sufficient technical information to determine the ECCN; and

(x) Any information that it knows will affect the determination of license authority.

Note to paragraph (c)(1): For items in paragraph (c)(1)(ix) and (x) of this section, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

(2) *Forwarding or other agent responsibilities.* In a routed export transaction, the forwarding or other agent is responsible for; obtaining a power of attorney or written authorization from the foreign principal party in interest to prepare and file the SED or AES record on its behalf; preparing, signing, and filing the SED or AES record based on information obtained from the exporter (U.S. principal party in interest) or other parties involved in the transaction; maintaining documentation to support the information reported on the SED or AES record, and upon request by the exporter (U.S. principal party in interest), provide appropriate documentation to the exporter (U.S. principal party in interest) verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record. The forwarding or other agent must also provide the following export information on the SED or AES record:

(i) Date of exportation;

(ii) Bill of lading/airway bill number;

(iii) Ultimate consignee;

(iv) Intermediate consignee;

(v) Forwarding or other agent name and address;

(vi) Country of ultimate destination;

(vii) Loading pier;

(viii) Method of transportation;

(ix) Exporting carrier;

(x) Port of export;

(xi) Port of unloading;

(xii) Containerized;

(xiii) Weight;

(xiv) ECCN;

(xv) License Authority;

(xvi) Signature in the certification block on the paper SED (block 24 on Commerce Form 7525–V and block 36 on Commerce Form 7525–V–ALT). In a routed export transaction the exporter (U.S. principal party in interest) must be listed as U.S. principal party in interest on the SED or on the AES record;

Note to paragraph (c)(2): For items in paragraph (c)(2)(xiv) and (xv) of this section, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

(d) *Information on the Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The data provided on the SED or AES electronic record shall be complete, correct, and based on personal knowledge of the facts stated or on information furnished by the parties involved in the export transaction. All parties involved in export transactions, including U.S. forwarding or other agents, should be aware that invoices and other commercial documents may not necessarily contain all the information needed to prepare the SED or AES record. The parties must ensure that all the information needed for completing the SED or AES record, including correct export licensing information, is provided to the forwarding or other agent for the purpose of correctly preparing the SED or AES record as stated in this section.

(e) *Authorizing a Forwarding or other agent.* In a power of attorney or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal (see 15 CFR 758.1(h) of the EAR). In cases where a forwarding or other agent is filing export information on the SED or AES record, the forwarding or other agent must obtain a power of attorney or written authorization from a principal party in interest to file the information on its behalf. A power of attorney or written authorization should specify the responsibilities of the parties with particularity, and should state that the forwarding or other agent has authority to act on behalf of a principal party in interest as its true and lawful agent for purposes of the export transaction in accordance with the laws and regulations of the United States.

(f) *Format requirements for SEDs:* The SED shall be prepared in English and shall be typewritten or prepared in ink or other permanent medium (except indelible pencil). The use of duplicating processes, as well as the overprinting of selected items of information, is acceptable.

(g) *Copies of SEDs:* All copies of the SEDs must contain all of the information called for in the signature space as to name of firm, address, name of signer, and capacity of signer. The original SED must be signed in ink, but signature on other copies is not required. The use of signature stamps is acceptable. A signed legible carbon or other copy of the export declaration is acceptable as an "original" of the SED.

5. Section 30.7 is amended by revising paragraphs (d), (e) and (q)(1) to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

* * * * *

(d) *Name of the U.S. principal party in interest and U.S. principal party in interest's Employer Identification Number (EIN).* For purposes of completing the paper SED or AES record the exporter (U.S. principal party in interest) is the U.S. principal party in interest. The name and address (number, street, city, state, ZIP Code) of the U.S. principal party in interest and the U.S. principal party in interest's EIN shall be entered where requested on the SED or AES electronic record. The EIN shall be the U.S. principal party in interest's own and not another's EIN.

(1) *Name of the U.S. principal party in interest.* In all export transactions, the person listed in the U.S. principal party in interest block on the SED or in the U.S. principal party in interest field on

the AES record must be the exporter (U.S. principal party in interest) in the transaction. The U.S. principal party in interest is the person in the United States that receives the primary benefit, monetary or otherwise, of the export transaction. Generally that person is the U.S. seller, manufacturer, order party, or foreign entity, if in the United States when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest. (See § 30.4 for details on the specific reporting responsibilities of exporter (U.S. principal party in interest)).

(2) *U.S. principal party in interest's Employer Identification Number (EIN).* An exporter (U.S. principal party in interest) shall report its own Internal Revenue Service (IRS) EIN in the U.S. principal party in interest's (IRS) EIN block/field on the SED. If, and only if, no IRS EIN has been assigned to the exporter (U.S. principal party in interest), the exporter's (U.S. principal party in interest) own SSN, preceded by the symbol "SS," must be reported on the paper SED. On the AES record the appropriate SSN symbol must be reported. When a foreign entity is in the United States when the items are purchased or obtained for export it is the exporter (U.S. principal party in interest). In such situations, when the foreign entity does not have an EIN or SSN, a border crossing number, passport number, or any number assigned by U.S. Customs must be reported on the SED or the AES record. On the paper SED, the appropriate number should be preceded by the symbol "T." On the AES record, the appropriate AES identifier code as specified in the Automated Export System Trade Interface Requirements (AESTIR) must be reported. Use of another's EIN or SSN is prohibited.

(e) *Forwarding or other agent.* The name and address of the duly authorized forwarding or other agent (if any) of a principal party in interest must be recorded where required on the SED or AES record. (See § 30.4 for details on the specific reporting responsibilities of forwarding or other agents).

* * * * *

(q) *Value.* (1) In general, the value to be reported on the Shipper's Export Declaration or AES record shall be the value at the U.S. port of export (selling price or cost if not sold, including inland freight, insurance, and other charges to U.S. port of export) (nearest whole dollar; omit cents figures). The "Selling price" for goods exported pursuant to sale, and the value to be reported on the SED or AES record, is the exporter's (U.S. principal party in interest) price to the foreign principal party in interest, net any unconditional discounts from list price, but without deducting any discounts which are conditional upon a particular act or performance on the part of the customer. Commissions to be paid by an exporter (U.S. principal party in interest) to his agent abroad, or to be deducted from the selling price by the agent abroad should be excluded. For goods shipped on consignment without a sale actually having been made at the time of export, the "selling price" to be reported on the SED or AES record is the market value at the time of export at the United States port from which exported.

* * * * *

6. Section 30.16 is amended by revising the first sentence to read as follows:

§ 30.16 Corrections to Shipper's Export Declarations.

The Exporter (U.S. principal party in interest) (or its agent) must report corrections, cancellations, or amendments to information reported on Shipper's Export Declarations to the Customs Director at the port of exportation (or, in the case of mail shipments directly to the U.S. Census Bureau, National Processing Center, Attention: Foreign Trade Section, 1201 East 10th Street, Jeffersonville, Indiana 47132) as soon as the need to make such correction, cancellation, or amendment is determined. * * *

Subpart D—Exemptions from the Requirements for the Filing of Shipper's Export Declarations

§ 30.54 [Removed and reserved]

7. Section 30.54 is removed and reserved.

8. Section 30.55 is amended by revising paragraphs (g) and (h), adding paragraphs (n) and (o), and removing the authority citation at the end of the section, to read as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(g) Shipments of single gift parcels as authorized by the Bureau of Export Administration under License Exception GFT, see 15 CFR 740.12 of the EAR.

(h) Except as noted in paragraph (h)(2) of this section exports of commodities where the value of the commodities, shipped from one exporter to one consignee on a single exporting carrier, classified under an individual Schedule B number, is $2,500 or less.

(1) This exemption applies to individual Schedule B commodity numbers regardless of the total shipment value. In instances where a shipment contains a mixture of individual Schedule B commodity numbers valued $2,500 or less and individual Schedule B commodity numbers valued over $2,500, only those commodity numbers valued $2,500 or more need be reported on a Shipper's Export Declaration or AES record.

(2) This exemption does not apply to exports:

(i) Destined for Cuba, Iran, Iraq, Libya, North Korea, Serbia (excluding Kosovo), Sudan and Syria.

(ii) Requiring a Department of Commerce license (15 CFR Parts 730 through 774 of the EAR).

(iii) Requiring a Department of State, Office of Defense Trade Controls export license under the International Traffic In Arms Regulations (ITAR) (22 CFR Parts 120 through 130).

(iv) Subject to the ITAR but exempt from license requirements.

(v) Requiring a Department of Justice, Drug Enforcement Administration export permit (21 CFR Part 1312). This exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on $2,500 and under shipments.

* * * * *

(n) Exports of technology and software as defined in 15 CFR Part 772 of the EAR that do not require an export license, except that an SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold at retail selling points, or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier.

(o) Intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and mass market software exported electronically.

9. Section 30.58 is amended by revising the phrase "validated export license" to read "license" in paragraph (c)(1), and by adding paragraph (c)(6) to read as follows:

§ 30.58 Exemption for shipments from the United States to Canada.

* * * * *

(c) * * *

(6) For all exports of items subject to the EAR (15 CFR Parts 730 through 799) that will be transhipped through Canada to a third destination, that would require an SED, AES record, or Commerce license if shipped directly to the final destination from the United States (see § 30.55(h)(2), including exports of items subject to the EAR that will be transhipped through Canada to Cuba, Iran, Iraq, Libya, North Korea, Serbia (excluding Kosovo), Sudan, and Syria.

Subpart F—General Requirements—Importers

10. Section 30.70 is amended by redesignating footnote 9 as footnote 7 and adding a sentence before the last sentence of the introductory text to read as follows:

§ 30.70 Statistical information required on import entries.

* * * Upon request, the importer or import broker must provide the Census Bureau with information or documentation necessary to verify the accuracy or resolve problems regarding the reported import transaction received by the Census Bureau.* * *

* * * * *

Dated: June 29, 2000.

Kenneth Prewitt,

Director, U.S. Census Bureau.

[FR Doc. 00–16895 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 732, 740, 743, 748, 750, 752, 758, 762, 772, and 774

[Docket No. 990709186–0128–02]

RIN 0694–AB88

Parties to a Transaction and Their Responsibilities, Routed Export Transactions, Shipper's Export Declarations, the Automated Export System (AES), and Export Clearance

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is revising the Export Administration Regulations (EAR) to clarify the responsibilities of parties to export and reexport transactions, the filing and use of Shipper's Export Declarations, Destination Control Statement requirements, and other export clearance issues. In addition, this rule adds information about the scope and requirements for the Automated Export System (AES) Option 4 provision.

DATES: *Effective Date:* This rule is effective July 10, 2000.

Grace Period: A 90 day grace period will apply to the requirements set forth in this rule. Until October 10, 2000, Shipper's Export Declarations will be accepted with information that complies with the rules prior to July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

For additional information on the AES in general, please contact: C. Harvey Monk, Chief Foreign Trade Division, U.S. Census Bureau, (301) 457–2255, fax (301) 457–2645, e-mail: c.harvey.monk.jr@census.gov

For information about obtaining BXA approval to use AES Option 4 for items subject to the EAR, contact: Tom Andrukonis or Donald Lyles, Director, Office of Enforcement Analysis, Bureau of Export Administration, (202) 482–4255, fax (202) 482–0971, e-mail: tandruko@bxa.doc.gov

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) in order to simplify and clarify the export clearance process and facilitate compliance. The amendment promotes flexibility so that parties to transactions subject to the EAR may structure their transactions freely, consistent with national security and foreign policy objectives.

In this final rule, BXA defines new terms, including "principal parties in interest", "routed export transaction", and "end-user", and clarifies existing ones (notably the definition of "exporter"). The amendments ensure that for every transaction subject to the EAR, some party to the transaction is clearly responsible for determining licensing authority (License, License Exception, or NLR), and for obtaining the appropriate license or other authorization. The amendments also encourage communication among all parties to a transaction to ensure that each party knows its responsibilities in order to comply with the EAR.

For export control purposes the exporter has generally been the seller. An export transaction, however, has two principal parties in interest: a U.S. party and a foreign party—usually the seller and the buyer. In a "routed export transaction," the foreign principal party in interest agrees to terms of sale that may include assuming responsibility for export licensing. This rule provides that when the foreign principal party expressly assumes responsibility in writing for determining license requirements and obtaining necessary authorization, that foreign party must have a U.S. agent who becomes the "exporter" for export control purposes. Without such a written undertaking by the foreign principal, the U.S. principal is the exporter, with all attendant responsibilities.

In addition to clarifying export licensing responsibilities, this rule institutes a requirement that the export licensee communicate license conditions to those parties to whom conditions apply and, when required by the license, obtain written acknowledgment of receipt of the conditions. This new provision is part of BXA's License and Enforcement Action Program (LEAP), which is designed to enhance compliance with the EAR.

In addition, these amendments significantly revise the first six sections of Part 758 of the EAR by reorganizing, streamlining and clarifying necessary provisions while deleting unnecessary or redundant provisions. Section 758.1 consolidates into one section the export control-related provisions pertaining to the SED or AES record. In consolidating these provisions into one section, BXA has eliminated those that are already contained in the FTSR, or that were otherwise unrelated to export controls. Section 758.2 provides new rules for BXA's AES Option 4 approval process. Commenters asked that this be added to the final regulation. Section 758.3 clarifies and consolidates provisions relating to the responsibilities of the parties, and § 758.4 consolidates, but does not significantly change, provisions concerning the use of an export license. Section 758.4, which contained very specific provisions relating to conformity of documents, has been greatly simplified in the interest of flexibility, and moved to section 758.5. Former sections 758.5 (general destination control requirements) and § 758.6 (destination control statement) have been combined and reduced to one paragraph at § 758.6.

Lastly, section 762.7 is amended to add language that clarifies that BXA has legal authority to issue subpoenas requiring individuals to appear and testify during the investigatory phase of an export case. The authority for this is found in both the Export Administration

Act of 1979 in section 12(a)(1), and in the International Emergency Economic Powers Act in section 1702(a)(2).

The Census Bureau initially published a notice of proposed rulemaking as to who goes in block 1(a) of the SED in the **Federal Register** on August 6, 1998 (63 FR 41979). As a result of comments received on that proposed rulemaking and subsequent discussions with the Bureau of Export Administration (BXA), the Census Bureau decided to issue a supplementary notice of proposed rulemaking to address the issues raised during the comment period and to further clarify provisions contained in that notice of proposed rulemaking. The Census Bureau published a supplementary notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53861). BXA also published a notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53854) revising the Export Administration Regulations (EAR) regarding the responsibilities of the parties to an export transaction, routed export transactions, Shipper's Export Declarations, and export clearance. Before and after the publication of those notices in the **Federal Register**, both the Census Bureau and BXA participated in numerous meetings, conferences, and seminars with the trade community to gain an understanding of business issues, and to more clearly explain the provisions of the proposed rules.

Response to Comments

BXA received twenty-eight (28) comments on the notice of proposed rulemaking published in the **Federal Register** on October 4, 1999 (64 FR 53861). BXA revised certain provisions in the final rule to address the concerns of the respondents and to more clearly explain the requirements. The major concerns addressed in the comments and BXA's response are as follows:

1. *Requirement to put the Export Control Classification Number (ECCN) on the SED or AES record whenever exporting an item that is listed on the Commerce Control List.* Commenters expressed concern this requirement would be very burdensome. These commenters explained the greater administrative burden in terms of having to report ECCNs subject only to Anti-terrorism (AT) controls even when the ultimate destination is a non-terrorism supporting country. BXA also received comments supporting the proposed ECCN requirement, because of the vital importance of the ECCN both to Government agencies such as the U.S. Customs Service, and to the business community as a foundation for making correct license determinations. In fact, one company suggested that BXA expand the requirement to include requiring the ECCN on the invoice and bill of lading in order to provide information to the foreign principal for reexport purposes. In response to the comments, BXA narrowed the scope of the ECCN requirement in the final rule so that exporters only have to report the ECCN on the SED or AES record for items exported under a license or License Exception, and "No License Required" (NLR) shipments of items having a reason for control other than anti-terrorism (AT). The only exception to this requirement would be for items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3) of the EAR.

2. *Clarify the writing required from the foreign principal party in interest in routed transactions to permit its agent to become the "exporter."* Some commenters wanted clarification as to what the writing should include. Others wanted to know if the Incoterm "EXW" would be sufficient for the writing. One commenter expressed support for an express writing, as opposed to Incoterms, because of the lack of understanding of the Incoterms among small and medium size exporters, who typically hire clerks to comply with export regulations. In response to these concerns, BXA has included in this preamble an example of an acceptable writing. This example is similar to the language that describes the buyer's responsibiltiy for export licenses in the Incoterms 2000 publication. BXA's sample writing would be signed by the foreign principal party in interest, and reads, "I undertake to determine any export license requirements, to obtain any export license or other official authorization, and to carry out any customs formalities for the export of the goods." This is just an example of a writing. No doubt the exporting community will use good judgement in determining the extensiveness of the writing it chooses to use, by considering the strategic applications and capabilities of the item being exported, its level of relationship with the foreign principal party in interest, and the foreign principal's knowledge of U.S. export laws. The format or language is not the most important part of the writing requirement. The most important aspect of the writing is that it reflects an agreement between the principals concerning their specific roles in determining the license requirements and obtaining any license that is required.

Some specific questions were submitted by some commenters about the writing.

1. *Question:* May one writing cover multiple transactions between the same principals?

Answer: Yes, and this has been clarified in this final rule.

2. *Question:* In a routed transaction that is supported by an assumption of responsibility in writing, must the U.S. principal party in interest also obtain a writing from the U.S. agent of the foreign principal party in interest stating that the agent has assumed export compliance responsibilities on behalf of the foreign principal party in interest?

Answer: While the EAR do not require the U.S. principal party in interest to obtain a writing from the agent to establish its export compliance role, it would be a good business practice to confirm the agent's responsibilities.

3. *The liability of the U.S. principal party in interest when complying with the information sharing requirement.* Several commenters were concerned about the liability that may accrue to the U.S. principal party in interest in a routed transaction when it gives the foreign principal party in interest or its agent the Export Control Classification Number (ECCN), technical specifications of an item, or other information related to license determination. This final rule does not change the current standards of liability as they apply to provision of information. The foreign principal party in interest or its authorized agent is responsible for ensuring that the export complies with all applicable requirements of the EAR, including, as necessary, the accuracy of the product classification. If the foreign principal party in interest has reason to doubt the accuracy of the ECCN provided, is unclear about the classification of the item based on the technical specifications provided or has questions about any other aspect of export control requirements, the foreign principal party in interest must make inquiries and take appropriate action to ensure compliance with the EAR.

Some companies expressed concern about requests for information that is readily available from other sources, proprietary, not in the possession of the U.S. principal party in interest, or not available. In addition to the availability concern, some companies were concerned about the cost of complying with information sharing requests. BXA has not made any changes in the final rule in this regard, as the U.S. principal is generally in a better position to obtain

the ECCN or technical specifications than the foreign principal or its agent. There is no requirement to go beyond the information necessary to classify the item according to the technical parameters of the CCL. BXA believes that all these concerns are better dealt with in the business environment among the principals, rather than by regulation.

4. *Requirement for the licensee to obtain written acknowledgment of license conditions, when it is required per condition on the license.* Some companies are concerned that BXA licensing officers will overuse this condition. Several individuals suggested a notification requirement instead of a notification and acknowledgment combination. The practice of including a condition for the licensee to notify a particular party or parties of the conditions on a license or in some case obtain an acknowledgment of this notification has been in use for many years by BXA. This rule simply adds the practice to the regulations, for transparency.

One individual expressed concern that it would be unclear as to what constitutes compliance if the licensee were required to notify all end-users of conditions in a situation where the ultimate consignee was a distributor. Applicants must remember that conditions may be negotiated between BXA and the applicant. Moreover, if an applicant receives a license, but is not comfortable with the conditions, the applicant may choose not to proceed with the transaction.

5. *Effective date of publication.* There is some industry concern about the effective date of these provisions, as it may take some time to reprogram automated processes, provide training to personnel, and create new compliance procedures within export management systems. BXA believes that a 90 day "grace period" will give adequate time to the exporting community to ensure compliance with the rules set forth in this regulation.

6. *Clarify conformity of documents provisions.* Several commenters stated their belief that BXA's new definition of "exporter", coupled with the Bureau of Census" new requirement for the U.S. principal party in interest to be placed in block 1(a) of the SED or in the "exporter" block of the AES record, was confusing to some commenters. They expressed concern over the fact the "exporter" for EAR purposes may not be the person in the "exporter" block of the SED or AES record. Some commenters came to the conclusion that the different definitions of "exporter" might impact the conformity of documents requirement contained in § 758.5(b) of the EAR. To alleviate the confusion and the conformity of document conflict caused by BXA's and Census' different definitions of the term "exporter," Census will be revising the SED and AES record to remove the term "exporter" from blocks 1a, 1b, and the AES record, and replacing it with the term "U.S. Principal Party in Interest."

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 10, 1999 (64 FR 44101) (August 13, 1999).

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves collections that have been approved by the Office of Management and Budget under control numbers 0694–0038, and 0694–0096. This rule contains collections that have been approved by the Office of Management and Budget under control numbers: 0607–0152, 0694–0040, 0694–0094, 0694–0095, 0694–0097, 0694–0088, and 0694–0120. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 732

Administrative practice and procedure, Advisory committees, Exports, Foreign trade, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 740, 743, 748, 750, 752, 758, and 772

Administrative practice and procedure, Exports, Foreign trade, Reporting and Recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade.

Accordingly, parts 732, 740, 743, 748, 750, 752, 758, 762, 772, and 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 758 and 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

2. The authority citation for 15 CFR parts 732, 748, 752, and 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

4. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq;* 50 U.S.C. 1701 *et seq;* E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

5. The authority citation for 15 CFR part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12981, 60 FR 62980, 3 CFR, 1997 Comp., p. 60; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

6. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

7. Parts 740 through 772 are amended by revising the phrase "U.S. exporter" to read "exporter" in the following places:

a. § 740.9(a)(2)(iii) last sentence;
b. § 740.10(b)(3)(ii)(C);
c. § 743.1(b);
d. § 748.11(e)(4)(ii)(*1*);
e. Supplement No. 3 to part 748, "BXA–711, Statement By ultimate consignee and Purchaser Instructions", Block 8; and
f. Supplement No. 3 to part 752, "Instructions on Completing Form BXA–752 'Statement by Consignee in Support of Special Comprehensive License'–A", Block 5.

PART 732—[AMENDED]

8. Section 732.5 is revised to read as follows:

§ 732.5 Steps regarding Shipper's Export Declaration, Destination Control Statements, and recordkeeping.

(a) *Step 27: Shipper's Export Declaration (SED) or Automated Export System (AES) record.* Exporters or agents authorized to complete the Shipper's Export Declaration (SED), or to file SED information electronically using the Automated Export System (AES), should review § 758.1 of the EAR to determine when an SED is required and what export control information should be entered on the SED or AES record. More detailed information about how to complete an SED or file the SED information electronically using AES may be found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) at 15 CFR part 30. Reexporters and firms exporting from abroad may skip Steps 27 through 29 and proceed directly to § 732.6.

(1) *Entering license authority.* You must enter the correct license authority for your export on the SED or AES record (License number, License Exception symbol, or No License Required designator "NLR") as appropriate. See § 758.1(g) of the EAR and 15 CFR 30.7(m) of the FTSR.

(i) *License number and expiration date.* If you are exporting under the authority of a license, you must enter the license number on the SED or AES record. The expiration date must be entered on paper versions of the SED only.

(ii) *License Exception.* If you are exporting under the authority of a License Exception, you must enter the correct License Exception symbol (*e.g.,* LVS, GBS, CIV) on the SED or AES record. See § 740.1 and § 740.2 of the EAR.

(iii) *NLR.* If you are exporting items for which no license is required, you must enter the designator NLR. You should use the NLR designator in two circumstances: first, when the items to be exported are subject to the EAR but not listed on the Commerce Control List (CCL) (*i.e.,* items that are classified as EAR99), and second, when the items to be exported are listed on the CCL but do not require a license. Use of the NLR designator is also a representation that no license is required under any of the General Prohibitions set forth in part 736 of the EAR.

(2) *Item description.* You must enter an item description identical to the item description on the license when a license is required, or enter an item description sufficient in detail to permit review by the U.S. Government and verification of the Schedule B Number (or Harmonized Tariff Schedule number) for License Exception shipments or shipments for which No License is Required (NLR). See § 758.1(g) of the EAR; and 15 CFR 30.7(l) of the FTSR.

(3) *Entering the ECCN.* You must enter the correct Export Control Classification Number (ECCN) on the SED or AES record for all licensed and License Exception shipments, and "No License Required" (NLR) shipments of items having a reason for control other than anti-terrorism (AT). The only exception to this requirement would be the return of unwanted foreign origin items, meeting the provisions of License Exception TMP, under § 740.9(b)(3). See § 758.1(g) of the EAR.

(b) *Step 28: Destination Control Statement.* The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List and is not required for items classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). Reexporters should review § 752.15 of the EAR for DCS requirements when using a Special Comprehensive License; otherwise, DCS requirements do not apply to reexports. See § 758.6 of the EAR.

(c) *Step 29: Recordkeeping.* Records of transactions subject to the EAR must be maintained for five years in accordance with the recordkeeping provisions of part 762 of the EAR.

§ 732.6 [Amended]

9. Section 732.6 is amended by:

a. Revising the citation "§ 758.2" to read "§ 758.4" in paragraph (a); and

b. Revising the citation "§ 758.4" to read "§ 758.1" in paragraph (b).

PART 740—[AMENDED]

§ 740.1 [Amended]

10. Section 740.1 is amended by revising:

a. The phrase "requirements of § 758.5 and § 758.6 of the EAR." in paragraph (e) to read "requirements of § 758.6 of the EAR."; and

b. Paragraph (d) to read as follows:

§ 740.1 Introduction.

* * * * *

(d) *Shipper's Export Declaration or Automated Export System (AES) record.* You must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the correct License Exception symbol (*e.g.,* LVS, GBS, CIV) and the correct Export Control Classification Number (ECCN) (*e.g.,* 4A003, 5A002) for all shipments of items exported under a License Exception. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See § 758.1 of the EAR for Shipper's Export Declaration requirements or § 758.2 of the EAR for Automated Export System (AES) requirements.

* * * * *

§ 740.7 [Amended]

11. Section 740.7 is amended by revising the citation "758.6(a)(ii)" to read "758.6" in paragraph (e)(2).

PART 748—[AMENDED]

12. Section 748.4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 748.4 Basic guidance related to applying for a license.

(a) *License applicant.* (1) *Export transactions.* Only a person in the United States may apply for a license to export items from the United States. The applicant must be the exporter, who is the U.S. principal party in interest with the authority to determine and control the sending of items out of the United States, except for Encryption License Arrangements (ELA) (see § 750.7(d) of the EAR). See definition of "exporter" in part 772 of the EAR.

(2) *Routed export transactions.* The U.S. principal party in interest or the duly authorized U.S. agent of the foreign principal party in interest may apply for a license to export items from the United States. Prior to submitting an application, the agent that applies for a license on behalf of the foreign principal party in interest must obtain a power of attorney or other written authorization from the foreign principal party in interest. See § 758.3(b) and (d) of the EAR.

(3) *Reexport transactions.* The U.S. or foreign principal party in interest, or the duly authorized U.S. agent of the foreign principal party in interest, may apply for a license to reexport controlled items from one country to another. Prior to submitting an application, an agent that applies for a license on behalf of a foreign principal party in interest must obtain a power-of-attorney or other written authorization from the foreign principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation. See power-of-attorney requirements in paragraph (b)(2) of this section.

(b) *Disclosure of parties on license applications and the power of attorney.* (1) *Disclosure of parties.* License applicants must disclose the names and addresses of all parties to a transaction. When the applicant is the U.S. agent of the foreign principal party in interest, the applicant must disclose the fact of the agency relationship, and the name and address of the agent's principal. If there is any doubt about which persons should be named as parties to the transaction, the applicant should disclose the names of all such persons and the functions to be performed by each in Block 24 (Additional Information) of the BXA–748P Multipurpose Application form. Note that when the foreign principal party in interest is the ultimate consignee or end-user, the name and address need not be repeated in Block 24. See "Parties to the transaction" in § 748.5.

(2) *Power of attorney or other written authorization.* (i) *Requirement.* An agent must obtain a power of attorney or other written authorization from the principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation, prior to preparing or submitting an application for a license, when acting as either:

(A) An agent, applicant, licensee and exporter for a foreign principal party in interest in a routed transaction; or

(B) An agent who prepares an application for export on behalf of a U.S. principal party in interest who is the actual applicant, licensee and exporter in an export transaction.

(ii) *Application.* When completing the BXA–748P Multipurpose Application Form, Block 7 (documents on file with applicant) must be marked "other" and Block 24 (Additional information) must be marked "748.4(b)(2)" to indicate that the power of attorney or other written authorization is on file with the agent. See § 758.3(d) for power of attorney requirement, and see also part 762 of the EAR for recordkeeping requirements.

* * * * *

13. Section 748.5 is revised to read as follows:

§ 748.5 Parties to the transaction.

The following parties may be entered on the BXA–748P Multipurpose Application Form or electronic equivalent. The definitions, which also appear in part 772 of the EAR, are set out here for your convenience to assist you in filling out your application correctly.

(a) *Applicant.* The person who applies for an export or reexport license, and who has the authority of a principal party in interest to determine and control the export or reexport of items. See § 748.4(a) and definition of "exporter" in part 772 of the EAR.

(b) *Other party authorized to receive license.* The person authorized by the applicant to receive the license. If a person and address is listed in Block 15 of the BXA–748P Multipurpose Application Form or the electronic equivalent, the Bureau of Export Administration will send the license to that person instead of the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant, licensee or exporter.

(c) *Purchaser.* The person abroad who has entered into the transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

(d) *Intermediate consignee.* The person that acts as an agent for a principal party in interest and takes possession of the items for the purpose of effecting delivery of the items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

(e) *Ultimate consignee.* The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

(f) *End-user.* The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

PART 750—[AMENDED]

14. Section 750.7 is amended by revising paragraph (d) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(d) *Responsibility of the licensee.* The person to whom a license is issued is the licensee. In export transactions, the exporter must be the licensee, and the exporter-licensee is responsible for the proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. In the case of Encryption License Agreements (ELA), the licensee may not necessarily be the exporter or reexporter. In this case, the authorized user of the ELA is responsible for proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. In reexport or routed export transactions, a U.S. agent acting on behalf of a foreign principal party in interest may be the licensee; in these cases, both the agent and the foreign principal party in interest, on whose behalf the agent has acted, are responsible for the use of the license, and for all terms and conditions of the

license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. It is the licensee's responsibility to communicate the specific license conditions to the parties to whom those conditions apply. In addition, when required by the license, the licensee is responsible for obtaining written acknowledgment(s) of receipt of the conditions from the party(ies) to whom those conditions apply.

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PART 752—[AMENDED]

§ 752.15 [Amended]

15. Section 752.15 is amended by revising the citation "§ 758.3" to read "§ 758.1" in paragraph (a) introductory text.

PART 758—[AMENDED]

16. Part 758 is amended by revising sections 758.1 through 758.6, to read as follows:

PART 758—EXPORT CLEARANCE REQUIREMENTS

§ 758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.

(a) *The Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The SED (Form 7525–V, Form 7525–V–Alt, or Automated Export System record) is used by the Bureau of Census to collect trade statistics and by the Bureau of Export Administration for export control purposes. The SED or AES record collects basic information such as the names and addresses of the parties to a transaction; the Export Control Classification Number (ECCN) (when required), the Schedule B number or Harmonized Tariff Schedule number, the description, quantity and value of the items exported; and the license authority for the export. The SED or the AES electronic equivalent is a statement to the United States Government that the transaction occurred as described.

(b) *When an SED or AES record is required.* Except when the export of items subject to the EAR is to take place electronically or in an otherwise intangible form, you must file an SED or AES record with the United States Government for items subject to the EAR, including exports by U.S. mail, in the following situations:

(1) For all exports of items subject to the EAR that are destined to Cuba, Iran, Iraq, Libya, North Korea, Serbia (except Kosovo), Sudan, or Syria, regardless of value (see 15 CFR 30.55(h) of the FTSR); and

(2) For all exports of items subject to the EAR that are authorized under a license, regardless of value, or destination;

(3) For all exports of commodities and mass market software subject to the EAR that are authorized under a License Exception or under NLR, when the value of the commodities or mass market software classified under a single Schedule B Number (or Harmonized Tariff Schedule number) is over $2,500, except as exempted by the Foreign Trade Statistics Regulations (FTSR) in 15 CFR part 30 and referenced in paragraph (c) of this section;

(4) For all exports of items subject to the EAR that will be transshipped through Canada to a third destination, where the export would require an SED or AES record or license if shipped directly to the final destination from the United States (see 15 CFR 30.58(c) of the FTSR).

Note to paragraph (b): In addition to the Shipper's Export Declaration for exports, the Bureau of Census Foreign Trade Statistics Regulations provide for a specific Shipper's Export Declaration for In-Transit Goods (Form 7513). See 15 CFR 30.3 and 30.8 of the FTSR.

(c) *Exemptions.* A complete list of exemptions from the SED or AES filing requirement is set forth in the FTSR. Some of these FTSR exemptions have elements in common with certain EAR License Exceptions. An FTSR exemption may be narrower than a License Exception. The following references are provided in order to direct you to the FTSR exemptions that relate to EAR License Exceptions:

(1) License Exception Baggage (BAG), as set forth in § 740.14 of the EAR. See 15 CFR 30.56 of the FTSR;

(2) License Exception Gift Parcels and Humanitarian Donations (GFT), as set forth in § 740.12 of the EAR. See 15 CFR 30.55(g) of the FTSR;

(3) License Exception Aircraft and Vessels (AVS), as set forth in § 740.15 of the EAR. See 15 CFR 30.55(l) of the FTSR;

(4) License Exception Governments and International Organizations (GOV), as set forth in § 740.11 of the EAR. See 15 CFR 30.53 of the FTSR;

(5) License Exception Technology and Software Under Restriction (TSR), as set forth in § 740.6 of the EAR. See 15 CFR 30.55(n) of the FTSR; or

(6) License Exception Temporary Imports, Exports, and Reexports (TMP) "tools of trade", as set forth in § 740.9(a)(2)(i) of the EAR. See 15 CFR 30.56(b) of the FTSR.

(d) *Notation on export documents for exports exempt from SED or AES record requirements.* When an exemption from filing the Shipper's Export Declaration or Automated Export System record applies, the export authority (License Exception or NLR) of all the items must be entered on the loading document (*e.g.*, Cargo Declaration, manifest, bill of lading, (master) air waybill) by the person responsible for preparing the document. This requirement is intended to parallel the Bureau of Census requirement, so that notations as to the basis for the SED *exemption* and the license authority are entered in the same place and manner (see 15 CFR 30.21 of the FTSR for detailed requirements). The loading document must be available for inspection by government officials, along with the items, prior to lading on the carrier.

(e) *Signing the Shipper's Export Declaration or transmitting data via AES.* The person who signs the SED must be in the United States at the time of signing. The person who transmits data via AES must be a certified AES participant in accordance with 15 CFR 30.60 of the FTSR. The person that signs the SED or transmits data via AES, whether exporter or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others.

(f) *The SED or AES record is an export control document.* The SED or AES record is a statement to the U.S. Government. The SED or AES record is an export control document as defined in part 772 of the EAR. False statements made thereon may be a violation of § 764.2(g) of the EAR. When an SED or AES record is presented to the U.S. Government, the signer or filer of the SED or AES record represents the following:

(1) Export of the items described on the SED or AES record is authorized under the terms and conditions of a license issued by BXA; is in accordance with the terms and conditions of a License Exception; is authorized under "NLR" as no license is required for the shipment; or is not subject to the EAR;

(2) Statements on the SED or AES record are in conformity with the contents of any license issued by BXA, with the possible exception of the exporter block in routed transactions; and

(3) All information shown on the SED or AES record is true, accurate, and complete.

(g) *Export control information on the SED or AES record.* For *each* item on the SED or AES record, you must show the license authority (License number, License Exception, or No License

Required (NLR)), the Export Control Classification Number (ECCN) (when required), and the item description in the designated blocks. The item description must be stated in Commerce Control List terms. If those terms are inadequate to meet Census Bureau requirements, the FTSR requires that you give enough additional detail to permit verification of the Schedule B Number (or Harmonized Tariff Schedule number). The FTSR also requires separate descriptions of items for each Schedule B classification (or Harmonized Tariff Schedule number). See 15 CFR 30.6 (separate SED or AES records), § 30.7(l) (description of items) and § 30.9 (separation of items on the SED) of the FTSR.

(1) *Exports under a license.* When exporting under the authority of a license, you must enter on the SED or AES record the license number and expiration date (the expiration date is only required on paper versions of the SED), the ECCN, and an item description identical to the item description on the license.

(2) *Exports under a License Exception.* You must enter on any required SED or AES record the ECCN and the correct License Exception symbol (*e.g.*, LVS, GBS, CIV) for the License Exception(s) under which you are exporting. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See also § 740.1(d) of the EAR.

(3) *No License Required (NLR) exports.* You must enter on any required SED or AES record the "NLR" designation when the items to be exported are subject to the EAR but not listed on the Commerce Control List (*i.e.*, items are classified as EAR99), and when the items to be exported are listed on the CCL but do not require a license. In addition, you must enter the correct ECCN on any required SED or AES record for all items being exported under the NLR provisions that have a reason for control other than anti-terrorism (AT). The designator "TSPA" may be used, but is not required, when the export consists of technology or software outside the scope of the EAR. See § 734.7 through § 734.11 of the EAR for TSPA information.

(h) *Power of attorney or other written authorization.* In a "power of attorney" or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal.

(1) An agent must obtain a power of attorney or other written authorization in the following circumstances:

(i) An agent that represents a foreign principal party in interest in a routed transaction must obtain a power of attorney or other written authorization that sets forth his authority; and

(ii) An agent that applies for a license on behalf of a principal party in interest must obtain a power of attorney or other written authorization that sets forth the agent's authority to apply for the license on behalf of the principal.

Note to paragraph (h)(1): The Bureau of Census Foreign Trade Statistics Regulations impose additional requirements for a power of attorney or other written authorization. See 15 CFR 30.4(e) of the FTSR.

(2) This requirement for a power of attorney or other written authorization is a legal requirement aimed at ensuring that the parties to a transaction negotiate and understand their responsibilities. The absence of a power of attorney or other written authorization does not prevent BXA from using other evidence to establish the existence of an agency relationship for purposes of imposing liability.

(i) *Submission of the SED or AES record.* The SED or AES record must be submitted to the U.S. Government in the manner prescribed by the Bureau of Census Foreign Trade Statistics Regulations (15 CFR part 30).

§ 758.2 Automated Export System (AES).

The Census Bureau's Foreign Trade Statistics Regulations (FTSR) (15 CFR 30) contain provisions for filing Shipper's Export Declarations (SEDs) electronically using the Automated Export System (AES). In order to use AES, you must apply directly to the Census Bureau for certification and approval through a Letter of Intent (see 15 CFR 30.60(b) and Appendix A to part 30 of the FTSR). Four AES filing options are available for transmitting shipper's export data. Option 1 is the standard paper filing of the SED, while the other three options are electronic. Option 2 requires the electronic filing of all information required for export prior to export (15 CFR 30.61(a) and 30.63 of the FTSR); Option 3 requires the electronic filing of only specified data elements prior to export, with complete information transmitted within 5 working days of exportation (15 CFR 30.61(b) and Appendix B of the FTSR); Option 4 is only available for approved filers (approval by Census Bureau, U.S. Customs Service, BXA and other agencies) and requires no information to be transmitted prior to export, with complete information transmitted within 10 working days of exportation (15 CFR 30.61(c) and 30.62(c) of the FTSR).

(a) *Census' Option 4 application process.* Exporters, or agents applying on behalf of an exporter, may apply for Option 4 filing privileges by submitting a Letter of Intent to the Census Bureau in accordance with 15 CFR 30.60(b) and 30.62 of the FTSR. The Census Bureau will distribute the Letter of Intent to BXA and other agencies participating in the Option 4 approval process. Any agency may notify Census that an applicant has failed to meet its acceptance standards, and the Census Bureau will provide a denial letter to the applicant naming the denying agency. If no agency denies the application within 30 days, nor requests an extension of time within 30 days, the Census Bureau will provide the applicant with an approval letter. See 15 CFR 30.62(b) of the FTSR.

(b) *BXA Option 4 application process.* When AES filers wish to use Option 4 for exports of items that require a BXA license, those filers must seek separate approval directly from BXA by completing a questionnaire and certification. (Separate BXA approval is not required for the use of Option 4 in connection with exports that do not require a BXA license.) The questionnaire and certification should be mailed to: U.S. Department of Commerce, Bureau of Export Administration, The Office of Enforcement Analysis, 14th & Pennsylvania Avenue, N.W., Room 4065, Washington, D.C. 20230.

(1) *Questionnaire.* The following questions must be answered based on your experiences over the past five years. If the answer to either of the questions is "yes", it must be followed with a full explanation. Answering "yes" to either of the questions will not automatically prevent your participation in Option 4. BXA will consider the facts of each case and any remedial action you have taken to determine whether your reliability is sufficient to participate in this program.

(i) Have you been charged with, convicted of, or penalized for, any violation of the EAR or any statute described in § 766.25 of the EAR?

(ii) Have you been notified by any government official of competent authority that you are under investigation for any violation of the EAR or any statute described in § 766.25 of the EAR?

(2) *Certification.* Each applicant must submit a signed certification as set forth in this paragraph. The certification will be subject to verification by BXA.

I (We) certify that I (we) have established adequate internal procedures and safeguards to comply with the requirements set forth in the U.S. Department of Commerce Export

Administration Regulations (EAR) and Foreign Trade Statistics Regulations (FTSR). These procedures and safeguards include means for:

(i) Making a proper determination as to whether a license is required for a particular export;

(ii) Receipt of notification of approval of the export license, if required, before the export is made;

(iii) Compliance with all the terms and conditions of the license, License Exception, or NLR provisions of the EAR as applicable;

(iv) Return of revoked or suspended licenses to BXA in accordance with § 750.8(b) of the EAR, if requested;

(v) Compliance with the destination control statement provisions of § 758.6 of the EAR;

(vi) Compliance with the prohibition against export transactions that involve persons who have been denied U.S. export privileges; and

(vii) Compliance with the recordkeeping requirements of part 762 of the EAR.

I (we) agree that my (our) office records and physical space will be made available for inspection by the Bureau of the Census, BXA, or the U.S. Customs Service, upon request.

(c) *BXA Option 4 evaluation criteria.* BXA will consider the grounds for denial of Option 4 filing status set forth in 15 CFR 30.62(b)(2) of the FTSR, as well as the additional grounds for denial set forth in this paragraph.

(1) Applicants have not been approved for Option 4 filing privileges by the Census Bureau or other agency;

(2) Applicants are denied persons (*i.e.*, persons listed on the Denied Persons List in Supplement No. 2 to Part 764 of the EAR); or

(3) Exports are destined to the countries designated by the Secretary of State as supporters of international terrorism under Section 6(j) of the Export Administration Act of 1979, as amended. These "T–7" countries currently include Iran, Iraq, Libya, North Korea, Cuba, Sudan, and Syria.

(d) *Contacts for assistance.* (1) For additional information on the AES in general, please contact: Chief Foreign Trade Division, U.S. Census Bureau, (301) 457–2255, facsimile: (301) 457–2645.

(2) For information about BXA's Option 4 approval process to use AES Option 4 for items subject to the EAR, contact: Director, Office of Enforcement Analysis, Bureau of Export Administration, (202) 482–4255, facsimile: (202) 482–0971.

§ 758.3 Responsibilities of parties to the transaction.

All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, as long as the transaction complies with the EAR. However, acting through a forwarding or other agent, or delegating or redelegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.

(a) *Export transactions.* The U.S. principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.

(b) *Routed export transactions.* All provisions of the EAR, including the end-use and end-user controls found in part 744 of the EAR, and the General Prohibitions found in part 736 of the EAR, apply to routed export transactions. The U.S. principal party in interest is the exporter and must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization, *unless* the U.S. principal party in interest obtains from the foreign principal party in interest a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority, making the U.S. agent of the foreign principal party in interest the exporter for EAR purposes. One writing may cover multiple transactions between the same principals. See § 748.4(a)(3) of the EAR.

Note to paragraph (b): For statistical purposes, the Foreign Trade Statistics Regulations (15 CFR part 30) have a different definition of "exporter" from the Export Administration Regulations. Under the FTSR the "exporter" will always be the U.S. principal party in interest. For purposes of licensing responsibility under the EAR, the U.S. agent of the foreign principal party in interest may be the "exporter" in a routed transaction.

(c) *Information sharing requirements.* In routed export transactions where the foreign principal party in interest assumes responsibility for determining and obtaining licensing authority, the U.S. principal party in interest must, upon request, provide the foreign principal party in interest and its forwarding or other agent with the correct Export Control Classification Number (ECCN), or with sufficient technical information to determine classification. In addition, the U.S. principal party in interest must provide the foreign principal party in interest or the foreign principal's agent any information that it knows will affect the determination of license authority, see § 758.1(g) of the EAR.

(d) *Power of attorney or other written authorization.* In routed export transactions, a forwarding or other agent that represents the foreign principal party in interest, or who applies for a license on behalf of the foreign principal party in interest, must obtain a power of attorney or other written authorization from the foreign principal party in interest to act on its behalf. See § 748.4(b)(2) and § 758.1(h) of the EAR.

§ 758.4 Use of export license.

(a) *License valid for shipment from any port.* An export license issued by BXA authorizes exports from any port of export in the United States unless the license states otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before being exported to a foreign country, are treated as exports from the last U.S. port of export.

(b) *Shipments against expiring license.* Any item requiring a license that has not departed from the final U.S. port of export by midnight of the expiration date on an export license may not be exported under that license unless the shipment meets the requirements of paragraphs (b)(1) or (2) of this section.

(1) BXA grants an extension; or

(2) Prior to midnight on the date of expiration on the license, the items:

(i) Were laden aboard the vessel;

(ii) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading; or

(iii) The vessel was expected to be at the pier for loading before the license expired, but exceptional and unforseen circumstances delayed it, and BXA or the U.S. Customs Service makes a judgment that undue hardship would result if a license extension were required.

(c) *Reshipment of undelivered items.* If the consignee does not receive an export made under a license because the carrier failed to deliver it, the exporter may reship the same or an identical item, subject to the same limitations as to quantity and value as described on the license, to the same consignee and destination under the same license. If an item is to be reshipped to any person other than the original consignee, the shipment is considered a new export and requires a new license. Before reshipping, satisfactory evidence of the original export and of the delivery failure, together with a satisfactory explanation of the delivery failure, must be submitted by the exporter to the

following address: Operations Division, Bureau of Export Administration, U.S. Department of Commerce, Room 2705, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

§ 758.5 Conformity of documents and unloading of items.

(a) *Purpose.* The purpose of this section is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the items are unloaded in a country other than that of the ultimate consignee as stated on the export license.

(b) *Conformity of documents.* When a license is issued by BXA, the information entered on related export control documents (*e.g.*, the SED or AES record, bill of lading or air waybill) must be consistent with the license.

(c) *Issuance of the bill of lading or air waybill.* (1) *Ports in the country of the ultimate consignee.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to any foreign port located outside the country of the intermediate or the ultimate consignee named on the BXA license and Shipper's Export Declaration (SED) or AES electronic equivalent.

(2) *Optional ports of unloading.* (i) *Licensed items.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to optional ports of unloading unless all the optional ports are within the country of ultimate destination or are included on the BXA license and SED or AES electronic equivalent.

(ii) *Unlicensed items.* For shipments of items that do not require a license, the exporter may designate optional ports of unloading on the SED or AES electronic equivalent and other export control documents, so long as the optional ports are in countries to which the items could also have been exported without a license. See also 15 CFR 30.7(h) of the FTSR.

(d) *Delivery of items.* No person may deliver items to any country other than the country of the intermediate or ultimate consignee named on the BXA license and SED or AES record without prior written authorization from BXA, except for reasons beyond the control of the carrier (such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances or insurrection).

(e) *Procedures for unscheduled unloading.* (1) *Unloading in country where no license is required.* When items are unloaded in a country to which the items could be exported without a license issued by BXA, no notification to BXA is required. However, any persons disposing of the items must continue to comply with the terms and conditions of any License Exception, and with any other relevant provisions of the EAR.

(2) *Unloading in a country where a license is required.* (i) When items are unloaded in a country to which the items would require a BXA license, no person may effect delivery or entry of the items into the commerce of the country where unloaded without prior written approval from BXA. The carrier, in ensuring that the items do not enter the commerce of the country, may have to place the items in custody, or under bond or other guaranty. In addition, the carrier must inform the exporter and BXA of the unscheduled unloading in a time frame that will enable the exporter to submit its report within 10 days from the date of unscheduled unloading. The exporter must within 10 days of the unscheduled unloading report the facts to and request authorization for disposition from BXA using either: mail, fax, or E-mail. The report to BXA must include:

(A) A copy of the manifest of the diverted cargo;

(B) Identification of the place of unloading;

(C) Statement that explains why the unloading was necessary; and

(D) A proposal for disposition of the items and a request for authorization for such disposition from BXA.

(ii) *Contact information.* U.S. Department of Commerce, Bureau of Export Administration, Office of Exporter Services, Room 1093, 14th and Pennsylvania Avenue, NW, Washington, DC 20230; phone number 202–482–0436; facsimile number 202–482–3322; and E-Mail address: RPD@BXA.DOC.GOV.

§ 758.6 Destination control statement.

The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List that are not classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). At a minimum, the DCS must state: "These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited."

PART 762—[AMENDED]

17. Section 762.2 is amended by:

a. Revising the citation "§ 758.1(b)(3)" to read "§ 758.1(h)" in paragraph (b)(29);

b. Revising paragraphs (b)(15), (b)(30), (b)(39), and (b)(40); and

c. Adding a new paragraph (b)(41) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(15) § 750.7, Issuance of license and acknowledgment of conditions;

* * * * *

(30) § 758.1 and § 758.2, Shipper's Export Declaration or Automated Export System record;

* * * * *

(39) § 745.1, Annual reports;

(40) § 745.2, End-use certificates; and

(41) § 758.2(c), Assumption writing.

§ 762.7 [Amended]

18. Section 762.7 is amended by revising the phrase in paragraph (a) "subpoenas for books, records, and other writings." to read "subpoenas requiring persons to appear and testify, or produce books, records, and other writings.".

PART 772—[AMENDED]

19. Part 772 is amended by:

a. Revising the definitions of "Applicant" , "Exporter", "Forwarding agent", "Intermediate consignee", "Purchaser", and "Ultimate Consignee";

b. Revising the phrase "Shipper's Export Declaration (SED)" in the definition for "Export control document" to read "Shipper's Export Declaration (SED) or Automated Export System (AES) record";

c. Removing the definition for "U.S. exporter"; and

d. Adding definitions for "AES", "Automated Export System (AES)", "End-user", "Order Party", "Other party authorized to receive license", "Principal parties in interest", and "Routed export transaction" in alphabetic order, to read as follows:

PART 772—DEFINITION OF TERMS

* * * * *

AES. See "Automated Export System."

* * * * *

Applicant. The person who applies for an export or reexport license, and who has the authority of a principal party in interest to determine and

control the export or reexport of items. See § 748.4 of the EAR and definition for "exporter" in this part of the EAR.

* * * * *

Automated Export System (AES). AES is a nationwide system operational at all ports and for all methods of transportation through which export shipment data required by multiple agencies is filed electronically to Customs, using the efficiencies of Electronic Data Interchange (EDI). AES provides an alternative to filing paper Shipper's Export Declarations (SEDs), so that export information is collected electronically and edited immediately. For more information about AES, visit the Bureau of Census website at: http://www.customs.ustreas.gov/impoexpo/abaesint.htm

* * * * *

End-user. The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

* * * * *

Exporter. The person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States. Note that the Foreign Trade Statistics Regulations have a different definition for the term "exporter". Under the FTSR, the "exporter" is the U.S. principal party in interest (see Foreign Trade Statistics Regulations title 15 part 30).

* * * * *

Forwarding agent. The person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of the items from the United States. This may include air couriers or carriers. In routed export transactions, the forwarding agent and the exporter may be the same for compliance purposes under the EAR.

* * * * *

Intermediate consignee. The person that acts as an agent for a principal party in interest for the purpose of effecting delivery of items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

* * * * *

Order Party. The person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, received the order from the foreign purchaser or ultimate consignee.

* * * * *

Other party authorized to receive license. The person authorized by the applicant to receive the license. If a person and address is listed in Block 15 of the BXA–748P Multipurpose Application Form, the Bureau of Export Administration will send the license to that person instead of the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant, licensee or exporter.

* * * * *

Principal parties in interest. Those persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, the forwarding or other agent is not a principal party in interest.

* * * * *

Purchaser. The person abroad who has entered into a transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

* * * * *

Routed export transaction. A transaction where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States.

* * * * *

Ultimate consignee. The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

* * * * *

PART 774—[AMENDED]

Supplement No. 1 to Part 774—The Commerce Control List

20. Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and "Toxins", is amended by revising the License Requirements section of ECCN 1C355, to read as follows:

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 Chemicals and Families of Chemicals, Not Controlled by ECCN 1C350 or by the Department of State Under the ITAR

License Requirements

Reason for Control: CW

Control(s)

CW applies to entire entry. A license is required for CW reasons only to CWC non-States Parties (destinations not listed in Supplement No. 2 to part 745), unless an End-Use Certificate is obtained by the exporter (see § 742.18 of the EAR). See § 745.2 of the EAR for End-Use Certificate requirements, and the License Requirements Notes of this entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

License Requirements Notes:

1. Chemicals listed in this entry may be shipped NLR (No License Required) when destined to most CWC States Parties (countries listed in Supplement No. 2 to part 745). Also see License Requirement Note 3.

2. Chemicals listed in this entry may be shipped NLR when destined to most non-States Parties (destinations *not* listed in Supplement No. 2 to part 745) if supported by an End-Use Certificate described by § 745.2 of the EAR and if the ECCN is indicated on the Shipper's Export Declaration in the appropriate space as provided in § 758.1 of the EAR. Chemicals listed in this entry require a license when exported to non-States Parties if the export is not supported by an End-Use Certificate described by § 745.2 of the EAR.

3. Chemicals listed in this entry may not be shipped NLR if restrictions of other sections of the EAR apply (*e.g.*, see the end-use and end-user restrictions of part 744 of the EAR and the restrictions that apply to embargoed countries in part 746 of the EAR).

4. MIXTURES: Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following requirements:

a. Mixtures are controlled under this entry when containing at least one of the chemicals controlled under 1C355.a when the chemical constitutes more than 10 percent of the weight of the mixture.

b. Mixtures are controlled under this entry when containing at least one of the chemicals controlled under 1C355.b when the chemical constitutes more than 25 percent of the weight of the mixture.

c. Mixtures containing chemicals identified in this entry are not controlled by ECCN 1C355 when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

Note to mixtures: Calculation of concentrations.

a. *Exclusion.* No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. Absolute Weight Calculation. When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents;

c. *Example.*

11% chemical listed in 1C355.a
39% chemical not listed in 1C355.a
50% Solvent
100% Mixture
11/100 = 11% chemical listed in 1C355.a

In this example, the mixture is controlled under this entry because a chemical listed in 1C355.a. constitutes more than 10 percent of the weight of the mixture.

5. *COMPOUNDS.* Compounds created with any chemicals identified in this ECCN 1C355 may be shipped NLR, unless those compounds are also identified in this entry.

Technical Notes: For purposes of this entry, a "mixture" is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

* * * * *

Dated: June 28, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–16894 Filed 7–6–00; 8:45 am]

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Part IX

Department of Housing and Urban Development

24 CFR Part 15
Revision of Freedom of Information Act Regulations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR–4292–P–01]

RIN 2501–AC51

Revision of Freedom of Information Act Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's Freedom of Information Act (FOIA) regulations in their entirety. The rule would implement the amendments made by the Electronic Freedom of Information Act to FOIA. The proposed rule would also rewrite the FOIA regulations using plain language. Plain language is an approach to writing that promotes responsive, accessible, and understandable written communication. The rule would also make various streamlining and organizational changes to the regulations. These proposed amendments would simplify and improve the clarity of the HUD's FOIA requirements.

DATES: *Comments Due Date:* Submit comments on or before September 8, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Marylea Byrd, Assistant General Counsel, FOIA Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500, Room 10248; Telephone (202) 708–3866 (this is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR part 15 describe the policies and procedures governing public access to HUD records under the Freedom of Information Act (FOIA) (5 U.S.C. 552). Enacted in 1966, FOIA gives persons the right to request and receive a wide range of information from any Federal agency, subject to certain exemptions. As stated by President Clinton in his October 4, 1993 memorandum to the heads of all Federal departments and agencies, FOIA "was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed."

The Congress has amended FOIA several times, most recently in 1996 with the enactment of the Electronic Freedom of Information Act (Public Law 104–231, approved October 2, 1996; 110 Stat. 3048) (EFOIA). The 1996 amendments were designed to improve public access to government information and records, particularly electronic records, and expedite agency responses to requests for records under FOIA.

This proposed rule would revise HUD's FOIA regulations in their entirety in order to: (1) Implement the statutory amendments made by the Electronic Freedom of Information Act to FOIA; and (2) simplify and improve the clarity of HUD's freedom of information requirements. The following sections of this preamble summarize the major changes that would be made by this proposed rule to HUD's FOIA regulations.

II. Implementation of Electronic FOIA Amendments

As noted above, EFOIA made various amendments designed to enhance public access to agency records and agency processing of FOIA requests. The following is a summary of the major amendments made by EFOIA that would be implemented by this proposed rule.

Electronic Access to Information

EFOIA improves the ability of a requester to obtain information in an electronic format by requiring agencies to provide information in the format preferred by a requester, and by requiring agencies to provide more information on-line. This proposed rule would make several amendments designed to implement the EFOIA electronic information requirements. The following is a summary of the most significant of these amendments:

1. *Information available in electronic format.* Section 15.101 of this proposed rule describes HUD's overall policy concerning disclosing identifiable records. (This information is currently located in § 15.3.) This section has been revised to implement the EFOIA requirement that readily reproducible records be made available in the format requested, including an electronic format (5 U.S.C. 552(a)(3)(B)).

2. *Electronic Reading Room.* EFOIA requires that agencies make information available over "electronic reading rooms" on the internet (5 U.S.C. 552(a)(2)(E)). Section 15.102 of this proposed rule specifies where the public may inspect and copy the documents that HUD is required to make readily available under section 552(a)(2) of FOIA. (This information is included in current § 15.12.) HUD has reading rooms in Headquarters in Washington, DC and in each of the Secretary's Representative's offices listed in Appendix A to this document. This section has been amended to include the internet address of HUD's "FOIA electronic reading room," which contains on-line access to HUD records. The proposed rule would also provide that requesters may use HUD's internet web site for submitting FOIA requests for records that are located in HUD Headquarters.

Enhanced FOIA Processing Procedures

EFOIA also modifies the deadlines and procedures for processing FOIA requests to provide faster processing for some requests, and to assist agencies to reduce backlogs and delays. This proposed rule would make various amendments to implement these enhanced FOIA processing procedures: The following is a summary of the most significant of these amendments:

1. *Multitrack processing.* EFOIA permits agencies to implement multitrack FOIA processing systems, based on the amount of work or time (or both) involved in processing FOIA requests (5 U.S.C. 552(a)(6)(D)). Under the first-come, first-served process used by agencies, FOIA requesters with simple requests could experience lengthy delays in the processing of their requests if the agency is handling a previous FOIA request involving voluminous records. Multitrack processing is designed to mitigate this problem.

Section 15.105 of this proposed rule explains how HUD will process FOIA requests. The proposed rule would provide for multitrack processing at § 15.105(a). Specifically, this proposed rule sets out a two track system: (1) A complex track, and (2) a routine track.

When HUD has a significant number of pending requests that prevents a responsive determination being made within 20 working days, the requests

will be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests. Factors HUD will consider in assigning a request to the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from three or more HUD organizational units. Unless HUD determines the request is complex, HUD will place each request into the "routine track." Within each of these tracks, HUD will process the requests on a first-in, first-out basis.

2. *Expedited processing.* EFOIA requires that agencies promulgate regulations authorizing expedited processing of FOIA requests for records if the requester demonstrates a "compelling need" for a speedy response (5 U.S.C. 552(a)(6)(E)). Section 15.105(b) of this proposed rule provides for expedited processing of FOIA requests. The proposed rule provides that HUD will consider a compelling need to exist if:

- The failure of a requester to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or
- If the requester is primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

3. *Changes in time periods for processing FOIA requests.* EFOIA amended the time periods for agency processing of FOIA requests. Specifically, EFOIA expanded the amount of time an agency has to provide an initial response to a FOIA request from ten working days to 20 working days (5 U.S.C. 552(a)(6)(A)). In unusual circumstances, the agency may extend this time period by an additional ten days (5 U.S.C. 552(a)(6)(B)(i)). If the additional time needed is more than 10 working days, the agency must offer the requester an opportunity to limit the scope of the request so that the agency may process it within the extra 10 working day period (5 U.S.C. 552(a)(6)(B)(ii)).

EFOIA defines "unusual circumstances" to include the need to:

- Search for, collect, and appropriately examine a voluminous amount of records;
- Search for and collect the records from other offices than the one handling the request; and
- Consult with another government office having a substantial interest in the determination of the FOIA request. (5 U.S.C 552(a)(6)(B)(iii).)

This proposed rule would implement the statutory amendments to the time period for responding to FOIA requests at § 15.104.

III. Clarifying Changes

In addition to implementing the statutory amendments made by EFOIA, this proposed rule would make several amendments to simplify and improve the clarity of HUD's freedom of information requirements. The following is a summary of the major clarifying changes that would be made by this rule:

Plain Language

This rule would rewrite the FOIA regulations using plain language, in response to President Clinton's Memorandum of June 1, 1998, entitled "Plain Language in Government" (63 FR 31885, Wednesday, June 10, 1998). In this memorandum, President Clinton directed Federal agencies to use plain language in all government writing. With respect to rules, President Clinton directed Federal agencies to use plain language in new proposed and final rules beginning January 1, 1999. In the same memorandum, President Clinton also urged Federal agencies to consider rewriting existing regulations in plain language, as resources permit.

Plain language is an approach to writing that promotes responsive, accessible, and understandable written communications. It involves the use of a number of writing tools to create documents that are visually inviting, logically organized, and understandable on the first reading. These writing tools include:

- Using the active voice and strong verbs;
- Using compact sentences;
- Using personal pronouns such as "you" and "we";
- Using common, everyday words;
- Avoiding surplus words and technical or legal jargon;
- Using tables to present information where appropriate; and
- Using a design and layout that increases comprehension.

HUD selected to rewrite the FOIA regulations in plain language, because it is important that the requirements governing the public's access to HUD records be simple to understand.

Streamlining and Organizational Changes

In addition to rewriting HUD's FOIA regulations in plain language, this proposed rule would also make various streamlining and organizational changes to 24 CFR part 15. The following is a brief summary of the major streamlining changes that would be made by this proposed rule:

1. *Consolidation of FOIA regulations.* Currently, HUD's FOIA regulations are located in seven separate subparts of 24 CFR part 15 (subparts A through C, E through G, and J). This proposed rule would simplify HUD's freedom of information requirements by consolidating them in subpart B of 24 CFR part 15.

Existing 24 CFR part 15, subparts H and I are not FOIA-related. Current subpart H, which describes the procedures HUD follows in responding to subpoenas or demands of courts and other agencies to produce or disclose documents, would be redesignated as subpart C. Current subpart I, which describes the procedures HUD follows concerning the testimony of its employees in legal proceedings, would be redesignated as subpart D. With the exceptions of the changes in designation and conforming amendments, these regulations would not be revised by this proposed rule.

2. *Removal of repetitive statutory language.* As part of the overall simplification of the FOIA regulations, HUD would remove codified language which simply restates statutory provisions. For example, this proposed rule does not include a section comparable to § 15.11 of the current rule, which simply restates section 552(1) of FOIA. Section 552(1) identifies the matters that HUD must publish in the **Federal Register**. Nor does the proposed rule restate the statutory exemptions in section 552(b) of FOIA currently contained in § 15.21(a).

3. *Clarification of FOIA request procedures.* Section 15.103 of the proposed rule describes the information that must be included in a FOIA request. The proposed rule would provide more instruction on what should be included in a request than does the current rule (see § 15.41 of the current rule). Among other clarifications, the proposed rule would ask the requester to specify a fee amount above which HUD and the requester would consult before the requester agrees to pay the fee. Proposed § 15.103 also seeks information concerning multitracking and expedited processing (see section II of this preamble).

4. *Time limits regarding fee payments.* Section 15.106 of the proposed rule would also add time limits on conferring about reformulating a request to reduce the fee and on paying or committing to pay a fee. Proposed § 15.106 would also provide that HUD can consider a FOIA request withdrawn

if the requester fails to respond within the specified period. HUD believes that this clarification is needed to avoid delays to other requesters that might otherwise occur because of the first-in, first-out policy.

IV. Findings and Certifications

Environmental Impact

This proposed rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). The proposed revision of the FOIA-related provisions of 24 CFR part 15 falls within the exclusion provided by 24 CFR 50.19(c)(1), in that it does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule before publication and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule is procedural. Accordingly, the proposed rule would not have any impact on the substantive rights or duties of small entities requesting HUD records under the Freedom of Information Act. Furthermore, the fees charged under this rule are limited by FOIA to direct costs of searching for, reviewing, and duplicating the records processed for requesters and are not economically significant.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 15 as follows:

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

1. Revise the heading of part 15 to read as set forth above.

2. The authority citation for part 15 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

Subpart A also issued under 5 U.S.C. 552. Section 15.107 also issued under E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333. Subparts C and D also issued under 5 U.S.C. 301.

3. Revise subpart A to read as follows:

Subpart A—Purpose and Policy

Sec.
15.1 What is the purpose of this part?
15.2 What definitions apply to this part?

§ 15.1 What is the purpose of this part?

(a) *Subpart B of this part.* Subpart B of this part describes the procedures by which HUD makes documents available under the Freedom of Information Act (FOIA) (5 U.S.C. 552). Subpart A of this part applies to all HUD organizational units; however, applicability of subpart A to the Office of the Inspector General is subject to parts 2002 and 2004 of the title.

(b) *Subpart C of this part.* Subpart C of this part describes the procedures HUD follows in responding to subpoenas or demands of courts and other agencies to produce or disclose documents.

(c) *Subpart D of this part.* Subpart D of this part describes the procedures HUD follows concerning the testimony of its employees in legal proceedings.

(d) *Inapplicability of subparts B and C to Office of Inspector General.* Subparts B and C of this part do not apply to employees in the Office of the Inspector General. The procedures that apply to employees in the Office the Inspector General are described in part 2004 of this title.

§ 15.2 What definitions apply to this part?

The following definitions apply to this part.

(a) *Terms defined in part 5 of this title.* The terms *HUD, Secretary,* and *Organizational unit* are defined in part 5 of this title.

(b) *Other terms used in this part.* As used in this part:

Business information means commercial or financial information provided to HUD by a submitter that arguably is protected from disclosure under Exemption 4 (42 U.S.C. 552(b)(4)) of FOIA.

Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.,* magnetic tape or disk), among others.

Educational institution means:

(i) A preschool;

(ii) A public or private elementary or secondary school;

(iii) An institution of graduate higher education;

(iv) An institution of undergraduate higher education

(v) An institution of professional education; or

(vi) An institution of vocational education, that primarily (or solely) operates a program or programs of scholarly research.

Employee of the Department means a current or former officer or employee of the United States appointed by or subject to the supervision of the Secretary, but does not include an officer or employee covered by part 2004 of this title.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

Legal proceeding includes any proceeding before a court of law or other authority, i.e., administrative board or commission, hearing officer, arbitrator or other body conducting a quasi-judicial or legislative proceeding.

Legal proceeding in which the United States is a party means any legal proceeding including as a named party the United States, the Department of Housing and Urban Development, or

any other Federal executive or administrative agency or department, or any official thereof in his official capacity.

Legal proceeding among private litigants means any legal proceeding in which the United States is not a party.

News means information that is about current events or that would be of current interest to the public.

Person means person as defined in 5 U.S.C. 551(2). It includes corporations and organizations as well as individuals.

Review means the process of examining a document located in response to a request to determine whether any portion of it may be withheld, excising portions to be withheld, and otherwise preparing the document for release. Review time includes time HUD spends considering any formal objection to disclosure made by a submitter under § 15.108. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search includes all time spent looking manually or by automated means for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

Submitter means any person or entity who provides business information, directly or indirectly, to HUD. The term includes, but is not limited to, corporations, State governments, and foreign governments.

4. Revise subpart B to read as follows:

Subpart B—FOIA Disclosure of Information

Sec.

15.101 What is HUD's overall policy concerning disclosing identifiable records?
15.102 Where and when may I inspect and copy records that FOIA requires HUD to make regularly available to the public?
15.103 How can I get other records from HUD?
15.104 What are the time periods for HUD to respond to my request for records?
15.105 How will HUD process my request?
15.106 How will HUD respond to my request?
15.107 How does HUD handle requests that involve classified records?
15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?
15.109 How will HUD respond to a request for information from Form HUD–92410 (Statement of Profit and Loss)?
15.110 What fees will HUD charge?
15.111 How do I appeal a denial of my request for records or a fee determination?
15.112 How will HUD respond to my appeal?

15.101 What is HUD's overall policy concerning disclosing identifiable records?

HUD will fully and responsibly disclose its identifiable records and information consistent with competing public interests concerning the national security, personal privacy, agency deliberative process, and obligations of confidentiality as are recognized by FOIA. HUD will make a record available in the form or format requested, if the record is readily reproducible in that format.

§ 15.102 Where and when may I inspect and copy records that FOIA requires HUD to make regularly available to the public?

(a) You may inspect and copy records, including indices of the records, that section 552(a)(2) of FOIA requires HUD make available to the public at HUD's reading rooms. HUD has reading rooms in Headquarters in Washington, DC and in each of the Secretary's Representative's offices. These reading rooms are open during the business hours for the HUD office in which they are located.

(b) This information is also available to you through HUD's Internet web site at http://www.hud.gov.

§ 15.103 How can I get other records from HUD?

(a) *Generally.* You may submit a written request for copies of records in person or by mail.

(b) *Records located in a HUD field office.* If you are submitting a request for records located in a HUD field office, you should deliver or mail your request to the FOIA Liaison in each HUD Field Office.

(c) *Records located in HUD headquarters.* If you are submitting a request for records located in HUD Headquarters, you should deliver or mail your request to the FOIA Division, Office of the General Counsel. You may also use the FOIA electronic request form on HUD's Internet web site at http://www.hud.gov.

(d) *What should I include in my FOIA request?* In your FOIA request you should:

(1) Clearly state that you are making a FOIA request. Although Federal agencies are required to process all requests for documents as Freedom of Information Act requests, whether or not specifically designated as FOIA requests, failure to clearly state that you are making a FOIA request could unduly delay the initial handling of your correspondence through HUD's FOIA processing;

(2) Reasonably describe the records you seek. Include information that you may know about the documents you are requesting;

(3) Indicate the form or format in which you would like the record made available;

(4) State your agreement to pay the fee. You may specify a dollar amount above which you want HUD to consult with you before you will agree to pay the fee;

(5) Indicate the fee category that you believe applies to you (see § 15.110);

(6) If you are making a request on behalf of another person for information about that person, include a document signed by that person authorizing you to request the information on his or her behalf; and

(7) If you are requesting expedited processing, include your certification setting out the facts you believe show that there is a compelling need (see § 15.104(d)) to expedite processing of your request.

§ 15.104 What are the time periods for HUD to respond to my request for records?

(a) *What time limits generally apply?* If you have met the fee requirements of § 15.110, HUD, in general, will respond within 20 working days after the correct office receives your request. If you have sent your request to the wrong office, that office will send it to the correct office within 10 working days and will send you an acknowledgment letter.

(b) *What time limits apply to requests made on behalf of another person?* The time limits described in paragraph (a) of this section also apply to requests you make on behalf of another person for information about that person. However, the time limits will not commence to run until HUD's receipt of the document signed by that person authorizing you to request information on his or her behalf. If you make your request on behalf of another person without including such signed authorization, HUD will inform you of the authorization needed.

(c) *What time limits apply in unusual circumstances?* If you have requested an especially large number of records, the records are not located in the office handling the request, or HUD needs to consult with another government office, HUD will notify you that extra time is required. If the extra time needed is more than 10 working days beyond the general time limit set out in paragraph (a) of this section, HUD will offer you any opportunity to limit the scope of your request so that HUD may process it within the extra 10 working day period.

(d) *What time limits apply to my request for expedited processing?* If you

requested expedited processing, HUD will notify you within 10 working days after it receives your request whether it will grant expediting processing.

§ 15.105 How will HUD process my request?

(a) *Multitracking.* HUD places each request in one of two tracks. HUD places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors HUD will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from three or more organizational units. Within each track, HUD processes requests in the order in which they are received.

(b) *Expedited processing.* HUD may take your request or appeal out of normal order if HUD determines that you have a compelling need for the records. If HUD grants your request for expedited processing, HUD will give your request priority and will process it as soon as practicable. HUD will consider a compelling need to exist if:

(1) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or

(2) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

§ 15.106 How will HUD respond to my request?

(a) *Who will respond to my request?* (1) The FOIA Division of the Office of General Counsel in HUD Headquarters and the FOIA liaisons in each HUD Field Office are authorized to release copies of any HUD records unless disclosure is clearly not appropriate under FOIA.

(2) The FOIA Division in HUD Headquarters and the FOIA liaisons in each HUD Field Office may deny a request for a record in accordance with the provisions of FOIA and this part.

(b) *What type of a response will I receive?* Within the time limit described in § 15.103, HUD will either:

(1) Agree to give you all the records you requested;

(2) Advise you that HUD will not give you some or all of the records you requested. Any denial or partial denial of a requested record must be concurred in by the FOIA Division in Headquarters, by counsel in the Field Offices, or by counsel in HUD's Departmental Enforcement Center Satellite Offices. In this case, HUD will:

(i) Explain why it has decided not to comply fully with your request, citing specific exemptions where applicable;

(ii) Describe the records denied or, if there are fewer than 21 records denied, list them specifically;

(iii) Estimate the volume of the records denied unless doing so would harm a protected interest; and

(iv) Explain how to appeal that decision, and provide the name and address of the HUD official to whom you should submit your appeal.

(3) Tell you that HUD's estimate of the fee is more than you have agreed to pay and ask to confer within 10 days to see if you can reformulate your request so that HUD can meet your request at a fee that is acceptable to you; or

(4) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable, and will provide you 10 days to pay, or commit to pay, the fee.

(5) If you requested expedited processing, advise you whether your request is granted or denied and, if your request is denied, advise you of your right to appeal.

(c) *What action may HUD take if I fail to respond?* If you fail to respond within a period specified in this subpart, HUD may consider your request for records withdrawn and may terminate processing of your request.

§ 15.107 How does HUD handle requests that involve classified records?

If your request involves the release of documents that are classified under Executive Order 12958, HUD will refer your request and the pertinent documents to the originating agency for processing. HUD may refuse to confirm or deny the existence of the requested information if the originating agency determines that the fact of its existence is itself classified.

§ 15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

(a) *HUD's general policy concerning business information which may be considered as confidential commercial or financial information.* Except as provided in this section or otherwise required by law, HUD officers and employees may not disclose business information which is considered as confidential commercial or financial information to anyone other than to HUD officers or employees who are properly entitled to the information to perform their official duties.

(b) *How does a submitter make a claim that business information is confidential commercial or financial information?* (1) If you are a submitter, you may request confidential treatment of business information at the time the information is submitted to HUD or within a reasonable time after it is submitted.

(2) To obtain a designation of confidentiality, you must:

(i) Support your request with an authorized statement or a certification giving the facts and the legal justification for your request and stating that the information has not been made public; and

(ii) Clearly designate the information that you consider confidential.

(3) Your designation of confidentiality will expire 10 years after the date the information was submitted to HUD, unless you have provided a reasonable explanation for a later expiration date.

(c) *How will HUD respond to a request for business information?* If the information requested has been designated in good faith by the submitter as information to be protected under 5 U.S.C. 552(b)(4) ("Exemption 4") or if HUD has reason to believe that the information may be protected by Exemption 4, HUD shall:

(1) Unless an exception in paragraph (c)(2) of this section applies, promptly notify the submitter about the request or the administrative appeal and give the submitter 10 working days to submit a written objection to disclosure. HUD will describe the requested business information or will provide copies of all or a portion of the records;

(2) If any of the following circumstances apply, HUD will not notify the submitter:

(i) HUD determines that the information should not be disclosed;

(ii) The information has been published lawfully or has been made available officially to the public;

(3) A law other than FOIA requires HUD to disclose the information;

(4) A HUD regulation requires HUD to disclose the information. The regulation must:

(i) Have been adopted pursuant to notice and public comment; and

(ii) Specify narrow classes of records submitted to HUD that are to be released under the FOIA.

(d) *Notice to requester.* At the same time HUD notifies the submitter, HUD will also notify the requester that the request is subject to the provisions of this section and that the submitter is being afforded an opportunity to object to disclosure of the information.

(e) *Opportunity to object to disclosure.* If the submitter timely objects to disclosure, HUD will consider the submitter's objections, but will not be bound by them. HUD generally will not consider conclusory statements that particular information would be useful to competitors or would impair sales, or other similar statements, sufficient to justify confidential treatment. Information provided by a submitter or its designee may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* If after considering the submitter's objections, HUD decides to disclose business information over the objection of a submitter, HUD will send a written notice of intent to disclose to both the submitter and the requester. HUD will send these notices at least 10 working days before the specified disclosure date. The notices will include:

(1) A statement of the reasons why HUD rejected the submitter's disclosure objections;

(2) A description of the business information to be disclosed; and

(3) A disclosure date.

(g) *What other policies apply to a submitter?* (1) *HUD notice of FOIA lawsuit.* HUD will promptly notify the submitter of any suit to compel HUD to disclose business information.

(2) *Determination of confidentiality.* HUD will not determine the validity of any request for confidentiality until HUD receives a request for disclosure of the information.

(3) *Current mailing address for the submitter.* Each submitter must give HUD a mailing address for receipt of any notices under this section, and must notify HUD of any change of address.

§ 15.109 How will HUD respond to a request for information from Form HUD–92410 (Statement of Profit and Loss)?

(a) *To whom will HUD disclose the information?* HUD will release information from Form HUD–92410 (or a HUD approved substitute form that the mortgagor may have submitted) only to eligible potential purchasers and only during the period specified by HUD for the mortgage sale.

(b) *Under what conditions will HUD release such information?* HUD will release the information only if all of the following three conditions are met:

(1) The information concerns a project that is subject to a HUD-held mortgage which HUD is selling under the authority of sections 207 (k) and (l) of the National Housing Act (12 U.S.C. 1713 (k) and (l)) or section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)).

(2) The eligible potential purchasers have agreed to:

(i) Keep the information confidential;

(ii) Disclose the information only to potential investors in the mortgage and only for the period specified by HUD for the mortgage sale and to notify those potential purchasers of their obligations under this section;

(iii) Use the information only to evaluate the mortgage in connection with the mortgage sale; and

(iv) To follow disclosure procedures for that sale that have been established by the Secretary.

(3) The potential investors in the mortgage have agreed to keep the information confidential and to use the information only to evaluate the mortgage in connection with their investment decision.

(c) *To whom may potential investors disclose such information?* Potential investors in the mortgage may disclose the information to other entities only if the disclosure is:

(1) Necessary for the investor's evaluation of the mortgage;

(2) Made in accordance with disclosure procedures for the specific sale that have been established by HUD; and

(3) Limited to the period specified by HUD for the mortgage sale.

(d) *What sanctions are available for improper disclosure of such information?* An eligible potential purchaser or a potential investor (who has received the information from a potential purchaser and has been notified by that entity of its obligations under paragraph (b) of this section), who discloses information from Form HUD–92410 in violation of this regulation, may be subject to sanctions under part 24 of this title.

§ 15.110 What fees will HUD charge?

(a) *How will HUD determine your fee?* HUD will determine your fee based on which category of requester you are in and on the other provisions of this section. With your request, you should submit information to help HUD determine the proper category. If HUD cannot tell from your request, or if HUD has reason to doubt the use to which the records will be put, HUD will ask you to provide additional information before assigning the request to a specific category.

(b) *What are the categories of requesters?*—(1) *Commercial use requester.* You are a commercial use requester if you request information for a use or purpose that furthers your commercial, trade, or profit interests or those interests of the person on whose behalf you have made the request. In determining whether your request properly belongs in this category, HUD determines the use to which you will put the documents requested.

(2) *Educational requester.* You are an educational requester if your request is on behalf of an educational institution and you do not seek the records for a commercial use, but to further scholarly research.

(3) *Non-commercial scientific requester.* You are a non-commercial scientific requester if you are not a commercial use requester and your request is on behalf of an organization that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media requester.* (i) You are a representative of the news media requester if you actively gather news for an entity that is primarily organized and operated to publish or broadcast news to the public.

(ii) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

(iii) Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(iv) If you are a representative of the news media requester, HUD will not consider you to be a commercial use requester.

(5) *Other requester.* You are considered an "other" requester if you do not fall within the categories of requesters described above.

(c) *FOIA Fee Schedule.* The following table sets out the Fee Schedule that HUD uses to determine your fee. The rates for professional and clerical search and review includes the salary of the employee performing the work. The duplication cost includes the cost of operating duplicating machinery. The computer run time includes the cost of operating a central processing unit for that portion of the operating time attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search. HUD's fee schedule does not include overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

Activity	Rate	Commercial use requester	News media, educational research, or scientific research requester	Other requester
Professional search	$37.00 per hour	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
Professional review	$37.00 per hour	Applies	Does not apply	Does not apply.
Clerical search	$16.35	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
Clerical review	$16.35 per hour	Applies	Does not apply	Does not apply.
Programming services	$35.00 per hour	Applies	Does not apply	Applies.
Computer run time (includes only mainframe search time not printing).	The direct cost of conducting the search.	Applies	Does not apply	Applies.
Duplication costs	$0.15 per page	Applies	Applies. No charge for first 100 pages.	Applies. No charge for first 100 pages.

(d) *How does HUD assess review charges?* HUD will assess review charges only for the first time it analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for its review at the administrative appeal level of an exemption already applied. If HUD has withheld in full a record or portions of a record under an exemption which is subsequently determined not to apply, HUD will assess charges for its review to determine the applicability of other exemptions not previously considered.

(e) *How does HUD handle multiple requests?* If you, or others acting with you, make multiple requests at or about the same time for the purpose of dividing one request into a series of requests for the purpose of evading the assessment of fees, HUD will aggregate your requests for records. In no case will HUD give you more than the first two hours of search time, or more than the first 100 pages of duplication without charge.

(f) *Unsuccessful searches.* If HUD's search for records is unsuccessful, HUD will still bill you for the search.

(g) *No charge for costs under $25.* HUD will not charge you a fee if the total amount calculated under this section is less than $25.00.

(h) *Reducing fees in the public interest.* If HUD determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information for your own commercial interests, HUD may waive or reduce the fee.

(i) *When do I pay the fee?* HUD will bill you when it responds to your request. You must pay within thirty-one calendar days. If the fee is more than $250.00 or you have a history of failing to pay FOIA fees in a timely manner, HUD will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *What happens if I do not pay the fees?* (1) If you do not pay by the thirty-first day after the billing date, HUD will charge interest at the maximum rate allowed under 31 U.S.C. 3717.

(2) If you do not pay the amount due within ninety calendar days of the due date, HUD may notify consumer credit reporting agencies of your delinquency.

(3) If you owe fees for previous FOIA responses, HUD will not respond to further requests unless you pay the amount due.

(k) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient method. When doing so HUD will charge the cost to the requester that the private sector source has charged HUD for performing these tasks. In some instances, these costs may be higher than the charges HUD would ordinarily charge if the processing tasks had been done by the agency itself. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that, when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

§ 15.111 How do I appeal a denial of my request for records or a fee determination?

(a) *To what address do I submit my appeals?* You must submit your appeal, in writing, to the address specified in HUD's notice responding to your FOIA request (see § 15.106(a)(2)(iv)). If you send your appeal to the wrong HUD office, that office will forward it to the correct office. That office will also notify you that it has so forwarded your appeal and advise you that, for processing purposes, the time of receipt will be when the appropriate office receives your appeal.

(b) *How much time do I have to submit an appeal?* Your written appeal must be postmarked within 30 calendar days of the date of the HUD determination from which you are appealing. If your appeal is transmitted by other than the United States Postal Service (i.e., facsimile, messenger or delivery service) it must be received in the appropriate office by close of business on the 30th calendar day after the date of the HUD determination.

(c) *What information must I provide if I am appealing a denial of request for information?* If you are appealing a denial of your request for information, the appeal must contain the following information:

(1) A copy of your original request;

(2) A copy of the written denial of your request; and

(3) Your statement of the facts and legal arguments supporting disclosure.

(d) *What information must I provide if I am appealing a fee determination?* If you are appealing a fee determination, including a denial of your request for HUD to waive the fee, the appeal must contain the following information:

(1) The address of the office which made the fee determination from which you are appealing;

(2) The fee that office charged;

(3) The fee, if any, you believe should have been charged;

(4) The reasons you believe that your fee should be lower than the fee which the Agency charged or should have been waived; and

(5) A copy of the initial fee determination and copies of any correspondence concerning the fee.

(e) *What information must I provide if I am appealing a denial of expedited processing?* If you are appealing a denial of your request for expedited processing, your appeal must contain the following information:

(1) A copy of your original request;

(2) A copy of the written denial of your request; and

(3) Your statement of the facts and legal arguments supporting expedited processing.

§ 15.112 How will HUD respond to my appeal?

(a) *How much time does HUD have to decide my appeal?* HUD will decide your appeal of a denial of expedited processing within 10 working days after its receipt. For any other type of appeal, HUD will decide your appeal within 20 working days after its receipt. HUD may have an additional 10 working days if unusual circumstances require.

(b) *What action will HUD take if it grants my appeal?* (1) *Appeal of a denial of request for information.* If you are appealing a decision to deny your request for records, HUD will either:

(i) Give you the records you requested or advise you that the records will be provided by the originating office;

(ii) Give you some of the records you requested while declining to give you other records you requested, tell you why HUD has concluded that the documents were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision; or

(iii) Decline to give you the records you requested, tell you why HUD has concluded that the records were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision.

(2) *Appeal of a fee determination.* If you are appealing a fee determination, HUD will either:

(i) Waive the fee or charge the fee that you have requested;

(ii) Modify the original fee charged, and explain why it has determined that the fee is appropriate; or

(iii) Advise you that the original fee charged was appropriate, and explain why it has determined that the fee is appropriate.

(3) *Appeal of a denial of expedited processing.* If you are appealing a denial of your request for expedited processing, HUD will either:

(i) Agree to expedited processing of your request; or

(ii) Advise you that the decision to deny expedited processing has been affirmed, and tell you how to obtain judicial review of HUD's decision.

5. Remove subparts C, D, F, G, and J.

6. Redesignate subparts H, consisting of §§ 15.71 through 15.74, as subpart C, consisting of §§ 15.201 through 15.204, to read as follows:

Subpart C—Production in Response to Subpoenas or Demands of Courts or Other Authorities

Sec.

15.201 Purpose and scope.
15.202 Production or disclosure prohibited unless approved by the Secretary.
15.203 Procedure in the event of a demand for production or disclosure.
15.204 Procedure in the event of an adverse ruling.

7. In newly designated § 15.201, the undesignated paragraph is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 15.201 Purpose and scope.

* * * * *

(b) The term "legal proceeding" has the meaning given in § 15.301(b).

§ 15.203 [Amended]

8. In newly designated § 15.203(a), revise the reference to § 15.71 to read § 15.201.

§ 15.204 [Amended]

9. In newly designated § 15.204, revise the reference to § 15.73(b) to read § 15.203(b).

10. Redesignate subpart I, consisting of §§ 15.81 through 15.85, as subpart D, consisting of §§ 15.301 through 15.309, to read as follows:

Subpart D—Testimony of Employees in Legal Proceedings

Sec.

15.301 Purpose.
15.302 Testimony in proceedings in which the United States is a party.
15.303 Legal proceedings among private litigants; general rule.
15.304 Legal proceedings among private litigants; subpoenas.
15.305 Legal proceedings among private litigants; expert or opinion testimony.

§ 15.304 [Amended]

11. In newly designated § 15.304, revise the reference to §§ 15.71–15.74 to read §§ 15.201–204.

Dated: June 14, 2000.

Andrew Cuomo,

Secretary.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A—Reading Rooms

The Department maintains a reading room in Headquarters, 451 Seventh Street, SW, Washington, DC 20410 and in each of its Secretary Representative's Offices as follows:

New England, Boston Office—Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092. The New England Office oversees jurisdiction for HUD Offices located in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.

New York/New Jersey, New York Office—26 Federal Plaza, New York, New York 10278–0068. The New York/New Jersey Office oversees jurisdiction for HUD Offices located in New York and New Jersey.

Mid Atlantic, Philadelphia Office—Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392. The Mid Atlantic Office oversees jurisdiction for HUD Offices located in Pennsylvania, Delaware, Maryland, Virginia, and West Virginia.

Southeast/Caribbean, Atlanta Office—Five Points Plaza Building, 40 Marietta St., Atlanta, Georgia 30303. The Southeast/Caribbean Office oversees jurisdiction for HUD Offices located in Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and Puerto Rico.

Midwest, Chicago Office—Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. The Midwest Office oversees jurisdiction for HUD Offices located in Illinois, Indiana, Ohio, Michigan, Wisconsin, and Minnesota.

Southwest, Fort Worth Office—Burnett Plaza Building, 801 Cherry Street, Fort Worth, Texas 76102. The Southwest Office oversees jurisdiction for HUD Offices located in Oklahoma, Texas, Arkansas, Louisiana, and New Mexico.

Great Plains, Kansas City Office—Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406. The Great Plains Office oversees jurisdiction for HUD Offices located in Missouri, Iowa, Kansas, and Nebraska.

Rocky Mountain, Denver Office—633 17th Street, Denver, Colorado 80202–3607. The Rocky Mountain Office oversees jurisdiction for HUD Offices located in Colorado, Utah, Wyoming, North Dakota, South Dakota, and Montana.

Pacific/Hawaii, San Francisco Office—Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, PO Box 36003, San Francisco, California 94102–3448. The Pacific/Hawaii Office oversees jurisdiction for HUD Offices located in California, Nevada, Arizona, and Hawaii.

Northwest/Alaska, Seattle Office—Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000. The Northwest/Alaska Office oversees jurisdiction for HUD Offices located in Alaska, Washington, Oregon, and Idaho.

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Part X

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Inviting Applications and Pre-Applications for Fiscal Year 2000; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of a Final Funding Priority for Fiscal Year 2000 for one Disability and Rehabilitation Research Project (DRRP)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces a final funding priority for one DRRP under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year 2000. The Assistant Secretary takes this action to focus research attention on an area of national need. The priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect on August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. If you use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: donna—nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains a final priority under the Disability and Rehabilitation Research Projects and Centers Program for a DRRP on Information Technology Technical Assistance and Training (ITTA).

The final priority refers to NIDRR's Long Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/legislation/FedRegister/other/1999–12/68576.html.*

This final priority supports the National Education Goal that calls for every American to possess the skills necessary to compete in a global economy.

The authority for the Assistant Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762 and 764). Regulations governing this program are found in 34 CFR Part 350.

Note: This notice of a final priority does not solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On May 8, 2000 the Assistant Secretary published a notice of a proposed priority in the **Federal Register** (64 FR 26588). The Department of Education received 3 letters commenting on the notice of proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Assistant Secretary is not legally authorized to make under statutory authority—are not addressed.

Comment: The needs assessment developed under Activity 1 and the training materials developed under Activity 2 should reflect both current technology and technology that is immanent. In doing so, the grantee should be required to collaborate with the Federal Communications Commission, the National Institute of Standards, and other agencies that have advanced technology operations.

Discussion: NIDRR agrees that the needs assessment and the training materials should reflect both current technology and foreseeable technological developments. NIDRR also agrees that collaboration with relevant Federal agencies is important and is a required component of the priority. The applicant may propose to coordinate with other agencies and organizations as deemed necessary. The peer review process will evaluate the merit of each applicant's proposed activities.

Changes: None.

Comment: Considering the rapid development of both the host technologies and the practice of universal design, it is important that training materials and instructional modules developed under activity 2 be developed and provided in ways that are amenable to very rapid update and renewal.

Discussion: NIDRR agrees that it is important for training materials to be reflective of rapid technological change. NIDRR anticipates that the successful applicant will propose activities that take into account rapid technological change as discussed in the background statement. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Comment: One commenter recommended that an activity be added that requires the grantee to develop and maintain a list of "best practices" and to make that list available to other organizations working in this field.

Discussion: An applicant may propose to develop and maintain a list of best practices. NIDRR elects to allow the applicant the choice as to whether to include such an activity. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Comment: One commenter stated that the background statement, specifically the fourth paragraph of the background statement that talks about "a shortage of individuals trained to educate consumers, consumer service professionals, technical writers, web developers, marketers, and other information technology related professionals about accessible and usable electronic and information technologies" should be expanded to include telecommunications products.

Discussion: Telecommunications products is included in the definition of electronic and information technology in the notice of proposed rule making published in the **Federal Register** (65 FR 17351) by the Access Board on March 31, 2000. Based on this definition NIDRR expects that telecommunications products will be considered in each application.

Changes: None.

Comment: The target audiences mentioned in Activity 1 should focus on those who are tasked with implementing Section 508 and Section 255 and include state procurement officers, designers of telecommunications and information technology products, others within information technology and telecommunications companies who make decisions regarding product design (including product managers, marketers, sales and customer service staff, human factors professionals, regulatory compliance specialists, and executives), web developers of government sites, consumers and disability-related organizations, and relevant industry groups and professional associations.

Discussion: NIDRR believes that the language in Activity 1, while specific, is not limiting. The applicant is free to include other audiences and/or elaborate upon identified audiences. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Comment: One commenter recommended that this center be required to coordinate efforts with other Federal grantees and contractors responsible for providing training and technical assistance related to Section 508 and Section 255 including those responsible for providing training and technical assistance to Federal procurement officers and those

responsible for the Section 508 Web Site content.

Discussion: The priority directs the applicant to collaborate with relevant Federal agencies and other agencies as identified by NIDRR. Therefore, the applicant is not limited in the nature, scope or number of agencies to be targeted in the application for coordination efforts. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Comment: One commenter stated that Activity 7 should be expanded to include the telecommunications field.

Discussion: Telecommunications is included in the definition of electronic and information technology in the notice of proposed rule making published in the **Federal Register** (65 FR 17351) by the Access Board on March 31, 2000. Based on this definition NIDRR expects that telecommunications will be considered in each application.

Changes: None.

Disability and Rehabilitation Research Projects

Authority for DRRPs is contained in section 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priority

Under 34 CFR 75.105(c)(3) the Assistant Secretary will give an absolute preference to applications that meet the following priority. The Assistant Secretary will fund under this competition only an application that meets this absolute priority.

Priority: Information Technology Technical Assistance and Training Center

Background

The emerging digital economy is fundamentally altering the way Americans work. The advent of powerful computers, high speed modems, sophisticated telecommunications networks, fiber optics, broadband network capacity, intranets, the Internet, the World Wide Web (WWW), and satellites has enabled computer and information experts to build a global information network that is unparalleled. These technologies, and how we use them, are undergoing rapid changes that result in a new wave of information flow that touches all facets of society, including education, employment and daily living. In this period of rapid technical, economic, and social change, access to electronic and information technologies is essential for everyone. Unfortunately, while the availability of information technology holds tremendous promise to level the playing field, the proliferation of electronic and information technologies does not guarantee accessibility and usability for individuals with disabilities.

The electronic and information technology industry has been growing at more than double the rate of the overall economy—a trend that is likely to continue (The Emerging Digital Economy II, a report by the U.S. Department of Commerce, June, 1999). Because of the increase in availability of the Internet, 20 million salaried workers telecommuted from their homes last year. That number is expected to reach 130 million by 2003 (InfoTech Trends, Fourth Quarter, 1998). Electronic mail, once considered an elite mode of communication for university-based researchers and scientists, is now routinely used by workers to instantly exchange visual and audible information in readable and reusable formats (e.g., computer files, charts, figures, tables, images, databases, and software packages) using one of the estimated 14,000 Internet service providers worldwide (InfoTech Trends, Second Quarter, 1999).

In today's market, electronic and information technology product cycles are measured in months, not years. The same can be said for product lifetimes. This rapid proliferation of technologies has emphasized the need for universal design—a process whereby environments and products are designed with built-in flexibility so they are usable by as many people as possible, regardless of age and ability, at no additional cost to the user. Given the rapid evolution of each generation, new products often do not include universal design features, thus increasing the need for the expensive process of retrofitting.

Unfortunately, there is a shortage of individuals knowledgeable about the principles of universal design and the benefits of incorporating universal design features into electronic and information technologies. There is also a shortage of individuals trained to educate consumers, customer service professionals, technical writers, web developers, marketers, and other information technology related professionals about accessible and usable electronic and information technologies.

Congress has passed landmark legislation that is intended to maximize the full inclusion and integration of individuals with disabilities in society, including increased access to electronic and information technology. These laws, and their provisions, include the Hearing Aid Compatibility Act of 1988, the Television Decoder Circuitry Act of 1990, the Americans with Disabilities Act (ADA) of 1990, the Telecommunications Act of 1996, the Assistive Technology Act (AT Act) of 1998, and the Workforce Investment Act of 1998, which includes sections 504 and 508 of the Rehabilitation Act of 1973, as amended.

Section 255 of the Telecommunications Act of 1996 requires telecommunications service providers and equipment manufacturers to make their services and equipment accessible by persons with the full range of disabilities, if readily achievable. If a manufacturer or service provider claims this is not readily achievable, the manufacturer or service provider must still ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access. On July 19, 1999, the Federal Communications Commission (FCC) adopted rules and guidelines to implement section 255 of the Telecommunications Act.

Section 508 of the Rehabilitation Act of 1973, as amended, requires access to the Federal government's electronic and information technology. Section 508 applies to all Federal departments and agencies when they develop, procure, maintain or use electronic and information technology. Federal departments and agencies must ensure equal access to, and use of, electronic and information technology for Federal employees with disabilities and members of the public seeking information or services from their agency comparable to those who do not have disabilities, unless such a requirement would cause an undue burden. The Access Board published a notice of proposed rulemaking in the **Federal Register** (65 FR 17345) on section 508 standards on March 31, 2000 and will publish final standards

after analysis of comments received. Federal agencies will be responsible for complaints related to the procurement of accessible electronic and information technologies as of August 7, 2000. The Assistive Technology Act, 29 U.S.C. 3001, also requires that States receiving assistance, including subrecipients, under the State Grants program comply with the requirements of section 508, including the standards developed by the Access Board.

The regulations and standards for section 255 of the Telecommunications Act and section 508 of the Rehabilitation Act will have a profound impact on dozens of stakeholders, including, but not limited to, information technology manufacturers, product designers and engineers, technical writers, marketers, distributors, purchasers of information technologies, web developers and others. Currently there is a dearth of information and technical assistance available for stakeholders and other constituencies on how to comply with these regulations and standards. There is also a limited supply of skilled professionals capable of providing training and support on how to implement the requisite guidelines and standards for electronic and information technology.

A number of Federal agencies are collaborating to promote awareness about accessible electronic and information technologies, the benefits of incorporating universal design into these products, and the need for expanding capacity for training and technical assistance in this field. NIDRR, the General Services Administration, the Federal Communications Commission, and the Access Board are jointly supporting a multifaceted initiative that includes a demonstration center, multiple web pages, and technical assistance and training efforts, in partnership with industrial consortia and professional and trade associations. This priority relates to the need for expanding capacity for technical assistance and training for a broad array of constituents.

Priority: Information Technology Technical Assistance and Training Center

The Assistant Secretary proposes to establish an Information Technology Technical Assistance and Training Center to promote the wide spread use of accessible and usable electronic and information technology and to promote the benefits of universal design. In carrying out these purposes, the Information Technology Technical Assistance and Training Center must:

- Design and implement a needs assessment that will determine the technical assistance and training needs relative to: (a) Implementing the final standards under section 508 of the Rehabilitation Act; (b) the guidelines for section 255 of the Telecommunications Act; and (c) promoting the principles of universal design. The needs assessment should target audiences including, but not limited to, State procurement officers, product designers and engineers, marketers, technical writers, web developers, consumer and disability-related organizations, service providers, human resource professionals, and relevant industrial consortia and professional and trade associations;
- Based upon the findings of the needs assessment, develop, implement and evaluate relevant training materials and instructional modules that meet the requirements of section 255 of the Telecommunications Act and section 508 of the Rehabilitation Act, and address the principles of universal design;
- Develop and disseminate training materials and instructional modules to States receiving AT Act funds on implementing the requirements of section 508 and its standards;
- Provide information, training and technical assistance about section 255 of the Telecommunications Act, section 508 of the Rehabilitation Act, and the principles of universal design to appropriate constituencies, including the information technology and telecommunications industry, relevant industrial consortia, professional and trade associations, and States receiving AT Act funds;
- Collaborate with the General Services Administration, the Federal Communications Commission, and the Access Board by contributing information and materials for the Government wide web site on Section 508;
- Design and implement, in collaboration with the Federal Communications Commission, the Access Board, the Rehabilitation Engineering Research Center on Telecommunications Access and the telecommunications industry, a web site that contains information and instructional materials, including those developed under Activity 2, that can be used by telecommunications designers of equipment and services to develop and fabricate solutions that are in accordance with the guidelines for section 255 of the Telecommunications Act; and
- Identify, implement, and disseminate strategies, in collaboration with industrial consortia and professional and trade associations, that will expand training capacity of the field and increase the knowledge base about accessible and usable electronic and information technology.

In addition to the activities proposed by the applicant to carry out these purposes, the Information Technology Technical Assistance and Training Center must:

- Collaborate with industry, industrial consortia, professional and trade associations, and States receiving AT Act funds on all relevant activities;
- Coordinate on activities of mutual interest with NIDRR-funded projects including the Rehabilitation Engineering Research Centers on Information Technology Access and Telecommunications Access and the Disability and Business Technical Assistance Centers; and
- Collaborate with relevant Federal agencies responsible for the administration of public laws that address access to and usability of electronic and information technology for individuals with disabilities including, but not limited to, the General Services Administration, the Access Board, the Federal Communications Commission, the Rehabilitation Services Administration, and other relevant Federal agencies identified by NIDRR.

Additional Selection Criterion

The Assistant Secretary will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, the Assistant Secretary also proposes to use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points:

Within this absolute priority, we will give the following competitive preference to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of those strategies, we will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Applicable Program Regulations: 34 CFR Parts 350 and 353.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC., area at (202) 512–1530.

Note: The official version of document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 761a(g) and 762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects)

Dated: July 3, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–17384 Filed 7–7–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A–4]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications and Pre-application for a New Disability and Rehabilitation Research Project for Fiscal Year 2000

Purpose of the Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973. The Assistant Secretary takes this action to focus research attention on an area of national need. The priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

The notice of final funding priority on Information Technology Technical Assistance and Training Center is published elsewhere in this issue of the **Federal Register**.

This notice also invites interested parties to participate in a pre-application meeting to discuss the funding priority for the Information Technology Technical Assistance and Training Center and to receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting will be held on July 31, 2000 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10 a.m. and 12 a.m. NIDRR staff will also be available at this location from 1:30 p.m. to 5 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person. For further information contact William Peterson, Switzer Building, room 3425, 330 C Street, SW, Washington, DC 20202. Telephone (202) 205–9192. If you use a TTY, please call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.* other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this Notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: September 1, 2000.

Application Available: July 15, 2000.

Maximum Award Amount per year: $1,500,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1.

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

Program Authority: 29 U.S.C. 762.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86, and the program regulations 34 CFR Part 350.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW, Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3414, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475.

Internet: Donna_Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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(Catalog of Federal Domestic Assistance Numbers: 84.133A, Disability and Rehabilitation Research Projects)

Program Authority: 29 U.S.C. 760–764.

Dated: July 3, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–17385 Filed 7–7–00; 8:45 am]

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Federal Register

Monday,
July 10, 2000

Part XI

The President

Proclamation 7328—To Amend the Generalized System of Preferences

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Title

The

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Presidential Documents

Title 3—

The President

Proclamation 7328 of July 6, 2000

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Section 502(c)(7) of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2462(c)(7)), provides that, in determining whether to designate any country a beneficiary developing country under this section, the President shall take into account whether that country has taken or is taking steps to afford internationally recognized worker rights to workers in that country. Section 502(d)(1) of the Trade Act (19 U.S.C. 2462(d)(1)) provides that the President may withdraw, suspend, or limit the application of duty-free treatment under the Generalized System of Preferences (GSP) with respect to any designated beneficiary developing country based on consideration of the factors set forth in sections 501 and 502(c) of the Trade Act (19 U.S.C. 2461 and 2462(c)). Section 502(f)(2) of the Trade Act (19 U.S.C. 2462(f)(2)) requires the President to notify the Congress and the affected country, at least 60 days before termination, of the President's intention to terminate the affected country's designation as a beneficiary developing country for purposes of the GSP.

2. Section 502(e) of the Trade Act (19 U.S.C. 2462(e)) provides that the President shall terminate the designation of a country as a beneficiary developing country if the President determines that such country has become a "high income" country as defined by the official statistics of the International Bank for Reconstruction and Development. Termination is effective on January 1 of the second year following the year in which such determination is made.

3. Pursuant to section 502(d) of the Trade Act, and having considered the factors set forth in sections 501 and 502(c), I have determined that it is appropriate to suspend Belarus's GSP benefits because it has not taken and is not taking steps to afford workers in that country internationally recognized worker rights. In order to reflect the suspension of benefits under the GSP for articles imported from Belarus, I have determined that it is appropriate to modify general note 4(a) of the Harmonized Tariff Schedule of the United States (HTS).

4. Pursuant to section 502(e) of the Trade Act, I have determined that Malta, French Polynesia, New Caledonia, and Slovenia meet the definition of a "high income" country as defined by the official statistics of the International Bank for Reconstruction and Development. Accordingly, pursuant to section 502(e) of the Trade Act, I am terminating the preferential treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Malta, French Polynesia, New Caledonia, and Slovenia, effective January 1, 2002.

5. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to Title V and section 604 of the Trade Act, do proclaim that:

(1) In order to reflect the suspension of benefits under the GSP with respect to Belarus, general note 4(a) of the HTS is modified by deleting "Belarus" from the list of independent countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 60 days after the date of publication of this proclamation in the **Federal Register**.

(2) In order to terminate the designation of Malta, French Polynesia, New Caledonia, and Slovenia as beneficiary developing countries under the GSP, general note 4(a) of the HTS is modified by:

(a) deleting "Malta" and "Slovenia" from the list of independent countries, and

(b) deleting "French Polynesia" and "New Caledonia" from the list of nonindependent countries and territories, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2002.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of July, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–17571
Filed 7–7–00; 10:39 am]
Billing code 3195–01–P

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S. 761/P.L. 106–229
Electronic Signatures in Global and National Commerce Act (June 30, 2000; 114 Stat. 464)

H.R. 4762/P.L. 106–230
To amend the Internal Revenue Code of 1986 to require 527 organizations to disclose their political activities. (July 1, 2000; 114 Stat. 477)

Last List June 30, 2000

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–042–00013–7)	37.00	Jan. 1, 2000
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–042–00015–3)	18.00	Jan. 1, 2000
1200–1599	(869–042–00016–1)	44.00	Jan. 1, 2000
1600–1899	(869–042–00017–0)	61.00	Jan. 1, 2000
1900–1939	(869–042–00018–8)	21.00	Jan. 1, 2000
1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–042–00023–4)	46.00	Jan. 1, 2000
200–End	(869–042–00024–2)	44.00	Jan. 1, 2000
10 Parts:			
1–50	(869–042–00025–1)	46.00	Jan. 1, 2000
51–199	(869–042–00026–9)	38.00	Jan. 1, 2000
200–499	(869–042–00027–7)	38.00	Jan. 1, 2000
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13	(869–042–00036–6)	35.00	Jan. 1, 2000
14 Parts:			
1–59	(869–042–00037–4)	58.00	Jan. 1, 2000
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140–199	(869–038–00039–1)	17.00	[4] Jan. 1, 2000
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17 Parts:			
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*200–239	(869–042–00049–8)	38.00	Apr. 1, 2000
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141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
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20 Parts:			
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*500–599	(869–042–00064–1)	31.00	Apr. 1, 2000
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*500–699	(869–042–00073–1)	20.00	Apr. 1, 2000
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*1–199	(869–042–00096–0)	59.00	Apr. 1, 2000

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200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
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29 Parts:			
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200–599	(869–038–00201–9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

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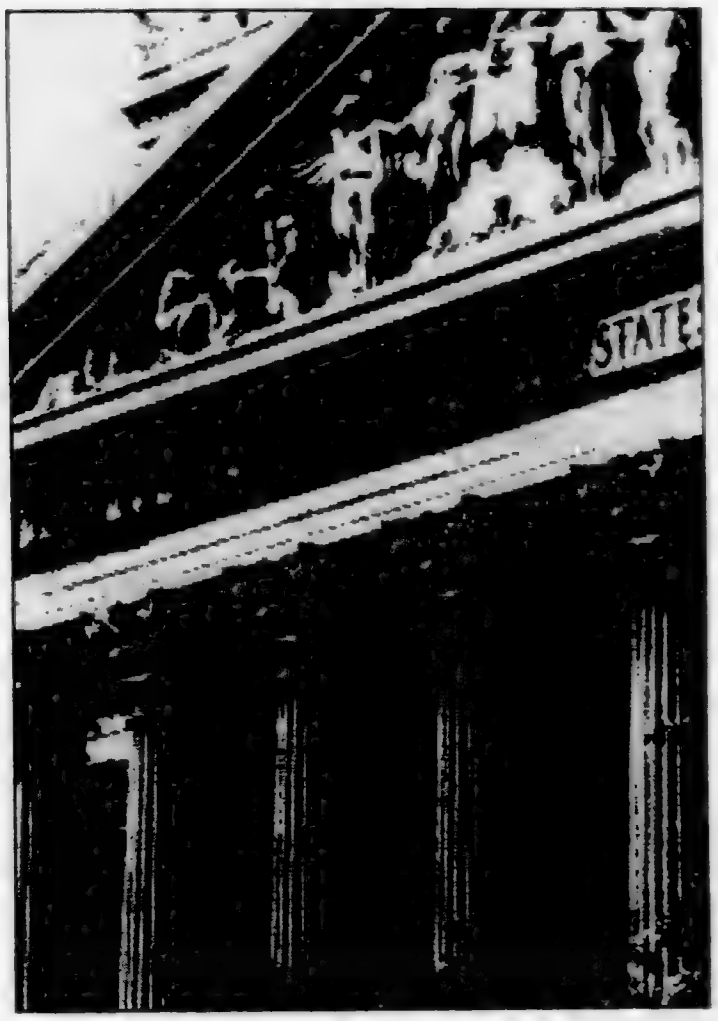

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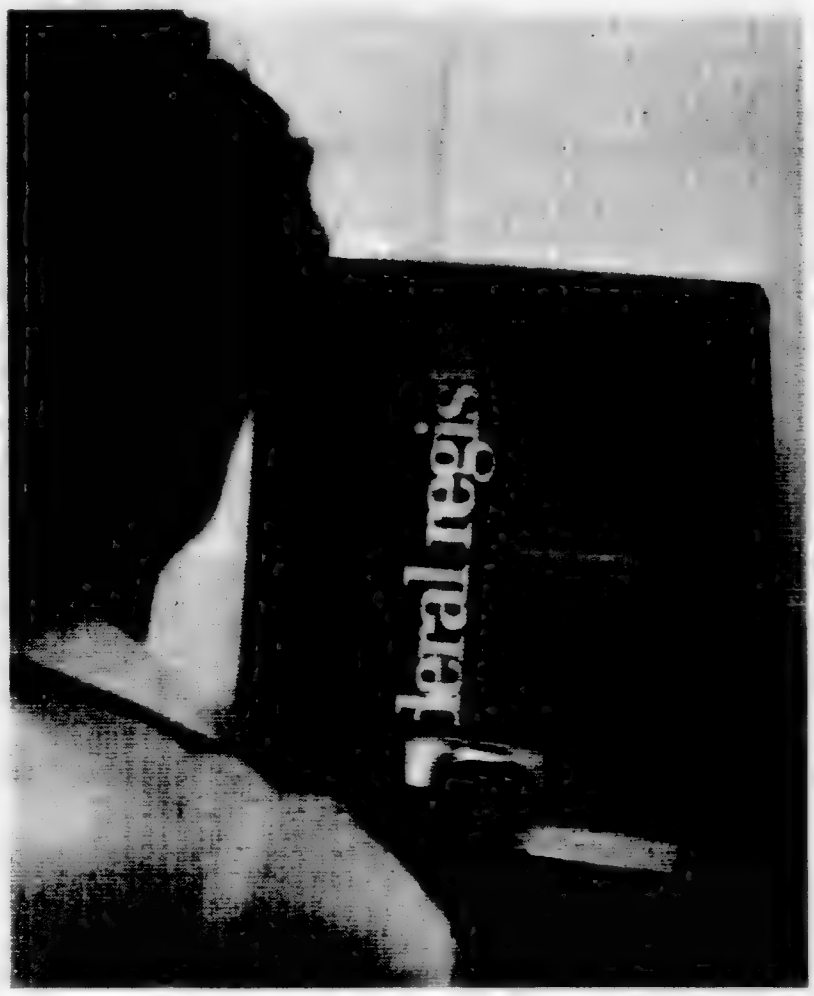

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Rules and Regulations

Federal Register
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Tuesday, July 11, 2000

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ00

Prevailing Rate Systems; Abolishment of the Franklin, PA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that will abolish the Franklin, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Franklin and Blair Counties, PA, to the Cumberland, PA, NAF FWS wage area. This change is necessary because the Franklin wage area's host installation, Letterkenny Army Depot, has downsized its operation. This leaves the Department of Defense without an installation in the survey area capable of hosting annual local wage surveys in the wage area.

DATES: *Effective date:* This regulation is effective on July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On February 29, 2000, the Office of Personnel Management (OPM) published an interim rule (65 FR 10673) to abolish the Franklin, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Franklin and Blair Counties, PA. The Franklin wage area consists of one survey county, Franklin County, and one area of application county, Blair County, PA. Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria in section 532.219(b) of title 5, Code of Federal Regulations.

OPM may establish NAF wage areas when a minimum of 26 NAF wage employees have duty stations in the survey area, a local activity has the capability to host annual local wage surveys, and a minimum of 1,800 private enterprise employees are within the survey area in establishments within survey specifications. Although Franklin County, PA, has approximately 26 NAF FWS employees, the wage area's host activity, Letterkenny Army Depot, has downsized its operation. This leaves the Department of Defense without an activity in the survey area with the capability to conduct annual local wage surveys in the wage area. Therefore, Blair and Franklin Counties, PA, will become part of the Cumberland, PA, NAF wage area. The Cumberland wage area will consist of one survey county, Cumberland County, PA, and two area of application counties, Blair and Franklin Counties, PA.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with this change. FWS employees in Franklin and Blair Counties, PA, transferred to the Cumberland, PA, NAF wage area schedule on the first day of the first applicable pay period beginning on or after March 16, 2000. The interim rule had a 30-day public comment period, during which OPM did not receive any comments.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (65 FR 10673) amending 5 CFR part 532 published on February 29, 2000, is adopted as final with no changes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–17459 Filed 7–10–00; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ01

Prevailing Rate Systems; Abolishment of the Lebanon, PA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that will abolish the Lebanon, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Lebanon County, PA, to the York, PA, NAF FWS wage area. This change is necessary because the Lebanon wage area's host installation, Fort Indiantown Gap, has downsized its operation. This leaves the Department of Defense without an installation in the survey area capable of hosting annual local wage surveys in the wage area. The rule will also remove Columbia County, PA, as part of an NAF wage area because NAF employees no longer have duty stations in the county.

DATES: *Effective date:* This regulation is effective on July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On February 29, 2000, the Office of Personnel Management (OPM) published an interim rule (65 FR 10674) to abolish the Lebanon, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area, redefine Lebanon County, PA, and remove Columbia County, PA, as part of an NAF wage area. The Lebanon wage area consists of one survey county, Lebanon County, and one area of application county, Columbia County. Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria in section

532.219(b) of title 5, Code of Federal Regulations.

OPM may establish NAF wage areas when a minimum of 26 NAF wage employees work in the survey area, a local activity has the capability to host annual local wage surveys, and a minimum of 1,800 private enterprise employees are within the survey area in establishments within survey specifications. Lebanon County, PA, has approximately 22 NAF FWS employees, and the wage area's host activity, Fort Indiantown Gap, has downsized its operation. This leaves the Department of Defense without an activity in the survey area with the capability to conduct annual local wage surveys in the wage area. Columbia County, PA, is not a part of an NAF wage area because NAF employees no longer have duty stations in the county. Therefore, the York, PA, NAF wage area will consist of one survey county, York County, PA, and one area of application county, Lebanon County, PA.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with this change. FWS employees in Lebanon County, PA, transferred to the York, PA, NAF wage area schedule on the first day of the first applicable pay period beginning on or after March 2, 2000. The interim rule had a 30-day public comment period, during which OPM did not receive any comments.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (65 FR 10674) amending 5 CFR part 532 published on February 29, 2000, is adopted as final with no changes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–17458 Filed 7–10–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV00–929–2 FR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Establishment of Marketable Quantity and Allotment Percentage and Other Modifications Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of cranberries that handlers may purchase from, or handle for, growers during the 2000–2001 crop year, which begins on September 1, 2000, and ends on August 31, 2001. The order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (Committee). This rule establishes a marketable quantity of 5.468 million barrels, allows for some adjustment of this figure based on final calculations of sales histories, and establishes an allotment percentage of 85 percent. This action is designed to stabilize marketing conditions and improve grower returns. Fresh and organically-grown cranberries are exempt from the volume limitations to facilitate marketing of these products. This rule also revises the method in which growers' sales histories are computed and suspends certain dates in the order which are impractical.

EFFECTIVE DATE: This final rule becomes effective July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

Question and Answer Overview

When Will This Final Rule Be Effective?

The final rule is effective on July 12, 2000, and the volume regulation will apply to the 2000–2001 crop year which begins on September 1, 2000, and ends on August 31, 2001.

Who Will Be Affected by This Action?

Cranberry growers and handlers/processors located in the 10-State production area will be affected by this action. The 10-State production area covers cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Why Is Volume Control Being Implemented This Year?

The Committee recommended volume control this year in order to address the serious oversupply situation being experienced by the industry. For the 1999 crop year, industry reports show that continued low grower prices will accompany record high production and inventories. Many cranberry growers are experiencing difficulties dealing with these extreme market conditions.

The Committee determined the best method of volume control would be the producer allotment program which provides for an annual marketable quantity and allotment percentage.

The use of volume control is not the only avenue that could be used to address the oversupply situation being experienced by the industry. The industry is also looking into methods of increasing demand by developing new markets, both domestic and foreign, by developing new products and by increasing promotional efforts.

What Is Marketable Quantity and Allotment Percentage?

Marketable quantity is defined as the number of pounds of cranberries needed

to meet total market demand and to provide for an adequate carryover into the next season. The marketable quantity for the 2000–2001 crop year has been established at 5.468 million barrels. This figure is subject to some change based on final calculations of sales histories. This is approximately equal to the expected demand for fruit for processing.

The allotment percentage equals the marketable quantity divided by the total of all growers' sales histories. Total growers' sales histories were set by the Committee at 6.432 million barrels. Using the formula established under the order (5.468 million barrels divided by 6.432 million barrels), the annual allotment percentage is 85 percent.

Sales of fresh and organically-grown fruit are exempt from the volume regulation. In addition, other modifications have been made to implement volume regulation.

How Are Growers' Annual Allotments Calculated?

A grower's annual allotment is the result of multiplying the individual grower's sales history by the 85% allotment percentage.

How Are Sales Histories Calculated for the 2000–2001 Season?

The Committee is responsible for calculating each grower's sales history on an annual basis. A new grower with no sales history will be issued allotment based on the State average yield per acre or total estimated commercial sales, whichever is greater. For the 2000–2001 crop, the State average yield is defined as the average State yield for the year 1997 or the average of the best four years out of the last six years, whichever is greater.

For growers with existing cranberry acreage, sales history for growers with six or more years of sales history is established by computing an average of the highest four of the most recent six years of sales. For growers with five years of sales history, the average of the best four out of the last five years is used. For growers with four years or less of commercial sales history, the sales history is calculated by using the best single sales year. The sales history of newly planted acreage belonging to existing growers which has no commercial sales history (including those with four years or less of sales history) is calculated the same way as the sales history of a new grower with no sales history. If growers with existing acreage also have newer acreage with four years of sales history or less, and such grower can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage will be treated in the same way as acreage of a grower with four years or less of sales history.

Do Growers Have Recourse if They Are Not Satisfied With Their Sales History Calculation?

If growers are dissatisfied with their sales history calculation as determined by the Committee, they can appeal to the appeals subcommittee appointed by the Committee. If growers are not satisfied with the decision by the appeals subcommittee, two other levels of appeal are available—the full Committee and the Secretary. All decisions by the Secretary will be final.

The appeals subcommittee is in the process of developing specific criteria to follow in making its decisions.

Appeals should be filed with David N. Farrimond, General Manager, Cranberry Marketing Committee, 266 Main Street, Wareham, Massachusetts 02571; Telephone: (800) 253–0862; or Fax (508) 291–1511.

Executive Orders 12866 and 12998

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, a marketable quantity and allotment percentage may be established for cranberries during any crop year. This rule establishes a marketable quantity and allotment percentage for cranberries for the 2000–2001 crop year beginning September 1, 2000, through August 31, 2001. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Introduction

As discussed in detail later in this document, the U.S. cranberry industry is experiencing an oversupply situation. Recent increases in acreage and yields have resulted in greater supplies, while demand has remained fairly constant. The result has been building inventories and reduced grower returns.

The Committee has been considering ways to cope with this oversupply situation in recent years. On March 30, 2000, the Committee recommended using volume controls (in the form of producer allotments) for the 2000–2001 crop year. Based on the Committee's recommendation and other available information, a proposed rule was issued and published in the May 30, 2000, **Federal Register** [65 FR 34411]. That rule proposed three alternative levels of volume regulation. The Committee met again on June 6, 2000, and revised its initial recommendation in several respects.

This final rule establishes a marketable quantity and allotment percentage for the 2000–2001 crop year. This action also revises procedures for calculating growers' sales histories, exempts fresh and organically-grown cranberries from volume regulation, defines State average yield per acre, increases the barrels per acre for determining a commercial crop, revises the Committee review procedures for re-determination of sales histories, and suspends the date by which the Committee notifies growers of their annual allotment. These actions are based primarily upon the recommendations made by the Committee and comments received in response to the May 30, 2000, proposed rule. The volume regulation will be effective September 1, 2000, through August 31, 2001.

Marketable Quantity, Allotment Percentage and Sales Histories

Section 929.49 of the order currently provides that if the Secretary finds from the recommendation of the Committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for that year. In addition, the Secretary would establish an allotment percentage which shall equal the marketable quantity divided by the total of all growers' sales histories. The allotment percentage

would be applied to each grower's individual sales history to derive each grower's annual allotment. Handlers cannot handle cranberries unless they are covered by a grower's annual allotment.

Section 929.48 of the order provides for computing growers' sales histories to be used in calculating marketable quantities and allotment percentages under § 929.49. Sales history is defined in section 929.13 as the number of barrels of cranberries established for a grower by the Committee. The Committee has been updating growers' sales histories each season. The Committee accomplishes this by using information submitted by the grower on a production and eligibility report filed with the Committee. The order sets forth that a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. For growers with four years or less of commercial sales history, the sales history has been calculated by averaging all available years of such grower's sales. A new sales history for acreage with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater. This is done for new growers, as well as those that also have acreage with sales history.

Section 929.46 of the order requires the Committee to develop a marketing policy each year prior to May 1. In its marketing policy, the Committee projects expected supply and market conditions for the upcoming season, including an estimate of the marketable quantity (defined as the number of pounds of cranberries needed to meet total market demand and to provide for an adequate carryover into the next season).

Committee's Initial Recommendation—March 30, 2000

At a March 30, 2000 meeting, the Committee estimated the 2000–2001 domestic production of cranberries at 5.89 million barrels. Carryover as of September 1, 2000, was estimated at 4.6 million barrels. Foreign production (primarily Canada) was projected at 800,000 barrels. Allowing for shrinkage of 2 percent for carryover and 4 percent for domestic and foreign production, the total adjusted available supply of cranberries was projected at 10,930,000 barrels.

Based in large part on historical sales figures, the Committee estimated utilization of processing fruit at 5.4 million barrels and of fresh fruit at 280,000 barrels.

A summary of the marketing policy follows:

CRANBERRY MARKETING POLICY, 2000 CROP YEAR ESTIMATES

Carryover as of 9/1/2000	4,600,000 barrels.
Domestic production	5,890,000 barrels.
Foreign production	800,000 barrels.
Available supply (sum of the above).	11,290,000 barrels.
Minus shrinkage	360,000 barrels.
Adjusted Supply	10,930,000 barrels.
Fresh Fruit	280,000 barrels.
Processing fruit	5,400,000 barrels.
Total Sales and Usage	5,680,000 barrels.
Carryover as of 8/31/2001	5,250,000 barrels.

The Committee determined that the marketable quantity for the 2000–2001 crop year should be established at 5.4 million barrels. This was equal to the expected demand for processing fruit. Fresh fruit sales were not included because (as discussed later in this document) fresh fruit would not be covered by the allotment percentage. Using a marketable quantity equal to processed fruit demand should result in a more stable level of inventories. Supplies in inventory could easily cover any unexpected increases in market demand.

Section 929.49(b) of the order provides that the marketable quantity be apportioned among growers by applying the allotment percentage to each grower's sales history. The allotment percentage equals the marketable quantity divided by the total of all grower's sales histories. No handler can purchase or handle cranberries on behalf of any grower not within the grower's annual allotment.

Total growers' sales histories were set at 6.35 million barrels. Using the formula established under the order in § 929.49 (5.4 million barrels divided by 6.35 million barrels), the annual allotment percentage was 85 percent.

Proposed Rule Published on May 30, 2000

The Committee has been discussing the possible use of volume regulation for over a year. In its deliberations, concerns were voiced about the potential inequities that could result from the current process used to calculate sales histories. Because sales histories are based on an average of past years' sales, newer growers could be restricted to a greater extent than more established growers. This is because a cranberry bog does not reach full capacity until several years after being planted. Using an average of early years' sales (which are low) would likely result in a sales history below future sales potential. A more established grower, on the other hand, would have a sales history more reflective of his or her production capacity.

The Committee's March 30, 2000, recommendation concerning the definition of "commercial crop" (explained later in this document) was intended to mitigate potential inequities. Based upon information received from cranberry growers and handlers subsequent to the March 30 meeting, the Department believed a further modification might be needed to lessen the differential impact a volume regulation could have on individual cranberry growers. For this reason, the Department proposed that a sales history for each existing grower be calculated using the best single sales year in the past six years. For a grower with less than six years of sales, the sales history would be the highest year of sales available. This type of change is contemplated under § 929.48(a)(2) of the order, which provides that the number and identity of the years used to compute sales histories may be altered by regulation. The Department did not propose a change in the way sales histories are computed for brand new acreage (acreage without any history of sales).

The Department's proposal would have changed the way most growers' sales histories were computed. If this change were adopted, each affected grower's sales history would be recalculated. The Committee staff reported that this would have resulted in a new industry total sales history of 7.6 million barrels (about 20% above the 6.35 million barrels used by the Committee). Retaining the 5.4 million barrel marketable quantity recommended by the Committee would require an allotment percentage of 71 percent. To retain the 85% allotment percentage recommended by the Committee, the marketable quantity would need to be increased to 6.46 million barrels (almost 20% above the 5.4 million barrels of expected demand for processing fruit as calculated by the Committee). In the May 30 proposed rule, the Department solicited comments on the Committee's original recommendation of marketable quantity and allotment percentage, as well as on two alternatives proposed by the Department. To summarize, the three options proposed in the May 30 rule

were as follows (the marketable quantity and total sales histories figures are all in million barrel units):

	Marketable quantity	Total sales histories	Allotment percentage
Committee Recommendation	5.4	6.35	85
USDA Option 1	5.4	7.6	71
USDA Option 2	6.46	7.6	85

The proposed rule solicited comments on these three options or appropriate modifications of them. Comments were due on June 14, 2000.

Committee's Recommendation of June 6, 2000

During the comment period, the Committee met again on June 6, 2000. The primary reason the meeting was held was to consider the various options contained in the proposed rule.

The Committee discussed the two options proposed by USDA. In order to lessen the differential impact a volume regulation would have on individual growers, the sales history calculation was proposed to be modified by USDA so that each existing grower would use the best single sales year in the past six years. A grower with less than six years of sales would use the highest year of sales available. The computation for all growers with brand new acreage was not modified from the Committee's first recommendation (using the State average yield or the total estimated commercial sales, whichever is greater). Using the revised calculation, total sales histories would be increased to 7.6 million barrels. The Committee believed that this calculation artificially inflates the total sales histories. For example, the new total exceeds the record-high 1999 production of 6.39 million barrels by 19 percent, and it exceeds the projected 2000 production (5.89 million barrels) by almost 30 percent.

The Committee also believes that the revised calculation favors production regions with more variability in yield from year to year over those with more consistent production. A Committee member at the June 6, 2000, meeting stated that the standard deviation of yields in Massachusetts is less than 15 barrels per acre, compared with more than 30 barrels per acre in Oregon. Using the best year out of the last six would benefit those States with higher variation, introducing more inequities rather than diminishing them. The proposed change would also favor growers who have planted new acreage over growers who have a more consistent record of production.

Discussion at the June 6 meeting also indicated that the proposed change would favor growers who have planted new acreage in recent years over growers who have a more consistent record of production. (No concerns were expressed about the method used for computing sales histories for new acreage with no sales history.) The Committee concluded that the proposed change in the calculation of sales histories would give undue advantages to growers who have expanded acreage considerably in recent years, and would penalize growers who maintained a consistent production base. This would, again, introduce additional inequities.

Under USDA's option 1, the marketable quantity would remain at 5.4 million barrels, as recommended by the Committee on March 30, 2000. Using the higher sales history figure of 7.6 million barrels would reduce the allotment percentage to 71 percent (5.4 million barrels divided by 7.6 million barrels). This would increase the restricted percentage from 15 to 29 percent. The consensus of the Committee was that volume regulation should not be more restrictive than an 85 percent producer allotment. Although a 15 percent restriction may not have a great immediate impact on grower returns because of the expected large crop and carryover inventories, the Committee believes that an 85 percent allotment percentage would be a good place to start for the industry to address the oversupply situation. The Committee recognizes that the market cannot be stabilized (under the marketing order) in a single year.

More importantly, many growers have been anticipating an allotment percentage not less than 85 percent and have been modifying their cultural practices accordingly. Any dramatic increase in the restricted percentage would likely be met with great opposition from the grower community. The Committee therefore concluded that an allotment percentage of 71 percent was unacceptable and rejected USDA's option 1.

Under its second option, USDA again used the higher sales history figure of 7.6 million barrels. To retain the 85% allotment percentage recommended by the Committee on March 30, the marketable quantity was raised from the 5.4 million barrels recommended by the Committee to 6.46 million barrels, an increase of almost 20 percent. The Committee believed that raising the marketable quantity to 6.46 million barrels would result in adding more fruit to the oversupply, further destabilizing the industry and lowering prices. The Committee therefore did not support USDA's option 2.

Concerns were expressed at the June 6 meeting involving growers with 4 years or less of sales histories. It was expressed that these growers could be impacted more greatly by a volume regulation than other growers because of the way the sales histories would be computed. This is because, as previously discussed, yields are increasing on younger acreage. Using an average of past years' sales, as the order provides, would result in a sales history lower than that acreage's future production capacity. To mitigate this problem, the Committee recommended adopting, in part, the change in sales history calculation proposed by USDA. Specifically, it voted to recommend, for a grower with four years or less of sales history, the best year of sales available as that grower's sales history.

Concern was also expressed that the sales history for a grower with only acreage that is 4 years old or younger (who would use the highest year as his or her sales history), would be calculated differently than the sales history for a grower with a combination of both older and younger acreage. For the more established grower, all sales off all acreage is combined, regardless of the age of the acreage. Then the average of the best four years of sales out of the last six years is used as that grower's sales history. Thus, the more established grower would not get the same adjustment for new acreage that the grower with all new acreage does. It was discussed at the meeting that the Committee does not collect information that would allow such an adjustment. Growers' sales are not segregated by the age of individual bogs, so based on the information available, an adjustment for acreage with 4 years of sales or less cannot be made. Such information could be collected by the Committee in the future.

The Committee ultimately recommended a fourth option. The Committee recommended that growers with only acreage that is 4 years old or less use the best single sales year to calculate a sales history. Growers with 5 years of sales history would use an average of their highest 4 years of sales. Growers with 6 or more years would use an average of their highest 4 years of sales of the most recent six years. New acreage for both brand new and existing growers would continue to receive a sales history using the State average yield or the total estimated commercial sales from that acreage, whichever is greater.

The Committee's recommended change in the calculation of sales histories revised the total industry sales history to 6.432 million barrels. The Committee recommended a small increase in its marketable quantity (from 5.4 to 5.468 million barrels) to retain an allotment percentage of 85 percent. The vote on this recommendation was unanimous. A summary of the various options under consideration follows (again, the marketable quantity and sales history figures are in million barrel units):

	Marketable quantity	Total sales histories	Allotment percentage
Initial Committee Recommendation	5.4	6.35	85
USDA Option 1	5.4	7.6	71
USDA Option 2	6.46	7.6	85
Revised Committee Recommendation	5.468	6.432	85

This rule implements the Committee's June 6, 2000, recommendation, with a change, by adding a new § 929.149 to the order's rules and regulations pertaining to determination of sales history. This section is modified from what appeared in the May 30, 2000, proposed rule by providing that a sales history for each grower with 5 years of sales history shall be computed by using an average of the highest four years of such grower's sales history. For a grower with six or more years of sales history, the sales history shall be computed using an average of the highest four of the most recent six years of sales. For a grower with four years or less of commercial sales history, the sales history will be computed using the highest year (the same as in the proposed rule). Sales histories for new acreage with no previous sales will be computed using the State average yield or estimated production, whichever is greater (again, the same as in the proposed rule). This rule clarifies the regulatory language pertaining to sales history for new acreage. As discussed in the proposal (65 FR 34414), sales histories for newly planted acreage by existing growers are computed in the same way as for newly planted acreage by new growers without any sales history. Finally, under this rule, if an established grower has newer acreage with four years of sales history or less, and such grower can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage will be treated in the same manner as acreage of a grower with four years or less of sales history.

This change in the way sales histories are calculated was made by the Department based on the concerns and comments regarding fairness and equity which were raised during this rulemaking. This change will likely result in a slight increase in the marketable quantity recommended by the Committee to maintain the allotment percentage at 85 percent. The Department believes that this change is needed to most equitably allocate allotment among growers, consistent with the requirements of the Act. Additionally, it is apparent that the industry will not support any restricted percentage greater than 15 percent. Although the level of restriction imposed under this rule will not likely resolve the surplus situation facing the cranberry industry in a single year, we conclude that this rule is the best course of action given the economic crisis facing the industry.

This rule also adds a new § 929.250 to set a marketable quantity of 5.468 million barrels and an allotment percentage of 85 percent. The marketable quantity is within the range proposed in the May 30 rule, and the allotment percentage is equal to that under two of the three options contained in that proposed rule. The additional change to accommodate established growers with new acreage having four years of sales history or less will result in a change in marketable quantity, but not enough to undermine this regulation. This conclusion is based on the Department's belief that sales histories of growers in this category would be increased by a relatively small amount.

Definition of Commercial Crop

The Committee unanimously recommended on March 30, 2000, that the number of barrels that defines a commercial crop under the marketing order be increased from 15 to 50 barrels per acre. Calculations of sales histories are based on "commercial" cranberry sales. Currently, section 929.107 defines a commercial crop as acreage that has a sufficient density of growing vines to produce at least 15 barrels per acre without replanting or renovation. This rule increases the 15 barrels per acre to 50 barrels per acre. Acreage producing less than 50 barrels per acre will not be considered to produce a commercial crop. This increase brings the order more in line with current growing conditions.

This action will assist growers who harvested cranberries for the first time in 1999. These growers will qualify for a new sales history determination if they produced less than 50 barrels per acre.

A full commercial cranberry crop is usually not harvested until 3 or 4 years after being planted. Production is usually limited during the first year, with increases in subsequent years until full capacity is reached. Under the current rule, if a grower harvested a bog for the first time in 1999, and achieved a yield of 25 barrels per acre, such grower's sales history would be calculated by using the determination for a grower with four years or less of production. This would be the actual production for that year. Therefore, in this example, for the 2000–2001 crop year the grower's sales history would be 25 barrels multiplied by the number of acres such grower harvested. The 25 barrels would be used in the calculation since it is greater than the 15 barrels per acre used to define commercial cranberry acreage.

Under this rule change, such grower's first year of sales harvested from that acreage will not count since it is less than 50 barrels per acre. Therefore, the grower will be eligible to receive the determination for growers with no sales history on such acreage (which is the State average yield or the grower's

estimated commercial sales, whichever is greater). This should benefit growers who had very low yields per acre for their first year of production.

This rule revises § 929.107 of the order's rules and regulations, consistent with the proposed rule published on May 30, 2000.

Determination of Sales History for Growers With No History on Their Acreage

As previously discussed, a new sales history for a grower with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater. Existing growers who have newly planted acreage will also use this calculation for their new acreage.

The Committee recommended that for the 2000–2001 crop year, the State average yield be defined as the average State yields for the year 1997 or the average of the best four years out of the last six years, whichever is greater. This calculation is similar to that used to compute sales history for more established growers (an average of the best four years out of the last six years), and would average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the Committee will use the commercial sales estimated by the grower.

To take into account the differences among the States, the Committee recommended calculating the average yield for each State using the best four of the last six years, and comparing it to the average yield for that State in 1997. The higher of the two figures for each State will be used to calculate new sales histories for new growers.

A new § 929.148 is added to the order's rules and regulations to set forth the calculation of the State average yield. This is consistent with the proposed rule published on May 30, 2000.

Fresh and Organic Fruit Exemption

The Committee also recommended on March 30, 2000, that fresh and organically-grown cranberries be exempt from volume regulation during the upcoming season. This exemption is authorized under § 929.58 of the order, which provides that the Committee may relieve from any or all requirements cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Fresh fruit accounts for about 4.7 percent of the total production. The Committee estimated that about 280,000 barrels will be sold fresh this year, compared to 260,000 barrels sold last season.

Under current growing and marketing practices, there is a distinction between cranberries for fresh market and those for processing markets. Cranberries intended for fresh fruit outlets are grown and harvested differently. Fresh cranberries are dry picked (in most cases) while cranberries used for processing are water picked. When cranberries are water picked, the bog is flooded and the cranberries that rise to the top are harvested. Dry picking is a more labor intensive and expensive form of harvesting. Cranberry bogs are designated as "fresh fruit" bogs and are grown and harvested accordingly to produce fruit that is of the quality needed for fresh fruit. Only the lower quality fruit from a fresh bog goes to processing outlets. Yields of fresh fruit growers are typically reduced from those of processed growers. Productions costs are higher, although a premium price over fruit delivered for processing is anticipated.

Fresh cranberry sales constitute less than 5 percent of the cranberry market. All fresh cranberries can be marketed and do not compete with processing cranberries. Fresh cranberries are seasonal (due to their limited shelf life) and are not part of the growing industry inventories.

The Committee concluded that fresh supplies do not contribute significantly to the current cranberry surplus. Thus, the Committee recommended that such cranberries be exempt from the volume regulation implemented by this rule.

Organically-grown cranberries comprise an even smaller portion of the total crop than fresh cranberries do. The Committee estimated that about 1,000 barrels of organic fruit will be sold this season, compared to 450 barrels last season. Organic cranberries are a growing niche market and regulating them could have an adverse effect on marketing this product. Demand for organic cranberries is in line with the current limited production. Thus, all organic cranberries can be marketed, and they do not contribute in any meaningful way to the current oversupply experienced with processing fruit. The Committee therefore recommended that organically-grown cranberries be exempt from volume regulation during the upcoming season. In order to be exempt, organic cranberries will have to be certified as such by a third party organic certifying organization that is acceptable to the Committee.

The fresh fruit exemption was further discussed at the Committee's June 6, 2000, meeting. Concerns were expressed that this exemption would give an unfair advantage to some cranberry processors (those that do not handle fresh fruit) and to their growers. It was suggested that any unused allotment earned by a fresh fruit grower be forfeited, similar to what happens to unused allotment received by growers with new acreage (based on the State average yield).

The Committee considered this suggestion, but continued to support its recommendation to exempt fresh fruit from volume regulation. It was concerned that any substantive departure from the requirements proposed in the May 30 rule would require a second proposed rule to be issued and an opportunity for additional comments to be made available. In any event, the effect of the fresh fruit exemption on the market would probably be minor. The Committee stated that the way in which fresh fruit is handled in future years will be given additional consideration.

Moreover, encouraging growth in organic and fresh markets for cranberries is consistent with the Committee's (and industry) objectives to develop additional market outlets for cranberries. Future industry growth depends on expanding market outlets for cranberries and should not be discouraged.

This rule provides an exemption from volume regulation for fresh and organically-grown cranberries by adding a new § 929.158, as included in the May 30, 2000, proposed rule.

Outlets for Excess Cranberries

The purpose of the producer allotment program implemented by this rule is to limit the amount of the total crop that can be marketed for normal commercial uses. There is no need to limit the volume of cranberries that may be marketed in noncommercial or noncompetitive outlets. Thus, in accordance with § 929.61, handlers will be able to dispose of excess cranberries in certain designated outlets. That section of the order provides that noncommercial outlets may include charitable institutions and research and development projects for market development purposes. Noncompetitive outlets may include any nonhuman food use (animal feed) and foreign markets, except Canada. Canada is excluded because significant sales of cranberries to Canada could result in transshipment back to the United States of the cranberries exported there. This could disrupt the U.S. market, contrary to the intent of the volume regulation.

To ensure that excess cranberries diverted to the specified outlets do not

enter normal market channels, certain safeguard provisions are established under § 929.61. These provisions require handlers to provide documentation to the Committee to verify that the excess cranberries were actually used in a noncommercial or noncompetitive outlet. In the case of nonhuman food use, a handler would be required to notify the Committee at least 48 hours prior to disposition so that the Committee staff would have sufficient time to be available to observe the disposition of the cranberries.

The proposed rule published on May 30, 2000, proposed revising § 929.104 of the order's rules and regulations to list the outlets in which handlers can divert excess cranberries. That section currently lists outlets for "restricted cranberries." "Restricted cranberries" is a term used in connection with withholding requirements—another type of volume regulation authorized under the order. While the specific outlets listed were not proposed for revision, changes were proposed in the regulatory text to provide that these outlets are authorized for excess cranberries under a producer allotment program. The outlets listed included all those mentioned in § 929.61 of the order.

At its June 6, 2000, meeting, the Committee recommended that foreign markets be excluded as outlets for excess cranberries.

When foreign markets were listed as potential outlets for excess cranberries, cranberry exports were not as significant to the industry as they are today. Exports of fresh cranberries for 1998 were 51,615 barrels, and for processed cranberries, 516,667 barrels. This represents about 10 percent of total sales.

The Committee indicated that the industry is actively selling cranberries in at least 54 foreign countries. The Committee concluded that it would be difficult to list all the countries that are not currently receiving U.S. cranberries (and therefore would be defined as "noncompetitive") and to monitor the sales activity in each such country.

Moreover, the Committee intends to continue foreign promotion activities to encourage cranberry export sales. These activities are financed, in part, by funds from USDA's Foreign Agricultural Service, which are matched by industry funds for promotional activities in foreign markets. Currently, funds are being used for promotional activities in Germany and Japan.

Additionally, individual handlers are working on developing markets in many foreign countries. Encouraging disposal of excess cranberries in countries where the Committee and individual handlers are attempting to build cranberry markets could undermine these individual efforts to develop commercial markets. Therefore, the Committee unanimously recommended that foreign countries be excluded as eligible outlets for excess cranberries.

The Department has concluded that the Committee's June 6, 2000, recommendation is unnecessary. Excess cranberries cannot be "handled," which means they cannot be processed. Therefore, under current requirements, excess cannot be processed and then exported. Fresh sales are exempt from volume regulation, so fresh cranberries can be exported free from regulation. We have, however, revised § 929.104 of the regulations to clarify that excess cranberries cannot be processed and sent to foreign markets.

Appeal Procedures

Section 929.125 of the order's rules and regulations establishes an appeal procedure for growers who are dissatisfied with their sales histories as determined by the Committee pursuant to § 929.48 of the order. Under procedures which have been used, a grower may submit to the Committee a written argument within 30 days after receiving the Committee's determination of that grower's sales history, if such grower disagrees with the determination. The Committee must review its determination within a reasonable time, reviewing all the material submitted by the grower, and notify the grower of its decision. If the grower is not satisfied with the Committee's decision, that grower may appeal to the Secretary, through the Committee, within 30 days after being notified of the Committee's decision. The Secretary must review all pertinent information and render a decision. The Secretary's decision is final.

On March 30, 2000, the Committee recommended revising the process. The Department concurs with the Committee recommendation. Specifically, this rule provides than an appeals subcommittee be established and that the full Committee be provided with 15 days to further review appeals by growers. This process should be more efficient in handling grower appeals. The subcommittee, appointed by the Committee Chairman, will be comprised of two independent and two cooperative representatives, as well as a public member. Although an additional level of review is being established, it should be more efficient for a smaller subcommittee to consider grower appeals. The subcommittee will have 30 days to render a decision on each appeal.

If a grower is not satisfied with the appeal subcommittee's decision, that grower could further appeal to the full Committee. The grower would submit his or her written argument to the Committee along with any pertinent information for the Committee's review within 15 days after being notified of the subcommittee's determination. The Committee will have 15 days from the receipt of the grower's appeal to respond. The Committee will promptly inform the grower of its decision, including the reasons for its decision.

The grower may further appeal to the Secretary within 15 days after notification of the Committee's findings, if the grower is not satisfied with the Committee's decision. The Committee will forward a file with all pertinent information related to the grower's appeal. The Secretary will inform the grower and Committee staff of the Secretary's decision. All decisions by the Secretary will be final.

This rule revises § 929.125 of the order's rules and regulations to implement the Committee's recommendation, consistent with the proposed rule published on May 30, 2000.

Suspension of Deadline for Notifying Growers of Their Annual Allotment

Section 929.49 of the order provides that in any year in which an allotment percentage is established by the Secretary, the Committee must notify growers of their annual allotment by June 1. That section also requires the Committee to notify each handler of the annual allotments for that handler's growers by June 1.

The May 30 proposed rule proposed establishing a marketable quantity and allotment percentage for the 2000 cranberry crop. To allow adequate time for interested parties to comment on the proposal and for the Department to give due consideration to the comments received, it was determined that a final decision on the proposed rule would not be reached before June 1. Therefore, the Department proposed that the June 1 deadline be suspended for the 2000–2001 crop year.

This rule suspends the June 1 date appearing in § 929.49 of the order as proposed on May 30, 2000.

Removal of Two Obsolete Regulations

At its June 6, 2000, meeting, the Committee discussed two of the order's rules and regulations that are now obsolete, and unanimously recommended that they be deleted. Those sections are *§ 929.109 Unusual*

circumstances as used in determining base quantities and *§ 929.151 Allotment transfers and disposition of the growers annual allotment certificate.*

Both of these sections pertain to the "base quantity" method of producer allotment, which was replaced in 1992 with the sales history method of producer allotment. These sections were inadvertently left in the regulations and do not apply to the sales history program.

Removing these sections from the order's rules and regulation will reduce confusion to the cranberry industry. Therefore, this rule removes §§ 929.109 and 929.151 from the rules and regulations in effect under the order.

Regulatory Flexibility Act & Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action and alternatives considered on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions, in order that small businesses are not unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Accordingly, AMS has prepared this final regulatory flexibility analysis.

According to the Small Business Administration (13 CFR 121.201) small handlers are those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those with annual receipts of less than $500,000. Because prices have declined significantly in the past year, and because the small farm definition is based on estimated sales, nearly all producers and some handlers are considered small under the SBA definition. Therefore, this RFA analysis is properly applicable for the entire industry. Of the 1,100 cranberry growers, between 86 and 95 percent are estimated to have sales equal to or less than $500,000. Fewer than 60 growers are estimated to have sales that would have exceeded this threshold in 1999. Thus, the consequences of this final action apply to virtually all growers.

Over two-thirds of the U.S. cranberry crop is handled by a grower-owned marketing cooperative. Five other major processors, together with the cooperative, handle over 97 percent of the crop. Using Committee data on volumes handled, AMS has determined that none of these handlers qualify as small businesses under SBA's definition. The remainder of the crop is marketed by about a dozen grower-handlers who handle their own crops. Dividing the remaining 3 percent of the crop by these grower-handlers, all would be considered small businesses.

This action makes the following amendments to the regulations under the cranberry marketing order: (1) revises the calculation of sales histories; (2) exempts fresh and organic fruit; (3) includes a definition of State average yields; (4) changes volume needed to qualify as commercial production; (5) revises Committee review procedure for determination of sales history; (6) suspends that annual allotment notification date; and (7) establishes levels of marketable quantity and allotment percentage to determine the level of volume control.

Most of the changes as a result of this final rule are expected to have little or no regulatory burden on industry, or are made expressly to acknowledge problems faced by new producers and producers with new acreage. The revisions to calculating sales histories will benefit new growers or those who want to enter cranberry production. The exemption for fresh and organic cranberry sales should help those two niche markets continue to develop. Recalculating the number of barrels needed to qualify for commercial production will enable new growers to use the revised sales history calculation to obtain a higher sales history. Before assessing the impact of volume control on the industry, an economic profile of the cranberry market conditions is provided.

Industry Profile

Cranberries are produced in 10 States, but the vast majority of farms and production is concentrated in Massachusetts, New Jersey, Oregon, Washington, and Wisconsin. Massachusetts was the number one producing State until 1990, when Wisconsin took over the lead. Since 1995, Wisconsin has been the top producing State. Both States account for over 80 percent of cranberry production. The industry has operated under a Federal marketing order since 1962.

Average farm size for cranberry production is very small. The average across all producing States is about 33 acres. Wisconsin's average is twice the U.S. average, at 66.5 acres, and New Jersey averages 83 acres. Average farm size is below the U.S. average for Massachusetts (25 acres), Oregon (17 acres) and Washington (14 acres).

Small cranberry growers dominate in all States: 84 percent of growers in Massachusetts harvest 10,000 or fewer barrels of cranberries, while another 3.8 percent harvest fewer than 25,000 barrels. In New Jersey, 62 percent of growers harvest less than 10,000 barrels, and 10 percent harvest between 10,000 and 25,000 barrels. More than half of Wisconsin growers raise less than 10,000 barrels, while another 29 percent produce between 10,000 and 25,000 barrels. Similar production patterns exist in Washington and Oregon.

Over 90 percent of the cranberry crop is processed, with the remainder sold as fresh fruit. In the 1950s and early 1960s, fresh production was considerably higher than it is today, and in many years, constituted as much as 25–50 percent of total production. Fresh production began to decline in the 1980s, while processed utilization and output soared as cranberry juice products became popular. Today, fresh fruit claims only about 5–6 percent of total production. (Typically, "shrinkage" absorbs the remaining 3 percent of production.) Three of the top five States produce cranberries for fresh sales. New Jersey and Oregon produce fruit for processed products only.

Historical Trends and Near Term Outlook

Production has risen steadily since the early 1950s, as more acreage was brought into production and yields increased. Cranberry output first exceeded 1.5 million barrels in 1966, 3 million barrels in 1982, 4 million in 1988, and hit a record 6.4 million barrels in 1999. Acreage rose 62 percent since 1954, from just under 23,000 acres to 37,200 acres. Output growth was also fed by soaring yields—a 288-percent increase from 44.3 barrels per acre in 1954 to almost 172 barrels in 1999.

The industry enjoyed healthy increases in demand as a result of new juice drink products, which in turn prompted expansion in acreage and output. Demand peaked in 1994 with per capita consumption of processed berries at 1.7 pounds and has since declined, to 1.6 pounds in 1998. Prices above $60 per barrel in 1996 and 1997 continued to stimulate output. As a result, inventories began building. Over the period 1954–1969, carryover averaged 222,179 barrels, about 19 percent of annual average production. During the 1970s, annual production rose nearly 90 percent from 1954–69, and carryover stocks rose to about 29 percent of annual average production during the decade. Carryover as a percent of output fell back to 19 percent during the 1980s. The 1990s have seen

both large output increases and carryover stocks. For 1990–99, beginning inventories rose to a level equal to nearly a third of annual production over the decade. In 1999 alone, carryover swelled to more than 3.1 million barrels, equivalent to 49 percent of the year's crop. Current estimates of beginning stocks are for a record 4.6 million barrels at the start of the 2000/2001 marketing year—equivalent to 78 percent of anticipated production. With no significant increases in demand or cutbacks in production, at the end of the 2000/2001 marketing year, there could be nearly a full year's production in storage (5.25 million barrels) to start the 2001 marketing season. Table 1 provides indicators of average annual carryover, production, and prices.

The value of utilized production increased steadily from 1974 to 1986, dipped 9 percent in 1987, then began a more volatile but still upward trend through 1997 before plunging 40 percent in 1998. Prices per barrel over the 1979–98 period averaged $44.375, but dropped below $40 a barrel for 1998 crop berries, and could fall below $20 for the 1999 crop. For the 2000/2001 marketing year, some handlers have indicated they may only offer $9–$10 per barrel. If prices do not exceed $20 per barrel in 1999, the value of utilized production will decline again by half—from $211 million estimated for the 1998 crop to less than $110 million in 1999. This would be the lowest crop value since 1981.

Impact of Volume Control

The volume control for cranberries imposes no restrictions on entry into production. For example, there is no quota such as used in the tobacco industry that a new entrant would have to acquire from an existing quota holder. The impact of volume control is evaluated relative to the income effect that excessive inventories would otherwise exert on growers and the likelihood that, without significant improvement in either prices or sales or both, many growers will not be able to remain in business.

Because inventories are large and cranberries may be stored for long periods without deterioration, producers may not receive full payment for cranberries delivered to storage for several years; and storage costs are deducted from their final payment. In addition, reports from various growers estimate current total costs of production at approximately $30–$35 per barrel. With expectations of prices declining well below this range in the 1999 marketing year, most producers are not expected to cover variable costs of production, thus increasing the likelihood they will either exit the industry or abandon bogs until the market situation improves.

The effect of the Committee's revised volume control recommendation (CMC2) contained in this final action may be evaluated in terms of the loss of sales that producers incur as a result of volume control, compared with the extent to which price increases due to volume control offset that sales loss.

For the 15-percent volume control to be revenue-neutral—that is, to leave producers on average no worse off with respect to revenue realized from lower production—prices would need to rise by 17.7 percent in 2000/01. An alternative allotment percentage that was considered by the Committee would have resulted in a volume control of 29 percent. A 29-percent volume control would require prices to rise by 40.8 percent to remain revenue-neutral. In both cases, a lesser price increase results in a gross revenue loss to producers. In and of itself, this would not necessarily mean that volume control should be rejected as a marketing tool. Even if prices do not rise, producers realize some savings from production costs not incurred and from higher prices that may result in subsequent marketing years as a result of lower inventories.

Economic analyses of factors affecting cranberry prices have been conducted by Sexton, Jesse, and USDA in 1999 and 2000. All of the analyses reported positive price impacts associated with a 100,000 barrel change in supply, ranging from $0.49–$1.26 per barrel for each 100,000 barrel change. Because inventories are so large, this analysis uses the lowest reported price impact, of $0.49 for each 100,000 barrel change, or $4.89 per barrel for a change of 1 million barrels. Thus, if inventories decrease (increase) by 1 million barrels, prices are estimated to increase (decrease) by $4.89 per barrel. In the aforementioned economic analysis, prices averaged $27.695 per barrel over the period analyzed from 1954 to 1998. The estimated price impact of $4.89 per barrel represents a 17.7 percent change in prices compared with the average over the 45-year period.

The 15-percent volume control is estimated to lead to a reduction in inventories by 884,000 barrels, based on a 2000/2001 domestic production forecast of 5.89 million barrels (prior to the 15-percent volume control). This reduction in inventory is estimated to increase prices by $4.32 per barrel (.884 × 4.89). Using a projected 2000/01 average price of $20 per barrel, prices are estimated to increase to $24.32 per barrel. Thus, a grower who reduced output from 1,000 to 850 barrels would realize a gain in revenue from $20,000 to $20,672 or 3.4 percent. Some additional gain would be realized from cost savings from 150 barrels that were not produced. And, the volume reduction would be expected to generate price increases in future years, providing cumulative positive effects from the volume control.

The results of econometric analyses are subject to some level of uncertainty. Results are generally reported as estimates subject to a specified error. Assuming a 5 percent error to illustrate the sensitivity of the results, the $4.89 per barrel price change estimate could range from $4.65 to $5.14 per barrel. Then, a reduction in inventory of 884,000 barrels would lead to higher prices ranging from $4.11 to $4.54 per barrel. Table 2 illustrates these estimated price increases and their effect on producer revenue, using a forecast price for 2000/01 of $20 per barrel.

We conclude that the 15 percent volume control would not unduly burden producers, particularly smaller growers. While there would be a loss of salable product, producers are likely to benefit from the price-enhancing effect of the reduced inventories in 2000/01. If producers do not benefit in 2000/01, the reduction in inventory is expected to raise prices in future years which would provide cumulative annual effects. The estimated price increases reported here would mean higher prices for consumers. However, recent prices have been significantly higher than these estimated prices; thus the consumer price effect is still well below previous years' prices.

TABLE 1.—AVERAGE ANNUAL CRANBERRY OUTPUT, CARRYOVER STOCKS, AND PRICES

Indicator	1954–59	1960–69	1970–79	1980–89	1990–99	1954–99
Production (barrels)	1,083,217	1,234,610	2,221,610	3,303,050	4,656,500	2,622,983
Carryover (barrels)	213,746	227,239	644,720	617,897	1,506,718	679,309

TABLE 1.—AVERAGE ANNUAL CRANBERRY OUTPUT, CARRYOVER STOCKS, AND PRICES—Continued

Indicator	1954–59	1960–69	1970–79	1980–89	1990–99	1954–99
Carryover/Production (%)	19.7	18.4	29.0	18.7	32.4	25.9
Price per barrel ($)	10.74	13.09	15.13	43.16	46.80	27.695

TABLE 2.—ESTIMATED IMPACTS OF PRICE CHANGES ON A REPRESENTATIVE PRODUCER

Price estimates	Average price ($/barrel)	Total output (barrels)	Gross revenue
Base Case	$20.00	1,000	$20,000
Volume Control Cases:			
—$4.32 price rise ($4.89 × .884)	$24.32	850	$20,672
—$4.11 price rise ($4.89 reduced by 5% error, × .884)	$24.11	850	$20,494
—$4.54 price rise ($4.89 increased by 5% error, × .884)	$24.54	850	$20,859

Summary of Rule

In accordance with § 929.49 of the order, this rule establishes a marketable quantity of 5.468 million barrels and an allotment percentage of 85 percent for cranberries in the 10-State production area during the 2000–2001 crop year. Because the Department is making allowances for established growers with acreage with four years of sales histories or less, this rule also provides for an increase in the marketable quantity which may be needed to maintain the 85 percent allotment percentage. This action also revises procedures for calculating growers' sales histories, defines the State average yield, increases the barrels per acre for determining a commercial crop, exempts fresh and organic cranberries from volume regulation, and revises Committee review procedures. These actions are designed to improve cranberry marketing conditions and the operation of the volume regulation program.

The marketable quantity for the 2000–2001 crop year is established at 5.468 million barrels with an allowance for an adjustment to allow for the additional sales history calculation provision. This is equal to the expected demand for processing fruit. Fresh fruit sales were not included because fresh fruit is exempt from volume regulation. Organically-grown cranberries are also exempt because projected sales are only about 1,000 barrels. Using a marketable quantity equal to processed fruit demand should result in a more stable level of inventories. Supplies in inventory could easily cover any unexpected increases in market demand.

Section 929.49(b) provides that the marketable quantity be apportioned among growers by applying the allotment percentage to each grower's sales history. The allotment percentage equals the marketable quantity divided by the total of all grower's sales histories. No handler can purchase or handle cranberries on behalf of any grower not within the grower's annual allotment.

Total growers' sales histories were established by the Committee at 6.432 million barrels. Using the formula established under the order (5.468 million barrels divided by 6.432 million barrels), the annual allotment percentage is 85 percent. The order provides that a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. Under this rule, growers with 5 years of sales history will use an average of their highest 4 years of sales. Growers with 6 or more years will use an average of their highest 4 of the most recent 6 years of sales. For growers with four years or less of commercial sales history, the sales history is calculated by using the highest single year of all available years of such growers' sales. New acreage with no sales history for both brand new and existing growers would receive a sales history using the State average yield or the total estimated commercial sales from that acreage, whichever is greater. If these growers also have newer acreage with four years of sales history or less, and such growers can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage shall be treated in the same manner as acreage of a grower with four years or less of sales history.

This rule changes the method of calculating sales histories for acreage with four years or less of sales. This rule should increase the amount of allotment available to growers with newer plantings. This is because a cranberry bog does not reach full capacity until several years after being planted. Using an average of early years' sales (which are low) normally results in a sales history below current sales potential. A more established bog, on the other hand, would have a sales history more reflective of his or her production capacity. The Committee recommended this adjustment be allowed only for growers who have no acreage with more than four years of sales. However, the Department is accommodating more established growers by making this calculation available to them as well.

Calculations of sales histories are made on "commercial" cranberry acreage. This rule raises the amount of barrels that defines a commercial crop under the order from 15 to 50 barrels. This action will assist growers who harvested cranberries for the first time in 1999. Such grower's first year of sales will not count if it was less than 50 barrels per acre. Instead, the grower will receive the same sales history as is provided to a grower with no sales history on his or her acreage (which is the State average yield or the grower's estimated commercial sales, whichever is greater). This will benefit growers who had very low yields per acre for their first year of production.

Growers with no sales history on their acreage receive the State average yield. This applies to both brand new growers and growers with sales history on some of their acreage. This rule defines the State average yield for the 2000–2001 crop as the average yields during the year 1997 or the average of the best four years out of the last six years, whichever is greater. This calculation is similar to that used to compute sales history (an average of the best four years out of the last six years), and should average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the Committee will use the commercial sales estimated by the grower.

There is no need to limit the volume of cranberries that may be marketed in these noncommercial and noncompetitive outlets. Thus, this rule provides that handlers may dispose of excess cranberries in such outlets. Noncommercial outlets are charitable institutions and research and development projects for market development purposes. Noncompetitive outlets are non-human food use and foreign markets, except Canada.

This rule exempts fresh and organically-grown fruit from the volume regulation. This exemption is provided pursuant to section 929.58 of the order which provides that the Committee may relieve from any or all requirements, cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Fresh fruit accounts for about 4.7 percent of the total production. The Committee estimated that about 280,000 barrels will be sold fresh this year, compared to 260,000 barrels sold last season. Sales of organically-grown fruit are projected at only 1,000 barrels. These relatively small volumes of fruit do not contribute in any significant way to the current oversupply or inventory build-up. Therefore, there is no need to cover them under the volume regulation.

The sales history re-determination procedures are being modified by appointing a subcommittee composed of two independent and two cooperative representatives and one public member to be the first level of review.

Currently, section 929.125 provides an appeal procedure for growers with their sales history determinations. A grower may submit to the Committee a written argument within 30 days of receiving the Committee's determination for sales history, if such grower disagrees with the determination.

This rule establishes an appeals subcommittee as a more efficient way to consider grower appeals. Although an additional level of review is being established, it will be more efficient for a subcommittee composed of 5 members to discuss and decide on appeals. Scheduling a meeting of the entire Committee to discuss and make determinations of grower appeals is more cumbersome and time consuming.

Finally, this rule suspends the June 1 deadline for notifying growers and handlers of their annual allotments. This will allow for adequate time to complete this rulemaking proceeding, without unduly impacting the cranberry industry.

Alternatives Considered

1. Different Methods of Volume Regulation

Eight months ago, the Committee established a volume regulation subcommittee that researched the two methods of volume regulation available under the order. Those two methods are a producer allotment program and handler withholding program. The subcommittee's primary mission was to determine what method of volume control would be best for the industry if volume regulations were recommended. After holding several meetings, the subcommittee concluded that a producer allotment is the best method available to the industry at this time.

The withholding program has not been used since 1971. The provisions of the producer allotment program were amended in 1992, but never used. Under the withholding program, growers deliver all their cranberries to their respective handlers. The handler is responsible for setting aside restricted cranberries and ultimately disposing of the cranberries in authorized noncommercial and noncompetitive outlets. This could result in a large volume of cranberries being disposed of and perhaps destroyed. In addition, the withholding provisions require that all withheld cranberries be inspected by the Federal or Federal-State Inspection Service, which could be costly.

The producer allotment program allows cultural practices to be changed at the grower level prior to harvest. This could result in less fruit being produced and will not require the disposal of as many cranberries as with the withholding provisions. In addition, inspections are not required under the producer allotment method, which is more cost effective and simpler to administer. For these reasons, we conclude that the producer allotment program is the preferred method of volume regulation at the current time.

2. Other Alternatives Considered

One alternative to this regulation discussed at length by the Committee and the industry was not regulating at all. Economic reports of the condition of the cranberry industry indicate that if supplies are not controlled, grower prices will continue to drop. It will be difficult for small growers as well as large ones to sustain further price declines. Thus, the Committee discarded this alternative. AMS concurs.

Another alternative to regulation was to increase demand through market development activities rather than control supplies through regulation. A domestic promotion program is being considered by the Committee, in addition to the export promotion activities already underway. These efforts in market development and new product development can increase demand for cranberries and assist in addressing the oversupply situation. This, in conjunction with volume regulation, was determined to be the best course of action for the cranberry industry at this time. AMS concurs.

3. Calculation of Sales Histories and Varying Levels of Volume Regulation

In addition, the Committee considered alternative ways to calculate growers' sales histories and different levels of regulation. These are discussed in more detail in the section of this document entitled "Analysis of Comments."

A grower's annual allotment is established by applying the allotment percentage to that grower's sales history. Several alternative methods of calculating sales histories were considered, primarily to mitigate the situation where newer growers (those with few years of sales history) would be more dramatically impacted by volume regulation than more established growers.

One change recommended by the Committee increases the number of barrels that defines commercial acreage. This change will allow growers who had a small initial crop in 1999 to market their entire 2000 crop (since they will receive as their sales history the State average yield). This should assist growers in their second year of production, without dramatically increasing the total industry sales history.

The Committee also considered a change proposed by USDA to allow every grower to use his or her best single sales year out of the last six years as that grower's sales history. This change would have increased the industry total by a substantial amount (about 20 percent), and would have resulted in either a much higher restricted percentage or marketable quantity (see the following discussion of USDA Options 1 and 2). This alternative was rejected as not being in the best interest of most cranberry growers.

The Committee ultimately recommended that growers with four years or less of sales history receive their highest year of sales as their sales history. This rule adopts this recommendation. It will result in a higher allotment for these growers than would be obtained by averaging all their available sales years. This will mitigate

the impact of the restricted percentage on growers with relatively new acreage, without increasing the marketable quantity by a significant amount. In the case of growers with five years of sales, the Committee recommended their sales history be computed using an average of the highest four years of sales. For growers with six or more years of sales history, a sales history will be computed using an average of the highest four of the most recent six years of sales. Growers (both new and established growers) having new acreage with no sales history will get the State average yield or estimated commercial production, whichever is greater. This rule also adopts these recommendations. In addition, based on concerns expressed during the June 6 Committee meeting and in comments, the Department added a provision to this regulation which applies to established growers with newer acreage having four years of sales history or less.

The following three levels of volume regulation were also considered (in addition to that finally recommended by the Committee).

Initial Committee Recommendation (15% volume control; sales history—6.35 million barrels; marketable quantity—5.4 million barrels): This alternative was rejected because it does not take into account the additional sales histories being granted to newer cranberry growers as described above.

USDA Option 1 (29% volume control; sales history—7.6 million barrels; marketable quantity—5.4 million barrels): This option was rejected because it almost doubled the restricted percentage (from 15 to 29 percent) recommended by the Committee and anticipated by the industry. As previously stated, this would require prices to rise by 40 percent to remain revenue-neutral for growers.

USDA Option 2 (15% volume control; sales history—7.6 million barrels; marketable quantity—6.46 million barrels): This option dramatically increases the marketable quantity above anticipated market demand. Thus, it would have the same impact as no volume regulation and is therefore rejected.

Reporting and Recordkeeping Requirements

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0103.

There are some reporting and recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. This rule does not change those requirements.

Opportunity for Public Participation in the Rulemaking Process

The Committee's meetings were widely publicized throughout the cranberry industry and all interested persons were invited to attend them and participate in Committee deliberations. Like all Committee meetings, the March 30 and June 6 meetings were public meetings. Press releases were issued announcing the meetings and setting forth the agenda. Meeting announcements were also placed on a website specifically designed for the cranberry industry. All interested parties were invited to attend. All entities, both large and small, were able to express their views on these issues by attending the meetings or contacting their Committee representatives about their concerns prior to the meetings. Subsequent to the publication of the proposed rule on May 30, AMS mailed a copy of that rule to every cranberry grower and handler of record. That mailing also invited interested parties to attend the June 6 meeting and express their views. Additionally, AMS posted a summary of what transpired at that meeting (as well as a full transcript of the meeting) on its website and included it in the rulemaking record. The Committee itself is composed of eight members, of which seven members are growers and one represents the public. Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations. The Committee manager also held several meetings with growers throughout the production area to discuss the methods of volume regulation and the procedures for regulation.

A proposed rule concerning this action was published in the **Federal Register** on May 30, 2000 (65 FR 34411). Copies of the rule were mailed to all known cranberry growers in the production area. Also, the rule was made available on the Department's website. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 15-day comment period ending June 14, 2000, was provided to allow interested persons to respond to the proposal.

Analysis of Comments

A total of 131 comments were filed in response to the May 30, 2000, proposed rule by 125 individuals (4 persons submitted 2 and one individual submitted 3 comments). By far, the majority of commenters were cranberry growers. The six major cranberry handlers also commented, as did the Committee, three U.S. Congressmen, the New Jersey Department of Agriculture, and an attorney representing two cranberry processors. Sixty-nine comments were opposed to a volume regulation in general or opposed to a specific portion of the proposal. Fifty-six comments favored one of the options under consideration. A number of comments addressed the fresh fruit exemption. Also, James M. Talent, Chairman of the U.S. House of Representatives' Committee on Small Business commented that AMS did not prepare a sufficient regulatory flexibility analysis in the proposed rule published on May 30, 2000.

Main Arguments Against Establishing a Volume Regulation

Sixty-nine comments opposed establishing a volume regulation for the 2000–2001 crop year. Following is a discussion of the six main arguments against volume regulation.

1. The 15 Percent Volume Control Will Have Little or No Impact on the Oversupply

Many commenters believed that a 15 percent reduction will have little or no impact on improving the market or reducing the large inventories.

The producer allotment program is a tool available to the cranberry industry to use in time of need. In their consideration of this issue, agricultural economists who have studied the program concluded that volume regulation is one avenue available to the industry that can help stabilize prices and shorten the period of oversupply. Economists have addressed the Committee and indicated that grower prices will further plummet if some type of action is not taken to decrease the

oversupply. It was also reported to the Committee that if volume regulation is implemented, a 100,000 barrel reduction in carryover inventory would result in a price increase ranging from $0.49 to $0.73 per barrel, while a 1,000,000 barrel reduction in inventories would result in a price increase of $4.89 to $7.26 per barrel.

It may be true that an 85 percent allotment percentage will not dramatically drive up grower prices. However, the Committee has communicated with a vast number of growers and determined that an allotment percentage lower than 85 percent would not be supported for the first year of volume regulation. By establishing a less restrictive percentage this year, growers will be eased into the mechanics of the program operations. Also, this volume regulation could be successful in stopping the decline of prices. The Committee and the industry are aware that the surplus situation cannot be resolved in one season or by volume regulation alone. It is possible that volume regulation may have to be instituted again in future years. However, that decision would be made on an annual basis.

The marketing order is only one tool the Committee has decided to use to assist in reducing the oversupply. The establishment of a domestic generic promotion program to increase the awareness and consumption of cranberries has also been recommended. The Committee is currently in the developmental stage of implementing such a program. The Committee is also involved in an export program using Marketing Access Program funds with USDA's Foreign Agricultural Service. Individual handlers have also taken steps to develop new products and expand foreign and domestic markets.

2. It Is Too Late in the Year To Establish Volume Regulation

Some commenters believed that the regulation is being implemented too late for the upcoming season, and growers do not have time to adjust cultural practices to reduce production and associated costs.

Many growers have been aware for months that a volume regulation has been under consideration by the Committee and USDA. The Committee has been discussing the implementation of volume regulations for this season for more than eight months. In addition, all Committee meetings, including the March 30 and June 6, 2000, meetings were public meetings, widely publicized throughout the industry. All interested parties were encouraged to attend. The Committee manager also held several meetings with growers throughout the production area to discuss the possible implementation of volume regulation for the 2000 crop.

In anticipation of a volume regulation, many growers have been taking steps to prepare for a 15 percent crop reduction. Information received by USDA indicates that there are still steps growers can take to minimize production costs. Some examples are that bogs can be flooded, and chemical applications and bee pollination can be curtailed. Also, as previously discussed, handler costs associated with the storage of excess inventories (which are ultimately passed on to growers) would be reduced.

We agree that it would have been preferable for this rule to be recommended and implemented at an earlier date to provide more time for growers to prepare for a volume regulation. However, this did not happen for several reasons. The last time volume control was imposed under the order was approximately 30 years ago. Difficulties were encountered in arriving at the most fair method of calculating grower sales histories in order to achieve (within the order's current parameters) an equitable apportionment of allotments among producers. And finally, although the Committee recommended volume control and, along with USDA, proposed regulations to implement such control, the industry is not unified in its support of the proposals. Nevertheless, there is overall agreement that volume controls need to be implemented, and USDA concludes that the implementation of volume control as set forth in this regulation is an important step to take in addressing the oversupply situation and resultant low grower returns.

3. The Proposed Calculation of Sales Histories Does Not Treat Growers Equitably

Many comments expressed concerns about the determination of sales histories, particularly that growers with four years or less of sales histories would be more dramatically impacted than others. The commenters stated that the reduction for these growers could exceed 15 percent by a substantial amount. Some suggested that these growers receive the State average yield as their sales history, similar to the method used to provide sales histories for growers with new acreage.

The Committee and the Department have been working for many months now to develop a way to calculate sales histories which would result in the most equitable allocation of allotment among growers in the cranberry industry as it exists today. The primary concern has been with growers with four years or less of sales history. In response to this concern, USDA's proposed recalculation of sales histories which modified the Committee's initial recommendation was intended to mitigate some of the perceived inequities that could arise. In its second recommendation, the Committee further recommended that the formula be changed so that growers with four years or less of sales be given their highest year of sales as their sales history. Growers with five years of sales or more would still have their sales history calculated by averaging the highest four years of sales during the most recent five or six years of sales, whichever is applicable.

This Committee recommendation is expected to help some growers with newly planted acreage. Instead of using an average of all years' sales, which could be lower on newer acreage, these growers can use their best year as their sales history. Most likely, with newer acreage, the last year of production will be the best year and will raise such growers' sales histories (over the current method of averaging all available years of sales).

Another concern was that the Committee's recommendation is not equitable for more established growers who have put in new acreage. Any grower who reports to the Committee that he or she has new acreage coming into production for the first time receives the State average yield as the sales history for that acreage. In that case, the established grower is treated in the same manner as a brand new grower. Once the new acreage starts producing cranberries, the grower reports to the Committee sales off all acres combined. Information reported to the Committee does not segregate sales by the age of the acreage. The combined sales are thus used in calculating the more established growers' sales histories (using an average of the best four years out of five or six). Since the sales are not separated, the Committee did not recommend making an adjustment for acreage belonging to an established grower that has been producing for four years or less. Nevertheless, based on concerns and comments expressed during this rulemaking proceeding, USDA has decided to allow such an adjustment if growers can produce credible records which would allow the Committee to segregate the newer acreage.

The Committee and USDA have worked diligently to ensure that all growers would receive a sales history that accurately represents each grower's

capability to produce on such acreage while still being an effective regulation. The various recommendations, although not perfect, were intended to achieve the most fair method of computing sales histories, which would result in allotments being equitably apportioned among producers.

The allotment calculation in this rule is based on prior years' histories. There are no barriers to entry into the cranberry growing or handling business under the marketing order nor should there be any. In the early 1990's, the order was amended to change the producer allotment program from the base quantity to the sales history method. The program amendments were put in place after a public hearing and grower and processor vote. However, this is the first time the sales history program has actually been implemented. The Committee and USDA have discovered some areas of the order provisions that could to be improved for future seasons. The Committee is currently considering needed order amendments, which would likely be necessary to make any substantive changes in the sales history provisions of the order.

4. Only Two Handlers Are Responsible for the Surplus

Many growers commented that their handlers are not responsible for the surplus, since two of the largest handlers maintain the largest inventories.

Review of this available information shows that the volume of inventories of these two handlers is directly proportional to the volume of cranberries handled. In addition, the increased plantings over the last few years, which have contributed to the surplus, was industry-wide. Regardless, the cranberry surplus is an industry problem, since large inventories depress overall grower prices. The marketing order's volume regulation features are designed to help all growers in the industry by stabilizing grower returns.

5. Handlers With No Inventories May Have To Purchase Cranberries From Their Competitors To Fill Orders

Some handler commenters said that with a restriction in place, they would have to purchase cranberries from their competitors to supply their customers since they do not have inventories like other handlers. Purchases among handlers is a standard practice in the cranberry business. With the surplus, there should be an abundance of fruit available for sale at a reasonable rate in the event handlers need additional product. In addition, one such commenter stated that they routinely purchase a large percentage (20–30%) of their cranberries from other handlers rather than directly from growers. The purpose of the volume regulation is to benefit the grower by stabilizing the marketplace. If handlers must purchase cranberries from other handlers, and inventories are reduced, the volume regulation is working. In addition, if a handler has excess cranberries, any unused allotment forfeited to the Committee will be equitably distributed among the remaining handlers.

6. The Regulation Will Encourage Plantings and Exports From Canada

Some commenters were concerned that Canada's cranberry industry could have a dampening effect on any volume regulation implemented in the United States. The marketing order regulates domestic cranberry handlers. Although any volume regulation implemented cannot extend to Canada, the British Columbia Cranberry Committee has voted to reduce their 2000 crop by 15 percent if volume regulations are implemented in the United States.

The Committee reported 1999 Canadian fruit production at 634,000 barrels of cranberries. A substantial portion of the Canadian fruit is grown in British Columbia. If volume regulation is instituted in Canada, growers will not be encouraged to plant new vines. Also, with the current U.S. surplus of cranberries, there are ample domestic supplies of fruit, which, along with current low grower prices, should discourage the importation of foreign fruit.

Discussion of Alternative Levels of Volume Regulation

Fifty-six of the comments supported volume regulation in general, many of those favoring one of the options under consideration over the others. Some of those who opposed volume regulation indicated which option they preferred if USDA does implement a regulation.

Initial Committee Recommendation (15% volume control; sales history—6.35 million barrels; marketable quantity—5.4 million barrels): Few comments were received in support of this option. Those in support commented that this was the most equitable option and the Committee's original recommendation should be adhered to. One commenter favored the initial Committee recommendation because he believed that the two alternatives offered by USDA favored certain growers over others. The calculation of sales histories using the average of the best four out of six years was favored by these commenters.

USDA Option 1 (29% volume control; sales history—7.6 million barrels; marketable quantity—5.4 million barrels): Some commenters who discussed this option were against volume regulation but believed this would be the best if volume regulation were implemented. This option would have established a restricted percentage of 29 percent. Those supporting this option believed that a 15 percent reduction does not go far enough and will not have an impact on the surplus. One commenter stated that the volume regulation should be restrictive enough to make a difference. Some commenters believed that a 29 percent reduction is necessary if the oversupply situation is to be seriously addressed. One commenter stated that this is the best opportunity to return market prices to a level that will allow growers to break even this year, after heavy losses in 1998. This commenter further stated that this regulation will not raise consumer prices but will allow the industry to avoid incurring costs of delivering, cleaning, freezing, and storing cranberries only to have them be sold at a loss. Others commented that allowing all growers to use the best single sales year out of the last 6 years as a sales history was preferable to using an average.

Those opposed to USDA Option 1 stated that it would cause hardships for growers. Most of those commented on the negative impact a volume reduction exceeding 15 percent would have on many growers. One commenter stated that growers will be unduly disadvantaged by a 71 percent producer allotment because many growers have already incurred production costs at levels designed to target a reduction of 15 percent of the average of the best 4 out of 6 years. This commenter further stated that growers who have produced consistent crops for six years would see their volume reduction double. According to this commenter, this option overinflates sales histories to 7.6 million barrels, which would cause a doubling of the restriction in order to maintain a reasonable marketable quantity. Using the best year of 6 will alter the sales histories of virtually all growers.

Many commenters did not support using the best year of the last 6 to calculate sales histories for all growers (except those with new acreage) because it rewards growers who have contributed most to the current oversupply. Some felt this method of calculating sales histories was too advantageous for newer growers, and those who have expanded their acreage in recent years.

USDA Option 2 (15% volume control; sales history—7.6 million barrels; marketable quantity—6.46 million barrels): Comments in support of this option believed that it was the most equitable of all options. Some commented, however, that it still did not go far enough on how newer growers will be allocated allotment. One comment in support of the option stated handlers should not be allowed to transfer unused allotments to other growers.

One supporter believed that unlike the Committee option, this was a good faith attempt to determine grower sales histories in an equitable fashion. This supporter further stated this option will have a similar impact on the entire industry, whereby most growers' actual crop reduction will be closer to 15 percent. This commenter added that because it does not result in significant differences in allotments, it better complies with the Act regarding equitable apportionment of allotments.

Those opposed to this option were generally opposed to both USDA options as they relate to the calculation of sales histories. As with USDA option 1, some commenters believed the method of calculating sales histories under this option was too advantageous for newer growers. One commenter believed that raising the marketable quantity to 6.35 million barrels (USDA Option 1) was unrealistic and, therefore, the volume regulation would have no effect on reducing supply.

Revised Committee Recommendation (CMC2) (15% volume control; sales history—6.432 million barrels; marketable quantity—5.468 million barrels): Comments submitted on CMC2 (following the June 6 public hearing) in support of this option believed that this was the best option to bring market stability and reduce costs. While it would not have an equal impact on each individual grower, it would help the industry overall. Some stated that a 15% restriction will not eliminate the surplus, but believed that it will allow handlers to begin the process of balancing supply and demand. Many commented that the marketable quantity should be near 5.4 million barrels to be effective. Some were supportive of any proposal that limits the marketable quantity to approximately 5.4 million barrels, and believed calculating sales histories for established growers using the best 4 years out of 6 was the best method. Some supported CMC2 even though USDA option 1 would have a greater impact on reducing the surplus. They believed CMC2 would be best for the long-term interests of the industry.

One commenter stated that he could deliver 3000 more barrels under USDA option 2, but still supported CMC2 as being best for the industry overall.

Those opposed to CMC2 stated that this option is grossly inequitable. One commenter stated that under both Committee recommendations, some growers would see a small reduction but others would be forced to dump up to 50 percent of this year's crop. This commenter stated that the Committee presented CMC2 as a compromise, but it is not. The commenter stated that this option does nothing to remedy the inequities of the first Committee recommendation, and only creates additional inequities. This commenter further stated that this option would reward growers growing for 4 years or less and punish established growers that have added new acreage.

Conclusions: Since the Committee's meeting on March 30, 2000, the Department received additional information from cranberry growers and handlers pertaining to the way in which sales histories are computed. Of primary concern were the potential inequities that could result from the Committee's initial recommendation. Specifically, some were concerned about growers with four years or less of sales histories on some or all of their acreage. The Department suggested two alternative levels of volume regulation in an attempt to address those concerns, with the expectation that the Committee would meet and discuss all options and recommend any needed revisions prior to finalization of the rule. The Department looked for flexibility in the marketing order that would assist this segment of the industry while still providing for an effective volume regulation.

The Department's options changed the way in which nearly all growers would calculate their sales histories. Under USDA Option 1, the sales histories would have increased to 7.6 million barrels (as opposed to the Committee's established sales histories of 6.35 million barrels). Using the Committee's recommended marketable quantity of 5.4 million barrels resulted in an allotment percentage of 71 percent. USDA Option 2 increased the marketable quantity to 6.46 million barrels (as opposed to the Committee's established marketable quantity of 5.4 million barrels) to stay within the Committee's original recommendation to establish an allotment percentage no lower than 85 percent. The Department recognized that the proposed rule provided a wide range of possible methods of implementing volume regulation for the industry to consider.

At the June 6 meeting and in written comments, it was expressed that both USDA options dramatically inflate the sales histories and USDA option 2 further provides an unrealistic marketable quantity. To demonstrate the unrealistic marketable quantity in USDA option 2, a commenter stated that the marketable quantity established in CMC2 (5.468 million barrels) represents a 10 percent increase in demand in one year. The largest increase in annual demand in recent years has been only about 5 percent. Further, the 6.46 million barrel marketable quantity in USDA option 2 exceeds anticipated production by over a half a million barrels. USDA Option 2 would, therefore, result in no reduction of available supplies. It would thus be an ineffective regulation and would provide no benefits to cranberry growers. We therefore concur with the Committee and comments received that USDA Option 2 should not be implemented.

Also, based on Committee meetings and comments received, we agree that USDA Option 1, which would establish an allotment percentage of 71 percent, would not be prudent at this time. For months, many growers have anticipated a volume regulation and believed it would not entail a reduction of more than 15 percent. Many growers altered their cultural practices accordingly. Establishing a reduction of more than 15 percent so close to the beginning of the season would cause too many hardships on too many growers. Although an 85 percent allotment percentage would have a lesser impact on supplies and prices than a 71 percent allotment percentage, we conclude that doubling the restriction from what was anticipated would be too costly to growers.

Both USDA options changed the way sales histories are calculated by allowing virtually all growers to use the best year of production. The primary concern of the Committee and industry was the method of establishing sales histories for growers with new acreage. We agree with the Committee that this method would overinflate total industry sales histories. The calculation for more established growers (using the average of the best four out of six years) has been in effect for many years and provides a reasonable and accurate sales history for these growers.

Additionally, the Committee is continuing its work on amending the order to address some of the problems it has encountered while considering volume regulation for the 2000–2001 crop year.

For these reasons, the Department has concluded that implementing CMC2, the Committee's recommendation of June 6, 2000, is the best course of action. It provides the most equitable means of allocating producer allotments available at this time, and should provide benefits to growers in excess of its costs. The only change the Department is making is allowing established growers who also have newer acreage with four years of sales history or less to receive the highest sales season on that acreage. Because this change will cause an increase in the marketable quantity if established growers can segregate production from their newer acreage, a change has also been made in § 929.250 of the regulations to reflect this adjustment.

Fresh and Organic Fruit Exemption

Fresh and organically-grown fruit are exempt from the volume regulation pursuant to § 929.58 of the order which provides that the Committee may relieve from any or all requirements cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Many comments were received regarding the fresh and organic cranberry exemption. Twenty-seven comments were against the exemption, primarily the fresh fruit exemption. Those in opposition were generally concerned that fresh fruit handlers are being given an unfair advantage as they will be in a position to make unused allotments from fresh growers available to their processed growers and virtually market all of their cranberries. Some commented that much of the fresh fruit excess would end up in the processed markets. In addition, some commented that the fresh market would be oversupplied with fresh cranberries and the quality would suffer, as well.

Five of the 27 who oppose the exemption commented that if the fresh fruit exemption is part of the regulation, any unused allotment realized from fresh fruit acreage should be forfeited in the same manner as with new growers who use the State average yield as their sales history and forfeit unused allotment.

Twelve comments supported the exemptions. In most cases, the commenters supported a specific option or volume regulation in general, including the fresh and organic exemption. One comment was against any volume regulation, but stated that if one is implemented, the fresh exemption should be a part of it.

The supporting commenters expressed that fresh and organic cranberries are small, but important segments of the overall cranberry market, and do not contribute to the oversupply situation. Because there is adequate demand for these products, one commenter stated that it does not make sense to restrict the volume of fresh cranberries that can be sold profitably. Another commenter stated that fresh fruit production requires special cultural practices that need to be implemented over the course of several growing seasons to transition the cranberry vines from processed fruit production to fresh fruit production. For this reason, it is unlikely that growers who normally produce cranberries for the processed market will become fresh growers during the 2000–2001 crop year. In addition, this commenter expressed that it would be unlikely for growers to market their excess fruit as fresh product for logistical reasons.

The Department supports the fresh and organic exemption. As stated previously, fresh fruit accounts for about 4.7 percent of the total production. Organically-grown cranberries comprise an even smaller portion of the total crop than fresh cranberries, about 1,000 barrels.

Under current marketing practices, there is a distinction between cranberries for fresh market and those for processing markets. Cranberries intended for fresh fruit outlets are grown and harvested differently. Most fresh cranberries are dry picked while cranberries used for processing are water picked. When cranberries are water picked, the bog is flooded and the cranberries that rise to the top are harvested. During this proceeding, it was noted that in the State of Wisconsin, cranberries for fresh market are water picked much like cranberries for processing. Additional information revealed that although cranberries intended for fresh market can be water picked, the resulting yields are more similar to the labor intensive dry picked cranberries, than to cranberries that are water picked for processing. This is partially attributable to the fact that only the highest quality fruit is earmarked for the fresh market.

Regarding the comments that many growers will become "fresh growers" and flood the market with fresh fruit, information received does not support that this will happen. Industry members advised that it takes many years to cultivate an acceptable "fresh" product. Handlers would not likely buy fresh cranberries from a first year fresh grower, as it would be expected the quality would not be acceptable. For these reasons, it would not be practical or economically feasible to convert from a processed grower to a fresh grower this season.

Regarding the comments that fresh cranberries will be diverted into processing outlets, safeguards are established under the program to protect against this. The exemption for both fresh and organic cranberries applies to cranberries packed in consumer packaging, such as cellophane bags for supermarkets. Any sorted-out cranberries converted to processing will count against that grower's allotment.

The Committee has deliberated for over eight months to arrive at a volume regulation recommendation that addresses the oversupply situation and is acceptable to most of the industry. The Committee recognizes that some improvements could be made in the way volume regulations are implemented, but it is impossible to make many more changes in time for the 2000–2001 crop year.

One idea that has been discussed, for example, is to amend the marketing order to provide that fresh and organic sales be segregated from processed sales, and allotment only be earned on the processed sales. The suggestion that fresh and organic cranberry growers forfeit any unused allotment is also an idea that could be considered in the future. The formal rulemaking process, which involves a hearing and grower referendum, usually takes 12 to 18 months to complete.

If the fresh or organic markets show significant growth in the coming years, and surplus becomes an issue, different measures can be taken at that time to include them in any volume regulation.

The Department supports the decision to exempt fresh and organically-grown cranberries from volume regulation this year. It is concluded that fresh and organic supplies do not contribute significantly to the current cranberry surplus, and that such cranberries should therefore be exempt from the allotment percentage this rule imposes.

Initial Regulatory Flexibility Analysis

James M. Talent, Chairman of the U.S. House of Representatives' Committee on Small Business commented that the proposed rule issued by AMS apparently did not comply with the Regulatory Flexibility Act. Specifically, he commented that our Initial Regulatory Flexibility Analysis did not find that the proposed rule would have a significant economic impact on small entities. Our initial analysis did conclude that cranberry growers and handlers (both large and small) would benefit from the establishment of volume regulation during the upcoming season. The Final Regulatory Flexibility

Analysis contained in this document provides further analysis to support this conclusion. Also, this document analyzes the impact of the various alternative levels of regulation offered in the proposed rule.

Congressman Talent also stated that AMS eliminated opportunity for public comment on the Committee's revised recommendation for volume regulation (CMC2) that it made on June 6, 2000. Subsequent to the publication of the proposed rule on May 30, AMS mailed a copy of that rule to every cranberry grower and handler of record. That mailing also invited interested parties to attend the June 6 meeting and express their views. Additionally, AMS posted a summary of what transpired at that meeting (as well as a full transcript of the meeting) on its website and included it in the rulemaking record. Many of those who filed comments in response to the proposed rule specifically addressed the second Committee recommendation. More importantly, CMC2 falls within the scope of options contained in the proposed rule. The marketable quantity is slightly higher than in two of those options, and lower than in a third. The 85 percent allotment percentage established by this rule is the same as that contained in two of the three published options. The change in the way sales histories are computed is also within the scope of options proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The crop year begins on September 1, 2000. This rule should be effective prior to the beginning of the crop year so that the Committee can initiate its appeals procedures well in advance of the start of the volume regulation. Also, growers need time to adjust their cultural practices in preparation for the volume regulation. Further, handlers and growers are aware of this rule, which was recommended and modified based on public meetings. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In paragraph (d) of § 929.49, the phrase "On or before June 1" is suspended.

3. In paragraph (e) of § 929.49, the phrase "On or before June 1 of any year in which an allotment percentage is established by the Secretary" is suspended.

4. Section 929.104 is revised to read as follows:

§ 929.104 Outlets for excess cranberries.

(a) In accordance with § 929.61, excess cranberries may be disposed of only in the following noncommercial or noncompetitive outlets, but only if the requirements in paragraph (b) of this section are complied with:

(1) Foreign countries, except Canada.

(2) Charitable institutions.

(3) Any nonhuman food use.

(4) Research and development projects dealing with dehydration, radiation, freeze drying, or freezing of cranberries, for the development of foreign markets.

(b) Excess cranberries may not be converted into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process. Handlers may divert excess cranberries in the outlets listed in paragraph (a) of this section only if they meet the diversion requirements specified in § 929.61(c).

5. In § 929.107, paragraphs (a) and (c) are amended by replacing the number "15" with the number "50".

§ 929.109 [Removed]

6. Section 929.109 is removed.

7. Section 929.125 is revised to read as follows:

§ 929.125 Committee review procedures.

Growers may request, and the Committee may grant, a review of determinations made by the Committee pursuant to §§ 929.48 and 929.149, in accordance with the following procedures:

(a) If a grower is dissatisfied with a determination made by the Committee which affects such grower, the grower may submit to the Committee within 30 days after receipt of the Committee's determination of sales history, a request for a review by an appeals subcommittee composed of two independent and two cooperative representatives, as well as a public member. Such appeals subcommittee shall be appointed by the Chairman of the Committee. Such grower may forward with the request any pertinent material for consideration of such grower's appeal.

(b) The subcommittee shall review the information submitted by the grower and render a decision within 30 days of receipt of such appeal. The subcommittee shall notify the grower of its decision, accompanied by the reasons for its conclusions and findings.

(c) If the grower is not satisfied with the subcommittee's decision, the grower may further appeal to the full Committee. The grower must submit its written argument to the Committee along with any pertinent information for the Committee's review within 15 days after notification of the subcommittee's decision. The Committee shall respond within 15 days of the receipt of the grower's appeal. The Committee shall inform the grower of its decision, accompanied by the reasons for its decision.

(d) The grower may further appeal to the Secretary, within 15 days after notification of the Committee's findings, if such grower is not satisfied with the Committee's decision. The Committee shall forward a file with all pertinent information related to the grower's appeal. The Secretary shall inform the grower and all interested parties of the Secretary's decision. All decisions by the Secretary are final.

8. A new § 929.148 is added to read as follows:

§ 929.148 State average yield.

The State average yield pursuant to section 929.48(a)(5)(ii) is defined as the yield per State for the year 1997 or the best four years out of the last six years whichever is greater. However, if the estimated commercial sales are greater than the volume computed by this method, the Committee will use the grower's estimated commercial sales.

9. A new § 929.149 is added to read as follows:

§ 929.149 Determination of sales history

A sales history for each grower shall be computed by the Committee. For growers with five years of sales history, a sales history shall be computed using an average of the highest 4 years of sales. For growers with six or more years of sales history, a sales history shall be computed using an average of the highest four of the most recent six years of sales. If these growers also have newer acreage with four years of sales history or less, and such growers can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage shall be treated in the same manner as acreage of a grower with four years or less of sales history. For a grower with four years or less of sales history, the sales history shall be computed using the highest sales season. Sales history for new acreage with no history of sales (for both new and existing growers) shall be computed according to § 929.48 of the order.

§ 929.151 [Removed]

10. Section 929.151 is removed.

11. A new § 929.158 is added to read as follows:

§ 929.158 Exemptions.

Sales of organic and fresh cranberries shall be exempt from volume regulation provisions. Handlers shall qualify for such exemption by filing the amount of fresh or organic cranberry sales on the grower acquisition listing form. In order to receive an exemption for organic cranberry sales, such cranberries must be certified as such by a third party organic certifying organization acceptable to the Committee.

12. A new § 929.250 is added to read as follows:

§ 929.250 Marketable quantity and allotment percentage for the 2000–2001 crop year.

The marketable quantity for the 2000–2001 crop year is set at 5.468 million barrels and the allotment percentage is designated at 85 percent. The marketable quantity may be adjusted to retain the 85 percent allotment percentage if the total industry sales history increases due to established growers receiving additional sales history on acreage with four years sales or less.

Dated: July 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–17289 Filed 7–5–00; 4:00 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB53

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to provide that applicants may seek financial assistance to provide mobile telecommunications service without regard to whether the applicant is providing basic local exchange service in the territory to be served. RUS is also clarifying its regulations with regard to the application of nonduplication provisions and state telecommunications modernization plans to mobile telecommunications services. In addition, RUS has included criteria for determining "reasonably adequate service" levels for mobile telecommunications service. This final rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility to continue providing reliable, modern telephone service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: This rule is effective July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and

Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, 20402–9325. Telephone: (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related Notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034).

Unfunded Mandates

This rule contains no Federal Mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The telecommunications industry is becoming increasingly competitive. The Telecommunications Act of 1996 (Pub. L. 104–104) and regulatory actions by the Federal Communications Commission are drastically altering the regulatory and business environment of all telecommunications systems, including RUS borrowers. At the same time, changes in overall business trends and technologies continue to place pressure on RUS-financed systems to offer a wider array of services and to operate more efficiently.

RUS regulations currently stipulate that an entity must provide or propose to provide the basic local exchange telephone service needs of rural areas to be eligible for RUS financing (7 CFR 1735.14, Borrower Eligibility) and that loans cannot be made for facilities to serve subscribers outside the borrower's local exchange service area (7 CFR 1735.17, Facilities Financed). The Telecommunications Act of 1996, however, made the term "basic local exchange service" obsolete. The law mandates that universally available and affordable telecommunications services, including access to advanced services, be made available to all US citizens—whether in rural areas or city centers, affluent or poor communities. RUS supports this mandate and the goal that, with the assistance of advanced telecommunications technology, rural citizens be provided the same economic, educational, and health care benefits available in the larger metropolitan areas. RUS believes that the most expeditious way to bring the full range of telecommunications services to rural areas is to make certain providers of services, in addition to providers of local exchange services, eligible for RUS financing. Mobile telecommunications services are included among the telecommunications services financeable under the Rural Electrification Act (RE Act) and among those contemplated in the Telecommunication Act of 1996. Therefore, RUS believes that, in addition to wireline service, mobile telecommunications services should be made available in all rural areas. As such, RUS is deleting its requirement that all borrowers provide local exchange service. Mobile telecommunications service, which allows the user to move within the service area while making and receiving telephone calls and other services, is fundamentally different from wireline service and is not, therefore, duplicative under the RE Act. Since mobile telecommunications services do not and cannot serve the same function as contemplated in state telecommunications modernization plans (TMPs) for wireline services (see 7 CFR 1751.106), RUS policy is to consider a borrower receiving a loan to finance such services to be participating in the state's plan so long as the loan funds are not used in a manner that, in RUS' opinion, is inconsistent with the borrower achieving the goals contained in the plan. RUS will continue to follow this policy regardless of whether the borrower provides any local exchange services. In addition, RUS has included criteria for determining "reasonably adequate service" levels for mobile telecommunications service.

RUS regulations are also utilized by the Governor of the Rural Telephone Bank in carrying out the loan program of the Rural Telephone Bank (the Bank); therefore, these policy revisions would apply to loans made by the Bank, as well.

Comments

RUS received eight comments regarding the proposed rule, published at 65 FR 6922 on February 11, 2000, which were taken into consideration in preparing the final rule. A list of the commenters and comment summaries and responses follows:

1. Cellular Telecommunications Industry Association (CTIA).
2. Farmers Telephone Cooperative, Inc. (FTC).
3. Joint comments submitted from the National Rural Telecom Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, United States Telecom Association and the Western Rural Telephone Association, (the Associations).
4. National Rural Telecommunications Cooperative (NRTC).
5. National Telephone Cooperative Association (NTCA).
6. Noverr Publishing, Inc. (NPI).
7. Rural Telephone Finance Cooperative (RTFC).
8. Western Wireless Corporation (WWC).

Comment: NPI, a mobile wireless telephone service, supports the proposed amendments to the existing regulations, stating that they will increase rural access to advanced telecommunications technology. CTIA and WWC also support the expansion of the RUS loan program to facilitate the provision of wireless telecommunications services to rural areas. They believe that the proposed rule correctly recognizes that wireless services fall within the definition of "telephone service" as defined by Congress for RUS. CTIA and WWC support RUS' conclusion that prudent public policy ensures that consumers in rural areas have access to wireless and advanced telecommunications services comparable to that of their urban counterparts. However, CTIA, WWC, and FTC recommended that RUS go further to encourage the development of competitive telecommunications services in rural areas between wireless and wireline service providers. They stated that RUS policies should facilitate wireline-wireless competition. They further stated that the proposed rule should be amended by removing the word "incidentally" to allow rural consumers to receive the benefits of genuine facilities-based competition. RUS' new rules should encourage multiple competing carriers to provide service to presently unserved and underserved rural markets.

Reply: RUS appreciates the support for its efforts to expand modern telecommunications in rural areas. However, unless authorized by the provisions of the RE Act, RUS is prohibited from making a loan that results in "duplication of lines, facilities, or systems providing reasonably adequate services * * *." (7 U.S.C. 922) (hereinafter referred to as "duplication"). Replies to other comments explain that RUS believes that wireline and mobile service do not duplicate each other. RUS' mission is to ensure that rural consumers have access to modern telecommunications service including wireless and advanced telecommunications services comparable to urban and suburban subscribers. The rule, therefore,

promotes the financing of mobile service where such service is non-existent or is determined to be inadequate.

Comment: CTIA and WWC stated that RUS should modify its rules to specify that, because states are federally preempted from requiring certificates of convenience (CCN) and necessity for wireless providers, § 1735.12(a) of the rule does not apply to wireless carriers, and mobile wireless carriers should be subject to § 1735.12(b) instead.

Reply: The RE Act dictates what action RUS will take when borrowers have a CCN or do not have a CCN. RUS will make a nonduplication finding in those cases where one is required.

Comment: CTIA and WWC further recommended that § 1735.12(d) of the proposed rule be revised to insure that it does not impose greater requirements on commercial mobile radio service (CMRS) carriers than those imposed by the FCC. Thus, RUS should hold that the clarity, reliability and signal strength requirements contained in proposed § 1735.12(d)(2) and (3) are met so long as a wireless provider is operating within the parameters of its FCC license, and that the mobile 911 requirements of proposed § 1735.12(d)(5) are consistent with those established by the FCC. NRTC recommended that the proposed requirements for mobile telecommunications service be interconnected with the public switched telephone network (PSTN) and that mobile 911 service be available to all subscribers, should not be determinative of eligibility for RUS loans. NRTC stated that the safety advantages of wireless technology do not depend on access to the PSTN or 911. Businesses and individuals using mobile wireless services not connected to the PSTN may still report emergency situations at the scene, rather than going to the nearest telephone. NRTC recommended that RUS eliminate the requirements of interconnection (§ 1735.12(d)(4)) and 911 availability (§ 1735.12(d)(5)) in its proposed rule changes.

Reply: The criteria used in determining if service is reasonably adequate are designed to ensure that no rural area is trapped with inferior, substandard service. RUS has, therefore, established criteria to ensure that service being provided is adequate. RUS will consider *all* criteria in § 1735.12(d) before making a determination as to whether a loan can be made based on a finding of inadequate service. RUS and the FCC have different roles. RUS' function is to promote and finance telecommunications service in rural areas. RUS is prohibited from financing duplication. The service features described in determining adequate service are a minimum standard of service RUS believes present-day subscribers should receive.

Comment: CTIA and WWC recommended that RUS should also implement proposed § 1735.12(d)(8), which allows the Administrator to impose "any other criteria * * * determine[d] to be applicable," in a manner that ensures that wireless carriers applying for RUS loans are not subjected to unreasonable requirements or provisions that conflict with FCC rules and policies. In addition, RUS should likewise implement proposed § 1735.12(d)(7), which precludes RUS loans from being used to provide service "at rates which render [it] unaffordable to a majority of rural persons," in a manner that takes into account competition in the wireless marketplace.

Reply: RUS appreciates the comment and will consider all relevant circumstances in applying § 1735.12(d) in a manner designed to promote modern mobile service in rural areas. Allowing the RUS Administrator the discretion to establish or evaluate "other criteria" is necessary and prudent in the rapidly evolving technological environment of the telecommunications industry. In addition, since the Administrator is responsible to the taxpayers for the security of the government's loans, he or she must be afforded the ability to adequately assess unique or rare situations to determine what is in the best interest of the rural residents measured against a provider's ability to repay its debt. With regard to rates, the word "majority" in the proposed rule has been changed to "significant number." RUS believes that the mobile service offered at unaffordable rates is not "available" if it is offered at rates that are unaffordable to a significant number of persons, and cannot, therefore, be adequate. Financing for mobile wireless service will only be provided where such facilities and the resulting service do not currently exist or is found to be inadequate.

Comment: The Associations stated that RUS should not distinguish between mobile telecommunications service and wireline telecommunications service. The Rural Electrification Act defines "telephone service" so as to include both. The two kinds of service duplicate each other if both are offered in the same area.

Reply: RUS believes that mobile and wireline telecommunications services are easily distinguishable from each other. The most obvious difference is that wireline service reaches only a fixed location while a receiver for mobile service allows the subscriber to send and receive communications while moving within a wide area. There is also a significant difference in capacity, with the wireline facilities being able to handle a significantly larger volume of information. Wireline's greater capacity is reflected in the difference in the pricing of the two services with subscribers being predominantly charged a fixed monthly rate while mobile service subscribers are charged rates that are more sensitive to usage levels. The RE Act definition of "telephone service" is sufficiently broad to allow RUS to finance wireline services and mobile services. Neither the definition nor any other provision of the RE Act prevents the RUS from financing more than a single provider of non-duplicating services in a specific area.

Comment: The Associations stated that Congress never envisioned RUS financing telecommunications competition. Neither the RE Act nor the Telecommunications Act of 1996 gives RUS the authority to finance competition.

Reply: As noted in the reply to the previous comment, the mobile and wireline services are distinct and, therefore, do not duplicate or compete with each other when offered in the same area. Moreover, the RE Act prohibits RUS financing of duplication, not competition, so that RUS may provide financing in some situations, even though another provider purports to serve the same area. The RE Act makes another distinction, between (1) cases where there is "a state regulatory body having authority to regulate telephone service and to require certificates of convenience and necessity," 7 U.S.C. 922, and (2) cases where there is not such a body. Non-duplication findings are required only in the second.

Comment: RTFC stated that RUS should concentrate on financing telecommunications services in rural areas, instead of promoting competition and also asserted that there are other sources of funds for mobile telecommunications services.

Reply: RUS' mission is to promote and finance the widest range of telecommunications services defined in the RE Act throughout rural America. RUS is not simply a lender of last resort as the comment implies. Just as RUS in the last 50 years led extension of telephone service in rural areas, it looks forward to leading in the deployment of mobile wireless and advanced

telecommunications services currently underway.

Comment: The Associations stated that RUS, by financing wireless and wireline services in the same area, increases the risk of default on its loans and jeopardizes provision of services in the area.

Reply: RUS is alert to the possibility of the risks mentioned in the comment. The agency believes that mobile wireless and wireline are distinct and do not, therefore, duplicate each other to any significant degree. Therefore, entry of a mobile telecommunications provider into an area poses little financial risk to an existing wireline provider. The language in the regulation states that generally, RUS will not make a loan to another entity to provide the same service (*i.e.*, mobile where mobile already exists) already being provided by a RUS borrower unless the borrower is unable to meet its obligations to RUS (this section, in proposed rule as an amendment to § 1735.14, will instead be added to § 1735.17). As a Federal lender, it is RUS' responsibilities to ensure, to the best of its ability, security for all outstanding and future loans, and to encourage telecommunications services in rural areas.

Comment: In the proposed regulations, the Associations assert that RUS fundamentally changed its definition of adequate telephone service by making the existing definition of adequate service apply only to wireline service and by adopting a new definition of mobile telecommunications services.

Reply: The RE Act requires the Administrator of RUS to determine that a loan will not result in the "duplication of lines, facilities, or systems, providing reasonably adequate services". If the existing service is not reasonably adequate, an RUS loan to improve service does not result in duplication. Mobile service is distinct from wireline service thereby requiring a definition of adequacy that properly reflects its uniqueness. With rapidly advancing technologies, the quality of telecommunication service expected by all persons has risen dramatically in recent years. Therefore, the new definition of adequate mobile telecommunications service reflects these developments.

Comment: The Associations assert that RUS does not have authority to determine the affordability of wireline or wireless service.

Reply: The new regulations state that "mobile telecommunications service is not provided at rates which render the service unaffordable to a majority of the rural persons" is one of the criteria RUS will use in determining whether existing mobile telecommunications service is adequate (7 CFR 1735.12(d)(7)). RUS believes that service available only at extremely high rates that render it inaccessible to a significant number of rural subscribers is not adequate service. The evaluation of whether rates are affordable to rural subscribers is made only to determine whether RUS will make a loan in the particular situation and is clearly different from the regulatory judgement of whether rates are reasonable. Therefore, RE Act purposes would be furthered by a loan to finance mobile telecommunications services at reasonable rates that are affordable to rural persons who would not otherwise have access to such services.

Comment: The Associations believe that RUS should not eliminate the requirement in its existing regulations that borrowers must provide basic exchange service. Instead, RUS should amend its regulations to authorize the financing of mobile and other advanced telecommunications services for providers that are also providing basic exchange service.

Reply: Telecommunications providers offering basic local exchange telephone service are eligible for RUS loans currently and will continue to be eligible under the new regulations. The facilities used to deliver mobile services are distinct from wireline facilities, including those facilities that provide basic exchange service, and RUS believes that treating mobile services separately will expedite their expansion in rural areas. Limiting RUS funding of mobile services to those companies providing basic exchange services would in most instances mean that the existing telephone company could decide not to provide mobile services and then prevent persons and businesses in its service area from receiving the service from any other company as well.

Comment: The Associations stated that RUS cannot exempt carriers from the statutory State telecommunications plan (TMP) requirements.

Reply: The RE Act requires, as a condition of receiving a loan, that "the applicant is a participant in the [TMP]" for the state in which the proposed service is located, "if the plan was developed by telephone borrowers under [the RE Act]" (7 U.S.C. 935(d); 7 U.S.C. 948(b)(4)(B)). The statute sets forth requirements for a TMP that contemplate only wireline carriers (see 7 U.S.C. 935(d)(3)) and existing regulations have been developed utilizing that interpretation (7 CFR 1751.101(d)). RUS believes that technologies that allow mobile service to meet TMP standards will not be practical for a considerable time, if ever, and that it was not Congress' intention to delay expansion of mobile services in rural areas. Under the existing interpretation of the TMP standards, RUS does not require that all of the wireline services provided by a borrower be upgraded to comply with the TMP, including services not covered by the loan. Instead, RUS requires that loan funds be spent in a manner consistent with the borrower achieving TMP standards (7 CFR 1751.103). RUS interprets the provision in the same way for mobile loans—the borrower must not use the funds in a manner inconsistent with achieving TMP standards. This interpretation will facilitate both accomplishing TMP standards at the earliest possible date and the expansion of mobile service in rural areas.

This rule becomes effective on the date of publication in the **Federal Register** because any further delay would contribute to denying benefits to residents in rural areas. This rule is part of an Administration initiative to ensure that rural areas receive access to all types of telecommunications services—services already available to urban residents. Part of the intent of that initiative is to provide funding, this fiscal year (fiscal year 2000), to entities to provide mobile telecommunications service where that service does not exist or is inadequate. In order to do that, applicants must have time to prepare and submit applications in accordance with this and other applicable RUS regulations; RUS must also have adequate time to process and approve eligible applications. A delay in the effective date of this rule of 30 days, coupled with application preparation, review and processing times, would undermine the ability to provide funding this fiscal year, thereby denying benefit to rural residents.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, 7 CFR chapter XVII is amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

The authority citation for part 1735 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. In § 1735.2, the following definitions are added in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Mobile telecommunications service means the transmission of a radio communication voice service between mobile and land or fixed stations, or between mobile stations.

* * * * *

Public switched network means any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile telecommunications service providers, that use the North American Numbering Plan in connection with the provision of switched services.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

* * * * *

3. Amend § 1735.10 by:

A. Revising paragraph (b);

B. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

C. Adding a new paragraph (c).

This revision and addition read as follows:

§ 1735.10 General.

* * * * *

(b) RUS will not make hardship loans, RUS cost-of-money loans, or RTB loans for any wireline local exchange service or similar fixed-station voice service that, in RUS' opinion, is inconsistent with the borrower achieving the requirements stated in the State's telecommunication modernization plan within the time frame stated in the plan (see 7 CFR part 1751, subpart B), unless RUS has determined that achieving the requirements as stated in such plan is not technically or economically feasible.

(c) A borrower applying for a loan to finance mobile telecommunication services shall be considered to be a participant in the State's telecommunication modernization plan so long as the loan funds are not used in a manner that, in the opinion of the Administrator, is inconsistent with the borrower achieving the goals set forth in the plan.

* * * * *

4. Amend § 1735.12 by:

A. Revising paragraph (c) introductory text; and

B. Adding new paragraphs (d) and (e).

The revision reads as follows:

§ 1735.12 Nonduplication.

* * * * *

(c) RUS shall consider the following criteria for any wireline local exchange service or similar fixed-station voice service in determining whether such service is reasonably adequate:

* * * * *

(d) RUS shall consider the following criteria for any of mobile telecommunications service in determining whether such service is reasonably adequate:

(1) The extent to which area coverage is being provided as described in 7 CFR 1735.11.

(2) Clear and reliable call transmission is provided with sufficient channel availability.

(3) The mobile telecommunications service signal strength is at least −85dBm (decibels expressed in miliwatts).

(4) The mobile telecommunications service is interconnected with the public switched network.

(5) Mobile 911 service is available to all subscribers, when requested by the local government entity responsible for this service.

(6) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Mobile telecommunications service is not provided at rates which render the service unaffordable to a significant number of rural persons.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

(e) RUS does not consider mobile telecommunications service a duplication of existing wireline local exchange service or similar fixed-station voice service. RUS may finance mobile telecommunications systems designed to provide eligible services in rural areas under the Rural Electrification Act even though the services provided by the system may incidentally overlap services of existing mobile telecommunications providers.

§ 1735.14 [Amended]

5. Amend § 1735.14 by:

A. Removing paragraph (c)(1); and

B. Redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2) respectively.

6. Amend § 1735.17 by:

A. Removing paragraph (c)(3);

B. Redesignating paragraphs (c)(4) and (c)(5) as (c)(3) and (c)(4), respectively, redesignating paragraph (d) as paragraph (e); and

C. Adding new paragraph (d):

The addition reads as follows:

§ 1735.17 Facilities Financed.

* * * * *

(d) Generally, RUS will not make a loan to another entity to provide the same telecommunications service in an area served by an incumbent RUS telecommunications borrower providing such service. RUS may, however, consider an application for a loan to provide the same type of service being provided by an incumbent RUS borrower if the Administrator determines that the incumbent borrower is unable to meet its obligations to the government, including the obligation to provide service set forth in its loan documents and to repay its loans.

Dated: July 5, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–17474 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2000–15]

Election Cycle Reporting by Authorized Committees

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations to require authorized committees of Federal candidates to aggregate, itemize and report all receipts and disbursements on an election-cycle basis rather than on a calendar-year-to-date basis. Beginning with reporting periods that start on or after January 1, 2001, authorized committees must report their receipts and disbursements on an election-cycle basis. Please note that this change affects only authorized committees of Federal candidates and does not affect unauthorized committees or other persons. This requirement reflects recent changes in the Federal Election Campaign Act of 1971. The intent of these rules is to simplify recordkeeping and reporting requirements for authorized committees of Federal candidates and to better disclose receipts and disbursements that occur during an election cycle. Further information is provided in the supplementary information that follows.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary Smith, Assistant General Counsel, or Cheryl Fowle, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to the regulations at 11 CFR 104.3, 104.7, 104.8 and 104.9. These rules implement section 641 of Public Law 106–58 (Pub. L. No. 106–58, 106th Cong. 1st Sess., § 641, 113 Stat. 430, 477 (1999)), which amended section 434(b) of the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.* ("FECA" or "the Act"), to require, *inter alia*, that the Commission require the authorized committees of Federal candidates to aggregate and report their receipts and disbursements on an election-cycle-to-date basis, rather than a calendar-year-to-date basis, as was previously required. The goals of the 1999 amendment to the FECA and the new rules are to simplify recordkeeping and reporting for authorized committees by itemizing contributions, other receipts, and disbursements on the same election-cycle-to-date basis, and to provide the public with more relevant information for the current election cycle. 145 Cong. Rec. E1896–02, September 17, 1999 (statement of Hon. William M. Thomas). The 1999 amendment to the FECA requires these rules to be effective for reports covering periods after December 31, 2000.

Section 438(d) of Title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 6, 2000.

Explanation and Justification

The Commission initiated this rulemaking by publishing a Notice of Proposed Rulemaking ("NPRM") in the **Federal Register** on May 3, 2000, 65 FR 25672 (May 3, 2000). The NPRM contained proposed rules at 11 CFR 104.3, 104.8 and 104.9 requiring authorized committees of Federal candidates to itemize and report their receipts and disbursements on an election cycle basis. The proposed rules used the definition of election cycle at 11 CFR 100.3(b), under which the election cycle begins the day after the general election for a seat or office and ends on the day of the next general election for that seat or office. The NPRM also contained two alternative approaches to the definition of election cycle. Under alternative one, the election cycle, for reporting purposes, would begin on January 1 of the year following the general election and end on December 31 of the year of the next general election. Under alternative two, the election cycle would begin twenty-one days after the general election for a seat or office and would end twenty days after the next general election for that seat or office. Additionally, under the second alternative, the contribution limit regulations at 11 CFR 110.1 and 110.2 would have been revised to require that undesignated contributions made up until the twentieth day after the election would aggregate to the contributor's contribution limit for the election that was just held.[1]

The comment period ended on June 2, 2000. The Commission received two comments from the Project On Government Oversight and Eliza Newlin Carney, a staff correspondent for the National Journal. One commenter stated that it has studied the problems with reviewing and searching FEC records and has found it very difficult to determine the amounts of individual contributions reported for a specific election. The commenter stated that the proposed rules directly correct the problem and that it fully supports their implementation. The second commenter was concerned that the rulemaking would eliminate year-end reports. The revised rules do not change the filing of year-end reports, or the filing frequency of any other reports, which are mandated by § 434 of the FECA. The rules simply alter the manner in which authorized committees aggregate and disclose their receipts and disbursements within the required reports. In addition, a comment from the Internal Revenue Service ("IRS") stated that the proposed rules are not inconsistent with IRS regulations or the Internal Revenue Code.

The final rules are identical to the rules proposed in the NPRM. Revisions to 11 CFR 104.3 state that the specified contents of authorized committee's reports must be disclosed for the reporting period and the election-cycle-to-date. Section 104.7 is being amended to change references to authorized committee's itemizations of contributions aggregating in excess of $200 per calendar year to $200 per election cycle and to provide authorized committees with examples of clear statements requesting contributor information, which are required on written solicitations. Sections 104.8 and 104.9 are being revised to require authorized committees to provide identifying information for contributors whose contributions total over $200 within the election cycle and for persons to whom expenditures and other disbursements exceed $200 within the election cycle.

Section 104.3 Contents of Reports (2 U.S.C. 434(b), 439a)

The Commission's regulations at 11 CFR 104.3 set forth the required contents of reports of receipts and disbursements. Section 104.3 is being revised to state that the specified contents of authorized committee's reports must be disclosed for the reporting period and for the election cycle-to-date rather than for the reporting period and calendar year-to-date. Please note that this amendment to the FECA does not affect unauthorized committees and the Commission is not issuing new rules modifying the calendar year reporting system they currently use, or changing the forms they file at this time.[2]

The introductory language of paragraph (a) is being revised to state that authorized committees must disclose their receipts for the reporting period and for the election cycle.

Paragraph (a)(3) is being revised to state that authorized committees must report the amount of each category of receipt listed in that paragraph for the reporting period and the election cycle.

A parenthetical statement is being added to paragraphs (a)(4)(i) to require authorized committees to identify each contributor whose election cycle-to-date total contributions exceeds $200.[3] Parenthetical statements are also being added to paragraphs (a)(4)(v) and (vi) to require authorized committees to identify each person whose election-cycle-to-date total rebates, refunds or other offsets to operating expenditures, or total dividends, interest or other

[1] Issues concerning election cycle are discussed below.

[2] On March 10, 2000, the Commission sent a legislative recommendation to Congress recommending a clarifying amendment that would remove the election cycle language from 2 U.S.C. 434(b)(6)(B)(iii) and (v) because 2 U.S.C. 434(b)(6)(B) applies solely to unauthorized committees.

[3] The Commission notes that publicly funded Presidential candidates are required to provide in their matching fund submissions, contributor information for contributors whose aggregate contributions exceed $200 per calendar year. 11 CFR 9036.1(b)(1)(ii). Since the statutory amendments did not alter the matching fund submission process, no changes are being made to the Commission's matching fund regulations applicable to the 2000 election or future elections.

receipts provided to the authorized committee exceeds $200.

Similarly, paragraph (b) is being revised to state that authorized committees must disclose their disbursements for the reporting period and for the election cycle.

Paragraph (b)(2) is being amended to state that authorized committees must report the amount of each category of disbursement listed in this paragraph for the reporting period and the election cycle.

Paragraph (b)(4)(i) is being revised to require authorized committees to identify each person to whom expenditures in an aggregate amount exceeding $200 within the election cycle are made to meet the authorized committee's operating expenditures.[4]

Paragraph (b)(4)(vi) is being reworded to require authorized committees to identify each person who has received any disbursements not otherwise itemized under paragraph (b)(4)(i), (ii), (iii), (iv) or (v) aggregating in excess of $200 within the election cycle.

Paragraph (i) is being revised to require that all reports filed by authorized committees under section 104.5 be cumulative for the election cycle rather than for the calendar year.

New paragraph (k) is being added to ensure the accurate reporting of election cycle-to-date activity for those candidates who are in mid-election cycle on January 1, 2001, when these regulations take effect. While receipts and disbursements made between November 8, 2000 (the day after the general election) and December 31, 2000, will be reported in the year-to-date totals for 2000 in the post-general election report and the year-end report, under new paragraph (k) of 11 CFR 104.3, these amounts must also be included in the election cycle-to-date aggregation totals that are reported beginning in 2001. Similarly, some candidates for the U. S. Senate in 2002 and 2004 and possibly some Presidential candidates for the 2004 election may have two, three, four or more years of previously reported receipts and disbursements. These amounts must also be included in the election-cycle-to-date figures reported on the first report covering financial activity occurring in 2001.

On the Detailed Summary Page of each report filed for the first election cycle in which these rules are in effect, election-cycle-to-date totals should be reported for each category of receipts (except itemized and unitemized contributions from individuals) and each category of disbursements. Please note that the Commission is creating a one-time worksheet to assist authorized committees in aggregating election-cycle-to-date data because this might require some authorized committees to aggregate several years of previously reported receipts and disbursements. However, the Commission is not making any changes to either the Detailed Summary Page, or the schedules of contributions or expenditures, that would necessitate the filing of amendments to reports covering pre-2001 financial activity.

The Commission received no comments on the proposed amendments to 11 CFR 104.3.

Section 104.7 Best Efforts (2 U.S.C. 432(i))

Under 11 CFR 104.7, treasurers are required to exercise best efforts to obtain, maintain and report certain identifying information for contributors whose total contributions exceed $200 in a calendar year. An amendment to paragraph (b) of 11 CFR 104.7 revises the references to $200 in a calendar year to $200 in an election cycle with regard to contributions itemized by authorized committees. This revision is consistent with the changes to the regulations at 11 CFR 104.3 requiring authorized committees to itemize contributions from any contributor aggregating in excess of $200 per election cycle. Paragraph (b) of 11 CFR 104.7 requires written solicitations to contain a clear statement requesting contributor information. The previous regulations gave two examples of clear statements. The Commission is adding two new examples at 11 CFR 104.7(b)(1)(i)(B) for authorized committees.

Paragraph (b)(3) of 11 CFR 104.7 requires political committees to disclose contributor information not supplied by the contributor if the political committees have the information in their records or reports filed within the same "two-year election cycle." Paragraph (b)(4)(ii) of 11 CFR 104.7 requires that if political committees file an amendment containing contributor information received after contributions are disclosed, they must amend every report containing itemized contributions from those contributors for the "two-year election cycle." The Commission sought comments on possibly revising paragraphs (b)(3) and (b)(4)(ii) to require authorized committees to supply information found in reports filed within the entire election cycle and to amend all reports disclosing itemized contributions from the contributor during the election cycle. Such a revision would require authorized committees to maintain copies of records and reports for the entire cycle (two, four or six years for House, Presidential and Senate candidates, respectively). Since the FECA requires political committees to maintain records and reports for a period of three years (2 U.S.C. 432(d)), the Commission has decided not to revise paragraph (b)(3) and (b)(4)(ii). For purposes of further clarification, "two-year election cycle" means the most recent two years in the current election cycle.

The Commission received no comments on this section.

Section 104.8 Uniform Reporting of Receipts

Section 104.8(a) requires a political committee, if it knows an individual contributor's name has changed since an earlier contribution reported during the calendar year, to note the exact name or address previously used with the first reported contribution from that contributor subsequent to the name changes. A parenthetical is being added to note that an authorized committee is required to provide such information if it knows a contributor's name has changed within the election cycle.

A new parenthetical is being added to paragraph (b) of 11 CFR 104.8 to require authorized committees to aggregate contributions from an individual on an election cycle basis rather than on the calendar year basis.

The Commission received no comments on this section.

Section 104.9 Uniform Reporting of Disbursements

Paragraph (a) of 11 CFR 104.9 is being revised to require authorized committees to report certain identifying information for each person to whom disbursements totaling over $200 are made within the election cycle, rather than within the calendar year, as previously required.

Revised paragraph (b) of 11 CFR 104.9 requires authorized committees to disclose certain identifying information about any recipient to whom an expenditures totaling over $200 are made within the election cycle, rather

[4] While the amendment requires all disbursements including operating expenditures to be aggregated and reported on an election-cycle basis, it does not require that operating expenditures be itemized on an election-cycle basis. Thus, the effect of the amendment is that operating expenditures would be reported on the summary pages on an election-cycle basis and itemized on Schedule B on a calendar-year basis. On March 10, 2000, the Commission submitted to Congress a legislative recommendation that Congress amend the FECA by requiring operating expenditures to be itemized on an election cycle basis rather than on a per calendar year basis. The final rules proceed on the assumption that Congress will pass an amendment to the Act to correct this inconsistency prior to the January 1, 2001, effective date required by Public Law 106–58.

than for the calendar year, as was previously required.

The Commission received no comments on this section.

Definition of Election Cycle

Under 11 CFR 100.3(b), an election cycle begins on the day after the general election for the office or seat that the candidate seeks and ends on the day of the next general election for that seat or office.[5] For example, for many candidates for the House of Representatives, the 2004 election cycle begins the day after the general election in 2002 and ends on the day of the general election in 2004. Please note that the length of the election cycle varies depending on the office sought. The election cycle is two years for candidates for the House of Representatives, six years for Senate candidates and four years for Presidential candidates.

For purposes of the contribution limits of 2 U.S.C. 441a and 11 CFR 110.1 and 110.2, contributions to candidates and their authorized committees are aggregated on per election basis. Contribution aggregation regulations at 11 CFR 110.1 and 110.2 state that post-election contributions can only be made to the extent the recipient political committee has net debts outstanding, and these contributions must be properly designated for the previous election. 11 CFR 110.1(b)(3)(i) and 110.2(b)(3)(i). Those regulations further require that any undesignated post-election contributions be applied to the donor's contribution limit for the next election in which the recipient will be a candidate. In *FEC* v. *Haley*,[6] the Ninth Circuit Court of Appeals upheld the Commission's aggregation regulations at 11 CFR 110.1, ruling that post-election loan guarantees for a loan used to retire general-election debt were contributions subject to the limits and aggregation rules in Part 110 of 11 CFR.[7]

In addition to the proposed rules, the NPRM also offered two alternatives approaches to defining *election cycle*, neither of which was included in the proposed rules.

Alternative 1. The first alternative was to add a new paragraph (c) to 11 CFR 104.1 stating that for reporting purposes only, authorized committees shall begin the "election cycle" on January 1 of the year following the general election for a seat or office and shall end the election cycle on December 31 of the calendar year in which the next general election for that seat or office is held (*e.g.*, January 1, 2003, to December 31, 2004, for House candidates). This approach has the advantage of causing less change to reporting practices and avoiding the need to include election-cycle-to-date figures for two different election cycles in post-general election reports (or year-end reports where no post-general report is filed). While the Commission recognizes that advantage, it is not adopting this alternative because it creates a greater discrepancy in the contribution totals reported for the election cycle and the contribution totals that actually accrue to the election just held. Under this alternative, undesignated contributions received after the general election but before January 1 of the following year are reported in the election cycle to date totals for the general election that was just held, even though these contributions count toward the contribution limits for the next election. Additionally, this approach introduces a definition of election cycle into the regulations that is different than the one in 11 CFR 100.3(b), which relates to determining whether an individual is a candidate. The Commission received no comments on this alternative.

Alternative 2. Under the second alternative approach, for both reporting and contribution limit purposes, authorized committees would begin the election cycle on the twenty-first day after the general election for the seat or office the candidate is seeking (the day after the end of the post-general election reporting period) and end the election cycle on the twentieth day after the next general election for the seat or office the candidate is seeking (the day the post-general reporting period ends for that election). Under this alternative, both 11 CFR 100.3(b) (election cycle definition) and 11 CFR 104.3 (reporting) would need to be amended. In addition, the contribution limit regulations at 11 CFR 110.1 and 110.2 would need to be changed to modify the attribution date of undesignated contributions for a general election from election day to the twentieth day after the election.

Under this approach, the post-general election report covers only one election cycle. Nevertheless, for candidates who do not participate in the general election (and therefore who do not file a post-general election report), the year-end report covers activity occurring both before the twentieth day after the election and after the twentieth day, and thus, spans two election cycles.

The Commission did not adopt Alternative 2 because it believes Congress did not intend to amend the contribution aggregation rules. Section 641 of Public Law 106–58 amended only 2 U.S.C. 434(b), "Contents or Reports." There is no evidence, either on the face of the statute or in its legislative history, indicating Congressional intent to alter the current regulations upheld in *Haley* (see discussion, *supra*) that contributions aggregate as of the date of the election. The Commission has concluded that the legislative intent was simply to change the basis for the contents of reports by authorized committees to provide better disclosure of financial activity from the beginning of the campaign to date. While neither Haley nor the lack of Congressional direction would prohibit the Commission from revising its contribution aggregation rules, the Commission has concluded that it is unnecessary and undesirable to alter those settled rules in this rulemaking. The Commission received no comments on this alternative.

Changes to FEC Forms 3 and 3P

The Commission recognizes that the 1999 amendment to the FECA and the new regulations will necessitate several changes to both the paper and electronic FEC Form 3 (used by House and Senate candidates' authorized committees to report receipts and disbursements) and FEC Form 3P (used by Presidential candidates' authorized committees to report receipts and disbursements). While most of the changes to the forms will consist of renaming headings and redrafting certain instructions, Forms 3 and 3P for the post-general election report (and the year-end report, if no post-general election report was filed) will have to be substantively changed. Section 434(a)(2)(A)(ii) of the FECA and 11 CFR 104.5 require that political committees file post-general election reports covering the period from the 19th day before the general election to the twentieth day after the general election. Thus, the post-general election covers two election cycles. Similarly, two election cycles will be covered in the year-end report for candidates who did not participate in the most recent general election (and therefore did not file a post-general election report). The Commission sought comments as to the simplest and easiest way for political committees to report separately the financial activity for each cycle, given

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[5] Please note that in the case of a runoff election after the general election, the election cycle would end on the day of the runoff election. Advisory Opinions 1993–2 and 1983–16.

[6] 852 F.2d 1111 (1988).

[7] At the time of the *Haley* loan guarantees in 1983, 11 CFR 110.1 stated that properly designated post-primary contributions were allowed only to the extent that the recipient committee had net debts outstanding. AO 1977–24 interpreted these rules to apply also to post-general election contributions. The regulations were clarified in a 1987 rulemaking. *See* Explanation and Justification for Rules on Contributions by persons other than multicandidate committees, 52 FR 761 (January 9, 1987).

that the activity occurred within the time period covered by the post-general election report or year-end report. The Commission received no comments on this issue. The Commission expects to transmit revised forms to Congress later this year.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These final rules will not have a significant economic impact on a substantial number of small entities. The only small entities subject to these regulations are candidates for Federal office and their authorized committees. The rules implement statutory reporting requirements that Congress enacted to reduce inadvertent violations of the contribution limits. Therefore, there will be no significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES

1. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

2. Section 104.3 is amended by revising paragraph (a) introductory text, paragraph (a)(3) introductory text, paragraph (a)(4) introductory text, paragraphs (a)(4)(i), (v) and (vi), paragraph (b) introductory text, paragraph (b)(2) introductory text, paragraphs (b)(4)(i) and (vi), paragraph (c) introductory text, and paragraph (i), and by adding paragraph (k) to read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).

(a) *Reporting of Receipts.* Each report filed under § 104.1 shall disclose the total amount of receipts for the reporting period and for the calendar year (or for the election cycle, in the case of an authorized committee) and shall disclose the information set forth at paragraphs (a)(1) through (a)(4) of this section. The first report filed by a political committee shall also include all amounts received prior to becoming a political committee under § 100.5 of this chapter, even if such amounts were not received during the current reporting period.

* * * * *

(3) *Categories of receipts for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of receipts received during the reporting period and, except for itemized and unitemized breakdowns, during the election cycle in each of the following categories:

* * * * *

(4) *Itemization of receipts for all political committees including authorized and unauthorized committees.* The identification (as defined at § 100.12 of this chapter) of each contributor and the aggregate year-to-date (or aggregate election-cycle-to-date, in the case of an authorized committee) total for such contributor in each of the following categories shall be reported.

(i) Each person, other than any political committee, who makes a contribution to the reporting political committee during the reporting period, whose contribution or contributions aggregate in excess of $200 per calendar year (or per election cycle in the case of an authorized committee), together with the date of receipt and amount of any such contributions, except that the reporting political committee may elect to report such information for contributors of lesser amount(s) on a separate schedule;

* * * * *

(v) Each person who provides a rebate, refund or other offset to operating expenditures to the reporting political committee in an aggregate amount or value in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee), together with the date and amount of any such receipt; and

(vi) Each person who provides any dividend, interest, or other receipt to the reporting political committee in an aggregate value or amount in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee), together with the date and amount of any such receipt.

(b) *Reporting of disbursements.* Each report filed under § 104.1 shall disclose the total amount of all disbursements for the reporting period and for the calendar year (or for the election cycle, in the case of an authorized committees) and shall disclose the information set forth at paragraphs (b)(1) through (b)(4) of this section. The first report filed by a political committee shall also include all amounts disbursed prior to becoming a political committee under § 100.5 of this chapter, even if such amounts were not disbursed during the current reporting period.

* * * * *

(2) *Categories of disbursements for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of disbursements made during the reporting period and, except for itemized and unitemized breakdowns, during the election cycle in each of the following categories:

* * * * *

(4) * * *

(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the election cycle is made by the reporting authorized committee to meet the authorized committee's operating expenses, together with the date, amount and purpose of each expenditure.

* * * * *

(vi) Each person who has received any disbursement(s) not otherwise disclosed under paragraph (b)(4) of this section to whom the aggregate amount or value of such disbursements exceeds $200 within the election cycle, together with the date, amount, and purpose of any such disbursement.

(c) *Summary of contributions and operating expenditures.* Each report filed pursuant to § 104.1 shall disclose for both the reporting period and the calendar year (or the election cycle, in the case of the authorized committee):

* * * * *

(i) *Cumulative reports.* The reports required to be filed under § 104.5 shall be cumulative for the calendar year (or for the election cycle, in the case of an authorized committee) to which they relate, but if there has been no change in a category reported in a previous report during that year (or during that election cycle, in the case of an authorized committee), only the amount thereof need be carried forward.

* * * * *

(k) *Reporting Election Cycle Activity Occurring Prior to January 1, 2001.* The aggregate of each category of receipt listed in paragraph (a)(3) of this section, except those in paragraphs (a)(3)(i)(A) and (B) of this section, and for each category of disbursement listed in paragraph (b)(2) of this section shall include amounts received or disbursed on or after the day after the last general election for the seat or office for which the candidate is running through December 31, 2000.

3. Section 104.7 is amended by revising the introductory text of paragraph (b), paragraph (b)(1) and the first sentence of paragraph (b)(2) to read as follows:

§ 104.7 Best efforts (2 U.S.C. 432(i)).

* * * * *

(b) With regard to reporting the identification as defined at 11 CFR 100.12 of each person whose contribution(s) to the political committee and its affiliated political committees aggregate in excess of $200 in a calendar year (or in an election cycle in the case of an authorized committee) (pursuant to 11 CFR 104.3(a)(4)), the treasurer and the political committee will only be deemed to have exercised best efforts to obtain, maintain and report the required information if:

(1)(i) All written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer, and include an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications.

(A) The following are examples of acceptable statements for unauthorized committees, but are not the only allowable statements: "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year;" and "To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year."

(B) The following are examples of acceptable statements for authorized committees, but are not the only allowable statements: "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in an election cycle;" and "To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per election cycle."

(ii) The request and statement shall appear in a clear and conspicuous manner on any response material included in a solicitation. The request and statement are not clear and conspicuous if they are in small type in comparison to the solicitation and response materials, or if the printing is difficult to read or if the placement is easily overlooked.

(2) For each contribution received aggregating in excess of $200 per calendar year (or per election cycle, in the case of an authorized committee) which lacks required contributor information, such as the contributor's full name, mailing address, occupation or name of employer, the treasurer makes at least one effort after the receipt of the contribution to obtain the missing information. * * *

* * * * *

4. Section 104.8 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 104.8 Uniform reporting of receipts.

(a) A reporting political committee shall disclose the identification of each individual who contributes an amount in excess of $200 to the political committee's federal account(s). This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution. If an individual contributor's name is known to have changed since an earlier contribution reported during the calendar year (or during the election cycle, in the case of an authorized committee), the exact name or address previously used shall be noted with the first reported contribution from that contributor subsequent to the name change.

(b) In each case where a contribution received from an individual in a reporting period is added to previously unitemized contributions from the same individual and the aggregate exceeds $200 in a calendar year (or in an election cycle, in the case of an authorized committee) the reporting political committee shall disclose the identification of such individual along with the date of receipt and amount of any such contribution. * * *

* * * * *

5. Section 104.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 104.9 Uniform reporting of disbursements.

(a) Political committees shall report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee) is made from the reporting political committee's federal account(s), together with the date, amount and purpose of such expenditure, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the expenditure. *See* 11 CFR 104.3(b)(3)(i)(A).

(b) In each case when an expenditure made to a recipient in a reporting period is added to previously unitemized expenditures to the same recipient and the total exceeds $200 for the calendar year (or for the election cycle, in the case of an authorized committee), the reporting political committee shall disclose the recipient's full name and mailing address on the prescribed reporting forms, together with the date, amount and purpose of such expenditure. As used in this section, *purpose* means a brief statement or description as to the reason for the disbursement as defined at 11 CFR 104.3(b)(3)(i)(A).

* * * * *

Dated: July 6, 2000.

Danny L. McDonald,

Vice-Chairman, Federal Election Commission.

[FR Doc. 00–17486 Filed 7–10–00; 8:45 am]

BILLING CODE 6715–01–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: In this Final Rule a Certified Development Company (CDC) will be permitted to apply to have an area of operations that goes beyond its state of incorporation, and beyond a local economic area in an adjacent state, into a contiguous state to its state of incorporation. This amendment includes specific additional membership, loan committee, and board requirements. Also in the Final Rule, for counties with a population of 100,000 or more that have an existing CDC that is adequately serving the county, an application from a new or expanding CDC will be permitted for that same county if the existing CDC has no objection. In addition, the Final Rule allows a CDC to contract out management and staff under specified circumstances. The changes implemented by this Final Rule seek to enhance competition and improve the effectiveness of the CDC program.

DATES: Effective: August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, 202–205–6490.

SUPPLEMENTARY INFORMATION:

1. CDC Area of Operations

The proposed amendments to § 120.802, § 120.810, § 120.822(b), § 120.823(b), § 120.835, and § 120.837 in the Proposed Rule relate to the issue of where a CDC may operate. Public Law 85–699 published August 21, 1958 enacted Title V of the Small Business Investment Act of 1958 ("Act")—Loans to State and Local Development Companies ("Pub. L. 85–699"). In the Proposed Rule, SBA set forth its understanding that Pub. L. 85–699 authorized SBA to assist development companies that are (1) principally composed of and controlled by persons residing or doing business in that community and (2) formed for the purpose of furthering economic development in the community. The Proposed Rule also noted that when the § 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations "formed by local citizens whose primary purpose is to improve *their* community's economy." (Emphasis added. Legislative History, Pub. L. 100–590, p. 22.) Aware that this concept of local citizens working to develop and improve their local economy is a fundamental aspect of SBA's Development Company Loan Program ("504 Program"), SBA attempted in the Proposed Rule to balance this fundamental principle of local economic development with SBA's goal of increasing the availability of 504 lending to small businesses across the country. The Small Business Investment Act, section 504, authorized the private sale of CDC debentures to fund CDC loans. The program is now traditionally referred to as the 504 program.

a. Adequately Served Counties

In the Proposed Rule, SBA proposed to allow an applicant CDC (§ 120.810) or existing CDC (§ 120.835) to apply to operate in a county within its State of incorporation even if that county is currently being "adequately served" (as defined by SBA) by another CDC, if that county has a population of 100,000 or more and only one CDC incorporated in that State includes that county in its Area of Operations. SBA stated in the Proposed Rule that, "this will give small businesses more choices." In this Final Rule, SBA retains the conditions set forth in the Proposed Rule and, for the reasons set forth below, adds the condition that the CDC that includes the county in its Area of Operations submit a statement of no objection.

Several commentors supported competition among CDCs. A typical supporting comment read: "Because we are focused on the end customer (*i.e.*, the citizens of our member communities) we believe he will only be aided by a higher level of competition—whether because it makes us sharper and more innovative, or because there is greater exposure for the 504 program, resulting in more loans made to more borrowers." A few commentors noted that competition in overlapping Areas of Operations has already been successful in their areas: "Competition is good for the 504 Loan Program * * * competition stimulated activity, service to the community and enhancement of the 504 Loan Program."

On the other hand, more than three-quarters of the commentors were opposed to the Proposed Rule for several reasons. Many commentors were concerned that competition in the more densely populated counties of a CDC's Area of Operations would affect the CDC's ability to do projects in more rural counties. One commentor stated: "I am concerned that this proposed regulation would have the opposite effect of that intended. Allowing CDCs to form in counties that are already being adequately serviced would encourage participation in those areas that offer a high probability of success, while leaving the 'Rural,' 'Less-Growth' areas unattended. In fact, an existing CDC may be potentially forced to reduce its focus from the rural areas of its territory, to those areas attractive to a start-up CDC * * *. The National Association of Development Companies (NADCO), the CDC industry trade association, commented that "we are deeply concerned that the Proposed Rule will foster a high level of CDC competition in areas of high small business density, to the detriment of rural areas where it might be difficult to make and service 504 loans."

Another concern expressed by several commentors was that increased competition might burden or reduce a small CDC's cash flow thus hurting its ability to cover its expenses related to 504 loans. One commentor stated: "It takes a population base of several hundred thousand to produce sufficient revenue for a CDC to be self-sustaining. What is being proposed will ultimately weaken existing CDCs and result in cutting services and assistance to (small businesses) as CDCs try to cut expenses due to less revenue." Several commenters stated that many CDCs depend on the cashflow of the 504 loan program to subsidize other local economic activities, such as participation in the microloan program or the provision of a revolving line of credit program. These commentors indicated their beliefs that a CDC approved to expand into an adequately served county would not reinvest in the local community. "Our concern is that another CDC operating in our community would not be reinvesting in our community, but taking the fee income generated and spending it on marketing and salaries instead of the businesses that are in [the county]."

Many commentors used the term "cherry-picking" to describe the effect of allowing other CDCs to compete in the more lucrative markets: "Market forces will lead the larger, more urban CDCs to 'cherry pick' the more lucrative projects from larger companies who require a lower level of service and assistance. Organizations such as ours use the returns from the occasional large debentures to subsidize the higher costs of providing service to small, needier borrowers * * * It would be extremely damaging to the cause of competition in the 504 loan program if the large CDCs were ever able to invade the territory of performing small CDCs. Many of the small rural performing CDCs just barely bring in enough revenue to support our small staffs, and a 'cherry picking' statewide [CDC] would eventually be able to rob many of us of the ability to operate. The result would be to decrease competition rather than an increase."

The comments made it clear to SBA that concerns that competition will hurt a CDC's ability to promote economic development in less densely populated counties should be further considered. The comments indicated that many CDCs subsidize their rural economic development efforts with the servicing fees generated by 504 loans made in the more densely populated counties. The comments also indicated that this subsidization would be frustrated by the loss of revenue caused by increased competition in the more densely populated counties. In addition, CDCs would be inspired to "cherry pick" or seek counties with high small business density to gain more fee income. The result would likely be a general shift of CDC resources and focus on high-density counties at the expense of more rural counties.

SBA remains committed to the concept of expanding local economic development through increased competition in the 504 program. The commentors raised legitimate concerns but did not provide enough evidence or other support for SBA to totally accept their assessment of the negative impact competition would have on CDC operations. However, the negative predictions by the commentors raised

additional issues that require further consideration as SBA seeks to increase competition in the 504 program. For example, it is a reasonable assertion that the drain in resources and possible loss of loan volume caused by competition in counties with high small business density could hinder a CDC's efforts to serve rural counties. The question is whether, and to what degree, this really will happen. SBA believes the best way to respect the concerns of the commentors while remaining committed to increasing competition is to approach increasing competition in two phases. The first phase will be implemented by this Final Rule. By this Rule, SBA will adopt a policy allowing an applicant or expanding CDC to apply to serve a county with a population of 100,000 or more if:

- The county is part of the Area of Operations of only one CDC;
- The county has not become part of another CDC's Area of Operations within the past 24 months;
- The applicant CDC is incorporated in the State where the county is located; and
- The CDC that includes the county in its Area of Operations submits a statement of no objection.

SBA added in this Final Rule the requirement that the CDC already serving the county submit a statement of no objection so that such CDC could oppose competition in the area if such competition would cause a negative impact on the original CDC's economic development efforts. SBA added this requirement because we believe there is merit to the concerns that competition may, in some circumstances, hinder the original CDC's economic development efforts. So, at this time, SBA will give CDCs the opportunity to draw on their knowledge of their markets and operations to assess whether competition will hurt their economic development efforts. It has been SBA's experience that a CDC will not object to the introduction of competition when it will help serve the local community in ways that the existing CDC is not able to do and will not be counterproductive to the CDC's ability to meet its local economic objectives.

The second step that SBA will take to increase competition in the 504 program will be its publication of an Advanced Notice of Proposed Rulemaking ("ANPR") specifically soliciting comments on some of the concerns regarding competition raised in response to the Proposed Rule. This ANPR will be published shortly and will give SBA the opportunity to further consider the issue of competition as well as other 504 program issues.

b. Multi-State Expansions

When Title V of the Small Business Investment Act of 1958—Loans to State and Local Development Companies—was enacted by Public Law 85–699 on August 21, 1958, it defined a Development Company as "an enterprise * * * formed for the purpose of furthering economic development of its community and environs, and with authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations * * * A local development company is a corporation chartered under any applicable State corporation law to operate in a specified area within a State * * * A local development company shall be principally composed of and controlled by persons residing or doing business in the locality * * *" (13 CFR part 108, section 2, as of January 1, 1967).

When the § 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations "formed by local citizens whose primary purpose is to improve their community's economy. They assist in the planned economic growth of the community by promoting and assisting the development of small business concerns in their area." (Legislative History, Pub. L. 100–590, p. 22) It continues, "to qualify for this program, a development company must be chartered in the State where it intends to operate * * *" (*Id.* at 23)).

Since the inception of the 504 Program, no CDC has been certified to operate permanently in more than one State, except for a relatively few circumstances when the CDC's operations crossed state lines, but only to the extent that the area was determined to be a Local Economic Area. Regulations published on August 10, 1982, permitted a CDC to operate within two States if "(i) a State line bisects a city, in which case the 503 company may operate city-wide or (ii) the 503 company has obtained prior written approval to operate within a contiguous economic area, as determined by SBA, which crosses a State line." Since this regulation was published, of the approximately 270 active CDCs, only nine have applied for and been approved by SBA to have their permanent Areas of Operations cross State lines to include a contiguous bi-sected local economic area. Currently, the permanent Area of Operations of all the other CDCs are within their State of incorporation.

There still remain substantial numbers of under-served counties. And, a few CDCs proposed to expand their Areas of Operations beyond their States of incorporation and beyond contiguous bi-sected local economic areas to include some of these under-served counties. To address these issues, and to achieve the goal of stimulating 504 lending activity in underserved areas, SBA proposed to permit out-of-state CDCs (Multi-State CDCs) to apply to cover such underserved areas. At the same time, SBA designed the Proposed Rule to ensure that Multi-State CDCs continue the 504 Program's statutory intent that local citizens responsible for assuring that the program contribute to the local economic development in their communities.

The many comments on this part of the Proposed Rule generally fall into three categories: (1) Those opposed to Multi-State CDCs under any circumstances; (2) those favoring Multi-State CDCs, but critical of the proposed organizational requirements; and (3) those supporting the strict controls SBA proposed on Multi-State CDCs which are designed to continue the emphasis on local involvement and influence in the economic development of each State. Approximately one-quarter of the comments were in the second category with the large majority of the comments closely divided between the first and third categories.

Commentors in the first category did not support the concept of Multi-State CDCs contained in the Proposed Rule. These commentors strongly disagreed with allowing CDCs to cross state lines to serve underserved counties. Representative comments include: "I cannot see how permanent expansion beyond State borders * * * can conceivably result in increased local involvement * * * It seems contra-intuitive to me * * * " and "Creating multi-state CDCs and removing the territorial boundaries may in the short-run bolster the program's production numbers, but ultimately the overall quality and integrity of the program will suffer." Many of these commentors believed that the local citizens helping their local economy principle would be violated. One commentor stated, "* * * the 504 program is grounded in federal legislation which mandates a strong role for local community involvement in the loan making process * * * If non-local and out of state CDCs have the ability to make and process loans, I believe you will lose the closeness and community involvement and you eventually will end up with a production line lending program, which, I believe, is contrary to the program's intent." Other commentors believe that large CDCs would develop and drive many small

CDCs out of business: "* * * the growth of large CDCs will ultimately prove the death knell of smaller CDCs that know their local areas well but do not have skills or capacity to overcome the relationships large CDCs can build with lenders." (Emphasis in the original.) SBA understands the concerns but, at this time, believes that the increased program access for small businesses, that would result from allowing out-of-state CDCs justifies allowing such expansions. However, SBA will closely monitor the effect this rule has on smaller CDCs and will propose additional appropriate regulatory changes, if necessary.

The second group of commentors favored allowing CDCs to cover under-served counties outside of their States of incorporation but believed the proposed conditions were too restrictive. One commentor stated: "Your proposal to restrict the use of funds earned by a CDC to the area in which they were realized is impractical and will only make expansions impossible * * * The funds of a company are budgeted where they are needed to produce the most product and generate income." Most of these comments were centered on the proposed membership and Board requirements. A representative comment is the following: "We suggest * * * the membership requirement be modified to reflect a total membership proportional with the CDC's population served in each of its areas of operations." Another commentor stated that it opposed the requirement for a "CDC to expand its Board of Directors substantially if the CDC is authorized to expand into a limited number of counties in a neighboring state."

SBA seriously considered requiring proportional representation for both CDC membership and Board membership but ultimately reasoned that a Multi-State CDC should meet the same minimum local presence requirements in each State as any other CDC incorporated in that State. The current Board and membership requirements in each State are *minimum* requirements for all CDCs in the State irrespective of the size of their Area of Operations. Thus, adopting a "proportional" standard for Multi-State CDCs would mean that a Multi-State CDC with the minimum number of members would need fewer members in the State to satisfy SBA requirements than a new CDC applying to cover the same area in that same State. To avoid these kinds of outcomes, SBA concluded that a Multi-State CDC should be required to meet the same membership and Board requirements a new CDC would need to meet if it applied to cover the under-served county or counties in the State.

In considering these comments, though, SBA has reconsidered the requirement for equal representation on the Board for each state in which the CDC is approved to operate by SBA. A Multi-State CDC must meet the minimum requirement of having a Board of Directors comprised of at least three of the four membership groups (government organizations responsible for economic development in the Area of Operations and acceptable to SBA; financial institutions that provide commercial long-term fixed asset financing in the Area of Operations; community organizations dedicated to economic development in the Area of Operations; and businesses in the Area of Operations) for each State in which it operates. However, the Final Rule will not require that the Board composition also be equally divided by the number of States in which the Multi-State CDC operates. SBA was persuaded that maintaining equal representation on the Board for each state could be impractical and overly burdensome as Directors' vacancies were created as a result of resignations or other reasons.

Commentors in this group also criticized other restrictions on Multi-State CDCs found in the Proposed Rule. A representative comment was the following: "(The commentor) disagrees with the proposed regulation of not counting Multi-State CDC loan production when SBA is considering either a new CDC certification or an expansion by an existing CDC [incorporated in the state]. In order to prepare for production in a new market, a Multi-State CDC would be required to make a substantial commitment of personnel and capital. Allowing another CDC to be approved while a Multi-State CDC is developing a new territory would serve as a deterrent for expansion of services in under-served areas across state lines." SBA considered these comments and was persuaded that if SBA required the same membership, Board membership, and financial investment that it requires of a CDC incorporated in the state, then the Multi-State CDC should receive the same protection of its area as any CDC incorporated in the State. In the final rule SBA has modified the Proposed Rule to treat Multi-State CDCs the same as other CDCs in regards to counting loans to determine whether an area is adequately served and also to protect the area from expansion by another applicant CDC for a period of twenty-four months.

Commentors in the last category were generally opposed conceptually to Multi-State expansions but also recognized the failure of CDCs incorporated in the States where the under-served counties were located to provide adequate access to the 504 Program in these under-served areas. One commentor stated: "There are a few cases where entire States are substantially under-served by 504. It is my opinion that in these States local, regional and statewide initiatives have failed to invest sufficient resources needed to insure the operation of a successful program. This is not the responsibility of SBA nor is it SBA's fault." While reluctant to accept the concept of Multi-State CDCs, they support the organizational restrictions in the Proposed Rule. A commentor stated that "Overall, I believe the Agency has done an excellent job on the proposed rules for multi-state CDCs, and if anything, did not go far enough." Another commented: "If it's determined that a multi-state CDC is a necessity * * * the safeguards in the Proposed Rule are carefully drawn and we would support them." Another commentor agreed with SBA's requirement that a Multi-State CDC "must abide by the same organizational rules, membership requirements, Board of Directors makeup, and uses of income. A CDC cannot truly serve an area of operations remote from the territory without local representation." Another expressed his concerns as follows: "Our experience regarding multi-state CDCs demonstrates a need for better accountability, which could occur through local memberships, directors and loan review committees."

Another set of comments in this category suggested a modification to the Proposed Regulations by recommending that the under-served counties that the Multi-State CDC could apply for had to be in a state that was contiguous to the Multi-State CDC's State of incorporation. The following are examples of comments that favored the addition of the concept of "contiguous" to the Area of Operations covered by Multi-State CDCs. One stated, "I would strongly encourage you to add 'contiguous' to any application being considered for expansion * * * I think to remove contiguous totally takes our economic development identity, that is unique to the 504 program, and throws it in the trash. Any CDC that applies to cross state lines * * * in a non-contiguous basis, in almost every instance, is not concerned with economic development, they are concerned with money." Another stated, "CDCs need to operate in a contiguous area * * * Each market area

requires a CDC to develop an understanding of the types of businesses, commercial lenders, etc. in that area. If a CDC's area is not contiguous then the CDC will try to standardize their lending process for all loans in all types of lending environments."

SBA was persuaded by the rationale expressed in these comments and has decided to add to the Final Rule the requirement that any Multi-State expansion be into a "contiguous" state in order to further ensure the local focus. The change is also based, in part, on SBA's decision not to require Multi-State CDCs to have an equal number of Board Members in each state in which it operates. As a result of this change, it will now be possible for a Multi-State CDC to have a majority of Board Members from its State of incorporation control the out-of-state activities of the CDC. SBA believes this change makes it more important for SBA to monitor carefully how Multi-State CDC local activities are shaped by local members. Given this concern, SBA reasons that limiting Multi-State CDC expansions to states contiguous to its State of incorporation will serve several goals. First, the temporary CDC expansions discussed in the Proposed Rule that engendered the Multi-State CDC concept were all into contiguous states to the expanding CDC's State of incorporation. Second, it will limit the number of expansions, thus making it more likely that SBA will be able to carefully monitor all Multi-State CDC expansions. Third, the closer physical proximity of the home office to the out-of-state operations will make it more likely that members will have some familiarity with the markets in each state covered by the CDC and will participate in scheduled meetings, thus facilitating the development of local strategies appropriate for each community the CDC covers. This will help ensure that corporate policy does not favor the CDC's Area of Operations in its State of incorporation over the Multi-State areas in the contiguous states. Thus, when the Executive Director or full Board vote on matters, their understanding of all markets the CDC covers will be stronger as a result.

However, in order to give more specialized consideration to the issue of whether CDCs should be allowed to expand into non-contiguous states, SBA will include questions related to this topic in the ANPR that it intends to publish shortly. SBA also intends to use the ANPR process to solicit opinions regarding whether CDCs that are approved to operate across state lines as Multi-State CDCs should then also be eligible to expand into contiguous local economic development areas under the regulations regarding those expansions.

c. Other

SBA initially proposed to limit the eligibility of counties to be included in an applicant CDC's or expanding CDC's Area of Operations to counties that had not become part of an Area of Operations of another CDC within the last 24 months. This proposed regulation was designed by SBA to permit a CDC to benefit from the upfront costs of establishing itself in a county. All comments were in favor of the new restriction. However, a few of the comments suggested that the timeframe of the restriction should be increased to 36 months. A representative comment states: "After a new or expanding CDC is allowed to enter a county, the proposed regulation provides that another application will not be approved for 2 years. In our opinion, a CDC given a new county should be allowed 3 years before another CDC is allowed to operate in the county. The proposed 2 year period is insufficient. Generally, it takes 18 to 24 months just to establish the 504 program in a new market." SBA considered these comments but was not persuaded that the 24-month timeframe, which did not exist as a regulation previously, is not adequate.

SBA received several comments on SBA's Proposed Regulation that deleted the timeframe for the AA/FA to make his or her final decision on applications for a new CDC or an existing CDC to expand its Area of Operations requesting that the 504 Program retain a specific for such decisions. SBA understands the desire to have an identified timeframe and intends to use reasonable efforts to issue timely decisions. However, SBA anticipates that the Final Rule will significantly increase the volume and complexity of the applications and may involve many new policy considerations. Given these factors and SBA's limited staff, SBA believes that establishing a specific timeframe would not be feasible or desirable.

2. CDC Organization and Operational Requirements

The proposed amendments to § 120.820, § 120.822, § 120.823, § 120.824, and § 120.825 in the Proposed Rule relate to CDC organization and operational requirements. SBA received many comments and suggestions on the proposed changes covering CDC membership, Boards of Directors, and professional management and staff.

In this Final Rule SBA adopts the policies concerning a CDC's Board of Directors as set forth in the Proposed Rule, with one modification. In light of the comments received on the Proposed Rule and several other factors, as discussed below, SBA has decided to amend the Proposed Rule to allow a CDC Manager to serve on its Board of Directors.

In the Proposed Rule, SBA prohibited all CDC staff, including the CDC Manager, from serving on the CDC's Board. SBA proposed this because we were concerned about the apparent possible loss of Board objectivity and independence if a Board were comprised of a number of CDC employees. SBA was concerned that a Board comprised of such members would lack the detached objectivity necessary to evaluate properly the performance of the CDC. However, as addressed below, SBA has amended the Final Rule to allow the CDC Manager, as the only CDC staff member, to participate as a Board Member. SBA believes that this approach will allow us to account for the concerns expressed by commentors while not impacting a Board's ability to operate independently.

In response to the Proposed Rule, SBA received several comments supporting the prohibition against CDC staff and management serving on its Board. However, more than two-thirds of the comments indicated that requiring CDCs to remove CDC Managers from their Boards would disrupt unnecessarily CDC operations. Commenters stated that CDC Managers typically manage the delivery of many small business assistance programs, including the 504 loan program, making it impractical, and therefore disruptive, to prohibit a CDC Manager from serving on a Board which oversees the full compliment of a CDC's economic development programs. SBA is persuaded by these comments and now better understands how disruptive it could be to prohibit a CDC Manager from serving on the CDC's Board.

In addition, the comments suggested that allowing only one individual employed by the CDC, the CDC Manager, to serve on the Board would not affect a Board's objectivity and independence. SBA now agrees with this position. Currently, for each Board vote, SBA regulations require a quorum of 5 Directors. If only one of those Directors is an employee of the CDC, then it is unlikely that a Board's objectivity and independence would be compromised. The authority of all the other Directors to vote on, and their responsibility to monitor, CDC

operations will help assure that each Board decision is independent and objective.

SBA also notes that there are other protections in place that will help assure independent action by the Board even when a CDC Manager serves on it. First, each Board Member has a general fiduciary duty of care and good faith to the CDC. This duty applies to the CDC Manager if the Manager sits on the Board. Secondly, with the Final Rule SBA requires that each Board have a member, other than the CDC Manager, who has commercial loan experience. This will assure that the Directors who are not employees of the CDC will have the requisite expertise to objectively and independently evaluate loan decisions. Thirdly, with this Final Rule SBA prohibits a Board Member from being a contractor with the CDC. SBA has encountered situations where CDC Managers who serve as Directors have recommended that the CDC contract with them for certain services. SBA believes that such a recommendation could impact a Board's objectivity and independence. Therefore, when the CDC Manager is a contractor, the manager will not be permitted to serve on the CDC's Board.

In light of all of the above, in this Final Rule, SBA has decided to uphold the prohibition against CDC staff serving as Board Members, but has decided to permit the CDC Manager to serve on the Board, provided that the CDC Manager is not a contractor, or an associate of a contractor, of the CDC. SBA believes that this approach will allow CDCs to operate most efficiently and appropriately to manage the delivery of all of the CDC's economic assistance programs. In addition, SBA believes that having only one member of the Board employed by the CDC will not adversely impact the Board's objectivity and independence. Moreover, the other protections contained in the Final Rule (*e.g.*, the prohibition against contractors serving as Board Members) and the general fiduciary duties of Board Members will further protect the objectivity and independence of the Board.

As a result of some comments, SBA is clarifying the Proposed Rule regarding a CDC's Loan Committees. The Proposed Rule established requirements for CDC Loan Committees to ensure that those CDCs that operated with Loan Committees were also in compliance with the current regulations that require a vote by a quorum of the CDC's Board on every 504 loan approval or servicing action. Some comments indicated confusion as to what was meant by a Loan Committee. One commentor stated that "We have a group of 30 Members of our Board of Directors that meet semi-annually. [Eleven] of those Board Members then meet as needed (once or twice a month) to approve loans and take servicing and collection actions, etc. These Loan Committee Members are elected by the full Board and are made up of the four required representative groups." What this commentor describes meets the current regulatory requirements for CDC Board loan approval and servicing actions. In the Proposed Rule, SBA intended to deal only with Loan Committees composed of non-Board Members whose actions must be ratified by a quorum of the CDC's Board in order to comply with the current regulations.

A few comments expressed concerns that the proposed required composition of the Loan Committee would be redundant to the requirements of the Board membership. One commentor stated that he did not "understand the need for the Board to ratify the actions of the Loan Committee if the Loan Committee structure meets the make-up requirements of the 3 groups, has a quorum of at least 5, (and) has a lender at the meeting * * *" SBA was persuaded by the comments of the need to clarify the definition of Loan Committee by adding "non-Board Members" to the definition in the Final Rule. Since the Board must ratify the decisions of the Loan Committee, SBA agrees that some of the requirements in the Proposed Rule may be eliminated. The final rule eliminates the requirement that the Loan Committee members represent three of the four membership groups. SBA believes that regulations governing Loan Committees are especially important for Multi-State CDCs because such regulations help ensure local involvement with CDC loan-making decisions. Since the requirements for the Board of Directors for Multi-State CDCs have been modified in the Final Rule, the role of Loan Committees in each State for a Multi-State CDC will have increased importance to assure the local influence over 504 loan decisions and to minimize concerns about the Multi-State CDC concept expressed.

In the Proposed Rule, SBA clarified under what circumstances a CDC may contract out its management and staffing functions. Some of the comments received indicated confusion regarding what was meant by contracts. The opening paragraph of the Proposed Rule states: "CDCs may obtain, under written contract, marketing, packaging, processing, closing, or liquidation services provided by qualified individuals and entities who live or do business in the CDC's Area of Operations." This explanation was apparently not clear because a few commentors raised concerns about the requirement that SBA approve contracts entered into by a CDC for space, equipment, etc. One commentor stated: "This type of micro-management is neither necessary nor within the spirit of SBA oversight." SBA agrees that this would indeed be micro-managing. The Final Rule adds language to clarify that contracts for other than staffing or management do not have to be reviewed and approved by SBA. In the Final Rule, SBA also is adding the word "servicing" since that was inadvertently omitted in the list of staff functions that may be contracted out. In the Preamble to the Proposed Rule, SBA stated that "No contractor or Associate of a contractor may be a voting or non-voting member of the CDC's Board or Loan Committee." However, SBA also inadvertently omitted the phrase "or non-voting" from § 120.824(e) of the Proposed Rule. SBA has corrected this omission by adding the phrase "or non-voting" to § 120.824(f) of this Final Rule.

Many commentors were in favor of the Proposed Rule regarding a CDC's staff requirements. One commentor states, "The proposed regulation gives further emphasis on full-time CDC management and on the manager being an employee, not a contractor. We heartily endorse this amendment and look forward to the enforcement of this regulation in the field." The following comment is representative of several CDCs' concerns about contracting: "I believe it is very important that the CDC become independent of any affiliate * * * providing financial and management support as soon as deemed economically feasible by SBA upon its contract review as required every two years. This would avoid the possibility of the affiliate * * * rolling up its fee charges when the CDC starts to produce an income beyond the cost of the current contract. This could seriously inhibit the growth of the CDC and its services provided. I know this has happened in the past and is still (occurring)."

Several commentors were in support of the Proposed Rule with a modification. A typical comment follows: "Our organization contracts with a local, one county, non-profit, economic development corporation. Because they have four employees, they can easily obtain health insurance, etc. for employees. We do not believe insurance companies will provide health insurance for a company with one employee. If they do, then the costs for the insurance will be higher."

Another commentor is more specific: "The staff [of the non-profit affiliate] is required to maintain individual daily logs, in hours, for each revenue center (SBA, EDA, USDA, and Indirect) that is being benefited to prevent overcharging any loan program. One of EDA's audit contentions was their funds supplemented the SBA 504 Loan Program. Subsequently, each program has its own balance sheet and operating statement and pays its fair share of the cost of the lending organization. Compliance is assured by an annual certified audit and agency review * * * We respond to the loan requests without regard for the specific loan program."

SBA is persuaded by these comments and has modified the Final Rule to eliminate the requirement that the non-profit affiliate that is contributing staff to the CDC must be financially subsidizing the CDC's operations. SBA was originally concerned that the non-profit affiliate could overcharge the CDC for the contract staff. SBA is persuaded by the comments that SBA's review of such contracts will minimize such risk. SBA notes that, in its experience, non-profit affiliates have no history of overcharging CDCs for staff. SBA reasons that non-profit affiliates have less incentive to overcharge than profit-making entities which occasionally have been found by SBA to charge staff costs that may be inappropriate. Finally, SBA's current policy already requires SBA to pre-approve all CDC contracts for staff and management as well as review the contracts annually. At this time, SBA believes its continued review that its oversight responsibility make of staff and management contracts is appropriate to minimize the possibility of abuse. We intend, however, to further address this issue in the Agency's ANPR to be published soon.

Some of the comments were concerned with SBA's role in pre-approving and reviewing all management and staff contracts. SBA considered these comments but did not modify the Proposed Rule regarding SBA oversight responsibilities. SBA is the regulatory agency for CDCs and, as such, is responsible for overseeing and reviewing many aspects of a CDC's operations. When a CDC contracts out its staff and management requirements, SBA must review such contracts to satisfy its CDC oversight responsibilities. Otherwise, SBA would fail in its responsibility to review how a CDC is satisfying its most fundamental responsibilities to borrowers as required by SBA regulations.

Although, as mentioned previously, several commentors, were strongly in favor of contracts having a limited term, other commentors were concerned that the proposed restrictions would increase the cost of contracted services as well as limit the choice of contractors. A representative comment was the following: "The time constraint—2 years—being the maximum length of a contract is far too short of a period of time. It is frequently normal and customary business practice to negotiate contract for services that exceed two years. We would urge SBA to avoid needless contract length regulation that could lead to higher costs and lower quality contract services for CDCs." SBA considered these comments and has modified the Proposed Rule to remove the time constraint initially proposed. SBA believes that other requirements in the Final Rule, such as the requirement that SBA review the contracts annually and the requirement that the contract clearly identify procedures satisfactory to SBA which permit the CDC to terminate the contract prior to its expiration date, are sufficient to monitor contractual relationships. SBA will continue to review the matter and intends to re-address this issue in the ANPR.

A few commentors wanted to continue to contract with for-profit affiliates that receive income from the CDC that exceeds the fees for actual services performed. SBA considered these comments but was not persuaded that the benefit to a CDC from such arrangements outweigh concerns about shifting 504 income to other entities. As a commentor that was concerned about the possible impact of aggressive contracting out explained: "There are very profound factors which drive generally for-profit packagers and similar service providers to attempt, if you will, to take control of CDCs * * * the income potential is enormous in such a takeover, and SBA very properly guards against that * * * I would suggest that on this issue, fees for * * * services be limited to fees for services actually performed, for example hourly services. And that no rights to * * * income be permitted beyond the contracting term * * * The purpose * * * is to provide self sufficiency, the ability of the CDC to stand on its two feet. It's very easy in these relationships for the financial strength of the CDC to be drained in such a way that would make it, for all purposes, perpetually dependent on our contracting relationship." These comments mirror SBA's concerns. SBA believes that its Final Rule strikes an appropriate balance by continuing to allow CDCs to contract out for some services, when such strategy is efficient and cost-effective while assuring that such contracting out is appropriately monitored by SBA. SBA wants to ensure that CDCs are given every opportunity to become independent and self-sufficient.

As indicated throughout this preamble, working with the CDC industry and its trade association, SBA intends to continue its consideration of a number of issues affecting CDC program operations. In addition to the issues already cited, in the ANPR that the Agency intends to publish shortly, SBA will seek comments regarding whether and under what circumstances CDCs should be required to engage in or support economic development activities other than the 504 program; whether and under what circumstances CDCs should be allowed to participate in profit-making activities; and whether SBA should amend the existing standard for determining that an area is adequately served by the 504 program, among others.

3. A Section by Section Description of the Changes to the Proposed Rule

Section 120.802 Definitions. The definition of Multi-State CDC was modified to limit the States into which a CDC can apply to operate in as a Multi-State CDC to those States contiguous to the applicant CDC's State of incorporation.

Section 120.810 Applications for Certification as a CDC. The Final Rule modifies subparagraph (a) to reflect SBA's decision, based on the comments received, to allow a CDC to expand its Area of Operations into a county with a population of 100,000 or more that is already adequately served by only one existing CDC only when that CDC does not oppose the application. Also, subparagraph (a) was modified to allow loans made by a Multi-State CDC to be used when determining if a county is adequately served. Finally, subparagraph (a) was modified to prohibit applications to cover a county if the county has become part of a Multi-State CDC's Area of Operations within the last 24 months. This gives any CDC 24 months to fully establish its operations in a new county before another CDC can apply to operate in it. This change was made so that a Multi-State CDC's out-of-state operations would not be treated differently from the local operations of any other CDC. In the Proposed Rule, the 24-month grace period only applied when the county was part of a CDC's Area of Operations within its State of incorporation.

Section 120.820 CDC non-profit status. No changes from the Proposed

Rule. The requirement that the non-profit corporation be in good standing refers to its being in good standing with the State in which it is incorporated.

Section 120.822 CDC Membership. No changes from Proposed Rule.

Section 120.823 CDC Board of Directors. The Final Rule modifies the Proposed Rule to permit the CDC Manager to be a member of the CDC's Board of Directors, but specifies that the requirement that "one Board Member with commercial loan experience" be satisfied by a Board Member other than the CDC manager. The Final Rule continues to prohibit other CDC staff members from being on the Board of Directors. The Proposed Rule also was reworded to require that a Multi-State CDC meet the Board representation requirements for each State, rather than requiring it to have separate Boards for each State or to have proportional Board representation as discussed above.

In addition, the Final Rule removes the requirement that Loan Committee members represent three of the four membership groups. This change was made because the Board already has representation from at least three of the four membership groups and a quorum of Board Members must approve, through a Board resolution (SBA Form 1528), its CDC's application for SBA's guarantee of each Debenture the CDC issues to fund one of its 504 loans prior to the sale of that Debenture. Requiring Loan Committee members to live or work in the State where the project they are voting on is located assures that local citizens will be part of the approval process for each loan made in their community. The Final Rule clarifies that this regulation only applies to a Loan Committee comprised of non-Board Members. The phrase "* * * no appearance of a conflict of interest" is changed to "no actual or apparent conflict of interest" throughout to emphasize the fact that actual conflicts of interest are prohibited and not just apparent conflicts. The Final Rule also clarifies that Multi-State CDCs are required to have Loan Committees in each State in which the Multi-State CDC operates. As stated above, this will assure local citizen participation in the loan approval process for each loan made in their community.

Section 120.824 Professional management and staff. The Final Rule corrects a technical error and adds "servicing" back into the list of services a CDC may obtain under contract. It also splits subparagraph (a) into two sections ((a)(1) and (a)(2)) for ease of reading. The Final Rule removes the phrase "that is financially subsidizing the CDC's operations" from 120.824(a) thus removing the condition that a non-profit affiliate of the CDC financially subsidize it before the CDC can apply for the waiver set forth in the section. Paragraphs (c) through (e) were expanded to (c) through (f) and were broken down into smaller paragraphs and subparagraphs for ease of reading. The phrase "or non-voting" was added to (f).

Section 120.825 Financial ability to operate. No change from the Proposed Rule.

Section 120.835 Application to expand an Area of Operations. The Final Rule reorders the section so that requests from CDCs to expand into counties within their State of incorporation or into a Local Economic Area are covered in section 120.835(a), requests from CDCs to expand into Multi-State Areas are covered in Section 120.835(b), and the general requirements for both are covered in 120.835(c).

The Final Rule modifies the Proposed Rule to reflect SBA's decision, based on the comments it received, to accept a CDC's application for expansion into a county with a population of 100,000 or more that is already being adequately served by only one existing CDC only if the original CDC does not oppose the application. The Proposed Rule was modified to allow loans made by a Multi-State CDC to be used when determining if a county is adequately served. The Proposed Rule was modified to prohibit CDC applications for a county if the county has become part of a Multi-State's Area of Operations within the last 24 months. (See discussion of changes to the Proposed Rule pertaining to § 120.810 above.)

The Final Rule removes the requirement for equal representation of each State on the Boards of Multi-State CDCs because SBA believes meeting the minimum Board requirements for each State is enough to assure proper local participation.

Section 120.837 SBA decision on application for a new CDC or for an existing CDC to expand Area of Operations. The Final Rule removes the parentheses from around the list of SBA programs conferring some special status, and changes "based solely on its activity" to "based solely on its activity and performance" to clarify the concept. The Final Rule also clarifies that any special status that a CDC's has earned such as ALP or PCLP only applies in the State or States in which that status was earned.

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Chapter 35)

The Office of Management and Budget reviewed this rule as a "significant" regulatory action under Executive Order 12866.

SBA has determined that this Final Rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Currently, out of approximately 24 million small businesses in the United States, about 4,000 receive 504 loans annually. As described in the preamble, through this regulation, SBA hopes to increase the number of 504 loans made to small businesses. Even if SBA were to assume a generous result of a 20 percent increase in loans, it would only result in an annual increase of 800 loans per year. SBA does not consider this a significant impact on a substantial number of small entities. Other aspects of this rule clarify the management and structural requirements for CDCs. These aspects would have no economic impact on small entities, as they merely alter CDC requirements.

SBA has determined that this Final Rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

For purposes of Executive Order 12988, SBA certifies that this Final Rule is drafted, to the extent practicable, to accord with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this Final Rule has no federalism implications.

List of Subjects in 13 CFR Part 120

Loan Programs—business, small business.

For the reasons set forth above, SBA amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634 (b)(6), 636(a) and (h), 696(3), and 697(a)(2).

2. Amend § 120.802 to revise the definition of Area of Operations and add definitions of Local Economic Area and Multi-State CDC in alphabetical order to read as follows:

§ 120.802 Definitions.

* * * * *

Area of Operations is the geographic area where SBA has approved a CDC's request to provide 504 program services to small businesses on a permanent basis.

* * * * *

Local Economic Area is an area, as determined by SBA, that is in a State other than the State in which an existing CDC (or an applicant applying to become a CDC) is incorporated, shares a border with the CDC's existing Area of Operations (or applicant's proposed Area of Operations) in its State of incorporation, and is a part of a local trade area that is contiguous to the CDC's Area of Operations (or applicant's proposed Area of Operations) within its State of incorporation. Examples of a local trade area would be a city that is bisected by a State line or a metropolitan statistical area that is bisected by a State line.

Multi-State CDC is a CDC that is incorporated in one State and is authorized by SBA to operate as a CDC in a State contiguous to its State of incorporation beyond any contiguous Local Economic Areas.

* * * * *

3. Revise § 120.810 to read as follows:

§ 120.810 Applications for certification as a CDC.

Applicants for certification as a CDC must apply to the SBA District Office serving the area in which the applicant has or proposes to locate its headquarters.

(a) An SBA District Office may accept an application for a county only if:

(1) There is no CDC that includes the county in its Area of Operations;

(2) Any CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the 24 months prior to SBA receiving a complete application from the applicant; and the county has not become part of another CDC's Area of Operations within the prior 24 months; or

(3) The county is part of the Area of Operations of only one CDC; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the prior 24 months of another CDC; the applicant is incorporated in the State where the county is located; and the CDC that includes the county in its Area of Operations submits a statement of no objection to the application.

(b) An applicant whose application has been accepted must then demonstrate that it satisfies the certification and operating criteria in §§ 120.820 through 120.829 and the need for 504 services in the Area Of Operations (if there is already a CDC in the Area of Operations, the applicant must justify the need for another and present a plan to avoid duplication or overlap). Applications must also include an operating budget approved by the applicant's Board of Directors, and a plan to meet CDC operating requirements (without specializing in a particular industry). An applicant's proposed Area of Operations may include Local Economic Areas. An applicant may not apply to cover an area as a Multi-State CDC. The AA/FA shall make the certification decision.

4. Revise § 120.820 to read as follows:

§ 120.820 CDC non-profit status.

A CDC must be a non-profit corporation in good standing. (For-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications.) An SBIC may not become a CDC.

5. Revise § 120.822 to read as follows:

§ 120.822 CDC membership.

(a) A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). The CDC membership must meet annually. No person or entity may own or control more than 10 percent of the CDC's voting membership (or stock). Members must be representative of and provide evidence of active support in the Area of Operations. Members must be from each of the following groups:

(1) Government organizations responsible for economic development in the Area of Operations and acceptable to SBA;

(2) Financial institutions that provide commercial long term fixed asset financing in the Area of Operations;

(3) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, or universities; and

(4) Businesses in the Area of Operations.

(b) A CDC that is incorporated in one State and is operating as a Multi-State CDC in another State must meet the membership requirements for each State.

6. Revise § 120.823 to read as follows:

§ 120.823 CDC Board of Directors.

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups. No single group shall control. No person who is a member of a CDC's staff may be a voting member of the Board except for the CDC manager. The Board Members must be responsible officials of the organizations they represent and at least one member other than the CDC manager must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least 5 Directors authorized to vote. When the Board votes on SBA loan approval or servicing actions, at least one Board Member with commercial loan experience acceptable to SBA, other than the CDC manager, must be present and vote. There must be no actual or apparent conflict of interest with respect to any actions of the Board.

(a) The Board may establish a Loan Committee of non-Board Members that reports to the Board. Loan Committee members must include at least one member with commercial lending experience acceptable to SBA. All members of the Loan Committee must live or work in the Area of Operations of the State where the 504 project they are voting on is located unless the project falls under one of the exceptions listed in Sec. 120.839, Case-by-case extensions. No CDC staff may serve on a Loan Committee. A quorum must have at least five committee members authorized to vote. The CDC's Board must ratify the actions of any Loan Committee. There must be no actual or apparent conflict of interest with respect to any actions of the Loan Committee.

(b) If the CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must meet the Board requirements for each State and must have a Loan Committee for each State.

7. Revise § 120.824 to read as follows:

§ 120.824 Professional management and staff.

A CDC must have full-time professional management, including an Executive Director (or the equivalent) managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process loan applications, close loans, service, and, if authorized by SBA, liquidate the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations. CDCs may obtain, under written contract, marketing, packaging, processing, closing, servicing or liquidation services provided by qualified individuals and entities who live or do business in the CDC's Area of Operations under the following circumstances:

(a) The CDC has at least one salaried professional employee that is employed

directly (not contracted) full-time to manage the CDC. A CDC may petition SBA to waive the requirement of at least one full-time manager if:

(1) The CDC is rural and has insufficient loan volume to justify its own management, and another CDC located in the same general area will provide the management; or

(2) The management of a CDC is to be contributed by a non-profit affiliate of the CDC that has the economic development of the CDC's Area of Operations as one of its principal activities. In the latter case, the management contributed by the affiliate may work on and operate other economic development programs of the affiliate, but must be available to 504 customers during regular business hours.

(b) SBA must pre-approve contracts the CDC makes for managing, marketing, packaging, processing, closing, servicing, or liquidation functions. (CDCs may contract for legal and accounting services without SBA approval, except for legal services in connection with loan liquidation or litigation.)

(c) Contracts must clearly identify terms and conditions satisfactory to SBA that permit the CDC to terminate the contract prior to its expiration date on a reasonable basis.

(d) The CDC must provide copies of these contracts to SBA for review annually.

(e) If a CDC's Board believes that it is in the best interest of the CDC to contract for a management, marketing, packaging, processing, closing, servicing or liquidation function, the CDC's Board must explain its reasoning to SBA. The CDC's Board must demonstrate to SBA that:

(1) The compensation under the contract is only from the CDC, reasonable and customary for similar services in the Area of Operations, and is only for actual services performed;

(2) The full term of the contract (including options) is reasonable; and

(3) The contract does not evidence any actual or apparent conflict of interest or self-dealing on the part of any of the CDC's officers, management, and staff, including members of the Board and any Loan Committee.

(f) No contractor (under this section) or Associate of a contractor may be a voting or non-voting member of the CDC's Board.

8. Revise § 120.825 to read as follows:

§ 120.825 Financial ability to operate.

A CDC must be able to sustain its operations continuously, with reliable sources of funds (such as income from services rendered and contributions from government or other sponsors). Any funds generated from 503 and 504 loan activity by a CDC remaining after payment of staff and overhead expenses must be retained by the CDC as a reserve for future operations or for investment in other local economic development activity in its Area of Operations. If a CDC is operating as a Multi-State CDC, it must maintain a separate accounting for each State of all 504 fee income and expenses and provide, upon SBA's request, evidence that the funds resulting from its Multi-State CDC operations are being invested in economic development activities in each State in which they were generated.

9. Revise § 120.835 to read as follows:

§ 120.835 Application to expand an Area of Operations.

An existing, active CDC applying to expand its Area of Operations must be operating in conformance with all existing SBA regulations, policies, and performance benchmarks and be well qualified to serve the proposed area. A CDC seeking to expand its Area of Operations must apply in writing to the SBA District Office where the CDC is headquartered, unless it is applying to be a Multi-State CDC. In that case, the CDC must apply to the SBA District Office that services the area where the Multi-State CDC intends to locate its principal office for that State.

(a) An SBA District Office may accept a CDC's application to expand its Area of Operations into a county within its State of incorporation, or in a Local Economic Area only if:

(1) There is no CDC that includes the county in its Area of Operations; or

(2) Any CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the 24 months prior to SBA receiving a complete application from the applicant CDC; and the county has not become part of an Area of Operations of another CDC within the prior 24 months; or

(3) The county is part of the Area of Operations of only one CDC; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the prior 24 months of another CDC; the applicant is incorporated in the State where the county is located; and the CDC that includes the county in its Area of Operations submits a statement of no objection to the application.

(b) An SBA District Office may accept a CDC's application to expand and service an area as a Multi-State CDC only if:

(1) There is no CDC that includes the county in its Area of Operations, or the CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the previous 24 months prior to SBA receiving a complete application from the applicant CDC; and the county has not become part of an Area of Operations of another CDC within the last 24 months; and

(2) The State it seeks to expand into is contiguous to the State of the CDC's incorporation; and

(3) The requirements in Section 120.822, Membership, are separately met for the Area of Operations within the CDC's State of incorporation and for each State in which it operates or seeks to operate as a Multi-State CDC; and

(4) The requirements in Section 120.823, Board of Directors, are separately met for the State of incorporation and each additional State in which it operates or seeks to operate as a Multi-State CDC; and

(5) The CDC has a Loan committee meeting the requirements of § 120.823(b).

(c) An applicant whose application for expansion has been accepted must demonstrate to the satisfaction of SBA that it satisfies all of the certification and operating criteria in §§ 120.820 through 120.829. It must demonstrate that it has the ability to provide full service to small businesses in the requested area including processing, closing, servicing, and, if authorized, liquidating 504 loans. It must also demonstrate the need for 504 services in the Area of Operations and present a plan for servicing the area. If there is already one or more CDCs in the requested Area of Operations, the applicant must justify the need for another.

10. Revise § 120.837 to read as follows:

§ 120.837 SBA decision on application for a new CDC or for an existing CDC to expand Area of Operations.

The processing District Office must solicit the comments of any other District Office in which the CDC operates or proposes to operate. The processing District Office must determine that the CDC is in compliance with SBA's regulations, policies, and performance benchmarks, including pre-approval and annual review by SBA of any management or staff contracts, and the timely submission of all annual reports. In making its recommendation on the application, the District Office

may consider any information presented to it regarding the requesting CDC, the existing CDC, or CDCs that may be affected by the application, and the proposed Area of Operations.

(a) The SBA District office will submit the application, recommendation, and supporting materials within 60 days of the receipt of a complete application from the CDC to the AA/FA, who will make the final decision. The AA/FA may consider any information submitted or available related to the applicant and the application.

(b) If a CDC is approved to operate as a Multi-State CDC, any unilateral authority that a CDC has in its State of incorporation under any SBA program, including Accredited Lender's Program (ALP), Premier Certified Lenders Program (PCLP), or Expedited Closing Process (Priority CDC), does not carry over into a State in which it is approved to operate as a Multi-State CDC. The CDC must earn the status in each State based solely on its activity and performance in that State.

Dated: June 28, 2000.

Aida Alvarez,

Administrator.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Ch. I

[T.D. 00–44]

Country of Origin Marking Rules for Textiles and Textile Products Advanced in Value, Improved in Condition, or Assembled Abroad

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This notice advises the public that Customs will no longer apply 19 CFR 12.130(c) for purposes of country of origin marking of textiles and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States (HTSUS), does not apply for country of origin marking purposes.

EFFECTIVE DATE: October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1254).

SUPPLEMENTARY INFORMATION:

Background

In T.D. 85–38, 50 FR 8710 (March 5, 1985), Customs adopted as a final rule an interim amendment to the Customs Regulations, consisting of the addition of a new section 12.130 (19 CFR 12.130) to establish criteria to be used in determining the country of origin of imported textiles and textile products for purposes of multilateral and bilateral textile agreements entered into by the United States pursuant to section 204, Agricultural Act of 1956, as amended. In T.D. 85–38, Customs stated that section 12.130 is applicable to merchandise for all purposes, including duty and marking. A similar statement was made in T.D. 90–17, 55 FR 7303 (March 1, 1990).

Paragraph (c)(1) of section 12.130 provides in part as follows:

> * * * In order to have * * * a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, may not, upon its return to the U.S., be considered a product of the U.S.

Paragraph (c)(2) of section 12.130 accords essentially the same treatment to products of insular possessions.

Chapter 98, Subchapter II, U.S. Note 2(a), HTSUS, (Note 2(a)), provides in pertinent part as follows:

> * * * Any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article.

Subsequently, in connection with the development of the final NAFTA Marking Rules, Customs concluded that Note 2(a) should not apply for general country of origin purposes, including marking. 60 FR 22312, 22318 (May 5, 1995). Accordingly, in order to clarify the applicability of this position for marking purposes, on June 15, 1998, Customs published a notice of proposed interpretation (hereinafter "proposed interpretation") in the **Federal Register** (63 FR 32697) to the effect that section 12.130(c) of the Customs Regulations should not control for purposes of determining the country of origin marking of textile and textile products, and that Note 2(a) does not apply for country of origin marking purposes. The notice solicited public comments on the proposal, and the public comment period was extended to December 18, 1998.

Discussion of Comments

A total of 7 entities submitted comments in response to the notice. Although all of the commenters were generally supportive of the proposed interpretation, two were opposed to the proposal as it pertains to textiles whose origin is determined by where the fabric is formed. The specific points made by the commenters are discussed below.

Comment: Several comments were received on particular operations that should or should not be allowed abroad in order for a U.S.-origin textile or textile product to remain of U.S. origin. One commenter strongly supports the proposed interpretation since minor operations performed on U.S. garments abroad should not force a change in origin solely because of 19 CFR 12.130(c). This commenter stated that imported articles that undergo a similar process in the United States do not undergo a change in origin in the United States. Another commenter supports the proposed interpretation as it would permit apparel produced in the United States that is exported for minor finishing operations such as silk screening, embroidery, stone washing, etc., to better compete against foreign competition.

Another commenter states that textiles and textile products made in the United States and sent abroad to be advanced in value or improved in condition should be considered products of the United States for marking purposes provided they: (a) "Do not undergo a change of tariff heading (sic) at the eight digit level; (b) do not otherwise undergo a substantial transformation; and (c) undergo no assembly operation while abroad." The commenter states that if decorative components such as epaulets, patches, flaps, etc. are added to a U.S.-origin article while abroad, the article should still be able to be marked as a product of the United States. Other foreign operations that should be allowed without the U.S.-made article losing its origin are suggested to be washing, printing, painting, garment dyeing, and embroidery. The commenter also states that value-added criteria should not be considered in determining how articles shall be marked.

Customs Response: The textile rules of origin of section 334 of the Uruguay Round Agreements Act (URAA) (codified at 19 U.S.C. 3592), as implemented by section 102.21 of the Customs Regulations, are in most cases determinative regarding the country of origin marking of a U.S. textile or textile product that is processed abroad. Therefore, the origin rules provided for

in 19 CFR 102.21 must be referred to in order to determine whether a U.S. textile product becomes a foreign product under those rules by virtue of the processing performed abroad. In response to the commenter's statement that U.S. textiles and textile products should not be considered U.S. products for marking purposes if they undergo a tariff change at the eight digit level, Customs presumes the commenter means from one eight digit classification to another eight digit classification. In examining 19 CFR 102.21, Customs notes that there are limited instances where a change is allowed at the eight digit level. However, these rules reflect section 334 of the URAA, as amended by the "Trade and Development Act of 2000", Public Law 106–200, 114 Stat. 251 (May 18, 2000).

In reference to the commenter's statement that U.S. textiles and textile products should not be considered U.S. products if they undergo a substantial transformation abroad, Customs simply notes that section 334 of the URAA, as amended, represents the view of Congress on how the substantial transformation principle should be applied. *See* T.D. 95–69, 60 FR at 46195. Therefore, to the extent that a U.S. textile product undergoes a change in origin abroad as set forth in 19 CFR 102.21, it would be considered a foreign product for marking purposes. Additionally, Customs notes that, in general, the textile rules of origin at 19 CFR 102.21 provide that the complete assembly of two or more integral components in a single country will result in a change in origin, thereby requiring most U.S. textile products that are assembled abroad to be marked as foreign articles.

Furthermore, under the 19 CFR 102.21 rules, the attachment of minor decorative components to a U.S. textile product while abroad would not result in a change in origin. For example, affixing an emblem classified in heading 5810, HTSUS, to a U.S. T-shirt classified in heading 6109, HTSUS, in a foreign country would not result in a change in the T-shirt's origin. 19 CFR 102.21(e) tariff shift rules for HTSUS headings 6101–6117. Therefore, the U.S. T-shirt may be returned as a product of the United States, and would not be required to be marked as a foreign article for purposes of 19 U.S.C. 1304 as previously required by 19 CFR 12.130(c). However, the T-shirt would be required to be labeled in accordance with the Textile Fiber Products Identification Act which is within the jurisdiction of the Federal Trade Commission (see further discussion below). Customs also notes that a U.S. T-shirt sent abroad for silk-screening, painting, or printing would also not change origin by virtue of these processes occurring, and the returned T-shirt would not be required to be marked as a foreign article. A similar result would apply to U.S. jeans which are washed, stone-washed, dyed, or embroidered abroad. However, U.S. T-shirt components or jean components sent abroad for assembly into T-shirts or jeans would change origin as a result of the assembly and would require marking as a foreign article pursuant to 19 CFR 102.21.

The tariff shift rules at 19 CFR 102.21 also do not include value-added criteria. To the extent that origin may not be determined under the applicable tariff shift rule of 19 CFR 102.21(e), the origin is determined by referring to the country in which the "most important assembly or manufacturing process occurred".

Comment: Two comments were received concerning the application of the proposed interpretation as it would pertain to textiles whose origin is determined by where the fabric is formed. One commenter opposes the proposed interpretation as it would apply to articles such as scarves, handkerchiefs, and bandannas. The other commenter opposes the proposed interpretation as it would apply to household linens and apparel accessories made overseas with domestic fabric. The commenters claim that the proposed interpretation would allow U.S.-made woven fabric made into scarves, *etc.* abroad to be labeled with a qualified "Made in U.S.A." statement, while scarves, *etc.* made in the United States using foreign-made woven fabric would have to be labeled as being of foreign origin pursuant to 19 CFR 102.21(e) tariff shift rules for HTSUS headings 6215–6217(2). It is stated that domestic manufacturers of scarves, etc. use both domestic and imported fabric. The fabric may be imported in a finished or greige condition, and may be bleached, dyed and/or printed in the United States. The finished fabric is also cut and sewn to manufacture scarves, etc. It is claimed that this would place domestic manufacturers at a significant competitive disadvantage, because if imported finished fabric or greige fabric is used and made into scarves in the United States, for example, the article is required to be marked as a foreign article. The commenters state that the purpose of the marking statute, 19 U.S.C. 1304, is to let the consumer know when they are purchasing foreign-made products, and that the proposed interpretation ignores this purpose. It is claimed that the fact the Federal Trade Commission will require some form of qualification does not really eliminate the potential of consumer deception. Therefore, these commenters suggest a modification to the proposed interpretation to exclude household linens and apparel accessories.

However, a third comment from a domestic manufacturer of bedding and bath products supports the proposed interpretation and believes that its adoption is necessary to ensure the uniform application of the country of origin rules for textile products promulgated pursuant to 19 U.S.C. 3592. The commenter claims that 19 CFR 12.130(c) contradicts the intent of Congress as set forth in 19 U.S.C. 3592 which provides that the textile rules of origin shall govern for the purposes of the Customs laws and the administration of quantitative restrictions, and 19 U.S.C. 3592(b)(2)(A) provides that the origin of certain products, such as sheets, shall be the country in which the fabric was formed. The commenter submits that the proposed interpretation should extend to all textile products, not merely those classifiable in Chapter 98, and that the country of origin rules governing textile products should be uniformly applied for country of origin marking purposes. This commenter states that it has invested in state-of-the art equipment for weaving fabric from raw cotton and man-made fibers and that these investments have allowed them to compete in the world marketplace. The commenter claims that with the enactment of 19 U.S.C. 3592, it is appropriate to re-examine T.D. 85–38 and T.D. 90–17 to assess what statutory policies are being furthered by the application of 19 CFR 12.130(c) to textile products such as sheets that are produced abroad from U.S.-origin fabric.

Customs Response: Customs is of the opinion that 19 CFR 12.130(c) should no longer be applied for country of origin marking purposes. Section 12.130(c) states that merchandise which falls within the "purview of Chapter 98, Subchapter II, Note 2, HTSUS," may not, upon its return to the U.S., be considered a product of the United States. As suggested by the supporting commenter that the proposed interpretation should extend to all textile products, not merely those classifiable in Chapter 98, Customs notes that the returned article need not necessarily be classifiable in Chapter 98, but must only be within the purview of Note 2. For example, U.S. greige fabric dyed abroad would not be classifiable in Chapter 98, but rather would be fully dutiable. *See Dolliff & Company, Inc.* v. *United States*, 455 F. Supp. 618 (CIT

1978), *aff'd*, 599 F.2d 1015 (Fed. Cir. 1979). However, the returned dyed fabric would be within the purview of Note 2 as it is a U.S. product sent abroad and advanced in value. Therefore, under the position stated in T.D. 85–38 and in T.D. 90–17, the returned fabric would be required to be marked as a foreign article. Because Customs applied section 12.130(c) for marking purposes due to the statements made in T.D. 85–38 and T.D. 90–17, 19 CFR 12.130(c) should no longer apply for country of origin marking purposes in light of the comments supporting the proposed interpretation, and in light of Customs previous statements made in connection with the NAFTA Marking Rules. 60 FR 22312, 22318 (May 5, 1995).

In regard to the marking of scarves, handkerchiefs, bandannas, household linens, *etc.*, since 19 U.S.C. 3592 sets forth the rules of origin for textile and apparel products for purposes of the customs laws, Customs lacks authority to carve out any exception for these articles. However, Customs notes that with the passage of the "Trade and Development Act of 2000", in particular section 405, some of the concerns raised by the commenter appear to have been alleviated as certain fabrics and articles will no longer be considered to originate where the fabric is made.

Comment: One commenter submits that 19 CFR 12.130(c) should no longer apply for country of origin marking purposes and for quota purposes. The commenter states that T.D. 85–38 was promulgated to prevent the circumvention of visa or export license requirements contained in multilateral and bilateral textile restraint agreements. The commenter notes that the Tariff Act of 1930 never addressed issues concerning country of origin determinations for quota purposes. Nonetheless, this rule was applied for marking and quota purposes because Customs believed that Congress did not intend Customs to apply one rule of origin for duty and marking purposes and a different rule for quota purposes.

This commenter states that it is unaware of any bilateral agreement that requires the imposition of quota restraints on products that are deemed to be of U.S. origin pursuant to the rules set forth in 19 CFR 102.21(e). As an example, the bilateral textile agreement negotiated between the United States and Fiji is presented, which requires Fiji to limit exports to the United States of cotton and man-made fiber textile and textile products of Fiji. The commenter notes that if a sheet is produced in Fiji using Australian fabric, Fiji would not possess authority to limit the exports of such sheets to the United States; however, it presently would if U.S. fabric were used, thus placing U.S. fabric manufacturers at a competitive disadvantage to fabric producers in nonquota countries such as Australia.

Another commenter questions whether Customs would still require a textile visa for textiles and textile products under the new proposed position.

Customs Response: With regard to the comments received regarding the applicability of 19 CFR 12.130(c) for quota purposes, we note that this would be more appropriately addressed to the Committee for the Implementation of Textile Agreements which issues instructions concerning these issues.

Comment: The Federal Trade Commission (FTC) notes that with respect to marking, the ordinary textile rules of origin, prescribed in 19 U.S.C. 102.21, as interpreted by Customs, would apply, but that the Textile Fiber Products Identification Act (TFPIA), set forth at 15 U.S.C. 70 *et seq.*, and the FTC rules implementing the TFPIA, set forth at 16 CFR Part 303, would also still apply.

The FTC states that the TFPIA requires that textile products be labeled to show the country of origin, whether domestic or foreign. 15 U.S.C. 70b(b)(4)&(5). The FTC rules implement the statutory requirement; explain how it applies to products made, in part, in the U.S. and, in part, in another country; and provide examples of proper labeling. 16 CFR 303.33. Therefore, under the TFPIA, imported textile products must name the country where they were manufactured or processed. Textile products made in the United States of materials also made in the United States should be labeled as "made in USA", or words to that effect. Products made in the United States of imported materials should disclose both the U.S. manufacturing and the imported component—for example, "Made in USA of imported fabric" or "Knitted in USA of imported yarn." Similarly, textile products partially manufactured in a foreign country and partially manufactured in the United States should be labeled to show the manufacturing process both in the foreign country and in the United States—for example, "Imported cloth, finished in USA," "Sewn in USA of imported components," or "Made in (foreign country), finished in USA." The rules state further that for purposes of determining how a particular product should be labeled, a manufacturer needs to consider the origin of only those materials that are covered under the TFPIA (*i.e.*, those made of textile fibers) and that are one step removed from that manufacturing process (*i.e.*, a fabric manufacturer must identify imported yarn; a garment manufacturer must identify imported fabric).

The FTC also provides several examples of how it would view the labeling requirements of textile products made in the United States which are sent abroad for some additional finishing process, where there is no change in origin under 19 CFR 102.21. When there is no change in origin, some returned U.S. articles may simply be labeled "Made in USA," but some additional foreign processes may have to be disclosed on the label. The FTC states that in many cases if the foreign processing is sufficiently minimal, disclosure would not be necessary for compliance with the TFPIA and the rules. Such processes would include: various kinds of washing or wet processing (stone washing, enzyme washing, acid washing, sizing, starching, *etc.*); dyeing or bleaching; application of ink designs (heat transfer or screen printing); pressing (including permapressing and similar processes to make apparel wrinkle free); repairs or alterations; tagging or labeling; closure of single-component knit products (such as hosiery); adding or changing buttons; and boarding (adding cardboard to give the garment shape). These processes, although they enhance the value of the goods, do not alter the basic identity or character of the product.

The FTC states that the addition of ornamentation or decorative trim that involves adding textile fibers to a textile product (by embroidery, for example) is addressed in 16 CFR 303.12 and 303.26. If such trim or ornamentation either (a) does not exceed 15 percent of the surface area of the item, or (b) does not exceed 5 percent of the product's fiber weight, it is exempt from the rules' fiber content disclosure requirement. If exempt from fiber content disclosure, it is also exempt from origin disclosure if added in another country. If the decorative trim or ornamentation is more than 15 percent of the surface area and more than 5 percent of the product's fiber weight, and is applied in another country, the foreign processing would have to be disclosed (for example, "Made in USA, embroidered in Mexico").

In those situations where the foreign processing is more than minimal finishing of an already finished article, disclosure of the foreign processing would be required. 16 CFR 303.33(a)(4). For example, if components of a garment are manufactured in the U.S., but the garment is assembled elsewhere, both aspects of the origin would have to

be disclosed (*e.g.*, "Assembled in Mexico of U.S. Components").

Customs Response: Customs appreciates the FTC's comments which clarify the marking requirements under the TFPIA. Further clarification of the rules administered by the FTC may be obtained by writing to: Textile Program, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580.

Conclusion

After analyzing the comments received and further consideration of the matter, Customs has decided to adopt the proposed interpretation that 19 CFR 12.130(c) does not apply for purposes of country of origin marking. As noted above, the textile rules of origin of 19 U.S.C. 3592, as amended, and as implemented by 19 CFR 102.21, will be determinative regarding the country of origin marking of a U.S. textile or textile product that is processed abroad and that is described in those statutory and regulatory provisions. Therefore, the origin rules provided by statute and in 19 CFR 102.21 must be referred to in order to determine whether a U.S. textile product becomes a foreign product by virtue of the processing performed abroad. Moreover, it should be noted that even if the U.S. textile product does not require labeling as a foreign product under those provisions, the interpretation adopted in this document does not exempt textile and apparel products imported into the United States from the labeling requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, enforced by the Federal Trade Commission.

Approved: April 14, 2000.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 821

Rules of Practice Governing Board Review of Federal Aviation Administration Emergency Determinations in Air Safety Enforcement Proceedings

AGENCY: National Transportation Safety Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Administrator of the Federal Aviation Administration (FAA) has the statutory authority to issue orders amending, modifying, suspending, or revoking certain FAA-issued certificates, in the interest of safety in air commerce or air transportation. Such actions are appealable to the Board, and the filing of an appeal by the affected certificate holder stays the effectiveness of the Administrator's order, unless the Administrator determines that an emergency, requiring the order to be effective immediately, exists. Section 716 of the Aviation Investment and Reform Act for the 21st Century confers on the Board the authority to review such emergency determinations, which were not previously subject to administrative review, and these interim rules provide procedures for that review. Comments are invited and will be considered in the formulation of final rules.

DATES: These interim rules are effective on July 11, 2000. Comments are invited by July 26, 2000. Reply comments may be filed by August 10, 2000.

ADDRESSES: An original and two copies of any comments must be submitted to: Office of General Counsel, National Transportation Safety Board, Room 6401, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20594, Attention: Emergency Procedure Rules.

FOR FURTHER INFORMATION CONTACT: Ronald S. Battocchi, General Counsel, (202) 314–6080.

SUPPLEMENTARY INFORMATION:

Background

The National Transportation Safety Board (NTSB) currently has rules, at 49 CFR part 821, that govern practice and procedure in certain air safety proceedings, including proceedings in which the FAA Administrator seeks to amend, modify, suspend or revoke various FAA-issued certificates or privileges. Under 49 U.S.C. 44709(d), such certificate actions are reviewable on appeal to the Board by the affected certificate holder. 49 U.S.C. 44709(e) provides that the filing of such an appeal stays the effectiveness of the Administrator's order, pending disposition of the appeal by the Board, unless the Administrator determines that an emergency exists and that safety in air commerce or air transportation requires the order to be effective immediately. Prior to the enactment of the Aviation Investment and Reform Act for the 21st Century (Pub. L. 106–181, signed into law April 5, 2000), the Administrator's emergency determinations were not subject to administrative review. Section 716 of Public Law 106–181 expands the Board's jurisdiction, by amending 49 U.S.C. 44709(e) to provide that a person affected by the immediate effectiveness of an order, based on the Administrator's finding of the existence of an emergency, may, not later than 48 hours after receiving the order, petition the Board to review that emergency determination, under procedures promulgated by the Board. 49 U.S.C. 44709(e), as amended, further provides that the Board shall dispose of the certificate holder's request for review of the Administrator's emergency determination no later than five days after the request is filed, and that, if the Board finds that an emergency does not exist, the immediate applicability of the Administrator's order shall be stayed. In light of the immediate effectiveness of Public Law 106–181, the Board is issuing interim rules to establish procedures for its review of the Administrator's emergency determinations, without notice and comment.

Public Law 106–181 also amends the time period for the Board to make final dispositions of appeals in all emergency cases. Under 49 U.S.C. 44709(e) prior to amendment, the Board had 60 days from the time the Administrator advised it of the existence of an emergency (by filing a complaint in response to the certificate holder's appeal) to make its final disposition of the appeal, whereas 49 U.S.C. 44709(e), as amended, requires a final disposition not later than 60 days after the date on which the appeal is filed. The interim rules include amendments to part 821 that were necessitated by this change.

Interim Rules

The Board believes that its current rules require certain immediate changes to accommodate these amendments to 49 U.S.C. 44709(e). These interim rules should permit the processing of any petitions for review of the Administrator's exercise of emergency authority that are instituted by affected certificate holders pursuant to the statutory amendments, while the Board has final rules under consideration.

Under the interim rules, the authority to review emergency determinations of the Administrator has been delegated to the Board's administrative law judges. The interim rules permit the Administrator to file a written reply to the certificate holder's petition for review of the emergency determination, and require the law judge to issue a

written order granting or denying the petition, based upon such written submissions by the parties. In view of the short five-day period which Public Law 106–181 mandates for the disposition of this issue, the interim rules provide that the law judge's decision on the issue is final, and not appealable to the Board. The placement of such review authority in the law judges is a matter subject to revisitation in the future, and the Board is particularly interested in comments on this. The Board is also interested in comments on the practicality and/or advisability of putting in place an appeal process that would permit a review of the law judge's ruling on the emergency issue by the Board, which would, of necessity, occur during the running of the 30-day period in which the case must proceed to hearing.

Aside from minor changes to 49 CFR 821.10, the general provision relating to computations of time in air safety proceedings before the Board, all of the revisions to part 821 necessitated by the amendments to 49 U.S.C. 44709(e) created by Public Law 106–181 appear in subpart I, which sets forth special rules applicable to appeals of emergency and other immediately effective orders issued by the Administrator.

The addition and logical placement of rules specifically relating to the disposition of petitions for review of the Administrator's emergency determinations have necessitated a restructuring of subpart I. Section 821.54, which contained general provisions relating to emergency cases, has been redesignated as § 821.52, with minor changes. Paragraphs (a) and (b) of § 821.55 have been removed from that section and recodified, with revisions, at § 821.53. Paragraph (b) of § 821.53 amends former paragraph (b) of § 821.55, by requiring appeals of emergency or other immediately effective orders to include a copy of the appealed order. Previously, it was sufficient for the certificate holder to indicate in the appeal that an emergency or other immediately effective order was the subject of the appeal. Former paragraphs (c) through (f) of § 821.55 have been redesignated as paragraphs (a) through (d) of that section.

A new § 821.54 sets forth the rules and procedures governing the Board's review of the Administrator's emergency determinations. Paragraph (a) of that section provides that a certificate holder has 2 days from the date on which he or she receives the Administrator's emergency or other immediately effective order to file with the Board a petition for review of the emergency determination. The Board believes the interim rule's 2 day time limit is a reasonable application of the new legislation's requirement that review of the Administrator's emergency determination "shall be requested not later than 48 hours after the order is received" by the affected certificate holder, and that the rule's use of a 2 day time frame, rather than one of 48 hours, avoids the possibility of having cases turn on inquiries as to the precise hour and minute the order was received and/or the petition was filed. Paragraph (a) further provides that, as the time limit for filing a petition for review of the emergency determination has been created by statute, the Board has no authority to extend it (whereas time limits created by the Board's rules may, for good cause shown, be extended pursuant to § 821.11). Similar language appears in the Board's rule relating to the filing of an application for fees and expenses under the Equal Access to Justice Act (see 49 CFR 826.24(a)). Finally, paragraph (a) provides that, in those cases where a certificate holder files a petition for review of an emergency determination, but has not previously submitted an appeal from the emergency or other immediately effective order, the petition will also be regarded as a simultaneously-filed appeal from the order.

In the remainder of § 821.54, paragraph (b) provides rules as to the form, content, and service of the certificate holder's petition, and requires that the petition include a copy of the Administrator's order. Paragraph (c) provides for the submission of a reply to the petition by the Administrator. Rules governing the law judge's disposition of the petition are set forth in paragraphs (d) and (e), and the effects of the law judge's ruling are enumerated in paragraph (f). Under paragraph (e), the petition is to be disposed of by written order, and the standard to be applied is whether, based on the acts and omissions of the certificate holder as alleged in the complaint, the Administrator abused his or her discretion in determining that an emergency exists, requiring the order to be effective immediately. Since issues of fact are properly resolved at an evidentiary hearing, challenges to the truthfulness of the factual allegations appearing in the Administrator's order are not appropriate for this preliminary inquiry; thus, paragraph (e) provides that, for purposes of deciding this emergency issue, the law judge is to assume the truth of the factual allegations stated in the order. The abuse of discretion standard set forth in paragraph (e) is adopted from the United States Court of Appeals for the Ninth Circuit, which used that criteria when presented with a challenge to the Administrator's exercise of emergency authority in *Nevada Airlines* v. *Bond*, 622 F.2d 1017 (1980). In paragraph (f), it is provided that, if the petition is granted, the effectiveness of the Administrator's order will be stayed until the Board makes a final disposition of the certificate holder's appeal. Since, in that instance, the certificate holder will not be deprived of the use of the certificate(s) affected by the order while the appeal is pending, the certificate holder will not be permitted to waive the applicability of the expedited appeals process of subpart I, unless the Administrator consents to such a waiver.

Paragraph (a) of § 821.55 (formerly paragraph (c) of that section), which provides rules for the filing and service of the Administrator's complaint, has been revised to include rules as to when the complaint is to be filed in those cases where there has been a challenge to the Administrator's emergency determination. In addition, paragraph (a) now requires that the complaint be filed with the Board by overnight delivery or facsimile, with service on the respondent by the same means. Minor changes have been made to paragraph (b) (formerly paragraph (d)) of § 821.55, and no substantive changes were made to paragraphs (c) and (d) (formerly paragraphs (e) and (f)) of that section.

Paragraph (a) of § 821.56, which sets forth rules and procedures regarding the issuance of notices of hearing in emergency cases, has been amended to take into account the new legislation's shortening of the time frame for the Board to make a final disposition of an appeal in an emergency case to 60 days after the date on which the certificate holder's appeal is filed (as opposed to 60 days from the date on which the Board is advised by the Administrator of the existence of an emergency, which was accomplished when the Administrator filed a complaint in response to the appeal). Paragraph (a) has also been amended to provide rules for the issuance of notices of hearing in those cases where the certificate holder has challenged the Administrator's determination as to the existence of an emergency, upon the disposition of that preliminary issue. There are no substantive changes to the remaining provisions of § 821.56. Section 821.57 has not been amended.

Related Matters

Since our part 821 rules were last amended, the statutes referred to in that

part—i.e., the Independent Safety Board Act of 1974; the Federal Aviation Act of 1958, as amended; and the FAA Civil Penalties Assessment Act of 1992—have been recodified, without substantive change, at 49 U.S.C. Chapters 11 (Sections 1101 *et seq.*), 447 (Sections 44701 *et seq.*), and 463 (Sections 46301 *et seq.*), respectively. Thus, the Board will, solely for "housekeeping" purposes, amend part 821, where necessary, to reflect the current statutory designations. In addition, Section 821.38(b), as currently written, contains a reference to "§ 556(d) of the Administrative Procedure Act," while § 821.41 refers to another section of Administrative Procedure Act by its United States Code citation. For purposes of consistency, and to follow the preferred convention of using United States Code citations to reference statutory authority in agency rules, the statutory reference in § 821.38(b) will be amended to reflect the appropriate United States Code citation.

The rules, as currently written, also contain references to parties involved in these proceedings, and actions taken by them, with the designations "he," "him," and "his." The Board believes that such terms should be changed to the more proper "he or she," "him or her," and "his or hers," and these changes will be made in the housekeeping amendments, as well.

Because such housekeeping amendments do not substantively change the Board's part 821 rules, comments on these matters are not solicited.

List of Subjects in 49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

For the reasons set forth in the preamble, part 821 of title 49 of the Code of Federal Regulations is amended as follows:

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

1. The authority citation for part 821 is revised to read as follows:

Authority: 49 U.S.C. 1101–1155, 44701–44723, 46301; unless otherwise noted.

2. In part 821, revise all references to "he," "him," and "his," to read "he or she," "him or her," and "his or her," respectively.

3. In part 821, revise all references to "section 602(b) of the Act" to read "49 U.S.C. 44703(c)," and revise all references to "section 609 of the Act" to read "49 U.S.C. 44709."

§ 821.1 [Amended]

4. In § 821.1, remove the paragraph defining the term "Act;" amend the paragraph defining the term "Certificate" by removing the words "Title VI of the Act" and inserting in their place the words "49 U.S.C. Chapter 447;" and amend the last sentence of § 821.1 by removing the words "the Act" and inserting in their place the words "49 U.S.C. Chapters 11, 447, and 463."

§ 821.3 [Amended]

5. In § 821.3, remove the words "a new."

§ 821.8 [Amended]

6. Amend paragraph (c) of § 821.8 by removing the words "section 1005(b) of the Act" and inserting in their place the words "49 U.S.C. 46103(a)."

7. Revise § 821.10 to read as follows:

§ 821.10 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice or order of the Board or a law judge, or by any applicable statute, the date of the act, event, or default after which the designated period of time begins to run is not to be included in the computation. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the Board, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. In all cases, Saturdays, Sundays, and legal holidays for the Board shall be included in the computation of time, except they shall not be included in computations of time respecting petitions for review of determinations as to the existence of emergencies under § 821.54 in subpart I of this part.

§ 821.19 [Amended]

8. Amend paragraph (a) of § 821.19 by removing the words "section 1004 of the Act" and inserting in their place the words "49 U.S.C. 46104."

§ 821.38 [Amended]

9. Amend paragraph (b) of § 821.38 by removing the words "§ 556(d) of the Administrative Procedure Act" and inserting in their place the words "5 U.S.C. 556(d) (Administrative Procedure)."

10. Revise subpart I to read as follows:

Subpart I—Rules Applicable to Emergency Proceedings and Other Immediately Effective Orders

Sec.

821.52 General.
821.53 Appeal.
821.54 Review of Administrator's determination of emergency.
821.55 Complaint, answer to complaint, motions, and discovery.
821.56 Hearing and initial decision.
821.57 Procedure on appeal.

§ 821.52 General.

(a) *Applicability.* This subpart shall apply to any order issued by the Administrator under 49 U.S.C. 44709: as an emergency order; as an order not designated as an emergency order, but later amended to be an emergency order; and any order designated as immediately effective or effective immediately.

(b) *Effective date of emergency.* The procedure set forth herein shall apply as of the date when written advice of the emergency character of the Administrator's order is first received and docketed by the Office of Administrative Law Judges or the Board.

(c) *Computation of time.* Time shall be computed in accordance with the provisions of § 821.10.

§ 821.53 Appeal.

(a) *Time within which to appeal.* The certificate holder may appeal within 10 days after the service of the Administrator's emergency or other immediately effective order. The certificate holder shall file an original and 3 copies of the appeal with the Office of Administrative Law Judges, and shall serve a copy of the appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the Administrator's order and the certificate affected, shall recite the Administrator's action and indicate that an emergency or other immediately effective order is being appealed, and shall identify the issues of fact or law on which the appeal is based, and the relief sought. A copy of the order shall be attached to the appeal.

§ 821.54 Review of Administrator's determination of emergency.

(a) *Time within which to file petition.* The certificate holder may, within 2 days after receipt of the Administrator's emergency or other immediately effective order, petition the Board for review of the Administrator's determination that an emergency, requiring the issuance of an immediately effective order, exists. This 2 day deadline is statutory and the Board has no authority to extend it. If the certificate holder has not previously filed an appeal from the emergency or other immediately effective order, the petition shall also be considered a

simultaneously filed appeal from the order under § 821.53.

(b) *Form, content, and service of petition.* The petition may be in letter form. It shall identify the order from which review of the Administrator's exercise of emergency authority is sought, and a copy of the order shall be attached to the petition. The petition shall enumerate the specific grounds on which the certificate holder challenges the Administrator's determination that an emergency exists. In the event that the petition fails to set forth the specific grounds for the certificate holder's challenge to the Administrator's emergency determination, the petition shall be dismissed. The petition shall be served on both the Board and the Administrator via overnight delivery or facsimile.

(c) *Reply to petition.* Within 2 days after service of the petition, the Administrator may file a reply to the petition in support of his or her determination as to the existence of an emergency requiring the order to be effective immediately. Such reply shall be served on both the Board and the certificate holder via overnight delivery or facsimile. No written submissions other than the petition and reply shall be filed, except in accordance with paragraph (d) of this section.

(d) *Hearing.* No hearing shall be held on a petition for review of an emergency determination. However, a law judge may, on his or her own initiative, solicit from the parties additional information to supplement that provided in the petition and reply.

(e) *Disposition.* Within 5 days after receipt of the petition, the chief judge (or, if the case has been assigned, the law judge to whom the case is assigned) shall dispose of the petition by written order, finding whether the Administrator abused his or her discretion in determining that there exists an emergency requiring the order to be immediately effective, based on the acts and omissions alleged in the Administrator's order, assuming the truth of such factual allegations.

(f) *Effect of law judge's ruling.* If the law judge grants the petition, the effectiveness of the Administrator's order will be stayed until final disposition of the respondent's appeal by the law judge or the Board. In such cases, the remaining provisions of this subpart (§§ 821.55–821.57) shall continue to apply, and their applicability may not be waived by the respondent without the consent of the Administrator. If the petition is denied, the Administrator's order shall remain in effect, and the remaining provisions of this subpart shall continue to apply, unless respondent waives their applicability. The law judge's ruling on the petition shall be final, and is not appealable to the Board.

§ 821.55 Complaint, answer to complaint, motions, and discovery.

(a) *Complaint.* Within 3 days after receipt of the appeal, or within 3 days after service of a law judge's order disposing of a petition for review of the Administrator's emergency determination, whichever is later, the Administrator shall file with the Board via overnight delivery or facsimile, an original and 3 copies of the emergency or other immediately effective order as the complaint, and serve a copy on the respondent by the same means.

(b) *Answer to the complaint.* Within 5 days after service of the complaint upon respondent, he or she shall file an answer thereto, and serve a copy of the answer on the Administrator. Failure to deny any allegation or allegations of the complaint may be deemed an admission of the allegation or allegations not answered.

(c) *Motion to dismiss and motion for more definite statement.* No motion to dismiss or for a more definite statement shall be made, but the substance thereof may be stated in the respondent's answer. The law judge may permit or require a more definite statement or other amendment to any pleading at the hearing, upon good cause shown and upon just and reasonable terms.

(d) *Discovery.* Discovery is authorized in emergency or other immediately effective proceedings, and, given the short time available, parties are directed to cooperate to ensure timely completion prior to the hearing. Discovery requests shall be served as soon as possible after initiation of the proceeding. Motions to compel production shall be expeditiously filed, and will be promptly decided. Time limits for compliance with discovery requests shall accommodate and not conflict with the schedule set forth in this subpart. The provisions at § 821.19 shall apply, modified as necessary to reflect applicable deadlines.

§ 821.56 Hearing and initial decision.

(a) *Notice of hearing.* Within 5 days of the receipt of respondent's appeal, or immediately upon the issuance of a law judge's order disposing of a petition for review of the Administrator's emergency determination (if later), the parties will be notified of the date, time and place of the hearing. The hearing shall be set for a date no later than 30 days after the filing of the appeal. To the extent not inconsistent with this section, the provisions of § 821.37(a) also apply.

(b) *Initial decision.* The initial decision shall be made orally on the record at the termination of the hearing and after opportunity for oral argument. The provisions of § 821.42(b) and (d) shall be applicable (covering content, furnishing a copy of the initial decision excerpted from the record, and issuance date).

(c) *Conduct of hearing.* The provisions of §§ 821.38, 821.39, and 821.40, covering evidence, argument and submissions, and record, shall be applicable.

(d) *Effect of law judge's initial decision.* If no appeal to the Board by either party, by motion or otherwise, is filed within the time allowed, the law judge's initial decision shall become final but shall not be deemed to be a precedent binding on the Board.

§ 821.57 Procedure on appeal.

(a) *Time within which to file a notice of appeal and content.* Within 2 days after the initial decision has been orally rendered, either party to the proceeding may appeal therefrom by filing with the Board and serving upon the other parties a notice of appeal. The time limitations for the filing of documents are not extended by the unavailability of the hearing transcript.

(b) *Briefs and oral argument.* Unless otherwise authorized by the Board, all briefs in emergency cases shall be served via overnight delivery or facsimile confirmed by first-class mail. Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy on the other parties. Within 7 days after service of the appeal brief, a reply brief may be filed, with copies served (as provided above) on other parties. The briefs shall comply with the requirements of § 821.48 (b) through (g). Appeals may be dismissed by the Board on its own initiative or on motion of a party, notably in cases where a party fails to perfect the notice of appeal by filing a timely brief. When a request for oral argument is granted, the Board will give notice of such argument.

(c) *Issues on appeal.* The provisions of § 821.49 shall apply to issues on appeal. However, the Board may upon its own initiative raise any issue, the resolution of which it deems important to a proper disposition of the proceeding. If necessary or appropriate, the parties shall be afforded a reasonable opportunity to comment.

(d) *Petitions for reconsideration, rehearing, reargument, or modification of order.* The only petitions for reconsideration, rehearing, reargument,

or modification of an order which the Board will entertain are petitions based on the ground that new matter has been discovered. Such petitions must set forth the following:

(1) The new matter;

(2) Affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and

(3) A statement that such new matter could not have been discovered by the exercise of due diligence prior to the date the case was submitted to the Board.

§ 821.64 [Amended]

11. Amend paragraph (a) of § 821.64 by removing the words "section 1006 of the Act (49 U.S.C. 46110) and section 304(d) of the Independent Safety Board Act of 1974 (49 U.S.C. 1153)" and inserting in their place the words "49 U.S.C. 1153 and 46110."

Dated: July 5, 2000.

Jim Hall,

Chairman.

[FR Doc. 00–17417 Filed 7–10–00; 8:45 am]

BILLING CODE 7533–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 070600A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), *July 6, 2000, through 2400 hrs, A.l.t., December 31, 2000.*

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the Western Regulatory Area was established as 1,240 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,140 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17473 Filed 7–6–00; 3:09 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 133
Tuesday, July 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV00–905–4 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (Committee). This rule would limit the volume of size 48 and size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 2000–2001 season beginning in September. This rule would establish the base percentage for these small sizes at 25 percent for the 11-week period. This proposal would supply enough small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

DATES: Comments must be received by August 10, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administrative Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administrative Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698 or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least $3\frac{5}{16}$ inches in diameter).

This rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market. This rule would limit the volume of size 48 and size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 2000–2001 season beginning in September. This rule would establish the base percentage for these small sizes at 25 percent for each week of the 11-week period. This proposal would supply enough small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the Committee and

approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market for each week of the 11-week period beginning September 18. This rule would limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market by establishing a weekly percentage of 25 percent for each of the 11 weeks. This would allow the Committee to start the season at the most restrictive level allowed under § 905.153, and if conditions warrant, to release greater quantities of sizes 48 and 56 small red grapefruit as more information becomes available. The Committee recommended this action by a unanimous vote at a meeting on May 26, 2000. This action is similar to those taken the previous three seasons (1997–98, 1998–99 and 1999–2000.)

For the seasons 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (4/5 bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to $1.41 per carton during the 1996–97 season.

The Committee determined that one problem contributing to the market's condition was the excessive number of small-sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11-week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasted with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season.

While there is a market for early grapefruit, shipping large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes. For the majority of the season, larger sizes return higher prices than smaller sizes. However, there is a push early to get fruit into the market to take advantage of high prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower-priced fruit on the market, driving down the price for all sizes.

At the start of the season, larger-sized fruit command a premium price. In some cases, the f.o.b. price is $4 to $10 more a carton than for the smaller sizes. In October, the f.o.b. price for a size 27 averages around $14.00 per carton. This compares to an average f.o.b. price of $6.00 per carton for size 56. In the three years before the issuance of a percentage size regulation, by the end of the 11-week period covered in this rule, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton to an average f.o.b. price of $5.50 per carton during the period covered by this rule. Later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment. However, the price structure in the market had already been negatively affected. The market never recovered, and the f.o.b. price for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes that the over shipment of smaller sized red seedless grapefruit early in the season contributes to poor returns for growers and lower on-tree values. To address this issue, the Committee voted to utilize the provisions of § 905.153, and established a weekly percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, and 1999–2000 seasons. The initial recommendation from the Committee was to set the weekly percentages at 25 percent for each of the 11 weeks. Then, as more information on the crop became available, and as the season progressed, the Committee met again and adjusted its recommendations for the weekly percentages as needed. Actual weekly percentages established during the 11-week period during the 1999–2000 season were 45 percent for the first two weeks, 40 percent for the third week, 37 percent for the fourth through the seventh week, and 32 percent for the last four weeks. The Committee considered information from past seasons, crop estimates, fruit size, and other available information in making its recommendations.

The Committee has used the percentage size regulation to the betterment of the industry. Prices have increased, and movement has been stable. In each of the three seasons following the 1996–97 season, the Committee has recommended utilizing the percentage size rule. During the 11-week period of regulation, the average price has been higher than for the three years prior to regulation. In late October, the average price for red seedless grapefruit was $9.31 for the last three years regulation compared to $7.22 for the same period for the three years prior to regulation. Prices also remained at a higher level, with an average price of $7.31 in mid-December during regulation compared to $6.02 for the three years prior to regulation. The average season price was also higher, with the past three seasons averaging $7.13 compared to $5.83 for the three prior years.

The on-tree earnings per box have also been increasing for the past three years, providing better returns to growers. The on-tree price increased from $3.42 for 1997–98, to $5.04 for 1998–99, to an estimated $6.46 for the 1999–2000 season.

Another benefit of percentage size regulation has been in maintaining higher prices for the larger-sized fruit. Larger fruit commands a premium price early in the season. The f.o.b. price for a larger size can be $4 to $10 more per carton than for smaller sizes. However, the glut of smaller, lower-priced fruit on the early market was driving down the prices for all sizes. In the three years prior to the implementation of the percentage size rule, by the end of the 11-week period covered, the f.o.b. price for the large sizes would drop to within $2 of the f.o.b. price for the smaller sizes. This was not acceptable to the industry.

During the past three years of regulation under the percentage size rule, the average differential between the carton price for a size 27 and the price for a size 56 was $5.65 at the end of October and remained at $3.43 in mid-December. During the three years prior to regulation, the average differential between these two sizes was $3.47 at the end of October, but by mid-December the price for the larger size had dropped to within $1.68 of the price for the smaller-size fruit. In fact, the average prices for each size were higher during the three years with regulation than for the three years prior to regulation. The average prices for size 27, size 32, size 36, and size 40 during the 11-week period for the last three years were $9.07, $7.91, $7.16, and $6.62, respectively. This compares to the average prices for the same sizes during the same period for the three years prior to regulation of $6.48, $5.63, $5.59, and $5.34, respectively.

The percentage size regulation has also been helpful in stabilizing the volume of small sizes entering the fresh market early in the season. During the three years prior to regulation, small sizes accounted for over 34 percent of the total shipments of red seedless grapefruit during the 11-week period covered in the rule. This compares to 31 percent for the same period for the last three years of regulation. There has also been a 43 percent reduction in the volume of small sizes entering the fresh market during the 11-week regulatory period from 1995–96 to 1999–2000.

In making its recommendation for the upcoming season, the Committee reviewed its experiences from the past seasons. The Committee examined shipment data covering the 11-week regulatory period for the last three regulated seasons and the three prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week. The Committee believes establishing weekly percentages during the last three seasons was successful. The past regulations helped maintain prices at a higher level than the previous years without regulation, and sizes 48 and 56 by count and as a percentage of total shipments were reduced.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

The Committee considered the past problems and the success of the percentage rule and decided to recommend using the percentage of size provisions for the coming season beginning in September. Members believe the problems associated with an uncontrolled volume of small sizes entering the market early in the season would recur without this action. The Committee recommended that the weekly percentage be set at 25 percent for each week of the 11-week period. This is as restrictive as § 905.153 will allow.

The Committee believes it is best to set regulation at the most restrictive level, and then relax the percentages if warranted by conditions later in the season. The Committee intends to meet on a regular basis early in the season, as was done in the previous three seasons. In making this recommendation, the Committee considered that by establishing regulation at 25 percent, they could meet again in August and the months following and use the most current information available to consider adjustments in the weekly percentage rates. This would help the industry and the Committee make the most informed decisions as to whether the established percentages are appropriate. Any changes to the weekly percentages proposed by this rule would require additional rulemaking and the approval of the Secretary.

The Committee noted that more information helpful in determining the appropriate weekly percentages would be available after August. At the time of the May meeting, grapefruit had just begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October. In addition, the production area is suffering through a period of insufficient rainfall. While the actual effects are not currently known, it is possible that this may affect the sizing of the crop as well as maturity. This could mean a larger volume of small-sized red seedless grapefruit, further exacerbating the problem with small sizes early in the season.

The situation is also complicated by the ongoing problems affecting the European and Asian markets. In past seasons, these markets have shown a strong demand for the smaller-sized red seedless grapefruit. The reduction in shipments to these areas experienced during the last few years is expected to continue during the upcoming season. This reduction in demand could result in a greater amount of small sizes for remaining markets to absorb. These factors increase the need for restrictions to prevent the volume of small sizes from overwhelming all markets.

During deliberations in past seasons, the Committee considered how shipments had affected the market. Based on available statistical information, the Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed that if shipments of small sizes could be maintained at around or below 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

Last season, the weekly shipments of sizes 48 and 56 during the 11 weeks regulated remained close to the 250,000 carton mark. This may have contributed to the success of the regulation.

In setting the weekly percentage for each week at 25 percent for this season, the total available allotment would be slightly less than the 250,000 carton level. The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 220,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This would allow total shipments of small red seedless grapefruit to approach the 250,000-carton mark during regulated weeks without exceeding it.

Therefore, this rule would establish the weekly percentage at 25 percent for each of the 11 weeks. The Committee plans to meet in August and as needed during the remainder of the 11-week period to ensure that the set weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week would be calculated using the recommended percentage of 25 percent. By taking the weekly percentage times the average weekly

volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

The Committee would calculate an average week for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons are added and divided by five to establish an average season. This average season is then divided by the 33 weeks to derive the average week. This average week would be the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 25 percent, is multiplied by a handler's average week. The product is that handler's total allotment of sizes 48 and 56 red seedless grapefruit for the given week.

Under the proposed rule handlers could fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. The Committee staff would perform the specified calculations and provide them to each handler.

The average week for handlers with less than five previous seasons of shipments would be calculated by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments would have no prior period on which to base their average week. Therefore, a new handler could ship small sizes equal to 25 percent of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week would be calculated as an average of the weeks they have shipped during the current season.

The regulatory period begins the third Monday in September, September 18, 2000. Each regulation week would begin Monday at 12:00 a.m. and end at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week.

The rules and regulations governing percentage size regulation contain a variety of provisions designed to provide handlers with some marketing flexibility. When the Secretary establishes regulation for a given week, the Committee calculates the quantity of small red seedless grapefruit that may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These tolerances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

During any week for which the Secretary has fixed the percentage of sizes 48 and 56 red seedless grapefruit, any handler could handle an amount of sizes 48 or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) would be deducted from the handler's allotment for the following week. Overshipments would not be allowed during week 11 because there would be no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped would not be carried forward to the following week. However, a handler to whom an allotment has been issued could lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party would, prior to the completion of the loan agreement, notify the Committee of the proposed loan and date of repayment. If a transfer of allotment were desired, each party would promptly notify the Committee so that proper adjustments of the records could be made. In each case, the Committee would confirm in writing all such transactions prior to the following week.

The Committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan would be at the discretion of the handler's party to the loan. The Committee would notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

The introductory text of § 905.350 is proposed to be modified to reflect the Committee recommendation to establish the minimum size for red seedless grapefruit at size 56 on a continuous basis. A proposed rule to implement this recommendation will be published in a separate issue of the **Federal Register**.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red grapefruit during the 1999–2000 season was around $7.52 per 4/5 bushel carton, and total fresh shipments for the 1999–2000 season are estimated at 25.6 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 70 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 69 percent of grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the

majority of Florida grapefruit handlers may be classified as small entities. Florida grapefruit producers also may be classified as small entities.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of the 2000–01 season, beginning the third Monday in September. The over shipment of smaller-sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. This proposal would limit the volume of sizes 48 and 56 red seedless grapefruit by setting the weekly percentage for each of the 11 weeks at 25 percent. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week would be calculated using the recommended percentage. This rule would utilize the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order.

While this rule may necessitate spot picking, which could entail slightly higher harvesting costs, many in the industry are already using the practice. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 11-week period for the three seasons prior to the 1997–98 season, an average of 4.2 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments. Also, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the overshipment is deducted from the following week's shipments. Approximately 120 loans and transfers were utilized last season. Statistics for 1999–2000 show that in none of the regulated weeks was the total available allotment used. Therefore, the overall impact of this regulation on total shipments should be minimal.

Handlers and producers have received higher returns under percentage size regulation. In late October, during the last three years with regulation, the average price for red seedless grapefruit was $9.31 compared to $7.22 for the same time during the three years prior to regulation. Prices have also remained higher, with an average price of $7.31 in mid-December during regulation compared to $6.02 for the three years prior to regulation. The average season price was also higher, with the past three seasons with regulation averaging $7.13 compared to $5.83 for the three years prior.

The on-tree earnings per box have also increased for the past three years, providing better returns to growers. The on-tree price increased from $3.42 for 1997–98, to $5.04 for 1998–99, to an estimated $6.46 for the 1999–2000 season. These increased returns when coupled with the overall volume of red seedless grapefruit would offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. This proposal would provide a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation.

The Committee considered alternatives to taking this action. One alternative was to not recommend using the percentage size rule. However, the Committee believes that the problems created by excessive volumes of small sizes entering the market early in the season would return absent the establishment of a percentage size regulation. Therefore, this option was rejected. Another alternative considered was to establish the weekly percentages at levels different than 25 percent. The Committee believes that the pattern of setting the weekly percentages at their most restrictive level, 25 percent, and then revisiting them prior to the beginning of the season has been very successful. Therefore, the Committee rejected this option, choosing instead to reconsider the recommended percentages closer to the beginning of the season.

Handlers utilizing the flexibility of the loan and transfer aspects of this action would be required to submit a form to the Committee. The rule would increase the reporting burden on approximately 75 handlers of red seedless grapefruit who would be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers will begin shipping grapefruit in September. In addition, because of the nature of this rule, handlers need time to consider their allotment and how best to service their customers. Also, the industry has been discussing this issue for some time, and the Committee has kept the industry well informed. It has also been widely discussed at various industry and association meetings. Interested persons have had time to determine and express their positions. This action is similar to those taken in the previous three seasons, and it was unanimously recommended by the Committee. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3 9/16 inches minimum diameter) and size 56 (3 5/16 inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/18/00 through 9/24/00	25
(b) 9/25/00 through 10/1/00	25
(c) 10/2/00 through 10/8/00	25
(d) 10/9/00 through 10/15/00 ..	25
(e) 10/16/00 through 10/22/00	25
(f) 10/23/00 through 10/29/00	25
(g) 10/30/00 through 11/5/00 ..	25
(h) 11/6/00 through 11/12/00 ..	25
(i) 11/13/00 through 11/19/00	25
(j) 11/20/00 through 11/26/00	25
(k) 11/27/00 through 12/3/00 ..	25

Dated: July 5, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–17424 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG54

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the FuelSolutions™ cask system to the list of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the FuelSolutions™ cask system under a general license.

DATES: The comment period expires September 25, 2000. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the interactive rulemaking website.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Milstein, telephone (301) 415–8149, e-mail, rim@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing on July 18, 1990 (55 FR 29181), a final rule in 10 CFR Part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites." This rule also established a new Subpart L within 10 CFR Part 72 entitled, "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This proposed rule would add the FuelSolutions™ cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, Westinghouse (subsequently acquired by BNFL Fuel Solutions (BFS)) submitted an application for NRC approval with the Safety Analysis Report (SAR): "Final Safety Analysis Report for the WESFLEX Spent Fuel Management System." BFS subsequently changed the name of the cask system from WESFLEX to FuelSolutions™. The NRC evaluated the BFS submittal and issued a preliminary Safety Evaluation Report (SER) on the BFS SAR and a proposed Certificate of Compliance (CoC) for the FuelSolutions™ cask system.

The NRC is proposing to approve the FuelSolutions™ cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of the public health

and safety would be ensured. This cask system is being proposed for listing under 10 CFR 72.214, "List of approved spent fuel storage casks" to allow holders of power reactor operating licenses to store spent fuel in this cask system under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask system's CoC is renewed. The certificate contains conditions for use specific for this cask system, addressing issues such as operating procedures, training, and spent fuel specification.

The proposed CoC for the FuelSolutions™ cask system and the underlying preliminary SER, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Single copies of the proposed CoC and preliminary SER may be obtained from Richard Milstein, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8149, email rim@nrc.gov.

Discussion of Proposed Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate Number 1026 would be added indicating that:

(1) The title of the SAR submitted by BFS is "Final Safety Analysis Report for the FuelSolutions™ Spent Fuel Management System;"

(2) The Docket Number is 72–1026;

(3) The certificate expiration date would be 20 years after final rule effective date; and

(4) The model numbers affected are the WSNF–200, WSNF–201, and WSNF–203 systems; the W–150 storage cask; the W–100 transfer cask; and the W–21 and W–74 canisters.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not have significant environmental impacts. The proposed rule would add the FuelSolutions™ cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Richard Milstein, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–8149, email rim@nrc.gov.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the FuelSolutions™ cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR Part 72, Subpart L. Subsequently, additional casks have been added to the listing in 10 CFR 72.214.

The alternative to this proposed action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost both the NRC and the utilities more time and money because each utility would have to pursue a new site-specific license. Using site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. Also, this alternative discourages competition because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems and is consistent with previous NRC actions. Further, the proposed rule will have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks. This proposed rule would have no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and BFS. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1026 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1026
SAR Submitted by: BFNL Fuel Solutions
SAR Title: Final Safety Analysis Report for the FuelSolutions™ Spent Fuel Management System
Docket Number: 72–1026
Certificate Expiration Date: [insert 20 years after the effective date of the final rule]
Model Number: WSNF–200, WSNF–201, and WSNF–203 systems; W–150 storage cask; W–100 transfer cask; and the W–21 and W–74 canisters

* * * * *

Dated at Rockville, Maryland, this 19th day of June, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–17464 Filed 7–10–00; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 004–0023; FRL–6733–4]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing a limited approval and a limited disapproval of a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP) concerning particulate matter (PM–10) [1] emissions from open outdoor fires. The intended effect of proposing a limited approval and limited disapproval of a rule is to strengthen the federally approved SIP by incorporating this revision. EPA's final action on this proposal will incorporate the rule into the SIP. While strengthening the SIP, this revision contains deficiencies which the MCESD must address before EPA can grant full approval under section 110(k)(3) of the Clean Air Act (CAA).

We are proposing limited approval of a revision to the MCESD portion of the Arizona (SIP) concerning PM–10 emissions from abrasive blasting.

We are also proposing full approval of a revision to the MCESD portion of the Arizona (SIP) concerning PM–10

[1] There are two separate national ambient air quality standards (NAAQS) for PM–10, an annual standard of 50 μg/m³ and a 24-hour standard of 150 μg/m³.

emissions from nonmetallic mineral mining and processing.

We are following the CAA requirements for actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Any comments must arrive by August 10, 2000.

ADDRESSES: Mail comments to: Andrew Steckel, Chief, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and our technical support documents (TSDs) at our Region IX office from 8 a.m. to 4:30 p.m., Monday through Friday. To see copies of the submitted rule revisions, you may also go to the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415)744–1135.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MCESD	312	Abrasive Blasting	07/13/88	01/04/90
MCESD	314	Open Outdoor Fires	07/13/88	01/04/90
MCESD	316	Nonmetallic Mineral Mining and Processing	04/21/99	08/04/99

On May 25, 1990, May 25, 1990, and October 18, 1999, respectively, EPA found that these rule submittals meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. The completeness letters may be found in the docket for this rulemaking.

B. Are There Other Versions of These Rules?

There are no previous versions of Rule 312 in the SIP?

We previously approved a version of Rule 314 into the SIP on April 10, 1995 (60 FR 18010), at which time the Phoenix metropolitan area was classified as a moderate nonattainment area for PM–10. The MCESD regulates certain sources of PM–10 in the nonattainment area. However, the approval action was vacated by the Ninth Circuit Court of Appeals in *Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996), so action is being taken again on the original submittal. The original submittal of Rule 314 was intended to replace SIP Rules 50 and 51, which will be replaced by finalizing this rulemaking. The Phoenix metropolitan area is now classified as a serious nonattainment area for PM–10 and a more stringent standard applies to Rule 314. 40 CFR 81.303; compare subsections (a) and (b) of section 189 of the CAA.

We approved a version of Rule 316 into the SIP on August 4, 1997 (62 FR 41856).

C. What Is the Purpose of the Submitted Rules?

Rule 312 limits the emission of particulate matter from abrasive blasting operations to 20 percent opacity, except for not more than three minutes in any one hour period. Required control measures are one of the following: Confined blasting, wet abrasive blasting, hydroblasting, or an approved equivalent control.

Rule 314 prohibits open outdoor fires, except for the following exemptions:

- Fires for cooking, warmth for humans, recreation, branding of animals, or the use of orchard heaters for frost protection.
- Fires permitted by the Arizona Department of Environmental Quality for the disposal of dangerous material where there is no safe alternative.

Additional exemptions are permitted subject to the stipulation of the conditions and time of day best for minimizing air pollution and protecting health, safety, and comfort of persons. Other exemptions are permitted subject to certain stipulations of the Control Officer, including size of pile to be burned, hours, and meteorological conditions.

Rule 316 limits the emission of particulate matter from nonmetallic mineral processing plants, asphaltic concrete plants, and concrete plants to values of percent opacity or particulate matter concentration for stacks and to values of percent opacity for various sources of fugitive dust within the plants. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

We evaluated these rules for enforceability and consistency with the CAA as amended in 1990, with 40 CFR part 51, and with EPA's PM–10 policy. Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) requires that serious PM–10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT). The Phoenix metropolitan area is a serious PM–10 nonattainment area. The

MCESD regulates certain sources of PM–10 in the nonattainment area.

EPA's preliminary guidance for both moderate and serious PM–10 nonattainment areas provides that RACM/RACT and BACM/BACT are required to be implemented for all source categories unless the State demonstrates that a particular source category does not contribute significantly to PM–10 levels in excess of the NAAQS (*i.e., de minimis* sources). See *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992) and *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998, 42011 (August 16, 1994). PM–10 emissions from the source categories that are the subject of these proposed actions do not meet the significance test above according to the December 1999 *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area* (PM–10 Plan).[2] Therefore, Rules 312, 314, and 316 are not required to meet BACM/BACT control levels.

However, the State submitted Rules 314 and 316 as RACM/RACT rules on which the PM–10 Plan relies. Thus EPA is evaluating Rules 314 and 316 to determine if they meet RACM/RACT requirements, to ensure that they do not relax the SIP in violation of CAA sections 110(l) and 193, and that they meet enforceability and other general SIP requirements of section 110.

In contrast to Rules 314 and 316, MCESD does not identify Rule 312, abrasive blasting, in PM–10 Plan as a RACM/RACT rule. Therefore, we are evaluating Rule 312 only to ensure that it does not relax the SIP in violation of CAA sections 110(l) and 193, and that it meets enforceability and other general SIP requirements of section 110. Rule 312 strengthens the SIP by regulating a previously non-regulated source of PM–10 emissions, so SIP relaxation is not at issue. The TSDs have more information on how we evaluated the rules.

Guidance and policy documents that we used to define specific enforceability, SIP relaxaton, and RACM/RACT requirements include the following:

- *PM–10 Guideline Document,* (EPA–452/R093–008).
- *Procedures for Identifying Reasonably Available Control Technology for Stationary Sources of PM–10* (EPA–452/R–93–001).
- *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area* (December 1999).
- *General Preamble Appendix C3—Prescribed Burning Control Measures,* 57 FR 18072 (April 28, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998 (August 16, 1994).

B. Do Any of the Rules Fully Meet the Evaluation Criteria?

These rules improve the SIP by establishing more stringent emission limits and by clarifying recordkeeping provisions. These rules are largely consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and RACT requirements. Rule provisions which do not fully meet the evaluation criteria are summarized below and discussed further in the TSDs.

MCESD Rule 316 has standards for nonmetallic mineral mining and processing plants generally as stringent or more stringent than NSPS (40 CFR 60.672) and analogous rules in other states. The rule is more stringent than the SIP rule. We have determined that MCESD Rule 316 meets the requirements of RACT and other applicable requirements of the CAA. As a result, we have determined that MCESD Rule 316 should be given full approval.

C. What Are the Rule Deficiencies?

- Rule 312 has a provision that prevents full approval of the SIP revision:
  - The rule enforceability is limited due to the discretion of the Control Officer in paragraph 302.4 to approve alternate control methods.

Rule 314 has provisions that prevent full approval of the SIP revision:

- The exemption to burn dangerous materials in paragraph 302.2 limits enforceability, because the dangerous materials are not defined.
- Exemptions permitting open burning with the stipulation of conditions and time of day in paragraph 302.3 limit enforceability, because the conditions for allowing exemptions are not specified and are at the discretion of the Control Officer. In order to meet the requirements of RACM and to be enforceable, the Control Officer should use conditions based on quantitative data, such as reasonably available meteorological data, to predict which days are favorable for open burning and smoke dispersion.
- The exemption to burn with an air curtain destructor in paragraph 302.5 limits enforceability, because the Control Officer has discretion to approve the material to be burned and type and size of equipment without any guidelines.

D. EPA Recommendations to Further Improve the Rules

The TSD for Rule 316 describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, we are proposing a limited approval of the submitted Rules 312 and 314 to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. We are also simultaneously proposing a limited disapproval of Rule 314 under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994). A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the MCESD, and EPA's final limited disapproval would not prevent the local agency from enforcing Rule 314. Sanctions would not be imposed for Rule 312.

As authorized in section 110(k) of the Act, EPA is proposing a full approval of the submitted Rule 316 to improve the SIP.

We will accept comments from the public on the proposed limited approval and limited disapproval, the proposed limited approval, and the proposed full approval for the next 30 days.

III. Background Information

Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency PM–10 rules.

[2] On April 13, 2000, EPA proposed approval of this plan. See 65 FR 19963. If the PM–10 Plan should be modified in the future, EPA could require additional control measures to meet BACM/BACT requirements.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
03/03/78	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act). 43 FR 8964; 40 CFR 81.305.
07/01/87	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). (52 FR 24672).
11/15/90	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
11/15/90	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 189(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility

analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2000.

Nora McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 00–17492 Filed 7–10–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6729–5]

RIN 2060–AG12

Protection of Stratospheric Ozone; Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to impose restrictions or prohibitions on substitutes for ozone-depleting substances (ODSs) under the Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone-depleting compounds while avoiding a shift into substitutes posing other environmental problems.

DATES: Written comments or data provided in response to this document must be submitted by September 11, 2000. A public hearing will be held if requested in writing. If a public hearing is requested, EPA will provide notice of the date, time and location of the hearing in a subsequent **Federal Register** document.

ADDRESSES: Written comments and data should be sent to Docket A–2000–18, U.S. Environmental Protection Agency, OAR Docket and Information Center, 401 M Street, SW, Room M–1500, Mail Code 6102, Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Anhar Karimjee at the address listed below under **FOR FURTHER INFORMATION**. Information designated as Confidential Business Information (CBI) under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Anhar Karimjee at phone: (202) 564–2683, fax: (202) 565–2095 or e-mail: karimjee.anhar@epa.gov, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW, Washington, DC, 20001. The Stratospheric Protection Hotline can be reached at (800) 296–1996 and additional information can be found at EPA's Ozone Depletion World Wide Web site at "http://www.epa.gov/ozone/title6/snap/".

SUPPLEMENTARY INFORMATION: On March 18, 1994, EPA promulgated a rulemaking setting forth its plan for administering the SNAP program (59 FR 13044), and has since issued decisions on the acceptability and unacceptability of a number of substitutes. Today's proposal presents EPA's response to a SNAP submission received in February 1999, requesting review of the following foam blowing agents as substitutes for HCFC–141b: HFC–134a; HCFC–22; HCFC–142b; HCFC–124; and a HCFC–22/142b blend. This proposal also addresses use of HCFC–22 and HCFC–142b as foam blowing agents. In this Notice of Proposed Rulemaking, EPA is proposing the following decisions on the acceptability of substitutes in the foams sector:

To list HCFC–141b and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–141b use would be grandfathered (*i.e.*, allowed to continue) until January 1, 2005. To list HCFC–22, HCFC–142b, and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–22/–142b use would be grandfathered until January 1, 2005.

To list HCFC–124 as unacceptable as a substitute in all foam end-uses. EPA is not proposing to grandfather the use of HCFC–124 because it has not been previously listed as an acceptable foam blowing agent. No further action is proposed on the SNAP submission request for review of HFC–134a. EPA previously listed HFC–134a as an acceptable substitute for HCFC 141b (64 FR 63558).

Outline

I. Background
A. Significant New Alternatives Policy (SNAP) Program
B. SNAP Submissions and Listing Decisions
C. Hydrochlorofluorocarbon (HCFC) Phase-out
D. HCFC–141b Phase-out
E. Significant New Alternatives Policy (SNAP) Foams Sector
F. Submission Addressed in Today's Proposal
II. Proposed Significant New Alternatives Policy (SNAP) Listing Decisions
III. Q's and A's on Today's Proposed Listing Decisions
IV. Economic Impact
V. Administrative Requirements

I. Background

A. Significant New Alternatives Policy (SNAP) Program

On March 18, 1994, EPA published a rulemaking (59 FR 13044) that described the process for administering the SNAP program and issued EPA's first lists of acceptable and unacceptable substitutes for end-uses that historically had been dominated by ozone-depleting substances (ODSs). The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance (40 CFR 82.172). EPA's SNAP regulations define "use" as any use of a substitute for a class I or class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses (40 CFR 82.172). The requirements of the SNAP program include:

- *Rulemaking*—Section 612 of the CAA requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) Reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—EPA must publish a list of the substitutes unacceptable for specific uses and a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Any person has the right to petition EPA to add a substitute or delete a substitute from the lists published under SNAP. The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.
- *90-day Notification*—EPA requires any person who produces a new chemical substitute to notify the Agency at least 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.
- *Outreach*—EPA must seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—The Agency has set up a public clearinghouse (Docket A–91–42) of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances. For more information on how to contact this clearinghouse, please contact the Air Docket with the information in the **ADDRESSES** section of this document.

SNAP sectors include: Refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings, and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting substances. Anyone who produces a new substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers of substitutes, but may also include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce. Any individual who uses a substitute in end-uses within any of the major industrial sectors listed above is subject to SNAP lists.

For copies of all of the current SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at (800) 296–1996, Monday–Friday, between the hours of 10 a.m. and 4 p.m. (EST). You may also contact the Air Docket and Information Center, 401 M Street, SW, Room M–1500, Mail Code 6102, Washington, DC 20460. The docket, which is the administrative record for EPA's SNAP regulations, may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). This, and subsequent notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at "http://www.epa.gov/ozone/title6/snap/" and from the Stratospheric Protection Hotline number listed above.

B. SNAP Submissions and Listing Decisions

The SNAP program receives submissions requesting EPA to review alternatives to CFCs and HCFCs for use in various applications. The 90-day review period begins when EPA receives a submission and determines that it includes all of the necessary information. As outlined in 40 CFR 82.180(a)(7), EPA considers the following factors when reviewing a submission:

(1) Atmospheric effects and related health and environmental impacts;
(2) General population risks from ambient exposure to compounds with direct toxicity and to increased ground level ozone;
(3) Ecosystem risks;
(4) Occupational risks;
(5) Consumer risks;
(6) Flammability; and
(7) Cost and availability of the substitute.

At the conclusion of the 90-day period, EPA makes a determination on the acceptability of the alternative. Under Section 612 of the CAA, the Agency has considerable discretion in the risk management decisions it can make in SNAP. In the SNAP rule, the Agency identified the following possible decision categories (40 CFR 82.180(b); see also 59 FR 13062 Decision-Making Framework):

1. Acceptable: Fully acceptable substitutes, *i.e.*, those with no restrictions, can be used for all applications within the relevant sector end-use;
2. Unacceptable: It is illegal to replace an ozone depleting substance with a substitute within an end-use for which the substitute is listed by SNAP as unacceptable;
3. Acceptable subject to use conditions: To minimize risk to human

health and/or the environment, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met. Use of such substitutes without meeting specified use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the CAA;

4. Acceptable subject to narrowed use limits: Applied when the Agency determines a need to restrict the use of a substitute based on the potential for adverse effects, while permitting a narrowed range of use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute that is acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives (*e.g.*, performance, technical or safety standards), and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes without meeting specific narrowed use limits subjects the user to enforcement for violation of section 612 of the CAA;

5. Pending: Used for substitutes for which the Agency has not received complete data or has not completed its review of the data.

As described in the final rule for the SNAP program, EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes (50 FR 13044, 13047). EPA does not believe that notice-and-comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

If EPA does not make a decision within 90 days of receipt of a complete submission, the substitute(s) can be legally used in the end-use for which they were submitted. EPA can subsequently list the substitute(s) as unacceptable making them illegal for use in specific end-uses. If EPA ultimately determines that the substitute is unacceptable, any company that switched to the alternative after the 90-day period expired must stop using that alternative at the time EPA's unacceptability decision takes effect.

C. Hydrochlorofluorocarbon (HCFC) Phase-Out

The Montreal Protocol on Substances that Deplete the Ozone Layer ("the Montreal Protocol" or "the Protocol") is an international treaty established in 1987 which aims to reduce the harmful effects of man-made ozone-depleting substances. The Protocol has been signed by more than 160 countries, all of whom have agreed to limit or eliminate their production and/or consumption of ozone-depleting substances in a stepwise fashion over time, according to the terms of the treaty and its amendments. The U.S. has adopted the Montreal Protocol and must at a minimum comply with its phase-out schedules and other requirements.

During their second meeting in London in 1990, the countries that are Parties to the Montreal Protocol identified HCFCs as transitional substitutes for chlorofluorocarbons (CFCs) and other more destructive ozone-depleting substances, but agreed to phase out HCFCs because of their significant potential to destroy stratospheric ozone as well. Recognizing the impact this phase-out would have on manufacturers and users of HCFCs, the Protocol provides for a gradual reduction in the consumption of HCFCs and eventual phase-out in developed countries by 2030. (A more extended schedule was agreed upon for developing countries, with a complete HCFC consumption phase-out by 2040.) Beginning in 1996, production of HCFCs in developed countries was capped at the 1989 HCFC production level, plus 2.8% of the 1989 CFC production level. Using the cap as a baseline, the U.S. consumption of HCFCs must be reduced by the following amounts and dates:

- 35% by 2004
- 65% by 2010
- 90% by 2015
- 99.5% by 2020
- 100% by 2030

The phase-out of HCFCs in the U.S. is implemented through regulations published under the authority of the Clean Air Act (CAA) (40 CFR 82 Subpart A). The CAA, as amended in 1990, established a U.S. consumption phase-out schedule for HCFCs and required EPA to promulgate regulations to implement, and if necessary, accelerate the phase-out to conform to the Montreal Protocol requirements. The phase-out schedule for HCFCs, established in rulemaking promulgated on December 16, 1993, is on a chemical-by-chemical basis, beginning with those with the highest ozone depletion potential (ODP), as outlined below. [**Note:** Consumption means the amount of a substance produced in the U.S., plus the amount imported, minus the amount exported (CAA, Title VI, § 601)].

(1) In light of the 35% reduction in HCFC consumption required by the Montreal Protocol by 2004, production and import of HCFC–141b will be banned in the U.S. as of January 1, 2003. Under the U.S. consumption phase-out schedule, HCFC–141b is being phased out first because it has the highest ODP of any commonly used HCFC. Petitions received from a number of environmental organizations and industry groups prior to the EPA's December 10, 1993 rulemaking (58 FR 65018) supported the decision to make ODP the key factor in establishing this phase-out schedule. In addition, the formula established by the Montreal Protocol to determine the cap on HCFC consumption weights HCFCs according to their ODP. Phasing out the HCFCs with the highest ODPs yields the greatest environmental benefit, while helping the U.S. meet the phase-out schedule and still allowing the use of other HCFCs in areas where suitable ozone-safe alternatives are not yet available.

(2) Effective January 1, 2010, in light of the 65% reduction in HCFC consumption required by the Montreal Protocol that year, production and import of HCFC–142b and HCFC–22 will be prohibited, except for use in equipment manufactured prior to January 1, 2010. HCFC–142b and HCFC–22 are being phased out before other HCFCs because they have high ODPs relative to other HCFCs (other than HCFC–141b). Together with HCFC–141b, these are the HCFCs that cause the most damage to the stratospheric ozone layer.

(3) Beginning in 2015, in light of the 90% reduction in HCFC consumption required by the Montreal Protocol that year, production and import of the remaining HCFCs will be prohibited beginning January 1, 2015, except for feedstocks or for use as a refrigerant in equipment manufactured before January 1, 2020.

(4) Beginning in 2020, in light of the 99.5% reduction in HCFC consumption required by the Montreal Protocol that year, the exemption for use of HCFC–

142b and HCFC–22 in equipment produced prior to 2010 will end, and all production and consumption of these two HCFCs will be phased out.

(5) All HCFCs will be completely phased out by January 1, 2030. The Montreal Protocol and CAA allow limited production of HCFCs after the January 1, 2030 phase-out for export to developing countries to meet their basic domestic needs.

In addition to a cap on HCFC consumption, the Parties to the Montreal Protocol agreed at their 1999 meeting in Beijing, China to require a cap on HCFC production. According to the formula established in the Beijing amendment to the Protocol, the annual cap on production in the U.S. will be the average of: the sum of 2.8% of our 1989 CFC consumption plus 100% of our 1989 HCFC *consumption*, and the sum of 2.8% of our 1989 CFC production plus 100% of our 1989 HCFC *production*. According to this formula, annual production of HCFCs in the U.S. will be capped at 15,537 metric tons beginning in 2004. Pursuant to Section 614 (b) of the CAA, on April 5, 1999, EPA published an Advance Notice of Proposed Rulemaking (64 FR 16373) regarding a proposed system of transferable allowances to produce and consume HCFCs. This system would supplement the chemical-specific phase-out and ensure that the U.S. does not exceed its consumption cap.

D. HCFC–141b Phase-Out

As noted above, production and import of HCFC–141b will be banned in the U.S. as of January 1, 2003. The phase-out related restrictions on HCFC–141b in the U.S. focus on consumption and do not include use. The Montreal Protocol does not restrict the use of HCFCs. Section 605 of the CAA does contain use restrictions on HCFCs, but they are not effective until 2015. Therefore, neither the international nor domestic phase-out requirements would limit the use of HCFC–141b stockpiles between 2003 and 2015. Both manufacturers and users can stockpile for future use, to the extent use will be permitted under the CAA and its implementing regulations. It is important to note, however, that EPA previously determined that HCFC–141b is not acceptable as a substitute cleaning solvent for CFC–113 or methyl chloroform. These determinations were based on the availability of zero-ODP alternatives in these applications. In today's action, EPA is proposing that the use of HCFC–141b as a foam blowing agent in any end-use would be illegal after January 1, 2005. See below for current information on HCFC–141b and the limits or conditions on its use.

As stated above, the HCFC–141b phase-out refers to consumption of HCFC–141b only. The phase-out does not affect imports of products containing HCFC–141b. Under Section 610 of the CAA, EPA has the authority to prevent interstate sale and distribution of certain products containing or manufactured with ozone-depleting substances. However, insulating foams, as defined in 40 CFR 82 subpart C, are specifically exempt from regulation under Section 610. Title VI of the Act thus does not provide EPA with the authority to prevent imports of products containing these foams.

E. Significant New Alternatives Policy (SNAP) Foams Sector

Class I substances, such as chlorofluorocarbon (CFC) –11, –12, –113, –114 and methyl chloroform, were the substances most widely used in foam sector end-uses at the time of the CAA Amendments of 1990 and EPA's original SNAP rule in March 1994. CFC–11 and –113, liquids at room temperature, were historically used in polyurethane and phenolic foams. CFC–12 and –114, gases at room temperature, were historically used in polyolefin and polystyrene foams. Methyl chloroform was used in some flexible polyurethane foams.

A major goal of the SNAP program is to facilitate the transition away from ozone-depleting substances. To encourage this transition, EPA has taken a stepwise approach to approving CFC and HCFC substitutes. In the original SNAP ruling, EPA created a list of acceptable substitutes for CFCs, which were common foam blowing agents at that time. The list of acceptable substitutes for CFCs includes: Hydrochlorofluorocarbon (HCFC) –123, –141b,—142b, –22; formic acid; saturated light hydrocarbons C3–C6; hydrofluorocarbon (HFC) –134a,—152a, –143a; 2–chloropropane; Electroset Technology; carbon dioxide; vacuum panels; methylene chloride; acetone; AB Technology; and various blends.

EPA listed HCFCs as acceptable replacements for CFCs because the Agency felt that HCFCs provided a bridge to ozone-friendly alternatives. Since then, HCFC–141b, –22 and –142b have become the most common foam blowing agents and consequently, the Agency has identified several new alternatives as substitutes for HCFCs in a second list. SNAP acceptable alternatives to HCFCs include: water; carbon dioxide; HFC–134a, –152a, –245fa; saturated light hydrocarbons C3–C6; formic acid; and acetone. All of these alternatives have no ozone depleting potential and are available and several companies are using them or plan to use them in the near future (before 2003) in various end-uses such as polyurethane boardstock and appliance foam.

Because CFCs are no longer used as foam blowing agents in the U.S., EPA plans to evaluate the current list of acceptable substitutes for CFC foam blowing agents to determine if there are alternatives on that list that are also acceptable HCFC substitutes. This re-evaluation would eventually result in one list of acceptable substitutes in the foam sector which all users would be subject to. EPA believes that a unified list would minimize confusion and economic disparities among regulated entities. Current users may switch from one acceptable substitute to another without notifying EPA. If, however, a user would like to use something that is not currently listed to replace an ODS, even if this new substance is a non-ODS, the manufacturer must notify EPA. This allows EPA to evaluate the risks of new substitutes and assists in our responsibility to maintain a clearinghouse of current information on environmentally superior alternatives to ozone-depleting compounds.

Lists of the substitutes along with their approval dates and **Federal Register** citations can be obtained through the Air Docket (A–2000–18). EPA has placed a complete list of acceptable alternatives for specific end-uses in the foams sector on the internet at http://www.epa.gov/ozone/title6/snap.

F. Submission Addressed in Today's Proposal

The submission addressed in today's proposal was sent to EPA on February 17, 1999 and requests review of the following foam blowing agents as substitutes for HCFC–141b: (1) HFC–134a; (2) HCFC–22; (3) HCFC–142b; (4) HCFC–124; and (5) a HCFC–22/142b blend. HFC–134a was approved as a substitute for HCFC–141b in a **Federal Register** Notice published on June 8, 1999 (64 FR 63558). Therefore, HFC–134a is not discussed in this proposal. The Agency is also proposing SNAP listing decisions for HCFC–141b, –22, and –142b as foam blowing agents. These decisions are based on the availability of zero-ODP alternatives. EPA believes that including them in this proposal would effect a balanced and smooth transition across the entire insulating foams sector. EPA previously reviewed all of the chemicals in the submission, either as CFC substitutes in the foam sector or in other SNAP

sectors. Therefore, the submitter was not required to re-submit information on these chemicals. Instead, they sent a letter to EPA outlining their request along with a Material Safety Data Sheet for a 142b/22 blend and a technical data sheet discussing flammability of the blend. The submission provided EPA with sufficient information to consider the request. You can obtain a copy of the submission (A–2000–18) from EPA's Air Docket located at 401 M Street, SW, Room M–1500, Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. A reasonable fee may be charged for photocopying.

II. Proposed Significant New Alternatives Policy (SNAP) Listing Decisions

A. Unacceptable Substitutes

(1) HCFC–141b and Blends Thereof

HCFC–141b and blends thereof are proposed as unacceptable as substitutes in all foam end-uses. This listing would be effective 30 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users would be grandfathered (*i.e.*, allowed to continue their use) until January 1, 2005. In this context, existing users are those using HCFC–141b in foam applications on the date of publication of a final action in the **Federal Register**. EPA is proposing to grandfather existing uses of HCFC–141b from prohibition under the four-part test established in *Sierra Club* v. *EPA* (719 F.2d 436 (DC Cir. 1983)) and discussed in Section VI.B. of EPA's original SNAP rule (59 FR 13044) published on March 18, 1994. As discussed in Section III, below, the Agency reviewed the considerations outlined in *Sierra Club* v. *EPA* and believes that this grandfathering period is appropriate.

The basis for EPA's proposed determination to list HCFC–141b as unacceptable is that HCFC–141b, with an atmospheric lifetime of approximately 9 years, has a comparatively high ozone depletion potential (ODP) of 0.11. When HCFC–141b was listed as an acceptable substitute for chlorofluorocarbons (CFCs), there were fewer alternatives available than there are today. Since 1994, EPA has listed alternatives as acceptable in more foam end-uses, and they are being used in a greater number of applications. Non-ozone-depleting substitutes are now available for all foam end-uses. The 1998 report of the United Nations Environment Programme (UNEP) Foams Technical Options Committee (TOC) concluded that zero-ODP alternatives are the substitutes of choice in many applications, including certain rigid thermal applications (UNEP, 1998). Also, research and development has improved the technical viability of some alternatives that have been available for years. The 1998 UNEP Foams TOC report presents several zero-ODP foam blowing agents that are viable alternatives and states that "there are several significant developments in blowing agents, many of which are applicable to more than one foam sector"; for example, the report states that cost and technical performance of hydrocarbons have been improved and that certain hydrofluorocarbons, which are acceptable under SNAP, are "near drop-in replacements for HCFC–141b" (UNEP, 1998). The available alternatives, including hydrofluorocarbons, hydrocarbons, and carbon dioxide, provide clear paths to the transition away from ozone-depleting substances.

EPA is not proposing to allow for an extension of the grandfathering period beyond January 1, 2005 in today's action, because the Agency is unaware of any situation where it would be necessary. The Agency also believes that the declining availability of HCFC–141b, due to the HCFC–141b production phaseout effective January 1, 2003, makes it unlikely that users will want to pursue an extension of the grandfathering period. However, EPA is interested in comments on whether such extensions may be appropriate, on a case-by-case basis, for those uses where technically feasible alternatives are not available. In order for EPA to extend the grandfathering period, the Agency would need to be convinced that there are no technically feasible alternatives available.

(2) HCFC–22, –142b and Blends Thereof

HCFC–22, –142b, and blends thereof are proposed as unacceptable as substitutes in all foam end-uses. This listing would be effective 30 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users would be grandfathered until January 1, 2005. In this context, existing users are those using HCFC–22, –142b, or blends thereof in foam applications on the date of publication of a final action in the **Federal Register**. As discussed in Section VI.B. of EPA's original SNAP rule (59 FR 13044) published on March 18, 1994, EPA is authorized to grandfather existing uses from prohibition where appropriate under the four-part test established in *Sierra Club* v. *EPA* (719 F.2d 436 (DC Cir. 1983)). As discussed in Section III, below, the Agency reviewed the considerations outlined in *Sierra Club* v. *EPA* and believes that this grandfathering period is appropriate.

EPA believes that there are technically feasible zero-ODP substitutes available to replace HCFC–22 and –142b and it is, therefore, appropriate to list these substitutes as unacceptable. The basis for EPA's proposed determination to list HCFC–22 and –142b as unacceptable is that these substances have comparatively high ODPs (0.055 for HCFC–22 and 0.065 for HCFC–142b). The approximate atmospheric lifetimes of HCFC–22 and –142b are 12 years and 18 years, respectively. When HCFC–22 and –142b were listed as acceptable substitutes for CFCs, there were fewer alternatives available than there are today. Since 1994, EPA has listed alternatives as acceptable in more foam end-uses, and they are being used in a greater number of applications. Non-ozone-depleting substitutes are now available for all foam end-uses. The 1998 report of the United Nations Environment Programme (UNEP) Foams Technical Options Committee (TOC) concluded that zero-ODP alternatives are the substitutes of choice in many applications, including certain rigid thermal applications (UNEP, 1998). Also, research and development has improved the technical viability of some alternatives that have been available for years. The 1998 UNEP Foams TOC report presents several zero-ODP foam blowing agents that are viable alternatives and states that "there are several significant developments in blowing agents, many of which are applicable to more than one foam sector"; for example, the report states that cost and technical performance of hydrocarbons have been improved and that certain hydrofluorocarbons, which are acceptable under SNAP, are "near drop-in replacements for HCFC–141b" (UNEP, 1998). The available alternatives, including hydrofluorocarbons, hydrocarbons, and carbon dioxide, provide clear paths to the transition away from ozone-depleting substances.

EPA is not proposing to allow for an extension of the grandfathering period beyond January 1, 2005 in today's action, because the Agency is unaware of any situation where it would be necessary. However, EPA is seeking comment on whether such extensions may be appropriate, on a case-by-case basis, for those uses where technically feasible alternatives are not available. In order for EPA to extend the

grandfathering period, the Agency would need to be convinced that there are no technically feasible alternatives available.

(3) HCFC–124

HCFC–124 is proposed as unacceptable as a substitute in all foam end-uses. HCFC–124 is a low pressure gas with an ODP of 0.02, an atmospheric lifetime of approximately 6 years, and a 100-year global warming potential of approximately 600. Other alternatives exist with lower or no ODP. These alternatives are identified above in Section I.C.

EPA is not proposing to grandfather the use of HCFC–124 because it has not been previously listed as an acceptable foam blowing agent.

III. Q's and A's on Today's Proposed Listing Decisions

Who Is Affected by Today's Proposal?

This proposal would affect anyone who uses HCFC–141b, HCFC–22, HCFC–142b, or HCFC–124 as a foam blowing agent. Affected parties include, but are not limited to, manufacturers of the following products: polyurethane and polyisocyanurate boardstock, appliance foam, spray foam, and sandwich panels; polystyrene boardstock; phenolic foams; and polyolefin foams.

What Is EPA Proposing?

EPA believes that there are sufficient alternatives with zero ozone depletion potential (ODP) currently or potentially available to make these listings. EPA proposes the following:

(1) To list HCFC–141b and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–141b use would be grandfathered until January 1, 2005.

(2) To list HCFC–22, HCFC–142b, and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–22/–142b use would be grandfathered until January 1, 2005.

(3) To list HCFC–124 as unacceptable as a substitute in all foam end-uses. EPA proposes these listings after reviewing a SNAP submission that requested review of several HCFC foam blowing agents (the submission is discussed below) and conducting a comprehensive evaluation of substitutes for both chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) in the Significant New Alternatives Policy (SNAP) foam sector.

What Did EPA Base This Proposed Decision On?

EPA is basing this proposed listing decision on the potential atmospheric effects, including the ODP and atmospheric lifetimes associated with the various foam blowing substitutes. According to the Scientific Assessment of Ozone Depletion: 1998 (World Meteorological Organization, 1999), HCFC–141b has an ODP of 0.1, HCFC–142 has an ODP of 0.065, HCFC–22 has an ODP of 0.055, and HCFC–124 has an ODP of 0.02. The atmospheric lifetimes for these chemicals range from 6–18 years. Regarding the other health and environmental factors typically included in SNAP review (40 CFR 82.180(a)(7)), EPA finds no substantive distinction between the HCFCs and other available alternatives listed as acceptable foam blowing agents.

Why Is EPA Proposing To List HCFC–141b, –22, –142b, and –124 as Unacceptable?

In 1994, under the SNAP program, EPA approved the use of HCFCs as transitional foam blowing agents, despite their ozone depletion potential, because technically feasible alternatives were limited at that time. Manufacturers of the class I CFC blowing agents had worked in collaboration to develop transitional substances—HCFCs—for the use in all sectors, as a bridge to the time when ozone-safe alternatives would be technically feasible. Since then, previously available zero-ODP alternatives have been tested, developed, and optimized for a broader range of foam applications, and additional zero-ODP alternatives have become available (59 FR 13083). A major objective of the SNAP program is to promote the use of substitutes which present a lower risk to human health and the environment (40 CFR 82.170). EPA believes that sufficient non-ozone-depleting foam blowing agents are available. EPA is proposing to list HCFC–141b, –22, –142b, and –124 as unacceptable because zero-ODP alternatives are available that will reduce the overall risk to public health and the environment.

EPA Listed HCFC–141b as an Acceptable Replacement for CFCs. Why Is EPA Revisiting the Acceptability of HCFC–141b in Today's Proposal?

As stated above, EPA believes that zero-ODP alternatives are available as substitutes for HCFC–141b in all foam end-uses. EPA is addressing the use of HCFC–141b in this proposal in order to maintain a consistent policy on the use of HCFCs in the foam sector and to ensure that the use of HCFC–141b does not continue in applications where zero-ODP alternatives exist. This decision is consistent with a previous EPA determination, based on the availability of alternatives with zero-ODP, that HCFC–141b is *not* acceptable as a substitute cleaning solvent for CFC–113 or methyl chloroform. Because EPA has provided an effective means for HCFC–141b users to transition to zero-ODP alternatives, today's proposal on HCFC–141b would have little or no negative effect on the foam industry.

Why Is EPA Proposing To List HCFC–22, –142b, and –124 as Unacceptable Replacements for HCFC–141b, Even Though Their ODPs Are Lower Compared to HCFC–141b?

EPA has concluded that listing these substances as unacceptable substitutes is consistent with the goals of the SNAP program. A major goal of the SNAP program is to facilitate the transition away from ozone-depleting substances (ODSs) by encouraging the use of environmentally safe alternatives. Congress intended to encourage and support research and development of non-ozone-depleting chemicals to replace HCFCs by giving EPA the authority to review potentially available alternatives (see also Section 612(a), (b), and (c) of the CAA). The use of HCFCs was initially considered acceptable as a bridge to zero-ODP foam blowing agents. Many HCFC–141b users and manufacturers have been researching alternatives for several years and are currently transitioning to zero-ODP foam blowing agents. Today's proposal does not disrupt their transition. Even though HCFC–22, –142b and –124 have lower ODPs compared to HCFC–141b, EPA does not believe that the new use of these ODSs as substitutes for HCFC–141b, even for a short period of time, is necessary in light of available zero-ODP foam blowing agents. Switching from HCFC–141b to HCFC–22, –142b or –124 would result in continued damage to the ozone layer and would delay the transition to zero-ODP foam blowing agents which are available.

Although HCFC–141b, –22 and –142b Are Being Proposed as Unacceptable in Today's Action, EPA is Proposing To Grandfather Existing Users of These Substances Until 2005. What Is Grandfathering?

In the original SNAP rulemaking, EPA recognized that, where appropriate, EPA can grandfather the use of a substitute by setting the effective date of its unacceptability listing for one or more specific parties in the future (59 FR 13057–58). EPA is authorized to allow the continuation of activities otherwise restricted where the balance of equities supports such grandfathering. Setting future effective dates allows the Agency to avoid penalizing those who in

specific applications may have already invested in good faith in alternatives that the SNAP program now determines to be unacceptable. Grandfathering also allows EPA to balance the desire not to penalize those who switched early in good faith with the need to avoid creating an incentive for continued investment in alternatives the Agency wishes to discourage.

What Criteria Are Used in Deciding Whether To Grandfather Continued Use of Unacceptable Substitutes?

In *Sierra Club* v. *EPA* (719 F.2d 436 (DC Cir. 1983)), the court established a four-part test to judge the appropriateness of Agency grandfathering. EPA considers the following when making a grandfathering determination:

(1) if the new rule represents an abrupt departure from previously established practice;

(2) the extent to which a party relied on the previous rule;

(3) the degree of burden which the application of the new rule would impose on the party; and

(4) The statutory interest in applying the new rule immediately.

Why Does EPA Believe That HCFC–141b, –22 and –142b Users Meet the Grandfathering Criteria?

The Agency recognizes that some foam manufacturers may have switched to HCFC–141b, –22 or –142b in good faith, expecting that these substitutes would sufficiently lower the risk of ozone depletion relative to other foam blowing agents available at the time. To avoid unfairly penalizing these existing users, the Agency is proposing to extend the effective date of the unacceptability listing until January 1, 2005, based on EPA's belief that existing users of HCFC–141b, –22 and –142b meet the grandfathering criteria outlined in *Sierra Club* v. *EPA*. EPA listed these substances as acceptable substitutes for class I substances in 1994. Prohibiting the use of these chemicals immediately represents an abrupt departure from that established practice for the many foam manufacturers that rely on HCFC–141b, –22 and –142b. These HCFCs were previously listed as acceptable substitutes for CFC foam blowing agents in various end-uses and were not scheduled for phase-out until future years. Additionally, if the proposal was to become effective immediately, it could create a burden on existing users if they currently do not have the means to make a sudden change to their operations. These factors outweigh EPA's statutory interest in applying the new rule immediately to existing users. EPA believes its goal of encouraging the transition away from ODSs is still satisfied as new use of these substances will not be permitted in the foam sector and existing users will begin transitioning to zero-ODP alternatives.

How Did EPA Determine the Length of the Proposed Grandfathering Period?

EPA believes that it could take foam manufacturers up to four years to transition to alternatives. EPA considered that companies might need to conduct several activities during that time period, including:

(1) Obtain permits or make modifications to existing permits;

(2) Make changes to equipment in order to optimize production and ensure worker safety;

(3) Establish raw material suppliers;

(4) Develop formulations;

(5) Test final products; and

(6) Obtain final product review and approval by relevant boards or agencies.

I Currently Use HCFC–22 and/or HCFC–142b as a Foam Blowing Agent. How Long Could I Continue To Use Them?

In today's action, EPA proposes that all current users of HCFC–22 or –142b in foam applications must transition to an acceptable substitute by January 1, 2005. EPA strongly encourages foam end-users to transition away from these substitutes as their existing stocks are used and/or they recoup their investment in equipment unique to these substitutes.

Why Is EPA Not Proposing To Grandfather the Use of HCFC–124 as Well?

Grandfathering would not apply to HCFC–124 as a foam blowing agent since it has not been previously listed as an acceptable foam blowing agent. Grandfathering allows limited continuation of previously acceptable use which is subsequently determined to be unacceptable.

Why Would I Have To Stop Using HCFC–22 or –142b Before Its Production Phase-Put in 2010?

The production phase-out, which is described in more detail above, does not govern use of HCFCs. As mentioned above, the role of the SNAP program is to promote the use of substitutes believed to present a lower risk to human health and the environment (40 CFR 82.170). EPA believes that sufficient non-ozone-depleting foam blowing agents are available to replace HCFC–22 and –142b. The Agency has listed other ozone-depleting chemicals as unacceptable for specific uses before the production phase-out date specified in the Montreal Protocol and Clean Air Act (*e.g.* HCFC–141b was listed unacceptable as a cleaning solvent in the original 1994 SNAP rulemaking (59 FR 13044)).

Does EPA Need To Be Petitioned in Order To List a Substitute as Unacceptable?

No. EPA has the authority to amend its regulations to initiate changes to SNAP determinations independent of any petitions or notifications received.

What if Some Alternatives Are Not Available in Time for Me To Meet the 2005 Deadline?

Some of the alternatives in the SNAP foam sector were only recently listed as acceptable (64 FR 65037). One alternative, HFC–245fa, is not yet commercially available in large quantities. If some alternatives prove to be technically infeasible or do not become available on a large scale, EPA has the ability to re-consider the proposed deadline.

What if There Is a Technical Constraint That Makes It Extremely Difficult for Me To Meet the SNAP Requirements?

You may be able to continue using HCFC–22 or –142b if you determine that there are no alternatives that can replace them in your specific application. In situations where companies have no technically feasible alternatives, EPA may extend the grandfathering of HCFC–22 or –142b for specific users or end-uses. EPA is not considering specific extensions at this time because the Agency feels that the grandfathering period provides everyone sufficient time to further develop and transition to alternatives. At some time prior to the expiration of the proposed grandfathering period, EPA will consider extending the grandfathering period for those applications where the use of alternatives is infeasible.

What Criteria Would I Need To Meet in Order for EPA To Extend the Grandfathering Period?

In order for EPA to extend the proposed grandfathering period, the Agency would need to be convinced that no technically feasible alternatives would be available. Users who believed they needed to use HCFC–22 or –142b past January 1, 2005, might be subject to the criteria laid out in 40 CFR 82.180 (b)(3). EPA might also require descriptions of the following:

(1) The process or product in which HCFC–22 or –142b is needed;

(2) Substitutes examined and rejected;

(3) Reason for rejection; and

(4) Anticipated date other substitutes will be available and projected time for switching to them.

Although the user is not required to submit all of the documentation to EPA, the Agency may request some of this information in order to determine whether continued use of HCFC–141b, –22 or –142b is warranted.

Can I Comment on This Proposed Rule?

Yes. EPA is soliciting comments on this proposal. The Agency welcomes any feedback on this proposal and urges commenters to provide data in support of their views. EPA also requests that commenters be as specific as possible. For example, if you believe that in a certain end-use there are no alternatives to HCFC–22 or blends thereof, you should provide information on that particular application and why the available alternatives are not technically feasible. Information on where to send comments is provided at the beginning of this notice under **ADDRESSES**.

IV. Economic Impact

At the request of the Office of Management and Budget, EPA evaluated the potential cost impacts of today's proposal. EPA considered the implications of appliance manufacturers' obligations to comply with the Department of Energy's (DOE) 1997 Refrigerator Efficiency Standards. These standards require energy consumption of refrigerators, refrigerator-freezers, and freezers to be reduced by 30% by July 2001. Specifically, EPA examined the potential costs associated with complying with the DOE standards while meeting EPA's SNAP requirements. EPA believes that today's proposal will not result in a significant cost to appliance manufacturers or consumers. In fact, when costs associated with manufacturing refrigerators that will meet DOE energy efficiency requirements are considered, EPA estimates that use of non-HCFC foam blowing agents can result in cost savings.

Based in part on confidential information collected from chemical and appliance manufacturers pertaining to various foam blowing agents and their thermal insulation value, price, and equipment and material requirements, EPA estimates that the cost today to convert to zero-ODP blowing agents would range from approximately $3 to $10 for a mid-size refrigerator (24 cubic feet with a retail price of approximately $900). Accounting for the fact that refrigerators will have to be re-designed to meet the DOE energy efficiency standards when they become effective in July 2001 (*e.g.*, reduced motor power in condenser and/or evaporator motor, reduced gasket heat leak rates, increased insulation, etc.), and because different blowing agents provide different thermal insulation values, EPA estimated the cost impacts associated with different blowing agents after the DOE standards become effective, assuming today's proposal becomes a final rule. For a mid-size refrigerator (24 cubic feet, approximately $900 retail), we estimate the impacts of this proposal would be a cost savings ranging between approximately $2.30 and $3.40 per refrigerator, which in aggregate, would total between approximately $23 million and $34 million per year.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any action containing a significant Federal intergovernmental mandate. Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because EPA estimates that this proposed rule will not result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Finally, because this NPRM does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule would not have a significant impact on a substantial number of small entities because the costs of the SNAP requirements as a whole are expected to be minor. There are numerous alternatives available and some users have independently begun to transition away from the substances listed as unacceptable because of the HCFC

production phase-out. The actions herein may well provide benefits to businesses who have transitioned to HCFC alternatives. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposal. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

EPA has determined that this proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

E. Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children, as the exposure limits and acceptability listings in this proposed rule primarily apply to the workplace.

F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This NPRM will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposal.

H. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards. This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this proposal.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G is amended by adding the following Appendix J to read as follows:

Appendix J to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the [FR publication date] of the final rule.

FOAM BLOWING UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
All foam end-uses	HCFC–141b and blends thereof	Unacceptable	Existing HCFC–141b users are grandfathered until January 1, 2005.
All foam end-uses	HCFC–22, HCFC–142b and blends thereof.	Unacceptable	Existing HCFC–22/–142b users are grandfathered until January 1, 2005.
All foam end-uses	HCFC–124	Unacceptable	Alternatives exist with lower or zero-ODP.

[FR Doc. 00–16966 Filed 7–10–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF32

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis; correction.

SUMMARY: This document corrects the electronic mail (e-mail) address listed in a document published in the **Federal Register** on June 29, 2000, regarding the reopening of comment period and notice of availability of draft economic analysis for proposed critical habitat determination for the coastal California gnatcatcher. This clarification provides the correct e-mail address for submission of electronic comments on the proposed critical habitat determination of the coastal California gnatcatcher and the draft economic analysis for the proposed critical habitat determination.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, 760–431–9440.

Correction

In the document announcing the reopening of comment period and notice of availability of draft economic analysis for proposed critical habitat determination for the coastal California gnatcatcher, FR 00–16511, beginning on page 40073 in the issue of June 29, 2000, make the following correction in the **ADDRESSES** section. On page 40074 in the 1st column, correct the e-mail address from "http://pacific.fws.gov/crithab/cg" to "fw1cagn@fws.gov."

Dated: June 29, 2000.

Michael J. Spear,

Manager, California/Nevada Operations.

[FR Doc. 00–17566 Filed 7–10–00; 8:45 am]
BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 133
Tuesday, July 11, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0514.

Form Number: N/A.

Title: Rules and Procedures Applicable to Commodity Transactions.

Type of Submission: Renewal of Information Collection.

Purpose: USAID finances transactions under Collection Import Programs and needs to assure that the transaction compiles with applicable statutory and regulatory requirements. In order to assure compliance and request refund when appropriate, information is required from host country importers, suppliers receiving from host country importers, suppliers receiving USAID funds and banks making payments for USAID.

Annual Reporting Burden:

Respondents: 308.

Total annual responses: 1991.

Total annual hours requested: 869 hours.

Dated: June 29, 2000.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services Bureau for Management.

[FR Doc. 00–17478 Filed 7–10–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA Forest Service

ACTION: Notice of meeting.

SUMMARY: The Opal Creek Scenic Recreation Area Advisory Council is scheduled to meet on July 29, 2000 for a field visit to the Opal Creek Scenic Recreation Area. The field visit will provide a general overview of the area and current situation related to recreation use and other resource issues. The tour is scheduled to begin at 10 a.m., and will conclude at approximately 3 p.m. The tour will begin at the Oregon Department of Forestry Office at 22965 North Fork Road in Mehema, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area.

The public comment period will begin at 10 a.m. and the field tour will depart after the last presentation. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the July 29 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below. The public is welcome to attend the tour, however, individuals must provide their own transportation throughout the tour and bring a lunch.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: July 3, 2000.

Stephanie Phillips,

Detroit District Ranger.

[FR Doc. 00–17444 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled a public hearing and its regular business meetings to take place in Alexandria, Virginia on Monday, Tuesday, and Wednesday, July 24–26, 2000, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, July 24, 2000

10:30 a.m.–5:00 p.m. Committee of the Whole—Americans with Disabilities Act/Architectural Barriers Act Final Rule (Closed Meeting).

Tuesday, July 25, 2000

9:00 a.m.–Noon Committee of the Whole—Americans with Disabilities Act/ Architectural Barriers Act Final Rule (Closed Meeting).

1:30 p.m.–3:00 p.m. Technical Programs Committee.

3:00 p.m.–4:00 p.m. Planning and Budget Committee.

4:00 p.m.–5:00 p.m. Executive Committee.

Wednesday, July 26, 2000

1:30 p.m.–3:30 p.m. Committee of the Whole—Recreation Final Rule (Closed Meeting).

1:30 p.m.–3:30 p.m. Board Meeting.

ADDRESSES: The meetings will be held at the Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 114 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

Open Meeting

- Executive Director's Report
- Approval of the Minutes of the March 15, 2000 Board Meeting
- Executive Committee Report—Board Meeting Policy
- Planning and Budget Committee Report—Fiscal Year 2000 Spending Plan and Status Report on Agency Goals
- Technical Programs Committee Report—Status Report on Projects

Closed Meeting

- Committee of the Whole—Americans with Disabilities Act/Architectural Barriers Act Final Rule
- Committee of the Whole—Recreation Final Rule

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–17502 Filed 7–10–00; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Robert Chaegon Kim; Order Denying Export Privileges

In the Matter of: Robert Chaegon Kim currently incarcerated at: Allenwood Federal Correctional Institution, Inmate Number: 49756–083, Low Security, P.O. Box 1500, White Deer, Pennsylvania 17887 and with an address at: 20765 Bank Way, Sterling, Virginia 20165.

On July 11, 1997, following a plea of guilty to one count of an Indictment, Robert Chaegon Kim (Kim) was convicted in the United States District Court for the Eastern District of Virginia of violating Section 793(b) and (g) of the Espionage Act (currently codified at 18 U.S.C.A. §§ 792–799 (1976 & Supp. 2000)). Kim was convicted of conspiring to gather national defense information with the intent that the information be used to the advantage of a foreign nation, South Korea.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 2000)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating Section 793 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999), as amended (65 FR 14862, March 20, 2000)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Section 793 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Kim's conviction for violating Section 793(b) and (g) of the Espionage Act, and after providing notice and an opportunity for Kim to make a written submission to the Bureau of Export Administration before issuing an Order denying his export privileges, as provided in Section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Kim's export privileges for a period of 10 years from the date of his conviction. The 10-year period ends on July 11, 2007. I have also decided to revoke all license issued pursuant to the Act in which Kim had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*.

I. Until July 11, 2007, Robert Chaegon Kim, currently incarcerated at: Allenwood Federal Correctional Institution, Inmate Number: 49756–083, Low Security, P.O. Box 1500, White Deer, Pennsylvania 17887, and with an address at: 20765 Bank Way, Sterling, Virginia 20165, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the Untied States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition form the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)) and August 10, 1999 (3 CFR, 1999 Comp. 302 (2000)), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 2000)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Kim by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until July 11, 2007.

VI. In accordance with Part 756 of the Regulations, Kim may file an appeal from this Order with the Under Secretary for Export Administration. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Kim. This Order shall be published in the **Federal Register.**

Dated: June 27, 2000.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 00–17476 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–99]

Foreign-Trade Zone 27—Boston, MA; Application for Subzone Status, J. Baker, Inc. (Distribution of Apparel, Footwear and Accessories), Canton, MA; Amendment of Application

Notice is hereby given that the application of the Massachusetts Port Authority, grantee of FTZ 27, requesting authority for special-purpose subzone status for the apparel, footwear and accessories distribution facility of J. Baker, Inc. (J. Baker), has been amended to include an additional site at 120 Shawmut Road (67,200 sq. ft.), Canton, Massachusetts.

The application otherwise remains unchanged.

The comment period is reopened to August 10, 2000.

Dated: June 29, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–17388 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[(A–427–801) (A–428–801) (A–475–801) (A–588–804) (A–559–801) (A–412–801) (A–570–601)]

Continuation of Antidumping Duty Orders: Certain Bearings From France, Germany, Italy, Japan, Singapore, the United Kingdom, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Orders: Certain Bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the People's Republic of China.

SUMMARY: On November 4, 1999 (with respect to France, Germany, Italy, Japan, Singapore, and the United Kingdom) and on April 3, 2000 (with respect to the People's Republic of China ("PRC")), the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC would be likely to lead to continuation or recurrence of dumping (64 FR 60321, 60309, 60291, 60275, 60287, 60326, and 65 FR 11550, respectively). On June 28, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of these antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 39925). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 15727 and 64 FR 15783, respectively) of the antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty orders would be likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked. [1]

On June 28, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (see, Certain Bearings From China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom, 65 FR 39925 (June 28, 2000) and USITC Publication 3309, Investigations Nos. AA1921–143, 731–TA–341, 731–TA–343–345, 731–TA–391–397, and 731–TA–399 (Review) (June 2000)).

[1] See Final Results of Expedited Sunset Reviews: Antifriction Bearings From France, 64 FR 60321 (November 4, 1999); Final Results of Expedited Sunset Reviews: Antifriction Bearings From Germany, 64 FR 60309 (November 4, 1999); Final Results of Expedited Sunset Review: Cylindrical Roller Bearings From Italy, 64 FR 60291 (November 4, 1999); Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan, 64 FR 60275 (November 4, 1999); Final Results of Expedited Sunset Review: Ball Bearings From Singapore, 64 FR 60287 (November 4, 1999); Final Results of Expedited Sunset Reviews: Antifriction Bearings From the United Kingdom, 64 FR 60326 (November 4, 1999); and Tapered Roller Bearings From the People's Republic of China; Final Results of Full Sunset Review, 65 FR 11550 (March 3, 2000).

Scope

Ball Bearings and Parts Thereof ("BBs")

These products include all antifriction bearings ("AFBs") that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule ("HTS") subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof ("SPBs")

These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends. Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50,10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90.

The Department notes that the HTS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive. Furthermore, we note that the size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.[2]

Tapered Roller Bearings and Parts Thereof ("TRBs")

The merchandise covered by this antidumping duty order (52 FR 22667, June 15, 1987) includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. The subject merchandise was originally classified under item numbers 680.30, 680.39, 681.10, 692.32 of the Tariff Schedules of the United States Annotated ("TSUSA"); currently, according to the U.S. Customs Service, they are classifiable under item numbers 8482.20.00.10, 8482.20.00.20, 8482.20.00.30, 8482.20.00.40, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8708.99.80.15 and 8708.99.80.80 of the Harmonized Tariff Schedule of the United States ("HTS")

Although the above HTS and TSUSA subheadings are provided for convenience and customs purposes, the written description remains dispositive.

In the ninth administrative review (62 FR 61276, 61289, November 17, 1997), the Department clarified the scope of the order when it added two additional HTS numbers (8708.99.90.15 and 8708.99.80.80) applicable to imports of the subject merchandise which previously had not been identified in the order. The above HTS numbers correspond to subject merchandise previously classified under TSUSA item number 692.32 in the original antidumping order.

We note that scope rulings are made on an order-wide basis.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC. The Department will instruct the U.S. Customs Service to continue to collect antidumping and countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than June 2005.

Dated: July 3, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix A

The following includes clarifications to the scopes of the Department's various antidumping duty orders on antifriction bearings.

Scope Determinations Made in the Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 19006, 19019 (May 3, 1989):

Products Covered

—Rod end bearings and parts thereof
—AFBs used in aviation applications
—Aerospace engine bearings
—Split cylindrical roller bearings
—Wheel hub units
—Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination. (See International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, 54 FR 21488 (May 18, 1989))
—Wave generator bearings
—Bearings (including mounted or housed units and flanged or enhanced bearings) ultimately utilized in textile machinery

Products Excluded

—Plain bearings other than spherical plain bearings
—Airframe components unrelated to the reduction of friction
—Linear motion devices
—Split pillow block housings
—Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
—Thermoplastic bearings
—Stainless steel hollow balls

[2] There have been a number of clarifications to the scopes of these orders. For a complete listing, see Appendix A.

—Textile machinery components that are substantially advanced in function(s) or value
—Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope Rulings Completed Between April 1, 1990, and June 30, 1990. (See Scope Rulings, 55 FR 42750 (October 23, 1990))

Products Excluded

—Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope Rulings Completed Between July 1, 1990, and September 30, 1990. (See Scope Rulings, 55 FR 43020 (October 25, 1990))

Products Covered

—Rod ends
—Clutch release bearings
—Ball bearings used in the manufacture of helicopters
—Ball bearings used in the manufacture of disk drives

Scope Rulings Published in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I), 56 FR 31692, 31696 (July 11, 1991)

Products Covered

—Load rollers and thrust rollers, also called mast guide bearings
—Conveyor system trolley wheels and chain wheels

Scope Rulings Completed Between April 1, 1991, and June 30, 1991 (See Notice of Scope Rulings, 56 FR 36774 (August 1, 1991))

Products Excluded

—Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope Rulings Completed Between July 1, 1991, and September 30, 1991 (See Scope Rulings, 56 FR 57320 (November 8, 1991)):

Products Covered

—Snap rings and wire races
—Bearings imported as spare parts
—Custom-made specialty bearings

Products Excluded

—Certain rotor assembly textile machinery components
—Linear motion bearings

Scope Rulings Completed Between October 1, 1991, and December 31, 1991 (See Notice of Scope Rulings, 57 FR 4597 (February 6, 1992))

Products Covered

—Chain sheaves (forklift truck mast components)
—Loose boss rollers used in textile drafting machinery, also called top rollers
—Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope Rulings Completed Between January 1, 1992, and March 31, 1992 (See Scope Rulings, 57 FR 19602 (May 7, 1992))

Products Covered

—Ceramic bearings
—Roller turn rollers
—Clutch release systems that contain rolling elements

Products Excluded

—Clutch release systems that do not contain rolling elements
—Chrome steel balls for use as check valves in hydraulic valve systems

Scope Rulings Completed Between April 1, 1992, and June 30, 1992 (See Scope Rulings, 57 FR 32973 (July 24, 1992))

Products Excluded

—Finished, semiground stainless steel balls
—Stainless steel balls for non-bearing use (in an optical polishing process)

Scope Rulings Completed Between July 1, 1992, and September 30, 1992 (See Scope Rulings, 57 FR 57420 (December 4, 1992))

Products Covered

—Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
—Model 15BM2110 bearings

Products Excluded

—Certain textile machinery components

Scope Rulings Completed Between October 1, 1992, and December 31, 1992 (See Scope Rulings, 58 FR 11209 (February 24, 1993))

Products Covered

—Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products Excluded

—Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope Rulings Completed Between January 1, 1993, and March 31, 1993 (See Scope Rulings, 58 FR 27542 (May 10, 1993))

Products Covered

—Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope Rulings Completed Between April 1, 1993, and June 30, 1993 (See Scope Rulings, 58 FR 47124 (September 7, 1993))

Products Covered

—Certain series of INA bearings

Products Excluded

—SAR series of ball bearings
—Certain eccentric locking collars that are part of housed bearing units

Scope Rulings Completed Between October 1, 1993, and December 31, 1993 (See Scope Rulings, 59 FR 8910 (February 24, 1994))

Products Excluded

—Certain textile machinery components

Scope Rulings Completed Between January 1, 1994, and March 31, 1994

Products Excluded

—Certain textile machinery components

Scope Rulings Completed Between October 1, 1994 and December 31, 1994 (See Scope Rulings, 60 FR 12196 (March 6, 1995))

Products Excluded

—Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order.

Scope Rulings Completed Between April 1, 1995 and June 30, 1995 (See Scope Rulings, 60 FR 36782 (July 18, 1995))

Products Covered

—Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order.
—Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order.

Scope Rulings Completed Between January 1, 1996 and March 31, 1996 (See Scope Rulings, 61 FR 18381 (April 25, 1996))

Products Covered

—Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order.

Scope Rulings Completed Between April 1, 1996 and June 30, 1996 (See Scope Rulings, 61 FR 40194 (August 1, 1996))

Products Excluded

—Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order.
—Rockwell International Corporation—Automotive component, known variously as a cushion suspension unit, cushion assembly unit, or center bearing assembly, is outside the scope of the order.
—Enkotec Company, Inc.—"Main bearings" imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, are outside the scope of the order.

[FR Doc. 00–17387 Filed 7–10–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–601 (TRBs/Hungary);*et al.*)]

Revocation of Antidumping Duty Orders on Certain Bearings From Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom.

SUMMARY: On November 4, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the following antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom would be likely to lead to continuation or recurrence of dumping:

Product	Country	ITA case no.	FR cite
Tapered roller bearings	Hungary	A–437–601	64 FR 60272
Tapered roller bearings (4 inches and under)	Japan	A–588–054	64 FR 60317
Tapered roller bearings (Over 4 inches)	Japan	A–588–604	64 FR 60266
Tapered roller bearings	Romania	A–485–602	64 FR 60269
Ball bearings	Romania	A–485–801	64 FR 60313
Ball bearings	Sweden	A–401–801	64 FR 60282
Cylindrical roller bearings	France	A–427–801	64 FR 60321
Cylindrical roller bearings	Germany	A–428–801	64 FR 60309
Cylindrical roller bearings	Italy	A–475–801	64 FR 60291
Cylindrical roller bearings	Japan	A–588–804	64 FR 60275
Cylindrical roller bearings	Sweden	A–401–801	64 FR 60321
Cylindrical roller bearings	United Kingdom	A–412–801	64 FR 60326
Spherical plain bearings	Germany	A–428–801	64 FR 60309
Spherical plain bearings	Japan	A–588–804	64 FR 60275

On June 28, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the above antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 39925). Therefore, pursuant to 19 CFR 351.222(i)(1), the Department is publishing notice of the revocation of the antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 15727 and 64 FR 15783, respectively) of the antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom. As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margins were the orders revoked. (*See* list below.)

On June 28, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Certain Bearings form China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 65 FR 39925, and USITC Publication 3309 (June 2000), Investigation Nos. AA–1921–143, 731–TA–341, 731–TA–343–345, 731–TA–391–397, and 731–TA–399 (Review)).

Scope of the Orders

These orders cover shipments of certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom as described in the Appendix.

Determination

As a result of the determinations by the Commission that revocation of the antidumping duty orders would not be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the revocation of the antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom. The Department will instruct the Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: July 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix

A. Description of the Merchandise

1. *Tapered Roller Bearings ("TRBs")*

a. *Hungary:* The products subject to this order are shipments of TRBs and parts thereof, finished and unfinished, from Hungary. This merchandise is currently classifiable under the following item numbers of the Harmonized Tariff Schedule ("HTS") of the United States: 8482.00.10, 8482.20.00,8482.20.00.30, 8482.20.00.40, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8708.99.80.15, and 8708.99.80.80. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

b. *Japan (four inches or less):* Imports covered by the A–588–054 findings are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under HTS numbers 8482.20.00 and 8482.99.30.

The HTS item numbers listed above are provided for convenience and customs purposes. The written descriptions remain dispositive.

c. *Japan (over four inches):* Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 findings are not included within the scope of this order, except for those manufactured by NTN Corporation. This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. In addition, in accordance with our February 2, 1995, final scope determination regarding Koyo Seiko's rough forgings, Koyo's rough forgings are also included within the scope of this order. The HTS item numbers listed above for the A–588–604 order are provided for convenience and customs purposes. The written descriptions remain dispositive.

d. *Romania:* The products subject to this order are TRBs, including flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under HTS item numbers 8482.20.00.10, 8482.20.00.20. 8482.20.00.30, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8708.99.80.15, and 8708.99.80.80.

2. Antifriction Bearings ("AFBs")

The AFBs (other than TRBs) covered by these orders, mounted or unmounted, and parts thereof, constitute the following three types of subject merchandise:

a. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05,8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

b. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

c. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends. Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50,10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90. The HTS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the AFB orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the AFB orders. Interested parties can access all scope determinations for individual countries on the Web at www.ita.gov/sunset/ss.home.htm.

[FR Doc. 00–17513 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce determines that solid fertilizer grade ammonium nitrate from the Russian Federation is being, or is likely to be, sold in the United States at less than fair value. The estimated dumping margins are shown in the Continuation of Suspension of Liquidation section of this notice. On May 19, 2000, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation ("the Agreement"). However, pursuant to a request from the Petitioner, we have continued and completed the investigation.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Case History

Since the *Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 1139 (January 7, 2000) ("*Preliminary Determination*"), the following events have occurred: on February 15, 2000, one importer, ConAgra International Fertilizer Company ("ConAgra"), requested that the Department determine critical circumstances on a company-specific basis with respect to JSC Acron ("Acron"), a mandatory respondent in this investigation. In response to our request pursuant to section 351.301(c)(3)(i) of the Department's regulations, on February 16, 2000, Petitioner, the Committee for Fair Ammonium Nitrate Trade ("COFANT"), submitted additional surrogate factor value information, and Nevinka provided 1998 financial statements of another Polish ammonium nitrate producer. ConAgra provided information and argument concerning surrogate country selection with respect to Poland and Venezuela. Petitioner, JSC Nevinnomyssky Azot ("Nevinka") and ConAgra submitted case briefs on April 28, 2000. On May 3, 2000, all three parties submitted rebuttal briefs. On February 7, 2000, Petitioner requested a public hearing, but withdrew that request on May 2, 2000.

Continuation of Investigation

On May 19, 2000, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation. On June 29, 2000, we received a request from Petitioner requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. If the ITC determines that material injury exists, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of the Act, and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms.

Scope of the Investigation

For purposes of this investigation, the products covered are solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate).

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1999 through June 30, 1999.

Critical Circumstances

On November 1, 1999, the Department issued its preliminary affirmative critical circumstances finding with respect to imports of ammonium nitrate from the Russian Federation. *See Preliminary Determination of Critical Circumstances: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation ("Preliminary Determination of Critical Circumstances")*, 64 FR 60422 (November 5, 1999). Specifically, we determined, pursuant to section 733(e) of the Act, that there was a history of injurious dumping of the subject merchandise and that imports were massive over a relatively short period of time. We also stated that we would make a final determination of critical circumstances on a company-specific basis, as appropriate, in our final determination in this investigation.

As noted in the *Preliminary Determination*, the Department requested information regarding shipments of ammonium nitrate from Nevinka on November 8, 1999. On November 23, 1999, Nevinka provided the requested information, and as discussed below, established its entitlement to a separate rate. Previously, on September 15, 1999, Acron notified the Department that it would not participate in the investigation and, subsequently, did not provide any information regarding critical circumstances or its entitlement to a separate rate. Because there is a history of injurious dumping, in this final determination, we need only determine whether imports were massive over a relatively short period of time. We are making this determination separately with respect to Nevinka and the Russia-wide entity. Our findings are as follows:

Nevinka

We analyzed Nevinka's November 23, 1999 data and found that Nevinka's exports were massive within the meaning of section 733(e)(1)(B) of the Act. Because this information is proprietary, see the proprietary discussion and analysis in our May 22, 2000 memorandum *Antidumping Duty Investigation of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Final Determination of Critical Circumstances ("Final Determination of Critical Circumstances Memorandum")*.

Russia-Wide Entity

With regard to the critical circumstances finding for the Russia-wide entity, we have determined that massive imports exist. *See* our discussion and analysis of this issue in Comment 3 and Comment 4 of the June 30, 2000. *Issues and Decision Memorandum for the Final Determination in the Antidumping Investigation of Ammonium Nitrate from the Russian Federation for the Period of Investigation ("POI") Covering January 1, 1999 Through June 30, 1999 ("Issues and Decision Memorandum")* (see Analysis of Comments Received section below). We included Acron in the Russian-wide entity because it failed to establish its entitlement to a separate rate.

Nonmarket Economy Country Status

The Department has treated the Russian Federation ("Russia") as a nonmarket economy ("NME") country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (January 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (November 19, 1997); and *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (March 30,

1995). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The Department has continued to treat the Russian Federation as an NME for this final determination, because no party has sought revocation of the NME status in this investigation.

Surrogate Country

When the Department is investigating imports from a NME, section 773(c) of the Act requires that the Department base normal value ("NV") on the NME producer's factors of production, valued in a surrogate market economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, utilizes, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are comparable in terms of economic development to the NME country and are significant producers of comparable merchandise. The sources of individual factor values are discussed in the NV section below.

In its *Preliminary Determination*, the Department determined that Poland, Tunisia, Colombia, Turkey, South Africa, and Venezuela were countries comparable to the Russian Federation in terms of overall economic development. *See Memorandum to Rick Johnson, Program Manager, from Jeff May, Director, Office of Policy; Re: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Nonmarket Economy Status and Surrogate Country Selection*. Petitioner submitted information on the record indicating that Poland, Turkey and South Africa are significant producers of identical merchandise. *See* Submission from Akin, Gump, Strauss, Hauer & Feld, L.L.P., November 5, 1999. Nevinka submitted information in support of its argument that Venezuela is a significant producer of comparable merchandise. *See* Submission from White & Case, November 5, 1999. As noted in the *Preliminary Determination of Solid Agricultural Grade Ammonium Nitrate from the Russian Federation; Selection of a Surrogate Country ("Surrogate Country Memorandum")*, in the event that more than one country satisfied both statutory requirements, the Department has a preference to narrow the field to a single country on the basis of data availability and quality. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the Peoples' Republic of China*, 59 FR 55625 (November 8, 1994).

Congress provided the Department with broad discretion in selecting surrogate countries in NME cases. *See* section 773(c)(1)(B) of the Act (valuation of factors of production shall be based on the best available information from a market economy country(s) considered to be appropriate); *see, also, Lasko Metals* v. *United States*, 43 F3d. 1442, 143 n.3 (Fed. Cir. 1994). Consequently, in its *Preliminary Determination*, the Department determined that Poland qualified as an appropriate surrogate country because it satisfied the statutory criteria listed. Furthermore, we were able to obtain publicly available, contemporaneous information on the majority of factor inputs required.

While we have used surrogate prices for certain factors from countries other than the selected surrogate country in previous cases, it is the Department's preference and practice to rely on factor value information from one surrogate country to the extent possible. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 21058 (May 18, 1992). Accordingly, in our *Preliminary Determination*, we calculated NV using publicly available information from Poland to value Nevinka's factors of production, with one exception, monoethanolamine, which we valued using Venezuelan data, since there was no Polish data available at the time of the issuance of the *Preliminary Determination*.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, interested parties were provided the opportunity to place additional publicly available information on the record within 40 days after the date of publication of the *Preliminary Determination*. Petitioner, Nevinka and ConAgra submitted comments on February 16, 2000. In these submissions, Petitioner submitted additional surrogate factor value information; Nevinka provided 1998 financial statements of an additional Polish ammonium nitrate producer; and ConAgra provided argument concerning surrogate country selection. For the final determination, we have continued to rely on Poland as our primary surrogate country in this investigation for the final determination. For a full discussion of the Department's position in this regard, *see* Comment 1 in our *Issues and Decision Memorandum*.

Separate Rates

Nevinka

In our *Preliminary Determination*, we preliminarily determined that Nevinka met the criteria for the application of a separate rate. *See Preliminary Determination* at 1142. At verification, we found no discrepancies with the information provided in Nevinka's questionnaire response that would cause the Department to reverse this determination. In addition, we have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separate rates determination with respect to Nevinka. We, therefore, determine that Nevinka will be assigned an individual dumping margin.

Russia-Wide Rate

As stated in the *Preliminary Determination*, companies that failed to respond to our questionnaires or reported no shipments were assigned the Russia-wide rate.

As noted in the *Preliminary Determination*, U.S. import statistics indicate that the total quantity and value of U.S. imports of solid fertilizer grade ammonium nitrate from the Russian Federation are greater than the total quantity and value of solid fertilizer grade ammonium nitrate reported by all Russian companies that submitted responses. Given this discrepancy, we have concluded that not all producers/exporters of Russian solid fertilizer grade ammonium nitrate with shipments during the POI responded to our questionnaire. Since our *Preliminary Determination*, we have received no information which contradicts the information already on the record. Accordingly, for the final determination, we are applying a single antidumping duty deposit rate—the Russia-wide rate—to all producers/exporters in the Russian Federation, other than those specifically identified below under "Suspension of Liquidation."

As noted in our *Preliminary Determination*, the Russia-wide antidumping rate is based on adverse facts available, in accordance with section 776 of the Act. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding

under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Use of facts available is warranted in this case because the producers/exporters other than Nevinka failed to respond to the Department's questionnaire. Therefore, in accordance with section 776(a)(2)(D) of the Act, we find that use of facts available is warranted with respect to all companies but Nevinka.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. By failing to respond to the Department's questionnaire and failing to provide any reasoning for not responding, Russian producers/exporters of ammonium nitrate, other than Nevinka, failed to act to the best of their ability in this investigation. Therefore, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. As an adverse inference, the Department has presumed that these producers/exporters are under government control and has assigned them a common, Russia-wide rate based on adverse inferences.

In accordance with our standard practice, as adverse facts available, we are assigning to the Russia-wide entity (i.e., those companies not receiving a separate rate), which did not cooperate in the investigation, the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434 (July 29, 1998)). Because the highest margin on the record is the calculated margin for Nevinka, the Department is assigning this rate as the adverse facts available Russia-wide rate. Accordingly, for the final determination, the Russia-wide rate is 253.98 percent.

Section 776(c) of the Act requires the Department to corroborate secondary information used as facts available to the extent practicable. Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. Since the margin selected represents Nevinka's calculated margin in this investigation, this margin does not represent secondary information, and, thus, does not need to be corroborated.

Affiliation

Nevinka originally reported its U.S. sales as CEP sales, claiming that it was affiliated with its U.S. trading company, Transammonia, through Transammonia's stock ownership of Nevinka and a close supplier relationship between Nevinka and Transammonia. In our *Preliminary Determination*, we examined the facts on the record and did not find the existence of an affiliation, as defined by the statute, between Nevinka and Transammonia. We noted that Transammonia's ownership of Nevinka is below the five percent requirement under section 771(33)(E) of the Act. In addition, we found no evidence of (and respondent has not argued for) a basis for affiliation with respect to the statutory definitions under section 771(33), subsections (A) through (D) or subsection (F), of the Act. Furthermore, with respect to section 771(33)(G) of the Act, we did not find that Nevinka's relationship with Transammonia constitutes a "close supplier relationship" which would indicate control by either party over the other.

Since the *Preliminary Determination*, we conducted a verification of the information on the record concerning the relationship between Nevinka and Transammonia. We found no evidence that warranted reversing our finding that Transammonia and Nevinka are not affiliated. *See* the proprietary discussion of this issue on page 2 and verification exhibits 11 and 18 of our April 19, 2000 verification report, "*Sales and Factors of Production in the Antidumping Duty Investigation of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: JSC Nevinnomyssky Azot ("Nevinka")*," and Comment 6 of our *Issues and Decision Memorandum*. Thus, for the final determination, we have continued to treat transactions between Transammonia and Nevinka as EP transactions.

Fair Value Comparisons

To determine whether sales of solid fertilizer grade ammonium nitrate products from the Russian Federation sold to the United States by Nevinka were made at less than fair value, we compared EP to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

Although Nevinka claimed, in its questionnaire response, that its sales through Transammonia should be considered CEP sales, as discussed above, the Department has determined that the relationship between Nevinka and Transammonia does not meet the statutory definition of affiliation. Therefore, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and because there is no indication that treatment as CEP is otherwise warranted, for the final determination, we have examined Nevinka's sales to Transammonia as EP sales in accordance with section 772(a) of the Act. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared the POI-wide weighted-average EP to NV based on factors of production. Consequently, we calculated EP based on the same methodology as in the *Preliminary Determination*.

Normal Value

For the final determination, we calculated NV as we did in the *Preliminary Determination*, based on factors of production reported by Nevinka. We valued all the input factors using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

Usage Rates and Factor Valuations

In our calculation of NV, we used the same factors of production and the same surrogate values as in the *Preliminary Determination*, with the following exceptions:

- We revised our calculations for lilamin and caustic magnesite by using the actual usage rates found at verification to have applied during the period in which Nevinka produced ammonium nitrate for shipment to the United States. *See* Comment 7 of our *Issues and Decision Memorandum*.
- We revised our calculation of ammonia synthesis catalyst to account for the actual purchase price paid for a market-economy input that the Department found to be incorrectly reported at verification. *See* Comment 8 of our *Issues and Decision Memorandum*.
- We revised our valuation of catalysts to include the data submitted by Petitioner on February 16, 2000 concerning catalysts. *See* our proprietary discussion of these catalysts in our *Analysis Memorandum for the Final Determination: JSC Nevinnomyssky Azot* ("*Nevinka*"), May

22, 2000 ("*Analysis Memorandum*"). In addition, in applying freight calculations for catalysts in accordance with *Sigma* v. *United States*, 117 F.2d 1401 (Fed. Cir. 1997) we used the freight distance from the nearest port to Nevinka as facts available since Nevinka did not report the freight distances for catalysts in its questionnaire response.

- We revised the reported labor factor to account for corrections to the response made at verification. (*See*, page 2 of the April 19, 2000 verification report and verification exhibit 3.) In addition, we revised the wage rate used to account for the updated Russian regression-based wage rate, revised in May 2000, at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, *http://ia.ita.doc.gov/wages/98wages/gdp00web.htm*.

- We recalculated the surrogate depreciation ratio as a percentage of COM plus overhead, as discussed in the *Memorandum from Doreen Chen to Edward Yang re Analysis of Ministerial Error Allegation* ("*Ministerial Error Memo*"), February 1, 2000 and Comment 2 of our *Issues and Decision Memorandum*.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Nevinka for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Issues and Decision Memorandum* which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Issues and Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the Department. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *www.ita.doc.gov/import_admin/records/frn*. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Suspension of Liquidation

On May 19, 2000, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation. Pursuant to that suspension agreement, we have instructed Customs to terminate the suspension of liquidation of all entries of solid fertilizer grade ammonium nitrate from Russia. Any cash deposits of entries of solid fertilizer grade ammonium nitrate from Russia shall be refunded and any bonds shall be released.

On June 29, 2000, we received a request from petitioner requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margins:

Exporter/manufacturer	Weighted-average margin (percent)
JSC Nevinnomyssky Azot	253.98
Russia-Wide	253.98

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the Agreement will have no force or effect, and the investigation shall be terminated. *See* Section 734(f)(3)(A) of the Act. If the ITC determines that such injury does exist, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of the Act, and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix 1—Issues in Decision Memorandum

1. Surrogate Country Selection
2. Correction of Clerical Errors
3. Critical Circumstances for Acron
4. Critical Circumstances for "All Others'
5. Valuation of Market-Economy Freight Services
6. Affiliation between Nevinka and Transammonia
7. Valuation of Lilamin and Caustic Magnesite
8. Valuation of Ammonia Synthesis Catalyst

[FR Doc. 00–17514 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Notice of Antidumping Duty Order: Bulk Aspirin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, or Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3853, and (202) 482–1279, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all citations to the regulations of the Department of Commerce ("the Department") are to 19 CFR Part 351 (1998).

Scope of Order

The product covered by this antidumping duty order is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia ("USP") 23. It is classified under the Harmonized Tariff

Schedule of the United States ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the Handbook of Nonprescription Drugs, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On June 27, 2000, the Department published in the **Federal Register** (65 FR 39598), its "Notice of Amended Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the PRC" in which the final antidumping duty margins for Shandong Xinhua Pharmaceutical Factory and Jilin Pharmaceutical Import and Export Corporation were revised. The revised margins are listed below.

On June 30, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission ("ITC") notified the Department that a U.S. industry is "threatened with material injury," within the meaning of section 735(b)(1)(A)(ii) of the Act, by reason of less-than-fair-value imports of bulk aspirin from the People's Republic of China ("PRC").

According to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted without the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the Act requires the Customs Service to refund any cash deposits or bonds of estimated antidumping duties posted since the Department's preliminary antidumping determination if the ITC's final determination is threat-based.

Because the ITC's final determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, section 736(b)(2) of the Act is applicable to this order. Therefore, the Department will direct the Customs Service to assess, upon further advice, antidumping duties on all unliquidated entries of bulk aspirin from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and to terminate the suspension of liquidation for entries of bulk aspirin from the PRC entered, or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct the Customs Service to refund any cash deposits made, or bonds posted, between the publication date of the Department's preliminary antidumping determination and the publication date of the ITC's final determination.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below:

Exporter/manufacturer	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Factory	16.51
Jilin Pharmaceutical Import and Export Corporation	10.85
PRC-wide Rate	144.02

This notice constitutes the antidumping duty order with respect to bulk aspirin from the PRC, pursuant to section 735(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with sections 736(a) and 19 CFR 351.211.

Dated: July 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17515 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

[I.D. 063000D]

Notice of Intent to Prepare an Environmental Impact Statement Regarding Issuance of an Incidental Take Permit and Enhancement of Survival Permit to Simpson Timber Company, California Timberlands, for Forest Management in Del Norte and Humboldt Counties, California

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct public scoping and prepare an environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), we, the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) intend to prepare an Environmental Impact Statement (EIS) regarding an expected application from the Simpson Timber Company, California Timberlands (Simpson) for an incidental take permit for take of threatened salmonid species and an enhancement of survival permit for coverage of an unlisted fish species and unlisted amphibian species, in accordance with section 10(a) of the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, Simpson is preparing a Habitat Conservation Plan/Candidate Conservation Agreement (Plan/Agreement) and applications for an incidental take permit and an enhancement of survival permit (Permits) related to forest management and timber operations on a portion of its lands in Del Norte and Humboldt Counties, California. Simpson expects to apply for an incidental take permit pursuant to section 10(a)(1)(B) of the ESA from NMFS for the coho salmon (*Oncorhynchus kisutch*) and chinook salmon (*O. tshawytscha*), and may also seek coverage for one currently unlisted species, coastal steelhead (*O. mykiss irideus*) under the incidental take permit should this species be listed in the future. Simpson is also preparing an application for an enhancement of survival permit under the Candidate Conservation Agreement with

Assurances Policy of the FWS for the coastal cutthroat trout (*O. clarki clarki*), southern torrent salamander (*Rhyacotriton variegatus*) and tailed frog (*Ascaphus truei*).

We are furnishing this notice in order to advise other agencies and the public of our intentions and to announce the initiation of a public scoping period during which other agencies and the public are invited to provide written comments on the scope of issues to be included in the EIS.

DATES: We request comments be received on or before August 10, 2000. Public scoping meetings, at which oral and written comments can be submitted, are scheduled for July 11, 2000, from 3:00 p.m. to 5:30 p.m. and from 6:00 p.m. to 8:30 p.m., at the Cultural Center Atrium, 1001 Front Street, Crescent City, CA, and July 12, from 3:00 p.m. to 5:30 p.m. and from 6:00 p.m. to 8:30 p.m., at the Double Tree Hotel, 1929 4th Street, Eureka, CA.

ADDRESSES: Comments regarding the scope of the EIS and requests for additional information should be addressed to Mr. James Bond, NMFS, or Ms. Amedee Brickey, FWS, both located at 1655 Heindon Road, Arcata, CA 95521. Written comments may also be sent by facsimile to (707) 822–8411. Comments received will be available for public inspection, by appointment, during normal business hours (Monday through Friday; 8:00 a.m. to 5:00 p.m.) at the above address. All comments received, including names and addresses, will become part of the official administrative record and may be available to the public.

FOR FURTHER INFORMATION CONTACT: Mr. James Bond, NMFS, or Ms. Amedee Brickey, or Mr. John Hunter FWS, at the address above, or telephone (707) 822–7201.

SUPPLEMENTARY INFORMATION: Simpson owns and manages approximately 457,000 acres of commercial timberland in Del Norte, Humboldt and Trinity Counties, California. This property occurs in watersheds with habitat important to the conservation of salmonid species in the North Coast region of California, including, but not limited to, the Winchuck River, Smith River, Klamath River and its tributaries, Redwood Creek, Little River, Mad River, tributaries to Humboldt Bay, Eel River, the Van Duzen River and others. Many of these streams are listed as water quality limited under Section 303(d) of the Clean Water Act. Some of Simpson's management activities have the potential to impact salmonid and other species subject to protection under the ESA. Section 10(a)(1)(B) of the ESA contains provisions for the issuance of incidental take permits to non-Federal land owners for the take of endangered and threatened species, provided, in part, the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Simpson is preparing a 50-year Plan/Agreement that is intended to provide for management of approximately 431,000 acres of its California properties in Del Norte and Humboldt Counties in a manner that will minimize and mitigate the impacts of take of certain salmonid species currently listed under the ESA or which may be listed during the life of the Plan/Agreement. Once completed, it is expected that Simpson will submit the Plan/Agreement to NMFS as part of an application for the permits.

The Candidate Conservation Agreement with Assurances Policy (64 FR 32706–32716 and 64 FR 32726–32736) contains provisions for the issuance of enhancement of survival permits (section 10(a)(1)(A) of the ESA) to non-Federal land owners to cover the take of currently unlisted species in the event that such species are listed in the future, provided, in part, that the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery in the wild of any species. An applicant for an enhancement of survival permit must prepare and submit a permit application to the FWS for approval along with an Agreement containing a strategy for covered lands that demonstrates the applicant's appropriate contribution to precluding or removing the need to list the species as threatened or endangered under the ESA. The applicant must ensure that adequate funding for the Agreement will be provided. Once completed, it is anticipated that Simpson will submit its Plan/Agreement to the FWS as part of its application for an enhancement of survival permit.

Activities that Simpson may propose for Permit coverage include mechanized timber harvest; forest product transportation; road and landing construction, use, maintenance and abandonment; site preparation; tree planting; certain types of vegetation management; fertilizer application; silvicultural thinning and other silvicultural activities; fire suppression; rock quarries and borrow pit operations; gravel extraction; aquatic habitat restoration and other forest management activities. The Plan/Agreement would also likely cover certain monitoring activities and scientific work in the Plan area.

NMFS will evaluate the incidental take permit application and associated Plan in accordance with section 10(a)(1)(B) of the ESA and its implementing regulations. The FWS will evaluate the enhancement of survival permit application and associated Agreement in accordance with section 10(a)(1)(A) of the ESA, its implementing regulations and the Candidate Conservation Agreement with Assurances Policy.

The environmental review will analyze the action as proposed by Simpson. Simpson's proposal is expected to seek authorization for take of the covered species incidental to the activities that are described above. The habitat conservation plan prepared by Simpson in support of the applications described above will describe the impacts of the taking for which authorization is sought. In addition, the HCP will propose a conservation strategy to minimize and mitigate those impacts to the maximum extent practicable and to satisfy other applicable requirements of the ESA and its implementing regulations. This conservation strategy is expected to include enhanced stream buffers, a sediment reduction program, a monitoring program, adaptive management measures and certain salmonid, fish and aquatic habitat restoration. The HCP will also identify alternatives to the conservation plan considered by Simpson and explain why those alternatives were not selected. Under Simpson's Plan alternative, we would issue the requested permits and Simpson would implement its Plan within the Plan area.

The environmental review will also analyze a full range of reasonable alternatives to the proposed action, including a No Action alternative, and the associated impacts of each. We are currently in the process of developing alternatives for analysis. In connection with developing alternative approaches, we will consider, for example, modified lists of covered species, modified permit coverage areas, i.e., portions of the landscape subject to permit coverage, modified permit terms and different mitigation/aquatic resource management strategies that would serve the purpose of minimizing and mitigating the impacts of incidental take. We will consider other project alternatives recommended during this scoping process in order to develop a full range of reasonable alternatives. We invite comments and suggestions from all interested parties to ensure that a reasonable range of alternatives and issues related to them are addressed and that all significant issues are identified.

We will conduct an environmental review of the permit application and the Plan/Agreement and prepare an Environmental Impact Statement in accordance with NEPA requirements, as amended (42 U.S.C. 4321 et seq.), and its implementing regulations (40 CFR parts 1500 through 1508) and in accordance with other applicable Federal laws and regulations and policies and procedures of the Services for compliance with those regulations. The Services estimate that the draft EIS will be available for public review during the fourth quarter of 2000.

Dated: July 5, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: June 30, 2000.

Elizabeth Stevens,

Acting California/Nevada Operations Manager, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 00–17509 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 063000A]

Marine Mammals; File No. 373–1575

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Point Reyes Bird Observatory (Dr. Sarah Allen, Principal Investigator), 4990 Shoreline Highway, Stinson Beach, CA 94970, applied in due form for a permit to take harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and Steller sea lions (*Eumetopias jubatus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 10, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001);and

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115 (206/526–6150).

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant seeks authorization to monitor and research all age, sex and reproductive classes of harbor seals and northern elephant seals along the Point Reyes National Seashore, and in the Gulf of the Farallones, San Francisco Bay, and Russian River, California. Proposed research takes of harbor seals would involve capturing, tagging, dye-marking, measuring, blood collecting, bacterial swabbing, scat collecting, and unintentional mortality. Proposed research takes of northern elephant seals would involve capturing, tagging, dye-marking, blood collecting, and bacterial swabbing. Unintentional harassment of California sea lions and Steller sea lions is also proposed.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 3, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–17510 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.062900D]

Marine Mammals; Permit Nos. 914–1470–01 and 779–1339–02

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for amendment.

SUMMARY: Notice is hereby given that University of Southern Mississippi, Box 5018, Hattiesburg, MS 39401, and National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149, have requested an amendment to scientific research Permit No. 914–1470 and 779–1339, respectively.

DATES: Written or telefaxed comments must be received on or before August 10, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment **in the following office(s):**

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713–2289.

SUPPLEMENTARY INFORMATION: The amendment request to Permit No. 914–1470, issued on November 12, 1998 (63 FR 64066), and Permit No. 779–1339, issued on July 8, 1997 (62 FR 38069) are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 914–1470 authorizes the permit holder to: import fluid and tissue samples of bottlenose dolphin, beluga whale and Pacific white-sided dolphin from the Bahamas, Honduras and Finland. The permit holder requests authorization to: import blood samples of Southern elephant seals from Argentina.

Permit No. 779–1339 authorizes the permit holder to: conduct research that involves biopsy sampling, photo-identification and photo-grammetry on a variety of marine mammal species in the North Atlantic ocean, including the Gulf of Mexico, Caribbean Sea, U.S. territorial seas and international waters. The Holder wants to increase the number of animals authorized to be biopsied sampled.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 3, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–17511 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

July 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that LDP, LLC has violated the requirements for participation in the Special Access Program, and has suspended LDP, LLC from participation in the Program for the period August 1, 2000 through July 31, 2003.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of LDP, LLC during the period August 1, 2000 through July 31, 2003, and to prohibit entry by or on behalf of LDP, LLC under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended LDP, LLC from participation in the Special Access Program for the period August 1, 2000 through July 31, 2003. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of LDP, LLC during the period August 1, 2000 through July 31, 2003. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of LDP, LLC manufactured from fabric exported from the United States during the period August 1, 2000 through July 31, 2003.

Sincerely,

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17437 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m. Friday, July 7, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17583 Filed 7–7–00; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, July 14, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17584 Filed 7–7–00; 11:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, July 21, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17585 Filed 7–7–00; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, July 28, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17586 Filed 7–7–00; 11:29 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Vessel Operation Report; ENG Forms 3925, 3925B, 3925P, 3925C; OMB Number 0710–0006.

Type of Request: Revision.

Number of Respondents: 1,321.

Responses Per Respondent: 173 (average).

Annual Responses: 228,752.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 44,479.

Needs and Uses: The information collected is the basic data from which the Corps of Engineers compiles and publishes waterborne commerce statistics. The data is collected from vessel operating companies. The data is used to report to Congress and to perform cost benefit studies for new projects, rehabilitation projects, and operations and maintenance of existing projects. The Waterborne Commerce Statistics Center, Army COE, is the sole authorized collector of data on domestic waterborne commerce. The WCSC provides the information to the Maritime Administration (MARAD), Department of Energy, Tennessee Valley Authority, Interstate Commerce Commission, the Coast Guard, State taxing agencies, U.S. Customs Service, Department of Treasury, and the Internal Revenue Service.

Affected Public: Business or Other For-Profit.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for U.S. Army COE, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 15, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17408 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Form Number, and OMB Number: USAF Museum System Volunteer Application/Registration; AF Form 3569; OMB Number 0701–0127.

Type of Request: Revision.

Number of Respondents: 255.

Responses Per Respondent: 1.

Annual Responses: 255.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 64.

Needs and Uses: The information collection requirement is necessary to provide: (a) The general public an instrument to interface with the USAF Museum System Volunteer Program; (b) the USAF Museum System the means with which to select respondents pursuant to the USAF Museum System Volunteer Program. The primary uses of the information collection includes the evaluation and placement of respondents within the Museum System Volunteer Program.

Affected Public: Individuals or Households.

Frequency: One-Time.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 15, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17409 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Marine Corps Advertising Awareness and Attitude Tracking Study; OMB Number 0704–0155.

Type of Request: Reinstatement.

Number of Respondents: 1,600.

Responses per Respondent: 2.

Annual Responses: 3,200.

Average Burden per Response: 21 minutes.

Annual Burden Hours: 1,120.

Needs and Uses: The Marine Corps Advertising Awareness and Attitude Tracking Study is used by the Marine Corps to measure the effectiveness of current advertising campaigns. The study, a semi-annual telephonic survey, also provides data concerning perceptions of young males and females towards the advantages of joining the Marine Corps, specific attributes of Marines, and the Marine Corps in general. This information is also used to plan future advertising campaigns. Respondents are young men and women between the ages of 16–19 years of age who have no prior experience in the military.

Affected Public: Individuals or Households.

Frequency: Semi-Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17410 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Form Number, and OMB Number: Health Insurance Claim Form; HCFA Form 1500; OMB Number 0720–0001.

Type of Request: Reinstatement.

Number of Respondents: 14,500,000.

Responses per Respondent: 1.

Annual Responses: 14,500,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 3,625,000.

Needs and Uses: This information collection requirement is used by TRICARE/CHAMPUS to determine reimbursement for health care services or supplies rendered by individual professional providers to TRICARE/CHAMPUS beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues TRICARE/CHAMPUS commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-For-Profit Institutions; Federal Government; State, Local or Tribal Government.

Frequency: On Occasion.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Allison Eydt. Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written request for copies of the information collection proposal should be sent to Mr. Cushing. WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17411 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board; Action Notice

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by the President on September 16, 1994.

The Board advises the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and functions as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) chairs the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Advisory Board will be held on 17 July, 2000 at the Crystal City Marriott Gateway Hotel, Arlington, VA from 2 p.m. to 5 p.m. The meeting will be open to the public.

For further information please contact Mr. Bill Isaacs telephone: 703–602–0815.

Dated: July 5, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17414 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on August 1, 2000, August 8, 2000, August 15, 2000, August 22, 2000, and August 29, 2000, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: July 5, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17413 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Department of Defense, Defense Contract Audit Agency.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Chief, Human Resources Management, Defense Contract Audit Agency, Department of Defense, Ft. Belvoir, Virginia 22060–6219, 703–767–1236.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Earl Newman, Assistant Director, Operations, Defense Contract Audit Agency, Chairperson.

Mr. Larry Uhlfelder, Assistant Director, Policy and Plans, Defense Contract Audit Agency, member.

Mr. Kirk Moberley, General Counsel, Defense Contract Audit Agency, member.

Regional Performance Review Board

Mr. Barbara Reilly, Regional Director, Mid-Atlantic, Defense Contract Audit Agency, Chairperson.

Mr. Frank Summers, Regional Director, Central, Defense Contract Audit Agency, member.

Mr. Robert Melby, Deputy Regional Director, Eastern, Defense Contract Audit Agency, member.

Dated: June 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17412 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: An Electromagnetic Locomotion Platform for use ion simulated environments, A One-Step Resin Transfer Molding Process, and A Method of Tailoring Susceptors for Use in Induction Heating and Bonding systems.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Electromagnetic Locomotion Platform for Translation and Total Immersion of Humans into Virtual Environments.

Inventor: Jim Faughn.

Patent Number: 6,050,822.

Issued Date: April 18, 2000.

Title: One-Step Resin Transfer Molding of Multifunctional Composites Consisting of Multiple Resins.

Inventors: Bruce K. Fink, John Gillespie, Emanuele Gillio and Karl Bernetich.

Patent Number: 6,048,488.

Issued Date: April 11, 2000.

Title: Tailored Mesh Susceptors for Uniform Induction Heating, Curing and Bonding of Materials.

Inventors: Bruce K. Fink, John W. Gillespie, Jr. and Shridhar Yarlagadda.

Patent Number: 6,043,469.

Issued Date: March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055 tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17504 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A method for multi-sensor, multi-target tracking, An inverter which converts power from a single source into two widely different types of power outputs, and an optical amplifier that provides high brightness output.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/

or selling devices or processes covered by this patent.

Title: Method and Apparatus for Multi-Sensor, Multi-Target Tracking Using a Genetic Algorithm.

Inventor: David Hillis.

Patent Number: 6,055,523.

Issued Date: April 25, 2000.

Title: Tridirectional Inverter.

Inventor: Thomas F. Podlesak.

Patent Number: 6,052,292.

Issued Date: April 18, 2000.

Title: High Brightness Optical Parametric Amplifier Array.

Inventors: Suresh Chandra, Geraldine H. Daunt and Michael J. Ferry.

Patent Number: 6,052,218.

Issued Date: April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197 tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17505 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Novel Target Technology for Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel target technology as described in the U.S. Patent #5,669,608; Device for Locating the Position of Impact of a Projectile; issued 23 September 1997; Thomson, et al. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17508 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive or Partially Exclusive License to Whithner Corporation

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of Intent.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to Whithner Corporation, a corporation having its principle place of business at 6300 Blair Hill Lane, Baltimore, MD 21209, an exclusive or partially exclusive license relative to a patented ARL technology (US Patent #5,669,608; Device for Locating the Position of Impact of a Projectile; issued 23 September 1997; Thomson, *et al.*). Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17507 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers

Department of the Army

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) to the Central and Southern Florida Project (C&SF) Comprehensive Review Study Integrated Feasibility Report and Programmatic Environmental Impact Statement on the Water Preserve Areas (WPA) Feasibility Study

AGENCY: Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, intends to prepare a Supplemental Environmental Impact Statement to the C&SF Comprehensive Review Study Integrated Feasibility Report and Programmatic Environmental Impact Statement on the Water Preserve Areas Feasibility Study. the study is located in Palm Beach, Broward, and Miami-Dade Counties east of the Water Conservation Areas and generally west of existing developed areas. The study will investigate concepts to capture and store excess surface waters by backpumping water from the lower east coast urban areas that is normally discharged to tide via the C&SF Project canal system. The C&SF Comprehensive Review Study demonstrated that the Water Preserve Areas concept is an integral part of the Everglades restoration plan.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and SEIS can be answered by William Porter, Planning Division, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232–0019, Telephone 904–232–2259, or Fax 904–232–3442.

SUPPLEMENTARY INFORMATION: a. *Project Features and Scope:* The WPAs feasibility study will evaluate the size, location, and operational aspects of the components of the Comprehensive Plan of the C&SF Project Comprehensive Review Study within the WPAs study boundary to provide for the optimum ecosystem restoration function. Other water-related needs and issues which will be addressed in the detailed engineering design of the WPAs include: water supply/use, water quality, seepage barriers, salt water intrusion, urban development impacts, and the presence of exotics in the proposed WPAs. This WPAs Feasibility Study will contain feasibility level analyses including General Design Memorandum level engineering and design. Some of the tasks associated with the preparation of this report will include surveys and mapping, geotechnical investigations, design optimization, economics, environmental analyses, and real estate analyses. A supplemental National Environmental Policy Act document will be prepared. A Project Management Plan has been prepared that details schedules, funding requirements, and identifies resource needs.

b. *Scoping:* The scoping process as outlined by the Council on Environmental Quality is being utilized to involve Federal, State, and local agencies, affected Indian Tribes, and other interested private organizations and parties. A Scoping Letter has been sent to interested Federal, State and local agencies, interested organizations and the public, to request their comments and concerns regarding issues they feel should be addressed in the SEIS. Interested persons and

organizations wishing to participate in the scoping process should contact the U.S. Army Corps of Engineers at the address above. Significant tissues anticipated include: flood protection and water supply for the project area; reduced drainage of the Everglades and reestablishing natural hydropatterns within existing natural areas, providing short hydroperiod wetlands to increase spatial extent, and providing a buffer between the Everglades and the increasingly urbanized lower east coast area. Public meetings held over the course of the study will be announced in public notices and local newspapers with exact locations, dates, and times.

c. It is estimated that the SEIS will be available to the public by summer 2001.

James C. Duck,

Chief, Planning Division.

[FR Doc. 00–17503 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Dam Safety Assurance Study, Tuttle Creek Lake Project, Manhattan, Kansas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The purpose of this study is to consider the economic, environmental, and social impacts that may occur as a result of various alternatives being considered in a dam safety assurance study, to consider embankment seismic remediation, under the authority of Section 1203 of the water Resources Development Act of 1986 (Pub. L. 99–662), Tuttle Creek Lake Project, Manhattan, Kansas.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed study and DEIS can be answered by the Project Manager, Mr. David L. Mathews, telephone number (816) 983–3696, Chief, Dam Safety and Support Section, Geotechnical Branch, U.S. Army Corps of Engineers, 700 Federal Building, 601 E. 12th Street, Kansas City, Missouri 64106–2896.

SUPPLEMENTARY INFORMATION: 1. The Kansas City District (KCD), Corps of Engineers, is undertaking a Dam Safety Assurance Study, to consider embankment seismic remediation measures, under the authority of Section 1203 of the Water Resources Development Act of 1986 (Pub. L. 99–662, for the Tuttle Creek Lake Project, Manhattan, Kansas.

2. KCD's study will evaluate the no-action alternative as well as various structural alternatives to determine:

a. Seismic remediation costs and benefits;

b. Regional social and economic impacts; and

c. Environmental impacts and mitigation measures.

3. Reasonable alternatives KCD will examine include the feasibility of various structural measures to address dam safety issues concerning seismic stability of the Tuttle Creek dam.

4. Scoping Process.

a. A public workshop will be held at Manhattan, Kansas in the Fall of 2000. The exact date, time, and location of the workshop will be announced when the details are finalized. Additional workshops will be held as the study progresses to keep the public informed. Coordination meetings will be held as needed with affected/concerned local, State, and Federal governmental entities.

b. These workshops and meetings, as well as any meetings which were previously held regarding this project, will serve as the collective scoping process for preparation of the DEIS. No formal "scoping" meeting will be held.

c. Draft documents forthcoming from the study will be distributed to Federal, State, and local agencies, as well as interested members of the general public, for review and comment.

d. Significant issues to be analyzed in depth include evaluations of:

(1) Dam safety;

(2) Impacts to fish and wild resources;

(3) Recreation;

(4) Navigation; and

(5) Water supply.

e. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as per regulations of the Council of Environmental Quality (Code of Federal Regulations, 40 CFR Parts 1500–1508), and other applicable laws, regulations, and guidelines.

5. The anticipated date of availability of the DEIS for public review is January 2002.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17506 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–KN–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–172–000, et al.]

CPV Gulfcoast, Ltd., et al.; Electric Rate and Corporate Regulation Filings

July 5, 2000.

Take notice that the following filings have been made with the Commission:

1. CPV Gulfcoast, Ltd.

[Docket No. EG00–172–000]

Take notice that on June 23, 2000, CPV Gulfcoast, Ltd., c/o Competitive Power Ventures, L.P., 4061 Power Mill Road, Suite 700, Calverton, MD 20705, filed with the Federal Energy Regulatory Commission (Commission) an amendment to the June 15, 2000 application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The amendment identified the following informational changes: (i) CPV Gulfcoast, Ltd. is the name of the Applicant rather than CPV Gulfcoast, L.P. and (ii) that the nominally rated 250 MW natural gas fired combined cycle generating facility will consist of one (1) F class combustion turbine, one (1) heat recovery steam generator and a single steam turbine.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

2. Southern Company Services, Inc.

[Docket No. ER00–2998–000]

Take notice that on June 30, 2000, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Purchased Power Agreement between Georgia Power and LG&E Energy Marketing, Inc. (LEM) dated October 6, 1999 (the Agreement) pursuant to the Commission's authorization for Georgia Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Agreement provides the general terms and conditions for capacity and associated energy sales from Georgia Power to LEM commencing on June 1, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER00–2999–000]

Take notice that on June 30, 2000, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Purchased Power Agreement between Georgia Power and LG&E Energy Marketing, Inc. (LEM) dated November 24, 1998 (the Agreement), the Letter Agreement between LEM and Georgia Power, dated as of June 20, 2000 (Letter Agreement), and the Letter Agreement between LEM and Georgia Power, dated as of June 26, 2000 (Second Letter Agreement), pursuant to the Commission's authorization for Georgia Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Agreement provides the general terms and conditions for capacity and associated energy sales from Georgia Power to LEM commencing on June 1, 2000. The Letter Agreement and the Second Letter Agreement accelerate the commencement dates for the delivery of portions of capacity and associated energy under the Agreement.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER00–3000–000]

Take notice that on June 30, 2000, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Purchased Power Agreement between Georgia Power and Dynegy Power Marketing, Inc. (Dynegy) dated March 2, 2000 (the Agreement) pursuant to the Commission's authorization for Georgia Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Agreement provides the general terms and conditions for capacity and associated energy sales from Georgia Power to Dynegy commencing on June 1, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER00–3001–000]

Take notice that on June 30, 2000, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Power Purchase Agreement between Georgia Power and Alabama Electric Cooperative, Inc. (AEC) dated May 5, 2000 (the Agreement) pursuant to the Commission's authorization for Georgia Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Agreement provides the general terms and conditions for capacity and associated energy sales from Georgia Power to AEC commencing on June 1, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Conectiv

[Docket No. ER00–3002–000]

Take notice that on June 30, 2000, Conectiv tendered for filing under Section 205 of the Federal Power Act four Interconnection Agreements between Conectiv and NRG Energy, Inc. The Interconnection Agreements set forth the terms for the interconnection of four wholly-owned generating stations being acquired by NRG Energy, Inc. from Conectiv in association with Conectiv's restructuring efforts.

A copy of the filing was served on the Delaware Public Service Commission, the Maryland Public Service Commission, the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, PJM Interconnection, LLC, and NRG Energy, Inc.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER00–3003–000]

Take notice that on June 30, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service between ASC and Illinois Municipal Electric Agency (IMEA). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to IMEA pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER00–3004–000]

Take notice that on June 30, 2000, Virginia Electric and Power Company (Virginia Power or the Company), tendered for filing the following unexecuted Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Unexecuted Second Amended Service Agreement for Firm Point-to-Point Transmission Service designated Second Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, First Revised Volume No. 5;

2. Unexecuted Second Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Second Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Original Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. The Company requests an effective date of June 1, 2000, the date service was first provided to the customer under the amended agreements.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. TXU Electric Company

[Docket No. ER00–3005–000]

Take notice that, on June 30, 2000, TXU Electric Company (TXU Electric) tendered for filing an executed transmission service agreement (TSA) with Engage Energy U.S., L.P. for certain Planned and Unplanned Service transactions under TXU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TXU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TXU Electric seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Engage Energy U.S., L.P. as well as the Public Utility Commission of Texas.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER00–3006–000]

Take notice that on June 30, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the

Service Agreement for Network Integration Transmission Service for PP&L Inc. (now PPL Electric Utilities Corporation) (PPL) so as to reflect that, commencing June 1, 2000, the load of the Borough of Goldsboro, Pennsylvania (Goldsboro) will be served by PPL rather than GPU.

Copies of this filing were served upon PPL, GPU, Goldsboro, and the Pennsylvania Public Utility Commission.

PJM requests an effective date of June 1, 2000, for the amendments to the service agreements.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER00–3007–000]

Take notice that on June 30, 2000, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and Gas Recovery Systems, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Gas Recovery Systems, Inc. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective June 12, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. The Montana Power Company

[Docket No. ER00–3008–000]

Take notice that on June 30, 2000, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement PPL EnergyPlus, LLC (PPL) (Open Access Transmission Tariff).

A copy of the filing was served upon PPL Energy Plus, LLC.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER00–3009–000]

Take notice that on June 30, 2000, Virginia Electric and Power Company tendered for filing amendments to its Open Access Transmission Tariff (OATT) to enhance the ability of customers whose loads are less than 1 MW in any or all hours to schedule transmission service under the Company's OATT.

Virginia Power requests an effective date of September 1, 2000.

The filing has been served on Virginia Power's current OATT customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. The Dayton Power and Light Company

[Docket No. ER00–3010–000]

Take notice that on June 30, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing British Columbia Power Exchange Corporation and Pepco Energy Services as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon establishing British Columbia Power Exchange Corporation and Pepco Energy Services and the Public Utilities Commission of Ohio.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. The Detroit Edison Company

[Docket No. ER00–3011–000]

Take notice that on June 30, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (Service Agreements) for Short-term Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Nordic Electric, dated as of April 20, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 19, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. The Detroit Edison Company

[Docket No. ER00–3012–000]

Take notice that on June 30, 2000, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (the Service Agreement) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access and Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Williams Energy Marketing and Trading Company, dated as of April 27, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 26, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. The Detroit Edison Company

[Docket No. ER00–3013–000]

Take notice that on June 30, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (Service Agreements) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access and Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Aquila Energy Marketing Corporation, dated as of April 27, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 26, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER00–3014–000]

Take notice that on June 30, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing three Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Reliant Energy Services, Inc. (Reliant). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to Reliant pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER00–3015–000]

Take notice that on June 30, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for

acceptance materials to permit NEPOOL to expand its membership to include The Cape Light Compact and J.F.Gray & Associates, LLC (collectively, the Applicants).

The Participants Committee requests an effective date of July 1, 2000 for commencement of participation in NEPOOL by Applicants.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Ameren Services Company

[Docket No. ER00–3016–000]

Take notice that on June 30, 2000, Ameren Services Company (Ameren Services), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and Illinois Municipal Electric Agency (IMEA). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to IMEA pursuant to Ameren's Open Access Tariff.

ASC requests that the Network Service Agreement and Network Operating Agreement be allowed to become effective June 1, 2000 as indicated in its term.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota) Northern States Power Company (Wisconsin)

[Docket No. ER00–3017–000]

Take notice that on June 30, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Wind Utility Consulting.

NSP requests that the Commission accept the Agreement effective June 15, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Central Illinois Light Company

[Docket No. ER00–3018–000]

Take notice that on June 30, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Legacy Energy Group.

CILCO requested an effective date of June 13, 2000 for the service agreements.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Avista Corporation

[Docket No. ER00–3019–000]

Take notice that on June 30, 2000, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 35.12 of the Commissions, 18 CFR Part 35.12, an executed Mutual Netting Agreement with Puget Sound Energy, Inc., effective June 1, 2000.

Notice of the filing has been served upon Puget Sound Energy, Inc.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Southern California Edison Company

[Docket No. ER00–3020–000]

Take notice that on June 30, 2000, Southern California Edison Company (SCE), tendered for filing the Harborgen Substation Service Agreement No. 2 (Agreement) between SCE and Harbor Cogeneration Company (Harbor).

The Agreement specifies the terms and conditions under which SCE will interconnect Harbor's 80,000 kW generating facility with SCE's Harborgen Substation pursuant to SCE's Transmission Owners Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Pool

[Docket No. ER00–3021–000]

Take notice that on June 30, 2000, the New England Power Pool (NEPOOL), Participants Committee filed for acceptance materials to terminate the membership of MetroMedia Energy, Inc. (MME).

At the request of MME, the Participants Committee seeks a June 1, 2000 effective date for that termination.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. The Detroit Edison Company

[Docket No. ER00–3022–000]

Take notice that on June 30, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (Service Agreement) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access and Joint Open Access Transmission Tariffs of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Power Exchange Corporation, dated as of April 27, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 26, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. American Electric Power Service Corporation

[Docket No. ER00–3023–000]

Take notice that on June 30, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Firm Point-to-Point Transmission Service Agreement for Duquesne Light Company and Specifications for Long-Term Firm Point-to-Point Transmission Service Reservations to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreement with the Michigan Companies (Consumers Energy and The Detroit Edison Company). All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after June 1, 2000.

Pursuant to a request by PP&L, Inc., the Firm and Non-firm Point-to-Point Transmission Service Agreements No. 159 and 95, under AEP Companies' FERC Electric Tariff Original Volume No. 4, are being assigned to PPL

EnergyPlus, LLC. The AEP Companies' FERC Electric Tariff Original Volume No. 4 is superceded by the OATT.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Aquila Energy Marketing Corporation

[Docket No. ER00–3024–000]

Take notice that on June 30, 2000, Aquila Energy Marketing Corporation (AEMC), tendered for filing a Contingent Call Option between AEMC and UtiliCorp United Inc. (d/b/a Missouri Public Service) dated June 30, 2000.

AEMC requests that the Contingent Call Option be made effective July 1, 2000.

Comment date: July 21 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Ameren Energy Marketing Company and Central Illinois Public Service Company d/b/a AmerenCIPS

[Docket No. ER00–3025–000]

Take notice that on June 30, 2000, Ameren Energy Marketing Company (AEM) and Central Illinois Public Service Company d/b/a AmerenCIPS (AmerenCIPS), tendered for filing a Voluntary Curtailment Agreement under which AmerenCIPS shall voluntary reduce its load upon notice from AEM requesting voluntary reduction in AmerenCIPS load.

Copies of this filing were served upon Illinois Commerce Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Southwestern Electric Power Company

[Docket No. ER00–3026–000]

Take notice that on June 30, 2000, Southwestern Electric Power Company (SWEPCO), tendered for filing Amendment No. 3 to the Power Supply Agreement, dated February 10, 1993, as amended, between SWEPCO and East Texas Electric Cooperative, Inc., (ETEC).

SWEPCO states that a copy of the filing has been served on ETEC and on the Public Utility Commission of Texas.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Southwestern Electric Power Company

[Docket No. ER00–3027–000]

Take notice that on June 30, 2000, Southwestern Electric Power Company (SWEPCO), tendered for filing Amendment No. 2 to the Amended and Restated Power Supply Agreement, dated June 30, 1997, as amended, between SWEPCO and Northeast Texas Electric Cooperative, Inc., (NTEC).

SWEPCO states that a copy of the filing has been served on NTEC and on the Public Utility Commission of Texas.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. PPL Electric Utilities Corporation

[Docket No. ER00–3028–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the 115 kV Seward-Conemaugh Interconnection Facilities Agreement (Pennsylvania Electric Company Rate Schedule FERC No. 63).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. PPL Electric Utilities Corporation

[Docket No. ER00–3029–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the Conemaugh Operating Agreement (GPU Operating Companies Rate Schedule FERC No. 100).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. PPL Electric Utilities Corporation

[Docket No. ER00–3030–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the Conemaugh Interconnection Agreement (PPL Utilities Rate Schedule FERC No. 168).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. PPL Electric Utilities Corporation

[Docket No. ER00–3031–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the Keystone Interconnection Agreement (Pennsylvania Electric Company d/b/a/ GPU Energy Rate Schedule FERC No. 115).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. PPL Electric Utilities Corporation

[Docket No. ER00–3032–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the Keystone Operating Agreement (GPU Operating Companies Rate Schedule FERC No. 99).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. PPL Electric Utilities Corporation

[Docket No. ER00–3033–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption of Power Sales Agreement dated June 26, 2000, between Baltimore Gas and Electric Company (BGE) and Constellation Power Source Generation, Inc. (CPSG), BGE will assign to its affiliate CPSG its interest in a Capacity and Energy Sales Agreement between PPL Utilities and BGE (PPL Rate Schedule FERC No. 92).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. PPL Montour, LLC

[Docket No. ER00–3034–000]

Take notice that on June 30, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Commission notice that PPL Electric Utilities Corporation (PPL Utilities) will assign its rights and obligations under the Assignment and Assumption

Agreement, dated November 24, 1999, between the Conemaugh Generating Station Owners and Sithe Power Marketing, L.P.

PPL Montour has served a copy of this filing on the Conemaugh Generating Owners, Sithe Power Marketing, L.P. and PPL Utilities.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

39. Commonwealth Edison Company; Commonwealth Edison Company of Indiana

[Docket No. ER00–3035–000]

Take notice that on June 30, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing an amendment to ComEd's Open Access Transmission Tariff (OATT) to offer new redispatch options to its Transmission Customers. ComEd is also revising Schedule 9 of its OATT, which sets forth how Transmission Customers shall compensate ComEd for redispatch, and updating the Market Redispatch option of Attachment J to its OATT to reflect changes submitted by the North America Electric Reliability Council and adopted by the Commission in Docket No. ER00–2077–000.

ComEd requests an effective date of August 29, 2000.

Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

40. PPL Montour, LLC

[Docket No. ER00–3036–000]

Take notice that on June 30, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Commission notice that PPL Electric Utilities Corporation (PPL Utilities) will assign its rights and obligations under the Assignment and Assumption Agreement, dated November 24, 1999, between the Keystone Generating Station Owners and Sithe Power Marketing, L.P.

PPL Montour has served a copy of this filing on the Keystone Generating Owners, Sithe Power Marketing, L.P. and PPL Utilities.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

41. PPL Montour, LLC

[Docket No. ER00–3037–000]

Take notice that on June 30, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Commission notice that PPL Electric Utilities Corporation (PPL Utilities) will assign its rights and obligations under the Energy Service Agreement among the Conemaugh Generating Station Owners and Sithe Power Marketing, L.P., dated November 24, 1999, and filed the Energy Service Agreement.

PPL Montour has served a copy of this filing on the Conemaugh Generating Owners, Sithe Power Marketing, L.P. and PPL Utilities.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

42. Exeter Energy Limited Partnership

[Docket No. ER00–3039–000]

Take notice that on June 30, 2000, Exeter Energy Limited Partnership. (Exeter) tendered for filing pursuant to Rule 205, 18 CFR 385.205, petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

EXETER intends to engage in electric power and energy purchases and sales. In transactions where EXETER sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in EXETER's petition, EXETER is an affiliate of CMS Energy, a public utility holding company and the parent company of Consumers Energy Company.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

43. Pennsylvania Electric Company

[Docket No ER00–3040–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing a Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the Keystone Generating Station Operating Agreement (Agreement), Penelec Rate Schedule No. 99, as part of BGE's restructuring.

The effective date of the Agreement is the date BGE's ownership interest in the Keystone Generating Station is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

44. Pennsylvania Electric Company

[Docket No. ER00–3041–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing a Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the 115 kV Seward-Conemaugh Interconnection Facilities Agreement, Pennsylvania Electric Company Rate Schedule FERC No. 63.

The effective date of the assignment is the date BGE's ownership interest in the Conemaugh Generating Station is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

45. Constellation Power Source Generation, Inc.

[Docket No ER00–3042–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing (1) a November 24, 1999 Assignment and Assumption Agreement (November Agreement) among the public utility owners of the Keystone Generating Station; and (2) a June 26, 2000 Assignment and Assumption agreement by and between Baltimore Gas and Electric Company (BGE) and CPSG (June Agreement). Pursuant to the June Agreement, BGE will, in conjunction with its restructuring, assign its interest in the November Agreement to its affiliate CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

46. Pennsylvania Electric Company

[Docket No ER00–3043–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the Conemaugh Generating Station Operating Agreement (Agreement), Penelec Rate Schedule No. 100, as part of BGE's restructuring.

The effective date of the Agreement is the date BGE's ownership interest in the Conemaugh Generating Station is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

47. Safe Harbor Water Power Corporation

[Docket No ER00–3044–000]

Take notice that on June 30, 2000, Constellation Power Source Generation,

Inc. (CPSG) on behalf of Safe Harbor Water Power Corporation (Safe Harbor) and PPL Electric Utilities Corporation (PPL Utilities) tendered for filing (a) an Assignment and Assumption of the Safe Harbor Contract, by and between Baltimore Gas and Electric Company (BGE) and CPSG (BGE Agreement); and (b) an Assignment and Assumption of the Safe Harbor Contract, by and between PPL Utilities and PPL Holtwood, LLC (PPL Agreement). Pursuant to the BGE Agreement, BGE will assign its interest as purchaser under the Safe Harbor Contract (Safe Harbor Water Power Corporation Rate Schedule FERC No. 7), to its affiliate CPSG. Pursuant to the PPL Agreement, PPL Utilities will assign its interest as purchaser under the Safe Harbor Contract to PPL Holtwood, LLC.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

48. Pennsylvania Electric Company

[Docket No ER00–3045–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the Keystone Generating Station Interconnection Agreement (Agreement), dated June 26, 2000, Penelec Rate Schedule FERC No. 115.

The effective date of the assignment is the date BGE's ownership interest in the Keystone Generating Plant is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

49. Pennsylvania Electric Company

[Docket No ER00–3046–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the Conemaugh Generating Station Operating Agreement (Agreement), Penelec Rate Schedule No. 100, as part of BGE's restructuring.

The effective date of the Agreement is the date BGE's ownership interest in the Conemaugh Generating Station is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

50. Constellation Power Source Generation, Inc.

[Docket No. ER00–3047–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pertaining to two assignments. The assignments relate to the Keystone Interconnection Agreement, Penelec Rate Schedule FERC No. 115.

The effective date of the assignments is the date Baltimore Gas and Electric Company's (BGE) ownership interest in the Keystone Generating Station is transferred from BGE to its affiliate CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

51. Constellation Power Source Generation, Inc.

[Docket No ER00–3048–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG) tendered for filing (1) A November 24, 1999 Assignment and Assumption Agreement (November Agreement) among the public utility owners of the Conemaugh Generating Station; and (2) a June 26, 2000 Assignment and Assumption agreement by and between Baltimore Gas and Electric Company (BGE) and CPSG (June Agreement). Pursuant to the June Agreement, BGE will, in conjunction with its restructuring, assign its interest in the November Agreement to its affiliate CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

52. Constellation Power Source Generation, Inc.

[Docket No. ER00–3049–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pertaining to two assignments. The assignments relate to the Conemaugh Interconnection Agreement, Penelec Rate Schedule FERC No. 115.

The effective date of the assignments is the date Baltimore Gas and Electric Company's (BGE) ownership interest in the Conemaugh Generating Station is transferred from BGE to its affiliate CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

53. Panda Oneta Power, L.P.

[Docket No. ER00–3050–000]

Take notice that on June 30, 2000, Panda Oneta Power, L.P. (Panda Oneta), 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, tendered for filing in Docket No. ER00–1982 pursuant to 18 CFR 35.13 and 131.53 of the Federal Energy Regulatory Commission's Rules and Regulations, Notice of Cancellation effective July 1, 2000.

Panda Oneta states that it has never entered into any wholesale electric power or energy transactions, and has never utilized its Electric Rate Schedule FERC No. 1.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17425 Filed 7–10–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–007]

Dominion Transmission Inc. (Formerly CNG Transmission Corporation; Notice of Negotiated Rate Filing

July 5, 2000.

Take notice that on June 29, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing the following tariff sheets for disclosure of a recently negotiated rate transaction:

Original Sheet No. 39B

DTI requests an effective date of July 1, 2000, for the negotiated rate.

DTI states that copies of the filing have been served on all parties on the official service list, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17426 Filed 7–10–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6733–1]

Agency Information Collection Activities: Continuing Collection; Comment Request; Registration of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Registration of Fuels and Fuel Additives (EPA ICR Number 309.10, OMB Control Number 2060–0150, expiration date: 6–30–00). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 11, 2000.

ADDRESSES: Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A paper or electronic copy of the draft ICR may be obtained without charge by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those who (1) manufacture or import gasoline or diesel fuel for use in motor vehicles, or (2) manufacture or import an additive for gasoline or diesel fuel for use in motor vehicles.

Title: Registration of Fuels and Fuel Additives: Requirements for Manufacturers (40 CFR 79), EPA ICR Number 309.10, OMB Control Number 2060–0150, expiration date: 6–30–00.

Abstract: In accordance with the regulations at 40 CFR 79, Subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline or diesel fuel for use in motor vehicles, and manufacturers (including importers) of additives for such gasoline or diesel fuel, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, certain technical and marketing information, and any health-effects information in possession of the manufacturer. The development of heath-effects data, as required by 40 CFR part 79, Subpart F, is covered by a separate information collection. Manufacturers are also required to submit periodic reports (annually for additives, quarterly and annually for fuels) on production volume and related information. The information is used to identify products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. The information is also used to ensure that gasoline additives comply with EPA requirements for protecting catalytic converters and other automotive emission controls. The data have been used to construct a comprehensive data base on fuel and additive composition. The Mine Safety and Health Administration of the Department of Labor restricts the use of diesel additives in underground coal mines to those registered by EPA. Most of the information is confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed at 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: There are approximately 120 fuel manufacturers, 660 additive manufacturers, 600 registered fuels, and 5600 registered additives. For each additive that is not a relable of a registered additive, about 4000 additives, an annual report is required, at an estimated burden of one hour and cost of $58. For each fuel, quarterly and annual reports are required, at an estimated burden of three hours and $173 for each. EPA estimates that there will be 500 new additives registered each year, with a reporting burden of eight hours and $500 each. EPA estimates that there will be 500 additive update letters each year, with a burden of one hour and $54 each. EPA estimates that there will be 50 new gasoline and diesel fuels registered each year, with a burden of eight hours and $500 each. EPA estimates that there will be 600 fuel update letters each year, with a burden of one hour and $54 each. There are no capital and start-up costs. There are no operation and maintenance costs beyond copying and postage. The total annual estimated burden for industry is 18,500 hours and $1 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 22, 2000.

Merrylin Zaw-Mon,

Director, Transportation and Regional Programs Division.

[FR Doc. 00–17490 Filed 7–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–1]

Notice of Availability and Request for Comment on Draft Plan of Action for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Public Comment.

SUMMARY: The Environmental Protection Agency (EPA), on behalf of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Task Force), invites public comments on the draft Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico (Action Plan) as required by section 604(b) of Public Law 105–383, the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, Title VI, enacted on November 13, 1998. The Task Force is comprised of senior policymakers from eight Federal agencies, nine States, and two Tribal governments. The Action Plan is the result of several years of study and discussion by the members of the Task Force and many interested officials and citizens who participated in their deliberations.

DATES: Comments must be received by September 11, 2000. All comments received during the formal comment period will be reviewed and delivered to the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force for their consideration prior to the development of the final Action Plan. Late comments will be considered as time allows. Submission of comments prior to the end of the comment period is highly encouraged.

ADDRESSES: Submit written comments to: Mississippi River/Gulf of Mexico Action Plan (4503F), c/o U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. For information on electronic filing of comments, see "Additional Comment Information" in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. John Wilson, U.S. EPA, Assessment and Watershed Protection Division (AWPD) (4503F), 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, telephone (202) 260–7878; Internet: wilson.john@epa.gov. The draft Action Plan below, as well as related information, may be reached via the EPA website: at <http://www.epa.gov/msbasin/>.

SUPPLEMENTARY INFORMATION:

Additional Comment Information: Comments may also be submitted electronically. Comments should be sent to the following Internet address: ms-river@epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form on encryption.

The Task Force first met on December 4, 1997 and has had five meetings since that time in various locations within the Mississippi/Atchafalaya river basin. At its November 18, 1999 meeting in Chicago, IL, the Task Force expressed general support for a previous draft of this Action Plan, but requested staff development of additional information on quantitative goals for the reduction of hypoxia in the Gulf of Mexico. At its June 15 and 16 meeting in St. Louis, MO, the Task Force had a spirited discussion about alternative goals and directed that several alternatives be published for public comment. Accordingly, the Task Force is particularly interested in comment on the following:

1. Which of the "Coastal Goals" should be in the final Action Plan, and if not any of these, please suggest alternatives? Are the "Within Basin" and "Quality of Life" Goals appropriate or how should they be modified?;
2. Are the Implementation Actions listed and the dates associated with them appropriate?;
3. Provide examples of any effective nutrient management State/Tribal program successes or challenges which can be highlighted in the final Action Plan; and
4. Are the listings of Federal programs in the section "Funding the National Effort" complete?

Draft Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico

Purpose and Background
Background on the Issue
Long-Term Goals
Implementation Actions
Key Roles and Responsibilities
The Framework and Approach for Reducing Hypoxia in the Gulf of Mexico
Adaptive Management: Action, Monitoring, and Research
Funding the National Effort: Clean Rivers/Clean Gulf Budget Initiative
Indicators of Success/Progress

Purpose and Background

This Action Plan describes a national strategy to reduce the frequency, duration, size and degree of oxygen depletion of the hypoxic zone of the northern Gulf of Mexico (the Gulf). The Plan is the result of several years of study and discussion by the members of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (the Task Force) and many concerned officials and citizens who participated in their deliberations. This Plan is submitted in accordance with The Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, Title VI of P.L. 105–383, section 604(b), enacted on November 13, 1998.

This Action Plan is informed by the findings of the Committee on Environment and Natural Resources (CENR) Integrated Assessment of Hypoxia in the Northern Gulf of Mexico along with many comments submitted about it and the six topic reports on which it is based. In addition, the Task Force considered several other significant reports, including the Gulf of Mexico Hypoxia: Land and Sea Interactions (Council for Agricultural Science and Technology, 1999), The Role of the Mississippi River in Gulf of Mexico Hypoxia (University of Alabama-Carey et al. 1999; for the Fertilizer Institute), and Clean Coastal Waters: Understanding and Reducing the Effects of Nutrient Pollution (Committee on the Causes and Management of Eutrophication, National Research Council, 2000). The Task Force members also drew on their many years of experience in agricultural and environmental policy in formulating this Action Plan. The Task Force also listened carefully to dozens of statements by members of the public during its six public meetings.

Improved coordination and, in most cases, expansion of the excellent private and government supported efforts to reduce losses of nutrients are central to the success of this strategy. Throughout the basin much work is underway to increase the efficiency of farming practices and restore wetlands and riparian buffers. In addition, industry and local governments are beginning to undertake additional efforts to reduce

nutrient loadings from point sources and urban runoff. Implementation, and expansion, of those efforts will continue to deliver improvements to water quality throughout the basin and in the Gulf.

The work of the Task Force has provided a basin wide context for the continued pursuit of both incentive-based, voluntary efforts for nonpoint sources and regulatory controls for point sources. Furthermore, research and monitoring that supports the proposed remedies and goals in this plan, as well as resolution of uncertainties identified in the CENR Integrated Assessment and elsewhere, are identified as priorities for future action.

The Action Plan proposes an implementation approach to carry out an initial set of ten priority actions and, subsequently, make adjustments to that initial approach as we evaluate results. This plan describes an adaptive approach, based on implementation, monitoring and research to address known problems, clarify scientific uncertainties, and evaluate the effectiveness of efforts to reduce hypoxia. Because of the importance of enhancing these efforts by increasing support for necessary incentives, monitoring and research, this plan also identifies additional resource needs.

Background on the Issue

Scientific investigations document a zone on the Gulf of Mexico's Texas-Louisiana Shelf with seasonally low oxygen levels (<2mg/l). Between 1993 and 1999 the zone of mid-summer bottom-water hypoxia in the northern Gulf of Mexico has been estimated to be larger than 4,000 square miles. In 1999, it was 8,000 square miles, about the size of the State of New Jersey. The hypoxic zone is a result of complicated interactions involving excessive nutrients, primarily nitrogen, carried to the Gulf by the Mississippi and Atchafalaya Rivers; physical changes in the basin, such as channelization and loss of natural wetlands and vegetation along the banks as well as wetland conversions throughout the basin; and the stratification in the waters of the northern Gulf caused by the interaction of fresh river water and the saltwater of the Gulf.

Nutrients, such as nitrogen and phosphorus, are essential for healthy marine and freshwater environments. However, an overabundance can trigger excessive algal growth (or eutrophication) which can result in several possible ecosystem responses. In the near shore Gulf, excessive algal growth, driven by excess nitrogen, results primarily in a decrease in dissolved oxygen in the bottom water, and the corresponding loss of aquatic (water column and benthic) habitat. Mobile organisms leave the hypoxic zone and those that cannot leave, die or are weakened depending on how low the oxygen level gets and for how long. In the Gulf, fish, shrimp, crabs, zooplankton, and other important fish prey are significantly less abundant in bottom waters in areas that experience bottom waters hypoxia.

Additionally, water quality throughout the Mississippi and Atchafalaya River basin (the Basin) has been degraded by excess nutrients. Most States in the Basin have significant river miles impaired by high nutrient concentrations, primarily phosphorous, meaning that they are not fully supporting aquatic life uses. In some areas groundwater supplies are threatened by excess nitrate, which can be a human health hazard.

A significant portion of the nutrients entering the Gulf from the Mississippi River come from human activities: discharges from sewage treatment and industrial wastewater treatment plants and stormwater runoff from city streets and farms. Nutrients from automobile exhaust and fossil fueled power plants also enter the waterways and the Gulf through air deposition to the vast land area drained by the Mississippi River and its tributaries. About 90% of the nitrate load to the Gulf comes from non-point sources. About 56% of the load enters the Mississippi River above the Ohio River. The Ohio basin adds 34%. High nitrogen loads come from basins receiving wastewater discharges and draining agricultural lands in Iowa, Illinois, Indiana, southern Minnesota, and Ohio.

The primary approaches to reduce hypoxia in the Gulf of Mexico appear to be to: 1) reduce nitrogen loads from watersheds to streams and rivers in the Basin and 2) restore and enhance denitrification and nitrogen retention within the Basin. Current model simulations suggest that a 40% reduction in total nitrogen flux to the Gulf is necessary to return to average loads comparable to those during 1955–70. Model simulations further suggest that, short of the 40% reduction necessary to return to levels in the past mid-century, nutrient load reductions of about 20–30% would result in a 15–50% increase in bottom water dissolved oxygen concentrations. Because any oxygen increase above the 2 mg/l threshold will have a significant positive effects on marine life, even small reductions in nitrogen loads are desirable. While the primary focus of this strategy is on reducing nitrogen loads to the northern Gulf, many of the actions proposed through this plan will also achieve basin-wide improvements in surface-water quality, by reducing phosphorous as well. Likewise, actions taken to address local water quality problems in the basin will frequently also contribute to reductions in nitrogen loadings to the Gulf.

Long-Term Goals

The goals of this strategy are three-fold:

(1) *Coastal Goal*—This goal will be re-evaluated every five years to take into account advances in information and the feasibility in attaining the goal based on progress in implementing this Action Plan.

(Note to commentors: Three options for the coastal goal are listed to specifically solicit public comments on the choices between different quantitative and qualitative alternatives)

1.A—to reduce, by 2010, annual discharges of nitrogen to the Gulf from the Mississippi/Atchafalaya Rivers by 350,000 to 650,000 metric tons—equivalent to a 20 to 40% reduction in the annual average loading during the period 1980–1996. This reduction should be pursued through a combination of actions to curb direct discharges of nitrogen bearing domestic and industrial wastewater, to reduce losses of excess nutrients from agricultural operations, and by intercepting and processing nutrients in riparian buffers and constructed or restored wetlands.

1.B—to reduce the 5-year running average areal extent of Gulf of Mexico hypoxia to less than 5,000 square kilometers by the year 2010. The best current science says that to make significant progress toward that goal, average nitrogen loads to the Gulf should be reduced by 30% from the 1980–96 average. Identification of specific actions within the basin, to achieve that 30% nitrogen load reduction, should be developed through the implementation actions outlined in this Action Plan.

1.C—to pursue practical, cost-effective efforts by all states and tribes within the basin and all categories of sources to protect the ecological and fisheries resources of the northern Gulf of Mexico by reducing nutrient over-enrichment.

(2) *Within Basin Goal*—to restore and protect the waters of the 31 States and tribal lands within the Mississippi/Atchafalaya River Basin and their aquatic ecosystems in order to protect public health and aquatic life, as well as reduce negative impacts on downstream waters.

(3) *Quality of Life Goal*—to improve the communities and economic conditions across the Mississippi/Atchafalaya River Basin, in particular the agriculture, fisheries and recreation sectors, through improved public and private land management and a cooperative, incentive based approach.

Implementation Actions

The guiding principle of this plan is that in establishing priorities for watershed restoration, States, Tribes, and Federal Agencies within the Mississippi and Atchafalaya River Basin consider the potential for benefits to the Gulf of Mexico, direct current and increased resources to cost-effective, practical, actions that will reduce discharges and run-off of nutrients in the Mississippi and Atchafalaya River Basin, and give priority to watersheds delivering the most nitrogen to the Gulf as well as being likely to have local benefits.

This Action Plan assumes continuation of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force with invitations for participation by additional States and Tribes in the Basin. The Plan also assumes that Federal, State, and Tribal governments will provide involved agencies with any new authorities needed to implement proposed actions and with additional appropriations needed to accomplish tasks not presently funded within agency budgets. The Task Force will serve as the national forum to encourage and coordinate implementation, including assessments, research, monitoring and modeling, and also adaptive management, including evaluation of progress, updates of goals and strategies and solicitation of continued financial support, to achieve the goals described above.

The following short term actions and time-frames are proposed to achieve long-term goals outlined above:

#1 By Summer, 2001: the Task Force will establish sub-basin committees to coordinate implementation of the Action Plan by major sub-basin, including coordination among smaller watersheds and States in each of those sub-basins;

#2 By Fall, 2001, States, Tribes and Federal Agencies within the Mississippi and Atchafalaya River Basin, using available data and tools, will develop strategies for nutrient reduction in the sub-basins with greatest contributions to Gulf hypoxia. These strategies will include setting reduction targets in metric tons of nitrogen, establishing a baseline of existing efforts for nutrient management, identifying opportunities to restore flood plain wetlands (including restoration of river inflows) along and adjacent to the Mississippi River, detailing needs for additional assistance to meet their goals, and promoting additional funding;

#3 By Fall, 2001, Clean Water Act permitting authorities within the Mississippi and Atchafalaya River Basin will identify point source dischargers with significant discharges of nutrients and undertake steps to reduce those loadings, consistent with action 2, above;

#4 By Spring 2002, States and Tribes within the Mississippi and Atchafalaya River Basin with support from Federal agencies, will increase assistance to landowners for voluntary actions to restore, enhance, or create wetlands and vegetative or forested buffers along rivers and streams within priority watersheds consistent with action 2, above;

#5 By Fall 2002, States and Tribes within the Mississippi and Atchafalaya River Basin, with support from Federal agencies, will increase assistance to agricultural producers, other landowners, and businesses for the voluntary implementation of best management practices (BMPs), which are effective in addressing loss of nitrogen to waterbodies, consistent with action 2, above;

#6 By Fall, 2001, The Task Force will propose an integrated Gulf of Mexico Hypoxia Research Strategy to coordinate and promoting funding for necessary research and modeling efforts to reduce uncertainties regarding the sources, effects (including economic effects in the Gulf as well as the basin), and geochemical processes for hypoxia in the Gulf;

#7 By Spring, 2002, Coastal States, Tribes and relevant Federal Agencies will greatly expand the long-term monitoring program for the hypoxic zone, including greater temporal and spatial data collection, measurements of macro-nutrient and micro-nutrient concentrations and hypoxia as well as measures of the biochemical processes that regulate the inputs, fate, and distribution of nutrients and organic material;

#8 By Spring 2002, States, Tribes and Federal Agencies within the Mississippi and Atchafalaya River Basin will expand the existing monitoring efforts within the Basin to provide both a coarse resolution assessment of the nutrient contribution of various sub-basins and a high resolution modeling technique in these smaller watersheds to identify additional management actions to help mitigate nitrogen losses to the Gulf, and phosphorous loadings to local waters, based on the interim guidance established by the National Water Quality Monitoring Council; and,

#9 By Fall 2003, The U.S. Army Corps of Engineers (COE), in cooperation with States, Tribes and other Federal Agencies, will, when authorized and funded by the Congress, complete a reconnaissance level assessment of potential nutrient reduction actions that could be achieved by modifying COE projects or project operations.

#10 By Fall 2005 and every five years thereafter, the Task Force will assess the nutrient load reductions achieved and the response of the hypoxic zone, water quality throughout the Basin, and economic and social effects. Based on this assessment, the Task Force will determine appropriate actions to continue to implement this strategy or, if necessary, revise the strategy.

Key Roles and Responsibilities

These implementation actions will require contributions and collaboration from many different individuals and organizations. Briefly, some of the most important roles and responsibilities include:

Private Citizens and Businesses

- Landowners (homeowners and renters, farmers, ranchers), businesses and business owners can significantly reduce the impacts of their activities on water quality when provided with information about environmental problems, practical and cost-effective solutions, technical assistance, and, where necessary, financial assistance. Under this strategy, Federal, State, Tribal and local agencies will use education, assistance and other incentives to encourage broader and more effective use of pollution prevention techniques, BMPs and participation in restoration programs by landowners, businesses and households.

States and Tribes

- States and Tribes have important water quality protection responsibilities under their own laws and as key implementors or partners in programs established pursuant to Federal legislation. Specifically, States and Tribes will assess the effectiveness of their nutrient reduction programs particularly to ensure that the goals for nitrogen reduction are met and that each State/Tribe is making appropriate contributions to the overall basin reduction goals.
- States and Tribes will develop Total Maximum Daily Loads (TMDLs) for those waters identified as priorities through their Continuing Planning Process and by listing on the 303(d) list in accordance with their respective

State priority lists. Where possible, States and Tribes are encouraged to give priority for developing TMDLs to those watersheds identified as significant sources of nitrogen to downstream waters that flow to the Basin.

- States and Tribes will develop numeric water quality standards for nutrients based on enhanced monitoring and research information linking nutrient loadings to water quality in the Basin.
- States and Tribes should assess water quality impairments in accordance with their watershed strategies based on the adopted standards for nutrients.

States, Tribes, and Federal Agencies

- The U.S. Army Corps of Engineers (COE), in conjunction with the U.S. Environmental Protection Agency (EPA), the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Interior, U.S. Department of Agriculture (USDA) and the State of Louisiana, will target the Coastal Wetlands Planning, Protection, and Restoration Act and other pertinent program resources for diversions and other related projects that further the goals of restoring coastal wetlands, removing nitrogen, and protecting near coastal water quality from excessive nutrient enrichment. The Corps, working with the Upper Mississippi River Basin States and Tribes through use of Navigation and Environmental Management or Restoration Programs, will promote pool management and other actions in the upper Mississippi River Basin targeted at enhancement of nitrogen removal during critical periods of the year.
- States, Tribes, USDA and EPA will target programs and State Revolving Loan Funds to improve municipal stormwater programs; promote the use, where appropriate, of centralized sewage treatment and Biological Nitrogen Removal in municipal sewage treatment plants; and improve the application, operation and maintenance of on-site systems.
- States, Tribes and EPA will target Clean Water Act Section 319 funds to improve nitrogen management and wetland and riparian buffer restoration and creation for water quality benefits.
- States and Tribes, in conjunction with the U.S. Geological Survey (USGS), USDA, EPA, COE and the National Oceanic and Atmospheric Administration (NOAA), will implement a coordinated monitoring program for the Basin. USDA, COE and EPA will have a leadership role in establishing the scope and plan for periodic inventory of programmatic and economic indicators. NOAA will have a leadership role in the monitoring and model development related to oceanographic processes and impacts of hypoxia. USGS will have a leadership role in monitoring of water-quality conditions and in development of models and related methods to evaluate water-quality trends and the effectiveness of management actions within the Basin. The States and Tribes will provide leadership in coordination of efforts within and along State and Tribal boundaries in order to insure that monitoring and model development are consistent among the various State and Federal programs.
- In cooperation with federal agencies, States will document and monitor land use changes to identify priority areas of likely nitrogen loss to streams. States will work with the USDA to complete soil maps for all agricultural areas in the basin and evaluate in more detail the soil nutrient loading and cycling in critical areas.
- NOAA, EPA, COE and the State of Louisiana, will develop and implement a comprehensive monitoring and assessment strategy for the northern Gulf hypoxic region based on the critical needs identified in the CENR assessment.
- EPA, in cooperation with other federal agencies, States, Tribes, and the National Water Quality Monitoring Council, will standardize monitoring and reporting of nutrient loading by point source dischargers within the Mississippi and Atchafalaya River Basin.
- USGS, USDA, EPA, COE and NOAA, in concert with other Federal and State agencies and non-government organizations, will pursue research to reduce the uncertainties in the scientific assessment, to improve monitoring and modeling capabilities, and to improve BMPs for reducing nutrient losses from nonpoint sources.
- State, Tribal and Federal agencies will increase the coordination of their activities as they affect the Basin using mechanisms such as the Clean Water Action Plan, State Technical Committees, and State/Tribe-led stakeholder input fora. Agencies will be responsive to locally-led conservation activities.
- EPA, NOAA, States and Tribes will develop water quality criteria for nutrients, including criteria for nitrogen that are tailored to the coastal ecoregions of the Northern Gulf of Mexico and near-coastal marine waters of the Gulf hypoxic region.

Federal Agencies

- The Federal agencies will direct the Environmental Quality Incentive Program (EQIP), the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP), Agricultural Extension Education Programs, Clean Water Act Section 319 resources, and other Environmental Restoration Programs into state-targeted watersheds to: establish stream-side buffers; increase producer participation and acres under the CRP and WRP in areas that will protect surface waters and restore natural nutrient cycling in aquatic systems; increase the number of acres in conservation tillage; increase the number of producers and acres under voluntary nutrient management plans; and improve animal waste management practices.
- EPA will provide technical, financial and institutional support to assist States and Tribes to upgrade their nonpoint source programs and will provide grants to be passed-through to landowners as incentives for improved practices. NOAA and EPA will support targeted implementation of Louisiana's Coastal Nonpoint Source program as provided in sec. 6217 of CZARA.
- EPA will approve prioritization and listing of impaired waters (Lists), including impaired coastal waters as appropriate, in accordance with Section 303(d) of the Clean Water Act. Where EPA determines that Lists or TMDLs do not satisfy requirements of the CWA, EPA is required to issue Lists and develop TMDLs.

The Framework and Approach for Reducing Hypoxia in the Gulf of Mexico

There are no simple solutions that will reduce hypoxia in the Gulf. An optimal approach would take advantage of the full range of possible actions to reduce nutrient loads and increase nitrogen retention and denitrification within a framework that encourages adaptive management and accomplishes this in a cost effective manner. While reduction of nitrogen is the principal focus of this framework, many of the actions needed to reduce nitrogen loads will complement and enhance existing efforts to restore water quality throughout the basin. With additional assistance, this national effort to reduce Gulf hypoxia will be implemented within the existing array of state and federal laws, programs and private initiatives.

The tools provided by the Clean Water Act, and the programs established under the last several Farm Bills and Water Resources Development Acts, are

critical to implementing this plan. Because nutrient over-enrichment is a widespread problem, these existing national programs and initiatives incorporate specific elements intended to reduce nutrient loadings to surface waters and to foster restoration of natural habitats capable of removing nutrients from waters. They include:

- encouraging nonpoint source pollutant reductions under the Clean Water Act, the Farm Bill, and State cost-sharing programs;
- implementation of the Environmental Quality Incentives Program (EQIP) to assist grain and livestock producers in reducing excessive nutrients' movement to water resources;
- implementation of the Conservation Reserve Program, Wetlands Reserve Program, Corps of Engineers Environmental Restoration Programs, and Agricultural Extension Education Programs to promote restoration and enhancement of natural systems for nitrogen retention and denitrification;
- increasing emphasis on nutrient management through State and Tribal efforts to implement watershed based approaches to water quality management, including monitoring and assessing waters, adoption of water quality standards, including nutrient criteria, developing total maximum daily loads (TMDLs), and implementing point source controls through the National Pollutant Discharge Elimination System (NPDES);
- promoting public-private partnerships to restore buffers;
- implementation of Louisiana's Coastal Nonpoint Pollution Control Programs under the Coastal Zone Act Reauthorization Act in the lower Mississippi and Atchafalaya Rivers;
- supporting actions by non-water quality State and Tribal agencies, private landowners, the agricultural and other industries to reduce nitrogen loadings to the basin; and,
- providing voluntary incentives for nitrogen reductions from point and nonpoint sources.

This plan recognizes and builds upon these requirements, programs and initiatives. A successful strategy to restore water quality in the Gulf of Mexico will almost certainly benefit water quality throughout the Mississippi and Atchafalaya River Basin.

Adaptive Management: Action, Monitoring and Research

The complex nature of nutrient cycling and transport within the Mississippi and Atchafalaya River basins and Gulf of Mexico make it difficult to predict specific improvements in water quality that will occur both in the Gulf as well as the entire Mississippi River basin for a given reduction in nutrient loads. Further, it is clear that environmental responses to management actions in the basin likely will be slow, possibly requiring decades to demonstrate that remedial actions have helped the recovery of oxygen concentrations in the Gulf and have improved water quality in the Basin. Finally, while the current understanding of the causes and consequences of Gulf of Mexico hypoxia is drawn from a massive amount of direct and indirect evidence collected and reported over many years of scientific inquiry, significant uncertainties remain. Further monitoring, modeling and research are needed to reduce those uncertainties in future assessments and to aid decision making in an adaptive management framework. A comprehensive program of planning, monitoring, interpretation, modeling, and research to facilitate improvement in scientific knowledge and adjustments in management practices should be coupled to the initial nutrient management strategies identified in this plan. This adaptive management scheme involves continual feedback between interpretation of new information and improved management actions and is the key to targeting BMPs within watersheds where they will actually be effective.

This adaptive approach should consist of the following components:

- *Action:* implementing the actions identified in this plan including developing sub-basin strategies, initiating additional monitoring and research, and pursuing a national commitment to supporting actions to reduce and mitigate the impacts of hypoxia in the Gulf.
- *Education:* increasing the stakeholder awareness of the causes and effects of hypoxia, the actions underway or planned to reduce those effects, and the role of state, local and tribal governments as well as individual landowners, citizens and businesses to contribute to the solution. Make this information available through electronic media and sharing the latest news on successful approaches and reductions.
- *Monitoring:* increasing the scale and frequency of monitoring of both the extent of the hypoxic zone and the sources and conditions of waters throughout the basin.
- *Research and Modeling:* reducing the uncertainties of the effects of the hypoxic zone, the sources of contributing factors and the biochemical processes that underlie the causes and effects of the hypoxic zone, and the social and economic impacts of various control strategies;
- *Evaluation and Adaptation:* reviewing periodically the monitoring and research results to revise this plan, through the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

This plan seeks to take maximum advantage of water quality improvement efforts underway or planned nationally and proposes a mechanism to better focus those efforts. Water resources within the Basin—rivers, wetlands, lakes, and streams—and the Gulf of Mexico are expected to benefit from these efforts. Many specific water quality improvement actions can be undertaken by industries, municipalities, farmers, ranchers, and other citizens. These actions can raise property values, conserve soil, increase productivity, reduce input costs and provide habitat for game and fish and revenue from hunting, fishing and other recreation. Because of the economic benefits of these measures to the landowners and other stakeholders who undertake them, education and voluntary, incentive-based, approaches can be effective in promoting such actions, in particular best management practices (BMPs).

Funding the National Effort: Clean Rivers/Clean Gulf Budget Initiative

This action plan proposes a Clean Rivers/Clean Gulf budget initiative to restore the waters of the Mississippi/Atchafalaya River Basins and the hypoxic zone in the Gulf of Mexico. This initiative would provide flexible funding to support implementation of the most practical, appropriate, and economical, mix of strategies as determined by implementation action #2 above, to address the linked problems of inland water quality in the Mississippi/Atchafalaya River Basins and Gulf of Mexico Hypoxic Zone.

Basin-wide Goal: State/Tribal-led Strategies Within a National Commitment

There are multiple sources of nitrogen contributing to nutrient over-enrichment in the Gulf of Mexico, including about 11 percent from municipal and industrial point sources, 65 percent from agricultural nonpoint sources, and about 24 percent from other nonpoint sources; the mix of these sources varies considerably within the huge watershed of the Mississippi/Atchafalaya Rivers. Therefore, this initiative proposes an innovative Omnibus Mississippi-Gulf Restoration Fund, which would allow for resources to be allocated initially based on an

estimate of the relative proportion of the need and cost for remedial measures basin-wide to be determined by implementation action #2. The allocation would be re-visited periodically based on the actual distribution of actions taken under State strategies, and thus funds committed. The land area to be "treated" (⅔ of the 48 contiguous states), number of States involved (31), number of tribes involved (77), and resources damaged and at risk justify an investment in keeping with the scale of investments planned or undertaken in South Florida and the California Bay Delta, and greater than those pursued in the Chesapeake Bay and Great Lakes.

States and Tribes, will, on a basin-by-basin basis select the most appropriate, readily implemented approaches, building on existing water quality and habitat improvement programs. State strategies will draw from a broad menu of reasonable and cost-effective responses to prevent nutrients from reaching rivers and streams to be carried to the Gulf and to restore the natural capacity of the ecosystem to process nutrients into harmless substances. Important improvements in water quality in the lakes and rivers used and enjoyed regionally, as well as significant reduction of Gulf of Mexico hypoxia will result. States currently contribute significant resources to match (and overmatch) many Federal programs and their contributions would increase along with further Federal investment.

The Federal Government will provide resources to support pollution control and habitat restoration through several new and existing programs. The Federal interest in this effort is clear: interstate waters, producing economically valuable goods and services and representing a key component of our national patrimony, are damaged and at further risk. Large-scale, Federally-funded navigation and flood control projects throughout the basin contribute to the problem, as well as smaller scale state and local contributions from wastewater treatment systems and farming practices. Often these actions were taken without adequate consideration of local or down-river impacts. Many of the investments proposed will have the further national policy benefit of supporting the farm economy at a time of severe stress.

Mississippi-Gulf Omnibus Restoration Fund

Elements of the Restoration Fund are:

Wetlands Restoration Fund: Restore Wetlands

Restoration/creation of wetlands to intercept and bioremediate nutrients from agricultural run-off; acquisition of land and/or easements and construction and operation of wetland treatment systems. *Action will also produce flood damage reduction benefits and habitat benefits.*

Principal Programs

USDA: Wetlands Reserve Program, Conservation Reserve Program, NRCS Technical Assistance, Extension Education

USFWS: North American Waterfowl and Wetlands Program, Partners for Fish and Wildlife Program, National Wildlife Refuge System

USEPA: Sec. 319 Grant program, Clean Water State Revolving Loan Fund (CWSRF)

NOAA: Coastal Wetland Restoration Projects

USACE: Section 206 WRDA '96, Aquatic Ecosystem Restoration; Section 204 WRDA '92 Use of dredged material to protect, restore, and create aquatic and ecologically related habitats; Section 1135, WRDA '86, Project Modifications for Improvement of the Environment; Specific General Investigations to address wetland restoration

Offset: Reductions in Crop Insurance Payments for Farming in Flood Prone Areas

Agricultural Nutrient Efficiency Fund: Use Management Practices for Nutrient Loading Reductions

Incentive payments and technical assistance to increase agronomic efficiency and improve management practices; could potentially provide payments in lieu of insurance fertilizer use. Action will also provide farm income security to participants.

Principal Programs

USDA: CRP, EQIP, Extension Education

USEPA: 319 Grants, CWSRF

NOAA: 306 Grant Program, CZMA

Clean Rivers-Clean Gulf Fund: Improve Stormwater and Wastewater Nutrient Removal Efficiency of new and existing wastewater treatment infrastructure. Also can finance agricultural practice improvements and wetland restoration.

Principal Programs

USEPA: CWSRF, Sec. 319 Grant program

USACE: Section 206 WRDA '96, Aquatic Ecosystem Restoration; Section 204 WRDA '92 Use of dredged material to protect, restore, and create aquatic and ecologically related habitats; Section 1135, WRDA '86, Project Modifications for Improvement of the Environment; Specific General Investigations to address wetland restoration.

River Remediation Fund: A. Operate and Retrofit Corps Projects for Water Quality Improvements; and, B. Creation and Restoration of Riparian Buffers. Action will also provide habitat for waterfowl, fish, and wildlife.

To waive local cost share for retrofit to Corps projects since benefits of re-engineering are primarily realized basin-wide and in the Gulf. In appropriate areas Corps and USDA work with agriculture owners to create and restore buffers. In coastal wetlands Corps works with States, Tribes and local governments to implement river diversions to coastal wetlands.

Principal Programs

USACE: Section 212 WRDA '99 Flood Mitigation and Riverine Restoration Program; Section 206

WRDA '96, Aquatic Ecosystem Restoration; Section 204 WRDA '92 Use of dredged material to protect, restore, and create aquatic and ecologically related habitats; Section 1135, WRDA '86, Project Modifications for Improvement of the Environment; Specific General Investigations to address wetland restoration

USDA: CRP, EQIP, Extension Education

Watershed Partnership Investment Fund: Assessment & Targeting, State Strategy Formulation, Stakeholder Involvement, program management. Will strengthen state-level and tribal capacity to address Hypoxia and in-basin water quality problems.

Principal Programs

USEPA: Clean Water Grants to States and Tribes (sec. 106) for assessment, monitoring, TMDLs, Watershed Assistance Grants to Basin Associations, large Scale Demonstration program for innovative approaches

USACE: Section 729, WRDA '86, Study of Water Resources Needs of River Basins and Regions; Section 4, WRDA '00, Watershed and River Basin Assessments; Specific General Investigations at the watershed level

USDA: CSREES Water Quality Program

Hypoxia Adaptive Management Fund: Research, Monitoring and Modeling.

To refine targeting, improve efficiency of response actions, evaluate progress.

Principal Programs

NOAA: Research, assessment and monitoring in the Gulf of Mexico

USGS: Research, assessment and monitoring in the MS Basin

USEPA: Support for adaptive management process in collaboration with States, Tribes and Federal Agencies

USDA: Research on Improved Agricultural Practices

USACE: Modeling capabilities within existing research and development programs, and research on nutrient fate and nutrient cycling.

Hypoxia Remediation Innovation Fund: To fund large scale innovative projects.

Principal Programs

USEPA, USDA, and USACE: Research, development and demonstration projects

NOAA: Coastal research, development, and demonstration projects

Indicators of Success/Progress

Effective implementation of a management action plan to reduce the size and effect of the hypoxic zone in the Northern Gulf of Mexico and to improve water quality within the Mississippi and Atchafalaya River Basin will require a monitoring strategy that measures progress toward achieving both long-term and short-term goals. Feedback from such a monitoring strategy will facilitate an adaptive management framework that enables continual improvement of the action plan with increasing knowledge of the factors and processes controlling nutrient losses, their effects on water quality, and the effectiveness of management actions.

A multi-scale, multidisciplinary, and long-term monitoring strategy one of the key implementation actions above. The strategy must include measurement of indicators of progress in implementing management or programmatic actions, indicators of environmental response of water quality in the Mississippi and Atchafalaya River Basin and hypoxia in the Gulf of Mexico, and indicators of economic conditions that can be used to gauge the significance and implications of management actions. It must quantify environmental trends and differentiate among trends caused by changes in climate, streamflow, nutrient and landscape management measures, Gulf hydrodynamics, and other concurrent factors. Variables should be measured to quantify the physical, chemical, and biological processes that affect the cause-and-effect relationships between nutrient inputs and resulting environmental quality. The strategy must include periodic data analysis, interpretation, and reporting to all stakeholders that are involved with design and implementation of management, remediation, and restoration actions. Analysis and interpretations must use models that integrate knowledge across scales and hydrologic compartments from the smallest watershed to the Mississippi and Atchafalaya River Basin and the Gulf of Mexico.

A coordinated and supporting research strategy is integral to maintenance of an effective monitoring strategy and an adaptive management framework for action. Research efforts can be targeted on improving monitoring designs, improving the interpretation of monitoring output, and increasing the predictive power of models and other assessment tools used to design and evaluate management actions.

A baseline condition needs to be established for all indicators and the monitoring strategy in general to quantify the improvements associated with management action. The expected delay in the response of indicators to management actions, indicates that additional improvements in water quality will continue to be realized from actions that have already been implemented, as well as from future management actions. The CENR science assessment has provided a large-scale (Basin and Gulf scale) estimates of baseline conditions in the Mississippi and Atchafalaya River Basin (generally for the period 1980–96) and the Gulf of Mexico (generally for the period 1993–97). Additional information available from other sources at more local scales should be included in these definitions of baseline conditions. In addition, more recent information may be available to improve these baseline definitions. The 1997 Hypoxia Response Interagency Activity Report provides an initial listing of programs that could be evaluated for participation through programmatic indicators. Baseline conditions will need to be defined for these indicators.

Indicators that have been considered for the monitoring strategy are listed below. A more detailed and comprehensive evaluation of indicators will be conducted under Implementation Action #2.

Environmental Indicators

- Dissolved oxygen concentrations within the current hypoxic zone increase (above 2 mg/l) resulting in a reduction in the duration and spatial extent of the hypoxic zone. Data should provide resolution of the spatial extent and duration of the hypoxic zone.
- Seasonal/annual average nitrogen and phosphorus concentrations and mass loadings are reduced at key river and tributary stations. Measurement stations should represent watershed scales ranging from the local scales at which specific management actions are tested to the scale of the Mississippi and Atchafalaya River Basin as it discharges to the Gulf.
- Bottom-dwelling communities in the current hypoxic zone in the northern Gulf return to a diversity and abundance characteristic of non-hypoxic conditions and normal migratory patterns of key species are restored.

Programmatic Indicators

The following indicators will be tracked at various scales. In general, nonpoint sources will be tracked at 8 digit Hydrologic Unit Code (HUC) basins and point sources by discharge location or 8-digit HUC basin:

- Vegetative or forested buffers established along rivers and streams of priority watersheds
- Producer/acres enrolled in CRP and WRP
- Acres in conservation tillage
- Producers implementing nutrient management plans and the number of acres affected
- States with fully approved Coastal Nonpoint Pollution Control Programs. Percent population served by secondary treatment
- Percent population served by Advanced Waste Treatment/Biological Nutrient Removal
- Reduction in discharges of nitrogen and phosphorus for municipalities
- Number of municipal stormwater programs approved
- Estimated/monitored reductions in nitrogen and phosphorus (or surrogate indicators) for industrial point sources.
- Number of 303(d) water segments listed because of nutrient impairment
- Number and percent of wetland acres restored, enhanced or created
- Completion of TMDLs for nutrient impaired waters
- Number of States and Tribes within the Mississippi and Atchafalaya River Basin achieving Enhanced Benefits status under the 319 Program. Number of projects and amount of dollars directed through EQIP, CRP, WRP, and section 319 to target sub-basins within the Mississippi and Atchafalaya River Basin.

Economic Indicators

- Population

- Gross Domestic Product
- Industrial Output
- Land Area in Crop Production
- Agricultural Output in numbers of animals and bushels of commodity crop

Dated: July 5, 2000.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 00–17354 Filed 7–10–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MD Docket No. 00–58; FCC 00–240]

Assessment and Collection of Regulatory Fees for Fiscal Year 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is revising its Schedule of Regulatory Fees in order to recover an amount of $185,754,000 in regulatory fees that Congress has required it to collect for Fiscal Year 2000. This summary of the FCC's FY 2000 Regulatory Fees decision will be followed by publication in the **Federal Register** of the full text at a later date. The dates for collecting regulatory fees will be September 11, 2000 through September 20, 2000.

DATES: Effective September 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445, or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: The Communications Act of 1934 ("Act"), as amended, provides for the annual assessment and collection of regulatory fees. For Fiscal Year 2000, changes to the Schedule of Regulatory Fees will be made per section 9(b)(2) of the Act. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

As mandated by Congress, the FY 2000 Regulatory Fees increased by $13,231,000, or approximately 7.67 percent, over the amount Congress required the Commission to collect in FY 1999. We are, therefore, revising the Schedule of Regulatory Fees to reflect this additional amount that was mandated by Congress. For FY 2000, as in FY 1999, the revenue requirements for each category were adjusted on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain a sum total of the amount Congress required the Commission to collect. As in FY 1999, none of the fee increases in FY 2000 exceed 25 percent. In brief, the adopted FY 2000 Regulatory Fee schedule will assess a fee on Comsat's INTELSAT facilities; incorporate the use of a new form which would change the basis for computing the fee for Interstate Telephone Service Providers; and continue to assess a CMRS messaging fee for SMR systems with less than 10 MHz bandwidth.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17501 Filed 7–10–00; 8:45 am]

BILLING CODE 6712–01–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Notice of Intent To Seek Approval To Extend an Information Collection

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Truman Scholarship Foundation [Foundation] has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment: the first was published in the **Federal Register** [May 3, 2000 (Volume 65, Number 86), Page 25730], and no comments were received. The Foundation is forwarding the proposed renewal submission to OMB for clearance simultaneously with the publication of this second notice.

Comments: Comments regarding [a] whether the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; [b] the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; [c] ways to enhance the quality, utility and clarity of the information to be collected; or [d] ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques for other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Harry S. Truman Scholarship Foundation, 725 17th Street, NW, Room 10235, Washington, DC 20503, and to Louis H. Blair, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW, Washington, DC 20005 or send e-mail to *Lblair@truman.gov*.

DATES: Comments regarding this information collection is best assured of having their full effect if received on or before August 8, 2000. Copies of the submission may be obtained at 202–395–7433.

FOR FURTHER INFORMATION CONTACT: Louis H. Blair, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW, Washington, DC 20005 or send e-mail to *Lblair@truman.gov*.

The Foundation may not conduct a collection of information unless the collection displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Truman Scholarship Application

OMB Approval Number: 3200–0004

Proposed Project: The foundation has been providing scholarships since 1977 in compliance with PL 93–642. This data collection instrument is used to collect essential information to enable the Truman Scholarship Finalists Selection Committee to determine whom to invite to interviews. It is used by Regional Review Panels as essential background information on the Finalists whom they interview and ultimately the Truman Scholars they select. A total response rate of 100% was provided by the 598 candidates who applied for Year 2000 Truman Scholarships.

Estimate of Burden: The foundation estimates that, on average, 50 hours per respondent will be required to complete the application, for a total of 30,000 hours for all respondents.

Respondents: Individuals.

Estimated Number of Responses: 600

Estimated Total Annual Burden on Respondents: 30,000 hours

Dated: July 6, 2000.

Louis H. Blair,

Executive Secretary.

[FR Doc. 00–17564 Filed 7–10–00; 8:45 am]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Technical Review Panel on the Medicare Trustees Reports; Notice of July 26–27 Meeting

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of July 26–27 meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the second meeting of the Technical Review Panel on the Medicare Trustees Reports (the Panel). This meeting is open to the public.

Pursuant to Public Law 92–463 (the Federal Advisory Committee Act), the Panel was established on August 12, 1999, by the Secretary of HHS to review the methods and assumptions underlying the annual reports of the Board of Trustees of the Hospital Insurance and Supplementary Medical Insurance Trust Funds.

DATES: The meeting will be held on Wednesday, July 26, 2000 (9:00 a.m. to 5:00 p.m.) and Thursday, July 27, 2000 (9:00 a.m. to 1:00 p.m.).

ADDRESSES: The meeting will be held at the Health Care Financing Administration (HCFA) Headquarters, 7500 Security Boulevard, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Ariel Winter, Executive Director, Technical Review Panel on the Medicare Trustees Reports, Department of Health and Human Services, Room 442E, 200 Independence Avenue, SW., Washington, DC, 20201, (202) 690–6860, medpanel@osaspe.dhhs.gov.

Additional information is also available on the Panel's web site: http://aspe.hhs.gov/health/medpanel.htm.

SUPPLEMENTARY INFORMATION: The Board of Trustees of the Medicare Trust Funds (the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Funds) reports annually on the funds' financial condition. The reports describe the trust funds' current and projected financial condition, within the next 10 years (the short term) and over the subsequent 65 years (the long term). The Medicare Board of Trustees has directed the Secretary of Health and Human Services (one of the Trustees) to establish a panel of technical experts to review the assumptions and methods underlying the HI and SMI annual reports.

The panel's review will include the following four topics:

1. Medicare assumptions (e.g., utilization rates, medical price increases).
2. Projection methodology (how assumptions are used to make cost projections).
3. Long-range growth assumptions for HI and SMI.
4. Use of stochastic forecasting techniques.

The Panel will issue its findings in reports to the Secretary and the other Trustees.

The Panel consists of six members who are experts in the fields of economics and actuarial science: Dale Yamamoto, F.S.A., M.A.A.A., F.C.C.A., E.A., B.S.—Chair; Len Nichols, Ph.D.; David Cutler, Ph.D.; Michael Chernew, Ph.D.; James Robinson, F.S.A., M.A.A.A., Ph.D.; Alice Rosenblatt, F.S.A., M.A.A.A., M.A. The members' terms will end August 12, 2001. Sam Gutterman, F.S.A., F.C.A.S., M.A.A.A., M.A., is a consultant to the Panel.

The second meeting of the Panel is scheduled for July 26, 2000 (9:00 a.m. to 5:00 p.m.), and July 27, 2000 (9:00 a.m. to 1:00 p.m.). The meeting will be held at the Health Care Financing Administration (HCFA) Headquarters, 7500 Security Boulevard, Baltimore, Maryland. The meeting is open to the public, but attendance is limited to the space available. The Panel's first meeting was held June 28–29, 2000.

At this meeting, the Panel will hear presentations from HCFA's Office of the Actuary on measures of actuarial soundness of the Medicare Trusf Funds, specific health care utilization assumptions, and stochastic forecasting techniques used to make Trust Funds projections. The Panel will continue its discussions with Office of the Actuary staff on issues raised at the first meeting, such as the Trust Funds' benefits models. The Panel will also consider how to continue its analyses.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues mentioned in this notice should contact the Executive Director by 12 noon on July 19, 2000. The number of oral presentations may be limited to the time available. A written copy of the presenters' oral remarks should be submitted to the Executive Director no later than 12 noon, July 19, 2000, for distribution to the Panel members.

Any interested member of the public may submit written comments to the Executive Director and Panel members for review. Comments should be received by the Executive Director by 12 noon, July 19, 2000, for distribution to the Panel members.

Individuals requiring sign language interpretation for the hearing impaired and/or other special accommodation, should contact Ariel Winter at (202) 690–6860 by July 17, 2000.

Dated: July 5, 2000.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–17518 Filed 7–10–00; 8:45 am]

BILLING CODE 4110–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: 9:00 a.m. to 4:45 p.m., July 13, 2000; 9:00 a.m. to 1:30 p.m., July 14, 2000.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this hearing is to discuss local code issues and early implementation of the Administrative Simplification standards that will be required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For local code issues, the Subcommittee will hear testimony delineating the problem and examining some of the tools and processes that could lead to a solution. For early implementors, the Subcommittee will hear a wide perspective of the issues from providers, vendor/clearinghouses, and geographic networks, as well as industry solutions.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Senior Science Advisor for Information Technology, Agency for Health Care Research and Quality, 2101 East Jefferson Street, #600, Rockville, MD 20852, phone: (301) 594–3938; or

Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information is also available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: June 28, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–17338 Filed 7–10–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–42]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects: National Disease Surveillance Program—I. Case Reports (0920–0009)—Reinstatement—National Center for Infectious Diseases (NCID)—Formal surveillance of 19 separate reportable diseases has been ongoing to meet the public demand and scientific interest for accurate, consistent, epidemiologic data. These ongoing diseases include: bacterial meningitis, dengue, hantavirus, HIV/AIDS, Idiopathic CD4+T-lymphocytopenia, Kawasaki syndrome, Legionellosis, lyme disease, malaria, Mycobacterium avium Complex Disease, plague, Reye Syndrome, tick-borne Rickettsial Disease, toxic shock syndrome, toxocariasis, trichinosis, typhoid fever, and viral hepatitis. Case report forms enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. This information is used to direct epidemiologic investigations, to identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and to develop guidelines for the prevention of treatment. It is also used to recommend target areas in most need of vaccinations for certain diseases and to determine development of drug resistance.

Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. The total annualized burden is 27,110 hours. The total cost to respondents is estimated at $406,650.

Respondents	Respondents	Responses/respondent	Average [1]
Health care workers ...	55	1	.3

[1] Average burden/respondent (in hours)

Dated: July 5, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17447 Filed 7–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00143]

Intervention Epidemiologic Research Studies of HIV/AIDS; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to (1) continue the longitudinal epidemiologic study of perinatal HIV transmission and pediatric disease progression during an era of highly active antiretroviral (ARV) therapy and (2) develop and implement innovative interventions to assist HIV infected children and adolescents (both perinatally and non-perinatally infected) in accessing and maintaining comprehensive HIV related care. The interventions will be directed at sustaining HIV specialist care, improving adherence to complex medical regimens, promoting overall and reproductive health, and decreasing the risk of secondary transmission of HIV infection. This program addresses the "Healthy People 2010" priority area of HIV Infection and Maternal and Infant Health. For a conference copy of "Healthy People 2010" visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is to support three research studies of programmatic interest to the health care community that fosters prevention of HIV-related disease in infants, children, and adolescents. These studies include: (1) Ongoing longitudinal record review of Pediatric HIV disease, (2) development and evaluation of innovative intervention(s) to enhance sustained HIV specialist care and improved adherence to antiretroviral (ARV) medication drug regimens in children, from 5–12 years of age, and (3) development and evaluation of innovative interventions to provide linkages to and help sustain continuity of HIV specialist care, to foster adherence to HIV therapy, improve overall and reproductive health, and reduce transmission from HIV-infected adolescents ages 13–21 years, to others.

The following three Research Studies will be supported:

I. Ongoing Longitudinal Record Review Study of Pediatric HIV Disease

Competing continuation applications are invited for the continued prospective follow-up of HIV-infected children enrolled in the Pediatric Spectrum of Disease (PSD) Study between 1988 and 2000. Continued research areas of interest include:

A. Perinatal HIV Prevention

1. Characterization of perinatally infected infants with respect to their risk factors for HIV infection and clinical and laboratory outcomes.

2. Investigation of potential severe adverse events related to exposure to antiretrovirals and/or other HIV-related therapies.

3. Description of circumstances of delivery and associated infant and maternal morbidities.

4. Frequency and description of birth outcomes to perinatally-infected adolescents.

B. Pediatric and Adolescent Management:

1. Factors associated with health and disease progression:

a. Viral load and ARV resistance

b. Immune function and reconstitution

c. Growth and development, including puberty

d. Timing, type, and duration of therapy

e. Factors affecting adherence (including HIV infection status disclosure)

f. Potential side effects of ARV therapy

2. Identification of barriers to:

a. Timely receipt of care

b. Durability of relationship with providers

3. Description of family structure and social risk factors

4. Characterization of developmental needs and linkage to special services for HIV-infected adolescents (*e.g.* health, family planning, STD clinic services, case management around HIV disease, etc.)

II. Innovative Intervention(s) To Enhance Sustained HIV Specialist Care and Improved Adherence to Antiretroviral Medication Drug Regimens in Children, From 5–12 Years of Age

The complex nature of combination antiretroviral regimens emphasizes the need to develop innovative interventions to help children adhere to prescribed drug therapy. Age-appropriate interventions need to be designed and evaluated for both perinatally and non-perinatally infected children. Applications are invited to propose and develop intervention trials for children with evidence of current disease progression or treatment failure. The intent is to examine the impact of intervention strategies which address the following issues:

A. Fostering sustained comprehensive HIV specialist care:

1. Assessing barriers to sustaining continuity of specialist HIV care.

2. Developing and implementing strategies (e.g. reminders, support groups, etc.) to overcome individual and family barriers including HIV disclosure issues.

3. Linking to services which enable continuity of specialist HIV care. (*e.g.* transportation, day care, family-based care, education, etc.)

4. Developing and implementing methods for locating and re-engaging children lost to follow-up.

B. Promoting adherence to medications:

1. Assessing individual and family barriers to adherence to medication.

2. Linking to services which facilitate adherence (medication education, case management, social, pharmacist, etc.)

3. Developing and implementing strategies (*e.g.* dosing and medication schedules, child's preferences, in-home assistance, out-of-home adherence, reminders, use of MEMS®Caps, support groups, etc.) to overcome individual and family barriers including HIV disclosure issues.

III. Innovative Interventions to Provide Linkages to and Help Sustain Continuity of HIV Specialist Care, To Foster Adherence to HIV Therapy, To Improve Overall and Reproductive Health, and To Reduce Secondary Transmission Among Perinatally or Non-Perinatally HIV-Infected Adolescents, From 13–21 Years of Age

Applications are invited that propose interventions that are developmentally focused, targeting issues of importance to adolescents and young adults, and address two or more of the following issues:

A. Linking to HIV specialist care:

1. Identifying HIV counseling and testing sites where HIV-infected adolescents are diagnosed.

2. Developing and documenting the procedures for referring identified HIV infected adolescents from counseling/testing sites to HIV specialist care providers appropriate for adolescents.

3. Facilitating the follow through of referrals made to HIV specialist care providers.

B. Maintaining continuity of HIV specialist care.

1. Assessing barriers to sustaining continuity of specialist HIV care.

2. Linking to services which enable continuity of specialist HIV care. (e.g. education, social, etc.)

3. Developing and implementing strategies to overcome individual, family or social barriers including HIV disclosure issues (reminders, support groups, etc.)

4. Developing and implementing age appropriate and culturally relevant strategies for locating and re-engaging adolescents lost to follow-up.

C. Promoting adherence to medication regimens:

1. Assessing individual, family and social barriers to adherence to medication.

2. Linking to services which facilitate adherence (medication education, case management, social, pharmacist, etc.)

3. Developing and implementing strategies to overcome individual, family and social barriers, including addressing HIV disclosure issues (dosing and medication schedules, adolescent's preferences, in-home assistance, reminders, etc.).

D. Develop interventions to support overall and reproductive health of adolescents and that decrease secondary HIV transmission.

1. Developing and implementing counseling strategies for HIV infected adolescents designed to improve their overall and reproductive health and decrease risk of secondary transmission of HIV (e.g. by prevention of sexually transmitted diseases, decreasing risky sexual behaviors, avoidance of illicit drug use, etc.)

2. Evaluating the effectiveness of the counseling intervention.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

For research study area I, (longitudinal medical record review), eligible applicants include only those grantees currently funded for the Pediatric Spectrum of HIV Disease (PSD) Project under CDC Program Announcement 735. These sites include Children's National Medical Center, (Washington, DC), the Puerto Rico Department of Health, the University of Massachusetts Medical Center, the Texas Department of Health, the Public Health Foundation Enterprises, Inc. (Los Angeles), and the New York City Department of Health.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

I. Research area I: Approximately $1.6 million is available in FY 2000 to fund approximately 6 competitive continuation projects. It is expected that the average award will be $260,000, ranging from $180,000 to $500,000.

II. Research area II: Approximately $200,000 is available in FY 2000 to fund approximately 2 awards for innovative intervention(s) for children 5–12 years

of age. It is expected that the average award will be $100,000.

III. Research area III: Approximately $200,000 is available in FY 2000 to fund approximately 2 awards for innovative interventions for adolescents 13–21 years of age. It is expected that the average award will be $100,000.

It is expected that all awards will begin on or about September 30, 2000, and will be made for a 12-month budget period, within a project period of up to 4 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under

1. (Recipient Activities), and CDC will be responsible for conducting activities listed under 2. (CDC Activities).

1. Recipient Activities

Applicants addressing the same research issue should be willing to participate in collaborative studies with other CDC-sponsored researchers, including developing and using common data collection instruments, specimen collection protocols, and data management procedures, as determined in post-award grantee planning conferences. Recipients will be required to pool data for analysis and publication. Recipients are also required to work collaboratively as a study group to:

a. Develop the research study protocols and standardized data collection forms across sites.

b. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocols and the program requirements.

c. Follow study participants as determined by the study protocols.

d. Establish procedures to maintain the rights and confidentiality of all study participants.

e. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocols.

f. Collaborate and share data and specimens (when appropriate) with other collaborators to answer specific research questions.

g. Contribute blood specimens for drug resistance and therapeutic drug level studies for the intervention studies depending on the protocol requirements, for shipment and storage at a centralized repository system at CDC.

h. Conduct data analysis with all collaborators as well as present and publish research findings.

i. Attend biannual meetings with other funded grantees.

2. CDC Activities

a. Provide technical assistance as needed in the design and conduct of the research.

b. Facilitate and assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist as needed in designing a data management system.

d. Assist as needed in performance of selected laboratory tests.

e. Work collaboratively with investigators to help facilitate research activities across sites involved in the same research project.

f. Assist in the analysis of research information and the presentation and publication of research findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Follow the directions for completing the application that are found in the Public Health Service (PHS) 398 kit. If you are applying for more than one activity, you must submit a separate application for each research area.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: www.cdc.gov/...Forms, or in the application kit. On or before August 21, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications that do not meet these criteria are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applicants will be ranked on a scale of 100 maximum points according to the research area identified. All applicants must state which research category they are addressing. Applications must demonstrate the applicant's ability to address the research in a collaborative manner with other recipients. Applications will be reviewed and evaluated based on the information submitted, as they specifically describe the applicant's abilities to meet the following criteria:

1. Familiarity With and Access To Study Population (25 Points)

a. Description of population to be studied, including number, age distribution, and other relevant demographic characteristics is described. The number of HIV-exposed (for Part I) and HIV-infected enrollees (for Parts I–III) to be prospectively monitored, and expected attrition from deaths and losses to follow-up over the study period based on prior experience is specified.

b. Description of the most important trends in disease progression, HIV and other health care needs, including gaps in services, of the population to be studied (e.g. HIV-exposed children, HIV-infected children, HIV-infected adolescents, HIV-infected mothers).

c. Ability to access and review neonatal, pediatric, adolescent and maternal prenatal and labor and delivery records. (Part I)

d. Ability to recruit at least 100 children for the pediatric intervention (Part II) or 50 adolescents for the adolescent intervention. (Part III)

e. Ability to identify and follow HIV-exposed but HIV-uninfected children and HIV-infected children for Part I, HIV-infected children between 5–12 years of age for Part II, and HIV-infected adolescents between 13–21 years of age for Part III. In addition:

(1) For part I, describes the plan to match HIV-exposed children over time (as long as they are followed in the study and after they are lost to follow-

up) with death, congenital birth defect, cancer and other registries to investigate potential severe side effects of antiretroviral exposure.

(2) For Part III, describes the sites where the majority of HIV-infected adolescents are being diagnosed (if "linkages to care" is included as a research area).

f. Prior research with or service provision to the study population and linkages and collaboration with other organizations providing medical and psychosocial services to the study population. As appropriate, include memoranda of agreement to document collaboration with organizations providing services to the study population.

g. Feasibility of plans for involving the service providers in the design and implementation of research activities.

h. Extent to which intervention plans take developmental stages into account and are appropriate for the population described. (Parts II and III)

i. Existence of linkages to facilitate monitoring the study population (all parts) including memoranda of agreement from the clinical facilities to permit record review. (Part I)

j. Demonstrated collaboration with local health departments and pediatric HIV/AIDS surveillance staff. (Part I)

2. Description and Justification of Research Plans (25 Points)

a. Quality of the review of the scientific literature pertinent to the proposed activities, including justification for and relevance of research questions and the proposed intervention. The research issues and a description of which ones must be addressed are described under the Purpose/Areas of Research section.

b. The applicant's understanding of the research objectives as evidenced by high quality of the proposed research plan.

c. The scientific soundness of the methods described by the applicant to:

(1) Abstract data and assure adequate follow-up of the pediatric, adolescent and maternal populations and timely completion of data forms and transfer of data to CDC (Part I)

(2) Develop and evaluate interventions in children 5–12 years of age (Part II), including:

(i) Review laboratory and disease indicators of (highly antiretroviral therapy) HAART failure in children 5–12 years of age (e.g. CD4 counts, HIV viral loads, history of AIDS defining conditions);

(ii) Interview children and their parents about factors potentially relevant to the children's treatment failure or success;

(iii) Design and operationalize standard and enhanced innovative interventions;

(iv) Randomize participants to one of the interventions and deliver the interventions;

(v) Monitor participants through the end of the study (e.g. monitor adherence to medications, measure drug levels, review laboratory and disease indicators of HAART failure, collect blood spots to measure ARV drug resistance); and

(vi) Evaluate the effectiveness of the interventions, including its cost-effectiveness.

(vii) Develop and deliver an intervention to HIV-infected adolescents from 13–21 years of age, monitor participants through the end of the study and evaluate the effectiveness of the intervention (Part III).

d. Ability and feasibility of collecting additional information from the medical records around the following areas (for Part I):

(1) Issues specific to adolescents;

(2) Issues specific to adherence to medical regimens; and

(3) Laboratory results related to ARV drug resistance.

e. Adequacy of methods for quality assurance including: Supervision of data abstraction, entry and cleaning, validation of accuracy and completeness of data abstraction and data entry, maintenance of consistency in methodology used by abstractors and data entry clerks in their procedures, and monitoring of study progress (Part I).

(1) Training and supervision of staff conducting interventions to ensure consistency in the methodology used for the intervention across all participants. (Parts II and III)

(2) Tracking follow-up of HIV-exposed children (Part I), HIV-infected children (Parts I and II), HIV-infected adolescents (Parts I and III) and HIV-infected mothers (Part I). This should include a description of the experience of the investigator in enrolling and monitoring the population to be studied (all parts) and the procedures used to ensure that participants will complete the interventions. (Parts II and III)

f. Scientific soundness, creativity and thoroughness of plans to analyze local data using quantitative methods and statistical techniques. (Parts I, II, and III).

g. Extent to which the intervention (Parts II and III):

(1) Represents an innovative approach.

(2) Meets unmet needs.

(3) Complements existing interventions.

(4) Avoids duplication of efforts.

(5) Incorporates cutting edge technology (e.g., MEMS®Caps, computer based interviews).

h. Adequacy of plans to disseminate research findings locally (including local collaborating service providers and participants of the study).

i. Extent to which study proposal demonstrates assurance of compliance with multisite research requirements (e.g., common protocol, data collection, and computer and data management systems).

j. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of ethnic and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

k. Extent to which application identifies and discusses any potential ethical issues associated with the proposed research and describes how these issues will be resolved.

(1) Describes procedures for obtaining IRB approval and maintaining participant confidentiality.

(2) Describes whether there are any additional IRB issues involved in: Reviewing mothers' medical records (Part I.) and matching ARV-exposed children to other registries after they are lost to follow-up to identify potential long term severe side effects which might be associated with ARV prophylaxis (e.g., how long can names be maintained at the local level for matching purposes?).

(3) Describes the state laws about obtaining informed consent in children and their parents (e.g., assent of children > 7 years of age, parental consent) and adolescents for the purposes of conducting an intervention. (Parts II and III).

(4) Describes the state laws for considering an adolescent as an "emancipated minor". (Part III)

(5) Notes whether the site currently has an IRB which has the authority to provide an assurance for the project being proposed or if not, whether they will need assistance from CDC in applying for such an assurance.

The degree to which the applicant has met the CDC Policy requirements

regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Provision of HIV/AIDS Report Data to and Collaboration With Local Pediatric or Adults HIV/AIDS Surveillance Activities (10 Points)

a. Adequacy of procedures for collaborating with local health department pediatric or adult HIV/AIDS surveillance staff to report children or adolescents with HIV exposure, infection, and/or AIDS (depending on state law). Includes a signed memorandum of agreement detailing the outlined division of responsibilities, joint activities to evaluate completeness, timeliness, validity of the HIV/AIDS report data, methods to ensure security and confidentiality of HIV/AIDS report data, and use of data (Part I.)

b. Feasibility of plans for completion and computer entry of HIV/AIDS report forms and complete and timely transfer of HIV/AIDS case reports to the local HIV/AIDS surveillance unit.(For Part I)

c. Adequacy of measures to assure completeness of HIV/AIDS report forms, data quality and timeliness, and protection of confidentiality. (For Part I)

d. Adequacy of measures to assure timely reporting of HIV/AIDS cases among children and adolescents participating in the intervention studies to the local HIV/AIDS surveillance if mandated by state law, and to assure protection of confidentiality . (For Parts II and III)

4. Demonstration of Staff's Capability To Conduct Research (20 Points)

a. Capacity to conduct the proposed activities as evidenced by previous experience and scientific expertise. Demonstration that staff has:

(1) Experience working with the targeted population of study participants;

(2) Principal investigators or staff have previous experience and scientific expertise in the area of research to be conducted (either in epidemiologic research in Part I or behavioral assessment, intervention, and evaluation research, including evaluation of cost-effectiveness, for Parts II and III.). Include table of current and previous relevant research projects, their status, sources and levels of funding and principal investigators and list of references of any publications on related research by study staff.

(3) The experience needed to conduct the intervention (e.g., nurse counselor, or study coordinator, etc.)

b. Inclusion of the curriculum vitae for key staff members as well as memoranda of agreement that clearly and specifically document activities to be performed by any external experts, consultants, or collaborating agencies under the cooperative agreement.

5. Staffing, Facilities, and Time Line (20 Points)

a. Availability of qualified personnel with realistic and sufficient percentage-time commitments;

b. Clarity of the described duties and responsibilities of existing and proposed project personnel with epidemiologic, administrative, clinical, data management (including HIV/AIDS case reporting to local surveillance unit), and statistical responsibilities. Organizational chart depicts lines of authority.

c. Adequacy of clinical oversight of the project, especially supervision of data abstraction and entry.

d. Adequacy of base staff to keep pace with anticipated workload such as the biannual medical record review for the number of children to be monitored prospectively (Part I) and the interventions involved with children (Part II) and adolescents (Part III).

e. Adequacy of equipment, facilities and systems to be used for data abstraction and follow-up tracking, data entry and analysis, project management, data security and participant confidentiality.

f. Feasibility of plans to communicate, ensure quality control and consistency, identify and resolve problems, and analyze date in collaboration with other sites.

g. Inclusion of time line showing plan for completion of research activities and goals

6. Other (Not Scored)

a. Budget: The extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

b. Human Subjects: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? ——Yes No Comments:

H. Other Requirements

Technical Reporting Requirements Provide CDC With Original Plus Two Copies of—

1. annual progress reports;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in paragraph J. Where to Obtain Additional Information.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4—HIV/AIDS Confidentiality Provisions
AR–5—HIV Program Review Panel Requirements
AR–6—Patient Care
AR–7—Executive Order 12372 Review
AR–8—Public Health System Reporting Requirements
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2)of the Public Health Service Act (42 U.S.C. 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone number (770) 488–2741, Email address: BHayes@cdc.gov

For program technical assistance, contact: Jeff Efird, MPA, Deputy Chief, Epidemiology Branch, Division of HIV/AIDS Prevention Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–45, Atlanta, Georgia 30333, Telephone (404) 639–6130, E-mailjle1@cdc.gov

Dated: July 5, 2000.

Ron Van Duyne,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17445 Filed 7–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00134]

Leadership and Investment in Fighting an Epidemic (LIFE) Global AIDS Activity; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to increase United States support for sub-Saharan African countries and India to limit the further spread of HIV and to care for those affected by this devastating disease.

This additional funding is an action by the United States (U.S.) Government recognizing the impact that AIDS continues to have on individuals, families, communities and nations, and the need to do more. Over the next 5 years, it is expected that these activities will contribute to global targets established by the Joint United Nation Programme on AIDS (UNAIDS), in cooperation with the United States Agency of International Development (USAID) and other bilateral and multi-lateral partners. These goals represent the result of the total worldwide contribution of resources and effort. The U.S. Government seeks to further these goals through the LIFE Initiative:

- The incidence of HIV infection will be reduced by 25% among 15–24 year olds by 2005. (Currently 2 million young adults are infected each year in sub-Saharan Africa.)
- At least 75% of HIV infected persons will have access to basic care and support services at the home and community levels, including drugs for common opportunistic infections (TB, pneumonia, and diarrhea). (Currently, less than 1% of HIV infected persons have such access.)
- Orphans will have access to education and food on an equal basis with their non-orphaned peers.
- By 2002, domestic and external resources available for HIV/AIDS efforts in Africa will have doubled to $300 million per year. (Currently, approximately $150 million per year is spent on HIV/AIDS prevention in sub-Saharan Africa.)
- By 2005, 50% of HIV infected pregnant women will have access to interventions to reduce mother-to-child HIV transmission. (Currently, less than 1% of HIV infected pregnant women have access to such services in sub-Saharan Africa.) As a key partner in the U.S. Government's Leadership and Investment in Fighting an Epidemic (LIFE) Initiative, CDC, through its Global AIDS Activity (GAA) is working in a collaborative manner with national governments, USAID and other international partners to develop programs of assistance to address the HIV/AIDS epidemic in countries designated as LIFE countries by the U.S. Congress. At present, those countries are Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda, Rwanda, Zimbabwe, Ethiopia, Mozambique, Malawi, Tanzania, Nigeria, Senegal, Zambia and India.

The overall objectives of the CDC's GAA are to:

- Reduce HIV transmission through primary prevention of sexual, mother-to child, and blood transmission.
- Strengthen the capacity of countries to collect and use surveillance data and to manage national HIV/AIDS programs.
- Improve community and home based care and treatment of HIV and sexually transmitted diseases (STDs) and opportunistic infections.

B. Eligible Applicants

Applicants must: (1) Be a U.S. Private Volunteer Organization (PVO), and have been granted tax-exempt status under Section 501(c)(3), evidenced by an Internal Revenue Service (IRS) determination letter; and (2) have at least 2 years experience in delivering HIV, STD, or TB prevention and care programs and/or prenatal/obstetric/reproductive programs in accordance with GAA objectives in at least 5 of the 15 countries (Botswana, Cote d'Ivoire, Ethiopia, Kenya, Malawi, Mozambique, Nigeria, Rwanda, Senegal, South Africa, Tanzania, Uganda, Zambia, Zimbabwe, India).

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $5,000,000 is available to fund up to 4 awards in FY 2000. It is expected that awards will begin September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates are subject to change.

CDC expects to allocate $5,000,000 into 2 categories of program activities and services: (A) primary prevention (approximately 70% of available funds), and (B) care, support, and treatment (approximately 30% of available funds). These estimates may vary. In making these awards, CDC will use the "CDC Global AIDS Activities Technical Strategies" as a guide for selecting collaborative activities to be funded (See Attachment I).

Continuation awards within an approved project period will be made on the basis of the availability of funds and the applicant's satisfactory progress toward achieving defined objectives.

Satisfactory progress toward achieving objectives will be determined by progress reports and site visits conducted by CDC representatives.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested.

Funding Preference

Funding will be given to ensuring a geographic distribution of awards covering the 15 GAA countries in African and India.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and CDC will be responsible for activities under number 2. (CDC Activities).

1. Recipient Activities

a. Collaborate with CDC, partner governments, USAID missions, and other partners to ensure that: (1) There is country ownership of the activities, (2) proposed activities complement existing efforts both by the country and with other partners, and (3) activities are supportive of indigenous expertise and institutions.

b. Provide services in collaboration with CDC, partner governments and other partners for the development of capacity for the Ministry of Health and other in-country partners to deliver the services.

c. Provide assistance to countries to develop behavior change intervention programs with vulnerable populations such as youth (age 15–29 years old) and commercial sex workers and their clients. Intervention programs may include support of information, education and communication (IEC) campaigns, social marketing of condoms and behavior change.

d. Focus on no more than three of the following activities:

1. Voluntary Counseling and Testing (VCT)—implement, monitor, and evaluate HIV counseling and testing programs. Identify barriers and concerns raised in providing VCT and coordinate with campaigns to help reduce the fear, stigma, discrimination, and isolation associated with HIV infection and AIDS.

2. Mother To Child Transmission (MTCT)—implement feasible, sustainable interventions to decrease HIV MTCT, and assure that these interventions are integrated within maternal and child health (MCH) programs, strengthen antenatal care, promote the health of the mother, and enhance HIV prevention programs at the family and community level.

3. Blood safety—build or strengthen a national blood transfusion service to manage a national program, improve the safety and quality of the blood supply, decrease the demand for blood transfusion, and increase the supply of blood from low-risk volunteer blood donors.

4. STD prevention and care—expand and improve the diagnosis and treatment of STDs, including risk reduction counseling and education, as a means of reducing the continued transmission of HIV.

5. Prevention and Youth—implement youth-focused prevention/intervention programs, testing prevention programs, secondary prevention for HIV-positive youth, and build youth development programs.

6. Public-private partnerships—engage business and labor unions in a number of countries and provide technical assistance and materials for the development and implementation of public-private partnerships to address the spread of HIV/AIDS.

7. Care, support and treatment—improve the local capacity to prevent and treat HIV and related opportunistic infections with a special emphasis on TB and the implementation of palliative AIDS care programs.

e. Serve on a coordinating council with representatives of CDC as well as other collaborating organizations that will meet in Atlanta on a semi-annual basis. This council will review and coordinate program assistance plans and routine program performance measures to ensure consistent support of LIFE Initiative and global UNAIDS goals and objectives.

f. Participate in specific country-based workgroups that develop and review ongoing country assistance activities. The product of these workgroups will define the activities of the collaborating agencies as detailed in items a through d above.

2. CDC Activities

a. Collaborate with partner governments, USAID missions and other partners to assist recipients in the development of plans for program assistance based on the country needs, the CDC technical assistance portfolio, and HIV prevention activities conducted by other partners.

b. Provide consultation and scientific and technical assistance based on the "CDC Global AIDS Activities Technical Strategies" document to promote the use of best practices know at this time. See Attachment I, "CDC Global AIDS Activities Technical Strategies'.

c. Facilitate semi-annual planning and review meetings in Atlanta for the purposes of coordinating recipient assistance programs in LIFE countries to ensure consistency in collaborative technical assistance activities.

d. Facilitate in-country planning and review meetings for the purposes of ensuring coordination of country-based program technical assistance activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font. Number each page clearly, and provide a complete Table of Contents to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. The following format should be used when developing your narrative:

Format

1. Background
2. Documented Needs
3. Eligibility and Capacity
4. Proposed Program Plan
   a. Goals
   b. Objectives
   c. Plan of Operation
   d. Evaluation Plan
   e. Collaboration
5. Budget and Staffing Breakdown and Justification

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Control Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov, or in the application kit. On or before August 24, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Capacity (30 Points)

a. The extent to which the applicant describes the ability to deliver HIV, STD, or TB prevention and care programs and/or prenatal/obstetric/reproductive programs in accordance with GAA objectives.

b. The extent to which the applicant documents personnel staff positions, experience, training, and recruitment.

2. Proposed Program Plan (40 Points)

a. The appropriateness of proposed activities and interventions and extent to which they are targeted to address the priority needs;

b. The quality of the proposed objectives and extent to which they are specific, realistic, measurable, and time-phased;

c. Extent to which proposed activities, if well-executed, are capable of attaining project objectives; the likelihood that the proposed activities, interventions, and services will achieve the stated program goals and intent of this program announcement.

3. Collaboration (15 Points)

Extent to which the applicant organization can document a history of successful collaborations with the U.S. government and/or non-governmental organizations in carrying out projects of public health impact.

4. Evaluation (15 Points)

Quality of the plan for evaluating the proposed program activities and the likelihood that the evaluation will provide information that will lead to improvement of the program.

5. Budget (Not Scored)

Extent to which budget is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress report
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

For descriptions of the following Other Requirements, see Attachment II. Some of the more complex requirements have some additional information provided below:

AR–1 Human Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 307 of the Public Health Service Act, 42 U.S.C. 241 and 2421, and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 2151b. The Catalog of Federal Domestic Assistance Number is 93.939, HIV Prevention Activities—Nongovernmental Organization.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Scroll down the page, click on "Funding", then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, MailStop E–15, Atlanta, GA 30341–4146, Telephone (770) 488–2736, E-mail address: dpr7@cdc.gov.

For program technical assistance, contact: Leo Weakland, Deputy Coordinator, Global AIDS Activity (GAA), National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, M/S E–07, Atlanta, GA 30333, Telephone number (404) 639–8016, Email address: lfw0@cdc.gov.

Dated: July 5, 2000.

Ron Van Duyne,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17446 Filed 7–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–4 p.m., August 4, 2000.

Place: The Sheraton Colony Square Hotel, 188 14th Street, N.E., Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The committee will anticipate, identify, and propose solutions to strategic and broad issues facing CDC.

Matters to Be Discussed: Agenda items will include updates from Dr. Jeffrey P. Koplan, Director, CDC regarding the current CDC Director's priorities with a focus on selected CDC programs including Immunizations, Prevention Research, and Tobacco.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333. Telephone 404/639–7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 3, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–17448 Filed 7–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1280]

Medical Devices; Exemptions From Premarket Notification; Class II Devices: Triiodothyronine Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a notice announcing that it has received a petition requesting exemption from the premarket notification requirements for the total triiodothyronine test system class II device (special controls). FDA is publishing this notice in order to obtain comments on this petition in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments by August 10, 2000.

ADDRESSES: Submit written comments on this notice to the Docket Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of the FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142). In the **Federal Register** of November 3, 1998 (63 FR 59222), FDA published a final rule codifying these exemptions.

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

III. Petition

FDA received the following petition requesting an exemption from premarket notification for class II devices:

Abbott Laboratories, *Total triiodothyronine test system*, 21 CFR 862.1710.

IV. Comments

Interested persons may submit to the Docket Management Branch (address above) written comments regarding this petition by August 10, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 28, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–17389 Filed 7–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00N–0504]

Egg Safety; Current Thinking Papers on Egg Safety National Standards; Notice of Availability; Public Meeting

[Docket No. 98–045N4]

AGENCIES: Food and Drug Administration, HHS; Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and announcement of public meeting.

SUMMARY: The Food and Drug Administration (FDA) and the Food

Safety and Inspection Service (FSIS) are announcing the availability of the agencies' current thinking papers on national standards for egg safety. The documents discuss approaches to the production of shell eggs, processing and packaging of shell eggs and egg products, and retail sale of shell eggs, including immediate consumption, such as at a restaurant, intended to reduce the risk of consumer exposure to *Salmonella enteritidis* (SE). The current thinking papers represent the agencies' current views on approaches to ensure egg safety from farm to table. FDA and FSIS are also announcing a joint public meeting to be held to discuss the current thinking papers.

DATES: The current thinking papers will be presented and distributed at a public meeting on July 31, 2000. The public meeting will be held on Monday, July 31, 2000, from 8 a.m. to 5 p.m. Submit written comments no later than August 14, 2000.

ADDRESSES: The meeting will be held at the Holiday Inn—Washington, DC on the Hill, 415 New Jersey Ave. NW., Washington, DC 20001, 202–638–1616.

After the meeting, the current thinking papers on egg safety national standards will be available on the Internet at www.foodsafety.gov, or from Tammy O'Conner, USDA/FSIS/OPPDE/RDAD, rm. 112, Cotton Annex Bldg., 300 12th St. SW., Washington, DC 20250–3700, FAX 202–205–0381, or FDA's Center for Food Safety and Applied Nutrition Outreach and Information Center, FAX 877–366–3322.

Transcripts and summaries of the meeting will be available at the Dockets Management Branch (HFA–305), FDA, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *To register for the meeting:*

Sally Fernandez, FSIS, 202–501–7251 or FAX 202–501–7615. When registering please provide name, title, firm name, address, telephone, and fax number. When registering, please indicate if you would like to make a presentation during the meeting. Time allotted for each presentation will be approximately 5 minutes for each participant, but will depend on the number of people participating. If you require a sign language interpreter or other special accommodations, please notify Ms. Fernandez 7 days before the meeting.

For general information regarding the meeting or the Egg Safety Action Plan: Nancy Bufano, FDA, 202–401–2022, FAX 202–205–4422, or e-mail: nancy.bufano@cfsan.fda.gov; Alice Thaler, FSIS, 202–690–2683, FAX 202–720–8213; or Martha Workman, FSIS, 202–720–3219, FAX 202–690–0824.

SUPPLEMENTARY INFORMATION:

I. Background

The President's Council on Food Safety was established in August 1998 to improve the safety of the food supply through science-based regulation and well-coordinated inspection, enforcement, research, and education programs. The Council on Food Safety was charged with developing a comprehensive long-range strategic plan that can be used to set priorities, improve coordination and efficiency, identify gaps in the current system, recommend ways to fill those gaps, enhance and strengthen prevention and intervention strategies, and identify or develop measures to show progress.

The Council has identified egg safety as one component of food safety that warrants immediate Federal, interagency action. In July 1999, FDA and FSIS committed to developing an action plan to address the presence of SE in shell eggs and egg products using a farm-to-table approach.

As part of this action plan, FDA and FSIS held a public meeting on August 26, 1999, to obtain stakeholder input on draft goals, as well as to further develop objectives and action items. The Egg Safety Action Plan, announced by the President on December 11, 1999, was developed, in part, from the input received at the meeting. The Egg Safety Action Plan is available on the Internet at www.foodsafety.gov or from the general information contact persons above.

The information shared at the public meeting and during the comment period following the public meeting will be considered prior to any further actions by the agencies. The agencies may hold additional public meetings, as appropriate, to discuss other issues, including strategies to ensure effective and efficient interactions between State and Federal governments.

II. Decision to Make Current Thinking Papers Available for Comment

On March 30, 2000, and April 6, 2000, the agencies held public meetings in Columbus, OH, and Sacramento, CA, respectively, to solicit and discuss information related to the implementation of the Egg Safety Action Plan and to gather information for reducing or eliminating the risk of SE in eggs. Transcripts from both meetings are available on the Internet at www.foodsafety.gov or from FDA's Dockets Management Branch (address above), at a cost of 10 cents per page. The summaries of the public meetings are also available for public examination at FDA's Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Based on verbal comments received at the meetings, written comments received subsequent to the meetings, and the desire to promote public participation in the implementation of the Egg Safety Action Plan, FDA and FSIS decided to publish this notice of availability of the agencies' current thinking papers in the **Federal Register**.

The current thinking papers represent the agencies' current views on approaches to ensure egg safety from farm to table. FDA and FSIS are soliciting public comment on these documents to obtain views as to whether the agencies are implementing the Egg Safety Action Plan in a way that will best achieve its public health goals.

III. Opportunity for Public Meeting

The agenda for the public meeting will address the following segments of the farm-to-table egg safety continuum: (1) On-Farm Production, (2) Packer/Processor, and (3) Retail. The agenda will also provide for discussion of economics issues, as well as small business and consumer perspectives.

Attendees are encouraged to present their comments, concerns, and recommendations on any of these topics at the public meeting. Attendees wishing to make a presentation must indicate such when registering.

Individuals and organizations that do not preregister to make a presentation may have the opportunity to speak if time permits. A transcript of the proceedings of the public meeting, as well as all information and data submitted voluntarily to FDA and FSIS during the public meeting to discuss the current thinking papers, will become part of the administrative record and will be available to the public under 21 CFR 20.111 from FDA's Dockets Management Branch (address above).

While oral presentations from specific individuals and organizations will be limited during the public meeting, the written comments submitted as part of the administrative record may contain a discussion of any issues of concern. All relevant data and documentation should be submitted with the written comments.

IV. Additional Public Notification

Public awareness of and involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce the

notice and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office at 202–720–5704.

V. Public Dockets and Submission of Comments

The agencies have established public dockets to which comments may be submitted. Comments should be directed either to FSIS, Docket No. 98–045N4, or to FDA, Docket No. 00N–0504, or to both dockets for consideration by both agencies. All comments must include the appropriate docket number found in brackets in the heading of this document. Submit written comments in triplicate to: (1) USDA/FSIS Docket Clerk, 300 12th St. SW., rm. 102, Cotton Annex, Washington, DC 20250-3700, or (2) FDA's Dockets Management Branch (address above). You may also send comments to Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or via the FDA Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm.

VI. Meeting Summary

A summary of the proceedings of the public meeting will be posted on the Internet at www.foodsafety.gov. This website is a joint FDA, USDA, and Environmental Protection Agency food safety home page. It is linked to each agency for persons seeking additional food safety information. A summary of the proceedings of the public meeting may also be requested in writing from FDA's Dockets Management Branch (address above) approximately 30 business days after the meeting, at a cost of 10 cents per page. The summary of the public meeting will be available for public examination at FDA's Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2000.

Thomas J. Billy,

Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation, Food and Drug Administration.

[FR Doc. 00–17494 Filed 7–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–730 & 182]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Employee Building Pass Application and File;

Form No.: HCFA–730 & 182 (OMB# 0938-NEW);

Use: The purpose of this system and the forms are to control United States Government Building Passes issued to all HCFA employees and non-HCFA employees who require continuous access to HCFA buildings in Baltimore and other HCFA and HHS buildings;

Frequency: Other; as needed;

Affected Public: Federal Government, and Business or other for-profit;

Number of Respondents: 150;

Total Annual Responses: 150;

Total Annual Hours: 37.50.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 28, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–17477 Filed 7–10–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish And Wildlife Service

Endangered and Threatened Species: Incidental Take Permits—Houston Toad

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (*Bufo houstonensis*) During Construction of One Single Family Residence on 0.5 acres of the 5.087-Acre Lot 41, Section 1 in the KC Estates Subdivision, Bastrop County, Texas (Bush).

SUMMARY: Anthony V. Bush (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–029602–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result

of the construction and occupation of one single family residence on 0.5 acres of the 5.087-Acre Lot 41, Section 1 in the KC Estates Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029602–0 (Bush) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Anthony V. Bush plans to construct a single family residence on 0.5 acres of the 5.087-Acre Lot 41, Section 1 in the KC Estates Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Dom Ciccone,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17449 Filed 7–10–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species: Incidental Take Permits—Houston Toad

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (*Bufo houstonensis*) During Construction of One Single Family Residence on 0.5 acres of the 1.7-acre Lots 9 and 10 in the Pine Forest Subdivision, Bastrop County, Texas (Decker).

SUMMARY: Douglas and Julie Decker (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–028087–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 1.7-acre Lots 9 and 10 in the Pine Forest Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Dianne Lee, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–028087–0 (Decker) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Dianne Lee at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Douglas and Julie Decker plan to construct a single family residence on 0.5 acres of the 1.7-acre Lots 9 and 10 in the Pine Forest Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Dom Ciccone,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17450 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on 0.5 Acres of the 1.0-acre Lot 1 in the Royal Pines Subdivision, Bastrop County, Texas (Schena)

SUMMARY: Sherry Schena (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an

incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–029608–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 1.0-acre Lot 1 in the Royal Pines Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029608–0 (Schena) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Sherry Schena plans to construct a single family residence on 0.5 acres of the 1.0-acre Lot 1 in the Royal Pines Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $4,000 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Dom Ciccone,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17451 Filed 7–10–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (Bufo houstonensis) During Construction of One Single Family Residence on 0.5 acres of the 4.877-acre Reserve Lot, Block 1, Phase III in the Pine Forest Subdivision, Bastrop County, Texas (Russo)

SUMMARY: Joseph and Sylvia Russo II (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–029605–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 4.877-acre Reserve Lot, Block 1, Phase III in the Pine Forest Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Dianne Lee, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029605–0 (Russo) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Dianne Lee at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Joseph and Sylvia Russo II plan to construct a single family residence on 0.5 acres of the 4.877-acre Reserve Lot, Block 1, Phase III in the Pine Forest Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Dom Ciccone,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17452 Filed 7–10–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–830–1030–XP–24 1 A]

OMB Approval Number 1004–NEW; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). On March 17, 2000, BLM published a notice in the **Federal Register** (65 FR 14610) requesting comments on this proposed collection. The comment period ended May 16, 2000. BLM received one comment from the public in response to that notice. Copies of the proposed collection of information and related surveys and explanatory material may be obtained by contacting the BLM Information Clearance Officer at (202) 452–5033.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: BLM's Generic Customer Satisfaction Surveys for Stakeholders and Partners and State and Local Governments, OMB Approval Number: 1004–NEW

Abstract: BLM is proposing a new information collection for determining the satisfaction of its stakeholders, partners, and state and local governments with its programs and services. A currently approved collection (1004–0181) covered all survey instruments, both customer comment cards and telephone surveys, and the use of focus groups to determine what questions to ask and comments to solicit. The new collection will concern only customer-specific programs not included in 1004–0181. The anticipated programs/customers for survey are state and local governments and stakeholders and partners. These data will be used to identify: (1) service needs of customers, (2) strengths and weaknesses of services, (3) ideas or suggestions for improvement of service from BLM customers, (4) barriers to achieving customer service standards, and (5) changes to customer service standards.

Bureau Form Number: Not applicable.

Frequency: Once every other year.

Description of Respondents: Stakeholders are indirect customers that represent BLM's direct customers and are key to assessing service quality and include environmental, business and other community organizations and Resource Advisory Councils (RAC's), advisory groups. State and local government officials are statewide executive agencies, statewide elected or appointed officials, and local and community elected officials.

Annual Responses: 1720.

Bureau Burden Hours: 430 or 0.25 hours (15 minutes) per response.

Information Clearance Officer: Shirlean Beshir, 202–452–5033.

Dated: June 16, 2000.

Shirlean Beshir,

BLM, Information Clearance Officer.

[FR Doc. 00–17463 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–99–2822–00–D889]

Closure and Restriction Orders

AGENCY: Bureau of Land Management, (BLM) Interior.

ACTION: Implement an emergency closure of certain public lands in the Juniper Flats area, San Bernardino County, California.

SUMMARY: In a previous **Federal Register** Notice, Public lands in the Juniper Flats area were closed to human entry. Approximately 16,000 acres burned in the Willow fire were closed from October 17, 1999 to July 1, 2000. The closed area is not to be entered by any means of access unless addressed by the closure described below. This closure exempts human access (mechanized, motorized, equestrian, foot) within the confines of routes signed as open. No travel of any kind is authorized other than on these signed open routes. This closure also exempts non-mechanized access on the signed trail leading from the southernmost portion of the Bowen Ranch property, across BLM land, referred to as the "upper parking lot", to the Forest Service trailhead, referred to as the "lower parking lot", which leads to the Deep Creek Hot Springs.

DATES: This closure goes into effect at 8 a.m. on Saturday, July 1, 2000 and shall remain in effect until 8 a.m. on Saturday, June 30, 2001, unless non-compliance dictates an entire closure.

FOR FURTHER INFORMATION CONTACT: Tim Read, Barstow Field Office Manager, Bureau of Land Management, 2601 Barstow Road, Barstow, CA 92311; or call (760) 252–6000.

SUPPLEMENTARY INFORMATION: On Saturday, August 28, 1999, the Willow Fire started on U.S. Forest Service lands adjacent to BLM lands in the Juniper Flats area. The fire burned 63,486 acres, including approximately 16,000 acres of BLM land. Natural resources comprising the local ecosystems were extensively damaged by the fire. The affected public land has been closed to human entry since the fire, with the exception of foot travel on the hiking trail from Bowen Ranch to the Forest Service Trail leading to the Deep Creek Hot Springs. Although the landscape remains barren in many locations, treatments have been completed on several routes, including the installation of open route signs which should guide visitors over a temporary designated network of routes. This closure still allows for non-mechanized access on the trail leading to the Deep Creek Hot Springs. The trail is well marked and is located in T.3N. R.3W. Section 11. This closure also allows human, equestrian, mechanized, and motorized travel within the confines of signed open routes.

In general, the closed public lands are east of Deep Creek Road, south of the Atchison Topeka and Sante Fe rail lines, west of California Highway 18, and north of Deep Creek. The authority for this closure is 43 CFR 8364.1, 18 U.S.C. 3571. This closure only applies to those portions of the following sections burned during the Willow Fire: San Bernardino Base and Meridian, T.3N. R1W. sections 2, 3, 4, 5, 6; T.3N. R.2W. sections 1, 2, 3, 4, 5, 6, 7 and 8; T.3N.

R3W. sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; T.4N. R.1W. sections 31 and 32; T.4N. R.2W. sections 26, 27, 28, 29, 31, 32, 33, 34 and 35; T.4N. R.3W. sections 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 and 35. Failure to comply with this closure order may result in a fine up to $100,000.00 or imprisonment up to 12 months, or both.

The only exemptions to this closure include the following activities: Law enforcement, emergency services, government business, or work to maintain utilities and infrastructure. Other specific exemptions may be permitted by the BLM Authorizing Officer.

Harold Johnson,

Acting Field Manager, BLM, Barstow Field Office.

[FR Doc. 00–17392 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–00–7122–EA–8829]

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary Closure of Selected Public Lands in Clark County, Nevada, during the operation of the Score International 2000 Las Vegas Primm 300 Desert Race.

SUMMARY: The District Manager of the Las Vegas District announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the Score International 2000 Las Vegas Primm 300 Desert Race and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–95–F–237).

DATES: From 6:00 am August 4, 2000 through 9:00 pm August 5, 2000 Pacific Standard Time.

Closure Area: Public lands within as described below, an area with T. 23 S. to T. 27 S.R. 59 E. to R. 61 E.

1. The closure is a triangle shaped area bound by Interstate I–15 (between Sloan and State line) on the west; the crest of the McCullough Mountains on the east; and the California/Nevada State line on the south.

Exceptions to the closure area are: State Route 163, Old Las Vegas Blvd.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure:

Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator area.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owner's expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor. Maps are available at the Las Vegas Field Office.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 25 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340 subpart 8341; 43 CFR 8360, subpart 8364.1 and 43 CFR 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Donn Siebert, Acting Recreation Manager or Ron Crayton, BLM Law Enforcement Ranger, BLM Las Vegas Field Office 4765 Vegas Dr. Las Vegas, Nevada 89108, (702) 647–5000.

Dated: June 29, 2000.

Mark Morse,

Las Vegas Field Office Manager.

[FR Doc. 00–17393 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–054–1220–DC; GP0–0260

John Day River Proposed Management Plan, Two Rivers and John Day Resource Management Amendments and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Central Oregon Field Office, Prineville District, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1506.6(2) notice is hereby given that the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the John Day River Proposed Management Plan, Two Rivers and John Day Resource Management Amendments. This plan area covers designated Wild and Scenic Rivers on the lower Mainstem and South Fork of the John Day River and BLM managed

lands on the Mainstem, South, Middle, and North Forks of the John Day River not designated Wild and Scenic in several counties in the North Eastern portion of Oregon.

Interested citizens not already on the mailing list may review the Final EIS via the internet on the Prineville BLM website at http://www1.or.blm.gov/Prineville/. A hardcopy or a CDROM of the EIS may be requested from the Prineville District by calling (541) 416–6700.

The planning process includes an opportunity for an administrative review of the plan amendment. If you believe approval of any provision of this proposed planning amendment would be in error, you may submit a plan protest to the Bureau of Land Management (BLM) Director (43 CFR 1610.52). Careful adherence to these guidelines as summarized below, will assist in preparing a protest that will assure consideration of your point of view.

Only those persons or organizations that participated in the planning process leading to this plan amendment may protest. If our records indicate that you had no involvement in any state in the preparation of this document, your protest will be dismissed without further review. Further, a protesting party may raise only those issues that he or she submitted for the record during the planning process.

To be considered timely, your protest must be postmarked no later than the last day of the protest period. Also, although not a requirement, we suggest that you send your protest by certified mail, return receipt requested.

Protest must be filed in writing to: Director, (WO–210), Bureau of Land Management, US Department of the Interior, Attn; Brenda Williams, 1849 C Street, NW., Washington, D.C. 20240.

To be considered complete, your protest must contain, at a *minimum*, the following information:

- Name, mailing address, telephone number, and the affected interest of person filing the protests.
- A statement of the issue or issues being protested.
- A statement of the part or parts of the planning amendment being protested. To the extent possible, reference specific pages, paragraphs. And sections of the document.
- A copy of all document addressing the issue or issues were discussed with BLM for the record.
- A concise statement explaining why the proposed decision is believed to be incorrect.

This is a critical part of your protest. Document all relevant facts. As much as possible, reference or cite the planning and environmental analysis documents. A protest that merely expresses disagreement with the State Director's proposed decision, without any data will not provide us with the benefit of your information and insight. In this case, the Director's review will be based on the existing analysis and supporting data.

DATES: The BLM will make a decision on the Management Plan and Resource Management Plan Amendments after review of protests (if any) that must be filed within 30 days of the Notice of Availability published by the EPA in the FR or by August 14, 2000, whichever is later.

FOR FURTHER INFORMATION CONTACT: Michael Williams, Prineville BLM at (541) 416–6862 or Dan Wood, Prineville BLM at (541) 416–6751.

SUPPLEMENTARY INFORMATION: As required by the Wild and Scenic Rivers Act of 1969 as amended in 1982 and 1987, 16 U.S.C. 12749(d), and by 40 CFR 1502.3 the BLM has examined a Range of Alternatives for managing the segments of the North Fork and lower mainstream of the John Day River that Congress Designated Wild and Scenic. In addition to this plan includes proposed decisions for managing public lands adjacent to the John Day River and its major tributaries that have not been designated Wild and Scenic but could influence the outstandingly remarkable values associated with the designated segments.

The proposed John Day River Management Plan and Final Environmental Impact Statement considered at least five alternatives for managing various resources and programs along over 200 river bank miles of the John Day River System. The John Day River is one of the longest free flowing river systems in the continental United States. The John Day watershed is located in the northeastern Oregon and encompasses all or portions of eleven counties, six of which would be directly affected by the proposed plan. This document has divided the John Day River system into 11 different segments for management purposes. Congress designated six of these segments (totaling 248.6 miles) as Wild and Scenic in 1988. This legislation also mandated a management plan be written in cooperation with the State of Oregon and affected native American Tribes. Consequently, this plan was written as a cooperative effort between the following agencies, and groups, collectively, known as the "partners": BLM, State of Oregon, Confederated Tribes of Warm Springs Reservation of Oregon USDI Bureau of Indian Affairs and John day River Coalition of Counties (Gilliam, Grant, Jefferson, Sherman, Wasco, and Wheeler Counties).

A draft of this document was released for a 90 day public review and comment period on December 3, 1999. Comments received helped the partners develop the proposed decisions in this plan. Major issues addressed by this plan include livestock grazing, boating use levels, commercial services, motorized boating, and public agricultural lands and related water use. Many other issues are also addressed by this plan and proposed decisions are made for each issue. They are displayed with alternatives considered. Alternative A describes the existing management situation for each resource of use (no action). The other alternatives were designed to protect and enhance the outstanding remarkable values which Congress identified for the designated Wild and Scenic segments and to protect and enhance similar river values for certain non-designated segments. Chapter IV of this document presents rulemaking by the State of Oregon for the State Scenic Waterway segments of the John Day River, most of which overlaps with designated Wild and Scenic Segments.

This proposed plan describes certain restrictions on each livestock grazing allotment along the segments designated Wild and Scenic and certain segments not so designated where they are situated in a way that directly affects the designated segments. Boating use levels and motorized boating restrictions, which vary by river segment, are proposed. Short and long-term strategies for management of commercial outfitter and guide permits are proposed for the river. Several small tracts of BLM administered irrigated agricultural lands are to be converted from commercial use to provide wildlife habitat and native vegetation. Any decisions which reallocate land uses or change major resource allocations would also amend or revise the BLM's Two Rivers and John Day Resource Management Plans under 43 CFR 1610.5–5 or 5–6.

Dated: June 30, 2000.

Donald L. Smith,

Acting Prineville District Manager.

[FR Doc. 00–17480 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–00–1220–00; GPO–0271]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, August 3, 2000 from 8:00 a.m. to 4:00 p.m. in the Library Room at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon. At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 11:00 a.m. to 11:15 a.m., August 3, 2000. Topics to be discussed are the Strategic Plan Update and reports from Coordinators of Subcommittees.

DATES: The meeting will begin at 8:00 a.m. and run to 4:00 p.m. August 3, 2000.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail Interpretive Center, P.O. Box 987, Baker City, OR 97814 (Telephone 541–523–1845).

Juan Palma,

District Manager.

[FR Doc. 00–17394 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–XQ]

Resource Advisory Council Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River District Resource Advisory Council (RAC) will be held as indicated below. The primary agenda item for this meeting will be a field trip to the Pleasant View Allotment that will give RAC members a better understanding of the application of Standards for Rangeland Health and Guidelines for Grazing Management. Other agenda items may be added between publication of this notice and the meeting. All meetings are open to the public. The public may present written or oral comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meetings is listed below. Depending on the number of persons wishing to comment, and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations should contact David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

DATES AND TIMES: The next meeting will be held Friday, August 4, 2000. The meeting will start at the BLM's Pocatello Field Office, 1111 8th Avenue in Pocatello, Idaho, beginning at 9 a.m. The field trip to the Pleasant View Allotment will begin shortly after the meeting convenes public comments, if any, are presented. The meeting is scheduled to end at about 4 p.m.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the of the public lands.

FOR FURTHER INFORMATION CONTACT: David Howell, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401, (208) 524–7559.

Dated: June 22, 2000.

James E. May,

Upper Snake River District Manager.

[FR Doc. 00–17481 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–00–14; AZA–30895, AZA–30896, AZA–30897]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of May 27, 1999, concerning a R&PP Classification in Mohave County, Arizona. The document contained an incorrect section number in the legal description.

FOR FURTHER INFORMATION CONTACT: Laurie Ford, Realty Specialist, (435) 688–3271.

Correction

In the **Federal Register** of May 27, 1999, in FR Doc. 64–102, on page 28832, the second section of the legal description should read section 10 instead of section 9 as follows:

Sec. 10, NE¼NE¼NW¼NE¼ (2.5 acres for a fire station).

Dated: June 26, 2000.

Roger G. Taylor,

Field Manager.

[FR Doc. 00–17483 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM050–1150PG]

Intent To Prepare Resource Management Plan Amendment (RMPA), Socorro Field Office (SFO), Socorro, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The BLM, SFO is proposing to amend the Resource Management Plan (RMP) to change oil and gas leasing stipulations on 229,500 acres within Socorro County. The areas proposed for stipulation changes include critical habitats for the state endangered desert bighorn sheep, designated Areas of Critical Environmental Concern (ACEC), and designated Special Management Areas (SMA).

DATES: Comments should be received on or before October 10, 2000.

ADDRESSES: Comments should be sent to the Socorro Field Manager, 198 Neel Avenue, Socorro, New Mexico, 87801.

FOR FURTHER INFORMATION CONTACT: David L. Heft, Wildlife Biologist, or Jon Hertz, Assistant Field Manager, at (505) 835–0412.

SUPPLEMENTARY INFORMATION: The Socorro RMP was completed in August 1989. The Ladron Mountain ACEC was identified at that time as a site for future reintroduction of the state endangered desert bighorn sheep. Desert bighorn sheep were reintroduced into the ACEC in 1992. The current population is approximately 35 individuals. The New Mexico Department of Game and Fish completed a habitat evaluation of potential reintroduction sites for desert

bighorn in New Mexico in 1991 with an update in 1994. This evaluation also identified the Devil's Backbone area in the southern portion of the Magdalena Mountains in Socorro County as historic and suitable habitat for the reintroduction of desert bighorn sheep. This area is approximately 38 miles south of the reintroduction site in the Ladron Mountain ACEC. Bighorn sheep movements have been confirmed to within 8 miles of the Devil's Backbone area from the Ladron herd. The connecting corridor between the two primary habitat sites is composed of the Polvadera Mountains, Socorro Mountain, and Chupadera Mountains.

Requests for public comment on probable impacts to bighorn sheep and their habitat from oil and gas leasing activities were sent to approximately 260 public entities composed primarily of industry constituents. Responses were received from the state wildlife agency and interested members of the public identifying potential negative impacts to bighorn sheep and their habitat from these activities. The New Mexico Bureau of Mines commented that the potential for oil and gas resources in the proposed action area was very low. A comment pertaining to the cultural importance and concern for conservation of bighorn sheep was received from the Navajo Nation. No comments were received from the oil and gas industries.

Any comments of substance received during the 90-day comment period will be incorporated into the environmental analysis. The resultant analysis of oil and gas leasing and associated activities such as geophysical exploration has determined that these activities can have detrimental impacts to the habitat for desert bighorn sheep. The protection of these areas has become even more critical with the recent listing as federally endangered of small isolated populations of bighorn sheep on public lands in California. The New Mexico statewide population of free ranging desert bighorn sheep is estimated to only number 220 animals at this time.

The vulnerability of small fragmented populations of desert bighorn sheep was recently demonstrated by the listing as federally endangered of the peninsular population in southern California in March 1998 by the United States Fish and Wildlife Service. This population at the time of listing was estimated to number 280 individuals. In order to preclude the potential future listing of the New Mexico population as much as possible, the SFO is pro-actively managing identified habitat areas within its jurisdiction to provide maximum protection and enhancement of those habitats. The Ladron Mountain/Devil's Backbone complex has the potential to support a long term viable population of more than 100 individuals if habitat suitability is maintained. Protection and enhancement of this habitat can also assist in the potential state delisting of this species.

Dated: June 30, 2000.

Kate Padilla,

Field Manager.

[FR Doc. 00–17482 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–MW–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; N–66363]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice temporarily segregates 160,529.76 acres of Federal lands and 15,813.12 acres of federally reserved minerals, while various studies and analyses are made to support a final decision to withdraw the land for protection of resources for a 20-year period. This notice closes the Federal lands to surface entry, except for conveyance under section 206 of Federal Land Policy and Management Act of 1976 or the Recreation and Public Purposes Act of 1926, and mining, but not to mineral leasing for up to 1 year. This notice closes the federally owned minerals to mining, but not to mineral leasing for up to 1 year. In addition, any non-Federal lands acquired through exchange, donation or purchase within the boundaries of the described plan area would be closed to surface entry and mining during the 1-year period. This segregation does not affect valid existing rights.

The Carson City Field Office of the Bureau of Land Management proposes to amend the Lahontan Resource Management Plan to address future management of these same lands. The resource management plan amendment process will serve as the basis for decisions on resource protection and development and the need for a withdrawal. The Bureau of Land Management and Washoe County are cooperating in the preparation of this resource management plan amendment.

DATES: Comments should be received on or before October 10, 2000.

ADDRESSES: Comments should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520 or the Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 775–785–6532 or Jo Ann Hufnagle, BLM Carson City Office, 775–885–6000.

SUPPLEMENTARY INFORMATION: On July 6, 2000, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described Federal lands and non-Federal lands from surface and mineral entry:

Federal Lands

Mount Diablo Meridian

T. 20 N., R. 18 E.,
- Sec. 2, lots 1 to 4, inclusive, S½N½ (that portion north of the south boundary of R/W Nev–042776 for U.S. Highway 395).

T. 21 N., R. 18 E.,
- Sec. 4, lots 1 to 4, inclusive, S½NW¼, and SW¼;
- Sec. 6, lots 11 to 14, inclusive;
- Sec. 7, lots 9 to 12, inclusive;
- Sec. 8;
- Sec. 10;
- Sec. 12, N½, NW¼SW¼, S½SW¼, and SW¼SE¼;
- Sec. 14;
- Sec. 18, lots 9 to 12, inclusive;
- Sec. 22;
- Sec. 26, lots 1 and 2, W½NW¼NE¼, NW¼, N½SW¼, and W½SE¼;
- Sec. 27, W½NE¼, N½NW¼, and SE¼NW¼;
- Sec. 34, NE¼, E½NW¼, E½W½NW¼, SW¼SW¼NW¼, N½N½SW¼, and N½SE¼, (those portions north of the south boundary of R/W Nev-042776 for U.S. Highway 395).

T. 22 N., R. 18 E.
- Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 4, lots 5 to 20, inclusive;
- Sec. 5, lots 5 to 8, inclusive, S½N½, and S½;
- Sec. 6, lots 3 to 6, inclusive;
- Sec. 8, lots 1 to 12, inclusive, and SW¼;
- Sec. 9 to 11, inclusive;
- Sec. 12, W½;
- Sec. 13, W½;
- Sec. 14, lots 1 to 8, inclusive, and W½;
- Sec. 15 to 17, inclusive;
- Sec. 18, lots 1 to 4, inclusive;
- Sec. 20, lots 1 to 8, inclusive, and S½;
- Sec. 21;
- Sec. 22, lots 1 to 4, inclusive, NE¼, and S½;
- Sec. 23;
- Sec. 24, lots 1 to 4, inclusive, and SW¼;
- Sec. 25, W½;
- Sec. 26 to 29, inclusive;
- Sec. 30, lots 1 to 4, inclusive;

Sec. 31, lots 3 to 7, inclusive;
Sec. 32, lots 1 to 6, inclusive, E½, E½NW¼, NE¼SW¼, and S½SW¼;
Sec. 33;
Sec. 34, lots 1 to 8, inclusive, and N½;
Sec. 35;
Sec. 36, lots 1 to 8, inclusive.
T. 23 N., R. 18 E.
Sec. 7, lots 2 to 4, inclusive;
Sec. 8, lots 2 to 7, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 9, lots 1 to 4, inclusive;
Sec. 12, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, and E½SW¼;
Sec. 13, lots 1 to 10, inclusive, E½NW¼, and SW¼SW¼;
Sec. 16, lots 1 to 10, inclusive, and E½SE¼;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive;
Sec. 19, lots 1 to 4, inclusive;
Sec. 20;
Sec. 21, lots 1 to 10, inclusive, and NE¼NE¼;
Sec. 22, SE¼SW¼, and SE¼;
Sec. 24, lots 1 to 6, inclusive, W½NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 25;
Sec. 26, lots 1 to 4, and SE¼NE¼;
Sec. 27, NE¼, E½NW¼, and S½;
Sec. 28, lots 1 to 12, inclusive, W½NE¼, and SE¼NE¼;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive;
Sec. 31, lots 1 to 4, inclusive;
Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 33, lots 1 to 12, inclusive, and SE¼;
Sec. 34, lots 1 to 7, N½, and SW¼SE¼;
Sec. 35, lots 1 to 6, inclusive, and NE¼;
Sec. 36, lots 1 to 8, inclusive, and N½.
T. 17 N., R. 19 E.,
Sec. 12, lots 1 and 2, NE¼, E½NW¼, S½SW¼, and N½SE¼.
T. 20 N., R. 19 E.,
Sec. 1, W½ lot 1 in NE¼, lot 2 in NE¼, lots 1 and 2 in NW¼;
Sec. 2, lots 1 and 2 in NE¼, lots 1 and 2 in NW¼, and S½;
Sec. 4, S½SW¼;
Sec. 10, NW¼NE¼, and N½NW¼;
Sec. 12;
Sec. 24, lots 1 and 4 to 8, inclusive, W½NE¼, E½SW¼, and W½SE¼.
T. 21 N., R. 19 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 8, N½NE¼, SE¼NE¼, and E½SE¼;
Sec. 10;
Sec. 11, SW¼NE¼, W½NW¼, NE¼SW¼, and W½SE¼;
Sec. 12;
Sec. 13;
Sec. 14; N½;
Sec. 16, N½, and SE¼;
Sec. 22, SW¼;
Sec. 24, SE¼NW¼, and SW¼;
Sec. 25;
Sec. 26, E½NE¼, and NE¼SE¼;
Sec. 28, NE¼, N½SE¼, and SE¼SE¼;
Sec. 36.
T. 22 N., R. 19 E.,
Sec. 1, lots 3 to 11, inclusive, SE¼NW¼, and NE¼SW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 2 to 4, inclusive;
Sec. 4, lots 1 to 11, inclusive, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 9, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 10;
Sec. 12;
Sec. 14, SE¼SW¼;
Sec. 15, W½;
Sec. 16, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 22;
Sec. 24;
Sec. 26, NE¼, NE¼NW¼, N½SE¼, and SW¼SE¼;
Sec. 36.
T. 23 N., R. 19 E.,
Sec. 1, S½;
Sec. 2, S½;
Sec. 3, S½;
Sec. 4, S½;
Sec. 5, S½;
Sec. 6, lots 6 to 7, inclusive, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8 to 17, inclusive;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 33, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 34, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 35, N½;
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 16 N., R. 20 E.,
Sec. 1, E½ of lot 2 in NE¼, and lot 3;
Sec. 2, lots 1 and 2 in the NE¼, lots 1 and 2 in NW¼, N½S½, and S½SW¼;
Sec. 3, lot 2 in NE¼, and lot 2 in NW¼;
Sec. 4, lots 1 and 2 in NE¼, and S½;
Sec. 10;
Sec. 11, N½NE¼NE¼, and SE¼NE¼NE¼;
Sec. 14, irregular Washoe County portion within W½W½;
Sec. 16, SE¼SE¼;
Sec. 20, E½, E½SW¼, and SW¼SW¼;
Sec. 30, lot 1 in NW¼, S½ of lot 2 in NW¼, lots 1 and 2 in SW¼, and E½.
T. 17 N., R. 20 E.,
Sec. 1, lot 2 in NE¼, lot 2 in NW¼, and SW¼SE¼;
Sec. 2, E½ of lot 1 in NE¼, lot 2 in NE¼, W½ of lot 1 in NW¼, lot 2 in NW¼, SW¼, and W½SE¼;
Sec. 8, E½, SE¼NW¼, NE¼SW¼, and S½SW¼;
Sec. 10, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 12, E½, S½NW¼, and SW¼;
Sec. 14;
Sec. 16;
Sec. 18, E½E½, E½NE¼SW¼, NE¼SE¼SW¼, E½NE¼NW¼SE¼, E½NW¼NW¼SE¼, S½NW¼SE¼, NE¼SW¼SE¼, and S½SW¼SE¼;
Sec. 20, lots 1 and 2, N½, N½S½, SW¼SW¼, and SE¼SE¼;
Sec. 21, SW¼NW¼SW¼, and NW¼SW¼SW¼;
Sec. 22;
Sec. 24;
Sec. 25, S½NE¼, and SE¼;
Sec. 26;
Sec. 28;
Sec. 29, lots 2 and 3;
Sec. 30, N½ of lot 1 in SW¼; and E½;
Sec. 32, N½N½, SE¼NE¼, SW¼NW¼, and E½SE¼;
Sec. 33, SW¼SW¼;
Sec. 34, lots 1 and 2, N½, SW¼, and W½SE¼;
Sec. 35, lots 1 and 2, N½, E½SW¼, and SE¼;
Sec. 36, lots 1 to 16, inclusive.
T. 18 N., R. 20 E.,
Sec. 4, lots 5 and 6;
Sec. 26, SW¼SW¼;
Sec. 28, SW¼SW¼;
Sec. 33, NE¼NW¼;
Sec. 34, E½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼SW¼NW¼, W½SE¼SW¼NW¼, NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, N½N½NE¼SE¼, N½SW¼NE¼SE¼, S½SE¼NE¼SE¼, W½SW¼SW¼SE¼, W½SE¼SW¼SW¼SE¼, E½E½SE¼SW¼SE¼, NE¼NE¼SE¼SE¼, W½SE¼SE¼, and S½SE¼SE¼SE¼.
T. 19 N., R. 20 E.,
Sec. 12, SE¼SW¼, and SW¼SE¼;
Sec. 14, SE¼NE¼, and SE¼;
Sec. 32, SE¼NE¼, S½S½NE¼SE¼, and S½SE¼;
Sec. 34, W½NW¼NW¼NE¼NE¼, S½NW¼NE¼NE¼, W½SW¼NE¼NE¼, SE¼NE¼NE¼, E½NE¼NE¼NW¼NE¼, SE¼NE¼NW¼NE¼, W½NE¼NW¼NE¼, E½NW¼NW¼NE¼, S½NW¼NE¼, NE¼NE¼SW¼NE¼, E½NW¼NE¼SW¼NE¼, S½NE¼SW¼NE¼, W½NE¼NW¼SW¼NE¼, W½NW¼SW¼NE¼, SE¼NW¼SW¼NE¼, W½NE¼SW¼SW¼NE¼, W½SW¼SW¼NE¼, SE¼SW¼SW¼NE¼, SE¼SW¼NE¼, E½SE¼NE¼, E½W½SE¼NE¼, N½NW¼, NE¼SE¼NW¼, W½NW¼SE¼NW¼, NE¼SW¼, E½SE¼, NW¼SE¼, and W½SW¼SE¼.
T. 20 N., R. 20 E.,
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 2, 3, and lots 8 to 11, inclusive, SE¼NW¼, E½SW¼, and S½SE¼;
Sec. 7, lots 1, 2, and lots 5 to 9, inclusive, W½NE¼, E½NW¼, NE¼SW¼, and N½SE¼SW¼;
Sec. 8, lot 1;

Sec. 9, SW¼;
Sec. 14, lots 4 to 5, E½SW¼, and SE¼;
Sec. 16, N½NE¼, SW¼NE¼, W½, and NW¼SE¼;
Sec. 20, S½NE¼, E½SW¼, and SE¼;
Sec. 21, lots 3 and 4, and NW¼SW¼;
Sec. 28, lots 15, 16, lots 21 to 24, inclusive, lots 26, 29, and lots 31 to 41, inclusive, SW¼NE¼, SW¼NW¼, and SE¼;
Sec. 29, lots 9 to 15, inclusive, N½NE¼, SE¼NE¼, NE¼SE¼, SW¼SE¼, and all unpatented mining claims.

T. 21 N., R. 20 E.,
Sec. 2, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 10, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 12, lots 1 and 2;
Sec. 15, lots 3 to 5, inclusive, W½NE¼, E½SE¼NW¼, and NE¼SW¼;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 22, lots 2 to 11, inclusive, SE¼NW¼, and NE¼SW¼;
Sec. 28;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 5, inclusive, E½, E½NW¼, and NE¼SW¼;
Sec. 32.

T. 22 N., R. 20 E.,
Sec. 3, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8;
Sec. 9;
Sec. 10, lots 1 to 4, inclusive, lots 8 and 9, SE¼NW¼, and NE¼SW¼;
Sec. 15, W½;
Sec. 16;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20 to 22, inclusive;
Sec. 23, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 26, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 27, lots 2 to 4, inclusive, N½, SW¼, N½SE¼, and all unpatented mining claims;
Sec. 28;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32 to 34, inclusive;
Sec. 35, lots 5 to 7, inclusive, lot 9 and lots 11 to 13, inclusive, W½E½, N½NW¼, and all unpatented mining claims;

T. 23 N., R. 20 E.,
Sec. 7, S½, unsurveyed;
Sec. 8, S½;
Sec. 9, S½, partly unsurveyed;
Sec. 10, S½;
Sec. 11, N½SW¼, SW¼SW¼, and E½SE¼;
Sec. 12, S½;
Sec. 14, S½NW¼, and N½SW¼;
Sec. 15, S½NE¼, W½NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 16 to 21, inclusive, unsurveyed;
Sec. 22, lots 2, 3, and lots 5 to 11, inclusive, and SW¼SW¼;
Sec. 27, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 28 to 30, inclusive, unsurveyed;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32;
Sec. 33, lots 1 and 2, W½NE¼, W½, and SE¼;
Sec. 34.

T. 19 N., R. 21 E.,
Sec. 6, lots 1 to 6, inclusive, S½NE¼, and SE¼;
Sec. 8, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 10, N½, N½SW¼, E½NE¼SW¼SW¼, SE¼SW¼SW¼SW¼, SE¼SW¼SW¼, and SE¼SW¼, NW¼SE¼;
Sec. 16, NE¼, N½NW¼, and SE¼NW¼;
Sec. 18, lot 1, and N½NE¼.

T. 20 N., R. 21 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 8,
Sec. 10;
Sec. 12 to 16, inclusive;
Sec. 18, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 20 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, and E½;
Sec. 31, lots 1 to 4, inclusive, and E½;
Sec. 32;
Sec. 33, N½;
Sec. 34;
Sec. 35, N½N½, and SE¼NE¼;
Sec. 36, lots 1, 4 and 5, N½, N½SW¼, and NW¼SE¼.

T. 21 N., R. 21 E.,
Sec. 6, lot 7 and SE¼SW¼;
Sec. 7, lot 1 and NE¼NW¼;
Sec. 36.

T. 22 N., R. 21 E.,
Sec. 7, lot 5.

T. 23 N., R. 21 E.,
Sec. 7, lots 3 and 4, E½SW¼, and SE¼;
Sec. 8, N½SW¼, SE¼SW¼, and SE¼;
Sec. 9, N½SE¼, and SW¼;
Sec. 10, NW¼SE¼;

T. 20 N., R. 22 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 10;
Sec. 12;
Sec. 14;
Sec. 16;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 22;
Sec. 24, irregular Washoe County portion within W½;
Sec. 26, N½, and N½S½;
Sec. 30, lots 1 to 4, inclusive, NE¼, and E½W½.

T. 21 N., R. 22 E.,
Sec. 32;
Sec. 34;
Sec. 36.

T. 20 N., R. 23 E.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 18, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 20, N½N½, irregular Washoe County portion within SE¼NW¼.

The areas described aggregate 160,529.76 acres in Washoe County.

Federally Reserved Minerals

T. 22 N., R. 18 E.,
Sec. 12, E½;
Sec. 24, E½;
Sec. 36, E½.

T. 23 N., R. 18 E.,
Sec. 15, NE¼, E½NW¼, and SE¼;
Sec. 16, W½NE¼, and SE¼NE¼;
Sec. 22, NE¼, SE¼NW¼, and NE¼SW¼;

T. 20 N., R. 19 E.,
Sec. 25, lots 1 to 7, inclusive, and lot 11, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼, (those portions north of the south boundary of R/W Nev–042776 for U.S. Highway 395).

T. 21 N., R. 19 E.,
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.

T. 22 N., R. 19 E.,
Sec. 8;
Sec. 13, SW¼NE¼;
Sec. 14, E½, NW¼, N½SW¼, and SW¼SW¼;
Sec. 18, lots 1 to 4, E½, and E½W½;
Sec. 20;
Sec. 26, W½NW¼, SE¼NW¼, SW¼, and SE¼SE¼;
Sec. 28;
Sec. 30, lots 1 to 4, E½, and E½W½;
Sec. 31, lots 3 and 4, E½SW¼, and SE¼;
Sec. 32;
Sec. 34.

T. 17 N., R. 20 E.,
Sec. 18, lots 3 to 11, inclusive, W½NE¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼, W½NE¼NW¼SE¼, W½NW¼NW¼SE¼, and NW¼SW¼SE¼.

T. 18 N., R 20 E.,

Sec. 4, lots 3 and 4;
Sec. 34, NE¼SE¼NE¼, W½NW¼SE¼NE¼, NE¼SW¼NW¼, W½NW¼SW¼NW¼, SW¼SW¼NW¼, E½SE¼SW¼NW¼, E½SW¼, NE¼NW¼SW¼, S½N½NE¼SE¼, S½SW¼NE¼SE¼, N½SE¼NE¼SE¼, N½SW¼SE¼, NE¼SW¼SW¼SE¼, E½SE¼SW¼SW¼SE¼, W½SE¼SW¼SE¼, W½E½SE¼SW¼SE¼, NW¼NE¼SE¼SE¼, S½NE¼SE¼SE¼, and N½SE¼SE¼SE¼.
T. 19 N., R. 20 E.,
Sec. 2, SE¼SE¼;
Sec. 11, SW¼NE¼;
Sec. 26, W½E½, and W½;
Sec. 32, W½NE¼;
Sec. 34, NE¼NE¼NE¼, NE¼NW¼NE¼NE¼, E½NW¼NW¼NE¼NE¼, E½SW¼NE¼NE¼, W½NE¼NE¼NW¼NE¼, W½NW¼NW¼NE¼, W½NW¼NE¼SW¼NE¼, E½NE¼NW¼SW¼NE¼, E½NE¼SW¼SW¼NE¼, W½W½SE¼NE¼, E½NW¼SE¼NW¼, SW¼SE¼NW¼, and E½SW¼SE¼.
T. 20 N., R. 20 E.,
Sec. 14, lots 1 to 3, inclusive, and SW¼NE¼;
Sec. 26, SW¼SE¼SW¼, and W½SE¼SE¼SW¼;
Sec. 28, E½SE¼SW¼NE¼NW¼, and W½SW¼SE¼NE¼NW¼;
Sec. 29, lot 8, NW¼SW¼, and SE¼SW¼;
Sec. 30, W½NE¼SE¼, N½SW¼SE¼, SW¼SW¼SE¼, and W½SE¼SW¼SE¼;
T. 21 N., R. 20 E.,
Sec. 1, lots 5 to 7, inclusive, and lots 10 to 22, inclusive;
Sec. 2, lot 2, lots 8 to 46, inclusive, SW¼NE¼, NW¼NE¼SE¼, S½NE¼SE¼, W½SE, and N½SE¼SE¼;
Sec. 12, lots 3 to 12, inclusive, and SW¼;
Sec. 13, lots 1 and 4.
T. 22 N., R. 20 E.,
Sec. 10, lots 5 to 7, inclusive, NE¼, and NW¼SE¼;
Sec. 14, lots 5 to 7, inclusive;
Sec. 24, W½W½;
Sec. 36, S½SE¼.
T. 23 N., R. 20 E.,
Sec. 11, SE¼SW¼, and W½SE¼;
Sec. 14, W½E½, and N½NW¼;
Sec. 15, N½NE¼, and E½NE¼NW¼;
Sec. 15, N½NE¼, and E½NE¼NW¼;
T. 19 N., R. 21 E.,
Sec. 10, W½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼SW¼, and SW¼SW¼SW¼SW¼.
T. 21 N., R. 21 E.,
Sec. 8, SE¼SW¼NE¼, S½SE¼NE¼, and S½;
Sec. 18, lots 1 and 2, S½NE¼NE¼, and SE¼NE¼;
Sec. 20, NE¼NW¼, and SW¼NW¼.
T. 23 N., R. 21 E.,
Sec. 8, SW¼SW¼;
Sec. 17, W½NW¼, and SW¼;
Sec. 18, lot 1, E½E½, NW¼NE¼, and NE¼NW¼;
Sec. 19, lots 3 and 4, E½E½, SW¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 20, W½;
Sec. 29, NW¼.
T. 22 N., R. 22 E.,
Sec. 4, lots 1 to 4, S½N½, and S½.

The areas described aggregate 15,813.12 acres in Washoe County.

In addition, if any of the non-Federal lands in Washoe County within the area described below are acquired by the United States in the future by exchange, donation, or purchase, those lands will be included in this application and would be closed to surface entry and mining if acquired during the 2-year segregative period:
T. 21 N., R. 18 E., (on north and east side of U.S. Highway 395).
T. 22 N., R. 18 E.
T. 23 N., R. 18 E., excepting sec. 1–5, inclusive, and the N½N½ of sec. 9–12, inclusive.
T. 20 N., R. 19 E., (on north and east side of U.S. Highway 395).
T. 21 N., R. 19 E.
T. 22 N., R. 19 E.
T. 23 N., R. 19 E., excepting sec. 4.
T. 16 N., R. 20 E.
T. 17 N., R. 20 E., (on east side of U.S. Highway 395).
T. 18 N., R. 20 E., (on east side of U.S. Highway 395).
T. 19 N., R. 20 E., (on east side of U.S. Highway 395).
T. 20 N., R. 20 E.
T. 21 N., R. 20 E.
T. 22 N., R. 20 E.
T. 23 N., R. 20 E., excepting sec. 2, 4 and 12.
T. 17 N., R. 21 E.
T. 19 N., R. 21 E.
T. 20 N., R. 21 E.
T. 21 N., R. 21 E.
T. 22 N., R. 21 E.
T. 23 N., R. 21 E., sec. 18, 19, and 30–32, inclusive.
T. 20 N., R. 22 E.
T. 21 N., R. 22 E.
T. 22 N., R. 22 E.
T. 23 N., R. 22 E., (outside the boundaries of the Pyramid Lake Indian Reservation).
T. 20 N., R. 23 E., sec. 5, 7, 17, 19 and 20.
T. 21 N., R. 23 E., sec. 31.

The purpose of the withdrawal is to protect resource values in the open and mountainous terrain in the southern Washoe County urban, suburban and rural residential area. Washoe County has recently developed an Open Space System that identifies a large acreage of public lands as having open space values. Much of this acreage is identified in BLM's resource management plan for disposal for community expansion. The joint land use plan amendment will address future management of these lands and the need for a protective withdrawal.

The withdrawal application will be processed in accordance with the regulations set forth in 43 CFR Part 2300. Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** 30 days before the scheduled date of the meeting.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to either the State Director or Manager, Carson City Field Office.

For a period of 1 year from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. Rights-of-way, leases, permits and other discretionary temporary land uses will be considered by the authorized officer during this segregative period.

Dated: July 6, 2000.

Margaret L. Jensen,

Deputy State Director, Natural Resources, Lands, and Planning.

[FR Doc. 00–17567 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 103474]

Notice of Proposed Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes to withdraw 14.417 acres of National Forest System land to protect the unique prehistoric, historical, and interpretive integrity of the Tijeras Pueblo and the future investment of the Sandia Ranger District Administrative Site. This notice segregates the land for up to 2 years from location and entry under the United States public land laws, including the mining laws but not the mineral leasing laws.

DATES: Comments should be received on or before October 10, 2000.

ADDRESSES: Comments should be sent to the Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE., Suite A, Albuquerque, New Mexico 87113–1001.

SUPPLEMENTARY INFORMATION: On April 5, 2000, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the

United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian, Cibola National Forest

T. 10 N., R. 5 E.,
Sec. 23, SW¼NW¼SW¼,
N½NW¼SW¼SW¼.

The area described contains approximately 14.417 acres in Bernalillo County.

All persons who wish to submit comments, suggestions, or objections about the proposed withdrawal may present their views in writing to the Forest Supervisor of the Cibola National Forest. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: June 30, 2000.

Steven W. Anderson,

Assistant Field Manager, Division of Multi-Resources.

[FR Doc. 00–17390 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Proposed Withdrawal

AGENCY: Bureau of Land Management, Interior.

NOTICE: Notice.

SUMMARY: The United States Forest Service proposes to withdraw 14.417 acres of National Forest System land to protect the unique prehistoric, historical and interpretive integrity of the Tijeras Pueblo and future investment of the Sandia Ranger District Administrative Site located on the Cibola National Forest. A notice published in the **Federal Register** on July 11, 2000 segregated the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses that by law may be made of National Forest System land.

DATES: Comments should be received on or before October 21, 2000.

ADDRESSES: Comments should be sent to the Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE, Suite A, Albuquerque, New Mexico 87113–1001.

FOR FURTHER INFORMATION CONTACT: Marian Aragon, Forest Service Southwestern Region, (505) 842–3160.

SUPPLEMENTARY INFORMATION: On April 5, 2000, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian, Cibola National Forest

T. 10 N., R. 5 E.,
Sec. 23, SW¼NW¼SW¼,
N½NW¼SW¼SW¼.

The area described contains approximately 14.417 acres in Bernalillo County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections about the proposed withdrawal may present their views in writing to the Forest Supervisor of the Cibola National Forest.

Dated: June 30, 2000.

Steven W. Anderson,

Assistant Field Manager, Division of Multi-Resources.

[FR Doc. 00–17391 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–1661]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service proposes to withdraw approximately 5,922 acres of public lands for 20 years to protect the Browns Park National Wildlife Refuge. This notice closes these lands to operation of the public land laws including location and entry under the mining laws for up to two years. The lands have been and remain open to mineral leasing.

DATES: Comments on this proposed withdrawal must be received on or before October 10, 2000.

ADDRESSES: Comments should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On June 12, 2000, a petition was approved allowing the Fish and Wildlife Service to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights, and transfer administrative jurisdiction to the Fish and Wildlife Service:

Sixth Principal Meridian

T. 10 N., R 102 W.,
Sec. 18, lots 7 and 8, E½SW¼, SW¼SE¼, and those portions of lots 6 and 9, SW¼NE¼, SE¼NW¼, NW¼SE¼, and NE¼SE¼ lying south and west of the centerline of County Route 318;
Sec. 19, lots 5, 6, and 12, NW¼NE¼, SW¼NE¼, NE¼NW¼ and those portions of lot 10 and SE½NE¼ lying south and west of the centerline of County Route 318;
Sec. 20, SW¼SW¼ and those portions of the SW¼NW¼, NW¼SW¼, NE¼SW¼, and SE¼SW¼, lying south and west of the centerline of County Route 318;
Sec. 29, SW¼, W½NW¼, SE¼NW¼, and those portions of the SW¼NE¼, NE¼NW¼, NW¼SE¼, SW¼SE¼, and SE¼SE¼ lying south and west of the centerline of County Route 318;
Sec. 32, lot 3, NW¼NE¼ and that portion of lot 1 lying south and west of the centerline of County Route 318.

T. 10 N., R. 103 W.,
Sec. 4, SW¼SW¼, and those portions of the SW¼NW¼, NW¼SW¼, NE¼SW¼, SE¼SW¼, and SW¼SE¼ lying south and west of the centerline of County Route 318;
Sec. 5, lots 7 and 8, S½, S½NW¼, SW¼NE¼, and those portions of lots 5 and 6, and SE¼NE¼, lying south and west of the centerline of County Route 318;
Sec. 6, lots 8, 9, 21,and 22, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 7, N½NE¼;
Sec. 8, N½N½;
Sec. 9, N½NW¼, NW¼NE¼, and that portion of the NE¼NE¼ lying south and west of the centerline of County Route 318;
Sec. 10, SW¼NW¼, SW¼, SW¼SE¼, and those portions of the N½NW¼, SW¼NE¼, NW¼SE¼, SE¼SE¼, and NE¼SW¼ lying south and west of the centerline of County Route 318;
Sec. 11, that portion of the S½S½ lying south and west of the centerline of County Route 318;
Sec. 12, that portion of the SW¼SW¼ lying south and west of the centerline of County Route 318;
Sec. 13, S½, S½NW¼, and that portion of the NW¼NE¼, N½NW¼, and S½NE¼ lying south and west of the centerline of County Route 318;
Sec. 14, N½, SE¼, and N½SW¼;
Sec. 23, NE¼;
Sec. 24, N½.

T. 10 N., R 104 W.,
Sec. 1, lots 9, 10, 11, 14 thru 19 inclusive, E½SW¼.

T. 11 N., R. 103 W.,
Sec 31, S½SE¼ lying south of the centerline of County Highway 318;
Sec 32, S½SW¼ lying south and west of the centerline of County Route 318.

T. 11 N., R. 104 W.,
Sec. 24, lot 4 and SE¼SW¼;
Sec. 25, lots 1 thru 5 inclusive, 7, 12, 22, 24, and 25, and SW¼SW¼;
Sec. 36, lots 1, 2, 8 thru 13 inclusive, and 20 thru 25 inclusive, and NE¼NW¼.

The area described contains approximately 5,922 acres in Moffat County.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, may present their views in writing to the Colorado State Director. A public meeting will be scheduled and held, the meeting will be conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management, in conjunction with the Fish and Wildlife Service, will continue to manage this land.

Herbert K. Olson,

Acting Realty Officer.

[FR Doc. 00–17479 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–JB–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review (OMB), Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0087).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), we are submitting to OMB for review and approval an information collection request (ICR) titled, Cooperative Agreements. We are also soliciting comments from the public on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Submit written comments on or before August 10, 2000.

ADDRESSES: You may submit written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0087), 725 17th Street, NW, Washington, D.C. 20503. Also, submit copies of your written comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

Public Comment Procedure

Submit your comments to the offices listed in the **ADDRESSES** section or email your comments to us at *RMP.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comments; also, include your name and return address. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact David S. Guzy at (303) 231–3432. We will post all comments at *http://www.rmp.mms.gov* for public review.

Paper copies of the comments may be reviewed by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make paper copies of these comments, including names and addresses of respondents, available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email Dennis.C.Jones@mms.gov. A copy of the ICR is available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Agreements.

OMB Control Number: 1010–0087.

Bureau Form Number: N/A.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. We perform the royalty management functions and assist the Secretary in carrying out DOI's Indian trust responsibility.

States and Tribes wishing to do royalty audits in cooperation with MMS must submit a written request for consideration and application to enter into a cooperative agreement, signed by the governor, Tribal chairman, or other appropriate official. The request must outline the activities to be undertaken and present evidence that the States and Tribes can meet the standards established by the Secretary for the activities to be conducted. After the application is accepted and a cooperative agreement is in effect, the States and Tribes submit an annual work plan and budget, and quarterly reimbursement vouchers.

No proprietary data will be collected; there are no questions of a sensitive nature; and responses to this information collection are voluntary.

Frequency: On occasion, monthly, quarterly, and annually

Estimated Number and Description of Respondents: 10 States and 7 Indian tribes

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,224 hours.

Reporting/recordkeeping requirements	Frequency	Number of respondents	Burden hours	Annual burden hours
Annual work plans and budgets, voucher preparation, recordkeeping.	Monthly, Quarterly, Annually	7 Indian Tribes and 10 States.	72	1,224

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: N/A.

Comments: Section 3506(c)(2)(A)of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

We published a **Federal Register** Notice on December 3, 1999 (64 FR 67931), with the required 60-day comment period soliciting public comments on renewing OMB's approval to continue to collect this information. No comments were received. If you now wish to comment on this ICR, please send your comments directly to the offices listed under the **ADDRESSES** section of this Notice. OMB has up to 60 days after reviewing an ICR to approve or disapprove the information collection. However, OMB may act sooner than that once the 30-day public comment period has ended. Therefore, to ensure maximum consideration, you should submit your comments on or before August 10, 2000s.

The PRA provides that an agency shall not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, telephone (202) 208–7744.

Dated: June 29, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–17512 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

Ulysses S. Grant National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare a general management plan amendment and environmental assessment for Ulysses S. Grant National Historic Site, St. Louis County, Missouri.

SUMMARY: The National Park Service (NPS) will prepare a general management plan amendment and an associated environmental assessment (EA) for Ulysses S. Grant National Historic Site, Missouri, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA).

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EA, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EA. Comments and participation in this scoping process are invited.

ADDRESSES: Written comments and information concerning the scope of the EA and other matters, or requests to be added to the project mailing list should be directed to: Mr. Randy Wester, Site Manager, Ulysses S. Grant National Historic Site, 7400 Grant Road, St. Louis, MO 63123. Telephone: 314–842–1867, extension 23. E-mail: randy__wester@nps.gov.

DATES: Comments regarding the scope of the EA should reach the National Park Service by August 15, 2000.

FOR FURTHER INFORMATION CONTACT: Site Manager, Ulysses S. Grant National Historic Site, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Management of Ulysses S. Grant National Historic Site is guided by a general management plan (GMP) that was approved in 1995. The approved GMP includes direction for development of various visitor facilities. In the past five years it has become apparent that some of the plan's guidance regarding development of visitor facilities is no longer practicable. The GMP Amendment/EA will consider new alternatives for: (1) Relocation of the primary entrance to the site, (2) provision for onsite visitor parking, and (3) relocation of the site's barn to with associated development of administrative offices and an interpretive center. Other provisions of the 1995 GMP will not be considered in this amendment and will continue to be in force.

The environmental review of the GMP Amendment/EA for the historic site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The National Park Service anticipates a draft GMP Amendment/EA will be available for public review in October of 2000. A public open house will be scheduled to explain the project and to receive comment after the draft is released for review.

Dated: June 29, 2000.

Alan M. Hutchings,

Acting Regional Director.

[FR Doc. 00–17427 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces two public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission.. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Saturday, September 30, 2000 at 9:00 a.m.

Address: Bushkill Visitor Center, U.S. Route 209, Bushkill, PA 18324.

Meeting Date and Time: Saturday, January 13, 2001, at 9:00 a.m.

Snow Date: Saturday, January 20, 2001 at 9:00 a.m.

Address: Walpack Church, Walpack, NJ.

The agenda will include reports from Citizen Advisory Commission committees including: Natural Resources and Recreation, Cultural and Historical Resources, Intergovernmental and Public Affairs, Construction and Capital Project Implementation, Interpretation, and New Jersey Swim Beach Feasibility Study. Superintendent Bill Laitner will give a report on various park issues. The meeting will be open to the public and there will be an opportunity for public comment on these issues.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, DC 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, DC 20510–3001

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Building, Washington, DC 20510–3802
Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington, DC 20515
Honorable Don Sherwood, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, DC 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

William G. Laitner,
Superintendent.
[FR Doc. 00–17430 Filed 7–10–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Of American Samoa Federal Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 10 a.m. to 4 p.m., Monday, July 31, 2000, at the Afono village malae, Afono, American Samoa.

The agenda for the meeting will include:

Welcome and introductions
Review and approval of bylaws
Superintendents report and discussion
National Geographic Article on Park
Discussion of park related tourism
Other Board issues
Public comments

The meeting is open to the public and opportunity will be provided for public comments prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after they have been approved by the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 011 (684) 633–7082.

Dated: June 25, 2000.

Charles Cranfield,
Superintendent National Park of American Samoa.
[FR Doc. 00–17428 Filed 7–10–00; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 13, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–309–A–B and 731–TA–528 (Review) (Magnesium from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 25, 2000.)
5. Inv. Nos. 731–TA–846, 848, and 849 (Final) (Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe and Tube from the Czech Republic, Mexico, and Romania)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 2, 2000.)
6. Inv. Nos. 701–TA–401 and 731–TA–854 (Final)(Structural Steel Beams from Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 7, 2000.)
7. Outstanding action jackets:

1.) Document No. (E)GC-00-004: Administrative matters.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 6, 2000.

By order of the Commission.

Donna R. Koehnke,
Secretary.
[FR Doc. 00–17600 Filed 7–7–00; 12:53 pm]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment To Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on June 26, 2000, a proposed Amendment No. 1 to the Consent Decree ("Consent Decree Amendment") in *United States* v. *ASARCO Incorporated,* Civil Action No. C91–5528B was lodged with the United States District Court for the Western District of Washington.

In the original Consent Decree in this action, the United States settled claims against ASARCO Inc. ("Asarco") under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for reimbursement of response costs and implementation of remedial actions in connection with the Asraco Tacoma Smelter, an operable unit of the Commencement Bay Nearshore/Tideflats Superfund Site ("CB N/T Site") in Ruston and Tacoma, Washington. Since entry of the Consent Decree, Asarco has been implementing the remedial action selected by EPA for the Asarco Tacoma Smelter. Amendment No. 1 adds lump sum stipulated penalties to be incurred by Asarco if it fails to meet certain revised deadlines for performing remedial actions at the Asarco Tacoma Smelter and with respect to sediments in Commencement Bay adjacent to the Smelter. The new stipulated penalties relate to revised deadlines by which Asarco must perform certain remedial actions at and near the Asarco Tacoma Smelter that were negotiated by EPA and Asarco and set forth in a Modification Agreement attached to the Consent Decree Amendment as Appendix A. In addition to delaying the schedule for Asarco's implementation of certain response actions at the Smelter, the Modification Agreement also allows for Asarco to reimburse response costs already incurred by EPA but not yet paid in three installments in 2001, 2002, and 2003, with interest accruing on the unpaid balance. the Modification Agreement also modifies requirements under the Consent Decree in *United States* v. *ASARCO Inc.,* Civil Action No. C94–5714 (W.D. Wash.), relating to the remediation of the Ruston/North

Tacoma Study Area by similarly delaying reimbursement of EPA's response costs with respect to that Decree, but requiring that Asarco increase the number of yards in Ruston and North Tacoma that it performs remedial actions on each year. The Modification Agreement also requires Asarco to treat discharges from the Edwards and City stormwater outfalls into Commencement Bay and to dispose of marine sediments dredged from the marina adjacent to the Smelter under the Smelter site-wide cap if EPA selects such dredging and disposal in its Record of Decision for remediation of Asarco off-shore sediments.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *ASARCO Inc.*, D.J. Ref. No. 90–11–2–698A.

The Consent Decree Amendment may be examined at the Office of the United States Attorney, 601 Union Street, Suite 5100, Seattle 98101–3903, and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. A copy of the Consent Decree Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–17396 Filed 7–10–00; 8:45 am]

BILLING CODE 4510–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree; Corrected Notice

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Dyer*, Civil Action No. 00CV11013 (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on May 23, 2000. This notice corrects an inadvertent error in the notice published on June 9, 2000 at 65 FR 36716. That Notice omitted the phrase, "three thousand dollars ($3,000) at the three year anniversary of the date of entry." This proposed Consent Decree concerns a complaint filed by the United States against Bruce S. Dyer and the Holly Farms Nominee Trust, pursuant to section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from, and impose civil penalties against the Defendants for the discharge of pollutants into the waters of the United States at portions of an approximately 107 acre parcel of land located at 36 Holly Lane in Bridgewater, Massachusetts where a cranberry farm now exists.

The proposed Consent Decree prohibits the discharge of pollutants into waters of the United States without authorization by the United States Department of the Army Corps of Engineers and requires Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities. This proposed Consent Decree further requires Defendants to pay civil penalties to the United States as follows: two thousand dollars ($2,000) within thirty (30) days of the date of entry of this Consent Decree; three thousand dollars ($3,000) at the one year anniversary of the date of entry; three thousand dollars ($3,000) at the two year anniversary of the date of entry; three thousand dollars ($3,000) at the three year anniversary of the date of entry; and four thousand dollars ($4,000) at the four year anniversary of the date of entry.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this corrected notice. Please address comments to Jon M. Lipshultz, Environment and Natural Resources Division, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *Dyer*, DJ # 90–5–1–1–05400/1.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, 2300 United States Courthouse, One Courthouse Way, Boston, MA 02210–3002.

Letitia J. Grishaw,

Chief Environmental Defense Section Environment & Natural Resources Division.

[FR Doc. 00–17397 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *H.K. Porter Company, Inc., et al.*, Civil Action No. 96–579 (W.D. Pa.) was lodged on June 26, 2000, with the United States District Court for the Western District of Pennsylvania. The consent decree resolves the claims of the United States against the remaining defendants, Thomas R. Allen, Jr., Morton J. Greene, Anne S. Greene, Carol M. Allen, and Economy Industrial Properties under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607(a), for reimbursement of response costs incurred by the U.S. Environmental Protection Agency ("EPA") in connection with the Bollinger Superfund Site in Ambridge, Pennsylvania. The consent decree also resolves the claims of the United States for penalties under Section 104(e) of CERCLA, 42 U.S.C. 9604(e), against Thomas R. Allen, Jr. and Morton J. Greene, for their failure to respond adequately to EPA information requests. The consent decree obligates the Settling Defendants to pay a total of $450,000 to settle this action; $400,000 is in reimbursement of EPA's outstanding (unreimbursed) past costs incurred through June 26, 2000 (date of lodging), which total approximately $1.8 million, and $50,000 is in payment of penalties for Thomas R. Allen's and Morton J. Greene's failure to respond to EPA's Section 104(e) information requests. The settlement amount is based on Settling Defendants' limited financial resources and ability to pay. The Settling Defendants remain potentially liable for any response costs that may be incurred after the date of lodging.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *H.K. Porter Company, Inc., et al.*, DOJ Ref. #90–11–2–738C.

The proposed consent decree may be examined at the offices of the United States Attorney, Gulf Tower, 7th

Avenue & Grant Street, Pittsburgh, Pennsylvania 15219, and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA. A copy of the consent decree may also be obtained by mail from the U.S. Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 00–17395 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on April 7, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TRW Space and Electronics Group, Redondo Beach, CA; Astrolink, Bethesda, CA; Avail Networks, Inc., Ann Arbor, MI; Basis Communications Corporation, Fremont, CA; Bay Microsystems, Inc., Santa Clara, CA; Catamaran Communications, Miliptas, CA; CyberPath Inc., Piscataway, NJ; General Bandwidth, Austin, TX; Ishoni Networks, Santa Clara, CA; Optical Solutions, Plymouth, MN; Tachion Networks, Eatontown, NJ; TeraGlobal Communications Corp., San Diego, CA; TERAYON Communication Systems, Tel-Aviv, *Israel*; and Trendium Inc., Ft. Lauderdale, FL have been added as parties to this venture. The following members have changed their names: Future Software Private Ltd. to Future Communications Software, San Jose, CA; and RADWIZ Ltd. to TERAYON Communication Systems, Tel-Aviv, *Israel*.

The following principal members have downgraded to auditing members: KDD, Tokyo, *Japan*; Panduit Corporation, Tinley Park, IL; Philips Research Labs, Aachen, *Germany*; Scientific Research Corp., Atlanta, GA; and Sumitomo Electric USA, Inc., Santa Clara, CA. The following auditing members have upgraded to principal members: GlobeSpan, Woodbridge, NJ; GTE Laboratories, Inc., Waltham, MA; Premisys Communications, Fremont, CA; and Zhone Technologies, Inc., Fremont, CA. Also, Adaptive Broadband Corporation, Sunnyvale, CA; AMCC, San Diego, CA; Ascom, Bern, *Switzerland*; Boeing Company, Seattle, WA; Booz Allen & Hamilton, McLean, VA; Cerent Corporation, Petaluma, CA; CYLINK Corp., Sunnyvale, CA; ETRI, Taejeon, *South Korea*; Hewlett-Packard, Sunnyvale, CA; IBM, Research Triangle Park, NC; Inrange Technologies Corporation, Mount Laurel, NJ; INTRACOM S.A., Peania, *Greece*; Italtel, Settimo Milanese, *Italy*; Korea Telecom, Seoul, *South Korea*; Litton Network Access Systems, Roanoke, VA; Madge Networks Inc., Wexham, *United Kingdom*; Maker Communication, Inc., Westborough, MA; Matra Marconi Space, Toulouse, *France*; Microsoft Corporation, Redmond, WA; Mitsubishi Rayon Co. Ltd., Tayohash Aichi, *Japan*; National Communications System, Arlington, VA; Nokia Corp., Helsinki, *Finland*; Novanet Semiconductor, Raanana, *Israel*; Olicom A/S, Lyngby, *Denmark*; Pulse Communications, Inc., Herndon, VA; Qwest Communications, Arlington, VA; SALIX Technologies, Inc., Rockville, MD; SITA, Valbonne, *France*; StorageTek, Brooklyn Park, MN; StratumOne, Santa Clara, CA; Tekelec, Inc., Calabasas, CA; Telecom Italia, Rome, *Italy*; Williams Communications, Tulsa, OK; 2Wire, Inc., Milpitas, CA; and Sonoma Systems, Marina Del Rey, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on January 10, 2000. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17399 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on January 6, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Enterprise Computer Telephony Forum ("ECTF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, StarBridge Technologies, Inc., Marlborough, MA, has been added as a Principal Member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, the ECTF intends to file additional written notifications disclosing all changes in membership.

On February 20, 1996, ECTF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 1996 (61 FR 22074).

The last notification was filed with the Department on October 21, 1999. A notice for this filing has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17405 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hart Communication Foundation ("HCF")

Notice is hereby given that, on November 3, 1998, pursuant to Section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Hart Communication Foundation ("HCF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Action Instruments, Inc., San Diego, CA; Amdell Ltd., Thebarton, *Australia*; Burkert Gmbh & Company KG, Ingelfingen, *Germany*; Camille Bauer AG, Wohlen, *Switzerland*; CEGELEC–BPT, Camart, Cedex, *France*; DANFOSS A/S, Nordborg, *Denmark*; Direct Measurement Corp., Longmont, CO; Druck Ltd., Groby, Leicester, *United Kingdom*; Dynisco Instruments, Sharon, MA; Elcon Instruments, Norcross, GA; EMCO Flowmeters, Longmont, CO; Fluke Electronics Corporation, Everett, WA; GLI International Inc., Milwaukee, WI; Huakong Technology Co.; Ltd., Beijing, *China*; Jordan Controls, Inc., Milwaukee, WI; Klay Instruments B. V., Dwingeloo, *The Netherlands*; LABOM Mess-und Regeltechnick GmbH, Hude, *Germany*; M-System Co., Ltd., Yokohama, *Japan*; Paper Machine Components, Inc. (PMC), Danbury, CT; Rochester Instrument Systems, Inc., Rochester, NY; Sparling Instruments, Inc., El Monte, CA; Spriano S.p.A., Vimodrone, *Italy*; Tokyo Keiso Company, Ltd., Tokyo, *Japan*; TROLEX Limited, Stockport, Cheshire, *United Kingdom*; TURBO-Werk Messtechnik GmbH, Koln, *Germany*; U.S. Electrical Motors, St. Louis, MO; Val Controls A/S, Esbjerg, *Denmark*; VALCOM S.r.l., Milan, *Italy*; VorTek Instruments, LLC, Longmont, CO; W. Borst, Fachingen, *Germany*; WIKA Alexander Wiegand GmbH, Klingenberg, *Germany*; Worcester Controls Corporation, Marlboro, MA; Yokogawa Europe B.V., Amersfoort, *The Netherlands*; and Zaklady Automatyki Przemyslowej S.A., Ostrow Wielkopolski, *Poland* have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Hart Communication Foundation ("HCF") intends to file additional written notification disclosing all changes in membership.

On March 17, 1994, Hart Communication Foundation ("HCF") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 1994 (59 FR 23234).

The last notification was filed with the Department on December 8, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 15939).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17400 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association ("PCA")

Notice is hereby given that, on February 14, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Florida Rock Industries, Inc., Jacksonville, FL; Continental Florida Materials, Inc., Fort Lauderdale, FL; Norval, Inc., Brooklyn, NY; and River Consulting, Inc., Columbus, OH have been added as parties to this venture. Also, Lone Star Northwest, Seattle, WA has changed its name to Glacier Northwest, Inc., Seattle, WA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association ("PCA") intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association ("PCA") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 67591).

The last notification was filed with the Department on October 25, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17406 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rotorcraft Technology Association, Inc. ("RITA")

Notice is hereby given that, on November 24, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Rotorcraft Technology Association, Inc. ("RITA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arizona State University, Tempe, AZ; Ohio Aerospace Institute, Cleveland, OH; University of California, Los Angeles, CA; University of Texas at Arlington, Arlington, TX; and West Virginia University, Morgantown, WV have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Rotorcraft Technology Association, Inc. ("RITA") intends to file additional written notification disclosing all changes in membership.

On September 28, 1995, Rotorcraft Technology Association, Inc. ("RITA") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of April 3, 1996 (61 FR 14817).

The last notification was filed with the Department on January 7, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 19, 1999 (64 FR 13605).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17398 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Secure Digital Music Initiative

Notice is hereby given that, on December 29, 1 999, pursuant to Section (6a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Secure Digital Music Initiative has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ZipLabs Pte Ltd, Singapore Science Park II, *Singapore*; Rowe International, Grand Rapids, MI; Oak Technology, Inc., Sunnyvale, CA; Guillemot Corp., SA, Carentoir, *France*; Media Tag Limited, Hayes, Middlesex, *United Kingdom*; MHS SA, Nantes, Cedex 3, *France*; Mitsubishi Electric Corporation, Hyogo, *Japan*; Be, Incorporated, Menlo Park, CA; Portland Software, Inc., Portland, OR; Music.co.jp, Inc., Tokyo, *Japan*; EMDES Systems Company Limited, Tokyo, *Japan*; Ericsson Mobile Communications, Stockholm, *Sweden*; Qpass, Seattle, WA; Funai Corporation, Teterboro, NJ; and ARM Limited, Cambridge, *United Kingdom* have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Secure Digital Music Initiative intends to file additional written notification disclosing all changes in membership.

On June 28, 1999, Secure Digital Music Initiative filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 2, 1999 (64 FR 67591).

The last notification was filed with the Department on October 4, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17402 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute Fuel Filtration Cooperative R&D Program—Phase III

In Notice document 99–13296 appearing on page 28521 in the issue of Wednesday, May 26, 1999, in the third column, after the thirtieth line of the first paragraph, the following paragraph should be added: "Membership in the program remains open, and SwRI intends to file additional written notifications disclosing all changes in the membership or planned activities."

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17401 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SwRI"): Advanced Reciprocating Engine Systems ("ARES")

In Notice document 00–3961 appearing on page 8445 in the issue of Friday, February 18, 2000, make the following corrections:

In the second column, heading of Notice, fifth line, "Reciprocal" should read "Reciprocating"; in the third column, first paragraph, second line, "Reciprocal" should read "Reciprocating"; in the third column, second paragraph, seventh line, "Reciprocal" should read "Reciprocating"; in the third column, third paragraph, third line, "Reciprocal" should read "Reciprocating".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17403 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SwRI"): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor

In Notice document 99–21560 appearing on page 45279 in the **Federal Register** issue of Thursday, August 19, 1999, make the following correction:

In the second column, heading of Notice, third line, "Southwest Research Institute ("SwRI"):" should be added before "Joint Industry Program".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17404 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on October 8, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, O-In Design Automation, Inc., San Jose, CA; Arasan Chip Systems, San Jose, CA; Axys Design Automation, Inc., Irvine, CA; Guy Bois, Montreal, Quebec, Canada; Communications Enabling Technologies, Irvine, CA; Desideratum Company, Moscow, Russia; Enabling Technology, Inc., Sunnyvale, CA; David Greenstein, Cupertino, CA; In-Chip Systems, Inc., Sunnyvale, CA; Industrial Technology Research Institute, Taiwan; Institute of System Level Integration, Livingston, United Kingdom; LEDA Systems, Inc., Plano, TX; Minoru Hasegawa, Tokyo, Japan; Mixel, Inc., San Jose, CA; PIXIM, Mountain View, CA; Q Systems, Inc., Feasterville, PA; RealChip, Sunnyvale, CA; Synplicity, Inc., Sunnyvale, CA; Teradyne, Inc.,

Agoura Hills, CA; and X–VEIN, Inc., Tokyo, Japan have been added as parties to this venture. Also, AMS Group International, Unterpremstatten, Austria; Chronology Corp., Redmond, WA; DSP Group, Herzlia, Israel; Henry Davis Consulting, Inc., Soquel, CA; IDEC–IC Design Education Center, Taejon, South Korea; Integrated Intellectual Property, Inc., Santa Clara, CA; LightSpeed Semiconductor Corp., Sunnyvale, CA; Packet Engines, Inc., Spokane, WA; Richard Watts Associated, Ltd., Bedfordshire, United Kingdom; Scientific & Engineering Software, Inc., Austin, TX; Technical Data Freeway, Inc., Concord, MA; Trimble Navigation Limited, Sunnyvale, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on July 14, 1999. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 2, 1999 (64 FR 67592).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17407 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1287]

Program Announcements for OJJDP's Fiscal Year 2000 Gang-Free Schools and Communities Initiative

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of solicitations.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for two new programs to address the youth gang problem and one new evaluation program under its Fiscal Year 2000 Gang-Free Schools and Communities Initiative. This initiative represents a collaboration between the U.S. Department of Justice and the U.S. Departments of Education, Health and Human Services, Labor, and Treasury. The two new programs are the Gang-Free Communities Program and the Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime Program. An evaluation of the second program, An Enhanced School/Community Approach, will also be competitively awarded.

DATES: Applications for two of the three programs (the Gang-Free Communities Program and the National Evaluation of the Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime) are due by 5 p.m. ET on Friday, September 1, 2000. The due date for applications for the Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime is 5 p.m. ET on Friday, September 15, 2000.

ADDRESSES: All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the three program announcements (which are contained in one document) and the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The program announcements are also available on OJJDP's Web site at www.ojjdp.ncjrs.ogr (click on "Grants & Funding" for the program announcements). The *Application Kit* is available online at www.ojjdp.ncjrs.org/grants/about.html#kit. (See the "Format" section in each program announcement for instructions on application standards.)

FOR FURTHER INFORMATION CONTACT: Jim Burch, Gang Programs Coordinator, Office of Juvenile Justice and Delinquency Prevention, 202–307–5914, or (for the National Evaluation of OJJDP's Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime) Phelan Wyrick, Program Manager, Research and Policy Development Division, Office of Juvenile Justice and Delinquency Prevention, at 202–353–9254. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

Authority This action is authorized under Title II, Part D, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*).

Background

In 1998, more than 4,000 urban, suburban, and rural communities in the United States were experiencing youth gang problems. More than 30,000 youth gangs and 800,000 youth gang members were reported in the most recent systematic, annual nationwide survey of law enforcement agencies conducted by OJJDP's National Youth Gang Center.

Research findings from OJJDP and the National Institute of Justice (NIJ) suggest that youth gangs continue to present a serious threat to public safety, despite the recent downturn in juvenile crime. OJJDP's Program of Research on the Causes and Correlates of Delinquency found that youth who are involved in youth gangs commit three to seven times as many delinquent and criminal offenses as youth who are not gang involved. The studies found this trend holds true even when comparing gang youth to nongang youth who were delinquents. Involvement with the juvenile and criminal justice systems is usually not a new experience for youth who join gangs. Many of these youth not only have come into previous contact with the justice system, but in many cases have also been involved in or in need of child protective, mental health, and other services. These youth are known to experience significant risk factors in numerous domains and pose a threat not only to their own safety, but to the safety of their families and their communities as well.

The threat of gang crime and violence is not limited to the streets. According to the 1998 National Youth Gang Survey, 40 percent of youth gang members in the United States are estimated to be under age 17. Presumably, most of these youth are still in school. The percentage of public school students who reported that gangs were present in their schools nearly doubled from 17 percent in 1989 to 31 percent in 1995, according to the U.S. Departments of Education and Justice. Thus, youth gang activity is also a threat to the very place sometimes assumed to be free from safety threats: the classrooms. These issues present a continuing need for communities to seek progressive and promising approaches to address the problem.

The purpose of the Gang-Free Communities Program is to provide up to 12 communities an opportunity to implement the OJJDP Comprehensive Gang Model as a way of addressing its local youth gang problem. The purpose

of the second program, which is jointly sponsored by the U.S. Department of Education's Office of Safe and Drug Free Schools, and the U.S. Department of Health and Human Services' Center for Mental Health Services, is to provide up to four communities an opportunity to assist in developing and implementing the OJJDP Comprehensive Gang Model and enhancing the Model's school component. The evaluation effort will focus on the latter program in order to measure its success. Under each program, the initial funding year will consist of a planning and assessment process to better identify the youth gang problem locally and to better develop a plan for addressing the problem(s) using the OJJDP Model.

Dated: June 27, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–16712 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before August 25, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records,

agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Labor, Employment Standards Administration (N9–448–00–1, 6 items, 6 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the Office of the Assistant Secretary for Employment Standards. Included are electronic copies associated with such records as correspondence files, files on committees and meetings, speeches, and documents relating to congressional hearings. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job N1–448–90–1.

2. Department of Labor, Employment Standards Administration (N9–448–00–2, 36 items, 36 temporary items. Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Office of Management, Administration and Planning. Included are electronic copies associated with such records as records disposition files, agency forms, training plans, research materials, GAO reports, inventories of automated systems equipment, employee grievance case files, issue papers, management improvement studies, information releases, long range strategy papers, analyses of legislation, and briefing books. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NC1–448–76–1, NC1–448–77–1, NC1–448–82–1, N1–448–92–1, N1–448–97–1, and N1–448–98–1.

3. Department of Labor, Employment Standards Administration (N9–448–00–3, 31 items, 31 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Office of Federal Contract Compliance Programs. Included are electronic copies associated with such records as public comments on proposed policies, directives, speeches, records management files, forms, affirmative action plans, training files, quarterly and annual reports, quality control audits, legal opinions, Freedom of Information Act and Privacy Act requests, and publications. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NC1–174–76, N1–448–90–2, and N1–448–93–1.

4. Department of Labor, Employment Standards Administration (N9–155–00–1, 33 items, 33 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Wage and Hour Division. Included are electronic copies associated with such records as contracts, subject files, reports and studies, child labor files, safety and health files, legal opinions, investigative files, committee files, and prevailing wage determinations. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NN–164–171, NN–168–43, NC–155–75–1, NC–155–75–2, NC1–155–84–1, N1–155–90–1, and N1–155–96–1.

5. Department of Labor, Employment Standards Administration (N9–271–00–1, 60 items, 60 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Office of Workers' Compensation Programs. Included are electronic copies associated with such records as directives, subject files, publications, compensation case files, financial files, training files, and reports on caseload. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs N1–271–80–1, N1–271–92–1, and N1–271–95–1.

6. Department of Labor, Employment Standards Administration (N9–317–00–4, 14 items, 14 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Office of Labor-Management Standards. Included are electronic copies associated with such records as correspondence concerning reports on labor organizations, criminal and civil investigative case files, claims files, contract files, program policy documents, and files concerning legal and legislative matters. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NC1–317–84–1, N1–317–94–1, and N1–317–95–1.

Dated: June 29, 2000.

Geraldine Phillips,

Acting Assistant Archivist for Record Services, Washington, DC.

[FR Doc. 00–17470 Filed 7–10–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/ conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (P.L. 92–463).

International Watch: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the

values and goals of the Americans with Disabilities Act.

DATES: August 15, 2000, 12:00 p.m. EDT.

For International Watch Information, Contact: Kathleen A. Blank, Attorney/Program Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), kblank@ncd.gov (e-mail).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Open Meeting/Conference Call: This advisory committee meeting/conference call of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all International Watch meetings/conference calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 6, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–17500 Filed 7–10–00; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, July 13, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Request from Two (2) Federal Credit Unions to Convert to Community Charters.

2. Missouri Member Business Loan Rule.

3. Final Rule: Amendment to Section 701.21(c) (7) (ii) (C), NCUA's Rules and Regulations, Interest Rate Ceiling.

4. Final Rule: Amendments to Part 7802, NCUA's Rules and Regulations, Prompt Corrective Action—Risk-Based Net Worth Requirement.

5. NCUA Mid-Session Operating Budget.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, July 13, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Two (2) Administrative Actions under Section 206 for the Federal Credit Union Act. Closed pursuant to exemptions (6), (7), (8), (9) (A) (ii), (9) (B), and (10).

2. Two (2) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Two (2) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–17599 Filed 7–7–7; 12:53 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel; Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Multidisciplinary section (Creativity category)—August 7–9, 2000, Room 716. A portion of this meeting, from 1:30 p.m. to 3:00 p.m. on August 9th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on August 7th and 8th, and from 9 a.m. to 1:30 p.m. and 3 p.m. to 4:30 p.m. on August 9th, will be closed.

Presenting section (Creativity and Organizational Capacity categories)—August 15–16, 2000, Room 716. A portion of this meeting, from 10:15 a.m. to 12 p.m. on August 16th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on August 15th and from 9 a.m. to 10:15 a.m. and 12 p.m. to 1 p.m. on August 16th, will be closed.

Multidiciplinary section (Organizational Capacity category)—August 17, 2000, in Room 716. A portion of this meeting, from 4:30 p.m. to 5:30 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 4:30 p.m. and from 5:30 p.m. to 6:30 p.m., will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines and Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 29, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 00–17110 Filed 7–10–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: July 25, 2000, 8:00 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard J. Fragaszy, Program Director, Geomechanics and Geotechnical Systems, Division of Civil and Mechanical Systems, Room 545, (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 MBSCON Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17434 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59)

Date and Time: Sunday, July 30, 2000, 5 p.m. to 9 p.m.; and Monday, July 31, 2000 through Wednesday, August 2, 2000; 8 a.m. to 5 p.m.

Place: Capitol Hilton Hotel, 16th and K Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Anna Suarez, Program Director, Presidential Awardees, Education and Human Resources, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1613.

Purpose of Meeting: To select the Presidential Awardees for 2000.

Agenda: To review and select applicants for the Presidential Awards for Excellence in Mathematics and Science Teaching.

Reason for Closing: The applicants being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17435 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date/Time: July 20–21, 2000; 8:00AM–5:30PM.

Place: Room 1020, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Marvin Goldberg, Program Director for Elementary Particle Physics, Division of Physics, 4201 Wilson Blvd., Room 1015, Arlington, VA 22230. Telephone: (703) 306–1894.

Purpose of Meeting: To provide advice on major project costs of proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the evaluation process for funding.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: This notice was late due to scheduling and travel arrangements for panel members.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17433 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130); Committee of Visitors.

Date/Time: July 25–26, 2000, 8:00 A.M. to 5:30 P.M.; and July 27, 2000 1:00 P.M.–5:00 P.M.

Place: NSF, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

Type of Meeting: Part-Open.

Contact Person: Altie Metcalf, Budget and Planning Officer, Room 755, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1030.

Purpose of Meeting: To carry out Committee of Visitors review, including program evaluation and GPRA assessments.

Agenda: Closed: July 25, 2000, 1:00–5:30; and July 26, 2000, 8:30–10:00. To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years.

Open: July 25, 2000, 8:00–12:00; July 26, 2000, 10:15–5:30; and July 27, 2000 1:00–5:00. To assess results of NSF program investments. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the COV will be reviewing proposals that will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17432 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation (61).

Date/Time: August 14, 16, 17, 21, 23, 24, 28–31 2000; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Joseph Hennessey, Acting Director, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 305–1395 x 5283.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17436 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8767]

Finding of No Significant Impact Related to Amendment of Materials License No. SUC–1380, U.S. Department of the Army, Lake City Army Ammunition Plant, Independence, MO

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Materials License No. SUC–1380, held by the U.S. Department of the Army (Army or the licensee), to authorize remediation of radioactive contamination in both the 600-yard bullet catcher and the southeast wing of Building 3A areas of its Lake City Army Ammunition Plant (LCAAP) located in Independence, Missouri.

Summary of Environmental Assessment

Background

The Army is the holder of Materials License No. SUC–1380 (hereafter, license) which the NRC originally issued on June 6, 1980, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR). This license, among other things, authorizes the Army to possess depleted uranium (DU) and DU-contaminated waste incident to decommissioning of facilities at LCAAP.

During the 1960s and 1970s, the Army produced and tested DU XM–101 spotter rounds at LCAAP. Part of the production of the XM–101 spotter rounds took place in the southeast wing of Building 3A. By 1968, the program was terminated and approximately 44,000 XM–101 spotter rounds were left on site. In 1971, because the rounds were fused, the licensee decided that a safe method for demilitarizing the remaining rounds was to fire the rounds into a sand-filled catch box. The actual catch box used for this demilitarization operation was the "600-yard bullet catcher." The catch box was filled with sand as an impact material. During this demilitarization operation, the impact material in the catch box was periodically replaced with fresh impact material. The used impact material (*i.e.*, DU-contaminated sand) was removed from the catch box and placed in an area of the site known as "Area 10." The Army, by letter dated May 1, 1998, submitted revision 5.1 of its plan to remediate Area 10. The NRC authorized remediation of Area 10, in accordance with that plan, on August 25, 1998 (License Amendment No. 32). The LCAAP site includes two production buildings that were used to produce the DU-spotter rounds. The production buildings, 3A and 12A, were remediated in April 1987. However, during an inspection in 1995, the staff identified several locations in the southeast wing of Building 3A, on the floor and walls, with fixed or removable activity in excess of unrestricted use criteria.

The licensee, by letter dated August 12, 1998, and supplemented by letters dated March 9, June 28, December 21, 1999, and June 20, 2000, submitted its current plans for the remediation of DU and DU-contaminated material from both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A. The Army plans to have its contractor, Allied Technology Group, Inc. (ATG), remediate these areas under the provisions of the Army's license.

Proposed Action

The licensee proposes to remediate both the 600-yard bullet catcher area and the southeast wing of Building 3A. The licensee, by letter dated August 12, 1998, and supplemented by letters dated March 9, June 28, December 21, 1999, and June 20, 2000, submitted its current plans for the remediation of DU and DU-contaminated material from both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A. The DU-contaminated material to be removed from the 600-yard bullet catcher area will most likely also contain some lead. The licensee will perform the remediation by surveying, excavating, packaging, and transporting, by a combination of truck and rail, DU and DU-contaminated material from the LCAAP to a licensed low-level radioactive waste disposal facility for disposal.

The Need for Proposed Action

The proposed action is necessary to allow the licensee to gather and remove DU and DU-contaminated material from both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A. This action will facilitate remediation of both radiologically contaminated areas sufficiently to meet NRC's unrestricted-use release criteria, and is one of the actions necessary for removal of the LCAAP from the Army's Materials License SUC–1380.

Alternative to Proposed Action

An alternative to the proposed action is a no-action alternative. The no-action alternative would mean that both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A would not be remediated at this time. This conflicts with NRC's requirements in § 40.42 of timely remediation at sites that have ceased operations. Although that while there is no immediate threat to the public health and safety from this site, as long as the licensee maintains appropriate controls over the radioactive material, not undertaking remediation at this time, does not resolve the regulatory and potential long-term health and safety problems involved in storing this waste. No action now would delay remediation of these areas until some time in the future, when costs could be much higher than they are today. It is even possible that no disposal option will be available in the future if current low-level radioactive waste disposal facilities are closed and no new ones are opened. Therefore, the no-action alternative is not acceptable.

Environmental Impacts of Proposed Action

Radiological impacts on members of the public may result from inhalation and ingestion of releases of radioactivity in air and water during the remediation operations and direct exposure to radiation from material at the site during remediation operations and transport for disposal. Decommissioning workers may receive dose by ingestion, inhalation, and direct exposure during the remediation activities. In addition to impacts from routine operations, the potential radiological consequences of accidents were considered. NRC staff found that the radiological

consequences of remediating both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A were insignificant for both members of the public and radiation workers. The radiological consequences were well within the regulatory limits, as specified in 10 CFR part 20.

The licensee has estimated the amount of radioactive contaminated waste/mixed waste to be shipped to a facility approved by the NRC to receive and dispose of this waste to be approximately 1,133 m^3 (40,000 ft^3). The staff has determined that any facility approved by the NRC to receive and dispose of this low-level radioactive/mixed waste would be regulated either under state or Federal rules for land disposal of radioactive/mixed waste. This will provide for long-term institutional control and minimize the potential for human intrusion and other environmental impacts. Therefore, NRC staff determined that disposing of the LCAAP low-level radioactive/mixed waste at such a facility will not cause any significant impacts on the human environment.

Nonradiological impacts evaluated were associated with demography and socioeconomic, air quality, land and water use, transportation, threatened or endangered species, and historical or archeological sites. NRC staff found that the nonradiological consequences either were insignificant or would have no impacts on the human environment.

Conclusions

Based on NRC staff's evaluation of the licensee's LCAAP 600-yard bullet catcher and the southeast wing of Building 3A areas remediation plan, NRC staff has determined that the proposed plan complies with NRC's public and occupational dose and effluent limits, and that authorizing the proposed activities by license amendment would not be a major Federal action significantly affecting the quality of the human environment. NRC staff concludes that a finding of no significant impact (FONSI) is justified and appropriate, and that an environmental impact statement (EIS) is not required. An Opportunity for a Hearing was offered. [1]

Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared this environmental assessment (EA) related to the issuance of a license amendment to Materials License SUC–1380 authorizing remediation of both the 600-yard bullet catcher and the southeast wing of Building 3A areas of the LCAAP. On the basis of this EA, NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment and does not warrant the preparation of an EIS. Accordingly, it has been determined that a FONSI is appropriate.

FOR FURTHER INFORMATION CONTACT: For further details with respect to this action, the EA and other documents related to this proposed action are available for public inspection and copying at the NRC's Website, *http://www.nrc.gov* (the electronic reading room).

Dated at Rockville, Maryland, this 5th day of July 2000.

For the U.S. Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17467 Filed 7–10–00; 8:45 am]

BILLING CODE 7590–01–P

[1] 64 FR 31020 (June 9, 1999).

NUCLEAR REGULATORY COMMISSION

Staff Responses to Frequently Asked Questions Concerning Decommissioning of Nuclear Power Plants, Availability of NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of NUREG–1628, "Staff Responses to Frequently Asked Questions Concerning Decommissioning Of Nuclear Power Plants," a final report dated June 2000.

ADDRESSES: A single copy of NUREG–1628 is available free upon written request to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by faxing a request to 301–415–2289, or by e-mail to *DISTRIBUTION@nrc.gov*. Multiple copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328; *www.access.gpo.gov/su—docs;* 202–512–1800 or The National Technical Information Service, Springfield, Virginia 22161–0002; *www.ntis.gov;* 1–800–553–6847 or, locally, 703–605–6000.

A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. You may also electronically access NUREG-series publications and other NRC records at NRC's Public Electronic Reading Room at *www.nrc.gov/NRC/ADAMS/index.html*.

This publication is also posted at NRC's Web site address *http://www.nrc.gov/NRC/NUREGS/SR1628/index.html*

FOR FURTHER INFORMATION CONTACT: John L. Minns, Division of Licensing Project Management, Washington, DC 20555–0001 (telephone 301–415–3166).

SUPPLEMENTARY INFORMATION: This report, through a question-and-answer format, provides NRC staff responses to frequently asked questions on the decommissioning of commercial power reactors. The document was prepared in response to the increase in the number of power reactors in the decommissioning process and significant changes in the regulations since 1996. The staff realized that there was a general lack of public understanding of the decommissioning process and the risks associated with decommissioning. The document was developed to assist the public in understanding the decommissioning process for commercial nuclear power plants. A draft of this report was issued for comment in April 1998. The June 2000 Final Report incorporates the comments received on the draft and updates responses to questions with current information. The staff also included additional questions and answers from the public meeting transcripts and written correspondence to members of the public. The report contains a definition of decommissioning and a discussion of decommissioning alternatives. It also provides a focus on decommissioning experiences in the United States and how the NRC regulates the decommissioning process. Questions on spent fuel, low-level waste, and transportation related to decommissioning are answered. Questions on socioeconomics, partial site releases, independent spent fuel storage installation (ISFSI), license termination, the ultimate disposition of the facility, fiances for completing decommissioning, and hazards associated with decommissioning are also addressed. This document also provides responses to questions related to public involvement in decommissioning as well as providing the public with sources for obtaining additional information on decommissioning.

Dated at Rockville, Maryland, this 5th day of July 2000.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Chief, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17465 Filed 7–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Standard Review Plan for the Review of the Department of Energy Plans for Achieving Regulatory Compliance at Sites With Contaminated Ground Water Under Title I of the Uranium Mill Tailings Radiation Control Act; Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of, and requesting comments on, NUREG–1724, "Standard Review Plan for the Review of DOE Plans for Achieving Regulatory Compliance at Sites with Contaminated Ground Water under Title I of the Uranium Mill Tailings Radiation Control Act."

The U.S. Department of Energy (DOE) is conducting ground-water corrective actions under the Uranium Mill Tailings Remedial Action Groundwater Project. This Standard Review Plan will provide guidance to NRC staff performing safety and environmental reviews of ground-water quality compliance activities conducted by the DOE under Title I of the Uranium Mill Tailings Radiation Control Act.

The purpose of this Standard Review Plan is to ensure the quality and uniformity of NRC staff reviews of site-specific documents describing DOE plans for achieving regulatory compliance at sites with contaminated groundwater. The standard review plan is written to cover a variety of site conditions and plans. Each section provides a description of the areas of review, review procedures, acceptance criteria, and an evaluation of findings.

DATES: The comment period ends October 10, 2000. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays.

Persons who are considering submitting public comments may request a free single copy of draft NUREG–1724 by writing to the U.S. Nuclear Regulatory Commission, ATTN: William Ford, Mail Stop T7J8, Washington, DC 20555–0001. Alternatively, requests may be submitted through the Internet by addressing electronic mail to *whf@nrc.gov*. A copy of draft NUREG–1724 is also available for inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

The NRC requests comments on this licensing guidance NUREG. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION, CONTACT: Mr. William Ford, T–7–J8, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6630; electronic mail address: *whf@nrc.gov*.

Electronic Address

NUREG–1724 is available electronically by visiting the NRC's Home Page at *http://www.nrc.gov/NRC/NUREGS/indexnum.html* or *http://www.nrc.gov/NRC/wwwforms.html*.

Dated at Rockville, Maryland this 28th day of June, 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17466 Filed 7–10–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection; Request for Public Comments

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on renewal and changes to two information collection requests from two types of entities: (1) reports from auditors to auditees concerning audit results, audit findings, and questioned costs, and (2) reports from auditees to the Federal Government providing information about the auditees, the awards they administer, and the audit results. These collection efforts are required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 *et seq.*) and OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

Included as part of this information collection is the Data Collection Form (SF–SAC). The changes being proposed are to modify the data elements collected on the SF–SAC. The current SF–SAC will be used for audit periods ending on or before December 31, 2000. A revised SF–SAC will be used for audit periods ending on or after January 1, 2001.

DATES: Submit comments on or before September 11, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed to Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW, Room 6025, Washington, DC 20503. Electronic mail (E-mail) comments may be submitted to: tramsey@omb.eop.gov. Please include the full body of the comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message as well as the name and phone number of a contact person.

COMMENTS: All responses will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The Information Collection Form can be obtained by contacting the Office of Federal Financial Management as indicated above or by download from the OMB Grants Management home page on the Internet at http://www.whitehouse.gov/OMB/grants/.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0057.

Title: Data Collection Form.

Form No: SF–SAC.

Type of Review: Revision of a currently approved collection.

Respondents: States, local governments, and non-profit organizations (Non-Federal entities).

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 59 hours for each of 400 large respondents and 17 hours for each of 59,600 small respondents for estimated annual burden hours of 1,036,800.

Estimated Number of Responses per Respondent: 1.

Frequency of Response: Annually.

Needs and Uses: Reports from auditors to auditees and reports from auditees to the Federal government are used by non-Federal entities, pass-through entities, and Federal agencies to ensure that Federal awards are expended in accordance with applicable laws and regulations. The Federal Audit Clearinghouse (FAC) (maintained by the U.S. Bureau of the Census) uses the information on the SF–SAC to ensure proper distribution of audit reports to Federal agencies and identify non-Federal entities who have not filed the required reports. The FAC also uses the information on the SF–FAC to create a government-wide database which contains information on audit results. This database is publicly accessible on the Internet at http://harvester.census.gov/sac/. It is used by Federal agencies, pass-through entities, non-Federal entities, auditors, the General Accounting Office, OMB, and the general public for management and information about Federal awards and the results of audits. Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Joshua Gotbaum,

Executive Associate Director and Controller.

[FR Doc. 00–17516 Filed 7–10–00; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

The Presidential Advisory Committee on Expanding Training Opportunities

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

Time and Date: 9:00 a.m., Tuesday, August 1, 2000.

Place: White House Conference Center, Truman Room, 725 Jackson Place, Washington, DC. The Truman Room is on the 3rd floor.

Status: This meeting will be open to the public. Seating is limited and will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM through the information shown below to obtain appropriate accommodations. Any member of the public wishing further information about the meeting or wishing to submit oral or written comments should contact the Designated Federal Official through the information shown below. Requests for oral comments must be in writing and received no later than 5:00 p.m. Eastern Daylight Savings Time on Tuesday, July 25, 2000. Each individual or group making an oral presentation will be limited in time based on the agenda and the number of people requesting to speak. Remarks may be submitted for the record. Written comments (30 copies) which are received in enough time will be shared with the Committee prior to the meeting. Comments received close to the meeting date will be shared with the Committee at the meeting.

Matters To Be Considered: Executive Order 13111, Using Technology to Improve Training Opportunities for Federal Government Employees, was issued by the President on January 12, 1999, and established the Presidential Advisory Committee on Expanding Training Opportunities. At its initial meeting, the Committee will review and discuss administrative issues, background matters, tasks, and plans of action. Committee functions include: (1) Providing an independent assessment of (a) progress made by the Federal Government in its use and integration of technology in training programs; (b) how Federal Government programs, initiatives, and policies can encourage or accelerate training technology to provide more accessible, timely, and cost-effective training opportunities for all Americans; (c) mechanisms for the Federal Government to encourage private sector investment in the development of high quality instructional software and wider deployment and use of technology-mediated instruction so that all Americans may take advantage of the opportunities provided by learning technology; and (d) the appropriate Federal Government role in research and development for learning technologies and their applications in order to develop high quality training and education opportunities for all Americans; and (2) an analysis of options for helping adult Americans finance the training and post-secondary education needed to upgrade skills and gain new knowledge.

FOR FURTHER INFORMATION CONTACT: Please contact Barbara Swanson, Designated Federal Officer for the Presidential Advisory Committee on Expanding Training Opportunities, at OPM, 1900 E Street NW., Washington, DC 20415; at telephone (202) 606–2721; or fax (202) 606–5231.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–17460 Filed 7–10–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Approval of Existing Information Collection:

Rule 27e–1 and Form N–27E–1—SEC File No. 270–486—OMB Control No. 3235—new

Rule 27f–1 and Form N–27F–1—SEC File No. 270–487—OMB Control No. 3235—new

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information under the Investment Company Act of 1940 ("Act") summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Rule 27e–1 [17 CFR 270.27e–1] is entitled "Requirements for Notice to be Mailed to Certain Purchasers of Periodic Payment Plan Certificates Sold Subject to Section 27(d) of the Act." Form N–27E–1 is entitled "Notice to Periodic Payment Plan Certificate Holders of 18 Month Surrender Rights with Respect to Periodic Payment Plan Certificates." Rule 27f–1 [17 CFR 270.27f–1] is entitled "Notice of Right of Withdrawal Required to Be Mailed to Periodic Payment Plan Certificate Holders and Exemption from Section 27(f) for Certain Periodic Payment Plan Certificates." Form N–27F–1 is entitled "Notice to Periodic Payment Plan Certificate Holders of 45 Day

Withdrawal Right with Respect to Periodic Payment Plan Certificates." Form N–27E–1, which is prescribed by rule 27e–1 in order to implement the statutory mandate in section 27(e) of the Act, serves to notify holders of periodic payment plan certificates who have missed certain payments of their surrender rights with respect to the certificates. Form N–27F–1, which is prescribed by Rule 27f–1, is used to notify recent purchasers of periodic payment plan certificates, of their right under section 27(f) of the Act to return the certificates within a specified period for a full refund. The Forms N–27E–1 and N–27F–1 notices, which are sent directly to holders of periodic payment plan certificates, serve to alert purchasers of periodic payment plans of their rights in connection with their plan certificates.

Commission staff estimates that there are fewer than five issuers of periodic payment plan certificates affected by Rules 27e–1 and 27f–1. The frequency with which each of these issuers or their representatives must file the Form N–27E–1 and Form N–27F–1 notices varies with the number of periodic payment plans sold and the number of certificate holders who miss payments. The Commission estimates, however, that approximately 5,000 Form N–27E–1 notices and 48,900 Form N–27F–1 notices are sent out annually. The Commission estimates that each Form N–27E–1 notices takes approximately 4.5 minutes (0.075 hours) to prepare. Therefore, the total annual burden of Form N–27E–1 is estimated to be approximately 375 hours. The Commission estimates that each Form N–27F–1 notice takes approximately 3.5 minutes (.05833 hours) to prepare. Therefore, the total annual burden of Form N–27F–1 is estimated to be 2,852 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[1]

Complying with the collection of information requirements of Rule 27e–1 is mandatory for issuers of periodic payment plans or their depositors or underwriters in the event holders of plan certificates miss certain payments within eighteen months after issuance. Complying with the collection of information requirements of Rule 27f–1 is mandatory for custodian banks of periodic payment plans for which the sales load deducted from any payment exceeds 9 percent of the payment. The information provided pursuant to Rules 27e–1 and 27f–1 will be provided to third parties and, therefore, will not be kept confidential. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected: and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: June 29, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17468 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

[1] These estimates are based on informal conversations between the Commission staff and representatives of periodic payment plan issuers.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension:

Rule 2a19–1; SEC File No. 270–294; OMB Control No. 3235–0332

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 2a19–1 under the Investment Company Act of 1940 (the "Act") provides that investment company directors will not be considered interested persons, as defined by section 2(a)(19) of the Act, solely because they are registered broker-dealers or affiliated persons of registered broker-dealers, provided that the broker-dealer does not execute any portfolio transactions for the company's complex, engage in any principal transactions with the complex or distribute shares for the complex for at least six months prior to the time that the director is to be considered not to be an interested person and for the period during which the director continues to be considered not to be an interested person. The rule also requires the investment company's board of directors to determine that the company would not be adversely affected by refraining from business with the broker-dealer. In addition, the rule provides that no more than a minority of the disinterested directors of the company may be registered broker-dealers of their affiliates.

Before the adoption of rule 2a19–1, many investment companies found it necessary to file with the Commission applications for orders exempting directors from section 2(a)(19) of the Act. Rule 2a19–1 is intended to alleviate the burdens on the investment company industry of filing for such orders in circumstances where there is no potential conflict of interest. The conditions of the rule are designed to indicate whether the director has a stake in the broker-dealer's business with the company such that he or she might not be able to act independently of the company's management.

It is estimated that approximately 3,200 investment companies may choose to rely on the rule, and each investment company may spend one hour annually compiling and keeping records related to the requirements of the rule. The total annual burden associated with the rule is estimated to be 3,200 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The Commission requests written comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: June 29, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17469 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–05740]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Diodes Incorporated, Common Stock, $.66⅔ Par Value)

July 3, 2000.

Diodes Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.66⅔ par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"). Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on June 19, 2000. The Company's Registration Statement on Form 8–A with respect to the Nasdaq listing became effective upon filing on June 15, 2000. In conjunction with creating the new listing on the Nasdaq, the Company is seeking to withdraw its Security from listing and registration on the Amex in order to avoid the costs associated with such listing and to prevent possible fragmentation of the market for its Security.

On February 18, 2000, the Company's board of directors approved a resolution authorizing the withdrawal of the Security from listing and registration on the Amex. The Amex has in turn advised the Company that its application for such withdrawal has been made in accordance with the rules of the Amex and that the Amex would not object to such withdrawal, pending its ultimate approval by the Commission. In the light of the new listing of the Security on the Nasdaq, the Amex has not required the Company to notify its shareholders of its intention to withdraw the Security from listing and registration on the Amex.

The Company's application relates solely to the withdrawal of the Security's from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the Nasdaq under section 12(g) of the Act.[3]

Any interested person may, on or before July 25, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17419 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14204]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (FuelCell Energy, Inc., Common Stock, $.0001 Par Value)

July 3, 2000.

FuelCell Energy, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.0001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"). Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on June 7, 2000. The Company's Registration Statement on Form 8–A with respect to the Nasdaq listing became effective upon filing on June 6, 2000. The Company, whose business relates to the development and commercialization of fuelcell technology, has sought to transfer trading in its Security from the Amex to the Nasdaq because it believes the Nasdaq offers the most trading activity and best liquidity for the securities of technology companies.

On March 22, 2000, the Company's board of directors approved a resolution authorizing the withdrawal of the Security from listing and registration on the Amex. The Amex has in turn advised the Company that its application for such withdrawal has been made in accordance with the rules of the Amex and that the Amex would not object to such withdrawal, pending its ultimate approval by the Commission. In the light of the new listing of the Security on the Nasdaq, the Amex has not required the Company to notify its shareholders of its intention to withdraw the Security from listing and registration on the Amex.

The Company's application relates solely to the withdrawal of the Security's from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the Nasdaq under Section 12(g) of the Act.[3]

Any interested person may, on or before July 25, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(g).
[4] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 781(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17420 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42997; File No. SR–GSCC–00–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Financing Necessary for the Provision of Securities Settlement Services

June 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 7, 2000, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to amend its rules to allow it to obtain financing in connection with its securities settlement process by entering into repurchase transactions with GSCC netting members and/or clearing agent bank members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

According to GSCC, it is occasionally required to obtain financing in connection with its securities settlement process. For example, a member with a net short position may deliver securities so near the close of the securities Fedwire that GSCC is unable to redeliver the securities to member(s) with the net long position(s). GSCC's rules contemplate that GSCC will obtain financing under these circumstances in the form of loans, because the rules expressly permit GSCC to grant security interests in the securities in question. The costs or expenses that GSCC incurs in obtaining such financing are generally allocated pro rata among all netting members based upon usage of GSCC's services.[3]

Another example of a situation where GSCC might need to obtain financing is when a GCF inter-dealer broker has a GCF net settlement position as the result of for example, a data submission error. As a result, GSCC is required to finance the settlement of the other-side of the transaction. Again, GSCC's rules currently contemplate that GSCC will obtain the requisite cash or securities through loans or securities borrowing/lending transactions.

GSCC is proposing to amend its rules to give it the option to obtain the requisite financing in the circumstances described above by entering into repurchase transactions with GSCC netting members and/or clearing agent bank members.[4] The ability to enter into repurchase transactions will enable GSCC to obtain more favorable financing terms and thus will result in lower financing costs being allocated to members. Repurchase transactions are a safe, widely accepted financing mechanism. GSCC will engage in such transactions only with highly creditworthy counterparties who are GSCC netting members or GSCC's clearing agent banks.

The proposed rule change also addresses the situation where an inter-dealer broker netting member obtains financing of a net settlement position. For example, an inter-dealer broker may have a net settlement position as the result of an uncompared trade. Under the proposed rule change, the inter-dealer broker-netting member would be required to obtain financing by entering into overnight repurchase transactions with GSCC netting members or clearing agent bank members, and GSCC may reimburse the inter-dealer broker for the costs of such finances if the net settlement position was incurred through no fault of the inter-dealer broker.[5]

GSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[6] and the rules and regulations thereunder because the proposal will provide GSCC with an additional financing alternative and will result in lower financing costs for GSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact, or impose a burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

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[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] GSCC's rules also provide that if the GSCC Board determines in its sole discretion that a netting member has on a frequent basis and without good cause caused GSCC to incur financing costs, the member can become obligated to pay for or reimburse GSCC for the entire amount of the financing costs.

[4] GSCC already has the authority to enter into repurchase agreements in connection with clearing fund deposits and proprietary funds.

[5] GSCC may also reimburse certain dealer netting members in a similar situation. This additional possibility for remibursement would apply to a division or other separate operating unit within a dealer netting member that GSCC has determined: (a) operates in the same manner as a broker and (b) has agreed to, and does, participate in the repo netting service pursuant to the same requirements imposed under GSCC's rules on inter-dealer broker netting members that participate in that service.

[6] 15 U.S.C. 78q–1.

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–01 and should be submitted by August 1, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17421 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42996; File No. SR–GSCC–00–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Accepting Mortgage-Backed Securities for Processing in the GCF Repo Service

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 1, 2000, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to accept non-Fedwire eligible mortgage-backed securities for processing in GSCC's GCF Repo Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC introduced its GCF Repo Service in November 1998.[3] The GCF Repo Service allows GSCC's non-inter-dealer broker netting members ("dealers") to trade general collateral repos involving U.S. Government securities throughout the day without requiring trade for trade settlement on a delivery versus payment basis.

GSCC has been activating the generic CUSIP numbers representing the securities that are eligible for GCF Repo processing in stages. U.S. Treasury securities with a maturity of ten years or less and U.S. Treasury securities with a maturity of thirty years or less were the first products to be made eligible for GCF Repo processing. At the beginning of this year, GSCC also began accepting non-mortgage-backed agency securities for GCF Repo processing and then more recently began accepting mortgage-backed securities "MBS") for GCF Repo processing.[4]

GSCC members active in the MBS markets have expressed an interest, both directly and through The Bond Market Association, in having GSCC process all types of MBS, especially those issued by the Government National Mortgage Association (Commonly referred to as "GNMAs").[5] Because these members engage in transactions involving all types of MBS, not just Fedwire-eligible MBS, they desire to have the risk reducing benefits associated with GSCC processing extend to GCF Repo transactions involving non-Fedwire-eligible MBS.

When GSCC submitted its original GCF Repo rule filing to the Commission, it only contemplated Fedwire-eligible securities (treasuries, agencies, and certain MBS) as eligible products. In response to the industry demand, GSCC desires to expand the acceptable types of underlying securities processed in the GCF Repo Service to include all types of MBS, not just Fedwire-eligible MGS.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will enhance the GCF Repo Service by making it more responsive to the needs of GSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii)[6] of the Act and Rule

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] On November 5, 1998, the Commission approved a rule change (Release No. 34–40623, File No. SR–GSCC–98–02) that allowed GSCC to implement the GCF Repo Service on an intrabank basis. On April 16, 1999, the Commission approved a rule change (Release No. 34–41303, File No. SR–GSCC–99–01) that allowed GSCC to implement an enhancement to the GCF Repo Service to enable participating dealers to engage in GCF Repo trading with participating dealers that use a different clearing bank.

[4] On March 20, 2000, GSCC activated the generic CUSIP number representing Federal Home Loan Mortgage Corporation and Federal National Mortgage Association fixed-rate MBS.

[5] The Government National Mortgage Association recently announced that it has decided to move its NBS clearance and settlement activities to the Federal Reserve System. No specific timetable has been specified for this move which will make GNMAs Fedwire-eligible.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

19b–4(f)(4)[7] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–04 and should be submitted by August 1, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17422 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 240.19b–4(f)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43001; File No. SR–NASD–00–41]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SelectNet Fees

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to: (1) Extend the reduced SelectNet fee pilot program under NASD Rule 7010(i) from April 1, 2000 until March 31, 2001, or through the date of implementation of the Nasdaq National Market Execution System ("Implementation Date," currently expected to be July 10, 2000), whichever is sooner; and (2) beginning on the Implementation Date, to (a) reduce the fees currently charged under NASD Rule 7010(i) for the execution of transactions in SelectNet; (b) reduce the fees currently charged under NASD Rule 4770(a) for the execution of transactions in the Small Order Execution System for Nasdaq SmallCap issues; and (c) establish that the fees charged for the execution of transactions in Nasdaq National Market issues in the Nasdaq National Market Execution System, will be identical to the fees charged for transactions in the Small Order Execution System ("SOES") for Nasdaq SmallCap issues.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. Purpose

Nasdaq proposes to again extend its current reduced SelectNet fees.[4] The reasons for Nasdaq's prevailing SelectNet fee structure were fully explained in its original fee structure proposal filed with the Commission in February of 1998.[5] Since then, SelectNet usage has continued at significantly elevated levels. As such, Nasdaq believes that an extension of these reduced fees through the Implementation Date is warranted.

Under the proposal, from April 1, 2000 until march 31, 2001, or until the Implementation Date, whichever is sooner, SelectNet fees would continue to be assessed in the following manner:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that Nasdaq filed a virtually identical proposal, SR–NASD–00–29, on May 24, 2000. In SR–NASD–00–29, Nasdaq proposed to amend its SelectNet fees in the same manner that it proposes to amend these fees in this filing. SR–NASD–00–29 was filed under Section 19(b)(3)(A) of the Act and, therefore, was effective upon filing. Among other things, Nasdaq proposed in SR–NASD–00–29 that its reduced SelectNet fees, which were subject to a pilot program, continue from the date of the filing, May 24, 2000. The pilot program, however, expired on March 31, 2000. When Commission staff brought this to the attention of Nasdaq expressed its desire to have the reduced fees apply retroactively from April 1 to May 23, 2000. After consultation with the Commission staff, Nasdaq filed this proposal, SR–NASD–00–41, to replace SR–NASD–00–29. Because the proposals are virtually identical except for Nasdaq's request in SR–NASD–00–41 that the reduced fees apply retroactively, the Commission has determined not to publish SR–NASD–00–29. Nevertheless, the public can receive a copy of it from the NASD or from the Commission's public reference room.

[4] Nasdaq represents that this rule supersedes SR–NASD–00–29, which Nasdaq submitted on May 24, 2000. According to Nasdaq, SR–NASD–00–29 proposed to extend the pilot program reducing SelectNet fees, but did not explicitly state that the pilot expired on March 31, 2000, and that the pilot should apply retroactively as of April 1, 2000. At the request of Commission staff, Nasdaq is submitting this filing to clarify these facts.

[5] *See* Securities Exchange Act Release No. 39641 (February 10, 1998), 63 FR 8241 (February 18, 1998). Nasdaq's current reduced fee structure was originally approved for a 90 day period. The last extension of this pilot occurred in April of 1999, and the pilot expired on March 31, 2000. According to the April 1999 extension, the SelectNet fees were supposed "to revert to their original $2.50 per-side level on April 1, 2000" if Nasdaq took no action. *See* Securities Exchange Act Release No. 41314 (April 20, 1999); 64 FR 22664 (April 27, 1999).

(1) $1.00 will be charged for each of the first 50,000 SelectNet orders entered and directed to one particular market participant that is subsequently executed in whole or in part, $.70 for the next 50,000 directed orders executed that same month, and $.20 for each remaining directed order executed that same month; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a $0.25 fee will remain in effect for any member who cancels a SelectNet order. Nasdaq will continue to monitor and review SelectNet activity to determine if further changes to the SelectNet fee structure are appropriate.

On January 14, 2000, the Commission issued an order approving rule changes that: (1) Establish the Nasdaq National Market Execution system ("NNMS"), a new platform for the trading of Nasdaq National Market ("NNM") securities; (2) modify the rules governing the use of SelectNet for trading NNM issues; and (3) leave unchanged the trading of Nasdaq SmallCap securities on the Small Order Execution system ("SmallCap SOES").[6] Nasdaq currently plans to implement these system changes on July 10, 2000.

The NNMS will be the primary trading platform for Nasdaq NNM issues. The NNMS will be based on the SOES architecture that currently exists, but will be enhanced in several ways: (1) The maximum order entry size will be 9,900 shares for NNM securities; (2) market participants (including market makers) will be able to use Nasdaq's automated execution systems on a proprietary basis for transactions in NNM securities; (3) the time delays between NNM executions against the same market maker on ECN participating in the NNMS will be reduced to 5 seconds; (4) NNMS will include a reserve-size functionality, which will be accessible on an automated basis; and (5) eliminating the "No Decrementation" and preferencing functionality that currently exist in SOES.

SelectNet generally will be used to deliver negotiable orders to market makers and ECNs that participate in the NNMS. SelectNet orders will no longer be "liability orders." SelectNet will accept entry of orders directed to specific market makers in NNM securities only if such orders: (1) Seek at least 100 shares more than the displayed amount of the quote to which they are directed; and (2) are designated as either "all-or-none" or "minimum acceptable quantity" for at least 100 shares more than the quoted size. SelectNet will automatically reject preferenced messages not meeting these conditions. Recipients of SelectNet orders will then have the option to execute the order, initiate electronic negotiation, or let the order expire. Market participants will still use SelectNet to deliver liability orders to order-entry ECNs and UTP Exchanges.

It is expected that much of the trading volume in NNM securities will migrate from SelectNet to the NNMS, due largely to the elimination of the liability aspect of SelectNet. The proposed pricing structure reflects this shift by removing from NNMS the $.50 per order fee that market participants currently pay for receiving a SOES execution, and also in the addition of volume discounts. Thus, market participants will pay $.50 per execution for executed orders of under 2000 shares, with a discounted price of $.30 for any order after 150,000; $.90 for orders over 2000 shares. Nasdaq believes that this will encourage the entry of quotes into the Nasdaq system, and thereby increase liquidity in the Nasdaq Stock Market.[7]

Beginning on the Implementation Date, SelectNet fees would be assessed in the following manner: (1) $.90 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; (4) market participants will be assessed $.70 per order for the first 25,000 orders executed monthly, $.50 per order for the next 25,000 orders executed monthly, and a $.10 for each remaining liability order executed monthly; and (5) a $0.25 fee will remain in effect for any member who cancels a SelectNet order.

Nasdaq proposes to charge the same fees for trades of both Nasdaq SmallCap and NNM securities. To accomplish this, Nasdaq proposes to reduce the fees charged for trades of SmallCap Securities through SOES. Beginning on the Implementation Date, fees for NNMS trades of NNM securities and SOES trades of SmallCap securities will be assessed in the following manner: (1) A fee of $.50 per order executed for the first 150,000 orders executed under 2000 shares monthly; (2) a fee of $.30 for all remaining orders executed less than 2000 shares monthly; (3) a fee of $.90 per order for all orders over 2000 shares; and (4) no fee will be charged to a member who receives an execution in SOES or NNMS.

2. Statutory Basis

For the reason set forth above, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competiton

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or charge imposed by the Association, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission,

[6] *See* Securities Exchange Act Release No. 42344 (January 14, 2000); 65 FR 3987 (January 25, 2000).

[7] Nasdaq believes that the fee changes will have a revenue-neutral effect. Telephone conversation between Jeffrey S. Davis, Assistant General Counsel, Nasdaq, and Joseph Corcoran, Attorney, Division of Market Regulation, Commission, on June 28, 2000.

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

450 Fifth Street, NW., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–41 and should be submitted by August 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17423 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3361]

Determinations on Export-Import Bank Financing in Support of Sale of Helicopters to Colombia

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, and Executive Order 11958 of January 18, 1977, as amended by Executive Order 12680 of July 5, 1989, I hereby determine that:

(1) The defense articles and services for which the Government of Colombia has requested Export-Import Bank (Ex-Im) financial guarantees, fourteen UH–60 (Blackhawk) helicopters, are to be used primarily for anti-narcotics purposes;

(2) The sale of such defense articles and services would be in the national interest of the United States;

(3) The Government of Colombia has complied with all U.S.-imposed end-use restrictions on the use of defense articles and services previously financed under the Act; and

(4) The Government of Colombia has not used defense articles or services previously provided under the Act to engage in a consistent pattern of gross violations of internationally recognized human rights.

The determinations shall be reported to Congress and shall be published in the **Federal Register**.

[11] 17 CFR 200.30–3a(a)(12).

Dated: May 22, 2000.

Madeleine Albright,

Secretary of State.

[FR Doc. 00–17475 Filed 7–10–00; 8:45 am]

BILLING CODE 4710–07–U

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Meeting.

SUMMARY: The Regional Resource Stewardship Council (Regional Council) will hold a meeting to consider various matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA).

The meeting agenda includes the following briefings:

1. Watershed Teams
2. Stewardship Planning
3. Shoreline Management
4. 26a Permitting
5. Subcommittee Reports

It is the Regional Council's practice to provide an opportunity for members of the public to make oral public comments at its meetings. However, due to the short meeting time, an opportunity for members of the public to make oral public comments at the meeting will not be provided. Written comments, however, are invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held in two sessions on July 28, 2000, from 8 a.m. to 9:45 a.m. and from 3:15 p.m. to 5 p.m. EDT.

ADDRESSES: The meeting will be held in Knoxville, Tennessee, in the West Tower Auditorium at the Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, (865) 632–2333.

Dated: June 30, 2000.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 00–17484 Filed 7–10–00; 8:45 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

COUNCIL ON ENVIRONMENTAL QUALITY

Request for Public Comment: Draft Guidelines for Implementation of Executive Order 13141: Environmental Review of Trade Agreements Notice of Public Hearing

AGENCY: Office of the United States Trade Representative and Council on Environmental Quality

ACTION: Notice of request for written public comment; notice of public hearing

SUMMARY: On November 16, 1999, President Clinton signed Executive Order 13141. 64 FR 63169 (Nov. 18, 1999). The Order makes explicit the United States' commitment to a policy of ongoing assessment and evaluation of the environmental impacts of trade agreements, and in certain instances, the conduct of written environmental reviews. The Order directs the Office of the United States Trade Representative (USTR) and the Council on Environmental Quality (CEQ) to oversee implementation of the Order, including the development of procedures pursuant to the Order.

This notice seeks public comment on draft Guidelines for implementing the Executive Order. USTR and CEQ developed the draft Guidelines through an extensive interagency process with active participation from interested foreign policy, environmental, and economic agencies. USTR and CEQ also solicited input from advisory committees and the public. 65 Fed. Reg. 9757 (Feb. 22, 2000). The resulting draft Guidelines endeavor to assure that consideration of the environmental implications of trade agreements is an integral part of the policymaking process, and that environmental analysis is undertaken sufficiently early to inform the development of U.S. negotiating positions and objectives. Further, the draft Guidelines make public participation an integral component.

FOR FURTHER INFORMATION CONTACT: Office of the U.S. Trade Representative, Environment and Natural Resources Section, telephone 202–395–7320, or Council on Environmental Quality, telephone 202–456–6224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 13141 and the Trade Policy Staff Committee (TPSC) Process

The United States has relevant experience with environmental reviews of trade agreements, including the North American Free Trade Agreement in 1991–92 and the Uruguay Round Agreements in 1994. Most recently, in November, 1999, the United States prepared a study of the economic and environmental effects of the proposed Accelerated Tariff Liberalization initiative with respect to forest products. Building on this experience, Executive Order 13141 institutionalizes, for the first time, the procedures for integrating consideration of environmental issues into the negotiating process. The Order recognizes that environmental reviews are an important tool to help identify potential environmental effects of trade agreements, both positive and negative, and to help facilitate consideration of appropriate responses to those effects whether in the course of negotiations, through other means, or both.

Sections 1 and 4(a) of the Order commit the United States to careful assessment and consideration of the environmental impacts of future trade agreements, including environmental reviews of certain major agreements (comprehensive multilateral trade rounds, multilateral or bilateral free trade agreements, and major new agreements in natural resource sectors). Further, Section 4(c) of the Order provides that environmental reviews may also be done for other agreements based on such factors as the significance of reasonably foreseeable environmental impacts, although it is anticipated that most sectoral liberalization agreements will not require reviews.

Pursuant to section 5(a) of the Order, reviews shall be written; initiated through a **Federal Register** notice outlining the proposed agreement and soliciting public comment and information on the scope of the review; and undertaken sufficiently early in the process to inform the development of negotiating positions. This section of the Order also acknowledges that the environmental review process shall not be a condition for the timely tabling of particular negotiating proposals. Written environmental reviews shall be made available in draft form for public comment where practicable, and shall be made available to the public in final form. Section 5(b) of the Order provides that, as a general matter, the focus of reviews will be on impacts in the United States; however, reviews may also examine global and transboundary impacts as appropriate and prudent.

In accordance with the Order, environmental reviews will be conducted by USTR through the Trade Policy Staff Committee (TPSC). The TPSC is the basic mechanism for interagency decisionmaking on U.S. trade policy. It is a senior-civil-servant-level committee established by section 242 of the Trade Expansion Act of 1962, as amended (19 U.S.C. section 1872). The composition of the TPSC includes environmental agencies as the scope of its work has expanded. The basic work of the TPSC is performed by a network of staff-level subcommittees and task forces, organized by geographical region and/or sector. The committees prepare recommendations on subjects within their purview (*e.g.*, instructions to negotiators on specific issues relevant to a given trade agreement). These recommendations take the form of a paper, which then must be cleared by agencies on the TPSC.

B. Public Comments and Advisory Committee Recommendations

On February 22, 2000, USTR and CEQ requested the views of the public concerning issues the agencies should consider when developing guidelines for implementing the Order, including general views on how the environmental review process should work; mechanisms for involving the public; the timing and process for conducting written reviews; and appropriate methodologies for assessing environmental impacts in the context of trade negotiations. 65 Fed. Reg. 9757. Twenty-two sets of comments were received from a broad spectrum of the public, including representatives of industry, agriculture, and environmental organizations. USTR's advisory committee, the Trade and Environment Policy Advisory Committee (TEPAC), also submitted recommendations (with one dissent) concerning implementation of the Order.

The process for developing the draft Guidelines (attached below) involved vigorous discussions and input from a broad spectrum of agencies and interested parties. The resulting draft endeavors to strike a careful balance assuring that environmental issues are factored into the development of U.S. negotiating objectives and positions, while also providing sufficient flexibility to address the wide variety of trade agreements and negotiating timetables. The draft Guidelines also take into account significant public comments received, including advisory committee recommendations. Following is a summary of how public comments have been addressed in the draft.

1. General Comments

In general, public comments supported the Executive Order's objective of integrating environmental considerations into the development of trade negotiating objectives and positions. Some commenters emphasized that reviews should be a proactive tool for improving environmental performance through trade policy development, and that public involvement was critical to restore public confidence in trade liberalization as a national goal. They also stressed the importance of a process of ongoing assessment and evaluation of the environmental implications of trade agreements (including agreements that do not receive a review). Other commenters urged that reviews consider the potential environmental benefits as well as potential negative impacts of trade liberalization, and stressed that the Guidelines should not set the bar so high that reviews become a deterrent to trade rather than a beneficial analytical tool. Almost all commenters emphasized the use of the environmental review process to identify "win-win" opportunities where opening markets and reducing or eliminating subsidies hold promise for yielding environmental benefits.

In response, the draft Guidelines provide that positive as well as negative environmental impacts will be considered in reviews, and recognize that reviews should be used as appropriate to identify areas in which the trade agreement can complement U.S. environmental objectives. Further, they envision that public input is an essential component of the review and provide for public participation at key points in the review process, including opportunities to comment on the scope of the review and, in most cases, on a draft review document. While the focus of the Executive Order, and therefore of the draft Guidelines, is necessarily on agreements that warrant an environmental review, the draft Guidelines also clarify the process of ongoing environmental evaluation and assessment applicable to all agreements.

2. Specific Issues

Regarding specific issues, TEPAC and a number of commenters stressed the importance of initiating the reviews as early as feasible in the process in order to maximize the usefulness of environmental analysis in informing negotiating positions. The draft Guidelines incorporate this approach, though they recognize that no bright

line test is possible and that there should be sufficient information available about the United States' negotiating objectives to make analysis meaningful.

TEPAC and a number of commenters emphasized the importance of determining the appropriate scope of the environmental review ("scoping"). As a result, the draft Guidelines endeavor to address the scoping process in detail. They provide for early involvement of interested agencies and the public to help assure that significant issues are identified early in the process and that government resources are targeted effectively.

Commenters differed over whether reviews should normally examine environmental impacts outside the United States. TEPAC and several commenters recommended that reviews should presumptively examine such effects, while other commenters contended that examination of effects outside the United States should be limited. Consistent with the Executive Order, the draft Guidelines acknowledge that domestic impacts are the primary concern and priority of the reviews. However, the draft Guidelines provide that global and transboundary impacts will be included in the scoping process for every review, including opportunity for public input. The draft Guidelines further elaborate on some of the considerations relevant to inclusion of global and transboundary impacts in a review.

Several commenters contended that reviews should be presumptively done for agreements covered by Section 4(c) of the Order (for which reviews are not mandated), while other commenters generally favored a more limited application. The draft Guidelines provide that USTR, through the TPSC, will conduct an objective process for making decisions whether to conduct a review for a Section 4(c) agreement, and make the significance of reasonably foreseeable environmental impacts an essential criterion in such decisions. The draft Guidelines elaborate on considerations relevant to the assessment of significance, as well as noting operational constraints that may be appropriate to consider in certain circumstances. Further, the draft Guidelines provide that a decision not to conduct a review for a Section 4(c) agreement does not relieve agencies of their obligation to consider environmental issues under the process of ongoing assessment and evaluation applicable to all trade agreements.

A number of commenters suggested that the reviews should include an examination of changes expected to occur as a result of the trade agreement compared with the situation assuming no trade agreement. In order to accomplish this and to isolate any environmental impacts resulting from the proposed trade agreement from the other sources of environmental change, the draft Guidelines provide that environmental impacts will be analyzed in comparison to a base or baseline scenario.

Finally, many commenters acknowledged that prescription of a particular methodology for environmental review of trade agreements is not possible, given the variety of trade agreements and the emerging state of methodological development. However, they stressed that methodologies should be objective and science-based. The draft Guidelines provide that analysis should be based on scientific information and principles, documented experience, and objective data, while acknowledging assumptions and uncertainties in methodologies or data. TEPAC also recommended that interested agencies identify sources of data and analytical methodologies within and outside of the U.S. government, which could serve as a basis for specific environmental analyses. In response, the draft Guidelines provide that agencies should use best efforts to develop such assessment capacity.

Requests To Participate in Public Hearing

A public hearing will be held on Wednesday and Thursday, August 2 and 3, 2000, beginning at 9:30 am, at 1724 F Street NW., Washington, DC 20508. Persons wishing to provide oral testimony should provide written notification of their intention by Tuesday, July 25, 2000, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, room 122, 600 Seventeenth Street, NW., Washington, DC 20508. The notification should include: (1) the name, address and telephone number of the person presenting the testimony; and (2) the organization represented, if any.

Parties presenting oral testimony should also submit a written statement, in 20 copies, by Monday, July 31, 2000, to Gloria Blue at the above address. Remarks at the hearing should be limited to no more than ten minutes to allow for possible questions from the Chairs and the interagency panel. Participants should provide 20 typed copies of their oral statement.

Submission of Written Comments

Persons wishing to submit written comments on the draft Guidelines in response to this notice should provide 20 copies no later than Friday, August 25, 2000. Comments should be addressed to Gloria Blue at the above address, marked ATTN: Draft Guidelines for Implementation of Executive Order 13141—Environmental Review of Trade Agreements.

Submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

Dinah Bear,

General Counsel, Council on Environmental Quality.

Guidelines for Implementation of Executive Order 13141

I. Purpose of the Guidelines

1. The purpose of these Guidelines is to implement Executive Order 13141, Environmental Review of Trade Agreements. They are meant to ensure that consideration of reasonably foreseeable environmental impacts of trade agreements (both positive and negative), and identification of complementaries between trade and environment objectives, are consistent and integral parts of the trade and environmental policymaking process.

II. Environmental Review of Trade Agreements

1. Section 4(a) of the Executive Order identifies three categories of agreements for which an Environmental Review (ER) is mandated: (1) Comprehensive multilateral trade rounds; (2) bilateral or plurilateral free trade agreements; and (3) major new trade liberalization agreements in natural resource sectors.

2. Section 4(c) of the Executive Order provides that ERs may also be done for other agreements. The decision whether to conduct an ER in such cases shall be based on an objective assessment of the particular agreement.

3. The significance of reasonably foreseeable environmental impacts shall be an essential factor in determining whether to conduct an ER for Section 4(c) agreements. The assessment of this factor shall include consideration of the following:

a. The extent to which the agreement might affect environmentally sensitive resources and/or result in substantial changes in trade flows of products or services that could confer environmental harms or benefits;

b. The extent to which the agreement might affect U.S. environmental laws, regulations, policies, and/or international commitments; and

c. The magnitude and scope of reasonably foreseeable environmental impacts.

4. In certain circumstances, it may be appropriate also to consider operational constraints when determining whether to conduct an ER for Section 4(c) agreements. Such constraints may relate to the negotiation timetable, the lack of available relevant data and analytical tools, and the relative priority among competing needs for environmental expertise in trade-related activities.

5. The Executive Order anticipates that most sectoral liberalization agreements will not require an ER because it is expected that they are unlikely to result in significant environmental impacts.

6. A decision not to conduct an ER for a Section 4(c) agreement will not relieve the Federal government of the obligation to consider environmental issues under the process of ongoing assessment and review applicable to all trade agreements, *see* Section VIII. The decision not to conduct an ER may be reassessed as appropriate.

III. Initiation of the Written Environmental Review Process

A. General Principles

1. The overarching goal of the ER process is to ensure that, through the consistent application of principles and procedures, environmental considerations are integrated into the development of U.S. positions in trade negotiations. In order to accomplish this goal, the ER process should be initiated early enough to maximize the usefulness of environmental information and analysis for informing negotiating positions.

2. Pursuant to Section 5 of the Executive Order, the ER process shall not be a condition for the timely tabling of specific negotiating position.

B. Process Considerations

1. USTR, through the Trade Policy Staff Committee (TPSC) interagency process, shall initiate the ER process with a notice in the **Federal Register** as soon as possible once sufficient information exists concerning the scope of the proposed trade agreement. *See* Appendix A.

2. Environmental issues shall be analyzed by the relevant TPSC subcommittee(s) conducting the negotiation or, as appropriate, by a working group under the subcommittee established for such purpose. For purposes of these Guidelines, the term Environmental Review Group (ERG) refers to any TPSC group tasked with the environmental review of trade agreements under these Guidelines.

3. In order to expedite the initiation of the ER process for a particular trade agreement, it may be desirable to analyze discrete aspects of the proposed agreement as sufficient information becomes available. In all cases, the final ER document should address identified environmental impacts in a comprehensive manner.

4. For some agreements that fall under Section 4(c) of the Executive Order, the need for an ER may not be identified until after specific negotiating positions have been established or are under development. In such cases, the ER process shall be initiated as soon as feasible thereafter.

IV. Determining the Scope of the Environmental Review

A. General Principles

1. In order to target governmental resources effectively, the scope of the ER must be considered in advance of the analysis of potential environmental impacts. The early involvement of interested agencies and the public in the scoping process helps assure that the analysis is adequate and that issues are identified early in the process.

2. The scoping process involves the identification of significant issues to be analyzed in depth in the ER, along with the elimination from detailed study of those issues which are not significant or have been covered by prior reviews.

3. Scoping includes consideration of the environmental dimensions of the regulatory and trade policies at issue, including ways in which the trade agreement can complement U.S. environmental objectives.

4. USTR, through the TPSC, shall request public comment on the scope of the ER through the **Federal Register** Notice of Initiation, and shall seek the views of advisory committees, including the Trade and Environment Policy Advisory Committee (TEPAC). *See* Section VI and Appendix A.

B. The Scoping Process

1. Overview

a. The scoping process for the ER has two principal components: (i) identification of issues; and (ii) prioritization of issues. The first component focuses on soliciting input and determining the types of environmental impacts that could result from the proposed trade agreement. The second component focuses on prioritizing the significant issues that should be analyzed to determine environmental consequences of the trade agreement. The result of an effective scoping process is a targeted, analytical work plan.

b. Issue identification and prioritization is an iterative process. Negotiating positions are likely to undergo continual adjustment until the agreement is completed. The steps taken to establish the scope of the ER may, therefore, be revisited throughout the process.

2. Identification of Issues

a. This step in the scoping process is meant to identify the range of possible environmental concerns. However, not all issues identified will necessarily be analyzed in the ER. The second step in the scoping process, issue prioritization (described below), will be used to select important issues warranting analysis.

b. Solicitation of Information

(1) The scoping process shall draw upon the knowledge of any agency with relevant expertise in the subject matter under consideration, as well as the views of the public and advisory committees.

c. Information Relevant to Scoping

(1) Three types of information shall be considered when determining the scope of the ER:

(a) The scope and objectives of the proposed trade agreement;

(b) A realistic range of alternative approaches for accomplishing the broad objectives of the trade agreement; and

(c) Types of reasonably foreseeable environmental impacts.

d. Scope of the Proposed Trade Agreement

(1) The scope of the ER is a function of the scope of the proposed trade agreement. Thus, the ERG shall maintain continuing awareness of the negotiation goals as they evolve. Relevant TPSC working groups should confer with the ERG to ensure that the scope of the ER properly reflects emerging environmental issues.

e. Alternative Negotiating Approaches

(1) Where a range of alternative negotiating approaches is under consideration for accomplishing the broad objectives of the trade agreement, the scoping process should be used to gain an understanding of important

elements likely to be at issue in the negotiations.

(2) Negotiating approaches identified for analysis shall be compared with a base or baseline scenario. Alternative approaches may also include consideration of methods for addressing positive and negative environmental impacts. *See* Section V.

f. Types of Reasonably Foreseeable Environmental Impacts

(1) During the initial stages of scoping, a range of reasonably foreseeable environmental impacts (both positive and negative) should be considered for inclusion in the ER. *See* Appendix B. Later, as scoping progresses, some of the identified impacts may be eliminated from consideration through the process of prioritization described below.

(2) Domestic impacts are necessarily the primary concern and priority of the Executive Order and these Guidelines. However, the scoping process shall also consider pursuant to Section IV.B.4, whether it is appropriate and prudent to examine global and transboundary impacts.

(3) The ERG may consult, consistent with existing legal requirements, with academic, federal, state or local entities, and/or other interested groups that have relevant experience with economic and environmental analyses and modeling techniques.

3. Prioritization of Issues and Considerations for Establishing Scope

a. Once the environmental issues have been sufficiently identified, the ERG shall prioritize the issues and establish the scope of the ER.

b. Considerations for establishing ER scope include:

(1) The relative importance placed on a particular issue by governmental agencies, the informed public, and/or advisory committees;

(2) Availability of analytical tools capable of assessing environmental impacts at an adequate level of detail; and

(3) Existence of opportunities for building on or incorporating by reference work already performed or being performed elsewhere in the interagency process.

4. Special Considerations for the Scoping of Global and Transboundary Impacts

(1) The scoping process for every ER shall examine whether it is appropriate and prudent to examine such global and transboundary impacts.

(2) Evaluation of whether it is appropriate and prudent to examine global and transboundary impacts shall include consideration of the following:

(a) scope and magnitude of reasonably foreseeable global and transboundary impacts;

(b) implications for U.S. international commitments and programs for international cooperation;

(c) availability of necessary data and analytic tools for addressing impacts outside the U.S.;

(d) diplomatic considerations;

(e) availability of government resources.

V. Analytical Content

A. General Principles

1. Since trade agreements exhibit broad variation, and because the science of environmental impact modeling is rapidly evolving, it is likely that each ER will incorporate uniquely tailored analytical approaches. A different mix of analytical methodologies will be needed for different types of trade agreements.

2. Analysis shall be both qualitative and quantitative and environmental impacts should be analyzed on the basis of scientific information and principles, documented experience and objective data. The analytical process should take into consideration assumptions and/or uncertainty in the data and methodologies and document any limitations due to those assumptions or uncertainties.

B. Analysis of Regulatory Environmental Impacts

1. The ER shall examine the extent to which the trade agreement has impacts on U.S. environmental laws and obligations. Examples of such impacts include the ability to maintain, strengthen and enforce laws, regulations and policies on pollution control; control of toxic and hazardous wastes and materials; protection of natural resources, wildlife and endangered species; product standards relevant to human health, safety, and the environment; control and regulation of pesticides; food safety; and the public's ability to obtain information regarding the environment.

C. Analysis of Economically Driven Environmental Impacts

1. The ER shall examine the extent to which environmental impacts may flow from economic changes estimated to result from the trade agreement. Application of modeling techniques may provide a useful approach for estimating such environmental impacts. However, modeling and other economic analytical techniques, in and of themselves, are unlikely to provide an exclusive means for assessing areas of environmental concern. For example, prevailing tools for assessing the economic effect of comprehensive trade agreements rely on aggregation of resource sectors to estimate broad trends, while estimates of environmental impact generally benefit from a more local or regional analysis.

2. Environmental impacts will be analyzed in comparison to a base or baseline scenario. Such a comparison shall take into account that changes are likely to occur in the economy and the environment even in the absence of the proposed trade agreement.

D. Identifying Ways To Address Environmental Impacts

1. Where significant environmental impacts have been identified, there shall be an analysis of options to mitigate negative impacts and create or enhance positive impacts. Options may include both changes to negotiating positions and also measures outside the trade agreement, including possible changes or additions to relevant U.S. environmental laws, regulations, policies, and other existing measures. To the extent possible, costs and benefits associated with various forms of mitigation or enhancement should also be assessed.

2. Where options that address identified impacts are described in the ER document, they may include options for post-agreement actions for agencies to consider, such as actions to assess the accuracy of the analysis.

VI. Public Participation

1. Provision for public participation in the review and assessment of environmental impacts of trade agreements is an essential component of these Guidelines, and is meant to ensure that the public and the government benefit from an open and inclusive process of trade policy development. In addition to public participation, the ERG shall also consult with advisory committees.

2. Procedures for public participation should be flexible, not excessively burdensome, and responsive to needs for expedited action and confidentiality. The period for public comment will normally be forty-five days, unless a shorter or longer period is appropriate.

3. Public notification shall be far enough in advance of critical junctures that, to the extent practicable, the public has a reasonable opportunity to prepare and submit comments to be taken into account during the ER process. Appendix A provides guidance on the types and content of public notification.

4. Public hearings, notices in relevant publications, web site postings, and other mechanisms shall be employed as appropriate and feasible. When the negotiating timetable permits, a public hearing or hearings shall normally be scheduled.

VII. Documentation of the Environmental Review Process

A. General Principles

1. The primary purpose for documenting the ER is to memorialize the process and explain the rationale for the conclusions reached. Documentation also provides numerous opportunities for integrating environmental considerations into negotiating positions. To that end, the Draft ER, along with public comments, shall serve as a means of informing the negotiation process.

2. In addition to informing the public, the Final ER should serve as a record for subsequent ERs so that lessons can be learned and information drawn from the effort.

3. In order to factor environmental considerations into the development of trade negotiations, relevant work products resulting from the ER process should be completed far enough in advance to be of benefit to the U.S. trade negotiators. However, pursuant Section 5 of the Executive Order, completion of ER documentation shall not be a condition for the timely tabling of specific negotiating positions.

4. The need for confidentiality shall be taken into account when developing ER documentation.

B. The Environmental Review Documents

1. Consistency in the ER process, to the extent allowed by variations in trade agreements, should be reflected through a consistent documentation format and content. Appendix C provides information on the structure and content that shall normally be followed for draft and final ER documents.

2. All ER documentation shall be written in plain language and shall provide the rationale for the scope of the analysis and the selected methodology. The ER documents shall also include a summary of key points raised in public comments.

3. A Draft ER document for public comment shall normally be prepared. However, in unusual circumstances, such as when a trade agreement is to be completed under a compressed negotiating schedule, a Draft document may not be possible. In such cases, the Final ER document shall be issued publically as soon as is feasible following the conclusion of the trade agreement.

4. As deemed appropriate by USTR through the TPSC process, amended ER document(s) (draft and/or final) may be completed and made available to the public when negotiations lead to a trade agreement with environmental implications that are substantially different from those analyzed.

VIII. The Process of Ongoing Environmental Assessment and Evaluation

1. It is the continuing responsibility of the Federal government to factor environmental considerations into the development of its trade negotiating objectives and positions. This is accomplished for all trade agreements through a process of ongoing assessment and evaluation, including those cases where an ER is not conducted.

2. USTR shall facilitate the process of ongoing assessment and evaluation of trade agreements through early consultations with interested agencies, advisory committees and the public. In notices USTR issues requesting comment on broad issues early in the development of a trade agreement, USTR shall also normally request comment on environmental issues.

3. Agencies should bring important environmental issues to the attention of the relevant TPSC subcommittee(s). If post-agreement actions are warranted or desirable, they may be undertaken by the responsible agency.

4. Agencies shall use best efforts to identify sources of data and analytical methodologies available within and outside of the U.S. government, which would then provide a foundation for subsequent specific environmental analyses. A list of such sources shall be created and made available to the public. The list may be updated over time, including on the basis of comments from the public.

IX. Administrative Considerations

A. Roles and Responsibilities

1. Regardless of whether a written ER is mandated, USTR shall initiate the TPSC process for examining environmental issues as early as feasible in the consideration of potential trade agreements. For those agreements falling within the 4(c) category, USTR, through the TPSC, shall also determine whether an agreement warrants an ER. The decision whether to proceed with an ER shall be reflected in the TPSC paper(s) initiating negotiations. These paper(s) shall include, as appropriate, discussion of the environmental issues identified at this early stage in the TPSC process, and recommendations on how they should be addressed.

2. USTR, through the TPSC, shall conduct the ER. Environmental issues shall be analyzed by the relevant TPSC subcommittee(s) conducting the negotiation and/or, as appropriate, an ERG established for such purpose. Membership in the ERG shall be open to all interested agencies, and shall include, at a minimum, those agencies with relevant expertise in economic and environmental assessment.

3. In order for the Executive Order to be effectively implemented, it is essential that adequate resources be available. Upon request from USTR, with the concurrence of the Deputy Director for Management of the Office of Management and Budget, Federal agencies shall, to the extent permitted by law and subject to the availability of appropriations, provide analytical and financial resources and support, including the detail of appropriate personnel to USTR to carry out these Guidelines.

4. While environmental analyses of an agreement shall draw upon multiple agency perspectives, CEQ and agencies with environmental expertise shall play a prominent role in the conduct of environmental reviews. Environmental agencies shall bear principal responsibility for providing the expertise necessary to analyze impacts on environmental media and natural resources within their areas of specialization.

B. Implementation and Oversight

1. CEQ and USTR shall jointly exercise general oversight of the implementation of these Guidelines including their periodic review and update as necessary.

2. These Guidelines are intended only to improve the internal management of the executive branch and do not create any right, benefit, trust or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or any person.

Appendix A: Public Participation Considerations

This appendix provides details on the format for particular elements of public participation described in the Guidelines. The time between key steps in the trade negotiation process will vary depending on the type and scope of the proposed agreement as well as the dynamics of the negotiation. For that reason, the precise number and timing of **Federal Register** notices and other mechanisms for public participation cannot be prescribed with specificity.

Federal Register notices shall also normally be posted on USTR's internet web site.

I. Minimum Requirements for Public Participation in Environmental Review Process

A. At a minimum, the public shall be involved at the following stages of the Environmental Review process:

1. Notice of Intent to Conduct Environmental Review (may be combined with other notices USTR issues early in the development of a trade agreement)

2. Notification of Intent to Initiate Environmental Review and Request for Comments on the Scope of Environmental Review

3. Notification of Availability of the Draft Environmental Review document and Request for Comments (in the normal case where a draft document is prepared)

4. Notification of Availability of the Final Environmental Review document

B. USTR shall also normally seek public views on environmental issues though periodic meetings with advisory committees and the interested public.

II. Guidance for Particular Public Notifications

A. Notice of Intent to Conduct Environmental Review

1. USTR shall notify the public of a decision to conduct an Environmental Review of the agreement. This notice may be combined with USTR notices requesting comment on broad issues early in the development of a trade agreement, which normally will request comment on environmental issues.

B. Notice of Intent to Initiate Environmental Review and Request for Comments on Scope

1. The notice and request shall normally provide information on the following subjects:

a. key US negotiating objectives,

b. the elements and topics expected to be under consideration for coverage by the proposed agreement,

c. the countries expected to participate in the agreement,

d. the sectors of the US economy likely to be affected (if known),

e. environmental issues already identified through the interagency process as potentially significant.

2. The notice may also explain how the public can obtain more information about the scoping process.

3. It may be possible to combine this notice with **Federal Register** notices issued for other purposes (*e.g.*, when USTR issues requests comment on broad issues associated with the trade agreement early in its development).

4. It may also be appropriate to request comments on the scope of the environmental review on multiple occasions as new information emerges and/or negotiating objectives shift.

C. Notice of Availability of Draft Environmental Review Document and Request for Comments

1. In the normal circumstance where a Draft Environmental Review document is prepared, the Draft ER shall be made available to the public through publication of a notice of availability in the **Federal Register**, and comments from the public will be requested.

D. Notice of Availability of Final Environmental Review Document

1. The Final Environmental Review document shall be made available to the public through publication of a notice of availability in the **Federal Register**.

E. Availability of Public Comments

1. Public comments on environmental issues relating to the particular trade agreement shall be available for public review in the USTR reading room.

F. Revision of Guidelines

1. USTR and CEQ through the TPSC may on occasion find it appropriate to revise and/or update these Guidelines. Public participation in the revision process shall include notification of the intent to revise and an opportunity for public comment on any significant revisions.

Appendix B: Types of Potential Environmental Impacts for Consideration

This appendix provides a list of types of impacts and may be useful for identifying the range of reasonably foreseeable environmental impacts for a proposed trade agreement. The list is illustrative and is intended to provide a general frame-of-reference for assisting in establishing the scope of the ER. The scope of any review must be determined on a case-by-case basis and all reasonably foreseeable environmental effects, both positive and negative, should be considered during scoping for the environmental review whether or not they are included on this list.

Scoping with respect to economic effects typically will result from an iterative exchange between those responsible for economic analysis and those with expertise in various areas of environmental concern. Similarly, with respect to the potential effects on environmental regulations of proposed trade disciplines, the scoping will typically involve an iterative exchange between those expert in the development and interpretation of trade texts and those expert in the development and interpretation of various fields of environmental regulation.

I. Regulatory Effects

A. Potential impacts of the proposed trade agreement on U.S. environmental regulations, statutes, other binding obligations such as multilateral environmental agreements.

B. Potential impacts of the proposed trade agreement on environmental policy instruments and other commitments.

II. Economic Effects (Compared to a Base or Projected Baseline)

A. Products, processes, environmentally sensitive sectors or regions that may be affected by the proposed trade agreement.

B. Changes in types or characteristics of goods and services and their distribution.

C. Changes in volume, pattern, and modes of transportation (*e.g.*, relating to invasive species or pollution impacts of transportation equipment and infrastructure).

D. Structural changes (*e.g.*, expansion or contraction of an environmentally sensitive sector in a certain country or region).

E. Technology effects involving changes in the process of production, including use of environmentally responsible technology.

F. Effect of the size of economies involved.

III. Environmental Effects (Related to Economic Effects Identified Above)

A. Changes in level, intensity, geographic distribution and temporal scope of variables used to measure the affected environment in comparison with base values (using either base year or baseline trend as appropriate).

B. Interaction of trade-related impacts with other impacts on the relevant media or resources.

C. Environmental effects resulting from any changes of standards that stem from economic effects.

IV. Environmental Media and Resources

A. Air quality and atmosphere (including climate, ozone).

B. Fresh water quality and resources (including both surface and ground), soil retention and quality.

C. Protected or environmentally sensitive terrestrial and marine areas, (*e.g.*, national parks, national wildlife refuges, wetlands, marine sanctuaries).

D. Endangered species and other species identified as significant under law (*e.g.*, marine mammals, migratory birds).

E. Marine, aquatic and terrestrial biodiversity, including species, genetic variety and ecosystems and the potential for invasive species to compromise such biodiversity; also ecosystem productivity and integrity, living resources and ecosystem services.

F. Environmental quality related to human health, including changes in environmental exposure to toxic substances (*e.g.*, increases or decreases in exposure to pesticide residues on food).

G. Transboundary and global impacts may include those on:

1. Places not subject to national jurisdiction or places subject to shared jurisdiction, such as Antarctica, atmosphere (including ozone and climate change features), outer space, and the high seas;

2. Migratory species, including straddling and highly migratory fish stocks and whale;

3. Impacts relating to other environmental problems identified by the international community as having a global dimension and warranting a global response;

4. Transboundary impacts involving the boundaries of the United States.

Appendix C: Structure and Content of Environmental Review Documents

This appendix provides details on the structure and content of the draft and final environmental review documents. In certain circumstances (e.g. confidentiality, compressed schedule) it may be necessary to adopt a modified documentation format, however, each ER document shall normally consist of the following sections:

(1) Summary
(2) Table of Contents
(3) Objectives of the Proposed Trade Agreement
(4) Scope of Environmental Impacts Reviewed
(5) Environmental Impacts & Response Options
(6) Findings and Conclusions
(7) List of Preparers
(8) Appendices

I. Guidance for Particular ER Document Sections

A. The *Objectives* section of the ER document should present an overview of the goals and negotiating history of the particular trade agreement under consideration. This section may highlight the perceived benefits of the agreement and related objectives for pursuing it.

B. The *Scope of Impacts* section should describe only those resources and/or regulations that were selected for review through the scoping process. This section should not be a compendium of all potentially impacted areas, but only those considered by the ERG to be sufficiently important to warrant analysis in the ER. This section of the ER document should also provide a brief presentation of the rationale employed during the issue prioritization process and the criteria used for establishing the scope of the ER and eliminating issues deemed irrelevant.

C. The *Environmental Impacts* section of the document should describe the expected impacts of those negotiating positions selected for review, which should be compared to a base or baseline scenario that estimates conditions that would exist in the absence of the proposed trade agreement. The described impacts should include both beneficial and adverse impacts. This section should summarize the analytical methodology used in determining the environmental impacts, including assumptions made and uncertainties in the data and methodology (a description of the methodology may best be provided in an appendix). The Environmental Impacts section of the ER document may also include a description of actions proposed for addressing negative impacts and/or for enhancing beneficial consequences of the proposed trade agreement.

D. The *Conclusions* section of the document should summarize the potential environmental impacts expected from the proposed trade agreement, and may present options for addressing those impacts. This section of the document may also include discussion of any post-agreement actions when responsible agencies determine that such actions are warranted or desirable.

E. The number and nature of *Appendices* for each Environmental Review document will vary according to the nature of the trade agreement under review. In general, the use of appendices is encouraged whenever inclusion of technical and/or supporting data would improve clarity and aid in the understanding of the review process. At a minimum, a summary of key issues identified by the public during the ER process should be included as an appendix of both the draft and final ER documents.

[FR Doc. 00–17418 Filed 7–10–00; 8:45 am]
BILLING CODE 3190–01–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Fairfax County, Virginia

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement in cooperation with the Virginia Department of Transportation (VDOT) for proposed improvements to the Capital Beltway (Interstate 495) in Fairfax County, Virginia for approximately 14 miles from Backlick Road (Route 617) to the American Legion Memorial Bridge at the Virginia/Maryland State line.

FOR FURTHER INFORMATION CONTACT: Edward Sundra, Environmental Specialist, Sr., Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240–0249, Telephone 804–775–3338.

SUPPLEMENTARY INFORMATION: In 1997, a Major Investment Study (MIS) was completed in accordance with 23 CFR 450.318 which examined the transportation problems associated with the Capital Beltway in Virginia and identified possible solutions to address those problems as well as future transportation needs in the area. The MIS resulted in the determination that highway improvements which promote high occupancy vehicle (HOV) and bus transit use would be the most effective transportation investment to serve current and future demand on the Capital Beltway. The MIS also recommended that potential rail transit improvements serving the Capital Beltway corridor be studied on a regional basis by an appropriate transit agency or multi-jurisdictional team.

In 1998, FHWA and VDOT initiated the National Environmental Policy Act (NEPA) process for the proposed recommendations resulting from the MIS. Based on a preliminary assessment of the project area and potential environmental impacts, FHWA and VDOT cooperatively agreed to prepare an Environmental Assessment in accordance with 40 CFR 1501.3(b) and 23 CFR 771.119(a) which permits the preparation of an Environmental Assessment when the significance of the environmental impacts are not clearly established and the preparation of the Environmental Assessment would assist agency decision making regarding the

need for an Environmental Impact Statement.

To provide additional definition to the MIS recommendations, alternatives for interchange improvements, mainline configurations, and direct HOV access were developed and evaluated. Following an extensive and ongoing public involvement and outreach effort involving citizen workshops and information meetings, newsletters, a telephone hot-line, a website, and business/civic/neighborhood meetings, the alternatives were refined through an iterative screening process which determined the feasibility of implementing the various combinations of mainline configurations and interchange concepts. This screening process was based on engineering, operational, and environmental criteria. The most effective mainline and interchange combinations were combined into several "end-to-end" alternatives and carried forward for more detailed environmental analysis. Based on the initial results of this environmental analysis, it was determined that the proposed improvements to the Capital Beltway would result in greater environmental impacts than originally anticipated requiring the preparation of an Environmental Impact Statement.

Alternatives being considered for improving the Capital Beltway include various combinations of the following: Widening the existing roadway, implementing lane management strategies such as HOV lanes or express/local lanes, reconstructing existing interchanges, and providing new direct access points for HOV traffic. Other alternatives being considered include the Transportation System Management alternative and the No-Build alternative. Additional information on the scope of the proposed Capital Beltway improvements and the alternatives that will be evaluated in the Environmental Impact Statement is available on the Internet at *http://project1.parsons.com/capitalbeltway*.

This Environmental Impact Statement will replace the Environmental Assessment currently being prepared by FHWA and VDOT for the proposed Capital Beltway while building upon the scoping, engineering, and environmental work as well as the public involvement effort conducted to date. As part of the early coordination for the Environmental Assessment, letters describing the proposed action and soliciting input were sent to the appropriate Federal, State and local agencies, private organizations, citizens, and interest groups who have expressed or are known to have an interest in this proposal. Coordination with these agencies, organizations and individuals will continue as the Environmental Impact Statement is prepared. All Federal, State, and local agencies contacted during the early coordination for the Environmental Assessment will be notified of the FHWA's intent to prepare an Environmental Impact Statement for the proposed Capital Beltway improvements and provided an additional opportunity to comment on its proposed scope. Similar notice will be given to private organizations, citizens, and interest groups that have previously expressed or are known to have interest in this proposal. In addition, public input will continue to be solicited through the ongoing public involvement and outreach effort. Public hearings will be held when the draft Environmental Impact Statement is completed. Public notices will be given of the times and places of the hearings, and the draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings. Finally, preparation of this Environmental Impact Statement will be coordinated closely with the Maryland State Highway Administration's Capital Beltway Corridor Transportation Study, the Virginia Department of Rail and Public Transportation's Capital Beltway Corridor Rail Feasibility Study, and the Environmental Impact Statement currently being prepared for the Dulles Corridor Rapid Transit Project.

Although no formal scoping meeting is planned at this time, comments are invited from all interested parties to ensure that the full range of issues related to this proposed action are identified and taken into account. Comments or questions concerning the proposed action and draft Environmental Impact Statement should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action)

Authority: 23 U.S.C. § 315; 49 CFR 1.48.

Issued on June 30, 2000.

Edward S. Sundra,

Environmental Specialist, Sr.

[FR Doc. 00–17485 Filed 7–10–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this 30-day notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on May 18, 2000 (65 FR 31624).

DATES: Comments must be submitted on or before August 11, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 C.F.R. 1320.5, 1320.8(d)(1), 1320.12. On February 9, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 6438. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60

days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Hours of Service Regulations.
OMB Control Number: 2130–0005.
Type of Request: Extension of a currently approved collection.
Affected Public: Businesses.
Form(s): FRA F 6180.3.
Abstract: The collection of information is due to the railroad hours of service regulations set forth in 49 CFR Part 228 which require railroads to collect hours of duty for covered employees, and records of train movements. Railroads whose employees have exceeded maximum duty limitations must report the circumstances. Also, a railroad that has developed plans for construction or reconstruction of sleeping quarters (Subpart C of 49 CFR Part 228) must obtain approval of the Federal Railroad Administration (FRA) by filing a petition conforming to the requirements of Sections 228.101, 228.103, and 228.105.
Annual Estimated Burden Hours: 4,067,432.

Title: Railroad Operating Rules.
OMB Control Number: 2130–0035.
Type of Request: Extension of a currently approved collection.
Affected Public: Businesses.
Form(s): N/A.
Abstract: The collection of information is due to the railroad operating rules set forth in 49 CFR Part 217 which require Class I and Class II railroads to file with FRA copies of their operating rules, timetables, and timetable special instructions, and subsequent amendments thereto. Class III railroads are required to retain copies of these documents at their system headquarters. Also, 49 CFR 220.21(b) prescribes the collection of information which requires railroads to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. These documents must be made available to FRA upon request.
Annual Estimated Burden Hours: 131,192.

Title: State Safety Participation Regulations and Remedial Actions.
OMB Control Number: 2130–0509.
Type of Request: Extension of a currently approved collection.
Affected Public: Businesses.
Form(s): FRA F 6180.10/29/29A/33/61/67/68/68A/69/96/96A/96B
Abstract: The collection of information is set forth under 49 CFR Part 212, and requires qualified state inspectors to provide various reports concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations to FRA for monitoring and enforcement purposes. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.
Annual Estimated Burden Hours: 9,467.

Title: Rear-End Marking Devices.
OMB Control Number: 2130–0523.
Type of Request: Extension of a currently approved collection.
Affected Public: Businesses.
Form(s): N/A.
Abstract: The collection of information is set forth under 49 CFR Part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current "Guidelines for Testing of FRA Rear End Marking Devices." Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests, number of samples tested, and the test results in order to demonstrate compliance with the performance standard.
Annual Estimated Burden Hours: 8.

Title: Certification of Glazing Materials.
OMB Control Number: 2130–0525.
Type of Request: Extension of a currently approved collection.
Affected Public: Businesses.
Form(s): FRA F 6180.3.
Abstract: The collection of information is set forth under 49 CFR Part 223 which requires the certification and permanent marking of glazing materials by the manufacturer along with the responsibility of the manufacturer to make available test verification data to railroads and FRA upon request.
Annual Estimated Burden Hours: 1,010.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, D.C., 20503. Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. §§ 3501–3520.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–17497 Filed 7–10–00; 8:45 am]
BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress

The attached document, 24th Annual Report to Congress on the Automotive Fuel Economy Program, was prepared pursuant to 49 U.S.C. 32916 *et seq.* which requires that "the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of the average fuel economy standards under this part."

The 24th Annual Report to Congress on the Automotive Fuel Economy Program summarizes the fuel economy performance of the vehicle fleet and the activities of the National Highway Traffic Safety Administration (NHTSA) during 1999. Included in this report is a section summarizing rulemaking activities during 1999. This report is available on the Internet at: *http://www.nhtsa.dot.gov/cars/problems/studies/fuelecon/index.html*. To obtain paper copies of this document, you may

contact NHTSA's Publications Ordering and Distribution Services on (202) 366–1566.

Issued on: June 28, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

Automotive Fuel Economy Program; Twenty-Fourth Annual Report to Congress, Calendar Year 1999

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Section I: Introduction

The Twenty-fourth Annual Report to Congress on the Automotive Fuel Economy Program summarizes the fuel economy performance of the vehicle fleet and the activities of the National Highway Traffic Safety Administration (NHTSA) during 1999, in accordance with 49 U.S.C. 32916 *et seq.*, which requires the submission of a report each year. Included in this report is a section summarizing rulemaking activities during 1999.

The Secretary of Transportation is required to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States market. The authority to administer the program was delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include:

(1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary;

(2) Promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards;

(3) Considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them;

(4) Preparing reports to Congress annually on the fuel economy program;

(5) Enforcing fuel economy standards and regulations; and

(6) Responding to petitions concerning domestic production by foreign manufacturers, and other matters.

Passenger car fuel economy standards were established by Congress for Model Year (MY) 1985 and thereafter at a level of 27.5 miles per gallon (mpg). NHTSA is authorized to amend the standard above or below that level. The agency has established light truck standards each year, but Congress has mandated through the DOT Appropriations Acts for fiscal years 1996 through 2000, no increase from the MY 1996 value of 20.7 mpg for MYs 1998 through 2002. All current standards are listed in Table I–1.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 2001

[In mpg]

Model year	Passenger cars	Light Trucks (1)		
		Two-wheel drive	Four-wheel drive	Combined (2) (3)
1978	(4)18.0			
1979	(4)19.0	17.2	15.8	
1980	(4) 20.0	16.0	14.0	(5)
1981	22.0	(6)16.7	15.0	(5)
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	(4) 27.5	(7)19.7	(7)18.9	(7)19.5
1986	(8) 26.0	20.5	19.5	20.0
1987	(9) 26.0	21.0	19.5	20.5
1988	(9) 26.0	21.0	19.5	20.5
1989	(10) 26.5	21.5	19.0	20.5
1990	(4) 27.5	20.5	19.0	20.0
1991	(4) 27.5	20.7	19.1	20.2
1992	(4) 27.5			20.2
1993	(4) 27.5			20.4
1994	(4) 27.5			20.5
1995	(4) 27.5			20.6
1996	(4) 27.5			20.7
1997	(4) 27.5			20.7
1998	(4) 27.5			20.7
1999	(4) 27.5			20.7
2000	(4) 27.5			20.7
2001	(4) 27.5			20.7

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. Standards for MY 1980 and beyond are for light trucks with a GVWR of 8,500 pounds or less.

[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the standard of 17.2 mpg.

[3] For MYs 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine all light trucks and comply with the combined standard.

[4] Established by Congress in Title V of the Motor Vehicle Information and Cost Savings Act.

[5] A manufacturer whose light truck fleet was powered exclusively by basic engines which were not also used in passenger cars could meet standards of 14 mpg and 14.5 mpg in MYs 1980 and 1981, respectively.
[6] Revised in June 1979 from 18.0 mpg.
[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.
[8] Revised in October 1985 from 27.5 mpg.
[9] Revised in October 1986 from 27.5 mpg.
[10] Revised in September 1988 from 27.5 mpg.

Section II: Vehicle Fuel Economy Performance and Characteristics

A. Fuel Economy Performance by Manufacturer

The fuel economy achievements for domestic and foreign-based manufacturers in MY 1999 were updated to include final EPA calculations, where available, since the publication of the *Twenty-third Annual Report to the Congress*. These fuel economy achievements and current projected data for MY 1999 are listed in Tables II–1 and II–2.

Overall fleet fuel economy for passenger cars was 28.3 mpg in MY 1999, a decrease of 0.4 mpg from the MY 1998 level. For MY 1999, CAFE values increased above MY 1998 levels for six of 17 passenger car manufacturers' fleets. (See Table II–1.) These six companies accounted for more than 12 percent of the total MY 1999 production. Manufacturers continued to introduce new technologies and more fuel-efficient models, and some larger, less fuel-efficient models. For MY 1999, the overall domestic manufacturers' fleet average fuel economy was 28.2 mpg. For MY 1999, Honda and Toyota domestic passenger car CAFE values rose 4.9 mpg and 4.7 mpg from their 1998 levels, while Ford/Mazda and General Motors fell 0.4 mpg and 0.2 mpg, respectively, from their MY 1998 levels. Nissan remained at its MY 1998 level of 29.9 mpg. Overall, the domestic manufacturers' combined CAFE increased 0.1 mpg above the MY 1998 level.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER* MODEL YEARS 1998 AND 1999

Manufacturer	Model year CAFE (mpg)	
	1998	1999
Domestic:		
Chrysler	28.7	.....
DaimlerChrysler	.....	27.5
Ford/Mazda	27.6	27.2
General Motors	27.8	27.6
Honda	29.5	34.4
Mitsubishi	.....	28.8
Nissan	29.9	29.9
Toyota	28.6	33.3
Sales weighted average (domestic)	28.1	28.2
Import:		
BMW	25.4	25.4
Chrysler	25.8	.....
DaimlerChrysler	.....	26.3
Fiat	13.5	13.6
Ford/Mazda	28.9	30.1
General Motors	28.9	27.9
Honda	34.6	29.4
Hyundai	31.5	31.4
Kia	30.9	31.2
Mercedes-Benz	27.2	.....
Mitsubishi	29.7	29.6
Nissan	30.7	29.5
Porsche	24.5	24.2
Subaru	27.6	27.5
Suzuki	35.9	35.4
Toyota	30.7	28.0
Volvo	25.6	26.2
Volkswagen	28.7	28.2
Sales weighted average (import)	30.0	28.4
Total fleet average	28.7	28.3
Fuel economy standards	27.5	27.5

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER MODEL YEARS 1998 AND 1999

Manufacturer	Model year CAFE (mpg) combined	
	1998	1999
Chrysler	20.5	.....
DaimlerChrysler	.....	20.7
Ford/Mazda	20.1	20.4
General Motors	21.1	20.0
Honda	27.1	24.2
Isuzu	21.4	21.5
Kia	24.4	24.2
Land Rover	17.2	17.0
Mercedes-Benz	21.3	.....
Mitsubishi	22.5	22.3
Nissan	22.2	21.1
Suzuki	27.4	24.3
Toyota	23.5	22.6
Volkswagen	.....	19.1
Total fleet average	20.9	20.7
Fuel economy standards	20.7	20.7

In MY 1999, the fleet average fuel economy for import passenger cars decreased by 1.6 mpg from the MY 1998 CAFE level to 28.4 mpg. Five of the 16 import car manufacturers increased their CAFE values between MYs 1998 and 1999. Figure II–1 illustrates the changes in total new passenger car fleet CAFE from MY 1978 to MY 1999.

The total light truck fleet CAFE decreased 0.2 mpg below the MY 1998 CAFE level of 20.9 mpg (see Table II–2). Figure II–2 illustrates the trends in total light truck fleet CAFE from MY 1979 to MY 1999.

Six passenger cars (BMW, DaimlerChrysler import, Fiat, Ford/Mazda domestic, Porsche and Volvo) and four light truck manufacturers (Ford/Mazda, General Motors, Land Rover and Volkswagen) are projected to fail to achieve the levels of the MY 1999 CAFE standards. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for non-compliance. Some MY 1999 CAFE values may change when final figures are provided to NHTSA by EPA in mid-2000. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

Mitsubishi achieved 75 percent domestic content for its United States built passenger cars to become the fourth foreign-based manufacturer with a domestic fleet. These domestic-built vehicles do not appreciably affect the domestic fleet CAFE.

BILLING CODE 4910–59–P

Figure II-1

CAFE PERFORMANCE
PASSENGER CARS

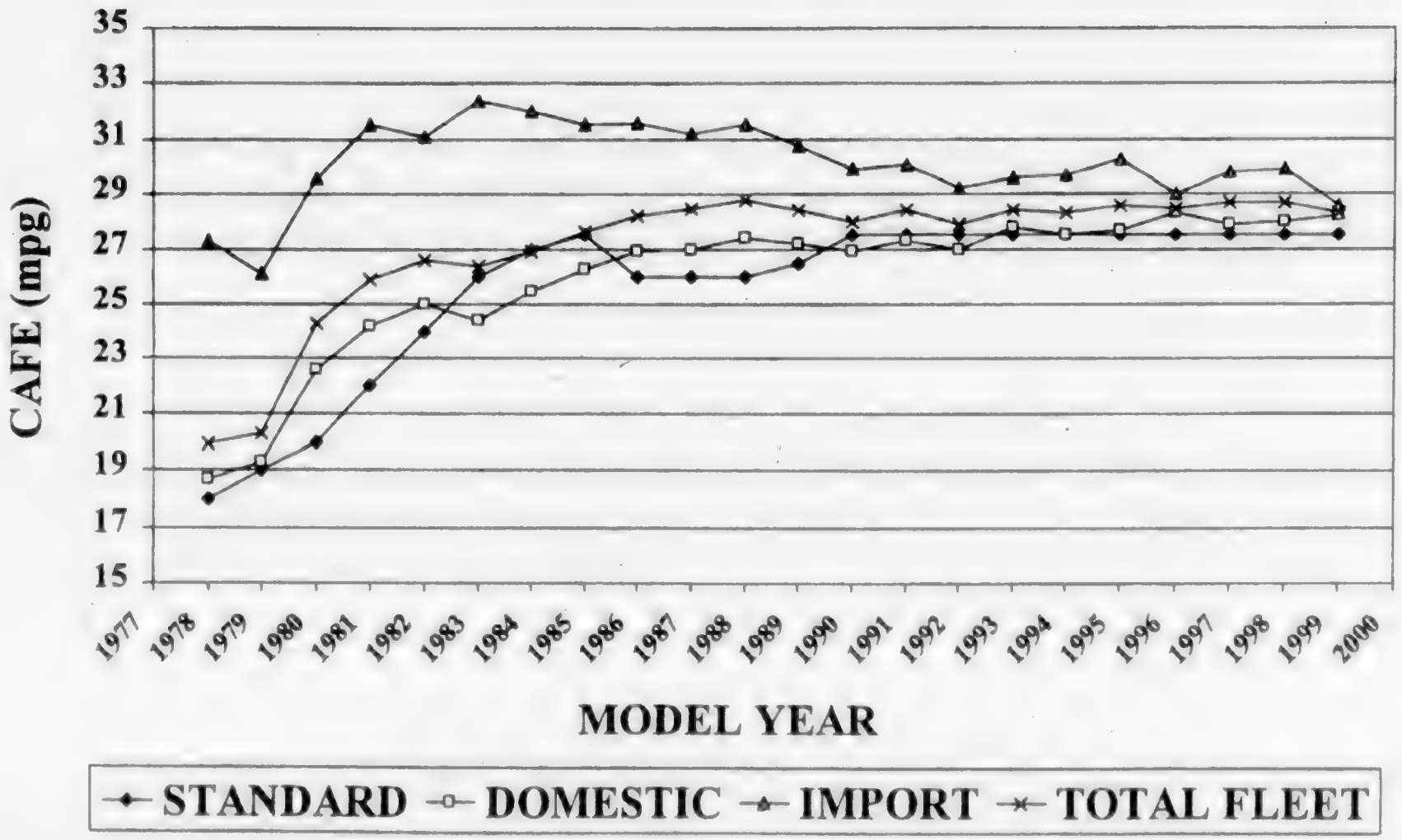

Figure II-2

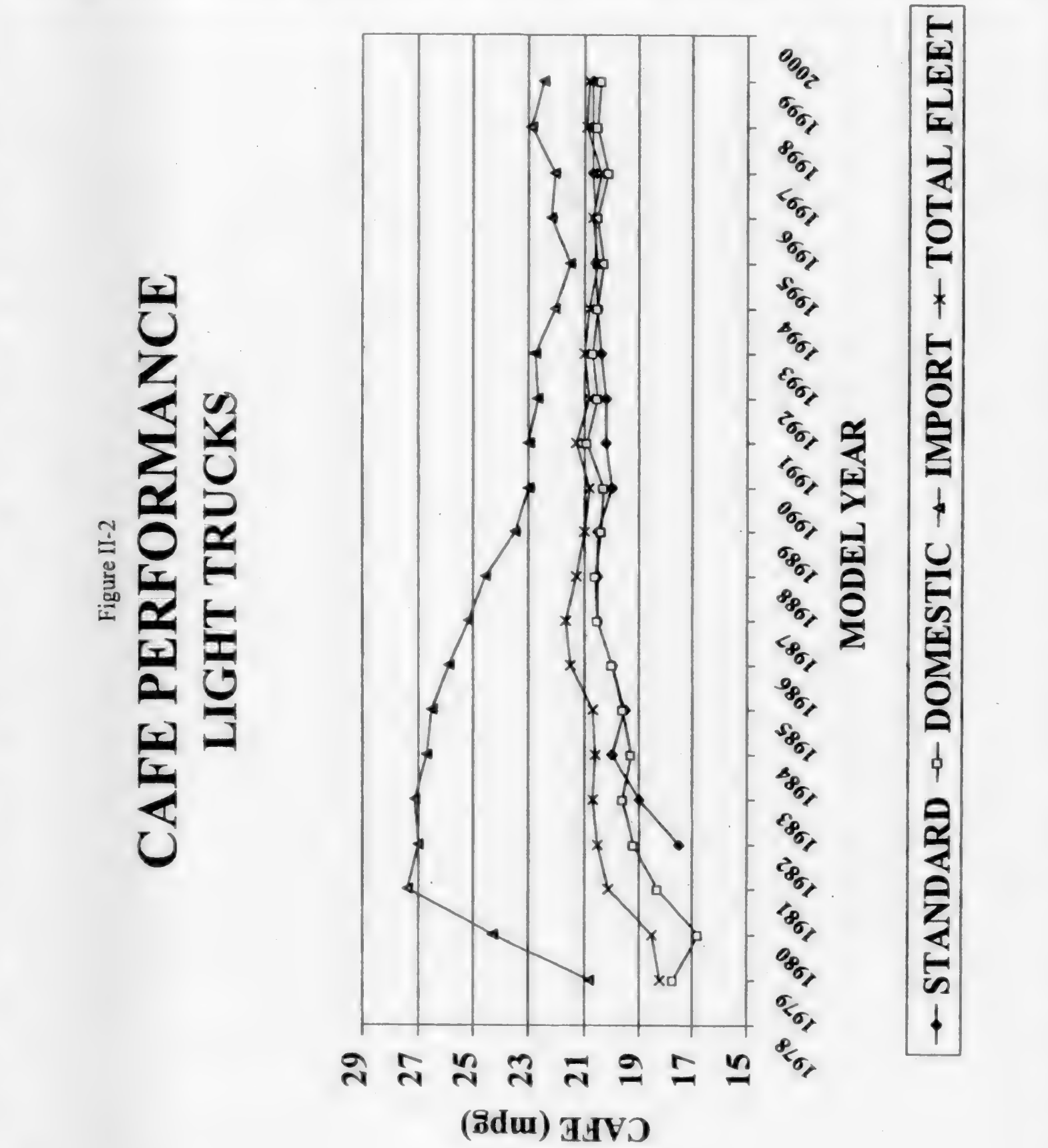

In November 1998, a domestic manufacturer, Chrysler Corporation, merged with an import manufacturer, Daimler-Benz AG, to form a new company, DaimlerChrysler, making it the fifth-largest automaker in the world.

B. Characteristics of the MY 1999 Passenger Car Fleet

The characteristics of the MY 1999 passenger car fleet reflect a continuing trend toward satisfying consumer demand for higher performance cars. (See Table II–3.) From MY 1998 to MY 1999, horsepower/100 pounds, a measure of vehicle performance, increased from 5.11 to 5.30 for domestic passenger cars and from 4.93 to 5.03 for import passenger cars. The total fleet average for passenger cars increased from 5.05 horsepower/100 pounds in MY 1998 to 5.21 in MY 1999, the highest level in the 43 years for which the agency has data. Compared with MY 1998, the average curb weight for MY 1999 increased by five pounds for the domestic fleet and increased by 108 pounds for the import fleet. The average curb weight for the total fleet of passenger cars increased from 3,075 pounds in MY 1998 to 3,116 pounds in MY 1999, primarily because of the average curb weight increase for the import fleet. Average engine displacement increased from 174 to 176 cubic inches for domestic passenger cars and increased from 137 to 146 cubic inches for import passenger cars from MY 1998 to MY 1999.

The 0.1 mpg fuel economy improvement for the MY 1999 domestic passenger car fleet may be attributed in part to mix shifts (in the segmentation by EPA size class), improved engine technology and the use of more automatic four-speed transmissions and automatic transmissions with lockup clutches.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MYS 1998 AND 1999

Characteristics	Total fleet		Domestic fleet		Import fleet	
	1998	1999	1998	1999	1998	1999
Fleet Average Fuel Economy, mpg	28.7	28.3	28.1	28.2	30.0	28.4
Fleet Average Curb Weight, lbs	3075	3116	3119	3124	2992	3100
Fleet Average Equivalent Test Weight, lbs	3372	3418	3421	3432	3278	3392
Fleet Average Engine Displacement, cu. in	161	166	174	176	137	146
Fleet Average Horsepower/Weight ratio, HP/100 lbs	5.05	5.21	5.11	5.30	4.93	5.03
% of Fleet	100	100	65.7	66.2	34.3	33.8
Segmentation by EPA Size Class, %						
Two-Seater	0.7	1.4	0.2	0.6	1.7	2.8
Minicompact	0.4	0.6	0.0	0.3	1.2	1.2
Subcompact*	16.7	15.6	10.4	14.7	28.7	17.4
Compact*	35.8	31.7	35.8	35.1	35.8	25.1
Mid-Size*	34.1	38.2	35.4	30.8	31.6	52.9
Large*	12.3	12.5	18.2	18.6	1.0	0.6
Diesel Engines	0.19	0.16	0.0	0.0	0.6	0.5
Turbo or Supercharged Engines	2.0	4.4	1.2	3.9	3.6	5.4
Fuel Injection	100	100	100	100	100	100
Front-Wheel Drive	87.0	86.0	90.9	90.9	79.5	76.4
Automatic Transmissions	86.4	86.0	90.4	90.8	78.9	76.6
Automatic Transmissions with Lockup Clutches	99.2	99.8	99.0	99.8	99.8	99.8
Automatic Transmissions with Four or more Forward Speeds	92.0	95.1	90.8	94.0	94.8	98.1
% Electric	0.0	0.002	0.0	0.003	0.0	0.0

*Includes associated station wagons.

The size/class breakdown shows an increased trend primarily toward two-seater, minicompact, mid-size passenger and large cars with the reduction of subcompact and compact passenger cars for the overall fleet. The size/class mix in the domestic fleet showed a decrease in compact and mid-size passenger cars and an increase in two-seater, minicompact, subcompact and large passenger cars. The size/class mix in the import fleet showed a decrease in subcompact, compact and large passenger cars and an increase in two-seater and mid-size passenger cars. The import share of the passenger car market declined in MY 1999, as more foreign-based manufacturers achieved 75 percent domestic content for their U.S. and Canadian-assembled passenger cars.

The domestic fleet rose above its MY 1998 level in the share of turbocharged and supercharged engines. Diesel engines were only offered on certain Mercedes and Volkswagen models during MY 1999. Consequently, diesel engine shares decreased in MY 1999.

Passenger car fleet average characteristics have changed significantly since MY 1978 (the first year of fuel economy standards). (See Table II–4.) After substantial initial weight loss (from MY 1978 to MY 1982, the average passenger car fleet curb weight decreased from 3,349 to 2,808 pounds), the curb weight stabilized between 2,800 and 3,120 pounds. Table II–4 shows that the MY 1999 passenger car fleet has nearly equal interior volume and higher performance, but with more than 42 percent better fuel economy, than the MY 1978 fleet. (See Figure II–3.)

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS MODEL YEARS 1978–1999

Model year	Fuel economy (mpg)	Curb weight (lbs.)	Equivalent test weight (lbs.)	Interior space (cu. ft.)	Engine size (cu. in.)	Horsepower/ weight (hp/100 lb.)
1978	19.9	3349	3627	112	260	3.68
1979	20.3	3180	3481	110	238	3.72
1980	24.3	2867	3162	105	187	3.51
1981	25.9	2883	3154	108	182	3.43

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS MODEL YEARS 1978–1999—Continued

Model year	Fuel economy (mpg)	Curb weight (lbs.)	Equivalent test weight (lbs.)	Interior space (cu. ft.)	Engine size (cu. in.)	Horsepower/ weight (hp/100 lb.)
1982	26.6	2808	3098	107	173	3.47
1983	26.4	2908	3204	109	182	3.57
1984	26.9	2878	3170	108	178	3.66
1985	27.6	2867	3177	108	177	3.84
1986	28.2	2821	3127	106	169	3.89
1987	28.5	2805	3100	109	162	3.98
1988	28.8	2831	3100	107	161	4.11
1989	28.4	2879	3181	109	163	4.24
1990	28.0	2908	3192	108	163	4.53
1991	28.4	2934	3228	108	164	4.42
1992	27.9	3007	3307	108	169	4.56
1993	28.4	2971	3328	109	164	4.62
1994	28.3	3011	3317	109	169	4.79
1995	28.6	3047	3335	109	166	4.87
1996	28.5	3047	3352	109	164	4.92
1997	28.7	3071	3364	109	164	4.95
1998	28.7	3075	3372	109	161	5.05
1999	28.3	3116	3418	110	166	5.21

		3.47
		3.57
		3.66
		3.84
		3.89
		3.98
		4.11
		4.24
		4.53
		4.42
		4.56
		4.62
		4.79
		4.87
		4.92
		4.95
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Figure II-3

PASSENGER CAR FLEET AVERAGE CHARACTERISTICS

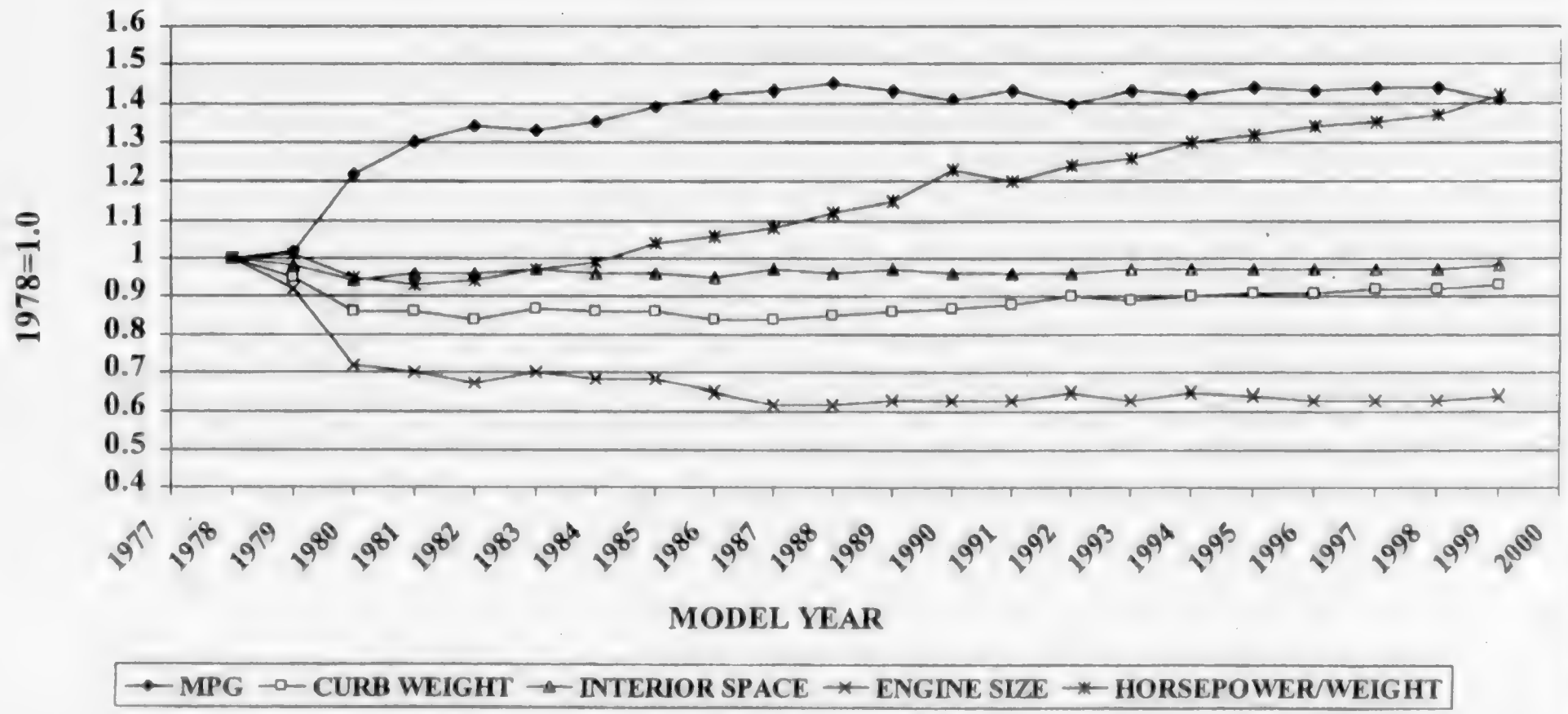

C. Characteristics of the MY 1999 Light Truck Fleet

The characteristics of the MY 1999 light truck fleet are shown in Table II–5. Light truck manufacturers are not required to divide their fleets into domestic and import fleets based on the 75-percent domestic content threshold used for passenger car fleets. The light truck fleet is subdivided into two-wheel drive or four-wheel drive classifications.

The MY 1999 average test weight of the total light truck fleet increased by 95 pounds over that for MY 1998. The average fuel economy of the fleet decreased by 0.2 mpg to 20.7 mpg. Diesel engine usage increased slightly in light trucks to 0.05 percent in MY 1999 from 0.02 percent in MY 1998. The share of the MY 1999 two-wheel drive fleet decreased by 1.9 percent from the MY 1998 level of 57.4 percent.

CAFE levels for light trucks in the 0–8,500 pounds gross vehicle weight (GVW) class increased from 18.5 mpg in MY 1980 to 21.7 mpg in MY 1987, before declining to 20.7 mpg in MY 1999, influenced by an increase in performance. Light truck production increased from 1.9 million units in MY 1980 to 6.4 million units in MY 1999. Light trucks comprised 43 percent of the total light duty vehicle fleet production in MY 1999, nearly 2.5 times more than the share in MY 1980.

D. Passenger Car and Light Truck Fleet Economy Averages

Figure II–4 illustrates an increase in the light duty fleet (combined passenger cars and light trucks) average fuel economy through MY 1987, followed by a gradual decline. (Also, see Table II–6.) Passenger car average fuel economy remained relatively constant for MYs 1987–1999. The overall decline in fuel economy illustrates a larger decrease in car fuel economy compared to light truck fuel economy.

TABLE II–5.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MYS 1998 AND 1999

Characteristics	Total fleet		Two-wheel drive		Four-wheel drive	
	1998	1999	1998	1999	1998	1999
Fleet Average Fuel Economy, mpg	20.9	20.7	22.4	22.2	19.1	19.1
Fleet Average Equivalent Test Weight, lbs	4435	4530	4255	4356	4679	4747
Fleet Average Engine Displacement, cu. in	243	251	228	239	263	267
Fleet Average Horsepower/Weight ratio, HP/100 lbs	4.23	4.24	4.20	4.29	4.26	4.17
% of Fleet	100	100	57.4	55.5	42.6	44.5
% of Fleet from Foreign-based Manufacturers	15.5	15.6	11.4	11.8	21.1	20.2
Segmentation by Type, %						
Passenger Van	18.5	17.1	31.4	29.9	1.3	1.2
Cargo Van	3.3	3.5	5.6	6.2	0.2	0.2
Small Pickup	7.3	3.2	12.8	5.8	0.0	0.0
Large Pickup:						
Two-Wheel Drive	17.1	17.9	29.7	32.3	0.0	0.0
Four-Wheel Drive	13.3	13.7	0.0	0.0	31.3	30.9
Special Purpose:						
Two-Wheel Drive	11.8	14.3	20.6	25.8	0.0	0.0
Four-Wheel Drive	28.7	30.2	0.0	0.0	67.3	67.8
Diesel Engines	0.02	0.05	0.01	0.08	0.04	0.03
Turbo/Supercharged Engines	0.25	0.52	0.01	0.08	0.56	1.1
Fuel Injection	100	100	100	100	100	100
Automatic Transmissions	86.1	89.8	85.0	88.6	87.6	91.3
Automatic Transmissions with Lockup Clutches	99.3	99.6	99.1	99.3	100	100
Automatic Transmissions with Four or More Forward Speeds	95.1	98.1	92.2	97.5	94.6	98.9
% Electric	0.01	0.01	0.02	0.02	0.00	0.00

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Table II-6

DOMESTIC AND IMPORT PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978-1999 (in MPG)

Model Year	Domestic			Import			All Cars	All Light Trucks	Total Fleet	Light Truck Share of Fleet (%)
	Car	Light Truck	Combined	Car	Light Truck*	Combined				
1978	18.7	...	...	27.3	...	...	19.9	...	...	...
1979	19.3	17.7	19.1	26.1	20.8	25.5	20.3	18.2	20.1	9.8
1980	22.6	16.8	21.4	29.6	24.3	28.6	24.3	18.5	23.1	16.7
1981	24.2	18.3	22.9	31.5	27.4	30.7	25.9	20.1	24.6	17.6
1982	25.0	19.2	23.5	31.1	27.0	30.4	26.6	20.5	25.1	20.1
1983	24.4	19.6	23.0	32.4	27.1	31.5	26.4	20.7	24.8	22.5
1984	25.5	19.3	23.6	32.0	26.7	30.6	26.9	20.6	25.0	24.4
1985	26.3	19.6	24.0	31.5	26.5	30.3	27.6	20.7	25.4	25.9
1986	26.9	20.0	24.4	31.6	25.9	29.8	28.2	21.5	25.9	28.6
1987	27.0	20.5	24.6	31.2	25.2	29.6	28.5	21.7	26.2	28.1
1988	27.4	20.6	24.5	31.5	24.6	30.0	28.8	21.3	26.0	30.1
1989	27.2	20.4	24.2	30.8	23.5	29.2	28.4	21.0	25.6	30.8
1990	26.9	20.3	23.9	29.9	23.0	28.5	28.0	20.8	25.4	30.1
1991	27.3	20.9	24.4	30.1	23.0	28.4	28.4	21.3	25.6	32.2
1992	27.0	20.5	23.8	29.2	22.7	27.9	27.9	20.8	25.1	32.9
1993	27.8	20.7	24.2	29.6	22.8	28.1	28.4	21.0	25.2	37.4
1994	27.5	20.5	23.5	29.7	22.0	27.8	28.3	20.8	24.7	40.2
1995	27.7	20.3	23.8	30.3	21.5	27.9	28.6	20.5	24.9	37.4
1996	28.1	20.5	24.1	29.6	22.2	27.7	28.5	20.8	24.9	39.4
1997	27.8	20.2	23.3	30.1	22.1	27.5	28.7	20.6	24.6	41.6
1998	28.1	20.5	23.3	30.0	22.9	27.6	28.7	20.9	24.6	44.5
1999	28.2	20.4	23.7	28.4	22.5	26.9	28.3	20.7	24.5	43.5

*Light trucks from foreign-based manufacturers.

NOTE: Beginning with MY 1999, the agency ceased categorizing the total light truck fleet by either domestic or import fleets.

While passenger car and light truck fleet fuel economy decreased from MY 1998 to MY 1999 by 0.4 mpg and 0.2 mpg respectively, the total fleet fuel economy for MY 1999 decreased to 24.5 mpg from 24.6 mpg. The shift to light trucks for
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trucks for general transportation has had a significant effect on fuel consumption.

E. Domestic and Import Fleet Fuel Economy Averages

Domestic and import passenger car fleet average fuel economies have improved since MY 1978, although the increase is far more dramatic for the domestic fleet. In MY 1999, the domestic passenger car fleet average fuel economy was 28.2 mpg. The import passenger car fleet average fuel economy was 28.4 mpg. Compared with MY 1978, this reflects an increase of 9.5 mpg for domestic cars and 1.1 mpg for import cars.

Since MY 1980, the average fuel economy for the total light truck fleet and the domestic light truck manufacturers has shown overall improvement, however, both have remained below the fuel economy level for the imported light truck fleet. The import light truck average fuel economy has decreased significantly since its highest level of 27.4 mpg for MY 1981 to 22.2 mpg for MY 1996, the last year the agency divided the light truck fleet into domestic and import.

The disparity between the average CAFEs of the import and domestic manufacturers has declined in recent years as domestic manufacturers have maintained relatively stable CAFE values while the import manufacturers moved to larger vehicles, and more four-wheel drive light trucks, thus lowering their CAFE values.

Section III: 1999 Activities

A. Light Truck CAFE Standards

On April 7, 1999, NHTSA published a final rule establishing a combined standard of 20.7 mpg for light trucks for MY 2001. The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1999, Pub. L. 105–66, precluded the agency from setting the MY 2001 standard at a level other than the level for MY 2000.

B. Enforcement

49 U.S.C. 32912(b) imposes a civil penalty of $5.50 for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacturer in that model year. Credits earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

Table III–1 shows CAFE fines paid by manufacturers in calendar year 1999. In calendar year 1999, manufacturers paid civil penalties totaling $16,275,722 for failing to comply with the fuel economy standards of 27.5 mpg for passenger cars and 20.7 mpg for light trucks in MYs 1997 and 1998.

TABLE III–1.—CAFE FINES COLLECTED DURING CALENDAR YEAR 1999

Model year	Manufacturer	Amount fined	Date paid
1997	Land Rover	$68	01/99
	Volkswagen	176,220	04/99
	Lotus	36,890	05/99
1998	Fiat	527.450	04/99
	Mercedes-Benz	1,683,525	07/99
	BMW of North America	13,851,569	12/99

[FR Doc. 00–16922 Filed 7–5–00; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6857, Notice 2]

Intac Automotive Products, Inc.; Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Intac Automotive Products, Inc., (Intac) has determined that certain brake fluid containers manufactured by its supplier, Gold Eagle, are not in compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 116, "Motor Vehicle Brake Fluids", and has filed appropriate reports pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Intac has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on February 18, 2000, in the **Federal Register** (65 FR 8472). NHTSA received no comments on this application.

Paragraph S5.2.2.2 of FMVSS No. 116 requires that certain information, including a serial number identifying the packaged lot and date of packaging specified in S5.2.2.2(d), be clearly marked on each brake fluid container or label permanently affixed to the container. Paragraph S5.2.2.2 further requires that this information be legible after being subjected to the test procedures in S6.14, *Container information*. S6.14 requires that each container be immersed in the same brake fluid contained therein for 15 minutes and dried within 5 minutes of its removal from the brake fluid.

Intac filed a Part 573 report informing the agency that, on November 4, 1997, it manufactured approximately 9,000 containers of brake fluid which it shipped to Petrochemical, Inc., for Mazda. On April 6, 1999, Intac manufactured approximately 30,500 containers of brake fluid which it shipped to Nissan and, on August 12, 1999, it manufactured approximately 16,800 containers of brake fluid which it shipped to Petrochemical, Inc., for Subaru. According to Intac, some of these brake fluid containers have labels that do not comply with the requirements of S5.2.2.2 of FMVSS No. 116. Additionally, to the best of Intac's knowledge, all of that company's brake fluid containers with labels that are potentially noncompliant with these requirements were manufactured on the aforementioned dates. For some of these containers, the packaged lot and date code information on the label (S5.2.2.2(d)) were not legible after the container was subjected to the test procedures in S6.14. The containers and labels were manufactured by the Gold Eagle Company, which also packaged the brake fluid in the containers under contract to Intac. Intac believes this noncompliance to be inconsequential to motor vehicle safety.

Intac supported its application for inconsequential noncompliance by stating that all the substantive safety warnings concerning proper storage and use of the contents of the referenced brake fluid containers were legible after durability testing in accordance with

NOTE: Beginning with MY 1999, the agency ceased categorizing the total light truck fleet by either domestic or import fleets.

S6.14. Intac also stated that the purpose of the serial number identifying the packaged lot and date of packaging is to facilitate determination of the extent of defective brake fluid should such be discovered. According to Intac, there is no serious risk to motor vehicle safety if the packaged lot and date information is lost. If packaged lot and date information were not visible on container labels, and defective brake fluid was suspected, the manufacturer would have to recall a larger number of containers than the number of the containers that would be recalled if this information was available. Intac informed the agency that the company has not manufactured brake fluid that has been determined to be in noncompliance with the brake fluid performance requirements in FMVSS No. 116, nor has the company manufactured brake fluid that has been recalled because of a safety defect.

Intac also stated that the containers of brake fluid in question were sold to Nissan and Petrochemical, Inc. The containers sold to Petrochemical were distributed to Mazda and Subaru. The product sold to Nissan and Petrochemical was distributed to dealerships and authorized repair facilities and it is unlikely that private consumers obtained these products through retail outlets for personal use.

According to Intac, the dealerships and authorized repair facilities that received the brake fluid tend to consume the product quickly once the containers are opened. Therefore, there was little likelihood that the lot and date information on the container label would become illegible through contact with brake fluid before the contents of a container was used.

Intac further stated that it was able to secure most of the noncompliant inventory after contacting Nissan and Petrochemical, Inc., so that most of the noncompliant brake fluid containers would be returned to Intac for correction.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the safety related information provided on the brake fluid container label. According to Intac, all substantive information regarding the safe use of the contents of the brake fluid containers was legible on the labels after testing in accordance with S6.14, and the brake fluid packaged in these containers complies with all relevant FMVSS No. 116 performance requirements. The primary purpose of the packaged lot and date code is to identify brake fluid that may not comply with the performance requirements of FMVSS No. 116 so as to facilitate a recall campaign. Intac has agreed that a campaign to recall noncompliant brake fluid would include all containers with illegible packaged lot and date codes in addition to the containers with relevant legible packaged lot and date code information. Accordingly, a container label with illegible packaged lot and date information would not have a consequential effect on motor vehicle safety. Additionally, Intac stated that it has not produced brake fluid that does not meet the performance requirements in FMVSS No. 116, nor has any of its brake fluid been recalled because of a safety defect. Intac further stated that most of the containers manufactured with potentially noncompliant warning labels were retrieved from Petrochemical, Inc. and Nissan prior to use.

Intac has reviewed the brake fluid container manufacturing process, determined the cause of this noncompliance, and modified the process to eliminate this noncompliance in the future.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 5, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–17416 Filed 7–10–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Part 275

1. *Purpose.* This order delegates certain of the authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms. Specifically, this order specifies the appropriate ATF officers that are designated in Treasury Decision ATF–422, which revised sections of Part 275 of Title 27 of the Code of Federal Regulations (CFR).

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to tobacco products and cigarette papers and tubes. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in certain sections of Part 275 of Title 27 CFR to subordinate officers. Also, this ATF order prescribes the subordinate officers with whom applications, notices, and reports required by certain sections of Part 275 of Title 27 CFR, which are not ATF forms, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates and the positions involved in this delegation order has been attached.

Bradley A. Buckles,

Director.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS

Regulatory section	Officer(s) authorized to act or receive document
§ 275.25	Inspector or Specialist.
§ 275.85	Section Chief, National Revenue Center (NRC).
§ 275.86	Unit Supervisor, NRC, to whom ATF F 2145(5200.11) is sent, and Specialist to certify ATF F 2145(5200.11).
§ 275.106	Unit Supervisor, NRC, to whom copy of ATF F 3075(5200.9) is sent.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS—Continued

Regulatory section	Officer(s) authorized to act or receive document
§ 275.111	Unit Supervisor, NRC, to whom copy of ATF F 2987(5120.32) is sent.
§ 275.115a(e)	Unit Supervisor, NRC.
§ 275.193	Unit Supervisor, NRC.
§ 275.194	Unit Supervisor, NRC.
§ 275.196	Unit Supervisor, NRC.
§ 275.197	Unit Supervisor, NRC, or Area Supervisor.
§ 275.198	Inspector, Specialist, or Special Agent.
§ 275.199	Director, Industry Operations.
§ 275.200	Unit Supervisor to approve (by affixing the signature of the Director) permits upon the recommendation of the Area Supervisor.
§ 275.203	Inspector, Specialist, or Special Agent.
§ 275.207	Unit Supervisor upon the recommendation of the Area Supervisor.
§ 275.208	Director of Industry Operations.
§ 275.223	Unit Supervisor, NRC.
§ 275.224	Unit Supervisor, NRC.
§ 275.225	Unit Supervisor, NRC.

ATF Organization

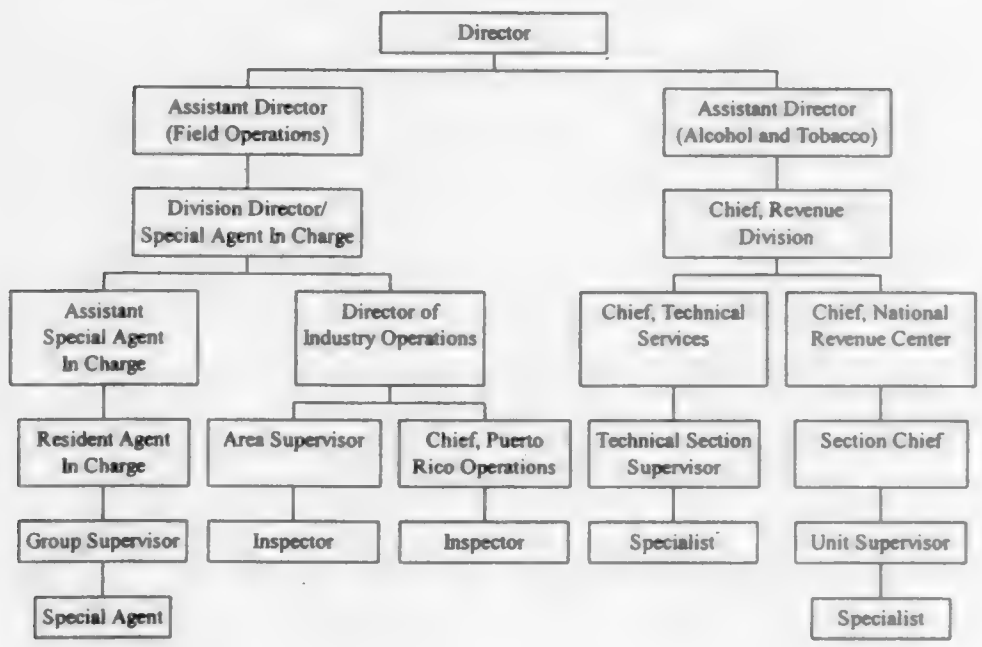

This is not a complete organizational chart of ATF.

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL

[FR Doc. 00–17498 Filed 7–10–00; 8:45 am]
BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Customs Service

Fee for Electronic Fingerprinting

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces the fee for fingerprinting at airports at which there is a computerized fingerprint identification system for the use of conducting background checks on airline and airport employees who require unescorted access to Federal Inspection Service areas of an airport. The fee will be $39.00.

EFFECTIVE DATES: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Slattery, U. S. Customs Service, Office of Field Operations, Passenger Programs, Room 5.4D, 1300 Pennsylvania Avenue, NW, Washington, DC, 20029, Tel. (202) 927–4434.

SUPPLEMENTARY INFORMATION:

Background

Customs requires fingerprints to conduct background checks for various reasons. See, T.D. 93–18 (58 FR 15770, dated March 24, 1993). In a **Federal Register** notice published March 3, 1998 (63 FR 10426) Customs announced that the fingerprint fee was $20.70. This fee was for manually conducting fingerprinting on fingerprint cards. The manual processing of fingerprint cards takes an average of four to seven weeks.

Customs is now implementing, at certain airports, a computerized fingerprint identification system for the use of conducting background checks on airline and airport employees who require unescorted access to Federal Inspection Service areas of an airport. This system employs an automated fingerprint reading devise that electronically transmits the fingerprint data directly to the Federal Bureau of Investigation (FBI) where a criminal history background search can be conducted within 24 hours, instead of the four to seven weeks it normally takes to process fingerprint cards. Where implemented, this computerized fingerprinting system will be used in lieu of collecting fingerprints on cards.

The fee for this computerized fingerprinting will be $39.00. This fee is based on Customs recovering the FBI user-fee that is charged to Customs for conducting fingerprint checks and Customs administrative processing costs associated with the collection of fingerprints, which include the compensation and/or expenses of Customs officers performing the fingerprint service and 15% of that amount to cover Customs administrative overhead costs.

Dated: July 5, 2000.

Charles W. Winwood,

Deputy Commissioner.

[FR Doc. 00–17462 Filed 7–10–00; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate of Identity of Owner of Registered Securities and Certificate of Identity of Owner of Savings and Retirement Securities.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Identity of Owner of Registered Securities and Certificate of Identity of Owner of Savings and Retirement Securities.

OMB Number: 1535–0048

Form Numbers: PD F 0385 and PD F 0385–1

Abstract: The information is requested to establish the identity of the owner of United States Savings Bonds/Notes or Registered Securities.

Current Actions: None

Type of Review: Extension

Affected Public: Individuals.

Estimated Number of Respondents: 177

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 89

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17453 Filed 7–10–00; 8:45 am]
BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application for disposition of United States registered securities and related checks without administration of deceased owner's estate.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Disposition of United States Registered Securities and Related Checks Without Administration of Deceased Owner's Estate.

OMB Number: 1535–0058.

Form Number: PD F 1646.

Abstract: The information is requested to support a request for distribution of registered securities belonging to a decedent's estate that is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 625.

Estimated Time Per Respondent: 90 minutes.

Estimated Total Annual Burden Hours: 938.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17454 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Affidavit by individual surety.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Affidavit By Individual Surety.

OMB Number: 1535–0100.

Form Number: PD F 4094.

Abstract: The information is requested to support a request to serve as surety for an indemnification agreement on a Bond of Indemnity.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 55 minutes.

Estimated Total Annual Burden Hours: 460.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17455 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request by owner of savings bonds/notes deposited in safekeeping when original custody receipts are not available.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request By Owner Or Person Entitled To Payment Or Reissue Of United States Savings Bonds/Notes Deposited In Safekeeping When Original Custody Receipts Are Not Available.

OMB Number: 1535–0063.

Form Number: PD F 4239.

Abstract: The information is requested to establish ownership and request reissue or payment when original custody receipts are not available.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 84.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17456 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning collections of information required to comply with the terms and conditions of FHA debentures.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Titles: FHA New Account Request, FHA Transaction Request, FHA Debenture Transfer Request

OMB Number: 1535–0120.

Form Numbers: PD F 5366, 5354, and 5367.

Abstract: The information is used to (1) establish a book-entry account; (2) change information on a book-entry account; and (3) transfer ownership of a book-entry account on the HUD system, maintained by the Federal Reserve Bank of Philadelphia.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households, businesses or other for-profit.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 102.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17457 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register

Vol. 65, No. 133

Tuesday, July 11, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Mine Safety and Health Administration (MSHA)

30 CFR Part 3

Office of Management and Budget Control Numbers Under the Paperwork Reduction Act

Correction

In rule document 00–16528 beginning on page 40498 in the issue of Friday, June 30, 2000 make the following correction:

§3.1 [Corrected]

On page 40501, in Table 1, in §3.1, under the heading "Subchapter O ", "171.403 " should read "71.403 ".

[FR Doc. C0–16528 Filed 7–10–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval

Correction

In notice document 00–16322 beginning on page 39952 in the issue of Wednesday, June 28, 2000, make the following correction:

On page 39952, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the tenth line, "OMB control number 1210–0101" should read "OMB control number 1210–0102".

[FR Doc. C0–16322 Filed 7–10–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
July 11, 2000

Part II

Social Security Administration

20 CFR Parts 404 and 416
Determining Disability and Blindness; Substantial Gainful Activity Guides; Final Rule
Social Security Acquiescence Rulings; Notices

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AB73

Determining Disability and Blindness; Substantial Gainful Activity Guides

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our rules to reflect amendments to the Social Security Act (the Act) concerning the trial work period and the disability insurance reentitlement period. We are also clarifying certain standards we use to determine whether work is substantial gainful activity and whether an individual is entitled to a trial work period, thereby further explaining how we determine disability under titles II and XVI of the Act.

EFFECTIVE DATE: These regulations are effective August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, SSA Regulations Officer, Office of Process and Innovation Management, L2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–3632 or TTY 1–800–988–5906. For information about eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internal web site, SSAOnline, at www.SSA.gov.

SUPPLEMENTARY INFORMATION: These regulations explain how we determine whether a person is entitled to a period of trial work under title II of the Act and whether a person is engaging in substantial gainful activity under titles II and XVI of the Act. The term "substantial gainful activity" combines two concepts, substantial work activity and gainful work activity. Substantial work activity means work activity that involves doing significant physical or mental activities, even if the work is done on a part-time basis or with less activities, pay, or responsibilities than in past work. Gainful work activity means work activity done for pay or profit. Work activity is gainful if it is the kind of work that is usually performed for pay or profit, whether or not a profit is realized.

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 6, 1995 (60 FR 12166). In the NPRM, we proposed to make revisions to a number of sections that address our rules for determining whether an individual is engaging in substantial gainful activity. The NPRM included certain changes in proposed §§ 404.1574(a)(3)–(6) and 416.974(a)(3)–(6) to clarify our policies on "subsidy." In part because of public comments we received on the NPRM and because we want to consider further issues with regard to our policies concerning on-the-job subsidies provided by employers and on-the-job assistance provided by others, we have decided not to publish final rules with regard to the proposals on "subsidy" in proposed §§ 404.1574(a)(3)–(6) and 416.974(a)(3)–(6). However, we are publishing final rules for the remaining proposals in the NPRM, some of which have been modified in response to public comments. We discuss in detail the comments we received on the NPRM later in this preamble under "Public Comments on Notice of Proposed Rulemaking." In addition, in these final rules, we have made certain changes from the proposed rules for technical accuracy and, consistent with the government's "plain language" initiative, to make our rules easier to read and understand. We have also included in these final rules several additional amendments to our regulations that, although not a part of the proposals in the NPRM, are necessary to reflect amendments to the Act relating to determinations of substantial gainful activity or the counting of trial work period months. These additional amendments affect §§ 404.15771 and 416.971, discussed below, and §§ 404.1584(d) and 404.1592(b), discussed later in this preamble.

In these final rules, we have made changes to §§ 404.1571 and 416.971 to reflect the provisions in sections 223(d)(4) and 1614(a)(3)(E) of the Act that were added by section 201 of Public Law (Pub. L.) 103–296, the Social Security Independence and Program Improvements Act of 1994. Under sections 223(d)(4) and 1614(a)(3)(E) of the Act, the Commissioner of Social Security (the Commissioner) is required to establish by regulations the criteria for determining when services performed by an individual or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In general, these sections of the Act provide that an individual whose services or earnings meet the criteria established by the Commissioner shall be found to be not disabled. The provisions added to the Act by Pub. L. 103–296 provide, in general, that the Commissioner shall make determinations of substantial gainful activity under these sections "without regard to the legality" of the work activity of the individual. We have included in these final rules changes to §§ 404.1571 and 416.971 to reflect these provisions of the Act. We have revised the first sentence of each of these sections to indicate that the work, without regard to legality, that an individual has done during any period in which the individual believes that he or she is disabled may show that he or she is able to work at the substantial gainful activity level. We explain our reasons for publishing these changes as final rules without notice-and-comment rulemaking at the end of this preamble.

We have revised §§ 404.1573(c) and 416.973(c) to explain in greater detail what we mean by work under special conditions that take into account an individual's impairments. We added information found in Social Security Ruling (SSR) 84–25, "Titles II and XVI: Determination of Substantial Gainful Activity If Substantial Work Activity Is Discontinued or Reduced—Unsuccessful Work Attempt" (Social Security Rulings, Cumulative Edition, 1984, p. 92), to clarify these regulatory provisions. As discussed later in this preamble, we also revised the paragraph in response to public comments.

We have amended §§ 404.1574(a) and 416.974(a) to add an expanded description of how we determine whether work performed by an employee is substantial gainful activity, what we mean by subsidized work, and how we determine the value of a subsidy. The changes reflect the interpretations in SSR 83–33, "Titles II and XVI: Determining Whether Work Is Substantial Gainful Activity—Employees" (Social Security Rulings, Cumulative Edition, 1983, p. 209).

These final rules also make changes to §§ 404.1574(b)(2), (b)(3), (b)(4), and (b)(6) and §§ 416.974(b)(2), (b)(3), (b)(4), and (b)(6) to clarify how we evaluate earnings from work in sheltered workshops. In paragraphs (b)(2), (b)(3), and (b)(6) of these sections, we provide thresholds that demonstrate earnings that ordinarily show that a person has engaged in substantial gainful activity (paragraph (b)(2)), that a person has not engaged in substantial gainful activity (paragraph (b)(3)), or that are not high or low enough to show whether a person has engaged in substantial gainful activity. Our intent is, and always has been, that paragraphs (b)(3) and (b)(6) apply only to workers who are not in sheltered workshops. This is because we ordinarily consider that individuals in sheltered workshops are not engaging in substantial gainful activity when they do not earn more than the threshold

amounts in paragraph (b)(2). In other words, we do not provide a "middle ground" category for workers in sheltered workshops, as we do for other workers under paragraph (b)(6), in recognition of the special circumstances of sheltered employment. We believe that the final rules now state this longstanding policy more clearly. The final rules also state more clearly our policy of evaluating sheltered workshop earnings that exceed the amount specified in paragraph (b)(2) in the same way we evaluate non-sheltered workshop earnings.

As a result of these clarifications in our final regulations, we are rescinding Acquiescence Ruling (AR) 87–4(8), *Iamarino* v. *Heckler* (Social Security Rulings, Cumulative Edition, 1987, p. 136; 55 FR 28302, August 31, 1987). We issued this acquiescence ruling in response to a decision of the U.S. Court of Appeals for the Eighth Circuit in *Iamarino* v. *Heckler*, 795 F.2d 59 (8th Cir. 1986). In the absence of regulations explicitly addressing the issue, the court in *Iamarino* held that, because our regulations provided a middle ground for evaluating earnings from competitive (*i.e.*, non-workshop) employment between specified upper and lower limits, we must also provide a middle ground for evaluating sheltered workshop earnings and not presume that an individual has engaged in substantial gainful activity when sheltered workshop earnings exceed the upper substantial gainful activity threshold amount. The revisions in these final rules make clear in our regulations that, ordinarily, we will find any individual, whether in competitive or sheltered work, to be engaging in substantial gainful activity when his or her earnings exceed the threshold for such earnings set out in §§ 404.1574(b)(2) and 416.974(b)(2). We clarify that the middle ground of earnings for individuals in competitive employment (i.e., the middle ground where we do not consider the earnings to be high or low enough to show whether a person has engaged in substantial gainful activity) lies *below* the upper threshold for substantial gainful activity in paragraph (b)(2) and above a *lower* threshold in paragraph (b)(3). Finally, we clarify that for individuals who are employed in sheltered workshops and whose earnings do not exceed the upper threshold above which we ordinarily find substantial gainful activity for all individuals, we will ordinarily find that there is *not* substantial gainful activity even when their earnings fall in the range that would constitute the middle ground of earnings for individuals in competitive employment.

We have also added new §§ 404.1574(d) and 416.974(d) and revised § 404.1592(b) to provide that we will not consider volunteer work done under programs mentioned in the Domestic Volunteer Service Act of 1973, 42 U.S.C. 5044, or the Small Business Act, 15 U.S.C. 637, in determining whether an individual has performed substantial gainful activity or, for individuals receiving benefits under title II of the Act, services in the trial work period. This exclusion is currently stated in SSR 84–24, "Titles II and XVI: Determination of Substantial Gainful Activity For Persons Working In Special Circumstances—Work Therapy Programs in Military Service—Work Activity in Certain Government-Sponsored Programs" (Social Security Rulings, Cumulative Edition, 1984, p. 87), and as required by the laws cited above.

We have also added new §§ 404.1574a and 416.974a to explain how we average earnings to determine if a person has been performing substantial gainful activity and the periods used for averaging. These amendments are based on SSR 83–35, "Titles II and XVI: Averaging of Earnings in Determining Whether Work Is Substantial Gainful Activity" (Social Security Rulings, Cumulative Edition, 1983, p. 237), and do not represent a change in practice.

We have revised § § 404.1575(a) and 416.975(a) to explain the order in which we will apply the three tests used to determine whether self-employed persons have engaged in substantial gainful activity. We also expanded the discussion in §§ 404.1575(c) and 416.975(c) of what we mean by substantial income for purposes of determining whether a self-employed person has engaged in substantial gainful activity. These revisions are based on SSR 83–34, "Titles II and XVI: Determining Whether Work Is Substantial Gainful Activity—Self-Employed Persons" (Social Security Rulings, Cumulative Edition, 1983, p. 222), and do not represent a change in practice.

We also made a nonsubstantive, technical correction to final §§ 404.1575(c)(2) and 416.975(c)(2) for consistency of language within our regulations. Both the former rules and the NPRM stated that we would consider self-employment income to be "substantial" if it averaged less than the amounts described in §§ 404.1574(b)(2) and 416.974(b)(2) but was either comparable to what the individual earned before he or she became "severely impaired" or was comparable to that of unimpaired self-employed persons in the community who were in the same or a similar business as their means of livelihood. However, the word "severe" in our regulations is a term of art under §§ 404.1520 and 416.920 and other regulations throughout subpart P of part 404 and subpart I of part 416, and it does not have the same meaning that we intended in §§ 404.1575(c)(2) and 416.975(c)(2). Therefore, we have revised the final rules to make our intent clear by changing the phrase "severely impaired" to "seriously impaired." (For similar reasons, we are making the same changes in §§ 404.1574(b)(4) and 416.974(b)(4).)

We added to §§ 404.1574, 404.1575, 416.974, and 416.975 an explanation, now found in SSR 84–25, of how we evaluate brief periods of work activity to determine if they should be considered "unsuccessful work attempts." The rules provide, consistent with SSR 84–25, that, ordinarily, work an individual has done will not show the ability to do substantial gainful activity if, after working for a period of 6 months or less, the individual was forced by his or her impairment to stop working or to reduce the amount of work so that earnings from such work fall below the substantial gainful activity earnings level. The work must also satisfy certain other conditions described in the regulations. The final rules also provide that we will not consider work performed at the substantial gainful activity level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or why earnings were reduced to below the substantial gainful activity earnings level.

The criteria for an unsuccessful work attempt differ depending on whether the work effort is for a duration of 3 months or less or for a duration of between 3 and 6 months. These amendments reflect the interpretation in SSR 84–25.

In addition, we have added to § 404.1584(d) the substantial gainful activity earnings guidelines for evaluating the work activity of blind persons under title II for the years 1983 through 2000. We also explain, consistent with section 223(d)(4)(A) of the Act, that effective with 1996, the substantial gainful activity amount for blind individuals is no longer linked to the monthly exempt amount under the retirement earnings test for individuals aged 65 to 69. Beginning 1996, increases in the substantial gainful activity level for blind individuals depend only on the increases in the national average wage index. We are including this provision in § 404.1584(d) of the final rules to reflect this statutory change.

which resulted from amendments to the Act made by section 102 of Pub. L. 104–121. We explain our reasons for publishing final rules to reflect this statutory change without notice-and-comment rulemaking at the end of this preamble.

We have also included in these final rules an amendment to § 404.1592(b) to reflect an amendment to the definition of "services" in section 222(c)(2) of the Act which applies in determining when the trial work period has ended. Section 222(c)(2) of the Act, as amended, provides that, for purposes of the trial work period, "the term 'services' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain." The parenthetical phrase "(whether legal or illegal)" was added to this provision of the Act by section 201 of Pub. L. 103–296. In these final rules, we are adding the same parenthetical phrase to the definition of "services" in § 404.1592(b). We explain our reasons for publishing final rules to reflect this change without notice-and-comment rulemaking at the end of this preamble.

We also have revised the fourth sentence of § 404.1592(b) to explain in clearer and more precise terms the type of activity that generally does not constitute "services" as that term is defined in section 222(c)(2) of the Act, quoted above. This revision clarifies that we generally do not consider work that is done without remuneration to be "services" for purposes of determining when the trial work period has ended if it is done merely as therapy or training or if it is work usually done in a daily routine around the house or in self-care. We have also added a new sentence at the end of § 404.1592(b) to state that we do not consider work as a volunteer in the Federal programs described in § 404.1574(d) in determining whether an individual has performed services in the trial work period.

We have revised § 404.1592(d) to explain, consistent with SSR 82–52, "Titles II and XVI: Duration of Impairment" (Social Security Rulings, Cumulative Edition, 1982, p. 106), that a claimant is not entitled to a trial work period when he or she performs work demonstrating the ability to engage in substantial gainful activity within 12 months after the onset of an impairment that otherwise could be the basis for a finding of disability and before the date of any notice of determination or decision making a finding of disability. These revisions, which do not represent a change in practice, are based on our interpretation of the duration requirement of section 223(d)(1)(A) of the Act and clarify the issues raised by the courts in *McDonald* v. *Bowen*, 800 F.2d 153 (7th Cir. 1986), amended on rehearing, 818 F.2d 559 (7th Cir. 1987), *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991), and *Newton* v. *Chater*, 92 F.3d 688 (8th Cir. 1996). We have issued acquiescence rulings for each of these cases, and do not currently plan to rescind the acquiescence rulings. (See AR 88–3(7), *McDonald* v. *Bowen*, Social Security Rulings, Cumulative Edition, 1988, p. 115, and 55 FR 28302, March 31, 1988; AR 92–6(10), *Walker* v. *Secretary of Health and Human Services*, Social Security Rulings, Cumulative Edition, 1992, p. 91, and 57 FR 43007, September 17, 1992; and AR 98–1(8), *Newton* v. *Chater*, 63 FR 9037, February 23, 1998.)

The trial work period is a period during which a person who becomes entitled to title II disability benefits may test his or her ability to work and still be considered disabled. Under section 222(c)(3) of the Act, the trial work period begins with the month an individual "becomes entitled" to title II disability benefits and generally ends after 9 months of work within a 60-consecutive-month period whether or not the 9 months are consecutive. Section 222(c) provides that any services rendered during the trial work period may not be considered in determining whether "disability has ceased" during that period.

In order to be found disabled under section 223(d)(1)(A), an individual must be unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or "which has lasted or can be expected to last for a continuous period of not less than 12 months." Under our longstanding interpretation of this provision, as reflected in SSR 82–52, the duration requirement to establish disability will not be met and a disability claim will be denied based on evidence that, within 12 months after the onset of an impairment which prevented substantial gainful activity and before we have issued any notice of determination or decision finding disability, the impairment no longer prevents substantial gainful activity. Under these circumstances, it is not necessary to determine whether earlier in the 12-month period the impairment was expected to prevent the performance of SGA for 12 months. We determine whether an impairment is expected to prevent substantial gainful activity for 12 months only when the claim is being adjudicated within 12 months after the onset of the person's inability to work and the evidence shows that the impairment currently prevents substantial gainful activity. We believe that Congress provided that disability can be found based on an impairment which "can be expected to last" 12 months simply to provide a means for us to adjudicate disability claims without having to wait 12 months from onset, rather than to permit claims to be allowed in the face of specific evidence that the claimant's impairment did not, in fact, prevent him or her from engaging in substantial gainful activity for 12 continuous months.

Because section 222(c) provides that a trial work period shall begin with the month in which a person becomes entitled to title II disability benefits, a claimant who does not become entitled to disability benefits cannot receive a trial work period. Under our interpretation of the duration requirement, a person cannot be found to be under a disability if he or she performs work demonstrating the ability to perform substantial gainful activity within 12 months after onset and before we have issued any notice of determination or decision finding disability. Because the person cannot become entitled to disability benefits in this situation, there can be no trial work period. On the other hand, if a claimant returns to work before we have made a determination or decision finding disability, but more than 12 months from onset, the duration requirement may be satisfied (unless it is not satisfied for some other reason, such as medical improvement less than 12 months after onset), the claimant may become entitled to benefits, and the work may be protected by the trial work period even though the work began prior to a finding of disability.

We have made several changes in § 404.1592(d)(1) and (2), which describe situations in which an individual is and is not entitled to a trial work period. We revised paragraph (d)(1) from the proposed rule by replacing "receiving" with "entitled to." We made this change in order to clarify, consistent with our discussion in the preambles to both the proposed rules and these final rules, that a person may be awarded a trial work period as part of the adjudication of an initial application when he or she returns to work more than 12 months from onset, but prior to the adjudication and prior to the receipt of any disability benefits. We also made nonsubstantive changes to paragraphs (d)(1) and (d)(2)(i) for greater consistency between these two paragraphs and made other slight technical changes to paragraph

(d)(2) from the proposed rule for additional clarity. None of these revisions is intended as a change in practice. As in the NPRM, we deleted the rule in prior paragraph (d)(2)(ii) which stated that an individual is not entitled to a trial work period if he or she is receiving disability insurance benefits in a second period of disability for which a waiting period was not required. This deletion reflects section 5112 of Pub. L. 101–508.

As in the NPRM, we added new paragraphs (d)(2)(ii), and (d)(2)(iii), and (d)(2)(iv) to § 404.1592 specifying additional circumstances in which an individual will not be entitled to a trial work period. Final paragraph (d)(2)(ii) provides that an individual who performs work demonstrating the ability to engage in substantial gainful activity during any required waiting period will not be entitled to a trial work period. Paragraph (d)(2)(iii) incorporates the provision, discussed above in this preamble, that explains that an individual who performs work demonstrating the ability to engage in substantial gainful activity within 12 months after onset and before the date of any notice of determination or decision finding disability will also not be entitled to a trial work period. Both of these provisions were in the NPRM, although we did make several minor clarifications to the language we proposed for paragraph (d)(2)(iii): We changed the word "which" to "that" and we expanded the word "decision" to the phrase "determination or decision." The latter was a technical change made for consistency with § 404.901, which provides that the words "determination" and "decision" are terms of art in our program applicable to initial and reconsideration determinations and administrative law judge or Appeals Council decisions, respectively. The revision merely rectifies an unintentional omission in the NPRM and will make clear that these rules apply at all levels of the administrative review process. Finally, we made a revision to clarify that a person may be entitled to a trial work period if he or she returns to substantial gainful activity within 12 months of onset and after receiving a notice of a determination or decision finding that he or she is disabled even in the relatively unusual situation in which that notice precedes the notice of a determination or decision awarding him or her title II disability benefits.

Final § 404.1592(d)(2)(iv) clarifies our rules, consistent with current § 404.1592(e), that an individual cannot be entitled to a trial work period for any month prior to the month he or she files an application for disability benefits. We revised final § 404.1592(d)(2)(iv) from the language we proposed in the NPRM to avoid a possible interpretation we had not intended that might have precluded trial work periods for some individuals who should be entitled to trial work periods. We explain our reasons for this revision in more detail in the public comments section of this preamble.

We revised § 404.1592(e) to reflect a provision of section 5112 of Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990, which provides that one of the conditions under which the trial work period will end is the 9th month within a period of 60 consecutive months if that 9th month is after December 1991. Prior to this statutory change, the trial work period would end after 9 service months no matter when they were completed.

We amended § 404.1592a to clarify that the earnings averaging and unsuccessful work attempt criteria do not apply in determining whether to pay benefits for any month during or after the reentitlement period after disability has been determined to have ceased because of the performance of substantial gainful activity. Those criteria do apply during and after the reentitlement period in determining whether disability has ceased due to the performance of substantial gainful activity.

Based on several public comments, we revised the proposed rules to clarify our intent, especially in the provisions of § 404.1592a(a). These amendments reflect and clarify our interpretations in SSR 83–35 and SSR 84–25. They also clarify the averaging methodology issue addressed in *Conley* v. *Bowen*, 859 F.2d 261 (2d Cir. 1988). As a result of these clarifications to our regulations, we are rescinding the *Conley* v. *Bowen* Acquiescence Ruling, AR 93–2(2). Other final rules also provide cross-references to § 404.1592a in the explanations of the averaging and unsuccessful work attempt policies contained in § § 404.1574(c), 404.1574a, and 404.1575(d).

These regulations also reflect section 9010 of Pub. L. 100–203, the Omnibus Budget Reconciliation Act of 1987, which extended, as of January 1, 1988, the reentitlement period from 15 months to 36 months. During this period, the title II disability benefits of an individual whose benefits are stopped because of substantial gainful activity may be reinstated without the need to file a new application if his or her work falls below the substantial gainful activity level as long as the individual continues to have a "disabling impairment" as defined in § 404.1511 of our regulations. This statutory change is reflected in amendments to § § 404.321, 404.325 and 404.1592a.

Pub. L. 99–643, the Employment Opportunities for Disabled Americans Act, required a number of changes in the way we handle supplemental security income (SSI) cases under title XVI when a disabled person eligible for SSI benefits works. Certain SSI recipients who work despite otherwise disabling impairments and begin to earn amounts that would ordinarily represent substantial gainful activity will not have their earnings considered when determining whether they continue to be disabled. Pursuant to section 4 of Pub. L. 99–643, the trial work period and the reentitlement period no longer apply in SSI disability cases. Accordingly, we have deleted § § 416.973(f), 416.976(f)(2), 416.992, 416.992a, and 416.994(b)(3)(v), (b)(5)(i), the first paragraph of (b)(6)(i), (b)(6)(i)(D), and (b)(6)(ii). We have revised § § 416.901(m), 416.991, and 416.1331(a) by removing references to the trial work period and reentitlement period. (The rules for continuing disability in § 416.994a for children under SSI did not need modification because we took these changes in the law into account when we first promulgated that regulation. See 56 FR 5534 (February 11, 1991).) A substantial gainful activity test is still necessary to establish an individual's initial eligibility for SSI benefits based on disability.

Finally, we made a number of minor changes to conform the text of the regulations in part 404 and part 416, for consistency, technical accuracy, and to comply with Executive Order 12866 and the President's memorandum dated June 1, 1998, which requires us to write all rules in "plain language." None of these changes is intended to be a change in practice.

Public Comments on Notice of Proposed Rulemaking

When we published the NPRM in the **Federal Register** on March 6, 1995 (60 FR 12166), we provided interested parties 60 days to submit comments. We received comments from 10 individuals and organizations, including attorneys and organizations representing the interests of individuals with mental impairments. We considered carefully the comments we received on the proposed rules in publishing these final regulations.

As noted at the beginning of this preamble, we decided not to include in these final regulations the changes

reflected in proposed §§ 404.1574(a)(3)-(6) and 416.974(a)(3)-(6). We have retained, without change, existing §§ 404.1574(a)(3) and 416.974(a)(3). For these reasons, we have not responded to the comments we received on the proposed revisions that we have withdrawn.

Also, there were a few comments that were outside the scope of the NPRM and these final rules. Some commenters provided recommendations for revising our overall work incentive provisions or changing the substantial gainful activity amounts or revising a number of other specific provisions in our rules that were not the subject of the proposed rules. Although we did not summarize or address these comments below because they are outside the scope of these final rules, we have forwarded them to the appropriate SSA components for consideration.

Also, in a separate regulatory action, we published final rules in the **Federal Register** on April 15, 1999 (64 FR 18566 and 64 FR 22903 April 28, 1999) to increase from $500 to $700 the average monthly earnings guidelines used to determine whether work done by a non-blind individual is substantial gainful activity. The change was effective July 1, 1999.

The rest of the comments, which we received on the NPRM and our responses to the comments, are set forth below. Although we condensed, summarized, or paraphrased the comments, we believe we have expressed the views accurately and have responded to all of the relevant issues raised.

General Comments

Comment: One commenter was concerned about what appeared to be a "negative tone" and "clear efforts to 'tighten up' the benefits of work incentives" throughout the proposed rules. Another commenter, who identified herself as a disability beneficiary who has been attempting to work, commented that the proposed rules reflected, though perhaps not sufficiently, her experiences, and praised the proposal to recognize some factors that "truly detract from" substantial gainful activity.

Response: It was certainly not our intent to give the impression that we discourage the attempts of our beneficiaries who want to work to gain employment or that we were "tightening up" on beneficiaries' efforts to try to work. To the contrary, we are supporting on several fronts the efforts of our beneficiaries who want to work to gain employment. Our only intent was to update and clarify our existing rules. Therefore, as we made further changes in the final rules in response to the comments, we were mindful of these overall comments and tried to avoid giving the impression that the first commenter received.

Specific Comments

Section 404.321 When a Period of Disability Begins and Ends

Comment: One commenter recommended that we revise § 404.321(c)(3) more substantively than in the proposed rules, in which we proposed only to update the language to delete the reference to the "15-month" reentitlement period. The commenter suggested that the regulation should be revised to clarify that payment status may end during the reentitlement period, but that a period of disability cannot end due to substantial gainful activity before the end of the reentitlement period, and to make § 404.321 consistent with proposed § 404.325.

Response: We did not adopt the comment. The "clarification" suggested by the commenter would have changed the meaning of the regulation and our intent, which *is* to provide that a "period of disability" under section 216 of the Act may end during the reentitlement period, as required by the Act. Section 216(i)(2)(D) of the Act provides that a period of disability will end with the close of whichever of several months is the earliest. One such month listed in section 216(i)(2)(D) is "the month preceding * * * the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 36-month period referred to in such section [i.e., the reentitlement period]." Thus, § 404.321(c)(3) reflects section 216(I)(2)(D) of the Act. Section 404.325 reflects the provision of section 223(a)(1) of the Act, which defines the "termination month" for purposes of determining when entitlement to disability insurance benefits terminates. In some cases, entitlement to a period of disability and entitlement to disability insurance benefits may end simultaneously with the month preceding the termination month. However, under the Act, entitlement to a period of disability will end with an earlier month if the above-quoted provision of section 216(I)(2)(D) applies.

Section 404.325 The Termination Month

Comment: One commenter noted that the examples in the proposed rules used dates in the past, thereby showing only "retroactive" cessations well in the past.

Response: We adopted the comment. We changed the dates in § 404.325 and throughout the final rules to be more current. However, it should be understood that with the passage of time, these dates will also fall farther and farther in the past.

Comment: The same commenter, and several others, suggested that we revise § 404.325 to eliminate the possibility of retroactive cessations of disability and disability benefit payments under title II based on substantial gainful activity. One suggested that we not cease the payment of benefits under these circumstances earlier than the month we send the beneficiary a notice stating that cash benefits are being stopped. Another suggested that we not retroactively cease disability or cash benefits based on work and earnings at the substantial gainful activity level unless the person fails to report work and earnings to us timely.

Response: We did not adopt the comments. Section 404.325 does not deal specifically with the determination as to when a title II beneficiary's disability ceases due to the performance of substantial gainful activity. That determination is made under the provisions of §§ 404.1594(d)(5), (g)(3) and (g)(4) of the regulations. As pertinent here, these provisions of the regulations, which are based on section 223(d)(4) and (f) of the Act, provide that we will find that an individual's disability ceased in the month in which the individual demonstrated the ability to engage in substantial gainful activity following completion of a trial work period, or if the individual is not entitled to a trial work period, in the month in which the individual does substantial gainful activity.

Section 404.325 reflects the provisions of section 223(a)(1) of the Act, as well as the parallel provision of section 202(d), (e) and (f) of the Act, which define the "termination month" for the purpose of prescribing when entitlement to title II benefits based on disability ends. In the absence of the occurrence of another event specified in the Act that requires the termination of entitlement to benefits, the aforementioned provisions of the Act provide that, subject to section 223(e) of the Act (discussed below), entitlement to title II benefits based on disability shall end with the month preceding the termination month. (See §§ 404.316, 404.337 and 404.352.) Consistent with the provisions of 202(d), (e) and (f) and 223(a)(1) of the Act, § 404.325 provides that for an individual who completes a trial work period and continues to have

a disabling impairment, the termination month will be the third month following the earliest month in which the individual performs substantial gainful activity or is determined able to perform substantial gainful activity, but that in no event will the termination month under these circumstances be earlier than the first month after the end of the reentitlement period described in § 404.1592a. Because entitlement to disability benefits ends with the month preceding the termination month, we cannot pay benefits for months after the month preceding the termination month. This is so even if the termination month occurred in the past. In addition, section 223(e)(1) states: "No benefit shall be payable * * * for any month, after the third month, in which [the individual] engages in substantial gainful activity during the 36-month period following the end of (the individual's) trial work period * * *." Because the law specifies the month(s) for which benefits are not payable during the reentitlement period (i. e., any month, after the third month, in which the beneficiary engages in substantial gainful activity), an individual cannot be paid benefits for any such nonpayment month(s), even if it occurred in the past.

Comment: One commenter did not understand the language of the first example in proposed § 404.325 and suggested revisions to clarify it.

Response: We adopted the comment. However, the language recommended by the commenter was inaccurate, so we did not use the exact language the commenter suggested.

Comment: One commenter recommended that we delete or clarify the proposed second example under § 404.325. The commenter suggested that we should not make a finding of substantial gainful activity unless the work activity is sustained for 6 months; that is, that we should always consider whether the activity is an unsuccessful work attempt and average earnings, and never consider a month of work in isolation.

Response: We clarified the example in response to the comment, but we did not adopt the other suggestions to clarify the rule in the comment. The example in the proposed rule only updated the example in the prior rule to reflect the change in duration of the reentitlement period from 15 months to 36 months and to use more recent dates. The example was correct in that it provided that, under the Act, the termination month must be the third month after the earliest month that we determine an individual performs substantial gainful activity or does work showing the ability to perform substantial gainful activity.

However, in considering the comment, we believe that the example may not have been as clear as it could have been. Our policy, set out in final § 404.1592a(a) and explained in more detail below in our responses to comments about that section, is that when a person with a "disabling impairment" works, we will first determine whether the work activity shows that his or her disability has ceased; i.e., by the individual's actual engagement in substantial gainful activity or by demonstrating the individual's ability to engage in substantial gainful activity. When we consider whether the individual's disability has ceased because of work, we do apply our rules regarding unsuccessful work attempts and averaging of earnings when they are relevant to the determination. This does not mean that we will wait 6 months to see whether an individual who has returned to work will be successful; we may decide that the earnings in a single month show that the individual is engaging in substantial gainful activity or has the ability to do so. However, if we have information showing that work was an unsuccessful work attempt, we will not decide that the individual's disability has ceased because of the work activity.

Once we have determined that an individual's disability has ceased because of work activity, we believe that the Act requires us to consider months of work in isolation for purposes of establishing the termination month; that is, we consider only what the earnings show for the relevant month in which the individual works without regard to whether the work could have been an unsuccessful work attempt and without averaging the earnings with earnings from other months. Therefore, we are not revising the rules as the commenter suggested.

The second example in proposed and prior § 404.325 presumed that we had already determined that the individual engaged in substantial gainful activity in the month in which he or she returned to work and that disability had ceased. However, based on the comment, we realize that it could have been difficult to understand, and we have clarified it accordingly. We have also clarified the rules in final § 404.1592a(a) in response to this comment and others, as well as other provisions throughout these final rules, to make clear when we will apply the provisions regarding unsuccessful work attempts and averaging of earnings.

Sections 404.1573(c) and 416.973(c) If Your Work is Done Under Special Conditions

Comment: Two commenters, while agreeing with the policy in the proposed rules, suggested that the rules could discourage some individuals from trying to work. The commenters suggested a reorganization of the paragraph and additional language to be more positive and send a more balanced message about work.

Response: We revised our regulations based on these comments, although we did not use all of the specific language proposed by the commenters.

Comment: Several commenters suggested that we expand the list of examples of special conditions in §§ 404.1573(c) and 416.973(c). The suggestions included special assistance from a job coach, counselor, or case manager in performing the work, and when the work is primarily rehabilitative, the individual obtained the job non-competitively, or the duration of work was limited because of therapeutic considerations. However, one commenter viewed the list of examples as exhaustive.

Response: We did not add examples, but we revised the text of the regulations in response to these comments to make clear that the list comprises *only* examples and "is not limited to" those examples. We decided not to add to the examples because they are fairly general and the more specific we make our examples, the more likely our examples would be misinterpreted as being exhaustive in nature.

Comment: One commenter stated that there should be a better, clearer distinction made between the examples of special conditions in proposed §§ 404.1573(c) and 416.973(c) and indicators of possible subsidy in proposed §§ 404.1574(a) and 416.974(a), or that we should indicate how they are related, if they are related.

Response: As noted above, we decided to withdraw the proposed changes reflected in proposed §§ 404.1574(a)(3)–(6) and 416.974(a)(3)–(6), regarding subsidies. We also clarified the provisions of §§ 404.1573(c) and 416.973(c) in these final rules.

Sections 404.1574 and 416.974 Evaluation Guides if You Are an Employee

Comment: One commenter suggested that in the first sentence under proposed §§ 404.1574(a)(1) and 416.974(a)(1) we should delete the clause "our primary consideration is the earnings that are derived from the work activity" and that

we should refocus our consideration away from earnings and onto the work activity itself as the clearer indicator of whether substantial gainful activity, or the ability to perform substantial gainful activity, exists.

Response: We did not delete the language, but we clarified our intent in response to the comment. The final rules now provide that, generally, we will first look at the individual's earnings, but we will further evaluate the individual's work activity, if appropriate. The final rules clarify our longstanding interpretation that substantial gainful activity is shown primarily by earnings from work, irrespective of the severity of an individual's impairment. However, these rules also recognize that there are some circumstances in which we should not count all of an individual's earnings. For this reason, a new second sentence in paragraph (a)(1) of the final rules provides that we will use an individual's earnings to determine whether there is substantial gainful activity unless we have information from the individual, his or her employer, or others that shows that we should not count all of the earnings.

Comment: One commenter thought that we should not determine that work is at the substantial gainful activity level until and unless a person earns over the substantial gainful level for a period of at least 6 consecutive months.

Response: We did not adopt the comment. It is reasonable to expect that in many instances an individual will demonstrate the ability to work at the substantial gainful activity level in fewer than 6 months.

Sections 404.1574(c), 404.1575(d), 416.974(c), and 416.975(d) The Unsuccessful Work Attempt

Comment: Two commenters thought that it was not clear whether we would consider if work was an unsuccessful work attempt at the time of an initial application. One commenter noted that it was unclear whether we would consider these rules at each point in the appeals process if the claimant began to work after he or she filed an application but before he or she received a determination or decision on his or her appeal.

Response: We adopted the comments. We revised §§ 404.1574(c) and 404.1575(d) to clarify that we will apply the unsuccessful work attempt concept when we make an initial determination on an application for title II disability benefits and throughout any appeal the individual may request and to provide a cross-reference to the provisions of § 404.1592a(a). We have revised § 404.1592a(a) to explain when we will and will not consider the unsuccessful work attempt concept and the provisions for averaging earnings during and after a reentitlement period. We did not make similar revisions to §§ 416.974(c) and 416.975(d) because we apply the rules in §§ 416.974 and 416.975 only in determining whether an individual is initially eligible for SSI. However, we did add sentences to §§ 404.1574(a), 404.1575(a), 416.974(a), and 416.975(a) to state expressly that all of the provisions of these sections (including the provisions on unsuccessful work attempts) apply at the time of the initial determination and throughout any appeals in connection with the application.

Comment: Two commenters suggested that the existing limit on a period of substantial gainful activity that may be considered an unsuccessful work attempt (*i.e.*, 6 months or less) is too short. They suggested that the number of months be increased to at least 9 months to be consistent with the 9-month trial work period.

Response: We did not adopt the comments. The final rules reflect our longstanding interpretation in SSR 84–25, and our experience which has been that 6 months is a sufficient time period to determine whether a work attempt will be unsuccessful. We do not believe that our interpretation on unsuccessful work attempts is analogous to the 9-month trial work period that is provided under a specific provision of the Act. For example, the "6-months or less" for the unsuccessful work attempt refers to a consecutive period of months. The trial work period does not require work to be in 9 consecutive months.

Comment: One commenter requested that we include inappropriate work behavior as a basis for an unsuccessful work attempt in §§ 404.1574(c)(4), 404.1575(d)(4), 416.974(c)(4), and 416.975(d)(4). The commenter noted that although a person's work product or services may be acceptable to an employer or in a business, the behavior may be so inappropriate that the individual may lose his or her job or business.

Response: We decided not to add this example because we believe that the examples given in our rules are general enough to cover a multitude of situations, including inappropriate work behavior due to an impairment. Work may be considered unsatisfactory for a number of reasons; one such reason is that a person exhibits inappropriate behavior with work peers, supervisors or the public to such a degree that it is harmful to the business. Unsatisfactory work due to an impairment already is included as a situation that may result in an unsuccessful work attempt. If an individual's inappropriate behavior at work causes him or her to lose the job in 6 months or less, we may consider this an unsuccessful work attempt. If the employer tolerates the behavior or accommodates the individual by providing special circumstances or work conditions, we would evaluate the value of the services and earnings to determine whether the services are substantial gainful activity.

Sections 404.1574a and 416.974a When and How we Will Average Your Earnings

Comment: One commenter suggested that we should average earnings whenever we decide whether an individual is doing substantial gainful activity, including during and after the 36-month reentitlement period. Another commenter stated that the proposed language for § 404.1574a was unclear with respect to whether averaging applies when deciding whether an individual's cash benefits should be terminated during and after the reentitlement period.

Response: We did not adopt the first comment. However, we clarified the rules in § 404.1592a in response to both comments to make clear when we will average earnings during and after a reentitlement period. In addition, in response to other comments, in § 404.1574a we updated the example and added a second example to better show when we will average earnings during and after a reentitlement period. We will apply the rules on averaging earnings when we make an initial determination on an application for title II disability or title XVI blindness or disability benefits and throughout any appeal the individual may request.

As we explain and clarify in the examples in §§ 404.1574(a) and 404.1592a, we will apply the rules on averaging earnings when we evaluate the work activity of a title II beneficiary to determine if his or her disability has ceased during or after the reentitlement period due to the performance of substantial gainful activity. We will not average earnings after the first month that we determine an individual performed substantial gainful activity during or after the reentitlement period. Thus, as we explain in §§ 404.1574a(d) and 404.1592a, we will not average a title II beneficiary's earnings in determining whether benefits should be paid for any month(s) during or after the reentitlement period that occurs after the month that we determined that disability ceased because of the

performance of substantial gainful activity.

Comment: One commenter stated that the example of averaging did not show when earnings could be averaged and asked that such an example be included.

Response: We added a second example which illustrates completion of the 9-month trial work period in a period of 10 consecutive months, when we will average earnings, and when it is not appropriate for us to average earnings.

Comment: One commenter believed that proposed § 416.974a, for averaging earnings when determining whether an individual is eligible for SSI disability benefits, was inconsistent with section 1619(a) of the Act.

Response: There is no inconsistency. Section 1619 of the Act applies to individuals whom we find eligible based on disability to receive benefits for at least 1 month and who begin work at the substantial gainful activity level in a subsequent month. We average earnings only to determine whether an individual is doing substantial gainful activity at the time he or she applies for SSI benefits to determine if the individual is eligible for SSI benefits. Once an individual is receiving SSI benefits, we do not consider whether he or she is engaging in substantial gainful activity to determine whether he or she continues to be eligible for benefits, consistent with the provisions of section 1619(a).

Section 404.1592(b) What We Mean by Services

Comment: One commenter stated that subsidy and impairment-related work expenses should be considered to reduce countable earnings when determining "services" for purposes of counting trial work period months.

Response: Subsidy and impairment-related work expenses are concepts which we use to reduce an employee's gross earnings in a month(s) in determining whether the work he or she has done or is doing is substantial gainful activity. Our regulations which provide for subtracting the value of any subsidy from an individual's gross earnings in determining whether the individual's earnings show that he or she has engaged in substantial gainful activity are based on the rulemaking authority granted to the Commissioner of Social Security under sections 223(d)(4)(A) and 1614(a)(3)(E) of the Act. These sections of the Act provide that the Commissioner "shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity." Our regulations which provide for deducting impairment-related work expenses in determining whether an individual's earnings show that he or she has engaged in substantial gainful activity are based on provisions of these same sections of the Act which specifically require that impairment-related work expenses be excluded in determining whether an individual is able to engage in substantial gainful activity by reason of his or her earnings.

By contrast, the term "services" for purposes of counting trial work period months is specifically defined by statute. Section 222(c)(2) of the Act provides that, for purposes of the trial work period, "the term 'services' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain." Under this definition, activity which is performed for remuneration or gain (e.g., wages, pay or profit) constitutes "services" for purposes of counting trial work period months whether or not an individual's earnings are subsidized or the individual incurs impairment-related work expenses. Consequently, consistent with the definition of "services" in section 222(c)(2) of the Act, we do not consider subsidies or impairment-related work expenses when we determine whether an individual has performed "services" for purposes of counting trial work period months.

Comment: Another commenter questioned the basis for the proposed revision of the fourth sentence of § 404.1592(b). The commenter interpreted the existing sentence to mean that we generally do not consider certain work, such as work done as therapy or training, to be "services" even if the work is done for remuneration. The commenter expressed the view that the proposed revision appeared to represent a change in policy in that it would exclude such work from being considered "services" only if the work is done "without remuneration."

Response: The revision of the fourth sentence of § 404.1592(b) in these final rules is not a change in interpretation. Rather, it is intended to eliminate an ambiguity in the existing language that could lead to a misinterpretation of the provision. Because of the ambiguity, some, such as the commenter, may have interpreted the existing provision in a manner that is inconsistent with the Act and our intent. Section 222(c)(2) of the Act provides that work activity is "services" for trial work period purposes if the activity "is performed for remuneration or gain *or* is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain" (emphasis added). Consistent with this provision of the Act, our longstanding interpretation has been that when an individual receives pay or profit in work that is done as therapy or training, we count that work as "services" for purposes of counting months of a trial work period. Conversely, we generally do not consider activity that is not performed for pay or profit, and that is done merely as therapy or training (or is the kind of activity usually done in a daily routine around the house or in self-care), as "services" for purposes of counting trial work period months. The purpose of the revision in these final rules is to clarify this intent.

Comment: One commenter stated that work activity performed in sheltered workshops or other similar environments is "pre-vocational and/or training" in nature and should not be considered "services" in determining trial work period months. Other commenters thought that § 404.1592(b) should be revised to exclude any activity that is "transitional employment" from being considered "services" for purposes of counting trial work period months.

Response: We did not adopt the comments. Whether activity performed by an individual constitutes "services" for purposes of the trial work period is determined on a case-by-case basis in accordance with the criteria specified in § 404.1592(b). Consistent with section 222(c)(2) of the Act, discussed above, § 404.1592(b) defines "services" to mean any activity, whether or not it is substantial gainful activity, "which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit." We use this standard to determine whether work activity performed by an individual, including work performed in a sheltered workshop or in "transitional employment," constitutes "services" for purposes of determining when the trial work period has ended. The criteria in § 404.1592(b) apply whether the activity is performed in competitive employment, in a sheltered workshop, in "transitional employment," in some other type of supported or subsidized employment, or in any other circumstance.

Section 404.1592(d) Who Is and Is Not Entitled to a Trial Work Period

Comment: Several commenters were critical of our proposed revisions to clarify that a claimant is not entitled to

a trial work period when he or she performs work demonstrating the ability to perform substantial gainful activity within 12 months after the alleged onset of disability and before we have issued any notice of determination or decision finding disability. It was contended that this policy is based on an "overly technical" statutory interpretation by SSA and is "completely arbitrary in its application" because entitlement to a trial work period for similarly situated individuals can depend on whether SSA makes a determination on their claims before or after they return to work.

Response: We did not adopt the comments. As noted in the NPRM, the revisions we are making clarify, but do not change, our interpretation set forth in SSR 82–52. Both the preambles to the NPRM and to these final regulations provide a more detailed explanation and justification for that longstanding interpretation than does SSR 82–52. As those preambles explain, our interpretation is based on the statutory 12-month duration requirement for establishing disability. We believe that our interpretation is a reasonable one that reflects congressional intent that disability claims should not be allowed in the face of evidence that a claimant's impairment(s) did not prevent substantial gainful activity for 12 consecutive months.

The legislative history of the duration requirement indicates the intent of Congress that the disability program not "result in the payment of disability benefits in cases of short-term, temporary disability." S. Rep. No. 404, 89th Cong. 1st Sess. 98–99, *reprinted* in 1965 U.S. Code Cong. & Ad. News 1943, 2038–39. The requirement in the statutory definition of disability of an inability to engage in any substantial gainful activity by reason of an impairment "which has lasted or can be expected to last for a continuous period of not less than 12 months" can most reasonably be interpreted to mean that the time of adjudication is the relevant point of reference. If Congress had intended benefits to be awarded based on evidence that a claimant's impairment(s) did not in fact prevent substantial gainful activity for 12 continuous months, but only had been expected to do so at some earlier point in the 12-month period, we believe that Congress would have provided for a finding of disability based on an impairment(s) which *was* expected to last 12 months, in addition to one which *can be* expected to last 12 months.

Furthermore, at the time the trial work period provision was enacted in 1960, the Act defined disability as the inability to engage in substantial gainful activity by reason of an impairment which can be expected to result in death or "to be of long-continued and indefinite duration." It was not until 1965 that the Act was amended to broaden the protection provided by the disability program by replacing the quoted language with the current 12-month duration requirement. Given the definition of disability in effect in 1960, it appears doubtful that Congress intended for the trial work period to be available when a claimant had already demonstrated the ability to perform substantial gainful activity by returning to work before we issue a determination or decision making a finding of disability.

With respect to the contention that our policy is arbitrary because a claimant's entitlement to a trial work period can be affected by the amount of time which passes before SSA adjudicates the claim or by when the application is filed, we recognize that it is possible for different outcomes to occur because of the amount of time needed to carefully and correctly adjudicate a particular claim. However, we believe that such outcomes on the relatively infrequent, but regrettable, occasions in which they occur, are a reasonable consequence of a program that was established by Congress in a way that would implement and accommodate two separate goals: (1) The disability program should not result in the payment of disability benefits in cases of short-term, temporary disability, and (2) claimants whose impairments will prevent them from being able to engage in substantial gainful activity for at least a year should not be required to meet this duration requirement by waiting the full year before they can be awarded and receive benefits. As the program was established, both these goals are accomplished except in the situation in which SSA awards benefits based on a finding that a claimant's inability to engage in substantial gainful activity can be expected to last for at least 12 months, and that prediction later turns out to be incorrect. While an award of benefits in this situation could be viewed as inconsistent with the first goal, such award is necessary in order to permit SSA to adjudicate disability claims and award benefits without having to wait 12 months from onset.

Finally, some claimants can seek relief under the unsuccessful work attempt policy, which permits benefits to be awarded to a claimant who attempts to return to work if that work attempt turns out to be "unsuccessful" under the provisions of final §§ 404.1574(c) and 404.1575(d) which are discussed in greater detail earlier in this preamble. We will disregard work attempts lasting 6 months or less that do not demonstrate the ability to perform sustained substantial gainful activity even if the unsuccessful work attempt occurs prior to adjudication of the claim for benefits.

Comment: One commenter was critical of our proposed revisions to § 404.1592(d) that were intended to clarify and be consistent with the provisions of § 404.1592(e). The commenter expressed the opinion that "(t)he proposed regulation is arbitrary because it treats persons differently, for trial work period purposes, based on the fortuity of when they apply for benefits."

Response: The proposed revisions and the final rules are consistent with our longstanding regulations which, since 1968, have provided that a trial work period may not begin prior to the month in which the application for benefits is filed. See § 404.1592(e). These regulations are based on section 222(c) of the Act, which provides that a trial work period begins with the month in which a person becomes entitled to disability benefits, and section 223(a)(1)(C) of the Act, which provides that, in order for a person to become entitled to disability benefits, he or she must have filed an application for benefits.

However, in reviewing § 404.1592(d)(2)(iv) of the proposed regulations in connection with these comments, we realized that the language we proposed could be misinterpreted to be more restrictive than we had intended. The proposed rule provided that an individual would not be entitled to a trial work period if he or she performed work demonstrating the ability to engage in substantial gainful activity at any time after the onset of the impairment(s) which prevented the individual from engaging in substantial gainful activity but before the month the individual filed his or her application for disability benefits. Taken literally, this could have prevented us from establishing trial work periods for some individuals we did not mean to exclude. For example, taken literally, the language could have been misinterpreted to exclude individuals whose impairments were not *disabling* at the time of their "onset" even though they were the impairments "which" ultimately prevented the individuals from working. It might have also been misinterpreted to exclude individuals with episodic impairments, such as mental disorders, that permit them to work intermittently, who might have worked in the past, and who might be

entitled to a trial work period for months after they have filed applications. Therefore, we revised the final rules to state more clearly our policy that we will not grant a trial work period for any month prior to the month of application.

Section 404.1592(e) When the Trial Work Period Begins and Ends

Comment: One commenter recommended that individuals who completed the trial work periods before January 1992 should be "grandfathered in." The commenter stated that individuals who completed their trial work period prior to January 1992 are not covered under the provisions of the law which state that the trial work period must be completed within a consecutive 60-month period. Under provisions effective January 1992, trial work months for the period prior to the 60-month period are not counted in the current 60-month period. Another commenter suggested that we should allow multiple trial work periods within the same period of disability. Another commenter suggested that we consider a trial work period completed only when 9 consecutive months of trial work are performed.

Response: Our longstanding interpretation has been that the statutory requirement for counting the 9 trial work period months in a consecutive 60-month period, which took effect January 1, 1992, does not apply to beneficiaries who complete their trial work period before that date. We believe this policy is consistent with and supported by the statutory language.

Section 404.1592a The Reentitlement Period

Comment: One commenter recommended that we clarify § 404.1592a to indicate when we would apply the policies regarding the unsuccessful work attempt in the reentitlement period. The commenter also asked that we include an example.

Response: As already noted in response to this and other comments, we have revised § 404.1592a(a) in these final rules to explain when we will and will not consider the unsuccessful work attempt and averaging policies during and after the reentitlement period. We did not provide an example because we believe the revised provisions are sufficiently clear.

Beginning with the month following the 9th trial work period month, if an individual continues to have a disabling impairment, he or she is entitled to a 36-month reentitlement period. During the reentitlement period, an individual may continue to test his or her ability to work. At any time after the trial work period ends and during and after the reentitlement period, we will evaluate any work and earnings to determine if it is substantial gainful activity and requires a cessation of disability status. To make this decision, we will, if applicable, average the work and earnings over the actual period of time that the individual worked. This may include work performed during the trial work period or during or after the reentitlement period. We will also consider whether the work was an unsuccessful work attempt and if there were any impairment-related work expenses, subsidy, special conditions or for self-employed individuals, unincurred business expenses. In no event will the cessation of disability based on substantial gainful activity be earlier than the first month after the end of the 9-month trial work period.

If we determine that disability ceased based on substantial gainful activity, then entitlement to disability benefits will terminate as of the third month following the month we find that the individual began substantial gainful activity, but in no event earlier than the first month after the end of the 36-month reentitlement period. We will evaluate all work activity that occurs in or after the third month following the month that we determine disability ceased based on substantial gainful activity on a month-by-month basis. This is because an individual is due payment for the month we find his or her disability ceased based on substantial gainful activity and the two succeeding months, whether or not the individual performs substantial gainful activity during those succeeding months. After those three months, an individual is not due benefits for any month he or she performs substantial gainful activity. However, he or she is due benefits for any month during the reentitlement period in which he or she does not engage in substantial gainful activity. We do not apply the provisions regarding an unsuccessful work attempt in determining whether to pay benefits for any month after the month disability ceased based on substantial gainful activity. Also, we do not average earnings. If we did, this could result in paying an individual less than what he or she is due. Likewise, after the reentitlement period ends, if we have previously determined that disability ceased based on substantial gainful activity during the reentitlement period, we must determine substantial gainful activity based on work and earnings on a month-by-month basis. When we calculate substantial gainful earnings on a month-by-month basis, we continue to consider any impairment-related work expenses, subsidy, and special conditions and for self-employed individuals, unincurred business expenses. If an individual's disability benefits were reinstated during the reentitlement period, they will terminate effective with the first month he or she does substantial gainful activity after the reentitlement period. This is because the individual has already demonstrated the ability to perform substantial gainful activity. We believe this longstanding interpretation is consistent with sections 223(a)(1) and 223(e)(1) of the Act. The intent of the 36-month reentitlement period is to encourage disability beneficiaries to continue working after the 9-month trial work period and after demonstrating the ability to do substantial gainful activity.

Comment: One commenter suggested eliminating the reentitlement period time limit (creating an unending reentitlement period) to make it easier for title II beneficiaries to receive benefits again after their benefits end because they did substantial gainful activity.

Response: We did not adopt the comment. The law specifically provides a 36-month limit to the reentitlement period. To make the changes suggested would require a change in the law.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its NPRM procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. For the reasons that follow, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures with respect to the following changes made to our regulations: (1) The changes made to §§ 404.1571 and 416.971 to reflect the provisions of sections 201(a)(4)(A) and 201(b)(4)(A) of Pub. L. 103–296; (2) the changes made to § 404.1592(b) to reflect the provisions of section 201(a)(4)(B) of Pub. L. 103–296; and (3) the changes made to § 404.1584(d) to reflect the provisions of section 102 of Pub. L. 104–121.

Sections 201(a)(4)(A) and 201(b)(4)(A) of Pub. L. 103–296 amended sections 223(d)(4) and 1614(a)(3) of the Act, respectively, to provide that we shall

make determinations of substantial gainful activity with respect to services performed by an individual "without regard to the legality" of the services. Section 201(a)(4)(B) of Pub. L. 103–296 added the parenthetical phrase "(whether legal or illegal)" into the definition of "services" in section 222(c)(2) of the Act to provide that for trial work purposes " 'services' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain." These amendments to the Act became effective on August 15, 1994, the date Pub. L. 103–296 was enacted. Section 102 of Pub. L. 104–121, enacted March 29, 1996, amended section 223(d)(4)(A) of the Act to provide that, for years after 1995, an increase in the substantial gainful activity amount for blind individuals under title II of the Act depends only on increases in the national average wage index.

Because the language of the statutory provisions added by these amendments is clear and does not provide for any discretionary policy, we believe that the use of notice-and-comment rulemaking procedures for the issuance of rules to reflect these statutory provisions is unnecessary. On this basis, good cause exists for dispensing with such procedures under the APA. Accordingly, we find that prior notice and comment are unnecessary with respect to these specific changes made to the rules.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB), and OMB has determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, OMB has reviewed these rules. We believe that changes in the number of individuals affected by these rules will be minimal and any associated costs will be cost neutral. We believe that based on these clarifications in our rules, any increase in the number of individuals found performing substantial gainful activity and therefore not disabled or no longer disabled under the Act will be offset by individuals who are working and found not performing substantial gainful activity and disabled because of certain adjustments that we make in calculating earnings for substantial gainful activity purposes. With these rules, we provide clarifications and better descriptions of our interpretations of the Act. We believe this will assist SSA personnel in providing our applicants and beneficiaries with more accurate information about SSA's work incentives (and thus, better service). Also, we believe, that people with disabilities who are working or who want to work will be better able to understand the employment support provisions and better perform their benefits and career planning in attempting to gain and keep employment, join America's mainstream and become more independent.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals who are applying for or receiving title II or title XVI benefits because of disability or blindness. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance. If you have any questions on this issue, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, Maryland 21235–6401, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0483), Washington, DC 20503.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the Preamble, subparts D and P of part 404 and subparts I and M of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.321 is amended by revising paragraph (c)(3) to read as follows:

§ 404.321 When a period of disability begins and ends.

* * * * *

(c) * * *

* * * * *

(3) If you perform substantial gainful activity during the reentitlement period described in § 404.1592a, the last month for which you received benefits.

* * * * *

3. Section 404.325 is revised to read as follows:

§ 404.325 The termination month.

If you do not have a disabling impairment, your termination month is the third month following the month in which your impairment is not disabling even if it occurs during the trial work period or the reentitlement period. If you continue to have a disabling impairment and complete 9 months of trial work, your termination month will be the third month following the earliest month you perform substantial gainful activity or are determined able to perform substantial gainful activity; however, in no event will the termination month under these circumstances be earlier than the first month after the end of the reentitlement period described in § 404.1592a.

Example 1: You complete your trial work period in December 1999. You then work at the substantial gainful activity level and continue to do so throughout the 36 months following completion of your trial work period and thereafter. Your termination month will be January 2003, which is the first month in which you performed substantial gainful activity after the end of your 36-month reentitlement period. This is because, for individuals who have disabling impairments (see § 404.1511) and who work, the termination month cannot occur before the first month after the end of the 36-month reentitlement period.

Example 2: You complete your trial work period in December 1999, but you do not do work showing your ability to do substantial

gainful activity during your trial work period or throughout your 36-month reentitlement period. In April 2003, 4 months after your reentitlement period ends, you become employed at work that we determine is substantial gainful activity, considering all of our rules in §§ 404.1574 and 404.1574a. Your termination month will be July 2003; that is, the third month after the earliest month you performed substantial gainful activity.

Subpart P—[Amended]

4. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

5. Section 404.1571 is amended by revising the first sentence to read as follows:

§ 404.1571 General.

The work, without regard to legality, that you have done during any period in which you believe you are disabled may show that you are able to work at the substantial gainful activity level. * * *

6. Section 404.1573 is amended by revising paragraph (c) to read as follows:

§ 404.1573 General information about work activity.

* * * * *

(c) *If your work is done under special conditions.* The work you are doing may be done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital. If your work is done under special conditions, we may find that it does not show that you have the ability to do substantial gainful activity. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. However, work done under special conditions may show that you have the necessary skills and ability to work at the substantial gainful activity level. Examples of the special conditions that may relate to your impairment include, but are not limited to, situations in which—

(1) You required and received special assistance from other employees in performing your work;

(2) You were allowed to work irregular hours or take frequent rest periods;

(3) You were provided with special equipment or were assigned work especially suited to your impairment;

(4) You were able to work only because of specially arranged circumstances, for example, other persons helped you prepare for or get to and from your work;

(5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or

(6) You were given the opportunity to work despite your impairment because of family relationship, past association with your employer, or your employer's concern for your welfare.

* * * * *

7. Section 404.1574 is amended by revising paragraphs (a), introductory text, (a)(1), (a)(2), (b)(1), (b)(2), introductory text, (b)(3), introductory text, (b)(4), and (b)(6), introductory text, and by adding new paragraphs (c) and (d) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

(a) We use several guides to decide whether the work you have done shows that you are able to do substantial gainful activity. If you are working or have worked as an employee, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate, whether in connection with your application for disability benefits (when we make an initial determination on your application and throughout any appeals you may request), after you have become entitled to a period of disability or to disability benefits, or both.

(1) *Your earnings may show you have done substantial gainful activity.* Generally, in evaluating your work activity for substantial gainful activity purposes, our primary consideration will be the earnings you derive from the work activity. We will use your earnings to determine whether you have done substantial gainful activity unless we have information from you, your employer, or others that shows that we should not count all of your earnings. The amount of your earnings from work you have done (regardless of whether it is unsheltered or sheltered work) may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We will use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.

(2) *We consider only the amounts you earn.* When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a person with a serious impairment does simple tasks under close and continuous supervision, our determination of whether that person has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 404.1576, and then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 404.1576). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2), (3), (4), and (6) of this section. See § 404.1574a for our rules on averaging earnings.

(2) *Earnings that will ordinarily show that you have engaged in substantial*

gainful activity. We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you have engaged in substantial gainful activity if—* * *

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* Unless you work in a sheltered workshop or a comparable facility (see paragraph (b)(4) of this section), we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—* * *

(4) *If you work in a sheltered workshop.* If you work in a sheltered workshop or a comparable facility especially set up for persons with serious impairments, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings meet the levels in paragraph (b)(2) of this section. Earnings from a sheltered workshop or a comparable facility that are less than those indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider the other information in paragraph (b)(6) of this section regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are less than those indicated in paragraph (b)(2), we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have done substantial gainful activity.

* * * * *

(6) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* Unless you work in a sheltered workshop or a comparable facility (see paragraph (b)(4) of this section), if your earnings, on the average, are between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings, such as whether—

* * * * *

(c) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, your impairment forced you to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(2) of this section, and you meet the conditions described in paragraphs (c)(2), (3), (4), and (5), of this section. We will use the provisions of this paragraph when we make an initial determination on your application for disability benefits and throughout any appeal you may request. Except as set forth in § 404.1592a(a), we will also apply the provisions of this paragraph if you are already entitled to disability benefits, when you work and we consider whether the work you are doing is substantial gainful activity or demonstrates the ability to do substantial gainful activity.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider that you began a work attempt that later proved unsuccessful. You must have stopped working or reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that were essential to the further performance of your work. We explain what we mean by special conditions in § 404.1573(c). We will consider your prior work to be "discontinued" for a significant period if you were out of work at least 30 consecutive days. We will also consider your prior work to be "discontinued" if, because of your impairment, you were forced to change to another type of work or another employer.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if you stopped working, or you reduced your work and earnings below the substantial gainful activity earnings level, because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity earnings level, within 6 months because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work and—

(i) You were frequently absent from work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) You worked during a period of temporary remission of your impairment; or

(iv) You worked under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity earnings level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

(d) *Work activity in certain volunteer programs.* If you work as a volunteer in certain programs administered by the Federal government under the Domestic Volunteer Service Act of 1973 or the Small Business Act, we will not count any payments you receive from these programs as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include a minimal stipend, payments for supportive services such as housing, supplies and equipment, an expense allowance, or reimbursement of out-of-pocket expenses. We will also disregard the services you perform as a volunteer in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a volunteer in a program explicitly mentioned in the Domestic Volunteer Service Act of 1973 or the Small Business Act. Programs explicitly mentioned in those Acts include Volunteers in Service to America, University Year for ACTION, Special Volunteer Programs, Retired Senior Volunteer Program, Foster Grandparent Program, Service Corps of Retired Executives, and Active Corps of Executives. We will not exclude under this paragraph, volunteer work you perform in other programs or any nonvolunteer work you may perform, including nonvolunteer work under one of the specified programs. For civilians in certain government-sponsored job training and employment programs, we evaluate the work activity on a case-by-case basis under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. We will subtract the value of any subsidy and use the remainder to determine if you have done substantial gainful activity. See paragraphs (a)(2)-(3) of this section.

8. A new § 404.1574a is added to read as follows:

§ 404.1574a When and how we will average your earnings.

(a) If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful

activity earnings levels, we will average your earnings over the entire period of work requiring evaluation to determine if you have done substantial gainful activity. See § 404.1592a for information on the reentitlement period.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

(d) We will not average your earnings in determining whether benefits should be paid for any month(s) during or after the reentitlement period that occurs after the month disability has been determined to have ceased because of the performance of substantial gainful activity. See § 404.1592a for information on the reentitlement period. The following examples illustrate what we mean by a significant change in the work pattern of an employee and when we will average and will not average earnings.

Example 1: Mrs. H. began receiving disability insurance benefits in March 1993. In January 1995 she began selling magazines by telephone solicitation, expending a minimum of time, for which she received $225 monthly. As a result, Mrs. H. used up her trial work period during the months of January 1995 through September 1995. After the trial work period ended, we determined that Mrs. H. had not engaged in substantial gainful activity during her trial work period. Her reentitlement period began October 1995. In December 1995, Mrs. H. discontinued her telephone solicitation work to take a course in secretarial skills. In January 1997, she began work as a part-time temporary secretary in a banking firm. Mrs. H. worked 20 hours a week, without any subsidy or impairment-related work expenses, at beginner rates. She earned $285 per month in January 1997 and February 1997. In March 1997 she had increased her secretarial skills to journeyman level and was assigned as a part-time private secretary to one of the vice presidents of the banking firm. Mrs. H.'s earnings increased to $525 per month effective March 1997. We determined that Mrs. H. was engaging in substantial gainful activity beginning March 1997 and that her disability ceased that month, the first month of substantial gainful activity after the end of the trial work period. Mrs. H. is due payment for March 1997, the month of cessation, and the following 2 months (April 1997 and May 1997) because disability benefits terminate the third month following the earliest month in which she performed substantial gainful activity. We did not average earnings for the period January 1997 and February 1997 with the period beginning March 1997 because there was a significant change in earnings and work activity beginning March 1997. Thus, the earnings of January 1997 and February 1997 could not be averaged with those of March 1997 to reduce March 1997 earnings below the substantial gainful activity level. After we determine that Mrs. H.'s disability had ceased because of her performance of substantial gainful activity, we cannot average her earnings to determine whether she is due payment for any month during or after the reentitlement period. Beginning June 1997, the third month following the cessation month, we would evaluate all of Mrs. H.'s work activity on a month-by-month basis (see § 404.1592a(a)).

Example 2: Ms. M. began receiving disability insurance benefits in March 1992. In January 1995, she began selling cable television subscriptions by telephone solicitation, expending a minimum of time, for which she received $275 monthly. Ms. M. did not work in June 1995, and she resumed selling cable television subscriptions beginning July 1995. In this way, Ms. M. used up her 9-month trial work period during the months of January 1995 through May 1995 and July 1995 through October 1995. After Ms. M.'s trial work period ended, we determined that she had not engaged in substantial gainful activity during her trial work period. Ms. M.'s reentitlement period began November 1995. In December 1995, Ms. M. discontinued her telephone solicitation work to take a course in secretarial skills. In January 1997, she began work as a part-time temporary secretary in an accounting firm. Ms. M. worked, without any subsidy or impairment-related work expenses, at beginner rates. She earned $460 in January 1997, $420 in February 1997, and $510 in March 1997. In April 1997, she had increased her secretarial skills to journeyman level, and she was assigned as a part-time private secretary to one of the vice presidents of the firm. Ms. M.'s earnings increased to $860 per month effective April 1997. We determined that Ms. M. was engaging in substantial gainful activity beginning April 1997 and that her disability ceased that month, the first month of substantial gainful activity after the end of the trial work period. She is due payment for April 1997, May 1997 and June 1997, because disability benefits terminate the third month following the earliest month in which she performs substantial gainful activity (the month of cessation). We averaged her earnings for the period January 1997 through March 1997 and determined them to be about $467 per month for that period. We did not average earnings for the period January 1997 through March 1997 with earnings for the period beginning April 1997 because there was a significant change in work activity and earnings beginning April 1997. Therefore, we found that the earnings for January 1997 through March 1997 were under the substantial gainful activity level. After we determine that Ms M.'s disability has ceased because she performed substantial gainful activity, we cannot average her earnings in determining whether she is due payment for any month during or after the reentitlement period. In this example, beginning July 1997, the third month following the month of cessation, we would evaluate all of Ms. M.'s work activity on a month-by-month basis (see § 404.1592a(a)).

9. Section 404.1575 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

§ 404.1575 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate, whether in connection with your application for disability benefits (when we make an initial determination on your application and throughout any appeals you may request), after you have become entitled to a period of disability or to disability benefits, or both. We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend on a number of different factors, such as capital investment and profit-sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are

in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

* * * * *

(c) *What we mean by substantial income.* We deduct your normal business expenses from your gross income to determine net income. Once we determine your net income, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties that ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 404.1576. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, *e.g.*, rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison with the earnings guidelines in § § 404.1574(b)(2) and 404.1574(b)(3). See § 404.1574a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in § 404.1574(b)(2); or

(2) It averages less than the amounts described in § 404.1574(b)(2) but it is either comparable to what it was before you became seriously impaired if we had not considered your earnings or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

(d) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), (4), and (5) of this section. We will use the provisions of this paragraph when we make an initial determination on your application for disability benefits and throughout any appeal you may request. Except as set forth in § 404.1592a(a), we will also apply the provisions of this paragraph if you are already entitled to disability benefits, when you work and we consider whether the work you are doing is substantial gainful activity or demonstrates the ability to do substantial gainful activity.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. You must have stopped working or reduced your work and earnings below substantial gainful activity because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work. Examples of such special conditions may include any significant amount of unpaid help furnished by your spouse, children, or others, or unincurred business expenses, as described in paragraph (c) of this section, paid for you by another individual or agency. We will consider your prior work to be "discontinued" for a significant period if you were out of work at least 30 consecutive days. We will also consider your prior work to be "discontinued" if, because of your impairment, you were forced to change to another type of work.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, within 6 months because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work and—

(i) You were frequently unable to work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) You worked during a period of temporary remission of your impairment; or

(iv) You worked under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

10. Section 404.1584 is amended by revising paragraph (d) to read as follows:

§ 404.1584 Evaluation of work activity of blind people.

* * * * *

(d) *Evaluation of earnings.*—(1) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will ordinarily consider that your earnings from your work activities show that you have engaged in substantial gainful activity if your monthly earnings average more than the amount(s) shown in paragraphs (d)(2) and (3) of this section. We will apply §§ 404.1574(a)(2), 404.1575(c), and 404.1576 in determining the amount of your average earnings.

(2) *Substantial gainful activity guidelines for taxable years before 1978.* For work activity performed in taxable years before 1978, the average earnings per month that we ordinarily consider enough to show that you have done substantial gainful activity are the same for blind people as for others. See § 404.1574(b)(2) for the earnings guidelines for other than blind individuals.

(3) *Substantial gainful activity guidelines for taxable years beginning 1978.* For taxable years beginning 1978, if you are blind, the law provides different earnings guidelines for determining if your earnings from your work activities are substantial gainful activity. Ordinarily, we consider your work to be substantial gainful activity, if your average monthly earnings are more than those shown in Table I. For years after 1977 and before 1996, increases in the substantial gainful activity guideline were linked to increases in the monthly exempt amount under the retirement earnings test for individuals aged 65 to 69. Beginning with 1996, increases in the substantial gainful activity amount have

depended only on increases in the national average wage index.

TABLE I

Over	In year(s)
$334	1978
$375	1979
$417	1980
$459	1981
$500	1982
$550	1983
$580	1984
$610	1985
$650	1986
$680	1987
$700	1988
$740	1989
$780	1990
$810	1991
$850	1992
$880	1993
$930	1994
$940	1995
$960	1996
$1,000	1997
$1,050	1998
$1,110	1999
$1,170	2000

11. Section 404.1592 is amended as follows:

a. By revising the first and last sentences of paragraph (b),

b. Adding a new sentence to the end of paragraph (b), and

c. Revising paragraphs (d) and (e).

The revisions and additions to § 404.1592 read as follows:

§ 404.1592 The trial work period.

* * * * *

(b) *What we mean by services.* When used in this section, *services* means any activity (whether legal or illegal), even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. * * * We generally do not consider work done without remuneration to be "services" if it is done merely as therapy or training or if it is work usually done in a daily routine around the house or in self-care. We will not consider work you have done as a volunteer in the Federal programs described in § 404.1574(d) in determining whether you have performed services in the trial work period.

* * * * *

(d) *Who is and is not entitled to a trial work period.* (1) You are generally entitled to a trial work period if you are entitled to disability insurance benefits, child's benefits based on disability, or widow's or widower's or surviving divorced spouse's benefits based on disability.

(2) You are not entitled to a trial work period—

(i) If you are entitled to a period of disability but not to disability insurance benefits, and you are not entitled to any other type of disability benefit under title II of the Social Security Act (i.e., child's benefits based on disability, or widow's or widower's benefits or surviving divorced spouse's benefits based on disability);

(ii) If you perform work demonstrating the ability to engage in substantial gainful activity during any required waiting period for benefits;

(iii) If you perform work demonstrating the ability to engage in substantial gainful activity within 12 months of the onset of the impairment(s) that prevented you from performing substantial gainful activity and before the date of any notice of determination or decision finding that you are disabled; or

(iv) For any month prior to the month of your application for disability benefits (see paragraph (e) of this section).

(e) *When the trial work period begins and ends.* The trial work period begins with the month in which you become entitled to disability insurance benefits, to child's benefits based on disability or to widow's, widower's, or surviving divorced spouse's benefits based on disability. It cannot begin before the month in which you file your application for benefits, and for widows, widowers, and surviving divorced spouses, it cannot begin before December 1, 1980. It ends with the close of whichever of the following calendar months is the earliest:

(1) The 9th month (whether or not the months have been consecutive) in which you have performed services if that 9th month is prior to January 1992;

(2) The 9th month (whether or not the months have been consecutive and whether or not the previous 8 months of services were prior to January 1992) in which you have performed services within a period of 60 consecutive months if that 9th month is after December 1991; or

(3) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are no longer disabled. See § 404.1594 for information on how we decide whether your disability continues or ends.

12. Section 404.1592a is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 404.1592a The reentitlement period.

(a) *General.* The reentitlement period is an additional period after 9 months of trial work during which you may continue to test your ability to work if you have a *disabling impairment.* as defined in § 404.1511. If you work during the reentitlement period, we may decide that your disability has ceased because your work is substantial gainful activity and stop your benefits. However, if, after the month for which we found that your disability ceased because you performed substantial gainful activity, you stop engaging in substantial gainful activity, we will start paying you benefits again; you will not have to file a new application. The following rules apply if you complete a trial work period and continue to have a disabling impairment:

(1) The first time you work after the end of your trial work period *and* engage in substantial gainful activity, we will find that your disability ceased. When we decide whether this work is substantial gainful activity, we will apply all of the relevant provisions of §§ 404.1571–404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses. We will find that your disability ceased in the first month after the end of your trial work period in which you do substantial gainful activity, applying all the relevant provisions in §§ 404.1571–404.1576.

(2) (i) If we determine under paragraph (a)(1) of this section that your disability ceased during the reentitlement period because you perform substantial gainful activity, you will be paid benefits for the first month after the trial work period in which you do substantial gainful activity (i.e., the month your disability ceased) and the two succeeding months, whether or not you do substantial gainful activity in those succeeding months. After those three months, we will stop your benefits for any month in which you do substantial gainful activity. (See §§ 404.316, 404.337, 404.352 and 404.401a.) If your benefits are stopped because you do substantial gainful activity, they may be started again without a new application and a new determination of disability if you stop doing substantial gainful activity in a month during the reentitlement period. In determining whether you do substantial gainful activity in a month for purposes of stopping or starting benefits during the reentitlement period,

we will consider only your work in, or earnings for, that month. Once we have determined that your disability has ceased during the reentitlement period because of the performance of substantial gainful activity as explained in paragraph (a)(1) of this section, we will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts or the provisions of § 404.1574a regarding averaging of earnings to determine whether benefits should be paid for any particular month in the reentitlement period that occurs after the month your disability ceased.

(ii) If anyone else is receiving monthly benefits based on your earnings record, that individual will not be paid benefits for any month for which you cannot be paid benefits during the reentitlement period.

(3) The way we will consider your work activity after your reentitlement period ends (see paragraph (b)(2) of this section) will depend on whether you worked during the reentitlement period and if you did substantial gainful activity. If you worked during the reentitlement period and we decided that your disability ceased during the reentitlement period because of your work under paragraph (a)(1) of this section, we will find that your entitlement to disability benefits terminates in the first month in which you engage in substantial gainful activity after the end of the reentitlement period (see § 404.325). (See § 404.321 for when entitlement to a period of disability ends.) When we make this determination, we will consider only your work in, or earnings for, that month; we will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts or the provisions of § 404.1574a regarding averaging of earnings. If we did not find that your disability ceased because of work activity during the reentitlement period, we will apply all of the relevant provisions of §§ 404.1571–404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses, to determine whether your disability ceased because you performed substantial gainful activity after the reentitlement period. If we find that your disability ceased because you performed substantial gainful activity in a month after your reentitlement period ended, you will be paid benefits for the month in which your disability ceased and the two succeeding months. After those three months, your entitlement to a period of disability or to disability benefits terminates (see §§ 404.321 and 404.325).

(b) * * *

(2)(i) The last day of the 15th month following the end of your trial work period if you were not entitled to benefits after December 1987; or

(ii) The last day of the 36th month following the end of your trial work period if you were entitled to benefits after December 1987 or if the 15-month period described in paragraph (b)(2)(i) of this section had not ended as of January 1988. (See §§ 404.316, 404.337, and 404.352 for when your benefits end.)

13. Section 404.1594 is amended by revising the second sentence of paragraph (f)(7) and by revising paragraph (g)(9) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(f) *Evaluation steps.* * * *

(7) * * * That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. * * *

* * * * *

(g) *The month in which we will find you are no longer disabled.* * * *

(9) The first month you were told by your physician that you could return to work, provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by substantial evidence.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart I—[Amended]

14. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c) and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

15. Section 416.901 is amended by revising the second sentence of paragraph (m) to read as follows:

§ 416.901 Scope of subpart.

* * * * *

(m) * * * We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status and when we will review to see if you are still disabled. * * *

16. Section 416.971 is amended by revising the first sentence to read as follows:

§ 416.971 General.

The work, without regard to legality, that you have done during any period in which you believe you are disabled may show that you are able to work at the substantial gainful activity level. * * *

17. Section 416.973 is amended by revising paragraph (c) and removing paragraph (f) to read as follows:

§ 416.973 General information about work activity.

* * * * *

(c) *If your work is done under special conditions.* The work you are doing may be done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital. If your work is done under special conditions, we may find that it does not show that you have the ability to do substantial gainful activity. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. However, work done under special conditions may show that you have the necessary skills and ability to work at the substantial gainful activity level. Examples of the special conditions that may relate to your impairment include, but are not limited to, situations in which—

(1) You required and received special assistance from other employees in performing your work;

(2) You were allowed to work irregular hours or take frequent rest periods;

(3) You were provided with special equipment or were assigned work especially suited to your impairment;

(4) You were able to work only because of specially arranged circumstances, for example, other persons helped you prepare for or get to and from your work;

(5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or

(6) You were given the opportunity to work, despite your impairment, because of family relationship, past association with your employer, or your employer's concern for your welfare.

* * * * *

18. Section 416.974 is amended by revising paragraphs (a), introductory text, (a)(1), (a)(2), (b)(1), (b)(2), introductory text, (b)(3), introductory text (b)(4) and (b)(6), introductory text,

and by adding new paragraphs (c) and (d) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

(a) We use several guides to decide whether the work you have done shows that you are able to do substantial gainful activity. If you are working or have worked as an employee, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate in connection with your application for supplemental security income benefits (when we make an initial determination on your application and throughout any appeals you may request) to determine if you are eligible.

(1) *Your earnings may show you have done substantial gainful activity.* Generally, in evaluating your work activity for substantial gainful activity purposes, our primary consideration will be the earnings you derive from the work activity. We will use your earnings to determine whether you have done substantial gainful activity unless we have information from you, your employer, or others that shows that we should not count all of your earnings. The amount of your earnings from work you have done (regardless of whether it is unsheltered or sheltered work) may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We will use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.

(2) *We consider only the amounts you earn.* When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a person with a serious impairment does simple tasks under close and continuous supervision, our determination of whether that person has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity.

* * * * *

(b) *Earnings guidelines.*—(1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 416.976, and then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 416.976). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2), (3), (4), and (6) of this section. See § 416.974a for our rules on averaging earnings.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you have engaged in substantial gainful activity if—* * *

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* Unless you work in a sheltered workshop or a comparable facility (see paragraph (b)(4) of this section), we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—* * *

(4) *If you work in a sheltered workshop.* If you work in a sheltered workshop or a comparable facility especially set up for persons with serious impairments, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings meet the levels in paragraph (b)(2) of this section. Earnings from a sheltered workshop or a comparable facility that are less than those indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider the other information in paragraph (b)(6) of this section regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are less than those indicated in paragraph (b)(2) of this section, we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have done substantial gainful activity.

* * * * *

(6) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* Unless you work in a sheltered workshop or a comparable facility (see paragraph (b)(4) of this section), if your earnings, on the average, are between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings, such as whether—

* * * * *

(c) *The unsuccessful work attempt—*(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(2) of this section and you meet the conditions described in paragraphs (c)(2), (3), (4), and (5) of this section.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. You must have stopped working or reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that were essential to the further performance of your work. We explain what we mean by special conditions in § 416.973(c). We will consider your prior work to be "discontinued" for a significant period

if you were out of work at least 30 consecutive days. We will also consider your prior work to be "discontinued" if, because of your impairment, you were forced to change to another type of work or another employer.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if you stopped working, or you reduced your work and earnings below the substantial gainful activity earnings level, because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below the substantial gainful activity earnings level, within 6 months because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work and—

(i) You were frequently absent from work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) You worked during a period of temporary remission of your impairment; or

(iv) You worked under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity earnings level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

(d) *Work activity in certain volunteer programs.* If you work as a volunteer in certain programs administered by the Federal government under the Domestic Volunteer Service Act of 1973 or the Small Business Act, we will not count any payments you receive from these programs as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include a minimal stipend, payments for supportive services such as housing, supplies and equipment, an expense allowance, or reimbursement of out-of-pocket expenses. We will also disregard the services you perform as a volunteer in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a volunteer in a program explicitly mentioned in the Domestic Volunteer Service Act of 1973 or the Small Business Act. Programs explicitly mentioned in those Acts include Volunteers in Service to America, University Year for ACTION, Special Volunteer Programs, Retired Senior Volunteer Program, Foster Grandparent Program, Service Corps of Retired Executives, and Active Corps of Executives. We will not exclude under this paragraph volunteer work you perform in other programs or any nonvolunteer work you may perform, including nonvolunteer work under one of the specified programs. For civilians in certain government-sponsored job training and employment programs, we evaluate the work activity on a case-by-case basis under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. We will subtract the value of any subsidy and use the remainder to determine if you have done substantial gainful activity. See paragraphs (a)(2)–(3) of this section.

19. A new § 416.974a is added to read as follows:

§ 416.974a When and how we will average your earnings.

(a) To determine your initial eligibility for benefits, we will average any earnings you make during the month you file for benefits and any succeeding months to determine if you are doing substantial gainful activity. If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels, your earnings will be averaged over the entire period of work requiring evaluation to determine if you have done substantial gainful activity.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

20. Section 416.975 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

§ 416.975 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate in connection with your application for supplemental security income benefits (when we make an initial determination on your application and throughout any appeals you may request). We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend on a number of different factors, such as capital investment and profit-sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(2) when considered in terms of its value to the business, or when compared to the salary that an

owner would pay to an employee to do the work you are doing.

* * * * *

(c) *What we mean by substantial income.* We deduct your normal business expenses from your gross income to determine net income. Once net income is determined, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties that ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 416.976. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, *e.g.*, rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison with the earnings guidelines in §§ 416.974(b)(2) and 416.974(b)(3). See § 416.974a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in § 416.974(b)(2); or

(2) It averages less than the amounts described in § 416.974(b)(2) but it is either comparable to what it was before you became seriously impaired if we had not considered your earnings or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

(d) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), (4), and (5) of this section.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. You must have stopped working or reduced your work and earnings below substantial gainful activity because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work. Examples of such special conditions may include any significant amount of unpaid help furnished by your spouse, children, or others, or unincurred business expenses, as described in paragraph (c) of this section, paid for you by another individual or agency. We will consider your prior work to be "discontinued" for a significant period if you were out of work at least 30 consecutive days. We will also consider your prior work to be "discontinued" if, because of your impairment, you were forced to change to another type of work.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work.

(4) *If you work between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, within 6 months because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work and—

(i) You were frequently unable to work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) You worked during a period of temporary remission of your impairment; or

(iv) You worked under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity level.

§ 416.976 [Amended]

21. Section 416.976 is amended by removing paragraph (f)(2) and by redesignating paragraphs (f)(3) through (f)(6) as paragraphs (f)(2) through (f)(5), respectively.

§ 416.991 [Amended]

22. Section 416.991 is amended by removing the parenthetical sentence.

§ 416.992 [Removed and reserved]

23. Section 416.992 is removed and reserved.

§ 416.992a [Removed and reserved]

24. Section 416.992a is removed and reserved.

25. Section 416.994 is amended as follows:

a. By revising the section heading,

b. Removing paragraph (b)(3)(v), and

c. By revising paragraphs (b)(5) and (b)(6).

The revisions to § 416.994 read as follows:

§ 416.994 How we will decide whether your disability continues or ends, disabled adults.

* * * * *

(b) * * *

(5) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are:

(i) *Step 1.* Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of this chapter? If you do, your disability will be found to continue.

(ii) *Step 2.* If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.)

(iii) *Step 3.* If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; i.e., whether or not there has been an

increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to your ability to do work, see step 4 in paragraph (b)(5)(iv) of this section. If medical improvement *is* related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.

(iv) *Step 4.* If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see § 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with § 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(vii) *Step 7.* If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

(6) *The month in which we will find you are no longer disabled.* If the evidence shows that you are no longer disabled, we will find that your disability ended in the earliest of the following months.

(i) The month the evidence shows that you are no longer disabled under the rules set out in this section, and you were disabled only for a specified period of time in the past;

(ii) The month the evidence shows that you are no longer disabled under the rules set out in this section, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(iii) The month in which you return to full-time work, with no significant medical restrictions and acknowledge that medical improvement has occurred, and we expected your impairment(s) to improve (see § 416.991);

(iv) The first month in which you fail without good cause to follow prescribed treatment, when the rule set out in paragraph (b)(4)(iv) of this section applies;

(v) The first month you were told by your physician that you could return to work, provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by substantial evidence; or

(vi) The first month in which you failed without good cause to do what we asked, when the rule set out in paragraph (b)(4)(ii) of this section applies.

* * * * *

Subpart M—[Amended]

26. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611–1615, 1619 and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382–1382d, 1382h, and 1383).

27. Section 416.1331 is amended by revising paragraph (a) to read as follows:

§ 416.1331 Termination of your disability or blindness payments.

(a) *General.* The last month for which we can pay you benefits based on disability is the second month after the first month in which you are determined to no longer have a disabling impairment (described in § 416.911). (See § 416.1338 for an exception to this rule if you are participating in an appropriate vocational rehabilitation program, and § 416.261 for an explanation of special benefits for which you may be eligible.) The last month for which we can pay you benefits based on blindness is the second month after the month in which your blindness ends (see § 416.986 for when blindness ends). You must meet the income, resources, and other eligibility requirements to receive any of the benefits described in this paragraph. We will also stop payment of your benefits if you have not cooperated with us in getting information about your disability or blindness.

* * * * *

[FR Doc. 00–17138 Filed 7–10–00; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 93–2(2); Conley v. Bowen

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 93–2(2)—*Conley* v. *Bowen*, 859 F.2d 261 (2d Cir. 1988).

SUMMARY: In accordance with 20 CFR 404.985(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 93–2(2).

EFFECTIVE DATE: August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On May 17, 1993, we published Acquiescence Ruling 93–2(2) to reflect the holding in *Conley* v. *Bowen*, 859 F.2d 261 (2d Cir. 1988), that 20 CFR 404.1592a does not apply to work activity performed by a disabled individual after a reentitlement period when determining whether that individual has engaged in substantial gainful activity. The court held that SSA must evaluate such work activity under 20 CFR 404.1571 through 404.1576, and consider an average of work and earnings performed over a period of months rather than work and earnings performed in a single month.

Concurrent with the rescission of this Ruling, we are publishing our final rules amending section 404.1592a of Social Security Regulations No. 4 (20 CFR 404.1592a). These amendments will clarify that earnings averaging does apply to work and earnings performed during and after a reentitlement period when determining whether an individual's disability has ceased because of the performance of substantial gainful activity. However, we have also clarified this regulation to explain that, after an individual's disability has already been determined to have ceased, earnings averaging does not apply when determining whether an individual has engaged in substantial gainful activity for any month during or after a reentitlement period because of the performance of substantial gainful activity for purposes of determining whether benefits shall be paid for that month.

Because the changes in the regulations address the Conley court's concerns and explain specifically when the rules for averaging work and earnings over a period of months apply, we are rescinding Acquiescence Ruling 93–2(2). The final rules and this rescission restore uniformity to our nationwide system of rules in accordance with our commitment to the goal of administering our programs through uniform national standards as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners)

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–17139 Filed 7–10–00; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 87–4(8); Iamarino v. Heckler

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 87–4(8)—*Iamarino* v. *Heckler*, 795 F.2d 59 (8th Cir. 1986).

SUMMARY: In accordance with 20 CFR 404.985(e), 416.1485(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 87–4(8).

EFFECTIVE DATE: August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On August 31, 1987, we issued Acquiescence Ruling 87–4(8) to reflect the holding in *Iamarino* v. *Heckler*, 795 F.2d 59 (8th Cir. 1986), that 20 CFR 404.1574 and 416.974 provide a "middle ground," where no positive or negative presumption of substantial gainful activity applies, for evaluating sheltered workshop earnings at the first step of the sequential evaluation process for determining disability. The court noted that because SSA's regulations for evaluating earnings from competitive employment (i.e., nonsheltered workshop earnings) provided a "middle ground" where no presumption applies, between the upper and lower earnings limits specified in the regulations, the same regulations must also provide a "middle ground" where no presumption applies for sheltered workshop earnings. Accordingly, the court found that sheltered workshop earnings that exceed the upper substantial gainful activity threshold amount in these regulations fall in a "middle ground" where no presumption applies that an individual is engaging in substantial gainful activity.

Concurrent with the rescission of this Ruling, we are publishing our final rules amending sections 404.1574 and 416.974 of Social Security Regulations Nos. 4 and 16 (20 CFR 404.1574 and 416.974) to clarify that the "middle ground" where no positive or negative presumption of substantial gainful activity applies because it lies below the upper threshold amount for substantial gainful activity in paragraphs 404.1574(b)(2) and 416.974(b)(2), and above the lower threshold amount in paragraphs 404.1574(b)(3) and 416.974(b)(2), relates only to earnings from competitive employment. We also have clarified these regulations to provide that sheltered workshop earnings that do not exceed the upper threshold amount listed in paragraphs 404.1574(b)(2) and 416.974(b)(2), are presumed not to be substantial gainful activity even when the earnings fall within the "middle ground" range for individuals engaged in competitive employment.

Because the changes in the regulations address the Iamarino court's concerns, and explain that sheltered workshop earnings that fall between the upper and lower earnings limits specified in the regulations (in the "middle ground" range) for individuals engaged in competitive employment are presumed not to be substantial gainful activity, we are rescinding Acquiescence Ruling 87–4(8). The final rules and this rescission restore uniformity to our nationwide system of rules in accordance with our commitment to the goal of administering our programs through national standards as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–17140 Filed 7–10–00; 8:45 am]

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Federal Register

Tuesday,
July 11, 2000

Part III

Department of Transportation

Federal Aviation Administration
14 CFR Parts 21 and 36
Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. FAA–2000–7587; Notice No. 00–08]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA is proposing changes to the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes. These proposed changes are based on the joint effort of the Federal Aviation Administration (FAA), the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for subsonic jet airplanes and subsonic transport category large airplanes. These proposed changes would provide nearly uniform noise certification standards for airplanes certificated in the United States and in the JAA countries. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

DATES: Comments must be received on or before October 10, 2000.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–7587 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments and you may review public dockets through the Internet at http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

FOR FURTHER INFORMATION CONTACT: James Skalecky, AEE–100, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3699; facsimile (202) 267–5594; or email at james.skalecky@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written comments, data, views, or arguments. Comments on the possible environmental, economic, and federalism or energy related impact of the adoption of this proposal are welcomed.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of comments if commenters include a self-addressed, stamped postcard with the comments. The postcards should be marked "Comments to Docket No. FAA–2000–7587." When the comments are received by the FAA, the postcards will be dated, time stamped, and returned to the commenters.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Current Regulations

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribe "standards to measure aircraft noise and sonic boom; . . . and regulations to control and abate aircraft noise and sonic boom." Part 36 of Title 14 of the Code of Federal Regulations (part 36) contains the FAA's noise standards and regulations that apply to the issuance of type certificates for all types of aircraft. Subparts A, B and C and appendices A, B and C of part 36 contain the requirements and standards that apply to subsonic jet airplanes and subsonic transport category large airplanes. Appendices A, B and C of part 36 specify the test conditions, procedures, and noise levels necessary to demonstrate compliance.

Government and Industry Cooperation

In June 1990 at a meeting of the Joint Aviation Authorities (JAA) Council, which consists of JAA members from European countries and the FAA, the FAA Administrator committed the FAA to support the harmonization of the U.S. regulations with the Joint Aviation Regulations (JAR). The Joint Aviation Regulations are being developed for use by the European authorities that are member countries of the JAA.

In January 1991, the FAA established the Aviation Rulemaking Advisory Committee to serve as a forum for the FAA to obtain input from outside the government on major regulatory issues facing the agency. The FAA has tasked ARAC with noise certification issues. These issues involve the harmonization of part 36 with JAR 36, the harmonization of associated guidance material including equivalent procedures, and interpretations of the regulations. On October 17, 1995, the ARAC established the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes (60 FR 53824). The working group task included reviewing the applicable provisions of subparts A, B, and C, and appendices A, B, and C of part 36, and harmonizing them with the corresponding applicable provisions

of JAR 36. The working group was asked to consider the current international standards and recommended practices, as issued under International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. A recommendation for amending part 36 was forwarded to the ARAC. After due consideration including a meeting open to the public on May 18, 2000, this recommendation agreed to by ARAC was forwarded, in the form of a draft NPRM, to the FAA for consideration.

Synopsis of the Proposal

Part 36 contains noise standards for aircraft type and airworthiness certification. Subparts A, B, and C, and the related appendices A, B, and C, of part 36 prescribe noise levels and test procedures for subsonic jet airplanes and subsonic transport category large airplanes, including rules governing the issuance of original, amended, or supplemental type certificates.

This notice of proposed rulemaking includes changes to part 36 in three major categories. First, there are substantive changes to technical material, such as proposing a revised method for demonstrating the lateral noise certification level for propeller-driven large airplanes. These changes are discussed individually in this preamble. Second, there are many proposed changes to regulatory text that would serve to minimize the language differences between part 36 and JAR 36, while having no substantive effect on the regulatory standards of part 36. These text changes are not specifically discussed in this preamble Third, there are numerous proposed changes to the section designations of current Appendices A, B, and C of part 36 that would more closely align part 36 and JAR 36 formats. Changes in this category would have no substantive effect on the regulatory standards of part 36. The changes in part 36 appendices designation are shown in a tabular format that identifies current part 36 appendices sections and the corresponding section of the proposed revision. This redesignation table appears at the end of the section-by-section discussion.

Section-by-Section Discussion

The following is a section-by-section discussion of the proposed amendments that will cover the substantive changes being proposed for the regulatory standards of part 36 and its appendices. Sections that are proposed for redesignation, but not substantively changed, will not be discussed, but will appear only in the redesignation table that follows the section-by-section discussion. Throughout the proposed amendment, the term "jet" has been used when referring to turbojet and turbofan engines. This would change the terminology in current part 36, which uses the term "turbojet" when referring to both turbojet and turbofan engines. This change would result in the same terminology usage by both part 36 and JAR 36, when referring to turbojet and turbofan engines.

Section 36.1

The FAA is proposing to remove § 36.1(d)(3). This section should have been removed by Amendment 36–10 (43 FR 28406, June 29, 1978), which redesignated § 36.1(d)(3) as § 36.1(d)(1)(iii).

In § 36.1(f)(1), the terms "takeoff" and "sideline" are proposed to be replaced with the terms "flyover" and "lateral", respectively. This change would harmonize the terminology based on the international standard.

Section 36.2

Section 36.2, "Special retroactive requirements" would be removed. Section 36.2 requires that the noise certification applicant show compliance to the part 36 amendment that is in effect on the date of certification. This requirement was included in part 36 when the FAA did not have the authority to prevent the issuance of a type certificate for an aircraft for which available and reasonable noise reduction design practices had not been incorporated. The FAA subsequently received this authority under the Noise Control Act of 1972; the retroactive requirement contained in § 36.2 is no longer necessary. This change would harmonize the applicability designation of part 36 with that contained in § 1.7 of ICAO annex 16, Chapter 1. In conjunction with the proposed removal of the special retroactive requirements of part 36 § 36.2, this notice proposes changes to §§ 21.17 and 21.101(a) of part 21 of this chapter to remove references to part 36 that are contained in these sections of part 21.

Section 36.6

The FAA proposes to add five specifications to the incorporated matter under § 36.6. These specifications are referred to under proposed section A36.3, which would update requirements for measurement and analysis systems to address the latest standards and equipment technology. Updated addresses for the International Electrotechnical Commission, American National Standards Institute, and FAA Regional Headquarters are also included in proposed § 36.6.

Sections 36.101 and 36.103

Two sections, 36.101, Noise measurement, and 36.103, Noise evaluation, would be replaced with a new § 36.101, Noise measurement and evaluation. The proposed § 36.101 reflects the proposal to combine the material contained in current Appendix A and Appendix B into proposed Appendix A. This proposed change would more closely align part 36 and JAR 36 formats without any substantive effect. Also for the purpose of aligning the formats of part 36 and JAR 36, the FAA proposes to redesignate § 36.201 as § 36.103. Current subpart C would be reserved.

Appendix A—Aircraft Noise Measurement and Evaluation Under § 36.101

The proposed Appendix A to part 36, Aircraft Noise Measurement and Evaluation under § 36.101, would replace current Appendix A, Aircraft Noise Measurement under § 36.101, and Appendix B, Aircraft Noise Evaluation under § 36.103. The harmonization objective is to develop seamless part 36 and JAR 36 regulations that reflect ICAO Annex 16 to the extent possible. The text of JAR 36, Appendix A, is essentially a copy of Annex 16, Appendix 2. The proposed Appendix A to part 36 was developed with the intent of maintaining a section format consistent with JAR 36, Appendix A and ICAO Annex 16, Appendix 2.

Appendix A36.1 Introduction

A new section A36.1.2 would be added to state that the noise certification instructions and procedures given are intended to ensure uniform results and to permit comparison between tests of various types of aircraft conducted in various geographical locations.

Appendix A36.2 Noise Certification Test and Measurement Conditions

Proposed section A36.2 would replace current section A36.1. This proposed section describes the conditions under which noise certification testing would be conducted and the measurement procedures that would be required.

Under the proposal, current section A36.5(e)(4), that addresses the use of equivalent procedures, would be deleted. The key requirement of the section, that equivalent procedures must be FAA-approved, is already addressed in the regulatory text of § 36.101. Additional information on the use of

equivalent procedures would be provided in the note contained in section A36.2.1.1. Therefore, section A36.5(e)(4) would be deleted since its content would be addressed in § 36.101.

A note in section A36.2.1.1 would reference the guidance material on the use of equivalent procedures contained in Advisory Circular 36–4C, "Noise Standards: Aircraft Type and Airworthiness Certification". Current AC36–4B, "Noise Certification Handbook", contains guidance material on the use of equivalent procedures. AC36–4B will be revised and significantly changed in format and content, and will be designated AC36–4C, "Noise Standards: Aircraft Type and Airworthiness Certification." The FAA intends to issue the new AC36–4C concurrently with the final rule that results from this notice. The AC36–4C is referred to as "the current Advisory Circular for this part" throughout the proposed regulatory text in order to avoid the need for formal rulemaking any time the Advisory Circular is revised. Throughout this preamble, however, the Advisory Circular is referred to as Advisory Circular 36–4C.

Most of proposed section A36.2 is moved from sections A36.1, A36.5 and A36.9. Under the proposal, the material in current section A36.1(c)(1) would be moved to proposed section A36.2.2.2(a) and revised to remove the word "rain", since rain is included in the term "precipitation." The material in section A36.1(c)(2) would be moved to proposed section A36.2.2.2(b) and the minimum test temperature limit decreased from 36 °F (2.2 °C) to 14 °F (−10 °C). The current 36 °F (2.2 °C) temperature limit is considered unnecessarily restrictive, given that no higher levels of atmospheric absorption, compared with those existing in the current test window, could be encountered by lowering the test day temperature. Under this revised minimum test temperature limit, testing would still be required to be conducted in conformance with the operational temperature limit for the noise measuring equipment being used.

Proposed section A36.2.2.2(c), does not contain the current section A36.1(c)(3) provision that permits expanded atmospheric attenuation rates when the dew point and dry bulb temperatures used for obtaining relative humidity are measured with a device which is accurate to within ±0.5 °C. This allowance for expanded atmospheric attenuation rates is already permitted as an equivalent procedure by AC36–4B, and will continue to be permitted as an equivalent procedure in the revision to AC36–4B (i.e., AC36–4C). The result would be no change in the allowance of expanded atmospheric attenuation rates. This change is proposed to meet the harmonization objective to more closely align part 36 and JAR 36 formats.

The requirement to obtain meteorological measurements within "25 minutes" of each noise test measurement as required in current section A36.9(b)(3) would be changed to "30 minutes" in proposed section A36.2.2.2(g). Thirty minutes is the established international standard in ICAO Annex 16. The FAA was unable to find a technical reason why the meteorological measurement time was originally set at 25 minutes. Based on technical and application considerations, an increment of 5 minutes does not constitute a substantive difference. No known technical criteria exist with which to assess this minimal time increment. This change is being proposed to achieve harmonization by adopting a single international standard.

Current section A36.9(d)(3) would be revised and moved to section A36.2.2.3. This amendment would change the method used to establish layer depth to a single international standard. Part 36 does not provide specific criteria for determining layer depth, except to require that it be no greater than 100 ft. The proposed criteria for determining layer depth is the same as that used to specify the onset of required layering, i.e. under weather conditions where the atmospheric attenuation rate changes by more than +/−1.6 dB/1000 ft (+/−0.5 dB/100m) over the sound propagation distance. Under this proposal, the minimum layer depth would be established as 100 feet (30 meters). Thus, the layer depth would be 100 feet (30 meters) in cases where the atmospheric rate change criteria would limit the layer depth to less than 100 feet (30 meters).

Section A36.3 Measurement of Aircraft Noise Received on the Ground

The proposed changes to this section are intended to update the requirements for measurement and analysis systems to address the latest standards and equipment technology. The changes were drafted by an international task group, that has years of knowledge and experience in the noise certification of airplanes, and was assembled to update the ICAO Annex 16 requirements for measurement and analysis systems. The proposed changes in section A36.3 incorporates the international task group's recommendations, which were agreed to by Working Group 1 of the ICAO Committee on Aviation Environmental Protection (ICAO/CAEP). Further, the proposed changes are intended to harmonize with the international standard, Annex 16. The primary purpose of this work was to address considerations related to the use of digital equipment. Many of these considerations are addressed in the International Electro-Technical Commission (IEC) Standard 61265 and IEC Standard 61260. Accordingly, much of the pertinent text from these standards has been included in the requirements developed by the international task group. These IEC standards also reflect general improvements to instrumentation technology that have occurred over the past decade, although they are not necessarily related to the advent of digital technology. In addition to improvements tied to the IEC standards, several changes that resulted from the work of the task group are linked to general advancements in noise measurement instrumentation overall.

Proposed section A36.3 includes the following specific changes to current section A36.3. Current section A36.3 does not include definitions. Section A36.3.1, Definitions, would be added to define the terms used in proposed section A36.3. Under the proposal, section A36.3.2, Reference environmental conditions, would be added for specifying the performance of a measurement system.

Section A36.3.3.2 would specify anti-alias requirements for measurement systems that include analog to digital signal conversion..

Proposed section A36.3.4.1 would add a requirement that windscreen insertion loss not exceed ±1.5 dB. In addition, proposed section A36.3.9.10 would specify allowable changes in windscreen insertion loss.

Proposed sections A36.3.5.3 and A36.3.5.4 would specify microphone sensitivity requirements only at the midband frequencies. This is a simplification of the current part 36 requirement contained in sections A36.3(c)(2)(ii) and A36.3(c)(2)(iii). Sections A36.3.5.3 and A36.3.5.4 would also specify more stringent tolerances on microphone sensitivity. Typical microphones that are currently used in part 36 noise certification testing comply with this more stringent microphone sensitivity requirement.

Proposed section A36.3.6.3 would add a tolerance for frequency response of the measurement system.

For analog tape, proposed section A36.3.6.4 would add a ±0.5 dB tolerance for amplitude fluctuations of a recorded 1 kHz signal.

Proposed section A36.3.6.5 would add a tolerance for amplitude linearity, at several specific frequencies, for the measurement system (exclusive of the microphone.)

Proposed section A36.3.6.6 would require that the electronic signal level corresponding to the calibration sound pressure level be from 5 dB to 30 dB less than the upper boundary of the measurement system level range. A similar requirement in current part 36, section A36.(c)(3)(i), is 10 dB.

Proposed section A36.3.6.8 would add a requirement for an overload indicator in the recording and reproducing system.

Proposed section A36.3.6.9 would allow for measurement system attenuators to operate in known intervals of decibel steps, rather than in equal interval steps, as in current part 36 section A36.3(b)(6).

Proposed section A36.3.7.2(e) would add a requirement that the analyzer operate in real time from 50 Hz through at least 12 kHz.

Proposed section A36.3.7.3 would specify IEC 61260 class 2 electrical performance requirements as the minimum standard for analyzers. This change updates the specifications for analyzers used in conjunction with part 36 noise certification. Proposed section A36.3.7.3 would also require that filter bandwidth adjustments be determined in accordance with IEC 61260. The IEC method requires that the adjustment be based on more frequencies than are required under current part 36.

Proposed section A36.3.7.4 would contain a correction to the slow time-weighting characteristics in current section A36.3(d)(5)(ii) and (iii). Section A36.3.7.6 would specify that the instant in time at which a slow time weighted sound pressure level is characterized should be 0.75 seconds earlier than the actual readout time. The current requirement specifies that the instant in time at which a readout is characterized must be the midpoint of the averaging period.

Proposed section A36.3.7.5 would specify a continuous exponential averaging process equation through which simulated slow weighted sound pressure levels can be obtained. Section A36.3.7.5 would also specify an equation that results in an approximation of continuous exponential averaging.

Section A36.3.7.7 would require that the analyzer resolution must be 0.1 dB or finer. The current requirement, in section A36.3(d)(7) specifies that the amplitude resolution of the analyzer must be at least ±0.25 dB.

Proposed section A36.3.9.1 would require that calibration adjustments be applied to the measured sound levels determined from the output of the analyzer; the current rule permits these calibrations to be applied within the analyzer. This change is necessary to enable the FAA to determine whether these calibration adjustments have been applied correctly.

Proposed section A36.3.9.3 would allow the free-field corrections based on grazing incidence to be applied when the sound incidence angle is within ±30 degrees of grazing incidence.

Proposed section A36.3.9.4 would require that at least 30 seconds of pink noise be recorded for analog tape recorders; the current section A36.3(e)(4)(ii) requirement is for at least 15 seconds of pink noise. This change would result in a more accurate pink noise correction and would harmonize with the international standard.

Proposed section A36.3.9.6 would require that attenuator accuracy be within 0.1 dB. Section A36.3(b)(6) currently requires that attenuator accuracy be within 0.2 dB. The proposed rule would require that calibration be checked within six months of each test series. The current rule does not specify a time period within which calibration must be checked.

Proposed sections A36.3.9.5 and A36.3.9.7 would change calibration requirements for the pink noise generator and sound calibrator to allow calibration to occur within six months preceding or succeeding the test instead of requiring it to be within the preceding six months as required by current section A36.3(e)(7).

Proposed section A36.3.9.7 would add a new calibration requirement that limits the change in output of the sound calibrator to not more than 0.2 dB, as compared to the previous calibration.

Proposed section A36.3.9.8 would allow for the use of sound calibrators other than pistonphones, as specified by current section A36.3(e)(4). Section A36.3.8.1 would specify the class 1L requirements of IEC 60942, entitled "Electroacoustics—Sound calibrators", as the minimum standard for the sound calibrator.

Proposed section A36.3.9.9 would add a requirement for the recording medium (*e.g.*, tape reel) to carry at least a 10-second sound pressure level calibration at its beginning and end. This proposed change would more precisely define the current section A36.3(e)(4) sound pressure level calibration requirement.

Section A36.4 Calculations of Effective Perceived Noise Level From Measured Data

To further harmonize the formats of part 36 and JAR 36, Table B–1, "Perceived Noisiness (NOYs) as a Function of Sound Pressure Level", referenced in current section B36.13(a) would be moved to AC36–4C. The noy values contained in Table B–1 can be calculated from the equations contained in proposed section A36.4.7.3.

A minor technical change is proposed for the Perceived Noise Level (PNL) equation in proposed section A36.4.2.1(c) (current section B36.3(c)). The more exact term 10/log 2 is replacing the rounded-off term (33.22). The difference between PNL values that are determined using the current and proposed equations is not expected to be significant.

To harmonize the formats of part 36 and JAR 36, Figure B1, "Perceived noise level as a function of noys", would be moved from current section B36.3(c) to AC36–4C. The perceived noise level values contained in Figure B1 can be calculated from the equations contained in proposed section A36.4.2.1(c).

Proposed section A36.4.5.2 would change the value of "d" from 1.0 seconds to 0.5 seconds to reflect current standard practice. Parallel changes are proposed for section A36.4.5.4 and section A36.6. This change is a text update to reflect the current practice of using 0.5 second data samples, and would have no substantive effect.

To harmonize the formats of part 36 and JAR 36, the material in section B36.5(m) addressing methods for removing the effects of tones resulting from ground plane reflections would be moved to AC36–4C.

The FAA is proposing the deletion of current section B36.9(e), which specifies the duration time interval when the value of PNLT(k) at the 10 dB-down points is 90 PNdB or less. This provision was eliminated for applications made after September 17, 1971 by Amendment 36–5 (41 FR 35053, August 19, 1976). The text permitting the use of this provision has erroneously remained in part 36.

In addition, current section B36.9(f) would also be deleted. The text contained in current section B36.9(f) was added to part 36 in Amendment 36–5 to distinguish between the procedure for determining duration for applications made before and after September 17, 1971. This distinction is no longer necessary if current section B36.9(e) is deleted as proposed.

Section A36.5 Data Reporting. Proposed section A36.5.2 would require

that the data specified under section A36.5.2 be reported to the FAA in the applicant's noise certification compliance report. While current part 36 does not specifically identify a requirement for the applicant to submit a noise certification compliance report, these reports represent the standard practice that is used by applicants for submitting this information to the FAA. Proposed section A36.5.2.5 would also identify the specific airplane configuration items and engine operating parameters that must be reported. Each of these configuration items and parameters can affect the airplane noise signature. The reporting requirement for these items and parameters already exist under current section A36.5 which specifies that the aircraft configuration and engine performance parameters relative to noise generation be reported. Further, these configuration items and parameters are also included in the international standard. Their addition to part 36 would promote harmonization.

Proposed section A36.5.2.5(c) would require that the test airplane's center of gravity be reported to the FAA. Airplane center of gravity is an example of an identifying characteristic of the airplane test configuration and an item that could influence measured noise levels. Proposed section A36.5.2.5(d) would require that airbrake and propeller pitch angle also be reported. Proposed sections A36.5.2.5(e), (f), and (j) would, respectively, require reporting of whether the auxiliary power unit (APU) is operating, the status of pneumatic engine bleeds and engine power take-offs, and non-standard airplane test configurations.

Proposed section A36.5.2.5(h)(2) would require reporting of engine performance parameters specifically related to propeller-driven large airplanes.

Current section A36.5(d)(3) does not permit an effective perceived noise level (EPNL) to be computed or reported from data that more than four one-third octave bands in any spectrum within the 10 dB-down points have been excluded from the EPNL computation. This section would be removed since correction (adjustment) methods for removing the effects of ambient noise from airplane noise data must be used in lieu of excluding one-third octave bands. Proposed section A36.3.9.12 specifies the ambient noise level limitations that would require corrections (adjustments) to be made, and also references AC36–4C, which contains an acceptable procedure for removing the affects of ambient noise.

Section A36.6 Nomenclature: Symbols and Units

Under the proposal, current section A36.7, Symbols and units, would be replaced by revised section A36.6, Nomenclature: Symbols and units. The proposed section would incorporate Annex 16 symbols and units, while retaining the English units. This change is proposed to more closely align part 36 with JAR 36. No substantive technical changes to the regulatory standards of part 36 are anticipated to result from incorporation of the Annex 16 symbols and units.

Section A36.7 Sound Attenuation in Air

Currently, atmospheric attenuation rates of sound with distance must be determined in accordance with Society of Automotive Engineers, Inc. (SAE), Aerospace Recommended Practice (ARP) 866A, (SAE ARP 866A) as specified in current section A36.9(c). Under the proposal, section A36.7.2 would contain the actual formulation (equations) from SAE ARP 866A. These equations are provided in both the International System of Units and the English System of Units. Whereas equations are continuous and provide consistent values, tables and graphs can provide minor differences. This proposed change would further harmonize part 36 and JAR 36 and is not expected to result in any substantive difference in attenuation rates.

Section A36.9 Adjustment of Airplane Flight Test Results

The current distinction between allowable/required positive and negative correction procedures contained in current sections A36.11(a)(1) and (2) are not included in proposed section A36.9.1. The distinction is no longer relevant, given the evolution of data correction procedures since part 36 was originally promulgated in 1969 and the need for noise certification levels to reflect airplane noise characteristics as accurately as possible. Prior to any noise certification compliance test, a noise certification applicant is required to identify and gain FAA approval of any planned or anticipated data correction that is not a mandatory correction procedure under part 36.

Under the proposal, current section A36.1(b)(3), which requires that the corrections prescribed in current section A36.5(d) be made when the height of the ground at a noise measuring station differs from that of the nearest point on the runway by more than 20 feet, would be deleted because it is obsolete. A 20-foot height allowance/tolerance could change the final EPNL value by several tenths of a dB under some circumstances. Under current practices, corrections (adjustments) are made over the sound propagation path from the microphone to airplane height as part of normal data corrections (adjustments). These corrections (adjustments) are specified in current section A36.11 and proposed section A36.9.

Proposed section A36.9.1.1(d) would require that the effect that airspeed has on source noise be considered with regard to the difference between test day airplane speed and the airplane reference flight profile speed. Thus, the proposed section would specify that, "in addition to the effect on duration, the effects of airspeed on component noise sources must be accounted for as follows: For conventional airplane configurations, when differences between test and reference airspeeds exceed 15 knots (28 km/h) true airspeed, test data and/or analysis approved by the FAA must be used to quantify the effects of the airspeed adjustment on resulting certification noise levels."

The symbols and figures used to describe the takeoff and approach profiles in current sections A36.11(b) and (c), would be replaced by the JAR 36 symbols and figures that have been incorporated into proposed section A36.9.2. There would be no substantive changes to the takeoff and approach profile technical requirements as a result of these changes.

Proposed section A36.9.3.2.1 provides equations that would enable data adjustments to be made using either the English System of Units or International System of Units.

The material in current section B36.11(c) would be moved to section A36.9.3.2.2 and revised to provide that the adjustment for multiple peak values of tone-corrected perceived noise level (PNLT) is based upon the difference in corrected PNLT values, rather than upon EPNL as in the current part 36. This change would more clearly define the intent of the multiple peak correction.

Under proposed section A36.9.3.3.2, a correction term to account for the difference between test and reference airplane airspeeds would be added to the duration correction ($\Delta 2$) contained in current section A36.11(e). The speed correction term would be defined as 10 log (V/V_r), where V is the airplane test speed and V_r is the airplane reference speed. This proposed change specifies the speed correction that is a requirement of current section A36.11(f)(1).

Appendix B—Noise Levels for Transport Category and Jet Airplanes Under § 36.103

Proposed appendix B would include the material from current appendix C. The objective is to harmonize proposed appendix B, and JAR 36, Section 1, Subpart B. The proposed appendix B is essentially the same as JAR 36, section 1, subpart B.

Section B36.3 Reference Noise Measurement Points.

Under the proposal, the material in current section C36.3 would be moved to section B36.3 and revised as follows. The term "takeoff" in current section C36.3(a) would be replaced with the term "flyover" in proposed section B36.3(b).) The term "sideline" in current section C36.3(c) would be replaced with "lateral" in proposed section B36.3(a). These terminology changes would harmonize the part 36 terminology with that used in JAR 36 and Annex 16.

Proposed section B36.3(a)(2) includes a simplified test procedure that may be used in determining the sideline (lateral) noise level for propeller-driven large airplanes in demonstrating the sideline (lateral) noise certification level. This procedure is also contained in JAR 36 and ICAO Annex 16. For propeller-driven airplanes, it can be difficult to establish the maximum lateral noise level specified under current section C36.3C, because this noise level may occur at a very low height. There is usually a significant difference in noise levels between the port and starboard sides of a propeller-driven large airplane. By measuring full-power noise at a predetermined point (650meters) below the takeoff flight path, many of the difficulties which arise because of the directional nature of the noise from propeller-driven airplanes when measured at the conventional lateral site will be eliminated. Ground effects that distort measurements will also be reduced. Under the current requirement, it is difficult to judge the airplane altitude at which the peak noise level occurs, and in the past this has required applicants to conduct as many as 30 flight tests to satisfy certification authorities, an expensive process. Moreover, the current method for testing propeller-driven airplanes has generally resulted in low confidence in accuracy and repeatability of measurements. The simplified test procedure is proposed to be available as an alternative to the current section C36.3(c) method for tests conducted before March 20, 2002, after which it would become the sole method for demonstrating sideline (lateral) noise level compliance.

Current section C36.3(b) would be moved to section B36.3(c) and text would be added to define the approach measurement point relative to the runway threshold. This change would more clearly describe the geometric relationship between the test airplane and the ground, and would further harmonize part 36 and JAR 36.

Section B36.4 Test Noise Measurement Points

As proposed, most of the requirements of current section A36.1(b)(7) would be moved to proposed section B36.4(b). Current section A36.1(b)(7), allows (when approved) for the sideline (lateral) noise certification level demonstration for jet airplanes to be based on the assumption that the peak sideline (lateral) noise level occurs at an airplane altitude of 1,000 feet (1,440 feet for Stage 1 or Stage 2 four-engine airplanes). Under the proposed rulemaking, this procedure would be moved to the guidance material in AC 36–4C as an equivalent procedure for demonstrating the sideline (lateral) noise certification level. This change would further harmonize part 36 and JAR 36 and would have no substantive effect.

Proposed section B36.4(b) would require that, in demonstrating the sideline (lateral) noise certification level for propeller-driven airplanes, noise measurements be made at symmetrically located noise measurements points on either side of the runway for each and every noise measurement point along the main sideline (lateral) noise measurement line. This change is proposed because of the asymmetric nature of propeller noise. Because of the possibility of lateral noise asymmetry, part 36 has required simultaneous measurements at one test measurement point opposite the main lateral measurement line. In the case of propeller-driven airplanes, whose noise field is known to be asymmetrical, having only one measuring point opposite the main lateral measurement line is not adequate to define the peak lateral noise on the other side of the runway from the main lateral line. This change would further harmonize part 36 and JAR 36.

Section B36.5 Maximum Noise Levels

The material in current section C36.5 would be moved to proposed section B36.5 and revised to include minor format and language changes to harmonize with JAR 36. Amendment 36–15 (53 FR 16360, May 6, 1988) removed section C36.5(c); the reference to section C36.5(c) in current section C36.5(a) should have been removed under that amendment but it was not. The reference to section C36.5(c) is not included in this proposal.

In order to further harmonize part 36 and JAR 36, the term "sideline" has been changed to "lateral" in each place that it appears throughout section B36.5. This is a change in terminology that does not affect the noise measurement/analysis procedures or noise limits. Similarly, the term "takeoff" has been changed to "flyover." No change in test procedures should be inferred from this change.

Section B36.6 Trade-Offs

The material in current section C36.5(b) would be moved to proposed section B36.6 and the reference to section 36.7(d)(3)(i)(B), in current section C36.5(b), would be changed to section 36.7(d)(1)(ii). This section reference should have been changed by Amendment 36–15 (53 FR 16360, May 6, 1988). This error is corrected by this proposed revision.

Section B36.7 Noise Certification Reference Procedures

The material addressing takeoff and approach reference and test limitations in current sections C36.7 and C36.9 would be moved to section B36.7, addressing takeoff and approach *reference* procedures, and section B36.8, addressing takeoff and approach *test* procedures. This material would also be revised as discussed in the following paragraphs.

Proposed section B36.7(b)(1) requires the use of "average engine" performance in defining the takeoff thrust for the reference takeoff procedures. This revision of current section C36.7(b)(2) would further harmonize the takeoff reference procedure, and would serve to eliminate confusion in compliance with the requirement. This change would also further standardize part 36 and JAR 36 regulations.

Proposed section B36.7(b)(1) would also specify "Takeoff thrust/power" as the maximum available for normal operations as scheduled in the performance section of the airplane flight manual for the reference atmospheric conditions given in proposed section B36.7(a)(5).

Currently section C36.7(b)(2) specifies different minimum cutback altitudes for jet powered and non-jet powered airplanes. Proposed section B36.7((b)(1)(ii) would contain the same minimum cutback altitude for all airplanes, the same altitude specified in current section C36.7(b)(2) for jet airplanes. Since the selection of the

minimum cutback altitude is determined by the minimum safe altitude for cutback initiation, there is no reason to distinguish between propeller-driven and jet airplanes. It is the FAA's understanding that this change would not have a substantive effect in practice, since cutback initiation heights greater than 1,500 feet are generally chosen for propeller-driven airplanes. Thus, the cutback initiation heights generally chosen are greater than both the current and proposed part 36 minimum cutback height requirements.

Under the proposal, the requirements of section A36.1(b)(2) is moved to section B36.7(b)(3) and revised to require that, for tests conducted after March 19, 2002, the lateral (sideline) noise level be demonstrated using full takeoff power throughout the takeoff flight path. Before that date, the lateral noise level may be demonstrated using the current section A36.1(b)(2) procedure, under which both the takeoff (flyover) and sideline (lateral) noise certification levels are determined using a single reference flight path that may include a thrust cutback. This change is proposed to reflect the intent of the international standard that the lateral measurement be based on the full-power condition. Since the revised lateral procedure might result in increased stringency, the use of this procedure would be optional for tests conducted before March 20, 2002. This change would mainly effect three and four engine airplanes.

The takeoff reference speed requirement specified in current section C36.7(e)(2) would be revised to be consistent with the takeoff reference speed contained in JAR 36 and Annex 16. The all-engine operating climb speed range (V2+10 to V2+20 kts) specified in proposed section B36.7(b)(4) represents the typical range of takeoff initial climb speeds seen in normal operation for most airplanes. For some airplanes, this proposed change to part 36 could result in an increase of up to 10 knots in the noise certification reference takeoff speed relative to the current part 36 reference takeoff speed requirements. For the affected airplanes, the increased takeoff speed could result in some noise level reduction at the sideline (lateral) noise measurement point with a resulting increase in noise level at the takeoff (flyover) noise measurement point. The FAA has found the change in takeoff reference speed to be acceptable because of this tradeoff of sideline (lateral) and takeoff (flyover) noise levels, although it might not be a one-to-one tradeoff.

Proposed section B36.7(b)(5) adds the meaning of configuration. This is not a change in requirement. Proposed section B36.7(b)(5) is intended to clarify the meaning and includes specific configuration elements, based on certification experience, that can have an effect on noise source.

Proposed section B36.7(b)(7) defines "average engine" as the average of all the certification compliant engines used during the airplane flight tests up to and during certification when operating within the limitations and according to the procedures given in the Flight Manual.

Under the proposal, current section C36.9(e)(1), reference approach speed, would be revised to incorporate the use of 1-g stall-based approach speeds by basing the approach noise certification reference speed on the reference landing speed (V_{REF}) that is used for the airworthiness certification. This proposal was included in Notice 95–17, published on January 18, 1996 (61 FR 1260), in which the FAA proposed to redefine the reference stall speeds for transport category airplanes as the 1-g stall speed instead of the minimum speed obtained in the stalling maneuver. Under Notice 95–17, a definition of V_{REF} would be included in 14 CFR part 1. Notice 95–17 has not been issued as a final rule. If a final rule based on Notice 95–17 is not issued before this notice becomes a final rule; the definition of V_{REF} (*i.e.*, the speed of the airplanes, in a specified landing configuration, at the point where it descends through the landing screen height in the determination of the landing distance for manual landings) would be added to part 36. The proposed change to section C36.9(e)(1) would also be consistent with an anticipated change to ICAO/Annex 16 that is expected to be recommended by Working Group 1 of the ICAO Committee on Aviation Environmental Protection (CAEP) in conjunction with the current CAEP work program cycle. Under this proposed change, existing section C36.9(e)(1) would be redesignated as section B36.7(c)(2).

Current section C36.9(d) requires that all engines must operate at approximately the same power or thrust for approach tests conducted to demonstrate compliance with part 36. Under the proposal, this specific requirement would be removed, and instead, proposed section A36.9.3.4 would require that source noise adjustments be applied to account for any difference, between test and reference conditions, in engine parameters that affect engine noise (*e.g.*, corrected low pressure rotor speed). This proposed change would meet the intent of the current part 36 requirement and would also further harmonize with JAR 36.

Section B36.8—Test Procedures

The current section A36.1(d)(5) and A36.1(d)(7), limitations on the difference between the test weight and the maximum takeoff/approach weight for which noise certification is requested, would be replaced by the limitation in proposed section B36.8(d). The current section A36.1(d)(5) and A36.1(d)(7) limitations help insure the integrity of the final certification results by indirectly limiting the magnitude of the EPNL adjustments that may be applied to the test data in normalizing to the noise certification reference conditions. Proposed section B36.8(d) would directly limit the magnitude of the correction by specifying a limitation on the EPNL adjustment that can be made when correcting between test weight and maximum certification weight.

Under the proposal, current section A36.5(d)(5) would be revised and moved to section B36.8(f). The amounts of adjustment permitted when equivalent test procedures are different from the reference procedures remain unchanged, except that the amended requirements do not specify that tradeoffs are permitted when comparing adjusted levels against the appendix C noise levels, for the purpose of determining adjustment limits. Several interpretations of the current section A36.5(d)(5) requirement are possible as to whether the proposal represents a more stringent or less stringent adjustment limitation as compared with the current limitation. The FAA believes that the proposed change to remove the tradeoff provision from the current limitation and base the proposed limitation solely on the difference between the adjusted noise levels and the maximum noise levels in proposed B36.5 meets the intent of the adjustment limitation, as stated above, and clarifies ambiguity in its interpretation. The proposed change would also result in harmonization of the adjustment limitation with that in JAR 36 and ICAO Annex 16.

Proposed section B36.8(g) would revise the test speed tolerance specified in current sections C36.7(e)(1) and C36.9(e)(3). Current section C36.7(e)(1) specifies that takeoff tests must be conducted at the test day speeds ±3 knots. Current section C36.9(e)(3) specifies that a tolerance of ±3 knots may be used throughout the approach noise testing. Proposed section B36.8(g) would specify that during takeoff,

lateral, and approach tests, the airplane variation in instantaneous indicated airspeed must be maintained within +/−3% of the average airspeed between the 10dB-down points. Under the proposal, the instantaneous indicated airspeed is determined by the pilot's airspeed indicator. However, if the instantaneous indicated airspeed exceeds +/−3 kt (+/−5.5 km/h) of the average airspeed over the 10dB-down points, and is determined by the FAA representative on the flight deck to be due to atmospheric turbulence, then the flight so affected must be rejected for noise certification purposes.

Appendix G Noise Requirements for Propeller-Driven Small Airplanes and Commuter Category Airplanes Under Subpart F

Current Section G36.105(f)

The proposal would change the designation of the reference to current part 36 section A36.3(e) to A36.3.8 and A36.3.9 to maintain the correct cross-reference.

Appendix H Noise Requirements for Helicopters Under Subpart H

Current Section H36.111(c)(3)

The proposal would change the designation of the reference to current part 36 section A36.3(f)(3) to A36.3.9.11 to maintain the correct cross-reference.

Current section H36.201

The proposal would change the designation of the reference to current part 36 section B36.5(a) to A36.4.3.1(a) to maintain the correct cross-reference.

Redesignation Table for Proposed Appendices A and B

CROSS REFERENCE TABLE

Old Section	New Section
A36.1	A36.1, A36.2
A36.1(a)	A36.1.1, A36.2.1.1
A36.1(b)	A36.2.2
A36.1(b)(1)	A36.2.3.2, B36.3
A36.1(b)(2)	B36.7(b)(1)(iii)
A36.1(b)(3)	Deleted
A36.1(b)(4)	A36.2.2.1
A36.1(b)(5)	A36.2.2.4
A36.1(b)(6)	A36.2.2.1
A36.1(b)(7)	A36.9.3.5, A36.9.3.5.1, B36.4(b)
A36.1(c)	A36.2.2.2
A36.1(c)(1)	A36.2.2.2(a)
A36.1(c)(2)	A36.2.2.2(b)
A36.1(c)(3)	A36.2.2.2(c) AC36–4C
A36.1(c)(4)	A36.2.2.2(e)
A36.1(c)(5)	A36.2.2.2(f)
A36.1(d)(1)	B36.8(b), B36.2
A36.1(d)(2)	A36.2.3.1
A36.1(d)(3)	A36.2.3.2, A36.2.3.3
A36.1(d)(4)	B36.7(b), B36.8
A36.1(d)(5)	B36.8(d)
A36.1(d)(6)	B36.7(c), B36.8(e)
A36.1(d)(7)	B36.8(d)
A36.1(d)(8)	A36.2.3.3
A36.3	A36.3
A36.3(a)	A36.3.3
A36.3(b)	A36.3.3.1
A36.3(c)(2)(i-iv), A36.3(f)(1)	A36.3.5
A36.3(c)(2)(v)	A36.3.4
A36.3(c)(3)	A36.3.6
A36.3(d)	A36.3.7
A36.3(e)(1–6), A36.3(f)(2)	A36.3.9
A36.3(f)(2–4)	A36.3.9.11
A36.3(e)(7)	A36.3.8
A36.5(a)	A36.5.1.1, A36.5.1.2, A36.5.1.3
A36.5(b)(1)	A36.5.2.1
A36.5(b)(2)	A36.5.2.2
A36.5(b)(3)	A36.5.2.3
A36.5(b)(4)	A36.5.2.4
A36.5(b)(5)(i-vi)	A36.5.2.5
A36.5(b)(vii)	A36.5.2.5(i)
A36.5(b)(6)	A36.2.3.2, A36.2.3.3 A36.5.2.5(i)
A36.5(c)	A36.5.3
A36.5(c)(1)	B36.7(a)(5)
A36.5(c)(2)	B36.3(c), B36.7(b)(1)(vi), B36.7(c)(1)(i), B36.7(c)(1)(iv)
A36.5(d)(1)	A36.5.3.1, A36.9, B36.8(c)
A36.5(d)(2)	A36.9.1
A36.5(d)(2)(i)-(iv)	B36.8(d)
A36.5(d)(3)	A36.3.9.12
A36.5(d)(4)	A36.3.9.12
A36.5(d)(5)	B36.8(f)
A36.5(e)(1)	A36.5.4.1
A36.5(e)(2)	A36.5.4.2
A36.5(e)(3)	A36.5.4.3
A36.5(e)(4)	Deleted
A36.7	A36.6, A36.9.5, A36.9.6
A36.9(a)	A36.9.1.1
A36.9(b)(1)	A36.2.2.4
A36.9(b)(2)	A36.2.2.2(b)
A36.9(b)(3)	A36.2.2.2(g)
A36.9(c)	A36.7
A36.9(d)(1)	A36.9.1, A36.9.1.1
A36.9(d)(2)	A36.2.2.2(d)
A36.9(d)(3)	A36.2.2.3
A36.11(a)	A36.9.1
A36.11(a)(1)	Deleted
A36.11(a)(2)	Deleted
A36.11(a)(3)(i)	A36.9.1, B36.7
A36.11(a)(3)(ii)	A36.9.1.1
A36.11(a)(3)(iii)	A36.9.1.1
A36.11(a)(3)(iv)	A36.9.1.1, A36.9.3.4
A36.11(a)(3)(v)	A36.9.1
A36.11(b)(1)(i-ii)	A36.9.2.1(c)
A36.11(b)(2)	A36.9.3.1, A36.9.4.1
A36.11(b)(3)	A36.9.3.2(a)
A36.11(c)	A36.9.2.2
A36.11(c)(1)	A36.9.3.2(a-c)
A36.11(c)(2)	A36.9.3.2(a)
A36.11(d)(1–3)	A36.9.3, A36.9.3.1, A36.9.3.2.1, A36.9.3.2.1.1, A36.9.3.2.1.2
A36.11(e)(1–2)	A36.9.3.3.1, A36.9.3.3.2
A36.11(f)	B36.4(a), AC36–4C
A36.11(f)(1)	A36.9.1.2
A36.11(f)(2)	A36.9.1.2
A36.11(f)(2)(i-ii)	A36.9.4
B36.1	A36.1, A36.1.1, A36.4.1.3
B36.1(a)	B36.4.1.3(a)
B36.1(b)	A36.4.1.3(b)
B36.1(c)	A36.4.1.3(c)
B36.1(d)	A36.4.1.3(d)
B36.1(e)	A36.4.1.3(e)
B36.3	A36.4.2.1
B36.3(a)	A36.4.2.1, Step 1
B36.3(b)	A36.4.2.1, Step 2
B36.3(c)	A36.4.2.1, Step 3, AC 36–4B
B36.5	A36.4.3.1
B36.5(a)	A36.4.3.1, Step 1
B36.5(b)	A36.4.3.1, Step 2
B36.5(c)	A36.4.3.1, Step 3
B36.5(d)	A36.4.3.1, Step 4
B36.5(e)	A36.4.3.1, Step 5
B36.5(f)	A36.4.3.1, Step ■
B36.5(g)	A36.4.3.1, Step 7
B36.5(h)	A36.4.3.1, Step 8
B36.5(i)	A36.4.3.1, Step 9
B36.5(j)	A36.4.3.1, Step 10
B36.5(k)	A36.4.3.1, Step 10
B36.5(l)	A36.4.3.1, Step 10
B36.5(m)	A36.4.3.1, Step 10 Note, AC36–4C
B36.5(n)	A36.4.4.2
B36.7	A36.4.4
B36.7(a)	A36.4.4.1, A36.4.4.1 Note 1
B36.7(b)	A36.4.4.1-Note 2
B36.9	A36.4.5.1
B36.9(a)	A36.4.5.2
B36.9(b)	A36.4.5.3
B36.9(c)	A36.4.5.4
B36.9(d)	A36.4.5.5
B36.9(e)	Deleted
B36.9(f)	Deleted
B36.11(a)	A36.4.6.1
B36.11(b)	Deleted
B36.11(c)	A36.9.3.2.2
B36.13(a)	A36.4.7.1, Table A1 moved to AC 36–4C
B36.13(a)(1),(2),(3)	A36.4.7.2(a-c)
B36.13(b)	A36.4.7.3
B36.13(c)	A36.4.7.4
C36.1	B36.1
C36.3(a)	B36.3(b)
C36.3(b)	B36.3(c)
C36.3(c)	B36.3(a)
C36.5(a)	B36.5
C36.5(a)(1)	B36.5(a)
C36.5(a)(2)	B36.5(b)
C36.5(a)(2)(i)	B36.5(b)(1)
C36.5(a)(2)(ii)	B36.5(b)(2)
C36.5(a)(3)	B36.5(c)
C36.5(a)(3)(i)(A)	B36.5(c)(1)(i)
C36.5(a)(3)(i)(B)	B36.5(c)(1)(ii)
C36.5(a)(3)(i)(C)	B36.5(c)(1)(iii)
C36.5(a)(3)(ii)	B36.5(c)(2)
C36.5(a)(3)(iii)	B36.5(c)(3)
C36.5(b)(1)	B36.6
C36.5(b)(2)	B36.6
C36.5(b)(3)	B36.6
C36.7(a)	B36.7(a)(3)
C36.7(b)	B36.7(b)(1)(i)
C36.7(b)(1)	B36.7(b)(1)(i)
C36.7(b)(1)(i)	B36.7(b)(1)(i)
C36.7(b)(1)(ii)	B36.7(b)(1)(i)
C36.7(b)(2)(i)	B36.7(b)(1)(i)
C36.7(b)(2)(ii)	B36.7(b)(1)(i)
C36.7(b)(2)(iii)	B36.7(b)(1)(i)
C36.7(b)(2)(iv)	B36.7(b)(1)(i)
C36.7(c)	B36.7(b)(1)(ii)
C36.7(d)	B36.7(b)(1)(v)
C36.7(e)(1)	B36.7(b)(1)(iv)
C36.7(e)(1) Next to last sentence.	B36.8(g)
C36.7(e)(2)	B36.7(b)(1)(iv)
C36.7(e)(3)	B36.7(a)(5), A36.9.1
C36.9(a)	B36.7(a)(3), B36.7(c)(1)
C36.9(b)	B36.7(c)(1)(iii) & B36.7(c)(1)(v)
C36.9(c)	B36.7(c)(1)(i), B36.7(c)(iii)
C36.9(d)	Deleted
C36.9(e)(1)	B36.7(c)(1)(ii)
C36.9(e)(2)	B36.7(c)(1)(ii)
C36.9(e)(3)	B36.8(g)

CROSS REFERENCE TABLE

New Section	Old Section
A36.1	A36.1, B36.1
A36.1.1	A36.1(a), B36.1
A36.1.2	New section
A36.1.3	New section
A36.2	A36.1
A36.2.1	A36.1(a)
A36.2.1.1	A36.1(a)
A36.2.2	A36.1(b)
A36.2.2.1	A36.1(b)(4), A36.1(b)(6)
A36.2.2.2	A36.1(c)
A36.2.2.2(a)	A36.1(c)(1)
A36.2.2.2(b)	A36.1(c)(2), A36.9(b)(2)
B36.2.2.2(c)	A36.1(c)(3)
B36.2.2.2(d)	A36.9(d)(2)
A36.2.2.2(e)	A36.1(c)(4)
A36.2.2.2(f)	A36.1(c)(5)
A36.2.2.2(g)	A36.9(b)(3)
A36.2.2.3	A36.9(d)(3)
A36.2.2.4	A36.1(b)(5), A36.9(b)(1)
A36.2.3	A36.1(d)
A36.2.3.1	A36.1(d)(2)
A36.2.3.2	A36.1(b)(1), A36.1(d)(3), A36.5(b)(6)
A36.2.3.3	A36.1(d)(8), A36.5(b)(6)
A36.3	A36.3

CROSS REFERENCE TABLE—Continued

New Section	Old Section
A36.3.1	New
A36.3.2	New
A36.3.3	A36.3(a)
A36.3.3.1	A36.3(b)
A36.3.3.2	New
A36.3.4	A36.3(c)(2)(v)
A36.3.5	A36.3(c)(2)(i-iv), A36.3(f)(1)
A36.3.6	A36.3(c)(3)
A36.3.7	A36.3(d)
A36.3.8	A36.3(e)(7)
A36.3.9	A36.3(e)(1–6), A36.3(f)(2)
A36.3.9.11	A36.3(f)(2–4)
A36.3.9.12	A36.5(d)(3–4)
A36.4	B36.1
A36.4.1	B36.1
A36.4.1.1	B36.1
A36.4.1.2	B36.1
A36.4.1.3	B36.1
A36.4.2	B36.3
A36.4.2.1	B36.3; AC 36–4C
A36.4.3	B36.5
A36.4.3.1	B36.5(a-m)
A36.4.3.2	B36.5(n)
A36.4.4	B36.7
A36.4.4.1	B36.7(a) & (b)
A36.4.4.2	B36.5(n)
A36.4.5	B36.9
A36.4.5.1	B36.9
A36.4.5.2	B36.9(a)
A36.4.5.3	B36.9(b)
A36.4.5.4	B36.9(c)
A36.4.5.5	B36.9(d)
A36.4.6	B36.11
A36.4.6.1	B36.11(a)
A36.4.7	B36.13
A36.4.7.1	B36.13(a)
A36.4.7.2	B36.13(a)(1–3)
A36.4.7.3	B36.13(b)
A36.4.7.4	B36.13(c)
A36.5	A36.5
A36.5.1	A36.5(a)
A36.5.1.1	A36.5(a)
A36.5.1.2	A36.5(a)
A36.5.1.3	A36.5(a)
A36.5.2	A36.5(b)
A36.5.2.1	A36.5(b)(1)
A36.5.2.2	A36.5(b)(2)
A36.5.2.3	A36.5(b)(3)
A36.5.2.4	A36.5(b)(4)
A36.5.2.5	A36.5(b)(5)
A36.5.3	A36.5(c)
A36.5.3.1	A36.5(d)(1)
A36.5.4	A36.5(e)
A36.5.4.1	A36.5(e)(1)
A36.5.4.2	A36.5(e)(2)
A36.5.4.3	A36.5(e)(3)
A36.6	A36.7
A36.7.1–A36.7.3	A36.9(c)
A36.8	New section—Reserved
A36.9	A36.5(d)(1), A36.11
A36.9.1	A36.5(d)(2), A36.9(d)(1), A36.11(a), A36.11(a)(3)(i) & (v)
A36.9.1.1	A36.9(a), A36.9(d)(1), A36.11(a)(3)(ii-iii), A36.11(a)(3)(iv)
A36.9.1.2	A36.11(f)(1–2)
A36.9.2	A36.11(b)&(c)
A36.9.2.1	A36.11(b)(1)(i-ii)
A36.9.2.2	A36.11(c)
A36.9.3	A36.11
A36.9.3.1	A36.11(a), A36.11(f)(1)
A36.9.3.2(a)	A36.11(b)(3), A36.11(c)(2)
A36.9.3.2(b)	New section
A36.9.3.2.1	A36.9(d)(1–3)
A36.9.3.2.1.1	A36.11(d)(1)(ii)
A36.9.3.2.1.2	A36.11(d)(1)(ii)
A36.9.3.2.2	B36.11(c)
A36.9.3.3	A36.11(e)
A36.9.3.3.1	A36.11(e)(1)(2)
A36.9.3.3.2	A36.11(e)
A36.9.3.4	A36.11(a)(3)(iv)
A36.9.3.4.1	A36.11(a)(3)(iv)
A36.9.3.4.2	A36.11(a)(3)(iv)
A36.9.3.5	A36.1(b)(7)
A36.9.3.5.1	A36.1(b)(7)
A36.9.4	A36.11(f)(2)(i-ii)
A36.9.4.1	A36.11(b)(2), A36.11(f)(2)(i-ii)
A36.9.4.2	A36.11(f)(2)(i-ii)
A36.9.4.2.2	A36.11(f)(2)(i-ii)
A36.9.4.2.3	A36.11(f)(2)(i-ii)
A36.9.4.3	A36.11(f)(2)(i-ii)
A36.9.4.4	A36.11(f)(2)(i-ii)
A36.9.4.4.1	A36.11(f)(2)(i-ii)
A36.9.5	A36.7
A36.9.6	A36.7
B36.1	C36.1
B36.2	A36.1(d)(1)
B36.3(a)	C36.3(c)
B36.3(b)	C36.3(a)
B36.3(c)	A36.5(c)(2), C36.3(b)
B36.4(a)	A36.11(f)
B36.4(b)	A36.1(b)(7)
B36.5	C36.5(a)
B36.5(a)	C36.5(a)(1)
B36.5(b)	C36.5(a)(2)
B36.5(b)(1)	C36.5(a)(2)(i)
B36.5(b)(2)	C36.5(a)(2)(ii)
B36.5(c)	C36.5(a)(3)
B36.5(c)(1)(i)	C36.5(a)(3)(i)(A)
B36.5(c)(1)(ii)	C36.5(a)(3)(i)(B)
B36.5(c)(1)(iii)	C36.5(a)(3)(i)(C)
B36.5(c)(2)	C36.5(a)(3)(ii)
B36.5(c)(3)	C36.5(a)(3)(iii)
B36.6	C36.5(b)(1)-(3)
B36.7(a)(1)	
B36.7(a)(2)	A36.11(a)(3)(i)
B36.7(a)(3)	C36.7(a), C36.9(a)
B36.7(a)(4)	New section—Reserved
B36.7(a)(5)	A36.5(c)(1), C36.7(e)(3)
B36.7(b)(1)	C36.7(b), C36.7(b)(2)
B36.7(b)(2)	C36.7(c)
B36.7(b)(3)	A36.1(b)(2)
B36.7(b)(4)	C36.7(e)(1–2)
B36.7(b)(5)	C36.7(d)
B36.7(b)(6)	A36.5(c)(2)
B36.7(b)(7)	New section
B36.7(c)	C36.9
B36.7(c)	C36.9(a)
B36.7(c)(1)	A36.5(c)(2), C36.9(c)
B36.7(c)(2)	C36.9(e)(1), C36.9(e)(2)
B36.7(c)(3)	C36.9(b-c)
B36.7(c)(4)	A36.5(c)(2)
B36.7(c)(5)	C36.9(b)
B36.8(a)	New section
B36.8(b)	A36.1(d)(1)
B36.8(c)	A36.5(d), A36.11(a)
B36.8(d)	A36.1(d)(5–7)
B36.8(e)	A36.1(d)(6)
B36.8(f)	A36.5(d)(5)
B36.8(g)	C36.7(e)(1), C36.9(e)(3)

Paperwork Reduction Act

In this NPRM, Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes, Part 36, proposed §§ A36.5.2 and A36.5.2.5 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review.

The information to be collected is needed for the applicant's noise compliance report that is required by the Aircraft Noise Abatement Act of 1968. This statute authorized FAA to prescribe standards for the measurement of aircraft noise and to prescribe regulations providing for the control and abatement of aircraft noise. The noise compliance report information is part of the aircraft certification test. The collected information is incorporated into the noise compliance report that is provided to and approved by the FAA. The annual burden for § A36.5.2 is estimated to range from 80×80 hours at $6,400 per noise certification project to 100×160 hours at $16,000 per noise certification project. The annual burden for § A36.5.2.5 is estimated to range from $500 ($5 \text{ hours} \times $100 per hour) to $2,000 ($25 \text{ hours} \times $80 per hour) per certification. If proprietary information is submitted, it will be protected in accordance with appropriate laws.

The agency is soliciting comments to (1) evaluate whether the proposed collection of information is necessary; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submission of responses).

Individuals and organizations may submit comments on the information collection requirement by September 11, 2000 and should direct them to the address listed in the **ADDRESSES** section of this document.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The public will be notified of the OMB control number when it is assigned.

Compatibility With ICAO Standards

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these proposed regulations. If this proposal is adopted, the FAA intends to file these differences with ICAO.

Wind Speed. Section A36.2.2.2(e) of the proposal requires that tests be carried out under atmospheric conditions where the average wind velocity 10 meters above ground does not exceed 12 knots and the crosswind velocity for the airplane does not exceed 7 knots. Section A36.2.2.2(e) of the proposal also specifies that maximum wind velocity 10 meters above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10

knots during the 10 dB down time interval. Section 2.2.2(e) of ICAO Annex 16, Appendix 2 contains a similar average wind speed limitation, but specifies a maximum windspeed limitation only in cases where an anemometer with a built-in detector time constant of less than 30 seconds is used. The FAA does not agree to adopt this Annex 16 provision because it could result in tests being conducted in windspeed conditions that exceed those currently permitted under part 36; the effect of these higher wind conditions might have on the resulting noise levels could not be determined based on the information that was available to the harmonization working group.

Adjustments to PNL and PNLT. In adjusting measured sound pressure level data to reference conditions, section 9.3.2.1 of Annex 16 Appendix 2 requires that when a sound pressure level value is equal to zero (for example, as a result of applying a background noise correction) the adjusted sound pressure level must be kept equal to zero in the adjustment process. The FAA did not agree to adopt this provision. The FAA's view is that the sound pressure level values should be carried through the adjustment process regardless of whether they are greater than zero, equal to zero, or less than zero. It is entirely possible for a negative or zero sound pressure level value that results from the background noise correction process to become positive when adjustments are applied to account for the difference between the test and reference airplane heights above the noise measurement point.

Design characteristics that require different reference procedures. Section 3.6.1.4 of ICAO Annex 16, Appendix 2 permits the certificating authority to approve reference procedures that depart from those contained in section 3.6.2 and 3.6.3 of Annex 16 Appendix 2 when design characteristics of an airplane would prevent flight from being conducted in accordance with the 3.6.2 and 3.6.3 reference procedures. FAA did not agree to adopt this provision since it views the need to depart from the specified reference procedures due to airplane design characteristics as an indication that part 36 may not be appropriate for a given airplane. In this case, under U.S. procedures, the exemption or rulemaking processes, which include a public comment period would be followed to develop an appropriate noise certification basis.

Noise Certificates. Section 1.2 of ICAO Annex 16, Chapter 1 specifies that the documents attesting noise certification may take the form of a separate Noise Certificate or a suitable statement contained in another document approved by the State of Registry and required by that State to be carried in the aircraft. However, under 49 U.S.C. 44702, the FAA is not authorized to issue Noise Certificates. Section 36.1581 of part 36 requires that the certificated noise levels be included in the Airplane Flight Manual. However, the FAA does not require the Airplane Flight Manual to be carried in the airplane. An operations manual that does not contain certificated noise levels is carried in some airplanes. The FAA is aware of a number of cases in which airplane operators had difficulty in substantiating airplane noise compliance status to the satisfaction of airport authorities. The FAA invites comments on the extent of any problems encountered due to the absence of noise compliance substantiation when the Airplane Flight Manual is not on board the airplane.

Economic Evaluation

Proposed changes to Federal regulations undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined that this rule (1) has benefits which do justify its cost, is not a "significant regulatory action" as defined in the Executive Order and the Department of Transportation's (DOT) Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or the private sector. These analyses, available in the docket, are summarized below.

Costs

Many of the changes in the proposed rule are either editorial or procedural in nature. These types of proposed revisions would not add any new requirements or impose costs. However, 38 sections of the proposed changes to part 36 entail changes, which warranted further evaluation to determine whether they involve changes in criteria or could impose additional costs. The key factor in evaluating the proposed changes in criteria was assessing whether an applicant could pass the noise certification test under the proposed change but fail the test under the current rule or vice versa, indicating a change in the stringency of the existing standard.

Eight sections that would be removed by the proposed rule warranted further evaluation. These include sections that had previously been eliminated by an earlier amendment but the text had erroneously remained in part 36, as well as sections that are no longer relevant given improvements in test equipment and the enhancement of data correction procedures since the time part 36 was originally promulgated. The deletion of these sections has no cost impact.

The FAA evaluated the remaining items to determine whether costs would be incurred and examined the magnitude of the cost. The sections of the proposed rule with potential cost fall into four categories: (1) Software costs, (2) additional testing procedures, (3) additional or new measuring provisions, and (4) additional reporting requirements.

Software Costs—Five proposed provisions address the maintenance of the computer programs used to correct as-measured noise certification data to 14 CFR part 36 reference conditions. Such maintenance often times involves administrative cost. However, based on discussions with staff at the Volpe National Transportation Center, which work under contract to the FAA and evaluate certification software, the FAA has determined that four of these proposed changes would have no cost impact. The fifth, Section A36.3.7.6, would deal with technical differences in the "readout" time of the time-weighted measurement of the sound pressure level between the test data and the reference data. Implementation of this change would require modifying the computer software used by the applicants. The estimated times required for each applicant to

implement the software change and for the FAA to verify correct implementation the change are 40 and 20 hours, respectively at hourly wage rates of $85 and $75, respectively. The FAA estimates that 39 applicants would incur this one-time cost, and that these software costs would be incurred in the first 3 years after the proposed rule's implementation. The total cost to industry and the FAA are $132,600 and $58,500 ($116,000 and $51,200 discounted), respectively.

Testing Costs—Three proposed changes relate to the operating specifications of test aircraft, but none have any cost impacts.

Measurement Costs—The FAA has determined that of the ten proposed changes that could affect the allowable test conditions and correction of test results to reference conditions, only one would have a cost impact. Under the proposed changes to Appendix B36.4(b), a special requirement would be added for propeller-driven airplanes that would require the placement of symmetrical positioned microphones at each and every test measurement point. However, most applicants already take advantage of FAA-approved equivalent test procedures that require only one set of symmetrical microphones for sideline noise measurements. Changing part 36 would not result in increased costs for most applicants. However, an applicant choosing to use multiple pairs of microphones could incur additional costs ranging up to an estimated $28,000 per test. These costs would involve an increase in the number of microphone systems, including cable, calibration, site surveys, and data recording, analysis and reporting. The FAA has calculated costs assuming that two domestic large-propeller applicants would conduct 4 tests meeting this requirement over the next 10 years. The total cost would be $112,000, or $79,200, discounted.

Reporting Costs—Section A36.5.2 would require applicants to include test results in their noise certification compliance report. While part 36 currently does not specifically require applicants to submit a compliance report it is a standard practice for applicants to do so, since applicants already address these data elements under JAR 36 or ICAO Annex 16. The addition of this provision would codify industry practice. Since the information is already provided, the FAA does not believe there will be additional costs to comply with this requirement. The FAA requests comments on this assumption and requests that all comments be accompanied by clear documentation supporting any proposed changes.

The FAA has determined that one proposed change, to section A36.5.2.3, would add new data elements to the required test report. There would be five new elements. All of these are test airplane operating configuration items that could effect the airplanes noise signature and are already a part of the international standard. Additional labor costs for documenting data not previously reported are estimated to range from $500 (5 hours × $100 per hour) to $2,000 (25 hours × $80 per hour) per test. These estimates are based on the number of additional items to be reported and on the assumption of a lower and upper range of required labor hour increases of 5 to 8 hours and 20 to 25 hours, respectively, at hourly labor rates that range from $80 to $100 per hour.

Based on FAA estimates, 14 noise certification projects involving flight tests are undertaken each year. Four of these projects are conducted among the 15 foreign firms which already comply with these proposed reporting requirements under JAR 36 or ICAO Annex 16 and thus would not incur additional reporting costs. Ten projects are conducted from among 24 domestic firms engaged in flight-testing and the FAA estimates that these firms would conduct 100 tests over the next 10 years. The FAA further estimates that some domestic firms will incur additional reporting costs of $1,250 per test based on the midpoint of the estimated additional labor costs. Domestic firms with a large international presence are estimated to conduct 40 of the 100 tests to be conducted over the next 10 years, based on the composition of the industry. Since these larger firms already frequently comply with the existing international reporting standard, the FAA estimates that only 10 of the 40 tests to be conducted by these firms would incur the additional reporting costs of $1,250 each, or a total of $12,500. The FAA estimates that of the 60 tests to be conducted by smaller domestic firms 24 tests would incur the additional reporting costs of $1,250 per test or a total of $30,000 over the next 10 years. Thus, the additional labor costs for reporting the additional information would total $42,500 ($30,000 plus $12,500) for these affected firms.

However, it is possible that some applicants might accrue additional costs. If an applicant was required to invest in new instrumentation or data recording equipment to comply with these requirements, the estimated total reporting costs could increase to between $5,000 and $10,000 per test. This is based on a range of estimates and scenarios involving purchasing and installing additional instrumentation, and labor for adding recording capability, data analysis, etc. For example, one possible scenario would entail the purchase and installation of instrumentation hardware at $4,200 ($2,500 for hardware and $1,700 for labor [20 hours × $85 per hour]), plus the labor cost for adding recording capability and data recording/analysis at $3,400 (40 hours × $85 per hour) for a total of $7,600 of additional cost. The FAA estimates that only three firms would incur this additional cost of $7,600 per test and that these firms would conduct a total of 12 tests over the next 10 years at a total cost of $91,200. Thus, the total additional reporting costs to the industry would be $133,700, or $93,900 discounted, based on the minimal additional reporting costs of $42,500 incurred by some firms and $91,200 incurred by the three firms requiring additional instrumentation/data recording.

Summary of Costs

The total costs for this proposed rule are $436,800, or $340,300 discounted. Of this total, industry costs are $378,300, or $289,100 discounted, and FAA costs are $58,500, or $51,200 discounted. Comments are invited on these additional cost elements; the FAA requests that all comments be accompanied by clear economic documentation.

Cost Savings

Several of the proposed changes could result in cost savings to applicants, depending upon the current inventory of the applicant's test equipment and the particular weather circumstances of the flight test. However, given the uncertainty in the annual number and duration of flight tests, it is difficult to accurately quantify these savings. For example, Section A36.2.2.2(b) would lower the minimum test temperature from 36 degrees Fahrenheit to 14 degrees Fahrenheit. This proposed change is based on technical data from extensive noise testing experience and is within the operational temperature limit of the noise measuring equipment. One of the largest cost elements of the test certification process is the cost associated with airplane down time; by extending the temperature range, down time could be minimized. Down time occurs when the test aircraft, crew, equipment and technicians are ready to commence testing but testing is delayed or postponed because the weather conditions specified in Section A36.2 are not met. While airplane noise testing is not normally planned for cold

weather, circumstances may dictate that the test be conducted under conditions which could take advantage of this new lower temperature. Under this circumstance, assuming various scenarios of daily temperature warming patterns that could result in reduced hours of airplane down time, an applicant might reduce total on-site test time of a typical certification flight test conducted under these conditions by 10 to 15 percent.

As an example of the impact of permitting testing to be conducted at a lower temperature, assuming an on-site test time of 5 to 7 days to complete a typical certification flight test under these conditions, the applicant might reduce the total test time between half a day to one full day by testing during a time period when the lower temperature condition prevailed. Assuming a cost factor of $150,000 to $200,000 per day for larger planes and $70,000 to $140,000 per day for smaller airplanes, cost reductions per test made possible by this change in minimum test temperatures could range between approximately $75,000 and $200,000 for larger airplanes and manufacturers and between $35,000 and $140,000 for smaller airplanes and manufacturers. The number of such tests conducted under cold weather conditions might be, at most, one per applicant over a 10 year period. Some applicants might not encounter this situation during a 10 year period.

The FAA estimates that 24 larger applicants would each derive cost savings of $137,500 per test and 13 smaller firms would save $87,500 each per test. The estimated industry cost savings over ten years totals $4.44 million, or $3.12 million discounted. Comments on these estimates are invited; the FAA requests that all comments be accompanied by clear documentation supporting any proposed changes.

Proposed section B36.3(a) includes a simplified test procedure that may be used in determining the sideline (lateral) noise level for propeller-driven large airplanes. This test procedure would allow the full power noise measurement to be obtained at a point (650m) below the takeoff flight path and thus eliminate the problems associated with obtaining this measurement from the conventional sideline site. According to industry sources, 40 to 45 fly-bys per test could be eliminated and between 2 and 8 microphone systems could be eliminated depending on the size of the array used by the applicant. (Many applicants currently use a 2-microphone sideline array.) In addition to the significant savings resulting from the reduction in the number of fly-bys and the number of microphone systems, further cost savings could result from a reduction in site surveying and field set-up expenses in addition to the analysis and reporting savings that result from fewer fly-bys. The total cost savings of these changes are estimated at $200,000 to $350,000 per test for manufacturers of propeller-driven large planes. These estimates are based on a range of potential scenarios involving combinations of the above elements (the number of fly-bys and the number of microphones used, flight test costs, *etc.*). As an example, based on a reduction of 42 fly-bys, the midpoint of the estimated range, and an example cost factor of $6,000 per fly-by, cost savings of $252,000 would be realized. In addition, assuming a reduction of 4 microphone systems, including surveying, setup, recording analysis and reporting at an assumed cost factor of $7,000 per system, another $28,000 (4 systems × $7,000 per system) in savings would be realized, for a total example savings of $280,000 per test under this example. Given the increasing demand for regional jets, and the financial status of large propeller-driven manufacturers, the FAA estimates that no more than 10 tests would be conducted over the next 10 years and that the derived cost savings would total $2.80 million or $1.97 million discounted.

Industry sources estimate that cost savings on the order of $37,500 per year for those applicants with considerable certification activity would be realized by the harmonization of testing, data measurement and analysis, reporting and documentation. Industry sources also claim that these cost savings would be achieved by a reduction in the confusion and the multiple interpretations that lead to delays, duplicate effort and costly negotiation caused by the existing dual certification standards. The FAA estimates that 10 firms engaged in noise certification activities would achieve cost savings of $375,000 annually for the industry. The estimated industry cost savings over ten years totals $3.75 million, or $2.63 million discounted.

Total quantifiable cost savings over ten years would be $10.99 million, or $7.72 million discounted. The FAA has not been able to quantify other potential savings made possible by the greater efficiencies and flexibility resulting from the uniformity that the proposed rule would provide. Comments are invited; the FAA requests that all comments be accompanied by clear documentation. The FAA would particularly appreciate specific cost savings data.

Benefits

Currently, airplane manufacturers must satisfy both the FAA and the European noise certification standards in order to market their aircraft in both the United States and Europe. Meeting two sets of noise certification requirements raises the cost of developing a new transport category airplane, often with no increase in safety or environmental benefit. Adoption of these proposed changes to the noise certification standards of part 36 will foster international trade, lower the cost of aircraft development, and make the certification process more efficient.

Cost-Benefit Analysis

If the proposed rule becomes effective, U.S. noise certification procedures would be nearly uniform with the JAA procedures. This harmonization between the test conditions, procedures, and noise levels necessary to demonstrate compliance with certification requirements for subsonic jet airplanes and subsonic transport category large airplanes would result in significant cost savings without compromising the environmental benefits of the noise certification standards.

The proposed rule's cost savings, over ten years (attributable to specific proposed changes to part 36 and achieving near uniformity of the standards), would be $7.24 million, $5.08 million discounted. In addition, $3.75 million, $2.63 million discounted, would be derived from overall efficiencies attributable to the harmonization effort in achieving near uniformity of the FAA and JAA standards for a total savings of $10.99 million, $7.72 million, discounted which exceeds the proposed rule's cost of $436,800 ($340,300, discounted). Since the potential cost savings exceed the additional costs, the proposed rule would be cost beneficial.

Initial Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Act) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. Agencies must perform a review to determine whether a proposed or

final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Enactment of this proposal would impose costs of $436,800 on the FAA and noise certification applicants over the ten year period of which $250,400 would be incurred by smaller applicants. The FAA has assumed that two smaller applicants which is not a substantial number of applicants would each incur measurement costs of $56,000, or a total of $112,000. Additional reporting costs requiring additional instrumentation/data recording totaling $60,800 over the ten year period would be incurred by 2 other smaller applicants or $30,400 each. Additional labor costs for new reporting requirements totaling $30,000 over the 10 year period would be incurred by 6 smaller applicants at a cost to each of these smaller applicants over the 10 year period of $5,000.

All the small (14) applicants at a cost of $3,400 each or a total of $47,600 would incur one time software costs and for four of these firms this would be the only cost they incur. The first-year cost to each of the six small applicants incurring both software and additional labor reporting costs would be $4,650. In this case, the FAA has determined this would not be a significant cost to a substantial number of small noise certification applicants. Therefore, the FAA had determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the U.S.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Unfunded Mandates

The Unfunded Mandates reform Act of 1995 (2 U.S.C. 1532–1538) requires the FAA to assess the effects of Federal Regulatory actions on state, local, and tribal governments, and on the private sector of proposed rules that contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year. This action does not contain such a mandate.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 21 and 36

Aircraft, Noise control.

The Proposed Amendment

In consideration of the foregoing the Federal Aviation Administration proposes to amend 14 CFR parts 21 and 36, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

§ 21.17 [Amended]

2. Amend paragraph (a) of § 21.17 by removing the word "parts" and adding the word "part" and removing the words "and 36".

§ 21.101 [Amended]

3. Amend paragraph (a) of § 21.101 by removing the word "parts" and adding the word "part" and removing the words "and 36".

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

§ 36.1 [Amended]

2. Amend § 36.1 as follows:

a. In paragraph (a)(1) remove the words "turbojet powered" and add the word "jet" in its place.

b. In paragraph (d), introductory text, remove the words "turbojet powered" and add the word "jet" in its place.

c. Remove paragraph (d)(3).

d. In paragraph (f) remove the words "turbojet powered" and insert the word "jet" in its place.

e. In paragraph (f)(1) remove the reference to "C36.5(a)(2)" and add "B36.5(b)" in its place; remove the word "takeoff" and add the word "flyover" in its place; and remove the word "sideline" and add the word "lateral" in its place;

f. In paragraph (f)(3) remove the reference to "C36.5(a)(2)" and add "B36.5(b)" in its place and remove the

reference to "C36.5(a)(3)" and insert "B36.5(c)" in its place;

g. In paragraph (f)(4) remove the reference to "C36.5" and add "B36.5(b)" in its place;

h. In paragraph (f)(5) remove the reference to "C36.5(a)(3)" and add "B36.5(c)" in its place;

i. In paragraph (f)(6) remove the reference to "C36.5" and add "B36.5(c)" in its place; and.

j. In paragraph (g) remove the word "turbojet" and add the word "jet" in its place.

§ 36.2 [Removed and reserved]

3. Remove and reserve § 36.2.

§ 36.6 [Amended]

* * * * *

4. Amend § 36.6 as follows:

a. Add paragraphs (c)(1)(vi) through (x);

b. Revise paragraphs (d)(1)(i) and (ii), (e)(3)(ii), (e)(3)(vii), and (e)(3)(ix).

The additions and revisions read as follows:

(c) * * *

(1) * * *

(vi) IEC Publication 61094–3, entitled "Measurement Microphones—Part 3: Primary Method for Free-Field Calibration of Laboratory Standard Microphones by the Reciprocity Technique", edition 1.0, dated 1995.

(vii) IEC Publication 61094–4, entitled "Measurement Microphones—Part 4: Specifications for Working Standard Microphones", edition 1.0, dated 1995.

(viii) IEC Publication 61260, entitled "Electroacoustics-Octave-Band and Fractional-Octave-Band filters", edition 1.0, dated 1995.

(ix) IEC Publication 61265, entitled "Instruments for Measurement of Aircraft Noise-Performance Requirements for Systems to Measure One-Third-Octave-Band Sound pressure Levels in Noise Certification of Transport-Category Aeroplanes", edition 1.0, dated 1995.

(x) IEC Publication 60942, entitled "Electroacoustics-Sound Calibrators", edition 2.0, dated 1997.

* * * * *

(d) * * *

(1) * * *

(i) International Electrotechnical Commission, 3, rue de Varembe, Case postale 131, 1211 Geneva 20, Switzerland

(ii) American National Standard Institute, 11 West 42nd Street, New York City, New York 10036

(e) * * *

(3) * * *

(iii) Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia, 30337.

* * * * *

(vi) Southwest Region Headquarters, 2601 Meacham Boulevard, Fort Worth, Texas, 76137–4298.

(vii) Northwest Mountain Region Headquarters, 1601 Lind Avenue, Southwest, Renton, Washington 98055.

* * * * *

(ix) Alaskan Region Headquarters, 222 West 7th Avenue, 14, Anchorage, Alaska, 99513.

* * * * *

§ 36.7 [Amended]

5. Amend § 36.7 to read as follows:

a. In paragraph (a) remove the words "turbojet powered" and add the word "jet" in its place.

b. In paragraph (b)(1) remove the reference to "Appendices A and B" and add "Appendix B" in its place.

c. In paragraph (b)(2) remove the reference to "C36.9" and add "B36.8" in its place.

d. In paragraph (c)(1) remove the reference to "C36.5(b)" and add "B36.6" in its place.

e. In paragraph (d)(1) remove the word "turbojet" and add the word "jet" in its place.

f. In paragraph (d)(1)(ii) remove the reference to "C36.5(b)" and add "B36.6" in its place.

g. In paragraph (d)(2) remove the word "turbojet" and add the word "jet" in its place.

Subpart B—Transport Category Large Airplanes and Jet Airplanes

6. Revise the heading of Subpart B to read as set forth above.

7. Revise § 36.101 to read as follows:

§ 36.101 Noise measurement and evaluation.

For transport category large airplanes and jet airplanes, the noise generated by the airplane must be measured and evaluated under appendix A of this part or under an approved equivalent procedure.

8. Revise § 36.103 to read as follows:

§ 36.103 Noise Limits.

(a) For subsonic transport category large airplanes and subsonic jet airplanes compliance with this section must be shown with noise levels measured and evaluated as prescribed in Appendix A of this part, and demonstrated at the measuring points, and in accordance with the flight test conditions under section C36.8 (or an approved equivalent procedure), stated under appendix C of this part.

(b) Type certification applications for subsonic transport category large airplanes and all subsonic jet airplanes must show that the noise levels of the airplane are no greater than the Stage 3 noise limits stated in section B36.5(c) of appendix B of this part.

§ 36.201 (Subpart C) [Removed]

9. Remove and reserve subpart C, consisting of § 36.201.

§ 36.1581 [Amended]

10. Amend § 36.1581(a)(1) and (d) by removing the words "turbojet powered" and adding the word "jet" in its place.

11. Revise appendix A of part 36 to read as follows:

Appendix A to Part 36—Aircraft Noise Measurement and Evaluation Under § 36.101

Sec.

A36.1 Introduction.
A36.2 Noise certification test and measurement conditions.
A36.3 Measurement of aircraft noise received on the ground.
A36.4 Calculations of effective perceived noise level from measured data.
A36.5 Reporting of data to the FAA.
A36.6 Nomenclature: Symbols and units.
A36.7 Sound attenuation in air.
A36.8 [Reserved]
A36.9 Adjustment of airplane flight test results.

Section A36.1 Introduction.

A36.1.1 This appendix prescribes the conditions under which airplane noise certification tests must be conducted and states the measurement procedures that must be used to measure airplane noise during each test conducted on or after [insert effective date of final rule]. The procedures that must be used to determine the noise evaluation quantity designated as effective perceived noise level, EPNL, under §§ 36.101 and 36.803 are also stated.

A36.1.2 The instructions and procedures given are intended to ensure uniformity during compliance tests and to permit comparison between tests of various types of airplane conducted in various geographical locations.

A36.1.3 A complete list of symbols and units, the mathematical formulation of perceived noisiness, a procedure for determining atmospheric attenuation of sound, and detailed procedures for correcting noise levels from non-reference to reference conditions are included in sections A36.6 to A36.9 of this appendix.

Section A36.2 Noise certification test and measurement conditions.

A36.2.1 *General.*

A36.2.1.1 This section prescribes the conditions under which noise certification must be conducted and the measurement procedures that must be used.

Note: Many noise certifications involve only minor changes to the airplane type design. The resultant changes in noise can often be established reliably without the necessity of resorting to a complete test as outlined in this appendix. For this reason the FAA permits the use of appropriate "equivalent procedures". There are also equivalent procedures that may be used in full certification tests, in the interest of

reducing costs and providing reliable results. Guidance material on the use of equivalent procedures in the noise certification of subsonic jet and propeller-driven large airplanes is provided in the current Advisory Circular for this part.

A36.2.2 *Test environment.*

A36.2.2.1 Locations for measuring noise from an airplane in flight must be surrounded by relatively flat terrain having no excessive sound absorption characteristics such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas. No obstructions that significantly influence the sound field from the airplane must exist within a conical space above the point on the ground vertically below the microphone, the cone being defined by an axis normal to the ground and by a half-angle 80° from this axis.

Note: Those people carrying out the measurements could themselves constitute such obstruction.

A36.2.2.2 The tests must be carried out under the following atmospheric conditions.

(a) No precipitation;

(b) Ambient air temperature not above 95°F (35°C) and not below 14°F (-10°C), and relative humidity not above 95% and not below 20% over the whole noise path between a point 33 ft (10 m) above the ground and the airplane.

Note: Care should be taken to ensure that the noise measuring, airplane flight path tracking and meteorological instrumentation are operated within their environmental limitations.

(c) Relative humidity and ambient temperature over the whole noise path between a point 33 ft (10 m) above the ground and the airplane such that the sound attenuation in the one-third octave band centered on 8 kHz will not be more than 12 dB/100 m;

(d) If the atmospheric absorption coefficients vary over the PNLTM sound propagation path by more than ±1.6dB/1000ft (±0.5dB/100m) in the 3150Hz one-third octave band from the value of the absorption coefficient derived from the meteorological measurement obtained at 33 ft (10 m) above the surface, "layered" sections of the atmosphere must be used as described in section A36.2.2.3 to compute equivalent weighted sound attenuations in each one-third octave band; the FAA will determine whether a sufficient number of layered sections have been used. For each measurement, where multiple layering is not required, equivalent sound attenuations in each one-third octave band must be determined by averaging the atmospheric absorption coefficients for each such band at 33 ft (10 m) above ground level, and at the flight level of the airplane at the time of PNLTM, for each measurement;

(e) Average wind velocity 10 meters above ground is not to exceed 12 knots and the crosswind velocity for the airplane is not to exceed 7 knots. The average wind velocity must be determined using a thirty-second averaging period spanning the 10 dB down time interval. Maximum wind velocity 10 meters above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10 knots during the 10 dB down time interval.

(f) No anomalous meteorological or wind conditions that would significantly affect the measured noise levels when the noise is recorded at the measuring points specified by the FAA; and

(g) Meteorological measurements must be obtained within 30 minutes of each noise test measurement; meteorological data must be interpolated to actual times of each noise measurement.

A36.2.2.3 When a multiple layering calculation is required by section A36.2.2.2(d) the atmosphere between the airplane and 33 ft (10 m) above the ground must be divided into layers of equal depth. The depth of the layers must be set to not more than the depth of the narrowest layer across which the variation in the atmospheric absorption coefficient of the 3150 Hz one-third octave band is not greater than +/-1.6 dB/1000 ft (+/-0.5 dB/100m), with a minimum layer depth of 100 ft (30 m). This requirement must be met for the propagation path at PNLTM. The mean of the values of the atmospheric absorption coefficients at the top and bottom of each layer may be used to characterize the absorption properties of each layer.

A36.2.2.4 The airport control tower or another facility must be approved by the FAA for use as the central location at which measurements of atmospheric parameters are representative of those conditions existing over the geographical area in which noise measurements are made.

A36.2.3 *Flight path measurement.*

A36.2.3.1 The airplane height and lateral position relative to the flight track must be determined by a method independent of normal flight instrumentation such as radar tracking, theodolite triangulation, or photographic scaling techniques, to be approved by the FAA.

A36.2.3.2 The airplane position along the flight path must be related to the noise recorded at the noise measurement locations by means of synchronizing signals over a distance sufficient to assure adequate data during the period that the noise is within 10 dB of the maximum value of PNLT.

A36.2.3.3 Position and performance data required to make the adjustments referred to in section A36.9 of this appendix must be automatically recorded at an approved sampling rate. Measuring equipment must be approved by the FAA.

Section A36.3 Measurement of Airplane Noise Received on the Ground.

A36.3.1 *Definitions*

For the purposes of this section the following definitions apply:

A36.3.1.1 *Measurement system* means the combination of instruments used for the measurement of sound pressure levels, including a sound calibrator, windscreen, microphone system, signal recording and conditioning devices, and one-third octave band analysis system.

Note: Practical installations may include a number of microphone systems, the outputs from which are recorded simultaneously by a multi-channel recording/analysis device via signal conditioners, as appropriate. For the purpose of this section, each complete measurement channel is considered to be a measurement system to which the requirements apply accordingly.

A36.3.1.2 *Microphone system* means the components of the measurement system which produce an electrical output signal in response to a sound pressure input signal, and which generally include a microphone, a preamplifier, extension cables, and other devices as necessary.

A36.3.1.3 *Sound incidence angle* means in degrees, an angle between the principal axis of the microphone, as defined in IEC 61094–3 and IEC 61094–4, as amended and a line from the sound source to the center of the diaphragm of the microphone.

Note: When the sound incidence angle is 0°, the sound is said to be received at the microphone at "normal (perpendicular) incidence"; when the sound incidence angle is 90°, the sound is said to be received at "grazing incidence".

A36.3.1.4 *Reference direction* means, in degrees, the direction of sound incidence specified by the manufacturer of the microphone, relative to a sound incidence angle of 0°, for which the free-field sensitivity level of the microphone system is within specified tolerance limits.

A36.3.1.5 *Free-field sensitivity of a microphone system* means, in volts per Pascal, for a sinusoidal plane progressive sound wave of specified frequency, at a specified sound incidence angle, the quotient of the root mean square voltage at the output of a microphone system and the root mean square sound pressure that would exist at the position of the microphone in its absence.

A36.3.1.6 *Free-field sensitivity level of a microphone system* means, in decibels, twenty times the logarithm to the base ten of the ratio of the free-field sensitivity of a microphone system and the reference sensitivity of one volt per Pascal.

Note: The free-field sensitivity level of a microphone system may be determined by subtracting the sound pressure level (in decibels re 20 μPa) of the sound incident on the microphone from the voltage level (in decibels re 1 V) at the output of the microphone system, and adding 93.98 dB to the result.

A36.3.1.7 *Time-average band sound pressure level* means in decibels, ten times the logarithm to the base ten, of the ratio of the time mean square of the instantaneous sound pressure during a stated time interval and in a specified one-third octave band, to the square of the reference sound pressure of 20 μPa.

A36.3.1.8 *Level range* means, in decibels, an operating range determined by the setting of the controls that are provided in a measurement system for the recording and one-third octave band analysis of a sound pressure signal. The upper boundary associated with any particular level range must be rounded to the nearest decibel.

A36.3.1.9 *Calibration sound pressure level* means, in decibels, the sound pressure level produced, under reference environmental conditions, in the cavity of the coupler of the sound calibrator that is used to determine the overall acoustical sensitivity of a measurement system.

A36.3.1.10 *Reference level range* means, in decibels, the level range for determining the acoustical sensitivity of the measurement system and containing the calibration sound pressure level.

A36.3.1.11 *Calibration check frequency* means, in hertz, the nominal frequency of the sinusoidal sound pressure signal produced by the sound calibrator.

A36.3.1.12 *Level difference* means, in decibels, for any nominal one-third octave midband frequency, the output signal level measured on any level range minus the level of the corresponding electrical input signal.

A36.3.1.13 *Reference level difference* means, in decibels, for a stated frequency, the level difference measured on a level range for an electrical input signal corresponding to the calibration sound pressure level, adjusted as appropriate, for the level range.

A36.3.1.14 *Level non-linearity* means, in decibels, the level difference measured on any level range, at a stated one-third octave nominal midband frequency, minus the corresponding reference level difference, all input and output signals being relative to the same reference quantity.

A36.3.1.15 *Linear operating range* means, in decibels, for a stated level range and frequency, the range of levels of steady sinusoidal electrical signals applied to the input of the entire measurement system, exclusive of the microphone but including the microphone preamplifier and any other signal-conditioning elements that are considered to be part of the microphone system, extending from a lower to an upper boundary, over which the level non-linearity is within specified tolerance limits.

Note. Microphone extension cables as configured in the field need not be included for the linear operating range determination.

A36.3.1.16 *Windscreen insertion loss* means, in decibels, at a stated nominal one-third octave midband frequency, and for a stated sound incidence angle on the inserted microphone, the indicated sound pressure level without the windscreen installed around the microphone minus the sound pressure level with the windscreen installed.

A36.3.2 *Reference environmental conditions.*

A36.3.2.1 The reference environmental conditions for specifying the performance of a measurement system are:

(a) air temperature—73.4°F (23°C);
(b) static air pressure—101.325 kPa; and
(c) relative humidity—50 %.

A36.3.3 *General.*

Note. Measurements of aircraft noise that use instruments that conform to the specifications of this section yield one-third octave band sound pressure levels as a function of time. These one-third octave band levels are to be used for the calculation of effective perceived noise level as described in section A36.4.

A36.3.3.1 The measurement system must consist of equipment approved by the FAA and equivalent to the following:

(a) A windscreen (see A36.3.4);
(b) A microphone system (see A36.3.5);
(c) A recording and reproducing system to store the measured aircraft noise signals for subsequent analysis (see A36.3.6);
(d) A one-third octave band analysis system (see A36.3.7); and
(e) Calibration systems to maintain the acoustical sensitivity of the above systems within specified tolerance limits (see A36.3.8).

A36.3.3.2 For any component of the measurement system that converts an analog signal to digital form, such conversion must be performed so that the levels of any possible aliases or artifacts of the digitization process will be less than the upper boundary of the linear operating range by at least 50 dB at any frequency less than 12.5 kHz. The sampling rate must be at least 28 kHz. An anti-aliasing filter must be included before the digitization process.

A36.3.4 *Windscreen.*

A36.3.4.1 In the absence of wind and for sinusoidal sounds at grazing incidence, the insertion loss caused by the windscreen of a stated type installed around the microphone must not exceed ±1.5 dB at nominal one-third octave midband frequencies from 50 Hz to 10 kHz inclusive.

A36.3.5 *Microphone system.*

A36.3.5.1 The microphone system must conform to the specifications in sections A36.3.5.2 to A36.3.5.4. Various microphone systems may be approved by the FAA on the basis of demonstrated equivalent overall electroacoustical performance. Where two or more microphone systems of the same type are used, demonstration that at least one system conforms to the specifications in full is sufficient to demonstrate conformance.

Note. This demonstration of equivalent performance does not eliminate the need to calibrate and check each system as defined in section A36.3.9.

A36.3.5.2 The microphone must be mounted with the sensing element 4 ft (1.2 m) above the local ground surface and must be oriented for grazing incidence, *i.e.*, with the sensing element substantially in the plane defined by the predicted reference flight path of the aircraft and the measuring station. The microphone mounting arrangement must minimize the interference of the supports with the sound to be measured. Figure A36–1 illustrates sound incidence angles on a microphone.

A36.3.5.3 The free-field sensitivity level of the microphone and preamplifier in the reference direction, at frequencies over at least the range of one-third-octave nominal midband frequencies from 50 Hz to 5 kHz inclusive, must be within ±1.0 dB of that at the calibration check frequency, and within ±2.0 dB for nominal midband frequencies of 6.3 kHz, 8 kHz and 10 kHz.

A36.3.5.4 For sinusoidal sound waves at each one-third octave nominal midband frequency over the range from 50 Hz to 10 kHz inclusive, the free-field sensitivity levels of the microphone system at sound incidence angles of 30°, 60°, 90°, 120° and 150°, must not differ from the free-field sensitivity level at a sound incidence angle of 0° (''normal incidence'') by more than the values shown in Table A36–1. The free-field sensitivity level differences at sound incidence angles between any two adjacent sound incidence angles in

Table A36–1 must not exceed the tolerance limit for the greater angle.

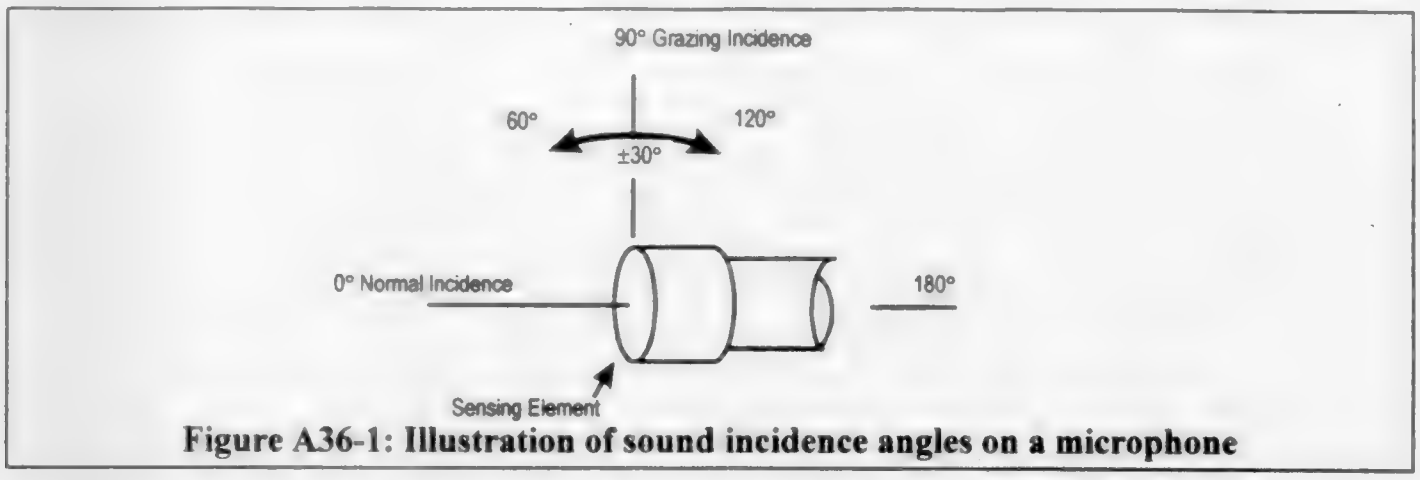

Figure A36-1: Illustration of sound incidence angles on a microphone

MAXIMUM DIFFERENCE BETWEEN THE FREE-FIELD SENSITIVITY LEVEL OF A MICROPHONE SYSTEM AT NORMAL INCIDENCE AND THE FREE-FIELD SENSITIVITY LEVEL AT SPECIFIED SOUND INCIDENCE ANGLES

Nominal midband frequency kHz	dB Sound incidence angle degrees				
	30	60	90	120	150
0.05 to 1.6	0.5	0.5	1.0	1.0	1.0
2.0	0.5	0.5	1.0	1.0	1.0
2.5	0.5	0.5	1.0	1.5	1.5
3.15	0.5	1.0	1.5	2.0	2.0
4.0	0.5	1.0	2.0	2.5	2.5
5.0	0.5	1.5	2.5	3.0	3.0
6.3	1.0	2.0	3.0	4.0	4.0
8.0	1.5	2.5	4.0	5.5	5.5
10.0	2.0	3.5	5.5	6.5	7.5

Table A36–1 Microphone Directional Response Requirements

A36.3.6 *Recording and reproducing systems.*

A36.3.6.1 A recording and reproducing system, such as a digital or analog magnetic tape recorder, a computer-based system or other permanent data storage device, must be used to store sound pressure signals for subsequent analysis. The sound produced by the aircraft must be recorded in such a way that a record of the complete acoustical signal is retained. The recording and reproducing systems must conform to the specifications in sections A36.3.6.2 to A36.3.6.9 at the recording speeds and/or data sampling rates used for the noise certification tests. Conformance must be demonstrated for the frequency bandwidths and recording channels selected for the tests.

A36.3.6.2 The recording and reproducing systems must be calibrated as described in section A36.3.9.

(a) For aircraft noise signals for which the high frequency spectral levels decrease rapidly with increasing frequency, appropriate pre-emphasis and complementary de-emphasis networks may be included in the measurement system. If pre-emphasis is included, over the range of nominal one-third octave midband frequencies from 800 Hz to 10 kHz inclusive, the electrical gain provided by the pre-emphasis network must not exceed 20 dB relative to the gain at 800 Hz.

A36.3.6.3 For steady sinusoidal electrical signals applied to the input of the entire measurement system including all parts of the microphone system except the microphone at a selected signal level within 5 dB of that corresponding to the calibration sound pressure level on the reference level range, the time-average signal level indicated by the readout device at any one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive must be within ±1.5 dB of that at the calibration check frequency. The frequency response of a measurement system, which includes components that convert analog signals to digital form, must be within ±0.3 dB of the response at 10 kHz over the frequency range from 10 kHz to 11.2 kHz.

Note: Microphone extension cables as configured in the field need not be included for the frequency response determination. This allowance does not eliminate the requirement of including microphone extension cables when performing the pink noise recording in section A36.3.9.5.

A36.3.6.4 For analog tape recordings, the amplitude fluctuations of a 1 kHz sinusoidal signal recorded within 5 dB of the level corresponding to the calibration sound pressure level must not vary by more than ±0.5 dB throughout any reel of the type of magnetic tape used. Conformance to this requirement must be demonstrated using a device that has time-averaging properties equivalent to those of the spectrum analyzer.

A36.3.6.5 For all appropriate level ranges and for steady sinusoidal electrical signals applied to the input of the measurement system, including all parts of the microphone system except the microphone, at one-third-octave nominal midband frequencies of 50 Hz, 1 kHz and 10 kHz, and the calibration check frequency, if it is not one of these frequencies, the level non-linearity must not exceed ±0.5 dB for a linear operating range of at least 50 dB below the upper boundary of the level range.

Note 1: Level linearity of measurement system components may be tested according

to the methods described in IEC 61265 as amended.

Note 2: Microphone extension cables configured in the field need not be included for the level linearity determination.

A36.3.6.6 On the reference level range, the level corresponding to the calibration sound pressure level must be at least 5 dB, but no more than 30 dB less than the upper boundary of the level range.

A36.3.6.7 The linear operating ranges on adjacent level ranges must overlap by at least 50 dB minus the change in attenuation introduced by a change in the level range controls.

Note: It is possible for a measurement system to have level range controls that permit attenuation changes of either 10 dB or 1 dB, for example. With 10 dB steps, the minimum overlap required would be 40 dB, and with 1 dB steps the minimum overlap would be 49 dB.

A36.3.6.8 An overload indicator must be included in the recording and reproducing systems so that an overload indication will occur during an overload condition on any relevant level range.

A36.3.6.9 Attenuators included in the measurement system to permit range changes must operate in known intervals of decibel steps.

A36.3.7 *Analysis systems.*

A36.3.7.1 The analysis system must conform to the specifications in sections A36.3.7.2 to A36.3.7.7 for the frequency bandwidths, channel configurations and gain settings used for analysis.

A36.3.7.2 The output of the analysis system must consist of one-third octave band sound pressure levels as a function of time, obtained by processing the noise signals (preferably recorded) through an analysis system with the following characteristics:

(a) A set of 24 one-third octave band filters, or their equivalent, having nominal midband frequencies from 50 Hz to 10 kHz inclusive;

(b) Response and averaging properties in which, in principle, the output from any one-third octave filter band is squared, averaged and displayed or stored as time-averaged sound pressure levels;

(c) The interval between successive sound pressure level samples must be 500 ms ±5 milliseconds (ms) for spectral analysis with or without slow time weighting, as defined in section A36.3.7.4;

(d) For those analysis systems that do not process the sound pressure signals during the period of time required for readout and/or resetting of the analyzer, the loss of data must not exceed a duration of 5 ms; and

(e) The analysis system must operate in real time from 50 Hz through at least 12 kHz inclusive. This requirement applies to all operating channels of a multi-channel spectral analysis system.

A36.3.7.3 The minimum standard for the one-third octave band analysis system is the class 2 electrical performance requirements of IEC 61260 as amended, over the range of one-third octave nominal midband frequencies from 50 Hz through 10 kHz inclusive.

Note: Tests of the one-third octave band analysis system may be made according to the methods described in IEC 61260 for relative attenuation, anti-aliasing filters, real time operation, level linearity, and filter integrated response (effective bandwidth).

A36.3.7.4 When slow time averaging is performed in the analyzer, the response of the one-third octave band analysis system to a sudden onset or interruption of a constant sinusoidal signal at the respective one-third octave nominal midband frequency, must be measured at sampling instants 0.5, 1, 1.5 and 2 seconds(s) after the onset and 0.5 and 1 s after interruption. The rising response must be -4 ± 1 dB at 0.5 s, -1.75 ± 0.75 dB at 1 s, -1 ± 0.5 dB at 1.5 s and -0.5 ± 0.5 dB at 2 s relative to the steady-state level. The falling response must be such that the sum of the output signal levels, relative to the initial steady-state level, and the corresponding rising response reading is -6.5 ± 1 dB, at both 0.5 and 1 s. At subsequent times the sum of the rising and falling responses must be -7.5 dB or less. This equates to an exponential averaging process (slow weighting) with a nominal 1 s time constant (i.e., 2 s averaging time).

A36.3.7.5 When the one-third octave band sound pressure levels are determined from the output of the analyzer without slow time weighting, slow time weighting must be simulated in the subsequent processing. Simulated slow weighted sound pressure levels can be obtained using a continuous exponential averaging process by the following equation:

$$L_s(i,k) = 10 \log [(0.60653)10^{0.1Ls[i,(k\ ndash;1)]} + (0.39347)\ 10^{0.1\ L(i,k)}]$$

Where $L_s(i,k)$ is the simulated slow weighted sound pressure level and L(i,k) is the as-measured 0.5 s time average sound pressure level determined from the output of the analyzer for the k-th instant of time and the i-th one-third octave band. For k =1, the slow weighted sound pressure Ls[i,(k-1=0)] on the right hand side should be set to 0 dB. An approximation of the continuous exponential averaging is represented by the following equation for a four sample averaging process for k ≥(4:

$$L_s(i,k) = 10 \log [(0.13)10^{0.1L[i,(k\ ndash;3)]} + (0.21)\ 10^{0.1L[i,(k\ ndash;2)]} + (0.27)\ 10^{0.1L[i,(k\ ndash;1)]} + (0.39)10^{0.1L[i,k]}]$$

Where $L_s(i,k)$ is the simulated slow weighted sound pressure level and L(i,k) is the as measured 0.5 s time average sound pressure level determined from the output of the analyzer for the k-th instant of time and the i-th one-third octave band.

The sum of the weighting factors is 1.0 in the two equations. Sound pressure levels calculated by means of either equation are valid for the sixth and subsequent 0.5 s data samples, or for times greater than 2.5 s after initiation of data analysis.

Note: The coefficients in the two equations were calculated for use in determining equivalent slow weighted sound pressure levels from samples of 0.5 s time average sound pressure levels. The equations should not be used with data samples where the averaging time differs from 0.5 s.

A36.3.7.6 The instant in time by which a slow time weighted sound pressure level is characterized must be 0.75 s earlier than the actual readout time.

Note: The definition of this instant in time is required to correlate the recorded noise with the aircraft position when the noise was emitted and takes into account the averaging period of the slow weighting. For each 0.5 second data record this instant in time may also be identified as 1.25 seconds after the start of the associated 2 second averaging period.

A36.3.7.7 The resolution of the sound pressure levels, both displayed and stored, must be 0.1 dB or finer.

A36.3.8 *Calibration systems.*

A36.3.8.1 The acoustical sensitivity of the measurement system must be determined using a sound calibrator generating a known sound pressure level at a known frequency. The minimum standard for the sound calibrator is the class 1L requirements of IEC 60942 as amended.

A36.3.9 *Calibration and checking of system.*

A36.3.9.1 Calibration and checking of the measurement system and its constituent components must be carried out to the satisfaction of the FAA by the methods specified in sections A36.3.9.2 through A36.3.9.10. The calibration adjustments, including those for environmental effects on sound calibrator output level, must be reported to the FAA and applied to the measured one-third-octave sound pressure levels determined from the output of the analyzer. Data collected during an overload indication are invalid and may not be used. If the overload condition occurred during recording, the

associated test data are invalid, whereas if the overload occurred during analysis, the analysis must be repeated with reduced sensitivity to eliminate the overload.

A36.3.9.2 The free-field frequency response of the microphone system may be determined by use of an electrostatic actuator in combination with manufacturer's data or by tests in an anechoic free-field facility. The correction for frequency response must be determined within 90 days of each test series. The correction for non-uniform frequency response of the microphone system must be reported to the FAA and applied to the measured one-third octave band sound pressure levels determined from the output of the analyzer.

A36.3.9.3 When the angles of incidence of sound emitted from the aircraft are within ±30° of grazing incidence at the microphone (see Figure A36–1), a single set of free-field corrections based on grazing incidence is considered sufficient for correction of directional response effects. For other cases, the angle of incidence for each 0.5 second sample must be determined and applied for the correction of incidence effects.

A36.3.9.4 For analog magnetic tape recorders, each reel of magnetic tape must carry at least 30 seconds of pink random or pseudo-random noise at its beginning and end. Data obtained from analogue tape-recorded signals will be accepted as reliable only if level differences in the 10 kHz one-third-octave-band are not more than 0.75 dB for the signals recorded at the beginning and end.

A36.3.9.5 The frequency response of the entire measurement system while deployed in the field during the test series, exclusive of the microphone, must be determined at a level within 5 dB of the level corresponding to the calibration sound pressure level on the level range used during the tests for each one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive, utilizing pink random or pseudo-random noise. The output of the noise generator must be determined by a method traceable to the U.S. National Institute of Standards and Technology or an equivalent national standards laboratory as determined by the FAA within six months of each test series. Any changes in the relative output from the previous calibration at each one-third octave band may not exceed 0.2 dB. The correction for frequency response must be reported to the FAA and applied to the measured one-third octave sound pressure levels determined from the output of the analyzer.

A36.3.9.6 The performance of switched attenuators in the equipment used during noise certification measurements and calibration must be checked within six months of each test series to ensure that the maximum error does not exceed 0.1 dB.

A36.3.9.7 The sound pressure level produced in the cavity of the coupler of the sound calibrator must be calculated for the test environmental conditions using the manufacturer's supplied information on the influence of atmospheric air pressure and temperature. This sound pressure level is used to establish the acoustical sensitivity of the measurement system. Within six months of each test series the output of the sound calibrator must be determined by a method traceable to the U.S. National Institute of Standards and Technology or an equivalent national standards laboratory as determined by the FAA. Changes in output from the previous calibration must not exceed 0.2 dB.

A36.3.9.8 Sufficient sound pressure level calibrations must be made during each test day to ensure that the acoustical sensitivity of the measurement system is known at the prevailing environmental conditions corresponding with each test series. The difference between the acoustical sensitivity levels recorded immediately before and immediately after each test series on each day may not exceed 0.5 dB. The 0.5 dB limit applies after any atmospheric pressure corrections have been determined for the calibrator output level. The arithmetic mean of the before and after measurements must be used to represent the acoustical sensitivity level of the measurement system for that test series. The calibration corrections must be reported to the FAA and applied to the measured one-third octave band sound pressure levels determined from the output of the analyzer.

A36.3.9.9 Each recording medium, such as a reel, cartridge, cassette, or diskette, must carry a sound pressure level calibration of at least 10 seconds duration at its beginning and end.

A36.3.9.10 The free-field insertion loss of the windscreen for each one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive must be determined with sinusoidal sound signals at the incidence angles determined to be applicable for correction of directional response effects per section A36.3.9.3. The interval between angles tested must not exceed 30 degrees. For a windscreen that is undamaged and uncontaminated, the insertion loss may be taken from manufacturer's data. Alternatively, within six months of each test series the insertion loss of the windscreen may be determined by a method traceable to the U.S. National Institute of Standards and Technology or an equivalent national standards laboratory as determined by the FAA. Changes in the insertion loss from the previous calibration at each one-third-octave frequency band must not exceed 0.4 dB. The correction for the free-field insertion loss of the windscreen must be reported to the FAA and applied to the measured one-third octave sound pressure levels determined from the output of the analyzer.

A36.3.9.11 Ambient noise, including both acoustical background and electrical noise of the measurement system, must be recorded for at least 10 seconds at the measurement points with the system gain set at the levels used for the aircraft noise measurements. Ambient noise must be representative of the acoustical background that exists during the flyover test run. The recorded aircraft noise data is acceptable only if the ambient noise levels, when analyzed in the same way, and quoted in PNL (see A36.4.1.3 (a)), are at least 20 dB below the maximum PNL of the aircraft.

A36.3.9.12 Aircraft sound pressure levels within the 10 dB-down points (see A36.4.5.1) must exceed the mean ambient noise levels determined in section A36.3.9.11 by at least 3 dB in each one-third octave band, or must be adjusted using a method approved by the FAA; one method is described in the current Advisory Circular for this part.

Section A36.4 Calculation of Effective Perceived Noise Level From Measured Data.

A36.4.1 General.

A36.4.1.1 The basic element for noise certification criteria is the noise evaluation measure known as effective perceived noise level, EPNL, in units of EPNdB, which is a single number evaluator of the subjective effects of airplane noise on human beings. Simply stated, EPNL consists of instantaneous perceived noise level, PNL, corrected for spectral irregularities, and for duration. The spectral irregularity correction, called "tone correction factor", is made at each time increment for only the maximum tone.

A36.4.1.2 Three basic physical properties of sound pressure must be measured: Level, frequency distribution, and time variation. To determine EPNL, the instantaneous sound pressure level in each of the 24 one-third octave bands

is required for each 0.5 second increment of time during the airplane noise measurement.

A36.4.1.3 The calculation procedure that uses physical measurements of noise to derive the EPNL evaluation measure of subjective response consists of the following five steps:

(a) The 24 one-third octave bands of sound pressure level are converted to perceived noisiness (noy) using one of the methods of sub-section A36.4.2.1(a). The noy values are combined and then converted to instantaneous perceived noise levels, PNL(k).

(b) A tone correction factor C(k) is calculated for each spectrum to account for the subjective response to the presence of spectral irregularities.

(c) The tone correction factor is added to the perceived noise level to obtain tone-corrected perceived noise levels PNLT(k), at each one-half second increment:

$PNLT(k) = PNL(k) + C(k)$

The instantaneous values of tone-corrected perceived noise level are derived and the maximum value, PNLTM, is determined.

(d) A duration correction factor, D, is computed by integration under the curve of tone-corrected perceived noise level versus time.

(e) Effective perceived noise level, EPNL, is determined by the algebraic sum of the maximum tone-corrected perceived noise level and the duration correction factor:

$EPNL = PNLTM + D$

A36.4.2 *Perceived noise level.*

A36.4.2.1 Instantaneous perceived noise levels, PNL(k), must be calculated from instantaneous one-third octave band sound pressure levels, SPL(i,k) as follows:

(a) Step 1: For each one-third octave band from 50 through 10,000 Hz, convert SPL(i,k) to perceived noisiness n(i,k), by using the mathematical formulation of the noy table given in section A36.4.7, or to the Table of Perceived Noisiness in the current Advisory Circular for this part.

(b) Step 2: Combine the perceived noisiness values, n(i,k), determined in step 1 by using the following formula:

$$N(k) = n(k) + 0.15\left\{\left[\sum_{i=1}^{24} n(i,k)\right] - n(k)\right\}$$

$$= 0.85n(k) + 0.15\sum_{i=1}^{24} n(i,k)$$

Where n(k) is the largest of the 24 values of n(i,k) and N(k) is the total perceived noisiness.

(c) Step 3: Convert the total perceived noisiness, N(k), determined in Step 2 into perceived noise level, PNL(k), using the following formula:

$$PNL(k) = 40.0 + \frac{10}{\log 2}\log N(k)$$

Note: PNL(k) is plotted in the current Advisory Circular for this part.

A36.4.3 *Correction for spectral irregularities.*

A36.4.3.1 Noise having pronounced spectral irregularities (for example, the maximum discrete frequency components or tones) must be adjusted by the correction factor C(k) calculated as follows:

(a) Step 1: After applying the corrections specified under section A36.3.9, start with the sound pressure level in the 80 Hz one-third octave band (band number 3), calculate the changes in sound pressure level (or "slopes") in the remainder of the one-third octave bands as follows:

$s(3,k)$ = no value

$s(4,k) = SPL(4,k) - SPL(3,k)$

•

•

$s(i,k) = SPL(i,k) - SPL(i-1,k)$

•

•

$s(24,k) = SPL(24,k) - SPL(23,k)$

(b) Step 2: Encircle the value of the slope, s(i, k), where the absolute value of the change in slope is greater than five; that is where:

$|\Delta s(i,k)| = |s(i,k) - s(i-1,k)| > 5$

(c) Step 3:

(1) If the encircled value of the slope s(i,k) is positive and algebraically greater than the slope s(i − 1,k) encircle SPL(i, k).

(2) If the encircled value of the slope s(i, k) is zero or negative and the slope s(i − 1,k) is positive, encircle SPL(i − 1,k).

(3) For all other cases, no sound pressure level value is to be encircled.

(d) Step 4: Compute new adjusted sound pressure levels SPL′(i,k) as follows:

(1) For non-encircled sound pressure levels, set the new sound pressure levels equal to the original sound pressure levels, SPL′(i,k) = SPL(i,k).

(2) For encircled sound pressure levels in bands 1 through 23 inclusive, set the new sound pressure level equal to the arithmetic average of the preceding and following sound pressure levels as shown below:

$SPL'(i,k) = \frac{1}{2}[SPL(i-1,k) + SPL(i+1,k)]$

(3) If the sound pressure level in the highest frequency band (i =24) is encircled, set the new sound pressure level in that band equal to:

$SPL'(24, k) = SPL(23, k) + s(23,k)$

(e) Step 5: Recompute new slope s′(i,k), including one for an imaginary 25th band, as follows:

$s'(3,k) = s'(4,k)$

$s'(4,k) = SPL'(4,k) - SPL'(3,k)$

•

•

$s'(i,k) = SPL'(i,k) - SPL'(i-1,k)$

•

•

$s'(24,k) = SPL'(24,k) - SPL'(23,k)$

$s'(25,k) = s'(24,k)$

(f) Step 6: For i, from 3 through 23, compute the arithmetic average of the three adjacent slopes as follows:

$\bar{s}(i,k) = \frac{1}{3}[s'(i,k) + s'(i+1,k) + s'(i+2,k)]$

(g) Step 7: Compute final one-third octave-band sound pressure levels, SPL″(i,k), by beginning with band number 3 and proceeding to band number 24 as follows:

$SPL''(3,k) = SPL(3,k)$

$SPL''(4,k) = SPL''(3,k) + \bar{s}(3,k)$

•

•

$SPL''(i,k) = SPL''(i-1,k) + \bar{s}(i-1,k)$

•

•

$SPL''(24,k) = SPL''(23,k) + \bar{s}(23,k)$

(h) Step 8: Calculate the differences, F (i,k), between the original sound pressure level and the final background sound pressure level as follows:

$F(i,k) = SPL(i,k) - SPL''(i,k)$

and note only values equal to or greater than 1.5.

(i) Step 9: For each of the relevant one-third octave bands (3 through 24), determine tone correction factors from the sound pressure level differences F (i,k) and Table A36–2.

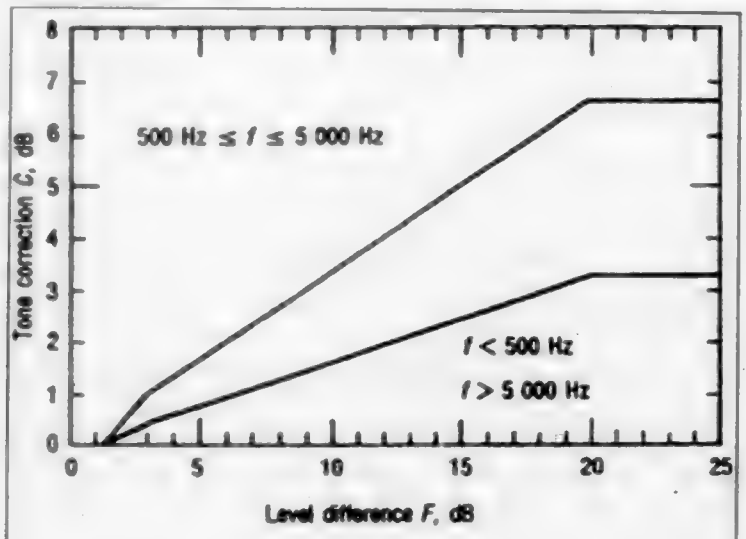

Frequency f, Hz	Level difference F, dB	Tone correction C, dB
$50 \le f < 500$	$1½^* \le F < 3$	$F/3 - ½$
	$3 \le F < 20$	$F/6$
	$20 \le F$	$3½$
$500 \le f \le 5\,000$	$1½^* \le F < 3$	$2F/3 - 1$
	$3 \le F < 20$	$F/3$
	$20 \le F$	$6½$
$5\,000 < f \le 10\,000$	$1½^* \le F < 3$	$F/3 - ½$
	$3 \le F < 20$	$F/6$
	$20 \le F$	$3½$

* See Step 8, 4.3.1.

Table A36-2. Tone correction factor

(j) Step 10: Designate the largest of the tone correction factors, determined in Step 9, as C(k). (An example of the tone correction procedure is given in the current Advisory Circular for this part.) Tone-corrected perceived noise levels PNLT(k) must be determined by adding the C(k) values to corresponding PNL(k) values, that is:

$PNLT(k) = PNL(k) + C(k)$

For any i-th one-third octave band, at any k-th increment of time, for which the tone correction factor is suspected to result from something other than (or in addition to) an actual tone (or any spectral irregularity other than airplane noise), an additional analysis may be made using a filter with a bandwidth narrower than one-third of an octave. If the narrow band analysis corroborates these suspicions, then a revised value for the background sound pressure level SPL''(i,k), may be determined from the narrow band analysis and used to compute a revised tone correction factor for that particular one-third octave band. Other methods of rejecting spurious tone corrections may be approved.

A36.4.3.2 The tone correction procedure will underestimate EPNL if an important tone is of a frequency such that it is recorded in two adjacent one-third octave bands. An applicant must demonstrate that either:

(a) No important tones are recorded in two adjacent one-third octave bands; or

(b) That if it has occurred that the tone correction has been adjusted to the value it would have had if the tone had been recorded fully in a single one-third octave band.

A36.4.4 Maximum tone-corrected perceived noise level.

A36.4.4.1 The maximum tone-corrected perceived noise level, PNLTM, must be the maximum calculated value of the tone-corrected perceived noise level PNLT(k). It must be calculated using the procedure of section A36.4.3. To obtain a satisfactory noise time history, measurements must be made at 0.5 second time intervals.

Note 1: Figure A36–2 is an example of a flyover noise time history where the maximum value is clearly indicated.

Note 2: In the absence of a tone correction factor, PNLTM would equal PNLM.

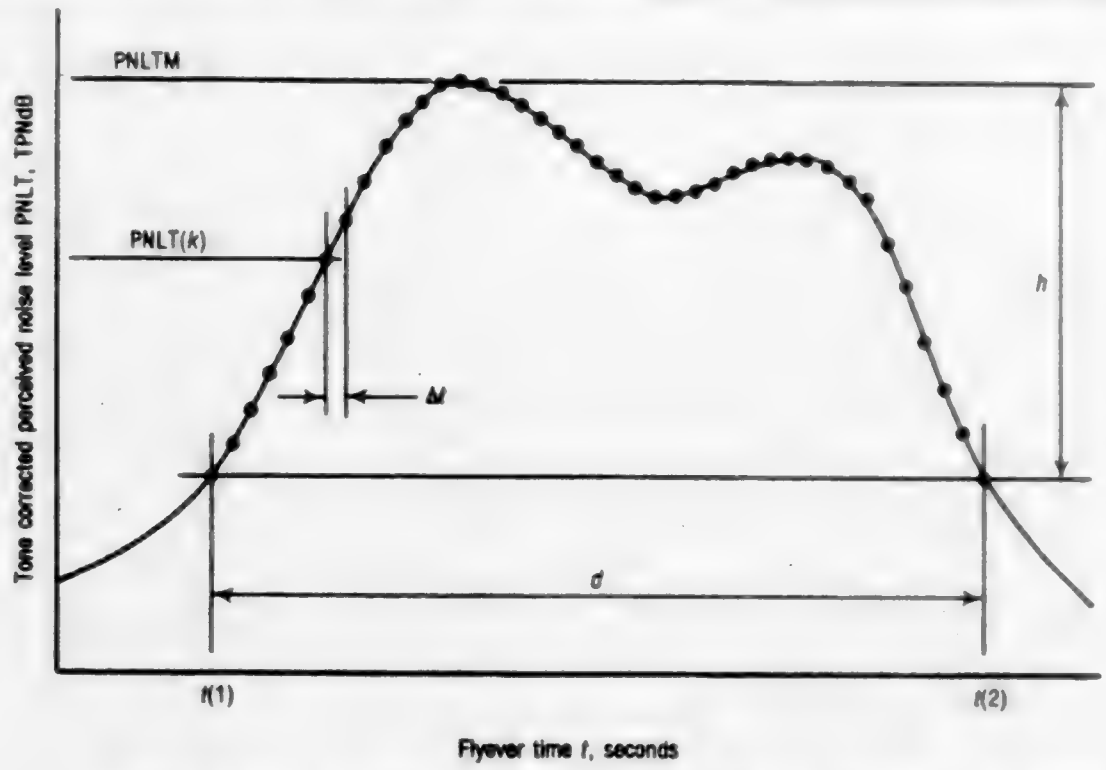

Figure A36-2. Example of perceived noise level corrected for tones as a function of aircraft flyover time

A36.4.4.2 After the value of PNLTM is obtained, the frequency band for the largest tone correction factor is identified for the two preceding and two succeeding 500 ms data samples. This is performed in order to identify the possibility of tone suppression at PNLTM by one-third octave band sharing of that tone. If the value of the tone correction factor C(k) for PNLTM is less than the average value of C(k) for the five consecutive time intervals, the average value of C(k) must be used to compute a new value for PNLTM.

A36.4.5 *Duration correction.*

A36.4.5.1 The duration correction factor D determined by the integration technique is defined by the expression:

$$D = 10 \log\left[\left(\frac{1}{T}\right)\int_{t(1)}^{t(2)} \text{antilog}\frac{PNLT}{10}\,dt\right] - PNLTM$$

Where T is a normalizing time constant, PNLTM is the maximum value of PNLT, t(1) is the first point of time after which PNLT becomes greater than PNLTM–10, and t(2) is the point of time after which PNLT remains constantly less than PNLTM–10.

A36.4.5.2 Since PNLT is calculated from measured values of sound pressure level (SPL), there is no obvious equation for PNLT as a function of time. Consequently, the equation is to be rewritten with a summation sign instead of an integral sign as follows:

$$D = 10 \log\left[\left(\frac{1}{T}\right)\sum_{k=0}^{d/\Delta t} \Delta t.\,\text{antilog}\frac{PNLT(k)}{10}\right] - PNLTM$$

Where Δt is the length of the equal increments of time for which PNLT(k) is calculated and d is the time interval to the nearest 0.5s during which PNLT(k) remains greater or equal to PNLTM–10.

A36.4.5.3 To obtain a satisfactory history of the perceived noise level use one of the following:

(a) Half-second time intervals for Δt; or

(b) A shorter time interval with approved limits and constants.

A36.4.5.4 The following values for T and Δt must be used in calculating D in the equation given in section A36.4.5.2:

T = 10 s, and

Δt = 0.5 s (or the approved sampling time interval).

Using these values, the equation for D becomes:

$$D = 10 \log\left[\sum_{k=0}^{2d} \text{antilog}\frac{PNLT(k)}{10}\right] - PNLTM - 13$$

Where d is the duration time defined by the points corresponding to the values PNLTM–10.

A36.4.5.5–If in using the procedures given in section A36.4.5.2, the limits of PNLTM–10 fall between the calculated PNLT(k) values (the usual case), the PNLT(k) values defining the limits of the duration interval must be chosen from the PNLT(k) values closest to PNLTM–10. For those cases with more than one peak value of PNLT(k), the applicable limits must be chosen to yield the largest possible value for the duration time.

A36.4.6–*Effective perceived noise level.*

A36.4.6.1–The total subjective effect of an airplane noise event, designated effective perceived noise level, EPNL, is equal to the algebraic sum of the maximum value of the tone-corrected perceived noise level, PNLTM, and the duration correction D. That is:

EPNL = PNLTM + D

Where PNLTM and D are calculated using the procedures given in sections A36.4.2, A36.4.3, A36.4.4. and A36.4.5.

A36.4.7–*Mathematical formulation of noy tables.*

A36.4.7.1–The relationship between sound pressure level (SPL) and the logarithm of perceived noisiness is illustrated in Figure A36–3 and Table A36–3.

A36.4.7.2–The bases of the mathematical formulation are:

(a) The slopes (M(b), M(c), M(d) and M(e)) of the straight lines;

(b) The intercepts (SPL(b) and SPL(c)) of the lines on the SPL axis; and

(c) The coordinates of the discontinuities, SPL(a) and log n(a); SPL(d) and log n = -1.0; and SPL(e) and log n = log (0.3).

A36.4.7.3 Calculate noy values using the following equations:

(a)

SPL ≥ SPL(*a*)

n = antilog {*M*(*c*)[SPL - SPL(*c*)]}

(b)

SPL(*b*) ≤ SPL < SPL(*a*)

n = antilog {*M*(*b*)[SPL - SPL(*b*)]}

(c)

SPL(*e*)≤SPL <SPL(*b*)

n = 0.3antilog {*M*(*e*)[SPL - SPL(*e*)]}

(d)

SPL(*d*)≤SPL <SPL(*e*)

n = 0.1 antilog {*M*(*d*)[SPL - SPL(*d*)]}

A36.4.7.4 Table A36–3 lists the values of the constants necessary to calculate perceived noisiness as a function of sound pressure level.

Section A36.5 Reporting Of data to the FAA.

A36.5.1 General.

A36.5.1.1 Data representing physical measurements and data used to make corrections to physical measurements must be recorded in an approved permanent form and appended to the record.

A36.5.1.2 All corrections must be reported to and approved by the FAA. In particular, the corrections to measurements for equipment response deviations must be reported.

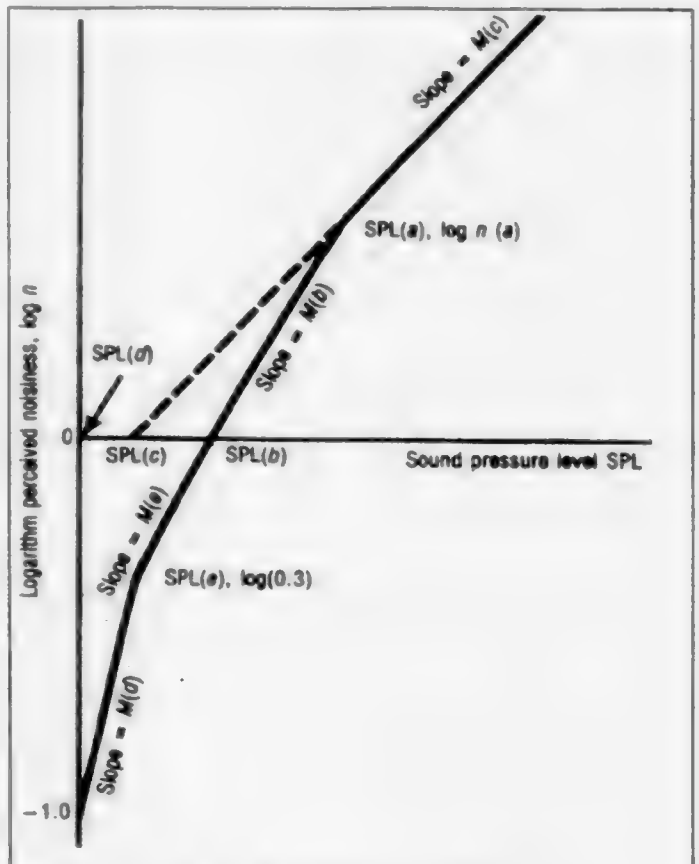

Figure A36-3. Perceived noisiness as a function of sound pressure level

A36.5.1.3 Applicants may be required to submit estimates of the individual errors inherent in each of the operations employed in obtaining the final data.

A36.5.2 *Data reporting.*

The following must be reported to the FAA in the applicant's noise certification compliance report.

A36.5.2.1 The applicant must present measured and corrected sound pressure levels in one-third octave band levels that are obtained with equipment conforming to the standards described in section A36.3 of this appendix.

A36.5.2.2 The applicant must report the make and model of equipment used for measurement and analysis of all acoustic performance and meteorological data.

BAND (*i*)	*f* HZ	SPL (*a*)	SPL (*b*)	SPL (*c*)	SPL (*d*)	SPL (*e*)	*M*(*b*)	*M*(*c*)	*M*(*d*)	*M*(*e*)
1	50	91.0	64	52	49	55	0.043478	0.030103	0.079520	0.058098
2	63	85.9	60	51	44	51	0.040570		0.068160	"
3	80	87.3	56	49	39	46	0.036831		"	0.052288
4	100	79.9	53	47	34	42	"		0.059640	0.047534
5	125	79.8	51	46	30	39	0.035336		0.053013	0.043573
6	160	76.0	48	45	27	36	0.033333			"
7	200	74.0	46	43	24	33	"			0.040221
8	250	74.9	44	42	21	30	0.032051			0.037349
9	315	94.6	42	41	18	27	0.030675	0.030103		0.034859
10	400	∞	40	40	16	25	0.030103			
11	500		40	40	16	25				
12	630		40	40	16	25				
13	800		40	40	16	25				
14	1 000		40	40	16	25			0.053013	
15	1 250		38	38	15	23	0.030103		0.059640	0.034859
16	1 600		34	34	12	21	0.029960		0.053013	0.040221
17	2 000		32	32	9	18			"	0.037349
18	2 500		30	30	5	15			0.047712	0.034859
19	3 150		29	29	4	14			"	
20	4 000		29	29	5	14			0.053013	
21	5 000		30	30	6	15			"	0.034859
22	6 300	∞	31	31	10	17	0.029960		0.068160	0.037349
23	8 000	44.3	37	34	17	23	0.042285	0.029960	0.079520	"
24	10 000	50.7	41	37	21	29	"	"	0.059640	0.043573

NOT APPLICABLE

Table A36-3. Constants for mathematically formulated noy values

A36.5.2.3 The applicant must report the following atmospheric environmental data, as measured immediately before, after, or during each test at the observation points prescribed in section A36.2 of this appendix.

(a) Air temperature and relative humidity;

(b) Maximum, minimum and average wind velocities; and

(c) Atmospheric pressure.

A36.5.2.4 The applicant must report conditions of local topography, ground cover, and events that might interfere with sound recordings.

A36.5.2.5 The applicant must report the following:

(a) Type, model and serial numbers (if any) of airplane, engine(s), or propeller(s) (as applicable);

(b) Gross dimensions of airplane and location of engines;

(c) Airplane gross weight for each test run and center of gravity range for each series of test runs;

(d) Airplane configuration such as flap, airbrakes and landing gear positions and propeller pitch angles (if applicable) for each test run;

(e) Whether auxiliary power units (APU), when fitted, are operating for each test run;

(f) Status of pneumatic engine bleeds and engine power take-offs for each test run;

(g) Indicated airspeed in knots or kilometers per hour for each test run;

(h) Engine performance data:

(1) For jet airplanes: engine performance in terms of net thrust, engine pressure ratios, jet exhaust temperatures and fan or compressor shaft rotational speeds as determined from airplane instruments and manufacturer's data for each test run;

(2) For propeller-driven airplanes: engine performance in terms of brake horsepower and residual thrust; or equivalent shaft horsepower; or engine torque and propeller rotational speed; as determined from airplane instruments and manufacturer's data for each test run;

(i) Airplane flight path and ground speed during each test run; and

(j) The applicant must report whether the airplane has any modifications or non-standard equipment likely to affect the noise characteristics of the airplane. Any such modifications or non-standard equipment must be approved by the FAA.

A36.5.3 *Reporting of noise certification reference conditions.*

A36.5.3.1 Airplane position and performance data and the noise measurements must be corrected to the noise certification reference conditions specified in the relevant sections of appendix C of this part. The applicant must report these conditions, including reference parameters, procedures and configurations.

A36.5.4 *Validity of results.*

A36.5.4.1 Three average reference EPNL values and their 90 per cent confidence limits must be produced from the test results and reported, each such value being the arithmetical average of the adjusted acoustical measurements for all valid test runs at each measurement point (flyover, lateral, or approach. If more than one acoustic measurement system is used at any single measurement location, the resulting data for each test run must be averaged as a single measurement. The calculation must be performed by:

(a) Computing the arithmetic average for each flight phase using the values from each microphone point; and

(b) Computing the overall arithmetic average for each reference condition (flyover, lateral or approach) using the values in paragraph (a) of this section and the related 90 per cent confidence limits.

A36.5.4.2 For each of the three certification measuring points, the minimum sample size is six. The sample size must be large enough to establish statistically for each of the three average noise certification levels a 90 per cent confidence limit not exceeding ±1.5 EPNdB. No test result may be omitted from the averaging process unless approved by the FAA.

Note: Methods available for calculating the 90 per cent confidence interval are shown in the current Advisory Circular for this part.

A36.5.4.3 The average EPNL figures obtained by the process described in section A36.5.4.1 must be those by which the noise performance of the airplane is assessed against the noise certification criteria.

Section A36.6 Nomenclature: Symbols and Units.

Symbol	Unit	Meaning
antilog		Antilogarithm to the base 10.
C(k)	dB	*Tone correction factor.* The factor to be added to PNL(k) to account for the presence of spectral irregularities such as tones at the k-th increment of time.
d	s	*Duration time.* The time interval between the limits of t(1) and t(2) to the nearest 0.5 second.
D	dB	*Duration correction.* The factor to be added to PNLTM to account for the duration of the noise.
EPNL	EPNdB	*Effective perceived noise level.* The value of PNL adjusted for both spectral irregularities and duration of the noise. (The unit EPNdB is used instead of the unit dB).
f(i)	Hz	*Frequency.* The geometrical mean frequency for the i-th one-third octave band.
F(i,k)	dB	*Delta-dB.* The difference between the original sound pressure level and the final background sound pressure level in the i-th one-third octave band at the k-th interval of time. In this case, background sound pressure level means the broadband noise level that would be present in the one-third octave band in the absence of the tone.
h	dB	*dB-down.* The value to be subtracted from PNLTM that defines the duration of the noise.
H	per cent	*Relative humidity.* The ambient atmospheric relative humidity.
i		*Frequency band index.* The numerical indicator that denotes any one of the 24 one-third octave bands with geometrical mean frequencies from 50 to 10,000 Hz.
k		*Time increment index.* The numerical indicator that denotes the number of equal time increments that have elapsed from a reference zero.
Log		Logarithm to the base 10.
log n(a)		*Noy discontinuity coordinate.* The log n value of the intersection point of the straight lines representing the variation of SPL with log n.
M(b), M(c), *etc.*		*Noy inverse slope.* The reciprocals of the slopes of straight lines representing the variation of SPL with log n.
n	noy	The perceived noisiness at any instant of time that occurs in a specified frequency range.
n(i,k)	noy	The perceived noisiness at the k-th instant of time that occurs in the i-th one-third octave band.
n(k)	noy	*Maximum perceived noisiness.* The maximum value of all of the 24 values of n(i) that occurs at the k-th instant of time.
N(k)	noy	*Total perceived noisiness.* The total perceived noisiness at the k-th instant of time calculated from the 24-instantaneous values of n(i,k).
p(b), p(c), *etc.*		*Noy slope.* The slopes of straight lines representing the variation of SPL with log n.
PNL	PNdB	The perceived noise level at any instant of time. (The unit PNdB is used instead of the unit dB).
PNL(k)	PNdB	The perceived noise level calculated from the 24 values of SPL (i,k), at the k-th increment of time. (The unit PNdB is used instead of the unit dB).
PNLM	PNdB	*Maximum perceived noise level.* The maximum value of PNL(k). (The unit PNdB is used instead of the unit dB).

Symbol	Unit	Meaning
PNLT	TPNdB	*Tone-corrected perceived noise level.* The value of PNL adjusted for the spectral irregularities that occur at any instant of time. (The unit TPNdB is used instead of the unit dB).
PNLT(k)	TPNdB	The tone-corrected perceived noise level that occurs at the k-th increment of time. PNLT(k) is obtained by adjusting the value of PNL(k) for the spectral irregularities that occur at the k-th increment of time. (The unit TPNdB is used instead of the unit dB).
PNLTM	TPNdB	*Maximum tone-corrected perceived noise level.* The maximum value of PNLT(k). (The unit TPNdB is used instead of the unit dB).
$PNLT_r$	TPNdB	Tone-corrected perceived noise level adjusted for reference conditions.
s(i,k)	dB	*Slope of sound pressure level.* The change in level between adjacent one-third octave band sound pressure levels at the i-th band for the k-th instant of time.
$\delta s(i,k)$	dB	Change in slope of sound pressure level.
s'(i,k)	dB	Adjusted slope of sound pressure level. The change in level between adjacent adjusted one-third octave band sound pressure levels at the i-th band for the k-th instant of time.
$\bar{s}(i,k)$	dB	Average slope of sound pressure level.
SPL	dB re 20 μPa	*Sound pressure level.* The sound pressure level that occurs in a specified frequency range at any instant of time.
SPL(a)	dB re 20 μPa	*Noy discontinuity coordinate.* The SPL value of the intersection point of the straight lines representing the variation of SPL with log n.
SPL(b) SPL(c)	dB re 20 μPa	*Noy intercept.* The intercepts on the SPL-axis of the straight lines representing the variation of SPL with log n.
SPL(i,k)	dB re 20μPa	The sound pressure level at the k-th instant of time that occurs in the i-th one-third octave band.
SPL'(i,k)	dB re 20μPa	*Adjusted sound pressure level.* The first approximation to background sound pressure level in the i-th one-third octave band for the k-th instant of time.
SPL(i)	dB re 20μPa	*Maximum sound pressure level.* The sound pressure level that occurs in the i-th one-third octave band of the spectrum for PNLTM.
$SPL(i)_r$	dB re 20μPa	*Corrected maximum sound pressure level.* The sound pressure level that occurs in the i-th one-third octave band of the spectrum for PNLTM corrected for atmospheric sound absorption.
SPL"(i,k)	dB re 20μPa	*Final background sound pressure level.* The second and final approximation to background sound pressure level in the i-th one-third octave band for the k-th instant of time.
t	s	*Elapsed time.* The length of time measured from a reference zero.
t(1), t(2)	s	*Time limit.* The beginning and end, respectively, of the noise time history defined by h.
Δt	s	*Time increment.* The equal increments of time for which PNL(k) and PNLT(k) are calculated.
T	s	*Normalizing time constant.* The length of time used as a reference in the integration method for computing duration corrections, where T = 10s.
t(°F)(°C)	°F, °C	*Temperature.* The ambient air temperature.
α(i)	dB/1000ft dB/100m	*Test atmospheric absorption.* The atmospheric attenuation of sound that occurs in the i-th one-third octave band at the measured air temperature and relative humidity.
$\alpha(i)_o$	dB/1000ft dB/100m	*Reference atmospheric absorption.* The atmospheric attenuation of sound that occurs in the i-th one-third octave band at a reference air temperature and relative humidity.
A_1	degrees	First constant climb angle (Gear up, speed of at least V_2+10 kt (V_2 +19 km/h), takeoff thrust)
A_2	degrees	Second constant climb angle (Gear up, speed of at least V_2+10 kt (V_2 +19 km/h), after cutback)
δ, ε	degrees	*Thrust cutback angles.* The angles defining the points on the takeoff flight path at which thrust reduction is started and ended respectively.
η	degrees	Approach angle.
η_r	degrees	Reference approach angle.
$\bar{\eta}$	degrees	*Noise angle (relative to flight path).* The angle between the flight path and noise path. It is identical for both measured and corrected flight paths.
ϕ	degrees	*Noise angle (relative to ground).* The angle between the noise paths and the grounds. It is identical for both measured and corrected flight paths.
μ		Engine noise emission parameter.
μ_r		Reference engine noise emission parameter.
Δ_1	EPNdB	*PNLT correction.* The correction to be added to the EPNL calculated from measured data to account for noise level changes due to differences in atmospheric absorption and noise path length between reference and test conditions.
Δ_2	EPNdB	*Adjustment to duration correction.* The adjustment to be made to the EPNL calculated from measured data to account for noise level changes due to the noise duration between reference and test conditions.
Δ_3	EPNdB	*Source noise adjustment.* The adjustment to be made to the EPNL calculated from measured data to account for noise level changes due to differences between reference and test engine operating conditions.

Section A36.7 Sound Attenuation in Air.

A36.7.1 The atmospheric attenuation of sound must be determined in accordance with the procedure presented in section A36.7.2.

A36.7.2 The relationship between sound attenuation, frequency, temperature, and humidity is expressed by the following equations.

A36.7.2(a) For calculations using the English System of Units:

$$a(i) = 10^{\left[2.05\log(f_0/1000)+6.33\times10^{-4}\theta-1.45325\right]} + n(\delta)\times10^{\left[\log(f_0)=4.6833\times10^{-3}\theta-2.4215\right]}$$

and

$$\delta = \sqrt{\frac{1010}{f(0)}}\,10^{\left(\log H - 1.97274664 + 2.288074 \times 10^{-2}\theta\right)} \times 10^{\left(-9.589 \times 10^{-5}\theta^2 + 3.0 \times 10^{-7}\theta^3\right)}$$

Where

$\eta(\delta)$ is listed in Table A36–4 and f_0 in Table A36–5;

$\alpha(i)$ is the attenuation coefficient in dB/1000 ft;

θ is the temperature in °F; and

H is the relative humidity, expressed as a percentage.

A36.7.2(b) For calculations using the International System of Units (SI):

$$a(i) = 10^{\left[2.05\log(f_0/1000) + 1.1394 \times 10^{-3}\theta - 1.916984\right]} + n(\delta) \times 10^{\left[\log(f_0) + 8.42994 \times 10^{-3}\theta - 2.755624\right]}$$

and

$$\delta = \sqrt{\frac{1010}{f_0}}\,10^{\left(\log H = 1.328924 + 3.179768 \times 10^{-2}\theta\right)} \times 10^{\left(-2.173716 \times 10^{-4}\theta^2 + 1.7496 \times 10^{-6}\theta^3\right)}$$

Where

$\eta(\delta)$ is listed in Table A36–4 and f_0 in Table A36–5;

$\alpha(i)$ is the attenuation coefficient in dB/100 m;

θ is the temperature in °C; and

H is the relative humidity, expressed as a percentage.

A36.7.3 The values listed in table A36–4 are to be used when calculating the equations listed in section A36.7.2. A term of quadratic interpolation is to be used where necessary.

Section A36.8 [Reserved]

TABLE A36–4.—VALUES OF $\eta(\delta)$

δ	η(δ)	δ	η(δ)
0.00	0.000	2.50	0.450
0.25	0.315	2.80	0.400
0.50	0.700	3.00	0.370
0.60	0.840	3.30	0.330
0.70	0.930	3.60	0.300
0.80	0.975	4.15	0.260
0.90	0.996	4.45	0.245
1.00	1.000	4.80	0.230
1.10	0.970	5.25	0.220
1.20	0.900	5.70	0.210
1.30	0.840	6.05	0.205
1.50	0.750	6.50	0.200
1.70	0.670	7.00	0.200
2.00	0.570	10.00	0.200
2.30	0.495	.....	.....

TABLE A36–5.—VALUES OF f_0

One-third octave center frequency	f_0 (Hz)	One-third octave center frequency	f_0 (Hz)
50	50	800	800
63	63	1000	1000
80	80	1250	1250
100	100	1600	1600
125	125	2000	2000
160	160	2500	2500
200	200	3150	3150
250	250	4000	4000
315	315	5000	4500
400	400	6300	5600
500	500	8000	7100
630	630	10000	9000

Section A36.9 Adjustment of Airplane Flight Test Results.

A36.9.1 When certification test conditions are not identical to reference conditions, appropriate adjustments must be made to the measured noise data using the methods described in this section.

A36.9.1.1 Adjustments to the measured noise values must be made using one of the methods described in sections A36.9.3 and A36.9.4 for differences in the following:

(a) Attenuation of the noise along its path as affected by "inverse square" and atmospheric attenuation.

(b) Duration of the noise as affected by the distance and the speed of the airplane relative to the measuring point.

(c) Source noise emitted by the engine as affected by the differences between test and reference engine operating conditions.

(d) Airplane/engine source noise as affected by differences between test and reference airspeeds. In addition to the effect on duration, the effects of airspeed on component noise sources must be accounted for as follows: For conventional airplane configurations, when differences between test and reference airspeeds exceed 15 knots (28 km/h) true airspeed, test data and/or analysis approved by the FAA must be used to quantify the effects of the airspeed adjustment on resulting certification noise levels.

A36.9.1.2 The "integrated" method of adjustment, described in section A36.9.4, must be used on takeoff or approach under the following conditions:

(a) When the amount of the adjustment (using the "simplified" method) is greater than 8 dB on flyover, or 4 dB on approach; or

(b) When the resulting final EPNL value on flyover or approach (using the simplified method) is within 1 dB of the limiting noise levels as prescribed in Section B36.5 of this part.

A36.9.2 *Flight profiles.*

As described below, flight profiles for both test and reference conditions are defined by their geometry relative to the ground, together with the associated airplane speed relative to the ground, and the associated engine control parameter(s) used for determining the noise emission of the airplane.

A36.9.2.1 *Takeoff Profile.*

Note: Figure A36–4 illustrates a typical takeoff profile.

(a) The airplane begins the takeoff roll at point A, lifts off at point B and begins its first climb at a constant angle at point C. Where thrust or power (as appropriate) cut-back is used, it is started at point D and completed at point E. From here, the airplane begins a second climb at a constant angle up to point F, the end of the noise certification takeoff flight path.

(b) Position K_1 is the takeoff noise measuring station and AK_1 is the distance from start of roll to the flyover measuring point. Position K_2 is the lateral noise measuring station, which is located on a line parallel to, and the

specified distance from, the runway center line where the noise level during takeoff is greatest.

(c) The distance AF is the distance over which the airplane position is measured and synchronized with the noise measurements, as required by section A36.2.3.2 of this part.

A36.9.2.2 *Approach Profile.*

Note.: Figure A36–5 illustrates a typical approach profile.

(a) The airplane begins its noise certification approach flight path at point G and touches down on the runway at point J, at a distance OJ from the runway threshold.

(b) Position K_3 is the approach noise measuring station and K_3O is the distance from the approach noise measurement point to the runway threshold.

(c) The distance GI is the distance over which the airplane position is measured and synchronized with the noise measurements, as required by section A36.2.3.2 of this part.

The airplane reference point for approach measurements is the instrument landing system (ILS) antenna.

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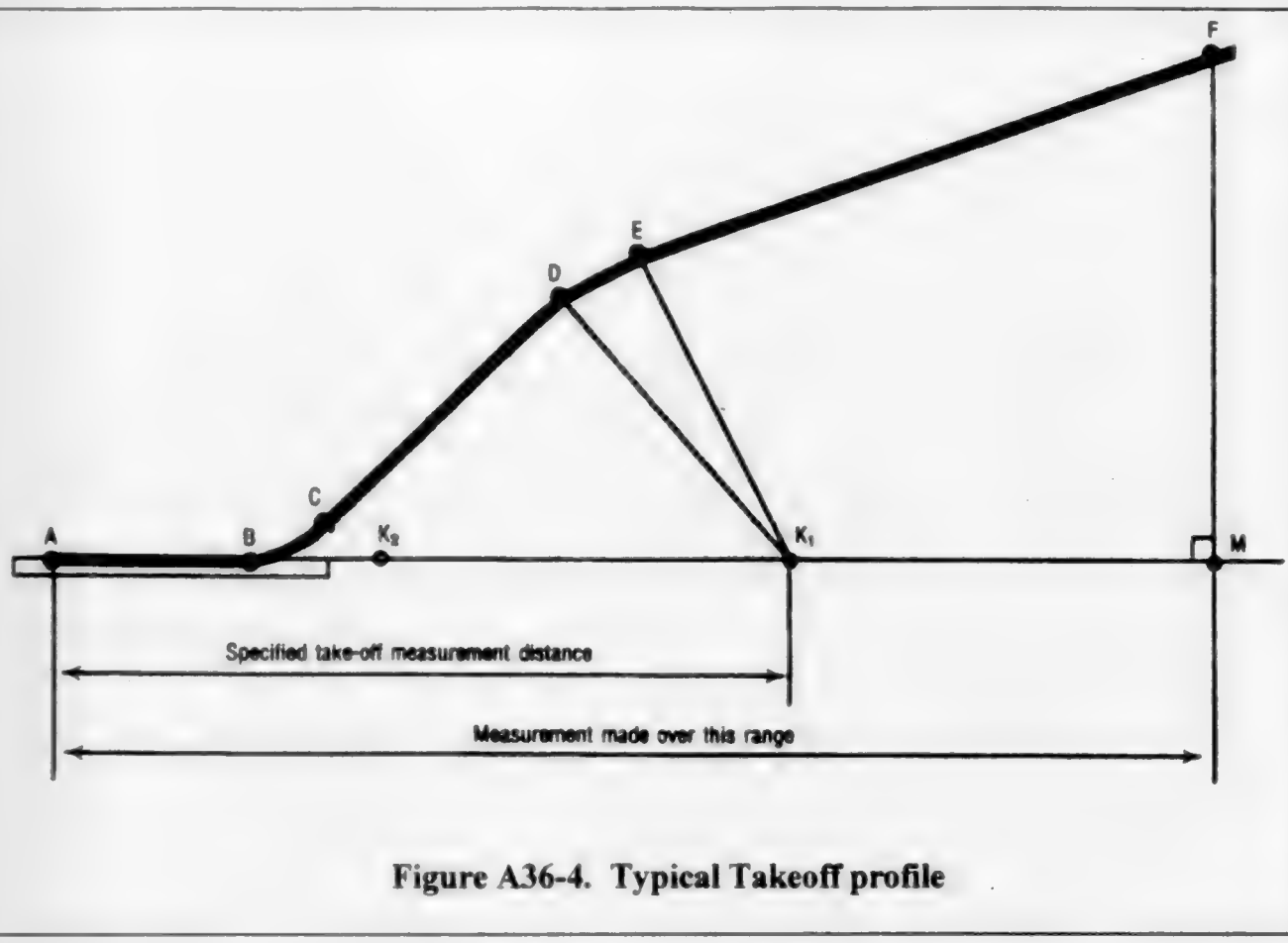

Figure A36-4. Typical Takeoff profile

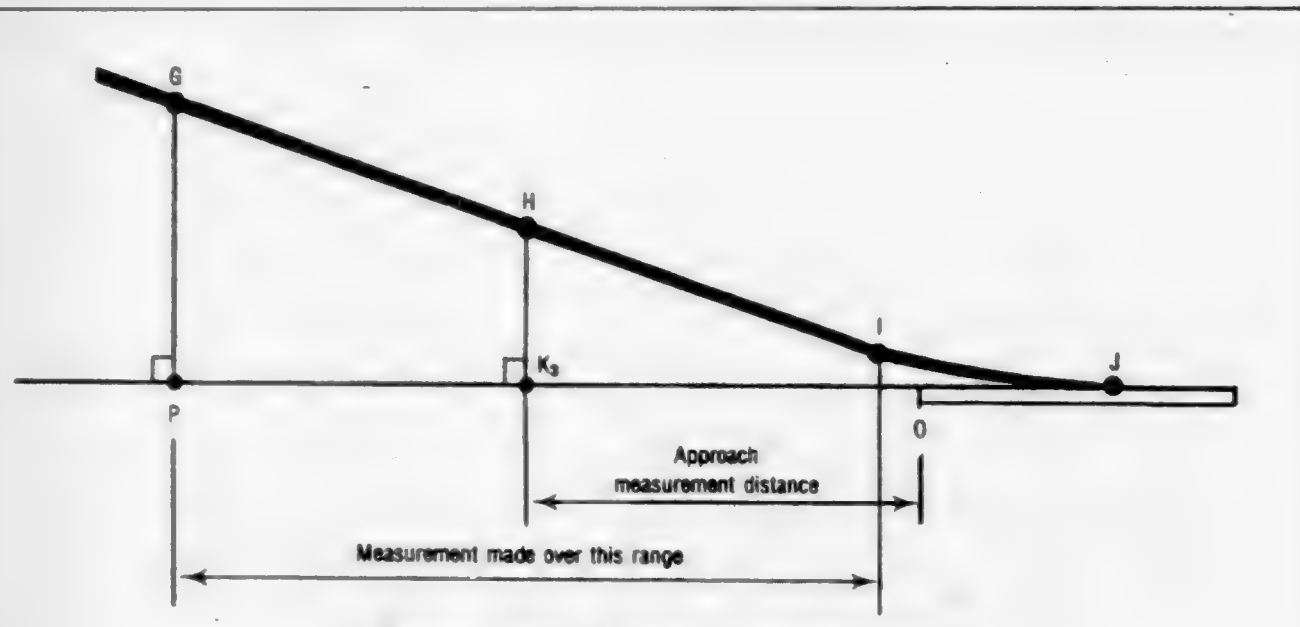

Figure A36-5. Typical Approach profile

A36.9.3 *Simplified method of adjustment.*

A36.9.3.1 *General.* As described below, the simplified adjustment method consists of applying adjustments (to the EPNL, which is

calculated from the measured data) for the differences between measured and reference conditions at the moment of PNLTM.

A36.9.3.2 *Adjustments to PNL and PNLT.*

(a) The portions of the test flight path and the reference flight path described below, and illustrated in Figure A36–6, include the noise time history that is relevant to the calculation of flyover and approach EPNL. In figure A36–6:

(1) XY represents the portion of the measured flight path that includes the noise time history relevant to the calculation of flyover and approach EPNL; X_rY_r represents the corresponding portion of the reference flight path.

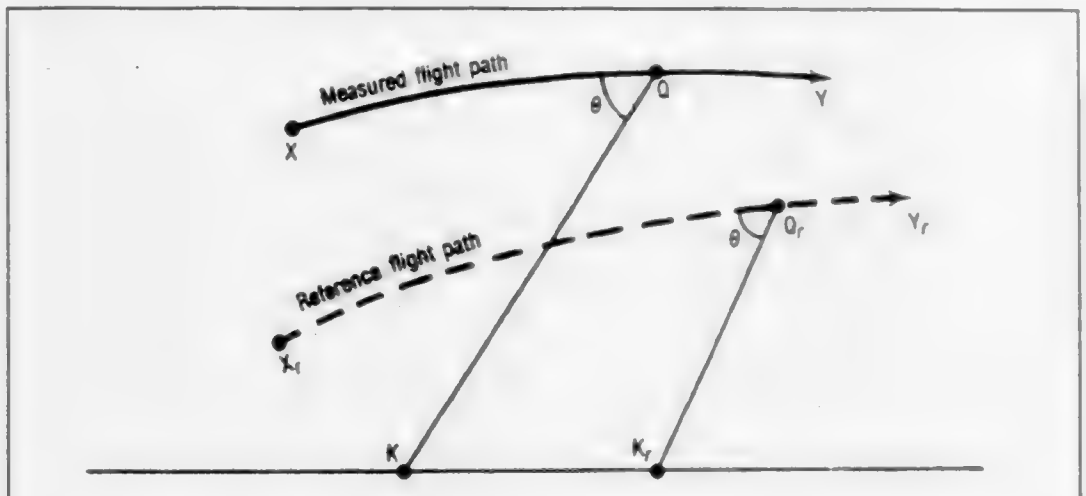

Figure A36-6. Profile characteristics influencing sound level

(2) Q represents the airplane's position on the measured flight path at which the noise was emitted and observed as PNLTM at the noise measuring station K. Q_r is the corresponding position on the reference flight path, and K_r the reference measuring station. QK and Q_rk_r are, respectively, the measured and reference noise propagation paths, Q_r being determined from the assumption that QK and Q_rK_r form the same angle θ with their respective flight paths.

(b) The portions of the test flight path and the reference flight path described in paragraphs (b)(1) and (2) of this section below, and illustrated in Figure A36–7(a) and (b), include the noise time history that is relevant to the calculation of Lateral EPNL.

(1) In figure A36–7(a), XY represents the portion of the measured flight path that includes the noise time history that is relevant to the calculation of Lateral EPNL; in figure A36–7(b), X_rY_r represents the corresponding portion of the reference flight path. For the Lateral noise measurement, sound propagation is affected not only by inverse square and atmospheric attenuation, but also by ground absorption and reflection effects which depend mainly on the angle ψ.

(2) Q represents the airplane position on the measured flight path at which the noise was emitted and observed as PNLTM at the noise measuring station K. Q_r is the corresponding position on the reference flight path, and K_r the reference measuring station. QK and Q_rK_r are, respectively, the measured and reference noise propagation paths. In this case K_r is only specified as being on a particular Lateral line; K_r and Q_r are therefore determined from the assumptions that QK and Q_rK_r:

(i) Form the same angle θ with their respective flight paths; and

(ii) Form the same angle ψ with the ground.

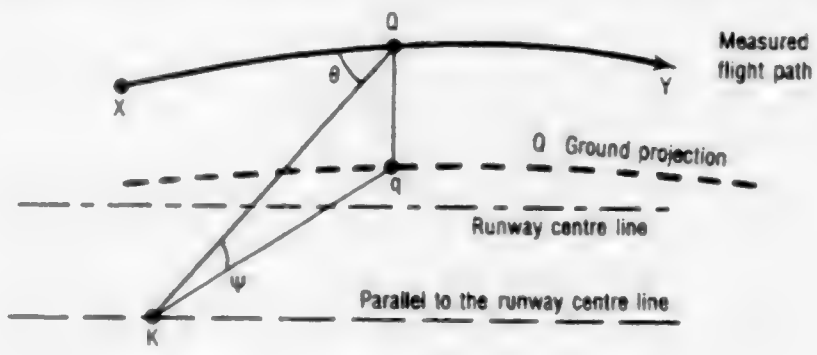

a – Measured flight path

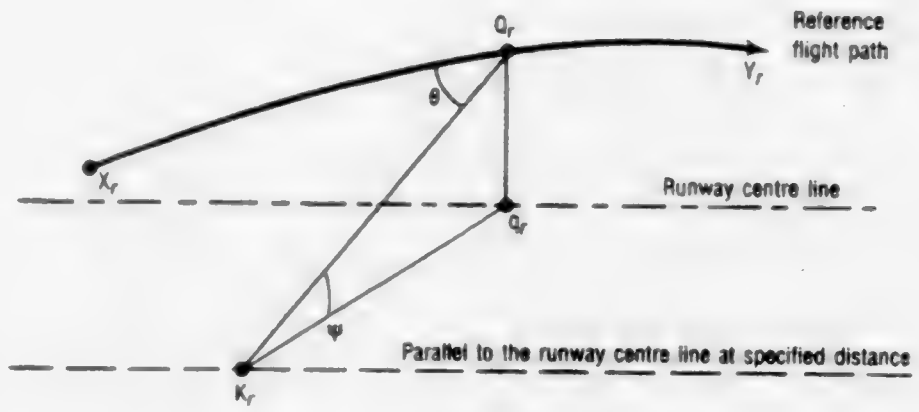

b – Reference flight path

Figure A36-7. Lateral measurement - determination of reference station

A36.9.3.2.1 The one-third octave band levels SPL(i) comprising PNL (the PNL at the moment of PNLTM observed at K) must be adjusted to reference levels $SPL(i)_r$ as follows:

A36.9.3.2.1(a) For calculations using the English System of Units:

$$SPL(i)_r = SPL(i) + 0.001[\alpha(i)-\alpha(i)_o]QK + 0.001\alpha(i)_o\,(QK - Q_rK_r + 20\log(QK/Q_rK_r)$$

In this expression,

(1) The term $0.001[\alpha(i)-\alpha(i)_o]QK$ is the adjustment for the effect of the change in sound attenuation coefficient, and $\alpha(i)$ and $\alpha(i)_o$ are the coefficients for the test and reference atmospheric conditions respectively, determined under section A36.7 of this appendix;

(2) The term $0.001\alpha(i)_o(QK-Q_rK_r)$ is the adjustment for the effect of the change in the noise path length on the sound attenuation;

(3) The term $20\log(QK/Q_rK_r)$ is the adjustment for the effect of the change in the noise path length due to the "inverse square" law;

(4) QK and Q_rK_r are measured in feet and $\alpha(i)$ and $\alpha(i)_o$ are expressed in dB/1000 ft.

A36.9.3.2.1(b) For calculations using the International System of Units:

$$SPL(i)_r = SPL(i) + 0.01[\alpha(i)-\alpha(i)_o]QK + 0.01\alpha(i)_o\,(QK - Q_rK_r + 20\log(QK/Q_rK_r)$$

In this expression,

(1) The term $0.01[\alpha(i)-\alpha(i)_o]QK$ is the adjustment for the effect of the change in sound attenuation coefficient, and $\alpha(i)$ and $\alpha(i)_o$ are the coefficients for the test and reference atmospheric conditions respectively, determined under section A36.7 of this appendix;

(2) The term $0.01\alpha(i)_o\,(QK-Q_rK_r$ is the adjustment for the effect of the change in the noise path length on the sound attenuation;

(3) The term $20\log(QK/Q_rK_r)$ is the adjustment for the effect of the change in the noise path length due to the inverse square law;

(4) QK and Q_rK_r are measured in meters and $\alpha(i)$ and $\alpha(i)_o$ are expressed in dB/100 m.

A36.9.3.2.1.1 *PNLT Correction.*

(a) Convert the corrected values, SPL(i)r, to $PNLT_r$;

(b) Calculate the correction term using the following equation:

$$\Delta_1 = PNLT_r - PNLTM$$

A36.9.3.2.1.2 Add Δ_1 arithmetically to the EPNL calculated from the measured data.

A36.9.3.2.2 If, during a test flight, several peak values of PNLT that are within 2 dB of PNLTM are observed, the procedure defined in section A36.9.3.2.1 must be applied at each peak, and the adjustment term, calculated according to section A36.9.3.2.1, must be added to each peak to give corresponding adjusted peak values of PNLT. If these peak values exceed the value at the moment of PNLTM, the maximum value of such exceedance must be added as a further

adjustment to the EPNL calculated from the measured data.

A36.9.3.3 *Adjustments to duration correction.*

A36.9.3.3.1 Whenever the measured flight paths and/or the ground velocities of the test conditions differ from the reference flight paths and/or the ground velocities of the reference conditions, duration adjustments must be applied to the EPNL values calculated from the measured data. The adjustments must be calculated as described below.

A36.9.3.3.2 For the flight path shown in Figure A36–6, the adjustment term is calculated as follows:

$\Delta_2 = -7.5\log(QK/Q_rK_r) + 10\log(V/V_r)$

(a) Add Δ_2 arithmetically to the EPNL calculated from the measured data.

A36.9.3.4 *Source noise adjustments.*

A36.9.3.4.1 To account for differences between the parameters affecting engine noise as measured in the certification flight tests, and those calculated or specified in the reference conditions, the source noise adjustment must be calculated and applied. The adjustment is determined from the manufacturer's data approved by the FAA. Typical data used for this adjustment are illustrated in Figure A36–8 that shows a curve of EPNL versus the engine control parameter μ, with the EPNL data being corrected to all the other relevant reference conditions (airplane mass, speed and altitude, air temperature) and for the difference in noise between the test engine and the average engine (as defined in section B36.7(b)(7)). A sufficient number of data points over a range of values of μ_r are required to calculate the source noise adjustments for lateral, flyover and approach noise measurements.

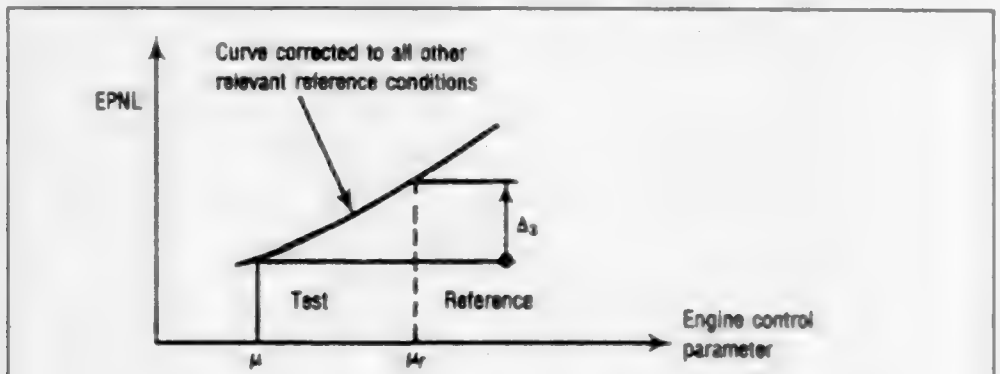

Figure A36-8. Noise thrust correction

A36.9.3.4.2 Calculate adjustment term Δ_3 by subtracting the EPNL value corresponding to the parameter μ from the EPNL value corresponding to the parameter μ_r. Add Δ_3 arithmetically to the EPNL value calculated from the measured data.

A36.9.3.5 *Symmetry adjustments.*

A36.9.3.5.1 A symmetry adjustment to each lateral noise value (determined at the section B36.4(b) measurement points), is to be made as follows:

(a) If the symmetrical measurement point is opposite the point where the highest noise level is obtained on the main lateral measurement line, the certification noise level is the arithmetic mean of the noise levels measured at these two points (see Figure A36–9(a));

(b) If the condition described in paragraph (a) of this section is not met, then it is assumed that the variation of noise with the altitude of the airplane is the same on both sides; there is a constant difference between the lines of noise versus altitude on both sides (see Figure A36–9(b)). The certification noise level is the maximum value of the mean between these lines.

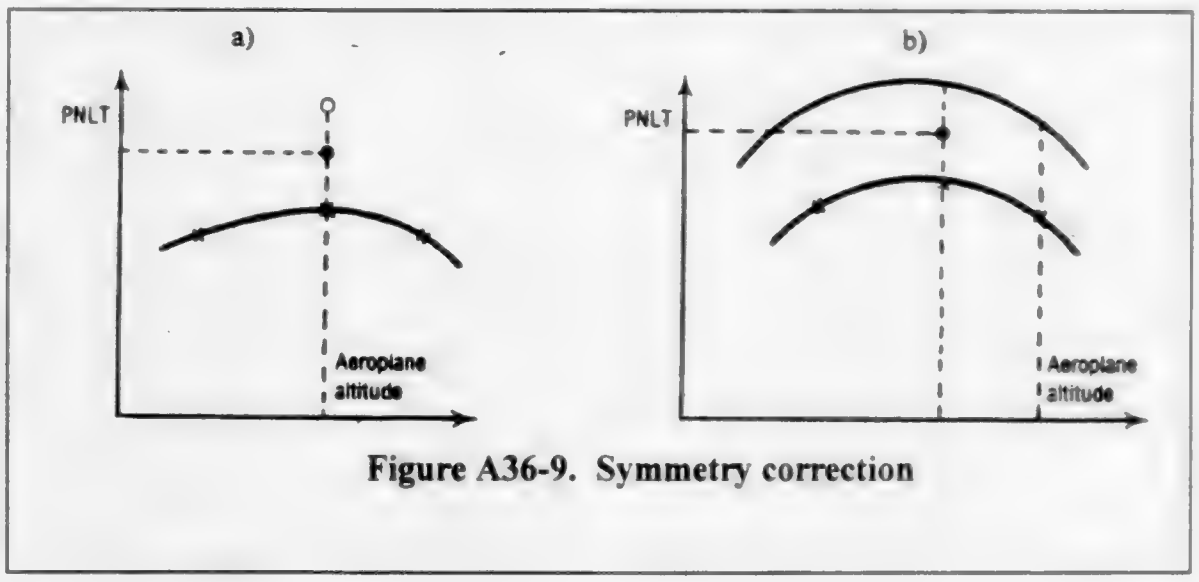

Figure A36-9. Symmetry correction

A36.9.4 Integrated method of adjustment

A36.9.4.1 *General.* As described in this section, the integrated adjustment method consists of recomputing under reference conditions points on the PNLT time history corresponding to measured points obtained during the tests, and computing EPNL directly for the new time history obtained in this way. The main principles are described in sections A36.9.4.2 through A36.9.4.4.1.

A36.9.4.2 *PNLT computations.*

(a) The portions of the test flight path and the reference flight path described in paragraph (a)(1) and (2) of this section, and illustrated in Figure A36–10, include the noise time history that is relevant to the calculation of flyover and approach EPNL. In figure A36–10:

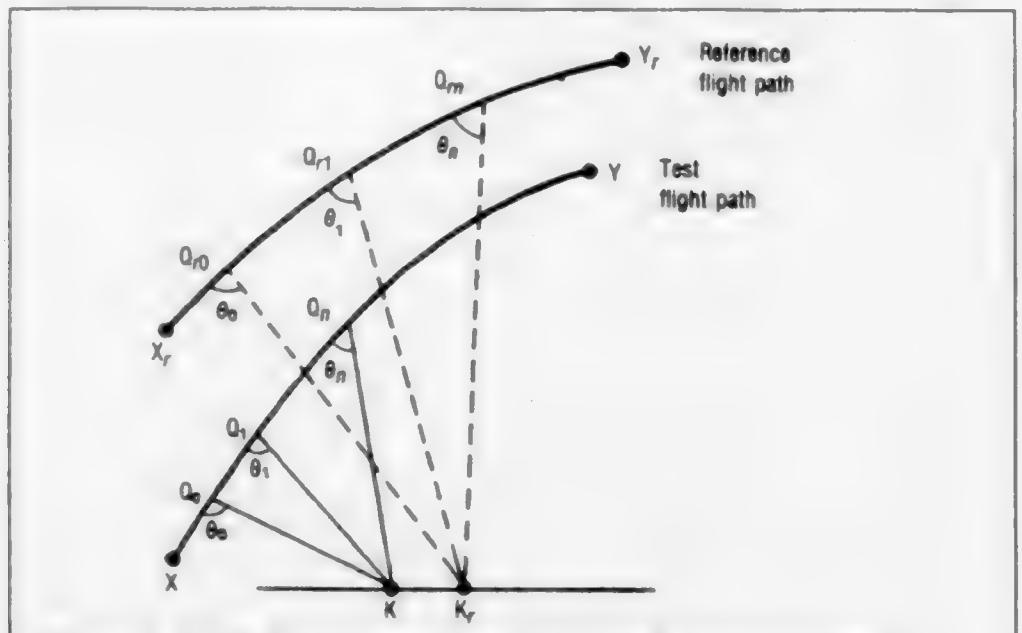

Figure 36-10. Correspondence between measured and reference flight paths for the application of the integrated method of adjustment

(1) XY represents the portion of the measured flight path that includes the noise time history relevant to the calculation of flyover and approach EPNL; X_rY_r represents the corresponding reference flight path.

(2) The points Q_0, Q_1, Q_n represent airplane positions on the measured flight path at time t_0, t_1 and t_n respectively. Point Q_1 is the point at which the noise was emitted and observed as one-third octave values $SPL(i)_1$ at the noise measuring station K at time t_1. Point Q_{r1} represents the corresponding position on the reference flight path for noise observed as $SPL(i)_{r1}$ at the reference measuring station K_r at time t_{r1}. Q_1K and $Q_{r1}K_r$ are respectively the measured and reference noise propagation paths, which in each case form the angle θ_{01} with their respective flight paths. $Q_r\theta$ and Q_{rn} are similarly the points on the reference flight path corresponding to Q_0 and Q_n on the measured flight path. Q_0 and Q_n are chosen so that between Q_{r0} and Q_{rn} all values of $PNLT_r$ (computed as described in paragraphs A36.9.4.2.2 and A36.9.4.2.3) within 10 dB of the peak value are included.

(b) The portions of the test flight path and the reference flight path described in paragraphs (b)(1) and (2) of this section, and illustrated in Figure A36–11(a) and (b), include the noise time history that is relevant to the calculation of lateral EPNL.

(1) In figure A36–11(a) XY represents the portion of the measured flight path that includes the noise time history that is relevant to the calculation of Lateral EPNL; in figure A36–11(b), X_rY_r represents the corresponding portion of the reference flight path. For the Lateral noise measurement, sound propagation is affected not only by "inverse square" and atmospheric attenuation, but also by ground absorption and reflection effects which depend mainly on the angle ψ.

(2) The points Q_0, Q_1 and Q_n represent airplane positions on the measured flight path at time t_0, t_1 and t_n respectively. Point Q_1 is the point at which the noise was emitted and observed as one-third octave values $SPL(i)_1$ at the noise measuring station K at time t_1. The point Q_{r1} represents the corresponding position on the reference flight path for noise observed as $SPL(i)_{r1}$ at the measuring station Kr at time t_{r1}. Q_1K and $Q_{r1}K_r$ are respectively the measured and reference noise propagation paths. Q_{r0} and Q_{rn} are similarly the points on the reference flight path corresponding to Q_0 and Q_n on the measured flight path. Q_0 and Q_n are chosen so that between Q_{ro} and Q_{rn} all values of $PNLT_r$ (computed as described in paragraphs A36.9.4.2.2 and A36.9.4.2.3) within 10 dB of the peak value are included. In this case K_r is only specified as being on a particular lateral line. The position of K_r and Q_{r1} are determined from the following requirements:

(A) Q_1K and $Q_{r1}K_r$ form the same angle θ_1 with their respective flight paths; and

(B) The differences between the angles ψ_1 and ψ_{r1} must be minimized using a method, approved by the FAA. The differences between the angles are minimized since, for geometrical reasons, it is generally not possible to choose K_r so that the condition described in paragraph A36.9.4.2(b)(2)(A) is met while at the same time keeping ψ_1 and ψ_{r1} equal.

A36.9.4.2.1 In paragraphs A36.9.4.2(a)(2) and (b)(2) the time t_{r1} is

later (for $Q_{r1}K_r > Q_1K$) than t_1 by two separate amounts:

(1) The time taken for the airplane to travel the distance $Q_{r1}Q_{r0}$ at a speed V_r less the time taken for it to travel Q_1Q_0 at V;

(2) The time taken for sound to travel the distance $Q_{r1}K_r$–Q_1K.

Note 1: For the flight paths described in paragraphs A36.9.4.2(a) and (b), if thrust or power cut-back is used there will be test and reference flight paths at full thrust or power and at cut-back thrust or power. Where the transient region between these affects the final result an interpolation must be made between them by an approved method such as that given in the current Advisory Circular for this part.

A36.9.4.2.2 The measured values of $SPL(i)_1$ must be adjusted to the reference values $SPL(i)_{r1}$ to account for the differences between measured and reference noise path lengths and between measured and reference atmospheric conditions, using the methods of section A36.9.3.2.1 of this appendix. A corresponding value of PNL_{r1} must be computed according to the method in section A36.4.2. Values of PNL_r must be computed for times t_0 through t_n.

A36.9.4.2.3 For each value of PNL_{r1}, a tone correction factor C_1 must be determined by analyzing the reference values $SPL(i)_r$ using the methods of section A36.4.3 of this appendix, and added to PNL_{r1} to yield $PNLT_{r1}$. Using the process described in this paragraph, values of $PNLT_r$ must be computed for times t_0 through t_n.

A36.9.4.3 *Duration correction.*

A36.9.4.3.1 The values of $PNLT_r$ corresponding to those of PNLT at each one-half second interval must be plotted against time ($PNLT_{r1}$ at time t_{r1}). The duration correction must then be determined using the method of section A36.4.5.1 of this appendix, to yield $EPNL_r$.

A36.9.4.4 *Source Noise Adjustment.*

A36.9.4.4.1 A source noise adjustment, Δ_3, must be determined using the methods of section A36.9.3.4 of this appendix.

A36.9.5 Flight path identification positions.

Position	Description
A	Start of Takeoff roll.
B	Lift-off.
C	Start of first constant climb.
D	Start of thrust reduction.
E	Start of second constant climb.
F	End of noise certification Takeoff flight path.
G	Start of noise certification Approach flight path.
H	Position on Approach path directly above noise measuring station.
I	Start of level-off.
J	Touchdown.
K	Noise measurement point.
K_r	Reference measurement point.
K_1	Flyover noise measurement point.
K_2	Lateral noise measurement point.
K_3	Approach noise measurement point.
M	End of noise certification Takeoff flight track.
O	Threshold of Approach end of runway.
P	Start of noise certification Approach flight track.
Q	Position on measured Takeoff flight path corresponding to apparent PNLTM at station K See section B36.9.3.2.
Q_r	Position on corrected Takeoff flight path corresponding to PNLTM at station K. See section A36.9.3.2.
V	Airplane test speed.
V_r	Airplane reference speed.

A36.9.6 Flight path distances.

Distance	Unit	Meaning
AB	Feet (meters)	Length of takeoff roll. The distance along the runway between the start of takeoff roll and lift off.
AK	Feet (meters)	Takeoff measurement distance. The distance from the start of roll to the takeoff noise measurement station along the extended center line of the runway.
AM	Feet (meters)	Takeoff flight track distance. The distance from the start of roll to the takeoff flight track position along the extended center line of the runway after which the position of the airplane need no longer be recorded.
QK	Feet (meters)	Measured noise path. The distance from the measured airplane position Q to station K.
Q_rK_r	Feet (meters)	Reference noise path. The distance from the reference airplane position Q_r to station K_r.
K_3H	Feet (meters)	Airplane approach height. The height of the airplane above the approach measuring station.
OK_3	Feet (meters)	Approach measurement distance. The distance from the runway threshold to the approach measurement station along the extended center line of the runway.
OP	Feet (meters)	Approach flight track distance. The distance from the runway threshold to the approach flight track position along the extended center line of the runway after which the position of the airplane need no longer be recorded.

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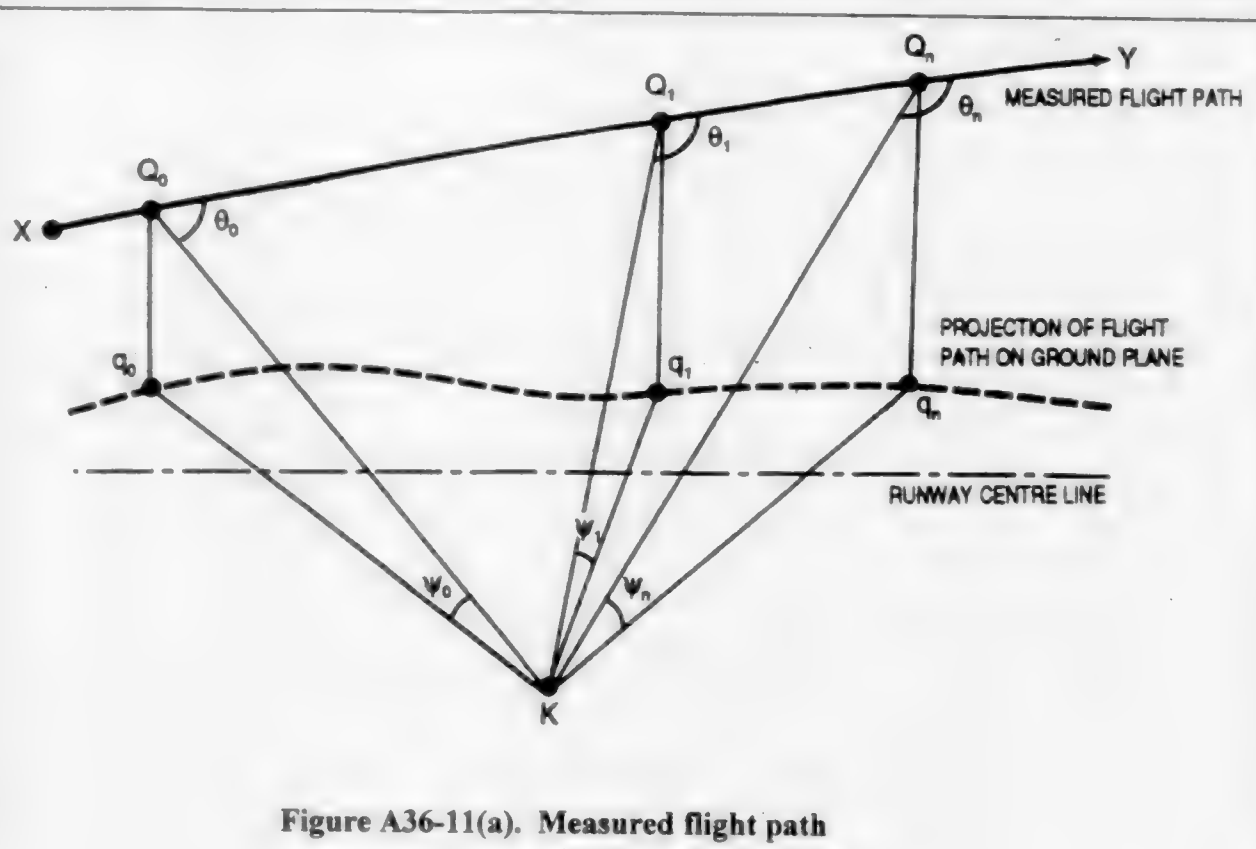

Figure A36-11(a). Measured flight path

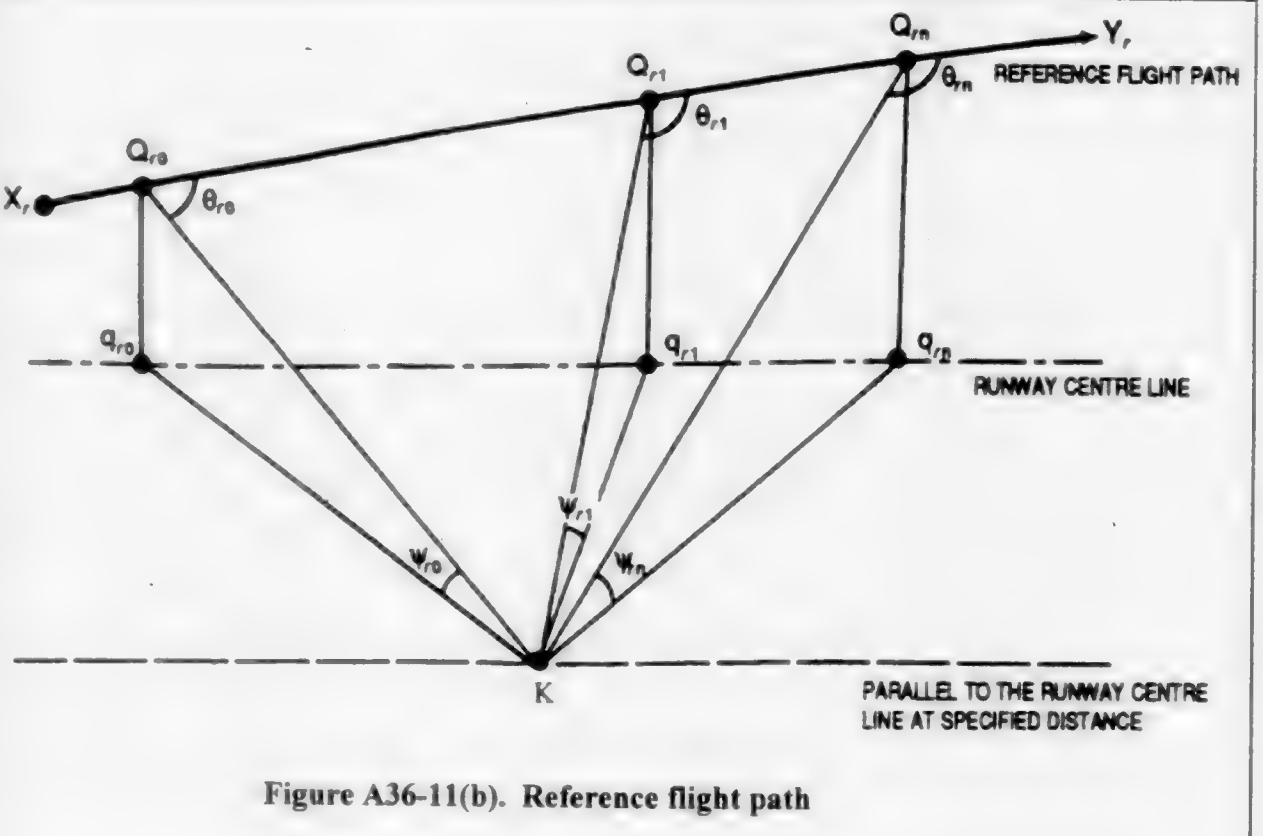

Figure A36-11(b). Reference flight path

12. Appendix B of part 36 is revised to read as follows:

Appendix B to Part 36—Noise Levels for Transport Category and Jet Airplanes Under § 36.103

Sec.

B36.1 Noise measurement and evaluation.
B36.2 Noise evaluation metric.
B36.3 Reference noise measurement points.
B36.4 Test noise measurement.
B36.5 Maximum noise levels.
B36.6 Trade-offs.
B36.7 Noise certification reference procedures.
B36.8 Test procedures.

Section B36.1 Noise Measurement and Evaluation

Compliance with this appendix must be shown with noise levels measured and evaluated using the procedures of appendix A of this part, or under approved equivalent procedures.

Section B36.2 Noise Evaluation Metric

The noise evaluation metric is the effective perceived noise level expressed in EPNdB, as calculated using the procedures of appendix A of this part.

Section B36.3 Reference Noise Measurement Points

When tested using the procedures of this part, except as provided in section B36.6, an airplane may not exceed the noise levels specified in section B36.5 at the following points on level terrain:

(a) Lateral full-power reference noise measurement point:

(1) For jet airplanes: The point on a line parallel to and 1,476 feet (450 m) from the runway centerline, or extended centerline, where the noise level after lift-off is at a maximum during takeoff. For the purpose of showing compliance with Stage 1 or Stage 2 noise limits for an airplane powered by more than three jet engines, the distance from the runway centerline must be 0.35 nautical miles (648 m).

(2) For propeller-driven airplanes: the point on the extended centerline of the runway above which the airplane, at full takeoff power, reaches a height of 2,133 feet (650 meters). For tests conducted before March 20, 2002, an applicant may use the measurement point specified in section B36.3(a)(1) as an alternative.

(b) Flyover reference noise measurement point: The point on the extended centerline of the runway that is 21,325 feet (6,500m) from the start of the takeoff roll;

(c) Approach reference noise measurement point: The point on the extended centerline of the runway that is 6,562 feet (2,000 m) from the runway threshold. On level ground, this corresponds to a position that is 394 feet (120 m) vertically below the 3° descent path, which originates at a point on the runway 984 feet (300 m) beyond the threshold.

Section B36.4 Test Noise Measurement Points

(a) If the test noise measurement points are not located at the reference noise measurement points, any corrections for the difference in position are to be made using the same adjustment procedures as for the differences between test and reference flight paths.

(b) The applicant must obtain a sufficient number of lateral test noise measurement points to demonstrate to the FAA that the maximum noise level on the appropriate lateral line has been determined. For jet airplanes, simultaneous measurements must be made at one test noise measurement point at its symmetrical point on the other side of the runway. Propeller-driven airplanes have an inherent asymmetry in lateral noise. Therefore, simultaneous measurements must be made at each and every test noise measurement point at its symmetrical position on the opposite side of the runway. The measurement points are considered to be symmetrical if they are longitudinally within 33 feet ((±10 meters) of each other.

Section B36.5 Maximum Noise Levels

Except as provided in section B36.6 of this appendix, maximum noise levels, when determined in accordance with the noise evaluation methods of appendix A of this part, may not exceed the following:

(a) For acoustical changes to Stage 1 airplanes, regardless of the number of engines, the noise levels prescribed under § 36.7(c) of this part.

(b) For any Stage 2 airplane regardless of the number of engines:

(1) Flyover: 108 EPNdB for maximum weight of 600,000 pounds or more; for each halving of maximum weight (from 600,000 pounds), reduce the limit by 5 EPNdB; the limit is 93 EPNdB for a maximum weight of 75,000 pounds or less.

(2) Lateral and approach: 108 EPNdB for maximum weight of 600,000 pounds or more; for each halving of maximum weight (from 600,000 pounds), reduce the limit by 2 EPNdB; the limit is 102 EPNdB for a maximum weight of 75,000 pounds or less.

(c) For any Stage 3 airplane:

(1) Flyover.

(i) For airplanes with more than 3 engines: 106 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 44,673 pounds or less;

(ii) For airplanes with 3 engines: 104 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 63,177 pounds or less; and

(iii) For airplanes with fewer than 3 engines: 101 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 106,250 pounds or less.

(2) Lateral, regardless of the number of engines: 103 EPNdB for maximum weight of 882,000 pounds or more; for each halving of maximum weight (from 882,000 pounds), reduce the limit by 2.56 EPNdB; the limit is 94 EPNdB for a maximum weight of 77,200 pounds or less.

(3) Approach, regardless of the number of engines: 105 EPNdB for maximum weight of 617,300 pounds or more; for each halving of maximum weight (from 617,300 pounds), reduce the limit by 2.33 EPNdB; the limit is 98 EPNdB for a maximum weight of 77,200 pounds or less.

Section B36.6 Trade-Offs

Except when prohibited by sections 36.7(c)(1) and 36.7(d)(1)(ii), if the maximum noise levels are exceeded at any one or two measurement points, the following conditions must be met:

(a) The sum of the exceedance(s) may not be greater than 3 EPNdB;

(b) Any exceedance at any single point may not be greater than 2 EPNdB, and

(c) Any exceedance(s) must be offset by a corresponding amount at another point or points.

Section B36.7 Noise Certification Reference Procedures

(a) General conditions:

(1) All reference procedures must meet the requirements of section 36.3 of this part.

(2) Calculations of airplane performance and flight path must be made using the reference procedures and must be approved by the FAA.

(3) Applicants must use the takeoff and approach reference procedures prescribed in paragraphs (b) and (c) of this section.

(4) [Reserved]

(5) The reference procedures must be determined for the following reference conditions. The reference atmosphere is homogeneous in terms of temperature and relative humidity when used for the calculation of atmospheric absorption coefficients.

(i) Sea level atmospheric pressure of 2116 pounds per square foot (psf) (1013.25 hPa);

(ii) Ambient sea-level air temperature of 77°F (25°C, *i.e.* ISA+10°C);

(iii) Relative humidity of 70 per cent; and

(iv) Zero wind.

(v) In defining the reference takeoff flight path(s) for the takeoff and lateral noise measurements, the runway gradient is zero.

(b) Takeoff reference procedure:

The takeoff reference flight path is to be calculated using the following:

(1) Average engine takeoff thrust or power must be used from the start of takeoff to the point where at least the following height above runway level is reached. The takeoff thrust/power used must be the maximum available for normal operations given in the performance section of the airplane flight manual under the reference atmospheric conditions given in section B36.7(a)(5).

(i) For Stage 1 airplanes and for Stage 2 airplanes that do not have jet engines with a bypass ratio of 2 or more, the following apply:

(A): For airplanes with more than three jet engines—700 feet (214 meters).

(B): For all other airplanes—1,000 feet (305 meters).

(ii) For Stage 2 airplanes that have jet engines with a bypass ratio of 2 or more and for Stage 3 airplanes, the following apply:

(A): For airplanes with more than three engines—689 feet (210 meters).

(B): For airplanes with three engines—853 feet (260 meters).

(C) For airplanes with fewer than three engines—984 feet (300 meters).

(2) Upon reaching the height specified in paragraph (b)(1) of this section, airplane thrust or power must not be reduced below that required to maintain either of the following, whichever is greater:

(i) A climb gradient of 4 per cent; or

(ii) In the case of multi-engine airplanes, level flight with one engine inoperative.

(3) For the purpose of determining the lateral noise level, the reference flight path must be calculated using full takeoff power throughout the test run without a reduction in thrust or power. For tests conducted before March 20, 2002, a single reference flight path that includes thrust cutback in accordance with paragraph (b)(1) of this section, is an acceptable alternative in determining the lateral noise level.

(4) The takeoff reference speed is the all-engine operating takeoff climb speed selected by the applicant for use in normal operation; this speed must be at least V2+10kt (V2+19km/h) but may not be greater than V2+20kt (V2+37km/h). This speed must be attained as soon as practicable after lift-off and be maintained throughout the takeoff noise certification test. For Concorde airplanes, the test day speeds and the acoustic day reference speed are the minimum approved value of V2 +35 knots, or the all-engines-operating speed at 35 feet, whichever speed is greater as determined under the regulations constituting the type certification basis of the airplane; this reference speed may not exceed 250 knots. For all airplanes, noise values measured at the test day speeds must be corrected to the acoustic day reference speed.

(5) The takeoff configuration selected by the applicant must be maintained constantly throughout the takeoff reference procedure, except that the landing gear may be retracted. Configuration means the center of gravity position, and the status of the airplane systems that can affect airplane performance or noise. Examples include, the position of lift augmentation devices, whether the APU is operating, and whether air bleeds and engine power take-offs are operating;

(6) The weight of the airplane at the brake release must be the maximum takeoff weight at which the noise certification is requested, which may result in an operating limitation as specified in § 36.1581(d); and

(7) The average engine is defined as the average of all the certification compliant engines used during the airplane flight tests, up to and during certification, when operating within the limitations and according to the procedures given in the Flight Manual. This will determine the relationship of thrust/power to control parameters (e.g., N_1 or EPR). Noise measurements made during certification tests must be corrected using this relationship.

(c) Approach reference procedure:

The approach reference flight path must be calculated using the following:

(1) The airplane is stabilized and following a 3° glide path;

(2) For subsonic airplanes, a steady approach speed of V_{REF} + 10 kts (V_{REF} + 19 km/h) with thrust and power stabilized must be established and maintained over the approach measuring point. For Concorde airplanes, a steady approach speed that is either the landing reference speed + 10 knots or the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, whichever speed is greater. This speed must be established and maintained over the approach measuring point.

(3) The constant approach configuration used in the airworthiness certification tests, but with the landing gear down, must be maintained throughout the approach reference procedure;

(4) The weight of the airplane at touchdown must be the maximum landing weight permitted in the approach configuration defined in paragraph (c)(3) of this section at which noise certification is requested, except as provided in § 36.1581(d) of this part; and

(5) The most critical configuration must be used; this configuration is defined as that which produces the highest noise level with normal deployment of aerodynamic control surfaces including lift and drag producing devices, at the weight at which certification is requested. This configuration includes all those items listed in section A36.5.2.5 of appendix A of this part that contribute to the noisiest continuous state at the maximum landing weight in normal operation.

Section B36.8 Noise Certification Test Procedures

(a) All test procedures must be approved by the FAA.

(b) The test procedures and noise measurements must be conducted and processed in an approved manner to yield the noise evaluation metric EPNL, in units of EPNdB, as described in appendix A of this part.

(c) Acoustic data must be adjusted to the reference conditions specified in this appendix using the methods described in appendix A of this part. Adjustments for speed and thrust must be made as described in section A36.9 of this part.

(d) If the airplane's weight during the test is different from the weight at which noise certification is requested, the required EPNL adjustment may not exceed 2 EPNdB for each takeoff and 1 EPNdB for each approach. Data approved by the FAA must be used to determine the variation of EPNL with weight for both takeoff and approach test conditions. The necessary EPNL adjustment for variations in approach flight path from the reference flight path must not exceed 2 EPNdB.

(e) For approach, a steady glide path angle of 3° ± 0.5° is acceptable.

(f) If equivalent test procedures different from the reference procedures are used, the test procedures and all methods for adjusting the results to the reference procedures must be approved by the FAA. The adjustments may not exceed 16 EPNdB on takeoff and 8 EPNdB on approach. If the adjustment is more than 8 EPNdB on takeoff, or more than 4 EPNdB on approach, the resulting numbers must be more than 2 EPNdB below the limit noise levels specified in section B36.5.

(g) During takeoff, lateral, and approach tests, the airplane variation in instantaneous indicated airspeed must be maintained within +/−3% of the average airspeed between the 10dB-down points. This airspeed is determined by the pilot's airspeed indicator. However, if the instantaneous indicated airspeed exceeds +/−3 kt (+/−5.5 km/h) of the average airspeed over the 10dB-down points, and is determined by the FAA representative on the flight deck to be due to atmospheric turbulence, then the flight so affected must be rejected for noise certification purposes.

Note: Guidance material on the use of equivalent procedures is provided in the current Advisory Circular for this part.

13. Remove and reserve appendix C of part 36.

Section G36.105 [Amended]

14. Amend paragraph (f) of section G36.105 of appendix G by removing the reference "paragraph A36.3(e) of Appendix A" and adding "paragraphs A36.3.8 and A36.3.9 of Appendix A" in its place.

Section H36.111 [Amended]

15. Amend paragraph (c)(3) of section H36.111 of appendix H by removing the reference "A36.3(f)(3)" and adding "A36.3.9.11" in its place.

Section H36.201 [Amended]

16. Amended paragraph (b) of section H36.201 of appendix H by removing the reference "B36.5(a)" and adding "A36.4.3.1—Step 1" in its place.

Issued in Washington, DC, on June 29, 2000.

Paul R. Dykeman,

Acting Director of Environment and Energy.

[FR Doc. 00–16913 Filed 7–10–00; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
July 11, 2000

Part IV

Advisory Council on Historic Preservation

36 CFR Part 800
Protection of Historic Properties; Proposed Rule

Availability of Environmental Assessment and Preliminary Finding of No Significant Impact; Notice

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

RIN 3010–AA05

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Advisory Council on Historic Preservation is submitting a proposed rule for public comment. The proposed rule sets forth how Federal agencies take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment, pursuant to Section 106 of the National Historic Preservation Act. The substance of the proposed rule now submitted for public comment went into effect on June 17, 1999. Recent litigation has challenged that rule. This proposed rulemaking is intended to address questions and concerns raised by the litigation. It will also give the public a chance to provide input to determine how the rule has operated and revise the rule as appropriate.

DATES: Submit comments on or before August 10, 2000.

ADDRESSES: Address all comments concerning this proposed rule to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606–8672. You may submit electronic comments to: regs@achp.gov.

FOR FURTHER INFORMATION CONTACT: Javier Marqués, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004, (202) 606–8503.

SUPPLEMENTARY INFORMATION:

I. Background

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, requires Federal agencies to take into account the effects of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Advisory Council on Historic Preservation ("Council") a reasonable opportunity to comment on such undertakings. Through Section 211 of the National Historic Preservation Act, the Council is authorized to "promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 * * * in its entirety."

After publishing two Notices of Proposed Rulemaking (59 FR 50396, October 3, 1994; and 61 FR 48580, September 13, 1996), the Council published a final rule setting forth a revised process implementing Section 106 in its entirety (64 FR 27044–27084, May 18, 1999). Such rule, currently codified at 36 CFR part 800, went into effect on June 17, 1999, superseding a rule previously issued in 1986.

Two major forces behind that revision process were the 1992 amendments to the National Historic Preservation Act (NHPA), and the Administration's reinventing government efforts. In October, 1982, Public Law 102–575 amended the NHPA and affected the way Section 106 review is carried out. Among other things, the 1992 amendments:

1. Clarified that "[p]roperties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register." 16 U.S.C. 470a(d)(6)(A);

2. Required that "[i]n carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described" above. 16 U.S.C. 470a(d)(6)(B). Also see 36 CFR 800.2(c)(3) (granting such tribes and Native Hawaiian organizations, "consulting party" status in the Section 106 process). Implementation of this statutory consultation requirement is found throughout the proposed rule. See, for example, 36 CFR 800.3(f)(2), 800.4(a)(4), 800.4(b), 800.4(c)(1), 800.5(a), 800.6 (a)–(b).

3. Added a provision in the NHPA prohibiting Federal agencies from granting a license or assistance to applicants who, with the intent to avoid the requirements of Section 106, significantly adversely affected historic properties related to the license or assistance. In such cases, the Federal agency can only grant the license or assistance if it determines, after consulting with the Council, that circumstances justify granting the license or assistance despite the effects to the historic property. 16 U.S.C. 470h–2(k). See 36 CFR 800.9(c).

4. Explicitly recognized the practice under the 1986 regulations of having Federal agencies seek agreements to address adverse effects of their undertakings to historic properties. It also clarified that where such an agreement is not reached, the head of the relevant Federal agency must document his/her decision pursuant to Section 106. Such agency head cannot delegate that responsibility. It also provided that agreements executed pursuant to the Section 106 process would govern the relevant Federal undertaking and all its parts. 16 U.S.C. 470h–2(1). See 36 CFR 800.6, 800.7.

5. Added a member to the Council. This Council member would be a Native American or Native Hawaiian appointed by the President. 16 U.S.C. 470i(a)(11).

6. Explicitly clarified the fact that the Council has authority to "promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety." 16 U.S.C. 470s (emphasis added) (highlighted text was added by the 1992 amendments); and

7. Amended the definition of the term "undertaking," by adding "[projects, activities, and programs] subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency" to the list of actions constituting an "undertaking." 16 U.S.C. 470w(7)(D). The amended, statutory definition of "undertaking" was adopted verbatim in the rule. 36 CFR 800.16(y).

Additionally, as part of the Administration's National Performance Review and overall regulatory streamlining efforts, the Council undertook a review of its regulatory process to identify potential changes that could improve the operation of the Section 106 process and conform it to the principles of the Administration. A thorough description of the Council's revision efforts from 1992, which led to the final rule in 1999, is found in the preamble to the final rule (64 FR 27044–27084, May 18, 1999). That preamble can be found on-line at http://www.achp.gov/regspreamble.html.

II. Litigation Prompting Decision To Go Forward With Additional Notice of Proposed Rulemaking

On February 15, 2000, the National Mining Association ("NMA") filed a lawsuit challenging the revised rule. Among other things, the lawsuit alleged violations of the Appointments Clause of the Constitution and certain provisions of the Administrative Procedure Act pertaining to rulemaking. After assessing the allegations contained in the lawsuit, the Council decided to move forward with the present notice of proposed rulemaking. This action would provide an opportunity to address assertions about the procedural adequacy of the promulgation of the Section 106 regulations, including those about the participation of the National Trust for Historic Preservation ("Trust") and the National Conference of State

Historic Preservation Officers ("NCSHPO"), as Council members, in the adoption of the final, revised rule. This republication action does not evidence Council agreement with the merits of the allegations, but rather the Council's desire to remove these issues from litigation.

Accordingly, at the June 23, 2000 Council meeting in Maine, the Chairman of the Council asked the Council members to take two actions. The first action was a new vote on the adoption of the rule now in place, without the participation of the Trust and NCSHPO. The Council members voted 16–0 in favor of the rule, with the Trust and NCSHPO voluntarily recusing themselves from the vote and any deliberation on it.

The second action was a vote on undertaking the present, new notice of proposed rulemaking ("NPRM"). Again, the Council members voted in favor of moving forward with the NPRM by a vote of 16–0, with the Trust and NCSHPO voluntarily recusing themselves from the vote and any deliberation on it. The plan is that the rulemaking process would commence with the present, **Federal Register** publication of an NPRM using the existing rule that took effect on June 19, 1999, as the substance of the proposal. A 30-day public comment period would ensue, affording all users of the section 106 process and interested members of the public an opportunity to comment on all aspects of the proposed rule. It is anticipated that the NPRM would be published near the end of June 2000. After the close of the public comment period, the comments would be considered and incorporated into the rule as deemed appropriate. The Council membership would then vote on the new rule. The Trust and NCSHPO would not participate as Council members in any Council activities related to this rulemaking process.

Given this schedule, it is anticipated that the new final rule would be submitted to the Council for a vote on adoption at its next scheduled meeting on November 17, 2000, and that, until then, the existing rule that has been in effect since June 17, 1999 would remain in place.

III. Impact Analysis

The Regulatory Flexibility Act

The Council certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule in its proposed version only imposes mandatory responsibilities on Federal agencies. As set forth in Section 106 of the NHPA, the duties to take into account the effect of an undertaking on historic resources and to afford the Council a reasonable opportunity to comment on that undertaking are Federal agency duties. Indirect effects on small entities, if any, created in the course of a Federal agency's compliance with Section 106 of the NHPA, must be considered and evaluated by the Federal agency.

The Paperwork Reduction Act

The proposed rule does not impose reporting or recordkeeping requirements or the collection of information as defined in the Paperwork Reduction Act.

The National Environmental Policy Act

In accordance with 36 CFR part 805, the Council initiated the NEPA compliance process for the Council's rule implementing Section 106 of the NHPA prior to publication of the previous draft regulations in the **Federal Register** on September 13, 1996. On August 12, 1997, through a notice of availability on the **Federal Register**, the Council sought public comment on its Environmental Assessment ("EA") and preliminary Finding of No Significant Impact "FONSI"). The Council considered such comments, and confirmed its finding of no significant impact on the human environment. A notice of availability of the EA and FONSI was then published on the **Federal Register** (64 FR 25473, May 12, 1999). The Council once more will publish a notice of availability of its EA and preliminary FONSI. Because the proposed rule is identical to the one adopted in 1999, these NEPA documents on the proposed rule are substantially the same as those published on May 12, 1999, the Council will complete its NEPA compliance after considering public comments.

Executive Orders 12866 and 12875

The Council is exempt from compliance with Executive Order 12866 pursuant to implementing guidance issued by the Office of Management and Budget's Office of Information and Regulatory Affairs in a memorandum dated October 12, 1993. The Council also is exempt from the documentation requirements of Executive Order 12875 pursuant to implementing guidance issued by the same OMB office in a memorandum dated January 11, 1994. Although exempt, the Council has adhered to the principles in both orders by involving and consulting with State, local, and tribal entities, members of the public, and industry groups in the development of this proposed rule and throughout the rulemaking process. The proposed rule does not mandate State, local, or tribal governments to participate in the Section 106 process. Instead, State, local, and tribal governments may decline to participate. State Historic Preservation Officers and Tribal Historic Preservation Officers to advise and assist Federal agencies, as appropriate, as part of their duties under Sections 101(b)(3) and 101(d)(2) of the NHPA, as a condition of their Federal grant assistance. In addition, in accordance with Executive Order 12875, the proposed rule includes several flexible approaches to consideration of historic properties in Federal agency decision making. The proposed rule promotes flexibility and cost effective compliance by providing for alternate procedures, categorical exemptions, standard treatments, program comments, and programmatic agreements.

The Unfunded Mandates Reform Act of 1995

The proposed rule implementing Section 106 of the NHPA does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significantly or uniquely affect small governments, and is not a significant Federal intergovernmental mandate. The Council thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act.

Executive Order 12898

The proposed rule implementing Section 106 of the NHPA does not cause adverse human health or environmental effects, but, instead, seeks to avoid adverse effects on historic properties throughout the United States. The participation and consultation process established by this rule seeks to ensure public participation—including by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed Federal undertakings. The Section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties. The Council considers environmental justice issues in reviewing analysis of alternatives and mitigation options, particularly when Section 106 compliance is coordinated with NEPA compliance.

Memorandum Concerning Government-to-Government Relations With Native American Tribal Governments

The Council has fully complied with this Memorandum. A Native American, and subsequently a Native Hawaiian, representative served on the Council. The Council also held extensive consultation meetings with tribal representatives and tribal groups as it developed the rule. The proposed rule enhances the opportunity for Native American involvement in the Section 106 process and clarifies the obligation of Federal agencies to consult with Native Americans.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1966, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Once the rulemaking process results in a final rule, the Council will submit the report containing such final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This proposed rule would not be a "major rule" as defined by 5 U.S.C. 804(2).

IV. Rule Proposed for Public Comment

As stated above, the rule now being proposed for public comment is the same as the rule that has been in place since June of 1999. That rule can presently be found at 36 CFR part 800. An extensive discussion of the background leading to that rule, the rationale behind the particulars of the rule, and how the Council responded to public comments on the rule can be found on the following public documents: (a) Notice of proposed rulemaking at 59 FR 50396, October 3, 1994; (b) notice of proposed rulemaking at 61 FR 48580, September 13, 1996; and (c) final rule and preamble published at 64 FR 27044–27084, May 18, 1999, and now codified at 36 CFR Part 800 (a copy can be accessed on-line at http://www.achp.gov/regsplain.html).

List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Inter-governmental relations.

For the reasons stated above, the Advisory Council on Historic Preservation proposes to revise 36 CFR part 800 to read as follows:

PART 800—PROTECTION OF HISTORIC PROPERTIES

Subpart A—Purposes and Participants

Sec.
800.1 Purposes.
800.2 Participants in the Section 106 process.

Subpart B—The Section 106 Process

Sec.
800.3 Initiation of the Section 106 process.
800.4 Identification of historic properties.
800.5 Assessment of adverse effects.
800.6 Resolution of adverse effects.
800.7 Failure to resolve adverse effects.
800.8 Coordination with the National Environmental Policy Act.
800.9 Council review of Section 106 compliance.
800.10 Special requirements for protecting National Historic Landmarks.
800.11 Documentation standards.
800.12 Emergency situations.
800.13 Post-review discoveries.

Subpart C—Program Alternatives

Sec.
800.14 Federal agency program alternatives.
800.15 Tribal, State and Local Program Alternatives. (Reserved)
800.16 Definitions.
Appendix A—Criteria for Council Involvement in Reviewing Individual Section 106 Cases

Authority: 16 U.S.C. 470s.

Subpart A—Purposes and Participants

§ 800.1 Purposes.

(a) *Purposes of the Section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the Agency Official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the Act.* Section 106 is related to other provisions of the Act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the Section 106 process. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The Agency Official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit Agency Official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The Agency Official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in the Section 106 process.

(a) *Agency Official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The Agency Official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the Agency Official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The Agency Official may be a State, local, or tribal government official who has been delegated legal

responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the Act requires each Federal agency responsible for the protection of historic resources, including archaeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the Agency Official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the Agency Official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The Agency Official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the Agency Official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The Agency Official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The Agency Official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the Agency Official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement Section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to Agency Officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process.* When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the Act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in Appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance.* Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties.* The following parties have consultative roles in the section 106 process.

(1) *State Historic Preservation Officer.*

(i) The State Historic Preservation Officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the Act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), of if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Tribal Historic Preservation Officer.*

(i) The Tribal Historic Preservation Officer (THPO) appointed or designated in accordance with the Act is the official representative of an Indian tribe for the purposes of section 106. If an Indian tribe has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(ii) If an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. For the purposes of subpart B of this part, such tribal representative shall be included in the term "THPO".

(3) *Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the Act requires the Agency Official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(i) The Agency Official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the Agency Official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(ii) The Federal government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part is intended to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or to preempt, modify or limit the exercise of any such rights.

(iii) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal government and Indian tribes. The Agency Official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(iv) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic

properties off tribal lands, section 101(d) (6)(B) of the Act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(v) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an Agency Official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The Agency Official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(vi) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act may notify the Agency Official in writing that it is waiving its rights under § 800.6(c)(1) to execute a Memorandum of Agreement.

(4) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the Agency Official for purposes of section 106.

(5) *Applicants for Federal assistance, permits, licenses and other approvals.* An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The Agency Official may authorize an applicant to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the Agency Official. The Agency Official shall notify the SHPO/THPO and other consulting parties when an applicant is so authorized.

(6) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public.*—(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The Agency Official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The Agency Official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the Agency Official to consider in decisionmaking.

(3) *Use of agency procedures.* The Agency Official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B—The section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The Agency Official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking does not have the potential to cause effects on historic properties, the Agency Official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a Programmatic Agreement in existence before [the effective date of the final rule], the Agency Official shall follow the program alternative.

(b) *Coordinate with other reviews.* The Agency Official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the Agency Official may use information developed for other reviews under Federal, State or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the Agency Official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The Agency Official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The Agency Official shall then initiate consultation with the appropriate Officer or Officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the Act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the Act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the Section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The Agency Official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to

respond within 30 days of receipt of a request for review of a finding or determination, the Agency Official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the Agency Official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.* Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the Agency Official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the Agency Official shall plan for involving the public in the section 106 process. The Agency Official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the Agency Official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The Agency Official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The Agency Official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The Agency Official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The Agency Official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the Agency Official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the Agency Official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

§ 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* The Agency Official shall consult with the SHPO/THPO to:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature and activities associated with such sites. The Agency Official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the Agency Official shall take the steps necessary to identify historic properties within the area of potential effect.

(1) *Level of effort.* The Agency Official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The Agency Official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject. The Agency Official should also consider other applicable professional, State, tribal and local laws, standards and guidelines. The Agency Official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the Agency Official may use a phased process to conduct identification and evaluation efforts. The Agency Official may also defer final identification and evaluation of historic properties if it is specifically provided for in a Memorandum of Agreement executed pursuant to § 800.6, a Programmatic Agreement executed pursuant to § 800.14(b), or the documents used by an Agency Official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the Agency Official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance.*—(1) *Apply National Register Criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria (36 CFR part 63) to properties identified

within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the Agency Official to reevaluate properties previously determined eligible or ineligible. The Agency Official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the Agency Official determines any of the National Register Criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the Agency Official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the Agency Official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the Agency Official to obtain a determination of eligibility.

(d) *Results of identification and evaluation.*—(1) *No historic properties affected.* If the Agency Official finds that either there are no historic properties present or three are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the Agency Official shall provide documentation of this finding as set forth in § 800.11(d) to the SHPO/THPO. The Agency Official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the Section 106 process, does not object within 30 days of receipt of an adequately documented finding, the Agency Official's responsibilities under section 106 are fulfilled.

(2) *Historic properties affected.* If the Agency Official finds that there are historic properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the Agency Official's finding under paragraph (d)(1) of this section, the Agency Official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the Agency Official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The Agency Official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the Agency Official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect.* The Agency Official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the Agency Official proposes a finding of no adverse effect, the Agency Official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the Agency Official may proceed if the SHPO/THPO agrees with the finding. The Agency Official shall carry out the undertaking in accordance with paragraph (d)(1) of this section. Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) *Disagreement with finding.* (i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The Agency Official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(ii) The Agency Official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the Agency Official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian

tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(iii) If the Council on its own initiative so requests within the 30-day review period, the Agency Official shall submit the finding, along with the documentation specified in § 800.11(e), for review pursuant to paragraph (c)(3) of this section. A Council decision to make such a request shall be guided by the criteria in Appendix A to this part.

(3) *Council review of findings.* When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the Agency Official shall include the documentation specified in § 800.11(e). The Council shall review the finding and notify the Agency Official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the Agency Official. The Council shall specify the basis for its determination. The Agency Official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of receipt of the finding, the Agency Official may assume concurrence with the Agency Official's finding and proceed accordingly.

(d) *Results of assessment.*—(1) *No adverse effect.* The Agency Official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the Agency Official's responsibilities under section 106 and this part. If the Agency Official will not conduct the undertaking as proposed in the finding, the Agency Official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect.* If an adverse effect is found, the Agency Official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) *Continue consultation.* The Agency Official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The Agency Official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The Agency Official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A Programmatic Agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the Agency Official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the Agency Official and the consulting parties that its decision to participate meets the criteria set forth in Appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the Agency Official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties.* In addition to the consulting parties identified under § 800.3(f), the Agency Official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The Agency Official shall invite any individual or organization that will assume a specific role or responsibility in a Memorandum of Agreement to participate as a consulting party.

(3) *Provide documentation.* The Agency Official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The Agency Official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The Agency Official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The Agency Official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The Agency Official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the Section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the Act and other authorities may limit the disclosure of information under paragraph (a)(3) and (4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the Agency Official believes that there are other reasons to withhold information, the Agency Official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects.*—(1) *Resolution without the Council.* (i) The Agency Official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The Agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a Memorandum of Agreement.

(iii) If the Council decides to join the consultation, the Agency Official shall follow paragraph (b)(2) of this section.

(iv) If the Agency Official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement. The Agency Official must submit a copy of the executed Memorandum of Agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of Section 106 and this subpart.

(v) If the Agency Official, and the SHPO/THPO fail to agree on the terms of a Memorandum of Agreement, the Agency Official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the Agency Official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the Agency Official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the Agency Official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement.

(c) *Memorandum of Agreement.* A Memorandum of Agreement executed and implemented pursuant to this section evidences the Agency Official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. A Memorandum of Agreement executed pursuant to paragraph (b)(1) of this section that is filed with the Council shall be considered to be an agreement with the Council for the purposes of section 110(1) of the Act. The Agency Official shall ensure that the undertaking is carried out in accordance with the Memorandum of Agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The Agency Official and the SHPO/THPO are the signatories to a Memorandum of Agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The Agency Official, the SHPO/THPO, and the Council are the signatories to a Memorandum of Agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The Agency Official and the Council are signatories to a Memorandum of Agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories.* (i) The Agency Official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a Memorandum of Agreement concerning such properties.

(ii) The signatories should invite any party that assumes a responsibility under a Memorandum of Agreement to be a signatory.

(iii) The refusal of any party invited to become a signatory to a Memorandum of Agreement pursuant to paragraphs (c)(2)(i) or (ii) of this section does not invalidate the Memorandum of Agreement.

(3) *Concurrence by others.* The Agency Official may invite all consulting parties to concur in the Memorandum of Agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the Memorandum of Agreement does not invalidate the Memorandum of Agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a Memorandum of Agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A Memorandum of Agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a Memorandum of Agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a Memorandum of Agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the Agency Official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a Memorandum of Agreement cannot be carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The Agency Official shall either execute a Memorandum of Agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) *Copies.* The Agency Official shall provide each consulting party with a copy of any Memorandum of Agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the Agency Official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates with consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the Agency Official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the Agency Official and the Council may execute a Memorandum of Agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the council shall notify the Agency Official, the agency's Federal Preservation Officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal Preservation Officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a Memorandum of Agreement will be executed. The Council shall provide them to the Agency Official when it executes the Memorandum of Agreement.

(c) *Comments by the Council.*—(1) *Preparation.* The Council shall provide an opportunity for the Agency Official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the Agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The council shall transmit its comments within 45 days of receipt of a request under paragraphs (a)(1) or (3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section unless otherwise agreed to by the Agency Official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the Agency Official, the agency's Federal Preservation Officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the Act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for

the decision and evidence of consideration of the Council's comments and providing it to the council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination with the National Environmental Policy Act.

(a) *General principles.*—(1) *Early coordination.* Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an Environmental Impact Statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles.* SHPO/THPOs, Indian tribes and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues.* Agency Officials should ensure that preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or an EIS and Record of Decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the Agency Official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the Agency Official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for Section 106 purposes.* An Agency Official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the Agency Official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with section 106.* During preparation of the EA or Draft EIS (DEIS) the Agency Official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the Agency Official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.* (i) The Agency Official shall submit the EA, DEIS or EIS to the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the Agency Official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the Agency Official that preparation of the EA, DEIS or EIS has not met the standard set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate. If the Agency Official receives such an objection, the Agency Official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the Agency Official's referral of an objection under paragraph (c)(2) (ii) of this section, the Council shall not notify the Agency Official either that it agrees with the objection, in which case the Agency Official shall enter into consultation in accordance with § 800.6(c)(2) or seek Council comments in accordance with § 800.7(a), or that it disagrees with the objection, in which case the Agency Official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) *Approval of the undertaking.* If the Agency Official has found during the preparation of the EA, DEIS or EIS that the effects of the undertaking on historic properties are adverse, the Agency Official shall specify in the FONSI or the ROD the proposed measures to avoid, minimize or mitigate such effects and ensure that the approval of the undertaking is conditioned accordingly. The Agency Official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either the proposed measures have been adopted through a binding commitment on the agency, the applicant or other entities, as appropriate, or the Council has commented and received the response to such comments under § 800.7. Where the NEPA process results in a FONSI, the Agency Official must adopt such a binding commitment through a Memorandum of Agreement drafted in compliance with § 800.6(c). Where the NEPA process results in an EIS, the binding commitment does not have to be in the form of a Memorandum of Agreement drafted in compliance with § 800.6(c).

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the Agency Official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the

binding commitment adopted pursuant to paragraph (c) (4) of this section are carried out, the Agency Official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3 through 800.6 will be followed as necessary.

§ 800.9 Council review of Section 106 compliance.

(a) *Assessment of Agency Official compliance for individual undertakings.* The Council may provide to the Agency Official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the Agency Official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiatives. The Agency Official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an Agency Official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the Agency Official and the agency's Federal Preservation Officer and allow 30 days for the Agency Official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the Agency Official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants.*—(1) *Agency responsibility.* Section 110(k) of the Act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the Act governs its implementation.

(2) *Consultation with the Council.* When an Agency Official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the Agency Official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the Agency Official's notification, unless otherwise agreed to by the Agency Official, the Council shall provide the Agency Official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The Agency Official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with section 106.* If an Agency Official, after consulting with the Council, determines to grant the assistance, the Agency Official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of section 106 operations.* The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the Act.

(1) *Information from participants.* Section 203 of the Act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The Agency Official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an Agency Official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the procedures in this part, the Council may participate in individual case reviews in a manner and for a period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the Act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement.* Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The Agency Official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary.* The Agency Official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the Act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any Memoranda of Agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) *Adequacy of documentation.* The Agency Official shall ensure that a determination, finding, or agreement

under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. When an Agency Official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the Agency Official and specify the information needed to meet the standard. At the request of the Agency Official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the Agency Official and the consulting parties.

(b) *Format.* The Agency Official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality.*—(1) *Authority to withhold information.* Section 304 of the Act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the Act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the Act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the Agency Official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties.

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of Agreement.* When a Memorandum of Agreement is filed with the Council, the documentation shall include any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a Memorandum of Agreement.* Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies of summaries of any views submitted to the Agency Official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.

(a) *Agency procedures.* The Agency Official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government or the governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government or the governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the Agency Official may comply with section 106 by:

(1) Following a Programmatic Agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the Agency Official determines that circumstances do not permit seven days for comment, the Agency Official shall notify the Agency Official, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the Agency Official for section 106 compliance, paragraphs (a) and (b) of

this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the Agency Official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries.*

(1) *Using a Programmatic Agreement.* An Agency Official may develop a Programmatic Agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the Agency Official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no Programmatic Agreement has been developed pursuant to paragraph (a)(1) of this section, the Agency Official shall include in any finding of no adverse effect or Memorandum of Agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the Agency Official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the Agency Official has completed the section 106 process without establishing a process under paragraph (a) of this section, the Agency Official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the Agency Official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the Agency Official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archaeological data, the Agency Official may comply with the Archaeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the Agency Official has approved the undertaking and construction has commenced, determine actions that the Agency Official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the actions proposed by the Agency Official to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification and the Agency Official shall take into account their recommendations and carry out appropriate actions. The Agency Official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The Agency Official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The Agency Official shall specify the National Register Criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the Agency Official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the Agency Official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C—Program Alternatives

§ 800.10 Federal agency program alternatives.

(a) *Alternate procedures.* An Agency Official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a) (2) (E) of the Act.

(1) *Development of procedures.* The Agency Official shall consult with the Council, the National Conference of State Historic Preservation Officers or individual SHPO/THPs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternative procedures, publish notice of the availability of proposed alternate procedures in the **Federal Register** and take other appropriate steps to seek public input during the development of alternate procedure.

(2) *Council review.* The Agency Official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, if shall notify the Agency Official and the Agency Official may adopt them as final alternate procedures.

(3) *Notice.* The Agency Official shall notify the parties with which it has consulted and public notice of final alternate procedures in the **Federal Register**.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the Act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic Agreements.* The Council and the Agency Official may negotiate a Programmatic Agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of Programmatic Agreements.* A Programmatic Agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decision making responsibilities;

(iv) Where routine management activities are undertaken at Federal Installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing Programmatic Agreements for agency programs.* (i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the Programmatic Agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Agency Official shall also follow paragraph (f) of this section.

(ii) *Public Participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The Agency Official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The Programmatic Agreement shall take effect when executed by the Council, the Agency Official and the appropriate SHPOs/THPOs when the Programmatic Agreement concerns a specific region or the President of NCSHPO when NCSHPO has participated in the consultation. A Programmatic Agreement shall take effect on tribal lands only when the THPO, Indian tribe or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved Programmatic Agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the President of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional Programmatic Agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the Act and the SHPO is signatory to Programmatic Agreement, the THPO assumes the role of a signatory, including the right to terminate a regional Programmatic Agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The Agency Official shall notify the parties with which it has consulted that a Programmatic Agreement has been executed under this paragraph (b)(2), provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a Programmatic Agreement are not being carried out, or if such an agreement is terminated, the Agency Official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing Programmatic Agreements for complex or multiple undertakings.* Consultation to develop a Programmatic Agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the Agency Official shall comply with the provisions of subpart B of this part for each individual undertaking.

(c) *Exempted categories.*—(1) *Criteria for establishing.* An Agency Official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the Act.

(2) *Public participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The Agency Official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Agency Official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the public. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt. The decision shall be based on the consistency of the exemption with the purposes of the Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the Act.

(6) *Legal consequences.* any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the Agency Official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B.

(7) *Termination.* The Council may terminate an exemption at the request of the Agency Official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the Agency Official 30 days before termination becomes effective.

(8) *Notice.* The Agency Official shall publish notice of any approved exemption in the **Federal Register**.

(d) *Standard treatments.*—(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the **Federal Register**.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part.

The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an Agency Official has proposed a standard treatment, the Council may request the Agency Official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of the SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in paragraph (f) of this section.

(5) *Termination.* The Council may terminate a standard treatment by publication of a notice in the **Federal Register** 30 days before the termination takes effect.

(e) *Program comments.* An Agency Official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The Agency Official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the Agency Official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The Agency Official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of the SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in paragraph (f) of this section.

(5) *Council action.* Unless the Council requests additional documentation, notifies the Agency Official that it will decline to comment, or obtains the consent of the Agency Official to extend the period for providing comment, the Council shall comment to the Agency Official within 45 days of the request.

(i) If the Council comments, the Agency Official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the **Federal Register** of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the Agency Official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an Agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the Agency Official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the Agency Official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the Agency Official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them.

(2) *Results of consultation.* The Agency Official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The Agency Official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

§ 800.15 Tribal, State, and Local Program Alternatives. (Reserved)

§ 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w–6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day* or *days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an Agency Official that effectively precludes the Council from providing comments which the Agency Official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of Agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register Criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s) *Native Hawaiian organization* means any organization which serves and represents the interests of native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians. "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic Agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the Act. For the purposes of subpart B of this part, the term also includes the designated representative of an Indian tribe that has not formally assumed the SHPO's responsibilities when an undertaking occurs on or affects historic properties on the tribal lands of the Indian tribe. (See § 800.2(c)(2)).

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A to Part 800—Criteria for Council Involvement in Reviewing Individual Section 106 Cases

Introduction. This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

General Policy. The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

Specific Criteria. The Council is likely to enter the section 106 process at the steps specified in this part when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

Dated: June 30, 2000.

John M. Fowler,

Executive Director.

[FR Doc. 00–17155 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–10–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Availability of Environmental Assessment and Preliminary Finding of No Significant Impact

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Availability of Environmental Assessment and Preliminary Finding of No Significant Impact.

SUMMARY: An environmental assessment on the Council's proposed regulatory revisions of its rule, published in this issue of the **Federal Register**, was prepared in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the Advisory Council on Historic Preservation's NEPA regulations, 36 CFR part 805. The proposed rule implements Section 106 of the National Historic Preservation Act. The environmental assessment made a preliminary determination that promulgation of the revised rule will not have a significant impact on the quality of the human environment and that preparation of an environmental impact statement will not be necessary. Copies of the environmental assessment and preliminary finding of no significant impact may be obtained by contacting the person listed below. Those interested may submit comments on the environmental assessment and preliminary finding of no significant impact to the address listed below no later than August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Javier Marques, Assistant General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004. (202) 606–8503.

Dated: June 30, 2000.

John M. Fowler,

Executive Director.

[FR Doc. 00–17156 Filed 7–10–00; 8:45 am]

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Federal Register

Tuesday,
July 11, 2000

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 2 et al
Federal Acquisition Regulation; Definitions for Sealed Bid and Negotiated Procurements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 14, 15, 28, 35, and 52

[FAR Case 2000–403]

RIN 9000–AI84

Federal Acquisition Regulation; Definitions for Sealed Bid and Negotiated Procurements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide consistent definitions for sealed bids and negotiated procurements. This case is one of a series of cases in response to the White House memorandum, Plain Language in Government Writing, dated June 1, 1999. The Councils' proposed amendments are intended only to reorganize, simplify, and clarify the FAR. The Councils do not intend to make any substantive change to the FAR by these amendments. Comments should address any potential unintended substantive changes to the FAR resulting from the proposed amendments.

DATES: Interested parties should submit comments in writing on or before September 11, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to:

General Services Administration
FAR Secretariat (MVR)
1800 F Street, NW, Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Submit electronic comments via the Internet to: farcase.2000–403@gsa.gov

Please submit comments only and cite FAR case 2000–403 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2000–403.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the FAR to clarify definitions that are used for sealed bid and negotiated procurements. The rule—

- Moves the definitions of "bid sample" and "descriptive literature" from FAR Part 14 to FAR 2.101 because the definitions apply to more than one FAR, (*e.g.* Parts 14 and 15).
- Amends those definitions and the definition of "offer" in accordance with plain language guidelines;
- Revises applicable provisions in FAR Part 52 to conform with the new definitions;
- Adds a new definition for "solicitation" at FAR 2.101;
- Provides definitions for "bid" and "bidder" in FAR Part 28 because, as used in that part, the terms address sealed bid and negotiated acquisitions; and
- Revises 3.302 by deleting "invitation for bids" and substituting "solicitation."

We also reviewed every instance where the terms "offeror," "prospective offeror," and "potential offeror" are used in the FAR. The rule corrects policy in FAR 15.201(f), 15.609(e), and 35.007(g) because the term "prospective offeror" is not used properly. Where we mean an entity that is actively seeking a contract, we use the term "prospective offeror." However, those cites describe processes that are set up to ensure fair and open competition. Therefore, any interested party is able to participate, including parties that the Government has not yet identified. Therefore, the proposed rule uses the more general term "potential offeror."

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 3, 14, 15, 28, 35, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–403), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR parts 2, 3, 14, 15, 28, 35, and 52

Government procurement.

Dated: July 5, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 3, 14, 15, 28, 35, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 3, 14, 15, 28, 35, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Bid sample,;" "Descriptive literature," and "Solicitation;" and revise the definition "Offer" to read as follows:

2.101 Definitions.

* * * * *

Bid sample means a product sample required to be submitted by an offeror to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the solicitation (*e.g.*, balance, ease of use, or pattern).

* * * * *

Descriptive literature means information provided by an offeror, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

* * * * *

Offer means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for

bids (sealed bidding) are offers called "bids" or "sealed bids;" responses to requests for proposals in negotiated acquisitions are offers called "proposals;" responses to requests for quotations in simplified acquisitions are called "quotations" not offers. For unsolicited proposals, see subpart 15.6.

* * * * *

Solicitation means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called "invitations for bids." Solicitations under negotiated procedures are called "requests for proposals." Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. In section 3.302, revise the definition "Line item" to read as follows:

3.302 Definitions.

* * * * *

Line item means an item of supply or service, specified in a solicitation, that the offeror must separately price.

PART 14—SEALED BIDDING

4. Amend section 14.201–6 as follows:

(a) Revise paragraph (a);

(b) Remove paragraphs (b)(1) and (b)(2) and redesignate paragraphs (b)(3) and (b)(4) as (b)(1) and (b)(2), respectively;

(c) In paragraph (o)(2), remove "14.202–4(f)(1)" and add "14.202–4(e)(1)" in its place; and

(d) In paragraph (o)(3), remove "14.202–4(f)(2)" and add "14.202–4(e)(2)" in its place.

The revised text reads as follows:

14.201–6 Solicitation provisions.

(a) The provisions prescribed in this subsection apply to preparation and submission of bids in general. See other FAR parts for provisions and clauses related to specific acquisition requirements.

* * * * *

14.202–4 [Amended]

5. Amend section 14.202–4 by removing paragraph (a); redesignating paragraphs (b) through (h) as (a) through (g), respectively; and in the newly redesignated paragraph (g) remove "of" from the paragraph heading.

6. In section 14.202–5, remove paragraph (a); redesignate paragraphs (b) through (f) as (a) through (e), respectively; and revise the newly designated paragraphs (a) through (e) to read as follows:

14.202–5 Descriptive literature.

(a) *Policy.* Contracting officers must not require bidders to furnish descriptive literature unless it is needed before award to determine whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

(b) *Justification.* The contracting officer must document in the contract file the reasons why product acceptability cannot be determined without the submission of descriptive literature, except when the contract specifications require submission.

(c) *Requirements of invitation for bids.* (1) The invitation must clearly state—

(i) What descriptive literature the bidder must furnish;

(ii) The purpose for requiring the literature;

(iii) The extent of its consideration in the evaluation of bids; and

(iv) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature provided does not comply with the requirements of the invitation.

(2) If bidders must furnish descriptive literature, see 14.201–6(p).

(d) *Waiver of requirements for descriptive literature.* (1) The contracting officer may waive the requirement for descriptive literature if—

(i) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the contracting activity; and

(ii) The contracting officer determines that the product offered by the bidder complies with the specification requirements of the current invitation for bids. When the contracting officer waives the requirement, see 14.201–6(p)(2).

(2) When descriptive literature is not necessary and a waiver of literature requirements of a specification has been authorized, the contracting officer must include a statement in the invitation that, despite the requirements of the specifications, descriptive literature will not be required.

(3) If the solicitation provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature furnished with the bid or a previously furnished product. If the bid is submitted on one basis, the bidder may not have it considered on the other basis after bids are opened.

(e) *Unsolicited descriptive literature.* If descriptive literature is furnished when it is not required by the invitation for bids, the procedures set forth in 14.202–4(g) must be followed.

PART 15—CONTRACTING BY NEGOTIATION

7. In section 15.201, revise paragraph (f) to read as follows:

15.201 Exchanges with industry before receipt of proposals.

* * * * *

(f) General information about agency mission needs and future requirements may be disclosed at any time. After release of the solicitation, the contracting officer must be the focal point of any exchange with potential offerors. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, but no later than the next general release of information, to avoid creating an unfair competitive advantage. Information provided to a potential offeror in response to its request must not be disclosed if it would reveal the potential offeror's confidential business strategy, and is protected under 3.104 or subpart 24.2. When conducting a presolicitation or preproposal conference, materials distributed at the conference should be made available to all potential offerors, upon request.

8. In section 15.609, revise paragraph (e) to read as follows:

15.609 Limited use of data.

* * * * *

(e) Use the notice in paragraph (d) of this section solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, do not use this notice to justify withholding of a record, or to improperly deny public access to a record, where an obligation is imposed by the Freedom of Information Act, 5 U.S.C. 552. An offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

* * * * *

PART 28—BONDS AND INSURANCE

9. Revise section 28.000 to read as follows:

28.000 Scope of part.

This part prescribes requirements for obtaining financial protection against losses under contracts that result from

use of the sealed bid or negotiated methods. It covers bid guarantees, bonds, alternative payment protections, security for bonds, and insurance.

10. Amend section 28.001 as follows:

(a) Add an introductory paragraph;

(b) In the definitions "Attorney-in-fact," "Insurance," and "Power of attorney," remove ", as used in this part,"; and

(c) Add the definitions, in alphabetical order, "Bid" and "Bidder" to read as follows:

28.001 Definitions.

As used in this part:

* * * * *

Bid means any response to a solicitation, including a proposal under a negotiated acquisition. See the definition of "offer" at 2.101.

* * * * *

Bidder means any entity that is responding or has responded to a solicitation, including an offeror under a negotiated acquisition.

* * * * *

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

11. In section 35.007, revise paragraph (g) to read as follows:

35.007 Solicitations.

* * * * *

(g) The contracting officer should ensure that potential offerors fully understand the details of the work, especially the Government interpretation of the work statement. If the effort is complex, the contracting officer should provide potential offerors an opportunity to comment on the details of the requirements in the work statement, the contract Schedule, and any related specifications. This may be done at a preproposal conference (see 15.201).

* * * * *

PART 52—SOLICITATION PROVISIONS AND REMOVED AND CONTRACT CLAUSES

52.214–1 [Reserved]

12. Section 52.214–1 is removed and reserved.

13. In section 52.214–20, revise the introductory text, the date of the provision, paragraphs (a), (b), and the introductory text of paragraph (c); and in Alternate I and Alternate II remove "14.202–4(f)(1)" and add "14.202–4(e)(1)", in their places, respectively. The revised text reads as follows:

52.214–20 Bid samples.

As prescribed in 14.201–6(o)(1), insert the following provision:

Bid Samples (Date)

(a) *Bid sample* means a product sample required to be submitted by a bidder to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the invitation for bid (*e.g.*, balance, ease of use, or pattern).

(b) Bidders must furnish bid samples as part of the bid. The Government must receive the bid samples by the time specified in the invitation for bid. If the bidder fails to submit samples on time, the Government will reject the bid, except that the Contracting Officer will consider a late sample sent by mail under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The Government will test or evaluate bid samples to determine compliance with all the characteristics listed for examination in this solicitation. The Government will reject the bid when the bid fails to conform to the required characteristics. Products delivered under any resulting contract must conform to—

* * * * *

(End of Provision)

14. Revise section 52.214–21 to read as follows:

52.214–21 Descriptive Literature.

As prescribed in 14.201–6(p)(1), insert the following provision:

Descriptive Literature (Date)

(a) *Descriptive literature* means information furnished by a bidder, such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

(b) Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as—

(1) Design;

(2) Materials;

(3) Components;

(4) Performance characteristics; and

(5) Methods of manufacture, assembly, construction, or operation.

(c) Descriptive literature, required elsewhere in this solicitation, shall be—

(1) Identified to show the item(s) of the offer to which it applies; and

(2) Received by the time specified in this solicitation.

(d) If the bidder fails to submit descriptive literature on time, the Government will reject the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(e) If the descriptive literature fails to show that the product offered conforms to the requirements of this solicitation, the Government will reject the bid.

(End of Provision)

Alternate I (Date). As prescribed in 14.201–6(p)(2), add the following paragraphs (f) and (g) to the basic provision.

(f) The Contracting Officer may waive the requirement for furnishing descriptive literature if the offeror has supplied a product that is the same as that required by this solicitation under a prior contract. A bidder requesting a waiver of this requirement shall provide the following information:

Prior contract number_____ _____

Date of prior contract_____ _____

Contract line item number of product supplied_____ _____

Name and address of Government activity to which delivery was made_____ _____

Date of final delivery of product supplied_____ _____

(g) Bidders shall submit offers on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (f) of this provision. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. The Government will disregard a bidder's request for a waiver under paragraph (f), if that bidder has submitted the descriptive literature required under this solicitation.

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H.R. 642/P.L. 106–231
To redesignate the Federal building located at 701 South Santa Fe Avenue in Compton, California, and known as the Compton Main Post Office, as the "Mervyn Malcolm Dymally Post Office Building". (July 6, 2000; 114 Stat. 484)

H.R. 643/P.L. 106–232
To redesignate the Federal building located at 10301 South Compton Avenue, in Los Angeles, California, and known as the Watts Finance Office, as the "Augustus F. Hawkins Post Office Building". (July 6, 2000; 114 Stat. 485)

H.R. 1666/P.L. 106–233
To designate the facility of the United States Postal Service at 200 East Pinckney Street in Madison, Florida, as the "Captain Colin P. Kelly, Jr. Post Office". (July 6, 2000; 114 Stat. 486)

H.R. 2307/P.L. 106–234
To designate the building of the United States Postal Service located at 5 Cedar Street in Hopkinton, Massachusetts, as the "Thomas J. Brown Post Office Building". (July 6, 2000; 114 Stat. 487)

H.R. 2357/P.L. 106–235
To designate the United States Post Office located at 3675 Warrensville Center Road in Shaker Heights, Ohio, as the "Louise Stokes Post Office". (July 6, 2000; 114 Stat. 488)

H.R. 2460/P.L. 106–236
To designate the United States Post Office located at 125 Border Avenue West in Wiggins, Mississippi, as the "Jay Hanna 'Dizzy' Dean Post Office". (July 6, 2000; 114 Stat. 489)

H.R. 2591/P.L. 106–237
To designate the United States Post Office located at 713 Elm Street in Wakefield, Kansas, as the "William H. Avery Post Office". (July 6, 2000; 114 Stat. 490)

H.R. 2952/P.L. 106–238
To redesignate the facility of the United States Postal Service located at 100 Orchard Park Drive in Greenville, South Carolina, as the "Keith D. Oglesby Station". (July 6, 2000; 114 Stat. 491)

H.R. 3018/P.L. 106–239
To designate certain facilities of the United States Postal Service in South Carolina. (July 6, 2000; 114 Stat. 492)

H.R. 3699/P.L. 106–240
To designate the facility of the United States Postal Service located at 8409 Lee Highway in Merrifield, Virginia, as the "Joel T. Broyhill Postal Building". (July 6, 2000; 114 Stat. 494)

H.R. 3701/P.L. 106–241
To designate the facility of the United States Postal Service located at 3118 Washington Boulevard in Arlington, Virginia, as the "Joseph L. Fisher Post Office Building". (July 6, 2000; 114 Stat. 495)

H.R. 4241/P.L. 106–242
To designate the facility of the United States Postal Service located at 1818 Milton Avenue

in Janesville, Wisconsin, as the "Les Aspin Post Office Building". (July 6, 2000; 114 Stat. 496)

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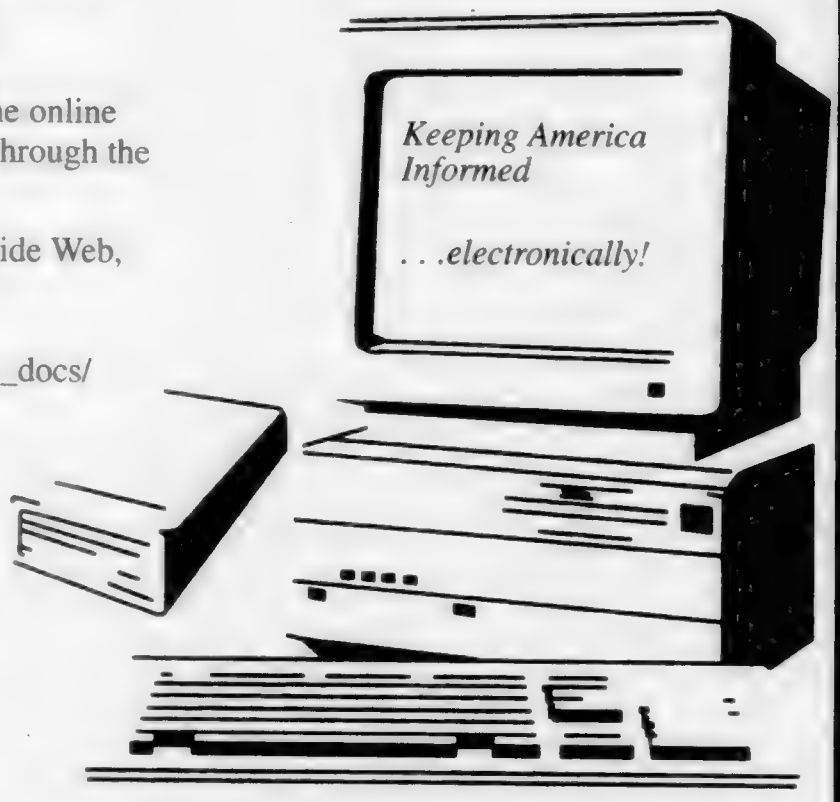

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–61–AD; Amendment 39–11061; AD 99–05–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech 17, 18, 19, 23, 24, 33, 35, 36/A36, A36TC/B36TC, 45, 50, 55, 56, 58, 58P, 58TC, 60, 65, 70, 76, 77, 80, 88, and 95 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; withdrawal.

SUMMARY: This amendment withdraws Airworthiness Directive (AD) 99–05–13, which currently applies to Raytheon Aircraft Company (Raytheon) Beech 17, 18, 19, 23, 24, 33, 35, 36/A36, A36TC/B36TC, 45, 50, 55, 56, 58, 58P, 58TC, 60, 65, 70, 76, 77, 80, 88, and 95 series airplanes. AD 99–05–13 requires installing a placard on the fuel tank selector to warn of the no-flow condition that exists between the fuel tank detents. Since the issuance of AD 99–05–13, the Federal Aviation Administration (FAA) has re-evaluated all information related to this subject, and determined that the subject matter in this AD is an operational issue and does not address an unsafe condition. Accordingly, this action withdraws AD 99–05–13.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

Reports of engine stoppage on Raytheon Beech 17, 18, 19, 23, 24, 33, 35, 36/A36, A36TC/B36TC, 45, 50, 55, 56, 58, 58P, 58TC, 60, 65, 70, 76, 77, 80, 88, and 95 series airplanes caused FAA to issue AD 99–05–13, Amendment 39–11061 (64 FR 10560, March 5, 1999). AD 99–05–13 currently requires installing a placard on the fuel tank selector to warn of the no-flow condition that exists between the fuel tank detents.

After issuing AD 99–05–13, we re-evaluated all information related to the subject matter of this AD and determined that:

- The positioning of the fuel selector is an operational issue and not an unsafe condition under part 39 of the Federal Aviation Regulations (14 CFR part 39) and should be handled by other methods;
- Normal operating and procedural information such as this should be handled through regular revisions to the Airplane Flight Manual (AFM) or Pilot's Operating Handbook (POH); and
- Issuing an AD to require a placard that conveys normal operating information reduces the pilots' sensitivity to true emergency information that should be conveyed by placards.

Consequently, FAA issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to withdraw AD 99–05–13. This proposal published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 30, 2000 (65 FR 16345).

Was the Public Invited to Comment?

The FAA invited interested persons to participate in the making of this amendment. The following describes each comment and presents FAA's response.

Comment Issue No. 1: AD is Valid if an Unsafe Condition Exists

What is the Commenter's Concern?

One commenter states that FAA is withdrawing this AD because it is an operational issue and should be handled by other methods. The commenter believes that the AD is valid because FAA has the authority to issue an AD on any issue as long as an unsafe condition exists.

What is FAA's Response to the Concern?

We concur that we have the authority and responsibility to act on an unsafe condition, regardless of the factors that create the unsafe condition. We were in error in including information in the NPRM specifying that an operational procedure cannot be the subject of an AD. However, we determined that the fuel selector valve, when functioning properly and used properly, does not create an unsafe condition. The FAA determined that the procedures to operate the fuel selector valve are readily available and that our authority is not to issue AD's against aircraft where the operators do not operate the equipment correctly. Utilizing positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

Comment Issue No. 2: AD is Needed for Airplanes Without an AFM/POH

What is the Commenter's Concern?

One commenter states that many airplanes currently affected by AD 99–05–13 are not required to have a POH, and Civil Aviation Regulations (CAR) part 3 allows a manufacturer to use placards instead of an AFM. The commenter believes that, for these reasons, the AD is valid.

What is FAA's Response to the Concern?

We concur that many aircraft do not require a POH and were certificated under CAR part 3 where the use of placards is acceptable over an AFM. However, airplanes in this situation usually only have placards installed that contain safety information when an unusual design, operating, or handling characteristic is prevalent.

The FAA has the authority to issue an AD to require operational placards. However, as discussed above, utilizing a positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

Comment Issue No. 3: Placards Are Necessary to Convey Safe Operation

What is the Commenter's Concern?

One commenter states that the AD is valid because placards are necessary to

convey safe operation for airplanes certificated under the Civil Aviation Regulations and part 23 of the Federal Aviation Regulations (14 CFR part 23). The commenter also states that placards should not be limited to only emergency information.

What is FAA's Response to the Concern?

We concur that placards are not just limited to emergency information. All required placards should convey information for safe operation. However, both CAR 3.777/3.777–1 and 14 CFR 23.1541 state that placards should convey safe operation information if the aircraft has unusual design, operation, or handling characteristics. As discussed previously, utilizing a positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

Comment Issue No. 4: FAA Has Changed the Definition of Unsafe Condition

What is the Commenter's Concern?

One commenter states that, by withdrawing AD 99–05–13, FAA will have changed the historical definition of an unsafe condition. We infer that the commenter wants to maintain the effectiveness of AD 99–05–13.

What is FAA's Response to the Concern?

We do not concur that we have altered the definition of an unsafe condition. Determination of an unsafe condition is based on each individual situation. Factors that are considered include the design, operation, or handling characteristics of the type design airplanes. As discussed above, utilizing a positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

Comment Issue No. 5: Numerous Occurrences Justify the Current AD

What is the Commenter's Concern?

One commenter states that placing a warning placard specifying the safe operation of the fuel selector as AD 99–05–13 requires supports the 49 occurrences from the records of the National Transportation Safety Board (NTSB). We infer that the commenter wants to maintain the effectiveness of AD 99–05–13.

What is FAA's Response to the Concern?

We do not concur with the commenter's assessment. We have reviewed 37 reports of the above-referenced 49 occurrences (commenter only provided 37). Approximately half of the occurrences listed the cause as fuel starvation in combination with the fuel selector not positioned in the detent. The most prevalent cause was failure to follow checklist procedures. In no instance was the pilot's lack of knowledge or understanding of the positioning of the fuel selector listed as the cause of the occurrence.

In addition, NTSB has not recommended that FAA issue an AD on this subject. Therefore, we conclude that the commenter believes NTSB supports the placard requirement, when in fact, NTSB has made no recommendation supporting it. Again, utilizing a positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

The FAA's Determination

What is FAA's Final Determination on This Issue?

Based on the above information, FAA has determined that there is no need for AD 99–05–13 and that it should be withdrawn.

This action withdraws AD 99–05–13. Withdrawal of AD 99–05–13 will not preclude us from issuing another notice in the future, nor will it commit us to any course of action in the future.

Regulatory Impact

Since this action only withdraws an AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, FAA withdraws AD 99–05–13, Amendment 39–11061 (64 FR 10560, March 5, 1999).

Issued in Kansas City, Missouri, on July 5, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17622 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–30]

Amendment to Class E Airspace; Albion, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Albion, NE.

DATES: The direct final rule published at 65 FR 26126 is effective on 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 5, 2000 (65 FR 26126). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on June 28, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–17610 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–18]

Amendment to Class E Airspace; Hugoton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Hugoton Municipal Airport, Hugoton, KS. A review of the Class E airspace area for Hugoton Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 24, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–18, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Hugoton, KS. A review of the Class E airspace for Hugoton Municipal Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Hugoton Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response t this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–18." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Hugoton, KS [Revised]

Hugoton Municipal Airport, KS
(Lat. 37°09′47″ N., long. 101°22′14″ W.)
Hugoton NDB
(Lat. 37°09′49″ N., long. 101°22′29″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5–mile radius of Hugoton Municipal Airport and with 2.6 miles each side of the 199° bearing from the Hugoton NDB extending from the 6.5-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on June 28, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–17609 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–17]

Amendment to Class E Airspace; McPherson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at McPherson Airport, McPherson, KS. A review of the Class E airspace area for McPherson Airport indicates it does not comply with the criteria for 700 feet Above Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 24, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–17, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at McPherson, KS. A review of the Class E airspace for McPherson Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at McPherson Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse no negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, and adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire, Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–17." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air.)

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 McPherson, KS [Revised]

McPherson Airport, KS
(Lat. 38°21'09" N., long. 97°41'29" W.
McPherson NDB
(Lat. 38°20'54" N., long. 97°41'14" W.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of McPherson Airport and within 2.6 miles each side of the 209° bearing from the McPherson Airport extending from the 6.5-mile radius to 10.5 miles southwest of the airport and within 2.6 miles each side of the 359° bearing from the McPherson NDB extending from the 6.5-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on June 29, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–17608 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–14]

Revision of Class E Airspace; Walnut Ridge, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Walnut Ridge, AR. The development of a VHF Omnidirectional Range (VOR) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Walnut Ridge Regional Airport, Walnut Ridge, AR, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Walnut Ridge Regional Airport, Walnut Ridge, AR.

DATES: Effective 0901 UTC, October 5, 2000. Comments must be received on or before August 28, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–14, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Walnut Ridge, AR. The development of a VOR or GPS SIAP, at Walnut Ridge Regional Airport, Walnut Ridge, AR, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to Walnut Ridge Regional Airport, Walnut Ridge, AR.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or

negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed .

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addresed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–ASW–15." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation: (a) Is not a "significant regulatory action," under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR E5 Walnut Ridge, AR [Revised]

Walnut Ridge Regional Airport, AR
(Lat. 36°07′31″N., long. 90°55′29″ W.)
Walnut Ridge VORTAC
(Lat. 36°06′36″ N., long. 90°57′13″ W.)
Pocahontas, Nick Wilson Field, AR
(Lat. 36°14′44″ N., long. 90°57′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Walnut Ridge Regional Airport and within 2.5 miles each side of the 235° radial of the Walnut Ridge VORTAC extending from the 6.7-mile radius to 8.8 miles southwest of the airport and within a 7.8-mile radius of Nick Wilson Field.

* * * * *

Issued in Fort Worth, TX, on June 30, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Soutwest Region.

[FR Doc. 00–17607 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–11]

Revocation of Class E Airspace, Freeport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revokes the Class E Airspace at Freeport, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 21302 is effective 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 21, 2000, (65 FR 21302). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 30, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–17606 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN65–01–7290a; FRL–6712–7]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a State Implementation Plan (SIP) revision for the State of Minnesota which was submitted on December 7, 1999. This SIP revision is to remove an Administrative Order and replace it with a federally enforceable State operating permit for Commercial Asphalt's facility located on Red Rock Road in the city of St. Paul. The accompanying support documents for the Administrative Order, such as the air dispersion modeling, remain in the SIP as they are now.

If EPA receives adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This rule will be effective September 11, 2000, unless EPA receives adverse or critical comments by August 11, 2000. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Christos Panos, at (312) 353–8328 before visiting the Region 5 Office.)

A copy of these SIP revisions is available for inspection at this Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

A. What Action is EPA Taking?
B. Why was this SIP Revision Submitted?
C. What Changes will this Revision Create?
D. What is a Federally Enforceable State Operating Permit and How does it Work?
E. What is an Administrative Order?
F. How are Administrative Orders Replaced by Federally Enforceable State Operating Permits?
G. What is EPA's Final Determination?

A. What Action Is EPA Taking?

In this action EPA is approving the revision to Minnesota's SIP to remove Commercial Asphalt's Administrative Order from the SIP and replace it with a federally enforceable State operating permit.

B. Why Was This SIP Revision Submitted?

This action is intended to streamline the permitting process in Minnesota and, thereby, reduce the permitting burden both on sources within the State and on the Minnesota Pollution Control Agency (MPCA).

C. What Changes Will This Revision Create?

The only thing changing in the SIP is the enforceable document from the Administrative Order to the federally enforceable State operating permit.

D. What Is a Federally Enforceable State Operating Permit and How Does It Work?

On May 2, 1995, the MPCA's revised operating permit rule was approved by EPA as a federally enforceable State operating permit program (FESOP) (60 FR 21447). Two things make the process of allowing State permits to act as the enforceable documents containing SIP requirements possible in Minnesota.

First, Minnesota's operating permit program requires all State permits, not only Title V permits, to contain all applicable requirements. Second, permits submitted as site-specific SIPS will have non-expiring SIP conditions (denoted as "Title I conditions"). For Federal approvability, any State requirement that is submitted as a revision to the federally enforceable SIP must be non-expiring or permanent.

EPA approved the use of the term "Title I condition" and its use as indicating that a condition will not expire even if the permit containing that condition expires. The use of the term, "Title I condition" in State operating permits or, subsequently, Title V permits, makes the requirements permanent, and allows Minnesota the use of State operating permits or Title V permits as vehicles for SIP conditions. The State defines "Title I conditions" as:

"Any condition based on a source specific determination of ambient impacts imposed for the purpose of achieving or maintaining attainment with the national ambient air quality standard and which was part of a SIP approved by EPA or submitted to EPA and pending approval under section 110 of the ACT."

All SIP requirements in Commercial Asphalt's permit are cited as "Title I condition" SIP for PM10.

E. What Is an Administrative Order?

MPCA has and non-expiring Administrative Orders as the federally enforceable documents in nonattainment SIPs. An Administrative Order contains the emission limits, operating conditions, monitoring, recordkeeping, and reporting requirements that the source must meet in order for the area to attain and maintain the National Ambient Air Quality Standards.

F. How Are Administrative Orders Replaced by Federally Enforceable State Operating Permits?

MPCA submitted its operating permit rules into the SIP so that permits issued pursuant to these rules could be considered federally enforceable documents for imposing emission limitations on culpable sources in nonattainment areas. Using permits replaces the MPCA's past practice of issuing an Administrative Order to such sources. EPA approved in concept the use of such permits in lieu of Administrative Orders, but noted that the permits and SIP submittals must be reviewed on a case-by-case basis.

G. What Is EPA's Final Determination?

Based on the rationale set forth above and in EPA's Technical Support Document, we are approving the removal of Commercial Asphalt's Administrative Order from the SIP and its replacement with a federally enforceable State operating permit. The removal of the Administrative Order does not affect the integrity of this source's site-specific SIP as the remaining conditions, listed as "Title I conditions" in the State operating permit, contain the necessary emission limits, as well as the monitoring, recordkeeping, and reporting requirements to enforce those limits.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed.

This action will be effective September 11, 2000 without further notice unless relevant adverse comments are received by August 11, 2000. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 11, 2000.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the State Implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory

requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 11, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

Title 40 of Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(54) On December 7, 1999, the State of Minnesota submitted to remove an Administrative Order and replace it with a federally enforceable State operating permit for Commercial Asphalt's facility located on Red Rock Road in the city of St. Paul. EPA approved a federally enforceable State operating permit (FESOP)(60 FR 21447) for the State of Minnesota on May 2, 1995.

(i) Incorporation by reference

(A) Air Emission Permit No. 12300347–002, issued by the MPCA to Commercial Asphalt CO-Plant 905, on September 10, 1999. Title I conditions only.

[FR Doc. 00–17347 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301018; FRL–6595–1]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of bifenthrin in or on caneberry subgroup, grape, head lettuce and peppers, bell and non-bell. The Interregional Research Project (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 12, 2000. Objections and requests for hearings, identified by docket control number OPP–301018 must be received by EPA on or before September 11, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301018 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–7610; and e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301018. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of December 22, 1999 (64 FR 71772) (FRL–6396–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP) for tolerances by IR–4, New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. This notice included a summary of the petitions prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.442 be amended by establishing tolerances for residues of the insecticide bifenthrin, (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate, in or on the following commodities:

(1) PP 9E6016 proposed a tolerance for grape at 0.2 ppm.

(2) PP 9E6030 proposed a tolerance for peppers, bell and non-bell at 0.5 ppm.

(3) PP 9E6031 proposed a tolerance for head lettuce at 2.0 ppm, subsequently revised in this final rule to 3.0 ppm.

(4) PP 9E6034 proposed a tolerance for the caneberry at 1.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of bifenthrin on caneberry subgroup at 1.0 ppm, grape at 0.2 ppm, head lettuce at 3.0 ppm, and peppers, bell and non-bell at 0.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bifenthrin are discussed in this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY

Guideline No./Study Type	Results
870.3700a Prenatal developmental in rodents.	Maternal NOAEL = 1 mg/kg/day LOAEL = 2 mg/kg/day based on tremors Developmental NOAEL = 1 mg/kg/day LOAEL = 24 mg/kg/day based on increased incidence of hydroureter
870.3700b Prenatal developmental in non-rodents.	Maternal NOAEL = 2.67 mg/kg/day LOAEL = 4 mg/kg/day based on head and forelimb twitching No Developmental effects observed

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY—Continued

Guideline No./Study Type	Results
870.3800 Reproduction and fertility effects.	Parental/Systemic NOAEL = 3 mg/kg/day LOAEL = 5 mg/kg/day Reproductive NOAEL = 5 mg/kg/day LOAEL = no reproductive effects observed at the highest dose tested (5 mg/kg/day) Offspring NOAEL = 5 mg/kg/day LOAEL = no adverse effects observed at the highest dose tested (5 mg/kg/day)
870.4100b Chronic toxicity dogs.	NOAEL = 1.5 mg/kg/day LOAEL = 3 mg/kg/day based on increased incidence of tremors in both sexes
870.4200 Carcinogenicity rats.	NOAEL = 2.5 mg/kg/day LOAEL = 5 mg/kg/day based on increased incidence of tremors in both sexes and possible increases in organ-to-body weight ratios in males. There was no evidence of carcinogenicity.
870.4300 Carcinogenicity mice.	NOAEL = 2.5 mg/kg/day LOAEL = 10 mg/kg/day based on incidence of tremors in both sexes. Carcinogenic potential was evidenced by statistically significant increased trend for hemangiopericytomas in the urinary bladders of males, a significant dose-related trend for combined hepatocellular adenomas and carcinomas in males, and a significantly higher incidence of combined lung adenomas and carcinomas in females.
Gene Mutation.	A gene mutation in Salmonella (Ames) was negative.
Cytogenetics.	Chromosomal aberrations in Chinese hamster ovary and rat bone marrow cells were negative.
Other Effects.	HGPRT locus mutation in mouse lymphoma cells and unscheduled DNA synthesis in rat hepatocytes were negative.
870.7485 Metabolism and pharmacokinetics.	Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. There was an accumulation of unchanged compound in fat upon chronic administration with slow elimination. Otherwise, bifenthrin was rapidly metabolized and excreted. Unchanged bifenthrin is the major residue component of toxicological concern in meat and milk.
870.7600 Dermal penetration.	Dermal absorption rate is 25%

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD=NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BIFENTHRIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary general population including infants and children.	NOAEL =1.0 mg/kg/day UF = 100 Acute RfD = 0.01 mg/kg/day FQPA SF = 1X	aPAD = acute RfD ÷ FQPA SF = 0.01 mg/kg/day	Rat developmental LOAEL = 2 mg/kg/day based on tremors in dams during and post dosing
Chronic Dietary all populations.	NOAEL= 1.5 mg/kg/day UF = 100 Chronic RfD = 0.015 mg/kg/day	cPAD = chronic RfD ÷ FQPA SF = 0.015 mg/kg/day	Dog chronic feeding LOAEL = 3 mg/kg/day based on tremors in both sexes

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BIFENTHRIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-Term Dermal (1 to 7 days) (Residential).	Oral NOAEL= 1.0 mg/kg/day (dermal absorption rate = 25%)	LOC for MOE = 100 (Residential)	Rat developmental LOAEL = 2 mg/kg/day based on tremors in dams during and post dosing
Intermediate-Term Dermal (1 week to several months) (Residential).	Oral study NOAEL = 1.0 mg/kg/day (dermal absorption rate = 25%	LOC for MOE = 100 (Residential)	Rat developmental LOAEL = 2 mg/kg/day based on tremors in dams during and post dosing
Long-Term Dermal (several months to lifetime) (Residential).	Oral study NOAEL = 1.5 mg/kg/day (dermal absorption rate = 25% when appropriate)	LOC for MOE = 100 (Residential)	Dog chronic feeding LOAEL = 3 mg/kg/day based on tremors in both sexes
Long-Term Inhalation (several months to lifetime) (Residential).	Oral study NOAEL = 1.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Rat developmental LOAEL = 2 mg/kg/day based on tremors in dams during and post dosing (No appropriate inhalation studies available.)
Cancer (oral, dermal, inhalation).	Dietary/Dermal/Inhalation Exposure Group C carcinogen	RfD approach	Mouse Carcinogenicity, urinary bladder tumors in male mice.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.442) for the residues of bifenthrin, in or on a variety of raw agricultural commodities including tolerances on plants ranging from 0.05 ppm for corn grain (field, seed, and pop) to 10 ppm on dried hops. Tolerances are also established on animal commodities ranging from 0.05 ppm on eggs to 1.0 ppm in milk fat (reflecting 0.1 ppm in whole milk). Risk assessments were conducted by EPA to assess dietary exposures from bifenthrin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: In this acute analysis, probabilistic Monte Carlo analysis (Tier 3) was used. For those foods identified by EPA as single-serving commodities, the Monte Carlo simulation is based on iterative sampling from individual residue values from field trial data reflecting maximum application rates and minimum preharvest intervals. For those foods considered to be blended or processed, mean field trial residues were calculated. For those samples which contained residues at or below the limit of detection (LOD), ½ of the LOD was used. It was assumed that 100% of the following crops were treated with bifenthrin: artichoke, bananas, Brassica vegetable, caneberry, canola, citrus, cucurbits, eggplants, garden peas, grape, head lettuce, lima beans, peanuts, pears, peppers, potatoes, snap beans, and sweet corn. Processing factors for grapes were calculated using concentration factors (grape juice = 1.2X, raisins = 4.2X). Secondary residues for meat and milk were not affected by adding the uses on peppers, lettuce, grape, and caneberry since no animal feed items are associated with these crops.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Anticipated residue values which were determined from field trial data conducted at maximum label conditions of maximum application rates and minimum preharvest intervals. Mean anticipated residue values were calculated. One hundred percent of crop treated was assumed for all crops except hops (43%) and cottonseed-oil and cottonseed-meal (4%). Secondary residues for meat and milk were not affected by the new proposed uses.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To

provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bifenthrin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for bifenthrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of bifenthrin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentration in ground water (SCI-GROW) model, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent of the Reference dose or percent of the population adjusted dose. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to bifenthrin they are further discussed in the aggregate risk sections below.

Based on the GENEEC and the SCI-GROW models the EECs of bifenthrin in surface water and ground water for acute exposures are estimated to be 0.10 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The EECs for chronic exposures are estimated to be 0.032 ppb for surface water and 0.006 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Bifenthrin is currently registered for use on the following residential non-dietary sites: lawns to control flea infestation, pets and as a termiticide. Registered termiticide use of bifenthrin constitutes a chronic exposure scenario, however, the exposure is considered negligible, considering the application technique of the termiticide use (buried underground) and the fact that vapor pressure of bifenthrin is extremely low. The Agency conducted a residential exposure assessment for the lawn care uses of bifenthrin. This risk assessment is based on post-application to treated lawns (turf use), a worst case scenario estimate of residential exposure. An assessment of applicator exposure was not included since the registered products are primarily limited to commercial use and, therefore, applied by professional lawn care operators. Inhalation, dermal and oral non-dietary routes of exposure were evaluated by this short- and intermediate-term risk assessment. For adults, the routes of exposure from these registered residential uses include dermal and inhalation, and for infants and children, the routes of exposure include dermal, inhalation, and oral (non-dietary).

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether bifenthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bifenthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bifenthrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism

of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Developmental toxicity studies.* See summary of developmental toxicity studies in Unit IIIA. Toxicological Profile.

iii. *Reproductive toxicity study.* See summary of reproduction toxicity studies in Unit IIIA. Toxicological profile.

iv. *Conclusion.* There is a complete toxicity data base for bifenthrin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA Safety Factor for enhanced sensitivity of infants and children was reduced from 10X to 1X.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD – (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC. A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the U.S. EPA's Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary (food only) exposure to bifenthrin will occupy 60% of the aPAD for the U.S. population, 40% of the aPAD for females 13 years and older, 75% of the aPAD for infants (<1 year old) and 99.7% of the aPAD for children (1 to 6 years old). In addition, there is potential for acute dietary exposure to bifenthrin in drinking water. Despite this potential and after calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO BIFENTHRIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.01	60	0.10	0.006	140
Females 13 years and older	0.01	40	0.10	0.006	180
children (1 to 6 years old)	0.01	99.7	0.10	0.006	0.3

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to bifenthrin from food will utilize 3.0% of the cPAD for the U.S. population, and 8.2% of the cPAD for children (1 to 6 years old), the subpopulation at greatest risk. Bifenthrin is also registered for residential use on outdoor lawn/gardens, inside households, pets and as a termiticide. Based on the use pattern, chronic residential exposure to residues of the bifenthrin is not expected. In addition, there is potential for chronic dietary exposure to bifenthrin in drinking water. After calculating the DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENTHRIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.015	3.0	0.032	0.032	530

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENTHRIN—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Females (13 yrs. and above)	0.015	3.0	0.032	0.032	450
children (1 to 6 years old)	0.015	3.0	0.032	0.032	140

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Bifenthrin is currently registered for use that could result in short- and intermediate-term residential exposure. Registered termiticide use of bifenthrin constitutes a chronic exposure scenario; however, the exposure is considered negligible. The Agency has determined that it is appropriate to aggregate chronic food and water and short- and intermediate-term non-dietary exposures for bifenthrin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food (water not included) and residential exposures aggregated result in aggregate MOEs of 940 for adults, 350 for children ages 1 to 6 years old, and 470 for infants less than 1 year old based on chronic food and residential use, e.g., turf representing the worst case residential exposure scenario. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of bifenthrin in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern.

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BIFENTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	940	100	0.032	0.006	320
Children 1 to 6 yrs. old	350	100	0.032	0.006	71

Applying the same exposure assumptions as above for short-term exposure, and after calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern.

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO BIFENTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
U.S. Population	940	100	0.032	0.006	480
Children 1 to 6 yrs. old	350	100	0.032	0.006	107

4. *Aggregate cancer risk for U.S. population.* A quantitative (Q_1^*) dietary cancer risk assessment was not performed. Dietary risk concerns due to long-term consumption of bifenthrin are adequately addressed by the DEEM® chronic exposure analysis using the chronic RfD. For the U.S. population, only 3.0% of the cPAD (cRfD) is occupied by chronic food exposure. Based on a comparison of the calculated DWLOCs and the estimated exposure to bifenthrin in drinking water (0.032 µg/L), the Agency does not expect the chronic aggregate exposure to exceed 100% of the cPAD (cRfD) for adults. Thus, EPA concludes with reasonable certainty that the carcinogenic risk is within acceptable limits.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to bifenthrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated bifenthrin residue in plants. The data gathering method for pepper, lettuce, grapes, and caneberry is FMC method P–2132M, with a limit of quantitation of 0.05 ppm (given as 0.055 in some cases). This method is a variation of two other methods which have been submitted for inclusion in PAM II (FMC's Methods P–1031 and RAN–0140. This method has been adequately validated and is adequate for data collection. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue levels (MRL) have been established for residues of bifenthrin in/on bell or non-bell peppers, head lettuce, grape, or caneberries. International harmonization is therefore not an issue for these tolerances.

V. Conclusion

Therefore, the tolerances are established for residues of bifenthrin, (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate, in or on caneberry crop subgroup 13A at 1.0 ppm, grape at 0.2 ppm, head lettuce at 3.0 ppm and peppers at 0.5 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301018 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 11, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301018, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16,

1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.442 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Caneberry subgroup	1.0
* * * * *	
Grape	0.2
* * * * *	
Lettuce, head	3.0
* * * * *	
Pepper, bell	0.5
Peppers, non-bell	0.5
* * * * *	

* * * * *

[FR Doc. 00–17618 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6732–8]

Delaware: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Delaware has applied to EPA for Final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revisions cover regulatory changes adopted on August 23, 1999 to the State's authorized hazardous waste program, which include various amendments to Federal hazardous waste regulations through January 21, 1999. EPA has determined that Delaware's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization, and is authorizing the state program revisions through this immediate final action. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revisions should the Agency receive adverse comment. If EPA receives comments that oppose this action or portion(s) thereof, we will publish a document in the **Federal Register** withdrawing this rule or portion(s) thereof before it takes effect, and the separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize Delaware's hazardous waste program revisions will take effect.

DATES: This Final authorization for Delaware will become effective without further notice on September 11, 2000, unless EPA receives adverse comments by August 11, 2000. Once again, if EPA should receive such comments on its decision, the Agency will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. Copies of the Delaware program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8 a.m. to 4:30 p.m., Monday through Friday at the following addresses: Department of Natural Resources & Environmental Control, Division of Air & Waste Management, 89 Kings Highway, Dover, DE 19901, Phone number 302–739–3689 and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), provides for authorization of State hazardous waste programs under Subtitle C. Under RCRA section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste program. See also 40 CFR part 271. In fact, Congress designed RCRA so that the entire Subtitle C program would eventually be administered by the States in lieu of the Federal program. This is because the States are closer to, and more familiar with, the regulated community and therefore are in a better position to administer the programs and respond to local needs effectively.

After receiving authorization, the State administers the program in lieu of the Federal program, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Authorized States must revise their programs when EPA promulgates "new" Federal Standards that are more stringent or broader in scope than existing Federal Standards. States are not required to modify their programs when "new" Federal changes are less stringent than the existing Federal program or when changes reduce the scope of the existing Federal program. These changes are optional and are noted as such in the **Federal Register** (FR) notices in which the new Federal Standards are promulgated.

States which have received Final authorization from EPA under section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA concludes that Delaware's application for authorization of its program revisions meets all applicable statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Delaware Final authorization to operate its hazardous waste program as revised. Delaware now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA. Delaware also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Delaware subject to RCRA will now have to comply with the authorized State requirements instead of the analogous federal requirements in order to comply with RCRA. Delaware has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, in part, authority to:

- Perform inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements and suspend or revoke permits;
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Delaware is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and expects no comments that oppose this action. EPA is providing an opportunity for public comment now. In the proposed rules section of today's **Federal Register** EPA is publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization or portion(s) thereof, that document will serve as a proposal to authorize such changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization decision or portion(s) thereof, we will withdraw this authorization decision, or those portion(s) for which EPA received comments opposing its decision, by publishing a document in the **Federal Register**. We will address all public comments in a subsequent final action based on the proposed rule.

If EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste program, we may withdraw only that part of today's authorization rule. The authorization of the program changes that are not opposed by any comments may become effective on September 11, 2000. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

You should send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. We must receive your comments by August 11, 2000. You may not have an opportunity to comment again. If you want to comment on this action you must do so at this time.

F. What Has Delaware Previously Been Authorized for?

Delaware received final authorization effective June 22, 1984 (53 FR 23837, June 8, 1984) to implement its hazardous waste management program in lieu of the Federal program. On January 31, 1986 (51 FR 3954), the authorized Delaware program was incorporated by reference into the Code of Federal Regulations (CFR). On April 9, 1996, Delaware submitted a program revision application for additional approval in accordance with the requirements of 40 CFR 271.21(b)(3) (Procedures for Revisions of State Programs). Delaware received final authorization for this program revision application effective October 7, 1996 (as published in 61 FR 41345, August 8, 1996). On June 15, 1998, Delaware submitted a second program revision application for additional approval in accordance with the requirements of 40 CFR 271.21(b)(3) (Procedures for Revisions of State Programs). Delaware received final authorization for this program revision application effective October 19, 1998 (as published in 61 FR 44152, August 18, 1998). On February 7, 2000, Delaware submitted a third

program revision application for additional approval in accordance with the requirements of 40 CFR 271.21(b)(3) (Procedures for Revisions of State Programs).

EPA reviewed Delaware's application, and now makes an immediate final decision, subject to receipt of adverse written comments, that Delaware's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Consequently, EPA intends to grant Delaware Final authorization for the program modifications contained in the program revision application.

G. What Revisions Are We Authorizing With Today's Action?

Delaware's program revision application includes State regulatory changes that are analogous to various amendments to 40 CFR parts 124, 260 through 266, and 270, that were published in the **Federal Register** through January 21, 1999.

Delaware is today seeking authority to administer the Federal requirements that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements. Unless otherwise indicated, the listed Delaware regulatory references are to the Delaware Regulations Governing Hazardous Waste (DRGHW), as amended and effective January 1, 1999. The statutory references are to 7 Delaware Code Annotated (1991). In DRGHW 262, Delaware has adopted analogues to amendments to 40 CFR part 262, subparts E and H, but is not being authorized for these provisions in today's action because they are not subject to authorization. Delaware has adopted revisions analogous to Federal revisions to 40 CFR 268.44(a), but is not being authorized for these provisions in today's action because they are not subject to authorization. In addition, Delaware adopted revisions analogous to Federal revisions to 40 CFR 268.44(h)–(m), but is not seeking authorization for these provisions and continues to leave this authority with EPA for granting variances from a treatment standard.

Delaware is seeking authority for the Federal Corrective Action Program under HSWA as addressed in Revision Checklists 17L, 44A, B, and C and 121; additional Land Disposal Restrictions (LDR) revisions through September 1998 and the post closure permit requirement and closure process regulations (alternative to post-closure rule).

Federal requirement	Analogous Delaware authority
HSWA Cluster I	
Surface Impoundments; Non-Checklist SR1	7 Delaware Code (7 Del. Code) Chapter 63, §§ 6304, 6305 and 6307; Delaware Regulations Governing Hazardous Waste (DRGHW) 264.221(j) and 265.221(i).
Double Liners, 50 *FR* 28702, 07/15/85; Revision Checklist 17H	7 Del. Code, §§ 6304, 6305, and 6307; DRGHW 264.221(a), 264.221(c)–(e), 264.301(a), 264.301(c)–(e), 265.221(a)–(e), 265.254, 265.301(a)–(e).
Corrective Action, 50 *FR* 28702, 07/15/85; Revision Checklist 17L	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 264.90(a), 264.101(a)–(b), 122.60(c)(3)(vii).
HSWA Cluster II	
Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 *FR* 35894–35899, 09/23/87; Revision Checklist 42.	7 Del. Code, §§ 6305(a) and 6306(c); DRGHW 262.42(a)(2), 262.42(b) more stringent, 262.44.
Permit Application Requirements Regarding Corrective Action, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44A.	7 Del. Code, § 6305(a); DRGHW 122.14(c)–122.14(d)(3).
Corrective Action Beyond the Facility Boundary, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44B.	7 Del. Code, § 6305(a); DRGHW 264.100(e)–(e)(2), 264.101(c).
Corrective Action For Injection Wells, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44C.	[No regulatory analogue because Delaware Regulations Governing Underground Injection Control (DRGUIC) 122.23(b)–(c) prohibit the underground injection of hazardous waste.]
Permit Modification, 52 FR 45788–45799, 12/01/87; Revision Checklist 44D—with revisions as noted in Checklist 54.	7 Del. Code, § 6304 and 6305; DRGHW 122.41(a)(3) [Revised as noted in Checklist 54].
Permit as a Shield Provision, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44E—with revisions as noted in Checklist 100.	7 Del. Code, § 6304; DRGHW 122.4(a) [Revised as noted in Checklist 100].
Permit Conditions to Protect Human Health and the Environment, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44F.	7 Del. Code, § 6304; DRGHW 122.10(k).
Post-Closure Permits, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44G—with revisions as noted in Checklist 174.	7 Del. Code, § 6304; DRGHW 122.1(c) [Revised as noted in Checklist 174], 122.1(c)(5)–122.1(c)(6)(iii).
HSWA Codification Rule, Double Liners; Correction, 55 *FR* 19262–19264, 05/09/90; Revision Checklist 77—with revisions as noted in Checklist 100.	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 264.221(c) and 264.301(c) [Revised as noted in Checklist 100].
RCRA Cluster II	
Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, 57 *FR* 3462–3497, 09/29/92; Revision Checklist 100.	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 260.10, 264.15(b)(4), 264.19, 264.73(b)(6), 264.221(c)–264.221(d)(2), 264.221(f)–(i), 264.222, 264.223, 264.226(d)(1)–(3), 264.228(b)(2)–(4), 264.251(c)–(k), 264.252, 264.253, 264.254(c), 264.301(c)–264.301(d)(2), 264.301(f)–(l), 264.302, 264.303(c)(1)–(c)(3), 264.304, 264.304(d) 264.310(b)(3)–(6), 265.15(b)(4), 265.19, 265.73(b)(6), 265.221(a), 265.221(c), 265.221(f)–(g), 265.222, 265.223, 265.226(b), 265.228(b)(2)–(4), 265.254, 265.255, 265.259, 265.260, 265.301(a), 265.301(c), 265.301(f)–(i), 265.302, 265.303, 265.304c, 265.310(b)(2)–(5), 122.4(a), 122.17(b), 122.17(b)(2)–(7), 122.18(c)–(d), 122.21(b), 122.21(d), 122.42/Appendix 1.

Federal requirement	Analogous Delaware authority
RCRA Cluster III	
Corrective Action Management Units and Temporary Units, 58 *FR* 8658–8685, 02/16/93, Revision Checklist 121.	7 Del. Code, §§ 6305(a), 6307 and 6310; DRGHW 260.10, 264.3, 264.101(b), 264.552, 264.553, 265.1(b), 268.2(c), 122.2, 122.42 Appendix I.
RCRA Cluster IV	
Testing and Monitoring Activities, 58 *FR* 46040–46051, 08/31/93; Revision Checklist 126—with revisions as noted in Checklists 137 and 141.	7 Del. Code, §§ 6304, 6305, 6305 and 6307; DRGHW 260.11(a) [Revised as noted in Checklist 141], 260.22(d)(1)(i), 261.22(a)(1)–(2), 261.24(a), Part 261, Appendices II, III and X, 264.190(a), 264.314(c), 265.190(a), 265.314(d), 268.7(a) [Revised as noted in Checklist 137], 268.40(a) [Revised as noted in Checklist 137], 268.41(a) [Revised as noted in Checklist 137], Part 268, Appendices I and IX, 122.6(a), 122.19(c)(1)(iii)–(iv), 122.62(b)(2)(i)(C)–(D), 122.66(c)(2)(i)–(ii).
Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues, 58 *FR* 59598–59603, 11/09/93, Revision Checklist 127.	7 Del. Code, §§ 6304, 6305, 6306 and 6307; DRGHW 266.112(b)(2)(i), Part 266, Appendix VII, notes.
Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection, 59 *FR* 458–469, 01/04/94; Revision Checklist 128—with revisions as noted in Checklist 141.	7 Del. Code, § 6305(a); DRGHW 260.11(a) [Revised as noted in Checklist 141], Part 261, Appendix VIII.
Recordkeeping Instructions; Technical Amendment, 59 *FR* 13891–13893, 03/24/94; Revision Checklist 131.	7 Del. Code, §§ 6305 and 6307; DRGHW, Part 264, Appendix I/Tables 1 and 2, Part 265, Appendix I/Tables 1 and 2.
Wood Surface Protection; Correction, 59 *FR* 28484, 06/02/94; Revision Checklist 132—with revisions as noted in Checklist 141.	7 Del. Code, § 6305(a); DRGHW 260.11(a) [Revised as noted in Checklist 141].
Letter of Credit Revision, 59 *FR* 29958–29960, 06/10/94; Revision Checklist 133.	7 Del. Code, §§ 6305, 6306 and 6307; DRGHW 264.151(d), 264.151(k).
Correction of Beryllium Powder (P015) Listing, 59 *FR* 31551–31552, 06/20/94; Revision Checklist 134—with revisions as noted in Checklist 137.	7 Del. Code, § 6305(a)(1); DRGHW 261.33(e), Part 261, Appendix VIII, 268.42(a)/ Table 2 [Revised as noted in Checklist 137].
RCRA Cluster V	
Recovered Oil Exclusion, 59 *FR* 38536–38545, 07/28/94; Revision Checklist 135.	7 Del. Code, § 6305(a)(1); DRGHW 261.3(c)(2)(ii)(B), 261.4(a)(12), 261.6(a)(3)(iv)–(vi), 266.100(b)(3).
Removal of the Conditional Exemption for Certain Slag Residues, 59 *FR* 43496–43500 as Amended 08/24/948; Revision Checklist 136—with revisions as noted in Checklist 137.	7 Del. Code, § 6307; DRGHW 266.20(c), 268.41(a)/ Table CCWE [Revised as noted in Checklist 137].
Testing and Monitoring Activities Amendment 1, 60 *FR* 3089–3095, 01/13/95; Revision Checklist 139—with revisions as noted in Checklist 141.	7 Del. Code, § 6305(a); DRGHW 260.11(a) [Revised as noted in Checklist 141].
Carbamate Production Identification and Listing of Hazardous Waste, 60 *FR* 7824–7859, 02/09/95 as Amended at 60 *FR* 19165, 04/17/95 and at 60 *FR* 25619, 05/12/95; Revision Checklist 140.	7 Del. Code, § 6305&(a)(1); DRGHW 261.3(a)(2)(iv)(E)–(G), 261.3(c)(2)(ii)(D), 261.32, 261.33(e)–(f), Part 261, Appendices VII–VIII.
Testing and Monitoring Activities Amendment II, 60 *FR* 17001–17004, 04/04/95; Revision Checklist 141.	7 Del. Code, § 6305(a); DRGHW 260.11(a).
Universal Waste: General Provisions, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142A.	7 Del. Code, §§ 6304, 6305, 6306, 6307, and 6312; DRGHW 260.10 intro, 260.10, 261.5(c), 261.5(f)(3)–261.5(g)(3), 261.9 intro, 262.10(b)–(g), 262.11(d), 264.1(g)(11)intro, 265.1(c)(14) intro, 268.1(f) intro, 122.1(c)(2)(viii) intro, 273.1, 273.5, 273.6, 273.10, 273.11, 273.12, 273.14 intro, 273.15, 273.16, 273.17, 273.18, 273.19, 273.20, 273.30, 273.31, 273.32(a)(1)–(2), 272.32(b), 273.34 intro, 273.35, 273.36, 273.37, 273.38, 273.39, 273.40, 273.50, 273.51, 273.52, 273.53, 273.54, 273.55, 273.56, 273.60, 273.61, 273.62, 273.70 intro–273.70(c).
Universal Waste Rule: Specific Provisions for Batteries, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142 B.	7 Del. Code, §§ 6304, 6305, 6306, and 6307; DRGHW 260.10, 261.6(a)(3)(ii)–(vi), 261.9(a), 264.1(g)(11)(l), 265.1(c)(14)(l), 266.80(a)–(b) intro, 268.1(f)(1), 122.1(a)(2)(viii)(A), 273.1(a)(1), 273.2, 273.6, 273.13, 273.14(a), 273.33(a), 273.34(a).
Universal Waste Rule: Specific Provisions for Pesticides, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142 C.	7 Del. Code, §§ 6304, 6305, 6306, and 6307; DRGHW 260.10, 261.9(b), 264.1(g)(11)(ii), 265.1(c)(14)(ii), 268.1(f)(2), 122.1(c)(2)(viii)(B), 273.1(a)(2), 273.3, 273.6, 273.13(b), 273.14(b)–(c)(2), 273.32(a)(1), 273.32(a)(3), 273.33(b), 273.34(b)–(c)(2).
Universal Waste Rule: Specific Provisions for Thermostats, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142 D.	7 Del. Code, §§ 6304, 6305, 6306 and 6307; DRGHW 260.10, 261.9(c), 264.1(g)(11)(iii), 265.1(c)(14)(iii), 268.l(f)(3), 122.1(c)(2)(viii)(C), 273.1(a)(3), 273.4, 273.6, 273.13(c), 273.14(d), 273.33(c), 273.34(d).
Universal Waste Rule: Petition Provisions to Add A new Universal Waste, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142 E.	7 Del. Code, §§ 6304, 6305, 6306, and 6307; DRGHW 260.20(a), 260.23, 273.80, 273.81.
Removal of Legally Obsolete Rules, 60 *FR* 33912–33915, 06/29/95; Revision Checklist 144.	7 Del. Code, §§ 6304, 6305, 6306, and 6307; DRGHW 261.31(a), 266.103(c)(5), 266.104(f)–(h), 122.2, 122.10(e)(4), 122.10(f)(2), 122.10(g)(1), 122.10(g)(1)(i) more stringent, 122.10(g)(1)(ii)–(iii).

Federal requirement	Analogous Delaware authority
RCRA Cluster VI	
Liquids in Landfills III, 60 *FR* 35703–35706, 07/11/95; Revision Checklist 145.	7 Del Code, 6305, DRGHW 264.314(e)(2)(ii)–(iii), 265.314(f)(2)(ii)–(iii).
RCRA Expanded Public Participation, 60 *FR* 63417–63434, 12/11/95; Revision Checklist 148.	7 Del. Code, §§ 6304, 6305, and 6307; DRGHW 124.31, 124.32, 124.33, 122.2, "Facility mailing list, 122.14(b)(22), 122.30(m), 122.61(b)(5), 122.62(b)(6)–(7), 122.62(b)(8)–(11), 122.62(d), 122.66(d)(3)–(6), 122.66(g).
Amendments to the Definition of Solid Waste; Amendment II, 61 *FR* 13103–13106, 03/26/96; Revision Checklist 150.	7 Del. Code, § 6305; DRGHW 261.4(a)(12).
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners, 61 *FR* 15566–15660, 04/08/96, Revision Checklist 151 as amended 04/08/96 at 61 *FR* 15660–15668, 04/30/96, 61 *FR* 19117, 06/28/96, 61 *FR* 33680–33690, 07/10/96, 61 *FR* 36419–36421, 08/26/96, 61 *FR* 43924–43931, 02/19/97, 62 *FR* 7502–7600—with revisions as noted in Checklists 157, 159, 162, 167A, 167B, 171, and 173.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.1(c)(3)–(4), 268.1(e)(3)–(4) [Revised as noted in Checklist 157], 268.1(e)(5), 268.2(f); 268.2(i) [Revised as noted in Checklist 167A]; 268.2(j); 268.2(k) Revised as noted in Checklist 167B]; 268.3(a)–(c)(6), 268.7(a) [Revised as noted in Checklist 157]; 268.7(a)(1)(ii) [Removed as noted in Checklist 157], 268.7(a)(1)(iv)–(vi) [Removed as noted in Checklist 157], 268.7(a)(2)(i)(B) [Revised as noted in Checklist 157], 268.7(a)(3)(ii) [Revised as noted in Checklist 167B], 268.7(b)(4)(ii), 268.7(b)(5)(iv)–(v), 268.8 (Reserve), 268.9(a) [Revised as noted in Checklist 157], 268.9(d), 268.9(d)(1)(i)–(ii) [Revised as noted in Checklist 157], 268.39(a) [Revised as noted in Checklist 159], 268.39(b), 268.39(c) [Revised as noted in Checklist 173], 268.39(d) [Revised as noted in Checklist 159], 268.39(e)–(g), 268.40(e) [Revised as noted in Checklist 167], 268.40(g) [Revised as noted in Checklist 171], 268.40/Table [Revised as noted in Checklist 173], 268.42 Table 1, 268.44(a) [Revised as noted in Checklist 162], 268.48(a)/Table UTS [Revised as noted in Checklist 171], Part 268, Appendix XI.
Imports and Exports of Hazardous Waste: Implementation of OECD Council Division, 61 *FR* 16290–16316, 04/12/96; Revision Checklist 152.	7 Del. Code, §§ 6305 and 6306; DRGHW 261.6(a)(5), 262.10(d)–(h), 262.53(b), 262.56(b), 262.58, 262.80, 262.81, 262.82, 262.83, 262.84, 262.85, 262.86, 262.87, 262.88 (Reserved), 262.89, 263.10(d), 263.20(a), 264.12(a)(1)–(2), 264.71(d), 265.12(a)(1)–(2), 265.71(d), 266.70(b)(2)–(3), 273.20, 273.40, 273.56, 273.70 intro, 273.70(d).
RCRA Cluster VII	
Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, 59 *FR* 62896–62953, 12/06/94 as amended by 60 *FR* 26828–26829, 05/19/95, 60 *FR* 50426–50430, 09/29/95, 60 *FR* 56952–56954, 11/13/95, 61 *FR* 4903–4916, 02/09/96, 61 *FR* 28508–28510, 06/05/96, 61 *FR* 59932–59997, 11/25/96; Revision Checklist 154—with revisions as noted in Checklists 163 and 177.	7 Del. Code, § 6305; DRGHW 260, 261, 262, 264, 265, 122 revisions were adopted to substantively and numerically coincide identically with the Federal revisions described in Revision Checklist 154 [Revised as noted in Checklists 163 and 177].
Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance, 62 *FR* 1992–1997, 01/14/97; Revision Checklist 155—with revisions as noted in Checklist 160.	7 Del. Code, §§ 6304, 6305, and 6307; DRGHW 268.39(c) [Revised as noted in Checklist 160].
Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties, 62 *FR* 6622–6657, 02/12/97; Revision Checklist 156.	7 Del. Code, §§ 6304, 6305, 6305(a), 6306, 6306(c) 6307, and 6310; DRGHW 260.10, 261.2(a)(2)(iii)–(iv), 262.10(i), 262.20(f) more stringent, 263.10(e)–(f), 264.1(g)(8)(i)(D), 264.1(g)(8)(iv), 264.1(i), 264.70, 264.1200, 264.1201, 264.1202, 265.1(c)(11)(i)(D), 265.1(c)(11)(iv), 265.1(f), 265.70, 265.1200, 265.1201, 265.1202, 266.200, 266.201, 266.202, 266.203(a)–(a)1)(iii), 266.203(a)(2)–(c), 266.204, 266.205, 266.206, 122.1(c)(3)(i)(D), 122.1(c)(3) (iii), 122.42(h)–(i).
Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, 62 *FR* 25998–26040, 05/12/97; Revision Checklist 157—with revisions as noted in Checklists 167B and 167C.	7 Del. Code, § 6304, 6305, and 6307; DRGHW 261.1(c)(9)–(12), 261.2(c) table 1, 261.4(a)(13)–(14), 261.6(a)(3)(ii), 268.1(e) intro–(e)(4), 268.4(a)(2)(iv), 268.4(a)(4), 268.7(a) intro; 268.7(a)(1) [Revised as noted in Checklist 167B], 268.7(a)(2) [Revised as noted in Checklist 167B], 268.7(a)(3) [Revised as noted in Checklist 167B], 268.7(a)(3)(i), 268.7(a)(3)(ii) [Revised as noted in Checklist 167B], 268.7(a)(4) [Revised as noted in Checklist 167B], 268.7(a)(4)/table [Revised as noted in Checklist 167B], 268.7(a)(5) [Revised as noted in Checklist 167B], 268.7(a)(5)(i)–(iii), 268.7(a)(6) [Revised as noted in Checklist 167B], 268.7(a)(7) [Revised as noted in Checklist 167C], 268.7(a)(8)–(b), 268.7(b)(1)–(2) [Revised as noted in Checklist 167B], 268.7(b)(3) intro, 268.7(b)(3)(i)–(ii), 268.7(b)(3)(ii)/table [Revised as noted in Checklist 167C], 268.7(b)(4)–(b)(4)(iii), 268.7(c)(1)–(2), 268.9(a), 268.9(d)(1)(ii), 268.30; 268.32–268.36 (Reserved), 268.40/Table of Treatment Standards [Revised as noted in Checklist 167C], 268.42/Table 1, 268.44(o), 268.44(o)/Table 1, 268 Appendices I, II, III, and X (Reserved), 268 Appendix VI, 268 Appendices VII and VIII [Revised as noted in Checklist 167C].

Federal requirement	Analogous Delaware authority
Testing and Monitoring Activities Amendment III, 62 *FR* 32452—32463, 06/13/97, Revision Checklist 158.	7 Del. Code, §§ 6304, 6305, 6306, 6307, and 6310; DRGHW 260.11(a) intro–(a)(15), 264.1034(d)(1)(iii), 264.1034(f), 264.1063(d)(2), 264 Appendix IX, footnote 5, 265.1034(d)(1)(iii), 265.1034(f), 265.1063(d)(2), 266.104(e)(1), 266.106(g)(1)–(2), 266.107(f), Part 266 Appendix IX, Section 3.0, Note.
Conformance With the Carbamate Vacatur, 62 *FR* 1992–1997, 05/29/97; Revision Checklist 159—with revisions as noted in Checklist 167C.	7 Del. Code, §§ 6302, 6304, 6305 and 6307; DRGHW 261.32/table, 261.33, 261 Appendix VII, 261 Appendix VIII, 268.39(a), 268.39(d), 268.40 table, [Revised as noted in Checklist 167C].
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment, 62 *FR* 37694—37699, 07/14/97; Revision Checklist 160—with revisions as noted in Checklist 173.	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 268.39(c) [Revised as noted in Checklist 173].
Emergency Revision of the Carbamate Land Disposal Restrictions, 62 *FR* 45568, 08/28/97; Revision Checklist 161—with revisions as noted in Checklist 171.	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 268.40(g) [Revised as noted in Checklist 171], 268.48(a)/Table [Revised as noted in Checklist 171].
Clarification of Standards for Hazardous Waste LDR Treatment Variances, 62 *FR* 64504—64509, 12/05/97; Revision Checklist 162—with revisions as noted in Checklist 167B.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.44(a), 268.44(h)–(h)(2)(i), 268.44(h)(3) [Revised as noted in Checklist 167B], 268.44(m).
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment, 62 *FR* 64636–64671, 12/8/97; Revision Checklist 163—with revisions as noted in Checklist 177.	7 Del. Code, § 6305; DRGHW 264 and 265 revisions were adopted to substantively and numerically coincide identically with the Federal revisions described in Revision Checklist 163 [revised as noted in Checklist 177].
Recycled Used Oil Management Standards; Technical Correction and Clarification, 63 *FR* 24963–24969, 5/6/98, as amended 7/14/98, at 63 *FR* 37780–37782; Revision Checklist 166.	7 Del. Code, §§ 6304–6307, and 6310; DRGHW 261.5(j), 261.6(a)(3)(iv)(A)–(C), 279.10(l), 279.22(d), 279.45(h), 279.54(g), 279.64(g), 279.74(b).
Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167A—with revisions as noted in Checklist 172.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.2(i), 268.3(d), 268.34(a), 268.34(b)–(e) [Revised as noted in Checklist 172], 268.40(e), 268.40(h), 268.40/Table, 268.48(a)/Table UTS.
Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167B.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.2(k), 268.7(a)(1)–(a)(3) intro, 268.7(a)(3)(ii), 268.7(a)(4)–(6), 268.7(b)(1)–(4) intro, 268.7(e), 268.44(h)(3) intro–(5), 268.49.
Land Disposal Restrictions Phase IV—Corrections 63 *FR* 28556–28753, 5/26/98, as amended at 63 *FR* 31266, 6/8/98; Revision Checklist 167C.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.4(a)(2)(ii)–(iii), 268.7(a)(7), 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv)–(b)(6), 268.40(e), 268.40/Table, 268.42(a), 268.45(a) intro, 268.45(d)(3)–(4), 268.48/Table, Appendix VII, Tables 1 and 2, Appendix VIII, Part 268.
Mineral Processing Secondary Materials Exclusion, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167D.	7 Del. Code, § 6305; DRGHW 261.2(c)(3), 261.2(c)(4)/Table, 261.2(e)(1)(iii), 261.4(a)(16) intro–(vi).
Bevill Exclusion Revisions and Clarifications, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167E.	7 Del. Code, § 6305; DRGHW 261.3(a)(2)(i), 261.3(a)(2)(iii), 261.4(b)(7).
Exclusion of Recycled Wood Preserving Wastewaters, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167F.	7 Del. Code, § 6305; DRGHW 261.4(a)(9)(iii).
Hazardous Waste Combustors; Revised Standards, 63 *FR* 33782–33829, 06/19/98; Revision..	
Checklist 168	7 Del. Code, § 6305; DRGHW 261.4(a)(17), 261.38, 122.42(j) intro, 122.42(j), 122.42 Appendix I, 122.72(b)(8).

RCRA Cluster IX

Petroleum Refining Process Wastes, 63 *FR* 42110–42189, 08/06/98; Revision Checklist 169.	7 Del. Code, §§ 6304, 6305(a), and 6305(a)(1); DRGHW 261.3(a)(2)(iv)(C), 261.3(c)(2)(ii)(B), 261.3(c)(2)(ii)(E), 261.4(a)(12)(i)–(ii), 261.4(a)(18)–(19), 261.6(a)(3)(iv)(C), 261.31(a), 261.32, 261 Appendix VII, 266.100(b)(3), 268.35, 268.40/Table.
Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production, 63 *FR* 47410–47418, 09/04/98; Revision Checklist 171.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.40(g), 268.40(i), 268.40/Table, 268.48(a)/Table.
Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags, 63 *FR* 48124–48127, 09/09/98; Revision Checklist 172.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.34(b)–(f).
Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule, 63 *FR* 51254–51267, 09/24/98; Revision Checklist 173.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.39(c), 268.40/Table.
Post-Closure Permit Requirement and Closure Process, 63 *FR* 56710–56735, 10/22/98; Revision Checklist 174.	7 Del. Code, §§ 6304, 6305, and 6307; DRGHW 264.90(e)–(f), 264.110(c), 264.110(c)(1)–(2), 264.112(b)(8), 264.112(c)(2)(iv), 264.118(b)(4), 264.118(d)(2)(iv), 264.140(d), 265.90(f), 265.110(c)–(d), 265.112(b)(8), 265.112(c)(1)(iv), 265.118(c)(4)–(5), 265.118(d)(1)(iii), 265.121, 265.140(d), 122.1(c) intro, 122.1(c)(7), 122.14(a), 122.28.

Federal requirement	Analogous Delaware authority
Organic Air Emission Standards: Clarification and Technical Amendments, 64 *FR* 3382, 01/21/99; Revision Checklist 177.	7 Del. Code, § 6305; DRGHW 262.34(a)(1)(i)–(ii), 264.1031, 264.1080(b)(5), 264.1083(a)(1)(i)–(ii), 264.1083(b)(1)(i)–(ii), 264.1084(h)(3), 264.1086(e)(6), 265.1080(b)(5), 265.1084(a)(1)(i)–(ii), 265.1084(a)(3)(ii)(B), 265.1084(a)(3)(ii)(D), 265.1084(a)(3)(iii), 265.1084(b)(1)(i)–(ii), 265.1084(b)(3)(ii)(B), 265.1084(b)(3)(ii)(D), 265.1084(b)(3)(iii), 265.1085(h)(3), 265.1085(h)(3)(i)–(ii), 265.1087(e)(6).

H. Where Are the Revised State Rules Different From the Federal Rules?

The Delaware hazardous waste program contains several provisions which are more stringent than is required by the RCRA program. The more stringent provisions are being recognized as a part of the Federally-authorized program and include the following:

1. At DRGHW 262.42(b), Delaware is more stringent because the State requires a small quantity generator to file an exception report when confirmation of the hazardous waste delivery to the designated facility is not made within 45 days instead of 60 days of the date the waste was accepted by the initial transporter. The generator must also notify the State of the designated facility and the State to which the waste may have been delivered. (Checklist 42)

2. At Delaware Regulations Governing Underground Injection Control (DRGUIC) 122.23(b)–(c), Delaware is more stringent in that the State prohibits the underground injection of hazardous waste. Therefore, there are no hazardous waste corrective action requirements for injection wells. (Checklist 44C)

3. At DRGHW 262.20(f), Delaware is more stringent because the State restricts the exemption to manifest requirements only when the military munitions are being transported during an emergency response. (Checklist 156)

Furthermore, the State requires transporters of used oil to obtain transporter permits. See DRGHW part 263, subpart E and Checklist 166. Since this requirement goes beyond the scope of the Federal program, it does not constitute part of the authorized program.

In addition, Delaware will be authorized to carry out, in lieu of the Federal program, State-initiated changes to provisions of the State's Program. The following State-initiated changes are equivalent and analogous to the numerically identical RCRA provisions found at Title 40 of the Code of Federal Regulations: DRGHW 260.1(a)(4) through (a)(6), and (c); 261.6(a)(3)(v); 262.23(d); 264.18(b)(1) introductory paragraph; 264.91(c) introductory paragraph; 264.145(c)(7); 264.221(e)(2)(I)(B); 265.145(e)(1)(I)(B) and (D), (ii)(B) and (D), and paragraph (e)(2); 268.7(a)(8); and 268.44 Table. One other state-initiated change being approved by this notice is DRGHW 122.1 which is analogous to 40 CFR Section 270.1.

Unless EPA receives comments opposing this action by August 11, 2000 and publishes a **Federal Register** document withdrawing the immediate final rule or portions thereof, this Final authorization approval will become effective without further notice on September 11, 2000.

I. Who Handles Permits After This Authorization Takes Effect?

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based on the Federal provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA will also transfer any pending permit applications and pertinent file information to the State within thirty (30) days of the effective date of this authorization.

Upon authorization of the State program for any additional portions of HSWA, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities mandated by HSWA in the State, in those areas for which the State is receiving authorization. If EPA promulgates standards for additional processes or regulations mandated by HSWA not covered by the State's authorized program, EPA will process and enforce RCRA permits in the State in those new areas until the State receives final authorization of equivalent State standards.

EPA will be responsible for enforcing the terms and conditions of the Federal portion of the permits until they expire or are terminated in accordance with 40 CFR 124.5 and 271.8.

The State and EPA will coordinate implementation of those HSWA provisions for which the State has not received authorization until such time as it receives authorization from EPA to implement the remaining HSWA provisions in lieu of EPA.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Delaware?

Delaware is not seeking authorization to operate the program on Indian lands since there are no Federally-recognized Indian Lands in the State.

K. What Is Codification and Is EPA Codifying Delaware's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA uses 40 CFR part 272 for codification of the decision to authorize Delaware's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA is not codifying Delaware's hazardous waste program at this time, but reserves amendment of 40 CFR part 272, subpart I, for such future use.

L. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Delaware program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not apply to duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves Delaware's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in Delaware in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any

rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not concern an environmental health or safety risk that may have a disproportionate effect on children.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with the consulting option, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect communities of Indian tribal governments. Delaware is not authorized to implement the RCRA hazardous waste program in Indian country, since there are no Federally-recognized Indian lands in the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve such technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 19, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

[FR Doc. 00–17345 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[CC Docket No. 94–102, CS Docket No. 98–120; FCC 00–224]

Service Rules for the 746 Through 764 and 776 Through 794 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration seeking changes in service rules adopted previously in this proceeding regarding commercial use of the 747–762 MHz and 777–792 MHz bands. The Commission generally affirms these service rules and provides additional guidance on the factors it will consider when reviewing applications that would accelerate the departure of incumbent analog television licensees. A separate document seeks comment on additional measures to facilitate the use of these bands for new commercial services.

DATES: Effective July 12, 2000.

FOR FURTHER INFORMATION CONTACT:

Legal Information: Stanley Wiggins or Jane Phillips, 202–418–1310.

Technical Information: Marty Liebman, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order (MO&O) portion of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99–168 and CS Docket No. 98–120, FCC 00–00–224, adopted June 22,2000, and released June 30, 2000. The Notice of Proposed Rulemaking portion of this decision is summarized elsewhere in this **Federal Register**. The complete text of this MO&O is available for inspection and copying during normal business hours at the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW, Washington, DC.

Synopsis of the Memorandum Opinion and Order

1. In this Memorandum Opinion and Order (MO&O), the Commission responds to petitions for reconsideration of the First Report and Order (First R&O), 65 FR 3139, January 20, 2000, in this proceeding. The First R&O adopted service rules for the commercial use of the 747 through 762 MHz and 777 through 792 MHz bands that enable the broadest possible use of this spectrum, consistent with sound spectrum management. The MO&O generally affirms the service rules adopted in the First R&O, and provides additional guidance on the factors the Commission will consider when reviewing regulatory requests necessary to implement voluntary agreements that would accelerate the departure of incumbent analog television licensees and open these bands for new 700 MHz licensee use.

2. Specifically, the Commission removes the restrictions on the

operation of base stations in the lower band, and on mobile, portable and control stations in the upper band, and revises its power limits for fixed and base stations to better enable Time Division Duplex (TDD) technologies to operate on these bands. In light of these changes, the Commission sees no need to revise the original, mandatory pairing of lower-band and upper-band spectrum blocks. Additionally, the Commission affirms its decision in the First R&O that this band's service rules should be oriented to intensive and efficient commercial wireless use, and also enable broadcast-type services that can satisfy the technical rules necessary for efficient overall use of spectrum.

3. First, as discussed in paragraphs 6 through 10 of the full text of the MO&O, the Commission allows base, fixed, portable, mobile, and control stations on both the upper and lower bands, subject to the consistent application of the power limits already adopted for the various types of stations. Specifically, the Commission revises Section 27.50 of its Rules to allow 1000 watt Effective Radiated Power (ERP) base and fixed stations in both the lower and upper bands, and to allow 30 watt ERP mobile and control stations, as well as 3 watt ERP portables, in both the upper and lower 700 MHz bands. The Commission indicates that these revisions will enable TDD-based technologies to use either the upper or lower bands, or both, as circumstances warrant. The Commission also decides not to alter its determination to establish spectrum blocks and assign licenses consisting of paired bands, in part, because the Commission finds that modifying the power limits is a better means for enabling TDD operations than eliminating frequency pairing. The Commission notes that the pairing of these bands has been favored by the majority of commenters in this proceeding.

4. The Commission further affirms the internal out-of-band emission (OOBE) limits established in the First R&O, finding that a modification of the internal, 43+10 log P out-of-band emission limit adopted in the First R&O to protect commercial service operators from one another is not demonstrated to be necessary to protect TDD-based technologies. However, the Commission believes that users of TDD technology are entitled to protection from interference from adjoining bands, and thus indicates that, in the event that sufficient, valid evidence is presented supporting instances of interference, it would take action to minimize such interference. This discussion may be found at paragraphs 14 through 17 of the full text of MO&O.

5. As discussed in paragraphs 21 through 27 in the full text of the MO&O, the Commission also declines to alter the OOBE standards adopted to protect public safety operations. Instead, the Commission finds that the existing OOBE standards reflect a carefully considered effort to protect public safety, while enabling the viability of the commercial 700 MHz band, which Congress also directed the Commission to establish. The Commission, as discussed in paragraphs 21 through 29 in the full text of the MO&O, reiterates its concern that operations in the 700 MHz bands not adversely affect Global Positioning System (GPS) operations, but finds that the OOBE limits adopted in the First R&O to protect such operations are sufficient. Further, at paragraph 31 of the full text of the MO&O, the Commission affirms the technical criteria adopted in the First R&O for the protection of digital television (DTV) stations from commercial stations that will operate in the 700 MHz band. However, the MO&O, at paragraph 32, clarifies a statement made in the First R&O to the effect that licenses issued for the 700 MHz bands within 120 km of the borders of Canada and Mexico would be subject to whatever future agreements the United States develops with those countries. The MO&O clarifies that *all* 700 MHz licensees will be subject to any future agreements the United States develops with Canada and Mexico.

6. Finally, as discussed in paragraph 34 of the full text of the MO&O, the Commission declines to adopt various proposals for technical modifications of the Commission's Rules that deal with emission limits (*i.e.*, Section 27.53 of the Commission's Rules).

7. The MO&O next considers conventional television broadcast issues. First, regarding inter-service flexibility, the Commission affirms its decision in the First R&O to preclude conventional broadcast service in the 700 MHz band. As discussed in more detail in paragraph 38 in the full text of the MO&O, the Commission decided to adopt technical and service rules that effectively preclude conventional television broadcast service on the 700 MHz band, based on Congressional intent that this spectrum be recovered from conventional broadcast use for the provision of commercial wireless services; the high potential for interference to lower-power services caused by the disparity in the two services' characteristic power levels and transmitter tower heights and the characteristic limits of receivers' ability to distinguish between desired and extraneous signals; and the predominant interest in the record in developing this spectrum for fixed and mobile wireless use. No material has been presented to change this finding.

8. The MO&O, at starting at paragraph 44, addresses issues relating to the transition to digital television (DTV) and the voluntary relocation of incumbent broadcast licensees currently operating in the 700 MHz band. In that regard, the Commission considers challenges to two aspects of the rules for the 700 MHz band, both keyed to the Commission's treatment of the transition to DTV. In response to these challenges, at paragraphs 44 and 45 of the full text of the MO&O, the Commission dismisses objections to its use of the statutory target date for the completion of the DTV transition—December 31, 2006—as the basis for setting certain regulatory dates for the new commercial licenses, and denies the request that it revise the text of the First R&O and the accompanying rules to identify "completion of DTV transition" as the triggering event for commencement of the eight-year license term for broadcast service, and the substantial performance period.

9. The Commission also affirms the decision in the First R&O that this band's service rules should be oriented to intensive and efficient commercial wireless use, and also enable broadcast-type services that can satisfy the technical rules necessary for efficient overall use of spectrum. The Commission thus declines to reconsider its willingness to consider voluntarily negotiated agreements that would expedite the departure of incumbent analog television licensees from these frequencies. The Commission finds that voluntary clearing agreements between 700 MHz licensees and TV incumbents would generally advance the public interest and further the statutory scheme. The MO&O therefore provides additional guidance regarding the Commission's treatment of such voluntary arrangements, in an effort to provide greater certainty to potential bidders and incumbent broadcasters and facilitate the early clearance of incumbent broadcast stations on channels 59–69. These agreements should facilitate both the provision of next generation and Internet wireless services, and the transition to DTV by these incumbent broadcast stations. This additional guidance establishes certain presumptions regarding the Commission's treatment of these voluntary arrangements, and recognizes the must-carry obligation of cable systems with regard to broadcasts of

digital television programming. Paragraphs 46 through 50 in the full text of the MO&O provide more detailed discussion of these issues which are summarized in this **Federal Register** document.

10. Paragraphs 51 through 54 of the full text of the MO&O discuss and affirm the Commission's authority to review the voluntary agreements between incumbent broadcast licensees and new 700 MHz licensees. The Commission finds that such agreements, if properly structured, will further the broad public interest in intensive and new wireless services to all Americans, should help make available to the public safety community needed new spectrum that Congress has mandated be allocated for public safety use, and should help expedite a transition to DTV for broadcasters who might need assistance to implement such a transition.

11. The MO&O, at paragraphs 55 and 56, analyzes matters related to the possible loss of broadcast services resulting from voluntary agreements. The Commission affirms its finding in the First R&O that, in reviewing voluntary agreements, it must weigh the benefits associated with recovery of the spectrum for new wireless uses against any loss of service to the broadcast community of license. The fundamental importance of over-the-air broadcast service is recognized by legislative and judicial determinations, and the Commission's own practice in reviewing specific instances of loss of service. In the past, the Commission has required that stations withdrawing or downgrading existing service justify that action by establishing offsetting considerations that demonstrate the public generally will benefit.

12. The Commission carefully considers the weight to be accorded such losses, both from a broad policy view and in the review of specific regulatory requests. From the broader policy perspective, the Commission determines that several statutory purposes involved here are best served by enabling voluntary agreements that result in the expeditious and efficient recovery of these frequencies for the legislatively specified commercial and public safety purposes. The Commission also notes that the over-the-air service involved here is scheduled to terminate as part of the DTV transition, and that Congress has directed the Commission to auction and license these frequencies on an expedited schedule well in advance of December 31, 2006. Thus the Commission finds that temporary loss-of-service issues here do not raise concerns that generally prevent regulatory requests in connection with voluntary agreements.

13. The Commission implements these policy judgements by providing guidance on the review of regulatory requests arising from band clearance agreements between new licensees of this spectrum and incumbent broadcast licensees on channels 59–69, discussed in paragraphs 57 through 59 of the full text of the MO&O. First, the Commission believes that private parties generally are the best evaluators of their own economic circumstances and alternatives and the Commission will not look to second guess their business decisions. The Commission's underlying policy premise is that voluntary agreements can provide supplemental resources to broadcasters that will both expedite their transition to DTV and strengthen their economic viability, but the private parties should determine for themselves when the economic case is made. When the private parties are satisfied, therefore, the Commission will be inclined to grant regulatory requests arising from such commercial arrangements, provided the requests do not, on balance, have adverse public policy consequences. Second, the Commission notes that its role will be limited to weighing the effect on the public interest of regulatory requests in connection with such agreements. The Commission will not be reviewing the wisdom of the underlying private agreements, or the negotiation process leading to them, in the normal course.

14. The Commission also establishes a process and specific guidance for parties potentially interested in negotiating voluntary agreements. To ensure that all public interest issues are readily identified, the Commission will require broadcasters entering into voluntary agreements to provide the public in the principal area served by the licensee with the notice required by the Commission's Rules for filing of applications. (47 CFR 73.3580(d).) In addition, the Commission will issue public notice of the filing of all voluntary agreements requiring its approval. The Commission clarifies that its review of such requests generally will fall within Section 316 of the Act, and notes that it will consider showings of actual loss of service, rather than theoretical loss, resulting from a voluntary agreement.

15. The Commission, in paragraphs 60 through 62 of the MO&O, establishes a rebuttable presumption that, in certain circumstances, substantial overall public interest benefits will arise from a voluntary agreement between a 700 MHz licensee and an incumbent broadcast licensee that clears the 700 MHz band of incumbent television licensees. Specifically, the Commission will initially presume that the public interest is substantially furthered, so that routine approval is justified, when an applicant demonstrates that the request will both result in certain specific benefits and avoid specific detriments. The Commission will recognize such a presumption favoring the grant of any requests that: (1) Would result in new wireless services to consumers, in particular "next generation" or "3G" wireless services; (2) would clear commercial frequencies that enable provision of new public safety service; or (3) would result in the provision of new wireless service to rural or other underserved communities. The applicant would also need to show that a grant of the request would not: (1) Result in the loss of any of the four stations in the designated market area with the largest audience share; or (2) occasion the loss of the sole service licensed to the local community; or (3) result in the loss of a community's sole service on channels reserved for noncommercial educational broadcast stations.

16. This presumption is not conclusive or dispositive, however. In specific cases where the presumption applies, for instance, the Commission would consider whether special or unique factors raised by the resulting loss of broadcast service would be sufficient to rebut the presumption. The MO&O also finds, in paragraphs 63 through 66 that, where the presumption does not apply, the Commission will review regulatory requests by weighing the loss of broadcast service, acceleration of the DTV transition, and the advent of new wireless service on a case-by-case basis. In reviewing requests not subject to the presumption, the Commission also will consider as a relevant factor in its public interest determination the extent to which the station's programming will remain available, after implementation of the agreement, to a significant number of its viewers in the licensee's service area.

17. The MO&O points to the important role that cable carriage can play during the transition period by providing continued service to viewers that would otherwise be deprived of broadcast service, and addresses two cable issues in the context of voluntary relocation agreements. First, the MO&O clarifies that cable systems are ultimately subject to the must carry obligation with regard to broadcasters' digital signals. Second, to facilitate the continuing availability during the transition of the analog signal of a

broadcaster who is party to a voluntary relocation agreement with new 700 MHz licensees, the MO&O states that such a broadcaster could, in this context and at its own expense, provide its broadcast digital signal in an analog format for carriage on cable systems, but only for a limited period. Until the transition to digital television is completed in a given market, nothing prohibits the cable system from providing such signals in analog format to subscribers.

18. Another factor the Commission will consider, when the favorable presumption does not apply, is whether the station's signal will remain available, after implementation of the agreement, to a significant number of its viewers in the licensee's service area. If that signal is effectively available to a significant number of current viewers through various distribution channels, and implementation of the voluntary agreement would not create additional TV white or gray area, the Commission would generally be inclined to approve the voluntary agreement.

19. The MO&O next denies a proposal that the Commission adopt an "equivalent regulatory regime" for new services on these bands that is similar to that for broadcast television. The MO&O also denies the request that, to the extent the Commission applies a less regulated structure to new broadcast-type services on these channels, it should accord similarly relaxed treatment to stations operating on channels 2–59. The Commission recognizes that specific statutory provisions govern broadcast services, but it will not, at this juncture, attempt to anticipate the form or forms that the next generation of "broadcast-type" services on these bands may take, or to configure a regulatory structure on the basis of speculation, but will determine the applicable regulatory framework in the context of the offering of specific, actual services. This issue is discussed in paragraph 68 of the full text of the MO&O.

20. The MO&O, in paragraph 70 of the full text, denies a request that the Commission review its decision in the First R&O establishing Guard Bands to protect the immediately adjoining public safety licensees on channels 63, 64, 68, and 69 from harmful interference from operations on the 30 megahertz segment, and consider instead enforcing emission limits.

21. The MO&O, in paragraph 73 of the full text, considers issues pertaining to licensing rules. Regarding the Commission's decision in the First R&O that licenses in the 747 through 762 MHz and 777 through 792 MHz bands should not count against the 45/55 MHz spectrum cap if used to provide CMRS, the Commission dismisses a proposal to extend the CMRS spectrum cap to include 700 MHz spectrum.

22. Finally, the MO&O, in paragraphs 76 through 77 of the full text, considers competitive bidding issues. The Commission affirms its decision to limit its nationwide bid withdrawal procedure to those bidders seeking a 30 megahertz nationwide license. The MO&O also declines to modify the service rules adopted in the First R&O by redrawing the geographic territories, reducing the size of the spectrum blocks, and/or setting aside a portion of the 700 MHz spectrum for exclusive bidding by smaller business.

Administrative Matters

23. The actions contained in this MO&O are exempt from the provisions of the Paperwork Reduction Act of 1995, under the Consolidated Appropriations statute, *See* Consolidated Appropriations, Appendix E, Sec. 213. *See* also 145 *Cong. Rec.* at H12493–94 (November 1, 1999). Implementation of the revisions to part 27 required to assign licenses in these commercial spectrum bands, including revisions to information collections, are therefore not subject to approval by the Office of Management and Budget, and became effective upon adoption. Similarly, the Consolidated Appropriations statute exempts this decision from the Regulatory Flexibility Act provisions and from the Contract With America Advancement Act provisions.

24. **Authority.** This action is taken pursuant to Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 324, 331, 332, 336, 337, and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 324, 331, 332, 336, 337, and 534, and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Section 213.

Ordering Clauses

25. Part 27 of the Commission's Rules is revised on reconsideration to modify service rules for the 747 through 762 MHz and 777 through 792 MHz bands, as set forth in this synopsis, and, in accordance with Section 213 of the Consolidated Appropriations Act, 2000, Public Law 106 through 113, 113 Stat. 1501 (1999), these rules shall be effective July 12, 2000.

26. The Petitions for Reconsideration filed by ArrayComm, Inc., the Association of Local Television Stations, Inc., the Association for Maximum Service Television, Inc., the Association of Public-Safety Communications Officials-International, Inc., the Federal Law Enforcement Wireless Users Group, the National Association of Broadcasters, Nelson Repeater Services, Inc., Northcoast Communications, LLC, and the U.S. GPS Industry Council are denied; the Petitions for Reconsideration filed by Adaptive Broadband Corporation, TRW, Inc., and US WEST Wireless, LLC are granted, to the extent indicated in the MO&O, and are otherwise denied; the request by Rand McNally & Company to withdraw its Petition for Reconsideration is granted.

List of Subjects in 47 CFR Part 27

Telecommunications.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Group.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 to read as follows:

PART 27—WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for part 27 continues to read:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332.

2. Section 27.50(b) is revised, and in paragraph (c) the heading of Table 1 is revised to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(b) The following power and antenna height limits apply to transmitters operating in the 746–764 MHz and 776–794 MHz bands:

(1) Fixed and base stations transmitting in the 746–764 MHz band and the 777–792 MHz band must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section;

(2) Control stations and mobile stations transmitting in the 747–762 MHz band and the 776–794 MHz band are limited to 30 watts ERP;

(3) Portable stations (hand-held devices) transmitting in the 747–762 MHz band and the 776–794 MHz band are limited to 3 watts ERP;

(4) Maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The

measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(c) * * *

Table 1—Permissible Power and Antenna Heights for Base and Fixed Stations in the 746–764 MHz and 777–792 MHz Bands

* * * * *

3. Section 27.53 is amended by revising paragraph (c), by removing paragraph (d), and redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), to read as follows:

§ 27.53 Emission limits.

* * * * *

(c) For operations in the 747 to 762 MHz band and the 777 to 792 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency outside the 747 to 762 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least 43 + 10 log (P) dB;

(2) On any frequency outside the 777 to 792 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least 43 + 10 log (P) dB;

(3) On all frequencies between 764 to 776 MHz and 794 to 806 MHz, by a factor not less than 76 + 10 log (P) dB in a 6.25 kHz band segment, for base and fixed stations;

(4) On all frequencies between 764 to 776 MHz and 794 to 806 MHz, by a factor not less than 65 + 10 log (P) dB in a 6.25 kHz band segment, for mobile and portable stations;

(5) Compliance with the provisions of paragraphs (c)(1) and (c)(2) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. However, in the 100 kHz bands immediately outside and adjacent to the frequency block, a resolution bandwidth of at least 30 kHz may be employed;

(6) Compliance with the provisions of paragraphs (c)(3) and (c)(4) of this section is based on the use of measurement instrumentation such that the reading taken with any resolution bandwidth setting should be adjusted to indicate spectral energy in a 6.25 kHz segment.

* * * * *

4. Section 27.60(b)(2)(i) is amended by removing the word "746–764 MHz band" and adding, in their place, "746–764 MHz and 777–792 MHz bands" in its place, and paragraph (b)(2)(ii) is amended by removing the words "776-794 MHz band" and adding, in their place, "776–777 MHz and 792–794 MHz bands and control and mobile stations (including portables) that operate in the 747–762 MHz and 777–792 MHz bands."

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000515139–0203–02; I.D. 041200D]

RIN 0648–AO03

Atlantic Highly Migratory Species (HMS); Atlantic Bluefin Tuna Specifications and HMS Regulatory Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final annual specifications and regulatory amendment.

SUMMARY: NMFS announces specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quota and General category effort control specifications for the 2000 fishing year. NMFS also amends the regulations governing the Atlantic HMS fisheries to adjust the date on which the BFT General category fishing season ends; adjust the date on which BFT allocations become available to Atlantic tunas Purse Seine category vessel owners; authorize NMFS to add the underharvest to, or subtract the overharvest from, individual Purse Seine category vessels' allocations for the following fishing year on a per vessel basis; revise text regarding restricted fishing days (RFDs) in the General category BFT fishery; and revise text regarding authorized gear in the North Atlantic swordfish fishery. These specifications and regulatory amendment are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final specifications are effective July 7, 2000 through May 31, 2001. The final regulatory amendment is effective July 7, 2000.

ADDRESSES: Copies of supporting documents, including the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale at 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) that was adopted and made available to the public in April 1999. The HMS FMP and the implementing regulations established percentage quota shares for each of the domestic fishing categories of the ICCAT-recommended U.S. BFT landings quota of 1,387 metric tons (mt). These percentage shares were based on allocation procedures that had been developed by NMFS in recent years. NMFS subsequently amended the HMS regulations to remove the 250-mt limit on allocating BFT landings quota to the Purse Seine category (64 FR 58793, November 1, 1999). This rulemaking also reinstated the transferability of partial purse seine vessel quota allocations from one vessel to another, which was inadvertently omitted from the consolidated regulations to implement the HMS FMP.

Further background information and rationale for these specifications and regulatory amendment were provided in the preamble to the proposed specifications and regulatory

amendment (65 FR 33513, May 24, 2000) and are not repeated here. The annual quota specifications allocate the total ICCAT-recommended quota among the several established fishing categories.

Changes From the Proposed Specifications

NMFS proposed the following RFDs for October: October 1, 4, 6, 7, 10, 11, 14, 15, 18, 19, 22, 23, 26, 27, 30, and 31.

Based on consideration of comments received during the comment period, NMFS is implementing the following RFDs for October: October 1, 4, 6, 7, 10, 11, 14, and 15. In addition, now that the 1999 fishing year has ended and revised landings data are available, minor modifications have been made to the 2000 fishing year quotas.

Fishing Category Quotas

NMFS implements U.S. domestic quota allocations for the 2000 fishing year, beginning June 1, 2000, consistent with the HMS FMP and the 1,387 mt U.S. allocation. The percentage quota shares established in the HMS FMP for fishing years beginning June 1, 1999, as amended by the Purse Seine category adjustment described earlier, are as follows (tonnage in parentheses corresponds to 1,387 mt total quota): General category—47.1 percent (653.3 mt); Harpoon category—3.9 percent (54.1 mt); Purse Seine category—18.6 percent (258.0 mt); Angling category—19.7 percent (273.2 mt); Longline category—8.1 percent (112.3 mt); Trap category—0.1 percent (1.4 mt); and Reserve—2.5 percent (34.7 mt).

Based on these percentages, and quota adjustments based on overharvests or underharvests in the 1999 fishing year, the adjusted quotas for the 2000 fishing year are as follows: 483.4 mt for the Angling category; 634.3 mt for the General category; 54.1 mt for the Harpoon category; 135.1 mt for the Longline category; 2.4 mt for the Trap category; 271.2 mt for the Purse Seine category; and 34.7 mt for the Reserve.

The Angling category quota is subdivided as follows: School BFT—136.3 mt, with 72.9 mt to the northern area (north of 38°47' N. latitude), 63.4 mt to the southern area (south of 38°47' N. latitude), and 38.3 mt held in reserve; large school/small medium BFT—300.9 mt, with 163.9 mt to the northern area and 137.0 mt to the southern area; and large medium/giant BFT—7.9 mt, with 3.4 mt to the northern area and 4.5 mt to the southern area.

The Longline category is subdivided as follows: 31.5 mt to longline vessels landing BFT north of 34° N. latitude and 103.6 mt to longline vessels landing BFT south of 34° N. latitude.

General Category Effort Controls

For the 2000 fishing year, NMFS implements General category quota subdivisions as established in the HMS FMP, as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. Given the overharvest of the 1999 fishing year General category quota, these percentages are applied to the adjusted coastwide quota for the General category of 624.3 mt, with the remaining 10.0 mt being reserved for the New York Bight fishery. Therefore, coastwide, 374.6 mt are available for the period beginning June 1 and ending August 31; 187.3 mt are available for the period beginning September 1 and ending September 30; and 62.4 mt are available for the period beginning October 1 and ending December 31.

The New York Bight set-aside area is the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. When the coastwide General category fishery has been closed in any quota period, NMFS may publish notification in the **Federal Register** to make available up to 10 mt ww of the quota set aside for the New York Bight area. The daily retention limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period may be carried over for the purpose of renewing the set-aside fishery at a later date.

Attainment of the subquota in any quota period will result in a closure until the beginning of the following quota period. The subquota for the following quota period will be adjusted by any underharvest or overharvest in the previous quota period. Announcements of closures will be filed for publication with the Office of the Federal Register, stating the effective date of closure, and will be disseminated by the Highly Migratory Species (HMS) Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line (978–281–9305 or 888–872–8862) to check the status of the fishery before leaving for a fishing trip.

Persons aboard vessels permitted in the General category are prohibited from fishing (including tag and release fishing) for BFT of all sizes on the following days in 2000: July 12, 16, 17, 19, 23, 24, 26, 30, and 31; August 2, 6, 7, 9, 11, 12, 13, 14, 16, 20, 21, 23, 27, 28, and 30; September 3, 4, 6, 10, 11, 13, 17, 18, 20, 24, 25, and 27; and October 1, 4, 6, 7, 10, 11, 14, and 15. Persons aboard vessels permitted in the Atlantic Tunas Charter/Headboat category are prohibited from fishing for large medium and giant BFT under the General category quota on the indicated RFDs. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality and are consistent with the objectives of the HMS FMP.

Changes to Regulatory Text

NMFS is revising the regulatory text for clarification and to achieve consistency with the FMP objectives. These changes include specification of fishing seasons, quota adjustments, effort controls, and authorized gear. For background information on these issues, see the preamble to the proposed regulatory amendment (65 FR 33513, May 24, 2000).

General Category Season

NMFS revises the regulatory text to clarify that December 31 is the end date for the General category BFT fishing season.

Purse Seine Category Season

NMFS corrects the regulatory text regarding the Purse Seine category BFT fishing season to indicate that the purse seine vessel allocation of BFT is available starting June 1, and that any BFT caught incidental to fishing operations for other species will be deducted from the vessel's BFT allocation for that fishing year. NMFS also clarifies the regulatory text to indicate that only the directed purse seine fishery for BFT commences on August 15 each year.

Purse Seine Quota Carryover

NMFS amends the regulations regarding annual adjustment of quotas and subquotas to authorize NMFS to add the underharvest to, or subtract the overharvest from, individual Purse Seine category vessels' allocations for the following fishing year if NMFS determines that a vessel's individual quota has been exceeded or has not been reached.

Restricted Fishing Days

NMFS corrects the regulatory text regarding RFDs to indicate that persons on board a vessel permitted in the General category cannot "fish for" BFT on an RFD. In addition, NMFS removes language included in the final consolidated regulations indicating that RFDs apply only when the General category fishery is open. Removing this language will allow NMFS the discretion to implement RFDs on days immediately prior to the reopening of the General category fishery for the following subquota time-period (e.g., September 29 and 30). In issuing a closure notification for any General category subperiod, NMFS will indicate the specific RFDs that would be waived and/or added prior to reopening the fishery.

Authorized Gear

Finally, NMFS corrects text that prohibits the use of bandit gear in the north Atlantic swordfish fishery. In the table appearing at 50 CFR 600.725(v), bandit gear is authorized in the swordfish handgear fishery. Likewise, 50 CFR 635.21(d)(4) authorizes the use of bandit gear to fish for north Atlantic swordfish from vessels issued limited access permits. When the final consolidated HMS regulations were published, the prohibition at 50 CFR 635.71(e)(8) inadvertently omitted bandit gear from the list of authorized gears.

Comments and Responses

NMFS received numerous comments regarding the proposed quota and General category effort control specifications and the regulatory amendments.

Specifications

General Category Quota Subdivision

Comment: NMFS should reallocate the October through December period subquota to the June through August and September periods for better market prices and reduced derby conditions.

Response: NMFS maintains the status quo time period subquota breakdown in these final specifications. Long-term effort controls were addressed in the HMS FMP to achieve a variety of FMP objectives. Specifically, the status quo regime for the General Category assists attainment of optimum yield, and addresses allocation issues by lengthening the season over time and space in a category with high participation and catch rates.

Comment: If NMFS maintains an October fishery, then buy-boats should be allowed again. The fish landed in Chatham are of poorer quality than fish landed elsewhere, and as the Town of Harwich is considering imposing new restrictions, this would improve matters. If observers are necessary, the dealers could pay for them.

Response: NMFS has removed the permit category allowing the use of buy-boats for BFT as it was deemed obsolete. In the proposed rule to consolidate regulations regarding Atlantic HMS species (January 20, 1999, 64 FR 3166) NMFS stated that for the last several years, the retention limit for General category vessels has been set at one fish per day, thus precluding the need to offload BFT at sea. In addition, compliance with applicable vessel and dealer reporting requirements would be difficult to achieve under at-sea transfer conditions. To date, the Town of Harwich has not yet imposed new restrictions. If any new regulations by the Town are implemented it remains unclear how, or even if, the BFT fishery would be impacted. NMFS intends to continue to monitor the situation to consider and address any inconsistencies between the Town's measures and Federal regulations.

2000 Fishing Year Quota Allocations

The HMS FMP addresses many issues regarding the allocation of BFT domestic quota among categories. The comments below address issues other than those regarding allocation percentages.

Comment: The amount of quota proposed to be rolled over in the Angling category due to underharvest of the quota for that category during the 1999 fishing year is very large. NMFS should use the transfer criteria specified in the regulations to make the quota available to other users within the domestic fishery, specifically to the commercial categories, in which each fish landed is reported.

Response: NMFS has added the Angling category underharvest from the 1999 fishing year to the Angling category quota for the 2000 fishing year in accordance with the provisions and criteria of the HMS FMP, which reflects the 5-year balancing period under ICCAT. Due to year-to-year variability in fishing effort and landings of recreational BFT, it is preferable to ensure availability of quota rather than risk overharvest of the quota. Because it is possible that the Angling category may attain this quota in the 2000 fishing year, it is premature to transfer any quota from this category at this time, and NMFS must consider the criteria for transferring quota, as established in the regulations. In addition, Angling category landings data are under review and subject to change.

Comment: NMFS should allocate a small portion of the Angling category quota for recreational spearfishing. Spearfishing has been a historical gear type and was overlooked during the development of the HMS FMP.

Response: NMFS evaluated gear types used in the Atlantic tuna fisheries during the development of the HMS FMP. Currently spearguns are not authorized in the BFT fishery and thus this activity is not allowed. The issue was discussed by the HMS Advisory Panel (AP) during the development of the HMS FMP but no consensus by the HMS AP was reached and no recommendation was transmitted to NMFS. At this time, no additional action is contemplated. However, the HMS AP may wish to discuss this issue again when it next meets.

Comment: NMFS should reinstitute the incidental catch quota for herring purse seine vessels, which occasionally catch BFT incidental to their target species.

Response: NMFS evaluated gear types used in the Atlantic tuna fisheries during the development of the HMS FMP. NMFS may solicit comment on this issue from the HMS Advisory Panel.

Restricted Fishing Days

Comment: Some commenters stated that NMFS should implement RFDs for July through September as scheduled but should not implement October RFDs, especially beyond the first few days of October. October weather alone should dictate when fishermen make fishing trips. Those in support of October RFDs fish in one geographic area. NMFS should not be involved simply for market reasons. If NMFS does implement October RFDs, the pattern should be the same as for July through September. A commenter proposed that NMFS should depart from the Sunday, Monday, Wednesday pattern and alternate the RFDs each year, so that for the days of Sunday through Wednesday, the one day on which fishing is allowed is different each year. Other commenters stated that if NMFS does implement RFDs for the first week of October, it should designate October 5 as an RFD, since otherwise any fish caught on October 5 would arrive in Japan on October 9, when the market is closed.

Other commenters supported the proposed schedule of RFDs and some specifically stated that NMFS should implement October RFDs for consistency with the rest of the schedule, for market reasons, and so

that fishermen have some days to rest. It is not a geographic issue, i.e., designed for those fishing off Chatham, as fishermen often travel to distant fishing areas to participate in the BFT fishery.

NMFS received comment from a tournament director that the RFDs as proposed would coordinate with the tournament schedule.

Finally, some commenters stated that NMFS should not implement RFDs at all. The implementation of RFDs in 1995 was an experiment to lengthen the season; it did not work significantly, and in fact led to poorer prices, so it should be discontinued.

Response: NMFS maintains the schedule of RFDs as proposed from July through September and has modified the schedule for the latter half of October. RFDs, in conjunction with the General category quota subdivision, help achieve HMS FMP objectives to achieve optimum yield (e.g., lengthening the season for market reasons) and address allocation issues. Comments over the past few years regarding the status quo pattern of RFDs have generally been favorable. In addition, maintaining the current pattern and schedule of RFDs provides some benefit to fishermen as it offers a certain level of predictability. However, over the past several years landings have been highest during the first week of October, exacerbating the derby nature of the fishery and contributing to market gluts. Implementing RFDs for the first half of October may help spread out fishing effort, slow the pace of landings, and extend the fishery. However, NMFS recognizes that the weather is unpredictable during this time period for the fishery, particularly in the latter half of October, and that poor weather conditions may limit participation without the need for additional RFDs during this part of the month. Thus, NMFS modifies the proposed schedule of RFDs by removing all RFDs after October 15 and maintains the schedule of RFDs for October 1, 4, 6, 7, 10, 11, 14, and 15.

Comment: If spotter planes are prohibited (except for in the Purse Seine fishery), NMFS should not implement any RFDs.

Response: Currently, spotter aircraft are allowed to participate in the fishery. However, NMFS has published a proposed rule to prohibit spotter aircraft in the BFT fishery, except for the Purse Seine category. If spotter aircraft are prohibited during the course of the fishing season from participating in the BFT fishery, NMFS will determine what other actions, if any, may be necessary at that time.

Regulatory Amendments

General Category Season

Comment: NMFS should implement a General category end-date of December 31 to prevent new BFT fisheries while rebuilding is underway.

Response: NMFS agrees and implements this measure.

Purse Seine Category Season

Comment: NMFS should not change the date on which purse seine vessel owners receive their allocations to June 1 if it means that BFT fishing would begin prior to August 15.

Response: Although the allocation would be made June 1, directed fishing for BFT will continue to start August 15. This amendment is made so as not to preclude Purse Seine category vessels from fishing for other tuna species from June 1 to August 15 of each year.

Purse Seine Quota Carryover

Comment: NMFS should add or subtract underharvest to, or overharvest from, individual purse seine IVQs.

Response: NMFS agrees and implements this measure.

Restricted Fishing Days

Comment: It is important to honest fishermen that NMFS reinstate language prohibiting "fishing for" BFT on RFDs in order to prevent the fishing for, and holding of, BFT in slush tanks until the next open day.

Response: NMFS agrees and implements this measure.

Comment: The language as proposed gives NMFS too much latitude in implementing additional RFDs; the authority should be limited to a few days before the start of the next time period.

Response: NMFS has considered this comment but maintains the provision as proposed to facilitate the enforcement of fishery openings and closures.

Timing of Rulemaking

Comment: The specifications should be final before the start of the season. Considering part of the reason NMFS changed the fishing year was to have time to implement the ICCAT recommendations, the proposed specifications should be months earlier so that decisions about permit category can be made before May 15.

Response: NMFS agrees. Part of the rationale for the adjustment of the fishing year from a calendar year to one that begins June 1 was to provide adequate time for the development of proposed and final specifications after the November ICCAT meeting. The large workload within the agency this spring delayed publication of the proposed specifications. However, as the measures contained in the specifications do not change the status quo as presented in the HMS FMP (except for the addition of RFDs in October), NMFS believes that there was minimal, or no, impact on decisions regarding choice of permit categories.

Classification

These final specifications are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The AA has determined that these specifications are necessary to implement the recommendations of ICCAT and are necessary for the management of the Atlantic tuna fisheries.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed specifications and proposed regulatory amendment would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for that certification. Accordingly, an initial regulatory flexibility analysis was not prepared for the proposed specifications and proposed regulatory amendment.

These specifications and regulatory amendment impose no requirements with which fishermen need time to come into compliance, and are necessary to help ensure that the United States' actions are consistent with its international obligations under ICCAT. Therefore, NMFS has determined that there is good cause to waive partially the 30-day delay in the effective date normally required by 5 U.S.C. 553(d). NMFS will rapidly communicate these final specifications through the FAX network.

The final specifications and regulatory amendment have been determined to be not significant for purposes of E.O. 12866. The specifications set 2000 fishing year BFT fishing category quotas and General category effort controls. The specifications are similar to those set for the 1999 fishing year as established by the HMS FMP. The regulatory amendments will not significantly change the operations of any HMS fishery. Taken together, the quota and effort control specifications and the proposed regulatory amendments are not expected to increase endangered species or marine mammal interaction rates. NMFS reinitiated formal consultation for all Atlantic HMS

commercial fisheries on November 19, 1999, under section 7 of the Endangered Species Act. NMFS issued a Biological Opinion on June 30, 2000 and concluded that the Atlantic pelagic longline fishery for tunas, swordfish and sharks is likely to jeopardize the continued existence of leatherback and loggerhead sea turtles, and may adversely affect but is not likely to jeopardize the continued existence of other listed and protected species. Additionally, NMFS concluded that other components of the Atlantic tunas fisheries (purse seine, handgear, traps) may adversely affect but are not likely to jeopardize the continued existence of listed and protected species. The BO determined reasonable and prudent alternatives to avoid jeopardizing the continued existence of any protected species, and incorporated an incidental take statement listing reasonable and prudent measures and terms and conditions to implement those measures that would serve to reduce takes. NMFS will address the requirements of the BO in subsequent rulemakings and by other non-regulatory means. In the interim, these BFT quota specifications, effort controls and revised regulations are not likely to increase takes of listed species and would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources.

The area in which fishing for BFT takes place has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, and the NMFS Highly Migratory Species Division. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: July 7, 2000.

Donald R. Knowles,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.23, paragraphs (a)(2) and (a)(4) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(a) * * *

(2) On an RFD, no person aboard a vessel that has been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**.

* * * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

* * * * *

3. In § 635.26, paragraph (a)(1) is revised to read as follows:

§ 635.26 Catch and release.

(a) *BFT.* (1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated RFD, may fish with rod and reel or handline gear for BFT under a tag and release program, provided the person tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging and, if the BFT was previously tagged, the information on the previous tag. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all persons aboard that vessel are ineligible to fish under the tag-and-release program.

* * * * *

4. In § 635.27, paragraph (a)(1)(i)(C), the second sentence of (a)(4)(i), the second sentence of (a)(4)(ii), the first sentence of paragraph (a)(4)(iii), and paragraph (a)(9)(i) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) * * *

(C) October 1 through December 31—10 percent.

* * * * *

(4) * * *

(i) * * * The directed purse seine fishery for BFT commences on August 15 each year.

(ii) * * * The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on June 1.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(9)(i) of this section. * * *

* * * * *

(9) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the Reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the following fishing year.

* * * * *

5. In § 635.71, paragraph (e)(8) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(e) * * *

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear.

* * * * *

[FR Doc. 00–17620 Filed 7–7–00; 3:26 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 070700A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 9, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the Eastern Aleutian District was established as 2,886 metric tons (mt) by the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the Eastern Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,636 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the Eastern Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17601 Filed 7–7–00; 3:25 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 134
Wednesday, July 12, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1075]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Public hearings and request for comments.

SUMMARY: The Board will hold public hearings on predatory lending practices in the home-equity lending market, and invites consumers, consumer advocacy organizations, lenders, and other interested parties to attend and to provide written comments on relevant issues. The hearings will be held pursuant to the Home Ownership and Equity Protection Act of 1994, which amended the Truth in Lending Act to impose disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. The act directs the Board to examine the home-equity loan market and the adequacy of existing Truth in Lending provisions in protecting the interests of consumers.

DATES: *Hearings.* The hearings are scheduled as follows:

1. Charlotte, North Carolina, July 27, 2000, 9 a.m. to 4:30 p.m.

2. Boston, Massachusetts, August 4, 2000, 9 a.m. to 4:30 p.m.

3. San Francisco, California, September 7, 2000, 9 a.m. to 4:30 p.m.

Comments. Comments from persons unable to attend the hearings or wishing to submit written views on the issues raised in this notice must be received by Friday, September 1, 2000.

ADDRESSES: *Hearings.* Hearings will be held at the following locations:

1. Charlotte, North Carolina—Federal Reserve Bank of Richmond, Charlotte Branch, 530 East Trade Street.

2. Boston, Massachusetts—Federal Reserve Bank of Boston, 600 Atlantic Street.

3. San Francisco, California—Federal Reserve Bank of San Francisco, 101 Market Street.

Comments. Comments on the questions listed in this document should refer to Docket No. R–1075, and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 in the Board's Martin Building between 9 a.m. and 5 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Counsel, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412; for the hearing impaired *only,* contact Janice Simms, Telecommunication Device for the Deaf, (202) 872–4984.

For directions and other matters relating to the meeting facilities in Charlotte, contact Mary Chick, (704) 358–2495; in Boston, Cynthia Reardon, (617) 973–3512; in San Francisco, Lena Robinson, (415) 974–2422.

SUPPLEMENTARY INFORMATION:

I. Background

In 1994, the Congress enacted the Home Ownership and Equity Protection Act of 1994 (HOEPA) as an amendment to the Truth in Lending Act (TILA). HOEPA was a response to anecdotal reports of abusive lending practices whereby unscrupulous lenders made unaffordable home-secured loans to "house-rich but cash-poor borrowers." These cases frequently involved elderly and sometimes unsophisticated homeowners who were targeted for loans with high rates and fees and repayment terms that were difficult or impossible for the homeowners to meet. Oftentimes the transactions involved fraud or unlawful misrepresentations by lenders or brokers.

HOEPA does not prohibit creditors from making any type of home-secured loan, nor does it limit or cap rates that creditors may charge. Instead, the act identifies a class of high-cost mortgage loans through rate and fee triggers. For transactions covered by HOEPA, creditors must provide abbreviated disclosures to consumers at least three days before the loan is closed, in addition to the disclosures generally required by TILA. When combined with TILA's three-day right of rescission after the loan closing, the HOEPA disclosures afford consumers a minimum of six days to consider key loan terms before finally deciding to enter into a transaction. Transactions covered by HOEPA are also subject to substantive limitations that prohibit certain terms from being included in the loan agreement.

HOEPA directs the Board, in consultation with its Consumer Advisory Council, to conduct public hearings periodically to examine home-equity loans in the marketplace and consider the adequacy of federal laws (including HOEPA) in protecting consumers—particularly low-income consumers. In June 1997, within two years after HOEPA became effective, the Board held hearings on home-equity lending and HOEPA. The results of those hearings were summarized and submitted to the Congress by the Board and Department of Housing and Urban Development (HUD) in July 1998, in a joint report concerning reform of TILA and the Real Estate Settlement Procedures Act.

Predatory lending practices in home-secured loans continue to receive attention from the Congress and regulatory agencies. The available information concerning predatory lending is essentially anecdotal; there is no ready method for measuring the amount of predatory lending or determining how prevalent a problem it represents. There are enough anecdotal reports, however, to suggest that predatory lending continues to be a problem. Abusive practices may involve, among other things, excessive fees and interest rates, unnecessary insurance, and fraud. Borrowers saddled with unaffordable payments can lose their homes. Excessive up-front fees combined with frequent refinancings

(often referred to as "loan flipping") may also strip the equity from consumers' homes.

Given the wide range of practices that predatory lending may involve, a multifaceted approach to dealing with the problem, including both regulatory and nonregulatory strategies, is likely to be the most effective. This includes strengthening enforcement of current laws, voluntary industry action, community outreach efforts, and consumer education and counseling. Several bills taking different approaches to addressing predatory lending have been introduced in the Congress. Several states have enacted or are considering legislation. The Board has convened a nine-agency working group, including the five federal agencies that supervise depository institutions, HUD, the Office of Federal Housing Enterprises Oversight, the Department of Justice, and the Federal Trade Commission. The aims of the group are to tighten enforcement of existing statutes and to establish a coordinated approach to addressing predatory practices.

On May 24, the Board presented testimony at a hearing held by the House Committee on Banking and Financial Services on predatory lending and possible remedial actions. HUD and the Department of the Treasury have convened a National Task Force on Predatory Lending. The primary mission of the Task Force has been to collect information about predatory lending, provide data on the impact of predatory practices, and comment on existing legislative proposals for reform in order to provide a basis for HUD and Treasury to make recommendations for legislation to the Congress. To solicit information about local and national aspects of the predatory lending problem, HUD and Treasury held five pubic forums in Los Angeles, Chicago, New York, Atlanta, and Baltimore. On June 20, HUD and Treasury issued a report on their findings, that discusses possible ways to curb predatory lending and contains recommendations to the Congress regarding possible legislative action and to the Board regarding the exercise of the Board's regulatory authority under HOEPA.

The Board's home-equity hearings under HOEPA will be primarily focused on the Board's regulatory authority under that act, and specific ways that the Board might consider exercising that authority. As described below, the Board is authorized to make some adjustments to HOEPA's high-cost triggers that could affect the scope of the act's coverage. The Board is also directed by HOEPA to prohibit certain acts and practices in connection with mortgage loans if the Board makes the finding required by the statute. Based on information gathered during recent public hearings, the interagency discussions, and meetings with industry and consumer representatives, the Board has developed a series of questions for discussion at the HOEPA hearings and for public comment. These questions are intended to solicit views on the ways that the Board might exercise its authority, and will be used to focus the discussion at the HOEPA hearings on possible regulatory approaches to deter predatory lending.

The Truth in Lending Act and HOEPA

The Truth in Lending Act (TILA) (15 U.S.C. 1601 *et seq.*) is intended to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the "finance charge") and as an annual percentage rate (the "APR"). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226).

The Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, amends TILA to impose disclosure requirements and substantive limitations on certain home-secured loans (closed-end installment loans) with rates and fees above a specified amount. A loan is covered by HOEPA if (1) the APR exceeds the rate for treasury securities with a comparable maturity by more than 10 percentage points, or (2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400 (adjusted annually based on the consumer price index). HOEPA is implemented by section 32 of the Board's Regulation Z (12 CFR 226.32), effective in October 1995. 60 FR 15463, March 24, 1995.

HOEPA does not prohibit creditors from making any home-secured loan, nor does it limit or cap rates that creditors may charge. Instead, HOEPA layers disclosure and timing requirements onto the requirements already imposed for consumer credit transactions. Creditors offering HOEPA-covered loans must provide abbreviated disclosures to consumers three days before the loan is closed. The disclosures provide that consumers are not obligated to complete the closing, remind borrowers that they could lose their home if they fail to make payments, and state a few key cost disclosures, including the APR, the regular payment, and, if the loan has a variable rate, a "worst case payment" if rates increase as high and quickly as possible under the loan agreement.

In addition, creditors making HOEPA-covered loans are prohibited from including in their loan agreements, among other provisions: (1) Balloon payments in loans with maturities of less than five years, (2) payment schedules that result in negative amortization, (3) higher default interest rates, and (4) prepayment penalties in most instances. Consumers entering into a HOEPA-covered loan may rescind the transaction for up to three years after closing if creditors fail to provide the early disclosures or if they include a prohibited term in the loan agreement.

Home-purchase loans are not covered by HOEPA. Although reverse mortgages are exempt from the HOEPA requirements imposed for traditional mortgages, reverse mortgages are subject to an alternative detailed disclosure scheme under HOEPA (implemented by section 33 of Regulation Z). Home-equity lines of credit (open-end credit) are also exempt from HOEPA, as congressional hearings preceding enactment did not reveal evidence of abusive practices connected with open-end home-equity lending.

In June 1997, the Board held hearings on home-equity lending and HOEPA in Los Angeles, Atlanta, and Washington, DC. Participants were asked to address several topics, including the effect of HOEPA on homeowners seeking home-equity credit and on credit opportunities in the communities targeted by the legislation (for example, whether there had been changes to the volume or cost of home-equity installment loans); the effectiveness of the disclosures and suggestions for improvements; and whether any exemptions or prohibitions would be appropriate for the Board to consider under its HOEPA rulemaking authority. 62 FR 23189, April 29, 1997.

Those testifying at the hearings generally concurred that it was too soon after HOEPA's enactment to determine the effectiveness of the new law. However, consumer representatives reported continuing abusive practices by home-equity lenders of all degrees of sophistication. The hearings formed the basis for a detailed analysis of the problem of abusive lending practices in mortgage lending contained in a July

1998 report to the Congress by the Board and HUD on possible reforms to TILA and the Real Estate Settlement Procedures Act regarding mortgage-related disclosures. (The 1998 joint report is available at the Board's website address: www.federalreserve.gov/boarddocs/press/general/1998.) Chapter 6 of the report suggested a multifaceted approach to curbing predatory lending practices, including some legislative action, stronger enforcement of current laws, and nonregulatory strategies such as community outreach efforts and consumer education and counseling. (See also Chapter 2 at page 17, Chapter 7 at page 76, and Appendix D.)

II. Public Hearings

Since HOEPA's enactment, the volume of home-equity lending has increased significantly. This overall growth in home-equity lending has been accompanied by a sharp boost in the subprime mortgage market. HUD reports that the number of subprime home-equity loans has increased from 80,000 in 1993 to 790,000 in 1998.

The growth in subprime lending brought a substantial increase in the availability of credit to borrowers having less-than-perfect credit histories and to other consumers who do not meet the underwriting standards of prime lenders. Because consumers who obtain subprime mortgage loans have, or perceive they have, fewer credit options than other borrowers, they may be more vulnerable to unscrupulous lenders or brokers. With the increase in the number of subprime loans, consumer advocates have been concerned for some time about the potential for a corresponding increase in the number of predatory loans. Some industry representatives have noted, however, that the trend toward securitizing subprime mortgages has served to standardize creditor practices and to limit the opportunity for widespread abuse.

To address concerns about predatory lending and consider approaches the Board might take in exercising its regulatory authority under HOEPA, the Board has scheduled three one-day hearings in Charlotte (Thursday, July 27), Boston (Friday, August 4), and San Francisco (Thursday, September 7). The hearings will seek statements from the public about home-equity lending in general, but will focus specifically on collecting testimony on the ways that the Board might use its rulewriting authority under HOEPA to address predatory lending practices in the home-equity market. To focus the discussion at the hearings, interested parties wishing to present oral statements at the hearings (and persons submitting written comments to the Board) are asked to address the issues set forth below, as applicable:

A. Adjusting the HOEPA Triggers

HOEPA covers mortgage loans that meet one of the act's two "high-cost" triggers. A loan is covered if (1) the APR exceeds the rate for treasury securities with a comparable maturity by more than 10 percentage points, or (2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400. The Board is required to adjust the $400 threshold annually, based on the consumer price index; for 2000 the amount is $451.

1. APR Trigger

HOEPA authorizes the Board to adjust the HOEPA trigger by 2 percentage points from the current standard of 10 percentage points above the U.S. Treasury securities with comparable maturities. Some consumer advocates and others have suggested that, based on the current APR trigger, only a small percentage of subprime mortgage loans are covered by HOEPA. They contend that lowering the APR trigger would allow HOEPA's protections to be extended to a broader class of transactions.

- Would lowering the APR trigger to 8 percentage points be effective in furthering the purposes of HOEPA, and if so, how?
- If the APR trigger were lowered, would such action have any significant impact on the availability or cost of subprime mortgage loans?

The Board also solicits comment on any available data regarding the percentage of subprime mortgage loans covered under the existing APR trigger, and the percentage of transactions that would be affected by lowering the trigger by 2 percentage points.

2. Points and Fees Trigger

A loan is covered by HOEPA if the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400. For this purpose, "points and fees" include all items included in the finance charge and APR except interest, and all compensation paid to mortgage brokers. The act specifically excludes reasonable closing costs that are paid to unaffiliated third parties. HOEPA also authorizes the Board to add "such other charges" to the points and fees test as the Board deems appropriate. Accordingly, comment is solicited on what fees, if any, should be added to the calculation. In particular, comment is requested on the following:

a. *Credit Insurance:* Premiums paid for credit insurance that a borrower is *required* to purchase are finance charges that are currently included in both the APR and the points and fees test under HOEPA. But premiums paid for optional credit life insurance currently are not included in the points and fees test. Some consumer advocates assert that because these premiums are excluded, predatory lenders may avoid HOEPA coverage by "packing" loans with high-priced credit insurance that represents a significant source of fee income, in lieu of charging fees that would be included under the current HOEPA trigger.

- What would be the effect of including lump-sum premiums collected at closing for optional credit insurance in HOEPA's points and fees test? Should such premiums be included only if they are paid to the creditor or an affiliate of the creditor, or only to the extent that the creditor receives compensation in connection with the sale of the insurance?

b. *Prepayment Penalties:* In some cases, prepayment penalties may provide fee income that is an additional incentive for creditors to encourage frequent refinancings that are not in a consumer's interest. If the consumer must pay a prepayment penalty to the same creditor that is refinancing the loan, the prepayment fee could be viewed as a cost of the new transaction.

- What would be the effect of including a prepayment penalty (assessed on the original loan) in HOEPA's points and fees test for the new loan when the loan is refinanced with the same creditor (or an affiliate)?

c. *Points:* Consumers who refinance their loans generally pay points on the entire refinanced amount.

- What would be the effect of adding any points paid by the consumer for the existing loan to the points and fees test when the same creditor (or an affiliate) refinances the loan within a specified time period?

The current points and fees test under HOEPA is complex. The statute allows many closing costs to be excluded from the calculation if they are reasonable and paid to third parties. The Board solicits comments on whether a better approach would be to recommend a statutory amendment that would include all closing costs in the points and fees test.

B. Restricting Certain Acts or Practices Under HOEPA

The hearings will explore how the Board's regulatory authority under HOEPA to prohibit specific practices can be used to curb predatory lending.

Under HOEPA, the Board is authorized to prohibit acts and practices:

• *In connection with mortgage loans*—if the Board finds the practice to be unfair, deceptive, or designed to evade HOEPA; and

• *In connection with refinancings of mortgage loans*—if the Board finds that the practice is associated with abusive lending practices or otherwise not in the interest of the borrower.

Comment is invited on the following specific approaches to dealing with predatory lending practices, and whether any new requirements or prohibitions should apply to all mortgage transactions, only to refinancings, or only to HOEPA-covered refinancings. Both regulatory and legislative proposals should be discussed.

1. *Credit insurance.* Premiums for credit insurance are often collected from the borrower at closing and added to the loan amount, increasing the total finance charges paid by the consumer. Consumer advocates express concern about high-pressure sales tactics, which may mislead consumers about whether the insurance is required. The Board previously recommended that the Congress consider prohibiting the advance collection of premiums for credit insurance policies in connection with HOEPA loans. If no statutory prohibition is adopted, should the Board regulate the conditions under which such policies are sold or financed? For example:

• What would be the effect of the Board's requiring the sale of single-premium policies to be accompanied by a disclosure that the coverage may also be available with periodic premiums? What other disclosures might be helpful?

• To address concerns about "insurance packing," what would be the effect of the Board's requiring that the sale of single-premium policies include a disclosure at the time of purchase of how unearned premiums will be rebated if the policy is cancelled or the loan is paid in full early?

• What would be the effect of requiring notification to borrowers, after the loan closing, of their right to cancel the policy and obtain a refund?

• What would be the effect of regulations prohibiting creditors from selling single-premium insurance products until after loan closing?

2. *Unaffordable loans.* Under HOEPA a creditor may not engage in a pattern or practice of extending credit based on the collateral if (given the consumer's current and expected income, current obligations, and employment status) the consumer will be unable to make the scheduled loan payments.

• Would additional interpretative guidance on the "pattern or practice" requirement be useful, or are case-by-case determinations more appropriate? If additional guidance would be useful, what elements of the requirement should the guidance address?

• What regulatory standards could the Board adopt for determining whether a creditor has considered the consumer's ability to repay the loan in order to satisfy this requirement?

3. *Refinancing lower-rate loans.* When a consumer seeks a second mortgage to consolidate debts or to finance home improvements, some creditors also require the existing first mortgage to be paid off as a condition of providing the new funds. This ensures that the creditor will be the senior lien-holder, but may increase significantly the points and fees paid for the new loan. Is regulatory action appropriate to protect consumers from abuses and, if so, what type of action could be taken without restricting credit in legitimate transactions?

4. *Balloon Payments.* Depending on the circumstances, mortgages with a balloon payment feature may be attractive to some borrowers, but may harm other consumers. HOEPA currently prohibits balloon payments for high-cost loans that have terms of less than 5 years. Lenders that price their loans just below HOEPA's triggers, however, might include balloon payments that force consumers to refinance the loan and pay additional points and fees.

• For loans *not* covered by HOEPA's restriction on balloon payments, are any restrictions or additional disclosures needed in connection with balloon payments in order to prevent abusive practices?

• To avoid evasions of HOEPA's restrictions on balloon payments, what would be the effect of the Board's prohibiting "payable on demand" clauses for HOEPA loans unless such a clause is exercised in connection with a consumer's default? (A similar limitation already exists for home-equity lines of credit.)

5. *Prepayment penalties.* Prepayment penalties allow creditors to recover their transaction costs if loans are prepaid earlier than expected. That rationale may not be relevant in cases where high rates and up-front fees are charged. In such cases, the penalty might be used to deter the consumer from refinancing the loan on more favorable terms.

• Is it feasible to limit the use of prepayment penalties to transactions where consumers receive, in return, a benefit in the form of lower up-front costs or lower interest rates? How might the existence of such benefits be measured?

6. *Foreclosures.* Consumers who have been victims of abusive practices must be afforded adequate opportunity to assert their rights in order to avoid unwarranted foreclosures. State law and local practice generally govern the procedures followed for foreclosures. Some states require actual notice to the consumer, but in other states notice by publication is sufficient. Even when consumers do receive notice, they may not get adequate information about their legal options.

• What would be the effect of setting minimum federal standards for foreclosures involving a consumer's primary dwelling? For example, a creditor might be required to provide the consumer with actual notice of: (1) The applicable foreclosure procedures; (2) any legal rights the consumer may have to avoid the foreclosure; and (3) the specific amount that, if paid in accordance with the notice, will terminate the foreclosure.

7. *Misrepresentations regarding borrower's qualifications.* There is some concern that many borrowers who obtain high-cost loans may actually qualify for lower cost credit. Some brokers or creditors may provide consumers with false or materially misleading information that the consumer does not qualify for a lower cost loan based on the creditor's underwriting criteria. Such a practice generally would be illegal under state laws that protect against fraud and deception. What benefit to consumers might be achieved if the Board issued a rule that prohibited such misrepresentations as unfair and deceptive under HOEPA?

8. *Reporting borrowers' payment history.* Some creditors do not report to consumer reporting agencies subprime borrowers' good payment history in order to avoid having the borrowers solicited by competitors for a refinancing on more attractive terms. What would be the effect of requiring creditors that choose not to report borrowers' positive payment history to disclose that fact?

9. *Referral to credit counseling services.* What regulatory action would better enable consumers in general, or HOEPA borrowers in particular, to take advantage of any available credit counseling services?

10. *HOEPA disclosures.* In their 1998 report to the Congress, the Board and HUD recommended amendments to the required disclosures, including adding references to the availability of credit

counseling, using more "user-friendly" text in the narrative reminders about the potential consequences for not making payments, and requiring the consumer's monthly income to be disclosed in close proximity to the consumer's monthly payment. Comment is requested on those recommendations. Comment also is solicited on whether additional information in the current HOEPA disclosures would benefit consumers. For example:

- The consumer must receive HOEPA disclosures three days before loan closing, specifying the APR and monthly payment amount. Due to the marketing practices of some lenders, consumers may not be aware of high up-front costs that will be financed. What would be the effect of the Board's requiring that the disclosure also include additional information, such as the total loan amount on which the disclosed monthly payment is based?
- For HOEPA loans, what would be the effect of requiring that consumers receive a complete Truth in Lending disclosure statement three days before closing?

11. *Open-end home equity lines.* HOEPA does not cover home-equity lines of credit. Is there evidence that lenders are using open-end credit lines to evade HOEPA? If so, what benefit might be derived from prohibiting the practice of structuring a home-secured loan as open-end credit in order to evade the provisions of HOEPA? How could such practices be identified and what limitations on these practices would be appropriate to effect the purposes of HOEPA?

Community Outreach and Consumer Education

In addition to issues concerning the Board's regulatory authority under HOPEA, views will also be elicited at the hearings about nonregulatory approaches to curbing predatory lending, such as community outreach and consumer education. Accordingly, the Board seeks comment on the following:

What community outreach activities and consumer education efforts are being pursued currently? Which types of products, programs, and delivery systems have been most effective? What other strategies might be implemented to reach the targeted populations? How might outreach and education efforts be tailored to address some lenders' and brokers' aggressive marketing practices? What role can government agencies play in increasing the effectiveness of these programs?

Additional Data

The Board seeks information about any studies or data pertaining to subprime lending or HOEPA loans that would be useful in determining how the Board might use its regulatory authority under HOEPA. For example, are there data regarding the percentage of HOEPA loans that result in foreclosures? Are there data regarding the effect of HOEPA disclosures showing the percentage of transactions cancelled by borrowers based on disclosures provided before closing?

III. Form of Statements and Comments

These hearings are open to the public to attend. Invited speakers will participate in panel discussions. In addition, about two hours is reserved for brief statements by other interested parties, starting at approximately 2:30 p.m. To allow as many persons as possible to offer their views during this period, oral statements should be brief (five minutes or less); written statements of any length may be submitted for the record. Interested parties who wish to participate during this "open-mike" period are asked to contact the Board in advance of the hearing date, to facilitate planning for this portion of the hearings. The order of speakers generally will be based on their registration at the hearing site on the day of the hearing.

Comment letters should refer to Docket No. R–1075, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

By order of the Board of Governors of the Federal Reserve System, July 6, 2000.

Jennifer J. Johnson,

Secretary to the Board.

[FR Doc. 00–17520 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 19, 122, 123, 127, 141 and 142

RIN 1515–AC57

General Order Warehouses

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations principally to create a new class of bonded warehouse exclusively for the receipt of general order merchandise, and to include procedures for authorizing and operating general order warehouses. This proposal is in response to a recent increase in the amount of unentered merchandise being moved into general order facilities. This increase has resulted from changes in the law, and it has prompted the importing community to request that Customs put in place uniform, national procedures for approving and operating warehouses receiving general order merchandise.

In addition, changes are proposed to the Customs Regulations to implement certain amendments to the law made by the Customs modernization portion of the North American Free Trade Agreement Implementation Act. The amendments concern the circumstances where the title to unclaimed and abandoned merchandise vests in the Government, in lieu of sale of the merchandise at public auction.

DATES: Comments must be received on or before September 11, 2000.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Gerard Bradley, Office of Field Operations, 202–927–0765.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act, 107 Stat. 2057 (Pub. L. 103–182; December 8, 1993), popularly known as the Customs Modernization Act (Mod Act), amended a number of Customs and navigation laws.

In particular, section 656 of the Mod Act amended 19 U.S.C. 1448(a) to provide, among other things, that the owner or master of any vessel or vehicle, or agent thereof, would be required to notify Customs of any merchandise or baggage unladen from the vessel or vehicle, for which entry was not made within the time prescribed by law or regulation; and if entry were not made within the prescribed time, the master or person in charge of the importing vessel or vehicle, or agent thereof, would be responsible for such unentered merchandise until it was removed from the carrier's control and placed in

general order status in accordance with 19 U.S.C. 1490.

In concert with this, section 658 of the Mod Act amended 19 U.S.C. 1490 by deleting the requirement that a Customs officer take unentered merchandise into Customs custody and send it to a bonded warehouse. Instead, carriers are now required to notify both Customs and a bonded warehouse of the unentered merchandise, and the bonded warehouse would then have to arrange for the transportation and storage of the merchandise at the risk and expense of the consignee.

These, and related, statutory amendments were implemented by a final rule document amending the Customs Regulations, that was published in the **Federal Register** (63 FR 51283) on September 25, 1998, as T.D. 98–74:

Based on the statutory amendments, and the Customs Regulations implementing them, imported merchandise could not remain at the wharf, pier or other place of unlading more than 15 calendar days after its landing; or, if transferred from the arriving carrier to any party under a Customs-authorized permit to transfer or in-bond entry, the merchandise could not remain in the custody of that party more than 15 calendar days after its receipt under a Customs-authorized permit to transfer or more than 15 calendar days after its arrival at the port of destination, as provided in §§ 4.37, 122.50, 123.10, Customs Regulations (19 CFR 4.37, 122.50, 123.10). There is no provision in these regulations for any extension of this 15-day period.

Customs and the trade have consequently seen an increase in the amount of unentered merchandise moving into general order facilities, including merchandise, such as hazardous materials, requiring specialized storage facilities. Due to this increase in merchandise moving into temporary storage in general order status, the trade community has sought the establishment of national, uniform criteria for the approval and operation of general order warehouses.

Accordingly, by this document, Customs is proposing that a new class of bonded warehouse, a Class 11 warehouse, be established exclusively to handle the receipt of general order merchandise as described in § 127.1, Customs Regulations (19 CFR 127.1). It is further proposed that a Class 3, 4, or 5 bonded warehouse, as described in § 19.1(a)(3), (4), or (5), Customs Regulations (19 CFR 19.1(a)(3), (4), or (5)), may likewise be used for the deposit of general order merchandise, but only if there is no Class 11 warehouse otherwise available to receive the merchandise, and provided the Class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2). So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (Class 11) warehouses. Section 19.1, Customs Regulations (19 CFR 19.1), would be amended as necessary to address these matters.

Class 1 warehouses, which are premises owned or leased by the Government for the deposit of unentered, seized or unclaimed merchandise, would, however, be retained as such, should the exigencies of the service as determined by the applicable port director require their occasional use.

As already indicated, the application criteria set forth in § 19.2 would apply as well to a warehouse where general order merchandise is to be sent. In addition, as a condition for approval of the application to establish a warehouse facility, at the discretion of the port director, minimum space requirements could be imposed for the storage of general order merchandise. The port director would need to post an announcement of these requirements by a written notice at the customhouse, and by any appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

Furthermore, § 19.2(f) would be amended to provide, in the case of applications from a business entity to establish a bonded warehouse, that Customs may require the submission of fingerprints from all employees of the business entity, as opposed to only those of all officers and managing officials. This requirement would apply to applications generally to establish a Customs bonded warehouse, including a general order warehouse. In this regard, there is a reasonably perceived need under the circumstances for a more thorough, comprehensive scrutiny of applicants, consistent with Customs movement toward a post-audit environment and the spirit of "shared responsibility" embodied in the Customs modernization provisions of the North American Free Trade Agreement Implementation Act.

Additionally, a general order warehouse would have to satisfy the inventory and recordkeeping requirements in § 19.12, Customs Regulations (19 CFR 19.12). However, the warehouse would have to do so through an automated inventory control and recordkeeping system. Existing Class 3, 4 and 5 warehouses that handle general order merchandise would be allowed a reasonable "phase-in" period (specifically, 2 years) after which their recordkeeping systems, at least insofar as they cover general order merchandise, must likewise be automated. Section 19.12 would be revised accordingly.

To this end, Customs has recently seen an increase in the quantity of unentered, unclaimed merchandise being sent into general order, as discussed above. Requiring an automated inventory system for such merchandise would enhance effectiveness in managing and monitoring the greater number of general order transactions, and thus augment the ability to track and safeguard this merchandise, which would benefit both the importing community as well as the Government. Specifically, an automated system would assist importers of unentered cargo by enabling its more rapid location and the faster resolution of any problems associated with the entry and clearance of the cargo. Also, as noted, it would help protect the potential interest of the Government in the property, given that, generally speaking, if unentered property remains unclaimed for 6 months from the date of its importation, the title to such property may vest in the United States, and the property may be retained for official Government use, in accordance with 19 U.S.C. 1491(b) (see *infra*).

As is currently the case, the proprietor of a general order warehouse must arrange for the transportation of the merchandise to, and its storage at, the warehouse facility. It is observed that the warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, that covers the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the carrier (or from any other party to whom custody of the merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry).

Sections 4.37, 19.9, 122.50 and 123.10, Customs Regulations (19 CFR 4.37, 19.9, 122.50 and 123.10), would be similarly amended in conformance with this latter, existing requirement. Also, for editorial purposes, in § 19.9, the term "bonded carrier" would be substituted in place of "cartman or lighterman".

In those cases where the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party would be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

On the other hand, if Customs finds that the proprietor cannot accept the goods because they are required to be exported or destroyed, or for other good cause, the goods would remain in the custody of the arriving carrier or in the custody of any party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry. In the event that merchandise cannot be accepted into a general order warehouse, and its exportation or destruction is required, as is the case with certain of the special categories of merchandise enumerated in § 127.28, Customs Regulations (19 CFR 127.28), the carrier or other party would be responsible under bond for exporting or destroying the goods, as necessary.

To implement the foregoing requirements, §§ 4.37, 122.50 and 123.10 would be further amended accordingly. In addition, § 127.13, Customs Regulations (19 CFR 127.13), would be amended consistent with §§ 4.37, 122.50 and 123.10.

Furthermore, where the warehouse proprietor has taken merchandise into his custody, the proprietor would assume the responsibility and expense for the destruction of the merchandise, in the event that such destruction is found to be warranted under the circumstances (*i.e.*, where the port director concludes that the merchandise has no commercial value or cannot be disposed of at public auction (unsalable)). The port director would authorize such destruction on a CF 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs. However, before destroying the merchandise, the warehouse proprietor would first have to make a reasonable effort to identify and inform the importer (owner) or consignee of the merchandise regarding its intended destruction. Section 127.14, Customs Regulations (19 CFR 127.14), would be revised to include these additional requirements.

Also, the general authority citation for part 127, Customs Regulations (19 CFR part 127), appearing after its table of contents, would be revised, and specific authority citations would be added for certain regulatory sections in part 127 whose authority is not already included in the general authority citation for the part. Currently, the specific statutory authority citations for numerous regulatory sections in part 127 are set forth in parentheses immediately following the text of the sections. To eliminate unnecessary repetition, these parenthetical citations of authority appearing after the individual sections would be deleted.

Mod Act Changes; Title to Unclaimed Merchandise Vesting in Government

In addition, § 127.14(a) would be revised and a new subpart E would be added to part 127 essentially to conform with and implement a number of amendments made to 19 U.S.C. 1491 under section 659 of the Mod Act. Section 1491 previously provided that unclaimed and abandoned merchandise would be sold at public auction.

However, 19 U.S.C. 1491, as amended by section 659 of the Mod Act, now provides that, as an alternative to selling unclaimed and abandoned merchandise at public auction, the title to the merchandise may instead vest in the United States following notice to all known interested parties, unless the merchandise is timely entered or withdrawn for consumption and all duties, taxes, fees, charges and other expenses accruing on the merchandise are paid. As amended, 19 U.S.C. 1491 also provides that in the event that title to such merchandise does vest in the Government, Customs may retain the property for its own official use, transfer the property to any other Federal, state or local agency, destroy the property, or otherwise dispose of it.

Moreover, where any party who lost title to, or a substantial interest in, the merchandise, by virtue of title having vested in the Government. can establish such title or interest, section 1491, as amended, provides that the party, upon filing a timely and proper petition, may be paid the amount that it is believed the party would have received had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under 19 U.S.C. 1493.

In this latter regard, 19 U.S.C. 1493 provides that any surplus of proceeds from the sale of unclaimed and abandoned merchandise, that remains after the payment of certain enumerated charges, expenses, duties, taxes and fees, will be deposited in the Treasury, unless a proper claim for the surplus is filed with Customs.

Time Limit Within Which To Make Entry; Conforming Changes

In conformance with the changes already made under T.D. 98–74 to §§ 4.37, 122.50, and 123.10, Customs Regulations, as discussed above, §§ 141.5 and 142.2, Customs Regulations (19 CFR 141.5, 142.2), would likewise be changed to require that the entry of merchandise be made within 15 calendar days (as opposed to 5 working days) after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Also, the reference to entry having to be made "by the consignee" would be removed from these sections, inasmuch as the entry law (see 19 U.S.C. 1484(a)) no longer requires this.

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

The proposed amendments primarily dealing with general order warehouses are intended to expedite the handling and disposition of general order merchandise, and to further facilitate consistent and uniform treatment in the administration of general order warehouses. Also, the proposed amendments dealing with the Mod Act are intended to conform with, implement and enforce the provisions of the statutory law and ensure the protection of the revenue. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria

for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in this notice of proposed rulemaking have in part already been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0121 (Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility); and 1515–0220 (Notification regarding imported merchandise or baggage for which entry has not been made). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The remaining collection of information in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This collection of information is contained in §§ 4.37(c), 19.9(a), 122.50(c), and 123.10(c). This information is necessary to expedite the handling and disposition of general order merchandise; ensure that merchandise and baggage imported into the United States has been properly accounted for in accordance with the requirements of the statutory law; and facilitate consistent and uniform treatment in the administration of general order warehouses. The likely respondents and/or recordkeepers are business organizations, including importers and carriers.

Estimated total annual reporting and/or recordkeeping burden: 6600 hours.

Estimated average annual burden per respondent/recordkeeper: 33 hours.

Estimated number of respondents and/or recordkeepers: 200.

Estimated annual frequency of responses: 20,000.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the same time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, would be appropriately revised upon adoption of the proposal as a final rule.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Imports, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 19

Bonds, Customs duties and inspection, Freight, Imports, Licensing, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 127

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Administrative practice and procedure, Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

It is proposed to amend parts 4, 19, 122, 123, 127, 141, and 142, Customs Regulations (19 CFR parts 4, 19, 122, 123, 127, 141 and 142), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citation would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

* * * * *

2. It is proposed to amend § 4.37 by adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e), (f), and (g), respectively, as paragraphs (e), (f), (g), and (h), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

§ 4.37 General order.

* * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general and relevant specific authority citations for part 19 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624; Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

* * * * *

2. It is proposed to amend § 19.1 by adding a heading to paragraph (a), by revising paragraph (a)(1), by adding a new paragraph (a)(10), by adding a heading to paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 19.1 Classes of customs warehouses.

(a) *Classifications.* * * *

(1) *Class 1.* Premises owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Unclaimed merchandise stored in such premises will be held under "general order."

* * * * *

(10) *Class 11.* Bonded warehouses, known as "general order warehouses", established for the storage and disposition exclusively of general order merchandise as described in § 127.1 of this chapter.

(b) *Manipulation.* * * *

(c) *General order.* General order merchandise as described in § 127.1 of this chapter will be stored and disposed of in a Class 11 warehouse. However, general order merchandise may also be sent to a warehouse of Class 3, 4, or 5, but only if there is no Class 11 warehouse otherwise available to receive the merchandise, and provided the Class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2). So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (Class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

3. It is proposed to amend § 19.2 by adding a new paragraph (d), and by revising the second sentence of paragraph (f), to read as follows:

§ 19.2 Applications to bond.

* * * * *

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

* * * * *

(f) * * * The port director may require an individual applicant to submit fingerprints on Standard Form 87 at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on Standard Form 87, of all employees of the business entity.

4. It is proposed to amend § 19.9 by revising paragraph (a) to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* The general order warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, will be reported to the port director within two working days of the joint determination.

* * * * *

5. It is proposed to amend § 19.12 by revising the introductory text in paragraph (a) to read as follows:

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability.* The proprietor of a Class 11 general order warehouse as described in § 19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing Class 3, 4, or 5 warehouses as described in § 19.1 certified before [the date this rule becomes final] to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from [the date this rule becomes final]. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. It is proposed to amend § 122.50 by revising the heading, by adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

§ 122.50 General order merchandise.

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the

custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

2. It is proposed to amend § 123.10 by revising the heading, by adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

§ 123.10 General order merchandise.

* * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 127—GENERAL ORDER, UNCLAIMED AND ABANDONED MERCHANDISE

1. The general authority citation for part 127 would be revised, and specific sectional authority citations would be added, to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;

Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;

Section 127.21 also issued under 19 U.S.C. 1753;

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

2. It is proposed to amend part 127 by removing the statutory authority citations that appear in parentheses immediately below the texts of §§ 127.1, 127.2, 127.11 through 127.14, 127.21, 127.23 through 127.29, and 127.31 through 127.37.

3. It is proposed to amend § 127.13 by revising paragraph (a) to read as follows:

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* A Class 11 bonded warehouse or warehouse of Class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned merchandise, upon due notification to the proprietor of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry), as provided in §§ 4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, will direct the storage of the merchandise by the carrier or by any other appropriate means.

* * * * *

4. It is proposed to amend § 127.14 by revising paragraph (a) to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale or other disposition.* (1) *General.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law, unless the merchandise is entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(2) *Destruction of merchandise.* (i) *Proprietor responsibility.* If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (see § 127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (see § 113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) *Notice of destruction.* Before destroying the merchandise, the

warehouse proprietor must first make a reasonable effort under bond (see § 113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

* * * * *

5. It is proposed to amend part 127 by adding a new subpart E to read as follows:

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

127.41 Government title to unclaimed and abandoned merchandise.
127.42 Disposition of merchandise owned by Government.
127.43 Petition of party for surplus proceeds had merchandise been sold.

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

§ 127.41 Government title to unclaimed and abandoned merchandise.

(a) *Vesting of title in Government.* At the end of the 6-month period noted in § 127.11, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Commissioner of Customs, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) *Notice to known interested parties.* Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

(1) Importer, if known;

(2) Consignee, if name and address can be ascertained;

(3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and

(4) Any other known interested parties.

(c) *Appraisement of merchandise.* Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

§ 127.42 Disposition of merchandise owned by Government.

(a) *Disposition.* If title to any unclaimed and abandoned merchandise vests in the United States under § 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) *Payment of charges and expenses.* All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving agency.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) *Filing of petition.* Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the surplus proceeds that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) *When and with whom filed.* The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under § 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of the vesting but not later than 90 calendar days from the vesting.

(c) *Evidence required.* The petition must show the party's title to or interest in the merchandise, and be supported, as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by satisfactory proof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) *Payment of claim.* If the claim of the owner, consignee, or other party having title to or a substantial interest in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (see § 127.36). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisement of the merchandise, as provided in § 127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to revise § 141.5 to read as follows:

§ 141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with § 4.37 or § 122.50 or § 123.10 of this chapter.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend § 142.2 by revising paragraph (a) to read as follows:

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

* * * * *

Approved: May 19, 2000.

Raymond W. Kelly,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–17639 Filed 7–11–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103115–00]

RIN 1545–AX90

Bad Debt Reserves of Thrift Institutions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of proposed regulations.

SUMMARY: This document withdraws proposed regulations amending the income tax regulations. This action is taken to remove from the IRS' inventory of regulations projects certain proposed regulations that will not be published in final form because under a subsequent amendment the underlying statute does not apply to taxable years beginning after December 31, 1995.

DATES: These proposed regulations are withdrawn July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Wojay, of the Office of Assistant Chief Counsel, Financial Institutions and Products, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224. Telephone (202) 622–3920, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document withdraws certain proposed regulations previously published in the **Federal Register** by the IRS. These proposed regulations, §§ 1.593–12, 1.593–13, and 1.593–14, are being withdrawn because under a subsequent amendment the underlying statute, section 593, does not apply to subsections (a), (b), (c), and (d) to taxable years beginning after December 31, 1995.

Drafting Information

The principal author of this withdrawal notice is Craig Wojay, Office of the Assistant Chief Counsel (Financial Institutions and Products) within the Office of the Chief Counsel, IRS. However, other personnel from the IRS and the Treasury Department participated in developing the withdrawal notice.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the proposed rulemaking that was published in the **Federal Register** on Monday, January 13, 1992 (57 FR 1232) is withdrawn.

Robert Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–17643 Filed 7–11–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT059–7218b, FRL–6731–5]

Approval and Promulgation of Implementation Plans; Connecticut; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In September 1999, the State of Connecticut (CT) submitted a State Implementation Plan (SIP) to reduce air emissions of nitrogen oxides (NO_X). The submittal responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." The submittal includes a narrative and a regulation that establish a statewide NO_X budget and a NO_X allowance trading program for large electricity generating and industrial sources beginning in 2003.

The Environmental Protection Agency (EPA) is proposing approval of the CT's September 1999 SIP submittal including, CT's NO_X control regulation, section 22a–174–22b, "Post–2002 Nitrogen Oxides (NO_X) Budget Program" and CT's SIP narrative, "Connecticut State Implementation Plan Revision to Implement the NO_X SIP Call," dated September 30, 1999. EPA is proposing to approve Connecticut's submittal for its strengthening effect pursuant to section 110 of the Clean Air Act (CAA).

DATES: EPA must receive written comments on or before August 11, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning , Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA 02114, and at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 918–1048 or at Rapp.Steve@EPA.GOV.

SUPPLEMENTARY INFORMATION:

Overview

On September 30, 1999, CT submitted a package of regulatory and narrative materials in order to comply with the NO_X SIP Call and strengthen its ozone SIP. EPA proposes full approval of CT's submittal.

The following table of contents describes the format for this

SUPPLEMENTARY INFORMATION:

I. EPA's Action
  A. What action is EPA proposing today?
  B. Why is EPA proposing this action?
  C. What are the general NO_X SIP Call requirements?
  D. What is EPA's NO_X budget and allowance trading program?
  E. What is the Compliance Supplement Pool?
  F. What guidance did EPA use to evaluate Connecticut's submittal?
II. Connecticut's NO_X Budget Program
  A. What is Connecticut's NO_X SIP Call submittal?
  B. When did Connecticut propose and adopt the program?

C. When did Connecticut submit the SIP revision to EPA and when did EPA find it technically and administratively complete?
D. What is Connecticut's NO_X Budget Trading Program?
E. How will Connecticut and EPA enforce the program?
F. How does Connecticut's program protect the environment?
G. What is the result of EPA's evaluation of Connecticut's program?
H. Why is EPA considering the NO_X SIP Call submittals from CT, MA, and RI at the same time?
I. What other significant items relate to Connecticut's program?
J. What issues are associated with the Connecticut NO_X SIP Call submittal?
III. Proposed Action
IV. Administrative Requirements

In the following questions and answers, the term "you" refers to the reader of the notice and "we" refers to the EPA.

I. EPA's Action

A. What Action Is EPA Proposing Today?

EPA is proposing approval of CT's SIP submittal, including CT's NO_X control regulation, section 22a–174–22b, "Post-2002 Nitrogen Oxides (NO_X) Budget Program" and the SIP narrative entitled, "Connecticut State Implementation Plan Revision to Implement the NO_X SIP Call," dated September 30, 1999. CT submitted the adopted section 22a–174–22b and the SIP narrative with a request to revise the SIP on September 30, 1999. CT submitted the regulation and narrative in order to strengthen its one-hour ozone SIP and to comply with the NO_X SIP Call in each ozone season, i.e., May 1 to October 1, beginning in 2003. EPA finds that CT's submittal is fully approvable as a SIP strengthening measure for Connecticut's one-hour ground level ozone SIP and it meets the air quality objective of the NO_X SIP Call requirements that EPA has published to date. EPA will take action in a separate future rulemaking on whether Connecticut's submittal meets the applicable NO_X SIP Call requirements themselves.

B. Why Is EPA Proposing This Action?

EPA is proposing this action in order to:

- Fulfill CT's and EPA's requirements under the Clean Air Act (the Act);
- Make CT's control regulation federally-enforceable and available for credit in the SIP;
- Make CT's SIP narrative, including the ozone season NO_X budget, federally enforceable as part of the CT SIP; and
- Give you the opportunity to submit written comments on EPA's proposed actions, as discussed in the **DATES** and **ADDRESSES** sections.

C. What Are the General NO_X SIP Call Requirements?

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." See 63 FR 57356. The NO_X SIP Call requires 22 States and the District of Columbia [1] to meet statewide NO_X emission budgets during the five month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO_X SIP Call set out a schedule that required the affected states to adopt regulations by September 30, 1999,[2] and implement control strategies by May 1, 2003.

The NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. But, the SIP Call notice suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed on average a 30% NO_X reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking notice included a model NO_X allowance trading regulation, called "NO_X Budget Trading Program for State Implementation Plans," (40 CFR Part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

D. What Is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule for SIPs, 40 CFR Part 96, sets forth a NO_X emissions trading program for large electric generating units (EGUs) and non-electric generating units (non-EGUs). A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR Part 96.

In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the

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[1] Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

[2] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP Call. The NO_X SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. Michigan v. EPA, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

On September 30, 1999, Connecticut voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the SIP call and remanding certain other portions to the Agency. The court's ruling does not affect this action because it is being proposed as a SIP-strengthening measure regardless of the status of the case.

participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.*, one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

E. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call provided each affected state with a "compliance supplement pool." The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2003 and 2004 ozone seasons. Allowances from the compliance supplement pool will not be valid for compliance past the 2004 ozone season. Despite disagreeing with commenters' concerns, the NO_X SIP Call included these voluntary provisions to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999 but before May 1, 2003 (*i.e.*, early reductions). In this way, sources that cannot install controls prior to May 1, 2003, can purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline due to undue risk to the electricity or other industrial sectors and where early reductions are not available. See 40 CFR 51.121(e)(3).

F. What Guidance Did EPA Use To Evaluate Connecticut's submittal?

EPA evaluated CT's NO_X SIP Call submittal using EPA's "NO_X SIP Call Checklist," (the checklist), issued on April 9, 1999. The checklist reflects and follows the requirements of the NO_X SIP Call set forth in 40 CFR 51.121 and 51.122. The checklist outlines the criteria that the EPA Regional Office used to determine the completeness and approvability of CT's submittal.

As noted in the checklist, the key elements of an approvable submittal under the NO_X SIP Call are: a budget demonstration; enforceable measures for control; legal authority to implement and enforce the control measures; compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The checklist is available to the public on EPA's website at: http://www.epa.gov/ttn/otag/sip/related.html.

As described above, the final NO_X SIP Call rule included a model NO_X budget trading program regulation. See 40 CFR Part 96. EPA used the model rule to evaluate section 22a–174–22b. Additionally, EPA used the October 1998 final NO_X SIP Call rulemaking notice, as well as the subsequent technical amendments to the NO_X SIP Call, published in May 1999 (64 FR 26298) and March 2000 (65 FR 11222), to evaluate the approvability of CT's submittal. EPA also used § 110 of the CAA, Implementation Plans, to evaluate the approvability of CT's submittal as a revision to the SIP.

II. Connecticut's NO_X Budget Program

A. What is Connecticut's NO_X SIP Call Submittal?

Connecticut's September 30, 1999, SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, *i.e.*, section 22a–174–22b, "Post-2002 Nitrogen Oxides NO_X Budget Program;"
- A description of how the state intends to use the compliance supplement pool, *i.e.*, as part of the control regulation;
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, *i.e.*, as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, *i.e.*, as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, *i.e.*, as part of the SIP narrative.

As described above, in order to reduce NO_X emissions statewide from 2003 and beyond, CT adopted section 22a–174–22b. The regulation applies to all EGUs with nameplate electricity generating capacities greater than 15 megaWatts that sell any amount of electricity as well as any non-EGU units that have a heat input capacity equal to or greater than 250 mmBtu per hour. Regarding other non-EGUs, CT has no cement kilns or internal combustion (IC) engines with emissions large enough to exceed the applicability threshold for assumed control requirements, *i.e.*, one ton per day. So, CT's SIP submittal does not assume any additional reductions from those sources. Furthermore, you should note that CT is not relying on any reductions beyond anticipated federal measures in the mobile and area sectors.

Below is a table of the 2007 baseline and budget emission levels that Connecticut has submitted with as part of its SIP narrative.

Source category	2007 Baseline NO_X emissions (tons/season)	2007 NO_X budget emissions (tons/season)	Projected reductions (tons/season)
EGUs	5,636	4,564	1,072
Non-EGU Point	5,124	4,970	154
Area Sources	4,821	4,821	0
Non-Road Mobile	10,736	10,736	0
Highway Mobile	19,902	19,902	0
CT Total	46,219	44,993	1,226

B. When Did Connecticut Propose and Adopt the Program?

On July 12, 1999, CT published a public notice to announce the availability of the proposed section 22a–174–22b, as well as the SIP narrative that included the statewide 2007 NO_X emission budget. The public notice opened a 30 day public comment period. A public hearing was held on the proposed regulation and SIP package on August 12, 1999. After modifying the proposal in response to public comment, on September 29, 1999, the final section 22a–174–22b was filed with the Secretary of State. The regulation became effective on that date.

C. When Did Connecticut Submit the SIP Revision to EPA and When Did EPA Find the Submittal Technically and Administratively Complete?

On September 30, 1999, CT DEP submitted section 22a–174–22b and the SIP narrative to EPA with a request to revise the CT SIP. On October 26, 1999, EPA sent a letter to CT deeming the SIP submittal technically and administratively complete.

D. What Is Connecticut's NO_X Budget Trading Program?

In response to the NO_X SIP Call, CT adopted section 22a–174–22b, "Post-2002 Nitrogen Oxides NO_X Budget Program." With section 22a–174–22b, CT established a NO_X cap and allowance trading program for the ozone seasons of 2003 and beyond. CT developed the regulation in order to reduce NO_X emissions and allow its sources to participate in the kind of interstate NO_X allowance trading program described in § 51.121(b)(2).

Under section 22a–174–22b Connecticut allocates NO_X allowances to its EGUs and large industrial units. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. For each ton of NO_X emitted in a control period, EPA will remove one allowance from the source's NO_X Allowance Tracking System (NATS) account. Once the allowance has been retired in this way, no one can ever use the allowance again.

Source owners will monitor their NO_X emissions by using systems that meet the requirements of 40 CFR Part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the federal Acid Rain program).

Section 22a–174–22b differs from EPA's NO_X model budget trading rule in two significant ways. Specifically, section 22a–174–22b is applicable to smaller electric generating sources than the model rule. Also, section 22a–174–22b uses a different method for allocating NO_X allowances. However, section 22a–174–22b results in fewer tons being allocated to sources than would be allowed by the model rule.

Considering the differences in allowance allocation methodology between section 22a–174–22b and 40 CFR Part 96, CT's regulation cannot be considered substantively identical to 40 CFR Part 96, as described in § 51.121(p). However, section 22a–174–22b does meet the requirements of § 51.121(f) through (o) and therefore, meets the requirements of § 51.121(b)(2) for interstate allowance trading programs. In this way, EPA finds that the program is similar enough to Part 96 for CT's sources to participate in the interstate NO_X allowance trading program administered by EPA. For additional information regarding EPA's evaluation of CT's NO_X SIP Call submittal, the reader should refer to the document entitled, "Technical Support Document for Connecticut's NO_X SIP Call Submittal," dated May 4, 2000. Copies of the technical support document (TSD) can be obtained at either of the addresses listed in the **ADDRESSES** section of this notice.

Section 22a–174–22b provides for the distribution of 473 early reductions to sources that implement NO_X reductions beyond applicable requirements after September 30, 1999 but before May 1, 2003. Under section 22a–174–22b, CT will only provide early reduction credits to those sources holding banked allowances that were allocated in 2000, 2001, and 2002, under CT's current NO_X budget program (*i.e.*, section 22a–174–22a). Section 22a–174–22a is CT's current SIP approved NO_X budget and allowance trading program that is part of the Ozone Transport Commission's regional NO_X cap and allowance trading program.

E. How Will Connecticut and EPA Enforce the Program?

Once approved into CT's SIP, both CT and EPA will be able to enforce the requirements of the NO_X budget and allowance trading program in section 22a–174–22b. All of the sources subject to the NO_X allowance trading program will have federally-enforceable operating permits that contain source specific requirements, such as emissions monitoring or pollution control equipment requirements. CT and EPA will be able to enforce the source specific requirements of those permits.

In order to determine compliance with the emission requirements of the program, at the end of each ozone season, CT and EPA will compare sources' allowance and emission accounts in the NO_X Allowance Tracking System (NATS). To be in compliance, sources must hold a number of available allowances that meets or exceeds the number of tons of NO_X emitted by that source and recorded in the Emissions Tracking System (ETS) for a particular ozone season (May 1 to October 1). For sources with excess emissions, penalties include EPA deducting three times the unit's excess emissions from the unit's allocation for the next control period.

F. How Does Connecticut's Program Protect the Environment?

Based on air quality modeling assessments performed for the NO_X SIP Call, EPA believes that the NO_X reductions in CT and other states subject to the SIP Call will reduce the transport of ozone starting in 2003.

Decreases of NO_X emissions will also help improve the environment in several important ways. Decreases in NO_X emissions will decrease acid deposition, nitrates in drinking water, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_X emissions reduce greenhouse gases and stratospheric ozone depletion.

G. What Is the Result of EPA's Evaluation of Connecticut's SIP Submittal?

EPA has evaluated CT's September 30, 1999, SIP submittal and finds it fully approvable. The September 30, 1999 submittal will strengthen CT's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003. The submittal also meets the air quality objectives of the NO_X SIP Call. EPA finds the NO_X control measures, section 22a–174–22b, as well as the SIP narrative that includes CT's 2007 NO_X baseline and controlled budgets, fully approvable. EPA finds that the submittal contained the information necessary to demonstrate that CT has the legal authority to implement and enforce the control measures, as well as a

description of how the state intends to use the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

Although section 22a–174–22b deviates from EPA's NO_X Budget Trading Model Rule, EPA finds that section 22a–174–22b is consistent with EPA's guidance and meets the air quality objectives of the NO_X SIP Call, including those found in 40 CFR part 51, 51.121 and 51.122, as well as the general SIP submittal requirements of the Act, § 110, 42 U.S.C. 7401 *et seq.* The most significant difference between the EPA's model rule and CT's control regulation is related to the timing of the allocations to the affected sources. Under CT's NO_X Budget Program, EPA will allocate NO_X allowances to a general state account by April 1 of the year that is three years before the relevant control period. CT will then hold the allowances in this account until allocating to sources, which it will do by May 1 of the relevant control period. While this deviates from the timing requirements stipulated under § 51.121(p) for streamlined approval, it is approvable under § 51.121(f) through § 51.121(o) as discussed below.

CT's SIP revision does not differ from EPA's model rule (40 CFR part 96) significantly enough to prevent CT from participating in the EPA administered trading program. CT's rule allows EPA to fulfill its obligation under § 96.41 (*i.e.*, the timing requirements for NO_X allowance allocations) to both the state and its sources, and allocate to the state by April 1 of the year that is three years in advance of the relevant control period. Once EPA allocates to CT's general account, it will become the state's responsibility to allocate the allowances to its sources.

EPA continues to believe that allocating to sources three years in advance allows sources to design the compliance strategy (*i.e.*, installing controls or buying, selling or banking allowances) that is most cost-effective for them. Decreasing sources' certainty about their future allocations and flexibility in meeting their obligations may impact their ability to comply with these requirements in the most cost-effective manner. Nevertheless, EPA believes CT's program will achieve the necessary reductions, albeit in a less cost-effective manner.

Regarding CT's SIP narrative, EPA finds that the submittal contains the required elements, including: the baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007; the 2007 projected inventory reflecting NO_X reductions achieved by the state control measures contained in the submittal; and the commitment to meet the annual, triennial, and 2007 state reporting requirements. EPA further finds that CT's 2007 projected inventory, reflecting the control strategies, is approvable, meeting the air quality objectives of the NO_X SIP Call.

In order to approve CT's 2007 projected inventory as meeting the air quality objectives of the NO_X SIP Call, however, it is necessary to consider the adopted 2007 emission budgets and adopted NO_X reducing measures in Massachusetts (MA) and Rhode Island (RI) as well. Comparing the most recent technical amendments to the NO_X SIP Call budgets to the adopted and submitted NO_X SIP Call related measures from the three states, you can see that the adopted measures in CT, MA, and RI will reduce more NO_X from the EGU and non-EGU sectors than the NO_X SIP Call notices have required.

H. Why Is EPA Considering the NO_X SIP Call Submittals From CT, MA, and RI at the Same Time?

In February 1999, CT, MA, RI, and EPA signed a memorandum of understanding (*i.e.*, "the Three State MOU") agreeing to redistribute the EGU portions of the three states' budgets, as well as the compliance supplement pool allocations, amongst themselves. Under the Three State MOU, the combined 2007 controlled emission level and compliance supplement pool did not change for the three states, only the individual state EGU allocations and supplement pools were redistributed to provide CT with additional flexibility.

On September 15, 1999, EPA published a Notice of Proposed Rulemaking (NPR) to approve the redistribution of the three states' allocations as described in the MOU and modified by the EPA's May 1999 NO_X SIP Call technical corrections.[3] See 64 FR 50036. As described in the NPR, the sum of the 2007 budgets and supplement pool allocations for the three states after redistribution is identical to the sum of the three budgets and supplement pool allocations for the states as published in the May 1999 technical corrections **Federal Register** notice. In other words, the total NO_X reduction expected from the three states due to the SIP Call would be the same before and after the redistribution of budgets under the Three State MOU. In fact, both the May 1999 technical amendments and the September 1999 NPR required a NO_X reduction of 5,491 tons by the three states each ozone season from 2007 onward and provided a combined allocation of 961 tons from the compliance supplement pool.

On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (65 FR 11222). As can be seen in the tables below, the March 2, 2000 technical corrections primarily changed the highway mobile and non-EGU 2007 baselines and budgets for CT, MA, and RI. However, these changes largely cancel each other out, *e.g.*, the 2007 highway sub-inventory baselines and budgets increased by approximately the same amount in the three states. The March 2000 technical corrections, however, did not effect the amount of reduction expected from the EGU sector. The tables below compare the 2007 baselines and budgets for each sub-inventory sector for CT, MA, and RI as published in the May 1999 and March 2000 technical amendment **Federal Register** notices.

CT	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	5,636	5,636	0	2,652	2,652	0
Non-EGU	5,124	5,397	273	4,970	5,216	246
Area	4,821	4,821	0	4,821	4,821	0
Nonroad	10,736	10,736	0	10,736	10,736	0
Highway	19,902	19,424	−478	19,902	19,424	−478
Total	46,220	46,015	−205	43,081	42,849	−232

[3] You should note that EPA took comments on the Three State MOU NPR and intends to address those comments in a future rulemaking. Therefore, we are not seeking comments on the specifics of the Three State MOU NPR at this time.

MA	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	16,479	16,479	0	15,145	15,146	1
Non-EGU	11,229	11,210	−19	10,296	10,298	2
Area	11,048	11,048	0	11,048	11,048	0
Nonroad	20,166	20,166	0	20,166	20,166	0
Highway	28,641	28,190	−451	28,641	28,190	−451
Total	87,563	87,092	−471	85,296	84,848	−448

RI	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	1,082	1,082	0	997	997	0
Non-EGU	2,031	1,635	−396	2,031	1,635	−396
Area	448	448	0	448	448	0
Nonroad	2,455	2,455	0	2,455	2,455	0
Highway	3,879	3,843	−36	3,879	3,843	−36
Total	9,895	9,463	−432	9,810	9,378	−432

The March 2000 **Federal Register** listed 2007 ozone season baseline emissions from CT, MA, and RI as 46,015 tons, 87,092 tons, and 9,463 tons, respectively. The March 2000 **Federal Register** listed the 2007 ozone season budgets for CT, MA, and RI as 42,849 tons, 84,848 tons, and 9,378 tons, and provided the three states with compliance supplement pools of 569 tons, 404 tons, and 15 tons, respectively, or a total of 988 tons. In total, the March 2000 notice required the three states to reduce their NO_X emissions by 5,495 tons per ozone season beginning in 2007.

In the Fall of 1999, CT, MA, and RI all adopted and submitted SIP packages in response to the NO_X SIP Call. All three states adopted and submitted NO_X control regulations that rely on reductions from the EGU and large non-EGU units to achieve their emission budgets. The 2007 baseline ozone season emissions adopted by the states were 46,219 tons, 87,563 tons, and 9,895 tons, respectively, or a three state total of 143,677 tons per ozone season. The SIP packages adopted and submitted by CT, MA, and RI, included 2007 projected NO_X inventories of 44,993 tons, 83,345 tons, and 9,798 tons, respectively, or a three state total of 138,136 tons per ozone season. Therefore, the total NO_X reduction expected from the adopted and submitted SIP packages from CT, MA, and RI is 5,541 tons per ozone season.

As discussed above, EPA signed the Three State MOU between CT, MA, and RI. We endorse the concept that states can voluntarily join together and redistribute their NO_X SIP Call budgets and compliance supplement pool allocations, provided that the total after the redistribution is less than or equal to before redistribution, and provided that the states have formalized such an agreement in an MOU or similar device to which EPA also agrees. EPA supports this concept because such a redistribution is no different than the effects of trading. For a detailed discussion of why EPA supports the concept that states can collectively redistribute their NO_X SIP Call budgets, see the proposed Three State MOU notice, 64 FR 49989, September 15, 1999. Given the fact that together the three states' regulations achieve at least the same NO_X reduction and allocate fewer than required compliance supplement pool allocations, EPA finds that the NO_X SIP Call SIP submittals from the three states collectively meet the air quality objectives of the NO_X SIP Call as published to date. In separate **Federal Register** notices today, EPA is also proposing approval of MA's and RI's NO_X SIP Call submittals.

You can find the NO_X SIP Call 2007 baselines, budgets, and compliance supplement pool allocations from the March 2000 technical amendments and the state adopted SIPs summarized in the table below.

State	SIP Call 2007 baseline (tons NO_X per ozone season) as of 03/00	State adopted 2007 baseline (tons NO_X per ozone season)	SIP call 2007 budget as of 03/00 (tons NO_X per ozone season)	State adopted 2007 budget (tons NO_X per ozone season)	SIP Call Projected reduction (tons NO_X per ozone season) as of 03/00	State projected reduction (tons NO_X per ozone season)	Compliance supplement pool state allocations as of 03/00	State adopted compliance supplement pool
CT	46,015	46,219	42,849	44,993	3,166	1,226	569	473
MA	87,092	87,563	84,848	83,345	2,244	4,218	404	473
RI	9,463	9,895	9,378	9,798	85	97	15	15
Total	142,570	143,677	137,075	138,136	5,495	5,541	988	961

For additional information regarding EPA's evaluation of CT's NO_X SIP Call submittal, the reader should refer to the TSD available at either of the addresses listed in the **ADDRESSES** section of this notice.

I. What Other Significant Items Relate to Connecticut's Program?

In addition to submitting the September 30, 1999, SIP package in order to fulfill its NO_X SIP Call obligation, CT submitted section 22a–174–22b as part of its one-hour ozone attainment plans for the serious and severe ozone nonattainment areas of the state. Both attainment plans rely on the NO_X reductions associated with section 22a–174–22b in 2003 and beyond. EPA proposed approval of CT's attainment plans for both the serious and severe nonattainment areas on December 16,

1999. See 64 FR 70348. Approval and implementation of section 22a–174–22b strengthens CT's SIP and is necessary in order for CT to fulfill a requirement of the one-hour ozone attainment plans.

Section 22a–174–22b is also related to the Ozone Transport Commission's (OTC's) ozone season NO_X budget program. On September 27, 1994, OTC adopted a Memorandum of Understanding (MOU) that committed the signatory states, including CT, to the development and proposal of a region-wide reduction in NO_X emissions. The OTC agreement committed the states to one phase of NO_X reductions by 1999 and another phase of reductions by 2003.

As a signatory state of the MOU, CT adopted its NO_X budget and allowance trading regulation, section 22a–174–22a, on December 15, 1998. Section 22a–174–22a contained a NO_X emissions budget and allowance trading system for the ozone seasons of 1999 through 2002, the period known as "OTC Phase II." CT's phase II EGU budget is 5,866 tons per ozone season. EPA approved CT's phase II OTC NO_X budget regulation on September 28, 1999. See 64 FR 52238.

Section 22a-174–22b contains a new NO_X emissions budget and allowance trading program for the ozone seasons of 2003 and thereafter, the period known as "OTC phase III." Although EPA's technical corrections and the Three State MOU described above would allow CT an EGU budget of 4,564 tons per season in 2003 and beyond, section 22a–174–22b contains an EGU ozone season budget of 4,477 tons. This is equal to the budget agreed upon by OTC for CT under phase III of the OTC program. Therefore, although the OTC MOU obligations are not federal requirements, section 22a-174–22b can be viewed as satisfying the OTC phase III program requirements as well.

J. What Issues Are Associated With Connecticut's NO_X SIP Call Submittal?

On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the NO_X SIP call and remanding certain other portions to the Agency (*e.g.*, the definition of an EGU and the control assumptions for internal combustion engines). Due to the Court's remanding of the EGU definition and IC engine control assumptions, EPA must now recalculate the final 2007 baseline, 2007 budget, and compliance supplement allocation for each state subject to the NO_X SIP Call, including CT. Those recalculated budgets are expected to be published in the next few months. However, this means that CT may be required to revisit its NO_X SIP Call program due to potential forthcoming changes to the NO_X SIP Call requirements. At such time as EPA publishes new emission budget requirements, CT and other NO_X SIP Call subject states will be informed as to what, if any, changes are needed.

Additionally, as described above, the March 2, 2000 technical corrections changed the 2007 baselines and budgets for the highway and non-EGU sub-inventories in CT, MA, and RI. Therefore, when those states make the changes needed due to the remanded portions of the NO_X SIP Call, those states will need to adopt changes to the highway and non-EGU 2007 baselines and budgets as well.

III. Proposed Action

EPA has reviewed CT's September 30, 1999, SIP submittal using the NO_X SIP Call rulemaking notices and checklist. EPA has reviewed CT's control measures and projected reductions and finds them approvable. Therefore, EPA is proposing to approve section 22a–174–22b and CT's NO_X SIP Call narrative at this time.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

[FR Doc. 00–17186 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA076–7209b, FRL–6731–7]

Approval and Promulgation of Implementation Plans; Massachusetts; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In November 1999, the Commonwealth of Massachusetts (MA) submitted a State Implementation Plan (SIP) to reduce air emissions of nitrogen oxides (NO_X). The submittal responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." The submittal includes a narrative and a regulation that establish a statewide NO_X budget and a NO_X allowance trading program for large electricity generating and industrial sources beginning in 2003.

The Environmental Protection Agency (EPA) is proposing approval of the MA's November 1999 SIP submittal including, MA's NO_X control regulation, 310 CMR 7.28, "NO_X Allowance Trading Program," and the SIP narrative materials: "Background Document and Technical Support For Public Hearings on the Proposed Revisions to the State Implementation Plan for Ozone," July 1999; "Supplemental Background Document For Public Hearings on Modifications to the July, 1999 Proposal to Revise the State Implementation Plan For Ozone," September 1999; and "Summary of Comments and Response To Comments From Public Hearings on Proposed Revisions to the State Implementation Plan for Ozone, Including Proposed 310 CMR 7.28." EPA is also proposing to approve changes to regulations 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X)," and 310 CMR 7.27, "NO_X Allowance Program," related to emissions monitoring. EPA is proposing to approve Massachusetts' submittal for its strengthening effect pursuant to section 110 of the Clean Air Act (CAA).

DATES: EPA must receive written comments on or before August 11, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA 02114, and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 918–1048 or at Rapp.Steve@EPA.GOV.

SUPPLEMENTARY INFORMATION:

Overview

On November 19, 1999, MA submitted a package of regulatory and narrative materials in order to comply with the NO_X SIP Call and strengthen its ozone SIP. EPA proposes full approval of MA's submittal.

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION:**

I. EPA's Action
- A. What action is EPA proposing today?
- B. Why is EPA proposing this action?
- C. What are the general NO_X SIP Call requirements?
- D. What is EPA's NO_X budget and allowance trading program?
- E. What is the Compliance Supplement Pool?
- F. What guidance did EPA use to evaluate Massachusetts' submittal?

II. Massachusetts' NO_X Budget Program
- A. What is Massachusetts' NO_X SIP Call submittal?
- B. When did Massachusetts propose and adopt the program?
- C. When did Massachusetts submit the SIP revision to EPA and when did EPA find it technically and administratively complete?
- D. What is Massachusetts' NO_X Budget Trading Program?
- E. How will Massachusetts and EPA enforce the program?
- F. How does Massachusetts' program protect the environment?
- G. What is the result of EPA's evaluation of Massachusetts' program?
- H. Why is EPA considering the NO_X SIP Call submittals from CT, MA, and RI at the same time?
- I. What other significant items relate to Massachusetts' program?
- J. What issues are associated with the Massachusetts NO_X SIP Call submittal?

III. Proposed Action

IV. Administrative Requirements

In the following questions and answers, the term "you" refers to the reader of the notice and "we" refers to the EPA.

I. EPA's Action

A. What Action Is EPA Proposing Today?

EPA is proposing approval of MA's SIP submittal, including MA's NO_X control regulation, 310 CMR 7.28, "NO_X Allowance Trading Program" and the SIP narrative materials listed above. EPA is also proposing to approve changes to regulations 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X)," and 310 CMR 7.27, "NO_X Allowance Program," related to emissions monitoring.

MA submitted the adopted 310 CMR 7.28 and the SIP narrative, as well as the amendments to 310 CMR 7.19 and 310 CMR 7.27, with a request to revise the SIP on November 19, 1999. MA submitted the regulation and narrative in order to strengthen its one-hour ozone SIP and to comply with the NO_X SIP Call in each ozone season, *i.e.*, May 1 to October 1, beginning in 2003. EPA finds that MA's submittal is fully approvable as a SIP strengthening measure for Massachusetts' one-hour ground level ozone SIP and it meets the air quality objective of the NO_X SIP Call requirements that EPA has published to date. EPA will take action in a separate future rulemaking on whether Massachusetts's submittal meets the applicable NO_X SIP Call requirements themselves.

B. Why Is EPA Proposing This Action?

EPA is proposing this action in order to:

- Fulfill MA's and EPA's requirements under the Clean Air Act (the Act);
- Make MA's control regulation federally-enforceable and available for credit in the SIP;
- Make MA's SIP narrative, including the ozone season NO_X budget, federally enforceable as part of the MA SIP; and
- Give you the opportunity to submit written comments on EPA's proposed actions, as discussed in the **DATES** and **ADDRESSES** sections.

C. What Are the General NO_X SIP Call Requirements?

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." See 63 FR 57356. The NO_X SIP Call requires 22 States and the District of Columbia [1] to meet statewide NO_X emission budgets during the five month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO_X SIP Call set out a schedule that required the affected states to adopt regulations by September 30, 1999 [2], and implement control strategies by May 1, 2003.

The NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. But, the SIP Call notice suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed on average a 30% NO_X reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking notice included a model NO_X allowance trading regulation, called "NO_X Budget Trading Program for State Implementation Plans," (40 CFR Part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

D. What Is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule for SIPs, 40 CFR Part 96, sets forth a NO_X emissions trading program for large electric generating units (EGUs) and non-electric generating units (non-EGUs). A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR Part 96.

In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.*, one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

E. What is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call provided each affected state with a "compliance supplement pool." The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2003 and 2004 ozone seasons. Allowances from the compliance supplement pool will not be valid for compliance past the 2004 ozone season. Despite disagreeing with commenters' concerns, EPA included these voluntary provisions in the NO_X SIP Call to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999 but before May 1, 2003 (*i.e.*, early reductions). In this way, sources that cannot install controls prior to May 1, 2003, can purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline due to undue risk to the electricity or other industrial sectors and where early reductions are not available. See 40 CFR 51.121(e)(3).

F. What Guidance Did EPA Use to Evaluate Massachusetts' Submittal?

EPA evaluated MA's NO_X SIP Call submittal using EPA's "NO_X SIP Call

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[1] Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

[2] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP Call. The NO_X SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. Michigan v. EPA, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

On November 19, 1999, Massachusetts voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the SIP call and remanding certain other portions to the Agency. The court's ruling does not affect this action because it is being proposed as a SIP-strengthening measure regardless of the status of the case.

Checklist," (the checklist), issued on April 9, 1999. The checklist reflects and follows the requirements of the NO_X SIP Call set forth in 40 CFR § 51.121 and § 51.122. The checklist outlines the criteria that the EPA Regional Office used to determine the completeness and approvability of MA's submittal.

As noted in the checklist, the key elements of an approvable submittal under the NO_X SIP Call are: a budget demonstration; enforceable measures for control; legal authority to implement and enforce the control measures; compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The checklist is available to the public on EPA's website at: http://www.epa.gov/ttn/otag/sip/related.html.

As described above, the final NO_X SIP Call rule included a model NO_X budget trading program regulation. See 40 CFR Part 96. EPA used the model rule to evaluate 310 CMR 7.28. Additionally, EPA used the October 1998 final NO_X SIP Call rulemaking notice, as well as the subsequent technical amendments to the NO_X SIP Call, published in May 1999 (64 FR 26298) and March 2000 (65 FR 11222), to evaluate the approvability of MA's submittal. EPA also used § 110 of the CAA, Implementation Plans, to evaluate the approvability of MA's submittal as a revision to the SIP.

II. Massachusetts's NO_X Budget Program

A. What Is Massachusetts' NO_X SIP Call Submittal?

Massachusetts' September 30, 1999, SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, *i.e.*, 310 CMR 7.28;
- A description of how the state intends to use the compliance supplement pool, *i.e.*, as part of the control regulation;
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, *i.e.*, as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, *i.e.*, as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, *i.e.*, as part of the SIP narrative.

As described above, in order to reduce NO_X emissions statewide from 2003 and beyond, MA adopted 310 CMR 7.28. The regulation applies to all EGUs with nameplate electricity generating capacities greater than 15 megaWatts that sell any amount of electricity as well as any non-EGU units that have a heat input capacity equal to or greater than 250 mmBtu per hour. Regarding other non-EGUs, MA has no cement kilns or internal combustion (IC) engines with emissions large enough to exceed the applicability threshold for assumed control requirements, *i.e.*, one ton per day. So, MA's SIP submittal does not assume any additional reductions from those sources. Furthermore, you should note that MA is not relying on any reductions beyond anticipated federal measures in the mobile and area sectors.

Below is a table of the 2007 baseline and budget emission levels that Massachusetts has submitted with as part of its SIP narrative.

Source category	2007 Baseline NO_X emissions (tons/season)	2007 NO_X budget emissions (tons/season)	Projected reductions (tons/season)
EGUs	27,708	23,490	4,218
Non-EGU Point			
Area Sources	11,048	11,048	0
Non-Road Mobile	20,166	20,166	0
Highway Mobile	28,641	28,641	0
MA Total	87,563	83,345	4,218

B. When Did Massachusetts Propose and Adopt the Program?

In July and September 1999, MA published public notices to announce the availability of the proposed 310 CMR 7.28, proposed changes to 310 CMR 7.19 and 310 CMR 7.27, as well as the SIP narrative materials that included the statewide 2007 NO_X emission budget. The public notices started 30 day public comment periods. Public hearings were held on August 4, August 6, and October 28. The final 310 CMR 7.28, as well as the amendments to 310 CMR 7.19 and 310 CMR 7.27, were filed with the Secretary of State on November 15, 1999. The 310 CMR 7.28 and the changes to 310 CMR 7.19 and 310 CMR 7.27 became effective on December 10, 1999.

C. When Did Massachusetts Submit the SIP Revision to EPA and When Did EPA Find the Submittal Technically and Administratively Complete?

On November 19, 1999, MA DEP submitted 310 CMR 7.28 and the SIP narrative materials, as well as the amendments to 310 CMR 7.27 and 310 CMR 7.19, to EPA with a request to revise the MA SIP. Subsequently, on January 7, 2000, MA submitted copies of the regulations as promulgated in the Code of Massachusetts Regulations. On January 25, 2000, EPA sent a letter to MA deeming the SIP submittal technically and administratively complete.

D. What Is Massachusetts' NO_X Budget Trading Program?

In response to the NO_X SIP Call, MA adopted 310 CMR 7.28, "Post-2002 Nitrogen Oxides NO_X Budget Program." With 310 CMR 7.28, MA established a NO_X cap and allowance trading program for the ozone seasons of 2003 and beyond. MA developed the regulation in order to reduce NO_X emissions and allow its sources to participate in the kind of interstate NO_X allowance trading program described in § 51.121(b)(2).

Under 310 CMR 7.28 Massachusetts allocates NO_X allowances to its EGUs and large industrial units. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. For each ton of NO_X emitted in a control period, EPA will remove one allowance from the source's NO_X Allowance Tracking System (NATS) account. Once the allowance has been retired in this way, no one can ever use the allowance again.

Source owners will monitor their NO_X emissions by using systems that meet

the requirements of 40 CFR Part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the federal Acid Rain program).

Generally, regulation 310 CMR 7.28 differs from EPA's model NO_X budget trading rule in three ways. First, 310 CMR 7.28 is applicable to smaller electric generating sources than the model rule. Second, the allocation method in 310 CMR 7.28 is based on useful output and results in fewer allocations (*i.e.*, lower NO_X emissions) than would be allowed by the model rule. Finally, MA's allowance trading rule does not provide the 25 ton per season exemption set forth in 40 CFR § 96.4(b). These differences make the regulation more stringent than 40 CFR Part 96 would be and are allowed under § 51.121(p). Therefore, 310 CMR 7.28 can be considered substantively identical to 40 CFR Part 96.

Regulation 310 CMR 7.28 provides for the distribution of 473 early reduction allowances to sources that implement NO_X reductions beyond applicable requirements after September 30, 1999, but before May 1, 2003. Under 310 CMR 7.28, MA will only provide early reduction credits to those sources holding banked allowances that were allocated in 2000, 2001, and 2002, under MA's current NO_X budget and allowance trading program (*i.e.*, regulation 310 CMR 7.27). Regulation 310 CMR 7.27 is MA's SIP approved NO_X budget and allowance trading program that is part of the Ozone Transport Commission's regional NO_X cap and allowance trading program that began in May 1999. See 64 FR 29567, June 2, 1999.

The amendments to 310 CMR 7.19 and 310 CMR 7.27 contain changes to MA's existing OTC MOU allowance trading program and NO_X RACT regulations. These minor changes were necessary to provide for a smooth transition to 310 CMR 7.28, and to ensure consistency between the regulatory requirements of 310 CMR 7.19, 310 CMR 7.27, 310 CMR 7.28, and 40 CFR Part 75.

For additional information regarding EPA's evaluation of MA's NO_X SIP Call submittal, the reader should refer to the document entitled, "Technical Support Document for Massachusetts's NO_X SIP Call Submittal," dated May 4, 2000. Copies of the technical support document (TSD) can be obtained at either of the addresses listed in the **ADDRESSES** section of this notice.

E. How Will Massachusetts and EPA Enforce the Program?

Once approved into MA's SIP, both MA and EPA will be able to enforce the requirements of the NO_X budget and allowance trading program in 310 CMR 7.28. All of the sources subject to the NO_X allowance trading program will have federally-enforceable operating permits that contain source specific requirements, such as emissions monitoring or pollution control equipment requirements. MA and EPA will be able to enforce the source specific requirements of those permits, as well as the requirements of 310 CMR 7.28, 310 CMR 7.27, and 310 CMR 7.19.

Additionally, in order to determine compliance with the emission requirements of the program, at the end of each ozone season, MA and EPA will compare sources' allowance and emission accounts in the NO_X Allowance Tracking System (NATS). To be in compliance, sources must hold a number of available allowances that meets or exceeds the number of tons of NO_X emitted by that source and recorded in the Emissions Tracking System (ETS) for a particular ozone season. For sources with excess emissions, penalties include EPA deducting three times the unit's excess emissions from the unit's allocation for the next control period.

F. How Does Massachusetts' Program Protect the Environment?

Based on air quality modeling assessments performed for the NO_X SIP Call, EPA believes that the NO_X reductions in MA and other states subject to the SIP Call will reduce the transport of ozone starting in 2003.

Decreases of NO_X emissions will also help improve the environment in several important ways. Decreases in NO_X emissions will decrease acid deposition, nitrates in drinking water, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_X emissions reduce greenhouse gases and stratospheric ozone depletion.

G. What Is the Result of EPA's Evaluation of Massachusetts' SIP Submittal?

EPA has evaluated MA's November 19, 1999, SIP submittal and finds it fully approvable. The submittal will strengthen MA's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003. The submittal also meets the air quality objectives of the NO_X SIP Call. EPA finds the NO_X control measures, 310 CMR 7.28, the SIP narrative that includes MA's 2007 NO_X baseline and controlled budgets, as well as the changes to 310 CMR 7.27 and 310 CMR 7.19, fully approvable. EPA finds that the submittal contained the information necessary to demonstrate that MA has the legal authority to implement and enforce the control measures, as well as a description of how the state intends to use the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

EPA finds that MA's control regulation and SIP narrative materials are consistent with EPA's guidance and meet the air quality objectives of the NO_X SIP Call, including, 40 CFR Part 51, § 51.121 and § 51.122 as well as the general SIP submittal requirements of the Act, § 110, 42 U.S.C. 7401 *et seq.* Regulation 310 CMR 7.28 does contain differences from the model rule, including: (1) 310 CMR 7.28 is applicable to smaller electric generating sources than the model rule; (2) the allocation method in 310 CMR 7.28 is based on useful output but results in fewer allocations (*i.e.*, lower NO_X emissions) than would be allowed by the model rule; and (3) the State's SIP trading rule does not provide the 25 ton/season exemption set forth in 40 CFR § 96.4(b). These differences are allowed under § 51.121(p). Therefore, EPA considers 310 CMR 7.28 to be substantively identical to 40 CFR Part 96.

Regarding MA's SIP narrative, EPA finds that the submittal contains the required elements, including: The baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007; the 2007 projected inventory reflecting NO_X reductions achieved by the state control measures contained in the submittal; and the commitment to meet the annual, triennial, and 2007 state reporting requirements. EPA further finds that MA's 2007 projected inventory, reflecting the control strategies, is approvable, reflecting the air quality objectives of the NO_X SIP Call.

In order to approve MA's 2007 projected inventory as meeting the air quality objectives of the NO_X SIP Call,

however, it is necessary to consider the adopted 2007 emission budgets and adopted NO_X reducing measures in Connecticut (CT) and Rhode Island (RI) as well. Comparing the most recent technical amendments to the NO_X SIP Call budgets to the adopted and submitted NO_X SIP Call related measures from the three states, you can see that the adopted measures in CT, MA, and RI will reduce more NO_X from the EGU and non-EGU sectors than the NO_X SIP Call notices have required.

H. Why Is EPA Considering the NO_X SIP Call Submittals From CT, MA, and RI at the Same Time?

In February 1999, CT, MA, RI, and EPA signed a memorandum of understanding (*i.e.*, "the Three State MOU") agreeing to redistribute the EGU portions of the three states' budgets, as well as the compliance supplement pool allocations, amongst themselves. Under the Three State MOU, the combined 2007 controlled emission level and compliance supplement pool did not change for the three states, only the individual state EGU allocations and supplement pools were redistributed to provide CT with additional flexibility.

On September 15, 1999, EPA published a Notice of Proposed Rulemaking (NPR) to approve the redistribution of the three states' allocations as described in the MOU and modified by the EPA's May 1999 NO_X SIP Call technical corrections.[3] See 64 FR 50036. As described in the NPR, the sum of the 2007 budgets and supplement pool allocations for the three states after redistribution is identical to the sum of the three budgets and supplement pool allocations for the states as published in the May 1999 technical corrections **Federal Register** notice. In other words, the total NO_X reduction expected from the three states due to the SIP Call would be the same before and after the redistribution of budgets under the Three State MOU. In fact, both the May 1999 technical amendments and the September 1999 NPR required a NO_X reduction of 5,491 tons by the three states each ozone season from 2007 onward and provided a combined allocation of 961 tons from the compliance supplement pool.

On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (65 FR 11222). As can be seen in the tables below, the March 2, 2000 technical corrections primarily changed the highway mobile and non-EGU 2007 baselines and budgets for CT, MA, and RI. However, these changes largely cancel each other out, *e.g.*, the 2007 highway sub-inventory baselines and budgets increased by the same amounts. The March 2000 technical corrections, however, did not effect the amount of reduction expected from the EGU sector. The tables below compare the 2007 baselines and budgets for each sub-inventory sector for CT, MA, and RI as published in the May 1999 and March 2000 technical amendment **Federal Register** notices.

CT	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	5,636	5,636	0	2,652	2,652	0
Non-EGU	5,124	5,397	273	4,970	5,216	246
Area	4,821	4,821	0	4,821	4,821	0
Nonroad	10,736	10,736	0	10,736	10,736	0
Highway	19,902	19,424	–478	19,902	19,424	–478
Total	46,220	46,015	–205	43,081	42,849	–232

MA	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	16,479	16,479	0	15,145	15,146	1
Non-EGU	11,229	11,210	–19	10,296	10,298	2
Area	11,048	11,048	0	11,048	11,048	0
Nonroad	20,166	20,166	0	20,166	20,166	0
Highway	28,641	28,190	–451	28,641	28,190	–451
Total	87,563	87,092	–471	85,296	84,848	–448

RI	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	1,082	1,082	0	997	997	0
Non-EGU	2,031	1,635	–396	2,031	1,635	–396
Area	448	448	0	448	448	0
Nonroad	2,455	2,455	0	2,455	2,455	0
Highway	3,879	3,843	–36	3,879	3,843	–36
Total	9,895	9,463	–432	9,810	9,378	–432

The March 2000 **Federal Register** listed 2007 ozone season baseline emissions from CT, MA, and RI as 46,015 tons, 87,092 tons, and 9,463 tons, respectively. The March 2000 **Federal Register** listed the 2007 ozone season budgets for CT, MA, and RI as 42,849 tons, 84,848 tons, and 9,378 tons, and provided the three states with compliance supplement pools of 569 tons, 404 tons, and 15 tons, respectively, or a total of 988 tons. In total, the March 2000 notice required the three states to reduce their NO_X emissions by 5,495 tons per ozone season beginning in 2007.

In the Fall of 1999, CT, MA, and RI all adopted and submitted SIP packages in response to the NO_X SIP Call. All three states adopted and submitted NO_X control regulations that rely on reductions from the EGU and large non-EGU units to achieve their emission budgets. The 2007 baseline ozone

[3] You should note that EPA took comments on the Three State MOU NPR and intends to address those comments in a future rulemaking. Therefore, we are not seeking comments on the specifics of the Three State MOU NPR at this time.

season emissions adopted by the states were 46,219 tons, 87,563 tons, and 9,895 tons, respectively, or a three state total of 143,677 tons per ozone season. The SIP packages adopted and submitted by CT, MA, and RI, included 2007 projected NO_X inventories of 44,993 tons, 83,345 tons, and 9,798 tons, respectively, or a three state total of 138,136 tons per ozone season. Therefore, the total NO_X reduction expected from the adopted and submitted SIP packages from CT, MA, and RI is 5,541 tons per ozone season.

As discussed above, EPA signed the Three State MOU between CT, MA, and RI. We endorse the concept that states can voluntarily join together and redistribute their NO_X SIP Call budgets and compliance supplement pool allocations, provided that the total after the redistribution is less than or equal to before redistribution, and provided that the states have formalized such an agreement in an MOU or similar device to which EPA also agrees. EPA supports this concept because such a redistribution is no different than the effects of trading. For a detailed discussion of why EPA supports the concept that states can collectively redistribute their NO_X SIP Call budgets, see the proposed Three State MOU notice, 64 FR 49989, September 15, 1999. Given the fact that together the three states' regulations achieve at least the same NO_X reduction and allocate fewer than required compliance supplement pool allocations, EPA finds that the NO_X SIP Call SIP submittals from the three states collectively meet the air quality objectives of the NO_X SIP Call as published to date. In separate **Federal Register** notices today, EPA is also proposing approval of CT's and RI's NO_X SIP Call submittals.

You can find the NO_X SIP Call 2007 baselines, budgets, and compliance supplement pool allocations from the March 2000 technical amendments and the state adopted SIPs summarized in the table below.

State	SIP Call 2007 Baseline (tons NO_X per ozone season) as of 03/00	State adopted 2007 baseline (tons NO_X per ozone season)	SIP Call 2007 Budget as of 03/00 (tons NO_X per ozone season)	State adopted 2007 budget (tons NO_X per ozone season)	SIP Call Projected reduction (tons NO_X per ozone season) as of 03/00	State Projected Reduction (tons NO_X per ozone season)	Compliance Supplement Pool State Allocations as of 03/00	State Adopted Compliance Supplement Pool
CT	46,015	46,219	42,849	44,993	13,166	1,226	569	473
MA	87,092	87,563	84,848	83,345	2,244	4,218	404	473
RI	9,463	9,895	9,378	9,798	85	97	15	15
Total	142,570	143,677	137,075	138,136	5,495	5,541	988	961

For additional information regarding EPA's evaluation of MA's NO_X SIP Call submittal, the reader should refer to the TSD available at either of the addresses listed in the **ADDRESSES** section of this notice.

I. What Other Significant Items Relate to Massachusetts' Program?

In addition to fulfilling the NO_X SIP Call obligation, 310 CMR 7.28 was adopted as part of MA's one hour ozone attainment plan for the serious ozone nonattainment area in Western MA. The attainment plan relies on the NO_X reductions associated with 310 CMR 7.28 in 2003 and beyond. EPA proposed conditional approval of MA's attainment plans for both the serious and severe nonattainment areas on December 16, 1999. See 64 FR 70318. Therefore, the approval and implementation of 310 CMR 7.28 is also necessary in order for MA to fulfill a requirement of its one hour ozone attainment plan.

Regulation 310 CMR 7.28 is also related to the Ozone Transport Commission's (OTC's) ozone season NO_X budget program. On September 27, 1994, OTC adopted a Memorandum of Understanding (MOU) that committed the signatory states, including MA, to the development and proposal of a region-wide reduction in NO_X emissions. The OTC agreement committed the states to one phase of NO_X reductions by 1999 and another phase of reductions by 2003.

As a signatory state of the MOU, MA adopted its NO_X budget and allowance trading regulation, 310 CMR 7.27, on June 5, 1997. Regulation 310 CMR 7.27 contained a NO_X emissions budget and allowance trading system for the ozone seasons of 1999 through 2002, the period known as "OTC Phase II." MA's phase II budget is 18,146 tons per ozone season. EPA approved MA's phase II OTC NO_X budget regulation on June 2, 1999. See 64 FR 29567.

Regulation 310 CMR 7.28 contains a new NO_X emissions budget and allowance trading program for the ozone seasons of 2003 and thereafter, the period known as "OTC phase III." Although EPA's technical corrections and the Three State MOU described above would allow MA an EGU budget of 13,245 tons per season in 2003 and beyond, 310 CMR 7.28 contains an ozone season EGU (and affected non-EGU) budget of 12,861 tons. This is equal to the budget agreed upon by OTC for affected sources in MA under phase III of the OTC program. Therefore, although the OTC MOU obligations are not federal requirements, 310 CMR 7.28 can be seen as satisfying the OTC phase III program requirements as well.

J. What Issues Are Associated With Massachusetts' NO_X SIP Call Submittal?

On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the NO_X SIP Call and remanding certain other portions to the Agency (*e.g.*, the definition of an EGU and the control assumptions for internal combustion engines). Due to the Court's remanding of the EGU definition and IC engine control assumptions, EPA must now recalculate the final 2007 baseline, 2007 budget, and compliance supplement allocation for each state subject to the NO_X SIP Call, including MA. Those recalculated budgets are expected to be published in the next few months. However, this means that MA may be required to revisit its NO_X SIP Call program due to potential forthcoming changes to the NO_X SIP Call requirements. At such time as EPA publishes new emission budget requirements, MA and other NO_X SIP Call subject states will be informed as to what, if any, changes are needed.

Additionally, as described above, the March 2, 2000 technical corrections changed the 2007 baselines and budgets for the highway and non-EGU sub-inventories in CT, MA, and RI. Therefore, when those states make the changes needed due to the remanded portions of the NO_X SIP Call, they will need to adopt changes to the highway and non-EGU 2007 baselines and budgets as well.

III. Proposed Action

EPA has reviewed MA's November 19, 1999, SIP submittal using the NO_X SIP Call rulemaking notices and checklist. EPA has reviewed MA's

control measures and projected reductions and finds them approvable. Therefore, EPA is proposing to approve 310 CMR 7.28 and MA's NO_X SIP Call narrative into the MA SIP at this time.

MA's November 19, 1999, submittal also contained amendments to 310 CMR 7.19 and 310 CMR 7.27. These amendments consisted of minor changes to the regulations to ensure consistent requirements and a smooth transition to the program under 310 CMR 7.28 in 2003. EPA has reviewed the amendments and is proposing to approve them into the MA SIP at this time.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

[FR Doc. 00–17187 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI041–6989b, FRL–6731–6]

Approval and Promulgation of Implementation Plans; Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In October 1999, the State of Rhode Island (RI) submitted a State Implementation Plan (SIP) to reduce air emissions of nitrogen oxides (NO_X). The submittal responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." The submittal includes a narrative and a regulation that establish a statewide NO_X budget and a NO_X allowance trading program for large electricity generating and industrial sources beginning in 2003.

The Environmental Protection Agency (EPA) is proposing approval of the RI's October 1999 SIP submittal including, RI's NO_X control regulation, Regulation No. 41, "Nitrogen Oxides Allowance Program," and the SIP narrative materials, "NO_X State Implementation Plan (SIP) Call Narrative," that includes a statewide emissions budget for the ozone season, i.e., May 1 to October 1, of 2007 and each year after. EPA is proposing to approve Rhode Island's submittal for its strengthening effect pursuant to section 110 of the Clean Air Act (CAA).

DATES: EPA must receive written comments on or before August 11, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, 02114, and at the Division of Air and Hazardous Materials, Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 918–1048 or at Rapp.Steve@EPA.GOV.

SUPPLEMENTARY INFORMATION:

Overview

On October 1, 1999, RI submitted a package of regulatory and narrative materials in order to comply with the NO_X SIP Call and strengthen its ozone SIP. EPA proposes full approval of RI's submittal.

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION:**

I. EPA's Action
A. What action is EPA proposing today?
B. Why is EPA proposing this action?
C. What are the general NO_X SIP Call requirements?
D. What is EPA's NO_X budget and allowance trading program?
E. What is the Compliance Supplement Pool?
F. What guidance did EPA use to evaluate Rhode Island's submittal?
II. Rhode Island's NO_X Budget Program
A. What is Rhode Island's NO_X SIP Call submittal?
B. When did Rhode Island propose and adopt the program?
C. When did Rhode Island submit the SIP revision to EPA and when did EPA find it technically and administratively complete?
D. What is Rhode Island's NO_X Budget Trading Program?
E. How will Rhode Island and EPA enforce the program?
F. How does Rhode Island's program protect the environment?
G. What is the result of EPA's evaluation of Rhode Island's program?
H. Why is EPA considering the NO_X SIP Call submittals from CT, MA, and RI at the same time?
I. What other significant items relate to Rhode Island's program?
J. What issues are associated with the Rhode Island NO_X SIP Call submittal?
III. Proposed Action
IV. Administrative Requirements

In the following questions and answers, the term "you" refers to the reader of the notice and "we" refers to the EPA.

I. EPA's Action

A. What Action is EPA Proposing Today?

EPA is proposing approval of RI's SIP submittal, including RI's NO_X control regulation, Regulation No. 41, "Nitrogen Oxides Allowance Trading Program," and the SIP narrative entitled, "NO_X State Implementation Plan (SIP) Call Narrative."

RI submitted the adopted Regulation No. 41 and the SIP narrative with a request to revise the SIP on October 1, 1999. RI submitted the regulation and narrative in order to strengthen its one-hour ozone SIP and to comply with the NO_X SIP Call in each ozone season, i.e., May 1 to October 1, beginning in 2003. EPA finds that RI's submittal is fully approvable as a SIP strengthening measure for Rhode Island's one-hour ground level ozone SIP and it meets the air quality objective of the NO_X SIP Call requirements that EPA has published to date. EPA will take action in a separate future rulemaking on whether Rhode Island's submittal meets the applicable NO_X SIP Call requirements themselves.

B. Why is EPA Proposing this Action?

EPA is proposing this action in order to:

- Fulfill RI's and EPA's requirements under the Clean Air Act (the Act);
- Make RI's control regulation federally-enforceable and available for credit in the SIP;
- Make RI's SIP narrative, including the ozone season NO_X budget, federally enforceable as part of the RI SIP; and
- Give you the opportunity to submit written comments on EPA's proposed actions, as discussed in the **DATES** and **ADDRESSES** sections.

C. What Are the General NO_X SIP Call Requirements?

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." See 63 FR 57356. The NO_X SIP Call requires 22 States and the District of Columbia [1] to meet statewide NO_X emission budgets during the five month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO_X SIP Call set out a schedule that required the affected states to adopt regulations by September 30, 1999 [2], and implement control strategies by May 1, 2003.

The NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. But, the SIP Call notice suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed on average a 30% NO_X reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking notice included a model NO_X allowance trading regulation, called "NO_X Budget Trading Program for State Implementation Plans," (40 CFR Part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

D. What is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule for SIPs, 40 CFR Part 96, sets forth a NO_X emissions trading program for large electric generating units (EGUs) and non-electric generating units (non-EGUs). A state can voluntarily choose to adopt EPA's model rule in order to allow sources

[1] Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

[2] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP Call. The NO_X SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. Michigan v. EPA, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

On October 1, 1999, Rhode Island voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the SIP call and remanding certain other portions to the Agency. The court's ruling does not affect this action because it is being proposed as a SIP-strengthening measure regardless of the status of the case.

within its borders to participate in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR Part 96.

In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.*, one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

E. What is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call provided each affected state with a "compliance supplement pool." The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2003 and 2004 ozone seasons. Allowances from the compliance supplement pool will not be valid for compliance past the 2004 ozone season. Despite disagreeing with commenters' concerns, EPA included these voluntary provisions in the NO_X SIP Call to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999 but before May 1, 2003 (*i.e.*, early reductions). In this way, sources that cannot install controls prior to May 1, 2003, can purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline due to undue risk to the electricity or other industrial sectors and where early reductions are not available. See 40 CFR 51.121(e)(3).

F. What Guidance Did EPA Use to Evaluate Rhode Island's Submittal?

EPA evaluated RI's NO_X SIP Call submittal using EPA's "NO_X SIP Call Checklist," (the checklist), issued on April 9, 1999. The checklist reflects and follows the requirements of the NO_X SIP Call set forth in 40 CFR 51.121 and 51.122. The checklist outlines the criteria that the EPA Regional Office used to determine the completeness and approvability of RI's submittal.

As noted in the checklist, the key elements of an approvable submittal under the NO_X SIP Call are: a budget demonstration; enforceable measures for control; legal authority to implement and enforce the control measures; compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The checklist is available to the public on EPA's website at: http://www.epa.gov/ttn/otag/sip/related.html.

As described above, the final NO_X SIP Call rule included a model NO_X budget trading program regulation. See 40 CFR Part 96. EPA used the model rule to evaluate Regulation No. 41. Additionally, EPA used the October 1998 final NO_X SIP Call rulemaking notice, as well as the subsequent technical amendments to the NO_X SIP Call, published in May 1999 (64 FR 26298) and March 2000 (65 FR 11222), to evaluate the approvability of RI's submittal. EPA also used § 110 of the CAA, Implementation Plans, to evaluate the approvability of RI's submittal as a revision to the SIP.

II. Rhode Island's NO_X Budget Program

A. What is Rhode Island's NO_X SIP Call Submittal?

Rhode Island's October 1, 1999, SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, *i.e.*, Regulation No. 41;
- A description of how the state intends to use the compliance supplement pool, *i.e.*, as part of the control regulation;
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, *i.e.*, as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, *i.e.*, as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, *i.e.*, as part of the SIP narrative.

As described above, in order to reduce NO_X emissions statewide from 2003 and beyond, RI adopted Regulation No. 41. The regulation applies to all EGUs with nameplate electricity generating capacities greater than 15 megaWatts that sell any amount of electricity as well as any non-EGU units that have a heat input capacity equal to or greater than 250 mmBtu per hour. Regarding other non-EGUs, RI has no cement kilns or internal combustion (IC) engines with emissions large enough to exceed the applicability threshold for assumed control requirements, *i.e.*, one ton per day. So, RI's SIP submittal does not assume any additional reductions from those sources. Furthermore, you should note that RI is not relying on any reductions beyond anticipated federal measures in the mobile and area sectors.

Below is a table of the 2007 baseline and budget emission levels that Rhode Island has submitted with as part of its SIP narrative.

Source category	2007 baseline NO_X emissions (tons/season)	2007 NO_X budget emissions (tons/season)	Projected deductions (tons/season)
EGUs	1,082	985	97
Non-EGU Point	2,031	2,031	0
Area Sources	448	448	0
Non-Road Mobile	2,455	2,455	0
Highway Mobile	3,879	3,879	0
RI Total	9,895	9,798	97

B. When Did Rhode Island Propose and Adopt the Program?

On July 19, 1999, Rhode Island proposed a draft of Regulation No. 41 and the SIP narrative. The release of the proposal began a 30 day public comment period. On August 17, 1998, EPA provided written comments to the public record. On August 20, 1999, a public hearing was held on Regulation No. 41 and the SIP narrative. On October 1, 1999, the final Regulation No. 41 was filed with the Secretary of State. The regulation became effective on that date.

C. When Did Rhode Island Submit the SIPr Revision to EPA and When did EPA Find the Submittal Technically and Administratively Complete?

On October 1, 1999, RI DEM submitted Regulation No. 41 and the SIP narrative to EPA with a request to revise the RI SIP. On October 26, 1999, EPA sent a letter to RI deeming the SIP submittal technically and administratively complete.

D. What Is Rhode Island's NO_X Budget Trading Program?

In response to the NO_X SIP Call, RI adopted Regulation No. 41, "Nitrogen Oxides Allowance Program." With Regulation No. 41, RI is establishing a NO_X cap and allowance trading program for the ozone seasons of 2003 and beyond. RI developed the regulation in order to reduce NO_X emissions and allow its sources to participate in the interstate NO_X allowance trading program described in § 51.121(b)(2).

Under Regulation No. 41, RI allocates NO_X allowances to its EGUs. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. For each ton of NO_X emitted in a control period, EPA will remove one allowance from the source's NO_X Allowance Tracking System (NATS) account. Once the allowance has been retired in this way, no one can use the allowance again.

Source owners will monitor their NO_X emissions by using systems that meet the requirements of 40 CFR Part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the federal Acid Rain program).

Generally, Regulation No. 41 differs from EPA's model NO_X budget trading rule in three ways. First, Regulation No. 41 is applicable to smaller electric generating sources than the model rule. Second, Regulation No. 41 does not allow early reduction credits and does not allocate any allowances from the compliance supplement pool. Finally, Regulation No. 41 describes a different methodology for allocating allowances from that set forth in the model rule but still ensures that the total allowance allocation does not exceed the state program budget. These differences make the regulation more stringent than 40 CFR Part 96 would be and are allowed under § 51.121(p). Therefore, Regulation No. 41 can be considered substantively identical to 40 CFR Part 96.

The NO_X SIP Call allotted RI with a compliance supplement pool. However, Regulation No. 41 does not provide for the distribution of early reductions. All of the sources affected are well controlled, gas-fired EGUs, with emission rates below the assumed 0.15 lb. NO_X/mmBtu assumed in the development of the state budgets. This means that no EGU sources in RI will have to reduce their emissions from current permitted levels in order to comply with the projected 2007 budget. Therefore, RI decided not to include provisions for distributing allowances from the compliance supplement pool.

For additional information regarding RI's NO_X SIP Call submittal, the reader should refer to the document entitled, "Technical Support Document for Rhode Island's NO_X SIP Call Submittal," dated May 5, 2000. Copies of the technical support document (TSD) can be obtained at either of the addresses listed in the **ADDRESSES** section of this notice.

E. How Will Rhode Island and EPA Enforce the Program?

Once approved into RI's SIP, both RI and EPA will be able to enforce the requirements of the NO_X budget and allowance trading program in Regulation No. 41. All of the sources subject to the NO_X allowance trading program will have federally-enforceable operating permits that contain source specific requirements, such as emissions monitoring or pollution control equipment requirements. RI and EPA will be able to enforce the source specific requirements of those permits, as well as the requirements of Regulation No. 41.

Additionally, in order to determine compliance with the emission requirements of the program, at the end of each ozone season, RI and EPA will compare sources' allowance and emission accounts in the NO_X Allowance Tracking System (NATS). To be in compliance, sources must hold a number of available allowances that meets or exceeds the number of tons of NO_X emitted by that source and recorded in the Emissions Tracking System (ETS) for a particular ozone season. For sources with excess emissions, penalties include EPA deducting three times the unit's excess emissions from the unit's allocation for the next control period.

F. How Does Rhode Island's Program Protect the Environment?

Based on air quality modeling assessments performed for the NO_X SIP Call, EPA believes that the NO_X reductions in RI and other states subject to the SIP Call will reduce the transport of ozone starting in 2003.

Decreases of NO_X emissions will also help improve the environment in several important ways. Decreases in NO_X emissions will decrease acid deposition, nitrates in drinking water,

excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_X emissions reduce greenhouse gases and stratospheric ozone depletion.

G. What is the Result of EPA's Evaluation of Rhode Island's SIP Submittal?

EPA has evaluated RI's October 1, 1999, SIP submittal and finds it fully approvable. The submittal will strengthen RI's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003. EPA also finds that the submittal meets the air quality objectives of the NO_X SIP Call. EPA finds the NO_X control measures, Regulation No. 41, the SIP narrative that includes RI's 2007 NO_X baseline and controlled budgets fully approvable. EPA finds that the submittal contained the information necessary to demonstrate that RI has the legal authority to implement and enforce the control measures, as well as a description of how the state intends to use the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

EPA finds that RI's control regulation and SIP narrative materials are consistent with EPA's guidance and meet the air quality objectives of the NO_X SIP Call, including, 40 CFR Part 51, § 51.121 and § 51.122 as well as the general SIP submittal requirements of the Act, § 110, 42 U.S.C. 7401 *et seq.* Regulation No. 41 does contain differences from the model rule but such differences are allowed under § 51.121(p). Therefore, EPA considers Regulation No. 41 to be substantively identical to 40 CFR Part 96.

Regarding RI's SIP narrative, EPA finds that the submittal contains the required elements, including: the baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007; the 2007 projected inventory reflecting NO_X reductions achieved by the state control measures contained in the submittal; and the commitment to meet the annual, triennial, and 2007 state reporting requirements. EPA further finds that RI's 2007 projected inventory, reflecting the control strategies, is approvable, reflecting the air quality objectives of the NO_X SIP Call.

In order to approve RI's 2007 projected inventory as meeting the air quality objectives of the NO_X SIP Call, however, it is necessary to consider the adopted 2007 emission budgets and adopted NO_X reducing measures in Connecticut (CT) and Massachusetts (MA) as well. Comparing the most recent technical amendments to the NO_X SIP Call budgets to the adopted and submitted NO_X SIP Call related measures from the three states, you can see that the adopted measures in CT, MA, and RI will reduce more NO_X from the EGU and non-EGU sectors than the NO_X SIP Call notices have required.

H. Why is EPA Considering the NO_X SIP Call Submittals from CT, MA, and RI at the Same Time?

In February 1999, CT, MA, RI, and EPA signed a memorandum of understanding (*i.e.*, "the Three State MOU") agreeing to redistribute the EGU portions of the three states' budgets, as well as the compliance supplement pool allocations, amongst themselves. Under the Three State MOU, the combined 2007 controlled emission level and compliance supplement pool did not change for the three states, only the individual state EGU allocations and supplement pools were redistributed to provide CT with additional flexibility.

On September 15, 1999, EPA published a Notice of Proposed Rulemaking (NPR) to approve the redistribution of the three states' allocations as described in the MOU and modified by the EPA's May 1999 NO_X SIP Call technical corrections.[3] See 64 FR 50036. As described in the NPR, the sum of the 2007 budgets and supplement pool allocations for the three states after redistribution is identical to the sum of the three budgets and supplement pool allocations for the states as published in the May 1999 technical corrections **Federal Register** notice. In other words, the total NO_X reduction expected from the three states due to the SIP Call would be the same before and after the redistribution of budgets under the Three State MOU. In fact, both the May 1999 technical amendments and the September 1999 NPR required a NO_X reduction of 5,491 tons by the three states each ozone season from 2007 onward and provided a combined allocation of 961 tons from the compliance supplement pool.

On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (65 FR 11222). As can be seen in the tables below, the March 2, 2000 technical corrections primarily changed the highway mobile and non-EGU 2007 baselines and budgets for CT, MA, and RI. However, these changes largely cancel each other out, *e.g.*, the 2007 highway sub-inventory baselines and budgets increased by the same amounts. The March 2000 technical corrections, however, did not effect the amount of reduction expected from the EGU sector. The tables below compare the 2007 baselines and budgets for each sub-inventory sector for CT, MA, and RI as published in the May 1999 and March 2000 technical amendment **Federal Register** notices.

CT	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	5,636	5,636	0	2,652	2,652	0
Non-EGU	5,124	5,397	273	4,970	5,216	246
Area	4,821	4,821	0	4,821	4,821	0
Nonroad	10,736	10,736	0	10,736	10,736	0
Highway	19,902	19,424	−478	19,902	19,424	−478
Total	46,220	46,015	−205	43,081	42,849	−232

MA	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	16,479	16,479	0	15,145	15,146	1

[3] You should note that EPA took comments on the Three State MOU NPR and intends to address those comments in a future rulemaking. Therefore, we are not seeking comments on the specifics of the Three State MOU NPR at this time.

MA	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
Non-EGU	11,229	11,210	−19	10,296	10,298	2
Area	12,048	11,048	0	11,048	11,048	0
Nonroad	20,166	20,166	0	20,166	20,166	0
Highway	28,641	28,190	−451	28,641	28,190	−451
Total	87,563	87,092	−471	85,296	84,848	−448

RI	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	1,082	1,082	0	997	997	0
Non-EGU	2,031	1,635	−396	2,031	1,635	−396
Area	448	448	0	448	448	0
Nonroad	2,455	2,455	0	2,455	2,455	0
Highway	3,879	3,843	−36	3,879	3,843	−36
Total	9,895	9,463	−432	9,810	9,378	−432

The March 2000 **Federal Register** listed 2007 ozone season baseline emissions from CT, MA, and RI as 46,015 tons, 87,092 tons, and 9,463 tons, respectively. The March 2000 **Federal Register** listed the 2007 ozone season budgets for CT, MA, and RI as 42,849 tons, 84,848 tons, and 9,378 tons, and provided the three states with compliance supplement pools of 569 tons, 404 tons, and 15 tons, respectively, or a total of 988 tons. In total, the March 2000 notice required the three states to reduce their NO_X emissions by 5,495 tons per ozone season beginning in 2007.

In the Fall of 1999, CT, MA, and RI all adopted and submitted SIP packages in response to the NO_X SIP Call. All three states adopted and submitted NO_X control regulations that rely on reductions from the EGU and large non-EGU units to achieve their emission budgets. The 2007 baseline ozone season emissions adopted by the states were 46,219 tons, 87,563 tons, and 9,895 tons, respectively, or a three state total of 143,677 tons per ozone season. The SIP packages adopted and submitted by CT, MA, and RI, included 2007 projected NO_X inventories of 44,993 tons, 83,345 tons, and 9,798 tons, respectively, or a three state total of 138,136 tons per ozone season. Therefore, the total NO_X reduction expected from the adopted and submitted SIP packages from CT, MA, and RI is 5,541 tons per ozone season.

As discussed above, EPA signed the Three State MOU between CT, MA, and RI. We endorse the concept that states can voluntarily join together and redistribute their NO_X SIP Call budgets and compliance supplement pool allocations, provided that the total after the redistribution is less than or equal to before redistribution, and provided that the states have formalized such an agreement in an MOU or similar device to which EPA also agrees. EPA supports this concept because such a redistribution is no different than the effects of trading. For a detailed discussion of why EPA supports the concept that states can collectively redistribute their NO_X SIP Call budgets, see the proposed Three State MOU notice, 64 FR 49989, September 15, 1999. Given the fact that together the three states' regulations achieve at least the same NO_X reduction and allocate fewer than required compliance supplement pool allocations, EPA finds that the NO_X SIP Call SIP submittals from the three states collectively meet the air quality objectives of the NO_X SIP Call as published to date. In separate **Federal Register** notices today, EPA is also proposing approval of CT's and MA's NO_X SIP Call submittals.

You can find the NO_X SIP Call 2007 baselines, budgets, and compliance supplement pool allocations from the March 2000 technical amendments and the state adopted SIPs summarized in the table below.

State	SIP call 2007 baseline (tons NO_X per ozone season) as of 03/00	State adopted 2007 baseline (tons NO_X per ozone season)	SIP call 2007 budget as of 03/00 (tons NO_X per ozone season)	State adopted 2007 budget (tons NO_X per ozone season)	SIP call projected reduction (tons NO_X per ozone season) as of 03/00	State projected reduction (tons NO_X per ozone season)	Compliance supplement pool state allocations as of 03/00	State adopted compliance supplement pool
CT	46,015	46,219	42,849	44,993	3,166	1,226	569	473
MA	87,092	87,563	84,848	83,345	2,244	4,218	404	473
RI	9,463	9,895	9,378	9,798	85	97	15	15
Total	142,570	143,677	137,075	138,136	5,495	5,541	988	961

For additional information regarding EPA's evaluation of RI's NO_X SIP Call submittal, the reader should refer to the TSD available at either of the addresses listed in the **ADDRESSES** section of this notice.

I. What Other Significant Items Relate to Rhode Island's Program?

Regulation No. 41 is also related to the Ozone Transport Commission's (OTC's) ozone season NO_X budget program. On September 27, 1994, OTC adopted a Memorandum of Understanding (MOU) that committed the signatory states, including RI, to the development and proposal of a region-wide reduction in NO_X emissions. The OTC agreement committed the states to one phase of NO_X reductions by 1999

and another phase of reductions by 2003.

As a signatory state of the MOU, RI adopted its NO_X budget and allowance trading regulation, Regulation No. 38, on June 10, 1997. Regulation No. 38 contained a NO_X emissions budget and allowance trading system for the ozone seasons of 1999 through 2002, the period known as "OTC Phase II." RI's phase II budget is 626 tons per ozone season. EPA approved RI's phase II OTC NO_X budget regulation on June 2, 1999. See 64 FR 29567. Regulation No. 41 contains a new NO_X emissions budget and allowance trading program for the ozone seasons of 2003 and thereafter, in order to control NO_X emissions during the period described in the OTC program as "OTC phase III."

J. What Issues Are Associated With Rhode Island's NO_X SIP Call Submittal?

On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the NO_X SIP Call and remanding certain other portions to the Agency (*e.g.*, the definition of an EGU and the control assumptions for internal combustion engines). Due to the Court's remanding of the EGU definition and IC engine control assumptions, EPA must now recalculate the final 2007 baseline, 2007 budget, and compliance supplement allocation for each state subject to the NO_X SIP Call, including RI. Those recalculated budgets are expected to be published in the next few months. However, this means that RI may be required to revisit its NO_X SIP Call program due to potential forthcoming changes to the NO_X SIP Call requirements. At such time as EPA publishes new emission budget requirements, RI and other NO_X SIP Call subject states will be informed as to what, if any, changes are needed.

Additionally, as described above, the March 2, 2000 technical corrections changed the 2007 baselines and budgets for the highway and non-EGU sub-inventories in CT, MA, and RI. Therefore, when those states make the changes needed due to the remanded portions of the NO_X SIP Call, they will need to adopt changes to the highway and non-EGU 2007 baselines and budgets as well.

III. Proposed Action

EPA has reviewed RI's October 1, 1999, SIP submittal using the NO_X SIP Call rulemaking notices and checklist. EPA has reviewed RI's control measures and projected reductions and finds them approvable. Therefore, EPA is proposing to approve Regulation No. 41 and RI's NO_X SIP Call narrative into the RI SIP at this time.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

[FR Doc. 00–17188 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN65–01–7290b; FRL–6712–8]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action approves a State Implementation Plan (SIP) revision for the State of Minnesota which was

submitted on December 7, 1999. This SIP revision is to remove an Administrative Order and replace it with a federally enforceable State operating permit for Commercial Asphalt's facility located on Red Rock Road in the city of St. Paul. In the final rules section of this **Federal Register**, we are conditionally approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rules based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received by August 11, 2000.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulations Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final document which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–17348 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6732–2]

RIN 2060–AI89

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Adjustment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes an adjustment to the VOC performance standard under Phase II of the reformulated federal gasoline (RFG) program for ethanol RFG blends that contain 3.5 weight percent oxygen. For such blends, the proposed adjustment would reduce by 1 percentage point (from a 27.4 to a 26.4 percent reduction in the north, and from a 29 to a 28 percent reduction in the south) the VOC performance standard. We believe that air quality benefits will continue to be similar to the current RFG standards. EPA also solicits comment on adjustment or elimination of the minimum oxygen requirement of 1.5 weight percent.

This action implements the National Research Council (NRC) recommendation that the contribution of CO to ozone formation be recognized in assessments of RFG air quality benefits.

This action also implements recommendations of the Blue Ribbon Panel on Oxygenate Use. One of the panel's recommendations was that EPA take steps to reduce the amount of MTBE used in gasoline. The action proposed today would increase the flexibility available to refiners to formulate RFG without MTBE while still realizing ozone benefits that are similar to those of the current Phase II program.

DATES: All public comments must be received on or before September 11, 2000.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed below and to Barry Garelick (6406J), Environmental Protection Specialist, U.S. Environmental Protection Agency, Office of Transportation and Air Quality, Transportation and Regional Programs, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Materials relevant to this have been placed in docket [A–99–32] located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW., Washington, DC 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services. To request a public hearing, contact Barry Garelick, (202) 564–9028.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Barry Garelick, Environmental Protection Specialist, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564–9028. To notify EPA of a public hearing request, contact Barry Garelick, (202) 564–9028.

SUPPLEMENTARY INFORMATION: The remainder of this proposed rule is organized as follows:

I. Adjusted VOC Standard Under Phase II of the RFG Program

A. Regulated Entities
B. Background
C. Need for Action
  1. Concerns relating to use of MTBE
  2. Summary of today's action
  3. Per gallon oxygen minimum
D. Volatility associated with ethanol RFG blends
E. VOC standard adjustment
F. Evaluation of air quality impacts of the proposed rule
G. Ozone reduction benefit in areas that currently use ethanol
H. Impact of proposed approach on SIPs
I. Oxygen and performance standard averaging
J. Downstream sampling
K. Oxygen Crediting
L. Product Transfer Documentation
M. Future vehicles

II. Elimination of Oxygen Minimum Requirement

A. Background
B. Potential modifications
C. Elimination of RFG oxygen content per-gallon minimum
D. Modification of method for calculation of oxygen survey series average
E. Modification to provision for effect of oxygen survey series failure
F. Modification to the commingling prohibition
G. Effect on air toxics
H. Effect on VOC

III. Administrative Requirements

A. Executive Order 12866: Federalism
B. Executive Order 13132 (Federalism)
C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
D. Regulatory Flexibility
E. Paperwork Reduction Act
F. Unfunded Mandates Reform Act
G. Executive Order 13045: Children's Health Protection
H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

I. Statutory Authority

I. Adjusted VOC Standard Under Phase II of the RFG Program

A. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
SIC 2911	Refiners, importers, oxygenate producers, and oxygenate blenders of reformulated gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR Part 80, particularly § 80.41 dealing specifically with the RFG standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

The purpose of the RFG program is to improve air quality in certain specified areas of the country by requiring reductions in emissions of ozone forming volatile organic compounds (VOCs) and emissions of toxic air pollutants through the reformulation of gasoline, pursuant to 211(k) of the Clean Air Act (CAA or the Act), as amended. Section 211(k)(10)(D) of the Act mandates that RFG be sold in the nine largest metropolitan areas with the most severe summertime ozone levels, as well as areas that are reclassified to "Severe". When the Sacramento Metropolitan Air Quality Management District was reclassified to "Severe", the number of mandated areas became 10. There will soon be 11 areas since the San Joaquin Valley area of California will be reclassified to "Severe". In addition to the mandatory areas, RFG must also be sold in ozone nonattainment areas that opt into the program.[1] The Act also mandates certain requirements for the RFG program. Section 211(k)(1) directs EPA to issue regulations that:

> require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

Section 211(k)(2) includes compositional specifications for reformulated gasoline including a 2.0 weight percent oxygen minimum, a 1.0 volume percent benzene maximum, and a prohibition on heavy metal content. This section also requires emissions from RFG to contain no more oxides of nitrogen (NO_X) than baseline gasoline emissions. Baseline emissions are the emissions of 1990 model year vehicles operated on a specified baseline gasoline.

Section 211(k)(3) requires RFG to meet the more stringent of either a formula or VOC and toxic air pollutant performance standards. During the initial RFG rulemaking process EPA found the performance standards to be more stringent. The performance standards at 40 CFR 80.41 require specific minimum reductions in emissions of VOC and toxics. For 1995 through 1999, or Phase I of the RFG program, EPA's regulations must require VOC emission and toxic air emission reductions from RFG measured on a mass basis, at least equal to 15 percent of baseline emissions. For the year 2000 and beyond, or Phase II of the RFG program, EPA's regulations must include a VOC and toxics performance standard each of which must be at least equal to a 25 percent reduction from baseline emissions. For the year 2000 and beyond EPA can adjust the performance standard upward or downward taking into account such factors as technical feasibility and cost, but in no case can the reduction be less than 20 percent. EPA also retains the authority in section 211(k)(1) to require greater reductions than these Phase I and II minimums.

Shortly after passage of the CAA Amendments in 1990, EPA entered into a regulatory negotiation with interested parties to develop specific proposals for implementing the RFG program. In August 1991, the negotiating committee recommended a program outline that would form the basis for a notice of proposed rulemaking, addressing emission content standards for Phase I (1995–1999), emission models, certification, enforcement, and other important program elements.

EPA published final regulations on February 16, 1994. The final rule closely followed the consensus outline agreed to by various parties in the negotiated rulemaking process. The final rule also adopted a NO_X emission reduction performance standard for Phase II RFG, relying on authority under section 211(c)(1)(A).

The regulations provide a method of certification through the complex model, based on fuel characteristics such as oxygen, benzene, aromatics, RVP, sulfur, olefins and the percent of fuel evaporated at 200 and 300 degrees Fahrenheit (E200 and E300, respectively).

Phase II will lead to significant reductions in the emission of the ozone precursors VOC and NO_X, and the emission of toxic air pollutants. The VOC Phase II performance standard is 29 percent for southern (class B) areas and 27.4 percent for northern (class C) areas, representing approximately an additional 10 percent reduction in VOC emissions beyond the Phase I requirements. The Phase II NO_X reduction requirement is 6.8 percent, and the toxics reduction requirement is 22 percent.

C. Need for Action

1. Concerns Relating to Use of MTBE

In the Clean Air Act, Congress specified that RFG contain two percent by weight oxygen. MTBE and ethanol are the two forms of chemical oxygen (or oxygenates) that gasoline producers most commonly use to add oxygen to their gasoline. Refiners and importers decide which oxygenate to use to meet the CAA requirement. MTBE and ethanol have also been used in conventional gasoline, as octane enhancers, since the 1970s.

Many chemicals in gasoline, including MTBE, can end up in groundwater, as a result of releases from storage tanks and other sources. MTBE is highly soluble and travels faster and farther in water than other gasoline components. MTBE has a strong taste and odor, so even small amounts of MTBE in water can make a water supply undrinkable, and significantly impact an area's ability to fully utilize its water resources. At higher levels, MTBE may also pose a risk to human health.

[1] *Mandatory areas:* Los Angeles, CA, San Diego, CA, Hartford, CT, New York City (NY–NJ–CT), Philadelphia (PA–NJ–DE–MD), Baltimore, MD, Houston, TX, Chicago (IL–IN–WI), Milwaukee, WI, and Sacramento, CA. *Opt-in areas:* Part or all of CT, DE, DC, KY, MD, MA, MO, NH, NJ, NY, RI, TX, and VA. Kansas City, MO and Kansas City, KS are former nonattainment areas which tried to opt into the program. On January 4, 2000, the U.S. Court of Appeals for the District of Columbia overturned EPA's final rule to allow former nonattainment areas to opt into the RFG program. This decision prohibits EPA from approving the opt-in requests submitted to the Agency on July 28, 1999, by Governors Carnahan and Graves.

EPA is concerned about the presence of MTBE in ground and surface water. In December 1998, EPA established a panel of independent experts to examine MTBE's performance in gasoline, its presence in water, and alternatives to its use. Panel recommendations made to EPA in July 1999 include:

- Ensure no loss of current air quality benefits from RFG.
- Reduce the use of MTBE, and seek Congressional action to remove the oxygen requirement in RFG.
- Strengthen the nation's water protection programs, including the Underground Storage Tank, Safe Drinking Water, and private well protection programs.

EPA is committed to working with Congress to provide a targeted legislative solution that maintains the air quality benefits of RFG while allowing reductions in the use of MTBE. EPA will also protect water supplies by continuing to enforce the UST requirements and by enhancing remediation programs.

Today's action implements the panel's recommendation that EPA take steps within its authority to reduce the amount of MTBE used in gasoline. This proposed rule could reduce the amount of MTBE refiners use in RFG by increasing the flexibility for refiners to blend ethanol into RFG. It will provide continued assurances for ethanol use in the Midwest and incentives for other areas looking to use ethanol.

On March 20, 2000, the Administration announced legislative principles for protecting drinking water supplies, preserving clean air benefits, and promoting renewable fuels. The following legislative principles taken together as a single package are designed to maintain air quality and enhance water quality protection while preserving the significant role of renewable fuels, most importantly ethanol:

1. Amend the Clean Air Act or provide the authority to significantly reduce or eliminate the use of MTBE;
2. As MTBE use is reduced or eliminated, ensure that air quality gains are not diminished;
3. Replace the existing oxygen requirement contained in the Clean Air Act with a renewable fuel standard for all gasoline.

In addition to today's action, EPA on March 24, 2000, published an Advanced Notice of Intent to Initiate Rulemaking to reduce or eliminate MTBE from gasoline, under Section 6 of the Toxic Substances Control Act (65 FR 16093).

2. Summary of Today's Action

EPA proposes to adjust by 1.0 percentage point the Phase II VOC performance standard for reformulated gasoline blends with 10 volume percent ethanol (approximately 3.5 weight percent oxygen). As discussed in Section I.B., section 211(k)(1) of the CAA directs EPA to promulgate regulations that require the greatest reduction in emission of ozone forming VOCs achievable through the reformulation of conventional gasoline. This section also directs EPA, in promulgating such regulations, to consider the cost of achieving such emission reductions and any nonair-quality and other air-quality related health and environmental impacts. With today's action EPA is exercising its discretion to consider cost and other environmental concerns in its implementation of the VOC performance standards.

The current Phase II VOC performance standards (as well as the proposed adjusted standards) require VOC emission reductions greater than those mandated by section 211(k)(3) of the CAA. In promulgating the current VOC standards, EPA exercised both its 211(k)(3) authority (to impose VOC emission reductions of approximately 25% and additional reductions based on technological feasibility and cost), and its 211(k)(1) authority (to require the greatest VOC emission reductions achievable considering cost and various environmental factors).

In light of certain cost and environmental considerations EPA is reevaluating the appropriateness of some of the current VOC emission reduction requirements for certain blends of RFG. The considerations that compel the proposed VOC adjustment include: (1) The incremental cost increase associated with producing Phase II ethanol RFG; (2) the potential for an adverse environmental impact (contamination of groundwater) from use of MTBE, and the interest in increasing the flexibility available to refiners to reformulate without MTBE; and (3) the unlikelihood that today's action will undermine the ozone benefits of the RFG program. For purposes of evaluating these considerations and reaching a decision to undertake today's proposed action, EPA has relied upon several sources, including, a cost study on ethanol RFG blends conducted by the Department of Energy (DOE) at EPA's request; [2] and the recommendation of the Blue Ribbon Panel on Oxygenate Use. The cost factors related to production of ethanol RFG are discussed in Section I.E, and the Blue Ribbon Panel recommendations are discussed in Section I.C.1.

In proposing this action EPA also recognizes the fact that the oxygen content of gasoline affects the amount of carbon monoxide (CO) emissions from automobiles. The National Research Council recommended that "the contribution of CO to ozone formation should be recognized in assessments of the effects of RFG" in its report "Ozone-forming Potential of Reformulated Gasoline," p. 6, National Academy Press, 1999. Accordingly, today's action considers the ozone benefits of CO emission reductions resulting from the use of oxygenates in the RFG program.

Oxygenates, like ethanol and MTBE, lead to reductions in emissions of CO from 1990 technology cars, the benchmark used for the RFG program. The level of CO reduction is a function of the amount of oxygen in the fuel. MTBE-blended RFG typically contains 2.0 weight percent oxygen. Ethanol, on the other hand, is typically blended in RFG at levels of 10 volume percent which equates to approximately 3.5 weight percent oxygen; thus, the oxygen content in ethanol-blended RFG is typically higher than in MTBE-blended RFG. The CO reduction attributable to the typical ethanol-blended RFG (with 3.5 weight percent oxygen) is therefore greater than that attributable to the typical MTBE blend (with 2.0 weight percent oxygen). The impact of the proposed VOC adjustment on air quality is discussed further in Section I.F.

Refiners that choose to use ethanol to provide 3.5 weight percent oxygen, the maximum allowed under the RFG program, may take advantage of the adjusted VOC standard which applies during the summer ozone season when VOC emissions are controlled in the RFG program. This option may be particularly attractive in the Midwest where state tax incentives combine with federal tax incentives to encourage use of ethanol at the maximum amount permitted by the RFG program.

3. Per Gallon Oxygen Minimum

We seek comment on whether we should propose elimination of the per gallon oxygen minimum. We believe such action might provide additional flexibility to refiners in their choice of oxygenates. Elimination of the per

[2] "Transportation Fuels and Efficiency: Estimating Impacts of Phase 2 Gasoline Reformulation on the Value of Ethanol; Scenario Document"; G.R. Hadder, Oak Ridge National Laboratory; Oak Ridge, Tennessee; March 17, 1999. This document is available in the public docket for this proposed rulemaking.

gallon minimum may allow refiners to use little or no oxygenate during the summer ozone season, thus reducing the modest cost associated with summer ethanol use. Even if refiners that currently use MTBE choose to continue using MTBE during the summer ozone season, and use ethanol during the non-ozone season, the use of MTBE may be significantly reduced.

We request comment on the alternative approach of lowering, rather than removing the oxygen minimum, which would retain the benefits of the requirement while reducing the small potential for any adverse impacts.

D. Volatility Associated With Ethanol RFG Blends

One way to reduce VOC emissions from gasoline is to reduce the volatility of the gasoline, measured in Reid Vapor Pressure (RVP). EPA expects that the summer RVP levels during Phase II of the RFG program will have to average about 6.7 pounds per square inch (psi) in order for the fuel to meet the VOC performance standard. In Phase I RFG, summer RVP averaged approximately 8.0 psi in the north and 7.0 psi in the south.

When added to gasoline in the amount needed to satisfy the oxygen content requirement of the Act, ethanol raises the RVP of the resulting RFG blend by about 1.4 psi. For an ethanol RFG blend to meet the VOC performance standard, refiners must use a blendstock gasoline with an RVP low enough to offset the increase resulting from adding ethanol. According to a cost study on ethanol RFG blends—conducted by DOE at EPA's request and available in the public docket for this proposed rulemaking,[3] the change in average manufacturing cost of reducing the RVP of blendstock intended for ethanol-blended RFG to a level that ensures compliance with the current Phase II VOC performance standard is approximately $0.01 per gallon of RFG for refiners currently using ethanol. Based on DOE's modeled 1.4 psi increase, this cost reflects the 1.4 psi RVP reduction necessary to offset the RVP increase associated with ethanol. (DOE's cost impact was derived by comparing the cost of reducing the RVP in Phase I RFG with 10 volume percent ethanol, to the RVP level necessary to comply with the Phase II RFG performance standard for VOC.)

The ethanol industry has raised concerns that any incremental cost associated with using ethanol in Phase II RFG may lead to a switch to the use of MTBE, because the more stringent VOC standard of Phase II RFG will require a lower RVP blendstock for ethanol blending.

This summer, ethanol appears to be maintaining its market share in the Chicago and Milwaukee RFG programs; however, for the future it is difficult to predict the geographic distribution of specific oxygenates in Phase II with any certainty. Specifically, in March 1998 EPA wrote to several oil companies serving the Midwest to learn their plans for ethanol use in Phase II of the RFG program. EPA contacted companies that supply a major portion of the Chicago and Milwaukee RFG markets. EPA was told that the price of ethanol relative to other oxygenates will be the determining factor in ethanol use in Phase II of the program. One company told EPA it plans refinery modifications of low to moderate cost that will allow continued use of ethanol year-round; other companies said they would evaluate the price of each oxygenate and, if MTBE was less expensive, they would consider using ethanol during the eight month non-ozone season, but MTBE may be their choice during the ozone season.

EPA wishes to ensure the stability of the RFG program in the Midwest and to avoid any significant disincentive for the use of ethanol. EPA also wants to increase the flexibility for refiners currently using MTBE elsewhere in RFG areas to switch to ethanol. Still, it remains of primary importance that Phase II RFG continue to achieve significant reductions in toxics and in ozone precursors, given RFG's key role in states' ozone control strategies.

E. VOC Standard Adjustment

We are proposing to reduce by 1.0 percent the Phase II VOC standard for ethanol RFG blends containing 10 volume percent ethanol. Phase II RFG would retain the current average VOC standards of 27.4 percent and 29 percent for northern (Class C) and southern (Class B) areas, respectively, and per-gallon standards of 25.9 percent and 27.5 percent for northern and southern areas, respectively. For RFG blends with 10 volume percent ethanol, however, the average VOC standards would be adjusted to 26.4 percent and 28 percent for northern and southern areas, respectively, and the per-gallon standards adjusted to 24.9 percent and 26.5 percent for northern and southern areas, respectively.

EPA intends this adjustment to provide additional flexibility for refiners to produce ethanol-blended RFG. The proposed adjustment to the Phase II VOC standard would work to offset the incremental costs associated with the production of ethanol-blended RFG that are created by the RVP increase caused by ethanol. Thus, the proposed adjustment would reduce the cost of ethanol blends and provide refiners with additional flexibility.

EPA believes this adjusted VOC standard maintains the air quality benefits of the RFG program while reducing the cost of using ethanol. The increased flexibility the rule would provide for refiners would help refiners reduce the use of MTBE in RFG.

As discussed in Section I.D., the addition of ethanol raises the RVP of gasoline by approximately 1.4 psi. Under the proposal, the adjusted VOC standard would result in an increase of RVP of approximately 0.2 psi for ethanol blends of RFG. We cannot adjust the standard for ethanol-blended RFG to account for the entire RVP impact of ethanol because an increase in RVP of approximately 1.4 psi in the volatility of RFG would result in a complete loss of emission reductions that would be achieved under Phase II, as well as a partial loss of benefits achieved under Phase I.

Even with the proposed adjustment, Phase II RFG will continue to be a strong VOC reduction program and will meet all the requirements of the Clean Air Act. By limiting the adjustment to 1.0 percentage point for ethanol blends, the change in stringency of the VOC standard for ethanol blends is relatively small. This adjustment will still require ethanol RFG blends to achieve significant VOC reductions beyond those required during Phase I of the program. EPA believes this proposal will not undermine the important benefits of Phase II RFG as an ozone control strategy. EPA believes that this level of adjustment will increase flexibility to switch to ethanol and reduce the incentive for refiners to switch to MTBE while maintaining the air quality benefits of the RFG program. EPA's reasons for this belief are discussed in more detail in Section I.F.

EPA requests comment on additional areas of flexibility for implementation and interaction with other emissions control requirements that the public may wish to suggest, and the possible benefits to such flexibility.

F. Evaluation of Air Quality Impacts of the Proposed Rule

Ethanol blends at 10 volume percent, the typical blending level of ethanol, contain 3.5 percent by weight oxygen in the fuel and achieve significant reductions in CO emissions because the amount of CO reduction increases as oxygen increases. Preliminary emission

[3] Op. Cit.; Hadder, Oak Ridge National Laboratory; Oak Ridge, Tennessee; June 14, 1999.

estimates using version 5b of the Mobile model indicate that at the adjusted VOC level proposed today, the use of RFG with ethanol at 10 volume percent would reduce emissions of CO by approximately 24 tons for every 1 ton increase in VOC emissions associated with the use of those blends. (See the technical support document in the docket (A–99–32) for this rulemaking; document number II.B–2.)

As recognized in a study conducted by the National Research Council (NRC),[4] CO contributes to ozone formation and is present in ambient concentrations due in part to the large volume of CO emissions from mobile sources. There is no dispute that CO emissions contribute to ozone formation. The Urban Airshed Model (UAM) relied on by states in their State Implementation Plan submissions includes inventories of CO emissions as well as VOC and NO_X. While the role of CO in the formation of ozone is limited when compared to the effect of VOC and NO_X, the volume of CO emissions from motor vehicles is comparatively large and therefore is not ignored in photochemical modeling demonstrations.

While it is difficult to quantify the overall ozone impact of a specific change in emissions of CO and VOC, clearly a reduction in CO should directionally reduce ozone, and an increase in VOC should directionally increase ozone. The combined impact on ozone of a change in emissions may vary depending on a variety of environmental conditions, including meteorology. However, given that CO does play a role in ozone formation, the relatively large decrease in CO emissions will offset some, if not all, of any potential increase in ozone formation due to the relatively small increase in VOC emissions. (See the technical support document in the docket (A–99–32) for this rulemaking; document number II.B–2.) Thus, EPA is generally confident that the adjusted standard will achieve ozone reductions that are similar to those anticipated from the current standard, and will assure that the Phase II RFG program will continue to achieve the significant environmental benefits for which it was designed. Furthermore, the adjusted standard will achieve the additional environmental benefits associated directly with decreased CO emissions and the benefits associated with the decreased use of MTBE.

[4] "Ozone-Forming Potential of Reformulated Gasoline'; National Research Council; Washington DC; May, 1999.

In establishing a change of 1.0 percent in the VOC performance standard, EPA's intent is to take a conservative and cautious approach to ensure that RFG will continue to provide the same level of overall benefits as the existing RFG requirements. EPA is soliciting comment, however, on whether the Agency should also consider adjustments to the VOC standard that are less than or greater than 1.0 percentage point.

With respect to adjustments to the VOC standard greater than 1.0 percentage point, the Illinois Environmental Protection Agency (IEPA) submitted to EPA a proposal and supporting analysis which suggests that EPA should allow a VOC adjustment of 3.7 percentage points—approximately equivalent to an increase in RVP of 0.5 psi. (See Docket A–99–32, document file numbers II.D.3, II.D.5 and II.D.6.).

Briefly, IEPA's analysis compares the VOC and CO emissions associated with a "complying fuel" (assuming a RVP of 6.8 psi and an oxygen content of 2.0 percent by weight) to the emissions associated with a fuel having an RVP of 7.3 (representing an increase in RVP of 0.5 psi) and an oxygen content of 3.5 weight percent. Using a relative reactivity analysis, IEPA concluded that the ozone impact of these two fuels would be identical, and that EPA should therefore provide an adjustment that corresponds to an RVP increase of 0.5 psi. Although EPA is not proposing to adopt the approach recommended by IEPA, the Agency requests comments on such an approach.

The IEPA analysis is based primarily on the use of relative reactivity factors. Relative reactivity factors are values for various types of VOCs and CO that represent a predicted amount of ozone formation, expressed as unit mass of ozone per unit mass of VOC or CO.

EPA is not proposing to use a reactivity analysis as the basis for this regulatory action for several reasons. First, the National Research Council did not recommend that EPA do so. In its May 1999 report, NRC stated, "The committee sees no compelling scientific reasons at this time to recommend that fuel certification under the RFG program be evaluated on the basis of the reactivity of the emissions components." Second, in the same report NRC stated, "So-called reactivity factors * * * are often uncertain and of limited utility for comparing similar RFG blends." EPA agrees with the NRC that the reactivity factors that have been developed to date, and were used by IEPA, may not accurately reflect actual photochemical reactivity of various ozone precursors. In recent regulatory decisions, EPA has expressed these concerns and others related to the use of relative reactivity factors [63 FR 48792, September 11, 1998]. In particular, EPA is concerned that the factors do not represent the wide variation in atmospheric conditions that exist across the country and have a large influence on ozone formation.

While today's proposed rule does incorporate a recognition of the fact that, in general, CO is relatively less reactive than VOCs, EPA agrees with the NRC that it is not possible to precisely identify the relative reactivity of such compounds at this time in a manner that is meaningfully predictive of ambient conditions and that can reliably form the basis of a regulatory program. (see Technical Support Document in Docket A–99–32, document number II.B.–2) EPA is, however, currently participating in an industry/academic/government workgroup whose goal is to identify research needs in the area of VOC reactivity. EPA anticipates that significant research results may be available in a year or possibly longer, which will assist us in any reexamination of our current VOC regulatory policy in selected instances. Until there are more data generated from this process, EPA believes that it may be premature to base any regulation on a precise quantification of the distinctions between reactivities of VOCs. The Agency is interested in and solicits comments on IEPA's approach or other reactivity-based approaches.

As explained earlier in this preamble, EPA believes that an adjustment to the VOC standard greater than 1.0 percentage point risks too great a loss in the mass VOC benefits of Phase II RFG. (See Technical Support Document in docket A–99–32,document number II.B.–2). When evaluated on a mass basis using EPA's complex model, IEPA's approach would result in approximately a 37 percent decrease in the incremental amount of VOC emissions reduced between Phase I and Phase II RFG.

Finally, we are also concerned with the effect of fleet turnover and the potential for reduced CO benefits associated with advances in engine technology which is discussed in further detail in Section I.M of the preamble. For this reason, EPA is soliciting comment on whether EPA should re-evaluate the adjusted VOC performance standard in several years to determine whether the proposed adjustment still makes sense in light of technology advances and fleet turnover. This re-evaluation will also provide EPA the opportunity to assess the ozone impact of this proposal in light of any

relevant scientific advances in determining ozone impact.

G. Ozone Reduction Benefit in Areas That Currently Use Ethanol

In developing the VOC adjustment in today's proposal, EPA believes that it is important to preserve, as much as possible, the ozone benefits of the current Phase II RFG standards. For areas that presently do not use RFG with ethanol as an oxygenate, this action may lead to an increase in ethanol use. If so, there would probably be an increase in the amount of oxygen in the fuel (*i.e.*, oxygen would increase to 3.5 weight percent from a baseline level of 2.1 weight percent). The increase in oxygen would result in an associated decrease in CO emissions and, under this proposal, a slight increase in VOC emissions. We believe that this proposed rule would allow areas switching to ethanol RFG to realize Phase II RFG ozone benefits that are similar to current Phase II benefits.

In areas that presently use RFG with ethanol as the oxygenate (*e.g.*, Chicago and Milwaukee), the oxygen level in the fuel currently averages 3.5 weight percent oxygen. EPA believes that without this rule change and without changes to the Act's oxygen content requirement for RFG, there is some probability that less ethanol (and more MTBE) will be used in these areas. If this occurs, there would be a drop in the oxygen level in the fuel which would result in increases in CO emissions. Thus the CO reduction benefit in the Midwest associated with the use of ethanol RFG (at 3.5 weight percent oxygen) would not be preserved. Today's action is intended to provide additional flexibility to assure that refiners will continue to use ethanol, thus helping to preserve the current CO benefits associated with ethanol RFG. Moreover, as discussed in Section I.K of the preamble (Oxygen Crediting), refiners that take advantage of the adjusted VOC standard would not be allowed to generate oxygen credits for RFG in other areas. This will avoid double counting the benefits of the additional oxygen. If the additional oxygen above 2.0 weight percent in ethanol RFG which results in a reduction in CO in a given area is also used as a credit for a fuel with less than 2.0 weight percent oxygen in other areas, the CO benefit in those areas would be lost. Under this proposal less oxygen credits would be available; therefore, fuel in other areas will need to use more oxygen, which ultimately lowers CO emissions elsewhere.

If we did not expect ethanol use to decline with Phase II RFG, (*i.e.*, the current 3.5 weight percent oxygen level remains as the baseline), then continued use of RFG with ethanol in light of the proposed VOC adjustment would represent neither an increase in oxygen in the fuel, nor an additional reduction in CO emissions. Such situation raises the question of whether the increase in VOC allowed by the proposed adjusted VOC standard could then be said to result in a lesser ozone benefit. However, when the Phase I RFG program was implemented in 1995, ethanol use, and hence oxygen levels, in the Midwest increased above previous levels. (According to a 1994 survey performed by the American Automobile Manufacturers Association, the average oxygen content of gasoline in the Chicago area was less than 2.0 weight percent.) With the implementation of the Phase I RFG program, gasoline oxygen levels in Chicago and Milwaukee increased to 3.5 weight percent resulting in a decrease in CO emissions. These CO emission reductions were not credited under Phase I of the RFG program. Those uncredited CO reductions have likely resulted in more ozone benefits than would have been realized otherwise.

The National Research Council has recommended that EPA recognize, in the RFG program, the ozone benefits from CO reductions. Accordingly, we believe our consideration in this proposed rule of CO reductions associated with the use of ethanol RFG is appropriate. Although the adjusted VOC increase would, in the worst case, eliminate the additional ozone benefit, the air quality would be no worse in the Midwest than would otherwise be the case under an "unadjusted" VOC standard in Phase II of the program. Moreover, given the assumption that ethanol use would not decline with Phase II RFG, we believe that the nationwide effect of the adjusted VOC standard would not result in an ozone disbenefit. This is because of the reason explained above relating to limitation on use of oxygen credit trading.

Finally, although the increase in VOC is expected to slightly increase air toxics, we are not proposing to adjust the air toxics performance standard. A minimal loss in toxics overcompliance is expected in areas that currently use ethanol as a result of this proposal. Some toxics overcompliance would be lost in areas that switch from MTBE to ethanol; however, we believe the loss, if any, would be modest.

Therefore, EPA believes that the proposed rule would substantially preserve the air quality goals of the Phase II RFG program.[5]

H. Impact of Proposed Approach on SIPs

The adjusted VOC standard for ethanol RFG will allow a slight increase in VOC where ethanol blends are used. States are required to meet specific VOC reduction goals in their respective State Implementation Plans (SIPs); specifically the 3.0 percent Rate of Progress (ROP) requirement of Section 182(c)(2)(B)(i). Some states rely on reductions from the RFG program in meeting these goals. EPA has determined that the increased VOC associated with the adjusted VOC standard should not affect states' ROP plans in the near term.

As discussed in Section I.D., current market uncertainty makes it difficult to predict the mix of ethanol and MTBE RFG in any one area. Given such uncertainty, we believe that the increase in VOC resulting from the flexibility proposed today cannot now be adequately quantified; moreover, any increase is likely to be a very small portion of an area's total emissions. Also as discussed in Section I.F above, we believe the reduction in CO associated with ethanol use will substantially preserve the benefits of Phase II RFG.

Therefore, we are proposing at this time that states are not required to account for any potential increase in mass VOC emissions associated with the proposed adjusted performance standard. In time, however, as more data on oxygenate use and distribution becomes available, we intend to consider this issue and assess the impact of any VOC increases on the states' attainment of the ROP goal. Accordingly, we propose to amend the Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration" to indicate that states are not required to evaluate whether there will be an increase in mass VOC emissions as a result of adjusted VOC gasoline, for several years. Prior to that time, EPA will begin an evaluation of market conditions with respect to ethanol and MTBE use and decide whether there is sufficient market predictability for state ROP plans to account for any subsequent increases in mass VOC emissions resulting from adjusted VOC gasoline. We solicit comment on this approach and the need

[5] The discussion in this section is limited to the scenario in which the current level of ethanol RFG penetration in Chicago and Milwaukee is maintained. In Section I.H. below we consider the fact that future penetration levels of ethanol RFG in these areas are difficult to quantify, and what effect the VOC adjustment has on state ROP goals.

for any future evaluation. We also solicit comment on the timing and appropriateness of the magnitude of the changes in VOC emissions this rule would have.

I. Oxygen and Performance Standard Averaging

The regulations under 40 CFR 80.41 provide both "per-gallon standards" and "averaged standards" for performance standards and oxygen content. Therefore, refiners, importers and oxygenate blenders would be able to meet the proposed performance standards by producing ethanol RFG that meets the proposed 26.4 percent performance standard for VOC, on average, as long as on a per gallon basis the ethanol RFG meets a minimum VOC performance standard of 23.4 percent.

The regulations allow refiners to produce fuels that on an average basis achieve the minimum 2.1 weight percent oxygen standard, as well as the VOC performance standard. While the proposed VOC adjustment does not affect oxygen averaging, it does affect how VOC compliance is calculated.

We are therefore proposing a change in the method for determining compliance with VOC performance standards. Under the current regulations, a refiner or importer supplying averaged RFG or reformulated gasoline blendstock for oxygenate blending (RBOB) must calculate compliance with RFG standards according to a procedure described in 40 CFR 80.67 of the regulations. Refiners are required to determine compliance for each portion of gasoline for which standards must be separately achieved, and for each relevant standard. Suppliers must make separate compliance determinations for each VOC control region since different VOC performance standards apply to RFG designated for VOC Control Region 1 (southern or Class B) and VOC Control Region 2 (northern or Class C).

Today's proposed regulation creates an additional set of averaged VOC performance standards applicable to "adjusted VOC gasoline" and RBOB used to make "adjusted VOC gasoline". (As discussed in Section I.K below, we are proposing to define "adjusted VOC gasoline" in 80.40.) Therefore, suppliers could potentially have portions of their RFG/RBOB subject to one of four different standards. Under the procedure currently specified in 80.67, suppliers would have to demonstrate that each of these portions complies separately with the relevant standard.

In order to accommodate the effect of these additional standards on compliance determinations, we are proposing to alter the calculation procedure in the regulations. With this modification suppliers will not have to separately comply with the non-adjusted and "VOC-adjusted" standards, but will continue to determine compliance by VOC control region.

Section 80.67 requires that a compliance total be calculated as:

$$\text{Compliancetotal} = \left[\sum_{i=1}^{n} V_i\right] \times \text{Std}$$

where V_i is the volume of gasoline batch i, Std is the standard for the parameter being evaluated, and n is the number of batches included in the averaging period.

This compliance total is compared with an actual total which is calculated as:

$$\text{Actualtotal} = \sum_{i=1}^{n}\left(V_i \times \text{parm}_i\right)$$

For VOCs, parm_i is the complex model emissions reduction of gasoline batch i, and compliance is achieved if the actual total is equal to or greater than the compliance total.

We are proposing for VOC performance compliance calculations that Std be replaced by a volume-weighted average of the two standards applicable to the RFG and RBOB which a supplier designates for a specific VOC control region *i.e:*

$$\text{Std} = \frac{\text{Std}_u \times \sum_{i=1}^{n_u} VU_i + \text{Std}_a \times \sum_{i=1}^{n_a} VA_i}{\sum_{i=1}^{n_u} VU_i + \sum_{i=1}^{n_a} VA_i}$$

Std_u and Std_a are the "unadjusted" and "adjusted" averaged standards applicable to a VOC control region. VU_i and VA_i are the volumes of the batch i of "unadjusted" and "VOC-adjusted" RFG and RBOB which a supplier designated for that control region, and n_u and n_a are the number of batches in each category. We believe that this approach allows the supplier more flexibility in meeting the VOC performance standards without adverse environmental consequence.

We also believe that this approach minimizes the changes to the RFG reporting system procedures necessary to report, compute and verify compliance calculations. (The RFG reporting system is a data collection system through which suppliers report to EPA gasoline properties, emissions performance calculations, volumes and other data necessary to determine compliance with regulations.) We recognize that reporting parties and "third party" software developers would have to respond to changes in reporting forms and procedures, and thus, that there is a benefit in minimizing changes to the current system. Creating an additional set of VOC performance standards is expected to have some impact on the reporting system regardless of the method of compliance calculations. For example, minor changes in reporting procedures may be necessary in order to unequivocally identify "VOC-adjusted" and "unadjusted" RFG and RBOB batches. However, this proposed change in the VOC compliance calculation procedure would avoid modifications to the VOC Emissions Performance Averaging Report which would be necessary if separate compliance with each VOC standard were still required.

We are soliciting comment on this proposed approach and any alternative compliance calculation approaches. We encourage parties to comment on both the environmental and administrative consequences of these approaches, including reporting and record keeping issues associated with this proposed regulation. Commenters should consider reporting and recordkeeping issues not only with respect to VOC compliance calculations, but with respect to other aspects of this regulation such as oxygen crediting.

J. Downstream Compliance and Survey Sampling

Theoretically, circumstances might arise where a mixture of two ethanol RFG blends (both of which independently meet the applicable VOC performance standard) results in a sample that does not meet the VOC performance standard, because while one of the fuels qualifies for the adjusted downstream standard, the other does not.

For ethanol-blended RFG, the ethanol is added to reformulated blendstock for oxygenate blending, or RBOB, at the terminal. In areas of the country that currently use ethanol there is not likely to be the same variation in oxygen levels seen with MTBE blends; the RFG will typically contain ethanol in amounts close to 10 volume percent. We base this finding on survey data for summertime RFG which support the expectation that ethanol will be blended at 10 volume percent due to marketing considerations. (The statistical analysis of the survey data has been submitted to the docket for this rulemaking.) For 1999, of 3,295 samples of ethanol RFG, over 90 percent of the samples contain oxygen levels at or close to 3.5 weight percent, which equates to

approximately 10 volume percent ethanol. (Depending on the specific gravity of the gasoline to which the ethanol is added, the various blends near 3.5 weight percent oxygen could theoretically all be 10 volume percent.) Based on industry practice, therefore, we do not believe that there will be a problem related to downstream compliance, but we solicit comment on this issue.

Another "downstream" issue associated with this proposed regulation is the interaction between the adjusted VOC standard and the RFG surveys required by the RFG regulations. Gasoline samples collected from retail stations in an RFG covered area in each one-week survey conducted during the summer ozone season (June 1–September 15) are evaluated for complex model VOC performance. (Covered areas are geographic areas using RFG and are defined in 40 CFR 80.70.) If the survey average VOC reduction for any survey is less than the applicable per-gallon standard for VOC emissions reduction, the covered area fails the VOC survey. (RFG surveys are discussed more fully in sections of this preamble addressing the oxygen minimum.)

This proposed regulation creates an additional set of per-gallon VOC standards potentially applicable to a portion of the RFG in each covered area. Since each individual gasoline sample collected is analyzed for type and amount of oxygenate, it can be determined which of the VOC standards applies to the gasoline in its current state.

The existence of dual standards creates some difficulty in the implementation and enforcement of the survey regulations. It is necessary to collect a sufficiently large number of samples to ensure that precision requirements for estimating parameter averages are met. These required sample sizes are determined in advance of the surveys, and are specified in the survey design plan. Under the current survey scheme there is no way to guarantee that the sample size for each RFG standard group would be sufficient to meet these precision requirements. A survey could be conducted, the samples analyzed and categorized according to the applicable standard, and the average computed for each of the two groups. However, the number of samples falling into each group would not be known in advance of sample collection and analysis.

A more feasible approach to determining survey compliance would be to calculate a VOC standard applicable for each survey by weighting each of the per-gallon standards by the proportion of samples in that group. For example, suppose 100 samples were collected in a survey in a covered area in VOC Control Region 2, and 70 contained ethanol at 3.5 weight percent oxygen while the remaining 30 did not. The applicable survey requirement would be calculated as (0.70)(24.9)+(0.30)(25.9)=25.2 percent VOC reduction. We are proposing to change the RFG regulations to incorporate this approach.

K. Oxygen Crediting

Refiners and importers are currently able to meet the averaged standard for oxygen through the exchange of credits under 40 CFR 80.67(h). Credits are generated as a result of a refiner producing, or an importer importing, gasoline that on average exceeds the averaged standard for oxygen over the averaging period. An oxygenate blender using the averaged oxygen standard may generate, or use, oxygen credits.

We have considered whether an adverse effect on air quality would occur if refiners or importers that qualify for the adjusted VOC standard (*i.e.*, make an RFG with 10 volume percent ethanol) also exchange oxygen credits under 40 CFR 80.67(h). We believe that there would be a disbenefit to air quality because the oxygen credit would be sold to a refiner making an RFG with an oxygen level less than 2.0 weight percent in the fuel. The additional oxygen that results in a reduction in CO in the 10 volume percent ethanol RFG would be used as a credit for a fuel with less than 2.0 weight percent oxygen. At such lower levels of oxygen, there would be an increase in CO which, as discussed earlier, plays a role in the formation of ozone in the atmosphere.

The adjusted VOC standard proposed today is based on ethanol RFG blends that contain 3.5 weight percent oxygen. We recognize that there may be some refiners or importers that may wish to take advantage of the oxygen credit trading program as it applies to the averaged oxygen standard. (This would be especially true if we were to adopt the elimination of the oxygen minimum requirement which is discussed in Section II of the preamble and on which we are soliciting comment.) Therefore, in order to offer refiners and importers flexibility, we are proposing to allow refiners that make RBOB for blending with 10 volume percent ethanol a choice of complying with the VOC adjusted standard or with the current (non-adjusted) VOC standard by defining "adjusted VOC gasoline" in 80.40. In the revised 80.40 refiners have the choice of designating gasoline with 10 volume percent ethanol as "adjusted VOC gasoline" or not. If they choose not to, the gasoline must comply with the more stringent (*i.e.*, non-adjusted) VOC standard. In this way batches of RFG blends that contribute oxygen above the oxygen standard and which comply with the non-adjusted VOC performance standard may be used by refiners or importers for the purpose of generating oxygen credits. Batches of RFG blends containing 10 volume percent ethanol which comply with the adjusted VOC standard, however, may not generate oxygen credits.

We are proposing to modify 40 CFR 80.67(h) to reflect which ethanol RFG may be used for generating oxygen credits. We solicit comment on this proposal as well as whether we should alternatively consider a requirement that *all* ethanol RFG blends containing 10 volume percent ethanol be ineligible for generating oxygen credits.

Allowing refiners the flexibility to comply with either of the VOC standards for ethanol RFG would require extensive tracking and segregation of the different types of RBOB downstream of the refineries. As discussed in Section I.L. below, we are also proposing to require that the Product Transfer Document designate the type of RBOB and whether it is to be used to make "adjusted VOC gasoline".

L. Product Transfer Documentation

Today's action proposes to require that the Product Transfer Document (as specified in 40 CFR 80.77) designate the type of RBOB (*i.e.*, which contains no ethanol, which contains ethanol less than 10 volume percent, or which must contain ethanol at 10 volume percent and which is used to make "adjusted VOC gasoline"). EPA believes that such designation is sufficient to allow tracking of the different types of ethanol blends as well as providing documentation of the VOC standard (*i.e.*, adjusted or non-adjusted) with which a refiner may choose to comply. EPA solicits comment on this change.

We believe that the Product Transfer Document provides a workable solution to tracking the RBOB for ethanol RFG products including requiring refiners to conduct oversight at retail stations receiving that RBOB. If there were sufficient variation in the levels of ethanol used in ethanol RFG blends, such level of oversight might be necessary. As discussed in Section I.J., the industry practice for ethanol RFG is to blend ethanol at 10 volume percent. We are proposing a change in the regulations to exempt from the quality assurance and sampling requirements of

40 CFR 80.69(a)(7) ethanol RFG that qualifies for the adjusted VOC standard. EPA solicits comment on this change.

M. Future Vehicles

The adjusted VOC standard is premised in part on the expectation that RFG blends containing 10 volume percent ethanol (3.5 weight percent oxygen) will achieve larger reductions in CO emissions than RFG blends with oxygenates at the level of 2.0 weight percent oxygen. It is possible that future vehicles will employ advanced technology that will significantly reduce CO emissions, irrespective of the oxygen content in the fuel, and consequently negate the importance of the impact of gasoline oxygen content on CO emissions.

We expect that we will learn about the CO emissions performance as time passes. We request comment on this issue and on whether (and when) EPA should evaluate the relationship between advanced vehicle emission control technology and the oxygen content of gasoline on CO emissions.

II. Elimination of Oxygen Minimum Requirement

A. Background

The Clean Air Act (CAA) section 211(k)(2)(B) requires that reformulated gasoline (RFG) contain 2.0 percent oxygen by weight. Our RFG regulations, in 40 CFR 80.41, specify standards for various fuel parameters, including oxygen content. The regulations provide both "per-gallon standards" and "averaged standards" for each parameter. Refiners, importers and oxygenate blenders may meet the oxygen content requirement by producing RFG which contains at least 2.0 percent oxygen in every gallon, or by producing RFG with 2.1 percent by weight oxygen on average, over the course of a calendar year, as long as no gallon of RFG contains less than 1.5 percent oxygen. This 1.5 percent lower limit is called the "per-gallon minimum".

The CAA section 211(k)(7) requires an oxygen credit program. The averaged standard for oxygen may be met with the help of oxygen credits. Oxygen credits are created when any refiner makes RFG above the 2.1 percent average requirement over the course of a calendar year. Credits may, with certain restrictions, be transferred from one refinery to another, but cannot be used to meet the per-gallon minimum. Thus, some parties may produce RFG with average oxygen content in excess of the standard while others may produce RFG with average oxygen content below the standard as long as the average oxygen content of all RFG meets the oxygen content standard.

These provisions for compliance on average provide more flexibility to refiners, importers and oxygenate blenders. We recognized when we promulgated the RFG regulations, that allowing for compliance on average as an alternative to adherence to a per-gallon standard could result in some "covered areas" not receiving the same quality of RFG that they would have received without averaging. Therefore, we built into the regulations several mechanisms, described below, to mitigate this potential problem.

The averaged standards for all parameters are numerically more stringent than the per-gallon standards (*e.g.* for oxygen 2.1 percent vs 2.0 percent). Furthermore, certain of the parameters (oxygen, benzene and volatile organic compound emission performance), have a per-gallon minimum or maximum specification which gasoline producers may not exceed. These limit the amount of gallon to gallon variability that can occur. Since the oxygen per-gallon minimum is set at 1.5 percent, even under the worst-case scenario, the annual average oxygen content in a covered area could not fall below 1.5 percent.

In addition to these safeguards in the standards, EPA's regulations require refiners, importers and oxygenate blenders who choose to comply on average to conduct surveys, as specified in § 80.68. In these surveys, RFG samples are collected at retail gasoline stations within covered areas and analyzed to determine if the RFG supplied to these areas meets certain pass/fail criteria specified in § 80.68. For example, an oxygen survey series failure occurs in a covered area if the annual average oxygen content of the samples in that area is less than 2.0 weight percent. (An oxygen survey series consists of all the one week surveys conducted in a single covered area during a single calendar year.) These surveys measure all the fuel properties necessary to compare the samples with the RFG standards.

Each type of survey failure results in a specific "ratcheting" of a fuel-parameter-averaged standard and/or a minimum/maximum standard, as specified in § 80.41. For example, an oxygen survey series failure results in a tightening of the per gallon minimum by 0.1 percent. The effect of a survey failure even in a single covered area may be wide ranging since, in general, a ratchet will apply to the gasoline sold in any area by all refiners, blenders or importers that supplied the ratcheted area during the year of the survey failure, and by all refiners, blenders or importers that supply the area while the ratchet is in effect. Oxygen survey series failures have occurred in several covered areas in past years, and consequently, many refiners, importers and blenders are subject to a 1.7 percent per gallon minimum for oxygen, rather than the initial 1.5 percent minimum.

These ratchets correct, over time, any geographic disparities in the quality of RFG that might result from the use of a refinery based average standard. Suppose, for example, that oxygen survey series failures occur in successive years and the oxygen minimum for all suppliers to the failed covered area is ratcheted by another 0.1 percent every time a failure occurs, until the per-gallon minimum is 2.0 percent. Since the minimum oxygen content in each gallon of RFG being supplied to the failed covered area must be at least 2.0 percent, the annual average oxygen content for that area could not be less than 2.0 percent. The ratchets also provide an economic incentive to correct and avoid geographic deficiencies in the quality of RFG. If any RFG standard is incrementally tightened as a result of survey failures for some RFG parameter, it is likely that the cost of compliance with this standard for suppliers will increase. At some point it is likely that it would be economically advantageous to avoid geographic deficiencies and survey failures rather than face further tightening of a standard.

B. Potential Modifications

We are soliciting comment on removal of the per gallon minimum oxygen requirement applicable to RFG. We believe that removing the minimum would allow refiners, importers and oxygenate blenders more flexibility in meeting the RFG oxygen content requirement, without compromising the air quality benefits attributable to RFG. Eliminating the per-gallon oxygen minimum may cause oxygen levels to fluctuate more with time in any covered area. Consequently, in order to reduce the effect of such fluctuations on the accuracy of the survey estimates, we are also considering a change in the method for calculating the annual oxygen average from survey data. Finally, removing the per-gallon oxygen minimum requirement eliminates the availability of the oxygen minimum as a ratcheting tool in the event of oxygen survey series failures. Therefore, in order to ensure continued effectiveness of the surveys as a tool to correct and avoid geographic disparities in the

quality of RFG, we are also considering whether the requirement for reduction of averaged toxics emissions (per the complex model) should be made more stringent in the event of an oxygen survey series failure.

Removing the RFG per-gallon oxygen minimum would allow refiners, blenders and importers to market some non-oxygenated gasoline in RFG areas—so long as the annual average oxygen content of their RFG is at least 2.1 weight percent. Currently, under § 80.78, there is a prohibition against combining VOC-controlled RFG oxygenated with ethanol with VOC-controlled RFG produced using any other oxygenate during the period January 1 through September 15. We are soliciting comment on whether this prohibition should be extended to the combining of VOC-controlled ethanol RFG with any other VOC-controlled RFG (including RFG blends without oxygen) during the same time period. We are not proposing this change at this time, and will consider all comments in deciding whether to propose such a change in a future rulemaking. These issues are discussed below.

C. Elimination of RFG Oxygen Content Per-Gallon Minimum

Removal of the per-gallon minimum would allow producers of RFG more flexibility to vary the oxygen content in RFG on a seasonal basis. One foreseeable benefit to suppliers would be the option for suppliers, who might otherwise oxygenate their VOC-controlled RFG with ethanol, to produce a portion of their VOC-controlled RFG without oxygen. Suppliers would thus be able to produce a portion of their VOC-controlled RFG without utilizing the more costly blendstocks necessary to offset the Reid Vapor Pressure (RVP) boost associated with ethanol-blended RFG. The RVP boost from ethanol is not an issue in non VOC-controlled (winter) RFG, and oxygenate usage at sufficiently high levels in winter RFG could ensure that the oxygen content requirement is met on an annual average basis.

Removal of the per-gallon minimum may also facilitate a reduction in the use of methyl tertiary butyl ether (MTBE) in RFG. For example, some refiners who produce ethanol-oxygenated RFG with high levels of oxygen outside of the VOC-control season may elect to use MTBE as an oxygenate during the summer VOC-control season. Under the current regulation, these refiners would have to use enough MTBE during the summer to ensure that both the annual average oxygen requirement and the per-gallon minimum are met. The average level of oxygen needed during the summer to satisfy the annual average requirement could potentially be below the current per-gallon minimum requirement. Therefore, removal of the per-gallon minimum could reduce the total amount of MTBE that these refiners would need to use.

As discussed in Section I.C., the "Blue Ribbon Panel on Oxygenates in Gasoline", a panel of experts appointed by the EPA Administrator, has recommended that the use of MTBE should be reduced substantially in order to minimize current and future threats to drinking water.

We do not believe that the elimination of the oxygen per-gallon minimum would diminish the quality of RFG or the benefits attributable to RFG. However, the modifications to the survey and commingling provisions of the existing regulations, described below, will help to prevent or mitigate any potential problems. We recognize that, in addition to preventing geographic disparities in the quality of RFG, the oxygen minimum requirement is a useful tool for detecting the illegal presence of conventional gasoline in RFG areas. Elimination of the oxygen minimum would also eliminate this enforcement tool. However other minimum or maximum standards remain in place and these can be employed to help detect conventional gasoline sold as RFG. We request comment on whether the value of increased flexibility gained by removal of the oxygen minimum sufficiently justifies the loss of this enforcement tool. We are soliciting comment on the environmental and economic consequences of removal of the oxygen minimum.

D. Modification of Method for Calculation of Oxygen Survey Series Average

The elimination of the oxygen minimum and the proposed adjustment to the VOC standard may cause RFG oxygen levels to fluctuate substantially throughout the year, with the possibility of seasonal trends. Both of these changes may result in different levels of oxygen occurring in VOC-controlled and non VOC-controlled RFG produced by the same refineries and supplied to the same covered areas. Currently, § 80.68 of the RFG regulations specifies that for each covered area, the average oxygen content for all samples from the survey series shall be averaged, and if the annual average is less than 2.00 percent the area fails the survey series. Calculation of an annual oxygen content average in this fashion may produce an inaccurate estimate in a covered area if there is substantial temporal fluctuation in oxygen levels. The bias may be more pronounced if oxygen levels vary seasonally, since more surveys are conducted during the "summer" (June 1 through September 15) and the number of samples per summer survey is also greater.

We are considering whether the method of calculation for the oxygen survey series average should be changed. A potential modification in procedure would be to:

1. Determine an average for each survey,
2. Average the "summer" and "winter" (January 1 through May 31 and September 16 through December 31) survey averages separately to determine seasonal averages and
3. Weight the seasonal averages to estimate an annual average.

The summer average could be multiplied by 0.468, the winter average by 0.532, and the two terms be summed to estimate an annual average to be compared to the 2.00 percent survey requirement. These weights are already used in the regulations to calculate the annual average toxics emission reduction from toxics survey data.

This change in calculation method should probably be sufficient to reduce the potential for seasonal bias in the survey series estimate of the annual oxygen average. This change would also reduce the effect of scheduling of surveys on survey series outcomes. Although we do not conduct these RFG surveys, we determine when and where they occur. These surveys are multi-purpose; *i.e.*, the same samples collected for determination of compliance with the oxygen requirement are used to determine compliance with other RFG requirements. This concurrent sampling results in more samples being taken in each summer survey in order to satisfy VOC and NO_X survey precision requirements, and often, in more surveys being done during the summer months in order to effectively assess VOC and NO_X performance. Thus, our scheduling of surveys is not done with the sole objective of accurately estimating annual average oxygen content.

Under the current calculation method, our scheduling decisions could limit supplier flexibility in meeting the oxygen average and negate the intended benefits of this regulation change. For example, if refiners supplying RFG to a covered area elect to use high levels of oxygen in winter and low levels in summer, each additional summer survey that we schedule for that area is likely to decrease the estimate of the

annual average oxygen content and increase the chance for an oxygen survey series failure. Under the suggested method, scheduling an additional summer survey should not substantially affect the probability of oxygen survey series failure.

At this time, we are also inviting comment on changes in the method for calculating the average for toxics, benzene and non-ozone season NO_X survey series from an "average of all samples" method to an "average of survey averages" method. These changes are consistent with the methodology that we are considering for calculating the seasonal oxygen averages. We do not expect that these changes would have any substantial interaction with either the adjusted VOC standard or removal of the oxygen minimum provisions. The technical rationale for these changes is discussed in detail in the original proposal.[6]

In summary, we are soliciting comment on whether survey calculation procedures should be changed if the oxygen minimum is removed, and if so, whether our suggested approach is the most appropriate way to do this.

E. Modification to Provision for Effect of Oxygen Survey Series Failure

Generally, we recognize that removing the oxygen minimum might increase the likelihood of area-to-area variability in the oxygen content of RFG. Of particular concern is the potential for any substantial reduction of the quality of RFG in any covered area. The required RFG surveys and resultant ratchets for survey failures are the primary mechanism for correcting or avoiding such a situation. These surveys assess the quality of RFG with respect to both fuel property standards (*i.e.*, oxygen and benzene content) and performance standards (*i.e.*, complex model VOC, toxics and NO_X emissions reductions).

As stated earlier, a specific ratchet is prescribed in the regulations for each type of survey failure, and a failure for a given parameter results in a ratchet of that parameter. In the absence of an oxygen minimum requirement, we believe that ratcheting of the average toxics performance requirement in response to an oxygen survey series failure is appropriate.

The exact role that oxygenates play in RFG toxics emissions performance is difficult to quantify. The complex model indicates that as oxygen content increases while other fuel properties are held constant, the toxics emissions performance of gasoline may increase or decrease, depending on the amount and type of oxygenate and values of other fuel properties. However, the relationship between toxics performance and oxygen in RFG is influenced by other factors. For example, oxygenates are a high octane blending component in RFG. Producing RFG with less oxygen or no oxygen requires adjusting the "recipe" to provide an alternate source for the volume and octane which the oxygenate provided.

One potential oxygen/octane replacement strategy is the use of reformate, a blending component which contains high-octane aromatic compounds. Increasing the aromatics content in gasoline increases emissions of toxics air pollutants, and this effect is incorporated into the complex model. We recognize that reducing or eliminating the oxygen content in an RFG recipe would not necessarily result in poorer toxics performance. For example, lost volume and octane content could be made up by increasing the use of alkylates, another potentially available refinery blending stream. Alkylates are a good octane source, and an increase in alkylate content in the recipe would not result in poorer toxics emissions performance. While the complex model does predict that total toxics emissions increase somewhat with oxygen removal, independent of what is used as a replacement, this effect can be offset by relatively small changes in other fuel properties with greater influence on toxics emissions.

However, U.S. refiners have far greater capacity to produce reformate than they do to produce alkylate and, thus, it is likely that the removal of oxygen from RFG batches below the current minimum would tend to result in an upward pressure on the use of aromatics. Therefore, EPA's suggestion to ratchet the toxics performance standard in the event of an oxygen survey series failure, is based on a reasonable expectation that inadequate use of oxygen will generally result in an increase in toxic air emissions. Accordingly, the risk of a more stringent "ratcheted" toxics standard would provide incentive to avoid risking an oxygen survey failure.

In summary, removing the oxygen per-gallon minimum would not necessarily lead to average oxygen content deficiencies, or to poorer average toxics emissions performance in any covered area, but the potential for such occurrences exists. Therefore, we are requesting comment on whether ratchets to the average toxics standard in response to oxygen survey failure would be an appropriate mechanism to address this concern.

This toxics ratchet would provide an economic incentive to avoid and correct average oxygen content deficiencies in any covered area, as well as a means to mitigate the possible environmental consequence of such deficiencies. The specific toxics ratchet suggested in the event of an oxygen survey series failure is the same as that currently prescribed for a toxics emissions performance survey series failure—*i.e.*, the complex model toxics emissions reduction requirement for that covered area beginning in the year following the failure is made more stringent by increasing the average toxics emissions reduction standard by an additional 1.0 percent.

The RFG regulations provide enforcement exemptions for Federal RFG sold in California. While most survey requirements do not apply in California, Section 80.81 of the regulations, which addresses these enforcement exemptions, contains a provision for oxygen surveys in Federal RFG areas in California.

We are suggesting that the 1.0% ratchet of the average toxics emissions reduction standard apply, as well, in the event of a California oxygen survey series failure. We are also soliciting comments on possible alternatives to a toxics ratchet.

F. Modification to the Commingling Prohibition

The regulations, in § 80.78(a)(8), currently prohibit the commingling of VOC-controlled RFG oxygenated with ethanol with VOC-controlled RFG produced using any other oxygenate during the period January 1 through September 15. The rationale for this prohibition is the RVP boost associated with ethanol. For example, the RVP resulting from mixing equal volumes of a 7 psi ethanol-oxygenated RFG blend and a 7 psi ether-oxygenated RFG blend would be greater than 7 psi. The RVP resulting from mixing two 7 psi ether-oxygenated RFG blends or two ethanol-oxygenated RFG blends would not be greater than 7 psi.

When an ethanol-oxygenated blend is mixed with an ether-oxygenated blend the commingled blend is likely to have a VOC emissions performance worse than the average of the VOC performance of the two original RFG formulations. Since commingling can reduce the effectiveness of RFG to control VOC emissions, it is prohibited. This RVP boost will also occur when RFG oxygenated with ethanol is mixed with a non-oxygenated gasoline, and removal of the oxygen minimum would produce situations where non-oxygenated RFG is permissible.

[6] 62 FR 37351 (July 11, 1997).

Therefore, in order to prevent reduced VOC control effectiveness, we request comment on whether an elimination of the oxygen minimum should include an extension of the commingling prohibition to combinations of VOC-controlled ethanol-oxygenated RFG with any other VOC-controlled RFG during the January 1 to September 15 time period. We also are soliciting comment on the adequacy of this approach to addressing commingling issues associated with removal of the oxygen minimum.

Based upon discussions EPA has had with refiners and representatives of the ethanol industry, we are considering whether it is advisable to change the dates during which the commingling prohibition is in effect. Under the current regulation, it is in effect from January 1 through September 15. Refiners and ethanol supporters are questioning why the period begins in January and suggest that it begin in April. The prohibition ends on September 15 because that is the end of the ozone season; during the three and a half months after that date, refiners and terminals can clear out the VOC controlled RFG. The prohibition begins in January because we have evidence that some refiners may begin production of VOC controlled RFG as early as January.

We understand that in terms of seasonal switching of RFG (*i.e.*, from wintertime non-VOC controlled RFG to summertime VOC controlled RFG) there is difficulty in product turnover at some terminals and the requirement to segregate VOC controlled RFG from non-VOC controlled RFG may present difficulties. This segregation requirement is not, however, part of the commingling prohibition. Therefore we would like to know what disadvantage the starting date of January 1 represents with respect to the commingling prohibition, as well as what advantages a starting date of April 1 would provide.

G. Effect on Air Toxics

Elimination of the oxygen minimum is likely to have some impact on toxics emissions. The magnitude of the impact is uncertain for a number of reasons. Most fundamentally, there is uncertainty about how, where and to what extent the elimination of the oxygen minimum will result in seasonal trends in oxygen usage. Consequently, it is impossible to predict with any accuracy the overall impact of this potential change on RFG toxics performance. However, it is possible to examine, and to some degree quantify, changes in RFG toxics performance that could occur under certain scenarios.

Some background information is necessary in order to understand the relationship between this rule and toxics emissions. RFG standards include a performance standard for toxics. The complex model calculates total toxics performance by separately calculating performance for five toxic air pollutants; benzene, acetaldehyde, formaldehyde, 1,3 butadiene and polycyclic organic matter (POM), and summing the results. The equations in the model which estimate the various toxics pollutants are a function of multiple fuel parameters, including oxygen. Oxygen is not the most influential parameter on toxics performance. Variations in other parameters, such as benzene, over the range of values that normally occur in RFG have a much greater effect on total toxics emissions. Some of the toxics equations are not oxygenate-specific, while others are. For example, the higher emitter exhaust benzene equation contains a term for oxygen weight percent, and as oxygen content increases, all else being constant, benzene emissions decrease. On the other hand, the formaldehyde equations have a term for oxygen from MTBE only, and as MTBE oxygen increases formaldehyde emissions increase. The acetaldehyde equations include a term for oxygen from ethanol, and as ethanol oxygen increases acetaldehyde emissions increase. The complex model treats all of the constituent toxics equally on a mass basis even though these toxics may have different cancer potencies and pose significantly different cancer risk.

As a result of these complex model characteristics, the model predicts that, as MTBE oxygen increases from zero, all else being constant, total toxics emissions will decrease. The model also predicts that an ethanol-oxygenated gasoline will have higher total toxics emissions than an otherwise identical MTBE-oxygenated gasoline with the same weight percent oxygen. Additionally, as ethanol oxygen increases from zero, all else being constant, total toxics emissions will decrease to a minimum and begin to increase again. However, the total toxics emissions at 3.5% oxygen (approximately 10 volume percent ethanol) would still be lower than the total toxics emissions at zero oxygen.

Consequently, since this rule may facilitate changes in both the type and amount of oxygenate used, there is a potential for some adverse impact on total toxics emissions. In order to get a sense of the magnitude of this impact, we have provided results from several complex model runs where the type and amount of oxygen is varied while other parameters are held constant. All model runs were done with the Phase II complex model, which is applicable beginning in 2000. However, rather than choose a hypothetical "recipe" (set of complex model fuel parameters) meeting Phase II requirements, we have fixed the non-oxygen fuel parameters at summer and winter seasonal average levels for Phase I RFG, based on 1998 RFG surveys from areas which used little or no ethanol (the summer season is June 1–September 15 and winter is the rest of the year). In order to provide a single set of numbers for each oxygenate scenario, we have combined summer and winter results from each complex model run using the weights 0.468 for summer and 0.532 for winter. (These are the weights specified in the RFG regulations for calculating annual survey series toxics averages, and suggested for calculation of the annual survey series oxygen averages.) Toxics results from these complex model runs are summarized in the following table:

	MTBE – 2% oxygen		Ethanol 3.5% oxygen		Ethanol 0%S/3.5%	% change	WMTBE 1%S/Eth. 3.5%W	
	mg/mi	% change	mg/mi	% change	mg/mi		mg/mi	% change
Exhaust benzene	40.64	– 38.82	37.66	– 43.31	40.54	– 37.93	39.62	– 39.65
Nonexhaust benzene	0.76	– 32.95	0.83	– 31.74	0.83	– 31.74	0.80	– 32.35
Acetaldehyde	5.35	– 9.72	13.74	131.75	10.92	68.33	10.85	66.74
Formaldehyde	14.43	13.22	13.16	3.22	13.16	3.22	13.38	5.47
Butadiene	11.10	– 11.79	10.59	– 15.89	11.07	– 10.71	10.92	– 12.30
POM	3.46	– 9.89	3.44	– 10.38	3.46	– 9.86	3.46	– 10.01
Total exhaust toxics	74.99	– 26.25	78.59	– 22.77	79.15	– 22.06	78.22	– 23.22
Total toxics	75.75	– 27.57	79.42	– 24.11	79.98	– 23.44	79.02	– 24.57

The "MTBE–2% oxygen" case represents MTBE usage at a 2% by weight oxygen level in both summer and winter. This level of oxygen satisfies the regulatory requirement, and oxygen usage at this level, with little seasonal fluctuation, is typical of Phase I ether-oxygenated RFG. The "Ethanol 3.5% oxygen" case represents ethanol usage at a 3.5% by weight oxygen level in both summer and winter. This level of oxygen usage, with little seasonal fluctuation, is typical of ethanol-oxygenated Phase I RFG. The "Ethanol 0%S/3.5%W" case represents no oxygen usage during the summer and ethanol usage at 3.5% during the winter. This oxygenate usage pattern could occur, or be approached, if the oxygen minimum requirement were removed. The "MTBE 1%S/Eth. 3.5%W" case represents MTBE usage at 1% by weight oxygen during the summer and ethanol usage at 3.5% during the winter. This oxygenate usage pattern could occur if the 1.5% minimum were removed and suppliers elect to use MTBE during the summer. Suppliers who elect to comply with the "averaged" oxygen standard must use sufficient oxygen to ensure volume-weighted compliance with this standard. Given the possibility of a toxics ratchet, suppliers are also likely to use sufficient oxygen to avoid survey series failure. If the seasonal weighting factors suggested for calculation of the oxygen survey series average are applied to this case, the annual oxygen level is about 2.3 weight percent, sufficient to provide compliance, with some margin, with the 2.0 percent survey standard. The columns labeled "mg/mi" and "% change" represent complex model emission estimates in milligrams per mile and as a % change from "baseline" emissions, with a negative number indicating a reduction from baseline. All complex model emissions estimates are referenced to 1990 technology vehicles and a statutory baseline fuel "recipe". While the parameters for these model runs were derived from Phase I RFG data, all cases complied with the 21.5% reduction Phase II "averaged" toxics performance standard. We acknowledge that this analysis does not attempt to account for effects resulting from substituting other blending components to replace the volume and octane lost with oxygenate removal. The intent of this analysis is to illustrate the direct effect of oxygen on complex model toxics emissions and the toxics emission performance issue associated with elimination of the oxygen minimum.

It is apparent from the above table that the "MTBE–2% oxygen" case has superior total toxics emissions to any of the other cases. However, on an individual toxics basis the MTBE case is not always superior. Exhaust benzene, formaldehyde and 1,3 butadiene emissions from the other cases are, on a milligram per mile basis, at least slightly lower than comparable emissions from the "MTBE–2%" case. The higher total toxics emissions with ethanol blends result primarily from higher acetaldehyde emissions. It should also be noted that the difference in total toxics emissions between the two ethanol cases is substantially smaller than the difference in toxics emissions between the MTBE case and the "Ethanol 3.5% oxygen" case. Consequently, the adverse impact, if any, of oxygen minimum elimination on total toxics emissions in a market already using ethanol is likely to be small. A larger adverse toxics impact could occur in a market switching from MTBE to ethanol. However most of this impact would be attributable to the switch in oxygenate type rather than to any change in seasonal oxygen usage. Thus, the incremental "total toxics" penalty resulting from the removal of the oxygen minimum is likely to be much less than the "total toxics" penalty resulting from a switch from MTBE to ethanol, assuming such a switch were to occur.

In summary, there are air toxics trade-offs associated with changes in oxygenate usage. At this time, the impact of an elimination of the oxygen minimum on oxygenate use and distribution and, hence, toxics emissions performance is uncertain. However, were EPA to implement such a change, the RFG surveys will provide a substantial amount of data to evaluate these impacts. Therefore, we are soliciting comment on the effects that this approach may have on toxic air emissions and, consequently on the benefits or dis-benefits of this approach with respect to air toxics. We also request comment on alternative regulatory approaches, such as lowering, rather than removing the oxygen minimum, which may provide some of the benefits of this regulation while mitigating some adverse impacts.

H. Effect on CO Emissions

Section I of the preamble which addresses the adjusted VOC standard, points out that the ozone impacts of the slight increase in VOC associated with the adjusted standard are likely to be generally offset by the reduction in CO emissions resulting from the higher level of oxygen in the fuel, since CO plays a role in the formation of ozone in the atmosphere. The CO decrease associated with higher oxygen levels raises the question of what the effect might be on air quality if gasoline with zero oxygen is used in the summertime. Specifically, elimination of the oxygen minimum could result in some amount of gasoline with zero oxygen in the summer months, and a relative increase in CO emissions associated with such fuel.

We believe that the unpredictability of ethanol RFG distribution identified in Section I.D and I.H also applies with respect to the distribution of gasoline with zero oxygen during the summer months in any given geographic region. As discussed in I.F, we believe that the increase in VOC emissions resulting from utilization of the adjusted VOC standard cannot be adequately quantified at this time and any increase is likely to be a very small portion of an area's total VOC emissions.

We believe the same to be true with respect to predicting the likelihood of increased CO emissions resulting from the presence of zero-oxygen RFG during the summer months. That is, the increase in CO emissions resulting from zero oxygen RFG during the summer months in any given region cannot be adequately predicted or quantified at this time. We believe that such increases are likely to be a very small portion of an area's total CO emissions and thus would likely have a negligible effect on ambient ozone.

Therefore we request comment on whether EPA should evaluate the need to re-evaluate the distribution of zero oxygen RFG in the summer months at some time after a rulemaking to eliminate the oxygen minimum requirement.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a Serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order because it generally relaxes the requirements of the RFG program by providing regulated parties with more flexibility with respect to compliance with the RFG requirements. Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would provide regulatory relief for refiners who choose to make RFG with 10 volume percent ethanol by adjusting the VOC performance standard. As discussed in Section I.H. of the preamble, we believe that the increased VOC associated with the adjusted VOC standard should not affect states' ROP plans in the near term, and does not impose any substantial direct effects on the states. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule does not create a mandate for any tribal governments. This proposed rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action proposes some changes that would generally relax the Federal RFG requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if

the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule would provide regulatory relief by making the VOC standard for RFG that contains 10 volume percent ethanol slightly less stringent, and by eliminating the oxygen minimum requirement in RFG. These actions will provide more flexibility for refiners to reduce MTBE use by decreasing the cost of ethanol-blended RFG. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted by approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1591.11) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*.

The action will result in revision of the Reformulated Gasoline and Anti-Dumping Batch Report form (EPA Form 3520–20C) that refiners must complete. The form would be revised to include under Item 4.0 a new product type called "Adjusted VOC gasoline". This revision does not represent significant new reporting requirements, nor a substantial increase in the amount of time spent filling out the form. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.08). ICR No. 1591.08 will be renewed in July of this year. Upon final promulgation of today's proposal, ICR 1591.11 associated with this rule will be encompassed in the renewed ICR 1591.08.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This proposed rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action proposes changes that would provide regulated parties with more flexibility with respect to compliance with the RFG requirements.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. For reasons stated in Section I.F. of the preamble, we believe that the adjusted VOC standard for RFG with 10 volume percent ethanol will continue to provide a similar level of benefits to those anticipated from the current standard, and will assure that the Phase II RFG program will continue to achieve the significant environmental benefits for which it was designed.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, 12(d) (15 U.S.C. 272 note) directs

EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Reforumlated Gasoline Adjustment Proposal Page 82 of Page 92 Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards, and does not specify the use of technical methods. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Statutory Authority

Sections 114, 211, and 301(a) the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Reformulated gasoline.

Dated: June 30, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, we propose to amend part 80 of title 40, of the Code of Federal Regulations to read as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.40 is amended by adding paragraph (c) to read as follows:

§ 80.40 Fuel certification procedures.

* * * * *

(c)(1) "Adjusted VOC gasoline" for purposes of the Product Transfer Document requirements in § 80.77 is gasoline that contains 10 volume percent ethanol for which the less stringent VOC standards in § 80.41 apply.

(2) Refiners may choose not to designate gasoline which contains 10 volume percent ethanol as "adjusted VOC gasoline", in which case the more stringent VOC standards in § 80.41 apply.

3. Section 80.41 is amended by revising paragraphs (e) and (f) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(e) *Phase II complex model per-gallon standards.* The Phase II "complex model" standards for compliance when achieved on a per-gallon basis are as follows:

PHASE II—COMPLEX MODEL PER-GALLON STANDARDS

VOC emissions performance reduction (percent):	
Gasoline containing 10 volume % ethanol designated for VOC-Control Region 1	26.5
All other gasoline designated for VOC-Control Region 1	27.5
Gasoline containing 10 volume % ethanol designated for VOC-Control Region 2	24.9
All other gasoline designated for VOC-Control Region 2	25.9
Toxic air pollutants emissions performance reduction (percent)	20.0
NOx emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	5.5
Gasoline not designated as VOC-controlled	0.0
Oxygen content (percent, by weight)	2.0
Benzene (percent, by volume)	1.00

(f) *Phase II complex model averaged standards.* The Phase II "complex model" standards for compliance when achieved on average are as follows:

PHASE II COMPLEX MODEL AVERAGED STANDARDS

VOC emissions performance reduction (percent):	
Gasoline containing 10 volume % ethanol designated for VOC-Control Region 1:	
Standard	28.0
Per-Gallon Minimum	25.0
All other gasoline designated for VOC-Control Region 1:	
Standard	29.0
Per-Gallon Minimum	25.0
Gasoline containing 10 volume % ethanol designated for VOC-Control Region 2:	
Standard	26.4
Per-Gallon Minimum	23.4
All other gasoline designated for VOC-Control Region 2:	
Standard	27.4
Per-Gallon Minimum	23.4
Toxic air pollutants emissions performance reduction (percent)	21.5
NO_X emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	6.8
Gasoline not designated as VOC-controlled	1.5
Oxygen content (percent, by weight):	
Standard	2.1
Per-Gallon Minimum	1.5
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Maximum	≤1.30

4. Section 80.67 is amended by revising paragraph (g)(1) and by adding paragraph (h)(4) to read as follows:

§ 80.67 Compliance on average.

* * * * *

(g) * * *

(1)(i)(A) The compliance total using the following formula:

$$\text{COMPLIANCE TOTAL} = \left(\sum_{i=1}^{n} V_i\right) \times \text{std}$$

Where:

V_i=the volume of gasoline batch i

std=the standard for the parameter being evaluated

n=the number of batches of gasoline produced or imported during the averaging period and

(B) For computation of the VOC performance standard compliance total, Std for each VOC control region is determined by the following formula:

$$\text{Std} = \frac{\text{Std}_u \times \sum_{i=1}^{n_u} VU_i + \text{Std}_a \times \sum_{i=1}^{n_a} VA_i}{\sum_{i=1}^{n_u} VU_i + \sum_{i=1}^{n_a} VA_i}$$

Where, for gasoline and RBOB designated for that VOC control region:

Std=the value to be used in the compliance total formula:

Std_u=the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB not designated for compliance with the adjusted VOC gasoline standard

Std_a=the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB designated for compliance with the adjusted VOC gasoline standard

VU_i=the volume of batch i not designated for compliance with the adjusted VOC gasoline standard

VA_i=the volume of batch i designated

for compliance with the adjusted VOC gasoline standard

n_u=the number of batches produced or imported and not designated for compliance with the adjusted VOC gasoline standard

n_a=the number of batches produced or imported and designated for compliance with the adjusted VOC gasoline standard and

(C) The actual total using the following formula:

$$\text{ACTUAL TOTAL} = \sum_{i=1}^{n} (V_i \times \text{parm}_i)$$

Where:

V_i=the volume of gasoline batch i

parm_i=the parameter value of gasoline batch i

n=the number of batches of gasoline produced or imported during the averaging period

(ii) [Reserved]

* * * * *

(h) * * *

(4) In the case of gasoline containing 10 volume percent ethanol oxygen credits may be generated, transferred and used for such gasoline only if it is not identified in the Product Transfer Document per § 80.77(g)(4)(B)(3) as "adjusted VOC gasoline" as defined in § 80.40(c).

* * * * *

5. Section 80.68 is amended by revising paragraph (c)(8)(ii)(B) to read as follows:

§ 80.68 Compliance surveys.

* * * * *

(c) * * *

(8) * * *

(ii) * * *

(B) The covered area shall have failed the complex model VOC survey if the VOC emissions reduction percentage average of all survey samples is less than the weighted average of the applicable per-gallon standards for VOC emissions reduction calculated according to the following formula:

$$\text{WSTD} = \frac{\text{VOCU} \times n_u + \text{VOCA} \times n_a}{n}$$

Where:

WSTD=Weighted average of the applicable per-gallon VOC standards

VOCU=Per gallon VOC standard applicable in the covered area to RFG containing less than 10% ethanol by volume

VOCA=Per gallon VOC standard applicable in the covered area to RFG containing 10% ethanol by volume

n_u=Number of samples in the VOC survey with oxygen content less than 3.5% by weight

n_a=Number of samples in the VOC survey with oxygen content equal to or greater than 3.5% by weight

n=Total number of samples in the VOC survey

* * * * *

6. Section 80.69 is amended by revising the introductory paragraph to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

The requirements of this section apply to all reformulated gasoline blendstock for oxygenate blending, or RBOB, to which oxygenate is added at any oxygenate blending facility, except that paragraph (a)(7) of this section does not apply to "adjusted VOC gasoline" as defined in § 80.40(c).

* * * * *

7. Section 80.77 is amended by revising paragraph (g)(3) to read as follows:

§ 80.77 Product transfer documentation.

* * * * *

(g) * * *

(3) Identification of VOC-controlled reformulated gasoline including "adjusted VOC gasoline" as defined in § 80.40(c), or RBOB as gasoline, or RBOB which does not contain any ethanol, or RBOB which contains less than 10 volume % ethanol, or RBOB which must contain 10 volume % ethanol and is used to make "adjusted VOC gasoline".

* * * * *

[FR Doc. 00–17351 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–6734–8]

Ocean Discharge Criteria: Revisions to Ocean Discharge Criteria Regulations; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: This document announces that the Environmental Protection Agency (EPA) is inviting all interested members of the public to participate in any or all of a series of public meetings on its plan for revising the Ocean Discharge Criteria regulations and to solicit public input on the plan. These regulations implement section 403 of the Clean Water Act. The EPA is hosting these meetings in five cities between late July and mid-August 2000.

DATES: See Supplementary information section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: For general information on the meetings, write Marine Pollution Control Branch, ATTN: Ocean Discharge Criteria, US Environmental Protection Agency, MC 4504F, 1200 Pennsylvania Avenue NW, Washington, DC, 20460, or email to: ocean.discharges@epa.gov, or fax to: 202/260–9920. You may also call Macara Lousberg, at telephone 202/260–9109.

SUPPLEMENTARY INFORMATION:

Public Meeting Information

The public meetings will be held on the following dates, times and locations:

1. Tuesday, July 25, 2000, 9 a.m. to 12:00 noon; and 1–4:30 p.m, in Washington, DC—Holiday Inn—National Airport, 2650 Jefferson Davis Highway, Arlington, VA 22202
2. Thursday, July 27, 2000, 1–4:30 p.m. and 7–9 p.m., in Boston, MA—Wyndham Boston Hotel, 89 Broad Street, Boston, MA 02110
3. Tuesday, August 1, 2000, 1–4:30 p.m. and 7–9 p.m., in Portland, OR—Portland Conference Center, (Morrison Room), 300 NE Multnomah Street, Portland, OR 97232
4. Thursday, August 3, 2000, 1–4:30 p.m. and 7–9 p.m., in Los Angeles, CA.—Los Angeles Convention Center, 201 S. Figueroa St., Los Angeles, CA 90015
5. Wednesday, August 9, 2000, 1–4:30 p.m. and 7–9 p.m., in Tampa, FL—Holiday Inn Express—Airport\Stadium, (Lakeside ×4), 4732 N. Dale Mabry Highway, Tampa, FL 33614

Members of the public who plan to attend any of these meetings should write, call, email or fax to the address listed in the **FOR FURTHER INFORMATION CONTACT** section above. Include your name, affiliation, address and phone number, and whether you wish to make a statement. The Agency will use the information to arrange enough time on the agenda for public comment.

Background

On May 26, 2000, President Clinton signed Executive Order 13158 which among other things explicitly directs EPA to take action to better protect marine and coastal areas. Section 4(f) of the Executive Order on Marine Protected Areas states:

To better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment. Such regulations may include the identification of areas that warrant additional pollution protections and the enhancement of marine water quality standards. The EPA shall consult with the Federal agencies identified in subsection 4(a) of this order, States, territories, tribes, and the public in the development of such new regulations.

EPA believes that revisions to the Ocean Discharge Criteria (also called the section 403 regulations) is the most appropriate approach to implementing the order.

In 1972, Congress passed the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA). Under the CWA, point source discharges (*i.e.*, discharges from municipal and industrial facilities) to waters of the United States must obtain a National Pollutant Discharge Elimination System (NPDES) permit, which requires compliance with technology- and water quality-based treatment standards. In addition, because of the complexity and ecological significance of marine ecosystems, discharges to the marine environment beyond the baseline (*i.e.*, the territorial sea, contiguous zone, and oceans) must also comply with section 403 of the CWA (section 403), which specifically addresses impacts from such point sources on marine resources.

The current Ocean Discharge Criteria regulations consider 10 criteria in evaluating NPDES permits for discharges into marine waters. These criteria emphasize an assessment of the impact of an ocean discharge both on the biological community in the area of the discharge and on surrounding biological communities. The current regulations governing section 403 were issued in 1980. Revising these regulations could potentially impact holders of NPDES permits that discharge into ocean waters and anyone who might apply for such a permit in the future.

EPA is holding these five meetings to present EPA's plans for section 403 regulatory revisions in support of the Executive Order. These meetings will provide the interested public an opportunity to comment on EPA's approach for regulatory revisions and to present data or opinions regarding the impacts of ocean discharges under CWA section 403 on the ocean environment.

These five meetings will provide an opportunity for the interested public to comment on EPA's approach to meeting the requirements of the Executive Order. Specifically, the Agency may reconsider revising the existing scientific standards for protecting coastal and ocean waters under section 403 of the Clean Water Act, and proposing a list of Special Aquatic Sites (SAS's). The Agency's actions may also include strengthening the existing regulations regarding permits to discharge into ocean waters under section 403 of the CWA, including specific protection for SAS's in ocean waters.

Dated: July 7, 2000.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 00–17751 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 268 and 271

[FRL–6729–4]

RIN 2050–AE65

Land Disposal Restrictions; Treatment Standards for Spent Potliners From Primary Aluminum Reduction (K088) and Regulatory Classification of K088 Vitrification Units

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise certain treatment standards for spent potliners from primary aluminum reduction (EPA hazardous waste: K088) under its Land Disposal Restrictions (LDR) program. These revisions are a direct result of an Agency commitment to investigate whether a more permanent treatment standard for K088 is appropriate. If promulgated, nonwastewaster forms of K088 waste would have to meet a new treatment standard, measured by a version of the Toxicity Characteristic Leaching Procedure (TCLP) that uses deionized water as the leaching fluid. The Agency is also proposing to revise the treatment standards for total and amenable cyanide in K088 nonwastewaters. Finally, the Agency is proposing to classify K088 vitrification units as RCRA Subpart X miscellaneous treatment units. As a final matter, we discuss the appropriateness of extending the rationale and regulatory status applied in this proposed rule for K088-vitrification units to all vitrification units treating RCRA hazardous waste.

DATES: Written and electronic comments must be received on or before September 11, 2000.

ADDRESSES: Commenters should submit an original and two copies of their comments referencing Docket No. F–2000–TSSP–FFFFF to: the RCRA Information Center (RIC), U.S. Environmental Protection Agency Headquarters (5305G), Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Courier deliveries of comments should be submitted to the RIC at the address listed below. Comments may also be submitted electronically through the Internet to: RCRA-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–2000–TSSP–FFFFF. Submit electronic comments as an ASCII file and avoid the use of special characters and any form of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional copy of the comments on disk in WordPerfect 6.1 file format.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of the CBI must be submitted separately to: Regina Magbie, RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

The Agency will consider the public comments during development of any final rule related to this action. The Agency urges commenters submitting data in support of their views to include data evidence that appropriate quality assurance/quality control (QA/QC) procedures were followed in generating the data. Data that the Agency cannot verify through QA/QC documentation may be given less consideration or disregarded in developing regulatory options for the final rule. For guidance see Final Best Demonstrated Available Technology (BDAT) Background Document for: Quality Assurance/ Quality Control Procedures and Methodology; USEPA, October 23, 1991.

Public comments and supporting materials are available for viewing in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page.

The docket index and notice are available electronically. See the Supplementary Information section for information on accessing it.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For specific information, contact Elaine Eby or John Austin, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Elaine Eby may be reached at 703–308–8449, eby.elaine@epamail.epa.gov; and John Austin may be reached at 703–308–0436, austin.john@epamail.epa.gov. For information on the capacity analysis, contact C. Pan Lee (5302W) at 703–308–8478, lee.cpan@epamail.epa.gov. For questions on the regulatory impact analysis, contact Linda Martin (5307W) at 703–605–0768, martin.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type http://www.epa.gov/epaoswer/hazwaste/ldr/index.html.

Affected Entities

Entities potentially affected by this action are generators of spent aluminum potliner from primary aluminum reduction, or entities that treat, store, transport, or dispose of these wastes.

Category	Affected entities
Industry	Generators of the following listed wastes, or entities that treat, store, transport, or dispose of these wastes. K088—Spent potliners from primary aluminum reduction. All RCRA Hazardous Waste—Treated using a vitrification technology.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be affected by this action. This table lists those entities of which EPA now is aware that potentially could be affected by this action. Other entities not listed in the table also could be affected. To determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully in concert with the amended rules found at the end of this **Federal Register** document. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How Can I Influence EPA's Thinking on this Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but we request comments in particular on the items in the following Table.

PRIMARY AREAS UPON WHICH COMMENTS ARE REQUESTED

- The selection of BDAT;
- The proposed treatment standards for cyanide and fluoride;
- The time required before treatment capacity capable of meeting the revised treatment standards will be available;
- The classification of K088 vitrification units as miscellaneous Subpart X treatment units;

PRIMARY AREAS UPON WHICH COMMENTS ARE REQUESTED—Continued

- The analytical approach taken to estimate compliance costs and potential economic impacts; and,
- Data to refine the time frame to construct a vitrification unit and commercial pricing of the Vortec technology.

Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

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G. National Technology Transfer and Advancement Act
H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
I. Executive Order 13132 (Federalism)

I. Background

A. How Is K088 Waste Generated?

K088 (spent potliner from primary aluminum reduction as listed in 40 CFR 261.32) is generated by the aluminum manufacturing industry. Aluminum production occurs in four distinct steps: (1) mining of bauxite ores; (2) refining of bauxite to produce alumina (aluminum oxide); (3) reduction of alumina to aluminum metal; and (4) casting of the molten aluminum. Bauxite is refined by dissolving alumina in a molten cryolite bath. Next, alumina is reduced to aluminum metal. This reduction process requires high purity aluminum oxide, carbon, electrical power, and an electrolytic cell. An electric current reduces the alumina to aluminum metal in electrolytic cells, called pots. These pots consist of a steel shell lined with brick with an inner lining of carbon. During pot service, the liner is degraded and broken down. Upon failure of a liner in a pot, the cell is emptied, cooled, and the lining is removed. In 1980, EPA originally listed spent potliners as a RCRA hazardous waste and assigned the hazardous waste code K088. See 45 FR 47832.

B. What Is the Regulatory History of K088 in the LDR Program?

The Phase III—Land Disposal Restrictions Rule (61 FR 15566, April 8, 1996) prohibited the land disposal of K088 spent potliner unless the waste satisfies the section 3004(m) treatment standard established in the same rulemaking. The Phase III rule established treatment standards, expressed as numerical concentration limits, for various regulated constituents in the waste—25 in all, with standards for both wastewaters and nonwastewaters. These constituents included cyanide, fluoride, toxic metals (including arsenic), and a group of organic compounds called polycyclic aromatic hydrocarbons (PAHs).

With the exception of fluoride, the treatment standard limits established for K088 were equivalent to the universal treatment standards. See 61 FR 15585; see also 40 CFR 268.48 (Universal Treatment Standards Table). The fluoride standard was based generally on data submitted in a delisting petition for K088 waste from the Reynolds Metals Company. These data were generated from the operation of Reynold's proprietary treatment process for spent potliners.

In the Phase III rule, the Agency granted a nine-month national capacity variance pursuant to section 3004(h)(2) to allow facilities generating K088 adequate time to work out treatment and disposal logistics. See 61 FR 15589. Subsequent developments then took an unexpected turn. Unanticipated performance problems in the Reynolds treatment process resulted in treatment residues whose actual leachate (as measured in the landfill leachate collection system at the company's disposal site) contained markedly higher concentrations of arsenic and fluoride than predicted by the Toxicity Characteristic Leaching Procedure (TCLP), the analytical test used to measure performance of the treatment technology for certain hazardous constituents in K088. Two of the 22 regulated constituents of concern, namely, arsenic and fluoride were significantly more soluble in highly alkaline conditions (the actual disposal environment of the landfill Reynolds was using for disposal) than acidic conditions (the situation modeled by the TCLP). 62 FR 1992, 1993 (January 14, 1997). In addition, the company was disposing of the treatment residues in non-subtitle C units.

EPA concluded that further time was needed to evaluate whether adequate protective treatment capacity was available (within the meaning of RCRA section 3004(h)(2)), and, as part of this determination, whether Reynold's practices in fact satisfied the mandate of section 3004(m) that threats posed by land disposal of the hazardous waste be minimized through treatment. Until these questions were answered and a finding of sufficient protective treatment capacity made, EPA determined that insufficient treatment capacity existed for K088 waste because Reynolds, at the time, was the only available commercial treatment facility for spent potliners. Consequently, on January 14, 1997, we extended the existing national capacity variance, and postponed implementing the land disposal prohibition for an additional six months to be able to study the efficacy of the Reynolds treatment process and the resulting leachate. See generally 62 FR 1992.

In July 1997, EPA, after further study and negotiation with affected parties, announced that Reynolds treatment does reduce the overall toxicity associated with the waste, and, by virtue of an Enforcement Order, that disposal of treatment residues would occur only in units meeting subtitle C standards. This was an improvement over the disposal of untreated spent potliner and provided protective treatment capacity. See 62 FR 37696 (July 14, 1997). On October 8, 1997, the national capacity extension ended and the prohibition on land disposal of untreated spent potliner took effect.

C. How Has Past Litigation Affected K088 Treatment Standards?

Petitions for judicial review of the Phase III rule and the January 1997 and July 1997 rules were filed by Columbia Falls Aluminum Company and other aluminum producers from the Pacific Northwest. The petitioners argued among other things that the use of the Toxicity Characteristic Leaching Procedure (TCLP) did not accurately predict the leaching of waste constituents, particularly arsenic and fluoride, to the environment and that it was therefore arbitrary to measure compliance with the treatment standard using this test. The United States Court of Appeals for the District of Columbia Circuit decided on April 3, 1998, that EPA's use of the TCLP as a basis for setting treatment standards for K088 was arbitrary and capricious for those constituents for which the TCLP demonstratively and significantly under-predicted the amount of the constituent that would leach (139 F.3d 914; see also 63 FR 28571, May 26, 1998 (EPA's interpretation of the Court's opinion)). The Court vacated all the K088 treatment standards and the prohibition on land disposal even though only two of the 54 hazardous constituents for which EPA established treatment standards, namely arsenic and fluoride nonwastewaters, were implicated and despite the Court's expressed statement that its decision did not affect the viability of the concentration limits established for other constituents (139 F.3d at 923–24). In its decision, the Court specifically invited EPA to file a motion to delay issuance of the mandate in this case for a reasonable time in order to develop a replacement standard. *Id.*

On May 18, 1998, we filed a motion with the Court to stay its mandate for four months while we promulgated a replacement prohibition and accompanying treatment standards. The Court granted this motion, indicating that its mandate would not become effective before September 24, 1998. On September 21, 1998, we promulgated interim replacement standards for K088 waste.[1] (See 63 FR 51254, September 24,

[1] The following wastewater and nonwastewater standards were promulgated in this rule: acenapthene, anthracene, benz(a)anthracene, benzo(a) pyrene, benzo(a)fluoranthene, benzo(b)fluoranthene, benzo(g,h,i)perylene,

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1998). We did not, however, replace the treatment standard for fluoride, one of the two constituents for which the TCLP markedly under predicted its leaching potential in treated K088. We determined that significant technical effort would be needed to develop a replacement treatment standard for this constituent—a task that could not be achieved by the D.C. Circuit's deadline of September 24, 1998.[2] We did commit, however, to investigating and if appropriate developing a more permanent treatment standard for K088—an effort we expected to be completed within two years. We stated that a new treatment standard for spent potliners (K088) would hopefully be based on the performance of a treatment technology that resulted in the immobilization of arsenic and fluoride, as well as the other toxic metals in the waste. At that time, we were aware of numerous technologies that showed promise for the treatment of K088 waste, a number of which we viewed as close to being commercially available. We stated that more information was needed to characterize the performance of these technologies, as well as to assess their safety and (in some cases) the safety of the hazardous waste-derived products which may be generated as part of these treatment processes. Chemical Waste Management, 976 F.2d at 17 (treatment technologies whose air emissions are not adequately controlled are not treating in conformance with requirements of section 3004(m)).

D. Today's Proposal

This brings us to today's proposal. Over the last 18 months we have gathered additional data and information on treatment technologies that may be evaluated as the basis for a permanent treatment standard for K088 waste. We have investigated technologies such as vitrification, gasification, and alkaline chlorination, among others. Our emphasis has been on the overall environmental benefits of these technologies including, of course, the performance of these technologies on the treatment of cyanide as well as the two constituents of special concern to the Court, namely arsenic and fluoride. Concurrent with this analysis we have evaluated various analytical methods for measuring fluoride and arsenic concentrations in K088 waste. We have also considered several regulatory implementation approaches for K088 vitrification units and appropriate emission controls for these units.

As a result of these efforts, we are proposing a four-part regulatory strategy for K088 treatment—a strategy that provides environmental protection, but also flexibility with regard to regulatory compliance. The four basic components being discussed in today's proposal include: (1) Revised treatment standards for cyanide and fluoride in K088 nonwastewaters; (2) regulation of K088 vitrification units as RCRA Subpart X miscellaneous treatment units; (3) required air controls on K088 vitrification units; and (4) regulatory status of the outputs of K088-vitrification units.[3] Today's preamble is structured to address each of these components individually and in the order that they have been presented here.

II. Proposed Revisions to K088 Treatment Standards

In this section we discuss proposed revisions to the treatment standards for fluoride, total cyanide, and amenable cyanide in K088 nonwastewaters. We discuss the analytical method proposed to measure compliance with the proposed fluoride treatment standard for K088 nonwastewaters, the identification of treatment processes and performance data for K088, the determination of Best Demonstrated Available Technology or BDAT, and today's proposed treatment standards.

A. Why Is EPA Proposing Changes for Cyanide and Fluoride in K088?

The September 21, 1998 interim final rule committed EPA to the development of a more permanent treatment standard for K088 waste. Cyanide and fluoride were two of the hazardous constituents for which treatment standard development had previously proved problematic. K088 waste contains extremely high concentrations of these constituents, much higher than any of the other regulated constituents in the waste.[4] Furthermore, spent potliners are listed as a hazardous waste because of high concentrations and large amounts of toxic cyanide. See 40 CFR Part 261, Appendix VII (basis for listing K088); 62 FR 37696.[5] Concentrations of cyanide have been found in untreated potliners as high as 5800 mg/kg. Past land disposal of these wastes have resulted in cyanide groundwater contamination. Indeed, EPA has stated repeatedly (and reiterates here) that control of cyanide is the most important objective of the K088 treatment standard, given cyanide's toxicity, concentration in these wastes, and potential to migrate from these wastes in high concentration, as shown by the historic damage incidents. See, e.g., 63 FR 51256; 51261.

K088 also contains high concentrations of fluoride. Often concentrations of fluoride in untreated potliner are greater than ten percent and some data suggest that untreated potliner may have concentrations of fluoride at greater than 20 percent. Most of this fluoride is in the form of soluble sodium fluoride. Unless this fluoride is recovered or effectively immobilized, the high concentrations of soluble fluoride found in K088 have significant potential to contaminate surface water and ground water and cause significant adverse effects to human health and the environment.

New performance data collected as part of developing this proposed rule show that the cyanide present in K088 waste can be readily treated to levels far below the current treatment standard using a vitrification process. These data also show that fluoride can be recovered and reused within the aluminum

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chrysene, dibenzo(a,h)anthacene, fluoranthene, indeno(1,2,3-cd)pyrene, phenanthrene, pyrene, antimony, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, and cyanide. The nonwastewater treatment standards for cyanide and the above-listed organic constituents, and all of the standards for wastewaters, are based on a total composition concentration analysis. The nonwastewater treatment standards for the metal constituents are based on analysis using the Toxicity Characteristic Leaching Procedure (TCLP). The interim treatment standard for arsenic nonwastewaters was set at 26.1 mg/kg total arsenic (mineral acid soluble).

[2] We determined that, as a practical matter the requirements of the other metal treatment standards for K088 would result in some immobilization of fluoride as well, and that looking at the totality of additional environmental protection gained from the interim replacement standards for the suite of hazardous constituents involved, in lieu of the land disposal of untreated K088 waste, would constitute the best practical approach to minimizing threats to human health and the environment (even without a fluoride treatment standard). EPA did commit to additional study of fluoride treatment as part of the longer-term effort to establish more permanent treatment standards for K088 waste.

[3] We note that although much the discussion in today's notice is in the context of how to regulate K088 vitrification units, the rationale for regarding these units as Subpart X miscellaneous treatment units would logically extend to all vitrification units treating various hazardous wastes. Thus, all vitrification units, whether direct-fired or indirectly heated and irrespective of the waste treated or recycled, would be classified as Subpart X treatment units. The Agency solicits your comments on the extension of this approach to all vitrification units treating hazardous waste.

[4] As an example, the concentrations of cyanide and fluoride in K088 waste from the Ormet Primary Aluminum facility in Hannibal, Ohio averaged approximately 700 mg/kg and 60,000 mg/kg respectively. All other regulated constituents measured well below the LDR treatment standards in the treated waste. See also, *Proposed Best Demonstrated Available Technology (BDAT) Background Document for Spent Aluminum Potliners—K088*, USEPA, December 1999.

[5] *See also* 60 FR 11702, 11723 n. 11 (Mar. 2, 1995) (notice of proposed treatment standards emphasizing the importance of destroying cyanide and PAHs).

reduction process as well as sold as product to other industrial sectors. See Chemical Waste Management v. EPA, 976 F.2d 2, 27 (D.C. Cir. 1992) (remanding treatment standards as failing to minimize threats when more aggressive treatment was demonstrated to exist). Accordingly, we are proposing to amend to current cyanide treatment standards based on this new performance data as well as proposing a new treatment standard for fluoride nonwastewaters that will encourage fluoride recycling and reuse.

B. What Analytical Methods Were Used to Measure Cyanide and Fluoride Concentrations In K088 Waste?

The proposed treatment standards for both total and amenable cyanides in nonwastewaters are based upon analysis using Method 9010 or 9012, found in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11. These analyses require a sample size of 10 grams and a distillation time of one hour and 15 minutes. This is the analytical method already required for cyanide in all the existing treatment standards.

Today's notice also proposes the use of a revised test for analyzing fluoride in K088 nonwastewaters. This test uses a version of the Toxicity Characteristic Leaching Procedure (TCLP) that uses deionized water as the leaching fluid (ASTM Method D3987–85 (1999)). The prior treatment standard for fluoride was based on TCLP analysis following treatment that converted the fluoride present in untreated K088 waste to generally insoluble calcium fluoride. (See 61 FR 15584, April 8, 1996.) However, the solubility of calcium fluoride is a function of pH. Because the TCLP tests use a simulated leachate with enough buffering capacity to lower the leachate pH to more acidic conditions, the calcium fluoride would be substantially less soluble than would be the case under actual field conditions. At the more acidic pH of the TCLP test, fluoride concentrations in treated waste were measured at less than 48 mg/L TCLP (the old treatment standard promulgated in the Phase III rule, 61 FR 15584, April 8, 1996), while measured concentrations in actual alkaline landfill leachate can be much higher, approximately 2200 mg/L. Had the original Phase III test been performed using de-ionized water as the leachate fluid, we expect that test results would have more closely tracked with the actual field measurement because the simulated leachate used in testing would not be buffered.

More recent leachate test results support this hypothesis. Fluoride results using deionized water leach ranged from 730–940 mg/L in the December 6, 1996, Special Laboratory Report, from Reynolds Metals Company. Actual leachate results from "landfill—cell 1" in which these wastes were placed have ranged from 664 to 1120 mg/L (April 1998 to August 1999), although values of approximately 2200 mg/L were initially observed from cell 1.

Testing of fluoride concentrations in K088 nonwastewaters, using a version of the TCLP with de-ionized water as the leachate fluid (ASTM Method D3987–85 (1999)), appears to be a workable solution to the pH-fluoride solubility concerns and a suitable measure of treatment performance. With de-ionized water as the leachate test fluid, leachate pH is controlled by the physical properties of the waste (and not the artificial buffering capacity of the test fluid), and more closely correlates with monofill conditions.

In developing this proposal, we also considered whether to conduct leach testing under more aggressive conditions, such as the very alkaline conditions (pH >12) that have been observed at the Gum Springs facility. Ultimately, the lack of a broadly-accepted test method, the variability of site conditions, concerns about transferability of results to other wastes or sites, and time constraints led us to reject this approach for developing today's proposal. We also evaluated the potential of a column-based test, although acceptable for rulemaking development, would not facilitate rapid assessment of compliance after promulgation of the standard. This was seen as a significant drawback not only for EPA, but for regulated entities as well, since column tests normally require weeks to conduct, and most treatment facilities lack multi-week storage capacity for treatment residues. Also, basing standards on alkaline leach or column-based testing conditions would entail the development and proposal of a new analytical procedure whereas the deionized water leach test has been fully vetted.[6] As such, we have collected performance data on K088 treatment using the alternative analytical method being proposed today.

[6] The development and proposal of a new analytical procedure would raise concerns related to the goals of the National Technology Transfer and Advancement Act of 1995. See today's preamble discussion under *National Technology Transfer and Advancement Act* for a further discussion.

C. How Are Treatment Standards Developed?

In the Land Disposal Restrictions (LDR) program, two types of treatment standards have been established by EPA: (1) numerical concentration-based treatment limits for each regulated constituent of concern; and (2) methods of treatment that must be used to treat a particular constituent or constituents(s). In either case, the treatment standard is based on a technology determined to be the "Best Demonstrated Available Technology" or BDAT. The BDAT determination consists of four steps: The first step is the identification of all possible technologies that, in theory, can treat a particular waste. The second step involves a determination of which of these technologies are demonstrated, defined as available on a full-scale basis.[7] Third, from the list of demonstrated technologies, we determine which are available, i.e., those which can be purchased and provide substantial treatment. Finally, available technologies are evaluated based on their treatment performance. EPA typically calculates numerical treatment standards or establishes a method of treatment based on the performance of that technology (or sometimes technologies) shown to perform best on a waste or waste constituent.

However, when evaluating any hazardous waste treatment process, we keep in mind other important environmental objectives. Consequently, within the LDR program and more specifically the BDAT process, a hierarchy of preferred options exists for evaluating treatment and recycling technologies. This hierarchy is part of a broader waste management goal to promote source reduction that is less or no production of hazardous waste, and recycling or reuse (i.e, all the waste generated is used as a feedstock in the same process or another process.) Next, in descending order of preference, are options for hazardous waste management and the establishment of LDR treatment standards. First, are treatment technologies that recover chemical value from the waste for reuse. This option may result in some residuals needing to be land disposed but the preferred techniques would also significantly reduce the quantity and toxicity of any waste destined for land disposal. Further down the hierarchy are treatment technologies that reduce the quantity and toxicity *without*

[7] Bench or pilot scale data may be considered if the full-scale technology is nevertheless in use or commercially available.

recovery of materials for reuse. Finally, at the lowest rung, are treatment technologies that only lower toxicity or the potential for migration. These may even increase the volume of materials for land disposal, e.g., metals stabilization.

If a treatment technology treats hazardous constituents, recovers chemical value from the waste, and meets our BDAT criteria, it will typically be our preference when establishing LDR standards. Treatment standards based on "treatment/recovery" are developed in one of two ways by: (1) establishing a required method of treatment, e.g. "lead recovery or RLEAD"; or (2) establishing numerical concentrations levels based on hazardous constituent concentrations in the recycling (i.e., treatment) residue. Presently, there are 14 waste codes that directly require or include recycling as their treatment standard. See 40 CFR 268.40. We recognize, however, that not all hazardous waste within a specific waste listing may be recyclable. Generally, that is why we establish concentration-based numerical standards instead of requiring mandatory recycling of a particular constituent. Although numerical standards can be based on a recycling technology, any technology (other than prohibited technologies) can be used to meet the treatment standard. In general, this type of approach meets our LDR goal of encouraging environmentally sound recycling at the same time providing the regulated community with flexibility in meeting the treatment standards.[8]

We have identified a range of treatment and recycling practices as applicable to K088 waste. Most of these processes, however, are still under development and are not full-scale operating units so they cannot be the basis of BDAT. What we find encouraging however, is that all of the processes being investigated are recovery or recycling-based. Many of these processes recover reusable chemical value from the spent potliner from either the fluoride or the unburned carbon contained in the waste. Some of these technologies also claim to process the K088 into marketable products. We are encouraged by the prospect of K088 management with some of these alternative processes. However, at the present time and for purposes of this proposal, we are only in a position to evaluate the three existent facilities known to be treating K088 waste.

The Reynolds Metals Company facility in Gum Springs, Arkansas, the Ormet Primary Aluminum facility in Hannibal, Ohio, and the Chemical Waste Management of the Northwest, Incorporated facility in Arlington, Oregon (herein referred to as Reynolds, Ormet, and CWMNW respectively) presently operate the three treatment facilities for K088 waste in the U.S. All three of these facilities maintain full-scale treatment operations and currently meet all the existing treatment standards for K088 waste found in § 268.40. Reynolds and CWMNW operate commercial treatment operations, while Ormet operates a private on-site treatment facility not involved in the commercial treatment of K088. All three of these treatment units are considered available as defined by our BDAT methodology and have had their treatment performance data evaluated for establishment of treatment standards for fluoride, cyanide and arsenic.[9]

D. Our Analysis of Performance Data and BDAT Determination

In 1999, we collected and analyzed treatment performance data from Ormet. We also reviewed performance data submitted by CWMNW. We compared these data to existing performance data from Reynolds. Our analysis shows that the Vortec technology, used at the Ormet facility, provides highly effective treatment of cyanide in addition to being a highly effective *recovery* process for fluoride. Furthermore, the process has also been shown to be effective in the immobilization of residual fluoride.

Conversely, Reynolds and CWMNW operate treatment only facilities for K088 waste. They do not recycle or recover the fluoride value in the waste. Reynolds and CWMNW performance data show that both treatment processes are less effective than Ormet in the destruction of cyanide and the immobilization of residual fluoride.

TABLE 1.—COMPARISON OF AVERAGE CONCENTRATIONS OF CYANIDE AND FLUORIDE IN ORMET, REYNOLDS, AND CWMNW UNTREATED AND TREATED POTLINERS[10]

Facility	Untreated cyanide (mg/kg)	Treated cyanide (mg/kg)	Untreated fluoride (mg/kg)	Treated fluoride (mg/kg)	Treated leachable fluoride (mg/L)
Ormet	670	<0.5	62,775	38.5	2.15
Reynolds	2,770	77	81,100	44,700	552
CWMNW[11]	CBI	CBI	CBI	CBI	CBI

As shown in Table 1, data from the Ormet treatment/recovery process showed cyanide concentrations in the treated potliner measuring below detectable limits (<0.5 mg/kg). This comports with a greater than 99.9% destruction of the cyanide. Conversely, treatment performance data from Reynolds showed untreated potliners with an average cyanide concentration of 77 mg/kg (92–94% total destruction of cyanide).[12] Data from CWMNW showed treatment of the cyanide below the current treatment standard of 590 mg/kg, but well above the average performance concentrations achieved by Ormet.

The Ormet process also removes and recovers from the untreated potliner approximately 99.9% total fluoride. Residual concentrations of fluoride in the treated potliner averaged 38.5 mg/kg total fluoride. Leachable fluoride

[8] The Agency would like to reiterate here that although we have proposed promulgating numerical treatment standards for K088 waste, EPA is aware of only one privately-owned facility that can meet the standards being proposed today. The vitrification technology that has formed the basis of the proposed standards does however meet all the criteria necessary for developing BDAT as identified in 51 FR 40588, November 7, 1986.

[9] As previously discussed, the determination of BDAT is a four-step process. When the Agency determines that a treatment is available, it must be available for purchase if the technology is patented or proprietary and it must provide substantial treatment. Ormet operates a private treatment unit which was purchased from the Vortec Corporation. This technology can be purchased, and as discussed in the following sections data indicate that substantial treatment of K088 occurs.

[10] Amenable concentrations of cyanide in the Ormet untreated and treated potliner averaged 322 mg/kg and <0.5 mg/kg respectively. No average amenable cyanide concentrations were reported by Reynolds.

concentration in the treated potliner averaged 2.15 mg/L total fluoride.[13] Conversely, fluoride concentrations in the treated potliner from Reynolds' averaged 44,700 mg/kg with leachate values averaging 552 mg/kg.

As such, we have initially determined Ormet's treatment process as BDAT for fluoride and cyanide in K088 waste.[14] Ormet's performance data show cyanide destruction values exceeding those obtained by both Reynolds and CWMNW. Furthermore, Ormet's ability to recovery fluoride values for the untreated potliner, coupled with effective immobilization of the residual fluoride in the treated potliner, indicate a treatment process superior to Reynolds and CWMNW.

While the data strongly support this BDAT determination, it is imperative, however, that we discuss here, the issue of "most-difficult-to-treat" waste. In the LDR program, we generally prefer to establish a treatment standard based on a waste that we determine to be the most difficult to treat. We usually consider the "most-difficult-to-treat" waste, as being the waste with the highest constituent concentration(s) of concern. It is therefore assumed that if a treatment technology can treat a highly concentrated waste, then it can also treat lower concentrations with equal effectiveness. However, we have encountered cases where data and information on different treatment technologies is limited in scope and does not represent the most difficult to treat waste. In these situations, our engineering judgment has played a crucial role in supporting the BDAT determination.

Today's rule is such a case. As mentioned earlier, Ormet is a privately-owned K088 treatment facility. It does not commercially treat K088 waste (although the treatment technology it uses is commercially available, as explained earlier). Because of this, the treatment performance data that we gathered at the Ormet facility reflects the treatment of only one type of K088 waste—Ormet's. Reynolds, the largest commercial treater of K088 waste treats K088 from more than 15 aluminum reduction facilities and has a much broader concentration range of K088 regulated constituents. As indicated by Table 1, the average concentration of cyanide in Ormet's untreated potliner was well below the average concentration of cyanide in Reynold's untreated potliner (670 mg/kg versus 2,770 mg/kg). Based on this information, one might be tempted to conclude that Ormet's waste is not the most difficult to treat for cyanide. However, based on an extensive engineering review of the process at Ormet, and our findings that the treatment unit is well-designed and operated and has a robust combination of time, temperature and mixing within the unit, we are confident that higher concentrations of cyanide, (such as those encountered by Reynolds) will be easily destroyed by this process.[15] Furthermore, we have determined that the Ormet process is matrix independent for cyanide and capable of destroying any concentration of cyanide contained in a K088 waste to below the detection limit. Therefore, we believe that the treatment standards being proposed today for both total and amenable cyanide are appropriate.

Similarly, the average concentration of total fluoride in the Reynolds untreated potliner was 81,000 mg/kg, exceeding the average concentration in Ormet's waste of 62,775 mg/kg. However, we conclude, for similar engineering reasons, that the process employed at Ormet is capable of providing effective recovery and immobilization of fluoride independent of the concentration of fluoride contained in the untreated K088 waste. That is, virtually all of the fluoride will partition to the vitrification baghouse dust, and is then recoverable. The remainder of the fluoride will be immobilized in the treatment residue.

EPA notes that the proposed standard for cyanide would no longer be the universal treatment standard (UTS). The UTS is normally our preferred option, but here the improved cyanide treatment performance from vitrification of K088 (over two and one-half orders of magnitude) is striking. In addition, the Ormet vitrification process appears to optimize recovery/treatment of fluoride, so that improved treatment of both cyanide and fluoride will go together. The proposed treatment standards thus reflect both of these linked treatment improvements. The Agency requests comment as to whether the assumptions made in this "difficult to treat" determination are valid and our conclusions are correct. Additional discussion on this matter can be found in the technical background document supporting this proposed rulemaking and is available in the docket.

E. How Does The Treatment Work?

The K088 treatment technology used at Ormet can be generally described as a direct-fired vitrification system that destroys cyanide, while recovering fluoride for reuse. In this treatment, the K088 along with other additives are mixed together and then vitrified to form a residue or glass-like "frit," while effectively partitioning the fluoride for reuse. The fluoride that does not partition is immobilized within the frit.

The unit performing this operation is referred to as a combustion melting system (CMS ™) which was licensed by Ormet from the Vortec Corporation. The CMS ™ consists of a Counter Rotating Vortex (CRV) reactor, a cyclone melter, and a separator/reservoir. The process involves the rapid suspension heating of finely crushed K088 waste, sand, and limestone in a preheater prior to physical and chemical melting that occurs within a cyclone reactor. The reactor is a refractory-lined, water-cooled, carbon steel vessel. Natural gas and preheated air are used to achieve temperatures of approximately 2400° F in the reactor. Materials begin to melt in the reactor and flow downward to the cyclone melter. Melting of the waste and other additives, as well as the combustion of the cyanide and other organics, is completed in this vessel and the resultant molten glass is separated from the combustion gas. The molten glass is dropped into a water quench tank where it solidifies into a frit.

The separated combustion gas is used to preheat the air entering the reactor, and is then sent to a baghouse to remove sodium fluoride (this residue is referred to as the primary baghouse dust). Arsenic, if present, would likewise partition to the baghouse because of its high volatility. The exhaust from the baghouse is then transferred into the potroom dry scrubber system, which is a baghouse air pollution control device using alumina to dry scrub fluoride from aluminum reduction pot exhaust gases. Here, gaseous fluoride is removed and additional particulate removal occurs. The material from the dry scrubber system (referred to as secondary baghouse dust) is fluoride-enriched alumina material that is also reused.

[11] The K088 performance data from Chemical Waste Management of the Northwest, Inc. has been claimed confidential business information. The reader is referred to the background document supporting this proposal for additional information.

[12] The percent destruction of cyanide by the Reynolds process was calculated using data found in Table 3–1 of the "Proposed Best Demonstrated Available Technology (BDAT) Background Document for Spent Aluminum Potliners—K088".

[15] The Agency has also concluded that in addition to the destruction of cyanide, polycyclic aromatic hydrocarbons (PAHs) will also be destroyed in this process, independent of their initial concentration in the untreated potliner. See the technical background document for this proposed rule for additional discussion on the technical engineering analysis used to make this determination.

F. Calculation of the Proposed Treatment Standards for Cyanide and Fluoride

Based on an analysis of the entire treatment process, the Agency concludes that the revised treatment standards for fluoride and cyanide will be derived from the concentrations of these constituents as measured in the treated potliner or glass frit. We do so for two reasons. First, the baghouse dust is fluoride-rich material that can be sold as a product or recycled back into the aluminum reduction pots as an electrolyte. Second, the glass frit is the primary residual from the treatment of K088 and will likely be land disposed at some point either after its use as a product or immediately if the glass frit market cannot sustain all the frit that is generated.[16]

EPA took four samples of the frit and analyzed them for total cyanide, amenable cyanide and fluoride. The data for total cyanide in the glass frit consisted of 4 data points all of which measured total cyanide concentrations at below detectable levels (<0.5 mg/kg). Based on these data, a treatment standard of 1.3 mg/kg for total cyanide was calculated. The data for amenable cyanide also included four data points all of which measured below detectable levels (<0.5 mg/kg) in the frit. Based on these data, a treatment standard of 1.4 mg/kg for amenable cyanide was calculated. The difference results from differing recovery factors in the two calculations.

Data was also collected on the leachability of fluoride in the glass frit using the deionized water leach test (ASTM Method D3987–85(1999)). The leach test is a measure of the immobility of the fluoride in the treated matrix. Data results as measured on the frit were: 1.9, 2.3, 1.9, and 2.5 (mg/L).[17] Based on these data, a treatment standard of 2.7 mg/L fluoride was calculated.

To resolve the compliance problem that would result from having a total cyanide value less than the amenable cyanide value, we propose that both total and amenable cyanide have the same compliance values. Therefore, EPA is today proposing revised treatment standards of 1.4 mg/kg total cyanide and 1.4 mg/kg amenable cyanide for K088 nonwastewaters. We are also proposing a new treatment standard for fluoride in K088 nonwastewaters, 2.7 mg/L fluoride, when measured by a version of the Toxicity Characteristic Leaching Procedure with deionized water as the leaching fluid (ASTM Method D3987–85 (1999)). It should be noted that we are *not* proposing to revise any of the other treatment standards for K088 waste found in 40 CFR 268.48.

The numerical treatment standards proposed in today's notice are performance standards reflecting the levels achieved by the BDAT. We emphasize that we are not proposing to require the use of any particular treatment technology. Any technology or combination of technologies not otherwise prohibited (*i.e.*, impermissible dilution) can be used to achieve these standards.[18] The establishment of concentration-based treatment standard provides the regulated community with the greatest amount of flexibility in meeting the treatment standards.

Evaluation of the performance data from Reynolds and CWMNW show that these treatment processes cannot generally achieve the proposed treatment standards which, in practical terms, means that existing treatment technologies that do not recover and substantially immobilize fluoride will need to be modified or replaced. See "Best Demonstrated Available Technology (BDAT) Background Document for Spent Aluminum Potliners—K088" for additional discussion. However, as previously mentioned, we are aware of several promising technologies being developed for K088—all of which recover fluoride. Preliminary information further suggest that these technologies would be successful in meeting the treatment standards being proposed today. We request any data and information on any developing technologies currently being investigated by the primary aluminum industry or other for the treatments of K088 waste. Furthermore, we solicit your comments on the achievability of these proposed treatment standards as well as EPA's assumptions regarding the technical and economic feasibility of recycling the fluoride dust.

During the development of this proposal, we did consider several other regulatory options in lieu of the treatment standards being proposed today. One option we considered was the development of a separate treatability group and treatment standard for "Baghouse Dust from K088 Vitrification Processes—No Land Disposal Based On Recycling." This option was explored because clarification might be needed as to the management of the dust, i.e., no land disposal. We determined, however, that the addition of a second, separate standard for K088 baghouse dust had no practical advantage over the proposed standard and rejected this option for two reasons: (1) The baghouse dust is a high quality product that can be recycled within the aluminum industry or other industrial processes; and (2) the proposed treatment standard of 2.7 mg/L *cannot* be met by the baghouse dust and, therefore, for all practical purposes, it must be recycled.[19]

We also considered a "Fluoride Recycling plus 268.48 Standards" requirement for all of K088 waste. This option would *require* some type of fluoride recycling to occur in addition to treatment to meet the concentration-based treatment standards (both existing and proposed). The option we are proposing already effectively provides this result since the baghouse dust would not meet the numerical standards if land disposed, and thus its recycling is essentially compelled.

G. Why Isn't the Agency Proposing to Revise the Treatment Standard for Arsenic in K088?

During the development of the revised treatment standards for cyanide and fluoride, we also evaluated the possibility of revising the nonwastewater treatment standard for arsenic. The current treatment standard for arsenic in K088 nonwastewaters is 26.1 mg/kg total arsenic. The development of a revised arsenic treatment standard in this proposal proved problematic for two reasons. First, Ormet's untreated potliners have extremely low concentrations of arsenic, measuring between 3.1 and 4.0 mg/kg, and therefore could not be considered "most-difficult to treat" for BDAT purposes.[20] Second, performance data

[16] As a condition of their recycling exemption from the State of Ohio Ormet Primary Aluminum must recycle the glass frit. It is reasonable to expect however, that if additional vitrification units are constructed and brought on-line or if the Ormet unit is permitted as a miscellaneous Subpart X unit, an excess of glass frit may occur, resulting in the land disposal of this material.

[17] Confirmatory experimental data collected by the Agency on June 15, 1999 show that leachate concentrations of the fluoride when tested in a pH range of 11.5–12.5 are 1.8, 2.1, 2.0, and 2.1 mg/L. These data suggest that the residual fluoride that remains in the glass frit is immobilized at an alkaline pH range from 8 (the pH at which the deionized water leach test was conducted) to 12.5.

[18] Of course, dilution of the waste as a means to comply with the standard is prohibited. Also wastes that are generated in such a way as to naturally meet the standard can be land disposed without treatment.

[19] If for some reason, the baghouse dust cannot be recycled, the generator may petition the Agency for a treatability variance as outlined in § 268.44.

[20] Performance data from the Ormet facility show that arsenic concentrations in the treated potliner (*i.e.*, glass frit) measured below detectable limits (<2mg/kg) in all samples analyzed. See "Proposed Best Demonstrated Available Technology(BDAT) Background Document for Spent Aluminum

from the Ormet process indicates that arsenic is not immobilized in the treated potliner.[21] Rather it partitions (because of its high volatility) to the baghouse dust, which is then be recycled back into the aluminum reduction pots or sold as product. Of course, trace amounts of arsenic may not be collected in the baghouse and would be contained ultimately in the stack emissions. We do not have data indicating at what level either of these two potential events might occur and, therefore, cannot make a judgment about the efficacy of an arsenic recycling standard or the probability or degree of environmental concern about potential releases of arsenic to the air or land. However, later in this notice, we are proposing an approach to assure that emissions from these devices do not present significant environmental threats.

EPA has therefore decided tentatively not to alter the existing arsenic treatment standard. That standard reflects total arsenic concentrations in the land disposed treatment residue from higher-arsenic potliners, and also is designed to prevent significant additions of arsenic via the treatment process (that is, the arsenic remaining in the treatment residues would reflect arsenic in the potliners in the first place). See 63 FR at 51,257–58 (Sept. 24, 1998). Given the current questions regarding whether any superior means of arsenic treatment presently exists, EPA is not in a position to propose a different standard at this time.

While we are not at this time proposing an alternative to the total arsenic standards now in place for K088, we foresee only very limited impacts upon the continuing development of alternative recycling and treatment technologies for K088 by other companies. We note however that should a K088 recycling process be constructed that has, as one of its residuals for land disposal, arsenic at total levels above the current standard, current regulations would prevent disposal of the residual. We emphasize that this does not render the process unusable. However, the generator would have to petition for a variance from the current treatment standard in accordance with 40 CFR 268.44 or for a rulemaking in accordance with 40 CFR 260.20 for the Agency to set appropriate alternative treatment standards. EPA also could adjust the arsenic standard as part of this rulemaking if we receive sufficient information as part of the comment process and the appropriate notice and comment protocols (*e.g.*, a Notice of Data Availability (NODA)) are met.

We are informally engaged in a broader effort to gather data on the effectiveness of current arsenic treatment methods and may revise the arsenic treatment standards for K088 or all hazardous waste upon the completion of these studies, if warranted. In the interim, as part of this docket, we are soliciting your comments on arsenic treatment methods in general, the use of these treatment methods for arsenic in K088, and our technical questions about the Ormet process (particularly with respect to its apparent inability to immobilize arsenic contained in K088).

III. Regulation of K088 Vitrification Units

Because new treatment units are likely to be needed to treat the 120,000 tons of K088 generated each year to achieve compliance with today's proposed standards, the issue of the regulatory status of K088 vitrification units has arisen. We discuss in this section several options for regulating K088 vitrification units and propose that they should be miscellaneous treatment units under RCRA. Furthermore, we propose that these units should be subject to a particular suite of emission controls irrespective of whether the unit recycles K088 treatment residuals back into the aluminum making process or into other products. Furthermore, we note that although the discussion in today's notice is in the context of how to regulate K088 vitrification units, the rationale for regarding these units as Subpart X miscellaneous treatment units would logically extend to all vitrification units treating other hazardous waste. Thus, all vitrification units, whether direct-fired or indirectly heated and irrespective of the waste treated or recycled, would be classified as Subpart X treatment units. Therefore, the Agency solicits your comments on the extension of this approach to all vitrification units treating hazardous waste.

A. Why Are K088 Vitrification Units Generating Glass Frit Subject to RCRA Subtitle C?

The initial issue requiring resolution is whether spent potliners are a solid waste when they are processed by a vitrification unit that generates glass frit and recyclable baghouse dust, both of which can be put to productive use. The argument goes that spent potliners are used as an ingredient in a glass production process, and so are not a solid waste based on 40 CFR 261.2 (e)(1). This subsection excludes from the regulatory definition of solid waste those secondary materials that are used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed. Because this regulation contains a proviso that the process not be reclamation, it is necessary to argue further that the recovery of fluoride values in the baghouse dust is not reclamation to fit within the cited exemption.

Although the issue is not entirely clear-cut, EPA takes the view here that vitrification of K088 is a hazardous waste treatment process, notwithstanding that recovery of something usable can result. *Marine Shale Processors* v. *United States*, 81 F. 3d 1371, 1380 (5th Cir. 1996); *United States* v. *Marine Shale Processors*, 81 F. 3d 1361, 1366 (5th Cir. 1996). These cases indicate that units producing a product may still be engaged in hazardous waste treatment subject to regulation.

Certain traditional criteria suggest that the best way to characterize the process is as conventional treatment plus recycling. For example, we know that spent potliners contain high concentrations of cyanide which is present in concentrations well in excess of that needed to produce glass frit.[22] See *Marine Shale Processors* v. *United States*, 81 F. 3d at 1381–83 and n.3 (concentrations of hazardous constituents in excess of those needed to produce a product are a critical indication that conventional waste treatment, rather than recycling, is occurring). Spent potliners may also

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Potliners—K088" which is available in the RCRA docket supporting this rule for additional detail.

[21] One might think that because the universal treatment standard for arsenic is based on the performance of slag vitrification (see 54 FR 48372 (Nov. 22, 1989)), and because Ormet operates a vitrification process, this process should become the basis for a revised arsenic treatment standard. However, all vitrification processes are not identical. The Ormet process does not appear to chemically bind the arsenic inside a glass-like matrix or frit. Thus, we are uncertain about the underlying similarity or difference between Ormet's vitrification process and slag vitrification (about which we do not have an abundance of data). In addition, we have questions on whether the high concentration of fluoride in the K088 can interfere with some vitrification processes; whether the high carbon concentration in the K088 acts as a reducing agent and inhibits some vitrification processes; and whether the high gas flow and limited solubility of arsenic in molten silica is distinct from slag vitrification. (See USEPA, Treatment Technology Background Document, 1991).

[22] Information suggests that there are certain waste constituents, such as fluoride, that may interfere with the vitrification process if they are present at high levels. However, in Ormet's vitrification process, the fluoride is volatilized and captured in the baghouse, thereby generating two usable outputs; (1) glass frit with low fluoride concentrations; and (2) fluoride-rich dust.

contain relatively high concentrations of carcinogenic polycyclic aromatic hydrocarbons, which do not contribute to the process at all. *United States* v. *Marine Shale Processors*, 81 F. 3d at 1366 ([a] substance cannot be an ingredient in making something if it is merely along for the ride); see also 60 FR at 11723 and n.11 (March 2, 1995) where EPA suggested that K088 could meet the criteria of being "inherently waste like" under section 261.2(d) for these reasons. The economics of the vitrification process also suggest that waste treatment is occurring at least in part, since generators of K088 would pay the vitrification facility to process the material, most likely at or near the going rate for hazardous waste treatment. See memorandum from Sylvia K. Lowrance, Director, Office of Solid Waste, to Hazardous Waste Management Division Directors, Regions I–X, entitled "F006 Recycling,", dated April 26, 1989, which states that the economics of the process are a criterion for legitimate recycling (*i.e.*, whether most of the revenue come from charging generators for managing their wastes or from the sale of the product). We note, of course, that the recovered fluoride can be sold by the treatment facility.

From a strictly definitional standpoint, the recovery of fluoride values in baghouse dust at least arguably meets the definition of reclamation in § 261.1(c)(4) (which is recovery of contained values in a matrix as a usable end product, the example in the rule being recovery of lead from a spent battery). Here we observe that fluoride in spent potliners being treated by the Ormet vitrification process is recovered as an air pollution control dust and can be returned to the aluminum reduction process as an agent to lower the melting point of the molten cryolite bath used to reduce aluminum from alumina. This means that under § 261.2(e)(1)(i), the fluoride recovery operation is reclamation and that fluoride recovery does not qualify strictly for the current overall recycling exclusion from RCRA. This is a separate proposition from identifying as BDAT a process that includes strong elements of recycling or reclamation in its broadest sense, which are preferred outcomes in the waste management hierarchy.

For these reasons, the Agency interpretation here is that vitrification of spent potliners is best viewed as a type of hazardous waste treatment, notwithstanding the elements of recycling, reclamation, and reuse. Hence, absent some regulatory exemption, some form of subtitle C rule regulatory controls are appropriate. The selection of appropriate controls under RCRA section 3004 and 3005 is a matter within our discretion. The next section discusses what those controls ought to be, with the chief focus on the air emissions from the treatment process.

B. What Hazards May Be Posed by Emissions From K088 Vitrification Units?

K088 can contain toxic constituents at significant concentrations as shown below [23]:

Constituent	Concentration (mg/kg)
Total cyanide	5,800 (0.58%)
Fluoride	135,000 (13.5%)
Beryllium	32
Chromium	59
Lead	26
Arsenic	27.6
Nickel	64
Polycyclic aromatic hydrocarbons	Up to 2,000 (0.2%)

Although cyanide and polycyclic aromatic hydrocarbons (PAHs) are relatively easy to destroy in a combustion system, improper combustion could result in high emissions from untreated compounds in the incoming waste or from products of incomplete combustion. Similarly, the metals present in K088 will condense as the combustion gas is cooled and can be effectively controlled using particulate matter control equipment such as a baghouse. Improper design, operation, or maintenance of the particulate matter control equipment could cause high metals emissions, however. Finally, the high levels of fluoride in K088 could result in unsafe emissions of hydrogen fluoride if the gas cleaning system is not properly designed, operated, and maintained.

C. What Regulatory Options Is EPA Considering?

We considered a number of control approaches under RCRA for K088 vitrification units, partly based on traditional classification criteria, including those for an incinerator, industrial furnace, or Subpart X miscellaneous treatment unit. We also considered whether the potential hazards posed by vitrification unit air emissions should be controlled by establishing MACT (Maximum Achievable Control Technology) standards under Section 112 of the Clean Air Act instead of using RCRA authorities. We discuss below our current thinking on these options and propose that K088 vitrification units can most effectively and efficiently controlled under our program for RCRA Subpart X miscellaneous treatment units. We also propose to have these units be presumptively subject to the recent MACT hazardous waste incinerator standards as a point of departure in developing the suite of Subpart X permit conditions to be imposed, irrespective of whether the facility engages in recycling of K088.

Incinerator Approach. While the one operating K088 vitrification system at Ormet uses controlled flame combustion and therefore meets the RCRA definition of an incinerator in 40 CFR 260.10, glass vitrification units can also be heated indirectly using electricity. See US EPA, Treatment Technology Background Document, January 1991, at p. 114. Indirectly heated units would be outside of the RCRA definition of an incinerator in § 260.10. To simplify decisions on regulatory classification, we propose to regulate all vitrification units the same given that their primary function is essentially the same (i.e., they treat waste by vitrification) whether or not the unit is direct-fired.[24] This would

[23] Source: USEPA, Proposed Best Demonstrated Available Technology (BDAT) Background document for Spent Aluminum Potliners—K088. The concentrations presented represent the maximum concentrations of contaminant. K088 also contains other toxic metals at lower concentrations, including cadmium, and selenium.

[24] See 60 FR at 11,723 (March 2, 1995) (K088 treatment devices should be subject to uniform standards if possible, given that they are performing the same function and are likely to pose the same types of risks).

avoid significant implementation issues for EPA and for individual State and regional permit writers, especially if custom-designed vitrification units employ variations in design and operation or experience variations in emissions that may derive from controlled flame combustion versus indirect heating configurations. We wish to avoid unnecessary confusion and controversy (with attendant delays) in any permit implementation scheme. This would not be feasible under § 260.10 and an incinerator approach unless we were assured that all current and future units would be direct-fired. We can reach a workable solution by other means (see Subpart X discussion below).

Industrial Furnace Approach. Vitrification units that are an integral component of a manufacturing process could potentially be considered a type of smelting, melting, or refining furnace (SMRF) that is listed as a category of industrial furnace under the regulatory definition in 40 CFR 260.10. Although the Agency had originally intended the SMRF category of industrial furnaces to apply to metallurgical furnaces, one could possibly interpret the category to also include glass or slag vitrification furnaces as a type of melting furnace. We considered whether it would be appropriate to explicitly add K088 vitrification units to the list of industrial furnaces in § 260.10 through this rulemaking. Under this approach, emission standards could be established under Subpart H of Part 266 and implemented through the BIF permit process under RCRA.

To be considered an industrial furnace, however, the unit must be an integral component of a manufacturing process and must use thermal treatment "to accomplish recovery of material products;" see also Marine Shale, 81 F. 3d at 1381–83 construing this definition. As discussed earlier, there are elements of waste treatment about these K088 vitrifying activities. In addition, unlike currently recognized industrial furnaces, the outputs of the vitrification process are entirely the result of K088 input and treatment and are not, for example, historical production processes that are using waste as an ingredient substitute.

We initially conclude that classifying K088 vitrification units as industrial furnaces is problematic. Ormet asserts that the frit is marketable for a variety of uses, including polishing and grinding, backing for asphalt shingles, molding for steel castings and as cullet in glass or ceramic manufacturing. The fluoride can be sold as a flux to steel mills as well as being recycled as a electrolyte in the aluminum industry. If, however, the market for the frit or the fluoride dust is not sustainable, the facility would not meet the primary criterion for an industrial furnace. See *Marine Shale* v. *United States*, 81 F.3d at 1383–84 (device listed as an industrial furnace which does not in fact engage in recovery of material products is not an industrial furnace, since industrial furnaces, by definition, must be used primarily to accomplish recovery of material products). We do not have any evidence that the current markets can use the amount of purported product that would be generated by vitrification processes treating 120,000 tons of K088 each year. Indeed, the amounts involved suggest caution about assuming constant demand, especially for the frit.

Finally, it is not a good use of constrained Agency resources to proceed with a rulemaking to list K088 vitrification units as industrial furnaces in § 260.10 and then to establish standards specific to those units. This is particularly the case here given that we expect only a few facilities to be constructed to meet the treatment capacity demand and given the availability of recently-upgraded emission standards for incinerators that can be applied through the Subpart X approach discussed next.

Subpart X Miscellaneous Treatment Unit Approach. Early on, the RCRA program recognized that treatment units (including thermal) may not fit easily into any existing classification, including those for incinerators and BIFs. As a result, EPA created a category known as Subpart X miscellaneous units.[25]

Design and operational conditions are developed for Subpart X units on a facility-by-facility basis by a regional or state permit writer, who has wide flexibility to impose conditions appropriate to protecting human health and the environment. 40 CFR 264.601. Typically, Subpart X permit writers are expected to incorporate existing standards for other types of units that would address the same or similar types of environmental and regulatory concerns. For example, Subpart X thermal treatment unit permits would likely incorporate many or all permit conditions and standards developed for other thermal units burning hazardous waste, *e.g.*, incinerators. See the discussion below giving further guidance on appropriate air emission standards for K088 vitrification units.

The Subpart X miscellaneous unit approach therefore offers implementation flexibility that de-emphasizes our somewhat rigid regulatory definitions and optimizes the ability of regulatory agencies to impose appropriate, environmentally protective conditions on a case-by-case basis. (A trade-off is the uncertainty of not knowing in advance what standards apply to a given activity, plus the administrative burden and inefficiencies of dealing with units on an ad hoc basis. These problems appear resolvable here, as explained below, because there are likely to be only a few units involved, and we are indicating a potential starting point for emission standards in this rulemaking.)

Using Subpart X as the umbrella approach for K088 vitrification units thereby offers an opportunity to avoid the potential implementation confusion and additional regulatory burdens involved in the two alternative approaches discussed above.[26] We would be able to address the permitting of K088 vitrification units in a consolidated fashion that would make unnecessary the need to engage in lengthy discussions about how regulatory definitions would apply. Rather, time and effort would be spent on characterizing the design, operation, and emissions of K088 treatment units

[25] Subpart X refers to the permit standards under Subpart X, Part 264, for units not eligible for interim status. Miscellaneous thermal treatment units operating under interim status are subject to Subpart P, Part 265.

[26] Use of the Subpart X miscellaneous unit approach may also be appropriate for other K088 treatment units (whether vitrification or not) that do not fit neatly into the previously described categories. These units may be evaluated on a case-by case basis or at such time that their operation is imminent. For these units, the Subpart X miscellaneous unit approach would again offer implementation flexibility and allow regulators to impose appropriate, environmentally protective conditions on a case-by-case basis.

and developing appropriate regulatory control. We also note that this is basically the approach the Agency previously used to implement controls for both direct-fired and indirect-fired carbon regeneration units. See 56 FR at 7200 (Feb. 21, 1991).

1. K088 Vitrification Units Should Be Regulated Even If Engaged in Bona Fide Recycling

We have discussed earlier the Agency's view that vitrification of K088 is a form of waste treatment, not excluded recycling. However, under EPA regulations (see 40 CFR 261.6(c)), the corollary issue of a recycling unit being exempt from permitting warrants brief mention. Under § 261.6(c), certain types of Subpart X recycling units have been regarded as exempt from permitting—either under application of EPA's own regulations or under a state's authorized implementing regulations. Today, we are proposing to regulate K088 vitrification units regardless of whether or not processing of hazardous waste K088 might otherwise be considered to be exempt recycling under current permit regulations in § 261.6(c).

Our proposed approach is consistent with EPA's general approach to regulate air emissions from hazardous waste recycling activities. Under current RCRA regulations, treatment units (other than industrial furnaces) that recycle hazardous waste are still subject to the standards of Parts 264 and 265. See 40 CFR 261.6(d). Likewise, industrial furnaces are subject to air emission standards in 40 CFR Part 266 when they burn hazardous waste for any purpose except certain types of metal recovery. Even if a K088 vitrification unit were to be viewed as being engaged in bona fide recycling of K088 along with its conventional treatment of that waste, today's proposed regulations would not allow this particular type of unit to be exempt from permitting and a full suite of appropriate emission standards. This is, at least in part, because K088 can contain high concentrations of toxic compounds. Improper design, operation, or maintenance of the reactor or gas cleaning system could result in emissions of toxic compounds at levels that could pose a hazard to human health and the environment. In addition, we note that, as discussed above, if we were not to classify K088 vitrification units as miscellaneous treatment units potentially eligible for the recycling exemption, direct-fired units could be appropriately classified as incinerators subject to the recently promulgated MACT incinerator standards.

2. Standards Applicable to K088 Vitrification Units

As discussed above, a Subpart X miscellaneous treatment unit classification is particularly apt because we expect it will result in appropriate emission controls, allowed for a consolidated implementation scheme, and avoid controversy over RCRA definitional issues. Permits issued under Subpart X must contain terms and provisions as necessary on a case-by-case basis to ensure protection of human health and the environment. See 40 CFR 264.601. This broad performance standard can be viewed as being another potential source of controversy and attendant delay for the construction and operation of new, properly controlled K088 vitrification units.[27] Therefore, we are also proposing, as part of the Subpart X approach, that permit writers must consider the recently-promulgated hazardous waste incinerator standards[28] as the point of departure for any Subpart X K088 vitrification unit.

This means that, absent factors suggesting otherwise, a K088 vitrification unit would be subject to the same standards as a hazardous waste incinerator (see 64 FR at 52993–94 (Sept. 30, 1999). Applying the incinerator MACT standards to K088 vitrification units could be accomplished either through direct regulatory provisions that can be added to 40 CFR Part 265 or via guidance to permit writers on how to approach developing permit conditions for these units on a site-by-site basis. Under either approach, if a particular incinerator standard is not technically applicable to the type of device or if it is unnecessary to ensure protection, then the permit writer is free to develop a technical justification as to why that particular standard should not be included in a permit. Again, this implementation scheme should shift the dialogue from one of definitional classification to one focused on the unit controls necessary to adequately protect the public and the environment. And, as noted above, it also offers the implementation advantage of having one type of permitting scheme for all K088 treatment unit designs, regardless of whether they are directly or indirectly fired.

We have looked closely at whether the MACT hazardous waste incinerator standards are the most appropriate for K088 vitrification units, and conclude that those standards are technically appropriate and necessary to address the hazards posed by toxic metal and nonmetal emissions from these units. Two issues should be discussed, however. First, K088 vitrification units may not feed enough chlorine to exceed the MACT incinerator standards for hydrogen chloride and chlorine gas, combined, even if emissions are uncontrolled. Our MACT regulations minimize the compliance burden in such cases by waiving emissions testing, and requiring only monitoring of feedrate to document that the standards could not be exceeded if emissions were uncontrolled. This approach can certainly be considered by permit writers dealing with K088 vitrification units. Second, the MACT incinerator standards do not establish controls specific to hydrogen fluoride, which is potentially a significant pollutant from K088 vitrification units. Accordingly, permit writers must consider whether additional permit conditions are needed to ensure that emissions of hydrogen fluoride do not pose a hazard to human health and the environment.

3. Availability of Interim Status for Existing K088 Treatment Units

A K088 vitrification unit is currently in operation at the Ormet Primary Aluminum Reduction facility in Hannibal, Ohio. At least some of the frit and baghouse dust from the vitrification unit appear to be recycled for beneficial use. As a State authorized to implement the applicable RCRA standards, Ohio has previously determined that this vitrification unit is excluded from RCRA regulation. As discussed above, when viewing this issue from a national policy perspective (and not on the site-specific factors that Ohio may have relied upon in its determination), we are persuaded that K088 vitrification units should be regulated for a number of reasons already discussed above, some of which are independent of whether recycling is deemed to occur. The status of the existing Ormet K088 vitrification unit could therefore become an issue under today's proposal, and regulatory confusion could easily result.

Because of the potential for confusion as to the proper classification and

[27] A RCRA storage permit is a necessity in all cases where storage occurs (except storage falling within the 90-day storage provisions of 40 CFR 262.34). Thus, RCRA permitting may be needed at a given site for reasons other than the vitrification unit itself.

[28] As noted earlier, these MACT standards are also protective of human health and the environment and are therefore presumptively appropriate for inclusion in RCRA Subpart X permits. See 64 FR at 52834, col. 3 (Sept. 30, 1999) (EPA concludes that the MACT standards are generally protective of human health and the environment).

ultimately the proper emission controls that should apply to any existing K088 vitrification facility, it would be appropriate for a state, should it so chose, to use the authority of 270.10(c) to allow an existing facility to submit Part A of a RCRA permit application and to operate under the interim status standards of Subpart P, Part 265, within 30 days of the date of promulgation of these revised LDRs for K088. See 60 FR at 11,723 (March 2, 1995) noting that it may be appropriate for EPA to make the substantial confusion finding because of unclear status of potential K088 treatment technologies. Questions about other interim status issues (such as adding a vitrification unit as a change in interim status) should be addressed to the Region or State administering the RCRA permit regulations at the plant location.

4. Why We Are Not Developing Separate MACT Standards Solely for K088 Vitrification Units?

Under this potential rulemaking option, we could use the authority of section 112(d) of the Clean Air Act to establish technology-based MACT (maximum achievable control technology) standards solely for these units. In such a case, RCRA air emission standards may be unnecessary since the MACT standards could also be sufficiently protective of human health and the environment. See RCRA section 1006(b) allowing EPA to defer RCRA regulation where it may unnecessarily duplicate provisions adopted under other environmental statutes, including the Clean Air Act.

Most significant from our perspective is the prospective resource commitment needed to develop MACT standards specific to K088 vitrification units. Such an effort has not been planned to date, and this effort would divert already constrained Agency resources to develop a regulatory regime applicable possibly only to a handful of units. Indeed, under a worst case scenario, the MACT standards development process could take as long or longer than a case-by-case permitting approach under Subpart X for new treatment facilities. This is particularly true if several units can be built quickly, but we need to wait for full-scale operations to obtain the emissions testing data to develop national MACT standards. In addition, we have concluded that the recently-promulgated MACT incinerator standards (perhaps with an additional standard to control hydrogen fluoride) would address the potential air emissions concerns that we now have. Starting a separate rulemaking would appear to be unnecessary from an environmental protection standpoint.

On balance, given that we expect that only a handful of new sources would be needed to meet the K088 treatment capacity demand and the existence of standards that can be applied to these Units, it does not appear cost-effective for the Agency to pursue a separate rulemaking to develop MACT standards to control emissions specifically from these sources. Rather, it appears more appropriate to adopt a RCRA Subpart X approach for regulating K088 vitrification units.

D. What Rule Changes Are Being Proposed To Regulate K088 Vitrification Units as Miscellaneous Treatment Units?

To enable K088 vitrification units to be able to be regulated as miscellaneous treatment units, we propose to revise the definition of an incinerator in § 260.10 to specifically exclude K088 vitrification units. This would ensure that direct-fired vitrification units are not classified as incinerators. In addition, we propose to add a definition for K088 vitrification unit. See proposed amendments to § 260.10. Because K088 vitrification units would not meet the definition of incinerator or boiler, and because K088 vitrification units are not listed as a type of industrial furnace, they would not qualify as BIFs and therefore would be classified by default as miscellaneous treatment units (along with sludge dryers and carbon regeneration units, for example). Please note that we are also requesting comment on whether to expand these regulatory changes to include all vitrification units and/or all types of K088 treatment units (whether vitrification or not).

E. What Is the Status of the Outputs From a K088 Vitrification Process?

As discussed above, Ormet's treatment process, which can be defined as a K088 vitrification process, generates two treatment residuals: a glass frit which is usable as a commercial product and a fluoride-rich baghouse dust that can be recycled back into the aluminum reduction pots as electrolyte or sold as a product for other industrial uses such as steel making. EPA is proposing here that both of these output streams be classified as products, and no longer solid wastes, provided certain conditions are satisfied. When put to productive use, this will avoid inappropriate Subtitle C regulation of these recycling activities. We will address the conditions for the glass frit and the fluoride-rich baghouse dust separately.

First, the glass frit, would be required to meet *all* the numerical treatment standards for K088 and it would have to be recycled. The Agency is proposing that this product be required to meet the LDR treatment standards to ensure the effective treatment of cyanide, fluoride and other regulated constituents in K088. Furthermore, it is important to note that at some point this product could be land disposed and there exists a need to address potential environmental consequences of this land disposal. By having to meet the K088 treatment standards, the glass frit is subject to a set of treatment standards that minimize threats to human health and the environment. We reiterate here, that if the glass frit is not recycled, it is still a K088 waste and must meet the treatment standards found in § 268.40 prior to land disposal in a Subtitle C land disposal unit.

The proposed conditions for the baghouse dusts are that they be recycled (e.g., returned for use to a primary aluminum process or to another process) and not be land disposed (i.e., placed on the land) before reintroduction into these industrial processes. This proposal is consistent with the principle (applicable to reclamation processes) found in existing rules. See § 261.3(c)(2)(i) stating that the output of a reclamation process typically is no longer a solid waste and § 261.2(e)(i) indicating that secondary materials put to direct use ordinarily are not solid wastes. EPA is proposing these conditions for two central reasons: (1) the baghouse dust is similar to raw materials currently utilized by industry in terms of physical properties and types and concentrations of hazardous constituents; [29] and (2) the concentration of fluoride in the baghouse dust is so high (and greatly in excess of the levels proposed as the treatment standard today for fluoride) that EPA is uncertain that other dispositions would be safe. The proposed exclusion limits the type of recycling of the baghouse dust to situations where the dust is used as an ingredient, or is used for material recovery (i.e., reclaimed) by being reintroduced into other industrial processes (normally primary aluminum

[29] The fluoride-rich baghouse dust can be used as a reducing agent for metals processed in iron and steel furnaces, the can also serve as a substitute for fluor-spar (calcium fluoride) which is typically between 95–100 pure calcium fluoride. Preliminary analysis of the baghouse dust show the concentration of all regulated organic constituents at below detectable levels (<.330 mg/kg). Analysis of the 11 UTS metals show leachate levels well below the K088 treatment standards. Cyanide concentrations are also below detectable levels (<.5 mg/kg).

or potentially steel production). EPA has added this qualification in the unlikely event that the baghouse dust would be burned as a fuel (probably not legitimate recycling in any case). It is our understanding that the proposed language covers all of the current and contemplated means of recycling the baghouse dust. The condition on there being no land disposal before return to the primary aluminum process is necessary to ensure that the basic LDR goal is not derogated. These baghouse dusts would not meet today's proposed treatment standards for fluoride, so that allowing their land disposal (in the guise of products stored on the land prior to recycling) would be inconsistent with the purpose of the LDR program, the prohibition and treatment standards for spent potliners, and our goal to ensure that recycling does not present threats to human health and the environment.[30]

In addition, EPA is including the standard condition that both these materials not be accumulated speculatively before recycling. Such prolonged storage would be inconsistent with the proposed product status, and indeed would raise the same types of concerns that the RCRA storage prohibition (codified in § 268.50) is intended to stop.

IV. Status of Interim Standards and Proposed Effective Date for Amended Standards

Typically, prohibitions on land disposal of hazardous waste are to take effect immediately upon promulgation, but may be postponed for two years on a national basis and (potentially) two more years on a case-by-case basis from the "earliest date on which adequate alternative treatment, recovery or disposal capacity that protects human health and the environment will be available." RCRA section 3004(h)(2). Here, however, spent potliners are already prohibited from land disposal (as of September 24, 1998; 63 FR 51254). Thus, the period during which EPA could conceivably issue any type of variance based on the available treatment capacity is already running out (less than a year remains on the potential national capacity variance period) and could already have expired by the time EPA issues a final rule adopting amended K088 treatment standards. A basic question, therefore, is whether there should be any lapse in the existing prohibition and treatment standards during the time it takes for additional treatment capacity to be created to treat K088 to the proposed treatment standards (assuming EPA adopts them). A second question is when the effective date should be for the amended standards (again, assuming EPA adopts them). These questions are discussed below.

A. Are the Interim Standards Still in Effect?

EPA proposes that there should be no lapse in the existing prohibition and treatment standards because if there were, land disposal of untreated spent potliners could resume. As EPA has explained at length, this result would be directly at odds with the central objective of the land disposal restriction statutory provisions. See 63 FR 51255–256. Moreover, EPA has already determined that there currently exists adequately protective treatment and disposal capacity for spent potliners treated to meet the existing (interim) treatment standards. See 62 FR 37696–697. Thus, EPA knows of no reason to justify eliminating the existing land disposal prohibition and treatment standards during the period before additional treatment capacity capable of meeting the proposed standards becomes available.

B. When Should the New Treatment Standards Take Effect?

EPA is guided by the overall objective of section 3004(h): treatment standards which best accomplish the objective of section 3004(m) to minimize threats posed by land disposal—should take effect as soon as possible, consistent with availability of protective treatment capacity. Therefore, we estimated how long it will take for available treatment capacity to be created and satisfy the proposed treatment standards.[31] We are basing the proposed effective date for today's treatment standards on this estimate.

Because a land disposal prohibition and interim treatment standards for K088 waste already exist under the interim rule of September 24, 1998, we propose as noted above to leave these requirements in place until the final rule adopting amended treatment standards becomes effective. Furthermore, although there are no legal constraints to limit EPA's potential implementation time period for a final rule amending these treatment standards, EPA will establish an appropriate effective date based on the projected availability of treatment or recovery capacity that can meet today's proposed treatment standards.

Key determinants of K088 generation include primary aluminum production rates (which vary from year to year), the useful life spans of different types of potliners, the lag time between aluminum production and waste generation, and occasional increases in potliner waste generation due to production starts and stops. To compare the required treatment or recovery capacity to available commercial capacity that can meet today's proposed treatment standards, EPA combined all data presented in previous rulemakings and used the 1997 Biennial Reporting System (BRS) to update these data. At the present time, EPA estimates that approximately 80,000–100,000 tons per year of K088 waste would require alternative management to meet the proposed treatment standards.

The majority of available commercial K088 waste treatment capacity in the United States exists at the Reynolds Gum Springs facility in Arkansas. This facility uses a thermal treatment system capable of treating approximately 120,000 tons of K088 waste per year and meeting the interim treatment standards promulgated on September 24, 1998. Two additional U.S. facilities have available technology to treat K088 waste to the interim standards. They are Chemical Waste Management of the Northwest, Inc. (CWMNW), which uses a combination of chemical oxidation and stabilization to treat commercial K088 waste, and a primary aluminum producer, Ormet, which uses a Vortec vitrification system to manage its own K088 waste. Other technologies, under development, although appearing to be promising, are not yet operating commercially.

In today's proposed rule, EPA would amend the treatment standards based on vitrification performance data and thus significantly lower the existing treatment standards for fluoride and total and amenable cyanide in K088 nonwastewaters. Available data suggest that the existing treatment process at the Reynolds Gum Springs facility cannot meet the proposed treatment standard for cyanide (both total and amenable) and fluoride for most (and perhaps all) of the K088 wastes currently being treated at the facility. Even if Reynolds can reconfigure or adjust its thermal

[30] It should be noted however that although the arsenic found in the baghouse would not meet the treatment standard for arsenic in K088 nonwastewaters (26.1 mg/kg), as part of the development of this proposed rule, we subjected this waste to numerous alternative arsenic leach tests, using a variety of leachate media. Based on our preliminary analysis, the leachate from the baghouse dust would not fail the TCLP for arsenic (5 mg/L) nor would it fail using any number of alternate leach tests. See the background document supporting this rule for additional discussion.

[31] The data and detailed analysis on the effective date for proposed treatment standards can be found in the Background Document to Establish the Effective Date for Amended Treatment Standards in the docket for this proposed rulemaking.

treatment process or purchase an additional treatment system, a substantial amount of time may be required. CWMNW, the other commercial treatment facility, will not meet the proposed treatment standards for total and amenable cyanide and fluoride in K088 with its current chemical treatment. Therefore, there is uncertainty whether CWMNW will continue to provide treatment capacity to meet the amended treatment standards for K088 waste.

At this time, among K088 generators, only Ormet appears to have an on-site management treatment technology (vitrification) capable of meeting the proposed treatment standards. The Ormet unit's capacity is up to 10,000 tons per year. The treatment capacity is based on Ormet's own waste generation and the company has no plans to expand its on-site capacity or accept K088 from other generators.

Based on this information, we find that no commercial vitrification or equivalent capacity currently exists that could meet the proposed treatment standards for K088 waste. Nevertheless, projects to construct plants for spent potliner recycling are currently in the planning phase. For example, in 1997, Vortec and Ormet formed a joint technology development enterprise (SPL Recycling, LLC) to assist in the development of waste recycling projects in the aluminum industry. Also, Reynolds is examining recycling technologies potentially capable of meeting the revised treatment standards. Some primary aluminum producers are also investigating recycling technologies to handle their K088 waste. Although other firms are also studying alternative K088 treatment or recycling technologies or processes (e.g., gasification, the "Alcoa-Selca" process, and the Spent Potliner Test Plan by AshGrove Cement Company). Most of these technologies and processes have not yet been proven commercially, and uncertainty exists about their potential to meet the proposed treatment standards.

The amount of time needed to establish sufficient vitrification or equivalent capacity for all K088 wastes—which essentially dictates our selection of an effective date for the amended standards—is affected by the need for treatment facilities to conduct full design and engineering assessments, negotiate contractual agreements, obtain permits from appropriate regulatory agencies, construct the systems, set up the appropriate infrastructures, and make other logistical arrangements necessary to receive, store, treat and recycle or dispose of K088 wastes. Such a process can take years to accomplish. For example, approximately two years were needed to before Ormet's vitrification system became operational. Using this example and other information noted in the background document for this analysis of the appropriate effective date for this rule, EPA is proposing to delay the effective date for two years following final rule promulgation. Although two years may or may not be adequate for certain systems to become operational and meet the proposed treatment standards for K088 waste, the length of time needed depends on whether the facility has an existing treatment system or will build a new system. For example, if a facility has an existing thermal system capable of treating K088 waste already, then it may replace its existing system with a vitrification device to meet the proposed requirements and new treatment standards if EPA adopts them. EPA will consider comments and other available information to adjust the time required before treatment capacity capable of meeting the revised treatment standards will be available.

In today's rule, as discussed above, EPA is not soliciting comments on the land disposal prohibition or interim standards for K088 waste. EPA is requesting capacity data and information solely to better assess when treatment or recovery capacity could become available and meet the proposed treatment standards. EPA is also seeking comments on whether two years after the final rule effective date is a sufficient time period to allow for adequate treatment or recovery capacity to become operational.

V. Compliance and Implementation

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Today's proposal would be promulgated pursuant to sections 3004 (g)(4) and (m) of RCRA. It either directly implements these provisions or, in the case of the provisions relating to classification of K088 treatment devices and their outputs, is necessary to implement the section 3004 (g) and (m) K088 treatment standards. Therefore, when promulgated, the Agency would add the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. This rule would be effective in all States immediately pursuant to RCRA section 3006(g). States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorization

As noted above, when promulgated, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because today's rule would be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. However, with respect to the classification of K088 thermal treatment devices as Subpart X units for permitting purposes, we note that many states already have authorization to issue Subpart X permits. Therefore, as a practical matter, these States would continue to be the appropriate permitting authority for K088 thermal treatment devices after promulgation of this rule. If a state is not yet authorized for Subpart X permitting, we encourage those States to apply for Subpart X authority as soon as possible after issuance of this proposal and not wait

until promulgation of the final rule. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21. All HSWA interim authorizations will expire January 1, 2003. (See § 271.24 and 57 FR 60132, December 18, 1992.)

VI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of novel policy reasons. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. The Agency estimated the costs of today's proposed rule to determine if it is a significant regulation as defined by the Executive Order. Because the treatment standards for K088 promulgated in the September 28, 1998 final rule (Interim Treatment Standards for Spent Aluminum Potliners from Primary Aluminum Reduction) have remained in effect, treatment costs for spent aluminum potliner have already been accounted for. Accordingly, EPA believes that there are no costs associated with the existing treatment standards in today's proposed rule. (According to the Court, none of the standards measured by means other than TCLP were affected by the ruling, 139 F.3d at 923, so no costs should be attributed to treating constituents other than cyanide and fluoride under this rule in any case.) Incremental annual treatment costs for cyanide and fluoride attributed to today's proposed rule range from a low estimate of $12.4 million to a high estimate of $36.8 million. The high treatment estimate of $36.8 million is not economically significant according to the definition in Executive Order 12866. These treatment estimates represent only direct expenditures for treatment of cyanide and fluoride attributable to today's proposed rule.

Discussion of the methodology used for estimating the costs and economic impacts attributable to today's proposed rule for K088 wastes may be found in the background document "Economic Assessment for Revised LDR Treatment Standards for Spent Aluminum Potliner (K088)" which was placed in the docket for today's proposed rule. EPA requests comments on the analytical approach to estimate the costs of today's proposed rule, as well as on the economic analysis background document. Further, EPA requests data (cost and/or engineering) to further refine assumptions underlying the implementation of Vortec. Of particular interest to EPA is information on actual commercial costs of the Vortec technology.

1. Methodology Section

The Agency examined reported values for K088 generation from prior Agency estimates in the Phase III LDR final rule to estimate the volumes of K088 affected by today's rule, to determine the national level incremental costs (for both the baseline and three post-regulatory scenarios) and economic impacts. Economic impacts were estimated based upon incremental costs as a percent of sales for three different scenarios. It should be noted that these are hypothetical scenarios, and do not necessarily predict the actual course of action potentially taken by any particular treatment facility. The Agency believes these three hypothetical scenarios to be a reasonable representation of the potential range of possible outcomes of this proposed rule. However, scenario two is thought to be the least likely of the three hypothetical scenarios, and is presented primarily for illustrative purposes. Scenario's one and three represent the range of anticipated responses given the current political environment in which the aluminum industry operates: on-site or off-site treatment in the northwest U.S. versus commercial treatment at the Reynolds Aluminum, Gum Springs, Arkansas facility. The Agency requests comments on these three hypothetical scenarios as well as any alternative scenarios in response to the proposed rule.

Scenario 1: Assumes two facilities will be available for treating K088, one owned by Reynolds, and one storage facility owned by CWMNW. Both facilities are assumed to be retrofitted with the Vortec technology to meet the revised treatment standards;

Scenario 2: Assumes only the treatment facility owned by Reynolds will be available. This facility is assumed to be retrofitted with the Vortec technology; and

Scenario 3: Assumes that facilities in the Pacific Northwest treat on-site using the Vortec technology (using a cost structure similar to the Ormet facility in Hannibal, Ohio), and assumes that the Reynolds facility also will be retrofitted with the Vortec technology.

The basis for the baseline thresholds are the engineering design capacity for one facility and current treatment rates at another. Under the baseline, the existing Reynolds off-site thermal treatment system located in Gum Springs, Arkansas has a design treatment capacity of 120,000 tons per year. Only, 48,455 tons of this capacity were utilized in 1998. The existing CWMNW off-site storage/treatment facility located near Arlington, Oregon has a treatment capacity of 60,000 tons per year based on a communication with the facility that they currently are treating K088 at a rate of 5,000 tons per month.

Unit costs for crushers, impact mills, hammer mills, and on-site Vortec Combustion Melt Systems are scaled based on cost estimates known or developed for certain capacities. Capital costs are scaled to the 0.6 power and operation & maintenance costs are scaled to the 0.9 power to reflect economies of scale with varying capacities. In its simplest form, the equations are as follows:

Scaled Capital Cost = (Known Capital Cost) * (New Capacity/Known Capacity)$^{0.6}$

Scaled O&M Cost = (Known O&M Cost) * (New Capacity/Known Capacity)$^{0.9}$

For off-site Vortec Combustion Melt Systems, unit prices are not scaled based on capacity. Instead a range of unit costs (based on vitrification and incineration market pricing assumed to be high estimates) are used to represent the range of potential commercial pricing that may occur within the post-regulation K088 treatment market.

EPA knows of only two full-scale Vortec systems that have been constructed to date. One plant treats radioactive-contaminated soil and the

other treats K088. They have capacities of 12,950 tons per year and 7,000 tons per year, respectively. The Vortec technology has been licensed to Japan's Mitsubishi Kasei Engineering Co. for the treatment of municipal incinerator ash which is typically generated in larger amounts than K088 annually. This indicates that larger design capacities are likely feasible. The economic assessment estimates costs for systems ranging in capacity from 3,150 tons per year to 85,000 tons per year. We have assumed that, similar to other larger vitrification technologies, Vortec capacities can be built through multiple lines and combining storage requirements. Costs will be higher for multiple lines because not all fixed costs can be shared among lines. These potentially higher costs have been captured within the range of market price proxies used based on vitrification and incineration commercial operations to estimate potential cost impacts.

EPA chose a rate of 50 percent debt to 50 percent equity (or 1.0 debt-equity ratio) as a proxy for actual industry debt-equity structures. The debt-equity ratio may shed some light on the cost of financing the capital expenditures to fully comply with the proposed rule. While the cost of debt financing (interest expenditures) is readily apparent, the cost of equity financing may be more difficult to discern. While many of the larger companies are less reliant on debt financing (*e.g.*, Reynolds Metals and ALCOA have respective debt-equity ratio of approximately 0.7 and 0.5), some of the publicly traded firms are heavily reliant on debt capital (*e.g.*, Kaiser Aluminum has a debt-equity ratio of 35). Data were not obtained for closely-held companies in the industry; EPA assumes that these companies' debt-equity positions would be similar to other aluminum industries (*e.g.*, extruded aluminum, aluminum foundries, die-cast aluminum and secondary nonferrous metals) for which data are available. A review of consolidated financial statements in these related industries (as published in Robert Morris Associates Annual Statement Studies) showed debt-equity ratios in the 1.0 to 1.5 range. We selected a debt-equity ratio of 1.0 rather than other values because it is near the midpoint of the 0.5 to 0.7 (Reynolds Metals and ALCOA) and 1.0 to 1.5 (Robert Morris Associates Annual Statement Studies) ranges. We request comment on the appropriateness of these debt-equity ratios for use in the aluminum industry.

Crusher, impact mill, and hammer mill cost estimates include the following capital cost elements:

- Access road,
- Site preparation (grading),
- Concrete slab on grade,
- Structural steel,
- Conveyor,
- Storage silo (1-day),
- Hopper,
- Crusher, impact mill, or hammer mill equipment purchase and installation costs,
- Pilot test of crusher, impact mill or hammer mill,
- Vibratory screen,
- Instrumentation and electrical,
- Indirect capital cost allowances (permits at 1.25%, insurance and bonding at 2%, construction management at 6%, engineering design at 5%, project management at 2.5%, and overhead and profit at 20%), and
- Contingency on direct and indirect capital costs at 15%.

Crusher, impact mill, and hammer mill cost estimates include the following operation and maintenance cost elements:

- Operator oversight,
- Maintenance labor,
- Maintenance material at 7% of capital,
- Electricity,
- Indirect O&M allowances (project management at 5%), and
- Contingency on direct and indirect O&M costs at 10%.

On-site Vortec Combustion Melting System cost estimates were not developed from the ground up similar to the crushing and milling cost estimates. They were estimated based on scaling aggregate costs obtained from literature. The Department of Energy (DOE) spent $11.6 million to construct a 12,950 ton per year system to treat radioactively contaminated soil in Paducah, Kentucky. EPA assumed that this cost estimate included all the capital cost components listed. In a recent communication with Ormet Primary Aluminum Corporation on February 1, 2000, it was estimated that it would cost $10 million today to construct a similar-sized 7,000 ton per year system to the one they are operating currently. Ormet had to make several modifications to the system and actually spent more than $10 million. Others likely can learn from their experience which is why they estimated only $10 million. EPA did not modify the Paducah cost estimate even though it may be a high estimate for future construction given the others will learn from their experience thus lowering their costs. For O&M costs, we assumed a unit cost at the high end of the $150–$300/ton range estimated for a NHW vitrification system. In recent communication with Ormet, they estimate it cost them less than $300 per ton (excluding depreciation) to operate and maintain their systems.

Off-site Vortec Combustion Melting System cost estimates were not developed from the ground up similar to the crushing and milling cost estimates. Unit price estimates were developed using market unit price estimates for commercial vitrification and commercial incineration as a proxy for the range of potential market pricing. This range of commercial unit prices should account for all the potential costs included in the list of cost elements in the question.

Under Scenario 3, EPA assumed crusher, impact mill, and hammer mill capacity based on current K088 generation rates for that plant. EPA further assumed that additional capacity could be added in the future in generation rates increased. "Site-specific" was changed to "current K088 generation." However, for the Vortec Combustion Melting System, a design capacity that is 40 percent greater than the plants current K088 generation rate was assumed. EPA assumed it would be more difficult to add capacity in the future for the Vortec system and that the initial investment for additional capacity will be made now rather than later.

2. Results

a. Volume Results. EPA estimated an average of 87,746 tons annually for purposes of assessing cost and economic impacts from today's proposed rule. This estimate is based upon the total reported generated quantity managed in 1997, including the 1995 reported quantity for Kaiser Aluminum & Chemical Corporation, Mead, Washington.[32] Moreover, spent potliner (SPL) generation is in the range of 80,000 to 100,000 tons annually.[33] An additional 20,000 tons reported in the 1997 BRS (including leachate and wastestreams that carried other EPA waste codes) were excluded from the economic analysis as they were determined not to be within the scope of today's rule. Previous analyses were based upon generation of an estimated 120,000 tons of SPL annually. This estimate was based upon available data sources from the Phase III Land Disposal Restrictions Final Rule (61 FR 15566, April 8, 1996.). The current K088 treatment standards became effective in

[32] Kaiser Aluminum and Chemical Corp., Mead, Washington facility did not report generating K088 in the 1997 Biennnial Reporting System (BRS). K088 generation data reported in the 1995 BRS were used instead.

[33] Background Document to Establish the Effective Date (March 2000, Section II, Required Capacity) in the docket for today's rule.

September 1998, therefore, several of the reported management practices (*i.e.*, off-site incineration, on-/off-site landfill, and off-site stabilization) did not meet the standard.

The baseline scenario assumes that of the 87,746 tons of spent aluminum potliner generated annually, 47,724 tons currently go to the Reynolds facility for treatment and Subtitle C disposal; 34,854 tons to the CWMNW facility for storage, and 5,170 tons are generated and treated on-site (non-commercially) using the Vortec technology at the Ormet facility. To establish the baseline management unit costs for the economic impact analysis, transportation costs were determined for each aluminum smelter.

b. Cost Results. As stated above, because this rule only modifies the treatment standard for cyanide and establishes a treatment standard for fluoride, the Agency believes that this rule does not impose significant incremental treatment costs associated with treating K088. EPA has estimated transportation, permitting, and treatment costs for K088. Incremental annual treatment costs attributable to today's proposed rule range from $12.4 million under Scenario 1 to $36.8 million under Scenario 2. Capacity currently exists at the CWMNW to treat all stored K088 to current treatment standards, therefore, costs of storage are not included in cost estimates.[34] Transportation and permitting costs are estimated to range from $4.5 million to $11.8 million. EPA previously estimated treatment costs between $6.4 million and $42 million for the LDR Phase III final rule. 61 FR 15566,15591(April 8, 1996). EPA notes that new K088 treatment technologies are currently being developed that may significantly lower K088 treatment costs nationally.[35] EPA does not believe that this proposed rule will create barriers to market entry for firms wishing to provide alternative treatment capacity for spent aluminum potliner. Estimated economic impacts reflect direct expenditures to construct using Vortec and do not reflect the full costs of compliance.

EPA has also estimated the potential value of the fluoride-rich baghouse dust that is a by-product of the Vortec process. In 1994, approximately 73% of reported fluorspar consumed in the U.S. was used in the production of hydrofluoric acid; 10% as a fluxing agent in steelmaking; and, 17% in aluminum fluoride manufacture, primary aluminum production, glass manufacture, enamels, welding-rod coatings, and other miscellaneous end uses or products. Fluorspar prices are driven to a large extent by activities in China, including major increases in Chinese exports and the resulting competition between Chinese exporters and the introduction of Chinese export quotas and license fees. The average U.S. Gulf port price per ton, dry basis, for acid grade fluorspar is $122. The current licensing fee for Chinese (acid grade) fluorspar is $39. This price per ton represents the average delivered price of Chinese, Mexican, and South African acid grade at Gulf port.

About 90,000 tons of K088 waste were reported managed in the U.S. in 1997. The estimated cost per ton of the Vortec system (excluding permitting prices) ranges from $483 to $693. The Agency has assumed that this estimated treatment cost per ton includes both the generation cost of fluoride-rich material, as well as cyanide removal. The Agency does not have data to isolate the cost of cyanide removal; this cost is included in the overall treatment cost using the Vortec process. Annual cost impacts of the proposed rule were estimated to range from about $12 million to $37 million in aggregate for all facilities. About 5,250 tons of fluoride-rich material (assuming 100% of the fluoride baghouse dust is marketed as fluorspar) are generated annually in the U.S. Based upon the $122 price per ton for acid grade fluorspar, the resulting estimated value of the fluoride-rich baghouse dust is $640,500.

c. Economic Impact Results. To estimate potential economic impacts resulting from today's proposed rule, EPA has used first order economic impact measures such as the estimated incremental management unit costs of today's final rule as a percentage of affected firms' sales and/or revenues. Individual facilities were considered in the analysis. Annual sales for each facility were estimated from overall industry production data and industry capacity. Total industry capacity estimates were taken from USGS data. Industry production divided by industry capacity determined the overall capacity utilization. Sales for each facility were approximated assuming that they each produced aluminum at this capacity utilization rate of approximately 88 percent. When the annual costs of regulation are less than one percent of a firms annual sales or revenues, this analysis presumes that the regulation does not pose a significant economic impact on the affected facilities absent information to the contrary. In 1997, U.S., primary aluminum production was an estimated 4.0 million metric tons of aluminum at an average market price of $1,542 per ton yielding total sales of $6.1 billion.[36] The $36.8 million high estimate of the incremental treatment cost estimate represents only 0.6 percent of the total value of the aluminum sold by primary aluminum producers. It is likely, as discussed, that treatment costs will decrease as new firms develop commercial technologies for K088. As a result, this proposed rule will not pose a significant economic impact on primary aluminum producers in the United States. More detailed information on this estimate can be found in the economic assessment placed into today's docket.

d. Benefits Assessment. EPA has not conducted a quantitative assessment of actual benefits from this proposed rule. Because today's proposed rule promulgates a revised treatment standard for cyanide and establishes a treatment standard for fluoride in K088, the Agency believes that there may be a reduction in the levels of cyanide and fluoride in leachate, which may reduce human health risks in the event of a landfill liner failure and subsequent actual exposure by any nearby populations.

Since the proposed rule is technology-based (and not risk-based) the Agency has not conducted a data collection and analysis of actual cyanide

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[34] Chemical Waste Management has received approximately 30,000 tons of K088 to-date, of which approximately 10,000 tons have already been treated. Further, Chemical Waste Management continues to receive 2,000 tons of additional K088 per month, while treating 5,000 tons of K088 per month. Net effect is a 3,000 ton per month reduction in stored K088. Personal communication with Steve Seed, Chemical Waste Management, and Linda Martin U.S.E.P.A., January 5, 2000.

[35] For example, previously Reynolds Metals Company has provided data indicating that the treatment of disposal cost of their process, though variable depending on a series of factors, is between $200 and $500 per ton. Personal Communication with Jack Gates, Vice-President, Reynolds Metals Company, September 28, 1994 as cited in Regulatory Impact Analysis of the Phase III Land Disposal Restrictions Final Rule, U.S. Environmental Protection Agency, Office of Solid Waste, February 15, 1996. Recently, Waste Management has quoted treatment and disposal charges at $160 per ton for treatment capacity now being developed at its Arlington, Oregon facility. Letter from Mitchell S. Hahn, Manager, Environmental Health and Safety, Waste Management Inc. to Paul A. Borst, Economist, USEPA, Office of Solid Waste, June 4, 1998. The Waste Management treatment and disposal charge is determined by subtracting the $85 storage price from a new customer price of $245 per ton. Transportation costs are not factored into this estimate. Of the $160 per ton treatment and storage cost, $80 per ton is attributable to treatment and $80 is attributable to disposal. Personal Communication with Mitch Hahn, Chemical Waste Management, and Paul Borst, U.S.E.P.A. August 13, 1998.

[36] Mineral Commodity Summaries 1999, U.S. Department of the Interior, U.S. Geological Survey.

contamination. However, the Agency has reviewed the available actual damage incidents with respect to the potential for spent aluminum potliner to release free cyanide, and cyanide's mobility and persistence following release. Specifically, the July 7, 1980 background document for the original spent aluminum potliner (K088) listing identified a damage case involving Kaiser Aluminum's Mead Works. Kaiser's facility is situated 150 feet above the Spokane aquifer which is used for private wells and drains into the Little Spokane River. Leachate from a lagoon containing potliners and sludge leached through the ground and contaminated the aquifer with cyanide. Eighteen wells were contaminated, some having cyanide levels in excess of 1,000 ppb. Kaiser had to provide alternative sources of drinking water to the affected owners and upgrade and seal the leaking lagoon.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the reasons stated above, in the estimated costs discussion of section X.A.2, the Agency does not believe that today's proposed rule will have a significant impact on a substantial number of small entities. The overall economic impact of today's proposed rule to promulgate revised treatment standards for total and amenable cyanide and establish a treatment standard for fluoride in spent aluminum potliner results in annual incremental costs ranging from $12.4 million to $36.8 million.

The proposed rule will affect an estimated 22 aluminum smelting companies. Of the companies in question, 21 are expected to incur costs. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: a small business that has less than 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. No more than one facility is estimated to be small according to the Small Business Administration definition for small for SIC 3334 (Primary Production of Aluminum). After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that the preliminary estimate of the impact on affected facilities indicates compliance costs may exceed 1% of sales for this facility. The overall impact to the entire affected population of facilities is expected to range from 0.0 to 1.9 percent of sales, however, only under the assumption that the only K088 management facility will be the Reynolds facility in Arkansas.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA has sought data to determine available treatment technologies for establishment of treatment standards for cyanide and fluoride, as well as available markets for recycled K088.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts. More information on this analysis can be found in the background document "Economic Assessment for Revised LDR Treatment Standards for Spent Aluminum Potliner (K088)" placed in the public docket.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more in the aggregate to either State, local, or tribal governments or the private sector in one year. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because this is not an economically significant regulatory action as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency has concluded this because this rulemaking proposes treatment standards for hazardous constituents in spent aluminum potliner that minimizes both short-term and long-term threats to human health and the environment. The environmental health risks or safety risks addresses by this action do not have a disproportionate effect on children.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed the results of early life exposure to K088 waste or its regulated constituents of concern, e.g., cyanide, fluoride, arsenic, and polycyclic aromatic hydrocarbons.

E. Environmental Justice Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's proposed rule covers K088 spent potliner wastes from primary aluminum operations. It is not certain whether the environmental problems addressed by this rule could disproportionately effect minority or low income communities, due to the location of primary aluminum operations. Because today's proposed rule establishes treatment standards for K088 being land disposed, the Agency does not believe that today's rule will increase risks from K088. It is, therefore, not expected to result in any disproportionately negative impacts on minority or low income communities relative to affluent or non-minority communities.

F. Paperwork Reduction Act

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–120 (ICR No. 1573, Part B Permit Application); 2050–120 (ICR 1571, General Facility Standards); 2050–0028 (ICR 261, Notification to Obtain an EPA ID); 2050–0034 (ICR 262, Part A Permit Application); 2050–0039 (ICR 801, Hazardous Waste Manifest); 2050–0035 (ICR 820, Generator Standards); and 2050-0024 (ICR 976, Biennial Report).

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. Existing determination methods are employed for the analysis of cyanide in the treated waste and fluoride in the deionized water leachate from the treated waste. As stated above, today's action proposes a revised treatment standard for fluoride in nonwastewaters, based on a recognized version of the toxicity characteristic leaching procedure, ASTM Method D3987–85 (1999) Standard Test Method for Shake Extraction of the Solid Waste With Water. This is a consensus method.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input to the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Aluminum potliners are not currently generated or treated on any known Indian tribal lands. Today's proposal does not create a mandate on State, local or tribal governments. The proposal would not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

I. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implication." "Policies that have federalism implication" is defined in the Executive Order to include regulation that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by State and local government, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also when EPA transmits a draft final rule with federalism implication to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Environmental protection, Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

I. In part 260:

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—[Amended]

2. Section 260.10 is amended by revising the definition of "incinerator" and adding the definition of "K088 vitrification unit" in alphabetical order to read as follows:

§ 260.10 Definitions.

* * * * *

Incinerator means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, carbon regeneration unit, or K088 vitrification unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

* * * * *

K088 vitrification unit means an enclosed device in which K088 waste and other materials are introduced into a pool of molten glass and whereby waste components that are dissolved or suspended in the molten matrix are subsequently entrapped or chemically bound in the matrix upon cooling to form a solid mass. Such units are classified as other thermal treatment units.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

II. In part 261:

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraphs, (a)(20) and (a)(21) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(20) Glass frit generated by the vitrification of K088, provided the frit is recycled legitimately and is not accumulated speculatively (as defined in § 261.1(c)(8)) and meets the requirements of § 268.40 of this chapter.

(21) Fluoride-rich baghouse dust generated by the vitrification of K088, provided the dust is recycled legitimately as an ingredient or for reclamation by introduction into industrial processes and is not land disposed (i.e., placed on the land) before doing so and is not accumulated speculatively (as defined in § 261.1(c)(8)) of this chapter.

* * * * *

3. Section 261.6 is amended by revising the last sentence of paragraph (c)(1) to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c)(1) * * * (The recycling process itself is exempt from regulation except as provided in § 261.6(d) and except that K088 vitrification units are not exempt from regulation.)

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

II. In part 268:

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.40 is amended by revising the entry for K088 in the table entitled Treatment Standards For Hazardous Wastes and adding footnote 12 to read as follows:

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS[2] number	Concentration in mg/L[3], or technology code[4]	Concentration in mg/kg[5] unless noted as mg/L TCLP, or technology code
*	*	*	*	*	*
K088	Spent potliner from primary aluminum reduction.	Acenaphthalene	83–32–9	0.059	3.4
		Anthracene	120–12–7	0.059	3.4
		Benzo(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Benzo(b)fluoranthene	205–99–2	0.11	6.8
		Benzo(k)fluoranthene	207–08–9	0.11	6.8
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		Fluoranthene	206–44–0	0.068	3.4
		Indeno(1,2,3,-c,d)pyrene	193–39–5	0.0055	3.4
		Phenanthrene	85–01–8	0.059	5.6
		Pyrene	129–00–0	0.067	8.2
		Antimony	7440–39–3	1.9	1.15 mg/L TCLP
		Arsenic	7440–38–2	1.4	26.1 mg/kg
		Barium	7440–39–3	1.2	21.0 mg/L TCLP
		Beryllium	7440–41–7	0.82	1.22 mg/L TCLP
		Cadmium	7440–43–9	0.69	0.11 mg/L TCLP
		Chromium (Total)	7440–47–3	2.77	0.60 mg/L TCLP
		Lead	7439–92–1	0.69	0.75 mg/L TCLP
		Mercury	7439–97–6	0.15	0.025 mg/L TCLP
		Nickel	7440–02–0	3.98	11.0 mg/L TCLP
		Selenium	7782–49–2	0.82	5.7 mg/L TCLP
		Silver	7440–22–4	0.43	0.14 mg/L TCLP
		Cyanide (Total)[7]	57–12–5	1.2	1.4 mg/kg
		Cyanide (Amenable)[7]	57–12–5	0.86	1.4 mg/kg
		Fluoride	16984–48–8	35	2.7 mg/L Deionized TCLP[12]
*	*	*	*	*	*

Footnotes to Treatment Standard Table 268.40

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts

and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW 846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

* * * * *

[12] Fluoride extraction must be performed using ASTM Method D3987–85(1999) Standard Test Method for Shake Extraction of Solid Waste with Water.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

3. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

4. Section 271.1(j) is amended by adding the following entries to Table 1 and Table 2 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	* * *	* *	*
[date of final signature].	Treatment Standards for Hazardous Waste K088	*Federal Register* page numbers.	*[date of signature]*
*	* * *	* *	*

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	* * *	* *	*
[date of final signature].	Prohibition on land disposal of K088 wastes, and prohibition on land disposal of radioactive waste mixed with K088 wastes, including soil and debris.	3004(g)(4)(C) and 3004(m).	*[date of publication of final rule]* [FR page numbers].
*	* * *	* *	*

* * * * * * *

[FR Doc. 00–16965 Filed 7–11–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6732–9]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Delaware. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before August 11, 2000.

ADDRESSES: Mail written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. You can examine copies of the materials submitted by Delaware during normal business hours at the following locations: EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254; or Department of Natural Resources & Environmental Control, Division of Air & Waste Management, 89

Kings Highway, Dover, DE 19901, Phone number: 302–739–3689.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe at the above address and phone number (215) 814–5454.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: June 19, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–17346 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168, CS Docket No. 98–120, FCC 00–224]

Service Rules for the 746 Through 764 and 776 Through 794 MHz Bands, Carriage of the Transmission of Digital Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document solicits comment on various aspects of the spectrum clearance process for the 746–764 and 776–794 MHz (700 MHz) band. First, the document seeks comment on cost-sharing rules. Second, the document requests comment on the Commission's review of possible three-way voluntary relocation agreements to expedite clearing of the 700 MHz band. Third, the document invites comment on "secondary auctions." Finally, the document invites comment whether incumbent broadcasters and new 700 MHz licensees should be permitted to share spectrum, and on whether the standards the Commission adopts for the channel 59–69 band should apply to incumbents on channels 58 and lower. The action is intended as a method of creating a comprehensive record, representing as many varying viewpoints as possible, upon which to base decisions in this proceeding.

DATES: Submit comments on or before August 16, 2000; submit reply comments on or before September 15, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joel Rabinovitz, 202–418–0689.

SUPPLEMENTARY INFORMATION: This is a summary of the Further Notice of Proposed Rule Making (FNPRM) portion of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99–168 and CS Docket No. 98–120, FCC 00–224, adopted June 22, 2000, and released June 30, 2000. The Memorandum Opinion and Order (MO&O) portion of the decision is summarized elsewhere in this edition of the **Federal Register**. The complete text of the MO&O/FNPRM is available on the Commission's Internet site at www.fcc.gov. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street SW, Washington, DC. Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

Synopsis of the FNPRM

1. The Commission, through the FNPRM, solicits comment on four aspects of the spectrum clearance process initiated in the First Report and Order (First R&O) in this proceeding (65 FR 3139, January 20, 2000). The First R&O adopted a band plan and associated service rules for the assignment of licenses in 30 megahertz of the 700 MHz band (747–762 and 777–792 MHz). In the First R&O, the Commission concluded that it would consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees that would compensate incumbents for clearing the band or otherwise accommodating the new licensees. In the FNPRM, the Commission seeks comment on other potential mechanisms to further the goals of transitioning the 700 MHz band to wireless services and accelerating the transition to digital television.

2. The FNPRM first invites comment on whether to adopt cost-sharing rules that would spread the cost of clearing the 700 MHz band for use by the new licensees among 700 MHz licensees that benefit from the process. Specifically, the Commission invites comment on the following issues: (1) Would cost-sharing rules would expedite clearing the 700 MHz band for use by the new licensees and the transition to DTV by incumbent broadcasters, or should, as the Commission tentatively concludes, cost-sharing arrangements should be left to negotiations among successful auction bidders? and (2) If the Commission adopts cost-sharing rules, how should the Commission calculate the costs that benefiting 700 MHz licensees would be required to pay. The Commission also tentatively concludes that if it were to adopt cost-sharing rules, licensees of the public safety spectrum would not be required to pay a share of the clearing costs, and invites comment on this tentative conclusion.

3. The FNPRM solicits comment on whether there are mechanisms other than cost-sharing rules that the Commission could implement to facilitate voluntary band clearing. In particular, the Commission seeks comment on whether there are market-oriented mechanisms that might be more efficient to facilitate voluntary band clearing than the negotiation of individual band clear agreements by each 700 MHz licensee and each incumbent.

4. One alternative on which the FNPRM solicits comment is three-way voluntary transition agreements that would provide for TV incumbents on television channels 59–69 to relocate to lower band TV channels that, in turn would be voluntarily cleared by the lower band TV incumbents. The Commission seeks comment on whether and under what conditions such agreements should be approved. The Commission, in the FNPRM seeks comment on how the Commission should evaluate possible loss of service in reviewing specific requests for voluntary relocations, and on whether the Commission should consider steps other than the review and approval or disapproval of voluntary agreements.

5. The FNPRM also invites comment on the use of "secondary auctions" in conjunction with this or future auctions in the band as another tool for facilitating band clearing agreements. In a secondary auction, competitive bidding would be used to determine the price that would be paid by 700 MHz licensees to TV incumbents who agree to clear their channels in the 700 MHz band. The FNPRM seeks comment on this alternative, on whether such an auction should be conducted on a private basis, whether the Commission has legal authority to conduct a secondary auction, and, if a secondary auction were to be conducted by the Commission, how it should be organized.

6. Finally, the Commission, through the FNPRM solicits comment on whether additional proposals should be considered to accelerate the digital television transition. For example, should the Commission allow incumbent broadcasters on television

channels 59–69 and 700 MHz new service providers to share spectrum in time and/or bits? Lastly, the FNPRM seeks comment on whether any of the enhanced band clearing proposals discussed in the FNPRM for incumbents on channels 59–69 should also apply to incumbents on channels 58 and lower.

Initial Regulatory Flexibility Analysis

7. This is a synopsis of the Initial Regulatory Flexibility Act Statement in the Further Notice of Proposed Rulemaking (FNPRM). The full text of Initial Regulatory Flexibility Act Statement may be found in Appendix C of the full Memorandum Opinion and Order and NPRM.

8. As required by the Regulatory Flexibility Act (RFA)(*see* 5 U.S.C. 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)) the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by certain policies and rules proposed in the FNPRM. Pursuant to the Consolidated Appropriations Act, 2000, the requirements of the RFA do not apply to the rules and competitive bidding procedures governing assignments to commercial entities of frequencies in the 746 MHz to 806 MHz band. Accordingly, the IRFA does not include an analysis of the possible economic impacts that might result from such rules and procedures. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the Memorandum Opinion and Order and FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for and Objectives of the Proposed Rules

9. The Congressional plan set forth in Sections 336 and 337 of the Act and in the 1997 Budget Act is to transition the 700 MHz band from its current use for broadcast services to commercial use and public safety services as expeditiously as possible. In the FNPRM, the Commission moves towards this goal by seeking comment on whether mechanisms other than those adopted in the First R&O might further facilitate the voluntary clearing of TV incumbents from the band. Further discussion of the need for and objectives of the proposed rules can be found at paragraph 2 of the full text of the IRFA.

B. Legal Basis

10. This action is authorized under Sections 1, 4(i), 7, 10, 301, 303, 307, 308, 309(j), 309(k), 316, 331, 332, 336, 337 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 301, 303, 307, 308, 309(j), 309(k), 316, 331, 332, 336, 337, and 534, and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Section 213.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). According to SBA reporting data, there were approximately 4.44 million small business firms nationwide in 1992. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

12. The policies and rules proposed in the FNPRM discussed in the IRFA would affect all small entities that seek to acquire licenses in wireless services in the 698–746 MHz band ("lower 700 MHz band") currently used for television broadcasts on Channels 52–58, or that are incumbent television broadcasters.

13. The Commission has not yet developed a definition of small entities applicable to the lower 700 MHz band. Therefore, the applicable definition is the one under the Small Business Administration rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. However, no channelization plan or licensing plan has been proposed or adopted for the lower 700 MHz band. Therefore, the number of small entities that may apply to acquire licenses in the lower 700 MHz band is unknown.

14. The SBA defines a television broadcasting station that is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. There were 1,509 television stations operating in the nation in 1992. In 1992, there were 1,155 television station establishments that produced less than $10.0 million in revenue (76.5 percent). As of May 31, 1998, official Commission records indicate that 1,579 full power television stations, 2089 low power television stations, and 4924 television translator stations were licensed. We conclude that a similarly high percentage of current television broadcasting licensees are small entities (76.5 percent).

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. At this time, the Commission does not anticipate the imposition of new reporting, recordkeeping, or other compliance requirements as a result of the FNPRM. If the Commission later finds a need to impose new reporting, recordkeeping or other compliance requirements as a result of deciding to adopt any of the proposals contained in the FNPRM, a period of public and agency comment will be established at that time.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

17. The Commission seeks comment on the economic impact that the proposals described in the FNPRM might have on small entities. With the exception of the cost-sharing rules, the proposals on which the FNPRM seeks comment are based on the voluntary participation of both new 700 MHz licensees and incumbent television broadcasters. Cost-sharing rules, if adopted, would require those new 700 MHz licensees that benefit from a clearing agreement with a TV incumbent to share the costs of that agreement. Insofar as small entities could not afford to enter into clearing agreements without the costs being shared by other 700 MHz licensees, the cost-sharing rules would provide a positive economic benefit to small entities. To the extent that other licensees would enter into clearing agreements without the costs being shared by small entities, thereby giving the small entities a "free ride," cost-sharing rules would produce a significant economic impact on small entities. Finally, to the extent that small entities would prefer not to enter into clearing agreements but to wait until the incumbent TV licensee was required to clear the band by statute, and cost-sharing rules would require small entities to share the costs of clearing agreements, cost-sharing rules would also produce a significant economic impact on small entities. As a general matter, cost-sharing rules must apply to all licensees in order for them to operate as intended. Moreover, without a channelization plan for the lower 700 MHz band, it is not possible at this time to determine whether the Commission could exempt some or all small entities from any cost-sharing rules adopted, or otherwise minimize the impact on small entities. One significant alternative the Commission is considering is not to adopt any cost-sharing rules.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

18. None.

Ordering Clauses

19. Notice is hereby given of the proposed regulations described in the FNPRM , and that comment is sought on these proposals.

20. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of the MO&O and FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1980).

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Group.

[FR Doc. 00–17649 Filed 7–11–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG27

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Morro Shoulderband Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Morro shoulderband snail (*Helminthoglypta walkeriana*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 1,039 hectares (2,566 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in San Luis Obispo County, California. If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation and our approaches for handling habitat conservation plans (HCPs). We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until September 11, 2000. Public hearing requests must be received by August 28, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003.

2. You may hand-deliver written comments to our Ventura Office, at the address given above.

3. You may send comments by electronic mail (e-mail) to FW1vees_MorrosnailCH@r1.fws.gov. For directions on how to submit electronic filing of comments, see **Public Comments Solicited** section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Office.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Morro shoulderband snail was first described as *Helix walkeriana* by Hemphill (1911) based on collections made "near Morro, California." He also described a subspecies, based on sculptural features of the shell, *Helix walkeriana, Helix* var. *morroensis,* that was collected "near San Luis Obispo City" (Roth 1985). The Morro shoulderband snail is also commonly known as the banded dune snail and belongs to the Class Gastropoda and Family Helminthoglyptidae.

The shell of the Morro shoulderband snail is slightly translucent (clear) and has 5–6 whorls. Its dimensions are 18 to 29 millimeters (mm) (0.7 to 1.1 inches (in.)) in diameter and 14 to 25 mm (0.6 to 1.0 in.) in height. The Morro shoulderband snail can be distinguished from the Big Sur shoulderband snail (*Helminthoglypta umbilicata*), another

native snail in the same area, by its more globose (globe shaped) shell shape and presence of incised (deeply cut) spiral grooves (Roth 1985). The shell of the Big Sur shoulderband snail tends to be flatter and shinier. The brown garden snail (*Helix aspersa*) also occurs in Los Osos with the Morro shoulderband snail and has a marbled pattern on its shell, whereas the Morro shoulderband snail has one narrow dark brown spiral band on the shoulder. The Morro shoulderband's spire is low-domed, and half or more of the umbilicus (the cavity in the center of the base of a spiral shell that is surrounded by the whorls) is covered by the apertural (small opening) lip (Roth 1985).

The Morro shoulderband snail is found only in western San Luis Obispo County. At the time of its addition to the List of Endangered and Threatened Wildlife on December 15, 1994 (59 FR 64613), the Morro shoulderband snail was known to be distributed near Morro Bay. Its currently known range includes areas south of Morro Bay, west of Los Osos Creek and north of Hazard Canyon. Historically, the species has also been reported near the city of San Luis Obispo (type locality for "*morroensis*") and south of Cayucos (Roth 1985).

The Morro shoulderband snail occurs in coastal dune and scrub communities and maritime chaparral. Through most of its range, the dominant shrub associated with the snail's habitat is mock heather (*Ericameria ericoides*). Other prominent shrub and succulent species are buckwheat (*Eriogonum parvifolium*), eriastrum (*Eriastrum densifolium*), chamisso lupine (*Lupinus chamissonis*), dudleya (*Dudleya* sp.), and in more inland locations, California sagebrush (*Artemisia californica*) and black sage (*Salvia mellifera*) (Roth 1985).

Away from the immediate coast, immature scrub in earlier successional stages may offer more favorable shelter sites than mature stands of coastal dune scrub. The immature shrubs provide canopy shelter for the snail, whereas the lower limbs of larger older shrubs may be too far off the ground to offer good shelter. In addition, mature stands produce twiggy litter that is low in food value (Roth 1985).

No studies or documented observations exist on the feeding behaviors of the Morro shoulderband snail. Hill (1974) suggested that the snail probably feeds on the fungal mycelia (webs or mats of non-reproductive fungal strands) growing on decaying plant litter. The Morro shoulderband snail is not a garden pest and is essentially harmless to gardens (Chambers 1997).

Sarcophagid flies (family of flies that rely on a host to complete its life-cycle) have been observed to parasitize the Morro shoulderband snail. Empty puparia ("cases" left behind by adult flies emerging from pupae) were observed in empty snail shells by Hill (1974), Roth (1985), and Kim Touneh (Service, pers. comm. 1997). Hill (1974) and Roth (1985) suggested that mortality from infestations of larvae of this parasitic fly often occurs before the snails reach reproductive maturity. The flies may have a significant impact on the population of the snail (Roth 1985). Seasonal drought and/or heat may contribute to the snail's egg mortality (Roth 1985). Based on shell examination, Roth (1985) also suggested that rodents may prey on the snail.

The Morro shoulderband snail is threatened by destruction of its habitat due to increasing development and by degradation of its habitat due to invasion of nonnative plant species (*e.g.*, veldt grass (*Ehrharta calycino*)), structural changes to its habitat due to maturing of dune vegetation, and recreational use (*e.g.*, heavy off-highway activity). In addition to the known threats, possible threats to the snail include competition for resources with the nonnative brown garden snail (although no assessment has been made of possible dietary overlap between the species); the small and isolated nature of the remaining populations; the use of pesticides (including snail and slug baits); and the introduction of nonnative predatory snails.

Previous Federal Action

We entered into a contract with the Sierra Club Foundation, San Francisco, California, to investigate the status of California land snails. A final report dated August 25, 1975, contained data indicating that several of the snails studied could be considered candidates for listing as threatened or endangered species. On April 28, 1976, we proposed endangered or threatened status for 32 land snails in the **Federal Register** (41 FR 17742). This proposal included the Morro shoulderband snail (under the common name "banded dune snail") as endangered. However, we withdrew the proposed rulemaking on December 10, 1979 (44 FR 70796), because of the 1978 amendments to the Act, which required the withdrawal of proposals over 2 years old.

In 1984, we undertook a status review of the snail, which ended in a report by Roth (1985). Based on that report, we included the Morro shoulderband snail as a category one species in the Animal Notices of Review of May 22, 1984 (40 FR 675); January 6, 1989 (54 FR 554); and November 21, 1991 (56 FR 58820). A category one species is one on which we have sufficient information to support a listing.

On December 23, 1991, we published a proposed rule in the **Federal Register** (56 FR 66400) to list five plants and the Morro shoulderband snail as endangered. We reopened the comment period on June 8, 1992 (57 FR 24221). On December 15, 1994, we published a final rule adding the Morro shoulderband snail and four plants to the List of Endangered and Threatened Wildlife as endangered species (59 FR 64613). We published a final recovery plan in September 1998.

At the time of listing, we concluded that designation of critical habitat for the Morro shoulderband snail was not prudent because such designation would not benefit the species. We were also concerned that critical habitat designation would likely result in an increased threat of vandalism or collection of the species. However, we have determined that instances of vandalism have not increased since the listing of the Morro shoulderband snail, and the threats to this species and its habitat from specific instances of collection and habitat destruction do not outweigh the broader educational, potential regulatory, and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas were already identified in the recovery plan as the focus of our recovery efforts for the Morro shoulderband snail.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (Southwest Center for Biological Diversity v. U.S. Fish and Wildlife, CIV 99–1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit

pursuant to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives some protection from destruction or adverse modification through required consultation under section 7 of the Act. See "Section 7 Consultation" below. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits.

Methods

In determining areas that are essential to conserve the Morro shoulderband snail, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the recovery plan, regional Geographic Information System (GIS) vegetation coverages, and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic and ecological distributions of a species.

The primary constituent elements of critical habitat for the Morro shoulderband snail are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The areas we are proposing to designate as critical habitat provide some or all of the primary constituent elements, which are: sand or sandy soils; a slope not greater than 10 percent; and the presence of, or the capacity to develop, native coastal dune scrub vegetation. This vegetation is typically represented, but not exclusively, by mock heather, buckwheat, eriastrum, chamisso lupine, dudleya, and in more inland locations, California sagebrush and black sage. Some of the habitat in the proposed units could be improved through habitat rehabilitation or improved management (*e.g.*, removal of nonnative species).

Criteria Used To Identify Critical Habitat

In an effort to map areas that have the features essential to the conservation of the species, we used data on known Morro shoulderband snail locations and conservation planning areas that were identified in the final recovery plan (Service 1998) as essential for the recovery of the species. All of the proposed critical habitat areas are occupied.

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for Morro shoulderband snail conservation. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas, will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

We also considered the existing status of lands in designating areas as critical habitat. The Morro shoulderband snail is known to occur on State, county, and private lands. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal and private lands that are covered by an existing operative HCP and an executed implementation agreement (IA) for Morro shoulderband snail under Section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and therefore are not proposed for inclusion in critical habitat since then do not meet the definition of critical habitat in section 3(5) of the Act.

Critical habitat designation is not intended to discourage the development of HCPs to protect essential habitat areas for the Morro shoulderband snail on non-Federal lands. To the contrary, we consider HCPs to be one of the most important methods through which non-Federal landowners can help conserve listed species while resolving potential land-use conflicts. We provide technical assistance and work closely with applicants throughout development of

HCPs to help identify special management considerations for listed species. We intend that HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by land ownership is shown in Table 1. Proposed critical habitat includes Morro shoulderband snail habitat throughout the species' existing range in the United States (*i.e.*, San Luis Obispo County, California). Lands proposed are under private and State and local ownership. The species is not known to occur or to have historically occurred on Federal lands. Lands proposed as critical habitat have been divided into three Critical Habitat Units. Brief descriptions of each unit, and our reasons for proposing it as critical habitat, are presented below.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) AND ACRES (AC) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries. Not all the areas within those broad boundaries, such as cities, towns, or other developments, will be considered critical habitat since these areas do not contain habitat considered essential to the survival of the Morro shoulderband snail.]

County	Federal land	Local/state land	Private land	Total
San Luis Obispo	N/A	790 ha (1,951 ac)	249 ha (615 ac)	1,039 ha. (2,566 ac).

Unit 1: Morro Spit and West Pecho

Unit 1 encompasses areas managed by Montaña de Oro State Park (Dunes Natural Preserve) and the City of Morro Bay (north end of spit), including the length of the spit and the foredune areas extending south toward Hazard Canyon. The unit is occupied by the Morro shoulderband snail, and it provides dune scrub habitat for the species. The spit's windward side and its north end are nonvegetated; patches of vegetation occur along its leeward side on Morro Bay. The West Pecho portion of this unit lies to the east of the Morro Spit Conservation Planning Area and is bounded on the east by Pecho Road and the community of Los Osos. It extends north to the Bay and south to Hazard Canyon. Elevations range from sea level on the Bay to about 75 meters (m) (250 feet (ft)) along its southeastern edge. Vegetation associations include coastal dune scrub, with coastal sage scrub closer to Hazard Canyon. The California Department of Fish and Game owns an ecological reserve in this unit, which is managed cooperatively with adjoining State Park property. Privately owned lands occur to the northeast in the community of Los Osos, but no private lands are included in this unit and are not reflected in the approximate area of the critical habitat proposed. Approximately 676 hectares (ha) (1,670 acres (ac)) occur on State land, and 65 ha (160 ac) occur on local government land.

Unit 2: South Los Osos

Unit 2 is bounded on the north and east by residential development in the community of Los Osos and agricultural fields. The area on the lower slopes of the Irish Hills, where the vegetation is composed of maritime chaparral, is currently occupied by the Morro shoulderband snail and is considered essential. We are designating approximately 130 ha (320 ac) of this area as critical habitat. This area is privately owned.

Unit 3: Northeast Los Osos

The Northeast Los Osos Critical Habitat Unit includes undeveloped areas between Los Osos Creek and Baywood Park and is divided by South Bay Boulevard. Its elevation range is from sea level to about 30 m (100 ft). Vegetation is dominated by variants of coastal sage and dune scrub, with scattered stands of manzanita (*Arctostaphylos* spp.) and coast live oak (*Quercus agrifolia*). The Morro shoulderband snail is known to occupy this unit. This unit includes the State- and county-owned Elfin Forest Preserve, portions of Morro Bay State Park, and privately owned lands. The Los Osos Center, Hord Residential, and MCI/Worldcom HCPs fall within the unit boundaries, but areas where take has been authorized are not being proposed for critical habitat. Approximately 49 ha (121 ac) of proposed critical habitat in this unit occur on State land, and 119 ha (295 ac) occur on private land.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. When multiple units of critical habitat are designated, each unit may serve as the basis of a jeopardy analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed

critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Under section 7(a)(2), if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water Act or a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration (FHA), Environmental Protection Agency (EPA), or Federal Emergency Management Agency (FEMA)), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Morro shoulderband snail is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that result in excavation, mechanized land clearing, or uncontrolled burning of coastal dune scrub vegetation; and

(2) Activities that could lead to the introduction of exotic species into occupied Morro shoulderband snail habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may "result in the destruction or adverse modification of" critical habitat with the requirements for actions that may "jeopardize the continued existence of" a listed species. Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by the Morro shoulderband snail is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. When critical habitat is designated in unoccupied areas, the designation could result in an increase in regulatory requirements on Federal agencies; however, all of the proposed critical habitat for the Morro shoulderband snail is occupied.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. The actions we consult on include, but are not limited to:

(1) Activities conducted by the USACE (*e.g.*, ordnance removal);

(2) Road construction and maintenance funded by the FHA; and

(3) Other activities funded or permitted by Federal agencies (e.g., EPA, FEMA).

Relationship to Habitat Conservation Plans

Several habitat conservation planning efforts have been completed within the range of the Morro shoulderband snail. The Los Osos Center HCP, Hord Residential HCP, and MCI/Worldcom HCP contributed funds toward the purchase and perpetual management of several acres to serve as conservation sites for the Morro shoulderband snail. Because the snail habitat preserved in these existing HCP planning areas will be managed for the benefit of the snail under the terms of the individual HCPs, no additional management considerations or protections are required for those lands. Therefore, we have determined that non-Federal lands within approved HCP planning areas for the Morro shoulderband snail do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

HCPs currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Morro shoulderband snail, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the snail. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those

specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the Morro shoulderband snail. Several HCP efforts are now under way for listed species in areas within the range of the Morro shoulderband snail in areas we propose as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species. However, since these HCP are not completed these areas have been included in this proposed critical habitat designation. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the Morro shoulderband snail should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, Eastside Federal Complex, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

(2) Specific information on the amount and distribution of Morro shoulderband snail habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designation of critical habitat for the Morro shoulderband snail, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, bird-watching, "existence values," improved air quality, increased soil retention, and changes in administration *i.e.* maintenance of area).

In this proposed rule, we do not propose to designate critical habitat on non-Federal and private lands within the boundaries of an existing approved HCP with an executed IA for Morro shoulderband snail approved under section 10(a)(1)(B) of the Act because the existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the snail. We believe that such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach, and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat; or

(2) Designate as critical habitat reserves, preserves, and other conservation lands identified by approved HCPs on the premise that they encompass areas that are essential to conservation of the species within the HCP area and will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the Morro shoulderband snail is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the Morro shoulderband snail in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

We are also seeking comments on critical habitat designation relative to future HCPs. Several conservation planning efforts are now under way within the range of the Morro shoulderband snail, and other listed and nonlisted species, in areas we are proposing as critical habitat. For areas where HCPs are currently under development, we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Morro shoulderband snail:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is

issued, that the plan protects those areas essential to the conservation of the Morro shoulderband snail, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Office at phone number 805/644–1766.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. Such requests must be made in writing and be addressed to the Field Supervisor of our Ventura Fish and Wildlife Office (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Morro shoulderband snail was listed as an endangered species in 1994. In fiscal years 1994 through 1999, we conducted nine formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the snail.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions

are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Morro shoulderband snail since the listing in 1994. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all of the proposed critical habitat occurs in occupied areas. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

TABLE 2.—IMPACTS OF MORRO SHOULDERBAND SNAIL LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation[1]
Federal Activities Potentially Affected[2]	Activities conducted by USACE (*e.g.* ordnance removal)	None.
Private or other non-Federal Activities Potentially Affected[3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy Morro shoulderband snail habitat by mechanical, chemical, or other means (*e.g.*, grading, overgrazing, construction, road building, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, fragmentation of habitat).	None.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by State and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Activities conducted by the USACE (*e.g.* ordnance removal);

(2) Road construction and maintenance funded by the FHA; and

(3) Other activities funded or permitted by Federal agencies (*e.g.*, EPA, FEMA).

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant

takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Morro shoulderband snail. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the survival of the Morro shoulderband snail.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Morro shoulderband snail imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. By making this definition and identification, we would not alter where and what federally sponsored activities may occur. However, having this information may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act, and plan public hearings, if requested, on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Morro shoulderband snail.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must send your comments to OMB by the above referenced date.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis.

We determined that no Tribal lands are essential for the conservation of the Morro shoulderband snail because no Tribal lands support populations of snails or suitable habitat. Therefore, we are not proposing to designate critical habitat for the Morro shoulderband snail on Tribal lands.

References Cited

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Hill, D.L. 1974. *Helminthoglypta walkeriana:* A rare and endangered land mollusc. Senior Project, California Polytechnic State University, San Luis Obispo. 21 pp.

Roth, B. 1985. Status survey of the banded dune snail, *Helminthoglypta walkeriana*. Unpublished report prepared for U.S. Fish and Wildlife Service, Sacramento, California. 27 pp. + figures.

U.S. Fish & Wildlife Service. 1998. Recovery plan for the Morro shoulderband snail and four plants from western San Luis Obispo County, California. U.S. Fish and Wildlife Service, Portland, Oregon. 75 pp.

Author

The primary authors of this document are Greg Sanders and Ron Popowski of our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for "Snail, Morro shoulderband (=Banded dune)" under "SNAILS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
SNAILS							
*	*	*	*	*	*	*	
Snail, Morro shoulderband (=Banded dune).	*Helminthoglypta walkeriana.*	U.S.A. (CA)	NA	E	567	17.95(g)	NA
*	*	*	*	*	*	*	

3. Amend § 17.95 by adding new paragraph (f) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and snails.*

Morro Shoulderband Snail (*Helminthoglypta walkeriana*)

1. Critical habitat units are depicted for San Luis Obispo County, California, on the map below.

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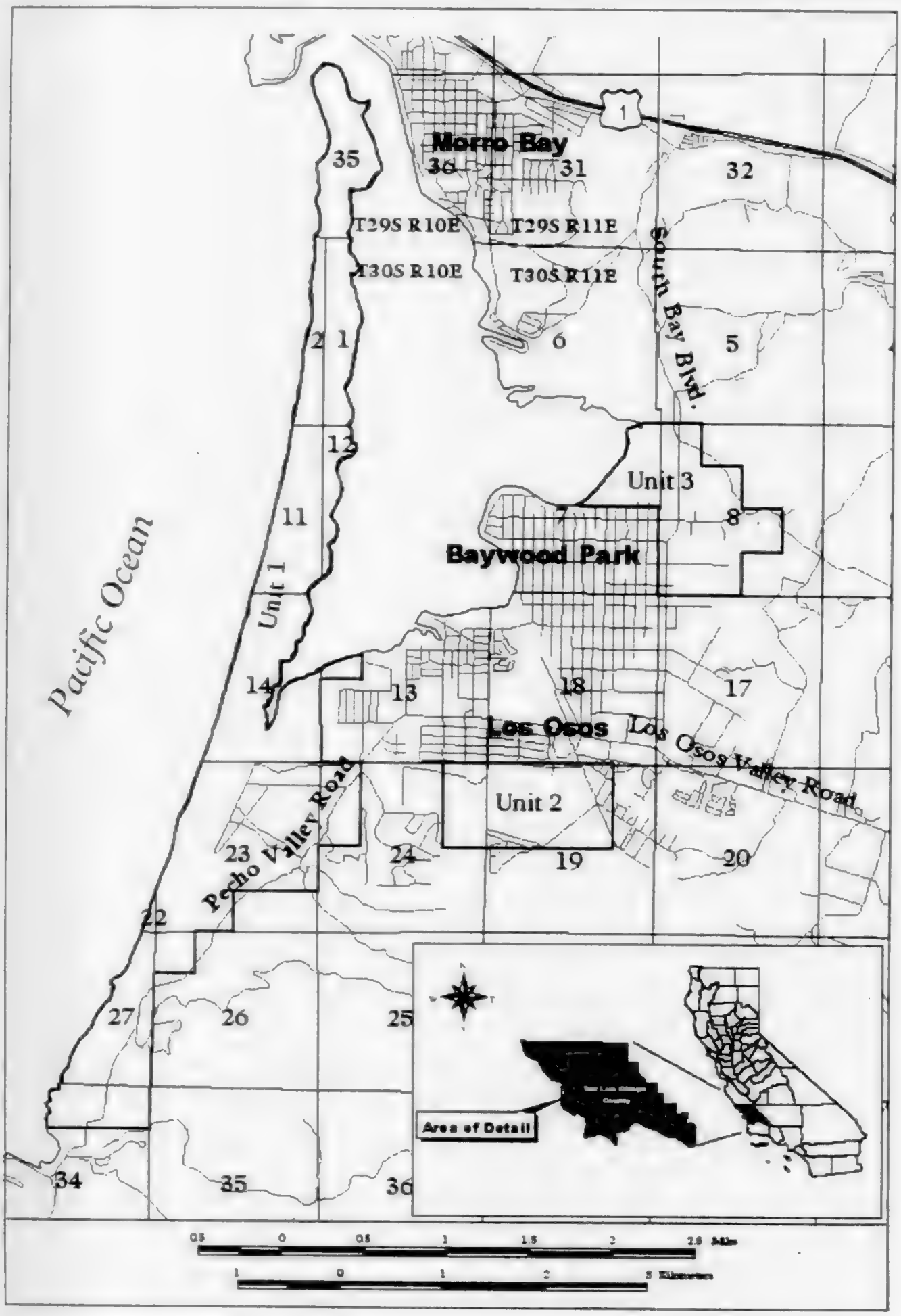

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Map Units 1 to 3: All located in San Luis Obispo County, California. Coastline boundaries are based upon the U.S. Geological Survey Morro Bay South 7.5

minute topographic quadrangle. Other boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Canada De Los Osos Y Pecho Y Islay Mexican Land Grant, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by us from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian.

Map Unit 1: T. 29 S., R. 10 E., all of section 35 above mean sea level (MSL); T. 30 S., R. 10 E. All portions of sections 1, 2, 11, 12, 14, 22, and 27 above MSL, SW¼NW¼ section 13 above MSL, W½NW¼ section 24, all of section 23 above MSL except S½SE¼, NW¼NW¼ section 26, N½N½ section 34.

Map Unit 2: T. 30 S., R. 10 E., E½NE¼ section 24; T. 30 S., R, 11 E., E¾N½ section 19.

Map Unit 3: T. 30 S., R. 11 E., All of NE¼ section 7 above MSL; in section 8, NW¼NW¼, S½NW¼, SW¼, and NW¼SE¼.

2. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements for the Morro shoulderband snail are the following: sand or sandy soils; a slope not greater than 10 percent; and the presence of, or the capacity to develop, coastal dune scrub vegetation.

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aqueducts, railroads, airports, paved areas, and similar features and structures.

Dated: June 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–17257 Filed 7–11–00; 8:45 am]

BILLING CODE 3410–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG07

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Scutellaria montana (large-flowered skullcap) from Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify *Scutellaria montana* (large-flowered skullcap) from its present endangered status to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current status of this plant. This proposed reclassification is based on the substantial improvement in the status of this species. Since listing, 22 additional sites have been discovered, and the total known number of individuals has increased from about 6,700 to more than 48,000. This proposal, if made final, would implement the Federal protection and recovery provisions for threatened plants as provided by the Act, to large-flowered skullcap. We are seeking data and comments from the public.

DATES: Comments from all interested parties must be received by September 11, 2000. Public hearing requests must be received by August 28, 2000.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address, by phone at 828/258–3939, Ext. 229, or by E-mail at Allen_Ratzlaff@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Scutellaria montana is a perennial herb with solitary, erect, four-angled, hairy stems usually from 30 to 50 centimeters (cm) (11 to 19 inches (in)) tall. The leaves are lanceolate (shaped like a lance-head, several times longer than wide, broadest above the base and narrowed to the apex) to ovate (egg-shaped, with the broader end at the base), on 1 to 2 cm (0.4 to 0.8 in) petioles (the stalk of a leaf that attaches it to the stem), with blades (the expanded portion of a leaf) 5 to 8 cm (2 to 3 in) long and 3 to 5 cm (1 to 2 in) wide. The leaf margins (the edge of the leaf) are crenate (rounded, tooth-like edges) to serrate (having sharp teeth pointing forward) and hairy on both surfaces. The inflorescence (the flowering part of a plant) is a terminal (at the end of the stalk), leafy-bracted (a "modified" leaf) raceme (simple flower), with or without paired lateral racemes at the base. The calyx (the outer part of the flower) is two-lobed with a "cap" just above the base of the upper lobe (characteristic of the genus *Scutellaria*). The corolla (petals) is relatively large, 2.6 to 3.5 cm (1 to 1.4 in) long, blue and white, and lacking a fleshy ridge (annulus) within the corolla tube near the top of the calyx. Flowering occurs from mid-May to early June; and fruits mature in June and early July.

Bridges (1984) stated, "The genus *Scutellaria* can be easily recognized by its distinctive calyx, with a protrusion, or 'cap' on the upper lobe." *Scutellaria montana* could be confused with other species of *Scutellaria*. Bridges (1984) also listed some important characters of *Scutellaria montana*: (1) A terminal inflorescence; (2) a large corolla at least 2.5 cm (1 in) long; (3) tapering or truncate (ending abruptly) leaf bases, never cordate (heart shaped); (4) a midstem with at least some stipitate (short stem) glandular hairs; (5) no sessile (without a footstalk of any kind) glands on the upper leaf surface, (6) a fairly densely pubescent (hairy) lower leaf surface, often with glandular hairs; and (7) a corolla tube lacking an annulus within.

Dr. A. W. Chapman described *Scutellaria montana* in 1878. Since then, the taxonomy of *Scutellaria montana* has undergone a period of debate. Penland (1924) reduced the taxon to a variety of *Scutellaria serrata*. Leonard (1927) later reinstated the species, but he made no distinction between *Scutellaria pseudoserrata* and *Scutellaria montana* (Collins unpublished). Epling (1942) restored the taxon to full species status and clarified the questions regarding the taxonomic differences between *Scutellaria pseudoserrata* and *Scutellaria montana*.

In the field, *Scutellaria montana* is most likely to be confused with *Scutellaria pseudoserrata*. The two species have a similar range and habitat and are sometimes found growing together. *Scutellaria montana* is the only species of *Scutellaria* that lacks an annulus within the corolla tube. Further, *Scutellaria pseudoserrata* has transparent sessile glands on the upper leaf surface and hairs only on the veins and leaf margins. In contrast, *Scutellaria montana* has a fine, even-mixed glandular and nonglandular "velvety" pubescence on the upper and lower leaf surface. Two other skullcaps that can occur in the same region are *Scutellaria elliptica* and *Scutellaria ovata*, both of which have smaller flowers and branching inflorescences. *Scutellaria elliptica* tends to have leaf margins with rounded teeth and noticeably longer hairs on the leaf, and *Scutellaria ovata* has strongly cordate leaf bases and flowers later in the season.

The pollination biology of this species has not been described. Collins (unpublished) and Cruzan (Shea and Hogan 1998) observed bees (*Apiodea*) visiting plants, and Kemp and Knauss (1990) observed butterflies, wasps, and

hummingbirds occasionally visiting the plants.

Scutellaria montana is known from the southern portion of the Ridge and Valley Physiographic Province in Marion and Hamilton Counties in Tennessee; Dade, Floyd, Chattooga, Gordon, Catoosa, and Walker Counties in Georgia; and the Cumberland Plateau Province in Sequatchie, Marion, and Hamilton Counties in Tennessee.

According to Bridges (1984), the geological strata underlying the sites for *Scutellaria montana* include most of the major slope-forming formations of the region: shale, chert, limestone, and sandstone from Cambrian to Pennsylvanian in age. Most sites in Tennessee occur on the Upper Mississippian Pennington Formation and Lower Pennsylvanian sandstones and shales. Most of the sites in the Lookout Mountain portion of the Chickamauga-Chattanooga National Military Park are found on Fort Payne, St. Lewis, Warsaw. Monteagle, and Bangor Formations that underlie the Pennington Formations (McKerrow and Pyne 1993). The Georgia portion of the Ridge and Valley is underlain by Paleozoic rock such as sandstone, shales, and limestone (Lipps and DeSelm 1969). The Georgia sites are found on Mississippian Formations including Rome, Red Mountain, and Rockwood (Collins unpublished). Site elevations range from 189 meters (620 feet) to 562 m (1844 ft) above sea level.

All populations occur on colluvial soils over bedrock composed of shale, chert, or limestone. The soils are generally rocky, shallow, well-drained, and slightly acidic. Soil depth ranges from deep to a thin layer, no more than 3 cm (1.2 in) deep, over bedrock. In Georgia, the soil is generally stony, shaley, or cherty silt loam or silty clay loam ranging in depth from 0.2 m (8 in) to 1.4 m (55 in). The average pH is 5.6 and ranges from 4.5 to 6.3 (Collins unpublished).

Bridges (1984) described the habitat of *Scutellaria montana* as ". . . rocky, submesic to xeric, well-drained, slightly acidic slope, ravine and stream bottom forests in the Ridge and Valley and Cumberland Plateau provinces of Northwestern Georgia, and adjacent southeastern Tennessee (and probably Alabama)." Bridges (1984) also listed distinguishing characteristics of the forests where *Scutellaria montana* is found as: (1) A history of some natural pine occurrence; (2) a canopy dominated by oaks and hickories; (3) a mostly deciduous shrub layer with some evergreen *Vaccinium*; (4) a moderately dense herb layer with mesic and xeric species; and (5) the site occurring on well-consolidated paleozoic to precambrian strata, often with some exposed rock.

Forest composition data has been collected on sites in the Marshall Forest and Marion County populations (Faulkner 1993; Collins, unpublished; Lipps 1966). Data from the sites where *Scutellaria montana* was first studied indicated that it occurred in late-successional forests. Studies of other sites suggest that it is more of a mid- to late-successional species (Bridges 1984; Collins, unpublished; Lipps 1966). At a Marion County, Tennessee, site, Faulkner (1993) observed *Scutellaria montana* persisting in an area where timbering activities had occurred and where the plants had been subjected to low-intensity ground fires. He concluded that, while individual plants established before the disturbance may survive, recruitment into disturbed sites is not likely. Fail and Sommers (1993) conducted a study on the Marshall Forest that suggests the associated species *Quercus prinus* (Chestnut oak) and *Oxydendrum arboreum* (Sourwood) may be producing toxic compounds that may be inhibiting growth and germination of *Scutellaria montana* near them.

Scutellaria montana does not appear to compete well with other herbaceous species, especially colonial plants that can propagate from extensive root structures, and is not found in thick herbaceous cover (Bridges 1984). While optimal light conditions are not yet known, plants grow in areas that receive a relatively greater amount of light at ground level, generally due to canopy disturbance (Sutter 1993). Nix (1993) states that "canopy coverage is probably the most important environmental factor that influences growth and survival." However, disturbances to the canopy accompanied by disturbances to the soil can lead to increases in other herbaceous species that could be detrimental to *Scutellaria montana*.

When we listed *Scutellaria montana* in 1986, 10 populations were known; 7 in Georgia (4 in Floyd County, 2 in Walker County, and 1 in Gordon County) and 3 in Tennessee (2 in Hamilton County and 1 in Marion County). Now 32 populations are known. A population is being defined as an "occurrence" that is at least 0.5 miles from other occurrences, but we must take into account physical barriers (ridges, highways, etc.), contiguous habitat (occurrences could be 1 mile apart on the same ridge or slope), and richness or diversity of the occurrence. Based on criteria in the Large-flowered Skullcap Recovery Plan, a population is considered self-sustaining, or viable if it has a minimum of 100 individuals.

Georgia is now known to have 15 populations. In Floyd County, there are 7 known populations that range in size from a few plants to about 1,300 plants. Three of these populations are considered self-sustaining. Two of the three self-sustaining populations are protected on lands owned by The Nature Conservancy. Catoosa County, Georgia, is currently known to have 4 populations ranging in size from 10 to about 200 plants. One population (100–200 plants) is self-sustaining and is protected (Catoosa County Park). Walker County, Georgia, has 2 populations of 5 and 60 plants respectively, which do not meet the minimum criteria of 100 individuals for self-sustaining status. Additionally, there is an introduced population on the Chattahoochee National Forest in Walker County (not included in recovery criteria for downlisting). A single, nonviable population of 15 plants occurs in Dade County, Georgia, near the Lookout Mountain population in Tennessee. Another single nonviable population of an estimated 50 plants occurs in Chattooga County, Georgia. One population known from Gordon County, Georgia, was extirpated when the area was clearcut in 1986.

Tennessee is now known to have 17 populations. Hamilton County has 13 known populations, 7 of which are considered self-sustaining. These populations range in size from just a few plants to more than 2,000 plants. Several Hamilton County populations are made up of several subpopulations, some of which are large enough to constitute self-sustaining populations by themselves but do not meet the necessary criteria of being separated by at least 0.5 miles from each other. Marion County, Tennessee, now has 2 populations ranging in size from about 50 plants to more than 40,000 plants at the Tennessee River Gorge. The Tennessee River Gorge is a population made up of 8 subpopulations, 2 of which contain more than 20,000 plants. The smaller Marion County site is protected, and 6 of the 8 subpopulations in the Tennessee River Gorge are protected (less than 1 percent of the plants are not protected). Two populations of 2 and 50 plants respectively, are known from Sequatchie County, Tennessee. Neither is protected nor considered self-sustaining.

Previous Federal Action

Federal Government actions on this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed

the Secretary of the Smithsonian Institution (Smithsonian) to prepare a report on plants considered endangered, threatened, or extinct. This report, designated House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now Section 4(b)(3)) of the Act. By accepting this report as a petition, we also acknowledged our intention to review the status of those plant taxa named within the report. *Scutellaria montana* was included in the Smithsonian report and the July 1, 1975, Notice of Review.

We published a revised Notice of Review for Native Plants on December 15, 1980 (45 FR 82480); *Scutellaria montana* was included as a category-1 species. Category 1 species were those for which we had information on file to support proposing them as endangered or threatened. On November 28, 1983, we published a supplement to the Notice of Review for native plants in the **Federal Register** (48 FR 53640). *Scutellaria montana* was changed to a category-2 species in this supplement. Category-2 species were those for which we had information indicating that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats were not currently known or on file to support the preparation of proposed listing rules. Subsequent to this notice, we received a draft status report on *Scutellaria montana* (Collins unpublished manuscript). This report and other available information indicated that the addition of *Scutellaria montana* to the Federal List of Threatened and Endangered species was appropriate.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This situation was the case for *Scutellaria montana* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, we found that the petitioned listing of *Scutellaria montana* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. On September 27, 1985, *Scutellaria montana* was again included as a Category 1 species in the revised Notice of Review (50 FR 39526) and on November 13, 1985, we published in the **Federal Register** (50 FR 46797) a proposal to list *Scutellaria montana* as an endangered species. That proposal constituted the next 1 year finding as required by the 1982 amendments to the Endangered Species Act. A final rule placing *Scutellaria montana* on the Federal List of Threatened and Endangered Plants as an endangered species was published in the **Federal Register** on June 20, 1986 (51 FR 22521).

Since listing, Federal actions have included a variety of recovery actions funded or carried out by the Tennessee Valley Authority (TVA), National Park Service (NPS), U.S. Forest Service, and the Service, including searches for additional populations, habitat studies, translocations, and land management.

We have conducted numerous consultations under section 7 of the Act involving *Scutellaria montana*. More than 50 consultations have taken place in Tennessee, principally concerning road and bridge construction or maintenance. Most potential conflicts have been resolved early in the informal portion of the consultation process resulting in concurrence by us with "not likely to adversely affect" determinations. One formal consultation was conducted that resulted in a "no jeopardy" biological opinion. There have been three informal section 7 consultations regarding this species in Georgia, one of which is ongoing.

A recovery plan was completed for *Scutellaria montana* in 1996 (U.S. Fish and Wildlife Service 1996). The recovery plan provides the following criteria for downlisting. "If numbers of discrete populations increase to 25 (because of the discovery/establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range), the species will be considered for downlisting to threatened status." The recovery plan also provides a description of protected and managed self-sustaining populations as follows: "A population will be considered adequately protected when it is legally protected and all needed active management is provided. A population will be considered "self-sustaining" if monitoring data support the conclusion that it is reproducing successfully and is stable or increasing in size. The minimum number of individuals necessary for a self-sustaining population should be considered at least 100 until otherwise determined by demographic studies."

The criteria for downlisting have been met through both the number of known populations (32) and the number of self-sustaining, protected populations (11) distributed throughout the range of the species. Though no formal written agreements have been developed with the principle landowners where protected, self-sustaining populations occur (The Nature Conservancy, the States of Georgia and Tennessee, Tennessee Valley Authority and National Park Service), managers of these lands are committed to the conservation of these populations and are actively involved as part of the recovery team.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the list of threatened and endangered species. These factors and their application to *Scutellaria montana* (large-flowered skullcap) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

In 1986, when *Scutellaria montana* was listed as endangered, there were 7 populations known in Georgia and 3 in Tennessee. Over 90 percent of the 7,000 individual plants known in 1986 occurred at only two sites, neither of which was completely protected. At the time of listing the most significant threats were logging, wildfires, livestock grazing, and residential development. In 1986, 80 percent of the site with the largest known population had been subdivided and was being offered for sale. A large portion of the second-largest population at that time was on land owned by The Nature Conservancy and was therefore afforded protection. The third largest population occurred on privately owned land and had no protection from potential land use changes. All remaining 1986 populations were extremely small, consisting of 4 to 60 plants, and were vulnerable to even the slightest modification of their remaining habitat. It was thought at the time of listing that one population had possibly been destroyed by timber operations conducted prior to the landowner becoming aware of the presence of *Scutellaria montana* on the property.

This species status has improved largely due to the fact that 20 (63 percent) of the 32 known populations are currently afforded protection through occurrence on lands owned by conservation organizations, county parks, or on Federal lands (11 of these protected populations are considered viable), and through the discovery of additional populations. However, threats to the species' habitat and future security still exist. Further, most of the plants (more than 85 percent) continue to occur in only two populations.

Habitat destruction caused by logging, residential development, clearing of wooded areas for pasture, grazing, and wildfire all continue to pose some degree of threat to the species. One population of *Scutellaria montana*, described in the final rule for this species, was lost due to clearcutting activities. Damage caused by off-road vehicles and hikers (trampling) has been noted at several sites, and the maintenance (widening) or rerouting of hiking trails is also a potential threat. Rapid urbanization in and around the Chattanooga area also poses a significant threat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In 1986, *Scutellaria montana* was not a significant component of the commercial trade in native plants. Significant commercial trade in *Scutellaria montana* is not currently known to occur or expected in the future, and no significant import or export is expected. Therefore, taking of *Scutellaria montana* for these purposes is not considered a threat.

C. Disease or Predation

While predation by animals, especially deer, has been observed at several sites, predation does not appear to be a factor affecting the continued existence of the species at this time. Some individual plants have been affected by disease, but this factor appears to affect only a few individuals and is not a threat to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Though there is less protection afforded to threatened plants than to endangered plants under section 9 of the Act, the protection currently afforded and that would continue to be afforded this species under the Act is significant enough that inadequate regulatory protection cannot be considered a threat. Further, both Georgia (Ga. Code Ann. §§ 27–3–130 *et seq.*) and Tennessee (Tenn. Code Ann. §§ 70–8–301 *et seq.*) have rare plant protection laws that also protect this species.

Half (16) of the known *Scutellaria montana* populations occur on privately owned lands. Of these, 12 populations receive no protection. All of two populations and a portion of two others are owned by conservation groups that are active in management for the conservation of *Scutellaria montana*.

Of the populations that are not on privately owned land, one population occurs on county land (on a nature park), a portion of one other population occurs on city-owned land, and two entire populations and a portion of three others occur on state-owned land. Except for the portion of one population occurring on city-owned land, all of these populations are being actively managed (Shea and Hogan 1998). In addition, nine entire populations and portions of three others occur on Federal land (TVA, NPS, and Department of Defense-U.S. Army) where they receive the protection afforded by section 7 of the Act.

E. Other natural or manmade factors affecting its continued existence

Invasive species, such as Japanese honeysuckle (*Lonicera japonica*) and privet (*Ligustrum vulgare*), are currently a problem for some populations of *Scutellaria montana*. These non-native species are likely to continue to be a problem where disturbance allows these species to become established in proximity to *Scutellaria montana* on some smaller public areas and privately owned sites.

Several investigators have noted a low reproductive capacity for *Scutellaria montana*. The percentage of flowers that form fruit has been recorded at 30 and 44 percent in the Marshall Forest (Kemp and Knauss 1990), and, in another study, 91.5 percent of the plants did not form fruits (Kemp 1987). This reproductive rate is extremely low compared with other *Scutellaria* species that have 75 to 93 percent of the flowers producing mature nutlets (Collins 1976).

Scutellaria montana also produces fewer seeds per fruit compared with other members of the genus. Kemp and Knauss (1990) found that the fruit averaged 2.2–2.3 seeds rather than the 4 seeds that are possible. Similarly, Cruzan (*in* Shea and Hogan 1998) found pollen present on 60 percent of the styles, but only 15 percent of these flowers set fruit with an average of 2 seeds per fruit.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Scutellaria montana* in determining to propose this rule. Based on this evaluation, the preferred action is to reclassify *Scutellaria montana* from an endangered species to a threatened species. The Recovery Plan for *Scutellaria montana* states that the species is qualified for downlisting to threatened ". . . If numbers of discrete populations increase to 25 (because of the discovery/establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range) . . ." The criteria for downlisting have been met through both the number of known populations (32) and the number of viable (self-sustaining), protected populations (11) distributed throughout the range of the species.

Available Conservation Measures

Half (16) of the known *Scutellaria montana* populations are privately owned (all of two populations and a portion of two other are owned by conservation groups), one is County-owned, a portion of one is City-owned, and two entire populations and a portion of three others are State-owned. However, nine entire populations and portions of three others are on Federal land (TVA, NPS, and Department of Defense-U.S. Army).

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for designation with this proposed rule.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. However,

unlike endangered plants, not all prohibitions of section 9(a)(2) of the Act apply (50 CFR 17.71). Those prohibitions that do apply, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession any threatened plant species from areas under Federal jurisdiction.

Under the Act, reclassifying *Scutellaria montana* from endangered to threatened status will continue to protect *Scutellaria montana* on areas under Federal jurisdiction. Collection, removal and possession of plants found on Federal land is prohibited. Activities including removal, cutting, digging up, damaging, or destroying threatened plants on non-Federal lands would constitute a violation of State natural resource laws or regulations. Such actions if conducted in the course of violating State criminal trespass laws may also be subject to prosecution.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special activities consistent with the purposes of the Act. We anticipate that few trade permits would ever be sought.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisors of either the Service's Asheville Field Office (see the "Addresses" section); the North Georgia Field Office, 380 Meigs St., Athens, Georgia 30601 (706/613–9493); or the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (615/528–6481). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679–7088; Fax 404/679–7081).

This proposed rule proposes to change the status of *Scutellaria montana* at 50 CFR 17.12 from endangered to threatened. If made final, this rule would formally recognize that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. Reclassification would not significantly alter the protection for this species under the Act. Anyone taking, attempting to take, or otherwise possessing *Scutellaria montana* in violation of section 9 is still subject to a penalty under section 11 of the Act. There is no difference in penalties for the illegal take of endangered species versus threatened species. Section 7 of the Act would still continue to protect this species from Federal actions that would jeopardize its continued existence.

Finalization of this rule will not be an irreversible commitment on the part of the Service. Reclassifying *Scutellaria montana* to endangered would be possible should changes occur in management, habitat, or other factors that alter the species' status or increase threats to its survival.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Scutellaria montana;*

(2) The location of any additional populations of *Scutellaria montana;*

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Scutellaria montana.*

In promulgating a final regulation on *Scutellaria montana,* we will take into consideration the comments and any additional information we receive, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and addressed to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

Paperwork Reduction Act

This proposed rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.72.

National Environmental Policy Act

We have determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Mr. J. Allen Ratzlaff (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

We propose to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. We propose to amend § 17.12(h) by revising the entry for *Scutellaria montana* under "FLOWERING PLANTS" in the "Status" column to read "T" instead of "E".

* * * * *

Dated: June 2, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–17561 Filed 7–11–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000524154–0154–01; I.D. 051100C]

RIN 0648–AO12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Commercial Fishing Gear; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of control date for gear eligibility.

SUMMARY: This document announces that the Gulf of Mexico Fishery Management Council (Council) is considering whether there is a need to limit participation by gear type in the commercial reef fish fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico and, if there is a need, what management measures should be imposed to accomplish this. If the Council and NMFS determine that management measures are needed, a rulemaking to do so may be initiated. Possible measures include modifications to the existing limited entry program to control fishery participation, or effort, based on gear type, such as a requirement for a gear endorsement on the commercial reef fish vessel permit for the appropriate gear. Gear types which may be included are longlines, buoy gear, handlines, rod-and-reel, bandit gear, spearfishing gear, and powerheads used with spears. This notice is intended to inform fishermen that anyone not using a particular gear by July 12, 2000 may not be eligible to use that gear if a gear-type effort control program is established. This announcement of a control date for gear eligibility is intended to discourage the use of different gear based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be received at the appropriate address or fax number no later than 5 p.m., Eastern Daylight Time, on August 11, 2000.

ADDRESSES: Written comments should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; fax: 813–225–7015; email: gulfcouncil@gulfcouncil.org. When providing comments, include your name, city, state, and your relevant background and interest, e.g., commercial fisherman, recreational fisherman, conservationist. Comments submitted by e-mail should also include a valid e-mail address. If you are commenting on behalf of an organization, please include your organization's name and number of members.

FOR FURTHER INFORMATION CONTACT: Dr. Roy Crabtree, 727–570–5305; fax: 727–570–5583; e-mail: Roy.Crabtree@noaa.gov or Steven Atran, 813–228–2815; fax: 813–225–7015; e-mail: Steven.Atran@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for reef fish in the EEZ of the Gulf of Mexico are managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Entry to the commercial reef fish fishery in the Gulf of Mexico is already limited by a permit system. The fishery is conducted with a variety of gears. The Council is concerned that some of these gears, particularly bottom longline gear, may be so efficient that users of those gears are harvesting a disproportionate share of the commercial grouper quota or are harvesting at a rate that is inconsistent with providing a year-round fishery. Additionally, NMFS' Office of Sustainable Fisheries, Highly Migratory Species Division (HMS Division), and Congress are considering proposals that would restrict the use of pelagic longline gear in the Gulf of Mexico and in the Atlantic. The HMS Division has published a proposed rule that would restrict the use of pelagic

longline gear in Atlantic Ocean and Gulf of Mexico waters (64 FR 69982, December 15, 1999). The Council is concerned that these proposals, if implemented, could result in a shift in effort from the pelagic longline fishery to the reef fish bottom longline fishery or other reef fish fisheries. Such effort shift could have an adverse impact on the allocation of the available reef fish resources among historical participants. The Council is also concerned about the incidental mortality of non-targeted species, impacts on essential fish habitat, and ghost fishing of unattended or abandoned gear. For these reasons, the Council is considering the need to evaluate the use of gears in the commercial reef fish fishery, and possibly to recommend limits on the use of some gears to ensure a fair and equitable allocation of the available resources, prevent overfishing and habitat destruction, and minimize bycatch mortality.

Commercial harvest of reef fish from the EEZ of the Gulf of Mexico using several gears or harvest methods is currently prohibited. Under 50 CFR 622.31, explosives and poison may not be used to fish for reef fish, and the possession of explosives onboard a vessel that is fishing in the EEZ for reef fish or that has a Federal vessel fishing permit for reef fish is prohibited. Under 50 CFR 622.39(a)(2), vessels that have trawl gear or entangling net gear onboard are restricted to the recreational bag and possession limits of reef fish (which cannot be sold). FMP Amendment 5 imposed a moratorium in 1994 on the number of vessels authorized to fish for reef fish using fish traps. FMP Amendment 14 established a limited entry system for the fish trap fishery and prohibits the use of fish traps to fish for reef fish in the EEZ after February 7, 2007.

NMFS published a final rule in the **Federal Register** (64 FR 67511, December 2, 1999) that lists authorized fisheries and fishing gear (LOF) for each fishery under the authority of a regional fishery management council or under the authority of the Secretary of Commerce (Secretary) with respect to Atlantic highly migratory species (HMS). Any person intending to fish with a gear or in a fishery in the EEZ not included in the LOF must give a 90-day advance notice to the appropriate regional fishery management council or to the Secretary with respect to HMS. For the Gulf of Mexico commercial reef fish fishery, the LOF listed the authorized gears as traps, pots, longline, buoy gear, handline, rod-and-reel, bandit gear, spear, powerhead, castnet, and trawl.

Implementation of an effort limitation program for gear used in the Gulf of Mexico reef fish fishery in the EEZ would require the Council's preparation of an FMP amendment and its submission to NMFS for Secretarial review, approval, and implementation. Under Secretarial review, NMFS would make the FMP amendment and its proposed rule available for public comment.

As the Council considers management options, some fishermen who do not currently participate in the commercial reef fish fishery with a particular gear, and have never done so, may decide to use that gear in the fishery for the sole purpose of establishing a record of landings. To avoid this first-time use of gear in order to establish a record of landings, the Council has established July 12, 2000 as a control date for gear eligibility. After that date, anyone not already using a particular gear, may not be eligible to continue using it if a management regime is developed and implemented limiting the number of fishery participants authorized to use that gear.

This notice of control date for gear eligibility applies to all gears listed in the LOF for the commercial reef fish fishery of the Gulf of Mexico, except for pots and traps, castnets, and trawls. Reef fish traps and pots are already under a limited entry system; therefore, application of this control date to reef fish traps and pots is unnecessary and inappropriate. Castnets are included in the LOF to allow fishermen to catch bait while on a reef fish trip but are not used to harvest reef fish directly. It is, therefore, unnecessary to include castnets in this notice of control date for gear eligibility. Bag and possession limits for Gulf reef fish apply to a person aboard a vessel with trawl gear onboard. Because the bag limits cannot be sold, such trawl gear is already excluded from the commercial reef fish fishery. However, groundfish vessels with bottom trawls may include reef fish bycatch in their unsorted catch. Because groundfish trawl vessels land their catch unsorted, it is impracticable to separate and release the reef fish bycatch. Consequently, groundfish vessels are exempted from the requirements for reef fish vessel permits, minimum size limits, bag limits, and quota closures. Groundfish trawls comprise a small fishery in the northern Gulf of Mexico, and are included in the LOF to accommodate the reef fish bycatch.

Announcement of a control date for gear eligibility does not commit the Council or NMFS to any particular management regime or criteria for authorization to use a gear in the commercial reef fish fishery. Fishermen are not guaranteed future participation with that gear in the fishery regardless of their entry date or intensity of participation in the fisheries before or after the control date for gear eligibility under consideration. The Council subsequently may choose a different control date for gear eligibility date or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen active in the fishery with the gear before and after the control date for gear eligibility. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The Council also may choose to take no further action to control use of gear in the fishery, in which case the control date for gear eligibility may be rescinded.

This advanced notice or proposed rulemaking has been determined to be not significant for purposes of E. O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17629 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 070300B]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on July 26 and 27, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, July 26, 2000, beginning at 9:30 a.m. and Thursday, July 27, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel—Portland, 1230 Congress Street, Portland, ME 04102; telephone (207) 774–5611. Requests for

special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday, July 26, 2000

After introductions, the meeting will begin with a Stock Assessment Public Review Workshop. Staff from NMFS's Northeast Fisheries Science Center will present an advisory report on the status of monkfish, with brief updates on the scup, summer flounder and ocean quahog resources. A report from the Groundfish Committee will follow. It will include a lengthy discussion of possible management approaches to Amendment 13 to the Northeast Multispecies Fishery Management Plan for purposes of further consideration and development. Updates on management issues concerning spiny dogfish, sea scallops and the Council's Research Steering Committee will occur later in the day.

Thursday, July 27, 2000

The second day of the meeting will begin with reports on recent activities from the Council Chairman, the Executive Director, the NMFS Regional Administrator, the Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, NMFS Enforcement, and the Atlantic States Marine Fisheries Commission. The Council's Magnuson-Stevens Act Committee will review comments developed on the reauthorization bills currently before Congress. During the Herring Committee Report to follow, Council staff will present the annual Stock Assessment and Fishery Evaluation (SAFE) Report for herring. The Council also will discuss the Scientific and Statistical Committee's review of SAFE Report elements and approve the annual herring specification recommendations to be forwarded to NMFS for the 2001 fishing year. The Council meeting will adjourn after addressing any other outstanding business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery management plan. If she concurs with the adjustment proposed by the Council, the Regional Administrator has the discretion to recommend publication of the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least five days prior to the meeting date.

Dated: July 6, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17630 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 134
Wednesday, July 12, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to extend an approved information collection with change. The following two forms are authorized under Office of Management and Budget number 0596–0081: R1–FS–2850–1-Application/Permit and FS–2800–9-Contract for the Sale of Mineral Materials. The agency is requesting an authorization extension for FS–2800–9 only.

The information collected using the form, FS–2800–9, enables the Forest Service to ensure that individuals, organizations, companies, or corporations conducting mining operations on National Forest System lands, conduct the operations in a manner consistent with all applicable land management laws and regulations in an environmentally responsible manner and are financially accountable.

DATES: Comments must be received in writing on or before September 11, 2000.

ADDRESSES: Send written comments to Director, Minerals and Geology Management Staff, (Mail Stop 1126), Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090.

Comments also may be submitted via facsimile to (202) 205–1243 or by e-mail to mgreeley@fs.fed.us.

The public may inspect comments in the Office of the Director, Minerals and Geology Management Staff, Forest Service, USDA, 201 14th Street, SW, Washington, D.C. To facilitate entrance into the building, visitors are encouraged to call (202) 205–1042.

FOR FURTHER INFORMATION, CONTACT: Mike Greeley, Minerals and Geology Management, at (202) 205–1237.

SUPPLEMENTARY INFORMATION:

Background

The Mineral Materials Act of 1947, as amended, and the Multiple Use Mining Act of 1955, as amended, authorize the Secretary of Agriculture to dispose of petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and other similar materials on lands administered by the Forest Service. Individuals, organizations, companies, or corporations may apply for a permit to mine these mineral materials using the form, FS–2800–9-Contract for the Sale of Mineral Materials.

In past years, the Forest Service requested authorization for two forms for prospecting or mining mineral materials using Office of Management and Budget number 0596–0081: R1–FS–2850–1-Application/Permit and FS–2800–9-Contract for the Sale of Mineral Materials. R–1–FS–2850–1-Application/Permit is a Forest Service regional form; the agency is not requesting an authorization extension for this form. FS–2800–9-Contract for the Sale of Mineral Materials is a Forest Service national form; the agency is requesting an authorization extension for this form.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2800–9, Contract for the Sale of Mineral Materials.

OMB Number: 0596–0081.

Expiration Date of Approval: August 2000.

Type of Request: Extension of an information collection approved by the Office of Management and Budget.

Abstract: The collected information enables the Forest Service to document planned operations, to prescribe the terms and conditions the agency deems necessary to protect surface resources, and to effect a binding contract agreement.

Forest Service employees also will evaluate the collected information to ensure that entities, applying to mine petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and other similar materials on lands administered by the Forest Service, are financially accountable and conduct their activities in accordance with the mineral regulations at part 228, subpart C, of title 36 of the Code of Federal Regulations.

Individuals, organizations, companies, or corporations, interested in mining mineral materials on National Forest System lands, may contact their local Forest Service office to inquire about opportunities and to learn about areas on which such activities are permitted. Interested parties also may request the form, FS–2800–9, at this time.

Individuals, organizations, companies, or corporations are asked to provide information that includes the purchaser's name and address, the location and dimensions of the area to be mined, the kind of material that will be mined, the quantity of material that will be mined, the sales price of the mined material, the payment schedule, the amount of the bond, and the period of the contract.

Data collected in this information collection are not available from other sources.

Estimate of Burden: 2.5 hours.

Type of Respondents: Mineral materials operators.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Comment is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 6, 2000.

James R. Furnish,

Deputy Chief for National Forest System.

[FR Doc. 00–17580 Filed 7–11–00; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

Davis Land Exchange; White River National Forest; Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of land exchange.

SUMMARY: On June 15, 2000, Anne Keys, Deputy Under Secretary for Natural Resources and Environment, signed a Decision Notice and Finding of No Significant Impact for the Davis Land Exchange. The decision authorizes the exchange of 7.32 acres within the White River National Forest, Colorado, for approximately 61 acres in Pitkin County, Colorado. The exchange will be completed under authority of and in accordance with the General Exchange Act of March 20, 1922; the Federal Land Policy and Management Act of October 21, 1976, as amended; and the Federal Land Exchange Facilitation Act of August 20, 1988.

EFFECTIVE DATE: June 15, 2000.

ADDRESSES: Copies of the decision and environmental assessment may be obtained from Mr. Allan Grimshaw, Aspen Ranger District, 806 West Hallam Street, Aspen, CO 81611.

FOR FURTHER INFORMATION CONTACT: Allan Grimshaw, Aspen Ranger District, at (970) 925–3445 or email agrimshaw@fs.fed.us.

Dated: June 26, 2000.

Sally D. Collins,

Associate Deputy Chief.

Decision Notice and Finding of No Significant Impact for the Davis Land Exchange, Pitkin County, Colorado, USDA Forest Service, White River National Forest, Aspen and Sopris Ranger Districts, May 2000

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To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, SW Washington DC 20250–9410 or call (202) 720–5964 (voice or TDD). USDA is an equal opportunity provider and employer.

Introduction

The Davis Land Exchange was initiated in an effort to resolve a title claim by Mr. D. Stone Davis against the United States, Pitkin County, Colorado, and others. Properties claimed by both the United States and Mr. Davis were conveyed to the United States by Pitkin County in1994 as part of the implementation of the Colorado Land Exchange Act of May 19, 1994 (Pub. L. 103–255). The United States has entered into a settlement agreement with Davis and Pitkin County whereby the United States would consider exchange of certain National Forest System lands for Davis' interest in disputed lands and others.

This Decision Notice (DN) documents my decision regarding the proposed Davis Land Exchange. An environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act for this proposal and discloses the environmental effects. This EA is available for review at the Forest Service Offices in Aspen and Glenwood Springs, Colorado. A biological assessment (BA)/biological evaluation (BE) was prepared in compliance with process requirements under the Endangered Species act and related Forest Service Policy. Floodplain and wetlands evaluations were prepared. A heritage resources inventory and report were completed. I referred to and have relied heavily upon these documents in my decision documented here.

Purpose and Need

The Colorado Land Exchange Act of May 19, 1994 (Pub. L. 103–255) directed the Forest Service to exchange approximately one hundred thirty two acres of land at the former Mt. Sopris Tree Nursery (MSTN), in Eagle County, Colorado, for approximately one thousand three hundred acres of patented mining claims whose ownership was claimed by Pitkin and Eagle Counties. Pitkin County issued a quit claim deed to the United States for 148 patented claims on August 16, 1994 and an additional quit claim deed for 4 patented parcels on September 30, 1994. Eagle County issued a quit claim deed to United States for 4 patented claims on July 26, 1994.

The Act also provided that any party who claimed any right, title, or interest in or to any lands conveyed to the Forest Service under the Act, would have to bring an action against the United States pursuant to the Real Property Quiet Title Act of October 25, 1972 (section 2409a of title 28, U.S.C.), prior to September 15, 2000. Civil action No. 96–WM–1607 was filed in United States District Court for the District of Colorado, naming the United States of America, Pitkin County, and a number of other parties as defendants. The purpose of the action was to have the court quiet title to the Picayune Lode (U.S. Mineral Survey No. 5743) and the Daisy Lode (U.S. Mineral Survey No. 4050).

Subsequently, Mr. Davis, the United States and Pitkin County negotiated a settlement agreement to resolve Mr. Davis' title claim. The settlement agreement was accepted by the U.S. District Court on September 10, 1999. The settlement agreement specifies that Mr. Davis, the United States, and Pitkin County will exchange various interests in land.

The Decision

I am well convinced that there is a valid purpose and need for this exchange. It is my decision to proceed with the land exchange as proposed in Alternative 1 of the EA. The exchange will be completed under authority of and in accordance with the General Exchange Act of March 20, 1922 (Pub. L. 67–173), the Federal Land Policy and Management Act of October 21, 1976 (FLPMA, Pub. L. 100–409). Additional authority for settlement is provided through the United States Attorney Manual, Chapter 4–1.300.

The Forest Service will convey approximately 7.32 acres of Federal land with an agency approved value of $725.000 to D. Stone Davis. Non-Federal parcels totalling approximately 65 acres with an agency approved value of $897,781 will become National Forest. This exchange will require a cash equalization payment by the United States to Mr. Davis in the amount of $172,781, in order to meet the equal value requirements of the Federal Land Policy and Management Act. The decision also includes the specified mitigation outlined in the environmental assessment. With regards to item d. of Alternative 1, the MIDCON Realty property to be conveyed to the United States is described as follows:

Township 10 South, Range 89 West, 6th PM,
County of Pitkin, State of Colorado
Sec. 10 N½ E½ SE¼ NE¼ SE¼;
Sec. 11 SW¼ NW¼ SW¼;
Sec. 14 N½ NW¼ NW¼, NW¼ NE @ NW¼.

The area described contains 42.5 acres, more or less.

Reasons for My Decision

After reviewing the EA and the public comment received through the process, I am convinced that this land exchange serves the public interest. Implementation of Alternative 1 not only resolves the title claim fairly and expeditiously, it provides for the acquisition of non-Federal land valuable for National Forest purposes.

Acquisition of the non-Federal parcels assist in achieving the objectives of the White River National Forest Land and Resource Management Plan (EA page 2). The non-Federal parcels which become National Forest will be protected from the sale, resale, and further development which could occur absent this exchange. Development would likely take place on most of the non-Federal lands in this exchange. This development would have a negative affect on the surrounding National Forest and would threaten the values for which those lands are being managed in the broader public interest. This is particularly true for the Case Lode and the MIDCON parcels. This exchange offers the opportunity to secure these lands from such intrusion.

The Forest Service's jurisdiction over the proposed land exchange is limited to the transfer of land ownership. While the National Environmental Policy Act (NEPA) requires the Forest Service to evaluate and disclose the impacts that can be expected as a result of the exchange. The use and management of the land that becomes private as a result of this exchange will be subject to the zoning authority which is Pitkin County. Pitkin County is a party to the Settlement Agreement. The agreement, as well as the past actions, demonstrate a strong desire to insure controlled development within the County. They support this exchange. This indicates to me that they are reasonably comfortable with their jurisdictional authority to regulate and mitigate development which results from the land exchange.

The Federal parcel is located in an area of considerable private land with ongoing development. The conveyance of this parcel will affect its use and enjoyment by owners of the adjacent property. However, it is my responsibility to insure that decisions involving National Forest reflect the greater public interest. It is acknowledged that wildlife habitat quality, which is already low, would decline further when the parcel is inevitably developed. In addition, the limited recreation resources associated with the parcel would be loss. I believe that both of these impacts are more than offset by the values associated with the non-Federal parcels to be acquired.

The administrative obligations of the Forest Service would be reduced through reduction of 6000 feet of boundary line to be located, posted and maintained and 12 corners to locate and maintain. Boundary location cost in this area is estimated of $11,000/mile. Maintenance costs are estimated at $2,500/mile every five years. There would be no change in road maintenance costs. There will be no net change in road miles the Forest Service would maintain.

Public Interest Determination

Per the requirements of 36 CFR 254.3(2), I have reviewed this decision against the criteria for determining public interest.

The resource values and the public objectives served by the non-Federal lands and interests to be acquired exceed the resource values and public objectives served by the by the Federal land to be conveyed. Also considered here was the time and expense of prolonged litigation in resolving the title claim.

The intended use of the Federal land will not substantially conflict with established management objectives on adjacent Federal land.

The consideration of all physical and biological resources and the public interests associated with both Federal and non-Federal properties, demonstrates a net gain in the public interest with the selection of Alternative 1.

Alternatives

The proposed action was analyzed in detail in the Environmental Assessment, along with the No Action alternative. Other alternatives were considered but dismissed from further analysis. The alternatives analyzed in detail in the Environmental Assessment are summarized below.

Alternative 1, Exchange Lands with D. Stone Davis, Proposed Action

Complete a land exchange under the current laws and regulations and Department of Justice Settlement Authority.

- The Forest Service would convey approximately 7.32 acres of Federal land into private ownership.
- D. Stone Davis would convey approximately 65 acres of non-Federal land to the United States.

Alternative 2, No Action

No lands would be exchanged between the Forest Service and D. Stone Davis.

- Land owned entirely by Davis would be available for resale or development. Litigation would continue over those properties with disputed title.
- The Federal land would remain under the current management prescription of the White River National Forest Land and Resource Management Plan. It would remain available for potential disposal in future exchanges.

Deed Restrictions

I wish to further expound on the impositions of deed restrictions, and alternative that was initially considered but dismissed. It has been suggested that the use of deed restrictions on the Federal parcel may be appropriate.

Forest Service direction for use of deed restrictions is found at several locations, including:

(a) Forest Service Manual 5474 deed restrictions and conditions.

In conveyances of National Forest System lands, in addition to reservations, it may be necessary to apply specific limiting conditions to manage effectively or to protect National Forest System lands and resources.

(b) Federal Register Notice of March 8, 1994, Part II, Department of Agriculture, Forest Service. 36 CFR 254 Land Exchanges; final rule.

A review of specific comments for 36 CFR 254.32 (h) *Reservations or restrictions in the public interest* provide an indication of the intent of this regulation. It contains references to "protecting critical interests" and restrictions to protect "any federal interests". The regulation itself states that "(t)he use or development of lands conveyed out of federal ownership are subject to * * * all laws, regulations and zoning authorities of State and local governing bodies".

(c) Forest Service Policy Statements.

October 14, 1999 memo from Deputy Chief James Furnish to Regional Foresters: "Do not propose or agree to restrictive covenants on the Federal lands unless they are required to comply with legal, regulatory requirements, executive orders, (*i.e.*, wetlands or floodplains, cultural) or to meet land and resource management objectives. Do not agree to reservations by either party as a means of equalizing values. The potential de-valuing effect of covenants on the Federal lands need

to be considered when developing proposals."

Forest Service direction indicates that deed restrictions are to be imposed in only those occasions when necessary to protect critical Federal interests. Neither scoping nor evaluation of the Federal land by specialists identified any critical resources or National Forest lands in need of protection through deed restrictions. In addition, the use of deed restrictions is not consistent with the Forest Service goal of improving the effectiveness and efficiency of its management. The Forest has identified these properties for disposal because of their intermingled status with private land, which makes management complicated and costly. Administration of deed restrictions can be extremely complicated, time consuming and expensive, resulting in a potential decrease in management efficiency, instead of the intended increase.

Finally, deed restrictions are not imposed to protect property interests on adjacent private property. The Forest Service has long taken the position that zoning and regulation of uses on private land are within the responsibility of state and local governments. Local authorities are in the best position to determine appropriate uses of private land. The Forest Service has neither the legal authority nor responsibility to substitute deed restrictions for local zoning controls. Local governments have traditionally agreed and insisted that such decisions be left to them.

Based on the fact that conveyance of the property with deed restrictions is inconsistent with policy, direction and regulation, and is beyond the scope of Forest Service responsibility, this alternative was dismissed from further consideration. It is "unlikely to be implemented" and thus, merited no further consideration.

Scoping and Public Involvement

A scoping effort to solicit issues and concerns related to the proposed action was accomplished through:

- The publication of the exchange proposal in the Aspen Times (July 31, August 7, 14 and 21, 1999)
- A mailing addressing the proposed action to potentially interested or affected organizations and individuals across the White River National Forest (July 30, 1999)
- A mailing to local officials, Pitkin County Commissioners, State of Colorado agencies, and the Colorado Congressional Delegation (March 23, 1999)

Four comment letters were received as a result of the scoping effort. All comments made or submitted were considered in this analysis and are available for review in the project file.

A notice of the availability of the completed EA was mailed to four parties on April 6, 2000. Both a notice of the availability of the EA and a copy of the EA were mailed or hand delivered to 18 parties between April 5th and April 7th. Those 18 parties were those who had commented, those who had previously requested copies, and those who we believed were very interested in the proposal. Legal notices of the availability of the EA were published April 3, 2000 in the Federal Register and April 8, 2000 in the Aspen Times.

Four written comments on the Environmental Assessment were received within the 30 day comment period. These comments have been documented and responses are provided in Appendix G of the EA.

Changes in the Environmental Assessment in Responses to Public Comment and Since February 2000

The Scoping section (EA page 4) was amended to include public review of the Environmental Assessment. Appendix G was also added. Appendix G is identification of the public comments on the Environmental Assessment and the Forest Service Response to those comments.

The EA, under mitigation measures for Alternative 1, called for reserving a right-of-way across the Federal parcel for a driveway to access land to the north. It was determined that this reservation is not needed because land to the north adjoins Castle Creek Road. This mitigation has been deleted from the EA.

Three names have been added to Exhibit 3.of Appendix B (parties who were mailed the 7/30/99 scoping letter). These names were overlooked when the EA was prepared.

Appendix E (BA & BE) has been supplemented with documentation of "No Effect" on Canada Lynx.

Finding of No Significant Impact

Based on my review of the Environmental Assessment, including appendices and supporting documents, it is my conclusion that Alternative 1 is not a major Federal action that would significantly effect the quality of the human environment as defined at 40 CFR 1508.27. Therefore, an environmental impact statement will not be prepared. This finding is based on the following factors:

- *Consideration for context of the project.* The context is local to Pitkin County, Colorado with implications for the immediate area only.
- *Consideration of both beneficial and adverse impacts.* Impacts from the selected action are not unique to this project. I conclude that the beneficial and adverse effects of the selected action are not significant to the context of the proposed and cumulative effects.
- *Consideration of the effects on public health and safety.* This exchange will not affect public health or safety. There are no hazardous materials or substances present on either the federal or non-Federal lands to be exchanged.
- *Consideration of unique characteristics of the geographic area.* There are no "unique characteristics of the geographic area" as defined at 40 CFR 1508.27(3).
- *Consideration of the degree to which the effects are likely to be highly controversial.* This land exchange is consistent with many other lands exchanges. There are no scientific disputes over the likely effects of this project. Therefore, I conclude that the environmental effects of the decision will not be highly controversial.
- *Consideration of the degree to which effects are uncertain or unknown.* This exchange is not likely to result in effects on the human environment which are highly uncertain or involve unique risk. It is similar to many past actions which have occurred on the White River National Forest. The probable effects and risks are well understood.
- *Consideration of the degree to which this action will set a precedent for future actions with significant effects.* Neither the land exchange nor this decision are precedent setting. Similar land exchanges have occurred in the past, nationally and locally. They are completed by Forest Service and by other public land management agencies with the objective of consolidating public land ownership. I conclude that this action does not establish precedence for further actions as each project must be evaluated on its individual merits.
- *Consideration of the action in relation to other actions with individually insignificant but cumulatively significant impacts.* This land exchange would not likely have cumulatively significant impacts on the environment.
- *Consideration of the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural or historic resources.* Cultural resource surveys have been conducted on all Federal lands to be exchanged. The selected

action will not affect any site, structure or object. No sites that are eligible for listing in the National Register of Historic Places or that may be scientifically, culturally or historically significant will be affected. Based on this information, I conclude that the selected action will not cause loss or destruction of significant scientific, cultural or historic resources. (EA, page 4)

• *Consideration for the degree to which the action may affect threatened or endangered species, or its critical habitat.* No threatened, endangered species is known to exist in the areas considered under this land exchange. There is no habitat within the project area that is viewed as critical habitat for threatened or endangered species, as documented in the biological assessment. There is the potential for sensitive species to benefit from the protection of acres of potential habitat. (EA, Page 4)

• *Consideration of whether the action violates or threatens to violate federal, state, or local laws or requirements imposed for the protection of the environment.* This land exchange does not violate nor threaten to violate any federal, state or local laws, regulations or requirements for protection of the environment.

Findings Required by Other Laws and Regulations

Executive Orders 11988 and 11990

The Forest Service has evaluated the proposed exchange in accordance with EO 11988 Floodplains and EO 11990 Wetlands and is in compliance. There are no floodplains or wetlands involved.

Endangered Species Act

The Biological Assessment/Biological Evaluation concluded the land exchange would have "No Effect" on any threatened, endangered or sensitive species.

National Historic Preservation Act

Heritage resource inventories have been completed on the federal parcels and the Colorado State Historic Preservation Officer has concurred with a finding of No Effect.

White River National Forest Land and Resource Management Plan

The land exchange is in compliance with the White River National Forest Land and Resource Management Plan as described on pages 2–3 of the EA.

CERCLA, Comprehensive Environmental Response, Compensation, and Liability Act

Field examinations of the Federal and non-Federal parcels considered for exchange have been completed. No evidence was found that hazardous or potentially hazardous substances or petroleum products have been used, stored, released or disposed on any parcel.

Implementation Date

Implementation of this decision may occur immediately.

Administrative Review or Appeal Opportunities

Since the decision notice was approved by the Secretary of Agriculture pursuant to the provisions of 36 CFR 215.2, this decision is not subject to the overall requirements of 36 CFR 215 and thus, cannot be appealed. The requirements of 36 CFR 215 apply only to forest service line officers.

Additional Information and Contact Person

For additional information concerning this decision, contact: Allan Grimshaw, Aspen Ranger District, White River National Forest, 806 West Hallam St., Aspen, Colorado 81611, 970/925–3445.

Dated: June 15, 2000.

Anne Keys,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 00–17581 Filed 7–11–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–853]

Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Handley at (202) 482–0631 or Charles Riggle at (202) 482–0650, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Final Determination

We determine that circular seamless stainless steel hollow products from Japan are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on April 21, 2000. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 25305 (May, 1, 2000) (*Preliminary Determination*). On May 31, 2000, case briefs were filed by Plymouth Tube Company (Plymouth Tube) and the petitioners.[1] Sumitomo Metal Industries, Ltd. (SMI) and the petitioners submitted rebuttal briefs on June 5, 2000. A hearing was held on June 26, 2000.

On May 31, 2000, SMI, Kawasaki Steel Corporation (Kawasaki) and Mitsui Tubular Products Inc., requested that the Department issue to the Customs Service a clarification which would allow certain shipments of proprietary grade oil country tubular goods (OCTG), which have been excluded from the scope of the investigation, to enter without suspension of liquidation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*) from Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 5, 2000, which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision*

[1] The petitioners include Altx, Inc., American Extruded Products, PMAC Ltd, DMV Stainless USA, Inc., Salem Tube Inc., Sandvik Steel Co., International Extruded Products LLC, Pennsylvania Extruded Company (Pexco) and the United Steel Workers of America, AFL–CIO/CLC.

Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

The scope of the investigation has been amended since the preliminary determination. For a description of the scope of this investigation, see the "Scope of Investigation" section, as well as item 2 in the "Discussion of the Issues" section, of the Decision Memorandum, which is on file in B–099 and available on the Web at *http://ia.ita.doc.gov*.

Period of Investigation

The period of investigation (POI) is October 1, 1998, through September 30, 1999.

Facts Available

In the preliminary determination, the Department based the dumping margins for the mandatory respondents, SMI and Sanyo Special Tube (Sanyo), on facts otherwise available pursuant to section 776(a)(2)(A) of the Act. For the final determination, the use of facts otherwise available continues to be necessary because the record does not contain company-specific information. Sanyo failed to respond to the Department's questionnaire, nor did it provide any indication that it was unable to do so. SMI responded to the Department's questionnaire, but failed to respond to all of the supplemental questionnaires and subsequently withdrew all of its questionnaire responses from the record. *See Memorandum from Constance Handley to the File, re: Return of Sumitomo Metal Industries Questionnaire Responses*, dated May 12, 2000. Therefore, the Department found that both Sanyo and SMI failed to cooperate by not acting to the best of their ability. As a result, pursuant to section 776(b) of the Act, the Department used an adverse inference in selecting from the facts available. Specifically, the Department assigned to the mandatory respondents the highest margin alleged in the petition. We continue to find this margin corroborated, pursuant to section 776(c) of the Act, for the reasons discussed in the *Preliminary Determination*. No interested parties have objected to the use of adverse facts available for the mandatory respondents in this investigation, nor to the Department's choice of facts available. In addition, the Department has left the "All Others Rate" unchanged from the preliminary determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend all entries of circular seamless stainless steel hollow products from Japan, that are entered, or withdrawn from warehouse, for consumption on or after May 1, 2000, the date of publication of our preliminary determination. The Customs Service shall require a cash deposit or bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Sanyo Special Tube	156.81
Sumitomo Metal Industries	156.81
All Others	62.14

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

1. Ultra-high purity 316L Redraw Hollows

2. Scope Exclusion

[FR Doc. 00–17645 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Orders and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part.

SUMMARY: In accordance with 19 CFR 351.216(b), Toyo Ink America ("TIA") requested a changed circumstances review of the antidumping order on Certain Corrosion-Resistant Carbon Steel Flat Products from Japan with respect to "doctor blades." Domestic producers of the like product have expressed no interest in continuation of the order with respect to doctor blades. In response to TIA's request, the Department of Commerce ("the Department") is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182, (202) 482–3818, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR. part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2000, TIA requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, TIA requested that the Department revoke the order with respect to imports of doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to .03% of phosphorous; less than or equal to .006 percent of sulfur; other elements representing .24%; and the remainder of iron. TIA is an importer of the products in question.

Scope of Review

This review covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate; (4) carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (5) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation; Ispat Inland Steel; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group, a unit of USX Corporation, of no further interest in continuing the order with respect to certain corrosion-resistant carbon steel flat products described as doctor blades which are specificed as carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900—990 HV; the carbon steel coil or strip consists of

the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to .03% of phosphorous; less than or equal to .006 percent of sulfur; other elements representing .24%; and the remainder of iron, we are initiating this changed circumstances administrative review. Furthermore, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to certain corrosion-resistant carbon steel flat products falling within the description above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty orders with respect to imports of certain corrosion-resistant carbon steel flat products meeting the above-mentioned specifications from Japan.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service ("Customs") to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on certain corrosion-resistant carbon steel flat products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments. This notice is published in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: July 6, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17646 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Final Results and Partial Recission of the Antidumping Duty Administrative Review of Mechanical Transfer Presses From Japan.

SUMMARY: On March 6, 2000, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. This review covers one manufacturer/exporter of MTPs during the period February 1, 1998 through January 31, 1999. We gave interested parties an opportunity to comment on our preliminary results.

Based on our analysis of the comments received, we have made certain changes in these margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Strollo at (202) 482–5255 or Maureen Flannery at (202) 482–3020, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (1999).

Background

On March 6, 2000, the Department published the preliminary results of administrative review of the antidumping duty order on MTPs from Japan (65 FR 11764). We invited parties to comment on our preliminary results of review. We received comments from respondent, Komatsu, Ltd. (Komatsu). The Department has now completed this administrative review in accordance with section 751 of the Act.

Final Recission in Part of Antidumping Administrative Review

On April 12, 1999, we received a letter from Hitachi Zosen indicating that there were no entries of subject merchandise during the period of review (POR). On June 28, 1999, the petitioner withdrew its request for an administrative review with respect to Ishikawajima Harima Heavy Industries (IHI). On August 25, 1999, we requested that the U.S. Customs Service (Customs) contact us if they were suspending liquidation of entries of the subject merchandise during the period of review from Hitachi Zosen Corporation (Hitachi Zosen). We have received no such response. Therefore, we conclude that there have been no entries of subject merchandise made by Hitachi Zosen during the POR, and, thus, are rescinding the review with respect to Hitachi Zosen and IHI. *See Mechanical Transfer Presses from Japan: Preliminary Results and Recission in Part of Antidumping Duty Administrative Review*, March 6, 2000 (65 FR 11764).

Scope of Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule

(HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order. (*See* "Final Scope Ruling on Spare and Replacement Parts," U.S. Department of Commerce, March 20, 1992; and "Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.," U.S. Department of Commerce, October 3, 1996.)

Analysis of Comments Received

All issues raised in Komatsu's case brief in this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 5, 2000, which is hereby adopted by this notice. A list of the issues which Komatsu has raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. A complete discussion of all issues raised in this review and the corresponding recommendations are in the public memorandum which is on file in the Central Records Unit, located in the Central Records Unit, room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period February 1, 1998 through January 31, 1999:

Manufacturer/exporter	Margin (percent)
Komatsu, Ltd	0.00

Because the weighted-average dumping margin is zero, we will instruct the Customs Service to liquidate entries made during this review period without regard to antidumping duties for the subject merchandise that Komatsu exported.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.51 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix

List of Issues

1. Deduction of Movement Expenses from Starting Price
2. Double-Counting of Marine Insurance Expenses
3. Transfer Price vs. Cost for Movement and Packing Expenses

[FR Doc. 00–17647 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Notice of Extension of Time Limit for Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Final Results of 1998–1999 Antidumping Duty Administrative Review and New Shipper Review of Stainless Steel Bar From India.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the fourth administrative review and new shipper review of the antidumping duty order on stainless steel bar from India. The period of review for both segments of the proceeding is February 1, 1998 through January 31, 1999. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Meg Weems, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 or (202) 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 1999).

Statutory Time Limits

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 120 days after the date on which the notice of preliminary results was published in the **Federal Register**.

On March 31, 1999, the new shipper, Meltroll Engineering Pvt. Ltd., requested that the Department align the new shipper review with the administrative review (*see also* Meltroll letter dated 21 June 2000 specifically waiving statutory time limits). The time limits prescribed for a new shipper review under section 751(a)(2)(B)(iv) of the Act differ from those of an administrative review under section 751(a)(3) of the Act. Pursuant to Meltroll's request and 19 CFR 351.214(j)(3), the Department is now aligning both reviews and the time limits for the administrative review under section 751(a)(3) of the Act will now also apply to the new shipper review.

Extension

On March 8, 2000, we published the preliminary results of review (65 FR 12209). In our notice of preliminary results, we stated our intention to issue the final results of these reviews no later than July 6, 2000.

Due to limited resources, we find it not practicable to complete the reviews within the originally anticipated time limit. Specifically, the Department personnel responsible for completing these reviews will be on verification for a separate proceeding for several weeks preceding the current deadline. Therefore, the Department is extending the time limit for completion of the final results to not later than August 4, 2000, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–17644 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) ("the Act") authorizes the Secretary of Commerce, with the concurrence of the Attorney General, to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR Section 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by E-mail at oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 00–00004." A summary of the application follows.

Summary of the Application

Applicant: Overseas Distribution Solutions, L.L.C. ("ODS"), 531 Central Avenue, Suite D, Laurel, Mississippi, 39440.

Contact: Ronald A. Oleynik, Attorney.

Telephone: (202) 457–7183.

Application No.: 00–00004.

Date Deemed Submitted: June 29, 2000.

Members (in addition to applicant): AJC International, Inc., Atlanta, GA; Cagle's Inc., Atlanta, GA; Peterson Farms Inc. (d/b/a Crystal Lake), Decatur, AR; Fieldale Farms Corporation, Baldwin, GA; and Pilgrim's Pride Corp., Pittsburg, TX.

ODS seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products*

Poultry (chicken) meat (Boilers, Fryers, and Roaster Chickens).

2. *Services*

All services related to the export of Products.

3. *Technology Rights*

All intellectual property rights associated with Products or Services, including, but not limited to: Patents, trademarks, service marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and sui generis forms of protection for databases and computer programs.

4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)*

Export Trade Facilitation Services, including, but not limited to: Consulting and trade strategy; sales and marketing; export brokerage; foreign marketing research and analysis; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer and consumer

preferences; documentation and services related to compliance with customs requirements; joint ventures; inspection and quality control; transportation; shipping and export management; export licensing; insurance and financing; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; management information systems development and application; trade show exhibitions; professional services in the area of government relations and assistance with state and federal export assistance programs, such as the Export Enhancement and Market Promotion programs.

Export Markets

The Export Markets include all parts of the world except the United States, (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

In connection with the promotion and sale of Members' Products and Services into the Export Markets, ODS and/or one or more of its Members may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Design and execute foreign marketing strategies for its Export Markets and collect and distribute information on trade opportunities in the Export Markets;
3. Prepare joint bids, establish export prices, and establish terms of sale in the Export Markets;
4. Design, develop and market generic corporate labels;
5. Enter into, terminate, amend or enforce exclusive or non-exclusive licensing agreements regarding its Products, Services, or Technology Rights with Export Intermediaries or other persons selling its Products in Export Markets;
6. Engage in joint promotional activities directly targeted at developing the Export Markets, such as: Arranging trade shows and marketing trips; providing advertising services; providing brochures, industry newsletters and other forms of product, service and industry information; conducting international market and product research; procuring international marketing, advertising and promotional services; and sharing the cost of these joint promotional activities among the Members;
7. Conduct product and packaging research and development exclusively for the export of the Products, such as meeting foreign regulatory requirements and foreign buyer specifications and identifying and designing for foreign buyer and consumer preferences;
8. Negotiate, enter into, and implement agreements with governments and other foreign persons regarding non-tariff trade barriers in the Export Markets, such as packaging requirements, and providing specialized packing operations and other quality control procedures to be followed by its Members in the export of Products into the Export Markets;
9. Advise and cooperate with agencies of the U.S. Government in establishing procedures regulating the export of Members' Products, Services and/or Technology Rights into the Export Markets;
10. Enter into, terminate, amend or enforce exclusive or non-exclusive sales agreements with Export Intermediaries, or other persons selling its Products for the transfer of title to Products, Services, and/or Technology Rights in the Export Markets;
11. Enter into, terminate, amend or enforce exclusive or non-exclusive pricing and/or consignment agreements for the sale and shipment of its Products and Services to Export Markets;
12. Allocate export sales, export orders and/or divide Export Markets, among Export Intermediaries, or other persons for the sale, licensing, and/or transfer of title to its Products, Services, and/or Technology Rights for sale in the Export Markets;
13. Enter into, terminate, amend or enforce territorial and customer restraints on Export Intermediaries, or other persons regarding the sale, licensing and/or transfer of title to its Products, Services, and/or Technology Rights for sale in the Export Markets;
14. Enter into, terminate, amend or enforce exclusive or non-exclusive agreements for the tying of its Products and Services, the setting of prices, and/or the distribution, shipping or handling of its Products or Services in the Export Markets;
15. Broker or take title to the Products;
16. Purchase Products from non-Members whenever necessary to fulfill specific sales obligations;
17. Solicit non-Members to become Members;
18. Communicate and process export orders;
19. Assist each Member in maintaining the quality standards necessary to be successful in the Export Markets;
20. Negotiate freight rate contracts with individual carriers and carrier conferences either directly or indirectly through shippers associations and/or freight forwarders;
21. Bill and collect from foreign buyers and provide accounting, tax, legal and consulting assistance and services;
22. Enter into exclusive agreements to provide, produce, negotiate, contract, and administer Export Trade Services and Trade Facilitation Services;
23. Apply for and utilize applicable export assistance and incentive programs which are available within the governmental and private sectors, such as the USDA Export Enhancement and Market Promotion programs;
24. Refuse to quote prices for, or to market or sell, Products or Services to an Export Market or Markets, or to non-Member distributors, buyer and/or sales representatives who directly or indirectly market or sell to an Export Market or Markets;
25. Utilize common marking and identification of Product sold in the Export Markets; and
26. Exchange information with and among the Members as necessary to carry out the Export Trade Facilitation Services and Export Trade Activities and Methods of Operation, including:

(a) Information regarding sales and marketing efforts and strategies in the Export Markets, including price, quality, quantity, and source; projected demand in the Export Markets for Products; customary terms of sale, prices and availability of Products independently committed by Members for sales in the Export Markets; prices and sales of Products in the Export Markets; and specifications by buyers and consumers in the Export Markets;

(b) Information regarding expenses specific to exporting to and within the Export Markets, including transportation, transshipments, intermodal shipments, insurance, inland freight, port storage, commissions, export sales, documentation, financing and Customs duties or taxes;

(c) Information regarding U.S. and foreign legislation and regulations, including federal marketing order programs that may affect sales to the Export Markets;

(d) Information about ODS's or its Members' export operations, including sales and distribution networks established by ODS or its Members in the Export Markets, and prior export

sales by Members, including export price information; and

(e) Information about ODS's or its Members' credit and collections practices and problems, claims, and sales allowances related to Export Markets.

Definitions

1. *Export Intermediary* means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Member* means a person who has membership in ODS and who has been certified as a "Member" within the meaning of Section 325.2 (1) of the Regulations.

Dated: July 6, 2000.

Morton Schnabel,

Director Office of Export Trading Company Affairs.

[FR Doc. 00–17613 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070600B]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Atlantic Mackerel, Squid and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, August 2, 2000, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Renaissance Hotel Philadelphia Airport (formerly the Radisson), 500 Stevens Drive, Philadelphia, PA 19113, telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop 2001 quota recommendations for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 6, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17631 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070300C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications to modify permits (1245, 1189); issuance of permits (1247), (1249); and modifications/amendments to existing permits (1177).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a request to modify permit (1245) from Mr. J. David Whitaker, of the South Carolina Department of Natural Resources (SCDNR), NMFS has received a request to modify permit (1189) from Dr. James Kirk, of the US Army Corps of Engineers (Corps); NMFS has issued permit 1247 to Mr. Tom Savoy, of CT Dept of Environmental Protection (CTDEP) and NMFS has issued permit 1249 to Mr. E.P. Taft, of Alden Research Laboratory (ALR); and NMFS has issued an amendment to a scientific research/enhancement permit to the U.S. Army Corps of Engineers, Portland District in Portland, OR (Corps)(1177).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00 pm eastern standard time on August 11, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permit 1177: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (ph: 503–230–5400, fax: 503–230–5435).

For permits 1247, 1245, 1189, 1249: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301–713–1401, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permits 1247, 1245, 1189, 1249: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

For permit 1177: Leslie Schaeffer, Portland, OR (ph: 503–230–5433, fax: 503–230–5435, e-mail: Leslie.Schaeffer@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS

regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (*Dermochelys coriacea*), Loggerhead turtle (*Caretta caretta*).

Fish

Coho salmon (*Oncorhynchus kisutch*): Threatened Southern Oregon/Northern California Coasts (SONCC).

Shortnose sturgeon (*Acipenser brevirostrum*).

Modification Requests Received

Permit 1245

SCDNR requests a modification to Permit 1245. Permit 1245 authorizes the annual take of up tp 200 threatened loggerhead turtle, 23 endangered Kemp's ridley, one green and one leatherback sea turtle in the Atlantic Ocean off the southeastern United States. This study is intended to capture juveniles and adults, thereby providing a more comprehensive assessment of total population abundance and an assessment of the health of individual animals. Modification #1 would increase the authorized annual take of green turtles from one to ten annually and add five hawksbill turtles.

Permit 1189

The applicant requests a modification to Permit 1189. Permit 1189 authorizes the capture handling and release of up to 300 juvenile and adult shortnose sturgeon annually in the Ogeechee River, Georgia. The permit also authorizes sonic tagging of up to 20 adult shortnose sturgeon in the Ogeechee River. Modification #2 would authorize the use of external floy tags for up to 50 shortnose sturgeon annually. Permit 1189 expires December 31, 2002.

Permits and Modifications Issued

Permits Issued

Notice was published on March 3, 2000 (65 FR 16894) that Mr. Tom Savoy, of CT Dept of Environmental Protection applied for a scientific research permit (1247). The applicant requested a five year permit to lethally take up to 300 spawned eggs and larvae annually; capture, examine, collect stomach contents samples via gastrical lavage, PIT tag and release up to 400 adult and 100 juvenile sturgeon; and sonically tag up to 25 adult sturgeon annually. The research proposes to determine general seasonal movements and fine scale diurnal movement patterns as well as food habits and prey preferences of shortnose sturgeon in the Connecticut River below Holyoke Dam. Permit 1247 was issued on June 30,2000, authorizing take of listed species. Permit 1247 expires June 30, 2005.

Permit 1249

Notice was published on April 19, 2000 (65 FR 20954) that Mr. E.P. Taft, of Alden Research Laboratory applied for a scientific research permit (1249). The applicant proposes to take a maximum of 200 1+ yr captively bred shortnose sturgeon from the Conte Anadromous Fish Research Center to conduct applied fish passage facility research and development with the intent of identifying what fish passage design and operating conditions are necessary to maximize biological effectiveness of shortnose sturgeon diversion around dams in the Connecticut and Santee-Cooper River systems. Permit 1249 was issued on July 6, 2000, authorizing take of listed species. Permit 1249 expires June 30, 2001.

Permit Amendment Issued

On June 30, 2000, NMFS issued an amendment to the Corps' scientific research/enhancement permit 1177. The amendment provides an extension of the duration of the permit through June 30, 2001. The permit was due to expire on June 30, 2000. The permit authorizes take of adult and juvenile, threatened, SONCC coho salmon associated with scientific research and an adult fish trap-and-haul program at Elk Creek Dam on the Rogue River in OR. The purpose of the trap-and-haul program is to move returning ESA-listed adult fish above Elk Creek Dam, an impassable barrier for adult salmonids, so that the fish may use the habitat upstream of the dam for natural spawning. To determine the annual spawning success of the fish upstream of the dam, ESA-listed juvenile fish will be observed by snorkeling. In addition, ESA-listed adult fish carcasses will be examined for evidence of spawning and immediately returned to the stream. Permit 1177 expires on June 30, 2001.

Dated: July 6, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–17628 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

July 6, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing, group swing, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also

see 64 FR 69228, published on December 10, 1999.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 13, 2000, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [2], 359–V [3], 360–363, 369–D [4], 369–H [5], 369–L [6], 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [7], 659–H [8], 659–S [9], 666, 669–P [10], 670–L [11], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,514,466,758 square meters equivalent.
Sublevels in Group I	
200	798,180 kilograms.
218	12,123,172 square meters.
219	2,663,554 square meters.
226	12,094,471 square meters.
237	2,227,444 dozen.
239	3,297,032 kilograms.
300/301	2,484,553 kilograms.
313	45,943,331 square meters.
314	53,450,809 square meters.
317/326	23,332,435 square meters of which not more than 4,463,953 square meters shall be in Category 326.
331	5,580,828 dozen pairs.
333	109,251 dozen.
334	353,835 dozen.
335	417,558 dozen.
336	185,543 dozen.
338/339	2,457,463 dozen of which not more than 1,816,459 dozen shall be in Categories 338–S/339–S [12].
340	839,239 dozen of which not more than 419,619 dozen shall be in Category 340–Z [13].
341	719,352 dozen of which not more than 436,317 dozen shall be in Category 341–Y [14].
342	283,509 dozen.
345	134,465 dozen.
347/348	2,419,985 dozen.
350	182,417 dozen.
351	596,599 dozen.
352	1,725,269 dozen.
359–C	672,436 kilograms.
359–V	954,257 kilograms.
360	8,642,321 numbers of which not more than 5,645,274 numbers shall be in Category 360–P [15].
361	4,565,395 numbers.
362	7,633,987 numbers.
363	23,479,014 numbers.
369–D	5,092,785 kilograms.
369–H	5,530,233 kilograms.
369–L	3,669,707 kilograms.
410	1,079,671 square meters of which not more than 865,473 square meters shall be in Category 410–A [16] and not more than 849,296 square meters shall be in Category 410–B [17].
433	22,003 dozen.
434	14,337 dozen.
435	25,841 dozen.
436	16,222 dozen.
438	27,858 dozen.
440	40,557 dozen of which not more than 23,175 dozen shall be in Category 440–M [18].
442	42,931 dozen.
443	135,706 numbers.
444	223,614 numbers.
445/446	298,874 dozen.
447	72,893 dozen.
448	23,956 dozen.
607	3,588,736 kilograms.
611	5,950,144 square meters.
613	8,419,448 square meters.
614	13,230,559 square meters.
615	27,543,621 square meters.
617	19,244,449 square meters.
631	1,440,856 dozen pairs.
633	62,017 dozen.
634	687,556 dozen.
635	725,251 dozen.
636	585,944 dozen.
638/639	2,584,271 dozen.
640	1,428,730 dozen.
641	1,412,458 dozen.
642	365,364 dozen.
643	551,517 numbers.
644/844	3,910,019 numbers.
645/646	884,600 dozen.
647	1,618,842 dozen.
648	1,164,438 dozen.
649	1,010,675 dozen.
650	128,875 dozen.
651	827,671 dozen of which not more than 147,358 dozen shall be in Category 651–B [19].
652	3,029,324 dozen.
659–C	451,552 kilograms.
659–H	3,079,901 kilograms.
659–S	669,556 kilograms.
666	3,837,643 kilograms of which not more than 1,385,151 kilograms shall be in Category 666–C [20].
669–P	2,237,063 kilograms.
670–L	17,471,826 kilograms.
831	632,536 dozen pairs.
833	32,336 dozen.
835	131,382 dozen.
836	306,009 dozen.
840	511,083 dozen.
842	296,248 dozen.
845	2,513,696 dozen.
846	193,561 dozen.
847	1,335,870 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [21], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [22], as a group.	132,076,642 square meters equivalent.

Category	Adjusted twelve-month limit [1]
Group III	
201, 220, 222, 223, 224–V [23], 224–O [24]; 225, 227, 229, 369–O [25], 400, 414, 464, 465, 469, 600, 603, 604–O [26], 606, 618–622, 624–629, 665, 669–O [27] and 670–O [28], as a group.	274,546,086 square meters equivalent.
Sublevel in Group III	
224–V	3,932,558 square meters.
225	6,784,411 square meters.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	12,478,390 square meters equivalent.
Levels not in a Group	
369–S [29]	658,108 kilograms.
863–S [30]	9,314,276 numbers.
870	34,821,214 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[12] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[13] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[14] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[15] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[16] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[17] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[18] Category 440–M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[19] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[20] Category 666–C: only HTS number 6303.92.2000.

[21] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[22] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[23] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[24] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[25] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S)

[26] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[27] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[28] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

[29] Category 369–S: only HTS number 6307.10.2005.

[30] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17589 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

July 6, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70223, published on December 16, 1999.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on

January 1, 2000 and extending through December 31, 2000.

Effective on July 13, 2000, you are directed to adjust the current limits for the following categories, as provided for under the current bilateral textile agreement between the Governments of the United States and the Sultanate of Oman:

Category	Adjusted twelve-month limit [1]
334/634	165,070 dozen.
335/635	284,249 dozen.
340/640	306,956 dozen.
347/348	1,159,037 dozen.
647/648/847	381,341 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17590 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 11, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOC, 550 D Street West, Suite 1, Randolph AFB, TX 78150–4527.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call HQ AFRS/RSOC, Officer Accessions Branch at (210) 652–4334.

Title, Associated Form, and OMB Number: Health Profession Accession Forms, AETC Forms 1402 and 1437, OMB Number 0701–0078.

Needs and Uses: These forms are used by field recruiters in the processing of health professions applicants applying for a commission in the United States Air Force.

Affected Public: Individuals or households.

Annual Burden Hours: 3,600.

Number of Respondents: 3,600.

Responses Per Respondent: 1.

Average Burden Per Response: 1 Hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are civilian candidates applying for a commission in the United States Air Force as healthcare officers. These forms provide pertinent information to facilitate selection of candidates for a commission.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–17542 Filed 7–11–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice To Extend the Public and Agency Scoping Period for the Initial F–22 Operational Beddown Environmental Impact Statement (EIS)

The United States Air Force is issuing this notice to advise the public of its decision to extend the public and agency scoping period for the preparation of the Draft EIS which will assess the potential environmental impacts of a proposal to beddown the initial F–22 Operational Wing.

The comment period for scoping related comments has been extended to October 31, 2000 to ensure sufficient time to consider public and agency comments in the screening process and preparation of the Draft EIS. Comments should be submitted to the address below.

HQ ACC/CEVP, 129 Andrews Street, Suite 102, Langley AFB, VA 23665–2769, Attn: Ms. Brenda Cook.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–17543 Filed 7–11–00; 8:45 am]

BILLING CODE 5001–05–P

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

Emergency Oil and Gas Guaranteed Loan Program; Guarantee Agreement

ACTION: Proposed collection; comment request.

SUMMARY: The Emergency Oil and Gas Guaranteed Loan Board, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 11, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Email Lengelme@doc.gov., Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Daniel J. Rooney, Executive Secretary, Emergency Oil and Gas Guaranteed Loan Board, Room 2500, 1401 Constitution Ave, NW., Washington, DC 20230; phone: (202) 219–0575, and fax: (202) 219–0585.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to "The Emergency Oil and Gas Guaranteed Loan Act of 1999," Chapter 2, Public Law 106–51, the Emergency Oil and Gas Guaranteed Loan Board developed a guarantee agreement that must be signed by qualified oil and gas companies that receive loan guarantees. The information being collected will be used and is necessary to ensure that the applicant is meeting the conditions of the guarantee agreement and to protect the Federal government from default

and/or fraud. The information is also required as supporting documentation for annual or other audits that may be conducted by or on behalf of the Board or by the General Accounting Office (GAO) for as long as the guarantee agreement is in effect.

II. Method of Collection

The application forms, the guarantee documents and the National Environmental Policy Act submission forms will all be available on the Department of Commerce's website. Applicants may download the required forms.

III. Data

OMB Number: 3003–0002.

Form Number: ELB–1.

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 23.

Estimated Time Per Response: 80 hours.

Estimated Total Annual Burden Hours: 1,475 hours.

Estimated Total Annual Cost: $124,900 (Government $60,000, Respondents $64,900).

IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 7, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17592 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–P

EMERGENCY STEEL LOAN GUARANTEE BOARD

Emergency Steel Loan Guarantee Program; Guarantee Agreement

ACTION: Proposed collection; comment request.

SUMMARY: The Emergency Steel Loan Guarantee Board, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 11, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Email Lengelme@doc.gov., Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Daniel J. Rooney, Executive Secretary, Emergency Steel Loan Guarantee Board, Room 2500, 1401 Constitution Ave, NW., Washington, DC 20230; phone: (202) 219–0575, and fax: (202) 219–0585.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to "The Emergency Steel Loan Guarantee Act of 1999," Chapter 1, Public Law 106–51, the Emergency Steel Loan Guarantee Board developed a guarantee agreement that must be signed by qualified steel companies that receive loan guarantees. The information being collected will be used and is necessary to ensure that the applicant is meeting the conditions of the guarantee agreement and to protect the Federal government from default and/or fraud. The information is also required as supporting documentation for annual or other audits that may be conducted by or on behalf of the Board or by the General Accounting Office (GAO) for as long as the guarantee agreement is in effect.

II. Method of Collection

The application forms, the guarantee documents and the National Environmental Policy Act submission forms will all be available on the Department of Commerce's website. Applicants may download the required forms.

III. Data

OMB Number: 3004–0002.
Form Number: ELB–1.
Type of Review: Regular submission.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 23.
Estimated Time Per Response: 80 hours.
Estimated Total Annual Burden Hours: 1,475 hours.
Estimated Total Annual Cost: $124,900 (Government $60,000, Respondents $64,900).

IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 7, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17591 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–364–000]

Clear Creek Storage Company, L.L.C.; Notice of Tariff Filing

July 6, 2000.

Take notice that on June 30, 2000, Clear Creek Storage Company, L.L.C. (Clear Creek) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective August 1, 2000:

First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 24
Original Sheet No. 25
Original Sheet No. 26
First Revised Sheet No. 69
Original Sheet No. 73A
First Revised Sheet No. 74
Original Sheet No. 99
Original Sheet No. 100
Original Sheet No. 101
Original Sheet No. 102
Original Sheet No. 103

Clear Creek states that the proposed tariff sheets, when approved, will enable it to implement unbundled sales service as provided by 18 CFR part 284, subpart J.

Clear Creek explains that on March 2, 1998, it filed an application in Docket No. CP98–256–000, pursuant to section 7 of the Natural Gas Act (NGA), for a certificate of public convenience and necessity to convert a natural gas production reservoir to a natural gas storage facility, to construct appurtenant facilities and to operate the storage field and related facilities for the sole use of Clear Creek's two owners, Questar Energy Trading Company and Montana Power Ventures, Inc.

Clear Creek explains further that on September 1, 1998, the Commission accepted Clear Creek's application and authorized the company to (1) convert a natural gas production reservoir to a gas storage facility, (2) operate the facility on an open-access basis and (3) perform certain storage-related transportation services under Part 284, Subpart G. Clear Creek states that as the holder of a Part 284, Subpart G certificate, the company automatically has blanket authority to provide unbundled sales in accordance with the provisions of Part 284, Subpart J of the Commission's regulations.

Clear Creek explains that although it has blanket authority to provide unbundled firm and interruptible sales of natural gas, Clear Creek's effective FERC Gas Tariff does not contain tariff provisions applicable to an unbundled sales service. Consequently, as required by 18 CFR 284.286 and 284.287, Clear Creek submits proposed tariff sheets that incorporate the provisions of Subpart J and explain how Clear Creek will comply with the Commission's standards applicable to unbundled sales service.

Clear Creek states that a copy of this filing has been served upon its customers and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–17557 Filed 7–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–362–000]

K N Wattenberg Transmission Limited Liability Company; Notice of Tariff Filing

July 6, 2000.

Take notice that on June 30, 2000, K N Wattenberg Transmission Limited Liability Company (KNW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective August 1, 2000.

In Docket No. RM96–1, the Commission has required that interstate pipelines communicate with their customers via the Internet. The purpose of this compliance filing is to make tariff changes entailed by that requirement and to incorporate the use of a new computer system as previously described in the Request for Extension of Time for KNW in Docket No. RM96–1–009, filed with the commission on May 24, 2000.

KNW requests that the Commission grant any other waivers of its regulations that the Commission may deem necessary to accept KNW's tariff sheet(s) to be effective August 1, 2000.

KNW states that copies of the filing were served upon KNW's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–17555 Filed 7–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–150–002]

Millennium Pipeline Company, L.P.; Notice of Amendment

July 6, 2000.

Take notice that on June 28, 2000, Millennium Pipeline Company, L.P. (Millennium), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed in Docket No. CP09–150–002 an amendment to its pending application filed in Docket No. CP98–150–000, to reflect a route variation in Westchester County, New York, all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Millennium states that Millennium and the Public Service Commission of the State of New York (PSCNY) have identified an alternative pipeline route in Westchester County, New York which they believe could satisfy the safety concerns that have been expressed by the PSCNY. Millennium indicates that the alternative route for the most part departs from the powerline right-of-way of Consolidated Edison Company of New York, Inc. and instead follows public highways and bike trails for most of its length.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 27,

2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved.

Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Millennium to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–17548 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–90–000]

Morgan Stanley Capital Group Inc., Complainant, v. New York Independent System Operator, Inc. Respondent; Notice of Complaint

July 6, 2000.

Take notice that on July 5, 2000, Morgan Stanley Capital Group, Inc. (MSCG), tendered for filing a complaint pursuant to Section 206 of the Federal Power Act against the New York Independent System Operator, Inc. (NYISO) alleging that the NYISO has unlawfully denied power marketers such as MSCG access to Real-Time markets through its bidding restrictions excluding non-physical transactions in those NYISO markets. MSCG alleges that these bidding restrictions unduly discriminate against certain market participants and serve to distort the marketplace, restrict fluidity, and result in incorrect pricing signals.

Copies of the filing were served upon the NYISO and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before July 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before July 17, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–17558 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–361–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

July 6, 2000.

Take notice that on June 30, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 238 and Fourth Revised Sheet No. 505, to be effective August 1, 2000.

Natural states that the filing is being submitted to set out a correction to its Tariff relating to the allocation of storage injections by pipeline leg under Natural's Rate Schedule NSS. A related change has been made in the Rate Schedule NSS pro forma service agreement. Natural further states that the allocation provision modified in the present filing was not updated to reflect a tariff change giving more flexibility under Natural's Rate Schedule NSS in contracting by pipeline leg.

Natural requests waiver of the Federal Energy Regulatory Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective August 1, 2000.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17554 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–363–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

July 6, 2000.

Take notice that on June 30, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective August 1, 2000.

Natural states that the purpose of this filing is to implement a new Rate Schedule FFTS, under which Natural would provide a flexible firm transportation service. Conforming tariff changes have also been made in the General Terms and Conditions of the Tariff and in the pro forma service agreement.

Natural requests waiver of the Federal Energy Regulatory Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective August 1, 2000.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17556 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–360–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

July 6, 2000.

Take notice that on June 30, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of July 1, 2000.

Fifty-First Revised Sheet No. 14
Seventy-Second Revised Sheet No. 15
Fifty-First Revised Sheet No. 16
Seventy-Second Revised Sheet No. 17
Thirty-Seventh Revised Sheet No. 14A
Forty-Third Revised Sheet No. 14A
Thirty-Seventh Revised Sheet No. 16A
Forty-Third Revised Sheet No. 17A
Second Revised Sheet No. 34B
First Revised Sheet No. 34C
First Revised Sheet No. 34D
Fifth Revised Sheet No. 41A
Sixth Revised Sheet No. 42
Seventh Revised Sheet No. 53
Fourth Revised Sheet No. 53A
Third Revised Sheet No. 53B

Southern has eliminated from its effective tariff certain surcharges and tariff provisions used by Southern to recover Order No. 636 transition costs associated with Account No. 858 (T&C Surcharge) and Southern LNG Inc (SEC Surcharge).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be reviewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17593 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1951–071; Georgia]

Georgia Power Company; Notice of Availability of Environmental Assessment

July 6, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Energy Projects has prepared an environmental assessment (EA) on the Georgia Power Company's application for approval of a new commercial dock facility. The Georgia Power Company proposes to permit Mr. Scott Jackson (permittee), to construct and operate a commercial dock facility on Lake Sinclair's Beaver Dam Creek. The proposed facility includes three open boat docks with a total of 24 slips, that can accommodate up to 42 watercraft; a fuel dock; a boat ramp; and a boat drop. The proposed facility would be used in conjunction with the permittee's planned commercial development on his adjoining property. The Sinclair Project is located on the Oconee River, in Putnam and Baldwin Counties, Georgia.

The EA is attached to a Commission order issued on June 27, 2000 for the above application. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. Copies of the EA can also be obtained through the Commission's homepage at *http://www.ferc.fed.us.* In the EA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action

significantly affecting the quality of the human environment.

David P. Boergers,

Secretary.

[FR Doc. 00–17551 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–172; Oklahoma]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

July 6, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 53 FR 47910), the Office of Energy Projects has prepared a mail environmental assessment (FEA) on the Grand River Dam Authority's application for approval of a new commercial dock facility. The Grand River Dam Authority proposes to permit Lewis Perrault, d/b/a/ Lewie Development Company (permittee), to construct and operation a commercial dock facility on Grand Lake's Grand Craft Cove, about 2 miles from the Pensacola dam. The proposed facility includes nine boat slips and an area for temporary boat mooring and will be used in conjunction with the permittee's planned commercial development on his adjoining property. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The FEA is attached to a Commission order issued on June 27, 2000 for the above application. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. Copies of the FEA can also be obtained through the Commission's homepage at *http://www.ferc.fed.us*. In the FEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

David P. Boergers,

Secretary.

[FR Doc. 00–17550 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of AmerenUE Request To Use Alternative Procedures in Preparing a License Application

July 6, 2000.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission:

a. Type of Application: Request to use alternative procedures to prepare a new license application.

b. Project No.: FERC No. 459.

c. Date filed: June 14, 2000.

d. Applicant: Union Electric Company (d/b/a AmerenUE).

e. Name of Project: Osage Project.

f. Location: On the Osage River, in Benton, Camden, Miller and Morgan Counties, central Missouri. The project occupies federal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Alan Sullivan, Licensing Project Manager, AmerenUE, 617 River Road, Elden, MO 65020, (573) 365–9329.

i. FERC Contact: Any questions on this notice should be addressed to Allan Creamer at (202) 219–0365.

j. Deadline for Comments: 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The peaking project consists of an 2,583-foot-long, 148-foot-high concrete dam; a 92-mile-long, 55,000-acre impoundment at a full pool elevation of 660 feet mean sea level; a powerhouse containing eight main and two in-house generating units, having a total installed capacity of 176,200 kilowatts; and appurtenant facilities. The project generates approximately 675,000 megawatt-hours of electricity annually.

l. AmerenUE has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. AmerenUE has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. AmerenUE has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on AmerenUE's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. AmerenUE will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

AmerenUE has met with federal and state resources agencies, NGOs, elected officials, flood control and downstream interests, environmental groups, business and economic development organizations, the boating industry, and members of the public regarding the Osage Project. AmerenUE intends to file 6-month progress reports during the alternative procedures process that leads to the filling of a license application by February 28, 2004.

David P. Boergers,

Secretary.

[FR Doc. 00–17549 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

July 6, 2000.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. Application Type: Transfer of License.

b. Project No: 2355–005.

c. Date Filed: June 13, 2000.

d. Applicants: PECO Energy Company and Exelon Generation Company, LLC (to be formed).

e. Name of Project: Muddy Run.

f. Location: The project is located on the Susquehanna River in Lancaster and York Counties, Pennsylvania. The project does not occupy federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contacts: Vilna Waldron Gaston, H. Alfred Ryan, Assistant General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, (215) 841–4265 and Brian J. McManus, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NE, Washington, DC 20001–2113, (202) 879–5452.

i. FERC Contact: Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. Deadline for filing comments and or motions: August 11, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (2355–005) on any comments or motions filed.

k. Description of Transfer: The applicants propose a transfer of the license for Project No. 2355 from PECO Energy Company (PECO) to Exelon Generation Company, LLC (GenCo), a still-to-be incorporated affiliate. GenCo will be a wholly-owned subsidiary of Exelon Corporation, a currently existing subsidiary of PECO. The transfer is being sought as part of a corporate restructuring of PECO. The application includes a proposal providing for PECO to operate the project's primary transmission lines according to the terms and conditions of a lease agreement.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a part to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–17553 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6734–1]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amened ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency ("EPA") on May 26, 1999, to address a lawsuit filed by the Midwest Ozone Group and the West Virginia Chamber of Commerce (collectively referred to as "MOG"). This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), addresses EPA's alleged failure to meet mandatory deadlines under section 110(c) of the Act, 42 U.S.C. 7410(c), to promulgate federal implementation plans for certain areas establishing (1) attainment demonstrations; (2) inspection and maintenance ("I/M") programs, and (3) 15% rate-of-progress ("ROP") requirements. *Midwest Ozone Group et. al.*, v. *EPA*, No. 1:00CV01047 (D.D.C.).

DATES: Written comments must be received by August 11, 2000.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Copies of the proposed consent decree are available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on May 26, 2000.

SUPPLEMENTARY INFORMATION: MOG alleges that EPA has a mandatory duty to promulgate federal implementation plans ("FIPs") establishing (1) attainment demonstrations for the Greater Connecticut ozone nonattainment area; the Springfield, Massachusetts ozone nonattainment area; and the New York and Connecticut portions of the New York-Northern New Jersey-Long Island ozone nonattainment area; (2) I/M programs for Portland, Maine; Providence, Rhode Island; and the portions of the Boston-Lawrence-Worcester and Portsmouth-Dover-Rochester ozone nonattainment areas located in New Hampshire; and (3) a 15% ROP program for the Springfield, Massachusetts Ozone nonattainment area.

The proposed consent decree provides, in part, that EPA will promulgate full attainment demonstration FIPs by May 15, 2001 for the Greater Connecticut and Springfield ozone nonattainment areas if EPA has not fully approved attainment demonstration SIPs for each area as of

that date. The consent decree provides that EPA will promulgate full attainment demonstration FIPs for the New York and Connecticut portions of the New York-Northern New Jersey-Long Island ozone nanattaiinment by June 14, 2002 if EPA has not fully approved attainment demonstration SIPS for each area as of that date.

This portion of the consent decree addresses the same issues for these four areas as is addressed in a partial consent decree with Natural Resources Defense Council, et al., for which EPA published notice on December 21, 1999, 64 FR 71453, and that was entered into by the parties on May 31, 2000. The FIP proposal and promulgation dates in the two consent decrees are consistent.

The consent decree also provides that EPA will promulgate I/M FIPs for four ozone nonattainment areas by October 31, 2001 if EPA has not fully approved enhanced I/M SIPs for each area by that date. The four areas are: Portland, Maine; Providence, Rhode Island; and the portions of the Boston-Lawrence-Worcester and Portsmouth-Dover-Rochester ozone nonattainment areas located in New Hampshire.

Finally, the consent decree provides that EPA will promulgate a 15% ROP FIP for the Springfield, Massachusetts ozone nonattainment area by April 2, 2001 if EPA has not fully approved a 15% ROP SIP for the area by that date.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the final consent decree will be entered with the court and will establish deadlines for promulgation of federal implementation plans in the absence of approved state plans.

Dated: June 23, 2000.

Gary S. Guzy,

General Counsel.

[FR Doc. 00–17616 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL—6734–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) will meet on Friday, July 28, 2000 from 11:00 am to 1:00 pm Eastern Daylight Time to review a report developed by its Technical Subcommittee on Fine Particle Monitoring. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available (phone lines will be very limited). Additional instructions about how to participate in the meeting can be obtained by calling Ms. Diana Pozun prior to the meeting at (202) 564–4544, or via e-mail at <pozun.diana@epa.gov>.

Background

The CASAC Technical Subcommittee on Fine Particle Monitoring (the Subcommittee) was established in 1996 to provide advice and comment to EPA (through CASAC) on appropriate methods and network strategies for monitoring fine particles in the context of implementing the revised national ambient air quality standards (NAAQS) for particulate matter. Most recently, EPA has asked the Subcommittee to review EPA's report to Congress as required by Section 6102(e) of the Transportation Equity Act for the 21st Century (see 65 **Federal Register** 35926, June 6, 2000 for more details).

Purpose of the Meeting

At this meeting, the Clean Air Scientific Advisory Committee, chartered under 42 U.S.C. 7409, will review a report (*Clean Air Scientific Advisory Committee Review of the US EPA Response to Section 6102(e) of the Transportation Equity Act for the 21st Century*) developed by its Technical Subcommittee on Fine Particle Monitoring.

Availability of Review Materials

Single copies of the USEPA review document *Response to Section 6102(e) of the Transportation Equity Act for the 21st Century,* (Report number: EPA 600/R–00/033, May 2000) and the Subcommittee's draft review report (*Clean Air Scientific Advisory Committee Review of the US EPA Response to Section 6102(e) of the Transportation Equity Act for the 21st Century*) are available from Ms. Diana Pozun, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Ms. Pozun can also be reached by telephone at (202) 564–4544, fax at (202) 501–0582, or e-mail: <pozun.diana@epa.gov>. The Subcommittee's draft report is also available on the SAB Website (*www.epa.gov/sab*) under the *Reports* heading, and *Draft Reports* subheading.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at <flaak.robert@epa.gov>. A copy of the draft agenda is available from Ms. Diana Pozun at (202) 564–4544 or by FAX at (202) 501–0582 or via e-mail at <pozun.diana@epa.gov>.

Members of the public who wish to make a brief oral presentation to the Subcommittee (in Room 6013 only) must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Daylight Savings Time, Thursday, July 20, 2000 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization; 15 minutes total. The request should identify the name of the individual making the presentation, and the organization (if any) they will represent. *Please note:* If we receive more requests than we can accommodate, time of receipt in the CASAC office will determine priority, with the first three requests granted time (additional requests may be granted to the extent that time is available, as determined by the CASAC Chair at the time of the meeting). All others will have to provide written comments. Written comments of any length may be submitted to Mr. Flaak at any time until the date of the meeting. Please provide at least 25 copies. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Individuals requiring special accommodation at this meeting,

including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 6, 2000.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 00–17617 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–949; FRL–6591–8]

Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–949, must be received on or before August 11, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION:** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–949 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5409; e-mail address: dani.daniel@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production.
	112	Animal Production.
	311	Food manufacturing.
	32532	Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. In person. The Agency has established an official record for this action under docket control number PF–949. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–949 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–949. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requiremements.

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Aventis CropScience

0F6119

EPA has received a pesticide petition 0F6119 from Aventis CropScience, 2 T.W. Alexander Drive, Research Triangle Park, Raleigh, NC, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of clofentezine in or on the raw agricultural commodity grapes at 0.35 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

APOLLO(r) SC Ovicide/Miticide (active ingredient clofentezine) is registered for use on apples, pears, almonds, walnuts, apricots, cherries, nectarines, and peaches to control European red mites and several spider mite species. It is an environmentally-friendly, IPM-compatible product used at low dose rates, and only once per season. Clofentezine has been shown to be relatively non-toxic in studies conducted on mammals, fish, birds, aquatic invertebrates, predacious and other beneficial mites, bees, algae, and plants by establishing a tolerance for residues of clofentezine in or on the raw agricultural commodity grapes at 0.026 ppm to 0.33 ppm.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of clofentezine has been studied in three crops representative of the use pattern for APOLLO SC: apples (pome fruit), peaches (stone fruit), and grapes (vines/small fruit). In each case, unchanged clofentezine was the major extractable residue present. Non-extractable residues (fiber-bound) were negligible. Minor amounts of 2-chlorobenzonitrile, the major photo-degradation product, were detected, predominantly on the fruit surface. Dissipation of this component may be a significant route in the degradation of clofentezine on the surface of these crops. The nature of the residue in grapes, and in all the other registered crops, is therefore adequately understood. The residue of concern is the parent, clofentezine.

2. *Analytical method.* EPA recently approved an analytical method for clofentezine on apples at a limit of quantitation (LOQ) of 0.01 ppm. In support of that effort, Aventis submitted an independent laboratory validation of the method which involves organic extraction and then cleanup, followed by high-pressure liquid chromatography. This method is suitable for enforcement for the registration of APOLLO SC ovicide/miticide on apples.

For the requested use on grapes, an analytical method similar to the above was previously submitted to the Agency. This method was deemed suitable for enforcement of the tolerances proposed in a previous tolerance petition. Similar analytical methods for enforcement purposes are available for all the other registered crops and relevant animal tissues/milk/fat.

3. *Magnitude of residues.* Extensive field residue trials have been conducted with APOLLO SC on grapes throughout the major growing regions of the United States. Application at 21 days pre-harvest interval (PHI) at the maximum use rate resulted in residues of clofentezine on fresh grapes of 0.026 ppm to 0.33 ppm. In processing studies on grapes which had been treated with APOLLO SC, residues in the processed commodity grape juice were lower than those in the raw agricultural commodity grapes; and residues in raisins were shown to also be lower than those in the raw agricultural commodity.

Residue trials were conducted for APOLLO SC on apples, pears, apricots, cherries, nectarines, peaches, almonds, and walnuts at the maximum use rates and minimum (PHIs) throughout the

major growing regions of the United States. Residues in apples ranged from <0.01 ppm to 0.44 ppm. Residues in pears ranged from <0.01 ppm to 0.2 ppm. Residues in stone fruit ranged from <0.01 ppm to 0.66 ppm. Residues on almond hulls ranged from 0.93 ppm to 2.4 ppm, on almond nut meats from <0.05 ppm to 0.3 ppm, and on walnuts <0.02 ppm. Tolerances were therefore established on apples (0.5 ppm); pears (0.5 ppm); apricots, cherries, nectarines, and peaches (1.0 ppm); almond nutmeats (0.5 ppm); almond hulls (5.0 ppm); and walnuts (0.02 ppm).

Ruminant feeding studies were conducted to determine the magnitude of the clofentezine-derived residues in the tissues and milk of cows. Four groups of three dairy cattle were fed technical clofentezine in the diet at dose levels of 0, 10, 30, and 100 ppm over a period of 28 days. Daily milk samples were taken and at the termination of the study the following organs were analyzed: liver, kidney, heart, muscle, peritoneal fat, and subcutaneous fat. At the feeding level of 10 ppm, residues were 0.3 ppm in liver and <0.05 ppm in kidney, milk, and other tissues. EPA established tolerances for cattle, goats, hogs, horses, and sheep as follows: 0.05 ppm in meat, fat, and meat by-products except liver; 0.4 ppm in liver; and 0.01 ppm in milk.

B. Toxicological Profile

The toxicology of clofentezine has been thoroughly evaluated by EPA as part of previous regulatory actions. The studies are considered to be valid, reliable and adequate for the purposes of evaluating potential health risks and for establishing tolerances. The primary studies submitted in support of the registration of clofentezine are summarized below.

1. *Acute toxicity.* A relatively low degree of acute toxicity and irritation potential. It is classified as toxicity category III for oral, dermal and inhalation toxicity, and toxicity category IV for eye and skin irritation. The acute oral LD_{50} of clofentezine was determined to be >5,2000 milligrams/kilograms (mg/kg) in rats and mice, >3,200 mg/kg in hamsters, and >2,000 mg/kg in beagle dogs. The acute rate dermal LD_{50} was >2,100 mg/kg. Clofentezine is considered to be practically non-irritating to eyes and skin but is considered to be a week skin sensitizer in the guinea pig maximization assay.

APOLLO SC is classified as toxicity category IV for oral toxicity and skin irritation, and as toxicity category III for dermal toxicity and eye irritation. The acute oral LD_{50} of APOLLO SC was determined to be >5,000 mg/kg in rats; the acute dermal LD_{50} in rats was >2,400 mg/kg. APOLLO SC is considered slightly irritating to eyes and skin.

2. *Genotoxicty.* No evidence of genotoxicity was noted in a battery of in vitro and in vivo studies. Studies submitted included Ames Salmonella and mouse lymphoma gene mutation assay, a mouse micronucleus assay, a rat dominant lethal assay, and a gene conversion and mitotic recombination assay in yeast.

3. *Reproductive and developmental toxicity.* A multigeneration rate reproduction study was conducted a dietary concentrations of 0, 4, 40, and 400 ppm. The parental no observed adverse effect level (NOAEL) was 40 ppm based on slightly reduced body weights (bwt), increased liver weights and hepatocellular hypertrophy at 400 ppm. No treatment-related reproductive effects were noted at any dose level.

In a rate developmental toxicity study, clofentezine was administered by gavage at dose levels of 0, 320, 1, 280 and 3,2000 mg/kg/day during gestation days 6 to 20. Evidence of maternal toxicity was noted at 3,200 mg/kg/day and consisted of decreased weight gain, increased liver weights and centrilobular hepatocellular enlargement. No developmental effects were observed at any dose level.

In a rabbit developmental toxicity study, clofentezine was administered by gavage at dose levels of 0, 250, 1,000 and 3,000 mg/kg/day during gestation days 7 to 28. Slight maternal toxicity (decreased maternal food consumption and weight gain) and a slight decrease in fetal weight were noted at 3,000 mg/kg/day. Thus, the NOAEL was considered to be 1,000 mg/kg/day for both maternal and developmental effects.

4. *Subchronic toxicity.* In a preliminary 90-day feeding study designed to select a suitable high dose level for a subsequent chronic rate study, clofentezine was administered to rats at dietary concentrations of 0, 3,000, 9,000 and 27,000 ppm. A significant reduction in weight gain was noted at 9,000 and 27,000 ppm. In addition, a marked, dose-related hepatomegaly and centrilobular hepatocyte enlargement was noted in all treatment groups. In a subsequent 90-day feeding study, clofentezine was administered to rats at dietary concentrations of 0, 40, 400, and 4,000 ppm. Slightly reduced weight gain, alterations in serveral clinical pathology parameters, increased liver, kidney and spleen weights, and centrilobular hepatocyte enlargement were noted at 400 and/or 4,000 ppm. Thus, 40 ppm (~ 2.8 mg/kg/day) was considered to be the NOAEL for this study.

Clofentezine was administered to beagle dogs for 90 days at dietary concentrations of 0, 3,200, 8,000 and 20,000 ppm. Increased liver weights were noted at all dose levels but no histopathological changes nor any other treatment-related effects were observed.

5. *Chronic toxicity.* In a 12-month feeding study, clofentezine was administered to beagle dogs at dietary concetrations of 0, 50, 1,000, and 20,000 ppm. An increase in adrenal and thyroid weights, as well as moderate hepatotoxicity consisting of minimal periportal hepatocyte enlargement with cytoplasmic eosinophilia, hepatomegaly and increased plasma cholesterol, triglycerides and alkaline phosphatase levels, were noted at 20,000 ppm. Evidence of slight hepatotoxicity was also noted at 1,000 ppm. Thus, the NOAEL for this study was considered to be 50 ppm (~1.25 mg/kg/day).

In a 27-month feeding study, clofentezine was administered to rats at dietary concentrations of 0, 10, 40, and 400 ppm. Effects noted at 400 ppm were limited to the liver and thyroid, primarily of males, and consisted of increased liver weights, a variety of microscopic liver lesions (centrilobular hepatocyte hypertrophy and vacuolation, focal cystic hepatocellular degeneration and diffuse distribution of fat deposits), increased serum thyroxine levels, and a slight but statistically significant increase in the incidence of thyroid follicular cell tumors. The NOAEL was considered to be 40 ppm (~2 mg/kg/day).

Clofentezine was not oncogenic to mice when administered for 2 years at dietary concentrations of 0, 50, 500, and 5,000 ppm. Decreased weight gain, increased liver weights, and increased mortality were noted at 5,000 ppm. An increased incidence of eosinophilic or basophilic hepatocytes was noted at 5,000 ppm, and possibly 500 ppm.

Numerous studies were conducted to investigate the mechanism for the increased incidence of male thyroid follicular tumors that was observed in the chronic rat study. These studies suggest that the tumors may have been caused by increased thyroid stimulating hormone (TSH) levels, which, in turn, resulted from clofentezine's liver toxicity.

6. *Animal metabolism.* The metabolism, tissue distribution and excretion of clofentezine have been evaluated in a number of species. In all species, almost all of the administered dose was recovered within 24 to 48 hours after treatment, primarily via the feces. The major route of metabolism

was found to be ring hydroxylation, sometimes preceded by the replacement of a chlorine atom with a methyl-thio group. Blood and tissue levels in the fetuses of pregnant rats that had been treated with clofentezine were much lower than the levels found in the mother, indicating that clofentezine does not readily pass across the placenta. In addition, less than 1% of the administered dose was absorbed through the skin of rats following a 10-hour exposure to a 50 SC (50% suspension concentrate) formulation of clofentezine.

Following oral dosing of a cow and three goats with 14C-labeled clofentezine, the residue in milk was identified as a single metabolite, 4-hydroxyclofentezine. Similarly, 4-hydroxyclofentezine has been shown to be the only metabolite present in fat, liver, and kidney. No unchanged clofentezine or other metabolites were found. Therefore, the nature of the residue in animals is adequately understood. The residues of concern are the combined residues of the parent, clofentezine, and the 4-hydroxyclofentezine metabolite.

7. *Endocrine disruption*. Except for the thyroid mechanistic studies mentioned above, no special studies have been conducted to investigate the potential of clofentezine to induce estogenic or other endocrine effects. However, the standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. However, with the exception of a slightly increased incidence of thyroid tumors in male rats, no such effects were noted in any of the studies with clofentezine. The male rat is known to be much more susceptible than humans to the carcinogenic effects resulting from thyroid hormone imbalance and/or increased levels of TSH. Therefore, the alterations in thyroid hormone and subsequent thyroid pathological changes, which have been noted following administration of high doses of clofentezine, are considered to be of minimal relevance to human risk assessment, particularly considering the low levels of clofentezine to which humans are likely to be exposed.

C. Aggregate Exposure

1. *Dietary exposure*. Clofentezine is a miticide used on apples, pears, almonds, walnuts, apricots, cherries, peaches, and nectarines. Clofentezine has also been registered recently for use on ornamental plants, however, the product (OVATION (miticide/insecticide) is not being marketed at this time. There are no other non-crop uses. Thus, potential sources of non-occupational exposure to clofentezine would consist only of any potential residues in food and drinking water. There are no acute toxicity concerns with clofentezine. Therefore, only chronic exposures are addressed here.

i. *Food*. A worst case dietary exposure assessment was performed for clofentezine using the dietary exposure evaluation model (DEEM) software (Novigen Sciences, Inc.) and 1994–1996 United States Department of Agriculture (USDA) consumption data. This assessment assumed that 100% of all grapes, apples, pears, almonds, walnuts, apricots, cherries, nectarines, peaches, milk, and the fat, meat, and meat by-products of cattle, goats, horses, sheep, and hogs contained residues at the established and proposed tolerance levels. A more realistic assessment was also conducted using estimates of market share.

ii. *Drinking water*. All EPA environmental fate data requirements have been satisfied. The potential for clofentezine to leach into ground water was assessed in terrestrial field dissipation studies conducted in several locations and in varying soil types. Half-lives ranged from 32.4 to 83 days. No evidence of leaching of parent or degradation products was observed. Based upon these and other studies, EPA concluded that "clofentezine is a relatively short-lived, non-mobile compound which does not pose a risk to ground water, and will not be expected to accumulate in rotational crops." Thus, the potential for finding significant clofentezine residues in drinking water is minimal and the contribution of any such residues to the total dietary intake of clofentezine will be negligible. No maximum contaminant level for clofentezine has been established.

Sufficient ground or surface water monitoring data are not available to perform a quantitative risk assessment for clofentezine at this time. However, EPA previously determined estimated drinking water environmental concentrations (DWECs) in ground and surface water using available environmental fate data and the screening model for ground water (SCI–GROW) and the generic expected environmental concentration (GENEEC) model for surface water. The DWEC of clofentezine in ground water was estimated to be 0.04 parts per billion (ppb) using SCI–GROW, and the DWECs for surface water were estimated to be 6.5 ppb (acute DWEC) and 0.3 ppb (chronic DWEC) using GENEEC. EPA policy allows the 90/56-day GENECC value to be divided by 3 to obtain a value for chronic risk assessment calculations. Therefore, a surface water estimate of 0.1 ppb was used in the chronic risk assessment.

iii. *Chronic exposure*. EPA uses the drinking water level of comparison (DWLOC) as a theoretical upper limit on a pesticide's concentration in drinking water when considering total aggregate exposure to a pesticide in food, drinking water, and through residential uses. DWLOCs are not regulatory standards for drinking water; however, EPA uses DWLOCs in the risk assessment process as a surrogate measure of potential exposure from drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. Calculated DWLOCs for chronic risks are listed in the following Table 1.

TABLE 1.—SUMMARY OF DWLOC CALCULATIONS-CHRONIC (NON-CANCER SCENARIO)

Population subgroup [1]	Chronic (non-cancer) scenario					
	RfD mg/kg/day	Food exposure mg/kg/day	Maximum water exposure mg/kg/day [2]	SCI–GROW (ppb) [3]	GENEEC (ppb)	DWLOC (ppb)
U.S. population [1]	0.013	0.000346	0.01265	0.04	0.1	442
Northeast region [1]	0.013	0.000380	0.01262	0.04	0.1	441
Non-hispanic other than black or white [1]	0.013	0.000386	0.01261	0.04	0.1	441
Non-nursing infants [2]	0.013	0.001295	0.01171	0.04	0.1	117

TABLE 1.—SUMMARY OF DWLOC CALCULATIONS-CHRONIC (NON-CANCER SCENARIO)—Continued

Population subgroup [1]	Chronic (non-cancer) scenario					
	RfD mg/kg/day	Food exposure mg/kg/day	Maximum water exposure mg/kg/day [2]	SCI–GROW (ppb) [3]	GENEEC (ppb)	DWLOC (ppb)
Children (1–6 yrs) [3]	0.013	0.001333	0.01167	0.04	0.1	233
All infants (<1 yr) [2]	0.013	0.001114	0.01189	0.04	0.1	117

[1] Assume 70 kg bodyweight.
[2] Assume 10 kg bodyweight.
[3] Assume 20 kg bodyweight.

To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to clofentezine in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

The estimated average concentration of clofentezine in surface water is 0.1 ppb. This value is less than EPA's DWLOCs for clofentezine as a contribution to chronic aggregate exposures (454 ppb). Therefore, taking into account the present uses and the proposed new use, residues of clofentezine in drinking water (when considered along with other sources of exposure for which reliable data are available) will not result in unacceptable levels of aggregate human health risk.

D. Cumulative Effects

The primary effects observed in the toxicity studies conducted with clofentezine appear to be a result of its potency as an enzyme inducer. Although many other chemicals are also known to induce microsomal enzymes, insufficient information is available at this time to determine whether or not the potential toxic effects from these chemicals are cumulative. Furthermore, realistic estimates of potential non-occupational exposure to clofentezine indicate that such exposures are minimal and far below the levels that might be expected to produce any effects. Thus, any contribution of clofentezine to cumulative risk will not be significant. Therefore, only exposure from clofentezine is being addressed at this time.

E. Safety Determination

1. *U.S. population.* The toxicity and residue data bases for clofentezine are considered to be valid, reliable, and essentially complete. Although clofentezine has been classified by EPA as category C for oncogenicity, quantitative oncogenic risk assessment was considered inappropriate for the following reasons:

a. Evidence of tumors was limited to a single site in one sex of one species and occurred only at the high-dose level.

b. The increased incidence of thyroid follicular tumors was only marginally increased above both concurrent and historical control levels.

c. No evidence of genotoxicity has been observed.

d. Mechanistic data indicate that the thyroid tumors were likely a secondary, threshold-medicated effect associated with clofentezine's liver toxicity. Furthermore, humans are believed to be much less susceptible to this effect than rats. Therefore, no effect on the thyroid pituitary axis or oncogeni response would be expected at exposure levels which did not affect the liver.

e. Clofentexine was recommended as a category D by EPA's scientific advisory panel (SAP) in 1988. Thus, a standard margin of safety approach is considered appropriate to assess the potential for clofentezine to produce both oncogenic and non-oncogenic effects. Based on the previously described data, EPA has adopted an RfD value for clofentezine of 0.0125 mg/kg/day, which was calculate using the NOAEL of 1.25 mg/kg/day from the 1-year dog feeding study and a 100-fold safety factor.

Using the worst-case assumptions of 100% of crop treated and that all crops and animal commodities contain residues of clofentezine at the current tolerance levels, the aggregate exposure of the general population to clofentezine from the established and proposed tolerances utilizes about 9% of the RfD. Using more realistic estimates of percent crop treated, this decreases to less than 3% of the RfD. There is generally no concern for exposures which utilize less than 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime would not pose significant risks to human health. Therefore, there is a reasonable certainty that no harm will result to the general population from aggregate exposure to clofentezine residues.

2. *Infants and children.* Data from rat and rabbit developmental toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from prenatal and postnatal exposure to the pesticide.

No indication of increased sensitivity to infants and children was noted in any of the studies with clofentezine. No developmental effects were noted in rats, even at a dose level (3,200 mg/kg/day) that exceeded the 1,000 mg/kg/day limit dose and produced maternal toxicity. In addition, no evidence of reproductive toxicity was noted in the rat multigeneration reproduction study. Slight developmental toxicity (decreased fetal weights) was noted in rabbits, but only at a dose level (3,000 mg/kg/day) that exceeded the EPA limit dose and also produced maternal toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children to account for prenatal and postnatal toxicity and the completeness of the data base. The toxicology data base for clofentezine regarding potential prenatal and postnatal effects in children is complete according to existing Agency data requirements and does not indicate any developmental or reproductive concerns. Furthermore, the existing RfD is based on a NOAEL of 1.25 mg/kg/day (from the 1-year dog study) which is already more than 800-fold lower than the NOAEL in the rabbit developmental toxicity study. Thus, the existing RfD of 0.0125 mg/kg/day is considered to be appropriate for assessing potential risks

to infants and children and an additional uncertainty factor is not warranted.

Using the conservative exposure assumptions described above (proposed and current tolerances, 100% crop treated, and no adjustments for percent contribution from livestock diet), aggregate exposure to residues of clofentezine are expected to utilize about 48% of the RfD in non-nursing infants, 20% of the RfD in nursing infants, and 36% of the RfD in children aged 1 to 6 years old. Using more realistic estimates of percent crop treated, the percent of RfD utilized is less than or equal to 10% for these population subgroups. These numbers would be lowered further if anticipated residues and/or an adjustment for percent contribution from livestock diet were utilized rather than tolerance values. Therefore, there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to clofentezine residues.

F. International Tolerances

Codex tolerances have been established for clofentezine on a wide variety of crops, including apples. The following maximum residue levels (MRLs) were adopted by the Codex Committee on Pesticide Residues (CCPR) in April 1988, except as noted in parentheses:

Commodity	MRL (mg/kg)
Cattle meat	0.05
Cattle, edible offal	0.1
Cattle, milk	0.01
Citrus fruits	0.5 (1995)
Cucumber	1.0 (1991)
Currants	0.01 (1993)
Eggs (poultry)	0.05
Grapes	1.0 (1995)
Pome fruits	0.5
Poultry, edible offal	0.05
Poutry meat	0.05
Stone fruits	0.2
Strawberry	2.0

This value, 1.25 mg/kg/day, was calculated by EPA using their standard conversion factor for food consumption. The NOAEL based upon actual food consumption in the study is 1.7 mg/kg/day.

[FR Doc. 00–17356 Filed 7–11–00; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6734–2]

Notice of Availability for Draft Guidance on the Use of Emissions Reductions From Motor Vehicles Operated on Low-Sulfur Gasoline as New Source Review (NSR) Offsets for Tier 2/Gasoline Sulfur Refinery Projects in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is making available for public review and comment a preliminary draft of its pending guidance on the use of emissions reductions resulting from motor vehicles operated on low sulfur gasoline as NSR offsets for Tier 2/Gasoline Sulfur Refinery Projects in nonattainment areas.

On February 10, 2000, EPA issued new emissions standards ("Tier 2 standards") for all passenger vehicles, including sport utility vehicles, minivans, vans and pick-up trucks. To ensure the effectiveness of low emissions control technologies in these vehicles, this rule also sets new standards to significantly reduce the sulfur content in gasoline. In order to meet these sulfur-in-gasoline requirements, many refiners will have to make modifications to their existing facilities, which could be subject to the major permitting requirements under parts C and D of the Clean Air Act. For a refinery located in an area designated nonattainment, the acquisition of emissions offsets is one of the prerequisites for receiving the construction permit authorizing the major modification. To provide greater certainty and to expedite the NSR permitting process for refinery projects undertaken in nonattainment areas to comply with the new gasoline sulfur requirements, EPA intends to provide guidance to explain how States can use some of the motor vehicle emissions reductions resulting from use of low sulfur gasoline as NSR offsets.

A draft of EPA's guidance is available for public review and comment. The EPA does not intend to respond to individual comments, but rather to consider the comments from the public in the preparation of the final guidance.

DATES: The comment period on the draft guidance will close on August 11, 2000.

ADDRESSES: Written comments should be sent to Pamela J. Smith, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–0641, telefax 919–541–5509 or E-mail *smith.pam@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Dan deRoeck, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–5593, telefax 919–541–5509 or E-mail *deroeck.dan@epa.gov*.

SUPPLEMENTARY INFORMATION: A copy of the draft guidance document may be obtained by calling or E-mailing Pamela J. Smith. The draft guidance may also be downloaded from the NSR Web Site *http://www.epa.gov/ttn/nsr* under the topic "What's New on NSR."

Dated: July 5, 2000.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 00–17615 Filed 7–11–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00576A; FRL–6589–6]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the revised version of the pesticide science policy document entitled "Available EPA Information on Assessing Exposure to Pesticides in Food—A User's Guide." This notice is the nineteenth in a series concerning science policy documents related to the Food Quality Protection Act of 1996 and developed through the Tolerance Reassessment Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Environmental Protection Agency (7509C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 308–2857; fax number: (703) 305–5147; e-mail address: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	032532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select "FQPA" and then look up the entry for this document under "Science Policies." You can also go directly to the listings at the EPA Home Page at http://www.epa.gov. On the Home Page select "Laws and Regulations" and then look up the entry to this document under "**Federal Register**—Environmental Documents." You can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-Demand.* You may request a faxed copy of the science policy documents, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6061 for the document entitled "Available EPA Information on Assessing Exposure to Pesticides in Food–A User's Guide." Select item 6062 for the document entitled "Response to Comments for Available EPA Information on Assessing Exposure to Pesticides in Food–A User's Guide." You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00576A. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background Information About the Tolerance Reassessment Advisory Committee

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met seven times as a full committee from May 27, 1998, through April 29, 1999.

The Agency worked with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC was the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believed were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA has been issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of the revised version of the science policy document identified in the "SUMMARY."

III. Summary of Revised Science Policy Guidance Document

The Agency's Office of Pesticide Programs regulates pesticides to ensure that their use does not pose unreasonable risks to human health or the environment and that pesticide residues in food are safe. These determinations rely on the process of risk assessment. In assessing risk, the Agency considers all routes of exposure (*e.g.*, food, drinking water, incidental exposure in and around the home and school) and the inherent toxicity of the pesticide.

The purpose of this "User's Guide" is to provide the reader with a comprehensive discussion and listing of EPA, USDA, and Food and Drug Administration (FDA) guidance, policy documents, and databases that provide detailed, specific "how-to" information and/or data on assessing exposure to pesticides from the foods that we eat. To put this exposure information in context, this guide first provides a basic overview of risk assessment for exposure resulting from pesticide residues in food.

This guide does not address aggregate exposure and risk assessment, which is the process of combining exposure to a single pesticide from all sources of exposure: food, drinking water, and non-occupational sources such as homes and recreational areas. And, this guide does not address cumulative risk assessment, which is the process of combining exposure and risk from all pesticides with a common mechanism of toxicity.

The first section of the guide, "A Primer on Pesticide Exposure and Risk from Food," provides a very simple overview of EPA's approach to estimating risk and exposure from pesticide residues in food. The following section, "Information Sources: Where to Find Guidance, Data, and Other Information on Assessing Exposure to Pesticides in Food," provides specifics on how to obtain or generate the data and/or information EPA uses in its assessments of exposure and risk from pesticides in food. Finally, a list of "Where to Find's" is provided along with the bibliography.

EPA published the draft science policy document on January 4, 1999 (64 FR 162) (FRL–6054–8) and comments were filed in docket control number OPP–00576. The public comment period ended on March 5, 1999. The Agency received comments from several organizations. All comments were considered by the Agency in the revised version of the science policy document.

Many of the comments were similar in content, and pertained to general issues concerning the proposed policy or specific sections within the draft science policy document. The Agency grouped the comments according to the nature of the comment and the issue or section of the document which they addressed. The Agency's response to the comments is available as described in Units I.B.1. and I.B.2.

IV. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 21, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–17493 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Nctices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–000[illegible]

1. Enevoldsen Limited Partnership, Potter, Nebraska; to acquire voting shares of Enevoldsen Management Company, Potter, Nebraska, and thereby indirectly acquire voting shares of Potter State Bank of Potter, Potter, Nebraska.

Board of Governors of the Federal Reserve System, July 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17563 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 4, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. First Rainsville Bancshares, Inc., Employee Stock Ownership Plan, Rainsville, Alabama; to become a bank holding company by acquiring 28.8 percent of the voting shares of First Rainsville Bancshares, Inc., Rainsville, Alabama, and thereby indirectly acquire voting shares of First Bank of the South, Rainsville, Alabama.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan, and Indiana Community Bancorp Limited, Elkhart, Indiana; to acquire 51 percent of the voting shares of Goshen Community Bank, Goshen, Indiana (in organization).

Board of Governors of the Federal Reserve System, July 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17565 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1068]

Policy Statement on Payments System Risk Modifications to Daylight Overdraft Posting Rules; Delay of Effective Date; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement: Delay of effective date; Correction.

SUMMARY: The Board is announcing the delay of the implementation of changes to the procedures for measuring daylight overdrafts for Treasury Investment Program transactions as a result of the Treasury Investment Program's implementation delay. The Board is also announcing posting-time corrections for three transactions.

EFFECTIVE DATE: The effective date of amendments published at 65 FR 33734 and 33735 are delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Myriam Payne, Manager (202/452–3219), Stacy Coleman, Senior Financial Services Analyst (202/452–2934), or Donna DeCorleto, Project Leader (202/452–3956), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired *only:* Telecommunications Device for the Deaf, Janice Simms (202/872–4984).

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2000, the Board published modifications to the procedures for measuring daylight overdrafts for Treasury Investment Program (TIP) and Paper Tax System (PATAX) transactions (65 FR 33734). The TIP and PATAX applications were scheduled to replace the Treasury Tax and Loan (TT&L) system on July 10, 2000. On July 5, 2000, the Department of the Treasury announced the implementation delay of the TIP and PATAX applications (65 FR 41522). The Board will announce the revised effective dates of the modifications to the procedures for measuring daylight overdrafts once a new implementation date is established.[1]

Need for Correction

As published, the posting time for same-day Treasury withdrawals announced by 11:30 a.m. ET is incorrect and the posting times for Main Account Administrative Withdrawals and SDI (Special Direct Investment) Withdrawals were omitted.

Correction of Publication

Accordingly, the amendments published on May 24, 2000, at 65 FR 33735, which was subject of FR Doc. 00–13016, are corrected as follows:

Policy Statement on Payments System Risk [Corrected]

1. On page 33735, column 2, line 10 from the top of the column, the language "+ Main Account Administrative Investment from TIP" is corrected to read "+/− Main Account Administrative Investment or Withdrawal from TIP."

2. On page 33735, column 2, line 12 from the top of the column, the language "+ SDI (Special Direct Investment) or Administrative Investment from TIP;" is corrected to read "+/− SDI (Special Direct Investment) or Administrative Investment or Withdrawal from TIP."

3. On page 33735, column 2, line 24 from the top of the column, the language "Post at 8:30 a.m., 11:30 a.m., and 6:30 p.m. Eastern Time:—Main Account Treasury Withdrawals from TIP" is corrected to read "Post at 8:30 a.m., 1:00 p.m., and 6:30 p.m. Eastern Time:—Main Account Treasury Withdrawals from TIP."

[1] To allow sufficient time for depository institutions to adjust to the various operational changes associated with TIP, the Board approved a transition period in which most TIP transactions resulting in debits to depository institutions' accounts would post after the close of Fedwire. After this transition period, the Federal Reserve will post all TIP transactions resulting in debits to depository institutions' accounts on a flow basis as TIP processes them.

By order of the Board of Governors of the Federal Reserve System, July 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17552 Filed 7–10–00; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 16, 2000

In accordance with § 71.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 16, 2000.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 6½ percent.

By order of the Federal Open Market Committee, June 30, 2000.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 00–17582 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–1076]

Privacy Act of 1974; Publication of Notice of Systems of Records and Amendment of Existing Systems of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; publication of four new systems of records and the amendment of one system of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is publishing notice of four new systems of records, entitled: "Travel Records" (BGFRS–8), "Employee Relations Records" (BGFRS–26), "Performance Management Program Records" (BGFRS–27), and "Employee Assistance

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 16, 2000, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Program Records" (BGFRS–28), as well as amendments to "Disciplinary and Adverse Action Records" (BGFRS–6). We invite public comment on this notice.

DATES: The new systems of records and amendments to the existing systems of records will become effective without further notice, on August 21, 2000, unless comments dictate otherwise.

ADDRESSES: Comments, which should refer to Docket No. R–1076, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays and to the security control room outside of those hours. The mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Managing Senior Counsel, Legal Division (202/452–2418), or Chris Fields, Manager, Human Resources Function, Management Division (202/452–3654), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of the Telecommunications Device for the Deaf (TDD) only, contact Janice Simms at 202/452–4984.

SUPPLEMENTARY INFORMATION: The establishment of the new systems of records and amendments to one existing system of records results from a review of the Board's information practices conducted in accordance with the President's May 14, 1998, memorandum on privacy and information in federal records.

Unlike most Federal government agencies whose personnel files are maintained by the Office of Personnel Management (OPM), the Board maintains its own personnel-related files because the Board has independent statutory authority to hire staff and set the salary and benefit terms for its staff. Accordingly, the personnel-related files of Board employees are not contained in the government-wide systems of records published by OPM. Nevertheless, the Board's personnel-related files are used in much the same manner as those of other federal employees. Accordingly, after reviewing the routine uses for the existing system of records, the Board has determined to adopt many of the routine uses that are used in OPM's government-wide systems of records.

New Systems of Records

The Travel Records contain the information used by the Board's Finance Function to monitor official Board travel and make appropriate reimbursements. It also includes limited records related to the Government Travel Card, but most of the credit card records are maintained by the General Services Administration. Notice of these government-wide records appears in GSA/Govt-3, entitled "Travel Charge Card Program."

The system of records for Performance Management Program (PMP) reports contains the reports and any supporting or related documentation on the reports. While the system manager for these records is the Associate Director of the Human Resources Function of the Management Division, many of the records are maintained in the various divisions of the Board.

The Employee Relations records concern work-related issues that have been discussed with the employee relations specialists in the Human Resources Function of the Management Division.

The Employee Assistance Program ("EAP") Records are maintained off Board premises in the office of the counselor who administers the EAP pursuant to a contract with the Board.

Revised System of Records

The revisions to the Disciplinary and Adverse Action Records update the descriptions of the records maintained and add several routine uses that are based on the routine uses used by OPM for the equivalent government-wide system of records. Furthermore, the retention period is revised to comply with the General Records Schedule.

In accordance with 5 U.S.C. 552a(r), a report of these actions is being filed with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Office of Management and Budget.

BGFRS–6

SYSTEM NAME:

FRB—Disciplinary and Adverse Action Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees (including special employees), and annuitants who are involved in a disciplinary or adverse action.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on the processing of adverse actions and disciplinary actions. The records include, as appropriate, copies of the notice of proposed action, materials relied on by the Board to support the reasons in the notice, replies by the employee, statements of witnesses, hearing notices, record of hearings, reports, appeals and related documents, and Board decisions. This system may also contain records related to the Career Transition Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in administering its personnel functions, and to maintain a record of proceedings in a disciplinary or adverse action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a

license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

e. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board is a party to the judicial or administrative proceeding.

f. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

h. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

i. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

j. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

k. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

l. To locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties or reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

n. To disclose information to the Department of Labor, Department of Veterans Administration, Social Security Administration, or any other Federal Agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (*e.g.*, State unemployment compensations agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Board or an agency, or to conduct an analytical study or audit of benefits being paid under such programs.

o. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board, when necessary to performance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, index cards, magnetic tape and disk.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are maintained for seven years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System, 20th & Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position. Individuals receiving notice of a proposed adverse action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the complete record.

RECORD ACCESS PROCEDURES:

Individuals against whom disciplinary or adverse actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official file by contacting the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial, quasi-judicial, or administrative action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents that action of the Board, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if

known), approximate date of record, and type of position.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; Board officials; affidavits or statements from employees; testimonies of witnesses; official documents relating to an action, appeal, grievance, or complaints; and correspondence from specific organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–8

SYSTEM NAME:

Travel Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551. A commercial credit card contractor maintains information on employee use of the government travel credit card.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel Authorization forms and supporting documentation; Travel Expense Statements and supporting documentation; applications for the government travel card; periodic reports from the commercial credit card contractor regarding use of the government travel cards; records regarding Board reimbursement of travel expenses; and records regarding reservations for transportation and lodging made by the Board's Travel Desk.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

To provide a travel management process that covers official travel for the Board and provides for tracking and appropriate reimbursement of expenses incurred in such travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

b. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board, where necessary for performance.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

d. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board is a party to the judicial or administrative proceeding.

e. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

f. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

g. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

h. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) regarding the use of the government travel card.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and in computer processable storage media.

RETRIEVABILILTY:

Records are indexed by name or trip number.

SAFEGUARDS:

Current and previous year's paper records are stored in the central lundia file system with access limited to those whose official duties require it. Records three years and older are stored in cardboard files in secured rooms. Access to computerized records is limited, through use of access codes, to those whose official duties require it.

RETENTION AND DISPOSAL:

Records are destroyed six years after reimbursement is made unless the claim is subject to litigation, in which case the records are destroyed when 10 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Finance Function, Management Division, Board of Governors of the Federal Reserve System, 20th & Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information provided by the employee, information from Travel Authorizations, reports from the credit card contractor, information from the Finance Function of the Management Division regarding reimbursement; and information from the Travel Desk regarding reservations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–26

SYSTEM NAME:

FRB—Employee Relations Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees (including special employees) with work-related issues that have involved the employee relations specialists in the Human Resources Function of the Management Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains written communications and related documents involved in adjusting work-related problems. Such documents may include copies of records included in other systems of records, including Performance Management Program (PMP) reports and related documentation; records of disciplinary actions; and records related to the Board's Drug-Free Workplace Plan. This system also includes records related to the Career Transition Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in administering its personnel functions, and to assist employees in resolving work-related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Board decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

b. To disclose to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

d. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board is a party to the judicial or administrative proceeding.

e. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

f. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

g. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

h. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

j. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

k. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

l. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

m. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board, when necessary to the performance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in lockable cabinets.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are destroyed three years after termination of counseling.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System 20th & Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; the individual's managers, supervisors and officers; employees and officers in the Human Resources Function of the Management Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–27

SYSTEM NAME:

FRB—Performance Management Program Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551. Final Performance Management Program (PMP) reports are maintained by the Human Resources Function of the Management Division. Supporting documentation for the reports is maintained in the Division where the employee works or worked.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Completed PMP reports, attachments, and supporting documentation; submissions and written suggestions by the subject employee; records of PMP objective-setting sessions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in administering its personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To consider and select employees for incentive awards, merit increases and performance awards, or other pay bonuses, and other honors and to publicize those granted.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

e. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board is a party to the judicial or administrative proceeding.

f. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

h. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

i. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

j. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

k. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

l. To locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in lockable cabinets.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retain for 10 years from the year of the rating, then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System 20th & Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, and the individual's manager(s).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–28

SYSTEM NAME:

FRB-Employee Assistance Program Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551. The files are under the control of the Board, but are maintained by an outside consultant pursuant to a contract with the Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees, and their spouses and dependent children, who have consulted with, or been referred to, the Employee Assistance Counselor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files developed for each client seen by a counselor. These files may contain notes of each contact between the client and counselor, the counselor's assessment, the kind of services being provided (including referrals), and follow-up information on the outcome of the consultation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12564 and 12 U.S.C. 244 and 248(l).

PURPOSE(S):

These records are collected and maintained to assist the Board in providing a safe and healthy working environment, and to comply with E.O. 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

With the exception of Routine Use "f," none of the other Routine Uses are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the Board, generally only to the Medical Review Officer, the administrator of the Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

In other cases, the information in these records may be used:

a. To disclose information to a new employee assistance contractor following a contract transition for the services.

b. To provide the necessary information to family members, and to the appropriate law enforcement, security services, or child protective services, where there is a reason to suspect abuse or neglect of children or other vulnerable persons, where the individual using the EAP services poses a serious threat to the health or safety of another individual, or where the individual using EAP services presents a clear and present danger to the safety and security of the community or workplace.

c. To provide the information necessary to warn another individual whose health or safety has been seriously threatened by the individual using the EAP services.

d. To provide the necessary information to a family member or guardian, and/or appropriate law enforcement or health authority, where the individual using EAP services says or does something that seriously threatens his or her own health or safety.

e. To disclose the results of a drug test of a Board employee pursuant to an order of a court of competent jurisdiction where required by the U.S. Government to defend against any challenge against any adverse personnel action.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are kept in locked files.

RETRIEVABILITY:

Records are maintained by the name of the individual and the case number assigned to that individual.

SAFEGUARDS:

Only staff of the Employee Assistance Program have access to the files, which are maintained on the premises of the contractor hired to administer the program.

RETENTION AND DISPOSAL:

Records are maintained for three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Assistance Program Administrator, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above, but see the special procedures set forth in the Board's Rules Regarding Access to and Review of Personal Information Under the Privacy Act, 12 CFR 261a.7.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; the EAP counselor; an

employee's physical or mental health care provider or counselor; medical institutions; the contractor administering the Drug-Free Workplace Plan; Federal Reserve System personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, July 6, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–17519 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Report of the "Tar," Nicotine, and Carbon Monoxide of the Smoke of 1294 Varieties of Domestic Cigarettes for the Year 1998

ACTION: Notice.

SUMMARY: The Federal Trade Commission publishes the "Report of the 'Tar,' Nicotine, and Carbon Monoxide of the Smoke of 1294 Varieties of Domestic Cigarettes for the Year 1998."

DATES: July 12, 2000.

ADDRESSES: Copies of the report are available from the FTC's World Wide Web site at: *http:www.ftc.gov* and from the FTC's Public Reference Branch, Room 130, 600 Pennsylvania Ave. NW., Washington, DC 20580. Telephone (202) 326–3128.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, Staff Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Ave. NW., Washington, DC 20580. Telephone (202) 326–2699.

SUPPLEMENTARY INFORMATION: This report contains data on the "tar," nicotine, and carbon monoxide yields of 1294 varieties of cigarettes manufactured and sold in the United States in 1998. The Tobacco Institute Testing Laboratory (TITL), a private laboratory operated by the cigarette industry, conducted the "tar," nicotine, and carbon monoxide testing for the widely-available domestic cagarette varieties. TITL provided the results to the respective cigarette companies, which then provided the data generated by TITL regarding their own brands to the Commission in response to compulsory process. Cigarette smoke from generic, private label, and not-widely-available cigarettes was not tested by TITL, but was tested by the cigarette companies and the test results were provided to the FRC in response to compulsory process.

In response to concerns that have been raised regarding the accuracy and utility of the testing method currently used to determine the "tar," nicotine, and carbon monoxide ratings of cigarettes, the Commission in 1998 requested the assistance of the Department of Health and Human Services in reviewing the scientific and public health questions surrounding the test method and, if appropriate, determining how the test method should be changed. In its two most recent reports to Congress pursuant to the Federal Cigarette Labeling and Advertising Act, the Commission has recommended that Congress consider giving authority over cigarette testing to one of the Federal government's science-based, public health agencies.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17588 Filed 7–11–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement with the Association for American Indian Physicians

AGENCY: Office of the Secretary, Office of Minority Health, HHS.

ACTION: Notice of a Cooperative Agreement with the Association for American Indian Physicians.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the Association for American Indian Physicians (AAIP). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to assist AAIP in expanding and enhancing its activities relevant to education, health promotion, disease prevention, and family and youth violence prevention, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority: This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to AAIP. During the last 5 years, AAIP has successfully demonstrated the ability to work with health agencies on activities relevant to increasing the proportion of practicing Native American health professionals, and enhancing physician and community education on health promotion, disease prevention, and research opportunities. The AAIP is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- This Association has developed, expanded, and managed an infrastructure to coordinate and implement various medical intervention programs within local communities and physician groups that deal extensively with Indian health issues. The Association has also established several oversight committees that provide a foundation upon which to develop, promote, and manage health intervention, education, and training programs which are aimed at preventing and reducing unnecessary morbidity and mortality rates among American Indian and Alaska Native populations.
- It has established itself and its members as an organization with professionals who serve as leaders and experts in planning, developing, implementing, and evaluating health education, prevention, and promotion programs aimed at reducing excessive mortality and adverse health behaviors among American Indian and Alaska Native communities.
- It has developed databases and directories of health services, health care accessibility issues, and professional development initiatives that deal exclusively with American Indian and Alaska Native populations that are necessary for any intervention dealing with this minority population.
- It has assessed and evaluated the current education, research and disease prevention, and health promotion activities for its members, affiliated groups, and represented sub-populations.

• It has developed a national organization whose members are all predominantly minority health care professionals and providers with excellent professional performance records.

• It has developed a base of critical knowledge, skills, and abilities related to instruction in medical and health professions preparation. Through the collective efforts of its members, its affiliated community-based organizations, sponsored research, and sponsored health education and prevention programs, the AAIP has demonstrated (1) the ability to work with academic institutions and health agencies on mutual education, service, and research endeavors relating to the goal of disease prevention and health promotion for American Indian and Alaska Native populations; (2) the leadership necessary to attract minority health professionals into public health careers; and (3) the leadership needed to assist health care professionals work more effectively with American Indian and Alaska Native clients and communities.

This cooperative agreement will be continued for an additional five-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: June 22, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–17527 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement With the National Council of La Raza

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of a cooperative agreement with the National Council of La Raza.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the National Council of La Raza (NCLR). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to support the efforts of the NCLR in expanding and enhancing its activities relevant to education, service delivery, health prevention, health promotion, and health research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority

This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to NCLR. During the last 5 years, NCLR has successfully demonstrated the ability to work with official health agencies on mutual education, service, and research endeavors. The NCLR is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

• It has developed, expanded, and managed an infrastructure to coordinate and implement various health education programs within local communities and physician groups that deal extensively with Hispanic health issues. The NCLR has established a strong network of Hispanic providers, health advocates, and health educators that provide a foundation upon which to develop, promote, and manage health interventions, and client education programs aimed at preventing and reducing unnecessary morbidity and mortality rates among Hispanic populations.

• It has established itself and its members as organizations with professionals who serve as leaders and experts in planning, developing, implementing, and evaluating health education curricula and client-based health prevention programs aimed at reducing excessive mortality and adverse health behaviors among Hispanic populations.

• It has developed databases and directories of health education programs, health care accessibility issues, and professional development initiatives that deal exclusively with Hispanic populations that are necessary for any intervention dealing with Hispanic populations.

• It has assisted in the development of many of the current education, research, disease prevention, and health promotion activities for its members, affiliated groups, and represented subpopulations.

• It has developed national organizations whose members consist of Hispanic physicians, health care providers, researchers and advocates with excellent professional performance records. The NCLR has a broad range of membership that is comprised of mostly Hispanic health care providers.

• It has developed a base of critical knowledge, skills, and abilities related to serving Hispanic clients on a range of health and social problems. Through the collective efforts of its members, its affiliated community-based organizations, sponsored research and sponsored health education and prevention programs, it has demonstrated: (1) The ability to work with academic institutions and official health agencies on mutual education, services, and research endeavors relating to the goal of disease prevention and health promotion of Hispanic peoples; (2) the leadership needed to assist health care professionals work more effectively with Hispanic clients and communities; and (3) the leadership needed to effectively promote health professions careers to Hispanic students who would otherwise not consider such a career path.

This cooperative agreement will be continued for an additional 5-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that his cooperative

agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia H. Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: June 22, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–17529 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement With the National Medical Association

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of a cooperative agreement with the National Medical Association.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the National Medical Association (NMA). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to (1) increase the association's support for and assistance in increasing the proportion of practicing minority health professionals within the U.S.; and (2) assist the association in expanding and enhancing its health prevention, promotion, and health services research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government and non-government agencies.

Authority

This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to NMA. During the last 5 years, NMA has successfully demonstrated the ability to work with health agencies on activities relevant to practicing minority health professionals and to the improvement of the health status of minorities and disadvantaged people. The NMA is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It has developed and expanded an infrastructure to coordinate and implement medical education programs within local communities and physician groups that deal extensively with African American health issues. The association has also established regional, state, and local divisions which provide a foundation upon which to develop, promote, and conduct professional medical programs for preventing and reducing unnecessary morbidity and mortality among African Americans, as well as other minority populations.
- It has established itself and its members as an association with professionals who serve as leaders and experts in public health campaigns aimed at improving health status of minority populations.
- It has developed an extensive knowledge-base of essential disease prevention, health promotion, and research evaluation strategies that are necessary for any health intervention dealing with these minority populations, with particular focus on African Americans.
- It has assessed the current education, research, disease prevention, and health promotion activities for its members, affiliated groups, and represented subpopulations.
- It has developed a national association whose members are all predominately minority health professionals and providers.
- It has developed a knowledge-base of critical knowledge, skills, and abilities related to instruction, training, and preparation of medical and health professionals. Through the collective efforts of its members, the association's committees, sponsored research, and sponsored health education and prevention programs, the NMA has demonstrated (1) the ability to work with academic institutions and health agencies on mutual education, service, and research endeavors relating to the goal of preventing disease and promoting health of minorities and disadvantaged people; (2) the leadership necessary to attract minority health professionals into public health careers; and (3) the leadership needed to effectively promote health professional careers as an option to minorities and disadvantaged people who would otherwise not consider such a career path.

This cooperative agreement will be continued for an additional five-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: June 22, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–17528 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Women's Health; Notice of Public Meeting on the Safety of Dietary Supplements Containing Ephedrine Alkaloids

AGENCY: Office of Public Health and Science, Office of the Secretary, DHHS.

ACTION: Notice of Public Meeting on the Safety of Dietary Supplements Containing Ephedrine Alkaloids.

SUMMARY: The Department of Health and Human Services' Office of Women's Health (OWH), which is part of the United States Public Health Service (USPHS), is announcing a public meeting to discuss available information about the safety of dietary supplements containing ephedrine alkaloids. These products are promoted for uses such as weight loss, body building, and increased energy. This meeting will afford all interested persons an opportunity to provide focused information and comment in a manner that will assist the USPHS in understanding the use of dietary supplements containing ephedrine alkaloids. Possible regulatory actions are not the topics for this meeting.

DATES: The meeting will begin on Tuesday, August 8, 2000 and will last for 2 or 3 days, depending on the number of presenters, from 9:00 a.m. to 6:00 p.m. Registration will open at 8:00 a.m. Registration and written notices of participation should be submitted by close of business, August 1, 2000. Late registrations will be accepted contingent on space availability.

ADDRESSES: The public meeting will be held at the Department of Health and Human Services, Wilbur J. Cohen Building, Wilbur J. Cohen Auditorium, 330 Independence Avenue, SW., Washington, DC 20201. Meeting participants should enter on the Independence Avenue entrance. The Wilbur J. Cohen Building is one block east of the Metro station (Orange/Blue Lines) Federal Center SW.

Background information on this meeting is available on the OWH Internet site (The National Women's Health Information Center) *www.4woman.gov/owh/public*. The agenda will be available at the public meeting.

In the **Federal Register** of April 3, 2000 (65 FR 17510), the Food and Drug Administration (FDA) announced the establishment of a new public docket that made available new adverse event reports and related information concerning dietary supplements containing ephedrine alkaloids. Interested persons were given until May 18, 2000 to submit written comments on the April 3, 2000 **Federal Register** notice to FDA's docket (Docket No. 00N–1200). FDA later extended this comment period until July 3, 2000 (65 FR 32113, May 22, 2000). FDA intends to reopen the comment period until September 30, 2000 via publication of a **Federal Register** notice the week of July 3, 2000. The transcript, presentations and views expressed at the USPHS public meeting on the safety of dietary supplements containing ephedrine alkaloids will be submitted to the FDA docket. For more Information, refer to www.fda.gov.

FOR FURTHER INFORMATION CONTACT: To register for the public meeting, contact: www.4woman.gov/owh/public, or contact Ms. Darlene Gregory, Conference Manager, Conference Technologies International, a division of the MayaTech Corporation (MTC), 8737 Colesville Road, 7th Floor, Silver Spring, MD 20910–3921, via fax at (301) 587–1686

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services' Office on Women's Health (OWH), which is part of the USPHS, will convene this public meeting. As part of this meeting, the USPHS will describe the historical and current use of ephedra-containing compounds and adverse events. The USPHS invites representatives from consumer groups, industry, and the clinical research communities to register for the meeting and to make presentations on the use of dietary supplements containing ephedrine alkaloids, the links between the use of these supplements and adverse events, and how best to characterize those links. The USPHS will assemble a panel of government public health experts representing such disciplines as epidemiology, clinical pharmacology, and cardiovascular medicine, whose rule will be to seek clarification from presenters.

II. Scope of the Discussion

The scope of this meeting will be limited to the issues discussed in this document. Possible regulatory actions are not the topics for this meeting. In reference to the following questions, discussion will cover such areas as the traditional medical use of these products, the use of these products as dietary supplements labeled for weight loss and exercise enhancement, and the known physiologic and pharmacologic actions of these alkaloids, including their use in combination with other stimulants. The specific questions on which USPHS is seeking comment follow.

1. What positive and adverse physiologic actions would be expected of ephedra based on its known constituents? Does the available information show an association between the use of dietary supplements containing ephedrine alkaloids and adverse events (i.e., cardiovascular, central nervous system, psychotropic, etc.) when used as directed?

2. Are there any circumstances for which there are well-established indications for the use of dietary supplements containing ephedrine alkaloids? What does and duration of use are needed for those indications? What is the quality of any data to support such use?

3. How would you characterize the seriousness and/or severity of the risks of ephedrine alkaloids labeled for weight loss and exercise enhancement, taking into account issues such as user demographics (age, sex, race/ethnicity); amount consumed across the population; use with other natural or synthetic stimulants (*e.g.*, caffeine, synephrine, yohimbine); the added stress of exercise; and individual sensitivity to these types of products?

4. Are the outcomes associated with use of these products affected by

- Dosage;
- User characteristics (*e.g.*, age, predisposing health conditions) or behaviors (*e.g.*, combining use with other stimulants or other compounds);
- Duration of exposure; or
- Other means?

III. Registration and Requests for Oral Presentations and Abstracts

If you would like to attend the meeting, we request that you register in writing with Ms. Darlene Gregory, Conference Technologies International, a Division of the Maya Tech Corporation (MTC), 8737 Colesville Road, 7th Floor, Silver Spring, MD 20910–3921, by August 1, 2000, by providing your name, title, business affiliation, address, telephone, fax number, and e-mail address. To expedite processing, this registration information may be sent to Ms. Gregory by fax at (301) 587–1686, or via the internet at www.4woman.gov/owh/public.

If you need special accomodations due to a disability, please inform Ms. Gregory when you register.

Researches with basic science, clinical, or other data responsive to the questions described above for dietary supplements containing ephedrine alkaloids are invited to register and to submit an abstract for an oral presentation. Abstracts must fit completely in a box measuring 6.5 inches wide by 4 inches deep and must follow this structured format: a brief title; names, credentials, affiliations, and locations of all authors (standard abbreviations are acceptable); identification of source(s) of support for the research and presentation; and the Objective Design, Results, and Conclusion of the research or presentation. Presenters should specify whether the research has been peer

reviewed, and the format of the presentation (slide, overhead, powerpoint (specify version), or other).

Other individuals wishing to provide remarks at the meeting are invited to submit a brief summary of those remarks, to fit completely in a box measuring 6.5 inches wide by 4 inches deep.

Presentations and summaries should be responsive to one or more of the specific focus questions identified in this notice. Incomplete abstracts or summaries and those nonresponsive to any of the questions will be rejected. Submitters should indicate if special accommodations are needed for the presentation. Abstracts should be received by close of business August 1, 2000, by Ms. Darlene Gregory, Conference Manager, Conference Technologies International, a Division of the MayaTech Corporation (MTC), 8737 Colesville Road, 7th Floor, Silver Spring, MD 20910–3921, via fax at (301) 587 1686.

Depending upon the number of people who register to make presentations, we may have to limit the time allotted for each presentation. Time will be allotted according to the number of requests received, but will be at least 3 minutes followed by 2 minutes of discussion. Presenters will be notified of their time.

V. Transcripts

You may request a transcript of the meeting in writing from the Freedom of Information Office [HFI–35], Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page.

You may also examine the transcript of the meeting after August 25, 2000, at the Dockets Management Branch between 9:00 a.m. and 4:00 p.m., Monday through Friday, as well as on the FDA website at *http://www.fda.gov*

Dated: July 5, 2000.

Wanda K. Jones,

Deputy Assistant Secretary for Health (Women's Health).

[FR Doc. 00–17526 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hereby given of the sixth meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 8 a.m. to 5 p.m. on August 4, 2000 at the National Institutes of Health, Building 31, C Wing, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892. The meeting will be open to the public with attendance limited to space available.

The Committee will devote time to a discussion of topics presented at its June 5–7 meeting and plan a course of action for future projects. The Committee will also hear a report from a SACGT working group that will meet August 3 to develop a methodology for classifying genetic tests for review purposes. There will be a limited period of time provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. The SACGT is directed to (1) recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following web site: *http://www4.od.nih.gov/oba/scagt.htm* Individuals who wish to provide public comments or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Garr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov*. The SACGT office is located at 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892.

Dated: July 5, 2000.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 00–17533 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date: 10 a.m.–4:45 p.m., July 17, 2000; 9 a.m.–1 p.m., July 18, 2000.

Place: Room 705A, Hubert H. Hemphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: At this meeting, the Subcommittee on Populations will continue to assess the feasibility of using the International Classification of Impairments, Disabilities, and Handicaps (ICIDH) system to classify functional status on administrative health records, such as enrollment forms for health plans, records of medical encounters, and standardized attachments to such records. Panelists will explore issues related to the potential application of the ICIDH for such records and will discuss data collection and measurement efforts necessary to address the issues effectively. This is the third of several public meetings being planned by the Subcommittee to discuss the topic of the feasibility of recording functional status on administrative health records.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Susan G. Queen, Lead Staff Person for the NCVHS Subcommittee on Populations, Division of Information and Analysis, Office of the Administrator, Health Resources and Services Administration, Room 14–22, 5600 Fishers Lane, Rockville, Maryland, 20852, telephone (301) 443–1129; or Marjorie S. Greenberg, Executive Secretary, NVCHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/, where an agenda for the meeting will be posted when available.

Dated: July 5, 2000.

James Scanlon,

Director, Division of Date Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–17632 Filed 7–11–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National HIV Prevention Planned Meetings; Cancellation

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the Cancellation of Meetings.

This notice announces the cancellation of previously announced meetings.

Federal Register: July 5, 2000 (Volume 65, Number 129) Notices Page 41471

Name: National HIV Prevention Plan Meetings

Time and Date: 9 a.m.–12 p.m. (Noon)

Tuesday—July 18, 2000

Hotel Pennsylvania, 401 7th Avenue, New York, NY 10001, Phone: 212–736–5000.

Wednesday—July 26, 2000

Crowne Plaza-Houston, 2222 West Loop South, Houston, TX 77027, Phone: 713–961–7272.

Thursday—July 27, 2000

Congress Plaza Hotel, 520 South Michigan Avenue, Chicago, IL 60605, Phone: 312–427–3800.

Tuesday—August 1, 2000

The Argent Hotel, 50 Third Street, San Francisco, CA 94103, Phone: 415–974–6400.

Place: See above.

Contact Person for More Information: Lydia Ogden, National Center for HIV, STD, and TB Prevention, Office of Planning and Policy Coordination, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8031. The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 6, 2000.

Julia Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–17572 Filed 7–11–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Time and Date: 2:30 p.m.–3 p.m., July 26, 2000.

Place: National Center for Injury Prevention and Control (NCIPC), CDC, Koger Center, Vanderbilt Building, 1st Floor, Conference Room 1004A&B, 2939 Flowers Road, South, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I–85.)

Status: Open: 2:30 p.m.–2:40 p.m., July 26, 2000. Closed: 2:40 p.m.–3:00 p.m., July 26, 2000.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focus on prevention and control and to support injury prevention research centers.

Matters to be Discussed: Agenda items include the purpose of the meeting and discussion and vote on findings and recommendations from a June 26–27, 2000, site visit to assess the National Study of Costs and Outcomes of Trauma at Johns Hopkins University.

Beginning at 2:40 p.m., through 3 p.m., July 26, the Committee will meet to discuss and vote on findings and recommendations from a site visit to assess a national trauma study project. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: J. Howard Hill, Director, Office of Research Grants, serving as the designated Federal official, IRGRC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–4826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 6, 2000.

Julia Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–17573 Filed 7–11–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1879]

BetzDearborn; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 9B4671) proposing that the food additive regulations be amended to provide for the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial for use in food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215),Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 22, 1999 (64 FR 33306), FDA announced that a food additive petition (FAP 9B4671) had been filed by BetzDearborn, 4636 Somerton Rd., Trevose, PA 19053. The petition proposed to amend the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) to provide for the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial for use in food-contact paper and paperboard. BetzDearborn has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 23, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–17603 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F–0157]

Minnesota Mining and Manufacturing Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0B4206) proposing that the food additive regulations be amended to provide for the safe use of a perfluoroalkyl acrylate copolymer, produced by the copolymerization of ethanaminium, *N,N,N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]-, chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[[(heptadecafluorooctyl) sulfonyl]methylamino] ethyl ester, as a component of paper and paperboard in contact with nonalcoholic foods at high temperatures, including the use in microwave heat susceptor packaging.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3085.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 22, 1990 (55 FR 21102), FDA announced that a food additive petition (FAP 0B4206) had been filed by Minnesota Mining and Manufacturing Co., 3M Center, St. Paul, MN 55144–1000. The petition proposed to amend the food additive regulations to provide for the safe use of perfluoroalkyl acrylate copolymer, produced by the copolymerization of ethanaminium, *N,N,N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]-, chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[heptadecafluorooctyl) sulfonyl] methylamino] ethyl ester, as a component of paper and paperboard in contact with nonalcoholic foods at high temperatures, including the use in microwave heat susceptor packaging. Minnesota Mining and Manufacturing Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 22, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–17602 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F–0116]

Minnesota Mining and Manufacturing Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0B4197) proposing that the food additive regulations be amended to permit the additional use of ammonium bis (*N*-ethyl-2 perfluoroalkylsulfonamido ethyl) phosphates in contact with nonalcoholic foods at high temperatures, including the use in microwave heat susceptor packaging.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3085.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 16, 1990 (55 FR 14133), FDA announced that a food additive petition (FAP 0B4197) had been filed by Minnesota Mining and Manufacturing Co., 3M Center, St. Paul, MN 55144–1000. The petition proposed to amend the food additive regulations to permit the additional use of ammonium bis (*N*-ethyl-2 perfluoroalkylsulfonamido ethyl) phosphates in contact with nonalcoholic foods at high temperatures, including the use in microwave heat susceptor packaging. Minnesota Mining and Manufacturing Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 22, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–17604 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–64]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Indirect Medical Education (IME) and Supporting Regulations in 42 CFR 412.105;

Form No.: HCFA–R–64 (OMB# 0938–0456);

Use: This collection of information on interns and residents (IR) is needed to properly calculate Medicare program payments to hospitals that incur indirect costs for medical education. The agency's Intern and Resident Information System uses the information for producing automated reports of duplicate full-time equivalent IRs for IME. The reports provide contractors with information to ensure that hospitals are properly reimbursed for IME, and help eliminate duplicate reporting of IR counts which inflate payments. The collection of this information affects 1,350 hospitals which participate in approved medical education programs;

Frequency: Annually;

Affected Public: Not-for-profit institutions, and business or other for-profit;

Number of Respondents: 1,350;

Total Annual Responses: 1,350;

Total Annual Hours: 2,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 3, 2000.

John P. Burke III

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–17545 Filed 7–11–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0315]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Collection of Data on Physician Encounters from Medicare + Choice Organizations; *HCFA Form Number:* HCFA–R–0315 (OMB 0938–NEW); *Use:* HCFA requires physician encounter data from Medicare + Choice organizations to develop and implement a risk adjustment payment methodology as required by the Balanced Budget Act of 1997; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 300; *Total Annual Responses:* 75.6 million; *Total Annual Hours:* 938,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–17544 Filed 7–11–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

White House Initiative on Asian Americans and Pacific Islanders President's Advisory Commission; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to conduct a public meeting during the month July 2000.

Name: President's Advisory Commission on Asian Americans and Pacific Islanders (AAPIs).

Date and Time: July 24, 2000; 9:00 a.m.–7:00 p.m. PDT and July 25, 2000; 9:00 a.m.–1:00 p.m. PDT.

Place: Los Angeles County Hall of Administration, 822 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, CA 90012.

The President's Advisory Commission on AAPIs will conduct a public meeting on July 24, from 9:00 a.m. to 7:00 p.m. PDT inclusive, and subsequent meeting on July 25, from 9:00 a.m. to 2:00 p.m. PDT inclusive. The meeting is open to the public.

Agenda items will include, but are not limited to: testimony from community organizations and individuals; approval of June conference call minutes; reports and recommendations from Commissioners and subcommittees; administrative tasks; and upcoming events.

The purpose of the Commission is to advise the President on the issues facing Asian Americans and Pacific Islanders (AAPIs). The President's Advisory Commission on AAPIs will be seated through June 7, 2001.

Requests to address the Commission on July 24 must be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and present through a single representative. The allocation of time for remarks may be adjusted to accommodate the level of expressed interest. Written requests should be faxed to: (301) 443–0259.

Anyone who has interest in joining any portion of the meeting or who requires additional information about the Commission should contact: Mr. Tyson Nakashima, Office of the White House Initiative on AAPIs, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD, 20857, Telephone (301) 443–2492. Anyone who requires special assistance, such as sign language interpretation, foreign language interpretation or other reasonable accommodations, should contact Mr. Nakashima no later than July 14, 2000.

Dated: July 6, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination,

[FR Doc. 00–17525 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request Pretesting of Office of Cancer Communications Messages

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and

approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 9, 2000, pages 12560–12561 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Pretesting of Office of Cancer Communications Mesages. *Type of Information Collection Request:* Extension (OMB# 0925–0046, expires 8/31/00). *Need and Use of Information Collection:* In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (*e.g.*, cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), the Office of Cancer Communications (OCC) needs to pretests its communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communication materials, and information services created by OCC have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, OCC is able to (1) understand characteristics of the intended target audience—their attitudes, beliefs and behaviors—and use this information in the development of effective communication tools; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resource dollars wisely and effectively. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Businesses or other for profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government: *Type of Respondents:* Adult cancer patients; members of the public; health care professionals; organizational representatives. The annual reporting burden is as follows: *Estimated Number of Respondents:* 13,780; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .1458; and *Estimated Total Annual Burden Hours Requested:* 2,010. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ellen Eisner, Communications Research Manager, Health Promotion Branch, OCC, NCI, NIH, Building 31, Room 10A03, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll free number (301) 435–7783 or E-mail your request, including your address to: EisnerE@occ.nci.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: June 29, 2000.

Reesa Nichols,

OMB Project Liaison Officer.

[FR Doc. 00–17534 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: July 16–18, 2000.

Time: 7:30 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Deborah R. Jaffe, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8038, MSC 8328, Bethesda, MD 20892, (301) 496–7721.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17535 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: July 7, 2000.

Time: 8:30 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: SpectruMedix Corporation, 2124 Old Gatesburg Road, State College, PA 16803.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 3, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17537 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 25, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, ns120v@nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institues of Health, HHS)

Dated: June 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17536 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Clinical Trials Network.

Date: July 17, 2000.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes on Drug Abuse, Office of Extramural Affairs, 6001 Executive Blvd., Rm. 3158, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: William C. Grace, PhD., Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2755.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17538 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Phase II SBIR: "Prevention Activities Handbook: A Practitioner's Guide to Selecting and Implementing Interactive Drug Use Prevention Activities for Children and Adolescents".

Date: July 18, 2000.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd.,

Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is begin published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Clinical Trial Network Administrative Coordinating Center".

Date: July 25, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17539 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 7, 2000.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 21, 2000.

Time: 2:30 am to 4:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787. etaylor@niaaa.nih.gov

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 2, 2000.

Time: 12 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Ronald Suddendorf, PhD, Scientific Review Adminstrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 23–25, 2000.

Time: 7:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P Street, NW, Washington, DC 20037.

Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–6106, vw21k@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17540 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 14, 2000.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 20, 2000.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Asikiya Walcourt, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301/443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 1, 2000.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17541 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Pressure Mediated Selective Delivery of Therapeutic Substances and Cannula

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: PCT Patent Application Serial Number PCT/US99/11277 (PHS Ref. E–196–98/2) entitled "Pressure Mediated Selective Delivery of Therapeutic Substances and Cannula" filed on May 21, 1999, to InTissue, Inc., having a place of business in Swarthmore, PA. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before September 11, 2000, will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: ps193c@nih.gov; Telephone: (301) 496–7056, ext. 268; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The patent application describes methods and devices for improved regional, organ, tissue, tissue-compartment, and celltype-specific delivery of therapeutic agents via infusion of those agents into body lumens under controlled pressure and volume conditions. Methods of varying pressure and flow rates for given body targets and depths are also disclosed along with methods of determining the proper protocol for a given target tissue. This application also includes designs for access cannulas, catheters, access ports, and other devices for controlled, targeted delivery of therapeutic agents, including drugs and gene therapy vectors. Local administration of drugs, gene therapy vectors, and other therapeutic agents in accordance with this invention can permit organ, tissue, tissue-compartment, and celltype-specific delivery, thereby maximizing administration to intended tissue targets using therapeutically effective dosages while simultaneously reducing the risk of systemic delivery and toxicity.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to pressure mediated selective delivery of therapeutic substances to the gastrointestinal (GI) and genitourinary (GU) organs.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 30, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–17532 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Highly Elastic, Adjustable Helical Coil Stent"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 4040.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application 08/434,822 entitled, "Highly Elastic, Adjustable Helical Coil Stent" filed on May 4, 1995 and now U.S. Patent 6,027,516, which issued on February 22, 2000, to Vascular Architects, Inc. of Portola Valley, California. The patent rights in the invention have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to all intraluminal uses.

DATES: Only written comments and or license applications which are received by the National Institutes of Health on or before October 10, 2000 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Girish C. Barua, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 601 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 496–7056, ext. 263; Facsimile (301) 402–0220; E-mail BaruaG@od.nih.gov.

SUPPLEMENTARY INFORMATION: The U.S. Patent 6,027,516 claims an adjustable helical coil stent which can be contracted or expanded away from a catheter. The invention relates to medical devices used to hold open blood vessel, heart valves and other conduits of the human body. The helical coil can be contracted around a small diameter catheter for percultaneous

insertion into the human body and then be remotely expanded to its original shape. The devise is especially useful for total and partial heart bypass procedures.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within ninety (90) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 30, 2000.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–17531 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–44]

Notice of Submission of Proposed Information Collection to OMB; Youthbuild Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 11, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0142) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Youthbuild Program.

OMB Approval Number: 2506–0142.

Form Numbers: HUD–40200, 40201, 40202, 40203, 27054 and SF–1199A.

Description of the Need for the Information and Its Proposed Use: The Youthbuild Program was authorized under Section 164 of the Housing and Community Development Act of 1992 (42 USC 8011). Funded programs provide disadvantaged youth, predominantly high school drop outs, with educational opportunities and job skills training. Information is collected from eligible applicants for a competition to determine which entities will receive grant funds.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Semi-Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
	250		1.2		37		9,250

Total Estimated Burden Hours: 9,250.

Status: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 5, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–17521 Filed 7–11–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

Multi-Species Conservation Program (MSCP) for the Lower Colorado River, Arizona, California, and Nevada

AGENCIES: Bureau of Reclamation, Interior; Fish and Wildlife Service, Interior.

ACTION: Supplemental Notice of Intent to prepare an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) and notice of supplemental public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the U.S. Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (Service), and the Metropolitan Water District of Southern California (Metropolitan), intend to prepare an EIS/EIR to evaluate the impacts associated with implementing the MSCP for the Lower Colorado River (LCR) in the states of Arizona, California, and Nevada.

DATES AND ADDRESSES: Written comments on conservation alternatives and issues to be addressed in the EIS/EIR are requested by August 11, 2000, and should be sent to Mr. Tom Shrader, Attention: LC–2011, Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470, or faxed to Mr. Shrader at (702) 293–8146. Oral and written comments will be accepted at the public scoping meetings to be held at the following locations:

July 31, 2000, 6–8 p.m., Yuma Desalting Plant, Bureau of Reclamation, 7301 Calle Agua Salada, Yuma, Arizona.

August 1, 2000, 6–8 p.m., California Department of Fish and Game, 14700 S. Broadway, Blythe, California.

August 2, 6–8 p.m., Regional Government Center, 101 Civic Way, Laughlin, Nevada.

August 3, 2000, 6–8 p.m., Henderson Convention Center, 200 South Water Street, Henderson, Nevada.

Starting at 6:30 p.m. at each of the public scoping meetings listed above, the lead agencies will present an overview of MSCP alternatives currently being considered and issues that will be addressed in the EIS/EIR. There will be an opportunity for individuals to make formal statements following each presentation.

FOR FURTHER INFORMATION, CONTACT: Mr. Tom Shrader, Ecologist, Bureau of Reclamation at (702) 293–8703 or Mr. Sam Spiller, Lower Colorado River Coordinator, Fish and Wildlife Service at (602) 640–2720, ext. 208. Questions regarding the CEQA process should be directed to Ms. Laura Simonek, Metropolitan Water District of Southern California at (213) 217–6242. Information on the purpose, membership, meeting schedules and documents associated with the MSCP may be obtained on the Internet at *www.lcrmscp.org*, with a supplemental link to Reclamation's web page at www.lc.usbr.gov.

SUPPLEMENTARY INFORMATION: The initial notice of intent to prepare an EIS/EIR and notice of public scoping meetings were published in the **Federal Register** of May 18, 1999 (Vol. 64, No. 95, pages 27000–2702). A summary of comments provided during the initial scoping period and at the public scoping meetings held at six locations from June 15 to July 1, 1999, is provided on the Internet at Reclamation's web site: *www.lc.usbr.gov*. Look for "Scoping Summary Report" under Multi-Species Conservation Program.

The proposed action is a multi-species conservation program that will (1) conserve habitat and work toward the recovery of threatened and endangered species as well as reduce the likelihood of additional species listings under the Federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA), (2) accommodate current water diversions and power production and optimize opportunities for future water and power development, to the extent consistent with the law, and (3) provide the basis for take authorization pursuant to ESA and CESA.

Reclamation and the Service are joint Federal leads for the EIS. The EIS will be the basis for (1) Reclamation's Record of Decision on implementing its portion of the MSCP and (2) the Service's Record of Decision on issuing an ESA section 10 permit. In addition to the EIS/EIR document, Reclamation will also prepare a biological assessment on its ongoing and future discretionary actions on the LCR, and the Service will utilize the assessment in preparing a biological opinion pursuant to section 7 of the ESA. Metropolitan is the designated CEQA lead agency for the EIR.

The Lower Colorado River MSCP is a partnership of state, Federal, tribal, and other public and private stakeholders with interest in managing the water and related resources of the Lower Colorado River basin. In August of 1995, the Department of the Interior and the states of Arizona, Nevada, and California entered into a Memorandum of Agreement and later a Memorandum of Clarification (MOA/MOC) for Development of a Lower Colorado River Multi-Species Conservation Program.

It is proposed that the MSCP will serve as a coordinated, comprehensive conservation approach for the lower Colorado River basin within the 100-year floodplain from below Glen Canyon Dam to the Southerly International Boundary with Mexico for a period of 50 years. The participants agreed to develop, implement, and fund the MSCP. It was also agreed to pursue an ecosystem-based approach to developing the MSCP for interim and long-term compliance with applicable endangered species and environmental laws and to implement conservation and protection measures for included species and habitats.

Preliminary MSCP alternatives currently under consideration for the MSCP include: (1) No Action, (2) Large habitat core restoration areas with minimized management, (3) Smaller habitat core restoration areas with more active, long-term management, (4) Habitat preservation and enhancement, and (5) Species coverage limited to Federal threatened and endangered, and a number of sensitive, non-listed species. These preliminary MSCP alternatives are further defined below and additional details will be provided during the presentations at the four scheduled public scoping meetings listed above. The alternatives presentations at the public scoping meetings will start at 6:30 p.m., followed by an opportunity for individuals to make formal statements on the MSCP. The lead agencies will be seeking suggestions and comments regarding alternatives and issues and concerns that need to be addressed in the EIS/EIR.

Under the No Action/No Project alternative, it is assumed that some or all of the current and future projects proposed for coverage under the MSCP would be implemented. Under the No Action/No Project alternative, impacts from these potential projects on listed and sensitive species and habitats would be evaluated and mitigated on a project-by-project basis, as is presently the case. Individual ESA section 10 permits or section 7 consultations would be required for activities involving take of listed species.

The Large Core/Minimal Management alternative addresses about 100 species and includes riparian, marsh, and aquatic strategies for the conservation efforts. The main focus of this alternative uses a habitat-based approach with large core habitat creation (1,250 acres or greater), existing habitat for corridors, and restoration areas with minimal management. The aquatic strategy in this alternative creates offstream refugia and allows for periodic reconnection to the river system. Non-native control strategies are included. The approaches for delivering water to the core areas include engineered connections such as canals, weirs, and other devices. This alternative also includes the provision for up to 40,000 cubic-feet-per-second releases from upstream reservoirs in conjunction with bankline and levee modification to create habitat. A floodplain management strategy would also be developed under this alternative. Water may be acquired for habitat management or maintenance through a variety of means, for example, from willing sellers or a water bank. The range of alternative acreage strategies suggested by a variety of scientists and biologists includes 12,000–80,000 acres of habitat restoration/creation.

The Smaller Core/Active Management alternative addresses about 100 species and includes riparian, marsh, and aquatic strategies for the conservation efforts. The main focus of this alternative uses a habitat-based approach with small core habitat

creation (250 to 1,250 acres) in conjunction with habitat for corridors and restoration areas with an active management component. The aquatic strategy in this alternative creates offstream refugia without provision for periodic reconnection to the river system. Non-native control strategies are included. The approaches for delivering water to the core areas include engineered connections such as canals, weirs, and other devices. The range of alternative acreage strategies suggested by a variety of scientists and biologists includes 12,000–80,000 acres of habitat creation/restoration.

The Habitat Restoration and Enhancement alternative also addresses about 100 species and includes riparian, marsh, and aquatic strategies for the conservation efforts. The main focus of this alternative uses a habitat-based approach through preservation and creation of habitat anywhere within the species' breeding range within the United States and may take advantage, where appropriate, of cooperative activities with related/adjacent programs. The aquatic strategy in this alternative focuses on the establishment of self-sustaining populations in the Upper Salt River and other LCR tributaries through renovation of habitat, stocking of fish, and removal of non-native fish. Studies have indicated that approximately 58,000 acres of land throughout the breeding range of the southwestern willow flycatcher may be available for acquisition and subsequent preservation. This habitat conservation would need to be supplemented with other conservation for species residing only within the LCR.

The Smaller Number of Species alternative is a species-based approach that works toward recovery on an individual species basis. This alternative addresses a limited number of species, including ESA-listed species and those species that are most likely to be listed. Elements of large core and small core alternatives are incorporated to meet the recovery goals on a case-by-case basis. The aquatic strategy in this alternative creates off stream refugia and allows for periodic reconnection to the river system. Non-native control strategies are included. The approaches for delivering water to the core areas include engineered connections such as canals, weirs, and other devices. The range of alternative acreage strategies suggested by a variety of scientists and biologists includes 12,000–80,000 acres of habitat creation/restoration. However, the actual acreage required would depend on the suite of species covered under this alternative.

A public involvement program has been initiated and will be maintained throughout this EIS/EIR process. The goal is to keep the public and affected parties informed and actively involved as the project evolves. Given the number of entities participating (Federal, State, and local governments, Native Americans, and private interest groups), successfully providing information and soliciting feedback are critical to the project's effectiveness.

Probable Environmental Effects—Following is a preliminary list of probable environmental and economic issues and effects associated with the project. Other issues may be identified during the internal MSCP and public scoping process.

Biological Resources—Among the endangered species known to use the project area are the southwestern willow flycatcher, Yuma clapper rail, razorback sucker, bonytail, and bald eagle (being considered for delisting). Of prime concern will be the conservation of these and other species, such as the yellow-billed cuckoo (under review for listing under the ESA), and associated habitat within the 100-year floodplain. Implementation of the MSCP will have an overall benefit on biological resources by moving species toward recovery and reducing the likelihood of additional species listings.

Hydrology and Water Quality—Certain conservation strategies may alter onsite water resources, including waters of the United States [as defined in 40 CFR 230.3(s)], which are under the U.S. Army Corps of Engineers (Corps) jurisdiction. Under Section 404 of the Clean Water Act, the Corps is responsible for issuing a permit if a project may result in the placement of material into water of the United States. Until specific alternatives are developed, the effects on hydrology and water quality are unknown.

Floodplains and Wetlands—Implementation of the MSCP will have overall beneficial impacts on floodplains and wetlands, especially in maintaining or creating backwaters (wetlands) and reestablishing native riparian habitat which is essential to the recovery of species. The MSCP partnership has identified several thousand acres of flood plain sites that may have the potential for restoration and enhancement of native habitat. There are several opportunities for the MSCP partnership and Federal, state, Native American and private landowners to voluntarily develop and engage in long-term native habitat restoration. The conversion of developed crop lands to native habitat could be an important component of an MSCP alternative. The MSCP is also exploring the economic requirements associated with long-term leases or purchases of private holdings from willing lessors or sellers.

Cultural Resources—The program could disturb or affect archaeological resources, traditional cultural properties, Indian sacred sites, and Indian Trust Assets. However, it is the intent of the MSCP to avoid or mitigate such effects and the MSCP, as part of the EIS/EIR process, is currently evaluating the potential effects of the preliminary alternatives on such resources.

Socioeconomics—The potential socioeconomic impacts associated with implementation of the MSCP will be evaluated. This assessment may include municipal and industrial uses, agricultural productivity, and other socioeconomic considerations.

Recreation—During the initial scoping in 1999, numerous recreational concerns and issues were identified. In general they involved the potential effects of the MSCP on access to the flood plain and river; activities such as camping, fishing and hunting; boat size and type of motor; off road vehicle use; and implementing ESA and Executive Order 12962 regarding recreational fisheries.

Water and Hydroelectric Power Uses—The effect of various conservation measures on water and hydroelectric power uses will be evaluated. It is the intent of the MSCP to accommodate these uses while protecting covered species and their habitat within the project area.

Agricultural and Other Land Uses—Current agricultural resources or operations and land uses may be impacted. Land use and cropping patterns would change with the voluntary conversion of agricultural lands to native riparian habitat or the transfer of water rights for habitat maintenance and restoration.

International Impacts—Pursuant to council on environmental quality guidance regarding NEPA, potential trans-boundary impacts to Mexico resulting from implementation of the MSCP will be identified and analyzed. The project will not affect the delivery of water pursuant to the 1944 Mexico Water Treaty.

Environmental Justice—It is anticipated that the MSCP will not result in disproportionately high and adverse human health or environmental effects on minorities and/or low income populations.

Related Project Documentation—It is anticipated that the EIS/EIR process will make full use (including incorporation

by reference, as appropriate, pursuant to NEPA and CEQA) of the following project documents, copies of which are available for inspection at Metropolitan, Reclamation, and Service offices:

Bureau of Reclamation, Description and Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River—Final Biological Assessment, August 1996.

Fish and Wildlife Service, Biological and Conference Opinion on Lower Colorado River Operations and Maintenance—Lake Mead to Southerly International Boundary, April 1997.

These documents may also be accessed through Reclamation's web site at *www.lc.usbr.gov*. See "Published Reports" at Multi-Species Conservation Program.

The draft EIS/EIR is expected to be available for public review by the first half of 2001.

Dated: July 5, 2000.

Robert W. Johnson,

Regional Director, Lower Colorado Region, Bureau of Reclamation.

Dated: July 6, 2000.

Nancy M. Kaufman,

Regional Diector, Region Two, Fish and Wildlife Service.

[FR Doc. 00–17578 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–0943130–JH: GP0–272]

Temporary Closure of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of Public Lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including recreation, parking, camping, shooting, hiking and sightseeing, from July 10, 2000 through November 15, 2000. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this temporary closure are specifically identified as follows:

Federal lands located in Section 29, Township 17 south, Range 4 West of the Willamette Meridian, Oregon, more generally described as follows: All federal lands within the City of Eugene Urban Growth Boundary located in Section 29, Township 17 South, Range 4 West of the Willamette Meridian lying east of Greenhill Road, South of Royal Ave., west of Terry Street and a line running South from the end of Terry Street to the Southern Pacific Railroad tracks, and north of the Southern Pacific Railroad tracks.

Containing approximately 200 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau, City of Eugene, and Corps of Engineers employees; state, local and federal law enforcement and fire protection personnel; agents for the Cone wetland mitigation sites; the contractor authorized to construct the Lower Amazon Wetland Restoration Project and its subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to provide for public safety, facilitate construction of the Lower Amazon Wetland Restoration Project facilities, and protection of property and equipment during the mobilization, construction and de-mobilization phases of the Lower Amazon Wetland Restoration construction project.

DATES: This closure is effective from July 10, 2000 through November 15, 2000.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Pat Johnston, Wetlands Project Manager, Eugene District Office, at (541) 683–6181.

Dated: July 6, 2000.

Diana Bus,

Coast Range Field Office Manager.

[FR Doc. 00–17575 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–920–00–1990–HP]

Abandoned Mined Lands Physical Safety Hazard Abatement; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Nevada State Office of the Bureau of Land Management gives notice of its intent to initiate a scoping period and conduct public meetings to identify issues and formulate alternatives for a programmatic Environmental Assessment (EA) for the abatement of safety hazards associated with Abandoned Mined Lands (AMLs) on Nevada public lands managed by the Bureau of Land Management.

DATES: Public comments on the preliminary issues and planning criteria will be accepted until August 11, 2000.

In addition, two informal public meetings are scheduled for Thursday, July 27, 2000, at the BLM Las Vegas Field Office, 4765 West Vegas Drive, Las Vegas, Nevada, and Tuesday, August 1, 2000, at the BLM Nevada State Office, 1340 Financial Boulevard, Reno, Nevada. Both meetings will begin at 7 p.m. each evening.

ADDRESSES: Written comments should be addressed to Christopher Ross, BLM Nevada State Office, PO Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Christopher Ross, BLM Nevada State Office, PO Box 12000, Reno, Nevada 89520–0006.

SUPPLEMENTARY INFORMATION: The proposed EA will result in the development of alternatives for the selection and remediation of AML features on Nevada public lands which represent physical safety hazards to humans. The anticipated issues for this proposed EA include:

(1) Determination of criteria for the prioritization of selection of sites for hazard abatement.

(2) Determination of what stipulations or conditions are necessary for remediation activities to protect, maintain, and enhance other resources, including protection of critical wildlife habitat; protection of threatened and endangered plant and animal species; recreational, cultural, and archeological resources.

(3) Identification of alternatives for securing hazardous sites.

(4) Determination of what impacts to the minerals industry may result from the securing of hazardous AML sites. Preliminary planning criteria for the AML Environmental Assessment call for the following:

(A) Sites which include chemical or water quality issues will not be considered in this EA.

(B) Existing studies, the most current available inventories, and ongoing investigation will be used to determine potential sites for remediation consideration.

(C) Reasonable scenarios based on available data and technology will be developed for remediation alternatives.

(D) An interdisciplinary approach will be used to develop reasonable alternatives; analyze impacts, including cumulative impacts to natural and cultural resources and the physical, social, and economic environment; identify alternatives; and make determinations.

(E) Impacts of use on adjacent or nearby non-Federal lands and non-public land surface over Federally owned minerals will be considered.

(F) Impacts from energy and mineral development on public lands will be considered. Alternatives proposed for consideration at a minimum include:

(1) No action—defined as continuation of current management.

(2) Preferred Alternative—to be defined by BLM management following consultation with staff and input from the public. An interdisciplinary team representing the following disciplines will be assigned to this planning effort: Minerals, wildlife, lands, recreation, wilderness, cultural resources, and hydrology. All documentation will be reviewed by the interdisciplinary team.

Public participation is an integral part of the planning process. It begins with this scoping period and public meetings and will continue through the development of the EA. The next major opportunity for public review and comment will be offered with the publication of the preliminary EA; however, the public is invited to comment or to become involved at any time during the planning process.

Dated: July 6, 2000.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 00–17574 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1820–DH–014B]

Headwaters Forest Reserve, California; Environmental Impact Statement; Extension of scoping Comment Period

AGENCY: Bureau of Land Management in Partnership with California Department of Fish and Game.

ACTION: Extension of scoping comment period.

SUMMARY: A Notice of Intent to prepare an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the adoption of a Management Plan for the Headwaters Forest Reserve in the northcoast area of California, and to announce three public scoping meetings, was published in the **Federal Register** June 2, 2000 (Volume 65, Number 107). A scoping comment deadline of July 3, 2000 was also cited and extended by subsequent **Federal Register** on June 23 to August 4, 2000 (Volume 65, Number 122). The scoping comment deadline is hereby extended to August 18, 2000 by this notice. This extension is intended to provide the public with additional time to prepare and submit comments.

SUPPLEMENTARY INFORMATION: An internet web page describes in detail the scope of the proposed plan and provides background information on the Headwaters Forest Reserve. The web page contains instructions for submitting scoping comments, and coding of comments by subject is requested. The internet address of the web site of *www.ca.blm.gov/arcata/headwaters.html*. The deadline for submitting comments is amended to Friday, August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Arcata Field Manager, at 707–825–2300 or Headwaters Forest Reserve Management Plan Information Line, 916–737–3010, extension 4326. Email comments should be sent to *headwatersplan@att.net*, or comment letters should be mailed to P.O. Box 189445, Sacramento, California 95818–9445.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. 00–17576 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–5700–10; IDI–33300]

Classification of Lands for Recreation and Public Purposes, Elmore County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands in Elmore County, Idaho, have been examined and determined to be suitable for classification for lease or conveyance to Elmore County, under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*):

Boise Meridian, Idaho

T. 2 N., R. 1 E., section 19:
NE¼NE¼NE¼SW¼.

Aggregating 2.5 acres, more or less.

DATES: Interested parties may submit comments through August 28, 2000, to the Bruneau Field Manager.

ADDRESSES: Comments should be sent to Jenna Whitlock, Bruneau Field Manager, Bureau of Land Management, Lower Snake River District, 3948 Development Ave., Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Mike Austin, Bruneau Realty Specialist at (208) 384–3339.

SUPPLEMENTARY INFORMATION: Elmore County has filed application to lease and/or purchase the above described public lands under the authority of the R&PP Act. The proposed use of the land is for a community center and shed to house equipment necessary to maintain snowmobile trails for recreational use by the public. The lands will be developed and managed for community and recreational purposes, as described in the development plan submitted by Elmore County on January 15, 2000. We have determined that the lease or conveyance of the lands for the proposed community center and shed are in the public interest.

Publication of this notice in the **Federal Register** will segregate the above described public lands from the operation of the public land laws and the mining laws, except for mineral leasing and leasing or conveyance under the R&PP Act. In the absence of any adverse comments, the classification will become effective September 11, 2000. The segregative effect will automatically expire on January 14, 2002.

Comments: Comments may address whether the lands being classified are physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning or zoning, or if the use is consistent with State and Federal programs. Comments may also address the specific use proposed in the application or plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease the land under the R&PP Act, or any other factor not directly related to the suitability of the land for the stated purpose. Adverse comments will be reviewed by the District Manager.

The lease of the lands will not occur until after the classification becomes effective, and will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Dated: July 6, 2000.

Jenna Whitlock,

Bruneau Field Manager.

[FR Doc. 00–17577 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of OMB Approval and Notice of Proposed Information Collection

AGENCY: National Park Service, Interior.

ACTION: Announcement of OMB approval and request for comments on proposed information collection.

SUMMARY: The National Park Service is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 for the Final Rule on Concession Contracts.

Additionally, in compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to request approval for the collection of information for 36 CFR part 51, section 51.47 regarding the appeal of a preferred offeror determination, sections 51.54 and 51.55 regarding NPS approval of the construction of capital improvements by concessioners, and Section 51.98 concerning recordkeeping requirements with which concessioners must comply.

DATES: Comments on the proposed information collection must be received by September 11, 2000.

ADDRESSES: Comments may be mailed to Wendelin M. Mann, Concession Program, National Park Service, 1849 C Street, NW., Washington, DC 20240. Comments may also be submitted electronically to *wendy_mann@nps.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, and explanatory information, contact Wendelin M. Mann at (202) 565–1219.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations as 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collection activities that NPS will submit to OMB for approval. NPS has requested, and OMB has granted emergency approval for these information collection activities through October 31, 2000, under Control Number 1024–0231.

NPS has identified burden estimates based on its experience with concession contracts and on information previously supplied by concessioners or offerors in response to concession prospectuses. NPS will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany NPS's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activities:

Title: Concession Contract-36 CFR 51.

OMB Control Number: 1024–0231.

Summary: The information is being collected to meet the requirements of sections 403(7) and (8) of the National Park Service Concessions Management Improvement Act of 1998 (the Act), concerning the granting of a preferential right to renew a concession contract, section 405 of the Act regarding the construction of capital improvements by concessioners, and section 414 of the Act regarding recordkeeping requirements of concessioners. The information will be used by the agency in considering appeals concerning preferred offeror determinations, agency review and approval of construction projects and determinations with regard to the leasehold surrender interest value of such projects, and when necessary, agency review of a concessioner's books and records related to its activities under a concession contract.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: NPS concessioners, and, in the case of appeals of preferred offeror determinations, offerors in response to concession prospectuses.

Total Annual Responses: 758.

Total Annual Burden Hours: 3,276.

Dated: June 29, 2000.

Richard G. Cripe,

Manager, Washington Administrative Program Center.

[FR Doc. 00–17523 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that meetings of the Native American Graves Protection and Repatriation Review Committee will be held on December 11, 12, and 13, 2000, in Nashville, TN, and May 31, June 1 and 2, 2001, in Kelseyville, CA.

December 11, 12, and 13, 2000 Meeting

The Committee will meet at the Sheraton Music City Hotel; telephone: (615) 885–2200, fax: (615) 231–1134, located at 777 McGavock Pike at Century City, Nashville, TN.

The agenda for the December meeting will include Federal agency compliance reports.

A block of lodging rooms has been set aside at the Sheraton Music City Hotel at a significantly reduced rate. Reservations must be booked by November 10, 2000, to guarantee the reduced rate. Please reference the National Park Service and mention that you are attending the NAGPRA Review Committee Meeting.

Meetings will begin at 8:30 a.m. and will end no later than 5:00 p.m. each day. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis.

Persons wishing to make a presentation to the Committee should submit a request to do so by November 10, 2000. Please submit a written abstract of your presentation and your

contact information. Any member of the public also may file a written statement for consideration by the Committee by November 24, 2000. Both written requests and statements should be addressed to the Committee in care of the Assistant Director, Cultural Resources Stewardship and Partnerships.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C Street NW. 350 NC, Washington, DC 20240; telephone: (202) 343–3387; facsimile: (202) 343–5260. Transcripts of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Assistant Director, Cultural Resources Stewardship and Partnerships, 800 North Capitol Street NW. Suite 350, Washington, DC 20013; email: John_Robbins@nps.gov .

May 31, June 1 and 2, 2001 Meeting

The Committee will meet at Konocti Harbor Resort and Spa; telephone: (707) 279–4281, fax: (707) 279–8575, located at 8727 Soda Bay Road, Kelseyville, CA. Additional information regarding specific agenda items and reservation details will be published at least 90 days prior to the meeting. The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act.

Dated: June 19, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–17524 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Allocation of Water Supply and Long-Term Contract Execution, Central Arizona Project

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of availability of a draft environmental impact statement for public review and comment on the proposed allocation of water supply and long-term contract execution, Central Arizona Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), has issued a Draft Environmental Impact Statement (DEIS) for the Central Arizona Project. This notice updates the **Federal Register** notice published on June 23, 2000 (65 FR 39177) and provides notice that the public comment period on this DEIS remains unchanged and notice that Reclamation will not be holding public hearings on this DEIS. Information on the public comment period may be found below in the **DATES** section. Information on public hearings may be found below in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Send written comments on the DEIS to Mr. Bruce Ellis, Environmental Program Manager, Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 85069–1169, by August 25, 2000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

The draft EIS document remains available for public inspection on the Internet at *http://www.apo.lc.usbr.gov.* In addition, copies of the draft EIS remain available at the following address: Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 85069–1169, faxogram 602–216–4006, or telephone 602–216–3812.

See the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** notice dated June 23, 2000 (65 FR 39177) for a list of libraries where the draft EIS remains available for public inspection and review.

DATES: Written comments on this DEIS must be received no later than August 25, 2000.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Mr. Bruce Ellis, Environmental Program Manager, at Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 85069–1169, or telephone (602) 216–3812.

SUPPLEMENTARY INFORMATION: As noted above in the **DATES** section, the public comment period on this DEIS remains unchanged and written comments must be received no later than August 25, 2000. In addition, in the **Federal Register** notice dated June 23, 2000 (65 FR 39177) Reclamation indicated that public hearings would be held during the public comment period to receive written or verbal comments on the DEIS. Based on legislation recently passed by Congress, Reclamation will not be holding public hearings on this matter. Interested members of the public may still provide comments on the DEIS and Reclamation therefore encourages all interested entities to provide written comments to Reclamation during the public comment period.

Dated: July 7, 2000.

V. LeGrand Neilson,

Deputy Regional Director.

[FR Doc. 00–17637 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–718 (Review)]

Glycine From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on February 3, 2000 (65 FR 5371, February 3, 2000) and determined on May 5, 2000 that it would conduct an expedited review (65 FR 31145, May 16, 2000). The Commission transmitted its determination in this review to the Secretary of Commerce on June 30, 2000. The views of the Commission are

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

contained in USITC Publication 3315 (June 2000), entitled Glycine From China: Investigation No. 731–TA–718 (Review).

Issued: July 3, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17627 Filed 7–11–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–033]

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 14, 2000 at 10 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731-TA–527 (Review)(Extruded Rubber Thread from Malaysia)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 27, 2000.)
5. Inv. No. 731-TA–669 (Review)(Cased Pencils from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 24, 2000.)
6. Outstanding action jackets: (1.) Document No. (E)GC–00–004: Administrative matters.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 6, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17775 Filed 7–10–00; 2:18 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 28, 2000, a proposed Partial Consent Decree in *United States* v. *Michael P. Eason, et al.*, Civil Action Number 98–2859 G V, was lodged with the United States District Court for the Western District of Tennessee.

In this action the United States sought recovery of costs incurred by the United States Environmental Protection Agency, in connection with responding to the release and threatened release of hazardous substances at the Memphis Container Site (aka Tri-State Drum Site) ("the Site"), located at 1761 Warford Road, Memphis, Shelby County, Tennessee. The Partial Consent Decree resolves certain claims pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, against defendant Lucille Ryan. Under the proposed Partial Consent Decree, defendant Lucille Ryan will pay $55,000 to the United States for past response costs, plus an additional $20,000 more within two years from the proceeds of the sale of the site property as required by the Consent Decree. The proposed consent decree includes a covenant not to sue by the United Staates under section, 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the entire Site, including all past and future costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to the *United States* v. *Michael P. Eason, et al.*, D.J. Ref. 90–11–2–1352.

The proposed Partial Consent Decree may be examined at the office of the United States Attorney, Western District of Tennessee, Suite 800, 167 North Main Street, Memphis, Tennessee 38103, or at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting copies please refer to the referenced case and enclose a check in the amount of $7.25 (25 cents per pages reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–17530 Filed 7–11–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

July 6, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), on or before August 11, 2000.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Affected Public: Business or other for-profit; Not-for-profit; Farms, State, Local or Tribal Government.

Frequency: Annual.

Form	Total respondents	Total responses	Average hours per response	Estimated total burden hours
BLS 9300	230,000	230,000	.71	163,125
Prenotification package	150,000	230,000	.11	16,666
Totals				179,791

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Survey of Occupational Injuries and Illnesses is the primary indicator of the Nation's progress in providing every working man and woman safe and healthful working conditions. Survey data also are used to evaluate the effectiveness of the Federal and State programs and to prioritize resources.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–17605 Filed 7–11–00; 8:45 am]

BILLING CODE 4510–24–M

MARINE MAMMAL COMMISSION

Sunshine Act Notice

Time and Date: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in exeutive session on Tuesday, October 10, 2000, from 8:30 a.m. to 10 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, October 10, from 10:15 a.m. to 5:15 p.m., on Wednesday, October 11, from 8:30 a.m. to 5 p.m., and on Thursday, October 12, from 8:30 a.m. to 3:45 p.m.

Place: The Tradewinds Sandpiper Hotel, 6000 Gulf Boulevard, St. Pete Beach, Florida 33706; Phone number 727/360–5551. Fax number 727/526–1282.

Status: The executive session will be closed to the public. At it, matters relating to international negotiations in process, personnel, and the budget of the Commission will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

Matters To Be Considered: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. The focus of the meeting will be on species that occur in waters along the Atlantic and Gulf of Mexico coasts of the United States. While subject to change, major issues that the Commission plans to consider at the meeting include: research and management issues related to the Florida population of West Indian manatees, the Atlantic and Gulf populations of bottlenose dolphins, northern right whales, and the effects of noise on marine mammals.

Contact Person for More Information: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, 301/504–0087.

Dated: July 10, 2000.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 00–17701 Filed 7–10–00; 10:24 am]

BILLING CODE 6820–31–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: August 9–11, 2000, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joy Pauschke, Program Director, National Earthquake Engineering Simulation Program, Room 580, (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 National Earthquake Engineering Simulation Review Panel proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 7, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17634 Filed 7–11–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Revised Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Names: Special Emphasis Panel in Engineering Education and Centers (173).

Dates: July 27–28, 2000 7:30 a.m. to 5:30 p.m. (previously announced for July 17–18, 2000).

Place: National Science Foundation, Room 580, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the SunShine Act.

Reason for Revision: To change dates and location of meeting.

Dated: July 7, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17633 Filed 7–11–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Revised

The ACRS Subcommittee on Planning and Procedures scheduled to start at 1 p.m. on *Tuesday, July 11, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland has been changed to start at 9 a.m.* Notice of this meeting was published in the **Federal Register** on Monday, June 26, 2000 (65 FR 39446). All other items pertaining to this meeting remain the same as previously published.

FOR FURTHER INFORMATION CONTACT: Dr. John T. Larkins, cognizant ACRS staff person (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: July 6, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–17623 Filed 7–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 10, 17, 24, 31, August 7, and 14, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 10

Monday, July 10

1:25 p.m.—Affirmation Session (Public Meeting)

a: Rulemaking to Modify the Event Reporting Requirements for Power Reactor in 10 CFR 50.72 and 50.73 and for Independent Spent Fuel Storage Installations (ISFSI) in 10 CFR 72.216

b: Final Rule: 10 CFR Parts 30, 31, and 32—"Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material" and Related Change to the Enforcement Policy

c: Hydro Resources, Inc. Petition for Review of LBP–99–18, LBP–99–19, and LBP–99–30

1:30 p.m.—Briefing on Proposed Export of High Enriched Uranium to Canada (Public Meeting)

Tuesday, July 11

9:30 a.m.—Discussion of Intragovernmental Issues (Closed–Ex. 4 and 9)

Week of July 17—Tentative

There are not meetings scheduled for the Week of July 17.

Week of July 24—Tentative

Tuesday, July 25

3:25 p.m.—Affirmation Session (Public Meeting), (If necessary)

Week of July 31—Tentative

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

Tuesday, August 15

9:25 a.m.—Affirmation Session (Public Meeting), (If necessary)

9:30 a.m.—Briefing on NRC International Activities (Public Meeting), (Contact: Ron Hauber, 301–415–2344)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 9, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–17780 Filed 7–12–00; 2:18 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 17, 2000, through June 30, 2000. The last biweekly notice was published on June 28, 2000 (65 FR 39956).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 11, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: June 21, 2000. This request supplements an earlier application dated October 29, 1999, submitted by GPU Nuclear, Inc., which has since been adopted by AmerGen Energy Company, LLC.

Description of amendment request: The proposed amendment revises the Technical Specifications (TSs) to include: (1) The addition of operating limits for make-up tank (MUT) level and pressure; (2) the addition of surveillance requirements for the MUT pressure instrument channel; and (3) revision of the calibration frequency for the MUT level instrument channel from "Not to exceed 24 months" to "Refueling interval (once per 24 months)" along with other instruments (high pressure and low pressure injection (LPI) flow instruments and the borated water storage tank (BWST) level instrument) in the same table as appropriate. Associated Bases changes are also proposed. Minor editorial changes (such as updates to the Table of Contents and others) are also proposed. This revision to the original submittal reflects changes to proposed TS Figure 3.3–1 and adds an additional instrument to those for which a surveillance calibration frequency extension is requested.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. *The proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.*

The changes included in this LCA [license change application] impose new requirements for MU/HPI [make-up/high pressure injection] system operation and testing and extension of calibration frequencies for the MUT level, HPI flow and LPI flow instruments and BWST level instrument. These changes could not result in initiation of any accident previously evaluated. Therefore, the probability of an accident could not be affected by changes to the MU/HPI and Decay Heat Removal (DHR) systems.

As described in the list of benefits for operation with MU/HPI cross-connect valves open, listed in section III.B above [section III.B, pages 5–6 of 14, of the June 21, 2000 supplement], the purpose of changing the operation of the MU/HPI system was to preclude the possibility of HPI pump damage. The addition of surveillance requirements for the MUT pressure instrument and the addition of LCO [limiting condition for operation] limits on MUT level and pressure along with appropriate action statements and required action times will ensure that gas entrainment of the MUT does not occur. The proposed change in instrument calibration frequencies will continue to maintain the required accuracy of the MUT level, HPI flow, LPI flow, and BWST level instruments.

Minor editorial changes are included in this request to improve clarity and readability of the T.S. [technical specifications] and could not adversely affect plant operation.

Therefore, the proposed changes will not adversely impact the reliability of the MU/HPI system and could not represent a significant increase in the probability or consequences of an accident previously evaluated.

B. *The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.*

This LCA does not involve the addition of any new hardware. Along with minor editorial changes, the requested changes involve MU/HPI system operation and changes in instrument calibration frequency which have been reviewed in accordance with NRC guidance. Changes to MU/HPI System operation can only affect RCS [reactor coolant system] coolant inventory changes during operation and the ability to provide protection in the event of a Loss of Coolant Accident (LOCA). The full spectrum of LOCAs has been evaluated in the FSAR [Final Safety Analysis Report]. Therefore, no new accident scenarios have been created.

The additional controls on MUT level and pressure provided by this LCA will ensure that a malfunction of a different type, gas entrainment of the MU/HPI pumps, will not occur. These limits on MUT level and pressure ensure that the initial conditions assumed for ECCS operation are maintained. The TS limits maintain the accident analysis initial conditions such that no operator action is required to avoid gas entrainment during ECCS [emergency core cooling [system] operation with the postulated single failure as required by the TMI–1 licensing basis (Reference 14) [GPU Nuclear Safety Evaluation No. SE–000211–015, Revision 0, "Operation with MU X–Connect Valves OPEN"].

Extension of the calibration frequencies for the HPI level, HPI flow, LPI flow, and BWST level will continue to maintain the accuracy of these instruments and could not create the potential for any new accident that has not been evaluated.

Minor editorial changes are included in this request to improve the clarity and readability of the TS and could not adversely affect plant operation.

Therefore, these [proposed] changes do not create the potential for any accident different from those that have been evaluated.

C. *These proposed changes do not involve a significant reduction in a margin of safety.*

This LCA includes changes to MU/HPI system operation and testing and an extension of the calibration frequency for certain instruments. The requested changes will serve to maintain the proper system initial conditions to ensure the ability of the MU/HPI system to provide protection in the event of a Loss of Coolant Accident (LOCA) and maintain the required instrument accuracy for the instruments where changes to a refueling interval frequency are being requested. NRC guidance for addressing the effect on increased surveillance intervals on instrument drift and safety analysis assumptions presented in GL [generic letter] 91–04 have been addressed in enclosure 1A [of the licensee's June 21, 2000 letter].

Minor editorial changes are included in this request to improve clarity and readability of the TS and could not adversely affect plant operation.

These changes, which are consistent with the TMI–1 licensing and design basis requirements, do not result in a degradation of safety related equipment, and therefore, do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis (paragraph 'B') against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The licensee concluded that "these [proposed] changes do not create the potential for any accident different from those that have been evaluated." This conclusion is worded slightly differently than the standard in 10 CFR 50.92 ("The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated") that the licensee is required to analyze against pursuant to 10 CFR 50.91. Nevertheless, the licensee did state in its application that "additional controls on MUT level and pressure provided by the proposed changes in this LCA will ensure that a malfunction of a different type, gas entrainment of the MU/HPI pumps, will not occur." These additional controls include a prohibited operating region which would require plant shutdown if not corrected.

The licensee further stated, that the portion of the TS Figure 3.3–1 related to NPSH [net positive suction head] has been deleted because operation of MU/HPI pump below the manufacturer's NPSH limits for a short period of time may affect pump performance while the NPSH shortfall exists, but would not render the pump inoperable. The licensee further stated that existing plant procedures will provide NPSH MUT pressure verses level operating limits that will ensure the recommended NPSH would be available for the NPSH limiting event, an HPI line break small-break LOCA. Based on the above, the staff has determined that the proposed changes and additional controls on MUT level and pressure would not create the possibility of a new or different kind of accident from any previously evaluated.

The licensee has determined that the proposed extension of the calibration frequencies for the HPI level, HPI flow, LPI flow, and BWST level, meets applicable staff guidance related to these proposed changes and will continue to maintain the accuracy of these instruments and could not, therefore, create the potential for any new accident that has not been evaluated. The staff has determined that the proposed extension of calibration frequencies would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed editorial changes are minor in nature, and are intended to improve the clarity and readability of the TSs, and would not create the possibility of a new or different kind of accident from any previously evaluated.

Based on this review, and the licensee's basis for its determination with respect to items "A" and "C" above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

NRC Section Chief: Marsha Gamberoni.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS), Maricopa County, Arizona

Date of amendments request: June 6, 2000.

Description of amendments request: The proposed amendments would revise information in Figure 3.5.5–1, "Minimum Required RWT Volume," in Technical Specification (TS) 3.5.5, "Refueling Water Tank (RWT)," of the TSs for the three units. The amendments are administrative changes to the figure that would (1) Relocate design bases information to the Bases of the TSs, (2) truncate the lower end of the RWT limit curve at 210 °F, (3) re-title the right-hand ordinate from "minimum useful volume required in the RWT" to "RWT Volume," and (4) delete the two footnotes and the references to the footnotes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in its application, which is presented below:

Standard 1: Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed administrative change does not involve any changes to the design, operation, or maintenance of any structures[,] systems or components. The requirements in TS 3.5.5 for RWT operability will not be changed. This proposed amendment [for each unit] does not alter, degrade, or prevent actions described or assumed in an accident described in the PVNGS UFSAR [Updated Final Safety Analysis Report] from being performed. It will not alter any assumptions previously made in evaluating radiological consequences or, affect any fission product barriers. It does not increase any challenges to safety systems as well. Any changes to the information relocated to the TS Bases would be controlled under the TS Bases Control program, TS 5.5.14, which utilizes the criteria of 10 CFR 50.59 to determine if prior NRC [Nuclear Regulatory Commission] approval is required for any changes. Therefore, this proposed amendment [for each unit] would not significantly increase the consequences of an accident previously evaluated.

Standard 2: Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed administrative change does not involve any changes to the design, operation, or maintenance of any structures[,] systems or components. The requirements in TS 3.5.5 for RWT operability will not be changed. This proposed amendment [for each unit] does not alter, degrade, or prevent actions described or assumed in an accident described in the PVNGS UFSAR from being performed. Any changes to the information relocated to the TS Bases would be controlled under the TS Bases Control program, TS 5.5.14, which utilizes the criteria of 10 CFR 50.59 to determine if prior NRC approval is required for any changes.

Therefore, the proposed amendment [for each unit] does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3: Does the proposed change involve a significant reduction in a margin of safety?

This proposed administrative change does not involve any changes to the design, operation, or maintenance of any structures[,] systems or components. The requirements in TS 3.5.5 for RWT operability will not be changed. This proposed amendment [for each unit] does not alter, degrade, or prevent actions described or assumed in an accident. Any changes to the information relocated to the TS Bases would be controlled under the TS Bases Control program, TS 5.5.14, which utilizes the criteria of 10 CFR 50.59 to determine if prior NRC approval is required for any changes. Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS), Maricopa County, Arizona

Date of amendments request: June 6, 2000.

Description of amendments request: The proposed amendments would restrict the emergency diesel generator (DG) acceptance criteria for steady-state voltage and frequency in several surveillance requirements (SRs) involving DG starts in Technical Specification (TS) 3.8.1, "AC Sources—Operating," of the TSs for the three units. The amendments would also add a note to each SR that states: "The steady state voltage and frequency limits are analyzed values and have not been adjusted for instrument error." The restricted acceptance criteria is to ensure proper DG operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in its application, which is presented below:

Standard 1: Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change does not significantly increase the probability of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The more restrictive steady-state voltage and frequency ranges ensure that the equipment being powered by the diesel generator will function as required to mitigate an accident as described in the UFSAR. The diesel generators are part of the systems required to mitigate an accident. Mitigation equipment is not a factor in accident initiation and, therefore, the probability of an accident previously evaluated will not be significantly increased.

The change to the steady state diesel generator voltage and frequency acceptance limits does not increase the probability of a diesel generator failure [or a failure of offsite power]. Therefore, this change does not increase the probability of a station blackout event.

The consequences of an accident previously evaluated in the UFSAR will not be significantly increased. The more restrictive change to the diesel generator

steady-state voltage and frequency acceptance limits ensures that the equipment powered by the diesel generators will perform as analyzed and mitigate the consequences of any accident described in the UFSAR. Therefore, the change in steady-state voltage and frequency acceptance limits is within the bounds of previously analysis in the UFSAR and does not involve a significant increase in the consequences of an accidently previously evaluated.

Standard 2: Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The possibility of an accident of a new or different kind from any accident previously evaluated has not been created. The more restrictive change to the diesel generator steady-state voltage and frequency acceptance limits ensures that the equipment powered by the diesel generators will perform as analyzed. This equipment and the diesel generators mitigate the consequences of an accident. Mitigation equipment does not contribute to accident initiation. Making existing requirements more restrictive will not alter the plant configuration (no new or different type of equipment will be installed) or change the methods governing normal plant operation. These changes are consistent with the assumptions made in the safety analysis. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3: Does the proposed change involve a significant reduction in a margin of safety?

No. The change to the diesel generator steady-state voltage and frequency acceptance limits ensures that the equipment powered by the diesel generators will perform as analyzed. This equipment and the diesel generators mitigate the consequences of an accident. This change maintains the required function of the equipment powered by the diesel generators and ensures the required operation of the plant and any structures[,] systems, or components is as intended by the safety analysis. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 7, 2000.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) related to the Engineered Safety Features Actuation System (ESFAS) Instrumentation found in TS 3/4.3.1, TS 3/4.3.2, and the associated Bases. Specifically, the proposed change would revise surveillance test intervals and allowed outage times for ESFAS instrumentation in TS 3/4.3.2. The proposed revision is based on WCAP–10271, "Evaluation of Surveillance Frequencies and Out of Service Times for the Reactor Protection Instrumentation System," its supplements, and the NRC approvals issued in the Safety Evaluation Reports (SERs) dated February 21, 1985, and February 22, 1989, and the Supplemental SER dated April 30, 1990. In addition, the licensee is proposing specific changes to the reactor trip system instrumentation in TS 3/4.3.1, which are directly associated with implementing the ESFAS relaxations proposed in the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The determination that the results of the proposed changes are within all acceptable criteria was established in the SERs prepared for WCAP–10271 Supplement 2 and WCAP–10271 Supplement 2, Revision 1 issued by letters dated February 22, 1989 and April 30, 1990. Implementation of the proposed changes is expected to result in an acceptable increase in total Engineered Safety Features Actuation System yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in a small increase in core damage frequency (CDF) and public health risk. The values determined by the WOG [Westinghouse Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered to be acceptable.

Removal of the requirement to perform the Reactor Trip System analog channel operational test on a staggered basis will have a negligible impact on the Reactor Trip System unavailability. Staggered Testing was initially imposed to address the concerns of common cause failures. HNP's [Harris Nuclear Plant's] program to evaluate failures for common cause, process parameter signal diversity, and normal operational test spacing yield most of the benefits of staggered testing.

The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes may affect the probability of failure of the RPS [reactor protection system], but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

2. *The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The proposed changes do not involve hardware changes and do not result in a change in the manner in which the Reactor Protection System provides plant protection or the manner in which surveillances are performed to demonstrate operability. No change is being made which alters the functioning of the Reactor Protection System. Rather the likelihood or probability of the Reactor Protection System functioning properly is affected as described above.

Therefore the proposed changes do not create the possibility of a new or different kind of accident.

3. *The proposed amendment does not involve a significant reduction in the margin of safety.*

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (*e.g.*, drift) may act. An evaluation has been performed to assure that the plant setpoints properly account for these instrument uncertainties over the larger time interval.

Implementation of the proposed changes is expected to result in an overall improvement in safety as follows:

a. Less frequent testing will result in fewer inadvertent reactor trips and inadvertent actuations of Engineered Safety Features Actuation System components.

b. Less frequent distraction of the operator and shift supervisor to attend to and support instrumentation testing will improve the effectiveness of the operating staff in monitoring and controlling plant operation.

The foregoing analysis demonstrates that the proposed amendment to HNP TS does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident, and does not involve a significant reduction in a margin of safety.

Based upon the preceding analysis, CP&L [Carolina Power & Light Company] concludes that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate

Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: May 11, 2000.

Description of amendment request: The proposed changes would revise Technical Specification Surveillance Requirement (SR) 3.6.1.3.8. SR 3.6.1.3.8 currently requires verification of the actuation capability of each excess flow check valve (EFCV) every 24 months. This proposed change would relax the SR frequency by allowing a "representative sample" of reactor instrument line EFCVs to be tested every 24 months, such that each reactor instrument line EFCV will be tested at least once every 10 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided an analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The current SR frequency requires each reactor instrument line EFCV to be tested every 24 months. The reactor instrument line EFCVs at WNP–2 are designed so that they will not close accidentally during normal operation, but will close if a rupture of the instrument line is indicated downstream of the valve, and have their status indicated in the control room. This proposed change allows a reduced number of reactor instrument line EFCVs to be tested every 24 months. There are no physical plant modifications associated with this change. Industry operating experience demonstrates a high reliability of these valves. Neither reactor instrument line EFCVs nor their failures are capable of initiating previously evaluated accidents; therefore; there can be no increase in the probability of occurrence of an accident regarding this proposed change.

Reactor instrument lines connecting to the reactor coolant pressure boundary are equipped with EFCVs and also have a flow-restricting orifice inside containment and upstream of the EFCV. The consequences of an unisolable rupture of such an instrument line has been previously evaluated in WNP–2 FSAR 15.6.2. The instrument lines that penetrate primary containment conform to Regulatory Guide 1.11 (WNP–2 FSAR 7.1.2.4). Those instrument lines are Seismic Category I and terminate in instruments that are Seismic Category I (reference WNP–2 FSAR Table 6.2–16 note 27).

The sequence of events in WNP–2 FSAR Section 15.6.2.2 for a reactor instrument line break assumes a continuous discharge of reactor water through the instrument line until the reactor vessel is cooled and depressurized (5 hours). Although not expected to occur as a result of this change, the postulated failure of an EFCV to isolate as a result of reduced testing is bounded by this previous evaluation. Therefore, there is no increase in the previously evaluated consequences of the rupture of an instrument line and there is no potential increase in the consequences of an accident previously evaluated as a result of this change.

The containment atmosphere and suppression pool instrument line EFCVs are required to remain open to sense containment atmosphere and suppression pool level conditions during postulated accidents. They are not required to close during an instrument line break assumed during normal plant operation nor is their design capable of closing during normal plant conditions. These EFCVs do not meet the criteria for inclusion in 10 CFR 50.36(c)(3) as they have no active safety function and thus relocation of their testing requirements to processes controlled under 10 CFR 50.59 cannot affect the probability or consequences of an accident previously evaluated.

2. *The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

This proposed change allows a reduced number of reactor instrument line EFCVs to be tested each operating cycle and that the testing requirements for containment atmosphere and suppression pool instrument line EFCVs be relocated to a process controlled under 10 CFR 50.59. No other changes in requirements are being proposed. Industry operating experience demonstrates the high reliability of these valves. The potential failure of a reactor instrument line EFCV to isolate by the proposed reduction in test frequency is bounded by the previous evaluation of an instrument line rupture. This change will not physically alter the plant (no new or different type of equipment will be installed). This change will not alter the operation of process variables, structures, or components as described in the safety analysis. Thus, a new or different kind of accident will not be created.

3. *The proposed change does not involve a significant reduction in a margin of safety.*

The consequences of an unisolable rupture of an instrument line has been evaluated in WNP–2 FSAR Section 15.6.2 in accordance with the requirements of Regulatory Guide 1.11. That evaluation assumed a continuous discharge of reactor water for the duration of the detection and cooldown sequence (5 hours). The only margin of safety applicable to this proposed change is considered to be that implied by this evaluation. Since a continuous discharge was assumed in this evaluation, any potential failure of a reactor instrument line EFCV to isolate as a result of reduced testing frequency is bounded by existing analysis and does not involve a significant reduction in the margin of safety.

There is no accident for which the containment atmosphere or suppression pool instrument line EFCVs are designed to actuate to the isolation position for mitigation. A postulated break of a containment atmosphere or suppression pool instrument line under normal operating conditions would not result in a condition that would create the ability for these EFCVs to operate because neither the containment pressure nor the suppression pool level head would be sufficient to result in their actuation. As these EFCVs have no active design or safety function, the relocation of testing requirements would not involve a significant reduction in the margin of safety. A postulated break of any instrument line simultaneous with a loss of coolant accident is beyond the design basis for the plant.

Based upon the above, the proposed amendment is judged to involve no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 25, 2000.

Description of amendment request: The proposed amendment would change the action statements for Technical Specification (TS) 3.8.2.2, A.C. Distribution—Shutdown, and TS 3.8.2.4, D.C. Distribution—Shutdown, by replacing the requirement to establish containment integrity within 8 hours, with a requirement to immediately suspend core alterations, the movement of irradiated fuel assemblies, and any operations involving positive reactivity additions. Related changes to the associated Bases were also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The existing requirement to establish containment integrity upon a loss of a required AC or DC bus in Mode 5 or 6 is not relied upon in any ANO–2 [Arkansas Nuclear One, Unit 2] accident analysis. Other components that may be rendered inoperable upon the loss of a required AC or DC bus are governed by other TSs and associated action

statements. Such functions include core cooling, reactor coolant makeup capabilities, the status of containment penetrations and openings, and reactor coolant inventory. The TSs that govern these functions provide appropriate actions to address the failure at hand. The proposed change[s] act to minimize the possibility of a fuel handling accident when a required AC or DC bus is inoperable by requiring the suspension of the handling of irradiated fuel and core alterations. In addition, ANO–2 has demonstrated that the offsite dose consequences of a fuel handling accident within the containment building remain well within 10 CFR 100 limits without taking credit for the containment's fission product control function. Deleting the requirement to establish containment integrity is not relevant to the initiation of any accident previously evaluated, nor does it significantly increase the consequences of any accident previously evaluated. Other TS LCOs [limiting conditions for operation] provide appropriate actions that address shutdown cooling (SDC), makeup capability and inventory, and other important functions. The proposed change deletes the requirement to establish containment integrity in favor of those actions that act to minimize the likelihood of a fuel handling accident or a positive reactivity excursion. The proposed change reduces unnecessary actions required upon the loss of an AC or DC bus and provide greater consistency with the philosophies of the RSTS [Revised Standard Technical Specifications].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The existing actions associated with shutdown mode AC and DC TS sources are not considered accident initiators. The proposed revision does not present a physical change to plant systems or equipment. Deleting the requirement to establish containment integrity in favor of actions that aid in minimizing the likelihood of a fuel handling accident or positive reactivity excursion does not result in any new or different kind of accident from any previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The existing requirement to establish containment integrity upon a loss of any required AC or DC bus in Modes 5 or 6 acts to limit offsite release consequences should an accident occur during the period of inoperability. The proposed change acts to address the source, that is, aids in minimizing the likelihood of a fuel handling accident or an undetected positive reactivity addition while in Modes 5 and 6. By suspending all handling of irradiated fuel and core alterations, the likelihood of a fuel handling accident occurring is minimized. Since the loss of a required AC or DC bus could impact plant instrumentation, the suspension of all activities involving positive reactivity additions aids in preventing the impact of a positive reactivity addition from being undetected. Other possible Mode 5 and 6 conditions (loss of inventory, loss of shutdown cooling, etc.) are addressed in other shutdown mode TSs. In addition, ANO–2 has demonstrated that the offsite dose consequences of a fuel handling accident within the containment building remain well within 10 CFR 100 limits without taking credit for the containment's fission product control function. Since the proposed change exchanges accident mitigation strategy in favor of accident prevention strategy, no significant reduction in the margin to safety is evident.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: May 1, 2000.

Description of amendment request: The proposed amendment would: (1) Revise Technical Specification (TS) requirements regarding the minimum number of radiation monitoring instrumentation channels required to be operable during movement of fuel within the containment; (2) revise the Modes in which the surveillance specified by Table 4.3–3, "Radiation Monitoring Instrumentation Surveillance Requirements," Item 2.c.ii is required; (3) revise TS 3.9.4, "Containment Building Penetrations," to allow both Personnel Air Lock (PAL) doors and other containment penetrations to be open during movement of fuel assemblies within containment, provided certain conditions are met; (4) revise applicability and action statement requirements of TS 3.9.4. to be for only during movement of fuel assemblies within containment; (5) revise periodicity and applicability of Surveillance Requirement (SR) 4.9.4.1; (6) revise SR 4.9.4.2 to verify flow rate of air to the supplemental leak collection and release system (SLCRS) rather than verifying the flow rate through the system; (7) add two new SRs, 4.9.4.3 and 4.9.4.4, for verification and demonstration of SLCRS operability; (8) modify TS 3/4.9.9 for the containment purge exhaust and isolation system to be applicable only during movement of fuel assemblies within containment; and, (9) revise associate TS Bases as well as make editorial and format changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?*

The proposed amendment involves changes to accident mitigation system requirements. These systems are related to controlling the release of radioactivity to the environment and are not considered to be accident initiators to any previously analyzed accident.

Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Based on the current technical specification requirements, an environmental release due to a fuel handling accident (FHA) occurring within containment is precluded by a design which automatically isolates the containment following detection of radioactivity by redundant containment purge monitors. The proposed amendment, which permits containment penetrations to be open during movement of fuel assemblies within containment, increases the dose at the site boundary and the control room operator dose due to a FHA occurring within containment; however, the dose remains within acceptable limits. Based on a radiological analysis of a FHA within containment with open containment penetrations being filtered by the Supplemental Leak Collection and Release System (SLCRS), the resultant radiological consequences of this event are well within the 10 CFR Part 100.11 limits, as defined by acceptance criteria in the Standard Review Plan (SRP) Section 15.7.4. Control room operator doses remain less than the 10 CFR Part 50 Appendix A General Design Criteria (GDC) 19 limit of 5 rem whole body or its equivalent to any part of the body. The proposed changes to LCO 3.9.4 and associated surveillance requirements will ensure that SLCRS filtration assumptions in the associated radiological analysis are met.

LCO 3.9.10 titled "Water Leve—Reactor Vessel" will continue to ensure that at least 23 feet of water is maintained over the fuel during fuel movement when the plant is in Mode 6. LCO 3.9.3 titled "Decay Time" will continue to ensure that irradiated fuel is not moved in the reactor pressure vessel until at least 150 hours after shutdown. These LCOs will continue to ensure that two of the key

assumptions used in the radiological safety analysis are met.

The radiological consequences of the Core Alteration events other than the FHA remain unchanged. These events do not result in fuel cladding integrity damage. A radioactive release to the environment is not postulated since the activity is contained in the fuel rods. Therefore, the affected containment systems are not required to mitigate a radioactive release to the environment due to a Core Alteration event.

The proposed revision in the minimum number of the Containment Purge Exhaust Radiation Monitoring Instrumentation channels required to be operable from one to two, ensures that redundant instrument channels are available to detect and initiate isolation of the containment purge and exhaust containment penetrations during a FHA inside containment.

The proposed administrative, editorial, and format changes do not affect plant safety. The Bases section has been revised as necessary to reflect the changes to these Specifications. Bases Section 3/4.9.9 will also be revised to remove text pertaining to Mode 5 applicability that is not relevant to this specification.

Therefore, the proposed amendment does not significantly increase the consequences of any previously evaluated accident.

2. *Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?*

The proposed amendment affects a previously evaluated accident; e.g., FHA. The proposed amendment does not represent a significant change in the configuration or operation of the plant. The proposed amendment does not impact Technical Specification requirements for systems needed to prevent or mitigate other Core Alteration events. The filtered SLCRS that will be utilized to control and filter the radioactive release from a FHA occurring within containment is the same system (with the exception of the flow path to the filter banks) currently relied upon to control and filter the release from a FHA in the fuel building. The primary function of SLCRS is to ensure that radioactive leakage from the primary containment following a Design Basis Accident (DBA) or radioactive release due to a fuel building FHA is collected and filtered for iodine removal prior to discharge to the atmosphere at an elevated release point through a ventilation vent. This system will be relied upon to control the releases from open containment penetrations should a FHA occur inside of containment until such time that these open containment penetrations can be isolated. The proposed amendment contains the requirement to maintain the capability to close open containment penetrations within 30 minutes following a FHA inside containment.

The filtered SLCRS that will be relied upon to mitigate a FHA within containment is classified as Quality Assurance (QA) Category I, Safety Class 3 and Seismic Category I as stated in Updated Final Safety Analysis Report (UFSAR) Section 6.5.3.2.1 titled "Design Bases." As described in UFSAR Section 6.5.1 titled "Engineered Safety Feature Filter Systems," filtered SLCRS is considered to be an engineered safety features (ESF) filter system used to mitigate the consequences of accidents.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does the change involve a significant reduction in a margin of safety?*

Based on the current technical specification requirements, an environmental release due to a FHA occurring within containment is precluded by a design which automatically isolates the containment following detection of radioactivity by redundant containment purge monitors. The proposed amendment increases the dose at the site boundary and the control room operator dose due to a FHA occurring within containment; however, the dose remains within acceptable limits. The margin of safety as defined by 10 CFR Part 100 has not been significantly reduced.

The revised radiological analysis based on the proposed amendment demonstrates that during a FHA inside containment, the projected offsite doses will be well within the applicable regulatory limits of 10 CFR Part 100.11 of 300 rem thyroid and 25 rem whole body, and are less than the more restrictive guidance criteria in the SRP Section 15.7.4 of 75 rem thyroid and 6 rem whole body. Control room operator doses are less than the 10 CFR Part 50 Appendix A GDC 19 limit of 5 rem whole body or its equivalent to any part of the body. This radiological analysis is based on all airborne activity reaching the containment atmosphere, as a result of a FHA inside containment, being released to the environment over a 2 hour period. The 2 hour release period is based on the guidance contained in Regulatory Guide 1.25 titled "Assumptions Used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors." The proposed amendment contains a Bases requirement to maintain the capability to close open containment penetrations within 30 minutes following a FHA inside containment. Completion of this action will reduce the dose consequence of a FHA within containment by terminating the release to the environment prior to all airborne activity being released from the containment.

The margin of safety for Core Alteration events other than the FHA is not significantly reduced due to this proposed amendment. The proposed amendment does not impact Technical Specification requirements for systems needed to prevent or mitigate such Core Alteration events. These events do not result in fuel cladding integrity damage. Therefore, a radioactive release to the environment is not postulated since the activity is contained in the fuel rods.

The proposed revision in the minimum number of the Containment Purge Exhaust Radiation Monitoring Instrumentation channels required to be operable from one to two, ensures that redundant instrument channels are available to detect and initiate isolation of the containment purge and exhaust containment penetrations during a FHA occurring inside containment.

The proposed changes to SR 4.9.4.1 and SR 4.9.9, to remove unnecessary detail on when these surveillances are required to be performed, are administrative in nature and do not affect plant safety.

The proposed revision of the words "through the" to the words "to filtered" in SR 4.9.4.2.a does not change the LCO 3.9.4 requirements. This change makes the LCO and surveillance requirements consistent. This change is administrative in nature and does not affect plant safety.

The proposed administrative, editorial, and format changes do not affect plant safety. The Bases section has been revised as necessary to reflect the changes to these Specifications. Bases Section 3/4.9.9 will also be revised to remove text pertaining to Mode 5 applicability that is not relevant to this specification.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Acting Section Chief: Marsha Gamberoni.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: May 31, 2000.

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 Improved Technical Specifications (ITS) to add an additional Condition and Required Action to ITS 3.3.11, "Emergency Feedwater Initiation and Control (EFIC) System Instrumentation." The Action would require tripping the affected reactor coolant pump (RCP) status signals to each of the four EFIC channels when one or more RCP status signals or Reactor Coolant Pump Power Monitors (RCPPMs) for up to two RCPs become inoperable. This action is intended to ensure continued operability of the EFIC RCP status function when one or more RCPPMs or their associated RCP status signals are inoperable. The amendment also proposes changes to ITS Table 3.3.11–1 to properly characterize the configuration of the signals from the RCPPMs to EFIC, and to clarify source of the Loss of Main Feedwater Pump signals to EFIC. The proposed changes to Table 3.3.11–1 are intended to provide consistency between Table

3.3.11–1 and information provided in the ITS Bases for the EFIC System Instrumentation Specification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. *Does not involve a significant increase in the probability or consequences of an accident previously analyzed.*

The EFIC system is not an initiator of any design basis accident. The EFIC RCP status signal function is intended to ensure emergency feedwater is available to automatically raise levels in the once through steam generator (OTSG) to the natural circulation setpoint in the event of a loss of reactor coolant system (RCS) forced flow.

The proposed license amendment adds clarifying information to ITS Table 3.3.11–1, and an additional Required Action to ITS 3.3.11 that assures continued operability of the RCP status function of the EFIC system in the event one or more RCPPMs or their associated RCP status signals become inoperable. The design functions of the EFIC system and the initial conditions for accidents that require EFIC will not be affected by the change. Therefore, the change will not increase the probability or consequences of an accident previously evaluated.

2. *Does not create the possibility of a new or different kind of accident from any accident previously analyzed.*

The proposed amendment involves no changes to the design or operation of the EFIC system. The RCPPMs are part of the design of the Emergency Feedwater Initiation and Control (EFIC) System, and are assumed to function properly in the accident analysis. The proposed amendment will assure that the EFIC system performs as assumed in the safety analysis in the event of a loss of RCS forced flow. The proposed amendment change will not affect the other EFIC functions, and will not create any new plant configurations. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does not involve a significant reduction in the margin of safety.*

The proposed amendment adds additional actions to be taken in the event one or more RCPPMs or their associated RCP status signals become inoperable, and provides clarifying information regarding the sources and configuration of signals to EFIC. The proposed amendment ensures appropriate actions are taken to restore the operability of the EFIC RCP status function in the event that one or more RCP status signals to EFIC are lost. Thus, the proposed amendment will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Richard P. Correia.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: June 1, 2000.

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 (CR–3) Improved Technical Specifications 3.4.14 to extend the interval for calibration of the containment sump monitor from the current 18 months to 24 months. The monitor is used to detect and measure reactor coolant system (RCS) leakage by monitoring changes in the level of water in the containment sump. Extending the interval to 24 months would make it consistent with the current CR–3 operating cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.*

The containment sump monitor is not an initiator of any design basis accident. This monitor is used during normal plant operation to measure and to trend the rate of change of containment sump fluid level.

The containment sump monitor does not perform any safety function as part of mitigating the consequences of a design basis accident. Separate safety-related instrumentation is used to determine post-accident containment sump and containment flood levels and to satisfy the requirements of Regulatory Guide (RG) 1.97 for post-accident monitoring instrumentation. Additionally, the containment sump monitor does not have any associated safety system setpoint. The level switch in the instrument circuit is used only for automatic pumping of sump fluid using the two containment sump pumps.

A longer interval between calibrations may result in some increase in the amount of drift that the containment sump level monitor might experience between calibrations. The behavior of instrumentation, including considerations such as the amount of drift that the instrument might experience between calibrations, is not an accident precursor. Thus, changes to instrument maintenance such as intervals for performance of calibration, and the behavior of instruments including such considerations as the amount of drift, do not affect the probability of an accident. The probability of an accident previously evaluated is independent of the amount of drift that the containment sump level monitor might experience.

The containment sump monitor is used to detect RCS leakage during normal operation and does not have an accident mitigation function. Additionally, the ability of the instrument to detect small leaks will not be affected by extending the calibration interval.

Based on the above, increasing the interval between calibrations does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. *Create the possibility of a new or different kind of accident from any accident previously evaluated?*

The proposed license amendment involves no changes to the design or operation of the containment sump level monitor. Extending the interval between calibrations of the containment sump level monitor from 18 months to 24 months might result in greater drift of the monitor during the period of operation. However, the only function of the monitor is to detect changes and trends in the containment sump level during normal operation and the amount of drift that the monitor has experienced does not affect its ability to measure such changes and trends of the containment sump level. Furthermore, changes in the behavior of instrumentation, such as the amount of drift that the instrument might experience between calibrations, do not create the possibility of a new or different kind of accident.

Because initiation of accidents is independent of instrumentation behavior parameters such as drift, extending the calibration interval from 18 to 24 months does not create the possibility of any new or different kind of accident from any previously evaluated.

3. *Involve a significant reduction in a margin of safety?*

The CR–3 operating license, i.e., the Improved Technical Specifications, requires that instrumentation to detect leakage of reactor coolant system (RCS) inventory be available and operable during power operation. The required instrumentation is one containment sump monitor and one containment atmosphere radioactivity monitor.

The proposed extension of the containment sump monitor calibration interval from 18 to 24 months does not compromise the ability of the instrumentation to perform its safety function, *i.e.*, early detection of RCS leakage. This is so because the only function of the containment sump monitor is to detect changes and trends in the containment sump level during normal operation. The proposed license amendment makes no changes to either the design or operation of the sump monitor. The proposed license amendment makes no changes to the license requirements or to the design or operation of the containment atmosphere radioactivity monitor.

Because no changes are made to either the design or operation of the sump monitor, the

sump monitor remains operable with the requested changes, and no changes are made to the containment atmosphere radioactivity monitor, FPC concludes that the change does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Richard P. Correia.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: June 8, 2000.

Description of amendment requests: The proposed amendments would approve changes to the Updated Final Safety Analysis Report (UFSAR) to allow the use of probabilistic risk assessment (PRA) techniques in evaluating the need for tornado-generated missile barriers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) *Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated*?

The possibility of a tornado reaching the Donald C. Cook Nuclear Plant (CNP) site is a design basis event considered in the UFSAR. The proposed change does not affect the probability that a tornado will reach the CNP site. However, the change affects the probability assumed in the current licensing basis that missiles generated by the winds of a tornado might strike certain plant systems or components.

No other accident scenarios, new initiators, or event precursors are affected or introduced by this change. There are a limited number of safety-related components that could potentially be struck by a tornado-generated missile. The total (aggregate) probability of exceeding 10 CFR 100 guidelines resulting from tornado missile strikes remains below the acceptance criterion ensuring overall plant safety. Thus, the proposed change does not constitute a significant increase in the probability of occurrence of an accident.

This change does not result in an increase in the quantity of radioactive materials potentially available for release to the environment in the event of an accident. The principle barriers to the release of radioactive materials are not modified or affected by this change. No new release pathways are created. Thus, the proposed change does not significantly affect potential offsite dose consequences.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

(2) *Does the change create the possibility of a new or different kind of accident from any accident previously evaluated*?

The possibility of a tornado reaching CNP site is a design basis event considered in the UFSAR. This change recognizes the acceptability of performing tornado missile probability calculations in accordance with established regulatory guidance. The change, therefore, deals with an established design basis event (the tornado). The change does not affect or create new accident initiators or precursors. Therefore, the change does not contribute to the possibility of a new or different kind of accident from those previously analyzed.

Therefore, the change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) *Does the change involve a significant reduction in a margin of safety*?

The existing licensing basis for CNP, with respect to the design basis event of a tornado reaching the plant, generating missiles, and directing them toward safety-related systems and components, is to provide positive missile protection for every required SSC [System, Structure, and Component] or area. This change recognizes the extremely low probability, below an established acceptance limit, that a limited subset of SSCs, and areas could be struck. This change from "protecting all required systems, structures, and components" to an "extremely low probability of exceeding 10 CFR 100 guidelines as a result of tornado-generated missiles," does not constitute a significant decrease in the margin of safety due to the extremely low probability.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment requests: May 15, 2000.

Description of amendment requests: The proposed amendments would change Technical Specification 3.7.B.6 one time only to explicitly allow de-energizing Motor Control Center (MCC) 1T1 and MCC 1T2. The proposed change would allow either MCC 1T1 or MCC 1T2, one at a time, to be out of service for up to 72 hours provided the redundant MCC, its associated 480 Volt bus is verified operable, and the diesel generator and safeguards equipment associated with the redundant MCC are operable. The reason for the change is to install transfer switches for MCC 1T1 and MCC 1T2 for personnel protection, and to increase the allowed outage time for the MCC's to ensure sufficient time to install the transfer switches. This would prevent a dual unit shutdown to install each transfer switch under current Technical Specification 3.7.B.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of accident previously evaluated.

The proposed changes do not involve any systems, structures or components whose failure would initiate an accident, thus, this change does not affect the probability of an accident.

The proposed changes extend the allowed out of service time for MCC 1T1 and MCC 1T2. The proposed changes would be applied only in support of a one-time modification to install transfer switches for the affected MCC's. The proposed changes do not extend the allowed out of service time for any components, supplied by these MCC's, that are relied on to mitigate the consequences of an accident. Thus, this change does not significantly increase the expected consequences of an accident.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not change the way any systems, structures or components are operated. Nor does the proposed change introduce any new failure modes.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes do not extend the allowed out of service times for any safety related components powered by the affected MCC's. Further, the proposed changes only allow one train (one of the affected MCC's) to be out of

service and only if the opposite train MCC, its supporting sources and supplied safeguards equipment is verified operable. Thus, the proposed changes do not substantially impact the ability of operators to protect the fuel cladding, reactor coolant system or containment.

Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards *consideration.*

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: May 12, 2000.

Description of amendment requests: The proposed amendment would allow the design upgrade of the refueling water purification (RWP) system from design class II/non-seismic category 1 to design class I/seismic category 1 for purposes of permitting the cleanup of the refueling water storage tank (RWST) water while the RWST is required to be operable. This license amendment request (LAR) also proposes to allow the crediting of operator action to isolate a manual code boundary valve connected to the RWST following a seismic event or safety injection. It is desired to take suction from the RWST through an existing tank drain line to facilitate RWST recirculation through a non-seismically qualified reverse osmosis system while the RWST is required to be operable. This reverse osmosis system will be used to remove silica from the RWST water.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The upgrade of the refueling water purification (RWP) system piping will allow connection of the RWP system to the refueling water storage tank (RWST) while the RWST is required to be operable. The installation and use of a reverse osmosis (RO) system will allow removal of silica from the RWST while the RWST is required to be operable. The upgrade to the RWP system piping and use of the RO system does not involve any changes or create any new interfaces with the reactor coolant system or main steam system piping. Operation of the RWST is required to mitigate a loss-of-coolant and main steam line break accident, therefore, the connection of the RWP system to the RWST and use of the RO system would not affect the probability of these accidents occurring.

Neither the RWP system nor the RO system are credited for safe shutdown of the plant or accident mitigation. The upgrade to the RWP system piping to seismic category I will prevent seismically induced failure of the RWP system piping and thus prevent a loss of RWST inventory while the RWP system is connected to the RWST. The RWST can perform its safety function with an active failure in the RWP system in the short term phase of an accident while the RWP system is connected to the RWST. The RWST can perform its safety function with an active or passive failure in the RO system in the short term phase of an accident. Since the RWST inventory is not credited in the long term phase of an accident, active and passive failures in the RWP or RO system in the long term phase of an accident need not be considered.

Continuous operation of the RWP pump during a design basis event will not reduce the RWST water inventory nor the emergency core cooling system (ECCS) pump suction supply. The increase in RWST discharge flow due to an operating RWP pump will not adversely impact the required net positive suction head of the operating ECCS pumps.

A combination of design and administrative controls ensure that both the RWP and RO systems maintain RWST boron concentration and tank volume requirements whenever the contents of the RWST are processed through these systems. Potential boron dilution or volume losses of the RWST inventory during tank processing through the RWP system is prevented by administratively maintaining closed all manual boundary valves within the RWP system while the RWP system is used to clarify RWST contents. Prior to RO system operation, the RWST volume margin will be verified to be adequate to compensate for postulated RO system line losses and process losses through the RO system reject waste stream. The waste stream losses will be monitored throughout RO system operation. The RO system is designed to maintain a high boron recovery rate, which will be verified through testing prior to initial installation. Potential boron dilution during each batch operation of the RO system is prevented through verifying RWST boron margin prior to RO system operation and monitoring the RO system boron recovery rate by grab samples taken of the system inlet and outlet after each batch operation. Following each batch operation of the RO system, RWST mixing and sampling will be performed to verify the RWST boron concentration, and boron additions to the RWST will be made accordingly. Since the RWST will continue to perform its safety function, overall system performance is not affected, assumptions previously made in evaluating the consequences of the accident are not altered, and the consequences of the accident are not increased.

Therefore, the changes will not increase the probability or consequences of an accident previously evaluated.

2. *The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The upgrade of the RWP system piping to seismic category I will prevent seismically induced failure of the RWP piping. An active RWP pump failure will not result in a loss of the RWST safety function. An active or passive failure in the RO system will not result in loss of the RWST safety function. Adequate RWST volume and boron margin will be verified prior to RO system operation, the RO system boron recovery rate will be monitored by grab samples taken of the system inlet and outlet after each batch operation, a flow limiting device will limit the maximum potential RWST inventory loss rate to a low value, and operator action can be taken within 1 hour to isolate the RO system from the RWST. The upgrade to the RWP system and use of the RO system do not impact any other systems and thus cannot create a new failure mode in another system which could potentially create a new type of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *The proposed change does not involve a significant reduction in a margin of safety.*

Neither the RWP system nor the RO systems are credited for safe shutdown of the plant or accident mitigation. The upgrade to the RWP system piping to seismic category I will prevent seismically induced failure of the RWP system piping and prevent loss of RWST inventory due to a seismic event while the RWP system is connected to the RWST. The RWST can perform its safety function with an active failure in the RWP system in the short term phase of an accident while the RWP system is connected to the RWST. The RWST can perform its safety function with an active or passive failure in the RO system in the short term phase of an accident. Since the RWST inventory is not credited in the long term phase of an accident, active and passive failures in the RWP or RO system in the long term need not be considered.

Adequate RWST volume and boron margin will be verified prior to RO system operation, a flow limiting device will limit the maximum inventory loss rate to a low value, and operator action can be taken within 1 hour to isolate the RO system from the RWST. The RO system waste stream losses will be monitored throughout RO system operation.

Potential boron dilution of the RWST inventory during tank processing through the RWP system is prevented by administratively maintaining closed all manual boundary valves within the RWP system while the RWP system is connected to the RWST. The

RO system is designed to maintain a high boron recovery rate, which will be verified through testing prior to initial installation. Potential boron dilution during each batch operation of the RO system is prevented through verifying RWST boron margin prior to RO system operation and monitoring the RO system boron recovery rate by grab samples taken of the system inlet and outlet after each batch operation. Following each batch operation of the RO system, RWST mixing and sampling will be performed to verify the RWST boron concentration, and boron additions to the RWST will be made accordingly. These measures will ensure the TS minimum RWST boron concentration is available to mitigate the short term consequences of a small break LOCA, large break LOCA, or main steam line break accident.

Therefore, the change does not involve a significant reduction in a margin of safety as defined in the basis for any technical specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket No. 50–323, Diablo Canyon Nuclear Power Plant, Unit No. 2, San Luis Obispo County, California

Date of amendment requests: June 2, 2000.

Description of amendment requests: The proposed amendment would revise Technical Specification (TS) 3.5.2, "ECCS—Operating," Action A, to change the allowed completion time for repair or replacement of the centrifugal charging pump (CCP) 2–1 during Cycle 10 of Unit 2 from 72 hours to 7 days. In response to high CCP 2–1 vibration, planning has been done for replacing the CCP 2–1 discharge head and bearing housing or to change out the entire CCP 2–1. The 72-hour allowed completion time is not sufficient to accomplish such emergent repairs on an inoperable CCP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The emergency core cooling system (ECCS) and the centrifugal charging pumps (CCPs) are designed to respond to mitigate the consequences of an accident. They are not an accident initiator, and as such cannot increase the probability of an accident.

The loss of both CCPs, due to an inoperable CCP 2–1 and a single failure of CCP 2–2, could increase the consequences of an accident. A PRA was performed to evaluate the increased consequences. The worst case risk increment due to the increased completion time for CCP 2–1 and the maximum allowed out of service time is 2.5 percent. This is a non-significant risk increase for core damage frequency (CDF). Also, there is no noticeable increase in the large early release frequency as a result of this request.

Allowing 7 days to complete the repairs and post-maintenance testing of CCP 2–1 is acceptable since the ECCS system remains capable of performing its intended function of providing at least the minimum flow assumed in the accident analyses. During the extended maintenance and test period, appropriate compensatory measures will be implemented to restrict high risk activity. The consequences of accidents, which rely on the ECCS system, will not be significantly affected.

Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no new failure modes or mechanisms created due to plant operation for an extended period to perform repairs and post-maintenance testing of CCP 2–1. Extended operation with an inoperable CCP does not involve any modification in the operational limits or physical design of the systems. There are no new accident precursors generated due to the extended allowed completion time.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Plant operation for 7 days with an inoperable CCP 2–1 does not adversely affect the margin of safety. During the extended allowable completion time the ECCS system maintains the ability to perform its safety function of providing at least the minimum flow assumed in the accident analyses. During the extended maintenance and test period, appropriate compensatory measures will be implemented to restrict high risk activity.

Therefore, the change does not involve a significant reduction in a margin of safety as defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PECO Energy Company, Docket No. 50–352, Limerick Generating Station (LGS), Unit 1, Montgomery County, Pennsylvania

Date of amendment request: May 15, 2000.

Description of amendment request: The proposed change is to LGS Unit 1 Technical Specifications (TSs) Figure 3.4.6.1–1, "Minimum Reactor Vessel Metal Temperature vs. Reactor Vessel Pressure," and associated changes to TS Bases Section 3/4.4.6. The proposed change revises the pressure-temperature (P–T) limits by revising the heatup, cooldown and inservice test limitations for the Reactor Pressure Vessel (RPV) of Unit 1 from 12 effective full power years (EFPY) to a maximum of 32 EFPY. The proposed change also eliminates the requirement to maintain reactor coolant system within a narrow temperature band less that 212 °F during pressure testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

There are no physical changes to the plant being introduced by the proposed changes to the P–T curves. The proposed changes do not modify the reactor coolant pressure boundary, *i.e.*, there are no changes in operating pressure, materials or seismic loading. The proposed changes do not adversely affect the integrity of the reactor coolant pressure boundary such that its function in the control of radiological consequences is affected. The proposed P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, and American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Section XI, Appendix G, in conjunction with ASME Code Cases N–640 and N–588. The proposed P–T curves were established in compliance with the methodology used to calculate the

predicted irradiation effects on vessel beltline materials. Usage of these procedures provides compliance with the intent of 10 CFR Part 50, Appendix G, and provides margins of safety that ensure that failure of the reactor vessel will not occur. The proposed P–T curves prohibit operational conditions in which brittle fracture of reactor vessel materials is possible. Consequently, the primary coolant pressure boundary integrity will be maintained. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, and ASME B&PV Code, Section XI, Appendix G, in conjunction with ASME Code Cases N–640 and N–588. Compliance with the proposed P–T curves will ensure that conditions in which brittle fracture of primary coolant pressure boundary materials are possible will be avoided. No new modes of operation are introduced by the proposed changes. The proposed changes will not create any failure mode not bounded by previously evaluated accidents. Further, the proposed changes to the P–T curves do not affect any activities or equipment, and are not assumed in any safety analysis to initiate any accident sequence. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes reflect an update of the P–T curves to extend the reactor pressure vessel operating limit to 32 Effective Power Years (EFPY). The revised curves are based on the latest ASME guidance. These proposed changes maintain the relative margin of safety commensurate with that which existed at the time that the ASME B&PV Code, Section XI, Appendix G, was approved in 1974. The revised pressure-temperature limits, although less restrictive than the current limits, were established in accordance with current regulations and the latest ASME Code information. Because operation will be within these limits, the reactor vessel materials will continue to behave in a non-brittle manner, thus preserving the original safety design bases. No plant safety limits, set points, or design parameters are adversely affected by the proposed TS changes. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Units Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 15, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) requirements to test the remaining diesel generators when (1) One of the two independent off-site power sources is inoperable as delineated in TS 3/4.8.1, Action a, and (2) a diesel generator is inoperable for other than preventative maintenance reasons as delineated in TS 3/4.8.1, Action b.

The proposed change also (1) Expands the diesel generator loading band for the monthly, six-month, and the two hour loaded pre-requisite requirement for the hot restart test in accordance with the guidance of Regulatory Guide 1.9, "Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class 1E Onsite Electric Power Systems at Nuclear Power Plants," Rev. 3, 1993; and (2) corrects an administrative error in a note associated with TS 3.8.1.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The emergency diesel generator system is not an accident initiator. Eliminating the requirement to demonstrate that the operable diesel generators function properly, when there is no evidence that the inoperability of the affected diesel generator is the result of a potential common mode failure, will not increase the probability or the consequences of previously evaluated accidents, which rely upon emergency power supplies.

Eliminating the testing of the diesel generators whenever a single off-site power source is inoperable does not establish operability of the remaining off-site power source. Operability is determined by the performance of surveillance 4.8.1.1.1.1.a.

Elimination of unnecessary starts (challenges) to the diesel generators will result in increased equipment reliability and hence improved overall reliability for emergency onsite power supplies, as follows:

(A) Reduce the overall engine degradation resulting from wear and tear of testing and reduce the probability of failure due to engine degradation, and,

(B) Minimize the number of entries into an equipment configuration where a potential challenge to the safety function exists during the period of the tests.

Expanding the band from 2500–2600 KW to 2330–2600 KW to accommodate instrument inaccuracy does not change any design parameter. The diesel generator will still be fully loaded (90% to 100% of continuous rating) in accordance with Reg. Guide 1.9, Rev. 3, Section 2.2.2. The full capability of the diesel generator to carry its load will continue to be demonstrated during the 24 endurance run, which is unaffected by this request.

The proposed change to the note in TS 3.8.1.2 is a correction of an administrative oversight (renumbering of a surveillance requirement) and does not change the surveillance content or intent.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does not create the possibility of a new or different kind of accident from any accident previously analyzed.*

Eliminating the requirement to demonstrate that the operable diesel generators function properly affects testing requirements only and does not alter the physical configuration of the plant, replace or modify existing equipment, affect operating practices or create any new or different accident precursors.

Similarly, expanding the band from 2500–2600 KW to 2330–2600 KW to accommodate instrument inaccuracy does not change the manner in which the diesel generator is operated, or introduces any new or different failure from any previously evaluated.

The proposed change to the note in TS 3.8.1.2 is a correction of an administrative oversight (renumbering of a surveillance requirement) and does not change the surveillance content or intent.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. *Does not involve a significant reduction in a margin of safety.*

Eliminating the testing of the diesel generators whenever a single off-site power source is inoperable does not establish operability of the remaining off-site power source. Operability of the remaining off-site power source is determined by the performance of surveillance 4.8.1.1.1.1.a. The normally performed monthly surveillance ensures the diesel will be available to perform their safety function.

Eliminating the requirement to demonstrate that the operable diesel

generators function properly, when there is no evidence that the inoperability of the affected diesel generator is the result of a potential common mode failure, does not reduce the margin of safety. If the evaluation is inconclusive or determines that a cause of inoperability for a diesel generator is a potential common mode failure then operability testing will be conducted for the remaining operable diesels. This action will assure that the initial assumption of two independent power supplies, utilized in the accident analysis, remain valid.

The proposed changes do not adversely affect the ability of the diesels to operate when called upon. Rather, these changes should result in improved overall reliability of the diesels and therefore the margin of safety is preserved for those events in which there is a dependence upon on-site AC power supplies.

Expanding the band from 2500–2600 KW to 2330–2600 KW to accommodate instrument inaccuracy does not introduce any new or different failure from any previously evaluated or changes the manner in which the diesel generator is operated. Expanding the band does not change any instrumentation set point, or changes to the auto loading sequence of the diesel. The capability of the diesel to be loaded to its manufactured maximum ratings will continue to be demonstrated during the performance of the diesel endurance run, which is unaffected by this request.

The proposed change to the note in TS 3.8.1.2 is a correction of an administrative oversight (renumbering of a surveillance requirement) and does not change the surveillance content or intent.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: May 25, 2000.

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station, Units 1 and 2, Technical Specifications, Limiting Condition for Operation (LCO) 3.9.4, "Containment Penetrations," to allow certain containment penetrations to be open during refueling activities under appropriate administrative controls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?*

Response: No.

The proposed change to Technical Specification (TS) 3.9.4, "Containment Penetrations," would allow certain containment penetration flow paths to be open during core alterations and movement of irradiated fuel within containment under specific administrative controls. The fuel handling accident [(FHA)] radiological analysis does not take credit for containment isolation or filtration. Therefore, the time required to close any open penetrations is not relevant to the confirmatory radiological analysis dose calculations and the proposed change does not involve a significant increase in the consequences of an accident previously evaluated. The proposed administrative controls for containment penetrations are conservative even though not required by the accident analysis.

The status of the penetration flow paths during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Because the FHA outside containment remains the limiting accident and the probability of a accident is not affected by the status of the penetration flow paths, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?*

Response: No.

The open containment penetration flow paths are not accident initiators and do not represent a significant change in the configuration of the plant. The proposed allowance to open the containment penetrations during refueling operations will not adversely affect plant safety functions or equipment operating practices such that a new or different accident could be created. Therefore, the proposed revision will not create a new or different kind of accident from any accident previously evaluated.

3. *Does the proposed change involve a significant reduction in a margin of safety?*

Response: No.

Technical Specification LCO 3.9.4 closure requirements for containment penetrations ensure that the consequences of a postulated FHA inside containment during core alterations or fuel handling activities are minimized. The LCO establishes containment closure requirements, which limit the potential escape paths for fission products by ensuring that there is at least one integral barrier to the release of radioactive material. The proposed change to allow the containment penetration flow paths to be open during refueling operations under administrative controls does not significantly affect the expected dose consequences of a FHA because the limiting FHA is not changed. The proposed administrative controls provide assurance that prompt closure of the penetration flow paths will be accomplished in the event of a FHA inside containment thus minimizing the transmission of radioactive material from the containment to the outside environment. Under the proposed TS change, the provisions to promptly isolate open penetration flow paths provide assurance that the offsite dose consequences of a FHA inside containment will be minimized. Therefore, the proposed change to the Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Section Chief: Robert A. Gramm

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 23, 2000.

Description of amendment request: The proposed amendment would revise Limiting Condition for Operation (LCO) 3.9.4, "Containment Penetrations," of the technical specifications (TS) to allow certain containment penetrations to be open during refueling operations under administrative controls. The amendment would (1) Revise the note in the LCO for containment penetrations that may be open under administrative controls, deleting the reference to penetrations P–63 and P–98, and (2) delete the exception for penetrations P–63 and P–98 in Surveillance Requirement (SR) 3.9.4.1. In addition, there would be format and editorial corrections to TS 3.8.3, "Diesel Fuel Oil, Lube Oil, and Start Air," and TS 5.2.2.b, "Administrative Controls," to remove errors in the conversion to improved TSs issued March 31, 1999, in Amendment No. 123. There are also changes to the TS Bases for the proposed changes to LCO 3.9.4 and SR 3.9.4.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. *The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The status of the penetration flow paths during refueling operations has no [effect] on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a FHA [fuel handling accident] inside containment with open penetration flow paths are bounded by the current analysis described in the USAR [updated safety analysis report for Wolf Creek] and the probability of an accident is not affected by the status of the penetration flow paths, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements in the technical specifications.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The open containment penetration flow paths are not accident initiators and do not represent a significant change in the configuration of the plant. The proposed allowance to open the containment penetrations during refueling operations will not adversely affect plant safety functions or equipment operating practices such that a new or different accident could be created.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements [in] the technical specifications.

Therefore, the proposed revision will not create a new or different kind of accident from any accident previously evaluated.

3. *The proposed change does not involve a significant reduction in a margin of safety.*

Technical Specification LCO 3.9.4 closure requirements for containment penetrations ensure that the consequences of a postulated FHA inside containment during core alterations or fuel handling activities are minimized. The LCO establishes containment closure requirements, which limit the potential escape paths for fission products by ensuring that there is at least one integral barrier to the release of radioactive material. The proposed change to allow the containment penetration flow paths to be open during refueling operations under administrative controls does not significantly affect the expected dose consequences of a FHA because the limiting FHA is not changed. The proposed administrative controls provide assurance that prompt closure of the penetration flow paths will be accomplished in the event of a FHA inside containment thus minimizing the transmission of radioactive material from the containment to the outside environment. Under the proposed TS change, the provisions to promptly isolate open penetration flow paths provide assurance that the offsite dose consequences of a FHA inside containment will be minimized.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements in the technical specifications.

Therefore, the proposed changes to the Technical Specifications do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: May 22, 2000.

Description of amendment request: The proposed amendment would add new Technical Specifications (TSs) 3.7.2.a(ii) and 3.7.2.h to address voltage on the 230 kV (kilovolt) grid as a precondition of criticality and to provide a time limit for when the 230 kV grid voltage is found to be insufficient to support Loss-of-Coolant Accident (LOCA) electrical loading during power operation. The application also requests various minor editorial changes. The Bases have also been changed to reflect the addition of the two new TS and to provide clarification of the components to which surveillance is applicable.

Date of publication of individual notice in ***Federal Register:*** June 2, 2000 (65 FR 35404).

Expiration date of individual notice: July 3, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: May 4, 2000, as supplemented May 9, 2000.

Brief description of amendment: The amendment revises Technical Specification (TS) 4.12.1.3, for the control building automatic isolation and recirculation dampers to remove the individual damper component tag numbers. The surveillance requirements do not change. The associated Bases is also changed to reflect the applicable section of the Updated Final Safety Analysis Report.

Date of issuance: June 29, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 223.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 22, 2000 (65 FR 32132).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 2000.

No significant hazards consideration comments received: No.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 19, 1999, as supplemented April 21, 2000.

Brief description of amendments: The amendments approved changes in the Updated Final Safety Analysis Report (UFSAR) that constitute an unreviewed safety question as described in 10 CFR 50.59. These changes increase the probability of occurrence of a malfunction. These changes were not previously evaluated in the UFSAR, specifically, Section 5.3.1, "External Missiles" of the UFSAR did not address the probability of a missile from Unit 1 turbine-generator striking: (1) The refueling water tanks, (2) the No. 11 fuel oil storage tank, and (3) the plant equipment through various roof slabs or through non-missile-proof openings in the missile-proofing walls. The UFSAR only discusses a turbine missile strikingthe containment, control room, switchgear room, and waste processing area. The amendment authorizes the licensee to revise the turbine missile analysis to include the additional targets.

Date of issuance: June 19, 2000.

Effective date: As of the date of issuance to be implemented by December 31, 2000.

Amendment Nos.: 236 and 210.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70079).

The April 21, 2000, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated June 19, 2000.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Inc., Docket Nos. 50–003 and 50–247, Indian Point Nuclear Generating Station, Units 1 and 2, Buchanan, New York.

Date of amendment request: February 14, 2000.

Brief description of amendments: The amendments would eliminate from Environmental Technical Specifications Section 5.4.1, Routine Reports, the discussion regarding Section 4.2. Specifically, the proposed change seeks to delete the reference to and discussion about Section 4.2, which was deleted as part of Amendment No. 90 to Operating License No. DPR–26.

Date of issuance: June 8, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 47 to DPR–5, and 210 to DPR–26.

Facility Operating License Nos. DPR–5 and DPR–26: The amendments revised the Environmental Technical Specifications.

Date of initial notice in ***Federal Register:*** April 5, 2000 (65 FR 17912). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 8, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: April 13, 2000, as supplemented by letter dated May 30, 2000.

Brief description of amendments: The amendments revise the Technical Specifications and associated Bases pages to accommodate the use of Mark-B11 fuel with M5 cladding.

Date of Issuance: June 21, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 313, 313, and 313.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 17, 2000 (65 FR 31356).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 21, 2000.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of application for amendment: July 29, 1999.

Brief description of amendment: The amendment revised Surveillance Requirement 3.5.2.2. The change requires maintaining a higher level in the condensate storage tanks.

Date of issuance: June 20, 2000.

Effective date: June 20, 2000, to be implemented within 30 days from the date of issuance.

Amendment No.: 165.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 25, 1999 (64 FR 46431).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: November 1, 1999, as supplemented by letter dated May 10, 2000.

Brief description of amendment: This amendment revised the frequency of performing Technical Specification Surveillance Requirement (SR) 3.6.1.7.4, verification that each containment spray nozzle is unobstructed. The frequency

for performing SR 3.6.1.7.4 has been changed from once every 10 years to conditions following maintenance which could result in nozzle blockage.

Date of issuance: June 29, 2000.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 113.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70088).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 2000.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: July 7, 1999.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to change the component surveillance frequencies for the following TSs to indicate a frequency of once per 3 months: Core Spray System TS 4.4.A.1 and 4.4.A.2, Containment Cooling System TS 4.4.C.1, Emergency Service Water System TS 4.4.D.1, Fire Protection System TS 4.4.F (isolation valves only), and Pressure Suppression Chamber—Drywell Vacuum Breakers TS 4.5.F.5.a. The TSs currently stipulate a component surveillance frequency of once per month. Also, the amendment revised TS pages 4.4–1 and 4.4–2 to incorporate editorial format changes and TS page 4.4–3 to accommodate the expanded text.

Date of Issuance: June 26, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 210.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications. Date of initial notice in ***Federal Register:*** October 20, 1999 (64 FR 56531).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 26, 2000.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 29, 1999.

Description of amendment request: The amendment relocates Surveillance Requirement 4.8.1.1.2f.1 which requires inspection of the Emergency Diesel Generator (EDGs) at least once per 18 months in accordance with procedures prepared in conjunction with its manufacturer from the Technical Specifications to the Seabrook Station Technical Requirements Manual.

Date of issuance: June 16, 2000.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 71.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4281).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2000.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 30, 1999, as supplemented on April 28, 2000.

Description of amendment request: The amendment revises the Technical Specifications (TSs) by: (1) Inclusion of a new Administrative Control TS 6.7.6i for establishing, implementing, and maintaining a Diesel Fuel Oil Testing Program for testing new and stored fuel oil; (2) relocation of current surveillance requirement (SR) 4.8.1.1.2d and SR 4.8.1.1.2e.1, containing SRs for fuel oil sampling and testing, to the Diesel Fuel Oil Testing Program in the Seabrook Station Technical Requirements (SSTR) Manual; (3) revision of SR 4.8.1.1.2d to reference the Diesel Fuel Oil Testing Program as a surveillance requirement; (4) inclusion of additional surveillance requirements to SR 4.8.1.2 for checking and removing accumulated water from the day and storage fuel oil tanks, verifying new and stored fuel oil properties and visually inspecting diesel generatof exhaust leakage when the plant remains in Modes 5 and 6 of operation; (5) relocation to the Diesel Fuel Oil Testing Program SR 4.8.1.12h for cleaning diesel fuel storage tanks at a 10-year frequency to the SSTR Manual; and (6) revision of TS Bases 3/4.8.1 by adding a statement that the exceptions to the certain Regulatory Guides are specified in the plant's Updated Final Safety Analysis Report.

Date of issuance: June 27, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 73.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 17, 2000 (65 FR 31358).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2000.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 14, 2000.

Description of amendment request: This amendment revises the Technical Specifications by relocating Sections 3/4.9.5, "Communications", 3/4.9.6, "Refueling Machine", and 3/4.9.7, "Crane Travel—Spent Fuel Storage Areas" to the Seabrook Station Technical Requirement Manual.

Date of issuance: June 23, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 72.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 17, 2000 (65 FR 31358).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 16, 2000, as supplemented by letters dated April 11, April 19, June 2, and June 9, 2000.

Brief description of amendments: The amendments revise several sections of the improved Technical Specification (ITS) to correct 19 editorial errors made in either (1) the application dated June 2, 1997, (and supplemental letters) for the ITSs, or (2) the certified copy of the ITSs that was submitted in the licensee's letters of May 19 and 27, 1999. The proposed amendment would

also revise 10 instances of incorrect incorporation of the CTS into the ITS. One of the proposed editorial errors and one of the incorrect incorporations of the CTS will be addressed in a future letter. The ITSs were issued as License Amendments 135 and 135 dated May 28, 1999.

Date of issuance: June 21, 2000.

Effective date: June 21, 2000, to be implemented by June 30, 2000.

Amendment Nos.: Unit 1–142; Unit 2–142

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 19, 2000 (65 FR 21032).

The April 19, June 2, and June 9, 2000, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 21, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 27, 1999, as supplemented April 11, 2000.

Brief description of amendment: This amendment revises Technical Specifications (TSs) 4.6.2.2.b, "Suppression Pool Spray," and 4.6.2.3.b, "Suppression Pool Cooling," to modify the acceptance criteria associated with flow rate testing of the Residual Heat Removal system pumps.

Date of issuance: June 16, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 128.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4289)

The April 11, 2000, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 5, 1999, as supplemented December 3, 1999.

Brief description of amendment: The amendment revises the applicability for the reactor power distribution limits and Average Power Range Monitor gain adjustments. The applicability is revised to operation at ≥ 25% Rated Thermal Power.

Date of Issuance: June 21, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 188.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73102)

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 21, 2000.

No significant hazards consideration comments received: No.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 19, 2000.

Brief description of amendments: These amendments revise Technical Specification 15.4.4–II.A to clarify that a different primary containment tendon may be designated a control tendon providing that the new control tendon has not previously been physically changed (*e.g.*, retensioned).

Date of issuance: June 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 196 and 201.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 8, 2000 (65 FR 12295).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 2000.

No significant hazards consideration comments received: No.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: October 27, 1998, as supplemented on February 23, 2000.

Brief description of amendment: The amendment revises the plugging limits specified in TS 4.2.b, "Steam Generator Tubes," for the Westinghouse hybrid-expansion-joint sleeve and the Westinghouse laser-welded sleeve. The proposed amendment also revises the list of applicable references specified in TS 4.2.b.

Date of issuance: June 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 148.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 18, 1998 (63 FR 64126). The February 23, 2000, supplement is within the scope of the original notice and does not change the proposed no significant hazards consideration finding.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2000.

No significant hazards consideration comments received: No.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 17, 1999, as supplemented April 23, July 21, and November 2, 1999, and March 6, 2000.

Brief description of amendment: The amendment revises Technical Specification Section 6.0, Administrative Controls, by consolidating management positions and modifying review and audit functions.

Date of issuance: June 20, 2000.

Effective date: June 20, 2000.

Amendment No.: 154.

Facility Operating License No. DPR–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 7, 1999 (64 FR 17033) The April 23, July 21, and November 2, 1999, and March 6, 2000, letters provided additional clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 5th day of July 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17625 Filed 7–11–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24553; 812–11908]

The Pitcairn Trust Company, et al.; Notice of Application

July 6, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain common and collective trust funds, certain individual trust accounts and certain limited partnerships to transfer their assets to certain series of a registered open-end management investment company in exchange for shares of the series.

APPLICANTS: The Pitcairn Trust Company ("PTC"), Pitcairn Funds (the "Trust"), Diversified Value Fund, Diversified Growth Fund, Select Value Fund, Select Growth Fund, Small Cap Value Fund, Small Cap Growth Fund, Tax Exempt Bond Fund, Family Heritage Fund and International Equity Fund (collectively, the "Common Trust Funds"), Employee Benefit Large-Capitalization Fund, Employee Benefit Mid-Capitalization Fund, Employee Benefit Small-Capitalization Fund, Employee Benefit Fixed Income Fund and Employee Benefit International Equity Fund (collectively, the "Collective Trust Funds," together with the Common Trust Funds, the "CTFs"). Collectively, PTC, the Trust and the CTFs are referred to as "Applicants."

FILING DATES: The application was filed on December 23, 1999 and amended on June 29, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 27, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o One Pitcairn Place, 165 Township Line Road, Suite 3000, Jenkintown, PA 19046.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware trust, will be registered under the Act as an open-end management investment company and will offer a number of series (each a "Fund") to the public, each with separate investment objectives, policies, and restrictions. PTC will serve as investment adviser to each Fund.[1]

2. PTC is a wholly-owned subsidiary of Pitcairn Company, which is wholly-owned by Pitcairn Group L.P. ("PGLP"), a limited partnership. PGLP's limited partnership units are owned by approximately 85 adult Pitcairn family members and related trusts, trusts governed by the Uniform Transfers to Minors Act, foundations and religious organizations supported by the Pitcairn family. For some of these family members, the beneficial ownership interests in PGLP partnership units are in excess of 5% of total units outstanding, both in terms of economic interest and voting power. Pitcairn family members also beneficially own, primarily through trusts, approximately 63% of the interests in the Common Trust Funds. A number of Pitcairn family members serve as co-trustees for trusts with, in the aggregate, more than 5% of the total beneficial interests in one or more common Trust Funds. Certain employee benefit plans maintained for the benefit of employees of PTC and its affiliates, including three members of the Pitcairn family who are employees of PTC ("PTC Plans"), own 70%–85% of the assets of the Collective Trust Funds.

3. Each CFT is maintained by PTC and is either (i) a "common trust fund" as defined in section 584(a) of the Internal Revenue Code of 1986, as amended ("Code"), or (ii) a collective trust fund that meets the requirements of section 401 of the Code. The CTFs are excluded from the definition of "investment company" under sections 3(c)(3) (for the Common Trust Funds) and 3(c)(11) (for the Collective Trust Funds) of the Act. Participants in the CFTs are persons or entities for which PTC acts as either trustee, executor, administrator, guardian, or custodian ("Participants"). Pitcairn company serves as the general partner of certain limited partnerships ("Partnerships"), the units of which are beneficially owned by clients of PTC. PTC serves as trustee for certain individual trust accounts ("ITAs") that are held by PTC as sole or co-trustee for the benefit of individual clients, none of which is a Pitcairn family member or an entity in which a Pitcairn family member has a pecuniary interest.

4. Applicants propose to transfer in-kind all of the assets of each CFT, ITA and Partnership to one of the Funds with generally similar investment objectives in exchange for Class I shares of the respective Fund having an aggregate net asset value equal to that of the assets transferred (the "Conversions").[2] Class I shares will not be subject to a front-end or contingent deferred sales charge, redemption fees or rule 12b–1 distribution fees, although there may be a shareholder service fee of 0.25%. The assets of the CFTs to be transferred will be valued in accordance with the provisions of rule 17a–7(b) under the Act, and the shares of the Funds issued will have an aggregate net asset value equal to the value of the assets transferred. The shares of the

[1] As a "bank" within the meaning of section 202(a)(2) of the Investment Advisers Act of 1940 ("Advisers Act"), PTC currently is not subject to the registration requirements of the Advisers Act.

[2] Applicants also request relief for future transactions in which the assets of a terminating common or collective trust fund maintained by PTC are exchanged for shares of a registered open-end management investment company, or a series thereof, advised by PTC, or any entity controlling, controlled by, or under common control with PTC when owners of PTC or the PTC Plans own 5% or more of such trust fund or such registered investment company, or series thereof ("Future Transactions"). Applicants state that they will rely on the requested relief for Future Transactions only in accordance with the terms and conditions contained in the application.

Funds issued to the CTFs will be credited to the account of each Participant, *pro rata*, according to the Participant's interest in the relevant CTF owned immediately prior to the Conversions. Following the Conversions, the CTFs will be terminated and the Fund shares will be held by PTC (together with any co-trustees). In addition, the Partnerships will terminate at the time of their Conversions. The Conversions of the CTFs are scheduled to occur on or before August 11, 2000. The Conversions of the Partnerships and ITAs will occur approximately one week before the Conversion of the CTFs. PTC will pay all expenses incurred in connection with the Conversions.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling, or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (c) if the other person is an investment company, any investment adviser of that company. Applicants state that, because the CTFs may be viewed as acting as principal in the Conversions, and because the CTFs and the Funds may be viewed as being under the common control of PTC, within the meaning of section 2(a)(3)(C) of the Act, the Conversions may be subject to the prohibitions of section 17(a) of the Act.

2. Rule 17a–7 under the Act exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the securities. Applicants state that rule 17a–7 may not be available for the conversions because, among other affiliations, the owners of PTC beneficially own more than one half the interests in the Common Trusts Funds, and the PTC Plans own 70–85% of the assets of the Collective Trust Funds. Thus, Applicants may not meet the sole affiliation requirement of rule 17a–7. In addition, Applicants state that the Conversions are to be effected as in-kind transfers, rather than in cash.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that certain conditions are satisfied. Applicants state that rule 17a–8 may not be available for the Conversions because the CTFs are not registered investment companies. In addition, Applicants state that the CTFS, ITAs, Partnerships and the Funds may be deemed to be affiliated for reasons other than those covered by rule 17a–8.

4. Section 17(b) of the Act provides that the Commission may exempt a proposed transaction from the provisions of section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants request an order under section 17(b) of the Act to permit the Conversions and under sections 6(c) and 17(b) to permit the Future Transactions. Applicants submit that the Conversions satisfy the standards for relief under sections 6(c) and 17(b) of the Act. Applicants state that the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will adopt procedures pursuant to which the Conversions may be effected in accordance with rule 17a–7(e), and that the provisions of rule 17a–7(b), (c), (d) and (f) will be satisfied. The Conversions will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the Funds in the Conversions is in the best interests of each Fund and that the interests of existing shareholders of each of the Funds will not be diluted as a result of the Conversions. These findings, and the basis upon which they will be made, will be fully recorded in the minute books of the Trust. In addition, before the Conversions are entered into, PTC will have determined in accordance with its fiduciary duties that the conversions are in the best interest of the ITAs and the Partnerships and the beneficial owners thereof.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Conversions will comply with the terms of rule 17a–7(b) through (f).

2. The Conversions will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the Funds in the Conversions is in the best interests of each Fund and that the interests of existing shareholders of such Fund will not be diluted as a result of the Conversions. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Trust.

3. The Conversions will not occur unless and until (a) PTC, as trustee and fiduciary of each CTF and the Participants therein, has determined in accordance with its fiduciary duties that the Conversions are in the best interests of Participants in each of the CTFs, and (b) PTC, as fiduciary of each ITA and Partnership, has determined in accordance with its fiduciary duties that the Conversions are in the best interests of each ITA or Partnership and its beneficial owners.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17594 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43004; File No. SR–CBOE–98–54]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 3, 4, 5 and 6 to the Proposed Rule Change Relating to Designated Primary Market Makers

June 30, 2000.

I. Introduction

On December 22, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to update and reorganize its rules concerning designated primary market makers ("DPMs"). On February 18, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published in the **Federal Register** on May 3, 1999.[4]

On May 11, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] On September 29, 1999, the Exchange submitted Amendment No. 3 to the proposed rule change.[6] On December 21, 1999, the Exchange submitted Amendment No. 4 to the proposed rule change.[7] On February 23, 2000, the Exchange submitted Amendment No. 5 to the proposed rule change.[8] Finally, on May 25, 2000, the Exchange submitted Amendment No. 6 to the proposed rule change.[9]

The Commission received two comment letters on the proposal.[10] This order approves the proposed rule change, as amended by Amendment No. 1, and approves Amendment Nos. 2, 3, 4, 5, and 6 to the proposed rule change on an accelerated basis. The Commission is also soliciting comment on Amendment Nos. 2, 3, 4, 5 and 6 to the proposed rule change from interested persons.

II. Background

The Exchange's DPM program began as a pilot program in 1987 with 4 DPMs that were allocated a total of 11 equity option classes. In 1994, the Commission approved the DPM program on a permanent basis.[11] Since its introduction, the DPM program has grown significantly. In June 1999, the members of the Exchange voted to expand the DPM program floor-wide to all equity options classes, as well as specified index options and structured products. According to the Exchange, currently there are 58 DPMs that have been allocated over 1400 options products.

Since its inception, the Exchange has developed procedures for implementing the rule provisions that govern the program. Currently, CBOE Rules 8.80 and 8.81 govern the DPM program. In this rule filing, the Exchange seeks to update these DPM rules to incorporate the various procedures that have been implemented pursuant to CBOE Rules 8.80 and 8.81 and to incorporate various proposed changes. In addition, the Exchange proposes to reorganize the rules by creating 12 separate rules that each address the 12 primary aspects of the DPM program.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly McCormick, Attorney, Division of Market Regulation ("Division"), SEC, dated February 11, 1999 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691.

[5] Letter from Arthur B. Reinstein, Assistant General counsel, CBOE, to Kelly McCormick, Attorney, Division, SEC, dated May 10, 1999 ("Amendment No. 2"). In Amendment No. 2, the CBOE made non-substantive, grammatical changes to the proposed rule change.

[6] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated September 28, 1999 ("Amendment No. 3"). In Amendment No. 3, the Exchange proposed changes to propose Rule 8.82 regarding election procedures. These changes were made to conform proposed Rule 8.82 to changes proposed to be made to the Exchange's constitution. Specifically, Amendment No. 3 would change the date by which member petitions for the election of members of the Modified Trading System ("MTS") Committee must be submitted and clarifies that petitions must be signed by 100 voting members. *See* Securities Exchange Act Release No. 42026 (October 18, 1999), 64 FR 57499 (October 25, 1999) (SR–CBOE–99–43).

[7] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated December 16, 1999 ("Amendment No. 4"). In Amendment No. 4, the Exchange proposes four changes to the proposed rule change. First, Amendment No. 4 proposed subparagraph (a)(viii) to proposed Rule 8.85 to provide that a DPM shall not initiate a transaction for its own account that would result in putting into effect any stop or stop limit order, which the DPM represents as agent, unless approved by a Floor Official and guaranteed by the DPM that the stop or stop limit order will be executed at the same price as the electing transaction.

Second, Amendment No. 4 deletes the portion of proposed Rule 8.85(b) that granted the MTS Committee the discretion to authorize a DPM to represent discretionary orders in unusual circumstances.

Third, Amendment No. 4 revises the Guidelines for Exemptive Relief under proposed Rule 8.91(e), which provides that the guidelines may be supplemented or modified by the Exchange in individual cases when the Exchange deems it appropriate. The provision would be amended to better define the Exchange's discretion to be limited to only allow the Exchange to supplement the guidelines in a manner that is consistent with the intent of the original requirements. *But see* Amendment No. 6 *infra*, note 9.

Fourth, Amendment No. 4 deletes the phrase "approve an interim DPM" and replaced it with "approve a DPM on an interim basis" in proposed Rule 8.83(f)(i), to clarify that a DPM appointed on an interim basis is subject to all of the DPM obligations.

[8] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated February 17, 2000 ("Amendment No. 5"). In Amendment No. 5, the CBOE confirms that any changes to the DPM financial guidelines proposed by the MTS Committee must be submitted to the Commission, pursuant to SEC Rule 19b–4.

[9] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated May 24, 2000 ("Amendment No. 6"). In Amendment No. 6, the Exchange proposes three changes to the rule filing. First, the Exchange proposes to add language to proposed Rule 8.85 (a)(viii) to make it consistent with the current language of CBOE Rule 8.80(c)(7).

Second, the Exchange proposes to delete paragraph (c)(iii) of proposed Rule 8.85 and adds language addressing the same issue to proposed rule 8.88. Therefore, proposed Rule 8.88 now states that the review of a DPM's operations and performance shall include, among other things, an evaluation of the extent to which a DPM has satisfied its obligations under proposed Rule 8.85 and has otherwise acted in ways reasonably designed to make the Exchange competitive with other markets that trade the same options allocated to the DPM, taking into account the Exchange's market share.

Third, the Exchange proposed to delete the proposed provision granting discretion to the Exchange under the Guidelines for Exemptive Relief under proposed Rule 8.91(e). As amended, the Exchange proposes to allow DPMs and members affiliated with DPMs to structure their corporate organizations in a manner so as to create a functional separation between the DPM and the affiliate, instead of the current requirement of separate and distinct organizations. All of the other requirements under the guidelines, however, remain intact.

Finally, in Amendment No. 6, the Exchange clarifies that any changes to the formula for determining the participation entitlement, pursuant to proposed Rule 8.87, must be submitted to the Commission, pursuant to SEC Rule 19b–4.

[10] Letter from James I. Gelbort, to Jonathan G. Katz, Secretary, SEC, dated May 21, 1999; letter from John L. Rushlie, to Kelly Riley, Attorney, Division, received on November 19, 1999.

[11] Securities Exchange Act Release No. 34999 (November 22, 1994), 59 FR 61361 (November 30, 1994) (File No. SR–CBOE–94–36).

[12] The Exchange filed a substantially similar proposed rule change with the Commission in 1998. *See* Securities Exchange Act Release No. 40041 (May 28, 1998), 63 FR 30525 (June 4, 1998) ("Original Proposal"). After the Original Proposal was submitted, however, the Exchange received a member petition concerning the transfer of DPM appointments. As a result of the member petition, the CBOE withdrew the Original Proposal. After the CBOE withdrew the Original Proposal, it engaged its members in a dialogue about DPM transferability by, among other things, holding membership meetings. The CBOE Board of Directors re-approved

III. Description of the Proposed Rule Change

A. Proposed Rule 8.80—DPM Defined

Proposed Rule 8.80 defines a DPM as a member organization that is approved by the Exchange to function as a market maker, floor broker, and order book official in allocated securities. Proposed Rule 8.80 also clarifies that the MTS Committee approves DPM appointments while the Exchange's Allocation Committee and Special Product Assignment Committee determines which securities will be allocated to each DPM.[13]

B. Proposed Rule 8.81—DPM Designees

Proposed Rule 8.81 sets forth the requirements applicable to DPM Designees. A DPM Designee is an individual approved by the MTS Committee to represent the DPM in its capacity as a DPM, Since a DPM, as defined in proposed Rule 8.80, must be a member organization, proposed Rule 8.81 provides that a DPM may only act through its DPM Designees.

C. Proposed Rule 8.82—MTS Committee

Proposed Rule 8.82 governs the composition of the MTS Committee. The proposal retains the current 11 members composition, which consists of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, four members whose primary business is as a market maker, two members whose primary business is as a market maker or as a DPM Designee, one member whose primary business is as a floor broker who is not associated with a member organization that conducts public customer business, and two persons associated with member organizations that conduct public customer business.

D. Proposed Rule 8.83—Approval To Act as a DPM

Proposed Rule 8.83 sets forth the criteria that may be considered by the MTS Committee when making DPM application decisions. Specifically, the MTS Committee may consider such factors as adequacy of capital, operational capacity, trading experience, regulatory history, and market performance. In addition, an applicant may present any other matter that it wishes the MTS Committee to consider in conjunction with the approval decision. As with most decisions of the MTS Committee, any applicant not approved by the MTS Committee to act as a DPM may appeal that decision to the Exchange's Appeals Committee, pursuant to Chapter XIX of the Exchange's Rules. The appeal procedures provide the right to a formal Appeals Committee hearing concerning any approval decision, and the decision of the Appeals Committee may be appealed to the Board of Directors, pursuant to CBOE Rule 19.5.

E. Proposed Rule 8.84—Conditions on the Allocation of Securities To DPMs

Proposed Rule 8.84 grants the MTS Committee new authority to establish (i) restrictions applicable to all DPMs regarding the concentration of securities allocable to a single DPM and to affiliated DPMs, and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied for a DPM to receive allocations of securities, including but not limited to, standards relating to adequacy of capital and number of personnel. If a DPM is not performing to the required level with the securities it has already been allocated, the MTS Committee may limit the DPM's eligibility to recieve additional securities.

F. Proposed Rule 8.85—DPM Obligations

Proposed Rule 8.85 establishes that each DPM, with respect to each of its allocated securities, must fulfill all of the obligations under Exchange Rule applicable to market makers, floor brokers, and order book officials. The proposed rule also sets forth the specific obligations of DPMs that are currently contained in CBOE Rule 8.80, some of which have been modified to clarify their scope.

For example, proposed Rule 8.85(a)(ix) restates the current requirement that the DPM is responsible for determining any formula used for generating automatically updated market quotes and for disclosing the elements of the formula (unless exempted as proprietary by the MTS Committee) to the trading crowd. Proposed Rule 8.85(a)(ix) provides the specific elements of the formula that must be disclosed, such as the option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying security.

Proposed Rule 8.85(b)(i) restates the current requirement that a DPM is obligated to place in the public order book any order in the DPM's possession that is eligible for entry, subject to two exceptions. First, proposed Rule 8.85(b)(i)(A) clarifies that a DPM is not obligated to place a book-eligible order in the book if the DPM immediately executes the order upon receipt. Second, proposed Rule 8.85(b)(ii)(B) provides that a DPM may refrain from placing a book-eligible order in the public order book if the customer who placed the order so requests, so long as the DPM announces the information concerning the order that would have been displayed had the order been placed in the public order book in public open outcry.

Proposed Rule 8.85(b)(ii) states that a DPM may not remove any order from the public order book except in two circumstances. First, proposed Rule 8.85(b)(ii) clarifies that a DPM may remove orders, which have been cancelled, executed, or have expired from the public order book. Second, proposed Rule 8.85(b)(ii) clarifies that a DPM may return an order to the number that placed the order upon such member's request.

In proposed Rule 8.85(b)(iii), the Exchange restates its current requirement that a DPM must accord priority to any order that the DPM represents as agent over the DPM's principal transactions. Proposed Rule 8.85(b)(iv) restates the current DPM prohibition that a DPM may not charge any brokerage commission for any order execution for which the DPM acted as both principal and agent. There is, however, an exception to this prohibition set forth in proposed Rule 8.85(b)(iv), if the customer consents.

Finally, proposed Rule 8.85(c)(vi) is a new provision that requires that each DPM segregate, in a manner prescribed by the MTS Committee, its DPM businesses and activities from its other non-DPM businesses and activities.

G. Proposed Rule 8.86—DPM Financial Requirements

Proposed Rule 8.86 sets forth the financial requirements for DPMs.

H. Proposed Rule 8.87—Participation Entitlement of DPMs

The Exchange proposes to formalize the authority of the MTS Committee to determine the participation entitlement for DPMs in proposed Rule 8.87.[14]

I. Proposed Rule 8.88—Review of DPM Operations and Performance

Proposed Rule 8.88(a) restates the current rule provision that the MTS Committee or a subcommittee thereof may conduct a review of a DPM's

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a substantially similar proposed rule change, which was then presented to the CBOE members for a vote. The CBOE members approved the current proposed rule change on December 14, 1998.

[13] The Exchange's process for allocating securities to DPMs and market-maker trading crowds is set forth in CBOE Rule 8.95.

[14] Any changes to the formula established by the MTS Committee shall be submitted to the Commission, pursuant to SEC Rule 19b–4. *See* Amendment No. 6.

operations and performance at any time. In addition, proposed Rule 8.88(a) clarifies that a DPM and its associated persons are obligated to submit information requested by the MTS Committee relating to such a review. The proposed rule requires that each DPM be reviewed on an annual basis rather than a quarterly basis as is currently required. As part of the review, the MTS Committee will consider, among other things, whether a DPM has satisfied its obligations under proposed Rule 8.85.[15]

Proposed Rule 8.88(b) expands the market performance evaluation responsibilities of the MTS Committee by requiring it to perform market performance evaluations and remedial action functions for market makers and floor brokers that regularly trade at DPM stations. Proposed Rule 8.88(c) provides that members of the MTS Committee may perform the functions of a floor official at DPM trading stations.

J. Proposed Rule 8.89—Transfer of DPM Appointments

Under current CBOE Rule 8.80(b)(3), a DPM appointment may not be transferred without the approval of the MTS Committee. Proposed Rule 8.89 expands upon this provision by setting forth a detailed procedure to be followed by a DPM in the event it proposes to sell, transfer, or assign any of its interest. The proposed rule change also includes standards to be applied by the MTS Committee to determine whether or not to approve the transfer request.

K. Proposed Rule 8.90—Termination, Conditioning, or Limiting Approval To Act as a DPM

Proposed Rule 8.90 governs the MTS Committee's authority to terminate, condition, and limit the approval of a DPM. The proposed rule restates, with certain clarifications, provisions that are currently contained in CBOE Rule 8.80.

L. Proposed Rule 8.91—Limitations on Dealings of DPMs and Affiliated Persons of DPMs and Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated With DPMs

Proposed Rule 8.91 restates that rule provisions that are currently found in CBOE Rule 8.81, which restricts the dealings of DPMs and persons associated with DPMs.

The proposed Guidelines for Exemptive Relief set forth the steps that a member affiliated with a DPM must undertake to seek an exemption from the prohibitions found in proposed Rule 8.91 (a) through (c). The Guidelines provide specific requirements and procedures that affiliated members must establish to prevent, among other things, the use of material non-public corporate or market information that may be in the possession of the affiliated member from influencing the conduct of the DPM or to avoid the use of DPM market information to influence the affiliated member's conduct. The Exchange has proposed to allow DPMs and their affiliated members to structure their corporate organizations in such a manner as to create a functional separation, unlike the current rule, which requires that the DPM and its affiliate be actual separate and distinct organizations.[16]

M. Deletions from Current DPM Rules

The CBOE also proposes to delete several provisions of the current DPM rules.

IV. Summary of Comments and CBOE Response

The Commission received two comment letters on the proposed rule change.[17] The Exchange submitted written responses to the issues raised in each comment letter.[18] The issues raised by the commenters and the Exchange's response are summarized below.

First, Mr. Gelbort requested that the Exchange clarify the relationship between CBOE Regulatory Circular RG97–114, and the proposed rule change. In RG97–114, the commenter stated that the Exchange "arguably expanded the scope of DPM responsibilities and obligations beyond those specifically enumerated in CBOE rules."

The Exchange responded that it strongly disagreed with Mr. Gelbort's assertion that RG97–114 exceeded the provisions of the Exchange's rules. The Exchange stated that the regulatory circular merely restated various responsibilities and obligations of DPMs that were specifically set forth in the Exchange's rules. Furthermore, the Exchange stated that the regulatory circular merely provided an explanation regarding how these provisions apply to specific situations.

The Exchange stated that it intends to issue a new regulatory circular upon the effectiveness of this proposed rule change that will replace RG97–114. The new circular will contain updated rule references and will describe the updated rule provisions. The Exchange further stated that since RG97–114 will be superceded, there should be no confusion about the relationship between it and the new proposed rules.

Second, Mr. Gelbort stated that proposed Rule 8.85(a)(ix), which provides that the DPM has the obligation to determine the formula for generating automatically updated market quotes and to disclose the formula to members at the trading station, mandates continued DPM control over the sole system for setting quotes in a crowd and restricts the ability of most other market makers to adequately make independent markets.

The Exchange responded that the obligation set forth in proposed Rule 8.85(a)(ix) is a restatement of current Rule 8.80(c)(3). The Exchange stated that the proposal clarifies the components of the formula generated by the DPM for automatically updating market quotes that must be disclosed to the trading crowd. In addition, the proposal provides the MTS Committee with the discretion to allow a DPM to keep proprietary information about the formula confidential.

In response to Mr. Gelbort's statement that DPMs should not have control over these formulas, the Exchange responds that this would be antithetical to the nature and purpose of the DPM system. The Exchange states that the DPM system is a unitary specialist-type trading system and one of its primary objectives is to provide for the centralization of trading functions. The Exchange believes it is imperative that the DPM have control over the disseminated market quotations to be able to fulfill its DPM obligations. An integral part of controlling the DPM's disseminated quotes, CBOE argues, is the ability of the DPM to determine how automatically updated market quotes are generated.

Responding to Mr. Gelbort's assertion that this proposal would restrict the ability of other market makers to make an independent market, the Exchange stated that market makers will continue to have the ability to improve an automatically updated market quote through open outcry. The Exchange explained that CBOE quote reporters are assigned to each trading crowd to input market quotations verbalized by members of the crowd. Moreover, a DPM has the obligation to assure that disseminated market quotes are

[15] *See* Amendment No. 6, *supra* note 9. As set forth in Amendment No. 6, the MTS Committee will consider whether the DPM has acted in ways that are reasonably designed to make the Exchange competitive with other markets that trade the same securities by considering the Exchange's market share in those multiple-traded options.

[16] *See* Amendment No. 6, *supra* note 9.

[17] *See supra* note 10.

[18] *See* letters from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated July 7, 1999 and February 17, 2000.

accurate, which includes assuring any market maker quote that improves the market is properly disseminated.

Third, Mr. Gelbort suggested that the last sentence of 8.85(a)(ix) could be read to relieve non-DPM market makers of certain market maker obligations while in the presence of a DPM. This sentence states that, in the event of inconsistency between specific DPM obligations in proposed Rule 8.85 and the general market maker obligations found under the market maker rules, the specific obligations applying to the DPM shall govern. The Exchange responded that it did not agree with the commenter's interpretation and stated that proposed Rule 8.85(a)(ix) does not, and will not be interpreted to, relieve market makers of any obligations under the Exchange's rules.

Finally, Mr. Gelbort suggested, in reference to proposed Rule 8.88(c), that MTS Committee members acting as floor officials or otherwise should be specifically precluded from intervening in any dispute that involves an affiliated member or co-employee.

The Exchange responded that current Exchange procedures already preclude such conflicts. The CBOE submitted Regulatory Circular RG96–81, which sets forth committee standards and procedures and specifically provides that a committee member should recuse himself from participation in any committee action if he believes that he may not be able to participate in a fair and impartial manner. In particular, if the committee member has a business relationship with an individual or entity that is the subject of a committee discussion or vote, member recusal would be appropriate. The Exchange believes that this regulatory circular specifically addresses the concerns raised by Mr. Gelbort.

In his comment letter, Mr. Rushlie raised two concerns with the proposed rule change. First, Mr. Rushlie asserted that he believed that the "new" DPM system would limit competition within each pit because non-DPM traders would be forced to "go along with the DPM's markets" or risk being cut out of trades. Second, Mr. Rushlie questioned the validity of the member vote taken to approve the proposed rule change. Specifically, he asserted that seat holders not present on the floor of the Exchange were not given the opportunity to vote on the proposal.

In response to Mr. Rushlie's comments, the Exchange first clarified that the DPM system is not new to the CBOE floor and that the proposal only seeks to reorganize and restructure the current rules applicable to DPMs. The Exchange strongly disagreed with Mr. Rushlie's first concern about market makers being forced to go along with DPMs or risk being cut out of trades. The Exchange stated that any action on the floor that would act to discourage a member from making competitive markets would be a serious rule violation. Further, the Exchange noted that Mr. Rushlie failed to identify any proposed rule that would restrict the ability of a market maker from competing with a DPM to improve DPM markets.

In response to Mr. Rushlie's comment that the vote was invalid because seat owners were not provided with the right to vote on the proposal, the Exchange cited CBOE Rule 8.95.03. This rule states that a trading crowd may decide that it no longer wishes to trade an options class that opened for trading prior to May 1, 1987. Pursuant to this rule, market makers and floor brokers that satisfy specified transaction requirements may vote. The rule, however, does not require that a member own a membership to be eligible to vote. Thus, according to the Exchange, the vote was held in a manner consistent with its rules.

Finally, the Exchange stated that Exchange members were given ample notice and opportunity to vote on the proposal before its submissions to the Commission and that members voted to approve the proposal.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission believes that the proposal is consistent with the requirements of Sections 6(b)(3)[20] and 6(b)(5)[21] of the Act. Section 6(b)(3) requires, among other things, that the rules of an exchange assure a fair representation of its members in the administration of its affairs.[22] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest.[23] Moreover, Section 6(b)(5) requires that the rules of a national securities exchange be designed to not permit unfair discrimination between customers, issuers, brokers, or dealers.[24]

The CBOE's DPM program has been utilized for approximately 13 years. During this time, the program has successfully grown to include 58 DPMs that are allocated over 1400 options classes. The Commission is not aware of any substantial problems arising from the workings of the program and believes that the proposed rules approved today will help clarify and govern the DPM program.

As stated above, the Commission believes that the proposed rule change is consistent with Section 6(b)(3) of the Act.[25] Specifically, proposed Rule 8.82 provides members with the ability to nominate members of the MTS Committee, which is the committee that implements and monitors the DPM program. Further, members will now be able to vote for the candidates for this committee. Currently, the CBOE Board of Directors appoints members of the MTS Committee that are nominated by the CBOE Nominating Committee. By providing members with the opportunity to choose their representation on the MTS Committee, members will now have a voice and be actively involved in the policies and oversight of the DPM system.

The Commission finds that the proposed rules approved today promote just and equitable principles of trade consistent with Section 6(b)(5) of the Act[26] because they provide a cohesive set of rules governing the DPM trading program. For example, proposed Rule 8.85 sets forth an extensive list of obligations to be fulfilled by each DPM. Under this proposed rule, the DPM is required to fulfill all of the obligations under Exchange rules that are applicable to market makers, floor brokers, and order book officials. Proposed Rule 8.85 also sets forth specific DPM obligations, such as the manner in which the DPM must segregate its transactions and the manner in which it must disseminate automatically updated market quotes. These DPM obligations should ensure that the DPM maintains a fair and orderly market in its allocated securities.

The proposed rule also mandates how a DPM must handle customer limit orders and the priority that must be

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[19] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(3).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(3).

[23] 15 U.S.C. 78f(b)(5).

[24] *Id.*

[25] 15 U.S.C. 78f(b)(3).

[26] 15 U.S.C. 78f(b)(5).

afforded to customer orders. Proposed Rule 8.85(b)(i) states that a DPM is required to place in the public order book any order in its possession that is book eligible (subject to two exceptions), while proposed Rule 8.85(b)(ii) requires that a DPM may not remove any order from the public order book, except in two specific circumstances.

One of the exceptions to proposed Rule 8.85(b)(i) states that a DPM is not required to place a book-eligible order in the public order book if the DPM executes the order immediately upon receipt. This exception should ensure investors that have marketable orders receive more timely executions by clarifying that the DPM is not required to first place the order in the public order book if it intends to immediately execute the book-eligible order. The second exception to proposed Rule 8.85(b)(i) allows a DPM to not place a book-eligible order in the public order book if the customer so requests. Upon receipt of such order, however, the DPM must announce the order in public outcry. This requirement should accommodate investors who desire a price improvement opportunity before execution, while also requiring that the order be disclosed to members of the trading crowd so that they are not at an informational disadvantage. These proposed changes should ensure that DPMs handle orders in a fair manner, which should, in turn, help to ensure liquidity and best execution of customer orders.

The Commission also finds that the proposed rules provide protection to investors and the public interest consistent with the requirements of Section 6(b)(5).[27] For example, the definition of the term, DPM, has been amended to allow only member organizations to become DPMs. This modification should ensure that each DPM has a formal organizational structure to govern the manner in which it operates, which should provide investors with a more stable and professional DPM program. In addition, this requirement should enhance the qualifications and abilities of DPMs on the Exchange floor.

The proposed rule change also deletes a provision that allowed DPM nominees, upon departure from the DPM, to request that the DPM's allocated securities be open to reallocation. By eliminating this requirement, the DPM program should have more continuity. Today, according to the Exchange, many DPMs are much larger and nominee turnover is more frequent. Therefore, the departure of nominees does not have the impact it once had and the current rule is no longer justified.

Investors' interests also are protected by the clarified role of the MTS Committee. For example, under proposed Rule. 8.81, the MTS Committee will now have the authority to limit the activities or require the supervision of DPM Designees. This requirement should provide an additional layer of supervision over inexperienced DPM Designees, which should ensure that customer orders are handled properly.

Moreover, the MTS Committee, pursuant to proposed Rule 8.83, must take into consideration many factors in determining whether to allow a member organization to act as a DPM. Such factors include the organization's adequacy of capital, operational capacity, trading experience, regulatory history, and market performance. These factors should ensure that those organizations approved to act as DPMs have the ability to perform successfully and competently. In addition, the MTS Committee will be required to review DPMs on an annual basis pursuant to proposed Rule 8.88. The MTS Committee will review each DPM's operations and performance to determine if the DPM is adequately performing its duties. Although the proposed rule change reduces the number of reviews from quarterly to annually, the annual review conducted by the MTS Committee should be more extensive. Moreover the MTS Committee will continue monitor DPMs throughout the year and address any problems or issues as they may arise.

Proposed Rule 8.86 and the accompanying proposed regulatory circular increase the financial requirements of DPMs. The Commission finds that the increased requirements should enhance investor protections by ensuring that DPMs have sufficient capital to maintain an orderly market for its allocated securities.

Further, the proposal to delegate specific oversight authority to other appropriate Exchange committees should enhance the fair and consistent application of the CBOE's rules and policies for all members. While all Exchange members have be held to the same standards, those standards will now be interpreted and applied by a single committee in a more consistent fashion.

The Commission finds that the transfer rules set forth in proposed Rule 8.89 generally protect the public interest because it provides a detailed procedure that must be followed in the event of a sale, transfer, or assignment of any ownership interest or any change in its capital structure. Because the Exchange has an interest in approving transfers to ensure that its members are qualified and able to execute their obligations, the Commission finds that the proposed rule to be consistent with the Act.

Finally, proposed Rule 8.91 should ensure that DPMs are not involved in inappropriate conflicts of interest, which could potentially harm investors and the integrity of the Exchange. The proposed guidelines for exemptive relief allow DPMs to be affiliated with other persons or entities so long as procedures are established to restrict any improper flow of material, non-public information. The CBOE has proposed to require that a DPM and its affiliates be functionally separate entities, rather than specifically separate organizations, as currently required. The functional separation must include appropriate procedures to restrict the flow of material, non-public information. Thus, a DPM must establish an information barrier between its DPM activities and its affiliate's business activities.

The Commission believes that this proposed structure is consistent with Section 6(b)(5) of the Act[28] because it is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. The CBOE guidelines have been drafted to prevent inappropriate use of non-public information by DPMs and their affiliates that could result in market manipulation. The Commission expects the CBOE to continue to monitor DPMs and their affiliates to ensure that their corporate structures and information barriers continue to satisfy these goals.

The Commission also finds that the proposed rule change is consistent with the requirements of the Act because it clearly sets forth the obligations of DPMs. The Exchange has added new rules, which should provide DPMs with adequate notice of the obligations and duties expected by the Exchange and the procedures and ramifications for failing to adequately comply with such obligations and duties.

The Exchange also proposed to delete paragraph (c)(iii) of proposed Rule 8.85 and added language addressing the same issue to proposed Rule 8.88. This proposed amendment deletes the affirmative obligation that a DPM be required to increase the Exchange's order flow in securities allocated to the DPM. The Commission believes that it is more appropriate to measure a DPM's performance in its allocated securities by considering, among other things, the

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(5).

Exchange's market share in a DPM's allocated securities rather than generically requiring a DPM to act in such a manner to increase the Exchange's market share.

Finally, the commission is satisfied that the Exchange adequately addressed the issues raised in the comment letters. Upon approval of this order, the Exchange represents that it will issue a regulatory circular to inform its members of the changes to the DPM rules. This regulatory circular will replace the current RG97–114 and should minimize member confusion.

The Commission finds good cause to accelerate approval of Amendment Nos. 2 through 6 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. In Amendment No. 2, the Exchange only made non-substantive, grammatical changes to the proposed rule change and did not change the meaning or intent of the proposed rule change. Moreover, the changes submitted in Amendment No. 2 did not raise any issue of regulatory concern regarding the proposed rule change. Therefore, the Commission believes that good cause exists, consistent with Section 6(b)(5) [29] and Section 19(b) [30] of the Act, to approve the amendment on an accelerated basis.

In Amendment No. 3, the Exchange made conforming changes to proposed Rule 8.82 to make it consistent with the proposed changes to the Exchange's constitution.[31] The Commission notes that these changes were approved by the Exchange's membership and have been noticed in the **Federal Register** for public comment. The Commission did not receive any comment on these changes. Thus, the Commission is satisfied that the Exchange's membership and the public received adequate notice and had a reasonable opportunity to comment on these changes and therefore, there changes may be approved without further publication.

In Amendment No. 4, the Exchange reinstated the current provision that prohibits a DPM from initiating a transaction for its own account that would result in a stop or stop limit order, which the DPM represents as agent, from being put into effect except with the approval of a floor official. The Commission believes that this provision provides significant protections for investors and, thus, it is appropriate to accelerate approval.

In Amendment No. 4, the Exchange also deleted a provision of proposed Rule 8.85(b) that would have permitted a DPM, with MTS Committee approval, to represent discretionary orders under unusual circumstances. Given the potential for conflicts of interest in representing such orders, the Commission believes that it is appropriate to accelerate approval of the proposed deletion of this provision.

Finally, in Amendment No. 4, the Exchange clarified the use of DPMs on an interim basis. The Amendment expressly provides that DPMs appointed on an interim basis must satisfy all of the DMP obligations. The Commission believes that this should help protect investors by ensuring that DMPs appointed on an interim basis satisfy all of the organizational and financial requirements that are required of permanent DPMs.

In Amendment No. 5, the Exchange confirmed that any changes to the DMP financial guidelines proposed by the MTS Committee must be submitted to the Commission, pursuant to SEC Rule 19b–4. The Commission is required to review the financial requirements imposed on DPMs as part of its regulatory responsibilities. Thus, Amendment No. 5 did not contain any new issue of regulatory concern.

In Amendment No. 6, the Exchange proposed to add language to proposed Rule 8.85(a)(viii) to make it consistent with the current language of CBOE Rule 8.80(c)(7). Since this change does not change the intent or meaning of the proposed rule change and only made non-substantive changes, the Commission believes that good cause exists to accelerate its approval.

The Exchange also proposed to delete paragraph (c)(iii) of proposed Rule 8.85 and add language addressing the same issue to proposed Rule 8.88. The Commission notes that the Exchange proposed this change in response to concerns raised by Commission staff.

In addition, the Exchange proposed to delete the discretion it proposed to be granted to itself under the Guidelines for Exemptive Relief Under proposed Rule 8.91(e). Instead, the CBOE proposes to allow DMPs and their affiliates to be structured so as to create a functional separation. The Commission notes that the CBOE has based this proposal on language found in the rules of the Pacific Stock Exchange and the International Securities Exchange.[32] The Commission believes that the proposed amended language adequately addresses the potential misuse of material, non-public information between DPMs and their affiliates. Further, the Commission believes that deleting proposed provision granting the non-specific discretion of the Exchange should ensure that the guidelines are applied evenly and consistently.

Finally, in Amendment No. 6, the Exchange clarified that any changes to the formula for determining the participation entitlement, pursuant to proposed Rule 8.87, must be submitted to the Commission, pursuant to Rule 19b–4. Therefore, the Amendment only clarified the Commission's regulatory authority and did not change the meaning or intent of the proposed rule change. Therefore, for the reasons discussed above, the Commission believes that good cause, consistent with Section 6(b)(5) [33] and 19(b) [34] of the Act, to accelerate approval of Amendment Nos. 2, 3, 4, 5, and 6.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 through 6, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld form the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File SR–CBOE–98–54 and should be submitted by August 2, 2000.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [35] that the amended proposed rule change (SR–CBOE–98–54) is approved, and Amendment Nos. 2, 3, 4, 5, and 6 are approved on an accelerated basis.

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[29] 15 U.S.C. 78(f)(b)(5).

[30] 15 U.S.C. 78s(b).

[31] *See supra* note 6.

[32] *See* PCX Rule 4.20 and ISE Rule 810.

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78s(b).

[35] 15 U.S.C. 78s(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17595 Filed 7–11–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43010; File No. SR–CHX–00–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc., To Establish a Board Review Process for Decisions of the Exchange's Committee on Specialist Assignment and Evaluation Regarding Specialist Firm Consolidations

July 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 3, 2000, the Exchange amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XXX, Rule 1, Interpretation .01 to establish a board review process for certain decisions of the Exchange's Committee on Specialist Assignment and Evaluation ("Committee"). The text of the proposed rule change is below. Proposed additions are in italics. Proposed deletions are in brackets.

ARTICLE XXX

Specialists

Registration and Appointment

RULE 1. No change to text.

* * * Interpretations and Policies

.01 Committee on Specialist Assignment & Evaluation

ASSIGNMENT FUNCTION

I. Events Leading to Assignment Proceedings

Pursuant to Article XXX, Rules 1 and 8, the Committee may, when circumstances require, assign or reassign a security. *Eight* [Seven] circumstances may lead to the need for assignment of a security. They are:

1. New listing or obtaining unlisted trading privilege;
2. Specialist request;
3. Corporation request;
4. Split-up and/or merger of specialist units;
5. Fundamental change of specialist unit;
6. Consolidations creating Concentration;
[6.]*7.* Unsatisfactory performance action; or
[7.]*8.* Disciplinary action.

The following guidelines have been adopted by the *Exchange* [Committee] for [its] use in the assignment or reassignment of stocks among co-specialists. These guidelines set forth the general policy [of the Committee] concerning the posting and allocation of stocks. They are not, however, rigid rules to be strictly followed regardless of unique circumstances. These guidelines form only the starting point of [the Committee's] deliberations; they will be applied in light of the facts in each individual case. *An assignment may be made subject to such conditions as are appropriate. If any such condition is not met, the stock shall be immediately posted for reassignment.*

1.–5. No change to text.

6. Consolidations creating Concentration.

(a) Whenever a specialist unit acquires, merges, creates a joint trading account or other profit-sharing arrangement with one or more other specialist units or otherwise comes under common control with one or more other specialist units (a "Consolidation") the assignments of the affected stocks shall be subject to Committee review and approval.

(b) When a Consolidation creates or increases a specialist unit's financial interest in trades constituting 10% or more of the total Exchange trade volume in the three preceding calendar months ("Concentration"), the Committee will consider:

(i) the effect of the consolidation on the specialist units'

A. Capital supporting specialist activities;

B. Experience and quality of management;

C. Experience and performance of co-specialists;

D. Risk controls and procedures;

E. Operational efficiencies; and

(ii) the effect of the consolidation on the Exchange's ability to:

A. Enhance its competitive position;

B. Minimize risk to the financial integrity of the marketplace; and

C. Continue operating in the public interest.

[6]*7.* No change to text.

[7]*8.* No change to text.

II. Assignment Procedures

* * * * *

4. Board Review. The full Board of Governors, excluding those Governors that are co-specialists or affiliates of co-specialists (a "Board Panel"), may on its own initiative review any decision of the Committee involving a change in control or consolidation of a specialist unit. The Board Panel shall give any interested member an opportunity to present its views on the matter. A Committee decision will be final if any member of a Board Panel, within ten days of a Committee decision, does not request that the Board Panel initiate a review. Notwithstanding the foregoing, a Board Panel will review all decisions made with respect to Consolidations creating Concentration. The decision of the Board Panel is final.

[4]*5.* No change to text.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to establish a board review process for certain Committee decisions. Specifically, the Exchange proposes an amendment to CHX Article XXX, Rule 1, Interpretation .01.

The Committee currently is charged with approving the assignment of stocks to specialist firms and their co-specialists, as well as evaluating the performance of such specialists and co-specialists. The Committee also reviews and must approve the transfers of assigned issues that typically occur in connection with the acquisitions of specialist firms by other specialist firms.

The Exchange is experiencing significant consolidation of its specialist firms. The Exchange's Board of Governors ("Board") believes that specialist firm consolidations, and the concentration of business that can result from these consolidations, can raise issues that are significant in the context of the Exchange's long-term business plan and operational forecasts. These issues are beyond those typically addressed by the Committee in the ordinary stock allocation process. The Board thus has determined that it is

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[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* March 31, 2000 letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the Exchange made minor, technical changes to the proposal.

both appropriate and necessary for the Board to review Committee decisions that raise the broader issues referenced above. Accordingly, the Board has approved a procedure for discretionary, and in certain cases mandatory, Board review and approval of stock assignment transfers in the case of specialist firm consolidations, and for discretionary authority to review and approve transfers of assigned stocks in circumstances where there is a change in control of a specialist firm.

Under the proposal, the Committee will continue to review transfers of assigned stocks in connection with specialist firm consolidations or changes in control of specialist firms, subject to the following new review procedures. A Board panel, composed of all Board members that are not affiliated with specialist firms may review (on a discretionary basis) any Committee decision regarding the transfer of assigned stocks in connection with consolidation [4] of specialist firms or a change in control of a specialist firm, if a member of the Board panel requests discretionary review within 10 days of a Committee decision. If no discretionary review is requested within this period, the Committee decision with respect to the proposed transfer or assigned stocks will become final. If the specialist firm consolidation will create or increase concentration [5] in specialist firms, however, review by the Board panel will be mandatory and no panelist need request the review.

The Exchange believes that the proposed procedures will enable the Exchange to better monitor and regulate the long-term business and operational effects of business combinations among specialist firms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and with the requirements of Section 6(b).[6] In particular, the Exchange believes the proposed rule is consistent with Section 6(b)(5) of the Act [7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–00–08 and should be submitted by August 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17596 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43003; File No. SR–NASD–00–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Mandatory Decimal Pricing Testing

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2000, the National Association of Securities Dealers, Inc. ("NASDA" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated the proposed rule change as one concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to add a new rule, Rule 3420, to the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to require clearing firms and market makers that are members to conduct or participate in the testing of their computer systems to ascertain decimal pricing conversion compatibility of those systems. The text of the proposed rule change is available at the NASD and at the Commission.

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[4] "Consolidation" of two or more specialist firms includes acquisitions, mergers, creation of joint trading accounts and other profit sharing arrangements, as well as the combining of specialist firms under common control.

[5] "Concentration" means a financial interest in trades constituting 10% or more of total Exchange trade volume.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require clearing firms and market makers that are members of the NASD to conduct or participate in the securities industry's decimalization pricing tests to ensure that conversion to decimal pricing occurs successfully and with minimal disruption of the markets.[4] The proposed rule change will assist the Association in implementing the SEC's recent Order Directing the Exchanges and NASD to Submit a Decimalization Implementation Plan[5] ("SEC Order"), which directs certain securities industry participants to develop a plan for conversion to decimal pricing. The NASD believes that the proposed rule change, which mandates testing by and among securities industry participants, will play a critical role in ensuring a successful conversion to decimal pricing.

To ensure that its members successfully transition to decimalization, the NASD has been working to prepare the industry for conversion to decimal pricing by requiring testing by and among industry participants.

In particular, the testing by and among industry participants mandated by the proposed rule change will be critical to: (1) Ensuring compliance with the SEC Order; (2) successfully converting the U.S. market to decimal pricing; (3) minimizing any disruption to the markets as a result of such conversion; and (4) reducing the impact of conversion on investors.

The proposed rule change provides authority to the NASD to require participation in organized, industry-sponsored tests, and to require "point-to-point" testing between member firms and the NASD and other industry systems. The decimalization testing is expected to be implemented in stages.

Member testing will focus on those firms that the NASD believes could cause the most disruption to the securities markets if their computer system were not able to accommodate decimal pricing—specifically clearing firms and market making firms. The NASD proposes to require market makers and clearing firms to conduct or participate in testing of their computer systems to ascertain the decimal pricing conversion compatibility of such systems.

In connection with the proposed rule change, the NASD intends to issue Notices to Members specifying members' reporting and testing obligations sufficiently in advance of specific testing events to provide members with adequate time to comply. While it is expected that each Notice to Members will be issued with sufficient time for members to comply with a particular testing requirement, nothing in this rule relieves member firms of their ongoing obligation to take all necessary steps so that they may function properly upon industry conversion to decimal pricing.

In addition, the proposed rule change requires firms to provide the NASD with any reports concerning the results of industry tests. Members also would be responsible for maintaining adequate documentation of any tests performed and would be required to make such documentation available for examination by NASD staff.

To assist with reporting test results to the NASD, the staff will design a standardized format for firms to use. Individual member firm testing result reports will not be publicly available, but will be provided to the Securities and Exchange Commission upon request. NASD staff will collect, review and analyze these reports and compile periodic consolidated reports that will be made available to the Securities and Exchange Commission and to others generally to evaluate the progress of the testing effort and the readiness of certain NASD members. In addition, the NASD believes that the individual reports from members will enable the NASD to identify those members that have not adequately prepared for decimal pricing conversion so that appropriate action can be taken to address these members' deficiencies. Any member that is subject to testing and fails to participate in the tests or fails to file any required reports or surveys will be subject to disciplinary action.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that that the proposed rule is necessary to protect investors and the public interest. The proposed rule change, which requires certain members to conduct or participate in decimal pricing testing, and to file reports about the tests, will enable the NASD and the SEC to evaluate the readiness of the securities industry for decimal pricing. The scope of firms subject to the rule is limited to those firms that perform critical functions in the markets and if they were unable to perform these functions upon industry conversion to decimal pricing, could cause disruptions in the markets and, consequently, harm investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately under Section 19(b)(3)(A)(iii) of the Act[6] and subparagraph (f)(3)[7] of Rule 19b–4 thereunder,[8] in that it is concerned solely with the administration of the self-regulatory organization. At any time

[4] The current practice in the U.S. equities markets is to quote security prices in fractions. Decimalization is the conversion of securities industry systems from fractional to decimal pricing. The U.S. securities markets are the only major markets that do not price securities in decimals.

[5] Securities Exchange Act Release No. 42914, (June 8, 2000), 65 FR 38010 (June 19, 2000).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] Inititally, the proposed rule change was filed under subparagraph (f)(1) of Rule 19b–4. This error was corrected by letter dated June 29, 2000. *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine England, Assistant Director, SEC.

[8] 17 CFR 240.19b–4(f)(5).

within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–40 and should be submitted by August 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17547 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43011; File No. SR–Phlx–00–28]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Divide Its Allocation, Evaluation and Securities Into Two Separate Committees

I. Introduction

On March 28, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change that would divide its Allocation, Evaluation and Securities Committee into two separate committees, one for equities and one for options. The proposed rule change was published for comment in the **Federal Register** on May 30, 2000.[3] The Commission received no comments on the proposal. This order approves the Phlx's proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Phlx By-Law Article X, Section 10–7 to divide its Allocation, Evaluation and Securities Committee into two separate committees: an Equity Allocation, Evaluation and Securities Committee and an Option Allocation, Evaluation and Securities Committee. The Exchange also proposes to amend Phlx Rule 500 to reflect the changes in the amended By-Law.

Currently, the Allocation, Evaluation and Securities Committee is composed of one Public Governor, one Non-Industry Governor, three persons who conduct a public securities business, two persons who are active on the equity trading floor, and two persons who are active on the options trading floor.[4] The committee is responsible for appointing specialist units on each floor,[5] approving the transfer of equities and options among specialist units on each floor,[6] allocating equities and options to specialist units on each floor;[7] evaluating the performance of specialist units on each floor,[8] reallocating equities and options from one specialist unit to another on each floor;[9] and supervising questions pertaining to securities admitted to dealings on the Exchange.[10]

Under the proposal, each new committee will consist of nine members. Five persons will be members of both new committees: three off-floor persons who conduct a securities business, one Non-Industry Governor, and one Public Governor. Of the two Governors, one will chair both committees. The remainder of the Equity Allocation, Evaluation and Securities Committee will consist of four persons who are active on the equity trading floor as floor brokers or specialists. The remainder of the Option Allocation, Evaluation and Securities Committee will consist of one person who is active on the options trading floor as a floor broker and three persons who are active on the options trading floor as specialists, registered options traders, or floor brokers.

Each new committee will consist of core members, who will serve a three-year term that will be renewable once, and annual members, who will serve a one-year term that will be renewable twice. The core members of the Equity Allocation, Evaluation and Securities Committee will consist of three persons who conduct a public securities business and two persons who are active on the equity trading floor as specialists or floor brokers. The annual members of the Equity Allocation, Evaluation and Securities Committee will consist of the Public Governor, the Non-Industry Governor, and two persons who are active on the equity trading floor as specialists or floor brokers. The core members of the Option Allocation, Evaluation and Securities Committee will consist of three persons who conduct a public securities business, one person who is active on the options trading floor as a floor broker, and one person who is active on the options trading floor as a specialist, registered options trader, or floor broker. The annual members of the Option Allocation, Evaluation and Security Committee will consist of the Public Governor, the Non-Industry Governor, and two persons who are active on the options trading floor as specialists, registered options traders, or floor brokers.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.[12] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Exchange's proposal will split the existing Allocation, Evaluation and Securities Committee, which has some members who are active on the equities floor and some who are active on the options floor, into two new committees.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 42800 (May 19, 2000), 65 FR 34521.

[4] *See* Exchange Rule 500.

[5] *See* Exchange Rule 501.

[6] *See* Exchange Rule 508.

[7] *See* Exchange Rule 511(b).

[8] *See* Exchange Rules 511(c) to 511(e) and 515.

[9] *See id.*

[10] *See* Exchange Rules 800 to 899.

[11] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

Currently, these floor members, along with the rest of the committee, evaluate specialists and vote to allocate securities to specialist regardless of whether their particular experience is in equities or options. After formation of the two new committees, persons who are active on one of the floors will be members only of the committee that governs their floor. The Commission believes that dividing the committees in this manner will bring greater expertise to the Exchange's allocation and evaluation function, while at the same time preserving independent views on each of the two committees. Accordingly, the Commission believes that the proposed rule change will promote just and equitable principles of trade and benefit investors by ensuring that each new committee includes individuals, with more specific expertise, responsible for allocating securities to, and evaluating the performance of, specialists.

IV. Conclusion.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–00–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17597 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3270]

State of Texas

Brown County and the contiguous counties of Callahan, Coleman, Comanche, Eastland, McCulloch, Mills, and San Saba in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and flooding that occurred on June 15, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 28, 2000 and for economic injury until the close of business on March 29, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.375
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.687
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	6.750
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000%

The numbers assigned to this disaster are 327011 for physical damage and 9H6100 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 29, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–17559 Filed 7–11–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3360]

Culturally Significant Objects Imported for Exhibition Determinations: "The Arts of Hon'ami Koetsu, Japanese Renaissance Master"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Arts of Hon'ami Koetsu, Japanese Renaissance Master" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Philadelphia Museum of Art, Philadelphia, PA from July 29, thru October 29, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 28, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–17256 Filed 7–11–00; 8:45 am]

BILLING CODE 4710–8–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

T.F. Green Airport, Warwick, Rhode Island; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Rhode Island Airport Corporation under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On December 22, 1999, the FAA determined that the noise exposure maps submitted by the Rhode Island Airport Corporation under Part 150 were in compliance with applicable requirements. On June 15, 2000, the Acting Associate Administrator approved the T.F. Green Airport noise compatibility program. Of the 47 proposed program elements, 40 were approved and the remaining 7 were acknowledged as needing no FAA approval.

EFFECTIVE DATES: The effective date of the FAA's approval of the T.F. Green Airport noise compatibility program is June 15, 2000.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region,

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 238–7602.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the T.F. Green Airport noise compatibility program, effective June 15, 2000.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150.

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA regional Office in Burlington, Massachusetts.

The Rhode Island Airport Corporation submitted to the FAA, on November 4, 1999, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from March 1998 to November 1999. The T.F. Green Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on December 22, 1999. Notice of this determination was published in the **Federal Register** on January 5, 2000.

The T.F. Green study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2003. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on December 22, 1999, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 47 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Acting Associate Administer effective June 15, 2000.

Of the 47 proposed program elements, 40 were approved and the remaining 7 were acknowledged as needing no FAA approval. The 47 program elements include construction of a parallel taxiway and noise barriers, a voluntary nighttime use restriction between midnight and 6 am for scheduled air carriers and discouragement of engine maintenance run-ups during this period, discouragement of engine start-ups and auxiliary power units prior to the end of the 6 am voluntary use restriction period, designation of close-in noise abatement departure procedures for various runways, establishment of air traffic control procedures for noise abatement, voluntary acquisition of approximately 210 residences within or adjacent to the 70 DNL noise contour, sound insulation of approximately 830 residences between the 65 DNL and 70 DNL noise contours, implementation of a formal Fair Disclosure Policy for real estate within the 65 DNL noise contour, a recommendation that the city of Warwick update its Comprehensive Plan to address the influence of the airport on surrounding community land use, investigation into the sound insulation of two schools outside of the 65 DNL noise contour, installation of a permanent noise monitoring system, implementation of a "Fly Quiet" public relations program, establishment of a continuing noise abatement committee to monitor and assist in the implementation of various noise abatement measures, further study analyze the possible extension of Runway 16–34 for noise abatement purposes, and continuation of various program measures from the 1986 approved Noise Compatibility Program.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Acting Associate Administrator on June 15, 2000. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Rhode Island Airport Corporation, T.F. Green Airport, 2000 Post Road, Warwick, RI.

Issued in Burlington, Massachusetts on June 22, 2000.

Bradley A. Davis,

Acting Manager, Airports Division, New England Region.

[FR Doc. 00–17611 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–01–I–00–TTN To Impose the Revenue From a Passenger Facility Charge (PFC) at Trenton Mercer Airport, West Trenton, New Jersey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose the revenue from a PFC at Trenton Mercer Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA–NYADO, Mr. Philip Brito, Suite 446, 600 Old County Road, Garden City, N.Y. 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Trenton Mercer Airport, Mr. Justin P. Edwards, Airport Manager at the following address: Trenton Mercer Airport, Terminal Building, Sam Weinroth Road, West Trenton, N.J. 08628.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Trenton Mercer Aiport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Vornea, P.E. Airport Manager, Airports District Office, FAA–NYADO Suite 446 600 Old County Road, Garden City, New York 11530, Telephone (516) 227–3812. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose the revenue from a PFC at Trenton Mercer Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 22, 2000, the FAA determined that the application to impose the revenue from a PFC submitted by Trenton Mercer Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 12, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–01–I–00–TTN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2001.

Proposed charge expiration date: May 30, 2042.

Total estimated PFC revenue: $15,300,000.

Brief description of proposed project: Design and Construction of New Terminal Building Project.

Class and classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO—Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airport office located at: Federal Aviation Administration, Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York, 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Trenton Mercer Airport.

Issued in NYADO, Garden City, N.Y. on June 26, 2000.

Philip Brito,

Manager, NYADO, Eastern Region.

[FR Doc. 00–17612 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance; Petition for Exemption for Technological Improvements

In accordance with title 49 Code of Federal Regulations (CFR) sections 211.9 and 211.41, and 49 U.S.C. 20306, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations and a request for exemption of certain statutory provisions. The individual petition is described below, including the party seeking relief, the regulatory and statutory provisions involved, the nature of the relief being sought, and the petitioner's arguments in favor of relief.

New Jersey Transit Corporation (NJ Transit)

Newark City Subway System (NCS)

[FRA Waiver Petition No. FRA–2000–7335]

New Jersey Transit Corporation (NJ Transit) hereby seeks approval of shared use and waiver of regulations from the Federal Railroad Administration (FRA) for the portion of the light rail transit passenger operations of the Newark City Subway System (NCS) that operates on the general railroad system, as described in this Petition and its Exhibits.

New Jersey Transit Corporation (NJ Transit), seeks a permanent waiver of compliance from certain CFR parts of Title 49, specifically: part 219, Control of Alcohol and Drug Use; part 220, Radio Standards and Procedures; part 221, Rear End Marking Device—Passenger, Commuter and Freight Trains; part 223, Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses; part 225, Railroad Accidents/Incidents—Reports Classification, and Investigations; part 229, Railroad Locomotive Safety Standards; part 231, Railroad Safety Appliance Standards; Part 238, Passenger Car Safety Standards; part 239, Passenger Rail Emergency Preparedness; part 240, Qualification and Certification of Locomotive Engineers, as well as the statutory requirements of 49 U.S.C. 20301 through 20305 and 49 U.S.C. 21101 through 21108.

NJ Transit seeks approval of shared track usage and waiver of certain FRA regulations involving light rail passenger operations on the Newark City Subway System (NCS). Currently, the NCS is a 4.3 mile, double-track light rail transit system that operates on an exclusive right-of-way in Newark, New Jersey. Presently, the NCS is a rapid transit system in an urban area not connected with the general railroad system. NJ Transit is involved in the construction of an 0.9-mile extension of the NCS which includes a portion of the Norfolk Southern (NS) Orange Industrial Track. NS will use a 0.24-mile portion of one of the tracks on this reconfigured 0.6-mile segment to maintain its operations to serve one freight customer. NCS and NS service on the Shared Track will be temporally separated. See FRA/FTA Proposed Policy Statement at 28241 (64 FR 28238; May 25, 1999).

In each section entitled "Justification," FRA merely sets out NJT Transit's justifications which are included in its petition. In doing so, NJT Transit references the proposed Joint Policy Statement on Shared Used of the General Railroad System issued by FRA and the Federal Transit Administration

(FTA) (64 FR 28238; May 25, 1999) ("FRA/FTA Policy Statement"). The proposed policy statement suggests that regulation of light rail service on the general rail system, under conditions of temporal separation from conventional rail movements, be handled through application of complementary strategies. FRA regulations would generally be employed to address hazards common to light rail and conventional operations for which consistent handling is necessary, while other hazards would be handled under FTA's program of State Safety Oversight (49 CFR part 659). See FRA/FTA Policy Statement for details.

Since FRA has not yet concluded its investigation of the planned NCS, the agency takes no position at this time on the merits of NJ Transit's stated justifications. As part of FRA's review of the petition, FTA will appoint a representative to FRA's Safety Board, and that person will participate in the board's consideration of NJ Transit's waiver petition.

Part 217—Railroad Operating Rules

Part 217 requires each railroad to provide training to employees on the operating rules and perform periodic operational tests to monitor compliance with the operating rules, pursuant to a written program. Under this part, each railroad must also retain testing records and file (or keep available in the case of Class III railroads) a copy of its operating rules with FRA. These requirements are intended to ensure the safety of railroad operations through employee knowledge of and compliance with operating rules.

Justification

NJ Transit requests a waiver from all of the requirements of this part. Training and testing on NCS operating rules are conducted pursuant to NJ Transit Light Rail Operations training requirements. The purpose of the training requirements is to produce an operator who can provide an optimum degree of safety to all employees, customers, and the general public. The initial operating rules training lasts for 7 days, and incorporates lectures, demonstrations and practical exercises. Employees are re-certified annually in operating rules and practices. These are described in Light Rail Operations Safety Rules & Procedures for Employees (LRT Rules and Procedures) and Light Rail Re-Certification Training Manual which contain additional operator training and testing requirements. These requirements will ensure that the NJ Transit employees know and comply with NJ Transit operating rules.

NJ Transit must submit its System Safety Program Plan (SSPP) and Operating Rules to the New Jersey's State Safety Oversight Board (Oversight Board) for review and approval. NJ Transit conducts initial and annual training for employees on the operating rules and conducts employee operational testing and rules inspections on a periodic basis. Employees are recertified on the operating rules annually. Employees receive reinstruction on the operating rules if they are involved in an accident, misuse of equipment, or unsafe acts. Employees also receive reinstruction if they have been away from subway operations for a period of 90 days or more, out sick for an extended period of time, or if reinstruction is requested by management. By start-up of operations on the NCS Extension, records of initial, annual and periodic employee testing and the LRT Rules and Procedures will be available for review by FRA during business hours. See FRA/FTA Policy Statement at 59054, 59056.

Part 219—Control of Alcohol and Drug Use

Part 219, Control of Alcohol and Drug Use, prescribes minimum Federal safety standards for the control of alcohol and drug use by railroad workers for the purpose of preventing accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

Justification

NJ Transit requests a waiver of all of the requirements of part 219 because all of the employees assigned to the NCS who would otherwise be covered employees under this part are already covered employees subject to NJ Transit's existing drug and alcohol program under the FTA rules at 49 C.F.R. Part 653, Prevention of Prohibited Drug Use in Transit Operations and part 654, Prevention of Alcohol Misuse in Transit Operations. NJ Transit's drug and alcohol program incorporates: drug and alcohol screening for new employees; an employee assistance program; drug and alcohol testing for persons receiving a bi-annual physical as part of the Commercial Driver's License requirements, and; random, post-accident, and reasonable suspicion drug/alcohol screening.

The FTA regulations apply to recipients of Federal mass transit funds except those "specifically excluded" because those recipients are operating railroads regulated by FRA. 49 CFR 653.5; 49 CFR 654.5. In such cases, a recipient is to follow the FRA regulations in 49 CFR part 219 for its railroad operations. Id. However, such a recipient is still required to certify that it is in compliance with applicable rules and to comply with parts 653 and 654 for its "non-railroad operations." Id. NJ Transit is a recipient of Federal mass transit funds, and therefore, is subject to these compliance certification provisions. Subjecting NCS employees to FRA regulations would create an administrative burden for NJ Transit, both in terms of cost and in terms of recordkeeping.

If granted a waiver from the requirements of part 219, NCS light rail operations would remain under the regulatory jurisdiction of FTA. NCS employees are employed by NJ Transit Bus Operations, Inc. and tested with bus operators and supervisors. Most other safety functions for NCS employees also are administered through NJ Transit Bus Operations, Inc. All of the employees assigned to the NCS LRT operation that would otherwise be covered employees under part 219, would remain covered employees under FTA's rules at parts 653 and 654. Application of the FTA drug and alcohol rules will provide an equivalent level of safety consistent with the policy underlying part 219. A basic review of the respective FRA and FTA regulations reveals that they are quite similar in purpose, structure and substance. Both regulations are intended to enhance safety by prohibiting and eliminating misuse of drugs and alcohol that might otherwise result in accidents and injuries to employees and the traveling public. Both regulations provide for procedural and recordkeeping requirements safeguarding the integrity of the program and providing privacy and due process protections for covered employees. Finally, both sets of regulations prohibit impaired employees from performing safety sensitive functions and require testing in the same situations (random, post-accident, reasonable suspicion, return-to-duty and pre-employment).

Although there are differences between the regulations, there are no major policy differences with respect to the need to eliminate drug and alcohol misuse and the primary importance of safety in transportation operations. The most obvious difference involves the application of penalties for non-compliance. Under FRA rules, a regulated entity found to be in violation of the rule may be subject to civil penalties in accordance with a published schedule. The FTA regulations do not contain such a civil penalty structure. However, under FTA regulations, compliance is a condition for eligibility for receipt of Federal

funds. Non-compliance can result in suspension of eligibility for applicable Federal funding altogether. Thus, the severity of the potential penalty suspension and funding eligibility under FTA rules serves as a deterrent in the same way as does the FRA civil penalty program.

Application of the FTA regulations will provide a level of safety equivalent to that provided by the FRA regulations. This request is consistent with FRA's position on the appropriate treatment of this Part. See FRA/FTA Policy Statement at 59054, 59056.

Part 220—Railroad Communications

Part 220 sets forth minimum requirements governing the availability and use of radios and other wireless communications equipment in connection with railroad operations and right-of-way maintenance. These requirements are intended to enhance operational safety by facilitating communications among railroad employees and offices through the availability of radios and the use of standardized communications protocols.

Justification

NJ Transit requests a waiver from all of the requirements of this part because radio communications on the NCS are conducted according to the requirements of the NCS SSPP. In addition, because of the strict temporal separation, there will be little need for communication between NCS personnel and personnel of NS. Primary indication of track occupancy is provided by the train control system. The NCS has redundant means of communicating, including two-way mobile and base radios, and a remote OCC two-way base radio. All NCS maintenance workers are equipped with two-way radios for communication with each other and the OCC. The LRT Rules and Procedures stipulate communications protocols addressing content and priority of communications, as well as emergency communications, identification of speakers, employee training and testing regarding proper use of radios. Paragraph 3012 states that all two-way radio transmissions are governed by the Federal Communications Commission regulations. LRT Rules and Procedures, E. Compliance with the LRT Rules and Procedures is also monitored as required by Section 4.4 of the SSPP. The LRT Rules and Procedures provide for an equivalent level of safety as FRA rules. This request is consistent with the FRA's position on the appropriate treatment of this part. Statement Concerning Jurisdiction at 59054, 59056.

Section 221.14(a)—Rear End Marking Device

Section 221.14(a) requires that passenger, commuter, and freight trains be equipped with at least one such compliant marking device, which has been approved by FRA in accordance with the procedures included in Appendix A of part 221, and which has specific intensity, beam arc width, color and flash rate characteristics. The requirements are intended to reduce the likelihood of rear-end collisions attributable to the inconspicuity of the rear-end of a leading train.

Justification

NJ Transit requests a waiver from this requirement because the NCS vehicle are equipped with lights and reflectors similar to those required for highway vehicles as contained in NJDOT regulations. The NJDOT regulations adopt and incorporate by reference the Federal Highway Administration's ("FHWA") Federal Motor Carrier Safety Regulations found at 49 CFR part 393. The external illumination on the NCS vehicles includes headlights, turn signals, tail and brake lights, reflectors, clearance lights, and marker lights at each end of the bi-directional NCS vehicles. In addition, marker lights, turn signal lights, and a reflecting strip, are located on the side of the vehicle. One headlight is mounted next to each brake light, with the headlights capable of being switched from low to high beam. Turn signal lights are visible from both the front and the side of the vehicle. The mounting height and candela value of the lights provided is consistent with the FHWA requirements for commercial motor vehicles. See 49 CFR part 393.

In addition, a railroad lamp is mounted at the center top of each end of the vehicle. The railroad lamp, which has high and low beam capability, is designed for use in dedicated track territory. This lamp meets the applicable requirements of 49 CFR 229.125.

The NCS vehicles have tail and brake light and marker lights to define the end contour of the vehicle, substantially similar to the marking devices required by FRA regulations. NJ Transit submits that safety on the Shared Track will not be compromised by the use of the NCS marking devices. The variation in illumination levels between NCS vehicles and NS trains is not material because of the temporal separation of the operations. The exterior lighting of the NCS vehicle will make the rear of the vehicles conspicuous to following vehicles and temporal separation will mean that freight trains will not follow behind leading NCS vehicles.

Section 223.9(c)—Glazing Requirements

Section 223.9(c) requires that passenger cars be equipped with FRA certified glazing in all windows. This requirement is intended to reduce the likelihood of injury to passengers and/or employees from breakage and shattering of windows (including windshields) and to avoid ejection of passengers from the vehicle in a collision.

Justification

NJ Transit requests a waiver of this requirement for NCS vehicle side windows. FRA will not permit operations on the general system in the absence of effective alternatives to the requirements of this part that provide an equivalent level of safety. Petitioners seeking waiver of this requirement should explain what equivalent safeguards are in place to provide assurances that passengers and crew members are safe from the effects of objects striking the vehicle's windows. Statement Concerning Jurisdiction at 59053. FRA has acknowledged that a transit system that has an SSPP developed under FTA's rules may be able to demonstrate that the Plan satisfies the safety goals of this part. Id. FRA also has recognized that temporal separation can form the basis for a grant of a waiver from safety glazing requirements. In FRA's waiver decision with respect to the Southern New Jersey Light Rail Transit (SNJLRT) project, FRA granted a waiver from the requirements of Section 223.9(c) based upon recognition that "a transit authority providing service on the general rail system under time separated arrangements should have wide latitude to select equipment well suited to the particular service requirements."

NCS vehicle side windows will conform to the side impact requirements of "American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways." Glass meeting this standard is break-resistant in normal usage, but can be broken with a standard rescue tool, such as a pry bar or punch, in an emergency. Upon breaking, the glass "crumbles" into pebble-like pieces, posing no significant hazard to passengers, employees or rescue personnel. The use of such safety glass windows is standard throughout the rail transit industry, where it has proved both durable and safe.

In addition, the risk associated with vandalism (such as by ballast or other objects thrown against the windows) is addressed from an operations standpoint in the SSPP. Sections 7.0 and 8.0 of the SSPP contain the NCS Security Program tasks and verification procedures. The NCS right-of-way is monitored by Closed-Circuit TV. The NJ Transit Police Department has primary responsibility for NCS security, including assessment and corrective action with respect to facility and equipment damage, vandalism and trespassing. NJ Transit has developed Standard Operating Procedures ("SOP's") intended to accomplish security goals, including SOP's regarding patrolling facilities and vehicle operator procedures for handling security threats. There is no reason to believe that the NCS vehicle side windows will pose any safety hazard in NCS operations on the Shared Track. The crumble characteristics of the NCS vehicle side windows, the NCS SSPP and NCS temporal separation from freight operations together offer necessary equivalent safety for Shared Track operations.

Section 223.15(c)—Emergency Window Requirements

Section 223.15(c) requires each passenger train car to be equipped with at least four emergency windows designed to permit rapid and easy removal during an emergency. This requirement is intended to enhance safety by providing emergency egress in addition to egress through vehicle doorways.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicles are not manufactured with designated emergency windows. The vehicles, however, are designed to permit equivalent or superior emergency exit options. Each vehicle has nine passenger windows on each side, all of which are made of safety glass and are bonded to the sidewalls. All of these windows are large (approximately 48 inches long by 36 inches high) when compared with conventional commuter rail cars, can be broken with standard rescue tools and can function as emergency windows if necessary. Furthermore, the NCS vehicle doorways provide greater access/egress capability than is found on conventional commuter rail cars. Each vehicle has four sets of double doors on each side of the vehicle. The minimum clearance height of each doorway is 80 inches and the flow lane width of each doorway is at least 24 inches (48 inches in total for each doorway). The vehicle is designed such that the egress time of an AW2 load shall not exceed 60 seconds, calculating egress assuming a flow rate of 2 seconds per passenger per flow lane. The doors are releasable through an emergency release lever located on the inside of each doorway and from at least one doorway per side on the outside of the vehicle. This will enable a closed and interlocked door to be lock-released without power supply. Activation of the emergency release levers allows the door leaves to be manually operated. The interior door release levers are clearly marked and in a location accessible to all passengers, compliant with ADA and FRA marking requirements. These release lever features enable quick and easy opening of the doors by passengers, equivalent to FRA emergency exit window requirements.

The doorways are designed to provide the main means of emergency access/egress and because the large windows can function as additional emergency access/egress points, there is very little risk of passengers becoming trapped or rescue personnel being unable to reach passengers. The NCS SSPP contains emergency response plan requirements that include passenger evacuation and crowd control planning.

Section 223.9(d)—Emergency Exit Window Markings

Section 223.9(d) requires that each emergency window be conspicuously and legibly marked with luminescent material on the inside of each car and that clear and legible operating instructions be posted at or near each such window. This section also requires that each window intended for access by emergency responders for extrication of passengers be marked with a retroreflective, unique and easily recognizable symbol or other clear marking and that clear and understandable window-access instructions be posted at each such window or at the end of each car. These requirements are intended to distinguish emergency windows from other windows and provide information on the operation of the emergency windows.

Justification

NJ Transit requests a waiver from these requirements because all side windows on the NCS vehicles are suitable for use in the event of an emergency. It would make no sense and, in fact, could cause confusion to mark any particular side set of windows as designated "emergency windows." All side windows can be broken with standard rescue tools and can function as emergency windows if necessary. Thus, identification of some windows as "emergency windows," and the posting of special operating instructions is not appropriate in this instance and is not necessary for safe emergency egress from the NCS vehicle. Enforcing the marking requirements will not serve the intended safety purpose. In the SNJLRT Waiver Letter, FRA granted NJ Transit's request for relief from the emergency window exit requirements, including the marking requirements. FRA indicated that it believed that emergency egress and rescue access for the vehicle should be resolved through the SSPP process. NJ Transit assumes that FRA would have the same concerns and recommendations here. Accordingly, NJ Transit intends to work with NJ Department of Transportation State Safety Oversight Program to address emergency egress and rescue access. Emergency preparedness drills will be carried out on LRTs on an annual basis. For the foregoing reasons, enforcing the marking requirements would not serve the intended safety purpose.

Part 225—Accident Reporting and Investigation

Part 225 prescribes reporting requirements for equipment and grade crossing accidents and employee injuries meeting specified thresholds. Part 225 also provides for recordkeeping and retention policies, and FRA accident investigations. These requirements support FRA's enforcement efforts and provide information to detect trends on an industry-wide basis.

Justification

NJ Transit requests a waiver of the reporting and investigation requirements for injuries because NJ Transit will be following the injury reporting requirements prescribed in Section 4.3 of the SSPP. NJ Transit intends to comply with injury reporting and investigation requirements in the event of grade crossing accidents.

Employee injuries are subject to FTA rules, and therefore provisions for reporting and investigating employee injuries are included in the SSPP. Pursuant to the SSPP, any employee responsible for the operation or maintenance of the NCS having direct knowledge of an accident or an incident that results in an injury must file a written report. Minor employee injuries such as those requiring first aid or a near miss must be investigated by the Supervisor, Claims Department. Employee injuries of moderate severity

resulting in medical treatment and/or lost time must be investigated by the Supervisor of both the Claims Department and Safety Department, depending upon the severity and circumstances of the injuries. Major injuries involving either serious injury or death must be investigated in-depth by the Supervisors of the Claims and Safety Department. The Safety Department must maintain an investigation recommendation matrix and a follow-up database to track implementation of recommendations. Pursuant to the NJ State Safety Oversight Program, NJ Transit must submit a monthly statement of among other things, injuries to passengers or employees.

If an accident results in a passenger or employee fatality; a fatality occurs at a grade crossing; or two or more employees or passengers are seriously injured requiring admission to a hospital, NJ Transit must provide verbal notification to the National Transportation Safety Board and the NJDOT within two hours of occurrence of the incident. The verbal notification must be followed by submittal of a written report. Records of injuries are maintained at NCS headquarters and may be made available upon FRA request during business hours.

FTA rules require NJ Transit's SSPP to contain provisions for reporting and maintaining records of certain injuries. Therefore, NJ Transit has an interest in establishing a system for uniform reporting of injuries. In addition, NJ Transit is responsible for compliance with applicable workplace injury reporting requirements contained in the New Jersey Public Employee's Occupational Safety and Health Act. The New Jersey Public Employee's Occupational Safety and Health Act is intended to adopt all applicable occupational health and safety standards of, and be as effective as, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* See N.J.A.C. 12:100, Safety and Health Standards for Public Employees; see also N.J.S.A. 34:6A–29(g) and 34:6A–30(a).

NJ Transit must already comply with FTA and New Jersey Public Employee's Occupational Safety and Health Act reporting requirements for injuries on the NCS. Requiring NJ Transit to also comply with FRA regulations would place an unnecessary administrative burden on NJ Transit. NJ Transit's system for recording, reporting and investigating injuries will be equally effective as FRA regulations in terms of preserving important data on injuries. This request is consistent with FRA's position on the appropriate treatment of part 225 as stated in the Statement Concerning Jurisdiction. See FRA/FTA Policy Statement at 59054, 59056.

Section 229.125—Headlights and Auxiliary Lights

Sections 229.125(a) and (d) require locomotives to have headlights and auxiliary lights of specified brightness and placement on the vehicle. The purpose of these requirements is to reduce the risk of collisions attributable to inconspicuity of the train.

Justification

NJ Transit requests a waiver from these two requirements of Section 229.125. The NCS vehicles have headlights and auxiliary lights that together present a triangular pattern and make the vehicles conspicuous to motor vehicles at grade crossings. However, the headlights and auxiliary lights do not match the dimensions set forth in Section 229.125(d) and the lights are not as bright as prescribed in Section 229.125(a).

FRA has stated that it is important for all locomotives (including LRT vehicles meeting the definition of "locomotive" or "cab car") to present the same distinctive headlight-auxiliary light profile to motor vehicle operators approaching grade crossings in order to reduce the risk of grade crossing accidents. Statement Concerning Jurisdiction at 59053. FRA is amenable to light rail headlights being less bright than conventional locomotive headlights. Id. FRA is willing to grant waivers of part 229, including Sections 229.125(a) and (d), provided that a petitioner explains how its practices will provide for the safe condition and operation of its vehicles and how the vehicle design maintains the triangular pattern required of other locomotives and cab cars to the extent practicable. Id.

The NCS vehicles will have two auxiliary lights similar to those used on motor vehicles. The auxiliary lights will meet the requirements of NJDOT motor vehicle headlight standards. The auxiliary lights will be capable of illuminating a person or object 500 feet away. The NCS vehicles will have a headlight on the top center of each end of the vehicle meeting the requirements of Section 229.125(a) and forming a triangular pattern with the auxiliary lights, to present a distinctive and conspicuous profile to motor vehicle drivers approaching grade crossings. The auxiliary lights on the NCS vehicle will be 43.5 inches above the top of rail and 42 inches apart. The vertical distance from the headlight to the horizontal axis of the auxiliary lights will be 94 inches.

As noted in Section II.G., there are two grade crossings on the segment of the Orange Industrial Track that will become the Shared Track, located at Franklin Street and at Belmont Avenue. As part of the NCS extension project, NJ Transit will reconstruct the Franklin Street and Belmont Avenue grade crossings. The crossings will be protected in accordance with the MUTCD to a design approved by the NJDOT. The public review process required under state law for the reconstruction of the grade crossings at Franklin Street and Belmont Avenue included participation of local emergency service organizations, municipalities (including the City of Belleville, where both grade crossings are located) and transportation planning organizations. The NCS extension includes installation of Bar Signals that are sequenced with traffic signals and grade crossing gates and lights. In addition, the grade crossings at Franklin Street and Belmont Avenue will be maintained in accordance with FRA regulations in part 234.

In the SNJLRT Waiver Letter, FRA granted NJ Transit's request for relief from the requirements of Sections 229.125(a) and (d) based upon the conditions that the vehicle maintain the basic triangular pattern of lights as described in NJ Transit's petition and that NJ Transit undertake a public education and awareness campaign to familiarize residents of the area with the new NCS service on the line, recognition of the light rail vehicles and the continuation of freight service. NJ Transit plans to undertake a public education and awareness campaign to familiarize motorists with the NCS extension.

Section 231.14—Passenger Cars Without End Platforms

Section 231.14 specifies the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances, directly implementing a number of statutory requirements found in 49 U.S.C. 20301–05, the Safety Appliances Act.

The statute contains specific standards for automatic couplers, sill steps, hand brakes, and secure ladders and running boards. Where ladders are required, the statute mandates compliant handholds or grab irons for the roof of the vehicle at the top of each ladder. Compliant grab irons or handholds also are required for the ends and sides of the vehicles, in addition to standard height drawbars. In addition, the statute requires trains to be

equipped with a sufficient number of vehicles with power or train brakes so that the engineer may control the train's speed without the use of a common hand brake. At least 50 percent of the vehicles in the train must be equipped with power or train brakes and the engineer must use the power or train brakes on those vehicles and all other vehicles equipped with such brakes that are associated with the equipped vehicles in the train.

Aside from the statutory requirements, the regulations provide additional and parallel specifications for handbrakes, sill steps, side handholds, end handholds, end handrails, side-door steps and uncoupling levers. More specifically, each passenger vehicle must be equipped with an efficient handbrake that operates in conjunction with the power brake on the train. The handbrake must be located so that it can be safely operated while the passenger vehicle is in motion. Passenger cars must have four sill steps and side-door steps and prescribed tread length, dimensions, material, location and attachment devices for sill steps and side-door steps. In addition, there are requirements for the number, composite material, dimensions, location and other characteristics for side and end handholds and end handrails. Finally, this section requires the presence of uncoupling attachments that can be operated by a person standing on the ground.

These very detailed regulations are intended to ensure that sufficient safety appliances are available and that they will function safely and securely as intended.

Justification

NJ Transit seeks an exemption from the statutory requirements of the Safety Appliances Act and waiver of the implementing of regulations in 49 CFR 231.14. As explained below, NJ Transit seeks an exemption from the statutory requirements of the Safety Appliances Act, because compliance with those requirements would preclude the introduction of efficient railroad transportation equipment "light rail vehicles" in temporally-separated shared use operations. NJ Transit seeks a waiver from the corresponding regulations in Section 231.14, because the appliances and the specifications for the appliances contained in that section are unnecessary for assuring the safety of the NCS vehicles to NCS vehicle operators and passengers.

The NCS vehicle has a number of features that provide an equivalent or superior level of safety as compared to a conventional hand brake. Each NCS vehicle will be equipped with four automatic spring applied parking brakes located on the two power trucks in each vehicle. The parking brake operates as part of the normal service braking function of the car. The parking brake is capable of holding the vehicle on a gradient of seven percent at an AW4 load. A one-person crew will operate the NCS vehicles. Normally the NCS will operate the system with single cars. There may be occasions where two cars will be coupled. The car or train will be normally operated from the console in the lead cab. During normal operating conditions, the operator will make all service brake applications. In the event of an emergency, the NCS vehicle will have several features that would permit passengers to activate the braking system. First, an emergency release device located on each passenger door pillar causes an irrevocable application of the service brakes in the event of any application. Second, the eight doors with double door leafs (four locations on each side of each vehicle) are interlocked with the propulsion system to ensure that the NCS vehicle does not move while any doors are open and the opening of the doors while the NCS vehicle is in motion will cause an irrevocable application of the service brake. The braking characteristics of the NCS vehicle will result in a shorter full service brake activation time and easier brake application than would be achieved by the presence of a traditional hand brake. Thus, the safety purpose of the hand brake requirement is achieved, but in a manner that provides an equivalent or superior level of safety.

Sill steps and side-door steps are not necessary for safety on the NCS vehicle, because it is a low floor vehicle designed for low level boarding. The door threshold is 13.75 inches above the top of the rail. This configuration renders sill steps and side-door steps unnecessary. Compliance with the sill step and side-door step requirements would not enhance the safety of the vehicle.

Handholds and handrails are typically intended for use by conductors and crew members performing service and yard duties. However, NCS operations will not involve any service and yard duties from positions outside and adjacent to the vehicle or near vehicle doors. Yard moves will be controlled from the console by the on-board operator and switches will be thrown remotely or through local controls initiated by the on-board operator. Therefore, there is no need for personnel to mount or dismount the vehicle using external appliances of any kind and no need for handholds or handrails on NCS vehicles. In sum, there is no practical need for handholds or handrails and their presence might constitute a safety hazard in the operating environment.

The NCS vehicle is equipped with a fully automatic electric coupler and a mechanical coupler at each end controlled from the operator's position in the cab. The coupler and associated draft gear system has a centering device that retains the unconnected coupler head within its gathering range. The couplers are central couplings with automatic electrical and pneumatic coupling. The operator can initiate uncoupling from the console and no external crew is required to assist in this operation. NJ Transit believes that performing all coupling/uncoupling from inside the vehicle will enhance safety. This elimination of the need for frequent coupling/uncoupling of vehicles, combined with the ability for such activity to take place without crew members in close proximity to the coupler mechanisms eliminates the need for specially placed uncoupling levers and any hazard associated with manual coupling. The NCS vehicle uses dynamic brakes as the primary braking for all service brake applications. The LRT Rules and Procedures requires that each operator perform a pre-trip inspection of his/her equipment, including inspection, testing and maintenance of brake equipment. Operators are required to report any defects or failures to the Maintenance Department immediately and to note such defects or failures on their vehicle condition reports. Therefore, the NCS vehicle brake system will be equivalent to a standard air brake system and thus provide an equivalent level of safety.

NJ Transit may obtain exemption from the statutory safety appliance requirements mentioned above only if application of such requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." 49 U.S.C. 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that "other types of railroad equipment might similarly benefit." S. Rep. 96–614, at 8, (1980), reprinted in 1980 U.S.C.C.A.N. 1156, 1164.

FRA has recognized the potential public benefits of temporally separated transit use on segments of the general railroad system. Light rail transit systems "promote more livable

communities by serving those who live and work in urban areas without adding congestion to the nation's overcrowded highways." FRA/FTA Policy Statement at 28238. They "take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right-of-way, would be prohibitively expensive." *Id.* There have been many technological advances in types of equipment used for passenger rail operations, such as the use of light rail transit vehicles that will be used for the NCS System. Light rail transit equipment is energy-efficient for passenger rail operations because it is lighter than conventional passenger equipment. Light rail vehicles are able to quickly accelerate or decelerate, which makes them more suitable than other equipment types in systems with closely configured stations. Denying NJ Transit's request for an exemption from certain safety appliance requirements would preclude the implementation of light rail transit for shared use/temporal separation operations. Moreover, compliance with the statutory requirements is not necessary for safe operations. With regard to the regulatory requirements of Section 231.14, as discussed above, the NCS vehicles will be equipped with safety appliances that are more appropriate for light rail transit vehicles, thus achieving an equivalent level of safety in the NCS operating environment..

Part 238—Passenger Equipment Standards

Part 238 prescribes minimum federal safety standards for railroad passenger equipment. NJ Transit requests a waiver from the requirements of part 238, because the NCS vehicles will not meet the requirements of the Part. NCS and NS operations will be temporally-separated. NCS is subject to state safety oversight pursuant to FTA's rules at 49 CFR part 659 and has an SSPP in place.

Section 238.113—Emergency Window Exits

Section 238.113 requires passenger cars to have a minimum of four emergency exit windows, either in a staggered configuration or with one located at each end at each side of the car. Each window must have a minimum unobstructed opening with dimensions of 26 inches horizontally and 24 inches vertically. Each emergency exit window must be easy to maneuver without requiring the use of a tool or other implement. This requirement is intended to provide for sufficient, easily accessible avenues of egress from passenger cars in the case of emergency.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicles do not come equipped with emergency exit windows. The cars, however, are designed to permit equivalent egress so that passengers will not become trapped in the cars in the case of an emergency. See also the discussion related to emergency egress and emergency planning above.

Section 238.115(b)(4)—Emergency Lighting

Section 238.115(b)(4) requires passenger cars to provide battery powered emergency lighting with a 90-minute back-up power system capable of operating without a loss of more than 40 percent minimum illumination levels in all equipment orientations within 45 degrees of the upright and vertical position. The emergency lighting must be capable of operating after the initial shock of a collision or derailment resulting from prescribed individually applied accelerations. The purpose of these requirements is to ensure that in an emergency situation, sufficient lighting will remain available to aid passengers, crew members, and rescue personnel to access and leave the train safely.

Justification

NJ Transit requests a waiver of these requirements because the NCS vehicles will not meet the requirements. However, power for the emergency lighting in the NCS vehicles is provided by a battery with sufficient capacity to sustain emergency loads, including the above lighting, and radio and public address systems, for a period of at least 60 minutes. Additionally, the battery will have sufficient capacity to sustain power to door controls, propulsion and brake controls, coupler control and the horn and bell for a period of at least 60 minutes. The battery is located on the roof of the B section near the central C section of the car, removed from the front of the vehicle where direct collisions may occur. The battery is designed for transit use that requires a rugged design capable of withstanding reasonable shock and vibration. The battery box mounting brackets, as are all mounting brackets of equipment above 90 kg (200 lbs.), are designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction and 3.0 g in the vertical direction.

The NCS vehicles will operate in an urban region; the route short segment of Shared Track is at-grade with many points of easy access for police, fire and other emergency rescue units from adjacent streets. On the Shared Track, emergency responders can reach the NCS system within five (5) minutes. Additionally, the headway between NCS vehicles is no more than 6 minutes (non-rush hour periods) and each vehicle has the capability of acting as a rescue car by coupling with a failed unit and moving it to the next stop for detrainment of passengers. The rescuing car can supply sufficient electrical power to the failed vehicle for the emergency lighting and other functions. In the event that the last scheduled vehicle in a day lost power, the previous vehicle would be returned to recover the failed vehicle.

The NCS main and backup lighting and power systems will provide a level of safety in the NCS operating environment equivalent to that provided in FRA's regulations.

Structural Requirements in Part 238

The waiver requests for the primary structural requirements in part 238 are addressed in this Section III.10.c. Many aspects of the safety justification for waiver of the structural requirements apply equally to all of the structural requirements and, therefore, the generally applicable points are set forth in this introduction.

NJ Transit seeks waiver of all of the structural requirements in part 238, because the NCS vehicle will not meet the requirements. The strict temporal separation of the NCS and NS services virtually eliminates the risk of a collision between a NCS vehicle and a NS freight train, obviating the need for NCS equipment to meet the passenger car structural standards. In addition, the NCS vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles and similar objects. Relevant aspects of these design standards are described below.

The NCS collision avoidance system is at the heart of the NCS safety design. Marked by complementary elements such as operating rules and procedures, train control technology and the NCS signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving NCS vehicles. Moreover, the NCS vehicle's rapid deceleration design features will work to further reduce the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that do occur.

Section 238.203—Static End Strength

Section 238.203 provides for the overall compressive strength of rail passenger cars, requiring them to have a minimum static end strength of

800,000 pounds on a line of draft at the ends of occupied volumes without permanent deformation of the car body structure. This section is intended to prevent sudden, brittle-type failure of the main structure of a passenger car, thereby providing protection of occupants in the case of a crash.

Justification

NJ Transit requests a waiver from this requirement because the NCS vehicle will not meet the requirements, but will be designed to attain an equivalent level of safety in the NCS operating environment.

Above and beyond the crash avoidance features of the NCS System, the NCS vehicles are designed to prevent sudden, brittle-type failure of the main structure of a passenger car. The vehicle design accommodates the actual progression of a failure induced by a sudden collision phenomenon; from the elastic limit, through the plastic limit, to a brittle failure. NJ Transit requires the NCS vehicles to be manufactured to comply with the standards summarized in the Summary of NCS Structural Specifications further summarized below:

The structure is capable of sustaining, without any permanent deformation, a longitudinal load 490 kN (110,156 lbf) applied uniformly at coupler bracket, with a uniformly distributed applied AW4 vertical load of 218 kN (49,008 lbf). Actual tests have determined that these minimum values were achieved.

The structure is capable of sustaining, without any permanent deformation, a longitudinal load of 441 kN (99, 141 lbf) applied uniformly at the end sill anticlimber, with a uniformly distributed applied AW4 vertical load of 218 kN (49,008 lbf). In addition the end sill structure is capable of: Sustaining loads up to the peak collapse load of the crush zone without permanent deformation; sustaining the reaction loads generated from the loads specified for collision posts, corner posts and anti-climbers without permanent deformation; and distributing the collision loads incurred during scenarios specified for crashworthiness, such that the collapse of the energy absorption elements in the crush zones is the primary failure mode.

Vehicles are capable of withstanding collisions with other NCS vehicles, motor vehicles, or over-travel buffers without unnecessary risk of injury to passengers or excessive damage to NCS cars and/or track equipment. In a collision, no passenger compartment shell will rupture or suffer any opening through which passengers limbs may protrude; high voltage devices and associated connecting cables will remain contained and will not create electrical shock hazards to personnel; and electrical systems will not create a fire hazard.

To achieve the objective of crashworthiness, a crash energy management approach was used as the basis of the NCS vehicle's structural design. Further, as it is expected that during peak hours that some passengers will stand, it was deemed important to minimize the deceleration of passengers in the event of a frontal collision. The crash energy management of the NCS vehicle in a collision between a NCS two car consist moving at speed V and a stationary two car NCS consist (i) both consists on level tangent track and unbraked, (ii) couplers fully engaged, and (iii) NCS vehicle having a design weight of AW0 of 45,000 kg (99,208 lb.) is detailed in Exhibit E. Actual car weights are averaging 47,700 kg (95,459 lbs.), enhancing the above performance.

The NCS crash avoidance system combined with the above stated specifications will provide equivalent protection to occupants in the case of a crash in the NCS operating environment.

Section 238.205 (a)—Anti-Climbing Mechanism

Section 238.205 (a) requires locomotives (as defined in § 238.5) to have forward and rear end anti-climbing mechanisms capable of resisting an upward or downward vertical force of 200,000 pounds without failure. These requirements are intended to prevent override or telescoping of one passenger train unit into another in the event of high compressive forces caused by a derailment or collision.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicle is designed so that: with only two ribs of the anticlimbing mechanism engaged, and a vertical load of 150 kN (33,721 lbs.) combined with a longitudinal compressive load of AW0, 441 kN (99,141 lbs.) applied at the carbody centerline, there will be no permanent deformation of the carbody structure. Analysis has shown that this component will sustain higher loads. In addition, elements within the couplers absorb 115 KJ (84,780 ft.-lbs.) of energy in recoverable energy absorption elements. When this occurs, the coupler moves back until the maximum energy absorption limit is reached when special calibrated bolts break at a predetermined design release load of 450 kN (101,164 lbs. force), allowing the anti-climbers of the colliding vehicles to engage and the loads are taken by the carbodies directly. Anti-climbers are fitted to each end of the cars to avoid overriding and underriding.

While individual structural elements will not conform to the requirement of Section 238.205(a), the assembled carbody uses "crush zones" and other techniques to protect passengers in the event of collisions. Specifically, the NCS vehicle is designed using advanced computer methods to incorporate modern energy absorbing and dissipation methods to dissipate energy and transfer loads to protect the passenger compartment. The anti-climbers and energy absorption mechanisms are designed to limit the potential for override and underride and prevent telescoping. The NCS vehicle design will achieve the uniformity of end structure deformation essential to this objective. The standard to which the NCS vehicle is manufactured will prevent override or telescoping and provide an equivalent level of safety as that provided by the FRA rule.

Section 238.207—Link Between Coupling Mechanism and Car Body

Section 238.207 requires the link between the car coupling mechanism and the car body to be designed to resist a vertical downward thrust from the coupler shank of 100,000 pounds for any normal horizontal position of the coupler, without permanent deformation. The purpose of this requirement is to avoid a premature failure of the draft system so that the anticlimbing mechanism will have an opportunity to engage.

Justification

NJ Transit requests a waiver from this requirement because the NCS vehicle has its own design features to accomplish the purpose of the requirement.

The NCS vehicle is designed so that the carbody structure supporting the coupler will sustain without permanent deformation a load that is equal to 110 percent of the coupler release load (if applicable) or failure load applied at the coupler brackets, with a uniformly distributed AW4 vertical load. In addition, the method of attaching the coupler to the coupler anchor bracket allows the coupler to become fully released from the coupler anchor bracket once the coupler has absorbed its maximum design energy. The coupler is contained and prevented from coming in contact with the track or from protruding into the passenger compartment. The coupler and draftgear is designed to withstand an operating consist with a 17,570 kg (38,735 lbs.),

(AW3) passenger load, pushing or pulling an unpowered consist with a 17,570 kg (38,735 lbs.) (AW3) passenger load, over all grades and curves on the NCS Line, without damage to the coupler.

The intent of the NCS vehicle design is to prevent the coupler shank from contributing to potential damage during a frontal collision. The approach taken is to release the coupler from mechanical connection to the carbody once it has absorbed its maximum design energy. When this occurs the coupler assembly is separated from the coupler anchorage on the car structure. The coupler is retained to prevent it from coming into contact with the track or from protruding into the passenger compartment. This feature is provided to reduce the risk of derailment and penetration of the occupied space. These design standards will allow the NCS vehicle to meet a level of safety equivalent to Section 238.207.

Section 238.209—Forward-Facing End Structure of Locomotives

Section 238.209 requires the skin of the forward-facing end of each locomotive to be equivalent to a ½ inch steel plate with a 25,000 pounds per square inch yield strength; designed to inhibit the entry of fluids into the occupied cab area of the locomotive; and to be affixed to the collision posts or other main vertical structural members so as to add to the strength of the end structure. These requirements are intended to provide protection to persons in the occupied area of the locomotive cab.

Justification

NJ Transit requests a waiver of the requirements in this section because the NCS vehicle is designed to attain a sufficient level of safety in the NCS operating environment.

With respect to the specific design of the forward-facing end structure, both vehicle ends are designed similar to a push-pull cab configuration with corner posts, collision posts and structural shelf. The operator's cab floor finished height is 890 mm (35 inches) above TOR and the vehicle provides a buff strength of 441 kN (99, 141 lbf.) applied uniformly at the end sill anticlimber. The cab floor structure is located immediately behind the anticlimber. NJ Transit believes that the NCS vehicle, along with the other system safety design features, will provide an equivalent level of safety.

Section 238.211—Collision Posts

Section 238.211 requires locomotives to have two full-height collision posts at each end where coupling and uncoupling are expected. Each collision post must have an ultimate longitudinal shear strength of not less than 500,000 pounds at a point even with the top of the underframe member to which it is attached and a longitudinal shear strength of not less than 200,000 pounds exerted at 30 inches above the joint of the post of the underframe. Alternatively, cars may be constructed with an end structure that can withstand the sum of forces that each collision post is required to withstand. This requirement is intended to provide for protection against crushing of occupied areas of passenger cars in the event of a collision or derailment.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicle has collision posts or a structural equivalent, protecting at least the area between the underframe and the bottom of the windshield. NJ Transit believes the NCS vehicle design will provide an adequate measure of safety. In order to preclude sudden catastrophic failure or overriding of NCS cars, all connections which attach collision posts, corner posts and structural shelf to each other and/or the underframe structure and roof structure, are made in such a manner to develop the full strength of the load bearing members in shear. The ultimate shear strength of the collision posts is not less than a compression load of 441 kN (99,141 lbs.) applied at the top of the underframe, and at any angle up to ±15° from the longitudinal axis. A compression load of 150 kN (33,721 lbs.) similarly applied 15 inches above the top of the underframe will cause no yielding of the collision posts. All underfloor, and roof mounted equipment weighing more than 90 kg (200 lbs.) is designed to withstand not less than 5.0 times the equipment weight in the longitudinal direction, 2.0 times the equipment weight in the lateral direction, and 3.0 times the equipment weight in the vertical direction. These loads applied separately will not result in stresses that exceed the ultimate strength of the material.

These design requirements provide for the same type of protection of the occupant space as the FRA collision posts requirements, but do so in a way consistent with the design of the NCS vehicle. As noted elsewhere herein, the NCS vehicle is designed using advanced computer methods to incorporate modern energy absorbing and dissipation methods as part of an overall protection system designed to dissipate energy and transfer loads from impacts to protect the passenger compartment. As part of this system, the NCS collision posts provide protection for the occupied volume of the vehicle shell during a collision. Thus, the NCS vehicle effectively isolates passengers and crew from the hazards of penetration.

Section 238.213—Corner Posts

Section 238.213 requires two full-height corner posts at the end of each vehicle capable of resisting without failure a load of 150,000 pounds at the point of attachment to the underframe and a load of 20,000 pounds at the point of attachment to the roof structure. Each corner post must be able to resist a horizontal load of 30,000 pounds applied 18 inches above the top of the floor without permanent deformation. These requirements serve to provide protection to occupant compartments from side-swipe type collisions.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicle is designed to attain a sufficient level of safety in the NCS operating environment.

The NCS vehicle corner posts have a minimum ultimate shear strength of 225 kN (50,582 lbf) applied at the top of the underframe and 75 kN (16,861 lbf) applied 380 mm (15 inches) above the top of the underframe. These requirements cause no yielding of the corner posts. All underfloor, and roof mounted equipment weighing more than 90 kg (200 lbs.) is designed to withstand not less than 5.0 times the equipment weight in the longitudinal direction, 2.0 times the equipment weight in the lateral direction, and 3.0 times the equipment weight in the vertical direction. These loads applied separately will not result in stresses that exceed the ultimate strength of the material.

Here too, while individual structural elements of the NCS vehicle may not conform to the specific requirements, the assembled carbody uses "crush zones" and other energy absorption and dissipation techniques to protect passengers in the event of collisions. As part of this system, the corner posts extend from the underframe to the roof structure and are combined with the collision posts, structural shelf, and underframe to become part of the end structure. This design effectively isolates passengers and crew from the hazards of penetration, thereby providing protection for the occupied volume of the vehicle shell during a collision.

The NCS vehicle specifications provide for additional structural protection of the occupant compartments, and, in conjunction with the other safety design features of the vehicle, will provide an equivalent or superior level of safety to the FRA specification.

Section 238.215—Rollover Strength

Section 238.215 sets forth the structural requirements intended to prevent significant deformation of the occupant compartments of passenger cars, in the event the car rolls onto its side or roof. Under this section, a passenger car must be able to support twice the dead weight of the vehicle while the vehicle is resting on its roof or side.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicle is designed such that the roof is designed to support, without permanent deformation, the equipment mounted on the roof, and maintenance personnel performing their duties. The heaviest equipment is the HVAC unit at 680 kg (1,500 lb). All underfloor and roof mounted equipment weighing more than 90 kg (200 lbs.) is designed to withstand not less than 5.0 times the equipment weight in the longitudinal direction, 2.0 times the equipment weight in the lateral direction, and 3.0 times the equipment weight in the vertical direction. These loads applied separately will not result in stresses that exceed the ultimate strength of the material. With a load of 178 kN (40,000 lbs.) applied to the side wall at the side sill, and distributed along 2,500 mm (98.5 inches), there is no yielding or buckling of the carbody structure. With a load of 44 kN (10,000 lbs.) applied to the side wall at the belt rail, and distributed along 2,500 mm (98.5 inches), there is no yielding or buckling of the carbody structure.

The features specified above are designed to enhance crashworthiness and protect the occupied volume. The NCS vehicle incorporates a lightweight low floor design (14 inches from the ground), which lowers the center of gravity as well as the load conditions in rollover circumstances. The NCS vehicle has a lower center of gravity than a standard commuter rail car. Moreover, in the unlikely event of a rollover, the lighter weight of the NCS car means that the roof does not have to support as much weight as would a standard commuter rail car. Because of the inherent requirements for roof and side wall strength, the car will not have significant deformation when the car is resting on its roof or side. In the unlikely event that a derailment leading to a rollover occurs, the NCS vehicle specifications provide for structural protection of the occupant compartments and, in conjunction with the other safety design features of the vehicles, will provide an equivalent measure of safety.

Section 238.217—Side Structure

Section 238.217 sets strength requirements for side posts and corner braces. This section also requires that outside sheathing of mild, open-hearth steel when used flat and without reinforcement in certain side frames be no less than ⅛-inch nominal thickness. When sheathing used for truss construction serves no load-carrying function, the minimum thickness is 40 percent of ⅛-inch nominal thickness. These specifications are intended to provide for additional structural protection, so that a car will derail before it collapses into the occupant compartments.

Justification

NJ Transit requests a waiver of these requirements because the NCS vehicle is designed so that with a load of 178 kN (40,000 lbs.) applied to the side wall at the side sill, and distributed along 2,500 mm (98.5 inches), there is no yielding or buckling of the carbody structure. In addition, with a load of 44 kN (10,000 lbs.) applied to the side wall at the belt rail, and distributed along 2,500 mm (98.5 inches), there is no yielding or buckling of the carbody structure.

The approach used in designing the NCS vehicle involved minimizing weight while providing maximum protection for passengers consistent with the service requirements. The vehicle has a well-lit interior and external indicator, marker lights and a side reflecting strip, and will therefore be more conspicuous than a regular commuter or freight train.

Additionally the relatively short car length 27,440 mm (90 feet), ensures that the vehicle will not obstruct a grade crossing for an extended period. This, in conjunction with the present constant warning time crossing protection, will encourage observation of grade crossing warnings by the NCS vehicle operator and road vehicle drivers.

NJ Transit believes that although NCS vehicle design elements set forth above may not conform to the specific requirements of the FRA regulation, they will provide, in conjunction with the other safety design features of the vehicles, an equivalent level of safety.

Section 238.233—Interior Fittings and Surfaces

Section 238.233 requires each seat in a passenger car to be securely fastened to the carbody so as to withstand individually applied acceleration of 4g acting in the vertical and in the lateral direction on the deadweight of the seat or seats if a tandem unit. Seat attachments must have an ultimate strength capable of resisting a longitudinal inertial force of 8g acting on the mass of the seat plus the impact force of the mass of an unrestrained 95th percentile male occupant striking the seat from behind when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds. This section also requires overhead racks to provide longitudinal and lateral restraint for stowed articles and be attached to the car body with sufficient strength to resist loads due to a longitudinal force of 8g, a vertical force of 4g and a lateral force of 4g. Other interior fittings must meet the same strength requirements. In addition, to the extent possible, all interior fittings in the passenger car are to be recessed or flush-mounted and sharp edges and corners in the locomotive cab or passenger car will be either avoided or padded. Floor mounted seats provided for a crew member assigned to occupy the cab of a locomotive must be capable of withstanding the same load limits as required for overhead storage racks with the mass being that of the seat and a 95th percentile male crew member. These requirements are designed to reduce the likelihood and severity of injury to train occupants caused by the dislodging of seats or other interior items or by occupants striking interior items in the event of an accident.

Justification

NJ Transit requests a waiver of these requirements because the seats and interior fittings of the vehicle have been designed for the NCS operating environment. The vehicle is designed such that the passenger seat consists of a cantilevered supporting structure in the low level and mounted on equipment boxes in the high level. The seat shell and cushion inserts for the seat and back are similar in both locations. The NCS car does not have luggage racks. Aspects of this regulation are more appropriate to an intercity vehicle where luggage accompanies most passengers. This vehicle is used in local service where luggage is typically limited to small carry-on items not

requiring luggage racks such as purses, attaché cases, *etc.*

The vehicle interior provides recess or flush-mounted fittings and readily accessible stanchions and resilient seat top grab rails for passenger safety and comfort. Stanchions and grab rails are sized and located to provide optimum arrangement for all passengers. Windscreens are provided adjacent to each doorway in the low level areas, with the upper portion transparent, and incorporating a stanchion extending from the windscreen to the NCS car ceiling. This vehicle also provides more floor space for passenger circulation than an intercity or commuter rail car due to its service characteristics.

It is also important to note that the proposed seat attachment strength requirements are a function of the 800,000 pound compression strength requirement for commuter cars and main line coaches. Because the NCS vehicles have different compression strength values, it is not necessary for the NCS car to meet the proposed 8g/4g force resistance requirements. In the NCS vehicles, the provision of crashworthiness features prevents acceleration in the passenger compartment from reaching such levels. Rather, the limit for collisions up to 20 km/h (12.5 mph) is 1.5 g. Moreover, the high emergency brake rate means that most collisions will be at a lower speed than would be the case with conventional commuter rail cars. The design parameters used for the passenger seats and the attachments are consistent with those specified for use for advanced design transit motor coaches. The NCS vehicle itself is designed for a maximum service speed of 90km/h (55 mph) and does not therefore attain the speeds of rail commuter cars.

Section 238.235—Doors

Section 238.235 provides that each passenger car must have a minimum of two exterior side doors with each door providing a minimum clear opening of 30 inches horizontally and 74 inches vertically. This section also provides for the availability of override devices enabling the opening of doors without power from both the inside and outside of the cars without the use of a tool or other implements.

Justification

NJ Transit requests a waiver of these requirements because the NCS vehicle is designed with an emergency release lever on the inside of each doorway and for one doorway per side on the outside of the vehicle. This enables a closed and interlocked door to be lock-released without power supply. Activation of the emergency release levers will allow the door leaves to be manually moved. The interior emergency door release levers will be clearly marked and will be in a location accessible to all passengers, consistent with ADA requirements.

The NCS vehicle has four doorways on each side to permit egress time of an AW2 load in less than 60 seconds. The passenger doorways are two-panel sliding plug type and flush with carbody in the closed position. They are opened and closed electrically and provide direct access from the platform to the car interior. There is no vestibule with secondary door access through a partition to the passenger compartment. The clear opening is 48 inches. The car has four doors per side in the low floor area. This door configuration permits evacuation of 190 passengers from either side in less than 60 seconds. Also, with regard to emergency services access, all side windows can be safely shattered using common rescue implements to provide additional access/egress locations. The design of the door and windows provides an equivalent level of safety to the FRA specifications.

Section 238.237—Automated Monitoring

Section 238.237 requires that controlling locomotives have working alerters. The alerter timing must be set by the operating railroad taking into consideration maximum train speed and signal system capabilities. Under this section, the working alerter must initiate a penalty brake application if the train operator does not respond to the alerter. If the alerter fails en route then a second qualified person will be stationed in the cab or the operator will be in constant communication with a second crew member until the train reaches the next terminal. These requirements are intended to prevent a train collision or derailment due to the inattention or incapacity of the train operator, resulting is loss of control of the train.

Justification

NJ Transit requests a waiver from these requirements because the NCS vehicle is equipped with its own controller and audible type features to provide an equivalent level of safety. If a vehicle operator fails to respond to speed commands, the vehicle automatically goes into a full service brake application that is only released when the speed command is achieved. A keyed control switch is provided on each master controller, which is interlocked such that when keyed up, only the controls in that cab are operable. The master controller power and brake handle incorporates a "dead-man" device which when released for any reason when the car is moving in forward or reverse, immediately initiates a propulsion inhibit and a full service brake application, independent of the position of the handle.

In addition to the master controller, redundant safety systems are provided. For example, the vehicle is also controlled by enforce-stop devices that initiate a brake application, if the vehicle is not compliant with speed commands. Also, an emergency stop push-button is provided such that, when pushed, it will activate the emergency brakes. It is possible to activate the emergency stop push-button from any console in a consist. Finally, the NCS service route involves frequent station stops in signaled territory under control of a dispatcher. Violation of a signal aspect will result in a penalty brake application.

Sections 238.301–238.319—Inspection, Testing and Maintenance

Subpart D of part 238, §§ 238.301 through 238.319, contains requirements pertaining to the inspection, testing and maintenance of the passenger equipment and systems required for Tier I passenger equipment. These requirements are designed to ensure that passenger rail operations are conducted only on vehicles whose components and systems are in good working order, thereby reducing both the chances of a equipment-related accident and the severity of damage or injury in the case of an accident.

Justification

NJ Transit anticipates being in compliance with the requirements of Subpart D. However, NJ Transit requests a waiver of any requirements that correlate to the Subpart B or C standards from which NJ Transit has sought waivers. NCS equipment will be subject to a detailed program of inspection, testing and maintenance, as required by the NJDOT System Safety Program Standard and the NCS SSPP. Specifically, Section 5.1.5 of the NJDOT System Safety Program Standard requires the NCS SSPP to provide for periodic and as needed maintenance inspection and testing of equipment and facilities, as well as training and certification of employees in safety-sensitive positions. The NCS SSPP will address these issues in detail, setting forth specific inspection maintenance and testing schedules and protocols for all major equipment, components and systems. Compliance with the SSPP

requirements will be monitored through a periodic audit and reporting program.

Part 239—Passenger Train Emergency Preparedness

Part 239 contains standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. The rules in part 239 were promulgated to reduce the risk of death or injury to passengers, employees and others in the case of accidents or other incidents by providing sufficient emergency egress capability and information to passengers and by having emergency preparedness plans calling for coordination with local emergency response officials. The rules were adopted as a result of several serious crashes involving commuter trains.

Justification

NJ Transit requests a waiver of the emergency preparedness plan requirement in part 239, because the NCS operates in accordance with the emergency preparedness specifications of the NCS SSPP, under the oversight of NJDOT's State Safety Oversight Program.

The SSPP sets forth procedures and requirements dealing with emergency situations tailored to the NCS system, but which also draw on the experience of emergency preparedness standards from other rail transit systems whose operations and equipment more closely resemble the NCS than FRA-regulated commuter rail systems. Section 9 of the State Safety Program Standard, requires the SSPP to contain Emergency Operating Procedures to deal with a variety of emergency situations, including accidents and natural disasters as well as sabotage or other criminal activities. The NCS SSPP contains a detailed emergency response plan which provides for contingency planning for passenger evacuation and crowd control coordination, training and simulation drilling with outside emergency response providers. The emergency response plan also specifies required emergency equipment.

In addition to emergency response planning required by Sections 5 and 9, the State Safety Program Standard requires NJ Transit to engage in a process by which hazards occurring in operations, maintenance and engineering are identified and categorized according to severity and likelihood. Resolutions to reduce hazards to the lowest level practical must then be considered. This process helps NCS to develop the emergency response plan, including the design, in advance, of processes for handling exceptions to established procedures where situations require them. A hazard resolution matrix is included in the SSPP.

In addition, the Safety Committee addresses emergency preparedness issues and provides coordination between NJ Transit, NS and local emergency response agencies. The NJDOT, as part of its oversight activities is responsible for investigation of accidents and other emergency situations. Part 239 prescribes specific requirements for the content and implementation of an emergency preparedness plan. The following is an explanation of how each portion of the NJ Transit emergency preparedness plan will address specific FRA requirements in part 239.

Section 239.101 requires that an emergency preparedness plan include procedures for initial and on-board notification by the control center of outside emergency responders, adjacent rail modes and appropriate railroad officials. The NCS conducts annual emergency simulation exercises. Additionally, local fire departments are briefed regularly on emergency procedures, escape routes and safety issues associated with the NCS system and operation. The NCS SSPP also provides that in the event of an emergency/fire, the OCC will ensure that the NJ Transit Police Department and appropriate local emergency agencies have been notified. The OCC is responsible for: ensuring that the appropriate local emergency agencies have been contacted; shutting down all electrical power to the NCS; maintaining recording communication between NCS management, NJ Transit rail management, car operators, and NCS employees within the affected areas.

Section 239.101(a)(12) requires that the emergency preparedness plan address individual employee responsibility and provide for initial and periodic (every other year) training for OCC personnel and on-board personnel. The NCS SSPP provides extensive training that includes training on the emergency preparedness plan. Section 239.101(a)(12) requires that the emergency preparedness plan address individual employee responsibility and provide for initial and periodic (every other year) training for OCC personnel and on-board personnel. The NCS SSPP provides extensive training that includes training on the emergency preparedness plan. Operators receive extensive training on emergency procedures during their initial operational training. In addition, operators receive annual training on operating rules, procedural rules, and emergency response procedures. Operators will receive initial training for the new OCC train control systems which will include instruction on the traction power system used to control emergency power shut off and the signal system before start-up of operations on the NCS Extension. Once all of the new components of the train control system are in place, NJ Transit will develop an updated comprehensive training program.

Section 239.101(a)(7)(i) requires each railroad to provide passengers with information for emergency situations. Operators are provided with a checklist of emergency procedures to assist passengers. They are also in constant communication with the OCC. Vehicles are signed to indicate emergency actions and precautions.

Section 239.101(a)(5) requires each railroad to establish and maintain a working relationship with the on-line emergency responders. Section 4.7 of the State Safety Program Standard requires NJ Transit to adopt an emergency response plan and procedures which must include a means to communicate and coordinate with external emergency response agencies, and provide for emergency simulations and drills, and training.

Section 239.101(4)(iii) requires the railroad's emergency preparedness plan to coordinate emergency efforts where adjacent rail modes of transportation run parallel to either the passenger railroad or the railroad hosting passenger operations. All NS movements will occur on routes under the control of the NJ Transit Rail Dispatcher or the OCC Dispatcher. Normal emergency response procedures would apply. Moreover, the NS delivery on the Orange Industrial Track has been a regular move for many years under the direction of NJ Transit's Rail Dispatcher. This office is experienced and highly qualified to respond to any eventuality.

Section 239.103 requires each railroad to conduct full-scale emergency simulations to ensure capacity to execute the emergency preparedness plan and coordination with emergency responders. The NCS SSPP requires periodic drills to ensure complete understanding of fire evacuation procedures. In addition, NCS will conduct full-scale emergency simulations on an annual basis.

Section 239.107 requires emergency exit markings and inspection, testing, malfunction reporting and recordkeeping regarding emergency exits. NCS emergency exits were discussed in Sections III.C.5.b and 5.c.

Section 4.4 of the SSPP requires safety audits and investigations. Section 3.4 of the SSPP covers the same ground on recordkeeping. Section 239.301 requires each railroad to periodically conduct operational efficiency tests of its on-board and control center employees to determine the extent of compliance with the emergency preparedness plan. These emergency preparedness standards will provide a level of safety equivalent to the FRA requirements in a manner more appropriate to the NCS operating environment.

Part 240—Qualification and Certification of Locomotive Engineers

Part 240 contains requirements for locomotive engineer eligibility, training, testing, certification and monitoring. In the FRA/FTA Policy Statement, FRA and FTA indicated that FRA would waive the requirements of part 240 for temporally-separated light rail operations subject to state safety oversight under 49 CFR part 659. FRA/FTA Policy Statement, 64 FR at 28241. FRA repeated that intention in the Statement Concerning Jurisdiction, 64 FR at 59055–56.

FRA says petitioners should describe those aspects of their SSPP that assure that operators "receive the necessary training and have proper skills to operate a light rail vehicle in shared use on the general railroad system." Statement Concerning Jurisdiction, FR at 59055. FRA suggests that the petition should "explain what safeguards are in place to ensure that operators receive at least an equivalent level of training, testing, and monitoring on the rules governing train operations to that received by locomotive engineers employed by conventional railroads." *Id.*

NJ Transit requests a waiver from these requirements because NCS will be following operator training and qualification standards contained in the NCS SSPP. Under Section 5.5 of the SSPP, NCS vehicle operators must meet specific training and certification requirements. All operators must pass the operator certification in order to be authorized for operations. NCS operators receive a 7-day training and certification course from the Light Rail Operations Training personnel. The Operational Training Instructors have experience in subway operations. These Instructors are selected from candidates with a three-year clean driving record. They are also experienced as Bus Operator Instructors. Once selected, an Instructor receives Instructional and Presentation skills training and six weeks of on-the-job training. Finally, once the Instructor begins operational training, he/she conducts his/her first class under the observation of a trained Instructor.

The NCS SSPP also provides for recertification of operators by way of reinstruction training or refresher training. An operator receives reinstruction training if he/she has been involved in an accident, misuse of equipment, or has been observed engaging in unsafe acts by management supervision. An operator receives refresher training if the operator has been inactive for more than 90 days, out sick for an extended period of time, or has been requested by management to do so. This training is tailored to the individual employee needs and is done on a one-on-one basis with an Operational Training Instructor.

The initial training course has three days of instruction and three days of operation with an Instructor. Each of the three days of operation requires at least 8 hours; each day covers a different run and at least one day covers a night run. The seventh day of training includes a final road test, a written exam and a review of emergency procedures. The minimum passing score on the written exam is 70 percent. Candidates for operator positions must meet qualifications consistent with NJDOT Commercial Drivers License qualifications. Such qualifications are intended to substantially conform to the requirements and standards under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701 *et seq.* See N.J.S.A. 39:3–10.10. The requisite visual acuity must be correctable to 20/20.

NJ Transit believes that compliance with these operator qualification and training requirements will provide at least an equivalent level of safety to the training and other requirements in part 240. See FRA/FTA Policy Statement at 28422.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with either the request for a waiver of certain regulatory provisions or the request for an exemption of certain statutory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA 2000–7335) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on June 22, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–17636 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: July 6, 2000

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 00–17546 Filed 7–11–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–01: OTS Nos. H–3626 and 03164]

First Federal Bancshares, Inc., Colchester, Illinois; Approval of Conversion Application

Notice is hereby given that on June 30, 2000, the Director, Office of Examination and Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Federal Bank, F.S.B., Colchester, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: July 7, 2000.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 00–17626 Filed 7–11–00; 8:45 am]

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July 12, 2000

Part II

Department of the Treasury

Office of Thrift Supervision
12 CFR Parts 563b and 575

Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, Gramm-Leach-Bliley Act Changes; Interim Rule

Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions from Mutual to Stock Form; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 2000–56]

RIN 1550–AB24

Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, Gramm-Leach-Bliley Act Changes

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations governing repurchases of stock of insured savings associations and certain related provisions in the mutual holding company regulations to ease regulatory burden. OTS is also amending its rules to implement changes regarding waivers of dividends for mutual holding companies, and to incorporate certain changes resulting from the passage of the Gramm-Leach-Bliley Act of 1999 (GLB Act).

DATES: This interim final rule is effective July 12, 2000. Comments must be received by October 10, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–56. Hand-deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Counsel (Banking and Finance), (202) 906–7505, or Gary Jeffers, Counsel (Banking and Finance), (202) 906–6457, Business Transactions Division, Chief Counsel's Office; or Timothy P. Leary, Counsel (Banking and Finance), (202) 906–7170, Regulations and Legislation Division, Chief Counsel's Office; or Mary Jo Johnson, Project Manager (202) 906–5739, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Stock Repurchases

Current OTS regulations require savings associations to follow OTS rules on stock repurchases for three years following a conversion from mutual to stock form. *See* 12 CFR 563b.3(g). In the first year following the transaction, the savings association cannot repurchase any stock. In the second and third years, the savings association may repurchase up to five percent of its stock in any twelve month period as long as the repurchases do not cause the institution to become undercapitalized, and certain other conditions have been met. OTS has also permitted repurchases in excess of those limits where an institution has established exceptional circumstances, such as when the stock price has fallen below the initial offering price. Because OTS regulations also prohibit savings association subsidiaries of mutual holding companies (MHCs) from repurchasing their stock for the first three years following the association's stock offering (12 CFR 575.11(c)), savings associations that have reorganized into MHC form must request a waiver from OTS regulations to conduct a stock repurchase.

Numerous stock savings associations and subsidiary holding companies of MHCs have requested waivers for stock repurchases in amounts that do not conform to OTS limitations. OTS has routinely granted the requested waivers. OTS has decided the repurchase of stock after the first year following conversion or issuance in an MHC minority stock offering should be a business decision of the institution. OTS believes that there are sufficient means, such as business plan review and approval, to ensure the safe and sound regulation of converted savings associations. Moreover, the current rule is inconsistent with the treatment accorded by other federal banking agencies.

Therefore, OTS revises its regulations to eliminate restrictions on stock repurchases by converted savings associations after the first year following conversion. Where the institution has established extraordinary circumstances, a converted savings association may repurchase its stock during the first year after conversion, provided the savings association files a notice under amended § 563b.3(g)(3) and OTS does not object to the planned repurchase.[1] OTS will work with the FDIC to establish consistent practices among the agencies regarding implementation of this provision.

In determining whether to object to a proposed stock repurchase during the first year following conversion, OTS will consider how the extraordinary circumstances, absent a repurchase, may detrimentally affect an institution's financial condition, the business purpose for the repurchase, and the permissibility of the repurchase under other applicable regulations. *See* amended § 563b.3(g)(3).

OTS also is making corresponding amendments to the mutual holding company (MHC) regulations, and amending the MHC regulations to address MHC purchases of stock of subsidiary savings associations or of subsidiary holding companies.

B. Dividend Waivers for Mutual Holding Companies

OTS regulation § 575.11(d) allows MHCs to waive dividends subject to certain restrictions. Under § 575.11(d), MHCs file notice of their intent to waive dividends and include a copy of a board of directors resolution concluding that the dividend waiver is consistent with the board's fiduciary duties. OTS will not object to the notice if it determines that the waiver would not be detrimental to the safe and sound operation of the savings association.

Waiving dividends saves the MHC from corporate taxation on the dividends and leaves capital at the subsidiary savings association where, in most cases, it can be deployed more efficiently. MHCs have requested clarification on whether the payment of dividends and MHC waiver of dividends will cause OTS to require minority shareholder dilution if the MHC subsequently determines to fully convert to stock form. Minority shareholder dilution would occur if OTS required converting MHCs to reduce the number of shares minority shareholders receive when they exchange their shares for shares in the fully converted company that correspond to the amount of waived dividends. The reduction in shares for minority shareholders reflects that they previously received their dividends while the MHC waived its dividends. OTS has required some dilution in past transactions, but only to the extent of excess or special dividends paid by the subsidiary holding company or savings association to minority shareholders

[1] The proposed repurchase provisions conform to the FDIC's treatment of stock repurchases by converted institutions. *See* 12 CFR 333.4(d) (1999).

and waived by the MHC. OTS has not required shareholder dilution for ordinary dividends.

OTS has reexamined this issue and has determined to change its practice with respect to waived dividends. OTS will no longer require dilution for any waived dividends in a subsequent conversion to stock form. OTS believes the belief that the minority shareholders would experience dilution caused a number of institutions to fully convert to stock form, rather than remain in MHC form. Instead, to prevent excessive dividends OTS will rely on the business plan filed with the reorganization application and on existing restrictions in OTS capital distribution regulations, as well as the fiduciary duty of the board of directors of the MHC to protect the interests of the depositors. Today, OTS amends the MHC regulation to codify this policy.

C. Gramm-Leach-Bliley

Finally, the Gramm-Leach-Bliley Act of 1999 (GLB Act) changed the activities limitations for MHCs to mirror those applicable to financial holding companies.[2] OTS is amending its regulations to make the GLB Act changes in this interim final rule. These changes enhance the MHC as a more suitable long-term alternative then full conversion to stock form for mutual savings associations contemplating such a conversion. Before the GLB Act, MHCs were limited to the activities and investments available to multiple savings and loan holding companies and those permissible for bank holding companies under the Bank Holding Company Act and those available under Section 10(o)(5) of the Home Owners? Loan Act. This change will give MHCs parity with financial holding companies, which have the ability to create financial supermarkets—banking, brokerage and insurance—all offered under one holding company that meets certain requirements.[3] OTS is amending § 575.11(a) to reflect this change.

D. Related Rulemaking

Elsewhere in today?s **Federal Register**, OTS is publishing a related proposed regulation governing mutual savings association, mutual holding company reorganizations, and conversions to stock form.

[2] 12 U.S.C. 1467a(o)(5)(E).

[3] Those requirements include requiring the depository institution controlled by the parent to be well capitalized, well managed and hold at least a satisfactory rating under the Community Reinvestment Act.

Notice and Comment, Effective Date, and Request for Comment

Section 553 of the Administrative Procedure Act (APA) permits an agency to issue rules without prior notice and comment if the agency, for good cause, finds that notice and comment are impracticable, unnecessary, or contrary to the public interest and explains its finding when it publishes the rule. 5 U.S.C. 553(b)(B).

OTS has concluded that it may issue an interim final rule revising the stock repurchase provisions. The current rule is inconsistent with the treatment accorded by other federal banking agencies, not required for the safe and sound regulation of converted savings associations, significantly restricts the ability of institution?s managers to make appropriate business decisions and, thus, unnecessarily limits the ability of savings associations to repurchase stock following a conversion. As a result, the retention of these restrictions would, in the absence of an interim final rule, continue to negatively impact the operations of thrifts and their holding companies. Accordingly, OTS concludes that public notice and comment on these changes are unnecessary and contrary to the public interest.

Notice and public comment also are not required for the interim rule on dividend waivers and shareholder dilution. As noted above, OTS's current policy on shareholder dilution may have inappropriately: (1) Encouraged some institutions in MHC structures to fully convert to stock form; (2) discouraged MHCs from taking full advantage of corporate tax advantages from dividend waivers; and (3) prevented MHCs from exercising their business judgment in deploying capital at the most appropriate level within the corporate structure. These regulatory disincentives would continue to hamper effective decision-making by MHCs in the absence of an effective interim final rule. As a result, OTS concludes that notice and public comment are inappropriate and contrary to public interest.

Similarly, OTS does not believe that public notice and comment are required for the technical change regarding MHC activities. The interim rule merely updates OTS regulations to correctly cite new statutory authority expanding the activities authorized for MHCs. Notice and comment procedures for this change are impractical and contrary to the public interest because such procedures could delay implementation of this new expanded authority for MHCs.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), 12 U.S.C. 4802, requires that new OTS regulations and amendments to existing regulations take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published. This delayed effective date provision, however, does not apply unless the rule imposes additional reporting, disclosures, or other new requirements on insured depository institution. As a related matter, section 553(d) of the APA states that publication of a rule shall be made not less than 30 days before its effective date. 5 U.S.C. 553(d). This APA provision does not apply if the rule grants or recognizes an exemption or relieves a restriction. OTS believes neither CDRIA nor the APA precludes the publication of this rule with an immediate effective date. As noted above, this rule makes only burden reducing, clarifying and technical conforming amendments to OTS rules and relieves current restrictions on repurchases.[4]

OTS invites comments on this interim final rule during the 60-day period that runs concurrently with its request for comment on companion proposed regulation published elsewhere in today's **Federal Register**.

Regulatory Flexibility Act Analysis

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required when an agency must publish a general notice of proposed rulemaking. 5 U.S.C. 603. As noted previously, OTS has determined that it is not necessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nonetheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities. This interim rule eliminates restrictions, imposes no new requirements, and makes only burden reducing, clarifying, and technical conforming amendments to OTS current regulations.

[4] In addition, both CDRIA and the APA permit an agency to select an earlier effective date for "good cause" published with the regulation. As noted above, the OTS has determined that there is good cause for publishing rule without notice and public comment. For these same reasons, OTS finds good cause to dispense with the delayed effective date requirements under CDRIA and the APA.

Paperwork Reduction Act

OTS invites comments on all of the following issues:

(1) Whether the information collections contained in this proposal are necessary for the proper performance of OTS? functions, including whether the information has practical utility.

(2) The accuracy of OTS? estimate of the burden of the information collections.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) Ways to minimize the burden of the information collection of respondents, including through the use of automated collection techniques or other forms of information technology.

(5) Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to these collections of information unless they display a currently valid OMB control number.

OTS has submitted the collections of information requirements contained in this proposal to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collections of information to the Office of Management and Budget, Paperwork Reduction Act Project (conversion information collection requirement: 1550–0014 or the mutual holding company information collection requirement: 1550–0072) Washington, DC 20503, with copies to the Regulations and Legislation Division (1550–0014 or 1550–0072), Chief Counsel's Office, Office of Thrift Supervisions, 1700 G Street, NW., Washington, DC 20552.

The collections of information requirements in this rule are in parts 563b and 575. OTS requires this information for the proper supervision of savings associations that convert from mutual to stock form under OTS regulations and mutual holding company activities. The likely respondents/recordkeepers are Federal savings associations or mutual holding companies.

OMB Control Number: 1550–0014.

Estimated average annual burden hours per respondent/recordkeeper: 510 hours.

Estimated number of respondents/ recordkeepers: 16 per year.

Estimated total annual reporting and recordkeeping burden: 8,160 hours.

Start up costs to respondents/ recordkeepers: N/A.

OMB Control Number: 1550–0072.

Estimated average annual burden hours per respondent/recordkeeper: 263 hours.

Estimated number of respondents/ recordkeepers: 16 per year

Estimated total annual reporting and recordkeeping burdenhours: 4,874 hours.

Start up costs to respondents/ recordkeepers: N/A.

Executive Order 12866

OTS has determined that this interim final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMA), Pub. L. 104–4, applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted previously, OTS has determined, for good cause, that this interim final rule should take immediate effect and, therefore, that a notice of proposed rulemaking is not required. Accordingly, OTS has concluded that the UMA does not require an unfunded mandates analysis of this interim final rule.

Moreover, OTS finds that this interim rule will not result in expenditure by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Rather, the rule eliminates restrictions, imposes no new requirements, and makes only burden reducing, clarifying, and technical conforming amendments to OTS regulations. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision amends title 12, Chapter V, Code of Federal Regulations as set forth below:

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1.The authority citation for part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c,78l, 78m,78n,78w.

2. Section 563b.3 is amended by revising paragraphs (g)(1) and (g)(3) to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(g) * * *

(1) No converted savings association may, for a period of one year from the date of the completion of the conversion, repurchase any of its capital stock from any person, except that this restriction shall not apply to:

(i) A repurchase, on a *pro rata* basis, pursuant to an offer approved by OTS and made to all shareholders of such association;

(ii) A repurchase of qualifying shares of a director; or

(iii) A repurchase approved by OTS under paragraph (g)(3) of this section.

* * * * *

(3) A savings association that is subject to paragraph (g)(1) of this section may not repurchase its capital stock within one year following its conversion to stock form, except that open market stock repurchases of up to five percent of its outstanding capital stock may occur during the first year after the conversion where extraordinary circumstances exist. The savings association must establish compelling and valid business purposes for the repurchases, to the satisfaction of the OTS. The savings association must file a notice with the Regional Director, with a copy to the Office of Examination and Supervision, at least ten days before commencement of the proposed repurchase. The notice must describe the proposed repurchase program and the effects of the proposed repurchases on the savings association's regulatory capital. OTS will not object to the proposed repurchase program if:

(i) The repurchase does not adversely affect the savings association's financial condition;

(ii) The savings association submits sufficient information to evaluate the repurchase program;

(iii) The savings association demonstrates extraordinary circumstances and a compelling and valid business purpose for the repurchase program consistent with the savings association's business plan; or

(iv) The repurchase program would not be contrary to other applicable regulations.

* * * * *

PART 575—MUTUAL HOLDING COMPANIES

3. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

4. Section 575.11 is amended by:

a. Removing, in paragraph (a) the phrase "12 U.S.C. 1467a(c)(2)(A) or (c)(2)(C)–(c)(2)(G)", and by adding in lieu thereof the phrase ";12 U.S.C. 1467a(c)(2) or (c)(9)(A)(ii)";

b. Redesignating, in paragraph (c), the introductory text as paragraph (c)(1) introductory text, and paragraphs (c)(1), (c)(2) and (c)(3), as (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv), respectively;

c. Removing, in newly designated paragraph (c)(1) introductory text the word "shall", and by adding in lieu thereof the word "may"; by removing the phrase "three years", and by adding in lieu thereof the phrase "one year";

d. Adding, in newly designated paragraph (c)(1), a new paragraph (c)(1)(i);

e. Removing, in newly designated paragraph (c)(1)(iv) the phrase "but not" and by adding in lieu thereof the word "or";

f. Adding a new paragraph (c)(2); and

g. Adding a new paragraph (d)(3).

The additions and revisions read as follows:

§ 575.11 Operating restrictions.

* * * * *

(c)(1) * * *

(i) Is in compliance with § 563b3(g)(1) of this chapter;

* * * * *

(2) No mutual holding company may purchase shares of its subsidiary savings association or subsidiary holding company within one year after a stock issuance, except if the purchase complies with § 563b.3(g)(1) of this chapter. For purposes of this subsection, the reference in § 563b.3(g)(3) of this chapter to five percent refers to minority shareholders.

* * * * *

(d)* * *

(3) The OTS will not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

* * * * *

Dated: June 20, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–16346 Filed 7–11–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 2000–57]

RIN 1550–AB24

Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to implement a comprehensive strategy governing mutual institutions, mutual holding company reorganizations, and the mutual to stock conversion process. OTS intends to modify its examination and supervisory policies within the context of safe and sound operations to address many of the concerns mutual institutions have raised about OTS's examination and supervision of their business form. OTS is also proposing to amend certain provisions in its mutual holding company regulations, and its regulations and forms governing mutual to stock conversions of insured savings associations. These proposed regulations include new provisions addressing business plans and charitable contributions. In addition, OTS clarifies certain matters involving conversions from the mutual to the stock form, by, among other things, adding demand account holders to the definition of savings account holders, allowing accelerated vesting in management benefit plans for changes of control, and clarifying the policy on the amount of proceeds allowed to be retained at the holding company level. Further, OTS is rewriting the conversion regulation in a plain language format. In a companion interim final regulation published elsewhere in today's **Federal Register**, OTS is amending the regulations on stock repurchases, changing its practices regarding mutual holding company dividend waivers, and making certain revisions as a result of the Gramm-Leach-Bliley Act of 1999 (GLB Act).

DATES: Written comments must be received on or before October 10, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–57. Hand-deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., from 10:00 a.m. until 4:00 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Counsel (Banking and Finance), (202) 906–7505, or Gary Jeffers, Counsel (Banking and Finance), (202) 906–6457, Business Transactions Division, Chief Counsel's Office; or Timothy P. Leary, Counsel (Banking and Finance), (202) 906–7170, Regulations and Legislation Division, Chief Counsel's Office; or Mary Jo Johnson, Project Manager (202) 906–5739, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS has broad authority to regulate mutual savings associations, to authorize mutual holding company reorganizations, and to regulate mutual to stock conversions of savings associations under the Home Owners' Loan Act, as amended (HOLA), 12 U.S.C. 1464(a), (i) and (p) and 1467a(o). OTS and its predecessor, the Federal Home Loan Bank Board, in exercising their supervisory responsibilities, periodically refined their regulatory strategies and mutual holding company reorganization and conversion regulations, based on their experience with mutual institutions, the conversion process, and in response to developments in the marketplace. OTS has again reviewed its policies, practices, and regulations to assess whether additions or revisions are necessary. OTS identifies several areas of the regulations that it must revise and update to further clarify the standards governing mutual holding company reorganizations and the conversion process. Also, OTS is revising part 563b using the plain language format.

I. Overview

Despite the large number of mutual-to-stock conversions over the years, there are 422 OTS-regulated mutuals, comprising nearly 40 percent of all OTS-regulated thrifts. In many respects, mutuals form the heart of the thrift industry. Mutuals tend to be community-based, community-focused institutions whose sole purpose is to provide a safe place for community members to save, and to invest those savings back into the community through prudent credit programs. History has demonstrated that this community focus is often lost or diluted when institutions convert to stock form and must respond to the interests of their stockholders.

OTS is developing a comprehensive regulatory strategy governing mutual institutions, mutual holding company reorganizations, and the mutual to stock conversion process. This comprehensive strategy will include: (1) New policy and examination guidance; (2) proposed regulations governing reorganizations into mutual holding companies and the mutual to stock conversion process; (3) interim final rules addressing share repurchases and mutual holding company dividend waivers; and (4) revisions to the application forms used for mutual holding company reorganizations and the mutual to stock conversion process.

A. Policy Guidance

Today, OTS is developing new analytical techniques, examination procedures, and industry guidance to address, within the context of safe and sound operations, many of the concerns mutual institutions have raised about their business form and to improve supervision of mutual institutions. OTS makes these changes in concert with the proposed changes to the mutual holding company and conversion regulations and the interim final rules concerning stock repurchases, dividend waivers, and GLB Act [1] revisions published in today's **Federal Register**.

Specifically, the guidance will focus on capitalization, compensation, and on-site examinations and financial analyses of mutual institutions. For mutual institutions seeking to augment their capital base, OTS is exploring the feasibility and utility of various capital-raising alternatives, such as the use of subordinated debt instruments, mutual capital certificates, non-withdrawable accounts, trust preferred securities, and other financing transactions. Conversely, OTS will study the issues and, if necessary, provide guidance or regulations concerning payment of special dividends by mutual institutions seeking to return excess capital to their communities.

OTS will revise its existing guidance on compensation to clarify its position that mutual institutions are subject to and governed by the same prudential standards as stock institutions. OTS will also explore a methodology by which mutual institutions can choose to have

[1] Pub.L. 106–102, 113 Stat. (1999).

their management and board of directors' compensation plans reviewed in a manner similar to shareholder review and approval for stock institutions. Finally, OTS will inform its examiners on emerging compensation issues and programs. This guidance will enhance the ability of mutual institutions to provide competitive compensation plans to attract and retain qualified management and staff.

OTS is currently developing enhanced analytical tools that will improve supervision of mutual institutions. Revised examination procedures, targeted more directly to the quality of operations, risk management, and internal controls, will enable examiners to more effectively gauge the overall financial condition and the ability of mutual institutions to sustain long-term economic viability throughout economic cycles, including during periods of prolonged adverse economic conditions. OTS also will revise the pre-examination response kit (PERK) to streamline information requests prior to the start of examinations to ensure information requested is germane to the operations of a mutual institution and is essential to the completion of the examination. Enhancements to off-site monitoring systems will also provide for more appropriate comparative financial analyses among similarly situated, community-oriented mutual institutions across geographic boundaries.

For mutuals that elect to convert to stock form, OTS encourages consideration of the mutual holding company (MHC) alternative. The MHC structure retains the benefits and essential nature of the mutual charter, while providing greater access to capital markets. In addition, in section 401(b) of the GLB Act, Congress recently expanded the investment and activities authority of MHCs to include the activities of financial holding companies. More than 40% of the MHCs that have been created to date have chosen to remain MHCs; nevertheless, OTS is today proposing significant enhancements to the MHC form to make it even more attractive as a long-term alternative to full conversion, and is seeking comments on still more enhancements. Whether a savings association elects the MHC format or full conversion, today's rule clarifies various aspects of the conversion process and proposes certain new requirements. In a companion interim final regulation published elsewhere in today's **Federal Register**, OTS is amending certain aspects of the regulations immediately.

B. Conversion Considerations

Stock conversion is a major step for mutual institutions. There are many parties who provide consulting services to mutual institutions concerning the benefits of conversion, and who help institutions through the process. Mutual savings associations, their boards of directors, and management must carefully consider whether the benefits of conversion, and the need for capital, justify the costs and other business implications of conversion.

In considering conversion, mutual boards must carefully examine their need for additional capital and the prospects for prudently deploying capital at competitive returns for investors. Institutions that fail to produce adequate returns on equity will likely face pressure from dissatisfied shareholders to improve performance or sell. OTS believes such pressure can distract management and the board from more fundamental business matters, cost an institution considerable sums in legal and management expense, and lead to disruption of normal business activities.

Often, mutual institutions considering conversion are already highly capitalized. They do not need to raise additional capital through conversion to grow or expand into new markets. Lack of opportunity, not capital, constrains the growth of mutual institutions. Opportunities may be limited by aggressive competition in the mutual institution's market area, lack of economic growth in the market area, unwillingness to venture into unfamiliar markets or products, or lack of adequate staff or appropriate expertise to manage new business. Without a clear need for additional capital, and a clear opportunity for prudently deploying it at a competitive shareholder return over the long term, mutual boards should consider other alternatives to conversion.

Other implications of conversion include fundamental changes in management and operations. Whether conversion brings expansion to new markets, introduction of new products or activities, or simply the continued growth of current activities, successful management of new capital generally requires additional management depth. Conversion also may require new management skills and experience, new staff, new facilities, new or upgraded data processing systems, expansion or refocus of internal audit and compliance management processes, and changes in marketing or customer service strategy.

Finally, the costs of conversion can be significant and often are underestimated, particularly the added burden on existing staff and systems. Mutual boards should consider the cost of additional staff to manage quarterly and annual shareholder reporting, the need for additional or more experienced (and more expensive) independent accountant and legal services to prepare shareholder reporting, the cost of managing shareholder relations, and the cost of annual and special shareholder meetings. Also, there may be a cost to the community if converted institutions are acquired by out-of-town institutions that may not share the same commitment to local community service as many mutuals.

Today's proposed rule includes measures to ensure that mutual boards of directors consider all these factors in determining whether to convert, and consider alternatives to meet the institution's business objectives when conversion may not be an appropriate option. The proposed rule confirms OTS practice of requiring pre-filing meetings, and proposes a new requirement to obtain prior OTS non-objection of conversion business plans. It also sets forth the proposed business plan standards to be addressed by converting institutions and considered in OTS review. OTS requests comment on these proposals.

C. Outline of the Process

The conversion process is complex. An institution that is considering a mutual to stock conversion must first update its business plan. Under today's proposed rule, OTS will require each institution contemplating a conversion to meet with the appropriate Regional Office to discuss the proposed business plan and receive the non-objection of the Regional Director to the business plan before submitting either an application to convert to stock form or a notice to reorganize to mutual holding company form.

Once the board of directors updates and receives OTS's non-objection to its business plan, the board must pass a Plan of Conversion that includes, among other things, an eligibility record date for persons who may subscribe for stock in any stock offering. After it approves the plan, the board of directors must publish a notice of adoption of the Plan of Conversion.

In the next stage, the institution must prepare the application for conversion or reorganization, write a proxy statement for the members to vote on the Plan of Conversion or reorganization, and write an offering circular to offer the institution's new stock. This process can take several months.

The institution must next submit all of these documents to OTS, together with an independent appraisal of the institution and current financial statements. If the institution is forming a holding company to hold its stock, it also must submit the documents to the Securities and Exchange Commission (SEC) for concurrent review. OTS and SEC review generally takes 5 to 6 weeks.

After receiving regulatory clearance, an institution prints and mails its documents to members and potential subscribers. The mailing starts the process of soliciting member votes and selling the institution's stock, which generally takes six to twelve weeks.

II. Description of Revisions to the Conversion Regulations

A. Business Plan

OTS currently requires converting institutions to submit a business plan before filing a Plan of Conversion or reorganization. *See* 12 CFR 563b.11. The proposed regulation clarifies that submitting a business plan is the first step in the conversion process. OTS emphasizes that the board of directors and management of converting institutions need to carefully consider their future operations and activities and, in particular, must have realistic plans regarding how they intend to use the conversion proceeds.

As a preliminary stage in business plan development, the proposed rule establishes a new requirement for a pre-filing meeting with the Regional Office to discuss initial plans for conversion and related implications. Generally, the board of directors, or a committee including outside directors, should participate in the meeting. The purpose of the meeting is to ensure that the board of directors has fully considered the costs and benefits of conversion and the available alternatives, and to generally discuss conversion application requirements.

Under the proposed rule, OTS would not formally accept a business plan, and the 30-day business plan review period provided in the proposed rule would not commence, until after the pre-filing meeting is held. The Regional Office may extend the review period as deemed necessary to request, receive, and review additional information from the institution. OTS will not accept an application for conversion until the Regional Office advises an applicant that the Regional Office does not object to the business plan.

Today's proposed rule also establishes written standards for an acceptable conversion business plan. The business plan should include a complete description of the proposed deployment of capital, demonstrate feasibility, discuss the risks, and address managerial and other resources required. The business plan should discuss the institution's record of success and experience in implementing prior growth or expansion initiatives. OTS strongly encourages institutions with management that does not have sufficient or favorable experience with expansion to consider alternatives to full conversion.

The business plan should demonstrate the ability to realize a reasonable return on equity. OTS recognizes that investor requirements vary with time and market conditions, and so has not proposed an absolute standard. Generally, returns should be considered in relation to trends for publicly-traded thrift and bank stocks, broader equity market returns, and the general level of interest rates. At a minimum, the projected return on equity should exceed, by a margin reflecting relative investment risk, the institution's rates on long-term certificates of deposit. The institution should not consider speculative short-term stock price appreciation, or the effect of returns of capital or repurchases of stock, in assessing the reasonableness of projected return on equity, even though these may indeed be factors considered by investors. Management must provide for consistent, sustainable returns to satisfy long-term investor expectations.

The proposed rule is intended to clarify that OTS expects business plans to fully support the business objectives of conversion. By requiring prior Regional Office non-objection to the business plan, OTS seeks to avoid the delays and unnecessary expense later in the conversion process that may arise from the submission of inadequate or incomplete business plans. The proposed rule also clarifies that institutions, upon completion of conversion, must follow their business plans and that any material deviation from an approved business plan will require the prior written approval of the Regional Director.

OTS also seeks to address the problem that many institutions converting from mutual to stock form experience when they convert without well developed business plans. Generally, institutions quickly realize that they cannot earn an acceptable return on equity or otherwise prudently deploy the conversion proceeds without resorting to large capital distributions (in the form of stock repurchases or extraordinary dividends) in the first few years following the conversion. This return of capital, so soon after its creation, undermines the considerable effort (and expenditures) involved in the conversion process and causes OTS to question whether there was a need for the capital in the first place. OTS views a return of capital to shareholders a material deviation from the business plan that requires the prior written approval of the Regional Director.

OTS encourages institutions considering raising new capital to seriously consider the mutual holding company (MHC) form of reorganization with a limited stock issuance, rather than a full conversion. OTS particularly encourages institutions that have no immediate plans for deployment of the new capital to consider this option. OTS requests comment on whether there are other capital raising techniques for mutual savings associations, short of conversion to stock form or MHC reorganization, that might also work. Currently, mutual institutions can raise capital in a variety of ways, including mutual capital certificates, subordinated debt, trust preferred securities, or the formation of real estate insurance trusts (REITs). OTS is particularly interested in the advantages and disadvantages of one instrument versus another, and why these forms of capital are not widely used. OTS is also interested in knowing why an institution would prefer the conversion or MHC reorganization over other methods of raising capital.

B. Mutual Capital Distributions

In contrast to situations where mutual institutions are seeking ways to raise additional capital, a number of mutual institutions have approached OTS for guidance on the distribution of excess capital to their communities in situations where the institution has determined it is prudent and appropriate. OTS is seeking comment on whether to issue guidance or regulations regarding special capital distributions by mutual institutions.

C. Stock Repurchases

In a separate interim final regulation, OTS is revising its regulations to eliminate restrictions on stock repurchases by converted savings associations after the first year following conversion. *See* Interim Final Rule regarding repurchases of stock, dividend waivers, and GLB Act revisions published elsewhere in this issue of the **Federal Register**. The new rule will be codified at proposed § 563b.515(c)(3) if this proposed rule is adopted as a final rule. OTS is also enacting corresponding amendments to the mutual holding company regulations in the interim final regulation.

D. Charitable Organizations

The current mutual to stock conversion regulations do not address when OTS will approve a charitable organization established as part of the mutual to stock conversion process. To date, OTS has not issued a regulation or guidance on establishing a charitable organization as part of the mutual to stock conversion. [2] OTS currently imposes, on a case-by-case basis, various procedures, requirements, and conditions on mutual savings associations contemplating the establishment of a foundation in the process of a stock conversion. Savings associations wishing to contribute conversion stock to a foundation currently must request waivers of a number of requirements in OTS conversion regulations.

To clarify the standards and procedures for forming a charitable organization or contributing stock as part of the conversion process, OTS proposes new regulations describing when OTS will approve a charitable organization in a conversion. These rules codify the current practices, so that waivers routinely requested in a conversion with a charitable foundation are no longer necessary. The standards include discussing the purpose of the charitable organization, voting foundation shares in the same ratio as all other shares voted on proposals considered by shareholders, reserving board seats for an independent director and a director from the institution, and dealing with conflicts of interest. The rules also specify the conditions for approval including examination by OTS at foundation expense, submission of annual reports, and compliance with all laws necessary to maintain the foundation's tax-exempt status.

E. Demand Account Holders

Current § 563b.3(c) provides that each eligible account holder and supplemental eligible account holder will receive the right to purchase stock. This right is tied to the amount of the account holder's "qualifying deposit." Section 563b.3(e) states that the amount of the "qualifying deposit" is the total of the deposit balances in the eligible or supplemental eligible account holder's savings accounts on the close of business on the eligibility or supplemental eligibility record date. The term "savings account" is defined by a cross reference to 12 CFR part 561, and includes "any withdrawable account, except a demand account as defined in 12 CFR 561.16." *See* 12 CFR 561.42.

Converting savings associations have requested that both savings and demand accounts be eligible to receive subscription rights. OTS believes converting savings associations should treat all savings and demand account holders the same way. Savings account and demand account holders are both members of the savings association and, therefore, should be given equal treatment. Accordingly, OTS proposes to clarify that the amount of the qualifying deposit is the total of the deposit balances in both savings and demand accounts.

F. Revision of Policy Regarding Management Stock Benefit Plans

In 1994, OTS substantially revised its conversion regulations to codify policies regarding the establishment of management recognition plans and stock option plans in connection with a conversion. [3] OTS intended these amendments to limit benefits realized by management and a few selected individuals in conversions and to give shareholders an opportunity to consider management performance before voting on plans.

Before the 1994 amendment, plans could provide for accelerated vesting in case of death, disability, or a change of control. Existing § 563b.3(g)(4)(xii), as modified by the 1994 amendment, provides for such accelerated vesting only in the case of disability or death.

Most converting associations object to this restriction. To avoid the restriction many converted associations have waited until the first year after conversion, amended their plans to allow for vesting in case of a change of control, and then had shareholders approve the amended plans. Amending plans requires shareholder approval, which entails additional expense and effort, and OTS is unaware of any case where such an amendment was rejected. The revised regulation rescinds the 1994 modification and clarifies that a plan may permit accelerated vesting for disability or death, or a change of control of the converted savings association. OTS will retain the right to object to any payments made in connection with a merger or acquisition.

OTS also is revising its regulation to clarify that it would allow dividend equivalent rights, dividend adjustment rights, or other similar provisions that permit cash payments, adjustment of the number of shares, or exercise price of options as a result of stock dividends or splits, in management recognition plans, stock option plans, or other stock benefit plans. OTS does not believe these types of provisions, which are common in option plans, unduly benefit recipients, as long as these provisions do not violate OTS vesting requirements or pricing requirements for options. *See* proposed § 563b.500.

OTS notes that when an institution lists its stock on the National Association of Securities Dealers Automated Quotation (NASDAQ) National Market System (which many do because it provides for a wider opportunity for trading an institution's stock than the over the counter market), NASDAQ requires shareholder ratification of stock benefit plans. OTS currently requires shareholder ratification of plans within the first year following conversion. OTS proposes to revise the section on management benefit plans to clarify that an institution must present to shareholders for ratification any material amendments to management recognition plans, stock option plans, or other benefit plans that occur more than one year after conversion and that are inconsistent with the regulation.

OTS also is adding a provision to the proposed rule that clarifies a supervisory policy requiring exercise or forfeiture of stock benefits in certain circumstances, such as if an institution becomes critically undercapitalized. *See* proposed § 563b.500.

G. Holding Company Formation

OTS allows a savings association to organize a holding company as part of a mutual to stock conversion. OTS, however, never formally imposed any limit on the amount of conversion proceeds that the holding company may retain. In the past, OTS staff advised institutions that a holding company may keep no more than 50 percent of conversion proceeds. This limit was based on OTS's belief that the institution should get the most proceeds from the conversion. This policy also ensures sufficient capital at the savings association. In today's proposed rule, OTS codifies this position. Accordingly, proposed § 563b.105 will state that the converted savings association must retain at least 50% of the gross conversion proceeds. The amount of proceeds proposed for the holding company level must also be consistent with the business plan.

H. Mutual Holding Company Revisions

The proposed regulation makes some conforming changes to the MHC

[2] A 1992 legal opinion concludes that savings associations have the authority to establish charitable foundations under the "incidental powers doctrine." 1992 OTS LEXIS 76 (Nov. 12, 1992). The opinion does not address the establishment of charitable foundations as part of the mutual-to-stock conversion process.

[3] 59 FR 61247, 61253 (November 30, 1994).

regulations to reflect OTS' intent to make the MHC a more suitable, long-term alternative to full conversion and to incorporate changes made to the conversion regulations. OTS is also proposing that institutions under the MHC format may have option plans that provide more flexibility than currently permitted.

The proposed regulation allows savings association subsidiaries of MHCs, or holding companies inserted in between MHCs and their savings association subsidiaries (Mid-tiers) to offer management benefits or stock option plans that permit issuance of more shares than currently permitted under the regulations. Under the current rule, an institution issuing 20 percent of its stock to minority shareholders could promulgate a stock option plan including two percent of its outstanding shares (*i.e.*, 10 percent of the minority stock issuance). OTS proposes that a savings association subsidiary of an MHC (or Mid-tier) may offer management benefit plans or stock option plans as if minority shareholders held 49 percent of the stock, provided that the MHC retains majority control. Using this option, under the proposed rule an institution issuing 20 percent of its stock to minority shareholders could promulgate a stock option plan including 4.9 percent of the outstanding shares (*i.e.*, 10 percent of the maximum shares that could be issued to minority shareholders).

In addition, OTS will allow the savings association or Mid-tier to adopt the plans at the time of reorganization. However, purchasers of the stock must approve the plan by a separate vote on the stock order form. In addition, the savings association or Mid-tier may make no grants under the plan until at least six months following the reorganization. The delay is designed to allow the stock price to settle in the marketplace before the savings association or Mid-tier makes grants.

Finally, OTS will allow the adoption of additional option plans without requiring an additional stock issuance to all categories of subscribers. Additional plans would be subject to certain restrictions, such as retention of majority ownership at the MHC level, and other applicable regulatory requirements. OTS notes that listing on the NASDAQ and qualification of some plans under IRS rules requires shareholder ratification of benefit plans, and of course OTS's regulation has no impact on these requirements. Additional plan offerings would require notice to OTS, but could be adopted unless OTS objects within 30 days of submission. Among the factors OTS will consider when reviewing the plans are the purpose for creating additional plans, management ratings, or supervisory problems at the converted savings association.

I. Revision of Policy Regarding Acquisitions

Current and proposed rules provide that no person or company may acquire more than 10% of any class of equity security of a recently converted institution for three years following conversion without OTS approval. The primary purposes of this rule are to provide a reasonable period of time for the institution to prudently deploy the new capital according to the plan described in the offering documents, for it to acclimate to operating as a public company, and to do both without the distraction of considering takeover proposals. (*See* approval standards at section 563b.3(i)(5) or proposed section 563b.525(d)).

OTS is aware that shareholder groups have approached management and other shareholders of recently converted institutions as soon as the first quarter following conversion, asserting that shareholder return on equity is inadequate or that management should consider a sale of the institution immediately. In certain situations, OTS has approved acquisitions of recently converted institutions, but in no event before the second year following conversion.

OTS is reconsidering its application of its approval standards. OTS does not believe acquisitions within the first three years following conversion are always in the best interest of newly converted institutions, the communities the institutions serve, or the shareholders. In addition, OTS is concerned that even where the acquisition is considered friendly, approval of the acquisition may be inconsistent with the purposes of the existing rules.

Current and proposed regulations provide newly converted institutions needed time to implement their business plans as presented to OTS and stock purchasers, and fully deploy proceeds according to those plans during the first three years after conversion. Therefore, OTS is notifying the public that it intends to take a very close look at applications under the existing standards to make sure all criteria are fully met before it will give written approval of acquisitions within the first three years following conversion.

J. Comments

OTS invites comment on all aspects of these proposed changes. In addition, OTS may convene a focus group during the public comment period, to ascertain other views on the proposed regulation. OTS will publish the views of the focus group in the public comment summary in the final regulation. In addition to questions posed throughout this preamble, OTS asks:

- How can OTS make the MHC form more attractive? The agency is interested in other enhancements to the MHC form that commenters might suggest.
- For institutions that have determined it is necessary to convert to stock form, will the proposal increase industry interest in converting to MHC form and remaining in that form? OTS asks mutual institutions that are considering converting to stock form if the proposed changes in OTS examination and supervisory policy, coupled with changes to the MHC regulations and the revisions enacted today by the interim final rule accompanying this proposal, make the MHC form a better choice of business organization than a full conversion to stock form.
- Should reorganization into MHC or Mid-tier form require a vote of the members? OTS is unaware of any reorganization that has failed to receive the majority vote of the members. OTS questions the necessity for the expenditure of funds by the institution to obtain a certain vote, particularly since members retain the same voting rights at the MHC that they had before reorganization at the savings association. If OTS removes this requirement for a reorganization, should it be imposed in the event of a full conversion to stock form, when members would lose their voting rights?
- Should mutual institutions be permitted to affiliate with other mutual institutions to leverage managerial and administrative resources while simultaneously retaining their independent community focus using means other than conversion to stock form or reorganization into MHC form? OTS requests comments on this issue in response to inquiries from mutual institutions for ways to affiliate with each other that do not involve the issuance of stock.
- OTS is also exploring the feasibility of creating bankers' banks specifically focused on serving the needs of community-oriented mutual institutions. OTS is seeking comment regarding the level of interest among mutual institutions in the formation of

bankers' banks to specifically serve their needs. Additionally, OTS would like commenters to identify potential regulatory requirements or other obstacles that may impede creation of bankers' banks for mutual institutions.

- What consideration may MHCs or Mid-tiers use to acquire other institutions, such as trust preferred securities, REITs, mutual capital certificates, and stock repurchases to issue stock for acquisitions? OTS has received a number of inquiries recently from MHCs about other currency to accomplish acquisitions.
- How can OTS make it more attractive for mutual institutions to stay in mutual form, particularly where capital raising is not a necessary objective for the institution?

Elsewhere in this issue of the **Federal Register**, OTS is amending its regulations to clarify another area of concern to MHCs, the ability to waive dividends and any attendant consequences.

K. Miscellaneous Revisions

In addition to the proposed revisions described above, OTS proposes a number of miscellaneous revisions to filing and other requirements. Among the other changes, the proposed rule will:

- Revise the definition section of the regulation to include only those definitions that are not defined elsewhere in OTS regulations, or to move specific definitions to the appropriate section of the regulation. *See* proposed § 563b.25.
- Reduce the number of copies of applications that a savings association must file with OTS from ten to seven. *See* proposed § 563b.155.
- Revise the filing requirements to coordinate the place of filing, and number of copies filed, for the application for conversion and any amendments to the application for conversion. *See* proposed §§ 563b.115, 563b.155, 563b.180 and 563b.185.
- Codify the current informal standard requiring a legal opinion indicating that any marketing materials comply with all applicable securities laws. *See* proposed § 563b.275.
- Delete the requirement for a legal opinion regarding insured accounts. *See* proposed § 563b.100 Exhibit 3(d).

L. Forms

OTS is proposing to revise all of the forms currently in the conversion regulations, and has drafted a new form that facilitates the conversion process (Form OF for the Order Form). In drafting these forms, OTS moved a number of requirements currently in the regulations to the related forms. *See* proposed § 563b.05(b). To ensure that the public will have an opportunity to comment on these forms, OTS has appended the forms to this proposed rule and will publish the final forms along with the final rule. The forms, however, will not be codified in the Code of Federal Regulations. They will continue to be available through OTS Washington and Regional Offices and will be accessible on OTS's website after issuance of the final rule.

M. Plain Language Format

OTS redrafted all of part 563b and the related forms using the plain language format. Section 722 of the GLB Act requires federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. These proposed revisions do not affect the substance of the regulation or forms, but do make them easier to understand.

OTS invites your comments on how to make this proposed rule easier to understand. For example:

- Did we organize the material to suit your needs? If not, how could the material be better organized?
- Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical language or jargon that isn't clear? If so, what language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?
- Would more (but shorter) sections be better? If so, what sections should be changed?
- What else could we do to make the rule easier to understand?

III. Disposition of Existing Rules

Original provision	Proposed provision	Comment
12 CFR 563b.1	12 CFR 563b.5	Nonsubstantive revision, moved.
12 CFR 563b.2(a)	12 CFR 563b.25	Substantive revisions, deletions, and moved.
12 CFR 563b.2(b)		Deleted.
12 CFR 563b.3(a)	12 CFR 563b.5(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(b)	12 CFR 563b.200(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(1)	12 CFR 563b.330(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(2)	12 CFR 563b.355(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(2)(i)–(ii)	12 CFR 563b.375(a), (d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(3)	12 CFR 563b.360	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)	12 CFR 563b.335(b), (c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(i)	12 CFR 563b.320(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(ii)	12 CFR 563b.375(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(iii)	12 CFR 563b.375(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(iv)	12 CFR 563b.375(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(5)	12 CFR 563b.320(d), 365	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(6)	12 CFR 563b.320(e), 335(b), (d)	Nonsubstantive revision, deletions and moved.
12 CFR 563b.3(c)(6)(i)	12 CFR 563b.385(a), (c), 380(a)	Substantive revision, deletions and moved.
12 CFR 563b.3(c)(6)(ii)–(iii)	12 CFR 563b.395	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(6)(iv)	12 CFR 563b.390(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(7)	12 CFR 563b.385(a), (c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(8)	12 CFR 563b.370	Nonsubstantive revision, deletions and moved.
12 CFR 563b.3(c)(9)	12 CFR 563b.505(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(10)	12 CFR 563b.330(a), 335(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(11)	12 CFR 563b.420(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(12)	12 CFR 563b.445(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(13)	12 CFR 563b.430(d), 445(b), 465, 485	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(14)	12 CFR 563b.25	Nonsubstantive revision, moved.

Original provision	Proposed provision	Comment
12 CFR 563b.3(c)(15)	12 CFR 563b.440, 445(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(16)	12 CFR 563b.140, 425	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(17)	12 CFR 563b.505(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(18)	12 CFR 563b.505(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(19)	12 CFR 563b.530(a)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(20)	12 CFR 563b.150(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(21)	12 CFR 563b.130	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(22)	12 CFR 563b.345(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(23)	12 CFR 563b.320(a)–(d), 380 (a)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(24)	12 CFR 563b.520(a)–(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(1)–(7)		Deleted.
12 CFR 563b.3(d)(8)	12 CFR 563b.385(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(9)	12 CFR 563b.385(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(10)–(11)		Deleted.
12 CFR 563b.3(d)(12)	12 CFR 563b.390(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(13)		Deleted.
12 CFR 563b.3(e)(1)	12 CFR 563b.25	Nonsubstantive revision, moved.
12 CFR 563b.3(e)(2)		Deleted.
12 CFR 563b.3(f)(1)	12 CFR 563b.445(b), 450, 455, 480	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(2)	12 CFR 563b.445(b), 450	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(3)	12 CFR 563b.470(e), 475	Revision with partial deletion, moved.
12 CFR 563b.3(f)(4)	12 CFR 563b.460	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(5)	12 CFR 563b.470(a)–(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(g)(1)	12 CFR 563b.510	Revision with deletion, moved.
12 CFR 563b.3(g)(2)	12 CFR 563b.510, 520(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(g)(3)	12 CFR 563b.510, 515	Substantive revision with deletion, moved.
12 CFR 563b.3(g)(4)	12 CFR 563b.500	Substantive revision, moved.
12 CFR 563b.3(h)	12 CFR 563b.340(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(1)–(2)	12 CFR 563b.340(b)(1)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(i)	12 CFR 563b.525	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(ii)	12 CFR 563b.420(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(iii)	12 CFR 563b.525(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(i)		Deleted.
12 CFR 563b.3(i)(4)(ii)–(iv)	12 CFR 563b.525(c)(1)–(3)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(v)	12 CFR 563b.340(b)(2)(ii), 525(c)(4)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(vi)–(5)	12 CFR 563b.525(d)(1)–(2)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(6)	12 CFR 563b.430(a), (b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(7)(i)–(ii)	12 CFR 563b.25, 525(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(7)(iii)–(iv)		Deleted.
12 CFR 563b.3(j)	12 CFR 563b.5(a)	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(1)	12 CFR 563b.120	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(2)		Deleted.
12 CFR 563b.4(a)(3)	12 CFR 563b.125	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(3)(i)–(ii), (4)(i)–(xviii)	12 CFR 563b.135(a), (b)	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(4)(xix)		Deleted.
12 CFR 563b.4(a)(5)	12 CFR 563b.135(c)	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(1)(i)	12 CFR 563b.180	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(1)(ii)	12 CFR 563b.185	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(2)		Deleted.
12 CFR 563b.4(b)(3)	12 CFR 563b.180(b)	Nonsubstantive revision, moved.
12 CFR 563b.4(c)	12 CFR 563b.160	Nonsubstantive revision, moved.
12 CFR 563b.5(a)	12 CFR 563b.250	Nonsubstantive revision, moved.
12 CFR 563b.5 (b)–(c)	12 CFR 563b.270(b)	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(1)	12 CFR 563b.255	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(2)	12 CFR 563b.260, 265	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(3)	12 CFR 563b.255(h)	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(4)	12 CFR 563b.260	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(1)–(2)	12 CFR 563b.150, 155	Nonsubstantive revision, deletions, and moved.
12 CFR 563b.5(e)(3)	12 CFR 563b.275(d)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(4)		Deleted.
12 CFR 563b.5(e)(5)	12 CFR 563b.150, 160(a)–(b)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(6)	12 CFR 563b.275(e)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(7)	12 CFR 563b.275(c)	Nonsubstantive revision, moved.
12 CFR 563b.5(f)	12 CFR 563b.280	Nonsubstantive revision, moved.
12 CFR 563b.5(g)(1)–(2)	12 CFR 563b.285(a)	Nonsubstantive revision, moved.
12 CFR 563b.5(g)(3)	12 CFR 563b.290	Substantive revision, moved.
12 CFR 563b.5(h)	12 CFR 563b.285(b)	Nonsubstantive revision, moved.
12 CFR 563b.6(a)	12 CFR 563b.225(a)	Nonsubstantive revision, moved.
12 CFR 563b.6(b)	12 CFR 563b.230	Nonsubstantive revision, moved.
12 CFR 563b.6(c)(1)	12 CFR 563b.235	Nonsubstantive revision, moved.
12 CFR 563b.6(c)(2)		Deleted.
12 CFR 563b.6(d)	12 CFR 563b.235(d)	Nonsubstantive revision, moved.
12 CFR 563b.6(e)	12 CFR 563b.225(b)–(c)	Nonsubstantive revision, moved.

Original provision	Proposed provision	Comment
12 CFR 563b.7(a)(1)	12 CFR 563b.325(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(2)	12 CFR 563b.300(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(3)	12 CFR 563b.325(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(4)		Deleted.
12 CFR 563b.7(b)	12 CFR 563b.300(e), 305	Nonsubstantive revision, moved.
12 CFR 563b.7(c)	12 CFR 563b.330	Nonsubstantive revision, moved.
12 CFR 563b.7(d)	12 CFR 563b.200(b)(8), 300 (c)–(d), Form OC, Item 3.	Nonsubstantive revision, moved.
12 CFR 563b.7(e)	12 CFR 563b.335(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(f)(1)–(2)	12 CFR 563b.200(b)	Nonsubstantive revision, deletion and moved.
12 CFR 563b.7(f)(3)		Deleted.
12 CFR 563b.7(g)(1)–(2)	12 CFR 563b.335(a), Form OF, Items (1), (2)	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.7(g)(3), (4), (5)	Form OF, Items (3), (4), (5)	Nonsubstantive revision, moved.
12 CFR 563b.7(h)	12 CFR 563b.345(a), 350(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(i)	12 CFR 563b.400	Nonsubstantive revision, moved.
12 CFR 563b.7(j)	12 CFR 563b.350(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(1)–(2)	12 CFR 563b.405	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(2)(i)–(ii)	12 CFR 563b.310(d)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(3)		Deleted.
12 CFR 563b.7(k)(4)	12 CFR 563b.310(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(5)	12 CFR 563b.310(b)–(d)	Substantive revision, moved.
12 CFR 563b.8(a)	12 CFR 563b.155	Substantive revision, moved.
12 CFR 563b.8(b)(1)–(2)	12 CFR 563b.150	Nonsubstantive revision, moved.
12 CFR 563b.8(b)(3)		Deleted.
12 CFR 563b.8(c)(1)–(2)(i)–(ii)	12 CFR 563b.240	Nonsubstantive revision, moved.
12 CFR 563b.8(c)(2)(iii)	12 CFR 563b.260	Substantive revision, moved.
12 CFR 563b.8(c)(3)	12 CFR 563b.300(a), (c)	Substantial revisions, deletions, and moved.
12 CFR 563b.8(d)(1)–(2)	12 CFR 563b.430	Nonsubstantive revision, moved.
12 CFR 563b.8(d)(3)	12 CFR 563b.435	Nonsubstantive revision, moved.
12 CFR 563b.8(e)	12 CFR 563b.115(a), 155, 180(b), Form AC, General Instruction B.	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.8(f)		Deleted.
12 CFR 563b.8(g)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(h)		Deleted.
12 CFR 563b.8(i)–(1)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(m)		Deleted.
12 CFR 563b.8(n)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(o)		Deleted.
12 CFR 563b.8(p)	12 CFR 563b.150(a)(6), Form AC, General Instruction B.	Nonsubstantive revision, moved.
12 CFR 563b.8(q)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(r)	Form AC, General Instruction B	Substantive revision, moved.
12 CFR 563b.8(s)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(t)(1)	12 CFR 563b.100	Nonsubstantive revision, moved.
12 CFR 563b.8(t)(2)		Deleted.
12 CFR 563b.8(u)	12 CFR 563b.205	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.8(v)	12 CFR 563b.530(d)	Nonsubstantive revision, moved.
12 CFR 563b.9	12 CFR 563b.10	Nonsubstantive revision, moved.
12 CFR 563b.10	12 CFR 563b.605(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.11	12 CFR 563b.200(c)	Nonsubstantive revision, moved.
12 CFR 563b.20	12 CFR 563b.600	Nonsubstantive revision, moved.
12 CFR 563b.21(a)	12 CFR 563b.605	Nonsubstantive revision, moved.
12 CFR 563b.21(b)	12 CFR 563b.650, 610	Nonsubstantive revision, moved.
12 CFR 563b.22		Deleted.
12 CFR 563b.23(a)–(c)	12 CFR 563b.670, 675	Nonsubstantive revision, additions and moved.
12 CFR 563b.23(d)	12 CFR 563b.690	Nonsubstantive revision, moved.
12 CFR 563b.24(a)–(b)(1), (3)	12 CFR 563b.625(a)(1)	Nonsubstantive revision, moved.
12 CFR 563b.24(b)(2)		Deleted.
12 CFR 563b.24(c)	12 CFR 563b.625(b)	Substantive addition, moved.
12 CFR 563b.25	12 CFR 563b.630	Nonsubstantive revision, moved.
12 CFR 563b.26	12 CFR 563b.625(a)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(a)	12 CFR 563b.650	Nonsubstantive revision, moved.
12 CFR 563b.27(b)	12 CFR 563b.660(f)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(c)	12 CFR 563b.660(a)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(d)	12 CFR 563b.660(c)	Nonsubstantive revision, moved.
12 CFR 563b.27(e)	12 CFR 563b.660(g)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(f)–(g)	12 CFR 563b.660(e)	Nonsubstantive revision, moved.
12 CFR 563b.27(h)	12 CFR 563b.660(f)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(i)	12 CFR 563b.660(g)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(j)	12 CFR 563b.660(g)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(k)	12 CFR 563b.660(g)(4)	Nonsubstantive revision, moved.

Original provision	Proposed provision	Comment
12 CFR 563b.27(l)	12 CFR 563b.660(d)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(m)	12 CFR 563b.660(d)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(n)	12 CFR 563b.660(d)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(o)	12 CFR 563b.660(d)(4)	Nonsubstantive revision, moved.
12 CFR 563b.27(p)	12 CFR 563b.660(a)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(q)–(r)	12 CFR 563b.660(h)	Nonsubstantive revision, moved.
12 CFR 563b.27(s)	12 CFR 563b.660(g)(5)	Nonsubstantive revision, moved.
12 CFR 563b.28	12 CFR 563b.610	Nonsubstantive revision, moved.
12 CFR 563b.29(a)	12 CFR 563b.660	Nonsubstantive revision, moved.
12 CFR 563b.29(b)		Deleted.
12 CFR 563b.29(d)(1)–(2)	12 CFR 563b.430	Nonsubstantive revision, moved.
12 CFR 563b.29(d)(3)	12 CFR 563b.435	Nonsubstantive revision, moved.
12 CFR 563b.30	12 CFR 563b.675	Nonsubstantive revision, moved.
12 CFR 563b.31	12 CFR 563b.680	Nonsubstantive revision, moved.
12 CFR 563b.32	12 CFR 563b.670(c)	Nonsubstantive revision, moved.
12 CFR 563b.33	12 CFR 563b.670(d)	Nonsubstantive revision, moved.
12 CFR 563b.100	Form AC–1680	Nonsubstantive revision, moved.
12 CFR 563b.101	Form PS–1681	Nonsubstantive revision, moved.
12 CFR 563b.102	Form OC–1682	Nonsubstantive revision, moved.
	12 CFR 563b.105, 110, 115	New provisions.
	12 CFR 563b.295	New provision.
	12 CFR 563b.550–575	New provisions.
	Form OF–1683	New form.

IV. Executive Order 12866

The Director of OTS determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires federal agencies to either prepare an initial regulatory flexibility analysis (IRFA) with this proposed rule or certify that the rule would not have a significant impact on a substantial number of small entities.[4] OTS cannot at this time determine whether the rule would have a significant impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.[5]

A description of the reasons why OTS is considering this action, and a statement of the objectives of, and legal basis for, the proposed rule are in the supplementary material above.

1. Small Entities to Which the Proposed Rule Would Apply

The proposed rule applies to mutual savings associations that propose to convert to the stock form of ownership. There are currently approximately 422 mutual savings associations and 27 MHCs subject to OTS oversight. Of these institutions, approximately 252 have less than $100 million in assets. Small depository institutions are generally defined, for RFA purposes, as those with assets under $100 million.[6] In the past two years, OTS has processed 45 and 17 applications, respectively, to convert from mutual to stock or mutual holding company form. Based on this experience, OTS believes that the proposed rule affects fewer than 20 savings associations annually.

2. Requirements of the Proposed Rule

The proposed rule requires mutual savings associations wishing to convert to stock form to prepare a plan of conversion and other supporting forms and documents (such as a business plan and an independent appraisal) and submit the documents for OTS approval. The current mutual to stock conversion regulations require all of these documents or information.

The proposed rule includes a new requirement that a savings association that intends to establish a charitable organization as part of its conversion must supply certain documents and information regarding the charitable organization. Under the current application processing policies, OTS often requires a savings association that intends to establish a charitable organization as part of its conversion to submit the same type of information that the proposed rule would require. As a result, this new requirement should not have any additional impact on small savings associations.

The proposed rule also adds demand account holders to the definition of savings account holders, allows accelerated vesting in management benefit plans for changes of control, and clarifies OTS policy regarding the amount of proceeds allowed at the holding company level. None of these provisions, however, should add to the reporting, recordkeeping, or compliance requirements for small entities.

Although it is not clear that the RFA requires a quantitative analysis of the impact of the proposed regulatory changes, OTS provides the following estimate. The proposed rule's primary economic impact on small savings associations relates to the expense of preparing the application to convert. Savings associations wishing to convert must prepare the necessary documents and forms, including a plan of conversion, a business plan, and an appraisal. Preparation of these documents may require legal or professional help. OTS's experience in the conversion process indicates that savings associations generally hire legal counsel, accountants, marketing agents, and professional appraisers to assist in completion of the necessary documents and forms. Savings associations converting under the current regulations spend approximately $250,000 to one million dollars each to go through the process. We note that the new requirements will add only 10 hours of additional paperwork in preparation, and may save institutions that decide after preliminary business plan preparation and discussion, not to convert, significant time and expense. *See* discussion *infra* at Section VII. The new requirement for information supporting a proposed charitable contribution should not increase these costs appreciably.

3. Significant Alternatives

Section 603(c) of the RFA requires OTS to describe any significant alternatives to the proposed rule that

[4] 5 U.S.C. 605(b).
[5] 5 U.S.C. 603(a).
[6] 13 CFR 121.201, Division H (1999).

accomplish the stated objectives of the rule while minimizing any significant economic impact of the rule on small entities. Section 603(c) lists several examples of significant alternatives, including (1) establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance standards rather than design standards; and (4) exempting small entities from coverage of the rule or a part of the rule.

After consideration, OTS does not believe that any of these alternatives are feasible. As noted, more than half of the savings associations to which the proposed rule could apply meet the RFA standard for "small depository institutions." In fact, the conversion process is aimed largely at small institutions that want to raise capital in the open market by converting to the stock form of ownership. Given that the conversion process is designed with small institutions in mind, modifying the requirements for such small institutions is not necessary. Moreover, given that a conversion cannot be measured for performance until it takes place, the use of performance standards rather than design standards is impractical.

To reduce regulatory burden consistent with the goals of this regulation, the proposed rule specifically permits OTS to waive any requirement under the part where the waiver is equitable and not detrimental to the savings association, the accountholders, or the public interest. This process will provide substantial flexibility to OTS and the savings association to minimize any significant economic impact of a provision on a specific institution.

Nevertheless, OTS requests comments on the burdens associated with the proposed rule that particularly affect small savings associations, and whether any modifications or exemptions from the rules for small savings associations would be appropriate.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VII. Paperwork Reduction Act

OTS invites comment on all of the following issues:

- Whether the proposed information collection contained in this proposal is necessary for the proper performance of OTS's functions, including whether the information has practical utility.
- The accuracy of OTS's estimate of the burden of the proposed information collection.
- Ways to enhance the quality, utility, and clarity of the information to be collected.
- Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.
- Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OTS submitted the collection of information requirements contained in this proposal to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collections of information to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503, with copies to the Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

The collection of information requirements in this proposed rule are in 12 CFR part 563b. OTS requires this information for the proper supervision of savings associations that convert from mutual to stock form under OTS regulations. The likely respondents/recordkeepers are federal savings associations.

Estimated average annual burden hours per respondent/recordkeeper: 510 hours.

Estimated number of respondents/recordkeepers: 16 per year.

Estimated total annual reporting and recordkeeping burden: 8160 hours.

Start up costs to respondents: N/A.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision proposes to amend title 12, Chapter V, Code of Federal Regulations as set forth below.

1. Part 563b is revised to read as follows:

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.

563b.5 What does this part do?
563b.10 May I form a holding company as part of my conversion?
563b.15 May I form a charitable organization as part of my conversion?
563b.20 May I acquire another insured stock depository institution as part of my conversion?
563b.25 What definitions apply to this part?

Subpart A—Standard Conversions

Prior to Conversion

563b.100 What must I do before a conversion?
563b.105 What information must I include in my business plan?
563b.110 Who must review my business plan?
563b.115 Under what circumstances will OTS not object to my business plan?
563b.120 May I discuss my plans to convert with others?

Plan of Conversion

563b.125 Must my board of directors adopt a plan of conversion?
563b.130 What must I include in my plan of conversion?
563b.135 How do I notify my members that my board of directors approved a plan of conversion?
563b.140 May I amend my plan of conversion?

Filing Requirements

563b.150 What must I include in my application for conversion?
563b.155 How do I file my application for conversion?
563b.160 May I keep portions of my application for conversion confidential?
563b.165 How do I amend my application for conversion?

Notice of Filing of Application and Comment Process

563b.180 How do I notify the public that I filed an application for conversion?
563b.185 How may a person comment on my application for conversion?

OTS Review of the Application for Conversion

563b.200 What actions may OTS take on my application?
563b.205 May a court review OTS's final action on my conversion?

Vote by Members

563b.225 Must I submit the plan of conversion to my members for approval?
563b.230 Who is eligible to vote?
563b.235 How must I notify my members of the meeting?
563b.240 What must I submit to OTS after the members' meeting?

Proxy Solicitation

563b.250 Who must comply with these proxy solicitation provisions?
563b.255 What must the form of proxy include?
563b.260 May I use previously executed proxies?
563b.265 How may I use proxies executed under this part?
563b.270 What must I include in my proxy statement?
563b.275 How do I file revised proxy materials?
563b.280 Must I mail a member's proxy soliciting material?
563b.285 What solicitations are prohibited?
563b.290 What will OTS do if a solicitation violates these prohibitions?
563b.295 Will OTS require me to re-solicit proxies?

Offering Circular

563b.300 What must happen before OTS declares my offering circular effective?
563b.305 When may I distribute the offering circular?
563b.310 When must I file a post-effective amendment to the offering circular?

Offers and Sales of Stock

563b.320 Who has priority to purchase my conversion shares?
563b.325 When may I offer to sell my conversion shares?
563b.330 How do I price my conversion shares?
563b.335 How do I sell my conversion shares?
563b.340 What sales practices are prohibited?
563b.345 How may a subscriber pay for my conversion shares?
563b.350 Must I pay interest on payments for conversion shares?
563b.355 How many subscription rights must I give to each eligible account holder and each supplemental eligible account holder?
563b.360 Are my officers, directors, and their associates eligible account holders?
563b.365 May other voting members purchase conversion shares in the conversion?
563b.370 Does OTS limit aggregate purchases by officers, directors, and their associates?
563b.375 How do I allocate my conversion shares if my shares are oversubscribed?
563b.380 May my employee stock ownership plan purchase conversion shares?
563b.385 May I impose any purchase limitations?
563b.390 Must I provide a purchase preference to members of my local community?
563b.395 What other conditions apply when I offer conversion shares in a community offering, a public offering, or both?

Completion of the Offering

563b.400 When must I complete the sale of my stock?
563b.405 How do I extend the offering period?

Completion of the Conversion

563b.420 When must I complete my conversion?
563b.425 Who may terminate the conversion?
563b.430 What happens to my old charter?
563b.435 What happens to my corporate existence after conversion?
563b.440 What voting rights must I provide to stockholders after the conversion?
563b.445 What must I provide my savings account holders?

Liquidation Account

563b.450 What is a liquidation account?
563b.455 What is the initial balance of the liquidation account?
563b.460 How do I determine the initial balances of liquidation sub-accounts?
563b.465 Do account holders retain any voting rights based on their liquidation sub-accounts?
563b.470 Must I adjust liquidation sub-accounts?
563b.475 What is a liquidation?
563b.480 Does the liquidation account affect my net worth?
563b.485 What provision must I include in my new Federal charter?

Post-Conversion

563b.500 May I implement a stock option plan or management or employee stock benefit plan?
563b.505 May my directors, officers, and their associates freely trade shares?
563b.510 May I repurchase shares after conversion?
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Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m,78n,78w.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

§ 563b.5 What does this part do?

(a) *General.* This part governs how a savings association ("you") may convert from the mutual to the stock form of ownership. Subpart A of this part governs standard mutual to stock conversions. Subpart B of this part governs voluntary supervisory mutual to stock conversions. This part supersedes all inconsistent charter and bylaw provisions of federal savings associations converting to stock form.

(b) *Prescribed forms.* You must use the forms prescribed under this part and provide such information as OTS may require under the forms by regulation or otherwise.

The forms required under this part include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form).

(c) *Waivers.* OTS may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, you must file a written request with OTS that:

(1) Specifies the requirement(s) or provision(s) you want OTS to waive;

(2) Demonstrates that the waiver is equitable, is not detrimental to you, your account holders or other savings associations, and is not contrary to public interest;

and

(3) If applicable, includes an opinion of counsel demonstrating that state law conflicts with the requirement or provision.

§ 563b.10 May I form a holding company as part of my conversion?

You may convert to the stock form of ownership as part of a transaction where you organize a holding company to acquire all of your shares upon their issuance. In such a transaction, your holding company will offer rights to purchase its shares instead of your shares. All of the requirements of subpart A generally apply to the holding company as they apply to the savings association. Section 574.6 of this chapter contains OTS's holding company application requirements.

§ 563b.15 May I form a charitable organization as part of my conversion?

When you convert to the stock form, you may form a charitable organization. Your contributions to the charitable organization are governed by the requirements of §§ 563b.550 through 563b.575.

§ 563b.20 May I acquire another insured stock depository institution as part of my conversion?

When you convert to stock form, you may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 563b.25 What definitions apply to this part?

The following definitions apply to this part and the forms prescribed under this part:

Acting in concert has the same meaning as in § 574.2(c) of this chapter. The rebuttable presumptions of § 574.4(d) of this chapter, other than §§ 574.4(d)(1) and (d)(2) of this chapter, apply to the share purchase limitations at §§ 563b.355 through 563b.395.

Affiliate of, or a person *affiliated with*, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

Associate of a person is:

(1) A corporation or organization (other than you or your majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§ 563b.370, 563b.380, 563b.385, 563b.390, 563b.395 and 563b.505, a person who has a substantial beneficial interest in your tax-qualified or non-tax-qualified employee stock benefit plan or who is a trustee or a fiduciary of the plan is not an associate of the plan. For the purposes of § 563b.370, your tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is your director or senior officer, or a director or senior officer of your holding company or your subsidiary.

Association members or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

Control (including *controlling, controlled by*, and *under common control with*) means the direct or indirect power to direct or exercise a controlling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described at 12 CFR part 574.

Eligibility record date is the date for determining eligible account holders. The eligibility record date must be at least one year before the date your board of directors adopts the plan of conversion.

Eligible account holders are any persons holding qualifying deposits on the eligibility record date.

IRS is the Internal Revenue Service.

Local community includes:

(1) Every county, parish, or similar governmental subdivision in which you have a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in your Community Reinvestment Act assessment area; and

(4) Any other area or category you set out in your plan of conversion, as approved by OTS.

Offer, offer to sell, or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with you, are not offers, offers to sell, or offers for sale.

Person is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, or a government or political subdivision of a government.

Proxy soliciting material includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

Purchase or *buy* is a contract to acquire a security or interest in a security for value.

Qualifying deposit is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. Your plan of conversion may provide that any savings account with total deposit balances of $50 or less do not qualify.

Sale or *sell* is a contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by OTS is not a sale.

Savings Account is any withdrawable account as defined in § 561.42 of this chapter, including a demand account as defined in § 561.16 of this chapter.

Solicitation and *solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause your members to procure, withhold, or revoke a proxy. Solicitation or solicit do not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

Subscription offering is the offering of shares through nontransferable subscription rights to:

(1) Eligible account holders under § 563b.355;

(2) Tax-qualified employee stock ownership plans under § 563b.380;

(3) Supplemental eligible account holders under § 563b.355; and

(4) Other voting members under § 563b.365.

Supplemental eligibility record date is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before OTS approves your conversion and will only occur if OTS has not approved your conversion within 15 months after the eligibility record date.

Supplemental eligible account holders are any persons, except your officers, directors and their associates, holding qualifying deposits on the supplemental eligibility record date.

Tax-qualified employee stock benefit plan is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under section 401 of the Internal Revenue Code.

Underwriter is any person who purchases any securities from you with a view to distributing the securities, offers or sells securities for you in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

Subpart A—Standard Conversions

Prior to Conversion

§ 563b.100 What must I do before a conversion?

(a) You must meet with OTS before you may file your business plan. You must submit your business plan at least 30 days before you file your application for conversion. You may not file your application for conversion if the Regional Director objects to your business plan.

(b) You must also consult with OTS before you file your application for conversion. OTS will discuss the information that you must include in the application for conversion, general issues that you may confront in the conversion process, and any other pertinent issues.

§ 563b.105 What information must I include in my business plan?

(a) Your business plan must:

(1) Clearly and completely describe your projected operations and activities for three years following the conversion. You must describe how you will deploy the conversion proceeds at the converted savings association (and holding company, if applicable), and include three years of projected financial statements for the converted institution and each holding company, and three years of consolidated financial statements for the holding company. The business plan must provide that the converted savings association must retain at least 50 percent of the gross conversion proceeds.

(2) Demonstrate that your plan for deployment of conversion proceeds will substantially serve to meet credit and lending needs in your proposed market areas. OTS will not approve a business plan that provides for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion, or the investment is part of a properly managed leverage strategy.

(3) Demonstrate that you have a reasonable need for new capital to support projected operations and activities. You must show that opportunities are reasonably available in your proposed market areas to achieve your planned deployment of conversion proceeds.

(4) Describe your experience with respect to prior growth, expansion, or other initiatives similar to the operations and activities proposed in your business plan.

(5) Describe the risks associated with your plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(6) Demonstrate that your management and board of directors have the expertise, and that you have adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in your business plan.

(7) Demonstrate that you will achieve a reasonable return on equity, commensurate with investment risk, investor expectations, and industry norms, without consideration of assumed, speculative stock price appreciation.

(b) You may not project stock repurchases, returns of capital, or extraordinary dividends in any part of the business plan. A newly converted company should not plan on significant returns of conversion proceeds during the business plan period, except in extraordinary circumstances.

§ 563b.110 Who must review my business plan?

(a) Your chief executive officer and members of the board of directors must review, and at least two-thirds of your board must approve, the business plan.

(b) Your chief executive officer and at least two-thirds of the board must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. You must submit these certifications with your business plan.

§ 563b.115 Under what circumstances will OTS not object to my business plan?

(a) You must file your business plan with the Regional Office. OTS may request additional information, if necessary. You must file your business plan as a confidential exhibit to the Form AC.

(b) OTS will not object to your business plan if it demonstrates prudent deployment of capital and otherwise meets the requirements of § 563b.105.

(c) OTS will review your business plan and will either not object to the plan or will disapprove your business plan. You may not submit your application for conversion until OTS advises you that it does not object to your business plan, except in extraordinary circumstances.

(d) If OTS approves your application for conversion and you complete your conversion, you must operate within the parameters of your approved business plan. You must obtain the prior written approval of the Regional Director for any material deviations from your business plan.

§ 563b.120 May I discuss my plans to convert with others?

(a) You may discuss information about your conversion with individuals that you authorize to prepare documents for your conversion.

(b) Except as permitted under paragraph (a) of this section, you must keep all information about your conversion confidential until your board of directors adopts your plan of conversion.

(c) If you violate this section, OTS may require you to take remedial action. For example, OTS may require you to take any or all of the following actions:

(1) Publicly announce that you are considering a conversion;

(2) Set an eligibility record date acceptable to OTS;

(3) Limit the subscription rights of any person who violates or aids a violation of this section; or

(4) Take any other action to assure that your conversion is fair and equitable.

Plan of Conversion

§ 563b.125 Must my board of directors adopt a plan of conversion?

Your board of directors must adopt a plan of conversion that conforms to §§ 563b.320 through 563b.395 ("Offers and Sales of Stock"). Your board of directors must adopt the plan by at least a two-thirds vote.

§ 563b.130 What must I include in my plan of conversion?

You must include the information included in §§ 563b.320 through 563b.395 ("Offers and Sales of Stock") in your plan of conversion. OTS may require you to delete or revise any provision in your plan of conversion if OTS determines the provision is inequitable, is detrimental to you, your account holders, or other savings associations, or is contrary to public interest.

§ 563b.135 How do I notify my members that my board of directors approved a plan of conversion?

(a) *Notice.* You must promptly notify your members that your board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in your home office and in your branch offices. You must mail a letter to each member or publish a notice in the local newspaper in every local community where you have an office. You may also issue a press release. OTS may require broader publication, if necessary to ensure adequate notice to your members.

(b) *Contents of notice.* You may include any of the following statements and descriptions in your letter, notice, or press release.

(1) Your board of directors adopted a proposed plan to convert from a mutual to a stock savings institution.

(2) You will send your members a proxy statement with detailed information on the proposed conversion before you convene a members' meeting to vote on the conversion.

(3) Your members will have an opportunity to approve or disapprove the proposed conversion at a meeting. At least a majority of the eligible votes must approve the conversion.

(4) You will not vote existing proxies to approve or disapprove the conversion. You will solicit new proxies for voting on the proposed conversion.

(5) OTS, and in the case of a state-chartered savings association, the appropriate state regulator, must approve the conversion before the conversion will be effective. Your members will have an opportunity to file written comments, including objections and materials supporting the objections, with OTS.

(6) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of your conversion before OTS will approve the conversion.

(7) OTS, and in the case of a state-chartered savings association, the appropriate state regulator, might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(8) Savings account holders will continue to hold accounts in the converted savings association with the same dollar amounts, rates of return, and general terms as existing deposits. FDIC will continue to insure the accounts.

(9) Your conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(10) Your business of accepting deposits and making loans will continue without interruption.

(11) Your current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(12) You may continue to be a member of the Federal Home Loan Bank System.

(13) You may substantively amend your proposed plan of conversion before the members' meeting.

(14) You may terminate the proposed conversion.

(15) After OTS, and in the case of a state-chartered savings association, the appropriate state regulator, approve the proposed conversion, you will send proxy materials providing additional information. After you send proxy materials, members may telephone or write to you with additional questions.

(16) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase your shares.

(17) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase your shares.

(18) A brief description of how voting members may participate in the conversion.

(19) A brief description of how directors, officers, and employees will participate in the conversion.

(20) A brief description of the proposed plan of conversion.

(21) The par value (if any) and approximate number of shares you will issue and sell in the conversion.

(c) *Other requirements.* (1) You may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of your shares upon conversion in the letter, notice, or press release.

(2) If you respond to inquiries about the conversion, you may address only the matters listed in paragraph (b) of this section.

§ 563b.140 May I amend my plan of conversion?

You may amend your plan of conversion before you solicit proxies. After you solicit proxies, you may amend your plan of conversion only if OTS concurs.

Filing Requirements

§ 563b.150 What must I include in my application for conversion?

(a) Your application for conversion must include all of the following information.

(1) Your plan of conversion.

(2) Pricing materials meeting the requirements of § 563b.200(b).

(3) Proxy soliciting materials under § 563b.270, including:

(i) A preliminary proxy statement with signed financial statements;

(ii) A form of proxy meeting the requirements of § 563b.255; and

(iii) Any additional proxy soliciting materials.

(4) An offering circular described in § 563b.300.

(5) The documents and information required by Form AC. You may obtain Form AC from OTS Washington and Regional Offices (see § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

(6) Written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use.

(7) Any additional information OTS requests.

(b) OTS will not accept for filing, and will return, any application for conversion that is improperly executed, materially deficient, or substantially incomplete, or that provides for unreasonable conversion expenses.

§ 563b.155 How do I file my application for conversion?

You must file seven copies of your application for conversion on Form AC. You must file the original and three conformed copies with the Applications Filing Room in Washington, and three conformed copies with the appropriate Regional Office at the addresses in § 516.1 of this chapter.

§ 563b.160 May I keep portions of my application for conversion confidential?

(a) OTS makes all filings under this part available to the public, but may keep portions of your application for conversion confidential under paragraph (b) of this section.

(b) You may request OTS to keep portions of your application confidential. To do so, you must separately bind and clearly designate as "confidential" any portion of your application for conversion that you deem confidential. You must provide a written statement specifying the grounds supporting your request for confidentiality. Your CRA Plan is not considered confidential information. The CRA portion of your application may not incorporate by reference information contained in the confidential portion of your application.

(c) OTS will determine whether confidential information must be available to the public under 5 U.S.C. 552 and part 505 of this chapter. OTS will advise you if it makes available to the public any information you designated as "confidential."

(d) If OTS issues a public statement with its decision on the application for conversion, OTS may comment on confidential submissions in the public statement without notifying you.

563b.165 How do I amend my application for conversion?

To amend your application for conversion, you must:

(a) File an amendment with an appropriate facing sheet;

(b) Number each amendment consecutively;

(c) Respond to all issues raised by OTS; and

(d) Demonstrate that the amendment conforms to all applicable regulations.

Notice of Filing of Application and Comment Process

§ 563b.180 How do I notify the public that I filed an application for conversion?

(a) You must publish a public notice of the application under the procedures in subpart B of part 516 of this chapter, except that you must publish your notice within three days before or after you file your application for conversion. You must simultaneously prominently post the notice in your home office and all branch offices. Your notice must include the following information.

(1) You filed an application for conversion with OTS.

(2) You delivered copies of the application to OTS and to the Regional Office, including the addresses of the applicable OTS offices.

(3) A statement that anyone may file written comments, including objections to the plan of conversion and materials supporting the objections, within 20 days. You must include instructions regarding how a person may file a comment.

(b) Promptly after publication, you must file four copies of any public notice, and an affidavit of publication from each publisher. You must file the original and one copy with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.1 of this chapter.

(c) If OTS does not accept your application for conversion under § 563b.200 and requires you to file a new application, you must publish and post a new notice and allow an additional 20 days for comment.

§ 563b.185 How may a person comment on my application for conversion?

Anyone may submit a written comment supporting or opposing your application for conversion with OTS. To do so, commenters must file within 20 days after you notify the public under § 563b.180. A commenter must file the original and one copy of any comments with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.1 of this chapter.

OTS Review of the Application for Conversion

§ 563b.200 What actions may OTS take on my application?

(a) OTS may approve your application for conversion only if:

(1) Your conversion complies with this part;

(2) You will meet your regulatory capital requirements under part 567 of this chapter after the conversion; and

(3) Your conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) OTS will review the appraisal required by § 563b.150(a)(2) in determining whether to approve your application. OTS will review the appraisal under the following requirements.

(1) Independent persons experienced and expert in corporate appraisal, and acceptable to OTS, must prepare the appraisal report.

(2) An affiliate of the appraiser may serve as an underwriter or selling agent, if you ensure that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(3) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(4) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(5) If the appraisal is based on a capitalization of your *pro forma* income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(6) If the appraisal is based on a comparison of your shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(7) OTS may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(8) You may not represent or imply that OTS approved the appraisal.

(c) OTS will review your compliance record under part 563e of this chapter and your business plan to determine how you will serve the convenience and needs of your communities after the conversion.

(1) Based on this review, OTS may approve your application, deny your application, or approve your application on the condition that you will improve your CRA performance or that you will address the particular credit or lending needs of the communities that you will serve.

(2) OTS may deny your application if your business plan does not demonstrate that your proposed use of conversion proceeds will help you to meet the credit and lending needs of the communities that you will serve.

(d) OTS may request that you amend your application if further explanation is necessary, material is missing or material must be corrected.

(e) OTS will deny your application if the application does not meet the requirements of this subpart, unless OTS waives the requirement under § 563b.5.

§ 563b.205 May a court review OTS's final action on my conversion?

(a) Any person aggrieved by OTS's final action on your application for

conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate or set aside the final OTS action. The aggrieved person must file the petition with the court within the later of 30 days after OTS publishes notice of OTS's final action in the **Federal Register** or 30 days after you mail the proxy statement to your members under § 563b.235.

Vote by Members

§ 563b.225 Must I submit the plan of conversion to my members for approval?

(a) After OTS approves your plan of conversion, you must submit your plan of conversion to your members for approval. You must obtain this approval at a special meeting, unless you are a state-chartered savings association and state law requires you to obtain approval at an annual meeting.

(b) Your members must approve your plan of conversion by a majority of the total outstanding votes, unless you are a state-chartered savings association and state law prescribes a higher percentage.

(c) Your members may vote in person or by proxy.

(d) You may notify eligible account holders or supplemental eligible account holders who are not voting members of your proposed conversion. You may include only the information in § 563b.135 in your notice.

§ 563b.230 Who is eligible to vote?

You determine members' eligibility to vote by setting a voting record date. You must set a voting record date that is not more than 60 days nor less than 20 days before your meeting, unless you are a state-chartered savings association and state law requires a different voting record date.

§ 563b.235 How must I notify my members of the meeting?

(a) You must notify your members of the meeting to consider your conversion by sending the members a proxy statement authorized by OTS.

(b) You must notify your members 20 to 45 days before your meeting, unless you are a state-chartered savings association and state law requires a different notice period.

(c) You must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If you are a federal association and the name of the beneficial holder is disclosed on your records; or

(2) If you are a state-chartered association and the beneficial holder possesses voting rights under state law.

§ 563b.240 What must I submit to OTS after the members' meeting?

Promptly after the members' meeting, you must file all of the following information with OTS:

(a) A certified copy of each adopted resolution on the conversion.

(b) The total votes eligible to be cast.

(c) The total votes represented in person or by proxy.

(d) The total votes cast in favor of and against each matter.

(e) The percentage of votes necessary to approve each matter.

(f) An opinion of counsel that:

(1) You conducted the members' meeting in compliance with all applicable state or federal laws and regulations; and

(2) You complied with all federal or state laws applicable to the conversion.

Proxy Solicitation

§ 563b.250 Who must comply with these proxy solicitation provisions?

(a) You must comply with these proxy solicitation provisions when you provide proxy soliciting material to members for the meeting to vote on your plan of conversion.

(b) Your members must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on your conversion, except where:

(1) The member solicits 50 people or fewer and does not solicit proxies on your behalf; or

(2) The member solicits proxies through newspaper advertisements after your board adopts the plan of conversion. The newspaper advertisement may include only the following information:

(i) Your name;

(ii) The reason for the advertisement;

(iii) The proposal or proposals to be voted upon;

(iv) Where a member may obtain a copy of the proxy soliciting material; and

(v) A request for your members to vote at the meeting.

§ 563b.255 What must the form of proxy include?

The form of proxy must include all of the following.

(a) A statement in bold face type stating whether management is soliciting the proxy.

(b) Blank spaces where the member must date and sign the proxy.

(c) Clear and impartial identification of each matter or group of related matters that members will vote upon. You must include any proposed charitable contribution as an item to be voted on separately.

(d) The phrase "Revocable Proxy" in bold face type (at least 18 point).

(e) A description of any charter or state law requirement that restricts or conditions votes by proxy.

(f) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(g) The date, time, and the place of the meeting, when available.

(h) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(i) A statement that management will vote the proxy in accordance with the member's specifications.

(j) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

§ 563b.260 May I use previously executed proxies?

You may not use previously executed proxies for the plan of conversion vote. If members consider your plan of conversion at an annual meeting, you may vote proxies obtained through other proxy solicitations only on matters not related to your plan of conversion.

§ 563b.265 How may I use proxies executed under this part?

You may vote a proxy obtained under this part on matters that are incidental to the conduct of the meeting. You may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on your plan of conversion.

§ 563b.270 What must I include in my proxy statement?

(a) *Content requirements.* You must prepare your proxy statement in compliance with this part and Form PS. You may obtain Form PS from OTS Washington and Regional Offices (see § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

(b) *Other requirements.* (1) OTS will review your proxy soliciting material when it reviews the application for conversion and will authorize the use of proxy soliciting material.

(2) You must provide an authorized written proxy statement to your members before you provide any other soliciting material. You must mail authorized proxy soliciting material to

your members within ten days after OTS authorizes the solicitation.

§ 563b.275 How do I file revised proxy materials?

(a) You must file revised proxy materials as an amendment to your application for conversion. *See* § 563b.155 for where to file.

(b) To revise your proxy soliciting materials, you must file:

(1) Seven copies of your revised proxy materials as required by Form PS;

(2) Seven copies of your revised form of proxy, if applicable; and

(3) Seven copies of any additional proxy soliciting material subject to § 563b.270, including press releases, personal solicitation instructions, radio or television scripts that you plan to use or furnish to your members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(c) You must mark four of the seven required copies to clearly indicate changes from the prior filing.

(d) You must file seven definitive copies of all proxy soliciting material, in the form in which you furnish the material to your members. You must file no later than the date that you send or give the proxy soliciting material to your members. You must indicate the date that you will release the materials.

(e) Unless OTS requests you to do so, you do not have to file copies of replies to inquiries from your members or copies of communications that merely request members to sign and return proxy forms.

§ 563b.280 Must I mail a member's proxy soliciting material?

(a) You must mail the member's authorized proxy soliciting material if:

(1) Your board of directors adopted a plan of conversion;

(2) A member requests in writing that you mail proxy soliciting material; and

(3) The member agrees to defray your reasonable expenses.

(b) As soon as practicable after you receive a request under paragraph (a) of this section, you must mail or otherwise furnish the following information to the member:

(1) The approximate number of members that you solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(2) The estimated cost of mailing the proxy soliciting material for the member.

(c) You must mail authorized proxy soliciting material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to you.

(d) You are not responsible for the content of a member's proxy soliciting material.

(e) A member may furnish other members its own proxy soliciting material, authorized by OTS, subject to these rules.

§ 563b.285 What solicitations are prohibited?

(a) *False or misleading statements.* (1) No one may use proxy soliciting material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(i) Is false or misleading with respect to any material fact;

(ii) Omits any material fact that is necessary to make the statements not false or misleading; or

(iii) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(2) No one may represent or imply that OTS determined that proxy soliciting material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

(1) An undated or post-dated proxy;

(2) A proxy that states it will be dated after the date it is signed by a member;

(3) A proxy that is not revocable at will by the member; or

(4) A proxy that is part of another document or instrument.

§ 563b.290 What will OTS do if a solicitation violates these prohibitions?

(a) If a solicitation violates § 563b.285, OTS may require remedial measures, including:

(1) Correction of the violation by a retraction and a new solicitation;

(2) Rescheduling the members' meeting; or

(3) Any other actions necessary to ensure a fair vote.

(b) OTS may also bring an enforcement action against the violator.

§ 563b.295 Will OTS require me to re-solicit proxies?

If you amend your application for conversion, OTS may require you to re-solicit proxies for your members' meeting as a condition of approval of the amendment.

Offering Circular

§ 563b.300 What must happen before OTS declares my offering circular effective?

(a) You must prepare and file your offering circular with OTS in compliance with this part and Form OC and, where applicable, part 563g of this chapter. Section 563b.155 governs where to file your offering circular. You may obtain Form OC from OTS Washington and Regional Offices (see § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

(b) You must condition your stock offering upon the members' approval of your plan of conversion.

(c) OTS will review the Form OC and may comment on the included disclosures and financial statements.

(d) You must file seven copies of each revised offering circular, final offering circular, and post-effective amendment to the final offering circular.

(e) OTS will not approve the adequacy or accuracy of the offering circular or the disclosures.

(f) After you satisfactorily address OTS's concerns, you must request OTS to declare your Form OC effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of your shares under § 563b.400.

§ 563b.305 When may I distribute the offering circular?

(a) You may distribute a preliminary offering circular at the same time as or after you mail the proxy statement to your members.

(b) You may not distribute an offering circular until OTS declares it effective. You must distribute the offering circular in accordance with this part.

(c) You must distribute your Form OC to persons listed in your plan of conversion within 10 days after OTS declares it effective.

§ 563b.310 When must I file a post-effective amendment to the offering circular?

(a) You must file a post-effective amendment to the offering circular with OTS when a material event, circumstance, or change of circumstance occurs.

(b) After OTS declares the post-effective amendment effective, you must immediately deliver the amendment to each person who subscribed for or ordered shares in the offering.

(c) Your post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless OTS approves a longer rescission period.

Offers and Sales of Stock

§ 563b.320 Who has priority to purchase my conversion shares?

You must offer to sell your shares in the following order.

(a) Eligible account holders.

(b) Tax-qualified employee stock ownership plans.

(c) Supplemental eligible account holders.

(d) Other voting members who have subscription rights.

(e) Your community, your community and the general public, or the general public.

§ 563b.325 When may I offer to sell my conversion shares?

(a) You may offer to sell your conversion shares after OTS approves your conversion, authorizes your proxy statement, and declares your offering circular effective.

(b) The offer may commence at the same time you start the proxy solicitation of your members.

§ 563b.330 How do I price my conversion shares?

(a) You must sell your conversion shares at a uniform price per share and at a total price that is equal to the estimated *pro forma* market value of your shares after you convert.

(b) The maximum price must be no more than 15 percent above the midpoint of the estimated price range in your offering circular.

(c) The minimum price must be no more than 15 percent below the midpoint of the estimated price range in your offering circular.

(d) If OTS permits, you may increase the maximum price of conversion shares sold. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) The maximum price must be between $5 and $50 per share.

(f) You must include the estimated price in any preliminary offering circular.

§ 563b.335 How do I sell my conversion shares?

(a) You must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. You may either send the order forms with your offering circular or after you distribute your offering circular.

(b) You may sell your conversion shares in a community offering, a public offering, or both. You may begin the community offering, the public offering, or both at any time during the subscription offering.

(c) You may pay underwriting commissions (including underwriting discounts). OTS may object to the payment of unreasonable commissions. You may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, you may pay an underwriter a consulting fee. OTS may object to the payment of unreasonable consulting fees.

(d) If you conduct the community offering, the public offering, or both at the same time as the subscription offering, you must fill all subscription orders first.

(e) You must prepare your order form in compliance with this part and Form OF. You may obtain Form OF from OTS Washington and Regional Offices (see § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

§ 563b.340 What sales practices are prohibited?

(a) In connection with offers, sales, or purchases of conversion shares under this part, you and your directors, officers, agents, or employees may not:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) During your conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for your conversion shares, or the underlying securities, to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of your conversion shares from anyone but you; or

(3) Knowingly acquire more than the maximum purchase limitations established in your plan of conversion.

(c) The restrictions in paragraphs (b)(1) and (b)(2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on your behalf, that makes the offer with a view toward public resale; or

(2) One or more of your tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of your equity securities in the aggregate.

§ 563b.345 How may a subscriber pay for my conversion shares?

(a) A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or by a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, you may not assess a penalty for the withdrawal.

(b) You may not extend credit to any person to purchase your conversion shares.

§ 563b.350 Must I pay interest on payments for conversion shares?

(a) You must pay interest from the date you receive a payment for conversion shares until the date you complete or terminate the conversion. You must pay interest at no less than the passbook rate for amounts paid in cash, check, or money order.

(b) If a subscriber withdraws money from a savings account to purchase conversion shares, you must pay interest on the payment until you complete or terminate the conversion as if the withdrawn amount remained in the account.

(c) If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, you may cancel the certificate and pay interest at no less than your passbook rate on any remaining balance.

§ 563b.355 How many subscription rights must I give to each eligible account holder and each supplemental eligible account holder?

(a) You must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 563b.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: the total number of conversion shares that you will issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. You must round down the product of this multiplied fraction to the next whole number.

(b) You must give subscription rights to purchase shares to each supplemental

eligible account holder in the same amount as described in paragraph (a) of this section, except that you must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

§ 563b.360 Are my officers, directors, and their associates eligible account holders?

Your officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, you must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

§ 563b.365 May other voting members purchase conversion shares in the conversion?

(a) You must give rights to purchase your conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. You must allocate rights to each voting member that are equal to the greater of:

(1) The maximum purchase limitation established for the community offering and the public offering under § 563b.395; or

(2) One-tenth of one percent of the total stock offering.

(b) You must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

§ 563b.370 Does OTS limit the aggregate purchases by officers, directors, and their associates?

(a) When you convert, your officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of your total stock offering:

Institution size	Officer and director purchases (percent)
$ 50,000,000 or less	35
$ 50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(b) The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to your officers, directors, and their associates.

§ 563b.375 How do I allocate my conversion shares if my shares are oversubscribed?

(a) If your conversion shares are oversubscribed by your eligible account holders, you must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(b) If your conversion shares are oversubscribed by your supplemental eligible account holders, you must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) If a person is an eligible account holder and a supplemental eligible account holder, you must include the eligible account holder's allocation in determining the number of conversion shares that you may allocate to the person as a supplemental eligible account holder.

(d) For conversion shares that you do not allocate under paragraphs (a) and (b) of this section, you must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. You must describe this method of allocation in your plan of conversion.

(e) If shares remain after you have allocated shares as provided in paragraphs (a) and (b) of this section, and if your voting members oversubscribe you must allocate your conversion shares among those members equitably. You must describe the method of allocation in your plan of conversion.

§ 563b.380 May my employee stock ownership plan purchase conversion shares?

(a) Your tax-qualified employee stock ownership plan may purchase up to 10 percent of the total offering of your conversion shares.

(b) If OTS approves a revised stock valuation range as described in § 563b.330(e), and the final conversion stock valuation range exceeds the former maximum stock offering range, you may allocate conversion shares to your tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (a) of this section.

(c) If your tax-qualified employee stock ownership plan is not able to purchase stock in the offering, it may, with prior OTS approval and appropriate disclosure in your offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(d) You may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (a) and (b) of this section, unless OTS objects on supervisory grounds.

§ 563b.385 May I impose any purchase limitations?

(a) You may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to between one percent and five percent of the total stock sold. If you set a limit of five percent, you may provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase more than five percent as long as the total amount that the subscribers purchase over five percent does not in the aggregate exceed 10 percent of the total stock offering.

(b) You may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a $500 subscription or 25 shares.

(c) In setting purchase limitations under this section, you may not aggregate conversion shares attributed to a person in your tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

§ 563b.390 Must I provide a purchase preference to persons in my local community?

(a) In your subscription offering, you may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in your local community.

(b) In your community offering, you must give a purchase preference to natural persons residing in your local community.

§ 563b.395 What other conditions apply when I offer conversion shares in a community offering, a public offering, or both?

(a) You must offer and sell your stock to achieve a widespread distribution of the stock.

(b) If you offer shares in a community offering, a public offering, or both, you must first fill orders for your stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. You must allocate any remaining shares on an equal number of shares per order basis until you fill all orders.

Completion of the Offering

§ 563b.400 When must I complete the sale of my stock?

You must complete all sales of your stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under § 563b.405.

§ 563b.405 How do I extend the offering period?

(a) You must request, in writing, an extension of any offering period.

(b) OTS may grant extensions of time to sell your shares. OTS will not grant any single extension of more than 90 days.

(c) If OTS grants your request for an extension of time, you must provide a post-effective amendment to the offering circular under § 563b.310 to each person who subscribed for or ordered stock. Your amendment must indicate that OTS extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

Completion of the Conversion

§ 563b.420 When must I complete my conversion?

(a) You must select a date for the completion of the conversion that is within 24 months of the date that your members approve the conversion. Once OTS approves the conversion, it will not permit extension of the completion date.

(b) Your conversion is complete on the date that you accept the offers for your stock.

§ 563b.425 Who may terminate the conversion?

(a) Your members may terminate the conversion by failing to approve the conversion at your members' meeting.

(b) You may terminate the conversion before your members' meeting.

(c) You may terminate the conversion after the members' meeting only if OTS concurs.

§ 563b.430 What happens to my old charter?

(a) If you are a federally chartered mutual savings association or savings bank, and you convert to a federally chartered stock savings association or savings bank, you must apply to OTS to amend your charter and bylaws consistent with part 552 of this chapter, as part of your application for conversion. You may only include OTS pre-approved anti-takeover provisions in your amended charter and bylaws. *See* 12 CFR 552.4(b)(8). OTS will state the effective date of your charter amendments in its approval of the conversion.

(b) If you are a state-chartered mutual savings association or savings bank, and you convert to a federally chartered stock savings association or savings bank, you must apply to OTS for a new charter and bylaws consistent with part 552 of this chapter. You may only include OTS pre-approved anti-takeover provisions in your charter and bylaws. *See* 12 CFR 552.4(b)(8). OTS will state the effective date of your charter amendments with its approval of the conversion.

(c) If you are a federally chartered mutual savings association or savings bank and you convert to a state-chartered stock savings association under this part, your mutual charter terminates when the state issues a stock charter. You must promptly file a copy of your new state stock charter with OTS. If you were a federally chartered mutual savings association or savings bank and you convert to a state-chartered stock savings association, you must also surrender your federal charter to OTS for cancellation promptly after the state issues your charter.

(d) Your new or amended charter must require you to establish and maintain a liquidation account for eligible and supplemental eligible account holders under § 563b.450.

§ 563b.435 What happens to my corporate existence after conversion?

Your corporate existence will continue following your conversion, unless you convert to a state-chartered stock savings association and state law prescribes otherwise.

§ 563b.440 What voting rights must I provide to stockholders after the conversion?

You must provide your stockholders with exclusive voting rights, except as provided in § 563b.445(c).

§ 563b.445 What must I provide my savings account holders?

(a) You must provide each savings account holder, without payment, a withdrawable savings account or accounts in the same amount and under the same terms and conditions as their accounts before your conversion.

(b) You must provide a liquidation account for each eligible and supplemental eligible account holder under § 563b.450.

(c) If you are a state-chartered savings association and state law requires you to provide voting rights to savings account holders or borrowers, your charter must:

(1) Limit these voting rights to the minimum required by state law; and

(2) Require you to solicit proxies from the savings account holders and borrowers in the same manner that you solicit proxies from your stockholders.

Liquidation Account

§ 563b.450 What is a liquidation account?

(a) A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in your net worth at the time of conversion. You must maintain a sub-account to reflect the interest of each account holder.

(b) Before you may provide a liquidation distribution to common stockholders, you must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(c) You may not record the liquidation account in your financial statements. You must disclose the liquidation account in the footnotes to your financial statements.

§ 563b.455 What is the initial balance of the liquidation account?

The initial balance of the liquidation account is your net worth in the statement of financial condition included in the final offering circular.

§ 563b.460 How do I determine the initial balances of liquidation sub-accounts?

(a)(1) You determine the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(2) You determine the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the supplemental eligibility

record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(3) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, you must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(b) You may not increase the initial sub-account balances. You must decrease the initial balance under § 563b.470 as depositors reduce or close their accounts.

§ 563b.465 Do account holders retain any voting rights based on their liquidation sub-accounts?

Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

§ 563b.470 Must I adjust liquidation sub-accounts?

(a)(1) You must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is your fiscal year end, after the relevant eligibility record dates is less than:

(i) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(ii) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(2) The reduction must be proportionate to the reduction in the deposit balance.

(b) If you reduce the balance of a liquidation sub-account, you may not subsequently increase it if the deposit balance increases.

(c) You are not required to adjust the liquidation account and sub-account balances at each annual closing date if you maintain sufficient records to make the computations if a liquidation occurs.

(d) You must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same Social Security number.

(e) If there is a complete liquidation, you must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

§ 563b.475 What is a liquidation?

(a) A liquidation is a sale of your assets and settlement of your liabilities with the intent to cease operations and close. Upon liquidation, you must return your charter to the governmental agency that issued it. The government agency must cancel your charter.

(b) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If you are involved in such a transaction, the surviving institution must assume the liquidation account.

§ 563b.480 Does the liquidation account affect my net worth?

No. You may use or apply any of your net worth accounts notwithstanding the existence of the liquidation account, except as provided in § 563b.520.

§ 563b.485 What provision must I include in my new federal charter?

If you convert to federal stock form, you must include the following provision in your new charter: "*Liquidation Account.* Under OTS regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of_____. If the association undergoes a complete liquidation, it must comply with OTS regulations with respect to the amount and priorities on liquidation of each of the savings account holder's interests in the liquidation account. A savings account holder's interest in the liquidation account does not entitle the savings account holder to any voting rights."

Post-Conversion

§ 563b.500 May I implement a stock option plan or management or employee stock benefit plan?

(a) You may implement a stock option plan or management or employee stock benefit plan within 12 months after your conversion, if you meet all of the following requirements.

(1) You disclose the plans in your proxy statement and offering circular and indicate in the offering circular that there will be a separate vote on the plans at least six months after the conversion.

(2) You do not grant stock options under your stock option plan in excess of 10 percent of shares that you issued in the conversion.

(3) You do not permit your management stock benefit plans, in the aggregate, to hold more than three percent of the shares that you issued in the conversion. However, if you have tangible capital of 10 percent or more following the conversion, OTS may permit you to establish a management stock benefit plan that holds up to four percent of the shares that you issued in the conversion.

(4) You do not permit your tax-qualified employee stock benefit plan(s) and your management stock benefit plans, in the aggregate, to hold more than 10 percent of the shares that you issued in the conversion. However, if you have tangible capital of 10 percent or more following the conversion, OTS may permit your tax-qualified employee stock benefit plan(s) and your management stock benefit plans, in the aggregate, to hold up to 12 percent of the shares that you issued in the conversion.

(5) No individual receives more than 25 percent of the shares under any plan.

(6) Your directors who are not your employees do not receive more than five percent of the shares of any plan individually, or 30 percent of the shares of any plan in the aggregate.

(7) Your shareholders approve each plan by a majority of the total votes eligible to be cast at a duly called meeting before you establish or implement the plan. You may not hold this meeting until six months after your conversion. If you are a subsidiary of a mutual holding company, a majority of the total votes eligible to be cast (other than your parent mutual holding company) must approve each plan before you may establish or implement the plan.

(8) When you distribute proxies or related material to shareholders in connection with the vote on a plan, you state that the plan complies with OTS regulations, and that OTS does not endorse or approve the plan in any way. You may not make any written or oral representation to the contrary.

(9) You do not grant stock options at less than the market price at the time of grant.

(10) You do not use stock issued at the time of conversion to fund management or employee stock benefit plans.

(11) Your plan does not begin to vest earlier than one year after your shareholders approve the plan, and does not vest at a rate exceeding 20 percent a year.

(12) Your plan permits accelerated vesting only for disability or death, or if you undergo a change of control.

(13) Your plan provides that your executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in § 565.4), is subject to OTS enforcement action, or receives a capital directive under § 565.7.

(14) You file a copy of the approved stock option plan or management or employee stock benefit plan with OTS and certify to OTS in writing that the

plan approved by the shareholders is the same plan that you filed with, and disclosed in, the proxy materials.

(15) You file the plan and the certification with OTS within five calendar days after your shareholders approve the plan.

(b) You may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to your stock in stock option plans or management or employee stock benefit plans under this section.

(c) If the plan is adopted more than one year following your conversion, any material amendments to the requirements in paragraph (a) of this section must be ratified by your shareholders.

§ 563b.505 May my directors, officers, and their associates freely trade shares?

(a) Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(b) You must include notice of the restriction described in paragraph (a) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(c) You must instruct your stock transfer agent about the transfer restrictions in this section.

(d) For three years after you convert, your officers, directors, and their associates may purchase your stock only from a broker or dealer registered with the Securities and Exchange Commission. However, your officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of your outstanding stock, and may purchase stock through any of your management or employee stock benefit plans.

§ 563b.510 May I repurchase shares after conversion?

(a) You may not repurchase your shares in the first year after the conversion except:

(1) You may make open market repurchases of up to five percent of your outstanding stock in the first year after the conversion if you file a notice under § 563b.515(a) and OTS does not disapprove your repurchase. OTS will not approve such repurchases unless the repurchase meets the standards in § 563b.515(c), and the repurchase is consistent with paragraph (c) of this section.

(2) You may repurchase qualifying shares of a director or conduct an OTS approved repurchase made to all shareholders of your association.

(b) After the first year, you may repurchase your shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) All stock repurchases are subject to the following restrictions.

(1) You may not repurchase your shares if the repurchase will reduce your regulatory capital below the amount required for your liquidation account under § 563b.450. You must comply with the capital distribution requirements at part 563, subpart E of this chapter.

(2) The restrictions on share repurchases apply to a charitable organization under § 563b.550. You must aggregate purchases of shares by the charitable organization with your repurchases.

§ 563b.515 What information must I provide to OTS before I repurchase my shares?

(a) To repurchase stock in the first year following conversion, you must file a written notice with the OTS. You must provide the following information:

(1) Your proposed repurchase program;

(2) The effect of the repurchases on your regulatory capital; and

(3) The extraordinary circumstances necessitating the repurchases.

(b) You must file your notice with your Regional Director, with a copy to the Chief Counsel's Office, Business Transactions Division, at least ten days before you begin your repurchase program.

(c) You may not repurchase your shares if OTS disapproves your repurchase program. OTS will disapprove your repurchase program if:

(1) Your repurchase program will adversely affect your financial condition;

(2) You fail to submit sufficient information to evaluate your proposed repurchases;

(3) You do not demonstrate extraordinary circumstances and a compelling and valid business purpose for the shares repurchases; or

(4) Your repurchase program would be contrary to other applicable regulations.

§ 563b.520 May I declare or pay dividends after I convert?

(a) You may declare or pay a dividend on your shares after you convert, unless the dividend will reduce your regulatory capital below the amount required for your liquidation account under § 563b.450.

(b) You must comply with all capital requirements under part 567 of this chapter after you declare or pay dividends.

(c) You must comply with the capital distribution requirements under part 563, subpart E of this chapter.

(d) You may not return any capital to purchasers in the first year following conversion. You may only return capital to purchasers after the first year, if the return of capital is consistent with your business plan.

§ 563b.525 Who may acquire my shares after I convert?

(a) For three years after you convert, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of your equity securities without OTS's prior written approval. If a person violates this prohibition, you may not permit the person to vote shares in excess of ten percent, and may not count these shares in any shareholder vote.

(b) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of your stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 574.4(a) and (b) of this chapter. OTS will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to you, to the underwriters, or to a selling group acting on your behalf.

(2) Unless OTS objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as your ownership may acquire or offer to acquire more than ten percent of your common stock, if it makes the offer or

acquisition more than one year after you convert.

(4) One or more of your tax-qualified employee stock benefit plans may acquire your shares, if the plan or plans do not beneficially own more than 25 percent of any class of your shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain OTS approval under paragraph (a) of this section, if the acquiror files an application under part 574 of this chapter that specifically addresses the criteria listed under paragraph (d) of this section and you do not oppose the proposed acquisition.

(d) OTS may deny an application under paragraph (a) of this section if the proposed acquisition:

(1) Is contrary to the purposes of this part;

(2) Is manipulative or deceptive;

(3) Subverts the fairness of the conversion;

(4) Is likely to injure you;

(5) Is inconsistent with your plan to meet the credit and lending needs of your proposed market area;

(6) Otherwise violates law or regulation; or

(7) Does not prudently deploy your conversion proceeds.

§ 563b.530 What other requirements apply after I convert?

After you convert, you must:

(a) Promptly register your shares under the Securities Exchange Act of 1934. You may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for your shares. A market maker for a security is a dealer who:

(1) Regularly publishes *bona fide* competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;

(2) Furnishes *bona fide* competitive bid and offer quotations for the security on request; or

(3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use your best efforts to list your shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that OTS requires.

Contributions to Charitable Organizations

§ 563b.550 May I donate conversion shares or conversion proceeds to a charitable organization?

You may contribute some of your conversion shares or proceeds to a charitable organization if:

(a) Your plan of conversion provides for the proposed contribution;

(b) Your members approve the proposed contribution; and

(c) The IRS approves the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

§ 563b.555 How do my members approve a charitable contribution?

At the meeting to consider your conversion, your members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds.

§ 563b.560 How much may I contribute to a charitable organization?

You may contribute a reasonable amount of conversion shares or proceeds to a charitable organization if your contribution will not exceed limits for charitable deductions under the Internal Revenue Code, and OTS does not object on supervisory grounds. Except in extraordinary circumstances, OTS will not object on supervisory grounds if you contribute an aggregate amount of eight percent or less of the conversion shares or proceeds.

§ 563b.565 What must the charitable organization include in its organizational documents?

The charitable organization's charter and bylaws (or trust agreement), gift instrument, and operating plan must provide that:

(a) The charitable organization's purpose is to serve and make grants in your local community;

(b) As long as the charitable organization controls shares, you must consider those shares as voted in the same ratio as all other shares voted on each proposal considered by your shareholders;

(c) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from your local community. This director may not be your officer, director, or employee, or your affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and

(d) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from your board of directors.

§ 563b.570 How do I address conflicts of interest involving my directors?

(a) A person who is your director, officer, or employee, or a person who has the power to direct your management or policies, or otherwise owes a fiduciary duty to you (for example, holding company directors) and who will serve as an officer, director, or employee of the charitable organization, is subject to § 563.200 of this chapter. *See* Form AC (Exhibit 9) for further information on operating plans and conflict of interest plans.

(b) Before your board of directors may adopt a plan of conversion that includes a charitable organization, you must identify your directors that will serve on the charitable organization's board. These directors may not participate in your board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

§ 563b.575 What other requirements apply to charitable organizations?

(a) The charitable organization's charter and bylaws (or trust agreement) and the gift instrument for the contribution must provide that:

(1) OTS may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that OTS imposes;

(3) The charitable organization must provide OTS with a copy of the annual report that the charitable organization submitted to the IRS;

(4) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(5) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(b) You must include the following legend in the stock certificates of shares that you contribute to the charitable organization or that the charitable organization otherwise acquires: "The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization."

(c) OTS may review the compensation paid to charitable organization directors

(or trustees) who are not your directors, employees, or affiliates.

(d) After you complete your stock offering, you must submit four executed copies of the following documents to the OTS Applications Filing Room in Washington, and three executed copies to the OTS Regional Office: the charitable organization's charter and bylaws (or trust agreement), operating plan, conflict of interest policy, and the gift instrument for your contributions of either stock or cash to the charitable organization.

Subpart B—Voluntary Supervisory Conversions

§ 563b.600 What does this subpart do?

(a) You must comply with this subpart to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 5(i)(1), (i)(2), and (p) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(i)(1), (i)(2), and (p).

(b) Subpart A of this part also applies to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

§ 563b.605 How may I conduct a voluntary supervisory conversion?

(a) You may sell your shares or the shares of a holding company to the public under the requirements of subpart A of this part.

(b) You may convert to stock form by merging into an interim federal-or state-chartered stock association.

(c) You may sell your shares directly to an acquirer, who may be a person, company, depository institution, or depository institution holding company.

(d) You may merge or consolidate with an existing or newly created depository institution. The merger or consolidation must be authorized by, and is subject to, other applicable laws and regulations.

§ 563b.610 Do my members have rights in a voluntary supervisory conversion?

Your members do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless OTS provides otherwise. Your members may have interests in a liquidation account, if one is established.

Eligibility

§ 563b.625 When is a SAIF-insured savings association eligible for a voluntary supervisory conversion?

(a)(1) You may be eligible to convert under this subpart if:

(i) You are a SAIF-insured savings association;

(ii)You are significantly undercapitalized (or you are undercapitalized and a standard conversion that would make you adequately capitalized is not feasible); and

(iii) You will be a viable entity following the conversion.

(2) You will be a viable entity following the conversion if you satisfy all of the following.

(i) You will be adequately capitalized as a result of the conversion.

(ii) You, your proposed conversion, and your acquirer(s) comply with applicable supervisory policies.

(iii) The transaction is in your best interest, and the best interest of the federal deposit insurance funds, and the public.

(iv) The transaction will not injure or be detrimental to you, the federal deposit insurance funds, or the public interest.

(b) If you are a SAIF-insured savings association, you may be eligible to convert under this subpart and section 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(p) if one of the following occurs:

(1) Severe financial conditions threaten your stability and a conversion is likely to improve your financial condition;

(2) FDIC will assist you under section 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1823; or

(3) You are in receivership and a conversion will assist you.

§ 563b.630 When is a BIF-insured savings association eligible for a voluntary supervisory conversion?

If you are a BIF-insured savings association you may be eligible to convert under this subpart if:

(a) FDIC certifies under section 5(o)(2)(c) of the HOLA that severe financial conditions threaten your stability and that the voluntary supervisory conversion is likely to improve your financial condition, and OTS concurs with this certification; or

(b) You meet the following conditions:

(1) Your liabilities exceed your assets, as calculated under generally accepted accounting principles, assuming you are a going concern; and

(2) You will issue a sufficient amount of permanent capital stock to meet your applicable FDIC capital requirement immediately upon completion of the conversion, or FDIC determines that you will achieve an acceptable capital level within an acceptable time period.

Plan of Supervisory Conversion

§ 563b.650 What must I include in my plan of voluntary supervisory conversion?

A majority of your board of directors must adopt a plan of voluntary supervisory conversion. You must include all of the following information in your plan of voluntary supervisory conversion.

(a) Your name and address.

(b) The name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares and a description of that purchaser's relationship to you.

(c) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that you will issue.

(d) The number and percentage of shares that each investor will purchase.

(e) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(f) A description of any liquidation account.

(g) Certified copies of all resolutions of your board of directors relating to the conversion.

Voluntary Supervisory Conversion Application

§ 563b.660 What must I include in my voluntary supervisory conversion application?

You must submit a voluntary supervisory conversion application to OTS under this subpart. You must include all of the following information and documents in your conversion application.

(a) *Eligibility.* (1) Evidence establishing that you meet the eligibility requirements under §§ 563b.625 or 563b.630.

(2) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(3) An opinion of independent counsel indicating that applicable state law authorizes the voluntary supervisory conversion, if you are a state-chartered savings association converting to state stock form.

(b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 563b.650.

(c) *Business plan.* A business plan that complies with § 563b.105, where required by OTS.

(d) *Financial data.* (1) Your most recent audited financial statements and Thrift Financial Report. You must

explain how your current capital levels make you eligible to engage in a voluntary supervisory conversion under §§ 563b.625 or 563b.630.

(2) A description of your estimated conversion expenses.

(3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to OTS and the non-cash asset must meet all other OTS policy guidelines. *See* Thrift Activities Handbook Section 110 for guidelines.

(4) *Pro forma* financial statements that reflect the effects of the transaction. You must identify your tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. You must prepare your *pro forma* statements in conformance with OTS regulations and policy.

(e) *Proposed documents.* (1) Your proposed charter and bylaws.

(2) Your proposed stock certificate form.

(f) *Agreements.* (1) A copy of any agreements between you and proposed purchasers.

(2) A copy and description of all existing and proposed employment contracts. You must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(g) *Related applications.* (1) All filings required under the securities offering rules of 12 CFR parts 563b and 563g.

(2) Any required Holding Company Act application, Control Act notice, or rebuttal submission under part 574 of this chapter, including prior-conduct certifications under Regulatory Bulletin 20.

(3) A subordinated debt application, if applicable.

(4) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for Federal Home Loan Bank membership, and FDIC insurance of accounts, if applicable.

(5) A statement describing any other applications required under federal or state banking laws for all transactions related to your conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by OTS, copies of the applications and related documents.

(h) *Waiver request.* A description of any of the features of your application that do not conform to the requirements of this subpart, including any request for waiver of these requirements.

OTS Review of the Voluntary Supervisory Conversion Application

§ 563b.670 Will OTS approve my voluntary supervisory conversion application?

OTS will generally approve your application to engage in a voluntary supervisory conversion unless it determines:

(a) You do not meet the eligibility requirements for a voluntary supervisory conversion under §§ 563b.625 or 563b.630 or because the proceeds from the sale of your conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(b) The transaction is detrimental to or would cause potential injury to you or the Federal deposit insurance funds or is contrary to the public interest;

(c) You or your acquirer, or the controlling parties or directors and officers of you or your acquirer, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(d) You fail to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, OTS generally will not approve employment contracts of more than one year for your existing management.

§ 563b.675 What conditions will OTS impose on an approval?

(a) OTS will condition approval of a voluntary supervisory conversion application on all of the following.

(1) You must complete the conversion stock sale within three months after OTS approves your application. OTS may grant an extension for good cause.

(2) You must comply with all filing requirements of Parts 563b and 563g of this chapter.

(3) You must submit an opinion of independent legal counsel indicating that the sale of your shares complies with all applicable state securities law requirements.

(4) You must comply with all applicable laws, rules, and regulations.

(5) You must satisfy any other requirements or conditions OTS may impose.

(b) OTS may condition approval of a voluntary supervisory conversion application on either of the following:

(1) You must satisfy any conditions and restrictions OTS imposes to prevent unsafe or unsound practices, to protect the deposit insurance funds and the public interest, and to prevent potential injury or detriment to you before and after the conversion. OTS may impose these conditions and restrictions on you (before and after the conversion), your acquirer, and controlling parties, directors and officers of you or your acquirer; or

(2) You must infuse a larger amount of capital, if necessary for safety and soundness reasons.

Offers and Sales of Stock

§ 563b.680 How do I sell my shares?

If you convert under this subpart, you must offer and sell your shares under Part 563g of this chapter.

Post-Conversion

§ 563b.690 Who may not acquire additional shares after the voluntary supervisory conversion?

For three years after the completion of a voluntary supervisory conversion, neither you nor any of your controlling shareholder(s) may acquire shares from minority shareholders without OTS's prior approval.

PART 575—MUTUAL HOLDING COMPANIES

2. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.2 [Amended]

3. Section 575.2(a) is amended by removing the phrase "12 CFR 563b.2", and by adding in lieu thereof the phrase "563b.25 of this chapter".

§ 575.4 [Amended]

4. Section 575.4(c)(2) is amended by removing the phrase "economical home financing", and by adding in lieu thereof the phrase "the credit and lending needs of your proposed market area".

5. Section 575.7 is amended by:

a. Adding a new first sentence to paragraph (a);

b. Removing, in paragraph (a)(7), the phrase "§ 563b.11 of this chapter", and by adding in lieu thereof the phrase "§ 563b.200(c) of this chapter";

c. Removing, in paragraph (b)(1), the phrase " § 563b.7" where it appears in the first and second sentences, and by adding in lieu of both phrases the phrase "part 563b of this chapter";

d. Removing, in paragraph (b)(2), the phrase "§ 563b.7(c)", and by adding in lieu thereof the phrase "§ 563b.330".

e. Removing, in paragraph (d)(6)(i), the phrase "12 CFR 563b.102", and by adding in lieu thereof the phrase "Form OC";

f. Adding new paragraphs (d)(7) and (d)(8);

g. Removing, in paragraph (e), the phrase "§§ 563b.3 through 563b.8 of this chapter", and adding in lieu thereof the phrase "12 CFR part 563b".

The additions read as follows:

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

(a) *Approval requirements.* Before any stock issuance, a savings association subsidiary of a mutual holding company must submit a business plan in accordance with the provisions of §§ 563b.105 through 563b.115 of this chapter. A savings association subsidiary may not submit a notice to reorganize if OTS objects to the business plan.

* * * * *

(d) * * *

(7) Notwithstanding the restrictions in paragraph (d)(6)(ii) of this section, a savings association subsidiary of a mutual holding company may issue stock as part of a stock benefit plan to any insider, associate of an insider, tax qualified or non-tax qualified employee stock benefit plan of the mutual holding company or subsidiary of the mutual holding company, if written notice is made to the OTS at least 30 days prior to the stock issuance and OTS does not object to the subsequent stock issuance.

(8) You may contribute a reasonable amount of shares or proceeds to a charitable organization that complies with §§ 563b.550 to 563b.575 of this chapter. In the case of a mutual holding company stock issuance no more than two percent of the savings association or subsidiary holding company stock may be contributed to the charitable organization.

* * * * *

6. Section 575.8 is amended by:

a. Removing, in paragraph (a) introductory text, the phrase "§ 563b.27(a)", and by adding in lieu thereof the phrase "§ 563b.650";

b. Revising paragraph (a)(7);

c. Removing paragraph (a)(8);

d. Redesignating paragraphs (a)(9) through (a)(21) as paragraphs (a)(8) through (a)(20), respectively;

e. Amending newly designated paragraph (a)(8) by removing the phrase "12 CFR 563b.102", and by adding in lieu thereof the phrase "Form OC";

f. Adding new paragraph (b)(5); and

g. Adding a new paragraph (b)(6).

The additions and revisions read as follows:

§ 575.8 Contents of Stock Issuance Plans.

(a) * * *

(7)(i) When you issue common or preferred stock, your officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of your total common or preferred stock offering, respectively, held by persons other than the mutual holding company:

Institution size	Officer and director purchases (percent)
$50,000,000 or less	35
$50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(ii) The purchase limitations in this section do not apply to shares held in tax-qualified or non-tax-qualified employee stock benefit plans that are attributable to your officers, directors, and their associates.

* * * * *

(b) * * *

(5) Provide that the association may adopt a stock benefit plan at the time of issuance if purchasers are given the opportunity to vote for or against the plan on the stock order form, and provided no shares may be granted for six months after the stock issuance.

(6) Provide that stock benefit plans for insiders may issue 49 percent of the amount of stock that is available under a plan subject to § 563b.500, provided that the mutual holding company holds more than 50 percent of the savings association's total outstanding common stock.

7. Section 575.11 is amended by:

a. Removing, in paragraphs (c)(1) and (c)(2) the phrases "§ 563b.3(g)(1)" or "§ 563b.3(g)(3)" wherever they appear, and by adding in lieu thereof the phrase "§ 563b.510";

b. Adding, in paragraph (e), after the phrase "stock issuance" the phrase ", and OTS does not object to the subsequent stock issuance"; and

c. Adding new paragraph (i).

The addition reads as follows:

§ 575.11 Operating restrictions.

* * * * *

(i) *Separate vote for charitable organization contribution.* In a mutual holding company stock issuance, a separate vote of a majority of the outstanding shares of common stock held by stockholders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

8. Section 575.13 is amended by removing, in paragraph (c)(2), the phrase "§ 563b.8 of this chapter", and by adding in lieu thereof the phrase "§ 563b.150 of this chapter", and by revising paragraph (a)(1) to read as follows:

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 563b.225 to 563b.290 and 563b.25 to 563b.35 of this chapter shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. OTS must authorize all proxy materials used in connection with such solicitations. Proxy materials must be in the form and contain the information specified in §§ 563b.255 and 563b.270 of this chapter and Form PS, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in § 563b.280 of this chapter. File proxies and proxy statements in accordance with § 563b.155 of this chapter and address them to the Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in § 516.1(a) of this chapter. For purposes of this paragraph (a)(1) the term *conversion* as it appears in the provisions of part 563b of this chapter cited above in this paragraph (a)(1) refers to *the reorganization* or *the stock issuance* as appropriate.

* * * * *

Dated: June 20, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

Appendix A—Form AC—Application for Conversion

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision

Form AC—Application for Conversion

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to provide OTS with all necessary information to evaluate the application for conversion to meet all agency safety and soundness requirements. *See* Part 563b.

Public reporting burden for this collection of information is estimated to average 299 hours if not creating a foundation and 309 hours if creating a foundation, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you

are not required to complete this form. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

Form AC—Application for Conversion

Office of Thrift Supervision 1700 G Street, NW., Washington, DC 20552

Application for Conversion

_____
(Name of Applicant in charter) (Docket No.)

_____
(Street address of Applicant)

_____
(City, State and Zip Code)

Index to Items

Item 1. Form of Application
Item 2. Plan of Conversion
Item 3. Proxy Statement and Offering Circular
Item 4. Form of Proxy
Item 5. Additional Information Required for Conversion with a Charitable Contribution
Item 6. Sequence and Timing of the Plan
Item 7. Record Dates
Item 8. Expenses Incident to the Conversion
Item 9. Indemnification
Item 10. Federally Chartered Stock Savings Associations Exhibits

General Instructions

A. Use of Form AC

You must use Form AC to seek OTS approval of a conversion from the mutual to the stock form of organization under 12 CFR part 563b. You must indicate on the cover if you are filing using Regulation S–B.

B. Application of Rules and Regulations

You should follow the general requirements in this section when you prepare and file this Form AC and all other forms required under 12 CFR part 563b.

(1) *Method of preparation.* In your applications, you must furnish information in item-and-answer form, and must include the captions on the form. You may omit the text of items and instructions. In a proxy statement or offering circular, you may present the required information in any order and omit the captions and text of all items and instruction. You must not present the information in a way that obscures any of the required information or other information necessary to keep the required information from being incomplete or misleading. Where an item requires you to provide information in tabular form, you must provide the information substantially in the tabular form specified in the item.

You must set out all information in the plan of conversion, proxy statement or offering circular under appropriate headings that reasonably indicate the principal subject matter. Except for financial statements and other tabular data, you must present all information in reasonably short paragraphs or sections. You must set out financial statements, including interim financial statements, in comparative form, and must include all notes and the accountants' certificate or certificates. You must follow 12 CFR 563c.1, which governs the certification, form, and content of financial statements, including the basis of consolidation.

In a proxy statement or offering circular, you must present all information in a clearly understandable format. The reader should not have to refer to the OTS form or 12 CFR part 563b to understand the document. You must include a reasonably detailed table of contents in each proxy statement and offering circular.

In every application, you must include a cross-reference sheet showing where the responses to each item of the appropriate form are located in the proxy statement and offering circular. In the cross-reference sheet, you must state where any item is inapplicable, or where you omitted an answer because it was no.

(2) *Additional information.* In addition to the information required under 12 CFR part 563b, you must include any material information necessary to make the required statements, in the light of the circumstances under which you have made them, not misleading.

(3) *Information unknown or not reasonably available.* You must provide information to the extent you know the information or it is reasonably available to you. You may omit any required information that you do not know or is not reasonably available to you. You must explain why such information is not known or reasonably available to you. Information is not reasonably available if obtaining it would involve an unreasonable effort or expense, or if it rests peculiarly within the knowledge of another person who is not your affiliate. You must provide all information on the subject that you possess or can acquire without unreasonable effort or expense, together with the sources of the information.

(4) *Incorporation by reference.* If an item in an application calls for certain information and the proxy statement or offering circular does not require you to include it, you may incorporate the information by reference from any part of the application, including exhibits, in the answer, or partial answer, to the item. In a proxy statement or offering circular, you may not incorporate information by reference unless you attach, summarize, or outline the document containing the information. To summarize or outline a document, you must make a brief statement of the most important provisions of the document. In addition, you may incorporate by reference particular items, sections, or paragraphs of any exhibit, and your summary or outline may be qualified in its entirety by the reference. In an offering circular, you may incorporate by reference information from a proxy statement that you have delivered. You do not need to summarize or outline the information. If you incorporate material by reference you must clearly identify the material in the reference. You must expressly state that the specified matter is incorporated by reference at the particular place in the application where the information is required. You may not incorporate information by reference if the incorporation would render the statement incomplete, unclear or confusing.

(5) *Signatures Required.* The following individuals must manually sign at least two copies of every application and every amendment to an application that you file with OTS:

(a) Your duly authorized representative.
(b) Your principal executive officer.
(c) Your principal financial officer.
(d) Your principal accounting officer.
(e) At least two-thirds of your directors.

(6) *Consents of persons about to become directors.* If you indicate in a proxy statement or offering circular that a person is about to become a director, and that person has not signed your application, you must file that person's written consent to the application with the appropriate form.

(7) *Consents of experts.* If you indicate that an accountant, attorney, investment banker, appraiser, or other professional prepared, reviewed, passed upon, or certified any part of an application, or any report or valuation used in connection with the application, you must file the written consent of that person to use their name in connection with the stated action with the application. If you quote or summarize any portion of a report of an expert in any filing under 12 CFR part 563b, you must file a written consent of the expert that expressly states that the expert consents to the quotation or summarization. All written consents must be dated and signed manually by the expert. You must file a list of consents with the application. If the expert's report contains his or her consent, you must refer to the report containing the consent in your list. You must file a new consent for any accounting amendment.

(8) *Date of filing.* Your documents are filed as of the date the last OTS office where they are filed receives them, and you paid any applicable fee.

(9) *Amendments.* You must file all amendments to any application with an appropriate facing sheet. You must number your amendments consecutively in the order in which you file them. You must comply with all regulations applicable to the original application.

Item 1. Form of Application

You must include the following form in your application for approval of the plan of conversion. You must set out the names and titles of the officers and directors below their signatures:

The undersigned applies for approval to convert into a stock association. We have attached a statement of the proposed plan of conversion and other information and exhibits as required by 12 CFR Part 563b.

In submitting this application, we understand and agree that, if OTS requires further examinations or appraisals, OTS will conduct or approve the examination or appraisal at our expense. We will pay the costs as computed by OTS.

At least two-thirds of the board of directors approved the application. By filing this application, the undersigned officers and directors severally represent that: (1) Each person read this application; (2) Each person

adequately examined and investigated this application and concluded that this application complies with 12 CFR Part 563b.

Attest:

_____
(Duly Authorized Representative) (Principal Executive Officer)

_____
(Principal Financial Officer)

_____
(Principal Accounting Officer)

_____
(Director)

_____
(Director)

_____
(Director)

_____
(Director)

_____
(Signatures of at least two-thirds of the Board of Directors)

Item 2. Plan of Conversion

You must furnish the complete written plan that your board of directors adopted for the conversion to the stock form. You must prepare the plan of conversion in accordance 12 CFR 563b.320 through 563b.395. OTS will base its approval on the terms of this plan. You must distribute the approved plan as an attachment to the proxy statement and the offering circular.

Item 3. Proxy Statement and Offering Circular

You must furnish preliminary copies of the proxy statement and offering circular. You must prepare the proxy statement and offering circular in accordance with Forms PS and OC, respectively.

Item 4. Form of Proxy

You must furnish preliminary copies of the form of proxy that your management will distribute to your members.

Item 5. Additional Information Required for Conversion With a Charitable Contribution

If your conversion application includes a charitable contribution, you must include the following information in your application:

(a) Your reasons for concluding that the proposed contribution is reasonable.

(b) The impact of the proposed contribution on the appraised valuation.

(c) A description of the charitable organization.

(d) The exhibits required under Exhibit 9.

Item 6. Sequence and Timing of the Plan

You must describe the expected chronological order of the events for your conversion. Begin with the filing of this application and end with the sale of all the stock under the plan. Estimate the timing of any requisite approvals by state or other regulators other than OTS. Indicate the proposed timing of all aspects of the subscription offering. If a selling agent will assist in the community offering, or if an underwriter will offer shares in the public offering, indicate the proposed timing of all aspects of the community offering and public offering.

Item 7. Record Dates

If the eligibility record date in your plan of conversion is more than one year before your board of directors adopted the plan of conversion, you must state why you selected the earlier date.

You must indicate what circumstances may require you to use a supplemental eligibility record date.

Item 8. Expenses Incident to the Conversion

You must estimate the expense of your conversion in the tabular form indicated below:

Legal	$
Postage and Mailing	.....
Printing	.....
Escrow or Agent Fees	.....
Underwriting Fees	.....
Appraisal Fees	.....
Transfer Agent Fees	.....
Auditing and Accounting	.....
Proxy Solicitation Fees	.....
Advertising	.....
Other Expenses	.....
Total	.....

Instructions. 1. Expenses that you incur in the conversion must be reasonable.

2. You may exclude salaries and wages of regular employees and officers, if you state that you excluded these items. You must state solicitation costs by specially engaged employees or paid solicitors under paragraph (b) of item 3 of Form PS under "Proxy Solicitation Fees" in this item.

3. You may not include any category of expense exceeding $10,000 in "Other Expenses." If an expense exceeds $10,000 and is not specified above, you must itemize the expense under an appropriate category.

4. If your management does not conduct the solicitation, you must provide the information under "Proxy Solicitation Fees" for the cost of the solicitation.

Item 9. Indemnification

If you will insure or indemnify any underwriter, appraiser, lawyer, accountant or expert, or director or officer against any liability which he or she may incur in his or her capacity under any charter provisions, bylaw, contract, arrangement, statute, or regulation, you must state the general effect of the charter provision, bylaw, contract, arrangement or regulation.

Item 10. Federally Chartered Stock Savings Associations

You must state whether you are applying to amend your charter and bylaws to comply with 12 CFR part 552.

Exhibits

You must attach the following exhibits to this Form.

Exhibit 1. Resolution of Board of Directors

You must include a certified copy or copies of your board of directors' resolution or resolutions: (1) Adopting the plan of conversion; and (2) authorizing this application. Two-thirds of your board of directors must approve the plan of conversion and authorize this application.

Exhibit 2. Copies of Documents, Contracts and Agreements

You must furnish the following documents, contracts, and agreements.

(a) Proposed certificates for shares.

(b) Proposed order forms with respect to the subscription rights.

(c) Proposed charter (including a liquidation account provision) and bylaws.

(d) Any proposed stock option plan, form of stock option agreement, and management or employee stock benefit plan.

(e) Any proposed management employment contracts.

(f) Any contract described in response to item 6 of Form PS.

(g) Contracts or agreements with paid solicitors described in response to item 3(b) of Form PS.

(h) Any material loan agreements relating to your borrowing other than from a Federal Home Loan Bank and other than subordinated debt securities approved by OTS.

(i) Any appraisal agreement or proposed agreement, underwriting contract, agreement among underwriters, or selling agent agreement.

(j) Any required undertaking or affidavits by officers or directors purchasing shares in the conversion stating that they are acting independently.

(k) Any documents referred to in the answer to item 9 of Form AC.

(l) Any trustee agreements or indentures.

(m) Any agreements for the making of markets or the listing on exchanges of your conversion stock.

(n) Proposed marketing materials.

If you furnish any document, contract, or agreement in draft form under this exhibit, you must furnish the final form immediately after the meeting of your members to consider the plan of conversion. You may provide documents required by subsection (i) above, that by their nature cannot be practically expected until a later time, in substantially final form.

Exhibit 3. Opinion of Counsel

You must furnish an opinion of counsel discussing each of the following matters:

(a) The legal sufficiency of your proposed certificates and order forms for any shares.

(b) State law requirements that apply to the plan of conversion. The opinion must cite to applicable state law and address whether the plan will fulfill the requirements.

(c) The legal sufficiency of your bylaws.

(d) The type and extent of each class of voting rights after conversion. The opinion must discuss any state law that requires you to provide savings account holders or borrowers with voting rights.

(e) A certification or statement that the proposed charter and bylaws conform to 12 CFR part 552 of this chapter.

(f) The legal sufficiency of your marketing materials.

You must discuss the matters listed in subdivisions (b), (c) and (d) of this Exhibit only if you are converting to a state-chartered stock association.

Exhibit 4. Federal and State Tax Opinions or Ruling

(a) You must furnish an opinion of your tax advisor or an Internal Revenue Service ruling on the federal income tax consequences of the plan of conversion. The opinion or ruling must address the tax consequences to you and to the various account holders who receive nontransferable subscription rights to purchase shares.

Instruction. OTS may require you to obtain a ruling from the Internal Revenue Service if the IRS has not issued a favorable ruling to plans of conversion that are substantially similar to your plan. OTS also may require you to obtain a ruling if your plan of conversion contains novel provisions or raises questions with federal income tax consequences.

(b) You must furnish an opinion of your tax advisor or, if applicable, a ruling from the appropriate state taxing authority on any tax consequences of the plan of conversion under the laws of the state where you will be located. The opinion must address the tax consequences to you and to your eligible account holders.

Exhibit 5. Valuation Materials

You must furnish the materials required under 12 CFR 563b.200(b) regarding the valuation of your shares. You are not required to file the materials if you will not begin to offer shares before your members' meeting to vote on the plan of conversion.

Exhibit 6. Notice to Members

You must furnish evidence that you have notified your members as required by 12 CFR 563b.135 and 563b.180.

Exhibit 7. Other Materials

(a) If you do not provide information required by an appropriate form because you do not know the information or the information is not reasonably available, you must:

(1) show that you will incur unreasonable effort or expense to obtain the information; or

(2) indicate that you have no affiliation with the person who has the information, state that you have requested the person to provide the information, and indicate the result of that request.

(b) You must furnish all required consents.

(c) If anyone has signed an application or any amendment to an application using a power of attorney, you must furnish four copies of the power of attorney. Two copies must be manually signed.

(d) You must furnish the cross-reference sheet.

(e) If you request a waiver under 12 CFR 563b.5(c), you must furnish the materials required by that section.

Exhibit 8. Business Plans

(a) You must furnish a consolidated business plan as required by 12 CFR 563b.105. You must detail how you will use the capital that you acquire in the conversion. You should not project stock repurchases, returns of capital or payment of extraordinary dividends in your business plan. OTS views a return of capital to shareholders as a material deviation from the business plan that requires the prior written approval of the Regional Director.

(b) You must follow 12 CFR 563b.160 if you wish OTS to deem any portion of your business plan confidential.

Exhibit 9. Conversion Application that Includes a Charitable Organization

If your conversion includes a contribution to a charitable organization you must provide:

(a) The current and proposed charter and bylaws (or trust agreement) for the charitable organization.

(b) The proposed gift instrument.

(c) A three year operating plan for the charitable organization, including the following:

(1) Pro-forma financial statements, including a balance sheet and income statement.

(2) Plans and expenses for any office space, employees, office equipment, supplies, and other items.

(3) A description and the estimated annual value of any contributed office space, personnel, furniture, equipment, and supplies and the name of the organization that will make the contribution.

(4) Any director, officer, and employee requirements and job descriptions.

(5) The terms of employment and any expected compensation for the directors (or trustees), officers, and employees.

(6) charitable causes that the charitable organization will support, including their location and a description of how the activities will aid the local community.

(7) Plans, policies, and procedures for soliciting and accepting grant applications.

(8) Decision standards for grant approval.

(9) The anticipated number and dollar amount of grants the charitable organization will make each year for the three years after it is established.

(10) Projected sources of revenues, including whether the operations and grant activities will be funded by dividends, stock sales, or additional contributions.

(11) An explanation of how the charitable organization will select directors (or trustees) and how much experience the directors (or trustees) will have with local community charitable organizations and grant making.

(d) A conflicts of interest policy for the charitable organization that prohibits grants to your officers, directors, and employees, your affiliates' officers, directors, and employees, and members of their immediate families.

(e) A legal opinion from independent counsel discussing whether the charitable organization's proposed charter and bylaws (or trust agreement), including the required pro-rata voting provision discussed in 12 CFR 563b.575, comply with applicable state law.

(f) A tax opinion from an independent accountant or independent tax counsel discussing whether the proposed contribution and any other contributions during the same year are deductible under federal and state law. The tax opinion must address deductibility for the year that you will make the contribution and for a five-year carry forward period.

OTS Form 1680, June 2000

Appendix B—Form PS—Proxy Statement

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision

Form PS—Proxy Statement

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to provide mutual members with information necessary for voting on the transaction. *See* Part 563b.

Public reporting burden for this collection of information is estimated to average 50 hours, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

Form PS—Proxy Statement

Office of Thrift Supervision 1700 G Street, NW., Washington, DC 20552

Proxy Statement

_____

(Name of Applicant in charter)—(Docket No.)

_____

(Street address of Applicant)

_____

(City, State and Zip Code)

Index to Items

Item 1. Notice of meeting
Item 2. Revocability of proxy
Item 3. Persons making the solicitation
Item 4. Voting rights and vote required for approval
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Item 9. Description of stock
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Item 11. Use of new capital
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Item 15. Consents of experts and reports
Item 16. Attachments

General Information

If OTS requests information on your directors, officers, or other persons holding specified positions or relationships during a specified period, you must give the information for every person who held the positions or relationships any time during the period. You do not have to include information for any portion of the period when a person did not hold any position or relationship. You must state, however, that you did not include this information.

Item 1. Notice of Meeting

You must include the following information on the cover page of your proxy statement:

(a) notice of the members' meeting to vote on the conversion;

(b) the meeting date, time and place;

(c) a brief description of each matter that will be voted at the meeting;

(d) the date of record for determining which members are entitled to vote at the meeting;

(e) the date of the proxy statement; and (f) your mailing address, zip code, and telephone number.

Item 2. Revocability of Proxy

(a) You must state that a member may revoke his or her proxy before it is exercised.

(b) You must briefly describe the procedures a member must follow to revoke his or her proxy.

(c) You must describe any charter provision, bylaw, or federal or state law that limits voting by proxy.

(d) You must state that the proxy is solicited for the meeting and any adjournment of the meeting, and that you will not vote the proxy at any other meeting.

Item 3. Persons Making the Solicitation

(a) You must state whether your management is soliciting the proxy. If any director informs you in writing that he or she intends to oppose any action, you must name the director and indicate the action he or she intends to oppose.

(b) You must describe the method that you will use to solicit proxies, unless you solicit by mail. If specially engaged employees or paid solicitors will solicit proxies, you must state the material features of any contract or arrangement and must identify the parties.

(c) If your management is not soliciting the proxies, you must name the persons on whose behalf the solicitation is made. You do not have to respond to items 5 through 16 for such solicitations, but must comply with § 563b.285 on false and misleading statements and other prohibited matters.

Item 4. Voting Rights and Vote Required for Approval

(a) You must describe briefly:

(1) the voting rights of each class of your members,

(2) the approximate total number of votes entitled to be cast at the meeting,

(3) the approximate number of votes to which each class is entitled, and

(4) the voting rights of beneficiaries of accounts held in a fiduciary capacity, such as IRA accounts.

(b) You must give the record date for members entitled to vote at the meeting.

(c) You must state the vote required for approval of each matter that you will submit to a vote of members.

(d) You may not use previously executed proxies to vote on the conversion.

Item 5. Directors and Executive Officers

(a) You must furnish the information on directors and executive officers and certain relationships and related transactions required in items 401 and 404 of Regulation S–K, 17 CFR 229.401 and 404, and item 6 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations refer to you and the word "Commission" refers to OTS.

(b) If your conversion application includes a charitable contribution, you must disclose:

(1) The proposed number of directors (or trustees) and officers of the charitable organization.

(2) The name and background of each person proposed as a director (or trustee) or officer of the charitable organization.

(3) The position, if any, that each proposed director (or trustee) and officer holds with you.

(c) You must state whether anyone will exercise control through the use of proxies and describe the nature of the control.

Item 6. Management Compensation

You must furnish the information on executive compensation required in item 402 of Regulation S–K, 17 CFR 229.402, and item 7 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations refer to you and the word "Commission" refers to OTS.

Item 7. Business

(a) *Narrative description of business.* (1) You must discuss briefly your organizational history, including the year of organization, the identity of the chartering authority, and any material charter conversions.

(2) You must describe the business that you and your subsidiaries conduct and intend to conduct. You must describe how your business and any predecessor(s) business developed over the past five years. If you have been engaged in business less than five years, you must provide information from when you began operations. You must disclose this information for earlier periods if the information is material to understand how your business developed. You must discuss material changes in the way you conduct business.

Instruction. If you are filing under Regulation S–B, you must include audited comparative balance sheets for the two most recent fiscal years.

(3) You must describe your historical lending practices, including the average remaining term to maturity of your portfolio of mortgage loans. You must state your plans for lending. You must address whether you will offer real estate or other types of loans, the nature of security you will receive, the terms of loans you will offer, whether the loans will carry fixed or variable interest rates, and whether you will retain the loans or resell them in secondary mortgage markets. You must identify the magnitude of various activities.

(4) You must explain whether any material acquisitions have had or will have significant impact on you, and the nature of the impact.

(b) *Selected financial data.* You must furnish a summary of your selected financial data. You must provide this information in columns that permit the comparison of data in each of the last five fiscal years. You must provide data for any additional fiscal years, if the data is necessary to keep the summary from being misleading.

Instructions. 1. The purpose of this summary is to supply selected data highlighting significant trends in your financial condition and results of operations in a convenient and readable format.

2. You must include the following items in the summary: Total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total deposits; total borrowings; total retained earnings; total shareholders' equity; total regulatory capital; and total number of customer service facilities, indicating the number which provide full service. You may vary this data if the variance is appropriate to conform to the nature of your business. You may include additional items if you believe the items would enhance understanding and highlight trends in your financial condition and results of operations. You must briefly describe factors that materially affect the comparability of the financial data, such as accounting changes, business combinations, or dispositions of business operations. You may describe such factors by a cross reference to other discussions in the proxy statement. You must also discuss any material uncertainties that may cause the data not to be indicative of your future financial condition or results of operations.

3. If you elect to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 89 ("SFAS 89") "Financial Reporting and Changing Prices," you may combine this information with the selected financial data required in this item.

4. If you include interim-period financial statements, or you are required to include interim-period financial statements under item 14, you must update the selected financial data for the interim period to reflect any material change in the trends indicated. If updating information is necessary, you must provide the information on a comparative basis, unless the comparison is not necessary to understand the updating information. You must provide a management statement of presentation for the required interim-period financial data reported.

5. "You" in the summary and in these instructions refers to you and your consolidated subsidiaries.

(c) *Management's discussion and analysis of financial condition and results of operations.* (1) You must discuss your financial condition, changes in financial condition, and results of operations. You must discuss the information in paragraphs (i), (ii), and (iii) of this paragraph (c) with respect to liquidity, capital resources, and results of operations. You must also provide all other information necessary to understand your financial condition, changes in your financial condition, and results of your operations. You must discuss significant business combinations. You may combine the discussion of liquidity and capital resources, if the two topics are interrelated.

If a discussion of the subdivisions of your business is appropriate to understand your business, you must focus your discussion on each relevant, reportable segment or other subdivision of the business, and on your business as a whole.

(i) *Liquidity.* You must identify any known trends or any known demands, commitments, events, or uncertainties that are reasonably likely to cause your liquidity to materially increase or decrease. If you identify a material deficiency, indicate what you have done or will do to remedy the deficiency. You must identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. You must comment on maturity imbalances between assets and liabilities, and planned activities in the secondary mortgage market.

(ii) *Committed resources.* You must describe your material commitments for funding loans or other expenditures as of the end of the latest fiscal period. You must indicate the general purpose of the commitments and the anticipated source of funds to fulfill the commitments. You must describe known material trends, favorable or unfavorable, in your committed resources. You must indicate any expected material changes in the mix and the relative cost of the resources. You must discuss changes between deposits, equity, debt, and any off-balance-sheet financing arrangements.

(iii) *Results of operations.* (A) You must describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations. In each case, you must indicate the extent to which these events, transactions, or changes affected income. In addition, you must describe any other significant components of revenues or expenses necessary to understand your results of operations.

(B) You must describe any known trends or uncertainties that have had, or will have, a materially favorable or unfavorable impact on net sales or revenues or income from your continuing operations. If you know of events which will cause a material change in the relationship between costs and revenues you must disclose the change in the relationship.

(C) If your financial statements disclose material increases in interest expense, you must discuss the extent to which the increases are attributable to increases in rates or to increases in volume.

(D) For your three most recent fiscal years, or for those fiscal years in which you have been engaged in business, whichever period is shorter, you must discuss the impact of inflation and changing prices on your revenues and on income from continuing operations.

(E) For the most recent financial statement, you must discuss any unusual risk characteristics in your assets, including real estate development, significant amounts of commercial real estate held as loan collateral, and significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III C).

(iv) You must provide a qualitative and quantitative discussion of your market risk analysis.

Instructions. 1. Your discussion and analysis must address your financial statements and other statistical data that will enhance a reader's understanding of your financial condition, changes in your financial condition, and results of your operations. Generally, you must discuss the three-year period covered by the financial statements and use year-to-year comparisons or other formats to enhance a reader's understanding. However, where trend information is relevant, you should refer to the five-year selected financial data appearing in item 7(b) above.

2. Your discussion and analysis should provide investors and other users with relevant information to assess your financial condition and results of operations, based on the user's evaluation of the amounts and certainty of cash flows from operations and from outside sources. You must only provide information that you may obtain without undue effort or expense, and that does not clearly appear in your financial statements.

3. Your discussion and analysis must specifically focus on material events and uncertainties known to you which would cause reported financial information not to be indicative of future operating results or of future financial condition. You should describe (a) matters that would affect future operations, but have not affected reported operations, and (b) matters that have affected reported operations, but would not affect future operations.

4. If the consolidated financial statements reveal material changes from year to year in one or more line items, you must state the causes for the changes if the causes are necessary to understand your business as a whole. If the causes for a change in one line item also relate to other line items, you do not have to repeat the explanation. You do not have to provide a line-by-line analysis of the financial statements as a whole. You do not have to recite the amounts of changes from year to year, if the reader may readily compute these changes from the financial statements. You must not merely repeat numerical data contained in the consolidated financial statements.

5. "Liquidity," as used in paragraph (c)(1)(i) of this item 7, refers to your ability to generate adequate amounts of cash to meet your cash needs. You must identify the balance sheet conditions or income or cash flow items that indicate your liquidity condition. You must discuss liquidity in the context of your own business or businesses. Liquidity means more than "liquid assets," as defined in OTS liquidity regulations at 12 CFR Part 566.

6. OTS encourages you, but does not require you, to supply forward-looking information. You must disclose known data that will have an impact upon future operating results, such as known future increases in rates or other costs. If you provide any forward-looking information, you may have a safe-harbor from liability for the projections under 12 CFR 563d.3b–6.

7. If you disclose narrative explanations of supplementary information in accordance with SFAS 89, you may combine these explanations with your discussion and analysis required under this provision or you may supply the information separately. If you combine the information, you must place it reasonably near the discussion and analysis. If you do not combine the information, you may omit the required discussion of the impact of inflation and cross reference the explanations provided under SFAS 89.

8. If you do not disclose explanations of supplementary information in accordance with SFAS 89, you may discuss the effects of inflation and changes in prices in an appropriate manner. OTS encourages you to voluntarily comply with SFAS 89. However, you must include a brief textual presentation of management's views. You do not have to present specific numerical financial data.

9. "You" in the discussion and in these instructions means you and your consolidated subsidiaries.

(2) If you include interim-period financial statements, you must provide management's discussion and analysis of the financial condition and results of operations. This discussion and analysis must enable the reader to assess material changes in your financial condition and results of operations between the periods specified in subdivisions (i) and (ii) of this paragraph. Your discussion and analysis must address material changes in the items specifically listed in paragraph (c)(1) of this item 7. However, you do not have to address the impact of inflation and changing prices on operations for interim periods.

(i) *Material changes in financial condition.* You must discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet that you provide. If you provide an interim balance sheet as of the corresponding interim date of the preceding fiscal year, you must discuss any material change in financial condition from that date to the date of the most recent interim balance sheet that you provide. You may combine any discussion of changes from the end, and the corresponding interim date, of the preceding fiscal year.

(ii) *Material changes in results of operations.* You must discuss any material changes in your results of operations from the most recent fiscal year-to-date period for which you provide an income statement to the corresponding year-to-date period of the preceding fiscal year. If you provide an income statement for the most recent fiscal year quarter, you must discuss material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if you provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet you provide, you must discuss material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions. 1. If you present interim financial statements and financial statements for full fiscal years, you must discuss the interim financial information under paragraph (c)(2) and the full fiscal year

information under paragraph (c)(1) of this item 7. You may combine the discussions.

2. In your discussion and analysis required by paragraph (c)(2), you must focus on material changes. If your interim financial statements reveal material change from period to period in one or more significant line items, you must describe the causes for the changes, unless you have already disclosed these causes. You do not have to repeat the description if the causes for a change in one line item relate to other line items. You do not have to recite the amounts of changes from period to period, if a reader may readily compute the amounts from the financial statements. You must not merely repeat numerical data from the financial statements. You must only provide information that you may obtain without undue effort or expense, and that does not clearly appear in your interim financial statements.

3. In your discussion of material changes in results of operations, you must identify significant elements of your income or loss from continuing operations that do not arise from or are not necessarily representative of your ongoing business.

4. You are encouraged, but not required, to supply forward-looking information. You must disclose known data that will have an impact upon future operating results, such as known future increases in rates or other costs. If you provide any forward-looking information, you may have a safe-harbor from liability for the projections under 12 CFR 563d.3b-6.

(d) *Lending activities.* (1) You must briefly describe federal and state restrictions on your lending activities and laws affecting mortgage lending or other lending. You must also briefly describe your general policy on loan-to-value ratios; your customary methods of obtaining loan originations, (*e.g.*, the use of loan consultants or brokers); your general policy on approval of properties as security for loans; your use of a loan committee, if any; and your title, fire, and casualty insurance requirements on security properties. You must indicate your future plans for secondary mortgage market activities, such as transactions with Freddie Mac or other secondary mortgage agency. You must identify significant loan service fee income as a percentage of net interest income for the years required by item 14(b).

(2) You must describe briefly (i) the areas where you normally lend; and (ii) any areas where you have a material concentration of loans. You may include maps illustrating these areas. You must estimate the housing vacancy rates in areas where you have a concentration of loans, if practicable.

(3) You must describe briefly your long-term investments in mortgage loans, and the effect of these investments on your earnings spread. You must provide the normal maturity of loans that you made on the security of single-family dwellings and estimate the average length of time these loans are outstanding.

(4) For each of the periods required by item 14(b), you must provide the following information in tabular form. You may exclude fees that are not adjustments of yield.

(i) Average yield during the period on: (A) your loan portfolio, (B) your investment portfolio, (C) other interest-earning assets, and (D) all interest-earning assets. You must compute average yield at least monthly.

(ii) Average rate paid during the period on: (A) deposits, (B) borrowings and Federal Home Loan Bank advances, (C) other interest-bearing liabilities, and (D) all interest-bearing liabilities ((A), (B), and (C)). You must compute average rate paid at least monthly.

(iii) Weighted-average yield at end of the latest required period, for items (i) and (ii) of paragraph (4).

(iv) The net yield on average interest-earning assets (*i.e.*, net interest earnings divided by average interest-earning assets. Net interest earnings is the difference between the amount of interest earned and interest paid). You must determine average interest-earning assets no more frequently than monthly.

(v) For each of the periods required by item 14(b), you must provide in tabular form: (A) The amount of change in interest income and (B) the amount of change in interest expense. For each major category of interest-earning asset and interest-bearing liability (as stated in items (i) and (ii) of paragraph (4)), you must attribute the amount of change to: (1) Changes in volume (change in volume multiplied by old rate), (2) changes in rates (change in rate multiplied by old volume), and (3) changes in rate-volume (change in rate multiplied by the change in volume). You must allocate the rate/volume variances consistently between rate and volume variance and disclose the basis of allocation in a note to the table.

(5) For each of the periods required by item 14(b), you must present the following:

(i) Return on assets (net income divided by average total assets).

(ii) Return on equity (net income divided by average equity).

(iii) Equity-to-assets ratio (average equity divided by average total assets).

Instruction. You must supply any additional ratios if the ratios are necessary to explain your operations.

(6) As of the end of the latest reported fiscal year, you must present separately the amounts of loans in each category required by balance sheet item 7(b), 12 CFR 563c.102, which are due:

(i) in each of the three years following the balance sheet,

(ii) after three through five years,

(iii) after five through ten years,

(iv) after ten through fifteen years, and

(v) after fifteen years.

In addition, you must present separately the total amount of all loans due after one year which have predetermined interest rates, and floating or adjustable interest rates.

Instructions. 1. You must report scheduled principal repayments in the maturity category in which the payment is due.

2. You must report demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts as due in one year or less.

3. You must base your maturities on contract terms. If terms vary due to your "rollover policy," you must revise the maturity and briefly discuss the rollover policy.

(7) You must describe briefly the risk elements in your loan and investment portfolios, and your procedures for delinquent loans. As of the end of each of the periods covered by the statements of operation required by item 14(b)(1) and as of the date of the latest statement of financial condition required by item 14(a), you must set forth in tables the amounts and categories of nonaccrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III. C.) and the ratio of such loans to total assets. If the amount of real estate that has been in substance foreclosed, or acquired by foreclosure or by deed in lieu of foreclosure is significant, you must briefly describe the major properties. You must also estimate your probable losses, if any, on disposition of the properties.

(e) *Savings activities.* (1) You must state that, if you liquidate after conversion, you will fully pay savings account holders before you pay shareholders. You also must indicate the percentage of total savings accounts that are from out-of-state sources, if the total is significant.

(2) You must set forth in a table the amounts of time deposit accounts categorized by interest rates on the dates of each balance sheet that you filed. You must use interest-rate categories that are not more than 200 basis points wide. As of the date of the latest balance sheet, you must set forth, in a table for each interest-rate category, the amounts of savings that will mature during each of the three years following the balance sheet date, and the total amount that will mature after three years.

Instruction. This information is not required for S-B filers.

(3) You must disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption 14, 12 CFR 563c.102. You must also disclose the maximum amount of borrowings in each category that are outstanding at any month-end during each period for which an end-of-period balance sheet is required. You must disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate for such aggregate short-term borrowings. You must briefly describe how you computed these averages. You do not have to disclose borrowings in each category if the aggregate amount of the borrowings at the balance sheet date does not exceed one percent of assets at that date. However, if the weighted average of your borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of your borrowings at year-end, you must furnish this disclosure. You are not required to provide this information for any category of short-term borrowings if the average balance outstanding during the period was less than 30 percent of shareholders equity at the end of the period.

(f) *Federal regulation.* You must describe briefly, to the extent not otherwise covered

by other items, how federal agencies regulate you and your operations. In particular, you must describe briefly how the Federal Deposit Insurance Corporation (FDIC) insures your accounts and how FDIC and OTS regulate your operations. You must describe federal regulatory capital requirements, what will happen to you if you fail to meet those capital requirements, and whether your regulatory capital position complies with those requirements. You must also describe how the FDIC and OTS charge assessments on your operations. In addition, you must describe briefly the liquidity requirements under section 6 of the Home Owners' Loan Act and OTS liquidity regulations, and state law. You must state whether you meet those liquidity requirements.

(g) *Federal Home Loan Bank System.* You must describe briefly the Federal Home Loan Bank (FHLB) System and state whether you are a member. If you are a member, you must describe the following:

(1) Limitations on your borrowings,

(2) Recent loan policies of your FHLB and the current interest rates your FHLB charges, and

(3) FHLB share purchase requirements and the amount of FHLB stock you own.

(h) *State savings association law.* If you are converting to a state-chartered stock association, you must describe state law provisions that materially affect your business.

(i) *Federal and state taxation.* (1) You must describe briefly applicable federal income tax laws including:

(i) Permissible bad debt reserves;

(ii) Your position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under item 14(a);

(iii) Future increases in your effective income tax rate;

(iv) The date through which the Internal Revenue Service audited your federal income tax returns; and

(v) How the payment of cash dividends on your capital stock after conversion will affect your federal income taxes.

(2) You must briefly describe applicable state tax laws.

(j) *Competition.* You must describe the material sources of competition for savings associations generally. You must indicate, to the extent practicable, your position in your principal lending and savings markets.

(k) *Office and other material properties.* (1) You must furnish the location of your home office, branch offices, and other office facilities (such as mobile or satellite offices). You must state the total net book value of all offices as of the date of the latest statement of financial condition required by item 14(a). You must state the expiration date of the lease on every leased office.

(2) You must describe briefly any undeveloped land that you own, including its location, net book value, prospective use, and holding period.

(l) *Employees.* You must state the number of full-time employees, including executive officers listed under item 5. You must state whether employees are represented by a collective bargaining group, and whether you have satisfactory relations with your employees. You must summarize briefly any loan, profit sharing, retirement, medical, hospitalization or other compensation plans that you provide to your employees, unless you have already included this information under item 6.

(m) *Subsidiaries.* You must describe briefly your investment in each subsidiary, and the major lines of the subsidiary's business (including any joint ventures) that are material to your operations.

(n) *Legal proceedings.* You must furnish the information on legal proceedings required by item 103 of Regulation S–K, 17 CFR 229.103. Unless the context otherwise requires, "registrant" in that regulation means you.

(o) *Additional information.* You may request permission to omit any information required by this item, or to substitute appropriate information of comparable character. OTS may permit you to omit or substitute information where it is consistent with the protection of account holders. OTS may also require you to furnish other additional or substitute information if the information is necessary or appropriate to adequately describe past and future business.

Item 8. Description of the Plan of Conversion

(a) You must include the following statement in the proxy statement. You must place this statement before the information required by this item 8. "OTS has approved the plan of conversion, subject to member approval the plan and certain other conditions. OTS approval does not mean that OTS recommends or endorses the plan."

(b) You must describe your plan of conversion. You must describe the information required by paragraphs (c) through (j) of this item. You must include any additional information necessary to accurately describe the material provisions of the plan.

(c) You must briefly describe the effects of conversion from a mutual to a stock association, including all of the following:

(1) That your savings account holders will continue to hold FDIC-insured accounts in the converted savings association, with the same dollar amount, rates of return, and general terms as existing accounts;

(2) That your savings and borrowing members will not have voting rights after conversion. In the mutual holding company context, however, you must describe what voting rights, if any, your savings and borrowing members will have after reorganization;

(3) That the account holders have liquidation rights. You must describe the liquidation account you will establish and maintain, including when you will pay the account, the interest of eligible account holders and supplemental eligible account holders in the account, and the formula that you will use to adjust the account;

(4) That the conversion will not affect borrowers' loans, including the amount, rate, maturity, security, or other contractual terms;

(5) That the FDIC will not insure your stock;

(6) That you will not distribute any assets other than to pay conversion expenses or to make a charitable contribution; and

(7) The reasons management recommends the conversion, including any advantages to the community that you serve.

(d) You must furnish the following information regarding the subscription rights of members:

(1) The formula that you will use to determine the subscription rights of account holders to purchase shares under 12 CFR 563b.320 through 563b.390;

(2) The purchase priorities, total purchase limitations, total number of shares that members may purchase, and the allocation formula in the plan of conversion;

(3) The allocation formulas that you will use if shares are oversubscribed during the sale under the plan of conversion; and

(4) The use and timing of the order forms for the exercise of subscription rights.

(e)(1) You must estimate the price range per share of the shares you will sell in the public offering under your plan of conversion. You do not have to estimate the price range if you will not begin the offering until after your members' meeting;

(2) You must indicate that the offering price will be the pro forma market value of the shares, as determined by your management and the underwriter; and

(3) You must state that you must sell all of the shares.

(f) Unless you will not begin the offering until after your members' meeting, you must discuss the following for stock you will sell:

(1) the earnings per share on a pro forma basis as of the most recent year-end and interim period required by item 14(b); and

(2) the book value per share on a pro forma basis as of the most recent year-end and interim period required by item 14(a).

Instructions. 1. You must provide earnings and book value per share data (a) without giving effect to the estimated net proceeds from the sale of the stock and (b) after giving effect to such proceeds. You must clearly state all of your assumptions.

2. In computing pro forma earnings, you must use the average of (i) the average yield on all interest-earning assets (item 7(d)(4)(i)(D)) and (ii) the average rate paid on deposits (item 7(d)(4)(ii)(A)).

3. If interest rates have significantly changed during the applicable periods, OTS may permit you to use properly supported alternative computations.

4. You must explain that pro forma data may not be indicative of your actual financial position or the results of continuing operations after the conversion.

(g) You must state when the proposed subscription period will begin and end, and must describe whether the plan of conversion permits you to change or extend these dates. You must also state the following:

(1) You will set a maximum subscription price in the offering circular that you will use for the offering of subscription rights;

(2) The actual subscription price will be the public offering price;

(3) The actual subscription price will not exceed the maximum subscription price on the order form; and

(4) You will refund any difference between the maximum and actual subscription prices, unless the subscriber affirmatively elects to apply the difference to the purchase of additional shares.

(h) You must also:

(1) Describe, to the extent practicable, whether you intend to list your shares on an exchange, or how you will otherwise provide a market for the purchase and sale of shares in the future;

(2) Describe briefly the tax effect of the conversion on you and on the various classes of account holders receiving nontransferable subscription rights in the conversion;

(3) State that the plan of conversion is attached as an exhibit to the proxy statement and that the reader may consult the plan for further information.

(i) You must state whether the plan of conversion permits you to offer unsubscribed shares to the public directly or through underwriters. If so, you must provide the information, to the extent known, required by item 6 of Form OC, and indicate the estimated timing of the proposed offering.

(j) You must furnish the following information on proposed purchases of shares by your directors and officers in a table:

(1) The total proposed number of shares that all officers, directors and their associates as a group may purchase.

(2) The name and position of each officer and director in item 5(a) and the number of shares each will purchase.

(3) If any officer, director or his or her associate proposes to purchase one percent or more of the total number of shares that will be outstanding, the name, position, and the number of shares that the officer, director or associate will purchase.

(4) Indicate separately the number of shares that will be purchased in each offering category with respect to the information required by items (1), (2) and (3) of paragraph (j).

(5) If your conversion application includes a charitable contribution, you must disclose the following additional information:

(i) The amount and percentage of shares that each proposed director (or trustee) and officer of the charitable organization will purchase in the conversion.

(ii) The aggregate number and percentage of shares that the charitable organization and its proposed officers and directors (or trustees) will hold.

(iii) The number of shares and value of the contribution at the minimum, midpoint, maximum, and maximum as adjusted, of the valuation range.

(iv) The decrease in shares that you will sell in the conversion, in number of shares and dollar amounts, at the minimum, midpoint, maximum, and maximum as adjusted, of the valuation range.

(v) The dilution in ownership and book value per share from the proposed contribution.

(vi) Your plans for additional charitable contributions over the next three years.

Instruction. You are only required to furnish information on associates of officers and directors to the extent that you know this information. If you are unable to confirm the number of shares an associate will purchase, you must disclose the number of shares the associate is given subscription rights to purchase.

Item 9. Description of Stock

(a) You must furnish the information required in item 202 of Regulation S–K, 17 CFR 229.202. Unless the context otherwise requires, "registrant" refers to you.

(b) You must undertake to use your best efforts to encourage and assist a professional market maker to establish and maintain a market for your shares.

(c) You must discuss the trading market that you expect will exist for your shares. You must estimate the number of market makers and shareholders, and describe your plans for listing the stock.

Instruction. You must describe the basic requirements you must meet to list your stock.

(d) If the rights of your stockholders will be materially limited or qualified by the rights of savings account holders or borrowers, you must describe these limitations or qualifications so that investors can understand their stock rights.

Item 10. Capitalization

You must set forth the amounts of your capitalization in substantially the tabular form indicated below. You may modify the captions as appropriate.

	(A) Capitalization on most recent balance sheet date	(B) Pro forma adjustments as a result of conversion	(C) Pro forma capitalization, after giving effect to the conversion
Deposits.			
FHLB advances.			
Other Borrowings.			
Capital stock			
Preferred stock			
Paid-in capital.			
Retained earnings Restricted Unrestricted.			
Total.			

Instructions. 1. You must indicate in the table, or in a footnote to the table, the total number of shares you will authorize, the par or stated value of the shares, and the number of shares you will sell in the conversion.

2. You must estimate in the table the total amount of funds you will receive when you sell your stock. In a footnote, you must state the price per share that you used for the estimate. You must clearly indicate that the total amount and price per share are estimates.

3. In Column A, you must use the most recent balance sheet date required by item 14.

Item 11. Use of New Capital

You must explain how you will use the new proceeds of the conversion, including the approximate amount that you will use for each purpose.

Instruction. You do not have to detail proposed investments. You must, for example, only briefly describe any investment or other activity that will be affected materially by availability of the proceeds. Examples of such activities include: expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. New Charter, Bylaws, or Other Documents

You must describe the material changes to your existing charter, bylaws, and other similar documents that will take effect after conversion.

Instruction. You only have to briefly summarize provisions that are pertinent from an investment and a voting standpoint. You do not have to provide a complete legal description of each provision.

Item 13. Other Matters

You must state that you will register your stock under section 12(g) of the Securities Exchange Act of 1934, and that you will not deregister the stock for three years after the date of conversion. You are subject to the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act when you register your stock.

Item 14. Financial Statements

Subpart A of 12 CFR Part 563c governs the certification, form, and content of the financial statements, including the basis of consolidation.

(a) *Consolidated balance sheets.* (1) You and your subsidiaries must furnish consolidated, audited balance sheets as of the end of each of the two most recent fiscal years, even if the applicant is filing using the provisions of Regulation S–B.

(2) If the latest balance sheets you furnish under (1) of this paragraph are dated 135 days or more before the date OTS approves the conversion, you must furnish an interim balance sheet dated within 135 days of OTS approval. This interim balance sheet may be unaudited.

(3) If the latest balance sheets you furnish under (1) of this paragraph are dated 105 days or more before the date OTS approves the conversion, you must furnish a Recent Development section of selected financial data and a Management's Discussion and Analysis section of significant variances.

(b) *Consolidated statements of income and cash flows.* (1) You, your subsidiaries, and your predecessors must furnish consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished.

(2) In addition, you must furnish statements of income and cash flows (i) for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet that you file, and (ii) for the corresponding period of the preceding fiscal year. The interim financial statements may be unaudited.

(c) *Changes in stockholders' equity.* You must analyze the changes in each caption of stockholders' equity in the balance sheets. You must present this analysis in a note or separate statement that reconciles the beginning balance with the ending balance for each period for which you are required to furnish an income statement. You must describe all significant reconciling items with appropriate captions. You must reconcile total generally accepted accounting principles (GAAP) capital with actual tangible, core, and risk-based capital in the notes to the financial statements.

(d) *Financial statements of business acquired or to be acquired.* You must furnish the information required by 17 CFR 210.3–05 and 210.11–01 to –03 for any business that you have acquired or will acquire.

(e) *Separate financial statements of subsidiaries not consolidated and 50-percent-or less-owned persons.* You must furnish the information required by 17 CFR 210.3–09 on separate financial statements of subsidiaries not consolidated and 50-percent-or less-owned persons.

(f) *Filing of other statements in certain cases.* You may request permission to omit any of the statements required by this item, or to substitute appropriate statements of comparable character. OTS may permit you to omit or substitute statements where it is consistent with the protection of account holders. OTS may also require you to include other additional or substitute statements, if the statements are necessary or appropriate to adequately present the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of account holders and others.

Instructions. 1. If you previously used an audit period for your certified financial statements and this audit period does not coincide with your fiscal year, you may use the audit period instead of any required fiscal year. You may use this audit period, however, only if it covers a full twelve months' operations and you have used this period consistently.

2. Interim financial statements must be comparative and reported in the same format as the audited financial statements.

Item 15. Consents of Experts and Reports

(a) You must briefly describe all consents of experts filed under the instructions in the Form AC.

(b) You must provide a report of the independent public accountants who certified your financial statements and other matters in the proxy statement.

Instruction. You must summarize only the provisions of the consents that are pertinent from an investment and a voting standpoint. You do not have to provide a complete legal description of each consent.

Item 16. Attachments

You must attach a copy of your plan of conversion as approved by OTS to the proxy statement distributed to members and others. Alternatively, in a transaction that does not utilize a state-chartered holding company, you may disclose in the proxy statement that you will provide the plan of conversion, if a recipient requests it within a specified period by means of a postage-paid postcard or other written communication.

OTS Form 1681, June 2000.

Appendix C—Form OC—Offering Circular

[Not To Be Codified in the Code of Federal Regulations]

Office of Thrift Supervision

Form OC—Offering Circular

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to ensure that the public receives adequate information about the Applicant and the securities being offered. *See* Part 563b and Part 563g.

Public reporting burden for this collection of information is estimated to average 150 hours, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

FORM OC—Offering Circular

Office of Thrift Supervision
1700 G Street, NW., Washington, DC 20552

Offering Circular

_____
(Name of Applicant in charter) (Docket No.)

_____
(Street address of Applicant)

_____
(City, State and Zip Code)

Index to Items

Item 1. Information Required by and Use of Form OC
Item 2. Additional Current Information Required
Item 3. Statement Required in Offering Circulars
Item 4. Preliminary Offering Circular
Item 5. Information with Respect to Exercise of Subscription Rights
Item 6. Stock Selling Arrangements

Item 1. Information Required by and Use of Form OC

You must date the offering circular as of the date that you mail it. You must include in your offering circular substantially the same information that you must include in the proxy statement that you distribute to your members to vote on the conversion. You may omit information from the offering circular that you included in the proxy statement only to the extent the information is clearly inapplicable. The offering circular may be in "wrap around" form, where the proxy statement is attached.

Instructions. 1. The "offering circular" is the offering circular for the subscription offering and the offering circular for any community offering or public offering, or both. It may also be called a "prospectus."

2. If you previously furnished a copy of the proxy statement to your members, you do not need to include the proxy statement as an attachment to your offering circular for a subscription offering in "wrap around" form. However, you must state in the offering circular that you previously furnished a copy of the proxy statement to the members, and that you will furnish an additional copy promptly upon request. You also must state your telephone number and mailing address.

Item 2. Additional Current Information Required

You must include the following additional current information in your offering circular, if the information is available and you did not already include the information in the proxy statement:

(a) If your members' meeting took place before you mailed the Form OC, the result of the vote of your members on the conversion and any other proposals considered at the meeting.

(b) Any recent material developments in your business or affairs.

(c) The trading market that you expect for your conversion shares.

(d) A summary of the results of any separate subscription offering. You must include the number of shares that you sold to eligible account holders, supplemental eligible account holders, and other voting members, the price at which you sold the shares, and the number of unsubscribed shares. You must include this summary on the outside front cover page.

(e) The information required by Items 8(e)(1) and 8(f) of Form PS.

(f) Any other information necessary to make the offering circular current, including full financial statements dated within six months before the date you mail the offering circular. You must also include, in your subscription offering circular, any more recent financial statements if, at the time you commence your subscription offering, you determine that you must include the financial statement in an offering circular in the community offering or public offering, or both.

Item 3. Statement Required in Offering Circulars

You must set out the following statement on the outside front cover page of every offering circular. You must set out the statement in capital letters printed in bold-face Roman type at least as large as ten-point modern type and at least two points leaded:

THE OFFICE OF THRIFT SUPERVISION HAS NOT APPROVED OR DISAPPROVED THESE SHARES. THE OFFICE HAS NOT PASSED ON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Item 4. Preliminary Offering Circular

You must include the caption "Preliminary Offering Circular," the date you issue the preliminary offering circular, and the following statement on the outside front cover page of any preliminary offering circular. You must set out the statement in red ink, printed in type as large as you use generally in the body of the offering circular.

"We have filed this offering circular with the Office of Thrift Supervision, but it has not been authorized for use in final form. We may complete or amend the information in this offering circular. We may not sell or accept offers to buy the shares covered by this offering circular before the Office of Thrift Supervision declares the offering circular effective. The offering circular is not an offer to sell or the solicitation of an offer to buy. We will not sell these shares in a state that prohibits offers, solicitations or sales before registration or qualification under the securities laws of that state."

Item 5. Information with Respect to Exercise of Subscription Rights

In any offering circular that you will deliver to subscribers, you must describe all material terms of the offering relating to the exercise of subscription rights. You may exclude this information if you have already included this information in the proxy statement. Material terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

Item 6. Stock Selling Arrangements

In each offering circular you must describe the material terms of the plan or plans of distribution for all shares.

(a) You must include the following information in substantially the tabular form set forth below. You must set out this information on the outside front cover page of the offering circular.

	Price to public	Selling discounts and commissions	Proceeds to applicant
Per share	$	$	$
Total.			

(b) If there is a community offering or public offering, or both, you must provide an offering circular. You may omit the description relating to the exercise of subscription rights required by item 5, unless you commence your community offering or public offering, or both, simultaneously with your subscription offering.

(c) If you sell any shares through a community offering, you must indicate: (1) The timing for the offering, (2) the geographic area where you will make the offering, (3) the method you will employ to market the shares (including the frequency and nature of communications or contracts with potential purchasers), (4) any preferences that you will give to any geographic area or to any class of potential purchasers, and (5) the limitations on purchases by potential purchasers.

(d) If a selling agent assists in offering shares, you must identify the selling agent, disclose how the selling agent will offer the shares, and disclose the commissions and fees you will pay to the selling agent.

(e) If you will offer any shares through underwriters, you must include in the offering circular for the public offering the names of the principal underwriters and the amounts that each will underwrite. You may omit this information for principal underwriters, other than the managing underwriters, from the offering circular for the subscription offering if you include the following conditions: (1) that all subscription rights will be exercisable by delivery of order forms to the underwriters or selling group for the public offering; and (2) that orders of persons exercising subscription rights will be filled prior to orders for stock in the direct community or public offerings, or both. You must identify each principal underwriter that has a material relationship with you and describe the relationship. In each offering circular, you must state briefly the underwriter's obligation to take unsubscribed shares.

(f) You must briefly disclose in the offering circular the discounts and commissions that you may allow or may pay dealers in connection with the sale of unsubscribed shares for the community or public offering, or both. You may omit this information from the offering circular for any subscription offering, unless you use the subscription offering circular for the community offering or public offering, or both.

Instructions. 1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, or disposed of. Commissions also include understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. You must include any cash commissions in the table. You must describe other consideration you will make to the underwriters following the table with a reference in the second column of the table. You also must appropriately disclose any finder's fees or similar payments.

3. You must state whether the selling agents or underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the selling agents or underwriters are required to take and pay for only the shares that they sell to the public.

OTS Form 1682, June 2000.

Appendix D—Form OF—Order Form

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision

Form OF—Order Form

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to ensure subscribers to Applicant's stock receive adequate disclosures regarding the purchase of Applicant's stock. *See* Part 563b and section 563.76.

Public reporting burden for this collection of information is estimated to average one hour, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

Form OF—Order Form

Office of Thrift Supervision 1700 G Street, NW., Washington, DC 20552

Order Form for purchase of conversion shares

_____

(Name of Applicant in charter) (Docket No.)

_____

(Street address of Applicant)

_____

(City, State and Zip Code)

(1) After OTS declares your offering circular for the subscription offering effective, you must promptly distribute order forms for the purchase of shares of stock to: (a) All eligible account holders, (b) supplemental eligible account holders, and (c) other voting members who may subscribe for shares under the plan of conversion.

(2) You must provide a final offering circular for the subscription offering or any community or public offerings with the order form (unless you previously provided a final offering circular). You must include detailed instructions explaining how to complete the order forms.

(3) You must state the maximum subscription price on each order form. This amount is the amount that is payable to you when the subscriber returns the order form. You must establish a maximum subscription price and an actual subscription price that is within the subscription price range stated in OTS's approval and in the offering circular. If the maximum subscription price or the actual subscription price is not within the subscription price range, you must receive OTS approval to amend the range. If appropriate, OTS may require you to resolicit proxies and order forms as a condition to its approval. If the public offering price is less than the maximum subscription price on the order form, you must reduce the actual subscription price to correspond to the public offering price. You must refund the difference to those subscribers who paid the maximum subscription price, unless the subscriber affirmatively elects to apply the difference to the purchase of additional shares.

(4) You must describe in a simple, clear and intelligible manner the actions that are required or available to the persons who will receive the order form. Specifically, you must provide all of the following information:

(i) Indicate the maximum number of shares that the person may purchase under the subscription rights;

(ii) Indicate the time period during which the person must exercise the subscription rights. This period must be at least 20 days and not more than 45 days after you mail the subscription offering order form;

(iii) State the maximum subscription price per share;

(iv) Indicate any minimum share purchase requirements;

(v) Specifically designate blank space or spaces for the person to indicate the number of shares he or she wishes to purchase;

(vi) Indicate how the person must pay. If the person withdraws funds from a certificate of deposit, you must indicate that the person may withdraw the funds without penalty. If the person pays by withdrawing from a savings account or certificate of deposit, you must provide for the person to check a box on the order form. If a person pays by withdrawing from a savings account or certificate of deposit, you may, but need not, withdraw funds from the account when you receive the order form. If the person withdraws funds before the closing date of the public offering, you must pay interest to the account holder as if the amount remained in the account until the closing date;

(vii) Specifically designate blank spaces for the person to date and sign the order form;

(viii) Include an acknowledgment that the person who signed the order form received a final offering circular before he or she signed the form; and

(ix) Indicate what will happen if the person does not properly complete and return the order form. You must state that the person may not transfer the subscription rights to another and state that the subscription rights are void at the end of the subscription period. You must include in the instructions to the form the address where the person must send the order form and the date that you will deem the order form received, (for instance, by date and time of actual receipt at the indicated address, or by date and time of postmark.)

(5) You may state that no one may modify the order form without your consent.

(6) You must include the following statements in bold print in your order form:

(a) "Federal Regulations prohibit any person from transferring or entering into any agreement directly or indirectly to transfer the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another."

(b) "Under penalty of perjury, I certify that I,_____, am purchasing shares solely for my account and that there is no agreement or understanding regarding the sale or transfer of such shares, or my right to subscribe for shares."

(7) You must also include the following separate one page certification.

"I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT AND IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT."

If anyone asserts that this security is federally insured or guaranteed, or is as safe as an insured deposit, I should call the Office of Thrift Supervision Regional Director [insert Regional Director's name and telephone number with area code].

I further certify that, before purchasing the [*description of security being offered*] of [*name of issuer, name of savings association and affiliation to issuer (if different)*], I received an offering circular.

The offering circular that I received contains disclosure concerning the nature of the security being offered and describes the risks involved in the investment including: [list briefly the principle risks involved and cross reference certain specified pages of the offering circular where a more complete description of the risks is made.]

Signature _____

Date _____

OTS Form 1683, June 2000.

[FR Doc. 00–16347 Filed 7–11–00; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Wednesday,
July 12, 2000

Part III

Department of Commerce

Export Administration Bureau

15 CFR Part 740 et al.
Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6 and 9 of the Commerce Control List; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740, 772 and 774

[Docket No. 000616178–0178–01]

RIN 0694–AC19

Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6 and 9 of the Commerce Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5, 6 and 9 to conform with changes in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability. The purpose of this final rule is to make the necessary changes to the CCL to implement recently agreed revisions to the Wassenaar List of Dual-Use Goods and Technologies.

DATES: This rule is effective July 12, 2000.

FOR FURTHER INFORMATION CONTACT: For questions of technical nature, the following persons in the Office of Strategic Trade are available:

Category 1: Robert Teer—(202) 482–4749
Category 2: Tanya Mottley—(202) 482–1837
Category 3: Hector Rivera—(202) 482–5534
Category 4: Patty Sefcik—(202) 482–0707
Category 5 (Telecommunications): Tony Koo—(202) 482–3206
Category 5 (Information Security): Patty Sefcik—(202) 482–0707
Category 6: Christopher Costanzo—(202) 482–0718
Category 9: Gene Christiansen—(202) 482–2984

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

On January 15, 1998, BXA published an interim rule (63 FR 2452) fulfilling U.S. commitments to the Wassenaar Arrangement by implementing the Wassenaar Arrangement list of dual-use items and imposing reporting requirements for exports of certain items controlled under the Wassenaar Arrangement.

On July 23, 1999, BXA published a final rule (64 FR 40106) that revised certain entries controlled for national security reasons to conform with the 1998 changes in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies agreed to by participating governments.

This final rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with recently agreed changes in the Wassenaar List of Dual-Use Goods and Technologies. The most significant revisions include liberalizations in national security thresholds for microprocessors. A detailed description of revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

Category 1—Materials, Chemicals, Microorganisms, and Toxins

1A001—amended by clarifying the term "vinylether monomer" to read "vinylether group as a constitutional unit" (1A001.c).

1C011—amended by (1) adding a new technical note to add hafnium as an impurity in the control of raw zirconium. This revision allows for the natural content of hafnium in zirconium (2–7%) to be counted with the zirconium (technical note to 1C011.a); and (2) adding nitroguanidine to the list of metals and compounds controlled by 1C011 (1C011.d). Previously nitroguanidine was controlled on the Munitions List (ML). This revision places nitroguanidine under control as a dual-use item on the Commerce Control List (CCL).

1C012—amended by revising the entry heading to remove the reference "for nuclear heat sources" and by revising the related definitions section to clarify that "these materials are typically used for nuclear heat sources" (1C012, Related Definitions).

1E002—amended by reformatting 1E002.c.1.c by merging the technical parameters of the note into 1E002.c.1.c.1 and by clarifying paragraphs c.1.c.2 and c.1.c.3. These reformatting revisions do not alter the scope of existing controls.

Category 3—Electronics

3A001—amended by (1) revising for clarity the phrase "integrated circuits described in 3A001.a.3 to 3A001.a.10 or 3A001.a.12" to provide a narrative description of the items identified by these paragraph references and by revising the phrase "field programmable gate arrays" to read "field programmable logic devices" (3A001.a.2); (2) increasing the composite theoretical performance (CTP) for microprocessors in 3A001.a.3.a from 260 million operations per second (MTOPS) to 3,500 MTOPS to account for technological advances and controllability factors (3A001.a.3.a); (3) removing the phrase "maximum resolution" from 3A001.a.5.a.1 to a.5.a.3 and adding a technical note to 3A001.a.5.b stating that "a resolution of n bit corresponds to a quantization of 2n levels and a total conversion time is the inverse of the sample rate" (3A001.a.5); (4) replacing the reference to "gate arrays" with "logic devices" in 3A001.a.7, combining the control criteria described in 3A001.a.8 into 3A001.a.7 to create a single entry for logic devices, and creating a note specifying that 3A001.a.7 includes Simple Programmable Logic Devices (SPLDss), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), Field Programmable Interconnects (FPICs) and adding a nota bene stating that field programmable logic devices are also known as field programmable logic arrays (3A001.a.7). These clarifications are designed to reflect new technology and terms; (5) removing from control on the CCL—impregnated cathodes designed for electronic tubes

with a turn on time to rate emission of less that 3 seconds (3A001.b.1.c.1). These impregnated cathodes are now controlled on the Munitions List and are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR, part 121); and (6) removing from control on the CCL—electromagnetic amplification at frequencies equal to or less than 31 GHz with a noise figure of less than 0.5 Db, or at frequencies exceeding 31 GHz (3A001.d.1). These items are now controlled on the Munitions List and are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR, part 121).

3B002—amended by (1) liberalizing the pattern rate for testing integrated circuits from 60 MHz to 333 MHz and adding a technical note explaining which technical parameter should be used in defining the pattern rate (3B002.b); (2) clarifying that "stored program controlled" test equipment for testing microwave integrated circuits are controlled by 3A001.b.2 (3B002.c) and removing the duplicative decontrol note (decontrol note to 3B002.c), as this decontrol note is described by 3A001.b.2; (3) removing from national security controls, electronic beam systems and laser beams described by 3B002.d. These items continue to be subject to the CCL and remain controlled for antiterrorism reasons under 3B992.

3E002—amended by adding a new paragraph 3E002.g controlling control technology according to the General Technology Note (not controlled by 3E001) for the development or production of microprocessors above 530 MTOPS and an access width of 32 bits or more (3E001.g).

Category 5—Telecommunications, Part I

5A001—amended by: (1) revising for clarity the phrase "'spread spectrum' or 'frequency agility' (frequency hopping) techniques" to read "'spread spectrum' techniques, including 'frequency hopping' techniques" (5A001.b.3); and (2) revising decontrol notes to 5A001.b.3.b and 5A001.b.4 by stating that these subparagraphs do not control radio equipment specially designed for use with civil cellular radiocommunications (5A001.b.3 and b.4).

5B001—amended by removing national security controls on test equipment used to test radio equipment operating at input or output frequencies exceeding 31 GHz (5B001.b.4).

5D001—amended by removing national security controls on software used for the development of radio equipment operating at input or output frequencies exceeding 31 GHz (5D001.d.4).

5E001—amended by revising for clarity the phrase "'spread spectrum' or 'frequency agility' (frequency hopping) techniques" to read "'spread spectrum' techniques, including 'frequency hopping' techniques" (5E001.b.4).

Category 5—Information Security, Part 2

5A002—amended by (1) revising the phrase "receiving equipment for radio broadcast, pay television or similar restricted audience television of the consumer type" to read "receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type" in paragraph c of the related controls section of 5A002; (2) revising the phrase "'spread spectrum' or the hopping code for 'frequency agility' systems" to read "'spread spectrum' systems, including the hopping code for 'frequency hopping' systems" (5A002.a.5). This revision is consistent with the revision made to 5A001.b.3.

Category 6—Sensors and Lasers

6A001—amended by (1) removing from control acoustic projectors designed to withstand pressure during normal operation at depths exceeding 1,000 m (6A001.a.1.c.3); (2) removing from control acoustic systems designed to withstand pressure during normal operation at depths exceeding 1,000 m (6A001.a.1.d.2) and reformatting 6A001.a.1.d by merging the technical parameters described in 6A001.a.1.d.1 into 6A001.a.1.d.; (3) revising 6A001.a.2.a by removing the reference to "transducers", adding a note specifying that the controls status of hydrophones specially designed for other equipment is determined by the control status of the other equipment and simplifying the control criteria for towed hydrophones arrays by establishing a clear 35 meter point of demarcation between commercial and military applications (6A001.a.2.).

6A002—amended by revising the second note to 6A002.a.3 for clarity.

6A003—amended by adding a note to 6A003.a specifying that instrumentation cameras controlled by 6A003.a.3 to a.5, with modular structures should be evaluated by their maximum capability, using electronic assemblies available according to the camera manufacturer's specifications (note to 6A003.a).

6A004—amended by adding a new paragraph 6A004.e to control for national security reasons certain aspheric optical elements. This revision is also accompanied by the addition of new technical notes and decontrol notes designed to clarify the scope of this new control. Due to the sensitive nature of these aspheric optical elements controlled by 6A004.e, a validated license is required to all destinations, except Canada for the technology for the development (6E001) and production (6E002) of these aspheric optical elements.

Category 9—Propulsion Systems, Space Vehicles and Related Equipment

9B001—amended by removing national security controls on ceramic core manufacturing equipment or tools and ceramic shell wax pattern preparation equipment (9B001c. and d.).

9E003—amended by (1) adding national security controls on technology for components manufactured from composite material controlled by 1C010 and manufactured with resins controlled by 1C008 (9E003.a.3); and (2) removing national security controls on technology for rotor blade tip clearance control systems employing active compensating casing "technology" limited to a design and development data base (9E003.a.11 and a.12). This equipment will continue to be controlled for antiterrorism reasons under newly created ECCN 9E993.

Editorial Revisions of Notes, Technical Notes and Nota Bene

This final rule makes a number of conforming revisions to the CCL in order to provide consistency with the use of the terms Notes, Technical Notes and Nota Bene. These conforming revisions do not affect or change the scope of control, but merely provide consistency with the use of these terms. There is a common understanding that a Note could directly affect control status, whereas a Technical Note clarifies issues and a Nota Bene (N.B.) directs the reader to a related item or issue. Specific revisions on the CCL include: ECCNs 1C001, 1C006, 1C011, Technical Notes to Category 2B, ECCNs 2B007, 2B008, 3B001, Notes to Category 4, ECCNs 5A001, and 9E002.

In addition, this rule corrects inadvertent omissions to the CCL. These corrections include a minor editorial revision to 6A995.c.2.a.1 by correcting a typographic error and revisions to 9E003.a and .d to conform with previously agreed Wassenaar text.

Items placed under control will be subject to both national security (NS) and antiterrorism (AT) controls. These actions are taken in consultation with the Departments of State and Defense and pursuant to agreements reached in the Wassenaar Arrangement.

All items removed from national security (NS) controls as a result of the

Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

BXA is continuing a comprehensive review of the Commerce Control List (CCL) to account for items controlled by the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR), and the Australia Group (AG) and to correct errors unavoidably reprinted in this version of the CCL. The review will be based in large part upon the comments received and upon ongoing efforts to harmonize the CCL with the EU's control list.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

Saving Clause

Shipments of items removed from eligibility for export or reexport under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until August 11, 2000. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for October 10, 2000, BXA will accept license applications for items described either by the entries in effect immediately before July 12, 2000 or the entries described in this rule.

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections have been approved by the Office of Management and Budget under control numbers 0694–0073, 0694–0106, and 0694–0088. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 772 and 774

Exports, Foreign trade.

Accordingly, parts 740, 772 and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

3. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 740—[AMENDED]

4. Section 740.11 is amended by revising paragraph (a)(2) introductory text and paragraph (a)(2)(v) to read as follows:

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(a) * * *

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.1.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

* * * * *

(v) Bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems; and

* * * * *

5. Supplement No. 1 to section 740.11 is amended:

a. By revising paragraph (a)(1) introductory text;

b. By revising paragraph (a)(1)(v);

c. By revising paragraphs (a)(1)(vii)(C) and (a)(1)(vii)(D);

d. By revising paragraph (b)(1) introductory text;

e. By revising paragraph (b)(1)(v); and

f. By revising paragraphs (b)(1)(vii)(C) and (b)(1)(vii)(D), to read as follows:

Supplement No. 1 to § 740.11—Additional Restrictions on Use of License Exception Gov

(a) * * *

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom:

1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

* * * * *

(v) Bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems; and

* * * * *

(vii) * * *

(C) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(D) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

* * * * *

(b) * * *

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.1.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

* * * * *

(v) Bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems; and

* * * * *

(vii) * * *

(C) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6B008, as described in paragraph (b)(1) of this Supplement; and

(D) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6B008, as described in paragraph (b)(1) of this Supplement; and

* * * * *

PART 772—[AMENDED]

6. Part 772 is amended by removing the two definitions for "Frequency agility" [two references] and by adding a new definition "Frequency hopping" to be added in alphabetical order to read as follows:

PART 772—DEFINITIONS OF TERMS

"*Frequency hopping*". (Cat 5 part 1 and 5 part 2)—A form of "spread spectrum" in which the transmission frequency of a single communication channel is made to change by a random or pseudo-random sequence of discrete steps.

* * * * *

PART 774—[AMENDED]

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCNs 1A001, 1C001, 1C006, 1C011, and 1E002; and

b. By revising the entry heading and List of Items Controlled section for ECCN 1C012, to read as follows:

1A001 Components Made From Fluorinated Compounds, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Kilograms.

Related Controls: Items specially designed or modified for missiles or for items on the U.S. Munitions List are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121.)

Related Definitions: N/A.

Items:

a. Seals, gaskets, sealants or fuel bladders specially designed for "aircraft" or aerospace use made from more than 50% by weight of any of the materials controlled by 1C009.b or 1C009.c;

b. Piezoelectric polymers and copolymers made from vinylidene fluoride materials controlled by 1C009.a:

b.1. In sheet or film form; *and*

b.2. With a thickness exceeding 200 μm

c. Seals, gaskets, valve seats, bladders or diaphragms made from fluoroelastomers containing at least one vinylether group as a constitutional unit, specially designed for "aircraft", aerospace or missile use.

1C001 Materials Specially Designed for Use as Absorbers of Electromagnetic Waves, or Intrinsically Conductive Polymers, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Kilograms.

Related Controls: See also 1C101.

Related Definitions: N/A.

Items:

a. Materials for absorbing frequencies exceeding 2×10^8 Hz but less than 3×10^{12} Hz.

Note 1: 1C001.a does not control:

a. Hair type absorbers, constructed of natural or synthetic fibers, with non-magnetic loading to provide absorption;

b. Absorbers having no magnetic loss and whose incident surface is non-planar in shape, including pyramids, cones, wedges and convoluted surfaces;

c. Planar absorbers, having all of the following characteristics:

1. Made from any of the following:

a. Plastic foam materials (flexible or non-flexible) with carbon-loading, or organic materials, including binders, providing more than 5% echo compared with metal over a bandwidth exceeding ±15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 450 K (177° C); *or*

b. Ceramic materials providing more than 20% echo compared with metal over a bandwidth exceeding ±15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 800 K (527° C);

Technical Note: Absorption test samples for 1C001.a. Note 1.c.1 should be a square at least 5 wavelengths of the center frequency on a side and positioned in the far field of the radiating element.

2. Tensile strength less than 7×10^6 N/m²; *and*

3. Compressive strength less than 14×10^6 N/m²;

d. Planar absorbers made of sintered ferrite, having:

1. A specific gravity exceeding 4.4; *and*

2. A maximum operating temperature of 548 K (275° C).

Note 2: Nothing in Note 1 releases magnetic materials to provide absorption when contained in paint.

b. Materials for absorbing frequencies exceeding 1.5×10^{14} Hz but less than 3.7×10^{14} Hz and not transparent to visible light;

c. Intrinsically conductive polymeric materials with a bulk electrical conductivity exceeding 10,000 S/m (Siemens per meter) or a sheet (surface) resistivity of less than 100 ohms/square, based on any of the following polymers:

c.1. Polyaniline;

c.2. Polypyrrole;

c.3. Polythiophene;

c.4. Poly phenylene-vinylene; *or*

c.5. Poly thienylene-vinylene.

Technical Note: Bulk electrical conductivity and sheet (surface) resistivity should be determined using ASTM D–257 or national equivalents.

1C006 Fluids and Lubricating Materials, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Barrels (55 U.S. gallons/209 liters).

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Hydraulic fluids containing, as their principal ingredients, any of the following compounds or materials:

a.1. Synthetic or silahydrocarbon oils, having all of the following:

Technical Note: For the purpose of 1C006.a.1, silahydrocarbon oils contain exclusively silicon, hydrogen and carbon.

a.1.a. A flash point exceeding 477 K (204° C);

a.1.b. A pour point at 239 K (−34° C) or less;

a.1.c. A viscosity index of 75 or more; *and*

a.1.d. A thermal stability at 616 K (343° C); *or*

a.2. Chlorofluorocarbons, having all of the following:

Technical Note: For the purpose of 1C006.a.2, chlorofluorocarbons contain exclusively carbon, fluorine and chlorine.

a.2.a. No flash point;

a.2.b. An autogenous ignition temperature exceeding 977 K (704 °C);

a.2.c. A pour point at 219 K (−54 °C) or less;

a.2.d. A viscosity index of 80 or more; *and*

a.2.e. A boiling point at 473 K (200 °C) or higher;

b. Lubricating materials containing, as their principal ingredients, any of the following compounds or materials:

b.1. Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof; or

b.2. Fluorinated silicone fluids with a kinematic viscosity of less than 5,000 mm^2/s (5,000 centistokes) measured at 298 K (25 °C);

c. Damping or flotation fluids with a purity exceeding 99.8%, containing less than 25 particles of 200 µm or larger in size per 100 ml and made from at least 85% of any of the following compounds or materials:

c.1. Dibromotetrafluoroethane;

c.2. Polychlorotrifluoroethylene (oily and waxy modifications only); *or*

c.3. Polybromotrifluoroethylene;

d. Fluorocarbon electronic cooling fluids, having all of the following characteristics:

d.1. Containing 85% by weight or more of any of the following, or mixtures thereof:

d.1.a. Monomeric forms of perfluoropolyalkylether-triazines or perfluoroaliphatic-ethers;

d.1.b. Perfluoroalkylamines;

d.1.c. Perfluorocycloalkanes; *or*

d.1.d. Perfluoroalkanes;

d.2. Density at 298 K (25 °C) of 1.5 g/ml or more;

d.3. In a liquid state at 273 K (0 °C); *and*

d.4. Containing 60% or more by weight of fluorine.

Technical Note: For the purpose of 1C006:

a. Flash point is determined using the Cleveland Open Cup Method described in ASTM D–92 or national equivalents;

b. Pour point is determined using the method described in ASTM D–97 or national equivalents;

c. Viscosity index is determined using the method described in ASTM D–2270 or national equivalents;

d. Thermal stability is determined by the following test procedure or national equivalents:

Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn);

The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644 ± 6 K (371 ± 6 °C) for six hours;

The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:

1. The loss in weight of each ball is less than 10 mg/mm2 of ball surface;

2. The change in original viscosity as determined at 311 K (38 °C) is less than 25%; *and*

3. The total acid or base number is less than 0.40;

e. Autogenous ignition temperature is determined using the method described in ASTM E–659 or national equivalents.

1C011 Metals and Compounds, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: 1.) See also 1C111. 2.) Items controlled by 1C011.a, and metal fuels in particle form, whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99 percent or more of items controlled by 1C011.b. are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: N/A.

Items:

a. Metals in particle sizes of less than 60 µm whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of zirconium, magnesium and alloys of these;

Technical Note: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

Note: The metals or alloys listed in 1C011.a are controlled whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium or beryllium.

b. Boron or boron carbide of 85% purity or higher and a particle size of 60 µm or less;

Note: The metals or alloys listed in 1C011.b are controlled whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium or beryllium.

c. Guanidine nitrate;

d. Nitroguanidine (NQ) (CAS 556–88–7).

1C012 Materials, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: N/A.

Related Definitions: These materials are typically used for nuclear heat sources.

Items:

a. Plutonium in any form with a plutonium isotopic assay of plutonium-238 of more than 50% by weight;

Note: 1C012.a does not control:

1. Shipments with a plutonium content of 1 g or less;

2. Shipments of 3 effective grams or less when contained in a sensing component in instruments.

b. Previously separated neptunium-237 in any form.

Note: 1C012.b does not control shipments with a neptunium-237 content of 1 g or less.

1E002 Other "Technology", as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: See also 1E102, 1E202, and 1E101 for "technology" related to 1E002.e.

Related Definitions: N/A.

Items:

a. "Technology" for the "development" or "production" of polybenzothiazoles or polybenzoxazoles;

b. "Technology" for the "development" or "production" of fluoroelastomer compounds containing at least one vinylether monomer;

c. "Technology" for the design or "production" of the following base materials or non-"composite" ceramic materials:

c.1. Base materials having all of the following characteristics:

c.1.a. Any of the following compositions:

c.1.a.1. Single or complex oxides of zirconium and complex oxides of silicon or aluminum;

c.1.a.2. Single nitrides of boron (cubic crystalline forms);

c.1.a.3. Single or complex carbides of silicon or boron; *or*

c.1.a.4. Single or complex nitrides of silicon;

c.1.b. Total metallic impurities, excluding intentional additions, of less than:

c.1.b.1. 1,000 ppm for single oxides or carbides; *or*

c.1.b.2. 5,000 ppm for complex compounds or single nitrides; *and*

c.1.c. Being any of the following:

c.1.c.1. Zirconia with an average particle size equal to or less than 1 µm and no more than 10% of the particles larger than 5 µm;

c.1.c.2. Other base materials with an average particle size equal to or less than 5 µm and no more than 10% of the particles larger than 10 µm; *or*

c.1.c.3. Having all of the following:

c.1.c.3.a. Platelets with a length to thickness ratio exceeding 5;

c.1.c.3.b. Whiskers with a length to diameter ratio exceeding 10 for diameters less than 2 µm; *and*

c.1.c.3.c. Continuous or chopped fibers less than 10 µm in diameter;

c.2. Non-"composite" ceramic materials composed of the materials described in 1E002.c.1;

Note: 1E002.c.2 does not control technology for the design or production of abrasives.

d. "Technology" for the "production" of aromatic polyamide fibers;

e. "Technology" for the installation, maintenance or repair of materials controlled by 1C001;

f. "Technology" for the repair of "composite" structures, laminates or

materials controlled by 1A002, 1C007.c or 1C007.d.

Note: 1E002.f does not control "technology" for the repair of "civil aircraft" structures using carbon "fibrous or filamentary materials" and epoxy resins, contained in aircraft manufacturers' manuals.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing is amended by revising the Technical Notes to Category 2B (Test, Inspection and Production Equipment), to read as follows:

Category 2—Materials Processing

* * * * *

B. Test, Inspection and Production Equipment

Notes for Category 2B

1. Secondary parallel contouring axes, (e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis) are not counted in the total number of contouring axes. Rotary axes need not rotate over 360°. A rotary axis can be driven by a linear device (*e.g.*, a screw or a rack-and-pinion).

2. Axis nomenclature shall be in accordance with International Standard ISO 841, "Numerical Control Machines—Axis and Motion Nomenclature".

3. For the purposes of 2B001 to 2B009 a "tilting spindle" is counted as a rotary axis.

4. Guaranteed positioning accuracy levels instead of individual test protocols may be used for each machine tool model using the agreed ISO test procedure.

5. The positioning accuracy of "numerically controlled" machine tools is to be determined and presented in accordance with ISO 230/2 (1988)

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Numbers (ECCNs) 2B007 and 2B008 are amended by revising the List of Items Controlled section, to read as follows:

2B007 "Robots" Having Any of the Following Characteristics Described in the List of Items Controlled and Specially Designed Controllers and "End-Effectors" Therefor

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 2B207 and 2B997.

Related Definitions: N/A.

Items:

a. Capable in real time of full three-dimensional image processing or full three-dimensional scene analysis to generate or modify "programs" or to generate or modify numerical program data;

Technical Note: The scene analysis limitation does not include approximation of the third dimension by viewing at a given angle, or limited grey scale interpretation for the perception of depth or texture for the approved tasks (2½ D).

b. Specially designed to comply with national safety standards applicable to explosive munitions environments;

c. Specially designed or rated as radiation-hardened to withstand greater than 5×10^3 Gy (Si) without operational degradation; *or*

d. Specially designed to operate at altitudes exceeding 30,000 m.

2B008 Assemblies, Units or Inserts Specially Designed for Machine tools, or for Equipment Controlled by 2B006 or 2B007, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 2B998.

Related Definition: N/A.

Items:

a. Linear position feedback units (*e.g.*, inductive type devices, graduated scales, infrared systems or "laser" systems) having an overall "accuracy" less (better) than $(800+(600\times L\times 10^{-3}))$ nm (L equals the effective length in mm);

N.B.: For "laser" systems see also Note to 2B006.b.1.

b. Rotary position feedback units (*e.g.*, inductive type devices, graduated scales, infrared systems or "laser" systems) having an "accuracy" less (better) than 0.00025°;

N.B.: For "laser" systems see also Note to 2B006.b.1.

c. "Compound rotary tables" and "tilting spindles", capable of upgrading, according to the manufacturer's specifications, machine tools to or above the levels controlled by 2B001 to 2B009.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Numbers (ECCNs), are amended by revising the List of Items Controlled section for ECCNs 3A001, 3A991, 3B001, 3B002, 3B992 and 3E002, to read as follows:

3A001 Electronic Components, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: See also 3A101, 3A201, and 3A991

Related Definitions: For the purposes of integrated circuits in 3A001.a.1, 5×10^3 Gy(Si)=5×10^5 Rads (Si); 5×10^6 Gy (Si)/s=5×10^8 Rads (Si)/s.

Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:

"Monolithic integrated circuits";

"Hybrid integrated circuits";

"Multichip integrated circuits";

"Film type integrated circuits", including silicon-on-sapphire integrated circuits;

"Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher; *or*

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher;

a.2. "Microprocessor microcircuits", "microcomputer microcircuits", microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or "optical integrated circuits" designed for "signal processing", field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125° C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55° C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55° C) to 398 K (125° C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobiles or railway train applications.

a.3. "Microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. A "composite theoretical performance" ("CTP") of 3500 million theoretical operations per second (Mtops) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 10 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 200 ns; *or*

a.5.a.3. A resolution of more than 12 bit with a total conversion time of less than 2 µs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a "settling time" of less than 10 ns;

Technical Note:

1. A resolution of n bit corresponds to a quantization of 2^n levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and "optical integrated circuits" designed for "signal processing" having all of the following:

a.6.a. One or more than one internal "laser" diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical "basic gate propagation delay time" of less than 0.4 ns; *or*

a.7.c. A toggle frequency exceeding 133 Mhz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. Reserved.

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 208 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.35 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12 based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having any of the following:

a.12.a. A rated execution time for a 1,024 point complex FFT of less than 1 ms;

a.12.b. A rated execution time for an N-point complex FFT of other than 1,024 points of less than $N \log^2 N$ /10,240 ms, where N is the number of points; *or*

a.11.c. A butterfly throughput of more than 5.12 MHz;

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note: 3A001.b.1 does not control tubes designed or rated to operate in the ITU allocated bands at frequencies not exceeding 31 GHz.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies higher than 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with an "instantaneous bandwidth" of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being "space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 Db;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm²;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing "monolithic integrated circuits"; *and*

b.2.b. Operating at frequencies above 3 GHz;

Note: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in the ITU allocated bands at frequencies not exceeding 31 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an "instantaneous bandwidth" of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (F_{max}/F_{min}) in less than 10 µs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave "assemblies" capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm³;

Note: 3A001.b.8 does not control equipment designed or rated for operation in an ITU allocated band.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 Db;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 µs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 µs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 Db and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (i.e., "signal processing" devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm3 (*e.g.*, standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30°C) to above 343 K (70°C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20°C) to above 333 K (60°C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m² at an operating temperature of 301 K (28°C) under a tungsten illumination of 1 kW/m² at 2,800 K (2,527°C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm²;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ±2.5 seconds of arc.

3A991 Electronic Devices and Components Not Controlled by 3A001

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List of Items Controlled

Unit: Equipment in number.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. "Microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having a clock frequency exceeding 25 MHz;

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Field programmable logic devices having either of the following:

c.1. An equivalent gate count of more than 5000 (2 input gates); *or*

c.2. A toggle frequency exceeding 100 MHz;

d. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

d.1. More than 144 terminals; *or*

d.2. A typical "basic propagation delay time" of less than 0.4 ns.

e. Travelling wave tubes, pulsed or continuous wave, as follows:

e.1. Coupled cavity tubes, or derivatives thereof;

e.2. Helix tubes, or derivatives thereof, with any of the following:

e.2.a.1. An "instantaneous bandwidth" of half an octave or more; *and*

e.2.a.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

e.2.b.1 An "instantaneous bandwidth" of less than half an octave; *and*

e.2.b.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

f. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

g. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having either of the following:

g.1. A carrier frequency exceeding 1 GHz; *or*

g.2. A carrier frequency of 1 GHz or less; *and*

g.2.a. A frequency side-lobe rejection exceeding 55 Db;

g.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

g.2.c. A dispersive delay of more than 10 microseconds.

h. Batteries, as follows:

Note: 3A991.h does not control batteries with volumes equal to or less than 26 cm³ (*e.g.*, standard C-cells or UM–2 batteries).

h.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

h.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

i. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

Note: 3A991.i does not control "superconductive" electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

i.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

i.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

i.3. Rated for a magnetic induction of more than 8T or "overall current density" in the winding of more than 300 A/mm².

j. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

j.1. Resonant operating frequencies exceeding 1 MHz;

j.2. A stored energy density of 1 MJ/M³ or more; *and*

j.3. A discharge time of less than 1 ms;

k. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

l. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

3B001 Equipment for the Manufacturing of Semiconductor Devices or Materials and Specially Designed Components and Accessories Therefor

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: See also 3B991.

Related Definitions: N/A.

Items:

a. "Stored program controlled" equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing a layer thickness uniform to less than ± 2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. "Stored program controlled" equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. Being capable of high energy oxygen implant into a heated semiconductor material "substrate";

c. "Stored program controlled" anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Magnetic confinement; *or*

c.1.b. Electron cyclotron resonance (ECR);

c.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

c.2.a. Magnetic confinement; *or*

c.2.b. ECR;

d. "Stored program controlled" plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

d.1.a. Magnetic confinement; *or*

d.1.b. ECR;

d.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

d.2.a. Magnetic confinement; *or*

d.2.b. ECR;

e. "Stored program controlled" automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B001.e. does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. "Stored program controlled" lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 350 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.5 µm or less;

Technical Note: The minimum resolvable feature size is calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in } \mu m) \times (\text{K factor})}{\text{numerical aperture}}$$

Where the K factor = 0.7.
MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focussed electron beam, ion beam or "laser" beam, having any of the following:

f.2.a. A spot size smaller than 0.2 µm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 µm; *or*

f.2.c. An overlay accuracy of better than ± 0.20 µm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

3B002 "Stored Program Controlled" Test Equipment, Specially Designed for Testing Finished or Unfinished Semiconductor Devices and Specially Designed Components and Accessories Therefor

* * * * *

List of Items Controlled

Unit: Number.
Related Controls: See also 3B992.
Related Definitions: N/A.
Items:

a. For testing S-parameters of transistor devices at frequencies exceeding 31 GHz;

b. For testing integrated circuits capable of performing functional (truth table) testing at a pattern rate of more than 333 MHz;

Note: 3B002.b does not control test equipment specially designed for testing:

1. "Assemblies" or a class of "assemblies" for home or entertainment applications;

2. Uncontrolled electronic components, "assemblies" or integrated circuits.

Technical Note: For purposes of 3B002.b, pattern rate is defined as the maximum frequency of digital operation of a tester. It is therefore equivalent to the highest data rate that a tester can provide in non-multiplexed mode. It is also referred to as test speed, maximum digital frequency or maximum digital speed.

c. For testing microwave integrated circuits controlled by 3A001.b.2.

3B992 Equipment Not Controlled by 3B002 for the Inspection or Testing of Electronic Components and Materials, and Specially Designed Components and Accessories Therefor

* * * * *

List of Items Controlled

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Equipment specially designed for the inspection or testing of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the inspection or testing of semiconductor devices, integrated circuits and "assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

Note: 3B992.b also controls equipment used or modified for use in the inspection or testing of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. "Stored program controlled" inspection equipment for the automatic detection of defects, errors or contaminants of 0.6 micrometer or less in or on processed wafers, "substrates", other than printed circuit boards or chips, using optical image acquisition techniques for pattern comparison;

Note: 3B992.b.1 does not control general purpose scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection.

b.2. Specially designed "stored program controlled" measuring and analysis equipment, as follows:

b.2.a. Specially designed for the measurement of oxygen or carbon content in semiconductor materials;

b.2.b. Equipment for line width measurement with a resolution of 1 micrometer or finer;

b.2.c. Specially designed flatness measurement instruments capable of measuring deviations from flatness of 10 micrometer or less with a resolution of 1 micrometer or finer.

b.3. "Stored program controlled" wafer probing equipment having any of the following characteristics:

b.3.a. Positioning accuracy finer than 3.5 micrometer;

b.3.b. Capable of testing devices having more than 68 terminals; *or*

b.3.c. Capable of testing at a frequency exceeding 1 GHz;

b.4. Test equipment as follows:

b.4.a. "Stored program controlled" equipment specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of testing at frequencies exceeding 18 GHz;

Technical Note: Discrete semiconductor devices include photocells and solar cells.

b.4.b. "Stored program controlled" equipment specially designed for testing integrated circuits and "assemblies" thereof, capable of functional testing:

b.4.b.1. At a pattern rate exceeding 20 MHz; *or*

b.4.b.2. At a pattern rate exceeding 10 MHz but not exceeding 20 MHz and capable of testing packages of more than 68 terminals;

Note: 3B992.b.4.b does not control equipment specially designed for testing integrated circuits not controlled by 3A001 or 3A991.

Notes: 1. 3B992.b.4.b does not control test equipment specially designed for testing "assemblies" or a class of "assemblies" for home and entertainment applications.

2. 3B992.b.4.b does not control test equipment specially designed for testing electronic components, "assemblies" and integrated circuits not controlled by 3A001 or 3A991 provided such test equipment does not incorporate computing facilities with "user accessible programmability".

b.4.c. Equipment specially designed for determining the performance of focal-plane arrays at wavelengths of more than 1,200 nm, using "stored program controlled" measurements or computer aided evaluation and having any of the following characteristics:

b.4.c.1. Using scanning light spot diameters of less than 0.12 mm;

b.4.c.2. Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise; *or*

b.4.c.3. Designed for evaluating arrays capable of creating images with more than 32 × 32 line elements;

b.5. Electron beam test systems designed for operation at 3 keV or below, or "laser" beam systems, for non-contactive probing of powered-up semiconductor devices having any of the following:

b.5.a. Stroboscopic capability with either beam blanking or detector strobing;

b.5.b. An electron spectrometer for voltage measurements with a resolution of less than 0.5 V; *or*

b.5.c. Electrical tests fixtures for performance analysis of integrated circuits;

Note: 3B992.b.5 does not control scanning electron microscopes, except when specially designed and instrumented for non-contactive probing of a powered-up semiconductor device.

b.6. "Stored program controlled" multifunctional focused ion beam systems specially designed for manufacturing, repairing, physical layout analysis and testing of masks or semiconductor devices and having either of the following characteristics:

b.6.a. Target-to-beam position feedback control precision of 1 micrometer or finer; *or*

b.6.b. Digital-to-analog conversion accuracy exceeding 12 bit;

b.7. Particle measuring systems employing "lasers" designed for measuring particle size and concentration in air having both of the following characteristics:

b.7.a. Capable of measuring particle sizes of 0.2 micrometer or less at a flow rate of 0.02832 m^3 per minute or more; *and*

b.7.b. Capable of characterizing Class 10 clean air or better.

3E002 Other "Technology" for the "Development" or "Production" of Items Described in the List of Items Controlled

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: (1.) See 3E001 for silicon-on-insulation (SOI) technology for the "development" or "production" related to radiation hardening of integrated circuits.

Related Definitions: N/A.

Items:

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

c. "Superconductive" electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components.

g. "Technology" according to the General Technology Note other than that controlled in 3E001 for the "development" or "production" of "microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits having a "composite theoretical performance" ("CTP") of 530 million theoretical operations per second (Mtops) or more and an arithmetic logic unit with an access width of more than 32 bits or more.

Note: 3E002.g does not control "technology" for the "development" or "production" of: (a) Microwave transistors operating at frequencies below 31 GHz; (b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following: (1.) Using "technology" of 0.7 micrometer or more, and (2.) Not incorporating multi-layer structures. The term multi-layer structures in this entry does not include devices incorporating a maximum of two metal layers and two polysilicon layers.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by revising the Notes that immediately follow the Category heading, to read as follows:

Category 4—Computers

Note 1: Computers, related equipment and "software" performing telecommunications or "local area network" functions must also be evaluated against the performance characteristics of Category 5, Part 1 (Telecommunications).

Note 2: Control units that directly interconnect the buses or channels of central processing units, "main storage" or disk controllers are not regarded as telecommunications equipment described in Category 5, Part 1 (Telecommunications).

N.B: For the control status of "software" specially designed for packet switching, see ECCN 5D001. (Telecommunications).

Note 3: Computers, related equipment and "software" performing cryptographic, cryptoanalytic, certifiable multi-level security or certifiable user isolation functions, or that limit electromagnetic compatibility (EMC), must also be evaluated against the performance characteristics in Category 5, Part 2 ("Information Security").

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications is amended by revising the List of Items Controlled section for Export Control Classification Numbers (ECCNs) 5A001, 5B001, 5D001, and 5E001, to read as follows:

5A001 Telecommunications Systems, Equipment, and Components

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in **$** value.

Related Controls: See also 5A101 and 5A991.

Related Definitions: N/A.

Items:

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; *or*

a.3. Specially designed to operate outside the temperature range from 218 K (−55 °C) to 397 K (124 °C).

Note: 5A001.a.3 applies only to electronic equipment.

Note: 5A001.a.2 and 5A001.a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

b.1 Being underwater communications systems having any of the following characteristics:

b.1.a. An acoustic carrier frequency outside the range from 20 Khz to 60 Khz;

b.1.b. Using an electromagnetic carrier frequency below 30 Khz; *or*

b.1.c. Using electronic beam steering techniques;

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:

b.2.a. Incorporating adaptive techniques providing more than 15 Db suppression of an interfering signal; *or*

b.2.b. Having all of the following:

b.2.b.1. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 MHz to 30 MHz frequency range or 250 W or more in the 30 MHz to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than −80 Db;

b.3. Being radio equipment employing "spread spectrum" techniques, including "frequency hopping" techniques, having any of the following characteristics:

b.3.a. User programmable spreading codes; *or*

b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 Khz;

Note: 5A001.b.3.b does not control radio equipment specially designed for use with civil cellular radio-communications systems.

Note: 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4. Being digitally controlled radio receivers having all of the following:

b.4.a. More than 1,000 channels;

b.4.b. A "frequency switching time" of less than 1 ms;

b.4.c. Automatic searching or scanning of a part of the electromagnetic spectrum; *and*

b.4.d. Identification of the received signals or the type of transmitter; *or*

Note: 5A001.b.4 does not control radio equipment specially designed for use with civil cellular radio-communications systems.

b.5. Employing functions of digital "signal processing" to provide voice coding at rates of less than 2,400 bit/s.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2×10^9 N/m^2 or more;

Technical Note: Proof Test: on-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20° C) and relative humidity

40%. Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

Note: 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. "Electronically steerable phased array antennae" operating above 31 GHz.

Note: 5A001.d does not control "electronically steerable phased array antennae" for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

5B001 Telecommunication Test, Inspection and Production Equipment, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See also 5B991.

Related Definition: N/A.

Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the "development", "production" or "use" of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

Note: 5B001.a. does not control optical fiber characterization equipment not using semiconductor "lasers".

b. Equipment and specially designed components or accessories therefor, specially designed for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

b.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

b.2. Equipment employing a "laser" and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing "optical amplification";

b.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5B001.b.2.d. does not include equipment specially designed for the "development" of commercial TV systems.

b.3. Equipment employing "optical switching";

b.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 128;

b.5. Equipment employing "common channel signalling" operating in either non-associated mode of operation or quasi-associated mode of operation.

5D001 "Software", as Described in the List of Items Controlled

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 5D991.

Related Definitions: N/A.

Items:

a. "Software" specially designed or modified for the "development", "production" or "use" of equipment, functions or features controlled by 5A001 or 5B001.

b. "Software" specially designed or modified to support "technology" controlled by 5E001.

c. Specific "software" as follows:

c.1. "Software" specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. "Software" which provides the capability of recovering "source code" of telecommunications "software" controlled by 5D001;

c.3. "Software", other than in machine-executable form, specially designed for "dynamic adaptive routing".

d. "Software" specially designed or modified for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

d.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

d.2. Equipment employing a "laser" and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; *or*

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5D001.d.2.b. does not control "software" specially designed or modified for the "development" of commercial TV systems.

d.3. Equipment employing "optical switching"; *or*

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 128;

5E001 "Technology" (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 5E101 and 5E991.

Related Definitions: N/A.

Items:

a. "Technology" according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, functions or features or "software" controlled by 5A001, 5B001 or 5D001.

b. Specific "technologies", as follows:

b.1. "Required" "technology" for the "development" or "production" of telecommunications equipment specially designed to be used on board satellites;

b.2. "Technology" for the "development" or "use" of "laser" communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. "Technology" for the "development" of digital cellular radio systems;

b.4. "Technology" for the "development" of "spread spectrum" techniques, including "frequency hopping" techniques.

c. "Technology" according the General Technology Note for the "development" or "production" of any of the following telecommunication transmission or "stored program controlled" switching equipment, functions or features:

c.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

c.2. Equipment employing a "laser" and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing "optical amplification" using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001.c.2.e. does not control "technology" for the "development" or "production" of commercial TV systems.

c.3. Equipment employing "optical switching"; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

c.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5E001.c.4.b. does not control "technology" for the "development" or "production" of equipment designed or modified for operation in any ITU allocated band.

c.5. Equipment employing "common channel signalling" operating in either non-associated or quasi-associated mode of operation.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5, part 2—Information Security is amended by revising the List of Items Controlled section for Export Control Classification Number (ECCN) 5A002 to read as follows:

5A002 Systems, Equipment, Application Specific "Electronic assemblies", Modules and Integrated Circuits for "Information security", and Other Specially Designed Components Therefor

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List of Items Controlled

Unit: $ value.

Related Controls: See also 5A992. This entry does not control: (a) "Personalized smart cards" where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this note. Note that if a "personalized smart card" has multiple functions, the control status of each function is assessed individually; (b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers; (c) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption; (d) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following: (1) Execution of copy-protected "software"; (2) access to any of the following: (a) Copy-protected read-only media; *or* (b) Information stored in encrypted form on media (*e.g.*, in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; *or* (3) one-time encryption of copyright protected audio/video data; (e) Cryptographic equipment specially designed and limited for banking use or money transactions; (f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications.

Related Definitions: (1) The term "money transactions" in paragraph (e) of Related Controls includes the collection and settlement of fares or credit functions. (2) For the control of global navigation satellite systems receiving equipment containing or employing decryption (*e.g.*, GPS or GLONASS) see 7A005.

Items:

Technical Note: Parity bits are not included in the key length.

a. Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", and other specially designed components therefor:

a.1. Designed or modified to use "cryptography" employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

Technical Notes:

1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. "Cryptography" does not include "fixed" data compression or coding techniques.

Note: 5A002.a.1 includes equipment designed or modified to use "cryptography" employing analog principles when implemented with digital techniques.

a.1.a. A "symmetric algorithm" employing a key length in excess of 56-bits; *or*

a.1.b. An "asymmetric algorithm" where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.*, RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.*, Diffie-Hellman over Z/pZ); *or*

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.*, Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptoanalytic functions;

a.3. [Reserved]

a.4. Specially designed or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" systems, including the hopping code for "frequency hopping" systems;

a.6. Designed or modified to provide certified or certifiable "multilevel security" or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

a.7. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Exceptions and List of Items Controlled section for ECCN 6A001;

b. By revising the List of Items Controlled section for 6A002, 6A003, and 6A995;

c. By revising the License Requirements and List of Items Controlled sections for ECCN 6A004; and

d. By revising the License Exceptions section for ECCNs 6E001 and 6E002, to read as follows:

6A001 Acoustics

* * * * *

License Exceptions

LVS: $3000; N/A for 6A001.a.2.a.1, a.2.a.2, a.2.a.5, a.2.b; processing equipment controlled by 6A001.a.2.c, and specially designed for real time application with towed acoustic hydrophone arrays; a.2.e.1, a.2.e.2; and bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems.

GBS: Yes for 6A001.a.1.b.4.

CIV: Yes for 6A001.a.1.b.4.

List of Items Controlled

Unit: $ value.

Related Controls: See also 6A991.

Related Definitions: N/A

Items:

a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment and specially designed components therefor, as follows:

Note: 6A001.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ± 20°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons;

2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems designed for sea bed topographic mapping, having all of the following:

a.1.a.1. Being designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2. Being designed to measure depths exceeding 600 m below the water surface; and

a.1.a.3. Being designed to provide any of the following:

a.1.a.3.a. Incorporation of multiple beams any of which is less than 1.9° *or*

a.1.a.3.b. Data accuracies of better than 0.3% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following:

a.1.b.1. A transmitting frequency below 10 Khz;

a.1.b.2. Sound pressure level exceeding 224 Db (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 Khz to 24 Khz inclusive;

a.1.b.3. Sound pressure level exceeding 235 Db (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 Khz and 30 Khz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 Khz;

a.1.b.5. Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

a.1.b.6. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

a.1.b.6.a. Dynamic compensation for pressure; *or*

a.1.b.6.b Incorporating other than lead zirconate titanate as the transduction element;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following:

Notes: 1. The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

2. 6A001.a1.c. does not control electronic sources that direct the sound vertically only, or mechanical (*e.g.*, air gun or vapor-shock gun) or chemical (*e.g.*, explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm²/Hz for devices operating at frequencies below 10 Khz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 mW/mm²/Hz for devices operating at frequencies below 10 Khz; *or*

Technical Note: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

or

a.1.c.3. Side-lobe suppression exceeding 22 Db;

a.1.d Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed to operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m;

Note: 6A001a.1.d includes:

a. Equipment using coherent "signal processing" between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle;

b. Equipment capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

or

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones having any of the following characteristics:

Note: The control status of hydrophones specially designed for other equipment is determined by the control status of the other equipment.

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers;

a.2.a.2.b. Piezoelectric polymers; *or*

a.2.a.2.c. Flexible piezoelectric ceramic materials;

a.2.a.3. A hydrophone sensitivity better than −180 Db at any depth with no acceleration compensation;

a.2.a.4. When designed to operate at depths exceeding 35 m with acceleration compensation; *or*

a.2.a.5. Designed for operation at depths exceeding 1,000 m;

Technical Note: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 μPa. For example, a hydrophone of −160 Db (reference 1 V per μPa) would yield an output voltage of 10^{-8} V in such a field, while one of −180 Db sensitivity would yield only 10^{-9} V output. Thus, −160 Db is better than −180 Db.

a.2.b. Towed acoustic hydrophone arrays having any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m;

a.2.b.2. Designed or "able to be modified" to operate at depths exceeding 35m;

Technical Note: "Able to be modified" in 6A001.a.2.b.2 means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Heading sensors controlled by 6A001.a.2.d;

a.2.b.4. Longitudinally reinforced array hoses;

a.2.b.5. An assembled array of less than 40 mm in diameter;

a.2.b.6. Multiplexed hydrophone group signals designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; *or*

a.2.b.7. Hydrophone characteristics controlled by 6A001.a.2.a;

a.2.c. Processing equipment, specially designed for towed acoustic hydrophone arrays, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.d. Heading sensors having all of the following:

a.2.d.1. An accuracy of better than ± 0.5°; *and*

a.2.d.2. Designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m;

a.2.e. Bottom or bay cable systems having any of the following:

a.2.e.1. Incorporating hydrophones controlled by 6A001.a.2.a; *or*

a.2.e.2. Incorporating multiplexed hydrophone group signal modules having all of the following characteristics:

a.2.e.2.a. Designed to operate at depths exceeding 35 m or having an adjustable or removal depth sensing device in order to operate at depths exceeding 35 m; *and*

a.2.e.2.b. Capable of being operationally interchanged with towed acoustic hydrophone array modules;

a.2.f. Processing equipment, specially designed for bottom or bay cable systems, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

b. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

6A002 Optical Sensors

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List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See also 6A102, 6A202, and 6A992.

Related Definitions: (1.) "Image intensifiers" defined in 6A002.a.2 and "focal plane arrays" defined in 6A002.a.3 specially designed, modified, or configured for military use and not part of civil equipment are subject to the export licensing authority of U.S. Department of State, Office of Defense Trade Controls (22 CFR part 121). (2.) "Space qualified" "monospectral imaging sensors", and "multispectral imaging sensors" defined in 6A002.b, and "space-qualified" "focal plane arrays" defined in 6A002.e, specially designed or modified for items on the U.S. Munitions List are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121).

Items:

a. Optical detectors, as follows:

Note: 6A002.a does not control germanium or silicon photodevices.

a.1. "Space-qualified" solid-state detectors, as follows:

a.1.a. "Space-qualified" solid-state detectors, having all of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm but not exceeding 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b. "Space-qualified" solid-state detectors, having all of the following:

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; *and*

a.1.b.2. A response "time constant" of 95 ns or less;

a.1.c. "Space-qualified" solid-state detectors having a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of 15 μm or less; *and*

a.2.a.3. Photocathodes, as follows:

a.2.a.3.a. S–20, S–25 or multialkali photocathodes with a luminous sensitivity exceeding 240 μmA/lm;

a.2.a.3.b. GaAs or GaInAs photocathodes; *or*

a.2.a.3.c. Other III–V compound semiconductor photocathodes;

Note: 6A002.a.2.a.3.c does not control compound semiconductor photocathodes

with a maximum radiant sensitivity of 10 mA/W or less.

a.2.b. Specially designed components, as follows:

a.2.b.1. Microchannel plates having a hole pitch (center-to-center spacing) of 15 μm or less;

a.2.b.2. GaAs or GaInAs photocathodes;

a.2.b.3. Other III–V compound semiconductor photocathodes;

Note: 6A002.a.2.b.3 does not control compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.3. Non-"space-qualified" "focal plane arrays", as follows:

Technical Note: Linear or two-dimensional multi-element detector arrays are referred to as "focal plane arrays".

Note 1: 6A002.a.3 includes photoconductive arrays and photovoltaic arrays.

Note 2:

6A002.a.3 does not control:

a. Silicon "focal plane arrays";

b. Multi-element (not to exceed 16 elements) encapsulated photoconductive cells using either lead sulphide or lead selenide;

c. Pyroelectric detectors using any of the following:

c.1. Triglycine sulphate and variants;

c.2. Lead-lanthanum-zirconium titanate and variants;

c.3. Lithium tantalate;

c.4. Polyvinylidene fluoride and variants; *or*

c.5. Strontium barium niobate and variants.

a.3.a. Non-"space-qualified" "focal plane arrays", having all of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm but not exceeding 1,050 nm; *and*

a.3.a.2. A response "time constant" of less than 0.5 ns;

a.3.b. Non-"space-qualified" "focal plane arrays", having all of the following:

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,200 nm; *and*

a.3.b.2. A response "time constant" of 95 ns or less;

a.3.c. Non-"space-qualified" "focal plane arrays", having individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm.

b. "Monospectral imaging sensors" and "multispectral imaging sensors" designed for remote sensing applications, having any of the following:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 μr (microradians); *or*

b.2. Being specified for operation in the wavelength range exceeding 400 nm but not exceeding 30,000 nm and having all the following;

b.2.a. Providing output imaging data in digital format; *and*

b.2.b. Being any of the following:

b.2.b.1. "Space-qualified"; *or*

b.2.b.2. Designed for airborne operation, using other than silicon detectors, and having an IFOV of less than 2.5 mr (milliradians).

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating any of the following:

c.1. Image intensifier tubes having the characteristics listed in 6A002.a.2.a; *or*

c.2. "Focal plane arrays" having the characteristics listed in 6A002.a.3.

Technical Note: "Direct view" refers to imaging equipment, operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically or by any other means.

Note: 6A002.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use.

d. Special support components for optical sensors, as follows:

d.1. "Space-qualified" cryocoolers;

d.2. Non-"space-qualified" cryocoolers, having a cooling source temperature below 218 K (−55 °C), as follows:

d.2.a. Closed cycle type with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers having bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive.

e. "Space qualified" "focal plane arrays" having more than 2,048 elements per array and having a peak response in the wavelength range exceeding 300 nm but not exceeding 900 nm.

6A003 Cameras

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List of Items Controlled

Unit: Number.

Related Controls: See also 6A203. See 8A002.d and .e for cameras specially designed or modified for underwater use.

Related Definitions: N/A.

Items:

a. Instrumentation cameras, as follows:

Note: Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using "electronic assemblies" available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

Note: 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/μ.

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 μs per full frame; *and*

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

b. Imaging cameras, as follows:

Note: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4×10^6 "active pixels" per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4×10^6 "active pixels" per solid state array for color cameras incorporating three solid state arrays; or

b.1.c. More than 12×10^6 "active pixels" for solid state array color cameras incorporating one solid state array;

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.b. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating "focal plane arrays" having the characteristics listed in 6A002.a.3.

Note: 6A003.b.4 does not control imaging cameras incorporating linear "focal plane arrays" with twelve elements or fewer, not employing time-delay-and-integration with the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; *or*

e. Medical equipment.

6A004 Optics

License Requirements

Reason for Control: NS, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

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List of Items Controlled

Unit: Equipment in number; cable in meters/feet; components in $ value.

Related Controls: See also 6A994.

Related Definitions: N/A.

Items: a. Optical mirrors (reflectors), as follows:

a.1. "Deformable mirrors" having either continuous or multi-element surfaces, and specially designed components therefor, capable of dynamically repositioning portions of the surface of the mirror at rates exceeding 100 Hz;

a.2. Lightweight monolithic mirrors having an average "equivalent density" of less than 30 kg/m^2 and a total mass exceeding 10 kg;

a.3. Lightweight "composite" or foam mirror structures having an average "equivalent density" of less than 30 kg/m^2 and a total mass exceeding 2 kg;

a.4. Beam steering mirrors more than 100 mm in diameter or length of major axis, that maintain a flatness of lambda/2 or better (lambda is equal to 633 nm) having a control bandwidth exceeding 100 Hz.

b. Optical components made from zinc selenide (ZnSe) or zinc sulphide (ZnS) with transmission in the wavelength range exceeding 3,000 nm but not exceeding 25,000 nm and having any of the following:

b.1. Exceeding 100 cm^3 in volume; *or*

b.2. Exceeding 80 mm in diameter or length of major axis and 20 mm in thickness (depth).

c. "Space-qualified" components for optical systems, as follows:

c.1. Lightweighted to less than 20% "equivalent density" compared with a solid blank of the same aperture and thickness;

c.2. Substrates, substrates having surface coatings (single-layer or multi-layer, metallic or dielectric, conducting, semiconducting or insulating) or having protective films;

c.3. Segments or assemblies of mirrors designed to be assembled in space into an optical system with a collecting aperture equivalent to or larger than a single optic 1 m in diameter;

c.4. Manufactured from "composite" materials having a coefficient of linear thermal expansion equal to or less than 5 × 10^{-6} in any coordinate direction.

d. Optical control equipment, as follows:

d.1. Specially designed to maintain the surface figure or orientation of the "space-qualified" components controlled by 6A004.c.1 or 6A004.c.3;

d.2. Having steering, tracking, stabilization or resonator alignment bandwidths equal to or more than 100 Hz and an accuracy of 10 μr (microradians) or less;

d.3. Gimbals having all of the following:

d.3.a. A maximum slew exceeding 5°;

d.3.b. A bandwidth of 100 Hz or more;

d.3.c. Angular pointing errors of 200 μr (microradians) or less; *and*

d.3.d. Having any of the following:

d.3.d.1. Exceeding 0.15 m but not exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 2 r (radians)/s^2; *or*

d.3.d.2. Exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 0.5 r (radians)/s^2;

d.4. Specially designed to maintain the alignment of phased array or phased segment mirror systems consisting of mirrors with a segment diameter or major axis length of 1 m or more.

e. Aspheric optical elements having all of the following characteristics:

e.1. The largest dimension of the optical-aperture is greater than 400 mm;

e.2. The surface roughness is less than 1 nm (rms) for sampling lengths equal to or greater than 1 mm; *and*

e.3. The coefficient of linear thermal expansion's absolute magnitude is less than 3×10 $^{-6}$/K at 25° C;

Technical Notes:

1. An "aspheric optical element" is any element used in an optical system whose imaging surface or surfaces are designed to depart from the shape of an ideal sphere.

2. Manufacturers are not required to measure the surface roughness listed in 6A004.e.2 unless the optical element was designed or manufactured with the intent to meet, or exceed, the control parameter.

Note: 6A004.e does not control aspheric optical elements having any of the following:

a. A largest optical-aperture dimension less than 1 m and a focal length to aperture ratio equal to or greater than 4.5:1;

b. A largest optical-aperture dimension equal to or greater than 1 m and a focal length to aperture ratio equal to or greater than 7:1;

c. Being designed as Fresnel, flyeye, stripe, prism or diffractive optical elements;

d. Being fabricated from borosilicate glass having a coefficient of linear thermal expansion greater than 2.5×10−6/K at 25° C; *or*

e. Being an x-ray optical element having inner mirror capabilities (*e.g.*, tube-type mirrors).

N.B.: For aspheric optical elements specially designed for lithographic equipment, see 3B001.

6A995 "Lasers", Not Controlled by 6A005 or 6A205

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List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Carbon dioxide (CO_2) "lasers" having any of the following:

a.1. A CW output power exceeding 10 kW;

a.2. A pulsed output with a "pulse duration" exceeding 10 microseconds; *and*

a.2.a. An average output power exceeding 10 kW; *or*

a.2.b. A pulsed "peak power" exceeding 100 kW; *or*

a.3. A pulsed output with a "pulse duration" equal to or less than 10 microseconds; *and*

a.3.a. A pulse energy exceeding 5 J per pulse and "peak power" exceeding 2.5 kW; *or*

a.3.b. An average output power exceeding 2.5 kW;

b. Semiconductor lasers, as follows:

b.1. Individual, single-transverse mode semiconductor "lasers" having:

b.1.a. An average output power exceeding 100 MW; *or*

b.1.b. A wavelength exceeding 1,050 nm;

b.2. Individual, multiple-transverse mode semiconductor "lasers", or arrays of individual semiconductor "lasers", having a wavelength exceeding 1,050 nm;

c. Solid state, non-"tunable" "lasers", as follows:

c.1. Ruby "lasers" having an output energy exceeding 20 J per pulse;

c.2. Neodymium-doped (other than glass) "lasers", as follows, with an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm:

c.2.a. Pulse-excited, "Q-switched lasers", with a pulse duration equal to or more than 1 ns, and a multiple-transverse mode output with any of the following:

c.2.a.1. A "peak power" exceeding 200 MW; *or*

c.2.a.2. An average output power exceeding 50 W;

c.2.b. Pulse-excited, non-"Q-switched lasers", having a multiple-transverse mode output with an average power exceeding 500 W; *or*

c.2.c. Continuously excited "lasers" having a multiple-transverse mode output with an average or CW output power exceeding 500 W;

d. Free electron "lasers".

6E001 "Technology" According to the General Technology Note for the "Development" of Equipment, Materials or "Software" Controlled by 6A (Except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (Except 6B995), 6C (Except 6C992 or 6C994), or 6D (Except 6D991, 6D992, or 6D993.

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License Exceptions

CIV: N/A.

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) Items controlled by 6A004.e; *or*

(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" for the "development" of the following:

(a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.l.3, 6B008, 6D003.a;

(b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when specially designed for real time applications; *or*

(c) "Software" controlled by 6D001 and specially designed for the "development" or "production" of equipment controlled by 6A008.l.3 or 6B008.

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6E002 "Technology" According to the General Technology Note for the "Production" of Equipment or Materials Controlled by 6A (Except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (Except 6B995) or 6C (Except 6C992 or 6C994).

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License Exceptions

CIV: N/A.

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) Items controlled by 6A004.e; *or*

(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" for the "development" of the following:

(a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, and 6A001.a.2.c; and

(b) Equipment controlled by 6A001.a.2.e and 6A001.a.2.f when specially designed for real time applications; or

(c) "Software" controlled by 6D001 and specially designed for the "development" or "production" of equipment controlled by 6A002.a.1.c, 6A008.l.3 or 6B008.

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15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment is amended as follows:

a. By revising the List of Items Controlled section for ECCNs 9B001, 9B991, 9E002, and 9E003; and

b. By adding a new ECCN 9E993, to read as follows:

9B001 Specially Designed Equipment, Tooling and Fixtures, as Follows (See List of Items Controlled), for Manufacturing or Measuring Gas Turbine Blades, Vanes or Tip Shroud Castings.

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List of Items Controlled

Unit: $ value.

Related Controls: For specially designed production equipment of systems, sub-systems and components controlled by 9A005 to 9A009, 9A011, 9A101, 9A105 to 9A109, 9A111, and 9A116 to 9A119 usable in "missiles" see 9B115. See also 9B991.

Related Definitions: N/A.

Items:

a. Directional solidification or single crystal casting equipment;

b. Ceramic cores or shells.

9B991 Specially Designed Equipment, Tooling or Fixtures, Not Controlled by 9B001, as Described in the List of Items Controlled, for Manufacturing or Measuring Gas Turbine Blades, Vanes or Tip Shroud Castings.

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Automated equipment using non-mechanical methods for measuring airfoil wall thickness;

b. Tooling, fixtures or measuring equipment for the "laser", water jet or ECM/EDM hole drilling processes controlled by 9E003.c;

c. Ceramic core leaching equipment;

d. Ceramic core manufacturing equipment or tools;

e. Ceramic shell wax pattern preparation equipment;

f. Ceramic shell burn out or firing equipment.

9E002 "Technology" According to the General Technology Note for the "Production" of Equipment Controlled by 9A001.c, 9A004 to 9A011 or 9B (Except 9B990 or 9B991).

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: (1) See also 9E102. (2) See also 1E002.f for "technology" for the repair of controlled structures, laminates or materials. (3) The "technology" required for the "development" of equipment controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.) (4) "Technology", required for the "development" of equipment or "software" subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls, is also subject to the same licensing jurisdiction. (See 22 CFR part 121).

Related Definitions: N/A.

Items:

The list of items controlled is contained in the ECCN heading.

9E003 Other "Technology", as Follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: (1) Hot section "technology" specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is subject to the licensing authority of the U.S. Department of State. (2) "Technology" is subject to the EAR when actually applied to a commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department of Commerce in respect to a specific export, or in the case of use for broad categories of aircraft, engines, or components, a commodity jurisdiction determination from the Department of State.

Related Definitions: N/A.

Items:

a. "Technology" "required" for the "development", "production", or overhaul of the following commercial aircraft engines, components or systems:

a.1. Gas turbine blades, vanes or tip shrouds made from directionally solidified (DS) or single crystal (SC) alloys having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000°C) at a stress of 200 MPa, based on the average property values;

a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,813 K (1,540° C) or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;

a.3. Components manufactured from any of the following:

a.3.a. Organic "composite" materials designed to operate above 588 K (315°C);

a.3.b. Metal "matrix" "composite", ceramic "matrix", intermetallic or intermetallic reinforced materials controlled by 1C007; *or*

a.3.c. "Composite" material controlled by 1C010 and manufactured with resins controlled by 1C008.

a.4. Uncooled turbine blades, vanes, tip-shrouds or other components designed to operate at gas path temperatures of 1,323 K (1,050°C) or more;

a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path temperatures of 1,643 K (1,370°C) or more;

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine components using "diffusion bonding" "technology" controlled by 2E003.b;

a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;

a.9. Full authority digital electronic engine control (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

a.10. Adjustable flow path geometry and associated control systems for:

a.10.a. Gas generator turbines;

a.10.b. Fan or power turbines;

a.10.c. Propelling nozzles;

Note 1: Adjustable flow path geometry and associated control systems do not include inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.

Note 2: 9E003.a.10 does not control "development" or "production" "technology" for adjustable flow path geometry for reverse thrust.

a.11. Wide chord hollow fan blades without part-span support;

b. "Technology" "required" for the "development" or "production" of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; *or*

b.2. "Composite" propeller blades or propfans capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. "Technology" "required" for the "development" or "production" of gas turbine engine components using "laser", water jet, ECM or EDM hole drilling processes to produce holes having any of the following sets of characteristics:

c.1. All of the following:

c.1.a. Depths more than four times their diameter;

c.1.b. Diameters less than 0.76 mm; *and*

c.1.c. Incidence angles equal to or less than 25°; *or*

c.2. All of the following:

c.2.a. Depths more than five times their diameter;

c.2.b. Diameters less than 0.4 mm; *and*

c.2.c. Incidence angles of more than 25°;

Technical Note: For the purposes of 9E003.c, incidence angle is measured from a plane tangential to the airfoil surface at the point where the hole axis enters the airfoil surface.

d. "Technology" "required" for any of the following:

d.1. The "development" of helicopter power transfer systems or tilt rotor or tilt wing "aircraft" power transfer systems; *or*

d.2. The "production" of helicopter power transfer systems or tilt rotor or tilt wing "aircraft" power transfer systems;

e.1. "Technology" for the "development" or "production" of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1.a. A box volume of 1.2 m^3 or less;

e.1.b. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; *and*

e.1.c. A power density of more than 700 kW/m^3 of box volume;

Technical Note: Box volume: the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; *or*

c. The diameter of the flywheel housing;

Height: The largest of the following:

a. The dimension of the crankshaft centerline to the top plane of the valve cover (or cylinder head) plus twice the stroke; *or*

b. The diameter of the flywheel housing.

e.2. "Technology" "required" for the "production" of specially designed components, as follows, for high output diesel engines:

e.2.a. "Technology" "required" for the "production" of engine systems having all of the following components employing ceramics materials controlled by 1C007:

e.2.a.1. Cylinder liners;

e.2.a.2. Pistons;

e.2.a.3. Cylinder heads; *and*

e.2.a.4. One or more other components (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

e.2.b. "Technology" "required" for the "production" of turbocharger systems, with single-stage compressors having all of the following:

e.2.b.1. Operating at pressure ratios of 4:1 or higher;

e.2.b.2. A mass flow in the range from 30 to 130 kg per minute; *and*

e.2.b.3. Variable flow area capability within the compressor or turbine sections;

e.2.c. "Technology" "required" for the "production" of fuel injection systems with a specially designed multifuel (e.g., diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8° C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8° C)), having both of the following:

e.2.c.1. Injection amount in excess of 230 mm3 per injection per cylinder; *and*

e.2.c.2. Specially designed electronic control features for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

e.3. "Technology" "required" for the development" or "production" of high output diesel engines for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication, permitting operation to temperatures exceeding 723 K (450° C), measured on the cylinder wall at the top limit of travel of the top ring of the piston.

f. "Technology" not otherwise controlled in 9E003.a.1 through a.10 and currently used in the "development", "production", or overhaul of hot section parts and components of civil derivatives of military engines controlled on the U.S. Munitions List.

9E993 Other "technology", not described by 9E003, as follows (see List of Items Controlled)

License Requirements

Reason for Control: AT.

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A

TSR: N/A

List of Items Controlled

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Rotor blade tip clearance control systems employing active compensating casing "technology" limited to a design and development data base; *or*

b. Gas bearing for turbine engine rotor assemblies.

Dated: June 29, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–17154 Filed 7–11–00; 8:45 am]

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Federal Register

Wednesday,
July 12, 2000

Part IV

Securities and Exchange Commission

17 CFR Parts 210 and 240
Revision of the Commission's Auditor Independence Requirements; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 240

[Release Nos. 33–7870; 34–42994; 35–27193; IC–24549; IA–1884; File No. S7–13–00]

RIN 3235–AH91

Revision of the Commission's Auditor Independence Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is soliciting comment on proposed rule amendments regarding auditor independence. The proposals modernize the Commission's requirements by providing governing principles for determining whether an auditor is independent in light of: investments by auditors or their family members in audit clients, employment relationships between auditors or their family members and audit clients, and the scope of services provided by audit firms to their audit clients. The proposals would, among other things, significantly reduce the number of audit firm employees and their family members whose investments in audit clients are attributed to the auditor. They would also identify certain non-audit services that, if provided to an audit client, would impair an auditor's independence. The scope of services proposals would not extend to services provided to non-audit clients. The proposals also would provide a limited exception for accounting firms that have certain quality controls and satisfy other conditions. Finally, the proposals would require companies to disclose in their annual proxy statements certain information about, among other things, non-audit services provided by their auditors during the last fiscal year.

DATES: Comments should be received on or before September 25, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–13–00; this file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comments will be posted on the Commission's internet web site (http://www.sec.gov). [1]

FOR FURTHER INFORMATION CONTACT: John M. Morrissey, Deputy Chief Accountant, or W. Scott Bayless, Associate Chief Accountant, Office of the Chief Accountant, at (202) 942–4400, or with respect to questions about investment companies, John S. Capone, Chief Accountant, Division of Investment Management, at (202) 942–0590, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 2–01 of Regulation S-X [2] and Item 9 of Schedule 14A [3] under the Securities Exchange Act of 1934 (the "Exchange Act"). [4]

I. Executive Summary

Independent auditors have an important public trust.[5] Every day, millions of people invest their savings in our securities markets in reliance on financial statements prepared by public companies and audited by independent auditors. [6] These auditors, using Generally Accepted Auditing Standards ("GAAS"), examine issuers'; financial statements and issue opinions about whether the financial statements, taken as a whole, are fairly presented in conformity with Generally Accepted Accounting Principles ("GAAP"). While an auditor's opinion does not guarantee the accuracy of financial statements, it furnishes investors with critical assurance that the financial statements have been subjected to a rigorous examination by an impartial and skilled professional and that investors can therefore rely on them. Providing that assurance to the public is the auditor's over-arching duty. [7]

Investors must be able to put their faith in issuers' financial statements. If investors do not believe that the auditor is truly independent from the issuer, they will derive little confidence from the auditor's opinion and will be far less likely to invest in the issuer's securities. Fostering investor confidence, therefore, requires not only that auditors actually be independent of their audit clients, but also that reasonable investors perceive them to be independent.

One of our missions is to promote investor confidence in the reliability and integrity of issuers' financial statements. To promote investor confidence, we must ensure that our auditor independence requirements remain relevant, effective, and fair in light of significant changes in the profession, structural reorganizations of accounting firms, and demographic changes in society. Some of the important developments in each of these areas since we last amended our auditor independence requirements in 1983 [8] include the following:

- Firms are becoming primarily business advisory service firms as they increase the number, revenues from, and types of non-audit services provided to audit clients,
- Firms and their audit clients are entering into an increasing number of business relationships, such as strategic alliances, co-marketing arrangements, and joint ventures,
- Firms are divesting significant portions of their consulting practices or restructuring their organizations,
- Firms are offering ownership of parts of their practices to the public, including audit clients,
- Firms are in need of increased capital to finance the growth of consulting practices, new technology, training, and large unfunded pension obligations,
- Firms have merged, resulting in increased firm size, both domestically and internationally,
- Firms have expanded into international networks, affiliating and marketing under a common name,
- non-CPA financial service firms have acquired accounting firms, and the acquirors previously have not been

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[1] We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] 17 CFR 210.2–01.

[3] 17 CFR 240.14a–101.

[4] 15 U.S.C. 78a *et seq.*

[5] This release uses the terms "independent auditor," "auditor," "independent public accountant," "accountant," and "independent accountant" interchangeably to refer to any independent certified or independent public account who performs an aduit of or reviews a public company's financial statements or whose report or opinion is filed with the Commission in accordance with the federal securities laws or the Commission's regulations.

[6] Public companies must have their annual financial statements audited by independent public accountants. *See, e.g.*, Items 25 and 26 of Schedule A to the Securities Act of 1933 (the "1933 Act"), 15 U.S.C. 77aa(25) and (26) that expressly require that financial statements be audited by independent public or certified accounts. Public companies also must have their quarterly reports reviewed by independent accountants. *See, e.g.*, Article 10 of Regulation S–X, 17 CFR 210.10–01(d).

[7] The profession's principles of professional conduct state, "Members should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism." American Institute of Certified Public Accountants ("AICPA") Professional Standards: Code of Professional Conduct ("AICPA Code of Professional Conduct"), ET § 53.

[8] Financial Reporting Release ("FRR") No. 10 (Feb. 25, 1983).

subject to the profession's independence, auditing, or quality control standards,

- Firms' professional staffs have become more mobile, and geographical location has become less important due to advances in telecommunications and internet services, and
- Audit clients are hiring an increasing number of firm partners, professional staff, and their spouses for high level management positions.

Having considered these and other developments and their effect on auditor independence, we are proposing rule amendments. The proposals start from the premise that investor confidence in auditor independence turns on whether auditors are in fact independent and appear to be independent. To strengthen the basis for that confidence, the proposals focus on those who can influence a particular audit. The proposals articulate four principles that would govern our determination of whether an accountant is independent of its audit client. Specifically, the proposals provide that an accountant is not independent whenever, during the audit and professional engagement period, the accountant: (i) Has a mutual or conflicting interest with the audit client, (ii) audits the accountant's own work, (iii) functions as management or an employee of the audit client, or (iv) acts as an advocate for the audit client.

The proposals then describe certain relationships which, when considered in light of these principles, render an accountant not independent of an audit client. The relationships addressed by the proposals include, among others, the financial and employment relationships between auditors (or their family members) and audit clients, and relationships between auditors and audit clients where the auditors provide certain non-audit services to their audit clients.

Financial and Employment Relationships. Current requirements attribute to an auditor ownership of shares held by widely dispersed audit firm personnel and their families. In light of some of the developments described above, these rules may unnecessarily restrict investment and employment opportunities available to firm personnel and their families. The proposals shrink significantly the circle of firm personnel whose investments are imputed to the auditor. They also shrink the circle of family members and former firm personnel whose employment impairs an auditor's independence.

Non-Audit Services. We have become increasingly concerned that the dramatic increase in the nature, number, and monetary value of non-audit services that accounting firms provide to audit clients may affect their independence. Accordingly, the proposals specify certain non-audit services that, if provided by an accounting firm to an audit client, impair an auditor's independence in light of the four governing principles.

For example, the proposals provide that an accounting firm would not be independent from an audit client to which the firm provides valuation and appraisal services. Some accounting firms provide these services to audit clients,[9] even though the firm's auditors must independently question the value of the appraised asset in auditing the audit client's financial statements. As such, the auditor may have participated actively in the process of developing asset values that are reported to investors in financial statements. The auditor then is required to challenge those same numbers during the audit. In this dual role as auditor and consultant, the accountant both oversees and answers to management, raising serious conflict of interest questions. Will the auditor be diligent and objective in reviewing the accounting firm's valuation work? If, during the audit, the auditor identifies a problem with the valuation or appraisal, will that auditor bring the problem to management's attention? Perhaps more important, even if the auditor made unbiased decisions, would investors believe that the auditor had been objective? [10]

The proposals do not extend to all non-audit services provided to audit clients. Not all non-audit services pose the same risk to independence. The proposals reflect what we believe to be a reasonable differentiation among various non-audit services, as well as our preference for narrowly drawn rules.

Quality Controls. Accounting firms and the public benefit when firms have effective quality controls that ensure the independence of audit professionals. These controls protect the public and the firms, on whose audits the public relies. Public companies benefit as well, since they are able to access capital at a lower cost through our capital markets. Therefore, for accounting firms that have certain quality controls, we are proposing a limited exception from the independence rules for certain independence failures that are cured promptly after discovery. This exception should encourage firms to institute controls to ensure the independence of the firm's personnel.

Disclosure of Non-Audit Services. Investors should have enough information to enable them to evaluate the independence of a company's auditors. The proposed rules would bring the benefits of sunlight to the auditor independence area by requiring companies to disclose in their annual proxy statements certain information about, among other things, the non-audit services provided by their auditors and the participation of leased personnel in performing the company's annual audit.

II. The Need To Preserve Auditor Independence

A. The Securities Laws Give Independent Auditors a Vital Mission and Responsibility

Capital formation depends on the willingness of investors to invest in the securities of public companies. Investors are more likely to invest, and pricing is more likely to be efficient, the greater the assurance that the financial information disclosed by issuers is reliable.[11] Independent auditors play a key role in providing that assurance. Auditors follow specified procedures set forth in GAAS and express their opinion

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[9] *See* Independence Standards Board ("ISB"), "Discussion Memorandum 99–3: Appraisal and Valuation Services," at 2–3 (Sept. 1999). The ISB was formed in 1997 to establish auditor independence standards applicable to audit and other attestation reports that are filed with us. Copies of standards issued by the ISB can be obtained from the ISB's web site at www.cpaindependence.org.

[10] As Statement on Auditing Standards No. 1 states, ". . . an independent auditor auditing a company of which he was also a director might be intellectually honest, but it is unlikely that the public would accept him as independent since he would be in effect auditing decisions which he had a part in making. Likewise, an auditor with a substantial financial interest in a company might be unbiased in expressing his opinion on the financial statements of the company, but the public would be reluctant to believe that he was unbiased." AICPA Codification of Statements on Auditing Standards ("SAS") No. 1, AU § 220.03. Indeed, a recent survey suggests that the complexity of the financial and business relationships between accounting firms and audit clients could diminish investors' confidence in the objectivity of auditors. In the 1999 study sponsored by the ISB, Earnscliffe Research & Communications found that many individuals interviewed believed that pressures on auditors have been increasing and are becoming problematic, and that "auditors are developing a stronger interest in their relationship with management, perhaps at the expense of their responsibilities to shareholders." *See* Earnscliffe Research & Communications ("Earnscliffe"), *Report to the United States Independence Standards Board: Research into Perceptions of Auditor Independence and Objectivity*, at 9 (Nov. 1999) ("Earnscliffe Report").

[11] *See generally* Codification of Financial Reporting Policies (the "Codification") § 601.01 ("[a]n investor's willingness to commit his capital to an impersonal market is dependent on the availability of accurate, material and timely information regarding the corporations in which he has invested or proposes to invest").

on whether the financial statements, taken as a whole, fairly reflect the financial position, results of operations, and cash flows of the company.[12] Based on the independent auditor's opinion, investors have reason to believe that financial statements are materially accurate, fair, and complete.

The federal securities laws, to a significant extent, make independent auditors "gatekeepers" to the public securities markets.[13] These laws require, or permit us to require, financial information filed with us to be certified (or audited) by independent public accountants.[14] Without an opinion from an independent auditor, the company cannot satisfy the statutory and regulatory requirements for audited financial statements and cannot sell its securities to the public.[15] The auditor is the only professional that a company must engage before making a public offering of securities and the only professional charged with the duty to act and report independently from management. Because it is the issuer's responsibility to file independently audited financial statements, if the auditor is not independent, the issuer's filings are deficient under the securities laws.

In the fiscal year ended September 30, 1999, 13,460 public companies filed annual reports with the Commission. In the same period, the aggregate dollar volume for public offerings filed with the Commission was $2.1 trillion. While our staff reviews a great many filings, it is not able to review in detail all of the financial statements filed with us. We therefore must rely heavily on the accounting profession to be primarily responsible for the integrity of the large volume of financial information that forms the cornerstone of our full disclosure system.[16]

In creating this system, Congress granted the accounting profession an important public trust. Congress considered creating a corps of government auditors to review and audit companies' financial statements. Congress also considered mandating federal licensing of auditors. Instead, Congress entrusted the accounting profession with the responsibility of auditing the financial statements of companies registered with the SEC.[17] In so doing, Congress gave the accounting profession both an enormously valuable franchise and a bedrock public responsibility.[18]

The Supreme Court has underscored the significant and unique role of the auditor. In *United States* v. *Arthur Young & Co.*,[19] the Court considered whether to extend to auditors certain confidentiality protections available to legal counsel representing a client and preparing for trial. The Court refused to extend the protections, citing principally the differences between the roles of counsel and auditor. A lawyer, the Court noted, is a confidential advisor and advocate with a duty to present the client's case in the most favorable light. In contrast, the Court stated that the "independent certified public accountant performs a different role. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client * * * [and] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public."[20] According to the Court, "This 'public watchdog' function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust."[21] The Court's words largely echoed those of Congress,[22] the Commission,[23] and the accounting profession.[24]

B. Independence in Fact and Appearance

To fulfill the important role assigned to the auditor, the auditor must approach each audit with professional skepticism and must have a willingness and freedom to decide issues in an unbiased and objective manner, even when the auditor's decisions may be against the interests of management of

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[12] The opinion of the auditor appears in a report that must include the word "independent." *See* AICPA SAS No. 58, AU § 508.08.

[13] Steven M. H. Wallman, "The Future of Accounting and Disclosure in an Evolving World: The Need for Dramatic Change," *Accounting Horizons*, at 81 (Sept. 1995).

[14] For example, Items 25 and 26 of Schedule A to the 1933 Act, 15 U.S.C. 77aa(25) and (26), and Section 17(e) of the Exchange Act, 15 U.S.C. 78q, expressly require that financial statements be audited by independent public or certified accountants. Sections 12(b)(1)(J) and (K) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78l and 78m, Sections 5(b)(H) and (I), 10(a)(1)(G), and 14 of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C. 79e(b), 79j, and 79n, Sections 8(b)(5) and 30(e) and (g) of the Investment Company Act of 1940 ("ICA"), 15 U.S.C. 80a–8 and 80a–29, and Section 203(c)(1)(D) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. 80b–3(c)(1), authorize the Commission to require the filing of financial statements that have been audited by independent accountants. Under this authority, the Commission has required that certain financial statements be audited by independent accountants. *See, e.g.*, Article 3 of Regulation S–X, 17 CFR 210.3–01 *et seq.* In addition, public companies must have their quarterly reports reviewed by independent accountants. Article 10 of Regulation S–X, 17 CFR 210.10–01(d) and Item 310(b) of Regulation S–B, 17 CFR 228.310(b). The federal securities laws also grant the Commission the authority to define the term "independent." Section 19(a) of the 1933 Act, 15 U.S.C. 77s(a), Section 3(b) of the Exchange Act, 15 U.S.C. 78c(b), Section 20(a) of PUHCA, 15 U.S.C. 79t(a), and Section 38(a) of the ICA, 15 U.S.C. 80a–37(a), grant the Commission the authority to define accounting, technical, and trade terms used in each Act.

[15] "An 'unqualified opinion' states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles." AICPA SAS No. 58, AU § 508.10.

[16] This regulatory regime has been recognized by the courts. *See, e.g., Touche Ross & Co.* v. *SEC*, 609 F.2d 570, 580–81 (2d Cir. 1979).

[17] Hearings on S. 875 Before the Senate Comm. on Banking and Currency, 73d Cong., 1st Sess. 55–60 (1933) ("1933 Senate Hearings"). During one hearing, Col. A. H. Carter, then president of the New York State Society of Certified Public Accountants, stressed the fact that outside accounting firms would be independent of management. During this discussion, Col. Carter, in differentiating between controllers employed by companies and independent accountants, stated, "the public accountant audits the controller's accountant." Senator Barkley then asked, "Who audits you?" Col. Carter's oft-quoted reply was, "Our conscience." *Id.* at 58.

[18] Payment of fees by the company to the auditor for performance of the audit and issuance of the auditor's opinion on the company's financial statements often is cited as a fundamental issue in the area of auditor independence. This fee structure was inherent in the decision by Congress in 1933 to have private sector auditors, rather than government employees, audit public companies. *Id.* Rather than being a reason for liberalization of the independence regulations, this payment structure should be a cause for exercising greater care by both companies and auditors in maintaining the auditor's independence. The National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange ("NYSE"), and the American Stock Exchange ("AMEX") recently addressed this issue by changing their company listing standards to make it clear that the auditor is ultimately accountable to the board of directors and the audit committee, as opposed to management, and that the audit committee and the board of directors have the ultimate authority and responsibility to select, evaluate and, when appropriate, replace the auditor. *See* Order Approving Proposed Rule Change by the NASD, Exchange Act Rel. No. 42231, File No. SR–NASD–99–48 (Dec. 14, 1999); Order Approving Proposed Rule Change by the NYSE, Exchange Act Rel. No. 42233, File No. SR–NYSE–99–39 (Dec. 14, 1999); and Order Approving Proposed Rule Change by the AMEX, Exchange Act Rel. No. 42232, File No. SR–Amex–99–38 (Dec. 14, 1999).

[19] 465 U.S. 805 (1984).

[20] *Id.* at 817–18.

[21] *Id.* at 818.

[22] *See, e.g.*, Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, 94th Cong., 2d Sess., Federal Regulation and Regulatory Reform 35 (Subcomm. Print 1976) (also known as the Moss Report).

[23] *See, e.g.*, "Relationships Between Registrants and Independent Accountants," Accounting Series Release ("ASR") No. 296 (Aug. 20, 1981). *See also* Office of the Chief Accountant of the U.S. Securities and Exchange Commission, *Staff Report on Auditor Independence* (Mar. 1994) ("Staff Report") for a detailed discussion of: (1) The background and need for auditor independence, (2) the current rules and interpretations of the Commission, the AICPA, and other nations, and (3) recent and proposed changes in those rules and interpretations.

[24] *See, e.g.*, AICPA SAS No. 1, AU § 220.03.

an audit client. According to a 1947 statement by the accounting profession, "The independent auditor is under a responsibility peculiar to his profession to maintain strict independence of attitude and judgment in planning and conducting his examination and in expressing his opinion on financial statements." [25] Further, the AICPA's SAS No. 1 requires that "in all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor * * * he must be without bias with respect to the client." [26]

Because a principal purpose of auditor independence is to provide assurance to investors, the accounting profession has long required independence not only in fact but also in appearance. SAS No. 1 states, "Public confidence would be impaired by evidence that independence was actually lacking, and it might also be impaired by the existence of circumstances which reasonable people might believe likely to influence independence." [27] Accordingly, "Independent auditors should not only be independent in fact; they should avoid situations that may lead outsiders to doubt their independence." [28]

The 1979 Report of the Public Oversight Board ("POB") echoes the point, noting that the appearance of independence is itself "a key ingredient to the value of the audit function, since users of audit reports must be able to rely on the independent auditor. If they perceive that there is a lack of independence, whether or not such a deficiency exists, much of that value is lost." [29] The Supreme Court made the same point in the *Arthur Young* decision:

> The SEC requires the filing of audited financial statements in order to obviate the fear of loss from reliance on inaccurate information, thereby encouraging public investment in the Nation's industries. It is therefore not enough that financial statements *be* accurate; the public must also *perceive* them as being accurate. Public faith in the reliability of a corporation's financial statements depends upon the public perception of the outside auditor as an independent professional. * * * If investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost.[30]

Auditor independence involves assumptions about human behavior that cannot be easily verified. [31] While conflicts of interest are easily described, their actual impact on the "objectivity" of particular auditors can never be precisely known, because "objectivity," as the AICPA's professional standards note, "is a state of mind." [32]

For this reason, the appearance standard serves an important legal purpose. It supplements an inquiry into the auditor's actual, subjective state of mind with an objective test: whether reasonable persons, knowing all relevant circumstances, would perceive that an auditor is independent. As the words connote, the appearance standard confines the inquiry into what is apparent and does not require an inquiry into the auditor's actual state of mind. The appearance standard, it should be stressed, is not a matter of "public relations." It does not require the auditor to guess how persons with only a superficial understanding of the relevant facts would view his or her actions. Appearance is measured only with respect to reasonable persons knowing all the relevant facts and circumstances.

Independence rules also must be prophylactic.[33] Auditor independence requires auditors "to be alert to a number of rather subtle influences. . . . [T]here is a considerable range of individual abilities within the profession; some accountants are strong enough and alert enough to control themselves under the most adverse and perhaps even the most subtle influences; others are not so fortunate." [34] Our task in this area is to identify and address the influences that reasonably could be expected to pose an unacceptable risk that an auditor would lose his or her objectivity or that reasonable persons would perceive a loss of objectivity.

C. The New Business Environment Calls for Modernized Rules

In recent years, there have been significant demographic changes, changes in the accounting profession, and changes in the business environment that have affected accounting firms. Some of the more significant changes that have drawn attention to our auditor independence requirements include the increase in dual-career families, an ever-increasing mobility among professionals, a broadening international presence of accounting firms, and the growth and profitability of non-audit services offered by accounting firms to audit clients. These changes have led us to re-evaluate whether our auditor independence requirements remain effective, relevant, and fair.

1. Financial and Employment Relationships

We propose to update the requirements regarding financial and employment relationships between auditors or their family members and audit clients.[35] The existing requirements, among other things, attribute to the auditor investments of the relatives of the auditor "in varying degrees depending on the closeness of the [family] relationship," [36] regardless of the amount of the holdings. They also attribute to auditors the investments of all partners and many professional employees in the accounting firm, as well as their families. The existing attribution rules may be too restrictive, since traditional family structures have changed, family members are more dispersed, there is increased mobility of professional employees, and accounting firms themselves are expanding around the globe. Accordingly, our proposals narrow many of these requirements,

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[25] The Council of American Institute of Accountants adopted an official statement on independence that was published in *The Journal of Accountancy* in July 1947.

[26] AICPA SAS No. 1, AU § 220.01–02.

[27] *Id.* at AU § 220.03.

[28] *Id.*

[29] POB, *Scope of Services by CPA Firms*, at 27 (Mar. 1979) ("1979 POB Report") (quoting A. Arens and J. Loebbecke, *Auditing: An Integrated Approach* (Prentice-Hall 1976)).

[30] *Arthur Young*, *supra* note 19, at 819 n.15 (emphasis in original).

[31] The Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees noted with respect to independent directors that, even absent objective verification, "* * * common sense dictates that a director without any financial, family, or other material personal ties to management is more likely to be able to evaluate objectively the propriety of management's accounting, internal control and reporting practices." The Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the "Blue Ribbon Committee"), *Report and Recommendations*, at 22 (1999) (the "Blue Ribbon Report"). Copies of the Blue Ribbon Report are available at *www.nyse.com* or *www.nasd.com*.

[32] Article IV of the AICPA's Code of Professional Conduct provides, "Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence precludes relationships that may appear to impair a member's objectivity in rendering attestation services." AICPA Code of Professional Conduct, ET § 55.01.

[33] Earnscliffe reports that "[w]hile some believe that perceptions of the independence of auditors is already suffering some corrosion, more people take the view that damage is inevitable in the future if greater precautions are not taken to protect the perception of independence." Earnscliffe Report, *supra* note 10, at 46.

[34] R. K. Mautz and Hussein A. Sharaf, *The Philosophy of Auditing*, at 223 (Am. Acct. Ass'n 1961).

[35] *See* illustrations in Appendix C of how some of the proposed rules would apply. They are provided for illustrative purposes only and necessarily exclude certain important details set forth in the proposed rules.

[36] Codification § 602.02.h.

while protecting investor confidence in the reliability of financial information.

The proposals similarly narrow existing restrictions on the employment of auditors' family members, former audit firm employees, and former audit client employees who leave companies to work in audit firms. For example, with respect to employment restrictions on auditor's relatives, the proposals liberalize our existing position in several significant respects. First, the proposals reduce the pool of people within audit firms whose independence is required for an independent audit. Second, the proposals identify specific positions, namely those in which a person is in a position to or does influence the audit client's financial records, that would impair an auditor's independence if held by the auditor's relative. Finally, under the proposals, only positions at an audit client held by the auditor's "close family members" affect the auditor's independence. These proposals liberalize our current position and the ISB's position as reflected in its recent Invitation to Comment.[37]

2. Scope of Services

(a) *A Historical Perspective on the Provision of Non-Audit Services.* In the 1970s, Congress seriously considered limiting the services independent public accountants could provide that were not directly related to accounting, even though at that time non-audit services did not constitute a large percentage of audit firms' businesses.[38] Although Congress did not take action, in 1979, the Chairman of the POB warned the public about dangers arising from the growth of non-audit services:

> The [POB] believes that there is possibility of damage to the profession and the users of the profession's services in an uncontrolled expansion of MAS to audit clients. Investors and others need a public accounting profession that performs its primary function of auditing financial statements with both the fact and the appearance of competence and independence. Developments which detract from this will surely damage the professional status of CPA firms and lead to suspicions and doubts that will be detrimental to the continued reliance of the public upon the profession without further and more drastic governmental intrusion.[39]

Our staff considered these issues in a 1994 Staff Report.[40] The Staff Report noted that much of the growth in non-audit services until then could be attributed to services provided to parties other than audit clients.[41] Accordingly, the Staff Report concluded that no change in our rules or the federal securities laws was warranted at that time, but the staff promised to "continue to be alert to the development of problems of independence that may be caused by [non-audit services]."[42] The staff has kept a watchful eye on these matters.

Other industry observers also have followed developments in this area. After the Staff Report, there were at least three significant studies by the private sector and one by the General Accounting Office ("GAO"). These studies emphasized the continuing public concern regarding the objectivity and independence of auditors, particularly in light of the expansion of consulting and other non-audit services for audit clients. The Advisory Panel on Auditor Independence (also known as the Kirk Panel), in its September 1994 report, described the trend toward non-audit services as "worrisome," because:

> [g]rowing reliance on nonaudit services has the potential to compromise the objectivity or independence of the auditor by diverting firm leadership away from the public responsibility associated with the independent audit function, by allocating disproportionate resources to other lines of business within the firm, and by seeing the audit function as necessary just to get the benefit of being considered objective and to serve as an entree to sell other services. . . .[43]

Similarly, the AICPA Special Committee on Financial Reporting (also known as the Jenkins Committee), in its 1994 report, found that users of financial statements believed that non-audit service relationships could "erode auditor independence." The Report noted:

> [Users] also are concerned that auditors may accept audit engagements at marginal profits to obtain more profitable consulting engagements. Those arrangements could motivate auditors to reduce the amount of audit work and to be reluctant to irritate management to protect the consulting relationship.[44]

Two years later, in 1996, GAO completed a thorough review of the accounting profession. In its report, GAO noted:

> GAO . . . believes that questions of auditor independence will probably continue as long as the existing auditor/client relationship continues. This concern over auditor independence may become larger as accounting firms move to provide new services that go beyond traditional services. The accounting profession needs to be attentive to the concerns over independence in considering the appropriateness of new services to ensure that independence is not impaired and the auditor's traditional values of being objective and skeptical are not diminished.[45]

Most recently, in 1999, Earnscliffe conducted interviews to assess the perceptions of different audiences about

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[37] *See* ISB, "Invitation to Comment 99–1: Family Relationships Between the Auditor and the Audit Client" (July 1999).

[38] *See* Report on Improving the Accountability of Publicly Owned Corporations and Their Auditors, Subcomm. on Reports, Accounting and Management of the Senate Comm. on Governmental Affairs, 95th Cong., 1st Sess. (Comm. Print Nov. 1977). In the Report, the Subcommittee stated that it "agrees with the Cohen commission and many others that the accounting profession must improve its procedures for assuring independence in view of the public's needs and expectations. Several activities of independent auditors have raised questions. Among them are public advocacy on behalf of a client, receiving gifts and discounts from clients, and maintaining relationships which detract from the appearance of arm's-length dealings with clients. Such activities are not appropriate." *Id.* at 16. The subcommittee also stated that "[t]he best policy * * * is to require that independent auditors of publicly owned corporations perform only services directly related to accounting. Non-accounting management services . . . should be discontinued." *Id.* at 16–17.

In a letter to Harold Williams, Chairman, SEC, Senator Thomas F. Eagleton, Chairman, Subcomm. on Governmental Efficiency and the District of Columbia, of the Senate Comm. on Governmental Affairs, recommended that "[t]here must be a requirement that independent auditors of publicly owned corporations perform only services directly related to accounting." Letter from Senator Thomas F. Eagleton to Harold Williams, dated Apr. 6, 1978 (reprinted in Securities and Exchange Commission Report to Congress on the Accounting Profession and the Commission's Oversight Role (July 1978)).

[39] Letter from John J. McCloy, Chairman, POB (former Chairman of the Board of Chase Manhattan Bank and former President of The World Bank), to Walter E. Hanson, Chairman, Executive Committee, SEC Practice Section ("SECPS"), dated March 9, 1979, at 2.

[40] Staff Report, *supra* note 23, at 27–34. Between 1979 and 1981, public companies were required to disclose in their proxy statements certain information about non-audit services provided by their auditors. *See infra* Section II.C.4. (discussing these disclosure requirements). In the late 1980s, several of the large public accounting firms filed a petition with us seeking to enter into joint ventures, limited partnership agreements, and other similar arrangements with audit clients. *See* Letter from Jonathan G. Katz, Secretary, SEC, to Duane R. Kullberg, Arthur Andersen & Co., dated Feb. 14, 1989 (denying the petition). In 1990, the staff stated that if certain conditions were met, it would not object to Arthur Andersen & Co.'s conclusion that certain business relationships between Andersen Consulting and audit clients of Arthur Andersen & Co. may be considered indirect business relationships. *See* Letter from Edmund Coulson, Chief Accountant, SEC, to Robert Mednick, Arthur Andersen & Co., dated June 20, 1990.

[41] Staff Report, *supra* note 23, at 33. *See infra* notes 47–67 and accompanying text (showing dramatic increase in nature, number, and dollar amount of non-audit services provided to audit clients since the issuance of the Staff Report).

[42] Staff Report, *supra* note 23, at 34.

[43] Advisory Panel on Auditor Independence, *Report to the Public Oversight Board of the SEC Practice Section, AICPA: Strengthening the Professionalism of the Independent Auditor*, at 9 (Sept. 13, 1994).

[44] Special Committee on Financial Reporting, AICPA, *Improving Business Reporting—A Customer Focus: Meeting the Information Needs of Investors and Creditors*, at 104 (1994).

[45] GAO, *The Accounting Profession—Major Issues: Progress and Concerns*, at 8 (GAO/AIMD–96–98, Sept. 1996) (the "GAO Report").

auditor independence. In conclusion, Earnscliffe reported that, "Most [interviewees] felt that the evolution of accounting firms to multi-disciplinary business service consultancies represents a challenge to the ability of auditors to maintain the reality and the perception of independence. . . ."[46]

Taken together, these studies suggest that important constituencies see a connection between the business scope of accounting firms and auditor independence.

(b) *Recent Developments.* The menu of services offered by the firms to audit clients has grown dramatically and continues to grow.[47] Attached to this release, for commenters' convenience, is a list of services that auditors provide to their audit and non-audit clients.[48] Companies appear to be turning to their auditors for performance of their internal audit, pension, financial, administrative, sales, data processing, and marketing functions, among others.[49]

U.S. revenues for management advisory and similar services[50] for the five largest public accounting firms amounted to more than $15 billion in 1999, based on amounts calculated from data published in the Public Accounting Report.[51] Revenues for these service lines are now estimated to constitute half of the total revenues for these firms.[52] In contrast, these service lines provided only 13 percent of total revenues in 1981.[53] From 1993 to 1999, the average annual growth rate for revenues from management advisory and similar services has been 26 percent; comparable growth rates have been 9 percent for audit, and 13 percent for tax services.[54]

For the largest firms, the growth in management advisory and similar services involves both audit clients and non-audit clients. For the largest public accounting firms, MAS fees from audit clients have increased significantly over the past two decades. In 1984, only one percent of audit clients of the eight largest public accounting firms paid MAS fees that exceeded the audit fee.[55] The percent of Big 5 audit clients that paid MAS fees in excess of audit fees did not exceed 1.5 percent until 1997.[56] In 1999, 4.6 percent of Big 5 audit clients paid MAS fees in excess of audit fees,[57] an increase of over 200% in two years. For the five largest public accounting firms, MAS fees received from audit clients amounted to ten percent of all revenues in 1999.[58] Almost three-fourths of audit clients purchased no MAS from their auditors in 1999. This means that purchases of MAS services by one-fourth of firm's audit clients account for ten percent of all firm revenues.[59] In addition, the magnitude of MAS fees received from SEC registrants appears to distinguish the five largest accounting firms from other firms. The MAS fees received by the approximately 800 accounting firms with 1,000 or fewer SEC registrants as audit clients represent approximately one percent or less of total fees on average.[60]

Certain transactions raise questions about auditor independence. Some smaller firms are consolidating their audit practices and seeking public investors in the resulting company.[61] Other firms are entering into agreements to sell all of their assets except their audit practices to established financial services companies. As part of these agreements, the financial services companies also hire the employees of the accounting firm, and then lease back the majority or all of the assets and audit personnel to the "shell" audit firm. These lease arrangements allow the financial service firm to pay the professional staff for "nonprofessional" services for the corporate organization as well as professional attest services rendered for the audit firm.[62]

In February 2000, Ernst & Young announced that it would sell its management-consulting business to Cap Gemini Group SA, a large and publicly-traded computer services company headquartered in France.[63] KPMG recently split off its consulting business into a separate corporation (KPMG Consulting, Inc.), sold preferred stock convertible to between 18.2% and 19.9% of its outstanding stock to Cisco Corporation, and announced its intention to sell additional shares to the public in an initial public offering.[64] PricewaterhouseCoopers has publicly announced its intention to re-structure its audit and consulting businesses along similar lines.[65]

Under certain circumstances, these transactions could lead to violations of the independence rules, since the financial interests and relationships of the newly formed consulting entities would be imputed to the auditing firms. At a minimum, these transactions could raise serious public policy issues by creating relationships between firms and shareholders, strategic investors, and companies providing services to audit clients. In the case of Ernst & Young, our Chief Accountant, by no-action letter, stated that the Office of the Chief Accountant would not assert that Ernst & Young's independence from an audit client has been impaired solely because that audit client is also a client of, enters into a business relationship with, or is invested in by Cap Gemini. That no-action relief was based on, among other things, Ernst & Young's representations that: (1) Following the initial sale to Cap Gemini, Ernst & Young's equity interest would be reduced to zero within five years, (2) Ernst & Young would play no role in the corporate governance of the consulting company, and (3) Ernst & Young would

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[46] Earnscliffe Report, *supra* note 10, at 46.

[47] Some firms are seeking to provide expanded services through joint ventures with audit clients or their affiliates. As noted above, as early as 1988, large public accounting firms were looking to enter into joint ventures, limited partnership agreements, and other similar arrangements with audit clients. *See* Letter from Jonathan G. Katz to Duane R. Kullberg, *supra* note 40.

[48] *See* Appendix A. The list was prepared by the ISB. *See* ISB, "Discussion Memorandum 99–2: Evolving Forms of Firm Structure and Organization" (Oct. 1999). Although the list is long, it is not comprehensive. Commentators may wish to review accounting firms' web sites and other sources for additional information about the services being provided by accounting firms.

[49] *See, e.g.*, "KPMG spies rapid growth in 'shared services'," *Accounting Today*, at 12 (June 3–16, 1996); "KPMG Restructures to Reposition Outsourcing," *Public Accounting Report*, at 1 (May 15, 1996).

[50] Management advisory services ("MAS") are a subset of non-audit services.

[51] *See* Table 1 in Appendix B. The underlying data are reported in "Special Supplement: Annual Survey of National Accounting Firms—2000," *Public Accounting Report* (Mar. 31, 2000).

[52] *See* Tables 1 and 2 in Appendix B.

[53] *See* Table 2 in Appendix B.

[54] *See* Table 1 in Appendix B.

[55] *See* Table 3 in Appendix B.

[56] *See* Table 3 in Appendix B.

[57] *See* Table 3 in Appendix B.

[58] *See* Table 4 in Appendix B.

[59] *See* Table 3 in Appendix B. Taken together, the data from tables 1, 3, and 4 indicate that in 1999 more than 12,700 clients of the five largest public accounting firms paid approximately $9.150 billion for accounting and auditing services. During that same period, approximately 3,300 of those companies that are SEC registrants paid approximately $3.062 billion for MAS and similar non-audit services.

[60] *See* Table 4 in Appendix B.

[61] *See, e.g.*, Rick Telberg, "Anybody can do it! says small-firm consolidator," *Accounting Today*, at 5 (Jan. 4–24, 1999).

[62] "Done Deal: HRB acquires M&P for $240 million cash, pension obligation," *Public Accounting Report*, at 1 (July 15, 1999); "AmEx and Checkers Close The Deal," *Public Accounting Report*, at 1 (Mar. 31, 1997).

[63] "Cap Gemini and Ernst & Young Have Agreed to Terms for the Acquisition of Ernst & Young Consulting" (Feb. 29, 2000) (press release of Ernst & Young) (available at www.ey.com).

[64] KPMG Consulting, Inc., Form S–1, filed May 5, 2000.

[65] Diane B. Henriques, "Auditing Firm Plans to Split Its Businesses," N.Y. Times, Feb. 18, 2000, at C8.

not have any co-marketing arrangements with the new entity.[66]

(c) *How Non-Audit Services Can Affect Auditor Independence.* The dramatic expansion of non-audit services may fundamentally alter the relationships between auditors and their audit clients in two principal ways. First, as auditing becomes an ever-smaller portion of a firm's business with its audit clients, auditors become increasingly vulnerable to economic pressures from audit clients. Second, certain non-audit services, by their very nature, raise independence issues. These concerns, described more fully below, have led us to consider whether our rules should limit—or even completely bar—an auditor's provision of non-audit services to audit clients.

(i) *Auditor Vulnerability to Economic Pressure From Audit Clients.* Large non-audit engagements[67] may make it harder for auditors to be objective when examining their client's financial statements. Under any circumstances, it can be difficult for an auditor to make a judgment that works against the audit client's interest. Where making that judgment may imperil a range of service engagements of the firm, of which the audit is a fairly small part, it may be unrealistic to expect that an auditor can ignore completely what the firm stands to lose by the auditor's action.

Our concern is not just that an auditor will give in to a client. It is that, as auditors become involved in a broad array of business arrangements with their clients, they come to be seen by themselves, their firms, their clients, and investors less as exacting, skeptical professionals who must be satisfied before signing off on the financial statements, and more like any other service vendor who must satisfy the client to make the sale.[68]

An expanded menu of relationships with an audit client may also give rise to a mutuality of interest between the auditor and client. This would be a significant concern in any era, but it may be especially important in an era when many ventures go quickly from start-up to apparent success to failure. For example, an audit firm may agree to perform the audit of a start-up company for fees significantly below market rates for a few years, in anticipation of "recouping" such an investment in the client through a subsequent initial public offering or performance of consulting services.

We also have concerns about the effect on an accounting firm's internal culture when the firm is trying to be an audit client's vendor of choice. As non-audit services become more important to a firm, that firm may care less about auditing and more about expanding its service lines. The factors that drive a high quality audit, including the core values of the auditing profession, may diminish in importance to the firm, as will the influence of those firm members who exemplified those core values in their own professional careers.

There appears to be growing public concern about audit firms' increasing provision of various non-audit services, and skepticism that firm safeguards adequately protect the fact and appearance of independence. Earnscliffe reports that auditors, audit committee chairs, chief executive officers, analysts, and regulators all, to some degree, recognize the independence risks posed by multifaceted relationships between auditors and their audit clients.[69] A majority of the Earnscliffe respondents felt that internal firm safeguards "might ultimately be insufficient to sustain confidence in the independence of auditors." According to the Report, those respondents

> . . . felt that the judgement of observers would turn on how the financial incentives and penalties were organized: if it appeared that a firm had more upside in bending to a client's pressures, then internal processes would only be of limited value. Not everyone felt that this was the perception today, rather they were offering the view that internal firm safeguards had limited prophylactic value if the scrutiny were to become more punishing.[70]

(ii) *Independence Issues Inherent in the Nature of Certain Non-audit Services.* Providing certain non-audit services to an audit client can lead an audit firm to have a mutual or conflicting interest with the client, audit its own work, advocate a position for the client, or function as an employee or management of the client.[71] Auditor independence concerns arise, for example, when a company hires its audit firm to perform valuations of in-process research and development.[72] When an auditor in effect, even if not in form, makes decisions for management, he or she functions as a member of the management team and may develop a "mutuality of interest" with the audit client. After all, a "consultant . . . will be judged by the ultimate usefulness of his advice in bringing success to management's efforts. He has had a hand in shaping managerial decisions and will be judged by management on the same basis that the management itself will be judged. How then can he claim to be completely independent?"[73] The consultant is accountable to management, in contrast to the auditor, who must "acknowledge[] no master but the public."[74]

(d) *Measuring Independence Impairments.* Some argue that no empirical evidence justifies our concerns. They argue that there is no evidence that providing non-audit services in general—much less particular types of non-audit services—leads to false financial reporting. Without this evidence, the argument goes, the Commission should not take steps to protect auditor independence.

It is common sense, however, and confirmed by studies, that a person's decision changes when he or she has a stake in the outcome of that decision.[75]

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[66] Letter from Lynn E. Turner, Chief Accountant, SEC, to Kathryn A. Oberly, Esq., Ernst & Young, dated May 25, 2000 (available at www.sec.gov).

[67] In 1999, Big 5 accounting firms received higher fees for MAS and other consulting services than for audits from approximately 600 audit clients. *See* Table 3 in Appendix B.

[68] Earnscliffe reports, "The large majority of interviewees in each segment (including auditors) have sensed that in recent years accounting firms have lost their preoccupation with audits, and become much more preoccupied with growing new areas of consulting revenue. Many felt that within firms, the psychic and financial rewards were tilted heavily towards the consulting side, and that auditors who wanted to be well compensated and respected by peers, needed to support the growth of non-audit functions. This perception was even shared by a fair number of auditors. . . ." Earnscliffe Report, *supra* note 10, at 14.

See also Statement of PricewaterhouseCoopers, "In essence, we have become an organisation trying to follow two missions at the same time. One goal has been to assure financial market integrity and provide investor protection. The other has been to help clients succeed by guiding them through complex, large-scale business transformations. One goal demands objectivity and independence. The other demands a direct interest in our clients' success." Wall St. J., Feb. 22, 2000, at A17.

[69] Earnscliffe Report, *supra* note 10, at 28, 37–41.

[70] *Id.* at 20. Regarding the lack of effective safeguards, *see generally* "Report of the Internal Investigation of Independence Issues at PricewaterhouseCoopers LLP" (Jan. 6, 2000) (available on our web site, www.sec.gov). *See also* Letters from Lynn Turner, Chief Accountant, SEC, to Michael Conway, Chairman, SECPS Executive Committee, dated Nov. 30, 1998 and May 1, 2000.

[71] *See generally* Paul M. Clikeman, "Auditor Independence: Continuing Controversy," Ohio CPA J. (Apr.-June 1998); Mautz and Sharaf, *supra* note 34, at Ch. 8.

[72] *See infra* Section III.D.1.(b) (regarding the types of services that raise independence concerns).

[73] Mautz and H. Sharaf, *supra* note 34, at 222.

[74] Gary John Previts, T*he Scope of CPA Services* 33 (John Wiley & Sons, 1985) (citing Charles Reckitt, *The Public Accountant* (Philadelphia 1900)).

[75] *See* Max H. Bazerman, Kimberly P. Morgan, and George F. Loewenstein, "The Impossibility of Auditor Independence," *Sloan Management Review*, at 89–94 (Summer 1997) (reviewing empirical research showing that "[w]hen people are called on to make impartial judgments, those judgments are likely to be unconsciously and powerfully biased in a manner that is commensurate with the judge's selfinterest," and concluding that, despite their best intentions, "there is good reason to believe that auditors will unknowingly misrepresent facts and will

Furthermore, common sense dictates that the more someone—including an auditor—has at stake, the more likely his or her decision is to be affected.

Studies cannot always confirm what common sense makes clear. Except where an auditor accepts a payment to look the other way,[76] is found to have participated in a fraudulent scheme,[77] or admits to being biased, it is largely impossible to observe an auditor's state of mind or know whether an auditor's mind is "objective." It is even harder to measure the impact a particular financial arrangement has on the auditor's state of mind. And it is similarly impossible to tie a questionable state of mind to a wrong judgment, a failure to notice something important, a failure to seek important evidential matter, a failure to challenge a management assertion, or a failure to consider the quality—not just the acceptability—of a company's financial reporting.[78] This is particularly true because auditing misjudgments may often go unnoticed.[79] As the POB noted, "Specific evidence of loss of independence through MAS, a so-called smoking gun, is not likely to be available even if there is such a loss."[80]

Whatever the effect of non-audit service relationships on an auditor's conduct, there can be little question about the effect of these impairments on investor confidence. Gradual decreases in investor confidence may not be measurable, but their cumulative economic impact could not be more palpable. Investor confidence in the integrity of publicly available financial information is the cornerstone of our securities markets. That confidence is hard won and easily lost, and the Commission must act to protect it.

(e) *Whether to Prohibit All Non-Audit Services.* In developing these proposals, we considered whether independence is impaired whenever an auditor provides *any* non-audit service to an audit client, or whether certain non-audit services do not impair independence. We have tentatively concluded, pending public comment, that the better approach is to permit some significant non-audit services, though several factors weigh in favor of a blanket ban.

Prohibiting only some non-audit services does not address the increasing vulnerability of auditors to their audit clients and the corresponding link between the financial health of auditors and their clients. These concerns do not turn on the nature of the non-audit service involved, but arise simply because of the growing interdependence of auditor and client.

In addition, distinguishing between permissible and impermissible types of services raises difficult questions about services that do not fall squarely into precise categories. These questions will get only harder in the future as firms move to provide new and unforeseen services.

Finally, an approach that tries to distinguish between permissible and impermissible types of services depends heavily upon daily interpretations by the very firms the rules are intended to affect. In light of the powerful economic interests at stake, there is serious question whether it is fair or reasonable to expect accounting firms to evaluate the impact of new services on their own impartiality.

Despite these doubts, we believe that the measured approach we propose—establishing basic principles for evaluating any non-audit services' impact on independence, and identifying specific services that are plainly incompatible with independence—protects investor confidence in the audit process while allowing auditors to provide those services that are not reasonably viewed as creating a bias in the auditor. Our goal is to preclude non-audit services only to the extent necessary to protect the integrity and independence of the audit function. Of course, therefore, the proposals do not extend to services provided to non-audit clients.

3. *Quality Controls*

As accounting firms become more global and their business relationships with their audit clients become more complex, the need for quality controls to address independence becomes more apparent. Without strong quality controls, it may be difficult or impossible for an accounting firm to understand whether its independence may be impaired. For example, firms need quality controls to track whether the firm, or any covered person in the firm, has any direct investment in an audit client.

Our staff has stated that certain firms, particularly larger firms with public company clients, may lack sufficient worldwide quality controls.[81] The staff has urged certain firms to review existing quality controls and ensure that particular areas are covered.[82] Moreover, designing and implementing quality controls is not a one-time responsibility. We encourage accounting firms to continue to invest in state-of-the-art systems that can identify conflicts at an early stage to ensure a swift response. The speed of the response to a conflict, or potential conflict, is important to maintain public confidence in the self-regulatory process and the effectiveness of quality controls.[83]

We understand that many firms are already designing and implementing quality controls. We recently announced a voluntary compliance program, in which the Big 5 accounting firms agreed to report past violations of auditor independence rules.[84] In connection with the program, the firms also have agreed to design and implement quality controls specified by our Chief Accountant and have the POB issue public reports on the results of their efforts. The rules we propose today are intended to encourage firms to design and implement effective quality controls to address independence. Toward that end, the rules contain a limited exception for firms that have appropriate quality controls and meet other conditions.

4. *Proxy Disclosure*

From 1978 to 1982, we required companies to disclose in their proxy statements all non-audit services provided by their auditors.[85] We also required companies to include a statement of the percentage of the fees for all non-audit services compared to total audit fees, the percentage of the fee for each non-audit service compared to

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unknowingly subordinate their judgment due to cognitive limitations"); *see also* Robert A Prentice, "The SEC and MDP: Implications of the Self-Serving Bias for Independent Auditing," Ohio St. L.J. (Fall 2000) (forthcoming).

[76] *See, e.g., SEC* v. *Jose Gomez*, Accounting and Auditing Enforcement Release ("AAER") No. 57 (May 8, 1985).

[77] *See, e.g., SEC* v. *Christopher Bagdasarian and Sam White*, AAER No. 825 (Sept. 26, 1996).

[78] *See* AICPA SAS No. 90, AU § 380.11. Independence lapses perhaps are most likely to affect this gray area, where the answers are more a matter of judgment than of bright-line rule, and where judgments are out of the public view.

[79] Of course, all of these factors make it equally impossible to demonstrate empirically that an auditor's economic interests do *not* adversely affect the quality of the audit.

[80] 1979 POB Report, *supra* note 29, at 34 n.103. As the POB noted, "[T]he Board recognizes that the nonexistence of such evidence does not necessarily mean that there have not been instances where independence may have been impaired. Not all situations where an auditor's objectivity is compromised will result in a lawsuit." *Id.* at 35.

[81] *See* Letter from Lynn Turner, Chief Accountant, SEC, to Charles Bowsher, Chairman, POB, dated Dec. 9, 1999; *see, e.g., In the Matter of PricewaterhouseCoopers, LLP*, AAER No. 1098 (Jan. 14, 1999).

[82] *See* Letters from Lynn Turner, Chief Accountant, SEC, to Michael Conway, *supra* note 70.

[83] *See id.*

[84] SEC Press Release, "All Big 5 Accounting Firms Agree to Participate in Voluntary Program to Address Independence Violations; Safe Harbor Provided for Certain Violations" (June 7, 2000).

[85] For a concise discussion of the Commission's previous rulemaking efforts in this area, *see* Staff Report, *supra* note 23, at 27–34.

total audit fees, and a statement whether each non-audit service was considered and approved by the audit committee of the board of directors or by the board itself.[86]

In connection with the disclosure requirement, we published an interpretive release[87] describing certain factors that independent accountants, audit committees, boards of directors, and managements should consider in determining whether a company's independent accountant should be engaged to perform non-audit services. These factors included the auditor's dependence on non-audit fees, the possibility of the auditor supplanting management's role in making corporate decisions, the possibility of creating a situation where an auditor may be required to review its own work, and the relation of the non-audit activity to accounting and auditing skills.

Although our concerns regarding the provision of consulting and other non-audit services remained unchanged, we later determined to rescind the formal interpretive release[88] and the proxy disclosure requirement.[89] Among other reasons, our review of proxy disclosures convinced us that accounting firms were not providing extensive non-audit services to their audit clients. Our review of the 1979 and 1980 proxy disclosures of approximately 1,200 registrants showed that fees paid by audit clients for non-audit services generally constituted a relatively small fraction of registrants' audit fees.[90] In addition, we noted that, even without the proxy disclosure requirement, investors had access to useful data concerning the relative levels of audit and non-audit services provided by firms to their audit clients. In particular, we noted that summarized information regarding the relationship between MAS and audit fees was provided to the SECPS by member firms and was publicly available. We also concluded that the efforts of audit committees and the accounting profession to monitor firms' provision of non-audit services generally had been effective.

As discussed above, however, in recent years there has been a dramatic growth in the number of non-audit services provided to audit clients and the magnitude of fees paid for non-audit services.[91] Moreover, there may be less information available to investors about these services since the SECPS has stopped publishing information about audit firms' provision of non-audit services. Further, information provided by the SECPS describes the mix of services provided by an accounting firm to all of its clients, while an investor generally is primarily interested in the services provided to an individual company. This information is not currently available.

Under circumstances where investors have less information about a matter that has become more important, we believe a disclosure requirement may once again prove useful to investors. Accordingly, we propose to reinstate a requirement that companies include in their proxy statements certain disclosures about non-audit services provided by their auditors during the last fiscal year. As we did while the requirement was in effect twenty years ago, we expect that both we and investors will learn from these disclosures and that they will have an impact on audit committees, investors, and accounting firms.[92] Disclosure may be particularly effective now that investors have unprecedented access to information about companies in which they invest. We believe that investors should have access to information regarding the company's auditors when making investment decisions and when voting to elect, approve, or ratify the selection of, the accounting firm as the principal auditor of a company's financial statements.

We also believe that audit committees, as well as management, should engage in active discussions of independence issues with the outside auditors. According to the Blue Ribbon Report, "If the audit committee is to effectively accomplish its task of overseeing the financial reporting process, it must rely, in part, on the work, guidance and judgment of the outside auditor. Integral to this reliance is the requirement that the outside auditors perform their service without being affected by economic or other interests that would call into question their objectivity and, accordingly, the reliability of their attestation."[93]

Recently, the ISB adopted ISB Standard No. 1, which requires each auditor to disclose in writing to its client's audit committee, all relationships between the auditor and the company that, in the auditor's judgment,[94] reasonably may be thought to bear on independence, and to discuss the auditor's independence with the audit committee.[95] Furthermore, we recently adopted new disclosure rules regarding audit committees and auditor reviews of interim financial information, in response to recommendations made by the Blue Ribbon Committee.[96] These new rules

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[86] "Disclosure of Relationships with Independent Public Accountants," ASR No. 250 (June 29, 1978). Prior to the implementation of this disclosure requirement, a private commission established by the AICPA (The Commission on Auditor's Responsibilities, known as the "Cohen Commission") reviewed the performance of non-audit services by auditors. The Cohen Commission found that outside of executive search and placement services, there was no evidence that the performance of such services compromised auditor independence. In spite of this finding, the Cohen Commission urged the accounting profession to take steps to diminish the concerns of a "significant minority" and recommended that the performance of non-audit services be evaluated by audit committees or boards of directors, and that registrants or auditors appropriately disclose such services. The Commission on Auditors' Responsibilities, AICPA, *Report, Conclusions, and Recommendations*, at 100–04 (1978).

[87] "Scope of Services by Independent Accountants," ASR No. 264 (June 14, 1979).

[88] In withdrawing the interpretive release, we reaffirmed our views regarding the need for caution in the provision of non-audit services:

Although the Commission's views expressed in [the interpretive release] are unchanged and registrants and accountants must continue to carefully evaluate their relationships to ensure that the public maintains confidence in the integrity of financial reporting, the Commission is withdrawing that release because it may confuse independent accountants, audit committees and others who are trying to evaluate services performed or to be performed by the accountants. Moreover, the Commission believes it has achieved its objective in issuing [the interpretive release]. Accountants and their self-regulatory structure, audit committees, boards of directors and managements are aware of the Commission's views on accountants' independence and should be sensitive to the possible impact on independence of nonaudit services performed by accountants. The Commission believes it should be able to rely on these persons to ensure adequate consideration of the impact on accountants' independence of nonaudit services because they share the responsibility to assure that the public maintains confidence in the independence of accountants.

ASR No. 296, *supra* note 23.

[89] "Rescission of Certain Accounting Series Releases and Adoption of Amendments to Certain Rules of Regulation S-X Relating to Disclosure of Maturities of Long-Term Obligations," ASR No. 297 (Aug. 20, 1981).

[90] ASR No. 296, *supra* note 23.

[91] *See supra* Section II.C.; see also Appendix B.

[92] The effect of the proposed disclosure would be similar to disclosure of management's discussion and analysis of financial condition and results of operations. *See* Item 303 of Regulation S–K, 17 CFR 229.303.

[93] Blue Ribbon Report, *supra* note 31, at 40.

[94] In a letter to the SECPS, ISB Chairman William Allen clarified the use of the auditor's judgment under the standard. He stated:

[I]n asking itself whether a fact or relationship is material in this setting the auditor may not rely on its professional judgment that such fact or relationship does not constitute an impairment of independence. Rather the auditor is to ask, in its informed good faith view, whether the members of the audit committee who represent reasonable investors, would regard the fact in question as bearing upon the board's judgment of auditor independence.

Letter from William T. Allen, Chairman, ISB, to Mr. Michael A. Conway, Chairman, Executive Committee, SECPS, dated Feb. 8, 1999. We believe that Chairman Allen's interpretation is appropriate.

[95] ISB Standard No. 1, "Independence Discussions with Audit Committees" (Jan. 1999).

[96] "Audit Committee Disclosure," Exchange Act Rel. No. 42266 (Dec. 22, 1999). Companies also

require that companies include in their proxy statements reports of their audit committees that state whether, among other things, the audit committees have received the written disclosures and the letter from the independent auditors required by ISB Standard No. 1,[97] and discussed with the auditors the auditors' independence. Our new requirements, and the new requirements of the ISB, the New York Stock Exchange, the National Association of Securities Dealers, Inc. and the American Stock Exchange[98] should encourage auditors, audit committees, and management to have robust and probing discussion of all issues that might affect investors' views of the auditor's independence.

D. The Need for a More Accessible Auditor Independence Framework

Currently, our auditor independence requirements are found in various Commission rules and interpretations. These have been supplemented over the years by staff letters, staff reports, and ethics rulings by the accounting profession.[99] Current Rule 2–01 of Regulation S–X sets forth the circumstances under which we will not recognize an accountant as independent.[100] Because Rule 2–01 does not address particular factual situations, we and our staff have issued interpretations of Rule 2–01 in response to public companies' questions about particular situations.[101] The proposed revisions to Rule 2–01 would consolidate and make more accessible the standards for auditor independence under the federal securities laws, reemphasize its importance, and provide a comprehensive framework for evaluating auditor independence. The proposed proxy disclosures, if adopted, should add to the body of knowledge regarding the provision of non-audit services.

The new rules should also assist the ISB in its work. In FRR No. 50,[102] we stated that we would look to the ISB to provide leadership in improving auditor independence requirements and in establishing and maintaining a body of independence standards applicable to auditors of public companies.[103] In the same manner, we previously have endorsed the establishment of the Financial Accounting Standards Board ("FASB").[104] Among other things, the ISB sets standards and its staff answers day-to-day inquiries regarding the application of our auditor independence requirements to specific situations confronting auditors and their clients.

The ISB has requested more guidance from us. For example, the ISB noted in ISB Standard No. 2,[105] the standard would not take effect until the SEC revises its rules on independence. Accordingly, our proposals and the attendant modifications to the Codification, if adopted, would enhance the ability of the ISB to make its standards effective. In addition, by providing a comprehensive framework, the new rules, if adopted, should assist the ISB in making future decisions regarding auditor independence matters.[106]

III. Discussion of Proposed Rules

A. Qualifications of Accountants

Section 2–01(a) would remain unchanged and require that in order to practice before the Commission an auditor must be in good standing and entitled to practice in the state of the auditor's residence or principal office. This requirement has existed since the Federal Trade Commission first adopted rules under the 1933 Act.[107] It acknowledges our deference to the states for the licensing of public and certified public accountants.

B. The General Standard for Auditor Independence

Proposed rule 2–01(b) sets forth the basic test of an auditor's independence. Under that test, we will not recognize as independent an accountant who, with respect to an audit client, is not, or would not be perceived by reasonable investors to be, capable of exercising objective and impartial judgment on all

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should note the requirement to disclose interests and relationships with its auditors under Item 509 of Regulation S–K, 17 CFR 229.509, and Item 509 of Regulation S–B, 17 CFR 228.509.

[97] ISB Standard No. 1, *supra* note 95.

[98] Orders Approving Proposed Rule Changes by AMEX, NASD, and NYSE, *supra* note 18.

[99] We have brought a number of enforcement cases in which we charged auditors with violations of the independence rules. *See, e.g., In the Matter of Pricewaterhouse Coopers, LLP*, AAER No. 1098 (Jan. 14, 1999); *In the Matter of Moore Stephens, et al.*, AAER No. 1135 (May 19, 1999).

[100] Rule 2–01 states:

(a) The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principal office.

(b) The Commission will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (1) in which, during the period of his professional engagement to examine the financial statements being reported on or at the date of his report, he, his firm, or a member of his firm had, or was committed to acquire, any direct financial interest or any material indirect financial interest; (2) with which, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, he, his firm, or a member of his firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee. A firm's independence will not be deemed to be affected adversely where a former officer or employee of a particular person is employed by or becomes a partner, shareholder or other principal in the firm and such individual has completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his employment by the person. For the purposes of § 210.2–01(b), the term "member" means (i) all partners, shareholders, and other principals in the firm, (ii) any professional employee involved in providing any professional service to the person, its parents, subsidiaries, or other affiliates, and (iii) any professional employee having managerial responsibilities and located in the engagement office or other office of the firm which participates in a significant portion of the audit.

(c) In determining whether an accountant may in fact be not independent with respect to a particular person, the Commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Commission.

17 CFR 210.2–01.

[101] Many of the interpretations are reprinted in Section 600 of the Codification. These interpretations include selected text from FRRs that explain the background, provide interpretive guidance for disclosure rules that promote auditor independence, and describe examples in which the staff and the Commission made a determination about a particular auditor's independence. Although the Commission updates the Codification to include the text from releases as rules are amended, the examples in the Codification have not been revised since 1983. *See* FRR No. 10, *supra* note 8. Since 1982, instead of waiting until there are a sufficient number of interpretations to warrant a Commission release that would amend the Codification, the Commission staff has placed its independence interpretive letters in a file where they are immediately available to the public. *See* FRR No. 33 (Oct. 17, 1988) and FRR No. 4 (Oct. 14, 1982).

[102] FRR No. 50 (Feb. 18, 1998).

[103] In FRR No. 50, however, we said that we were not abdicating our responsibilities in this area and that our existing authority regarding auditor independence was not affected. ISB standards and interpretations do not take precedence over our regulations or interpretations. As a result, if an ISB standard conflicts in any way with our rules or interpretations, the ISB standard or interpretation does not take effect unless or until we amend our existing regulation. *See* FRR 50, at 7 n.10.

[104] *See* ASR No. 150 (Dec. 20, 1973) (recognizing establishment of the FASB); ASR No. 280 (Sept. 2, 1980) (commenting on FASB's role in establishing and improving accounting principles).

[105] ISB Standard No. 2, "Certain Independence Implications of Audits of Mutual Funds and Related Entities," at 2 ¶ 5 (Dec. 1999).

[106] *See generally* FRR No. 50, *supra* note 102 (regarding SEC's endorsement of ISB); ISB, "Discussion Memorandum 00–1: A Conceptual Framework for Auditor Independence," at 1 (Feb. 2000) (regarding the purposes of a conceptual framework).

[107] Federal Trade Commission, *Rules and Regulations Under the Securities Act of 1933*, art. 14 (July 6, 1933).

issues encompassed within the auditor's engagement.[108] The general standard in paragraph (b) recognizes that an auditor must be independent in fact and appearance. Appearance is measured by reference to reasonable investors knowing all the relevant circumstances. As noted above,[109] independence in fact and the appearance of independence are inseparable.

To make the general standard more specific, paragraph (b) identifies four governing principles for determining when an auditor is not independent. The four principles incorporate situations that we believe reasonable investors would agree impair an auditor's independence. They are when the auditor:

- Has a mutual or conflicting interest with the audit client,[110]
- Audits the accountant's own work,[111]
- Functions as management or an employee of the audit client,[112] or
- Acts as an advocate for the audit client.[113]

We believe these four basic principles provide a framework for analyzing auditor independence issues, in that actions inconsistent with one or more of these principles would result in a lack of auditor independence. We apply these principles in the remainder of the rules.

We request comment on the general standard and the four proposed principles. Do these four principles appropriately address the concept of auditor independence? If not, why not? Please describe any alternative formulation and why it is preferable. Some believe a basic principle of auditor independence is that the auditor will not subordinate his or her judgment to others.[114] Should this be included in the proposed principles? Are there additional principles that should be included, and, if so, what are they, and do they reflect an impairment of independence?

Should the concept of mutual or conflicting interests be limited to economic interests? Would that limitation reach areas such as employment of close family members by an audit client? What forms of activities engaged in by accountants involve auditing their own work? What forms of activities constitute advocacy? Are there situations in which an auditor may act as an advocate for the audit client that would not impair the auditor's independence? If so, what are these, and why would they not impair independence? For instance, the principle regarding advocacy is not intended to prevent the accounting firm from explaining or defending (in court, if necessary) its work in an audit. Should that principle be modified to make that explicit? If so, how? Should accounting firms be permitted to lobby for an audit client before Congress, state legislatures, regulatory agencies, or other similar bodies?

C. Specific Applications of the Independence Standard

Proposed rule 2–01(c) ties the general standard and four principles of paragraph (b) to specific applications.[115] It provides that an accountant is not independent under the standard of paragraph (b) if, during the audit and professional engagement period, the accountant has any of the financial, employment or business relationships with, provides certain non-audit services to, or receives a contingent fee from, the accountant's audit client or an affiliate of the audit client, as specified in paragraphs (c)(1) through (c)(5), or otherwise does not comply with the standard of paragraph (b). Paragraphs (c)(1) through (c)(5) address separately situations in which an accountant is not independent of an audit client because of: (i) A financial relationship, (ii) an employment relationship, (iii) a business relationship, (iv) the provision of non-audit services, or (v) the receipt of contingent fees.[116]

While paragraph (c) specifies a number of the relationships and other situations that might impair an auditor's independence, this list is not exhaustive. We cannot foresee all situations in which an auditor might lack independence. Accordingly, paragraph (c) includes a catch-all reference to any other situation in which an accountant "otherwise does not comply with the standard of paragraph (b) of this section."[117]

Auditor independence is more than a requirement imposed by the federal securities laws. Accountants have both a professional and ethical duty to remain independent of their audit clients,[118] including an obligation to "avoid situations that may lead outsiders to doubt their independence."[119] Accordingly, accountants may have to take steps to remain independent even if the steps are not specified in proposed rule 2–01.

In certain situations, the best course may be for the accountant to ask to be removed from the audit engagement. Neither we nor the profession's standards-setters can foresee every business or employment relationship, or investment that could affect the hundreds of decisions that an auditor must make during the course of an audit. On occasion, there may be a relationship, apart from those contemplated by any standard or rule, that has an important meaning to an individual accountant and could create, or be viewed as creating, a conflict with the accountant's duty to investors.[120] We therefore encourage accountants to seek to recuse themselves from any review, audit, or attest engagement if reasonable investors would view the accountant's ability to exercise objective and impartial judgment as compromised by *any* personal, financial, or business relationship, whether or not specifically discussed in the Commission's, the ISB's, or the profession's rules.

Paragraphs (b) and (c) require the accountant to be independent "during the audit and professional engagement period."[121] This term is defined in proposed rule 2–01(f)(6) to mean the period covered by any financial statements being audited or reviewed, and the period during which the auditor is engaged either to review or audit financial statements or to prepare a report filed with us, including at the

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[108] *Cf.* Staff Report, *supra* note 23, at 12–16. *See also* SEC, *Tenth Annual Report of the Securities and Exchange Commission*, at 205–207 (1944), which states:

[T]he Commission has found an accountant to be lacking in independence with respect to a particular registrant if the relationships which exist between the accountant and the client are such as to create a reasonable doubt as to whether the accountant will or can have an impartial and objective judgment on the questions confronting him.

[109] *See supra* Section II.B.

[110] *See, e.g.*, Codification §§ 601.01 & 601.04.

[111] *See, e.g.*, Codification § 602.02.c.i.

[112] *See, e.g.*, Rule 2–01(b), 17 CFR 210.2–01(b); Codification § 602.02.d.

[113] *See, e.g., Arthur Young, supra* note 19, at 819 n.15 (1984); Codification §§ 602.02.e.i and ii.

[114] *See* AICPA Code of Professional Conduct, ET § 102.01 (regarding integrity and objectivity).

[115] *See* illustrations in Appendix C, *supra* note 35.

[116] A number of the specified situations are based on examples in the current Codification and the AICPA and SESPS membership rules.

[117] We anticipate that the ISB and, when appropriate, our staff, will continue to implement and apply these principles to new and evolving transactions and events in the future.

[118] *See* AICPA SAS No. 1, AU § 220.03; AICPA Code of Professional Conduct, ET § 101. Of course, accountants also have to comply with applicable state law on independence. *Id.*

[119] AICPA SAS No. 1, AU § 220.03.

[120] *Cf. AUSA Life Ins. Co.* v. *Ernst & Young*, 206 F.3d 202 (2d Cir. 2000) (noting "E&Y's failure lay in the seeming spinelessness" of the audit engagement partner and that "[p]art of the problem was undoubtedly the close personal relationship between" that partner and the company's chief executive officer, a former co-partner in the firm) (quoting 991 F. Supp. 234, 248 (S.D.N.Y. 1997) (district court opinion)).

[121] AICPA Code of Professional Conduct, ET § 101.02 (as revised Feb. 28, 1998).

date of the audit report.[122] The use of the word "during" in paragraphs (b) and (c) is intended to make clear that an accountant will lack independence if, for example, he or she is independent at the outset of the engagement but acquires a financial interest in the audit client during the engagement.

1. Financial Relationships

Proposed rule 2–01(c)(1) sets forth the general rule regarding financial relationships that impair independence and is substantially similar to current Rule 2–01(b). Both state that a direct or material indirect financial interest in an audit client will impair an auditor's independence with respect to that audit client. The remainder of paragraph (c) of the proposed rule provides a non-exclusive list of relationships in which an accountant has a direct or material indirect financial interest in an audit client and is, therefore, not independent. Accountants should not assume that financial interests not specifically described in (c)(i) through (c)(iv) do not impair independence.

(a) *Investment in audit client.* Proposed rule 2–01(c)(1)(i) provides that an accountant is not independent with respect to an audit client if the accounting firm, any covered person in the firm, or any immediate family member of any covered person has any direct investment in the audit client or in an affiliate of the audit client. Under current rules, the "direct financial interest" requirement prevents all partners in an accounting firm, all managers in the office performing the audit, and all persons on the engagement team, from having any financial interest in the audit client. This approach was intended to give effect to the principle of loyalty that the firm and all of its employees owe to public investors. It is based on the belief that the public generally perceives a firm as one entity in which individuals may have equal access to confidential client information, shared confidences, and common personal and financial interests.

Under the proposal, as under the current rules, the accounting firm (including its affiliates, such as its pension plan) cannot have a direct investment in an audit client and remain independent of that audit client. The proposal otherwise increases significantly the group of persons within the firm who can invest in an audit client without impairing the auditor's independence. Under proposed paragraph (c)(1)(i), the group of persons who cannot invest is limited to "covered persons in the firm" and their immediate family members. As explained in greater detail below, we define "covered persons" in proposed rule 2–01(f)(13) to include the "audit engagement team," those in the "chain of command," all other partners, principals, shareholders, or professional employees providing any professional service to the audit client or its affiliate, and any other partner, principal, or shareholder in an "office" that participates in a significant portion of the audit.[123] The proposal, like the current rule, would attribute all investments by a covered person's "immediate family members"—that is, the covered person's spouse, spousal equivalent, and dependents—to the covered person.[124]

Paragraph (c)(1)(i)(A) applies to any direct investment in an audit client "such as stocks, bonds, notes, options, or other securities." As the language of the rule makes clear, this is not an exclusive list of all covered ownership interests. In addition, as under current law, the rule cannot be avoided through indirect means. For instance, an accountant who cannot have a direct investment in the audit client by virtue of being a covered person in the firm, may not hold the investment through a corporation or as a member of an investment club.[125]

Under paragraph (c)(1)(i)(A), a direct investment in an affiliate of an audit client would be treated the same as an investment in the audit client. "Affiliate of the audit client" is defined in proposed rule 2–01(f)(5) to mean an entity that has significant influence over the audit client, or over which the audit client has significant influence.[126] Our concern is that, in both cases, there is a melding of financial interests and managerial functions of the entity and the audit client such that one can influence the accounting policies and financial transactions of the other. Once an audit client can exercise "significant influence" over the operating or financial policies of an entity, then under GAAP,[127] information from the financial statements of that entity will be reflected in the financial statements of the audit client. Similarly, if an entity can exercise influence over the audit client, information from the audit client's financial statements will be reflected in the entity's financial statements. In this case, the revenues and income of the audit client would directly affect the earnings of the entity in which the accountant has an investment.

Proposed rule 2–01(c)(1)(i)(A) applies only to a limited class of people, namely an accounting firm, as well as covered persons in the firm and members of their immediate families. Proposed rule 2–01(c)(1)(i)(B) applies to a larger class of people, including an accounting firm's partners, principals, shareholders, professional employees, and their immediate family members, the close family members of covered persons in the firm,[128] and any "group" of the foregoing persons.[129] Under proposed rule 2–01(c)(1)(i)(B), an accountant is not independent with respect to an audit client when any such person or group holds more than five percent of an audit client's outstanding voting securities or otherwise controls the audit client. We selected the five percent level, in part, because it triggers a separate filing with the Commission,[130] and therefore, in certain circumstances, the accountant will have an independent means of knowing the status of those persons' investments.

Proposed rule 2–01(c)(1)(i)(C) is a specialized application of the direct financial interest rule. It provides that an accountant is not independent when

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[122] Proposed rule 2–01(f)(6) states that the engagement period ends when the registrant or accountant notifies the Commission that the registrant is no longer the accountant's audit client. This notice typically would occur when the registrant files with the Commission a Form 8–K with disclosures under Item 4 "Changes in Registrant's Certifying Accountant." In some cases, however, a Form 8–K would not be required, such as when the registrant is a foreign private issuer or when the audited financial statements of a non-reporting company are filed upon its acquisition by a public company. Notification to the Commission in these cases would occur by the filing of the next audited financial statements of the foreign private issuer or the successor corporation. Registrants or auditors in these situations, however, may provide earlier notice to the Commission on Form 6–K or other appropriate means.

[123] *See infra* Section III.I.10. for a complete discussion of the term "covered persons in the firm."

[124] *See infra* Section III.I.11. for a complete discussion of the term "immediate family members."

[125] *Compare* Codification § 602.02.b.ii (Example 1); *cf. infra* Section III.C.1.(a). (regarding indirect investments).

[126] We recognize that this definition of affiliate is different from the current definition in Rule 1–02. We believe, however, that the revised definition is appropriate in the context of our proposals in this release.

[127] Accounting Principles Board ("APB") Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," at ¶ 17 (1971).

[128] *See infra* Section III.I.9. for a complete discussion of the term "close family members".

[129] "Group" is defined in proposed rule 2–01(f)(14) to mean when two or more persons act together for the purposes of acquiring, holding, voting, or disposing of securities of a registrant. This definition is based on Exchange Act Rule 13d–5(b)(1).

[130] Schedules 13D and 13G, 17 CFR 240.13d–1. Schedules 13D and 13G are intended to alert the market to accumulations of a public company's securities that might indicate a potential change of control of the company.

the accounting firm, any covered person in the firm, or any covered person's immediate family member serves as voting trustee of a trust or executor of an estate containing the securities of an audit client. In these positions, the firm or person typically makes investment decisions, or participates in making investment decisions, concerning the securities of the audit client. In this role, the firm or person typically has a fiduciary duty to preserve or maximize the value of the assets. We believe that this warrants treating the trustee or executor's interest as a direct financial interest in the audit client and deeming the auditor's independence impaired.

Proposed rule 2–01(c)(1)(i)(D) covers material indirect investments in an audit client. It describes the circumstances in which independence is impaired because of investments by the accounting firm, any covered person in the firm, any immediate family member of a covered person, or any group of these people in: (i) Non-client entities that have an investment in an audit client ("non-client investors"), or (ii) companies in which an audit client also has invested ("common investees"). The current rule generally recognizes that these investments create a mutuality of interest if the auditor or the audit client owns more than five percent of the entity's equity securities.[131]

In both the "non-client investor" and "common investee" scenarios, an intermediary is placed between the auditor and the audit client. In one case, the auditor has invested in an entity that, in turn, has invested in the audit client. In the other, the auditor and the audit client are linked through a mutual financial interest in seeing their common investment grow and prosper. Because these financial ties are indirect, we believe that use of a materiality threshold continues to be appropriate. Accordingly, under the proposed rule, accounting firms, covered persons, and covered persons' immediate families can own up to five percent of an entity that invests in an audit client or of an investee in which an audit client also invests.[132]

It should be remembered, however, that should the "non-client investor" or the "common investee" become an affiliate of the audit client, then as described under paragraph (A) regarding direct investments, the auditor may not have *any* investment in the intermediary entity. For example, assume auditor A invests in non-client company B, which owns an equity interest in audit client C. A may own up to five percent of the equity of B without impairing its independence from C, provided B does not "significantly influence" or is not "significantly influenced" by C. As discussed above, if such significant influence exists, then B is an affiliate of C and, under paragraph (A) regarding direct investments, A may not invest in B without impairing its independence from C. Similarly, assume auditor A invests in non-client company Z, and audit client C also invests in company Z. A may own up to five percent of the equity of company Z without impairing its independence from C, provided Z does not "significantly influence" or is not "significantly influenced" by C.

Proposed rule 2–01(c)(1)(i)(D) does not make a distinction for an indirect investment in an audit client by an auditor through an investment company. As a result, an auditor would not be independent if the auditor owns more than 5% of the outstanding stock of an investment company and the investment company holds an investment in an audit client.[133] The proposed rule, however, does not impose a limit on the portion of an investee company's (including an investment company's) assets that may be invested in the audit client, assuming the auditor owns less than five percent of the investee company and the investee is not an affiliate of the audit client. For example, an operating company or an investment company (Company A) could have a significant portion of its assets invested in Company B, and an auditor could own up to five percent of Company A's stock and audit Company B, so long as B is not an affiliate of A.

We considered limiting the portion of an investee company's assets that could be invested in an audit client without impairing auditor independence. We request comment on whether there should be a limit on the portion of an investee's total assets that can be invested in an audit client without independence being impaired in addition to, or in place of, the proposed indirect investment test. If so, where should the limit be set? Would a 10% or 25% level be appropriate?

If we use that approach, should the rule for registered investment companies turn on their diversification status?[134] Limitations on material indirect investments in an audit client may be difficult for auditors to apply in practice when they invest in an investment company. Auditors have no easy way to determine how much of an investment company's assets are invested in an audit client or how much of an issuer's securities are owned by an investment company because many investment companies' portfolios change frequently. Because funds are required to disclose their diversification status in their registration statements, accountants could easily determine, by looking at a fund's registration statement, whether an investment in the fund by the accounting firm, a covered person in the firm or such person's immediate family might impair an accountant's independence under the rule. Should we permit an investment in any registered investment company that is "diversified" under the ICA, provided it is not part of the same investment company complex as an audit client?[135] Would this be one way to prevent inadvertent violations of the independence rules?

We solicit comment on all aspects of the financial interest rules in paragraph (c)(1)(i). In particular, would reasonable investors be concerned that investments of the sort described in this section would impair an auditor's independence? Should the restrictions on financial ownership interests apply to all partners (but not their immediate family or employees of the firm) of an audit firm, as the partners represent the partnership?

Is the five percent threshold for financial interest in an audit client by persons who do not influence the audit appropriate? For example, would reasonable investors perceive a firm's independence to be impaired if a partner or employee in an office that did not work on the audit, held four percent of the audit client? If the five percent threshold is not appropriate, what threshold is appropriate, and which individuals should be subject to the restriction?

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[131] Codification § 602.02.b.iii. We have used the term "material" in our proposed rules in the sense that it has been used in our current independence rules. *See, e.g.*, ASR No. 79 (Apr. 8, 1958). This should not be confused with the meaning of the term "material" in other federal securities law contexts. *See* Staff Accounting Bulletin No. 99 (Aug. 13, 1999).

[132] Paragraph (c)(1)(i)(D)(*1*) and (*2*) refer to "ownership" of an entity. Ownership interest is determined based on the form of organization. For example, for a corporation, ownership is based on ownership of a class of voting securities. For a partnership, ownership is based on ownership of a partnership interest or unit.

[133] Also, an auditor would not be able to invest in an investment company if the investment company is an affiliate of the audit client. *See* proposed rule 2–01(c)(1)(i)(A).

[134] Generally, a diversified management investment company is a company that with respect to 75% of its total assets may not invest more than 5% of its total assets in a single issuer and may not own more than 10% of the outstanding securities of a single issuer. *See* Section 5(b)(1) of the ICA, 15 U.S.C. 80a–5(b).

[135] *See infra* Section III.I.12. for a discussion of the "investment company complex" definition.

Furthermore, is it appropriate to base the determination, as we do, on ownership of five percent or more of a company's equity securities? Should we be more specific and indicate whether to account for common and preferred shares, and voting and non-voting shares? If so, what types of shares should be included (*i.e.*, voting shares only)? If the determination depends on ownership of outstanding voting shares, should all shares, regardless of the number of votes different classes of shares have, count the same?

Would reasonable investors perceive an accountant's independence to be impaired if any partner, shareholder, or professional employee of the accountant's firm has an investment in an audit client that is more than five percent of the individual's net worth, even if it represents less than five percent of the ownership of the audit client's equity securities?

Suppose that ABC Accounting Firm audits XYZ Corp. Partner A is a covered person in the firm for the XYZ audit. In the following situations, would a reasonable investor be concerned about the independence of the auditor:

(i) A grandchild of Partner A owns more than five percent of the equity of XYZ Corp;

(ii) Partner A's siblings each own four percent of the equity of XYZ Corp. The siblings do not act together in their investment activities in such a way as to constitute a group under the proposed definition of group;

(iii) Partner A's brother-in-law owns ten percent of the equity of XYZ Corp;

(iv) Partner A's sister-in-law owns 20 percent of the equity of XYZ Corp; or

(v) Five partners of ABC Accounting Firm, none of whom are covered persons and not acting as a "group," each own four percent of the equity of XYZ Corp.

Are there other persons whose investment in the XYZ Corp. may cause concern regarding the independence of Partner A?

We solicit comment on all aspects of the proposals regarding investments in audit clients in paragraph (c)(1)(i)(D). Do investments in an intermediary affect the auditor's independence when the intermediary has an investment in an audit client that an auditor could not have directly without impairing the auditor's independence? If the auditor has an investment greater than five percent in the intermediary, but the intermediary has an investment in the audit client that is less than five percent of the audit client, is the auditor's independence impaired? What if the intermediary's investment is less than five percent of the audit client but material to the auditor or intermediary?

Suppose that the pension fund of ABC Accounting Firm has a 4.9 percent ownership of DEF Corp. DEF is not an audit client of ABC. DEF in turn has a substantial investment in XYZ Corp., an audit client of ABC. DEF and XYZ are not affiliates. Would a reasonable investor perceive that the accountant's independence was impaired? Is five percent an appropriate threshold? Would a lower threshold enhance investor confidence in auditor independence? The proposed rule on material indirect investments includes investments by the accounting firm, any covered person in the firm or any of his or her immediate family members, or any group of such persons. Should other persons be included?

Suppose that the pension fund of ABC Accounting Firm has a 4.9 percent ownership of DEF Corp. DEF is not an audit client of ABC. XYZ Corp., an audit client of ABC, has a substantial investment in DEF, but XYZ and DEF are not affiliates. Would reasonable investors perceive that the accountant's independence was impaired? The proposed rule includes investments by the accounting firm, any covered person in the firm or any of his or her immediate family members, or any group of such persons. Should other persons be included? Are there any investments that you believe would impair an auditor's independence that the proposed rules permit? If so, what are they, and why do they raise independence concerns?

(b) *Other financial interests.* Proposed rule 2–01(c)(1)(ii) describes other financial interests of an auditor that would impair an auditor's independence with respect to an audit client because they create a debtor-creditor relationship or other commingling of the financial interests of the auditor and the audit client. In some situations (*e.g.*, bank deposits or insurance), the continued viability of the audit client may be necessary for protection of the auditor's own assets or for the auditor to receive a benefit (*e.g.*, insurance claim). These situations reasonably may be viewed as creating a self-interest that competes with the auditor's obligation to serve only investors' interests. We discuss several of these situations here.

(i) *Loans/debtor-creditor relationships.* The proposals provide that the accountant will not be independent when the accounting firm, or any covered person in the accounting firm, or any of the covered person's immediate family members has any loan (including any margin loan) to or from an audit client, the officers of an audit client or an affiliate of an audit client, the directors of an audit client or an affiliate of an audit client, or record or beneficial owners of more than five percent of the equity securities of an audit client or its affiliate. We considered adding to the proposal the AICPA's Ethics Ruling on loans to or from audit clients.[136] The ruling indicates that any loan would impair the auditor's independence, unless the loan was from a financial institution; acquired in accordance with that institution's normal lending procedures, terms and requirements; kept current as to all its terms; and, was: (1) An automobile loan or lease collateralized by the automobile; (2) a loan on the cash surrender value of an insurance policy; (3) a "passbook loan" collateralized by cash deposits at the same institution; or (4) credit cards or cash advances on checking accounts with an aggregate balance not paid of less than $5,000. We are proposing a more liberal approach since our proposal sets the credit card balance threshold at $10,000, permits a mortgage loan not obtained during the period of the audit or professional engagement, and because, unlike the AICPA ruling, the proposed rule covers only the relatively small group of entities and people that could influence the audit.

We solicit comment on our approach to loans. Should we expand the rule to cover close family members as opposed to just immediate family members? For example, would a $1,000,000 home loan from an audit client to the auditor's brother-in-law be perceived as affecting the independence of the audit partner? Does the answer change if the loan is unsecured? Are there other categories of loans that should be excluded, similar to car loans? Are there circumstances under which a loan to or from an audit client would not impair an auditor's independence?

(ii) *Savings and checking accounts.* The proposals provide that an accountant will not be independent when the accounting firm, or any covered person in the accounting firm, or any of the covered person's immediate family members has any savings or checking account at a bank or savings and loan that is an audit client or its affiliate, if the account has a balance that exceeds the amount insured by the Federal Deposit Insurance Corporation ("FDIC"). Would reasonable investors perceive an accountant's independence to be

[136] *See* AICPA Code of Professional Conduct, ET §§ 101.02, 101.07 (Ethics Rulings 101–1–A–4, 101–5).

impaired if an accountant or the accountant's immediate family member has any savings or checking account at an audit client or the audit client's affiliate? Would an accountant's independence be impaired if a covered person maintained a balance in a non-federally insured bank that is an audit client? Are there other institutions that are similar to a bank or savings and loan that should be included? Are any of the risks to independence mitigated by depository insurance similar to that provided by the FDIC? Why or why not? Would the financial condition of the bank or other depository institution affect reasonable investors' perceptions?

(iii) *Broker-dealer accounts.* The proposals provide that an accountant will not be independent when the accounting firm, or any covered person in the accounting firm, or any of the covered person's immediate family members has any brokerage or similar account maintained with a broker-dealer that is an audit client or an affiliate of an audit client if any such accounts include any asset other than cash or securities (within the meaning of "security" provided in the Securities Investor Protection Act ("SIPA")), or where the value of the assets in the accounts exceeds the amount that is subject to a Securities Investor Protection Corporation ("SIPC") advance for those accounts, under Section 9 of SIPA. Our proposal is rooted in a concern that, to the extent that the assets of an accountant (or covered persons or their family members) in a broker-dealer account are exposed to loss in the event of the broker-dealer's financial failure, the accountant has an interest in the financial condition of the broker-dealer.

When an accounting firm, a covered person, or a covered person's immediate family member maintains such accounts at an audit client, would reasonable investors perceive that auditor independence is impaired? Should covered persons be considered not independent if they have an account with a broker-dealer that is an audit client, regardless of whether the assets in the account are subject to a SIPC advance? Are there better ways to identify broker-dealer accounts that impair an auditor's independence? For example, the proposal's provision on loans and debtor-creditor relationships provides that a margin loan impairs an auditor's independence. Should the provision concerning broker-dealer accounts state that maintaining a margin account with a broker-dealer impairs an auditor's independence as to that broker-dealer, whether or not any margin debt exists? Are there other types of accounts that might be maintained with a broker-dealer that the rule should specifically identify as impairments to independence? If so, what types of accounts, and why do they impair, or appear to impair, independence?

Should the rule specifically address short positions, or the writing of options, in an account with a broker-dealer? If so, should the rule provide that those types of accounts, when held by the accounting firm, any covered person in the firm, or such person's immediate family member, impair independence as to the broker-dealer with whom the account is maintained?

Is it impractical for accountants (and covered persons and family members) to monitor whether the assets in their broker-dealer accounts are within the amounts subject to a SIPC advance? Are there preferable alternative formulations that would accomplish the goal of deeming independence to be impaired only in those situations where the accounts include assets that are exposed to loss in the event the broker-dealer fails? Or is that goal too narrow? Should the rule impose additional limits on accounts even though the assets in the accounts stay within the amounts subject to a SIPC advance? For example, an auditor might control several different types of accounts, each of which qualify for SIPC coverage. Should the rule impose some limit on the number or total assets of such accounts with a broker-dealer audit client? What should those limits be, and why?

Would it be preferable to provide that independence is impaired as to any broker-dealer audit client with whom the accountant (or covered person or covered person's family member) maintains any account, regardless of whether the account's assets are within the limits subject to a SIPC advance?

In addition to SIPC protection, broker-dealers sometimes purchase insurance from private insurers to protect customer assets. Should the rule take that type of insurance into account? If so, how?

(iv) *Futures commission merchant accounts.* The proposals provide that the accountant will not be independent when the accounting firm, or any covered person in the accounting firm, or any covered person's immediate family member has any futures, commodity, or similar account maintained with a futures commission merchant ("FCM") that is an audit client or an affiliate of the audit client. This proposal is rooted in a concern that, to the extent that the assets of an accountant (or covered persons or their family members) in an FCM account are exposed to loss in the event of the FCM's financial failure, the accountant has an interest in the financial condition of the FCM. We solicit comment on whether maintaining such accounts could impair, or would appear to reasonable investors to impair, an auditor's independence. Are there different types of FCM accounts or different types of assets maintained in FCM accounts that should be distinguished from each other for purposes of determining auditor independence? What distinctions should be made? Are there conditions under which an accountant (or covered person or covered person's family member) could maintain an account with an FCM but have no interest in the financial condition of the FCM? If so, what are those conditions? How, if at all, should the rule take those conditions into account?

(v) *Credit cards.* We are proposing that credit card balances of $10,000 or less owed by a firm, a covered person, or any covered person's immediate family member to an audit client or its affiliate, not be deemed to impair an auditor's independence.[137] We do not believe that a relatively minor credit card balance would create or appear to create a mutuality or conflict of interest with the lender-audit client. Furthermore, a strict prohibition of such accounts might unnecessarily affect a firm's ability to assign staff to provide short-term technical advice to the audit engagement team. Would reasonable investors perceive an accountant's independence to be impaired if a covered person held a credit card balance in excess of $10,000 with a lender that is an audit client? Is $10,000 an appropriate limit?

(vi) *Insurance products.* Proposed rule 2–01(c)(1)(ii)(F) provides that an auditor's independence is impaired whenever the accounting firm, any covered person in the firm, or any immediate family member of a covered person holds any individual insurance policy originally issued by an insurer that is an audit client or an affiliate of an audit client. Additionally, under the proposed rule, an auditor's independence is impaired if the audit firm obtains professional liability coverage from an audit client or its affiliate. Holding these policies creates a mutual interest in the continuing viability of the insurer.

We solicit comment on whether an accountant's independence is impaired, and on whether reasonable investors would perceive an accountant's independence to be impaired, if the

[137] *See* proposed rule 2–01(c)(1)(ii)(E).

accountant or a member of the accountant's immediate family originated an individual insurance policy with an insurance company that is an audit client or an affiliate of an audit client. Should the proposed rule cover all insurance policies, or be limited, such as to life insurance policies? Would an accounting firm's independence be impaired if the accounting firm acquired from an audit client insurance such as (i) insurance for litigation or indemnification losses, (ii) group health, or (iii) group life insurance policies? Should an accounting firm be permitted to purchase professional liability coverage through an audit client?

(vii) *Investment companies.* Proposed rule 2–01(c)(1)(ii)(G) sets forth the rule for investment by accounting firms, covered persons and covered persons' immediate family members in an investment company or a related entity. The proposed rule provides that an auditor is not independent if the auditor invests in any entity in an investment company complex if the audit client is also an entity included in that investment company complex. Proposed rule 2–01(f)(16) defines "investment company complex" as an investment company and its investment adviser or, if the company is a unit investment trust, its sponsor; any entity controlled by, under common control with, or controlling the investment adviser or sponsor, such as the distributor, administrator or transfer agent; and any investment company or an entity that would be an investment company but for the exclusions provided by section 3(c) of the ICA [138] that is advised by the same adviser or a related adviser, or sponsored by the same sponsor or related sponsor.

Proposed rule 2–01(c)(1)(ii)(G) makes clear that when an audit client is part of an investment company complex, the accountant must be independent of each entity in the complex. The proposed rule follows ISB Standard No. 2 on this point. Under ISB Standard No. 2, the firm and those in the firm who are in a position to influence an audit must be independent from each fund in the fund complex *and* each entity in the fund complex in order to be independent with respect to *any* fund or entity in the complex.[139]

In addition to the requirement that the auditor have no investment in any entity in the investment company complex, the auditor also must be independent with respect to its other relationships with entities within the complex. For example, an auditor could not be a director for an entity within an investment company complex while auditing an entity in the complex.

Should we follow the standard of ISB Standard No. 2 that an accountant must be independent of the entire investment company complex to be independent of any entity in that complex? Is this standard sufficiently clear and capable of implementation? If not, what modifications are needed? Does this standard have implications outside the area of investments (*e.g.*, employment relationships, business relationships, or the provision of non-audit services) that go beyond what is necessary to safeguard independence?

Are there certain complex capital structures, such as master/feeder or fund of funds, that require specific clarification as to an auditor's independence when the auditor audits one or more entities in that structure? Are there any unique implications of applying the proposed independence rules to investment companies, investment advisers, sponsors of unit investment trusts, and affiliated or unaffiliated service providers? If so, what are they and how should they be addressed?

(c) *Exceptions.* Proposed rule 2–01(c)(1)(iii) would provide two limited exceptions to the financial relationship rules. These exceptions recognize that there are situations in which an accountant, by virtue of being given a gift of or inheriting a financial interest from a third party, or because the accounting firm has taken on a new audit client, may lack independence solely because of events beyond the accountant's control. In these circumstances, and provided the financial interest is promptly disposed of or the financial relationship is promptly terminated, we believe that reasonable investors would not necessarily perceive the accountant to be incapable of exercising objective and impartial judgment.

(i) *Inheritance and gift.* Proposed rule 2–01(c)(1)(iii)(A) provides that an accountant's independence will not be impaired if any person acquires a financial interest through an unsolicited gift or inheritance that would cause the accountant to be not independent under (c)(1)(i) or (c)(1)(ii), and the financial interest is disposed of as soon as practicable, but no longer than 30 days after the person has the right to dispose of such interest. We solicit comment on all aspects of the gift and inheritance exception. Does the exception capture all situations in which a person subject to the financial relationship rules might enter into a restricted financial relationship and yet not give rise to any independence concerns? Are there situations in which an accounting firm might have no option but to receive its fee in its audit client's stock as a result of a court settlement? If so, should there be an exception for these situations, and how would such an exception work? Does the rule provide affected persons with adequate means to "cure" the lack of independence? For example, should the rule expressly allow a covered person to recuse himself or herself from an engagement or the chain of command rather than disposing of the financial interest?

Would an accountant's independence be impaired if the covered person was restricted from disposing of the financial interest for an extended period? For example, suppose XYZ Corp. is the audit client of ABC Accounting Firm. Partner A is a covered person in the firm. Partner A becomes the beneficiary of a testamentary trust fund that includes $2 million in equity securities of XYZ Corp. This amount constitutes 40 percent of the amount of the trust, and 30 percent of Partner A's net worth. The terms of the trust fund prohibit disposing of the XYZ investment for a period of five years. Would a reasonable investor perceive ABC's independence to be impaired?

Assume the same facts as above, except that the securities are received directly by Partner A. Would placing those securities in a "blind trust" remedy the independence question? Can an individual be impartial if he or she knows what securities are held in the blind trust?

(ii) *New audit engagement.* Proposed rule 2–01(c)(1)(iii)(B) is designed to allow accounting firms to bid for and accept new audit engagements, even if a person has a financial interest that would cause the accountant to be not independent under the financial relationship rules. This exception is available to an accountant so long as the accountant did not audit the client's financial statements for the immediately preceding fiscal year, and the accountant was independent before the earlier of either accepting the engagement to provide audit, review, or attest services to the audit client; or commencing any audit, review, or attest procedures (including planning the audit of the client's financial statements).

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[138] Section 3(c) of the ICA excludes from the ICA certain companies that otherwise would be investment companies. 15 U.S.C. 80a–3(c). These companies include, among others, hedge funds and real estate pools.

[139] ISB Standard No. 2, "Certain Independence Implications of Audits of Mutual Funds and Related Entities," at ¶ 3 (Dec. 1999).

The new audit engagement exception of proposed rule 2–01(c)(1)(iii)(B) is necessary because an auditor must be independent, not only during the period of the auditor's engagement, but also during the period covered by any financial statements being audited or reviewed.[140] Because of an existing financial relationship between an accounting firm or one of its employees and a company (that is not an audit client), an accounting firm may not be able to bid for or accept an audit engagement from the company without this exception. For example, where a firm's pension plan or a covered person in the firm owns the stock of a potential audit client during the period of the financial statements to be audited or reviewed, the accounting firm could not compete for the audit engagement but for this exception. This exception allows firms to bid for and accept engagements in these circumstances, provided they are otherwise independent of the audit client and they become independent of the audit client under the financial relationship rules before accepting the engagement or beginning any audit, review, or attest procedures.

We solicit comment on all aspects of the new audit engagement exception. Will the exception, as a practical matter, allow accounting firms to bid for and accept new audit engagements when they become available? Is the exception appropriate even though the auditor's independence would otherwise be considered impaired? Should the exception also extend to employment relationships, business relationships, or the provision of non-audit services? Does the existence of an employment relationship or the provision of non-audit services during the period covered by the financial statements raise independence concerns that cannot be "cured" before beginning the engagement in the same way that a financial relationship during this period can?

(d) *Audit Clients' Financial Relationships.* Proposed rule 2–01(c)(1)(iv) provides that an accountant is not independent when its audit client has invested, or otherwise has a financial interest in the accounting firm or an affiliate of the accounting firm.

(i) *Investments by the audit client in the auditor.* Under proposed rule 2–01(c)(1)(iv)(A), an accountant's independence is impaired with respect to an audit client when the audit client or an affiliate of an audit client has, or has agreed to acquire, any direct investment in the accounting firm or its affiliate, whether in the form of stocks, bonds, notes, options, or other securities. This impairment occurs primarily for two reasons.

First, the accountant may be placed in the position of auditing the value of the securities of the accounting firm or its affiliates that are reflected as an asset in the financial statements of the audit client. This could result when an auditor in an accounting firm whose shares are held by the audit client must value the shares of that accounting firm held by the audit client for purposes of including that valuation in the audited financial statements.

Second, the accountant reasonably may be assumed to have a mutuality of financial interest with the owners of the firm and of the firm's affiliates, including an audit client-shareholder. The audit firm, as management, will be responsible to its shareholders, and one of the shareholders may be an audit client. Thus, there may be situations where a shareholder-audit client is in a position to influence the accountant because the accountant would owe a fiduciary responsibility to that audit client-shareholder and would be accountable to that audit client for the accounting firm's activities.[141] For example, an audit client-shareholder is legally entitled to receive certain notices, invoke "dissenters' rights,"and nominate candidates for directors under most state corporation laws. Consequently, an accountant, as management, would have fiduciary obligations to an audit client-shareholder who, acting alone or in combination with other shareholders, may be in a position to exercise some measure of influence over the accountant.

Are there other situations in which an audit client could have a financial interest in the accounting firm that would impair independence? For example, would a reasonable investor perceive an accountant's independence to be impaired if the audit client's CEO held a substantial investment in the accounting firm? Would it make a difference if the investment was significant to the CEO's net worth? Should there be a maximum allowable investment by audit clients in their auditors? If so, what should the threshold be? Does it matter if the investment is material to the investor or one of its affiliates?

(ii) *Underwriting.* Few transactions are as significant to the financial health of a company, including an accounting firm, as the sale of its securities, whether in private or public offerings. In an offering, an underwriter either buys and then resells a company's securities or receives a commission for selling the services. In either circumstance, were an audit client to act as underwriter of an accounting firm's or its affiliate's securities, the audit client would assume the role of advocate or seller of the accounting firm's securities. Moreover, depending on the terms of the underwriting, the underwriter could for a time become a significant shareholder of the accounting firm. There also may be indemnification agreements that place the underwriter and auditor in adversarial positions.

Relying on an audit client to sell the accounting firm's securities plainly impairs independence. The accounting firm would have a direct interest in ensuring the underwriter's viability and credibility, either of which could be damaged as the result of an audit. Moreover, the auditor would have a clear incentive not to displease an audit client to which it had entrusted a critical financial transaction. Similar conflicts of interest may arise if an audit client or an affiliate of an audit client performs other financial services for an accounting firm or its affiliates, such as making a market in the accounting firm's or its affiliate's securities or issuing an analyst report concerning the securities of the accounting firm or its affiliate.

We request comment on whether we have addressed all situations in which the independence concerns arise because the audit client or its affiliate performs a financial service for the accounting firm or an affiliate? Are there financial services that an audit client or its affiliate could provide to its auditors or the accounting firm or its affiliate that would not raise these concerns? For example, would reasonable investors perceive an accountant's independence to be impaired if an audit client or an affiliate of an audit client made a market in the securities of the accounting firm or prepared and issued research reports on the accounting firm?

2. Employment Relationships

Proposed rule 2–01(c)(2) sets forth the employment relationships that impair an auditor's independence. This paragraph is based on the premise that when an accountant is either employed by an audit client, or has a close relative

[140] *See supra* Section III.C.

[141] *See* Letter from POB to ISB, dated Jan. 12, 2000 ("[p]ublic ownership in an audit firm or in its parent or in an entity that effectively has control of the audit firm would add another form of allegiance and accountability to those identified by the Supreme Court—a form of allegiance that in our opinion will be viewed as detracting from, if not conflicting with, the auditor's 'public responsibility' ").

or former colleague employed in certain positions at an audit client, the accountant might not be capable of exercising the objective and impartial judgment that is the hallmark of independence.

As with the financial relationships provision, paragraph (c)(2) sets forth the general standard that an accountant is not independent if the accountant has an employment relationship with an audit client or an affiliate of an audit client. The proposed rule then provides a non-exclusive list of relationships that are inconsistent with the general rule of paragraph (c)(2). Again, accountants should not assume that all employment relationships not specifically described in (c)(2)(i) through (c)(2)(iv) do not impair independence. All non-specified employment relationships are subject to the general tests of paragraphs (b) and (c)(2).

(a) *Employment at audit client of accountant.* Proposed rule 2–01(c)(2)(i) continues the principle set forth in current Rule 2–01(b) that to be independent, neither the accountant nor any member of his or her firm can be a director, officer, or employee of an audit client. The paragraph therefore provides that an accountant is not independent if any current partner, principal, shareholder, or professional employee of the accounting firm is employed by the audit client or an affiliate of an audit client, or serves as a member of the board of directors or similar management or governing body of the audit client or an affiliate of the audit client. In the most basic sense, the accountant cannot be employed by his or her audit client and be independent.

(b) *Employment at audit client of certain relatives of accountant.* Proposed rule 2–01(c)(2)(ii) specifies the family members of the auditor whose employment in certain positions by an audit client or its affiliate will impair the auditor's independence. For the employment category, the interests and relationships of a covered person's close family members—that is, the covered person's spouse, spousal equivalent, dependents, parents, nondependent children, and siblings—are attributed to the covered person in the firm. This stands in contrast to the investment category, where only the interests of the covered person's immediate family members (*i.e.*, spouse, spousal equivalent, and dependents) are attributed to the covered person. We believe this distinction is justified because, while some close family members' investments may not be known to a covered person, the place and nature of such family members' employment should be obvious, and thus may affect the covered person's objectivity and impartiality.

We do not consider an audit client's employment of even a close family member, however, to impair an auditor's independence unless that family member is in a position to, or does, influence the preparers or the contents of the accounting records or financial statements of the audit client or its affiliate. The proposed rule uses the defined term "accounting or financial reporting oversight role" to describe the persons in this group. The term is defined in proposed rule 2–01(f)(3). To reduce uncertainty, the definition lists those positions that generally carry with them the type of influence about which we are concerned. These positions include: a member of the audit client's board of directors (or similar management or governing body), chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, vice president of marketing, or any equivalent position.

The proposed rule eliminates the so-called "five hundred mile rule." Under that rule, when a family member has an interest in or relationship with an audit client, consideration is given to whether the geographic separation of that family member from both the person in the firm and the conduct of the audit lessens the negative impact of that interest or relationship on the auditor's independence.[142] When an auditor's relative is not geographically distanced from the auditor and the audit, the auditor and his or her relatives are said to be in "closely linked business communities" and the auditor's independence is deemed to be impaired. However, considering whether family members are in "closely linked business communities" no longer seems relevant in today's world of instantaneous international communications and global securities markets. Accordingly, the proposal dispenses with this test of auditor independence.

We solicit comment on all aspects of proposed rule 2–01(c)(2)(ii). Does the proposal use an appropriate definition of what constitutes close family members whose employment by an audit client results in an impairment of an auditor's independence? If not, how should it be revised? Should the definition of close family member be expanded to include extended family relationships, such as in-laws? Would reasonable investors perceive an accountant's independence to be impaired if the audit client's CEO was the brother-in-law of a covered person? Would employment by an audit client of friends, neighbors, or other persons having emotional or financial ties with covered persons, but not within the definition of close family member, impair an accountant's independence?

Would reasonable investors perceive an accountant's independence to be impaired if a close family member of a covered person were employed by an audit client in a capacity that did not enable the family member to influence the preparers or contents of the accounting records or financial statements of the audit client or its affiliates? The ISB has suggested that independence is impaired if an immediate family member of a person on the audit engagement team is employed by the audit client in any position, or if a close family member holds a "key position" at an audit client.[143] Is the ISB's stricter position with respect to immediate family members necessary to ensure an auditor's independence?

Is the definition of the positions that may enable employees to influence the accounting records appropriate? Would independence be impaired by other employment positions held by close family members with an audit client, such as vice president of human resources, assistant controller, or manager of internal audit?

(c) *Employment at audit client of former employee of accounting firm.* Proposed rule 2–01(c)(2)(iii) describes the circumstances under which an auditor's independence will be impaired by an audit client's employment of a former partner, shareholder, principal, or professional employee of the accounting firm. When these persons retire or resign from accounting firms, it is not unusual for them to join the management of former audit clients or to become members of their boards of directors. Registrants and their shareholders may benefit from the former partner's accounting and financial reporting expertise. Investors and the public in general also may benefit when individuals on the board or in management can work effectively with the auditors, members of the audit committee, and management to provide informative financial statements and reports.

When these persons, however, assume positions with the firm's audit client and also remain linked in some fashion to the accounting firm, they could be in a position to influence the content of the

[142] *See generally* Codification § 602.02.h.

[143] ISB, Invitation to Comment 99–1, *supra* note 37, at 9.

audit client's accounting records and financial statements on the one hand, or the conduct of the audit, on the other. This is particularly true when the individual, while at the accounting firm, was in some way associated with the audit of the client. The perceived close association between a member of the board of directors or of senior management [144] may create the impression of a mutuality of interest.[145]

As accounting firm partners leave their firms and accept management positions with former audit clients, some have questioned whether these individuals compromised their independence in order to secure positions with audit clients.[146] Others have questioned the continuing personal relationships between the former partner and the individuals at the firm who audit the client's financial statements.[147] There is also the risk that the former partner's familiarity with the firm's audit process and the audit partners and employees of the firm will enable him or her to alter the outcome of the audit.[148]

As with the current requirements, the proposed rule recognizes that an auditor's independence with respect to an audit client may be impaired when former partners, shareholders, principals, or professional employees of the firm are employed in an accounting or financial reporting oversight role at the firm's audit client or an affiliate of the audit client. We are also proposing, however, that independence will not be impaired if certain steps are taken to disassociate the individual from the firm. Under the proposed rules, the former partner, shareholder, principal, or professional employee must not: (i) Influence the firm's operations or financial policies, (ii) have a capital balance in the firm, or (iii) have a financial arrangement with the firm, other than a fully-funded, fixed payment retirement account.

The rule provides that, under certain conditions, use of a "rabbi trust" as a mechanism to make fixed retirement payments to a former partner or employee of the accounting firm would not impair an auditor's independence.[149] Specifically, under the proposed rule, use of a "rabbi trust" does not impair an auditor's independence as long as the amount owed to the individual is immaterial to the firm, the payments from the trust are fixed as to time and amount, and the chances of the firm entering bankruptcy or insolvency are remote.

We request comment on our approach in (c)(2)(iii). Should a former partner now employed by the audit client, be permitted to retain financial ties to the audit firm without impairing the independence of the auditor? What if the financial ties are material to the former auditor but not to the firm? Would reasonable investors perceive an accountant's independence to be impaired if a former employee of the accounting firm, who continued to hold a 401(k) investment with the accounting firm, became employed by the audit client? Does it matter if the former partner's position at the audit client is not one in which he or she will have influence over the company's audit, accounting records, or financial statements?

If an audit partner or other professional employee leaves an accounting firm and joins the audit client during the course of an audit, does this impair the accounting firm's independence? Should the rule depend on whether the person leaving the accounting firm is a senior partner within the firm, an audit manager with management responsibilities for the audit, or non-managerial audit staff?

Should we require a mandatory "cooling off" period for former partners and professional staff of an audit firm who join an audit client? Should registrants have to disclose on a timely basis if they hire a partner or other senior audit professional assigned to the company's audit.[150] If so, where should the disclosure appear?

(d) *Employment at accounting firm of former employee of audit client.* Proposed rule 2–01(c)(2)(iv) describes the circumstances under which employment of a former officer, director, or employee of an audit client or its affiliate as a partner, principal, or shareholder of the accounting firm will impair an auditor's independence. This provision, in a sense, mirrors the restrictions on employment by an audit client of former partners or employees of an accounting firm.

When the employee of an audit client joins an accounting firm, the independence rules must ensure that the former employee is not in a position to influence the audit of his or her former employer.[151] Participating in that

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[144] *See generally AUSA Life Ins. Co.* v. *Ernst & Young, supra* note 120.

[145] *See* Auditing Standards Division, AICPA, "Audit Risk Alert—1994, General Update on Economic, Accounting, and Auditing Matters," at 35 (1994).

A few litigation cases suggest auditors need to be more cautious in dealing with former coworkers employed by a client. None of these cases involved collusion or an intentional lack of objectivity. Nevertheless, if a close relationship previously existed between the auditor and a former colleague now employed by a client, the auditor must guard against being too trusting in his or her acceptance of representations about the entity's financial statements. Otherwise, the auditor may rely too heavily on the word of a former associate, overlooking that a common interest no longer exists.

[146] *See* Paul M. Clikeman, "Close revolving door between auditors, clients," *Accounting Today*, at 20 (July 8–28, 1996). *Cf. In the Matter of Richard A. Knight*, AAER No. 764 (Feb. 27, 1996) (individual allegedly learned of accounting misstatements while he was engagement partner for firm conducting audit and resigned to become registrant's executive vice president and chief financial officer).

[147] *See, e.g., AUSA Life Ins. Co.* v. *Ernst & Young, supra* note 120; AICPA Board of Directors, *Meeting the Financial Reporting Needs of the Future: A Public Commitment From the Public Accounting Profession*, at 4 (June 1993) ("AICPA Board Report"); *see also* Staff Report, *supra* note 23, at 51–52; In addressing an example of this problem, the court in *Lincoln S&L* v. *Wall*, 743 F. Supp. 901, 917 n.23 (D.D.C. 1990) wrote:

Atchison, who was in charge of the Arthur Young audit of Lincoln, left Arthur Young to assume a high paying position with Lincoln. This certainly raises questions about Arthur Young's independence. Here a person in charge of the Lincoln audit resigned from the accounting firm and immediately became an employee of Lincoln. This practice of "changing sides" should certainly be examined by the accounting profession's standard setting authorities as to the impact such a practice has on an accountant's independence. It would seem that some "cooling off period" perhaps, one to two years, would not be unreasonable before a senior official on an audit can be employed by the client.

[148] In response to these and other concerns, the AICPA Board of Directors suggested in 1993 that we prohibit a public company from hiring the partner responsible for the audits of that company's financial statements for a minimum of one year after the partner ceases to serve that company. *See* AICPA Board Report, *supra* note 147, at 4. Our staff has indicated, however, that, if implemented, this suggestion would take the form of the firm's independence being impaired for one year from the date the individual left the audit engagement, rather than as a prohibition on hiring the former partner. Staff Report, *supra* note 23, at 52 n.146. *See also* Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), "Fraudulent Financial Reporting: 1987–1997: An Analysis of U.S. Public Companies," at 21 (1999) (finding, with respect to companies where there was fraudulent financial reporting, that among 44 companies for which there was information available on their CFO's background, 11 percent of the companies' CFOs had previous experience with the companies' audit firms immediately prior to joining the company).

[149] To avoid adverse tax consequences to the individual, accounting firms often settle their retirement obligations to former partners by fully funding a "rabbi trust" from which payments will be made to the individual. As defined by proposed rule 2–01(f)(18), a "rabbi trust" is an irrevocable trust whose assets are not available to the firm until all benefit obligations have been met but are subject to claims of the firm's creditors in bankruptcy or insolvency.

[150] *See* Letter from Association for Investment Management and Research to Arthur Siegel, Executive Director, ISB, dated Feb. 29, 2000, at 4 ("AIMR Letter").

[151] Of course, once an employee of an accounting firm, the person would also be subject to all other independence requirements applicable to other firm members. For example, if the former audit client employee becomes a covered person, he or she could have no financial interest in the audit client. *See* proposed rule 2–01(c)(1)(i)(A).

audit might require the former employee to audit his or her own work. Accordingly, the rule provides that independence is impaired unless the former employee does not participate in and is not in a position to influence the audit of the financial statements of the audit client or its affiliate for any period during which he or she was employed by or associated with that audit client or its affiliate.

We solicit comment on whether additional or other procedures should be implemented when a former employee of an audit client joins the accounting firm? If so, what should they be? Should the rule also apply to professional employees of the accounting firm?

3. Business Relationships

Proposed rule 2–01(c)(3) describes the business relationships that impair an auditor's independence from an audit client. It continues the Codification's current standard that an auditor's independence with respect to an audit client is impaired when the accounting firm, or a covered person in the firm, has a direct or material indirect business relationship with an audit client, an affiliate of an audit client, or either of their officers, directors, or shareholders holding five percent or more of the audit client's equity securities.[152] As is true today, under proposed rule 2–01(c)(3), an accountant's independence is not impaired solely because the accountant has a business relationship with the audit client in which the accountant provides professional services to the audit client except for those specified in rule 2–01(c)(4) or acts as "a consumer in the ordinary course of business."

Because of recurring issues in this area, we have attempted to set forth in proposed rule 2–01(f)(11) a workable definition of "consumer in the ordinary course of business." In general, an accountant acts as a "consumer in the ordinary course of business" when the accountant buys "routine" products or services on the same terms and conditions that are available to the seller's other customers or clients.[153] An accountant is not acting as a "consumer" if it resells the client's products or services. Likewise, a purchase is not "in the ordinary course of business," nor is the product "routine," if it is significant to the firm or its employees. For example, an over-the-counter purchase of office supplies at customary prices would be considered in the ordinary course of business. Purchasing items other than on normal, customary terms, or acting as an agent, value-added reseller, or marketer of the client's products, however, would not be acting as a consumer in the ordinary course of business.

We considered whether to address each business relationship that would impair an auditor's independence. Because there are vast, varied, and constantly shifting types of business relationships, we determined not to attempt to identify all such business relationships. We have retained, however, a number of the examples currently found in the Codification to provide guidance on permissible and impermissible business relationships.[154]

We solicit comment on all aspects of paragraph (c)(3). Is the definition of "consumer in the ordinary course of business" appropriate? If not, how should it be modified? Should an auditor be allowed to resell its audit client's products? For example, should an auditor be allowed to act as a reseller of a client's software products to other clients of the auditor? Would the answer change if the sales to the auditor exceed some percentage of the client's revenues such as ten percent?

Should an auditor be permitted to enter into any of the following types of business relationships with an audit client without impairing independence, and why or why not: (i) Strategic alliances such as joint marketing arrangements of the products or services of the audit client or auditor; (ii) joint ventures or other similar activities to develop or market new products or services; or (iii) prime/subcontractor relationships? Should any of these relationships be permitted if they do not result in the auditor and audit client sharing any revenues, costs or profits? Should any of these relationships be permitted if they do not result in any revenue, cost or profit sharing that is material to the audit partner, the audit firm, or the audit client?

Are there other business relationships that impair independence that the rules do not cover? Should we retain the "direct or material indirect business relationship" formulation or are there other formulations that would provide additional or more precise guidance? Should we adopt rules addressing particular business relationships based on the examples of direct and material indirect business relationships in the Codification?

In addition, we request comment on business relationships between other persons or entities related to the accountant that might affect the independence of the accountant. For example, suppose that XYZ Corp., an audit client of ABC Accounting Firm, manufactures coffee mugs. The spouse of Partner A, who is the partner in charge of the audit of XYZ, purchases coffee mugs from XYZ Corp., applies decorative logos, and sells the mugs to customers. The spouse purchases the mugs at a price that is below the normal selling price. Would a reasonable investor perceive that accountant's independence to be impaired?

D. Non-Audit Services

Historically, accounting firms have provided consulting and other non-audit services to their audit clients.[155] As noted elsewhere in this release, however, for many years consulting services for SEC registrants constituted a relatively minor portion of the firms' revenues.[156] In recent years, firms have expanded the scope of services they offer to audit and other clients.[157]

Current Rule 2–01 states that our independence requirements apply to "any professional employee involved in providing [on behalf of an accounting firm] any professional service" to an audit client. The current rule further states that in making independence determinations, we will consider "all relevant circumstances, including evidence bearing on all relationships between the accountant and [the client]."[158] Our independence requirements, therefore, apply to all persons at an accounting firm who provide non-audit services to audit clients, and we consider those services in making independence determinations. These principles remain unchanged in the rule proposal.

The proposed rules, like our current independence requirements, govern

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[152] *See* Codification § 602.02.g. As under the current business relationship standard, the term "business relationships" does not encompass sales of professional services by the accounting firm to a company.

[153] The definition of "consumer in the ordinary course of business" does not include situations in which an accountant sells, rather than purchases, the audit client's products or services.

[154] *See infra* Section IX.

[155] The AICPA describes "consulting services" as follows:

> Consulting services differ fundamentally from the CPA's function of attesting to the assertions of other parties. In an attest service, the practitioner expresses a conclusion about the reliability of a written assertion that is the responsibility of another party, the asserter. In a consulting service, the practitioner develops the findings, conclusions, and recommendations presented. The nature and scope of work is determined solely by the agreement between the practitioner and the client. Generally, the work is performed only for the use and benefit of the client.

AICPA Professional Standards: Consulting Services—Definitions and Standards, CS § 100.02.

[156] *See supra* Section II.C; *see also* Appendix B.

[157] *See* Appendix A.

[158] Rule 2–01(c).

non-audit services provided by an accountant to an audit client during the audit and professional engagement period. They do not govern non-audit services when provided to persons other than audit clients. We request comment on this approach.

1. The Proposals

(a) *General Rule.* Proposed rule 2–01(c)(4) states the general rule that an auditor's independence is impaired if providing services to an audit client or its affiliate is inconsistent with the standard in proposed rule 2–01(b). The rule is derived from current Rule 2–01 and our releases that have been incorporated into the Codification. Proposed rule 2–01(c)(4) identifies certain services that are incompatible with the principles set forth in proposed rule 2–01(b), even when the audit client, by contract or otherwise, accepts ultimate responsibility for the work performed or for any decision made.

The rule does not provide an all-inclusive list of the services that are incompatible with proposed rule 2–01(b). Whether the provision of a non-audit service not specified in the proposed rule impairs an accountant's independence will be measured against the four general principles set forth in proposed rule 2–01(b). We request comment on whether there are any services listed in Appendix A that would raise independence concerns if provided by the accounting firm to the audit client? If so, what are they, and why do they raise independence concerns? Are there other non-audit services that are not on the list in Appendix A that raise independence concerns? If so, what are they, and why do they raise independence concerns?

We request comment on whether, if you are a registrant, your company, board of directors, or audit committee have a policy or practice of not hiring your independent auditors to provide non-audit services, other than income tax services. We request comment from registrants about what non-audit services you hire your auditor to provide, other than tax services.

We also request comment on whether allowing certain non-audit services to be provided to audit clients is a viable approach, or whether banning all non-audit services for audit clients is the only appropriate approach. Should such a ban exclude tax services?

(b) *Specific Non-Audit Services that Impair Independence.*

(i) *Bookkeeping or other services related to the audit client's accounting records or financial statements.* Currently, an auditor's independence is impaired if the auditor provides bookkeeping services to an audit client or an audit client's affiliate.[159] Proposed rule 2–01(c)(4)(i)(A) continues that position. When an accounting firm provides bookkeeping services for an audit client, the auditor auditing that client's financial information may be auditing his or her accounting firm's work. If, during an audit, an auditor must audit the bookkeeping work performed by his or her accounting firm, it is questionable that the auditor could, or that reasonable investors would believe that the auditor could, remain objective and impartial. If the auditor found an error in the bookkeeping, the auditor could well be under pressure not to raise the issue with the client, if raising the issue could jeopardize the firm's contract with the client for bookkeeping services.

Because there may be bookkeeping tasks that do not involve financial information or that do not otherwise need to be considered in the audit, we have narrowed the definition to services involving maintaining or preparing the audit client's or its affiliate's accounting records or financial statements, or generating financial information to be disclosed by the audit client, or its affiliate, to the public.[160]

We request comment on whether performing bookkeeping or preparing financial records or statements for an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence. If not, why not? Should the definition of bookkeeping be further clarified? If so, how? Does the definition cover all the bookkeeping services that would impair an accountant's independence?

(ii) *Financial information systems design and implementation.* Under the proposed rule, an accountant is not independent if the accountant designs or implements a hardware or software system that is or will be used to generate information that is significant to the audit client's financial statements taken as a whole. By "significant" we refer to information that is reasonably likely to be material to the financial statements of the audit client or its affiliate. Since materiality determinations cannot be made before financial statements are generated, the accounting firm by necessity will need to evaluate the general nature of the information rather than only system output during the period of the audit engagement. An accountant, for example, would not be independent of an audit client for which it designed an integrated Enterprise Resource Planning (ERP) system.[161]

Designing or implementing systems affecting the financial statements may create a mutual interest between the client and the accountant in the success of that system, supplant a fundamental business function, or result in the accountant auditing his or her own work. For example, if an auditor designs and installs a computer system that generates the financial records, and that system generates incorrect data, the accountant is placed in a position of having to report on its own work. When an accountant audits the accountant's own work, investors may perceive that the accountant will be unwilling to challenge the integrity and efficacy of the client's financial or accounting information collection systems that the accountant designed or implemented.

Our proposed rule would not, however, cover services in connection with the assessment, design, and implementation of internal accounting and risk management controls. Accountants often gain an understanding of their audit clients' systems of internal accounting controls. With this insight, auditors often become involved in diagnosing, assessing, and recommending to audit committees and management, ways in which their audit client's internal controls can be improved or strengthened. These services can be extremely valuable to companies, and they may also bring benefits to the performance of a quality audit, such as through increased knowledge of the audit client's business.

At the same time, we recognize that when an auditor designs and implements its audit client's internal accounting and risk management control systems, some might believe that the auditor will lack objectivity if called upon to audit financial statements that are derived at least in part from data from those systems. Testing of these controls is often an integral part of any

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[159] Codification § 602.02.c.i.

[160] As noted in section 602.c.iii of the Codification, we determined not to raise questions of independence solely because a foreign office of, or a foreign firm associated with, a domestic accounting firm performs limited, routine, or ministerial bookkeeping services for a foreign division, subsidiary or investee of a domestic registrant which is a client of that firm. The Commission stated that a comparison of the fees for the bookkeeping services and the audit should provide a fair test for determining the significance of the work to the registrant and the accountant and, indirectly, the possible effect on the firm's independence. Accordingly, the Commission limited the fees for such services to the greater of $1,000 or one percent of the total audit fee for the registrant. The Commission continues to recognize the need for relief in this area and has therefore retained this section of the Codification.

[161] This includes designing or implementing such a system for an affiliate of the audit of client, if the system is used to generate information that is significant to the audit client's financial statements taken as a whole.

audit of the financial statements of a company. Do such services result in the auditor auditing their own work? Would such services impair an auditor's independence if the auditor were required to issue an opinion on the effectiveness of the control systems that he or she designed or implemented?

We believe there is relatively little reason for concern about an audit firm's work on hardware or software systems that are unrelated to the audit client's financial statements or accounting records. Accordingly, our proposed rule does not prohibit an accounting firm from providing such services for non-financial or tax purposes where the results of the valuation do not have a direct impact on the financial statements.

We request comment on whether designing or implementing financial information systems poses a threat to an auditor's independence. Is an auditor's independence impaired when the auditor designs, selects or helps select, implements, or tests computer software and hardware systems that generate financial data used in or underlying the financial statements? Why or why not?

Whether a system is used to generate information that is "significant" to the audit client's financial statements may depend on the size of the engagement. Does the magnitude of the fees for such services make a difference? For example, if the auditor is hired to do a major new system design and implementation for which the fees will exceed the audit fee, is the auditor's independence impaired or would reasonable investors perceive the auditor's independence to be impaired? What if the consulting fees do not exceed the audit fee, but are significant in relation to the audit fee? What if the consulting fees are much larger than the audit fee?

Is having the audit committee pre-approve these computer systems consulting arrangements sufficient to monitor and ensure the auditor's independence? Why or why not? Would disclosure of such an arrangement make a difference? Why or why not?

Some believe that with the current pace of technological innovation, the quality of audits in the future will be even more dependent on internal controls over the electronic processing of information and data. If so, is auditor independence impaired if auditors are permitted to design and implement the systems that process the information and data, then audit these systems in the course of the audit engagement?

(iii) *Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.* The proposals would provide that the auditor is not independent if the auditor provides appraisal or valuation services, fairness opinions or contribution-in-kind reports,[162] where there is a reasonable likelihood that the results will be audited by the auditor.[163] Appraisal and valuation services include any process of valuing assets, both tangible and intangible, or liabilities. They include valuing, among other things, in-process research and development, financial instruments, assets and liabilities acquired in a merger, and real estate. Fairness opinions and contribution-in-kind reports are opinions and reports in which the firm provides its opinion on the adequacy of consideration in a transaction. Providing these services to audit clients raises several auditor independence concerns. When it is time to audit the financial statements, the accountant could well end up reviewing his or her own work, including key assumptions or variables that underlie an entry in the financial statements.[164] Also, where the appraisal methodology involves projection of future results of operations and cash flows, the accountant that prepares the projection could have a mutuality of interest with the client in attaining forecast results. The auditor may feel constrained by the valuation and appraisal issued by the firm, and as a result, the auditor may be unable to evaluate skeptically and without bias the accuracy of that valuation or appraisal. Our proposals do not prohibit an accounting firm from providing such services for non-financial (*e.g.*, tax) purposes.

We request comment on whether providing appraisal or valuation services and issuing fairness opinions or consideration-in-kind reports to audit clients would impair, or appear to reasonable investors to impair, an accountant's independence. Does providing valuation or appraisal services that are unrelated to the financial statements, such as for income tax purposes impair an accountant's independence?

Some believe that providing valuations and appraisals does not impair the auditor's independence when the amounts involved are likely to be immaterial to the financial statements that later would be reviewed by the auditor. Should we provide an exception in our rule to cover this situation? If so, would the auditor/consultant be able to determine in advance of the valuation work being performed whether amounts may be material to the financial statements currently and in the future?

Are there certain types of appraisal or valuation services, or certain instances in which they are provided, that do not raise auditor independence concerns? Are there circumstances in which an accounting firm may be required by law or regulation to provide such services, either in the United States or abroad? If so, please describe them. How should our rules address them?

(iv) *Actuarial services.* The SECPS defines actuarial services to include: (i) assisting management to develop appropriate methods, assumptions, and amounts for policy and loss reserves presented in financial reports, based on the company's history, current practice and future plans; (ii) assisting management in the conversion of financial statements from a statutory basis to one in conformity with GAAP; (iii) analyzing actuarial considerations and alternatives in federal income tax planning; and (iv) assisting management in the financial analyses of various matters, such as proposed new policies and business acquisitions.[165] Providing actuarial services may affect amounts reflected in an audit client's financial statements and result in an accountant auditing his or her own work.

The proposals, therefore, provide that the accountant is not independent if the auditor provides any advisory service involving the determination of policy reserves and related accounts for the audit client or its affiliate, unless the audit client uses its own actuaries or third-party actuaries to provide management with the primary actuarial capabilities. The SECPS already prohibits member accounting firms from providing certain actuarial services.

Does providing actuarial services to an audit client, such as the calculation of actuarial reserves or determining key actuarial assumptions, impair an auditor's independence? Sometimes auditors provide consulting services to their audit clients concerning employee benefit plans. While the consulting services may range from providing tax advice to complete development and ongoing administration of the plan and plan records, many of these services

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[162] Contribution-in-kind reports in certain foreign countries require the auditor to express an opinion on the fairness of a transaction, the value of a security, or the adequacy of consideration to shareholders.

[163] The ISB has identified threats to the independence of firms that perform appraisal and valuation services for audit clients. *See* ISB, Discussion Memorandum 99–3, *supra* note 9, at 7–9 (Sept. 1999).

[164] *See generally* Codification § 602.02.c.

[165] *See* SECPS, Organizational Structure and Functions of the SECPS of the AICPA Division for CPA Firms, at § 1000.35 (June 1997) ("SECPS Manual").

require computation of future benefit levels. Does providing such services impair an auditor's independence with respect to the audit client or the audit of the plan?

Auditors also sometimes prepare or assist an audit client in preparing its annual pension plan reports, from which the financial data are derived to be used in recording the appropriate pension plan information in the financial statements. Does providing this service for an audit client impair the independence of the auditor? Would the auditor's independence be impaired if management provided all of the significant data and key assumptions, and the auditor merely input these data into its computer model to generate the necessary information for the accounting records and financial statements?

Are there certain circumstances under which an accountant can provide actuarial services to an audit client without impairing independence? Have we appropriately described the actuarial services that give rise to independence concerns?

(v) *Internal audit outsourcing.* The line between performing management functions and performing an audit is not always clear. Our staff has received numerous questions about where to draw this line in general, and where to draw this line with respect to "internal audit outsourcing" in particular. Companies "outsource" internal audit functions by contracting with an outside source to perform all or part of their audits of internal controls. As emphasized by the Committee of Sponsoring Organizations ("COSO"), internal auditors play an important role in evaluating and monitoring a company's internal control system.[166] As a result, internal auditors are, in effect, part of a company's system of internal accounting control.

Since the external auditor generally will rely, at least to some extent, on the internal control system when conducting the audit of the financial statements,[167] the auditor would be relying on its own work performed as part of the internal controls and internal audit function. In essence, by outsourcing the internal audit function, the auditor assumes a responsibility of the company and becomes part of the company's control system, as opposed to providing consulting advice. Also, there may well be a mutuality of interest where management and the external auditor become partners in creating an internal control system and share the risk of loss if that system proves to be deficient.

Proposed rule 2–01(c)(4)(i)(E) provides that an auditor is not independent when the auditor performs certain internal audit services for an audit client or an affiliate. This does not include nonrecurring evaluations of discrete items or programs that are not in substance the outsourcing of the internal audit function. It also does not include operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements.

In 1996, the Ethics Committee of the AICPA published a revised ruling concerning internal audit outsourcing.[168] It states that AICPA members may perform "extended audit services," including internal audit outsourcing services, provided the member or his or her firm does not act or appear to act in a capacity equivalent to a member of client management or as an employee. Under the ruling, an AICPA member may conduct "separate evaluations" of the effectiveness of a client's internal controls.[169] The client, however, among other things, must designate a competent member of management to: (i) Be responsible for the internal audit function, (ii) determine the scope, risk, and frequency of internal audit activities, including those to be performed by the member, (iii) evaluate the findings and results arising from the internal audit activities, and (iv) evaluate the adequacy of the audit procedures performed and the findings resulting from performance of those procedures. The ruling also contains examples of activities that, if performed by the member, would be considered to impair that member's independence.[170] The staff has interpreted the language of this ruling narrowly: if the performance of internal audit work entails *any* managerial or employee function, audit independence is adversely affected.

The COSO Report defines certain tasks for management related to separate evaluations, including deciding on scope; analyzing control evaluation work by internal auditors; prioritizing high risk areas; considering the scope, time-frame, methodology, tools, input to be used, and means of reporting findings; reviewing findings; and ensuring follow-up actions are taken. *Id.* at 76.

As noted above, the proposal does not follow the AICPA because we believe performing an internal audit function results in the auditor assuming a management function and, during the audit, relying on a system that the auditor has helped to establish or maintain. We solicit comment on whether internal outsourcing would impair, or would appear to reasonable investors to impair, an auditor's independence. Does it impair an auditor's independence if the auditor does not outsource the internal audit function of the audit client, but rather performs individual audit projects for the client? Would it impair the auditor's independence if the auditor performs only operational audits that are unrelated to the internal controls, financial systems, or financial statements?

(vi) *Management functions.* Proposed rule 2–01(c)(4)(i)(F) provides that an accountant's independence is impaired with respect to an audit client for which the accountant acts, temporarily or permanently, as a director, officer, or employee of an audit client, or an affiliate of the audit client, or performs any decision-making, supervisory, or ongoing monitoring functions. This provision is consistent with the provisions of existing Rule 2–01(b).

We request comment on whether there are circumstances under which an accounting firm can perform or assume management functions or responsibilities for an audit client without impairing independence?

(vii) *Human resources.* Proposed rule 2–01(c)(4)(i)(G) provides that an auditor's independence is impaired with respect to an audit client when the

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[166] *See also* Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), *Internal Control—Integrated Framework*, at 7 (1992) (the "COSO Report").

[167] AICPA SAS No. 55, AU § 319 (effective for audits on or after Jan. 1, 1990).

[168] AICPA Code of Professional Conduct, ET § 101.15 (Omnibus Proposal of Professional Ethics Division Interpretations and Rulings (June 1996)).

[169] COSO Report, *supra* note 166, discussed what constitutes an acceptable internal control system. Monitoring, according to the report, has two parts: ongoing monitoring activities and separate evaluations. The first is a management function, and the second is not.

"Ongoing monitoring" occurs in the course of operations, and includes regular management and supervisory activities. *Id.* at 3. Ongoing monitoring procedures are built into the normal recurring operations of an entity. *Id.* at 72. Separate evaluations, on the other hand, are not conducted on a continuing basis. The scope and frequency of separate evaluations depend primarily on management's assessments of the effectiveness of the ongoing monitoring procedures and the amount of information necessary for management to have reasonable assurance about the effectiveness of the internal control system. *Id.* at 3, 71.

[170] *Supra* note 168. These examples include the performance of ongoing monitoring activities that affect the execution of transactions or ensure that transactions are properly executed, accounted for, or both; and the performance of routine activities in connection with the client's operating or production processes that are equivalent to those of an ongoing compliance or quality control function.

auditor recruits, hires, or designs compensation packages for, officers, directors, or managers of the audit client or its affiliate. Under the proposed rule, an auditor's independence also is impaired when the auditor advises an audit client about its or its affiliate's management or organizational structure, when it develops employee evaluation programs, or conducts psychological or other formal testing of employees.[171]

Assisting management in human resource selection or development places the auditor in the position of having an interest in the success of the employees that the auditor has selected, tested, or evaluated. Accordingly, an auditor may be reluctant to suggest the possibility that those employees failed to perform their jobs appropriately, or at least reasonable investors might perceive the auditor to be reluctant, because doing so would require the auditor to acknowledge shortcomings in its human resource service. The auditor would also have other incentives not to report such employees' ineffectiveness, including that the auditor would identify and be identified with the recruited employees.

We request comment on whether providing human resource services would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there any types of human resource and employee benefit services rendered that are included in Appendix A that do or do not impair an auditor's independence?

Is an auditor's independence impaired when the accounting firm does an executive search for an audit client? Would an auditor's independence be impaired if the auditor provided personnel hiring assistance for only non-executive or non-financial personnel?

Does it impair an auditor's independence if the auditor provides consultation with respect to the compensation arrangements of the company's executives? Is an auditor's independence impaired if the auditor outsources an audit client's human resource department or similar functions? Are there circumstances in which outsourcing these functions would not impair independence?

(viii) *Broker-dealer, investment adviser or investment banking services.* The proposed rule provides that an accountant is not independent if the accountant acts as a securities professional for an audit client or an affiliate of the audit client. Examples include serving as a broker-dealer, promoter, underwriter, investment adviser, or analyst of the audit client's or an affiliate of the audit client's securities; designing the audit client's or its affiliate's system for compliance with broker-dealer or investment adviser regulations; or recommending the purchase or sale of securities issued by an audit client or its affiliate. Our existing regulations take note of the mutuality of interest created by providing services of this type.[172] Selling—directly or indirectly—an audit client's securities is incompatible with the auditor's responsibility of assuring the public that the company's financial condition is fairly and accurately presented.

We solicit comment on whether providing these services would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there situations in which an accountant could serve as a promoter or underwriter of an audit client's or an affiliate of an audit client's securities without impairing independence?

Broker-dealers often give advice and recommendations on investments and investment strategies. Investment advisers give similar advice. The value of that advice is measured principally by the performance of a customer's securities portfolio. When the customer is an audit client, the accountant has an interest in the value of the audit client's securities portfolio, even as the accountant values the portfolio as part of an audit.

When an accountant, in any capacity, recommends to anyone (including non-audit clients) that they buy or sell the securities of an audit client or an affiliate of the audit client, the accountant has an interest in whether those recommendations were correct. That interest could affect the audit of the client whose securities, or whose affiliate's securities, were recommended. For example, if an auditor uncovers an accounting error in a client's financial statements, and the auditor had, in an investment adviser capacity, recommended that client's securities to investment clients, the auditor performing the audit may be reluctant to recommend changes to the client's financial statements if the changes could negatively affect the value of the securities recommended by the auditor to its investment adviser clients. We solicit comment on whether recommending the purchase or sale of the securities of an audit client or an affiliate of an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence. Will there be an independence impairment if the accountant's broker-dealer customers or investment adviser customers hold substantial positions in audit client securities, even though the accountant did not recommend those securities? We request comment on whether acting as a broker-dealer or an investment adviser for an audit client or an affiliate of an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence.

An accountant acting as a securities analyst for an audit client or an affiliate of an audit client has a mutuality of interest with the audit client. An analyst often prepares research reports that are used to promote or market the securities of their client. In addition, an auditor may be placed in a conflict if the audit results in the auditor obtaining information that casts doubt on the analyst's opinion. We solicit comment on whether serving as a securities analyst for an audit client's or an affiliate of an audit client's securities would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there circumstances in which an accountant could act as a securities analyst for an audit client's or an affiliate of an audit client's securities without impairing independence?

Independence issues also arise when an accountant designs an audit client's or an affiliate of an audit client's system for complying with broker-dealer or investment adviser regulations. To the extent that, during the performance of the audit, the auditor relies on the controls that are part of compliance systems designed by the accountant, the accountant will end up in the position of auditing its own work.

We solicit comment on whether designing an audit client's or an affiliate of an audit client's system for compliance with broker-dealer or investment adviser regulations would impair, or would appear to reasonable investors to impair, an auditor's independence. If an accountant has an audit client who is a broker-dealer or an investment adviser, and the accountant designs the client's system for regulatory compliance, will the financial audit necessarily encompass reviewing or auditing any aspect of that system or its performance?

We further solicit comment on the scope of the proposal. Are there other securities professional services that the

[171] This proposal is consistent with SECPS Manual § 1000.35, *supra* note 165.

[172] Rule 2–01(b), 17 CFR 210.2–01(b); Codification § 602.02.e.iii. These regulations indicate that activities such as recommending securities, soliciting customers, and executing orders provide investors with sufficient reason to question the auditor's ability to be impartial and objective.

rule should expressly identify as impairing independence?

(ix) *Legal services.* The proposed rule provides that an accountant is not independent of an audit client if the accountant provides any service to the audit client or its affiliates that, in the jurisdiction in which the service is provided, may be provided only by someone licensed to practice law. This proposal is consistent with current regulations, under which legal services are deemed to be incompatible with auditor independence.[173] A lawyer's core professional obligation is to advance clients' interests. Rules of professional conduct require the lawyer to "represent a client zealously and diligently within the bounds of the law."[174] The lawyer must "take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor * * *. In the exercise of professional judgment, a lawyer should always act in a manner consistent with the best interests of the client."[175] Unlike an auditor, a lawyer takes basic direction from the client. In addition, a lawyer has a near absolute duty to safeguard the confidences of his or her client.[176] We have long maintained that an individual cannot be both a zealous legal advocate for management or the client-company, and maintain the objectivity and impartiality that are necessary for an audit. As noted above, the Supreme Court has agreed with our view. In *Arthur Young*, the Supreme Court emphasized, "If investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost."[177]

We recently reiterated our views in a settled enforcement action.[178] In addition, the staff wrote to the American Bar Association and to its Commission on Multidisciplinary Practices ("ABA Commission") explaining the impairment of auditor independence that is created when a firm provides both audit and legal services to an entity required to file audited financial statements with the SEC.[179] In its final report, the ABA Commission adopted this view. In discussing legal and attest services, the report states, "The Commission explicitly recognizes their incompatibility. It does not believe that a single entity should be allowed to provide legal and audit services to the same client."[180] We continue to believe that a fundamental conflict exists between the roles of an independent auditor and an attorney.[181]

We request comment on whether providing legal services to an audit client or an affiliate of an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there any particular legal services that should be exempted from the rule? Does making the rule's application depend upon the jurisdiction in which the service is provided leave the rule subject to any significant uncertainty, or pose the prospect of any significant complexity or unfairness? Should there be any exception for legal services provided in foreign jurisdictions? If so, why?

(x) *Expert services.* The proposed rule states that an accountant's independence is impaired as to an audit client if the accountant renders or supports expert opinions for the audit client or an affiliate of the audit client in legal, administrative, or regulatory filings or proceedings ("expert services"). Clients retain experts to lend authority to their contentions in various proceedings by virtue of the expert's specialized knowledge and experience. The provision of expert services by the accountant creates, at the very least, the appearance that the accountant is acting as the client's advocate in pursuit of the client's interests. The appearance of advocacy (and the corresponding appearance of mutual interest) created by providing expert services is sufficient to deem the accountant's independence impaired.[182] Our proposals would not prohibit an auditor from testifying as a fact witness to its audit work for a particular audit client. In those instances, the auditor is merely providing a factual account of what he or she observed and the judgments he or she made.

We solicit comment on whether providing expert services on behalf of an audit client or an affiliate of an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there circumstances in which providing audit clients with expert services in legal, administrative, or regulatory filings or proceedings should not be deemed to impair independence? We also solicit comment on whether an auditor should be permitted to serve as a non-testifying expert for an audit client in connection with a proceeding in which the auditor's work does not provide a basis for testimony by an expert.

An auditor may provide an audit client a written report or "opinion" on the application of an accounting principle to a particular transaction in accordance with AU § 625. Such advice aids the audit client in determining the appropriate accounting for a transaction. However, an auditor may also provide such an opinion that is not used primarily by the audit client in the preparation of its financial statements, but rather to market a product to third parties. Does it impair the independence of the auditor when it issues an opinion on the application of an accounting principle that is used primarily to market a product to third parties?

(xi) *Tax services.* The proposed rule would not affect tax-related services provided by auditors to their audit clients. Tax services are unique, not only because there are detailed tax laws that must be consistently applied, but also because the Internal Revenue Service has discretion to audit any tax return. We do not think that the Congressional purpose for requiring independent audits is thwarted by an accountant providing traditional tax preparation services to an audit client or an affiliate of an audit client.

We are considering whether special considerations apply when the auditor provides a tax opinion for the use of a third party in connection with a business transaction between the audit client and the third party. The tax opinion may be vital in the audit client's efforts to induce the third party

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[173] Codification § 602.02.e.ii.

[174] *See, e.g.*, D.C. Rules of Professional Conduct, Rule 1.3(a).

[175] *Id.* at cmts. 1, 5.

[176] *Id.* at Rule 1.6.

[177] *Arthur Young, supra* note 19, at 819–20 n.15.

[178] *In the Matter of Charles Falk*, AAER No. 1134 (May 19, 1999) (formally disciplining an attorney/accountant who gave legal advice to an audit client of another partner in his accounting firm).

[179] Letter from Harvey J. Goldschmid, Lynn E. Turner, and Richard H. Walker, SEC, to Philip S. Anderson, President, American Bar Association, dated July 12, 1999; Letter from Lynn E. Turner, Chief Accountant, SEC, to Sherwin P. Simmons, Chair, Commission on Multidisciplinary Practice, dated Jan. 22, 1999. Except with respect to the matter of auditor independence, we have not taken a position on the development of multidisciplinary practices.

[180] American Bar Association Commission on Multidisciplinary Practice, *Report to the House of Delegates*, at 5 (July 2000) (footnote omitted). The report is available at www.ABAnet.org/cpr/mdpfinalrep2000.html.

[181] *See also* ISB, "Discussion Memorandum 99–4: Legal Services" (Dec. 1999).

[182] Existing auditor independence regulations recognize the problem posed by expert services. *See* Codification §§ 601.01 & 602.02.e. Moreover, in connection with its report on auditor independence, the GAO cited a congressional staff report issued in 1977 that "raised concerns involving situations where accountants testify before public bodies advocating positions that are favorable to their clients." GAO Report, *supra* note 45, at 47. That congressional study related to auditing firms' testimony before Congress on oil and gas pricing issues and stated, "Conflicts of interest occur when 'Big Eight' firms influence governmental authorities on matters which affect their corporate clients." Subcomm. on Reports, Accounting and Management of the Senate Comm. on Government Operations, "The Accounting Establishment: A Staff Study," 95th Cong., 1st Sess., Doc. No. 95–34, at 67 (1977).

to enter into the transaction, particularly when the transaction is tax-driven. Under those circumstances, the auditor may be acting as an advocate for the audit client by actively promoting the client's interests.

We request comment on whether providing tax opinions, including tax opinions for tax shelters, to an audit client or an affiliate of an audit client under the circumstances described above would impair, or would appear to reasonable investors to impair, an auditor's independence. Should the rules provide that independence is impaired whenever the auditor provides any tax opinion or any tax opinion that will affect the audit client's financial statements? Does rendering a tax opinion to an audit client affect an auditor's independence considering an auditor must reach an opinion that the financial statements taken as a whole, including the tax accounts, are fairly presented? Are there circumstances in which providing audit clients with tax opinions should not be deemed to impair independence? Are there other tax-related services that if provided to an audit client, would impair, or would appear to reasonable investors to impair, an auditor's independence?

2. Alternatives

We are considering a number of alternatives concerning scope of services. We encourage public comment on each alternative. We may adopt a rule based on one or more of these alternatives instead of the proposed rule or in combination with the proposed rule.

As discussed above, some have suggested that auditors should be prohibited from providing *any* non-audit service to audit clients.[183] We are considering drawing this bright line. This approach may provide investors with the greatest assurance of an auditor's independence. Some believe that such an approach should contain an exception, referred to as an exclusionary rule, that would permit non-audit services to be provided if: (i) Before any non-audit service is rendered to the audit client, the client's audit committee finds that special circumstances make it obvious that the best interests of the company and its shareholders will be served by retaining its audit firm or affiliate to render such non-audit service and that no other vendor of such service can serve those interests as well; (ii) a written copy of that finding is submitted promptly to the SEC and POB; and (iii) the company discloses such finding by the audit committee and the amount paid and expected to be paid to the audit firm or affiliate for such service in the company's next proxy statement for the election of directors.[184]

Is a complete break between audit and non-audit services necessary to give investors confidence that auditors will act without bias and with complete objectivity and independence? Would a complete break be useful for instilling such confidence in investors? Is the exclusionary rule a reasonable alternative to a prohibition on non-audit services? How should the exclusionary rule be modified?

We are also considering whether the rules should identify services that would not impair an auditor's independence. These would include services that are a natural outgrowth of the audit process, by building on information learned, and analyses conducted, during the audit. Examples might include business risk assessments, tax services, actuarial valuations of pension and other post-employment benefits or similar liabilities, consulting on the client's internal controls, and similar services. If we pursue this alternative, we might also include a provision stating that these services would nevertheless impair independence if they involved the auditor in making management decisions, operating the client's internal controls or information systems, marketing the client's products, or sharing risks or rewards with the client. We solicit comment on this alternative.

We are also considering whether the independence problems raised by expanded non-audit services can be avoided by structuring a firm to segregate its audit and non-audit businesses into separate autonomous units. Under this approach, the audit, income tax, and certain consulting practices, such as financial advisory and business risk management services, would be placed into an "audit entity." Information and computer technology services, e-commerce, business process reengineering, strategic planning, and other remaining consulting practices would be placed into a separate "consulting entity." Each entity would be managed by individuals not associated with the other entity. Both the audit entity and the consulting entity would be owned and to some extent governed by a common partnership or corporation ("holding entity"), whose board and management would be elected by the respective subsidiary entities. Partners of the audit entity and the consulting entity would own the holding entity.

The holding entity board of directors could be structured to give either entity—or neither—a majority of representatives on the board. The holding entity would retain certain rights, including the right to approve significant transactions, investment, borrowings, or business alliances. The audit and consulting entities would enter into agreements not to compete with each other. In addition, the holding entity, the audit entity, and the consulting entity might share similar, but not identical names, such as ABC Global, ABC LLP, and ABC Consulting, respectively. Partners in the audit entity and consulting entity might market the other entity's services.

In these arrangements, it is common that there would be some level of direct or indirect profit sharing between the audit and consulting entities. The amount of shared profits might depend on whether each met or fell below certain earnings targets. The impact of the profit sharing on an individual owner or partner in the audit or consulting entity would depend on his or her ownership interest in the respective entity. There could also be profit sharing between the audit entity and the consulting entity arising from investments made in other companies.

We request comment on whether such a structure would create a sufficient "firewall" between the audit entity and the consulting entity such that the auditor's independence would not be impaired with respect to any services provided by the consulting entity. Are there other ways to construct a firewall that should prevent the consulting entity from being considered an affiliate of the audit entity for purposes of determining the audit entity's independence? Would the independence of the audit entity be impaired if the consulting entity entered into business relationships, such as strategic marketing alliances, with an audit client of the audit entity? Would the independence of the audit entity be impaired if it continued to provide consulting services that generated revenues or profits that were material to the audit entity? Would the independence of the audit entity be impaired if the consulting entity acquired either material or immaterial investments in clients of the audit entity? Would the audit entity's independence be impaired if clients of the audit entity invested in the consulting entity?

[183] *See supra* note 38; The Panel on Audit Effectiveness ("O'Malley Panel"), *Report and Recommendations: Exposure Draft*, at ch. 5, p. 9 (May 31, 2000) ("O'Malley Report"). A copy of the O'Malley Report is available at www.pobauditpanel.org.

[184] *Id.* at 10.

We could require the audit entity and consulting entity to have completely separate management and financial operations, not to "co-brand" or use similar names or logos, not to share more than a *de minimis* amount of revenues or earnings (no organization's or partner's earnings would change by more than three percent annually), not to have an equity interest in each other, and not to be contractually or otherwise obligated to refer clients to one another. We request comment on whether any or all of these requirements would suffice to prevent impairments to the audit entity's independence resulting from activities or relationships of the consulting entity.

Under the auditing literature, an auditor is required to discuss matters that may affect the audit with personnel responsible for providing non-audit services to the client-company.[185] Does this requirement prevent the use of firewalls? Are investors harmed if communications between the audit and consulting entities are hindered? If communication is not hindered and there would remain a free flow of information between the audit and consulting entities, should we require other measures to assure independence of the auditors? If we were to pursue this alternative, are there other conditions that should be considered?

We are also considering an alternative that would provide that non-audit services impair independence only when the aggregate fees for those services surpass a certain level in relation to the audit fee. For example, we could adopt a rule stating that an auditor's independence would be impaired if the fees for all non-audit services (excluding tax services) during the most recent fiscal year, and the fiscal year in which the services would be provided, were or would be more than 25 percent of the fee for the audit of the client's financial statements. Does the size of the consulting fees relative to audit fees affect independence? Is the proposed fee comparison an appropriate measure by which to determine whether independence is impaired? If not, what level of non-audit service fees, relative to audit fees, should trigger an impairment of independence?

We also solicit comment on whether not to preclude certain non-audit services, but instead to require companies to disclose substantial information about all the non-audit services received from their auditors. Under this alternative, investors, and not regulators or other interested parties, would decide whether their perceptions of auditor independence were affected by the provision of non-audit services to audit clients. Is disclosure alone sufficient to preserve investor confidence in financial information? Can an impairment of auditor independence be avoided merely by disclosing it?

Several of the largest accounting firms have announced that they have sold, or intend to sell, certain non-audit service lines. We solicit comments relating to those developments and their bearing on this proposed rule. Will the economic forces that gave rise to these transactions cause all or most major accounting firms to divest all or a portion of their consulting service lines? Will economic forces cause those accounting firms that have divested certain consulting service lines to create similar service lines in the future?

3. Transition

We recognize that adoption of the proposed rules could require a registrant to decide between continuing to engage an auditing firm to audit its financial statements and continuing to engage that firm to provide certain non-audit services. It may not be feasible for the registrant and the auditor to cease all ongoing or scheduled non-audit engagements immediately. The company may need time to find a new provider of those services, to complete works in progress, and to provide for a smooth transition from one provider of services to another.

As a result, we propose to include a transition period of two years. Under the proposal, for the two years following the effective date of the rule, providing the non-audit services set forth in subsection (c)(4)(i) to an audit client or an affiliate of an audit client will not impair an accountant's independence from the audit client, if the following holds true: (i) The non-audit services are performed pursuant to a written contract in effect on or before the effective date of this rule; and (ii) performing those services would not impair the auditor's independence under pre-existing requirements of the Commission, the ISB, or the U.S. accounting profession. We believe that two years provides a reasonable time period for the auditor and the audit client to make the necessary elections and conform to the new rules.

We solicit comment on the proposed transition provisions. Do the proposed transition provisions allow an adequate period for implementation? Should the period be longer? If so, how long and why? Could the period reasonably be shorter? If so, what is the shortest transition period that we could reasonably adopt? Are there any conditions other than the two specified in the proposed rule that should be satisfied in order for the services specified in section 2–01(c)(4)(i) not to impair independence during the transition period? Should the condition described in section (c)(4)(ii)(A)—that the non-audit services performed during the transition period be pursuant to a written contract in effect on or before the effective date of the rule—require that the contract be in writing?

E. Contingent Fees

Proposed rule 2–01(c)(5) provides that an accountant is not independent under the standard of paragraph (b) of the rule if the accountant provides any service to an audit client or an affiliate of an audit client for a contingent fee, or receives a contingent fee from an audit client or an affiliate of an audit client. Contingent fee arrangements will typically result in the auditor having a mutual interest with the client. If, for example, a firm arranged to receive an audit fee of $200,000, but half of that fee was contingent upon the audit client successfully completing an initial public offering within the following year, the auditor would have a mutual interest with the audit client in the success of the client's planned IPO, and in the continuing viability of the audit client. That mutuality of interest could influence the auditor's conduct of the audit.

A "value added" fee may be another example of a contingent fee arrangement that presents independence problems. An accounting firm might arrange to provide a non-audit service to a client for a "value added" fee, meaning that the amount of the fee will depend upon the additional value, profit, or other benefit recognized by the client because of the non-audit service. For example, an audit may undertake a study of certain types of a client's expenditures in order to identify greater amounts of qualifying expenses that would result in greater income tax credits. Fees for such services might be based on a percentage of the tax credits generated, a base fee plus a percentage of tax credits generated over a pre-determined base amount, or a base fee plus a "value added" amount to be added to the base fee.

The accounting firm will have an interest in a high valuation of the benefit to the client from the service that had been provided for a contingent fee. In the situation described above, the accounting firm's economic benefit will be greater if the tax credits are maximized, a position that is

[185] AICPA SAS No. 22, AU § 311.04b and AUI § 9311.03.

inconsistent with an auditor who would have to act independently in assessing the accuracy of the impact on the income tax accounts and financial statements of the tax credits.

Rule 302 of the profession's ethics rules states that an AICPA member may not receive a contingent fee for the performance of any service. The AICPA Rule further states:

> [A] contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.[186]

Contingent fees are not specifically mentioned in our current regulations, though contingent fees are prohibited by the AICPA Rules.[187] In view of the increase in consulting activities and business relationships among accounting firms, their affiliates, and SEC registrants, however, we believe that it is advisable to state explicitly in the proposed rule that receiving contingent fees from an audit client impairs the auditor's independence.[188] Consistent with the AICPA Rule, however, our proposed definition of "contingent fees," in proposed rule 2–01(f)(12), contains an exception for fees that are fixed by courts or by federal, state, or local governments.

We solicit comment on whether contingent fee arrangements impair, or would appear to reasonable investors to impair, an auditor's independence. Are there circumstances in which, or particular types of services for which, a contingent fee arrangement would not impair independence?

We also solicit comments on whether our proposed definition of contingent fees is adequate. For example, an auditor might charge an audit client fees for professional services priced significantly below market price with the expectation of higher fees in connection with or after a securities offering. Though these arrangements may involve no legal obligations between the parties, they could have the same effect. Should our definition of "contingent fees" include fees that are substantially below the fair market value of the services provided? Are there fee arrangements, such as commissions, that are not included within the proposed definition but that should be included because they would impair an auditor's independence? Should the exception for fees fixed by courts or public authorities be deleted?

F. Quality Controls

Paragraph (d) of the proposed rules establishes a limited exception for accounting firms that maintain certain quality controls and satisfy certain conditions. We are proposing this exception to encourage accounting firms to adopt internal quality controls that ensure the independence of the firm's auditors. In addition, we are proposing this section so that accounting firms that have appropriate controls will not be deemed to lack independence when the particular auditor did not know, and was reasonable in not knowing, the circumstances giving rise to the impairment.

Notwithstanding attempts to maintain independence, we recognize that situations may arise where an accountant's independence inadvertently becomes impaired. A covered person's independence may be impaired, for example, because his or her family member made an investment in an audit client and the covered person was not aware of the investment. We propose, therefore, that in certain situations an accounting firm's independence will not be impaired if: (i) The covered person did not know, and was reasonable in not knowing, the circumstances that gave rise to the lack of independence; [189] (ii) the covered person's lack of independence was corrected promptly after the covered person or the accounting firm became aware of it; and (iii) the accounting firm maintains a quality control system that provides reasonable assurance that the accounting firm and its employees do not lack independence.

The third condition for the exception—a quality control system—is the first line of defense to guard against independence impairments with respect to a client. We understand that accounting firms vary significantly in size and in the nature of their practices, and we propose that the quality controls that the firm establishes be tailored to the firm's size and practice.

Proposed rule 2–01(d)(3)(i)–(vii) describe the elements of a quality control system that large accounting firms that audit public companies must have in place to qualify for the limited exception.[190] Many of these elements are set forth in a 1999 letter from our staff to the SECPS.[191] In the letter, the staff noted that the requirements reflect procedures that many accounting firms are implementing or already following. While the proposed rules would require only large firms to incorporate these elements in their control systems to qualify for the limited exception, we encourage all firms to adopt them and note that, depending on firm size and the nature of its practice, some of these elements may be essential to a quality control system. We discuss those elements here.[192]

1. Written Independence Policies and Procedures

The largest firm's independence policies and procedures must be reduced to writing. We expect that the policies and procedures would be comprehensive and would cover all professionals in the accounting firm and

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[186] AICPA Code of Professional Conduct, ET § 302.01.

[187] Under our current Codification, however, a contingent fee might constitute a financial interest in an audit client. For example, Codification § 602.02.b.v. states in part:

> If fees for audit *and other professional services* are owed to an accountant for an extended period of time and become material in relation to the fee expected to be charged for a current audit, there may be a question concerning the accountant's independence with regard to the current audit because the accountant may appear to have a direct interest in the results of operations of the client. Generally, prior year audit *and other unpaid fees* should be paid before a current audit engagement is commenced in order for the accountant to be deemed independent with respect to the current audit. (Emphasis added.)

[188] The staff has become aware of an increasing number of situations where firms are sharing with their consulting clients the risk that the firm's advice will add value to the project or transaction. In such situations, the firms are paid through contingent fees or similar arrangements, or payments to the firm may be deferred until contemplated transactions occur or benefits from the project begin to be realized. If the consulting client is also an audit client, however, these payment mechanisms would be considered to be contingent fees and impair the firm's audit independence.

[189] The exception does not apply to situations where the covered person was aware of the circumstances but did not know that the circumstances impaired the covered person's independence.

[190] Under the proposed rule, these procedures apply to those firms that have as clients 500 or more companies that have a class of securities registered with us under Section 12 of the Exchange Act, 15 U.S.C. § 78*l*.

[191] *See* Letters from Lynn Turner to Michael Conway, *supra* note 70. The SECPS adopted independence quality control membership requirements in April 2000.

[192] The quality control policies and procedures would consist of policies and procedures for the accounting firm. Proposed rule 2–01(d)(3)(i). Under the proposed rules, the term accounting firm includes affiliates of the firm. Proposed rule 2–01(f)(2). The definition of affiliate of the accounting firm would include, among other things, all persons and entities with which the firm is publicly associated by co-branding or using the firm's name, initials, or logo. Proposed rule 2–01(f)(4)(E). One effect of this provision, therefore, is that the term accounting firm would include all of the firm's affiliates worldwide. We expect that the written policies and procedures, therefore, would apply to the firm and its affiliates worldwide. *See* Letters from Lynn Turner to Michael Conway, *supra* note 70.

address all aspects of independence, including financial, employment, and business relationships, and fee arrangements.

2. Automated Systems

Large firms must have automated systems to identify financial relationships that may impair independence. We expect that these systems would provide a reasonable basis for tracking audit clients and financial investments by firm professionals. We anticipate that large firms will employ a sophisticated electronic system updated on a regular basis that would allow employees to post their investments to the system, and that would maintain a list of employee holdings and check them against a current list of clients. We propose to require these systems track only financial relationships.

3. Training

Large firm quality controls also must include annual or ongoing firm-wide training about auditor independence. This training should be designed to raise awareness and understanding of the applicable rules. Each professional in a large accounting firm should be able to demonstrate a minimum level of competence with respect to professional standards, legal requirements, and firm policies and procedures.

4. Internal Inspection and Testing

An internal inspection and testing program to monitor adherence to independence requirements is an important part of quality controls. To qualify for the limited exception, large firms must monitor compliance by their firm, their firm partners and their firm professional employees with the applicable independence rules of the profession, standard setters, and other regulatory bodies. This would entail procedures to audit, on a test basis, the completeness and accuracy of information submitted by employees and partners, and information in a client investment database. We expect that firms would have policies, procedures, and controls to monitor the investments of the firm itself and its pension and retirement plans, and any business arrangements with firm clients. We encourage firms to monitor compliance with their own policies and procedures as well.

5. Notice of Names of Senior Management Responsible for Independence

We also propose to require, with respect to large firms, that all firm members, officers, directors, and employees be notified of the name and title of the member of senior management responsible for compliance with the independence requirements. This would require firms to assign responsibility to members of senior management for ensuring compliance with the independence rules.

6. Prompt Reporting of Employment Negotiations

A firm professional would not be independent if he or she were to audit a client while simultaneously negotiating employment with that client. The quality control system of a large firm, therefore, would contain written policies and procedures to require firm professionals to report promptly to the firm as soon as they begin employment negotiations with an audit client. The large firm also would have appropriate procedures in place to remove any such professional from that audit client's engagement immediately and to review that professional's work related to that client.

7. Disciplinary Mechanism

Finally, we propose to require that large firms' quality control systems also have a disciplinary mechanism for enforcement.

We request comment on whether these are the appropriate elements of an effective quality control system. Are there other quality controls that should be required? For example, are these quality controls sufficient to address all situations where the audit firm leases personnel? Under the proposed rules, these procedures apply to those firms that have as clients 500 or more companies registered with us under section 12 of the Exchange Act. Is 500 the appropriate number? Is there another test that we should use to determine which firms must adhere to these procedures to qualify for the exception? We request comment on whether these are the appropriate controls on which to condition the exception, or whether other conditions would be appropriate.

The Big 5 firms are comprised of both U.S. and foreign members. Should these quality controls apply to both U.S. and the foreign firms? Do the foreign firms require a transitional or phase-in period? Should the exception also be provided to a firm that has adopted the specified quality controls, but did not know and was reasonable in not knowing that a partner or employee lacked independence, and the lack of independence was cured promptly after the firm became aware of it? Should the term "promptly" be defined in terms of a period of time?

G. "All Relevant Circumstances"

Proposed rule 2–01(e), reciting the standard currently found in current Rule 2–01(c), provides that we will look to all relevant circumstances in making independence determinations, including all relationships between the accountant and the audit client or its affiliates, and will not confine ourselves solely to the relationship between the audit client and the corporate entity whose name appears on the audit client's filing. Reasonable investors would consider all appropriate circumstances in evaluating an auditor's independence. Paragraph (e) of the proposed rule expresses this principle and makes clear that an independence determination cannot be based on an artificially limited set of the relevant facts.

We solicit comment on paragraph (e). Does paragraph (e) adequately capture the relevant circumstances for making an independence determination? Are there other considerations that should be expressly mentioned in this paragraph?

H. Proxy Disclosure Requirement

We are proposing to reinstate a proxy disclosure requirement. The proposed proxy disclosure requirement varies somewhat from the proxy disclosure requirement rescinded in 1982. Like the 1979–82 proxy disclosure requirement, the proposal would require companies to: (i) Describe specifically each professional service provided by its auditor, and (ii) indicate whether the company's audit committee or, where no such committee exists, board of directors approved the service and considered the effect that the provision of each disclosed service could have on the auditor's independence.[193] We are proposing to require disclosure of the specific non-audit services provided by an auditor to an audit client because we believe that an investor needs the information to form a judgment about independence. We also believe that investors will be aided by disclosure as to whether the audit committee or board of directors considered this issue: Among other things, this information will enable investors to make judgments about whether their interests have been adequately considered by the audit

[193] The O'Malley Panel has recommended that audit committees pre-approve non-audit services that exceed a threshold determined by the committee. This recommendation is consistent with the recommendations of the Blue Ribbon Committee regarding auditors' services. The Panel set forth factors for audit committees to consider in determining the appropriateness of a service. *See* O'Malley Report, *supra* note 183, at ch. 5, pp. 7–8.

committee or whether the investors should make further inquiry.

Unlike the earlier proxy disclosure requirement, the current proposal would require companies to disclose the fee paid for each non-audit service and the aggregate audit fee for the most recent fiscal year. Additional disclosures would be required only if a company's auditor leased or otherwise acquired from another entity the professionals it needed to perform a majority of the audit of the company's financial statements.

1. Disclosure of Fees

The proposal would generally require a company to disclose the fee paid for each non-audit service performed by its auditor and the fee charged for the annual audit. An exception to these general disclosure requirements is that issuers would not have to describe a non-audit service, nor disclose the fee for that service, if the fee was less than $50,000 or ten percent of the company's audit fee, whichever is smaller. We are proposing this exclusion to allow companies to avoid disclosure of *de minimis* items.

Earnscliffe asked respondents in its survey whether disclosure could potentially improve auditor independence. "A fair number of [respondents] advocated a requirement of full disclosure as a way to both deter an unhealthy relationship between auditor and client, and to inform investors of any risks related thereto." [194] Like the respondents surveyed, we believe that disclosure could have a positive impact on auditor independence.

We note that, in this area, the United Kingdom has long required disclosure of annual audit fees, and since 1989, it has required disclosure of fees for non-audit services provided by their auditors. "The [British] government believes that the publication of the existence of, and extent of, non-audit consultancy services provided to audit clients will enable shareholders, investors, and other parties to judge for themselves whether auditor independence is likely to be jeopardized." [195]

We request comment on whether the disclosure requirement will be useful to investors and enhance auditor independence. Will disclosure impede the ability of audit client's to obtain valuable non-audit services or have any negative affect? We also request comment on whether the disclosure regarding the approval of the audit committee should be made by the audit committee in its report under Item 306 of Regulation S–K. Is the information required to be disclosed appropriate or should other information be required? Should we require companies to disclose separately the fee paid for tax services? For example, should we require companies to disclose fees by a range in which they fall? Would the disclosure of audit and non-audit fees be more appropriate in Form 10–K (for example, for all companies or for those companies that are not required to prepare proxy statements or information statements) or footnotes to the financial statements, as done in the U.K.?

We further request comment on the exclusion for non-audit services that cost the lesser of $50,000 or ten percent of a company's annual audit fee. Should we set different levels for this *de minimis* exclusion? If so, what should these levels be? What is the appropriate scope of the exclusion? As proposed, the disclosure requirement applies only to the registrant. In the case of an investment company complex, should the rule extend beyond the registrant to require disclosure of all of the professional services that are provided to the investment company complex?

2. Leased Personnel

Under the proposal, a company would have to disclose if its principal auditor leased or otherwise acquired from another entity the personnel it needed to perform a majority of the audit of the company's financial statements. This disclosure requirement responds to the recent move by accounting firms to sell their non-audit practices to financial services companies. Often in these transactions, the partners and employees become employees of the financial services firm. The accounting firm in essence becomes a "shell" that then leases assets, namely professional auditors, back from those companies to complete audit engagements. In such an arrangement, audit professionals become full-or part-time employees of the financial services company, but work on audit engagements for their former accounting firm. They receive compensation from the financial services firm and in some situations from the accounting firm.[196] We believe that investors should be informed when individuals who have personal interests that may affect their objectivity are performing the bulk of the audit. [197]

We request comment on the proposal to require disclosure when the principal audit firm signing the audit opinion uses personnel from another entity to perform a majority of the work on the audit engagement.

I. Definitions

In this section of the release, we provide a more detailed explanation of those defined terms not discussed in the preceding sections. Proposed rule 2–01(f) provides definitions of certain terms used in rule 2–01. These definitions apply only to rule 2–01 and not to other sections of Regulation S–X. Rule 1–02 of Regulation S–X provides definitions of terms used in the remainder of Regulation S–X. Are the different scopes of the two sets of definitions sufficiently clear, or should we amend current Rule 1–02 to make it explicit?

1. "Accountant"

Proposed rule 2–01(f)(1) defines the term "accountant." The proposed rules are written in terms of an accountant's independence from the audit client. The definition of "accountant" set forth in Rule 2–01(f) includes the accounting firm in which the auditor practices and, accordingly, makes clear that an individual accountant's lack of independence may be attributed to the firm.

2. "Accounting Firm"

Proposed rule 2–01(f)(2) is the first of several definitions that are used to describe the entities or groups whose actions may cause an accountant to lack independence. The "accounting firm" includes the organization (whether organized as a partnership, corporation, limited liability company, or otherwise) that is engaged in the practice of public accounting or furnishing accountant's reports with respect to financial statements, reports, or other documents filed with the Commission, and all of the firm's divisions, subsidiaries, and departments. The definition also includes all "affiliates of the accounting firm," including its pension, retirement,

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[194] Earnscliffe Report, *supra* note 10, at 33.

[195] Michael Firth, "The Provision of Nonaudit Services by Accounting Firms to their Audit Clients," *Contemporary Accounting Research*, at 6 (Summer 1997). Firth hypothesized that companies with potentially high agency costs (*i.e.*, companies in which directors do not control management or which have a large amount of debt) would limit the non-audit services provided by their auditors because the appearance of a lack of auditor independence would increase their cost of capital. Firth's findings were consistent with his hypothesis.

[196] The ISB cites threats to independence arising from these structures and identifies quality controls to ensure the independence of the auditors in these situations. *See* ISB, "Discussion Memorandum 99–2: Evolving Forms of Firm Structure and Organization," at 20 (Oct. 1999).

[197] AICPA SAS No. 1, AU § 543 also sets forth guidance on when a principal auditor discloses and makes reference to another auditor who performs an audit of a component of the entity.

investment, or similar plans. The definition of "affiliate of the accounting firm" is discussed below.

The "accounting firm" does not include individual partners or employees of the firm. For the purposes of these independence rules, we are proposing that a distinction be made between investments in which the "accounting firm" has the primary legal rights or obligations, and investments in which individual partners or employees have the primary legal rights or obligations.

3. "Affiliate of the Accounting Firm"

Proposed rule 2–01(f)(4) defines "affiliate of the accounting firm." [198] This definition attempts to capture those entities that are financially tied to or otherwise associated with the accounting firm enough to warrant being treated like the accounting firm for purposes of our independence requirements. While part of the definition draws on the definition of "affiliate" used in other areas of the securities laws, the definition is broader than those other provisions.

Proposed rule 2–01(f)(4)(i)(A) states that an "affiliate of the accounting firm" includes any person controlling, controlled by, or under common control with the firm, shareholders of more than five percent of the firm's voting securities (or similar interests entitling a person to vote), and entities five percent or more of whose securities (or similar interests entitling a person to vote) are owned by the firm. The rule also includes any officer, director, partner, or co-partner of any of the foregoing entities, or persons. This portion of the definition is based generally on the provisions in section 2(a)(3) of the ICA [199] and the definition of "affiliate" in Regulation S–X.[200]

Paragraphs (C) through (F) of proposed rule 2–01(f)(4)(i) describe those who are "affiliates of the accounting firm" because they are business partners of the accounting firm. In general, these include certain: (i) Joint ventures in which the accounting firm participates, (ii) entities that provide non-audit services to the accounting firm's audit clients and with which the accounting firm has certain financial interests or relationships, and (iii) entities involved in "leasing" professional services to the accounting firm for their audits. The definition also includes all other entities with which the accounting firm is publicly associated in certain ways.[201]

The category of joint ventures and partnerships takes into account recent changes in accounting firms' structures and alliances with third parties. It generally would attribute to the auditor actions and interests of certain entities in joint ventures or partnerships in which the parties agree to share revenues, ownership interests, appreciation, or certain other shared economic benefits. The category is based on the notion that such agreements create a mutuality of interest between the auditor and its partner or shareholder because the revenue or profits accruing to each party depend, to some degree, on the efforts of each. Their interests are wedded.[202] Accordingly, under the proposals, the business partner's relationships with or interests in the accounting firm's audit clients would be attributed to the auditor.

The definition of "affiliate of an accounting firm" also includes any entity that provides non-audit services to an audit client, if the accounting firm has an equity interest in, shares revenues with, loans money to, or if any covered person has certain direct business relationships with, the consulting entity. Under these circumstances, the actions and investments of the consulting entity are fairly attributed to the accounting firm because the accounting firm's interest in the consulting entity creates a mutuality of interest in the promotion and success of the entity's consulting projects.

The proposed definition of "affiliate of the accounting firm" also attributes to the auditor the actions and interests of persons "co-branding" or using the same (or substantially the same) name or logo, cross-selling services, or using co-management. Where the auditor has taken steps to identify itself publicly with another person, the auditor shares, and will be perceived to share, a mutuality of interest with that other person.

Would the relationships described in the preceding three paragraphs impair, or appear to reasonable investors to impair, an auditor's independence? Are there any that should be excluded from the definition of "affiliate of the accounting firm" for purposes of determining impairments to independence?

The proposed definition of "affiliate of the accounting firm" also addresses the situation where full- or part-time employees of an entity other than the firm signing the audit report perform a majority of the audit engagement. The proposal provides that if an auditor "leases" personnel from an entity to perform audit procedures or prepare reports to be filed with the Commission, and the "leased" personnel perform a majority of the hours worked on the engagement, then the actions and interests of the "lessor," the lessor's board of directors, executive officers, persons with responsibility for management, quality control, or technical supervision over the leased personnel, and shareholders of five percent or more of the lessor's securities, are attributed to the audit firm. In these situations, we believe that this proposal strikes a balance between those entities and persons who reasonably could influence the auditor and the audit process, and those who may be associated with the lessor but have no real or perceived ability to influence the audit.

Would the relationships described in the preceding paragraph impair, or appear to reasonable investors to impair, an auditor's independence? Does the answer depend upon the percentage of the hours worked on the engagement that are attributable to leased personnel? If so, where should the line be drawn and why?

Finally, the proposed definition of "affiliate of the accounting firm" excludes persons whose sole business relationship with an accounting firm is to share certain services or facilities, such as a joint training facility or billing office, so long as neither the auditor nor the other person profits from the shared services. The latter restriction is necessary to assure that the auditor and audit client have not joined together in a profit-seeking venture.

We seek comment on the proposed definition of "affiliates of an accounting firm." Should persons or entities other

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[198] As noted above, the definitions used in the rest of Regulation S–X, including the definition of "affiliate," would not apply to proposed Rule 2–01.

[199] 15 U.S.C. § 80a–2(a)(3).

[200] 17 CFR 210.1–02(b).

whether all investments and relationships of an affiliate of an accounting firm, as described in the preceding paragraph should be attributed to the audit firm for purposes of evaluating its independence from its audit clients. Should the answer depend upon the percentage of the accounting firm's securities (or similar voting interests) that the affiliate owns? If the latter, at what percentage of ownership should we draw the line beyond which independence is impaired, and, accordingly, draw the line by which we define "affiliate of the accounting firm?" If the "affiliate" holding the ownership interest is an entity, should the definition of "affiliate of the accounting firm" also include any officer, director, partner, co-partner or shareholder of more than five percent of the voting securities of that entity? Does the proposed definition identify all persons that should be considered affiliates for purposes of determining impairments to independence?

[201] There is also an exception from the definition of "affiliate of the accounting firm" for certain persons or entities with which the accounting firm shares services, such as training or billing facilities. Proposed rule 2–01(f)(4)(ii).

[202] *See generally*, Letter from Jonathan G. Katz to Duane R. Kullberg, supra note 40, at 4.

than those identified in the proposed rule be included as affiliates?

4. "Affiliate of the Audit Client"

Proposed rule 2–01(f)(5) defines "affiliate of an audit client" as any entity that has "significant influence" over the audit client, or any entity over which the audit client has significant influence. The definition thus makes clear that it covers both "upstream" and "downstream" affiliates of the audit client, including the audit client's corporate parent and subsidiary.

We use the term "significant influence" in the definition to signal that the "affiliates of an audit client" should be determined in light of the principles in Accounting Principles Board ("APB") Opinion No. 18.[203] APB No. 18 clarifies the term "significant influence." This accounting literature recognizes that "significant influence" can be exercised in several ways: representation on the board of directors; participation in key policy decisions; material inter-company transactions; interchange of personnel; or other means. APB No. 18 also recognizes that an important consideration is the extent of the equity investment, particularly in relation to the concentration of other investments. In order to provide a reasonable degree of uniformity in application of this standard, the Board concluded that,

> [A]n investment (direct or indirect) of 20% or more of the voting stock of an investee should lead to a presumption that in the absence of evidence to the contrary an investor has the ability to exercise significant influence over an investee. Conversely, an investment of less than 20% of the voting stock of an investee should lead to a presumption that an investor does not have the ability to exercise significant influence unless such ability can be demonstrated.[204]

We believe that the "significant influence" test is appropriate because it results in the marriage of financial information between the audit client and the entity influenced by, or influencing, the financial or operating policies of the audit client, including those over which the audit client has control or that control the audit client. Should we, however, consider a different definition of an "affiliate of an audit client?" What other test would be appropriate? Rather than using a test that sets a presumption of influence at an equity investment of 20%, is a different investment threshold more appropriate? Should it be higher or lower, and why?

[203] APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock" (Mar. 1971).

[204] *Id.*¶ 17.

5. "Audit and Professional Engagement Period"

The proposed definition of "audit and professional engagement period" uses language from current Rule 2–01(b) and indicates that the auditor must be independent during the period covered by any financial statements being audited or reviewed (the "audit period"), and during the period that the auditor is engaged either to review or audit financial statements or to prepare a report (the "professional engagement period"). The proposed definition also provides that the "professional engagement period" begins when the auditor signs the initial engagement letter or begins review or audit procedures, whichever is earlier, and ends when the registrant or the accountant notifies the Commission that the registrant is no longer the accountant's audit client.

The proposed definition makes clear that we agree with the "auditor of record" notion described in AICPA Ethics Ruling 101–1. That ruling states:

> The period of a professional engagement starts when the [AICPA] member begins to perform any professional services requiring independence for an enterprise, lasts for the entire duration of the professional relationship, which could cover many periods, and ends with the formal or informal notification of the termination of the professional relationship either by the member, by the enterprise, or by the issuance of a report, whichever is later. Accordingly, the professional engagement does not end with the issuance of a report and recommence with the signing of the following year's engagement.[205]

We solicit comment on the proposed definition. Does the proposed definition cover the appropriate period? Is the definition appropriate for all situations in which the professional engagement ends or do we need to provide an alternative definition for some types of registrants, such as foreign private issuers, or for certain types of engagements? Could this portion of the definition be made more specific by referring to Form 8–K or other Commission filings?

6. "Audit Client"

The term "audit client" is defined in proposed rule 2–01(f)(7) as the entity whose financial statements or other information is being audited, reviewed, or attested. This is how "audit client" is commonly used. Use of the term "audit client" in this rule in no way changes our position that the auditor "owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public."[206]

[205] AICPA Code of Professional Conduct, ET§ 101.02.

7. "Audit Engagement Team"

Proposed rule 2–01(f)(8) defines the term "audit engagement team." The "audit engagement team" includes the people in the accounting firm that are obviously in a position to influence the audit. Members of the "audit engagement team" are included within the category of "covered persons in the firm," which is the term used to indicate the persons in the firm subject to a number of the specific rules in paragraph (c) of proposed rule 2–01.

The "audit engagement team" includes all partners, principals, shareholders, and professional employees participating in an audit, review, or attestation engagement of an audit client, including those conducting concurring or second partner reviews, and all persons who consult, formally or informally, with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events.

We solicit comment on this definition. Should any other persons be included on the audit engagement team? Should any of the persons included on the audit engagement team not be included?

Could the definition's inclusion of persons consulted on an audit create a disincentive for an auditor to seek, or for others to provide, assistance on an audit, and thereby adversely affect the quality of the audit? Is there a realistic possibility that auditors will be impeded significantly in their efforts to secure expert consulting assistance because experts would have to terminate any interest in the audit client before consulting? For example, XYZ Corp is an audit client of ABC Accounting Firm. Industry Expert A, who is not otherwise a covered person in the firm with respect to XYZ Corp, holds an investment in XYZ Corp. Accountant B, who is a covered person, seeks the advice of Industry Expert A. A declines to offer advice because liquidation of the investment would create adverse tax consequences. In situations like this, are there likely to be other industry experts in the firm without investments in the audit client that the accountant could consult? Should the definition of covered persons be limited to assure that all appropriate expertise is available for every audit engagement?

[206] *Arthur Young, supra* note 19, at 818.

8. "Chain of Command"

Proposed rule 2–01(f)(9) defines the term "chain of command." This term is defined broadly to refer to the group of people in the accounting firm who, while not directly on the audit engagement team, are capable of influencing the audit process either through their oversight of the audit itself or through their influence over the members of the audit engagement team. Like the "audit engagement team," persons in the "chain of command" are included as "covered persons in the firm," and therefore are subject to a number of the specific rules in paragraph (c) of proposed rule 2–01.

Under the proposed definition, the "chain of command" includes all persons having any supervisory, management, quality control, compensation, or other oversight responsibility over either any member of the audit engagement team or over the conduct of the audit. It also includes all partners and managers who may review, determine, or influence the performance appraisal or compensation of any member of the audit engagement team and any other person in a position to influence the audit engagement team's decisions during the conduct of the audit, review, or attestation engagement.

We solicit comment on the definition. Should additional persons be included in the chain of command? Should prominent partners, principals or shareholders in the firm, such as a chairman, CEO, member of the governance board, office managing partner or managing partner of the national technical office always be considered to be in the chain of command? Should any of the persons included in the chain of command not be included? Specifically, is it appropriate to include managers in this group? Is the definition capable of being consistently applied under different accounting firms' management structures?

9. "Close Family Members"

Proposed rule 2–01(f)(10) defines "close family members" to mean a person's spouse, spousal equivalent, parent, dependent, nondependent child, and sibling. These terms should be understood in terms of contemporary family relationships. Accordingly, "spouse" means a husband or wife, whether by marriage or under common law; "spousal equivalent" means a cohabitant occupying a relationship generally equivalent to that of a spouse; "parent" means any biological, adoptive, or step parent; "dependent" means any person who received more than half of his or her support for the most recent calendar year from the relevant covered person; "child" means any person recognized by law as a child or step-child; and "sibling" means any person who has the same mother or father.

"Close family members" includes the persons separately defined as "immediate family members" (spouse, spousal equivalent, and dependent), and adds certain family members who may, as a general matter, be thought to have less regular, but not necessarily less close, contact with the covered person in question (parent, nondependent child, and sibling). One of our reasons for distinguishing the two groups is that the less immediate the family relationship to the covered person, the more substantial that family member's relationship to the audit client should be before we deem it to impair the auditor's independence.

We considered whether we should follow this approach further and further into a covered person's family, making impairment depend upon increasingly substantial relationships to the audit client the further removed the family member is from the covered person. The proposed definition of "close family members," for example, does not include in-laws.

We solicit comment on the proposed definition of "close family members." Should the definition include family members in addition to those proposed? Is the proposed definition too inclusive? Should we adopt some type of formula that would reach family members who are further removed from the covered person if those family members have substantial enough relationships to the audit client? How would such a formula work? Instead, are these situations appropriately handled under the general standards of paragraphs (b) and (c)(2) of the rule?

10. "Covered Persons in the Firm"

Proposed rule 2–01(f)(13) defines the term "covered persons in the firm." The term includes four basic groups: (i) The "audit engagement team;" (ii) the audit engagement team's "chain of command;" (iii) any other professional employee of the accounting firm who is, or during the audit client's most recent fiscal year was, involved in providing any professional service to the audit client, its parents, subsidiaries, or other affiliates; and (iv) all other professional employees from an "office" of the accounting firm that participates in a significant portion of the audit.

The "audit engagement team" and the "chain of command" are discussed above. We have also included as "covered persons in the firm" those professionals who provide consulting and non-audit services to the audit client. We did so because the auditing literature, quite appropriately, directs the audit engagement team to discuss certain matters with the firm personnel responsible for providing such services to that client. [207]

We have also included as "covered persons in the firm" all other professional employees from an "office" of the accounting firm that participates in a significant portion of the audit. (The definition of "office" is separately discussed below.) We included these people because we believe they are generally in a position to influence the audit. They are the ones most likely to interact with the audit engagement team on substantive matters and to exert influence over the audit engagement team by virtue of their physical proximity to, or relatively frequent contact with, the audit engagement team.

Nevertheless, under the proposal, an accounting firm employee in a distant part of the world, or even down the street, could own an audit client's securities, have a family member in a financial position at the client, or enter into a business relationship with a client without necessarily impairing the firm's independence from the audit client. We expect that many partners and employees who previously could not own securities issued by an audit client will be able to do so under the proposed rule. It should be noted that insider trading restrictions prohibit any partner, principal, shareholder, or employee of the firm, whether or not he or she performs any service for the client, from trading on any nonpublic information about that client. [208]

We believe that the lines drawn in the proposed rule provide a reasonable balance between those who may and those who may not be able to influence the audit process for a particular client. In general, all those who may have a connection with, or directly or indirectly influence, the audit have been included.

We solicit comment on the definition of "covered persons in the firm." Are there other persons in the firm who should be included, such as all partners? Are there persons included in the definition who should not be

[207] AICPA SAS No. 22, *supra* note 185.

[208] *See* "Selective Disclosure and Insider Trading," Securities Act Rel. No. 7787 (Dec. 20, 1999). As discussed in footnote 109 of that release, an individual working at an accounting firm may be liable for insider trading for misappropriating information about a client, even if he or she did not perform services for that client.

included? Is the concept of a "significant portion of the audit" sufficiently familiar to accountants to be a useful standard?

A person who is not a covered person at the time an audit engagement begins may be consulted about the audit as the engagement progresses. Once consulted, that person becomes a member of the audit engagement team and, therefore, a covered person in the firm. That person must dispose of any financial interest in the audit client completely and irrevocably before participating in any discussion with another covered person concerning the audit engagement. The proposal would not allow the person consulted to participate in a discussion about the audit engagement and then "cure" an independence impairment by later disposing of his or her financial interest in the audit client.

Likewise, a person may become a covered person by rotating on to an engagement or being promoted into the chain of command. In these situations, the person must also dispose of any financial interest in the audit client completely and irrevocably before becoming a covered person.

11. "Immediate Family Members"

Proposed rule 2–01(f)(15) defines "immediate family members" to mean a person's spouse, spousal equivalent, and dependent. These terms have the same meaning as they do in the definition of "close family members."

"Immediate family members" is a narrower group than "close family members." Again, part of our premise in distinguishing the two groups is that the less immediate the family relationship to the covered person, the more substantial that family member's relationship to the audit client should be before we deem it to impair the auditor's independence. By circumscribing the group of "immediately family members," we mean to identify those persons who have such regular and close contact with a "covered person," that it is fair, for independence purposes, to attribute to the covered person any financial and employment relationships that family member has with the audit client.

We solicit comments on the definition of "immediate family members." Should the definition include family members in addition to those proposed? Is the proposed definition too inclusive? Are there any qualifications that should be added to the definition, such as not including spouses who are separated from, and living apart from, the covered person?

12. "Investment Company Complex"

Proposed rule 2–01(f)(16) provides a definition of "investment company complex" that is loosely based on ISB Standard No. 2. ISB Standard No. 2 defines "mutual fund complex" to mean "[t]he mutual fund operation in its entirety, including all the funds, plus the sponsor, its ultimate parent company, and their subsidiaries." [209]

Our proposed rule defines "investment company complex" to include an investment company and its investment adviser, or if the company is a unit investment trust, its sponsor; any entity controlled by, under common control with, or controlling the investment adviser or sponsor of a unit investment trust, such as a distributor, fund administrator, or transfer agent; and any investment company or an entity that would be an investment company but for the exclusions provided by section 3(c) of the ICA and that is advised by the investment adviser or sponsored by the sponsor, or an entity that is controlled by, under common control with, or controlling the investment adviser or sponsor. The definition does not include sub-advisers whose role is primarily portfolio management and who provides services pursuant to a subcontract with, or are overseen by, an adviser in the complex. As proposed, an auditor generally would not be precluded from investing in other investment companies advised by an investment company audit client's sub-adviser. We request comment on whether the auditor of an investment company should be independent of other investment companies that have an adviser that is the sub-adviser of an audit client investment company. Sub-advisers are excluded only when their duties are limited to portfolio management. Should they be excluded only in this circumstance? Is the definition of sub-adviser clear and capable of implementation, or is another definition preferable?

As proposed, the definition would require an auditor to be independent of all companies that would be investment companies but for the exclusions set forth in section 3(c) of the ICA. Should the auditor of an investment company be independent of all investment type products (*i.e.*, hedge funds, venture capital funds, commodity pools, real-estate pools) offered by the adviser or sponsor of the investment company?

The rule would preclude auditors of a unit investment trust from investing in other investment companies sponsored by the sponsor of the unit investment trust and any other entity in the same investment company complex. We have defined sponsor as the entity that establishes the unit investment trust. Is such a definition sufficiently clear and capable of implementation? If not, how should it be modified so as to be sufficiently clear?

We solicit comment on the proposed definition of "investment company complex." Does the definition include all entities that should be within the investment company complex? Does the definition include any entities that should not be included? For example, under the proposed rule, we focus on the integral role of an investment adviser in the investment company complex. But, for some fund groups, the principal underwriter or administrator plays a predominant role in organizing and managing the overall operations of the investment companies in the investment company complex. Should the auditors be independent of the administrator or principal underwriter? Should the auditors be independent of other fund groups who use the same principal underwriter or administrator?

13. "Office"

Proposed rule 2–01(f)(17) defines "office" to mean a distinct sub-group within an accounting firm, whether distinguished along geographic or practice lines. The term "office" is used in the rule to help delimit the persons who are considered "covered persons" and, therefore, plays a role in identifying those firm personnel who cannot have financial or employment relationships with a particular audit client or affiliate of an audit client without impairing the firm's independence.

We give "office" a meaning that does more than merely refer to a distinct physical location where the firm's personnel work. By "office" we mean to encompass any reasonably distinct sub-group within an accounting firm, whether constituted by formal organization or informal practice, where the personnel who make up the sub-group generally serve the same clients, work on the same matters, or work on the same categories of matters. In this sense, "office" may transcend physical boundaries, and it is possible that a firm may have a sub-group that constitutes an "office" even though the personnel making up that sub-group are stationed at various places around the country or the world.

At the same time, we intend for "office" also to include reference to a physical location. For this reason, "office" will generally include a distinct physical location where the firm's

[209] ISB Standard No. 2, *supra* note 139.

personnel work. We recognize, however, that in some cases thousands of firm personnel may work at a single, large physical location, but physical divisions may nonetheless effectively isolate different sub-groups of personnel from each other in ways that will warrant treating each sub-group as a separate "office" under the proposed definition.

We solicit comments on the proposed definition of "office." Does the definition provide a useful framework for identifying firm personnel who reasonably should be included within the definition of "covered persons?" Is there an alternative definition that would better serve the objective of identifying persons firm-wide whose geographic or professional proximity to the firm's work for a particular audit client suggests that their financial or employment relationships with that audit client should be deemed to impair the firm's independence? Should "office" be defined more narrowly, such as by limiting it to persons who work in the same physical location? To the extent that the definition does include physical location, should "office" be defined more strictly, by providing that all firm personnel working at the same physical or geographic location will, in all cases, constitute a single office?

J. Codification

As previously discussed, the Commission's current auditor independence requirements are found in various rules and interpretations. Section 600 of the Codification provides interpretations and guidance not otherwise available in the current rule. The proposed rule attempts to articulate clearly situations and circumstances, such as financial relationships, employment relationships, and non-audit services that impair auditor independence. Accordingly, we are proposing to delete interpretations included in the Codification that are reflected in, or that have been superseded by, the proposed rule.[210] The current Codification contains background information and interpretations that may continue to be useful in situations not specifically or definitively addressed in the proposed rule. Examples of these items concern business relationships, unpaid prior professional fees, indemnification by clients, and litigation.

Should the background information and other relevant items included in the Codification be maintained in their current form? Are there additional items that should be modified? Are there items that are proposed to be deleted but should be maintained in the Codification?

IV. General Request for Comments

We request comment on the proposals, other matters that may have an impact on the proposals, and your suggestions for additional changes. In addition, in considering whether to adopt rule amendments on auditor independence, the Commission will consider what effect, if any, its actions might have on the states and on state law. Specifically, the Commission will consider whether the rule amendments (i) could alter the relationships between federal and other authorities, (ii) require expenditures by state officials, or (iii) preempt state or local law. The Commission's rules affect only those auditors that perform audits for companies required to file financial statements and auditors' reports with the Commission, whereas state regulations often affect a much broader category of auditors and companies.

The Commission's proposals are not intended to alter the relationship between federal and state authorities. In general, states have patterned their regulations after those of the AICPA or the National Association of State Boards of Accountancy. Many state independence regulations may be more permissive, in some respects, than the Commission's current regulations. These differences would continue under the proposals. The proposals do not require state officials to undertake licensing regimes or otherwise make any financial outlays. Furthermore, our proposals would not affect the ability of the states to adopt different regulation in those areas they currently regulate. We solicit comment on whether the proposals would affect specific state laws or require any expenditures by state officials. We also request comment on whether or how these proposals would alter the relationship between federal and state authorities.

V. Cost-Benefit Analysis

We have identified certain costs and benefits of the proposals. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of the proposed amendments. We encourage commenters to identify or supply relevant data concerning the costs or benefits of the proposed amendments.

A. Costs and Benefits of the Proposals Regarding Investments in and Employment Relationships With Audit Clients

The proposals clarify and, in some cases, eliminate, certain existing regulations under which an accountant's independence is impaired by fellow accounting firm employees or their family members having an investment in or holding a position at an audit client. As explained above,[211] changes in business practices and demographics, including an increase in dual-career families, may warrant a change in our auditor independence requirements to prevent them from unnecessarily restricting the employment and investment opportunities available to auditors and members of their families. To this end, the proposals take a more targeted approach and focus on those persons who are involved in or can influence an audit. In addition, the proposals create a limited exception for accounting firms that have quality controls that provide reasonable assurance of independence.

1. Benefits

We believe that our proposals on investment and employment restrictions provide several benefits. Eliminating certain investment and employment restrictions should benefit auditors and their families by permitting them a wider range of investment and employment opportunities. Currently, according to annual reports filed by accounting firms with the SECPS, the five largest audit firms employ approximately 115,000 professionals. Other public accounting firms that audit SEC registrants employ an estimated 5,000 to 25,000 professional staff. Our proposals would benefit these 120,000 to 140,000 accounting firm professional employees and their families by enabling them to invest in some public companies that, under the current rules, they cannot invest in without impairing the independence of the companies' auditors. In addition, under the proposals, unlike under current rules, family members of some audit firm employees could be employed by audit clients and their affiliates without impairing auditor independence.

Expanding the set of investment opportunities available to auditors and their family members may increase the return they can earn on their investments and improve their ability to reduce risk through diversification. Similarly, expanding the set of employment opportunities available to

[210] The Codification in its entirety remains in effect until any final rule is adopted.

[211] *See supra* Section II.

the family members of audit firm employees has the potential to increase their compensation. Finally, opening up the employment opportunities available to auditors and their family members increases their freedom of choice with respect to employment opportunities. This could improve the non-pecuniary, as well as financial, benefits of employment.

We request comment on the estimate of the number of individuals who are likely to benefit from the proposed amendments. Is a better estimate available? Is it possible to estimate the annual benefits to these individuals from having a wider range of investment choices? Is it possible to estimate the benefits that these individuals may achieve on an annual basis because of a wider range of employment choices? Would eliminating investment and employment regulations provide other benefits to these individuals? Are there other individuals who would benefit from the proposals regarding investment and employment relationships?

In addition to eliminating certain restrictions, the proposals clarify the independence requirements. Currently, these requirements are found in various Commission rules, Commission interpretations, staff letters and staff reports. The proposals consolidate the requirements. As a result, the proposals should provide clearer guidance to accountants and their families, issuers and their audit committees, regulators, courts, administrative law judges, and others. The proposals also put this guidance in an easily accessible format that should save these parties costs in ascertaining and complying with the regulations. Is it possible to quantify these benefits? Would additional parties be affected by the proposed clarification of our investment and employment restrictions?

Finally, the proposals encourage, but do not require, accounting firms to establish quality control systems that provide reasonable assurance that they are complying with our auditor independence requirements. The proposals do so by providing that an accounting firm's independence will not be impaired solely because one of its employees does not comply with the independence rules if, among other things, the firm has adequate independence quality controls in place.

GAAS already requires firms to have quality controls for their audit practices and refers auditors to the "Statements on Quality Control Standards" ("SQCS") for guidance regarding the elements of those systems.[212] SQCS No. 2 states that firms' controls should provide "reasonable assurance that personnel maintain independence (in fact and in appearance) in all required circumstances, perform all professional responsibilities with integrity, and maintain objectivity in discharging professional responsibilities."[213] In addition to requirements imposed by GAAS, public accounting firms that are SECPS members must comply with independence quality control membership requirements. Among other things, member firms with at least 7,500 professionals must implement an electronic tracking system by no later than December 31, 2000.[214] Our proposals, therefore, do not impose, even indirectly, a requirement for internal controls that does not already exist under GAAS and SECPS membership requirements.

The proposals, however, do clarify the GAAS requirement for firms with more than 500 SEC registrants as audit clients by identifying procedures that should be part of their quality control systems.[215] This aspect of the proposals could benefit the largest public accounting firms by reducing uncertainty about the required minimum characteristics of any quality control system they institute.

In addition, any public accounting firm implementing a quality control system in compliance with this limited exception should benefit because we would be narrowing the circumstances in which independence would be impaired. This aspect of the proposals also should provide investors with the assurance of improved quality control systems of any firms that implement them, and inform investors and others who rely on audited financial statements about the minimum characteristics of the quality control systems maintained by these accounting firms. This should reduce uncertainty among investors and increase investor confidence.

What methods are available to estimate the benefits that these accounting firms would receive from the limited exception and the reduced uncertainty about the minimum characteristics required for quality control systems? What methods are available to estimate the benefits to investors and others because of enhanced assurance that firms possess quality controls with minimum characteristics described in this section? Are there other benefits arising from the proposed amendment?

We request comment, including supporting data if available, on the benefits of the proposals regarding investment and employment relationships.

2. Costs

Modification of our investment and employment restrictions may require accounting firms, their employees, or others to incur transaction costs, such as one-time costs to modify existing systems that monitor investments and employment relationships, and training costs to make all professional staff aware of the revised rules. Is it possible to estimate these costs? Are there additional costs that would be borne by any individual or entity other than those identified?

As discussed above, the proposals provide an incentive—namely a limited exception from the auditor independence requirements—for accounting firms to establish quality controls. In the case of the largest firms, the proposals specify what we believe to be the minimum characteristics of these systems.[216] For the largest firms, implementing such a quality control system would likely entail costs to enhance or alter the firm's existing system. Because seeking the limited exception is elective, such costs will be assumed voluntarily, if at all, by accounting firms that decide that the benefits of this limited exception outweigh the cost of any incremental changes that are necessary to make their quality control systems meet the proposals' standards.

In addition, to minimize costs, we have tailored these quality control proposals in recognition of current industry requirements and practices. As noted above, under GAAS and, where applicable, under SECPS membership requirements, accounting firms must have a system of quality controls, including policies and procedures, to

[212] AICPA SAS No. 25, AU § 161, n. 1.

[213] AICPA Professional Standards: SQCS, QC § 20.09.

[214] Letter from Michael A. Conway, Chairman, Executive Committee, SECPS, to the Managing Partners of SECPS Member Firms, dated April 2000 (available at www.aicpa.org).

[215] The specified criteria for a quality control system only apply to the largest accounting firms. For other firms, the proposal states that a firm's quality control system should take into account the size and nature of the firm's practice. Again, this is in general conformity with GAAS, which states, "The nature and extent of a firm's quality control policies and procedures depend on factors such as its size, the degree of operating autonomy allowed its personnel and its practice offices, the nature of its practice, its organization, and appropriate cost-benefit considerations." AICPA SAS 25, AU § 161.02.

[216] Other public accounting firms would have the flexibility to adopt a system to comply with the proposed requirement in light of the nature and size of their practice.

provide the firm with reasonable assurance that personnel maintain independence in all required circumstances.[217] Moreover, it is prudent business practice to maintain reasonable quality controls.[218] An accounting firm that chooses to upgrade its existing quality control system to comply with the limited exception should incur only the incremental costs of implementing any improvements beyond what is required by GAAS and SECPS membership requirements.

We seek comment, and supporting data if available, on these and any other costs of our investment and employment proposals, including the quality control proposals. Is it possible to quantify the initial costs accounting firms may incur to modify their quality control systems? Is it possible to quantify the incremental costs that may be incurred by the largest accounting firms that choose to put in place a quality control system that meets the specified criteria?

B. Costs and Benefits of Restricting Certain Non-Audit Services

As more fully described above,[219] there is increasing concern that the growth of non-audit services provided to audit clients affects the independence of auditors. If investors lose confidence in auditors' ability or willingness to provide an unbiased and impartial examination of companies' financial statements, then investors' trust in the reliability of publicly available financial information, and in the integrity of the securities markets, may be damaged.

Currently, accounting firms may not provide certain services to their audit clients without impairing their independence. Our proposals extend and clarify those restrictions by setting forth four basic principles that should be used to evaluate the effect of non-audit services on an auditor's independence, and by designating certain non-audit services that, if performed by an auditor for an SEC registrant that is an audit client, impair the auditor's independence.

Our proposals on the provision of non-audit services may affect four distinct groups: investors, issuers, public accounting firms, and other potential providers of non-audit services. The benefits and costs arising from the proposed amendments are examined for each group.

1. Benefits

(a) *Investors.* For the reasons explained above, the Commission believes that the proposals will enhance auditor independence and thereby enhance the reliability and credibility of financial statements of public companies.[220] We expect these benefits to inure primarily to investors who, if the proposals are adopted, should be able to review public companies' financial statements with greater assurance that reliance on the statements will lead to more informed investment decisions. We seek comment on whether it is possible to quantify the benefits of the proposals to investors, and if so, how.

(b) *Issuers.* Issuers may benefit from the proposed scope of services regulations in several respects. First, the proposals eliminate certain uncertainties as to when a registrant's auditor will not be recognized as independent. The proposals eliminate these uncertainties by setting forth not only four general principles by which to analyze non-audit services, but also by listing certain non-audit services as incompatible with the concept of auditor independence. Accordingly, in the future, issuers can know that if their auditor provides any of the listed services, the auditor will not be independent for purposes of Commission filings.

Second, if the proposals increase investor confidence in financial reporting and thereby encourage investment, they may facilitate capital formation. In such a scenario, issuers would be able to attract capital at lower rates of return, or in circumstances in which they currently cannot raise capital.

Finally, the proposals may increase the utility of annual audits to issuers. For example, by requiring issuers to obtain certain information technology services, such as implementation of an accounting information system that is used to generate data significant to the financial statements as a whole, from a vendor other than their auditor, the proposals should result in someone other than the non-audit services provider reviewing that system during the course of the audit. As a result, issuers may get an independent "second opinion" of the system from the audit. Furthermore, as a result of the proposals, issuers may avoid pressure from their auditors to purchase non-audit services.

(c) *Other Consulting Firms.* Consulting firms that do not engage in public accounting also may benefit from the proposals. Such consulting firms may receive revenue from certain consulting engagements that, but for our proposals, would have gone to the client's auditor. Moreover, to the extent that a registrant's auditor has advantages in competing to provide consulting services to an audit client by virtue of the auditor's personal relationships with officers of the audit client or increased awareness of potential consulting engagements through proximity to an audit client, our proposals may improve competition in the market for the provision of consulting services. This improved competition could benefit any consulting firm with comparative advantages in providing the necessary non-audit services.[221]

(d) *Public Accounting Firms.* We anticipate that the proposals will confer two primary benefits on public accounting firms. First, the proposals should clarify what non-audit services may be provided to an audit client without jeopardizing auditor independence. Second, the proposals could improve competition in the market for the provision of non-audit services by public accounting firms. Because the restrictions on providing non-audit services to an audit client would apply equally to all accounting firms, the overall impact of the proposed restrictions may be to re-distribute the restricted non-audit services among the public accounting firms.[222]

In addition, as noted above, a registrant's auditor may have advantages in competing to provide non-audit services to its audit client that are not based on the auditor's skill or cost advantages in providing that service. To the extent that such advantages exist, the proposals may improve competition in the market for non-audit services. If a public accounting firm has a comparative skill or cost advantage in providing a particular non-audit service, that public accounting firm may benefit from any enhanced competition because its comparative advantage over other public accounting firms in providing that service would be more likely to lead to non-audit assignments from other public accounting firms' audit clients. Might these enhancements to

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[217] AICPA SQCS, QC § 20; AICPA SAS No. 25, AU § 161.

[218] Some firms are already developing or improving quality control systems. At least one Big 5 accounting firm has begun the process of installing a computerized tracking system that monitors employee investments. *See* Elizabeth MacDonald, "Top Accounting Industry Group Sets Conflict-of-Interest Compliance Rules," Wall St. J., Feb. 2, 2000, at B2.

[219] *See supra* Section II.C.

[220] *See supra* Section III.D.1.

[221] This would also benefit the issuers that contract for these non-audit services.

[222] As noted above, some of this work may be re-distributed to consulting firms that do not engage in public accounting.

competition change the way accounting firms invest in various of their service lines? For example, might accounting firms begin to re-invest more heavily in their audit function?

We request comment, including supporting data, on the benefits of the proposals.

2. Costs

Our proposals on non-audit services may impose costs on issuers and public accounting firms. We request comment on whether these proposals may impose costs on other groups.

(a) *Issuers.* The proposed amendments have the effect of restricting issuers from purchasing certain non-audit services from their auditors. Currently, the five largest public accounting firms audit approximately 12,800 public companies. Other public accounting firms audit approximately 3,900 public companies. According to reports filed with the AICPA, of the 12,800 public companies audited by the so-called "Big 5," approximately 9,500 did not purchase any consulting services from their auditor in the most recently reported year. Of the approximately 3,900 registrants that are audited by other public accounting firms, approximately 3,100 did not purchase any consulting services from their auditor.

For the 12,600 registrants that did not purchase any consulting services from their auditor, the proposed amendments would not have affected their purchase of non-audit services in the most recently reported year. In the future, however, these registrants could be affected by the proposals insofar as the proposals reduce their flexibility in the purchase of non-audit services.

Of the approximately 4,100 registrants that were reported to have purchased non-audit services from their auditor, many may have purchased non-audit services that are not covered by the proposals. In the future, these issuers could continue to procure the same services from their auditor.

Issuers that purchased from their auditor non-audit services that are covered by the proposals, however, will have to look to other professional services firms, including other public accounting firms, to provide these services in the future. The fact that many issuers currently purchase non-audit services from firms other than their auditor suggests that there is a competitive market for non-audit services. Therefore, issuers who are precluded by the proposals from purchasing such services from their auditor likely will be able to purchase these services from other vendors. These issuers may incur costs from having to use a separate vendor, including the possible loss of any synergistic benefits of having a single provider of both audit and non-audit services. For example, they may incur costs locating a new vendor and developing a business relationship with that vendor.

We request comment on whether it is possible to quantify the costs arising from employing separate vendors for certain consulting services, and if so, how. We also request comment on the accuracy of the estimated number of issuers that would be affected by the proposed amendment. What percentage of SEC registrants use a competitive bidding process in selecting providers of non-audit services? What percentage "sole source" non-audit assignments? For issuers that currently acquire from their auditor non-audit services that are prohibited by the proposals, what is the additional cost of using a competitive bidding process to acquire non-audit services? Are there any benefits to the issuer of employing such a process? Under our proposed rule, how often, if at all, would an issuer be unable to find a vendor other than their auditor to provide a covered non-audit service on a comparable basis?

(b) *Public Accounting Firms.* Some public accounting firms provide a wide variety of services both to audit and non-audit clients. Our scope of services proposals are likely to affect these firms in several ways. The primary cost for these firms is that they individually may lose one source of revenue because they will no longer be able to sell certain non-audit services to their audit clients. Based on the accounting firms' SECPS reports, however, it appears that, on average, public accounting firms with fewer than 1,000 SEC registrants as clients earn less than 1% of their total fees from providing management consulting services to audit clients.[223]

The anticipated loss of revenue would primarily affect the Big 5 firms. Some members of the Big 5 provide extensive non-audit services to their audit clients. However, at least two of the Big 5 have recently sold or taken steps to separate their consulting practice from their audit practice. And, at least one other Big 5 firm has announced its intention to separate its consulting and its audit practices. In addition, the SECPS reports of the Big 5 show that almost 75% of their audit clients that are SEC registrants purchased no management consulting services from their auditor. Accordingly, the proposals appear likely to impose significant costs only on those members of the Big 5 that do not plan to separate their audit and non-audit practices (or at least that portion of their non-audit practice that provides those non-audit services listed in proposed rule 2–01(c)(4)).[224] Even then, because only about 25% of these firms' SEC audit clients buy non-audit services from their auditors, the proposals will only impose costs with respect to, at most, 25% of these firms' client relationships.

In addition, because our proposals would affect all auditors, the overall impact of the proposed restrictions may be merely to redistribute certain non-audit services among public accounting firms.[225] To the extent these services are only redistributed, there should be no net loss of revenue to public accounting firms as a whole.

We request comment on these costs and our estimates of the number of accounting firms and issuers that will be affected. Is it possible to quantify these costs? Is there any reason to believe the costs in the form of lost revenue will not be offset by equal benefits to other public accounting firms and other consulting firms?

A complete prohibition on accounting firms' providing any non-audit services could impose other, different costs on public accounting firms, such as depriving accounting firms of expertise they could have obtained from consulting activities that can be employed in audit engagements, preventing "synergies" from a better understanding of the client, and harming accounting firms' ability to recruit and retain employees. Our proposed rule does not ban accounting firms from providing all non-audit services, nor does it ban accounting firms from providing any non-audit services to entities other than their audit clients. It only adds certain non-audit services to those that accounting firms are already precluded from providing to a particular audit client if they wish to maintain independence from that audit client.

Nonetheless, we have considered whether our proposals are likely to impose any of these other costs on public accounting firms. For example, we have considered that the provision

[223] Of course, these firms and other firms that do not currently earn any such revenues would be precluded from earning such revenues in the future from the covered non-audit services.

[224] Public accounting firms that are separating their consulting practices would be affected if they subsequently determined to re-acquire or recreate consulting practices that included these listed services.

[225] Of course, as noted above, some of the non-audit services now provided by auditors may be redistributed to consulting firms that are not engaged in public accounting.

of non-audit services may enhance an auditor's expertise and thereby improve the efficiency or effectiveness of the audit. Our proposals would not preclude public accounting firms from developing or maintaining such expertise through consulting engagements, however. Under the proposals, public accounting firms could provide any non-audit service to clients that are not audit clients as to which they must be independent under the federal securities laws, and thereby develop or maintain their expertise. Moreover, to the extent that the effect of the proposals is merely to redistribute the provision of non-audit services among the public accounting firms, this redistribution may permit each of the firms to maintain its expertise in various of these services.

We request comment on whether our proposals on non-audit services would impose costs on accounting firms or others because accountants would have diminished expertise. If so, is it possible to quantify these costs? We also request comment on what effect, if any, reducing the pool of clients to which accounting firms can sell certain non-audit services will have on the firms' profit margins.

Our proposals also may affect what some contend are synergies (or "knowledge spillovers") that arise from providing non-audit services to an audit client. Research on enhanced efficiency or effectiveness of providing non-audit services to audit clients is inconclusive.[226] Anecdotal evidence that argues against knowledge spillovers is found in the recent sale or proposed sale of the consulting divisions of several large public accounting firms. If efficient and effective audits require the expertise that can be most efficiently maintained through the provision of consulting services to audit clients, these firms would be unlikely to sell their consulting practices. Thus, the sale of these consulting practices, coupled with the results of previous research, provide evidence that is inconsistent with the existence of synergies that would be negatively affected by our proposed amendments.

We seek comment on whether there are knowledge spillovers that would be lost under the proposals. If so, is there some means of quantifying this cost? Would knowledge spillovers be a concern for some or all of the non-audit services covered by our proposals? We also seek comment on whether there is evidence as to the mechanisms by which knowledge spillovers occur. For example, please provide an average of the number of hours billed on particular audit engagements by consulting personnel as a fraction of total audit hours and the number of hours of audit staff time billed for consulting services covered by the rule to an audit client of that staff member.

Finally, some accounting firms have suggested that their recruiting and employee retention would be affected if they could not provide non-audit services. According to this argument, employees or potential employees are more interested in joining accounting firms in which they will be able to engage in both audit and non-audit work, or at least have the option of engaging in both audit and non-audit work.

We seek comment on whether our proposals impose a cost of this type on accounting firms. Do a significant number of accounting firm employees engage in both: (i) audit activities, and (ii) non-audit activities that are prohibited as a result of our proposal, as part of their work? Have a significant number of accounting firm employees shifted from providing audit services to providing non-audit services that are covered by these proposals? Do the proposals significantly reduce the non-audit work available to professional audit staff? If so, how? [227]

C. Costs and Benefits of the Proposals to Add Disclosure Requirements

Our proposals require public companies, under certain circumstances, to disclose information about the non-audit services provided by their auditor, the fees for those services, and the audit fee. The proposals also require public companies to disclose, when relevant, that more than 50% of the audit was performed by personnel who are full-or part-time employees of an entity other than the audit firm.

The disclosure of non-audit services provided by a company's auditor is intended to allow investors to judge for themselves whether they believe that a particular service affects the independence of the auditor. Such disclosures have been provided in the United Kingdom for several years.

The disclosure regarding the usage of leased personnel to perform an audit is intended to allow investors to know when personnel of an entity, other than the audit firm, performed a majority of the audit so that investors can consider the independence of the other entity. Under such circumstances, the independence of the other entity and its personnel may be as relevant—if not more relevant—to auditor independence than the independence of the auditor itself.

1. Benefits

As discussed above,[228] there is growing concern about the impact of non-audit services on auditors' independence. In addition, as noted above, while the SECPS collects information on non-audit and audit fees from its member firms, it no longer publishes this information. Accordingly, such information is not readily available to, or easily accessible by, the investing public. Further, this information provides a description of service line activities by the public accounting firm for all of its clients, rather than for each audit client.

The proposals would remedy this situation. The proposed disclosure related to non-audit services provided by auditors to audit clients would give investors insight into the full relationship between a company and its auditor. In so doing, the proposed disclosure would replace uncertainty about the nature and scope of such relationships with facts about the services provided by the auditor to the company. This information may help shareholders decide, among other things, how to vote their proxies in selecting or ratifying management's selection of an auditor.

The disclosure regarding the auditor's use of another entity's employees to perform a majority of the audit work also provides important information to investors. Investors may need to know when a majority of the audit work is performed by persons who have financial, business, and personal interests in addition to, or different

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[226] Two studies in the 1980s documented that audit fees were generally greater, after controlling for other factors, for clients that also purchased nonaudit services from the same public accounting firm. *See* Zoe-Vonna Palmrose, "The effect of nonaudit services on the pricing of audit services," *Journal of Accounting Research*, at 405–11 (Autumn 1986); Dan A. Simunic, "Auditing, consulting, and auditor independence," *Journal of Accounting Research*, at 679–702 (Autumn 1984). The authors of these studies nonetheless concluded that this evidence was consistent with the hypothesis that the joint provision of audit and nonaudit services may give rise to "knowledge spillovers" (i.e. enhanced efficiency or effectiveness). More recent research documents that these higher fees are associated with increased audit effort (in labor hours). *See* Larry R. Davis, David N. Ricchiute, and Greg Trompeter, "Audit Effort, Audit Fees, and the Provision of Nonaudit Services to Audit Clients," *Accounting Review*, at 135–50 (Jan. 1993). The results of the Davis et al. study therefore cast doubt on the knowledge spillover hypothesis.

[227] This argument also assumes that accounting firms will not be engaged in both audit and nonaudit work. Our proposals, of course, do not prevent accounting firms from continuing to provide any nonaudit services to companies other than their audit clients.

[228] *See supra* Section II.C.

from, persons employed by the auditor. This disclosure is significant because it reveals when the "principal auditor" (the auditor performing a majority of the audit work) is an entity other than the firm signing the audit opinion.

We believe that the benefits of the proposed disclosure rules would include increased market efficiency due to improved information and transparency concerning the credibility and reliability of companies' financial disclosures. The value of these benefits is not readily quantifiable. We solicit comment, including supporting data if available, on the benefits of the proposed disclosure rule.

2. Costs

We believe that the proposed disclosure rule will impose relatively minor reporting costs on issuers. Generally, information about auditor independence is readily available to registrants. One basis for that information is ISB Standard No. 1, which requires auditors to report certain independence issues to the audit committees of their audit client-registrants.[229] In addition, the SECPS requires members to report annually to the audit committee, or similar body, the total fees received from the company for management advisory services during the year under audit, and a description of the types of such services rendered.[230] As a result, companies should have ready access to the information on fees paid to their auditor for non-audit services. The proposed disclosure requirement would merely require issuers to pass certain of this information on to shareholders.

For purposes of the Paperwork Reduction Act, we have estimated that our proposed disclosure rules would, on an annual basis, impose 2,473 additional burden hours on all Schedule 14A filers and 63 additional burden hours on all Schedule 14C filers, for an aggregate annual total of 2,536 additional burden hours.[231] That estimate is based on current burden hour estimates and the staff's experience with such filings. We further estimate that approximately 75% of the extra burden hours, or 1,902 hours, will be expended by companies' internal staff, and the remaining 25%, or 634 hours, by outside professional help.[232] These percentage estimates, which are based on current burden hour estimates and the staff's experience with such filings, reflect the time companies would spend preparing the additional disclosures in the proxy statement or information statement.

Assuming that the internal staff costs the company an average of about $85 per hour, the aggregate annual cost for internal staff assistance would amount to approximately $161,670. If we assume that the outside professional assistance would have an average cost of approximately $175 per hour, the aggregate annual paperwork cost would be approximately $110,950. The total annual costs would accordingly be about $272,620. We request comment on the reasonableness of these estimates and their underlying assumptions.

In addition, as noted above, some issuers would have to disclose the percentage of hours expended on the engagement by "leased" employees. We currently lack information on the number of issuers that would be affected by the proposed disclosures on "leased" employees. We expect, however, that this disclosure will be required only in rare situations where the firm has sold its non-attest practice to a financial services company and is leasing back its employees. In these situations, former employees of the firm become full-or part-time employees of the financial services company and are "leased" back to the accounting firm to perform audit work. This disclosure should not require any additional recordkeeping by the firm because the amount of hours performed on an audit by the lessor and by the "leased" personnel should be readily available from the firm's billing records. This information also should be readily available to the registrant because of the communications requirements under ISB Standard No. 1, as discussed above.

We seek comment on these and any other costs of the proposed disclosure rules. Are there any other potential costs we have not considered?

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Act Analysis ("IRFA") in accordance with the Regulatory Flexibility Act,[233] regarding the proposed amendments to Rule 2–01 of Regulation S–X and item 9 of Schedule 14A under the Exchange Act. The following summarizes the IRFA.

As discussed in greater detail in the IRFA and in other sections of this release, there have been significant changes in accounting firms, changes in the business environment, and demographic changes since we last amended our requirements regarding the independence of auditors of financial statements filed with us. The IRFA notes that we are re-evaluating whether our auditor independence requirements remain effective, relevant and fair. In this regard, we are proposing amendments to our current requirements to address investments by auditors or their family members in audit clients, employment of auditors' family members and former partners by audit clients, and the scope of services provided by audit firms to their SEC audit clients. The IRFA also discusses the proposed proxy disclosure requirements by public companies regarding non-audit services provided by their auditors.

The IRFA sets forth the statutory authority for the proposed rules. It also discusses small entities subject to the rules.[234] The IRFA states that approximately 2,500 Exchange Act reporting companies are small businesses and approximately 227 investment companies are small businesses. The IRFA also states that the Small Business Administration defines small business, for purposes of accounting firms, as those with under $6 million in annual revenues.[235] We cannot estimate the number of firms with less than $6 million in revenues.

The IRFA indicates that the proposed rules would affect two primary groups, auditors and registrants. The IRFA states that the rules could potentially affect auditors in three areas: investments and

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[229] ISB Standard No. 1, *supra* note 95. In addition, SAS No. 61 provides additional guidance on topics that an auditor should discuss with the audit committee (or board of directors if there is no such committee) of each registrant. AICPA SAS No. 61, AU § 380.

[230] SECPS Manual, *supra* note 165, at § 1000.08(i).

[231] Approximately 9,892 respondents file proxy statements under Schedule 14A and approximately 253 respondents file information statements under Schedule 14C. We based the number of entities that would complete and file each of the forms on the actual number of filers during the 1998 fiscal year.

[232] These assumptions are based on the staff's experience with these filings. We believe that a company's internal staff will typically carry most of the burden of preparing the proposed additional disclosures, and will consult with outside professionals only on specific issues that the company may periodically encounter in preparing the proxy statement or information statement.

[233] 5 U.S.C. § 603.

[234] For the purposes of this analysis, the Commission has defined "small business" in Securities Act Rule 157 as any entity whose total assets on the last day of its most recent fiscal year were $5 million or less and is engaged, or proposes to engage, in small business financing. 17 CFR 230.157. A registrant is considered to be engaged, or to propose to engage, in small business financing under this rule if it is conducting, or proposes to conduct, an offering of securities which does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act. 15 U.S.C. 77c(b). The Commission also has defined small business in Rule 0–10 of the Investment Company Act as an investment company that has assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10.

[235] 13 CFR 121.201.

employment relationships; non-audit services; and quality controls. With regard to investments and employment relationships, the IRFA states that the proposed rules would liberalize certain restrictions on investments by, and employment opportunities available to, accountants and their families. In this sense, compliance requirements are being relaxed.

With regard to non-audit services, the IRFA states that the vast majority of SEC registrants are audited by one of the Big Five firms, which clearly are not small entities. The IRFA explains that we have data regarding the approximately 776 accounting firms with fewer than 20 SEC audit clients,[236] which would tend to be smaller accounting firms. As the IRFA explains, we do not believe that the proposed amendments regarding consulting and non-audit services would have a significant impact on a substantial number of small accounting firms.

With regard to quality controls, the IRFA explains that the proposed rules establish a limited exception for accounting firms that institute certain quality controls and satisfy other conditions. The proposed rules, therefore, encourage, but do not require, accounting firms to adopt quality controls that ensure the independence of the firms' auditors. The IRFA explains that GAAS already require firms to have quality controls over their audit practices, and the standards refer to the SQCS for guidance regarding the elements of those systems.[237]

The proposals, however, clarify the GAAS requirement for the quality controls of firms with more than 500 SEC audit clients by setting forth certain procedures that should be part of their quality controls. For firms with fewer than 500 SEC audit clients, a firm's quality control system should take into account the size and nature of the firm's practice. For smaller firms, therefore, the proposals incorporate GAAS requirements, but do not add new requirements.

The proposed proxy disclosure rule would require registrants to disclose certain information to shareholders regarding auditor independence and regarding fees for audit and non-audit services. The proposed rules also address situations where more than 50% of the audit is performed by personnel that are full or part-time employees of another entity.

We do not believe that the proposed proxy disclosure requirement would have a significant impact on a substantial number of small entities. These requirements would apply to small businesses only if they are otherwise subject to the proxy rules. We estimate the number of those entities to be no more than 2,700, including 227 investment companies. The proposed disclosures relate to only one item on the proxy statement, and the information should be readily available to registrants because of the requirements of ISB Standard No. 1. Finally, the proposals provide an exclusion from the disclosure requirements for *de minimis* items.

As explained in the IRFA, the Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing adverse impact on small entities. In that regard, we considered the following alternatives: (a) Differing compliance or reporting requirements that take into account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (c) use of performance rather than design standards; and (d) an exemption from the coverage of the proposed amendments for small entities.

As noted, because neither the proposals to modernize the independence rules for investments and employment relationships nor the proposed proxy disclosure requirements should have a significant economic impact on a substantial number of small entities, we did not make special provisions for small entities. Regarding the provision of non-audit services by accounting firms, including small accounting firms, we have, above, solicited comment on a number of alternative regulatory approaches. The IRFA states that because of the limited amount of non-audit services that small accounting firms provide to their SEC audit clients, we believe that the adoption of any of these alternatives would not have a significant impact on a substantial number of small businesses or small accounting firms.

The IRFA explains that the use of performance rather than design standards or providing an exemption from the coverage of the proposed amendments for small entities are not viable because it is not possible to design performance standards that would carry out our statutory mandate and we believe investors receive a significant benefit from knowing that an independent professional has examined the financial statements of a registrant, including a small registrant, with skepticism.

The IRFA includes information concerning the number of small entities that may be affected by the proposed amendments and the nature of the impact on those entities. We encourage the submission of comments with respect to any aspect of the IRFA. In particular, we seek comment on the number of small entities that would be affected by the proposed rules; the nature of the impact; how to quantify the number of small entities that would be affected; and how to quantify the impact of the proposed rules. Comment is specifically requested regarding the number of small accounting firms that might be affected by the proposed rules, and the effect, if any, that the proposed rules would have on those firms. Please describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments. A copy of the IRFA may be obtained by contacting Robert Burns, Chief Counsel, (202) 942–4400, at the Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

VII. Paperwork Reduction Act

Certain of the provisions in the proposed amendment to item 9 of Schedule 14A contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collections of information are titled "Regulation 14A (Commission Rules 14a–1 through 14b–2 and Schedule 14A)" and "Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Regulation 14A (OMB Control No. 3235–0059) was adopted pursuant to section 14(a) of the Exchange Act[238] and prescribes information that a company must include in its proxy statement to ensure that shareholders

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[236] "Special Supplement: Annual Survey of National Accounting Firms—2000," *Public Accounting Report* (March 31, 2000); Annual Reports to SECPS, Annual reports filed with AICPA Division for CPA firms; SECPS Reports, Reports prepared by the AICPA Division for CPA firms.

[237] AICPA SAS No. 25, AU § 161 n.1.

[238] 15 U.S.C. 78n(a).

are provided information that is material to their voting decisions. Regulation 14C (OMB Control No. 3235–0057) was adopted pursuant to section 14(c) of the Exchange Act [239] and prescribes information that a company must include in an information statement when a shareholder vote is to be held but proxies are not being solicited. Schedule 14C refers to Schedule 14A for the disclosure requirements related to the company's independent accountants.

The proxy disclosure requirements in section 14 of the Exchange Act apply to those entities that have securities registered with the Commission under section 12 of that Act. The likely respondents, therefore, include entities with more than 500 shareholders and more than $10 million in assets (section 12(g)) [240] and entities with securities listed on a national exchange (section 12(b)).[241] Approximately 9,892 respondents file proxy statements under Schedule 14A and approximately 253 respondents file information statements under Schedule 14C. We based the number of entities that would complete and file each of the forms on the actual number of filers during the 1998 fiscal year.

We estimate that the total reporting burden for Schedule 14A is 179,144 hours, or approximately 18 hours per respondent. We estimate that the total reporting burden for Schedule 14C is 4,582 hours, or approximately 18 hours per respondent. These estimates include increases of 2,473 hours for Schedule 14A and 63 hours for Schedule 14C based on estimates that the proposed amendments will add one hour to the reporting burden of one-quarter of the respondents, and will not add to the burden of the other respondents. These increases are based on the fact that the information needed to make these disclosures should be readily available to the respondents and the fact that, based on information provided to the SECPS, approximately 75 percent of Commission registrants receive no non-audit services from the auditors of their financial statements and, accordingly, will not be required to make any disclosures under the proposed amendments.

We believe the proposed disclosure will bolster confidence in the securities markets by informing investors about: (i) non-audit relationships between the auditor and the audit client, and (ii) situations in which a majority of the audit work is performed by employees of an entity other than the principal audit firm signing the audit opinion. As discussed in other sections of this release, there is growing concern about the impact of non-audit services on auditors' independence. The disclosure will bring the benefit of sunshine to non-audit relationships and replace uncertainty about the nature and scope of such relationships with facts about the services provided by an auditor to each audit client. This information may be material to an investor's decision to vote on the selection or ratification of the auditor. The disclosure regarding the auditor's use of another entity's employees to perform a majority of the audit work also provides important information to investors. Investors may need to know when a majority of the audit work is performed by persons who have financial, business, and personal interests in addition to, or different from, persons employed directly by the auditor.

Compliance with the disclosure requirements is mandatory if the audit client is subject to the proxy or information disclosure requirements and either (i) the audit client has received non-audit services from the auditor of its financial statements, or (ii) the auditor used employees of another entity to perform a majority of the audit work. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected, and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7–13–00. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–13–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[242] we are requesting information regarding the potential impact of the proposals on the economy on an annual basis. Commenters should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts.[243] We expect that in some ways the proposals will increase competition by removing the accountant's competitive advantage in bidding on or otherwise obtaining non-audit work required by audit clients.[244] We request comment on any anti-competitive effects of the proposals.

In addition, Section 3(f) of the Exchange Act requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[245] We believe that the proposals will increase investor confidence in the integrity of the audit process and in the audited financial information that they use daily to make investment and voting decisions. This increased sense of confidence should promote market efficiency and capital formation. The modernization of our rules should allow more accountants, and their families, to invest in a wider range of investment opportunities. According to information provided to the SECPS, over 100,000 individuals will have more freedom of choice in their financial investments.

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[239] 15 U.S.C 78n(c).

[240] 15 U.S.C. 78*l*(g).

[241] 15 U.S.C. 78*l*(b).

[242] Pub. L. No. 104–121, tit. II, 110 Stat. 857 (1996).

[243] 15 U.S.C. 78w(aa)(2).

[244] *See supra* Section V. for a discussion of this issue.

[245] 15 U.S.C. § 78c(f).

This should increase the efficiency of the markets. We request comment on these matters.

IX. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) is proposed to be amended as follows:

1. By removing section 602.01.
2. By removing section 602.02.a.
3. By removing section 602.02.b.i.
4. By removing section 602.02.b.ii to remove examples 2, 3, 4, 7, 8, and 10, and redesignate examples 5, 6, and 9 as examples 2, 3, and 4.
5. By removing section 602.02.b.iii.
6. By amending section 602.02.b.iv to remove the first three introductory paragraphs.
7. By amending section 602.02.c.i to remove the last two paragraphs.
8. By amending section 602.02.c.ii to remove examples 1, 2, 3, 4, 5, 7, 8, and 9 and redesignate example 6 as example 1.
9. By amending section 602.02.d to remove the two introductory paragraphs, remove examples 2, 3, 4, 5, 6, and 7, and redesignate example 8 as example 2.
10. By removing section 602.02.e.ii.
11. By removing section 602.02.e.iii.
12. By amending section 602.02.f to remove the introductory paragraph, remove examples 1, 2, 3, 4, and 5, and redesignate examples 6 and 7 as examples 1 and 2.
13. By amending section 602.02.g to remove examples 5, 15, 18, 19, and 22 and remove examples 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20, 21, 23, and 24 as examples 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, respectively.
14. By removing section 602.02.h.
15. By adding section 602.01, captioned "Discussion of Rule 2–01," to include the text in the adopting release that discusses the final rules, which, if the proposed rules are adopted, would be substantially similar to topic III of this release.
16. By amending section 602.02 to redesignate sections 602.02.b.ii, 602.02.b.iv, 602.02.b.v, 602.02.c.i, 602.02.c.ii, 602.02.c.iii, 602.02.d, 602.02.e.i, 602.02.e.iv, 602.02.f, 602.02.g, 602.02.i.i, and 602.02.i.ii as sections 602.02.a.i, 602.02.a.ii, 602.02.a.iii, 602.02.b.i, 602.02.b.ii, 602.02.b.iii, 602.02.c, 602.02.d.i, 602.02.d.ii, 602.02.e, 602.02.f, 602.02.g.i, and 602.02.g.ii, respectively.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

X. Statutory Bases and Text of Amendments

We are proposing amendments to Rule 2–01 of Regulation S–X and Item 9 of Schedule 14A under the authority set forth in Schedule A and Sections 19 and 28 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, Sections 5, 10, 14, and 20 of the Public Utility Holding Company Act of 1935, Sections 8, 30, and 38 of the Investment Company Act of 1940, and Sections 203 and 211 of the Investment Advisers Act of 1940.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By amending § 210.2–01 by revising paragraphs (b) and (c) and adding paragraphs (d), (e) and (f) to read as follows:

§ 210.2–01 Qualifications of accountants.

(a) * * *

(b) The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or would not be perceived by reasonable investors to be, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. Under this standard, an accountant is not independent whenever, during the audit and professional engagement period, the accountant:

(1) Has a mutual or conflicting interest with the audit client;

(2) Audits the accountant's own work;

(3) Functions as management or an employee of the audit client; or

(4) Acts as an advocate for the audit client.

(c) An accountant is not independent under the standard of paragraph (b) of this section if, during the audit and professional engagement period, the accountant has any of the financial, employment or business relationships with, provides any of the non-audit services to, or receives a contingent fee from, the accountant's audit client or an affiliate of the audit client, as specified in paragraphs (c)(1) through (c)(5) of this section, or otherwise does not comply with the standard of paragraph (b) of this section.

(1) *Financial relationships.* An accountant is not independent under the standard of paragraph (b) of this section if the accountant has a direct financial interest or a material indirect financial interest in the accountant's audit client, such as the financial relationships specified in this paragraph (c)(1).

(i) *Investment in audit client.* An accountant is not independent when:

(A) The accounting firm, any covered person in the firm, or any of his or her immediate family members, has any direct investment in an audit client or an affiliate of an audit client, such as stocks, bonds, notes, options, or other securities.

(B) Any partner, principal, shareholder, or professional employee of the accounting firm, any of his or her immediate family members, any close family member of a covered person in the firm, or any group of the above persons has filed a Schedule 13D or 13G with the Commission indicating beneficial ownership of more than five percent of an audit client's equity securities, or otherwise controls an audit client.

(C) The accounting firm, any covered person in the firm, or any of his or her immediate family members, serves as voting trustee of a trust or executor of an estate containing the securities of an audit client.

(D) The accounting firm, any covered person in the firm, any of his or her immediate family members, or any group of the above persons has any material indirect investment in an audit client, including:

(*1*) Ownership of more than five percent of an entity that has an ownership interest in the audit client; or

(*2*) Ownership of more than five percent of an entity of which the audit client has an ownership interest.

(ii) *Other financial interests in audit client.* An accountant is not independent when the accounting firm,

any covered person in the firm, or any of his or her immediate family members has:

(A) *Loans/debtor-creditor relationship.* Any loan (including any margin loan) to or from an audit client, an affiliate of an audit client, or an audit client's or an affiliate of an audit client's officers, directors, or record or beneficial owners of more than five percent of the audit client's or affiliate's equity securities, except for the following loans obtained from a financial institution under its normal lending procedures, terms and requirements:

(*1*) Automobile loans and leases collateralized by the automobile;

(*2*) Loans fully collateralized by the cash surrender value of an insurance policy;

(*3*) Loans fully collateralized by cash deposits at the same financial institution; and

(*4*) A mortgage loan collateralized by the accountant's primary residence provided the loan was not obtained while the borrower was a covered person in the firm or an immediate family member of a covered person in the firm.

(B) *Savings and checking accounts.* Any savings, checking or similar account at a bank, savings and loan or similar institution that is an audit client or an affiliate of an audit client, if the account has a balance that exceeds the amount insured by the Federal Deposit Insurance Corporation or any similar insurer.

(C) *Broker-dealer accounts.* Any brokerage or similar accounts maintained with a broker-dealer that is an audit client or an affiliate of the audit client, if:

(*1*) Any such accounts include any asset other than cash or securities (within the meaning of "security" provided in the Securities Investor Protection Act); or

(*2*) The value of assets in the accounts exceeds the amount that is subject to a Securities Investor Protection Corporation advance, for those accounts, under Section 9 of the Securities Investor Protection Act.

(D) *Futures commission merchant accounts.* Any futures, commodity, or similar account maintained with a futures commission merchant that is an audit client or an affiliate of the audit client.

(E) *Credit cards.* Any credit card balance in excess of $10,000 owed to a lender that is an audit client or an affiliate of an audit client.

(F) *Insurance products.* Any individual policy or professional liability policy originally issued by an insurer that is an audit client or an affiliate of an audit client.

(G) *Investment companies.* Any investment in any entity in an investment company complex if the audit client is also an entity in the same investment company complex. When the audit client is an entity that is part of an investment company complex, the accountant must be independent of each entity in the investment company complex.

(iii) *Exceptions.* Notwithstanding paragraphs (c)(1)(i) and (c)(1)(ii) of this section, the accountant will not be deemed not independent if:

(A) *Inheritance and gift.* Any person acquires a financial interest through an unsolicited gift or inheritance that would cause an accountant to be not independent under paragraphs (c)(1)(i) or (c)(1)(ii) of this section, and the financial interest is disposed of as soon as practicable, but no longer than 30 days after the person has the right to dispose of the financial interest.

(B) *New audit engagement.* Any person has a financial interest that would cause an accountant to be not independent under paragraphs (c)(1)(i) or (c)(1)(ii) of this section, and:

(*1*) The accountant did not audit the client's financial statements for the immediately preceding fiscal year; and

(*2*) The accountant is independent under paragraphs (c)(1)(i) and (c)(1)(ii) of this section before the earlier of:

(*i*) Accepting the engagement to provide audit, review, or attest services to the audit client; or

(*ii*) Commencing any audit, review or attest procedures (including planning the audit of the client's financial statements).

(iv) *Audit clients' financial relationships.* An accountant is not independent when:

(A) *Investments by the audit client in the auditor.* An audit client or an affiliate of an audit client has, or has agreed to acquire, any direct investment in the accounting firm or its affiliate, such as stocks, bonds, notes, options, or other securities.

(B) *Underwriting.* An audit client or an affiliate of an audit client, including a broker-dealer or other entity, performs any service for the accounting firm related to underwriting, offering, making a market in, marketing, promoting, or selling securities issued by the accounting firm, or issues an analyst report concerning the securities of the accounting firm.

(2) *Employment relationships.* An accountant is not independent under the standard of paragraph (b) of this section if the accountant has an employment relationship with an audit client or an affiliate of an audit client, such as the employment relationships specified in this paragraph (c)(2). An accountant is not independent when:

(i) *Employment at audit client of accountant.* A current partner, principal, shareholder, or professional employee of the accounting firm is employed by the audit client or an affiliate of an audit client or serves as a member of the board of directors or similar management or governing body of the audit client or an affiliate of the audit client.

(ii) *Employment at audit client of certain relatives of accountant.* A close family member of a covered person in the firm is in an accounting or financial reporting oversight role at an audit client or an affiliate of an audit client, or was in such a role during any period covered by an audit for which the covered person in the firm is a covered person.

(iii) *Employment at audit client of former employee of accounting firm.* A former partner, shareholder, principal, or professional employee of an accounting firm is in an accounting or financial reporting oversight role at an audit client or an affiliate of an audit client, unless the individual:

(A) Does not influence the accounting firm's operations or financial policies;

(B) Has no capital balances in the accounting firm; and

(C) Has no financial arrangement with the accounting firm other than one providing for regular payment of a fixed dollar amount (which is not dependent on the revenues, profits, or earnings of the firm) pursuant to a fully funded retirement plan or rabbi trust.

(iv) *Employment at accounting firm of former employee of audit client.* A former officer, director, or employee of an audit client or an affiliate of an audit client becomes a partner, shareholder, or principal of the accounting firm, unless the individual does not participate in, and is not in a position to influence, the audit of the financial statements of the audit client or an affiliate of the audit client covering any period during which he or she was employed by or associated with that audit client or an affiliate of the audit client.

(3) *Business relationships.* An accountant is not independent under the standard of paragraph (b) of this section if the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, an affiliate of an audit client, or with an audit client's or an affiliate of an audit client's officers, directors, or record or beneficial owners of more than five

percent of the audit client's or affiliate's equity securities. The relationships described in this paragraph do not include a relationship in which the accounting firm or covered person in the firm provides professional services or is a consumer in the ordinary course of business,

(4) *Non-audit services.* (i) Even if the audit client accepts ultimate responsibility for the work that is performed or decisions that are made, an accountant is not independent under the standard of paragraph (b) of this section when the accountant provides certain non-audit services to an audit client or an affiliate of an audit client, such as:

(A) *Bookkeeping or other services related to the audit client's accounting records or financial statements.* Any service involving:

(*1*) Maintaining or preparing the audit client's or an affiliate of the audit client's accounting records;

(*2*) Preparing the audit client's or an affiliate of the audit client's financial statements; or

(*3*) Generating financial information to be disclosed by the audit client or an affiliate of the audit client to the public.

(B) *Financial information systems design and implementation.* Designing or implementing a hardware or software system used to generate information that is significant to the audit client's financial statements taken as a whole, not including services an accountant performs in connection with the assessment, design, and implementation of internal accounting controls and risk management controls.

(C) *Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.* Any appraisal or valuation service for an audit client or an affiliate of an audit client, or any service involving a fairness opinion or contribution-in-kind report where it is reasonably likely that, in performing an audit in accordance with generally accepted auditing standards, the results will be audited by the accountant.

(D) *Actuarial services.* Any advisory service involving the determination of policy reserves and related accounts for the audit client or an affiliate of an audit client, unless the audit client or its affiliate uses its own actuaries or third-party actuaries to provide management with the primary actuarial capabilities.

(E) *Internal audit outsourcing.* Internal audit services for an audit client or an affiliate of an audit client, not including nonrecurring evaluations of discrete items or programs and operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements.

(F) *Management functions.* Acting, temporarily or permanently, as a director, officer, or employee of an audit client or an affiliate of an audit client, or performing any decision-making, supervisory, or ongoing monitoring function for the audit client or affiliate of the audit client.

(G) *Human resources.* Recruiting, hiring, or designing compensation packages for officers, directors, or managers of the audit client or an affiliate of the audit client; advising about the audit client's or affiliate of the audit client's management or organizational structure; developing employee evaluation programs; or conducting psychological or other formal testing of employees.

(H) *Broker-dealer, investment adviser, or investment banking services.* Acting as a securities professional, such as a broker-dealer, promoter, underwriter, analyst of the audit client's or an affiliate of the audit client's securities, investment adviser, or in any capacity recommending the purchase or sale of an audit client's or an affiliate of an audit client's securities, or designing the audit client or an affiliate of the audit client's system to comply with broker-dealer or investment adviser regulations.

(I) *Legal services.* Providing any service to an audit client or an affiliate of an audit client that, in the jurisdiction in which the service is provided, could be provided only by someone licensed to practice law.

(J) *Expert services.* Rendering or supporting expert opinions for an audit client or an affiliate of an audit client in legal, administrative, or regulatory filings or proceedings.

(ii) *Transition.* Until [insert date two years from the effective date of this section], providing to an audit client or an affiliate of an audit client the non-audit services set forth in paragraph (c)(4)(i) of this section will not impair an accountant's independence with respect to the audit client if:

(A) The non-audit services are performed pursuant to a written contract in effect on or before [insert the effective date of this section]; and

(B) Performing those services did not impair the auditor's independence under pre-existing requirements of the Commission, the Independence Standards Board, or the accounting profession in the United States.

(5) *Contingent fees.* An accountant is not independent under the standard of paragraph (b) of this section if the accountant provides any service to an audit client or an affiliate of an audit client for a contingent fee, or receives a contingent fee from an audit client or an affiliate of an audit client.

(d) *Quality controls.* An accounting firm's independence will not be impaired solely because a covered person in the firm is not independent of an audit client provided:

(1) The covered person did not know, and was reasonable in not knowing, of the circumstances giving rise to the lack of independence;

(2) The covered person's lack of independence was corrected promptly after the covered person or accounting firm became aware of it; and

(3) The accounting firm has a quality control system in place that provides reasonable assurance, taking into account the size and nature of the accounting firm's practice, that the accounting firm and its employees do not lack independence. For an accounting firm that annually provides audit, review, or attest services to more than 500 companies with a class of securities registered with the Commission under section 12 of the Securities Exchange Act of 1934, a quality control system will not provide such reasonable assurance unless it has at least the following features:

(i) Written independence policies and procedures;

(ii) An automated system to identify financial relationships that might impair the accountant's independence;

(iii) An annual or on-going firm-wide training program about auditor independence;

(iv) An annual internal inspection and testing program to monitor adherence to independence requirements;

(v) Notification to all firm members, officers, directors, and employees of the name and title of the member of senior management responsible for compliance with auditor independence requirements;

(vi) Written policies and procedures requiring all firm professionals to report promptly to the firm when they are engaged in employment negotiations with an audit client, and requiring the firm to remove immediately any such professional from that audit client's engagement and to review promptly all work the professional performed related to that audit client's engagement; and

(vii) A disciplinary mechanism to ensure compliance with this section.

(e) In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client or the affiliates of the audit client, and not just those

relating to reports filed with the Commission.

(f) *Definitions of terms.* For purposes of this section:

(1) *Accountant,* as used in paragraphs (b) through (e) of this section, means a certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.

(2) *Accounting firm* means the organization (whether it is a sole proprietorship, incorporated association, partnership, corporation, limited liability company, limited liability partnership, or other legal entity) that is engaged in the practice of public accounting or furnishing accountant's reports with respect to financial statements, reports, or other documents filed with the Commission, and all departments, divisions, parents, subsidiaries, and affiliates of the accounting firm, including its pension, retirement, investment or similar plans.

(3) *Accounting or financial reporting oversight role* means that the person is in a position to, or does influence the contents of the accounting records or financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, vice president of marketing, or any equivalent position.

(4) *Affiliate of the accounting firm.* (i) "Affiliate of the accounting firm" means:

(A) Any person directly or indirectly controlling, controlled by, or under common control with the accounting firm, including:

(*1*) Any person or entity directly or indirectly owning, controlling, or holding the power to vote five percent or more of the accounting firm's outstanding voting securities, partnership units, or other interest entitling a person to vote; and

(*2*) Any person or entity five percent or more of whose outstanding voting securities, partnership units, or other interest entitling a person to vote are directly or indirectly owned, controlled, or held by the accounting firm;

(B) Any officer, director, partner, copartner, or shareholder of more than five percent of the voting securities of a person described in paragraph (f)(4)(A) of this section;

(C) Any joint venture, partnership, or other undertaking in which the accounting firm participates and in which the parties agree to any form of shared benefits, including any form of shared revenue, income, or equity appreciation;

(D) Any entity that provides non-audit or other professional services to one or more of the accounting firm's audit clients, and in which the accounting firm has any equity interest in, has loaned funds to, or shares revenues with, or with which the accounting firm or any covered person in the firm has any direct business relationship;

(E) All persons and entities with which the accounting firm is publicly associated by co-branding; using the accounting firm's name, initials, or logo; cross-selling services; or using co-management; and

(F) If the accounting firm leases, or otherwise routinely acquires on a temporary or continuous basis, the services of personnel employed full- or part-time by another party (the "lessor") and the leased personnel perform a majority of the hours worked on the engagement or supporting the accountant's reports filed with the Commission, the lessor and the lessor's board of directors, executive officers, and all persons with management, supervisory, compensation, or other oversight responsibility for the leased personnel, and shareholders of five percent or more of the lessor's equity securities.

(ii) "Affiliate of the accounting firm" does not include parties that share with an accounting firm training facilities, technical knowledge, databases, or billing facilities but that have no other business or financial relationship with the accounting firm, provided that the accounting firm pays a reasonably proportionate and fair share of the costs and expenses associated with such items, and the party charges all participants no more than the costs and expenses incurred to operate or maintain the shared facility or database.

(5) *Affiliate of the audit client* means an entity that has significant influence over the audit client, or over which the audit client has significant influence, including the audit client's parent and subsidiary.

(6) *Audit and professional engagement period* includes both:

(i) The period covered by any financial statements being audited or reviewed (the "audit period"); and

(ii) The period of the engagement to audit or review the client's financial statements or to prepare a report filed with the Commission (the "professional engagement period").

(A) The professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements), or begins review or audit procedures, whichever is earlier; and

(B) The professional engagement period ends when the client or the accountant notifies the Commission that the client is no longer that accountant's audit client.

(7) *Audit client* means the entity whose financial statements or other information is being audited, reviewed, or attested.

(8) *Audit engagement team* means all partners, principals, shareholders, and professional employees participating in an audit, review, or attestation engagement of an audit client, including those conducting concurring or second partner reviews and all persons who consult, formally or informally, with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events.

(9) *Chain of command* means all persons having any supervisory, management, quality control, compensation, or other oversight responsibility over either any member of the audit engagement team or over the conduct of the audit. The "chain of command" includes all partners, principals, shareholders, and managers who may review, determine, or influence the performance appraisal or compensation of any member of the audit engagement team and any other person in a position to influence the audit engagement team's decisions during the conduct of the audit, review, or attestation engagement.

(10) *Close family members* means a person's spouse, spousal equivalent, parent, dependent, nondependent child, and sibling.

(11) *Consumer in the ordinary course of business* means a purchaser of routine products or services on the same terms and conditions that are available to the seller's other customers or clients, as long as the purchaser does not resell the product or service or receive a commission or other fee for selling the product or service.

(12) *Contingent fee* means any fee where payment, or the amount of the fee paid or due, is contingent, in whole or in part, on the result, including the value added, of any transaction or event, other than completion of the work or delivery of the product giving rise to the fee. A fee is not a "contingent fee" if it is fixed by a court or by any federal, state, or local governmental agency.

(13) *Covered persons in the firm* means the following partners, principals, shareholders, and employees of an accounting firm:

(i) The "audit engagement team;"

(ii) The "chain of command;"

(iii) Any other partner, principal, shareholder, or professional employee of the accounting firm who is, or during the audit client's most recent fiscal year was, involved in providing any professional service to the audit client or an affiliate of the audit client; and

(iv) Any other partner, principal, or shareholder from an "office" of the accounting firm that participates in a significant portion of the audit.

(14) *Group* means when two or more persons act together for the purposes of acquiring, holding, voting, or disposing of securities of a registrant.

(15) *Immediate family members* means a person's spouse, spousal equivalent, and dependent.

(16) *Investment company complex.* (i) "Investment company complex" includes:

(A) An investment company and its investment adviser or sponsor;

(B) Any entity controlled by, under common control with or controlling the investment adviser or sponsor in paragraph (f)(16)(A) of this section; or

(C) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 (15 U.S.C. § 80a–3(c)) that has an investment adviser or sponsor included in this definition by either paragraphs (f)(16)(A) or (f)(16)(B) of this section.

(ii) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(iii) Sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

(17) *Office* means a distinct sub-group within an accounting firm, whether distinguished along geographic or practice lines.

(18) *Rabbi trust* means an irrevocable trust whose assets are not accessible to the accounting firm until all benefit obligations have been met, but are subject to the claims of creditors in bankruptcy or insolvency.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

4. By amending § 240.14a–101 to add paragraph (e) to Item 9 to read as follows:

§ 240.14a–101 Schedule 14A information required in proxy statement.

* * * * *

Item 9. *Independent public accountants.* * * *

* * * * *

(e)(1) Describe each professional service provided during the most recent fiscal year by the independent public or certified public accountant (as defined in Article 2 of Regulation S–X, 17 CFR 210.2–01) that is the registrant's principal accountant. A service does not have to be disclosed if the fee for that service was, is, or will be less than the lesser of $50,000 or 10 percent of the fee for the audit of the registrant's annual financial statements.

Instruction to paragraph (e)(1). Specifically describe each service. Broad general categories such as "tax matters" or "management advisory services" or "management consulting services" are not sufficient.

(2) Indicate whether, before each disclosed professional service was rendered, the audit committee of the board of directors, or if there is no such committee then the board of directors, approved the service and considered the possible effect of the service on the principal accountant's independence.

(3) Disclose the fee for each disclosed professional service.

(4) Disclose the aggregate fee for the audit of the registrant's financial statements for the fiscal year most recently completed and for the reviews of the financial statements included in the registrant's Forms 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) for that fiscal year.

(5) If greater than 50 percent, disclose the percentage of the hours expended on the principal auditor's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

* * * * *

By the Commission.

Dated: June 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A, B, and C to the preamble will not appear in the Code of Federal Regulations.

Appendix A

Services Offered by Professional Accounting Firms

Accounting and Auditing Services

1. Year-end audit. This may include assisting the client in calculating the amount of the income taxes owed, valuing stock options and other stock compensation arrangements under FAS 123, and drafting and typing up the financial statements.

2. Review of interim (monthly, quarterly) financial statements.

3. Compilation of financial statements.

4. Bookkeeping services (some firms offer this as a computer bookkeeping service).

5. Valuations of derivatives at fair market value for accounting purposes.

6. Assistance in preparation of and review of filings with the SEC, including initial public offerings.

7. Underwriter comfort letters for SEC and non-SEC filings.

8. Audit of Management's Discussion and Analysis in SEC filings.

9. Agreed upon procedures engagement (the client and auditor agree to procedures the auditor is to perform with respect to tasks such as testing a royalty arrangement or compliance with a loan agreement, and the auditor then issues a report on his or her findings).

10. Audit or review of financial forecasts or projections. This includes such documents included in offering memoranda.

11. Providing advice on how to interpret new accounting pronouncements, including providing sample journal entries.

12. Audits of financial statements of pension plan financial statements.

13. Director examinations of financial institutions.

14. CPA WebTrust—an engagement to review the security of a company's website that is conducting electronic commerce over the internet.

15. Assisting international companies in conforming their financial reporting to U.S. financial reporting practices (GAAP conversions).

16. Technical opinions on accounting matters to clients of other accounting firms.

Business Controls

1. Ethics and Responsible Business Practices—a service that helps clients address the sources of internal wrongdoing and eliminate barriers to responsible business practices.

2. Evaluation, design and implementation of internal accounting and financial reporting controls, policies and procedures.

3. Evaluation, design and implementation of management and business controls over various business functions such as management reporting systems, research and development, etc.

4. Examinations of internal controls.

5. Business Fraud and Investigation Services—helps companies identify, manage and minimize integrity risks, such as suspected management or alleged employee fraud.

Tax Services

1. Preparation of federal and state individual income tax returns.
2. Preparation of federal and state corporation tax returns.
3. Individual and corporate tax planning (including federal, state, and local taxes).
4. Personal financial planning for individuals including client employees and executives.
5. Income tax planning for executives including employee compensation and benefit plans (see below).
6. Investment planning.
7. Programs for planning for college.
8. Retirement planning programs.
9. Estate planning including preparation of wills, trusts, etc.
10. Representation of clients in tax negotiations and disputes with the IRS.
11. Review of property tax assessments.
12. Succession planning.
13. Serve as or provide tax advice to executors and trustees.
14. Tax credit reviews to determine maximum allowable credits (*e.g.*, research and development credits).
15. Trade and customs services—ensures compliance with trade laws and regulations while trying to avoid, reduce, or defer overall customs duties.
16. Transfer pricing studies and evaluation, documentation, and modification of existing policies.
17. Valuation services.
18. VAT Services.

Financial Services

1. Treasury management services including design, development and implementation of policies and procedures.
2. Credit management services including design, development and implementation of credit policies and procedures.
3. Design and structuring of financial instruments.
4. Assisting investment banking firms with the design of financial instruments and financing transactions.
5. Assistance with finding/identifying equity parties or financing parties.
6. Identification and selection of banks.
7. Assistance with or preparation of financing and loan applications.
8. Loan review services.
9. Regulatory advisory services.

Information Systems Technology

1. Selection of new hardware and software systems. This may include activities such as performing a "needs analysis," preparation of a request for proposals, and overseeing, assistance with, or performance of demonstrations.
2. Implementation of new hardware and software systems. This may include:

- Full on-site team to perform all implementation services.
- Project administration of another consulting team.
- Development of necessary manual and computer control systems.
- Providing necessary computer programmers.
- Software design and programming.
- Ongoing support functions.

3. Consulting on Y2K issues such as:

- Inventory of Y2K system problems.
- Development of Y2K remediation program.

4. Development of IT management and/or strategic plans.
5. Evaluation and selection of telephone systems.
6. Business continuity planning and information security services.
7. Application controls consulting.
8. Electronic commerce services.
9. Reporting on the processing of transactions by service organizations.

Employment Benefit Programs

1. Designing and developing employee compensation programs including:

- Stock option programs.
- Retirement plans.
- Executive compensation arrangements.
- Deferred compensation and bonus arrangements.

Business Reengineering

1. Benchmarking of best practices including business and financial reporting practices.
2. Reengineering of business processes including:

- Manufacturing processes.
- Research and development processes.
- Review of spending levels (*e.g.*, for general and administrative expenses).
- Plant layout design.

3. Review of manual processes that feed into computerized information systems.
4. Staff reduction programs.

Outsourcing

Outsourcing of such client functions as:
1. Information systems. This may include outsourcing the management or the entire data processing and information systems group.
1. Internal audit function.
2. Tax department.
3. Office of the Chief Financial Officer.
4. Accounting department.
5. Human resource department.
6. Risk management function.

Corporate Finance

1. Deal due diligence.
2. Candidate targeting.
3. Preparation of offering memorandums.
4. Lead advisor for private placements
5. Merger transaction advice on:

- Structuring of transactions.
- Tax implementations.
- Sourcing capital.
- Preparation of pro forma financial statements and projections.
- Reengineering acquired businesses.
- Cost reduction and synergistic studies.

6. Appraisal and valuation of targets assets, including receivables, inventories, property, plant and equipment, intangible assets and in-process research and development.
7. Fairness opinions.
8. In some foreign jurisdictions, the firms act as stock transfer agents.
9. "Turnaround" business advisors.

Marketing and Distribution

1. Evaluation of marketing and distribution channels.
2. Development of marketing and distribution channel plans and consulting on the implementation of such plans.

Legal Services

1. Corporate and commercial legal services to national and international companies worldwide.
2. Assistance to law departments and general counsel to enhance and measure performance.

Litigation Support

1. Case management.
2. Expert accounting and financial reporting witnesses.
3. Damages experts and witnesses.
4. Environmental litigation experts.
5. Securities litigation experts.
6. Antitrust services.
7. Construction disputes.
8. Service of detailed data to provide cost-effective, proactive strategies and solutions to complex business disputes.

Other

1. Government Contract Consulting—helps companies understand and address business risks associated with negotiating, contracting with, and performing under contracts for the sale of goods or services with U.S. federal, state, local and foreign governments.
2. Advise government entities that are privatizing on commercialization, restructuring, competition, changing organization attitudes, customer satisfaction and policy adjustment; provides other grant-aided work in emerging markets.
3. Real Estate—provides advice about increasing the profitability of real estate assets through the acquisition, development, management and disposition of single assets or portfolios of properties. Services also include strategic planning, consolidation studies, surplus property planning, valuations, and outsourcing consulting.
4. Services for middle-sized companies—includes cash management, payroll needs, business relocation services, and shareholder meetings.
5. Insolvency/executory services—acting as receivers, liquidators, bankruptcy trustees, or advisors to debtor or creditor groups.
6. Specific services for health insurers and other health care organizations.

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APPENDIX B

Table 1
Estimated U.S. Revenues for Big 5/Big 6 Public Accounting Firms
Source: PAR

	1999	1998	1997	1996	1995	1994	1993
Total	$ 30,616	$ 25,917	$ 20,492	$ 17,305	$ 15,051	$ 13,291	$ 12,162
Estimated revenue mix by service line							
A&A	30%	30%	33%	36%	38%	44%	45%
Tax	19%	19%	20%	20%	20%	20%	22%
MCS & Other	51%	51%	47%	44%	42%	36%	32%
Estimated revenue by service line							
A&A	$ 9,150	$ 7,812	$ 6,738	$ 6,195	$ 5,762	$ 5,823	$ 5,485
Tax	$ 5,764	$ 4,871	$ 4,110	$ 3,477	$ 2,968	$ 2,673	$ 2,714
MCS & Other	$ 15,702	$ 13,234	$ 9,618	$ 7,633	$ 6,321	$ 4,796	$ 3,856
Compound growth rate of estimated U.S. revenues from 1993 to 1999							
A&A	9%						
Tax	13%						
MCS & Other	26%						

Table 2
Composition of Big 5 (Big 6/Big 8) U.S. Revenues by Service
Source: PAR, Annual Reports to SECPS, and SECPS Reports

Year	A&A		Tax		MCS & Other	
	Average	Median	Average	Median	Average	Median
1981	NA	NA	NA	NA	15%	13%
1984	NA	NA	NA	NA	16%	14%
1986	NA	NA	NA	NA	18%	18%
1988	55%	57%	23%	23%	22%	20%
1993	46%	51%	23%	22%	30%	27%
1994	45%	51%	20%	21%	34%	28%
1995	40%	43%	20%	20%	40%	35%
1996	37%	40%	21%	22%	42%	39%
1997	34%	36%	21%	21%	45%	42%
1998	31%	34%	20%	19%	49%	47%
1999	31%	33%	19%	18%	50%	49%

NA indicates that item is not reported or not available

Abbreviations of service lines:
A&A - accounting and auditing
MCS & Other - management consulting services and other non-audit, non-tax services

Table 3
Range of MCS Fees to Audit Fees for SEC Audit Clients of Big 5 (Big 6/Big 8) Firms
Source: Annual Reports to SECPS and SECPS Reports

Year	# clients	0%	1-25%	26-50%	51-100%	> 100%	>50%	>25%
1984	10,110	NA	NA	NA	NA	1.0%	NA	NA
1986	11,439	NA	NA	1.9%	1.2%	1.2%	2.5%	4.4%
1988	10,386	75.4%	19.1%	2.4%	1.6%	1.4%	3.1%	5.5%
1989	11,164	77.3%	17.0%	2.5%	1.8%	1.5%	3.2%	5.7%
1990	11,277	81.2%	13.5%	2.4%	1.5%	1.3%	2.8%	5.2%
1991	11,520	83.4%	12.5%	1.9%	1.4%	0.8%	2.2%	4.1%
1992	11,809	79.2%	16.5%	2.1%	1.1%	1.1%	2.2%	4.3%
1993	12,362	83.8%	11.5%	2.2%	1.3%	1.2%	2.5%	4.7%
1994	12,841	82.6%	12.5%	2.1%	1.4%	1.3%	2.8%	4.9%
1995	12,793	81.8%	13.4%	2.3%	1.2%	1.2%	2.4%	4.7%
1996	11,755	77.8%	16.1%	2.6%	1.9%	1.5%	3.4%	6.1%
1997	11,846	78.1%	14.8%	2.9%	2.1%	2.1%	4.2%	7.1%
1998	12,348	73.6%	16.5%	3.6%	3.1%	3.2%	6.4%	10.0%
1999	12,769	74.3%	14.3%	3.7%	3.0%	4.6%	7.6%	11.3%

NA indicates that item is not reported or not available

Table 4
MCS Activity for Public Accounting Firms Based on Number of SEC Audit Clients
For Most Recent Reporting Year
Source: SECPS Report

# clients	# firms	Average number of SEC clients	Average MCS fees from SEC clients to total fees	Average MCS fees from SEC clients to total MCS fees
> 1000	5	2554	10.0%	22.8%
100 - 1000	3	314	1.0%	3.6%
20-99	20	36	1.0%	9.9%
3 – 19	258	6	.9%	7.4%
2	167	2	.5%	3.3%
1	351	1	.4%	5.0%

Information sources:

PAR - Public Accounting Report, "Special Supplement: Annual Survey of National Accounting Firms – 2000, March 31, 2000.

Annual Reports to SECPS - Annual reports filed with the AICPA Division for CPA Firms SECPS member public accounting firms

SECPS Reports - Reports prepared by the AICPA Division for CPA Firms

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APPENDIX C
PROPOSED RULES
Investment in Audit Client
Reg. § 210.2-01(c)(1)(i)(A),(B) and (C)

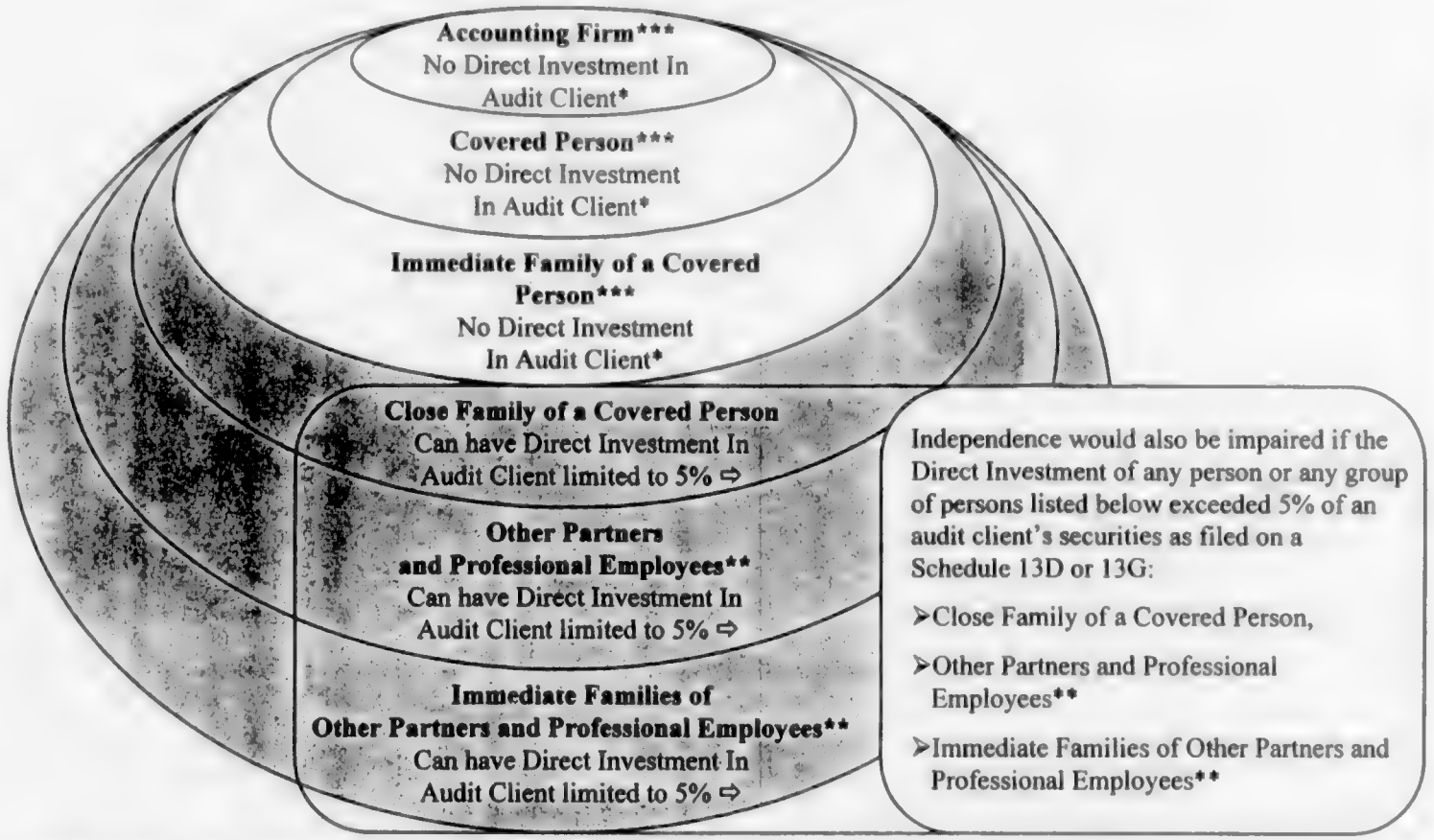

* Includes affiliates of the audit client
** Other Partners and Professional Employees includes partners, principals, shareholders and professional employees that are not covered persons
***The accounting firm, a covered person and the immediate family of a covered person can not be a voting trustee of a trust or executor of an estate containing the securities of an audit client.

APPENDIX C (Continued)
PROPOSED RULE
Material Indirect Investments
Reg. § 210.2-01(c)(1)(i)(D)(1) Investment in Audit Client

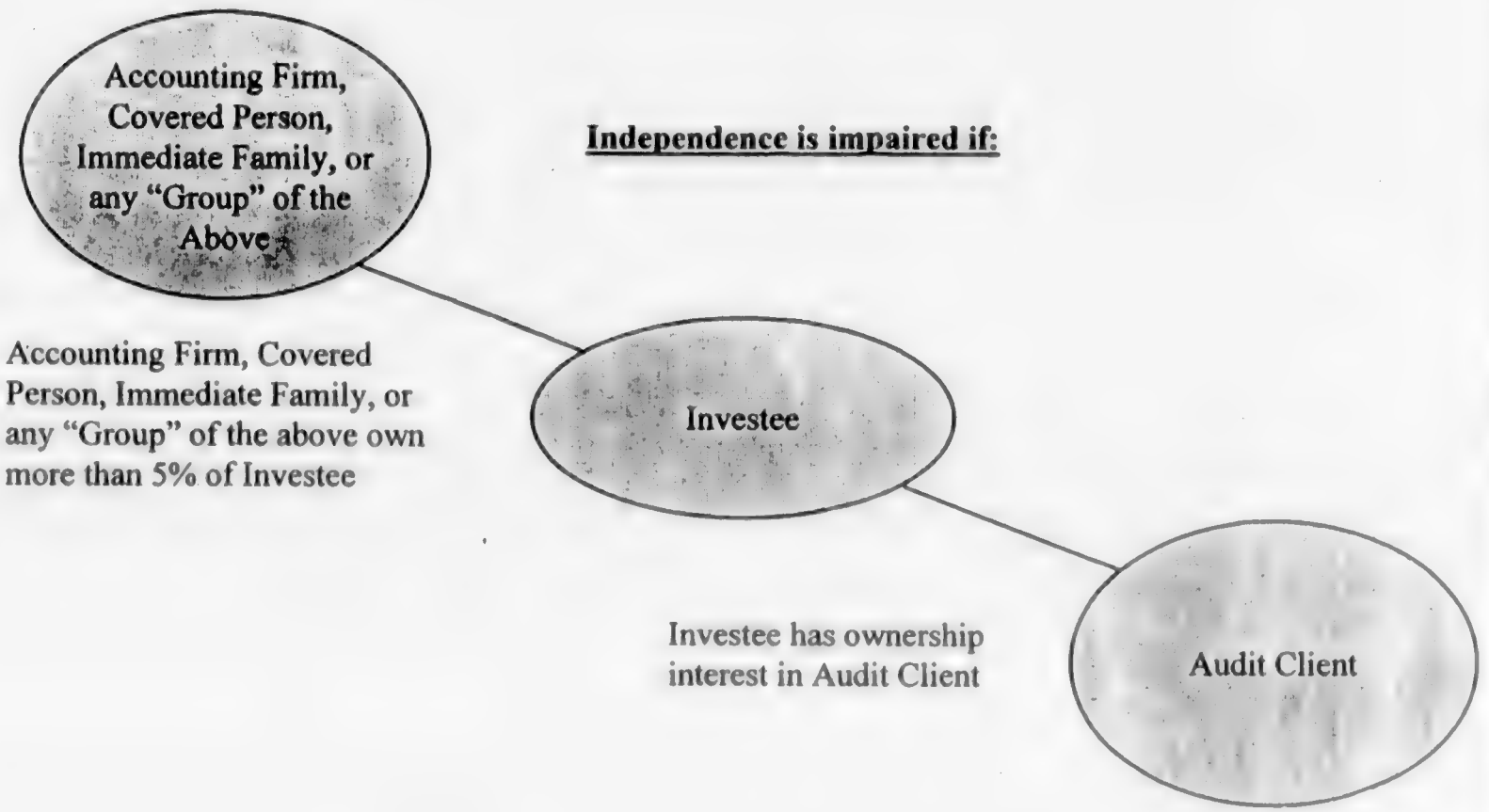

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APPENDIX C (Continued)
PROPOSED RULE
Material Indirect Investments
Reg. § 210.2-01(c)(1)(i)(D)(2) Investment in Audit Client

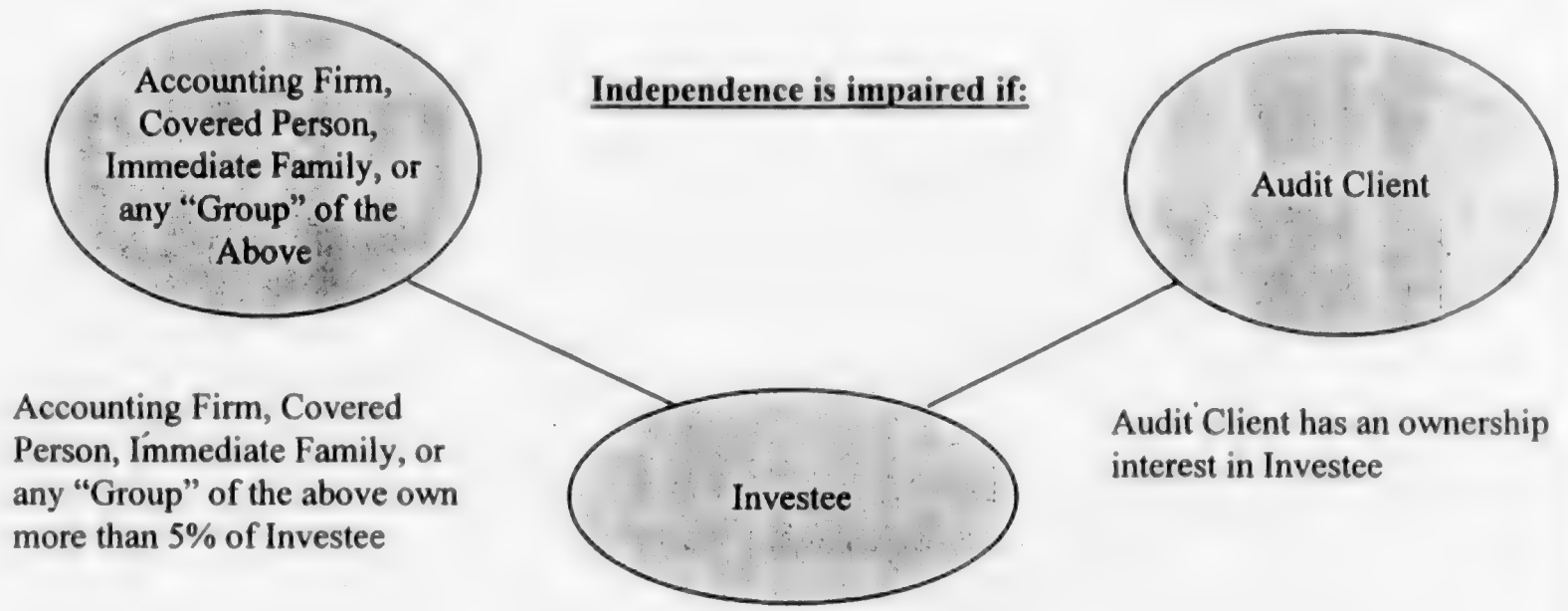

APPENDIX C (Continued)
PROPOSED RULE
Investment Company Complex
Reg. § 210.2-01(c)(1)(ii)(G)

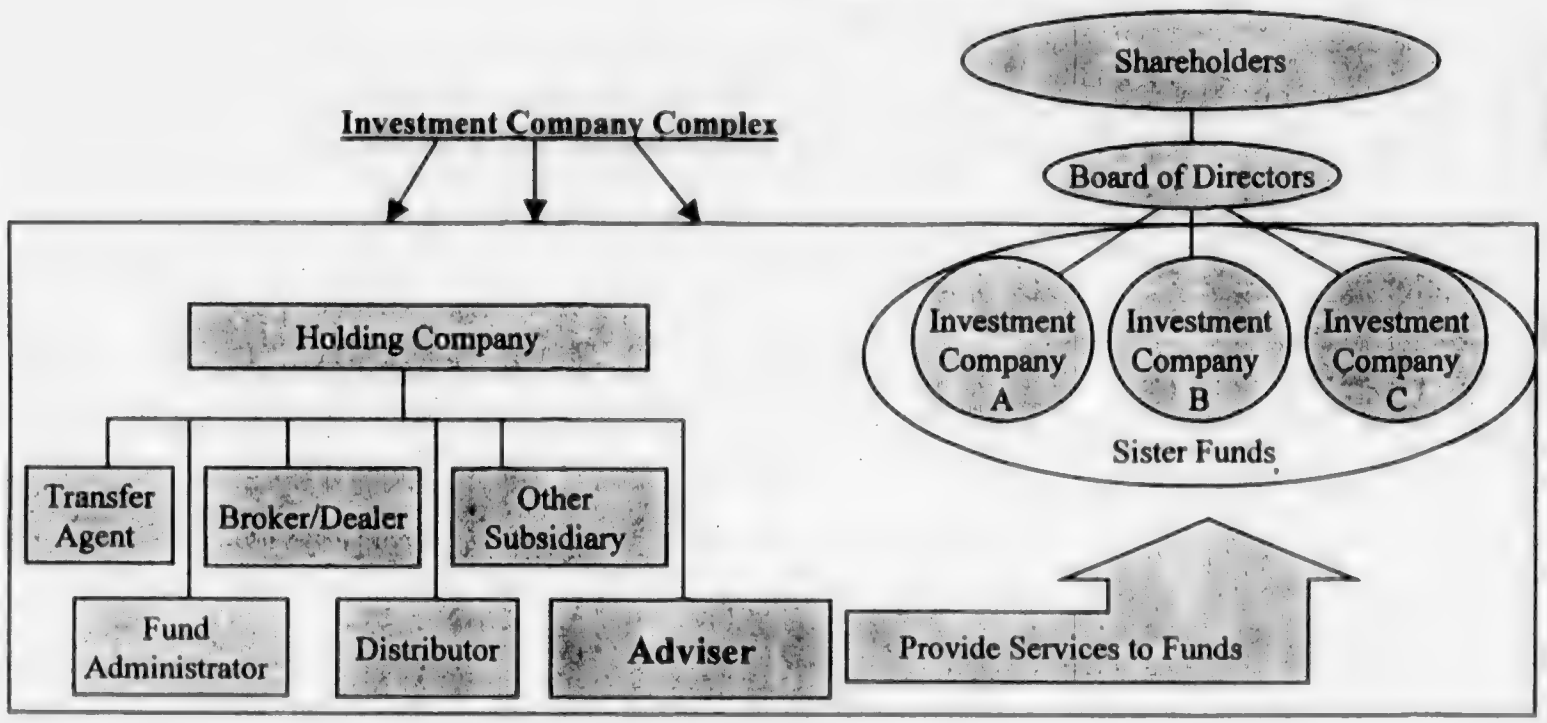

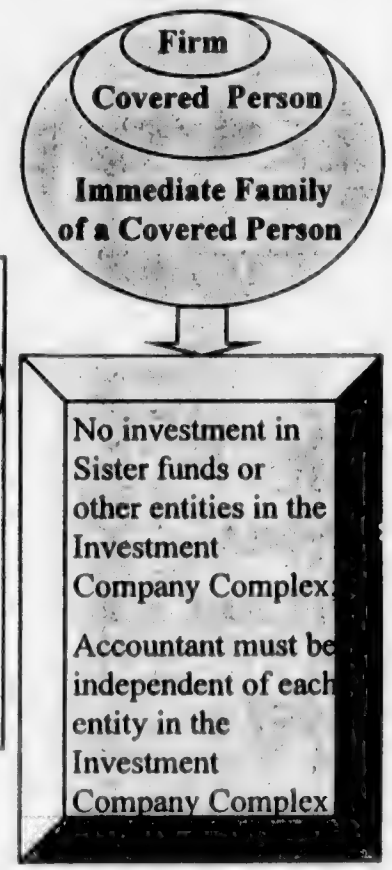

Reg. § 210.2-01(f)(16)(i) "Investment Company Complex" includes:
(A) An investment company and its investment adviser or sponsor;
(B) any entity controlled by, under common control with, or controlling the investment adviser or sponsor in paragraph (f)(16)(A) of this section; or
(C) any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 that has an investment adviser or sponsor included in this definition by either subparagraph (f)(16)(A) or (f)(16)(B)
(ii) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.
(iii) Sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

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BILLING CODE 8010-01-C

APPENDIX C (Continued)
PROPOSED RULE
Affiliates of the Audit Client
Reg. § 210.2-01(f)(5)

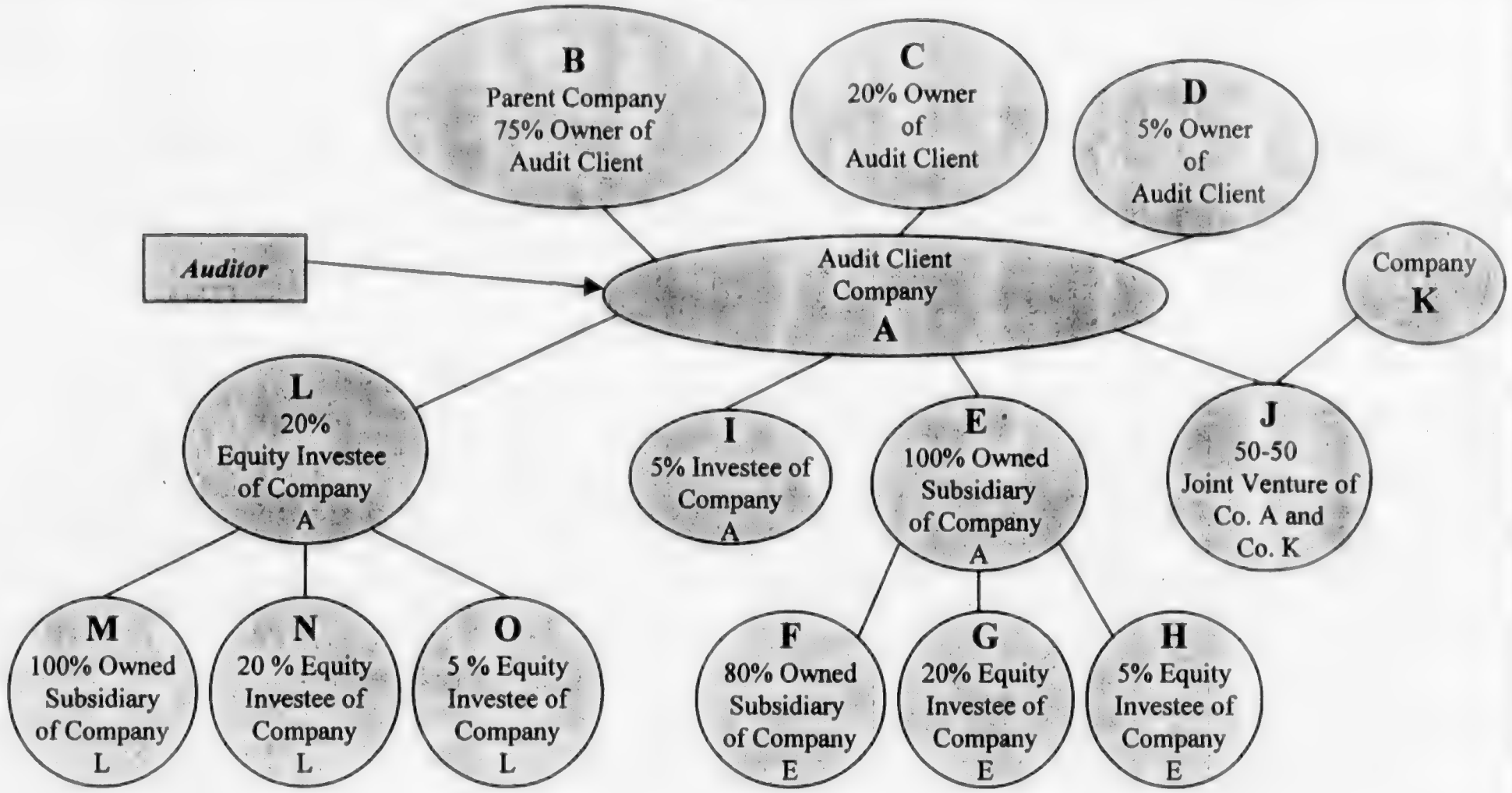

NOTE: A detailed analysis follows applying the proposed rules to Direct and Material Indirect Financial Interests in the Audit Client and Affiliates of the Audit Client, Employment of Relatives of a Covered Person, and Non-Audit Services

Direct Investments in the Audit Client or an Affiliate of the Audit Client

Section (c)(1)(i)(A) of the proposed rule states that an accountant is not independent when the Accounting Firm, any Covered Person in the firm or a member of the Immediate Family of a Covered Person in the firm has any direct investment in an "Audit Client" or an "Affiliate of the Audit Client." Section (f)(5) of the proposed rule defines "Affiliate of the Audit Client" as an entity that has significant influence over the audit client, or over which the audit client has significant influence. Also, under APB No. 18 as noted in the release, there is a presumption of significant influence where an entity owns 20% or more of an audit client or where the audit client owns 20% or more of an entity. For purposes of these examples, we assume that there are no other factors rebutting the presumption of significant influence under APB No. 18.

Both and C own 20% or more of the Audit Client. In addition, the Audit Client owns 20% or more of E, which in turn owns 20% or more of F and G. The Audit Client also owns 20% of L which in turn owns 20% or more of M and N. Finally the Audit Client owns more than 20% of J. Thus, in addition to being precluded from directly investing in A, the Accounting Firm, any Covered Person in the firm and the Immediate Families of Covered Persons in the firm would be precluded from directly investing in companies B, C, E, F, G, L, M, N, and J since these entities are affiliates of the audit client.

With respect to D, I, H, and O there is no presumption of significant influence since D only owns 5% of the Audit Client and the Audit Client only owns 5% of I and the entities over which A has significant influence, E and L, only own 5% of H and O, respectively. Under APB No. 18, as noted in the release, there could be other indicia that would cause D's ownership of the audit Client or the Audit Client's ownership of 5% of I (as well as E's ownership of H or L's ownership of the Audit Client or the Audit Client's ownership of 5% of I (as well as E's ownership of H or L's ownership of O) to rise to the independence would be impaired by direct investments in those entities.

J is an Affiliate of the Audit Client because the Audit Client owns more than 20% of J and thus has "significant influence" over J. However, K is not an Affiliate of the Audit Client because the Audit Client does not have "significant influence" over K and the accountant's independence would not be impaired by direct investments in K.

Therefore, the Accounting Form, Covered Persons and the Immediate Families of Covered Persons would not be precluded from investing in D, I, H, O, and K. Investments in D, I, H, and O could not exceed 5% of the voting interests of these entities as described under "Material Indirect Investment in an Audit Client or an Affiliate of the Audit Client" below.

Investments Reportable on Schedule 13D or 13G or Otherwise Control the Audit Client

Section (c)(1)(i)(B) of the proposed rule states that an accountant would not be independent if any partner, principal, shareholder, or professional employee of the accounting firm, any of his or her immediate family members, any close family member of a covered person in the firm, or any group of the above persons has filed a Schedule 13D or 13G with the Commission indicating record or beneficial ownership of more than five percent of an audit client's equity securities, or otherwise controls an audit client.

As noted above, partners and professionals in the firm other than covered persons, and their immediate families and the close family members of covered persons would not be precluded from investing in the audit Client, A. Section (c)(1)(i)(B) of the proposed rule operates to, among other things, preclude professionals in the firm from acting as a group to control the audit client. Thus, the accountant would not be independent when any partner or professional in the firm other than a covered person, a member of their immediate family, or the close family. member of a covered person filed a Schedule 13D or 13G (generally required for investments over 5%) with the Commission or otherwise controlled the Audit Client, A.

Material Indirect Investment in an Audit Client or an Affiliate of the Audit Client

Section (c)(1)(i)(D) of the proposed rule states that an accountant would not be independent if the accounting firm, any covered person in the firm or the immediate family member of a covered person or any group of these persons owned more than 5% of an entity that has an ownership interest in the audit client or more than 5% of an entity of which the audit client has an ownership interest.

Assuming that D, I, H, and O are not affiliates, the accounting firm, a covered person in the firm or the immediate family of a covered person or any group of these persons could own up to 5% of these entities without impairing independence since a 5% investment would be considered an immaterial indirect investment in the Audit Client, A.

Employment of Relatives of a Covered Person

Section (c)(2)(ii) of the proposed rule states that an accountant will not be independent if a close family member of a covered person in the firm is in an accounting or financial reporting oversight role at an audit client or an affiliate of an audit client or was in such a role during any period covered by an audit for which the covered person in the firm is a covered person.

As noted above, B, C, E, F, G, L, M, N, and J are affiliates of the audit client. Consequently, the accountant would not be independent when any close family member of a covered person in the firm was employed in accounting or financial reporting oversight role at the Audit Client A or the affiliates of the audit client, B, C, E, F, G, L, M, N, or J.

Subject to the general standard, a close family member of a covered person could work in any position at D, I, H, O, or K since those entities are not affiliates of the audit client.

Non-Audit Services

Section (c)(4)(i) of the proposed rule provides that an accountant will not be independent when the accountant provides certain non-audit services to an audit client or an affiliate of an audit client.

Accordingly, the accountant would not be independent if the accounting firm provided any prohibited non-audit services to the Audit Client, A, or to any affiliate of the audit client including B, C, E, F, G, L, M, N, and J. Subject to the general standard, the firm would not be precluded from providing non-audit services to D, I, H, O, or K since these entities are not affiliates of the audit client.

[FR Doc. 00–17207 Filed 7–11–00; 8:45 am]
BILLING CODE 8010–01–P

Person, and Non-Audit Services

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Federal Register

Wednesday,
July 12, 2000

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Department of the Interior

Protection of the Coral Reef Ecosystem of the Northwestern Hawaiian Islands; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Protection of the Coral Reef Ecosystem of the Northwestern Hawaiian Islands

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); Department of the Interior (DOI).

ACTION: Request for comments; notice of public meetings.

SUMMARY: On May 26, 2000 President William Jefferson Clinton announced his intention to provide strong and lasting protection for the coral reef ecosystem of the Northwestern Hawaiian Islands. The President signed a Memorandum directing the Secretaries of the Interior and Commerce, in cooperation with the State of Hawaii and in consultation with the Western Pacific Fishery Management Council, to develop recommendations for a new, coordinated management regime to increase protection for the coral reef ecosystem of the Northwestern Hawaiian Islands and provide for sustainable use. The President also directed the Departments of the Interior and Commerce to conduct "visioning sessions, which would provide opportunities for public hearing and comment to help shape the final recommendations." As part of the visioning process, by this notice the Departments of the Interior and Commerce request comments on a number of specific issues pertaining to the protection of the coral reef ecosystem of the Northwestern Hawaiian Islands. This notice also announces the dates, times and locations for a number of public hearings to receive comments on these issues. The comments received will be used to inform the Departments as they develop the recommendations for the President.

DATES: Comments must by received by August 2, 2000.

ADDRESSES: Comments should be sent to the U.S. Institute for Environmental Conflict Resolution, Suite 3350, 110 South Church Avenue, Tucson, AZ 85701, ATTN: Northwestern Hawaiian Islands. Comments may also be sent to the Institute's website at *www.ecr.gov/nwhi*.

There will be seven public meetings on the Northwestern Hawaiian Islands initiative. The dates, times and locations are listed below.

FOR FURTHER INFORMATION CONTACT: Marla Steinhoff, NOAA, (301) 713–3155, ext. 208; or Jessica Jenkins, DOI, (202) 219–0710.

I. SUPPLEMENTARY INFORMATION:

1. Northwestern Hawaiian Islands

The Northwestern Hawaiian Islands are an archipelago of uninhabited islands over 1200 miles long located west of the main Hawaiian Islands. They include Nihoa and Necker Islands, French Frigate Shoals, Maro Reef, and Pearl & Hermes Atoll, and are surrounded by some of the healthiest and most extensive coral reefs in U.S. waters. The coral reef ecosystem extends from near-shore areas just beneath the ocean surface to depths of approximately 100 fathoms (600 feet).

The coral reef ecosystem of the Northwestern Hawaiian Islands encompasses approximately 10,000 square kilometers and is home to a diverse and unique assemblage of fish, invertebrates, birds, sea turtles, marine mammals and other species, including many species found nowhere else on Earth. Federally protected species include the threatened green sea turtle, the endangered leatherback and hawksbill sea turtles, and the only remaining population of the endangered Hawaiian monk seal.

2. The President's Memorandum

The following is the text of the President's Memorandum to the Secretaries of the Interior and Commerce.

May 26, 2000.

Memorandum for the Secretary of the Interior, the Secretary of Commerce

Subject: Protection of U.S. Coral Reefs in the Northwest Hawaiian Islands

The world's coral reefs—our tropical rain forests of the water are in serious decline. These important and sensitive areas of biodiversity warrant special protection. While the United States has only 3 percent of the world's coral reefs, nearly 70 percent of U.S. coral reefs are in the Northwest Hawaiian Islands. Many of the Northwest Hawaiian Islands' coral, fish, and invertebrate species are unique, and the area is home to endangered Hawaiian monk seals and threatened turtles. In 1909, President Theodore Roosevelt set aside certain islands and reefs in the Northwest Hawaiian Islands for the protection of sea birds. Today, the U.S. Fish and Wildlife Service manages this area as the Hawaiian Islands National Wildlife Refuge.

In June 1998, I signed an Executive Order for Coral Reef protection (E.O. 13089), which established the Coral Reef Task Force and directed all Federal agencies with coral reef-related responsibilities to develop a strategy for coral reef protection. States and territories with coral reefs were invited to be full partners with the Federal Government in preparing an action plan to better protect and preserve the Nation's coral reef ecosystems. In March of this year, the Task Force issued the National Action Plan to Conserve Coral Reefs. The Plan lays out a science-based road map to healthy coral reefs for future generations, based on two fundamental strategies: Promoting understanding of coral reef ecosystems by, for example, conducting comprehensive mapping, assessment, and monitoring of coral reefs; and reducing the adverse impacts of human activities by, for example, creating an expanded and strengthened network of Federal, State, and territorial coral reef Marine Protected Areas, reducing the adverse impact of extractive uses, and reducing habitat destruction.

It is time now to take the Coral Reef Task Force's recommendations and implement them to ensure the comprehensive protection of the coral reef ecosystem of the Northwest Hawaiian Islands through a coordinated effort among the Departments of the Interior and Commerce and the State of Hawaii.

Accordingly, I have determined that it is in the best interest of our Nation, and of future generations, to provide strong and lasting protection for the coral reef ecosystem of the Northwest Hawaiian Islands, and I am directing you to initiate an administrative process to that end. Specifically, I direct you, working cooperatively with the State of Hawaii and consulting with the Western Pacific Fisheries Management Council, to develop recommendations within 90 days for a new, coordinated management regime to increase protection of the ecosystem and provide for sustainable use. Further, I direct that your recommendations address whether appropriate stewardship for the submerged lands and waters of the Northwest Hawaiian Islands warrants exercise of my authority to extend permanent protection to objects of historic or scientific interest or to protect the natural and cultural resources of this important area.

The recommendations should also:

- Review the status and adequacy of all ongoing efforts to protect the coral reef ecosystem, including proposed no-take ecological reserves and the ongoing work of the Western Pacific Fisheries Management Council;
- To the extent permitted by law, ensure that any actions that the Departments of the Interior and Commerce authorize, fund, or carry out will not degrade the conditions of the coral reef ecosystems;
- Identify any further measures necessary to protect cultural and historic resources and artifacts;
- Identify any further measures necessary for the protection of the ecosystem's threatened and endangered species, including the endangered monk seal, sea turtles, and short-tailed albatross;
- Establish a framework for scientific research and exploration;
- Establish a framework for facilitating recreation and tourism in the Northwest Hawaiian Islands consistent with the protection and sustainable management of the ecosystem;
- Provide for culturally significant uses of the Northwest Hawaiian Islands' marine resources by Native Hawaiians; and

• Address the development of a cooperative framework, in consultation with the State of Hawaii and the Western Pacific Fisheries Management Council, to ensure that the goals set forth above will be implemented in a cooperative manner, consistent with existing authorities.

I also direct that during the 90-day period, the Departments shall conduct "visioning" sessions, which would provide opportunities for public hearing and comment to help shape the final recommendations.

With this new effort, we are taking strides to fulfill the goal of the Coral Reef Task Force to protect our precious coral reefs for the benefit of future generations.

William J. Clinton

II. Request for Comments

As part of the visioning process the Departments of the Interior and Commerce request comments on the following issues related to the coral reef ecosystem of the Northwestern Hawaiian Islands.

(1) Those qualities of the Northwestern Hawaiian Islands coral reef ecosystem that are most important to be preserved through new, strong and lasting protections;

(2) The current threats to the Northwestern Hawaiian Islands coral reef ecosystem;

(3) The future threats to the Northwestern Hawaiian Islands coral reef ecosystem;

(4) The types of activities and uses (including culturally significant uses) that are appropriate in the Northwestern Hawaiian Islands;

(5) The types of activities and uses that are inappropriate in the Northwestern Hawaiian Islands; and

(6) The types of management tools, actions, and approaches that should be used to ensure strong and lasting protection of the Northwestern Hawaiian Islands coral reef ecosystem.

In addition, the Departments welcome comments on the bulleted items set forth in the President's Memorandum.

III. Public Meetings

There will be seven public meetings on the Northwestern Hawaiian Islands initiative. The dates, times and locations are as follows:

July 21, 1–4 p.m.—Washington, D.C.—Department of Commerce Auditorium (14th and Constitution Ave. NW)
July 24, 6–9 p.m.—Oahu—Kalihi Kai Elementary School Cafeteria
July 25, 6–9 p.m.—Maui—Baldwin High School Auditorium
July 27, 6–9 p.m.—Kona—Kealakehe High School Cafeteria
July 28, 6–9 p.m.—Hilo—Hilo High School Cafeteria
July 31, 6–9 p.m.—Kauai—Kauai Community College Cafeteria
August 1, 6–9 p.m.—Molokai—Mitchell Pauole Center

Any changes in dates, times or location shall also be posted in the local media. This information may also be found at *www.ecr.gov/nwhi.*

Dated: July 6, 2000.

Scott Gudes,

Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce.

Stephen C. Saunders,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 00–17587 Filed 7–10–00; 8:45 am]

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Federal Register

Wednesday,
July 12, 2000

Part VI

The President

Executive Order 13162—Federal Career Intern Program

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Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13162 of July 6, 2000

Federal Career Intern Program

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and in order to provide for the recruitment and selection of exceptional employees for careers in the public sector, it is hereby ordered as follows:

Section 1. There is hereby constituted the Federal Career Intern Program (Program). The purpose of the Program is to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, and competencies, and to prepare them for careers in analyzing and implementing public programs. "Career Intern" is a generic term, and agencies may use occupational titles as appropriate.

Sec. 2. The Program is another step in the Administration's effort to recruit the highest caliber people to the Federal Government, develop their professional abilities, and retain them in Federal departments and agencies. Cabinet secretaries and agency administrators should view the Program as complementary to existing programs that provide career enhancement opportunities for Federal employees, and departments and agencies are encouraged to identify and make use of those programs, as well as the new Program, to meet department and agency needs.

Sec. 3. (a) The Office of Personnel Management (OPM) shall develop appropriate merit-based procedures for the recruitment, screening, placement, and continuing career development of Career Interns.

(b) In developing those procedures, the OPM shall provide for such actions as deemed appropriate to assure equal employment opportunity and the application of appropriate veterans' preference criteria.

Sec. 4. (a) A successful candidate shall be appointed to a position in Schedule B of the excepted service at the GS–5, 7, or 9 (and equivalent) or other trainee level appropriate for the Program, unless otherwise approved by the OPM. The appointment shall not exceed 2 years unless extended by the Federal department or agency, with the concurrence of the OPM, for up to 1 additional year.

(b) Tenure for a Career Intern shall be governed by the following principles and policies:

(1) Assigned responsibilities shall be consistent with a Career Intern's competencies and career interests, and the purposes of the Program.

(2) Continuation in the Program shall be contingent upon satisfactory performance by the Career Intern throughout the internship period.

(3) Except as provided in subsections (4) and (5) of this section, service as a Career Intern confers no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(4) Competitive civil service status may be granted to a Career Intern who satisfactorily completes the internship and meets all other requirements prescribed by the OPM.

(5) Within an agency, an employee who formerly held a career or career-conditional appointment immediately before entering the Career Intern Program, and who fails to complete the Career Intern Program for reasons unrelated to misconduct or suitability, shall be placed in a career or career-conditional position in the current agency at no lower grade or pay than the one the employee left to accept the position in the Career Intern Program.

Sec. 5. A Career Intern shall participate in a formal program of training and job assignments to develop competencies that the OPM identifies as core to the Program, and the employing agency identifies as appropriate to the agency's mission and needs.

Sec. 6. The OPM shall prescribe such regulations as it determines necessary to carry out the purpose of this order.

Sec. 7. The OPM shall provide oversight of the Program.

Sec. 8. Executive Order 12596 of May 7, 1987, is revoked.

Sec. 9. *Judicial Review.* This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity, by a party against the United States, its agencies, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
July 6, 2000.

[FR Doc. 00–17829
Filed 7–11–00; 8:45 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 3051/P.L. 106–243

To direct the Secretary of the Interior, the Bureau of Reclamation, to conduct a feasibility study on the Jicarilla Apache Reservation in the State of New Mexico, and for other purposes. (July 10, 2000; 114 Stat. 497)

S. 1309/P.L. 106–244

To amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans. (July 10, 2000; 114 Stat. 499)

S. 1515/P.L. 106–245

Radiation Exposure Compensation Act Amendments of 2000 (July 10, 2000; 114 Stat. 501)

Last List July 11, 2000

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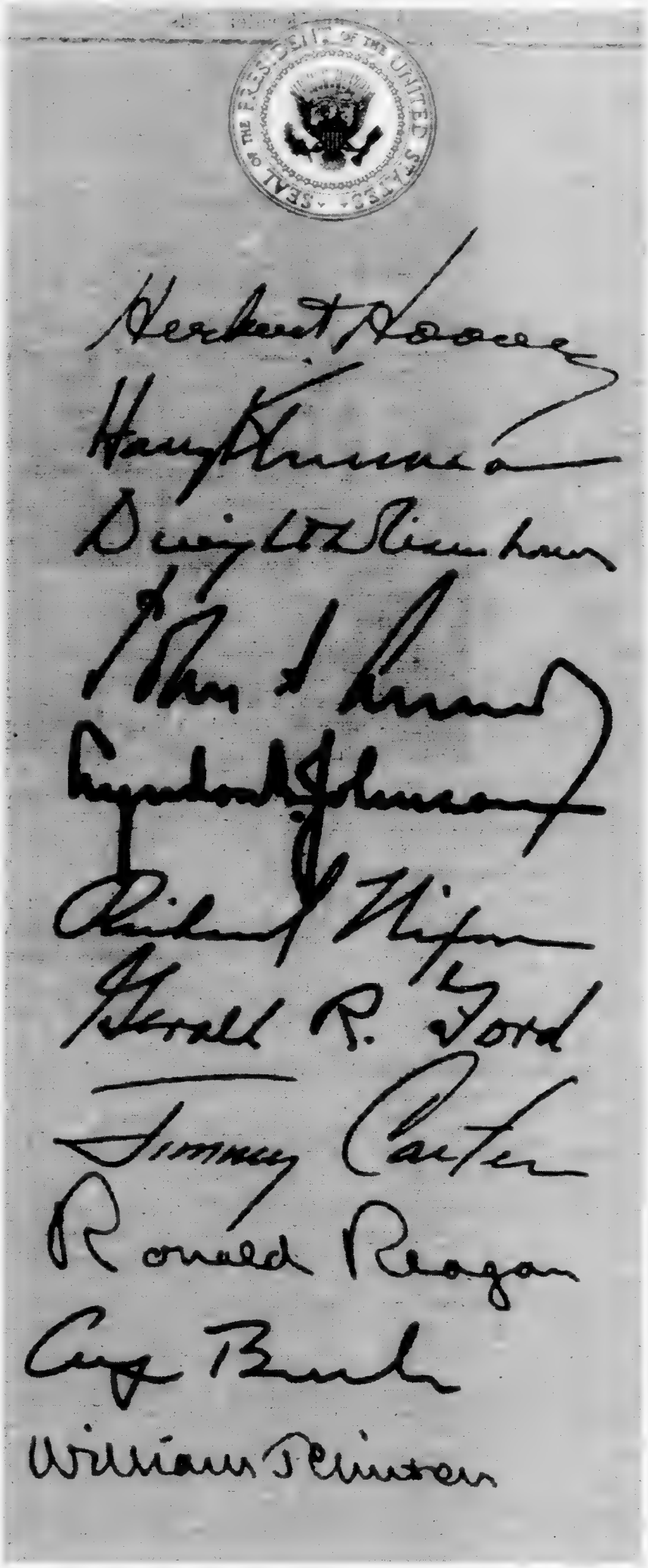

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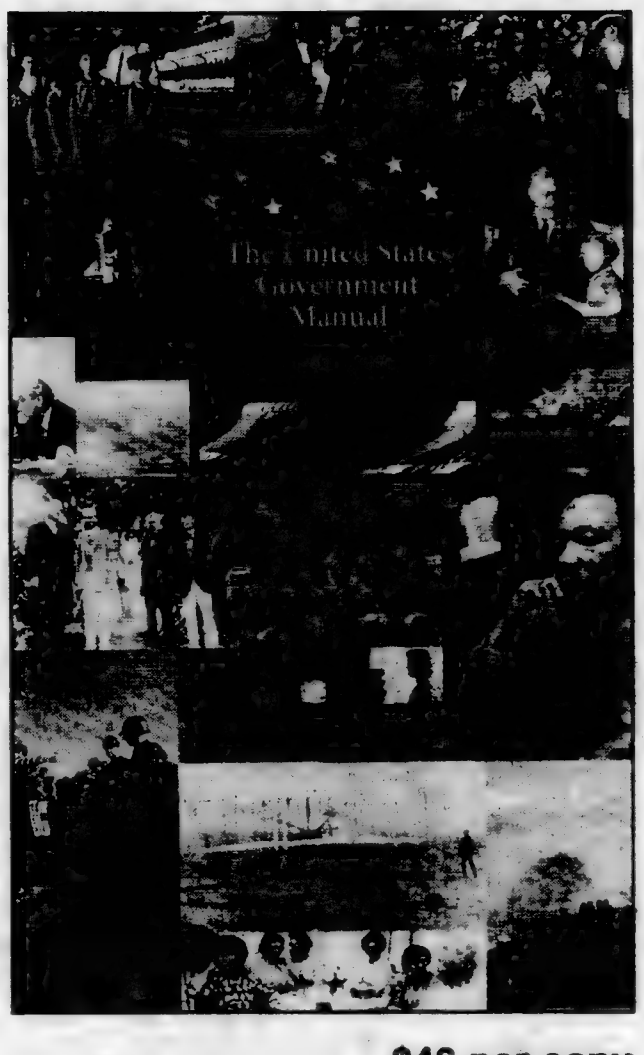

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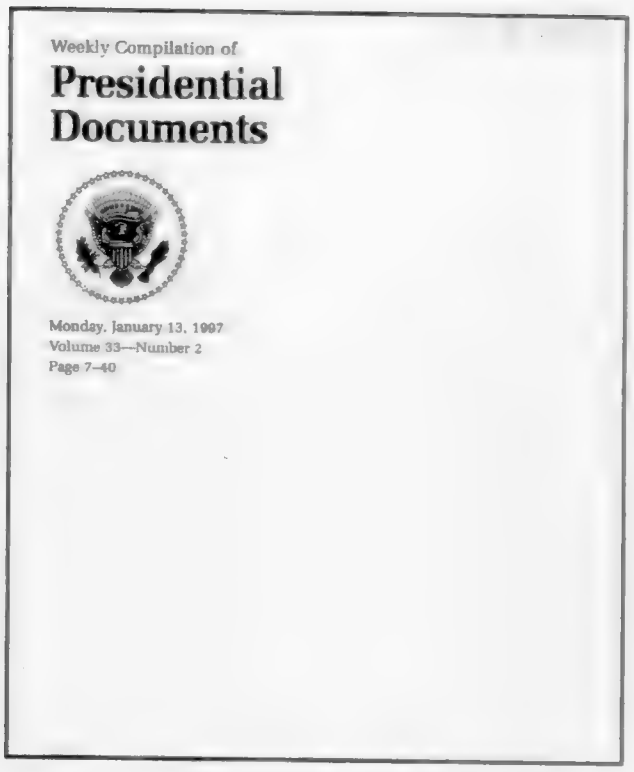

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106th Congress, 2nd Session, 2000

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Presidential Documents

Title 3—

The President

Memorandum of July 5, 2000

Delegation of Responsibilities Under Section 1232 of the Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (Public Law 106–113)

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Defense the duties and responsibilities vested in the President by section 1232 of the Foreign Relations Authorization Act for Fiscal Years 2000 and 2001 (the "Act") (Public Law 106–113), to transfer from War Reserve Allies Stockpiles in Korea and Thailand to the Republic of Korea and the Kingdom of Thailand, respectively, in return for concessions to be negotiated by the Secretary of Defense, with the concurrence of the Secretary of State, any or all of the items described in paragraph (a)(2) of section 1232 of the Act, subject to the conditions, requirements, and limitations set forth in section 1232 of the Act.

Any reference in this memorandum to the provisions of any Act shall be deemed to be a reference to such Act or its provisions as may be amended from time to time.

The authority delegated to the Secretary of Defense may be redelegated in writing within the Department of Defense.

The Secretary of Defense is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 5, 2000.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ05

Prevailing Rate Systems; Change in the Survey Cycle for the Orleans, LA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to change the timing of local wage surveys in the Orleans, Louisiana, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change will help even out the local wage survey workload for the Department of Defense and improve the amount and quality of data it collects during annual local wage surveys in the Orleans wage area.

DATES: *Effective Date:* This regulation is effective on August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email *jdhopkin@opm.gov*.

SUPPLEMENTARY INFORMATION: On March 23, 2000, the Office of Personnel Management (OPM) published an interim rule (65 FR 15521) to change the timing of local wage surveys in the Orleans, Louisiana, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. Full-scale wage surveys currently begin in February of each odd-numbered fiscal year. Full-scale wage surveys will now begin in June of each even-numbered fiscal year. Under section 532.207 of title 5, Code of Federal Regulations, the scheduling of wage surveys takes into consideration the best timing in relation to wage adjustments in the principal local private enterprise establishments, reasonable distribution of workload of the lead agency, timing of surveys for nearby or selected wage areas, and scheduling relationships with other pay surveys.

The Department of Defense asked OPM to change the starting time for local wage surveys in the Orleans wage area to June of even fiscal years to help spread out its survey workload. In addition, this change will avoid annual Mardi Gras festivities in New Orleans during the month of February. DOD will conduct a full-scale wage survey in the Orleans wage area in June 2000. DOD will update the data collected in the full-scale wage survey during a "wage change" survey in June 2001.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and concurred by consensus with this change. The interim rule had a 30-day public comment period, during which OPM did not receive any comments.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (65 FR 15521) amending 5 CFR part 532 published on March 23, 2000, is adopted as final with no changes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–17720 Filed 7–12–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–23–AD; Amendment 39–11812; AD 2000–14–03]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires replacing the smoke detectors in the cargo compartment with new, improved smoke detectors. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent false smoke warnings from the cargo compartment smoke detectors, which could result in aborted takeoffs, diversions of flight routes, and emergency evacuation of flight crew and passengers.

DATES: Effective August 17, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on March 27, 2000 (65 FR 16158). That action proposed to require replacing the smoke detectors in the cargo compartment with new, improved smoke detectors.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request for Delay in AD Issuance

One commenter, the vendor for the existing (Fenwall) smoke detector, states that the proposed AD was not warranted, and requests that issuance of the final rule be delayed a minimum of 90 days. The commenter disagrees with the proposed requirement to replace the existing smoke detectors with another vendor's (Cerberus) smoke detector. As background, the commenter notes that the existing Fenwall smoke detector was susceptible to false alarms due to high humidity conditions; and, in response, Fenwall Safety Systems initiated a product improvement via Service Bulletin #9701 to correct the problem. The commenter states that about 1,000 #9701 kits have been installed to date, and a recent polling of operators indicates that the humidity problem is no longer a significant concern; i.e., the existing smoke detector performs adequately after this modification. The commenter requests the 90-day delay to resolve this issue with the airplane manufacturer and the Luftsfartsverket (LFV), the airworthiness authority for Sweden.

The FAA does not concur. Based on historical and current data received from the LFV and the airplane manufacturer, false (nuisance) warnings from the existing smoke detector continue to be a significant safety concern. The FAA acknowledges the commenter's statement that modification of the existing smoke detector via Fenwall Service Bulletin #9701 has resulted in some improvement in reliability. However, the commenter did not provide data to substantiate this statement. Additionally, the LFV advises that bench and field tests conducted with both the modified Fenwall smoke detector and the Cerberus smoke detector have shown the Cerberus unit to have a much higher reliability with respect to nuisance warnings. The Cerberus smoke detector incorporates new technology, *i.e.*, a microprocessor intended to better distinguish between smoke conditions and high humidity conditions. With this information, the FAA has determined that installation of the Cerberus smoke detectors is necessary to adequately address the identified unsafe condition, and does not consider it necessary to delay issuance of the final rule. No change is made to the final rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 289 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost between $2,011 and $4,022 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $2,131 and $4,142 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–03 SAAB Aircraft AB: Amendment 39–11812. Docket 2000–NM–23–AD.

Applicability: Model SAAB SF340A series airplanes, manufacturer's serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, manufacturer's serial numbers 160 through 459 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent false smoke warnings from the cargo compartment smoke detectors, which could result in aborted takeoffs, diversions of flight routes, and emergency evacuation of flight crew and passengers, accomplish the following:

Replacement

(a) Within 2 years after the effective date of this AD, replace the smoke detectors in the cargo compartment with new, improved smoke detectors, in accordance with Saab Service Bulletin 340–26–023, dated December 21, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager,

International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Saab Service Bulletin 340–26–023, dated December 21, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–151, dated December 28, 1999.

(e) This amendment becomes effective on August 17, 2000.

Issued in Renton, Washington, on July 3, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17300 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–209–AD; Amendment 39–11811; AD 2000–14–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, and –800 series airplanes. This action requires installation of placards on the P3–1 panel. This action is necessary to prevent loss of communication between the flight crew and Air Traffic Control; this situation could result in the flight crew being unaware of an unsafe scenario when the airplane is on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective July 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–209–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jay Yi, Aerospace Engineer, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1013; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of several incidents in which the flight crew lost communication with Air Traffic Control (ATC) while the airplane was taxiing or on hold for takeoff. These incidents occurred on Boeing Model 737–700 series airplanes. Investigation revealed that the loss of communication is due to the location of the very high frequency (VHF) VHF–1 and VHF–2 antennas. This condition, if not corrected, could result in loss of communication between the flight crew and ATC; this situation could result in the flight crew being unaware of an unsafe scenario when the airplane is on the ground.

The VHF–1 and VHF–2 antennas on certain Model 737–700 series airplanes are identical to those installed on certain Model 737–600 and 737–800 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–23A1170, dated April 27, 2000, which describes procedures for installation of placards on the P3–1 panel. The placards instruct the flight crew to use the VHF radio that is connected to the upper antenna for ATC communications when the airplane is on the ground.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–600, –700, and –800 series airplanes of the same type design, this AD is being issued to prevent loss of communication between the flight crew and ATC, which could result in the flight crew being unaware of an unsafe scenario when the airplane is on the ground. This AD requires accomplishment of the action specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed AD and Relevant Service Information

Operators should note that, although the service bulletin recommends accomplishing the installation within 10 days (from receipt of the service bulletin), the FAA has determined that an interval of 60 days would address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, parts availability, and the time necessary to perform the installation (less than one hour). The FAA has verified that the lead time for obtaining the required placards will exceed the 10-day compliance time recommended in the subject service bulletin. In light of all of these factors, the FAA finds a 60-day compliance time will accommodate the

time necessary for affected operators to order, obtain, and install the placards, without adversely affecting safety.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–209–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–02 Boeing: Amendment 39–11811. Docket 2000–NM–209–AD.

Applicability: Model 737–600, –700, and –800 series airplanes, as listed in Boeing Alert Service Bulletin 737–23A1170, dated April 27, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of communication between the flight crew and Air Traffic Control (ATC), which could result in the flight crew being unaware of an unsafe scenario when the airplane is on the ground, accomplish the following:

Installation of Placards

(a) Within 60 days after the effective date of this AD, install placards on the P3–1 panel in accordance with Boeing Alert Service Bulletin 737–23A1170, dated April 27, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The installation shall be done in accordance with Boeing Alert Service Bulletin 737–23A1170, dated April 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 28, 2000.

Issued in Renton, Washington, on July 3, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17301 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–206–AD; Amendment 39–11813; AD 2000–14–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes. This action requires a one-time inspection of the fuselage skin adjacent to the drag splice fitting to detect cracking, and follow-on actions, if necessary. This action is necessary to detect and correct fatigue cracking of the fuselage skin, which could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane.

DATES: Effective July 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–206–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that, during regular maintenance of certain Boeing Model 747 series airplanes, operators detected cracking of certain areas of the fuselage skin adjacent to the drag splice fitting. One operator reported finding four skin cracks, which ranged in length from 0.19 to 1.37 inches, under the drag splice fitting of the right side underwing. On another airplane, an 8.5-inch long crack under the drag splice fitting of the left side was detected. Another operator found a 25-inch long diagonal crack between body station (BS) 982 and BS 990 at stringers 37L through 38L. The lower drag splice angle and stringer 38L also were cracked, and the BS 1000 bulkhead ring chord was severed. Such conditions, if not corrected, could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000, which describes procedures for a one-time external detailed visual inspection of the fuselage skin adjacent to the drag splice fitting to detect cracking. If no cracking is detected, the service bulletin describes procedures for repetitive ultrasonic, high frequency eddy current (HFEC), and internal detailed visual inspections. The service bulletin also describes procedures for a secondary inspection to detect additional cracking, if cracking is outside certain limits.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Model 747 series airplanes of the same type design, this AD is being issued to detect and correct fatigue cracking of certain areas of the fuselage skin, which could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane. This AD requires a one-time inspection of the fuselage skin adjacent to the drag splice fitting to detect cracking, and repair, if necessary. This AD also requires a follow-on inspection to detect additional cracking, if cracking is outside certain limits.

Interim Action

This is considered to be interim action until final action is identified. At this time the FAA is considering a separate rulemaking action to address the procedures for repetitive ultrasonic, HFEC, and internal detailed visual inspections of the fuselage skin adjacent to the drag splice fitting to detect additional cracking, and repair of any cracking detected, as described in the service bulletin. However, the planned compliance time for these actions is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Due to the urgency of the need to inspect the fleet and repair any cracking, this AD will address only the sections in the service bulletin that pertain to an initial detailed visual inspection of the fuselage skin adjacent to the drag splice fitting to detect cracking, repair of any cracking detected, and accomplishment of a secondary inspection to detect additional cracking, if necessary.

Differences Between Service Bulletin and This AD

Operators should note that the service bulletin recommends accomplishing the initial detailed visual inspection within 60 days (after the release of the service bulletin) for airplanes with more than 13,000 flight cycles. The FAA has determined, however, that limiting the inspection to airplanes with more than 13,000 flight cycles would not address all affected airplanes, in light of the fact that the unsafe condition is likely to exist or develop on other Model 747 series airplanes. In developing an appropriate compliance time for all airplanes that are affected by this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with

addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the required inspection (approximately 2 hours). In light of all of these factors, the FAA finds that, for all Model 747 series airplanes, a compliance time of, "Prior to the accumulation of 13,000 total flight cycles, or within 60 days after the effective date of this AD" for initiating the required inspection is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–206–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–04 Boeing: Amendment 39–11813. Docket 2000–NM–206–AD.

Applicability: All Model 747 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of certain areas of the fuselage skin, which could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane; accomplish the following:

One-Time Detailed Visual Inspection

(a) Prior to the accumulation of 13,000 total flight cycles or within 60 days after the effective date of this AD, whichever occurs later: Perform a one-time external detailed visual inspection of the fuselage skin adjacent to the drag splice fitting as illustrated in Figure 2 of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000. If no cracking is detected, no further action is required by this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If any cracking is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Secondary Inspection

(c) For airplanes on which cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight after accomplishment of paragraph (b) of this AD: Determine if a secondary inspection of adjacent structure is required, using the Logic Diagram illustrated in Figure 1 of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000. If required, prior to further flight, accomplish the inspection in accordance with the service bulletin.

Note 3: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2444, dated May 25, 2000, are considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The inspections shall be done in accordance with Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 28, 2000.

Issued in Renton, Washington, on July 3, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17299 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–155–AD; Amendment 39–11814; AD 2000–14–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This action requires a one-time measurement of the electrical bonding resistance between the wing spar connectors of the fuel quantity indicating system (FQIS) and the spar structure, installation of bonding jumpers, a one-time operational check of the FQIS system, and corrective action, if necessary. This action is necessary to ensure adequate electrical bonding between the wing spar connectors of the FQIS and the spar structure. Inadequate electrical bonding, in the event of a lightning strike, could cause electrical arcing and ignition of fuel vapor in the main or center fuel tank, which could result in a fuel tank explosion. This action is intended to address the identified unsafe condition.

DATES: Effective July 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–155–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–155–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received data from the manufacturer indicating the results of tests conducted during the High Intensity Radiated Field Lightning Assurance Plan test program. One test revealed that the electrical bonding of the wing spar connectors of the fuel quantity indicating system (FQIS) was not adequate to meet the bonding limit required for lightning protection. This was because the bonding resistance of all six FQIS connectors exceeded the required limit. Investigation revealed that the faying surface of the adapter that bonds the connector to the spar structure was contaminated with fuel tank sealant or O-ring lubricant. Inadequate electrical bonding, in the event of a lightning strike, could cause electrical arcing, and ignition of fuel vapor in the main or center fuel tank, which could result in a fuel tank explosion.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–28A0019, dated April 27, 2000, which describes procedures for a one-time measurement of the electrical bonding resistance between the wing spar connectors of the FQIS and the spar structure, installation of bonding jumpers to create a redundant bonding path between the connector and the spar structure, and a one-time operational check of that installation. The service bulletin references Boeing 777 Airplane Maintenance Manual, Chapter 28–41–00, as the appropriate source for accomplishment of the operational check and repair instructions if any discrepancy is found. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Model 777 series airplanes of the same type design, this AD is being issued to ensure adequate electrical bonding between the wing spar connectors of the FQIS and the spar structure. This AD requires a one-time measurement of the electrical bonding resistance between the wing spar connectors of the FQIS and the spar structure, installation of bonding jumpers, a one-time operational check of that installation, and corrective action, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between the Alert Service Bulletin and This AD

Operators should note that, although the service bulletin recommends accomplishing the specified actions within 24 months (after the release of the service bulletin), the FAA has determined that an interval of 24 months would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the required actions (approximately 6 hours). In light of all of these factors, the FAA finds a 90-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–155–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–14–05 Boeing: Amendment 39–11814. Docket 2000–NM–155–AD.

Applicability: Model 777 series airplanes as listed in Boeing Alert Service Bulletin 777–28A0019, dated April 27, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure adequate electrical bonding between the wing spar connectors of the fuel quantity indicating system (FQIS) and the spar structure in the event of a lightning strike, accomplish the following:

One-Time Measurement and Installation

(a) Within 90 days after the effective date of this AD: Perform a one-time

measurement of the electrical bonding resistance between the wing spar connectors of the FQIS and the spar structure, record the measurements, and install bonding jumpers, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–28A0019, dated April 27, 2000.

Operational Check and Corrective Action

(b) Prior to further flight after accomplishment of the installation required by paragraph (a) of this AD: Perform an operational check in accordance with Boeing Alert Service Bulletin 777–28A0019, dated April 27, 2000, and correct any discrepancy detected.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–28A0019, dated April 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 28, 2000.

Issued in Renton, Washington, on July 3, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17298 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–192–AD; Amendment 39–11815; AD 2000–14–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires a one-time inspection to determine the part number of the fuel shutoff spar valve for the outboard engines. That AD also requires replacement of certain valves with new valves, or modification of the spar valve body assembly, and various follow-on actions. This amendment adds new requirements to accomplish those actions on additional airplanes; and requires a one-time inspection of the maintenance records of certain airplanes to determine if the fuel shutoff spar valve for the outboard engines has ever been replaced, and various follow-on actions. This amendment is prompted by reports indicating that, due to high fuel pressure, certain fuel system components of the outboard engines have failed. The actions specified by this AD are intended to prevent such high fuel pressure, which could result in failure of the fuel system components; this situation could result in fuel leakage, and, consequently, lead to an engine fire.

DATES: Effective August 17, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 20, 1998 (63 FR 55517, October 16, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; or ITT Aerospace Controls, 28150 Industry Drive, Valencia, California 91355. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dionne M. Krebs, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–21–29, amendment 39–10837 (63 FR 55517, October 16, 1998); which is applicable to Boeing Model 747–100, -200, -300, -400, 747SP, and 747SR series airplanes, having line numbers 629 through 1006 inclusive, and powered by General Electric or Rolls-Royce engines; was published in the **Federal Register** on November 26, 1999 (64 FR 66419). The action proposed to continue to require a one-time inspection to determine the part number of the fuel shutoff spar valve for the outboard engines, replacement of certain valves with new valves or modification of the spar valve body assembly, and various follow-on actions. The action proposed to add new requirements to accomplish those actions on additional airplanes; and require a one-time inspection of the maintenance records of certain airplanes to determine if the fuel shutoff spar valve for the outboard engines has ever been replaced, and various follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Three commenters concur with the intent of the proposed rule.

Request to Clarify Airplanes Subject to Paragraph (e)

Two commenters request that paragraph (e) of the proposed rule be revised to clarify that it applies to all affected airplanes (as identified in Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999). One

commenter points out that paragraph (d) of the proposed rule instructs operators to check maintenance records on airplanes having line numbers 1 through 628 inclusive, to determined if the left- and right-hand outboard fuel shutoff spar valves have been replaced. If either valve has been replaced, paragraph (d)(2) instructs operators to accomplish paragraph (e) for that valve. However, paragraph (e) does not state that it applies to airplanes having line numbers 1 through 628. The commenter states that this has been confusing for several operators. The other commenter points out that paragraph (e) of the proposed rule addresses airplanes having line numbers 1 through 1006 inclusive powered by General Electric (GE) or Rolls-Royce engines, but paragraph (a) also refers to airplanes having line numbers 629 through 1006 inclusive powered by GE or Rolls-Royce engines. Paragraphs (a) and (e) require similar actions. The commenter states that this could result in unnecessary duplicate inspections for some airplanes.

The FAA concurs with the commenters' request for clarification of the airplanes subject to paragraph (e) of this AD. The intent of this AD is that airplanes having line numbers 1 through 628 inclusive that had or may have had fuel shutoff spar valves replaced are subject to paragraph (e) of this AD, as specified in paragraph (d) of this AD. In addition, airplanes having line numbers 629 through 1006 inclusive powered by Pratt & Whitney engines are also subject to the requirements in paragraph (e). As pointed out by the commenter, the actions described in paragraph (e) are equivalent to those required by paragraph (a); therefore, the FAA has revised this final rule to remove the airplanes having line numbers 629 through 1006 powered by GE or Rolls-Royce engines from the applicability of paragraph (e) of this AD. To address the commenters' request, paragraphs (d)(1) and (d)(2) of this AD have been revised as follows:

- Paragraph (d)(1) reads, "If the maintenance record inspection establishes that neither valve has been replaced, no further action is required by this AD.
- Paragraph (d)(2) reads, "If either valve has been replaced, or if the maintenance record inspection does not clearly establish that neither valve has been replaced, prior to further flight, accomplish paragraph (e)(1), (e)(2), or (e)(3), as applicable."
- Paragraph (e) reads, "For airplanes having line numbers 629 through 1006 inclusive and powered by Pratt & Whitney engines, or for airplanes having line numbers 1 through 628 inclusive on which a fuel shutoff spar valve has been, or may have been, replaced: * * *."

Request to Refer to Wet Motor Leak Check

One commenter requests that, if the FAA finds it necessary to require a fuel leak check of the engine, the requirement should refer specifically to a wet motor leak check. The commenter points out that paragraphs (b) and (c), including "NOTE 3," of the proposed rule specify accomplishment of a leak check per Aircraft Maintenance Manual (AMM) procedures or per Boeing Service Bulletin 747–28A2199, Revision 2. The applicable AMM procedures describe an idle leak check, while the service bulletin describes a wet motor leak check. The commenter also notes that paragraphs (f) and (g) of the proposed rule specify a leak check in accordance with the service bulletin (that is, a wet motor leak check).

The FAA does not concur with the commenter's request. The FAA recognizes that the idle leak checks identified in "NOTE 3" and the wet motor leak check identified in the service bulletin are not identical. However, because both checks involve the pressurization of the fuel lines and components between the fuel shutoff spar valve and the engine fuel shutoff valve, either check meets the intent of the requirement. Therefore, the FAA finds that paragraphs (b) and (c) of this AD are acceptable as written because they allow either type of check. Also, the FAA has determined that it is appropriate to add a new "NOTE 4" to this final rule, to state that the idle leak checks are acceptable for compliance with the actions specified in paragraphs (f) and (g) of this AD. (All subsequent "NOTES" have been renumbered accordingly.)

Request to Expand Applicability of Proposed AD

One commenter requests that the FAA expand the applicability of the proposed AD to include all Model 747 series airplanes delivered prior to the effective date of the AD. The commenter states that Model 747 series airplanes with line numbers higher than 1006 may have improper fuel shutoff spar valves installed. The commenter's rationale is that, although the proper valves were installed during production, it is possible that, during maintenance, one of the original valves has been replaced with an improper valve.

The FAA does not concur with the commenter's request. The airplane manufacturer has informed the FAA that, at the time the airplane having line number 1007 was delivered, the engineering drawings (including drawing notes regarding spare parts) limited the fuel shutoff spar valve installed at the outboard engine positions to an acceptable part number (S343T003–40). Therefore, operators have not been allowed to replace a fuel shutoff spar valve installed at the outboard position with an earlier fuel shutoff spar valve since delivery on Model 747 series airplanes with line number 1007 and subsequent. No change to the final rule is necessary in this regard.

Request to Extend Compliance Time

Several commenters request extension of the compliance time. Two commenters request that the compliance time be extended from 18 to 36 months; another requests a compliance time of four years for Model 747–100 and –200 series airplanes and six years for Model 747–400 series airplanes. The commenters state that an extension would allow operators to schedule the inspection during airplane checks when internal access to the fuel tanks is available. One commenter states that the 18-month compliance time would force it to perform unscheduled fuel tank entries. Another commenter notes that, due to the reduced interchangeability of valves having part numbers 60B92406-(x), additional spare valves will be required, or all valves will have to be upgraded to the latest configuration on an attrition basis.

The FAA infers that the commenters are referring to the compliance time for the one-time inspection to determine the part number of fuel shutoff spar valve for the left- and right-hand outboard engines. The FAA does not concur with the commenters' requests to extend the compliance time. In the final rule for AD 98–21–29, which this AD supersedes, the FAA agreed to extend the compliance time from 12 to 18 months to allow the inspection to be accomplished during a regularly scheduled maintenance visit for the majority of the affected fleet. This would allow airplanes to be inspected at a location where special equipment and trained personnel would be readily available, if necessary. A compliance time of 18 months corresponds to most operators' scheduled "C"-checks and, therefore, accommodates the majority of operators' maintenance schedules while not adversely affecting flight safety. Because the compliance time has already been extended in this way, the FAA has determined that it is inappropriate to extend it further. No change to the final rule is necessary in this regard.

Request to Make Restatement of Requirements Consistent With New Requirements

One commenter requests that paragraph (a)(1) of the proposed AD be revised to be consistent with paragraph (e)(2) of the proposed AD. The commenter notes that paragraph (a) of the proposed rule instructs operators to inspect the part number of the left- and right-hand outboard fuel shutoff (spar) valves on airplanes having line numbers 629 through 1006 inclusive powered by General Electric (GE) or Rolls-Royce engines, and paragraph (a)(1) identifies the acceptable fuel shutoff spar valve part number as S343T003–43. The commenter also notes that paragraph (e)(2) of the proposed rule lists additional modified valve part numbers that are acceptable for installation. The commenter suggests that paragraph (a)(1) be revised to be consistent with paragraph (e)(2) with regard to acceptable part numbers.

The FAA does not concur with the commenter's request. The FAA infers that the part number in paragraph (a)(1) to which the commenter refers is S343T003–40 (not S343T003–43). The FAA acknowledges that the restatement of requirements of AD 98–21–29 in paragraph (a) of the proposed rule identifies fuel shutoff spar valve part number S343T003–40 only, though paragraph (e)(2) lists other acceptable part numbers. The additional part numbers in paragraph (e)(2) have been included in this AD because the FAA incorporated an existing approved alternative method of compliance (AMOC) to AD 98–21–29 into this AD. Because paragraphs (a), (b), and (c) of this AD are a restatement of the requirements of AD 98–21–29 (and are labeled as such), the FAA finds that it is unnecessary and potentially confusing to operators to incorporate the part numbers referenced in paragraph (e)(2) of this AD into paragraph (a)(1) of this AD. No change to the final rule is necessary in this regard.

Request to Eliminate Requirement for Fuel Leak Check

One commenter requests that the fuel leak check specified in paragraphs (b), (c), (f), and (g) of the proposed rule be eliminated. The commenter states that a fuel leak check of the engine, as identified in these paragraphs, is not necessary. The commenter acknowledges that the leak checks are intended to identify damage to components between the fuel shutoff spar valve and the engine fuel shutoff valve, resulting from a fuel overpressure condition. The commenter states that all known in-service occurrences of the failure of components associated with this AD have been "ultimate" failures and not "fatigue-type" failures. The commenter asserts that a fuel leak would be evident upon engine installation, when a fuel leak check is required as part of post-installation tests, or during normal in-service operation.

The FAA does not concur with the commenter's request. The FAA acknowledges that a fuel leak may become evident upon engine installation, during a post-installation fuel leak check, or during normal operation. However, because the unsafe condition associated with this AD is fuel leakage that could result in an engine fire, the FAA considers it necessary to verify the integrity of any replaced fuel shutoff spar valves and fuel system components that may have been previously exposed to high-pressure fuel. In the case of design deficiencies that could lead to engine fires, the FAA considers it necessary to prevent such events from occurring on in-service airplanes. Therefore, no change to the final rule is necessary in this regard.

Request to Revise Cost Estimate

Two commenters request that the FAA revise the cost impact estimate in the proposed rule to reflect the estimate of 75 work hours given in Boeing Service Bulletin 747–28A2199, Revision 2. One of the commenters points out that, for Model 747–100, –200, and –300 series airplanes, a removable rib must be taken out to gain access to the fuel shutoff spar valves. The other commenter states that the estimate in the proposal is considerably too low and does not include the work hours or cost of materials necessary for modification of the valves, which the commenter estimates to be 3 work hours and $200 per valve.

The FAA does not concur with the commenters' request. The cost impact information in AD rulemaking actions describes only the "direct" costs of the specific actions required by this AD. The cost information typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

With regard to the comment that the proposed rule does not account for the time necessary to modify each valve, the proposed rule only requires installation of a fuel shutoff spar valve with an acceptable part number. Though operators may choose to modify a discrepant fuel shutoff spar valve to create an acceptable part, the AD does not actually require this modification. Therefore, the cost of the modification is not included in the cost impact estimate. No change to the final rule is necessary in this regard.

Request to Confirm AMOC Approval

One commenter requests that the FAA confirm that AMOC's approved for AD 98–21–29 will be acceptable for compliance with the proposed rule. The commenter has previously received FAA approval of an AMOC for AD 98–21–29.

The FAA concurs that AMOC's previously approved in accordance with AD 98–21–29 are approved for compliance with paragraphs (a), (a)(1), (a)(2), (a)(2)(i), (b), and (c) of this AD. Paragraph (h)(2) of the proposed rule, and this final rule, states this approval. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 987 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 208 airplanes of U.S. registry will be affected by this AD.

The one-time inspection to determine the part number of the valve that is currently required by AD 98–21–29 and retained in this AD affects approximately 59 airplanes of U.S. registry, and takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required inspection on U.S. operators is estimated to be $14,160, or $240 per airplane.

Should an operator be required to accomplish the one-time inspection to detect leaks and cracks (after replacement of the valve or modification of the assembly) that is currently required by AD 98–21–29 and retained in this AD, it will take approximately 16

work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection is estimated to be $960 per airplane.

The new one-time inspection of the maintenance records of the airplane that is required by this AD action affects approximately 149 airplanes of U.S. registry, and takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required inspection on U.S. operators is estimated to be $17,880, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to modify the valve body assembly of the fuel system rather than replace a discrepant valve, it would take approximately 20 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would cost approximately $404 (2 kits) per airplane. Based on these figures, the cost impact of this modification is estimated to be $1,604 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10837 (63 FR 55517, October 16, 1998), and by adding a new airworthiness directive (AD), amendment 39–11815, to read as follows:

2000–14–06 Boeing: Docket 99–NM–192-AD. Amendment 39–11815. Supersedes AD 98–21–29, Amendment 39–10837.

Applicability: Model 747 series airplanes, line numbers 1 through 1006 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high fuel pressure in components between the fuel shutoff spar valve and the engine fuel shutoff valve, which could result in failure of the fuel system components, lead to fuel leakage, and, consequently, lead to a possible engine fire, accomplish the following:

Restatement of Actions Required By AD 98–21–29, Amendment 39–10837:

One-Time Inspection

(a) For airplanes having line numbers 629 through 1006 inclusive and powered by General Electric or Rolls-Royce engines: Within 18 months after November 20, 1998 (the effective date of AD 98–21–29, amendment 39–10837), perform a one-time inspection to determine the part number of the fuel shutoff spar valve for the left-and right-hand outboard engines, in accordance with Boeing Alert Service Bulletin 747–28A2199, dated August 1, 1996; Boeing Service Bulletin 747–28A2199, Revision 1, dated October 1, 1998; or Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999.

Replacement

(1) If a valve having part number (P/N) S343T003–40 (ITT P/N 125334D–1) is installed, no further action is required by this AD.

(2) If a valve having P/N S343T003–40 (ITT P/N 125334D–1) is not installed, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the valve with a new valve, in accordance with the service bulletin.

Prior to further flight following accomplishment of the replacement, align the valve(s), perform a check to detect leaks, and correct any discrepancy, in accordance with the service bulletin. Or

(ii) Modify the valve body assembly of the fuel system in accordance with ITT

Service Bulletin SB125120–28–01, ITT Service Bulletin SB107970–28–01, and ITT Service Bulletin SB125334–28–01; all dated July 15, 1996.

Inspection

(b) For airplanes having line numbers 629 through 1006 inclusive and powered by General Electric or Rolls-Royce engines: Except as provided in paragraph (c) of this AD, prior to further flight following accomplishment of paragraph (a)(2) of this AD, perform a one-time general visual inspection to detect fuel leaks of the components between the fuel shutoff spar valve and the engine fuel shutoff valve on all four engines, in accordance with the applicable section that pertains to Rolls-Royce RB211 series engines or General Electric CF6–80C and CF6–45/50 series engines in Chapter 71 of the Boeing 747 Airplane Maintenance Manual (AMM), or Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999. If any leak is detected, prior to further flight, replace the part with a serviceable part. No further action is required by this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as:

"A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or

opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(c) For airplanes having line numbers 629 through 1006 inclusive, powered by General Electric or Rolls-Royce engines, and having maintenance records that positively demonstrate that the inboard engines have never been located in the outboard position:

Prior to further flight following accomplishment of paragraph (a)(2) of this AD, perform a one-time general visual inspection to detect fuel leaks of the components between the fuel shutoff spar valve and the engine fuel shutoff valve on the outboard engines only, in accordance with the applicable section that pertains to Rolls-Royce RB211 series engines or General Electric CF6–80C and CF6–45/50 series engines in Chapter 71 of the Boeing 747 AMM, or Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999. If any leak is detected, prior to further flight, replace the part with a serviceable part. No further action is required by this AD.

Note 3: Accomplishment of the actions specified in AMM 71–00–00/501, Test No. 2, "Fuel and Oil Leak Check," for Rolls-Royce RB211 series engines, and AMM 71–00–00/501, Test No. 3, "Ground Test—Idle Leak Check (or Idle Power)," for General Electric CF6–80C and CF6–45/50 series engines, is acceptable for compliance with the actions specified by paragraphs (b) and (c) of this AD.

New Actions Required By This AD:

Inspection

(d) For airplanes having line numbers 1 through 628 inclusive: Within 18 months after the effective date of this AD, perform a one-time inspection of the maintenance records of the airplane to determine if the fuel shutoff spar valve for the left-and right-hand outboard engines has ever been replaced, in accordance with Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999.

(1) If the maintenance record inspection establishes that neither valve has been replaced, no further action is required by this AD.

(2) If either valve has been replaced, or if the maintenance record inspection does not clearly establish that neither valve has been replaced, prior to further flight, accomplish paragraph (e)(1), (e)(2), or (e)(3), as applicable.

(e) For airplanes having line numbers 629 through 1006 inclusive and powered by Pratt & Whitney engines, or for airplanes having line numbers 1 through 628 inclusive on which a fuel shutoff spar valve has been, or may have been, replaced: Within 18 months after the effective date of this AD, perform a one-time inspection to determine the part number of the fuel shutoff spar valve for the left-and right-hand outboard engines, as applicable, in accordance with Boeing Alert Service Bulletin 747–28A2199, dated August 1, 1996; Boeing Service Bulletin 747–28A2199, Revision 1, dated October 1, 1998; or Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999.

Replacement

(1) If a valve having P/N S343T003–40 (ITT P/N 125334D–1) is installed, no further action is required by this AD.

(2) If a valve having P/N 60B92406–161 (ITT P/N 125334–1), P/N 60B92406–81 (ITT P/N 125120–1), or P/N 60B92406–201 (ITT P/N 107970–1) is installed, accomplish either paragraph (f) or (g) of this AD, as applicable.

(3) If a valve having P/N S343T003–40 (ITT P/N 125334D–1), P/N 60B92406–161 (ITT P/N 125334–1), P/N 60B92406–81 (ITT P/N 125120–1), or P/N 60B92406–201 (ITT P/N 107970–1) is not installed, prior to further flight, accomplish either paragraph (e)(3)(i) or (e)(3)(ii), and either paragraph (f) or (g) of this AD, as applicable.

(i) Replace the valve with a new valve, in accordance with the service bulletin. Prior to further flight following accomplishment of the replacement, align the valve(s), perform a check to detect leaks, and correct any discrepancy, in accordance with the service bulletin. Or

(ii) Modify the valve body assembly of the fuel system in accordance with ITT Service Bulletin SB125120–28–01, ITT Service Bulletin SB107970–28–01, and ITT Service Bulletin SB125334–28–01; all dated July 15, 1996.

Inspection

(f) Expect as provided in paragraph (g) of this AD, prior to further flight following accomplishment of paragraph (e) of this AD, perform a one-time general visual inspection to detect fuel leaks of the components between the fuel shutoff spar valve and the engine fuel shutoff valve on all four engines, in accordance with Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999. If any leak is detected, prior to further flight, replace the part with a serviceable part.

(g) For airplanes having maintenance records that positively demonstrate that the inboard engines have never been located in the outboard position: Prior to further flight following accomplishment of paragraph (e) of this AD, perform a one-time general visual inspection to detect fuel leaks of the components between the fuel shutoff spar valve and the engine fuel shutoff valve on the outboard engines only, in accordance with Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999. If any leak is detected, prior to further flight, replace the part with a serviceable part.

Note 4: Accomplishment of the actions specified in AMM 71–00–00/501, Test No. 2, "Fuel and Oil Leak Check," for Rolls-Royce RB211 series engines, and AMM 71–00–00/501, Test No. 3, "Ground Test—Idle Leak Check (or Idle Power)," for General Electric CF6–80C and CF6–45/50 series engines, is acceptable for compliance with the actions specified by paragraphs (f) and (g) of this AD.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–21–29, amendment 39–10837, are approved as alternative methods of compliance with paragraph (a), (a)(1), (a)(2), (a)(2)(i), (b), and (c) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraphs (b) and (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–28A2199, dated August 1, 1996; Boeing Service Bulletin 747–28A2199, Revision 1, dated October 1, 1998; Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999; ITT Service Bulletin SB125120–28–01, dated July 15, 1996; ITT Service Bulletin SB107970–28–01, dated July 15, 1996; or ITT Service Bulletin SB125334–28–01, dated July 15, 1996; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 747–28A2199,

Revision 1, dated October 1, 1998; and Boeing Service Bulletin 747–28A2199, Revision 2, dated July 8, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–28A2199, dated August 1, 1996; ITT Service Bulletin SB125120–28–01, dated July 15, 1996; ITT Service Bulletin SB107970–28–01, dated July 15, 1996; and ITT Service Bulletin SB125334–28–01, dated July 15, 1996; was approved previously by the Director of the Federal Register as of November 20, 1998 (63 FR 55517, October 16, 1998).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; or ITT Aerospace Controls, 28150 Industry Drive, Valencia, California 91355. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on August 17, 2000.

Issued in Renton, Washington, on July 3, 2000.

Vi L. Lipki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17297 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–75–AD; Amendment 39–11816; AD 2000–14–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that currently requires repetitive inspections to detect cracking of the rear spar web or fuel leakage of the wing center section, and repair, if necessary. That action also provides for an optional modification of the rear spar web that constitutes terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating action. The actions specified by this AD are intended to prevent cracking of the rear spar web, which could permit fuel leakage into the airflow multiplier, and could result in an electrical short that could cause a fire.

DATES: Effective August 17, 2000.

The incorporation by reference of Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of August 17, 2000.

The incorporation by reference of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 29, 1997 (62 FR 65355, December 12, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–25–15, amendment 39–10239 (62 FR 65355, December 12, 1997), which is applicable to certain Boeing Model 727 series airplanes, was published in the **Federal Register** on October 6, 1999 (64 FR 54246). The action proposed to require repetitive inspections to detect cracking of the rear spar web or fuel leakage of the wing center section; repair, if necessary; and modification of the rear spar web, which would constitute terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To State Grace Period in Calendar Time

One commenter requests that the FAA revise the grace period in the proposed rule from 3,000 flight cycles to 4 years after the effective date of this AD. The commenter notes that Boeing Alert Service Bulletin 727–57A0182 is listed in Boeing Document D6–54860, dated March 31, 1989, which is currently required by AD 90–06–09, amendment 39–6488 (55 FR 8370, March 7, 1990) and AD 94–05–04, amendment 39–8842 (59 FR 13442, March 22, 1994). The commenter states that these AD's currently state a compliance threshold of 60,000 total flight cycles, with a grace period of 4 years after the effective date of the AD. The commenter requests that the proposed rule allow the same grace period allowed by the existing AD's for the actions specified in Boeing Alert Service Bulletin 727–57A0182.

The FAA does not concur with the commenter's request. Boeing Document D6–54860 addresses service problems related to both corrosion (which is a function of time) and fatigue (which is a function of flight cycles). Although Boeing Alert Service Bulletin 727–57A0182 is listed in that document, this AD is a standalone AD concerned with fatigue cracking of the rear spar web, which is related to flight cycles. As a result, the FAA has determined that a grace period stated in flight cycles is more appropriate than one stated in calendar time. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 970 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 659 airplanes of U.S. registry will be affected by this AD: 641 "Group 1" airplanes and 18 "Group 2" airplanes, as listed in the service bulletin.

The inspection that is currently required by AD 97–25–15 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $79,080, or $120 per airplane, per inspection cycle.

The new modification that is required in this AD action takes approximately 60.work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $6,434 per airplane for "Group 1" airplanes, and $6,689 per airplane for "Group 2" airplanes. Based on these figures, the cost impact of the new modification required by this AD on U.S. operators is estimated to be $6,616,996, or $10,034 per "Group 1" airplane and $10,289 per "Group 2" airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10239 (62 FR 65355, December 29, 1997), and by adding a new airworthiness directive (AD), amendment 39–11816, to read as follows:

2000–14–07 Boeing: Amendment 39–11816. Docket 99–NM–75–AD. Supersedes AD 97–25–15, Amendment 39–10239.

Applicability: Model 727 series airplanes having line numbers 858 through 864 inclusive, 867 through 869 inclusive, 872 through 883 inclusive, and 885 through 1832 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the rear spar web, which could permit fuel leakage into the airflow multiplier, and could result in an electrical short that could cause a fire, accomplish the following:

Restatement of the Requirements of AD 97–25–15

Inspections

(a) Prior to the accumulation of 15,000 total flight cycles, or within 300 flight cycles after December 27, 1997 (the effective date of AD 97–25–15, amendment 39–10239), whichever occurs later: Accomplish the inspections specified in either paragraph (a)(1) or (a)(2) of this AD, in accordance with Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999. For purposes of the AD, the access panels specified in the alert service bulletin need not be removed; the access panels need only be opened.

Note 2: The fuel tank of the wing center section may be filled with fuel to assist in detecting cracking or fuel leakage during the accomplishment of the visual inspections required by this AD.

(1) Perform a visual inspection using a borescope or mirror to detect cracking of the rear spar web and/or fuel leakage of the wing center section between right body buttock line (BBL) 40 and left BBL 40, in accordance with Part I of the Accomplishment Instructions of the service bulletin. Thereafter, repeat this inspection at intervals not to exceed 300 flight cycles. Or

(2) Perform an ultrasonic and high frequency eddy current (HFEC) inspection to detect cracking of the rear spar web of the wing center section between right BBL 40 and left BBL 40, in accordance with Part II of the Accomplishment Instructions of the service bulletin. Thereafter, repeat this inspection at intervals not to exceed 3,000 flight cycles.

Repair

(b) If any cracking of the rear spar web and/or fuel leakage of the wing center section is detected between right BBL 40 and left BBL 40 near the upper machined land radius, prior to further flight, repair in accordance with Part III of the Accomplishment Instructions in Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999. Accomplishment of this repair constitutes terminating action for the repetitive inspection requirements of this AD.

(c) If any cracking of the rear spar web and/or fuel leakage of the wing center section is detected that is outside the area specified in paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

New Requirements of This AD

Modification

(d) Prior to the accumulation of 60,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish an ultrasonic and HFEC inspection in accordance with the requirements of paragraph (a)(2) of this AD.

(1) If no cracking is detected, prior to further flight, modify the rear spar web of the center section of the fuel tank between right BBL 40 and left BBL 40, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(2) If any cracking is detected, prior to further flight, repair and modify the rear spar web in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–25–15, amendment 39–10239, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided the limitations specified in paragraphs (f)(1) through (f)(6) of this AD are included in the special flight permit:

"(1) Required trip and reserve fuel must be carried in the No. 1 and No. 3 outer wing tanks.

(2) Wing center tank No. 2 must be empty of fuel.

(3) The fuel system must be checked for normal operation prior to flight by verifying that all boost pumps are operational; configuring the fuel system by turning on all boost pumps in the No.'s 1 and 3 outer wing tanks and by opening all crossfeed valve selectors; and by confirming that fuel is not bypassing tank No. 2 check valves by observing that there is not leakage into tank No. 2.

(4) Maintain a minimum of 5,300 pounds of fuel in tanks No. 1 and No. 3 to prevent uncovering the fuel bypass valve.

(5) The fuel quantity indication system must be operational in all three tanks.

(6) The effects of loading fuel only in the wing tanks on the airplane weight and balance must be considered and accounted for."

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997; or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999.

(1) The incorporation by reference of Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, was approved previously by the Director of the Federal Register as of December 29, 1997 (62 FR 65355, December 12, 1997).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 17, 2000.

Issued in Renton, Washington, on July 3, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17296 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30108; Amdt. No. 2000]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination.—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), Faa Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 7, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication

FDC Date	State	City	FDC number	SIAP	
06/01/00	IL	Champaign/Urbana	University of Illinois–Willard	FDC 0/5785	GPS RWY 19 ORIG... CORRECTED
06/22/00	CA	Oakland	Metropolitan Oakland Intl	FDC 0/6866	ILS RWY 29 (CAT I, II, III) AMDT 23A...
06/22/00	CA	Watsonville	Watsonville Muni	FDC 0/6865	LOC RWY 2 AMDT 2B...ADD...
06/22/00	TX	Morristown	Moore–Murrell	FDC 0/6851	NDB OR GPS RWY 5, AMDT 4...
06/23/00	CA	San Martin	South County Arpt of Santa Clara County.	FDC 0/6892	GPS RWY 32 ORIG...
06/23/00	OH	Columbus	Port Columbus Intl	FDC 0/6907	ILS RWY 28L, AMDT 27A...
06/23/00	TN	Morristown	Moore–Murrell	FDC 0/6885	NDB OR GPS RWY 5, AMDT 4...
06/26/00	GA	Lawrenceville	Gwinnett County–Briscoe Field	FDC 0/6960	GPS–A, ORIG...
06/26/00	IL	Chicago	Chicago–O'Hare Intl	FDC 0/6979	ILS RWY 14R THIS REPLACES 0/6419
06/26/00	IL	Peoria	Greater Peoria Regional	FDC 0/6987	VOR/DME OR TACAN RWY 31, AMDT 8A... THIS REPLACES 0/5950
06/26/00	NE	Beatrice	Beatrice Muni	FDC 0/6993	VOR RWY 35, ADMT 6A...
06/27/00	IL	Carbondale–Murphysboro.	Southern Illinois	FDC 0/7037	ILS RWY 18L AMDT 12B...
06/27/00	LA	Lafayette	Lafayette Regional	FDC 0/7041	ILS RWY 22L, AMDT 4...
06/27/00	TX	Sherman/Denison	Grayson County	FDC 0/7026	VOR/DME RNAV RWY 35R, ORIG...
06/28/00	MO	Ft. Leonard Wood	Waynesville Regional Arpt at Forney Field.	FDC 0/7107	VOR RWY 32, ORIG A...
06/28/00	WA	Pullman–Moscow	Pullman–Moscow Regional	FDC 0/7104	VOR/DME OR GPS–A ORIG...
06/28/00	WY	Gillette	Gillette–Campbell Co	FDC 0/7118	NDB RWY 34 ORIG–B...
06/28/00	WY	Gillette	Gillette–Campbell Co	FDC 0/7119	VOR OR GPS RWY 16, AMDT 6B...

FDC Date	State	City	FDC number	SIAP	
06/28/00	WY	Gillette	Gillette–Campbell Co	FDC 0/7120	VOR/DME OR GPS RWY 34, ORIG–B...
06/29/00	MO	Neosho	Neosho Hugh Robinson	FDC 0/7170	VOR/DME RNAV OR GPS RWY 19, AMDT 6A...
06/29/00	MO	Neosho	Neosho Hugh Robinson	FDC 0/7171	VOR OR GPS–A, AMDT 6A...
06/29/00	UT	Salt Lake City	Salt Lake City Intl	FDC 0/7146	ILS RWY 35, AMDT 1B...
06/30/00	GA	Lawrenceville	Gwinnett County–Briscoe Field	FDC 0/7192	VOR/DME OR GPS RWY 7, AMDT 1A...
06/30/00	MO	Lee's Summit	Lee's Summit Muni	FDC 7/7205	VOR–A ORIG...
06/30/00	OK	Oklahoma City	Wiley Post	FDC 0/7188	VOR RWY 35R, AMDT 3...
06/30/00	SD	Huron	Huron Regional	FDC 0/7195	LOC/DME BC RWY 30, AMDT 11A...
07/03/00	MO	Kaiser Lake Ozark	Lee C. Fine Memorial	FDC 0/7285	VOR OR GPS RWY 3, AMDT 5...
07/03/00	MO	Kaiser Lake Ozark	Lee C. Fine Memorial	FDC 0/7286	LOC/DME RWY 21, AMDT 1A...
07/30/00	MO	Kaiser Lake Ozark	Lee C. Fine Memorial	FDC 0/7289	GPS RWY 21, ORIG–A...

[FR Doc. 00–17788 Filed 7–12–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30107; Amdt. No. 1999]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscripton—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure

before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 7, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 10, 2000

Tallulah/Vicksburg, LA, Vicksburg Tallulah Regional, GPS RWY 18, CANCELLED
Tallulah/Vicksburg, LA, Vicksburg Tallulah Regional, RNAV RWY 18, Orig
Tallulah/Vicksburg, LA, Vicksburg Tallulah Regional, RNAV RWY 36, Orig
Three Rivers, MI, Three Rivers Muni Dr Haines, RNAV RWY 27, Orig
Owatonna, MN, Owatonna Degner, Regional, RNAV RWY 12, Orig
Southern Pines, NC, Moore County, VOR OR GPS–A, Amdt 4, CANCELLED
Mooreland, OK, Mooreland Muni, NDB RWY 17, Amdt 4, CANCELLED

. . . Effective September 7, 2000

St. Louis, MO, Lambert-St. Louis Intl, VOR RWY 6, Orig
St. Louis, MO, Lambert-St. Louis Intl, VOR RWY 24, Orig
Lake City, SC, Lake City Muni CJ Evans Field, NDB OR GPS–A, Amdt 1B, CANCELLED

. . . Effective October 5, 2000

Gustavus, AK, Gustavus, NDB OR GPS–A, Amdt 3A, CANCELLED
Kenai, AK, Kenai Muni, VOR/DME RWY 1L, Amdt 6
Sacramento, CA, Sacramento Intl, NDB RWY 16R, Amdt 10A
Sacramento, CA, Sacramento Intl, NDB RWY 16L, Amdt 1A
Sacramento, CA, Sacramento Intl, NDB OR GPS RWY 34R, Orig–A
Sacramento, CA, Sacramento Intl, NDB OR GPS RWY 34L, Amdt 4A
Bridgeport, CT, Igor I. Sikorsky Memorial, VOR OR GPS RWY 24, Amdt 15
Hartford, CT, Hartford-Brainard, LDA RWY 2, Amdt 1D
Hartford, CT, Hartford-Brainard, NDB RWY 2, Amdt 2B
Tallahassee, FL, Tallahassee Regional, GPS RWY 9, Orig–A
Rota Island, MP, Rota Intl, GPS RWY 9, Orig–A
Edenton, NC, Northeastern Regional, NDB RWY 5, Amdt 5
Edenton, NC, Northeastern Regional, NDB RWY 19, Amdt 6
Edenton, NC, Northeastern Regional, GPS RWY 1, Orig–B, CANCELLED
Edenton, NC, Northeastern Regional, RNAV RWY 1, Orig
Edenton, NC, Northeastern Regional, RNAV RWY 5, Orig
Edenton, NC, Northeastern Regional, RNAV RWY 19, Orig
Winston Salem, NC, Smith Reynolds, VOR/DME RWY 15, Amdt 1B
Winston Salem, NC, Smith Reynolds, NDB RWY 33, Amdt 25B
Winston Salem, NC, Smith Reynolds, GPS RWY 15, Orig–B
Winston Salem, NC, Smith Reynolds, GPS RWY 33, Orig–B
Millersburg, OH, Holmes County, NDB RWY 27, Amdt 5A, CANCELLED
Toledo, OH, Toledo Express, VOR/DME OR GPS RWY 34, Amdt 7
Providence, RI, Theodore Francis Green State, VOR/DME OR GPS RWY 23L, Amdt 6C
Providence, RI, Theodore Francis Green State, VOR/DME RWY 34, Amdt 5A
Springfield, VT, Hartness State (Springfield), LOC/DME RWY 5, Amdt 3B
Suffolk, VA, Suffolk Muni, LOC RWY 4, Amdt 1B
Suffolk, VA, Suffolk Muni, NDB RWY 4, Amdt 1B
Suffolk, VA, Suffolk Muni, GPS RWY 4, Orig–B
Eau Claire, WI, Chippewa Valley Regional, LOC/DME BC RWY 4, Amdt 8

The FAA published an Amendment in Docket No. 30088, Amdt. No. 1997 to Part 97 of the Federal Aviation Regulations (Vol 65 FR No. 125 Page 39795; dated June 28, 2000) under section 97.33 effective August 10, 2000, which is hereby amended as follows:

Detroit/Grosse, MI, Grosse Ile Muni, RNAV RWY 22, Orig, should read Detroit/Grosse Ile, MI, Grosse Ile Muni, RNAV RWY 22, Orig.

[FR Doc. 00–17787 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 85N–0214]

Court Decisions, ANDA Approvals, and 180-Day Exclusivity

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim rule to amend its regulations governing the definition of court decisions that affect the timing of certain abbreviated new drug application (ANDA) approvals and the beginning of 180-day exclusivity under the Federal Food, Drug, and Cosmetic Act (the act). The interim rule eliminates the current definition of the court decision. This change is necessitated by recent court decisions on these issues.

DATES: This interim rule is effective July 18, 2000. Submit written comments by October 11, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Virginia G. Beakes, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the Hatch-Waxman Amendments) amended the act. The Hatch-Waxman Amendments created section 505(j) of the act (21 U.S.C. 355(j)), which established the ANDA approval procedures. These procedures allow for the approval and marketing of lower priced generic drug products through a process that includes, among other elements, a listing of innovator drug patents, a procedure for certification to listed patents and judicial review of patent claims, and a period of 180 days of marketing exclusivity for certain ANDA applicants who challenge innovator patents.

FDA's interpretation of two provisions of section 505(j) of the act have been affected by recent court decisions interpreting the phrase "decision of a court" or "court decision." Section 505(j)(5)(B)(iii) of the act governs the approval of ANDA's when a patent owner or new drug application (NDA) holder has brought a timely patent infringement action in response to an ANDA applicant's notice of filing of a paragraph IV certification to a listed patent. Section 505(j)(5)(B)(iv) of the act governs the eligibility for and timing of 180-day exclusivity. The regulations implementing these statutory provisions are found in § 314.107 (21 CFR 314.107). Certain aspects of these regulations have been successfully challenged in *TorPharm, Inc.*, v. *Shalala*, No. 97–1925, 1997 U.S. Dist. LEXIS 21983 (D.D.C. Sept. 15, 1997), appeal withdrawn and remanded, 1998 U.S. App. LEXIS 4681 (D.C. Cir. Feb. 5, 1998); vacated No. 97–1925 (D.D.C. Apr. 9, 1998); and *Mylan Pharmaceuticals, Inc.*, v. *Shalala*, No. 99–2995, slip op. (D.D.C. Jan. 4, 2000). In response to this litigation, FDA is issuing this interim rule withdrawing from § 314.107 the definitions related to court decisions.

The statutory provisions at issue in the *TorPharm* and *Mylan* cases apply the concept of a court decision to the timing of certain ANDA approvals and to the start of 180-day exclusivity. There is a 30-month statutory bar to approval of an ANDA that is the subject of patent infringement litigation except if "before the expiration of such period the court decides that such patent is invalid or not infringed, the approval will be made effective on the date of the *court decision*" (section 505(j)(5)(B)(iii)(I) of the act (emphasis added)). In implementing this provision in current § 314.107(e)(1), FDA interpreted "court" to mean "the court that enters final judgment from which no appeal can be or has been taken." The agency's reasons for adopting this interpretation are discussed in the preambles to the proposed and final rules implementing the 1984 Drug Price Competition and Patent Term Restoration Act (54 FR 28872 at 28893 through 28895, July 10, 1989, and 59 FR 50338 at 50352 through 50354, October 3, 1994).

Certain court decisions are also important for 180-day generic drug exclusivity. FDA's interpretation of "court" in the court decision described in section 505(j)(5)(B)(iii)(I) of the act was influenced by the role such a decision plays in 180-day exclusivity. The 180-day period of exclusivity can begin on either: (1) The date of first commercial marketing; or (2) "the date of a *decision of a court* * * * holding the patent which is the subject of the [paragraph IV] certification to be invalid, or not infringed, whichever is earlier" (section 505(j)(5)(B)(iv) of the act (emphasis added)). As described in the preambles to the implementing regulations (54 FR 28893 through 28895, and 59 FR 50352 through 50354), FDA believed that for the 180-day exclusivity to have real meaning for the eligible ANDA the court decision triggering the exclusivity must be the one that finally resolves the patent infringement litigation related to the ANDA. Therefore, for purposes of section 505(j)(5)(B)(iv) of the act, FDA determined that "court" means "the court that enters final judgment from which no appeal can be or has been taken," as stated in current § 314.107(e)(1).

FDA's interpretation of the term "court" has been successfully challenged in the context of both the timing of ANDA approvals and the commencement of 180-day exclusivity. In *TorPharm* v. *Shalala*, the D.C. District Court found FDA's interpretation not supported by the statute and directed FDA to approve an ANDA upon a decision of the district court finding a patent invalid, unenforceable, or not infringed. When the case became moot, FDA's appeal of that decision was withdrawn, and the district court opinion was vacated. In the period since the *TorPharm* decision, FDA has continued to apply the definition of "court" set out at § 314.107(e). Recently, in *Mylan Pharmaceuticals, Inc.*, v. *Shalala*, the D.C. District Court found FDA's interpretation of court as used in the 180-day exclusivity context inconsistent with the statute's plain meaning. However, the court also determined that the applicant who relied in good faith on FDA's interpretation of the 180-day exclusivity provision should not be punished by losing its exclusivity. The court therefore refused to order FDA to begin the running of 180-day exclusivity upon the decision of the district court in the patent litigation at issue.

These recent decisions add considerable uncertainty to FDA's implementation of the ANDA approval and 180-day generic drug exclusivity programs. These regulatory programs already have been disrupted by the changes in eligibility for 180-day exclusivity necessitated by *Mova Pharmaceutical Corp.*, v. *Shalala*, 140 F.3d 1060 (D.C. Cir. 1998), and *Granutec, Inc.*, v. *Shalala*, 46 U.S.P.Q.2d 1398 (4th Cir. 1998). Therefore, in determining its response to the *TorPharm* and *Mylan* decisions, a primary concern for the agency has been to identify an approach that will minimize further disruption and provide the regulated industry with reasonable guidance for making future business decisions.

The government has not appealed the *Mylan* decision and will follow that court's interpretation of the statute in approving ANDA's and calculating the commencement of 180 days of exclusivity. Although the agency believes that the statutory provisions at issue may properly be interpreted as FDA set out in § 314.107(e), the agency nonetheless has determined that because of the confusion and uncertainty created by the repetitive litigation of these issues, it is in the interest of the regulated industry and the agency to accept the interpretation of the *TorPharm* and *Mylan* courts. The agency will incorporate the *TorPharm* and *Mylan* courts' interpretation of the statute into the final rule implementing the changes in 180-day exclusivity proposed in the **Federal Register** of August 6, 1999 (64 FR 42873).

In the period before the final rule implementing changes in 180-day exclusivity is completed, the agency is issuing this interim rule to remove § 314.107(e)(1) through (e)(2)(iii). FDA issued a guidance for industry stating that the agency would continue to apply the interpretation set out in § 314.107(e)(1) through (e)(2)(iii) in certain circumstances, and that the interpretation urged by the courts would be applied prospectively.[1] This

[1] Guidance for industry, "Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act," March 2000. This guidance is available on the Internet at http://www.fda.gov/cder/guidance/index.htm.

guidance will apply until revoked or revised by the agency.

II. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental impact assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the interim rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agency believes that this interim rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the interim rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because good cause exists under 5 U.S.C. 553(d)(3) for making this interim rule effective in less than 30 days, the agency is not required to analyze regulatory options under the Regulatory Flexibility Act (see 5 U.S.C. 604(a)). Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The elimination of the definition of "court" in § 314.107(e)(1) through (e)(2)(iii) will not result in any significant increased expenditures by State, local, and tribal governments or the private sector. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the interim rule, because the interim rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

This interim rule is intended to bring FDA's regulations into conformance with the *TorPharm* and *Mylan* court decisions. The agency believes that this interim rule is necessary and that: (1) It is consistent with the principles of Executive Order 12866, (2) it is not a significant regulatory action under that Order, (3) an analysis is not required under the Regulatory Flexibility Act, and (4) it is not likely to result in an annual expenditure in excess of $100 million.

IV. Federalism

FDA has analyzed this interim rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the interim rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the interim rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This interim rule contains no collections of information, and clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Public Law 104–13) is not required.

VI. Effective Date

The agency is issuing these amendments as an interim rule effective July 18, 2000. This action is being taken to remove the provisions of § 314.107(e)(1) through (e)(2)(iii), which were determined by the *TorPharm* and *Mylan* courts to be unsupported by the act. These decisions have rendered the regulatory provisions unenforceable, and the agency can find no good reasons to retain the provisions in the regulations. For the foregoing reasons, FDA finds, for good cause, that notice and public procedure would be impracticable, unnecessary, and contrary to the public interest. Therefore a public comment period before the establishment of this interim rule may be dispensed with under 5 U.S.C. 553(b)(3)(B) and § 10.40(e)(1) (21 CFR 10.40(e)(1)). In addition, the Commissioner of Food and Drugs finds good cause under 5 U.S.C. 553(d)(3) and § 10.40(c)(4)(ii) for making this interim rule effective in less than 30 days.

VII. Opportunity for Public Comment

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this interim rule, on or before October 11, 2000. FDA will use any comments received to determine whether this interim rule should be modified or revoked. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 374, 379e.

2. Section 314.107 is amended by removing paragraphs (e)(1) through (e)(2)(iii); by redesignating paragraph (e)(2)(iv) as paragraph (e); and by revising the heading for newly redesignated paragraph (e) to read as follows:

§ 314.107 Effective date of approval of a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act.

* * * * *

(e) *Notification of court actions.*

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Dated: June 27, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17652 Filed 7–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–004]

RIN 2115–AA97

Safety Zone: New York Harbor, Western Long Island Sound, East and Hudson Rivers Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing 19 permanent safety zones for fireworks displays located on New York Harbor, western Long Island Sound, the East River, and the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the events. This action establishes permanent exclusion areas that are only active prior to the start of the fireworks display until shortly after the fireworks display is completed, and is intended to restrict vessel traffic in a portion of New York Harbor, western Long Island Sound, the East and Hudson Rivers.

DATES: This rule is effective August 14, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–004) and are available for inspection or copying at room 205, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, NY 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 11, 2000, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: New York Harbor, Western Long Island Sound, East and Hudson Rivers Fireworks in the **Federal Register** (65 FR 30376). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing 19 permanent safety zones that will be activated for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these 19 locations. The 19 locations are Coney Island in New York Harbor; Elizabeth, New Jersey on the Arthur Kill; Peningo Neck, Satans Toe, Larchmont, Manursing Island, Glen Island, Twin Island, Davenport Neck, and two locations in Hempstead Harbor in western Long Island Sound; Pier 14, Manhattan, and Wards Island in the East River; The Battery, Battery Park City, and Pier 90, Manhattan; Yonkers, Hastings-on-Hudson, and Pier D, Jersey City in the Hudson River. The Coast Guard received 30 applications for fireworks displays in these areas from 1998 to 1999. In 1997, the Coast Guard received 10 applications for fireworks displays in these locations. In the past, temporary safety zones were established with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing permanent safety zones by notice and comment rulemaking gave the public the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active. The Coast Guard has received no prior notice of any impact caused by the previous events. Marine traffic will still be able to transit around the safety zones. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the safety zones.

This rule revises 33 CFR 165.168, which was published in the **Federal Register** on January 7, 2000 (65 FR 1065). It adds 19 permanent safety zones to the five existing ones in 33 CFR 165.168, and it lists all 24 by the body of water in which they are located.

The sizes of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 6–12 inch mortars fired from a barge or shore, combined with the Coast Guard's knowledge of tide and current conditions in these areas. Barge and land site locations, and mortar sizes were adjusted to try and ensure the safety zone locations would not interfere with any known marinas or piers. The 19 safety zones are:

New York Harbor

The safety zone in Lower New York Bay includes all waters of Lower New York Bay within a 250-yard radius of the fireworks land shoot located on the south end of Steeplechase Pier, Coney Island, in approximate position 40°34′11″ N 073°59′00″ W (NAD 1983). The safety zone prevents vessels from transiting a portion of Lower New York Bay, and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through Lower New York Bay during the event. Additionally, Steeplechase Pier does not accept marine traffic and there are no commercial or recreational piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone on the Arthur Kill includes all waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot located in Elizabeth, New Jersey, in approximate position 40°38–50— N 074°10–58— W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780). The safety zone prevents vessels from transiting a portion of the Arthur Kill, and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through the southern 90 yards of the Arthur Kill opposite the display site in Elizabeth, New Jersey during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

Western Long Island Sound

The safety zone at Peningo Neck includes all waters of western Long Island Sound within a 300-yard radius of the fireworks barge in approximate position 40°56′21″ N 073°41′23″ W (NAD 1983), about 525 yards east of Milton Point, Peningo Neck. The safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone east of Satans Toe includes all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°55′21″ N 073°43′41″ W (NAD 1983), about 635 yards northeast of Larchmont Harbor (East Entrance) Light 2 (LLNR 25720). The safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from

the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone off Larchmont, west of the entrance to Horseshoe Harbor includes all waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°54′45″ N 073°44′55″ W (NAD 1983), about 450 yards southwest of the entrance to Horseshoe Harbor. The safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone south of Manursing Island includes all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°57′47″ N 073°40′06″ W (NAD 1983), about 380 yards north of Rye Beach Transport Rock Buoy 2 (LLNR 25570). The safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone east of Glen Island includes all waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°53′12″ N 073°46′33″ W (NAD 1983), about 350 yards east of the northeast corner of Glen Island. The safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone around the southeast corner of Twin Island includes all waters of western Long Island Sound within a 200-yard radius of the fireworks land shoot in approximate position 40°52′10″ N 073°47′07″ W (NAD 1983), at the east end of Orchard Beach. The safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone off Davenport Neck includes all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in Federal Anchorage No. 1–A, in approximate position 40°53′46″ N 073°46′04″ W (NAD 1983), about 360 yards northwest of Emerald Rock Buoy (LLNR 25810). The safety zone prevents vessels from transiting a portion of Federal Anchorage No. 1–A and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorage No. 1–A. Federal Anchorage No. 1–B, to the north, and Federal Anchorage No. 1, to the south, are also available for vessel use. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone in northern Hempstead Harbor, Long Island Sound, includes all waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″ N 073°39′34″ W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). The safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Hempstead Harbor during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone in southern Hempstead Harbor, Long Island Sound, includes all waters of Hempstead Harbor within a 180-yard radius of the fireworks barge in approximate position 40°49′50″ N 073°39′12″ W (NAD 1983), about 190 yards north of Bar Beach. The safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Hempstead Harbor during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

East River

The safety zone southeast of Pier 14, Manhattan, includes all waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′07.5″ N 074°00′06″ W (NAD 1983), about 250 yards southeast of Pier 14, Manhattan. The safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will be able to transit through the eastern 100 yards and the western 70 yards of the 530-yard wide East River during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone at Wards Island includes all waters of the East River within a 150-yard radius of the fireworks land shoot in approximate position 40°46′55.5″ N 073°55′33″ W (NAD 1983), about 200 yards northeast of the Triborough Bridge. The safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic

will still be able to transit through the eastern 150 yards of the 300-yard wide East River during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

Hudson River

The safety zone south of The Battery, Manhattan, includes all waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42′00″ N 074°01:17″ W (NAD 1983), about 500 yards south of The Battery. The safety zone prevents vessels from transiting a portion of the Hudson River and Anchorage Channel and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 675 yards of the 1500-yard wide Hudson River and through the eastern 350 yards of the 1200-yard wide Anchorage Channel during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone southwest of North Cove Yacht Harbor, Manhattan, includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′39″ N 074°01′21″ W (NAD 1983), about 480 yards southwest of North Cove Yacht Harbor. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 470 yards of the 1215-yard wide Hudson River during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone west of Pier 90, Manhattan, includes all waters of the Hudson River within a 300-yard radius of the fireworks barge in approximate position 40°46′12″ N 074°00′18″ W (NAD 1983), about 425 yards west of the west end of Pier 90, Manhattan. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 175 yards and the eastern 140 yards of the 915-yard wide Hudson River during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone west of Yonkers includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56′14.5″ N 073°54′33″ W (NAD 1983), about 475 yards northwest of Yonkers Municipal Pier. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 715 yards and eastern 115 yards of the 1550 yard-wide Hudson River during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone west of Hastings-on-Hudson includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59′44.5″ N 073°53′28″ W (NAD 1983), about 425 yards west of Hastings-on-Hudson, NY. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 675 yards and eastern 60 yards of the 1315 yard-wide Hudson River during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone southeast of Pier D, Jersey City, includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′57.5″ N 074°01′34″ W (NAD 1983), about 375 yards southeast of Pier D, Jersey City. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 440 yards of the 1120-yard wide Hudson River during the event. Additionally, Pier D does not accept marine traffic and vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The actual dates that these safety zones will be activated are not known by the Coast Guard at this time. Coast Guard Activities New York will give notice of the activation of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners. Marine information broadcasts will also be made for these events beginning 24 to 48 hours before the event is scheduled to begin. Facsimile broadcasts may also be made to notify the public. The Coast Guard expects that the notice of the activation of each permanent safety zone in this rulemaking will normally be made between thirty and fourteen days before the zone is actually activated. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled "FIREWORKS BARGE". This will provide on-scene notice that the safety zone the fireworks barge is located in is or will be activated on that day. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. Displays launched from shore sites will have a sign labeled "FIREWORKS SITE" with the same size requirements. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce each safety zone.

The effective period for each safety zone is from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.). However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

Discussion of Comments and Changes

We received no letters commenting on the proposed rule, but we did make one change to it. The proposed safety zone at Hunters Point on the East River

(§ 165.168(c)(2)) is being removed. The Coast Guard is planning to establish a safety zone at Hunters Point in a future rulemaking. The East River safety zones in § 165.168(c) are renumbered because of this. Figure 3 is also revised to show this change.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. Vessels may also still transit through Lower New York Bay, the Arthur Kill, western Long Island Sound, the East and Hudson Rivers, and Anchorage Channel during these events. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zones. Advance notifications will also be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts. Facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that there will only be 20–25 total activations of these safety zones per year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Port of New York/New Jersey and western Long Island Sound during the times these zones are activated.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can transit around all 19 safety zones. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zones. Before the effective period, we will issue maritime advisories widely available to users of the Port of New York/New Jersey by local notice to mariners and marine information broadcasts. Facsimile broadcasts may also be made.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes 19 safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Revise § 165.168 to read as follows:

§ 165.168 Safety Zones: New York Harbor, Western Long Island Sound, East and Hudson Rivers Fireworks.

(a) *New York Harbor.* Figure 1 of this section displays the safety zone areas in paragraphs (a)(1) through (a)(6).

(1) *Liberty Island Safety Zone:* All waters of Upper New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°41′16.5″ N

074°02′23″ W (NAD 1983), located in Federal Anchorage 20–C, about 360 yards east of Liberty Island.

(2) *Ellis Island Safety Zone:* All waters of Upper New York Bay within a 360-yard radius of the fireworks barge located between Federal Anchorages 20–A and 20–B, in approximate position 40°41′45″ N 074°02′09″ W (NAD 1983), about 365 yards east of Ellis Island.

(3) *South Beach, Staten Island Safety Zone:* All waters of Lower New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°35′11″ N 074°03′42″ W (NAD 1983), about 350 yards east of South Beach, Staten Island.

(4) *Raritan Bay Safety Zone:* All waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30′04″ N 074°15′35″ W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595).

(5) *Coney Island Safety Zone:* All waters of Lower New York Bay within a 250-yard radius of the fireworks land shoot located on the south end of Steeplechase Pier, Coney Island, in approximate position 40°34′11″ N 073°59′00″ W (NAD 1983).

(6) *Arthur Kill, Elizabeth, New Jersey Safety Zone:* All waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot located in Elizabeth, New Jersey, in approximate position 40°38′50″ N 074°10′58″ W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780).

(b) *Western Long Island Sound.* Figure 2 of this section displays the safety zone areas in paragraphs (b)(1) through (b)(9).

(1) *Peningo Neck, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 300-yard radius of the fireworks barge in approximate position 40°56′21″ N 073°41′23″ W (NAD 1983), about 525 yards east of Milton Point, Peningo Neck, New York.

(2) *Satans Toe, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°55′21″ N 073°43′41″ W (NAD 1983), about 635 yards northeast of Larchmont Harbor (East Entrance) Light 2 (LLNR 25720).

(3) *Larchmont, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°54′45″ N 073°44′55″ W (NAD 1983), about 450 yards southwest of the entrance to Horseshoe Harbor.

(4) *Manursing Island, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°57′47″ N 073°40′06″ W (NAD 1983), about 380 yards north of Rye Beach Transport Rock Buoy 2 (LLNR 25570).

(5) *Glen Island, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°53′12″ N 073°46′33″ W (NAD 1983), about 350 yards east of the northeast corner of Glen Island, New York.

(6) *Twin Island, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 200-yard radius of the fireworks land shoot in approximate position 40°52′10″ N 073°47′07″ W (NAD 1983), at the east end of Orchard Beach, New York.

(7) *Davenport Neck, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in Federal Anchorage No. 1–A, in approximate position 40°53′46″ N 073°46′04″ W (NAD 1983), about 360 yards northwest of Emerald Rock Buoy (LLNR 25810).

(8) *Glen Cove, Hempstead Harbor Safety Zone:* All waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″ N 073°39′34″ W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065).

(9) *Bar Beach, Hempstead Harbor Safety Zone:* All waters of Hempstead Harbor within a 180-yard radius of the fireworks barge in approximate position 40°49′50″ N 073°39′12″ W (NAD 1983), about 190 yards north of Bar Beach, Hempstead Harbor, New York.

(c) *East River.* Figure 3 of this section displays the safety zone areas in paragraphs (c)(1) and (c)(2).

(1) *Pier 14, East River Safety Zone:* All waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′07.5″ N 074°00′06″ W (NAD 1983), about 250 yards southeast of Pier 14, Manhattan, New York.

(2) *Wards Island, East River Safety Zone:* All waters of the East River within a 150-yard radius of the fireworks land shoot in approximate position 40°46′55.5″ N 073°55′33″ W (NAD 1983), about 200 yards northeast of the Triborough Bridge.

(d) *Hudson River.* Figure 4 of this section displays the safety zone areas in paragraphs (d)(1) through (d)(7).

(1) *Pier 60, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′49″ N 074°01′02″ W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York.

(2) *The Battery, Hudson River Safety Zone:* All waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42′00″ N 074°01′17″ W (NAD 1983), about 500 yards south of The Battery, Manhattan, New York.

(3) *Battery Park City, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′39″ N 074°01′21″ W (NAD 1983), about 480 yards southwest of North Cove Yacht Harbor, Manhattan, New York.

(4) *Pier 90, Hudson River Safety Zone:* All waters of the Hudson River within a 300-yard radius of the fireworks barge in approximate position 40°46′12″ N 074°00′18″ W (NAD 1983), about 425 yards west of the west end of Pier 90, Manhattan, New York.

(5) *Yonkers, New York, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56′14.5″ N 073°54′33″ W (NAD 1983), about 475 yards northwest of the Yonkers Municipal Pier, New York.

(6) *Hastings-on-Hudson, New York, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59′44.5″ N 073°53′28″ W (NAD 1983), about 425 yards west of Hastings-on-Hudson, New York.

(7) *Pier D, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′57.5″ N 074°01′34″ W (NAD 1983), about 375 yards southeast of Pier D, Jersey City, New Jersey.

(e) *Notification.* Coast Guard Activities New York will cause notice of the activation of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS BARGE." This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. Fireworks launched from shore sites will display a sign labeled "FIREWORKS SITE" with the same dimensions.

(f) *Effective Period.* This section is effective from 8 p.m. (e.s.t.) to 1 a.m.

(e.s.t.) each day a barge with a "FIREWORKS BARGE" sign on the port and starboard side is on-scene or a "FIREWORKS SITE" sign is posted in a location listed in paragraphs (a) through (d) of this section. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York or designated Coast Guard patrol personnel on scene.

(g) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

BILLING CODE 4910–15–C

Figure 1
§ 165.168(a) New York Harbor Fireworks Safety Zones drawn to scale.

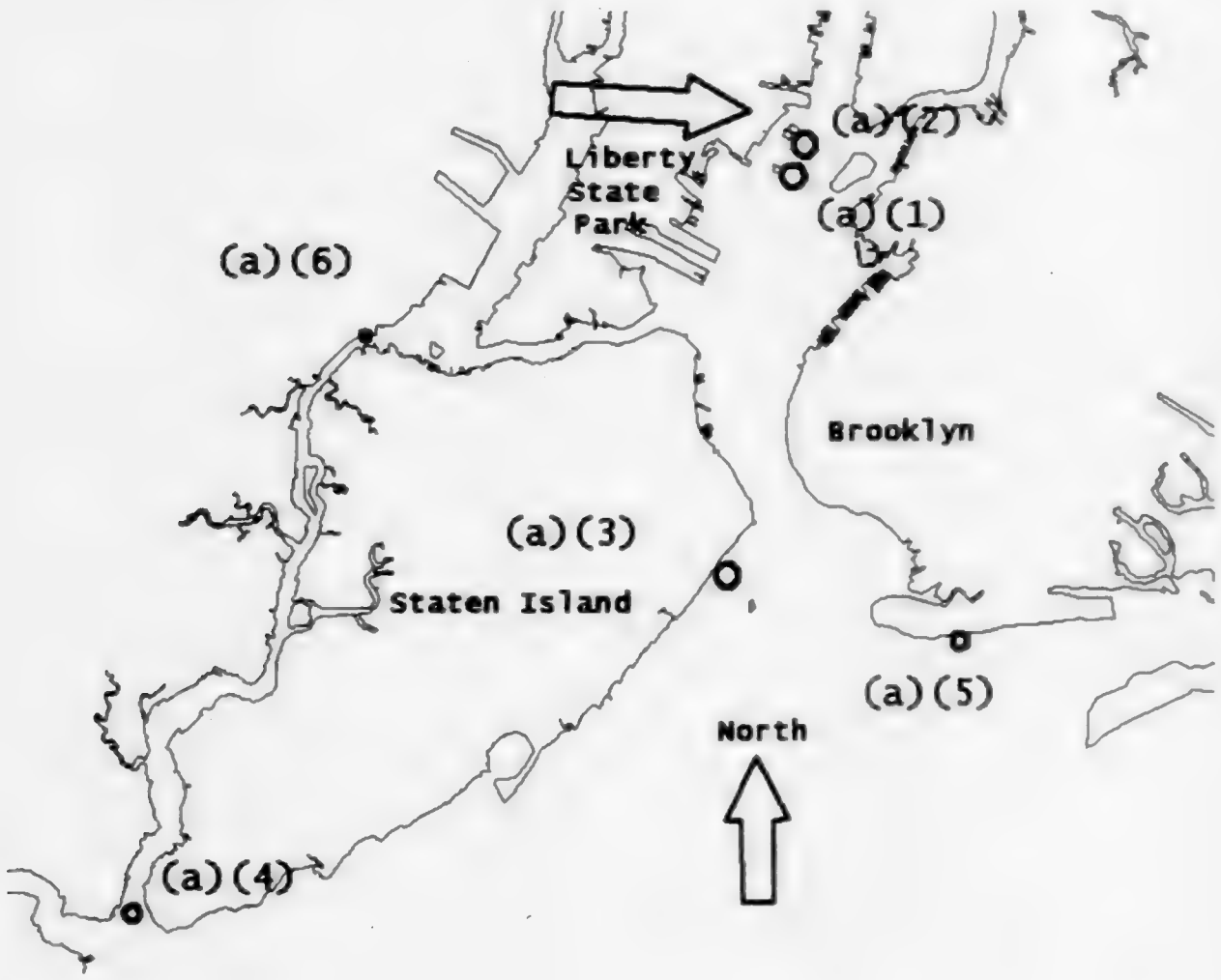

Figure 2
§ 165.168(b) Western Long Island Sound Fireworks Safety Zones drawn to scale.

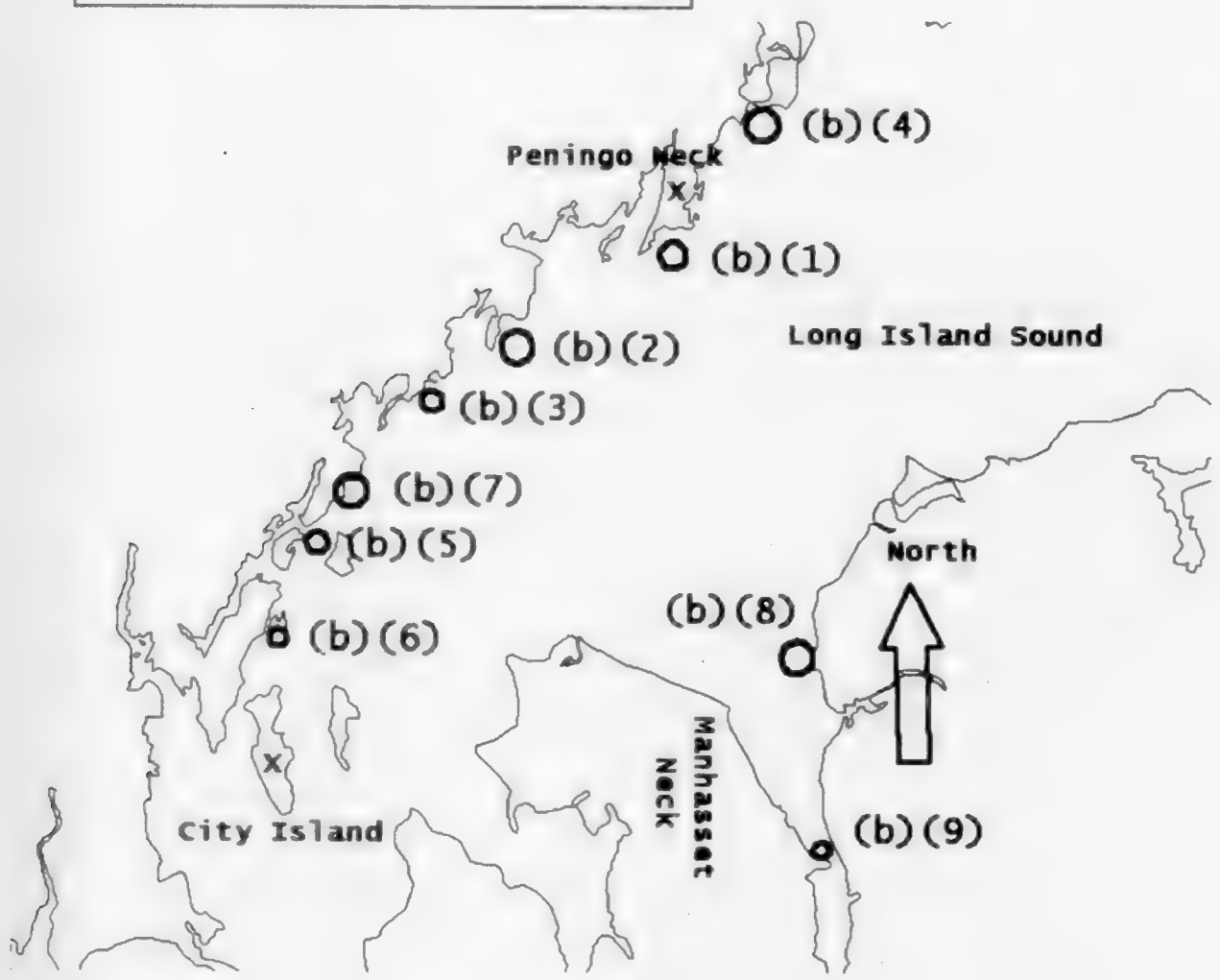

Figure 3
§ 165.168(c) East River Fireworks Safety Zones
Drawn to scale.

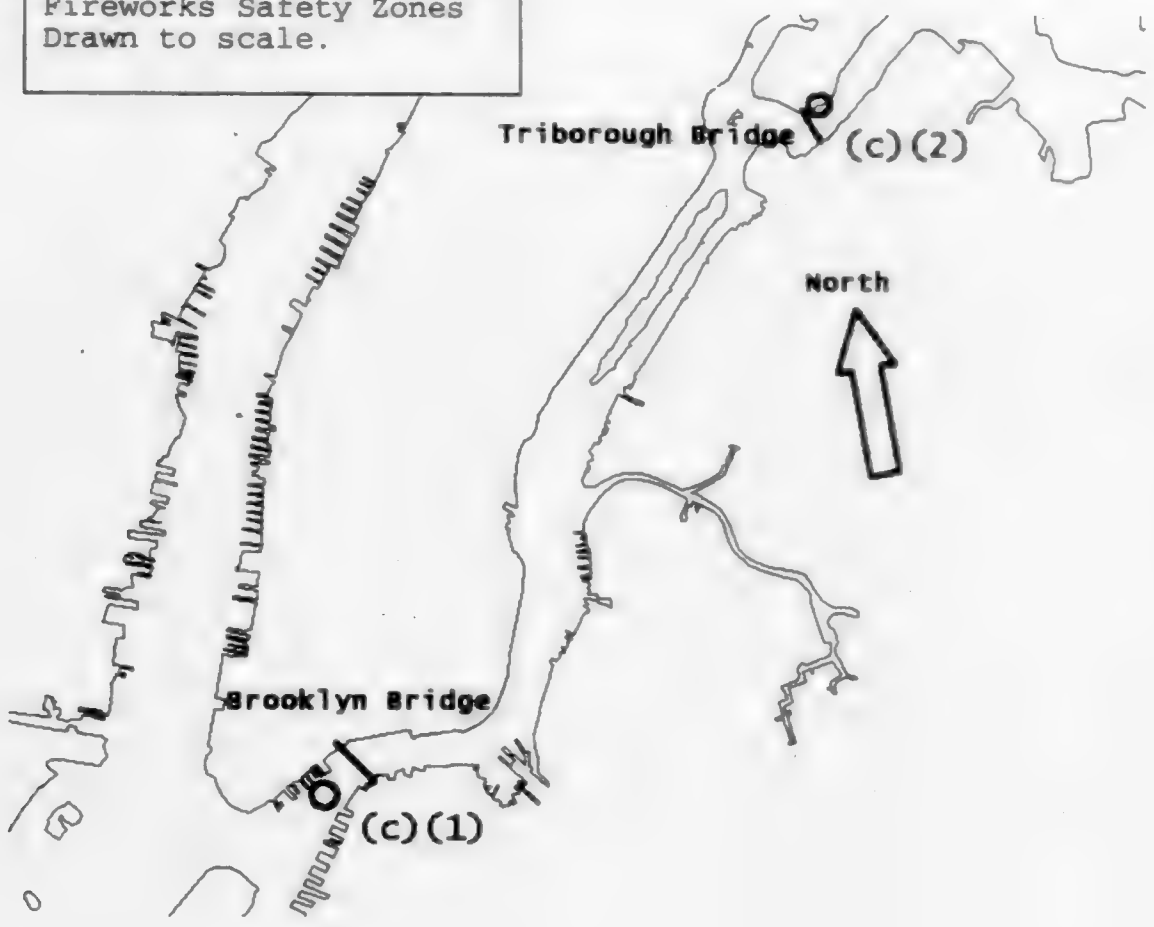

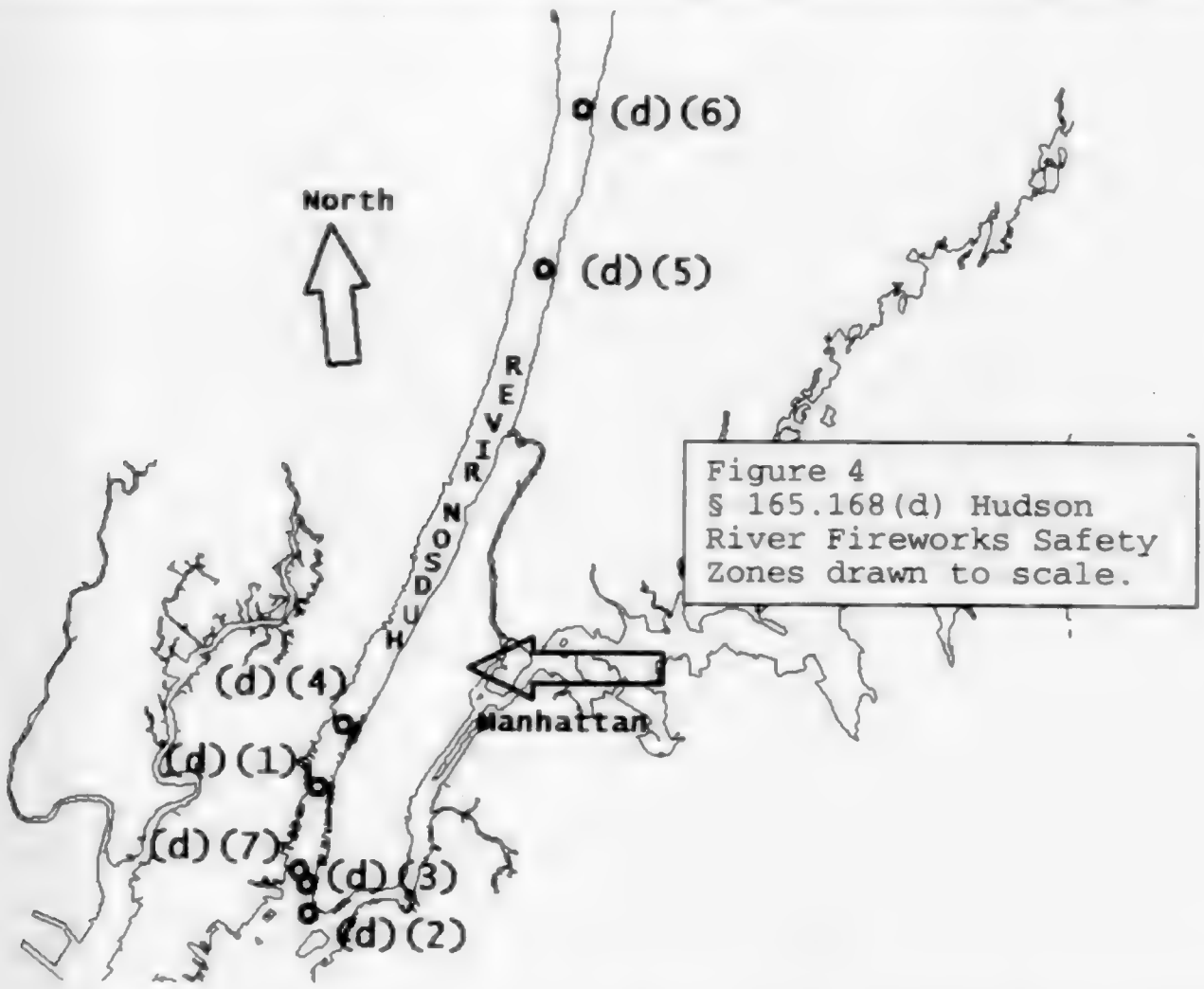

Figure 4
§ 165.168(d) Hudson River Fireworks Safety Zones drawn to scale.

Dated: June 27, 2000.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–17677 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–015]

RIN 2115–AA97

Safety Zone: Staten Island Fireworks, Arthur Kill

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones on the Arthur Kill for two Borough of Staten Island Fireworks displays. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic on a portion of the Arthur Kill.

DATES: This rule is effective July 2, 2000 until September 3, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–015) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 24, 2000, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Staten Island Fireworks, Arthur Kill in the **Federal Register** (65 FR 21686). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. On May 4, 2000, we published a correction notice in the **Federal Register** (65 FR 25980). This corrected the position of the fireworks barge location in the Arthur Kill.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: they are locally supported, annual events, the zones are only in affect for 1½ hours, commercial facilities in the Arthur Kill and the Sandy Hook Pilots Association were notified of this proposal by Local Notice to Mariners number 019 and 023, the NPRM and chart of the area were also e-mailed to the Hudson River Pilots Association, recreational vessels will be able to transit through the western 50 yards of the Arthur Kill during the event, recreational vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zone, and advance notifications which will be, and have been made to the local maritime community by the Local Notice to Mariners, and marine information broadcasts. Additionally, commercial vessels will normally be precluded from entering the zone for only a 45-minute period during the effective period of the safety zone.

Background and Purpose

The Coast Guard is establishing a temporary safety zone in all waters of the Arthur Kill, Ward Point Bend (West), and the Raritan River Cutoff, within a 300-yard radius of the fireworks barge in approximate position 40°30′18″ N 074°15′30″ W (NAD 1983), about 250 yards northwest of Raritan Bay Channel Buoy 60 (LLNR 36319). The safety zone is in effect from 8:15 p.m. (e.s.t.) until 9:45 p.m. (e.s.t.) on July 2, and September 2, 2000. If either event is cancelled due to inclement weather, then this safety zone will be effective from 8:15 p.m. (e.s.t.) until 9:45 p.m. (e.s.t.) on July 3, and September 3, 2000. The safety zone prevents vessels from transiting a portion of the Arthur Kill, Ward Point Bend (West), and the Raritan River Cutoff for approximately 45 minutes of the 90 minute long event, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Public notifications have been and will be made prior to the events via local notice to mariners, and marine information broadcasts.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Arthur Kill during the event, the effect of this regulation will not be significant for several reasons: commercial facilities in the Arthur Kill and the Sandy Hook Pilots Association were notified of this event by Local Notice to Mariners number 019 and 023, the NPRM and chart of the area were also e-mailed to the Hudson River Pilots Association, recreational vessels will be able to transit through the western 50 yards of the Arthur Kill during the event, recreational vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zone, and advance notifications which have been and will be made to the local maritime community by the Local Notice to Mariners, and marine information broadcasts. Additionally, commercial vessels will normally be precluded from entering the zone for only a 45-minute period during the effective period of the safety zone.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department Standards for 10 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit a portion of the Arthur Kill, Ward Point Bend (West), and the Raritan River Cutoff during the time this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: commercial facilities in the Arthur Kill and the Sandy Hook Pilots Association were notified of this rule by the Local Notice to Mariners numbers 019 and 023, the NPRM and chart of the area were also e-mailed to the Hudson River Pilots Association, recreational vessels will be able to transit through the western 50 yards of the Arthur Kill during these times. Recreational vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zone. Additionally, commercial vessels will normally be precluded from entering the zone for only a 45-minute period during the effective period of the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agricultural Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–015 to read as follows:

§ 165.T01–015 Safety Zone: Staten Island Fireworks, Arthur Kill.

(a) *Location.* The following area is a safety zone: All waters of the Arthur Kill within a 300-yard radius of the fireworks barge in approximate position 40°30′18″ N 074°15′30″ W (NAD 1983), about 250 yards northwest of Raritan Bay Channel Buoy 60 (LLNR 36319).

(b) *Enforcement Period.* This section will be enforced from 8:15 p.m. (e.s.t.) until 9:45 p.m. (e.s.t.) on July 2, and September 2, 2000. If the event is cancelled due to inclement weather, this section will be enforced from 8:15 p.m. (est) until 9:45 p.m. (est) on July 3, and September 3, 2000.

(c) *Effective Date.* This section is effective on July 2, 2000 until September 3, 2000.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 28, 2000.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–17679 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6730–8]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Texas has applied for Final authorization of the changes to its Hazardous Waste Program under the Resource Conservation and Recovery Act. (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize the State of Texas's changes to their hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on September 11, 2000 unless EPA receives adverse written comment by August 14, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Written comments, referring to Docket Number TX–00–01, should be sent to Alima Patterson Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 1145 Ross Avenue, Dallas, Texas 75202–2733. Copies of the Texas program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Texas Natural Resource Conservation Commission, 12100 Park S. Circle, Austin TX 78753–3087, (512) 239–1121 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, 270, 273, and 279.

B . What Is the Effect of Today's Authorization decision?

The effect of this decision is that a facility in Texas subject to RCRA will now have to comply with the authorized State requirements (in RCRA Cluster VI listed in this document) instead of the equivalent Federal requirements in order to comply with RCRA. Texas has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) do inspections, and require monitoring, tests, analyses or reports; (2) enforce RCRA requirements and suspend or revoke permits; and (3) take enforcement actions regardless of whether the State has taken its own actions. This action does not impose additional requirements on the regulated community because the regulations for which Texas is being

authorized by today's action are already effective, and are not changed by today's action.

C. What Has The State Of Texas Previously Been Authorized For?

Texas received final authorization to implement its Hazardous Waste Management Program on December 12, 1984, effective December 26, 1984 (49 FR 48300). This authorization was clarified in a notice published in the FR on March 26, 1985 (50 FR 11858). Texas received final authorization for revisions to its program in notices published in the **Federal Register** (FR) on January 31, 1986, effective October 4, 1985 (51 FR 3952); on December 18, 1986, effective February 17, 1987 (51 FR 45320). We authorized the following revisions: March 1, 1990, effective March 15, 1990 (55 FR 7318); on May 24, 1990, effective July 23, 1990 (55 FR 21383); on August 22, 1991, effective October 21, 1991 (56 FR 41626); on October 5, 1992, effective December 4, 1992 (57 FR 45719); on April 11, 1994, effective June 27, 1994, (59 FR 16987); on April 12, 1994, effective June 27, 1994 (59 FR 17273); September 12, 1997, effective November 26, 1997, (62 FR 47947); and on August 18, 1999, (64 FR 44836) effective October 18, 1999. Effective December 3, 1997 (62 FR 49163) and effective October 1999 (64 FR 49673), EPA incorporated by reference the State of Texas Base Program and additional program revisions in (RCRA Clusters III and IV) into the CFR.

On November 15, 1999, Texas submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. The State of Texas has also adopted the regulations for Import and Export of Hazardous Waste. However, the requirements of the Import and Export regulations will be administered by the EPA and not the State because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the United States Constitution.

In 1991, Texas Senate Bill 2 created the Texas Natural Resource Conservation Commission (TNRCC) which combined the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993.

Under the Texas Solid Waste Disposal Act (codified in Chapter 361 of the Texas Health and Safety Code), the TNRCC has primary responsibility for administration of laws and regulations concerning hazardous waste. The TNRCC is authorized to administer the RCRA program. However, under the Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 27, waste (both hazardous and nonhazardous) resulting from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, is regulated by the Railroad Commission of Texas (RRC). A list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 Texas Administrative Code (TAC) § 3.8(a)(30) and at 30 TAC § 335.1. Such wastes are termed "oil and gas wastes." The TNRCC has responsibility to administer the RCRA program, however, hazardous waste generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TNRCC until the RRC is authorized by EPA to administer the RCRA. When the RRC is authorized by EPA to administer the RCRA program for these wastes, jurisdiction over such hazardous waste will transfer from the TNRCC to the RRC. The EPA has designated the TNRCC to be the lead agency to coordinate RCRA activities between the two agencies. The EPA is responsible for the regulation of hazardous waste for which TNRCC has not been previously authorized.

Further clarification of the jurisdiction between the TNRCC and the RRC can be found in a separate document. The document which is the Memorandum of Understanding (MOU) was signed effective May 31, 1998. The MOU clarified the jurisdiction between the agencies for waste associated with exploration, development, production and refining of oil and gas.

The TNRCC has rules necessary to implement EPA's RCRA Cluster VI revisions to the Federal Hazardous Waste Program made from July 1, 1995, to June 30, 1996. The TNRCC authority to incorporate Federal rules by reference can be found at Texas Government Code Annotated § 311.027 and adoption of the hazardous waste rules in general are pursuant to the following statutory provisions: (1) Texas Water Code Annotated § 5.103 (Vernon 1988 & Supplement 1998 and Supp. 1999), effective September 1995, as amended; (2) Texas Health and Safety Code Annotated § 361.024 (Vernon 1992 & supplement 1998 & 1999), effective September 1, 1995, as amended; and (3) Texas Health and Safety Code Annotated § 361.078 (Vernon 1992), effective September 1, 1989.

D. What Changes Are We Authorizing With Today's Action?

The State of Texas applied for final approval of its revision to its complete program in accordance with 40 CFR 271.21. Texas' revisions consist of regulations which specifically govern Federal Hazardous Waste promulgated from July 1, 1995, to June 30, 1996 (RCRA Cluster VI). Texas requirements are included in a chart with this document. The EPA is now making an immediate final decision, subject to receipt of written comments that oppose this action, that Texas' Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Texas final authorization for the following program revisions:

Federal citation	State analog
1. Liquids in Landfills III, [60 FR 35703–35706] July 11, 1995. (Checklist 145).	Texas Water Code Annotated (TWCA) § 5.103 (Vernon 1988 & Supplement (Supp.) and Supp. 1999), effective September 1, 1995, as amended; § 5.105 (Vernon 1988) effective September 1, 1985; Texas Health and Safety Code Annotated (THSCA) § 361.017 (Vernon 1992 & Supp. 1998 & Supp. 1999), effective September 1, 1995, as amended, THSCA § 361.024 (Vernon 1992 & Supp. 1999), effective September 1, 1995, as amended, 30 TAC §§ 335.125(e) and 335.175(e), effective November 20, 1996, as amended. The State law is more stringent than Federal law. Since 1985, TNRCC rules have not allowed the option of using sorbent to treat free liquids to be disposed of in landfills. Therefore the federal regulations in Checklist 145 concerning the nonbiodegradability of sorbent to be used to treat free liquids to be disposed in landfills have no applicability under state rules.

Federal citation	State analog
2. RCRA Expanded Public Participation [60 FR 63417–63434] December 11, 1995. (Checklist 148).	TWCA 5.103 (Vernon 1988 & Supp. 1999), effective September 1, 1995, as amended; TWCA 5.105 (Vernon 1988) effective September 1, 1985, TWCA 5.501 (Vernon Supp. 1999), effective September 1, 1997, as amended; 26.011 (Vernon 1988 & Supp. 1999), effective March 28, 1991, as amended; THSCA §§ 361.017 (Vernon 1992 & Supp. 1999), effective September 1, 1995, as amended; THSCA 361.024 (Vernon 1992 & Supp. 1999), effective September 1, 1995, as amended; 30 TAC § 39.103, effective August 8, 1999, as amended; 30 TAC § 305.2 effective August 8, 1999 as amended; 30 TAC § 305.30, TAC § 35.402(e) effective December 10, 1998; 30 TAC § 305.50 (4)(A), effective November 20, 1996 as amended, TAC § 305.125, TAC § 305.172, TAC § 305.174, TAC § 305.572, and TAC § 305.573 effective August 8, 1999 as amended. § 305.2, effective August 8, 1999, as amended; § 305.50, effective November 20, 1996, as amended; §§ 305.125, 305.172, 305.174, 305.572, and 305.573, effective August 8, 1999, as amended.
3. Amendments to the Definition of Solid Waste; Amendment II [61 FR 13103–13106] March 26, 1996. (Checklist 150).	TWCA 5.103 (Vernon 1988 & Supp. 1999), September effective 1, 1995, as amended; TWCA 5.105 (Vernon 1988) effective September 1, 1985, as amended; THSCA §§ 361.017 (Vernon 1992 & Supp. 1999), effective September 1, 1995, as amended; THSCA 361.024 (Vernon 1992 & Supp. 1999), effective September 1, 1995, as amended; 30 TAC § 335.1(119), effective April 4, 1999, as amended.
4. Land Disposal Restrictions Phase III—Decharacterized Wastewater, Carbamate Waste, and Spent Potliners [61 FR 15566–15660] April 8, 1996. (Checklist 151).	TWCA 5.103 (Vernon 1988 & Supp. 1999), effective September 1, 1995, as amended; TWCA 5.105 (Vernon 1988) effective September 1, 1985, as amended; THSCA §§ 361.017 (Vernon 1992 & Supp. 1999), effective September 1, 1995, as amended; THSCA 361.024 (Vernon 1992 & Supp. 1999), effective September 1, 1995, as amended; 30 TAC § 335.431, effective April 4, 1999, as amended. State law is more stringent than Federal law. State law has no provision equivalent to 40 CFR part 268.44(a), under which EPA may issue a variance from an applicable treatment standard.

E. What Decisions Have We Made?

We conclude that Texas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Texas final authorization to operate its hazardous waste program with the changes described in the authorization application. Texas has responsible for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Texas, including issuing permits, until the State is granted authorization to do so.

F. How Do the Revised State Rules Differ From the Federal Rules?

The EPA considers the following State requirement to be more stringent than the Federal: The State § 335.175(e) and 335.125(e) analogous to 40 CFR 264.314(e)(2)(ii), 40 CFR 264.314(e)(2)(iii), 40 CFR 265.314(f)(2)(ii) and 40 CFR 265.314(f)(2)(iii), since 1985, the TNRCC rules have not allowed the option of using sorbent to treat free liquids to be disposed of in landfills. Therefore, the Federal regulations in Checklist 145 (Liquids in Landfills III) concerning the nonbiodegradability of sorbent to be used to treat free liquids to be disposed in landfills have no applicability under State rules. Texas does not have provision equivalent to 40 CFR 268.44(a), under which EPA may issue variance from an applicable treatment standard. In this authorization of the State of Texas' program revisions for RCRA Cluster VI, there are no broader in scope provisions. Broader in scope requirements are not part of the authorized program and EPA cannot enforce them.

G. Who Handles Permits After This Authorization Takes Effect?

The State will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. Upon authorization of the State program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the State is receiving authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Texas is not yet authorized.

H. Why Wasn't There A Proposed Rule Before Today's Notice?

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and does not expect comments that oppose this action. The EPA is providing an opportunity for public comment in the proposed rules section of today's **Federal Register**, where we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization, that document will serve as a proposal to authorize the changes.

I. Where Do I Send My Comments And When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6,

1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number TX–00–1. We must receive your comments by August 14, 2000. You may not have an opportunity to comment again. If you want to comment on this action. You must do so at this time.

J. What Happens If EPA Receives Comments Opposing This Action?

If EPA receives comments which oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

K. When Will This Approval Take Effect?

Unless EPA receives comments that oppose this action, this final authorization approval will become effective without further notice on September 11, 2000.

L. Where Can I Review The State's Applications?

You can view and copy the State of Texas' application from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: Texas Natural Resource Conservation Commission, 12100 Park 3 S Circle, Austin TX 78753–3087, (512) 239–1121 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

M. How Does Today's Action Affect Indian Country In Texas?

Texas is not authorized to carry out its Hazardous Waste Program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian country.

N. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized Hazardous Waste Program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR Part 272, subpart SS for this codification of Texas' program changes until a later date.

Regulatory Requirements

Compliance with Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12866.

Compliance Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) the OMB determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, § 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law (P.L.) 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, the EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local and tribal governments, in the aggregate or to the private sector, of $100 million or more in any one year. Before promulgating EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Texas' program, and today's action does not impose any additional obligations on regulated entities. In fact EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no

regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate of Treatment, Storage, Disposal, Facilities, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 USC 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organization, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate treatment, storage, disposal, facilities are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA 3006 those existing State requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not require by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian governments. The State of Texas is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one State. This action simply approves Texas' proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, those newly authorized provisions of the State's program now apply in the State of Texas in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State provisions, as a opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 14, 2000.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 00–17488 Filed 7–12–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 99–200; FCC 00–104]

Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission (Commission) implemented numbering resource optimization measures that will minimize the negative impact on consumers of premature area code exhausts; ensure sufficient access to numbering resources for all service providers to enter into or to compete in telecommunications markets; avoid, or at least delay, exhaust of the North American Number Plan (NANP) and the need to expand the NANP; impose the least societal cost possible, and ensure competitive neutrality, while obtaining the highest benefit; ensure that no class of carrier or consumer is unduly favored or disfavored by our optimization efforts; and minimize the incentives for carriers to build and carry excessively large inventories of numbers. Section 52.15(f) of the Commission's rules, which imposes new information collection requirements, becomes effective on July 17, 2000.

EFFECTIVE DATE: The amendment to 47 CFR 52.15(f) published at 65 FR 37703, June 16, 2000, becomes effective on July 17, 2000.

FOR FURTHER INFORMATION CONTACT: Aaron N. Goldberger, Attorney Advisor, Common Carrier Bureau, Network Services Division, (202) 418–2320 or via e-mail at *agoldber@fcc.gov*.

SUPPLEMENTARY INFORMATION: On March 17, 2000, the Commission adopted a Report and Order implementing administrative and technical measures that will allow it to monitor more closely the way numbering resources are used within the NANP. See 65 FR 37703, June 16, 2000. Section 52.15(f) of the Commission's rules imposes new information collection requirements. Section 52.15(f) provides that for purposes of forecast and utilization reports, reporting shall commence August 1, 2000. In the **Federal Register** publication, we stated that "§ 52.15(f) * * * contains information collection requirements that have not been approved by the Office of Management and Budget (OMB)." See 65 FR 37703, June 16, 2000. OMB approved the information collections on June 23, 2000. See OMB No. 3060–0895. This publication satisfies our statement that the Commission would publish a document in the **Federal Register** announcing the effective date of § 52.15(f).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17669 Filed 7–12–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–170; FCC 00–111]

Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document concerning Truth-in Billing and Billing Format, we grant, in part, petitions for reconsideration of the requirements that telephone bills highlight new service providers and prominently display inquiry contact numbers. We deny all other petitions seeking reconsideration, but provide clarification with respect to certain issues. We note that several petitioners make arguments substantially similar to those addressed previously in the Truth-in-Billing Order and offer no new information to persuade us that our decisions in the Truth-in-Billing Order were erroneous. This document addresses only those new arguments raised in the petitions that we have not already considered and rejected.

DATES: Effective July 13, 2000 except for the amendments to §§ 64.2401(a), (d), and (e), which contain information collection requirements that are not effective until approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

FOR FURTHER INFORMATION CONTACT: Michele Walters, Associate Division Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Order on Reconsideration in CC Docket No. 98–170 released on March 29, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC, 20554.

I. Introduction and Background

1. In this Order, we address several petitions for reconsideration or clarification of the principles and guidelines contained in *Truth-in-Billing and Billing Format*, First Report and Order (TIB Order), 64 FR 34487 (June 25, 1999), 64 FR 55163 (October 12, 1999), 64 FR 56177 (October 18, 1999). In the *TIB Order*, we adopted principles and guidelines designed to reduce telecommunications fraud such as slamming and cramming by making telephone bills easier for consumers to read and understand, and thereby, making such fraud easier to detect and report. Our truth-in-billing principles and guidelines require common carriers to: (1) Identify the telecommunications service provider, separate charges on bills by service provider, and notify customers when a new entity has begun providing service; (2) provide on telephone bills brief, clear, non-misleading, plain language descriptions of services rendered; and (3) provide a toll-free number for customers to call to lodge a complaint or to obtain information about any charge contained in the bill. Carriers also must identify on bills those charges for which failure to pay will not result in disconnection of the customer's basic, local service. Finally, we held that carriers must use standardized labels on bills to refer to certain line item charges relating to federal regulatory activity, such as the PICC, local number portability, and subscriber line charge.

2. Six parties filed petitions for reconsideration and/or clarification of the principles and guidelines adopted in the *TIB Order*. In this Order, we grant, in part, petitions for reconsideration of the requirements that telephone bills highlight new service providers and prominently display inquiry contact numbers. We deny all other petitions seeking reconsideration, but provide clarification with respect to certain issues. We note that several petitioners make arguments substantially similar to those addressed previously in the *TIB Order* and offer no new information to persuade us that our decisions in the *TIB Order* were erroneous. This Order

addresses only those new arguments raised in the petitions that we have not already considered and rejected.

II. Discussion

A. Identification of New Service Providers

3. In the *TIB Order*, we adopted rules requiring that telephone bills "provide clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service." We concluded in that order that such a requirement would act as an important tool in deterring both slamming and cramming by enabling consumers to detect more readily charges for unauthorized services. On reconsideration, we retain the fundamental aspects of this requirement. In response to arguments raised by some Petitioners, however, we modify this rule to apply only to subscribed services for which the provider will (absent a decision by the subscriber to terminate) continue to place periodic charges on the subscriber's bill. Thus, for example, preferred carrier changes would be subject to this rule, as would charges for other services where a continuing month-to-month relationship exists. By contrast, services that are billed solely on a per-transaction basis, such as dial-around and directory assistance services, would not be subject to the rule. As explained, however, these services would continue to be subject to the requirement that charges be separated by provider. We conclude that this modification substantially addresses the concerns raised by Petitioners, without significantly impairing the effectiveness of this rule in protecting consumers.

4. In light of the modification to our rules described, we are otherwise unpersuaded by carrier assertions that highlighting of new service providers will be costly and difficult. Petitioners argue that compliance with this rule will require the construction of expensive "stare and compare" databases to compare current providers with those that have provided service in the past. The record demonstrates, however, that development of such a database is not necessary in order to comply with our rules, particularly as clarified in this Order. In particular, we clarify that local exchange carriers and other billing agents may satisfy this obligation by requiring the parties for which they bill to include, as part of the electronic billing information submitted to the billing agent, information identifying the provider as a new provider subject to this rule with respect to a particular customer. We note that the industry already has taken steps to facilitate provision of this information by service providers to billing agents by agreeing to modify the standard industry electronic billing documentation and notification to include this information. Accordingly, LECs and other billing entities will be able to comply with the modified requirements to highlight new providers in a low-cost and effective manner.

5. As modified by this order, our rule requiring highlighting of new service providers will apply only to providers that have continuing arrangements with the subscriber that result in periodic charges on the subscriber's telephone bill. Thus, changes in a subscriber's presubscribed local and long-distance service providers clearly would be subject to the rule. Additionally, charges on telephone bills for such services as voice mail and internet access would also be subject to the rule because these services typically involve monthly or other periodic charges on an ongoing basis until the service is cancelled. On the other hand, our modified rule excludes services billed solely on a per transaction basis, such as dial-around interexchange access service, operator service, directory assistance, and non-recurring pay-per-call services. These services typically are ordered intermittently with no formal, ongoing relationship between the carrier and the customer. Because they are used just for occasional convenience, such a carrier is and will always be a "new" provider with regard to a consumer using its services. Highlighting of such providers, in fact, might confuse consumers into thinking that the provider is a new presubscribed carrier. We also note that, with regard to pay-per-call services, the Commission's pay-per-call rules already require specific disclosures that accomplish many of the same goals as the requirement to highlight new service providers. Although the modification we adopt in this order restrict somewhat the application of our rule requiring highlighting of new services, we emphasize that these other services remain subject to the rules adopted in the *TIB Order* requiring charges to be separated by provider. As we explained in the *TIB Order*, this obligation, like the highlighting requirement, also serves to help consumers identify unauthorized charges on their bills. Taking into consideration the additional costs of highlighting these intermittent services, as asserted by Petitioners, we conclude that our modified rule draws an appropriate balance between the needs of consumers and any impact on the industry.

6. Finally, we have modified slightly the language in the rule concerning when the highlighting requirement is triggered. The original rule states that the highlighting requirement is triggered if a provider "did not bill for services on the previous billing statement." Under the revised rule, the highlighting requirement is triggered if a provider "did not bill for services, in its last billing cycle, with respect to a particular subscriber." This modification recognizes that the billing cycles of service providers often may be different from the billing cycles of their billing agents. For example, if a voicemail provider bills quarterly through a LEC, the voicemail provider's charges will only appear on every third monthly LEC bill. Under the original rule, the voicemail provider would be highlighted as a new provider every cycle, even though it was not a new provider, because the subscriber's last monthly bill would not have contained voicemail charges. Under the revised rule, the voicemail provider would not be highlighted as a new provider because the subscriber was billed during the voicemail provider's last billing cycle, even if that charge was not reflected on the subscriber's last monthly LEC bill. We make this modification in order to minimize the burden on service providers and billing agents, as well as to reduce possible consumer confusion.

B. Identification of Deniable and Non-Deniable Charges

7. We retain our requirement that carriers distinguish on telephone bills those charges that consumers may refuse to pay without jeopardizing the provision of basic, local service, and charges for which non-payment may result in such disconnection. As we noted in the *TIB Order*, distinguishing between such charges on consumers' bills protects consumers from paying contestable, unauthorized charges because they believe that they will lose basic telephone service for non-payment. We are unpersuaded by U S West's argument that compliance with this rule will be costly because it would require the creation and maintenance of a database containing the necessary information. We note that, even absent the Commission's truth-in-billing requirements, carriers need such a database to remain knowledgeable about state law requirements regarding disconnection of customers for non-payment.

8. Equally important, we find that compliance with this truth-in-billing

requirement need not involve an expensive or complicated billing process. In the *TIB Order*, we refrained from mandating any particular method of distinguishing between deniable and non-deniable charges in order to give carriers maximum flexibility in complying with our rules. Because of the concerns raised in the petitions for reconsideration and/or clarification, however, we clarify that a carrier need not label every charge as either deniable or non-deniable. For example, SNET's bill, complies with the rule by listing the total amount due, the amount of charges owed for deniable, basic local service, and includes an explanatory statement that basic, local service can only be disconnected for failure to pay the charges for basic, local service. Although SNET's bill does not label each individual charge as either deniable or non-deniable, we find that its format appropriately places consumers on notice that they may dispute the non-deniable portion of their bills without fear that their local service will be cut off for failure to pay such charges. While we approve of SNET's approach, we reiterate that carrier's retain broad flexibility to use other methods on telephone bills that adequately provide this essential information to consumers. We also note that, upon customer inquiry, a carrier's customer service personnel must explain this distinction to customers.

C. Bundled Services

9. Section 64.2401(a)(2) of our rules provides that, where charges for two or more telephone companies appear on the same bill, the charges must be separated by service provider. SBC seeks clarification on the applicability of § 64.2401(a)(2) to bundled services. Bundled services are various types of services, such as telephone, cable, and Internet services, that are offered and billed by a single entity, even though they may be provisioned by multiple carriers. We clarify that, where an entity bundles a number of services (some of which may be provided by various carriers) as a single package offered by a single company, such offering may be listed on the telephone bill as a single offering, rather than listed as separate charges by provider. Carriers providing bundled services in this manner must, however, make sure that an inquiry contact number or numbers appears on the bill for customer questions or complaints concerning the services provided through the bundle, as required by § 64.2401(d).

D. Clear Identification of Providers

10. We decline to reconsider the timetable for implementation of the requirement to identify each provider. We note that we have already delayed implementation of this requirement for certain carriers, and we find further delay to be unwarranted. We clarify, however, that this guideline may be satisfied by listing the carrier's trade name, rather than its precise corporate or corporate subsidiary name. That is, the carrier name on the telephone bill should be the name by which such company is known to its consumers for the provision of the respective service.

E. Toll Free Contact Numbers

11. Section 64.2401(d) of the Commission's rules requires that common carriers prominently display on each bill a toll-free number or numbers by which consumers may inquire about or dispute charges on their bills. While agreeing that it is reasonable to expect carriers to provide adequate inquiry information to their customers, MCIW requests that carriers be permitted to provide means other than toll-free numbers for consumers to access a carrier's customer service. MCIW specifically notes that some carriers offer customer service via a web site or e-mail. We decline to modify the generally applicable requirement adopted in the TIB Order that carriers include toll-free numbers on their bills for customers to inquire about or dispute charges. Since the bills at issue are for telephone service, it naturally follows that those questioning these charges will have telephone access; on the other hand, Internet access remains far from universally available. We will, however, modify this requirement by creating a limited exception where the customer does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or Internet. Under such circumstance, we find it reasonable to expect that customers can adequately resolve their inquiries and disputes through e-mail or web site communications. As MCI recognizes in its Petition, consumers contacting a service provider though such means continue to be entitled to have their communications reach and be responded to by an individual with the necessary information and authority to timely resolve their inquiry or dispute. We also note that any carrier may provide on customers' bills other means for consumers to make inquiries, such as an e-mail address, in addition to the toll-free number required by the rule.

F. Regulatory Flexibility Analysis in the TIB Order

12. We reject NTCA's contention that we failed to perform adequately our regulatory flexibility analysis in the *TIB Order* because we did not give sufficient consideration to the needs of small carriers. We conclude that the regulatory flexibility analysis in the *TIB Order* adequately addressed the concerns of small carriers. In the *TIB Order*, we noted that, in order to decrease the economic impact of our rules on small carriers, we declined to adopt several proposals made in the Notice of Proposed Rulemaking and gave carriers considerable discretion in implementing our guidelines. Moreover, the modifications in this *Order* and the extensions of time that we have granted to carriers provide evidence of our continuing concern for the impact of our guidelines on small carriers.

13. USTA requests that we find that small ILECs constitutes small businesses under the definition of the United States Small Business Administration (SBA). We have included small ILECs in this RFA analysis. A "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small ILECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small ILECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

III. Procedural Matters

A. Effective Date of Existing Rules

14. Our existing truth-in-billing rules took effect on November 18, 1999 with compliance required as of April 1, 2000. Thus, absent action on our part, carriers would be bound by the existing rules as of April 1, despite the fact that today we amend those rules to become effective upon OMB approval. In view of these circumstances, we stay the portions of the *existing* § 64.2401 detailed below for which compliance was required as of April 1, 2000 until such time as today's amendments of § 64.2401 become effective. The portions of the existing § 64.2401 that are subject to this stay are: (1) That portion of § 64.2401(a)(2) that requires that each carrier's "telephone bill must provide clear and conspicuous notification of any change in service provider, including

notification to the customer that a new provider has begun providing service," (2) § 64.2401(a)(2)(ii) and (3) § 64.2401(d). The existing provisions of §§ 64.2401(a)(1), (a)(2)(i) and the portion of (a)(2) requiring "[w]here charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider," will continue to take effect on April 1, 2000. Nothing in this order modifies the effective dates of existing §§ 64.2401(b) and (c). Upon their effective date, the rules, as amended, will supercede the existing rules. We take this action because we find that requiring carriers to comply with the existing rules for a short time prior to the effective date of today's amendments would be unduly burdensome and that it could result in the very sort of consumer confusion that today's amendments seek to avoid.

B. Final Supplemental Regulatory Flexibility Act Analysis

15. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* in Truth-in-Billing and Billing Format. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The comments received are discussed. The *TIB Order* included a Final Regulatory Flexibility Analysis (FRFA) that conformed to the RFA. The Supplemental FRFA included herein addresses only the modifications adopted in this Order on Reconsideration, and conforms with RFA.

1. Need for and Objectives of This Order and the Rules Adopted Herein

16. Section 258 of the Act makes it unlawful for any telecommunications carrier "to submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." Accordingly, the Commission adopted in the *TIB Order* principles to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers. First, consumer telephone bills must be clearly organized, clearly identify the service provider, and highlight any new providers; second, bills must contain full and non-misleading descriptions of charges that appear therein; and third, bills must contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill. Additionally, the Commission adopted minimal, basic guidelines that explicate carriers' obligations pursuant to these broad principles. These principles and guidelines are designed to prevent the types of consumer fraud and confusion evidenced in the tens of thousands of complaints that this Commission, and state commissions, receive each year. In enacting the principles and guidelines contained in the *TIB Order*, our goal was to implement the provisions of sections 201(b) and 258 to prevent telecommunications fraud, as well as to encourage full and fair competition among telecommunications carriers in the marketplace. This Order on Reconsideration seeks to respond to requests for modification and clarification received by certain carriers in response to the *TIB Order*. Specifically, we modify our rule concerning highlighting of new service providers to apply only to subscribed services for which a provider will continue to place periodic charges on the subscriber's bill.

2. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

17. In the IRFA, we found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by 5 U.S.C. 601(3). The IRFA solicited comment on the number of small businesses that would be affected by the proposed regulations and on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

18. PCIA, Liberty, RTG and others argued that the cost of compliance faced by smaller carriers would be particularly burdensome. PCIA asserted that medium- and small-sized carriers will be less likely to have billing systems in place that "can simply be 'tweaked' to produce the required modifications." Indeed, PCIA stated that smaller carriers may be forced to replace their entire billing systems in order to comply with the format and content mandates proposed in the *NPRM*. RTG agreed, arguing that rural carriers are particularly sensitive to increased regulatory requirements with significant costs.

19. The Office of Management and Budget (OMB) received a large number of comments in response to the *NPRM*. The commenters generally agreed that new charges or services need to be easily identifiable on customer bills; that definitions of services and other terms are difficult to reach and could be counterproductive; that more information, including point of contact toll-free numbers for service providers or billing agents needs to be included in billing materials; that materials should be clear, concise, and relatively simple; that the Commission must account for costs of any changes to bills that will be passed on to consumers in making decisions; that CMRS and other wireless firms that provide services only to businesses should be exempt from most new requirements that would be imposed on wireline carriers; that every effort should be made so that billing standards are uniform across the nation; that reseller information should be included; and that, where possible, market-based solutions should be adopted unless there is conclusory evidence that the Commission must enact regulations that affect billing practices. As a result, OMB recommended that we not impose undue burdens on wireless providers and small wireline services, and urged that flexibility be given to small companies that may experience significant cost and managerial issues related to implementation of billing requirements. Moreover, OMB recommended that the Commission allow companies sufficient time to address their necessary Year 2000-related modifications to their computer systems as well as modifying their billing systems to meet any new requirements. OMB also recommended that the Commission make a concerted effort to work with the industry to establish voluntary guidelines in lieu of mandatory requirements that restrict the ability of firms to tailor their billing to meet the needs of customers.

20. The *TIB Order* considered these comments and found that we appropriately balanced the concerns of carriers that detailed rules may increase their costs against our goal of protecting consumers against fraud. We exempted CMRS carriers from certain of our requirements on grounds that the requirements may be inapplicable or unnecessary in the CMRS context. Moreover, we considered our principles and guidelines to be flexible enough that carriers will be able to comply with them without incurring unnecessary expense. Since the modifications adopted in this Order were made in response to requests from carriers, and are designed to ease any burden on such carriers from implementing our rules, we find that nothing we have done in this Order causes us to reconsider our previous evaluation of this issue. Specifically, in response to petitions from various carriers, we have modified

our rule concerning highlighting of new service providers to apply only to subscribed services for which a provider will continue to place periodic charges on the subscriber's bill. Thus, the rule will apply to a narrower range of charges than contemplated in the original rule, thereby reducing the compliance costs on small businesses and other entities.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in the Order in CC Docket No. 98–170 May Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

22. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,459 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

23. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. We discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

24. We have included small incumbent LECs in this present RFA analysis. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

25. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain, that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by our principles and guidelines.

26. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by our principles and guidelines.

27. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by our principles and guidelines.

28. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 143 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that

may be affected by our principles and guidelines.

29. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by our principles and guidelines.

30. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 339 reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by our principles and guidelines.

31. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems. We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

32. *International Services.* The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million. The Census report does not provide more precise data.

33. *Telex.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to telex. The most reliable source of information regarding the number of telegraph service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data.* According to our most recent data, 5 facilities based and 2 resale provider reported that they engaged in telex service. Consequently, we estimate that there are 7 or fewer telex providers that may be affected by our principles and guidelines.

34. *Message Telephone Service.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to message telephone service. The most reliable source of information regarding the number of message telephone service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data.* According to our most recent data, 1,092 carriers reported that they engaged in message telephone service. Consequently, we estimate that there are fewer than 1,092 message telephone service providers that may be affected by our principles and guidelines.

35. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

36. *220 Mhz Radio Services.* Because the Commission has not yet defined a small business with respect to 220 MHz services, we will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Given that nearly all radiotelephone companies under the SBA definition employ no more than 1,500 employees (as noted), we will consider the approximately 1,500 incumbent licensees in this service as small businesses under the SBA definition.

37. *Private and Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present,

there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

38. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies, and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services. Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

39. *Broadband Personal Communications Service.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

40. *Cable Service Providers.* The SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating no more than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We note that cable system operators are included in our analysis due to their ability to provide telephony.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

41. In this Order on Reconsideration, we have responded to petitions from various carriers by modifying the rules adopted in the *TIB Order* concerning highlighting of new service providers to apply only to subscribed services for which a provider will continue to place periodic charges on the subscriber's bill. The modified rule will apply to a narrower range of charges than contemplated in the original rule, thereby reducing the compliance costs on small businesses and other entities.

5. Steps Taken To Minimize the Significant Economic Impact of This Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered

42. In this Order, we make minor modifications to our previously adopted rules on Truth-In-Billing. Specifically, we modify our rule concerning highlighting of new service providers to apply only to subscribed services for which a *provider* will continue to place periodic charges on the subscriber's bill. The modified rule will apply to a narrower range of charges than contemplated in the original rule, thereby reducing the compliance costs on small businesses and other entities. The modifications adopted herein were made at the request of carriers, including small local carriers, and are specifically intended to reduce the burden on such entities in implementing the previously adopted rules. Accordingly, adoption of these rules should actually reduce the economic impact of our Truth-In-Billing rules on these entities.

6. Report to Congress

43. The Commission will send a copy of the Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order on Reconsideration, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

C. Paperwork Reduction Act Analysis

44. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. These rules contain information collections which have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

IV. Ordering Clauses

45. Pursuant to the authority contained in sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and § 1.429 of the Commission's rules, the petitions for reconsideration and/or clarification filed by AT&T Corp., MCI WorldCom, Inc., National Telephone Cooperative Association, SBC Communications, Inc., United States Telephone Association, U S West Communications, Inc. are granted in part and denied in part to the extent discussed.

46. (1) That portion of § 64.2401(a)(2) that requires that each carrier's "telephone bill must provide clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service," (2) § 64.2401(a)(2)(ii), and (3) § 64.2401(d) of the existing rules took effect November 12, 1999 with compliance required as of April 1, 2000 are stayed until such time as the amendments adopted herein are effective. The amendments to § 64.2401 of the Commission's rules, 47 CFR 64.2401(a), (d), and (e), set forth are effective upon OMB approval but no

sooner than 30 days following publication of these rules in the **Federal Register**. The Commission will publish a document announcing the effective date of these rules.

47. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in Part 64

Claims, Communications common carrier, Computer technology, Consumer protection, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Part 64 of title 47 of the Code of Federal Regulations is amended as follows:

PART 64—[AMENDED]

Subpart Y—Truth-in-Billing Requirements for Common Carriers

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted . Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Subpart Y of Part 64 consists of § 64.2400 and § 64.2401. The heading for Subpart Y is added to read as set forth above. [1]

3. A Note is added to § 64.2401 as set forth below effective July 13, 2000.

4. In § 64.2401, revise paragraphs (a) and (d), and add paragraph (e) to read as follows:

§ 64.2401 Truth-in-Billing Requirements

Note to § 64.2401: The following provisions, for which compliance would have been required as of April 1, 2000, have been stayed until such time as the amendments to § 64.2401(a), (d), and (e) become effective (following their approval by the Office of Management and Budget and the publication by the Commission of a document in the **Federal Register** announcing the effective date of these amended rules) and will be superceded by the amended rules: (1) That portion of § 64.2401(a)(2) that requires that each carrier's "telephone bill must provide clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service," (2) § 64.2401(a)(2)(ii), and (3) § 64.2401(d).

(a) *Bill organization.* Telephone bills shall be clearly organized, and must comply with the following requirements:

(1) The name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill.

(2) Where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider.

(3) The telephone bill must clearly and conspicuously identify any change in service provider, including identification of charges from any new service provider. For purpose of this subparagraph "new service provider" means a service provider that did not bill the subscriber for service during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the subscriber that will result in periodic charges on the subscriber's bill, unless the service is subsequently canceled.

* * * * *

(d) *Clear and conspicuous disclosure of inquiry contacts.* Telephone bills must contain clear and conspicuous disclosure of any information that the subscriber may need to make inquiries about, or contest, charges on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf. Where the subscriber does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet, the carrier may comply with this requirement by providing on the bill an e-mail or web site address. Each carrier must make a business address available upon request from a consumer.

(e) *Definition of clear and conspicuous.* For purposes of this section, "clear and conspicuous" means notice that would be apparent to the reasonable consumer.

[FR Doc. 00–17719 Filed 7–12–00; 8:45 am]

BILLING CODE 6712–01–P

[1] See 64 FR 34497 (June 25, 1999); 64 FR 55163 (October 12, 1999); 64 FR 56177 (October 18, 1999); 65 FR 36637 (June 9, 2000).

Proposed Rules

Federal Register
Vol. 65, No. 135
Thursday, July 13, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[TM–00–04]

RIN 0581–AA40

Submission of Petitions for Evaluation of Substances for Inclusion on or Removal From the National List of Substances Allowed and Prohibited in Organic Production and Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Guidelines and Call for National List Petitions.

SUMMARY: The Organic Foods Production Act of 1990, as amended, (Act) requires the Secretary of Agriculture (Secretary) to establish a National List of Allowed and Prohibited Substances (National List) which identifies the synthetic substances that may be used, and the nonsynthetic substances that cannot be used, in organic production and handling operations. The Act authorizes the National Organic Standards Board (NOSB) to develop and forward to the Secretary a recommended Proposed National List, and subsequent proposed amendments to it. The Act provides that persons may petition the NOSB to evaluate a substance for inclusion on or removal from the National List. This notice explains who can submit a petition, for what substances a petition can be submitted, and the information that should be included in a submitted petition. All submitted petitions will be evaluated by the Department of Agriculture's (USDA) National Organic Program (NOP) for completeness. If there is incomplete information, petitioners will be given a reasonable opportunity to provide the missing information. Petitioners should realize that providing incomplete information may increase the evaluation time or result in no substance evaluation. This notice also provides the name and address of the person to whom a petition should be submitted.

ADDRESSES: Petitions should be submitted in duplicate to: National Organic Standards Board, c/o Robert Pooler, Agricultural Marketing Specialist, USDA/AMS/TM/NOP, Room 2510-So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456. Phone: 202/720–3252. Fax: 202/205–7808. e-mail: nlpetition@usda.gov. Petitioners are encouraged to submit the required information through one system of submission (mail, fax or e-mail).

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, National Organic Program, USDA/AMS/TM/NOP, Room 2945-So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456. Phone: 202/720–3252. Fax: 202/690–3924. e-mail: keith.jones@usda.gov.

SUPPLEMENTARY INFORMATION: To help readers better understand the petition process, we have provided answers to some frequently asked questions about the National List and the petition process.

What Is the Purpose and Timing of This Notice?

The NOSB submitted a Proposed National List to the Secretary that was subsequently published on March 13, 2000, as part of the NOP proposed rule, 65 FR 13512–13658, (2000). Based on information supplied to the NOSB by trade associations, certification organizations and other organic industry sources, there are many substances currently used in organic production and handling that have not been evaluated by the NOSB for inclusion on the National List. Evaluations of these materials must be expedited to prevent the disruption of many well-established and accepted production, handling and processing systems. The NOP and the NOSB will be developing a workplan to process the potential evaluation of the numerous substances which may be presented to the NOSB and the NOP. Therefore, the organic industry is encouraged to initiate notification to the NOSB and the NOP on which substances should receive priority for evaluation. Substances that are petitioned and under evaluation by the NOSB will be announced on the NOP website: www.ams.usda.gov/nop. Interested individuals or groups can provide information or commentary to the NOSB or NOP for any substance being evaluated by the NOSB.

How Are National List Decisions Made?

The NOSB reviews information from various sources in evaluating substances for inclusion on or removal from the National List. Sources include Technical Advisory Panels (TAP), the Environmental Protection Agency, the Food and Drug Administration, the National Institute of Environmental Health Studies, and the testimony of the public.

TAP reviews assist the NOSB in evaluating substances being considered for addition to or removal from the National List. The NOP, on behalf of the NOSB, establishes contracts to conduct the TAP with qualified individuals or organizations who have specialized knowledge of the petitioned substances. These reviewers have expertise in such fields as organic production and handling, veterinary medicine, chemistry, or food handling and preparation. All contractors, whether an individual or an organization, must meet USDA contract requirements including the prevention of conflict of interest. Recent TAP reviews conducted for the NOSB have been performed under contract by the Organic Materials Review Institute (OMRI). However, the NOP on behalf of the NOSB may contract with any individual or organization having the necessary technical expertise to conduct TAP reviews for NOSB substance evaluations.

TAP reports and the NOSB recommendations for each substance are submitted to the Secretary. The Secretary evaluates the recommendations and other documentation regarding each substance for inclusion on or removal from the National List.

The Act requires that the initial Proposed National List and subsequent proposed amendments to it be published in the **Federal Register** for public comment.

How Long Can a Substance Appear on the National List and Will the List Change?

The Act (7 U.S.C. 6517(e)) requires that substances appearing on the National List be reviewed by the NOSB and the Secretary at least once every 5 years following implementation of the NOP. Once a substance evaluation is

completed and a recommendation is forwarded to the Secretary, the NOSB will not reevaluate its decision within the 5 year period unless substantive new information becomes available.

What Criteria Does the NOSB Use to Evaluate Petitioned Substances?

The Act (7 U.S.C. 6518(m)) requires that the NOSB consider the following criteria for each substance evaluated:

(1) The potential of such substances for detrimental chemical interactions with other materials used in organic farming systems;

(2) The toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence and areas of concentration in the environment;

(3) The probability of environmental contamination during manufacture, use, misuse or disposal of such substance;

(4) The effect of the substance on human health;

(5) The effects of the substance on biological and chemical interactions in the agroecosystem, including the substance's physiological effects on soil organisms (including the salt index and solubility of the soil), crops and livestock;

(6) The alternatives to using the substance in terms of practices or other materials; and,

(7) It's compatibility with a system of sustainable agriculture.

How Does the NOSB Evaluate Substances Such as Processing Aids or Adjuvants?

In addition to the criteria cited in the Act, the NOSB developed internal guidelines for evaluating processing substances such as synthetic processing aids or adjuvants for inclusion on or removal from the National List during their February 1999 meeting. For specific information about these guidelines, please refer to the USDA NOP website: www.ams.usda.gov/nop/nosbfeb99.html, or write the Program Manager, National Organic Program, USDA/AMS/TM/NOP, Room 2945-So, Ag Stop 0268, PO Box 96456, Washington, D.C. 20090–6456. Phone: 202/720–3252. Fax: 202/690–3924. e-mail: keith.jones@usda.gov.

When Can the NOSB be Petitioned?

The NOSB can be petitioned at any time for substances not previously evaluated by the NOSB. For substances receiving a prior recommendation by the NOSB restricting or prohibiting its use, a petition may be filed only when significant new information may alter the established NOSB recommendation. However, the NOSB and the NOP expects that amending the National List will be a continuous process. For instance, the National List may need to be amended to accommodate development of new substances or technologies in organic production or handling of foods. Recommendations to amend the National List result from the review and deliberation of the TAP reports and other information by the NOSB Committees (Crop, Livestock, Processing or Materials). These committees forward their recommendations to the entire NOSB which considers, then accepts, modifies or rejects these recommendations during scheduled public meetings or conferences conducted periodically, as needed.

Who Can Submit a Petition?

Any person may submit a petition. Each substance to be evaluated must be submitted in a separate petition.

To Whom Should a Petition be Submitted?

Petitions should be submitted in duplicate to: National Organic Standards Board, c/o Robert Pooler, Agricultural Marketing Specialist, USDA/AMS/TM/NOP, Room 2510–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456. Phone: 202/720–3252. Fax: 202/205–7808. e-mail: nlpetition@usda.gov.

What Are the Substances for Which a Petition May be Submitted?

Only single substances or ingredients may be petitioned for evaluation. Formulated products cannot appear on the National List. Substances that appear on USDA's current Proposed National List, 65 Fed. Reg.13626–13628 (2000), should not be petitioned for inclusion on the National List.

What Information Has to be Included in the Petition?

A petition seeking evaluation of a substance must indicate within which of the following categories the substance is being petitioned for inclusion on or removal from the National List:

(1) Synthetic substance's allowed for use in organic crop production;

(2) Nonsynthetic substances prohibited for use in organic crop production;

(3) Synthetic substances allowed for use in organic livestock production;

(4) Nonsynthetic substances prohibited for use in organic livestock production; and

(5) Nonagricultural (nonorganic) substances allowed in or on processed products labeled as "organic" or "made with organic (specified ingredients)."

The petition must also include, as applicable, the following information:

1. The substance's common name.

2. The manufacturer's name, address and telephone number.

3. The intended or current use of the substance such as use as a pesticide, animal feed additive, processing aid, nonagricultural ingredient, sanitizer or disinfectant.

4. A list of the crop, livestock or handling activities for which the substance will be used. If used for crops or livestock, the substance's rate and method of application must be described. If used for handling (including processing), the substance's mode of action must be described.

5. The source of the substance and a detailed description of its manufacturing or processing procedures from the basic component(s) to the final product. Petitioners with concerns for confidential business information can follow the guidelines in the Instructions for Submitting Confidential Business Information (CBI) listed in #13.

6. A summary of any available previous reviews by State or private certification programs or other organizations of the petitioned substance.

7. Information regarding EPA, FDA, and State regulatory authority registrations, including registration numbers.

8. The Chemical Abstract Service (CAS) number or other product numbers of the substance and labels of products that contains the petitioned substance.

9. The substance's physical properties and chemical mode of action including (a) chemical interactions with other substances, especially substances used in organic production; (b) toxicity and environmental persistence; (c) environmental impacts from its use or manufacture; (d) effects on human health; and, (e) effects on soil organisms, crops, or livestock.

10. Safety information about the substance including a Material Safety Data Sheet (MSDS) and a substance report from the National Institute of Environmental Health Studies.

11. Research information about the substance which includes comprehensive substance research reviews and research bibliographies, including reviews and bibliographies which present contrasting positions to those presented by the petitioner in supporting the substance's inclusion on or removal from the National List.

12. A "Petition Justification Statement" which provides justification for one of the following actions requested in the petition:

When petitioning for the inclusion of a synthetic substance on the National List, the petition should state why the synthetic substance is necessary for the production or handling of an organic product. The petition should also describe the nonsynthetic substances or alternative cultural methods that could be used in place of the petitioned synthetic substance. Additionally, the petition should summarize the beneficial effects to the environment, human health, or farm ecosystem from use of the synthetic substance that support the use of it instead of the use of a nonsynthetic substance or alternative cultural methods.

When petitioning for the removal of a synthetic substance from the National List the petition must state why the synthetic substance is no longer necessary or appropriate for the production or handling of an organic product.

When petitioning for the inclusion on the National List of a nonsynthetic or nonagricultural substance as a prohibited substance the petition must state why the nonsynthetic or nonagricultural substance should not be permitted in the production or handling of an organic product.

When petitioning for the removal from the National List of a nonsynthetic or nonagricultural substance as a prohibited substance the petition must state why the nonsynthetic or nonagricultural substance should be permitted in the production or handling of an organic product.

13. A Commercial Confidential Information Statement which describes the specific required information contained in the petition that is considered to be Confidential Business Information (CBI) or confidential commercial information and the basis for that determination. Petitioners should limit their submission of confidential information to that needed to address the areas for which this notice requests information. Instructions for submitting CBI to the National List Petition process are presented in the instructions below:

(a) Financial or commercial information the applicant does not want disclosed for competitive reasons can be claimed as CBI. Applicants must submit a written justification to support each claim.

(b) "Trade secrets" (information relating to the production process, such as formulas, processes, quality control tests and data, and research methodology) may be claimed as CBI. This information must be (1) commercially valuable, (2) used in the applicant's business, and (3) maintained in secrecy.

(c) Each page containing CBI material must have "CBI Copy" marked in the upper right corner of the page. In the right margin, mark the CBI information with a bracket and "CBI."

(d) The CBI-deleted copy should be a facsimile of the CBI copy, except for spaces occurring in the text where CBI has been deleted. Be sure that the CBI-deleted copy is paginated the same as the CBI copy. (The CBI-deleted copy of the application should be made from the same copy of the application which originally contained CBI.) Additional material (transitions, paraphrasing, or generic substitutions, etc.) should not be included in the CBI-deleted copy.

(e) Each page with CBI-deletions should be marked "CBI-deleted" at the upper right corner of the page. In the right margin, mark the place where the CBI material has been deleted with a bracket and "CBI-deleted."

(f) If several pages are CBI-deleted, a single page designating the numbers of deleted pages may be substituted for blank pages. (For example, "pages 7 through 10 have been CBI-deleted.")

(g) All published references that appear in the CBI copy should be included in the reference list of the CBI-deleted copy. Published information usually cannot be claimed as confidential.

However, the National List substance evaluations will involve a public and open process. Nonconfidential information will be available for public inspection.

The NOP Program Manager may request additional information from the petitioner following receipt of the petition.

In accordance with the Paperwork Reduction Act of 1980, Public Law 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this notice have been previously approved by OMB and were assigned OMB control number 0581–0181.

Authority: 7 U.S.C. 6501–6522.

Dated: July 7, 2000.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Transportation and Marketing.

[FR Doc. 00–17689 Filed 7–12–00; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Military Reservist Economic Injury Disaster Loans

AGENCY: Small Business Administration (SBA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this document, SBA proposes to amend its Disaster Loan Program regulations to implement a new program authorized by the Veterans Entrepreneurship and Small Business Development Act of 1999. Under this new program, SBA would make a low interest, fixed rate loan available to a small business employing a military reservist if that reservist is called up to active military duty during a period of military conflict and if he or she is an essential employee critical to the success of the business' daily operation.

DATES: Submit comments on or before August 14, 2000.

ADDRESSES: Written comments should be sent to Bernard Kulik, Associate Administrator, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Herbert Mitchell, Deputy Associate Administrator, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION: SBA proposes adding Disaster Loan Program regulations to implement the Military Reservist Economic Injury Disaster Loan Program ("program"). This rule proposes the program's requirements, application and loan approval process.

The Military Reservist Economic Injury Disaster Loan Program was authorized by Public Law 106–50, enacted on August 17, 1999. The program will allow SBA to make economic injury disaster loans (EIDL) to small businesses employing military reservists if those employees are called up to active duty during a period of military conflict (call-up) and those employees are essential to the success of the small businesses' daily operations.

Under this proposed rule, to qualify for the Military Reservist EIDL, a business would be required to show that the call-up of an essential employee has caused or will cause the business substantial economic injury. The interest rate for a Military Reservist EIDL would be the same as for other EIDL assistance. At the present time the statutory interest rate may not exceed 4 percent. SBA calculates interest rates quarterly, which could result in a lower rate in the future, but SBA proposes that

the interest rate at the time the Military Reservist EIDL application is filed would be the fixed rate for the entire term of the loan.

Section 123.500 contains program definitions conforming with those in Public Law 106–50.

Section 123.501 sets out the proposed program eligibility requirements including a reference to an "eligible small business as defined in 13 CFR Part 121." While Public Law 106–50 describes an eligible or "qualified borrower" as a small business that "employs" an eligible reservist, Congress" intent was that this program also include assistance to a small business sole proprietor who is an essential employee. *See* S. Rep. No.254, 106th Cong., 1st Sess. 4 (1999). Therefore, SBA proposes to include such a category in the program eligibility requirements. In addition, this section includes the legislative requirement that the program apply only to military conflicts occurring or ending on or after March 24, 1999.

Under § 123.502 of this proposed rule, a small business would not be eligible to apply for a Military Reservist EIDL if it is an enterprise included in any of the categories described in §§ 123.101, 123.201, and 123.301 of this part. These sections include general ineligibility categories applying to all EIDL assistance. For example, a business would not be eligible if a principal owner of the business had been convicted, during the year preceding its application for a Military Reservist EIDL, of a felony during and in connection with a riot or civil disorder. Another example, a business would not be eligible if it is an agricultural enterprise as defined in § 123.201 of this part.

Under § 123.503 of this regulation, a business could not apply for a Military Reservist EIDL in anticipation of a call-up to active duty. It could only apply during a period beginning on the date the essential employee receives a call-up order and ending 90 days after the date the employee is discharged or released from active duty. The call-up of the essential employee would be the basis that triggers SBA's assistance under this program.

Under proposed § 123.504, the business must submit a copy of the reservist's call-up orders to show compliance with the statutory requirements described above. Also under this section, as a part of the application, the business owner must certify that the reservist is an essential employee and must detail the employee's duties and responsibilities. In addition, the employee must indicate in writing whether he or she concurs with such assessment. The application must also support a determination by SBA that the essential employee's absence will result in substantial economic injury to the business.

SBA recognizes that the owner of a small business may be an essential employee of that business and may be called up and start active duty before applying for a Military Reservist EIDL. Accordingly, SBA proposes that it would accept a program application from a representative of the reservist if that representative has power of attorney to act on the behalf of the reservist for such matters.

SBA proposes to offer this program, in part, to support individuals who choose to serve the United States as military reservists. These individuals should not be put in a position where a call to military service jeopardizes their employment situation. Therefore, under this proposed rule, SBA would require that the business offer the essential employee the same or similar job upon return from active duty.

Under proposed § 123.506, an eligible small business may borrow from SBA up to $1,500,000 necessary to meet its obligations as they mature, pay its ordinary and necessary expenses, and enable it to market, produce or provide products or services ordinarily marketed, produced, or provided by the business, which cannot be done as a result of the essential employee's active military service. This amount may not exceed the amount of working capital the business could have generated had the call-up not occurred. It may not include amounts the business, together with its affiliates and principal owners, could provide without undue hardship. SBA may consider waiving this loan limit if it determines that the conditions identified in § 123.507 are satisfied.

Under § 123.509, this rule proposes prohibitions on the use of loan proceeds. For example, EIDL funds could not be used to:

(1) Refinance debt which the business incurred before the call up of the essential employee,

(2) Make payments on loans owned by SBA or another federal agency or a Small Business Investment Company licensed under the Small Business Investment Act,

(3) Pay any obligations resulting from a tax penalty or any non-tax criminal fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter,

(4) Repair physical damage, or

(5) Pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

Compliance With Executive Orders 12866, 12988, 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) reviewed this rule as a "significant" regulatory action under Executive Order 12866.

SBA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Since October, 1997, only 19,592 military reservists have been called up for active duty. This figure averages just under 10,000 call-ups per year. Further, 52 percent of the non-farm workforce of this country is employed by businesses that employ 500 or fewer persons. Applying this percentage to the average number of call-ups for the past years indicates that 5,200 of the call-ups affected non-farm businesses with less than 500 employees. Of this figure, SBA estimates that 30 percent of these individuals may be essential employees. This results in an estimate of approximately 1,590 businesses that could be affected by this proposed rule. SBA does not believe that this is a substantial number of small businesses. Furthermore, SBA has taken steps to simplify the loan documentation process for small business owners and permits small business owners to self-certify the designation of essential employees. These steps will substantially reduce any economic impact on small business owners applying for assistance.

For the purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA has submitted the Military Reservist Economic Injury Disaster Loan Program Loan Application (application) to OMB for review. SBA is requesting that OMB approves or disapproves of this collection of information 30 days after submission. This application would allow small businesses to apply for Military Reservist EIDLs and would provide SBA with the information necessary to evaluate applicants. The application would request such information as name, address, type of business, management information, organization type, name of essential employee who is a military reservist employed by the small business, explanation of the designation of the employee as "essential" and financial

information to permit SBA to determine repayment ability.

The applicant would complete an application each time it applies for a Military Reservist Economic Injury Disaster Loan. SBA estimates that the time necessary to complete an application for the Military Reservist Economic Injury Disaster Loan Program would average 2 hours.

In addition, SBA is proposing to collect ordinary and usual financial statements before making subsequent loan disbursements under the Military Reservist EIDL Program (see § 123.511). This information will allow SBA to assess the continued need for disbursements under this program.

SBA is seeking comments on: (a) Whether the information SBA proposes to collect is necessary for the proper performance of this program, (b) the accuracy of the burden estimate (time estimated to complete the application), (c) ways to minimize the burden estimate, and (d) ways to enhance the quality of the information being collected. Please send comments regarding this proposed collection to David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, and to Bernard Kulik, Associate Administrator, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications.

For purposes of Executive Order 12988, SBA certifies that this proposed rule is drafted, to the extent practicable, to be in accordance with the standards set forth in section 3 of that Order.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; Pub. L. 103–75, 107 Stat. 739; Pub. L. 106–50, 113 Stat. 233.

2. In part 123 add the designated centerheading "Military Reservist Economic Injury Disaster Loans" and §§ 123.500 through 123.512 to read as follows:

Military Reservist Economic Injury Disaster Loans

Sec.

123.500 Definitions.
123.501 When is your business eligible to apply for a Military Reservist Economic Injury Disaster Loan (EIDL)?
123.502 When is your business ineligible to apply for a Military Reservist EIDL?
123.503 When can you apply for a Military Reservist EIDL?
123.504 How do you apply for a Military Reservist EIDL?
123.505 What if you are both an essential employee and the owner of the small business and you started active duty before applying for a Military Reservist EIDL?
123.506 How much can you borrow under the Military Reservist EIDL Program?
123.507 Under what circumstances will SBA consider waiving the $1.5 million loan limit?
123.508 How can you use Military Reservist EIDL funds?
123.509 What can't you use Military Reservist EIDL funds for?
123.510 What if you don't use your Military Reservist EIDL funds as authorized?
123.511 How will SBA disburse Military Reservist EIDL funds?
123.512 What is the interest rate on a Military Reservist EIDL?

Military Reservist Economic Injury Disaster Loans

§ 123.500 Definitions.

The following terms have the same meaning wherever they are used in §§ 123.500 through 123.512.

(a) *Essential employee* is an individual (whether or not an owner of a small business) whose managerial or technical expertise is critical to the successful day-to-day operations of a small business.

(b) *Military reservist* is a member of a reserve component of the Armed Forces ordered to active duty during a period of military conflict.

(c) *Period of military conflict* means:

(1) A period of war declared by the Congress,

(2) A period of national emergency declared by the Congress or by the President, or

(3) A period of contingency operation, as defined in 10 U.S.C. 101(a).

(d) *Principal owner* is a person, legal entity or affiliate(s) which owns 20 percent or more of the small business.

(e) *Substantial economic injury* means an economic harm to the small business such that it cannot:

(1) Meet its obligations as they mature,

(2) Pay its ordinary and necessary operating expenses, or

(3) Market, produce or provide a product or service ordinarily marketed, produced or provided by the business. Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

§ 123.501 When is your business eligible to apply for a Military Reservist Economic Injury Disaster Loan (EIDL)?

Your business is eligible to apply for a Military Reservist EIDL if:

(a) It is a small business as defined in 13 CFR part 121,

(b) The owner of the business is a military reservist and an essential employee or the business employs a military reservist who is an essential employee,

(c) The essential employee has been called-up to active military duty during a period of military conflict existing on or after March 24, 1999, and

(d) The business has suffered or is likely to suffer substantial economic injury as a result of the absence of the essential employee.

§ 123.502 When is your business ineligible to apply for a Military Reservist EIDL?

Your business is ineligible for a Military Reservist EIDL if it, together with its affiliates, is subject to any of the following conditions:

(a) Any of your business' principal owners has been convicted, during the past year, of a felony during and in connection with a riot or civil disorder;

(b) You have assumed the risk associated with employing the military reservist, as determined by SBA (for example, hiring the "essential employee" after the employee has received call-up orders or been notified that they are imminent);

(c) Any of your business' principal owners is presently incarcerated, or on probation or parole following conviction of a serious criminal offense;

(d) Your business is an agricultural enterprise. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. (See 13 CFR 121.107, "How does SBA determine a concern's 'primary industry'?") Sometimes a business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of the business is not an agricultural enterprise, it may apply for a Military Reservist EIDL, but loan proceeds may not be used, directly or indirectly, for the benefit of the agricultural enterprises.

(e) Your business is engaged in any illegal activity;

(f) Your business is a government owned entity (except for a business owned or controlled by a Native American tribe);

(g) Your business presents live performances of a prurient sexual nature or derives directly or indirectly more than insignificant gross revenue through the sale of products or services or through the presentation of any depictions or displays, of a prurient sexual nature;

(h) Your business is engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for commercial rental);

(i) Your business is a non-profit or charitable concern;

(j) Your business is a consumer or marketing cooperative;

(k) Your business is not a small business concern;

(l) Your business derives more than one-third of its gross annual revenue from legal gambling activities;

(m) Your business is a loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(n) One of several of your business' principal activities is teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(o) Your business' principal activity is political or lobbying activities.

§ 123.503 When can you apply for a Military Reservist EIDL?

Your small business can apply for a Military Reservist EIDL any time beginning on the date your essential employee receives official call-up orders and ending 90 days after the date the essential employee is discharged or released from active duty.

§ 123.504 How do you apply for a Military Reservist EIDL?

To apply for a Military Reservist EIDL you must complete a SBA Military Reservist EIDL application package (SBA Form 5R and supporting documentation) including:

(a) A copy of the essential employee's official call-up orders for active duty showing the date of call up, and if known, the date of release from active duty;

(b) A statement from the business owner that the reservist is essential to the successful day-to-day operations of the business (detailing the employee's duties and responsibilities and explaining why these duties and responsibilities can't be completed in the essential employee's absence);

(c) A certification by the essential employee supporting that he or she concurs with the business owner's statement as described in paragraph (b) of this section;

(d) A written explanation and financial estimate of how the call-up of the essential employee has or will result in economic injury to your business;

(e) The steps your business is taking to alleviate the economic injury; and

(f) The business owners' certification that the essential employee will be offered the same or a similar job upon the employee's return from active duty.

§ 123.505 What if you are both an essential employee and the owner of the small business and you started active duty before applying for a Military Reservist EIDL?

If you are both an essential employee and the owner of the small business and you started active duty before applying for an Military Reservist EIDL, a person who has a power of attorney with the authority to borrow and make other related commitments on your behalf, may complete and submit the EIDL loan application package for you.

§ 123.506 How much can you borrow under the Military Reservist EIDL Program?

You can borrow a total loan amount of up to $1.5 million until normal operations resume regardless of the number of essential employees called to active duty. You can't borrow more than the amount of working capital your business could have generated had the essential employee not been called to active duty.

§ 123.507 Under what circumstances will SBA consider waiving the $1.5 million loan limit?

SBA will consider waiving the $1.5 million dollar limit if you can certify to the following conditions and SBA approves of such certification based on the information supplied in your application:

(a) Your small business is a major source of employment. A major source of employment:

(1) Employs 10 percent or more of the work force within the commuting area of the geographically identifiable community (no larger than a county) in which the business employing the essential employee is located, provided that the commuting area does not extend more than 50 miles from such community; or

(2) Employs 5 percent of the work force in an industry within such commuting area and, if the small business is a non-manufacturing small business, employs no less than 50 employees in the same commuting area, or if the small business is a manufacturing small business, employs no less than 150 employees in the commuting area; or

(3) Employs no less than 250 employees within such commuting area;

(b) Your small business is in imminent danger of going out of business as a result of one or more essential employees being called up to active duty during a period of military conflict, and a loan in excess of $1.5 million is necessary to reopen or keep open the small business; and

(c) Your small business has used all reasonably available funds from the small business, its affiliates, its principal owners and all available credit elsewhere to alleviate the small business' economic injury. Credit elsewhere means that SBA believes your small business, its affiliates and principal owners could obtain financing from non-Federal sources on reasonable terms given your available cash flow and disposable assets.

§ 123.508 How can you use Military Reservist EIDL funds?

Your small business can use Military Reservist EIDL to:

(a) Meet obligations as they mature,

(b) Pay ordinary and necessary operating expenses, or

(c) Enable the business to market, produce or provide products or services ordinarily marketed, produced, or provided by the business, which cannot be done as a result of the essential employee's military call-up.

§ 123.509 What can't you use Military Reservist EIDL funds for?

Your small business can not use Military Reservist EIDL funds for purposes described in 13 CFR 123.303(b) (See § 123.303, "How can my business spend my economic injury disaster loan?").

§ 123.510 What if you don't use your Military Reservist EIDL funds as authorized?

If your small business does not use Military Reservist EIDL funds as authorized by § 123.509, then § 123.9 applies (See § 123.9, "What happens if I don't use loan proceeds for the intended purpose?").

§ 123.511 How will SBA disburse Military Reservist EIDL funds?

SBA will disburse your funds in quarterly installments (unless otherwise specified in your loan authorization agreement) based on a continued need as demonstrated by comparative financial information. On or about 30 days before your scheduled fund disbursement, SBA will request ordinary and usual financial statements

(including balance sheets and profit and loss statements). Based on this information, SBA will assess your continued need for disbursements under this program. Upon making such assessment, SBA will notify you of the status of future disbursements.

§ 123.512 What is the interest rate on a Military Reservist EIDL?

The interest rate on a Military Reservist EIDL will be 4 percent per annum or less. SBA will publish the interest rate quarterly in the **Federal Register**.

Dated: June 30, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–17560 Filed 7–12–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter 1

[Docket No. FAA–2000–7623]

Review of Existing Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Review of regulations; request for comments.

SUMMARY: This notice invites you, as a member of the public, to tell us, the FAA, which regulations now in effect you believe we should amend, eliminate, or simplify. We are publishing this notice in response to Presidential Executive Order No. 12866, directing certain Federal agencies to periodically review their regulations. We need to ensure that they are consistent with statutory authority and are in the public interest. Your comments will assist us in conducting this review and in determining what actions we should take, if any.

DATES: Comments should be submitted on or before October 11, 2000.

ADDRESSES: Comments should be mailed or delivered in duplicate to: U.S. Department of Transportation Dockets, Docket No. [FAA–2000–7623], 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: htpp;// dms.dot.gov. Commenters who wish to file comments electronically should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, ARM–24, Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267–9678, facsimile (202) 267–5075.

SUPPLEMENTARY INFORMATION: In recent years, the FAA conducted several regulatory reviews. In his 1992 State of the Union address, then-President Bush called for a 90-day moratorium on and review of Federal regulations. We responded by asking for public comments on our regulatory program as part of that overall government review (57 FR 4744, Feb. 7, 1992). Based on comments we received, we revised our regulatory agenda.

In 1994, we did another public review (59 FR 1362, Jan. 10, 1994) responding to recommendations from the National Commission to Ensure a Strong Competitive Airline Industry. We were also responding to Vice President Gore's National Performance Review and acting on Department of Transportation (DOT) and FAA regulatory initiatives. We initiated that review of our regulations to reduce any unjustified burdens and as a result of that review we also revised our regulatory agenda and our priorities. At the same time, we announced a Regulatory Review Program to seek public input every three years (60 FR 44142, Aug. 24, 1995). After each review, we published a disposition of the comments.

The most recent review in the 3-year review cycle was announced in the **Federal Register** on May 15, 1997 (62 FR 26894, May 15, 1997). As a result of the Review of Existing Rules, the FAA identified several issues that it determined would be addressed in future rulemaking projects and concluded the review with a general disposition of comments on October 22, 1998 (63 FR 56539, Oct. 22, 1998).

Three-Year Regulatory Review Program; Request for Comments

As part of this ongoing Regulatory Review Program, you may submit a total of three regulations, in priority order, that you believe should be amended, revised, or eliminated. Our agency's goal is to identify regulations which impose unjustified regulatory burdens or are no longer necessary. We also want to identify regulations that need to be clarified or simplified, or overlap, duplicate, or conflict with other regulations. Also, please identify any regulations that have a significant economic burden on a substantial number of small entities that you consider no longer justified.

To focus on areas of greatest interest, and to effectively manage FAA resources, we ask that you limit your comments to the issues you consider most urgent, and list them in priority order. We will review the issues addressed by all the commenters in light of our current regulatory agenda (64 FR 64682, November 22, 1999). We will consider your comments and adjust our regulatory priorities consistent with our statutory responsibilities. When we are done reviewing all comments, we will publish a summary and an explanation of how we will act on them, telling you how we will adjust our priorities.

Finally, please give us any specific suggestions where the regulations could be redone to be performance-based rather than prescriptive and submit your suggested language.

Issued in Washington DC, on July 7, 2000.

Thomas E. McSweeney,

Associate Administrator for Regulation and Certification.

[FR Doc. 00–17790 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–243–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, that currently requires opening the circuit breaker of the pneumatic sense line heater tape, installing an inoperative ring, and coiling and stowing the electrical wire to the circuit breaker of the pneumatic sense line heater tape. That AD also provides for an optional inspection, which, if accomplished, constitutes terminating action for deactivation of the pneumatic sense line heater tape. This proposal is prompted by the FAA's determination that the one-time optional terminating inspection in the existing AD does not adequately detect chafing, electrical arcing, or inadequate

clearance of the subject area. The actions specified by the proposed AD are intended to detect and correct such inadequate clearance, which could result in a hole in the fuel feed pipe caused by electrical arcing, and consequent fuel leakage and possible ignition of the fuel vapors. This action would require repetitive inspections of the subject area and corrective actions, if necessary, and would provide for an optional terminating modification(s) for the repetitive inspection requirements.

DATES: Comments must be received by August 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–243–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Stephen Kolb, Senior Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5244; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–243–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 16, 1998, the FAA issued AD 98–08–11, amendment 39–10491 (63 FR 20066, April 23, 1998), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, to require opening the circuit breaker of the pneumatic sense line heater tape, installing an inoperative ring, and coiling and stowing the electrical wire to the circuit breaker of the pneumatic sense line heater tape. That AD also provides for an optional inspection, which, if accomplished, constitutes terminating action for deactivation of the pneumatic sense line heater tape. That action was prompted by a report indicating that, while an airplane was on the ground, fuel was found leaking from the fuel feed pipe of the number 2 engine due to inadequate clearance between the fuel feed pipe and the pneumatic sense line heater tape. The requirements of that AD are intended to detect and correct such inadequate clearance, which could result in a hole in the fuel feed pipe caused by electrical arcing, and consequent fuel leakage and possible ignition of the fuel vapors.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–08–11, the FAA has determined that the optional one-time inspection provided by that AD does not ensure adequate clearance between the heater tape of the pneumatic sense lines and fuel feed pipe of the number 2 engine, which could result in a hole in the fuel feed pipe caused by electrical arcing, and consequent fuel leakage and possible ignition of the fuel vapors. Because the pneumatic sense lines can move and cause the heater tape to contact the fuel feed pipe of the number 2 engine, the FAA finds that repetitive detailed visual inspections of the subject area are necessary in order to address the identified unsafe condition of this AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–36A030, Revision 03, dated December 14, 1999. The alert service bulletin describes procedures for opening the circuit breaker of the pneumatic sense line heater tape, installing an inoperative ring, and coiling and stowing the electrical wire to the circuit breaker of the pneumatic sense line heater tape. Accomplishment of the above actions deactivates the pneumatic sense line heater tape. The alert service bulletin also describes procedures for repetitive detailed visual inspections to detect chafing, electrical arcing, or inadequate clearance of the heater tape of the pneumatic sense lines and fuel feed pipe of the number 2 engine; and corrective actions, if necessary. The corrective actions involve repositioning the pneumatic sense lines, rewrapping the insulation on the pneumatic sense lines, and repairing or replacing damaged parts with new parts. Accomplishment of the repetitive inspections eliminates the need for deactivation of the pneumatic sense line heater tape.

The FAA also has reviewed and approved the following optional service bulletins. Accomplishment of the applicable actions specified in these service bulletins eliminates the need for

the repetitive inspections described above.

• McDonnell Douglas Service Bulletin MD11–36–018 R01, Revision 1, dated July 18, 1995, describes, for certain airplanes, procedures for modification of the high stage pilot valve located in the aft accessory compartment (including purging the sense lines and revising wiring of the high stage pilot valve).

• McDonnell Douglas Service Bulletin MD11–36–026, dated September 30, 1996, describes, for certain airplanes, procedures for disconnecting and splicing together the heater tape wires of the pneumatic sense lines for the high stage and fan air valves from the terminal strips in the lower vertical stabilizer.

• McDonnell Douglas Service Bulletin MD11–36–025 R01, Revision 01, dated July 31, 1997, describes, for certain airplanes, modification and reidentification of the pilot pressure regulator valve located in the aft accessory compartment (including purging the sense lines and revising the wiring of the pilot pressure regulator valve).

• McDonnell Douglas Service Bulletin MD11–36–028, dated December 7, 1998, describes, for certain airplanes, procedures for disconnecting the heater tape wires from their respective terminal strips and splicing the wire ends together.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–08–11 to require accomplishment of the actions specified in McDonnell Douglas Alert Service Bulletin MD11–36A030, Revision 03, dated December 14, 1999, described previously. The proposed AD also would provide for an optional terminating modification for the repetitive inspection requirements. The proposed AD also would require that operators report results of inspection findings to the FAA.

The FAA is not proposing to mandate the modification specified in paragraph (d)(1), (d)(2), (d)(3), or (d)(4) of this AD for several reasons:

1. Accessing the pneumatic sense lines and fuel feed pipe of the number 2 engine for inspection is easily accomplished.

2. The chafing, electrical arcing, or inadequate clearance of the subject area is easily detectable.

3. The repetitive detailed visual inspections will minimize the probability of a hole in the fuel feed pipe being caused by electrical arcing, which may result in fuel leakage and possible ignition of the fuel vapor.

Differences Between the Proposed AD and Relevant Service Information

Operators should note that, although McDonnell Douglas Alert Service Bulletin MD11–26A030 recommends accomplishing the repetitive detailed visual inspections at intervals not to exceed 5,000 flight hours, the FAA has determined that an interval of 5,000 flight hours or 18 months, whichever occurs later, would address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the high utilization of some operator's affected fleet, and the time necessary to perform the inspection (one hour). In light of all of these factors, the FAA finds an interval of 5,000 flight hours or 18 months, whichever occurs later, for the repetitive detailed visual inspections to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

In addition to the procedures described above, McDonnell Douglas Service Bulletin MD11–36–018 R01, Revision 1, describes procedures for modification of the high stage pilot valve of the left and right wings, and McDonnell Douglas Service Bulletin MD11–36–025 R01, Revision 01, describes procedures for modification and reidentification of the pilot pressure regulator valve of the left and right wings. Accomplishment of these modifications is not necessary to comply with certain optional actions provided by this AD. These particular modifications do not address the identified unsafe condition of this AD.

Cost Impact

There are approximately 174 Model MD–11 and MD–11F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry would be affected by this proposed AD.

The modification that is currently required by AD 98–08–11, and retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $4,020, or $60 per airplane.

The new inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection proposed by this AD on U.S. operators is estimated to be $4,020, or $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by paragraph (d)(1) of this proposed AD, it would take approximately 4 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $4,500 per airplane. Based on these figures, the cost impact of this optional terminating action would be $4,740 per airplane.

Should an operator elect to accomplish the optional terminating action that would be provided by paragraph (d)(2) of this proposed AD, it would take approximately 1 work hour to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $50 per airplane. Based on these figures, the cost impact of this optional terminating action would be $110 per airplane.

Should an operator elect to accomplish the optional terminating action that would be provided by paragraph (d)(3) of this proposed AD, it would take approximately 2 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $2,500 per airplane. Based on these figures, the cost impact of this optional terminating action would be $2,620 per airplane.

Should an operator elect to accomplish the optional terminating action that would be provided by paragraph (d)(4) of this proposed AD, it would take approximately 4 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $50 per airplane. Based on these figures, the cost impact of this optional terminating action would be $290 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship

between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10491 (63 FR 20066, April 23, 1998), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99–NM–243–AD. Supersedes AD 98–08–11, Amendment 39–10491.

Applicability: Model MD–11 and MD–11F series airplanes, having manufacturer's fuselage numbers 0447 through 0552 inclusive, and 0554 through 0620 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct inadequate clearance between the fuel feed pipe of the number 2 engine and the pneumatic sense line heater tape, which could result in a hole in the fuel feed pipe caused by electrical arcing, and consequent fuel leakage and possible ignition of the fuel vapors, accomplish the following:

Restatement of Requirements of AD 98–08–11

Modification

(a) Within 7 days after April 28, 1998 (the effective date of AD 98–08–11, amendment 39–10491), open the circuit breaker of the pneumatic sense line heater tape, install an inoperative ring, and coil and stow the electrical wire to the circuit breaker of the pneumatic sense line heater tape, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–36A030, dated April 2, 1998; Revision 01, dated September 28, 1998; Revision 02, dated July 27, 1999; or Revision 03, dated December 14, 1999. Accomplishment of these actions deactivates the pneumatic sense line heater tape.

Note 2: The pneumatic sense line heater tape of the number 2 engine has been deactivated. This deactivation may cause a nuisance shutdown of the bleed air system of the number 2 engine at top of descent.

New Requirements of This AD

Repetitive Inspections

(b) Except as provided in paragraph (d) of this AD, within 6 months after the effective date of this AD, perform a detailed visual inspection to detect chafing, electrical arcing, or inadequate clearance of the pneumatic sense lines and fuel feed pipe of the number 2 engine, in accordance with Phase 2 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–36A030, Revision 03, dated December 14, 1999. Repeat the inspection thereafter at intervals not to exceed 5,000 flight hours or 18 months, whichever occurs later. Accomplishment of the detailed visual inspection constitutes terminating action for the deactivation requirements of paragraph (a) of this AD.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Note 4: Detailed visual inspections accomplished before the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–36A030, dated April 2, 1998, Revision 01, dated September 28, 1998, or Revision 02, dated July 27, 1999; are considered acceptable for compliance with the requirements of paragraph (b) of this AD.

Corrective Actions

(c) If any discrepancy (*i.e.*, as identified in Conditions 1, 2, 3, 4, and 5 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–36A030, Revision 03, dated December 14, 1999) is detected during any inspection required by paragraph (b) of this AD, before further flight, perform the applicable corrective actions in accordance with Conditions 1, 2, 3, 4, or 5 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–36A030, Revision 03, dated December 14, 1999, except as indicated in paragraphs (c)(1) and (c)(2) of this AD.

(1) Accomplishment of the modification of the high stage pilot valve of the left and right wings in accordance with McDonnell Douglas Service Bulletin MD11–36–018 R01, Revision 1, dated July 18, 1995, is NOT necessary to comply with the applicable corrective action in Condition 5 of the Accomplishment Instructions of the service bulletin.

(2) Accomplishment of the modification and reidentification of the pilot pressure regulator valve of the left and right wings in accordance with McDonnell Douglas Service Bulletin MD11–36–025 R01, Revision 01, dated July 31, 1997, is NOT necessary to comply with the applicable corrective action in Condition 5 of the Accomplishment Instructions of the service bulletin.

Optional Actions

(d) Accomplishment of the action(s) specified in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this AD, as applicable, constitutes terminating action for the repetitive inspection requirements of paragraph (b) of this AD.

(1) For airplanes having manufacturer's fuselage numbers 0447 through 0552 inclusive, and 0554

through 0573 inclusive: Before or in conjunction with the actions specified in paragraph (d)(2) of this AD, modify the high stage pilot valve located in the aft accessory compartment (including purging the sense lines and revising wiring of the high stage pilot valve), in accordance with McDonnell Douglas Service Bulletin MD11–36–018 R01, Revision 1, dated July 18, 1995.

Note 5: In addition to the procedures for modification of the high stage pilot valve located in the aft accessory compartment, McDonnell Douglas Service Bulletin MD11–36–018 R01, Revision 1, dated July 18, 1995, also describes procedures for modification of the high stage pilot valve of the left and right wings. Accomplishment of modification of the high stage pilot valve of the left and right wings is NOT necessary to comply with the optional action provided by paragraph (d)(1) of this AD.

Note 6: Modification of the high stage pilot valve of the aft accessory compartment accomplished before the effective date of this AD in accordance with McDonnell Douglas Service Bulletin MD11–36–018, dated March 28, 1995, is considered acceptable for compliance with the actions specified in paragraph (d)(1) of this AD.

(2) For airplanes having manufacturer's fuselage numbers 0447 through 0552 inclusive, and 0554 through 0608 inclusive: Disconnect and splice together the heater tape wires of the pneumatic sense lines for the high stage and fan air valves from the terminals strips in the lower vertical stabilizer, in accordance with McDonnell Douglas Service Bulletin MD11–36–026, dated September 30, 1996.

(3) For airplanes having manufacturer's fuselage numbers 0447 through 0552 inclusive, and 0554 through 0608 inclusive: Before or in conjunction with the actions specified in paragraph (d)(4) of this AD, modify and reidentify the pilot pressure regulator valve located in the aft accessory compartment (including purging the sense lines and revising the wiring of the pilot pressure regulator valve), in accordance with McDonnell Douglas Service Bulletin MD11–36–025 R01, Revision 01, dated July 31, 1997.

Note 7: In addition to the procedures for modification and reidentification of the pilot pressure regulator valve located in the aft accessory compartment, McDonnell Douglas Service Bulletin MD11–36–025 R01, Revision 01, dated July 31, 1997, also describes procedures for modification and reidentification of the pilot pressure regulator valve of the left and right wings. Accomplishment of the modification and reidentification of the pilot pressure regulator valve of the left and right wings is *not* necessary to comply with the optional action provided by paragraph (d)(3) of this AD.

Note 8: Modification and reidentification of the pilot pressure regulator valve of the aft accessory compartment accomplished before the effective date of this AD in accordance with McDonnell Douglas Service Bulletin MD11–36–025, dated February 14, 1997; is considered acceptable for compliance with the actions specified in paragraph (d)(3) of this AD.

(4) For airplanes having manufacturer's fuselage numbers 0447 through 0464 inclusive, 0466 through 0552 inclusive, and 0554 through 0620 inclusive: Disconnect the heater tape wires from their respective terminal strips and splice the wire ends together, in accordance with McDonnell Douglas Service Bulletin MD11–36–028, dated December 7, 1998.

Reporting

(e) Within 10 days after accomplishing any inspection required by paragraph (b) of this AD, submit a report of the inspection results (only negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 9: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 7, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17758 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 58, 170, 171, 174, and 179

[Docket No. 99N–5556]

Food Additives: Food Contact Substance Notification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to implement the premarket notification process for food contact substances (FCS's) established by the Food and Drug Administration Modernization Act (FDAMA) of 1997. Once implemented, the notification process will be the primary method for authorizing new uses of food additives that are FCS's. FDA is proposing regulations that identify the circumstances under which a food additive petition (FAP) will be required to authorize the use of an FCS; specify the information required in a notification for an FCS; describe the administration of the notification process; and establish the procedure by which the agency may deem a notification to no longer be effective. Additionally, FDA is announcing elsewhere in this issue of the **Federal Register** the availability of an administrative guidance document relating to the preparation of premarket notifications (PMN's).

DATES: Submit written comments by September 26, 2000, except that comments regarding information collection provisions should be submitted by August 14, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION:

I. Background

A. History

In 1958, Congress amended the Federal Food, Drug, and Cosmetic Act (the act) to require premarket approval of food additives (sections 201(s), 402(a)(2)(C), and 409 (21 U.S.C. 321(s), 342(a)(2)(C), and 348)). ''Food additive'' is defined in section 201(s) of the act as ''any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food * * *,'' unless such substance is generally recognized as safe (GRAS) by qualified experts or is prior sanctioned for its intended use. Under section 409 of the act as originally established, food additives require premarket approval by FDA and publication of a regulation authorizing their intended use. Subsequently, in 1995, FDA codified a process, the ''threshold of regulation'' process (§ 170.39 (21 CFR 170.39)), by which certain food additives may be exempted from the requirement of a listing regulation if the substance is expected to migrate to food at only negligible levels (60 FR 3658, July 17, 1995).

More recently, FDAMA (Public Law 105–115) amended section 409 of the act to establish a PMN process as the primary method for authorizing new uses of food additives that are FCS's. A ''Food Contact Substance'' is defined in section 409(h)(6) of the act as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' FDA expects most new uses of FCS's that previously would have been regulated by issuance of a listing regulation in response to a FAP or would have been exempted from the requirement of a regulation under the threshold of regulation process will be the subject of PMN's. Historically, FDA has used the term ''food contact material'' to refer to the ''materials'' mentioned in the definition of an FCS; a food contact material may consist of one or more food contact substances. For the purposes of this document ■ food contact material is any material intended for use in contact with food (e.g., packaging and food processing equipment).

While developing this proposed rule, FDA convened a public meeting on March 12, 1999 (hereinafter referred to as the March 1999 public meeting), to provide interested parties with an opportunity to comment on FDA's current thinking on administration of the PMN process, and on the agency's recommendations on chemistry and toxicology data for PMN's. FDA has considered those comments in developing this proposal. FDA has filed copies of the transcript of the meeting and the comments received from interested parties with the Dockets Management Branch (address above) (Docket No. 99N–0235). The transcript and comments are available for public review at the Dockets Management Branch.

B. Scope of the PMN Process

The FDAMA amendments and their legislative history make clear that the PMN process is to be the preferred process for authorizing new uses of FCS's. Specifically, section 409(h)(3)(A) of the act states that the PMN process shall be utilized for authorizing the marketing of FCS's except where the Secretary of Health and Human Services determines that the submission and review of a petition is necessary to provide adequate assurance of safety, or where FDA and any manufacturer or supplier agree that a petition may be submitted. (See S. Rept. 105–43, 105th Cong., 1st sess. 46 (1997); H. Rept. 105–306, 105th Cong., 1st sess. 19 (1997).) Section 409(h)(3)(B) of the act authorizes FDA to issue regulations to identify those circumstances under which a petition shall be required, considering criteria such as probable exposure to and potential toxicity of the FCS (21 U.S.C. 348(h)(3)(B)). Below, FDA is proposing regulations identifying the circumstances in which a FAP would be required to authorize the use of an FCS.

C. Comparison to the Food Additive Petition Process

Under the FAP process, a petitioner is required to show that the intended use of the food additive, including an FCS, is safe within the meaning of section 409(c)(3)(A) of the act. FAP's must contain information that addresses the identity of the food additive, the manufacture and the intended conditions of use of the food additive, and the safety of the food additive under its intended conditions of use. Within 15 days of receipt of the petition, FDA determines whether the information in the petition is adequate for filing and notifies the petitioner in writing. If the petition is filed, FDA publishes a notice in the **Federal Register** announcing the filing of the petition. Data and information submitted in a FAP are available for public disclosure once a filing notice for the petition has published. Once a petition is filed, FDA has up to 180 days to respond to the petition. If the petitioner delivers additional substantive information to the agency, either in response to agency questions or on the petitioner's own initiative, the petition is given a new filing date and the statutory clock begins to run anew. Once the agency concludes its review, the agency publishes an order in the **Federal Register**. Such order either includes a regulation that lists the conditions of use for the food additive FDA has determined to be safe or denies the petition and gives the reasons for the agency's decision. Importantly, regardless of the time that passes after the notice of filing publishes, a food additive may not be legally marketed for the petitioned use until FDA publishes an authorizing regulation.

New section 409(h) of the act establishes a different process for food additives that are also FCS's. Under the PMN process for FCS's, a manufacturer or supplier of an FCS must notify FDA at least 120 days before marketing the FCS. The notification must include information on the identity and intended use of the FCS and describe the basis for the notifier's determination that the intended use is safe within the meaning of section 409(c)(3)(A) of the act. As with the FAP process, the burden is on the notifier to demonstrate the safety of the intended use of the FCS. If the information in the notification does not support the notifier's determination of safety, FDA has 120 days from the date of receipt of the notification to object and thereby, to prevent marketing of the substance. If the agency does not object to the notification within the 120 days, the substance may be legally marketed for the notified use. Section 409(h)(4) of the act requires FDA to keep confidential any information submitted in a premarket notification for the 120-day review period. Once the 120-day review period ends, information in the notification is disclosable except for trade secret and confidential commercial information.

The FAP process and the PMN process have two important similarities. First, under both processes, the petitioner or notifier bears the burden of demonstrating that the intended use of the FCS is safe. Second, for both processes, the applicable safety standard

is the standard in section 409(c)(3)(A) of the act.

There are also two important differences between the FAP process and the PMN process. First, in contrast to the petition process, in the PMN process, FDA is not required to publish an order announcing the agency's decision and, if appropriate, an authorizing regulation, in response to a notification. Second, under the petition process, once FDA publishes an authorizing regulation for a specific use of a food additive, any person may legally manufacture and market the food additive for the approved use. In contrast, under section 409(h)(6) of the act, a notification for an FCS is not effective for a similar or identical substance manufactured or prepared by anyone other than the manufacturer identified in the notification. Thus, additional manufacturers who wish to market the same FCS for the same use must also submit a notification to FDA.

II. Proposed Regulations for the Notification Process for Food Contact Substances

This section discusses the regulations that FDA is proposing to implement the notification process for FCS's. Additionally, FDA is announcing elsewhere in this issue of the **Federal Register** the availability of an administrative guidance document relating to the preparation of PMN's. FDA has previously announced the availability of two draft guidance documents on FDA's recommendations for chemistry and toxicology information to be included in PMN's in a notice published in the **Federal Register** of November 12, 1999 (64 FR 61648). Finally, in a direct final rule and companion proposed rule published in the **Federal Register** of May 11, 2000 (65 FR 30352 and 65 FR 30366, respectively), FDA announced that it was amending its regulations on environmental impact considerations to permit notifiers to claim in PMN's the categorical exclusions currently applicable to FAP's and threshold of regulation exemption requests for FCS's.

A. The Definition of a Food Contact Substance

The premarket notification process described in section 409(h) of the act applies only to food additives that are FCS's. As noted in section I.A of this document, an FCS is any substance that is intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in food. FDA is proposing to codify the statutory definition of an FCS in proposed § 170.3(e)(3). In addition, FDA is proposing to amend the definition in § 170.3(e)(2) *Uses of food additives not requiring a listing regulation* (21 CFR 170.3(e)(2)) to include FCS's that are the subject of effective notifications. Notifications are required only for FCS's that are food additives; FCS's that are prior sanctioned or GRAS for their intended use do not require premarket notification to FDA.

In the past, FDA has informally characterized a food additive as being a "direct additive" if it was intended to have a technical effect in food, a "secondary direct additive" if it was intended to have a technical effect on food during food processing but not in the finished food as consumed, or an "indirect additive" if it was intended to have a technical effect in a food contact material. Even though each of these types of food additives is regulated in separate sections of Title 21 of the Code of Federal Regulations, no definition for direct, secondary direct, or indirect food additives exists in the codified regulations or the statute. PMN's will be accepted for unapproved uses of food additives that meet the definition of an FCS regardless of the location in the Code of Federal Regulations of any related codified approval.

In response to the March 1999 public meeting, FDA received comments from interested persons requesting that the agency accept notifications for two types of mixtures of FCS's. The first type of mixture of FCS's is a food contact substance "formulation" where all the FCS's in the mixture already may be legally marketed for their intended use in contact with food. FDA's current view on notifications for these mixtures, which will be referred to as "formulations," is discussed in section III of this document.

The second type of mixture of FCS's is a finished food contact material containing one or more FCS's that may not be legally marketed for their intended use at the time FDA receives the notification for the mixture, because the substances are unapproved food additives. FDA has tentatively concluded that a notification for a food contact material containing a new FCS may be submitted under section 409(h) of the act. FDA currently believes that a notification for a mixture of FCS's containing one or more new FCS's would be comparable to a FAP for the use of an indirect food additive in combination with a particular polymer or other food contact material. In this case, the types of polymers with which a petitioned substance is regulated for use represent a limitation on the conditions of use for which the petitioned substance is authorized. Therefore, FDA currently believes that the conditions of use for an FCS that is the subject of a PMN could include detailed specifications on the other FCS's that may be used in combination with the notified FCS. However, FDA is concerned that it could be burdensome for FDA to review within the review period for a PMN a notification for more than one new FCS in a food contact material. Therefore, FDA has tentatively decided that a separate notification must be submitted for each new FCS intended for use in a given food contact material. In other words, a food contact material that includes a new use for two or more FCS's would require the submission of a separate notification for each of the new uses. FDA believes that this approach will permit the agency to better manage its resources and its statutory obligations concerning the review of notifications for FCS's.

B. Notifications for Food Contact Substances: General

Proposed § 170.100 contains the general regulations for submitting a PMN. The agency is proposing in § 170.100(a)(1) that a PMN contain all the information described in proposed § 170.101. In addition, proposed § 170.100(a)(2) states that a notifier may incorporate by reference any information in FDA files that is available to the notifier. This would include publicly disclosable material and material that the submitter of the information has given the notifier permission to reference. Finally, proposed § 170.100(a)(3) requires that a notifier provide all relevant information in English. This latter requirement is comparable to the requirement in 21 CFR 171.1(a) for data submitted in a FAP.

Proposed § 170.100(b) describes the circumstances under which FDA may choose not to accept a PMN. Under proposed § 170.100(b)(1) the submission of a PMN would be prohibited for any use of a substance that is already the subject of a regulation in 21 CFR parts 173 through 189. Under proposed § 170.100(b)(2) submission of a PMN would be prohibited for any use of a substance that is the subject of an exemption under the threshold of regulation process in § 170.39. Authorizations under section 409(b) of the act and exemptions under § 170.39 authorize the use of FCS's without regard to the manufacturer of the substance. Thus, a notification for a use already permitted by a regulation or an exemption would be redundant, and the review of such a notification would be

an inefficient use of agency resources. Moreover, such a notification could not be exclusive to the notifier and is therefore inconsistent with the FDAMA amendment to the statute. Therefore, FDA believes that it is appropriate to prohibit submission of a notification for a use of an FCS that is already permitted by a regulation or by an exemption. However, the agency requests comments regarding the appropriateness of FDA accepting PMN's for uses permitted by existing regulations or threshold of regulation (TOR) exemptions.

Section 409(h)(3)(B) of the act authorizes FDA to issue regulations identifying the circumstances in which a FAP shall be required to provide adequate assurance of safety regarding the use of an FCS. Section 409(h)(3)(B) of the act directs FDA to consider criteria such as the probable consumption of the FCS and its potential toxicity in identifying when a petition shall be required.

Based upon the information currently available, FDA believes that nearly all uses of FCS's would be the subject of PMN's. However, FDA believes there are circumstances in which submission and review of a FAP would be needed to assure safety. Therefore, the agency is proposing in § 170.100(c) a regulation to define the limited circumstances in which a petition would be required. The proposed regulation also provides that if the agency is consulted prior to submission and determines that a notification is more appropriate, a petition would not be required even under the circumstances described in proposed § 170.100(c). Proposed § 170.100(c) lists two circumstances that FDA currently believes should presumptively require the submission of a FAP. These circumstances are as follows: (1) When the use of the FCS will increase the cumulative dietary concentration to the FCS from food uses to a level greater than 1 part per million (ppm) (3 mg/person/day) or, in the case of a biocide, to a level greater than 200 parts per billion (ppb) (0.6 mg/person/day); and (2) when there exists one or more bioassays on the FCS that the agency has not already reviewed and such studies are not clearly negative for carcinogenicity.

Historically, FDA has based its recommendations for toxicity data to support the safe use of food additives on the estimated intake of the food additives. As a general rule, higher estimated intakes of substances in the diet pose both an increased risk of toxicity and a wider range of potential toxic effects. The maximum levels of cumulative dietary concentration identified above are levels at which the agency has historically requested more comprehensive toxicity testing in order to address a substance's potential to induce diverse toxic effects. To address the risk of these effects, FDA has asked for longer term toxicity studies and toxicity studies that measure a wider variety of toxic endpoints. The agency believes that this approach is sound, in that it has ensured the safety of additives permitted in the food supply. Thus, FDA continues to believe that uses of FCS's that have the potential for inducing diverse toxic effects of consequence to human health generally require longer term and more specialized toxicity testing to support their safe use. Where such toxicity testing is needed, the agency believes that submission, review, and approval of a food additive petition is appropriate because the petition process will afford FDA the time necessary to review the more extensive toxicity data package.

FDA has tentatively concluded that a lower dietary concentration cutoff for PMN's for biocides is appropriate for substances that are toxic by design. Biocides are a class of FCS's that have the potential to raise safety concerns because their intended technical effect is microbial toxicity. Because of this expectation of greater toxicity for biocides, FDA has historically requested longer term and specialized toxicity testing for biocides at a dietary concentration of 200 ppb (0.6 mg/person/day), rather than the 1 ppm (3 mg/person/day) level that would apply to most other FCS's. Consistent with FDA's testing recommendations, FDA is proposing in § 170.100(c)(1) that, for biocides, a petition be required where the maximum cumulative dietary concentration level is 200 ppb. FDA intends that this lower cut-off level would apply to substances used as FCS's primarily for their antimicrobial or fungicidal effects.

The use of carcinogens as food additives is prohibited by the food additives anti-cancer clause in section 409(c)(3)(A) of the act (the so-called Delaney clause). FDA believes that, if data exist that may demonstrate that an FCS is carcinogenic, a thorough review of such data is appropriate and necessary to adequately assure safety and properly administer the statute. Therefore, in proposed § 170.100(c)(2), FDA is proposing to require that the proposed use of an FCS be the subject of a petition when a bioassay on the FCS has not been reviewed by the agency and is not clearly negative for carcinogenicity.

FDA's current view is that in some situations where exposure exceeds 1 ppm (3 mg/person /day) or in the case of biocides, 200 ppb (0.6 mg/person/day)), the agency's concerns about potential toxicity may be alleviated by other factors, and thus, a notification may be acceptable. For example, if the cumulative estimated daily intake (CEDI) is greater than 1 ppm (3mg/person/day) but the agency has established an applicable acceptable daily intake (ADI) for the substance that is greater than the CEDI, then a notification would likely be acceptable. FDA expects to make publicly available a database of ADI's and CEDI's for regulated, exempted, and notified FCS's to assist potential notifiers in preparing notifications and petitions for FCS's. Based on the above, FDA is proposing that in the situations described in proposed § 170.100(c), a petition would be required unless FDA determines that a petition is not necessary to adequately assure safety even though the criteria of § 170.100(c)(1) or (c)(2) are met. Although sponsors are not required to consult with the agency prior to submitting either a petition or a notification, FDA strongly encourages presubmission discussion of uses that fall within the bounds of those circumstances defined in proposed § 170.100(c).

In order for FDA to be able to contact a notifier to provide an opportunity for the notifier to respond to agency's concerns regarding a PMN, the agency must have current information on the person for whom the notification is effective. Therefore, under proposed § 170.100(d), all notifiers would be required to inform FDA of any change in address.

C. Information Required in a Premarket Notification for an FCS

The FDAMA amendments require that an FCS meet the safety standard for food additives generally that is set out in section 409(c)(3)(A) of the act. Under section 409(h)(1) of the act, a notification shall include the notifier's determination that the intended use of the FCS is safe under the standard of section 409(c)(3)(A), as well as the data and information that forms the basis of such determination and any information required by regulation to be submitted. In light of this safety standard, FDA has tentatively concluded that the information in a premarket notification should be comparable to that required in a FAP for the same use. In addition, because of the short review period for PMN's, FDA is proposing to require in proposed § 170.101(a) that the notifier submit a comprehensive discussion of the data and information in the notification that forms the basis of the notifier's determination that the FCS is

safe. Under proposed § 170.101(a)(1), a discussion is comprehensive if it addresses all safety data in the notification. Although the discussion of every study or test need not be exhaustive, a notifier should include a thorough discussion of safety data that are important to the determination of safety. The notifier should also discuss in detail the notifier's basis for discounting or disregarding any data. To ensure a balanced evaluation of all existing data, FDA is also proposing to require in proposed § 170.101(a)(2) that the notifier address in the comprehensive discussion any information that appears inconsistent with the notifier's determination that the use of the FCS is safe. Under this proposed system, if FDA determines that a notifier's discussion is not sufficiently comprehensive to show that the notifier has considered all relevant data and information, the agency would object to the notification on the basis that the notification does not include all required information.

Proposed § 170.101(b) would require the notifier to submit all data and information relevant to the safety determination for the intended use of the FCS. This requirement is comparable to the requirement in entry E. of the form in 21 CFR 171.1(c) for FAP's concerning detailed data derived from appropriate animal and other biological experiments related to the safety of the additive be submitted in a FAP. Under proposed § 170.101(b), notifiers would be required to submit to FDA all primary biological and chemical data and information relevant to the safety of the intended use of the FCS. For example, notifications would include the primary data from relevant toxicity studies and from migration tests, including validation data. To assist notifiers in determining which data are relevant to the safety determination, in the **Federal Register** of November 12, 1999 (64 FR 61648), FDA announced the availability of two guidance documents on the chemistry and toxicology information recommended for inclusion in PMN's. In addition, FDA is announcing elsewhere in this issue of the **Federal Register** the availability of an administrative guidance document relating to the preparation of PMN's. These guidance documents include general recommendations that will help notifiers to satisfy the requirements of proposed § 170.101(b). For special circumstances not addressed in the guidance, notifiers are encouraged to consult with the agency prior to submitting a notification.

Proposed § 170.101(c) would require that all nonclinical laboratory studies submitted in a premarket notification be performed under good laboratory practices (GLP's) and include, for each study, a signed statement that the study has been performed under GLP's (proposed § 170.101(c)(1)) or a statement identifying the deviations from GLP's that occurred along with an explanation of the reasons for the deviations (proposed § 170.101(c)(2)). This section is comparable to § 171.1(k) (21 CFR 171.1(k)) for FAP's and would ensure that data submitted in support of the safety of the use of an FCS meet appropriate minimum technical standards.

In addition, proposed § 170.101(c)(3) would require that the data in each study conducted since 1978 but not conducted under GLP's be validated by an independent third party prior to submission to FDA. Finally, proposed § 170.101(c)(3) would require a signed certification from such a data validator. FDA has tentatively concluded that the requirement that such data be validated will ensure the reliability of data submitted in support of the safety of the use of an FCS. FDA currently believes that, because of the short time period for the review of notifications, it is necessary that data be validated in advance of submission to FDA.

Under the National Environmental Policy Act (NEPA), FDA must consider the environmental impact of its actions; the effect of this obligation is that for covered actions, either an environmental assessment or a claim of categorical exclusion is required.

In view of this NEPA obligation, FDA is taking two actions. First, in the **Federal Register** of May 11, 2000, FDA published a direct final rule (64 FR 30352) amending the agency's regulations in part 25 (21 CFR part 25), and a companion Notice of Proposed Rulemaking (65 FR 30366) proposing to amend the regulations in part 25. Specifically, the direct final rule amended, and the companion proposal proposed to amend, part 25 by adding to the list of those actions that require an environmental assessment in § 25.20 allowing a notification submitted under section 409(h) of the act to become effective, and by expanding the existing categorical exclusions in § 25.32(i), (j), (k), (q), and (r) to include allowing a notification submitted under section 409(h) of the act to become effective. This will allow notifiers of FCS's to claim the categorical exclusions now available to sponsors of other requests for authorization of FCS's. Second, as part of this rulemaking, FDA is proposing in § 170.101(d) that if the environmental component of a notification is missing or deficient under § 25.40, the agency will not accept the notification for review. In cases where the agency does not accept a notification based on deficiencies in environmental information, FDA expects to inform the notifier in writing within 30 days of receipt of the submission.

In response to the March 1999 public meeting, FDA received comments requesting that FDA consider incorporating standard forms in the requirements for information in PMN's. Although FDA currently believes that forms cannot replace a comprehensive discussion of the information in the notification or a discussion of the basis for a notifier's determination of safety, FDA tentatively agrees that forms may be useful in preparing and reviewing PMN's. Therefore, FDA is proposing in § 170.101(e) to require the submission of FDA Form No. 3480 with all notifications for FCS's. FDA expects to make this form available via the agency's internet site (http://vm.cfsan.fda.gov). FDA Form No. 3480, as well as FDA Form No. 3479 (see section III of this document), are undergoing review by the Office of Management and Budget as part of the paperwork reduction analysis (see section VII below) for this proposed rule.

D. Confidentiality of Information in a Premarket Notification for an FCS

Section 409(h)(4) of the act prohibits FDA from publicly disclosing any information in a PMN for 120 days after submission of the PMN to FDA. FDA is proposing to codify in § 170.102(a) the prohibition against disclosure of information in a notification. FDA currently believes that the intent of section 409(h)(4) of the act is to prevent the agency from disclosing information in a notification prior to completion of the agency's review. Therefore, FDA is proposing to add § 170.102(b) which provides that the information in a notification that is withdrawn within 120 days after receipt, and before the agency has completed its review, will not be publicly available. Similarly, FDA believes that the agency's conclusion regarding a notification should be publicly available at the time such conclusion is reached. Therefore, FDA is proposing in § 170.102(c) to provide that FDA's conclusion regarding a notification would be available at the time the agency's review is completed. However, FDA does not expect to actively disclose its conclusion regarding a notification; rather, FDA anticipates providing this information to

persons who contact the agency (i.e., by telephone, letter, or e-mail) after the conclusion of FDA's review.

The agency is planning to establish a publicly available inventory of effective PMN's (discussed below). FDA has tentatively concluded that the inventory will include the information necessary to describe adequately the substance that is the subject of the notification and the use of that substance for which the notification is effective. Such information may include, but will not necessarily be limited to, the complete chemical identity of the FCS, the maximum use level in food contact materials, any limitations on the types of food that may contact materials containing the substance, and limitations on time and temperature conditions of use for the material containing the substance. FDA believes that the foregoing information is necessary to describe adequately the circumstances under which a given notification is effective and that any claim to confidentiality of such information would hamper the agency's ability to adequately communicate which notifications have become effective. Therefore, as proposed, § 170.102(d) provides that by submitting a notification, the notifier waives any claim of confidentiality to the information required to describe adequately the FCS and the intended conditions of use that are the subject of the notification.

FDA is proposing to codify in § 170 102(e) the types of information in a PMN that will be publicly available once the statuatory 120-day review period is completed. The types of information listed in proposed § 170.102(e) are comparable to the types of information contained in or relating to an FAP that generally are publicly available under § 171.1 (h) either at the time the petition is filed or once the agency has rendered a decision on the petition. FDA has tentatively concluded that once the statuatory prohibition in section 409 (h) of the act against disclosure of information in a PMN expires, the disclosure of data and information in a PMN should be comparable to the disclosure of similar information when contained in an FAP. FDA specifically requests comments on all of the provisions of proposed § 170.102

E. Withdrawal Without Prejudice

Under proposed § 170.103, FDA is proposing that a notifier may withdraw a PMN at any time during the 120 days after receipt of the notification by FDA, if FDA has not completed its review. For the purpose of this section, FDA's review is complete when FDA has allowed 120 days to pass without objecting to the PMN, or when FDA has issued an objection letter. FDA tentatively believes that the outcome of the agency's review should be publicly available at the time it issues. As discussed above, FDA is proposing in § 170.102(c) to protect from public disclosure the information in a PMN withdrawn within 120 days of receipt by FDA.

F. Action on a Notification for an FCS

FDA currently plans to conduct an initial review of whether the basic informational items required under proposed § 170.101 are in a notification for an FCS. If, during this initial review, FDA finds that one of the elements required under proposed § 170.101 is missing, FDA believes that the agency should be able to decline to review such notification. Under proposed § 170.104(b)(1), FDA would inform a notifier in writing that a clearly deficient notification has not been accepted. In addition, if a notifier supplements a deficient notification before FDA informs the notifier in writing under proposed § 170.104(b)(1) then the date of receipt of the supplemental information would be the date of receipt of the notification for purposes of section 409(h)(1) of the act.

If FDA accepts a PMN, FDA expects to acknowledge receipt of the PMN in writing within 30 days of receipt (see proposed § 170.104(b)(2)). This acknowledgment would serve two purposes: First, the acknowledgment would inform the notifier of the date of receipt of the notification by FDA, and thereby the effective date of the notification if FDA does not object to the marketing of the substance; second, the acknowledgment would identify the substance and use that FDA understands are the subject of the notification. FDA intends to use this identity and use information in FDA's inventory of effective notifications (discussed below) if the notification becomes effective. If FDA determines during the course of review of a PMN that it is necessary to modify the description of the FCS or its intended use as conveyed in the acknowledgment letter, FDA intends to promptly inform the notifier of any such changes.

If, after reviewing a notification, FDA does not agree that the notifier has demonstrated that the substance is safe under the intended conditions of use, FDA would inform the notifier in writing that FDA objects to the marketing of the substance for the use that is the subject of the notification and would describe the basis for the objection. Under proposed § 170.104(c)(1), if FDA objects to a PMN, FDA will inform the notifier in writing. FDA has tentatively concluded that the date of the objection letter should be the date that the agency objects to the notification for the purposes of section 409(h)(2)(A) of the act, and has proposed such an arrangement in § 170.104(c)(1). FDA believes that this practice for objection dates will simplify management of the notification process. For purposes of clarity, FDA is also proposing in § 170.104(c)(2) to restate the statutory outcome that, if FDA objects to a notification during the 120-day review period, the notification would not become effective. Under section 409(a) of the act, in the absence of an effective notification, an FCS cannot be lawfully marketed.

FDA currently believes that, if information on which the notifier's determination of safety is based is inadequate to support a safety determination, the agency would object, under section 409(h)(2)(B) of the act, to the notification on the basis that the use of the FCS has not been shown to be safe under the standard of section 409(c)(3)(A). FDA currently believes that, if the notifier's discussion of the data supporting the safety of the use of the FCS is not comprehensive, the agency would consider the notification inadequate to support the safety of the intended use of the FCS and would object to the notification on that basis.

Section 409(h)(5)(A)(i) of the act states that the premarket notification program shall not operate in any fiscal year (FY) for which the program is not funded as described in section 409(h)(5). FDA currently believes that the agency must be able to object to a notification if the notification program ceases to operate before the end of the 120-day period after FDA's receipt of the notification in accordance with section 409(h)(5) of the act. Accordingly, proposed § 170.104(c)(3) would authorize FDA to object to a premarket notification on the basis that some portion of the 120-day review period occurs during a period while the PMN program is not operating. Proposed § 170.104(c)(3) would not, however, require FDA to object. For example, if FDA determines that it can complete its review of a PMN while the PMN program operates, the agency would not object to a notification solely on the basis of proposed § 170.104(c)(3).

Unlike the FAP process, there is no requirement under the PMN process that FDA publish either a filing notice or a final rule in the **Federal Register** in order to authorize the use of an FCS. Moreover, the statute does not require

FDA to issue a letter at the conclusion of the review of a notification, in contrast to the threshold of regulation process under § 170.39. No action by FDA is required for a notification to become effective 120 days after receipt by the agency. However, FDA has considered information provided by the public at the March 1999 public meeting and has tentatively concluded that issuing a letter identifying the notification and the date on which the notification became effective may be valuable in bringing the review process to closure. Such a letter could also clarify the identity or intended use of the FCS if there is a need to do so. Therefore, FDA's current plan is to reissue the acknowledgment letter and to add a statement regarding the date on which the notification became effective and to describe any changes in identity or use of the FCS. Because FDA is concerned that the issuance of a final letter for every PMN may become an administrative burden on the agency, the agency is not proposing to make issuance of such a letter a requirement.

In order to administer the PMN program efficiently, FDA has tentatively concluded that the agency should maintain a publicly available inventory of effective notifications. Such an inventory would permit both the regulated industry and the public readily to determine whether an effective notification exists for use of an FCS. As currently envisioned by the agency, the publicly available inventory would include such information as the identity of the substance, the notified use, the manufacturer identified in the notification, the effective date of the notification, and a tracking number identifying the notification. FDA expects to make the inventory of effective notifications available on the agency's Internet site (http://vm.cfsan.fda.gov). FDA is specifically requesting comments on the agency's plan for the inventory of effective notifications and on ways the agency may make the inventory most useful to the public.

As noted, section 409(h)(3)(A) of the act requires that the notification process be utilized for authorizing new uses of food contact substances except where the agency determines that a FAP is necessary to provide adequate assurance of safety or where FDA and a manufacturer or supplier agree that such manufacturer or supplier may submit a petition. FDA currently believes that there may be some instances where a codified regulation may be in the best interest of the public and the agency, and in such cases, the agency would agree to accept a petition. However, FDA should not be required to review both a petition and a notification for the same use of an FCS. Thus, proposed § 170.104(d) would provide that a premarket notification would be deemed withdrawn if FDA and a notifier agree under section 409(h)(3)(A) of the act that the notifier may submit a FAP proposing the approval of the FCS for the use described in the notification. FDA is also proposing to amend § 171.1(i)(1) to ensure that FDA is not required to file a FAP for the use of an FCS that, under section 409(h)(3)(A) of the act, may be the subject of a notification.

G. Determination That a Premarket Notification Is No Longer Effective

Section 409(i) of the act states that FDA shall by regulation prescribe the procedure by which the agency may deem a premarket notification to no longer be effective. If information becomes available that indicates that the use of an FCS that is the subject of an effective notification may no longer be considered safe, FDA believes that such information must be adequately addressed by the notifier for the notification to continue to be effective. Proposed § 170.105(a) states that FDA may determine that a PMN is no longer effective if the available information demonstrates that the use of an FCS is no longer safe. Proposed § 170.105(b) states that FDA would inform the notifier in writing of the agency's tentative conclusion that a notification is no longer effective, and would provide the basis for that conclusion. In addition, FDA will establish a timeframe for the notifier to respond to the agency's tentative conclusion. Under proposed § 170.105(b) the notifier would be given an opportunity to address FDA's safety concerns. Under proposed § 170.105(c), if the notifier is not able to address adequately FDA's concerns, FDA would publish a notice in the **Federal Register** stating the agency's conclusion that the notification is no longer effective. The date of such notice will be the date after which the notification shall no longer be effective. FDA has tentatively concluded that the agency's determination that a notification is no longer effective shall be the final agency action subject to judicial review (proposed § 170.105(d)).

III. Notifications for Formulations

As discussed above, in response to the March 1999 public meeting, the agency received comments requesting that the agency accept notifications for food contact substance formulations (NFCSF's). Such notifications would be distinct from notifications for FCS's in two ways. First, NFCSF's would be for a particular mixture of FCS's and would be for more than one FCS. Second, each of the substances in the formulation would already be authorized for its intended use in contact with food. Thus, FDA's evaluation of NFCSF's would be limited to a review of the basis for compliance with section 409 of the act.

Because each substance in an NFCSF would already be authorized for its intended use, such notifications would not be required under section 409 of the act. Nor does the act require FDA to implement and operate such a program. Comments in response to the March 1999 public meeting stated that such notifications would be useful for facilitating trade in both food contact materials and in food, if FDA would choose to accept these notifications under the PMN process. FDA also believes that acceptance and review of NFCSF's will aid the agency in monitoring compliance within the regulated industry and provide the agency with better information on the types of food contact materials in use. Therefore, FDA is proposing, in § 170.106(a), to accept NFCSF's where the notifier can establish that each of the components of the formulation is authorized for its intended use. However, FDA has serious concerns about the potential burden that accepting notifications for formulations could place on the agency. Therefore, proposed § 170.106(b) states that the agency may decline to accept NFCSF's by publishing a notice in the **Federal Register** stating that the agency does not have sufficient resources to review such notifications. FDA believes that this level of notice is appropriate because there is no statutory requirement for FDA to accept NFCSF's.

FDA's current view is that notifications for formulations would not require resubmission of the information supporting the safety of the intended use of each food contact substance in the formulation. FDA has tentatively concluded that a notifier for a formulation would ordinarily submit only a completed FDA Form No. 3479 and any additional information necessary to establish that the specific conditions of use in the formulation for each FCS are authorized. Also, in cases where the basis for compliance of an individual FCS in a formulation is an effective notification, a notifier would need to certify that he could rely on the notification cited. Therefore, under proposed § 170.106(c), FDA would require that a notification for a food contact substance formulation include a completed FDA Form No. 3479 and any additional information to establish that

each of the components of the formulation is authorized for its intended use. FDA is specifically requesting comments on proposed § 170.106.

IV. Transition Policy

At the time the premarket notification program began to operate, the agency had an inventory of pending FAP's for the use of FCS's. FDA also had an inventory of pending TOR exemption requests (submitted under § 170.39). FDA believes that nearly all of these petitions and exemption requests are for uses that would meet the criteria under proposed § 170.100 for premarket notification.

At any time that the PMN program is operational, a petitioner may withdraw a FAP or TOR request for the use of an FCS and resubmit the petition or request as a PMN. If a petitioner does not withdraw a petition and such petitioner submits a PMN for the same use, the petition would be deemed withdrawn under proposed § 171.7(c) for the use or uses described in the notification. In a letter dated October 25, 1999, FDA strongly encouraged petitioners and requesters under the threshold of regulation process to contact the agency prior to withdrawal of a petition or a TOR request to obtain specific guidance on conversion of the petition or request to a PMN. Finally, for some of the FAP's and TOR requests in the agency's inventory when the notification program began to operate, FDA was awaiting the submission of additional information that the agency has considered necessary to the safety determination. Any such information would be necessary to establish the safety of the intended use of the FCS if a petition or request were resubmitted as a notification.

V. Conforming Amendments

FDA is proposing several conforming amendments to the agency's regulations to help to administer the PMN process and to clarify the application of the food additive regulations to FCS's.

Section 20.100 cross-references regulations concerning the public availability of information in specific types of documents submitted to FDA. FDA is proposing to amend this section to cross-reference the regulations on the disclosure of information in PMN's under proposed § 170.102.

FDA is proposing to amend § 58.3 (21 CFR 58.3) to add PMN's to the list of types of submissions that the agency classifies as "Applications for research or marketing permits." This amendment will make the appropriate provisions of the agency's GLP regulations applicable to PMN's.

FCS's that are the subject of PMN's will not be listed in the food additive regulations for their intended uses. Therefore, FDA proposes to amend §§ 174.5(d) and 179.25(c) (21 CFR 174.5(d) and 179.25(c)) to provide appropriate cross references for the use of an FCS that is the subject of an effective PMN.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Food Contact Substances Notification System

Description: Section 409(h) of the act establishes a premarket notification process for FCS's. Section 409(h)(6) of the act defines a "food contact substance" as "any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food." Section 409(h)(3) of the act requires that the notification process be utilized for authorizing the marketing of FCS's except where FDA determines that the submission and premarket review of a FAP under section 409(b) of the act is necessary to provide adequate assurance of safety. Section 409(h)(1) of the act requires that a notification include information on the identity and the intended use of the food contact substance and the basis for the notifier's determination that the food contact substance is safe under the intended conditions of use. Because section 409(h)(1) of the act references the general safety standard for food additives, the data in a PMN should be comparable to the data in a FAP. FDA is proposing regulations necessary to implement the premarket notification program which will largely replace the FAP process for those food additives that are food contact substances. The collection of information associated with notifications for new uses of FCS's under section 409 of the act has been previously announced for public comment in a notice published in the **Federal Register** of November 12, 1999 (64 FR 61648).

FDA is also proposing to require that a notification for a food contact substance include FDA Form No. 3480 "Notification for New Use of a Food Contact Substance" and a notification for a formulation of a food contact material include FDA Form No. 3479 "Notification for a Food Contact Substance Formulation" that will serve to summarize pertinent information in the notification. FDA Form No. 3480 was made available for public comment in the November 12, 1999, notice. FDA believes that these forms will facilitate both preparation and review of notifications since the forms will serve to organize information necessary to support the safety of the use of the FCS. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Description of Respondents: Manufacturers of food contact substances.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.106[2]	FDA 3479	200	4	800	2	1,600
170.101[3,7]	FDA 3480	200	1	200	25	5,000

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR Section	Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.101[4,7]	FDA 3480	55	2	110	120	13,200
170.101[5,7]	FDA 3480	45	2	90	150	13,500
170.101[6,7]	FDA 3480	16	1	16	150	2,400
Total						35,700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Notifications for a food contact substance formulation. These notifications require only FDA Form No. 3479 ("Notification for a Food Contact Substance Formulation") to be filled out and documentation attached.
[3] Duplicate notifications for uses of food contact substances.
[4] Notifications for uses that would currently be the subject of exemptions under 21 CFR 170.39 or very simple FAP's.
[5] Notifications for uses that would currently be the subject of moderately complex FAP's.
[6] Notifications for uses that would currently be the subject of more complex FAPs.
[7] These notifications require the submission of FDA Form No. 3480 ("Notification for New Use of a Food Contact Substance").

The above estimate is based on the types of submissions that FDA currently receives for food contact substances in the TOR and the FAP processes and the following assumptions and information:

- FDA estimates that the likely increase in PMN's over the number of FAP's and TOR requests will be approximately four times the highest recent influx of these submissions (50 and 54, respectively). This factor is based on an analysis of the number of companies producing various types of food contact substances and the types of food contact substances for which FAP's and TOR's are most commonly submitted to FDA.
- Based on input from industry sources, FDA estimates that the agency will receive approximately 800 notifications annually for food contact substance formulations.
- FDA also has included 200 expected duplicate submissions in the second lowest tier. FDA expects that the burden for preparing these notifications will primarily consist of the notifier filling out FDA Form No. 3480, verifying that a previous notification is effective, and preparing necessary documentation.
- Based on the amount of data typically submitted in FAP's and TOR requests, FDA identified three other tiers of PMN's that represent escalating levels of burden required to collect information.
- FDA estimated the median number of hours necessary for collecting information for each type of notification within each of the three tiers based on input from industry sources.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding the information collection by August 14, 2000 to the Office of Information and Regulatory Affairs, OMB (address above), Attn: Desk Officer for FDA.

VII. Analysis of Impacts

A. Preliminary Regulatory Impact Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. The Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

1. The Need for Regulation

This notice proposes regulations that are needed to help implement the premarket notification process for food contact substances created by FDAMA. These premarket notifications will largely replace FAP's for food contact substances. In the petition process, FDA evaluates the safety of the proposed use of a food additive and, if FDA determines that the proposed use is safe, the agency issues a regulation authorizing the legal marketing of the product. Under the statute, FDA has an initial period of 90 days, which may be extended for an additional 90 days, in which to make a determination regarding the safety of the proposed use and publish an order stating the agency's determination. However, regardless of the time that actually passes after submission of a FAP, the FAP may not be legally marketed until FDA publishes an authorizing regulation. By contrast, the premarket notification provision of FDAMA requires FDA to object within 120 days to a manufacturer's notification that it intends to use a particular food contact substance for a particular use, or the substance may be legally marketed on the 121st day without issuance of a regulation.

This notice also proposes regulations to implement the statutory requirement that information in a PMN not be publicly disclosed before completion of FDA's review. Under the petition process, the publication in the **Federal Register** of the notice of filing for the petition permits competitors of the petitioner to learn about the new food contact substance before authorization. Disclosure of a manufacturer's intent to market a substance before authorization lowers the competitive advantage of a new product, since a food additive regulation authorizes anyone to market the substance for its intended use. Under section 409(h) of the act and the proposed rule, a notification will be effective for the manufacturer named in the notification only, thereby protecting the commercial intent of the manufacturers of the new food contact substance during the period of review, and permitting the manufacturer of the new food contact substance to market the substance first.

The implementing regulations propose binding criteria for the successful submission of notifications and a concrete framework for the resolution of routine questions or problems arising in the notification process. The notification process is more predictable than the

corresponding FAP process, because the notifier will have either an effective notification or FDA's objection within 120 days. The structure added by limited implementing regulations would enhance the predictability of that process and reduce the burden on all potential notifiers. Therefore, the proposed regulations implementing the statutory requirement for PMN's would help the agency to reduce delays in the marketing of new food contact substances. In the absence of the proposed rule, the agency would be less effective in achieving this goal.

In the economic analysis of the proposed rule, the agency will not separate the benefits and costs of the statute from the benefits and costs of the regulations helping to implement the statute. The regulations and the statute are complementary and will be assessed together.

2. Regulatory Options

FDA examined a range of regulatory options to demonstrate why the proposed action is most beneficial to the public. Not all of the options discussed below are currently legally available. FDA assesses options that are not legally available in order to elucidate its reasoning for the option that was chosen.

a. *No new regulatory activity.* No additional social costs or benefits are associated with this option. Section 409 of the act does not require FDA to issue regulations to implement the notification process for food contact substances except for regulations prescribing the procedure by which a notification may be deemed no longer effective (section 409(i)(3)). The notification process for food contact substances begins to operate when the budgetary requirements of section 409(h)(5) of the act are met whether or not FDA issues regulations.

If no regulations exist to govern the notification program when it begins to operate, FDA will operate the program through guidance alone. This situation would provide the most discretion for FDA to deal with individual notifications but would provide less predictability for industry. Less predictability would create additional burden on the industry to prepare and manage notifications for review.

As stated above, the proposed implementing regulations provide binding criteria for the successful submission of notifications and a concrete framework for the resolution of routine questions or problems arising in the notification process. The notification process is more predictable than the corresponding FAP process, because the notifier will have either an effective notification or FDA's objection within 120 days. The structure added by limited implementing regulations will enhance the predictability of that process and reduce the burden on all potential notifiers. Furthermore, if the agency continued to rely on the current FAP procedure to approve food contact substances, there could be delays in meeting consumer demand when the agency's evaluation has not been completed within a predictable time; these delays could represent potentially significant avoidable costs. This unpredictability discourages new products when the food contact substance manufacturers do not believe their products can be brought to market within a reasonable time. When products are not brought to market, the public bears a social cost in terms of lost consumer satisfaction from the lack of desirable products. Although the public cost from new products not being brought to market are mostly unseen and are not measurable, they may be large.

b. *Modification of the petition process to require automatic authorization at the end.* Although this option is not legally available, the public might have benefited if the current petition process were modified to require automatic authorization at the end of a specified review period. The period of evaluation for food contact substance petitions could be extended to 120 days, with automatic authorization granted for petitions that are not reviewed during this period. Extending the review period would provide the agency with additional time to review each petition and the requirement of automatic agency authorization at the end of the review period would create reliable expectations for petitioners. However, extending the period of evaluation would not address all of the problems that petitioners encounter in the current process. This option neglects the circumstance that certain information may be disclosed to competitors during the review process.

c. *Stricter requirements for data submission.* The agency might have proposed to require that food contact substances meet stricter requirements for data submission than those it is proposing. For example, FDA might require additional validation for all data that form the basis of the determination that the food contact substance is safe for the intended use. The agency did not choose this option because additional data requirements would impose a cost by potentially delaying the introduction of beneficial substances.

d. *Deregulation—no requirement for a petition or a notification.* Congress could legislate to dispense with the approval of new food contact substances through either petitions or notifications. The objection to this option is that the agency's review and authorization of food contact substances protects the public from harmful substances that might otherwise be introduced into the food supply and reduces the costs of private monitoring of the food supply. Protection in this context means that the agency requires that manufacturers of products under review by FDA demonstrate a reasonable certainty of no harm from the intended use of the product.

With deregulation, consumers bear the risks when producers sell products that do not meet the regulatory standard of reasonable certainty of no harm. If the approval of new food contact substances were withdrawn, consumers would have to monitor the safety of the substances in the food supply. If products cause harm, consumers would have to rely on the tort system for redress. Consumers would have to prove that a harm was linked to the food contact substance based on a standard that might vary by jurisdiction or at the whim of a jury. Furthermore, proving the link between the substance and the harm could be extremely difficult. Private markets operate within the framework of legal institutions. The tort system of the common law evolved, in part, to provide remedies to injuries suffered in transactions in private markets. For instance, under this system, if a defective product injures someone, then the injured person may recover damages from the producer of the defective product. The recovery of damages requires the injured person to prove that his injuries were caused by the producer's product. Regardless of the legal standard chosen (negligence, warranty, or strict liability) the injured person must be able to link his injury to the specific product of a specific producer. Because legal proceedings are always retrospective and must have occurred after the plaintiff consumer has suffered an injury, the social cost under the tort system is the cost of the harm caused to the plaintiff and the cost of the legal proceedings.

In most instances, consumers experiencing illness or other harm from food consumption do not recognize the illness as foodborne or are unable to link the illness to consumption of a particular food. This inability to connect illness and food or food contact substances exists because many symptoms do not occur immediately after consumption of the product. Many

consumers are never compensated, and in practice, the tort system is rarely used to remedy the harm that comes from unsafe foods or food additives. Therefore, the costs of private monitoring and enforcement of safety using the tort system in an unregulated market are probably substantially greater than the social costs of regulatory enforcement and the additional research costs needed to demonstrate with reasonable certainty that products are safe.

3. Benefits

The benefits from the change to premarket notifications come from the increased innovation in the food contact substance market. Consumers want new and better food contact substances (or their properties) and receive benefits from them in the form of increased satisfaction. Although new substances will (on average) generate monetary benefits that exceed monetary costs—if not, new substances would not be introduced—it is difficult to place a monetary value on the full increase in consumer satisfaction from better food contact substances in the future. FDA therefore did not attempt to directly measure the increased consumer satisfaction arising from greater innovation in food contact substances. Instead, the agency estimated the benefits indirectly by the increase in innovation. FDA measured the benefits from the change to premarket notifications as the expected increase in the annual number of new notifications after the change. More product notifications to the agency imply more innovation, which in turn implies better products and greater consumer satisfaction.

Determining the benefits without regard for the congressional requirement to change regimes, although it ignores the rationale and legal authority for the change, provides a simple measure of the consequences of the change to the system of premarket notifications for new food contact substances. The increase in notifications, however, may overstate innovation because: (1) Not all notifications will be for new products and (2) the new regime will require each manufacturer to submit a notification to obtain marketing approval so some duplication of firm and agency resources might occur when different manufacturers produce the same substances. Thus, the estimated benefit due to innovation represents a maximum.

The agency estimated that the likely increase in submissions will be approximately four times the highest recent number of annual submissions for food contact substances (50 FAP's and 54 TOR submissions). Thus, for fiscal year (FY) 2000, FDA estimates that 416 premarket notifications will be submitted (4 x 50 + 4 x 54). As explained above, the agency has not attempted to place a monetary value on the benefits from these submissions.

4. Costs

The costs of the proposed rule are the costs incurred by firms that notify the agency of a new substance, but would not have had to under the previous regime. The firms that will bear this cost manufacture products identical to those that have already been through the notification process. These firms would formerly have been able to avoid the regulatory process altogether.

The agency used the following calculation:

Cost = (Number of Notifications) X (Hours/Notification) X (Hourly Rate to Prepare a Notification) + (Number of Notifications) X (Average Cost for Data Development)

The agency determined the expected number of notifications for seven categories of notifications for those firms that are expected to make substances identical to those for which notifications have been received, the number of hours required to prepare the notification for each category, and the estimated average hourly cost to prepare the notification. In addition the agency estimated the average cost of developing the data for each type of submission.

The total number of FAP's and TOR's received in FY 1998 and that would be affected by the change in regimes was 102. Based on petition data, these 102 were divided between petitions for components of food contact materials and petitions for substances used to manufacture food which do not have an intended effect in the food as consumed. The burden of the data collection for FAP's varies with the type of petition submitted. The following are the agency's estimates of the information collection burden for FAP's and TOR's.

A TOR requires the least amount of time for the collection of information: approximately 88 hours per submission. Forty-nine TOR's were received in FY 1998, resulting in a burden of 4,664 hours.

Category A. A simple indirect additive petition with minimal testing requirements (collection of identity information, genetic toxicity testing and administrative details) requires approximately 120 hours per petition. Sixteen such petitions of this type were received in FY 1998, resulting in a burden of 1,920 hours. In addition, the average data collection costs for such petitions is about $12,500, resulting in a total dollar burden for data collection of $200,000 for FY 1998.

Category B. An average indirect additive petition consisting of analytical work, 90-day feeding studies, toxicological review of study data, and internal review and the drafting of the petition, requires approximately 150 hours per petition. Twenty-two such petitions were received in FY 1998, resulting in a burden of 3,300 hours. In addition, the average data collection costs for such petitions is about $350,000, resulting in a total dollar burden for data collection of $7,700,000 for FY 1998.

Category C. For an indirect additive petition with complex analytical work, the estimated time requirement per petition is approximately 150 hours. Eleven such petitions were received in FY 1998, resulting in a burden of 1,650 hours. In addition, the average data collection costs for such petitions is about $375,000, resulting in a total dollar burden for data collection of $4,125,000 for FY 1998.

Category D. A petition for a major new component of food packaging, involving long-term feeding studies, toxicology review, analytical work, and administrative details, requires more hours and a larger dollar investment for data development. FDA does not expect to accept such petitions as notifications.

Category E. A simple petition for a secondary direct food additive with minimal testing requirements (collection of identity information, minimal toxicity testing, analytical work and administrative details) requires approximately 120 hours per petition. One such petition was received in FY 1998, resulting in a burden of 120 hours. In addition, the average data collection costs for such petitions is about $12,500, resulting in a total dollar burden for data collection of $12,500 for FY 1998.

Category F. An average secondary direct additive petition consisting of analytical work, 90-day feeding studies, toxicological review of study data, and internal review and the drafting of the petition, requires approximately 150 hours per petition. Two such petitions were received in FY 1998, resulting in a burden of 300 hours. In addition, the average data collection costs for such petitions is about $350,000, resulting in a total dollar burden for data collection of $700,000 for FY 1998.

Furnishing the information required even in a simple indirect additive petition requires a team of professional employees, which may include toxicologists, chemists, environmental scientists, and lawyers. According to information provided by industry trade

associations, the collection of information, analytical work, toxicological review and administrative details involved in such a petition (Category A) average about 120 hours. In addition, such a petition requires an average of $12,500 for data development. Assuming that the aggregate professional hourly cost is $90, then the cost for submitting a simple petition is $10,800 (calculated by multiplying the hourly cost and the total hours) + $12,500 (for data development), for a total cost of $23,300.

The following summaries list the TOR and petition categories and the cost for each, assuming an aggregate professional hourly cost of $90.

TABLE 2.—CATEGORIES OF FOOD CONTACT SUBSTANCE SUBMISSIONS (CURRENT)

Submission Type	No. of Submissions	Total Hours	Cost of Hours	Other Costs
Threshold of regulation	49	4,664	419,760	0
Category A	6	1,920	172,800	200,000
Category B	22	3,300	297,000	7,700,000
Category C	11	1,650	148,500	4,125,000
Category D	0	0	0	0
Category E	1	120	10,800	12,500
Category F	2	300	27,000	700,000
Totals		11,954	1,075,860	12,737,500

If, in a given fiscal year the expected number of PMN's has the same proportion of categories as does the FY 1998 petitions and TOR's, then the agency expects:

TABLE 3.—CATEGORIES OF FOOD CONTACT SUBSTANCE SUBMISSIONS (PROJECTED)

Submission Type	No. of Notifications	Total Hours	Cost of Hours	Other Costs
Threshold of regulation	201	17,688	1,591,920	0
Category A	66	7,920	712,800	825,000
Category B	91	13,650	1,285,000	31,850,000
Category C	46	6,900	621,000	17,250,000
Category D	0	0	0	0
Category E	4	480	43,200	50,000
Category F	8	1,200	108,000	2,800,000
Totals		47,838	4,361,920	52,775,000

FDA expects approximately 50 percent of new notifications to be duplicates of PMN's submitted for products that would have required only one authorization under the old regime. Comparable products that could have used authorizations for another firm's product now require separate authorizations. Therefore, 50 percent of the expected total cost is the social cost imposed on the industry because of the change in regimes, for a total expected social cost of $26,387,500. As with the estimate of benefits above, this estimate of social cost represents a maximum cost since duplicate notifications may not require development of new scientific data.

5. Summary of Benefits and Costs

The social benefits of the proposed change in regime are from new product innovation. The agency estimates that four times the current number of petitions and TOR's will be introduced into the market, for a total of 416. The social costs from the change in regimes are the costs to submit duplicate notifications. The agency estimates that 50 percent of the total will be duplicate notifications for a maximum total social cost of $26,387,500.

B. Initial Regulatory Flexibility Analysis

1. Introduction

FDA has examined the economic implications of these proposed rules as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lesson the economic effect of the rule on small entities.

2. Economic Effects on Small Entities

We were unable to estimate how many small entities will be affected by this proposed regulation, because the universe of affected small entities might include any entities with a new idea. Past practice may not be a useful guide for estimating how many future entities will be affected. Some of these firms will now have to submit a PMN, when in the past they would not have had to. Because they will have to make a submission, the cost may act as a barrier and discourage them. On the other hand, firms that might not have submitted an application because the regime did not protect their ideas from copying, will now have some protection for their ideas by virtue of the new regime and thus be more likely to submit a PMN. We believe the net affect will be to encourage more innovation as reflected by more notifications.

3. Regulatory Relief

Because some small firms are expected to be adversely affected by the proposed rule, options for regulatory relief, such as small business exemption, need to be addressed. The benefit of this option is that small businesses would not incur an additional cost. The drawback is that small firms could then copy and distribute themselves the substances being reviewed in response to the marketing submission of a competitor, creating disincentives for new substance development by rival firms.

4. Description of RecordKeeping and Reporting

There are no additional recordkeeping requirements for the proposed rule.

5. Summary

FDA estimates that there will be no additional direct costs to small businesses because of this rule. If small business entities determine that the costs of notification outweighed the

benefits, the small business entities could rely on existing authorized food contact substances.

C. Unfunded Mandates and Congressional Review

Section 1531(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), defines a significant rule as a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year. FDA has determined that this rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995.

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, OMB has determined that this proposed rule is not a major rule for the purpose of congressional review.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Comments

Interested persons may, on or before September 26, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule, except that comments regarding the information collection provisions should be submitted on or before August 14, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch. (address above above) between 9 a.m. and 4 p.m., Monday through Friday.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA Form No. 3479 "Notification for a Food Contact Substance Formulation," Rev. 9/99.

2. FDA Form No. 3480 "Notification for a New Use of A Food Contact Substance," Rev. 5/00.

List of Subjects

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR 171

Administrative practice and procedure, Food additives.

21 CFR Part 174

Food additives, Food packaging.

21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs it is proposed that 21 CFR parts 20, 58, 170, 171, 174, and 179 be amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264n, 265, 300u–300u–5, 300aa–1.

2. Section 20.100 is amended by adding paragraph (c)(42) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(42) Premarket notifications for food contact substances, in § 170.102 of this chapter.

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

3. The authority citation for 21 CFR part 58 continues to read as follows:

Authority: 21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 360, 360b-360f, 360h-360j, 371, 379e, 381; 42 U.S.C. 216, 262, 263b-263n.

4. Section 58.3 is amended by adding paragraph (e)(23) to read as follows:

§ 58.3 Definitions.

* * * * *

(e) * * *

(23) A premarket notification for a food contact substance, described in part 170, subpart D, of this chapter.

* * * * *

PART 170—FOOD ADDITIVES

5. The authority citation for 21 CFR part 170 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

6. Section 170.3 is amended by revising paragraph (e)(2), and adding paragraph (e)(3) to read as follows:

§ 170.3 Definitions.

* * * * *

(e)(1) * * *

(2) *Uses of food additives not requiring a listing regulation.* Use of a substance in a food contact article (e.g., food-packaging or food-processing equipment) whereby the substance migrates, or may reasonably be expected to migrate, into food at such levels that the use has been exempted from regulation as a food additive under § 170.39, and food contact substances used in accordance with a notification submitted under section 409(h) of the act that is effective.

(3) *A food contact substance* is any substance that is intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.

* * * * *

7. Subpart D, consisting of §§ 170.100 through 170.106 is added to part 170 to read as follows:

Subpart D—Premarket Notifications

Sec.

170.100 Submission of a premarket notification for a food contact substance (PMN) to the Food and Drug Administration (FDA).

170.101 Information in a premarket notification for a food contact substance (PMN).

170.102 Confidentiality of information in a premarket notification for a food contact substance (PMN).
170.103 Withdrawal without prejudice of a premarket notification for a food contact substance (PMN).
170.104 Action on a premarket notification for a food contact substance (PMN).
170.105 The Food and Drug Administration (FDA's) determination that a premarket notification for a food contact substance (PMN) is no longer effective.
170.106 Notification for a food contact substance formulation (NFCSF).

Subpart D—Premarket Notifications

§ 170.100 Submission of a premarket notification for a food contact substance (PMN) to the Food and Drug Administration (FDA).

(a) A PMN is effective for the food contact substance manufactured or prepared by the manufacturer or supplier identified in the PMN submission. If another manufacturer or supplier wishes to market the same food contact substance for the same use, that manufacturer or supplier must also submit a PMN to FDA.

(1) A PMN must contain all of the information described in § 170.101.

(2) A PMN may incorporate by reference any information in FDA's files provided that the notifier is authorized to reference the information. The PMN should include information establishing that the notifier is authorized to reference information in FDA's files.

(3) Any material submitted in or referenced by a PMN that is in a foreign language must be accompanied by an English translation verified to be complete and accurate.

(b) FDA may choose not to accept a PMN for either of the following:

(1) A use of a food contact substance that is the subject of a regulation in parts 173 through 189 of this chapter; or

(2) A use of a food contact substance that is the subject of an exemption under the threshold of regulation process described in § 170.39.

(c) A petition must be submitted under § 171.1 of this chapter to authorize the safe use of a food contact substance in either of the following circumstances, unless FDA agrees to accept a PMN for the proposed use.

(1) The use of the food contact substance increases the cumulative dietary concentration to a certain level. For a substance that is a biocide (e.g., it is intended to exert microbial toxicity), this level is equal to or greater than 200 parts per billion in the daily diet (0.6 milligram (mg)/person/day). For a substance that is not a biocide, this level is equal to or greater than 1 part per million in the daily diet (3 mg/person/day); or

(2) There exists a bioassay on the food contact substances, FDA has not reviewed the bioassay, and the bioassay is not clearly negative for carcinogenic effects.

(d) A notifier must keep a current address on file with FDA.

(1) The current address may be either the notifier's address or the address of the notifier's agent.

(2) FDA will deliver correspondence to the notifier's current address.

§ 170.101 Information in a premarket notification for a food contact substance (PMN).

A PMN must contain the following:

(a) A comprehensive discussion of the basis for the notifier's determination that the use of the food contact substance is safe. This discussion must:

(1) Discuss all information and data submitted in the notification; and

(2) Address any information and data that may appear to be inconsistent with the notifier's determination that the proposed use of the food contact substance is safe.

(b) All data and other information that form the basis of the notifier's determination that the food contact substance is safe under the intended conditions of use. Data must include primary biological data and chemical data.

(c) A good laboratory practice statement for each nonclinical laboratory study that is submitted as part of the PMN, in the form of either:

(1) A signed statement that the study was conducted in compliance with the good laboratory practice regulations under part 58 of this chapter; or

(2) A brief signed statement listing the reason(s) that the study was not conducted in compliance with part 58 of this chapter.

(3) Data from any study conducted after 1978 but not conducted in compliance with part 58 of this chapter must be validated by an independent third party prior to submission to the Food and Drug Administration (FDA), and the report and signed certification of the validating party must be submitted as part of the notification.

(d) Information to address FDA's responsibility under the National Environmental Policy Act, in the form of either:

(1) A claim of categorical exclusion under § 25.30 or § 25.32 of this chapter; or

(2) An environmental assessment complying with § 25.40 of this chapter.

(e) A completed and signed FDA Form No. 3480.

§ 170.102 Confidentiality of information in a premarket notification for a food contact substance (PMN).

(a) During the 120-day period of the Food and Drug Administration (FDA) review of a PMN, FDA will not publicly disclose any information in that PMN.

(b) FDA will not publicly disclose the information in a PMN that is withdrawn prior to the completion of FDA's review.

(c) Once FDA completes its review of a PMN, the agency will make its conclusion about the PMN publicly available. For example, if FDA objects to a notification 90 days after the date of receipt, the agency would make available its objection at that time.

(d) By submitting a PMN to FDA, the notifier waives any claim to confidentiality of the information required to adequately describe the food contact substance and the intended conditions of use that are the subject of that PMN.

(e) The following data and information in a PMN are available for public disclosure, unless extraordinary circumstances are shown, on the 121st day after receipt of the notification by FDA, unless the PMN is withdrawn under § 170.103.

(1) All safety and functionality data and information submitted with or incorporated by reference into the notification. Safety and functionality data include all studies and tests of a food contact substance on animals and humans and all studies and tests on a food substance for establishing identity, stability, purity, potency, performance, and usefulness.

(2) A protocol for a test or study, unless it is exempt from disclosure under § 20.61 of this chapter.

(3) A list of all ingredients contained in a food contact substance, excluding information that is exempt from disclosure under § 20.61 of this chapter. Where applicable, an ingredient list will be identified as incomplete.

(4) An assay method or other analytical method, unless it serves no regulatory or compliance purpose and is exempt from disclosure under § 20.61 of this chapter.

(5) All correspondence and written summaries of oral discussions relating to the notification, except information that is exempt for disclosure under § 20.61.

(6) All other information not subject to an exemption from disclosure under subpart D of part 20 of this chapter.

§ 170.103 Withdrawal without prejudice of a premarket notification for a food contact substance (PMN).

A notifier may withdraw a PMN without prejudice to a future

submission to the Food and Drug Administration (FDA) if FDA has not completed review of the PMN. For the purpose of this section, FDA's review is completed when, FDA has allowed 120 days to pass without objecting to the PMN or FDA has issued an objection letter.

§ 170.104 Action on a premarket notification for a food contact substance (PMN).

(a) If the Food and Drug Administration (FDA) does not object to a PMN within the 120-day period for FDA review, the PMN becomes effective.

(b) In order for the 120-day review period to begin FDA must accept that notification.

(1) If any element required under § 170.101 is missing from a PMN, then FDA will not accept that PMN and FDA will send a PMN nonacceptance letter to the notifier. If the notifier submits the missing information before FDA sends a PMN nonacceptance letter, the date of receipt of the PMN will become the date of receipt of the missing information.

(2) If FDA accepts a PMN, then FDA will acknowledge in writing its receipt of that PMN.

(c) Objection to a PMN:

(1) If FDA objects to a PMN, then FDA will send a PMN objection letter. The date of the letter will be the date of FDA's objection for purposes of section 409(h)(2)(A) of the act.

(2) If FDA objects to a PMN within the 120-day period for FDA review, the PMN will not become effective.

(3) FDA may object to a PMN if any part of FDA's 120-day review occurs during a period when this program is not funded as required in section 409(h)(5) of the act.

(d) If FDA and a notifier agree that the notifier may submit a FAP proposing the approval of the food contact substance for the use in the notifier's PMN, FDA will consider that PMN to be withdrawn by the notifier on the date the petition is received by FDA.

§ 170.105 The Food and Drug Administration's (FDA's) determination that a premarket notification for a food contact substance (PMN) is no longer effective.

(a) If data or other information available to FDA, including data not submitted by the notifier, demonstrate that the intended use of the food contact substance is no longer safe, FDA may determine that the authorizing PMN is no longer effective.

(b) If FDA determines that a PMN is no longer effective, FDA will inform the notifier in writing of the basis for that determination. FDA will give the notifier an opportunity to show why the PMN should continue to be effective and will specify the time that the notifier will have to respond.

(c) If the notifier fails to respond adequately to the safety concerns regarding the notified use, FDA will publish a notice of its determination that the PMN is no longer effective. FDA will publish this notice in the **Federal Register**, stating that a detailed summary of the basis for FDA's determination that the PMN is no longer effective has been placed on public display and that copies are available upon request. The date that the notice publishes in the **Federal Register**, is the date on which the notification is no longer effective.

(d) FDA's determination that a PMN is no longer effective is final agency action subject to judicial review.

§ 170.106 Notification for a food contact substance formulation (NFCSF).

(a) In order for the Food and Drug Administration (FDA) to accept an NFCSF, any food additive that is a component of the formulation must be authorized for its intended use in that NFCSF.

(b) FDA may publish a notice in the **Federal Register** stating that the agency has insufficient resources to review NFCSF's. From the date that this notice publishes in the **Federal Register**, FDA will no longer accept NFCSF's.

(c) An NFCSF must contain the following:

(1) A completed and signed FDA Form No. 3479; and

(2) Any additional documentation required to establish that each component of the formulation already may be legally marketed for its intended use.

PART 171—FOOD ADDITIVE PETITIONS

8. The authority citation for 21 CFR part 171 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

9. Section 171.1 is amended by revising paragraph (i)(1) to read as follows:

§ 171.1 Petitions.

* * * * *

(i)(1)(i) Within 15 days after receipt, the Food and Drug Administration will notify the petitioner of the acceptance or nonacceptance of a petition, and if not accepted, the reasons therefor. If accepted, the petitioner will be sent a letter stating this and the date of the letter shall become the date of filing for the purposes of section 409(b)(5) of the act. In cases in which the Food and Drug Administration agrees that a premarket notification submitted under section 409(h) of the act may be converted to a petition, the withdrawal date for the premarket notification will be deemed the date of receipt for the FAP.

(ii) If the petitioner desires, he may supplement a deficient petition after being notified regarding deficiencies. If the supplementary material or explanation of the petition is deemed acceptable, the petitioner shall be notified. The date of such notification becomes the date of filing. If the petitioner does not wish to supplement or explain the petition and requests in writing that it be filed as submitted, the petition shall be filed and the petitioner so notified.

(iii) Notwithstanding paragraph (i)(1)(ii) of this section, the petition shall not be filed if the Food and Drug Administration determines that the use identified in the petition should be the subject of a premarket notification under section 409(h) of the act rather than a FAP.

* * * * *

10. Section 171.7 is amended by adding paragraph (c) to read as follows:

§ 171.7 Withdrawal of petition without prejudice.

* * * * *

(c) Any petitioner who has a FAP pending before the agency and who subsequently submits a premarket notification for a use or uses described in such petition, shall be deemed to have withdrawn the petition for such use or uses without prejudice to a future filing on the date the premarket notification is received by FDA.

PART 174—INDIRECT FOOD ADDITIVES: GENERAL

11. The authority citation for 21 CFR part 174 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

12. Section 174.5 is amended by adding paragraph (d)(5) to read as follows:

§ 174.5 General provisions applicable to indirect food additives.

* * * * *

(d) * * *

(5) Food contact substances used in accordance with an effective premarket notification submitted under section 409(h) of the act.

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF FOOD

13. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

14. Section 179.25 is amended by revising paragraph (c) to read as follows:

§ 179.25 General provisions for food irradiation.

* * * * *

(c) Packaging materials subjected to irradiation incidental to the radiation treatment and processing of prepackaged food shall be in compliance with § 179.45, shall be the subject of an exemption for such use under § 170.39 of this chapter, or shall be the subject of an effective premarket notification for such use submitted under § 170.100 of this chapter.

* * * * *

Dated: January 24, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–17653 Filed 7–12–00; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6730–9]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" in this preamble) proposes to grant final authorization to the hazardous waste program revisions submitted by the State of Texas for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act (RCRA) Cluster VI, which contains Federal rules promulgated between July 1, 1995 to June 30, 1996. In the "Rules and Regulations" section of this **Federal Register** (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 14, 2000.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Texas during normal business hours at the following locations: EPA Region Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin TX 78711–3087, (512) 239–6757.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: June 14, 2000.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 00–17489 Filed 7–12–00; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 65, No. 135
Thursday, July 13, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Reinstatement and Revision of a Previously Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request a reinstatement and revision of a previously approved information collection used in support of the FSA, Farm Loan Programs (FLP). This renewal does not involve any revisions to the program regulations.

DATES: Comments on this notice must be received on or before September 11, 2000 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Patrick Spalding, Loan Officer, USDA, FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW, STOP 0522, Washington, D.C. 20250–0522; Telephone (202) 690–0595; Electronic mail: patrick.spalding@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Direct Farm Ownership Loan Policies, Procedures, and Authorizations.

OMB Control Number: 0560–0157.

Type of Request: Reinstatement and Revision of a Previously Approved Information Collection.

Abstract: The information collected under OMB Control Number is 0560–0157 is necessary to administer the farm ownership loan program in accordance with the requirements in 7 CFR part 1943 subpart A as authorized by the Consolidated Farm and Rural Development Act. Specifically, the Agency uses the information to evaluate loan making or loan servicing proposals. The information is needed by the Agency to evaluate an applicant's eligibility, and to determine if the operation is economically feasible and the security offered in support of the loan is adequate.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 210.

Estimated Total Annual Burden: 50.85.

Comments are sought on these requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Mike Hinton, USDA, FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW, STOP 0522, Washington, D.C. 20250–0522. Copies of the information collection may be obtained from Mike Hinton at the above address. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, D.C., on July 6, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–17680 Filed 7–12–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 1 of the 2001 Panel

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 11, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3379, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of 1 to 4 years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on taxes, the ownership and contributions made to an Individual Retirement Account, Keogh, and 401K plans, examining patterns in respondent work schedules, and child

care arrangements. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 panel, of which, 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 persons, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Two waves of interviewing will occur in the 2001 SIPP Panel during FY 2001. The total annual burden for 2001 Panel SIPP interviews would be 78,750 hours in FY 2001.

The topical modules for the 2001 Panel Wave 1 collect information about: Recipiency History Employment History Wave 1 interviews will be conducted from February 2001 through May 2001.

A 10-minute reinterview of 2,500 persons is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 835 burden hours in FY 2001.

An additional 1,050 burden hours is requested in order to continue the SIPP Methods Panel testing which will be conducted during the period of Wave 1 interviewing. The test targets SIPP Wave 1 items and sections that require thorough and rigorous testing in order to improve the quality of core data.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: Not Available.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 78,750 persons per wave.

Estimated Time Per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 80,635.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17721 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 4 of the 2000 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 11, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3379, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey. designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of 1 to 4 years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on taxes, the ownership and contributions made to an Individual Retirement Account, Keogh and 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics

and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2000 Panel is currently scheduled for just over one year and will include 3 waves of interviewing. We are considering extending the panel to include 9 waves. A request for OMB clearance of the core questions and Wave 4 topical modules will be submitted if the panel is extended. Approximately 11,500 households are in the 2000 Panel. We estimate that each household will contain 2.1 persons, yielding 24,150 interviews in each wave. Interviews take 30 minutes on average. If the 2000 Panel is extended, three waves of interviewing would occur in the 2000 Panel during FY 2001. The total annual burden for 2000 Panel SIPP interviews would be 36,255 hours in FY 2001.

The topical modules for the 2000 Panel Wave 4 would collect information about:

- Annual Income and Retirement Accounts
- Child Care
- Work Schedule
- Taxes
- Children's Well-Being

Wave 4 interviews would be conducted from February 2001 through May 2001.

A 10-minute reinterview of 750 persons is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 375 burden hours in FY 2001.

An additional 1,050 burden hours is requested in order to continue the SIPP Methods Panel testing which will be conducted during the period of Wave 4 interviewing. The test targets SIPP Wave 1 items and sections that require thorough and rigorous testing in order to improve the quality of core data.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2000 panel, respondents are interviewed at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0865.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 24,150 persons per wave.

Estimated Time Per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 37,650.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17722 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau Department of Commerce.

Title: Annual Survey of Local Government Finances (School Systems).

Form Number(s): F–33, F–33–1, F–33–L1, F–33–L2, F–33–L3.

Agency Approval Number: 0607–0700.

Type of Request: Revision of a currently approved collection.

Burden: 3,737 hours.

Number of Respondents: 3,500.

Avg Hours Per Response: 1.1 hours average over all forms.

Needs and Uses: The Census Bureau collects education finance data as part of its Annual Survey of State and Local Governments. This survey is the only comprehensive source of public fiscal data collected on a nationwide scale using uniform definitions, concepts and procedures. The collection covers the revenues, expenditures, debt, and assets of all public school systems. This data collection has been coordinated with the National Center for Education Statistics (NCES). The NCES uses this collection to satisfy its need for school system level finance data.

Information on the finances of our public schools is vital to assessing their effectiveness. This data collection makes it possible to access a single database to obtain information on such things as per pupil expenditures and the percent of state, local, and federal funding for each school system. Recently, as exemplified by the establishment of the America 2000 education goals, there has been increased interest in improving the Nation's public schools. One result of this intensified interest has been a significant increase in the demand for school finance data.

In this request, six new "special processing" items have been added to the F–33 data collection form for state

payments made on behalf of the school systems. These items will make it possible for expenditure data to be more accurately reported at the functional level. Additionally, we are adding two new data collection forms. Form F–33–L2 is a supplemental letter that we will send to the school systems whose state education agencies cannot provide indebtedness information. Form F–33–L3 is a supplemental letter that we will send to the school systems whose state education agencies cannot provide assets and indebtedness information. This letter combines the items requested on the forms F–33–L1 and F–33–L2.

Affected Public: State, local, or Tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 161 and 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 7, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17718 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

Summary: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the Committees will not be compensated for their services.

The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics—semiconductor section), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Categories 3 (electronics—instrumentation section) and 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine technology), and 9 (propulsion systems, space vehicles, and related equipment).

To respond to this recruitment notice, please send a copy of your resume. Please use the fax number or e-mail address below.

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

For More Information Contact: Ms. Lee Ann Carpenter on (202) 482–2583. Resumes may be faxed to her at (202) 501–8024 or e-mailed to her at lcarpent@bxa.doc.gov

Dated: July 6, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–17748 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34–2000]

Proposed Foreign-Trade Zone—Pensacola/Escambia County, Florida Area Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Pensacola-Escambia County Promotion and Development Commission, a Florida public corporation, to establish a general-purpose foreign-trade zone at sites in the Pensacola and Escambia County, Florida area, within/adjacent to the Pensacola Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 6, 2000. The applicant is authorized to make the proposal under Section 288.36, Florida Statutes 1999.

The proposed new zone would consist of five sites covering 1,660 acres in the Escambia County and Pensacola metropolitan area: *Site 1* (40 acres)—Port of Pensacola (owned by the City of Pensacola), 700 S. Barracks Street, Pensacola; *Site 2* (1,400 acres)—Pensacola Regional Airport complex (owned by the City of Pensacola), 2430 Airport Boulevard, Pensacola; *Site 3* (70 acres)—Pensacola Shipyard Marine Complex (owned by FDC Holdings, Inc.), 700 South Myrick Street, Pensacola; *Site 4* (10 acres)—FDC Industrial Warehouse site (owned by FDC Holdings, Inc.), 10 Spruce Street, Pensacola; and, *Site 5* (140 acres)—Century Industrial Park (owned by the Town of Century), Escambia County Road ×4 and Industrial Boulevard, Century. Site 4 is in a brownfield redevelopment area that is being funded by EPA and the State of Florida. Site 5 is located in an enterprise zone.

The application indicates a need for additional foreign-trade zone services in the Pensacola and Escambia County, Florida area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as forest products, paper products, cabinets, marine electrical systems and components, and custom modified gas chromatography equipment for the petroleum, chemical and petrochemical industries. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff

has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on August 9, 2000, 1:00 p.m., at the Pensacola City Hall, Whibbs Room, First Floor, Pensacola, Florida 32501.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 11, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 26, 2000).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Pensacola Area Chamber of Commerce, 117 West Garden Street, Pensacola, FL 32501

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: July 7, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–17764 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–2000]

Foreign-Trade Zone 74—Baltimore, Maryland Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Baltimore Development Corporation, on behalf of the City of Baltimore, Maryland, grantee of FTZ 74, requesting authority to expand and reorganize its zone in the Baltimore, Maryland area, within the Baltimore Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 7, 2000.

FTZ 74 was approved on January 21, 1982 (Board Order 183, 47 FR 5737, 2/8/82) and expanded on January 31, 1989 (Board Order 427, 54 FR 5992, 2/7/89). The zone project currently consists of approximately 150 acres at the following sites: *Site 1A*—6201–6301 Pulaski Highway, Baltimore; *Site 2*—open space 1 mile from the Holabird Park; *Site 3*—within the Point Breeze Business Center, 2500 Broening Highway, adjacent to the Dundalk Marine Terminal; *Site 3A* (Canton Warehouse ×1)—at the northwest corner of the Seagirt Marine Terminal at the intersection of Keith Avenue and Vail Street; *Site 3B*—warehouse at 1657–B South Highland Avenue, Baltimore, within the Highland Marine Terminal; *Site 3C*—2101 E. Fort Avenue, Locust Point; and, *Site 4*—Shed ×4 within the Port of Baltimore's Dundalk Marine Terminal and Piers 4/5 at the North Locust Point Marine Terminal.

The applicant, in a major revision to its zone plan, now requests authority to expand and reorganize its general-purpose zone to add 9 new sites; restore FTZ status to areas at existing Sites 1 and 3 that had been previously deleted, returning existing Sites 1 and 3 to their original boundaries as approved by the Board in 1982 and 1989 respectively; eliminate existing Site 2; and, redesignate existing Site 3 as Site 2. Sites authorized by certain previous temporary boundary modifications are included in the new sites, and the proposed expansion would supercede such modifications. The expansion and reconfiguration of the zone will result in a zone project consisting of eleven sites (1,300 acres) located in Baltimore City, at or adjacent to the Port of Baltimore. Sites 1 and 2 and Proposed Sites 3 to 8 are part of the Port of Baltimore complex and Sites 9–11 are business parks.

The revised zone plan for FTZ 74, as proposed, would be expanded and reorganized as follows: *Site 1:* (20 acres)—Holabird Industrial Park, Baltimore; *Site 2:* (127 acres)—within the Point Breeze Business Center, 2500 Broening Highway, adjacent to the Dundalk Marine Terminal, Baltimore; *Proposed Site 3:* (213 acres) Seagirt Marine Terminal, Baltimore; *Proposed Site 4:* (272 acres)—Dundalk Marine Terminal, Baltimore; *Proposed Site 5:* (97 acres)—Chesapeake Terminal and American Port Services Center, Baltimore; *Proposed Site 6:* (274 acres)—Atlantic and Fairfield Terminals, Baltimore; *Proposed Site 7:* (196 acres)—North & South Locust Point Terminals, Baltimore; *Proposed Site 8:* (157 acres)—Rukert and Clinton Street Marine Terminals, Baltimore; *Proposed Site 9:* (15 acres)—Belt's Business Center, 600 Folcroft Street, Baltimore; *Proposed Site 10:* (81 acres)—Pulaski Business Park, 6200 Pulaski Highway, Baltimore; and, *Proposed Site 11:* (12 acres)—Obrecht Business Center, 6200 Frankford Ave., Baltimore. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 11, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 26, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 401 E. Pratt Street, Suite 2432, Baltimore, MD 21202

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: July 7, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–17765 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–2000]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico: Application for Subzone, Caribbean Petroleum Corporation/ Caribbean Petroleum Refining, Inc. (Oil Refinery Complex), Bayamon, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting special-purpose subzone status for the oil refinery complex of Caribbean Petroleum Corporation/ Caribbean Petroleum Refining, Inc. (CPC/CPR), located in Bayamon, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 6, 2000.

The refinery complex (48,000 BPD capacity, 77 storage tanks with over 2

million barrels of capacity) is located on State Road 28, Km. 2, Bayamon, Puerto Rico. The refinery (173.81 acres, 155 employees) is used to produce fuels and petrochemical products, including gasoline, jet fuel, distillates, residual fuels, naphthas, motor fuel blendstocks, liquid petroleum gases, butane, kerosene, and propane. Refinery by-products include petroleum coke, asphalt and sulfur. All of the crude oil (85 percent of inputs), and some naphthas, and gas oils are sourced from abroad.

Zone procedures would exempt the refinery from Customs duty payments of the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil in non-privileged foreign status. The duty rates on inputs range from 5.25 cents/barrel to 10.5 cents/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 11, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 26, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, La Torre de Plaxa, San Juan, PR 00918

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: July 6, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–17763 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Notice of Final Results and Partial Recission of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On March 8, 2000, the Department of Commerce ("the Department") published the preliminary results of the administrative reviews of the antidumping duty orders on heavy forged hand tools ("HFHTs") from the People's Republic of China (65 FR 12202). The reviews cover five manufacturer/exporters, Fujian Machinery & Equipment Import & Export Corporation ("FMEC"), Liaoning Machinery Import & Export Corporation ("LMC"), Shandong Machinery Import & Export Corporation ("SMC"), Shandong Huarong General Group Corporation ("Shandong Huarong"), and Tianjin Machinery Import & Export Corporation ("TMC"). The period of review ("POR") is February 1, 1998 through January 31, 1999.

The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "*Final Results of the Reviews.*" The final margins differ from those published in the preliminary results due to changes that we made since the preliminary results. For details regarding these changes, see the section of the notice entitled "*Changes Since the Preliminary Results of the Reviews.*"

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or James Terpstra, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3601 or (202) 482–3965 respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1998).

Background

Since the publication of the preliminary results, the following events have occurred. The Department issued supplemental questionnaires to TMC, LMC, and Shandong Huarong on March 9, 2000, and received responses to those questionnaires on March 17, 2000, and March 20, 2000. On March 28, 2000, and April 3, 2000, the respondents submitted publicly available information and comments regarding factor valuation. In response to the Department's invitation to comment on the preliminary results of these reviews, the respondents filed case briefs on April 10, 2000, and the petitioner filed a rebuttal brief on April 14, 2000. The respondents requested a public hearing on March 28, 2000 and a public hearing was held on April 19, 2000.

The Department has conducted these administrative reviews in accordance with section 751 of the Act.

Partial Recission

At the preliminary results of these reviews, we preliminarily rescinded the reviews of Shandong Huarong with respect to hammers/sledges and picks/mattocks, and for LMC with respect to hammers/sledges, picks/mattocks, and axes/adzes classes because they had no shipments of products in these classes or kinds of merchandise. We have received no comment on this from interested parties, nor has any additional information been put on the record in these reviews. Therefore, we are making these rescissions final.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length,

heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by the trading companies SMC and TMC, as well as the information provided by their suppliers (the manufacturers of the subject merchandise). We used standard verification procedures including on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the memoranda dated February 28, 2000, the public versions of which are on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU-Public File). *See SMC's Sales Verification Report* (February 28, 2000), *TMC's Sales Verification Report* (February 28, 2000), *SMC's Cost Verification Report* (February 28, 2000), and *TMC's Cost Verification Report* (February 28, 2000).

Use of Facts Available

At the preliminary results of these reviews, we applied adverse facts available to Shandong Huarong with respect to axes/adzes; and to the PRC-wide entity (including FMEC) with respect to hammers/sledges, picks/mattocks, bars/wedges, and axes/adzes because they failed to provide certain information that was requested by the Department. We have received no comment on this issue from interested parties, nor has any additional information been put on the record in these reviews. Therefore, for the reasons stated in the preliminary results, we are using adverse facts available for Shandong Huarong with respect to the axes/adzes class or kind of merchandise and for the PRC-wide entity for all classes or kinds of subject merchandise for these final results. See the "Facts Available" section of the Department's "Issues and Decision Memorandum" ("*Decision Memorandum*") from Holly A. Kuga, Acting Deputy Assistant Secretary, Important Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 6, 2000.

For a discussion of our use of facts available in regards to SMC, see Comments 1, 2 and 3 of the Decision Memorandum.

Corroboration

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) (H.R. Doc. 103–316 (2nd Sess. 1994)) states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Grain-Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Accordingly, for each class or kind of HFHTs for which we have resorted to adverse facts available, we have used the highest margin from this or any prior segment of the proceeding as the margin for these final results because there is no evidence on the record indicating that such margins are not appropriate as adverse facts available.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties will find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the CRU-Public File. In addition a complete version of the Decision Memorandum can be accessed directly on the Web at www.ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results of the Reviews

The Department, at verification, found certain errors in TMC's reported consumption of paint, electricity, packing materials, and coal. *See TMC's Cost Verification Report* (February 28, 2000) at 2. In addition, the Department made clerical errors in calculating the surrogate values for steel scrap, pallets, inland and ocean freight. The Department corrected for the errors in these final results of these administrative reviews. *See TMC's Final Calculation Memorandum* (July 06, 2000); *see also LMC's Final Calculation Memorandum* (July 06, 2000); *see also Shandong Huarong's Final Calculation Memorandum* (July 06, 2000). No other changes were made to our margin calculation programs.

Final Results of the Reviews

We determine that the following percentage weighted-average margins exist for the period February 1, 1999, through January 31, 1999:

Manufacturer/exporter	Margin (percent)
Shandong Huarong General Group Corporation:	
Axes/Adzes	41.12
Bars/Wedges	23.99
Liaoning Machinery Import & Export Corporation:	
Bars/Wedges	17.91
Tianjin Machinery Import & Export Corporation:	
Axes/Adzes	41.12
Bars/Wedges	91.45
Hammers/Sledges	32.51
Picks/Mattocks	2.34
Shandong Machinery Import & Export Corporation:	
Axes/Adzes	41.12
Bars/Wedges	91.45
Hammers/Sledges	32.51
Picks/Mattocks	98.77
PRC-wide rates:	
Axes/Adzes	41.12

Manufacturer/exporter	Margin (percent)
Bars/Wedges	91.45
Hammers/Sledges	32.51
Picks/Mattocks	98.77

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an importer-specific duty assessment rate. With respect to both export price and constructed export price sales, we divided total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above; (2) for companies previously found to be entitled to a company-specific rate and for which no review was requested, the cash deposit rates will continue to be the company-specific rates published for the most recent period reviewed; (3) for all other PRC exporters of subject merchandise, the cash deposit rates will be the PRC country-wide rate indicated above; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and this notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: July 6, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum Comments and Responses

1. Whether Shandong Machinery Import & Export Company ("SMC") Failed Verification for Hammers/Sledges
2. Whether the Application of Adverse Facts Available is Warranted for SMC's Sales of Hammers/Sledges
3. Whether the Application of Adverse Facts Available is Warranted for SMC's Axes/Adzes, Picks/Mattocks, and Bars/Wedges
4. Factory A's Unreported Factors of Production: Resin and Tape
5. Calculation of Hammer Weight Loss for SMC
6. Surrogate Value for Steel Bar
7. Surrogate Value for Steel Billet
8. Surrogate Value for Steel Scrap
9. Surrogate Value for Pallets
10. Truck Freight
11. The "Sigma" Rule/Inland Freight
12. Ocean Freight Rate
13. Tianjin Machinery Import & Export Corporation ("TMC") Verification and Adjustment Issues
14. Preliminary Adjustments Noted in the Calculation Memorandums

[FR Doc. 00–17760 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms from Chile: Final Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to a timely request from the petitioners [1], on January 26, 2000, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to Nature's Farm Products (Chile) S.A. and Ravine Foods Inc., covering the period August 5, 1998, through November 30, 1999. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 65 FR 42280 (January 26, 2000). The Department of Commerce is now rescinding this review as a result of the absence of imports and entries into the United States of the subject merchandise during the period of review.

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Katherine Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (1999).

Background

On January 21, 2000, the Department ("the Department") issued the antidumping questionnaire to Nature's Farm Products (Chile) S.A. ("NFP") via its U.S. parent, Nature Farm Products, Inc., and Ravine Foods Inc. ("Ravine"), a Canadian company. On January 26, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to NFP and Ravine (65 FR 4228). On February 28, 2000,

[1] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

Ravine advised the Department that the company did not export the subject merchandise to the United States during the period of review ("POR").

To confirm the accuracy of Ravine's claim, the Department performed a customs query on entries of the subject merchandise exported from Chile and Canada. In so doing, the Department examined U.S. Customs import statistics, and found no imports of the subject merchandise by Ravine, NFP, or any other company from Chile to the United States during the POR. We also found no imports of the subject merchandise from Canada. *See* March 14, 2000, Memorandum, "U.S. Customs Data on Imports of the Subject Merchandise," from David J. Goldberger to Irene Darzenta Tzafolias.

On May 26, 2000, the Department published a notice of preliminary rescission of antidumping duty administrative review on certain preserved mushrooms from Chile with respect to NFP and Ravine (65 FR 34147). In light of its no shipments finding, the Department preliminarily determined that there was no basis for applying facts available in this instance with regard to NFP, which did not respond to our questionnaire. No party commented on the Department's preliminary findings.

Scope of the Review

The products covered by this review are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this review are the species Agaricus bisporus and Agaricus bitorquis. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this review are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms'; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this review is classifiable under subheadings 2003.1000.27, 2003.1000.31, 2003.1000.37, 2003.1000.43, 2003.1000.47.2003.1000.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Final Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. In this case, the available evidence indicates that there were no entries of certain preserved mushrooms produced or exported from Chile during the POR. We also note, however, that our normal practice under section 776(b) of the Act is to use adverse facts available when a respondent (here, NFP) has not responded to our questionnaire and thus has failed to cooperate to the best of its ability. Given that the same dumping rate would apply to NFP regardless of whether we applied adverse facts available or simply rescinded this review, in the unusual circumstances of this case we have decided simply to rescind this review as to both Ravine and NFP in accordance with 19 CFR 351.213(d)(3).

The cash-deposit rate for NFP and "All Other" producers/exporters of the subject merchandise will remain at 148.51 percent, the rate established in the most recent segment of this proceeding for these producers/exporters (63 FR 56613, October 22, 1998), which is also the highest rate on the record of any segment of the proceeding.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–17761 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–804]

Sparklers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final Results of Antidumping Duty Administrative Review.

SUMMARY: On April 6, 2000, the Department of Commerce (the "Department") published the preliminary results of its administrative review of the antidumping duty order on Sparklers from the People's Republic of China. *See Sparklers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 18059 (April 6, 2000) ("*Preliminary Results*"). The review covers three manufacturers/exporters of this merchandise to the United States, Guangxi Native Produce Import & Export Corporation, Beihai Fireworks and Firecrackers Branch ("Guangxi"); Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation, Liling City Fireworks Bomb Fty. ("Hunan"); and Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company ("Jiangxi") (collectively "the respondents"). The period of review is June 1, 1998, through May 31, 1999. We gave interested parties an opportunity to comment on the *Preliminary Results* of review but received no comments. Therefore, these final results do not differ from the *Preliminary Results* of review, in which we found that the use of facts available is appropriate.

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Nithya Nagarajan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0651 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations

to the Department's regulations are to 19 CFR part 351 (1999).

Background

On April 6, 2000, the Department published in the **Federal Register** (65 FR 18059) the *Preliminary Results* of the administrative review of the antidumping duty order on Sparklers from the People's Republic of China for the 98–99 review period. We invited parties to comment on our *Preliminary Results* of review. On April 21, 2000, petitioner submitted comments that were returned by the Department because they contained untimely new factual information. In a letter dated May 2, 2000, the Department requested that petitioner resubmit a revised version of the comments that reflected only information already on the record by May 8, 2000. Petitioner did not resubmit its comments.

In the *Preliminary Results*, we determined that it was appropriate to use, as adverse facts available for the PRC-wide rate, the highest rate from this or any previous segment of the proceeding. We selected the PRC-wide rate of 93.54 percent from *Sparklers from the People's Republic of China: Adverse Decision and Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance with Decision on Remand*, 58 FR 40624 (July 29, 1993). We have now completed the administrative review in accordance with section 751 of the Act and have continued to use the rate of 93.54 percent as adverse facts available.

Scope of the Review

The products covered by this administrative review are sparklers from the People's Republic of China. Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classifiable under subheading 3604.10.00 of Harmonized Tariff Schedules ("HTS"). The HTS subheading is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of this proceeding.

Analysis of Comments Received

Other than the petitioner's comments that were rejected for containing untimely new factual information, we did not receive any interested party comments on our Preliminary Results. Therefore, there is no Issues and Decision Memorandum for the final results of review.

Use of Facts Otherwise Available

As determined in the *Preliminary Results*, the Department continues to use adverse facts available for the final results of review. Because we have received no responses and have not been contacted by the respondents, we determine that the use of facts available is appropriate. *See Preliminary Results.*

Final Results of Review

Because we received no comments from interested parties on our Preliminary Results, we have determined that no changes to our analysis are warranted for purposes of these final results. As a result of our review, we determine that the following margin exists for the period June 1, 1998, through May 31, 1999:

Exporter/manufacturer	Weighted-average margin percentage
PRC-wide	93.54

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For previously reviewed or investigated companies that have a separate rate and for which no review was requested, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) for all other PRC exporters, the cash deposit rate will be the rate indicated above; and (3) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of the exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 28, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17762 Filed 7–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Notice 2]

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at the above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit proposals, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated would be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the codes or standard.

At a later date, each NFPA Technical Committee will issue a report, which will include a copy of written proposals that have been received, and an account of their disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Dated: July 6, 2000.

Karen H. Brown,

Deputy Director.

NFPA No	Title	Proposal closing date
NFPA 11–1998	Standard for Low-Expansion Foam	11/3/2000
NFPA 13–1999	Standard for the Installation of Sprinkler Systems	1/5/2001
NFPA 13D–1999	Standard for the Installation of Sprinkler Systems in One-and Two-Family Dwellings and Manufactured Home.	11/3/2000
NFPA 13R–1999	Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.	11/3/2000
NFPA 17–1998	Standard for Dry Chemical Extinguishing Systems	1/5/2001
NFPA 17A–1998	Standard for Wet Chemical Extinguishing Systems	1/5/2001
NFPA 20–1999	Standard for the Installation of Stationary Pumps for Fire Protection	12/28/2001
NFPA 51B–1999	Standard for Fire Prevention During Welding, Cutting, and Other Hot Work	12/28/2001
NFPA 52–1998	Compressed Natural Gas (CNG) Vehicular Fuel Systems Code	1/5/2001
NFPA 55–1998	Standard for the Storage, Use, and Handling of Compressed and Liquefied Gases in Portable Cylinders.	7/6/2001
NFPA 57–1999	Liquefied Natural Gas (LNG) Vehicular Fuel Systems Code	1/5/2001
NFPA 61–1999	Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Products Facilities.	1/5/2001
NFPA 69–1997	Standard on Explosion Prevention Systems	1/5/2001
NFPA 72–1999	National Fire Alarm Code®	1/5/2001
NFPA 79–1997	Electrical Standard for Industrial Machinery	11/10/2000
NFPA 86–1999	Standard for Ovens and Furnaces	12/28/2001
NFPA 86C–1999	Standard for Industrial Furnaces Using a Special Processing Atmosphere	12/28/2001
NFPA 86D–1999	Standard for Industrial Furnaces Using Vacuum as an Atmosphere	12/28/2001
NFPA 97–2000	Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances.	7/6/2001
NFPA 101–2000	Code for Safety to Life from Fire in Building and Structures	3/30/2001
NFPA 101B–1999	Code for Means of Egress for Buildings and Structures	9/15/2000
NFPA 130–2000	Standard for Fixed Guideway Transit and Passenger Rail Systems	7/6/2001
NFPA 140–1999	Standard on Motion Picture and Television Production Studio Soundstages and Approved Production Facilities.	7/6/2001
NFPA 211–2000	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	7/6/2001
NFPA 225–P*	Standard for Manufactured Home Sites, Communities, and Setups	1/5/2001
NFPA 252–1999	Standard Methods of Fire Tests of Door Assemblies	12/28/2001
NFPA 260–1998	Standard Methods of Tests and Classification System for Cigarette Ignition Resistance of Components of Upholstered Furniture.	12/28/2001
NFPA 261–1998	Standard Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes.	12/28/2001
NFPA 262–1999	Standard Method of Test for Flame Travel and Smoke of Wires and Cables for Use in Air-Handling Spaces.	7/6/2001
NFPA 265–1998	Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile Wall Coverings.	1/5/2001
NFPA 272–1999	Standard Method of Test for Heat and Visible Smoke Release Rates for Upholstered Furniture Components or Composites and Mattresses Using an Oxygen Consumption Calorimeter.	7/6/2001
NFPA 285–1998	Standard Method of Test for the Evaluation of Flammability Characteristics of Exterior Non-Load-Bearing Wall Assemblies Containing Combustible Components Using the Intermediate-Scale, Multistory Test Apparatus.	12/28/2001
NFPA 415–1997	Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways.	1/5/2001
NFPA 480–1998	Standard for the Storage, Handling and Processing of Magnesium Solids and Powders.	1/5/2001
NFPA 485–1999	Standard for the Storage, Handling, Processing, and Use of Lithium Metal	1/5/2001
NFPA 505–1999	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operation.	1/5/2001

NFPA No	Title	Proposal closing date
NFPA 651–1998	Standard for the Machining and Finishing of Aluminum and the Production and Handling of Aluminum Powders.	1/5/2001
NFPA 705–1997	Recommended Practice for a Field Flame Test for Textiles and Films	1/5/2001
NFPA 750–2000	Standard on Water Mist Fire Protection Systems	7/6/2001
NFPA 1122–1997	Code for Model Rocketry	1/5/2001
NFPA 1221–1999	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems.	1/5/2001
NFPA 1402–1997	Guide to Building Fire Service Training Centers	7/30/2000
NFPA 1403–1997	Standard on Live Fire Training Evolutions	7/30/2000
NFPA 1451–1997	Standard for a Fire Service Vehicle Operations Training Program	7/30/2000
NFPA 1561–2000	Standard on Emergency Services Incident Management System	7/30/2000
NFPA 1582–2000	Standard on Medical Requirements for Fire Fighters and Information of Fire Department Physicians.	7/30/2000
NFPA 1911–1997	Standard for Service Tests of Fire Pump Systems on Fire Apparatus	1/5/2001
NFPA 1914–1997	Standard for Testing Fire Department Aerial Devices	1/5/2001
NFPA 1961–1997	Standard for Fire Hose	7/31/2000
NFPA 1999–1997	Standard on Protective Clothing for Emergency Medical Operations	12/29/2000
NFPA 5000–P*	NFPA Building Code	11/9/2000

[FR Doc. 00–17792 Filed 7–12–00; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Notice 1].

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its November Meeting or its May Meeting, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2001 May Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The National Electrical Code® is published in a separate Report on Proposals and is available about July 14, 2000. Comments received on or before October 27, 2000 will be considered by the National Electrical Code Panels before NFPA takes final action on the proposals.

Twenty-seven reports are published in the 2001 May Meeting Report on Proposals and will be available on July 28, 2000. Comments received on or before October 6, 2000 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2001 May Meeting Report on Proposals and the NEC® Report on Proposals are available and downloadable from NFPA's Website—www/nfpa.org or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, MA 02322. Comments on the reports should be submitted to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, MA 02269–9101, (617) 770–3000.

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's November Meeting or at the May Meeting each year. The NFPA invites public comment on its Report on Proposals.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 6, 2000 for the 2001 May Meeting Report on Proposals or October 27, 2000 for the NEC® Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2001 May Meeting Report on Comments by March 30, 2001, or April 16, 2001 for the NEC® Report on Comments, prior to the May Meeting.

A copy of the Report on Comments will be sent automatically to each commenter. Action on the reports of the Technical Committees (adoption or rejection) will be taken at the May Meeting, May 13–17, 2001 in Anaheim, California, by NFPA members.

Dated: July 6, 2000.

Karen H. Brown,

Deputy Director.

2001 MAY MEETING REPORT ON PROPOSALS

Doc No.	Title	Action
NFPA 15	Standard for Water Spray Fixed Systems for Fire Protection	P
NFPA 40	Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film	P
NFPA 70	National Electrical Code	P
NFPA 80A	Recommended Practice for Protection of Buildings from Exterior Fire Exposures	P
NFPA 96	Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations	P
NFPA 231D	Standard for Storage of Rubber Tires	W
NFPA 268	Standard Test Method for Determining Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source.	R
NFPA 271	Standard Method of Test for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter.	P
NFPA 288	Standard Method of Fire Tests of Floor Door Assemblies	N
NFPA 301	Code for Safety to Life from Fire on Merchant Vessels	P
NFPA 306	Standard for the Control of Gas Hazards on Vessels	P
NFPA 407	Standard for Aircraft Fuel Servicing	P
NFPA 409	Standard on Aircraft Hangars	P
NFPA 414	Standard for Aircraft Rescue and Fire Fighting Vehicles	P
NFPA 495	Explosive Materials Code	P
NFPA 498	Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives	R
NFPA 502	Standard for Road Tunnels, Bridges, and Other Limited Access Highways	P
NFPA 513	Standard for Motor Freight Terminals	W
NFPA 655	Standard for Prevention of Sulfur Fires and Explosions	P
NFPA 704	Standard System for the Identification of the Hazards of Materials for Emergency Response.	C
NFPA 1081	Standard for Industrial Fire Brigade Member Professional Qualifications	N
NFPA 1124	Code for the Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles.	C
NFPA 1125	Code for the Manufacture of Model Rocket and High Power Rocket Motors	C
NFPA 1142	Standard on Water Supplies for Suburban and Rural Fire Fighting	C
NFPA 1710	Standard for the Organization and Deployment of Fire Suppression, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments.	N
NFPA 1720	Standard on Volunteer Fire Service Deployment	N
NFPA 2112	Standard on Flash Fire Protective Garments for Industrial Personnel	N
NFPA 2113	Standard on Selection, Care, Use, and Maintenance of Flash Fire Protective Garments	N

P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision

[FR Doc. 00–17791 Filed 7–12–00; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

Technology Administration

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This request is being submitted under the regular 30-day processing procedures of the Paperwork Reduction Act.

Agency: Technology Administration.

Title: National Medal of Technology Nomination Applications.

Agency Form Number(s): None.

OMB Approval Number: 0692–0001.

Type of Request: Reinstatement.

Burden: 2550 hours.

Number of Respondents: 102.

Average Hours Per Respondents: 25 hours.

Needs and Uses: This information collection is critical for the Nomination Evaluation Committee to determine nomination eligibility and merit according to specified criteria for the annual selection of the Nation's leading technological innovators honored by the President of the United States. This information is needed in order to comply with P.L. 105–309. Comparable information is not available on a standardized basis.

Affected Public: Individuals, households, business and other for-profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 1401 Constitution Avenue, NW, Washington, DC 20230 (or via Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent no later than 30 days after publication of this notice, to Director, National Medal of Technology, Room 4226, Washington, DC 20230.

Dated: July 7, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17717 Filed 7–12–00; 8:45 am]
BILLING CODE 3510–18–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207

TIME AND DATE: Wednesday, July 19, 2000 2:00 p.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

Matter to be Considered:

FY 2002 Budget Request

The staff will brief the Commission and the Commission will consider issues related to the Commission's budget for fiscal year 2002.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: July 11, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–17928 Filed 7–11–00; 3:59 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, July 20, 2000, 2:00 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter to be Considered

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 11, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–17929 Filed 7–11–00; 3:59 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Future of DoD Airborne High-Frequency Radar Needs/Resources

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Future of DoD Airborne High-Frequency Radar Needs/Resources will meet in closed session on July 12–13, 2000; July 19–20, 2000; July 26–27, 2000; and August 2–3, 2000. All meetings are scheduled to be held at SAIC, 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will focus on the use of airborne X-band radars to serve the broad mission areas of air defense and ground surveillance. It will review the overall architectural approaches for DoD programs in advanced air defense with an emphasis on theater cruise missile defense, as well as all elements of the kill chain with a focus on the needs for airborne X-band ESA systems. The Task Force will also review the architectural approaches for DoD programs in advanced ground surveillance with an emphasis on airborne X-band ESA sensors.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public. However, due to critical mission requirements for a report by August, the Task Force is unable to provide timely notice of the above mentioned meetings.

Dated: July 6, 2000.

C.M. Robinson

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17662 Filed 7–12–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice of a New System of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 14, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: Mrs. Pauline E. Korpanty at (703) 607–3743.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service records system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on June 20, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: July 6, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T5500b

SYSTEM NAME:

Garnishment Processing Files.

SYSTEM LOCATION:

Office of the Assistant General Counsel, Garnishment Operations, Defense Finance and Accounting Service-Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present active duty and retired military personnel; present DoD Civilian employees; present Reserve and National Guard personnel and employees of the Executive Office of the President whose pay is garnished or attached under 5 U.S.C. 5220a; 10 U.S.C. 1408; 42 U.S.C. 659; and 42 U.S.C. 665.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual state court wage withholding notices or court order garnishment orders, interrogatories, correspondence between DFAS Office of General Counsel and parties to the case, DFAS pay units, United States Attorneys, United States District Courts and other State and Government agencies relevant to the processing of child support and commercial debt garnishment, applications under the Uniformed Services Former Spouses' Protection Act and applications for military involuntary allotments for commercial debt. Also bankruptcy trustees who received payments

pursuant to Chapter 13 of the Bankruptcy Code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5520a, Garnishment of pay; 10 U.S.C. 1408, Payment of retired or retainer pay in compliance with court orders; 42 U.S.C. 659, Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations; 42 U.S.C. 665, Allotments from pay for child and spousal support owed by members of uniformed services on active duty; and E.O. 9397 (SSN).

PURPOSE(S):

Records are being maintained for the purpose of processing court orders for the garnishment of wages.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To former spouses, who receive payments under 10 U.S.C. 1408, for purposes of providing information on how their payment was calculated to include what items were deducted from the member's gross pay and the dollar amount for each deduction.

To state child support agencies, in response to their written requests for information regarding the gross and disposable pay of military and civilian employees, for purposes of assisting the agencies in the discharge of their responsibilities under Federal and state law.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing, and authorized to use, the record system in performance of their official duties who are properly screened and cleared for need-to-know. Additionally, records are in an office building protected by guards and controlled by screening of personnel and registration of visitors.

RETENTION AND DISPOSAL:

Disposition pending (until NARA has approved the retention and disposal schedule, treat records as permanent).

SYSTEM MANAGER AND ADDRESS:

General Counsel, Defense Finance and Accounting Service Headquarters, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

Assistant General Counsel, Garnishment Operations, Defense Finance and Accounting Service-Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2005.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service-Cleveland Center, 1240 E. Ninth Street, Cleveland, OH 44199–2055.

Individuals should provide sufficient proof of identity, such as full name, Social Security Number, and other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Privacy Act Officer, Defense Finance and Accounting Service-Cleveland Center, 1240 E. Ninth Street, Cleveland, OH 44199–2055.

Individuals should provide sufficient proof of identity, such as full name, Social Security Number, and other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Information is obtained from courts, Government records, individuals and similar documents and sources relevant to the proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–17657 Filed 7–12–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint staff, the U.S. Mission to the North Atlantic Treaty Organization, the Defense Advance Research Projects Agency, the Defense Commissary Agency, the Defense Security Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Field Activities and the U.S. Court of Appeals of the Armed Forces. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, Executive and Political Personnel Division, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 693–8347.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executive are appointed to the office of the Secretary of Defense PRB: specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 2000.

Office of the Secretary of Defense

Chairman

Robert R. Soule

John Ablard
Joseph Angello
Bill Bader
Bruce Baird
Howard Becker
Alan Beckett
Marc J. Berkowitz
Robert Brittigan
Lisa Bronson
Thomas Brunk
Jennifer Buck
Richard Burke
Mark Cancian
Carolyn A. Carmack

Victor F. Ciardello
Michael Cifrino
Sharon Cooper
Judith Ayres Daly
Bruce Dauer
James Dominy
Jeanne B. Fites
Albert Gallant
John F. Gehrig
Claiborne D. Haughton
Charles J. Holland
Sally Horn
Frank Jones
Paul Koffsky
Frank Lalumiere
Glenn F. Lamartin
John R. Landon
J. William Leonard
Maureen Lieschke
George Lotz
Susan Ludlow-MacMurray
J. David Martin
Mary Lou McHugh
Henry McIntrye
Kirk Moberly
Robert Newberry
John Osterholz
James C. Reardon
William Reed
Manfred J. Reinhard
Donna S. Richbourg
Richard Ritter
Cheryl Roby
Deborah Rosenblum
Vincent Roske
John Roth
Gregory L. Schulte
Harry E. Schulte
Robert J. Shue
Nancy L. Spruill
Kent G. Stansberry
Diana Tabler
Robert D. Tate
Robert W. Taylor
Al Volkman
Anne Johnson Winegar
Christopher C. Wright
Karen Yannello

Dated: July 6, 2000.

C. M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17658 Filed 7–13–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of the Army is proposing to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 14, 2000 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act System Notice Manager, Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 20, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 6, 2000.

C.M. Robinsion,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0690–990–2 ASA(M&RA)

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Records on current Federal employees are maintained by the local Civilian Personnel Advisory Centers at each installation. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the voluntary leave transfer program as either a donor or a recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, and the status of that hardship.

The file may also contain medical or physician certifications and agency approvals or denials.

Donor records include the individual's name, organization, office telephone number, Social Security Number, position title, grade, and pay level, leave balances, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6331 et seq., Leave; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 690–990–2, Hours of Duty, Pay and Leave Annotated; 5 CFR part 630; and E.O. 9397 (SSN).

PURPOSE(S)

The file is used in managing the Army's Voluntary Leave Transfer Program. The recipient's name, position data, organization, and a brief hardship description are published internally for passive solicitation purposes. The Social Security Number is sought to effectuate the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a)b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness

Where leave donor and leave recipient are employed by different Federal agencies, to the personnel and pay offices of the Federal agency involved to effectuate the leave transfer.

The 'Blanket Routine Uses' set forth at the beginning of Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING O RECORDS IN THE SYSTEM:

STORAGE:

Paper in file folders and electronic media storage.

RETRIEVABILITY:

By surname or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Director of Civilian Personnel, Assistant Secretary of the Army, Manpower and Reserve Affairs Policy and Program Development, 200 Stovall Street, Alexandria, VA 22332–0300.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Secretary of the Army, Manpower and Reserve Affairs Policy and Program Development, 200 Stovall Street, Alexandria, VA 22332–0300.

For verification purposes, the individual should provide full name, current address, and Social Security Number and the request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Secretary of the Army, Manpower and Reserve Affairs Policy and Program Development, 200 Stovall Street, Alexandria, VA 22332–0300.

For verification purposes, the individual should provide full name, current address, and Social Security Number and the request must be signed.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–17655 Filed 7–12–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to Alter Systems of Records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The notice is being altered to expand the categories of records being maintained, and a routine use is being added to allow disclosure of information to the Department of Justice for the purpose of asset identification, location, and recovery; and for immigration and naturalization record verification purposes.

DATES: This action will be effective without further notice on August 14, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 20, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 6, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.50 CA

SYSTEM NAME:

Access and Badging Records *(October 15, 1997, 62 FR 53602).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Add new location to read 'Visitor security clearance data is also maintained by the Chief, Internal Review Group, DLA–DDAI, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to the entry 'handicap data'.

* * * * *

PURPOSE(S):

Add to entry 'Data is also used to manage reserved, handicap, and general parking. Clearance data is also used by the DLA Internal Review Group to control access to sensitive records.'

* * * * *

S500.50 CA

SYSTEM NAME:

Access and Badging Records.

SYSTEM LOCATION:

Staff Director, Office of Command Security, HQ Defense Logistics Agency, ATTN: CAAS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Visitor security clearance data is also maintained by the Chief, Internal Review Group, DLA–DDAI, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian and military personnel, contractor employees, and individuals requiring access to DLA-controlled installations, facilities, or computer systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains documents relating to requests for and issuance of facility entry badges and passes, motor vehicle registration, and access to DLA computer systems or databases. The records contain the individual's name; address; Social Security Number; date of birth; a DLA-assigned bar code number; dates and times of building entry; current photograph; physical descriptors such as height, hair color, and eye color; handicap data; computer logon addresses, passwords, and user identification codes; security clearance data; personal vehicle description to

include year, make, model, and vehicle identification number; state tag data; operator s permit data; inspection and insurance data; vehicle decal number; parking lot assignment; and parking infractions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Chapter 3, Powers; 5 U.S.C. 6122, Flexible schedules, agencies authorized to use; 5 U.S.C. 6125, Flexible schedules, time recording devices; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 18 U.S.C. 1029, Access device fraud; 18 U.S.C. 1030, Computer fraud; 23 U.S.C. 401 et seq., National Highway Safety Act of 1966; E.O. 9397 (SSN); and E.O. 10450 (Security Requirements for Government Employees).

PURPOSE(S):

Information is maintained to by DLA security personnel to control access onto DLA-managed installations and activities; access into DLA-controlled buildings and facilities, and access to DLA computer systems or databases.

Data is also used to manage reserved, handicap, and general parking. Clearance data is also used by the DLA Internal Review Group to control access to sensitive records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Retrieved by name, Social Security Number, bar code number, or decal number.

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized DLA personnel.

RETENTION AND DISPOSAL:

Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation;

Individual badging and pass records are destroyed upon cancellation or expiration or 5 years after final action to bar from facility.

Database access records are maintained for the life of the employee and destroyed 1 year after employee departs.

Visitor and temporary passes, permits, and registrations are destroyed 2 years after final entry or 2 years after date of document, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Command Security, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA s compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, HQ DLA, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA s compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, HQ DLA, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA s compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is supplied by security personnel and by individuals applying for access to DLA controlled installations, facilities, or databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–17656 Filed 7–12–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration to S322.10 DMDC, Defense Manpower Data Center Data Base consists of expanding the routine use to the Social Security Administration to permit disclosure of current earnings data on individuals who have left military service or DoD civil employment for purposes of allowing for comparisons to be made of individuals in like occupational series grades, or geographic regions. This information will also be used to support analytical studies of personnel stability, promotability, and long-term earnings.

DATES: This action will be effective without further notice on August 14, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 26, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining

Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 6, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(March 29, 2000, 65 FR 16571).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

After 'civilian occupational information' add 'performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Amend paragraph 5.a. to read 'To the Office of Research and Statistics for the purpose of (1) conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and (2) obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

NOTE 3: Earnings data obtained from the SSA and used by DoD does not contain any information which identifies the individual about whom the earnings data pertains.'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972.

All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series,

position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub.L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub.L. 83–598, 84–356, 86–724, 94–455

and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

NOTE 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

NOTE 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of (1) conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and (2) obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

NOTE 3: Earnings data obtained from the SSA and used by DoD does not contain any information which identifies the individual about whom the earnings data pertains.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SBV). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal

government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub.L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub.L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub.L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101–510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of

obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

NOTE 4: Data obtained from such organizations and used by DoD does not contain any information which identifies the individual about whom the data pertains.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

NOTE 5: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DLA's 'Blanket Routine Uses' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–17660 Filed 7–12–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Delete a Records System.

SUMMARY: The Department of the Navy proposes to delete a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on August 14, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 6, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N07230–1

SYSTEM NAME:

Navy Standard Civilian Payroll System (NAVSCIPS) *(February 22, 1993, 58 FR 10805).*

Reason: These records are now under the cognizance of the Defense Finance and Accounting Service. See system of records notice T7335, Defense Civilian Pay System (DCPS).

[FR Doc. 00–17659 Filed 7–12–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of the Navy proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on August 14, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval

Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on June 26, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: July 6, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N12630–1

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Navy Human Resources Offices. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave transfer program as either a donor or recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Separate files exist for leave recipients and leave donors records.

Leave recipients records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balance, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, the status of that hardship, and a statement that selected data elements may be used in soliciting donations. The file may also contain medical or physician certifications and agency approvals or denials.

Leave donors records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, and pay level, leave balance, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 6331 et seq. (Leave); E.O. 9397 (SSN); and 5 CFR part 630.

PURPOSE(S):

To manage the Department of the Navy's Voluntary Leave Transfer Program. The recipient's name, position data, organization, and brief hardship description are published internally for passive solicitation purposes. The Social Security Number is sought to effectuate the transfer of leave by human resources and pay offices from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness, when leave donor and leave recipient are employed by different Federal agencies.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name/Social Security Number of leave recipient for access to their files. Name/Social Security Number of leave donor for access to their files.

SAFEGUARDS:

Access to records is limited to the custodian of the records or by persons responsible for servicing the records in the performance of their official duties. Records are stored in locked cabinets or rooms and are controlled by personnel screening. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy official: Office of the Deputy Assistant Secretary of the Navy (CP/EEO), 3801 Nebraska Avenue, NW, Washington, DC 20393–5441.

Record holder: Director of local Human Resources Offices. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquires to their servicing Human Resources Office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of record.

The request should contain the name, approximate date during which the case record was developed, the address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system of records should address written inquiries to their servicing Human Resources Office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

The request should contain the name, approximate date during which the case record was developed, the address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employee, supervisors, and individuals who contribute leave.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–17661 Filed 7–12–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.215E]

Elementary School Counseling Demonstration Program

AGENCY: Department of Education.

ACTION: Notice reopening the application deadline date for the Elementary School Counseling Demonstration Program.

SUMMARY: On April 18, 2000, the Department published a notice inviting applications for new awards for the Elementary and Secondary Education Act, Title X—Programs of National Significance, Part A–Fund for the Improvement of Education-Section 10102, Elementary Counseling Demonstration Program. The Secretary reopens the deadline date for the submission of applications for this competition from June 9, 2000 for applicants that can show a shipping label, invoice, or receipt for overnight delivery contracted to arrive by June 9, 2000. This action is taken due to unexpected or unavoidable delays in receipt of applications sent via certain overnight delivery services.

DATES: The applicant deadline date is reopened to July 13, 2000 for applicants able to show a shipping label, invoice, or receipt for overnight delivery contracted to arrive by June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Loretta Riggans, Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6123. Telephone: (202) 260–3954.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 8002.

Dated: July 7, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–17687 Filed 7–12–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[FE Docket No. PP–226]

Notice of Floodplain and Wetlands Involvement Brownsville Public Utilities Board

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Floodplain/Wetland Involvement.

SUMMARY: Brownsville Public Utilities Board (BPUB) has applied for a Presidential permit to construct, connect, operate and maintain a double-circuit electric transmission line across the U.S. border with Mexico. In accordance with Department of Energy (DOE) regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR Part 1022), a floodplain or wetlands assessment will be performed for this proposed action in a manner so as to avoid or minimize potential harm to or within potentially affected floodplain and wetlands.

DATES: Comments are due to the address below no later than July 28, 2000.

ADDRESSES: Written comments, questions about the proposed action, and requests to review the draft environmental assessment should be directed to: Ellen Russell, Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350. Fax: (202) 287–5736. E-mail: Ellen.Russell@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624.

SUPPLEMENTARY INFORMATION: Under Executive Order 11988, Floodplain Management, and 10 CFR Part 1022, Compliance with Floodplain-Wetlands Environmental Review Requirements (http://tis-nt.eh.doe.gov/nepa/tools/regulate/nepa_reg/1022/1022.htm), notice is given that DOE is considering an application from BPUB for a Presidential permit to construct, connect, operate, and maintain electric transmission facilities across the U.S. border with Mexico. BPUB proposes to construct a double-circuit 138,000 volt (138–kV) transmission line, on wood poles, from its existing Silas Ray Power Plant in Brownsville, Texas, and extending 3,000 feet to the U.S.–Mexico border. Notice of BPUB's application for a Presidential permit appeared in the **Federal Register** on June 30, 2000 (65 FR 40618).

Before making a final decision on granting or denying a Presidential permit to BPUB, DOE will prepare an environmental assessment (EA) to address the environmental impacts that would accrue from the proposed project and reasonable alternatives. The EA will be prepared in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The EA will include a floodplain and wetlands assessment. DOE expects to have a draft of the EA available for public review in August, 2000. Copies may be requested by telephone, facsimile, or e-mail from the address given above. A floodplain statement of findings will be included in any Finding of No Significant Impact that may be issued following completion of the EA.

If you wish further information on DOE's floodplain and wetlands environmental review requirements, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756.

Issued in Washington, DC, on July 7, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Fossil Energy.

[FR Doc. 00–17772 Filed 7–12–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–372–000]

ANR Pipeline Company; Notice of Proposed Direct Bill

July 7, 2000.

Take notice that on June 30, 2000, ANR Pipeline Company (ANR) tendered for filing, pursuant to Section 4(e) of the Natural Gas Act (NGA), 15 U.S.C. § 717c(e), a plan for recovery of interest charges paid by ANR to Great Lakes Gas Transmission L.P. (Great Lakes)

pursuant to the Federal Energy Regulatory Commission's letter order dated July 30, 1998. *See Great Lakes Gas Transmission Limited Partnership*, 84 FERC (CCH) ¶ 61,124 (1998). ANR proposes to direct bill its customers approximately $1.8 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 14, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17708 Filed 7–12–00; 8:45 am]

BILLING CODE 3717–01–M.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–379–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, proposed to become effective July 1, 2000:

Original Sheet No. 14N

ANR is filing the tariff sheet to reflect the implementation of a negotiated rate agreement with PG&E Energy Trading-Gas Corporation (PG&E) for service under Rate Schedule IPLS. The service will be effective July 1, 2000 and terminate on June 30, 2001.

ANR states that a copy of this filing is being mailed to the affected shipper and to each of ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 customers, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17715 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–374–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of December 1, 2000:

Third Revised Sheet No. 275
Second Revised Sheet No. 277
Eighth Revised Sheet No. 281
Eighth Revised Sheet No. 282
Fifth Revised Sheet No. 283

Columbia states it is filing tariff sheets to revise its existing capacity auction provisions and that such revised provisions meet the principles set forth in the Commission's Order Nos. 637 and 637–A. Columbia is revising General Terms and Conditions (GTC), Section 4, which contain the procedures of Columbia's current "Auctions of Available Firm Service" involving the awarding of existing firm capacity and the exercise of the ROFR on Columbia, to reflect these changes. Columbia is also revising Section 3, to be consistent with the field provision of GTC Section 4(e) and the current provision of GTC Section 14.5(b).

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17710 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–023]

Dominion Transmission, Inc; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Dominion Transmission, Inc. (Dominion), formerly CNG Transmission Corporation, filed revised pro forma tariff sheets listed below to be part of its FERC Gas Tariff, Second Revised Volume No. 1, in order to implement fully unbundled gathering and extraction rates, and to reflect the effects of that unbundling on transportation service rates.

The work papers supporting the methodology by which the Company arrived at the proposed fully unbundled gathering and products extraction rates were included in the filing. The fully unbundled rates and the tariff sheets implementing those rates are to become effective January 1, 2001.

Pro Forma Sheet No. 31
Pro Forma Sheet No. 32
Pro Forma Sheet No. 34
Pro Forma Sheet No. 37
Pro Forma Sheet No. 107

Pro Forma Sheet No. 107A
Pro Forma Sheet No. 120
Pro Forma Sheet No. 120A
Pro Forma Sheet No. 135
Pro Forma Sheet No. 136
Pro Forma Sheet No. 136A
Pro Forma Sheet No. 319
Pro Forma Sheet No. 351
Pro Forma Sheet No. 353A
Pro Forma Sheet No. 354
Pro Forma Sheet No. 364A

Dominion states that the purpose of this filing is to place on file fully unbundled gathering and extraction rates in accordance with Article IV of Dominion's August 31, 1998 rate case Stipulation and Agreement in Docket No. RP97–406–000 as approved by the Commission. 85 FERC ¶ 61,261 (1998).

Dominion states that copies of its filing have been served on Dominion's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17737 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–21–006]

Dominion Transmission, Inc; Notice of Compliance Filing

July 7, 2000.

Take notice that on June 30, 2000, Dominion Transmission, Inc. (DTI), formerly CNG Transmission Corporation tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets in compliance with the Commission's order issued June 29, 2000, in this proceeding and moved such tariff sheets into effect.

DTI states that the filing would implement two new rate schedules. Rate Schedules Delivery Point Operator (DPO) and City Gate Swing Customer (CSC). Rate Schedule DPO is designed primarily to allow operators of citygate interconnections with DTI to offer no-notice service to retail markets behind the citygate and their service providers. Rate Schedule CSC, a companion service to Rate Schedules DPO, is designed to all customers behind the citygate to receive no-notice service from DTI under certain terms and conditions.

DTI states that the revised tariff tariff sheets and compliance filing satisfy the conditions of the Commission's June 29, 2000, order in this proceeding.

DTI's filing also includes a motion to make the DPO and CSC tariff sheets effective on July 1, 2000.

DTI states that copies of its filing have been served upon all parties on the official service lists DTI's customers customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at htt.//www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17741 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–052]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, El Paso Natural Gas Company (El Paso) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective July 1, 2000:

Thirty-First Revised Sheet No. 30
Eighth Revised Sheet No. 31A

El Paso states that the above tariff sheets are being filed to implement two negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17736 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–031]

Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

July 7, 2000.

Take notice that on June 30, 2000, Koch Gateway Pipeline Company (Koch) filed with the Federal Energy Regulatory Commission (Commission) a contract for disclosure of a recently negotiated rate transaction. As shown on the contract, Koch requests an effective date of July 1, 2000.

Special Negotiated Rate Between Koch and Entergy Mississippi, Inc.

Koch states that copies of the filing have been served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17733 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–373–000]

MIGC, Inc; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet NO. 6, with a proposed effective date of August 1, 2000.

MIGC states that the purpose of the filing is to revise and update the fuel retention and loss percentage factors (FL&U factors) set forth in its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the requirements of Section 25 of said tariff.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17709 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–371–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 2000:

Second Revised Sheet Number 119
First Revised Sheet Number 120
Second Revised Sheet Number 121
Second Revised Sheet Number 134
Second Revised Sheet Number 275
Second Revised Sheet Number 276
Original Sheet Number 276A
Third Revised Sheet Number 278
Original Sheet Number 278A
Second Revised Sheet Number 281
Third Revised Sheet Number 283
Second Revised Sheet Number 284
Third Revised Sheet Number 285

Northern Border proposes to revise Section 5, Right of First Refusal, under Rate Schedule T–1 and Section 27 of its General Terms and Conditions, regarding the temporary removal of the rate cap in short-term capacity releases and corresponding bidding requirements in accordance with the Commission's Order Nos. 637 and 637–A.

Northern Border states the herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17707 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00ndash;370–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas tariff, Fifth Revised Volume

No. 1, the following tariff sheets proposed to be effective June 30, 2000:

Second Revised Sheet No. 104
Third Revised Sheet No. 119
First Revised Sheet No. 120
Fourth Revised Sheet No. 142
Second Revised Sheet No. 297
Fourth Revised Sheet No. 299
Third Revised Sheet No. 229A

Northern states that the purpose of this filing is to comply with Order No. 637 issued on February 9, 2000 and Order No. 637A issued on May 19, 2000. Northern is filing revised tariff sheets to modify its rights of first Refusal (ROFR) provisions.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims/htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17706 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–015]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on July 1, 2000.

Seventh Revised Sheet No. 66
Second Revised Sheet No. 66C

Northern states that the above sheets are being filed to implement specific negotiated rate transactions in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17732 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Regulatory Commission

[Docket No. RP96–347–019]

Northern Natural Gas Company; Notice of Refund Report

July 7, 2000.

Take notice that on June 30, 2000, pursuant to the Carlton Settlement filed in Docket No. RP96–347 and its FERC Gas Tariff, Northern Natural Gas Company (Northern) has filed various schedules detailing the Carlton buyout and surcharge dollars reimbursed to the appropriate parties.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 1[illegible], 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17734 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–162–007]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheet to be effective May 22, 2000 and June 1, 2000, as noted on Appendix A attached to the filing.

Panhandle states that the purpose of this filing is to reflect on the Rate Schedule HFT tariff rate sheet the rate adjustments and fuel reimbursement percentages that were filed during the Rate Schedule HFT was suspended.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17742 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–9–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Ninth Revised Sheet No. 52 and Fourth Revised Sheet No. 85. PG&E GTN requests that these tariff sheets become effective August 1, 2000.

PG&E GTN asserts that the purpose of this filing is to update its Tariff to reflect additions and deletions to its list of Marketing Affiliates and to modify its Tariff to specify that PG&E GTN no longer shares any facilities or operating personnel with its Marketing Affiliates.

PG&E GTN further states that a copy of this filing has been served on PG&E GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17729 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–015]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, with an effective date of July 1, 2000:

Eleventh Revised Sheet No. 7
Second Revised Sheet No. 7.01
Second Revised Sheet No. 7C
Original Sheet No. 7E

PG&E GT–NW states that these sheets are being filed to reflect the implementation of three negotiated rate agreements.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17740 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–496–006]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000 Southern Natural Gas Company (Southern) tendered for filing to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, and First Revised Volume No. 2A, the revised tariff sheets listed on Appendix A to the filing.

Southern filed to place into effect as of August 1, 2000, tariff sheets in compliance with the Commission's Order on Uncontested Settlement and Granting Certificate Authorization issued in the above listed proceedings on May 31, 2000 (Order). Southern filed certain sheets as noted in the filing to be effective either March 1, 2000, June 1, 2000, or July 1, 2000, in accordance with the Stipulation and Agreement approved in the Order. These tariff sheets place into effect the provisions of the Stipulation and Agreement filed by Southern on March 10, 2000, in Docket Nos. RP99–496–000, et al., which provided for a full resolution of the issues that had been set for hearing in Southern's Section 4 general rate case and included Southern's acquisition of the facilities and assets of its subsidiary, South Georgia Natural Gas Company, and the conversion of Southern's ANR Storage Transportation Service from a Part 157 certificated service to a Part 284 seasonal service under Southern's FT Rate Schedule. As a matter of administrative convenience, Southern filed all of the affected tariff sheets in the instant filing.

Southern states that copies of the revised tariff sheets are being mailed to Southern's jurisdictional customers and interested state commissions and to parties on the official service list compiled by the Secretary in these proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17739 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–366–000]

Southwest Gas Storage Company; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets as listed on Appendix A attached to the filing, to be effective March 27, 2000 and August 1, 2000.

Southwest states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) as clarified in Docket Nos. RM98–10–001, et al. issued on May 19, 2000, 91 FERC ¶ 61,169 (Order No. 637–A). Specifically, the proposed changes revise the applicable sections of the General Terms and Conditions of Southwest's tariff to remove the price cap for short-term capacity releases until September 30, 2002 and to modify the applicability of the right of first refusal as directed by Order Nos. 637 and 637–A.

Southwest states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:///www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17745 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–365–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing, to become effective August 1, 2000.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers.

Texas Eastern states that these revised tariff sheets are being filed to reflect Texas Eastern's projected costs for the use of electric power for the twelve month period beginning August 1, 2000. Texas Eastern states that the rate changes proposed to the primary firm capacity reservation charges and, usage rates for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone (market)	Reservation (in dth)	Usage (in dth)
1	$0.008	–$0.0002
2	$0.023	–$0.0007
3	$0.034	–$0.0010

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17744 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–378–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 2000:

2 Rev Thirty-third Revised Sheet No. 10
2 Rev Sixteenth Revised Sheet No. 10A
2 Rev Sub Original Sheet No. 10A.01
2 Rev Sub Original Sheet No. 10A.02
1 Rev Twenty-ninth Revised Sheet No. 11
2 Rev Seventeenth Revised Sheet No. 11B

Texas Gas states that this filing reflects the termination of the Docket No. RP97–344 Miscellaneous Revenue Credit originally filed in compliance with Article III of Texas Gas's

Stipulation and Agreement in Docket No. RP97–344. The termination of the Docket No. RP97–344 Revenue Credit increases the daily demand rates for Rate Schedules NNS, SNS, and FT by $0.0010 and increases SGT rates by $0.0020.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17714 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–327–002]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of July 1, 2000:

1 Rev Thirty-third Revised Sheet No. 10
1 Rev Sixteenth Revised Sheet No. 10A
First Revised Sub Original Sheet No. 10A.01
First Revised Sub Original Sheet No. 10A.02
1 Rev Twenty-first Revised Sheet No. 11A
1 Rev Seventeenth Revised Sheet No. 11B
1 Rev Thirty-first Revised Sheet No. 12

Texas Gas states that the filing reflects the expiration of the Order No. 528 Commodity Surcharge (Docket No. RP99–327) originally filed on June 1, 1999, and approved by the Commission in its Order dated June 30, 1999. Due to the scheduled expiration of the commodity surcharge and the resulting decrease in applicable rates, Texas Gas requested an effective date for the filed tariff sheets of July 1, 2000.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and all parties appearing on the official service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17738 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–002]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of June 1, 2000:

Substitute Original Sheet No. 11D
Pro forma Sub Thirty-second Revised Sheet No. 12
Pro forma Original Sheet No. 12.01

Texas Gas states that this filing is being submitted in compliance with the Commission's May 31 Suspension Order in the referenced docket. In that Order, the Commission directed Texas Gas, within 30 days, to take certain actions as described below:

1. File a revised tariff sheet with a stated rate for one-day contracts, winter and summer, under the proposed STF Rate Schedule;

2. Fully explain the basis and justification for the premiums Texas Gas assigned to the differentiated rates under the proposed STF Rate Schedule;

3. Provide a basis and justification for having seasonal rates for short-term, firm service, but not for interruptible service (i.e., explain why interruptible rates should not follow the same seasonal pattern as firm short-term rates);

4. Explain why Texas Gas has offered term differentiated rates for short-term service and not for long-term service, as well;

5. Revise the proposed STF service to reflect distance sensitive rates; and

6. Explain the need for continued sales of storage gas by Texas Gas.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17743 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–008]

TransColorado Gas Transmission Company; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for

filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of July 1, 2000.

Eighth Revised Sheet No. 21
Eighth Revised Sheet No. 22

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revises TransColorado's Tariff to implement an amended negotiated-rate firm transportation service agreement between TransColorado and Barrett Resources Corporation and a new negotiated-rate firm transportation service agreement with Texaco Natural Gas Inc. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective July 1, 2000.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17735 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–380–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets as listed on Appendix A to the filing, with a proposed effective date of August 1, 2000.

Transco states that the instant filing is submitted pursuant to Section 39 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to adjust its Great Plains Volumetric Surcharge (GPS) 30 days prior to each GPS Annual Period beginning August 1. The GPS Surcharge is designed to recover (i) the cost of gas purchased from Great Plains Gasification Associates (or its successor) which exceeds the Spot Index (as defined in Section 39 of the General Terms) and (ii) the related cost of transporting such gas.

The revised GPS Surcharge included therein consists of two components—the Current GPS Surcharge calculated for the period August 1, 2000 through July 31, 2001 plus the Great Plains Deferred Account Surcharge (Deferred Surcharge). The determination of the Deferred Surcharge is based on the balance in the current GPS subaccount plus accumulated interest at April 30, 2000.

Transco states that include in Appendix B attached to the filing are workpapers supporting the calculation of the revised GPS Surcharge of $0.0097 per dt reflected on the tariff sheets included therein.

Transco states that copies of the instant filing are being mailed to customers, State Commission and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17716 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–369–000]

Trunkline Gas Company; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets as listed on Appendix A attached to the filing, to be effective March 27, 2000 and August 1, 2000.

Trunkline states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and Rm98–12–000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) as clarified in Docket Nos. RM98–10–001, *et al.* issued on May 19, 2000, 91 FERC ¶ 61,169 (Order No. 637–A). Specifically, the proposed changes revise the applicable sections of the General Terms and Conditions of Trunkline's tariff to remove the price cap for short-term capacity releases until September 30, 2002 and to modify the applicability of the right of first refusal as directed by Order Nos. 637 and 637–A.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17705 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–376–000]

Trunkline LNG Company; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, revised tariff sheets as listed on Appendix A attached to the filing, to be effective March 27, 2000 and August 1, 2000.

TLNG states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) as clarified in Docket Nos. RM98–10–001, *et al.* issued on May 19, 2000, 91 FERC ¶ 61,169 (Order No. 637–A). Specifically, the proposed changes revise the applicable sections of the General Terms and Conditions of TLNG's tariff to remove the price cap for short-term capacity releases until September 30, 2002 and to modify the applicability of the right of first refusal as directed by Order Nos. 637 and 637–A.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17712 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–377–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2000.

Take notice that on June 30, 2000, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following tariff sheet to be effective August 1, 2000:

Fourth Revised Sheet No. 5

TLNG states that this filing is made in accordance with Section 19 (Fuel Reimbursement Adjustment) and Section 20 (Electric Power Cost Adjustment) of the General Terms and Conditions (GT&C) of TLNG's FERC Gas Tariff, Original Volume No. 1–A. The revised tariff sheets reflect a 0.41% increase to the currently effective fuel reimbursement percentage and a ($0.0007) per Dt. decrease for the electric power cost adjustment under Rate Schedules FTS and ITS.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17713 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–368–000]

Tuscarora Gas Transmission Company; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective August 1, 2000:

Second Revised Sheet No. 70
First Revised Sheet No. 74
Second Revised Sheet No. 78
Second Revised Sheet No. 79

Tuscarora asserts that the purpose of this filing is to comply with Order No. 637, issued on February 9, 2000 in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Order No. 637 provides for a waiver of the rate ceiling for short-term capacity release transactions (with a term of less than one year) until September 30, 2002. Tucarora has revised Section 26 of the General Terms and Conditions of its tariff to remove the price cap for short-term capacity release transactions of less than one year.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17704 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–373–000]

Tuscarora Gas Transmission Company; Notice of Site Visit

July 7, 2000.

On July 17 through July 19, 2000, the staff of the Office of Energy Projects will conduct a precertification site visit with the staff of the U.S. Department of Interior, Bureau of Land Management, Carson City Field Office (BLM), and corporate officials of the Tuscarora Gas Transmission Company (Tuscarora). The purpose of the site visit is to tour the project area of Tuscarora's proposed Hungry Valley Lateral Project in Washoe County, Nevada.

The BLM is the lead agency in the preparation of the environmental assessment for this proposal. The Commission is a cooperating agency and will be assisting the BLM in the preparation of the document, pursuant to the National Environmental Policy Act.

All parties may attend the site visit. Those planning to attend must provide their own transportation. For further information on attending the site visit, please call Mr. Paul McKee of the Commission's External Affairs Office at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 00–17726 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–367–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

July 7, 2000.

Take notice that on June 30, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective August 1, 2000:

Second Revised Volume No. 1

Thirty-eighth Revised Sheet No. 15
Nineteenth Revised Sheet No. 15A
Fortieth Revised Sheet No. 16
Nineteenth Revised Sheet No. 16A
Thirty-seventh Revised Sheet No. 18
Nineteenth Revised Sheet No. 18A
Nineteenth Revised Sheet No. 19
Nineteenth Revised Sheet No. 20
Thirty-third Revised Sheet No. 21

Original Volume No. 2

Eighty-second Revised Sheet No. 11B

Williston Basin states the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant transportation, gathering, and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 14, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17703 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–10–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of June 30, 2000.

Twelfth Revised Sheet No. 187
Original No. 187A
Eighth Revised Sheet No. 188

Williston Basin states that the proposed revision to its Tariff is being made to reflect that to the extent that the term "Marketing Affiliate," within the context of FERC Order Nos. 566, *et seq.*, is deemed to include WBI Production, Inc. (WBI Production), as it pertains to and so long as WBI Production sells natural gas acquired from Frontier Gas Storage Company, then the executive officers of Transporter may be considered shared policy making personnel.

Williston Basin states that the proposed Tariff revisions also reflect the fact that Transporter and Montana-Dakota Utilities Co., a local distribution company division of MDU Resources Group, Inc. (MDU) and/or MDU share a record storage area at the Bismarck Service Center, 909 Airport Road, Bismarck, ND 58504.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17730 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–110–000, et al.]

Entergy Gulf States, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 6, 2000.

Take notice that the following filings have been made with the Commission:

1. Entergy Gulf States, Inc.

[Docket No. EC00–110–000]

Take notice that on June 27, 2000, Entergy Gulf States, Inc. (Entergy Gulf States) tendered for filing an application under Section 203 of the Federal Power Act to transfer certain jurisdictional facilities to the City of Gueydan, Louisiana, (Gueydan) which operates the electric distribution system within Gueydan's city limits.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power & Light Company

[Docket No. EC00–111–000]

Take notice that on June 30, 2000, Carolina Power & Light Company (CP&L), tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization to sell various jurisdictional facilities the City of Camden, South Carolina. The facilities include conductors, poles, substations, land, transformers, breakers, switches, steel structures, controls, and appurtenances normally included in transmission substations. CP&L states that these facilities are currently being used to serve the City of Camden and one industrial customer.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. CE Puna Limited Partnership

[Docket No. EG00–187–000]

Take notice that on June 29, 2000, CE Puna Limited Partnership (Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. CII Woodpower I, Inc.

[Docket No. EG00–188–000]

Take notice that on June 29, 2000, CII Woodpower I, Inc. (Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. CII Woodpower II, Inc.

[Docket No. EG00–189–000]

Take notice that on June 29, 2000, CII Woodpower II, Inc. (Applicant) with its principal place of business at 111 Market Street, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. CD Soda I, Inc.

[Docket No. EG00–190–000]

Take notice that on June 29, 2000, CD Soda I, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. CD Soda II, Inc.

[Docket No. EG00–191–000]

Take notice that on June 29, 2000, CD Soda II, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. CD Rocklin I, Inc.

[Docket No. EG00–192–000]

Take notice that on June 29, 2000, CD Rocklin I, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. CD Rocklin II, Inc.

[Docket No. EG00–193–000]

Take notice that on June 29, 2000, CD Rocklin II, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. CD Rocklin III, Inc.

[Docket No. EG00–194–000]

Take notice that on June 29, 2000, CD Rocklin III, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

11. Ameren Services Company

[Docket No. ER00–1008–001]

Take notice that on June 30, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing an Amended Service Agreement for Long-Term Firm Point-to-Point Transmission Services between ASC and Reliant Energy Services, Inc. ASC asserts that the purpose of the Amended Agreement is to reflect additional terms which have been agreed upon by the parties, including a Guaranty Agreement which is designed to cover construction cost that ASC will incur on behalf of the customer.

The parties request that the Service Agreements be allowed to become effective June 1, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER00–2739–000]

Take notice that on July 5, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing a tariff sheet numbered "Original Sheet No. 1" that is blank and marked "Reserved" under Virginia Electric and Power Company, FERC Electric Tariff, Second Revised Volume No. 5 in compliance with Designation of Electric Rate Schedule Sheets, 90 FERC ¶ 61,352 (2000). Virginia Power respectfully requested that the tariff sheet be accepted for filing as of June 7, 2000.

Copies of the filing were served upon the public utility's jurisdictional customers, Virginia State Corporation Commission and North Carolina Utilities Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Carolina Power & Light Company

[Docket No. ER00–2741–000]

Take notice that Carolina Power & Light Company ("CP&L"), on July 5, 2000, tendered for filing a title page with no pagination and a tariff sheet numbered "Original Sheet No. 1" that is blank and marked "Reserved" under Carolina Power & Light Company, FERC Electric Tariff, Second Revised Volume No. 3 in compliance with Designation of Electric Rate Schedule Sheets, 90 FERC ¶ 61,352 (2000). CP&L respectfully requested that the sheets be accepted for filing as of June 7, 2000.

Copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission and South Carolina Public Service Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–2763–000]

Take notice that on July 5, 2000, Wisconsin Energy Corporation Operating Companies (Wisconsin Energy), tendered for filing a title page with the correct designation and a tariff sheet numbered "Original Sheet No. 1" that is blank and marked "Reserved" under Wisconsin Energy Corporation Operating Companies, FERC Electric Tariff, First Revised Volume No. 1 in compliance with Designation of Electric Rate Schedule Sheets, 90 FERC ¶ 61,352 (2000).

Wisconsin Energy requested that the sheets be accepted for filing as of June 7, 2000.

Copies of the filing were served upon the public utility's jurisdictional customers, Public Service Commission of Wisconsin and Michigan Public Service Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Ohio Edison Company

[Docket No. ER00–3051–000]

Take notice that on July 3, 2000, Ohio Edison Company tendered for filing agreements to construct second delivery points at Cuyahoga Falls and Monroeville, and revisions to Appendices A and B of Service Agreements with American Municipal Power-Ohio, Inc. Under FERC Electric Tariff, Second Revised Volume No.2. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. The Dayton Power and Light Company

[Docket No. ER00–3052–000]

Take notice that on June 30, 2000, The Dayton Power and Light Company (Dayton) submitted service agreements establishing with British Columbia Power Exchange Corporation and Pepco Energy Services as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with British Columbia Power Exchange Corporation and Pepco Energy Services and the Public Utilities Commission of Ohio.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. The Dayton Power and Light Company

[Docket No. ER00–3053–000]

Take notice that on June 30, 2000, The Dayton Power and Light Company (Dayton) submitted service agreements establishing Amerada Hess Corporation as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Amerada Hess Corporation and the Public Utilities Commission of Ohio.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. DTE Georgetown, LLC

[Docket No. ER00–3054–000]

Take notice that on June 30, 2000, DTE Georgetown, LLC (DTE Georgetown) filed a tolling agreement under its FERC Electric Tariff Original Volume No. 1.

DTE Georgetown requests that the acceptance of this contract be effective as of June 1, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. PPL Montour, LLC

[Docket No. ER00–3055–000]

Take notice that on June 30, 2000, PPL Montour, LLC (PPL Montour) notified the Commission that PPL Electric Utilities Corporation (PPL Utilities) will assign its rights and obligations under the Energy Service Agreement among the Keystone Generating Station Owners and Sithe Power Marketing, L.P., dated November 24, 1999, and filed the Energy Service Agreement.

PPL requests that the effective date of the Energy Service Agreement be made July 1, 2000.

PPL Montour has served a copy of this filing on the Keystone Generating Owners, Sithe Power Marketing, L.P. and PPL Utilities.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. South Carolina Electric & Gas Company

[Docket No. ER00–3056–000]

Take notice that on July 3 ,2000, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing DTE Energy Trading, Inc. as a firm point-to-point customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon DTE Energy Trading, Inc. and the South Carolina Public Service Commission.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Indiana Michigan Power Company, d/b/a American Electric Power

[Docket No. ER00–3057–000]

Take notice that on July 3, 2000, Indiana Michigan Power Company, d/b/a American Electric Power (AEP), tendered for filing with the Commission Addenda to the Service Agreements under which AEP provides wholesale electric service to members of the Indiana and Michigan Municipal Distributors Association (IMMDA). Specifically, AEP provides wholesale electric service under AEP's FERC Tariff MRS, Original Volume No. 4, to the Town of Avilla, Indiana, the City of Bluffton, Indiana, the City of Garrett, Indiana, the City of Gas City, Indiana, the City of Mishawaka, Indiana,[1] the Town of New Carlisle, Indiana, the City of Niles, Michigan, the Village of Paw Paw, Michigan, the City of South Haven, Michigan, the City of Sturgis, Michigan,[2] and the Town of Warren, Indiana, by electric service agreements dated at various dates during the year 1997 (Service Agreements).

AEP requests that the Addenda be made effective beginning with the July 2000 billing month.

AEP states that a copy of its filing was served upon the IMMDA members, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

[1] AEP provides wholesale electric service to the City of Mishawaka under FERC Tariff WS, Original Volume No. 5.

[2] AEP Tariff MRS Service to the City of Sturgis under the Electric Service Agreement dated May 8, 1968 ended August 31, 1999.

22. Cleco Evangeline LLC

[Docket No. ER00–3058–000]

Take notice that on July 3, 2000, Cleco Evangeline LLC (Cleco Evangeline), tendered for filing a sale and tolling agreement under which Cleco Evangeline will make market-based power sales to Williams Energy Marketing & Trading Company. Cleco Evangeline is an affiliate of Cleco Utility Group Inc., a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. § 79l(a) *et. seq.* Cleco Evangeline requests confidential treatment of the agreement pursuant to 18 CFR 388.112.

A copy of the filing has been served upon Williams Energy Marking & Trading Company.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Indianapolis Power & Light Company

[Docket No. ER00–3059–000]

Take notice that on July 3, 2000, Indianapolis Power & Light Company (IPL) tendered for filing a blanket service agreement under IPL's Wholesale Power Sales Tariff. The Tariff was accepted for filing effective April 29, 2000 and has been designated as IPL's FERC Electric Tariff Revised Volume 2.

IPL requests that the effective date of the service agreement be June 1, 2000

A copy of the filing was served upon the party to the service agreement.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Ohio Valley Electric Corporation

[Docket No. ER00–3060–000]

Take notice that on July 3, 2000, Ohio Valley Electric Corporation (OVEC), in accordance with the Commission's order in *North American Electric Reliability Council,* 91 FERC ¶ 61,122 (2000), tendered for filing a notice informing the Commission that OVEC has adopted revised Transmission Loading Relief procedures submitted to the Commission by the North American Electric Reliability Council.

Copies of this filing were served upon OVEC's jurisdictional customers and upon each state public service commission that, to the best of OVEC's knowledge, has retail rate jurisdiction over such customers.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Alrus Consulting, L.L.C.

[Docket No. ER00–3061–000]

Take notice that on July 3, 2000, Alrus Consulting L.L.C. (Alrus) filed a Petition with the Federal Energy Regulatory Commission (Commission) for acceptance of FERC Rate Schedule IND/COMM Generators—Alrus, FERC Electric Rate Schedule No. 1, the granting of certain waivers of the Commission's Regulations, and the granting of certain blanket approvals. Alrus seeks authority to purchase energy and/or capacity from eligible independent power producers (IPPs) at market-based rates for resale.

Alrus also requests a waiver of the 60-day prior notice requirement to allow the rate schedule to become effective, without suspension or hearing, on or before July 26, 2000.

Alrus is an unaffiliated power marketer authorized to engage in wholesale power and energy transactions pursuant to the Commission's Order in Docket No. ER00–861–000.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. New Century Services, Inc.

[Docket No. ER00–3062–000]

Take notice that on July 3, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Golden Spread Electric Cooperative, Inc.

The Companies request that the Agreement be made effective on June 6, 2000.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. New Century Services, Inc.

[Docket No. ER00–3063–000]

Take notice that on July 3, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Golden Spread Electric Cooperative, Inc.

The Companies request that the Agreement be made effective on June 6, 2000.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Genesee Power Station Limited Partnership

[Docket No. QF93–19–001]

Take notice that on June 29, 2000, Genesee Power Station Limited Partnership, a Michigan limited partnership, filed with the Federal Energy Regulatory Commission an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The applicant's 38 MW facility located in Genesee Township, Michigan (Facility) was self-certified in Docket No. QF93–19–000. Certification by the Commission is sought to confirm the QF status of the Facility in light of changes in certain upstream ownership interests. The Facility is interconnected with Consumers Energy Company, and Consumers Energy Company supplies all maintenance power to the Facility.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17681 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11480–001 Alaska]

Haida Corporation; Notice of Availability of Final Environmental Assessment

July 7, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for an original license for Haida Corporation's proposed Reynolds Creek Hydroelectric Project, and has prepared a Final Environmental Assessment (FEA). The project would be located about 10 miles east of Hydaburg, Alaska on Prince of Wales Island.

On September 9, 1999, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 45 days. Comments on the DEA were filed by the Alaska Power & Telephone Company, National Marine Fisheries Service, Alaska Department of Fish and Game, Alaska Division of Governmental Coordination, Haida Corporation, and Natural Heritage Institute and are addressed in the FEA.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Commission's Public Reference Room, Room 2A, at 888 First Street, N.E., Washington, D.C. 20426, and on the web at http://www.ferc.fed.us/online/rims.htm [please call (202) 208–2222 for assistance].

David P. Boergers,

Secretary.

[FR Doc. 00–17731 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments; Motions To Intervene, and Protests

July 7, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI00–5–000.

c. *Date Filed:* June 15, 2000.

d. *Applicant:* John & Ronda Gacek.

e. *Name of Project:* Hidden Creek Hydro.

f. *Location:* On unnamed stream, known as Hidden Creek, San Miguel County, T. 42N., R. 11 W., sec. 2, SE¼NE¼, New Mexico Principal Meridian, Colorado. Project would not utilize federal lands or reservations.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. §§ 817(b).

h. *Applicant Contact:* Mr. John Joseph Gacek, Jr., and Ronda L. Gacek, P.O. Box 1930, 4400 Fallcreek Road, Telluride, CO 81435, telephone (970) 728–0214 (office/home), (970) 728–1469 (FAX), E-Mail jgconst@rmi.net.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, E-mail address: diane.murray@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* August 14, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

Please include the docket number (DI00–5–000) on any comments or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) A 3-foot-high dam; (2) a 1,260-foot-long pipeline; (3) a powerhouse with a total generating capacity of 1,500 kW; and (4) appurtenant facilities. The estimated cost of running power to the site by the local power company, San Miguel Power Association, is over $100,000.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy

or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–17727 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments Motions To Intervene, and Protests

July 7, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI00–6–000.

c. *Date Filed:* June 15, 2000.

d. *Applicant:* John & Ronda Gacek.

e. *Name of Project:* Sanctuary Ranch Hydro.

f. *Location:* On Fall Creek, San Miguel County, T. 42 N., R. 11 W., sec. 2, SE¼NE¼, New Mexico Principal Meridian, Colorado. Project would not utilize federal lands or reservations.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Mr. John Joseph Gacek, Jr., and Ronda L. Gacek, P.O. Box 1930, 4400 Fallcreek Road, Telluride, CO 81435, telephone (970) 728–0214 (office/home), (970) 728–1469 (FAX), E-Mail *jgconst@rmi.net*.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, or E-mail address: diane.murray@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* August 14, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

Please include the docket number (DI00–6–000) on any comments or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) an intake; (2) a 1,100-foot-long pipeline; (3) a powerhouse with a total generating capacity of 1,500 kW; and (4) appurtenant facilities. The estimated cost of running power to the site by the local power company, San Miguel Power Association, is over $100,000.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–17728 Filed 7–12–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42212A; FRL–6595–2]

Priority-Setting Workshop for the Endocrine Disruptor Screening Program; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the comment period, announced in the May 19, 2000, **Federal Register**, for issues discussed at the June 5–7 Priority-Setting Workshop for the Endocrine Disruptor Screening Program (EDSP), from July 7, 2000 to August 25, 2000. The Agency has developed a draft version of a priority-setting system for the selection of chemicals for testing in the EDSP and seeks public input on the further design and implementation of the system.

DATES: Comments, identified by docket control number OPPTS–42212A, must be received on or before August 25, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–42212A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Jim Darr, telephone number: (202) 260–3441; e-mail address: darr.james@epa.gov or Patrick Kennedy, telephone number: (202) 260–3916; e-mail address: kennedy.patrick@epa.gov. Mailing address: Economics, Exposure, and Technology Division (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Electronic messages must contain the docket control number OPPTS–42212A and the heading "Endocrine Disruptor Priority-Setting Database" in the subject line on the first page of your message.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who manufacture, import, or use chemical substances that are addressed by the Endocrine Disruptor Priority-Setting Database (EDPSD). The general public may also have an interest in the design and implementation of the EDPSD and in other aspects of the EDSP covered at the workshop. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the " **Federal Register** —Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information presented at the June 5–7, 2000, workshop, you may go to the website at http://www.epa.gov/scipoly/oscpendo/. A summary report of comments made at the workshop will be posted at this site by July 28, 2000.

B. In person. The Agency has established an official record for this document under docket control number OPPTS–42212A. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the EDPSD, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–42212A in the subject line on the first page of your response.

A. By mail. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

B. In person or by courier. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

C. Electronically. You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–42212A. Electronic

comments may also be filed online at many Federal Depository Libraries.

IV. What Action is EPA Taking?

EPA is extending the comment period, for issues discussed at the June 5–7 Priority-Setting Workshop for the EDSP, until August 25, 2000. A description of EPA's draft EDPSD and a listing of the issues covered at the workshop were announced in the **Federal Register** of May 19, 2000 (65 FR 31900) (FRL–6559–9).

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides.

Dated: July 5, 2000.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–17753 Filed 7–12–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–952; FRL–6592–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–952, must be received on or before August 14, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–952 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–952. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–952 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–952. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 5, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Zeneca Ag. Products

9F6032

EPA has received a pesticide petition 9F6032 from Zeneca Ag. Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of sulfosate (the trimethylsulfonium salt of glyphosate, also known as glyphosate-trimesium) in or on the raw agricultural commodities (RAC) cotton gin byproducts at 120 parts per million (ppm) (of which no more than 35 ppm is trimethylsulfonium (TMS)); cotton undelinted seed at 40 ppm (of which no more than 10 ppm is TMS); leaves of root and tuber vegetables group (except radish) at 0.25 ppm (of which no more than 0.2 ppm is TMS); pistachio at 0.05 ppm; potato flakes at 2 ppm (of which no more than 1.5 ppm is TMS); radish roots at 16 ppm (of which no more than 15 ppm is TMS); radish tops at 10 ppm (of which no more than 8 ppm is TMS); root vegetables subgroup (except radish) at 0.15 ppm (of which no more than 0.1 ppm is TMS); sorghum grain at 35 ppm (of which no more than 15 ppm is TMS); sorghum forage at 0.2 ppm (of which no more than 0.1 ppm is TMS); sorghum stover at 140 ppm (of which no more than 60 ppm is TMS); sweet corn forage at 20 ppm (of which no more than 5 ppm is TMS); sweet corn, kernels + cob with husks removed at 0.15 ppm (of which no more than 0.1 ppm is TMS); sweet corn stover at 165 ppm (of which no more than 65 ppm is TMS); tuberous and corm vegetables subgroup at 1 ppm (of which no more than 0.5 ppm is TMS); and to increase the tolerance in poultry meat by-products to 0.5 ppm and in milk to 2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of sulfosate has been studied in corn, grapes, and soybeans. EPA has concluded that the nature of the residue is adequately understood and that the only residues of concern are the parent ions *N*-(phosphonomethyl)-glycine anion (PMG) and TMS.

2. *Analytical method.* Gas chromatography/mass selective (GC/MS) detector methods have been developed for PMG analysis in crops, animal tissues, milk, and eggs. Gas chromatography detection methods have been developed for TMS in crops, animal tissues, milk, and eggs.

3. *Magnitude of residues*—i. *Magnitude of residues in crops*—*a. Cotton.* Residue data are available for sulfosate in a total of 13 trials conducted in 5 EPA regions and 11 different states. The proposed tolerance of 40 ppm (of which no more than 10 ppm is TMS) for undelinted cotton seed and the proposed tolerance of 120 ppm (of which no more than 35 ppm is TMS) for cotton gin by-products will accommodate any residue resulting from the proposed use pattern.

Cotton seed for processing were obtained and samples were processed into hulls, meal, and refined oil. There was no concentration in the processed fractions. No tolerances are required for cotton hulls, meal, or refined oil at the proposed use rates.

b. *Sorghum.* Residue data are available for sulfosate in a total of 12 trials conducted in 6 EPA regions and 8 different states. The proposed tolerance of 0.2 ppm (of which no more than 0.1 ppm is TMS) for sorghum forage; the proposed tolerance of 35 ppm (of which no more than 15 ppm is TMS) for sorghum grain; and the proposed tolerance of 140 ppm (of which no more than 60 ppm is TMS) for sorghum stover will accommodate any residue resulting from the proposed use pattern. Aspirated grain fractions (AGF) were also collected. Analysis of the treated samples showed that residue of both TMS and PMG concentrated in AGF, but the combined levels are less than the existing tolerance in 40 CFR 180.489 for aspirated grain fractions. No

change in the existing tolerance is required.

c. *Sweet corn.* Residue data are available for sulfosate in a total of 12 trials conducted in 7 EPA regions and 11 different states. The proposed tolerance of 20 ppm (of which no more than 5 ppm is TMS) for sweet corn forage; the proposed tolerance of 0.15 ppm (of which no more than 0.1 ppm is TMS) for sweet corn kernels plus cobs with husks removed; and the proposed tolerance of 165 ppm (of which no more than 65 ppm is TMS) for sweet corn stover will accommodate any residue resulting from the proposed use pattern.

d. *Leaves of root and tuber vegetables group (except radish).* Residue data are available for sulfosate in a total of 15 trials in the representative commodties of turnips and sugar beets in 8 EPA regions and 12 different states. Residue data are also available for sulfosate in a total of five trials in radish conducted in four EPA regions and four different states. The proposed tolerance of 0.25 ppm (of which no more than 0.2 ppm is TMS) for the leaves of the root and tuber vegetable group (except radish) and the proposed tolerance of 10 ppm (of which no more than 8 ppm is TMS) for radish tops will accommodate any residue resulting from the proposed use pattern.

e. *Root vegetables subgroup 1–A (except radish).* Residue data are available for sulfosate in a total of 20 trials in the representative commodities of sugar beets, radish, and carrots in 8 EPA regions and 10 different states. Residue data are also available for sulfosate in a total of six trials in turnips conducted in five EPA regions and six different states. The proposed tolerance of 0.15 ppm (of which no more than 0.1 ppm is TMS) for the root vegetables subgroup (except radish) and the proposed tolerance of 16 ppm (of which no more than 15 ppm is TMS) for radish roots will accommodate any residue resulting from the proposed use pattern.

Sugar beets treated at a 5x exaggerated rate for processing were obtained. No residues above the limit of quantitation (LOQ) were found in any of the sugar beet magnitude of the residue studies nor in the 5x exaggerated rate treated sugar beet samples so a processing study is not required. No tolerances are required for sugar beet refined sugar, dried pulp, or molasess at the proposed use rates.

f. *Tuberous and corm vegetables subgroup 1–D.* Residue data are available for sulfosate in a total of 12 trials in the representative commodity, potatoes, in 7 EPA regions and 10 different states. The proposed tolerance of 1 ppm (of which no more than 0.5 ppm is TMS) for the tuberous and corm vegetables subgroup will accommodate any residue resulting from the proposed use pattern.

Potatoes for processing were obtained and samples were processed into potato flakes, chips, and wet peel. Analysis of the treated samples showed that residue of TMS concentrated in potato flakes. The proposed tolerance for potato flakes of 2 ppm (of which no more than 1.5 ppm is TMS) is adequate to accommodate any residues arising from this use pattern in potatoes. No tolerances are required for potato chips and potato wet peel.

g. *Pistachio.* Residue data are available for sulfosate for representative commodities of the nut crop group (pecans, walnuts, and almonds). Residues were below the LOQ of 0.05 ppm in all samples. These data are sufficient to support a tolerance in pistachio. The proposed tolerance for pistachio of 0.05 ppm is the same as the established tolerance in 40 CFR 180.489 for the tree nut group and is adequate to accommodate any residues arising from this use pattern in pistachios.

ii. *Magnitude of residue in animals*—a. *Ruminants.* The maximum dietary burden in dairy cows results from a diet comprised of 20% AGF, 60% wheat forage, 15% sweet corn stover, and 5% cotton gin by-products for a total dietary burden of 427 ppm. The maximum dietary burden in beef cows results from a diet comprised of 20% AGF, 25% sweet corn stover, 25% sorghum grain, 25% wheat forage, and 5% cotton gin by-products for a total dietary burden of 438 ppm. Comparison to a ruminant feeding study at a dosing level of 1,000 ppm indicates that the appropriate tolerance levels resulting from these proposed additional uses are covered by existing tolerances in 40 CFR 180.489, except milk. The appropriate tolerance for milk is 2 ppm.

b. *Poultry.* The maximum dietary burden in poultry results from a diet comprised of 80% sorghum grain and 20% soybean hulls for a total dietary burden of 43 ppm. Comparison to a poultry feeding study at a dosing level of 50 ppm indicates that the appropriate tolerance levels are covered by existing tolerances in 40 CFR 180.489, except poultry meat by-products. The appropriate tolerance for poultry meat by-products is 0.5 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Several acute toxicology studies have been conducted placing technical grade sulfosate in toxicity category III and IV.

2. *Genotoxicty.* The toxicological endpoints for sulfosate are discussed in Unit 3.B. of the **Federal Register** notice of April 8, 1999 (64 FR 17171) (FRL–6071–2).

3. *Reproductive and developmental toxicity.* The toxicological endpoints for sulfosate are discussed in Unit B.3. of the **Federal Register** notice of April 8, 1999 (64 FR 17171).

4. *Subchronic toxicity.* The toxicological endpoints for sulfosate are discussed in Unit 3.B. of the **Federal Register** notice of April 8, 1999 (64 FR 17171).

5. *Chronic toxicity.* The toxicological endpoints for sulfosate are discussed in Unit 3.B. of the **Federal Register** notice of April 8, 1999 (64 FR 17171).

6. *Animal metabolism.* The metabolism of sulfosate has been studied in animals. The residues of concern for sulfosate in meat, milk, and eggs are the parent ions PMG and TMS only.

7. *Metabolite toxicology.* There are no metabolites of toxicological concern. Only the parent ions, PMG and TMS, are of toxicological concern.

8. *Endocrine disruption.* Current data suggest that sulfosate is not an endocrine disruptor.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For the purposes of assessing the potential dietary exposure, Zeneca has utilized the tolerance level for all existing and pending tolerances; and the proposed maximum permissible levels of 120 ppm for cotton gin by-products; 40 ppm for cotton undelinted seed; 0.25 ppm for leaves of root and tuber vegetables group (except radish); 0.05 ppm for pistachio; 2 ppm for potato flakes; 16 ppm for radish roots; 10 ppm for radish tops; 0.15 ppm for root vegetables subgroup (except radish); 35 ppm for sorghum grain; 0.2 ppm for sorghum forage; 140 ppm for sorghum stover; 20 ppm for sweet corn forage; 0.15 ppm for sweet corn, kernels + cob with husks removed; 165 ppm for sweet corn stover; 1 ppm for tuberous and corm vegetables subgroup; 0.5 ppm in poultry meat by-products; 2 ppm in milk; and 100% crop treated acreage for all commodities. Assuming that 100% of foods, meat, eggs, and milk products will contain sulfosate residues and those residues will be at the level of the tolerance results in an overestimate of human exposure. This is a very conservative approach to exposure assessment.

a. *Chronic exposure.* For all existing and pending tolerances and the proposed maximum permissible levels proposed in this notice of filing, the potential exposure for the U.S. population is 0.04 milligrams/kilograms

body weight per day (mg/kg/bwt/day) (17.6% of RfD). Potential exposure for children's population subgroups range from 0.02 mg/kg bwt/day (7.8% of RfD) for nursing infants (<1 year old) to 0.12 mg/kg bwt/day (47.8%) for children 1–6 years old. The chronic dietary risk due to food does not exceed the level of concern (100%).

b. *Acute exposure.* The exposure to the most sensitive population subgroup, non-nursing infants, is 23.5% of the acute RfD at the 95th percentile. The acute dietary risk due to food does not exceed the level of concern (100%).

ii. *Drinking water.* Results from computer modeling indicate that sulfosate in ground water will not contribute significant residues in drinking water as a result of sulfosate use at the recommended maximum annual application rate (8.00 lbs. active ingredient/acre). The computer model uses conservative numbers, therefore it is unlikely that ground water concentrations would exceed the estimated concentration of 0.014 parts per billion (ppb), and sulfosate should not pose a threat to ground water.

The surface water estimates are based on an exposure modeling procedure called Generic Expected Environmental Concentration (GENEEC). The assumptions of two applications of 4.00 lbs. active ingredient/acre resulted in calculated estimated maximum concentrations of 58 ppb (acute, based on the highest 56–day value) and 10 ppb (chronic, average). GENEEC modeling procedures assumed that sulfosate was applied to a 10–hectare field that drained into a 1–hectare pond, 2–meters deep with no outlet.

As a conservative assumption, because sulfosate residues in ground water are expected to be insignificant compared to surface water, it has been assumed that 100% of drinking water consumed was derived from surface water in all drinking water exposure and risk calculations. To calculate the maximum acceptable acute and chronic exposures to sulfosate in drinking water, the dietary food exposure (acute or chronic) was subtracted from the appropriate (acute or chronic) RfD. Drinking water levels of concern (DWLOCs) were then calculated using the maximum acceptable acute or chronic exposure, default body weights (70 kg-adult, 10 kg-child), and drinking water consumption figures (2 liters-adult, 1 liter-child).

The maximum concentration of sulfosate in surface water is 58 ppb. The acute DWLOCs for sulfosate in surface water were all greater than 5,400 ppb. The estimated average concentration of sulfosate in surface water is 10 ppb which is much less than the calculated levels of concern (>1,300 ppb) in drinking water as a contribution to chronic aggregate exposure. Therefore, for current and proposed uses of sulfosate, Zeneca concludes with reasonable certainty that residues of sulfosate in drinking water would not result in unacceptable levels of aggregate human health risk.

2. *Non-dietary exposure.* Sulfosate is currently not registered for use on any residential non-food sites. Therefore, residential exposure to sulfosate residues will be through dietary exposure only.

D. Cumulative Effects

There is no information to indicate that toxic effects produced by sulfosate are cumulative with those of any other chemical compound.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* Since there are no residential uses for sulfosate, the acute aggregate exposure only includes food and water. Using the conservative assumptions of 100% of all crops treated and assuming all residues are at the tolerance level for all established and proposed tolerances, the aggregate exposure to sulfosate will utilize 12.3% of the acute RfD at the 95th percentile for the U.S. population. The estimated peak concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to acute aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate acute human health risk considering the present use and uses proposed in this action.

ii. *Chronic risk.* Using the conservative exposure assumptions described above, the aggregate exposure to sulfosate from food will utilize 17.6% of the chronic RfD for the U.S. population. The estimated average concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to chronic aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate chronic human health risk considering the present uses and uses proposed in this action.

2. *Infants and children.* The data base on sulfosate relative to prenatal and postnatal toxicity is complete. Because the developmental and reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased prenatal or postnatal sensitivity of children and infants to sulfosate exposure. Therefore, Zeneca concludes, upon the basis of reliable data, that a 100–fold uncertainty factor is adequate to protect the safety of infants and children and an additional safety factor is unwarranted.

i. *Acute risk.* Using the conservative exposure assumptions described above, the aggregate exposure to sulfosate from food will utilize 23.5% of the acute RfD at the 95th percentile for the most highly exposed group, children (1–6 years). The estimated peak concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to acute aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate acute human health risk considering the present uses and uses proposed in this action.

ii. *Chronic risk.* Using the conservative exposure assumptions described above, we conclude that the percent of the RfD that will be utilized by aggregate exposure to residues of sulfosate is 47.8% for children (1–6 years), the most highly exposed group. The estimated average concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to chronic aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate chronic human health risk considering the present uses and uses proposed in this action.

F. International Tolerances

There are no Codex maximum residue levels established for sulfosate.

[FR Doc. 00–17755 Filed 7–12–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00631; FRL–6393–5]

Final Test Guidelines; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These test guidelines represent

an Agency effort that began in 1991 to harmonize the test guidelines within OPPTS, as well as to harmonize the OPPTS test guidelines with those of the Organization for Economic Cooperation and Development (OECD). The process for developing and amending these test guidelines includes public participation and the extensive involvement of the scientific community, including peer review by the Scientific Advisory Panel (SAP) and the Scientific Advisory Board (SAB) and other expert scientific organizations. With this notice, EPA is announcing the availability of three final test guidelines for three health effects end points. These test guidelines (and their OPPTS guideline reference) are: Repeated Dose 28-Day Oral Toxicity Study in Rodents (OPPTS 870.3050), Reproduction/Developmental Toxicity Screening Test (OPPTS 870.3550), and Combined Repeated Dose Toxicity Study With the Reproduction/ Developmental Toxicity Screening Test (OPPTS 870.3650).

FOR FURTHER INFORMATION CONTACT: *For general information contact:*

Toxic Substances Control Act (TSCA) information contact: TSCA Hotline at TAIS/7408, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; fax number: (202) 554–5603; e-mail address: TSCA-Hotline@epa.gov.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) information contact: Communications Services Branch (7506C), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5017; fax number: (703) 305–5558.

For technical information contact: Chemical Control Division, Office of Pollution Prevention and Toxics (7405), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–8130; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may also obtain copies of test guidelines from the EPA Internet Home Page and the U.S. Government Printing Office (GPO). From the EPA Internet Home Page select "Information Resources/Test Methods/OPPTS Harmonized Test Guidelines" at http://www.epa.gov/OPPTS_Harmonized. Paper copies and disks of the guidelines are available from GPO, Washington, DC 20402, or by calling (202) 512–0132.

B. In Person

The Agency has established an official record for this proposed guideline under docket control number OPP–00631. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch, Rm. 119, Crystal Mall ×2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

III. What Action is EPA taking?

EPA is announcing the availability of three final health effects test guidelines. These guidelines are: Repeated Dose 28-Day Oral Toxicity Study in Rodents (OPPTS 870.3050), Reproduction/ Developmental Toxicity Screening Test (OPPTS 870.3550), and Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (OPPTS 870.3650). These guidelines are being made available today in order to establish a set of harmonized guidelines for use in test rules and other actions under TSCA. After establishment of these guidelines today, the Agency will then establish new TSCA test guidelines in Title 40 of the Code of Federal Regulations (CFR), but in the format specified for the CFR. TSCA test guidelines for the three endpoints are not now in existence but are needed for planned regulatory actions.

In publishing these harmonized test guidelines, EPA recognizes concerns have been expressed about animal testing. EPA is committed to avoiding unnecessary or duplicative animal testing. As part of this commitment, the Agency plays a important role in the federal Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) (http://iccvam.niehs.nih.gov/home.htm) whose goals are: (1) To encourage the reduction of the number of animals used in testing; (2) to seek opportunities to replace test methods requiring animals with alternative test methods when acceptable alternative methods are available; and (3) to refine existing test methods to optimize animal use when there is no substitute for animal testing. Further, where testing is needed to develop scientifically adequate data, the Agency is committed to reducing the number of animals used for testing, including, whenever possible, by incorporating *in vitro* (non-animal) test methods or other alternative approaches that have been scientifically validated and have received regulatory acceptance. EPA considers these goals and commitments to be important considerations in developing health effects data; however, they must be balanced with the essential need to conduct scientifically sound chemical hazard/risk assessments in support of the Agency's mission. By using the test guidelines cited in today's notice, EPA believes that fewer animals will be used when it is necessary to conduct screening level testing to fill such data needs and these guidelines will yield scientifically sound data.

IV. How Were these Test Guidelines Developed?

These guidelines were adapted from the series of the Organization for Economic Cooperation and Development (OECD) Guidelines for Testing of Chemicals. The OECD guidelines which were adapted and are being announced for publication today are: OECD Guideline 407 (Repeated Dose 28-day Oral Toxicity in Rodents) for OPPTS 870.3050, OECD Guideline 421 (Reproduction/Developmental Toxicity Screening Test) for OPPTS 870.3550, and OECD Guideline 422 (Combined Repeated Dose Toxicity Study With the Reproduction/Developmental Toxicity Screening Test) for OPPTS 870.3650. EPA has retained the OECD guideline names. EPA scientists reviewed the OECD guidelines and reformatted them to the OPPTS harmonized guideline format with only minor editorial changes.

The OECD test guidelines were developed initially under the OECD Chemicals Testing Programme and are updated under the OECD Updating Programme for Test Guidelines and the OECD Test Guidelines Programme. The OECD test guideline process involves the use of multi-national panels of scientific and technical experts who develop guideline drafts which are submitted to a review panel. The review process is concluded by the endorsement of the guidelines by the OECD Chemicals Group and the OECD Environment Committee prior to the formal submission to the OECD Council. The OECD Council then adopts the guidelines and publishes them in the official OECD Guidelines for Testing of Chemicals.

V. Are there Any Applicable Voluntary Consensus Standards that EPA Should Consider?

This notice of availability does not involve a proposed regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide an explanation to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

List of Subjects

Environmental protection, Chemical testing, Test guideline.

Dated: June 22, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–17754 Filed 7–12–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 97–82; DA 00–1531]

Deadline for Final Ex Parte and Other Presentations on Proposed Revisions to Broadband Personal Communications Services (PCS) Rules Extended to July 17, 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document extends the period for final *ex parte* and other presentations on issues raised in this proceeding pertaining to proposed revisions to portions of the broadband Personal Communications Services C and F block rules.

DATES: Final *ex parte* presentations are due July 17, 2000.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This a summary of a public notice, WT Docket No. 97–82, DA 00–1531, released July 7, 2000. The complete text of the public notice is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, S.W., Room CY–A257, Washington, D.C. 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.), 1231 20th Street, N.W., Washington D.C. 20036, (202) 857–3800. It is also available on the Commission's website at *http://www.fcc.gov/wtb/auctions.*

1. On June 7, 2000, the Commission released a *Further Notice of Proposed Rulemaking* ("FNPRM"), 65 FR 37092 (June 13, 2000), in the above-referenced proceeding. The *FNPRM* seeks comment on proposed revisions to portions of the broadband Personal Communications Services ("PCS") C and F block rules. The *FPRM* established comment and reply comment deadlines for June 22, 2000 and June 30, 2000, respectively. The *FNPRM* also established 7 p.m., July 12, 2000 as the time and date after which *ex parte* and other presentations would be prohibited.

2. In order to provide interested parties additional time to make *ex parte* presentations, the period for final *ex parte* and other presentations on issues raised in the *FNPRM* is extended until 7 p.m. on July 17, 2000.

3. Pursuant to § 1.1200(a) of the Commission's rules, presentations on issues in the *FNPRM* will be prohibited after 7 p.m., July 17, 2000. 47 CFR 1.1200(a). In all other respects, parties are required to follow the procedures previously outlined in the *FNPRM.*

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–17671 Filed 7–12–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96–98, 99–68; FCC 00–227]

Reciprocal Compensation; Inter-Carrier Compensation for ISP-Bound Traffic

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On March 24, 2000, the United States Court of Appeals for the D.C. Circuit vacated certain provisions of the Commission's Reciprocal Compensation Ruling regarding ISP-bound traffic, and remanded the matter to the Commission. The Commission seeks comment on the issues identified by the court in its decision, including the jurisdictional nature of ISP-bound traffic, the scope of the reciprocal compensation requirement, and the relevance of the concepts of "termination," "telephone exchange service," "exchange access service," and "information access." The Commission also seeks comment on any ex parte presentations filed after the close of the reply period on April 27, 1999, and on any new or innovative inter-carrier compensation arrangements for ISP-bound traffic that may have been considered or entered into during the pendency of this proceeding.

DATES: Comments are due on or before July 21, 2000, and reply comments are due on or before August 4, 2000.

ADDRESSES: Submit electronic comments and reply comments to *http://www.fcc.gov/e-file/ecfs.html*. Requests for filing instructions for e-mail comments may be sent to *ecfs@fcc.gov*. Comments and reply comments filed by paper must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW–A325, Washington, D.C. 20554. Copies filed with International Transcription Services (ITS), the Commission's duplicating contractor, must be sent to 1231 20th Street, N.W., Washington, D.C. 20036, and copies to the Chief, Competitive Pricing Division, must be sent to 445 12th Street, S.W., TW–A225, Washington, D.C. 20554. See **SUPPLEMENTARY INFORMATION** for further information on filing requirements.

FOR FURTHER INFORMATION CONTACT: Rodney McDonald, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: The Commission's Public Notice, Comment Sought on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit, Pleading Cycle Established, CC Docket Nos. 96–98, 99–68, FCC 00–227, was adopted June 22, 2000, and released June 23, 2000. The item in its entirety is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center. The complete text may also be obtained through the world wide web, at http:/www.fcc.gov/Bureaus/Common_Carrier/Public_Notices, or may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

Public Notice

On February 26, 1999, the Commission released a Declaratory Ruling and Notice of Proposed Rulemaking (Reciprocal Compensation Ruling) to address the issue of inter-carrier compensation for the delivery of telecommunications traffic to an Internet service provider (ISP). (64 FR 14203, 64 FR 14239, March 24, 1999). In the Reciprocal Compensation Ruling, the Commission determined that ISP-bound calls are not local calls subject to reciprocal compensation under our rules implementing section 251(b)(5) of the Act. 47 U.S.C. 251(b)(5). Using an "end-to-end" analysis of these calls, the Commission concluded that ISP-bound calls do not terminate at the ISP's local server, but instead continue to one or more Internet websites that are often located in another state. It therefore found that ISP-bound calls are jurisdictionally mixed, largely interstate, and thus not subject to reciprocal compensation. The Commission also acknowledged that there was no federal rule establishing an inter-carrier compensation mechanism for such traffic or governing what amounts, if any, should be paid. In the absence of a federal rule regarding the appropriate inter-carrier compensation for ISP-bound traffic, the Commission held that parties were bound by their interconnection agreements as interpreted and enforced by state commissions. The Commission sought comment, therefore, on a federal inter-carrier compensation mechanism for ISP-bound traffic.

On March 24, 2000, the United States Court of Appeals for the D.C. Circuit vacated certain provisions of the Reciprocal Compensation Ruling, and remanded the matter to the Commission. *Bell Atl. Tel. Companies* v. *F.C.C.*, 206 F.3d 1 (D.C. Cir. 2000). The court ruled that the Commission had not adequately justified the application of its jurisdictional analysis in determining whether a call to an ISP is subject to the reciprocal compensation requirement of section 251(b)(5). The court noted that (1) the Commission failed to apply its definition of "termination" to its analysis; and (2) cases upon which the Commission relied in its end-to-end analysis can be distinguished on the theory that they involve continuous communications switched by interexchange carriers (IXCs), as opposed to ISPs, which are not telecommunications providers. The court also found that a remand was required because the Commission did not provide a satisfactory explanation as to how its conclusions regarding ISP-bound traffic accord with the statutory definitions of "telephone exchange service" and "exchange access service."

The Commission seeks comment on the issues identified by the court in its decision. In particular, the Commission asks parties to comment on the jurisdictional nature of ISP-bound traffic, as well as the scope of the reciprocal compensation requirement of section 251(b)(5), and on the relevance of the concepts of "termination," "telephone exchange service," (47 U.S.C. 153(47)) "exchange access service," (47 U.S.C. 153(16)) and "information access." (47 U.S.C. 251(g); 47 U.S.C. 153(20)) In addition, the Commission seeks to update the record in the pending rulemaking proceeding by inviting parties to comment on any ex parte presentations filed after the close of the reply period on April 27, 1999. Finally, the Commission seeks comment regarding any new or innovative inter-carrier compensation arrangements for ISP-bound traffic that parties may be considering or may have entered into, either voluntarily or at the direction of a state commission, during the pendency of this proceeding.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200, 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Interested parties may file comments no later than July 21, 2000. Reply comments may be filed no later than August 4, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. (63 FR 24121, May 1, 1998) When filing comments, please reference CC Docket Nos. 96–98, 99–68.

Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to *ecfs@fcc.gov* and include "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply.

An original and four copies of all comments and reply comments filed by paper must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW—A325, Washington, D.C. 20554. In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 1231 20th Street, N.W., Washington, D.C. 20036, and one copy with the Chief, Competitive Pricing Division, 445 12th Street, S.W., TW—A225, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17666 Filed 7–12–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 98–35; FCC 00–191]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document is the Commission's Report in its 1998 biennial review of its broadcast ownership rules. Such biennial reviews are required by the Telecommunications Act of 1996. The intended effect of these reviews is to assure that the Commission's broadcast ownership rules are no more extensive than necessary in the public interest as the result of competition.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, (202) 418–2134 or Dan Bring, Mass Media Bureau, Policy and Rules Division, (202) 418–2170.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report* in MM Docket No. 98–35, FCC 00–191, adopted May 26, 2000, and released June 20, 2000. The complete text of this *Report* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 445 12th Street, SW, Room CY–B402, Washington, DC. The *NPRM* is also available on the Internet at the Commission's website: *http://www.fcc.gov.*

Synopsis of Report

I. Introduction

1. This *Report* reviews our broadcast ownership rules as required by section 202(h) of the Telecommunications Act of 1996 (Public Law 104–104, 110 Stat. 56 (1996)) ("Telecom Act"). That section provides:

> The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

Section 11(a) of the Communications Act of 1934, as amended, similarly provides that under the statutorily required review, the Commission "shall determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition" and requires that the Commission "shall repeal or modify any regulation it determines to be no longer necessary in the public interest." More recently, Congress has prescribed a period of 180 days from November 29, 1999, in which the Commission is to complete the 1998 biennial review of its broadcast ownership rules. (Section 5003, Pub. L. 106–113, 113 Stat. 1501 (1999).) The Conference Report for this 1999 Act states that within the subject period the Commission shall issue a report and if it concludes that it should retain any of the rules unchanged, it "shall issue a report that includes a full justification of the basis for so finding."

2. Six rules are reviewed in this *Report*: (1) the national TV ownership rule (including the "UHF discount"); (2) the local radio ownership rules; (3) the dual network rule; (4) the daily newspaper/broadcast cross-ownership rule; (5) the cable/television cross-ownership rule; and (6) an experimental broadcast station ownership rule. The *Report* provides a regulatory history of each rule, followed by a discussion of the competitive and diversity issues that justify our decision as to whether the rule remains in the public interest.

3. On March 12, 1998, we adopted a *Notice of Inquiry* ("*NOI*") in this proceeding seeking comment on the six rules included in this biennial ownership report. The NOI did not seek comment on the local television ownership rule or one-to-a-market ownership rule because these rules were already the subject of pending proceedings and we reasoned that their examination in those proceedings complied with Congress' mandate that we review all of our ownership rules biennially beginning in 1998. On August 5, 1999, we adopted a *Report and Order* (*Report and Order* in MM Docket Nos. 91–221 & 87–8), relaxing our local television ownership rule and one-to-a-market ownership rule. Those decisions provided broadcasters with expanded opportunities to realize the efficiencies of television duopolies and local radio/television combinations in markets where an essential level of competition and diversity would be preserved. More specifically, we narrowed the geographic scope of the television duopoly rule from the Grade B contour approach to a "DMA" test. This new approach allows the common ownership of two television stations without regard to contour overlap if the stations are in separate Nielsen Designated Market Areas ("DMAs"). Additionally, it allows the common ownership of two television stations in the same DMA if their Grade B contours do not overlap or if eight independently owned, full-power and operational television stations will remain post merger, and one of the stations is not among the top four ranked stations in the market based on audience share. Furthermore, we adopted waiver criteria presuming, under certain circumstances, that a waiver to allow common local television station ownership is in the public interest where one of the stations is a "failed station," is a "failing station," or where the applicants can show that the combination will result in the construction and operation of an authorized but as yet "unbuilt" station. We also substantially relaxed the radio/television cross-ownership ("one-to-a-market") rule to permit more such combinations, including allowing a party to own as many as one TV station and seven radio stations under certain circumstances. These actions were taken in fulfillment of our obligations under section 202(h) of the Telecom Act and satisfy its requirements as to the subject rules.

4. In the instant phase of our biennial review of broadcast ownership rules, we conclude that the local radio ownership rules, the national television ownership rule (including the UHF discount), and cable/TV cross-ownership rule continue to serve the public interest and so retain these rules. As noted, we have just recently substantially relaxed our local

television ownership and one-to-a-market rules. It is currently too soon to tell what effect this will have on consolidation, competition and diversity. Until we have further information in this regard we believe that these rules remain necessary in the public interest in their current form. However, we will issue—*Notices of Proposed Rule Makings* (*NPRMs*) proposing modification of the dual network rule (64 FR 41393) and newspaper/broadcast cross-ownership rules. Additionally, in the case of the local radio ownership rule, we will issue an *NPRM* (65 FR 41401) seeking comment on alternative methods of correcting certain anomalies in the way we currently define radio markets and the way we count the number of stations in a radio market and the number of radio stations that an entity owns in a market. Finally, we conclude that the experimental broadcast station multiple ownership rule may no longer be in the public interest and will issue an *NPRM* proposing its elimination.

II. Background

5. For more than a half century, the Commission's regulation of broadcast service has been guided by the goals of promoting competition and diversity. These goals are separate and distinct, yet also related. Indeed, as recently as 1997, the Supreme Court noted that "[f]ederal policy * * * has long favored preserving a multiplicity of broadcast outlets regardless of whether the conduct that threatens it is motivated by anticompetitive animus or rises to the level of an antitrust violation." (*Turner Broadcasting System, Inc.* v. *FCC*, 520 U.S. 180, 117 S. Ct. 1174 (1997) ("Turner II"). (Citations omitted.)) The Supreme Court has also held that both of these goals are important and substantial public policies for First Amendment purposes. (*Turner Broadcasting System* v. *FCC*, 512 U.S. 622, 662 (1997) ("Turner I").) Competition is an important part of the Commission's public interest mandate, because it promotes consumer welfare and the efficient use of resources and is a necessary component of diversity. Diversity of ownership fosters diversity of viewpoints, and thus advances core First Amendment principles. As the Supreme Court has said, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public * * *." (*Associated Press* v. *United States*, 326 U.S. 1, 20 (1945); *accord Federal Communications Commission* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).) Promoting diversity in the number of separately owned outlets has contributed to our goal of viewpoint diversity by assuring that the programming and views available to the public are disseminated by a wide variety of speakers.

6. This Report uses the framework for reviewing competition and diversity outlined in the *NOI* to evaluate, as required by the Telecom Act, whether the six rules included in this biennial review continue to be in the public interest. Thus, we assess current levels of competition in the market for delivered video programming, the advertising market, and the program production market to determine whether such competition has eliminated the need for the six rules. Our diversity analysis focuses upon the degree to which broadcast and non-broadcast media, operating within the framework of our ownership rules, advance the three types of diversity (*i.e.*, viewpoint, outlet and source) that our broadcast ownership rules have attempted to foster. Viewpoint diversity refers to the range of diverse and antagonistic opinions and interpretations presented by the media. Outlet diversity refers to a variety of delivery services (*e.g.*, broadcast stations, cable and DBS) that select and present programming directly to the public. Source diversity refers to the variety of program or information producers and owners.

III. Status of Media Marketplace

7. Our decision here concerning the broadcast ownership rules takes account of the ongoing changes in the structure of the broadcast industry. The UHF television discount, the daily newspaper/broadcast cross-ownership rule, the cable/television cross-ownership rule, and the experimental broadcast station ownership rule have not been examined for many years. In reviewing these rules, we recognize that there has been substantial growth in the number and variety of media outlets in local markets. In contrast, the national television ownership rule, the local radio ownership rules, and the dual network rule were modified in 1996 in accordance with section 202 of the Telecom Act. While there has been growth in the number and variety of media outlets since the Telecom Act, there have also been significant changes in the ownership structure of the broadcast industry during that period, chiefly consisting of extensive consolidation in the radio and television industries.

8. Section 202(h) of the Telecom Act requires us to determine whether any of our broadcast ownership rules "are necessary in the public interest as the result of competition." We note that some commenters express the belief that this limits our review only to competitive matters and that our analysis must be devoid of diversity considerations. Because the statutory language requires reference to the public interest standard, and because diversity and competition have both been critical components of that standard, (*See, e.g., United States* v. *Storer Broadcasting Company*, 351 U.S. 192, 203 (1956); *FCC* v. *National Citizens Committee For Broadcasting*, 346 U.S. 775, 780–81, 794 (1978)). our review must consider diversity issues as well. Indeed, the United States Supreme court has identified as a "governmental purpose of the highest order" ensuring the public's access to "a multiplicity of information sources." (*Turner II, supra* at 90.) Also, there is support for our consideration of diversity in this context in the legislative history of the Telecom Act itself. As discussed in our recent local television ownership decision, Congress expressed diversity concerns with regard to at least two of our rules and, with respect to our review of the radio/television cross-ownership rule, expressly instructed the Commission to take into account not only the increased competition facing broadcasters but also "the need for diversity in today's radio marketplace." Finally in this regard, the statutory language appears to focus on whether the public interest basis for the rule has changed as a result of competition, and does not appear to be intended to limit the factors we should consider. Therefore, our public interest determination for each rule is based on an examination of both competition and diversity issues in light of competitive market conditions. The material below provides a brief overview of the number of outlets, ownership structure, and other information relevant to the current status of competition in the video, audio, and newspaper industries. The numbers alone, of course, are not sufficient to determine whether particular media compete with one another in relevant markets or whether different media are adequate substitutes for one another from a diversity perspective.

IV. Rules

A. National TV Ownership Rule and UHF Discount

1. Regulatory History

9. Section 73.3555(e)(1) sets forth the current national TV ownership rule. That section states:

> No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer, or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in TV stations which have an aggregate national audience reach exceeding thirty-five (35) percent.

10. Section 73.3555(e)(2) sets forth the "UHF discount." That section explains that "national audience reach" is based on the number of TV households in Nielsen Designated Market Areas (DMA), and that UHF TV stations are attributed with only 50% of the TV households in the DMA.

11. The Commission first adopted a national ownership limit for television broadcast stations in the 1940s by imposing numerical caps on the number of stations that could be commonly owned, and originally limited common ownership to no more than three stations nationwide. Several years later this was expanded to allow ownership of no more than five stations. In retaining the five station rule in 1953, the Commission explained:

> The purpose of the multiple ownership rules is to promote diversification of ownership in order to maximize diversification of program and service viewpoint as well as to prevent any undue concentration of economic power contrary to the public interest and thus to carry out the underlying purpose of the Communications Act to effectuate the policy against monopolization of broadcast facilities and the preservation of the broadcasting system on a free competitive basis.

12. In 1954, the Commission adopted the "Seven Station Rule" by raising the multiple ownership limit from five stations to seven, with no more than five being VHF stations. The Commission believed that the more rapid and effective development of the UHF band warranted permitting the ownership of additional UHF stations. The Commission noted that it was aware of the serious problems confronting the development of the UHF service, especially in markets with VHF-only set saturation, and that it was in these areas particularly where the prestige, capital, and know-how of the networks and other multiple owners would be most effective in aiding UHF.

13. In 1984, the Commission eliminated the Seven Station Rule and established a six-year transitional period during which common ownership of twelve television broadcast stations would be permitted. The Commission determined that repeal of the Seven Station Rule would not adversely affect the Commission's traditional policy objectives of promoting viewpoint diversity and preventing economic concentration. The Commission explained that: (1) Changes in the broadcasting and communications markets, (2) new evidence of the positive effects of group ownership on the quality and quantity of public affairs and other programming responsive to community needs, and (3) the lack of relevance of a national ownership rule to the availability of diverse and independently owned radio and TV voices to individual consumers in their respective local markets led to the conclusion that the rule was unnecessary to ensure diversity of viewpoints. The Commission determined that the better focus for addressing viewpoint diversity and economic competition concerns was the number and variety of information and advertising outlets in local markets. Nevertheless, the Commission recognized the concerns of some commenters that, if the rule were repealed immediately and in its entirety, a significant restructuring of the broadcast industry might occur before all ramifications of such a change became apparent. Therefore, the Commission established a transitional limit of twelve television broadcast stations. The transitional limit would automatically sunset in six years unless experience showed that continued Commission involvement was warranted.

14. On reconsideration, the Commission, modified its decision. Specifically, the Commission (1) established an audience reach cap of 25 percent (defined as 25 percent of the national audience, calculated as a percentage of all Arbitron ADI television households), in addition to the twelve station limit, to better account for the effect that relaxation of the rule would have on population penetration; (2) attributed owners of UHF stations with only 50 percent of their ADI audience reach to take cognizance of the limitations inherent in UHF broadcasting; (3) permitted common ownership of an additional two television stations, provided that they were minority controlled; and (4) eliminated the automatic sunset provision. The stated objective was to permit reasonable expansion so as to capture the benefits of group ownership while avoiding the possibility of potential disruptive restructuring of the national broadcast industry. The Commission explained that a numerical cap would prevent the acquisition of a tremendous number of stations in the smaller markets, thus reducing the possibility of disruptive restructuring in small markets, while an audience reach cap would temper dramatic changes in the ownership structure by the largest group owners in the largest markets. The Commission noted that its decision to use both a numerical cap and an audience reach cap was also predicated on concerns regarding the potential impact on industry structure. The Commission further explained that attributing UHF stations with 50 percent of an ADI market's audience reach was intended to address the fundamental disadvantage of UHF television in reaching viewers. The UHF Comparability Task Force found that: "Due to the physical nature of the UHF and VHF bands, delivery of television signals is inherently more difficult at UHF. It should be recognized that actual equality between these two services cannot be expected because the laws of physics dictate that UHF signal strength will decrease more rapidly with distance than does VHF signal strength." The Commission found it inadvisable to terminate the multiple ownership rules for television broadcast stations automatically at the end of six years. The Commission explained that (1) it was appropriate to proceed cautiously in relaxing the rules and (2) an automatic sunset of the ownership rules was unnecessary to achieve the Commission's policy objectives.

15. On March 7, 1996, the Commission amended the national television station multiple ownership rules to conform to the provisions in section 202(c)(1) of the Telecom Act. Specifically, the Commission eliminated the numerical limit on the number of broadcast television stations a person or entity could own nationwide and increased the audience reach cap on such ownership from 25 percent to 35 percent of television households.

16. In our *Notice of Inquiry* in this proceeding we sought comment on this rule. Particularly, we asked about its effect on competition in the national advertising market and the program production market at the national level. We also sought comment on the rule's effect on existing television networks and the formation of new networks and sought information on the economies of

scale that may have been realized as a result of the consolidation permitted by the Telecom Act. Finally, we asked whether the UHF discount should be retained, modified or eliminated in view of the decreasing disparity between VHF and UHF television and, in the event of a decision to modify the rule, whether and, if so, how group owners that exceed any new limits should be grandfathered.

2. Comments on National TV Ownership Rule

17. All of the major networks (ABC, CBS, Fox, and NBC) support total repeal of the national television ownership rule. These networks argue that abolition of the rule would have no effect on the level of diversity and competition in local markets, and retention of the rule hinders broadcasters from achieving economic efficiencies. These networks maintain that group owned stations provide more news and public affairs programming than non-group owned stations. They also argue that removal of the audience reach cap would promote the development of new broadcast television networks. Finally, they argue that the only two markets that may be affected by elimination of the rule, the national advertising market and the market for national exhibition rights to video programming, would remain unconcentrated.

3. Discussion of National TV Ownership Rule

18. We believe that the audience reach cap should be retained at its current level for the present. As an initial matter, Congress prescribed an increase in the cap from 25% to 35% in the Telecom Act. Several considerations motivate our decision not to change the national TV ownership rule. First, we believe that the effects of our recent change to the local television ownership rule should be observed and assessed before we make any alteration to the national limit. Second, the existing reach cap has already resulted in many group owners acquiring large numbers of stations nationwide since the cap was increased to 35 percent in 1996. We also believe that this trend needs further observation prior to any change in the cap. (We note, however, that on November 18, 1999, Fox Television Stations, Inc., filed an "Emergency Petition for Relief and Supplemental Comments" in this proceeding seeking, among other things, repeal of the national broadcast ownership rule. Also, on November 19, 1999, Viacom Inc. filed "Comments" in this proceeding seeking repeal of the same rule and, additionally, the dual network rule. The original deadline for filing comments in this proceeding was May 22, 1998, with June 22, 1998, being the reply comment deadline. These deadlines were later extended, pursuant to the request of the National Association of Broadcasters, to July 21, 1998, and August 21, 1998, for comments and reply comments, respectively. *Order in MM Docket No. 98–35, DA 98–854* (released May 7, 1998). The Fox and Viacom filings, having been submitted nearly 18 months subsequent to these deadlines will not be considered in this proceeding. Simply, to do so would provide a precedent for subjecting our biennial review proceedings to unceasing comment cycles, and would deprive other parties of an ability to respond to these new matters absent establishment of new pleading cycles. Accordingly, they will not be considered herein but will be included in the record of our 2000 biennial review of broadcast ownership issues.)

19. One factor in our decision is the recent relaxation of our local television ownership rules. As noted above, those decisions provided increased flexibility for the creation of television duopolies and television/radio combinations in local markets while safeguarding an essential level of competition and diversity. We conclude that prudence dictates that we should monitor the impact of our recent decisions regarding local television ownership and any impact they may have on diversity and competition prior to relaxing the national reach cap. Commenters supporting relaxation or elimination of the cap make credible arguments in favor of their position. These arguments include the contention that elimination of, or increase in, the cap would allow additional economic efficiencies and more news and public affairs, increase minority ownership by removing the cap as an impediment to broadcasters obtaining attributable equity interests in minority-owned television stations, and promote the development of new broadcast television networks. We believe, however, that the competitive concerns of opponents of relaxation or elimination of the cap (*i.e.*, are that eliminating or expanding the reach cap would increase the bargaining power of networks over their affiliates, reduce the number of viewpoints expressed nationally, increase concentration in the national advertising market, and enlarge the potential for monopsony power in the program production market) are more convincing under current circumstances. Until we gain experience under the new local television ownership rules we are disinclined to correspondingly relax them on the national level. While we will reexamine this decision in our future biennial reviews of broadcast ownership rules, we intend to proceed cautiously in this area at the present time.

20. Also, elimination of the 12 station numerical cap has already permitted group owners to acquire a large number of stations. The current rule permits a group owner to acquire a VHF station in every market below DMA 47 (i.e., DMA 48 through DMA 210, a total of 163 stations) and still remain below the 35 percent audience reach cap. By holding UHF stations only, a group owner could acquire a station in every market below DMA 10 (*i.e.*, DMA 11 through DMA 210, a total of 200 stations) and still remain below the 35 percent audience reach cap. Data show that many group owners have acquired additional stations and increased their audience reach since the Telecom Act's passage.

21. Moreover, consolidation is a feature of other video media. In cable, the seven largest operators now serve almost 90 percent of all U.S. cable subscribers, which is up from 63 percent being served by the top 10 multiple system operators ("MSO") in 1990. Thirty-seven percent of satellite-delivered national programming networks are now vertically integrated with a cable MSO. In 1999, for example, one or more of the top six cable MSOs held an ownership interest in each of 101 vertically integrated national programming services. In addition, a significant percentage of the top national programming services are controlled by approximately eleven companies, including cable MSOs, broadcasters and other media entities. Of the top 50 programming services in terms of subscribership, 46 are owned by one or more of these 11 companies.

22. The evidence suggests that the television broadcast industry is still adapting to the recent relaxation of the national and local ownership rules and we wish to avoid actions with the potential for disruptive restructuring. For example, applications for duopolies under our new local television ownership rule were only filed this past November and we believe that we should monitor developments under this new rule prior to making any changes to the national television ownership reach cap.

23. We also intend to proceed cautiously because the Commission has previously recognized that a change in the audience reach cap may well influence the bargaining positions between broadcast television networks and their affiliates. We noted that in

some situations, relaxation of the national ownership limits could increase the bargaining power of networks by expanding their option to own rather than affiliate with broadcast television stations. In other situations, however, relaxation of the national ownership limits could increase the bargaining position of group-owned affiliates by creating larger, more powerful groups. In its comments, NASA (Network Affiliated Stations Alliance) asserts that the national ownership rule is the essential mechanism for maintaining the balance between networks and their affiliates to ensure that affiliates can program their stations in the interests of the communities they are licensed to serve. NASA argues that an increase in the audience reach cap will increase the bargaining power of networks. We believe that in considering relaxation of the national ownership rule we should act cautiously in light of the potential impact of this rule on the bargaining positions of networks and affiliates, particularly given the restructuring that may be taking place concurrently on the local level. We do not believe that consolidation of ownership of all or most of the television stations in the country in the hands of a few national networks would serve the public interest. The national networks have a strong economic interest in clearing all network programming, and we believe that independently owned affiliates play a valuable counterbalancing role because they have the right to decide whether to clear network programming or to air instead programming from other sources that they believe better serves the needs and interests of the local communities to which they are licensed. Independent ownership of stations also increases the diversity of programming by providing an outlet for non-network programming. We do not believe that the role played by independently owned affiliates is any less important today than it was four years ago when Congress determined that the public interest was served by maintaining a national ownership limit, albeit it at a slightly relaxed (35% rather than 25%) level.

4. Comments on the UHF Discount

24. A number of commenters advocate elimination or substantial modification of the UHF discount. These groups argue that the original basis for the discount appears to have fallen away. Specifically, the deficiencies in UHF reception that existed in the early years of television have largely been ameliorated by improved television receiver design and the fact that more than two-thirds of all television homes now receive local signals via cable.

25. A number of commenters, however, support retention of the UHF discount. These commenters argue that the original basis for the discount remains. Specifically, these commenters maintain that cable carriage, must-carry rules, and improved receiver design have not created a level playing field between UHF and VHF stations. They argue that economic and technical disparities between UHF and VHF stations continue to disadvantage UHF stations.

5. Discussion of the UHF Discount

26. We believe that, for the present time, the UHF discount remains necessary in the public interest. As commenters note, there remains a UHF handicap that has not yet been overcome. Although roughly two-thirds of American viewers obtain their local television stations over a cable television system, still roughly one third do not. They rely on over-the-air reception. UHF stations have greater difficulty in reaching these viewers and cable headends—thereby hindering their ability to obtain cable carriage—because of their weaker signal. While the Commission has observed in other contexts that this UHF signal disparity has been ameliorated over the years it has not yet been eliminated. Additionally, because of the higher operating costs of UHF stations, particularly due to their higher power requirements, even when they can reach these viewers they still incur greater expenses than VHF stations in doing so and, thus, remain under a competitive handicap warranting a 50 percent discount.

27. As Univision points out in its comments, if there were no competitive disparity between VHF and UHF television, we would expect group owners to take advantage of the UHF discount by selling their VHFs and buying UHFs. The fact that few, if any, group owners have used this strategy suggests that the market recognizes a continuing competitive disparity between the two services. Accordingly, we cannot say the discount is no longer in the public interest as a result of competition.

28. While the technical and engineering evidence submitted by commenters continues to support the UHF discount, we believe that it will likely not continue to do so in the future. The information received in the proceeding suggests that the reach disparity between VHF and UHF stations differs from market-to-market and station-to-station. In addition, we agree with commenters arguing that advances in technology now provide us with the tools to more accurately measure the household reach for each UHF station.

29. In this regard, we note that the existing UHF discount will likely not work well for DTV. Our efforts to replicate existing signal coverage provide DTV stations the ability to reach approximately the same number of television households they currently reach with NTSC stations. Thus, it is not clear that a VHF NTSC station assigned a UHF DTV channel should be permitted a UHF discount if the station reaches the same number of households as did its NTSC counterpart. Nor is it clear that a UHF NTSC station assigned a VHF DTV channel should lose the discount if the DTV station does not reach more households. In this regard, however, we note that, pursuant to section 5009(c) of Public Law 106–113, 113 Stat. 1501, Appendix I (1999), the Commission, on December 7, 1999, issued a Public Notice giving DTV licensees until December 31, 1999, in which to file notice that they intend to seek maximization of their DTV service area. One thousand three hundred and sixteen letters of notification manifesting the intent to file to maximize DTV stations' service areas were filed by that deadline. Accordingly, DTV licensees, including those operating on UHF channels, have been given the opportunity to maximize their DTV coverage areas, and not merely replicate their analog coverage. This should ameliorate at least some of the disparities between UHF and VHF stations' access to viewership in the digital context. Additionally, unlike analog signal reception, where picture quality gets progressively worse as distance from the antenna increases, digital reception is characterized by the so-called "cliff effect." That effect is characterized by DTV television receivers obtaining the same quality of reception at a distance from the transmitting antenna as is obtained close to it until such a point as the data stream is no longer useable by the receiver. At that point reception "falls off a cliff" and no picture or sound is produced. In other words, the reception quality remains high when an adequate signal is available. Effectively, as the average DTV signal strength gets weaker at the edge of a station's service area, the picture and sound will be produced for smaller percentages of time, until reception is considered unacceptable. Generally, DTV UHF viewers should have better quality reception at greater distances from the station than is

currently the case with respect to analog UHF reception. This, too, should allow DTV UHF stations to obtain better access to off-the-air viewers and should rectify the VHF/UHF disparity to an extent. We believe that under these circumstances, the eventual modification or elimination of the discount for DTV will be appropriate. Accordingly, at such time near the completion of the transition to digital television we will issue a Notice of Proposed Rulemaking proposing a phased-in elimination of the discount. We previously stated that until the UHF discount was addressed in the proceedings where it was under review, any entity that acquired stations during the interim period between the revision of the national reach cap pursuant to the Telecom Act, and a Commission decision on the UHF discount, and which complied with the 35 percent reach cap only by virtue of the UHF discount, would be subject to our eventual decision on the discount. This has remained the case during the pendancy of the instant proceeding and we will continue to follow this policy until such time as the UHF discount is modified or eliminated.

B. Local Radio Ownership Rules

1. Regulatory History

30. In 1996, the Commission amended the local radio ownership rules to conform to provisions in section 202(b) of the Telecommunications Act of 1996. Section 73.3555(a)(1) of the Commission's rules (47 CFR 73.3555(a)(1)) sets forth the current local radio ownership rules. These rules currently allow: (1) Combinations of up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM), in markets with 45 or more commercial radio stations; (2) combinations of up to 7 commercial radio stations, not more than 4 of which are in the same service, in markets with between 30 and 44 commercial radio stations; (3) combinations of up to 6 commercial radio stations, not more than 4 of which are in the same service, in markets with between 15 and 29 commercial radio stations; (4) combinations of up to 5 commercial radio stations, not more than 3 of which are in the same service, if no party controls more than 50 per cent of the stations in the radio market, in radio markets with 14 or fewer commercial radio stations.

31. In 1938, the Commission adopted a strong presumption against granting radio licenses that would create duopolies (*i.e.*, common ownership of more than one station in the same service in a particular community) based largely on the principle of "diversification of service." In the early 1940s this presumption against duopoly ownership became an absolute prohibition when the Commission (1) adopted rules governing commercial FM service and (2) prohibited the licensing of two AM stations in the same area to a single network. The AM rule barred overlap of AM stations where a "substantial portion of the applicant's existing station's primary service area" would receive service from the station in question, except upon a showing that the public interest would be served through such multiple ownership; and the FM rule prohibited the licensing of a new station which would serve "substantially the same area" as another station owned or operated by the same licensee. The Commission explained that the radio duopoly rules sought to promote economic competition and diversity of programming viewpoints through station-ownership diversity.

32. In 1964, the Commission abandoned its case-by-case adjudication approach and barred common ownership of radio stations when the predicted 1 mV/m contours of the stations overlapped. In adopting the rule, the Commission stated: "When two stations in the same broadcast service are close enough together so that a substantial number of people can receive both, it is highly desirable to have the stations owned by different people." The Commission explained that this objective flowed logically from two basic principles underlying the multiple ownership rules.

First, in a system of broadcasting based upon free competition, it is more reasonable to assume that stations owned by different people will compete with each other, for the same audience and advertisers, than stations under the control of a single person or group. Second, the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.

The Commission concluded that the rules were based upon the view of the First Amendment to the Constitution articulated by the Supreme Court in the Associated Press case—*i.e.*, a notion that the Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."

33. In 1988, the Commission replaced the 1 mV/m contour-overlap duopoly standard, which prohibited the common ownership of stations with overlapping 1 mV/m signal contours, with a more relaxed "principal city" contour-overlap standard that prohibited common ownership of AM stations when the predicted 5 mV/m contours overlapped and common ownership of FM stations when the predicted 3.16 mV/m contours overlapped. As such, the rule prohibited combinations of 2 AM or 2 FM stations in the same "principal city" but permitted AM/FM combinations within the same community. The Commission explained that efficiencies of common ownership might be realized by allowing radio broadcasters to own two or more radio stations in the same geographic area, although not in the same principal city. The Commission also explained that the goals of the duopoly rule remained the same: to promote economic competition and diversity of programming and viewpoints through local ownership diversity. The Commission noted a changed marketplace, with an increased number of broadcast stations, the introduction of new services and technologies, and the abundance of competition in local markets, as the compelling reasons to relax the local ownership regulation.

34. In 1992, the Commission again cited changed economic conditions in radio markets as a basis for further relaxing the local radio ownership rules. Specifically, the Commission permitted combinations of up to (i) 3 AM and 3 FM in markets with 40 or more stations, (ii) 3 AM and 2 FM in markets with 30 to 39 stations, (iii) 2 AM and 2 FM in markets with 15 to 29 stations and (iv) 3 stations (with no more than 2 in the same service) in markets with 14 or fewer stations. The Commission based the count of radio stations on the number of commercial radio stations meeting minimum audience survey reporting standards within an Arbitron designated radio metro market, or on overlapping principal community contours outside designated radio markets. Under cases (i)-(iii), combinations were permitted if the combined audience share did not exceed 25 percent. In case (iv), the combination was permitted if it would not result in a single party controlling 50 percent or more of the stations in the market. The Commission noted growth in the number of radio stations and increased competition from non-radio outlets such as cable and MTV. The Commission noted that stations faced declining growth in radio revenues and concluded that economic circumstances threatened radio's ability to serve the

public interest. The Commission explained that consolidation within the industry would allow radio broadcasters to realize economies of scale that would then generate greater programming investment and increase radio stations' competitiveness. In response to petitions for reconsideration, the Commission moderated the relaxation of its rules permitting combinations of up to (i) 2 AM/2 FM in markets with 15 or more stations, if the combined audience share did not exceed 25 percent; and (ii) 3 stations in markets of 14 or fewer stations, with no more than 2 in the same service, if the combination would not control 50 percent or more of the stations in the market. The Commission decided to count radio stations with reference to a contour overlap standard in all situations, not just those outside of Arbitron designated radio markets. Thus, the Commission defined the radio market "as that area encompassed by the principal community contours * * * of the mutually overlapping stations proposing to have common ownership. The number of stations in the market will be determined based on the principal community contours of all commercial stations whose principal community contours overlap or intersect the principal community contours of the commonly-owned and mutually overlapping stations." The Commission concluded "that adopting more moderate increases * * * in the permissible level of station ownership in certain local markets at this time will provide necessary relief while enabling us to monitor marketplace developments as they unfold."

35. Pursuant to the Telecommunications Act of 1996, the Commission further relaxed its local radio ownership rules in March 1996, as set forth. The Commission did not change from its 1992 reconsideration decision, however, how it defined the relevant radio market or which stations it counted.

36. In our biennial review *NOI*, we asked for comment on how the relaxation of local radio ownership rules under the Telecom Act has impacted competition, diversity and economic efficiencies within local radio markets. We noted that since the passage of the Telecom Act, the radio industry has experienced an ongoing trend towards increasing ownership concentration, both in terms of local and national radio markets; although the number of radio stations has increased, the number of owners has decreased. The *NOI* asked for comment on whether this trend has had a significant impact on local market competition among radio stations, and with other local media outlets, in terms of the program delivery and local advertising markets. The *NOI* also asked for comment on whether radio ownership concentration has had a significant influence over the expression of viewpoint diversity and the level of news coverage within local radio markets. We noted in the *NOI* that the NTIA's 1997 annual report on minorities and broadcasting showed that there has been a drop in the number of minority-owned broadcast stations, and sought comment on the relationship between our ownership limits and the opportunities for minority and female broadcast station ownership. In addition, the *NOI* sought comment on whether our current counting method for purposes of applying the local radio ownership rules should be modified to more realistically account for the number of stations in a radio market.

2. Comments

37. Commenters were divided on whether the current local radio ownership rules, mandated by the Telecommunications Act, have produced positive or negative results. Commenters concerned about the effects of the rules on the marketplace ask the Commission to maintain or strengthen, the current rules.

38. Other commenters, however, rejoin that consolidation was the intent behind deregulation of local radio ownership restrictions, and that any resulting problems that may arise with market power should be left to antitrust authorities.

39. Commenters also differed on the Commission's methodology for counting stations in determining compliance with the ownership rules. Commenters such as Air Virginia, Americans for Radio Diversity (ARD), Greater Media, Inc., Press Communications, LLC, and Gross Communications Corporation argue that too many stations are counted under the Commission's current methodology. These commenters proposed to use an Arbitron or other rating service market definition, taking into account listener audience and station power, and to include only those stations that place a 1mV/m (FM) or 2 mV/m (AM) primary service contour over the furthest city limit of the market's principal city, or using Department of Commerce MSA definitions in place of Arbitron.

40. In contrast, some commenting parties urged the Commission to retain, or even expand, its current radio market definition and station count method.

3. Discussion

41. *Overview.* We conclude that our current local radio ownership rules, as mandated by the Telecommunications Act of 1996, generally continue to serve the public interest. The longstanding goal of the Commission's local radio ownership restrictions has been to promote competition and viewpoint diversity within local radio markets. While some commenters argued that consolidation has had a positive impact on the economic viability of the radio industry, in terms of improved station profitability and increased value of radio ownership, and has also yielded potential benefits for both the listening public and advertisers, others raised significant concerns about the impact of radio ownership consolidation on both our competition and diversity goals.

42. We recognize that the industry has undergone significant consolidation since 1996. Moreover, we expect further consolidation as a result of our recent ownership decisions relaxing the television duopoly and one-to-a-market rules. We intend to monitor the consolidation and gather information regarding the overall impact on competition and diversity. As discussed more fully below, although we will maintain our current local radio ownership rules for the time being, we are persuaded that further proceedings are warranted to address certain definitional and methodological issues affecting our local radio ownership rules. Specifically, we will commence a proceeding to seek comment on alternative means of defining radio markets and alternative methods of calculating the total number of stations "in a market" and the number owned by a particular party in a market to correct anomalies in our current methodology. We believe that proceeding will lead to rules and procedures that will be easier to apply, provide more certainty for entities contemplating acquisitions, and result in a more rational and consistent application of our multiple ownership limits.

43. *Competition.* Relaxation of the ownership limits under the Telecom Act has produced financial benefits for the broadcast radio industry. Financial data indicate that the industry has made significant gains since passage of the Telecom Act. For the industry as a whole, station profitability has increased and station values have reached new heights. However, it is not clear whether these gains are the result of greater efficiencies, enhanced market power, or both.

44. We are concerned that increasing consolidation may be having adverse effects on competition, especially in the local radio advertising market. Current data show that in 85 out of a total of 270 Arbitron radio markets, two entities already control more than 80% of

advertising revenue; in 143 markets two entities control more than 70 percent of such. We recognize that many advertisers consider alternative media to be good substitutes for radio advertising. However, the Department of Justice (DOJ) has concluded that there are a significant number of advertisers that do not. In distinguishing radio advertising as a distinct market from that of television and newspaper advertising, the DOJ explains that (1) radio advertising is unique in reaching a mobile broadcast audience; (2) radio has a greater ability to target particular audience segments; and (3) radio can be more cost effective and more flexible in responding to changes in local advertising conditions. Additionally, as we noted in our recent *TV Ownership Order*, "[a] recent econometric study finds that other advertising media are not good substitutes for radio advertising and that radio advertising probably constitutes a separate antitrust market." Thus, for certain advertisers, newspapers, cable, and broadcast television stations do not constitute an effective substitute for radio stations. For these advertisers, the consolidation of local radio markets may raise significant competitive concerns.

45. *Diversity.* Consolidation of radio stations under group ownership might allow owners to increase investment in news coverage, through the acquisition of more sophisticated news coverage equipment and by maintaining larger, more efficient news staffs. Some commenters thus suggest that ownership concentration has fostered viewpoint diversity. For example, Fuller-Jeffrey Broadcasting Companies, Inc. believes that viewpoint diversity is "alive and well," and that pre-Telecom Act ownership limits had placed a severe economic strain on small to medium-sized companies. It also believes that the present level of consolidation should allow the radio industry to enjoy unprecedented success and stability, which will allow it to better contribute to the public interest. One impact of consolidation, it argues, has been to reduce unnecessary format duplication and to minimize audience overlap. Commenters such as NAB assert that the Commission should look at all media, including television, radio, cable, DBS, Internet and newspapers, along with smaller services such as MMDS and SMATV, when judging program diversity. NAB also finds that group owners do not impose their views on audiences.

46. The scale and scope efficiencies discussed above might in part arise from the consolidation of news coverage at commonly-owned stations, leading to a lessening of viewpoint diversity and to a smaller local market for news talent. If this were the case, this would conflict with the longstanding intent of the radio multiple ownership rules to promote viewpoint diversity through independently owned local stations. Viewpoint diversity has traditionally been viewed in terms of the number of independent viewpoints expressed in local markets, in which case ownership consolidation could have a negative impact on both viewpoint and source diversity. A related concern is that even without the loss of news staffs, viewpoint expression might become homogenized within a commonly owned group of radio stations as a result of the sharing of common news facilities and a common corporate culture.

47. Several commenters lend support to these notions. Air Virginia notes a trend by large group-owned stations towards less news and public affairs and more revenue-generating entertainment programming, particularly with local marketing agreements ("LMAs"). Americans for Radio Diversity (ARD) believes that independent broadcasters are more likely to provide diverse and unbiased programming, and that group owners tend to ignore public service to demographic groups deemed to be small or unprofitable, which often impacts minorities and those of lower economic status. CME believes that consolidation has led to reduced public-affairs and local-news programming, since group owners increasingly use syndicated programming and out-sourcing to produce news and public affairs programs, often with the same production company as is used by competitors. It reports that, for example, Metro Networks Inc., a Houston-based company, provides all of the news programming to 10 Washington, D.C., radio stations. Metro, it states, is one of the fastest growing companies in the United States and its growth, according to one of its executives, has been due to the "out-sourcing" his company has found at many radio stations. Similarly, CME reports that Capstar Broadcasting uses ten announcers based in Austin, Texas, to record all between-song breaks and weather and traffic breaks for 37 of its stations in Texas, Arkansas and Louisiana.

48. In view of the large-scale consolidation in the radio industry, we believe that the existing local radio ownership limitations remain necessary to prevent further diminution of competition and diversity in the radio industry. It appears that while there may have been a number of salutary effects flowing from the consolidation that has taken place since 1996, largely in financial strength and enhanced efficiencies, it cannot be said that consolidation has enhanced competition or diversity, and, indeed, may be having the opposite effect. There currently are hundreds of fewer licensees than there were four years ago and, in many communities, far fewer radio licensees compete against each other.

49. Our competition and diversity concerns outlined above lead us to conclude that the local radio ownership rules should not be further relaxed at this time. The industry is still adapting to the substantial relaxation of local ownership rules that followed enactment of the 1996 Act, and we expect consolidation to continue under our current ownership limits. While some commenters argue that we should tighten the ownership limits, we do not believe this appropriate given that Congress directed the Commission to adopt these limits in 1996.

50. *Market Definition and Counting Methodology.* Although we have decided to retain our ownership rule, our experience in administering the rule since its implementation in 1996 suggests several concerns that should be addressed, including our method of defining markets, counting the number of stations within them and counting the number of stations owned by a party in a radio market. These definitions and methodologies may be undermining Congress' intent in adopting the 1996 Act.

51. Our definition of a radio market and our method for counting the number of stations in a market were adopted in 1992. These were not altered when we amended our rules to implement section 202 of the 1996 Act. To evaluate whether a proposed transaction complies with our ownership rules, we first determine the boundaries of each market created by the transaction. A transaction may create more than one radio market. Our rules define a radio market as the "area encompassed by the principal community contours (i.e., predicted or measured 5 mV/m for AM stations and predicted 3.16 mV/m contour for FM stations) of the mutually overlapping stations proposed to have common ownership." Thus, we look to all stations that will be commonly owned after the proposed transaction is consummated and group these stations into "markets" based on which stations have mutually overlapping signal contours. A market is defined as the area within the combined contours of the stations to be commonly owned that have a common overlap. For example, suppose an applicant proposes to own stations A, B, C and D. The contours of

stations A, B and C each overlap the contours of the other two stations—that is, there is some area which the contours of all three stations have in common. Station D, on the other hand, overlaps the principal community contour of station A, but not those of stations B or C. Under our current definitions, the area encompassed by the combined contours of stations A, B and C form one "market" and the area within the combined contours of stations A and D form another market. This example assumes that stations A and D are same-service stations, and that at least one other station, B or C, is also in the same service as station A.

52. To determine the total number of stations "in the market," as defined above, we count all stations whose principal community contours overlap the principal community contour of any one or more of the stations whose contours define the market. Thus, in the market formed by the contours of stations A, B and C, any station whose contour overlapped the contour of A, B or C would be counted as "in the market." We use a different methodology, however, to determine the number of stations that any single entity is deemed to own in a given market. For this purpose, we only count those stations whose principal community contours overlap the common overlap area of *all* of the stations whose contours define the market. Thus, a station owned by the applicant that is counted as being "in the market" because its contour overlaps the contour of at least one of the stations that create the market will not be counted as a station owned by the applicant in the market unless its contour overlaps the area which the contours of *all* of the stations that define the market have in common. Referring to our example of the market formed by the contours of stations A, B and C, station D would be counted as "in the market" because its contour overlaps the contour of station A. But, station D would not be counted as a station owned by the applicant in the ABC market because station D's contour does not also overlap the contours of stations B and C. In short, the applicant's ownership of station D would not be counted against it in determining compliance with the ownership cap in the ABC market.

53. These definitions and methodologies may be producing unintended results that are contrary to Congress' intent. In the 1996 Act, Congress directed us to adopt radio ownership limits that increase as the size of the market increases. Implicit in Congress' statutory directive is: (1) a rational definition of radio "market" that reflects the number of stations to which listeners in a particular community actually have access; and (2) a consistent definition of radio market when counting the number of stations in a market and when counting the number of stations an entity owns within that market.

54. The Commission's current policies raise concerns on both counts. First, the Commission's use of overlapping signal contours to assess the number of stations in the market can produce unrealistic results. For example, in a recent case in Wichita, Kansas, a 24-station market according to the commercial Arbitron rating service, the contour overlap approach counted 52 radio stations in the market, including several Oklahoma stations whose signals did not even reach Kansas. In other contexts, such as our television duopoly and one-to-a-market rules, we recently opted for market definitions based on commercial reality—as measured by ratings services like Arbitron and Nielsen—rather than contour overlaps. In changing our duopoly rule from a contour-based restriction to a DMA-based restriction, we stated that the DMAs "are a better measure of actual television viewing patterns, and thus serve as a good measure of the economic marketplace in which broadcasters, program suppliers and advertisers buy and sell their services and products." We believe that the same reasoning could apply to radio markets. Arbitron markets reflect the number of stations that actually target listeners in a particular community because they are the listeners that advertisers pay to reach. We will issue an *NPRM* seeking comment on whether Arbitron markets (or a proxy in non-Arbitron areas) would be a more accurate measure of marketplace reality than our current approach.

55. Second, our current methodology for counting the number of stations a party owns in a market may result, as in the example discussed above, in a station being counted in the market for purposes of establishing the number of stations in the market but not being counted against a licensee's cap on the number of stations it may own in that market. In one case, this would have led to a party being permitted, in effect, to own three stations in a four-station market because our method of counting the stations it owned in the market excluded one of its stations. *See In re Application of Pine Bluff Radio, Inc.*, 14 FCC Rcd 6594 (1999). In *Pine Bluff*, a station that was logically in a market in terms of listenership and advertiser support, and, in fact, was counted for purposes of determining the total number of stations in that market was not counted against a party's ownership cap in that market because its principal city contour did not overlap the principal community contours of all stations that defined the market. In the 1996 Act, Congress provided that in markets with 14 or fewer commercial radio stations a party may own up to five commercial radio stations, but "may not own, operate, or control more than 50 percent of the stations in such market." (Section 202(b)(1)(D) of the Telecommunications Act of 1996.) Yet, in *Pine Bluff*, application of our established policies led to one party owning three stations in what could reasonably be considered a four-station market. In *Pine Bluff* we recognized that this may appear to be an anomalous result but pointed out that it was produced by a methodology that had been consistently utilized since 1992 and that subsequent events in the market had rendered harmless the impact of this anomaly in that case.

56. This shifting market definition appears illogical and contrary to Congress' intent. For instance, in the 1996 Act, Congress provided that:

> [I]n *a radio market* with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in *such market*.

Thus, the plain language of the statute seems to require us to look at the same market—*i.e.*, to use the same definition of "market"—when determining the number of radio stations in the market and when counting the number of stations that an entity owns, operates, or controls within that market. As a logical matter, if a station has sufficient presence that it should be counted as contributing to the number of stations "in the market," it seems appropriate to count it as being "in the market" for purposes of calculating the ownership cap.

57. We tentatively conclude that our definitions and methodologies in this area may be having effects inconsistent with what Congress intended. In addition, they may be undermining the legitimate expectations of broadcasters, advertisers and the public as to the size of their market, the number of stations in their market, and the number of stations that can be owned by an individual party in that market. To consider appropriate changes to our rules, we will issue an *NPRM* soliciting comment on proposed modifications of our rules in this area.

C. Dual Network Rule

1. Regulatory History

58. Section 73.658(g) (47 CFR 73.658(g)) sets forth the Commission's current dual network rule. It directly reflects the provisions of section 202(e) of the Telecom Act, which permits a television broadcast station to affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such networks are composed of: (1) Two or more persons or entities that were "networks" on the date the Telecom Act was enacted; or (2) any such network and an English-language program distribution service that on the date of the Telecom Act's enactment provided 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television households. The Conference Report identified with precision the networks to which these definitions were to apply. It stated that the Commission was being directed to revise its dual network rule,

> to permit a television station to affiliate with a person or entity that maintains two or more networks unless such dual or multiple networks are composed of (1) two or more of the four existing networks (ABC, CBS, NBC, Fox) or, (2) any of the four existing networks and one of the two emerging networks (WBTN, UPN). The conferees do not intend these limitations to apply if such networks are not operated simultaneously, or if there is no substantial overlap in the territory served by the group of stations comprising each such networks.

59. The Commission first adopted a dual network rule for broadcast radio networks in 1941 following an investigation to determine whether the public interest required "special regulations" for radio stations engaged in chain or other broadcasting. The rule provided that no license would be issued to a broadcast station affiliated with a network organization that maintained more than one broadcast network. The Commission extended the dual network rule to television networks in 1946. The Commission believed that permitting an entity to operate more than one network might preclude new networks from developing and affiliating with desirable stations because those stations might already be tied up by the more powerful network entity. In addition, the Commission expressed concern that dual networking could give a network too much market power. The dual network prohibition, therefore, was intended to remove barriers that would inhibit the development of new networks, as well to serve the Commission's more general diversity and competition goals. The dual network rule for broadcast television remained unchanged until 1996, when the Commission amended the rule, as noted above, to conform with the provisions in Section 202(e) of the Telecom Act.

2. Comments

60. Four parties (ABC, CBS, Paxson and WB) submitted comments regarding the dual network rule; all favored repeal. These four broadcast networks argue that the rule constrains their ability to restructure and achieve efficiencies of common ownership. They also argue that antitrust enforcement would be sufficient to address any anticompetitive concerns that might arise in the absence of the dual network rule.

3. Discussion

61. The current dual network rule differs markedly from the dual network rule that remained unchanged from 1946 to 1996. The latter prohibited a broadcast station from affiliating with a network organization that maintained more than one broadcast network. In contrast, the current rule effectively permits a broadcast station to affiliate with a network organization that maintains more than one broadcast network, unless such networks are created by a merger between ABC, CBS, Fox, or NBC, or a merger between one of these four established networks and UPN or WB. Thus, the current rule supports common ownership of multiple broadcast networks created through internal growth and new entry, and discourages common ownership of multiple broadcast networks created by mergers between specific network organizations.

62. Under the current dual network rule, all existing network organizations, and all new network organizations, may create and maintain multiple broadcast networks. There are no limits on the number of broadcast networks that may be maintained by a network organization, or the number of television stations that may affiliate with a network organization. As such, it is theoretically possible for a network organization with sufficient programming to enter into affiliation agreements with every broadcast television station, in every market, and supply all of their programming. The opportunity to create and maintain multiple broadcast networks places broadcast networks on more equal footing with cable, satellite and other multichannel video programming distributors.

63. While the dual network rule gives all network organizations the opportunity to pursue any economic efficiencies that may arise from the maintenance of multiple broadcast networks, it restricts the manner in which specific network organizations become multiple broadcast networks. Specifically, the rule permits ABC, CBS, Fox and NBC to develop multiple broadcast networks by (1) creating new broadcast networks, (2) acquiring new broadcast networks created after passage of the Telecom Act, and (3) acquiring video networks from nonbroadcast media (*e.g.*, cable or satellite) and moving them to broadcast, assuming they could find additional local stations with which to affiliate. However, the rule prohibits ABC, CBS, Fox, and NBC from developing multiple broadcast networks by merging with one another or UPN or WB.

64. We believe that the rule as it applies to UPN and WB may no longer be necessary in the public interest. Accordingly, we will adopt an *NPRM* seeking comment on modifying the dual-network rule. We recognize that program production and broadcast networking are complementary inputs with economic characteristics (*e.g.*, large sunk costs and large transaction costs) that make vertical integration desirable. Since UPN and WB are nascent subsidiaries of large, well-established program producers, a merger of ABC or CBS or Fox or NBC with UPN or WB may be characterized as a merger of an established broadcast network with an established program producer. We believe that allowing such mergers may permit realization of substantial economic efficiencies without undue harm to our diversity and competition goals. However, because we are concerned about the effect of such a merger on our diversity goals, that *NPRM* seeks comment on what, if any, safeguards should be imposed to assure a minimal reduction in diversity assuming we alter the rule in some fashion.

65. We do not, however, believe that, at the present time, the dual network rule should be eliminated in its entirety. While there may be some economic efficiencies associated with mergers between established broadcast networks, we believe such mergers would raise significant competition and diversity concerns. As such, our forthcoming *NPRM* concerning the dual network rule will not propose elimination of that portion of the rule that prevents mergers between ABC, CBS, Fox, and NBC.

D. Daily Newspaper/Broadcast Cross-Ownership Rule

1. Regulatory History

66. Section 73.3555(d) of the Commission's rules sets forth the newspaper/broadcast cross-ownership rule. That section states:

> No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: (1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or (2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or (3) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

67. The Commission adopted the newspaper/broadcast cross-ownership rule in 1975. Like all of the Commission's cross-ownership and multiple ownership rules in the broadcast context, the newspaper/broadcast cross-ownership rule rests on "the twin goals of promoting diversity of viewpoints and economic competition." In adopting the rule, the Commission made clear that its diversity goal is paramount; sometimes competition must "yield . . . to the even higher goals of diversity and the delivery of quality broadcasting service to the American people." The Commission explained that diversification of ownership promoted diversification of viewpoint in that "it is unrealistic to expect true diversity from a commonly owned station-newspaper combination. The divergence of their viewpoints cannot be expected to be the same as if they were antagonistically run." Thus, the Commission determined that, as a general rule, granting a broadcast license to an entity in the same community in which the entity also publishes a newspaper would harm local diversity, and should be prohibited. The Commission did not foreclose, however, waiver requests under certain circumstances, although it has only granted three waiver requests on a permanent basis. (The circumstances are: (1) where there is an inability to dispose of an interest in order to conform to the rules; (2) where the only sale possible is at an artificially depressed price; (3) where separate ownership and operation of the newspaper and the station cannot be supported in the locality; and (4) where, for whatever reason, the purposes of the rule would be disserved by divestiture.)

68. In 1978, the Supreme Court, in *FCC* v. *National Citizens Committee for Broadcasting*, upheld the Commission's rules and waiver policies in their entirety. The Supreme Court found the Commission's diversity goal an important public policy that furthered the First Amendment values of public access to diverse and antagonistic sources of information. Although the Supreme Court noted the arguments of opponents of the rule to the contrary, it stated that "notwithstanding the inconclusiveness of the rulemaking record, the Commission acted rationally in finding that diversification of ownership would enhance the possibility of achieving greater diversity of viewpoints." The Supreme Court approvingly cited the lower court's observation that "[d]iversity and its effects are . . . elusive concepts, not easily defined let alone measured without making qualitative judgments objectionable on both policy and First Amendment grounds." It also confirmed the Commission's opinion in the *Second Report and Order in Docket 18110* that "it is unrealistic to expect true diversity from a commonly-owned station-newspaper combination. The divergency of their viewpoint cannot be expected to be the same as if they were antagonistically run." The Supreme Court noted the availability of waivers to underscore the reasonableness of the rule.

69. For several years in the 1980s and early 1990s, Congress precluded the Commission from spending authorized funds "to repeal, retroactively apply changes in, or to begin or continue a reexamination of the rules and the policies established to administer" the newspaper/broadcast cross-ownership rule. In the Commission's 1994 appropriation, however, Congress provided that the Commission could amend policies with respect to waivers of the newspaper/broadcast cross-ownership rule as it applied to radio. Subsequently, Congress dropped all restrictive language concerning the rule from the Commission's appropriations, and thus removed the statutory ban on the Commission's review of the rule itself.

70. Although the Telecommunications Act of 1996 addresses various broadcast cross-ownership issues, it does not address newspaper/broadcast cross-ownership issues; indeed, the legislative history of that Act reveals that the House of Representatives explicitly considered and rejected changes to the newspaper/broadcast cross-ownership rule. Thus, while the Commission now has the authority and obligation to reevaluate the newspaper/broadcast cross-ownership rule, and its policy regarding waivers thereof, there is no explicit Congressional guidance on how that authority should be exercised. However, we believe that there may be certain circumstances in which the rule may not be necessary to achieve the rule's public interest benefits. We, therefore, will initiate a rulemaking proceeding to consider tailoring the rule accordingly.

71. As a result of issues raised in the merger of The Walt Disney Company and Capital Cities/ABC, Inc., in September 1996 we issued an *NOI* soliciting comment on the possible revision of our waiver policy as to newspaper/radio combinations. In that *NOI* we asked whether we should revise our waiver policy in ways that might make it less stringent and/or more objective, such as by adopting a voice count test. Subsequently, in the instant proceeding, we solicited comment on whether the overall newspaper/broadcast cross-ownership rule should be retained, modified or eliminated. (During the pendency of the newspaper/radio waiver policy proceeding, the Newspaper Association of America filed a petition for rulemaking to eliminate the newspaper/broadcast cross-ownership rule. In our *NOI* in the instant proceeding, we stated that we would incorporate NAA's petition in this proceeding, and invited comment on it. Additionally, on August 23, 1999, NAA filed an Emergency Petition for Relief. This petition, like NAA's prior Petition for Rulemaking, argues in favor of repeal of the newspaper/broadcast cross-ownership rule, although in this pleading NAA's arguments are based in part on the Commission's action in the *TV Ownership Order*. As with the pleadings filed by Fox and Viacom, this pleading will be treated as a late-filed comment and not considered in this proceeding. Rather, we will include these comments in the record of the 2000 biennial review.) In the biennial review *NOI* we expressed the view that permitting the owner of a broadcast TV or radio station to own a newspaper, or visa versa, could give a common owner the market power to unilaterally raise local radio, television, and/or newspaper advertising rates. However, we also expressed the belief that the broadcast media and newspapers were not likely to compete in the markets for delivered programming or program production and, accordingly, elimination of the rule would likely not have adverse competitive impact in these markets. We asked for comment

on alternatives to elimination of the rule and other possible economic effects from such elimination (*e.g.*, benefits to the public from efficiencies to be realized from joint operations). Finally, we solicited comment on the effects elimination of the rule might have on our diversity concerns and specifically solicited comment on the arguments made in a Petition for Rulemaking filed by the Newspaper Association of America seeking repeal of the rule.

2. Comments

72. Opponents of the rule claim that the Commission has never empirically demonstrated that the rule furthers its competition and diversity objectives. In any event, they assert, media markets are dramatically more competitive and diverse now than when the Commission adopted the rule, such that the rule is no longer in the public interest, and perhaps is even unconstitutional on First Amendment or other grounds.

73. Proponents of the rule counter that many of the new media outlets, such as the Internet, OVS and DBS, do not add to viewpoint diversity on the local level. They also point out that new programs by the same broadcasters do not add to viewpoint diversity. Rule proponents also state that the rule does not prohibit all combinations, but rather only those in the same market; moreover, existing waiver policies allow combinations where a broadcaster or newspaper publisher is failing and cannot survive but for the combination.

3. Discussion

74. We believe the newspaper/broadcast cross-ownership rule continues to serve the public interest because it furthers our important and substantial policy of viewpoint diversity. We therefore conclude that, as a general matter, the rule should be retained. However, we believe that there may be circumstances in which the rule may not be necessary to achieve its intended public interest benefits. We, therefore, will initiate a rulemaking proceeding to consider tailoring the rule accordingly.

75. *Effects on Diversity.* While the media marketplace has changed since we adopted the rule, we find that the changes are insufficient to justify repeal and we will need to gather a more complete record to determine what modifications may be appropriate. First, many of the new media outlets do not yet appear to be substitutes for broadcast stations and newspapers on the local level for diversity purposes. As we have stated in the biennial review *NOI* and elsewhere, we are most concerned with viewpoint diversity at the local level. This is because "[m]onopolization on the means of mass communication in a locality assures the monopolist control of information received by the public and based upon which it makes elective, economic, and other choices." New outlets such as DBS and MMDS, however, typically do not provide locally originated programming. In addition, even though cable systems may originate local programming, they are required to dedicate PEG channels only if their franchise authorities require them to do so, and to provide leased access channels only as a function of their activated channels. There is no requirement that the material offered on cable access channels be locally originated or oriented. By contrast, as part of their public interest obligations, broadcasters are required to air programming that is responsive to issues facing their communities of license, and, although they are not required to do so, local daily newspapers typically cover local issues, endorse local candidates, and provide a platform for the presentation of local opinion. Thus, the fact remains that broadcast services, in particular broadcast television, and newspapers have been and continue to be the dominant sources of local news and public affairs information in any given market. The Commission has distinguished broadcast television from radio as having more visual impact and serving more people as a primary source of news. Almost 70% of American adults surveyed indicated that they use television as their primary source of news. Importantly, while the number of broadcast stations has increased in the past several years, the number of daily newspapers has decreased. On one hand, some commenters argue that this warrants the Commission allowing newspapers to combine with local broadcast stations in order to realize the economies of joint operation, helping them to preserve their newspaper. On the other hand, to the extent that this suggests that the survival of some newspapers may depend on their joint operation with local broadcast stations, we have a waiver standard that can accommodate such instances.

76. Second, we note that not all of the new media in a given market are available to all consumers in the market to the same extent as broadcast services and newspapers. Broadcast radio and TV are available free of charge to anyone who makes an investment in receiving equipment, and much of the public have such equipment; for example, 98.2% of Americans own a TV set. Similarly, newspapers are available to anyone for a nominal charge. DBS, MMDS, and the Internet, however, are available only to those who both purchase or rent equipment *and*, except in the case of the Internet where some Internet Service Providers offer Internet connections free of direct charge, subscribe to a service, the monthly fees for which services are typically several times the cost of a newspaper subscription. In addition, in the case of the Internet, the sunk cost of a computer and the software necessary to browse the Internet is typically several times that of a radio or TV.

77. Third, although some grandfathered combinations report that efficiencies they have derived therefrom have enabled them to air more news and public affairs programming than their competitors such additional programming does not necessarily enhance our policy goal of viewpoint diversity if the additional programs all come from the same source. The Commission has previously explained that its cross-ownership and multiple ownership rules encourage "outlet" and "source" diversity as an indirect means to achieve viewpoint diversity:

> The Commission has felt that without a diversity of outlets, there would be no real viewpoint diversity—if all programming passed through the same filter, the material and views presented to the public would not be diverse. Similarly, the Commission has felt that without diversity of sources, the variety of views would necessarily be circumscribed.

78. Thus, as the Commission stated when it adopted the newspaper/broadcast cross-ownership rule: "it is unrealistic to expect true diversity from a commonly-owned newspaper combination. The divergence of their viewpoints cannot be expected to be the same as if they were antagonistically run."

79. We also emphasize that media markets are undergoing significant changes, occasioned by the Telecommunications Act of 1996 and our decision to relax other cross-ownership and multiple ownership rules and waiver policies. The Telecommunications Act directed the Commission to modify its radio ownership rules. Between the enactment of the Telecom Act and March 2000, the number of radio station owners declined by 22 percent from approximately 5,100 owners in March 1996, to about 4,000 in March 2000. In addition, we have recently amended our "TV duopoly" and "one-to-a-market" rules and waiver policies and we propose other changes to still other broadcast ownership rules or policies as a result of this biennial review. The response of the market to these rule

changes will provide us concrete, empirical information about their impact on our public policy goals for use in our future biennial reviews. Therefore, the dominance of broadcast services and newspapers in providing local news and public affairs information, may suggest that a measured approach to modifying the newspaper/broadcast cross-ownership rule is appropriate at this time.

80. *Effects on Competition.* With respect to competition, we also emphasize that the record was not clear on several points. First, it was not clear that grandfathered combinations derived efficiencies only from co-located combinations. For example, Chronicle provided information that its combination aired more news and public affairs programming than its competitors in a given market, but the combination that produced these benefits included both co-located and non-co-located broadcast stations and newspapers. The newspaper/broadcast cross-ownership rule only prohibits combinations in the same market. Second, it was not clear that the efficiencies grandfathered combinations derived could not be realized from non-attributable joint ventures. Managers of existing newspaper/broadcast combinations, as well as other commenters, report that the broadcast station and the newspaper keep separate news staffs in combination situations because the combination does not derive efficiencies from consolidation of such staff. Accordingly, it does not appear that mergers of newspapers and broadcast stations would produce such efficiencies. Third, it was not clear that the efficiencies of newspaper/broadcast combinations produced any meaningful benefits for advertisers, and therefore for viewers as consumers of the advertisers' goods. As indicated above, some commenters explain that grandfathered combinations have provided more news and public affairs programming, and one could extrapolate that this translates into more advertising and viewing options. There was no evidence, however, that any of these additional options translated into benefits for advertisers in the form of reduced rates, or corresponding benefit for viewers in the form of reduced prices for advertised products and services. Accordingly, we conclude that the newspaper/broadcast cross-ownership rule continues to provide important public interest benefits and that its elimination would not necessarily provide any offsetting benefits to competition.

81. Notwithstanding our general conclusion that the rule should be retained, we recognize that there may be situations in which the rule may not be necessary to protect the public interest in diversity and competition. We wish to examine in greater detail such situations. There may be instances, for example, in which, given the size of the market and the size and type of the newspaper and broadcast outlet involved, sufficient diversity and competition would remain if a newspaper/broadcast combination were allowed. While the record contains several proposals for tailoring the rule to address this issue, we believe that a more complete record can and should be developed regarding the circumstances in which the rule may not be necessary to achieve its intended public interest benefits. We will examine whether the rule needs to be tailored to address contemporary market conditions. We will issue a notice of proposed rulemaking seeking comment on these and other potential modifications of our rule. While we generally believe that the newspaper/broadcast cross-ownership rule should be retained, this rulemaking will ensure that the rule is tailored to cover only those circumstances in which it is necessary to protect the public interest.

82. *Additional Matter.* In 1996, the Tribune Company, which publishes a newspaper in Fort Lauderdale, Florida, agreed to merge with Renaissance Communications Corporation, which owned six television stations including one in Miami, Florida. Although Tribune sought a permanent waiver of the newspaper/broadcast cross-ownership rule to permit this combination, the Commission granted the license transfer subject to the condition that Tribune divest itself of either the Ft. Lauderdale newspaper or the Miami television station within one year, expiring March 22, 1998. On March 6, 1998, Commission staff granted an extension of Tribune's temporary waiver subject to the review of the newspaper/broadcast cross-ownership in the instant proceeding and required that it come into compliance within six months of the completion of the 1998 biennial review (unless, of course, Tribune's combination was in compliance with any new cross-ownership rule adopted as a consequence of that review). We explained that an extension was appropriate because it would be unduly harsh for Tribune not to receive further interim relief given the confusion that may have resulted from the Commission's initial waiver decision with respect to its policy on interim waivers pending rulemaking. We also stated that an extension would not so compromise our diversity and competition interests as to outweigh the substantial equitable considerations favoring the grant. Given our decision here to issue an *NPRM* seeking comment on possible modifications of the newspaper/broadcast cross-ownership rule, and the unusual circumstances that led to the prior extension of Tribune's waiver, including the withdrawal of the waiver opponent's opposition to the joint operation as long as Tribune continues to operate the newspaper and television station separately and the fact that we have found the joint operation does not so compromise our diversity and competition interests as to outweigh the substantial equitable considerations favoring the grant of an interim waiver, we will extend that temporary waiver, under the same terms and conditions now applicable, until the completion of the rulemaking.

E. Cable/Television Cross-Ownership Rule

1. Regulatory History

83. Section 76.501(a) of the Commission's rules sets forth the "cable/TV cross-ownership rule." That section states:

> No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted Grade ■ contour . . . overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers).

The Commission adopted the cable/TV cross-ownership rule in 1970. In doing so, the Commission noted its concerns about concentration in the broadcast industry, and stated that the rule would further the Commission's policy favoring diversity of control over local mass communications media, and thereby lead to diverse sources of programming. The Commission noted that it wished to avoid over-concentration of media control. On reconsideration, the Commission reiterated that its "adoption of these provisions—designed to foster diversification of control of the channels of mass communication—was guided by two principal goals, both of which have long been established as basic legislative policies. One of these goals is increased competition in the economic marketplace; the other is increased competition in the marketplace of ideas."

84. Congress codified and then repealed a statutory prohibition on

cable/TV cross-ownership. On October 30, 1984, the Cable Communications Policy Act of 1984 became law. Section 613(a)(1) of the Cable Act of 1984 codified the cable/TV cross-ownership rule. Section 202(i) of the Telecommunications Act of 1996, however, eliminated section 613(a)(1) of the Cable Act of 1984, thereby ending the statutory bar to cable/TV cross-ownership. In eliminating the bar, however, Congress stated: "The conferees do not intend that this repeal of the statutory prohibition should prejudge the outcome of any review by the Commission of its rules." The instant proceeding is the first one in which the Commission has reviewed the rule since its adoption.

85. In the Biennial Review *NOI* we solicited comment on the cable/TV cross-ownership rule. Specifically we asked for comment on the possible effects that repeal or relaxation of the rule might have on various markets, including the market for delivered programming, on the appropriate scope of the product and geographic advertising markets in which cable and broadcast television compete, and on whether cable/broadcast television combinations could exercise monopoly power in the program production markets. We defined this power in this context as the ability of the cable/television combination to artificially restrict the price paid for programming. Additionally, we sought comment on the impact on diversity of both the increased number of video outlets and allowing cable/television cross-ownership.

2. Comments

86. Twelve parties commented on the cable/TV cross-ownership rule; seven supported retention of the rule, and five supported repeal or modification. Opponents of the rule note that relevant markets are more competitive and diverse than when the Commission adopted the rule, and state that the rule no longer serves the public interest, and perhaps is even unconstitutional.

87. Proponents of the rule claim that the rule continues to serve the public interest because cable is the dominant competitor in the multichannel video programming distribution market, and thus serves as a "gatekeeper" to the delivered programming market. Proponents also contend that a cable/TV combination could harm competition in the advertising market by discriminating in favor of its television station and cable programming services, manipulating carriage and channel positioning and offering joint advertising rates, realizing economies of scale, driving competitors out of the market and frustrating new entrants.

3. Discussion

88. As explained more fully below, we agree with proponents of the rule that it continues to serve the public interest because it furthers our important public policies of fostering competition and viewpoint diversity. The cable/TV cross-ownership rule promotes competition and diversity and prevents unfair discrimination against competitors, including in forms not covered by existing law. We therefore retain the rule.

89. *Effects on Competition.* We conclude that the rule continues to serve the public interest because it furthers our goal of competition in the delivered video programming market. This market includes an array of participants, such as operators or providers of broadcast television, cable systems; DBS, MMDS, OVS, SMATV, and possibly even the Internet and videocassettes for VCRs. Sixty-seven percent of American television households, however, subscribe to cable. In the context of discussing the status of competition in the market for the delivery of multichannel video programming, the Commission stated in its most recent *Cable Competition Report* that "[t]he market for the delivery of video programming to households continues to be highly concentrated and characterized by substantial barriers to entry." Under these circumstances, we agree with proponents of the rule that cable, in many instances, functions as the "gatekeeper" to local markets for delivered video programming. As commenters point out, this status gives cable system operators both the incentive and the means to discriminate against their competitors with respect to such core issues as carriage and channel positioning as well as in areas not covered by statute or Commission rule such as joint advertising rates and promotions. As commenters also point out, a cable/TV combination would have even greater incentive and means to discriminate against others and in favor of its own broadcast affiliate in this fashion, and both the broadcast station and the cable system would stand to unfairly benefit.

90. The record indicates that current carriage and channel position rules prevent some of the discrimination problems, but not all of them. For example, opponents of relaxing the rule note that current law would not prevent discrimination through joint advertising sales and rates practices and joint promotions unavailable to competitors. Additionally, although section 614(b)(6) of the Communications Act entitles a local commercial television station to be carried by a cable system on the same channel as it broadcasts over the air, Univision describes protracted disputes with a cable system in securing its "on air" channel, with one cable system shuffling Univision's channel position four times in four years. Univision also claims that a cable system abruptly changed the channel position of one of Univision's stations in order to provide that position to the cable system's own local news channel. Univision further claims that cable system operators sometimes otherwise delay carriage by denying that they receive an adequate signal from a station, which forces the broadcast station to divert resources away from obtaining quality programming and toward obtaining carriage and channel position. Other commenters also emphasize that cable systems can delete broadcasters from carriage through waiver, and that cable/TV combinations will be unlikely to offer retransmission consent agreements. Univision emphasizes that all of this anti-competitive behavior occurred in spite of the cable/TV cross-ownership rule, and claims that such behavior will only be exacerbated by cable/TV combinations that seek to favor their own broadcast affiliate over others.

91. Although, as we noted in the *NOI*, DTV holds the potential to enable broadcasters to compete better with cable in the multichannel video programming distribution market, the reality is that DTV is now nascent. In addition, because of the advent of DTV, our DTV must-carry rules are the subject of a pending proceeding. Modification of the cable/TV cross-ownership rule at this time could frustrate and undermine the potential that DTV holds for broadcasters if, as suggested by ALTV, a cable/TV combination, in order to give its own broadcast station a competitive advantage, denied carriage to a competitor and inhibited its DTV roll-out. We believe that it is particularly important to ensure stability and a level playing field as the technology of DTV reaches the marketplace and competitive forces determine its fate in the marketplace. Cable/DTV competition may ultimately provide a basis for some modification of the cable/TV cross-ownership rule, but we believe that time has not yet arrived.

92. *Effects on Diversity.* We also conclude that the cable/TV cross-ownership rule is necessary to further our goal of diversity at the local level. As we noted above, current media markets include a variety of

participants; as we also noted above in our discussion of the newspaper/broadcast cross-ownership rule, however, many new media do not contribute to diversity at the local level. Broadcasters contribute to local diversity through the fulfillment of their public interest obligations to air programming responsive to the issues facing their communities of license; cable contributes through PEG and leased access channels and to some degree through origination of local cable news channels. In the *TV Further Ownership Notice*, the Commission thus tentatively concluded that broadcast television and cable are to a certain extent substitutes for diversity purposes, but also stated:

> [w]e tentatively see no reason to include in our diversity analysis the other electronic video media [beyond cable], such as MMDS, VCRs, and VDT, as substitutable for a broadcast television station. None of these has nearly the ubiquity of cable and most do not have the capability for local origination that cable has. All provide similar entertainment programming; however, our core concern with respect to diversity is news and public affairs programming especially with regard to local issues and events.

93. More recently, we reaffirmed this view in the *TV Ownership Order* where we stated that many of these alternative video delivery systems "are still establishing themselves in the marketplace and generally do not provide an independent source of local news and informational programming." While newspapers and radio contribute to local diversity, broadcast television and cable television are the only participants in the market for delivered news and public affairs *video* programming at the local level. The Commission has distinguished the influence of television from that of newspapers as being more immediate, and from that of both newspapers and radio as having more visual impact and serving more people as a primary source of news. The Commission has also noted that the public receives more news from television than from any other source; while broadcast television is the more dominant source of local news and public affairs programming, cable functions as the "gatekeeper" to broadcast television, as we have noted above. (In the *TV Ownership Order* we concluded that cable would not count as an independent local voice for the duopoly rule because there was an absence of factual data in the record indicating that cable is a substitute for broadcast television.) Cable/TV combinations thus would represent the consolidation of the only participants in the video market for local news and public affairs programming, and would therefore compromise diversity.

94. Opponents of rule retention argue that cable does not control the content of its PEG channels and, therefore, contend that cable/TV combinations do not threaten diversity at the local level. However, PEG programming typically is not the cable programming that provides the closest substitute for broadcast local news and public affairs programming. The cable programming that is the closest substitute for such broadcast programming is originated by local cable systems. NCTA suggests that it is the efficiencies and synergies that could be derived from combining just this type of programming that makes the combinations desirable, and, in fact, contends that these efficiencies and synergies would enable combinations to produce more local news and public affairs programming, perhaps targeted at niche markets. Such cable/TV combinations, however, would erode the number of *independent* local news and public affairs voices in the market. As CME explains, "[e]ven if the common owner created a local cable news station, it would not be providing a diverse source of local news programming because of the common ownership."

95. The television industry has just begun adapting to the recent relaxation of our local television ownership rule. Further consolidation of local television broadcast stations will reduce the number of independent voices providing local news and public affairs programming. Prudence dictates that we monitor and ascertain the impact of these changes on diversity and competition before relaxing the cable/TV cross-ownership rule.

F. Experimental Broadcast Stations

1. Regulatory History

96. The multiple ownership rule for experimental broadcast stations was initially adopted in 1946. It generally limited ownership to one station. An exception is allowed when a showing is made that the program of research requires the licensing of two or more separate stations. In 1963 this rule was redesignated as 47 CFR 74.134. The rule currently reads:

> § 74.134 Multiple ownership. No persons (including all persons under common control) shall control, directly or indirectly, two or more experimental broadcast stations unless a showing is made that the program of research requires a licensing of two or more separate stations.

2. Comments

97. Only one comment was filed. NAB recommends repeal of this rule stating that broadcast auxiliary facilities are facing regulatory change and dislocation and, accordingly, there is now ever greater need for responsible use of experimental stations to develop solutions to these problems. While supporting elimination of what it characterizes as "this arbitrary restriction," it urges the Commission to ensure that such stations not endanger the interference-free service provided by other broadcasters.

3. Discussion

98. The rules authorizing experimental broadcast facilities seek to encourage experimentation and innovation in the provision of broadcast service to the public. A license for an experimental broadcast station will be issued for the purposes of carrying on research and experimentation for the development and advancement of new broadcast technology, equipment, systems or services which are more extensive or require other modes of transmission than can be accomplished by using a licensed broadcast station under an experimental authorization (47 CFR 74.102) Uses of experimental broadcast stations.). Most of the related rules are intended to prevent interference to existing services.

99. Experimental broadcast licenses are also subject to a broad variety of operating and reporting requirements, as well as a requirement that prohibits their commercial use. The licensee of an experimental broadcast station may make no charges nor ask for any payment, directly or indirectly, for the production or transmission of any programming or information used for experimental broadcast purposes (47 CFR 74.182(b)). Nor may it transmit program material unless it is necessary to the experiments being conducted, and no regular program service may be broadcast unless specifically authorized (47 CFR 74.182(a)). These commercial restrictions prevent entities from exploiting an experimental broadcast station for commercial purposes while functioning under the guise of an experimental authorization. The supplementary statement to be filed with an application for a construction permit (47 CFR 74.112), supplementary reports filed with an application for renewal of license (47 CFR 74.113), and the requirement to make a satisfactory showing of compliance with the general requirements of the Communications Act of 1934, as amended, to satisfy the licensing requirement (47 CFR 74.131),

allow for the oversight necessary to protect the goals of competition and diversity.

100. We find that elimination of the rule will have no adverse impact on our diversity and competition goals. Repeal of this multiple ownership rule would not affect the Commission's ability to ensure that experimental stations are used solely for their avowed purposes, which is separately covered under 47 CFR 74.102. Neither would it imply that any petitioner will necessarily be able to control multiple frequencies, since a license of an experimental broadcast station will not authorize the exclusive use of any frequency, under 47 CFR 74.131. The multiple ownership rule for experimental broadcast stations appears to have been originally adopted to limit the opportunities for the commercial use of experimental stations. The early history of the Federal Radio Commission and, later, the Federal Communications Commission with regard to commercial use of experimental stations demonstrates an ambivalence with regard to such use of these stations. The FRC initially permitted commercial use but, in 1933, prohibited any further commercial use of such stations. The FCC also initially prohibited their commercial use, then, in 1935, permitted some commercial use, and, still later (1936) again prohibited their commercial use. Rules for experimental stations adopted in the late 1930s, were intended to prevent commercial operations from predominating and interfering with experimentation. Our current rules prohibit the licensee of an experimental broadcast station from making charges or asking for payment, directly or indirectly, for the production or transmission of any programming or information used for experimental broadcast purposes.

101. We believe that the current requirement that such stations operate for research purposes and the proscriptions on the broadcast of a regular program service and the imposition of charges for the transmission of programming or information on experimental broadcast stations are sufficient to assure that, even absent the multiple ownership rule, licensees do not, under the guise of experimentation, obtain sufficient experimental stations to create, *sub rosa*, commercial broadcast services. These stations operate for research purposes and, thus, do not compete in the marketplace for programming or advertising and existing rules will provides safeguards against abuse in the absence of the experimental station multiple ownership rule. There existing no competitive bar to the elimination of the multiple ownership rule applicable to them, we believe that the multiple ownership rule governing experimental broadcast stations may no longer be in the public interest. We will issue an *NPRM* proposing elimination of the rule.

V. Constitutional Issues

102. Commenters raised Constitutional arguments with respect to two of our rules. The newspaper/broadcast cross-ownership rule is objected to by several commenters on the grounds that it violates the First Amendment. Additionally, both that rule and the dual network rule are said to discriminate. In the case of the newspaper/broadcast cross-ownership rule, the discrimination is alleged to be between newspaper owners and other media owners. The dual network rule is claimed to discriminate against broadcast networks as opposed to cable networks as it allows mergers between broadcast and cable networks but not between broadcast networks themselves.

As an initial matter, our newspaper/broadcast cross-ownership rule has already been sustained by the Supreme Court. *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978). Beyond that, it is well-established that a content-neutral regulation, such as the subject rule, will be sustained against claims that it violates the First Amendment if: (1) It advances important governmental interests unrelated to the suppression of free speech; and (2) does not burden substantially more speech than necessary to further those interests (the "O'Brien test"). *Turner II*, 520 U.S. at 189, *citing U.S.* v. *O'Brien*, 391 U.S. 367, 377 (1968).

As we noted previously, the Supreme Court has determined that the preservation of media diversity is a government interest that is not only important, but is of the highest order (*Turner I*, 512 U.S. at 663; *Turner II*, 520 U.S. at 190), and is unrelated to the suppression of free speech. Therefore, the rule meets the first prong of the *O'Brien* test. Even were one to conclude that it confines free speech of newspaper owners by limiting their ownership of co-located broadcast stations, that burden is the minimum necessary to accomplish the diversity goal. It does not prevent newspaper publishers from owning broadcast outlets. It does not prevent them from entering into joint venture agreements with broadcasters in their community. Rather, it simply precludes them from owning—and therefore having ultimate editorial control over—broadcast and newspaper outlets in the same community due to the impact of such common ownership on, especially, local viewpoint diversity. Accordingly, we believe that the newspaper/broadcast cross-ownership rule, to the extent it burdens free speech at all, does so to the minimum extent necessary. It therefore passes the constitutional test for such rules.

As to commenters' claims of discrimination, the Supreme Court has repeatedly held that "a classification neither involving fundamental rights nor proceeding along suspect lines * * * cannot run afoul of the Equal Protection Clause if there is a rational relationship between disparity of treatment and some legitimate governmental purpose." *Central State University* v. *American Association of University Professors, Central State University, (per curiam)*, 526 U.S. 124. 119 S.Ct. 1162, 1163 (1999), *citing Heller* v. *Doe*, 509 U.S. 312, 319–321, (1993), *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 313–314 (1993), *Nordlinger* v. *Hahn*, 505 U.S. 1, 11 (1992). We do not concede that a fundamental right is involved in the instant matter. It is well established that there is no unabridgeable First Amendment right to a broadcast license. *See, e.g., FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775, 798–802 (1978); *Columbia Broadcasting System* v. *Democratic National Committee*, 412 U.S. 94, 101 (1973); *United States* v. *Weiner*, 701 F.Supp. 14 (U.S.D.C. Mass., 1988). As we noted above, protecting media diversity has been determined by the Supreme Court to be a governmental interest of the "highest order." We believe that the classifications inherent in both the newspaper/broadcast and cable/television cross-ownership restrictions are, under current conditions, necessary to promote that governmental interest and, therefore, do not violate the rights of any party to equal protection of the law.

VI. Conclusion

103. In this, the first of our biennial reviews of our broadcast ownership rules, we conclude that some regulations are no longer in the public interest in their current forms as a result of competition. These are: The dual network rule and the limitation on the multiple ownership of experimental broadcast stations. We will also adopt an *NPRM* to explore the manner in which we define radio markets and determine both the number of stations in a radio market and the number of radio stations owned by a party in such a market. We are, therefore, proposing to

modify or eliminate these rules in *NPRMs* we will issue. We also conclude, however, that, for now, the other ownership rules considered in this proceeding warrant retention. We will, of course, revisit our ownership rules biennially, as directed by the 1996 Act. Our future biennial reviews will be informed by the impact of the substantial changes we made to our television "duopoly" and "one-to-a-market" rules this past August.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17670 Filed 7–12–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No 95–5; FCC 00–76]

Streamlining the Commission's Antenna Structure Clearance Procedure

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission responds to filings in WT Docket 95–5. We dismiss as moot a petition for partial reconsideration filed by the Wireless Cable Association International, Inc., deny a petition for partial reconsideration filed by Comp Comm, Inc., and grant in part and deny in part a petition for declaratory ruling filed by Teletech, Inc. In doing so, we conclude that the antenna structure registration procedures adopted in 1996 effectively allow us to meet our statutory responsibilities. In response to the petition for declaratory ruling, we provide clarification with respect to situations in which two or more parties locate facilities on the same tower. The effect is to retain in their entirety the rules adopted in a previous final rule.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The Memorandum Opinion and Order and Order on Reconsideration was adopted March 1 and released March 8, 2000. The document is available, in its entirety, for inspection and copying during normal business hours in the FCC Reference Center, (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. In addition, it is available on the Commission's website at http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00076.pdf.

Summary of the Memorandum Opinion and Order and Order on Reconsideration

1. Section 303(q) of the Communications Act of 1934, as amended, vests in the Federal Communications Commission (FCC) authority to require painting and/or lighting of antenna structures that might constitute a hazard to air navigation. Part 17 of the Commission's Rules contains the procedures the FCC uses to identify structures which might pose an air safety hazard and by which owners register their antenna structures with the FCC.

2. The Memorandum Opinion and Order and Order on Reconsideration addresses several filings the FCC received in response to the original Report and Order issued in WT Docket 95–5; a petition for declaratory ruling and a separate petition for partial reconsideration both requesting that the Commission establish a specific accuracy standard for obtaining antenna structure data to be filed with the FCC; a petition for partial reconsideration requesting that the Commission adopt relaxed procedures for Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) licensees whose licensing data differ from data submitted by antenna structure owners on whose structures the MDS and ITFS licensees are located; and a petition requesting clarification of the FCC's registration requirements in circumstances involving multiple antenna structures on building rooftops and concerning cases of two or more parties located on the same antenna tower.

3. We conclude that a specific accuracy standard is unnecessary because the requirement that antenna structure owners first obtain a study from the Federal Aviation Administration ensures reliability of the antenna structure site data and promotes air safety. Additionally, we find that the request that the FCC adopt relaxed license correction procedures for MDS and ITFS licensees whose licensing data differ from data submitted by antenna structure owners on whose structures the MDS and ITFS licensees are located is moot, and therefore we do not modify these procedures. Any discrepancies between licensing data and antenna structure registration data would have occurred when owners of existing antenna structures (including those structures on which MDS and ITFS licensees were sited) registered with the FCC. The time period for registering these existing structures ended on June 30, 1998.

4. We uphold the procedures adopted in 1995 that require all antenna structures meeting the registration criteria—including multiple structures atop the same rooftop—to be individually registered. Because the Commission's rules require a single registration for each antenna tower, we clarify that in those situations in which an owner of a supporting tower structure permits a third party to add a surmounting antenna, we will consider the owner of the supporting tower remains the "owner" for purposes of the FCC's antenna structure registration purposes. Thus, we grant the petition that requested this clarification.

5. Accordingly, it is ordered that, pursuant to sections 4(i) and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(q), and sections 1.2, 1.3 and 1.429 of the Commission's Rules, 47 CFR 1.2, 1.3 and 1.429, that the petitions filed in WT Docket 95–5 are granted in part and dismissed in part.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17668 Filed 7–12–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–36–B (Auction No. 36); DA 00–1388]

Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service Frequencies in the Lower 80 Channels

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses for the 800 MHz Specialized Mobile Radio Service Lower 80 Channels ("Auction No. 36"). It also announces that the beginning date of Auction No. 36 will be rescheduled to November 1, 2000. It was initially scheduled for September 13, 2000.

DATES: Auction No. 36 will begin November 1, 2000.

FOR FURTHER INFORMATION CONTACT: *Auctions and Industry Analysis Division:* M. Nicole Oden, Legal Branch

at (202) 418–0660, Kathy Garland or Bob Reagle, Auctions Operations Branch at (717) 338–2888; *Commercial Wireless Division:* JoAnn Epps, Licensing and Technical Analysis Branch at (202) 418–1342; *Media Contact:* Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released June 23, 2000. The complete text of the public notice, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, D.C. 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

List of Attachments Available at the FCC

Attachment A—Licenses to be Auctioned
Attachment B—Auction Seminar Registration Form
Attachment C—Electronic Filing and Review of the FCC Form 175
Attachment D—Completing the FCC Form 175
Attachment E—Completing the FCC Form 159
Attachment F—Remote Bidding Software Order Form
Attachment G—Exponential Smoothing Formula and Calculation
Attachment H—Accessing the FCC Network
Attachment I—Summary of Documents Addressing the Anti-Collusin Rules

I. General Information

A. Introduction

1. This public notice announces the procedures and minimum opening bids for the upcoming auction of licenses for the 800 MHz Specialized Mobile Radio Service Lower 80 Channels ("Auction No. 36"). On March 23, 2000, in accordance with the Balanced Budget Act, Public Law 105–33, 111 Stat. 251 (1997) ("Balanced Budget Act") the Wireless Telecommunications Bureau ("Bureau") released a public notice seeking comment on the establishment of reserve prices or minimum opening bids and the procedures to be used in Auction No. 36. *See* Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Frequencies in the Lower 80 Channels Scheduled for September 13, 2000, (*Auction No. 36 Comment Public Notice*) 65 FR 17272 (March 31, 2000). The Bureau received four comments and three reply comments in response to the *Auction No. 36 Comment Public Notice.*

2. The *Auction No. 36 Comment Public Notice* announced that Auction No. 36 would begin on September 13, 2000. In this public notice, the Bureau announces that the beginning date of Auction No. 36 will be rescheduled to November 1, 2000.

i. Background of Proceeding

3. On December 15, 1995, the Federal Communications Commission (FCC or Commission) released *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band,* First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (*800 MHz First Report and Order*), 61 FR 6212 (February 16, 1996). This document established geographic area licensing, auction and service rules for the "upper 200" 800 MHz SMR channels and set forth proposals for new licensing rules and auction procedures for the "lower 230" 800 MHz SMR channels. On July 10, 1997, the Commission released a Second Report and Order in the same proceeding (*800 MHz Second Report and Order*), 62 FR 41190 (July 31, 1997), that resolved pending issues and established technical and operational rules for the "lower 230" 800 MHz SMR channels. On October 8, 1999, the Commission released a Memorandum Opinion and Order on Reconsideration (*800 MHz Order on Reconsideration*), 64 FR 71042 (December 20, 1999) that completed the implementation of a new licensing framework for the 800 MHz SMR service.

ii. Licenses To Be Auctioned

4. The licenses available in this auction consist of sixteen non-contiguous 5 channel blocks (0.25 MHz) in each of 172 Economic Areas (EAs) and 3 EA-like areas, covering the United States, possessions or territories in the Northern Mariana Islands and Guam, American Samoa, the United States Virgin Islands and Puerto Rico. These licenses are listed in this public notice under Attachment A. The following table contains the Block/Frequency Band Limits Cross-Reference List for the 800 SMR Lower 80 Channels:

800 MHz SMR Lower 80 Channels
[856–860 MHz Band]

Channel block	Channel No.	Base station frequencies (channel centers)
G	201, 241, 281, 321, 361	856–860.0125
H	202, 242, 282, 322, 362	856–860.0375
I	203, 243, 283, 323, 363	856–860.0625
J	204, 244, 284, 324, 364	856–860.0875
K	205, 245, 285, 325, 365	856–860.1125
L	206, 246, 286, 326, 366	856–860.1375
M	207, 247, 287, 327, 367	856–860.1625
N	208, 248, 288, 328, 368	856–860.1875
O	221, 261, 301, 341, 381	856–860.5125
P	222, 262, 302, 342, 382	856–860.5375
Q	223, 263, 303, 343, 383	856–860.5625
R	224, 264, 304, 344, 384	856–860.5875
S	225, 265, 305, 345, 385	856–860.6125
T	226, 266, 306, 346, 386	856–860.6375
U	227, 267, 307, 347, 387	856–860.6625
V	228, 268, 308, 348, 388	856–860.6875

Note: The allocation of channels available in spectrum blocks G through V are different in the U.S./Mexico and U.S./Canada border areas than noted in the prior table. The tables that follow indicate the channels assignable in the border areas. Also note that the channels listed for the U.S./Mexico border area are offset 12.5 kHz lower in frequency than the same channel as specified in § 90.613 of the Commission's rules.

United States-Mexico Border Area, SMR Categories.
[EA-Based SMR Category (83 Channels)]

Spectrum block	Offset channel Nos.
G	229–272–349
H	230–273–350
I	231–274–351
J	232–278–352
K	233–279–353
L	234–280–354
M	235–309–358
N	236–310–359
O	237–311–360
P	238–312–389
Q	239–313–390
R	240–314–391
S	269–318–392
T	270–319–393
U	271–320–394
V	228–268–308–348–388

UNITED STATES-CANADA BORDER AREA, SMR CATEGORIES

[Region 7 & 8]——SMR Category (172 Channels)

Spectrum block	Channel Nos.
G	155–229–269–309–349
H	156–230–270–310–350
I	157–231–271–311–351
J	158–232–272–312–352
K	159–233–273–313–353
L	160–234–274–314–354
M	195–235–275–315–355
N	196–236–276–316–356
O	197–237–277–317–357
P	198–238–278–318–358
Q	199–239–279–319–359
R	200–240–280–320–360
S	225–265–305–345–385
T	226–266–306–346–386
U	227–267–307–347–387
V	228–268–308–348–388

B. Scheduling

i. Bifurcation

5. Some commenters responding to the *Auction No. 36 Comment Public Notice* argued that there should be no overlap between Auctions No. 34 and 36. The Bureau agrees that it may be burdensome for some bidders to participate in coinciding auctions. However, there was no consensus among commenters on how to resolve this potential problem. For reasons of administrative convenience, the Bureau chooses to maintain the bifurcated schedule for Auctions No. 34 and 36.

6. In addition, for reasons of administrative convenience and effective auction management, we will change the date for Auction No. 36, moving the date back to November 1, 2000. This change will not only provide for more efficient management of the auction, it will provide additional time between Auctions No. 34 and 36 to permit all interested parties, including incumbents and small businesses, sufficient time in which to evaluate the outcome of Auction No. 34 and prepare for Auction No. 36.

ii. Pacific Wireless' Petition for Reconsideration

7. Pacific Wireless seeks reconsideration of the Bureau's scheduling of Auctions No. 34 and 36 prior to the conclusion of the mandatory negotiation period for the relocation of incumbent licensees from the upper 200 channels, scheduled to conclude on December 4, 2000. SBT and PCIA also support postponement of the auctions, however, they advocate delay until the completion of the involuntary relocation phase that is scheduled to commence on December 4, 2000. Pacific Wireless contends that holding the auctions prior to December 4, 2000, contravenes the Commission's prior decisions and is contrary to the interests of incumbents. We disagree with this contention and deny Pacific Wireless's Petition for Reconsideration. The *800 MHz Second Report and Order* stated that the licensing of the lower channels would not occur until "incumbents have had the opportunity to relocate to the lower channels." As Nextel and Southern correctly note, prior to Auction No. 36, incumbents on the upper 200 channels will have had approximately 18 months to relocate their systems. Although we recognize that upper channel incumbents are currently in the second phase of the three-phase process the Commission established, we believe that 18 months provides a reasonable opportunity for incumbents to relocate.

8. We agree with those commenters who stated that going forward with Auctions No. 34 and 36 will facilitate the relocation process by providing EA licensees with additional relocation spectrum and incumbents with a more certain picture of their relocation options. Accordingly, we will not delay the start of Auction No. 36 until the close of the mandatory negotiation period for relocation of incumbent licensees on the upper 200 channels.

C. Rules and Disclaimers

i. Relevant Authority

9. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 800 MHz band, contained in title 47, part 90 of the *Code of Federal Regulations*, and those relating to application and auction procedures, contained in title 47, part 1 of the *Code of Federal Regulations*.

10. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 34 Comment Public Notice, 800 MHz First Report and Order, 800 MHz Second Report and Order*, and the *800 MHz Order on Reconsideration*.

11. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC Auctions World Wide Web site at *http://www.fcc.gov/wtb/auctions*. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 99–270 for the *800 MHz Order on Reconsideration*).

ii. Prohibition of Collusion

12. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications and ends on the down payment due date. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the authorized bidders is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm), a violation could similarly occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

13. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. Applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175 short-form application. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form

application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas. By signing their FCC Form 175 short form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment I.

iii. Due Diligence

14. Potential bidders should be aware that certain applications (including those for modification), waiver requests, petitions to deny, petitions for reconsideration, and applications for review are pending before the Commission that relate to particular applicants or incumbent licensees. In addition, certain decisions reached in the SMR proceeding are subject to judicial appeal and may be the subject of additional reconsideration or appeal. We note that resolution of these matters could have an impact on the availability of spectrum for EA licensees in the 800 MHz SMR general category and upper bands. While the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction. Potential bidders are solely responsible for investigating and evaluating the degree to, which such pending matters may affect spectrum availability in areas where they seek EA licenses. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 36, and encouraged to continue such research during the auction, in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction.

15. To aid potential bidders, the Commission will release a subsequent public notice listing pending matters that relate to licenses or applications that affect the 800 MHz SMR general category and upper bands. The Commission will make available for public inspection the pleadings and related filings in those matters pending before the Commission.

16. In addition, potential bidders may research the Bureau's licensing databases on the World Wide Web in order to determine which frequencies are already licensed to incumbent licensees. Because some of our incumbent 800 MHz licensing records have not yet been converted to the Bureau's new Universal Licensing System (ULS), potential bidders may have to select other databases to perform research for the frequency(s) of interest. The research options will allow potential bidders to download licensing data, as well as to perform queries online.

17. 800 MHz band Incumbent Licenses: Licensing records for the 800 MHz band are contained in the Bureau's Land Mobile database and may be researched on the internet at *http://www.fcc.gov/wtb* by selecting the "Databases" link at the top of the page. Potential bidders may download a copy of the licensing database by selecting "Download the Wireless Databases" and choosing the appropriate files under "Land Mobile Database Files—47 CFR part 90." Alternatively, potential bidders may query the Bureau's licensing records online by selecting "Search the Wireless Databases Online."

18. The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the databases. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

19. Potential bidders should direct questions regarding the search capabilities described to the FCC Technical Support Hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via email at *ulscomm@fcc.gov*. The hours of service for the hotline are 7 a.m. to 10 p.m. EST, Monday through Friday, 8 a.m. to 7 p.m. EST, Saturday, and 12 p.m. to 6 p.m. EST, Sunday. In order to provide better service to the public, all calls to the hotline are recorded.

iv. Incumbent Licensees

20. Potential bidders are reminded that there are incumbent licensees operating on frequencies that are subject to the upcoming auction. Incumbent licensees retain the exclusive right to use those channels within their self-defined service areas. The holder of an EA authorization thus will be required to implement its facilities to protect incumbents from harmful interference. These limitations may restrict the ability of such geographic area licenses to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Specifically, an EA authorization holder will be required to coordinate with the incumbent licensees by using the interference protection criteria referenced in § 90.683 and § 90.693 of the Commission's rules. However, operational agreements are encouraged between the parties. Should an incumbent lose its license, the incumbent's service area(s) will convey to the relevant authorized holder of the EA, and the authorized EA licensee will be entitled to operate within the forfeited service area(s) without being subject to further competitive bidding.

v. Bidder Alerts

21. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

22. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware than a FCC auction represents an opportunity to become a FCC licensee in this service, subject to certain conditions and regulations. A FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does a FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding, as they would with any new business venture.

23. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 36 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following: (a) The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial; (b) The offering materials used to invest in the venture

appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts; (c) The amount of the minimum investment is less than $25,000. (d) The sales representative makes verbal representations that: (i) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (ii) the investment is not subject to state or federal securities laws; or (iii) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific 800 MHz proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vi. National Environmental Policy Act (NEPA) Requirements

24. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of an 800 MHz facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

D. Auction Specifics

i. Auction Date

25. The auction will begin on Wednesday, November 1, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

26. Auction No. 36—800 MHz SMR Lower 80 Channels

iii. Bidding Methodology

27. The bidding methodology for Auction No. 36 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

iv. Pre-Auction Dates and Deadlines

28. These are important dates relating to Auction No. 36:
Auction Seminar—September 18, 2000
Short-Form Application (FCC FORM 175)—September 29, 2000; 6:00 p.m. EST
Upfront Payments (via wire transfer)—October 16, 2000; 6:00 p.m. EST
Orders for Remote Bidding Software—October 17, 2000; 5:30 p.m. EST
Mock Auction—October 30, 2000
Auction Begins—November 1, 2000

v. Requirements For Participation

29. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6:00 p.m. EST, September 29, 2000.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. EST, October 16, 2000.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

30. The following is a list of general contact information relating to Auction No. 36:
General Auction Information
  General Auction Questions
  Seminar Registration
  Orders for Remote Bidding Software
  FCC Auctions Hotline (888) 225–5322, Press Option #2 or direct (717) 338–2888; Hours of service: 8 a.m.–5:30 p.m. EST
Auction Legal Information
  Auction Rules, Policies, Regulations
  Auctions and Industry Analysis Division, Legal Branch, (202) 418–0660; Commercial Wireless Division, (202) 418–0620
Licensing Information
  Rules, Policies, Regulations
  Licensing Issues
  Due Diligence
  Incumbency Issues
Technical Support
  Electronic Filing Assistance
  Software Downloading
  FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: 7 a.m.–10:00 p.m. EST, Monday–Friday; 8 a.m.–7:00 p.m. EST, Saturday; 12:00 p.m.–6:00 p.m. EST, Sunday
Payment Information
  Wire Transfers
  Refunds
  FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax)
Telephonic bidding—Will be furnished only to qualified bidders
FCC Copy Contractor
  Additional Copies of Commission Documents
  International Transcription Services, Inc., 445 12th Street, SW Room CY–B400, Washington, DC 20554, (202) 314–3070
Press Information—Meribeth McCarrick (202) 418–0654
FCC Forms—(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area)
FCC Internet Sites—*http://www.fcc.gov/formpage http://www.fcc.gov/wtb/auctions http://www.fcc.gov ftp://ftp.fcc.gov*

II. Short-Form (FCC Form 175) Application Requirements

31. Guidelines for completion of the short-form (FCC Form 175) are set forth on Attachment D. The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the authorization(s) sought, the authorized bidders and contact persons.

A. Ownership Disclosure Requirements (Form 175 Exhibit A)

32. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (Form 175 Exhibit B)

33. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. *See* 47 CFR 1.2105(a)(2)(viii) and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

34. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies.

C. Small Business Bidding Credits (Form 175 Exhibit C)

i. Eligibility

35. Bidding credits are available to small businesses and very small businesses as defined in 47 CFR 90.912(b). For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and the affiliates of the applicant and its controlling interests. The Commission does not impose specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and their affiliates will be counted in determining small business eligibility. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

36. A consortium of small businesses, or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of small or very small business in § 90.912. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

ii. Application Showing

37. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a small business or very small business (or consortia of small or very small businesses) for this auction. Specifically, for Auction No. 36, applicants applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, separately and in the aggregate, the gross revenues for the preceding three years of each of the following: (i) The applicant; (ii) the applicant's affiliates; (iii) the applicant's controlling interests; and (iv) the affiliates of the applicant's controlling interests. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

iii. Bidding Credits

38. Applicants that qualify under the definitions of small business, and very small business (or consortia of small or very small businesses) as set forth in 47 CFR 90.912, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of an 800 MHz lower band bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

- A bidder with average gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for 800 MHz lower band licenses ("small business");
- A bidder with average gross revenues of not more than $3 million for the preceding three years receives a 35 percent discount on its winning bids for 800 MHz lower band licenses ("very small business").

39. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

40. Bidders in Auction No. 36 should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. *See* 47 CFR 90.910(b) Finally, bidders should also note that there are no installment payment plans in Auction No. 36.

D. Other Information (Form 175 Exhibits D and E)

41. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so in Exhibit E (Miscellaneous Information) to the FCC Form 175.

E. Minor Modifications to Short-Form Applications (FCC Form 175)

42. After the short-form filing deadline (September 29, 2000), applicants may make only minor changes to their FCC Form 175

applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter summarizing the changes to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4–A760, Washington, DC 20554. A separate copy of the letter should be submitted to M. Nicole Oden, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications commission, 445 12th Street, SW, Room 4–A337, Washington, D.C. 20554, briefly summarizing the changes. Questions about other changes should be directed to M. Nicole Oden at (202) 418–0660.

F. Maintaining Current Information in Short-Form Applications (FCC Form 175)

43. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

44. On Monday, September 18, 2000, the FCC will sponsor a free seminar for Auction No. 36 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 800 MHz band service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

45. To register, complete the registration form (Attachment B) and submit it by Friday, September 15, 2000. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due September 29, 2000

46. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission by 6:00 p.m. EST on September 29, 2000. Late applications will not be accepted.

47. There is no application fee required when filing a FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.D.

i. Electronic Filing

48. Applicants must file their FCC Form 175 applications electronically. *See* 47 CFR 1.2105(a). Applications may generally be filed at any time beginning at noon on September 18, 2000 until 6:00 p.m. EST on September 29, 2000. Applicants are strongly encouraged to file early, and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on September 29, 2000.

49. Applicants must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Forms 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 7 a.m. to 10 p.m. EST, Monday through Friday, 8 a.m. to 7 p.m. EST, Saturday, and 12 p.m. to 6 p.m. EST, Sunday.

ii. Completion of the FCC Form 175

50. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

51. The FCC Form 175 electronic review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

C. Application Processing and Minor Corrections

52. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

53. As described more fully in the Commission's rules, after the September 29, 2000, short form-filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due October 16, 2000

54. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank, by 6:00 p.m. EST on October 16, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 36 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the October 16, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

55. Wire transfer payments must be received by 6:00 p.m. EST on October 16, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank, closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC 910–1203
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO.: (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter "A36U")
FCC CODE 1 (same as FCC Form 159, block 23A: "36")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. ×358425

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

56. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 209–6045 or (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 36." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

57. A completed FCC Remittance Advice Form (FCC Form 159) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

58. In the *Amendment of Part 1 of the Commission's Rules*, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, (*Part 1 Order, MO&O and NPRM*) 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. In the *Auction No. 36 Comment Public Notice*, the Bureau proposed upfront payments for Auction No. 36. Specifically, the Bureau proposed calculating the upfront payment on a license-by-license basis, using the following formula:

License population *$0.001 (the result rounded to the nearest hundred for levels below $10,000.00 and to the nearest thousand for levels above $10,000.00) with a minimum of no less than $1,000.00 per license.

In this public notice, we adopt this formula.

59. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 36, the amount of the upfront payment will be translated into bidding units on a one-to-one basis; *e.g.*, a $25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

60. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

61. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds

62. The Commission will use wire transfers for all Auction No. 36 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short form-filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser, at (202) 418–2843 by October 16, 2000. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418–1995

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.D.

E. Auction Registration

63. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

64. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

65. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday,

October 27, 2000 should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

66. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

F. Remote Electronic Bidding Software

67. Qualified bidders are allowed to bid electronically or telephonically. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is $175.00 and must be ordered by Tuesday, October 17, 2000. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 36. If bidding telephonically, the telephonic bidding phone number will be supplied in the first Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, a FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175. Bidders should complete this form electronically, print it out, and fax to (717) 338–2850. A manual copy of this form is also included as Attachment F in this public notice.

G. Mock Auction

68. All qualified bidders will be eligible to participate in a mock auction on Monday, October 30, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

69. The first round of bidding for Auction No. 36 will begin on Wednesday, November 1, 2000. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

70. In the *Auction No. 36 Comment Public Notice*, we proposed to award the 2,800 licenses in the 800 MHz lower band in a single, simultaneous multiple round auction. We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction the 800 MHz lower band licenses through a single, simultaneous multiple round auction.

ii. Maximum Eligibility and Activity Rules

71. In the *Auction No. 36 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

72. For Auction No. 36 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. The total upfront payment does not define the total dollars a bidder may bid on any given license.

73. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

74. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see* "Minimum Accepted Bids" in Part IV.B.(iii)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses.

iii. Activity Rule Waivers and Reducing Eligibility

75. Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

76. The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

77. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Part IV.A.iv discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

78. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

iv. Auction Stages

79. We conclude that the Auction No. 36 will be composed of three stages, which are each defined by an increasing activity rule. The following paragraphs describe the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

80. *Stage One:* During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

81. *Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths (10/9).

82. *Stage Three:* During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

v. Stage Transitions

83. Auction No. 36 will start in Stage One and will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

vi. Auction Stopping Rules

84. Auction No. 36 will employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

85. The Bureau retains the discretion to invoke the other versions of the simultaneous stopping rule. This modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

86. The Bureau also retains the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

87. In addition, the Bureau reserves the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage where bidders will be required to maintain a higher level of bidding activity, increasing the number of bidding rounds per day.

vii. Auction Delay, Suspension, or Cancellation

88. For Auction No. 36, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases the Bureau may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

89. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. This public notice will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will be included in a *Qualified Bidder Public Notice.*

90. The FCC has discretion to change the bidding schedule in order to foster

an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

91. The Bureau adopts minimum opening bids for Auction 36, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest.

92. The Bureau adopts the following proposed formula to calculate minimum opening bids for each license:

License population * $0.001 (the result rounded to the nearest hundred for results less than $10,000.00 and to the nearest thousand for results greater than $10,000.00) with a minimum of no less than $1,000.00 per license.

93. The Bureau concludes that this adopted formula best meets the objectives of our authority in establishing reasonable minimum opening bids. The Bureau has noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue but rather a protection against assigning licenses at unacceptably low prices and that we must balance the revenue raising objective against our other public interest objectives in setting the minimum bid level. *See* Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, 62 FR 55251 (October 23, 1997). For the sake of auction integrity and fairness, minimum opening bids must be set in a manner that is consistent across licenses.

94. As a final safeguard against unduly high pricing, minimum opening bids are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum-opening bid on specific licenses.

iii. Bid Increments and Minimum Accepted Bids

95. For Auction No. 36 the Bureau adopts a smoothing methodology to calculate minimum bid increments. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment G.

96. The Bureau adopts the initial values for the maximum of 0.2 or 20 percent of the license value and a minimum of 0.1 or 10 percent of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 36 if circumstances warrant.

iv. High Bids

97. Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission receives bids. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date- and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

v. Bidding

98. During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its eligibility, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

99. Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round. Normally four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 36.

100. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175; and (ii) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

101. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations after they submit their bids.

102. The bid entry screen of the Automated Auction System software for Auction No. 36 allows bidders to place multiple increment bids. Specifically, high bids may be increased from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

103. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the

high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

104. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

105. In Auction No. 36, the Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

106. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed; i.e. a bid that is subsequently removed does not count toward the bidder's activity requirement.

107. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," Part IV.B.iv.

108. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. Specifically, a bidder ("Bidder X") that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the winning bid amount for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment, less the three percent interim payment, equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less.

vii. Round Results

109. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 36 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

110. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet.

ix. Maintaining the Accuracy of FCC Form 175 Information

111. As noted in Part II.E., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4–A760, Washington, D.C. 20554. A separate copy of the letter should be mailed to M. Nicole Oden, Auctions and Industry Analysis Division, Room 4–A337, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Questions about other changes should be directed to M. Nicole Oden, Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

112. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

113. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any

applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due according to 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

114. Within ten business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each 800 MHz license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

115. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

116. All applicants that submitted upfront payments but were not winning bidders for an 800 MHz license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

117. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If the refund instructions were completed electronically, only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number ("TIN"). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, S.W., Room 1–A824, Washington, D.C. 20554.

118. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information. Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Michelle Bennett or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00–17672 Filed 7–12–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–31–H (Auction No. 31); DA 00–1486]

Auction of Licenses in the 747–762 AND 777–792 MHz Bands Scheduled for September 6, 2000; Procedures Implementing Package Bidding for Auction No. 31

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces revised procedures to allow for package bidding for the upcoming auction of licenses for services in the 747–762 and 777–792 MHz bands ("Auction No. 31"). These procedures are designed to be efficient, and to avoid both the risk of bidders winning licenses they do not desire (*exposure problems*) and the difficulty that multiple bidders desiring the single licenses (or smaller packages) that constitute a larger package may have in outbidding a single bidder bidding for the larger package (*threshold problems*). The procedures are also designed to allow the auction to proceed at an appropriate pace; to encourage straightforward bidding and deter gaming; and to be simple for straightforward bidders. while permitting bidders to employ flexible backup strategies.

DATES: Auction No. 31 is scheduled for September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Attorney, Auctions Legal Branch; Joel Rabinovitz, Attorney, Auctions Legal Branch, or Craig Bomberger, Analyst, Auctions Operations Branch, at (202) 418–0660. *Media Contact:* Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released July 3, 2000 ("*Auction No. 31 Public Notice*"). The complete text of the *Auction No. 31 Public Notice*, including all attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's website at *http://www.fcc.gov/wtb/auctions.*

List of Attachments available at the FCC:

Appendix A—List of Commenters
Attachment A—Licenses to be Auctioned
Attachment B—FCC Auction Seminar Registration Form
Attachment C—Electronic Filing and Review of the FCC Form 175
Attachment D—Guideline for Completion of FCC Form 175 and Exhibits
Attachment E—Accessing the FCC Network to Submit FCC Form 175 Applications

I. Introduction and General Information

A. Introduction

1. The public notice announces revised procedures to allow for package bidding for the upcoming auction of licenses for services in the 747–762 and 777–792 MHz bands ("Auction No. 31"). *See* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order*, 65 FR 3139 (January 20, 2000). On February 18, 2000, the Wireless Telecommunications Bureau ("Bureau") announced the procedures and minimum opening bids for Auction No. 31. *See* Auction of Licenses in the 747–762 and 777–792

MHz Bands, *Auction No. 31 Procedures Public Notice*, 65 FR 12251 (March 8, 2000) and *Postponement PN*, 65 FR 30598 (May 12, 2000). On May 18, 2000, the Bureau released a public notice seeking comment on modifying those procedures to allow combinatorial (or "package") bidding for Auction No. 31. *See* Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for September 6, 2000; Comment Sought on Modifying the Simultaneous Multiple Round Auction Design to Allow Combinatorial (Package) Bidding, *Auction No. 31 Package Bidding Comment Public Notice*, 65 FR 35636 (June 5, 2000). On June 22, 2000, the Commission adopted the *700 MHz Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in which it stated that the Bureau may implement a combinatorial auction design for Auction No. 31 pursuant to its existing delegated authority if, after review of the comments, the Bureau finds combinatorial bidding to be appropriate and feasible.

2. In general, package bidding should be an improvement over our usual auction design when (a) there are strong complementarities among licenses for some bidders, and (b) the pattern of those complementarities varies for different bidders. Under these circumstances, package bidding should yield the more efficient outcome, with licenses being sold to those bidders who value them the most. The comments we previously received in this docket have suggested these conditions are true for Auction No. 31. For example, some potential bidders have expressed the importance of acquiring a nationwide footprint, and others the importance of acquiring all 30 MHz in a region. The comments we received in response to the *Auction No. 31 Package Bidding Comment Public Notice* largely concur that package bidding is appropriate for the types of licenses being sold in Auction No. 31.

3. Under the procedures we establish here, bidders may place bids on individual licenses, as under our usual auction procedures, and may also place all-or-nothing bids on up to twelve packages of licenses of their own design at any point during the auction. This approach allows bidders to better express the value of any synergies (benefits from combining complementary items) that may exist among licenses. The winning bids are the set of "consistent" bids on individual licenses and packages that maximize total revenue when the auction closes. Consistent bids are bids that (i) do not overlap and (ii) are made or renewed by an individual bidder in the same round (bids made by an individual bidder in different rounds are treated as mutually exclusive under the procedures we are establishing for this auction).

4. The specific procedures we establish are designed to meet a number of objectives. They are designed to be efficient, and to avoid both *exposure problems*—the risk of bidders winning licenses they do not desire—and *threshold problems*—the difficulty that multiple bidders desiring the single licenses (or smaller packages) that constitute a larger package may have in outbidding a single bidder bidding for the larger package. The procedures are also designed to allow the auction to proceed at an appropriate pace; to encourage straightforward bidding and deter gaming; and to be simple for straightforward bidders while permitting bidders to employ flexible backup strategies.

5. As a general matter, bidders in our simultaneous multiple round auction that wish to acquire a certain combination of licenses, and only that combination, may face an *exposure problem*. Although they desire either all of the licenses or none, by bidding on the licenses individually they risk winning only some of the licenses. They therefore risk either acquiring licenses they do not desire or paying more for each license than they would have paid if they knew that the license was not going to be part of the combination they desired. With the package bidding procedures we establish today, however, this risk can be avoided. For example, a bidder desiring an aggregation of all six 20 MHz licenses in order to implement a nationwide service could bid on the six licenses as a package and thereby avoid the risk of winning only some of the desired licenses or of paying more for those licenses than it wishes.

6. Allowing package bidding, however, introduces a *threshold problem*—the difficulty that multiple bidders for the single licenses (or smaller packages) that constitute a larger package may have in outbidding a single bidder on the larger package, even though the multiple bidders may value the sum of the parts more than the single bidder values the whole. This may occur because bidders for parts of a larger package each have an incentive to hold back in the hope that a bidder for another part will increase its bid sufficiently for the bids on the pieces collectively to beat the bid on the larger package. The package bidding procedures that we establish are designed to facilitate the emergence of bids that will overcome this problem.

7. The changes we adopt from our initial package bidding proposal respond to three design weaknesses that were identified by commenters. First, the proposal to allow only nine specific packages was too restrictive. Second, in some circumstances the rules could have resulted in bidders being caught with retained but non-winning bids that they no longer wished to hold. This possibility could have chilled bidding and made bidders unable to switch to backup strategies. Third, the pace of the auction could be too slow because there were inadequate incentives for bidders to make bids that would be or could become provisional winning bids, as opposed to bids that merely preserved bidders' eligibility but were unlikely to become winning. In addition, implementation of package bidding procedures for Auction No. 31 makes unnecessary the nationwide bid withdrawal procedure we established in the *Auction No. 31 Procedures Public Notice*.

B. Auction Specifics

i. Auction Procedures and New Dates and Deadlines

8. The auction procedures announced in the February 18, 2000, *Auction No. 31 Procedures Public Notice* remain in effect except as modified by (a) the dates announced in the May 2, 2000, *Postponement Public Notice*, and (b) the package bidding and other auction procedures established here. The new schedule is as follows:

Filing Window Opens for FCC Form 175—July 17, 2000
Bidder Seminar—July 24, 2000
Filing Deadline for FCC Form 175—August 1, 2000, 6:00 p.m. EDT
Upfront Payment Deadline—August 18, 2000, 6:00 p.m. EDT
Mock Auction—August 31, 2000
Auction Start Date—September 6, 2000

ii. Licenses and Packages To Be Auctioned

9. The licenses available in this auction consist of one 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) in each of six regions to be known as the 700 MHz Band Economic Area Groupings ("700 MHz Band EAGs"). These licenses are listed in this public notice in Attachment A and are shown in the following table.

700 MHz Band EAGs

	Northeast	Mid-Atlantic	Southeast	Great Lakes	Central/Mountain	Pacific
10 MHz ..	WXEAG701–C	WXEAG702–C	WXEAG703–C	WXEAG704–C	WXEAG705–C	WXEAG706–C.
20 MHz ..	WXEAG701–D	WXEAG702–D	WXEAG703–D	WXEAG704–D	WXEAG705–D	WXEAG706–D

10. In the *Auction No. 31 Package Bidding Comment Public Notice,* we proposed to permit bidders to submit all-or-nothing bids on nine packages of licenses: A global package of all of the licenses; a nationwide package of either 10 MHz or 20 MHz consisting of the six 10 MHz or the six 20 MHz licenses, respectively; or six regional 30 MHz packages consisting of the 10 MHz license and the 20 MHz license for a particular 700 MHz Band EAG. We also sought comment on whether the Commission should allow all possible packages composed of the twelve individual licenses, or only certain additional packages.

11. We agree with some of the commenters that limiting packages to those identified by the Commission is overly restrictive and may lead to inefficient results. On the other hand, we are also concerned that allowing an unlimited number of packages would be needlessly complex and could facilitate strategic bidding. It is highly unlikely that any serious bidder actually needs to bid on all 4,095 combinations of licenses that are possible in this auction. Moreover, allowing bidders to bid upon an unlimited number of packages would introduce the risk of bidders "parking" bids, which could lead to an unacceptable pace for the auction. "Parking" is the placing of a bid that a bidder does not expect to become a winning bid for the purpose of maintaining eligibility and/or keeping the auction open. Finally, from a purely practical view, allowing 4,095 possible packages may lead to computational difficulties.

12. Bidders will be permitted to create and bid on up to twelve different packages of their own choosing during the course of the auction. Each variation of a package is considered a separate package. This is a somewhat larger number than the nine packages originally proposed, and does not wed bidders to the Commission's choice of packages (although bidders may very well choose to bid on some of the packages already identified.) We believe that this provides bidders with sufficient flexibility to achieve any reasonable business plan, while maintaining simplicity for bidders and the Commission, as well as limiting the opportunity for "parking" on an unlimited number of packages. Bidders will not be required to identify or create their packages before start of the auction, but may create their packages as the auction progresses. Bidders may modify or delete a package after they create the package but before they bid on it. Once a bidder bids on a package, however, the package may not be modified or deleted and counts as one of the bidder's twelve allowable packages. Bidders are limited to bidding on, and hence creating packages from, those licenses which they selected on their FCC Form 175 and for which they have eligibility. Bidders may therefore wish to save one or more of their opportunities to create packages for use near the end of the auction.

iii. Bidding Methodology

13. The bidding methodology for Auction No. 31 will be simultaneous multiple round combinatorial (package) bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

iv. Requirements for Participation

14. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6:00 p.m. EDT, August 1, 2000.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. EDT, August 18, 2000.
- Comply with all provisions outlined in this public notice and the February 18, 2000, *Auction No. 31 Procedures Public Notice.*
- Comply with all rules set forth in the Commission's orders in WT Docket No. 99–168, Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules.

v. Auction Registration and Remote Electronic Bidding Software

15. Procedures for replacement of lost security identification and access to remote electronic bidding software will be announced in a future Public Notice.

II. Auction Event

16. The first round of bidding for Auction No. 31 will begin on September 6, 2000. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round With Package Bidding

17. In the *Auction No. 31 Package Bidding Comment Public Notice,* we proposed to award 12 licenses in the 700 MHz bands in a single, simultaneous multiple round auction with package bidding. When we refer to "simultaneous multiple round" we mean without package bidding; when we refer to "package bidding" we mean simultaneous multiple round with package bidding. We conclude that it is appropriate and operationally feasible to implement the package bidding design described for Auction No. 31. We believe that package bidding provides many advantages over our current simultaneous multiple round auction design. For the reasons we stated in the introduction, we believe that package bidding will allow bidders in this auction to take advantage of any synergies that exist among licenses and will lead to the most efficient outcome consistent with our objectives under section 309(j) of the Communications Act of 1934.

18. While commenters stated that we (and they) have not had sufficient time to consider package bidding and that more study is needed, in fact the Commission has been considering the possibility of implementing combinatorial bidding since 1994. Congress has also instructed us to experiment with this form of bidding. In 1997, the Commission awarded research and development contracts to consultants to provide and test combinatorial bidding approaches. Experiments and tests were completed this spring demonstrating that combinatorial bidding is feasible and generally leads to more efficient auction results. The material presented at the Combinatorial Bidding Conference that occurred this spring also supported the view that it was feasible to implement combinatorial bidding for this auction. We have made these studies and papers presented at the Conference available on the Commission's web site. In addition, the delay of the auction date provided more time to implement this auction

design. We conclude that there has been sufficient time to implement a proper package bidding auction design for this auction. We also have carefully considered the comments submitted in response to the *Auction No. 31 Package Bidding Comment Public Notice* which were very helpful in our process of determining the procedures for implementing package bidding. We are confident that the procedures we establish today adequately address the concerns raised in the comments.

19. Finally, we note that the auction will not occur for another two months. We believe that this time is sufficient for bidders to understand the package bidding procedures and to develop appropriate auction strategies. Moreover, we have endeavored, to the extent possible, to make the package bidding procedures similar to the simultaneous multiple round auction procedures with which bidders are familiar. We therefore believe that bidders will be able to grasp the new procedures quickly. We also plan on extensive bidder education efforts and will be available both before and during the auction to answer any questions bidders might have.

ii. Maximum Eligibility

20. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed no change in upfront payments established for individual licenses. We proposed to calculate bidding units and associated upfront payment for a package by adding together the bidding units and associated upfront payments of the individual licenses that make up the package. We conclude that the bidding units for a package will be calculated by adding together the bidding units of the individual licenses that make up the package.

21. We also proposed no change in our procedure for determining initial maximum eligibility, which calculates initial maximum eligibility based on the bidding units represented by a bidder's upfront payment. We noted, however, that, under some circumstances, bidders might wish to purchase more eligibility than the total bidding units associated with all licenses. We conclude that we will not change our procedure for determining initial maximum eligibility.

iii. Activity Rules

22. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction if they wish to maintain their current eligibility.

23. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed that in each round of the auction a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 50 percent of its current eligibility. For a bidder that failed to meet the activity requirement in a given round, we would reduce the bidder's eligibility for the next round to two times its activity in the current round. Thus, a bidder's eligibility in the current round would be the *lesser* of: (i) Its eligibility in the previous round, or (ii) twice its activity in the previous round.

24. We adopt the 50 percent activity requirement. We reserve the right, however, to increase to two-thirds the proportion of bidding units on which bidders must be active to retain their current eligibility. The two-thirds limit will ensure that bidders retain the flexibility to switch from bidding on a 20 MHz package to a 30 MHz package with the equivalent population. Any such change will be announced to bidders prior to the beginning of the round in which the change takes effect.

25. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed that a bid would be considered "active" if it was either a "retained" bid from the previous round or an accepted bid in the current round. A "retained" bid was defined as a provisionally winning bid or a bid that has the potential to become a provisionally winning bid because of changes in other bids in subsequent rounds. The bidding units associated with licenses on which a bidder was active, including retained bids, would count towards the bidder's activity. To account for the possibility of overlapping bids, which by definition can not simultaneously be part of the winning set, we proposed to measure a bidder's activity in a round as the *maximum* number of bidding units associated with the bidder's active bids that could simultaneously be in a provisional winning set.

26. Several of the commenters criticize the proposal to use retained bids. Also, under the procedures we establish today, we have not implemented the concept of "retained" bids as the term was used in the *Auction No. 31 Package Bidding Comment Public Notice*. We therefore cannot establish the activity rule originally proposed in the *Auction No. 31 Package Bidding Comment Public Notice*.

27. To determine activity in the current round, we will count accepted new bids made in the current round and provisionally winning bids that are "renewed" in the current round. Bids placed in a prior round no longer count towards a bidder's activity, except for bids that are provisionally winning bids at the end of the previous round. Therefore, a bidder is active on a license or package in the current round if (i) it has a bid on the license or package that is part of the provisionally winning set at the end of the previous round, or (ii) it submits a new accepted bid or renews a provisionally winning bid for the license or package in the current round.

28. A bidder's activity level in a round is the maximum number of bidding units that the bidder can win considering only the licenses and packages on which the bidder is active—*i.e.*, counting the set of bids with the most bidding units in the case of mutually exclusive bids. For example, suppose license A has 10 bidding units associated with it; license B, 20; and license C, 20. If the only bids made by a bidder were on packages AB and BC its activity would be 40 since AB and BC are mutually exclusive (*i.e.*, license B is included in both packages, but can only be awarded as part of one package) and the package BC has more bidding units. Counting activity as the maximum number of bidding units a bidder could win makes activity a measure of (i) a bidder's potential contribution to moving the auction along and (ii) the maximum amount of bidding units associated with active licenses for which the bidder could be financially responsible and for which it therefore must have eligibility (as determined by the bidder's upfront payment).

iv. Activity Rule Waivers and Reducing Eligibility

29. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

30. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and

maximum flexibility to the bidders, while safeguarding the integrity of the auction.

31. We also proposed that bidders would not have the ability to apply waivers proactively, as they can under our current simultaneous multiple round auction format. We received no comment on this issue. We adopt our proposal.

32. We proposed, with the exception of the proactive waiver rule described, no other changes to activity rule waivers and reducing eligibility. Thus, automatic waivers and reducing eligibility will continue to function as described.

33. The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

34. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in the previous section. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

v. Auction Stages and Stage Transitions

35. As stated in section II.B.iii. Activity Rules, in the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed that in each round of the auction a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 50 percent of its current eligibility. We sought comment on whether we should instead adopt multiple stages with increasing activity requirements.

36. We adopt our proposal for a 50 percent activity requirement, but we retain the discretion during the auction to increase to two-thirds the proportion of bidding units on which bidders must be active to retain their current eligibility. The two-thirds limit will ensure that bidders retain the flexibility to switch from bidding on a 20 MHz package to a 30 MHz package with the equivalent population. Any such change will be announced to bidders prior to the beginning of the round in which the change takes effect.

vi. Auction Stopping Rules

37. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed to employ a two-round simultaneous stopping rule approach. A two-round simultaneous stopping rule means that all licenses remain open until two consecutive rounds have occurred in which no new bids are accepted. After the second consecutive such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

38. The Bureau also sought comment on a modified version of the two-round simultaneous stopping rule that would close the auction for all licenses after the second consecutive round in which no bidder submits a new accepted bid on any license on which it is not the provisional winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisional winning bidder would not keep the auction open under this modified rule.

39. Based on our experience in past auctions with a simultaneous stopping rule that closed the auction after one round of no new bids (or withdrawals or proactive waivers), we believe that the two-round stopping rule we proposed allows adequate time for bidders. We therefore adopt the two-round simultaneous stopping rule we proposed, with one clarification. Renewed bids are not considered new bids for purposes of the stopping rule; in other words, a round in which the only bids that are placed are renewed bids is considered a round with no new bids for purposes of the stopping rule.

40. As in previous auctions, the Bureau proposed to retain the discretion to keep an auction open even if no new accepted bids are submitted. The activity rule would apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver. We also proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). The Bureau would exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction, for example, by increasing the number of bidding rounds per day, and/or by increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We received no comments on these proposals, and we retain the discretion to keep an auction open or to implement a "special stopping rule." Any such change will be announced to bidders before it takes effect.

vii. Auction Delay, Suspension, or Cancellation

41. We proposed no change to the procedures regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers

B. Bidding Procedures

i. Round Structure

42. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed no changes in the round structure from those we have already adopted for Auction No. 31. We, adopt our proposal to use the round structure previously announced. Thus, the Commission will use an automated auction system to conduct the package bidding auction format. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The package bidding format will consist of sequential bidding rounds, each followed by the release of round results. Multiple bidding rounds may be conducted in a single day. Details regarding the location and format of round results will be included in the same public notice.

43. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. Any changes will be announced to bidders before they take effect.

ii. Reserve Price or Minimum Opening Bid

44. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed no change in the minimum opening bids from those we previously adopted for the individual licenses. For a package, we proposed to calculate the minimum, opening bid by adding together the minimum opening bids of the individual licenses that make up the package. We adopt our proposal for the minimum opening bids for individual licenses. For a package, we adopt our proposal that the minimum opening bid is the sum of the minimum opening bids of the individual licenses that make up the package. We retain the discretion to lower the minimum opening bids during the auction.

iii. Minimum Accepted Bids and Bid Increments

45. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed that for a bid to be accepted in any round it must be x% greater than the minimum amount to have become a retained bid in the previous round, where the Bureau will specify the value of x. This was analogous to the minimum accepted bid rule in a simultaneous multiple round auction. We also sought comment on other methods for calculating the minimum accepted bid. We noted that one possibility was to determine the bid increment as the maximum of (i) the increment as calculated and (ii) an increment based on the total revenue (the provisionally winning bids) in the previous round. Another possibility was to determine the minimum accepted bid by allocating the total amount needed to beat the provisional winners ("the shortfall approach"). We also proposed to set the minimum increment for a license or package initially at five percent and retain the discretion to vary the minimum bid increments in each round of the auction by announcement prior to each round.

46. We conclude that our original proposal for basing minimum accepted bids on retained bids did not comport well with other elements of our proposed package bidding procedures (*e.g.*, the use of contingent "or" bids or allowing cancellation of retained but non-provisionally winning bids) nor with other elements of the package bidding procedures we establish today (*e.g.*, allowing bidders to place mutually exclusive bids across rounds). With any of those procedures, the determination of retained bids as potentially winning bids is complicated. Accordingly, it is necessary to modify our proposal.

47. The major purpose of a minimum accepted bid rule is to ensure the proper pacing for the auction even if bidders act strategically. In the case of package bidding, a properly designed minimum accepted bid rule also can facilitate bids that overcome the threshold problem (the potential difficulty of combining small packages to beat larger ones). We believe that simplicity, while obviously desirable, ranks as a lesser factor. In this regard we note that bidders will not be required to calculate minimum accepted bids themselves, but will have the minimum accepted bids provided to them by the bidding software.

48. We adopt a variation of our first proposed alternative method for calculating minimum accepted bids. The minimum accepted bid for any license or package will be the greater of: (i) the minimum opening bid; (ii) the bidder's own previous high bid on that package plus x%, where the Bureau will specify the value of x in each round; and (iii) the number of bidding units for the license or package multiplied by the lowest $/bidding unit on any provisionally winning package in the last 5 rounds. We retain the discretion to change the minimum accepted bid, and to do so on a license-by-license and package-by-package basis, if circumstances so dictate. We will notify bidders of any such change before it takes effect.[1]

49. Part (i) of the formula simply ensures consistency with the minimum opening bids we have adopted. With regard to part (ii) of the formula, by using a bidder's own prior bid as a base we ensure that the price each bidder faces is rising, generally in small steps above the amount it has indicated it is willing to pay. Moreover, we find that when we allow for mutually exclusive bids across rounds[2] and package bidding, there are disadvantages to requiring a bidder to beat a high bid on a package or license. One effect of allowing mutually exclusive bids is that a bid does not necessarily have to be the highest bid on a particular package or license in order for it to be a provisional winner. An example will illustrate this point.

Bidder 1 places a bid of 50 on Package A, and Bidder 2 places a bid of 50 on Package B. In the next round, Bidder 1 places a bid of 100 on Package B, which is mutually exclusive with its bid of 50 on Package A from the previous round. If Bidder 3 is allowed to bid 40 on Package A, even though it is not higher than Bidder 1's bid of 50, Bidder 3 will become a provisional winner (assuming that these are the only bids). Bidder 3's bid of 40 on Package A plus Bidder 1's bid of 100 on Package B totals 140, and this total is higher than Bidder 1's bid of 50 on Package A plus Bidder 2's bid of 50 on Package B which totals only 100. We wish to encourage such bids. Moreover, Bidder 3 may not have bid if it were required to beat Bidder 1's bid of 50 on Package A, which is not the efficient outcome.

Under part (iii) of the formula, we calculate the least expensive provisionally winning "unit price" (the provisionally winning bid for a license or package divided by the number of bidding units associated with the bid) for the five prior rounds. To perform this calculation, we examine all of the provisionally winning bids for the five prior rounds. We then divide each of those provisionally winning bids by the number of bidding units associated with it, to yield a "unit price" for each provisionally winning bid. Finally, we determine the lowest unit price of all of the provisionally winning bids (in other words, the lowest unit price that any bidder has bid for any provisionally license or package in the prior five rounds). To apply part (iii) of the formula to a new bid, we multiply that lowest unit price by the bidding units associated with the license or package for which the bidder is bidding. It is possible, and indeed likely, that the lowest unit rate will come from a different license or package than the one on which the bidder is bidding.

50. Part (iii) of the formula essentially requires that bids on any license or package be not too far from the provisionally winning bids; unless we

[1] As described further in section II.B.iv, Last and Best Bids, and section II.B.v, Renewed Bids, there are two exceptions to the minimum accepted bid requirement. First, bidders who choose to place no further bids in the auction may place one last set of bids at any amount between their previous high bid and the minimum accepted bid. Second, at any time bidders may "renew" their highest previous bid on a license or package without increasing the bid; however, a bidder is not conferred activity credit for renewing a non-provisionally winning bid. Because bids in each round are considered mutually exclusive, renewing a provsionally winning bid does not double count that bid towards a bidder's total activity credit.

[2] As discussed in more detail in section II.B.vi.b, Winning and Provisionally Winning Bids, bids that are made by the same bidder in different rounds are treated as being mutually exclusive, or as contingent "or" "bids". The bidder may win with the bids in one round, or the other, but not both.

include such a provision, bids might not become competitive without many rounds of bidding. Part (iii) thereby facilitates bids that will overcome the threshold problem. By using the least expensive provisionally winning rate for any license or package over the previous five rounds, we believe that we have ensured that minimum accepted bids will not be too high. Although we recognize that part (iii) may not meet some commenters' concerns about simplicity, omitting part (iii) would adversely and unacceptably affect the pace of the auction. We also believe that the rule as a whole will discourage "parking" because any minimum accepted bid has a reasonable chance of becoming a provisional winner. "Parking" is the placing of a bid that a bidder does not expect to become a winning bid for the purpose of maintaining eligibility and/or keeping the auction open.

51. We retain the discretion to limit minimum accepted bids when circumstances warrant, and to do so on a round-by-round, package-by-package and license-by-license basis. We believe that this discretion, along with our discretion to increase the time for the bidding rounds and review periods and the number of rounds per day, which we will exercise with sensitivity to the needs of bidders to study round results and adjust their bidding strategies, is sufficient to meet commenters' concerns of having adequate time in which to make decisions involving potentially hundreds of millions of dollars.

52. We note that part (ii) of the minimum accepted bid rule is specific to each bidder. It may therefore be the case that different bidders will have different minimum accepted bids on the same license or package. We do not believe that this will yield an inefficient result because when part (ii) applies the bidder's new bid is based on an amount that it has already bid and therefore indicated it is willing to pay. Moreover, any inefficiency or inequity caused by part (ii) of this rule is mitigated by the ability of bidders to renew bids without increasing them and by the last and best bid procedure, described in the next section, which allows a bidder to make a final set of bids without regard to the minimum accepted bid rule.

53. As has become standard in our auctions, we also proposed that we would use "click box" bidding. Specifically, we proposed to allow package bids to increase by one increment in each round, while bids on individual licenses could increase by one to nine increments.

54. Under our previously adopted procedures, a bid increment was defined as x% of the standing high bid, where x was specified by the Bureau, and the minimum accepted bid was the standing high bid plus x%. Thus, if x was equal to 10, bidders were permitted to made bids of the standing high bid plus 10%, plus 20%, etc., with the maximum bid being equal to the standing high bid plus 90%. Under the procedures we establish today, however, there are no standing high bids and minimum accepted bids are not based on standing high bids. We believe, however, that the prior definition of a bid increment is one that is easy for bidders to understand. Accordingly, we believe our new definition of a bid increment should be analogous to the old definition. Accordingly, for this auction, we are defining a bid increment as x% of the minimum accepted bid, where the minimum accepted bid is determined as discussed. As under our previously established procedures, the Bureau will specify the value of x in each round. The Bureau also retains the discretion to change the bid increment, and to do so on a license-by-license and package-by-package basis, if circumstances so dictate. Any such change will be announced to bidders prior to the beginning of the round in which the change takes effect.

55. Several commenters disagreed with our proposal to restrict bidders from raising a bid on a package by more than one increment. Because we believe that the minimum bid rule we are adopting helps overcome the threshold problem, we no longer find it necessary to adopt that restriction. We note that we currently use click box bidding in our simultaneous multiple round auctions. Click box bidding eliminates the use of trailing digits for bid signaling. It also helps prevent bidders from making mistakes when placing their bids. The nine-increment limit constrains jump bidding to some degree while generally not preventing a bidder from making up in a single bid the entire shortfall necessary to become a provisional winner. We therefore adopt our proposal to use click box bidding and to allow bids on either individual licenses or packages to increase by one to nine increments. We reserve the right to change the number of possible increments. Any such change will be announced to bidders prior to the beginning of the round in which the change takes effect.

iv. Last and Best Bids

56. Bidders that wish to drop out of the auction or that believe they are about to lose their bidding eligibility will have the opportunity before they drop out to make a "last and best" bid on any packages for which they remain eligible. Such bids may be of any amount (in thousand dollar increments) between their previous high bid and the minimum accepted bid. This is a limited exception to the minimum accepted bid rule and to click box bidding. If a bidder chooses this option, it will not be permitted to make any further bids during the auction.

57. We adopt this procedure primarily as a method of ensuring that there are no tie bids at the end of the auction. Several commenters had expressed their concern that, especially with click box bidding, bidders could submit tie bids. We believe that this procedure provides a fair and efficient way to break ties should they occur, although it is not limited to those situations where there is a tie. An example of how this procedure would break a tie is provided at the beginning of section II.B.vi, Winning and Provisionally Winning Bids. The procedure also allows bidders to bid the maximum amount they are willing to pay for a package regardless of how the Commission sets the minimum accepted bid, and thus mitigates the possible inefficiency that would result from setting minimum accepted bids too high.

v. Renewed Bids

58. Without regard to the minimum accepted bid requirement, a bidder may "renew" in the current round the highest previous bid it made on any license or package; that is, it may resubmit the bid without increasing the amount bid. No activity credit will be conferred for renewing a non-provisionally winning bid (provisionally winning bids, however, receive activity credit whether or not they are renewed). Renewed bids will be treated as being made in the current round.

59. Allowing bidders to renew bids provides several benefits. For example, because bids made in different rounds are treated as mutually exclusive, if a bidder wishes to win both a license for which it is the provisional winner and another license, it must bid on both licenses in a single round. Therefore, unless we provide bidders an opportunity to renew their provisionally winning bids without increasing them, provisionally winning bidders that desired additional licenses would be forced to raise their bids on the licenses for which they were already provisional winners. Allowing bidders to renew bids also mitigates the potential concern that we are not retaining all potentially winning bids and a bidder may not be able to submit a new bid on a license

or package on which it previously bid because the bid increment is too high.

vi. Winning and Provisionally Winning Bids

60. The first part of this section describes how we will determine the winning and provisionally winning bids from among the bids we examine. The second part describes the universe of bids we will examine and includes a discussion of retained bids, contingent "or" bids, and bid cancellation.

Section A

61. In the *Auction No. 31 Package Bidding Comment Public Notice*, we defined winning bids as the set of gross bids on individual licenses and packages that maximizes gross revenue when the auction closes, assigning each license to only one party (a bidder or, in the case of unsold licenses, the Commission).[3] We defined provisionally winning bids as the set of bids that maximize revenue in a particular round (*i.e.*, they would win if the auction were to close in that round), assigning each license to only one party (a bidder or the Commission).

62. No commenter disagrees with how we proposed to determine the winning bids. Accordingly, we adopt our proposal with a clarification to take into account the fact that, we will treat the bids it makes in different rounds as mutually exclusive (as explained in section b). The *winning bids* are the set of "consistent" bids (bids that (i) do not overlap and (ii) are made or renewed by an individual bidder in the same round) that maximize total revenue when the auction closes. The *provisionally winning bids* are the consistent bids that maximize total revenue in a particular round. The Bureau is developing computer software to perform these tasks.[4]

63. We note that, in the case of a tie among bids, the algorithm we are using to calculate the winning and provisionally winning bids selects the winning bid randomly.[5] The procedure we are adopting for last and best bids, described in section II.B.iv, should help ensure that the winning bid is not the result of a tie. In the case of a tie, the bidder(s) whose bid is not chosen has the opportunity in the next round to make another bid. If the bidder believes that the minimum bid increment is too high and so would ordinarily cease bidding on that license or package, it still has the opportunity, using the last and best bid procedure, to make one final bid on the license or package (which may be as little as $1,000 more).[6] The bidder whose bid was chosen randomly then has the opportunity in the next round to beat the new bid.[7]

Bidder 1 and Bidder 2 both bid $100 million on License A in Round 20. The algorithm randomly selects Bidder 1 as the provisional winner. In round 21, Bidder 2 may make the minimum accepted bid on License A, for example, $105 million, in which case bidding on the license would simply continue. If, however, Bidder 2 does not value License A at $105 million, and if it wishes to cease bidding on all other licenses and packages, it may use the last and best bid option to place any bid it wishes on License A between $100,001,000 and $104,999,000 (in thousand dollar increments). (If Bidder 2 wishes to continue to bid on other licenses or packages, it may use the last and best bid option at a later point in the auction.) Bidder 2 therefore bids $103.5 million on License A, the maximum amount it is willing to bid. Bidder 2 is not permitted to place any new bids in the auction. In Round 22, Bidder 1 has the opportunity to place the minimum accepted bid on License A, for example, $108.67 million, thereby beating Bidder 2. But if Bidder 1 believes that the minimum bid is too high, Bidder 1 also has the opportunity to choose the last and best bid option to place any bid it wishes on License A between $103,501,000 and $108,670,100. He therefore bids $104 million, and is not permitted to place any new bids in the auction. If no other bidders bid on License A, Bidder 1 would be awarded the license at a price of $104 million.

We therefore believe that by adopting the last and best bid procedure, we have mitigated any adverse effects the algorithm may have on winning bids. We acknowledge, however, a bidder that submits a tie bid and whose bid is not selected as part of the provisionally winning set will have a higher minimum accepted bid in the next round than the bidder whose bid was selected and who need not raise its bid in order to be considered active on that license or package.

64. We also proposed that licenses on which no bids have been submitted would be treated as if the minimum opening bid had been submitted. SBC/BellSouth state that licenses for which no bids have been made should be treated as having a bid of $0. Prof. Paul Milgrom ("Milgrom") disagrees.

65. In determining provisionally winning bids, individual licenses on which no bids are available to be considered when solving for the provisionally winning set will be treated as having a bid at the minimum opening bid. We believe that at the end of the auction there will not be any licenses on which bids no bids have been made (either directly or as part of a package), and if it appears that this will occur, the Commission retains the discretion during the auction to lower the minimum opening bid and the minimum accepted bid. Thus, the question of how to treat licenses for which no bids are currently available is one that mostly affects the pace of the auction and the computational simplicity in the early rounds. We believe that treating the licenses as having bids at the opening minimum bid is the better course.

Section B

66. *Mutually Exclusive Bids.* In order to determine the provisionally winning bids at the end of each round, we proposed to consider both the bids made in the current round and "retained" bids. We defined "retained" bids as the provisionally winning bids plus bids that have the potential to become provisionally winning bids because of changes in other bids in subsequent rounds. Somewhat simplified, retained bids were the standing high bids for any package or license (except that a bid on a package that was not greater than the sum of the bids on its best components would not be retained).

67. Commenters have various views of our proposed use of retained bids in calculating provisionally winning bids. Some commenters suggest that we retain all bids. If some or all bids are retained, commenters variously suggest that we permit non-provisionally winning bids to be cancelled, or that we permit contingent "or" bids. Contingent "or" bids would allow bidders to specify that they wish to win one bid or the other, but not both. We had proposed both of these alternatives in the *Auction No. 31 Package Bidding Public Notice*. We agree with those commenters that state

[3] If the action closes with any license(s) unsold, those license(s) remain held by the FCC. As stated, in determining the set of bids that maximizes gross revenue, FCC held licenses will be treated as having a bid at the minimum opening bid.

[4] For example, we are using the ILOG CPLEX, version 6.5 software for our solving algorithm. Prior to the auction date, the Bureau will release further information describing the computer software in detail. Further, we will make available a bidder aid for bidders to be able to determine for themselves what bid amount would have been necessary to beat the other bids and become a provisional winner in the prior round.

[5] To ensure randomness, we will use a National Institute of Standards and Technology ("NIST") tested pseudorandom generator, which will permute the order of the set of all bids prior to consideration by the solving algorithm.

[6] The bidder would ordinarily choose the best and final bid option only when it has decided to stop bidding and drop out of the auction altogether.

[7] If, however, the bidder whose bid is not chosen chooses not to bid and no other bidder makes a higher bid (and the provisionally winning bidder does not make a mutually exclusive bid on a different license or package), then the provisional winner will become the winner at the end of the auction.

that without one of these procedures (cancellation or contingent "or" bids) bidders face the risk that they will have retained but non-provisionally winning bids that they do not desire, which both consumes some of their eligibility and leads to the possibility that they ultimately may win more licenses than they wish. This risk could make bidders unable to switch to backup strategies and could generally chill bidding.

68. In the *Auction No. 31 Package Bidding Public Notice*, we noted that contingent "or" bids could provide a bidder greater flexibility to aggressively bid on licenses that it considers substitutes by overcoming the exposure problem. For computational simplicity and transparency, we proposed a number of restrictions on the use of 'or" bids. We also noted that we would need to modify our method for determining retained bids. With regard to bid cancellation, we noted that it could avoid the possible complexity of "or" bids while overcoming exposure problems and thereby allow bidders to explore bids that would overcome the threshold problem. On the other hand, by allowing potential partnering bids to be cancelled, bid cancellation could also make it more difficult to overcome the threshold problem. It also could facilitate adverse strategic bidding, and adversely affect the pace of the auction. Finally, we noted that if we permitted bid cancellation, we would probably retain all bids and modify the activity rules and the procedures for calculating minimum accepted bids.

69. We conclude that calculating provisionally winning bids using the definition of retained bids as set forth in the *Auction No. 31 Package Bidding Comment Public Notice* does not necessarily "retain" all potentially winning bids when bidders are permitted to submit bids that are mutually exclusive across rounds ("or" bids). As illustrated in section II.B.iii., Minimum Accepted Bids and Bid Increments, a bid does not have to be the highest bid on a particular package in order for it to be a provisional winner. The definition of retained bids, however, would not retain a bid unless it was the highest bid on a particular package.

70. We also conclude that it is not computationally feasible at this time to calculate provisionally winning bids using all of the bids that are made throughout the auction (i.e., to retain all bids) when "or" bids are permitted. Similarly, we conclude that permitting unrestricted "or" bids is computationally too complicated to implement for this auction. Finally, we do not favor allowing bidders to freely cancel bids because, as stated, bid cancellation could be used strategically and because other bidders on a smaller package attempting to beat a larger package need some certainty about what bids are available in order to overcome the threshold problem.

71. We conclude that the nature of package bidding requires that we devise some system for retaining non-provisionally winning bids so that more than just the bids made in the current round are considered in determining the new provisionally winning bids. Otherwise, it would be very difficult to overcome the threshold problem. Bidders on individual licenses or smaller packages need to know what other bids are available that, when considered along with their bids, could beat a larger package.

72. We believe that the following procedure meets our objectives and responds to the design weaknesses discussed. First, we will treat the bids a bidder makes in the current round as mutually exclusive with the bids that same bidder made in prior rounds. If a bidder does not want a bid from the previous round (including a provisionally winning bid) to be considered mutually exclusive with bids made in the current round, it can resubmit the bid in the current round. A bidder may either "renew" a bid without increasing the amount bid or increase the bid.[8]

73. Second, to determine the provisionally winning bids, we will consider (i) the bids made by each bidder in the most recent two rounds in which that bidder placed new or renewed bids and (ii) all provisionally winning bids from the prior round. This approach ensures that bidders in the current round will have bids by other bidders available for them to "partner" with so they can make a bid that would have made them a provisional winner in the last round.[9] It thereby assists bidders in overcoming the threshold problem. This approach also helps ensure that bidding is sincere since bidders are held to their bids even after they stop bidding. Bidders should be willing to pay the amount they previously bid even if they are not willing to raise their bids.

74. The auction design we establish today therefore takes elements from both, contingent "or" bids and bid cancellation. By making a bidder's own bids mutually exclusive across rounds, we have implicitly provided for a limited number of "or" bids without the imposition of excessive computational burdens. Moreover, by considering only a bidder's two most recent rounds in which it made a bid (either an accepted new bid or a renewed bid), plus any provisionally winning bids, we have essentially cancelled all of the bidder's other bids.

75. More importantly, treating each participant's bids across rounds as mutually exclusive meets the objectives that both of these methods were attempting to accomplish without either the complications or the risks. As with "or" bids and bid cancellation, bidders may pursue back-up strategies without exposing themselves to the risk that they will win both sets of licenses. Also, bidders may achieve all of the flexibility of using "or" bids within a round by bidding straightforwardly across rounds. And by considering a bidder's two most recent rounds of bids in which accepted new bids or renewed bids were made (plus its provisionally winning bids), we allow bidders to explore ways to partner with other bids in order to beat bids on larger packages. Yet the bidding method we are adopting, by automatically canceling bids instead of leaving it to the bidder's discretion, lessens the risk of strategic bidding. We believe that this bidding method meets both the commenters' concerns and their desires.

vii. Bidding

76. During a bidding round, a bidder may submit individual bids for as many licenses as it wishes, subject to its eligibility; may submit bids on any packages it has designed, subject to its eligibility and a limit of bidding on twelve different packages throughout the auction; may renew bids it has previously made; may remove bids placed in that round before the round closes; may use an activity rule waiver, and may permanently reduce eligibility. Bidders may make certain mutually exclusive bids (*i.e.*, overlapping bids) in a bidding round. For example, a bidder may place a bid on License A and a bid on a package consisting of Licenses A and B. The bids are mutually exclusive because it is not possible that both bids can become provisionally winning bids. Bidders have the option of making multiple submissions and removals in each bidding round.

[8] As stated, "renewing" a non-provisionally winning bid confers no activity credit, while making a minimum accepted bid does. On the other hand, a bidder receives activity for a bid that is a provisionally winning bid at the end of the last round, whether or not it renews the bid.

[9] The use of the term "partner" does not imply collusion among bidders and collusion is strictly prohibited by the Commission's Rules. See 47 CFR 1.2105(c). It simply refers to the fact that in order to beat a larger package, a bidder on an individual license or smaller package needs others to bid on the other licenses or packages that make up the larger package.

77. Bidders should note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round, especially since this is the first combinatorial auction conducted by the Commission. For the simultaneous multiple round auctions, normally, four to five minutes were necessary to complete a bid submission. Bid submissions may take longer for combinatorial auctions.) There will be no on-site bidding during Auction No. 31.

78. A bidder's ability to bid on specific licenses and packages in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175; and (ii) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. Bidders must create packages on the package creation screen before they are permitted to bid on the packages. Bidders are reminded that they will be able to create only those packages (i) that contain only the licenses for which they applied on FCC Form 175, and (ii) for which they have eligibility based on their upfront payments.

79. The bidding software requires each bidder to log in to the FCC auction system during the bidding round using its FCC-supplied security identification. Procedures for obtaining security information and accessing the FCC auction system will be announced in a future Public Notice. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

80. The bid entry screen of the automated auction system software for Auction No. 31 allows bidders to place multiple increment bids. In addition to placing the minimum accepted bid, bidders may increase the minimum accepted bid by from one to nine bid increments. The bidding software will display allowable bids for each license and package created by the bidder.

81. To place a new bid on a license or package, the bidder must place a minimum accepted bid, and may place a bid up to nine times the bid increment. A bidder may also place a renewed bid on a license or package. Both actions are done by clicking the desired bid amount in the Amount Bid box displayed on the bidding screen and then clicking the submit button.

viii. Bid Removal and Bid Withdrawal

82. Bid "removal" is the voiding of a bid made in the current round. Bid "withdrawal" is the voiding of a provisionally winning bid. Bid "cancellation" is the voiding of a non-provisionally winning bid. We discuss bid cancellation in section II.B.vi.b, Winning and Provisionally Winning Bids. For the reasons set forth and in section II.B.vi.b, we permit only the removal of bids placed in the current round. The withdrawal or cancellation of bids made in previous rounds is *prohibited*.

83. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed to retain the bid removal procedures that we previously established. Spectrum Exchange endorses the proposal and no commenter objects. Accordingly, we retain the bid removal procedures previously announced. At any time before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. This is not the same as withdrawing a bid, which, in our simultaneous multiple round auction system, can occur in rounds subsequent to the round in which the high bid was placed. A bidder removing a bid placed in the same round is not subject to withdrawal payments. *See* 47 CFR 1.2104(g). Once a round closes, a bidder may no longer remove a bid.

84. We also proposed not to allow bidders to withdraw provisionally winning bids from previous rounds. If a bid is declared the winner and the bidder does not pay the amount due, it is liable for a default payment as set forth in the Commission's Rules.

85. We believe that by making bids placed in different rounds mutually exclusive, we have eliminated a bidder's exposure risk when changing strategies. Bidders will win at most one set of bids, not both. Moreover, the bid withdrawal procedure was designed to allow bidders to back out of failed aggregations—to avoid winning some licenses that are worth less to them than the amount bid without the other licenses they need to implement their business plan. Therefore, since bidders may make package bids on all combinations of licenses with significant complementarities, the use of withdrawals to mitigate such risk is no longer necessary. Moreover, while there is no offsetting benefit from allowing bid withdrawals, there would still be potential harm. Withdrawals may be used strategically to provide incorrect price signals during the auction and lead other bidders to place inefficient bids. Also, when withdrawals are permitted, one cannot ensure that the auction will proceed at an acceptable pace. Moreover, the harm associated with withdrawals is likely to be more severe in auctions with package bidding since a single withdrawal of a bid (on either an individual license or a package) can affect the entire provisionally winning set. Accordingly, we will *not* permit bidders to withdraw their provisionally winning bids.

86. Finally, we proposed that the previously announced special 30 MHz nationwide bid withdrawal procedure would no longer apply. No commenter objects. We believe that such a special procedure is unnecessary once package bidding is generally permitted. Accordingly, upon approval by the Commission, we will not apply the previously announced special 30 MHz nationwide bid withdrawal procedure.[10]

ix. Bid Composition Restriction

87. We sought comment on bid composition restrictions to deter bidders without complementarities from strategically bidding on large packages in order to create a threshold problem for competitors that want only parts of the larger package. For example, the Milgrom-McAfee bid composition restriction would not allow a bidder that is active in a round on a package, but not on a subset of that package, to bid subsequently for the subset. No commenter believes that such a bid composition restriction is necessary for this auction. We agree. Therefore, we are not adopting any restrictions on bid composition (other than limiting bidders to creating and bidding on at most twelve packages).

x. Default

88. In the *Auction No. 31 Package Bidding Comment Public Notice*, we proposed to modify the default procedures and rules to take into account package bidding. In the 700 *MHz Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, the Commission stated that after the Bureau has reviewed the record in this proceeding and determined

[10] In the *700 MHz First Report and Order*, the Commission directed the Bureau to adopt a special 30 MHz nationwide withdrawal rule if it was operationally feasible to do so. Accordingly, the Bureau established such a rule in the *Auction No. 31 Procedures Public Notice*. As discussed in section II.B.x, Default, the Commission has stated that prior to the due date for the filing of short form applications for Auction No. 31, it will adopt any rule changes necessary to implement package bidding.

whether or not to implement package bidding, which we do today, it will adopt any necessary rule changes, such as changes to the general competitive bidding default payment rule, in a further reconsideration order to be adopted prior to the due date for the filing of short forms for Auction No. 31. Accordingly, we leave for the Commission the discussion of the proposed modifications to the default rule and the comments received to that proposal.

xi. Round Results

89. Although we did not propose any changes to the round results that would be provided, the modified procedures we establish today change some of the results that will be reported. As we stated in the *Auction No. 31 Procedures Public Notice*, bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, provisionally winning bids, whether or not there were ties for the provisionally winning bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 31 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

xii. Auction Announcements

90. The Commission will use auction announcements to announce items such as schedule changes. All Commission auction announcements will be available on the FCC Extranet and on the Internet.

xiii. Maintaining the Accuracy of FCC Form 175 Information

91. As we stated in the *Auction No. 31 Procedures Public Notice*, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revisions to exhibits. Impermissible changes include changes to the selection of licenses on which the applicant wishes to bid. Filers must make these changes on-line, and submit a letter to: Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport, Auctions and Industry Analysis Division at (202) 418–0660.

C. Post-Auction Procedures: Refund of Remaining Upfront Payment Balance

92. The package bidding procedures we adopt here necessitate a slight change in the post-auction procedures regarding the refund of a bidder's remaining upfront payment balance. Because a bidder with no provisionally winning bids during the auction may still be a winning bidder at the end of the last round of the auction, bidders may not drop out of the auction completely. Accordingly, bidders are no longer eligible for a refund of their upfront payments before the close of the auction. The refund procedures are therefore as follows:

93. All applicants that submitted upfront payments but were not winning bidders for a 700 MHz license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. At the end of the auction, those bidders who are eligible for a refund must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, SW, Room 1–A824, Washington, DC 20554.

94. Bidders are encouraged to file their refund information electronically using the Refund Information portion of the FCC Form 175, but bidders can also fax their request to the Auctions Accounting Group at (202) 418–2843. Once the request has been approved, a refund will be sent to the party identified in the refund information. Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Michelle Bennett or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division Wireless Telecommunications Bureau.

ATTACHMENT—AUCTION NO. 31; LICENSES TO BE AUCTIONED

Economic area grouping	License numbers	License bandwidth (MHz)	Description	Population (1990)	Bidding units	Upfront payment	Minimum opening bid
EAG701	WXEAG701–C	10	Northeast	41,567,654	14,000,000	$14,000,000	$40,000,000
EAG702	WXEAG702–C	10	Mid-Atlantic	42,547,218	14,000,000	14,000,000	40,000,000
EAG703	WXEAG703–C	10	Southeast	44,516,919	14,000,000	14,000,000	40,000,000
EAG704	WXEAG704–C	10	Great Lakes	41,560,906	14,000,000	14,000,000	40,000,000
EAG705	WXEAG705–C	10	Central/Mountain	40,926,284	14,000,000	14,000,000	40,000,000
EAG706	WXEAG706–C	10	Pacific	41,427,686	14,000,000	14,000,000	40,000,000
Subtotal					84,000,000	84,000,000	240,000,000
EAG701	WXEAG701–D	20	Northeast	41,567,654	28,000,000	28,000,000	80,000,000
EAG702	WXEAG702–D	20	Mid-Atlantic	42,547,218	28,000,000	28,000,000	80,000,000
EAG703	WXEAG703–D	20	Southeast	44,516,919	28,000,000	28,000,000	80,000,000
EAG704	WXEAG704–D	20	Great Lakes	41,560,906	28,000,000	28,000,000	80,000,000
EAG705	WXEAG705–D	20	Central/Mountain	40,926,284	28,000,000	28,000,000	80,000,000
EAG706	WXEAG706–D	20	Pacific	41,427,686	28,000,000	28,000,000	80,000,000
Subtotal					168,000,000	168,000,000	480,000,000
Total					252,000,000	252,000,000	720,000,000

[FR Doc. 00–17673 Filed 7–12–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 00–30; DA 00–1432]

En Banc Hearing on America Online, Inc and Time Warner, Inc. Applications for Transfer of Control

AGENCY: Federal Communications Commission.

ACTION: Notice of Hearing.

SUMMARY: The Federal Communications Commission (FCC) will hold an en banc hearing to discuss issues pertinent to the joint applications of America Online, Inc. ("AOL") and Time Warner, Inc. (Time Warner) for Commission approval of the transfer of control to AOL Time Warner, a new entity, of licenses and authorizations now held by AOL and Time Warner. AOL and Time Warner, as well as consumer, community, and industry representatives will be invited to participate as panelists.

DATES: The hearing will be held on Thursday, July 27, 2000 from 1:00 p.m. to 5:00 p.m.

ADDRESSES: The hearing will be held at the Federal Communications Commission, Commission Meeting Room, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Linda Senecal, 202–418–7044. News Media Contact: Michelle Russo, 202–418–2358.

SUPPLEMENTARY INFORMATION: A transcript of the en banc will be available 10 days after the event on the FCC's Internet site. The URL address for the FCC's Internet Home Page is http://www.fcc.gov. Transcripts may be obtained from the FCC's duplicating contractor, International Transcription Service (ITS) at (202) 857–3800 or fax (202) 857–3805 or TTY (202) 293–8810. ITS may be reached by e-mail at: service@itsdocs.com. ITS's Internet address is http://www.itsdocs.com. The transcript is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audiocassette) by contacting Brian Millin at (202) 418–7426 (Voice), (202) 418–7365 (TTY), or by sending an email to access@fcc.gov. The en banc can be viewed over George Mason University's Capitol Connection via the Internet by calling (703) 993–3100 for more information. The audio portion of the en banc will be broadcast live on the Internet via the Commission's Internet audio/video broadcast page at http://www.fcc.gov/realaudio. The en banc can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Users must have an account with National Narrowcast prior to the en banc. Audio and video tapes of the en banc may be purchased from Infocus, 341 Victory Drive, Herndon, Virginia 20170, by calling Infocus at (703) 834–0100 or by faxing Infocus at (703) 834–0111.

Dated: July 6, 2000.

John Norton,

Division Chief, Policy and Rules Division, Cable Services Bureau.

[FR Doc. 00–17667 Filed 7–12–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2423]

Petition for Reconsideration of Action in Rulemaking Proceeding

July 7, 2000.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by July 28, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996 (WT Docket No. 96–198).

Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17664 Filed 7–12–00; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:36 p.m. on Monday, July 10, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory, corporate, and receivership activities.

In calling the meeting, the Board determined, on motion of Ms. Julie L. Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than July 6, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: July 10, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–17859 Filed 7–11–00; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Date & Time: Tuesday, July 18, 2000 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C.

Status: This meeting will be closed to the public.

Items To Be Discussed:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Date & Time: Thursday, July 20, 2000 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

Status: This meeting will be open to the public.

Items To Be Discussed:

Correction and Approval of Minutes.

Advisory Opinion 2000–14: New York State Committee of the Working Families Party by counsel, Michael Trister.

Administrative Matters.

Person To Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 00–17832 Filed 7–11–00; 10:41 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 201104.

Title: Marine Terminal Agreement between Compania Chilena de Navegacion Interoceanica S.A. and The City and County of San Francisco.

Parties: The City and County of San Francisco, Compania Chilena de Navegacion Interoceanica S.A.

Synopsis: The agreement provides for the non-exclusive right to use a municipal pier for berthing, loading and discharging cargoes. The agreement runs through July 31, 2005.

Dated: July 7, 2000.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–17651 Filed 7–12–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Logistics Advantage, Inc., 1805 South Elm Street, Alhambra, CA 91803, Officer: Frank Wong, President, (Qualifying Individual)

Principal Container Line Inc., 515 N. Sam Houston Parkway East, Suite 175, Houston, TX 77060, Officers: Jerome (Joe) Sopher, President, (Qualifying Individual), Noel McEvoy, Director

Cargo Express Northwest, Inc., 354 NE Greenwood Ave., Suite 207, Bend, Oregon 97701, Officers: Joseph M. Pfender, President, (Qualifying Individual), Robert Pfender, Director

Port of Palm Cold Storage, 1016 Clemons Street, Suite 400, Jupiter, FL 33477, Officer: Michael K. Drew, President, (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

International Transport Logistics, Inc., 8998–1 Blount Island Blvd., Blount Island Marine Terminal, Jacksonville, FL 32226, Officers: Bernard S. Sain, President, (Qualifying Individual), Jason Sain, Vice President

Trans Port Agencies, Inc., 1204 Lynda Lane, Warminster, PA 18974, Officers: Joseph G. O'Donnell, President, (Qualifying Individual), Theresa A. O'Donnell, Exec. Vice President

Air Sea Cargo Network, Inc., 33511 Western Avenue, Union City, CA 94587, Officers: Y. Elizabeth Searle, President, (Qualifying Individual), Robert G. Searle, Vice President

Dated: July 7, 2000.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–17650 Filed 7–12–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Citizens Bancshares, Inc., Crawfordville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank—Wakulla, Crawfordville, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. The Jack and Katherine Dickey Family Limited Partnership, Weatherford, Oklahoma; to become a bank holding company by acquiring 59.6 percent of the voting shares of First Farm Credit Corporation, Weatherford, Oklahoma, and thereby indirectly acquire Southwest National Bank, Weatherford, Oklahoma.

In connection with this application Southwest Capital, LLC, Weatherford, Oklahoma; has applied to become a bank holding company by acquiring 5 percent of the voting shares of The Jack and Katherine Dickey Family Limited Partnership, Weatherford, Oklahoma, and thereby indirectly acquire First Farm Credit Corporation, Weatherford,

Oklahoma, and Southwest National Bank, Weatherford, Oklahoma. Comments regarding these applications must be received not later than August 1, 2000.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Heritage Commerce Corp, San Jose, California; to merge with Western Holdings Bancorp, Los Altos, California, and thereby indirectly acquire Bank of Los Altos, Los Altos, California.

Board of Governors of the Federal Reserve System, July 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17675 Filed 7–12–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

White House Commission on Complementary and Alternative Medicine Policy; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is given of the first meeting of the White House Commission on Complementary and Alternative Medicine Policy. The purpose of the meeting is to convene the Commission and to begin receiving public testimony from individuals and organizations interested in the subject of federal policy regarding complementary and alternative medicine. Comments received at the meeting will be used by the Commission to identify and frame the issues and develop the agenda for subsequent meetings. Comments should focus on the following issues:

(1) The education and training of health care practitioners in complementary and alternative medicine;

(2) Coordinated research to increase knowledge about complementary and alternative medicine practices and products;

(3) The provision to health care professionals of reliable and useful information about complementary and alternative medicine that can be made readily accessible and understandable to the general public; and

(4) Guidance for appropriate access to and delivery of complementary and alternative medicine.

Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on July 14, from 11:30 a.m.–12:30 p.m.

Name of Committee: White House Commission on Complementary and Alternative Medicine Policy.

Date: July 13–14, 2000.

Time: July 13—2:00 p.m.–5:30 p.m. July 14—8:30 a.m.–5:00 p.m.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

Contact Person: Stephen Groft, Pharm. D., Executive Director, 6701 Rockledge Drive, Room 1010, Bethesda, MD 20817–1813, Phone: (301) 435–6199, Fax: (301) 480–1691.

Because of the need to obtain the views of the members as soon as possible and because of the early deadline for the report(s) required of the Commission, this notice is being provided at the earliest possible time.

Supplementary Information: The President established the White House Commission on Complementary and Alternative Medicine Policy on March 7, 2000 by Executive Order 13147. The mission of the White House Commission on Complementary and Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of complementary and alternative medicine to Americans.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Dr. Stephen C. Groft by telephone, fax, or mail as shown above as soon as possible, but at least 4 days before the meeting. A one-page summary of the presentation should accompany any request. The chairperson will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received.

Individuals unable to make oral presentations can mail their written comments to the staff office of the Commission at least 4 business days prior to the meeting for distribution to the Commission and inclusion in the public record.

Any person attending the meeting who has not requested an opportunity to speak in advance of the meeting will be allowed to make a brief oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Due to time constraints, only one representative from each organization will be allowed to present oral testimony.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Commission staff at the address or telephone number listed below as soon as possible.

Dated: July 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17695 Filed 7–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00148]

Breast & Cervical Cancer Early Detection Activities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Breast & Cervical Cancer Early Detection Activities. This program focuses on serving women in the American Indian/Alaska Native populations.

In August 1994, Congress passed the National Breast and Cervical Cancer Mortality Prevention Act (Pub. L. 101–354). The NBCCEDP program was established to eliminate disparity and provide comprehensive breast and cervical cancer screening services for all women at or below 250 percent of the official poverty line. The American Indian/Alaska Natives (AI/AN) are the only ethnic group specifically mentioned as a priority population in the law. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of cancer. For the conference copy of "Healthy People", visit the internet address site: <http://www.health.gov/healthypeople>.

The purpose of this announcement is to provide Breast and Cervical Cancer Early Detection Activities reaching the maximum number of eligible American Indian/Alaska Native women possible. This will be done by:

1. Enhancing tribal grantee capacity to plan, implement, monitor and evaluate screening, referral and follow-up, case management, public education and outreach, professional education, quality assurance, surveillance, evaluation, partnership development and community involvement in their NBCCEDP screening services.

2. Enhancing the State grantee capacity to understand the unique issues preventing American Indian/Alaska Native women from being screened and to work more effectively to reach tribal women in their states. In a recent meeting at CDC, tribal leaders urged CDC to help build their capacity for developing, implementing and monitoring programs when tribal expertise in a given area was not available. This includes, when possible, respecting their preference for technical assistance to be provided by American Indians for programs serving American Indians and by funding programs directly instead of channeling funds through states for American Indian/Alaska Native programs. See Attachment I for additional background information.

B. Eligible Applicants

Assistance will be provided only to a nonprofit organization with extensive experience serving the American Indian/Alaska Natives populations with the management of women health care programs, including Breast and Cervical Cancer Early Detection Activities. Therefore, eligible organizations should have staff in key positions with evidence of 5 or more years experience. Provide proof of nonprofit status, see AR–15 in Attachment II for additional detail information. The eligible applicants should demonstrate the following:

1. Knowledge and experience in the development of American Indian/Alaska Native women health programs;

2. Have members who are from, or have worked in and are familiar with, each of the 12 Indian Health Service Areas; and

3. Have extensive knowledge of the unique health service delivery issues for American Indian/Alaska Native women and have experience in working with IHS, tribes, tribal organizations, and state staff to identify effective strategies to deliver culturally competent services to this population;

4. Have a past history of demonstrated success in planning, implementing and monitoring health programs such as:

a. Director of Health of the Navajo Nation

b. Director of California Indian Health Board

c. Director of Oklahoma City Indian Clinic

d. Director of Inter-Tribal Council of Michigan

e. Advisors to the Indian Health Service on AI/AN women's health issues

Limited competition is justified under this Program Announcement due to the limited number organizations that have expertise serving American Indian/Alaska Natives populations with the management of women health care programs, including Breast and Cervical Cancer Early Detection Activities.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $300,000 is available in FY 2000 to fund one award. It is expected that the award will begin on or before September 30, 2000, for a 12-month budget period within a project period of up to 3 years.

Funding estimates may change. A continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Cooperative agreement funds may not be expended to provide inpatient hospital or treatment services. Treatment is defined as any service recommended by a clinician, including medical and surgical intervention provided in the management of a diagnosed condition.

D. Program Requirements

Breast and Cervical Cancer Early Detection Program activities should adhere to current accepted public health recommendations by the U.S. Preventive Services Task Force, or current Division of Cancer Prevention and Control (DCPC) guidance (See Attachment Public Law 101–354)

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for activities under 1. (Recipient Activities), and CDC shall be responsible for conducting activities under 2. (CDC Activities.)

1. Recipient Activities

a. Collaborate with tribal grantees in the development of annual workplans which will use goals, objectives, activities and time frames that are realistic, measurable and relevant for reaching American Indian/Alaska Native women for screening.

b. Facilitate meetings with states and tribes/tribal organizations within those states to develop realistic and culturally sensitive approaches for screening women.

c. Conduct culturally effective Professional education to National Breast and Cervical Cancer Early Detection Program (NBCCEDP) sponsored tribes, tribal organizations and states working directly with tribes.

d. Participate in CDC-sponsored annual trainings, meetings, and conferences for AI/AN grantees designed to increase culturally appropriate health care delivery and cultural sensitivity for cooperative agreement grantees.

e. Monitor and evaluate the program including process and outcome measures.

2. CDC Activities

a. Assist with providing orientation to staff on the unique requirements of the NBCCEP program by consultation and technical assistance in the planning and evaluation or program activities.

b. Collaborate in the development of workshops planning outreach strategies for tribal grantees and states screening AI/AN women.

c. Provide consultation and technical assistance on guidance on NBCCEDP management topics to be considered for technical assistance.

d. Assist in developing and planning annual trainings, meetings, and conferences designed to increase culturally appropriate health care delivery and cultural sensitivity for cooperative agreement grantees.

E. Application Content

Use the information in the "Program Requirements," "Other Requirements," and "Evaluation Criteria" sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 (twenty) double-spaced pages, printed on one side, with one-inch margins, and unreduced 12 point font.

The narrative should contain:

1. Statement of Need—Identify opportunities for enhancement/improvement addressing existing gaps in the support of AI/AN BCCEDP activities. Describe the extent to which the proposed activities will fill existing gaps.

2. Objectives—Establish and submit short-and long-term objectives for each activity proposed in Section 1 (statement of need) above. Objectives

must be specific, measurable, attainable, time phased, and realistic.

3. Operational Plan—Submit an operational plan that addresses means for achieving each of the objectives established in Section 2 (objectives) above. Provide a concise description of each component or major activity and how it will be implemented. The plan must identify and establish a time line for the completion of each component or major activity.

4. Evaluation Plan—Submit a quantitative plan for monitoring progress toward achieving each of the objectives stated in Section 2 (objectives) above.

5. Organizational Capacity/Program Management—Describe the capacity of the organization/group to perform the technical assistance activities relating to Breast and Cervical Programs. Provide an organizational chart and a curricula vitae(not to exceed 2 pages per person) for each member of the organization that will be providing technical assistance.

6. Budget—Submit a detailed budget and narrative justification for the activities that is consistent with the purpose of the program and the proposed activities.

F. Submission and Deadline

Submit an original and two copies of PHS 5161–1 (OMB Number 0937–0189) on or before August 15, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: The application will be considered as meeting the deadline if it is either:

a. Received on or before the stated deadline date; or

b. Sent on or before the deadline date. (Applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

Late Application: If the application does not meet the criteria in 1.a. or 1.b. above it will be a considered late application and will be returned to the applicant.

G. Evaluation Criteria

The application will be evaluated according to the following criteria by an independent review group appointed by CDC.

1. Statement of Need. The extent to which the applicant identifies specific opportunities and existing gaps related to the purpose of the program. (10 points)

2. Objectives. The degree to which short-and long-term objectives are specific, measurable, attainable, time phased, and realistic.(15 points)

3. Operational Plans. The adequacy of the applicant's plan to carry out the proposed activities, including the extent to which the applicant plans to work collaboratively with other organizations and individuals who may have an impact on breast and cervical cancer prevention and control objectives. (30 points)

4. Organizational Capacity/Program Management. The extent to which the organization appears to have the organizational capacity and program management to develop and manage the program. The extent to which proposed staff appear to be qualified and possess capacity to perform the technical assistance described. The extent to which staff has expertise working with American Indian/Alaska Natives populations with the management of women health care programs, including Breast and Cervical Cancer Early Detection Activities. (30 points)

5. Evaluation Plan. The extent to which the evaluation plan appears capable of monitoring progress toward meeting project objectives. (15 points)

6. Budget. The extent to which each line-item budget and narrative justification is reasonable and consistent with the purpose and objectives of the program. (Not weighted)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of the following:

1. Annual written progress report must be submitted 30 days after the end of each budget period.

2. Financial status report (FSR) must be submitted 90 days after the end of each budget period.

3. Final financial and performance reports, must be submitted 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application package.

AR–9	Paperwork Reduction Act Requirements
AR–10	Smoke-Free Workplace Requirements
AR–11	Healthy People 2010
AR–12	Lobbying Restrictions
AR–15	Proof of Non Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) of the Public Health Service Act (42 U.S.C. 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance Number for this program is 93.283.

J. Where To Obtain Additional Information

To obtain additional information contact: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00148, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770)–488–2757, E-mail address: CCollns@CDC.GO

See also the CDC home page on the Internet:
http://www.cdc.gov

For program technical assistance, contact: Annie Voigt, Program Consultant, Section C, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–57, Atlanta, GA 30341–3724, telephone (770) 488–4707, fax (770) 488–3230.

Dated: July 7, 2000.

Mary Anne Bryant,

Acting Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17702 Filed 7–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements to Develop Core State-Based Surveillance Model Programs, RFA OH–00–007, and Development of New or Enhanced Models for State-Based Occupational Surveillance, RFA OH–00–008

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements to Develop Core State-Based Surveillance

Model Programs, RFA OH–00–007, and Development of New or Enhanced Models for State-Based Occupational Surveillance, RFA OH–00–008.

Times and Dates: 8 a.m.–8:30 a.m., August 2, 2000 (Open).

8:30 a.m.–5 p.m., August 2, 2000 (Closed).

8 a.m.–5 p.m., August 3, 2000 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA–OH–00–007 and RFA OH–00–008.

Contact Person for More Information: Michael J. Galvin, Jr., Ph.D., Health Science Administrator, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, 1600 Clifton Road, N.E., m/s D30 Atlanta, Georgia 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 7, 2000.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–17700 Filed 7–12–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1360]

Draft Guidance for Industry: Food-Contact Substance Notification System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Preparation of Premarket Notifications for Food Contact Substances: Administrative." This document is intended to provide guidance for industry regarding the preparation of premarket notifications for food-contact substances (FCS). FDA is providing this draft guidance as part of its implementation of the premarket notification process for FCS established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments on this draft guidance by September 26, 2000 to ensure their adequate consideration in the preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Preparation of Premarket Notifications for Food Contact Substances: Administrative" to the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The document may also be obtained by calling the Office of Premarket Approval at 202–418–3080 or by fax at 202–418–3131. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this guidance.

Submit written comments concerning this draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION:

I. Background

FDAMA (Public Law 105–115) amended section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) to establish a premarket notification (PMN) process as the primary method for authorizing new uses of food additives that are FCS. A "food contact substance" is defined in section 409(h)(6) of the act as "any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food." FDA expects most new uses of FCS that previously would have been regulated by issuance of a listing regulation in response to a food additive petition or would have been exempted from the requirement of a regulation under the threshold of regulation process (21 CFR 170.39) will be the subject of PMN's. FDA is announcing the availability of a draft guidance document entitled "Preparation of Premarket Notifications for Food Contact Substances: Administrative." This document is intended to provide guidance for industry regarding the preparation of premarket notifications for FCS. FDA is providing this draft guidance as part of its implementation of the premarket notification process for FCS established by FDAMA. Elsewhere in this issue of the **Federal Register** FDA is proposing regulations necessary to implement the notification process for FCS.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the data and information that should be submitted in a premarket notification for the use of a FCS. This draft guidance document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

This draft guidance document is a level 1 guidance under the agency's good guidance practices (62 FR 8961, February 27, 1997).

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the draft guidance document by September 26, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Such comments will be considered when determining whether to amend the draft guidance.

VI. Electronic Access

The draft guidance may also be accessed on the Internet site for the Center for Food Safety and Applied Nutrition at http://www.cfsan.fda.gov.

Dated: June 27, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17654 Filed 7–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The entire meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting. The meeting will take place via conference call with the members. A speaker phone will be installed in the conference room for the public to listen to the discussion.

Name of Committee: Advisory Committee to the Director, NIH.

Date: July 14, 2000.

Time: 12–1 p.m.

Agenda: To discuss and provide advice on the first part of the Report from the Working Group on NIH Oversight of Clinical Gene Transfer Research.

Place: National Institutes of Health, 1 Center Drive, Building 1, Room 151, Bethesda, Maryland 20892.

Contact Person: Ms. Janice C. Ramsden, Special Assistant to the Acting Director, NIH, National Institutes of Health, Building 1, Room 235, Bethesda, Maryland 20892, *jr52h@nih.gov*, Telephone: (301) 496–0959.

This notice is being published less than fifteen days in advance of the meeting due to scheduling conflicts among the members.

Dated: July 6, 2000.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17690 Filed 7–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Brain Bank".

Date: July 19, 2000.

Time: 9:30 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Hilton Towers, 20 W. Baltimore Street, Baltimore, MD.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17691 Filed 7–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: August 2, 2000.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, MA, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clincial Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17692 Filed 7–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Aging Special Emphasis Panel.

Date: July 19–20, 2000.

Time: 6:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 00–17693 Filed 7–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: July 27–28, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17694 Filed 7–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 2, 2000.

Time: 1:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 3, 2000.

Time: 1:00 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award, 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17696 Filed 7–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1(01).

Date: July 26–27, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202

Contact Person: Carolyn Miles, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 641, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17697 Filed 7–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(03).

Date: July 14, 2000.

Time: 3:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William E. Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 647, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6 (O2).

Date: July 27–28, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 651, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–D(02).

Date: July 31, 2000.

Time: 11:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Blvd, 2 Democracy Plaza, Rm 653. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Hagan, PhD, Chief, DEA, NIDDK, Room 653, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17698 Filed 7–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Vincent E. Cucci, Jr., Bernardsville, NJ, PRT–030012.

The applicant requests a permit to import the sport-hunted trophy of two male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Paul Labrecque, Lincoln, ME, PRT–030066.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Wayne A. Bliss, Ossineke, MI, PRT–030067.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

Applicant: James L. Scull, Jr., Rapid City, SD, PRT–029977.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife service Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 7, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–17773 Filed 7–12–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–0777–XQ]

Notice of Meeting

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise. Potential agenda topics are sage grouse habitat management, off highway vehicle use, and other resource management issues.

DATES: August 21, 2000. The meeting will begin at 9:00 a.m. Public comment periods will be held at 9:30 a.m. and 3:00 p.m.

ADDRESSES: The meeting will be held at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office, 3948 Development Avenue, Boise, Idaho 83705, 208–384–3393.

Katherine Kitchell,

District Manager.

[FR Doc. 00–17699 Filed 7–12–00; 8:45 am]

BILLING CODE 4310–84–U

DEPARTMENT OF THE INTERIOR

National Park Service

Telecommunications Facilities; Construction and Operation: Lake Mead National Recreation Area, Clark County, NV

AGENCY: Lake Mead National Recreation Area, NPS, DOI.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that Lake Mead National Recreation Area has determined that an application by NEXTEL of Nevada to co-locate on an existing communications tower in the River Mountains near the Southern Nevada Water Treatment Plant Surge Tanks is categorically excluded from the requirements of NEPA.

EFFECTIVE DATE: Comments on the proposal will be accepted on or before August 30, 2000

ADDRESSES: Interested parties should contact Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005. Further information may be obtained by contacting Nancy Hendricks (702) 293–8949.

SUPPLEMENTARY NOTICE: The initial application made by NEXTEL of Nevada requests permission to Co-locate on the existing tower in the River Mountains. The Superintendent will consider and evaluate all comments received before authorizing NEXTEL to proceed with the permitting process.

Dated: June 21, 2000.

William K. Dickinson,

Acting Superintendent, Lake Mead National Recreation Area.

[FR Doc. 00–17777 Filed 7–12–00; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–859 (Final)]

Circular Seamless Stainless Steel Hollow Products From Japan; Notice of Commission Determination not to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Commission determination not to close any part of the hearing to the public.

SUMMARY: The Commission has determined to deny the requests of respondents to conduct a portion of its hearing in the above-captioned reviews scheduled for July 12, 2000, in camera. See Commission rules 201.13 and 201.36(b)(4) (19 CFR §§ 201.13 and 201.36(b)(4)).

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3103, e-mail hughes@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission's policy and practice is to conduct its hearings in public in all but the most unusual circumstances. See 19 CFR § 201.36. The Commission has determined that, in light of the nature of this investigation, it will be able to assess adequately all arguments raised by the parties without resorting to the extraordinary measure of an in camera hearing. Accordingly, the Commission has determined that the public interest would be best served by a hearing that is entirely open to the public. See 19 CFR § 201.36(c)(1).

Authority: This notice is provided pursuant to Commission Rule 201.35(b) (19 CFR 201.35(b)).

Issued: July 10, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17776 Filed 7–12–00; 8:45 am]

BILLING CODE 7020–02–U

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information pertaining to the requirement to be submitted:

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 150, "Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274".

3. The form number, if applicable: Not applicable.

4. How often the collection is required:

10 CFR 150.16(b), 150.17(c), and 150.19(c) require the submission of reports following specified events, such as the theft or unlawful diversion of licensed radioactive material. The source material inventory reports required under 10 CFR 150.17(b) must be submitted annually by certain licensees.

5. Who is required or asked to report:

Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts.

6. An estimate of the number of responses: 12.

7. The number of annual respondents: 9 Agreement State licensees.

8. The number of hours needed annually to complete the requirement or request: 35 hours.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States and in offshore waters over which NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out NRC's safeguards and inspection programs.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by August 14, 2000: Erik Godwin, Office of Information and Regulatory Affairs (3150–0032), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 7th day of July, 2000.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–17769 Filed 7–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309–OLA; ASLBP No. 00–780–03–OLA]

Maine Yankee Atomic Power Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Maine Yankee Atomic Power Company
Maine Yankee Atomic Power Station

This Board is being established pursuant to a notice of consideration of issuance of amendment to facility operating license, proposed no significant hazards consideration determination, and opportunity for a hearing published by the Commission on May 17, 2000, in the **Federal Register** (65 FR 31,354, 31,357). The January 13, 2000 license amendment request at issue would add a license condition that requires Maine Yankee Atomic Power Company to implement and maintain in effect all provisions of the License Termination Plan. Two petitioners, Friends of the Coast—Opposing Nuclear Pollution and the State of Maine, seek to intervene and request a hearing regarding the amendment request.

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 C.F.R. § 2.701.

Issued at Rockville, Maryland, this 7th day of July 2000.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–17782 Filed 7–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453–MLA–5; ASLBP No. 00–781–07–MLA]

Moab Mill Reclamation Trust; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR §§ 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR § 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

Moab Mill Reclamation Trust Moab, Utah

The hearing will be conducted pursuant to 10 CFR Part 2, Subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a May 17, 2000 request for hearing submitted by petitioner Sarah M. Fields. The request was filed in response to a March 31, 2000 request from Moab Mill Reclamation Trust (MMRT) to revise site-reclamation milestones in its source material license for the Moab, Utah facility. The notice of receipt of the MMRT request to revise site-reclamation milestones and opportunity for hearing was published in the **Federal Register** on April 17, 2000 (65 FR 20,490).

The Presiding Officer in this proceeding is Administrative Judge Charles Bechhoefer. Pursuant to the provisions of 10 CFR §§ 2.722, 2.1209, Administrative Judge Frederick J. Shon has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Bechhoefer and Shon in accordance with 10 CFR § 2.1203. Their addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Administrative Judge Frederick J. Shon, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Issued at Rockville, Maryland, this 7th day of July 2000.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–17781 Filed 7–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (PSE&G, or the licensee) to withdraw its November 24, 1999, application, as supplemented by letter dated February 10, 2000, for the proposed amendment to Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), located in Salem County, New Jersey.

The proposed amendment would have revised charcoal filter testing requirements defined in the Salem Technical Specifications (TSs) for the Auxiliary Building Ventilation (ABV) System, the Control Room Envelope Air Conditioning System (CREACS), and the Fuel Handling Building Ventilation (FHV) System to be consistent with Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 17, 2000 (65 FR 31359). However, by letter dated May 31, 2000, the licensee withdrew the proposed change. The May 31, 2000, letter also provided a new application for a license amendment to change the Salem TSs concerning ABV, CREACS, and FHV charcoal filter testing which effectively superceded PSE&G's original November 24, 1999, request.

For further details with respect to this action, see the application for amendment dated November 24, 1999, supplemental letter dated February 10, 2000, and the licensee's letter dated May 31, 2000, which withdrew the

application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 6th day of July 2000.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17770 Filed 7–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–11]

Sacramento Municipal Utility District; Notice of Issuance of Materials License SNM–2510, Rancho Seco Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued a Materials License under the provisions of Title 10 of the Code of Federal Regulations, Part 72 (10 CFR Part 72), to the Sacramento Municipal Utility District (SMUD), authorizing receipt and storage of spent fuel into an independent spent fuel storage installation (ISFSI) located on site at its Rancho Seco Nuclear Generating Station in Sacramento County, California.

The function of the ISFSI is to provide interim storage in a dry cask storage system for up to 228.8 metric tons of uranium contained in intact and damaged fuel assemblies and associated control components from the prior operation of the Rancho Seco Nuclear Generating Station. The dry cask storage system that is authorized for use is a Rancho Seco site-specific model of the NUHOMS–24P storage system designed by Transnuclear West Inc. The license for an ISFSI under 10 CFR Part 72 is issued for 20 years, but the licensee may seek to renew the license, if necessary, prior to its expiration.

The Commission's Office of Nuclear Material Safety and Safeguards (NMSS) has completed its environmental, safeguards, and safety reviews in support of issuance of this license.

Following receipt of the application filed October 4, 1991, a "Notice of Consideration of Issuance of Materials License for the Storage of Spent Fuel and Opportunity for Hearing" was published in the **Federal Register** on January 13, 1992 (57 FR 1286). The "Environmental Assessment (EA) Related to the Construction and Operation of the Rancho Seco Nuclear Generating Station Independent Spent Fuel Storage Installation and Finding of No Significant Impact," was issued and noticed in the **Federal Register** (59 FR 41797, August 15, 1994) in accordance with 10 CFR Part 51. The scope of the EA included the construction and operation of an ISFSI on the Rancho Seco Nuclear Generating Station site including impacts derived from use of the NUHOMS–24P storage system.

The staff has completed its safety review of the Rancho Seco ISFSI site application and safety analysis report. The NRC staff's "Safety Evaluation Report for the Rancho Seco Independent Spent Fuel Storage Installation," was issued on June 30, 2000. Materials License SNM–2510, the staff's Environmental Assessment, Safety Evaluation Report, and other documents related to this action are available electronically for public inspection at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 30th day of June 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17767 Filed 7–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–0940]

Enforcement Actions: Significant Actions Resolved

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing its intent to use the NRC website to communicate a consolidation of enforcement actions and to discontinue publication of the paper document, NUREG–0940, "Enforcement Actions: Significant Actions Resolved," which contains significant enforcement actions that have been issued. The NRC is taking this action because this material is now available electronically on the NRC website. The Commission is also seeking public comment on this action.

DATES: The comment period expires September 11, 2000. Unless the Commission takes further action, the final edition of NUREG–0940 will be the edition published in the summer of 2000.

ADDRESSES: Submit written comments to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Renée Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001 (301) 415–2741, e-mail rmp@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1982, the Enforcement Staff of the NRC's then Office of Inspection and Enforcement commenced publishing NUREG–0940, "Enforcement Actions: Significant Actions Resolved." This NUREG is a compilation of the letters, Notices, and Orders sent to licensees with respect to significant enforcement actions (also referred to as escalated actions) issued in a period of time, most recently, six months. The NUREG has been published to assist licensees in taking action to improve safety by avoiding future violations similar to those described in the publication. The NUREG was also published to comply with Commission direction to distribute a list of persons subject to prohibition orders issued under the Deliberate Misconduct Rule (January 13, 1998; 63 FR 1890).

NUREG–0940 is now published twice a year. It is distributed to all power reactor site managers, approximately 2500 materials licensees, and all of the states. The latest issue of NUREG–0940, Vol. 18, No. 1, published August 1999, contained a total of 847 printed pages.

The Office of Enforcement (OE) has established a Home page on the NRC website *(www.nrc.gov/OE)*. The OE Home page contains information on the OE staff, the current Enforcement Policy, the text of escalated Enforcement Actions issued since 1996, upcoming

predecisional enforcement and regulatory conferences, guidance documents (*e.g.*, the Enforcement Manual and Enforcement Guidance Memoranda (EGMs)), and a discussion of discrimination for raising safety concerns. This site includes links to other related sites and a search capability. All orders that currently prohibit or restrict individuals from employment in licensed activities are posted on the OE Home page.

The Office of Enforcement also publishes an annual report which describes enforcement activities occurring during each fiscal year. The report addresses significant policy changes, highlights significant enforcement actions, and includes summaries of cases involving exercise of discretion, discrimination, and actions involving individuals. Various statistical tables and figures are included. The annual report is also available on the OE Home page.

Discussion

NUREG–0940 was first published as a paper document, as this was the only effective way to communicate with licensees as a group and to give widespread circulation to actions taken by the NRC in enforcing regulatory requirements. Now, escalated actions that are published in the NUREG are also available to licensees and the public on the NRC website, under the Office of Enforcement Home page. All orders are published in the **Federal Register** immediately after issuance, and are also available on the website after publication.

Preparing and publishing NUREG–0940 in paper form is expensive when the cost of paper and postage are taken into account. The NRC believes that the purpose of NUREG–0940 can now be accomplished more effectively and far more efficiently by posting actions promptly on the NRC website. Whereas NUREG–0940 is prepared every six months, and the delay from issuance of an action to publication can be as much as 9 months, posting actions on the Internet is immediate. Continuing to publish material in paper form when the current information is immediately available electronically is not a judicious use of NRC resources. Providing the same information via the Internet is a more effective and efficient method of communicating this information to NRC stakeholders.

For the above reasons, the NRC believes that publication of NUREG–0940 is no longer needed. The next issue will contain a notice that will advise recipients that unless the NRC receives sufficient public comment in support of continuing this publication, NRC will cease publication with that issue and describe where on the Internet this information can be obtained. The NRC will also accept and consider comments from persons who are not currently on the mailing list. Those comments should be submitted as indicated above.

Dated at Rockville, Maryland, this 30th day of June 2000.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Director, Office of Enforcement.

[FR Doc. 00–17771 Filed 7–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Northern States Power Co.; Monticello Nuclear Generating Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to Northern States Power Company (NSP or the licensee) for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Technical Specification (TS) Chapter 5 to allow use of generic titles for personnel in lieu of plant-specific titles, update the TS table of contents to reflect changes due to the amendment, and correct typographical errors.

The proposed action is in accordance with the licensee's application for amendment dated May 4, 2000.

The Need for the Proposed Action

The proposed action would provide clarity to the TSs and remove an unnecessary NRC and licensee burden with no increase in safety when titles are changed.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the changes to the TSs are administrative in nature.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Monticello.

Agencies and Persons Consulted

In accordance with its stated policy, on June 22, 2000, the staff consulted with the Minnesota State official, Ms. N. Campbell of the Department of Commerce, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated May 4, 2000, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 7th day of July 2000.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17768 Filed 7–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Experts' Meeting on High-Burnup Fuel Behavior Under Postulated Accident Conditions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will hold a meeting to further develop a Phenomena Identification and Ranking Table (PIRT) for loss of coolant accidents (LOCAs). PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About twenty of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The current PIRT activity is addressing postulated LOCAs for a BWR and a PWR.

DATES: July 25–27, 2000, 8:30 am–5:30 pm.

ADDRESSES: Room T10A1 (TWFN) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at www.nrc.gov/RES/meetings.htm by July 17, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph Meyer, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, D.C. 20555–0001, telephone (301) 415–6789.

Dated at Rockville, Maryland, this 10th day of July 2000.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 00–17766 Filed 7–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on August 8–9, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Most of the meeting will be closed to public attendance to discuss proprietary information per 5 U.S.C. 552b(c)(4) pertinent to Siemens Power Corporation.

The agenda for the subject meeting shall be as follows:

Tuesday, August 8, 2000—8:30 a.m. Until the Conclusion of Business

Wednesday, August 9, 2000—8:30 a.m. Until the Conclusion of Business

The Subcommittee will begin review of Siemens Power Corporation S–RELAP5 thermal-hydraulic systems code. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Siemens Power Corporation, the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: July 7, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–17783 Filed 7–12–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–7872]

Revision of the Commission's Auditor Independence Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Notice of hearings.

SUMMARY: On June 27, 2000, the Securities and Exchange Commission (the "Commission") approved proposed rule amendments (the "Proposing Release") regarding auditor independence (Securities Act Release No. 33–7870). Copies of the Proposing Release are available on the Commission's website at www.sec.gov. In connection with those proposals, the Commission announced that it will hold public hearings. The purpose of the hearings is to give the Commission the benefit of the views of interested members of the public regarding the issues raised and questions posed in the Proposing Release. The Commission is announcing that the initial public hearing will be held on July 26, 2000 in Washington, D.C. Additional public hearings will be held in September.

DATES: The initial public hearing will be held on July 26, 2000 in Washington, D.C. Additional public hearings will be held in September. The following information pertains to the July 26th hearing. The hearing on July 26 will begin at 9:00 a.m. Those who wish to testify at the hearing must submit a written request to the Commission. The Commission must receive these requests on or before July 17, 2000. Persons requesting to testify must also submit three copies of their oral statements or a summary of their intended testimony to the Commission. The Commission must receive these submissions on or before July 21, 2000. Those who do not wish to appear at the hearings may

submit written testimony on or before the end of the comment period for the Proposing Release, which is 75 days after publication of the Proposing Release in the **Federal Register**, for inclusion in the public comment file. Additional information regarding the September hearings will be forthcoming.

ADDRESSES: The July 26,2000 hearing will be held in the William O. Douglas Room of the Commission's headquarters at 450 Fifth Street, N.W., Washington, D.C. 20549. Persons submitting requests to appear or written testimony in lieu of testifying should file three copies of the request or testimony with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20459. Persons requesting to appear should also submit three copies of their oral statement or summary of their testimony to the same address. Requests to appear and copies of oral statements or summaries of intended testimony may be filed electronically at the following e-mail address: rule-comments@sec.gov. The words "Request to Testify" should be clearly noted on the subject line of the request. All requests and other submissions also should refer to Comment File No. S7–13–00. Copies of all requests and other submissions and transcripts of the hearings will be available for public inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted requests and other materials will be posted on the Commission's internet web site (www.sec.gov).

FOR FURTHER INFORMATION CONTACT: John M. Morrissey, Deputy Chief Accountant, or W. Scott Bayless, Associate Chief Accountant, Office of the Chief Accountant, at (202) 942–4400.

SUPPLEMENTARY INFORMATION:

I. Summary of Rule Proposals

The public hearings concern the Commission's proposed rule amendments regarding auditor independence. As more fully described in the Proposing Release, the proposals modernize the Commission's requirements by providing governing principles for determining whether an auditor is independent in light of: investments by auditors or their family members in audit clients, employment relationships between auditors or their family members and audit clients, and the scope of services provided by audit firms to their audit clients. The proposals would, among other things, significantly reduce the number of audit firm employees and their family members whose investments in audit clients are attributed to the auditor. They would also identify certain non-audit services that, if provided to an audit client, would impair an auditor's independence. The scope of services proposals would not extend to services provided to non-audit clients. The proposal also would provide a limited exception for accounting firms that have certain quality controls and satisfy other conditions. Finally, the proposals would require companies to disclose in their annual proxy statements certain information about, among other things, non-audit services provided by their auditors during the last fiscal year. The Commission will consider the hearing record in connection with its rulemaking proposals.

II. Procedures for Hearing

After July 17, 2000, the Commission will publish a schedule of appearances. Based on the number of requests received, the Commission may not be able to accommodate all requests for the July 26 hearing. It also may limit the time for formal presentations or group presentations into a series of panels. Time will be reserved for members of the Commission and Commission staff to pose questions to each witness concerning his or her testimony as well as other matters pertaining to the Proposing Release. The Commission has designated Jonathan G. Katz, Secretary of the Commission, as the hearing officer. As noted, the Commission will hold additional public hearings in September. The Commission will issue other orders designating additional hearing officers as necessary.

Dated: July 7, 2000.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17725 Filed 7–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43013; File No. SR–Amex–00–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Procedures for the Review of Initial Listing Decisions

July 6, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2000, the American Stock Exchange LLC (the "Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt new Part 12 of the Amex Company Guide to establish procedures for the review of initial listing determinations. The text of the proposed rule change is available at the Amex and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to establish new procedures for the review of initial listing determinations. Amex original listing criteria, set forth in Part 1 of the Amex Company Guide, provide quantitative and qualitative criteria for the original listing of securities on the Exchange. Section 101 of the Amex Company Guide currently provides that the approval of a listing application is a matter solely within the discretion of the Exchange. Thus, the Exchange currently has the discretion to list the securities of an applicant that may not satisfy each of the listing guidelines and to deny the listing of an applicant's securities that do satisfy those guidelines. Furthermore, under the Exchange's existing procedures, original listing determinations are made by different entities. The ultimate discretion to list applicants that do not satisfy each of the guidelines is vested

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

with the Exchange's Committee on Securities; [3] however, the Amex Staff generally determines whether to deny a listing or whether an applicant should be considered by the Committee on Securities at all.[4]

The Exchange believes that the existing process is not sufficiently transparent to applicants and also operates to create inefficiencies in the listing process. To address these concerns, the Exchange proposes to implement specific procedures governing the review of initial listing determinations. The proposed rules are modeled on the Nasdaq listing process.;[5]

Proposed Part 12 codifies the procedures for the review of Amex Staff listing determinations by a subcommittee of the Committee on Securities (as defined in proposed Section 1204) and also sets forth the procedures with respect to appeals from the subcommittee to the Amex Adjudicatory Council (as defined in Section 1205) or the Amex Board of Governors. Under the proposed rules, Exchange determinations to limit or prohibit the initial listing of an applicant's securities will continue to be made by the Listing Qualifications Department or the Listing Investigations Department.

The Exchange will notify applicants of a decision to deny an application, citing the specific quantitative or qualitative standards in Part 1 of the Amex Company Guide that were not met. The Exchange will notify the applicant that, upon request, the applicant will be provided an opportunity for a hearing under these procedures. The applicant will be solely responsible for presenting the arguments in favor of listing to the subcommittee. Presently, such burden rests with the Exchange Staff.

An applicant may request a written or oral hearing within 7 days of the date of the Staff's determination to deny the application.[6] Such hearings will be scheduled, to the extent practicable, within 45 days of the date the request is filed. The applicant will be provided at least 10 days notice of the hearing unless the applicant waives such notice. Proposed Section 1203 specifies written materials that the applicant may submit in connection with a hearing.

Proposed Section 1204 provides that all hearings will be conducted before a subcommittee of the Committee on Securities ("Subcommittee") consisting of at least two persons. Following the hearing, the Subcommittee must issue a written decision ("Subcommittee Decision") citing specific grounds for the Subcommittee's determination. The Subcommittee will promptly provide its decision to the applicant and will also provide notice that the applicant may request review by the Adjudicatory Council [7] within 15 days of the date of the Subcommittee Decision.[8] The applicant will also be notified that the Adjudicatory Council may call for review of the Subcommittee Decision within 45 days, at the request of one or more of the Council's members, as provided in proposed Section 1205. The applicant will be promptly informed of the reasons for the review. Any such review does not operate as a stay of the Subcommittee Decision, unless the Adjudicatory Council's call for review specifies to the contrary.

The Adjudicatory Council will consider the written record and can hold additional hearings. It may also recommend that the Amex Board consider the matter. The Adjudicatory Council will issue a written decision that affirms, modifies or reverses the Subcommittee Decision. The Adjudicatory Council will set forth specific grounds for the decision and provide notice that the Amex Board may call the decision for review at any time before its next meeting which is at least 15 days after the decision.

Such review by the Amex Board will be solely at the Board's discretion. Governors that serve on the Adjudicatory Council will not participate in the Board review.[9] If the Board conducts a discretionary review, the applicant will be provided with a written decision affirming, modifying or reversing the Adjudicatory Council's decision. The Board may also remand the matter to the Adjudicatory Council, the Committee on Securities, or the Amex Staff, with appropriate instructions. The Board's decision constitutes final action of the Exchange and will take immediate effect unless it specifies to the contrary.[10]

Proposed Section 1207 describes the documents included in the written record. The Exchange will provide the applicant with a list of the documents in the written record and a copy of any documents in the record that are not in applicant's possession or control, at least 3 days in advance of the deadline for the applicant's submissions. Proposed Section 1208 states that the written record for the review, as well as any documents excluded from the written record, will be maintained until the date upon which the decision becomes final, including, if applicable, upon conclusion of any Commission or federal court review.

Time is computed within proposed Part 12 procedures based on calendar days. In computing any period of time, the day of the act event or default from which the period of time begins is not included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday or Amex holiday.[11]

Finally, proposed Section 1211 prohibits the Amex Staff or an applicant from making any communication relevant to the merits of a proceeding with anyone who is participating in or advising in the consideration of a matter (members of the Committee on Securities, the Adjudicatory Council, the Amex Board, and Amex Staff), unless the applicant and the appropriate Amex Staff have been provided notice and an opportunity to participate in the communication. The Amex represents that the purpose of this limitation is to prevent non-record information from being considered in rendering a decision. The Exchange currently expects that Amex Staff generally will waive their rights under this provision in the interest of providing a non-adversarial business forum for listing decisions.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act [12] in general and furthers

[3] The Committee on Securities is appointed by the Amex Board and consists of six non-floor, financial professionals and six Floor members. Of the six non-floor financial professionals, not less than three must be affiliated with a member organization.

[4] The Committee on Securities also has the discretion to deny listing to an applicant which is recommended by the Staff

[5] *See* NASD 4800 Series Rules.

[6] The Amex will not charge a hearing fee to appeal the Exchange Staff's listing determination. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission, April 19, 2000.

[7] The Amex Adjudicatory Council, is established by the Amex Board pursuant to Article II, Section 6 of the Amex Constitution. The Council consists of six individuals, all of whom are nominated by the Amex Nominating Committee and elected by the regular and options principal members voting together as a single class. Three of the Council's members are Floor Governors and three are Public Governors.

[8] The Amex will not charge a hearing fee to appeal the Subcommittee's determination. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission, April 19, 2000.

[9] *See* Proposed Section 1206(a).

[10] The Commission notes that any applicant aggrieved by a final action of the Amex may apply for review to the Commission in accordance with Section 19 of the Act.

[11] *See* Proposed Section 1210.

[12] 15 U.S.C. 78f(b).

the objectives of Section 6(b)(5) [13] in particular in that it is designed to prevent fraudulent and manipulative acts and practic4es, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–12 and should be submitted by August 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17724 Filed 7–12–00; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43014; File No. SR–BSE–00–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to Its Membership and Other Fees, Floor Operations Fees, and Transaction Fees Schedules

July 6, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], notice is hereby given that on July 3, 2000, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Membership and Other Fees, Floor Operation Fees and Transaction Fees schedules. The proposed fee changes are below. Deletions are in brackets. Additions are italicized.

MEMBERSHP AND OTHER FEES

(1) *Membership*

Membership Dues ..... $[600.00] *750.00* per membership per quarter.

* * * * * * *

SRO Fee ..... *$100.00 per month.*

* * * * * * *

(2) *Electronic File Access and Processing*

[Open Order Match ..... $200.00 per month].

* * * * * * *

FLOOR OPERATION FEES

* * * * * * *

(3) *Specialist Trade Processing*

Odd Lot Trades (*Includes CSI issues*) ..... $[.00].*05* per order (*$400 maximum per account*).

* * * * * * *

TRANSACTION FEES

1. *Trade Recording and Comparison Charges*

- All other executions (*excluding automated non-BSE executions*)

First 2,500 trades per month	$.29 per 100 shares.
Next 2,500 trades per month	$.25 per 100 shares.
Next 2,500 trades per month	$.15 per 100 shares.
Over 7,500 trades per month	$.04 per 100 shares.
Floor Brokered non-BSE executions	$.05 per 100 shares.

[1] 15 U.S.C. 78s(b)(1).

Automated non-BSE executions	*$.05 per 100 net non-BSE automated shares.*
Maximum charge per side (single-sided)	$50.00.
Maximum charge per side (cross)	$25.00.
(all trades accumulate for volume discounts)	

* * * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's Membership and Other Fees, Floor Operation Fees, and Transaction Fees schedules to allow the Exchange to continue to charge in an equitable manner for the products and services it offers while at the same time continuing to provide quality markets at competitive prices.

The proposed changes to the Membership and Other Fees schedule will (1) eliminate the $200 per month charge for electronic file transmissions of Open Order Match files; (2) increase Membership Dues to $750 per quarter; and (3) implement a $100 per month SRO fee for off-floor firms. The SRO fee is being implemented to help offset the costs of providing and the systems necessary to monitor and maintain the BSE's Execution Quality Program.[2]

The proposed change to the Floor Operation Fees Schedule will implement a $0.05 per odd lot trade (trades of less than 100 shares) fee for all specialists. This fee will be capped at $400 per month per account. The BSE currently does not charge a fee for these trades. Because of the significant growth in volume the BSE has experienced from odd trading, these fees will help to fund the necessary additional system capacity as this business continues to grow.

The BSE also proposed to change its Transaction Fee Schedule to now distinguish between BSE and non-BSE generated transaction fees for the purpose of capping monthly-automated transaction fees at $50,000. Currently, the BSE accumulates both BSE and non-BSE automated transaction fees when determining if a firm's monthly-automated transaction fees should be capped at $50,000. The BSE proposes to change the accumulation method to accumulate BSE automated executions only for purposes of the $50,000 transaction fee cap. In addition, for those firms that provide BSE specialists with the capability of routing order flow to other exchanges (for example, through DOT[3] terminals) and that also route orders to the BSE, Trade Recording and Comparison fees on net automated non-BSE share volume will not be charged a flat rate of $0.05 per 100 shares as opposed to the sliding scale rates currently levied on non-BSE volume. For example, assume a firm that provides DOT services to the trading floor also routes business to the BSE. Also assume total volume routed to the BSE for the month is 500,000 shares and total non-Base volume executed through their DOT terminals is 1,000,000 shares per month. Non-BSE shares for the month would be $250 (1,000,000 non-BSE shares minus 500,000 BSE shares=500,000 net non-BSE shares at a rate of $0.05 per 100 shares). However, if a firm routes more volume to the BSE than is executed through their DOT terminals, no fees will be charged on any of their automated non-BSE volume.

The basis for the proposed rule change is Section 6(b)(5) of the Act,[4], in that the proposed rule change is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on July 3, 2000, pursuant to Section 19(b)(3) of the Act[5] and subparagraph (f) of Rule 19b–4.[6] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[2] The BSE's Execution Quality Program involves building, maintaining, and updating the systems necessary to develop and provide execution quality statistics to customers and the BEAM system, which provides the Exchange with real-time capabilities to monitor specialist-trading activity. Telephone conversation between Kathy Marshall, Vice President-Finance, BSE, and Karl Varner, Special Counsel, Commission (July 7, 2000).

[3] DOT is the New York Stock Exchange's ("NYSE") Designated Order Turnaround System, an application that permits NYSE members to route market orders and day limit orders on an automated basis directly to the appropriate specialist on the NYSE trading floor. *See* Securities Exchange Act Release No. 16649 (March 13, 1980) 45 FR 18541.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3).

[6] 17 C.F.R. 240.19b–4.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. BSE–00–09 and should be submitted by August 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17723 Filed 7–12–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3362]

Culturally Significant Objects Imported for Exhibition Determinations: " 'La Divine Comtesse,' Photographs of the Countess de Castiglione"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition " 'La Divine Comtesse,' Photographs of the Countess de Castiglione," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from on about September 18, 2000 to on or about December 31, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: June 26, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–17746 Filed 7–12–00; 8:45 am]

BILLING CODE 4710–08–U

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3358]

Bureau of Educational and Cultural Affairs; Program Title: Near East and North Africa Democracy Initiative

NOTICE: Request for Proposals.

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs of the United States Department of State announces an open competition for grants under the Near East and North Africa Democracy Initiative. U.S. public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to develop and implement exchange programs involving participants from Tunisia. Two grant awards are anticipated, as outlined below.

PROGRAM INFORMATION

Overview

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs, U.S. Department of State, consults with and supports American public and private nonprofit organizations in developing and implementing multi-phased, often multi-year, exchanges of professionals, academics, youth leaders, public policy advocates, etc. These exchanges address issues crucial to both the United States and the foreign countries involved, they represent focused, substantive, and cooperative interaction among counterparts, and they entail both theoretical and experiential learning for all participants. A primary goal is the development of sustained, international, institutional and individual linkages. In addition to providing a context for professional development and collaborative, international problem-solving, these projects are intended to introduce Foreign participants and their American counterparts to one another's political, social, and economic structures. Desirable components of an exchange may be local citizen involvement and activities that orient foreign participants to American society and culture.

The Near East and North African Democracy Initiative is based on the premise that people-to-people exchanges that focus on enhancing human capacity and on encouraging and strengthening democratic initiatives nurture the social, political, and economic development of society. In response to the aspirations of this program, the Office of Citizen Exchanges solicits proposals for two exchange projects that respond to the project foci and guidelines suggested below.

1. *Citizen Participation and Advocacy: Building and Strengthening Non-governmental Organizations.*

Social and political activism, encouraged, focused, and channeled through non-governmental organizations, is a basic underpinning of democratic society. Strengthening NGO advocacy skills, management, grassroots support, recruitment and motivation of volunteers, fundraising and financial management, media relations, and networking for mutual support and reinforcement encourages democratic development. Among other emphases, this project should focus on computer training and on developing cooperation between educators and NGO's for community action. Participants in this exchange should be leaders and potential leaders (social activists; public policy advocates; professionals) of NGO's. It is essential that organizations submitting proposals in this category recognize that democratic activism and foreign involvement with local NGO's must be carefully thought out and approached with sensitivity and subtlety. Close consultation with American Mission officers is critical. Grant requests should not exceed $125,000. ECA anticipates awarding one grant under this theme.

2. *Developing Leadership for Democratic Institutions.*

Political democracy is characterized by the existence of diverse political groupings, representing varying approaches to governing and service, from which an electorate may choose its leadership. Such groupings represent viable governing potential only when, under informed and skilled leadership, they are organized, more or less unified in perspective, able to articulate policy alternatives and to communicate with the electorate, capable of attracting workers and motivating volunteers, and able to raise funds and manage finances. The development of skilled leadership, upon which all other requirements depend, is the goal of this project. Participants should be leaders or potential leaders of nascent political parties in Tunisia. Applicants should

focus on democratic orientation, development of the skills necessary for successful organizational management and leadership, and both theoretical and experiential introduction to best practices in party building and strengthening. Grant requests should not exceed $125,000. ECA anticipates awarding one grant under this theme.

Activities for the above projects might include:

1. Initial needs assessment/orientation travel (if necessary) by American organizers to develop contacts and relationships with both American Mission officers and counterpart organizations/individuals in Tunisia

2. A U.S.-based program, including orientation to program purposes and to U.S. society, discussions, site visits, limited shadowing or internship opportunities

3. A return visit by selected American professionals to collaborate with participants in the U.S.-based program in conducting workshops, seminars, on-site training, networking

4. Longer, intensive internship in the U.S. for two or three selected Tunisian participants

The Office of Citizen Exchanges encourages applicants to be creative in planning project implementation. Activities may include both theoretical orientation and experiential, community-based initiatives designed to achieve concrete objectives.

Applicants should, in their proposals, identify any partner organizations and/or individuals in the U.S. with which/whom they are proposing to collaborate and justify on the basis of experience, accomplishments, etc.

Selection of Participants

Successful applications should include a description of an open, merit-based participant selection process. Applicants should anticipate working closely with the Public Affairs Section of U.S. Embassy in Tunis in selecting participants, with the Embassy retaining the right to nominate participants and to advise the grantee regarding participants recommended by other entities.

Public Affairs Section Involvement

The Public Affairs Sections of the U.S. Embassies (PAS) play an important role in project implementation. Posts evaluate project proposals, coordinate planning with the grantee organization and in-country partners, facilitate in-country activities, nominate participants and vet grantee nominations, observe in-country activities, debrief participants, and evaluate project impact. U.S. Missions are responsible for issuing IAP–66 forms in order for foreign participants to obtain the necessary J–1 visas for entry to the United States. They also serve as a link to in-country partners and participants.

Though project administration and implementation are the responsibility the grantee, the grantee is expected to inform the PAS in participating countries of its operations and procedures and to coordinate with and involve PAS officers in the development of project activities. The PAS should be consulted regarding country priorities, political and cultural sensitivities, current security issues, and related logistic and programmatic issues.

Visa Regulations

Foreign participants on programs sponsored by ECA are granted J–1 Exchange Visitor visas by the U.S. Embassy in the sending country. All programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Applicants must submit a comprehensive line item budget based on guidance provided in the Proposal Submission Instructions (PSI) of the Solicitation Package. Maximum award amounts are cited above. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will not be considered under this competition.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed the amounts cited in the guidelines above. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Proposals should present evidence of cost sharing—in cash or in kind—representing approximately 33% or more of the total cost of the exchange project.

Allowable costs include the following:

(1) Direct program expenses

(2) Adminstrative expenses, including indirect costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number ECA PE/C–00–70.

FOR FURTHER INFORMATION, CONTACT: The Office of Citizen Exchanges, ECA/PE/C, Room 224, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, attention: Thomas Johnston. Telephone number 202/260–0299 or 202/619–5325; fax number 202/619–4350; Internet address to request a Solicitation Package, tjohnsto@pd.state.gov. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Thomas Johnston on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website: http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, October 6, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–00–70, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be

balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website: http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as by the Public Diplomacy section of the U.S. Mission overseas. Eligible proposals will be forwarded to panels of State Department officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation.

1. Quality of the program idea: Proposals should be substantive, well thought out, focused on issues of demonstrable relevance to all proposed participants, and responsive, in general, to the exchange suggestions and guidelines provided above.

2. Implementation Plan and Ability to Achieve Objectives: A detailed project implementation plan should establish a clear and logical connection between the interest, the expertise, and the logistic capacity of the applicant and the objectives to be achieved. The plan should discuss, in concrete terms, how the institution proposes to achieve the objectives. Institutional resources—including personnel—assigned to the project should be adequate and appropriate to achieve project objectives. The substance of workshops and site visits should be included as an attachment, and the responsibilities of U.S. participants and in-country partners should be clearly described.

3. Institution's Record/Ability: Proposals should include an institutional record of successful exchange programs, with reference to responsible fiscal management and full compliance with reporting requirements. The Bureau will consider the demonstrated potential of new applicants and will evaluate the performance record of prior recipients of Bureau grants as reported by the Bureau grant staff.

4. Follow-on Activities: Proposals should provide a plan for sustained follow-on activity (building on the linkages developed under the grant and the activities initially funded by the grant, after grant funds have been depleted), ensuring that Bureau-supported projects are not isolated events.

5. Project Evaluation/Monitoring: Proposals should include a plan to monitor and evaluate the project's implementation, both as the activities unfold and at the end of the program. Reports should include both accomplishments and problems encountered. A discussion of survey methodology or other disclosure/measurement techniques, plus a description of how outcomes are defined in terms of the project's original objectives, is recommended. Successful applicants will be expected to submit a report after each project component is concluded or semi-annually, whichever is less frequent.

6. Impact: Proposed projects should, through the establishment of substantive, sustainable individual and institutional linkages and encouraging maximum sharing of information and cross-boundary cooperation, enhance mutual understanding among communities and societies.

7. Cost Effectiveness and Cost Sharing: Administrative costs should be kept low. Proposal budgets that provide evidence of cost sharing, comprised of cash or in-kind contributions, representing 33 percent or more of the total cost of the exchange will be given priority consideration. Cost sharing may be derived from diverse sources, including private sector contributions and/or direct institutional support.

8. Support of Diversity: Proposals should demonstrate support for the Bureau's policy on diversity. Features relevant to this policy should be cited in program implementation (selection of participants, program venue, and program evaluation), program content, and program administration.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to revise, reduce, or increase proposal budgets in accordance with the needs of the program

and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: June 27, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–17254 Filed 7–12–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3359]

Bureau of Educational and Cultural Affairs; A Writer's Perspective on Contemporary Social Issues in the United States

NOTICE: Request for Proposals.

SUMMARY: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs of the U.S. Department of State, announces a competition for a project designed for Vietnam titled A Writer's Perspective on Contemporary Social Issues in the United States. U.S. public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501 (c) may submit proposals.

Program Information:

Overview: Within Vietnam there is a lack of understanding of U.S. culture and society. This circumstance derives from decades of isolation and often makes Vietnamese cautious about cooperating with the U.S. One of the best ways to promote increased understanding of the U.S. is to enable Vietnamese writers, artists, journalists and academics to meet and discuss with American writers and academic specialists on contemporary social issues and observe how American social critics express concerns over these issues.

The proposed program would bring a delegation of 13 Vietnamese to the United States for a three-week study tour. During the study tour, members of the delegation should meet with range of writers who write on social and political issues. These meetings will explore how American writers, both fiction and nonfiction, influence the public's perception of contemporary political and social questions. A key element of the project is how writers define their role as social and political critics and how the written word can play a role in framing the issues confronting society. Additional meetings should be scheduled with American journalists from both the print and the electronic media who write about contemporary social issues. Finally, the study tour should permit the participants to experience the ethnic and cultural diversity of the U.S. It is anticipated that the program will be conducted between September 2000 and December 2000. The grant should be awarded by mid-July. Applicants should identify the local organizations and individuals with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The total requested from the Bureau not exceed $190,000. Please note: All funding decisions are subject to final Congressional action. Additional budget guidelines are explained in the Solicitation Package.

Allowable costs for the program include the following:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at {www.usia.gov/agency/ebur-ref.html}.

3. Interpreters: If needed, interpreters for the U.S. program are provided by the State Department's Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All Bureau-funded delegates will be covered under the terms of a Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–00–55.

FOR FURTHER INFORMATION, CONTACT: The Office of Citizen Exchanges, ECA/PE/C, Room 224, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone number 202/619–5326 and fax number 202/260–0440, Internet address, ctoles@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

Please specify Bureau Program Officer Raymond H. Harvey on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition

with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Thursday, September 28, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–00–55, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Idea*: Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program Planning/Ability to Achieve Program Objectives*: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

3. *Multiplier Effect/Impact*: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity*: Proposals should demonstrate the substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue, and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials, and follow-up activities

5. *Institutional Capacity/Reputation/Ability*: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's or project's goal. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by USIA's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Follow-on Activities*: Proposals should provide a plan for continued follow-on activity (without Bureau support) which ensures that Bureau-supported programs are not isolated events.

7. *Evaluation Plan*: Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

8. *Cost-Effectiveness/Cost Sharing*: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: June 27, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–17255 Filed 7–12–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7608]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on Environmental Response will meet to discuss its tasking and current applicable response standards. The Subcommittee is tasked to identify, review, and make recommendations to the Coast Guard on current industry standards and guidelines for hazardous material response organizations that represent best practices for ensuring safe and effective emergency response operations to marine transportation-related chemical spill incidents. This meeting will be open to the public.

DATES: The Subcommittee will meet on Thursday, August 3, 2000, from 9:00 am to 4 pm. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before July 31, 2000. Requests to have a copy of your material distributed to each member of the subcommittee should reach the Coast Guard on or before July 30, 2000.

ADDRESSES: The Subcommittee will meet in room 6319, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Send written material and requests to make oral presentations to Commander Robert F. Corbin, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Susan Klein, Coast Guard Technical Representative to the Subcommittee, telephone 202–267–0417, or Lieutenant Gregory F. Herold, Deputy Assistant to the Executive Director of CTAC, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda of the Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on Environmental Response includes the following:

(1) Introduction of Subcommittee members.

(2) Brief overview of Subcommittee tasking and desired outcome.

(3) Discussion of current applicable regulatory requirements and industry best practice response standards.

(4) Evaluation of the need to provide certain criteria or best practices to the field.

(5) Development of future Subcommittee activities.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. All attendees at the meeting are encouraged to fully review the Subcommittee's task statement prior to the meeting. Copies of the Subcommittee's task statement can be obtained from Lieutenant Susan Klein, telephone 202–267–0417, or Lieutenant Gregory F. Herold, telephone 202–267–1217, fax 202–267–4570. It is also available from the CTAC Internet Website at: *www.uscg.mil/hq/g-m/advisory/ctac*. At the discretion of the Subcommittee Chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard Technical Representative to the Subcommittee and submit written material on or before July 31, 2000. If you would like a copy of your material distributed to each member of the Subcommittee in advance of a meeting, please submit 25 copies to the Coast Guard Technical Representative to the Subcommittee no later than July 30, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Deputy Assistant to the Executive Director of CTAC as soon as possible.

Dated: July 3, 2000.

Peter A. Richardson,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–17676 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20972]

Laidlaw Inc., et al.; Control and Merger; 918897 Ontario Inc., B. R. Babcock Limited, Babcock Coach Lines Limited, Lee Line Corp., and Lee Charter Services, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Application.

SUMMARY: In an application filed under 49 U.S.C. 14303, Laidlaw Inc. (Laidlaw), a noncarrier, seeks to acquire indirect control, through its subsidiary, Laidlaw Transit Ltd. (Transit Ltd.), of 918897 Ontario Inc. (Babcock), a noncarrier, and B. R. Babcock Limited (BRB), and Babcock Coach Lines Limited (BCL), motor passenger carriers, and subsequently to merge Babcock, BRB, and BCL into Transit Ltd. Laidlaw also seeks to acquire indirect control, through its subsidiary, Laidlaw Transit, Inc. (Transit, Inc.), of the operating assets of Lee Line Corp. (LLC), a motor passenger carrier, the transfer of LLC's

operating authority to Lee Charter Services, Inc. (LCS), and the voluntary surrender of such authority by LCS. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by August 28, 2000. Applicants may file a reply by September 11, 2000. If no comments are filed by August 28, 2000, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20972 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Fritz R. Kahn, 1920 N Street (8th Floor), N.W., Washington, DC 20036–1601.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Applicants submit that, on March 5, 1999, Transit Ltd. and Brian Babcock, an individual noncarrier resident in the Province of Ontario, Canada and the owner of Babcock, entered into an agreement whereby all of the capital stock of Babcock was transferred to an independent voting trustee pending Board approval of Transit Ltd's acquisition of Babcock and the merger of Babcock, BRB, and BCL into Transit Ltd. Applicants also submit that, by agreement dated February 8, 1999, Transit, Inc. agreed to acquire the operating assets of LLC for the purpose of continuing LLC's charter service under Transit, Inc's operating authority. The February 8, 1999 agreement also provides for the transfer of LLC's operating authority to LCS and the voluntary surrender of such authority by LCS. The existing shares of LCS are also currently held by a separate, independent voting trust.

Laidlaw currently controls motor passenger carriers, which include Transit Ltd. (MC–102189) and Transit, Inc. (MC–161299). These carriers' operations in the United States, with the exception of Greyhound Lines, Inc. (Greyhound), are largely limited to charter and special operations. Greyhound holds federally issued operating authority in Docket No. MC–1515 and provides mainly nationwide, scheduled regular-route operations.[1] Applicants state that, although they do not intend to change the nature of the acquired companies' operations, the traveling public in the United States and Canada will benefit through applicants' centralized management functions.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information demonstrating that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicants have shown that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicants' representative.

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at: "WWW.STB.DOT.GOV."

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed control and merger is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on August 28, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: July 7, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–17778 Filed 7–12–00; 8:45 am]

BILLING CODE 4915–00–P

[1] By letter filed June 13, 2000, Laidlaw informed the Board that, in prior proceedings, it incorrectly described Greyhound as a subsidiary of Laidlaw Inc. Laidlaw now states that, through transactions effected as of the date of its March 16, 1999 acquisition of control of Greyhound, Greyhound became a subsidiary of Laidlaw Transportation, Inc., a noncarrier controlled by Laidlaw Inc. Accordingly, Laidlaw indicates that Greyhound is an indirect subsidiary of Laidlaw Inc.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 21–2J, Export Airworthiness Approval Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular 21–2J, Export Airworthiness Approval Procedures. Advisory Circular 21–2J provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of Title 14 Code of Federal Regulations, part 21, Certification Procedures for Products and Parts, regarding Export Airworthiness Certification approvals.

ADDRESSES: Copies of AC 21–2J can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Ave, Landover, MD 20785. Issued in Washington, DC on June 27, 2000.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Certification Division, AIR–200.

[FR Doc. 00–17789 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–21]

Petitions for Exemption; Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before July 24, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 10, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 013SW
Petitioner: ERA Aviation, Inc.
Section of the FAR Affected: 14 CFR § 29.1
Description of Relief Sought: To allow certification as a Category B rotorcraft with a maximum weight of 20,500 pounds and 10 or more passenger seats.

Docket No.: 30085
Petitioner: MD Helicopters, Inc.
Section of the FAR Affected: 14 CFR § H36.105(c)(1)
Description of Relief Sought: To permit MDHI to use $0.9V_{NE}$, never to exceed, flyover airspeed, instead of the traditional options of $0.9V_H$ (airspeed at maximum continuous power) or 0.45 V_H+65 knots, whichever is less, for level flvoyer noise certification tests of its Model MD900 helicopter.

[FR Doc. 00–17785 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–22]

Petitions for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 3, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. __, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 10, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29422
Petitioner: Gulfstream Aerospace Corporation
Section of the FAR Affected: 14 CFR 43.9(a)(4), 43.11(a)(3), appendix B to part 43, and 145.57(a)
Description of Relief Sought/ Disposition: To allow Gulfstream qualified technicians and inspection personnel to use electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements for the completions processes for Gulfstream aircraft.
Grant, 04/03/2000, Exemption No. 7163.

Docket No.: 28422
Petitioner: Broward County, Florida Public Works Department
Section of the FAR Affected: 14 CFR 137.53(c)(2)
Description of Relief Sought/ Disposition: To permit Broward to conduct aerial applications of insecticide materials from a Beechcraft C–45H aircraft (Registration No. N850BC, Serial No. 51–1184A) without the aircraft being equipped with a device that is capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operating over a congested area.
Grant, 04/04/2000, Exemption No. 6470B.

Docket No.: 23869
Petitioner: The Uninsured Relative Workshop, Inc.
Section of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To permit employees, representatives, and other volunteer experimental test jumpers under TURWI's control to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack that has at lease one main parachute and one approved auxiliary parachute. That exemption also permits pilots in command of aircraft involved in these operations to allow such persons to make these parachute jumps.
Grant, 04/05/2000, Exemption No. 4943L.

Docket No.: 29661
Petitioner: Experimental Aircraft Association, Small Aircraft Manufacturers Association, and National Association of Flight Instructors
Section of the FAR Affected: 14 CFR 91.319(a)(1) and (2)
Description of Relief Sought/ Disposition: To permit members of the Experimental Aircraft Association, the Small Aircraft Manufacturers Association, and the National Association of Flight Instructors who own certain amateur- and kit-built aircraft certificated in the experimental category to receive compensation for the use of the aircraft for the purpose of conducting aircraft-specific flight training and flight reviews under 14 CFR 61.56.
Grant, 04/06/2000, Exemption No. 7162.

Docket No.: 27258
Petitioner: Air Methods Corporation
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit AMC to operate certain aircraft under the provisions of part 135 without a TSO–C112 (Mode S) transponder installed.
Grant, 04/13/2000, Exemption No. 5720C.

Docket No.: 29940
Petitioner: Parker Hannifin Corporation
Section of the FAR Affected: 14 CFR 145.45(f)
Description of Relief Sought/ Disposition: To permit Parker to make its Inspection Procedures Manual (IPM) available electronically to its supervisory and inspection personnel rather than give a copy to each.
Grant, 04/16/2000, Exemption No. 7185.

Docket No.: 27729
Petitioner: Skydive Sebastian, Inc.
Section of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To permit SSI to allow nonstudent parachutists who are foreign nationals to use parachutes that do not meet the parachute equipment and packing requirements of the Federal Aviation Regulations.
Grant, 04/17/2000, Exemption No. 7169.

Docket No.: 29510
Petitioner: Cessna Aircraft Company
Section of the FAR Affected: 14 CFR 145.45(f)
Description of Relief Sought/ Disposition: To permit Cessna to distribute electronically its IPM to all repair station personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.
Grant, 04/17/2000, Exemption No. 7170.

Docket No.: 27577
Petitioner: Aviall
Section of the FAR Affected: 14 CFR 145.45(f)
Description of Relief Sought/ Disposition: To permit to maintain one copy of its repair station IPM at each facility rather than give a copy of the IPM to each of its supervisory and inspection personnel.
Grant, 04/17/2000, Exemption No. 5940C.

Docket No.: 28468
Petitioner: Honolulu Community College Aeronautics.
Section of the FAR Affected: 14 CFR 65.75(b)
Description of Relief Sought/ Disposition: To permit HCC to use a continuous practical examination program in which students undergo FAA oral and practical testing concurrent with HCC's training program as an integral part of the education process, rather than conducting the oral and practical tests upon students' successful completion of the training program, and to allow HCC to use AERO Testing Board Members to administer the continuous oral and practical examinations to students of HCC's approved 14 CFR part 147 program at times and places identified in HCC's operations handbook.
Grant, 04/17/2000, Exemption No. 6764A.

Docket No.: 28590
Petitioner: Human Flight, Inc.
Section of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To permit Human Flight employees, representatives, and other volunteer test jumpers under Human Flight's direction and control and Human Flight certified tandem instructors to continue to make tandem/parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a), and to permit pilots in command of aircraft involved in these operations to continue to allow such persons to make these parachute jumps.
Grant, 04/17/2000, Exemption No. 6650C.

Docket No.: 25060
Petitioner: Boeing Commercial Airplane Group
Section of the FAR Affected: 14 CFR 21.197
Description of Relief Sought/ Disposition: To permit Boeing to conduct training of Boeing's pilot flight crewmembers while operating under special flight permits issued for the purpose of production flight testing.
Grant, 04/17/2000, Exemption No. 4936D.

Docket No.: 29948
Petitioner: East Coast Aviation Service, Ltd., dba Executive Airlines
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Executive Airlines to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 04/19/2000, Exemption No. 7171.

Docket No.: 29984
Petitioner: Norman L. Westerbuhr and Crossville Flying Association
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit Mr. Westerbuhr and CFA to conduct local sightseeing flights at the Crossville Memorial Airport, Crossville, Tennessee for an event on May 27, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 04/19/2000, Exemption No. 7172.

Docket No.: 29972
Petitioner: Western North Carolina Air Museum
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit WNCAM to conduct local sightseeing flights at Hendersonville, North Carolina airport for WNCAM's Air Fair on May 6 and 7, 2000, for compensation or hire, without complying with certain

anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 04/19/2000, Exemption No. 7173.

Docket No.: 29933
Petitioner: Air Care, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Air Care to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 04/19/2000, Exemption No. 7174.

Docket No.: 29634
Petitioner: Petaluma Area Pilots Association
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit PAPA to conduct local sightseeing flights at Petaluma Municipal Airport, for PAPA's "Penny-A-Pound" charitable event on Father's Day weekend in June 2000 and June 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements.
Grant, 04/19/2000, Exemption No. 6981A.

Docket No.: 29973
Petitioner: Mirabella Yachts, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Mirabella to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 04/21/2000, Exemption No. 7178.

Docket No.: 29993
Petitioner: Davis Aerospace Technical High School and Black Pilots of America
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit DATHS and BPA to conduct local sightseeing flights at Davis Aerospace Technical High School, Detroit, Michigan for its annual open house on May 21, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements.
Grant, 04/21/2000, Exemption No. 7177.

Docket No.: 29902
Petitioner: Brim Equipment Leasing, Inc., dba Brim Aviation
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Brim to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 04/21/2000, Exemption No. 7176.

Docket No: 29971
Petitioner: DeKalb Peachtree Airport
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit DPA to conduct local sightseeing flights at DeKalb Peachtree Airport for its Good Neighbor Day Open House/Airshow on June 3, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 04/21/2000, Exemption No. 7175.

Docket No.: 29935
Petitioner: Friends of Allen County Airport
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit FACA to conduct local sightseeing flights at Allen County Airport, Iola, Kansas for a fly-in and open house on May 6, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 04/21/2000, Exemption No. 7179.

Docket No.: 29962
Petitioner: Challenged Child, Inc. and friends
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit Challenged Child to conduct local sightseeing flights at the Gainesville, Georgia airport for charitable airlifts on May 6 and 7, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 04/21/2000, Exemption No. 7180.

Docket No.: 29411
Petitioner: Spirit Aviation Incorporated
Section of the FAR Affected: 14 CFR 135.225(g)
Description of Relief Sought/ Disposition: To permit Spirit Aviation to conduct takeoffs in single-pilot, turbine-powered airplanes where takeoff visibility is one-half of a mile down to 1,800 feet (ft) runway visual range (RVR), subject to certain conditions and limitations.
Denial, 04/23/2000, Exemption No. 7186.

Docket No.: 29942
Petitioner: Metro Ambulance Group
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit MAG to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 04/25/2000, Exemption No. 7182.

Docket No.: 28148
Petitioner: Capital City Air Carrier, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: to permit CCAC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 04/25/2000, Exemption No. 7181.

Docket No.: 29965
Petitioner: Hageland Aviation Services, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit HAS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 04/25/2000, Exemption No. 7183.

Docket No.: 30007
Petitioner: Charlie Wells Aviation Scholarship
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit CWMAS to conduct local sightseeing flights at Capital Airport, Springfield, Illinois for scholarship fund raising flights on April 29 and 30, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 04/26/2000, Exemption No. 7184.

Docket No.: 29092
Petitioner: Pratt & Whitney Engine Services, Inc,
Section of the FAR Affected: 14 CFR 145.45(f)
Description of Relief Sought/ Disposition: To permit PWES to assign IPMs to key individuals within departments and to strategically place an adequate number of IPMs for access by all employees, in lieu of giving a copy of the IPM to each of its supervisory and inspection personnel.
Grant, 04/28/2000, Exemption No. 6750A.

[FR Doc. 00–17786 Filed 7–12–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7620]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SPICE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub.L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 14, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7620. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–4357.

SUPPLEMENTARY INFORMATION: Title V of Pub.L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: SPICE. Owner: Tom and Terri Laird

(2) Size, capacity and tonnage of vessel: According to the Applicant: Length = 41.0 feet, Breadth = 10.2 feet, Depth = 6.7 feet, Capacity = 6 passengers, Gross tonnage = 14, Net Tonnage = 12.

(3) Intended use for vessel, including geographic region of intended operation and trade: According to the applicant: The vessel will be chartered for coastwise cruising from Eastport Maine to Montauk, New York including Long Island Sound.

(4) Date and place of construction and (if applicable) rebuilding: Date of construction: 1954. Place of construction: Abeking & Rasmussen, Lemwerder Germany.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators: According to the applicant: There are numerous small private charters operating in coastwise waters throughout New England. In recent years the healthy economy and increased tourism have created a market for additional vessels. Vintage wooden vessels such as SPICE are rare and particularly sought after.

(6) A statement on the impact this waiver will have on U.S. shipyards: According to the applicant: SPICE was fitted out in the US and has been maintained by US boatyards since she was delivered in 1954. A significantly greater amount of money has been spent in the US than in Germany on the original purchase, for example, the current annual maintenance costs are equal to two times the initial purchase price. She will continue to be maintained by US yards.

Dated: July 10, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–17756 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–00–015]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working committees will meet to discuss waterway improvements, aids to navigation, Houston/Galveston-area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Houston/Galveston area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Tuesday, September 12, 2000 from 10:00 a.m. to approximately 12:30 p.m. The meeting of the Committee's working groups will be held on Tuesday, August 22, 2000 at 9:00 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the Corps of Engineers facility in Galveston. The Corps of Engineers building is located at 2000 Fort Point Road. The working group meeting will be held at the Houston Port Authority building, 111 East Loop North, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Wayne Gusman, Executive Director of HOGANSAC, telephone (713) 671–5199, or Commander Peter Simons, Executive Secretary of HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Pluta) (or the Committee Sponsor's

representative), Executive Director (CAPT Gusman) and Chairman (Tim Leitzell).

(2) Approval of the May 24, 2000 minutes.

(3) Status of dredging projects.

(4) Barge lanes.

(5) Facility mooring depths data collection.

(6) Presentation by the National Oceanic and Atmospheric Administration on an experimental nowcast/forecast system for Galveston Bay.

(7) New business.

Working Committee Meeting. The tentative agenda for the working committee meeting includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Work groups were formed to examine the following issues: hurricane contingency plan, PORTS funding/TCOON operability, dredging and related issues, barge lanes, electronic navigation systems, port emergency communications committee/internet site, AtoN knockdowns, VTS radio frequency congestion. All work groups may not necessarily report out at this session. Further, work group reports may not necessarily include discussions on all issues within the particular work group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make oral presentations during either meeting.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: June 29, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 00–17678 Filed 7–12–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 3, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 14, 2000 to be assured of consideration.

INTERNAL REVENUE SERVICE (IRS)

OMB Number: 1545–0046.

Form Number: IRS Form 982.

Type of Review: Extension.

Title: Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

Description: Internal Revenue Code section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency, or a qualified farm indebtedness. Code section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.

Respondents: Business or other for-profit, Individuals or households, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	5 hr., 18 min.
Learning about the law or the form.	2 hr., 44 min.
Preparing and sending the form to the IRS.	2 hr., 22 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 10,290 hours.

OMB Number: 1545–0059.

Form Number: IRS Form 4137.

Type of Review: Extension.

Title: Social Security and Medicare Tax on Unreported Tip Income.

Description: Section 3102 requires an employee who receives tips subject to Social Security and Medicare tax to compute tax due on these tips if the employee did not report them to his or her employer. The data is used to help verify that the Social Security and Medicare tax on tip income is correctly computed.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 76,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	26 min.
Learning about the law or the form.	7 min.
Preparing the form ...	26 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 101,080 hours.

OMB Number: 1545–0062.

Form Number: IRS Form 3903.

Type of Review: Extension.

Title: Moving Expenses.

Description: Internal Revenue Code (IRC) section 217 requires itemization of various allowable moving expenses. Form 3903 is filed with Form 1040 by individuals claiming employment related moves. The data is used to help verify that the expenses are deductible and that the deduction is computed correctly.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 678,678.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	33 min.
Learning about the law or the form.	9 min.
Preparing the form ...	13 min.
Copying, assembling, and sending the form to the IRS.	14 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 773,693 hours.

OMB Number: 1545–0139.

Form Number: IRS Form 2106.

Type of Review: Revision.

Title: Employee Business Expenses.

Description: Internal Revenue Code (IRC) section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing "Adjusted Gross Income". Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106 is used to figure these expenses.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 762,514.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	2 hr., 11 min.
Learning about the law or the form.	26 min.

Preparing the form	14 min.
Copying, assembling, and sending the form to the IRS.	35 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,189,745 hours.
OMB Number: 1545–0162.
Form Number: IRS Form 4136.
Type of Review: Extension.
Title: Credit for Federal Tax Paid on Fuels.
Description: Internal Revenue Code (IRC) section 34 allows a credit for Federal excise tax for certain fuel uses. This form is used to figure the amount of the income tax credit. The data is used to verify the validity of the claim for the type of nontaxable or exempt use.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.
Estimated Number of Respondents/ Recordkeepers: 619,851.
Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping	16 hr., 29 min.
Learning about the law or the form.	6 min.
Preparing and sending the form to the IRS.	22 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 2,618,453 hours.
OMB Number: 1545–0215.
Form Number: IRS Forms 5712 and 5712–A.
Type of Review: Revision.
Title: Election To Be Treated as a Possessions Corporation Under Section 936 (5712); and Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5) (5712–A).
Description: Domestic corporations may elect to be treated as possessions corporations on Form 5712. This election allows the corporation to take a tax credit. Possession corporations may elect on Form 5712–A to share their taxable income with their affiliates under Internal Revenue Code section 936(h)(5). These forms are used by the IRS to ascertain corporations are entitled to the credit and if they may share their taxable income with their affiliates.
Respondents: Business or other for-profit, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 2,600.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 5712	Form 5712–A
Recordkeeping	4 hr., 32 min.	5 hr., 44 min.
Learning about the law or the form.	35 min.	1 hr., 0 min.
Preparing and sending the form to the IRS.	42 min.	1 hr., 8 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 20,258 hours
OMB Number: 1545–0712.
Form Number: IRS Form 6198.
Type of Review: Extension.
Title: At-Risk Limitations.
Description: Internal Revenue Code (IRC) section 465 requires taxpayers to limit their at-risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.
Estimated Number of Respondents/ Recordkeepers: 185,167.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 12 min.
Learning about the law or the form.	1 hr., 0 min.
Preparing the form	1 hr., 26 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 735,113 hours.
OMB Number: 1545–0770.
Regulation Project Number: FI–182–78 NPRM.
Type of Review: Extension.
Title: Transfers of Securities Under Certain Agreements.
Description: Section 1058 of the Internal Revenue Code provides tax-free treatment for transfers of securities pursuant to a securities lending agreement. The agreement must be in writing and is used by the taxpayer, in a tax audit situation, to justify nonrecognition treatment of gain or loss on the exchange of the securities.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 11,742.
Estimated Burden Hours Per Respondent: 50 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 9,781hours.
OMB Number: 1545–1035.
Form Number: IRS Form 8611.
Type of Review: Extension.
Title: Recapture of Low-Income Housing Credit.
Description: Internal Revenue Code (IRC) section 42 permits owners of residential rental projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or it fails to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credit(s) taken in prior years.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,200.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 hr., 40 min.
Learning about the law or the form.	1 hr., 0 min.
Preparing and sending the form to the IRS.	1 hr., 11 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 10,855 hours.
OMB Number: 1545–1057.
Form Number: IRS Form 8800.
Type of Review: Extension.
Title: Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts.
Description: Form 8800 is used by partnerships, real estate mortgage investment conduits (REMICs), and by certain trusts to request an additional extension of time (up to 3 months) to file Form 1065, Form 1041, or Form 1066. Form 8800 contains data needed by the IRS tc determine whether or not a taxpayer qualifies for such an extension.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/ Recordkeepers: 20,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 11 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,800 hours.
OMB Number: 1545–1163.
Form Number: IRS Form 8822.
Type of Review: Extension.
Title: Change of Address.
Description: Form 8822 is used by taxpayers to notify the Internal Revenue Service that they have changed their home or business address or business location.
Respondents: Individuals or households, Business or other for-profit,

Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,500,000.

Estimated Burden Hours Per Respondent: 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 387,501 hours.

OMB Number: 1545–1350.

Form Number: IRS Form 9465.

Type of Review: Extension.

Title: Installment Agreement Request.

Description: Form 9465 is used by the public to provide identifying account information and financial ability to enter into an installment agreement for the payment of taxes. The form is used by IRS to establish a payment plan for taxes owed to the Federal Government, if appropriate, and to inform taxpayers about the application fee and their financial responsibilities.

Respondents: Individuals or households.

Estimated Number of Respondents: 760,000.

Estimated Burden Hours Per Respondent:

Learning about the law or the form.	17 min.
Preparing the form ...	26 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 805,600 hours.

OMB Number: 1545–1441.

Form Number: IRS Form 2106–EZ.

Type of Review: Revision.

Title: Unreimbursed Employee Business Expenses.

Description: Internal Revenue Code (IRC) section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing "Adjusted Gross Income". Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106–EZ is used to figure these expenses.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 3,337,019.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	40 min.
Learning about the law or the form.	12 min.
Preparing the form ...	24 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 5,339,230 hours.

OMB Number: 1545–1442.

Regulation Project Number: PS–79–93 Final.

Type of Review: Extension.

Title: Grantor Trust Reporting Requirements.

Description: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust treated as owned by the grantor or another person are properly reported.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,840,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 920,000 hours.

OMB Number: 1545–1679.

Form Number: IRS Form 2031.

Type of Review: Extension.

Title: Revocation of Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.

Description: Form 2031 is used by certain individuals wishing to revoke their election to be exempt from social security coverage and self-employment taxes.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Learning about the law or the form.	11 min.
Preparing the form ...	11 min.
Copying, assembling, and sending the form to the IRS.	14 min.

Frequency of Response: Other (One-Time).

Estimated Total Reporting/Recordkeeping Burden: 3,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–17686 Filed 7–12–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Terminations: Allstate Insurance Company, Continental Western Insurance Company, Dairyland Insurance Company, Economy Fire & Casualty Company, First Excess and Reinsurance Corporation, First Financial Insurance Company, National Reinsurance Corporation, Navigators Insurance Company, Northbrook Property and Casualty Insurance Company, Security National Insurance Company, TIG Insurance Company of Michigan, TIG Premier Insurance Company, Tri-State Insurance Company of Minnesota, Trinity Universal Insurance Company of Kansas, Inc., Risk Capital Reinsurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 26 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6775.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds was terminated effective June 30, 2000.

The Companies were last listed as acceptable sureties on Federal bonds at 64 FR starting on page 35864, July 1, 1999.

With respect to any bonds currently in force with above listed companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these companies. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government

Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2000.

Michael C. Salapka,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–17685 Filed 7–12–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Terminations: Credit General Insurance Company, The Millers Mutual Fire Insurance Company, ULICO Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury

ACTION: Notice,

SUMMARY: This is Supplement No. 24 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to the above named Companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as acceptable sureties on Federal bonds are terminated effective immediately.

The Companies were last listed as an acceptable surety on Federal bonds at 64 FR 35872, 35881 and 35891, July 1, 1999.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should be replaced.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c3570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 29, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–17683 Filed 7–12–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Terminations: Frontier Pacific Insurance Company & United Capitol Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 23 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective immediately.

The Companies were last listed as an acceptable surety on Federal bonds at 64 FR 35876 and 35892, respectively, July 1, 1999.

With respect to any bonds currently in force with above listed Companies, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should be replaced.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 29, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–17682 Filed 7–12–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Redland Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 25 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to Redland Insurance Company, of Council Bluffs, Iowa, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective immediately.

The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35886, July 1, 1999.

With respect to any bonds currently in force with Redland Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should be replaced.

The Circular may be viewed and downloaded through the Internet at (http://www.fms.treas.gov/c570/index.html). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–17684 Filed 7–12–00; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 65, No. 135
Thursday, July 13, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990625176–0029–02]

RIN 0694–AB86

Revisions and Clarifications to the Export Administration Regulations; Commerce Control List

Correction

In rule document 00–13252 beginning on page 34073 in the issue of Friday, May 26, 2000, make the following correction:

PART 774 [CORRECTED]

1. On page 34075, in Supplement No. 1 to Part 774, in the third column, in "note 1.", in the second line, "desired" should read "designed".

2. On page 34076, in the same supplement, in the second column, in paragraph b.2.f.3., "+0.3" should read "±0.3".

3. On the same page, in the same supplement, in the same column, in paragraph b.3.a.3., "+10" should read "±10".

[FR Doc. C0–13252 Filed 7–12–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–208–AD; Amendment 39–11801; AD 2000–13–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

Correction

In rule document 00–16110 beginning on page 39541 in the issue of Tuesday, June 27, 2000, make the following correction:

§39.13 [Corrected]

On page 39543, in the first column, in paragraph (b), the lines between "Assisted Start:" and "APU bleed start:" are corrected to read as follows:

Crossbleed Start:	
N2 (operating engine).	ABOVE 80%
Crossbleed	AUTO OR OPEN
Engine Bleed (operating engine).	OPEN
Start/Stop Selector	START, THEN RUN
Engine Indication	MONITOR

Check ITT and N2 rising. Observe limits. Check ignition and fuel flow indication at 10% N2.

APU bleed start:

* * * * *.

[FR Doc. C0–16110 Filed 7–12–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–7]

Amendment to Class E Airspace; Hampton, IA

Correction

In rule document 00–12821, in the issue of Friday, June 16, 2000, on page 37833, in the third column, the phrase "**ACE AI E5 Hampton, IA [Revised]**" should read "**ACE IA E5 Hampton, IA [Revised]**".

[FR Doc. C0–12821 Filed 7–12–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–24]

Proposed Establishment of Class D Airspace; Oak Grove, NC

Correction

In proposed rule document 00–15944 beginning on page 39111 in the issue of Friday, June 23, 2000 make the following correction:

On page 39111, in the first column, under the heading **DATES:** , "June 24, 2000" should read "July 24, 2000 ".

[FR Doc. C0–15944 Filed 7–12–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
July 13, 2000

Part II

Federal Housing Finance Board

12 CFR Part 917, et al.
Capital Requirements for Federal Home Loan Banks; Proposed Rule

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 917, 925, 930, 931, 932, 933, 956, and 960

[No. 2000–23]

RIN 3069–AB01

Capital Requirements for Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) proposes to amend its regulations to implement a new capital structure for the Federal Home Loan Banks (Banks), as is required by the Gramm-Leach-Bliley Act. The proposed rule would establish risk-based, leverage, and operations capital requirements for the Banks. It also addresses the different classes of stock that a Bank may issue, the rights and preferences that may be associated with each class of stock, and the capital plans that each Bank must submit for Finance Board approval.

DATES: The Finance Board will accept written comments on the proposed rule that are received on or before October 11, 2000.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director and Chief Economist, (202) 408–2821; Scott L. Smith, Deputy Director, (202) 408–2991; Ellen Hancock, Senior Financial Analyst, (202) 408–2906; or Christina Muradian, Senior Financial Analyst, (202) 408–2584; or Julie Paller, Senior Financial Analyst, (202) 408–2842, Office of Policy, Research and Analysis; or Deborah F. Silberman, General Counsel, (202) 408–2570; Neil R. Crowley, Deputy General Counsel, (202) 408–2990; or Thomas E. Joseph, Attorney-Advisor, (202) 408–2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. The Bank System

The twelve Banks are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1423, 1432(a), *as amended*. The Banks are a "government sponsored enterprise" (GSE), *i.e.*, a federally chartered but privately owned institution created by Congress to serve a public purpose. The purpose of the Bank System is to support the financing of housing and community lending. *See* 12 U.S.C. 1422a(a)(3)(B)(ii), 1430(i), (j)(10) (1994). As with other GSEs, Congress has granted the Banks certain benefits, including an exemption from registration of their securities under federal securities laws, an exemption from state and local corporate taxation, and an ability to sell debt obligations (at the discretion of the Secretary of the Treasury) to the United States Treasury, that enable them to borrow in the capital markets on favorable terms. Typically, the Banks are able to borrow at a spread that is over the rates on U.S. Treasury securities of comparable maturity but which is less than the rates available to comparably situated private corporate borrowers. The Banks pass along that funding advantage to their members—and ultimately to consumers—by providing advances (secured loans) and other financial services at rates that their members generally could not obtain on their own.

The Banks also are cooperatives, meaning that only their members may own the capital stock and share in the profits of the Banks and only their members, and certain eligible associates (such as state housing finance agencies), may borrow from or use the other products and services provided by the Banks. 12 U.S.C. 1426, 1430(a), 1430b, *as amended*. Each Bank is managed by a board of directors, a majority of whom are elected by its members and the remainder of whom are appointed by the Finance Board. 12 U.S.C. 1427, *as amended*. An institution that is eligible (typically, an insured depository institution) may become a member of a Bank if it satisfies certain statutory criteria and purchases a specified amount of the Bank's capital stock. 12 U.S.C. 1424, 1426 (1994). Together with the Office of Finance, the twelve Banks comprise the Bank System, which operates under the supervision of the Finance Board, an independent agency in the executive branch of the U.S. government. The primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner; consistent with that duty the Finance Board is required to supervise the Banks, ensure that they carry out their housing finance mission, and ensure that they remain adequately capitalized and able to raise funds in the capital markets. 12 U.S.C. 1422a(a)(3)(A), (B) (1994).

B. Federal Home Loan Capital Structure

Since its enactment in 1932, the Bank Act has provided for a "subscription" structure for the capital of the Banks. Under that structure, the amount of capital stock each Bank issued was determined as a percentage of either the total mortgage assets of each member of the Bank or the dollar amount of advances outstanding to each member, whichever was greater. The subscription capital structure was deficient in certain respects, most notably in that the amount of capital each Bank was required to hold bore no relationship to the risks posed by its activities. Moreover, the subscription capital structure caused the Banks to become substantially overcapitalized in relation to the risks they face. The amount of excess capital contributed to an increase in the amount of arbitrage investments made by the Banks, *i.e.*, investments in assets such as money market instruments or mortgage-backed securities that do not advance the housing finance and community lending mission of the Banks. The substantial amount of the non-mission investments held by the Banks collectively, though diminishing in recent years as a percentage of their assets, has been the subject of much criticism from the Administration and the Congress, and was one issue that the Congress intended to address by reforming the capital structure and other aspects of the Bank System. The Congress recognized that if it were to eliminate mandatory membership for federal savings associations, and thus remove the only permanent capital from the Bank System, it also would have to create a new capital structure that would include capital elements with more permanence than one based solely on 6-month redeemable stock.

C. The Gramm-Leach-Bliley Act

On November 12, 1999, the President signed the Gramm-Leach-Bliley Act, Pub. Law No. 106–102, 133 Stat. 1338 (Nov. 12, 1999) (GLB Act), which, among other things, substantially amended the provisions of the Bank Act that relate to the capital structure of the Banks. 12 U.S.C. 1426, *as amended*. As a result of those amendments, the existing subscription capital structure will be replaced over a period of several years by a more modern capital structure, with risk-based and leverage capital requirements that are similar to those applicable to depository institutions and to the other housing GSEs. The GLB Act provides for a transition period to the new capital structure of up to approximately five

years from the date of enactment, during which time the prior capital provisions are to remain in effect. The GLB Act requires the Finance Board to promulgate uniform capital regulations for the Banks no later than November 12, 2000. Under the new structure, each Bank will be required to maintain amounts of total capital and permanent capital that are sufficient to comply with the minimum leverage and risk-based capital requirements, respectively, established by the GLB Act.

The GLB Act requires each Bank to maintain a ratio of total capital to total assets of at least 4 percent. Total capital is defined to include a Bank's permanent capital (defined below), plus the amounts paid-in by members for Class A stock (which is redeemable on 6 months written notice), any general loss allowance (if consistent with generally accepted accounting principles (GAAP) and not established for specific assets), and other amounts from sources determined by the Finance Board as available to absorb losses. Permanent capital is defined as the amounts paid-in by members for the Class B stock (which is redeemable on 5 years written notice), plus the amount of a Bank's retained earnings, as determined in accordance with GAAP. In addition to requiring total capital of 4 percent, the GLB Act requires the Banks to maintain a leverage ratio of 5 percent. In calculating the leverage ratio, the amount paid-in for Class B stock and the amount of retained earnings are multiplied by 1.5, while other capital items are counted at face value. The risk-based capital provision requires each Bank to maintain permanent capital in an amount sufficient to meet the credit and market risks to which the Bank is subject, with the market risk being based on a stress test established by the Finance Board that tests for changes in certain specified market variables.

The GLB Act further requires the capital regulations to address a number of other matters, such as the classes of stock that a Bank may issue, the rights, terms, and preferences that may be established for each class, the issuance, transfer, and redemption of Bank stock, and the liquidation of claims against a withdrawing member. The rules must permit each Bank to issue Class A or Class B stock, or both, with the board of directors of each Bank to determine the rights, terms, and preferences for each class. Both Class A and Class B stock may be issued only to and held only by members of the Bank, and the regulations are to provide the manner in which the stock may be sold, transferred, redeemed, or repurchased. The rules also must address the manner in which a Bank is to liquidate any claims against its members.

The GLB Act separately establishes a number of other capital-related requirements, which pertain to matters such as the termination of an institution's Bank membership, the ability of a Bank to redeem excess stock held by a member (*i.e.*, stock that is in excess of the amount each member is required to hold), restrictions on the ability of a Bank to redeem stock when its capital is impaired, restrictions on readmission to membership after withdrawing, and the ownership of the retained earnings by the Class B stockholders.

Within 270 days after the publication of the final capital rule, the board of directors of each Bank must submit for Finance Board approval a capital plan that the board determines is best-suited for the Bank and its members. Any amendments to the plan also must be approved in advance by the Finance Board. The law does not specify a period of time within which the Finance Board must approve the plans, which allows for the possibility that a Bank may be required to revise its plan before obtaining Finance Board approval. The GLB Act requires the plan to include certain provisions, requires that it be consistent with the regulations adopted by the Finance Board, and that when implemented it must provide the Bank with sufficient capital to meet both the leverage and risk-based capital requirements. Each plan also must include certain provisions specified by the GLB Act. Those provisions relate to the minimum investment required of each member in order for the Bank to meet its regulatory capital requirements, the effective date of the plan and the length of its transition period (which may be up to 3 years from the effective date of the plan), the classes of stock to be offered by the Bank and the rights, terms, and preferences associated with each class, the transferability of the Bank stock, the disposition of Bank stock held by institutions that withdraw from membership, and review of the plan by an independent accountant and a credit ratings agency. Those provisions are only the minimum contents required by the GLB Act; the Finance Board may require that other provisions be included in each plan, and the Banks as well may include other provisions in their plans, provided they are consistent with the Bank Act and the regulations of the Finance Board.

D. Federal Home Loan Bank Stock

Section 6 of the Bank Act, as in effect prior to the GLB Act, authorized the Banks to issue stock, specified the characteristics of the stock, and addressed the manner in which the stock may be issued, transferred, and redeemed. 12 U.S.C. 1426 (1994). Since the establishment of the Bank System in 1932, each of the Banks has been authorized to issue a single class of stock, which could be issued and redeemed only at its statutory par value of $100 per share. An institution becoming a Bank member was required to subscribe for a certain minimum amount of the Bank's stock, for which it was required to pay in full and in cash at the time of its application.[1]

The amount of the initial stock subscription required for membership was the greater of $500, 1.0 percent of the member's mortgage assets, or 0.3 percent of the member's total assets.[2] 12 U.S.C. 1426(b), 1430(e) (1994). If a member were to borrow from its Bank, the amount of Bank stock it was required to own could not be less than 5.0 percent of the amount of Bank advances outstanding to the member. Each Bank was required to adjust the minimum stock investment required of each member, as of December 31st of each year, so that each member would own at least the required minimum amount of Bank stock, based on a percentage of either its assets or advances, whichever amount was higher. Each Bank had the discretion to retire any "excess" stock held by a member, *i.e.*, stock in excess of the

[1] A member also was allowed to purchase the stock in installments, under which it would pay one-quarter of the full amount at the time of application, and the remainder in three installments over the following 12 months. 12 U.S.C. 1426(c) (1994).

[2] The Bank Act referred to a member's "aggregate unpaid loan principal", which the Finance Board has defined to include a variety of mortgage assets, such as home mortgage loans, combination loans, and mortgage pass-through securities. 12 U.S.C. 1426(b)(1) (1994); 65 Fed. Reg. 8253 (Feb. 18, 2000), to be codified at 12 CFR 925.1. For purposes of applying the 1.0 percent of mortgage assets test, the Bank Act also established a statutory presumption that each member had at least 30 percent of its assets in mortgage related instruments. 12 U.S.C. 1430(e)(3) (1994). The effect of the presumption was that commercial banks (which typically have a lower percentage of their assets in mortgage related instruments than do savings associations) were required to maintain a minimum investment equal to the greater of 1.0 percent of mortgage assets, 0.3 percent of total assets, or 5.0 percent of outstanding advances. Separately, a member that was not a "qualified thrift lender" (QTL), *i.e.*, an institution with less than 65 percent of its assets in certain mortgage related instruments, was subject to a higher "percentage of advances" requirement, which would vary inversely with its QTL ratio.

minimum required for that member, upon the application of the member.

Once issued, the stock of a Bank could be transferred only between the member and the Bank or, with the approval of the Finance Board, from one member to another member or to an institution in the process of becoming a member. The Bank Act also required that all stock issued by a Bank share in dividends equally and without preference. The Bank Act also allowed any member, other than a federal savings and loan association, to withdraw from membership by providing six months written notice to the Finance Board. At the end of the six-month notice period, and provided that all indebtedness owed by the withdrawing member to the Bank had been liquidated, a Bank could redeem the stock of the withdrawing member, paying cash to the member equal to the par value of the stock. Any such withdrawing member could not rejoin the Bank system for 10 years, with only limited exceptions.

The Bank stock currently outstanding carries only limited voting rights. The members of each Bank have the right to elect a majority of its directors, typically eight of fourteen directorships, but do not vote on any other matters. The number of votes each member may cast in an election of directors is tied to the amount of Bank stock it is "required to hold" under the subscription capital provisions. Section 7 of the Bank Act provides that the number of votes each member may cast is equal to the number of shares of Bank stock "required [by Section 6 of the Bank Act] to be held by [each] member at the end of the calendar year next preceding the election" of directors. 12 U.S.C. 1427(b) (1994). As noted above, at the end of each year each member was required to hold Bank stock equal to the greater of $500, 1.0 percent of its mortgage assets, 0.3 percent of its total assets, or 5.0 percent of its outstanding advances. For voting purposes, however, Section 7 limits the number of votes that any member may cast at the average number of shares of Bank stock "required to be held" by the members located in the same state at the end of the prior calendar year. Thus, for any members that hold stock in excess of the average for their state, those excess shares are divested of their voting rights.[3] As amended by the GLB Act, all of Section 6 of the Bank Act has been revised and no longer requires a member to hold a particular amount of Bank stock as of the end of the calendar year. Similarly, the Bank Act no longer establishes a required investment for each member. Instead, Section 6 of the Bank Act now authorizes each Bank to determine the amount and nature of any investment each member must maintain in the capital stock of the Bank, and requires each Bank to address the voting rights for each class of stock in its capital structure plan, subject to the approval of the Finance Board.

E. The Financial Management and Mission Achievement Proposal

In 1999 the Finance Board proposed to adopt a risk-based capital requirement as part of its "Financial Management and Mission Achievement" (FMMA) rulemaking. 64 FR 52163 (Sept. 27, 1999). The capital provisions of the FMMA would have established a "minimum total capital requirement" and a "minimum total risk-based capital requirement" for each Bank. Under the total risk-based capital requirement a Bank would have been required to maintain "total risk-based capital" in an amount sufficient to meet the sum of its credit risk, market risk, and operations risk capital requirements, each of which would have been established by the proposed rule. The credit risk aspect of the FMMA would have addressed the credit risks to which each Bank is exposed with respect to both its on- and off-balance sheet items, using data from Nationally Recognized Statistical Rating Organizations (NRSRO) to estimate the credit losses likely to be associated with particular classes of items during periods of extreme credit stress. The FMMA would have established the market risk capital requirement based on the market value of a Bank's portfolio at risk from movements in market prices, such as interest rates, foreign exchange rates, commodity prices, or equities prices, that might occur during periods of extreme market stress. The proposal would have allowed for the use of a Bank's internal market risk model, which was to have been approved by the Finance Board. The FMMA would have required each Bank to maintain capital in an amount equal to 30 percent of the sum of its credit risk capital and market risk capital requirements in order to support the operations risks to which the Bank is exposed. The FMMA also would have required the Banks to maintain both a System-wide and individual Bank credit ratings, at levels specified by the proposed rule, and would have required each Bank to maintain "contingency liquidity" in an amount sufficient to enable the Bank to meet its obligations if it were unable to borrow in the capital markets for seven consecutive days. The proposal included provisions limiting the amount of unsecured credit that a Bank could have outstanding to any single counterparty (or to affiliated counterparties) and would have addressed the extent to which the Banks may use hedging instruments. The Finance Board withdrew the FMMA proposal following the enactment of the GLB Act. Board Resolution No. 99–56 (Nov. 15, 1999); 64 FR 66115 (Nov. 24, 1999).

With the enactment of the GLB Act, certain aspects of the proposed FMMA capital rule, such as those pertaining to the types of capital required for the leverage and risk-based capital requirements, no longer would be consistent with Section 6 of the Bank Act, as amended. Other aspects of the capital rules proposed as a part of FMMA, however, remain generally consistent with the amended statute, particularly as it relates to the capital required to be held against credit risk and market risk. The GLB Act requires the Finance Board to adopt a risk-based capital regulation that requires the Banks to maintain sufficient permanent capital to meet the credit risks to which they are subject, but does not otherwise provide how the credit risk is to be measured. Similarly, the GLB Act provides that the market risk element of the risk-based capital requirement must be based on a stress test developed by the Finance Board that "rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve." The GLB Act does not further specify the provisions of the stress test, other than to require that the Finance Board give "due consideration" to any risk-based capital rules promulgated by the Office of Federal Housing Enterprises Oversight (OFHEO) with respect to Fannie Mae and Freddie Mac. Moreover, the GLB Act does not preclude the Finance Board from incorporating other elements into the risk-based capital rules, such as a requirement to hold some amount of capital to cover the operations risks to which the Banks are subject. In considering the requirements of the GLB

[3] The Bank Act provides generally that each Bank is to have a board of fourteen directors, eight of whom are elected by the members and six of whom are appointed by the Finance Board. 12 U.S.C. 1427(a) (1994). The elected directorships for each Bank are allocated among the states in each Bank district, based on the amount of stock held by members in the respective states, subject to certain "grandfather" provisions that reserve a specified number of directorships to particular states (based on relative stock ownership in 1960) and certain discretionary authority conferred on the Finance Board to establish a limited number of additional seats in certain Bank districts.

Act for the credit and market risk elements of the capital rules, the Finance Board has determined that in many respects the underlying methodology of the credit and market risk provisions of the capital rules that were proposed as part of the FMMA are consistent with the requirements of the GLB Act. Accordingly, the proposed rule builds on those provisions, as well as on the provisions of the FMMA relating to operating risk.

II. The Proposed Rule

A. Issuance of Bank Stock.

In General. The GLB Act provides that the capital regulations are to permit each Bank to issue "any one or more" of Class A or Class B stock. Class A stock is to be redeemable at par on six months written notice to the Bank; Class B stock is to be redeemable at par on five years written notice to the Bank. The board of directors of each Bank is to determine the "rights, terms, and preferences" for each class of stock, consistent with Section 6 of the Bank Act, with the regulations of the Finance Board, and with market requirements. The regulations are required to prescribe the manner in which Bank stock may be "sold, transferred, redeemed, or repurchased." The regulations also are required to restrict the issuance and ownership of Bank stock to the members of the Bank, to prohibit the issuance of other classes of stock, and to provide for the liquidation of claims and the redemption of stock upon an institution's withdrawal from membership in its Bank.

Apart from authorizing the issuance of two classes of Bank stock, the GLB Act eliminated certain key characteristics of the single class of Bank stock that had been established under prior law. For example, the Bank Act no longer mandates a statutory par value for all Bank stock of $100 per share and no longer requires all Bank stock to be issued at par value.[4] As a result, the Bank Act now authorizes a Bank to establish the par value for its Class A and Class B stock (which may differ), and permits the issuance of stock at a price other than par value. The proposed rule includes provisions that implement those changes in the law, as described below.

Classes of Stock. In authorizing the new capital structure for the Banks, the GLB Act provides that the regulations promulgated by the Finance Board "shall * * * permit each Federal home loan bank to issue * * * any 1 or more of * * * Class A stock * * * and * * * Class B stock." 12 U.S.C. 1426(a)(4)(A), *as amended.* The GLB Act also provides that the capital structure plan for each Bank "shall afford each member * * * the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Finance Board." *Id.*, 1426(c)(4)(A), *as amended.* Although the GLB Act gives the members the option to decide how to allocate their required investment if a Bank issues both Class A and Class B stock, that option applies only to whatever "classes of stock [are] authorized by the board of directors of the bank" and must be read in light of the other provisions that permit each Bank to issue "any 1 or more" classes of stock. The directive that the regulations must allow a Bank to issue "any 1 or more" class of stock clearly contemplates that a Bank may issue only a single class of stock. Provided that a Bank's board of directors were to determine that a single class structure would be in the best interest of the Bank and its members, such a stock structure would be legally permissible. Accordingly, the proposed rule would permit each Bank to issue either Class A stock or Class B stock, or to issue both Class A and Class B stock. Whatever classes the board of directors of a Bank authorizes, the capital plan must demonstrate that the classes of stock to be issued will result in the Bank having sufficient amounts of permanent capital (*i.e.*, the amounts paid-in for the Class B stock, plus retained earnings) to meet the regulatory risk-based capital requirement and sufficient amounts of total capital (*i.e.*, permanent capital plus the amounts paid-in for Class A stock, certain loss allowances, and other items capable of absorbing losses) to meet the regulatory total capital requirement. For example, if a Bank were to increase its retained earnings to an amount that would provide sufficient permanent capital to comply with the regulatory risk-based capital requirement it may not need to issue any Class B stock. Alternatively, if a Bank were to have only a minimal amount of retained earnings it may need to issue only Class B stock in order to have sufficient permanent capital to meet the regulatory risk-based capital requirement.

The proposed rule would define the essential characteristics of both Class A and Class B stock. As required by the GLB Act, Class A stock would be redeemable in cash at its par value on six-months written notice to the Bank. The Finance Board is proposing to require that the Class A stock have a par value of $100 per share and that it be issued at par value. Because the current capital stock of the Banks has a par value of $100 per share and is issued and redeemed at par, the Finance Board believes that establishing the same characteristics for the Class A stock would facilitate the transition to the new capital structure. The proposed rule also would require each Bank to specify in its capital plan a stated dividend for the Class A stock, which would have a priority over the payment of any dividends paid on Class B stock. The Finance Board anticipates that the stated dividend would be commensurate with the risks of holding an instrument that is putable to the issuer on six months notice. By definition, the Class B stock entails a greater risk to the member because its investment is committed to the Bank for at least five years. The Finance Board believes (and has been so advised by a financial consultant retained by the Banks) that members will demand some form of control over the affairs of the Bank in return for putting their capital at risk for five years. In that event, the members holding Class B stock likely would control the board of directors of the Bank, and thus would be in a position to determine the dividend to be paid on the Class A stock. The Finance Board has included the requirement that the Class A stock pay a stated dividend as a means of ensuring that the Class B stockholders would not be able to reduce or eliminate the dividend for the Class A stock, should they control the board of directors.

Certain of the essential characteristics of Class B stock would differ from those established for the Class A stock. As with the Class A stock (and as required by the GLB Act) the proposed rule would provide that the Class B stock must be redeemable in cash and at par value on five-years written notice to the Bank. The Class B stock would differ from the Class A stock with regard to its par value and its issuance price, which could be different from its par value. Allowing the Banks to set an issuance price above the par value of the Class B stock should result in a greater degree of permanence for the Class B stock that would be more in the nature of common stock. The proposed rule would not require a Bank to issue the Class B stock above par value, but simply would allow a Bank that option. A Bank could issue Class B at par if it wished to do so. The proposed rule also would

[4] 12 U.S.C. 1426(a) (1994). The minimum amount of Bank stock that each member was required to purchase had to be issued at par value. Any subsequent issuance could be at a price in excess of par value, but not less than par value. As a matter of practice, the stock of the Banks has been issued at par value.

provide that a fundamental characteristic of the Class B stock is that it would confer on the member an ownership interest in the retained earnings of the Bank upon acquisition of the stock. The GLB Act provides that the holders of the Class B stock shall own the retained earnings of each Bank, which is consistent with the attributes of permanent equity capital in a corporate setting.

Subclasses of Stock. The GLB Act requires the capital regulations to provide that a Bank may not issue stock other than as authorized by Section 6 of the Bank Act, and that the stock is to have "such rights, terms, and preferences * * * as the board of directors of that Bank may approve." Separately, the GLB Act requires the capital plan for each Bank to establish the "terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences for each class of stock issued by the bank." 12 U.S.C. 1426(a)(4)(A), (c)(4)(B), *as amended.* The Finance Board construes this language as authorizing a Bank to establish rights, terms, and preferences for Class A stock that differ from those established for the Class B stock. The Finance Board also believes that the authority to establish different rights, terms, or preferences for the stock should apply within a particular class of stock as well as between the two different classes. For example, the repeal of the requirement that all stock must be issued at par would allow a Bank to issue two types of Class B stock—one type that was issued at par and another that was issued above par. Although both types of stock would possess the minimum characteristics required for Class B stock, *i.e.*, they would be redeemable on five years written notice to the Bank, they would have been issued on materially different terms. The same rationale would apply if a Bank were to issue one type of Class B stock for which the dividend is to be determined based on the performance of a specific category of Bank assets and other Class B stock for which the dividend would be determined on the general profitability of the Bank. Because the board of directors of a Bank clearly has the authority to establish different rights, terms, and preferences for the Bank stock, the Finance Board believes it would be appropriate to allow a Bank to designate stock of the same class that possesses different rights as separate subclasses of that class.

Issuance of Capital Stock. The proposed rule would allow each Bank to determine whether to issue either Class A or Class B stock, or both Class A and Class B stock, and whether to issue any subclasses of stock. In accordance with the GLB Act, the proposed rule also would provide that a Bank may issue its capital stock only to its members, and may not issue any other types or classes of capital stock. The proposal would require a Bank to act as its own transfer agent, and to issue its capital stock only in book-entry form, which is consistent with the current practice at each of the Banks, and is intended to ensure that the stock is held only by members. The Finance Board is not aware of any business necessity that would require the Banks to issue stock certificates, especially given the limited universe of potential stockholders, and believes that certificates would only increase the possibility that third parties might acquire the stock. The Finance Board requests comments on whether there are any sound reasons why the Banks should be permitted to issue stock certificates to their members, and if so what safeguards would be appropriate.

In order to allow each Bank to determine the method of distribution that is best suited to its business requirements and to the needs of its members, the Finance Board is not proposing to prescribe the manner in which the Banks must conduct the initial issuance of the Class A and Class B stock. Instead, the proposed rule would require each Bank to determine the manner in which to issue its stock, and would require only that the method of distribution be fair and equitable to all eligible purchasers. The proposal would expressly allow the Banks to conduct the initial issuance through an exchange or conversion, but would not mandate either approach. Whatever method a Bank adopts for the initial stock issuance must be included in the Bank's capital plan, as set forth in § 933.2. Additionally, because a fundamental characteristic of Class B stock is that it confers on the member an ownership interest in the retained earnings of the Bank, the Finance Board is proposing to allow a Bank to distribute its then-existing unrestricted retained earnings as shares of Class B capital stock.

The Finance Board is further proposing to establish concentration limits that would preclude any one member, or group of affiliated members, from controlling the Bank. Thus, the proposed rule would provide that a Bank shall not issue stock to a member or group of affiliated members if it were to result in such member or group of affiliated members owning more than 40 percent of any class or subclass of its outstanding capital stock. Other provisions of the rule would bar a Bank from approving a transfer of stock that would result in a member or group of affiliated members owning more than 40 percent of any class or subclass of its stock. The proposed rule also would allow a Bank to include in its capital plan an ownership cap lower than 40 percent.

The investment by one Bank in the assets of another Bank, such as Acquired Member Assets, has been increasing in recent years. As these "joint assets" increase, capital issues under the new structure will exist. One such issue would be whether two or more Banks jointly managing assets through a participation agreement could jointly issue stock. Another issue would be whether two or more Banks jointly managing assets could pool their capital stock in order to meet the regulatory capital requirements. The Finance Board specifically requests comments on whether the Banks should be allowed to issue stock jointly or to pool stock to meet regulatory capital requirements for assets that are being jointly managed by two or more Banks.

B. *Voting rights.* Section 7 of the Bank Act addresses, among other things, the manner in which the members of each Bank elect directors and the manner in which the Finance Board allocates directorships among the states in each Bank district. The GLB Act did not expressly amend Section 7 as it relates to those issues, but it did include certain amendments to Section 6 that conflict with those provisions of Section 7. In the proposed rule, the Finance Board has attempted to strike a balance between the conflicting provisions of Sections 6 and 7, respectively, by giving full effect to the more recent amendments to Section 6, while preserving as much as possible the provisions of Section 7. The approach taken in the proposed rule represents one means of reconciling the competing provisions of Section 6 and Section 7. The Finance Board recognizes that there may be other approaches to balancing the requirements of these provisions and specifically requests public comment on how else the provisions might be harmonized, and how the proposed rule may affect the cooperative structure of the Bank System. The Finance Board also would like to know whether there are any other restrictions on voting rights or allocation of directorships that should be incorporated into the rule as mandatory requirements, or whether there are other restrictions or requirements that the Finance Board should encourage the Banks to include as part of their capital plans.

Since 1932, the Banks have been authorized to issue only one class of stock. Ownership of Bank stock has conferred on a member the right to participate in the election of directors. In 1961, Congress amended Section 7 of the Bank Act to provide that the number of votes each member may cast in an election of directors, and the manner in which the elected directorships are to be allocated among the states, would be determined on the basis of the subscription capital provisions of Section 6. Specifically, Section 7 was amended to provide that "each such member may cast * * * a number of votes equal to the number of shares of stock in [the Bank] required by this Act to be held by such member at the end of the calendar year next preceding the election".[5] At that time, Congress also amended Section 7 to require that the allocation of elected directorships, like the method for determining the number of votes, be determined based on the proportionate amounts of Bank stock "required to be held" by the members in each state as of the end of the preceding calendar year, subject to a "grandfather" provision that reflected the allocation of directorships as of December 31, 1960. *See* 12 U.S.C. 1427 (a)–(c) (1994).

The language in Section 7 regarding the amount of Bank stock "required to be held" by the members as of the preceding December 31st refers to the subscription capital provisions of Section 6, as in effect prior to the GLB Act. As described previously, the subscription capital provisions required each member to purchase an amount of Bank stock based on a statutory formula (*i.e.*, the greater of $500, 1.0 percent of mortgage assets, 0.3 percent of total assets, or 5.0 percent of advances) that was to be applied to each member as of December 31st of each year. By incorporating into Section 7 a principal component of Section 6—*i.e.*, the amount of Bank stock "required to be held" by each member as of the end of each year—the Congress in 1961 effectively linked the process of electing Bank directors to the subscription capital structure. In the GLB Act the Congress removed the subscription capital provisions from Section 6, but made no conforming amendments to Section 7. As a result, Section 7 of the Bank Act continues to require that the allocation of directorships and the determination of member votes be based solely on the subscription capital provisions, which will no longer exist when the new capital plans take effect. The Congress has provided no guidance on how, if at all, it intended the references to the subscription capital provisions within Section 7 to be applied in conjunction with the new risk-based capital provisions of Section 6.

The most apparent conflict between Section 7 and Section 6 (as amended) pertains to the number of votes each member may cast in an election of directors. Though Section 7 provides that the number of votes each member may cast shall equal the number of shares of Bank stock that the member is required to own, Section 6 expressly authorizes each Bank to establish voting preferences for its capital stock. As amended, Section 6 would authorize a Bank to assign voting rights exclusively to either its Class A or Class B stock, or to the Class A and Class B stock equally, or to both Class A and Class B but with a disproportionate weighting. The Finance Board believes that it is not possible to reconcile these provisions, as a Bank cannot establish a system of voting preferences (which, by definition, results in disparate voting rights for each class) while at the same time adhering to a requirement that all shares of its stock are to have uniform voting rights (subject only to the cap on members with large stockholdings).[6] In order to give effect to the GLB Act capital amendments that have authorized each Bank to establish voting preferences, the Finance Board is of the opinion that the provisions of Section 7(b) of the Bank Act that establish a "one share, one vote" structure must be considered to have been impliedly repealed by Section 6(c)(4)(B), as amended by the GLB Act.

In a similar fashion, there are conflicts between provisions of Section 7(b), (c), and (e), regarding the designation of directorships among the states, and Section 6, as amended by the GLB Act. The former provisions are premised on the assumption that the Banks are to be capitalized in accordance with a statutory formula, whereas the latter provisions require the Banks to be capitalized in relation to their risks. As described previously, Section 7 continues to require the Finance Board to designate the elected directorships of each Bank among the states in the approximate ratio of the Bank stock required to be held by the members in each state to the total stock outstanding, as of the end of the calendar year. The Finance Board cannot determine those ratios in the manner required by the literal language of Section 7, however, because under the new capital structure the members will no longer be required to maintain an investment in Bank stock in accordance with the statutory formula and as of December 31st of each year. The Finance Board has considered whether it would be feasible to calculate the Section 7 ratios for the allocation of directorships on the basis of Section 6, as it has been amended, but believes that doing so likely would create a host of uncertainties that are not addressed by the Bank Act and which the Finance Board would be required to resolve.

As amended by the GLB Act, Section 6 does refer to a "minimum investment" that each member must maintain in the stock of the Bank, but it does not specify what that term means, other than indicating that it may be based on a percentage of a member's assets or a percentage of its advances, or any other provision approved by the Finance Board. The Finance Board could define the term, but there likely are several ways in which to do so, none of which would be compelled by statute. However the term is to be defined, it would have to be correlated in some fashion to the risks to which the Bank is exposed, *i.e.*, it should not result in a Bank having too little or too much capital in relation to its risks. Thus, a bare formulaic definition of the term (as formerly included in the subscription capital provisions) likely would not be appropriate because it would have no relation to the risks to which the Banks are exposed.

As one possibility, the Finance Board could define "minimum investment" to mean an amount of Bank stock required to be held as a condition of membership in the Bank. That approach, however, would be complicated by the issuance of the two classes of Bank stock authorized by the GLB Act. The existence of two classes of stock means that for every state within a Bank district each member located in that state would hold a certain percentage of the Bank's Class A stock and a certain percentage of the Bank's Class B stock. Because the GLB Act gives each member the option of determining which class of stock to buy, it is likely that if a Bank issues both Class A and Class B stock there will be some members that purchase only one class of Bank stock and other members that purchase both

[5] Act of September 8, 1961, Pub. Law No. 87–211; *see*, 12 U.S.C. 1427(b) (1994). Although each share of Bank stock carried one vote, the Bank Act also limited the number of votes any one member could cast to the average number of shares of Bank stock "required to be held" by each member in that state as of the end of the preceding calendar year. That provision had the effect of partially disenfranchising any members that owned Bank stock in excess of the average stockholdings within that state.

[6] As a technical matter, members with large amounts of Bank stock cannot vote all of their shares of stock due to the cap based on the average holdings within each state. For those shares that can be voted, however, all votes count equally.

classes of stock but in varying combinations. As a result, for each state in a Bank district it is unlikely that the percentage of Class A stock held by the members located in that state will be identical to the percentage of Class B stock held by the members in that state. Indeed, it appears probable that the relative percentages of Class A and Class B stock held by the members in a particular state will differ, and may well differ substantially. Thus, it would be possible, and perhaps probable, that the Class A stock of a Bank may be concentrated in certain states while the Class B stock would be concentrated in other states within the Bank district. In that event, the Finance Board should be able to determine the ratio of Class A stock held by members in a given state, and separately should be able to determine the ratio of Class B stock held by the members in that state. It is not at all clear, however, how the Finance Board could apply those ratios to allocate the elected directorships in the manner required by Section 7, especially if there are material differences among the ratios for the various states in the Bank district. The possibility of having two different ratios would be further complicated by the provisions of the GLB Act that allow a Bank to set a lower minimum investment for the B stock than for the Class A stock. Thus, even if the Finance Board could readily calculate the ratios for the Class A and Class B stock, respectively, for each state, the ratio for the Class B stock most likely would have to be adjusted in some fashion.

As an alternative to viewing the term "minimum investment" as an investment required as a condition of membership, it could be defined in terms of the amount of Bank stock required to support the credit, market, and operations risks created for the Bank as a result of entering into business transactions (such as making advances, acquiring mortgage assets, or issuing letters of credit) with a member. Because all Bank assets entail some degree of risk, a member could be required to purchase Class A and Class B stock in whatever amounts are necessary to provide the total capital and permanent capital required to cover the risks associated with the assets created by its business transaction with the Bank. If the Finance Board were to define "minimum investment" on the basis of the risk placed on the balance sheet, such an approach would result in most members investing in both Class A and Class B stock. The relative amounts of each class of stock held by a member under such an approach would vary with the degree of risk associated with the underlying assets. Thus, one would expect that a member placing somewhat more risky assets on the balance sheet of the Bank would be required to purchase a correspondingly greater amount of Class B stock than a member creating the same amount of a less risky asset. Because the leverage requirement applies independently of risk, however, an equal amount of assets with different risk characteristics should require the same amount of Class A stock for leverage purposes. Thus, defining "minimum investment" in this manner also would be likely to result in the ratio of Class A stock held by the members in a particular state differing from the ratio of Class B stock held by the members in that state, which would present the same difficulties in calculating the individual state ratio described previously. Moreover, it is likely that the term "minimum investment" could not be defined solely on the basis of a member's transactions with the Bank because not all members will at all times be engaged in a business transaction with the Bank. For that reason, it is likely that a definition of "minimum investment" would have to incorporate both membership and risk aspects. If so, the Finance Board then would be faced with using as many as four different stock ratios for each state if it were to determine the allocation of directorships in accordance with the literal language of Section 7.

Apart from those definitional concerns, the Finance Board has a more general concern that requiring the allocation of elected directorships among the states, regardless of how it is done, could impair the ability of the Banks to sell Class B stock in amounts sufficient to comply with their risk-based capital requirements. If that were to occur, the adherence to the state-based allocation formula clearly would frustrate the intent of Congress in establishing a risk-based capital structure for the Banks. In requiring the Banks to have sufficient permanent capital to meet their risk-based capital requirements, the GLB Act has effectively mandated that the Banks, through sale or conversion, issue a significant amount of Class B stock.[7] In tension with this requirement is another provision of the GLB Act, which requires that each Bank's capital plan allow each member the option of determining what combination of classes of authorized Bank stock to purchase. In effect, the GLB Act requires the Banks to issue Class B stock but does not compel the members to purchase the Class B stock. The GLB Act does provide that each Bank is to establish the terms, rights, and preferences for each class of stock that are "consistent with Finance Board regulations and market requirements." That provision recognizes that if the purchase of Class B stock is to be voluntary, then the Banks must be authorized to establish terms for the Class B stock, such as voting and dividend preferences, that provide economic incentives for the members to purchase the Class B stock.

The paramount intent of Congress in revising the capital structure for the Banks was to ensure that the risks to which each Bank are exposed are supported by permanent capital, *i.e.*, Class B stock and retained earnings. Because Class B stock is the only practical source of permanent capital for the immediate future, the intent of the Congress cannot be implemented unless the Banks are able to sell Class B stock. To the extent that other provisions of the Bank Act might impair the ability of the Banks to do so, the application of those provisions would frustrate the intent of Congress in creating the new risk-based permanent capital structure. The Finance Board believes that requiring the allocation of the elected directorships of each Bank exclusively on a state-based formula would make the Class B stock a less attractive economic option for the members because there would be no assurance that the Class B stock would be distributed in the same proportion that the directorships would be allocated among the states.

Because of the difficulties in using a "minimum investment" as a proxy for the amount of stock "required to be held" as of each December 31st, and the likelihood that a state-based allocation of directorships would make the sale of Class B stock more difficult, the Finance Board has preliminarily determined that it cannot apply the provisions of Section 7 regarding the allocation of directorships without frustrating the intent of Congress to create a workable risk-based permanent capital structure

[7] Although a Bank may include its retained earnings as permanent capital, no Bank has sufficient retained earnings to comply with the risk based capital requirements at present or is likely to have sufficient retained earnings in the near future. Since the enactment of FIRREA in 1989, the Banks have maintained only nominal amounts of retained earnings. Moreover, in the six months since the enactment of the GLB Act, some Banks have paid out significant portions of their retained earnings to their members. As of March 31, 2000, the retained earnings of the Bank System were equal to 0.11 percent of the total assets of the Banks, and the amounts at the individual Banks ranged from 0.03 percent to 0.20 percent of total assets.

for the Banks. The Finance Board believes that there is no practical way to give simultaneous effect to one provision of law that would require the preservation of the subscription capital structure for the purpose of allocating directorships and voting rights and another provision of law that would repeal the subscription capital structure in its entirety. The Finance Board is proposing to resolve that conflict by giving precedence to the provisions of Section 6 of the Bank Act, as amended by the GLB Act, over those provisions of Section 7(b), (c), and (e) relating to voting and the allocation of directorships.[8] The Finance Board does not believe that any other provisions of Section 7 are inconsistent with Section 6, as amended. Thus, the other provisions of Section 7, such as those regarding the size of the board of directors (including both elected and appointed directors), the requirements applicable to individual directors, the terms of office, term limits, vacancies, compensation, duties, and indemnification, would not be affected by the application of Section 6, as amended.

In cases of conflicting statutory provisions, it is an ordinary rule of statutory construction that later-enacted provisions take precedence over older provisions, to the extent that the older provision is inconsistent with the later-enacted provision. See *Tennessee Gas Pipeline Co.* v. *Federal Energy Regulatory Comm'n*, 626, F.2d 1020, 1022 (D.C. Cir. 1980); *Estate of Flanigan* v. *Commissioner of Internal Revenue*, 743 F.2d 1526, 1532 (11th Cir. 1984). The Finance Board believes, as described above, that the provisions of Section 6 must take precedence over the provisions of Section 7 that relate to the allocation of directorships and voting. The U.S. Supreme Court has made clear, however, that it is also a "cardinal rule" of statutory construction that judicial findings of such implied repeals of statutory provisions are not favored. *Morton* v. *Mancari*, 417 U.S. 535, 549 (1974); *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936). The Court has explained that effect should be given to both provisions wherever possible and that absent a "clear and manifest" intention on the part of Congress to repeal a statutory provision, the only permissible justification for a repeal by implication is when the earlier and later statutes are "irreconcilable." Morton, 417 U.S. at 550–51; see *Georgia* v. *Pennsylvania RR Co.*, 324 U.S. 439, 456–57; *FAIC Securities* v. *United States*, 768 F.2d 352, 362 (D.C. Cir. 1985); *United Ass'n of Journeymen and Apprentices* v. *Thornburgh*, 768 F. Supp. 375, 379–80 (D.D.C. 1991).

In determining whether an "irreconcilable" conflict exists between statutory provisions, a court will first look to the plain language of the statutes. See *Flanigan*, 743 F.2d at 1532 (finding that two provisions of the Internal Revenue Code were, on their face, plainly irreconcilable). Only when the language of two provisions leaves the court in doubt as to whether they represent truly irreconcilable intentions will a court resort to any legislative history that may be pertinent to the issue. See *Demby* v. *Schweiker*, 671 F.2d 507, 510 (D.C. Cir. 1981) (wherein the court resorted to the legislative history of the newer act in finding that the provisions in question were not irreconcilable).

An administrative agency charged with the implementation of a particular statute may implement an administrative resolution of two conflicting provisions in that statute through a proper APA notice-and-comment rulemaking. *Citizens to Save Spencer County* v. *Environmental Protection Agency*, 600 F.2d 844, 875–78 (D.C. Cir. 1979). In undertaking such a rulemaking, an agency should determine, based on the plain language of the provisions and, if necessary, on the legislative history of the statutes, that the provisions are irreconcilable. *Id.* at 863–68. The agency should then consider the statute as a whole and the purposes of the provisions in question in order to fashion a solution that avoids unnecessary hardship or surprise to affected parties and remains within the general bounds of the statute in question. *Id.* at 870–71. The Finance Board believes that the provisions of Sections 6 and 7 of the Bank Act described above are in conflict and is proposing through this rulemaking to give precedence to the capital provisions of Section 6. The legislative history of the GLB Act does not address the interrelationship between Section 6 and Section 7, though the language of the statute and the legislative history do suggest strongly that the creation of a sound system of permanent capital was of paramount concern to the Congress in amending Section 6. The proposed rule has been structured to give effect to Section 7 to the greatest degree possible, and would not preclude a Bank from establishing a state-based structure if it believed that approach would be consistent with capitalizing the Bank in the manner required by the GLB Act.

The proposed rule would require that the capital plan for each Bank specify the manner in which the members are to elect directors and the other corporate matters, if any, on which the members will be entitled to vote. The capital plan also must describe the voting preferences, if any, to be assigned to any particular class or subclass of stock, and whether the Bank will permit cumulative voting by its members and, if so, the matters on which members may vote cumulatively.

If a Bank were to issue any Class B stock, the proposed rule would require that the Bank assign some voting rights to the Class B stock. The proposed rule would not specify what voting rights should be assigned to the Class B stock, and thus would allow each Bank to determine whether the Class B stock would have exclusive voting power or shared voting power. If a Bank were to issue Class B stock, the proposed rule would allow the Bank, in its discretion, also to assign some voting rights to the Class A stock, and would allow some voting rights to be assigned to the members generally, *i.e.*, without regard to the amount or class of Bank stock that each member owns. Within each class or subclass of stock, however, the proposed rule would require that all shares have equal voting rights, although a Bank could give preferences to one or more classes. Thus, all Class B stock would vote equally, although a Bank could authorize the Class B members to elect a majority of the elected directors by giving Class B a preference over the Class A stock. As suggested to the Finance Board by an independent consultant retained by the Banks to study the GLB Act capital issues, a Bank may find that such preferences are necessary in order to sell the Class B stock because it bears more of the risks than does the Class A stock.

As a means of preventing undue concentration of voting power within a

[8] Puerto Rico presents a unique situation of a prior Finance Board establishment of a directorship, which has been made permanent by statute. In 1962, Congress amended Section 7(e) to authorize the Finance Board to establish an additional elected directorship for the Bank in which the Commonwealth of Puerto Rico was located, which directorship was required to be designated to Puerto Rico. The Finance Board exercised that authority, creating an additional elected directorship for the New York Bank, which it designated as representing the members located in Puerto Rico. Although the designation of that seat to Puerto Rico is inconsistent with the risk-based capital amendments to Section 6, for the same reasons that the other state-based designations are inconsistent with Section 6, the preservation of the additional directorship can be reconciled with Section 6, as amended. Accordingly, the New York Bank would continue to have an additional elected directorship pursuant to Section 7(e), and the proposed rule would allow the Bank to accommodate the representation of members located in Puerto Rico as part of its capital plan. As provided in Section 7(e), if the Finance Board ever were to relocate the Commonwealth of Puerto Rico to another Bank district, the additional elected directorship created by Section 7(e) would cease to exist.

small number of members, the proposed rule would cap the number of votes any member (including affiliated members) may cast in an election at 20 percent of the votes eligible to be cast in that election. The Finance Board recognizes that in some Bank districts a member with less than 20 percent of the vote may be able to control the Bank and therefore is proposing to allow any Bank to establish a lower percentage as part of its capital plan.

As noted above, in order to ensure that the new capital structure is workable and the Banks are able to sell the Class B stock, the proposed rule would state expressly that the elected directorships for a Bank need not be allocated among the states on the basis of the amount of stock required to be held under the now-repealed subscription capital requirements, and that the number of votes for each member also need not be based on the amount of stock each member was required to hold as of the end of the prior year. Notwithstanding that provision the proposed rule would not preclude a Bank from allocating voting rights among its members on a state-by-state basis, provided such an allocation were approved as part of the Bank's capital plan. A Bank also could adopt any other reasonable method of electing directors, such as authorizing each class of stock to elect a specified number of directors, or allocating the directors among the members based on the asset size of the members. The proposed rule also would require that each Bank include in its capital plan, to the extent feasible, a provision for the representation of small members that own Class B stock, particularly members that are community financial institutions (CFI), as that term is defined by the GLB Act.

Although the proposed rule includes provisions addressing concentration of stock ownership, limits on voting rights, and representation of CFIs on the boards of directors, the Finance Board is especially interested in receiving comments on these issues and whether there may be other ways to address each of them. The approach taken in the proposed rule regarding voting would allow each Bank to determine the manner in which the members are to elect directors, which recognizes that the board of each Bank may be best suited to determining how to balance the interests of its members against the need to raise the capital required by the GLB Act. Notwithstanding the approach embodied in the proposed rule, the Finance Board requests public comments on whether there might be a need to include some limitations in the rule such that it does not have any untoward consequences for the cooperative structure of the Bank System.

On the issue of board composition, the Finance Board would like to receive comments on whether the rule should include a provision requiring certain types of members, such as CFIs, to be represented on the boards of the Banks. As proposed, the rule would require the Banks to ensure that small members, specifically including CFIs, that own Class B stock be represented on the board, to the extent it is feasible to do so. The Finance Board would like to know whether this type of requirement should be made mandatory on the Banks, such that some number of the elected directorships should be assigned permanently to the CFIs within that district. The Finance Board also would like to receive comments on whether the rule should mandate some form of state-based representation on the boards of the Banks. With the removal of barriers to interstate banking, it is less clear what purpose is served by retaining a state-based board of directors, especially when there is no requirement that the members within a particular state hold any Class B stock. The Finance Board requests that any comments advocating a requirement for state-based representation address the details of how that should be accomplished, especially in light of the varying number of states in each Bank district, which range from two to eight, and the cooperative structure of the Bank System. The Finance Board also would like to know whether it would be advantageous to increase the size of the boards of directors to accommodate the representation of small members, which the Finance Board can do in the five Bank districts that include five or more states, and if so, what actions might be appropriate in the other seven Bank districts, for which the Finance Board cannot increase the number of directors on the boards.

One issue on which the Finance Board would like to receive comment is whether the rule should allow a Bank to include advisory directors on its board, *i.e.*, directors who are not elected by the members and who do not vote on board matters, but who may participate in the deliberations of the full board of directors. Advisory directors are neither expressly authorized nor expressly prohibited by the Bank Act, but the Finance Board believes that it could authorize such directors, provided that the management of the Bank (*i.e.*, the ability to vote) remained vested exclusively in the elected and appointed directors. Although an advisory director could not vote on matters before the board of the Bank, the Finance Board believes that there may be some value to the Bank in having such individuals on the board, as they could present the views of members who might not otherwise have a voice at the meetings of the boards of directors. For example, if the members were to elect directors predominantly from certain states or from certain sized institutions, the board could appoint advisory directors from states or classes of members that were not otherwise represented. The proposed rule does not include any provisions regarding advisory directors, but the Finance Board would appreciate comments on whether such directorships, or other advisory panels, might be appropriate to address in the final rule.

The proposed rule would bar any member or affiliated members from owning more than 40 percent of any class of Bank stock and would bar any member or affiliated members from casting more than 20 percent of the eligible votes in any election. Although the proposed rule would allow each Bank to establish lower limits as part of its capital plan, the Finance Board requests comments on whether the percentages used in the proposal are appropriate or whether the Finance Board should adopt some other percentages as a means of preserving the cooperative structure of the Bank System.

With regard to voting rights, the proposed rule would require that the Class B stockholders be assigned some voting rights, but would leave to each individual Bank the responsibility to decide exactly what voting rights the Class B stock shall be assigned. The rule expressly allows a Bank to assign voting rights as well to the Class A stockholders and further allows a Bank to assign voting rights on the basis of membership, *i.e.*, without regard to what class or how much stock a particular member owns. The Finance Board would like to receive comments on whether those matters that are at present left to the discretion of the Banks should be included in the rule as a mandatory requirement, *i.e.*, whether the Banks should be required to assign some portion of the voting rights on a one-member one-vote basis, or should otherwise require that the members generally be allowed to elect some number of directors. Similarly, the Finance Board requests comments on whether some number of directorships or some proportion of the vote should be assigned by regulation to the Class A stockholders.

With regard to all such issues, the Finance Board requests that commenters elaborate on how any alternative voting arrangements recommended by the commenters would work in conjunction with Section 6 and how they would facilitate, or at least not impair, the ability of the Banks to raise the permanent and total capital required by the GLB Act. If the Finance Board ultimately adopts a final rule addressing the voting rights and directorship structure generally as proposed, the final rule also would include conforming amendments to certain provisions of the current election rules, 12 CFR Part 915. Those rules address matters such as the allocation of directorships, the annual capital stock report, the determination of member votes, and the election process. If the final rule authorizes each Bank to determine the manner of electing directors, several of the existing regulations in Part 915 would have to be rescinded or revised, to the extent that they are based on the subscription capital provisions incorporated in Section 7. Assuming that the final rule were to address voting rights and the allocation of directorships in the manner proposed, the Finance Board requests comment on what conforming amendments to the existing elections regulations would be appropriate.

C. *Dividends.* Under the proposed rule, any member, including those withdrawing from the Bank System, that owns Class A or Class B stock, or both, would be entitled to receive dividends declared on its stock for as long as it owned the stock. The Class A stock would be required to pay a stated dividend, and the capital plan would specify the basis on which the stated dividend would be calculated. Any Bank wishing to change the basis on which the stated Class A dividend is calculated would be required to amend its capital plan and submit the amendment to the Finance Board for approval. Payment of the stated dividend on the Class A stock would have priority over the payment of dividends on Class B stock. By providing Class A stockholders a dividend priority, the Finance Board intends to preclude the possible manipulation of the Class A dividend by and for the benefit of Class B shareholders, who are likely to have greater influence on the Bank's dividend policies than Class A stockholders. After a Bank pays its stated Class A dividend, the board of directors of a Bank may augment the stated dividend. This additional payment may be paid, at the discretion of the Bank's board of directors, before, concurrently with, or after payment of dividends on paid-in Class B stock. Along with specifying the basis on which the stated dividend would be calculated, a Bank's board of directors would have to determine, prior to issuance of the stock, whether such dividends are to be cumulative or non-cumulative.

Under the proposed rule, the Bank's board of directors could authorize the payment of a dividend to Class B stockholders and would determine the amount of the dividend to be paid. The board of directors would also be able to establish different dividend rates or preferences for different subclasses of Class B stock. A dividend established for a different subclass could, for example, track the performance of specific Bank assets, such as Acquired Member Assets or advances. Any dividend that tracks the performance of a Bank asset, however, must be proportionately appropriate for the level of risk and profitability associated with the underlying asset. For example, the lower the risk and profitability of an asset, the lower the dividend payment should be.

The payment of any Class B dividends would only be permitted after the payment of the stated Class A dividend. Any dividends to Class B stockholders must be payable from GAAP net earnings of the Bank plus the GAAP retained earnings of the Bank (after the payment of Class A dividends). GAAP net earnings are the net earnings of the Bank after the payment of the Resolution Funding Corporation (RefCorp) and Affordable Housing Program obligations. Any dividends on Class B stock would be non-cumulative. Cumulative dividends on Class B stock would not be necessary because the board of directors would set the dividend rate anew each year and could, therefore, effectively treat dividends as cumulative, but only if there were sufficient earnings to do so.

D. *Preferences on Liquidation, Merger, or Consolidation.* Under the proposed rule, in the event of a liquidation, merger, or other consolidation of a Bank, Class A stockholders would be entitled to receive the par value of their stock, plus any accumulated dividends. Class A stockholders would be paid before the Bank (or its successor) could redeem any Class B stock or pay dividends on the outstanding Class B stock that had been issued by the Bank that had been liquidated, merged, or consolidated. The preference given to Class A stockholders in such cases is consistent with the priority given to the payment of the stated dividend to Class A stockholders and with the role of Class B stock as bearing the greater risk.

E. *Transfer of Capital Stock.* As required by the GLB Act, the proposed rule would allow a member to transfer capital stock only to another member of the Bank or to an institution that is in the process of becoming a member. The Finance Board considers the transfer of stock to an institution in the process of becoming a member as an opportunity to minimize the likelihood of a Bank becoming overcapitalized. Any such transfer of stock would be at a price agreed to by the parties, and could be below, at, or above the par value of the stock.

Additionally, the proposed rule would prohibit a Bank from allowing the transfer of Bank stock to a member or group of affiliated members if, after the transfer, the member or group of affiliated members would own more than 40 percent of any class or subclass of capital stock. The proposed rule also would allow a Bank, through its capital plan, to establish an ownership cap lower than 40 percent. The ownership cap is intended to preclude the possibility that a single member or group of affiliated members could control a Bank. If a merger, acquisition, or other consolidation of two or more members of a Bank were to result in the surviving member holding more than 40 percent of any class of stock, or any lower cap set by the Bank, the Bank and member(s) would be required to agree to a plan for the member to divest any stock in excess of the ownership cap in an orderly manner. The Finance Board requests comments on how else the concentration limits might be applied in the case of a merger of members, as well as on how to apply such limits if a member were to exceed the limits as a result of actions taken by a third party, such as the withdrawal of a large member that causes the percentages of all other members to increase.

F. *Membership Investment in Capital Stock.* The GLB Act requires each member to maintain an investment in its Bank. Under the proposed rule, a Bank may require an institution to invest in Class A stock as a condition to becoming and remaining a member of the Bank, or a Bank may establish a membership fee to be assessed in lieu of mandatory stock investment. As noted below, after a Bank reaches its operating capital ratios it could no longer continue to require any additional membership investments, though it would be able to continue to assess annual membership fees. If a Bank were to require a membership investment in Class A stock, the Bank also must provide the member the option of

investing in a lesser proportional amount of Class B stock, which amount would be as determined by the Bank. For example, a lesser proportional amount of Class B stock could be calculated by multiplying the amount of Class A stock otherwise required for membership by a Bank-determined percentage.

If a Bank were at or above its operating total capital ratio and its operating risk-based capital ratio, the proposed rule would provide that the Bank could not require a member to purchase capital stock, but it still could require a member to pay an annual membership fee in lieu of the mandatory stock purchase. Because the amounts paid as membership fees do not constitute total capital or permanent capital under the GLB Act, the proposed rule would not preclude a Bank from assessing an annual membership fee after it has reached or exceeded its operating capital ratios. Both of these provisions have been included in the proposed rule in an effort to avoid a Bank becoming over-capitalized. The Finance Board believes that allowing a Bank to accumulate excessive amounts of capital, *i.e.*, amounts of capital beyond what is required to support the risks inherent in the business of the Bank, plus the marginal amount of additional capital carried as a result of the Bank's operating total capital and risk-based capital ratios, would lead to increased arbitrage investments, which the Congress clearly intended to address as part of the GLB Act capital restructuring. The Finance Board would allow the Banks to operate at higher capital ratios than are required by the GLB Act and this regulation, *i.e.*, higher percentages of total and permanent capital, which the Finance Board does not believe would lead to increased arbitrage investments. Also, by providing the Bank with various options to offer its members, the Finance Board believes members would have the flexibility necessary to accommodate the membership investment requirement that is required by the GLB Act.

G. *Activity-Based Stock Purchase Requirement.* The proposed rule provides that a Bank may require a member to purchase either or both Class A or Class B stock as a condition to entering into a specific business transaction with the Bank. Such an activity-based stock purchase requirement would not be inconsistent with other provisions of the GLB Act, which provide generally that a member shall have the option of purchasing either Class A or Class B stock. Any business transaction between a Bank and a member, such as an advance, is a voluntary transaction initiated by the member that results in an asset being placed on the books of the Bank. Under the risk-based capital provisions of the GLB Act and the proposed rule, every on-balance sheet asset and off-balance sheet item of a Bank must be supported by some amount of permanent capital to cover the credit, market, and operations risks associated with the asset or item. Ultimately, whatever amount of permanent capital is required by each Bank to meet its regulatory risk-based capital ratio and its operating risk-based capital ratio must be provided by the members; if a Bank lacks sufficient capital to engage in a particular transaction, it cannot enter into the transaction. If the provision of the GLB Act allowing each member the option of purchasing either Class A or Class B stock were read to allow each member to decline to purchase any Class B stock, the Banks would be unable to engage in any transactions with their members beyond the amount that could be supported by their retained earnings, the only other source of permanent capital. There is nothing in the GLB Act or its legislative history that suggests that the provision allowing members the option of purchasing Class A or Class B stock was intended to override the other provisions of the GLB Act that require every asset and off-balance sheet item to be supported, at least in part, by some amount of permanent capital. As noted above, the provisions of this proposed rule regarding each member to maintain some investment in the Bank preserves for the members the option of maintaining that investment in either Class A or Class B stock. To ensure that the Banks have sufficient permanent and total capital to cover the risks of their business, the proposed rule would authorize a Bank to require a member, as a condition to doing business with the Bank, to purchase whatever amount of Class A and Class B stock is necessary for the Bank to comply with the regulatory capital requirements (and operating capital ratios) that would be associated with the Bank asset (or off-balance sheet item) to be generated by the transaction with the member. If a member would prefer not to purchase any Class B stock, it would not be required to do so, but the Bank would not be required to make an advance or enter into any other transaction with a member that declined to provide the capital needed for the business it wished to conduct with the Bank.

The activity-based stock purchase requirement also should provide the Banks with some additional flexibility in managing their capital accounts, such that the levels of capital correspond more closely to the risks generated by the business of the Bank. The proposed rule would impose certain limitations on activity-based stock purchases. First, the amount of Class B stock that a member may be required to purchase in order to engage in a certain transaction must be based on the risk characteristics of the asset being acquired by the Bank. Second, a Bank could not require a member entering into a transaction to purchase Class B stock if the amount of the purchase would cause the Bank to exceed its operating total capital ratio and operating risk-based capital ratio, as established in the Bank's capital plan. Although a Bank could not impose an activity-based stock purchase requirement if doing so would cause it to exceed its operating capital ratios, the proposed rule would allow a Bank to enter into a written agreement with a member under which the member would commit to purchase a specific number of shares of Class A or Class B stock at a specified price, but with the purchase to be completed and all payments made at a future date to be determined by the Bank. Any such arrangement would have to be included in the Bank's approved capital plan. Under such an arrangement, if a Bank were to fall below its operating capital ratios it could require the members to honor their commitment to provide the capital that otherwise would have been required at the time they entered into the commitments. These provisions are intended to prevent the Banks from building excessive amounts of capital, which the Finance Board believes would lead to arbitrage investments.

Additionally, the proposed rule would bar a Bank from prohibiting a member that had purchased capital stock in compliance with an activity-based purchase requirement from selling the stock to another member. The members would remain subject to the other provisions of the rule, under which no member may redeem any capital stock if doing so would cause the Bank to fail to comply with any regulatory capital requirement.

H. *Concentration limits.* Under the proposed rule, no member, or group of affiliated members, of a Bank would be permitted to own more than 40 percent of any class or subclass of the outstanding capital stock of the Bank. A Bank would be able, through its capital plan, to establish an ownership cap lower than 40 percent. If at a given time, a member, or group of affiliated members, of a Bank were to acquire stock such that they owned more than 40 percent of any class or subclass of

stock (or any lower amount as established by the Bank) the Bank and member (including any affiliated members) would be required to agree to a plan under which the member would divest sufficient shares of such stock as necessary to comply with the limit. The Finance Board requests comment on the need to include concentration limits in the rule and what percentage limits might be most appropriate to ensure that the Bank cannot be dominated by a small number of members.

I. *Redemption and Purchase of Capital Stock.* As required by the GLB Act, a member may redeem its Class A stock with six-months written notice to the Bank. Class B stock may be redeemed with five-years written notice to the Bank. At the end of the notice periods, a member would be entitled to receive the par value of the stock in cash. The proposed rule would bar a member from having pending at any one time more than one notice of redemption for any class of Bank stock. For example, a member may have pending a notice to redeem 50 shares of Class A stock, as well as a notice to redeem 50 shares of Class B stock. A member, however, could not have two separate notices to redeem only Class B (or only Class A) stock. A Bank would be permitted to impose a fee, as specified in its capital plan, on a member that cancels a pending notice of redemption. The imposition of a fee would be at the discretion of a Bank, as specified in its capital plan. The Finance Board is proposing the option of establishing a fee in order to minimize a Bank's cost associated with canceling a notice of redemption.

J. *Capital Impairment.* Under the proposed rule, the Bank would not be permitted to redeem or purchase any capital stock without prior written approval from the Finance Board if the Bank were not in compliance with any of its regulatory capital requirements. The Bank would also not be permitted to redeem or purchase any capital stock without prior written approval from the Finance Board if such a redemption or purchase of stock would cause the Bank to fail to comply with any of its regulatory capital requirements. These provisions reflect the requirement of the GLB Act that the Bank shall maintain both total and permanent capital that is sufficient to meet its regulatory capital requirements.

K. *Part 932—Federal Home Loan Bank Capital Requirements.*

Overview. As discussed previously, the Banks' current capital requirements have been determined according to a statutory formula, which has used either the assets held by a member or the amount of the member's borrowings from a Bank to determine the amount of Bank stock that the member must hold. 12 U.S.C. 1426(b)(1), (b)(2), and (b)(4); 1430(c), (e)(1), and (e)(3) (1994). The capital provisions of the GLB Act replace this approach with a modern risk-based capital system for the Banks and mandate a capital structure that is more in line with the risk-based capital standards developed under the Basle Accord and with the practices of other bank regulatory agencies.[9] Under the GLB Act amendments, the Banks would be allowed greater flexibility to set their own risk tolerances, subject to the requirement that they hold sufficient capital to support the risks they choose to accept. The Finance Board is proposing to implement the capital provisions of the GLB Act by adopting a modern approach to overseeing the Banks, which would require the Banks to implement regulatory capital requirements as part of a comprehensive risk management system. In developing the proposed regulations, the Finance Board has reviewed the Basle Accord, the regulations of other banking regulators, the OFHEO proposed capital regulations,[10] and other papers drafted by the BCBS and other bodies.

The capital requirements of proposed Part 932 also would replace the risk management provisions of the Finance Board's Financial Management Policy (FMP) under which the Banks currently operate. The FMP imposes specific restrictions and limitations on the Banks' investment practices and includes a leverage limit to regulate the risk management practices of the Banks. Finance Board Res. No. 96–45 (July 3, 1996), *as amended by* Finance Board Res. No. 96–90 (Dec. 6, 1996), Finance Board Res. No. 97–05 (Jan. 14, 1997), Finance Board Res. No. 97–86 (Dec. 17, 1997) and 65 FR 36305 (June 7, 2000). Although the FMP has served the purpose of ensuring the safety and soundness of the Bank System, it lacks sufficient flexibility to enable the Banks to fulfill their mission to the maximum extent possible.

The Basle Accord forms the basis for risk-based capital standards for banks in the world's industrialized countries. Its approach principally involves a standardized system of risk weights, under which the book value of an on-balance sheet asset is assigned a particular risk weight based on the relative level of credit risk associated with that category of asset. The same method is used with respect to off-balance sheet items, which are converted to credit equivalent amounts and assigned to the appropriate risk weight category. The risk weight categories range from zero percent, for items such as cash and U.S. Treasury obligations, to 100 percent, which includes claims on private obligors. The Basle Accord credit risk capital regime is based on an 8 percent benchma k, *i.e.*, an institution must maintain total capital in an amount equal to 8 percent of the book value of any asset that is in the 100 percent risk weight category.

The Finance Board, and other commentators, believe that the Basle Accord has a number of shortcomings. For example, the risk weight categories are so broad that instruments with markedly different credit risks may be subject to the same risk weighting. The Basle Accord also does not take into consideration how differences in the maturities between two instruments within the same category would affect their relative credit risk, nor does it distinguish between immediate exposure and possible future credit exposures, or between the credit risks associated with a diversified portfolio compared to those associated with a concentrated portfolio.

The January 1996 amendment to the Basle Accord (the Amendment) remedies some of these shortcomings, especially with respect to debt instruments held in the trading portfolios of large banks.[11] The Amendment offers large banks the

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[9] The risk-based capital standards of the other federal bank regulatory agencies are based on the document entitled "International Convergence of Capital Measurement and Capital Standards" (July 1988) (the Basle Accord). The Basle Accord was agreed to by the Basle Committee on Banking Supervision (BCBS) which comprises representatives of the central banks and supervisory authorities of the Group of Ten countries (Belgium, Canada, France, Germany Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom, United States and Luxembourg). The BCBS meets at the Bank for International Settlements, Basle, Switzerland.

[10] On April 13, 1999, OFHEO published a notice of proposed rule-making with respect to the required risk-based capital standards. *See* 64 FR 18083 (Apr. 13, 1999). The original deadline for comments on this proposal was August 11, 1999, but that deadline was extended. The comment period ultimately closed on March 10, 2000. *See* 64 FR 56274 (Oct. 19, 1999). On March 13, 2000, OFHEO solicited reply comments in response to the comments received on the proposed rule. *See* 65 FR 13251 (Mar. 13, 2000). The deadline for these reply comments was April 14, 2000.

[11] The Amendment, entitled "Amendment to the Capital Accord to Incorporate Market Risks," sets specific risk-based capital standards for instruments held in trading portfolios of commercial banks. For debt instruments, the specific risk is defined by the Amendment as credit and event risk. In addition, the Amendment incorporates a measure of the market risk due to interest rates, foreign exchange rates, equity prices and commodity prices for all instruments held in trading portfolio (trading book); and foreign exchange and commodity risks for instruments held in non-trading portfolio (banking book).

alternative either to use internal credit risk models to calculate value at risk due to credit risk on debt instruments held in its trading portfolio, or, if the bank lacks satisfactory internal models, to use standardized credit risk capital percentage requirements specified in the Amendment.

In order to address some shortcomings of the Basle Accord with respect to the non-trading portfolio, *i.e.*, the banking book, the BCBS published in June 1999 a consultative paper entitled "A New Capital Adequacy Framework" (the Framework), which proposed a system to better correlate regulatory solvency with the economic-capital needs of a bank and with the risks and returns of a bank's lending activities.[12] The Framework would calibrate a bank's risk-based capital requirements more closely with its underlying credit risks, and would recognize the improvements in risk measurement and control that have occurred in recent years. The Framework would also allow for the use of internal credit ratings and credit risk models to better assess a bank's capital requirement in relation to its risk profile.

General Capital Requirements. Section 6(a)(1) of the Bank Act, 12 U.S.C. 1426(a), *as amended*, requires that each Bank maintain a minimum ratio of total capital to total assets and that each Bank maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to cover the credit risk and market risk to which a Bank is subject. 12 U.S.C. 1426(a)(1), (3), *as amended*.

The GLB Act defines "permanent capital" as the amounts paid for a Bank's Class B stock, plus the Bank's retained earnings (as determined in accordance with GAAP). 12 U.S.C. 1426(a)(5)(A), *as amended*. The term "total capital" includes permanent capital, the amounts paid for Class A stock, any general allowance for losses that are not held against specific assets (determined in accordance with GAAP and Finance Board regulations), and any other amounts available to absorb losses that the Finance Board determines by regulation to be appropriate to be included in total capital. 12 U.S.C. 1426(a)(5)(B), *as amended*.

The definitions for "permanent capital" and "total capital" proposed in § 930.1 conform with the statutory definitions. Proposed § 930.1 also defines the term "general allowance for losses" to require that such allowances be consistent with GAAP and not include any amounts held against specific assets of the Bank. The restrictions would be the same as the statutory restrictions placed on loan loss reserves.

Capital requirement transition provisions. The proposed rule would require that by a date not later than three years from the effective date of the its capital plan, each Bank shall have sufficient total capital to meet the total capital requirement in proposed § 932.2 and sufficient permanent capital to meet the risk-based capital requirement in proposed § 932.3. Before the new total capital and risk-based capital requirements could be implemented, however, each Bank must first obtain Finance Board approval for its internal risk model or its cash flow model, which would be used to calculate the market risk component of its risk-based capital requirement, and for the risk assessment procedures and controls that would be used to manage the Bank's credit, market, and operations risks.

The capital rule would not supercede the risk management provisions of the FMP until after the Finance Board has approved the models and procedures, discussed above, for each Bank and the Bank has met its regulatory capital requirements. Thus, each Bank would continue to be governed by the Hedging Transaction Guidelines and the Interest Rate Risk guidelines of the FMP until those conditions are met. *See* FMP Sections V and VII. The provisions of the FMP that limit the purchase of mortgage-backed securities (MBS), collateralized mortgage obligations (CMOs), real estate mortgage investment conduits (REMICs), and eligible asset-backed securities to 300 percent of capital, Section II.C.2, also would remain in effect until the Bank had met the proposed regulatory capital requirements.

The proposed rule also would mandate that the minimum stock purchase and stock retention requirements of the Bank Act in effect immediately prior to the GLB amendments would remain in effect until the Bank has issued capital stock in accordance with its approved capital plan. (See discussion of proposed Part 933.) This provision is consistent with the GLB Act requirement that the pre-GLB Act stock purchase and stock retention requirements shall continue in effect until the capital plan of a Bank has been approved and implemented. 12 U.S.C. 1426(a)(6), *as amended*. Under the proposed rule, the new capital structure for each Bank would take effect (subject to any transition provision) once a Bank has issued its Class A or Class B capital stock. Any other Finance Board regulations that may affect stock purchase or retention would also apply.[13]

Total capital requirement. The GLB Act requires each Bank to maintain a ratio of total capital to total assets of no less than four percent. 12 U.S.C. 1426(a)(2), *as amended*. The statute also requires each Bank to maintain a leverage ratio of total capital to total assets of five percent, where in calculating this ratio, the amounts paid in for the class B stock and the amounts of retained earnings are multiplied by 1.5 and all other items of total capital are included at face value. *Id.* Section 932.2 of the proposed rule would implement these statutory provisions.

Risk-based capital requirement. The GLB Act requires each Bank to maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to cover the credit risk and market risk to which a Bank is subject. 12 U.S.C. 1426(a)(1), (3), *as amended*. Section 932.3 of the proposed rule would require each Bank to maintain sufficient permanent capital to meet the combined credit, market, and operations risks to which it is subject, as determined under proposed § 932.4, § 932.5, and § 932.6, respectively.

Although the GLB Act does not address operations risk, the Finance Board is proposing to adopt an operations risk component to the risk-based capital requirements in order to assure that the Banks "operate in a financially safe and sound manner" and "remain adequately capitalized." 12 U.S.C. 1422a(a)(3)(A), (B), *as amended*. The Finance Board believes that the risk of loss from business operations exists with regard to the Banks and that it is necessary to require the Banks to maintain capital against that risk. Under the new credit and market risk capital provisions in the GLB Act, the amount

[12] *New Basle Committee Proposals Have Positive Bank Credit Implications*, Moody's Credit Perspectives, June 21, 1999, at 1, 18.

[13] The Finance Board recently approved a final rule that, among other things, established an asset-based leverage limit under which the aggregate amount of assets of any Bank shall not exceed 21 times the total of paid-in capital stock, retained earnings and reserves (or a capital to assets ratio of at least 4.76 percent). The rule also extended and made permanent the additional leverage authority originally permitted to the Banks for Year 2000 liquidity, *i.e.*, a Bank may have asset-based leverage of up to 25 to 1 (or a capital to assets ratio of at least 4.0 percent) if that Bank's ratio of non-mortgage assets does not exceed 11 percent of the Bank's total assets minus deposits and capital. *See* 65 FR 36290, 36299 (June 7, 2000). Non-mortgage assets equal total assets after deduction of core mission activity assets, as defined in proposed § 940.3, and assets described in sections II.B.8 though II.B.11 of the FMP. *See* 65 FR 25676, 25688 (May 3, 2000). This 25 to 1 limit is in line with the requirements of the GLB Act.

of capital held by the Banks will be closely aligned to the expected losses associated with those risks, and is not meant to cover the unexpected losses that may result from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems or other operations risks. Without an operations risk requirement, the proposed rule would be deficient and the Banks could be exposed to losses arising from these operational failures. Thus, the Finance Board considers the operations risk requirement necessary to ensuring the continued safe and sound operation of the Bank system.

Credit Risk Capital Requirement. The GLB Act mandates that each Bank maintain sufficient permanent capital, as determined in accordance with Finance Board regulations, to meet the credit risk to which the Bank is subject. 12 U.S.C. § 6(a)(3)(A)(i), *as amended.* The GLB Act, however, does not specify the elements that make up credit risk or the charges that must be applied to cover such risk, leaving to the Finance Board the responsibility to define the elements of credit risk.

Proposed § 932.4 would implement the credit risk requirements of the GLB Act. In developing these requirements, the Finance Board has reviewed the Basle Accord, the regulations of other banking regulators, OFHEO's proposed capital regulations, and other information prepared by the BCBS and other relevant bodies. As already discussed, the Finance Board has revised the credit risk provisions contained in the proposed FMMA both to meet the GLB requirements and to further enhance the accuracy of the provisions.

The credit risk component of the risk-based capital requirement proposed by the Finance Board would encompass the credit risks associated with both on-balance sheet assets and off-balance sheet items of each Bank. The objective of this credit risk capital standard is to provide a regulatory framework that would: (i) Assess capital charges based on the extent of the underlying credit exposure; (ii) address on- and off-balance sheet exposures consistently; (iii) be responsive to changes to the portfolios of the Banks, as well as in the markets; and (iv) reflect improvements in risk measurement and control systems, as they develop and become available for use by the Banks.

Finance Board determination of specific credit risk percentage requirements. The credit risk capital requirement would be equal to the sum of a Bank's credit risk capital charges for all on-balance sheet assets and off-balance sheet items. For an on-balance sheet asset, the credit risk capital charge would equal the book value of the asset multiplied by the "credit risk percentage requirement" assigned to the asset. For off-balance sheet items, the credit risk capital charge would be the "credit equivalent amount" of the item, multiplied by the credit risk percentage requirement assigned to the item.

The proposed rule would include credit risk percentage requirements for various categories of on-balance sheet assets and the credit equivalent amount of off-balance sheet items based on the type of asset or item, its credit rating and, if appropriate, its remaining maturity. The Finance Board has used data from NRSROs and other relevant sources to calculate estimates of credit losses associated with the particular categories. The estimates of credit risk percentage requirements represent the expected credit losses for the particular categories of instruments during periods of credit stress, based on historical data that reflect the longer-term nature of credit cycles, and span multiple credit cycles. The credit losses are estimated after identifying time periods with the highest losses stemming from downgrades and defaults. The loss in market value from a downgrade is estimated for each maturity category of the investment using credit spreads from 1992 to the present that were available to the Finance Board. For defaults, assumptions for loss severity are based on exposure type and maturity as indicated by available data. Periodic updates to the initial credit risk percentage requirements will be implemented by the Finance Board as amendments to the credit risk capital requirement.

In the proposed FMMA, the credit risk percentage requirements did not consider the term structure of credit risk. This limitation mirrored the initial failure of the Basle Accord to consider the term structure of credit risk, such that an overnight exposure on a particular instrument would receive the same capital charge as a two- or a ten-year exposure on another instrument from the same issuer. Recently, however, the BCBS as well as other financial regulators have begun to address this failure. Under the Amendment, the term structure of credit risk can be fully recognized for trading portfolios of large banks with satisfactory internal models, and is partially recognized for others through a standardized table. In addition, the recently proposed Framework addresses this problem by according limited recognition to the term structure of credit risk. The Farm Credit Administration similarly accords limited recognition to the term structure of credit risk in its risk-based capital requirements for the farm credit banks. In the proposed rule, the Finance Board would give recognition to the term structure of credit risk.

While consideration of term structure is not necessary for all credit risk categories, the Finance Board incorporated term structure in the percentage requirements for advances and "rated assets or items other than advances or residential mortgage assets." The Finance Board also has incorporated specific credit risk percentage requirements for residential mortgage assets, which include MBS, by investment grade. As a result, four tables are included in proposed § 932.4(d)(2)(i): Table 1.1—Requirement for Advances; Table 1.2—Requirement for Residential Mortgage Assets; Table 1.3—Requirement for Rated Assets or Items Other Than Advances or Residential Mortgage Assets; and Table 1.4—Requirement for Unrated Assets. These tables set forth the percentages to be applied to the book value of on-balance sheet assets, or the credit equivalent amounts of off-balance sheet items, in determining a Bank's credit risk capital requirement. The Finance Board seeks comment on its proposed recognition of asset maturity in its calculation of credit risk percentage requirement for certain types of assets or items. The Finance Board also generally requests comment on any aspect of the tables included in the proposed rule.

Table 1.1. The proposed FMMA assigned advances to a triple-A credit risk category based on factors such as the historical credit loss record for Bank advances (no credit losses have been incurred on the advance portfolio), the conservative lending and collateral management policies of each Bank (all classes of collateral are discounted based on risk), the blanket lien arrangements that some Banks employ with certain members over all of the assets of that member, the statutory priority lien, which gives the Banks priority over other secured creditors (so long as those secured interests are not perfected), and a statutory stock purchase requirement that required a member to maintain an investment in the Bank at least equal to 5 percent of its outstanding advances. 12 U.S.C. 1430(e) (1994).

In developing the FMMA, the Finance Board considered treating advances in the same manner as cash or as securities that are backed by the full faith and credit of the U.S. government, both of which are assigned zero credit risk. Two credit rating agencies, however, have

expressed their opinion to the Finance Board that such treatment would not be appropriate for advances, *i.e.*, that advances should not be treated as equivalent to assets that have no credit risk. The two rating agencies recommended that advances be treated as triple-A rated assets. They noted, in particular, that legislative authority for the Banks to accept new types of collateral from certain members as one reason why advances should not be rated higher than triple-A. Based on the historical experience of zero credit losses for advances over the past 60 years, however, compared to the experience with triple-A rated corporate securities, some of which have had rating downgrades that have lead to eventual credit losses, it would appear that advances are a better credit than are triple-A rated corporate securities. Accordingly, the proposed rule would treat advances as having somewhat greater credit risk than securities that are backed by the full faith and credit of the U.S. government, but somewhat less than triple-A rated corporate securities. The proposed rule, in Table 1.1, provides unique credit risk percentage requirements for advances by their maturity.

The determination of credit risk percentage requirements or credit losses for advances under stress conditions would require estimates of the default rate and the loss severity rate under such stress conditions. Because the Banks have incurred no credit losses on their advances, the Finance Board has assumed, for purposes of establishing a default rate for advances, that advances would exhibit the same default patterns as the highest investment grade corporate bonds in Moody's Default Risk Service database, and that advances would have a recovery rate of 90 percent (*i.e.*, a loss severity rate of 10 percent). A recovery rate of 90 percent is consistent with the conservative lending and collateral management policies and the historical credit loss record of the Banks with respect to advances. Thus, the credit risk percentage requirements in Table 1.1 for advances are based on the maximum default rates for the highest investment grade exposures from Moody's Default Risk Service database and a recovery of 90 percent.[14] The Finance Board seeks comment on the methodology used for setting the credit risk percentage requirements for advances and whether a more satisfactory analytical framework exists that could be used to determine more appropriate credit risk percentage requirements for advances.

Table 1.2 and Table 1.3. Table 1.2 includes the credit risk percentage requirements for residential mortgage assets, which category includes both mortgages and MBS, while Table 1.3 sets forth credit risk percentage requirements for rated assets or items other than advances or residential mortgage assets. The credit risk percentage requirements in Table 1.3 were developed for instruments without embedded options. As explained in more detail following the discussion of Table 1.3, residential mortgage assets have prepayment options, and, therefore, require a separate set of credit risk percentage requirements.

The proposed credit risk percentage requirements in Table 1.3 for credit exposures of rated assets or items other than advances and residential mortgages are calculated by examining data from Moody's which includes the rating and default history for rated assets over the time period 1970–1999. In calculating the values in Table 1.3, the worst time period for credit losses is found for each rating category, where credit losses are estimated as the sum of defaults, assuming a 100 percent loss severity, and losses in market value from rating downgrades during a specified period or credit risk horizon.[15] *See* "Historical Default Rates of Corporate Bond Issuers, 1920–1998," Moody's Investor Service, January 1999.

A maximum of a two year credit risk horizon has been used for calculating the default and downgrade probabilities, because this is the expected period of time, based on experience, needed to resolve asset-quality problems at troubled commercial banks. Furthermore, both the default and downgrade probabilities increase as the horizon is increased from six months to two years. For credit exposures longer than two years, the default and downgrade probabilities remain constant at the two year maximum horizon. The loss in market value from a downgrade is estimated from calculations of market values of corporate bonds at initial credit ratings and market values subsequent to the downgrade. These losses tend to increase with the maturity of the asset.

The probability of a rating downgrade (of one or more categories), and the probability of default, are taken from the worst historical period as defined above. These probabilities, and available credit spread data, are used to estimate the possible loss in value from defaults and downgrades in future stressful environments. Assets with longer maturities will generally have higher credit risk percentage requirements to reflect higher credit risk associated with longer maturities. Even though the default and downgrade probabilities are constant for maturities above two years, the downgrades will have a greater impact on the market value of longer lived assets.

Based on data obtained from Moody's, the worst default frequency over a two-year horizon for triple-A rated corporate debt is 0.0. In fact, no triple-A rated security has ever defaulted while it was rated triple-A. Given a sufficiently long period of time, however, even triple-A rated corporate credits may default following rating downgrades.[16] In fact, some triple-A rated credits have been downgraded within a year after receiving the triple-A rating. In addition, the market credit spreads for triple-A rated securities can widen without any change in credit ratings.[17] Credit deterioration and spread widening can lead to losses in market value for triple-A rated securities within a relatively short time after such securities are assigned a triple-A rating. Because such risks exist and the holding periods associated with long-term held-to-maturity securities are relatively long, the proposal adopts a conservative approach and requires capital to be maintained for triple-A rated credit exposures.

For Bank assets that are downgraded to below investment grade after being acquired by the Bank, the proposed rule would assign increasingly higher credit risk percentage requirements. The percentage requirements would range from 5.0 percent to 20.0 percent for assets or items that are downgraded to the highest rating below investment grade. For assets or items that are downgraded to the second highest rating below investment grade, the percentages would range from 22.0 percent to 37.0 percent. The proposed rule would assign a percentage requirement of 100 percent for all other assets or items that

[14] The credit risk percentage requirement for advances with maturities above 10 years has been capped at the maximum credit risk percentage requirement for the highest investment grade residential mortgage exposures as historical loss rates for advances have been below the loss rates for residential mortgages.

[15] Based on Moody's data from 1977–98, historical defaulted-bond prices display a great deal of volatility and are zero at two standard deviations below the mean. Unless more data is examined and a positive recovery rate under credit stress conditions can be established with confidence, the Finance Board would adopt a recovery rate of zero for estimation of credit losses that are to be used for credit risk capital requirements.

[16] According to Moody's data from 1970 to 1998, over a 4-year default horizon, the worst historical probability of default for assets initially rated triple-A is 1.21 percent.

[17] This applies equally to triple-A rated securities issued by GSEs.

are downgraded below investment grade. Table 1.3 includes U.S. government securities that are backed by the full faith and credit of the U.S. government. These securities, which would include Government National Mortgage Association (GNMA) MBS, are assigned to the zero percentage category regardless of their maturity, because they are deemed not to present any credit risk to the Bank.

Credit risk capital requirements in Table 1.3 were developed for instruments without embedded prepayment options.[18] Instruments with prepayment options, such as residential mortgage assets, would require a separate set of capital charges. Therefore, credit risk percentage requirements for residential mortgage related exposures are presented in Table 1.2.[19] Due to prepayment features, the expected or weighted average maturity for 30-year, fixed-rate mortgages is significantly less than 30 years. Therefore, the credit risk percentage requirements in Table 1.3 would be too high for residential mortgage exposures. In addition, the pattern or timing of defaults between corporate bonds and residential mortgages significantly differ. The default rates for corporate bonds generally increase with the time horizon, whereas, mortgage defaults tend to be concentrated between years three and eight. *See* "Moody's Approach to Rating Residential Mortgage Pass-Through Securities," Moody's Investor Service, November 1996 (hereinafter Moody's). Based on Moody's analysis of the lifetime default curve for 30-year residential mortgages, the default rate becomes very small after 14 years and is zero after 22 years. Due to the build up of borrower equity in residential assets, the loss severity rates generally decline after the first few years of a residential mortgage's life. The Fitch IBCA Residential Mortgage-Backed Securities model utilizes a 14 year credit loss horizon. *See* "Fitch IBCA Residential Mortgage-Backed Securities Criteria" Fitch IBCA, December 1998 (hereinafter Fitch IBCA). Somewhat similar default and loss patterns are found in Duff & Phelps model. *See* "The Rating of Residential Mortgage-Backed Securities" Duff & Phelps Credit Rating Co.

As required by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Housing Enterprises Act), OFHEO has identified a "benchmark loss experience" for fixed rate mortgages (defined as conventional, 30-year, fixed-rate loans secured by first liens) on single-family properties (defined as single unit, owner occupied, detached properties) that were originated from 1979 to 1993 by the secondary market housing enterprises. OFHEO proposed to base its benchmark credit loss estimates on a 10 year credit loss horizon *See* 61 FR 29616. (June 11, 1996).

In the proposed rule, residential mortgage assets, including MBS, held by Banks that are not rated directly for credit quality by rating agencies (NRSROs) must be rated for credit quality internally by Banks based on NRSRO criteria for rated MBS. The determination of credit risk percentage requirements or credit losses for residential mortgages under stress conditions would require estimates of the lifetime default rate corresponding to each rating category and the loss severity rate under stress conditions. In grading the relative credit risk of MBS, rating agencies employ the same symbol system as used for corporate bonds and counterparty obligations. As stated by Moody's, "The overall expected loss for a security of any rating should be the same, whether applied to an unsecured corporate instrument, a senior class of an MBS transaction (where losses would be of small magnitude), or a subordinate tranche." Moody's at 2. To determine the appropriate thresholds on the distribution of mortgage default rates to be associated with each rating level, Fitch IBCA calibrated the lifetime mortgage default rate curve to the default rate curves for corporate bonds. Fitch IBCA at 4. This means that the corporate bond default rate data could provide a means of determining default rates comparable to mortgage default rates at each credit rating level. Based on the above analysis and conversations with rating agencies, it appears that a credit loss horizon of 15 years would be sufficient to capture the credit risk from residential mortgages. Therefore, the maximum default rate for a 15 year horizon from Moody's Default Risk Service is utilized for calculation of credit risk percentage requirements for residential mortgage assets with prepayment features.

The loss severity rates for residential mortgages can be significantly different from the loss severity rates for corporate exposures. Private label mortgage issues rated single-B have had loss severity rates of 100 percent even though the private label market has yet to cope with a period of serious stress or a prolonged recession. In addition, the actual loss rates for some of the single-B rated issues have been 100 percent. Conversations with credit rating agencies indicate that the loss severity rates for mortgages are associated with credit ratings. Mortgage issues rated triple-A would be expected to have relatively small losses even under a severe recession, and loss severity rates increase with a decline in credit rating. Thus, a loss severity rate of 100 percent is assumed for residential mortgage assets rated single-B or below. Loss severity rates for investment grade mortgage assets are derived by calibrating them to the pattern of loss rates for long corporate bonds.

Credit risk percentage requirements in Table 1.2 for residential mortgage assets are based on 15-year maximum default rate from Moody's Default Risk Service database and the rating specific loss severity rate. Unless separate credit risk percentage requirements are determined by the Finance Board for other classes of mortgages, such as multifamily and commercial properties, the percentages in Table 1.3 would apply to such rated credit exposures. The Finance Board seeks comment on the methodology used for setting credit risk percentage requirements, as well as alternative approaches for setting such percentages, that are linked to specific credit ratings from NRSROs.

Table 1.4. To the extent possible, credit risk percentage requirements are derived from actual loss experience during periods of financial stress. For several asset categories, however, there is no relevant loss experience from which to calculate the credit risk percentage. The credit risk percentage requirements for certain unrated assets are set forth in Table 1.4, and are the same as previously proposed in the FMMA. Cash would be assigned to the zero percent category, as it is deemed not to present any credit risk to the Bank. All of a Bank's tangible assets, "Premises, Plant and Equipment," as well as any unrated targeted debt or equity investments made by the Banks

[18] The proposed credit risk percentage requirements in Table 1.3 are based on the credit risk from typical bonds that carry normal coupons. Zero or low coupon exposures would require credit risk percentage requirements higher than those being proposed. The Banks' holdings of such exposures and other complex credit-related instruments would be monitored and assigned appropriate credit risk percentage requirements on a case-by-case basis.

[19] Conceptually, the data in Table 1.2 should be based on historical mortgage default data. Because sufficient data on historical mortgage default rates was not available, however, the percentages in the table are derived from corporate bond default rates and mortgage loss recovery rates, adjusted to approximate mortgage default rates. The Finance Board believes that the use of corporate bond data is less than ideal and intends to seek better sources of historical mortgage default data for purposes of the final rule. The Finance Board requests comment on any other methods of obtaining accurate data on historical mortgage loan defaults.

pursuant to proposed § 940.3(a)(5),[20] would be assigned an 8.0 percent requirement. The targeted investments included in this category would be certain non-securitized debt or equity investments that advance certain specific public welfare goals. The 8 percent credit risk percentage requirement for these categories is consistent with the Basle Accord (with regard to tangible assets) and with the capital requirements applicable to national banks (with regard to public welfare investments).

Bank determination of specific credit risk percentage requirements. The proposed rule would require each Bank to determine the credit risk capital requirement for each asset and item, first by identifying its type, its credit rating, and, its remaining maturity (as appropriate), then by identifying its appropriate risk category and applying the applicable credit risk percentage for that risk category under Tables 1.1 through 1.4. The proposal includes guidance for the Banks on how to determine the credit rating for a particular asset or item.

The proposed rule would require the Banks to apply certain criteria when determining the credit rating to be used in finding the applicable credit risk percentage requirement from Tables 1.2 and 1.3. If an asset or item is directly rated by an NRSRO, the Banks must use that rating. If an asset or item is not rated directly by an NRSRO, but its issuer or guarantor is rated or the asset or item is backed by collateral that is rated, then a Bank may use the highest rating given to the issuer, guarantor, or collateral, to the extent that the issuer, guarantor, or collateral supports the asset or item held by the Bank. If the asset or item is not fully backed by a rated issuer, guarantor, or collateral, then only the portion to which such rated support applies may receive the highest rating noted above, and the portion of the asset or item that is not supported must be assigned to the category that would be appropriate for such an asset on a stand-alone basis. For example, if up to 25 percent of a triple-B asset with a maturity of less than one year is guaranteed by a triple-A-rated entity, then 25 percent of the value of the asset may be assigned to the highest investment grade category with maturity equal to or less than one year, which would carry a credit risk percentage requirement from Table 1.3 of 0.15 percent, and the remaining 75 percent of the value of the asset will be assigned to the fourth highest investment grade category with a maturity equal to or less than one year, which would carry a credit risk percentage requirement of 1.30 percent.

The proposal further provides that the Banks must disregard modifiers attached to a particular credit rating. Thus, an asset with an A+ rating and an asset with an A-rating would both be placed in the A category, or third highest investment grade, for credit risk-based capital charge purposes. NRSROs generally assign rating modifiers such as "1", "2" and "3" or "+" and "−" along with letter grades. Such modifiers are provided to further distinguish among credit risks that are assigned identical letter grades. Consequently, historical samples containing default activity for each modified letter grade are smaller than what they would be if modifiers were ignored. The smaller sample size makes it more difficult to calculate credit risk percentage requirements corresponding to modified ratings with some degree of statistical precision and confidence. Therefore, the Finance Board is proposing to disregard rating modifiers. This is consistent with the treatment specified for investment grade credit exposures under the Amendment and the Framework.

The proposal also provides that where a particular asset or item has been rated multiple times by the same NRSRO, the Bank must use the most recent rating from that NRSRO, and that if an asset or item has received ratings from multiple NRSROs, the Bank must use the lowest of those ratings. If an asset is not rated by an NRSRO and does not fall within one of the categories in Tables 1.1 or 1.4 (which do not need to be rated), the proposal would require a Bank to determine its own credit rating for the asset or item or relevant portion thereof using credit rating standards available from an NRSRO or other similar standards.

As a general matter, collateral may be used to enhance the creditworthiness of a particular asset or item, which can result in a lower credit risk percentage requirement for the particular asset or item. The BCBS has recognized that the Basle Accord did not provide sufficient incentive for banks to reduce their credit risk by taking an interest in collateral other than marketable securities, and recently has proposed to extend the scope of collateral recognition to all financial assets—not just marketable securities. The Finance Board proposal would allow a Bank to look through to the collateral supporting a given asset or instrument for credit risk capital purposes if certain conditions are met. In order to recognize such collateral for capital purposes, the collateral must be held by the Bank (which could include being held by a third party custodian or by the member), must be legally available to absorb losses (*i.e.*, the Bank must have a legal right to liquidate the collateral and have a superior priority to all other parties with competing claims to the asset), must have a readily determinable value at which it can be liquidated, and must be held in conformance with the Bank's member product policy. *See* 12 CFR § 917.4. This would include arrangements under which a third-party custodian holds collateral from a Bank's counterparty and may not return the collateral to the counterparty without the express permission of the Bank. In using collateral to reduce the credit risk percentage requirement, a bank must make appropriate allowance for discounts, such as haircuts or overcollateralization, to reflect the price risk underlying the collateral.

Credit equivalent amounts for off-balance sheet items. Off-balance sheet items may expose a Bank to credit risks similar to those associated with on-balance sheet assets. The Finance Board is proposing to apply the credit risk capital framework consistently to all on- and off-balance sheet instruments. The proposed rule would require the Banks to convert all off-balance sheet credit exposures into equivalent on-balance-sheet credit exposures or credit equivalent amounts, determine the type of the item, and then apply the appropriate credit risk percentage requirement from the tables to estimate the instrument's credit risk capital charge. The Finance Board would allow the Banks to use Finance Board approved internal models to convert some or all off-balance sheet credit exposures into on-balance-sheet credit equivalents. For Banks that lack appropriate internal models, the Finance Board is proposing to adopt the Basle Accord treatment for such instruments as used by the other federal bank regulatory agencies to convert an off-balance sheet credit exposure into an equivalent on-balance-sheet exposure.

Under the Basle Accord, as incorporated by the federal bank regulatory agencies, off-balance sheet instruments, other than derivative contracts, that are substitutes for loans, *e.g.*, standby letters of credit serving as financial guarantees for loans and securities, have the same credit risk as an on-balance sheet direct loan. For some off-balance sheet instruments, the full face value, or notional amount, is not exposed to credit risk. This means that a dollar of off-balance sheet exposure may be equivalent to less than a dollar of on-balance sheet exposure. Table 2 in proposed § 932.4(e)(1), which

[20] See 65 FR 25676, 25688 (May 3, 2000).

includes the same categories as are used by the federal bank regulatory agencies and those proposed under the Framework, presents credit exposure conversion factors that are to be used to calculate the credit equivalent amount of an off-balance sheet instrument other than a derivative contract. The conversion factors are given in percentage form so that a conversion factor of 50 results in the face value of the off-balance sheet instrument being multiplied by 0.50 to calculate the credit equivalent amount.

Under the Basle Accord, a 100 percent conversion factor is assigned to an off-balance sheet instrument where the instrument is a direct credit substitute and the credit risk is equivalent to that of an on-balance sheet exposure to the same counterparty. A 50-percent conversion factor is assigned to an off-balance sheet instrument where there is a significant credit risk but mitigating circumstances exist which suggest less than full credit risk. A 20-percent conversion factor is assigned to an off-balance sheet instrument where there is a small credit risk, but it is not one that can be ignored. The proposed rule would assign a credit conversion factor of zero percent for other commitments that are unconditionally cancelable by the Bank without prior notice, or that effectively provide for automatic cancellation, due to deterioration in a borrower's creditworthiness. The proposed rule also would allow the Banks to use Finance Board approved internal models to calculate credit conversion factors instead of those specified in Table 2.

Under the proposed FMMA, a standby letter of credit (SLOC) would have been assigned a 100 percent conversion. Because a SLOC issued by a Bank is rarely drawn down, and if drawn down it converts to an advance, the Finance Board believes that it would be more appropriate to assign a Bank SLOC a 50-percent conversion factor, and has done so in the proposed rule. The Finance Board intends to undertake further research on the magnitude and appropriateness of the credit conversion factors set forth in proposed Table 2 and may make revisions in the final rule based on this research. The Finance Board requests comment on the credit conversion factors generally, and what issues might be appropriate to address as part of the anticipated research on this issue.

Credit equivalent amounts for derivative contracts. The proposed rule provides that for market driven instruments such as over-the-counter derivative contracts, *i.e.*, swaps, forwards, and options, subject to counterparty default, the credit risk percentage requirement will be based on both current and potential future credit exposures (PFEs). The credit equivalent amount for a derivative contract is equal to the sum of the current credit exposure (sometimes referred to as the replacement cost) of the contract and the PFE (sometimes referred to as the potential future replacement cost) of the contract.

The proposed rule provides that the current credit exposure is equal to the maximum of the mark-to-market value of the contract, if that value is positive. A current credit exposure of zero is applied for contracts with a zero or negative mark-to-market value because such contracts do not create any current credit exposure for a Bank.

The proposed rule provides that the PFE of a contract shall be determined by using an internal market risk model approved by the Finance Board or, in the case of Banks that lack appropriate internal models to calculate PFE, using the Basle Accord's standardized approach set forth in Table 3 of the proposed rule.[21] Under this approach, the PFE of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional amount of the contract by a credit conversion factor for the underlying market risk, as specified in proposed Table 3 of proposed § 932.4(f)(3)(i). The credit conversion factors are given in percentage terms such that a conversion factor of 7 would require the notional amount of a derivative contract to be multiplied by 0.07 to calculate the PFE for the contract.

Under the proposed rule, forwards, swaps, purchased options and similar derivative contracts that are not included in the Interest Rate, Foreign Exchange and Gold, Equity, or Precious Metals except Gold categories must be treated as Other Commodities for purposes of applying proposed Table 3. If a Bank determines to use proposed Table 3 for credit derivative contracts, the credit conversion factors applicable to Interest Rate Contracts under proposed Table 3 would apply.[22]

Within each category of market risks, a Bank would not be allowed to arbitrage between capital requirements based on proposed Table 3 and internal models.[23] If a Bank were to use an internal model for a particular type of derivative contract, the Bank would be required to use the same model for all other similar types of contracts. The Bank, however, could use an internal model for one type of derivative contract and proposed Table 3 for another type of derivative contract. Adjustments to the credit conversion factors provided in Table 3 are specified in the proposed rule for contracts with multiple payment dates or that automatically reset to zero following a payment.

The proposed rule does not include any specific means to account for portfolio diversification effects. Consequently, the proposal would require the same regulatory capital charge for two portfolios that are of the same credit quality, even where the credit risk of one is significantly more concentrated than that of the other. As noted by the BCBS, however, this limitation may be effectively addressed in a portfolio-based internal credit risk model framework. Portfolio credit risk modeling is a long-term project for the BCBS; ultimately, it is anticipated that sophisticated banking institutions would employ a comprehensive portfolio risk modeling approach under which regulatory capital requirements would be based entirely on internal models. Similarly, the Finance Board will encourage the Banks to develop internal credit risk models. Building such an internal model should not be a formidable task for the Banks, given that their portfolios largely consist of credit exposures that may be rated and almost all their counterparties are financial institutions. The remaining unrated exposures are insignificant and may be dealt with outside a credit risk model. The Finance Board requests comment on whether the rule should take into account the diversification of a Bank's portfolio, and if so, how that should be done.

The proposed rule sets forth specific requirements for calculation of credit equivalent amounts for multiple derivative contracts subject to a

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[21] *See* BCBS, *Basle Capital Accord: Treatment of Potential Credit Exposure for Off-Balance Sheet Items* (Apr. 1995). The BCBS ran Monte Carlo simulations on numerous contracts before determining the conversion factors included in Table 3.

[22] The BCBS has yet to determine conversion factors for credit derivatives. Given that fluctuations in investment grade credit spreads are generally of a smaller magnitude than shifts in the level of interest rates, it appears that the potential future changes in the market value of credit-linked contracts should not generally exceed potential shifts in the market value of interest rate linked contracts. The Finance Board plans to examine any credit derivative contracts that the Banks may enter into and require larger conversion factors for credit derivatives, if necessary.

[23] A Bank that uses an internal model for simple interest rate contracts may utilize Table 3 for interest rate contracts with embedded options, stand-alone interest rate options or other complex/structured contracts. The reverse would not be allowed as a Bank that is capable of internally calculating PFE for complex/structured contracts must use such internal model for simple contracts.

qualifying bilateral netting contract, as defined in the proposed rule. The provisions in the proposal are consistent with the requirements set forth in the risk-based capital guidelines of the federal bank regulatory agencies.

Zero credit risk charge for assets and items. The proposed rule would allow on-balance sheet assets that are hedged with credit derivatives to be assigned a zero credit risk capital charge under three specified scenarios. Even if the credit risk capital requirement for the on-balance sheet asset were decreased through the use of a credit derivative, the applicable credit risk capital required for the derivative contract still would be applied.

Within an internal credit risk model in which credit risks are marked-to-market, recognition of offsets, or credit hedges, whether perfect or imperfect, can be readily accommodated. Large commercial banks have accomplished this as part of their credit risk and value at risk models for trading portfolios. Under the proposed rule, only some of the offsets would be recognized. If the offset is perfect, *i.e.*, the two positions are of identical remaining maturity and relate to exactly the same instrument, it is straightforward to reduce the credit risk capital charge for the on-balance sheet asset to zero. For example, if a Bank purchases a triple-B rated corporate bond with a maturity of five years and at the same time enters into a five-year credit default option contract based on the same bond, the credit risk capital charge for the underlying asset will be zero. The net credit risk capital charge for the pair will equal the credit risk capital charge for the credit exposure on the derivative contract.

If the on-balance sheet asset and the asset referenced in a credit derivative are identical, but the remaining maturities for the asset and the credit derivative are different, the capital relief in the proposed rule would depend on a maturity comparison between the two. For example, if the same triple-B rated five-year corporate bond was hedged with a credit derivative referenced to the same five-year corporate bond with a remaining maturity of two years or longer, there would be no credit risk associated with the underlying asset given the Finance Board's proposed default horizon of two years. Therefore, such a hedge would be fully recognized and the credit risk capital charge on the underlying asset would be zero. If the credit derivative maturity were less than two years, however, no capital relief would be granted because the credit derivative would not off-set the exposure associated with the asset for the complete term of the proposed default horizon. In all cases, there will be a credit risk capital charge for the credit exposure on the derivative contract.

If the remaining maturities of the on-balance sheet asset and a credit derivative are the same, but the on-balance sheet asset is different from the asset referenced in the credit derivative, capital relief for the on-balance asset may or may not be granted. It is proposed that the credit risk capital charge for the on-balance sheet asset be reduced to zero only if the asset referenced in the credit derivative and the on-balance sheet asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu or more junior to the on-balance sheet asset, and cross-default clauses are in effect.

Where the on-balance sheet asset and the asset referenced in the credit derivative have been issued by different obligors, the proposed rule does not provide any capital relief for the underlying asset. For example, a Bank may invest in a triple-B rated bond issued by corporate entity X, but hedge the credit risk with a derivative based on triple-B rated bond issued by corporate entity Y, and where X and Y belong to the same industry. The Finance Board recognizes that such a hedge may provide significant credit protection to the Bank as there may be a high degree of default correlation between X and Y, and that capital relief for such hedges can be accommodated under an internal portfolio credit risk model. Thus, the Finance Board requests comments on whether to allow affected Banks to petition the Finance Board for capital relief on a case-by-case basis, provided the petition is accompanied by adequate data and analysis. The Finance Board also more generally requests comment on how it should account for credit derivatives in calculating credit risk capital charges.

The proposed rule also would allow foreign exchange rate contracts with an original maturity of 14 calendar days or less to be assigned a zero credit risk capital charge. Gold contracts would not be considered exchange rate contracts. Derivative contracts that are traded on regulated exchanges that require daily collection of variation margin for the contract also would be assigned a zero credit risk capital charge.

The credit risk capital charge calculations required by the proposed rule, unless otherwise directed by the Finance Board, must be performed based on a Bank's on-balance sheet assets and off-balance sheet items as of the close of business on the last business day of the month for which the credit risk capital requirement is being calculated. Where applicable, calculations of credit risk capital charges must use the most current NRSRO credit risk ratings available as of the last business day of the month for which the credit risk capital requirement is being calculated.

Market Risk Capital Requirement. The GLB Act requires each Bank to maintain sufficient permanent capital, as determined in accordance with Finance Board regulations, to cover the market risk to which the Bank is subject. 12 U.S.C. 1426(a)(3)(A)(ii), *as amended.* It further specifies that each Bank's market risk be determined:

> based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.

Id. Beyond requiring that the stress test include the effects of changes in the interest rates, rate volatility and changes in the shape of the yield curve, neither the elements of market risk nor specific elements of the stress test are further defined in the statute, leaving the Finance Board with a degree of discretion to determine the terms and elements of the market risk stress test.

The GLB Act also directs the Finance Board, in developing the market risk stress test, to "take due consideration" of any risk-based capital test established by OFHEO for Fannie Mae and Freddie Mac, with such modifications as are appropriate to reflect differences in operations between the Banks and Fannie Mae and Freddie Mac. 12 U.S.C. 1426(a)(3)(B), *as amended.* This provision requires the Finance Board to take "due consideration" of the OFHEO capital rule only as it may relate to market risk. It does not require consideration of other aspects of the OFHEO rule, such as those relating to credit risk, nor does it mandate deference to OFHEO in any respect. The Finance Board has included the proposed OFHEO market risk test among the factors it has considered in developing the proposed market risk provisions of its capital rules. The Finance Board has modeled a hypothetical $100 billion asset Bank with a portfolio composition similar to the portfolio composition of Freddie Mac and Fannie Mae. The results of this simulation show that the Finance Board's risk-based capital requirement is consistent with what OFHEO has proposed to require for Freddie Mac and Fannie Mae. Given this consideration, the Finance Board believes that it has complied with its legal obligations under the GLB Act. Further, although

OFHEO has not yet adopted a risk-based capital test, the Finance Board intends to consider the substance of the final rule once it is adopted by OFHEO.

Market risk may be defined as the risk that the market value, or estimated fair value if market value is not available, of a Bank's portfolio will decline as a result of changes in interest rates, foreign exchange rates, equity prices and commodity prices. The Banks engage in activities that carry complex on-and off-balance sheet market risks. For example, outstanding consolidated obligations (COs), for which the Banks are jointly and severally liable, include bonds having embedded options, callable and index amortizing bonds, bonds denominated in foreign currencies, and bonds linked to equity prices. To hedge the market risk on such instruments, the Banks typically enter into off-balance sheet derivative contracts that convert the bonds to simple fixed-rate or floating rate bonds or convert the exposure to U.S. dollars. The Banks also make advances on a simple fixed-or floating-rate basis, as well as callable, putable/convertible and amortizing advances. The Banks also have invested in agency bonds with callable and structured features, mortgage and mortgage-backed instruments with embedded options, and collateralized mortgage obligations.

Given that the Banks undertake transactions that carry market risks similar to the risks incurred by large banks or securities dealers, the Finance Board believes that the capital regime needed to address market risks should be similar to the market risk capital requirements established or recommended by the BCBS and other financial institution regulatory agencies, but broader in scope. The Finance Board further believes that the general approach to market risk developed by the BCBS, as modified in this proposed rule, is consistent with the statutory requirements of the GLB Act.

As previously discussed, the BCBS has led the drive to institute a risk-based capital system for general market risk. Following the BCBS's lead, the federal bank regulatory agencies (Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), and Federal Deposit Insurance Corporation (FDIC)) issued a joint final rule in September 1996 to incorporate a measure for market risk, effective as of January 1, 1998 (Joint Rule). 61 FR 47358 (Sept. 6, 1996). Institutions whose trading activity (defined in the Joint Rule as total assets plus total liabilities in the trading portfolio) equals 10 percent or more of their total assets, or whose trading activity equals $1 billion or more, must use an internal model (with standardized parameters as set in the Joint Rule) to calculate the capital they must hold to support their exposure to general market risk. Positions covered by the rule include: (i) All positions in an institution's trading account; and (ii) foreign exchange and commodity positions, whether or not in the trading account.

Overall, the Joint Rule implements market risk-based capital requirements that are based on actual risks undertaken by large banks. This is the only market risk capital framework that has been both agreed to internationally and implemented in a number of countries. Under the Joint Rule, large banks in the United States generally have adopted a simulation-based approach that is capable of capturing market risks from holding a wide range of simple, exotic and structured instruments, with or without options, including mortgages or other similar types of instruments.

Financial institutions regulated by the Office of Thrift Supervision (OTS) and by the Farm Credit Administration (FCA) currently are subject to credit risk capital requirements that contain no market risk capital components (consistent with the small bank regulatory capital framework). *See* 12 CFR 567.5 (OTS), 615.5205, 615.5210 (FCA). OFHEO, however, has published a Notice of Proposed Rulemaking including its regulatory model for calculating risk-based capital for Fannie Mae and Freddie Mac, which model does account for both interest rate risk and credit risk. *See* 64 FR 18083 (Apr. 3, 1999). The OFHEO interest rate risk based capital rule is mandated by the 1992 Housing Enterprises Act, which requires that capital requirements account for market risks. Under the proposed OFHEO test, the market risk capital requirement would be determined by a stress test, which examines the effects of two specified interest rate shocks. *See* 12 U.S.C. 4611(a)(2). The 1992 Housing Enterprises Act establishes parameters that OFHEO must meet in developing the model used to implement its stress test such that many aspects of OFHEO's stress test are dictated by legislation. This legislative approach is in contrast to the greater flexibility afforded the Finance Board in developing its stress test under the GLB Act. While the 1992 Housing Enterprises Act reflected the state of the art in risk measurement at the time it was drafted, the Finance Board's proposed regulation seeks to incorporate improvements in risk measurement that have been made since then. Furthermore, the statutory constraints imposed on OFHEO have rendered it difficult for OFHEO to develop and implement its capital requirements in a timely manner. The Finance Board believes that its proposed approach would reach the same goal as OFHEO's proposal—that of providing sound capital requirements based on the economic risks undertaken by the regulated entities—albeit with inevitable differences in the underlying methodology. Nonetheless, the Finance Board also notes that its proposed market risk rule would provide Banks with the opportunity to develop a cash flow model, similar to that proposed by OFHEO, as long as the cash flow model is consistent with the requirements of the GLB Act and the Finance Board's proposed requirements governing internal market risk models, and is approved by the Finance Board.

Currently, the FMP limits the Banks' interest rate risk based on a methodology that uses interest rate shocks similar to those proposed but never adopted by the four federal bank regulatory agencies (the OCC, the FRB, the FDIC, and the OTS). Specifically, the FMP requires the Banks to maintain the duration of their equity to within ±5 years and to maintain the duration of their equity to ±7 years under an assumed change in interest rates of ±200 basis points. *See* FMP Section VII.

In the view of the Finance Board, the methodology underlying the FMP is not sufficiently flexible to capture the Banks' market risks as they currently exist, or as they are likely to evolve given the recent proposal to expand their investment authority. *See* 65 FR 25676 (May 3, 2000). Additionally, the risk management approach of the FMP is not consistent with a risk-based capital structure, nor would it allow the Finance Board to establish a market risk capital requirement based on a stress test that "rigorously tests for changes in market variables" and captures the risks to which a Bank is subject, as required by the GLB Act. Accordingly, the proposed rule sets forth an approach to measuring market risk that is based on the value at risk (VAR) framework adopted by the BCBS and other financial institution regulators. This approach can be implemented with commercially available models, is practical, and is sufficiently rigorous to comply with the requirements of the GLB Act. In particular, the proposed rule would require each Bank's internal market risk model to capture the effects of various shifts in the interest rate yield curve beyond parallel shocks, and to account for other financial and market shocks that could be experienced by the Banks given historic experience.

Components of the market risk capital requirement. The proposed market risk capital requirement is the sum of two separate components. One component is the amount by which the current market value of a Bank's total capital is less than 95 percent of the book value of the Bank's total capital. The current market value of a Bank's total capital would be estimated by using the Bank's internal risk model to calculate the market value of the Bank's on-balance sheet assets, liabilities and off-balance sheet items. In essence, these values would be the base line values for the Bank's portfolio prior to running any stress tests required by the proposed rule. The "book value" of total capital would equal the Bank's total capital where all on-balance assets, liabilities and off-balance sheet items are accounted for under GAAP. The second component of the proposed market risk requirement would be the market value of the Bank's portfolio at risk, as estimated by the Bank's approved internal risk model. This value would equal the maximum loss in the market value of a Bank's portfolio under various stress scenarios, where the Bank's portfolio would be comprised of all its on-balance sheet assets and liabilities, and all off-balance sheet items.

The 95 percent test. The Finance Board believes that significant impairment in a Bank's market value of capital, to the extent that it is not reflected in the book value of capital, must be taken into account in developing an adequate market risk capital requirement. To address this issue, the Finance Board proposes to increase the market risk capital requirement by the amount, if any, that a Bank's market value of total capital is less than 95 percent of its book value of its total capital. Thus, given the proposed test, if the current value of a Bank's total capital were significantly diminished by adverse market changes, a Bank's ability to take on risk would be restrained even if the impact of such adverse market events were not reflected in the book value of a Bank's total capital.

Generally, the proposed rule requires a Bank to measure and report its capital adequacy based upon the book value of total or permanent capital, calculated in accordance with GAAP. Because the Banks have large portfolios of long-term on- and off-balance sheet positions that are held-to-maturity, however, a Bank's financial strength, expressed by its market value, can decline significantly without that decline being reflected in the Bank's book value of capital.[24] This is because under GAAP, held-to-maturity positions would generally be valued at historic cost. Without the proposed 95 percent market value test, a Bank could incur a significant loss in financial strength due to adverse market changes, but not alter its market risk profile in response to that loss. The Finance Board is proposing this 95 percent test as a safeguard measure and believes that it will have little effect on Bank operations because most Banks have a market value of capital above 95 percent of book value. The charge associated with the 95 percent test would only limit a Bank's risk taking activities if its market value of capital were to fall below the 95 percent benchmark, and the Bank had otherwise fully leveraged its permanent capital.

Measurement of market value at risk under a Bank's internal market risk model. The proposed rule requires each Bank to estimate the current market value of its portfolio and measure the market value of the portfolio at risk using an internal VAR model, subject to the parameters in the proposed rule. Each Bank's internal model must calculate the value of a Bank's portfolio at risk during periods of market stress, given the interest rate, foreign exchange rate, equity price, and commodity price risks undertaken by the Bank, including risks of related options positions.

The Finance Board notes that even where foreign exchange, equity or commodity price exposures are hedged, the market valuations may differ from valuations for hedging instruments because of different assumptions concerning the underlying discount curves, volatilities and correlations. Prices in the two markets may not be the same and may fail to move in perfect correlation over time. Therefore, some measure of market risk would generally remain. Under the proposed rule, however, a Bank is not required to determine the market value of its portfolio at risk from its exposure to interest rate, foreign exchange rate, equity price, and commodity price risk if those risks are not material. For example, such risks may be effectively eliminated through matching hedges such as "mirror swaps" arranged in conjunction with the issuance of consolidated obligations denominated in foreign currencies or linked to equity or commodity prices, which typically reduce a Bank's market risk exposure to foreign exchange, equity or commodity price risk to an immaterial amount.

[24] The held-to-maturity items in a Bank's portfolio would typically include 15 and 30 year fixed-rate mortgage loans and fixed-rate pass-through MBS.

The proposed rule would require the Banks to calculate the market value of their portfolios at risk associated with these risks except, as discussed below, in the narrow circumstances where such risks may be immaterial. The proposed rule would allow the value at risk measure to incorporate empirical correlations within and among foreign exchange rates, equity prices, and commodity prices, subject to a Finance Board determination that the model's system for measuring such correlations is sound. The Finance Board is requesting comment on whether the final rule should require the Banks to account for basis risk by incorporating the correlations across risk categories in the market risk model.

The Finance Board believes that it is appropriate to exempt a Bank's exposure to certain hedged risks from the market value at risk calculation. The Finance Board emphasizes that this proposed exception is a narrow one, and the Banks would be expected consistently to estimate a market value at risk measurement for instruments linked to foreign exchange rates, equity prices, and commodity prices unless the hedging of those risks in each instrument results in those risks being immaterial. Given the Banks' portfolios, however, the Finance Board does not expect that the Banks' overall exposure to interest rate risk could ever be considered immaterial.[25] If the proposed "immateriality" exception is adopted, the Finance Board intends to direct its staff to monitor the Banks' implementation of the exception to assure that it is applied strictly in accordance with its underlying purpose.

As proposed, the rule would allow each Bank to develop an internal market risk model that uses any generally accepted measurement technique, such as variance-covariance models, historical simulations, or Monte Carlo simulations, provided that the measurement technique covers the Bank's material risks. In this respect, the proposed rule specifically provides that the Bank's internal market risk model must measure the risks arising from the non-linear price characteristics of options and the sensitivity of the market value of options to changes in the volatility of the option's underlying rates or prices. Thus, for example, while

[25] Currently, the Banks are required by the FMP to hedge risk associated with foreign exchange rates, equity prices, and commodity prices with matching derivative contracts. As a result market risks associated with foreign exchange rates, equity prices, and commodity prices are currently small relative to interest rate risk. Therefore, the bulk of the proposed market risk capital requirement will reflect interest rate and related options risks.

a variance-covariance methodology may be sufficient for estimating the market value at risk associated with instruments that contain no optionality, it would be essential to use a simulation technique for instruments with options characteristics.

The proposed rule also provides that a Bank's internal market risk model must use interest rate and market price scenarios of the Bank's choosing for estimating the market value of the Bank's portfolio at risk, subject to certain minimum requirements. These requirements are that the internal risk model must incorporate: (i) Monthly estimates of the market value of the Bank's portfolio at risk so that the probability of a loss greater than that estimated shall be no more than one percent; and (ii) scenarios that reflect changes in interest rates, interest rate volatility and the shape of the yield curve equivalent to those that have been observed over 120-business day periods of market stress. The proposed rule specifies that for interest rates, the relevant historical observation period would start at the end of the month prior to the month for which the market risk capital requirement is being calculated and go back to the beginning of 1978. This time frame represents a modern period with a relatively liquid debt market that also includes periods of market stress. The rule would also allow the market value at risk measure to incorporate empirical correlations among interest rates, subject to a Finance Board determination that the model's system for measuring such correlations is sound. These required scenarios assure that the stress tests performed using the Bank's models will be rigorous and fulfill the statutory requirements of the GLB Act.

The proposed rule provides that if a Bank participates in COs denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, the Bank's internal market risk model must be used to calculate the market value of its portfolio at risk due to these market risks such that the probability of a loss greater than that estimated must not exceed one percent and must include scenarios that reflect changes in rates and market prices that have been observed over 120-business day periods of market stress. For foreign exchange, equity and commodity prices, the relevant historic observation period can be chosen by the Banks, but such period must be acceptable to the Finance Board. The chosen time periods generally must reflect periods of stress, which given the risk exposures of a Bank, could have resulted in a strong negative impact on the Bank's financial position. Although the Finance Board believes foreign exchange rates, equity prices, and commodity prices pose a relatively small amount of market risk to the Banks at this time, this requirement reflects the conservative approach adopted by the Finance Board with respect to the Banks' safety and soundness.

The proposed rule also makes clear that Banks are required to hedge risk arising from consolidated obligations that are denominated in foreign currencies or otherwise linked to foreign exchange, equity or commodity prices, and to enter into a replacement contract if there is a default by a counterparty on an existing hedging contract. Besides strengthening safety and soundness, the proposed requirement formalizes the long standing practice at the Banks under which the Banks do not assume unhedged foreign exchange, equity or commodity positions and is consistent with the requirement in proposed § 956.3(b). *See* 65 FR 25676, 25692 (May 3, 2000).

Independent validation of Bank internal market risk model. The proposed rule provides that each Bank annually shall conduct an independent validation of its internal market risk model within the Bank or obtain independent validation by an outside party qualified to make such determinations on an annual basis. The Finance Board would be able, however, to require such reviews to occur more frequently. In order for validations conducted within the Bank to be considered independent, the validation would have to be carried out by personnel not reporting to persons responsible for conducting or overseeing business transactions for the Bank. As contemplated by the Finance Board, the required validation could include periodic comparisons, such as on a quarterly basis or annual basis, of model-generated mark-to-market values with values obtained from dealers/markets or of model-generated market value at risk measurements obtained from an independent third-party source. An integral part of this process, however, is the necessity to validate key assumptions and associated parameters underlying the Bank's market risk models. For example, the Finance Board would expect a Bank to determine periodically the impact on its market value at risk measurements from shifts in key parameters such as correlations or regime shifts in volatility parameters. The results of such validations would be reviewed by the Bank's board of directors and provided to the Finance Board.

Under the proposed rule, each Bank must obtain approval from the Finance Board of its internal market risk model, including subsequent material adjustments to the model made by the Bank, prior to the model's initial use or to implementing the subsequent adjustments. A Bank would be required to make any adjustments to its model that may be directed by the Finance Board. In addition, the calculations required by the proposed rule, unless otherwise directed by the Finance Board, must be performed based on the Bank's portfolio as of the close of business on the last business day of the month for which the market risk capital requirement is being calculated.

Basis risk. Banks are exposed to basis risk, which is the risk that rates or prices of different instruments on the two sides of the balance sheet (after taking associated off-balance instruments into account) do not change in perfect correlation over time. The BCBS has emphasized the importance of basis risk as part of a comprehensive process for the management of interest rate risk.[26] While certain modeling techniques may capture the effects of basis risk on a Bank's portfolio, the proposed rule does not require a Bank's model to capture basis risk. At this time, the Finance Board is requesting comment on how best to treat basis risk in the final rule.

Operations Risk Capital Requirement. Operations risk is the risk of an unexpected loss to a Bank resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems. There is currently no generally accepted methodology for measuring the magnitude of operations risk. Therefore, the proposed rule adopts the same statutory requirement imposed on Fannie Mae and Freddie Mac, 12 U.S.C. 4611(c)(2), but will allow the Banks the option of demonstrating to the Finance Board that a lower requirement should apply.

As proposed, § 932.6 provides that each Bank's operations risk capital requirement shall equal 30 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement. The proposed provision, however, allows a Bank to substitute an alternative methodology for calculating the operations risk capital requirement if such methodology is approved by the Finance Board. In addition, a Bank may obtain insurance to cover it for operations risk and, with Finance Board approval, proportionately reduce the

[26] *See Principles for the Management of Interest Rate Risk* (Jan. 1997).

operations risk capital requirement. Any insurance obtained must be from an insurer that has at least the second highest investment grade credit rating by an NSRSO. As proposed, however, the rule specifies that in no case may a Bank's operations risk requirement be reduced to less than 10 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement.

Reporting Requirements. Proposed § 932.7 provides that each Bank shall report to the Finance Board by the 15th day of each month its minimum total risk-based capital requirement, by component amounts (credit risk capital, market risk capital, and operations risk capital), and its actual total capital amount and permanent capital calculated as of the last day of the preceding month, or more frequently as may be required by the Finance Board.

L. *Minimum Liquidity Requirements.* Liquidity risk is the risk that a Bank would be unable to meet its obligations as they come due or to meet the credit needs of its members and associates in a timely and cost-efficient manner. *See* 65 FR 25267, 25274 (May 1, 2000), *to be codified* at 12 CFR 917.1. In general, the liquidity needs of the Banks may be classified as: (1) Operational liquidity; and (2) contingency liquidity. Operational liquidity addresses day-to-day or ongoing liquidity needs under normal circumstances, and may be either anticipated or unanticipated. Contingency liquidity addresses liquidity needs under abnormal or unusual circumstances in which a Bank's access to the capital markets is temporarily impeded. Under such unusual circumstances, a Bank may still need funds to meet all of its obligations that are due or to meet some of the credit needs of its members and eligible nonmember borrowers.

Currently, the Banks operate under two general liquidity requirements. Both are easily met by the Banks. Neither, however, is structured to meet the Banks' liquidity needs should their access to the capital markets be limited for any reason. The first requirement is statutory and requires the Banks to maintain an amount equal to total deposits invested in obligations of the United States, deposits in banks or trusts, or advances to members that mature in 5 years or less. 12 U.S.C. 1431(g). The second liquidity requirement is in the FMP. It requires each Bank to maintain a daily average liquidity level each month in an amount not less than 20 percent of the sum of the Bank's daily average demand and overnight deposits and other overnight borrowings during the month, plus 10 percent of the sum of the Bank's daily average term deposits, COs, and other borrowings that mature within one year. *See* FMP section III.C.

The proposed rule specifies a contingency liquidity requirement, but does not specify an operational liquidity requirement.[27] The Finance Board requests comment on whether the rule should address the issue of operational liquidity, and if so, how it should do so. The proposed rule provides that the Banks not only must meet the statutory liquidity requirements, 12 U.S.C. 1431(g), but also must hold contingency liquidity in an amount sufficient to enable the Bank to cover its liquidity risk, assuming a period of not less than five business days of inability to borrow in the capital markets. Contingency liquidity may be provided, for example, by Banks: (1) Selling liquid assets; (2) pledging government, agency and mortgage-backed securities as collateral for repurchase agreements; and (3) borrowing in the federal funds market. Consequently, contingency liquidity is defined in proposed § 930.1 as: (1) Marketable assets with a maturity of one year or less; (2) self-liquidating assets with a maturity of seven days or less; (3) assets that are generally accepted as collateral in the repurchase agreement market; and (4) irrevocable lines of credit from financial institutions rated not lower than the second highest credit rating by a NRSRO. The proposed rule specifically states that an asset that has been pledged under a repurchase agreement cannot be used to satisfy the contingency liquidity requirement, because such an asset will not be available to provide liquidity should a contingency arise.

The proposed five business day contingency liquidity requirement would help to ensure that the Banks maintain sufficient liquidity to meet their funding needs should their access to the capital markets be temporarily limited by occurrences such as: (1) A power outage at the Bank System's Office of Finance (OF); (2) a natural disaster; or (3) a real or perceived credit problem. This requirement was determined from calculations using daily data on CO redemptions during 1998. The Finance Board found that the 99th percentile of the five-business day CO redemption distribution resulted in liquidity requirements that ranged from about 5 percent to 17 percent of each Bank's total assets.

Other regulators recognize the importance of adequate levels of liquidity but, for the most part, have not always imposed liquidity requirements with the degree of specificity contained in the proposed rule. Specifically, depository institution regulators have not implemented any numeric ratios or other quantitative requirements with respect to liquidity. For example, each institution regulated by the Farm Credit Administration is required to maintain a minimum liquidity reserve. 12 CFR 615.5134. This liquidity reserve requirement ensures that Farm Credit System banks have a pool of liquid investments to fund their operations for approximately 15 days should their access to the capital markets become impeded. The importance of liquidity is also reflected in the fact that it is one of the six components of the Uniform Financial Institutions Rating System (UFIRS) that was adopted by the Federal Financial Institutions Examination Council (FFIEC) on November 13, 1979 and revised as of January 1, 1997. The UFIRS has been used as an internal supervisory tool for evaluating the soundness of financial institutions and for identifying those institutions requiring special attention or concern. OFHEO has not published any regulation concerning liquidity requirements for Fannie Mae and Freddie Mac.

Liquidity problems may arise from concerns about the creditworthiness of the Banks or from events that may temporarily disrupt the Banks' access to the credit markets. Real or perceived concerns about creditworthiness of the Bank System could lead to a widening of the spreads to U.S. Treasury securities at which the Bank System COs are issued. Depending on the size of the increase in credit spreads, such an event could substantially impair the Banks' ability to carry out their mission. Two such episodes affecting other GSEs took place in the 1980s. In both cases, the interest rate spread narrowed back to normal levels only after the GSE in question received assistance from the federal government.[28] In the first instance, the spread to comparable U.S. Treasury securities for a Farm Credit System issue increased approximately 80 basis points within a 6 month period during 1985 as the Farm Credit System ran into financial difficulty and started posting losses. Fannie Mae underwent a

[27] Recently adopted 12 CFR § 917.3(b)(3)(iii) requires that each Bank's risk management policy indicate the Bank's sources of liquidity, including specific types of investments to be held for liquidity purposes, and the methodology to be used for determining the Bank's operational liquidity needs. *See* 65 FR 25267, 25275 (May 1, 2000).

[28] *See* Federal Reserve Bank of Richmond, *Instruments of the Money Market* 153 (1993).

similar episode in which its debt spread widened substantially.

The likelihood that such an event could take place with respect to the Banks is remote and, in any case, the proposed contingency requirement is not meant to address such an event. The five business day contingency liquidity requirement could, however, provide policy makers with some time to address the underlying problem. Further, should a crisis arise affecting liquidity at all financial institutions, assistance would be needed from the Federal Reserve System, the U.S. Treasury, or the Congress.

The proposed requirement is meant to address principally events that may temporarily disrupt a Bank's access to credit markets. It may be viewed as conservative when examined in the context of events which could impair the normal operations of the OF. The likelihood that there would be no access to the capital markets for as long as five business days is extremely remote, given OF contingency plans to be back in operation within the same business day following a disaster. The OF contingency plans include back-up power sources and two back-up facilities, plus procedures to back-up their databases at both their main location as well as the primary alternative site. A back-up data tape from OF's main location is sent and stored off-site on a daily basis.

Rating agencies also consider adequate liquidity an important component in a financial institution's rating. Liquid investments held by the Banks are stated by Moody's as one of the reasons behind the triple-A rating for the Banks.[29] Thus, the Finance Board believes that the proposed liquidity requirement is important to maintaining a sound credit rating for the Banks and assuring continued safe and sound operation of the Bank System and access to the capital markets.

M. *Limits on Unsecured Extensions of Credit.* The proposed rule also would establish maximum capital exposure limits for unsecured extensions of credit by a Bank to a single counterparty or to affiliated counterparties. As proposed, the rule also establishes reporting requirements for total unsecured credit exposures and total secured and unsecured credit exposures to single counterparties and affiliated counterparties that exceed certain thresholds.

Concentrations of unsecured credit by a Bank with a limited number of counterparties or group of affiliated counterparties raise safety and soundness concerns. Unlike Bank advances, which must be secured, unsecured credit extensions are more likely to result in limited recoveries in the event of default. Thus, significant credit exposures to a few counterparties increase the probability that a Bank may experience a catastrophic loss in the event of default by one of the counterparties. In contrast, holding small credit exposures in a large number of counterparties reduces the probability of a catastrophic loss to a Bank.

Safety and soundness concerns also arise where a Bank's credit extensions are concentrated in a single counterparty whose debt, in turn, is concentrated in one or a few lenders. The fact that the counterparty's debt is concentrated may suggest that other lenders have declined to lend to the counterparty because of concerns about the counterparty's ability to repay a loan. The Bank's concentration of credit in such a counterparty may indicate that the Bank's extensions of credit are at risk.

In addition, where a Bank's extensions of credit to a single counterparty are in jeopardy of nonpayment, the Bank may be reluctant to take appropriate actions to reduce losses, such as declaring a default, or selling the loans, which could depress the value of the Bank's remaining loans to the counterparty. Further, a Bank may even be tempted to lend additional funds to the counterparty to keep the counterparty in business, in order to protect its existing significant credit exposure to the counterparty.

Affiliated counterparties generally share aspects of common ownership, control or management. Thus, if one member of a group of affiliates defaults, the likelihood is high that other members of the affiliated group also are under financial stress. A Bank's unsecured credit exposures to a group of affiliated counterparties thus should be aggregated in considering the Bank's unsecured credit exposure to any one counterparty in the affiliated group.

Concentrations of credit by multiple Banks in a few counterparties also may raise safety and soundness concerns at the Bank System level. Several Banks in recent years have had unsecured credit exposures to affiliated counterparties that exceeded 20 percent of each Bank's capital. These credit exposures were to counterparties ranked at the second highest investment grade. A few counterparties have spread their exposure among several Banks. Such credit concentrations may result in large aggregate credit exposures for the Bank System, raising concerns regarding the liquidity of such debt in the event of adverse information regarding a counterparty.

The risk-based capital requirement in the proposed rule does not take into account the increase in credit risk associated with concentrations of credit exposures. Therefore, the Finance Board believes that it is necessary, for safety and soundness reasons, to impose separate limits on unsecured credit exposures of a Bank to single counterparties and to affiliated counterparties. This is consistent with the regulatory approaches of other financial institution regulators. *See, e.g.,* 12 U.S.C. 84; 12 CFR Part 32 (the lending limit for a national bank is generally 15 percent of its capital and surplus).

Currently, the FMP limits Bank unsecured credit exposures to a single counterparty based on the credit rating of the counterparty. *See* FMP section VI. Under the FMP, the lower the credit rating of the counterparty, the lower the maximum permissible credit exposure limit, because the probability of default increases as the counterparty's rating decreases. The FMP does not impose limits on unsecured exposure to affiliated counterparties, but does require the Banks to monitor such lending and impose limits if necessary. As of December 31, 1998, five Banks had adopted explicit unsecured credit exposure limits to affiliated counterparties. Consistent with the general approach of the FMP, § 932.9(a)(1) of the proposed rule provides that unsecured credit exposure by a Bank to a single counterparty that arises from authorized Bank investments or hedging transactions shall be limited to the maximum capital exposure percent limit applicable to such counterparty, as set forth in Table 4 of the proposed rule, multiplied by the lesser of: (i) The Bank's total capital; or (ii) the counterparty's Tier 1 capital, or total capital if information on Tier 1 capital is not available.[30] The maximum capital exposure percent limits applicable to specific counterparties in Table 4 range from a high of 15 percent for counterparties with the highest investment grade rating, to a low of one percent for counterparties with a below

[29] Moody's Investor Service, Global Credit Research, *Moody's Credit Opinions—Financial Institutions,* (June 1999).

[30] For the purposes of the proposed requirements related to limits on and reporting of credit concentrations, the term "total capital" when used in reference to capital held by a Bank's counterparty (or an affiliate of such counterparty) would have the same meaning as in regulations issued by the counterparty's (or the affiliate's) principal regulator and not as defined in proposed § 930.1. The proposed rule makes clear in the affected sections when the meaning of "total capital" differs from that in proposed § 930.1.

investment grade rating. These limits are consistent with those established internally by large lenders. Section 932.9(a)(3)(iii) of the proposed rule provides that where a counterparty has received different credit ratings for its transactions with short-term and long-term maturities: (i) the higher credit rating shall apply for purposes of determining the allowable maximum capital exposure limit under Table 4 applicable to the total amount of unsecured credit extended by the Bank to such counterparty; and (ii) the lower credit rating shall apply for purposes of determining the allowable maximum capital exposure limit under Table 4 applicable to the amount of unsecured credit extended by the Bank to such counterparty for the transactions with maturities governed by that rating. For example, if a counterparty has received a lower rating on its long-term debt than its short-term debt, the Bank will be more severely limited in the amount of the counterparty's long-term debt that it can hold. If the Bank wishes to hold any more of this counterparty's debt, it will be limited to holding the higher rated short term debt, up to a total amount of credit exposure governed by proposed § 932.9(a)(3)(iii)(A).

The proposed rule also provides that if a counterparty is placed on a credit watch for a potential downgrade by an NRSRO, the Bank would determine the maximum capital exposure under Table 4 by first assuming that an NRSRO had already downgraded the rating to the next lower grade and then choosing the exposure limit that corresponds to that next lower rating. Section 932.9(b) of the proposed rule provides that the total amount of unsecured extensions of credit by a Bank to all affiliated counterparties may not exceed: (i) The maximum capital exposure limit applicable under Table 4 based on the highest credit rating of the affiliated counterparties; (ii) multiplied by the lesser of: (A) The Bank's total capital; or (B) the combined Tier 1 capital, or total capital if information on Tier 1 capital is not available, of all of the affiliated counterparties.

Reporting requirement for total unsecured credit concentrations. Currently, there is no Finance Board requirement establishing a centralized mechanism for maintaining and measuring specific data on the aggregate unsecured credit concentration exposure at the Bank System level. As discussed above, Bank unsecured credit concentrations raise safety and soundness concerns at the Bank System level, as well as at the individual Bank level.

Accordingly, the proposed rule requires each Bank to report monthly to the Finance Board the amount of the Bank's total unsecured extensions of credit to any single counterparty or group of affiliated counterparties that exceeds 5 percent of: (i) The Bank's total capital; or (ii) the counterparty's Tier 1 capital (or total capital if information on Tier 1 capital is not available), or in the case of affiliated counterparties, the combined Tier 1 capital (or total capital if information on Tier 1 capital is not available) of all of the affiliated counterparties. The Finance Board will be considering limits on aggregate unsecured credit concentration exposures at the Bank System level for the final rule. The Finance Board specifically requests comments on whether such limits should be imposed and what the size and form of such limits should be.

Reporting requirement for total secured and unsecured credit concentrations. Bank concentrations of secured credit, primarily advances, to a single counterparty or group of affiliated counterparties also may present safety and soundness concerns for individual Banks and the Bank System. Other financial institution regulators impose loans-to-one-borrower limits for secured as well as unsecured extensions of credit, with exceptions for loans secured by high-quality collateral. *See, e.g.,* 12 U.S.C. 84; 12 CFR Part 32. There may be reasons to exclude concentrations of advances from such limits, given the extent of their overcollateralization, their statutory superlien protection and core mission activity status.

Accordingly, the proposed rule requires each Bank to report monthly to the Finance Board the amount of the Bank's total secured and unsecured credit exposures to any single counterparty or group of affiliated counterparties that exceeds 5 percent of the Bank's total assets. Because secured credit is supported by collateral, not capital, in the first instance, the Finance Board believes that exposures as a percent of assets rather than of capital is a more appropriate measure of the size of the exposure.

The Finance Board will be considering limits on total secured and unsecured credit concentration exposures applicable to the Banks or the Bank System for the final rule. The Finance Board specifically requests comments on whether such limits should be imposed and what the size and form of such limits should be.

N. *Part 933—Capital Plans.*

Approval of Plans. The GLB Act requires the board of directors of each Bank to submit to the Finance Board a capital plan within 270 days after the date of publication of the final capital rule. Each capital plan must establish the details for the new capital structure, which must provide sufficient capital for the Bank to comply with its regulatory total capital and regulatory risk-based capital requirements. The proposed rule would allow the Finance Board to approve a reasonable extension of the 270-day period upon a demonstration of good cause as to why the Bank does not expect to meet the statutory deadline. The Finance Board would determine what constitutes "good cause" on a case-by-case basis. As required by the GLB Act, a Bank must receive approval from the Finance Board prior to implementing its capital plan, or any amendment to the plan. As part of that approval process, the Finance Board would reserve the right to determine the effective date for each capital plan.

If a Bank, for any reason, were to fail to submit a capital plan to the Finance Board within the 270-day period, including any Finance Board approved extension, the proposed rule would authorize the Finance Board to establish a capital plan for that Bank, and the Finance Board also would have the discretion to take any enforcement action against the Bank, its directors, or its executive officers authorized by Section 2B(a)(5) of the Bank Act, or to merge the Bank in accordance with Section 26 of the Bank Act into another Bank that has submitted an acceptable capital plan.

Contents of Plan. The GLB Act sets forth requirements regarding the contents of each Bank's capital plan. The proposed rule would follow the statutory requirements and require that each Bank's capital plan address, at a minimum, the classes of capital stock, capital stock issuance, membership investment or fee structure, transfer of capital stock, termination of membership, independent review of the capital plan, and implementation of the plan. In addressing the classes of stock, the Finance Board is proposing that the capital plan shall, at a minimum, describe each class or subclass of capital stock to be issued to the members; establish the terms, rights, and preferences for each class and subclass of capital stock to be issued; establish the voting rights and preferences; and provide the basis on which the stated Class A dividends are to be calculated and whether such dividends are to be cumulative. In general, the Finance Board believes the inclusion of each of these items in the Banks' capital plans is necessary for the Bank to transition

smoothly to the new capital structure mandated by the GLB Act.

The proposed rule also would require each Bank to include in its capital plan a description of the manner in which the Bank intends to solicit its members for voluntary purchases of its capital stock. By requiring that the Banks address the issue of solicitations of voluntary purchases in its capital plan, the Finance Board would have the opportunity to ensure that the methods used are fair and equitable. The proposed rule also would require each Bank's capital structure plan to specify "operating capital ratios," *i.e.*, an "operating total capital ratio" and an "operating risk-based capital ratio," each of which would be set at a higher percentage than the regulatory total capital and the regulatory risk-based capital requirements, respectively, as established by the Finance Board. Because it is necessary that each Bank manage its risk portfolio such that it complies with its regulatory capital requirements, the Finance Board believes each Bank must establish target ratios at which to operate that are sufficiently higher than the minimum regulatory capital requirements. Doing so would allow each Bank to manage its capital accounts in a manner that affords a capital "cushion" within which to conduct its operations while ensuring its compliance with the regulatory capital requirements.

The GLB Act requires that each Bank's capital plan specify the minimum investment required of the members. The proposed rule requires that each Bank's capital plan allow for the fulfillment of this requirement through either the purchase of Class A stock or the payment of an annual membership fee, as set forth in § 931.7. The Finance Board is proposing that a Bank's capital plan must allow a member to substitute the purchase of Class B stock for its membership investment of Class A stock. The capital plans also would be required to specify the methodology used by the Bank to determine the level of the membership investment or the annual membership fee. The Finance Board is proposing to allow the Banks to offer the option of a membership fee in order to provide additional flexibility to both the Banks and its members. By providing an option, the Banks would have more flexibility in controlling their capital accounts while meeting the needs of their members.

If, to fulfill its membership investment requirement, a member were to elect to invest in the capital stock of the Bank, the Finance Board is proposing that the member be provided the option of investing in Class B stock, if authorized by the Bank, at a proportionately lesser amount than would be required if the member purchased Class A stock. The terms of Class A and Class B stock, as specified in the Bank's capital plan, will dictate an appropriate rate of substitution of Class B stock for Class A stock to fulfill the membership investment requirement. For example, one term imposed by the GLB Act is to weight Class B stock at 1.5 times of Class A stock for purposes of determining compliance with the five percent leverage requirement, which, taken alone, suggests that one share of Class B stock should substitute for more than one share of Class A stock. In proposing that this provision be included in the Banks' capital plans, the Finance Board is providing the Banks the opportunity to offer members different membership investment options.

Additionally, the proposed rule requires that each Bank's capital plans specify that the board of directors of the Bank review and adjust the membership investment periodically to ensure that the Bank complies with the regulatory capital requirements and, further requires members to comply promptly with any adjusted membership investment.

The Finance Board is also proposing that a Bank's capital plan may specify a fee to be imposed on a member that cancels a notice of withdrawal or a notice of redemption. The decision to impose a fee structure would be at a Bank's discretion, but the methodology used to calculate such fees would need to be specified in the capital plan. The conditions under which a Bank may impose a fee also must be specified in its capital plan to ensure the fair and equitable imposition of fees among members. The Finance Board is proposing the option of establishing a fee in order to minimize the Bank's costs associated with canceling a notice of withdrawal or redemption.

As required in the GLB Act, the capital plan must establish the criteria for the issuance, redemption, retirement, or purchase of Bank stock by the Bank, and for the transfer of Bank stock between members of the Bank. The capital plan must also specify that the stock of the Bank may only be issued to or held by the members of the Bank, and that no entities other than the Bank may trade the stock of the Bank.

Under the proposed rule, as required in the GLB Act, the plan must address the manner in which the Bank will provide for the disposition of its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against its members, including claims resulting from prepayment of advances prior to their stated maturity. Also as required in the GLB Act, the plan must include a report from an independent certified public accountant regarding the extent to which the implementation of the plan would affect the redeemable stock issued by the Bank and a report from an NRSRO regarding the extent to which the implementation of the plan would affect the credit rating of the Bank. The plan must also demonstrate that the Bank has made a good faith determination that the Bank will be able to implement the plan as submitted and that the Bank will be in compliance with its regulatory total capital requirement and regulatory risk-based capital requirement.

Implementation of Plan. The Finance Board is proposing that each Bank's capital plan must specify the manner in which the members of the Bank may convert or exchange their existing Bank capital stock into either, or both, Class A and Class B capital stock. The plans should address how the conversion or exchange will take place and the likely outcome in terms of total Class A and Class B stock, as demonstrated by prior commitments of members, surveys, or other quantifiable means. The proposed rule also requires that the capital plan specify what will happen to existing Bank stock owned by a member that does not affirmatively elect to convert or exchange its existing Bank stock into either Class A or Class B stock or some combination of both.

As required by the GLB Act, each Bank's plan must include a transition provision that specifies the date on which the plan is to take effect, as well as the date, not to exceed three years from the effective date of the plan, on which the Bank must be in full compliance with its regulatory total capital requirement and regulatory risk-based capital requirement. The GLB Act further requires that the capital plan for each Bank may include a provision allowing any institution that was a member of the Bank on November 12, 1999, a period of up to three years from the effective date of the plan in which to comply with the membership investment requirements of the capital structure plan. Any institution that was approved for membership after November 12, 1999, will be required to comply with the membership investment requirements as soon as the Bank's capital structure plan becomes effective. The Finance Board also requests comment on whether it would be appropriate for the final rule to allow

institutions becoming members after November 12, 1999 to be provided with a similar transition period.

O. *Part 925 Membership Amendments.*

The proposed rule would revise several provisions of the Finance Board's membership regulations to reflect changes made by the GLB Act. The existing membership regulations include provisions regarding the amount of Bank stock an institution must purchase upon becoming a member. Because that issue would be addressed by the capital regulations and the capital plan for each Bank, the proposed rule would remove all stock purchase requirements from the membership regulations.

The proposed rule also would revise the existing provisions that pertain to the effect of a merger or other consolidation of a member into another member of the same Bank, a member of another Bank, or a nonmember. Generally speaking, the Bank membership of an institution terminates when its charter is cancelled in connection with its merger or consolidation into another institution. The proposed rule would retain that concept, but would consolidate the substance of the two sections that deal separately with the consolidation into another member and into a nonmember, respectively. The proposed rule also would remove from the membership regulation provisions that address the treatment of the member's Bank stock, dividends, and advances, each of which is to be covered by other provisions of the regulations. For example, § 950.19 of the advances regulations provides that upon an institution's termination of membership, the Bank shall determine an orderly schedule for the liquidation of any indebtedness owed by the member to the Bank, and may allow the debt to run until its maturity. The Finance Board believes that the general requirement in § 950.19 for an orderly liquidation of indebtedness is sufficient and is proposing to remove the existing references to such liquidation from the provisions dealing with consolidation of members as being duplicative.

The proposed rule also would implement the provisions of the GLB Act that address the withdrawal of a member from a Bank. Section 6(d) of the Bank Act, 12 U.S.C. 1426(d), *as amended*, provides that any member may withdraw from its Bank by providing written notice of its intent to do so, provided that on the date of the withdrawal there is in effect a certification from the Finance Board (RefCorp certification) that the withdrawal will not cause the Bank System to fail to meet its obligations to contribute to the debt service for the obligations issued by RefCorp, in accordance with Section 21B(f)(2)(C) of the Bank Act, 12 U.S.C. 1441b(f)(2)(C), *as amended*. The GLB Act further provides that the receipt of the notice by the Bank commences the applicable stock redemption periods for the stock owned by that member, *i.e.*, the 6-month and 5-year notice periods for Class A and Class B stock, respectively, and allows the member to receive the par value of its stock in cash at the end of the redemption period. During the notice period, the member may continue to receive dividends on its stock.

The proposed rule would require a member to specify in its notice of withdrawal the date on which it intends its termination of membership to become effective, which date may be no later than the date on which the last of its stock redemption periods end. If the notice does not indicate a withdrawal date, the proposed rule would provide that the withdrawal is deemed to take effect on the date that the last applicable stock redemption period ends. Because the Bank Act no longer links the withdrawal from membership to the redemption of stock, the proposed rule would allow an institution to terminate its membership in a Bank as early as upon the Bank's receipt of the member's notice of withdrawal, if the member so chose. The effect of an immediate withdrawal would be that an institution would cease to be eligible to obtain any further services from the Bank and would be at risk that the Bank would call due any advances outstanding to the member. Such an institution, however, could not redeem its Bank stock until the end of the applicable stock redemption period, notwithstanding its earlier termination of membership, but would be entitled to continue to receive dividends on its Bank stock for as long as it were to hold the stock. The proposed rule would allow a member to cancel a notice of withdrawal at any time before its effective date, by providing a written cancellation notice to the Bank. The proposed rule also would permit a Bank to impose a fee, which would be specified in its capital plan, on any member that withdraws a notice of termination.

As amended by the GLB Act, the obligation of the Banks to contribute to the annual RefCorp debt service was changed from a fixed dollar amount of $300 million per year to a percentage amount, 20 percent of the net earnings of each Bank. In effect, the RefCorp certification requires the Finance Board to certify that the withdrawal of a member would not cause the Bank System to fail to pay 20 percent of its annual earnings (on an aggregate basis) to discharge its RefCorp obligation. Because the GLB Act has changed the method of calculating the RefCorp obligation to a percentage formula, there are no circumstances in which the Bank System could ever fail to meet its RefCorp obligations, *i.e.*, if the obligation is to pay 20 percent of annual net earnings, and the net earnings for a given year were to be zero or negative, the obligation for that year would be zero. Moreover, if one or more Banks were to have zero or negative earnings, and zero contributions, for a particular year, the RefCorp obligation, as amended by the GLB Act, would be extended for some additional number of years, based on a present value calculation. The Finance Board anticipates addressing this matter by issuing a certification that the withdrawal of any member will not cause the Bank System to fail to meet its RefCorp obligation. That certification would remain in effect, thus allowing members to withdraw from membership without requesting individual certifications, until rescinded by the Finance Board.

The GLB Act also provides grounds on which the Bank may terminate the membership of an institution, such as in the case of violating the Bank Act or Finance Board regulations, or insolvency. The proposed rule would provide that the stock redemption periods commence on the date that a Bank removes an institution from membership, during which time the institution could continue to receive dividends on its stock, but not any other membership benefits.

If a member withdraws from membership, the proposed rule would require the Bank to determine an orderly manner for liquidating all indebtedness owed to the Bank and for unwinding other transactions with the member, and would provide that the Bank's lien on any stock held by the member would remain in effect until the debts are paid, the effect of which could be to delay the redemption of stock until the member has satisfied its indebtedness to the Bank. Once an institution terminates its membership, it may not again become a member of any Bank for five years, as required by the GLB Act amendments.

P. *Part 956—Hedging Provisions and Part 960 Off Balance Sheet Items.*

Use of hedging Instruments—§ 956.6: Section 956.6 of the proposed rule addresses the Banks' use of hedging instruments, such as interest rate swaps, options, and futures contracts. Hedging

instruments are derivative contracts or securities used to offset the risks associated with asset-liability management by financial institutions and others, typically relating to interest rate risk. Proposed § 956.6(a) would require that derivatives instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank. Because GAAP prescribes extensive rules for hedging transactions that are required to be followed by most market participants, the Finance Board finds it prudent that the Banks also should be subject to these same requirements. The Banks, however, enter into derivatives contracts with members in order to assist those members with their asset-liability management. In addition, certain derivatives that currently are used by the Banks for hedging purposes, would not meet the requirements of FAS 133.[31] The Finance Board recognizes that allowing the Banks to serve as intermediaries in derivatives contracts with members is a benefit that is valued by members, and that the Banks may benefit from the ability to use certain instruments to hedge actual balance sheet risks, even if the hedge transactions would not meet the requirements of FAS 133. Therefore, the Finance Board is proposing to permit such transactions, provided that the Bank documents that the use of the hedging instruments is non-speculative.

Section 956.6(b) of the proposed rule would govern the documentation that each Bank must have and maintain during the life of each hedge. Proposed § 956.6(c)(1) would require that transactions with a single counterparty be governed by a single master agreement when practicable. Proposed § 956.6(c)(2) would govern Bank agreements with counterparties for over-the-counter derivative contracts by requiring each agreement to include: (i) A requirement that market value determinations and subsequent adjustments of collateral be made on at least a monthly basis; (ii) a statement that failure of a counterparty to meet a collateral call will result in an early termination event; (iii) a description of early termination pricing and methodology; and (iv) a requirement that the Bank's consent be obtained prior to the transfer of an agreement or contract by a counterparty.

All of these requirements currently exist in the FMP. The requirements are intended to ensure that the Banks monitor and manage their exposure to counterparties and that the agreements in place with counterparties provide adequate legal protection to the Banks. Because the risk-based capital requirements contained in the proposed rule do not directly alter or replace the need to address these issues, the Finance Board finds it appropriate to continue to impose these requirements on Bank hedging transactions.

Under the FMP, the Banks are limited to using a specific list of hedging instruments. The use of the listed hedging instruments by the Banks is permitted provided it is for the purpose of assisting the Bank in achieving its interest rate or basis risk management objectives. Like the FMP's Investment Guidelines, the Hedge Transaction Guidelines of the FMP contain detailed requirements that will no longer be necessary. The unsecured credit concentration limits set forth in proposed § 932.9 and the credit risk-based capital requirements set forth in proposed § 932.4 would eliminate the need for provisions addressing unsecured credit exposure and collateralization in the FMP. In addition, because the Finance Board is removing the restrictions on certain types of investments, it would be inconsistent to continue to restrict swaps with characteristics similar to those investments.

Q. *Part 960—Off-Balance Sheet Items.* Proposed § 960.2(a) would authorize the Banks to enter into the following types of off-balance sheet transactions, subject to any requirements or restrictions set forth by the Finance Board: standby letters of credit; derivative contracts; forward asset purchases and sales; and commitments to make advances or other loans. This authorization essentially would codify the types of off-balance transactions that already have been authorized by the Finance Board. The Finance Board specifically requests comment on whether there are additional types of off-balance sheet transactions that it should consider authorizing.

Proposed § 960.2(b) prohibits the Banks from making speculative use of derivative contracts by requiring that derivative instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank. As previously discussed in the general context of hedging instruments, speculating with derivatives contracts is inappropriate for the Banks, as it would do nothing to further their mission, while posing risks to their safety and soundness.

III. Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of the collection of information contained in §§ 931.7 through 931.9 and 933.2 of the proposed rule, described more fully in part II of the **SUPPLEMENTARY INFORMATION.** The Banks will use the information collection to determine whether Bank members satisfy the statutory and regulatory capital stock requirements. The Banks will use the information collection to implement its new capital structure and limit member ownership of Bank stock. *See* 12 U.S.C. 1426; 12 CFR parts 931 and 933. Responses are mandatory and are required to obtain or retain a benefit. *See* 12 U.S.C. 1426.

Likely respondents and/or record keepers will be Banks and Bank members. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See* 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents—7,512
b. Total annual responses—52,500
Percentage of these responses collected electronically—0%
c. Total annual hours requested—900,648

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs—0
b. Total annual costs (O&M)—0
c. Total annualized cost requested—$46,717,758.48

The Finance Board will accept written comments concerning the accuracy of the burden estimates and suggestions for reducing the burden at the address listed above.

The Finance Board has submitted the collection of information to OMB for review. Comments regarding the proposed collection of information may be submitted in writing to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503 by September 11, 2000.

[31] Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" (FAS 133), which provides a comprehensive framework of accounting and reporting standards for derivatives. It requires that all derivatives must be carried on the balance sheet at fair value. The only exception is for derivatives that qualify as hedges in accordance with FAS 133. Certain derivatives used by the Banks would not meet the requirements for hedge accounting. For example, macro or portfolio hedging would not be allowed hedge accounting treatment under FAS 133 because a specific identification of the hedged item, which must be a specific asset or liability or a pool of similar assets or liabilities is required.

IV. Regulatory Flexibility Act

The proposed rule would apply only to the Finance Board and to the Federal Home Loan Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant impact on a substantial number of small entities.

List of Subjects

12 CFR Part 917

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 925

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Parts 930, 931, 932 and 933

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

12 CFR Part 956

Community development, Credit, Federal home loan banks, Housing, Investments, Reporting and recordkeeping requirements.

12 CFR Part 960

Credit, Federal home loan banks, Investments.

Accordingly, the Federal Housing Finance Board proposes to amend title 12, chapter IX of the Code of Federal Regulations, as follows:

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

1. The authority citation for part 917 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1427, 1432(a), 1436(a), 1440.

§ 917.9 [Removed]

§ 917.10 [Redesignate as § 917.9]

2. In part 917, remove § 917.9 and redesignate § 917.10 as § 917.9.

PART 925—MEMBERS OF THE BANKS

3. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

Part 925 [Remove Subpart D]

4. Remove subpart D from part 925.

§§ 925.24 and 925.28 [Removed]

5. Remove §§ 925.24 and 925.28.

§§ 925.25 through 925.27 [Redesignated as §§ 925.19 through 925.21]

6. Redesignate §§ 925.25 through 925.27 as §§ 925.19 through 925.21.

§§ 925.29 through 925.32 [Redesignated as §§ 925.22 through 925.25]

7. Redesignate §§ 925.29 through 925.32 as §§ 925.22 through 925.25.

Subparts E through J [Redesignate as subparts D through I]

8. Redesignate subparts E through J as subparts D through I.

9. Amend newly designated § 925.19 by revising the heading and paragraphs (a), (b) and (d), and by removing paragraph (e), to read as follows:

§ 925.19 Consolidations involving members.

(a) *Consolidation of members.* (1) Upon the consolidation of two or more institutions that are members of the same Bank into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of the disappearing institutions shall terminate on the cancellation of their charter. Upon the consolidation of two or more institutions each of which is a member of a different Bank, into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate upon cancellation of its charter, provided, however, that that if more than 80 percent of the assets of the consolidated institution are derived from the assets of a disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which the disappearing institution was a member prior to the consolidation and the membership of the other institutions shall terminate upon the effective date of the consolidation.

(2) Upon the consolidation of a member into an institution that is not a member of a Bank, where the consolidated institution operates under the charter of the nonmember institution, the membership of the disappearing institution shall terminate upon the cancellation of its charter.

(b) *Notification of decision to seek membership.* When a consolidated institution resulting from a consolidation described in paragraph (a)(2) of this section has its principal place of business in a state in the same Bank district as the disappearing institution, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the disappearing institution to notify the disappearing institution's Bank that it intends to apply for membership in such Bank.

* * * * *

(d) *Treatment of outstanding indebtedness.* (1) *Prior to membership approval.* If the membership of an institution has been terminated pursuant to paragraph (a)(2) of this section, the Bank need not require the institution (or its successor) to liquidate any outstanding indebtedness owed to the Bank, as otherwise may be required pursuant to § 950.19, during:

(i) The initial 60-day notification period;

(ii) The 60 calendar day period following receipt of a notification that the consolidated institution intends to apply for membership; and

(iii) The period of time during which the Bank processes the application for membership.

(2) *Failure to apply for or be approved for membership.* If the consolidated institution does not apply for membership within the required period of time, or if its application for membership is denied, then the liquidation of any outstanding indebtedness owed to the disappearing institution's Bank shall be carried out in accordance with § 950.19.

* * * * *

10. Revise newly designated § 925.20 to read as follows:

§ 925.20 Withdrawal from membership.

(a) *Notice of withdrawal.* Any institution may terminate its membership by providing to the Bank written notice of its intent to withdraw from membership. A member that has so notified its Bank shall be entitled to have continued access to the benefits of membership until the effective date of its withdrawal. A withdrawing member may cancel its notice of withdrawal at any time prior to its effective date by providing a written cancellation notice to the Bank. A Bank may impose a fee, to be specified in its capital plan, on a member that cancels its notice of withdrawal.

(b) *Termination of membership.* The notice of withdrawal shall indicate the date on which the membership is to terminate, which may be no later than the date on which the last of the applicable stock redemption periods ends. If the notice fails to specify an effective date for the withdrawal, the Bank shall deem the withdrawal to take effect on the date the last of the

applicable stock redemption periods ends.

(c) *Stock redemption periods.* The receipt by a Bank of a notice of withdrawal shall commence the applicable 6-month and 5-year stock redemption periods for all Bank stock held by that member, unless the member previously has provided a notice of stock redemption. In the case of an institution the membership of which has been terminated as a result of a merger or other consolidation into a nonmember or into a member of another Bank, the applicable stock redemption periods shall be deemed to commence on the date on which the member's charter is cancelled, unless the member previously has provided a notice of stock redemption.

(d) *Certification.* No institution may withdraw from membership unless, on the date that the membership is to terminate, there is in effect a certification from the Finance Board that the withdrawal of a member will not cause the Bank System to fail to satisfy its obligations under 12 U.S.C. 1441b(f)(2)(C) to contribute toward the interest payments owed on obligations issued by the Resolution Funding Corporation.

11. Revise newly designated § 925.21 to read as follows:

§ 925.21 Removal from membership.

(a) *Grounds for removal.* The board of directors of a Bank may terminate the membership of any institution that fails to comply with any requirement of the Bank Act, any regulation adopted by the Finance Board, or any requirement of the Bank's capital plan, or that becomes insolvent or otherwise subject to the appointment of a conservator, receiver, or other legal custodian under federal or state law.

(b) *Stock redemption.* The applicable 6-month and 5-year stock redemption periods shall commence on the date that the Bank removes an institution from membership, unless the institution previously has provided a notice of stock redemption to the Bank.

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall have no right to obtain any of the benefits of membership after the effective date of its removal.

12. Revise newly designated § 925.22 to read as follows:

§ 925.22 Liquidation of indebtedness.

(a) *In general.* If an institution withdraws from membership or its membership is otherwise terminated, the Bank shall determine an orderly manner for liquidating all indebtedness owed by that member to the Bank, as well as all other items, including letters of credit, derivatives, or deposits. After all such obligations relating to the member have been extinguished, the Bank shall return to the member all collateral pledged by the member to the Bank to secure its obligations to the Bank.

(b) *Lien on Bank stock.* If a withdrawing member is indebted or otherwise obligated to a Bank, the Bank shall not redeem any Bank stock held by the member until after the indebtedness and other obligations to the Bank have been extinguished.

13. Revise newly designated § 925.23 to read as follows:

§ 925.23 Readmission to membership.

(a) *In general.* An institution that has withdrawn from membership, or otherwise has terminated its membership, may not be readmitted to membership in any Bank for a period of 5 years from the date on which its membership terminated.

(b) *Exceptions.* An institution that transfers membership between two Banks without interruption shall not be deemed to have withdrawn from Bank membership. Any institution that withdrew from Bank membership prior to December 31, 1997, and for which the 5-year period has not expired, may apply for membership in a Bank at any time, subject to the approval of the Finance Board and the requirements of 12 CFR part 925.

14. In subchapter E, add new parts 930, 931, 932 and 933 to read as follows:

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

Sec.
930.1 Definitions.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

§ 930.1 Definitions.

As used in this subchapter:

Affiliated counterparty means a counterparty that is an affiliate of another counterparty, as the term "affiliate" is defined in 12 U.S.C. 371c(b).

Capital plan means the approved capital structure plan that each Bank is required to develop and submit to the Finance Board for approval pursuant to 12 CFR 933.1.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 931.1(a) of this subchapter.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 931.1(b) of this subchapter.

Contingency liquidity has the meaning set forth in § 917.1 of this chapter.

Credit derivative contract means a derivative contract that transfers credit risk.

Credit risk has the meaning set forth in § 917.1 of this chapter.

Derivative contract means generally a financial contract the value of which is derived from the values of one or more underlying assets, reference rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate, foreign exchange rate, equity, precious metals, commodity, and credit contracts, and any other instruments that pose similar risks.

Exchange rate contracts include cross-currency interest-rate swaps, forward foreign exchange rate contracts, currency options purchased, and any similar instruments that give rise to similar risks.

Financial Management Policy means the Financial Management Policy For The Federal Home Loan Bank System approved by the Finance Board pursuant to Finance Board Resolution No. 96–45 (July 3, 1996), as amended by Finance Board Resolution No. 96–90 (Dec. 6, 1996), Finance Board Resolution No. 97–05 (Jan. 14, 1997), and Finance Board Res. No. 97–86 (Dec. 17, 1997).

GAAP means generally accepted accounting principles.

General allowance for losses means an allowance established by a Bank in accordance with GAAP for losses, but which does not include any amounts held against specific assets of the Bank.

Government Sponsored Enterprise, or GSE, means a United States Government-sponsored agency originally established or chartered to serve public purposes specified by the United States Congress, but whose obligations are not obligations of the United States and are not guaranteed by the United States.

Interest rate contracts include: Single currency interest-rate swaps; basis swaps; forward rate agreements; interest-rate options; and any similar instrument that gives rise to similar risks, including when-issued securities.

Investment grade means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards

available from an NRSRO or other similar standards.

Market risk has the meaning set forth in § 917.1 of this chapter.

Marketable means, with respect to an asset, that the asset can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

Market value at risk is calculated as the maximum loss in the market value of a portfolio under various stress scenarios.

NRSRO means a credit rating organization regarded as a Nationally Recognized Statistical Rating Organization by the Securities and Exchange Commission.

Operating risk-based capital ratio means the ratio of permanent capital to total assets at which the Bank intends to operate.

Operating total capital ratio means the ratio of total capital to total assets at which the Bank intends to operate.

Operations risk has the meaning set forth in § 917.1 of this chapter.

Permanent capital of a Bank means the amount paid-in for Class B stock plus its retained earnings.

Regulatory risk-based capital requirement means the amount of permanent capital that a Bank is required to maintain in accordance with § 932.3 of this chapter.

Regulatory total capital requirement means the amount of total capital that a Bank is required to maintain in accordance with § 932.2 of this chapter.

Repurchase agreement means an agreement between a seller and a buyer whereby the seller agrees to repurchase a security or similar securities at an agreed upon price, with or without a stated time for repurchase.

Retained earnings means the retained earnings, as determined in accordance with GAAP.

Total assets means the total assets of a Bank, as determined in accordance with GAAP.

Total capital of a Bank means the sum of permanent capital, the amounts paid-in for Class A stock, the amount of any general allowance for losses, and the amount of other instruments identified in a Bank's capital plan that the Finance Board has determined to be available to absorb losses incurred by such Bank.

Unrealized net losses on available-for-sale securities means the unrealized net losses on available-for-sale securities, as determined in accordance with GAAP.

Walkaway clause means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the bilateral netting contract.

PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK

Sec.
- 931.1 Classes of capital stock.
- 931.2 Issuance of capital stock.
- 931.3 Voting rights.
- 931.4 Dividends.
- 931.5 Preferences on liquidation, merger, or consolidation.
- 931.6 Transfer of capital stock.
- 931.7 Membership investment in capital stock.
- 931.8 Activity-based stock purchase requirement.
- 931.9 Concentration limits.
- 931.10 Redemption and purchase of capital stock.
- 931.11 Capital impairment.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

§ 931.1 Classes of capital stock.

The authorized capital stock of a Bank shall consist of the following instruments:

(a) Class A stock, which shall:

(1) Have a par value of $100 per share;

(2) Be issued and redeemed only at its par value;

(3) Be redeemable in cash only on six-months written notice to the Bank; and

(4) Pay a stated dividend that has a priority over the payment of dividends on the Class B stock.

(b) Class B stock, which:

(1) Shall have a par value that is to be determined by the Bank and is to be included in the capital plan;

(2) May be issued at its par value or at a price other than its par value, as determined by the Bank;

(3) Shall be redeemable in cash and at par value only on five-years written notice to the Bank;

(4) Shall be subordinated to the stated dividend payable on the Class A stock; and

(5) Shall confer an ownership interest in the retained earnings and paid-in surplus of the Bank upon acquisition of the stock by a member; and

(c) Any one or more subclasses of Class A or Class B stock, each of which may have different rights, terms, conditions, or preferences, but each subclass also shall have all of the characteristics of its respective class, as specified in paragraph (a) or (b) of this section.

§ 931.2 Issuance of capital stock.

(a) *In general.* A Bank may issue any one or more classes or subclasses of capital stock authorized by § 931.1 and shall not issue any other class of capital stock. A Bank shall issue its stock only to its members and only in book-entry form, and the Bank shall act as its own transfer agent. All issuances of capital stock shall be in accordance with the provisions of an approved capital plan.

(b) *Initial issuance.* In connection with the initial issuance of Class A or Class B stock (or any subclass of either), a Bank may issue such stock in exchange for its existing stock, through a conversion of its existing stock, or through any other fair and equitable method of distribution to the eligible purchasers, and may distribute its then-existing unrestricted retained earnings as shares of Class B capital stock.

(c) *Membership and activity-based issuance.* A Bank may issue capital stock as a requirement of membership only in accordance with § 931.7, and may issue capital stock as a requirement for conducting business with the Bank only in accordance with § 931.8.

(d) *Limitation on issuance.* A Bank shall not issue stock to a member or group of affiliated members if the issuance would result in such member or group of affiliated members owning more than 40 percent of any class (including its subclasses) of the outstanding capital stock of the Bank, or such lesser percentage established in its capital plan pursuant to § 931.9.

§ 931.3 Voting rights.

(a) *In general.* (1) The capital plan of each Bank shall specify the manner in which the members of the Bank are to elect directors, shall specify the other corporate matters, if any, on which the members of the Bank may vote, shall describe the voting preferences, if any, to be given to any particular class or subclass of capital stock, and shall indicate whether any class or subclass of capital stock may be voted cumulatively and, if so, the matters on which such cumulative voting would be permitted.

(2) A Bank that has issued any Class B stock shall assign voting rights to the Class B stock and, in its discretion, also may assign voting rights to its outstanding Class A stock or may assign voting rights to all members generally without regard to the class or number of shares of stock held by the members.

(3) Within each class or subclass of capital stock to which the capital plan has assigned voting rights, each share of stock shall have equal voting rights, but a Bank may give voting preferences to one or more classes or subclasses of capital stock and may permit any class or subclass of capital stock to vote separately from the other classes and subclasses of capital stock.

(4) No member or group of affiliated members of a Bank shall be permitted to

cast more than 20 percent of the votes eligible to be cast in any election by any class or subclass of capital stock on any matter on which the stockholders may vote. A Bank may establish a lower percentage limit in its capital plan.

(b) *Election of directors.* (1) The number of elected directors for each Bank shall be as provided by section 7 of the Act (12 U.S.C. 1427), except that the provisions of section 7 that require the elected directorships to be designated as representing the members located in each of the states within the Bank district and those provisions that require the number of votes each member may cast in an election to be determined based on the number of shares of Bank stock held by the member (or by the average number of shares held by all members in that state) as of the most recent year end shall not apply.

(2) With regard to the election of directors, the capital plan may allocate the voting rights among the members on any reasonable basis, such as on the basis of the class (or subclass) of capital stock outstanding, the asset size of the members, or the states in which the members are located. The capital plan shall, to the extent feasible, provide for the representation on the board of directors of smaller members that own Class B stock, especially members that are community financial institutions.

§ 931.4 Dividends.

(a) *In general.* A member, including a withdrawing member, shall be entitled to receive any dividends that a Bank declares on its capital stock for as long as the member owns the stock.

(b) *Class A stock.* The capital plan of a Bank shall establish the basis on which the stated dividends on the Class A stock are to be calculated, and shall provide whether such dividends are to be cumulative or non-cumulative. Thereafter, the Bank shall pay dividends on the Class A stock in accordance with that method and shall pay such dividends before paying any dividends on the Class B stock of the Bank. After payment of the stated Class A dividend, the board of directors of the Bank, in its discretion, may augment the stated dividend, which may be paid before, concurrently with, or after payment of dividends on the Class B stock.

(c) *Class B stock.* The board of directors of a Bank may authorize the payment of a dividend on the Class B stock, and shall determine the amount of such dividend. The board of directors may establish different dividend rates or preferences for different subclasses of the Class B stock, and may establish a dividend for one or more subclasses of the Class B stock that tracks the economic performance of certain Bank assets, such as Acquired Member Assets. Any dividend that tracks the performance of specific Bank assets shall be proportionately appropriate for the level of risk and profitability associated with the underlying assets. Any dividends on the Class B stock shall be payable only from the net earnings or retained earnings of the Bank, determined in accordance with GAAP, shall be paid only after the payment of the stated dividend on the Class A stock, and shall be non-cumulative.

§ 931.5 Preferences on liquidation, merger, or consolidation.

In the event of a liquidation, merger, or other consolidation of a Bank, the holders of the Class A stock shall be entitled to receive the par value of their stock, plus any accumulated dividends, before the Bank or its successor may redeem, or pay any dividends on, the outstanding Class B stock that had been issued by the Bank that has been liquidated, merged, or consolidated.

§ 931.6 Transfer of capital stock.

(a) A member of a Bank may transfer the capital stock of the Bank only to another member of the Bank or to an institution that is in the process of becoming a member of the Bank. Any such stock transfers shall be at a price agreed to by the parties.

(b) No Bank shall permit the transfer of any class (including subclasses) of its capital stock to a member, or group of affiliated members, to the extent that such transfer would result in that member or group of members owning more than 40 percent of such class or subclass of the capital stock of the Bank, or such lesser percentage established in its capital plan pursuant to § 931.9. In the event of a transfer of Bank stock that occurs as a result of a merger, acquisition, or other consolidation of two or more members of a Bank that results in the surviving member holding more than 40 percent of any class or subclass of Bank stock, the Bank and the member shall agree to a plan for the member to divest any stock pursuant to § 931.9.

§ 931.7 Membership investment in capital stock.

A Bank may require each member to invest in the Class A stock of the Bank as a condition to becoming and remaining a member of the Bank. If a Bank establishes such a mandatory membership investment, it shall allow each member the option of satisfying the requirement by investing a lesser proportional amount in Class B stock, as determined by the Bank. If a Bank is at or above its operating total capital ratio and its operating risk-based capital ratio, it shall not require members to purchase capital stock. A Bank also may establish an annual membership fee to be assessed in lieu of a mandatory stock investment for its members.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–_____ with an expiration date of _____.)

§ 931.8 Activity-based stock purchase requirement.

(a) *In general.* As a condition for entering into a particular business transaction with a member, a Bank may require the member to purchase an amount of Class A or Class B stock.

(b) *Alternative arrangements.* A Bank may enter into a written contractual agreement with a member under which the member commits to purchase a specific number of shares of a particular class or classes of Bank stock at a specified price, with the purchase to be completed and all payments made at a future date to be determined by the Bank, and such agreement may be used to satisfy the activity-based stock purchase requirement in paragraph (a) of this section, if the use of such alternative arrangements is approved as part of the Bank's capital plan.

(c) *Limitations.* The amount of Class B stock that a Bank may require a member to purchase under paragraph (a) of this section shall be based on the risk characteristics associated with the type and duration of asset to be acquired by the Bank as a result of the particular transaction with that member. A Bank shall not require a member to purchase any Class B capital stock either under paragraph (a) or paragraph (b) of this section to the extent that the amount of stock to be purchased would cause the Bank to exceed its operating total capital ratio and operating risk-based capital ratio.

(d) *Retention of stock.* A Bank shall not prohibit a member that has purchased capital stock in accordance with this section from selling the stock to another member, subject to the limitations of § 931.11.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–_____ with an expiration date of _____.)

§ 931.9 Concentration limits.

No member, or group of affiliated members, of a Bank shall own more than 40 percent of any class (including,

in the aggregate, all subclasses of a class) of the outstanding capital stock of the Bank, or such lower limit established in the capital plan. If at a given time, a member, or group of affiliated members, of a Bank acquires stock such that they own more than 40 percent of any class (including, in the aggregate, all subclasses of any class) of the outstanding capital stock of the Bank, or such lower limit established in the capital plan, the Bank and member (or members) shall agree to a plan under which the member (or members) will divest sufficient shares of such stock as necessary to comply with this section.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–_____ with an expiration date of _____.)

§ 931.10 Redemption and purchase of capital stock.

(a) *Redemption.* A member may redeem capital stock of the Bank by providing the requisite written notice to the Bank of its intent to redeem the stock. For Class A stock, a member shall provide 6 months written notice, and for Class B stock a member shall provide 5 years written notice. At the expiration of the applicable notice period, the member shall be entitled to receive from the Bank the par value of the stock in cash. A member shall not have pending at any one time more than one notice of redemption for any class of Bank stock. A Bank may impose a fee, as specified in its capital plan, on a member that cancels a pending notice of redemption.

(b) *Purchase.* A Bank shall not be obligated to redeem its capital stock other than in accordance with paragraph (a) of this section, but a Bank, in its discretion, may purchase its outstanding Class A or Class B capital stock at any time at a negotiated price.

§ 931.11 Capital impairment.

A Bank may not redeem or purchase any capital stock without the prior written approval of the Finance Board if the Bank is not in compliance with any regulatory capital requirement or would fall out of compliance with any regulatory capital requirement as a result of the redemption or purchase.

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

Sec.

932.1 Capital provisions transition requirements.
932.2 Total capital requirement.
932.3 Risk-based capital requirement.
932.4 Credit risk capital requirement.
932.5 Market risk capital requirement.
932.6 Operations risk capital requirement.
932.7 Reporting requirements.
932.8 Minimum liquidity requirements.
932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

§ 932.1 Capital provisions transition requirements.

(a) *General transition provision.* Not later than three years after the effective date of its capital plan, each Bank shall:

(1) Have sufficient total capital to comply with the requirement of § 932.2 and

(2) Have sufficient permanent capital to comply with the requirement of § 932.3.

(b) *Risk management.* Before its new capital structure may take effect, each Bank shall obtain the approval of the Finance Board for the internal market risk model or a cash flow model used to calculate the market risk component of its risk-based capital requirement, and for the risk assessment procedures and controls (whether established as part of its risk management policy or otherwise) to be used to manage its credit, market, and operations risks.

(c) *Financial Management Policy.* After obtaining the approvals required by paragraph (b) and as of the end of the transition period specified in its capital plan, a Bank shall be governed exclusively by the capital requirements of § 932.2 or § 932.3. Until such date, the risk management requirements of the Financial Management Policy shall continue to apply to that Bank.

(d) *Issuance of capital stock.* Until a Bank has issued capital stock in accordance with its approved capital plan, it shall continue to be governed by the minimum stock purchase and stock retention requirements of the Act, as in effect on November 11, 1999. Upon the initial issuance of stock in accordance with its capital plan, the minimum stock purchase and stock retention requirements of the Act as in effect on November 11, 1999, will cease to apply to that Bank and the purchase and retention of capital stock by its members shall be governed by the approved capital plan and other applicable regulations.

§ 932.2 Total capital requirement.

(a) Each Bank shall maintain at all times total capital in an amount equal to at least 4.0 percent of the Bank's total assets.

(b) Each Bank also shall maintain at all times a leverage ratio of total capital to total assets of at least 5.0 percent of the Bank's total assets, where the ratio is computed by multiplying the Bank's permanent capital by 1.5 and all other components of total capital are included at face value.

(c) For reasons of safety and soundness, the Finance Board may require an individual Bank to have and maintain more total capital than mandated by paragraph (a) of this section.

§ 932.3 Risk-based capital requirement.

(a) *In general.* Each Bank shall maintain at all times permanent capital in an amount at least equal to the sum of its credit risk capital requirement, its market risk capital requirement, and its operations risk capital requirement, calculated in accordance with §§ 932.4, 932.5 and 932.6, respectively.

(b) *Exception.* For reasons of safety and soundness, the Finance Board may require an individual Bank to have a greater amount of permanent capital than required by paragraph (a) of this section.

§ 932.4 Credit risk capital requirement.

(a) *General requirement.* A Bank's credit risk capital requirement shall be equal to the sum of the Bank's credit risk capital charges for all on-balance sheet assets and off-balance sheet items.

(b) *Credit risk capital charge for on-balance sheet assets.* Except as provided in paragraph (h)(1) of this section, a Bank's credit risk capital charge for a specific on-balance sheet asset shall be equal to the book value of the asset multiplied by the specific credit risk percentage requirement assigned to that asset pursuant to paragraph (d)(2) of this section.

(c) *Credit risk capital charge for off-balance sheet items.* Except as provided in paragraph (h)(2) of this section, a Bank's credit risk capital charge for a specific off-balance sheet item shall be equal to the credit equivalent amount of such item, as determined pursuant to paragraphs (e), (f), or (g) of this section, as applicable, multiplied by the specific credit risk percentage requirement assigned to that item pursuant to paragraph (d)(2) of this section.

(d) *Determination of specific credit risk percentage requirements.* (1) *Finance Board determination of specific credit risk percentage requirements.* The Finance Board shall determine, and update periodically, the specific credit risk percentage requirements set forth in Tables 1.1 through 1.4 of this part applicable to a Bank's on-balance sheet assets and credit equivalent amounts of its off-balance sheet items.

(2) *Bank determination of specific credit risk percentage requirements.* (i) Each Bank shall determine the credit risk percentage requirement applicable

to the book value of each on-balance sheet asset and the on-balance sheet equivalent value of each off-balance sheet item by identifying the category set forth in Table 1.1, Table 1.2, Table 1.3 or Table 1.4 of this part to which the asset or item belongs based upon, as applicable, the type of asset or item, its demonstrated credit rating (as determined in accordance with paragraphs (d)(2)(ii) and (d)(2)(iii) of this section), and its remaining maturity. The applicable credit risk percentage requirement for a specific on-balance sheet asset or off-balance sheet item shall be used to calculate the credit risk capital charge for such asset or item in accordance with paragraphs (b) or (c) of this section respectively. The relevant categories and credit risk percentage requirements are provided in the following Tables 1.1 through 1.4 of this part:

TABLE 1.1.—REQUIREMENT FOR ADVANCES

Type of Advances	Percentage applicable to on-balance sheet equivalent value
Advances with:	
Remaining maturity <= 4 years	0.07
Remaining maturity > 4 years to 7 years	0.20
Remaining maturity > 7 years to 10 years	0.40
Remaining maturity > 10 years	0.45

TABLE 1.2.—REQUIREMENT FOR RESIDENTIAL MORTGAGE ASSETS

Type of residential mortgage asset	Percentage applicable to on-balance sheet equivalent value
Highest Investment Grade	0.45
Second Highest Investment Grade	0.55
Third Highest Investment Grade	0.90
Fourth Highest Investment Grade	3.40
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade	35.00
Second Highest Below Investment Grade	100.00
All Other Below Investment Grade	100.00

TABLE 1.3.—REQUIREMENT FOR RATED ASSETS OR ITEMS OTHER THAN ADVANCES OR RESIDENTIAL MORTGAGE ASSETS

	Percentage applicable to on-balance sheet equivalent value				
	<=year	>1 yr to 3 yrs	>3 yrs to 7yrs	>7 yrs to 10 yrs	>10 yrs
U.S. Government Securities	0.00	0.00	0.00	0.00	0.00
Highest Investment Grade	0.15	0.44	0.88	1.45	2.05
Second Highest Investment Grade	0.15	0.47	1.00	1.50	2.35
Third Highest Investment Grade	0.20	1.80	2.50	3.30	4.30
Fourth Highest Investment Grade	1.30	2.90	4.20	5.20	6.80
If Downgraded Below Investment Grade After Acquisition by Bank:					
Highest Below Investment Grade	5.00	15.00	17.00	18.00	20.00
Second Highest Below Investment Grade	22.00	35.00	37.00	37.00	37.00
All Other	100.00	100.00	100.00	100.00	100.00

TABLE 1.4.—REQUIREMENT FOR UNRATED ASSETS

Type of unrated asset	Percentage applicable to on-balance sheet equivalent value
Cash	0.00
Premises, Plant, and Equipment	8.00
Investments Under § 940.3(a)(5) of this chapter	8.00

(ii) When determining the credit rating used to identify the applicable credit risk percentage requirement from Tables 1.2 and 1.3 of this part, each Bank shall apply the following criteria:

(A) For assets or items that are rated directly by an NRSRO, the credit rating shall be the NRSRO's credit rating for the asset or item as determined in accordance with paragraph (d)(2)(iii) of this section.

(B) For an asset or item, or relevant portion of an asset or item, that is not rated directly by an NRSRO, but for which an NRSRO rating has been assigned to any corresponding obligor counterparty, third party guarantor, or collateral backing the asset or item, the credit rating that shall apply to the asset or item, or portion of the asset or item, so guaranteed or collateralized, shall be the credit rating corresponding to such obligor counterparty, third party guarantor, or underlying collateral, as determined in accordance with paragraphs (d)(2)(iii) of this section. If there are multiple obligor counterparties, third party guarantors, or collateral instruments backing an asset or item not rated directly by an NRSRO, or any specific portion thereof, then the credit rating that shall apply to that asset or item, or specific portion thereof, shall be the highest credit rating among such obligor counterparties, third party guarantors, or collateral instruments, as determined in accordance with paragraph (d)(2)(iii) of this section. Assets or items shall be deemed to be backed by collateral for purposes of this paragraph if the collateral is:

(*1*) Actually held by the Bank or an independent, third-party custodian, or by the Bank's member if permitted under the Bank's collateral agreement with such party;

(*2*) Legally available to absorb losses;

(*3*) Of a readily determinable value at which it can be liquidated by the Bank;

(*4*) Held in accordance with the provisions of the Bank's member products policy established pursuant to § 917.4 of this chapter; and

(*5*) Subject to an appropriate discount reflecting the price risk underlying the collateral.

(C) For residential mortgage assets and other assets or items, or relevant portion of an asset or item, that do not meet the requirements of paragraphs (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section, and are not identified in Tables 1.1 or Table 1.4 of this part, the Bank shall determine its own credit rating for such assets or items, or relevant portion thereof, using credit rating standards available from an NRSRO or other similar standards. This credit rating, as determined by the Bank, shall be used to identify the correct credit risk percentage requirement under Table 1.2 of this part for residential mortgage assets, or under Table 1.3 of this part for all other assets or items.

(iii) In determining the credit ratings under paragraph (d)(2)(ii)(A) and (d)(2)(ii)(B) of this section, a Bank shall apply the following criteria:

(A) Where a credit rating has a modifier (*e.g.*, A+ or A−) the credit rating is deemed to be the credit rating without the modifier (*e.g.*, A+ or A−= A);

(B) Where a specific asset or item has received more than one credit rating from a given NRSRO, the most recent credit rating shall be used;

(C) Where a specific asset or item has received credit ratings from more than one NRSRO, the lowest credit rating shall be used.

(e) *Calculation of credit equivalent amount for off-balance sheet items other than derivative contracts.* (1) *General requirement.* The credit equivalent amount for an off-balance sheet item other than a derivative contract shall be determined by a Finance Board approved model or shall be equal to the face amount of the instrument multiplied by the credit conversion factor assigned to such risk category of instruments, subject to the exceptions in paragraph (e)(2) of this section, provided in the following Table 2 of this part:

TABLE 2.—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS OTHER THAN DERIVATIVE CONTRACTS

Instrument	Credit conversion factor (in percent)
Asset sales with recourse where the credit risk remains with the Bank	100
Sale and repurchase agreements	
Forward asset purchases	
Commitments to make advance, or other loans	
Standby letters of credit	50
Other commitments with original maturity of over one year	
Other commitments with original maturity of one year or less	20

(2) *Exceptions.* The credit conversion factor shall be zero for Other Commitments With Original Maturity of Over One Year and Other Commitments With Original Maturity of One Year or Less, for which credit conversion factors of 50 percent or 20 percent would otherwise apply, that are unconditionally cancelable, or that effectively provide for automatic cancellation, due to the deterioration in a borrower's creditworthiness, at any time by the Bank without prior notice.

(f) *Calculation of credit equivalent amount for single derivative contracts.* (1) *General requirement.* The credit equivalent amount for a derivative contract that is not subject to a qualifying bilateral netting contract shall be the sum of the current credit exposure and the potential future credit exposure of the derivative contract, where the current credit exposure is determined in accordance with paragraph (f)(2) of this section and the potential future credit exposure is determined in accordance with paragraph (f)(3) of this section.

(2) *Current credit exposure.* If the mark-to-market value of the contract is positive, the current credit exposure shall equal that mark-to-market value. If the mark-to-market value of the contract is zero or negative, the current credit exposure shall be zero.

(3) *Potential future credit exposure.* (i) The potential future credit exposure for a single derivative contract, including a derivative contract with a negative mark-to-market value, shall be calculated using an internal model approved by the Finance Board or, in the alternative, by multiplying the notional amount of the derivative contract by one of the assigned credit conversion factors, modified as may be required by paragraph (f)(3)(ii) of this section, for the appropriate category as provided in the following Table 3 of this part:

TABLE 3.—CREDIT CONVERSION FACTORS FOR POTENTIAL FUTURE CREDIT EXPOSURE DERIVATIVE CONTRACTS

[In percent]

Residual maturity	Interest rate	Foreign exchange and gold	Equity	Precious metals except gold	Other commodities
One year or less	0	1	6	7	10
Over 1 year to five years	.5	5	8	7	12
Over five years	1.5	7.5	10	8	15

(ii) In applying the credit conversion factors in Table 3 of this part the following modifications shall be made:

(A) For derivative contracts with multiple exchanges of principal, the conversion factors are multiplied by the number of remaining payments in the derivative contract; and

(B) For derivative contracts that automatically reset to zero value following a payment, the residual maturity equals the time until the next payment; however, interest rate contracts with remaining maturities of greater than one year shall be subject to a minimum conversion factor of 0.5 percent.

(iii) If a Bank uses an internal model to determine the potential future credit exposure for a particular type of derivative contract, the Bank shall use the same model for all other similar types of contracts. However, the Bank may use an internal model for one type of derivative contract and Table 3 of this part for another type of derivative contract.

(iv) Forwards, swaps, purchased options and similar derivative contracts not included in the Interest Rate, Foreign Exchange and Gold, Equity, or Precious Metals Except Gold categories shall be treated as Other Commodities contracts when determining potential future credit exposures using Table 3 of this part.

(v) If a Bank uses Table 3 of this part to determine the potential future credit exposures for credit derivatives contracts, the credit conversion factors provided in Table 3 for Interest Rate contracts shall also apply to the credit derivative contracts.

(g) *Calculation of credit equivalent amount for multiple derivative contracts subject to a qualifying bilateral netting contract.* (1) *Netting calculation.* The credit equivalent amount for multiple derivative contracts executed with a single counterparty and subject to a qualifying bilateral netting contract described in paragraph (g)(2) of this section, shall be calculated by adding the net current credit exposure and the adjusted sum of the potential future credit exposure for all derivative contracts subject to the qualifying bilateral netting contract, where:

(i) The net current credit exposure equals:

(A) The net sum of all positive and negative mark-to-market values of the individual derivative contracts subject to a qualifying bilateral netting contract, if the net sum of the mark-to-market values is positive; or

(B) Zero, if the net sum of the mark-to-market values is zero or negative; and

(ii) The adjusted sum of the potential future credit exposure (A_{net}) is calculated as follows:

$A_{net} = 0.4 \times A_{gross} + (0.6 \times NGR \times A_{gross})$, where:

(A) A_{gross} is the gross potential future credit exposure, *i.e.*, the sum of the potential future credit exposure, calculated in accordance with paragraph (f)(3) of this section, for each individual derivative contract subject to the qualifying bilateral netting contract;

(B) NGR is the net to gross ratio, *i.e.*, the ratio of the net current credit exposure to the gross current credit exposure; and

(C) The gross current credit exposure equals the sum of the positive current credit exposures of all individual derivative contracts subject to the qualifying bilateral netting contract.

(2) *Qualifying bilateral netting contract.* A bilateral netting contract shall be considered a qualifying bilateral netting contract if the following conditions are met:

(i) The netting contract is in writing;

(ii) The netting contract is not subject to a walkaway clause;

(iii) The netting contract provides that the Bank would have a single legal claim or obligation either to receive or to pay only the net amount of the sum of the positive and negative mark-to-market values on the individual derivative contracts covered by the netting contract in the event that a counterparty, or a counterparty to whom the netting contract has been assigned, fails to perform due to default, insolvency, bankruptcy, or other similar circumstance;

(iv) The Bank obtains a written and reasoned legal opinion that represents, with a high degree of certainty, that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, the relevant court and administrative authorities would find the Bank's exposure to be the net amount under:

(A) The law of the jurisdiction by which the counterparty is chartered or the equivalent location in the case of non-corporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(B) The law of the jurisdiction that governs the individual derivative contracts covered by the netting contract; and

(C) The law of the jurisdiction that governs the netting contract;

(v) The Bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the netting contract continues to satisfy the requirements of this section; and

(vi) The Bank maintains in its files documentation adequate to support the netting of a derivative contract.

(h) *Exceptions.* (1) *Specific credit risk capital charge for on-balance sheet assets hedged with credit derivatives.* The credit risk capital charge for an on-balance sheet asset shall be zero if a credit derivative is used to hedge the credit risk on that asset, provided that:

(i) Either:

(A) The credit derivative and the on-balance sheet asset are of identical remaining maturity, and the asset being referenced in the credit derivative is identical to the underlying asset;

(B) If the on-balance sheet asset and the asset referenced in the credit derivative are identical, but the remaining maturities of the on-balance sheet asset and the credit derivative are different, the remaining maturity of the credit derivative is two years or more; or

(C) If the remaining maturities of the on-balance sheet asset and the credit derivative are identical, but the on-balance sheet asset is different from the asset referenced in the credit derivative,

the asset referenced in the credit derivative and the on-balance sheet asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to or more junior than the on-balance sheet asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the credit derivative contract calculated pursuant to paragraph (c) of this section is still applied.

(2) *Specific credit risk capital charge for certain derivative contracts.* The credit risk capital charge for the following derivative contracts shall be zero:

(i) An exchange rate contract with an original maturity of 14 calendar days or less (gold contracts do not qualify for this exception); and

(ii) A derivative contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

(i) *Date of calculations.* Unless otherwise directed by the Finance Board, a Bank must perform all calculations required by this section using the assets and off-balance sheet items held by the Bank, and, if applicable, the values or credit ratings of such assets or items, as of the close of business of the last business day of the month for which the credit risk capital charge is being calculated.

§ 932.5 Market risk capital requirement.

(a) *General requirement.* (1) A Bank's market risk capital requirement shall equal the sum of:

(i) The market value of the Bank's portfolio at risk from movements in interest rates, foreign exchange rates, commodity prices, and equity prices that could occur during periods of market stress, where the market value of the Bank's portfolio at risk is determined using an internal market risk model that fulfills the requirements of paragraph (b) of this section and that has been approved by the Finance Board; and

(ii) The amount, if any, by which the Bank's current market value of total capital is less than 95 percent of the Bank's book value of total capital, where:

(A) The current market value of the total capital is calculated by the Bank after determining the current market value of its assets, liabilities and off-balance sheet items using the internal market risk model, or cash flow model, approved by the Finance Board under paragraph (d) of this section; and

(B) The book value of the Bank's total capital is calculated in accordance with GAAP.

(2) A Bank may substitute a cash-flow model to derive a market risk capital requirement comparable to that calculated using an internal risk model under paragraph (a)(1) of this section, provided that:

(i) The Bank obtains Finance Board approval of the cash-flow model and of the assumptions to be applied to the model; and

(ii) The Bank demonstrates to the Finance Board that the cash flow model considers the same factors and a comparable degree of stress as required for an internal market risk model and as set forth in paragraph (b) of this section, taking into account the difference in model structure.

(b) *Measurement of market value at risk under a Bank's internal market risk model.* (1) Each Bank shall use an internal market risk model that estimates the market value of the Bank's on-balance sheet assets and liabilities and off-balance sheet items, including related options, and measures the market value of the Bank's portfolio at risk of its on-balance sheet assets and liabilities and of off-balance sheet items, including related options, from all sources of the Bank's market risks, except that a Bank's model need only incorporate those risks that are material.

(2) The Bank's internal market risk model may use any generally accepted measurement technique, such as variance-covariance models, historical simulations, or Monte Carlo simulations, for estimating the market value of the Bank's portfolio at risk, provided that any measurement technique used must cover the Bank's material risks.

(3) The measures of the market value of the Bank's portfolio at risk shall include the risks arising from the non-linear price characteristics of options and the sensitivity of the market value of options to changes in the volatility of the options' underlying rates or prices.

(4) The Bank's internal market risk model shall use interest rate and market price scenarios for estimating the market value of the Bank's portfolio at risk, but at a minimum:

(i) The Bank's internal market risk model must provide an estimate of the market value of the Bank's portfolio at risk such that the probability of a loss greater than that estimated shall be no more than one percent;

(ii) The Bank's internal market risk model must incorporate scenarios that reflect changes in interest rates, interest rate volatility, and shape of the yield curve, and changes in market prices, equivalent to those that have been observed over 120-business day periods of market stress. For interest rates, the relevant historical observation period is to start from the end of the previous month and to go back to the beginning of 1978; and

(iii) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations among interest rates, subject to a Finance Board determination that the model's system for measuring such correlations is sound.

(5) For any consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, the Bank must meet the following requirements:

(i) The relevant foreign exchange, equity price or commodity price risks associated with the consolidated obligations must be hedged in accordance with § 956.6;

(ii) In addition to fulfilling the criteria of paragraph (b)(4) of this section, the Bank's internal market risk model must calculate an estimate of the market value of the Bank's portfolio at risk due to the material foreign exchange, equity price or commodity price risk, such that, at a minimum:

(A) The probability of a loss greater than that estimated must not exceed one percent;

(B) The scenarios reflect changes in foreign exchange, equity, or commodity market prices that have been observed over 120-business day periods of market stress, as determined using historical data that is from an appropriate period and satisfactory to the Finance Board; and

(C) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations within or among foreign exchange rates, equity prices, or commodity prices, subject to a Finance Board determination that the model's system for measuring such correlations is sound; and

(iii) If there is a default on the part of a counterparty to a derivative or hedging contract linked to foreign exchange, equities or commodities, the Bank must enter into a replacement contract in a timely manner and as soon as market conditions permit.

(c) *Independent validation of Bank internal market risk model or cash flow model.* (1) Each Bank shall conduct an independent validation of its internal market risk model or cash flow model within the Bank that is carried out by personnel not reporting to the business line responsible for conducting business transactions for the Bank. Alternatively, the Bank may obtain independent validation by an outside party qualified to make such determinations. Validations will be done on an annual

basis, or more frequently as required by the Finance Board.

(2) The results of such independent validations shall be reviewed by the Bank's board of directors and provided promptly to the Finance Board.

(d) *Finance Board approval of Bank internal market risk model or cash flow model.* Each Bank shall obtain approval from the Finance Board of its internal market risk model or its cash flow model, including subsequent material adjustments to the model made by the Bank prior to its use. A Bank shall make all adjustments to its model that may be directed by the Finance Board.

(e) *Date of calculations.* Unless otherwise directed by the Finance Board, a Bank must perform any calculations or estimates required under this section using the on-balance sheet assets and liabilities and off-balance sheet items held by the Bank, and if applicable, the values of any such holdings, as of the close of business of the last business day of the month for which the market risk capital requirement is being calculated.

§ 932.6 Operations risk capital requirement.

(a) *General requirement.* Except as allowed in accordance with paragraph (b) of this section, a Bank's operations risk capital requirement shall at all times equal 30 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement.

(b) *Alternative requirements.* With the approval of the Finance Board, a Bank may have an operations risk capital requirement equal to less than 30 percent but no less than 10 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement if:

(1) The Bank provides an alternative methodology for assessing and quantifying an operations risk capital requirement; or

(2) The Bank obtains insurance to cover operations risk from an insurer rated at least the second highest investment grade credit rating by an NRSRO.

§ 932.7 Reporting requirements.

Each Bank shall report to the Finance Board by the 15th day of each month its risk-based capital requirement by component amounts, and its actual total capital amount and permanent capital amount, calculated as of the close of business of the last business day of the preceding month, or more frequently, as may be required by the Finance Board.

§ 932.8 Minimum liquidity requirements.

In addition to meeting the deposit liquidity requirements contained in § 965.3 of this chapter, each Bank shall hold contingency liquidity in an amount sufficient to enable the Bank to meet its liquidity needs, which shall, at a minimum, cover five business days of inability to access the consolidated obligation debt markets. An asset that has been pledged under a repurchase agreement cannot be used to satisfy minimum liquidity requirements.

§ 932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

(a) *Unsecured extensions of credit to single counterparty.* (1) *General requirement.* Unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on- and off-balance sheet transactions shall not exceed the product of the maximum capital exposure limit applicable to such counterparty, as set forth in paragraph (a)(2) and Table 4 of this part, multiplied by the lesser of:

(i) The Bank's total capital; or

(ii) The counterparty's Tier 1 capital, or total capital (as defined by the counterparty's principal regulator) if Tier 1 capital is not available.

(2) *Bank determination applicable maximum exposure limits.* The applicable maximum capital exposure limits for specific counterparties are assigned to each counterparty based upon the credit rating of the counterparty, as determined in accordance with paragraph (a)(3) of this section, and are provided in the following Table 4 of this part:

TABLE 4.—MAXIMUM LIMITS ON UNSECURED EXTENSIONS OF CREDIT TO A SINGLE COUNTERPARTY BY COUNTERPARTY CREDIT RATING CATEGORY

Credit rating of counterparty category	Maximum capital exposure limit (in percent)
Highest Investment Grade	15
Second Highest Investment Grade	12
Third Highest Investment Grade	[illegible]
Fourth Highest Investment Grade	1.5
Below Investment Grade or Other	1

(3) *Bank determination of applicable credit ratings.* In determining the applicable credit rating category under Table 4 of this part, the following criteria shall be applied:

(i) If a counterparty has received more than one rating from a given NRSRO, the most recent credit rating shall be used;

(ii) If a counterparty has received credit ratings from more than one NRSRO, the lowest credit rating shall be used;

(iii) If a counterparty has received different credit ratings for its transactions with short-term and long-term maturities:

(A) The higher credit rating shall apply for purposes of determining the allowable maximum capital exposure limit applicable to the total amount of unsecured credit extended by the Bank to such counterparty; and

(B) The lower credit rating shall apply for purposes of determining the allowable maximum capital exposure limit applicable to the amount of unsecured credit extended by the Bank to such counterparty for the transactions with maturities governed by that rating.

(iv) If a counterparty is placed on a credit watch for a potential downgrade by an NRSRO, the credit rating from that NRSRO at the next lower grade shall be used; and

(v) If a counterparty is not rated by a NRSRO, the Bank shall determine the applicable credit rating by using credit rating standards available from an NRSRO or other similar standards.

(b) *Unsecured extensions of credit to affiliated counterparties.* The total amount of unsecured extensions of credit by a Bank to all affiliated counterparties shall not exceed the product of the maximum capital exposure limit provided under Table 4 of this part based upon the highest credit rating of the affiliated counterparties, as determined in accordance with paragraph (a)(3) of this section, multiplied by the lesser of:

(1) The Bank's total capital; or

(2) The combined Tier 1 capital, or total capital (as defined by each affiliated counterparty's principal regulator) if Tier 1 capital is not available, of all of the affiliated counterparties.

(c) *Reporting requirements.* (1) *Total unsecured extensions of credit.* Each Bank shall report monthly to the Finance Board the amount of the Bank's total unsecured extensions of credit arising from on- and off-balance sheet transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of:

(i) The Bank's total capital; or

(ii) The counterparty's, or affiliated counterparties' combined, Tier 1 capital, or total capital (as defined by each counterparty's principal regulator) if Tier 1 capital is not available.

(2) *Total secured and unsecured extensions of credit.* Each Bank shall

report monthly to the Finance Board the amount of the Bank's total secured and unsecured extensions of credit arising from on- or off-balance sheet transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of the Bank's total assets.

PART 933—BANK CAPITAL STRUCTURE PLANS

Sec.
933.1 Submission of plan.
933.2 Contents of plan.
933.3 Implementation of plan.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

§ 933.1 Submission of Plan.

(a) *In general.* Within 270 days after the date of publication of the final capital rule, the board of directors of each Bank shall submit to the Finance Board a capital plan that would establish a new capital structure for the Bank and that would provide sufficient capital for the Bank to comply with its regulatory total capital requirement and regulatory risk-based capital requirement. The Finance Board, upon a demonstration of good cause, may approve a reasonable extension of the 270-day period for submission of the plan. A Bank may not implement its capital plan, or any amendment to the plan, until after the Finance Board has approved the plan or amendment, and the Finance Board shall determine the effective date for each capital plan.

(b) *Failure to submit a capital plan.* If a Bank fails to submit a capital plan to the Finance Board within the 270 day period, including any approved extension, the Finance Board may establish a capital plan for that Bank, take any enforcement action against the Bank, its directors, or its executive officers section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)), or merge the Bank in accordance with section 26 of the Act (12 U.S.C. 1446) into another Bank that has submitted an acceptable capital plan.

§ 933.2 Contents of Plan.

The capital plan for each Bank shall include, at a minimum, the following provisions:

(a) *Classes of capital stock.* The capital plan shall:

(1) Indicate each class or subclass of capital stock that the Bank will offer to its members;

(2) Indicate the terms, rights, and preferences for each class and subclass of capital stock to be issued by the Bank;

(3) Provide that the payment for Class B stock confers on the member an ownership interest in the retained earnings and paid-in surplus of the Bank;

(4) Specify the manner in which the members of the Bank are to elect directors, specify the other corporate matters, if any, on which the members of the Bank may vote, describe the voting preferences, if any, to be given to any particular class or subclass of capital stock, and indicate whether any class or subclass of capital stock may be voted cumulatively and, if so, the matters on which such cumulative voting would be permitted; and

(5) Establish the basis on which the stated dividends on the Class A stock are to be calculated, and provide whether such dividends are to be cumulative or non-cumulative.

(b) *Capital stock issuance.* The capital plan shall:

(1) Describe the manner in which the Bank intends to solicit its members for voluntary purchases of its capital stock; and

(2) Specify the operating total capital ratio and the operating risk-based capital ratio at which the Bank intends to operate, which shall be greater than the regulatory total capital requirement and regulatory risk-based capital requirement, respectively.

(c) *Membership investment or fee structure.* The capital plan shall:

(1) Require, as a condition of membership, that a member either maintain a specified investment in the Class A stock of the Bank or pay to the Bank an annual membership fee, and describe the method used by the Bank to calculate such investment or fee;

(2) Allow each member that is required to invest in the capital stock of the Bank the option of investing in Class B stock, if authorized by the Bank, rather than in the Class A stock, in some lesser amount as determined by the Bank, subject to § 931.7 of this subchapter;

(3) Require the board of directors of the Bank to review and adjust the membership investment periodically to ensure that the Bank complies with the regulatory total capital requirement and the regulatory risk-based capital requirement;

(4) Require members to comply promptly with any adjusted membership investment; and

(5) Specify a fee, if any, on a member that cancels a notice of withdrawal or a notice of redemption and describe the method used by the Bank to calculate such fees.

(d) *Transfer of Bank stock.* The capital plan shall:

(1) Establish the criteria for the issuance, redemption, retirement, or purchase of Bank stock by the Bank, and for the transfer of Bank stock between members of the Bank;

(2) Provide that the stock of the Bank may only be issued to or held by the members of the Bank, and that no entities other than the Bank or its members may trade the stock of the Bank; and

(3) Specify the maximum percentage of a class or subclass of stock a Bank may transfer to a member, or group of affiliated members, not to exceed 40 percent of any class or subclass of stock.

(e) *Termination of membership.* The capital plan shall address the manner in which the Bank will provide for the disposition of its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against its members, including claims resulting from prepayment of advances prior to their stated maturity.

(f) *Independent review of plan.* The capital plan shall include the report from an independent certified public accountant regarding the extent to which the implementation of the plan would affect the redeemable stock issued by the Bank and the report from an NRSRO regarding the extent to which the implementation of the plan would affect the credit rating of the Bank.

(g) *Implementation.* The capital plan shall demonstrate that the Bank has made a good faith determination that the Bank will be able to implement the plan as submitted and that the Bank will be in compliance with its regulatory total capital requirement and its regulatory risk-based capital requirement after the plan is implemented.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–_____ with an expiration date of _____.)

§ 933.3 Implementation of Plan.

(a) *In general.* Each Bank's capital plan shall:

(1) Provide for the manner in which the Bank shall issue Class A or Class B stock (or any subclass of either), which may be through an exchange for its existing stock, a conversion of its existing stock, or any other fair and equitable method of distribution to eligible purchasers;

(2) Provide what shall happen to the existing Bank stock owned by a member that does not affirmatively elect to convert or exchange its existing Bank stock into either Class A or Class B stock, or some combination thereof; and

(3) Include a transition provision that specifies the date on which the plan is to take effect, and that specifies the date,

not to exceed three years from the effective date of the plan, on which the Bank shall be in full compliance with its regulatory total capital requirement and regulatory risk-based capital requirement.

(b) *Member transition.* The capital plan for each Bank may include a provision allowing any institution that was a member of the Bank on November 12, 1999, a period of up to three years from the effective date of the plan in which to comply with the membership investment requirements of the capital plan.

PART 956—FEDERAL HOME LOAN BANK INVESTMENTS

15. The authority citation for part 956 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1431, 1436.

16. Add a new § 956.6, to read as follows:

§ 956.4 Use of hedging instruments.

(a) *Applicability of GAAP.* Derivative instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank.

(b) *Documentation requirements.* (1) Transactions with a single counterparty shall be governed by a single master agreement when practicable.

(2) A Bank's agreement with the counterparty for over-the-counter derivative contracts shall include:

(i) A requirement that market value determinations and subsequent adjustments of collateral be made at least on a monthly basis;

(ii) A statement that failure of a counterparty to meet a collateral call will result in an early termination event;

(iii) A description of early termination pricing and methodology, with the methodology reflecting a reasonable estimate of the market value of the over-the-counter derivative contract at termination (Standard International Swaps and Derivatives Association, Inc. language relative to early termination pricing and methodology may be used to satisfy this requirement); and

(iv) A requirement that the Bank's consent be obtained prior to the transfer of an agreement or contract by a counterparty.

17. In subchapter G, add a new part 960 to read as follows:

PART 960—OFF-BALANCE SHEET ITEMS

Sec.
960.1 Definitions.
960.2 Authorized off-balance sheet items.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1429, 1430, 1430b, 1431.

§ 960.1 Definitions.

As used in this part:

Derivative contracts has the meaning set forth in § 930.1 of this chapter.

Repurchase agreement has the meaning set forth in § 930.1 of this chapter.

§ 960.2 Authorized off-balance sheet items.

(a) *Authorization.* A Bank may enter into the following types of off-balance sheet transactions:

(1) Standby letters of credit, pursuant to the requirements of 12 CFR part 961;

(2) Derivative contracts;

(3) Forward asset purchases and sales; and

(4) Commitments to make advances or other loans.

(b) *Speculative use prohibited.* Derivative instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank.

Dated: May 22, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–17153 Filed 7–12–00; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Proposal To Establish Three Special Regulations for Threatened Gray Wolves; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF20

Endangered and Threatened Wildlife and Plants; Proposal To Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Proposal To Establish Three Special Regulations for Threatened Gray Wolves

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to change the classification of the gray wolf (*Canis lupus*) under the Endangered Species Act of 1973, as amended (Act). Increases in gray wolf numbers, expansion of the species' occupied range, and progress toward achieving the reclassification and delisting criteria of several approved gray wolf recovery plans show that the species' current classification is no longer appropriate throughout most of its range. This proposal, if finalized, will establish four distinct population segments (DPSs) for the gray wolf in the United States and Mexico. Gray wolves in the Western Great Lakes DPS, the Western DPS, and the Northeastern DPS will be reclassified from endangered to threatened, except where already classified as an experimental population or as threatened. Gray wolves in the Southwestern (Mexican) DPS will retain their endangered status. All three existing gray wolf experimental population designations will be retained and are not affected by this proposal. Gray wolves will be removed from the protections of the Act in all other areas of the 48 conterminous states. We are proposing a new special regulation under section 4(d) of the Act for the threatened Western DPS to increase our ability to respond to wolf-human conflicts outside the two experimental population areas in the northern United States Rockies. We are proposing a second special regulation under section 4(d) that would apply to the Northeastern DPS to reduce wolf-human conflicts and land-use restrictions. A third section 4(d) special regulation would expand the current Minnesota wolf depredation program into Wisconsin, Michigan, North Dakota, and South Dakota. The classification, under the Act, of captive gray wolves would be determined by the location from which they, or their ancestors, were removed from the wild. We would revise our existing recovery plans, as appropriate to accommodate changes necessitated by this proposal, if finalized. This proposal does not affect the protection currently afforded by the Act to the red wolf (*C. rufus*), a separate species that is listed as endangered in the southeastern United States.

DATES: We must receive comments from interested parties by November 13, 2000 so they can be considered in our final decision. Requests for formal public hearings must be received by August 28, 2000. We will hold informal public informational meetings at numerous locations across the country during the comment period. The locations and dates of the informational meetings will be widely publicized in advance in the press; the locations and dates can also be obtained by using the phone, facsimile, electronic mail, and World Wide Web contact information given below.

ADDRESSES: Send all comments and other materials concerning this notice to Content Analysis Enterprise Team, Wolf Comments, 200 East Broadway, PO Box 7669, Room 301, Missoula, Montana 59807. Comments only (no questions or requests for information) may be submitted by electronic mail to GRAYWOLFCOMMENTS@FWS.GOV or by facsimile to 406–329–3021; the subject line must say wolf comments. Questions or requests for additional information should follow the instructions in the following section.

We will make the comments and materials we receive available for public inspection, by appointment, during normal business hours at Regional Offices and the Washington Office of the U.S. Fish Wildlife Service following the close of the comment period. Use the contact information in the next paragraph to obtain the addresses of those locations.

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information to the Fish and Wildlife Service using the Gray Wolf Phone Line—612–713–7337, facsimile—612–713–5292, the general gray wolf electronic mail address—GRAYWOLFMAIL@FWS.GOV, or write to: GRAY WOLF QUESTIONS, Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056. Additional information is also available on our World Wide Web site at http://midwest.fws.gov/wolf.

SUPPLEMENTARY INFORMATION:

Background

Purpose and Definitions of the Act

The purpose of the Act is to identify species that meet the Act's definitions of endangered and threatened species, to add those species to the Federal lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12, respectively), and to implement conservation measures to improve their status to the point at which they no longer need the protections of the Act. When protection is no longer needed, we take steps to remove (delist) the species from the Federal lists. If a species is listed as endangered, we may reclassify it to threatened status as an intermediate step before eventual delisting; however, reclassification to threatened status is not required in order to delist.

Section 3 of the Act provides the following definitions that are relevant to this proposal:

Endangered species—any species which is in danger of extinction throughout all or a significant portion of its range;

Threatened species—any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range; and

Species—includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. (See additional discussion in *Distinct Population Segments under Our Vertebrate Population Policy*, below.)

Organization and Contents of This Proposed Rule

This proposal begins with a discussion of the biology of the gray wolf, followed by a description of related issues that we considered during the development of this proposal. These issues include gray wolf taxonomy, experimental population designations, our Vertebrate Population Policy, and wolf-dog hybrids. We describe previous Federal actions taken for the gray wolf, including the development of recovery plans, and recovery progress in various parts of the country.

A detailed discussion is presented for the five listing factors as required by the Act. These factors are (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued

existence. We analyze these factors for the proposed reclassification of certain populations in response to the current status of the species, which encompasses present and future threats and conservation efforts. We designate Distinct Population Segments (DPSs) and we also discuss wolves in captivity and their role in wolf recovery.

We identify alternative actions that we considered but did not propose and explain the reasons for selecting the proposed actions. Separate sections will explain the three special regulations that are proposed and how these special regulations will promote the conservation of the gray wolf in different parts of the country. We also explain the conservation measures that would be provided to the species if this proposal is finalized.

We request comments and additional information on these proposed changes. The text of the regulatory changes that we are proposing for the gray wolf are found at the end of this rule.

Biology and Ecology of Gray Wolves

Gray wolves are the largest wild members of the Canidae, or dog family, with adults ranging from 18 to 80 kilograms (kg) (40 to 175 pounds (lb)) depending upon sex and subspecies (Mech 1974). The average weight of male wolves in Wisconsin is 35 kilograms (77 lb) and ranges from 26 to 46 kg (57 to 102 lb), while females average 28 kg (62 lb) and range from 21 to 34 kg (46 to 75 lb) (Wisconsin Department of Natural Resources (WI DNR) 1999a). In the northern U.S. Rocky Mountains, adult male gray wolves average just over 45 kg (100 lb), while the females weigh slightly less. The fur color is frequently grizzled gray, but it can vary from pure white to coal black. Wolves tend to resemble coyotes (*Canis latrans*) or domestic German shepherd or husky dogs (*C. domesticus*) but can be distinguished from them by their longer legs, larger feet, wider head and snout, and straight tail.

Wolves are predators of large animals. Wild prey species in North America include white-tailed deer (*Odocoileus virginianus*) and mule deer (*O. hemionus*), moose (*Alces alces*), elk (*Cervus canadensis*), woodland caribou (*Rangifer caribou*) and barren ground caribou (*R. arcticus*), bison (*Bison bison*), muskox (*Ovibos moschatus*), bighorn sheep (*Ovis canadensis*) and Dall sheep (*O. dallí*), mountain goat (*Oreamnos americanus*), beaver (*Castor canadensis*), and snowshoe hare (*Lepus americanus*), with small mammals, birds and large invertebrates sometimes being taken (Mech 1974, Stebler 1944, WI DNR 1999a). Domestic animals verified as being taken by wolves in Minnesota during the last 20 years include horses, cattle, sheep, goats, pigs, geese, ducks, turkeys, chickens, dogs, and cats (Paul 1999). Since 1987, wolves in the northern Rocky Mountains of Montana, Idaho, and Wyoming have killed a horse, cattle, sheep, and dogs.

Wolves are social animals, normally living in packs of 2 to 10 members. Packs are primarily family groups consisting of a breeding pair, their pups from the current year, offspring from the previous year, and occasionally an unrelated wolf. Packs occupy, and defend from other packs and individual wolves, a territory of 50 to 550 square kilometers (sq km) (20 to 214 square miles (sq mi)). In the northern U.S. Rocky Mountains territories tend to be larger, typically from 520 to 1040 sq km (200 to 400 sq mi). Normally, only the top-ranking male and female in each pack breed and produce pups. Litters are born from early April into May; they can range from 1 to 11 pups, but generally contain 4 to 6 pups (Michigan Department of Natural Resources (MI DNR) 1997, U.S. Fish and Wildlife Service 1992a). Yearling wolves frequently disperse from their natal packs, although some remain with their pack. Dispersers may become nomadic and cover large areas as lone animals, or they may locate suitable unoccupied habitat and a member of the opposite sex and begin their own territorial pack. Dispersal movements of over 800 km (500 mi) have been documented (Fritts 1983).

The gray wolf historically occurred across most of North America, Europe, and Asia. In North America, gray wolves formerly occurred from the northern reaches of Alaska, Canada, and Greenland to the central mountains and the high interior plateau of southern Mexico. The only areas of the contiguous United States that apparently lacked gray wolves since the last glacial events are much of California and the Gulf and Atlantic coastal plain south of Virginia. In addition, wolves were generally absent from the extremely arid deserts and the mountaintops of the western United States (Goldman 1944, Hall 1959, Mech 1974).

The influx of European settlers and their cultures into North America brought superstitions and fears of wolves. Their attitudes, coupled with perceived and real conflicts between wolves and human activities along the frontier, led to widespread persecution of wolves. Poisons, trapping, and shooting—spurred by Federal, State, and local government bounties—resulted in extirpation of this once widespread species from more than 95 percent of its range in the 48 conterminous States. At the time of the passage of the Act, likely only several hundred wolves occurred in northeastern Minnesota and on Isle Royale, Michigan, and possibly a few scattered wolves in the Upper Peninsula of Michigan, Montana, and the American Southwest.

Researchers have learned a great deal about gray wolf biology, especially regarding the species' adaptability and its use of non-wilderness habitats. Public appreciation of the role of predators in our ecosystems has increased, and the recovery of the species is now generally supported by the public. Most importantly, within the last decade the prospects for gray wolf recovery in several areas of their former historical United States range have greatly increased. In the western Great Lakes area, wolves have dramatically increased their numbers and occupied range. In addition, gray wolf reintroduction programs in the northern U.S. Rocky Mountains have shown great success.

The gray wolf (*Canis lupus*) is one of two North American wolf species currently protected by the Act. The other is the red wolf (*C. rufus*), a separate species that is listed as endangered throughout its range in the southeastern United States and extending west into central Texas. The red wolf is the subject of a separate recovery program. This proposal does not pertain to the current or future listing status or protection of the red wolf.

Summary of Related Issues Considered

Taxonomy of Gray Wolves in the Eastern United States

Both the 1978 and 1992 versions of the Recovery Plan for the Eastern Timber Wolf were developed to recover the gray wolf subspecies *Canis lupus lycaon*, commonly known as the eastern timber wolf, that was believed to be the gray wolf subspecies historically occurring throughout the northeastern quarter of the United States east of the Great Plains (Goldman 1944, Hall and Kelson 1959, Mech 1974). Since the publication of those recovery plans, various studies have been conducted on the subspecific taxonomy of the gray wolf with conflicting results (Nowak 1995, Wayne *et al.* 1995).

We recognize that gray wolf taxonomy at the subspecies level is subject to conflicting opinions and continuing modification. For this reason, we will not base our gray wolf recovery efforts on any particular portrayal of gray wolf

subspeciation. Instead, we have identified geographic areas where wolf recovery is occurring or is feasible, and we will focus recovery efforts on those geographic entities, regardless of the subspecific affiliation of current or historical gray wolves in those areas. We recognize the benefits to the species of focusing recovery efforts across a large expanse of the species' range in order to recover and retain as much of the remaining genetic variation as is feasible. This approach will promote the recovery of the gray wolf throughout representative areas of their historical range in the conterminous 48 States.

Distinct Population Segments Under Our Vertebrate Population Policy

The Act's definition of the term "species" includes "any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." On February 7, 1996, we, in conjunction with the National Marine Fisheries Service, adopted a policy governing the recognition of distinct population segments (DPSs) for purposes of listing, reclassifying, and delisting vertebrate species under the Act (61 FR 4722). This policy, sometimes referred to as the "Vertebrate Population Policy" guides the Services in recognizing DPSs that satisfy the definition of species under the Act. To be recognized as a DPS, a group of vertebrate animals must satisfy tests of discreteness and significance, as well as qualify for the status (that is, threatened or endangered) assigned to it.

To be considered discrete, a group of vertebrate animals must be delimited by physical, physiological, ecological, or behavioral barriers or by an international governmental boundary that coincides with differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms. A population does not have to be completely isolated from other populations of the parent taxon in order to be considered discrete.

The significance of a potential DPS is assessed in light of its importance to the taxon to which it belongs. Evidence of significance includes, but is not limited to, the use of an unusual or unique ecological setting; a marked difference in genetic characteristics; or the occupancy of an area that, if devoid of the species, would result in a significant gap in the range of the taxon.

If a group of vertebrate animals is determined to be both discrete and significant, its status can then be judged as would that of any species; that is, if it satisfies the Act's definition of "endangered" or "threatened", it can be accorded the appropriate protective legal status under the Act as a DPS. Although the policy does not allow State or other intra-national governmental boundaries to be used in determining the discreteness of a potential DPS, a State boundary may be used as a boundary of convenience when it incidentally separates two DPSs that are judged to be discrete on other grounds.

Refer to **Designation of Distinct Population Segments**, below, for further discussion and analysis of how our Vertebrate Population Policy applies in this proposed rule.

Currently Designated Nonessential Experimental Populations of Gray Wolves

Section 10(j) of the Act gives the Secretary of the Interior the authority to designate populations of listed species that are reintroduced outside their current range, but within their probable historical range, as "experimental populations" for the purposes of promoting the recovery of those species by establishing additional wild populations. Such a designation increases our flexibility in managing reintroduced populations, because experimental populations are treated as threatened species under the Act. Threatened status, in comparison to endangered status, allows somewhat more liberal issuance of take permits for conservation and educational purposes, imposes fewer permit requirements on recovery activities by cooperating States, and allows the promulgation of special regulations to further promote the conservation of the species.

Furthermore, the Secretary is authorized to designate experimental populations as "nonessential" if they are determined to be not essential to the continued existence of the species. For the purposes of section 7(a)(2) of the Act (Interagency Cooperation), nonessential experimental populations, except where they occur within areas of the National Wildlife Refuge System or the National Park System, are treated as species proposed to be listed as threatened or endangered species, rather than as listed species. Proposed species lack the protection of the Act, although we encourage the inclusion of protective measures when Federal agencies conference with us pursuant to section 7(a)(4) of the Act or consult with us pursuant to section 7(a)(2), or private individuals apply for a 10(a)(1)(B) permit.

The Secretary has designated three nonessential experimental population areas for the gray wolf, and wolves have subsequently been reintroduced into these areas, establishing three nonessential experimental populations. These nonessential experimental population areas are the Yellowstone Experimental Population Area, the Central Idaho Experimental Population Area, and the Mexican Wolf Experimental Population Area.

The Yellowstone Experimental Population Area consists of that portion of Idaho east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming (59 FR 60252; November 22, 1994).

The Central Idaho Experimental Population Area consists of that portion of Idaho that is south of Interstate Highway 90 and west of Interstate 15; and that portion of Montana south of Interstate 90, west of Interstate 15, and south of Highway 12 west of Missoula (59 FR 60266; November 22, 1994).

The special regulations for these two experimental populations allow flexible management of wolves, including authorization for private citizens to take wolves in the act of attacking livestock on private land. These rules also provide a permit process that similarly allows the taking, under certain circumstances, of wolves in the act of attacking livestock grazing on public land. In addition, they allow opportunistic noninjurious harassment of wolves by livestock raisers on private and public grazing lands, and designated government employees may perform lethal and non-lethal control efforts to remove problem wolves under specified circumstances.

A December 12, 1997, ruling by the United States District Court for Wyoming declared these nonessential experimental population rules to be in violation of the Act because they reduce the protection for any naturally occurring (that is, non-reintroduced) wolves that may disperse into those areas from northwestern Montana or Canada. The District Court declared the nonessential experimental designation to be unlawful and ordered that the reintroduced wolves be removed. However, the Court stayed the order pending an appeal. The United States appealed the District Court's ruling, and on January 13, 2000, the Tenth Circuit Court of Appeals upheld the wolf reintroduction rule. Consequently, wolves in central Idaho and the Greater Yellowstone area are protected and managed as nonessential experimental populations.

On January 12, 1998, we established a similar third nonessential experimental population area to reintroduce the Mexican gray wolf into

its historical habitat in the southwestern States. The Mexican Gray Wolf Nonessential Experimental Population Area consists of that portion of Arizona lying south of Interstate Highway 40 and north of Interstate Highway 10; that portion of New Mexico lying south of Interstate Highway 40 and north of Interstate Highway 10 in the west and north of the Texas-New Mexico border in the east; and that part of Texas lying north of U.S. Highway 62/180 (63 FR 1752).

This proposed rule will not affect any of the existing three nonessential experimental populations for gray wolves in Wyoming and portions of Idaho, Montana, Arizona, New Mexico, and Texas, nor will it affect the existing special regulations that apply to those three nonessential experimental populations.

Distinct Population Segments and Experimental Populations

The Act does not provide a definition for the term "population." However, the Act uses the term "population" in two different concepts— distinct population segments and experimental populations. These two concepts were added to the original Act at different times and are used in different contexts. The term "distinct population segment" is part of the statutory definition of a "species" and is significant for listing, delisting, and reclassification purposes, under section 4 of the Act. Our Vertebrate Population Policy (61 FR 4722; February 7, 1996) defines a DPS as one or more groups of members of a species or subspecies within a portion of that species' or subspecies' geographic distribution that meets established criteria regarding discreteness, significance, and conservation status. Congress included the DPS concept in the Act, recognizing that a listing, reclassification, or delisting action may, in some circumstances, be more appropriately applied over something less than the entire area in which a species or subspecies is found in order to protect and recover organisms in a more timely and cost-effective manner.

In contrast, Congress added the experimental population concept to give the Secretary another tool to aid in the conservation of species, subspecies, or DPSs that have already been listed under the Act. The Act authorizes the Secretary to establish an experimental population if he determines that a release under such a designation will further the conservation of a listed species. Under the Act's definition of "species," an experimental population can be introduced to aid in the recovery of whatever biological unit is the subject of the listing, that is, a species, subspecies, or DPS. The term "population" as used in the experimental population program is necessarily a flexible concept, depending upon the organism involved and its biological requirements for successfully breeding, reproducing, and establishing itself in the reintroduction area.

For purposes of gray wolf reintroduction by means of experimental populations in central Idaho and Yellowstone National Park, we needed to examine the biological characteristics of the species to determine if the reintroduced wolves would be geographically separate from other gray wolf populations. We defined a wolf population to be two breeding pairs, each successfully raising two or more young for two consecutive years in a recovery area (U.S. Fish and Wildlife Service 1994a). This wolf population definition was used to evaluate all wolves in the northern U.S. Rocky Mountains to determine if, and where, gray wolf populations might exist. Gray wolves in northwestern Montana qualified as a wolf population under this definition; that existing wolf population was further examined to determine if it was geographically separated from the potential experimental population areas. We determined that the northwestern Montana wolf population was geographically separate, so we designated the two experimental population areas and began gray wolf reintroductions to establish the two experimental populations.

Refer to Designation of Distinct Population Segments, below, for further discussion and analysis of how our Vertebrate Population Policy has been applied in this proposed rule.

Gray Wolf-Dog Hybrids

The many gray wolf-dog hybrids in North America have no value to gray wolf recovery programs, and are not provided the protections of the Act. Wolf-dog hybrids, when they escape from captivity or are intentionally released into the wild, can interfere with gray wolf recovery programs in several ways. They are familiar with humans, so they commonly are attracted to the vicinity of farms and residences, leading to unwarranted fears that they are wild wolves hunting in pastures and yards. They generally have poor hunting skills; thus, they may resort to preying on domestic animals, while the blame for their depredations is commonly and mistakenly placed on wild wolves. These behaviors are reported in the media and can erode public support for wolf recovery efforts. In addition, feral wolf-dog hybrids may mate with dispersing wild wolves, resulting in the introduction of dog genes into wild wolf populations. For these reasons, this proposed regulation would not extend the protections of the Act to gray wolf-dog hybrids, regardless of the geographic location of the capture of their pure wolf ancestors.

In other threatened or endangered species recovery programs, hybrids and hybridization could perhaps play an important role. Our decision to not extend the protections of the Act to gray wolf-dog hybrids should not be taken as an indication of our position on the potential importance of hybrids and hybridization to recovery programs for other species. Determining the importance and treatment under the Act of hybrids requires a species-by-species evaluation.

Previous Federal Action

The eastern timber wolf (*Canus lupus lycaon*) was listed as endangered in Minnesota and Michigan, and the northern Rocky Mountain wolf (*C. l. irremotus*) was listed as endangered in Montana and Wyoming in the first list of species that were protected under the 1973 Act, published in May 1974 (USDI 1974). A third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*), was listed as endangered on April 28, 1976, (41 FR 17740) with its known range given as "Mexico, USA (Arizona, New Mexico, Texas)." On June 14, 1976, (41 FR 24064) the subspecies *C. l. monstrabilis* was listed as endangered (under the misleading common name "Gray wolf"), and its range was described as "Texas, New Mexico, Mexico."

To eliminate problems with listing separate subspecies of the gray wolf and identifying relatively narrow geographic areas in which those subspecies are protected, on March 9, 1978, we published a rulemaking (43 FR 9607) relisting the gray wolf at the species level (*Canus lupus*) as endangered throughout the conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified to threatened (refer to Map 1 located at the end of the Alternative Selected for Proposal section). In addition, critical habitat was designated in that rulemaking. In 50 CFR 17.95(a), we designated Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3 (delineated in 50 CFR 17.40(d)(1)) as critical habitat. We also promulgated special regulations under section 4(d) of the Act for operating a wolf management program in Minnesota at that time. The depredation control

portion of the special regulation was later modified (50 FR 50793; December 12, 1985).

On November 22, 1994, we designated areas in Idaho, Montana, and Wyoming as nonessential experimental populations in order to initiate gray wolf reintroduction projects in central Idaho and the Greater Yellowstone Area (59 FR 60252, 59 FR 60266). On January 12, 1998, a nonessential experimental population was established for the Mexican gray wolf in portions of Arizona, New Mexico, and Texas (63 FR 1752). These experimental population designations also contain special regulations that govern take of wolves within these geographic areas (codified at 50 CFR 17.84(i) and (k)). (Refer to *Currently Designated Nonessential Experimental Populations of Gray Wolves*, above, for more details.) We have received several petitions during the past decade requesting consideration to delist the gray wolf in all or part of the 48 conterminous States. We subsequently published findings that these petitions did not present substantial information that delisting gray wolves in all or part of the conterminous 48 States may be warranted (54 FR 16380, April 24, 1989; 55 CFR 48656, November 30, 1990; 63 FR 55839, October 19, 1998).

Gray Wolf Recovery Plans

Section 4(f) of the Act directs us to develop and implement recovery plans for listed species. In some cases, we appoint recovery teams of experts to assist in the writing of recovery plans and oversight of subsequent recovery efforts.

We initiated recovery programs for the originally listed subspecies of gray wolves by appointing recovery teams and developing and implementing recovery plans. Recovery plans describe criteria that are used to assess a species' progress toward recovery, contain specific prioritized actions believed necessary to achieve the recovery criteria and objectives, and identify the most appropriate parties to implement the recovery actions.

Recovery plans may contain two separate sets of criteria that are intended to trigger our consideration of the need to either reclassify (from endangered to threatened) or to delist a species due to improvements in its status. Criteria are based upon factors that can be measured or otherwise evaluated to document improvements in a species' biological status. Examples of the type of criteria typically used are numbers of individuals, numbers and distribution of subgroups or populations of the species, rates of productivity of individuals and/or populations, protection of habitat, and reduction or elimination of threats to the species and its habitat.

The first gray wolf recovery plan was written for the eastern timber wolf, and it was approved on May 2, 1978 (U.S. Fish and Wildlife Service 1978). This recovery plan was later revised and was approved on January 31, 1992 (U.S. Fish and Wildlife Service 1992a). The 1978 Recovery Plan for the Eastern Timber Wolf (Eastern Plan) and its revision were intended to recover the eastern timber wolf, *Canus lupus lycaon*, believed at that time to be the only gray wolf subspecies that historically inhabited the United States east of the Great Plains. Thus, the Eastern Plan covers a geographic triangle extending from Minnesota to Maine and into northeastern Florida. The recovery plan for the eastern timber wolf is based on the best available information on taxonomy at the time of publication. Since the publication of those recovery plans, various studies have produced conflicting results (See *Taxonomy of Gray Wolves in the Eastern United States*).

The Northern Rocky Mountain Wolf Recovery Plan (Rocky Mountain Plan) was approved in 1980 and revised in 1987 (U.S. Fish and Wildlife Service 1980, 1987). The Rocky Mountain Plan states in its introduction that it should be understood to refer to "gray wolves in the northern Rocky Mountains of the contiguous 48 States, rather than to a specific subspecies." The Rocky Mountain Plan covers Idaho, most of Montana and Wyoming, and approximately the eastern one-third of the States of Washington and Oregon.

The Mexican Wolf Recovery Plan was approved in 1982 (U.S. Fish and Wildlife Service 1982). Based on a review of Southwestern (Mexican) subspecies of the gray wolf by Bogan and Mehlhop (1983), the plan combines the historical ranges of *Canus lupus baileyi, C. l. monstrabilis*, and the presumed extinct C. l. mogollonensis (which historically occurred in parts of New Mexico and Arizona) to define the portions of Arizona, New Mexico, Texas, and Mexico where recovery of the Mexican wolf would be appropriate.

Recovery Progress of the Eastern Gray Wolf

The 1992 revised Eastern Plan has two delisting criteria. The first criterion requires that the survival of the wolf in Minnesota must be assured. We believe that this first delisting criterion identifies a need for reasonable assurances that future State and Tribal wolf management practices and protection will maintain a viable recovered population of gray wolves within the borders of Minnesota for the foreseeable future. While there is no specific numerical recovery criterion for the Minnesota wolf population, the Eastern Plan identified State subgoals for use by land managers and planners. The Eastern Plan's subgoal for Minnesota is 1251 to 1400 wolves.

The second delisting criterion in the Eastern Plan requires that at least one viable wolf population be reestablished within the historical range of the eastern timber wolf outside of Minnesota and Isle Royale. The Eastern Plan provides two options for reestablishing this second viable wolf population. If it is located more than 100 miles from the Minnesota wolf population, it would be considered "isolated," and the frequency of movement of individuals and genetic material from one population to the other would likely be very low. Such an isolated population, in order to be self-sustaining, would have to consist of at least 200 wolves for at least 5 years (based upon late winter counts) to be considered viable. Alternatively, if the second population is located within 100 miles of a self-sustaining wolf population (for example, the Minnesota wolf population), a reestablished population having a minimum of 100 wolves for at least 5 years would be considered viable. Such a smaller population would be considered to be viable, because its proximity would allow frequent immigration of Minnesota wolves to supplement it numerically and genetically.

The Eastern Plan does not specify where in the eastern United States the second population should be reestablished. Therefore, the second population could be located anywhere within the triangular Minnesota-Maine-Florida land area covered by the Eastern plan, except on Isle Royale and within Minnesota.

The 1992 Eastern Plan recommends reclassifying in Wisconsin and Michigan separately, recognizing that progress towards recovery may occur at differing rates. The Plan specifies that wolves in Wisconsin could be reclassified to threatened if the population within the State remained at or above 80 (late winter counts) for 3 consecutive years. The Plan does not contain a reclassification criterion for Michigan wolves. Instead, it states that if Wisconsin wolves reached their reclassification criterion, consideration should also be given to reclassifying Michigan wolves. However, with the subsequent increase in Michigan wolf numbers, it has frequently, but

unofficially, been assumed that the "80 wolves for 3 years" criterion would be applied to Michigan. In other words, each State could be considered for reclassification if either the Wisconsin or Michigan wolf population reached 80 individuals or more for 3 successive years. The Eastern Timber Wolf Recovery Team used these criteria in its recent recommendation that the gray wolf in the western Great Lakes States be reclassified to threatened as soon as possible (Rolf Peterson, Eastern Timber Wolf Recovery Team, *in litt.* 1997, 1998, 1999a, 1999b).

The Eastern Timber Wolf Recovery Team recently clarified the delisting criterion, which treats wolves in Wisconsin-Michigan as a single population. The Recovery Team clarified that the numerical delisting criterion for the Wisconsin-Michigan population will be achieved when 6 successive late winter wolf surveys document that the population equaled or exceeded 100 wolves for 5 consecutive years (Rolf Peterson, *in litt.* 1998). Because the Wisconsin-Michigan wolf population was first known to have exceeded 100 wolves in the late winter 1993–94 survey, the numerical delisting criterion was satisfied in early 1999, based upon late winter 1998–99 data (Wydeven *et al.* 1999).

The Eastern Plan has no goals or criteria for the gray wolf population on the 546-sq km (210-sq mi) Isle Royale, Michigan. This small and isolated wolf population is not expected to make a significant contribution to gray wolf recovery, although long-term research on this wolf population has added a great deal to our knowledge of the species.

Over the last 2 years, the Eastern Timber Wolf Recovery Team has consistently recommended that we designate a DPS in the western Great Lakes area and proceed with reclassification of wolves in that DPS to threatened as soon as possible. The Eastern Team recommended that the DPS include a wide buffer around the existing populations of wolves in Minnesota, Wisconsin, and Michigan. Buffers generally are described as lands that may not be regularly occupied by wolves but which may be temporarily used by dispersing wolves. Thus, they suggested the DPS also include the States of North Dakota, South Dakota, Iowa, Illinois, Indiana, and Ohio (Peterson *in litt.* 1997, 1998, 1999a, 1999b).

Minnesota

During the pre-1965 period of wolf bounties and legal public trapping, wolves persisted in the more remote northeastern areas of Minnesota. Estimates of population levels of Minnesota wolves prior to listing under the Act in 1974 include 450 to 700 in 1950–53 (Fuller *et al.* 1992, Stenlund 1955), 350 to 700 in 1963 (Cahalane 1964), 750 in 1970 (Leirfallom 1970), 736 to 950 in 1971–72 (Fuller *et al.* 1992), and 500 to 1,000 in 1973 (Mech and Rausch 1975). While these estimates were based upon varying methodologies and are not directly comparable, they all agree in estimating the wolf population in Minnesota, the only significant population in the Lower 48 States during those time-periods, at 1,000 or fewer animals preceding their listing under the Act.

Various population estimates in Minnesota have indicated a steady increase in numbers after the eastern timber wolf was listed as endangered under the Act. A population of 1,000 to 1,200 was estimated by L. David Mech for 1976 (U.S. Fish and Wildlife Service 1978), and 1,235 wolves in 138 packs were estimated for the winter of 1978–79 (Berg and Kuehn 1982).

In 1988–89 the Minnesota Department of Natural Resources (MN DNR) repeated the 1978–79 survey, and also used a second method to estimate wolf numbers in the State. The resulting independent estimates were 1,500 and 1,750 wolves in at least 233 packs (Fuller *et al.* 1992).

During the winter of 1997–98, a statewide wolf population and distribution survey was repeated by MN DNR, using methods similar to those of the two previous surveys. That survey concluded that approximately 2,445 wolves existed in about 385 packs in Minnesota during that winter period. This figure indicates the continued growth of the Minnesota wolf population at 4 to 5 percent annually. The Minnesota wolf population has shown this annual rate of increase since 1970 (Berg and Benson, in press, Fuller *et al.* 1992).

Simultaneous with the increase in wolf numbers in Minnesota has been a parallel expansion of the area in which wolves are routinely found. During 1948–53 the major wolf range was estimated to be about 31,080 sq km (11,954 sq mi) (Stenlund 1955). A 1970 questionnaire survey resulted in an estimated wolf range of 38,400 sq km (14,769 sq mi) (calculated by Fuller *et al.* 1992 from Leirfallom 1970). Fuller *et al.* (1992), using data from Berg and Kuehn (1982), estimated that Minnesota primary wolf range included 36,500 sq km (14,038 sq mi) during winter 1978–79. By 1982–83, pairs or breeding packs of wolves were estimated to occupy an area of 57,050 sq km (22,000 sq mi) in northern Minnesota (Mech *et al.* 1988). That study also identified an additional 40,500 sq km (15,577 sq mi) of peripheral range, where habitat appeared suitable but no wolves or only lone wolves existed. The 1988–89 study produced an estimate of 60,200 sq km (23,165 sq mi) as the contiguous wolf range at that time in Minnesota (Fuller *et al.* 1992), an increase of 65 percent over the primary range calculated for 1978–79. The 1997–98 study concluded that the contiguous wolf range had expanded to 88,325 sq km (33,971 sq mi), a 47 percent increase in 9 years (Berg and Benson, in press). The wolf population in Minnesota has recovered to the point that its contiguous range covered approximately 40 percent of the State during 1997–98.

Wisconsin

Wolves were considered to have been extirpated from Wisconsin by 1960. No formal attempts were made to monitor the State's wolf population from 1960 until 1979. From 1960 through 1975 individual wolves and an occasional wolf pair were reported. However, no evidence exists of any wolf reproduction occurring in Wisconsin, and the wolves that were reported may have been dispersing animals from Minnesota.

Wolf population monitoring by the Wisconsin Department of Natural Resources (WI DNR) began in 1979 and estimated a statewide population of 25 wolves at that time. This population remained relatively stable for several years, then declined slightly to approximately 15 to 19 wolves in the mid-1980s.

In the late 1980s, the Wisconsin wolf population began an increase that continues today. WI DNR intensively monitors its wolf population, using a combination of aerial and ground radiotelemetry, snow tracking, and wolf sign surveys (Wydeven *et al.* 1995, 1999). During the winter of 1998–99, 20 wolf packs had members carrying active radio transmitters much of the season. Minimum wolf population estimates (late-winter counts) for 1994 through 1999 are 57, 83, 99, 148, 178, and 197 animals, comprising 14, 18, 28, 32, 47, and 54 packs respectively (WI DNR 1999a; Wydeven *et al.* 1999). Wolves in Wisconsin have surpassed the reclassification criteria identified in the Eastern Plan.

In 1995 wolves were documented in Jackson County, Wisconsin, an area well to the south of the northern Wisconsin area occupied by other Wisconsin wolf packs. During the winter of 1998–99, there were believed to be 24–27 wolves

in 8 packs in the Jackson County area (Wydeven *et al.* 1999).

Based on wolf monitoring activities during the winter of 1997–98, a minimum of 10 wolves were believed on Tribal reservations in Wisconsin. Nine to 11 wolves, not including pups that may have been born in 1998, comprised 3 packs on the Bad River Reservation. By the fall of 1998, one pack no longer occupied the reservation, and the wolf population declined to five animals. One, and possibly as many as three, wolves occur on the Lac du Flambeau Reservation. Wolves will likely reoccupy areas of the Lac Courte Oreilles and Menominee Reservations in the next few years (Adrian Wydeven, WI DNR, *in litt.* 1998).

Michigan

Michigan wolves were extirpated as a reproducing population long before they were listed as endangered in 1974. Prior to 1991, and excluding Isle Royale, the last known breeding population of wild Michigan wolves occurred in the mid-1950s. As wolves began to occupy northern Wisconsin, the Michigan Department of Natural Resources (MI DNR) began noting single wolves at various locations in the Upper Peninsula of Michigan. In the late 1980s, a wolf pair was verified in the central Upper Peninsula and produced pups in 1991. Since that time, wolf packs have spread throughout the Upper Peninsula, with immigration occurring from both Wisconsin on the west and Ontario on the east. They now are found in every county of the Upper Peninsula. The MI DNR annually monitors the wolf population and estimates that 57, 80, 116, 112, 140, and 174 wolves occurred in the Upper Peninsula based on late winter counts from 1994 through 1999, respectively (MI DNR 1997, 1999a). The Upper Peninsula Michigan wolf population has exceeded the unofficial criteria for reclassification from endangered to threatened status.

During the winter of 1997–98 one wolf pack composed of four animals lived on lands of the Keewenaw Bay Indian Community. No other wolves are known to be primarily using Tribal lands in Michigan (James Hammill, MI DNR, *in litt.* 1998).

The wolf population of Isle Royale National Park, Michigan, is not considered to be an important factor in the recovery or long-term survival of wolves in the western Great Lakes States. This population is small, varying from 12 to 25 animals over the last 15 years, and is almost completely isolated from other wolf populations (Peterson *et al.* 1998, pers. comm. 1999). For these reasons, the Eastern Plan does not include these wolves in its recovery criteria and recommends only the continuation of research and complete protection for these wolves (U.S. Fish and Wildlife Service 1992a).

Northeastern United States

Wolves were extirpated from the northeastern United States by 1900. Few credible observations of wolves were reported in the Northeast during most of this century. However, in 1993 a single female wolf was killed in western Maine, and in 1996 a second wolf or wolf-like canid was trapped and killed in central Maine. These records and a growing number of observations (and signs) of large, unidentified canids in Maine during recent years led to speculation that wolves may be dispersing into the northeastern United States from nearby occupied habitat in Canada. No actual specimens have been collected to document their presence. Many of the characteristics of the unidentified canids are consistent with an animal intermediate between the eastern coyote and the gray wolf and they may be hybrids of these two species. Private conservation organizations, the Maine Department of Inland Fisheries and Wildlife, the New York Department of Environmental Conservation, and the Service are continuing to seek evidence of the presence of wild wolves in northern New York and New England.

A recent Geographic Information System analysis evaluated the potential for wolf dispersal from southern Quebec and Ontario into the northeastern United States. The study also estimated the amount of suitable wolf habitat present in northern New York and other New England States, and evaluated the likelihood of natural wolf colonization from existing occupied wolf range in Canada. That study found that sufficient suitable wolf habitat is available in the Adirondack Park region of New York and in Maine and northern New Hampshire. However, the New York habitat is relatively isolated, and the authors concluded that natural recolonization is unlikely to occur there. Furthermore, while there are relatively narrow potential dispersal corridors connecting wolf habitat in Maine and New Hampshire with existing wolf populations north of Quebec City, there are significant barriers to dispersal, including the St. Lawrence River, adjacent highways, and dense human developments that may preclude the movement of a sufficient number of wolves from Canada into Maine (Harrison and Chapin 1997).

Recovery Progress of the Rocky Mountain Gray Wolf

In 1974, an interagency wolf recovery team was formed and completed the Northern Rocky Mountain Wolf Recovery Plan in 1980 (U.S. Fish and Wildlife Service 1980). The Rocky Mountain Plan focuses wolf recovery efforts on the large contiguous blocks of public land from western Wyoming through Montana to the Canadian border.

The Rocky Mountain Recovery Plan (U.S. Fish and Wildlife Service 1987) identifies a criterion of 10 breeding pairs of wolves for 3 consecutive years in each of the 3 recovery areas—(1) northwestern Montana (Glacier National Park; the Great Bear, Bob Marshall, and Lincoln Scapegoat Wilderness Areas; and adjacent public lands), (2) central Idaho (Selway-Bitterroot, Gospel Hump, Frank Church River of No Return, and Sawtooth Wilderness Areas; and adjacent, mostly Federal, lands), and (3) the Yellowstone National Park area (including the Absaroka-Beartooth, North Absaroka, Washakie, and Teton Wilderness Areas; and adjacent public lands). The Plan states that if one of these recovery areas maintains a population of 10 breeding pairs for 3 successive years, wolves in that recovery area can be reclassified to threatened status. If 2 recovery areas maintain 10 breeding pairs (totaling about 200 adult wolves) for 3 successive years, gray wolves across the coverage area of the Rocky Mountain Plan can be reclassified to threatened status. It also states that if all 3 recovery areas maintain 10 breeding pairs for 3 successive years, the Northern Rocky Mountain wolf population can be considered as fully recovered and can be delisted. The wolf population would be about 300 adult wolves upon attainment of full recovery. The Plan also recommends that wolves be reintroduced into the Yellowstone National Park area as an experimental population. Additionally, if natural recovery has not resulted in at least two packs becoming established in central Idaho within 5 years, the Rocky Mountain Plan states that other measures, including reintroduction, would be considered to recover wolves in that area. The goals identified in the Rocky Mountain Plan are intended to ensure a well distributed and viable population in the Rocky Mountains, goals that could be met in a variety of ways while still adhering to the "biological intent" of the recovery plan.

Gray wolf populations were eliminated from Montana, Idaho, and Wyoming, as well as adjacent

southwestern Canada by the 1930s (Young 1944). After human-caused mortality of wolves in southwestern Canada was regulated in the 1960s, populations expanded southward (Carbyn 1983). Dispersing individuals occasionally reached the northern Rocky Mountains of the United States (Ream and Mattson 1982, Nowak 1983), but lacked legal protection until 1974 when they were listed as endangered.

In 1982 a wolf pack from Canada began to occupy Glacier National Park along the Montana-Canadian border. In 1986 the first litter of pups documented in over 50 years was born in the Park. In recognition of the ongoing natural recovery of wolves arising from these Canadian dispersers, the Rocky Mountain Plan was revised in 1987 (U.S. Fish and Wildlife Service 1987). The revised Rocky Mountain Plan recommends that recovery be focused in areas with large blocks of public land, abundant native ungulates, and minimal livestock. Three recovery areas were identified—northwestern Montana, central Idaho, and the Greater Yellowstone Area. Promotion of natural recovery was advocated for Montana and Idaho (unless no breeding pairs formed in Idaho within 5 years), but recovery in the Yellowstone area was believed to require a reintroduction program.

By 1989, we formed an interagency wolf working group, composed of Federal, State, and Tribal agency personnel. The group conducted four basic recovery tasks, in addition to the standard enforcement functions associated with any take of listed species. These tasks were—(1) monitor wolf distribution and numbers, (2) control wolves that attacked livestock by either moving or killing them, (3) research wolves' relationships to ungulate prey, livestock, and people, and (4) provide accurate information to the public through reports and mass media so that people could develop their opinions about wolves and wolf management from an informed perspective.

In 1995 and 1996, we reintroduced wolves from southwestern Canada to remote public lands in central Idaho and Yellowstone National Park (Bangs and Fritts 1996, Fritts *et al.* 1997). We designated these wolves as nonessential experimental populations to increase management flexibility and address local and State concerns (59 FR 60252 and 60266; November 22, 1994). Wolves in northwestern Montana remain listed as endangered, the most protective category under the Act; they are not included within the nonessential experimental population areas. (Refer to *Currently Designated Nonessential Experimental Populations of Gray Wolves*, above, for additional details.)

The reintroduction of wolves to Yellowstone National Park and central Idaho in 1995 and 1996 greatly expanded the numbers and distribution of wolves in the northern Rocky Mountains of the United States. Because of the reintroduction, wolves soon became established throughout central Idaho and the Greater Yellowstone Area. In 1995, an estimated 8 packs of about 105 individual wolves produced pups in the northern Rocky Mountains. By 1996, 161 wolves with 15 packs were producing pups. In 1997, 233 wolves with 23 packs were producing pups. In 1998, the wolf population exceeded 300 wolves, with 23 packs producing pups. In 1999, the third successive year that over 20 wolf packs successfully produced pups in the Northern U.S. Rocky Mountains, approximately 400 wolves in about 30 packs occurred in Montana, Idaho, and Wyoming. This achieves the reclassification goal within the Rocky Mountain Plan, which was to have a minimum of 10 breeding packs in at least 2 recovery areas (about 200 adult wolves) for 3 years. While the rate of wolf population expansion may slow, we have every reason to believe wolves will continue to form packs and expand both their distribution and numbers rapidly.

Achieving the Rocky Mountain Plan's delisting goal of 10 breeding packs in each of the 3 recovery areas (about 300 adult wolves) for a minimum of 3 successive years is expected to be achieved by 2002 or 2003. At that point, gray wolves within the geographic area covered by the Rocky Mountain Plan would be proposed to be delisted.

Northwestern Montana

Reproduction first occurred in northwestern Montana in 1986. The natural ability of wolves to find and quickly recolonize empty habitat and the interagency recovery program combined to effectively promote an increase in wolf numbers. By 1993 the number of wolves had grown approximately 22 percent annually to about 88 wolves in 7 packs (Fritts *et al.* 1995). However, since 1993 the number of breeding groups and number of wolves has stabilized, varying from 6 to 8 packs and from 65 to 90 wolves. The reasons for this are unknown, but are being investigated. The decline in documented wolf numbers may be due to two factors, the first of which produced only the appearance of a decline, while the second represents a real decline (1) monitoring was less intensive during the last several years, so some packs may have gone undetected during those years; and (2) a dramatic reduction of white-tailed deer numbers throughout northwestern Montana (Caroline Sime, Montana Dep. Fish, Wildlife and Parks, pers. comm. 1998) due to the severe winter of 1996–97, which we believe was responsible for the record high level of livestock depredations and correspondingly high level of wolf control in northwestern Montana during summer 1997. Our 1998 estimate was a minimum of 65 wolves in 6 reproducing packs. In 1999, 7 packs appear to have produced pups, and the northwestern Montana population has increased to about 80 wolves.

Wolf conflicts with livestock have increased with the increasing wolf population and with fluctuations in prey populations. For example, in 1997, following a severe winter that reduced white-tailed deer populations, wolf conflicts with livestock increased dramatically. That year accounted for nearly 50 percent of all the livestock wolf depredations that were confirmed and lethal wolf control actions that were taken in northwestern Montana from 1987 to 1999 (Bangs *et al.* 1998). Wolf numbers should increase as prey numbers rebound; the need for wolf control measures is expected to subside at the same time.

Central Idaho

In January 1995, 15 young adult wolves captured in Alberta, Canada, were released in central Idaho (Bangs and Fritts 1996, Fritts *et al.* 1997). During January 1996, an additional 20 wolves from British Columbia were released. In 1998 the population consisted of a minimum of 122 wolves, including 10 packs that produced pups (Bangs *et al.* 1998), and in 1999 it has grown to about 170 wolves including 12 reproducing packs.

Yellowstone National Park

In January 1995, 14 wolves from Alberta, representing three family groups, were placed in 3 pens in Yellowstone National Park (Bangs and Fritts 1996, Fritts *et al.* 1997, Phillips and Smith 1996). The groups were released in late March. Two of the three groups produced young in late April. In January 1996, this procedure was repeated with 17 wolves from British Columbia, representing 4 family groups, being released in early April. Two of those groups produced pups in late April. Furthermore, as the result of a September 1996 wolf control action in northwestern Montana, 10 5-month-old pups were transported to a pen in the Park. These pups and 3 adults from the

Greater Yellowstone Area, which were originally reintroduced from Canada, were released in spring 1997. By autumn of 1998 the Greater Yellowstone Area population consisted of 116 wolves, including 7 packs that produced 10 litters of pups. The 1999 population consists of about 170 wolves comprising 11 reproducing packs.

Dispersal of Western Gray Wolves

By winter 1998–99, significant numbers of pups (9 in 1995, 25 in 1996, and 99 in 1997) born to reintroduced wolves were becoming sexually mature and were beginning to disperse from their natal packs. Because dispersing wolves may travel extensively and often settle in areas without resident packs, we expect that these wolves will initiate significant expansion in the number and distribution of wolf packs in the northern Rocky Mountains. Dispersal will increase management costs and controversy, because many of these wolves will not be radiocollared and will attempt to colonize areas of private land used for livestock production. Wolves that disperse southward in central Idaho and the Greater Yellowstone Area will increasingly encounter the full range of domestic livestock, including sheep, which are more susceptible to predation and multiple-mortality incidents than are other domestic livestock (Bangs *et al.* 1995, Fritts *et al.* 1992).

We predicted that these three populations eventually would expand and begin to overlap, resulting in one meta-population of gray wolves in the northern U.S. Rocky Mountains. In 1994 we believed that the most likely direction for wolf dispersal and population growth would be from northwestern Montana southward into the experimental areas. Wolves most commonly disperse toward other wolves even when separated by great distances, and we speculated that the presence of reintroduced wolves in the central Idaho and Yellowstone experimental areas would increase the likelihood for wolf dispersal into those areas from northwestern Montana. At that time, we believed that wolves in the northwestern Montana recovery area would be the first to reach 10 breeding pairs. We now believe that the severe winter of 1996–97 temporarily depressed the number of wolves in northwestern Montana and limited the number of dispersal-aged wolves in that area (U.S. Fish and Wildlife Service 1994a, Bangs *et al.* 1998).

In contrast, the wolves reintroduced into central Idaho and Yellowstone have increased their numbers greatly, and nearly two-thirds of those wolves are young, dispersal-aged animals that may move from those areas over the next 2 years. We believe that wolves that are offspring of the reintroduced animals will increasingly disperse into northwestern Montana and elsewhere. In 1997 a reintroduced male wolf from Idaho dispersed into northwestern Montana and joined a pack there. To date, this is the only wolf known to leave and settle outside an experimental area, but we anticipate many other similar occurrences in the near future.

We also anticipate additional movement of wolves from the northern U.S. Rockies and Canada into western Washington and Oregon and into the Cascade Range. For example, one radiocollared wolf from northwestern Montana was recently found dead from unknown causes in eastern Washington, and a radiocollared young female wolf from central Idaho dispersed into eastern Oregon in early 1999. She was recaptured and returned to the Central Idaho Recovery Area where she would have a better opportunity to find a mate. Furthermore, there are suitable habitat and prey conditions in areas to which wolves may be able to disperse from current populations. Interest in reintroducing gray wolves into Olympic National Park, Washington, prompted the recent completion of a congressionally mandated feasibility study of such a project; additional studies are underway. A similar feasibility study conducted by us concludes that Colorado contains abundant suitable wolf habitat (primarily on public lands administered by the USDA Forest Service) and that a viable wolf population is biologically feasible in the State. While habitat that could support wolves certainly exists in these areas, at this time we have no plans to initiate wolf recovery efforts for any areas in the western United States outside of those identified in Montana, Idaho, and Wyoming.

Recovery Progress of the Southwestern (Mexican) Gray Wolf

The objectives of the Mexican Wolf Recovery Plan (U.S. Fish and Wildlife Service 1982) are to maintain a captive breeding program and to reestablish a population of at least 100 Mexican wolves within its historical range. The plan contains no numerical criteria for revising the endangered status of the Mexican wolf. We consider the current recovery plan objective for the wild population to be an essential first step toward the eventual recovery of the Mexican wolf. A revised recovery plan for the Mexican wolf will contain numerical criteria for reclassifying to a threatened status and for delisting. Because recovery of the Mexican wolf is in its very early stages, we are proposing no changes to the legal status of the Mexican gray wolf at this time.

Through managed breeding, the captive population of Southwestern (Mexican) gray wolves had increased to 182 animals prior to the 1999 breeding season. Forty zoos and wildlife sanctuaries throughout the United States and Mexico cooperate in the maintenance and breeding of the captive wolves. An 18,000-sq km (7000-sq mi) area (the Blue Range Wolf Recovery Area) has been designated for the re-establishment of a wild population of at least 100 wolves. This area includes all of the Apache and Gila National Forests in eastern Arizona and western New Mexico.

Re-establishment of a wild population began with the release of 13 captive-reared Mexican gray wolves in eastern Arizona in 1998, and an additional 21 wolves in 1999. Nineteen Mexican wolves were free-ranging in the wild as of January, 2000. Additional releases are planned over the next 2 to 3 years to reach the goal of a wild population of 100 wolves. This reintroduced population of wolves, like those in central Idaho and the Greater Yellowstone Area, has been designated nonessential experimental (63 FR 1752–1772, January 12, 1998) and can be legally killed by ranchers if the wolves are attacking livestock on private land. Other provisions of the special regulation designating the population as nonessential experimental give agency managers flexibility to address wolf-human conflicts. Defenders of Wildlife, a private conservation organization, compensates ranchers whose livestock are killed by these wolves.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act, set forth the procedures for listing, reclassifying, and delisting species. Species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because (1) of extinction, (2) of recovery, or (3) the original data for classification of the species were in error. This analysis must be based upon the same five categories of threats specified in section 4(a)(1).

In a subsequent section of this proposal we identify four DPSs that we believe deserve separate treatment under the Act (refer to Designation of Distinct Population Segments). These DPSs are the Western Gray Wolf DPS, the Western Great Lakes Gray Wolf DPS, the Northeastern Gray Wolf DPS, and the Southwestern (Mexican) Gray Wolf DPS. Therefore, for consistency and clarity in discussing each threat, the following analysis of the five categories of threats contains separate discussions for wolves within those geographic areas that we believe should be designated as DPSs.

For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the future if the delisting or downlisting proposal is finalized and the Act's protections are removed or reduced. Our evaluation of the future threats to the gray wolf in the Western Great Lakes DPS—especially those threats that would occur after removal from the protections of the Act—is partially based upon the wolf management plans and assurances of the States and Tribes in that area. If the gray wolf were to be federally delisted, State and tribal management plans will be the major determinants of wolf habitat and prey availability, will set and enforce limits on human utilization and other forms of taking, and will determine the overall regulatory framework for conservation or exploitation of gray wolves.

If the gray wolf is reclassified to threatened status, many aspects of State and Tribal management plans cannot yet be implemented because of the over-riding prohibitions of the Act. However, State and Tribal plans, to the extent that they have been developed, can serve as significant indicators of public attitudes and agency goals which, in turn, are evidence of the probability of continued progress toward full recovery under the Act. Such indicators of attitudes and goals are especially important in assessing the future of a species that was officially persecuted by government agencies as recently as 35 years ago and still is reviled by some members of the public to this day. Therefore, below we provide some details on the components of the wolf management plans that currently exist and analyze their impact on the future of the gray wolf.

After a thorough review of all available information and an evaluation of the following five factors specified in section 4(a)(1) of the Act, we have determined that the Act's protections for the gray wolf should be reduced or eliminated across the conterminous States except for portions of several southwestern States and Mexico. Significant gray wolf recovery has occurred, and continues, across a significant portion of the species' historical range as a result of the reduction of threats as described below.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

General. Gray wolves have become symbols of wilderness in the minds of many people. Wolves are popularly thought to inhabit only remote portions of pristine forests or mountainous areas, where human developments and other activities have produced negligible change to the natural landscape. Their extirpation outside of areas such as the heavily forested portions of northeastern Minnesota, Alaska, and Canada reinforced this popular belief. However, wolves survived in those areas not because those were the only places with the necessary habitat, but because only in those remote areas were they sufficiently free of the human persecution that elsewhere killed wolves faster than the species could reproduce.

Wolf research, as well as the expansion of the wolf range over the last 2 decades, has shown that wolves can successfully occupy a wide range of habitats, and are not dependent on wilderness areas for their survival. In the past, gray wolf populations occupied nearly every type of habitat north of mid-Mexico that contained large ungulate prey species, including bison, elk, white-tailed deer, mule deer, moose, and caribou. An inadequate prey density and a high level of human persecution apparently are the only factors which limit wolf distribution (Mech 1995).

Western Great Lakes Gray Wolves. In the western Great Lakes States, wolves in the densely forested northeastern corner of Minnesota have expanded into the more agricultural portions of central and northwestern Minnesota, northern and central Wisconsin, and most of the Upper Peninsula of Michigan. Habitat currently being used by wolves spans the range from the mixed hardwood-coniferous forest wilderness area of northern Minnesota; through sparsely settled, but similar habitats in Michigan's Upper Peninsula and northern Wisconsin; into more intensively cultivated and livestock-producing portions of central and northwestern Minnesota and central Wisconsin; and even approaching the northern fringes of the St. Paul suburbs. (In April 1993 a radiotracked wolf from Wisconsin spent several weeks near the Washington County, Minnesota town of Hugo, without generating any reported sightings. Hugo is less than 20 miles from the center of downtown St. Paul.) Wolves are also dispersing from Minnesota into the agricultural landscape of eastern North and South Dakota in increasing numbers (Licht and Fritts 1994).

Based upon computer modeling, Wisconsin and the Upper Peninsula of Michigan contain large tracts of potential wolf habitat, estimated at 15,052 sq km (5812 sq mi) and 29,348 sq km (11,331 sq mi), respectively (Mladenoff *et al.* 1995; WI DNR 1999). In Wisconsin most of this suitable habitat is on public lands, with most of these public lands being National, State, and county forest lands.

Wisconsin DNR biologists conducted a population viability analysis (PVA) for their wolf population using the computer simulation model VORTEX. The purpose of a PVA is to estimate extinction probabilities by modeling long-term species' population changes that result from multiple interacting factors. The resulting extinction probabilities provide insight into the effects that management alternatives, environmental fluctuation, and biological factors will likely have on rare species' populations over many years.

Under most of the scenarios that were modeled by WI DNR the results of the PVA indicated that a wolf population of 300 to 500 animals would have a low probability of extinction over a 100-year timeframe. However, the modeling indicated that the population might decline to a level that State-relisting might be necessary (fewer than 80 wolves for 3 years). "State-relisting probabilities" ranged from 10 to 40 percent for those scenarios which looked at a combination of moderate environmental variability and a 5 percent probability of catastrophic events. Extinction probabilities were only one percent for those same scenarios (WI DNR 1999a).

The Wisconsin wolf population has increased at an average annual rate of over 30 percent over the last 6 years and was at least 197 wolves in early 1999 (Wydeven *et al.* 1999). The Michigan wolf population (excluding Isle Royale) has increased at an average annual rate of about 34 percent over the last 6 years and was at least 174 wolves in early 1999 (MI DNR 1999a). Wolf survey methods in both States focus on wolf packs and may miss some lone individuals.

Final and State wolf management plans for Michigan and Wisconsin, respectively, have identified habitat protection as one of their top priorities

for maintaining a viable wolf population. Both of these State wolf management plans emphasize the need to manage human access to wolf areas by avoiding increasing road densities, protecting habitat corridors between larger tracts of wolf habitat, avoiding disturbance and habitat degradation in the immediate vicinity of den and rendezvous sites, and maintaining adequate prey species for wolves by suitable habitat and prey harvest regulations.

Both the final Michigan Plan and the Wisconsin Plan establish wolf population goals that exceed the viable population threshold identified in the Federal Recovery plan for isolated wolf populations, that is, a population of 200 or more wolves for 5 consecutive years (U.S. Fish and Wildlife Service 1992a). Each State adopted this approach to ensure the continued existence of a viable wolf population within its borders regardless of the condition or existence of wolf populations in adjacent States or Canada. The Michigan Plan contains a long-term minimum goal of 200 wolves (excluding Isle Royale wolves) and identifies 800 wolves as the estimated carrying capacity of suitable areas on the Upper Peninsula (MI DNR 1997).

The final Wisconsin wolf plan identifies a management goal of 350 wolves, well above the 200 wolves specified in the Federal Recovery Plan for a viable isolated wolf population. After the Wisconsin wolf population is at 250 for 3 consecutive years (excluding wolves on Indian Reservations) the species will be removed from the State's threatened and endangered species list (WI DNR 1999a).

Three comparable surveys of wolf numbers and range in Minnesota have been carried out in recent decades. The first survey estimated a State wolf population of 1235 in 1979 (Berg and Kuehn 1982). In 1989, 1500 to 1750 wolves were estimated in the State (Fuller *et al.* 1992). This represents an average annual increase of about three percent. The 1998 survey (Berg and Benson, in press) estimated that the State's wolf population was 2445 animals, indicating an average annual growth rate of 4 to 5 percent during the intervening 9 years. While estimates of the wolf population that are made at about 10-year intervals do not provide any insight into annual fluctuations in wolf numbers that might be due to winter conditions, prey availability and vulnerability, legal depredation control, and illegal killing, these three population estimates clearly indicate that the Minnesota wolf population has continued to increase. (Refer to Recovery Progress of Gray Wolves in the Eastern United States, above, for additional details on the increase in numbers and range of Minnesota wolves.)

The Minnesota DNR prepared its Wolf Management Plan (MN Plan)(MN DNR 1999) and an accompanying legislative bill in early 1999 and submitted them to the Minnesota Legislature. The Legislature must approve the plan and bill to provide implementation of the regulatory authority. However, the Legislature failed to approve the MN Plan in the 1999 session. In early 2000 the MN DNR released a second bill that would result in somewhat different wolf management and protection than would the 1999 bill. As of mid-February the Minnesota Legislature had not yet considered the 2000 Minnesota wolf management bill.

The complete text of the Wisconsin, Michigan, and Minnesota wolf management plans and bills can be found on our Web site. Our summaries of those plans are also available there. See **FOR FURTHER INFORMATION,** above, for the Uniform Resource Locator (URL) of our World Wide Web site.

We expect wolf populations to continue to be conserved on most, and probably all, Indian Reservations in the western Great Lakes area, and those practices will augment wolf population goals listed above for the State DNRs. While we are unable to perform a comprehensive analysis of the likely future management and protection afforded to wolves on Native American reservations, we believe their traditional respect for the wolf, and its importance in Native American culture, will secure the species' future existence on most land under Native American control.

The wolf retains great cultural significance and traditional value to many Tribes and their members (Eli Hunt, Leech Lake Tribal Council, *in litt.* 1998, Mike Schrage, Fond du Lac Resource Management Division, *in litt.* 1998a). Some Native Americans view wolves as competitors for deer and moose, while others are interested in the harvest of the wolf as a furbearer (Schrage, *in litt.* 1998a). Many Tribes intend to manage their natural resources, wolves among them, in a sustainable manner in order that they be available to their descendants. However, traditional natural resource harvest practices often include only a minimum amount of regulation by the Tribal government (Hunt *in litt.* 1998).

In the creation story of the Ojibwa, Ma''ingan, the wolf, is a brother to the Original Man. The two traveled together throughout the world naming everything they encountered. Afterward, the Creator had them take separate paths, but told them that they would share the same fates, and that both would be feared, respected, and misunderstood by others who arrived later. Thus, the Ojibwa people link their survival to that of Ma''ingan, and will fully support the protection of the wolf to ensure its health and abundance in the future (Schlender, Great Lakes Indian Fish and Wildlife Commision, *in litt.* 1998).

In order to retain and strengthen these cultural connections some Tribes are choosing to reject the unnecessary killing of wolves on reservations and on ceded lands, even if wolves were to be delisted. For example, the Tribal Council of the Leech Lake Band of Minnesota Chippewa recently has adopted a resolution that describes the sport and recreational harvest of gray wolves as an inappropriate use of the animal. The resolution supports the limited harvest of wolves to be used for traditional or spiritual purposes by enrolled Tribal members. This limited harvest would only be allowed by the Tribe if it does not negatively affect the wolf population. We will assist the Council with obtaining wolf pelts and parts that become available from other sources, such as depredation control activities, based on their request. The Leech Lake Reservation is home to an estimated 75 to 100 gray wolves, the largest population of wolves on an Indian reservation in the 48 conterminous States (Hunt *in litt.* 1998).

The Red Lake Band of Chippewa Indians (Minnesota) has indicated that it is likely to develop a wolf management plan that will probably be very similar in scope and content to the plan developed by the MN DNR. The Band's position on wolf management is "wolf preservation through effective management," and the Band is confident that wolves will continue to thrive on their lands (Lawrence Bedeau, Red Lake Band of Chippewa Indians, *in litt.* 1998).

The Keweenaw Bay Indian Community (Michigan) has at least one wolf pack of four animals on its lands. They will continue to list the gray wolf as a protected animal under the Tribal Code even if federally delisted, with hunting and trapping prohibited (Mike Donofrio, Biological Services, Keweenaw Bay Indian Community, pers. comm. 1998). Other Tribes, such as the Fond du Lac Band of Lake Superior Chippewa, have requested a slower pace to any wolf delisting process to allow more time for the preparation of Tribal wolf management plans. The Fond du Lac Band has passed a resolution opposing Federal

delisting and to any other measure that would permit trapping, hunting, or poisoning of the gray wolf (Schrage *in litt.* 1998b).

The Great Lakes Indian Fish and Wildlife Commission has stated its intent to work closely with the States to cooperatively manage wolves in the ceded territories in the Upper Midwest, and will not develop a separate wolf management plan. The Commission intends to work with us to ensure that State plans will adequately protect the wolf (Schlender, *in litt.* 1998).

The lands of national forests, and the prey species found in their various habitats, are important to wolf conservation and recovery in the western Great Lakes States. There are six national forests in that area that have resident wolves. Their wolf populations range from 3 on the Nicolet National Forest in northeastern Wisconsin to an estimated 300–400 on the Superior National Forest in northeastern Minnesota. The land base of the Chequamegon National Forest currently is used by nearly half of the wolves in Wisconsin. All of these national forests are operated in conformance with standards and guidelines in their management plans that follow the recommendations of the 1992 Recovery Plan for the Eastern Timber Wolf (U.S. Fish and Wildlife Service 1992a). Reclassification to threatened status is not expected to change these standards and guidelines; in fact, the gray wolf is expected to remain classified as a sensitive species by the Regional Forester for U.S. Forest Service Region 9 at least for 5 years even if federally delisted (Steve Mighton, U.S. Forest Service, pers. comm. 1998). This continuation of current national forest management practices will be a major factor in ensuring the long-term viability of gray wolf populations in Minnesota, Wisconsin, and Michigan.

Gray wolves regularly use four units of the National Park System in the western Great Lakes States and may occasionally use three or four other units. Although the National Park Service (NPS) has participated in the development of some of the wolf management plans in this area, NPS is not bound by those plans. Instead, the NPS Organic Act and the NPS Management Policy on Wildlife give the agency a separate responsibility to conserve natural and cultural resources and the wildlife present within the Parks. National Park Service management policies require that native species be protected against harvest, removal, destruction, harassment, or harm through human action, so management emphasis will continue to minimize the human impacts on wolf populations. Thus, because of their responsibility to preserve all wildlife, units of the National Park System can be more protective of wildlife than are State plans and regulations. In the case of the gray wolf, the NPS Organic Act and NPS policies will continue to provide protection to the wolf even after Federal delisting has occurred.

Voyageurs National Park, along Minnesota's northern border, has a land base of nearly 350,000 sq km (134,000 sq mi). Preliminary data from the first 6 months of a 3-year wolf study indicate that 40 to 55 wolves in 7 to 11 packs currently have at least a portion of their territory within the Park. Management and protection of wolves within the Park is not expected to change significantly if they are reclassified to threatened or even if delisted. Voyageurs National Park has identified winter Wildlife Protection Areas; some of these areas are lake embayments which are closed to winter visitation to minimize human disturbance to wildlife, including wolves and bald eagles. Temporary closures around wolf denning and rendezvous sites will be enacted to reduce human disturbance. Sport harvest of wolves within the Park will be prohibited, regardless of what may be allowed beyond Park boundaries in future years. If there is a need to control depredating wolves (unlikely due to the current absence of agricultural activities adjacent to the Park) the Park will work with the State to conduct control activities outside the Park to resolve the problem (Barbara West, Voyageurs National Park, *in litt.* 1999).

The wolf population in Isle Royale National Park is described above (see Recovery Progress of Gray Wolves in the Eastern United States). The NPS has indicated that it will continue to closely monitor and study these wolves, but at this time it does not plan to take any special measures to ensure their continued existence, regardless of their status under the Act. This wolf population is very small and isolated from the remainder of the western Great Lakes population; it is not considered to be significant to the recovery or long-term viability of the gray wolf (U.S. Fish and Wildlife Service 1992a).

Two other units of the National Park System—Pictured Rocks National Lakeshore and St. Croix National Scenic Riverway—are regularly used by wolf packs. Pictured Rocks National Lakeshore is a narrow strip of land along Michigan's Lake Superior Shoreline; it contains wolves during the non-winter months when deer populations are high. The Lakeshore intends to protect denning and rendezvous sites at least as strictly as the MI DNR Plan recommends (Brian Kenner, Pictured Rocks National Lakeshore, *in litt.* 1998). The St. Croix National Scenic Riverway, in Wisconsin and Minnesota, is also a linear ownership, and it makes up portions of the territories of 3 to 5 packs of 10 to 40 wolves. The Riverway is likely to limit public access to denning and rendezvous sites, and to follow other management and protective practices outlined in the respective State wolf management plans when they are finalized (Robin Maercklein, St. Croix National Scenic Riverway, *in litt.* 1998).

In the western Great Lakes area we currently manage six units within the National Wildlife Refuge System with wolf populations. Primary among these are Agassiz National Wildlife Refuge (NWR) and Tamarac NWR in Minnesota, as well as Seney NWR in the Upper Peninsula of Michigan. Agassiz NWR has had as many as 20 wolves in 2 or 3 packs in recent years, but mange and illegal shootings have reduced them to 5 wolves in a single pack and a separate single wolf in 1999. Tamarac NWR has 2 resident packs in 1999, and both of them produced pups. Possibly 10 to 15 adult wolves use that refuge. Seney NWR currently has 3 packs, with a total of 10 wolves. Rice Lake NWR, in Minnesota, had 1 or 2 packs using the refuge in 1999. Late in the winter of 1998–99 a pair of gray wolves were located on Necedah NWR. Sherburne NWR, also in Minnesota, has 2 to 4 individual wolves, but lacks established wolf packs.

Gray wolves occurring on national wildlife refuges in the western Great Lakes States will be monitored, and refuge habitat management actions will maintain the current prey base for them while they are listed as threatened, and for a minimum of 5 years following any future delisting. Trapping or hunting by government trappers in response to depredation complaints will not be authorized on these refuges.

The extra protection afforded to resident and transient wolves, their den and rendezvous sites, and their prey by 6 national forests, 2 national parks, and numerous national wildlife refuges in the western Great Lakes area will further ensure the continuing recovery of wolves in the three States.

In summary, we believe that, if reclassified to threatened, the gray wolf will not become endangered in the western Great Lakes area in the foreseeable future due to habitat or range destruction or degradation, or related factors that may affect gray wolf numbers. Recovery efforts over the past

decade, the final or draft State and Tribal wolf management plans and practices, as well as those of Federal land management agencies in the western Great Lakes area, will provide adequate protection for wolf populations, maintain their prey base, preserve denning sites and dispersal corridors, and are likely to keep wolf populations well above the numerical recovery criteria established in the Federal recovery plan.

Northeastern Gray Wolves. Researchers have recently evaluated the potential for wolf restoration in the Northeastern U.S., and found that both habitat quality and prey densities are favorable for gray wolf recovery (Harrison and Chapman 1997). The moose population in Maine is particularly robust, and within the past few decades moose have expanded their range throughout New Hampshire and into Vermont. Additionally, a small number of moose now occur in northern New York. White-tailed deer and beaver populations are generally considered healthy throughout the region. Therefore, we believe that habitat and prey base conditions are favorable for wolf restoration in the Northeastern U.S.

Western Gray Wolves. The Recovery Plan recommended that wolf recovery efforts in the northern U.S. Rocky Mountains be focused on areas that contained large blocks of public land, abundant wild ungulates, and minimal livestock to reduce potential conflicts between people and wolves. Three primary recovery areas were identified: northwestern Montana, central Idaho, and the Greater Yellowstone Area (U.S. Fish and Wildlife Service 1987). Northwestern Montana (more than 50,000 sq km (19,200 sq mi); the area North of Interstate 90 and West of Interstate 15) is a mixture of public land, primarily administrated by the USDA Forest Service, and private land. The economy and local culture is diverse and not as agriculturally based as other parts of Montana (Bangs *et al.* 1995). The Greater Yellowstone Area and central Idaho areas, 64,000 sq km (24,600 sq mi) and 53,900 sq km (20,700 sq mi) respectively, are primarily composed of public lands (U.S. Fish and Wildlife Service 1994a). These areas of potential wolf habitat are secure and there are no foreseeable habitat-related threats that would prevent them from supporting a wolf population that exceeds recovery levels.

Wild ungulate populations in these three areas are composed mainly of elk, white-tailed deer, mule deer, moose, and (only in the Greater Yellowstone Area) bison. The States of Montana, Idaho, and Wyoming have managed resident ungulate populations for decades and maintain them at densities that would support a recovered wolf population. There is no foreseeable condition that would cause a decline in ungulate populations significant enough to affect a recovered wolf population. While 100,000 to 250,000 wild ungulates are estimated in each State, domestic ungulates, primarily cattle and sheep, are typically at least twice as numerous even on public lands (U.S. Fish and Wildlife Service 1994a). The only areas large enough to support wolf packs, but lacking livestock grazing, are Yellowstone National Park and some adjacent USDA Forest Service Wilderness and parts of wilderness areas in central Idaho and northwestern Montana. Consequently, many wolf pack territories have included areas used by livestock, primarily cattle. While there is no livestock grazing in Glacier National Park, every wolf pack in northwestern Montana has interacted with some livestock, primarily cattle. To date, conflict between wolves and livestock has resulted in the annual removal of less than six percent of the wolf population (Bangs *et al.* 1995). This level of removal by itself is not generally believed to cause declines in wolf populations.

In summary, we do not believe that habitat loss or deterioration, or a decline in the abundance of wild prey, will occur at levels that will affect wolf recovery and long-term population viability in the Western DPS.

Southwestern (Mexican) Gray Wolves. Sufficient suitable habitat exists in the Southwestern United States to support current recovery plan objectives for the Southwestern (Mexican) gray wolf. These habitats occur primarily on national forests and Native American reservations. Current and reasonably foreseeable management practices on these areas are expected to support ungulate populations at levels that will sustain wolf populations which meet or exceed recovery plan objectives. Habitat destruction or modification is not currently considered a threat or deterrent for restoration of Southwestern (Mexican) gray wolves.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

General. Since their listing under the Act, there have been no gray wolves legally killed or removed from the wild for either commercial or recreational purposes. We acknowledge that there may have been wolves illegally killed for commercial use of the pelts and other parts, but illegal commercial trafficking in wolf pelts or wolf parts is believed to be rare. Illegal capture of wolves for commercial breeding purposes is also possible, but is also believed to be rare. The large fines and prison sentences provided for by the Act for criminal violations are believed to substantially discourage and minimize the illegal killing of wolves for commercial or recreational purposes.

The intentional or incidental killing, or capture and permanent confinement of endangered or threatened gray wolves for scientific purposes can only legally occur under permits issued by us (under section 10(a)(1)(A) and 10(a)(1)(B) of the Act; under an incidental take statement issued by us as part of a biological opinion evaluating the effects of an action by a Federal agency; under an incidental take statement issued by us pursuant to section 10(a)(1)(B), or by a State agency operating under a cooperative agreement with us pursuant to section 6 of the Act (50 CFR 17.21(c)(5) and 17.31(b)). Although exact figures are not available, such removals of wolves from the wild have been very limited and probably comprised an average of fewer than two animals per year since the species was first listed as endangered. These animals were either taken from the Minnesota wolf population during long-term research activities (about 15 gray wolves), were accidental takings as a result of research activities in Wisconsin (4 mortalities and 1 long-term confinement), were removed from the endangered population in Mexico (5 wolves) to be used as breeding stock for reintroduction programs in the United States, or they were previously released *Canis lupus baileyi* that were recaptured for probable permanent confinement after being judged unsuitable for the reintroduction program (2 or 3 wolves) (William Berg, MN DNR, *in litt.* 1998; Mech, *in litt.* 1998; David Parsons, U.S. Fish and Wildlife Service *in litt.* 1998; Wydeven 1998).

We believe that there have been no wolves legally removed from the wild for educational purposes in recent years. Wolves that are used for such purposes are the captive-reared offspring of wolves that were already in captivity for other reasons.

Refer to *Depredation Control Programs in the Western Great Lakes States* and *Depredation Control Programs in the Western DPS* under *E. Other Natural or Manmade Factors Affecting its Continued Existence*, below, for discussions of additional wolf mortalities associated with wolf depredation control programs.

Western Great Lakes Gray Wolves. If reclassified to threatened status, the taking of gray wolves for commercial, recreational, scientific, or educational

purposes would still be generally prohibited under the Act, but could be authorized by Federal permit. In addition, the taking of wolves for conservation purposes could be done without an authorizing permit, if that taking is done by an employee or agent of a State conservation agency having an approved conservation agreement under the provisions of section 6(c) of the Act. The wildlife management agencies of the States of Minnesota, Wisconsin, Michigan, North Dakota, and South Dakota each have such an approved conservation agreement, and therefore, would be able to take gray wolves for conservation purposes if they are reclassified to threatened status. The amount of such take must be reported to us annually.

A reclassification to threatened status for the Western Great Lakes DPS would not result in any decrease in protection for gray wolves in Minnesota, because they already are classified as threatened there. Therefore, we do not expect any increase in the taking of Minnesota wolves for these purposes. The extremely small current level of such take has not affected the recovery of Minnesota wolves, and is not expected to do so in the future.

Gray wolves in Wisconsin, Michigan, North Dakota, and South Dakota will be subject to a possible increase in take by employees or agents of these States. However, this take must be for conservation purposes, and is thus likely to be for research purposes. Therefore, we believe such take will be minimal and will not significantly slow wolf recovery in Wisconsin and Michigan. (Refer to *Depredation Control Programs in the Western Great Lakes States* under *E. Other Natural or Manmade Factors Affecting its Continued Existence*, below, for a discussion of the increased take expected in these four States for depredation control under the proposed section 4(d) special regulation.)

The taking of wolves by Tribes, Federal agencies, organizations, or private citizens for commercial, recreational, scientific, or educational purposes may increase slightly, because the Act allows us to issue take permits for zoological exhibition, educational purposes, and "special purposes consistent with the Act" for threatened but not for endangered wildlife. Again, the requirement that such take must promote the conservation of the threatened species means that the magnitude of the take will be small and cannot inhibit continued gray wolf recovery.

Western Gray Wolves. Since being listed as endangered and experimental, there has been no legal commercial, recreational, or educational utilization or take of western gray wolves. In the States where wolves are proposed for reclassification to threatened status and will be covered by the proposed 4(d) special regulation, there still would not be any legal take for these purposes under the threatened classification or under the proposed special regulation.

We believe some wolf mortalities associated with the ongoing scientific studies of wolves will occur. Some of these studies involve capturing and radiocollaring of wolves. Wolf capture by trapping, helicopter netgunning, and darting has the potential to seriously injure or kill wolves. These unintentional mortalities are rare and generally average less than 2 percent of the wolves handled (U.S. Fish and Wildlife Service 1994a). During the reintroduction of wolves from Canada nearly 100 wolves were handled and 2 died. Since then there has been only 1 wolf mortality out of about 130 wolves captured as part of routine trapping and radiocollaring for monitoring purposes in Montana, Idaho, and Wyoming.

Northeastern and Southwestern (Mexican) Gray Wolves. In these DPSs, gray wolves would continue to be protected by section 9 of the Act under their threatened, endangered, or nonessential experimental population classifications. These classifications would prohibit any commercial or recreational take of gray wolves. Neither the current special regulations for the nonessential experimental population in the Southwestern (Mexican) DPS, nor the proposed special regulation for the Northeastern DPS, would allow these forms of take. Enforcement by us will continue to keep such take to minimal levels.

Take for scientific or recovery purposes, including educational purposes, will be available for both DPSs. For the Southwestern (Mexican) DPS such take can be authorized only by a permit from us. Under the proposed special regulation for the Northeastern DPS take of wolves for scientific, educational, and conservation purposes can be carried out by States under existing cooperative agreements with us under section 6 of the Act. This take authority would be extended to Tribes after they have developed a wolf conservation plan and it has been approved by us.

Thus, in all cases, gray wolf take for scientific, educational, and conservation purposes must benefit the gray wolf DPS and must promote its recovery. Therefore, any take of this nature will not negatively impact these DPSs.

C. Disease or Predation

Disease

Many diseases and parasites have been reported for the gray wolf, and several of them have had significant impacts during the recovery of the species in the conterminous States. These diseases and parasites, and perhaps others, must be considered to be significant potential threats to gray wolf populations in the future. Thus, in order to avoid a disease/parasite-related decline in the gray wolf population, their presence and impacts require diligent monitoring and appropriate follow-up for the foreseeable future.

Western Great Lakes Gray Wolves. Canine parvovirus (CPV) is a relatively new disease that infects wolves, domestic dogs, foxes, coyotes, skunks, and raccoons. Recognized in the United States in 1977 in domestic dogs, it appeared in Minnesota wolves (based upon retrospective serologic evidence) live-trapped as early as 1977 (Mech *et al.* 1986). However, Minnesota wolves may have been exposed to the virus as early as 1973 (Mech and Goyal 1995). Serologic evidence of gray wolf exposure to CPV peaked at 95 percent of a group of Minnesota wolves live-trapped in 1989 (Mech and Goyal 1993). In a captive colony of Minnesota wolves, pup and yearling mortality from CPV was 92 percent of the animals that showed indications of active CPV infections in 1983 (Mech and Fritts 1987), demonstrating the substantial impacts this disease can have on young wolves. It is believed that the population impacts of CPV occur via diarrhea-induced dehydration leading to abnormally high pup mortality (WI DNR 1999).

There is no evidence that CPV has caused a population decline or has had a significant impact on the recovery of the Minnesota gray wolf population. However, Mech and Goyal (1995) found that high CPV prevalence in the wolves of the Superior National Forest in Minnesota occurred during the same years in which wolf pup numbers were low. Because the wolf population did not decline during the study period, they concluded that CPV-caused pup mortality was compensatory, that is, it replaced deaths that would have occurred from other causes, especially starvation of pups. They theorized that CPV prevalence affects the amount of population increase, and that a wolf population will decline when 76 percent of the adult wolves consistently test positive for CPV exposure. Their data indicate CPV prevalence in adult wolves in their study area increased by an annual average of 4 percent during 1979–93, and was at least 80 percent during the last 5 years of their study (Mech and Goyal 1995). Additional

unpublished data gathered since 1995 indicate that CPV reduced wolf population growth in that area from 1979 to 1989, but not since that period (Mech *in litt.* 1999). These data provide strong justification for continuing population and disease monitoring.

The disease probably stalled wolf population growth in Wisconsin during the early and mid-1980s. During those years the Wisconsin wolf population declined or was static, and 75 percent of 32 wolves tested by the same method were positive for CPV. During the following years (1988-96) of population increase only 35 percent of the 63 wolves tested positive for CPV (WI DNR 1999). CPV exposure rates were at 50 percent in live-captured Wisconsin wolves in 1995–96 (WI DNR 1999), but there is no necropsy evidence of CPV mortalities from Wisconsin wolves (Nancy Thomas, National Wildlife Health Laboratory, *in litt.* 1998). However, the difficulty of discovering CPV-killed pups must be considered.

Canine parvovirus is considered to have been a major cause of the decline of the isolated Isle Royale, Michigan, population in the mid and late 1980s. The Isle Royale gray wolf population decreased from 23 and 24 wolves in 1983 and 1984, respectively, to 12 and 11 wolves in 1988 and 1989, respectively. The wolf population remained in the low to mid-teens through 1995. However, factors other than disease may be causing a low level of reproductive success, including a low level of genetic diversity and a prey population composed of young healthy moose that may make it difficult to secure sufficient prey for pups. There are no data showing any CPV-caused population impacts to the larger gray wolf population on the Upper Peninsula of Michigan (Peterson *et al.* 1998).

Sarcoptic mange is caused by a mite infection of the skin. The irritation caused by the feeding and burrowing mites results in scratching and then severe fur loss, which in turn can lead to mortality from exposure during severe winter weather. From 1991–96 27 percent of live-trapped Wisconsin wolves exhibited symptoms of mange. During the winter of 1992–93 58 percent showed symptoms, and a concurrent decline in the Wisconsin wolf population was attributed to mange-induced mortality (WI DNR 1999). Seven Wisconsin wolves died of mange during the years 1993 through October 15, 1998, and severe fur loss affected five other wolves that died from other causes. During that period mange was the third largest cause of death in Wisconsin wolves, behind trauma (usually vehicle collisions) and shooting (Nancy Thomas *in litt.* 1998).

In a long-term Alberta wolf study, higher wolf densities were correlated with increased incidence of mange, and pup survival decreased as the incidence of mange increased (Brand *et al.* 1995). At least seven wild Michigan wolves died from mange during 1993–97, making it the most common disease of Michigan wolves. The Michigan Wolf Management Plan acknowledges that mange may be slowing wolf population growth and specifies that captured wolves be treated with Ivermectin to combat the mites (MI DNR 1997). MI DNR currently treats all captured wolves with Ivermectin, vaccinates them against CPV and canine distemper virus (CDV), and administers antibiotics to combat potential leptospirosis infections.

Wisconsin wolves similarly had been treated with Ivermectin and vaccinated for CPV and CDV when captured, but the practice was stopped in 1995 to allow the wolf population to experience more natural biotic conditions. Since that time, Ivermectin has been administered only to captured wolves with severe cases of mange. In the future, Ivermectin and vaccines will be used sparingly on Wisconsin wolves, but will be used to counter significant disease outbreaks (Adrian Wydeven *in litt.* 1998).

Mange has not been documented to be a significant disease problem in Minnesota. Several packs in the Ely and Park Rapids areas are known to suffer from mange, and a pack at Agassiz NWR in northwestern Minnesota was reduced from at least five wolves (the pack may have numbered six to eight in the early 1990s) to a single animal over the last few years, primarily due to mange.

Lyme disease, caused by a spirochete, is another relatively recently recognized disease, first documented in New England in 1975; it may have occurred in Wisconsin as early as 1969. It is spread by ticks, who pass along the infection to their various host species during tick feeding episodes. Host species include humans, horses, dogs, white-tailed deer, white-footed mice, eastern chipmunks, coyotes, and wolves. The prevalence of Lyme disease in Wisconsin wolves averaged 70 percent of live-trapped animals in 1988–91, but dropped to 37 percent during 1992–97. While there are no data showing wolf mortalities from Lyme disease, it may be suppressing population growth through decreased wolf pup survival. Lyme disease has not been reported from wolves beyond the Great Lakes regions (WI DNR 1999a).

Other diseases and parasites, including rabies, canine distemper, canine heartworm, blastomycosis, brucellosis, leptospirosis, bovine tuberculosis, hookworm, coccidiosis, and canine hepatitis have been documented in wild gray wolves, but their impacts on future wild wolf populations are not likely to be significant (Brand *et al.* 1995, Johnson 1995, Mech and Kurtz 1999, Thomas *in litt.* 1998, WI DNR 1999a).

In aggregate, diseases and parasites were the cause of 25 percent of the diagnosed wolf deaths from 1960–97 in Michigan (MI DNR 1997) and 19 percent of the diagnosed mortalities of radiocollared wolves in Wisconsin from 1979–98 (Wydeven 1998).

Since several of the diseases and parasites are known to be spread by wolf to wolf contact, their incidence may increase as wolf densities increase in newly colonized areas. However, because wolf densities generally are relatively stable following the first few years of colonization, wolf to wolf contacts will not likely lead to a continuing increase in disease prevalence (L. David Mech *in litt.* 1998).

Disease and parasite impacts may increase because several wolf diseases are carried and spread by dogs. This transfer of diseases and parasites from domestic dogs to wild wolves may increase as gray wolves continue to colonize non-wilderness areas (Mech *in litt.* 1998). Heartworm, CPV, and rabies are the main concerns (Thomas *in litt.* 1998).

Disease and parasite impacts are a recognized concern of the State departments of natural resources. The Michigan Gray Wolf Recovery and Management Plan states that necropsies will be conducted on all dead wolves and that all live wolves that are handled will be examined and blood, skin, and fecal samples will be taken to provide disease information. All wolves that are handled will be vaccinated for CDV and CPV and treated for parasites before release (MI DNR 1997). These steps will continue even if the gray wolf is federally reclassified to threatened.

Similarly, the Wisconsin Wolf Management Plan has a section on wolf health monitoring. It states that as long as the wolf is State-listed as a threatened or endangered species the WI DNR will conduct necropsies of dead wolves and a sample of live-captured wolves will be tested for diseases and parasites. The goal will be to capture and screen 10 percent of the State wolf population for diseases annually. Following State delisting (after the State wolf population grows to 250 animals) disease monitoring will be scaled back because

the percentage of the wolf population that is live-trapped each year will decline, but periodic necropsy and scat analyses will continue to test for disease and parasite loads. The plan also recommends that all wolves live-trapped for other studies should have their health monitored and reported to the WI DNR wildlife health specialists (WI DNR 1999a).

In summary, several diseases have had significant impacts on wolf population growth in the Great Lakes region in the past. These impacts have been both direct, resulting in mortality of individual wolves, and indirect, by reducing longevity and fecundity of individuals or entire packs or populations. Canine parvovirus stalled wolf population growth in Wisconsin in the early and mid-1980s, and it has been implicated as a contributing factor in declines in the isolated Isle Royale population. Sarcoptic mange has impacted wolf recovery in both Michigan's Upper Peninsula and in Wisconsin in this decade, and is recognized as a continuing problem. However, despite these and other diseases and parasites, the overall trend for wolf populations in the western Great Lakes States is upward. The wolf management plans of Michigan and Wisconsin include monitoring components that are expected to identify future disease and parasite problems in time to allow corrective action to be taken to avoid a significant decline in overall population viability. We do not believe disease impacts will have significant adverse effects on wolf recovery in the western Great Lakes States.

Western Gray Wolves. Wolves in the northern U.S. Rocky Mountains are exposed to a wide variety of canid diseases, which are common throughout North America. Some of these diseases and parasites have been documented to significantly affect wolf populations, usually temporarily, in other areas of North America. However, in the studies of wolves in Montana, Idaho, and Wyoming to date, disease and parasites have not appeared to be a significant factor affecting wolf population dynamics. Just like wolves in all other parts of North America, wolves in the Northern Rocky Mountains will occasionally die from a wide variety of canid diseases. However, it is doubtful that wolf populations in the northern Rocky Mountains could be significantly impacted, because wolf exposure to these diseases has been occurring for decades. The environmental impact statement (EIS) on gray wolf reintroduction identified disease impact as an issue but did not evaluate it further, because it appeared not to be significant (U.S. Fish and Wildlife Service 1994a). Likewise, in the "Wolves for Yellowstone?" reports to Congress in 1992, Johnson (1995b and 1995c) reviewed the relationship between wolves and rabies, brucellosis, and tuberculosis and found canids were not likely to be a reservoir for those diseases.

Southwestern (Mexican) Gray Wolves. There is no evidence suggesting that disease was a significant factor in the decline of the Mexican wolf. Likewise, there is no reason to believe that disease will be a significant impediment to recovery of the Mexican wolf in the wild. Because the potential for disease and parasite transmission is much greater in captivity, especially in zoos, all captive Mexican wolves are vaccinated or treated for potential canine diseases and parasites that may exist in the captive environment.

As a result of captive disease and parasite prevention and treatment protocols, released wolves are in good health and physical condition when they enter the wild. Re-established Southwestern (Mexican) wolves will be monitored for disease or parasite-related problems.

Predation

There are no wild animals that habitually prey on gray wolves. Occasionally wolves will be killed by large prey such as deer or moose (Mech and Nelson 1989) or possibly by a competing predator such as a mountain lion, but this has only been documented on rare occasions and is not believed to be a significant mortality factor. However, humans are highly effective predators of gray wolves.

Western Great Lakes Gray Wolves. Wolves are killed by other wolves, most commonly when a dispersing wolf encounters another pack and is attacked as an intruder, or when two packs encounter each other along their common territorial boundary. This form of mortality is likely to increase as more of the available wolf habitat becomes saturated with wolf pack territories, as is already the case in northeastern Minnesota. Over the period from October 1979 through June 1998 7 (13 percent) wolves of the diagnosed mortalities of radiocollared Wisconsin wolves were a result of wolves being killed by other wolves (Wydeven 1998). However, this behavior is a normal part of the species' behavioral repertoire and should not be a cause for concern in healthy wolf populations as it normally indicates that the wolf population is at, or approaching, the carrying capacity of the area.

Humans have functioned as highly effective predators of the gray wolf as we attempted to eliminate them from the landscape in earlier times. The United States Congress passed a wolf bounty that covered the Northwest Territories in 1817. Bounties on wolves subsequently became the norm for States across the species' range. In Michigan an 1838 wolf bounty became the ninth law passed by the First Michigan Legislature; a bounty remained in place until 1960. A Wisconsin bounty was instituted in 1865 and then repealed about the time wolves were extirpated from the State in 1957. Minnesota maintained a wolf bounty until 1965.

Subsequent to its listing as a federally endangered species, protection of the gray wolf under the Act and under State endangered species statutes prohibited the killing of wolves except under extenuating circumstances, such as in defense of human life, for scientific or conservation purposes, or under several special regulations intended to reduce wolf depredations on livestock. This reduction in human-caused mortality is the main cause of the wolf's comeback in parts of its historical range. However, it is clear that illegal killing of wolves still continues.

Illegal killing of wolves occurs for a number of reasons. Some of these killings are accidental (*e.g.*, vehicle collisions, mistaken for coyotes and shot, caught in traps set for other animals), and some of these incidents are reported to State, Tribal, and Federal authorities. However, it is likely that most illegal wolf killings are intentional and are never reported to authorities. Such killings may be done out of frustration over wolf depredations on livestock or pets, fear for the safety of pets or children, hatred of the species, opposition to wolf recovery, as a form of protest against the government, or for other reasons. The number of illegal killings is difficult to determine, because they generally occur in isolated areas and the evidence is quickly concealed.

There are two Minnesota studies that provide insight into the extent of human-caused wolf mortality before and after the species' listing. Based upon bounty data from a period that predated wolf protection under the Act by 20 years, Stenlund (1955) found an annual human-caused mortality rate of 0.41 wolves (that is, 41 out of 100 wolf mortalities were human-caused). Fuller (1989) provided 1980–86 data from a north-central Minnesota study area and found an annual human-caused mortality rate of 0.27. (Fuller's mortality rate excludes wolves killed as part of the wolf depredation control program.) However, drawing conclusions from

these two data sets is difficult due to the confounding effects of habitat quality, exposure to humans, prey density, differing time periods, and vast differences in study design. While these figures provide support for the contention that human-caused mortality decreased subsequent to the wolf's protection under the Act, it is not possible at this time to determine if human-caused mortality (apart from mortalities from depredation control) has significantly changed during the 25-year period that the gray wolf has been listed as threatened or endangered.

Interestingly, when compared to his 1985 survey, Kellert's 1999 public attitudes survey showed an increase in the number of northern Minnesota residents who reported having killed, or knowing someone who had killed, a wolf. However, members of groups that are likely to encounter wolves—farmers, hunters, and trappers—reported a decrease in the number of such incidents (Kellert 1999). Due to these apparently conflicting results, and differences in the methodology of the two surveys, it is difficult to draw any clear conclusions on this issue.

It is important to note that despite the difficulty in measuring the extent of illegal killing of wolves, their population and range in the western Great Lakes States has continued to increase. During recent decades all sources of wolf mortality, including legal (takings for research and depredation control activities) and illegal human-caused mortality, have not stopped the continuing growth of the wolf population, estimated at a 4 to 5 percent average annual increase in Minnesota, and about a 30 to 35 percent average annual increase in Wisconsin and Michigan. This indicates that total gray wolf mortality continues to be exceeded by recruitment (that is, reproduction and immigration) into these areas.

As the wolf population in Wisconsin and Michigan achieves habitat saturation or as the cultural carrying capacity is approached, the rapid growth rates are expected to slow and likely will eventually stop. We should then expect to see negative growth rates (that is, wolf population declines) in some years, due to short-term fluctuations in birth and mortality rates. However, adequate wolf monitoring programs, as identified in the Michigan, Wisconsin, and Minnesota (submitted by MN DNR in 1999 but not approved by the Legislature) wolf management plans, should be able to identify excessively high mortality rates and low birth and/or survival rates and to trigger timely corrective action when necessary. Michigan and Wisconsin DNRs are currently monitoring their wolf populations in this manner, and we fully expect this level of monitoring will continue if those wolves are reclassified to threatened status. The goals of all three State wolf management plans are to maintain a within-state wolf population that is well above the size identified in the Federal Eastern Recovery Plan for viable isolated wolf populations.

In Wisconsin, human-caused mortalities accounted for 58 percent of the diagnosed mortalities on radiocollared wolves from October 1979 through June 1998. One-third of all the diagnosed mortalities, and 55 percent of the human-caused mortalities, were from shooting. Another 12 percent of all the diagnosed mortalities resulted from vehicle collisions. Vehicle collisions have increased as a percentage of radiocollared wolf mortalities. During the October 1979 through June 1995 period only one of 27 known mortalities was from that cause, but from July 1995 through June 1998 5 of the 26 known mortalities resulted from vehicle collisions (WI DNR 1999a, Wydeven 1998).

In the Upper Peninsula of Michigan human-caused mortalities accounted for 75 percent of the diagnosed mortalities, based upon 34 wolves recovered from 1960 to 1997. Twenty-eight percent of all the diagnosed mortalities and 38 percent of the human-caused mortalities were from shooting. In the Michigan Upper Peninsula during that period about one-third of all the known mortalities were from vehicle collisions (MI DNR 1997). During the 1998 Michigan deer hunting season three radiocollared wolves were shot and killed, resulting in one arrest and conviction; the other two cases remain under investigation (Hammill *in litt.* 1999, Michigan DNR 1999b).

A continuing increase in wolf mortalities from vehicle collisions is expected as wolves continue their colonization of areas with more human developments and a denser network of roads.

A significant portion of the intentional illegal mortalities may arise as a protest against the Federal government or from frustration due to a perception of inadequate Federal depredation control programs or inadequate State compensation for depredated livestock and dogs. The proposed action in the Western Great Lakes DPS—reclassifying Wisconsin and Michigan wolves to threatened and implementing a special regulation for lethal depredation control, with no change in the protection provided to threatened Minnesota wolves—is expected to have both positive and negative impacts on illegal wolf mortality.

In Wisconsin and Michigan, the rapidly expanding wolf population is beginning to cause more depredation problems. For example, from 1991 through 1996 only one Wisconsin wolf was captured for depredation control. In 1997 two wolves were trapped and moved to eliminate depredation problems. In 1998 four wolves had to be captured as a result of depredation problems. For Wisconsin and Michigan, special management regulations under section 4(d) of the Act would provide increased flexibility and efficiency in dealing with these problem wolves (See Special Regulations Under Section 4(d) for Threatened Species). This may result in greater public satisfaction with the States' abilities to promptly and effectively deal with depredation incidents, and may reduce the perception that wolves are out of control and vigilante action is needed to reduce their numbers.

Wolves were extirpated in the Dakotas in the 1920s and 1930s and were rarely reported from the mid-1940s through the late 1970s. From 1981 to 1992 10 wolves were killed in the Dakotas, with 5 of them killed from 1991 to 1992. Two more were killed in North Dakota after 1992. There have been other recent reported sightings of gray wolves, including a confirmed sighting by U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (APHIS-Wildlife Services) personnel in 1996 near Gary, South Dakota, and a 1994 confirmation of a den with pups in extreme north central North Dakota. Several other unconfirmed sightings have been reported from extreme northeastern and southeastern South Dakota. Wolves killed in North and South Dakota are most often shot by hunters who have mistaken them for coyotes or are killed by vehicles.

Additional discussion of past and future wolf mortalities in the Western Great Lakes DPS arising from depredation control actions is found under factor D. *The inadequacy of existing regulatory mechanisms.*

Despite human-caused mortalities of wolves in the western Great Lakes States, it is clear that these populations have continued to increase in both numbers and range. As long as other mortality factors do not increase significantly, and the wolf populations receive adequate and timely monitoring to document (and counteract, if necessary) the effects of excessive human-caused mortality, we believe the

Minnesota and Wisconsin-Michigan wolf populations will not decline to non-viable levels, nor will recovery slow, in the foreseeable future due to human-caused killing or other forms of predation.

Western Gray Wolves. Since wolves have been monitored in Montana, Idaho, and Wyoming only one wolf has been confirmed to have been killed by another predator. That lone reintroduced wolf was killed by a mountain lion in 1995. Wolves in the northern Rocky Mountains inhabit the same areas as mountain lions, grizzly bears, and black bears, but conflicts rarely result in the death of either species. Wolves are occasionally killed by prey that they are attacking but those instances are rare. Since 1987, wolves in the northern Rocky Mountains have apparently died from wounds they received while attacking prey on about four occasions. This level of mortality will not significantly affect wolf recovery. Other wolves are the largest cause of natural predation among wolves. Wherever wolves occur, including Montana, Idaho, and Wyoming, some low level of mortality due to territorial conflict between wolves is common. Those incidents occur but are so infrequent that they do not cause a level of mortality that would significantly affect a wolf population that is at or above recovery levels.

Humans are the largest cause of wolf mortality and the only cause that can significantly affect wolf populations at recovery levels. The annual survival rate of immature wolves in northwestern Montana and adjacent Canada from 1984 to 1995 was 80 percent (Pletscher *et al.* 1997); 84 percent for resident wolves and 66 percent for dispersers. That study found 84 percent of immature wolf mortality to be human-caused. Fifty-eight wolves from northwestern Montana with functioning radiocollars have died since 1987, and humans caused the death of 49 (84 percent). Wolves are more likely to be radiocollared if they come into conflict with people, so the proportion of mortality caused by agency depredation control actions could be over-estimated by this study. People who illegally kill wolves may destroy the radiocollar so the proportion of illegal mortality could be under-estimated.

As was typically the case elsewhere in North America, humans were the largest cause of wolf mortality in northwestern Montana. Wolf control was the leading cause of death for wolves in northwestern Montana. Of 28 wolves from northwestern Montana that were relocated and released because of conflicts with livestock, humans caused the death of 96 percent. Only two females lived long enough after relocation to reproduce, and both of them were killed by people within months of whelping. Injuries during capture or confinement ultimately caused the death of 7 of those 28 relocated wolves.

In central Idaho, 25 of 35 original reintroduced wolves have functioning radiocollars and continue to be monitored. In addition, new radiocollars have been placed on an additional 24 wolves. One radiocollared wolf from northwestern Montana has dispersed into central Idaho. Eleven radiocollared wolves have died. Sixty-four percent of the wolf mortalities were human-caused. Fewer wolves have died in Idaho than in either the Greater Yellowstone Area or northwestern Montana. Causes of natural mortality in Idaho were starvation and mountain lion predation.

Over three times as many radiocollared wolves have died in the Greater Yellowstone Area than in central Idaho. Humans caused 68 percent of mortalities in the Greater Yellowstone Area. Sources of natural mortalities included other wolves (4), prey (2), avalanches (1), old age (1), and unknown causes (2).

The EIS (U.S. Fish and Wildlife Service 1994a) predicted that 10 percent of the reintroduced wolves would be removed annually for depredation control with an additional 10 percent dying annually from other causes. Out of 66 original reintroduced and 69 other wolves radiocollared for monitoring purposes over the past 4 years in central Idaho and the Greater Yellowstone Area, 45 (33 percent) have died. Most (68 percent) wolf mortality was human-caused. Annual mortality has been below the 20 percent annual level that was predicted in the EIS. Reintroduced wolves had a lower proportion of human-caused mortality compared to naturally colonizing wolves because they were released in remote areas where contact and conflicts with people were less likely. Relocated depredating wolves in northwestern Montana had a higher proportion of human-caused mortality (96 percent) than either reintroduced (61 percent) or naturally colonizing wolves in northwestern Montana (71 percent excluding legal harvest in Canada). In northwestern Montana relocated depredating wolves traveled widely and often resettled in places similar to the areas that they had been removed from, typically private ranch land. Consequently they continued to come into conflict with people and livestock.

The levels of documented human-caused mortality among wolves in the northern Rocky Mountains have not, at this time, been significant enough to cause declines in wolf populations. The protection of wolves under the Act appears sufficient to promote wolf population growth. Under the provisions of the experimental population rules for the central Idaho and Yellowstone areas, wolf population growth has been high. Although special management regulations under section 4(d) of the Act would allow some expanded take of problem wolves outside the experimental population areas, such regulations would still sufficiently protect wolves from human persecution. Continued rapid growth towards recovery levels is therefore expected (See Special Regulations Under Section 4(d) for Threatened Species).

Enforcement of the Act's prohibitions on taking wolves listed as "experimental" and "endangered" has been successful to date. Twelve wolves have been illegally killed in the experimental areas, and six cases have been resolved. In northwestern Montana nine wolves were known to have been illegally killed, and four cases have been resolved. Fines have ranged from $500 to $10,000, with jail sentences being imposed for some violators. The legal or illegal killing documented to date has not been at a level that could affect wolf population growth to recovery levels.

Two yearling experimental wolves were legally killed (one each in Montana and Idaho) under the provisions of the experimental population special regulation by livestock producers who saw the wolves attacking livestock. They reported shooting the wolves to authorities within 24 hours as required. Both investigations confirmed compliance with the experimental rules, and no further action was taken. So far, wolves have been unintentionally killed by vehicles, coyote cyanide (M–44) devices, and traps, and during control and management actions, but investigations of these incidents concluded that prosecution was not warranted. These types of mortalities are relatively rare and will not affect wolf population growth to recovery levels.

Special management regulations under section 4(d) of the Act would allow for the legal take of wolves under more circumstances than the existing special regulation. The existing special management regulations under section 10(j) of the Act will continue to apply to the two nonessential experimental populations in the Northern U.S. Rocky

Mountains (See Special Regulations Under Section 4(d) for Threatened Species). Therefore, we do not expect wolf mortality rates to change significantly as a result.

Northeastern Gray Wolves. The proposed special management regulations under section 4(d) of the Act would give State and Tribal conservation agencies that actively undertake wolf recovery actions, such as a reintroduction effort, new regulatory flexibility to address problems caused by these wolves or their progeny (See Special Regulations Under Section 4(d) for Threatened Species). We are not proposing to authorize the incidental or intentional take of gray wolves that naturally occur in the Northeast. Special management regulations under section 4(d) of the Act will have no immediate effect on the protection afforded any naturally occurring or recolonizing gray wolves in the States of New York, Vermont, New Hampshire and Maine. However, if future wolf reintroductions occur in the Northeast, and conditions allowing incidental or intentional take pursuant to special management regulations under section 4(d) of the Act are met, it will not be possible in every instance to distinguish naturally occurring wolves from the unmarked progeny of reintroduced wolves. Therefore, in the event that one or more States or Tribes actively reintroduce wolves into the Northeast, some incidental or intentional take of naturally occurring wolves may occur in the future.

Southwestern (Mexican) Gray Wolves. As of mid-February, 2000, illegal killing has been confirmed as the cause of death of 4 of the 34 Mexican wolves that have been released to the wild. However, we do not believe that predation or illegal killing will preclude recovery of the Mexican wolf. Killing or capture and permanent confinement of gray wolves for scientific and educational purposes is discussed under Factor B, above.

D. The Inadequacy of Existing Regulatory Mechanisms.

Upon being listed under the Act the gray wolf immediately benefitted from a Federal regulatory framework that includes— prohibition of take, which is defined broadly under the Act to include killing, injuring, or attempting to kill or injure; prohibition of habitat destruction or degradation if such activities harm individuals of the species; the requirement that Federal agencies ensure their actions will not likely jeopardize the continued existence of the species, coupled with the requirement that Federal agencies implement measures to reduce the incidental adverse effects of their actions; and the requirement that we develop and implement a recovery program for the species. In addition, the 1978 designation of critical habitat in Minnesota and Michigan (43 FR 9607) further requires Federal agencies to ensure that their actions do not result in the destruction or adverse modification of those designated areas. These protective regulations and conservation measures have substantially improved the status of the gray wolf.

Western Great Lakes Gray Wolves. A June 29, 1998, announcement by Secretary of Interior Bruce Babbitt and Service Director Jamie Rappaport Clark described, in part, our intention to propose a delisting of gray wolves in the Western Great Lakes. That intention was based, in large part, upon our belief that State wolf management plans for Minnesota, Wisconsin, and Michigan would either be completed, or would be sufficiently close to completion, so that our delisting and reclassification proposal could be based, in part, upon an analysis of the protective mechanisms and management strategies and actions to be described in those plans.

In late 1997 the Michigan wolf management plan was completed and received the necessary State approvals. By mid-1998 the Wisconsin wolf management plan was available as a public draft; it has since been revised, released as a second draft for public review and comment, and has undergone further revision. The Wisconsin Natural Resources Board approved the plan in October of 1999. Our biologists have participated on the teams that developed these two State plans, so we are familiar with their evolution and likely future direction. We believe that these plans provide sufficient information for us to analyze the future threats to the gray wolf population in Wisconsin and Michigan after Federal delisting.

The Minnesota Legislature failed to approve a State Wolf Management Plan and regulatory bill during the 1999 legislative session that would allow us to conclude that the future of the Minnesota wolf population would be assured, as is recommended by the recovery criteria for the Eastern Timber Wolf (See Other Alternatives Considered). Furthermore, as of mid-February, 2000, the Minnesota Legislature had not considered the wolf management bill produced by the Minnesota DNR in early 2000. Therefore, we are not proposing to delist wolves in the Western Great Lakes. Rather we are proposing to reclassify wolves in Wisconsin, Michigan, North Dakota, and South Dakota to threatened. Upon adoption of an adequate State wolf management plan and regulatory bill for Minnesota, we will consider delisting wolves in the Western Great Lakes.

If this proposed regulation is finalized, wolves will continue to be protected by the provisions of the Act throughout this DPS. The regulatory changes that will take place are twofold—wolves in Wisconsin, Michigan, North Dakota, and South Dakota will be protected as a threatened species, rather than as an endangered species; and for the first time wolves in those four States will be subject to limited, but routine, lethal depredation control measures under the terms of the special regulation that we are proposing under section 4(d) of the Act.

The only direct change in protection that would result from a reclassification from endangered to threatened was discussed above, under *B. Overutilization for Commercial, recreational, scientific, or educational purposes.* The change stems from the broader authority of Service or State employees, or their designated agents, to take a threatened species without a Federal permit. Furthermore, we can issue permits to take threatened species for a somewhat wider variety of purposes than for endangered species. The impact of this increased take authority on wolf recovery is believed to be insignificant; additional discussion is found in that earlier section.

The second impact of this reclassification is indirect, and it stems from our ability to implement special regulations under section 4(d) of the Act for threatened, but not endangered, species. We are using that authority to propose a special regulation for the lethal control of depredating wolves in Wisconsin, Michigan, North Dakota, and South Dakota, in a form that is very similar to that authorized by the special regulation that has been in effect for Minnesota wolves since December 12, 1985 (50 FR 50792). The proposed special regulation will allow the killing of depredating wolves by certain government employees or agents, subject to several restrictions.

Depredation Control Programs in the Western Great Lakes States. Wolves that are injuring and/or killing domestic animals in the western Great Lakes States are currently controlled in different ways, depending upon their listing under the Act and their importance to our gray wolf recovery programs. In Minnesota depredating wolves have been lethally controlled under a special regulation, because they are listed as threatened. Section 4(d) of

the Act allows lethal take of threatened animals under a special regulation. (Details on the Minnesota depredation control program are provided later in this subsection.)

Depredating wolves in Wisconsin and Michigan, listed as endangered and therefore not eligible for a section 4(d) special regulation, currently are being trapped and released in suitable and unoccupied habitat at some distance from the depredation location. The goal of this approach is to eliminate future depredations by the individual wolf by moving it to suitable, but vacant, habitat at a location with abundant wild prey, and with minimal or no exposure to domestic animals. However, the results of this approach vary widely. In some cases the wolf will become resident at the new site and will not resume its previous habit of preying on domestic animals. In other cases the wolf attempts to return to its previous territory, continues its depredations on domestic animals at the new site, or is killed by nearby resident wolves. This approach has a greater chance of succeeding if there are several areas of suitable unoccupied habitat from which to choose for release of the wolf, so that a release location can be selected that is very remote from the wolf's previous territory.

However, the rapidly growing wolf populations in both Wisconsin and Michigan make it increasingly difficult to find suitable, but unoccupied, habitat into which a depredating wolf can be successfully released. In the most recent incident of the capture and translocation of a depredating wolf in Wisconsin, the animal left the release site and had traveled half of the distance back to its capture site before being mistaken for a coyote and shot (Wydeven *in litt.* 1999).

Due to the decreasing effectiveness of translocating depredating wolves, and the high cost of making such attempts, the States of Wisconsin and Michigan have requested the authority to carry out lethal depredation control measures, similar to what has been done by APHIS-Wildlife Services in Minnesota. As the wolf population grows in number and expands in range in those two States, those wolves will increasingly use more agricultural areas and will be exposed to additional domestic animals as potential prey. We believe that special management regulations under section 4(d) of the Act would provide increased flexibility and efficiency in managing wolves (See Special Regulations under Section 4(d) for Threatened Species.)

Based upon depredation control statistics from Minnesota, we expect the lethal take of Wisconsin and Michigan wolves to be very small during the next few years. Data from Minnesota clearly show that an expanding wolf population's increasing exposure to domestic animals will likely lead to increased depredation incidents, and the need for additional lethal control of those wolves. From 1980 to 1984, with a late winter wolf population of about 1350 animals, an annual average of 2.2 percent of the Minnesota wolf population was killed by APHIS-Wildlife Services to reduce depredation problems. From 1985 to 1989, with a late winter wolf population of about 1600 wolves, the annual average of wolves killed for depredation control increased to 3.0 percent. Additional increases have occurred in the 1990s.

With the current Wisconsin and Michigan (Upper Peninsula) late winter wolf populations at 200 or less in each State, we estimate that about 2 percent of those wolves will be taken through lethal depredation control annually, or about 4 or 5 wolves in each State. Given the average annual population increases of 30 to 34 percent over the last 6 years in each of these States, the effect of such levels of lethal depredation control will not prevent the continued growth of the wolf population in either State, and will probably be so small that it does not noticeably slow that growth over the next few years. Wolf recovery will not be affected in either State. Reporting and monitoring requirements will ensure that the level of lethal depredation control is evaluated annually and can be curtailed if necessary. Therefore, we do not believe that lethal depredation control will be a significant threat to the future of wolves in either Michigan or Wisconsin, or that it will result in a need to reclassify those wolves as endangered in the foreseeable future.

Only one wolf has been killed for depredation control purposes in Wisconsin and Michigan. An adult wolf was killed by the WI DNR in 1999, under the provisions of a permit that we issued. This was done to end a chronic depredation problem at a private deer farm after the failure of extensive efforts to live-trap and remove the wolf (WI DNR 1999b).

For both North Dakota and South Dakota we have anticipated potential wolf depredation problems associated with mostly single, dispersing wolves from the Minnesota and Manitoba populations. To cope with these anticipated depredations we have had a "Contingency Plan for Responding to Gray Wolf Depredations of Livestock" in place for each State for several years (U.S. Fish and Wildlife Service 1992b, 1994b). In partnership with APHIS-Wildlife Services and State animal damage control agencies, the contingency plans provide for the capture and permanent transfer to American Zoo and Aquarium Association (AZA)-approved holding facilities, such as zoos, captive breeding centers, or research facilities, of all depredating or injured/sick wolves in North Dakota and South Dakota. The lethal control of depredating and injured/sick wolves is authorized by the plans only if no AZA-approved holding facilities could be identified. Verified wolf depredations occur approximately once every other year in North Dakota, with the most recent occurring in June of 1999; there have been no verified wolf depredations in South Dakota in recent decades. To date, neither state has found it necessary to implement either the non-lethal or lethal control measures authorized under the contingency plans, although confirmed wolf sightings and some incidents of wolf depredation continue to occur.

North Dakota and South Dakota are recognized as lacking significant recovery potential for the gray wolf. Therefore, lethal control of depredating wolves in these two States will not adversely affect the Western Great Lakes DPS recovery program. We believe that special management regulations under section 4(d) of the Act to allow lethal control of depredating wolves would help to promote greater public acceptance of the gray wolf recovery programs being carried out in areas where wolf recovery is feasible (See Special Regulations under Section 4(d) for Threatened Species). Furthermore, such regulations would allow Federal, State, and Tribal agencies in the Dakotas to be even more responsive to depredation incidents, thus, minimizing conflicts between wolves and livestock production. In addition, such regulations would eliminate the costs, time, and facilities needed to capture, transport, and house live gray wolves.

We expect a much higher proportion of North Dakota and South Dakota wolves to become involved in depredation than the approximately 2 or 3 percent we expected in Wisconsin and Michigan. Thus, if the Minnesota wolf population continues to expand and provide additional dispersing wolves, lethal depredation control activities in North Dakota and South Dakota may also kill on the order of four or five wolves annually in each of these two States. These mortalities will neither slow the recovery of the Minnesota and Michigan-Wisconsin wolf populations nor delay the eventual delisting of the Western Great Lakes DPS, because the

Eastern Plan does not rely on wolves in North Dakota or South Dakota to achieve any of its recovery criteria.

This proposal will not affect the current section 4(d) special regulation for wolf depredation control in Minnesota, and we expect that program will continue unchanged. During the period from 1980 through 1998 the Federal Minnesota wolf depredation control program has annually euthanized from 20 (in 1982) to 216 (1997) gray wolves. The annual average was 30 wolves killed from 1980 to 1984, 49 from 1985 to 1989, 115 from 1990 to 1994, and 152 from 1995 to 1998. Based upon estimates of the Minnesota wolf population during these periods, these numbers represent an average annual removal of approximately 2.2 percent, 3.0 percent, 6.0 percent, and 6.7 percent of the total population during those four multi-year periods, respectively. The lowest annual percentage of Minnesota wolves destroyed by APHIS-Wildlife Services was 1.5 percent in 1982; the highest percentage was 9.4 in 1997.

There is no evidence that this level of wolf removal for depredation control purposes has halted the increase in wolf numbers or range in Minnesota, although it is quite possible that the depredation control program may have slowed wolf population growth, especially since the late-1980s. Because the Minnesota wolf population has continued to grow at an average annual rate of 4 to 5 percent since 1989, we believe that it is highly likely that a viable wolf population will continue to exist in Minnesota if a lethal depredation control program of this magnitude is continued. However, monitoring of the wolf population will become increasingly important if the percentage of wolves killed for depredation control continues to increase, or if other mortality factors increase in magnitude. Annual monitoring may become necessary to enable timely corrective action, including reduction of lethal depredation control activities, if the Minnesota wolf population begins to decrease or to contract in geographic range. At this time, however, it appears that continuing the current magnitude of lethal depredation control under the existing special regulation will not significantly suppress the Minnesota wolf population.

State and Tribal Management and Protection of Wolves. The Wisconsin Wolf Management Plan recommends immediate reclassification from State-endangered to State-threatened status because the State's wolf population has already exceeded the State reclassification criterion of 80 wolves for 3 years. The Plan further recommends the State manage for a gray wolf population of 350 wolves outside of Native American reservations, and states the species should be delisted by the State once the population reaches 250 animals outside of reservations. Upon State delisting, the species would be classified as a "protected nongame species," a designation that would continue State prohibitions on sport hunting and trapping of the species. The Wisconsin Plan includes criteria that would trigger State relisting as threatened (a decline to fewer than 250 wolves for 3 years) or endangered (a decline to fewer than 80 wolves for 1 year). State reclassification to threatened, and possibly State delisting, will occur while the wolf is still federally listed as threatened or endangered. If the wolf is both federally and State-delisted proactive wolf control by government trappers in problem areas could occur. In addition, the taking of wolves by the public in Wisconsin would be considered to keep the wolf population within the range of social tolerance if other control measures have failed to do so; however, the social tolerance level has not yet been determined. Public taking of wolves will not occur while the wolf remains federally listed as threatened or endangered. The Wisconsin plan will be reviewed annually by the Wisconsin Wolf Advisory Committee and will be reviewed by the public every 5 years.

Both the Wisconsin and Michigan Wolf Management Plans recommend managing wolf populations within each State as isolated populations that are not dependent upon frequent immigration of wolves from an adjacent State or Canada. Thus, each State will be managing for a wolf population at, or in excess of, the 200 wolves identified in the Federal Recovery Plan for the Eastern Timber Wolf as necessary for an isolated wolf population to be viable. We support this approach and believe it provides further assurance that the gray wolf will remain a viable component of the western Great Lakes ecosystem in the foreseeable future.

The Wisconsin and Michigan wolf management plans recommend similar high levels of protection for wolf den and rendezvous sites, whether on public or private land. Both State plans recommend that most land uses be prohibited at all times within 100 meters (330 feet) of active sites. Seasonal restrictions (March through July) should be enforced within 0.8 km (0.5 mi) of these sites, to prevent high-disturbance activities such as logging from disrupting pup-rearing activities. These restrictions should remain in effect even after State delisting occurs.

While the Tribes do not yet have management plans specific to the gray wolf, several Tribes have informed us that they have no plans or intentions to allow commercial or recreational hunting or trapping of the species on their lands even if gray wolves were to be federally delisted. As previously discussed in the section *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes,* Tribes are expected to continue to provide sufficient protection to gray wolves on reservation lands to preserve the species' long-term viability in the western Great Lakes area.

Based upon information received from other Federal land management agencies in the western Great Lakes area, we expect National Forests, units of the National Park System, and National Wildlife Refuges will provide additional protections to threatened gray wolves beyond the protections that will be provided by the Act and its regulations, State wolf management plans, and State protective regulations. Refer to the discussion under Factor A. *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range* for Details.

Northeastern Gray Wolves. Except as provided by special management regulations under section 4(d) of the Act (See Special Regulations under Section 4(d) for Threatened Species.), the current Federal regulatory framework will remain in effect largely unchanged for those wolves in the Northeast proposed to be reclassified to threatened status. The Act and implementing regulations under 50 CFR 17.31 provide nearly the same level of protection to both endangered and threatened species. The exceptions to this equal protection are twofold.

First, we can issue permits to take threatened species from the wild for a wider variety of purposes than for endangered species. The additional purposes are for educational use, zoological exhibition, and for other special purposes consistent with the Act, that is, for purposes consistent with the conservation of the species.

Second, an employee of the Service or of a State conservation agency which is operating under a conservation program pursuant to the terms of a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may take threatened species in the course of official duties, to carry out conservation programs for that species.

Because both of these provisions allow take of threatened species for purposes that are intended to promote the conservation of the species, the additional take that results from these provisions must be small and must be beneficial to the Northeastern DPS.

In addition, special management regulations under section 4(d) of the Act (See Special Regulations under Section 4(d) for Threatened Species) will also authorize additional take, both intentional and incidental, of gray wolves if the take is done under conditions specified in a Service-approved wolf conservation plan. (Refer to *Northeastern Gray Wolf DPS special regulations*, below, for additional discussion.) These conservation plans, and all actions carried out under their authority, must have the conservation of the gray wolf as their purpose.

We do not believe this additional management flexibility provided by a reclassification to threatened status and the proposed special regulation will adversely impact the recovery of gray wolves. On the contrary, we believe the additional flexibility will promote wolf recovery in those areas by making it easier for State, Tribal, and local agencies, as well as private organizations, to become more involved in the activities essential to wolf recovery—educational programs, wolf reintroductions, and capture and relocation of nuisance wolves.

Western Gray Wolves. Currently, wolves in these States have two different listings under the Act—(1) Those wolves within the two nonessential experimental populations (all of Wyoming and most of Idaho and Montana) are treated as threatened wolves. However, for purposes of interagency cooperation (section 7 of the Act) those wolves are treated as species proposed for listing and receive limited consideration in the planning and implementation of Federal agency actions, unless those actions occur on units of the National Park System or the National Wildlife Refuge System, in which case the wolves are treated as a threatened species and are subject to the full protections of section 7. These wolves also are subject to two special regulations that modify the normal protections of the Act for threatened species (under the nonessential experimental population designation 59 FR 60252 and 60266; November 22, 1994). (2) Those wolves outside of the nonessential experimental populations are listed as endangered and are subject to the strictest protections afforded by the Act.

The proposed special management regulations under section 4(d) of the Act (See Special Regulations under Section 4(d) for Threatened Species) would increase management flexibility for wolves in the Western DPS (but only in areas outside of the experimental population areas) because they would allow take under additional circumstances. Wolves near livestock could be harassed in a noninjurious manner at any time on private land or on public land by the livestock permittee. Intentional or potentially injurious harassment could occur by permit on private land and public land. Wolves attacking not only livestock, but also any domestic animals, on private land could be taken in the act of attacking domestic animals without a permit; on public land a permit would be required for such take. Permits would be required for taking wolves on private land if they are a risk to domestic animals and there are at least 10 breeding pairs of wolves in the State where the permit would apply.

The increased management flexibility for take is expected to reduce and more quickly resolve conflicts between livestock producers and wolves by providing additional methods by which individual problem wolves can be removed from the wild population. We do not expect the take under special management regulations under section 4(d) of the Act (See Special Regulations under Section 4(d) for Threatened Species) to result in a significant increase in the removal of problem wolves nor to appreciably slow wolf recovery, because much of that recovery is occurring, and will continue to occur, within the experimental population areas.

During the EIS process for the reintroduction of nonessential experimental wolves into the West (U.S. Fish and Wildlife Service 1994a) the States of Montana, Idaho, and Wyoming, as well as many State residents, asked that the States be delegated the authority and funding to assume the lead role in wolf restoration. The special regulations under the experimental population designation allowed this opportunity (59 FR 60252–60266 and 60266–60281; November 22, 1994), and all three States produced draft wolf management plans that were funded by us. However, none of the States' plans obtained sufficient public or political support, and they were abandoned. After nearly 3 years of internal debate, on August 19, 1997, the Governors of Montana, Idaho, and Wyoming signed a memorandum of understanding announcing that their States would not be directly involved in wolf management until gray wolves were removed from protections of the Act. The memorandum also directed the States to be involved in recovery planning, assist in control of problem wolves, facilitate communication, and develop a tri-state plan by the year 2000 that would assist us in the timely delisting of wolves in the northern Rocky Mountains. This process will improve coordination of management of wolves that are listed as threatened.

In 1995, funding levels reduced our northern Rocky Mountains wolf recovery program staff from five people to two, and our direct involvement in wolf management declined. Fortunately, however, the Nez Perce Tribe began managing wolves in Idaho under a cooperative agreement with us in 1996, and personnel from Yellowstone National Park, APHIS-Wildlife Services, and our law enforcement agents assumed nearly all wolf management activities in the Greater Yellowstone Area. After the States formally declined direct involvement in wolf recovery, we redirected our wolf recovery funding to support development of the State wolf management plans to encourage State involvement in wolf recovery. In addition, due to the anticipation of the increased effort that more wolves will require under the special management regulations, we also used the redirected funding to station two Service biologists in Lander, Wyoming, and another two in Helena, Montana, beginning in January 1999. This additional effort by us will greatly assist in the management of gray wolves in the West and allow for full implementation of special management regulations under section 4(d) of the Act (See Special Regulations under Section 4(d) for Threatened Species).

Depredation Control Programs in the Western DPS. In the Northern U.S. Rocky Mountain wolf recovery area, reports of suspected wolf-caused damage to livestock are investigated by APHIS-Wildlife Services specialists using standard techniques (Roy and Dorrance 1976, Fritts *et al.* 1992, Paul and Gipson 1994). If the investigation confirms wolf involvement, APHIS-Wildlife Services specialists conduct wolf control in close coordination with us and Nez Perce Tribal personnel.

In northwestern Montana, wolf control under a section 10(a)(1)(a) permit is conducted only when livestock are attacked. In the experimental areas, wolf control can also occur when other domestic animals, such as dogs, are attacked on private land more than once in a calendar year. Control in both of these situations consists of the minimum actions believed necessary to reduce further depredations. The spectrum of

control measures used includes: intensive monitoring of the wolves and livestock (including providing a telemetry receiver to the affected rancher), aversive conditioning (i.e., capturing, radiocollaring, and releasing wolves on site or harassing wolves with noise-makers such as cracker shells), relocating or killing some wolves, or some combination of these approaches. Control measures are continued until livestock depredations cease, even if all wolves eventually have to be removed. When five or fewer breeding pairs are in a recovery area, wolves are relocated on their first offense. When at least six breeding pairs are present, wolves can be killed after their first offense. Wolves that repeatedly depredated on livestock were killed.

In experimental areas, special regulations allowed landowners on private land and livestock producers on public land to harass wolves at any time. In the experimental areas, wolves attacking livestock on private land can be shot by landowners with a permit, and, after six breeding pairs are established, our permit can allow permittees to shoot wolves attacking livestock on public land. A private program has compensated ranchers full market value for confirmed and one-half market value for probable wolf-kills of livestock and livestock guard animals (Fischer 1989).

The control of problem wolves depredating livestock resulted in the removal of less than six percent of the wolves in northwestern Montana between 1987 and 1995. This level of mortality is not expected to prevent wolf populations from reaching recovery levels. Wolves in the Greater Yellowstone and central Idaho areas have attacked livestock less frequently than predicted. Wolf control removed a total of 45 wolves between 1995 and 1999. This represented less than six percent of the wolf population over a 5-year period. While it is expected that wolf control will continue to remove wolves that attack livestock from the population in the Western DPS, we still expect that wolf population recovery will be achieved by 2002. Management of wolves under the special management regulations under section 4(d) of the Act (See Special Regulations under Section 4(d) for Threatened Species) is not expected to significantly increase wolf mortality rates, because relatively few wolves attack livestock.

The only significant difference in the management of problem wolves between the current management and the proposed management of wolves following their reclassification from endangered to threatened would be the taking of wolves in the act of attacking livestock or domestic animals on private land by private landowners. In the past 4 years in Idaho and Wyoming only two nonessential experimental wolves have been legally taken by landowners. That level of take could not significantly increase wolf mortality rates or decrease the rate of wolf population recovery.

During depredation control actions for problem wolves in Montana, Idaho, and Wyoming, individual wolves have incurred injuries from capture that ultimately resulted in their death or removal from the wild (one in Idaho and two in Montana). Mortality from capture is rare and not a significant portion of total mortality in the wolf population.

We have determined that effective control of problem wolves benefits the conservation of the species in the northern Rocky Mountains (U.S. Fish and Wildlife Service 1999).

Southwestern (Mexican) Gray Wolves. The listing status of Mexican Gray wolves will not change with this proposed regulation. They will continue to be endangered, except for the reintroduced population which will retain its current status of a nonessential experimental population.

E. Other Natural or Manmade Factors Affecting its Continued Existence.

Public Attitudes Toward the Gray Wolf. The primary determinant of the long-term status of gray wolf populations in the United States will be human attitudes toward this large predator. These attitudes are based upon the conflict between human activities and wolves, concern with the perceived danger the species may pose to humans, its symbolic representation of wilderness, the economic effect of livestock losses, the conviction that the species should never be a target of sport hunting or trapping, and the wolf traditions of Native American Tribes.

We have seen a change in public attitudes toward the wolf over the last few decades. Public attitude surveys in Minnesota and Michigan (Kellert 1985, 1990, 1999), as well as the citizen input into the wolf management plans of Minnesota, Wisconsin, and Michigan indicate strong public support for wolf recovery if the adverse impacts on recreational activities and livestock producers can be minimized (MI DNR 1997, MN DNR 1998, WI DNR 1999a). This increased public acceptance of wolves during the last 25 years also has reduced illegal persecution and killing.

Similar national support is evident for wolf recovery and reintroduction in the Northern U.S. Rocky Mountains and appears to be developing for wolf recovery in the northeastern States. With the continued help of private conservation organizations, States, and Tribes, we can continue to foster public support to maintain viable wolf populations in the western Great Lakes area and for recovery of wolves in the Northeast, West, and Southwest. We believe that special management regulations under section 4(d) of the Act (See Special Regulations under Section 4(d) for Threatened Species) will further foster public support for wolf recovery by providing more effective means for dealing with wolf-human conflicts.

Southwestern (Mexican) Gray Wolves. The primary factor currently affecting the continued existence of the Mexican wolf in the wild is the small number of individuals in the wild population. No wolves are known to exist in the wild in Mexico, and only 7 Mexican wolves exist in the wild in the United States (as of February 2000), most of which are captive-raised animals released by us since March 1998. The continued existence of the Mexican wolf depends upon the success of our reintroduction projects in the Southwest. The reintroduction plan requires an assessment of the success of the project at 3 and 5 years following the first releases. It is too soon to know which factors, if any, may affect the continued existence of Mexican wolves in the wild.

Designation of Distinct Population Segments

Currently, the gray wolf is listed as threatened in Minnesota and as endangered in the other 47 conterminous States, effectively establishing a Minnesota DPS that is delimited by State boundaries in the absence of any other indications of discreteness. This separate designation of Minnesota gray wolves as threatened was established in 1978, before our adoption of the 1996 Vertebrate Population Policy (61 FR 4722; February 7, 1996); this proposed rule brings the current listing of the gray wolf into compliance with the policy.

Due to the extensive geographic separation in current wolf distribution in the conterminous States, and based on the Vertebrate Population Policy, this notice proposes the reclassification of the gray wolf by establishing the following 4 DPSs within the conterminous 48 States and Mexico (refer to Map 2 located at the end of the Alternative Selected for Proposal section).

Western Great Lakes Gray Wolf Distinct Population Segment. Consisting of gray wolves within the States of North Dakota, South Dakota, Minnesota, Wisconsin, and Michigan, and those gray wolves in captivity that originated

from, or whose ancestors originated from, this geographic area.

Southwestern (Mexican) Gray Wolf Distinct Population Segment. Consisting of gray wolves in Arizona south of the Colorado River and the Little Colorado River between Hoover Dam and Winslow and south of Interstate Highway 40 between Winslow and the eastern State boundary; New Mexico south of Interstate Highway 40; Texas south of Interstate Highway 40 and west of Interstate Highway 35; and Mexico; and those gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area.

Western Gray Wolf Distinct Population Segment. Consisting of gray wolves in the States of Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, and the parts of Arizona and New Mexico north of the Colorado River and the Little Colorado River between Hoover Dam and Winslow (Arizona) and north of Interstate Highway 40 between Winslow and the eastern boundary of New Mexico; and those gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area.

Northeastern Gray Wolf Distinct Population Segment. Consisting of gray wolves within the States of New York, Vermont, New Hampshire, and Maine, and those gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area.

The gray wolf populations within each of these proposed DPSs are separated from gray wolf populations in the other DPSs by large areas that are not occupied by, and may not be suitable for, breeding populations of resident wild gray wolves. Although dispersing individual gray wolves have been located in some of these unoccupied areas (Licht and Fritts 1994), and it is possible that individual dispersing wolves can completely cross some of these gaps between occupied areas, we believe that the existing geographic isolation of wolf populations between these four areas fully satisfies the Vertebrate Population Policy's criterion for discreteness of each DPS. The Vertebrate Population Policy allows us to use international borders to delineate the boundaries of a DPS even if the current distribution of the species extends across that border. Therefore, we will use the United States-Canadian border to mark portions of the boundaries of three of the DPSs due to the difference in control of exploitation, conservation status and regulatory mechanisms between the two countries. In general, wolf populations are more numerous and wide-ranging in Canada, therefore, wolves are not protected by Federal laws in Canada and are publicly trapped in most Canadian provinces.

We further believe that each of these four wolf populations satisfies the significance criterion of the Vertebrate Population Policy. Without viable wolf populations in these four geographic areas the recognized historical range of the species within the 48 conterminous States would have extensive and significant gaps, possibly broader than the dispersal distance of the species (Fritts 1983). Additionally, the Western Great Lakes, Western, and Southwestern (Mexican) Gray Wolf Distinct Population Segments are each being repopulated by wolves of distinct morphological characteristics which may represent different gray wolf subspecies.

The existence of large areas of potentially suitable wolf habitat and prey resources in parts of New England, the possibility that wild wolves may exist in remote areas of Maine, and the presence of wolf populations in neighboring areas of eastern Canada form the basis for our consideration of a DPS for the gray wolf in the Northeast. We have determined that, based on the Vertebrate Population Policy, gray wolves that may exist in Maine are discrete from gray wolves elsewhere in the lower 48 States. We have also determined that a population of gray wolves in this portion of the lower 48 States is significant and will contribute to the overall restoration of the species. In addition, although taxonomic studies have provided conflicting conclusions regarding wolf taxonomy at the subspecies level, we believe it is likely that a separate form of the gray wolf historically occupied the northeastern United States and adjacent Canada. Establishing a Northeastern DPS maximizes the ability of the Service, States, and Tribes to reestablish this form, or its current-day equivalent. The wolves in Canada, which would serve as a source of animals for natural reestablishment or reintroduction, are thought to be taxonomically and genetically similar to the wolves that once populated the northeastern United States.

Establishing a Northeastern DPS with a classification of threatened under the Act would recognize that suitable habitat exists, that a genetically appropriate source of wolves may exist in Canada for natural colonization or reintroduction, that wolf recovery once initiated proceeds quickly based on our experience in the Rockies, and that management flexibility is critical to successful wolf reestablishment. Threatened status would maintain Federal protection for any wolves that might disperse into historical wolf range in the northeastern United States from Canada. However, a threatened classification, rather than an endangered classification, allows us to develop a special regulation under section 4(d) of the Act. The proposed special regulation under section 4(d) of the Act is intended to promote the restoration and recovery of wolves to one or more States within the Northeastern DPS by providing interested States and Tribes with the authority to assume a leading role in carrying out protection, management, and recovery actions for the species. This flexibility will make it easier for States and Tribes to control and remove problem wolves, and will reduce opposition to wolf restoration in areas where they have been absent for many decades. Any wolf restoration program would be implemented only with the full cooperation of respective State and Tribal natural resource management agencies and general support of landowners and after full compliance with the National Environmental Policy Act.

As discussed earlier (refer to *Distinct Population Segments and Experimental Populations*), our current consideration of designating a multi-state Western Gray Wolf DPS does not mean that we now believe the existing experimental wolf populations and the natural wolf population in Idaho, Wyoming, and Montana constitute a single wolf population. For purposes of gray wolf reintroduction by means of experimental populations in central Idaho and Yellowstone National Park, we examined the biological characteristics of the species to determine if the reintroduced wolves would be geographically separate from other gray wolf populations. We defined a wolf population to be two breeding pairs, each successfully raising two or more young for two consecutive years in a recovery area (U.S. Fish and Wildlife Service 1994a). This wolf population definition was used to evaluate all wolves in the northern U.S. Rocky Mountains to determine if, and where, gray wolf populations might exist. Gray wolves in northwestern Montana qualified as a wolf population under this definition; that existing wolf population was further examined to determine if it was geographically separated from the potential experimental population areas. We determined that the northwestern Montana wolf population was geographically separate, so we designated the two experimental population areas and began gray wolf reintroductions to establish the two

experimental populations. The DPS designation under consideration here would be made for a different purpose and would have to satisfy different criteria than the experimental population designations.

Wolves in Areas Beyond the Scope of Current Recovery Programs

Although the gray wolf currently is listed as either threatened or endangered throughout the 48 conterminous United States and Mexico, all or portions of half of those States are not included within the geographic coverage of the 3 existing recovery plans. Due to the lack of suitable habitat in many of the areas beyond the current scope of recovery programs, these States cannot offer significant potential for gray wolf recovery. In fact, some of the States, for example, California, where the gray wolf currently is listed as endangered, were on the very edges of the former historical range, and wolves were likely never very numerous there.

Thus, we believe the purposes of the Act will be fulfilled if each part of the conterminous States and Mexico, is either (1) included within one of the four DPSs to provide protection for current populations including dispersing and recolonizing wolves, (2) included within one of the four DPSs in order to facilitate potential future restoration efforts in areas where restoration has been determined to be feasible or potentially feasible, or (3) delisted and all protections of the Act are ended for that area. This proposal adopts this approach mentioned above by designating four DPSs and delisting any wolves that may occur outside of the DPS boundaries. We believe this approach will result in the recovery of the gray wolf throughout significant portions of its historical range and ultimately allow us to delist it across the entire geographic area in which it is listed, consistent with the purpose and definitions of the Act.

Increasing numbers of wolves in Minnesota and an expansion of their range westward and southwestward in the State has led to an increase in dispersing, mostly young, wolves that have been documented in North and South Dakota in recent years. An examination of skull morphology of North and South Dakota wolves indicates that of eight examined, seven likely had dispersed from Minnesota; the eighth probably came from Manitoba, Canada (Licht and Fritts 1994). The low potential for the establishment of a viable and self-sustaining wolf population in North and South Dakota, and the belief that all or most wolves in the Dakotas are biologically part of the Minnesota-Wisconsin-Michigan wolf population, leads us to believe that any wolves in these States should be included in the Western Great Lakes Gray Wolf DPS.

Extensive monitoring since 1990 indicates that wolves may be re-colonizing Washington State, probably as dispersing wolves from Canada. Wolves appear to have been eliminated in the State by the 1930s, although occasional unconfirmed individual wolves are reported in the North Cascades and northeastern Washington. Observation data indicate that the wolves mostly occur as individuals, although several wolf family units have been reported in the North Cascades (Almack and Fitkin 1998). However, because efforts to locate family units have been unsuccessful, it is unclear whether wolves are reproducing in the North Cascades. Under their current listing, these animals are protected by the Act as endangered wolves, and we provide protection recommendations for den and rendezvous sites to Federal agencies on a site-specific basis. Furthermore, the State of Washington's forest practices rules provide seasonal protection to wolf den sites. However, the North Cascades are outside of the geographic scope of the Northern Rockies Plan. In order to retain the Act's protections for such wolves, and provide the potential for their inclusion within the Northern Rockies Recovery Program, we are now proposing that all of Washington and Oregon be included in the Western DPS.

A study to determine the feasibility of re-introducing wolves to the Olympic Peninsula was initiated in 1998 and was completed in early 1999. In addition, studies are underway to determine if sufficient habitat and prey base exist within and around Olympic National Park to support a viable wolf population. The initial feasibility study indicates that the existing habitat and land uses could support approximately 56 wolves in 6 to 7 packs within the Park (Ratti *et al.* 1999). However, until more detailed studies of the prey base are completed, we cannot determine the number of wolves that could be supported by the entire Olympic Peninsula, or assess the long-term viability of such a reintroduced population of gray wolves. Results of one prey base study completed in April, 1999 on lands within Olympic National Park determined appropriate survey methods for prey populations that will be crucial if reintroduction efforts move forward. Results of a study on lands outside of Olympic National Park are expected to be available by the middle of 2000. Here again, the Olympic Peninsula is beyond the geographic scope of the Northern Rockies Plan, so we are proposing that all of Washington be included in the Western DPS.

Over the past 20 years there have been reports of wolves in several other western States, including Oregon, Colorado, and Utah. One radiocollared wolf from northwestern Montana was recently found dead from unknown causes in eastern Washington, and a radiocollared young female wolf from central Idaho dispersed into eastern Oregon in early 1999. Any wolves that are found in these areas at the current time are listed as endangered and are protected under the Act. While there is certainly habitat that could support wolves in these areas, at this time we have no plans to initiate wolf recovery for any areas in the western United States outside of the gray wolf recovery areas already identified in Montana, Idaho, Wyoming, Arizona, New Mexico, and Texas. However, our proposal to include these additional States within a Western DPS will maintain the protections of the Act for any wild gray wolves that disperse or are reintroduced into such areas while Western DPS gray wolves remain listed as threatened.

While we have no plans to actively pursue wolf restoration in other areas of the western United States, we will not actively prevent natural wolf recolonization in other areas. Wolves that naturally disperse into other States will be managed on a case-by-case basis. If there are no conflicts with human activities such wolves will likely not be returned to the area of their origin.

Gray Wolves in Captivity

We recognize that there are many gray wolves being held in captivity for a variety of reasons. Some of these are being held for research, propagation, or educational projects that are part of gray wolf recovery programs; many others are considered pets or are held for other reasons. We see no over-riding reason to retain the protections of the Act for such individuals if they or their ancestors were obtained from an area where wild gray wolves are now proposed for delisting and those wild wolves would no longer be protected by the Act. However, if the captive gray wolves or their ancestors originated from within the boundaries of a DPS that would retain the protections of the Act under this proposal, those captive wolves potentially can be a valuable part of the recovery program for that DPS. For example, they could serve as a potential source of wolves that could be released in the DPS.

Therefore, we have defined the four DPSs to include wolves living within the boundaries of the DPSs, as well as those captive wolves which were removed from the wild, or whose ancestors were removed from the wild, from within the geographic boundaries of a DPS, regardless of where the captive wolves may be held.

Other Alternatives Considered

We considered numerous alternatives to the actions proposed in this notice. These alternatives consisted of combinations of different geographic areas of coverage, changes in classification, and details and geographic areas of coverage of new special regulations.

We initially considered delisting gray wolves within the Western Great Lakes DPS, and on June 29, 1998, we announced (through a press release and media event) our intention to develop such a proposal. In addition, we also announced our intention to create four DPSs, reclassify the Western and Northeastern DPSs, and delist in other States not covered by a DPS. That announcement was based upon our expectation that State wolf management plans for Minnesota, Wisconsin, and Michigan would provide assurances of adequate wolf protection and management following Federal delisting. These assurances are one of the recovery criteria for delisting in the 1992 Eastern Recovery Plan. At that point we began drafting a proposal that included delisting the Western Great Lakes DPS.

At the time of our June 1998 announcement the Minnesota DNR had already held a series of 12 public meetings to receive input on the direction a State wolf management plan should take. The MN DNR subsequently established a Citizens Roundtable and asked that group to address the wolf management issues raised at the public meetings. The MN DNR submitted a wolf management plan, based on the Citizen Roundtable, to the MN Legislature in early 1999 in order to obtain the regulatory authority needed by the DNR to implement the plan.

We completed our analysis of post-delisting threats after the release of the February 1999 MN DNR wolf management plan; that plan closely followed the Roundtable's recommendations. We were prepared to publish a proposal to delist the gray wolves in the Western Great Lakes DPS, based in part on the MN DNR's plan. However, the MN Legislature did not approve the plan during the 1999 legislative session. Legislative approval is necessary to provide the MN DNR with both the authorities and the funding to implement many of the recommended wolf management practices.

Therefore, at this time we are unable to carry out an adequate evaluation of the future threats, as required by the Act, to wolves in Minnesota following a potential Federal delisting. We are unable to determine what protective regulations will be developed, the extent of State law enforcement that will be provided, what wolf population targets will be used, what depredation control measures will be used, and how the wolf population and wolf health will be monitored. For a large predator like the wolf, which was subject to past extensive government eradication efforts, including bounties at Federal, State, county, and local levels, we believe it is important to have an approved Minnesota wolf management plan that clearly describes the beneficial management practices that will be implemented following Federal delisting. Given this high degree of uncertainty regarding the extent and direction of future management and protection of wolves in Minnesota, we decided it is premature to propose a delisting of this DPS.

We also considered reclassifying a larger or smaller DPS in the eastern United States—reclassifying the entire geographic area included in the Recovery Plan for the Eastern Timber Wolf; reclassifying that area plus North Dakota, South Dakota, Nebraska, and Kansas; reclassifying only Minnesota, Wisconsin, and Michigan; or reclassifying those three States plus adjacent States into which wolves might disperse. Because under the Vertebrate Population Policy State boundaries cannot be used to bisect the continuous range of a species, we have included North and South Dakota within the Western Great Lakes DPS. Wolf recovery in New York and several northern New England States appears biologically feasible and has some public support. We have chosen to list that area as a separate DPS and retain the protections of the Act for wolves that may recolonize or be reintroduced there, but to change their classification to threatened and promulgate a section 4(d) special regulation in order to maximize wolf management flexibility and, therefore, to promote a separate gray wolf recovery program in that area.

We considered retaining all gray wolves in the western States under an endangered status, because they have not yet achieved their reclassification criteria in the strictest sense. Those criteria were based upon our expectations of where wolf packs would become established; the wolves have subsequently demonstrated their "preference" to establish pack territories that do not all fit within the boundaries of the recovery areas that we established in the Rockies Plan. However, these wolves are showing dramatic population growth in the areas that they have chosen, and we believe they no longer fit the definition of an endangered species. Instead, they fit the definition of a threatened species.

We believe that the listing status of all gray wolves in the conterminous States should be adjusted to accurately reflect their recovery progress and their risk of extinction. Furthermore, wolves in the northern U.S. Rocky Mountains have achieved the biological intent of the reclassification criteria—a total of over 200 adult wolves in more than 20 breeding pairs for 3 successive years.

In addition, the nature of wolves as a predator, which sometimes conflicts with human activities, causes the consideration of additional regulatory flexibility in order to control problem wolves and address other conflicts that might otherwise constrain recovery as wolf populations increase. The flexibility provided by the section 4(d) special regulation has been critically important to the success of wolf recovery in Minnesota. Similarly, wolf recovery to date in the nonessential experimental population areas of Idaho, Montana, and Wyoming has been greatly aided by the depredation control measures provided by the special regulations that were established by the nonessential experimental designation under section 10(j) of the Act. Extending this type of flexibility for wolf management beyond the experimental population areas in Idaho, Montana, and Wyoming should similarly expand the success of wolf recovery there. Reclassifying to threatened in the Western Gray Wolf DPS and the development of a 4(d) special regulation can provide that flexibility throughout the DPS.

We also considered removing the two existing nonessential experimental population designations in the northern U.S. Rocky Mountains. The anticipated merging of the three existing western subpopulations into a single expanding and dispersing gray wolf population (refer to *Dispersal of Western Gray Wolves*, above) indicates that their current treatment as two separate experimental populations and a third natural, non-experimental endangered population without a special regulation (in northwestern Montana) may no longer be appropriate or understandable to the general public. One approach to simplifying this increasingly complex

regulatory situation would be to bring all gray wolves throughout the northern U.S. Rockies under a single set of regulations that accurately reflects current and expected future progress toward recovery in the West and applies only the amount of protection that is appropriate to achieve full recovery. This could be accomplished by removing the two existing experimental population designations and substituting a Western DPS-wide threatened classification with a section 4(d) special regulation.

Under this alternative all wolves throughout Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, and the northern portions of Arizona and New Mexico would become threatened wolves and would then be subject to the more flexible management provisions of the proposed section 4(d) special regulation for the Western DPS. Currently many, but not all, of these wolves are subject to the existing more restrictive protections of the special regulation for the Central Idaho and Greater Yellowstone Area nonessential experimental populations (See "Comparison of the Standard Protections of the Endangered Species Act * * *" below). This alternative would result in a uniform protection and management situation in western States that not only would further reduce conflicts with human activities, but also would be more easily understood by livestock producers and residents. The increased management flexibility contained in the proposed section 4(d) special regulation would allow wolves to be intentionally harassed by private landowners without having to wait for an attack to occur, in addition to being able to take wolves that are in the act of attacking any domestic animals. Current regulations for the nonessential experimental populations allow landowners to take gray wolves only during attacks on their livestock. Other new provisions of the proposed 4(d) would allow us to issue permits for private citizens to take wolves posing a significant risk to domestic animals if there are 10 or more pairs present in that State, and would allow government trapping of problem wolves at all wolf population levels. We would not expect this to result in a significant increase in the removal of problem wolves nor to appreciably slow wolf recovery in the Western DPS. However, we rejected this alternative because we previously stated in our two November 22, 1994, **Federal Register** final rules establishing the Central Idaho and Greater Yellowstone DPSs that "The Service does not foresee any likely situation which would result in changing the nonessential experimental status until the gray wolf is recovered and delisted * * *" (59 FR pages 60266 and 60281). Due to that previous assurance to the public, we are not proposing the removal of the nonessential experimental population designations at this time despite the likely benefits we believe it would provide to livestock producers and private landowners.

We considered including all of the 48 conterminous States within one of the 4 DPSs. This would result in gray wolves retaining a threatened or endangered classification in many more States (for example, California, Nevada, New Jersey, Massachusetts, Kansas, and Arkansas) . However, we do not believe that it is necessary to restore wolves to all 48 conterminous States in order to achieve the purposes of the Act with regard to the gray wolf. The Act contains no reference to the need to restore a species to all or most of its historical range in order to consider it recovered. We believe that recovery is achieved if viable populations are restored across a significant portion of the species' range to a point that it no longer fits the Act's definitions of endangered and threatened. In the case of the gray wolf, we believe the provisions of the Act are not needed where these 4 conditions jointly exists—(1) wolves currently do not occur, (2) wolves are unlikely to arrive on their own, (3) wolf restoration is not potentially feasible, and (4) wolf restoration is not needed to achieve recovery. Thus, we chose to propose the retention of the protections of the Act only in States where wolf recovery is needed to achieve the purposes of the Act and where wolf recovery is potentially feasible.

Finally, we also considered not making any changes in the legal status of the gray wolf. However, this would mean that the species retains its status as an endangered species despite the best available scientific and commercial information shows, in several key recovery areas, it now fits the definitions of a threatened species. It would unnecessarily prevent States and Tribes from managing a species of resident wildlife in a manner consistent with the needs of their citizens, residents, and members in the absence of an overriding national need for different or more protective management. We are obligated under the Act to continue protecting gray wolves only if they fit the Act's definitions of endangered or threatened species.

Alternative Selected for Proposal

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the gray wolf in determining to propose this rule. Based upon this evaluation, the preferred action is to reclassify gray wolves from endangered to threatened in the Western Great Lakes Gray Wolf DPS, the Northeastern Gray Wolf DPS, and Western Gray Wolf DPS, and to retain an endangered classification for gray wolves in the Southwestern (Mexican) Gray Wolf DPS (refer to Map 3 located at the end of this section). Gray wolves outside of these four DPSs would be removed from the protections of the Act. All three existing experimental population designations will be retained. To further promote gray wolf recovery and management within the Western and Northeastern Gray Wolf DPSs, special regulations under section 4(d) of the Act are proposed. The new special regulation for the Western DPS would only apply to areas outside of the existing experimental population areas. A new special regulation for Michigan, Wisconsin, North Dakota, and South Dakota wolves would also authorize lethal depredation control that is similar to that which has been used to further wolf recovery in Minnesota since 1985. The existing special regulation for Minnesota gray wolves and the critical habitat designations in Minnesota and Michigan would remain in effect.

With wolf populations of 197 and 174 in Wisconsin and Michigan (excluding Isle Royale), respectively, it is clear that those States have each surpassed the numerical reclassification criterion contained in the 1992 Eastern Plan of 80 wolves for 3 years. They have also surpassed the numerical delisting criterion, but the lack of a clear indication of future State wolf management and protection in Minnesota precludes proposing a delisting of these wolves at this time. Instead, proposing reclassification to threatened status for all endangered wolves within the Western Great Lakes DPS recognizes their greatly improved biological situation, provides us with the ability to implement a section 4(d) rule to allow lethal depredation control throughout the DPS, and yet retains Federal protection until such time as delisting is appropriate.

The gray wolves that occasionally appear in North and South Dakota are believed to be part of the Minnesota-Wisconsin-Michigan gray wolf population. These wolves are well isolated from the Montana, Idaho, and

Wyoming gray wolf populations. Therefore, they would be included in the Western Great Lakes DPS and will be reclassified to threatened status. In the future, if we are able to fully analyze the future threats to gray wolves in Minnesota, and appropriate measures are in place to assure their future survival, we will consider a proposal to delist gray wolves in the Western Great Lakes DPS.

There have been small numbers of gray wolves documented in North Dakota and South Dakota in recent years (Licht and Fritts 1994), but there is little likelihood that a viable wolf population can develop in these States in the foreseeable future, largely due to the absence of sufficiently large expanses of unbroken public land with a suitable prey base. Furthermore, a viable wolf population is not needed in either or both of these States for us to determine that western Great Lakes wolves have recovered. Thus, while North Dakota and South Dakota wolves would continue to be provided the protections of the Act as threatened species if this proposal is finalized, we do not intend to establish separate wolf recovery programs for wolves in those States. In recognition of the likelihood that wolves dispersing into these two States frequently will encounter domestic livestock and become predators of them, we are including North Dakota and South Dakota in the proposed 4(d) special regulation that allows lethal control of depredating wolves throughout the Western Great Lakes DPS.

Wolves in the northern U.S. Rocky Mountains are also making steady progress toward recovery. In 1999, wolves achieved the biological intent of the reclassification criterion in the Northern Rockies Plan—20 breeding pairs for 3 years (a total of about 200 adult wolves). Therefore, wolves in the Western DPS no longer meet the Act's definition of endangered ("any species which is in danger of extinction throughout all or a significant portion of its range"), and should be proposed for reclassification to threatened status.

While wolves in the four northeastern States exist in very low numbers, if present at all, we believe a number of factors justify the establishment of a Northeastern Gray Wolf DPS and reclassification to threatened status. We have determined that, based on the Vertebrate Population Policy, wolves that may exist in Maine are discrete from wolves elsewhere in the lower 48 States. We have also determined that a population of wolves in this portion of the lower 48 States is significant and will contribute to the overall restoration of the species. In addition, there appears to be adequate habitat and a sufficient prey base for one or more viable wolf populations, and a source wolf population exists in nearby areas of Canada for dispersal or reintroduction of gray wolves into the Northeast. Public support for wolf recovery is evident in these States, although at this time we can not evaluate the scope of that support, or the degree of opposition to wolf recovery. Finally, the special regulation that we are proposing for the Northeastern DPS is intended to reduce wolf-human conflicts and land-use restrictions, and therefore the threat of wolf persecution by humans should significantly diminish. Because human-caused wolf mortality is the primary threat to continued viability of wolf populations worldwide, reducing this threat should significantly increase the likelihood of successful wolf recovery in the Northeast.

Wolves in the Southwestern (Mexican) Gray Wolf DPS will remain endangered if this proposed regulation is finalized. Wolf reintroduction in that area is still in its initial stages, and its success is not yet assured. Human-caused mortalities of reintroduced gray wolves in 1998 show that there still is much to be done to reduce the threats to a level where a viable wolf population can be reestablished.

This proposal would not remove the two existing nonessential experimental population designations for gray wolves in the northern U.S. Rocky Mountains. Those experimental population designations would remain superimposed on the geographically larger Western DPS where wolves would be listed as threatened. The regulations associated with those two experimental population designations would remain in effect; the new section 4(d) special regulation for the Western DPS would apply only to areas outside of the experimental population areas.

Similarly, this proposal would not remove the existing nonessential experimental population designation for gray wolves in the Southwestern (Mexican) DPS. The nonessential experimental population designation would remain superimposed on a geographically larger area where wolves would remain listed as endangered.

In addition to proposing to reclassify gray wolves in three DPSs, we are proposing to reduce the geographic area in which gray wolves would continue to be protected by the Act. We believe that several decades of conducting wolf recovery activities have made it clear that the recovery goals of the Act can readily be achieved for the gray wolf without maintaining protection for the species throughout the many States within its historical range where gray wolf recovery is no longer potentially feasible or is not necessary under the Act.

When a species is first listed as threatened or endangered under the Act we normally apply that listing and its resultant protection across the entire recognized historical range of the species in order to retain a wide spectrum of options for its recovery. As recovery programs are implemented and progress, we gain important information concerning the areas where restoration is necessary and feasible. We also become aware of areas where restoration is unnecessary or unlikely to be successful. For species listed across a broad geographic area, it is especially appropriate for us to use this type of recovery information to reduce or eliminate the Act's restrictions and impacts in those areas where restoration is not necessary or potentially feasible. This is consistent with our Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act (59 FR 34272; July 1, 1994) which established our policy to minimize the social and economic impacts arising from the recovery of species listed as threatened or endangered under the Act.

We anticipate successful restoration of viable gray wolf populations in the four DPSs. Upon achieving this recovery of the gray wolf, the species will no longer qualify as either a threatened or endangered species within the definitions of the Act. Thus, we have chosen to also remove the protections of the Act from any gray wolves that may occur now or in the future in all other geographic areas outside of the boundaries of the four DPSs. Gray wolves will remain listed as endangered, threatened, or as experimental populations only in Mexico, the entire States of Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, Arizona, New Mexico, New York, Vermont, New Hampshire, Maine, Minnesota, Wisconsin, Michigan, North Dakota, South Dakota, and part of Texas.

We recognize that there is significant private and public interest in initiating programs to restore gray wolves to areas outside of the four proposed DPSs where the gray wolf will remain listed as threatened or endangered. This proposal should not be interpreted that such interest and any resulting non-Service wolf restoration programs are unwise, unjustified, infeasible, or otherwise ill-advised. Rather, with this proposal we are stating that our mandate to recover gray wolves under

the Act does not require our initiation of such efforts. Our future role in gray wolf recovery would focus only on those four areas where wolves will remain listed as threatened, endangered, or as experimental populations. However, we remain willing to provide assistance, as budget and staff limitations allow, to other wolf restoration efforts that may be initiated by other partners, including private organizations.

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Map 1 - Current Listing

Map 2 - Proposed Distinct Population Segments

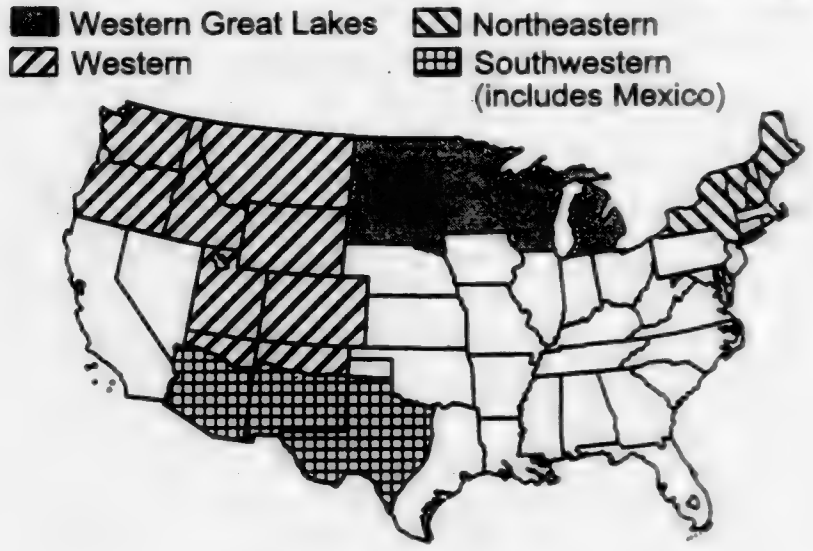

Map 3 - Proposed Listing

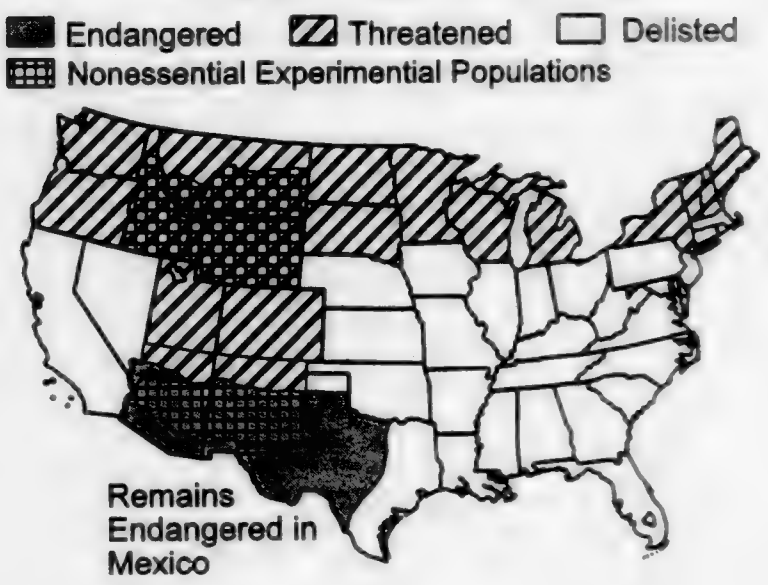

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Critical Habitat

Critical habitat was designated for the gray wolf in 1978 (43 FR 9607). That rulemaking (50 CFR 17.95(a)) identifies Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(1), as critical habitat. Wolf management zones 1, 2, and 3 comprise approximately 3800 sq km (9800 sq mi) in northeastern and north central Minnesota. This proposal will not affect those existing critical habitat designations.

Special Regulations Under Section 4(d) for Threatened Species

General

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

The implementing regulations for threatened wildlife under the Act incorporate the section 9 prohibitions for endangered wildlife (50 CFR 17.31), except when a special regulation promulgated pursuant to section 4(d) applies (50 CFR 17.31(c)). Section 4(d) of the Act provides that whenever a species is listed as a threatened species, we shall issue regulations deemed necessary and advisable to provide for the conservation of the species. Conservation means the use of all methods and procedures necessary to bring the species to the point at which the protections of the Act are no longer necessary. Section 4(d) also states that we may, by regulation, extend to threatened species, prohibitions provided for endangered species under section 9.

In this proposal we are recommending retaining the special regulation that has been crucial to conserving the gray wolf in Minnesota, and are proposing a similar special regulation to provide similar authority for lethal control of depredating wolves in Michigan, Wisconsin, North Dakota, and South Dakota.

We are also proposing the establishment of two new special regulations for other geographic areas. One new section 4(d) special regulation would assist in managing the rapidly expanding gray wolf numbers in the Western DPS and will apply to wolves outside the boundaries of the currently designated nonessential experimental population areas. The existing 10(j) special regulations for the currently designated nonessential experimental populations in Montana, Idaho, and Wyoming will remain in effect. The other new section 4(d) special regulation is intended to encourage Northeast States and Tribes to become partners with us in wolf recovery in the Northeastern DPS. We intend to continue to work with the States and Tribes in developing management plans and agreements with the objective of recovery and eventual delisting of the gray wolf in the Western, Northeastern, and Western Great Lakes Gray Wolf DPSs. These three proposed section 4(d) special regulations would offer additional management flexibility to assist in meeting this objective.

The existing special regulation for the gray wolf nonessential experimental population in portions of Arizona, New Mexico, and Texas remains unaffected.

Continuation of Existing Special Regulations for Minnesota Gray Wolves

In 1978 we developed special regulations under section 4(d) of the Act for gray wolves in Minnesota in order to reduce the conflicts between gray wolves and livestock producers. These regulations were modified in 1985 (50 FR 50792; December 12, 1985, 50 CFR 17.40(d)) and remain unchanged. The regulations divided the State into five management zones and established the conditions under which certain State or Federal employees or agents may trap and kill wolves that are likely to continue preying on lawfully present domestic animals. The intent of these regulations was to provide an effective means to reduce the economic impact of livestock losses due to wolves. We believe that by reducing these impacts, private citizens would have less incentive to resort to illegal and excessive killing of problem wolves, and that consequently the recovery of the wolf would be hastened in Minnesota.

We operated this Minnesota Wolf Depredation Control Program from 1976 into 1986. However, in 1986 the Animal Damage Control Program was transferred by Congressional action from us to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS). In 1997 the Animal Damage Control program was renamed "Wildlife Services." APHIS-Wildlife Services continues to operate the Wolf Depredation Control Program in Minnesota. This proposal, if finalized, will not change the special regulations which authorize these wolf depredation control activities in Minnesota.

New Special Regulations

Special regulations are being proposed for the gray wolf populations in the western, northeastern, and Western Great Lakes States (excluding Minnesota) that will receive a threatened designation if this proposed regulation is finalized. The proposed special regulations are intended to promote the conservation of the gray wolf in those areas by reducing actual and perceived conflicts with human activities, thus reducing the likelihood and extent of illegal killing of wolves.

In the case of the Western Gray Wolf DPS, the proposed section 4(d) regulation will apply only to wolves outside of the nonessential experimental population areas. The existing 1994 special regulations that apply to the two nonessential experimental population areas (50 CFR 17.84(i)) will remain in effect. The proposed special regulations will allow similar, but increased, management flexibility for problem wolves in all areas of the Western DPS that are outside of the boundaries of the two experimental population areas. The existing experimental population special regulations, while not allowing the same degree of management flexibility, will remain in effect within the two experimental population areas as long as those experimental areas remain designated.

Western Gray Wolf DPS Special Regulations

The survival and recovery of the gray wolf in the northern U.S. Rocky Mountain region will continue to depend heavily on human tolerance of wolves. Human actions, legal and illegal, intentional and accidental, remain the primary cause of gray wolf deaths in the western half of the United States (Bangs *et al.* 1998). We are committed to reducing illegal killing of wolves through law enforcement and by minimizing the perception that such killings are "necessary" because wolves are causing too many problems.

The proposed section 4(d) regulations for threatened gray wolves in the Western DPS are designed to conserve the wolf population while addressing local public and State government concerns about conflicts between humans and wolves. The existing special regulations (50 CFR 17.84(i)) for

the central Idaho and Yellowstone nonessential experimental population areas were developed through years of extensive public involvement, scientific review, and agency coordination. To date those special regulations have been effective at both promoting rapid growth in wolf distribution and numbers toward recovery goals, and resolving conflicts with local residents who were fearful of excessive government regulation and ongoing wolf-caused losses of livestock and other domestic animals. During the years that wolf recovery has been occurring in the West we have learned a great deal about both actual and perceived conflicts between wolves and human activities, and we have also learned how these conflicts and perceptions can be reduced while allowing wolf recovery to proceed. Because of the knowledge we have gained during these years of wolf management and recovery, we believe we can provide several additional methods to reduce wolf-human conflicts during wolf recovery. Thus, the proposed section 4(d) rule is very similar to, but provides more management flexibility than, the existing special regulations that have been successfully implemented for the Yellowstone and central Idaho nonessential experimental populations since January 1995. We believe that the proposed section 4(d) rule will further aid in the conservation and enhancement of the gray wolf in the Western DPS.

The proposed section 4(d) rule would continue to protect wolves under the Act. Wolves that do not depredate on domestic animals would be protected from take by the public, except for non-lethal harassment of wolves. Agencies would have management flexibility to take wolves under controlled circumstances, such as on the rare occasions that wolf predation may significantly affect wild ungulate populations, but only when such take would not affect wolf recovery. The proposed section 4(d) rules would allow increased flexibility by the public and by agencies to manage those few wolves that come into conflict with people by attacking domestic animals. We believe that, by effectively managing problem wolves and including the affected public in that management, local tolerance of non-depredating wolves will be enhanced. Tolerance of wolves by the local public reduces illegal killing of wolves, allows more opportunity for the public and us to investigate innovative ways to reduce wolf/livestock conflicts without killing wolves (such as aversive conditioning), and enhances communication between resource agencies and people who live near wolves leading to more accurate data gathering on wolf restoration efforts. All this ultimately increases the likelihood of successful wolf recovery in the region.

The provisions of the current special regulations for the two nonessential experimental populations in the northern U.S. Rockies are compared with the proposed special regulation for the Western DPS in the following table.

COMPARISON OF THE NORMAL PROTECTIONS OF THE ENDANGERED SPECIES ACT WITH THE CURRENT EXPERIMENTAL POPULATION SPECIAL RULES AND THE PROPOSED SPECIAL RULE FOR THE NORTHERN U.S. ROCKY MOUNTAIN GRAY WOLVES

[Proposed Western DPS]

Provision	Current experimental populations special rules (50 CFR § 17.84(i))	Proposed section 4(d) special rule	Normal protections for an endangered species
Geographic area	This special rule applies only to wolves within the areas of two Nonessential Experimental Populations (NEP), which together include—Wyoming, the southern portion of Montana, and Idaho south of Interstate 90. These gray wolves are treated as a threatened species under the Endangered Species Act. Any wolves that disperse beyond this geographic area receive the full protection of the Endangered Species Act under a classification of endangered.	This special rule will apply to any gray wolves that occur throughout the area designated as the Western Distinct Population Segment (WDPS)—Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, and the northern portions of Arizona and New Mexico, except where listed as an experimental population. These gray wolves would be listed as threatened.	Throughout area in which it is listed as endangered.
Interagency Coordination (Sec. 7 consultation).	Federal agency consultation with the U.S. Fish and Wildlife Service on agency actions that may affect gray wolves is not required within the two NEPs, unless those actions are on lands of the National Park System or the National Wildlife Refuge System.	Federal agency consultation with the Service on agency actions that may affect gray wolves is required, but will not result in land-use restrictions unless needed to avoid direct take at active den sites between April 1 and June 30.	Federal agencies must consult with the U.S. Fish and Wildlife Service (Service) on all agency actions that may affect the gray wolf.
Opportunistic harassment.	Landowners and grazing allotment holders can opportunistically harass gray wolves in a non-injurious manner without a Service permit.	Identical to the current experimental population special rules.	Harassment is included within the definition of "take" and is prohibited.
Intentional harassment Permits.	No specific provision for intentional harassment permits. However, see provision below for "Permits for recovery actions that include take of gray wolves".	The Service can issue a 90-day permit to private landowners (not available for public grazing allotments) after verified persistent wolf activity on their private land; permit would allow intentional and potentially injurious, but non-lethal, harassment of wolves.	No specific provision for intentional harassment permits. However, see provision below for "Permits for recovery actions that include take of gray wolves."

COMPARISON OF THE NORMAL PROTECTIONS OF THE ENDANGERED SPECIES ACT WITH THE CURRENT EXPERIMENTAL POPULATION SPECIAL RULES AND THE PROPOSED SPECIAL RULE FOR THE NORTHERN U.S. ROCKY MOUNTAIN GRAY WOLVES—Continued

[Proposed Western DPS]

Provision	Current experimental populations special rules (50 CFR § 17.84(i))	Proposed section 4(d) special rule	Normal protections for an endangered species
Taking wolves "in the act" on PRIVATE land.	Livestock producers on their private land may take a gray wolf in the act of killing, wounding, or biting livestock. Injured or dead livestock must be in evidence to verify the wolf attack.	Similar to the current experimental population special rules, but this provision is broadened to also apply to gray wolves attacking any domestic animals.	No provision for such take.
Taking persistent problem wolves "in the act" on PUBLIC land.	If six breeding pairs of wolves are established in a NEP area, livestock producers and permittees with current valid livestock grazing allotments on public land may receive a 45-day permit from the Service or other agencies designated by the Service, to take gray wolves in the act of killing, wounding, or biting livestock. The Service must have verified previous attacks by wolves, and must have completed agency efforts to resolve the problem. The taking must be reported as soon as possible.	Same permits are available, but they can be issued regardless of the wolf population level. Also allows permits to take wolves attacking livestock guarding or herding animals or other domestic animals.	No provision for such take.
Permits for additional taking by private citizens on their private land.	No specific provision for such permits. However, see provision below for "Permits for recovery actions that include take of gray wolves".	If 10 or more breeding pairs are present in a State and the Service has determined that wolves are routinely present on private property and present a significant risk to domestic animals, a private landowner may receive a permit from the Service to take those wolves, under specified conditions.	No specific provision for such permits. However, see provision below for "Permits for recovery actions that include take of gray wolves."
Government take of problem wolves.	The Service or agencies designated by the Service may take wolves that attack livestock or that twice in a calendar year attack domestic animals other than livestock. When six or more breeding pairs are established in a NEP, lethal control of problem wolves or permanent placement in captivity may be authorized by the Service or agency designated by the Service. When five or fewer breeding pairs are established in a NEP, taking may be limited to non-lethal measures such as aversive conditioning, nonlethal control, and/or translocating wolves. If during depredation control activities on Federal or other public lands, prior to six breeding pairs becoming established in a NEP and prior to October 1, a female wolf having pups is captured, the female and her pups will be released at or near the site of capture. All problem wolves on private land, including female wolves with pups, may be removed (including lethal control) if continued depredation occurs. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity).	No numerical threshold applies, so all control measures, including lethal control, can be used regardless of the number of breeding pairs in a State. No upper threshold of six breeding pairs limiting protection of females and their pups prior to October 1 on public lands, thus females and their pups will be released if captured on public land, regardless of the number of breeding pairs of wolves. Otherwise, the proposed special rule is similar to the current experimental population special rules.	No provision for such take.

COMPARISON OF THE NORMAL PROTECTIONS OF THE ENDANGERED SPECIES ACT WITH THE CURRENT EXPERIMENTAL POPULATION SPECIAL RULES AND THE PROPOSED SPECIAL RULE FOR THE NORTHERN U.S. ROCKY MOUNTAIN GRAY WOLVES—Continued

[Proposed Western DPS]

Provision	Current experimental populations special rules (50 CFR § 17.84(i))	Proposed section 4(d) special rule	Normal protections for an endangered species
Govt. translocation of wolves to reduce impacts on wild ungulates.	States and Tribes may capture and translocate wolves to other areas within the same NEP area, if the gray wolf predation is negatively impacting localized wild ungulate populations at an unacceptable level, as defined by the States and Tribes. State/Tribal wolf management plans must be approved by the Service before such movement of wolves may be conducted, and the Service must determine that such translocations will not inhibit wolf population growth toward recovery levels.	Similar to the current experimental population special rules, but translocated wolves must be released within the Western Distinct Population Segment. Additionally, the proposed special rule has a new provision: After 10 breeding pairs are established in a state, the Service, in cooperation with the states and tribes, may translocate wolves that it determines are impacting localized wild ungulate populations at unacceptable levels..	No provision for such relocation.
Protection of human life and safety.	The Service, or agencies authorized by the Service, may promptly remove (that is, place in captivity or kill) any wolf determined by the Service or authorized agency to be a threat to human life or safety.	Identical to the current experimental population special rules.	The Service, other Federal land management agency, a state conservation agency, or an agent of these, may take a wolf that is a demonstrable but non-immediate threat to human safety. (50 CFR 17.21(c)(3)(iv))
Take in self defense	Identical to the normal protections	Identical to the normal protections	Any person may harass or take (kill or injure) a wolf in self defense or in defense of others. (50 CFR 17.21(c))
Incidental take	Any person may take a gray wolf if the take is incidental to an otherwise lawful activity, and is accidental, unavoidable, unintentional, not resulting from negligent conduct lacking reasonable due care, and due care was exercised to avoid taking the wolf.	Similar in intent to the current experimental population special rules, with some minor wording changes.	Can be authorized by permit after Service approval of a habitat conservation plan. (50 CFR 17.22).
Permits for recovery actions that include take of gray wolves.	Available for scientific purposes, enhancement of propagation or survival, zoological exhibition, educational purposes, or other purposes consistent with the Act (50 CFR 17.32).	Identical to the current experimental population special rules.	Available for scientific purposes, and enhancement of propagation or survival (50 CFR 17.22).
Additional taking provisions for agency employees.	Any employee or agent of the Service or appropriate Federal, State, or Tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the wild, if such action is for: (A) Scientific purposes; (B) to avoid conflict with human activities; (C) to relocate a wolf within the NEP areas to improve its survival and recovery prospects; (D) to return wolves that have wandered outside of the NEP areas; (E) to aid or euthanize sick, injured, or orphaned wolves; (F) to salvage a dead specimen which may be used for scientific study; or (G) to aid in law enforcement investigations involving wolves.	Identical to the current experimental population special rules, except it has an additional provision that allows such take of wolves "to prevent wolves with abnormal physical or behavioral characteristics from passing on those traits to other wolves".	Any employee or agent of the Service, a Federal land management agency, or a State conservation agency, who is designated in writing for such purposes, when acting in the course of official duties, may take a wolf from the wild if such action is to: (1) Aid a sick, injured, or orphaned specimen, (2) dispose of a dead specimen, or (3) salvage a dead specimen which may be useful for scientific study. (50 CFR 17.21(c)(3)).

COMPARISON OF THE NORMAL PROTECTIONS OF THE ENDANGERED SPECIES ACT WITH THE CURRENT EXPERIMENTAL POPULATION SPECIAL RULES AND THE PROPOSED SPECIAL RULE FOR THE NORTHERN U.S. ROCKY MOUNTAIN GRAY WOLVES—Continued

[Proposed Western DPS]

Provision	Current experimental populations special rules (50 CFR § 17.84(i))	Proposed section 4(d) special rule	Normal protections for an endangered species
Land-use restrictions on private or Federal lands.	When five or fewer breeding pairs of wolves are in an experimental population area temporary land-use restrictions may be employed on Federal public lands to control human disturbance around active wolf den sites. These restrictions may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites, and would only apply to Federal public lands or other such lands designated in State and Tribal wolf management plans. When six or more breeding pairs are established in an experimental population area, no land-use restrictions may be employed on Federal public lands outside of national parks or national wildlife refuges, unless that wolf population fails to maintain positive growth rates for two consecutive years.	Land-use restrictions may be employed for wolf recovery purposes on national parks and national wildlife refuges. Between April 1 and June 30 land-use restrictions may be employed to prevent direct take of wolves at active den sites on any Federal lands.	Various land-use restrictions may be employed on Federal lands if the Service believes they are necessary to recovery the species and to minimize take of wolves. Land-use restrictions may be employed on private land and other non-Federal land if necessary to minimize take of wolves.

Under the proposed section 4(d) rule landowners would be allowed to harass wolves from areas where potential conflicts are of greatest concern, such as private property and near grazing livestock. In addition to the authority for landowners and livestock producers to opportunistically harass gray wolves in a non-injurious manner (as already allowed by the current special regulations within the two experimental populations), the proposed rule would allow us to issue temporary permits for deliberate harassment of wolves in an injurious manner under certain situations. Harassment methods that would be allowed under this provision include rubber bullets and shotgun shells containing small shot (#8). Since all such harassment would be nonlethal, and most is expected to be noninjurious, to wolves, no effect on wolf population growth is expected to occur. Fewer wolf depredations on livestock and pets should result from more focused and more unpleasant harassment of the problem wolves. Fewer depredations will result in fewer control actions, and consequently fewer wolves will be killed by management agencies. This provision allows us to work closely with the public to avoid conflicts between wolves and livestock or pets, thereby reducing the need for wolf control. Because we will have to confirm persistent wolf activity, and each intentional harassment permit will contain the conditions under which such harassment could occur, there should be little potential for abuse of this management flexibility.

Under the proposed special regulation for the Western DPS, landowners would be allowed to take (kill or injure) wolves actually seen attacking their livestock on private land (as currently allowed by the current special regulations within the two experimental populations). The proposed special regulation would also expand this provision so that it applies to wolves attacking any domestic animals on private land outside of the experimental areas. Furthermore, the proposed special regulation would allow us to issue permits to take wolves seen attacking livestock and livestock guard or herding animals on public land. (The current special regulations that will continue to apply to the two experimental population areas do not allow such permits to be issued for attacks on guard or herding animals, and do not allow such permits to be issued if there are fewer than six breeding pairs of wolves in the experimental population area.) Because such take has to be reported and confirmation of livestock attacks must be made by agency investigators, we anticipate that no additional significant wolf mortality will result from this provision. However, those few wolves that are killed will be animals with behavioral traits that were not conducive to the long term survival and recovery of the wolf in the northern Rocky Mountains. The required confirmation process will greatly reduce the chances that wolves that have not attacked domestic animals would be killed under this provision. Once a depredating wolf is shot, no further control on the pack would be implemented by the agencies unless additional livestock were attacked. This could result in even fewer wolves being taken in agency control actions, because the wolf that was killed would be the individual from that pack that was attacking livestock.

The proposed special regulation will allow us or other agencies and the public to continue to take wolves in the rare event that they threaten human life or safety. While this is a highly unlikely situation, and one that is already addressed by the Act and the current special regulation, emphasizing the Act's provision to defend human life and safety should reduce the public's concern about human safety.

The proposed special regulation would allow government agencies to remove problem wolves (wolves that attack livestock or twice in a year attack other domestic animals) outside the experimental areas using lethal methods regardless of the number of breeding pairs present in the area. (The current special regulations that will continue to apply within the two experimental

population areas allow lethal methods only if there are six or more breeding pairs present in that experimental population area.)

Prior to October 1 of each year, the proposed special regulation would require the release of trapped female wolves with pups, regardless of the number of breeding pairs on public land. (The current special regulations that will continue to apply within the two experimental population areas require the release of such female wolves if there are fewer than six breeding pairs present in that experimental population area.)

The proposed special regulation would allow us to issue permits for private landowners to take wolves on their private lands if 10 or more breeding pairs are present in the State and if we have determined that wolves are routinely present on that land and present a significant risk to domestic animals. (The current special regulations that will continue to apply within the two experimental areas have no provision for this type of permit to take wolves.)

The proposed special regulation addresses public concerns about the presence of wolves disrupting traditional human uses of public and private land. Except for within national parks and national wildlife refuges, the only potential restrictions on Federal lands, may be seasonal restrictions to avoid the take of wolves at active den sites. These seasonal restrictions would likely run from April 1 to June 30 of each year and apply to land within one mile of the active den site. Managing wolves in the northern Rocky Mountains has shown that successful wolf recovery does not depend upon land-use restrictions due to the wolves' ability to thrive in a variety of land uses. Since 1987, as a result of the experience we gained in the northern Rockies, we believe there is little, if any, need for land-use restrictions to protect wolves in most situations, with the possible exception of temporary restrictions around active den sites on Federal lands. Additionally, the public is much more tolerant of wolf recolonization if restrictive government regulations do not result from the presence of wolves. While the threatened status of wolves will require Federal agencies to consult under section 7, the proposed special regulation will simplify that process by stating that no land-use restrictions will be imposed except to protect wolves at active den sites on Federal lands, as described above.

All other provisions of the proposed section 4(d) special regulation for the Western DPS are identical or very similar to the current special regulations that will continue to apply to the two nonessential experimental populations in the northern United States Rocky Mountains.

We reemphasize that the management flexibility provided by the current special regulation will continue to apply to the two nonessential experimental populations established in 1994 in Wyoming and in portions of Idaho and Montana (refer to Map 1). Currently, any western gray wolves that reside outside of, or disperse beyond, those experimental areas are protected under the Act as endangered gray wolves; thus, wolves in and around Glacier National Park in northwestern Montana are endangered wolves. Captured wolves known to be experimental are not endangered. In contrast, the proposed reclassification to threatened status and the proposed section 4(d) special regulation would apply a degree of greater management flexibility across the rest of the area defined as the Western DPS, which includes all of seven States and portions of two others.

In conclusion, the proposed 4(d) rule for the Western Gray Wolf DPS would continue to protect wolves from human persecution outside of the two experimental population areas, but would improve and expand the management options for problem wolves. By focusing management efforts on the occasional problem wolf, we believe that the public will become more tolerant of non-depredating wolves. Based on our experience with wolf recovery in Minnesota, this increased public tolerance is expected to result in fewer illegal killings of Western DPS wolves and more opportunity for us to work with local agencies and the public to find innovative solutions to potential conflicts between wolves and humans. Overall, we expect that this proposed special regulation will promote the conservation of the gray wolf and speed the species' recovery in the northern U.S. Rocky Mountains.

Northeastern Gray Wolf DPS Special Regulations

Using section 4(d) of the Act and 50 CFR 17.31(c), we propose to define the conditions under which intentional and incidental take of gray wolves resulting from activities regulated or carried out by State and Tribal governments will not violate section 9 of the Act or any regulations under 50 CFR part 17 that implement section 9, and thus could be performed without need for a permit under sections 10(a)(1)(A) or 10(a)(1)(B) of the Act. Under the proposed special regulation for the Northeastern DPS, the normal provisions of 50 CFR 17.31(b) will continue to apply to any employee or agent of the Service and of a State conservation agency. Furthermore, incidental take of wolves when conducting otherwise lawful activities, regardless of their relationship to wolf conservation, addressed in a wolf conservation plan prepared by individual States or Tribes and approved by us, would not be considered a violation of section 9 of the Act.

The intent of this special regulation is to provide those northeastern States and Tribes that have an active interest in participating in gray wolf conservation the authority to maintain the lead role in protection, management, and recovery of the species. Importantly, this special regulation will increase the options for wolf restoration to portions of historical gray wolf range in the northeastern United States by providing greater regulatory flexibility to State and Tribal governments. Greater regulatory flexibility will enable participating States and Tribes to manage wolves released as part of a reintroduction effort and to address problem wolves, such as those that depredate domestic animals.

In addition to accommodating concerns for domestic animals, we realize that the effects of introduced wolves on moose and deer populations are significant concerns among State and Tribal wildlife agencies and hunters. There is concern that wolves compete with hunters for moose and deer. For this reason, we propose a special provision to allow limited lethal take of wolves by Service, U.S. Department of Agriculture, and State and Tribal agency personnel to take effect 5 years after reintroductions are completed in the Northeastern Gray Wolf DPS. Such take can occur only after the agency has informed us of the need for lethal control and established the extent to which individual packs will be reduced. No pack will be reduced by more than 30 percent, and no packs will be reduced more frequently than every 3 years.

This special regulation will provide northeastern State and Tribal governments that have developed and implemented a wolf conservation plan the following authority:

1. Lethal control of wolves depredating domestic animals. This authority does not extend to wolf pups less than 6 months of age.

2. Incidental take of wolves resulting from otherwise lawful activities that are included in the conservation plan.

3. Capture and relocation of wolves that have dispersed outside of areas considered suitable for wolf restoration.

4. Five years after reintroduction is completed, the capture and relocation of wolves that threaten ungulate populations of management concern will be allowable if consistent with the terms of the conservation plan.

5. Capture and lethal control of diseased wolves (*e.g.*, carriers of rabies or canine parvovirus) determined to be a potential threat to other wolves domestic animals, or humans.

We believe that activities that modify gray wolf habitat will not adversely affect or incidentally take gray wolves within northeastern State boundaries or on Tribal lands. Therefore, it is not anticipated that land use restrictions will generally be needed to achieve conservation for the wolf in the Northeast. Wolves can successfully inhabit a variety of habitats provided that adequate prey are available and that they are not persecuted by humans. However, we encourage States and Tribes to identify any such activities that may modify wolf habitat that result in incidental take, along with actions ongoing or planned to reduce the effects of those activities, and submit them to us as part of a wolf conservation plan.

When wolf conservation plans are received, we will make them available for public comment through **Federal Register** notice. We will consider public comments and the criteria outlined in this section to determine whether the plan will reduce threats and promote the conservation of the gray wolf within State boundaries or on Tribal lands. We will work closely with northeastern State or Tribal officials to revise or strengthen sections of the plan as may be necessary to obtain plan approval. We will comply with the National Environmental Policy Act and section 7 of the Endangered Species Act in reviewing and approving conservation plans.

We recommend that the conservation plans contain, but not be limited to, the following sections: (1) A discussion of the status of the wolf in the State or on Tribal lands, including population estimates, habitat quantity and quality, and threats to its existence; (2) a discussion of the lawful activities having the potential to incidentally take wolves; such activities may include trapping and hunting programs that target other species; forest management; road construction, maintenance, and use; and recreational activities and development; (3) a discussion of potential impacts to gray wolves from these activities and existing or planned provisions to monitor, minimize, and mitigate those effects; (4) provisions for identifying and correcting any situations that are likely to be causing incidental take and monitoring the effects of such corrective actions; (5) a discussion of existing or planned conservation measures to promote wolf recovery; and (6) a discussion of measures that may be needed to reduce conflicts with domestic animals and significant effects to wild ungulate populations. The plan must be consistent with the conservation of the gray wolf.

The criteria we will use to evaluate the conservation plans are as follows:

1. Any incidental taking of gray wolves, as described in the plan, occurs unintentionally while conducting an otherwise lawful activity. The purpose of the activity cannot be to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect wolves from the wild. The plan explains why alternatives that would not result in incidental take are not being used.

2. The plan includes a strategy to avoid, minimize, and mitigate any proposed incidental take. Compliance with this standard involves a planning strategy that emphasizes avoidance of impacts to gray wolves and provides measures to minimize potential impacts by modifying practices.

3. The plan is adequately funded and contains provisions to deal with unforeseen circumstances. A summary of the funding that will be available to implement provisions of the plan, including enforcement and monitoring, is provided. The plan outlines how it will be determined that a previously unforeseen problem has arisen and should include the specific steps that will be taken to correct that problem.

4. Any incidental taking allowed pursuant to the plan does not appreciably reduce the likelihood of survival and recovery of wolves in the wild. This criterion is equivalent to the regulatory requirement to avoid causing "jeopardy" under section 7(a)(2) of the Act (*i.e.*, to avoid engaging in any activity that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of the gray wolf). In the case of incidental trapping of wolves, the plan includes an assessment of the potential for gray wolves to be incidentally caught by trappers targeting other species, the likelihood of mortality to a wolf that is trapped and released (including the potential for it to be trapped more than once), and the resulting impact to the wolf population.

5. We are assured that the plan will be implemented. The plan specifies how the State or Tribal governments will exercise the existing authorities to adhere to the commitments made in the plan. Terms and conditions for implementation and monitoring of the plan are included to ensure that the plan's requirements and the requirements of the Act are met. Any violations could be a basis for revocation of our approval of the plan.

6. We are assured that States and Tribes have involved stakeholders in plan development (*e.g.*, timber companies or associations, trappers associations, recreational interests).

The take prohibitions of section 9 will be in effect throughout the Northeastern DPS until a conservation plan is approved by us. Once a plan is approved by us, the conditions contained in the approved plan will be the conditions, pursuant to section 4(d), under which the intentional and incidental take of gray wolves resulting from activities regulated by the State and Tribal governments included in the conservation plan would not be a violation of section 9.

Michigan, Wisconsin, North Dakota, and South Dakota Special Regulation

The current endangered status of wolves in Michigan and Wisconsin restricts depredation control activities in these States to capturing depredating wolves and releasing them at another location in the State. Wolves released in this manner commonly either return to the vicinity of their capture and resume their depredating habits, begin pursuing domestic animals at their new location, or are killed by resident wolf packs in the release area. Thus, in order for translocation to have a reasonable probability of succeeding, there must be unoccupied wolf habitat available within the State, but at a great distance from the depredation incident site.

As the Michigan and Wisconsin wolf populations expand in number and range, the frequency of depredation incidents is increasing, yet there are fewer suitable release sites available. Releases of depredating wolves at marginal locations (that is, near existing wolf packs or too close to their capture site) are likely to fail. For example, a depredating wolf recently released into the Nicolet National Forest in Wisconsin at a location 46 miles from his initial capture had returned to within 23 miles of his capture location when he was mistaken for a coyote and shot only 13 days after his release.

Similar problems with relocating depredating wolves have occurred in northwestern Montana. Of 28 relocated wolves, 25 either died a short time after their release or resumed attacking livestock again and had to be killed.

Only 2 of the 28 relocated wolves survived long enough to reproduce and contribute to wolf recovery. A review of wolf relocation as a means of reducing depredations on livestock in northwestern Montana concluded that relocation should be discontinued and that both livestock losses and depredation control costs could be reduced by killing, instead of relocating, depredating wolves (63 FR 20212, April 23, 1998; Bangs 1998; Bangs *et al.* 1998).

This proposed regulation would allow us, the Michigan and Wisconsin DNRs, the North Dakota Game and Fish Department, the South Dakota Game, Fish and Parks Department, or Tribes within these States, or the designated agents of these agencies to carry out lethal control of depredating wolves. The restrictions for these actions would be similar to those used for the Minnesota wolf depredation control program since 1985: (1) Wolf depredation must be verified, (2) the depredation is likely to be repeated, (3) the taking must occur within one mile of the depredation site in Michigan and Wisconsin, and within 4 miles of the depredation site in North Dakota and South Dakota, (4) taking, wolf handling, and euthanizing must be carried out in a humane manner, which includes the use of steel leghold traps, and (5) any young of the year trapped before August 1 must be released.

Lethal depredation control has been successful in reducing conflicts between the recovering wolf population and domestic animals in Minnesota. It resolves the immediate depredation problem without the removal of excessive numbers of wolves, and avoids removing any wolves when the depredation was not verified as being caused by wolves or is not likely to be repeated. It is significantly less expensive than translocating such problem wolves, and thus is more appropriate for the rapidly expanding wolf populations that exist in Michigan and Wisconsin.

Based upon Minnesota wolf depredation control data from the early 1980s when the wolf population was probably less than 1,500 animals, we estimate that a maximum of about 2 to 3 percent of Wisconsin and Michigan wolves would be taken annually under the provisions of this special regulation. At current population levels this would be about 4 to 6 wolves per State. This level of take should not appreciably affect the wolf population or its continued expansion in either of these States. As their wolf population already exceeds the numerical delisting criterion, this take will have no effect on the recovery of Michigan and Wisconsin wolves under the Act. The level and effects of this take will be closely monitored by continuing the annual monitoring of wolf populations in these States and the required reporting of the lethal take under this special regulation.

We propose to limit depredation control activities to an area within one mile of the depredation site in Wisconsin and Michigan. Because wolf pack territories are large (in Wisconsin and Michigan they range from 52 to 518 sq km (20 to 200 sq mi), and the locations of Wisconsin and Michigan wolf packs are much more precisely known than is the case for Minnesota wolf packs, it will be possible for depredation control actions to be directed at only the depredating pack. Thus, the one-mile limit will enable depredation control trappers to focus their trapping within the activity areas of the target pack without significant risk of trapping wolves from nearby non-depredating packs.

The situation in North Dakota and South Dakota is quite different from that in Michigan or Wisconsin. Wolves that appear in North Dakota and South Dakota are dispersing individuals from Minnesota and Canada, or rarely may be a pair or small pack along North Dakota's border with Canada. None of our recovery plans or recovery programs recommends actions to promote gray wolf recovery in either of these two States, and we do not believe the Act requires nor encourages such recovery actions. We also recognize that, due to the more open landscape of these States, and the high likelihood that dispersing wolves will encounter livestock, wolves are more likely to become involved in depredations on domestic animals. Therefore, we believe we should provide a mechanism for prompt control of depredating wolves in these States. Because there are very few or no established wolf packs in these States, and there are very few wolves dispersing into these States, we believe there is minimal risk of trapping or shooting wolves from a nearby non-depredating pack or dispersers not involved in the depredation under the proposed special regulation. For this reason, as well as recognition that the much more open landscape of North Dakota and South Dakota means that depredating wolves are likely to travel a much greater distance from the depredation site to secure cover, we propose to allow lethal depredation control actions to be undertaken up to 4 miles from the depredation site.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Many of these measures have already been successfully applied to gray wolves in the conterminous States.

If this proposed regulation is finalized, the protections of the Act will continue to apply to the endangered Southwestern (Mexican) Gray Wolf DPS and to the threatened Western Great Lakes, Northeastern, and Western DPSs. The protections of the Act will be removed only from wild gray wolves in areas outside of these four DPSs. We do not believe there are any wild gray wolves in the States outside of the these four DPSs, nor would they be significant to gray wolf recovery, under the Act, if they are found there. This proposal does not modify or withdraw the existing special regulations or the nonessential experimental population designations for the reintroduced gray wolf populations in Idaho, Montana, Wyoming, Arizona, and New Mexico, nor does it make any changes to the threatened classification and existing section 4(d) special regulation for gray wolves in Minnesota. Similarly, the existing critical habitat designations for portions of Minnesota and Michigan will remain unchanged, and will continue to be considered during consultations with other Federal agencies. This proposal does not affect the protection or listing of the red wolf (*Canis rufus*).

To the extent necessary, we will revise our existing gray wolf recovery plans to accommodate the potential changes in geographic coverage, Federal status, and gray wolf protection that would be brought about by new special regulations. Changes to the recovery plan for northern U.S. Rocky Mountain wolves will also be considered in light of the localities chosen by the colonizing wolves and the expansion and anticipated merging of the three recovery populations. We will also consider developing, in partnership with interested agencies and organizations, a Federal recovery plan for the Northeastern DPS.

The protection required of Federal agencies and the prohibitions against taking and harm are discussed in Summary of Factors Affecting the Species, part D, above.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any species listed as endangered or threatened, or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. If a Federal action is likely to jeopardize a species proposed to be listed as threatened or endangered or destroy or adversely modify proposed critical habitat, the responsible Federal agency must confer with us.

Federal agency actions that may require consultation or conferencing, as described in the preceding paragraph, include activities by the U.S. Forest Service, the National Park Service, the U.S. Geological Survey, USDA/APHIS-Wildlife Services, the Bureau of Land Management, the U.S. Department of Transportation, and the U.S. Environmental Protection Agency.

However, under section 10(j)(2)(C) of the Act, for those three areas currently designated as nonessential experimental populations in Montana, Idaho, Wyoming, Arizona, New Mexico, and Texas for the purpose of interagency consultation under section 7 of the Act the gray wolf will continue to be considered a species proposed for listing under the Act, except where the species occurs on an area within the National Wildlife Refuge System or the National Park System. For all other purposes of the Act, gray wolves that are currently designated as experimental populations shall continue to be treated as a threatened species. Furthermore, the existing special regulations found in 50 CFR 17.84(i) and 17.84(k) regarding the taking of wolves depredating on livestock in these experimental population areas will continue to apply as long as these experimental population designations remain in force.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened wildlife. The prohibitions codified at 50 CFR 17.21 and 17.31 in part make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. Additionally, as discussed above, special regulations promulgated under sections 4(d) and 10(j) of the Act provide additional exceptions to these general prohibitions for the gray wolf.

The proposed 4(d) rule for gray wolves in the northeastern DPS will have no immediate effect on current conservation measures in place for any naturally occurring or recolonizing gray wolves. It is the intent of the 4(d) rule to provide regulatory flexibility so that there will be fewer obstacles for States and Tribes to assume an active role in wolf restoration. As a threatened species with a 4(d) rule, States and Tribes can undertake wolf restoration without nullifying the authority to manage introduced "problem" wolves in a manner consistent with other wildlife population objectives. As stated earlier in the section *Northeastern Gray Wolves*, if future wolf reintroductions occur in the Northeast, and conditions allowing incidental or intentional take pursuant to the 4(d) rule are met, it will not be possible in every instance to distinguish naturally occurring wolves from the unmarked progeny of reintroduced wolves. Therefore, in the event that one or more States or Tribes actively reintroduce wolves into the Northeast, some incidental or intentional take of naturally occurring wolves may occur in the future.

It is our policy (59 FR 34272; July 1, 1994) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Activities that we believe could potentially harm or kill the gray wolf in the area where it will remain listed as threatened or endangered and may result in take include, but are not limited to:

(1) Taking of gray wolves by any means or manner not authorized under the provisions of the existing special regulation established for the designated nonessential experimental population in Arizona, New Mexico, and Texas as long as that designation and special regulation remain in effect;

(2) Taking of gray wolves within the Western Gray Wolf DPS or in the Northeastern DPS in a manner not authorized under the provisions of the 4(d) special regulations proposed in this document, or in a manner not authorized under the existing experimental population regulations which would continue to apply to gray wolves in Wyoming and in parts of Idaho and Montana;

(3) Taking of gray wolves within the Western Great Lakes DPS in a manner not authorized in either the existing section 4(d) special regulation for Minnesota or the proposed section 4(d) special regulation for Michigan, Wisconsin, North Dakota, and South Dakota;

(4) Taking of captive members of the Southwestern (Mexican) DPS unless such taking results from implementation of husbandry protocols approved under the Mexican Wolf Species Survival Plan or are otherwise approved or permitted by the Service;

(5) Intentional killing of a live-trapped canid that is demonstrably too large to be a coyote (that is, greater than 27 kg (60 lb)) in the Northeastern Gray Wolf DPS; or

(6) Killing or injuring of, or engaging in the interstate commerce of, captive wolves which originated from, or whose ancestors originated from, the areas included within the Western Great Lakes, Western, Northeastern, or Southwestern (Mexican) Gray Wolf DPSs, unless authorized in a Service permit.

We believe, based on the best available information, that the following actions will not result in a violation of section 9:

(1) Taking of a gray wolf in defense of human life;

(2) Taking of gray wolves outside of the areas described as the Western, Western Great Lakes, Northeastern, or Southwestern (Mexican) Gray Wolf DPS;

(3) Taking of gray wolves under the provisions of the existing special regulations established for the three designated nonessential experimental populations in Arizona, New Mexico, Texas, Wyoming, Idaho, and Montana as long as those designations and special regulations remain in effect;

(4) Taking of gray wolves under the provisions of the special regulations under section 4(d) of the Act, as proposed at this time for threatened gray wolves in the Northeastern Gray Wolf DPS, the Western Gray Wolf DPS, or the Western Great Lakes Gray Wolf DPS States of Michigan, Wisconsin, North Dakota, and South Dakota;

(5) Taking of gray wolves under the provisions of the existing special

regulation at 50 CFR § 17.40(d) for Minnesota wolves; or

(6) Taking of captive members of the Southwestern (Mexican) Gray Wolf DPS in accordance with husbandry protocols approved under the Mexican Wolf Species Survival Plan or other approvals or permits issued by the Service.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. For endangered species such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for economic hardship. For threatened species such permits are also available for zoological exhibition, educational purposes, and/or for special purposes consistent with the purposes of the Act, but not for economic hardship.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the nearest regional or Ecological Services field office of the Service. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to any Service regional office or to the Washington headquarters office. The location, address, and phone number of the nearest regional or Ecological Services/Endangered Species field office may be obtained by calling us at 703–358–2171 or by using our World Wide Web site at: http://www.fws.gov/where/index.html.

Required Determinations

Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness Act

This proposed rule was subject to Office of Management and Budget review under Executive Order 12866. An economic analysis is not required because this proposed regulation will result in only minor (positive) effects on the very small percentage of livestock producers within wolf range.

Currently the vast majority of wolves that occur in the western Great Lakes area are found in the State of Minnesota where they are listed as threatened. A special regulation exists for Minnesota wolves that allows the Fish and Wildlife Service, the Minnesota DNR, other designated agencies, and their agents to manage wolves to ensure minimal economic impact. These special regulations allow some direct "take" of wolves. A State program compensates livestock producers up to $750 per head if they suffer confirmed livestock losses by wolves. The value of the confirmed livestock losses amounted to an annual average of about $53,000 over the last five years. Because this proposal will not affect the existing special regulations for Minnesota wolves, there will be no economic effect on livestock producers or other economic activities in Minnesota.

This proposed regulation will reclassify wolves in Michigan and Wisconsin from endangered to threatened and provide special regulations similar to those for Minnesota as described above. Thus specified State, Tribal, and Federal agencies and their designated agents will be allowed to take wolves in certain circumstances without a permit. Under normal protections of the Act, that is, without the benefit of special regulations proposed for Michigan and Wisconsin, permits would be required. This proposed special regulations will benefit the small percentage of livestock producers in wolf range in Michigan and Wisconsin that experience wolf attacks on their animals. Since only about 1.2 percent of livestock producers in nearby Minnesota, where the wolf population is much greater (Minnesota contains 2500 wolves, while Michigan and Wisconsin have 197 and 174 wolves, respectively), are adversely affected by wolves, the potential beneficial effect to livestock producers in Michigan and Wisconsin is small, but it may be significant to a few producers. In addition, State programs in Michigan and Wisconsin compensates livestock producers if they suffer confirmed livestock losses by wolves. In Wisconsin compensation is at full market value, while Michigan provides partial compensation and is planning on offering full compensation soon. The net effect of the proposed reclassification and 4(d) rule to livestock producers in Michigan and Wisconsin is the control of depredating wolves will become more efficient and effective, thus reducing the economic burden of livestock producers resulting from wolf recovery in those states. Similar positive, but geographically scattered and minor economic benefits will occur for livestock producers in North and South Dakota.

The majority of wolves in the West are protected under nonessential experimental population designations that cover Wyoming, most of Idaho, and southern Montana that effectively treat wolves as threatened species. A smaller, but naturally-occurring population of about 80 wolves is found in northwestern Montana. The wolves with the nonessential experimental population designation were reintroduced into these States from Canada. Special regulations exist for these experimental populations that allow government employees and designated agents, as well as livestock producers, to take problem wolves. Because this proposal does not change the nonessential experimental designation or associated special regulations, it will have no economic impact on livestock producers or other entities in these areas. However, the naturally occurring wolves in northwestern Montana (outside of the nonessential experimental population areas) and wolves that may occur in other Western States are proposed for reclassification to threatened. Under normal protections of the Act, that is, without the benefit of special regulations proposed for the Western States not included in the nonessential experimental designation, permits would be required for nearly all forms of take. For example, currently a private landowner on his or her own land in northwestern Montana could not take a wolf in the act of attacking a domestic animal. This proposed rule would allow such take without a permit. The proposed reduction of the restrictions on taking problem wolves will make their control easier and more effective, thus, reducing the economic losses that result from wolf depredation on livestock and other domestic animals. Furthermore, a private program compensates livestock producers if they suffer confirmed livestock losses by wolves. Average compensation for livestock losses has been slightly over $7,000 per year. The potential effect on livestock producers in Western States outside of the experimental population is small, but could be entirely beneficial to their operation.

We propose delisting the gray wolf in a large number of states outside of the four distinct population segments identified in the proposed rule. We are proposing these areas for delisting because we believe wolf recovery in these areas is not feasible or is not necessary in order to carry out our responsibilities under the ESA. These areas currently contain no wolves and are not likely to contain wolves in the future given the modification of the habitat by humans. Current regulations that protect wolves are unnecessary and currently provide no protection to wolves. Livestock producers and other economic activities in these States have not been affected by the wolf and will not be affected by the actions in this

proposal because we are simply proposing to remove the current regulations which have no effect on landowners.

a. This proposed regulation would not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. As explained above, this proposed regulation will result in only minor positive economic effects for a very small percentage of livestock producers.

b. If finalized, this proposed regulation would not create inconsistencies with other agencies' actions. This proposed regulation reflects continuing success in recovering the gray wolf through long-standing cooperative and complementary programs by a number of federal, state, and tribal agencies.

c. This proposed regulation would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This proposed regulation would not raise novel legal or policy issues. This proposed regulation is consistent with the ESA, regulations, and policy.

This proposed regulation would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As stated above, this proposed regulation will result in only minor positive economic effects for a very small percentage of livestock producers. Only 1.2 percent of the livestock producers are affected in Minnesota and fewer are expected to be effected in the other States.

This proposed regulation would not be a major rule under 5 U.S.C. 801 *et seq.*, the Small Business Regulatory Enforcement Fairness Act.

a. This proposed regulation would not produce an annual economic effect of $100 million. The majority of livestock producers within the range of the wolf are small family-owned dairies or ranches and the total number of livestock producers that may be affected by wolves is small. (For example, only about 1.2 percent of livestock producers in Minnesota are affected by wolves where the largest wolf population, by far, exists.) The proposed take regulations that are proposed further reduce the effect that wolves will have on individual livestock producers by reducing or eliminating permit requirements. Compensation programs are also in place to offset losses to individual livestock producers. Thus, even if livestock producers affected are small businesses, their combined economic effects will be minimal and the effects are a benefit to small business by reducing or eliminating paperwork requirements.

b. This proposed regulation would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. This proposed regulation would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. As stated above, this proposed regulation will result in only minor positive economic effects for a very small percentage of livestock producers.

b. This proposed regulation would not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This proposed regulation will not impose any additional wolf management or protection requirements on the States or other entities.

Takings Implications Assessment

In accordance with Executive Order 12630, this proposed regulation would not have significant implications concerning taking of private property by the Federal government. This proposed regulation will reduce regulatory restrictions on private lands and, as stated above,.will result in minor positive economic effects for a small percentage of livestock producers.

Federalism Assessment

In accordance with Executive Order 13132, this proposed regulation would not have significant Federalism effects. This proposed regulation would not have a substantial direct effect on the States, on the relationship between the States and the Federal government, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

In accordance with Executive Order 12988, this proposed regulation does not unduly burden the judicial system.

Paperwork Reduction Act

This proposed regulation does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094.

National Environmental Policy Act

We have analyzed this proposed rulemaking in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Section 7 Consultation

We do not need to complete a section 7 consultation on this proposed rulemaking. An intra-Service consultation is completed prior to the implementation of recovery or permitting actions for listed species; however, the acts of listing, delisting, or reclassifying species under the ESA are not subject to the requirements of section 7 of the ESA.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit data, comments, or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the actions contained in this proposal. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, available for public inspection in their entirety (see

ADDRESSES section). Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat, or lack thereof, to gray wolves in the 48 conterminous States and Mexico;

(2) Additional information concerning the range, distribution, population size, and population trends of gray wolves in the conterminous 48 States and Mexico;

(3) Information concerning the adequacy of the reclassification and recovery criteria described in the 1992 Recovery Plan for the Eastern Timber Wolf, the 1987 Northern Rocky Mountain Wolf Recovery Plan, and the 1982 Mexican Wolf Recovery Plan;

(4) The extent of State and Tribal protection and management that would be provided to the gray wolf in the western Great Lakes area as either a threatened or a delisted species;

(5) Information concerning the potential for recovery of gray wolves in the northeastern United States, and the potential involvement of the Service in such recovery activities;

(6) Information concerning approaches to controlling wolf depredation on domestic animals and significant impacts to wild ungulate populations in States where the wolf may be reclassified to a threatened species, including the use of section 4(d) special regulations to allow lethal depredation control and additional opportunities for harassment of wolves by livestock producers;

(7) Comments and information regarding the merits of alternatives described in this proposal that were not selected, including the alternative of removing the two existing nonessential experimental population designations for the northern U.S. Rocky Mountains; and

(8) Information concerning other alternative approaches to changing the listing status of the gray wolf to reflect recovery progress and recovery needs, including alternatives not discussed in this proposal.

(9) Appropriateness of authorizing take in the Northeastern DPS in accordance with an approved State or Tribal Conservation Plan.

References Cited

A complete list of all references cited in this proposal is available upon request from the U.S. Fish and Wildlife Service Region 3 Office at Ft. Snelling, Minnesota (see **FOR FURTHER INFORMATION** section).

Author

The primary author of this notice is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota Regional Office (see **ADDRESSES** section). Substantial contributions were also made by Service employees Michael Amaral (Concord, New Hampshire), Ed Bangs (Helena, Montana), John Fay (Arlington, Virginia), Scott Johnston (Washington, D.C.), Paul Nickerson (Hadley, Massachusetts), and David Parsons (Albuquerque, New Mexico).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulation, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by removing the first two entries for the gray wolf (*Canis lupus*) under MAMMALS in the list of Endangered and Threatened Wildlife and adding in their place the following three entries, while retaining the current final two entries for the gray wolf, which designate nonessential experimental populations in Wyoming, Idaho, Montana, Arizona, New Mexico, and Texas:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Mammals							
*	*	*	*	*	*		*
Wolf, gray	*Canis lupus*	Holarctic	U.S.A. (AZ south of the Colorado and Little Colorado Rivers between Hoover Dam and Winslow and south of Interstate Highway 40 between Winslow and the eastern State boundary, NM south of Interstate Highway 40, TX south of Interstate Highway 40 and west of Interstate Highway 35), Mexico, except where listed as an experimental population; captive wolves who were, or whose ancestors were, removed from the wild in this area.	E	1, 6, 13, 15, 35, 631,____	NA	NA.
Do	do	do	U.S.A. (MI, MN, ND, SD, WI); captive wolves who were, or whose ancestors were, removed from the wild in this area.	T	1, 6, 13, 15, 35,____	17.95(a)	17.40(d), 17.40(n).
Do	do	do	U.S.A. (ME, NH, NY, VT); captive wolves who were, or whose ancestors were, removed from the wild in this area.	T	1, 6, 13, 15, 35,____	NA	17.40(m).

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (CO, ID, MT, OR, UT, WA, WY, AZ north of the Colorado and Little Colorado Rivers between Hoover Dam and Winslow and north of Interstate Highway 40 between Winslow and the eastern State boundary, and NM north of Interstate Highway 40), except where listed as an experimental population; captive wolves who were, or whose ancestors were, removed from the wild in this area.	T	1, 6, 13, 15, 35, 561, 562,____	NA	17.40(l).

3. The Service amends § 17.40 by adding new paragraphs (m), (n), and (o) to read as follows:

§ 17.40 Special rules—mammals

* * * * *

(m) Gray wolf (*Canis lupus*) Western Distinct Population Segment (DPS). The gray wolf Western DPS occurs in the States of Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, and the parts of Arizona and New Mexico north of the Colorado River and the Little Colorado River between Hoover Dam and Winslow (Arizona) and north of Interstate Highway 40 between Winslow and the eastern boundary of New Mexico, except where listed as an experimental population.

(1) *Does this Special rule apply to the experimental populations located in the Western DPS?* No. Paragraphs (m)(2) through (6) of this section apply to gray wolves within the Western Gray Wolf Distinct Population Segment, but excludes those wolves occurring in areas that are designated as experimental populations in Idaho, Montana, and Wyoming under section 10(j) of the Endangered Species Act of 1973, as amended.

(2) *What are the definitions of terms used in this paragraph (m)?*

(i) *Active den site.* A den or a specific aboveground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

(ii) *Breeding pair.* An adult male and an adult female wolf that, during the previous breeding season, have produced at least two pups that survived until December 31 of the year of their birth.

(iii) *Domestic animals.* Animals that have been tamed for use by humans, including use as pets.

(iv) *Livestock.* Cattle, sheep, horses, and mules or as otherwise defined in State and Tribal wolf management plans as approved by the Service.

(v) *Noninjurious.* Does not cause either temporary or permanent physical damage or death.

(vi) *Opportunistic harassment.* Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

(vii) *Problem wolves.* Wolves that attack livestock, or wolves that twice in a calendar year attack domestic animals other than livestock.

(viii) *Public land.* Federal land and any other public land designated in State and Tribal wolf management plans as approved by the Service.

(ix) *Remove.* Place in captivity or kill.

(x) *Service (we).* The Fish and Wildlife Service of the Department of the Interior.

(xi) *Take (taking).* To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(xii) *Wounded.* Torn flesh and bleeding or evidence of physical damage caused by a wolf bite.

(3) *What forms of take of gray wolves are allowed in the Western DPS?* The following activities, in certain circumstances as described below, are allowed: Opportunistic harassment; intentional harassment; taking on private land; taking on public land; taking in response to impacts on wild ungulates; taking in defense of human life; taking to protect human safety; taking to remove problem wolves; incidental take; taking under permits; and taking authorizations for agency employees. Other than as expressly allowed in the rule, all the prohibitions of 50 CFR 17.31(a) and (b) apply to gray wolves in this DPS, and all other activities are considered a violation of section 9 of the Act. Any wolf, or wolf part, taken legally must be turned over to the Service. Any taking of wolves must be reported to the Service as outlined in paragraph (m)(6) of this section.

(i) *Opportunistic harassment.* Landowners on their own land and livestock producers or permittees who are legally using public land under valid livestock grazing allotments may conduct opportunistic harassment of any gray wolf in a noninjurious manner at any time. Opportunistic harassment must be reported to us within 7 days.

(ii) *Intentional harassment.* After we or our designated agent have confirmed persistent wolf activity on privately owned land, we may, pursuant to section 10(a)(1)(A) of the Act, issue a 90-day permit, with appropriate conditions, to any landowner to harass wolves in a potentially injurious manner (such as by projectiles designed to be nonlethal to larger mammals). The harassment must occur as specifically identified in the Service permit.

(iii) *Taking on private land.* We allow landowners to take wolves on privately owned land in two circumstances:

(A) Any landowner may take a gray wolf that is in the act of biting, wounding, or killing any domestic animal, provided that the domestic animal(s) freshly (less than 24 hours) wounded or killed by wolves are evident, and we or our designated agent are able to confirm that the domestic animal(s) were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(B) A private landowner who has a permit issued by the Service pursuant to section 10(a)(1)(A) of the Act may take a gray wolf on their private land if:

(*1*) Ten or more breeding pairs of gray wolves are present in that State where the permit is to be used, and

(*2*) We or our designated agent have determined that wolves are routinely present on that private property and

present a significant risk to the health and safety of domestic animals. The landowner must conduct the take in compliance with the permit issued by the Service.

(iv) *Take on public land.* Under the authority of section 10(a)(1)(A) of the Act, we may issue permits to take gray wolves under certain circumstances to livestock producers or permittees who are legally using public land under valid livestock grazing allotments. The permits, which may be valid for up to 45 days, can allow the take of a gray wolf that is in the act of killing, wounding, or biting livestock, livestock guard and herding animals, or other domestic animals, provided that we or our designated agent have confirmed that wolves have previously wounded or killed livestock and agency efforts to resolve the problem have been completed. We or our designated agent will investigate and determine if the previously wounded or killed livestock were wounded or killed by wolves. There must be evidence of livestock freshly wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(v) *Take in response to wild ungulate impacts.* If wolves are causing unacceptable impacts to wild ungulate populations, a State or Tribe may capture and translocate wolves to other areas within the Western DPS. In their State or Tribal wolf management plans, the States or Tribes will define such unacceptable impacts, describe how they will be measured, and identify possible mitigation measures. Before wolves can be captured and translocated, we must approve these plans and determine that such translocations will not inhibit wolf population growth toward recovery levels. In addition, if, after 10 or more breeding pairs are established in a State, we determine that wolves are causing unacceptable impacts to wild ungulate populations, we may, in cooperation with the appropriate State fish and game agencies or Tribes, relocate wolves to other States within the Western DPS.

(vi) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) *Take to protect human safety.* We or a Federal land management agency or a State or Tribal conservation agency may promptly remove any wolf that we or our designated agent determines to present a threat to human life or safety.

(viii) *Take of problem wolves.* We or our designated agent may carry out aversive conditioning, nonlethal control, translocation, permanent placement in captivity, or lethal control of problem wolves. If nonlethal depredation control activities occurring on Federal lands or other public lands identified in State or Tribal wolf management plans result in the capture, prior to October 1, of a female wolf showing signs that she is still raising pups of the year (*e.g.*, evidence of lactation, recent sightings with pups), whether or not she is captured with her pups, then she and her pups will be released at or near the site of capture. All problem wolves on private land, including female wolves with pups, may be removed if continued depredation occurs. All chronic problem wolves (wolves that repeatedly depredate on domestic animals including female wolves with pups regardless of whether on public or private lands) will be removed from the wild (killed or placed in captivity). To determine the status of problem wolves, we must have the following:

(A) Evidence of wounded livestock or remains of a livestock carcass that clearly shows that the injury or death was caused by wolves (such evidence is essential because wolves feed on carrion that they find and did not kill);

(B) Reason to believe that additional livestock losses would occur if no control action is taken;

(C) No evidence of attractants or artificial or intentional feeding of wolves; and

(D) Evidence that, on public lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments were followed.

(ix) *Incidental take.* We will allow certain incidental take of gray wolves in the Western DPS if the take was accidental and incidental to an otherwise lawful activity. Take that does not conform with the provisions above may be referred to the appropriate authorities for prosecution. Shooters have the responsibility to identify their target before shooting. Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.

(x) *Take under permits.* Any person with a valid permit issued by the Service under 50 CFR 17.32 may take wolves in the wild in the Western DPS, pursuant to terms of the permit.

(xi) *Additional taking authorizations for agency employees.* When acting in the course of official duties, any employee or agent of the Service or appropriate Federal, State, or Tribal agency, who is designated in writing for such purposes by the Service, may take a wolf if such action is for:

(A) Scientific purposes;

(B) To avoid conflict with human activities;

(C) To improve wolf survival and recovery prospects;

(D) To aid or euthanize sick, injured, or orphaned wolves;

(E) To salvage a dead specimen that may be used for scientific study;

(F) To aid in law enforcement investigations involving wolves; or

(G) To prevent wolves with abnormal physical or behavioral characteristics, as determined by the Service, from passing on those traits to other wolves.

Any additional taking authorizations for agency employees identified in this subparagraph must reported to us within 15 calendar days.

(4) *What types of take of gray wolves are not allowed in the Western DPS?*

(i) Any manner of take not described under paragraph (m) (3) of this section.

(ii) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or wolf part from the State of origin taken in violation of the regulations in this paragraph (m) or in violation of applicable State or Tribal fish and wildlife laws or regulations or the Act.

(iii) In addition to the offenses defined in this paragraph (m), we consider any attempts to commit, solicitations of another to commit, or actions that cause to be committed any such offenses to be unlawful.

(iv) *Use of unlawfully taken wolves.* No person, except for an authorized person, may possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in the Western DPS.

(5) *How does the gray wolf Western DPS affect use of Federal lands.* Restrictions on the use of any Federal lands within the Western DPS may be put in place to prevent the direct take of wolves at active den sites between April 1 and June 30. Otherwise, no additional land-use restrictions on Federal lands, except for national parks or national wildlife refuges, may be employed to reduce or prevent take of wolves solely to benefit gray wolf recovery under the Act. This prohibition does not preclude restricting land use when necessary to reduce negative impacts of wolf restoration efforts on other endangered or threatened species.

(6) *What are the reporting requirements when a gray wolf is taken?* Except when otherwise indicated in this paragraph (m), or when a permit issued under 50 CFR 17.32 specifies otherwise, any taking must be reported to us within

24 hours. We will allow additional reasonable time if access is limited. Report wolf takings or opportunistic harassment to Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 100 N. Park, #320, Helena, MT 59601; 406–449–5225; facsimile 406–449–5339, or a Service-designated representative of another Federal, State, or Tribal agency. Any wolf, or wolf part taken legally, must be turned over to the Service which will determine the disposition of any live or dead wolves.

(n) Gray wolf (*Canis lupus*) Northeastern Distinct Population Segment (DPS). The gray wolf Northeastern DPS occurs in New York, Vermont, New Hampshire, and Maine.

(1) *What are the definitions of terms used in paragraph (n)?*

(i) *Domestic animals.* Animals that have been tamed for use by humans, including use as pets.

(ii) *Livestock.* Cattle, sheep, horses, and mules or as otherwise defined in State and Tribal wolf management plans as approved by the Service.

(iii) *Service (we).* The Fish and Wildlife Service of the Department of the Interior.

(iv) *Take (taking).* To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(2) *What forms of take of gray wolf are allowed in the Northeastern DPS?* The following activities, in certain circumstances as described below, are allowed: take in defense of human life, take to protect human safety, take under permits, take for conservation purposes, and incidental take. Other than as expressly allowed in this rule, all the prohibitions of 50 CFR 17.31(a) apply to gray wolves in this DPS, and all other activities are considered a violation of section 9 of the Act. Any wolf, or wolf part, taken legally must be turned over to the Service. Any taking of wolves must be reported to the Service as outlined in paragraph (n)(6) of this section.

(i) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(ii) *Take to protect human safety.* We or a Federal land management agency or a State or Tribal conservation agency may promptly remove any wolf that we or our designated agent determines to present a threat to human life or safety.

(iii) *Take under permits.* Any person with a valid permit issued by the Service under 50 CFR section 17.32 may take wolves in the wild in the Northeastern DPS, pursuant to terms of the permit.

(iv) *Take for conservation purposes.*

(A) When acting in the course of official duties, any authorized Service employee or agent, as described in § 17.31(b), or State conservation agency who is designated by his/her agency for such purposes under a Cooperative Agreement under section 6 of the Act, may take a gray wolf in his/her respective State to carry out scientific research or conservation programs.

(B) Federally recognized Tribes or States that have an approved gray wolf conservation plan as described below in paragraph (n)(3) of this section may take gray wolf in accordance with that plan.

(v) *Incidental Take.* Take that is incidental to an otherwise lawful activity included in an approved State or Tribal gray wolf conservation plan in accordance with (n)(3) of this section is not unlawful.

(3) *What are the elements that may comprise an approved State or Tribal gray wolf conservation plan?* We will review these plans, make them available for public comment, and approve them if the plans promote the conservation of the gray wolf. Elements that may be included in the conservation plan are listed below.

(i) A discussion of the status of the wolf in the State or on Tribal lands, including population estimates, habitat quantity and quality, and threats to its existence.

(ii) A discussion of existing or planned conservation measures to promote wolf recovery.

(iii) A discussion of the lawful activities having the potential to incidentally take wolves.

(iv) A discussion of potential impacts to gray wolves from these activities and existing or planned provisions to monitor, minimize, and mitigate those effects.

(v) Provisions for identifying and correcting any situations that are likely to be causing incidental take and monitoring the effects of such corrective actions.

(vi) A discussion of measures that may be needed to reduce conflicts with domestic animals and significant effects to wild ungulate populations.

(vii) Conservation plans that include provisions for lethal control of wolves depredating on livestock or domestic animals will not include provisions for euthanizing wolf pups less than 6 months of age.

(viii) A conservation plan may contain provisions for control activities to include capturing, relocating, or euthanizing wolves that threaten ungulate populations of management concern if the control activities:

(A) Do not begin until at least 5 years after wolf reintroduction is completed;

(B) Occur only after the State or Tribal natural resources agency has informed the Service of the need for such activities and the extent of control that will be implemented; and

(C) Will not reduce any wolf pack by more than 30 percent and more frequently than every 3 years.

(ix) A conservation plan may contain provisions for capture and lethal control of diseased wolves (*e.g.*, carriers of rabies or canine parvovirus) determined to be a potential threat to other wolves, domestic animals, or humans.

(4) *What are the criteria that will be used to evaluate the conservation plans?*

(i) Any incidental taking of gray wolves, as described in the plan, occurs unintentionally while conducting an otherwise lawful activity. The purpose of the activity cannot be to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect wolves from the wild. The plan explains why alternatives that would not result in incidental take are not being used.

(ii) The plan includes a strategy to avoid, minimize, and mitigate any proposed incidental take. Compliance with this standard involves a planning strategy that emphasizes avoidance of impacts to gray wolves and provides measures to minimize potential impacts by modifying practices.

(iii) The plan is adequately funded and contains provisions to deal with unforeseen circumstances. A summary of the funding that will be available to implement provisions of the plan, including enforcement and monitoring, is provided. The plan outlines how it will be determined that a previously unforeseen problem has arisen and should include the specific steps that will be taken to correct that problem.

(iv) Any incidental taking allowed pursuant to the plan does not appreciably reduce the likelihood of survival and recovery of wolves in the wild. This criterion is equivalent to the regulatory requirement to avoid causing "jeopardy" under section 7(a)(2) of the Act (*i.e.*, to avoid engaging in any activity that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of the gray wolf). In the case of incidental trapping of wolves, the plan includes an assessment of the potential for gray wolves to be incidentally caught by trappers targeting other species, the likelihood of mortality to a wolf that is trapped and released (including the potential for it to be trapped more than

once), and the resulting impact to the wolf population.

(v) We are assured that the plan will be implemented. The plan specifies how the State or Tribal governments will exercise the existing authorities to adhere to the commitments made in the plan. Terms and conditions for implementation and monitoring of the plan are included to ensure that the plan's requirements and the requirements of the Act are met. Any violations could be a basis for revocation of our approval of the plan.

(vi) We are assured that States and Tribes have involved stakeholders in plan development (*e.g.*, timber companies or associations, trappers associations, recreational interests, conservation organizations).

(5) *How will the conservation plans be reviewed?* We will annually review the conservation plans with the States and Tribes to measure progress, identify problems, and recommend corrective action. If we determine that a plan is not being effectively implemented, we will present our concerns to the State or Tribe for joint determination of an appropriate resolution. If the State or Tribe does not take the agreed-upon corrective action within 90 days, we may partially or completely revoke approval of the plan. We will publish notice of our decision to revoke our approval and our reasons for doing so in the **Federal Register**, providing a 30-day public comment period prior to revocation. If we decide to revoke our approval, the take prohibitions that had been removed through approval of the conservation plan will be reinstated.

(6) *What types of take of gray wolves are not allowed in the Northeastern DPS?*

(i) Any manner of take not described under paragraph (n)(2) of this section.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under 50 CFR 17.32, no person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or wolf part from the State of origin taken in violation of the regulations in this paragraph (n) or in violation of applicable State or Tribal fish and wildlife laws or regulations or the Act.

(iii) In addition to the offenses defined in this paragraph (n), we consider any attempts to commit, solicitations of another to commit, or actions that cause to be committed any such offenses to be unlawful.

(iv) *Use of unlawfully taken wolves.* No person, except for an authorized person, may possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in the Northeastern DPS.

(7) *What are the reporting requirements when a gray wolf is taken?* Except when otherwise indicated in this paragraph (n), or when a permit issued under 50 CFR 17.32 specifies otherwise, any taking must be reported to us within 24 hours. We will allow additional reasonable time if access is limited. Report wolf takings to Fish and Wildlife Service, Chief, Endangered Species, 300 Westgate Center Drive, Hadley, MA; 413–253–8657. Any wolf or wolf part taken legally, must be turned over to the Service which will determine the disposition of any live or dead wolves.

(o) Gray wolf (*Canis lupus*) in Michigan, Wisconsin, North Dakota, and South Dakota.

(1) *What are the definitions of terms used in paragraph (o)?*

(i) *Domestic animals.* Animals that have been tamed for use by humans, including use as pets.

(ii) *Livestock.* Cattle, sheep, horses, and mules or as otherwise defined in State and Tribal wolf management plans as approved by the Service.

(iii) *Service (we).* The Fish and Wildlife Service of the Department of the Interior.

(iv) *Take (taking).* To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(2) *What forms of take of gray wolves are allowed in Michigan, Wisconsin, North Dakota, and South Dakota?* The following activities, in certain circumstances as described below, are allowed: Take in defense of human life; take to protect human safety; take to aid, salvage, or dispose; take for depredation control; take under cooperative agreements; and take under permit. Other than as expressly allowed in this rule, all the prohibitions of 50 CFR 17.31(a) apply to gray wolves in this DPS, and all other activities are considered a violation of section 9 of the Act. Any wolf, or wolf part, taken legally must be turned over to the Service. Any taking of wolves must be reported to the Service as outlined in paragraph (o)(4) of this section.

(i) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(ii) *Take to protect human safety.* We or a Federal land management agency or a State or Tribal conservation agency may promptly remove any wolf that we or our designated agent determines to present a threat to human life or safety.

(iii) *Allowable take for Aiding, Salvaging, or Disposing of Specimens.* When acting in the course of official duties, any authorized employee or agent of the Service; any other Federal land management agency; the Michigan Department of Natural Resources; the Wisconsin Department of Natural Resources; the North Dakota Game and Fish Department; the South Dakota Game, Fish and Parks Department; or a federally recognized American Indian Tribe, who is designated by his/her agency for such purposes, may take a gray wolf in Michigan, Wisconsin, North Dakota, and South Dakota without a Federal permit if such action is necessary to:

(A) Aid a sick, injured, or orphaned specimen;

(B) Dispose of a dead specimen; or

(C) Salvage a dead specimen that may be useful for scientific study or for traditional, cultural, or spiritual purposes by Indian Tribes. Any taking to aid, salvage, or dispose of a specimen must reported to a Law Enforcement Office of the Service within 15 calendar days. The specimen may be retained, disposed of, or salvaged only in accordance with directions from the Service.

(iv) *Allowable take for Depredation Control.* When acting in the course of official duties, any authorized employee or agent of the Service; the Michigan Department of Natural Resources; the Wisconsin Department of Natural Resources; the North Dakota Game and Fish Department; the South Dakota Game, Fish and Parks Department; or a federally recognized American Indian Tribe, who is designated by his/her agency for such purposes, may take a gray wolf or wolves within the person's State or Reservation boundaries, in response to depredation by a gray wolf on lawfully present livestock or domestic animals. However, such taking must be preceded by a determination by one of the agencies listed above in this subparagraph that the depredation was likely to have been caused by a gray wolf and depredation at the site is likely to continue in the absence of a taking. In addition, such taking must be performed in a humane manner and occur within 1 mile of the place where the depredation occurred if in Michigan or Wisconsin and within 4 miles of the place where the depredation occurred if in North Dakota or South Dakota. Any young of the year taken by trapping on or before August 1 of that year must be released. Any take for depredation control must reported to a Law Enforcement Office of the Service within 15 calendar days. The specimen may be retained, disposed of, or salvaged only in accordance with directions from the Service.

(v) *Take Under Section 6 Cooperative Agreements.* When acting in the course of official duties, any authorized employee or agent of the Michigan Department of Natural Resources; the Wisconsin Department of Natural Resources; the North Dakota Game and Fish Department; or the South Dakota Game, Fish and Parks Department, as described in section 17.31(b), who is designated by his/her agency for such purposes under a Cooperative Agreement under section 6 of the Act, may take a gray wolf in his/her respective State to carry out scientific research or conservation programs. Such takings must be reported to the Service as specified in the reporting provisions of the Cooperative Agreement.

(vi) *Take under permit.* Any person who has a permit under section 50 CFR 17.32 of this subpart may carry out activities as specified by the permit with regard to gray wolves in Michigan, North Dakota, South Dakota, and Wisconsin.

(3) *What types of take are not allowed for gray wolves in Michigan, Wisconsin, North Dakota, and South Dakota?*

(i) Any form of taking not described in paragraph (o)(2) of this section is prohibited.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under section 17.32 of this subpart, no person may sell or offer for sale in interstate commerce, import or export, or in the course of a commercial activity transport or receive any gray wolves from Michigan, North Dakota, South Dakota, or Wisconsin.

(iii) In addition to the offenses defined in this paragraph (o), we consider any attempts to commit, solicitations of another to commit, or actions that cause to be committed any such offenses to be unlawful.

(iv) *Use of unlawfully taken wolves.* No person, except for an authorized person, may possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in Michigan, North Dakota, South Dakota, or Wisconsin.

(4) *What are the reporting requirements for gray wolf takings?* Except when otherwise indicated in this paragraph (o), or when a permit issued under 50 CFR 17.32 specifies otherwise, any taking must be reported to us within 24 hours. Any wolf, or wolf part taken legally, must be turned over to the Service which will determine the disposition of any live or dead wolves.

Dated: June 9, 2000.

Stephen C. Saunders,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–99–14]

Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule sets forth the procedures for conducting a referendum to determine if producers and importers favor continuation of the Pork Checkoff Program, formally known as the Pork Promotion, Research, and Consumer Information Order (Order). The Pork Checkoff Program was implemented September 5, 1986, as authorized by the Pork Promotion, Research, and Consumer Information Act of 1985 (Act). The Secretary of Agriculture (Secretary) will conduct a referendum among persons who have been producers and importers during the period August 18, 1999, through August 17, 2000, to determine whether producers and importers favor the continuation of the Pork Checkoff Program. Producers and importers can vote from August 18, 2000, through September 21, 2000. The Pork Checkoff Program would be terminated if a majority of producers and importers voting in the referendum favor termination.

EFFECTIVE DATE: This final rule is effective July 14, 2000.

Referendum Dates: Producers can vote in-person in the referendum on September 19, 20, 21, 2000, at the county Farm Service Agency (FSA) offices. Absentee ballots for producers will be available from county FSA offices from August 18, 2000, through September 18, 2000. Importers can obtain ballots from the FSA headquarters office in Washington, DC, from August 18, 2000, through September 21, 2000, at the address listed in this rule. The representative period to establish voter eligibility will be the period from August 18, 1999, through August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA; Stop 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251; telephone number 202/720–1115, fax 202/720–1125, or by e-mail Ralph.Tapp@usda.gov.

Producers can determine the location of county FSA offices by contacting (1) The nearest county FSA office; (2) the State FSA office; or (3) through an online search of the FSA website at *www.fsa.usda.gov/pas/search.htm*. From the options available on this webpage select "FSA Field Office Search," select "St Abbrv," and enter the county name in the "Cnty code" block. Some county FSA offices service multiple counties.

SUPPLEMENTARY INFORMATION: This final rule is being carried out in accordance with the Act (7 U.S.C. 4801–4819).

Question and Answer Overview

When Will the Referendum Be Held?

Producers can vote in-person in the referendum on 3-consecutive days on September 19, 20, 21, 2000. Producers voting by absentee ballot may obtain ballot packages from August 18, 2000, through September 18, 2000. Importers may obtain mail ballot packages from August 18, 2000, through September 21, 2000.

Who Is Eligible To Vote in the Referendum?

People and businesses who owned and sold hogs or pigs or imported hogs, pigs, pork, or pork products during the representative period from August 18, 1999, through August 17, 2000, are eligible to vote. This means that there are three types of eligible voters: (1) Persons who own and sell hogs or pigs in the United States in their own name; (2) persons who import hogs, pigs, pork, or pork products into the United States in their own name; and (3) persons who are designated to cast the single vote for a business entity that owns and sells, or imports hogs, pigs, pork, or pork products into the United States. Persons ineligible to vote include persons who do not pay the pork checkoff such as contract growers unless they have owned and sold hogs or pigs in their own name at some time during the representative period of August 18, 1999, to August 17, 2000, as well as persons who left hog farming prior to the beginning date of the representative period of August 18, 1999.

Where Do I Vote if I'm a U.S. Producer?

In-person voting will take place at the Department of Agriculture's (Department) FSA county offices. If you currently participate in FSA programs, you should vote at the FSA county office where you normally do business. If you do not participate in FSA programs, go to the FSA office in the county where you raise hogs or pigs (or if you raise hogs or pigs in more than one county, the county FSA office where most of your business is conducted). All county FSA office locations can be found on the FSA website at *www.fsa.usda.gov/pas/search.htm*.

Can I Vote by Absentee Ballot?

Yes. We recognize that producers are very busy so absentee voting will be allowed from August 18, 2000, through September 21, 2000, in addition to the September 19–21, 2000, 3-day in-person voting period. Eligible voters may request an absentee ballot from the appropriate county FSA office. Producers can begin requesting absentee ballots on August 1, 2000. However, absentee ballots will not be available for distribution to producers until August 18, 2000. Producers can request an absentee ballot in-person, by telephone, by facsimile, or by mail beginning August 1, 2000. To count, absentee ballots must be delivered to the county office no later than September 21, 2000, or be postmarked by September 21, 2000, and be received by the county FSA office no later than September 28, 2000.

Where do I Vote if I'm an Importer?

Voting will take place by mail. Voting by mail will be allowed for the same 35-day period of producer voting. Importers can request a ballot beginning August 1, 2000, from the FSA headquarters office in Washington, DC, at the address listed in this final rule. However, mail ballots will not be available for distribution to importers until August 18, 2000,

How Will the Department Make Certain That Only Eligible Persons Vote in the Referendum?

FSA county offices will publicly display a list of all people who have voted at that office, by absentee ballot as well as in-person. This will allow scrutiny by everyone. If a person believes that an ineligible person has voted, he or she can challenge that person's ballot. When a person's vote has been challenged, the challenged voter will be required to submit documentation to the county FSA office to prove eligibility. The Department will require importers to submit proof that they paid the pork assessment when they request ballots.

One commenter suggested several minor clarifying changes in the answers to three of the eight questions published with the proposed rule. We agree that these changes clarify the answers and have made the suggested changes. The

comments and responses are discussed in the section on comments.

Regulatory Impact Analysis

Executive Orders 12866 and 12998 and the Regulatory Flexibility Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12998, Civil Justice Reform. It is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceedings in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*), the Administrator of AMS has considered the economic impact of this final action on small entities.

According to the December 29, 1999, issue of the "Hogs and Pigs" report published by the National Agricultural Statistics Service (NASS), the number of farms with hogs or pigs was 98,460. According to the U.S. Customs Service, in 1999 there were 524 importers of hogs, pigs, pork, or pork products in the United States. The majority of the 98,460 hog producers and 524 importers subject to the Order should be classified as small entities under the criteria established by the Small Business Administration.

This rule is being carried out in accordance with the Act and establishes procedures for the conduct of a referendum to determine whether producers and importers favor continuation of the Pork Checkoff Program. Such procedures will permit all eligible producers who have been engaged in the production and sale of hogs or pigs and importers who have been engaged in the importation of hogs, pigs, pork, or pork products to vote in the referendum. Participation in the referendum is voluntary. Producers may cast their votes either by absentee ballot or in-person at county FSA offices. Importers may cast their ballots by mail at the FSA headquarters office in Washington, DC.

The information collection requirements, as discussed below, will be minimal. Casting votes by mail or in-person will not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the OMB regulation 5 CFR part 1320 that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), OMB has approved the information collection requirements contained in this final rule.

Title: Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum.

OMB Number: 0581–0194.

Expiration Date of Approval: 06/30/2003.

Type of Request: Revision of an approved information collection.

Abstract: The purpose of this final rule is to determine whether pork producers and importers favor continuation of the Pork Checkoff Program. The question on the ballot will be: "Do you favor continuing the Pork Checkoff program? Yes or No." For producers, provisions are made for in-person voting, absentee voting, and the challenge of voters. For importers, provision is made for voting by mail only. Importers will submit a copy of the U.S. Customs Service Form 7501 (as proof of eligibility) along with their request for a mail ballot.

AMS estimates that the cost per person to comply with the reporting provision of this rule is $20 per hour for a total cost of $222,400. This is based on an estimated 50,000 voters participating in the referendum.

In this final rule, information collection requirements include a one-time submission of the required information on the following forms that are included in an Appendix at the end of this action.

(a) Producers voting in-person will:

(1) Print their name and address on the In-Person Voter Registration List (Form LS–75).

(2) Complete a Pork Producer In-Person Voting form (Form LS–72).

(3) Insert the ballot into the "Pork Ballot" envelope (Form LS–72–1).

(4) Complete the In-Person Registration and Certification form (printed on the "Pork Referendum" envelope) (Form LS–72–2), and insert the sealed "Pork Ballot" envelope (Form LS–72–1), containing the ballot, into the "Pork Referendum" envelope (Form LS–72–2).

(b) Producers voting absentee will:

(1) Complete, a combined registration and absentee ballot form (Form LS–73).

(2) Insert the ballot portion into a "Pork Ballot" envelope (Form LS–72–1).

(3) Put the sealed "Pork Ballot" (Form LS–72–1) envelope and the completed registration form in the "Pork Referendum" envelope (Form LS–73–1).

(c) Importers voting in the referendum will have their names placed on an Importer Ballot Request List (Form LS–77) by FSA employees. Importers will vote using a mail ballot package consisting of a combined ballot and registration and certification form (Form LS–76), a "Pork Ballot" envelope (Form LS–72–1), and a "Pork Referendum" envelope (Form LS–73–1). They will complete the ballot and registration and certification form and place the ballot portion into the "Pork Ballot" envelope (Form LS–72–1), and place the sealed "Pork Ballot" envelope (Form LS–72–1) into the "Pork Referendum" envelope (Form LS–73–1) along with the completed registration form.

(d) This final rule requires each producer of hogs or pigs, who votes in-person to print on the In-Person Voter Registration List (Form LS–75) his or her name and address and, if applicable, the name and address of the corporation or other business entity he or she represents. Employees in each county FSA office will fill out the Absentee Voter Request List (Form LS–74).

1. Pork Producer In-Person Voting: Form LS–72, Pork Ballot envelope: Form LS–72–1, and In-Person Registration and Certification envelope: Form LS–72–2

Estimate of Burden: The public reporting burden for this collection of

information is estimated to average .10 hour per response.

Respondents: Only producers voting in-person in the referendum will use these forms.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Total Cost: $50,000.

2. Pork Producer Absentee Voting: Form LS–73, Pork Ballot envelope: Form LS–72–1, and Pork Referendum envelope: Form LS–73–1

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .10 hour per response.

Respondents: Only producers requesting an absentee ballot to vote in the referendum will use these forms.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Total Cost: $50,000.

3. In-Person Voter Registration List: Form LS–75

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .03 hour per response.

Respondents: Only producers voting in-person in the referendum will use this form.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 750 hours.

Total Cost: $15,000.

4. Absentee Voter Request List: Form LS–74

Estimate of Burden: Employees in each county FSA office will fill out one or more of the Absentee Voter Request Lists (Form LS–74). Because only county FSA employees will complete the Absentee Voter Request List, the estimated average reporting burden would not apply to producers voting absentee in the referendum.

5. Challenge of Voters

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .08 hour per response.

Respondents: Only persons wishing to challenge a vote of another producer will be required to provide such challenge in writing to the county FSA office.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 320 hours.

Total Cost: $6,400.

6. Proof of Eligibility

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Producers responding to a challenge of their eligibility to vote will be required to submit to the county FSA office records such as sales documents, tax records, or other similar documents to prove that the person owned and sold hogs or pigs during the representative period.

Estimated Number of Respondents: 4,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4,000 hours.

Total Cost: $80,000.

7. Appealing a Challenge of Eligibility

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Producers appealing a determination of their ineligibility to vote in the referendum will be required to submit to the county FSA office records such as sales documents, tax records, or other similar documents to prove that the person owned and sold hogs or pigs during the representative period.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Total Cost: $10,000.

8. Pork Importer Mail Voting: Form LS–76, Pork Ballot Envelope: Form LS–72–1, and Pork Referendum Envelope: Form LS–73–1

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .10 hour per response.

Respondents: Importers can only vote by mail ballot in the referendum and will use these forms.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Total Cost: $1,000.

9. Submission of U.S. Customs Service Form 7501 as Proof of Importer Eligibility

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Importers voting in the referendum will submit a copy of U.S. Customs Service Form 7501 with their request for a mail ballot.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Total Cost: $10,000.

10. Importer Ballot Request List: Form LS–77

Estimate of Burden: Employees in the Washington, DC, FSA headquarters office will print the name and address of the importer requesting the ballot on the Importer Ballot Request List (Form LS–77). Because only headquarters FSA employees will complete the Importer Ballot Request List, the estimated average reporting burden would not apply to importers voting in the referendum.

In the proposed rule published April 18, 2000, comments were invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

One commenter recommended several changes to the Paperwork Reduction Act section of the proposed rule. They are organized below by the applicable section.

Abstract

The commenter suggested that the Department require producers to provide documentation as evidence of their status as a producer to be eligible to vote the same as it requires for importers to obtain a ballot. The commenter believed that requiring

producer documentation when requesting a ballot would reduce the costs of challenges. Importers must submit a U.S. Custom Form 7501 with their request for a mail ballot. The Department is requiring importers to submit this form because unlike producers who vote in the county FSA offices, and may be known by the FSA county employees and by other producers in the county, importers are not typically known by these persons. For this reason, FSA is requiring that importers vote in one location, the FSA headquarters office in Washington, DC. The submission of Form 7501 up-front will eliminate the challenge process.

The Department believes that requiring producers to present documentation that they have sold hogs or pigs during the representative period, to prove their eligibility prior to obtaining a ballot, would increase the paperwork burden on the public. Assuming that it takes a producer the same amount of time to acquire and present documentation at the time of voting as it does to present the same proof in responding to a challenge, the public paperwork burden would be 50,000 hours if required of all producers at a cost of $1,000,000. By contrast, if 4,000 producers' ballots are challenged, the public paperwork burden would be 4,000 hours at a cost of $80,000.

Section 5 Challenge of Voters

The same commenter recommended that under section 5, Challenge of Voters, the wording under Respondents should be corrected to be consistent with the rule section by replacing the word "producers" with the word "persons." The Department agrees. Any person can challenge the ballot of another person. Accordingly "persons" is substituted for "producers" making that statement consistent with the regulatory text.

Section 6 Proof of Eligibility

The same commenter suggested that the number of producers having to respond to challenges listed as Estimated Number of Respondents under section 6, Proof of Eligibility, would be approximately 8,000 as opposed to the proposed 2,000. The commenter based his estimate on his interpretation of the results of AMS' evaluation of petitions submitted by the Campaign for Family Farms (CFF) requesting that the Secretary conduct a referendum of the Pork Checkoff Program. The Department based the proposed number of challenged ballots of 2,000 on the percentage of challenged ballots in previous referenda that was 1.5 to 2 percent of the number of voters and doubled that figure to reflect approximately 4 percent. Upon further review, the Department agrees that the number of challenged ballots is likely to be greater than the original estimated number of 2,000, but is not persuaded it will be as high as 8,000.

The Department has reconsidered the Estimated Number of Responses per Respondent and has increased the number from an average of 1 to an average of 2 in section 5, Challenge of Voters. Therefore, the Department has changed the Estimated Number of Respondents from 2,000 to 4,000 in section 6, Proof of Eligibility. The Department has also reconsidered the Estimated Number of Respondents in section 7, Appealing a Challenge of Eligibility, and reduced the number from 2,000 in the proposed rule to 500. In the proposed rule the Department estimated that 2,000 producers whose votes would be challenged would appeal. However, upon review, the Department now estimates that all 2,000 producers challenged would not have been found to be ineligible. Recognizing this fact, the Department now believes that a smaller number of persons will be declared ineligible to vote and thus appeal. The Department has estimated the number of respondents to be 500.

The same commenter also suggested that the estimate of 25,000 voters may be too low. The Department estimated that 50,000 producers and importers would vote in the pork referendum and further estimated that 25,000 would vote in-person and 25,000 would vote absentee or by mail ballot. The Department agrees with the commenter that more than 25,000 voters should be expected in the referendum and thus continues to estimate that there will be approximately 50,000 voters. Accordingly, no change is made based upon this comment.

Background

The Act provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for pork and pork products. The program is financed by a pork checkoff assessment of 0.45 percent of the market value of domestic and imported hogs and pigs and an equivalent amount on imported pork and pork products. Pursuant to the Act, an Order was made effective on September 5, 1986, and the collection of assessments began on November 1, 1986.

The Act provides that at the request of a number of persons equal to at least 15 percent of persons who have been producers and importers during a representative period as determined by the Secretary, the Secretary shall conduct a referendum to determine whether the producers and importers favor the continuation of the Pork Checkoff Program. Based on statistical data reported by NASS in the December 29, 1998, issue of the "Hogs and Pigs" report and information from the 1997 Census, there were 98,892 producers who sold hogs or pigs in 1998. According to data submitted by U.S. Customs Service, in 1998, there were 1,017 importers of hogs, pigs, pork, or pork products. The total number of producers and importers who would be eligible to sign a petition was 99,909. Fifteen percent of 99,909 equals 14,986. Therefore, AMS determined that a petition containing 14,986 valid signatures was sufficient to request a referendum.

On May 24, 1999, a petition containing 19,043 names was submitted to AMS. AMS conducted a signature validation process to ensure that the petitioners were pork producers or importers during the representative period, January 1, 1997, to June 1, 1999, and signed the petition. However, the Department concluded that the validation process was vulnerable to criticism in a number of respects and that the Department cannot be certain of the exact number of valid signatures. Because many thousands of valid signatures were received, however, the Secretary determined that a referendum would be held at the Department's expense in the interest of fairness. Pork producers and importers have not voted on the continuation of the Pork Checkoff Program since the initial referendum in 1988.

The purpose of the final rule is to determine whether pork producers and importers favor continuation of the Order. Therefore, the question on the ballot will be: "Do you favor continuing the Pork Checkoff program? Yes or No." Support of the program by a majority of persons who pay assessments is essential to both the establishment and the continuation of this program. Assessment collection under the Order would be terminated not later than 30 days after the date it is determined that termination of the Order is favored by a majority of the producers and importers voting in the referendum. The Order would be terminated in an orderly manner, as soon as practical, after the date of such determination. The proceedings after termination are set forth in § 1230.85 of the Order.

The final rule sets forth procedures to be followed in conducting the

referendum, including definitions, representative period, supervision of the referendum, mail ballots, challenge of voters and appeals, in-person voting procedures, absentee voting procedures, importer voting procedures, reporting referendum results, and disposition of the ballots and records. FSA will assist in the conduct of the referendum by (1) Providing the polling places; (2) counting ballots; (3) determining the eligibility of challenged voters; and (4) reporting referendum results.

The proposed rule was published (65 FR 20861, April 18, 2000) with a request for comments to be submitted by May 18, 2000. The Department received 1,005 comments in a timely manner. In addition, 73 late comments were received. These comments generally reflected the substance of comments timely received. The bulk of the comments were submitted by individual hog producers. About 40 comments were received from organizations or associations representing hog producers, pork importers, and farmers. The comments have been posted on AMS' website at (http://www.ams.usda.gov/lsg/mpb/pork/pkrefrule.htm).

The changes suggested by commenters are discussed below, along with the changes made by the Department upon further review of the proposed procedures for the conduct of the referendum. Also, the Department has made other minor changes for the purpose of clarity and accuracy. For the readers' convenience the discussion of comments is organized by the topic headings of the proposed rule.

Background

One commenter pointed out that an assessment of 0.45 percent of the market value not only applies to domestic hogs and pigs but also to imported market hogs and pigs. The proposed Order stated that an equivalent amount applied to imported market hogs and pigs. The commenter is correct. The 0.45 percent of market value applies to domestic and imported pigs and hogs. An assessment equivalent to 0.45 percent of market value applies only to imported pork and pork products. The commenter's recommended change has been incorporated in the final rule.

One commenter stated that the last statements in paragraph three concerning the Department's determination to hold a referendum are biased or "positioned" comments and should be deleted since the Department should maintain a neutral role. The Department does not agree. The statements are factual and are an integral part of the background information that explains why the referendum is being held. This recommendation is not adopted.

One commenter pointed out that the Order has information concerning the proceedings after termination, suggesting that it should be referenced and included for producer knowledge in the final rule. The Department agrees. A reference to § 1230.85 in the Order concerning these proceedings has been included in the Background Section.

Definitions

Section 1230.608 Farm Service Agency State Committee

AMS and FSA reviewed the procedures for determining an appeal in § 1230.631(g) after the proposed rule was published. They agreed the appeals of the FSA County Committee's determination would be faxed to the Administrator of AMS for a final determination of voter eligibility rather than be sent to the FSA State Committee. For the purpose of this final rule, the FSA State Committee is not involved in the procedures for the conduct of the referendum. Consequently, the definition of FSA State Committee at § 1230.608 has been deleted and each following section has been renumbered.

Section 1230.615 Producer

Some commenters suggested that the definition of producer should be clarified by inserting "2 or more" after "animals" and suggested "and markets" be inserted after "produces." The Department finds that the suggestion that the production of two or more hogs is needed to qualify as a producer is not consistent with the language and intent of the Act and Order. The definition of producer in the proposed rule is consistent with the definition of a producer in the Act. The Act specifies no minimum number of hogs a person must own to be eligible to vote in the referendum. A person who produces one hog or pig in the United States for sale in commerce must pay the checkoff just as a person who produces more than one. Accordingly, this suggestion is not adopted. The commenter's suggestion to include "and markets" in the definition of producer is also not adopted. The Department has determined that this addition is not needed as the language of the definition from the Act "produces for sale in commerce" includes porcine animals that are marketed.

Section 1230.617 Referendum

One commenter suggested that the phrase "* * * continuation of the Order." should be replaced with "ending the mandatory pork checkoff assessment program."

The Secretary in announcing that a referendum would be held stated "* * * it is appropriate and necessary to determine whether a majority of pork producers do in fact continue to support the checkoff." The Department has determined that the language in the proposed rule with some modification is appropriate and reflects the intent of this referendum. Accordingly, this suggestion is not adopted.

Section 1230.618 Representative Period

Numerous commenters supported the proposed representative period of 12-consecutive months prior to the referendum, which is the timeframe during which producers must have owned and sold hogs or pigs to be eligible to vote in the referendum. However, many commenters recommended changes in the length (both longer and shorter) of the representative period. Many commenters recommended lengthening the period by a varying number of years, including 2 years, 3 years, 4 years, and even to a much longer timeframe such as 12 years or since the beginning of the Pork Checkoff Program. These commenters contended that an extended period is necessary for a variety of reasons. The reasons given most often were to enable all producers who signed the CFF petition requesting a referendum on the Pork Checkoff Program to participate in the referendum; to permit producers who may have temporarily left the business due to the extremely low hog prices experienced in 1998 and 1999 to participate in the referendum; and to allow all producers who have paid the checkoff at some time in the past to participate in the referendum. In contrast, some commenters recommended shortening the representative period. These comments included limiting the representative period to the year 2000; to the period from April 18, 2000, until the referendum begins; and to requiring ownership of hogs on the date the producer votes in the referendum. These commenters emphasized the need for current producers, who will be paying the checkoff in the future, to determine whether the checkoff continues.

Some commenters recommended an earlier ending date for the representative period than the one included in the proposed rule. Their comments included ending the representative period on February 28, 2000 (the day the Secretary announced a pork referendum would be held); on April 18,

2000 (the day the proposed referendum rule was published); and the date the final referendum rule is published. These commenters expressed concern that questionable hog transactions could occur after these dates solely for the purpose of establishing a person's eligibility to vote in the referendum.

The Department has carefully considered these comments and recognizes the importance of this issue to all producers desiring to vote in the referendum. The Department has determined that the representative period will be the 12-consecutive month period prior to the beginning of absentee balloting for producers and mail balloting for importers. Producers who may have temporarily left the hog business in 1998 and 1999 and were interested in getting back into hog production due in part to significant capital investments in hog production facilities most likely would have since returned to the business due to higher hog prices (current price is approximately $50/cwt) and low corn prices (current price is approximately $2.00/bu).

The Department finds that the 1-year representative period is a period used by AMS in many other referenda and that the period will provide an opportunity for all pork producers presently engaged in producing and selling hogs and paying the checkoff assessments to determine whether the checkoff continues.

One commenter suggested that the exact dates of the representative period should be clear to producers, importers, and FSA representatives who will vote in the referendum or implement the referendum rules. The dates of the representative period are August 18, 1999, through August 17, 2000. These dates are set forth in the Dates section of this final rule and other sections, as applicable, as well as being included in the voting materials for all voters.

Section 1230.621 Voting Period

Numerous commenters recommended increasing the length of the in-person voting period. These commenters suggested that the 2-day in-person voting period be extended by 1 week to as many as 8 weeks. The commenters contend that the longer time period is needed to accommodate producers' busy schedules and to promote maximum eligible producer participation. Many other commenters supported the 2-day in-person voting period.

The Department recognizes the need for producers to have ample time to participate in the referendum and is extending the 2-day in-person voting period to 3 days. The Department believes a 3-day in-person voting period in conjunction with a 32-day absentee voting period will give producers who want to vote ample time to cast their ballot. During the 32-day absentee voting period, producers may request absentee ballots in-person, by telephone, facsimile, or by mail. This final rule permits producers to obtain an absentee ballot and vote at the county FSA office during any business day during the 32-day absentee voting period. Any producer who is concerned about being able to vote during the 3-day in-person voting period may use the absentee voting option. Accordingly, the suggestion for a longer in-person voting period is accepted in part by extending the in-person voting period from 2 days to 3 days. Section 1230.621 has been revised to reflect the expanded voting period. References in other sections to the length of the in-person voting period have been changed as appropriate.

Section 1230.622 General

A number of commenters questioned the legitimacy of holding a referendum expressing their belief that there is no authority in the law, the Order, or the regulations to call for a referendum.

The Department disagrees. The Department has authority to conduct a referendum to determine if producers do in fact wish to continue to pay assessments to fund the Pork Checkoff Program.

Section 1230.624 Eligibility

One commenter recommended revising § 1230.625 so that groups of family members raising hogs are not presumed to be selling hogs under one business entity. Individual family members should be presumed to be individual producers unless there is evidence that all hogs are owned and sold under a single business entity. The language in § 1230.624 of this final rule (§ 1230.625 in the proposed rule) makes it clear that any member of a group, *i.e.*, member of a family may register to vote if he or she sells hogs or pigs in his or her own name. Accordingly, this suggestion is not adopted.

The same commenter also recommended that the terms "joint tenants" and "tenants in common" refer to ownership in real estate interests, not personal property interests such as hogs. This comment has merit. The words "joint tenants" and "tenants in common" have been deleted from § 1230.624(a)(2) and (a)(3). These terms have also been deleted from the voting registration and certification forms.

Numerous comments supported either "one hog or pig" or "two or more hogs or pigs" as the number that a producer must own and sell to be eligible to vote. Those supporting two or more hogs and pigs assert that a producer as defined in the Act, is a person who produces porcine animals in the United States for sale in commerce and argue that "porcine animals" is plural and thus means two or more hogs or pigs.

Those who support the need to own only one hog or pig to be eligible to vote argue that producers who produce one hog or pig for sale in commerce must pay the assessment just as producers who produce more than one hog or pig. The Department agrees. All producers subject to paying the checkoff including those producing and selling one hog or pig are eligible to vote in this referendum. Accordingly, the Department has amended § 1230.624(a)(1) to clarify that producers owning and selling at least one hog or pig are eligible to vote.

Numerous commenters suggested that there should be a minimum voting age. The majority of commenters recommended 18 years as the minimum age. The commenters point out that a person must be 18 years old to vote in general elections in the United States and that younger voters in general would not understand the implications of their vote.

The Act (in defining producers) does not differentiate between producers by age. Younger producers are subject to assessment the same as producers 18 years of age and older. Therefore, the suggestion for a minimum voting age of 18 is not adopted. However, individual producers must be old enough to complete the required registration and certification form and mark the ballot since no proxy voting is permitted for individual producers.

Several commenters recommended the words "and markets" be added after "produces" in both § 1230.624(a)(1) and § 1230.624(a)(2). As mentioned previously, in order to prove that a person whose eligibility to vote is challenged has met the definition of a producer, it will be necessary to provide a sales document, tax records, or other similar documents showing that the producer owned and sold hogs or pigs. The Department believes that producers will understand the terms "owned and sold" better than "marketed." Therefore, this suggestion is not adopted.

Several commenters expressed opinions on the eligibility to vote of individuals or business entities that raise hogs or pigs through production contracts but who do not own the hogs or pigs they raise. The commenters asserted that individuals or business entities that raise hogs or pigs through

production contracts but who do not own the hogs or pigs they raise should not be eligible to vote. Other commenters argued that these individuals or business entities are often more dependent on the hog industry for a major share of their income than many small diversified farming operations that have hogs as a minor enterprise and thus should be eligible to vote. Likewise, other commenters argued that full-time employees in hog operations are fully dependent on the viability of these hog businesses and, thus, should be eligible to vote.

Individuals or business entities that raise hogs or pigs under production contracts do not take ownership of the hogs and pigs and sell them. They are not subject to paying assessments when the hogs or pigs are sold. Therefore, contract producers are not eligible to vote in this referendum, unless they have produced and sold pigs or hogs in their own names during the representative period. Full-time employees of hog enterprises are not eligible to vote as a result of employment in the hog industry. Eligibility to vote is based on the ownership and sale of hogs or pigs. Accordingly, the suggestions that contract growers of hogs or pigs and employees of hog operations be allowed to vote based on their involvement in the industry is not adopted.

Section 1230.625 Time and Place of Registration and Voting.

A large number of commenters expressed opinions on the length of the producer voting period. These commenters suggested that the 2-day in-person voting period be extended by 1 week to 8 weeks. Commenters contend that the longer time period is needed to accommodate producers' busy schedules and to promote maximum eligible producer participation. Many other commenters supported the 2-day in-person voting period.

The Department recognizes the need for producers to have ample time to participate in the referendum and is extending the 2-day in-person voting period to 3 days. The Department believes a 3-day in-person voting period in conjunction with a 32-day absentee voting period will give producers who want to vote ample time to cast their ballot. During the 32-day absentee voting period, producers may request absentee ballots in-person, by telephone, facsimile, or by mail. This final rule permits producers to obtain an absentee ballot and vote at the county FSA office during any business day during the 32-day absentee voting period. Any producer who is concerned about being able to vote during the 3-day in-person period may use the absentee voting option. Accordingly, the suggestion for a longer in-person voting period is accepted in part by extending the in-person voting period from 2 days to 3 days.

Commenters in general were supportive of holding the referendum for producers at county FSA offices. County FSA offices will conduct the referendum for producers and the FSA headquarters office will conduct the referendum for importers as proposed.

A number of commenters requested that ballots be mailed by the Department to producers such as those producers who signed the petition for a pork referendum and those who received Small Hog Operation Payment (SHOP) program payments. Other commenters agreed with the proposed 2-day in-person voting period and 30-day absentee voting period, citing that it was consistent with the procedures of the initial referendum. They also expressed their belief that the Department has no current comprehensive list of eligible producers and providing ballots to some groups of producers would be inequitable and unfair.

The Department does not have a list of the names and addresses of all pork producers in the United States. Further, to rely solely on lists that do not identify the names and addresses of all hog producers in the United States to mail ballots to producers would not be equitable. Thus, the recommendation to mail ballots to producers who signed the petition or other lists of producers is not adopted. Producers who wish to vote by mail ballot can obtain absentee ballots from county FSA offices.

One commenter suggested that the final rule should clarify that in-person registration and voting will be carried out "on-site" at FSA offices. The commenter suggested the rule was not clear whether a person could pickup a ballot, leave the office, and return with a completed ballot. The intent of the rule is that in-person voting will be carried out "on-site." The suggestion is adopted and §1230.625 has been revised accordingly.

Section 1230.626 Facilities for Registering and Voting

Many commenters requested that absentee ballots be made available if requested by telephone or electronic mail.

The Department has determined that in the interest of making voting more convenient for producers, absentee ballots will be made available to producers if requested by telephone. Thus, the suggestion to provide ballots by telephone is adopted and incorporated into this final rule. Obtaining importer ballots by telephone is addressed in the discussion of comments on § 1230.629 registration and voting procedures for importers.

The Department has determined that not all county FSA offices can receive electronic mail from sources outside of the Department. Thus, the suggestion that voters could request ballots by electronic mail is not adopted.

Several commenters recommended that the final rule clarify the fact that voting materials would not be faxed to participants due to the nature of materials that include special envelopes needed for a valid ballot. This clarification is made in § 1230.626 of the final rule by stating that ballot materials requested by telephone, mail, and facsimile will be provided to the requestor by mail.

Several commenters suggested that it should be made clear that county FSA offices will keep a list of absentee ballot requests and will match it with the returned voting materials to ensure only those registered are considered to be valid ballots. This was the intent of the proposed rule and is the intent of this final rule. Accordingly, § 1230.633 canvassing ballots is revised to emphasize this requirement. Instructions issued to FSA county offices also will reflect this requirement.

Section 1230.627 Registration Form and Ballot

Several commenters recommended that the ballot question be changed and the certification statement should be more prominently displayed on the voting forms. This suggestion has been adopted. The ballot and ballot question as well as the certification statement have been revised to make them easier to use and understand. The ballot portions of the registration and certification forms have been redesigned so they will appear more prominent.

Many commenters had a wide range of recommendations on the wording of the ballot question. Some commenters recommended the ballot read as follows: "Do you vote to end the mandatory Pork Checkoff assessment program?" These commenters believe that the ballot question must emphasize that the referendum is about ending the mandatory Pork Checkoff Program.

Other commenters recommended that the language emphasize that the purpose of the referendum is to determine whether the Order is to continue and should be exactly the same as the language used in the 1988 referendum.

Some commenters were concerned that the proposed language could confuse some voters since these voters might not understand that a "No" vote in the referendum would mean that both the Pork Checkoff Program and the Order would be terminated.

To make the ballot question as simple and straightforward as possible, the Department has determined that the ballot question will read as follows: "Do you favor continuing the Pork Checkoff program?" Therefore, the specific language recommended by the various commenters is not adopted.

Commenters suggested that the instructions to voters on the ballot forms and the registration and certification statements be amended and clarified to: (1) Clarify the difference between voting as an individual producer and voting as a representative of a corporation or other business entity; (2) clarify that contract growers are not eligible to vote; (3) clarify eligibility requirements; and (4) strengthen the language in the certification statement.

The Department finds that these suggestions have merit and these forms have been revised to incorporate each of these suggestions. In addition, there will be handouts given to voters at the county FSA offices for easy reference on eligibility, challenges, and appeals.

One commenter recommended that there needed to be instructions on how to complete the county blank on the registration forms as it is confusing because the form did not indicate what county a voter is supposed to enter, *i.e.*, county of residence, county voting in, etc. The Department upon further review finds that county has little significance on the form and, therefore the requirement for providing county, has been deleted from this final rule and the forms for the registration and certification of voters.

Some commenters suggested that the In-Person Voter Registration List (Form LS–75) be amended to provide the address of the voter. They assert that in the event that multiple producers with the same last name are voting, having the address would facilitate the challenge process by helping to distinguish between persons with the same last name. The Department agrees. Recording of the voter's address in addition to his or her name on Form LS–75 would help distinguish between producers having the same last name for purposes of challenging voters. This suggestion is adopted. The Department is also requiring that the address of a voting business entity be added to Form LS–75.

Section 1230.628 Registration and Voting Procedures for Producers

Many commenters registered opinions on both sides of the issue of whether producers should be required to provide documentation of eligibility to vote. The proposed rule did not require documentation to vote but provided for certification of eligibility and a challenge process. Many commenters suggested that an up-front documentation requirement would eliminate time-consuming challenges, give more integrity to the process, and better ensure equal treatment among all voters. They assert that large numbers of challenges are likely and that resolution of the challenges would be much more cumbersome and time consuming than requiring documentation up-front. Other commenters were opposed to up-front documentation of eligibility and supported the challenge process. These commenters believe that many eligible voters would not vote if required to provide documentation of eligibility up-front and believe that the challenge procedures would adequately protect the integrity of the process.

The Department has carefully considered the pros and cons of up-front documentation. The Department believes that requiring a person voting in this referendum to sign a certification statement attesting to the fact that they are a producer and that they comply with the eligibility requirement when they vote coupled with having to provide documentation to prove eligibility as a producer if challenged protects the integrity of the voting process. This suggestion is not adopted.

One commenter recommended that the word "on-site" be added to the last sentence in § 1230.628(a)(2) to clarify that in-person voters must complete the voting procedure before leaving the FSA county office. The proposed wording is consistent with the intent of the section and provides clarification. Therefore, the recommendation has been adopted and incorporated in the language of this section in the final rule.

One commenter recommended that a procedure be incorporated in this final rule to allow producers to obtain a clean package of voting materials if they spoiled a ballot by merely returning the initial package received whether it was received in-person or by mail. The In-person Ballot, the Absentee Ballot, and the Importer Mail Ballot only require that a person check "yes" or "no." The ballot portion of the forms shown in the appendix in the proposed rule have been redesigned and the ballot question simplified. The Department believes that this redesign and simplification will make it easier for producers to clearly mark their choice on the ballot. Accordingly, this suggestion is not adopted.

Some commenters recommended that changes to § 1230.628(b)(3) should include the actual dates ballots and registration forms could be requested rather than the term "during a specified time period." When the Department published the proposed rule, the dates that the referendum would be held had not been decided. Consequently, actual dates that ballots and registration forms could be requested were not included in the proposed rule. However, the Department has established the date for the referendum and other dates associated with the referendum and has included these dates in appropriate sections in this final rule and on the registration and ballot forms.

One commenter recommended that language confirm that the absentee ballot materials could be picked up in-person at county FSA offices as well as received by mail upon request. Section 1230.628(b)(2) registration and voting procedures states in part "* * * he or she [the producer] may request an absentee voting package by telephone, by mail, by facsimile, or pick it up in-person from the county FSA office * * *" The Department finds the present language clearly states the ways in which producers can obtain absentee ballots, including by mail or by picking them up in-person. For this reason, this suggestion is not adopted.

One commenter recommended that § 1230.628(b)(6) be amended to stipulate that the county FSA office has responsibility to check that no absentee ballot is returned that was not duly requested and logged on the Absentee Voter Request List (Form LS–74). The Department finds no need to include such language in this section as this requirement is covered in § 1230.633 canvassing ballots and is in the instructions to FSA county offices.

Some commenters recommended that § 1230.628(b)(7) be clarified to specify the deadline for receipt of absentee ballots delivered in-person. This suggestion has merit and is included in the final rule in § 1230.628(b)(6) for clarity.

Section 1230.629 Registration and Voting Procedures for Importers

Some commenters recommended that the period for importer voting be the same as the total period for producer voting including absentee and in-person voting. This was the intent of the proposed rule and this final rule emphasizes that the same 35-day voting

period is provided for both producer and importer voting.

One commenter recommended that importers' votes should be weighted to equal the percent of total assessment collections attributed to importers. There is no provision in the Act that permits weighted voting based on the amount of annual assessment. Eligibility to vote is based on owning and selling one or more hogs or pigs or importing hogs, pigs, pork, or pork products during the representative period and each eligible individual and each eligible business entity is entitled to cast one vote.

Consistent with the requirements of the Act, the results of the referendum will be determined by a majority of producers and importers casting valid ballots. Thus, the recommendation for weighted voting based on the level of contributions to the Pork Checkoff Program is not adopted.

Several commenters requested that ballots be available if requested by telephone by producers or importers. The Department has determined that producers and importers can request ballot materials by telephone. Section 1230.628(b) and (c) of the final rule have been amended to provide for producers to request absentee voting materials by telephone and for importers to request mail ballots by telephone.

Section 1230.630 List of Registered Voters

One commenter recommended that the Importer Ballot Request Lists (Form LS–77) be posted for public inspection just as the producer absentee and in-person lists are posted and that there be a provision for the challenge of importers.

Unlike for producer voting, documentation of an individual importer's or importer entities' eligibility to vote is required to obtain a ballot package. FSA employees will maintain an Importer Ballot Request List and will check the returned voting materials against the list. FSA officials and AMS officials will review the U.S. Custom Form 7501 to ascertain that importers and importer entities are eligible to vote. The Department concludes there is no need for posting the names of importers or importer entities who have been declared eligible to vote.

Several commenters recommended that only producers who actually vote be subject to challenge and that absentee voters' names be posted as their absentee ballots are received. In § 1230.631(c) the language of the proposed and final rules clearly states: "Absentee ballots have to be received in the county FSA office before a producer's vote can be challenged." The Absentee Voter Request List will contain the name and address of producers and producer entities requesting absentee ballots. The date that each absentee ballot is received in the county FSA office will be entered for each name. The list will be posted in the county FSA office beginning on the first day of the in-person voting period. Producers who requested absentee ballots have until close of business on the 5th business day after the end of the in-person voting period, for absentee ballots mailed on the last day of the in-person voting period to arrive at FSA county offices by mail. The names of those producers who do not have a date of receipt of their ballot by their name will remain on the list for that 5-day period. To do otherwise, would necessitate county FSA employees maintaining separate lists that will increase their workload and increase the chance for errors. In § 1230.630(a) the language of the proposed and final rules clearly states: "Absentee ballots arriving after the Absentee Voter Request List is first posted will be recorded on the Absentee Voter Request List each day." The Department believes this final rule adequately addresses the posting of the Absentee Voter Request List. These two suggestions are not adopted.

Section 1230.631 Challenge of Voters

Some commenters suggested that the challenge period should be extended from the proposed 6 business days to 7 or 10 business days after the last day of in-person voting. They contend that the proposed challenge period is unreasonably short because absentee ballots may not arrive at the county FSA office until 5 business days after the close of voting resulting in only 1 day to challenge the ballots of absentee voters. The Department has determined that this suggestion has merit and will facilitate a person's review of the Absentee Voter Request List. Accordingly, § 1280.631 has been revised to show the challenge period has been extended from 6 to 7 business days after the last day of in-person voting. This coupled with the 3-day in-person voting period will provide a total of 10 days to review these two voter lists and submit challenges.

One commenter suggested that county offices should provide a standard challenge form for a person to complete when challenging a producer's eligibility to vote. The Department does not agree. The information required for challenging a producer is minimal and each challenge of a voter's ballot must be made on a separate sheet of paper and signed. Thus, the Department believes that a form is not necessary. This suggestion has not been adopted.

One commenter recommended that a person challenging a ballot should be required to state in-writing specific reasons why he or she believes that the person challenged does not meet the eligibility requirements to vote. They further recommended that a person challenging a ballot should be required to sign a certification statement that he or she has good reason for challenging the voter. While the Department believes that challengers should have a good reason for challenging a person's eligibility to vote and discourages frivolous challenges, the Department does not believe it is necessary to require challengers to give specific reasons for challenges or to sign a certification statement that he or she has good reason for challenging the voter. Therefore, the suggestion is not adopted.

Some commenters suggested that the final rule should make it clear that the identity of the challenger should remain confidential. The Department agrees. Therefore, this suggestion is adopted and appropriate language has been added to § 1230.631 of this final rule.

Some commenters recommended that all challenged producers be required to provide documentation of eligibility. They assert that this is necessary to ensure valid proof of eligibility and equitable treatment of all persons challenged. Other commenters recommended that the FSA County Committee use its own knowledge, records, and other available information to resolve challenges, whenever possible, to minimize the burden on challenged producers. The Department agrees that requiring all voters whose ballots have been challenged to provide documentation that they have sold one or more hogs will provide for increased uniformity and fairness in the resolution of challenges.

To incorporate this revision into the challenge resolution process, a new subsection (d) notification of challenges has been added to § 1230.631 challenge of votes. Notifying all challenged producers that they have been challenged and providing time for producers to provide documentation of eligibility once notified, will add 10 business days to the challenge resolution process, but it will be fair to all challenged producers. As a result of the 10 additional business day change and the additional day for challenges discussed earlier, a determination of eligibility will now be made no later than 22 business days after the last day of in-person voting rather than the 11

business days after the last day of in-person voting permitted in the proposed rule.

The proposed rule provided for the FSA State committees to resolve appeals. After the proposed rule was published, AMS and FSA agreed that appeals of the FSA County Committee's determinations would be faxed to the Administrator, AMS, for a final determination of eligibility rather than be sent to the State committees. When appeals of the FSA County Committee's determinations are submitted to the Administrator of AMS, the Administrator will review the challenge to determine whether the FSA County Committee conducted a full and impartial review of the information presented to correctly resolve the original challenge. This change was made to provide increased consistency in the determination of appeals and to minimize the workload and costs incurred at the FSA State offices. Section 1280.631 of this final rule has been modified accordingly.

One commenter suggested that the referendum rule should provide objective standards for deciding challenges including documentation. Documentation is being required in the final rule to resolve all challenges and examples of the types of documentation that will be acceptable are included in the final rule, posted in county FSA offices, and listed in FSA's instructions to county offices. Thus, changes have been made to incorporate the concepts proposed in this recommendation.

Section 1230.633 Canvassing Ballots

One commenter recommended that by the time of in-person voting, FSA county offices should have posted the date, place, and time that ballots will be tabulated so that interested parties can observe. This commenter also suggested that the results be made public at the time of counting and be reportable to interested parties.

The Department will allow interested parties to observe the counting of ballots. The ballots will be counted on the day following the end of the challenge resolution process which will be November 29, 2000. Section 1230.633 has been revised to include the date the ballots will be counted and indicate during normal business hours. The date and time the county FSA offices will count the ballots will be posted. However, to minimize speculation on the results of the referendum, the county level and State level results will not be made available until the Secretary has announced the results of the referendum.

Section 1230.634 FSA County Report

One commenter recommended that time specific reporting dates for reporting county office results should be included in the final rule. The Department finds no compelling reason to have such requirements in the final rule. The results will be reported from the county level, to the State level, and to the national level in a timely manner and in accordance with FSA instructions, once all challenges are resolved. This suggestion is not adopted.

Section 1230.635 FSA State Office Report

One commenter recommended that specific reporting dates for reporting State results as well as a report of results on a county-by-county basis should be included in the final rule. The Department finds no compelling reason to have such requirements in the final rule. The results will be reported from the State level to the national level in a timely manner in accordance with FSA instructions once all challenges are resolved. This suggestion is not adopted.

Section 1230.636 Results of the Referendum

Some commenters recommended that results be announced within 2 weeks of the vote. With 7 business days after the in-person voting period provided for challenges and with a lengthy challenge resolution process including provisions for an appeal to the Administrator of AMS, the results of the referendum will not be available within the time period recommended. This suggestion is not adopted.

Section 1230.637 Disposition of Ballots and Records

One commenter recommended that AMS maintain accurate records of the vote that would be made available in the event the vote is challenged. The proposed and final rule provide that the FSA County Executive Director maintain all referendum records for at least 12 months and longer if notified to do so by the Administrator of FSA. Any challenge of referendum results would likely occur within less than 12 months of the referendum. No change in the rule appears to be necessary to accommodate this suggestion.

General Comments

Some commenters recommended a section be added in the final rule to cover false statements. They recommended the following language:

False Statements—Persons who participate in the referendum who knowingly or willfully make false statements on documents related to the referendum may be fined up to $10,000, imprisoned up to 5 years or both penalties applied (19 U.S.C. 1001 *et seq.*). Notice of this penalty shall be displayed at the FSA polling site and on related documents for registration and voting.

The Department has determined it is not necessary to have this language in the final rule. Language concerning the penalties for making false statements is displayed prominently on the voting forms and will be posted at the FSA polling sites. Providing information about penalties for false statements in this manner is deemed to be sufficient and so the recommendation to incorporate it in the final rule is not adopted.

One commenter recommended that procedures be added to prevent a company with multiple production locations from voting in multiple counties. The voting materials clearly indicate that only an authorized individual can cast the one vote a business entity is entitled to cast. In addition, as indicated above the penalty for false statements is clearly displayed in conjunction with the producers' certification of eligibility to vote. Thus, no changes have been made as a result of this comment.

Pursuant to the provisions in 5 U.S.C. 553 *et seq.*, good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because postponing the final rule until 30 days after publication would make the rule effective after the date pork producers can request absentee ballots.

Referendum Order

It is hereby directed that a referendum be conducted among eligible pork producers who owned and sold one or more hogs or pigs and importers who imported pigs, hogs, pork, or pork products to determine whether the Order will continue. Producer in-person voting in the referendum will be on September 19, 20, 21, 2000, at county FSA offices. Producer absentee ballots will be available at those offices from August 18, 2000, through September 18, 2000. Importers can obtain ballots from the FSA headquarters office in Washington, DC, from August 18, 2000, through September 21, 2000. The representative period to establish voter eligibility will be the period from August 18, 1999, through August 17, 2000.

In summary, this final rule adopts provisions of the April 18, 2000, proposed rule with the changes

discussed herein and with other minor changes made for purposes of clarity and accuracy.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Pork and pork products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. A new subpart E is added to read as follows:

Subpart E—Procedures for the Conduct of Referendum

Definitions

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1230.601 Act.
1230.602 Administrator, AMS.
1230.603 Administrator, FSA.
1230.604 Department.
1230.605 Farm Service Agency.
1230.606 Farm Service Agency County Committee.
1230.607 Farm Service Agency County Executive Director.
1230.608 Imported porcine animals, pork, and pork products.
1230.609 Importer.
1230.610 Order.
1230.611 Porcine animal.
1230.612 Person.
1230.613 Pork.
1230.614 Pork product.
1230.615 Producer.
1230.616 Public notice.
1230.617 Referendum.
1230.618 Representative period.
1230.619 Secretary.
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Referendum

1230.622 General.
1230.623 Supervision of referendum.
1230.624 Eligibility.
1230.625 Time and place of registration and voting.
1230.626 Facilities for registering and voting.
1230.627 Registration form and ballot.
1230.628 Registration and voting procedures for producers.
1230.629 Registration and voting procedures for importers.
1230.630 List of registered voters.
1230.631 Challenge of votes.
1230.632 Receiving ballots.
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1230.634 FSA county office report.
1230.635 FSA State office report.
1230.636 Results of the referendum.
1230.637 Disposition of ballots and records.
1230.638 Instructions and forms.

Subpart E—Procedures for the Conduct of Referendum

Definitions

§ 1230.601 Act.

The term *Act* means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.602 Administrator, AMS.

The term *Administrator, AMS*, means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.603 Administrator, FSA.

The term *Administrator, FSA*, means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.604 Department.

The term *Department* means the United States Department of Agriculture.

§ 1280.605 Farm Service Agency.

The term *Farm Service Agency* also referred to as "FSA" means the Farm Service Agency of the Department.

§ 1230.606 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee*, also referred to as the *FSA County Committee* or *COC*, means the group of persons within a county elected to act as the Farm Service Agency County Committee.

§ 1230.607 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director* also referred to as the *CED*, means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and be responsible for the day-to-day operations of the FSA county office or the person acting in such capacity.

§ 1230.608 Imported porcine animals, pork, and pork products.

The term *Imported porcine animals, pork, and pork products* means those animals, pork, or pork products that are imported into the United States and subject to assessment under the harmonized tariff schedule numbers identified in § 1230.110 of the regulations.

§ 1230.609 Importer.

The term *Importer* means a person who imports porcine animals, pork, or pork products into the United States.

§ 1280.610 Order.

The term *Order* means the Pork Promotion, Research, and Consumer Information Order.

§ 1230.611 Porcine animal.

The term *Porcine animal* means a swine, that is raised:

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seedstock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.612 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1230.613 Pork.

The term *Pork* means the flesh of a porcine animal.

§ 1230.614 Pork product.

The term *Pork product* means an edible product processed in whole or in part from pork.

§ 1230.615 Producer.

The term *Producer* means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.616 Public notice.

The term *Public notice* means information regarding a referendum that would be provided by the Secretary, such as press releases, newspapers, electronic media, FSA county newsletters, and the like. Such notice would contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1230.617 Referendum.

The term *Referendum* means any referendum to be conducted by the Secretary pursuant to the Act whereby persons who have been producers and importers during a representative period would be given the opportunity to vote to determine whether producers and importers favor continuation of the Order.

§ 1230.618 Representative period.

The term *Representative period* means the 12-consecutive months prior to the first day of absentee and importer voting in the referendum. The representative period for this referendum is August 18, 1999, through August 17, 2000.

§ 1230.619 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated to act in the Secretary's stead.

§ 1230.620 State.

The term *State* means each of the 50 States.

§ 1230.621 Voting period.

The term *Voting period* means the 3-consecutive business day period for in-person voting.

Referendum

§ 1230.622 General.

(a) A referendum to determine whether eligible pork producers and importers favor continuation of the Pork Checkoff Program will be conducted in accordance with this subpart.

(b) The Pork Checkoff Program will be terminated only if a majority of producers and importers voting in the referendum favor such termination.

(c) The referendum will be conducted at the county FSA offices for producers and at FSA headquarters office in Washington, DC, for importers.

§ 1230.623 Supervision of referendum.

The Administrator, AMS, will be responsible for conducting the referendum in accordance with this subpart.

§ 1230.624 Eligibility.

(a) Eligible producers and importers. Persons eligible to register and vote in the referendum include:

(1) Individual Producers. Each individual that owns and sells at least one hog or pig during the representative period and does so in his or her own name is entitled to cast one ballot.

(2) Producers who are a corporation or other entity. Each corporation or other entity that owns and sells at least one hog or pig during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, owners of community property, or a corporation engaged in the production of hogs and pigs will be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer if he or she sells at least one hog or pig in his or her own name.

(3) Importers. Each importer who imports hogs, pigs, pork, or pork products during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, or a corporation engaged in the importation of hogs, pigs, pork, or pork products will be entitled to only one vote; provided, however, that any member of a group may register to vote as a importer if he or she imports hogs, pigs, pork, or pork products in his or her own name.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible producer or importer (other than an individual producer or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any eligible producer or importer corporation or other entity must certify that he or she is authorized to take such action.

§ 1230.625 Time and place of registration and voting.

(a) Producers. The referendum shall be held for 3-consecutive days on September 19, 20, 21, 2000. Eligible producers shall register and vote on-site following the procedures in 1230.628. Producers shall register and vote during the normal business hours of each county FSA office or request absentee ballots from the county FSA offices by mail, telephone, or facsimile, or pick up an absentee ballot in-person. The absentee voting period shall be from August 18, 2000, through September 21, 2000.

(b) Importers. Importer voting shall take place during the same time period provided producers for in-person and absentee voting in the referendum. The referendum shall be conducted by mail ballot by the FSA headquarters office in Washington, DC, between August 18, 2000, through September 21, 2000.

§ 1230.626 Facilities for registering and voting.

(a) Producers. Each county FSA office shall provide:

(1) Adequate facilities and space to permit producers of hogs and pigs to register and to mark their ballots in secret;

(2) A sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Copies of the Order for review.

(b) Absentee ballots. Each FSA county office shall provide each producer an absentee ballot package upon request. Producers can pick up an absentee ballot in-person or request it by telephone, mail, or facsimile. The FSA county office will provide absentee ballots by mail for all requests received by telephone, mail, or facsimile. The FSA county office shall record date of receipt of the "Pork Referendum" envelope containing the completed absentee ballot on the Absentee Voter Request List and place it unopened in a secure ballot box.

(c) Importers. The FSA headquarters office in Washington, DC, will:

(1) Mail ballot packages to eligible importers upon request;

(2) Have a sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Mail copies of the Order to importers if requested by mail, telephone, or facsimile. Importers can also pickup a ballot in-person.

§ 1230.627 Registration form and ballot.

(a) *Producers.* (1) A ballot (Form LS–72) and combined registration and certification form (Form LS–72–2) will be used for voting in-person. The information required on the registration form includes name, address, and telephone number. Form LS–72–2 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check a "yes" or "no."

(2) A combined registration and voting form (Form LS–73) will be used for absentee voting. The information required on this combined registration and voting form includes name, address, and telephone number. Form LS–73 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check "yes" or "no."

(b) *Importers.* A combined registration and ballot form (Form LS–76) will be used for importer voting. The information required on this combined registration and ballot form includes name, address, and telephone number. Form LS–76 also contains the certification statement referenced in § 1230.629. The ballot will require importers to check "yes" or "no."

§ 1230.628 Registration and voting procedures for producers.

(a) *Registering and voting in-person.* (1) Each eligible producer who wants to vote whether as an individual or as a representative of a corporation or other entity shall register during the 3-day in-person voting period at the county FSA office where FSA maintains and processes the individual producer's or corporation's or other entities' administrative farm records. A producer voting as an individual or as a representative of a corporation or other entity not participating in FSA programs, shall register and vote in the county FSA office serving the county where the individual producer or corporation or other entity owns hogs or pigs. An individual or an authorized representative of a corporation or other entity who owns hogs or pigs in more than one county shall register and vote in the FSA county office where the individual or corporation or other entity does most of their business. Producers shall be required to record on the In-Person Voter Registration List (Form LS–75) their name and address, and if applicable, the name and address of the corporation or other entity they represent before they can receive a registration form and ballot. To register, producers shall complete the in-person registration and certification form (Form LS–72–2) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period; and

(ii) The person voting on behalf of a corporation or other entity referred to in § 1230.612 is authorized to do so.

(2) Each eligible producer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in § 1230.625 and on September 19, 20, 21, 2000. Eligible producers who record their names and addresses and, if applicable, the name and address of the corporation or other entity they are authorized to represent on the In-Person Voter Registration List (Form LS–75) will receive a combined registration and certification form printed on an envelope (Form LS–72–2) and a ballot (Form LS–72). Producers will enter the information requested on the combined registration and certification form/envelope (Form LS–72–2) as indicated above. Producers will then mark their ballots to indicate "yes" or "no." Producers will place their completed ballots in an envelope marked "Pork Ballot" (Form LS–72–1), seal and place it in the completed and signed registration form/envelope marked "Pork Referendum" (Form LS–72–2), seal that envelope and personally place it in a box marked "Ballot Box" or other designated receptacle. Voting will be conducted on-site under the supervision of the county FSA County Executive Director (CED).

(b) *Absentee voting.* (1) Eligible producers who are unable to vote in-person may request an absentee voting package consisting of a combined registration and absentee ballot form (Form LS–73) and two envelopes—one marked "Pork Ballot" (Form LS–72–1) and the other marked "Pork Referendum" (Form LS–73–1) by mail, telephone, facsimile, or by picking up one in-person from the county FSA office where FSA maintains and processes the producer's administrative farm records.

(2) If a producer, whether requesting an absentee ballot as an individual or as an authorized representative of a corporation or other entity that does not participate in FSA programs, and therefore does not have administrative records at a county FSA office, he or she may request an absentee voting package by telephone, mail, facsimile, or pick it up in-person from the county FSA office serving the county where the individual or corporation or other entity owns hogs or pigs. An individual or authorized representative of a corporation or other entity, who owns hogs or pigs in more than one county can request an absentee ballot from the county FSA office where the producer or corporation or other entity does most of their business.

(3) An absentee voting package will be mailed to producers by the FSA CED to the address provided by the prospective voter. Only one absentee registration form and absentee ballot will be provided to each eligible producer. The absentee ballots and registration forms may be requested during August 1, 2000, through September 18, 2000.

(4) The county FSA office will enter on the Absentee Voter Request List (Form LS–74) the name and address of the individual or corporation or other entity requesting an absentee ballot and the date the forms were requested.

(5) To register, eligible producers shall complete and sign the combined registration and certification form and absentee ballot (Form LS–73) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period;

(ii) If voting on behalf of a corporation or other entity referred to in § 1230.612, they are authorized to do so.

(6) A producer, after completing the absentee voter registration form and marking the ballot, shall remove the ballot portion of the combined registration and absentee ballot form (Form LS–73) and seal the completed ballot in a separate envelope marked "Pork Ballot" (Form LS–72–1) and place the sealed "Pork Ballot" envelope in the mailing envelope marked "Pork Referendum" (Form LS–73–1) along with the signed registration form. Producers are required to print their name and address on the mailing envelope marked "Pork Referendum" (Form LS–73–1), and mail or hand deliver it to the county FSA office from which the producer or corporation or other entity obtained the absentee voting package. Absentee ballots returned in-person must be received by close of business on the last day of the in-person voting period, which is September 21, 2000. Ballots received after that date will be counted as invalid ballots.

(7) Absentee ballots returned by mail have to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the county FSA office by the close of business on the 5th business day after the last day of the in-person voting period, which is September 28, 2000. Absentee ballots received after that date will be counted as invalid ballots. Upon receiving the "Pork Referendum" envelope (Form LS–73–1) containing the registration form and ballot, the county FSA CED will record the date the "Pork Referendum" envelope (Form LS–73–1) containing the absentee ballot was received in the FSA county office on the Absentee Voter Request List (Form LS–74) opposite the name of the producer voting absentee. The county FSA CED will place it, unopened, in a secure ballot box.

§ 1230.629 Registration and voting procedures for importers.

(a) Individual importers, corporations, or other entities can obtain the registration and certification forms, ballots, and envelopes by mail from the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, P.O. Box 44366, Washington, DC 20026–4366. Importers may pick up the voting materials in-person at USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. Importers may also request voting materials by facsimile or telephone. The facsimile number is 202/690–3354. The telephone number is 202/720–6833.

(b) When requesting a ballot, eligible importers will be required to submit a

U.S. Customs Service Form 7501 showing that they paid the pork assessment during the representative period.

(c) Upon receipt of a request and U.S. Customs Service Form 7501, the voting materials will be mailed to importers by the FSA headquarters office in Washington, DC, to the address provided by the importer or importer corporation or other entity. Only one mail ballot and registration form will be provided to each eligible importer. The forms must be requested during August 1, 2000, through September 21, 2000.

(d) The FSA headquarters office in Washington, DC, will enter on the Importer Ballot Request List (Form LS–77) the name and address of the importer requesting a ballot and the date of the request.

(e) To register, eligible importers will complete and sign the combined registration form and ballot (Form LS–76) and certify that:

(1) To the best of their knowledge and belief the information provided on the form is true and accurate;

(2) If voting on behalf of an importer corporation or other entity referred to in § 1230.612, they are authorized to do so.

(f) Eligible importers, after completing the combined ballot and registration form, will remove the ballot portion of the combined registration and ballot form (Form LS–76) and seal the completed ballot in a separate envelope marked "Pork Ballot" (Form LS–72–1) and place the sealed "Pork Ballot" envelope in the mailing envelope marked "Pork Referendum" (Form LS–73–1) along with the signed registration form. Importers, corporations, or other entities must legibly print their name and address on the mailing envelope marked "Pork Referendum" (Form LS–73–1), and mail the envelope to the FSA headquarters office at the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, Post Office Box 44366, Washington, DC 20026–4366. Importers may hand deliver the "Pork Referendum" envelope to USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(g) The "Pork Referendum" envelope (Form LS–73–1) containing the registration form and ballot has to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the FSA headquarters office by the close of business on the 5th business day after the date of the last day of the in-person voting period, which is September 28, 2000. If delivered in-person, it has to reach headquarters office not later than the last day of the in-person voting period. Ballots received after that date will be counted as invalid ballots. Upon receiving the "Pork Referendum" envelope (Form LS–73–1) containing the registration form and ballot, an FSA employee will record the date the "Pork Referendum" envelope containing the completed ballot was received in the FSA headquarters office in Washington, DC, on the Importer Ballot Request List (Form LS–77) directly opposite the voting importer's name. The FSA employee will place the "Pork Referendum" envelope, unopened, in a secure ballot box.

§ 1230.630 List of registered voters.

(a) *Producers.* The In-Person Voter Registration List (Form LS–75) and the Absentee Voter Request List (Form LS–74) will be available for inspection during the 3 days of the voting period and during the 7 business days following the date of the last day of the voting period at the county FSA office. The lists will be posted during regular office hours in a conspicuous public location at the FSA county office. The Absentee and In-Person Voter Registration Lists will be updated and posted daily. The complete In-Person Voter Request List (Form LS–75) will be posted in the FSA county office on the 1st business day after the date of the last day of the voting period. The complete Absentee Voter Request List (Form LS–74) will be posted in the FSA county office on the 6th business day after the date of the last day of the voting period.

(b) *Importers.* The Importer Ballot Request List (Form LS–77) will be maintained by the FSA headquarters office in Washington, DC, and not posted.

§ 1230.631 Challenge of votes.

(a) *Challenge period.* During the dates of the 3-consecutive day voting period and the 7 business days following the voting period, the ballots of producers may be challenged at the FSA county office.

(b) *Who can challenge.* Any person can challenge a producer's vote. Any person who wants to challenge shall do so in writing and shall include the full name of the individual or corporation or other entity being challenged. Each challenge of a producer vote must be made on a separate sheet of paper and each challenge must be signed by the challenger. The identity of the challenger will be kept confidential except as the Secretary may direct or as otherwise required by law.

(c) *Who can be challenged.* Any producer having cast an in-person ballot or an absentee ballot whose name is posted on the In-Person Voter Registration List (Form LS–75) or the Absentee Voter Request List (Form LS–74) can be challenged. Absentee ballots have to be received in the FSA county office before a producer's vote can be challenged. There is no challenge process for importers.

(d) *Notification of challenges.* The FSA County Committee or its representative, acting on behalf the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than 12 business days after the date of the last day of the in-person voting period. FSA will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to the FSA county offices within 5 business days of notification and not later than 17 business days after the date of the last day of the voting period.

(e) *Determination of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable, but no later than 22 business days after the date of the last day of the in-person voting period of its decision.

(f) *Challenged ballot.* A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the Administrator, AMS, after an appeal.

(g) *Appeal.* A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office within 5 business days after the date of receipt of the letter of notification of ineligibility, but not later than November 2, 2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA county office or as soon as practical thereafter.

(h) An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day after the date of

the last day of the voting period. The Administrator, AMS, shall send her decision on a producer's appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator's, AMS, determination on his or her appeal. The Administrator's, AMS, determination on an appeal shall be final.

§ 1230.632 Receiving ballots.

(a) *Producers.* A ballot shall be considered to be received on time if:

(1) It was cast in-person in the county FSA office prior to the close of business on the date of the last day of the in-person voting period; or

(2) It was cast as an absentee ballot, having a postmarked date not later than the last day of the in-person voting period and was received in the county FSA office not later than the close of business, 5 business days after the last day of the in-person voting period.

(b) *Importers.* A ballot shall be considered to be received on time if it had a postmarked date not later than the date of the last day of the in-person voting period and was received in the FSA headquarters office in Washington, DC, not later than the close of business, 5 business days after the last day of the in-person voting period.

§ 1230.633 Canvassing ballots.

(a) *Producers.* (1) Counting the ballots. Under the supervision of FSA CED, acting on behalf of the Administrator, AMS, the in-person registration and certification form envelopes (Form LS–72–2) and the absentee "Pork Referendum" envelopes (Form LS–73–1) containing the "Pork Ballot" envelopes for producer voters will be checked against the In-Person Voter Registration List (Form LS–75) and the Absentee Voter Request List (Form LS–74), respectively, to determine properly registered voters. The ballots of producers voting in-person whose names are not on the In-Person Voter Registration List (Form LS–75), will be declared invalid. Likewise, the ballots of producers voting absentee whose names are not on the Absentee Voter Request List (Form LS–74) will be declared invalid. All ballots of challenged producer voters declared ineligible and invalid ballots will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular business hours on the 46th business day after the last day of the in-person voting period. FSA county office employees will remove the sealed "Pork Ballot" envelopes (Form LS–72–1) from the registration form envelopes and "Pork Referendum" envelopes (absentee voting) envelopes of all eligible producer voters and all challenged producer voters determined to be eligible. After removing all "Pork Ballot" envelopes, FSA county employees will shuffle the sealed "Pork Ballot" envelopes or otherwise mix them up so that ballots cannot be matched with producers' names. After shuffling the "Pork Ballot" envelopes, FSA county employees will open them and count the ballots. The ballots will be counted as follows:

(i) Number of eligible producers casting valid ballots;

(ii) Number of producers favoring continuation of the Pork Checkoff Program;

(iii) Number of producers favoring termination of the Pork Checkoff Program;

(iv) Number of challenged producer ballots deemed ineligible;

(v) Number of invalid ballots; and

(vi) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if a producer voting in-person has failed to print his or her name and address on the In-Person Voter Registration List (Form LS–75) or if an absentee voter's name and address is not recorded on the Absentee Voter Request List (Form LS–74), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they are mutilated or marked in such a way that it cannot be determined whether the voter is voting "yes" or "no." Spoiled ballots shall not be considered as approving or disapproving the Pork Checkoff Program, or as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

(b) *Importers.* (1) *Counting the ballots.* FSA headquarters personnel, acting on behalf of the Administrator, AMS, will check the registration forms and ballots for all importer voters against the Importer Ballot Request List (Form LS–77) to determine properly registered voters. The ballots of importers voting whose names are not recorded on the Importer Ballot Request List (Form LS–77), will be declared invalid. All ballots of importer voters declared invalid will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular office hours on the 46th business day after the date of the last day of the in-person voting period. FSA headquarter office employees will remove the sealed "Pork Ballot" envelope (Form LS–72–1) from the "Pork Referendum" envelopes (Form LS–73–1) of all eligible importer voters. After removing all "Pork Ballot" envelopes, FSA headquarter employees will shuffle the sealed "Pork Ballot" envelopes or otherwise mix them up so that ballots cannot be matched with importers' names. After shuffling the "Pork Ballot" envelopes, FSA headquarters employees will open the envelopes and count the ballots. The ballots will be counted as follows:

(i) Number of eligible importers casting valid ballots;

(ii) Number of importers favoring continuation of the Pork Checkoff Program;

(iii) Number of importers favoring termination of the Pork Checkoff Program;

(iv) Number of importer ballots deemed invalid; and

(v) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if an importer voter's name was not recorded on the Importer Ballot Request List (Form LS–77), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they were mutilated or marked in such a way that it cannot be determined whether the voter is voting "yes" or "no." Spoiled ballots shall not be considered as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public can witness the opening of the ballot box and the counting of the votes but can not interfere with the process.

§ 1230.634 FSA county office report.

The FSA county office will notify the FSA State office of the results of the referendum. Each FSA county office will transmit the results of the referendum in its county to the FSA State office. Such report will include the information listed in § 1230.633. The results of the referendum in each county will be made available to the public, after the results of the referendum are announced by the Secretary. A copy of the report of results will be posted for 30 days in the FSA county office in a conspicuous place accessible to the public and a copy will be kept on file in the FSA county office for a period of at least 12 months after the referendum.

§ 1230.635 FSA State office report.

Each FSA State office will transmit to the Administrator, FSA, a written summary of the results of the referendum received from all FSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the FSA State Executive Director. The FSA State office will maintain a copy of the summary where it will be available for public inspection for a period of not less than 12 months.

§ 1230.636 Results of the referendum.

(a) The Administrator, FSA, will submit the combined results of the FSA State offices' results of the producers' vote and the FSA headquarters office results of the importers' vote to the Administrator, AMS. The Administrator, AMS, will prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum will be announced by the Department in an official press release and published in the **Federal Register**. State reports on producer balloting, FSA headquarters office report on importer balloting, and related papers will be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of producer voting results in any State or county or the report of importer voting results shall be reexamined and checked by such persons as may be designated by the Secretary.

§ 1230.637 Disposition of ballots and records.

(a) *Producer ballots and records.* Each FSA CED will place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records will be placed under lock in a safe place under the custody of the FSA CED for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, FSA, by the end of such time, the records shall be destroyed.

(b) *Importer ballots and records.* The FSA headquarters office in Washington, DC, will deliver the importers' U.S. Customs Service Form 7501s, the voter registration list, voted ballots, invalid ballots, spoiled ballots, and national summaries and records to the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. A Marketing Programs Branch employee will place the ballots and records in sealed containers marked with the identification of the referendum. Such ballots and records will be placed under lock in a safe place under the custody of the Marketing Programs Branch for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, AMS, by the end of such time, the records shall be destroyed.

§ 1230.638 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Dated: July 7, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

BILLING CODE 3410–02–P

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix—Pork Referendum Forms

The following nine forms referenced in Subpart E Part 1230—Procedures for the Conduct of a Referendum—will be used for registering and voting in the pork referendum and for listing registered voters.

LS–72 Pork Producer In-Person Voting
LS–72–1 Pork Ballot (Envelope)
LS–72–2 In-Person Registration and Certification (Envelope)
LS–73 Pork Producer Absentee Voting
LS–73–1 Pork Referendum (Envelope)
LS–74 Absentee Voter Request List
LS–75 In-Person Voter Registration List
LS–76 Pork Importer Mail Voting
LS–77 Importer Ballot Request List

Form Approved - 0581-0194

PORK PRODUCER IN-PERSON VOTING

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

ELIGIBLE VOTERS:

- **Individual Producers:** Any individual who owned and sold one or more pigs or hogs at any time between August 18, 1999, and August 17, 2000, in his or her own name may cast one vote as an individual producer.
- **Business Entity Producers:** A corporation, partnership, estate, or other legal business entity that owned and sold one or more pigs or hogs at any time between August 18, 1999, and August 17, 2000, is entitled to one vote. An authorized individual may cast the business entities' vote.
- **Producers Who Sell Hogs as Individuals and Represent a Business Entity:** If an individual owned and sold one or more pigs or hogs between August 18, 1999, and August 17, 2000, in his or her own name and is an authorized representative of a legal business entity who owned and sold one or more pigs or hogs between August 18, 1999 and August 17, 2000, he or she may cast the one vote for the business entity and one vote as an individual producer.
- **Contract Producers are Not Eligible to Vote:** Individuals or business entities that raise pigs or hogs under production contracts are not eligible to vote unless they owned and sold one or more pigs or hogs in their own name.

INSTRUCTIONS TO VOTERS (Please read carefully):

1. Before you **VOTE**, *you must print your name and address* on the **In-Person Voter Registration List,** and if you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., also print its name and address on the **In-Person Voter Registration List.**
2. Individual producers and other producer entities may vote at the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records. Producers not participating in FSA programs may vote in the county FSA office serving the county where the producer owns hogs and pigs.
3. If you are voting as an individual, please print **your** name, address, and telephone number in the spaces provided and sign the **Registration and Certification Statement**. If you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., print your name first and then print its name, address, and telephone number in the spaces provided and sign the **Registration and Certification Statement.**
(If you do not complete this step your ballot will be invalidated and your vote will not be counted.)
4. Check "Yes" or "No" on the **Ballot** below. Put this form in the envelope marked **"PORK BALLOT"** and seal it.
5. Put the **"PORK BALLOT"** envelope into the **"PORK REFERENDUM"** envelope, seal it, and place it in the designated "Ballot Box."

BALLOT

Do you favor continuing the Pork Checkoff program?

☐ YES ☐ NO

LS-72 (06-00)

(See reverse of form for Burden and Nondiscriminatory Statements.)

NOTE: *According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0194. The time required to complete this information collection is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

(Continuation of Form LS-72)

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PORK BALLOT

Seal and Insert into envelope marked "Pork Referendum".

LB-72-1 (06-DEI)

3 5/8" x 6 1/2" ENVELOPE

PORK REFERENDUM

FORM APPROVED - OMB NO. 0581-0194

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

According to the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0093. The time required to complete this information collection is estimated to average .05 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The authority for requesting the information to be supplied on this form is the Pork Promotion, Research, and Consumer Information Act of 1985. The information would be furnished to pork producers and importers of pork and pork products who voluntarily participate in the referendum.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

You may, by law, be fined up to $10,000, imprisoned up to 5 years, or both, for knowingly or willfully making false statements within this document (18 USC Section 1001).

IN PERSON REGISTRATION AND CERTIFICATION

NOTE: If you are voting as an individual, please print your name, address, and telephone number in the spaces provided and sign the **Registration and Certification Statement.** If you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., print your name first and then print its name, address, and telephone number in the spaces provided and sign the **Registration and Certification Statement.**

NAME *(See note above)*

REPRESENTING *(If applicable)*

MAILING ADDRESS *(Street, P.O. Box, or Route No., City, State, ZIP Code)*

TELEPHONE NUMBER (including area code)

CERTIFICATION STATEMENT

I HEREBY CERTIFY *at some time between August 18, 1999, and Agust 17, 2000, I, or the entity that I am authorized to represent, owned and sold one or more pigs or hogs and that this is the only vote I am casting in this capacity in the pork referendum. I further certify that to the best of my knowledge and belief the information provided herein is true and accurate.*

SIGNATURE

DATE

LS-72-2 (06-00)

4 1/8" X 9 1/2" ENVELOPE

Form Approved - 0581-0194

PORK PRODUCER ABSENTEE VOTING

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

ELIGIBLE VOTERS:

- **Individual Producers:** Any individual who owned and sold one or more pigs or hogs at any time between August 18, 1999, and August 17, 2000, in his or her own name may cast one vote as an individual producer.
- **Business Entity Producers:** A corporation, partnership, estate, or other legal business entity that owned and sold one or more pigs or hogs at any time between August 18, 1999, and August 17, 2000, is entitled to one vote. An authorized individual may cast the business entity's vote.
- **Producers Who Sell Hogs as Individuals and Represent a Business Entity:** If an individual owned and sold one or more pigs or hogs between August 18, 1999, and August 17, 2000, in his or her own name and is an authorized representative of a legal business entity who owned and sold one or more pigs or hogs between August 18, 1999, and August 17, 2000, he or she may cast the one vote for the business entity and one vote as an individual producer.
- **Contract Producers are Not Eligible to Vote:** Individuals or business entities that raise pigs or hogs under production contracts are not eligible to vote unless they owned and sold one or more pigs or hogs in their own name.

INSTRUCTIONS TO VOTERS (Please read carefully):

1. If you are voting as an individual, please print your name, address, and telephone number in the spaces provided below and sign the **Registration and Certification Statement**. If you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., print your name first and then print its name, address, and telephone number in the spaces provided and sign the **Registration and Certification Statement**.
2. Mark "Yes" or "No" on the **Ballot** below.
3. Separate the completed **Ballot** from the rest of this form, and put the **Ballot** in the envelope marked **"PORK BALLOT."** Seal the **"PORK BALLOT"** envelope.
4. Place both the sealed **"PORK BALLOT"** envelope and remainder of the form containing the completed and signed **Registration and Certification Statement** into the envelope marked **"PORK REFERENDUM."** Seal the **"PORK REFERENDUM"** envelope. ***Print your name and address in the upper left-hand corner of the "PORK REFERENDUM"*** envelope.
5. Mail or deliver the **"PORK REFERENDUM"** envelope to the county Farm Service Agency (FSA) office from which you obtained the absentee voting materials. To be counted, your **"PORK REFERENDUM"** envelope must contain the correct and completed forms.
6. If the **"PORK REFERENDUM"** envelope is mailed, it must be postmarked not later than September 21, 2000, and arrive in the county FSA office not later than September 28, 2000.
7. If the **"PORK REFERENDUM"** envelope is hand delivered, it must arrive at the FSA county office by close of business September 21, 2000.
8. Failure to complete, sign, and return this **Registration and Certification Statement** with the Ballot will invalidate the **Ballot** and your vote will not be counted. **Late ballots will not be counted.**

REGISTRATION AND CERTIFICATION STATEMENT (Absentee voting)	
NAME (See instruction number 1)	REPRESENTING (If applicable)
MAILING ADDRESS (Street, P.O. Box, or Route No., City, State, ZIP Code)	TELEPHONE NUMBER (Including area code)
***I HEREBY CERTIFY** at some time between August 18, 1999, and August 17, 2000, I, or the entity that I am authorized to represent, owned and sold one or more pigs or hogs and that this is the only vote I am casting in this capacity in the pork referendum. I further certify that to the best of my knowledge and belief the information provided herein is true and accurate.*	
SIGNATURE	DATE

LS-73 (06-00) ***You may, by law, be fined up to $10,000, imprisoned up to 5 years, or both, for knowingly or willfully making false statements within this document (18 USC Section 1001).***

SEPARATE HERE

BALLOT

Do you favor continuing the Pork Checkoff program?

☐ YES ☐ NO

(See reverse of form for Burden and Nondiscriminatory Statements.)

NOTE: *According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a persons is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0194. The time required to complete this information collection is estimated to average .10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

(Continuation of Form LS-73)

PLACE STAMP HERE

4 1/8" x 9 1/2" Envelope

LS-73-1 (06-00)
Name and Return Address

PORK REFERENDUM

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REPRODUCE LOCALLY. *Include form number and date on all reproductions.*

FORM APPROVED - OMB NO. 0581-0194

ABSENTEE VOTER REQUEST LIST

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

_____ **COUNTY** *(Enter name of county)*

NOTE: A separate "Absentee Voter Request List" must be maintained for each county served.

PLEASE PRINT REQUIRED INFORMATION

DATE REQUESTED	NAME OF VOTER	REPRESENTING *If voting as the authorized representative of a legal entity (partnership, corporation, estate, etc.) enter its name*	BALLOT MAILING ADDRESS	DATE BALLOT RECEIVED BY FSA	[redacted]

LS-74 (06-00)

REPRODUCE LOCALLY. *Include form number and date on all reproductions.*

FORM APPROVED - OMB NO. 0581-0194

IN-PERSON VOTER REGISTRATION LIST

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

_____ **COUNTY** *(Enter name of county)*

NOTE: A separate "In-Person" Voter Registration List must be maintained for each county served.

PLEASE PRINT REQUIRED INFORMATION

NAME AND ADDRESS OF VOTER	REPRESENTING *If voting as the authorized representative of a legal business entity (partnership, corporation, estate, etc.) enter its name and address.*	[redacted]

LS-75 (06-00)

Form Approved - 0581-0194

PORK IMPORTER MAIL VOTING

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

ELIGIBLE VOTERS:

- **Individual Importers:** Any individual who imported pigs, hogs, pork, or pork products at any time between August 18, 1999, and August 17, 2000, in his or her own name may cast one vote as an individual importer.
- **Business Entity Importers:** A corporation, partnership, estate, or other legal business entity that imported pigs, hogs, pork, or pork products at any time between August 18, 1999, and August 17, 2000, is entitled to one vote. An authorized individual may cast the business entities' vote.
- **Importers Who Import as Individuals and Represent a Business Entity:** If an individual imported pigs, hogs, pork, or pork products between August 18, 1999, and August 17, 2000, in his or her own name and is an authorized representative of a legal business entity who imported pigs, hogs, pork, or pork products between August 18, 1999, and August 17, 2000, he or she may cast the one vote for the business entity and one vote as an individual importer.

INSTRUCTIONS TO VOTERS (Please read carefully):

1. If you are voting as an individual, please print your name, address, and telephone number in the spaces provided below and sign the **Registration and Certification Statement**. If you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., print your name first and then print its name, address, and telephone number in the spaces provided and sign the **Registration and Certification Statement**.
2. Mark "Yes" or "No" on the **Ballot** below.
3. Separate the completed **Ballot** from the rest of this form, and put the **Ballot** in the envelope marked "PORK BALLOT." Seal the "PORK BALLOT" envelope.
4. Place both the sealed "PORK BALLOT" envelope and the remainder of the form containing the completed and signed **Registration and Certification Statement** into the envelope marked "PORK REFERENDUM." Seal the "PORK REFERENDUM" envelope. ***Print your name and address in the upper left-hand corner of the*** "PORK REFERENDUM" ***envelope.***
5. Mail or deliver the "PORK REFERENDUM" envelope to the Farm Service Agency (FSA) office in Washington, D.C. To be counted, your "PORK REFERENDUM" envelope must be postmarked not later than September 21, 2000, and arrive in the Washington, D.C., FSA office not later than September 28, 2000.
6. Mailing address of Washington D.C. Office: USDA, FSA, Review and Analysis Staff, Attention: William A. Brown, P.O. Box 44366, Washington, D.C. 20026-4366.
7. If hand delivered the "PORK REFERENDUM" envelope must arrive in the FSA office at the following address: FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, D.C., not later than September 21, 2000.
8. Failure to complete, sign and return this **Registration and Certification Statement** with the Ballot will invalidate the **Ballot** and your vote will not be counted. **Late ballots will not be counted.**

REGISTRATION AND CERTIFICATION STATEMENT (Mail voting)	
NAME (See instruction number 1)	REPRESENTING (if applicable)
MAILING ADDRESS (Street, P.O. Box, or Route No., City, State, ZIP Code)	TELEPHONE NUMBER (including area code)
I HEREBY CERTIFY *that sometime between August 18, 1999, and August 17, 2000, I, or the entity that I am authorized to represent, imported pigs, hogs, pork, or pork products and that this is the only vote I am casting in this capacity in the pork referendum. I further certify that to the best of my knowledge and belief the information provided herein is true and accurate.*	
SIGNATURE	DATE

LS-76 (06-00) ***You may, by law, be fined up to $10,000, imprisoned up to 5 years, or both, for knowingly or willfully making false statements within this document (18 USC Section 1001).***

SEPARATE HERE

BALLOT

Do you favor continuing the Pork Checkoff program?

☐ YES ☐ NO

(See reverse of form for Burden and Nondiscriminatory Statements.)

NOTE: *According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a persons is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0194. The time required to complete this information collection is estimated to average .10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

(Continuation of Form LS-76)

REPRODUCE LOCALLY. *Include form number and date on all reproductions.*

FORM APPROVED - OMB NO. 0581-0194

IMPORTER BALLOT REQUEST LIST

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

PLEASE PRINT REQUIRED INFORMATION

DATE REQUESTED	NAME OF VOTER	REPRESENTING *If voting as the authorized representative of a legal entity (partnership, corporation, estate, etc.) enter its name*	BALLOT MAILING ADDRESS	DATE BALLOT RECEIVED BY FSA	[redacted]

LS-77 (06-00)

[FR Doc. 00–17688 Filed 7–12–00; 8:45 am]

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Federal Register

Thursday,
July 13, 2000

Part V

Department of Justice

Immigration and Naturalization Service

8 CFR Parts 103, 214, 248, 264
Nonimmigrant Classes: Aliens Coming Temporarily to U.S. to Perform Agricultural Labor or Services; H–2A Classification Petitions; Final Rule
Nonimmigrant Classes: Temporary Agricultural Worker (H–2A) Petitions; Processing Procedures; Proposed Rule

Department of Labor

Employment and Training Administration

20 CFR Part 655
Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in the United States Agriculture; Authority Delegation to Adjudicate; Final Rule and Modification of Fee Structure; Proposed Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 214

[INS No. 1946–98, AG Order No. 2313–2000]

RIN 1115–AF29

Delegation of the Adjudication of Certain Temporary Agricultural Worker (H–2A) Petitions, Appellate and Revocation Authority for Those Petitions to the Secretary of Labor

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations to transfer to the Secretary of Labor the authority to adjudicate petitions for temporary agricultural workers (H–2As), and the authority to decide appeals on those decisions and to make determinations for revocation of petition approvals. This rule does not affect the Service's authority to make determinations at a port-of-entry of an alien's admissibility to the United States, or of an alien's eligibility for change of nonimmigrant status, or for extension of stay. This rule streamlines the existing H–2A petitioning process and makes the process easier and faster for employers of temporary agricultural workers.

DATES: This rule is effective November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Bert Rizzo, Supervisory Immigration Adjudications Officer, Programs Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4213, Washington, DC 20536, telephone (202) 307–8996.

SUPPLEMENTARY INFORMATION:

What Is An H–2A Petition?

The Immigration and Nationality Act (Act) provides for an employer to seek the services of foreign workers to perform temporary or seasonal agricultural services in the United States. These temporary agricultural workers are known as H–2As.

What Are the Department of Labor's (DOL) and Service's Current Roles?

Under present procedures, DOL plays the principal role with respect to employment of H–2A workers since DOL must first consider an employer's application and issue a labor certification for the hiring of temporary agricultural workers. Once DOL issues a labor certification, the employer then files an H–2A petition with the Service and attaches DOL certification.

The Service's role in the process consists mainly of confirming that DOL has issued a labor certification, that the services required are temporary or seasonal (which is also considered by DOL), and that any prior H–2A violations by that employer have been corrected.

Why Is the Service Delegating Authority to the Secretary of Labor?

On December 7, 1998, the Service published a proposed rule in the **Federal Register** at 63 FR 67431 to transfer authority to adjudicate certain temporary agricultural worker petitions (H–2As) to the Secretary of Labor. The initial proposal was to allow DOL to adjudicate all H–2A petitions where the alien beneficiaries were located outside of the United States, while the Service would continue to adjudicate petitions when the alien beneficiaries were located within the United States. As described below, the Service has revised the approach of the proposed rule to effectuate a more comprehensive, one-step process for the adjudication of H–2A petitions by DOL.

This rule is intended to streamline the process and consolidate the H–2A determinations within DOL, the agency having the far greater role in the existing process. Consolidation under DOL is logical because of the Service's minimal role and the ability of DOL to handle the limited additional considerations to adjudicate completely both the labor certification and petition portions of the process.

However, the transfer of authority to DOL is being made only for determinations of the eligibility for classification of alien beneficiaries for H–2A status. The Attorney General is not further delegating to DOL the control of aliens within the United States. Therefore, this rule provides that DOL will forward requests to extend the stay or change the status of alien beneficiaries of H–2A petitions to the Service for adjudication. Since DOL and the Service will conduct the necessary interagency coordination, the petitioners will still have the advantage of a one-stop forum for the filing of all H–2A matters.

What Comments Did the Service Receive on the Proposed Rule?

The Service received eight comments to the proposed rule. The comments were from employer associations and the American Immigration Lawyers Association. The comments generally were divided among six issues. The following is a discussion of the comments and the Service's response:

1. Filing Form

Five of the commenters believed that the Service was not properly planning for its continued role in developing the filing form(s) or the data to be gathered from the petitioner, although they did not offer reasons for this belief. DOL and the Service engaged in extensive discussions on the appropriate filing vehicle for H–2As. The Service has specific data requirements for its management information system, statistical records, and the administration of immigration laws. The Service is ensuring that those data requirements are met through the consultation process and through an interagency agreement outlining all areas of concern in the transfer of this process to DOL.

The agencies will use a single form with multiple pages to capture all the necessary data for both agencies. DOL envisions a scannable form that can be machine read, which will expedite its data input into a new management information system and assist in the adjudication process. Data elements derived from the current DOL Forms ETA–750 and the Service Form I–129 will be combined on a new filing form. The new Form ETA–9079 will be submitted for approval to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995. This rule will not be implemented until that form has received approval under the Paperwork Reduction Act requirements. The new Form ETA–9079, Application for Temporary Agricultural Labor Certification and H–2A Petition, will replace the Service Form I–129 for all H–2A filings, as well as replace DOL Form ETA–750 for this purpose. It will contain separate sections for capturing data on individual aliens named in the new form. The separate section, which is being created through our proposed rule published elsewhere in this **Federal Register**, will require that an alien beneficiary who is present in the United States and seeking an extension of stay or change of status to H–2A sign that section. This will ensure that the alien has taken legal responsibility for the information entered on the form concerning himself or herself and that the alien is a responsible party to the request for extension of stay or change of status.

2. Split Filing Locations

Four commenters believed that the split in required filing location, based upon the location of the beneficiaries

either inside or outside of the United States, would be confusing and would not streamline the process.

The Service believes that the commenters correctly identified a weakness in the proposal and has revised it accordingly. As mentioned earlier, the proposed split in filing between DOL and the Service has been amended to require employers to file all H–2A filings with DOL. DOL will also have authority to approve the H–2A petitions as well as issue labor certifications.

Although all H–2A filings will now be made with DOL, the Service is retaining the authority over requests by individual aliens who are already present in the United States to change their status to H–2A or to extend their H–2A stay. As explained in a new proposed rule to accomplish this published elsewhere in this issue of the **Federal Register**, we are separating the determinations on change of status and extension of stay from the determination on the petition. DOL will forward to the Service the information from the joint application concerning an alien beneficiary in the United States in all cases where change of status or extension of stay is requested. The process will require that after the joint application (Form ETA–9079) is adjudicated by DOL, the Service's management information system would be updated with information indicating whether the labor certification application/petition was approved or denied. With this information, the Service can complete its adjudication of the extension of stay or change of status application (Form ETA–9079W) and notify the individual alien(s) of its determination.

The worker and employer will benefit from complete one-stop filing because all forms and supporting documentation are submitted to a single agency. DOL will determine the correct processing routes needed for all pieces of the one-stop package. The Service will receive data from DOL and the Form(s) ETA–9079W (Named Alien Addendum) to adjudicate. The Service's determination(s) on the Addendum will be based upon the individual alien's eligibility and a final determination by DOL on the Form ETA–9079.

3. Countervailing Evidence

As discussed in the proposed rule, the Service's role in most H–2A petition proceedings is limited. Most H–2A petitions are filed before the petitioner has identified, or named, the H–2A workers (beneficiaries). Currently, the Service's role is limited to a review of the determinations made by DOL that the job offer is for temporary or seasonal agricultural employment, that the petitioner is making a valid job offer, and that any liquidated damages from prior H–2A petition proceedings have been paid. Liquidated damages are assessed to an employer who fails to notify the Service of the departure of workers from the United States or when the employer cannot establish that workers have left the employment for other legal status. In cases with named beneficiaries, the Service judges the ability of the beneficiary to perform the needed services. Additionally, in rare cases, the Service reviews countervailing evidence on the availability of U.S. workers.

Four commenters pointed out that the proposed rule was silent about the countervailing evidence procedure currently provided in regulations. Briefly, this procedure allows a petitioner to seek a review by the Service of DOL determination on the labor certification, if countervailing evidence can be produced to establish that U.S. workers are not in fact available to the petitioner. Only DOL determination concerning the availability of U.S. workers is reviewable by the Service. The Service rarely entertains countervailing evidence on H–2A petitions and almost universally follows the DOL determination because of DOL's expertise. Under this rule change, a separate review of this availability issue is no longer practical or necessary. Because DOL/Employment and Training Administration will be making the determination on the labor certification and petition concurrently, and a fresh review of these determinations is already provided for through appeal to DOL Office of Administrative Law Judges, an additional review is not useful and is removed from this rule.

The Service is establishing a mechanism to notify DOL of any unpaid liquidated damage claims to enable DOL to judge this factor as part of the adjudication process. Finally, in instances in which the petitioner identifies named beneficiaries, DOL has the necessary expertise to review the documentation presented to establish that each beneficiary is qualified to perform the unskilled agricultural labor.

4. DOL Capabilities

Five of the commenters objected to the proposal due to various concerns about the ability of DOL to perform its current functions in a timely fashion and to handle requests for expedited processing of problem cases. The Service believes that the consolidated new process is not highly complex and will allow concurrent adjudication of the petition with the labor certification. The additional determinations to be made by DOL will encompass whether the Service has notified DOL of a failure to pay liquidated damages and whether the worker has the qualifications to perform the stated services. The Service is providing training to DOL personnel on the issues considered by the Service under its present role in the H–2A petition process. The time savings for the average case under the new system should be at least 3 to 6 days, which is normally consumed by mail notification by DOL to the employer and the employer's filing by mail of the petition with the Service, in addition to the time needed to process the petition by the Service (normally 15 to 21 days). The additional work for DOL presented by the combined process should not adversely impact the H–2A process and should result in a combined reduction of 18 to 27 days in the time taken from initial filing with DOL to completion of petition processing by the Service under the current system.

5. Department of State Notification

The proposed rule was silent on how DOL would notify the Department of State (DOS) of its determinations on the new combined application. One commenter was concerned that DOL is unfamiliar with the current notification process and that the process itself needed improvement. Currently, the Service mails the duplicate copy of the petition (Form I–129) to the consulate selected by the petitioner. Occasionally, when warranted, the Service notifies the consulate by telephone or telefax. The three agencies have now agreed that routine telefax notification from DOL to DOS will assist the efforts to streamline the H–2A process. The agencies are finalizing the internal details to ensure that these notifications are secure. This process should result in an additional 2 to 5 day reduction in obtaining workers through the faster notification to DOS. DOL will notify the Service of approvals for any workers not requiring a visa for admission to the United States. Notification will be either to the port-of-entry or to the Nebraska Service Center for extension of stay or change of status cases.

6. Earlier Filing of H–2A Cases

One commenter expressed a desire to be able to file a request for H–2As earlier than the current process permits to allow for determination before the current "20-day notice in advance of need." DOL regulations currently encourage earlier filing of applications for labor certification. DOL has recently

reduced its minimum lead-time for submission of a labor certification request from 60 days to 45 days (64 FR 34958). This minimum is intended to assist employers by reducing the advance filing requirement to allow them to better determine the dates of need for the services to be performed. This also leaves sufficient time for DOL to make determinations at least 20 days in advance of the date of need for the workers. DOL regulations will still encourage earlier filing. However, DOL is only legally required to issue its determination 20 days in advance of the need and cannot guarantee an earlier issuance. Also, the combined process should realize large savings in time from initial filings to final notifications as previously described.

What Other Change Does This Rule Make?

The Service is authorizing DOL to accept Form I–824, Application for Action on an Approved Application or Petition (or its equivalent), and to process the application when DOL has previously processed a request for temporary agricultural workers on the Service's behalf. The Form I–824 is used to request a change in notification to a consulate or port-of-entry after a petition has been approved. DOL will use an addendum to its proposed Form ETA–9079, which is the ETA–9079M, for this purpose.

What Is the Intended Effect of These Changes?

This rule will provide a more streamlined procedure for the processing of temporary agricultural worker cases (H–2As) from initial submission seeking labor certification to notification of either DOS or the Service for issuance of a visa or status changes, respectively. It simplifies employers' points of contact with the Government by requiring all certification and petition filings to occur with the same agency. It also allows for simultaneous adjudication of DOL and the Service portions of the case. Finally, it provides these benefits to all employers needing H–2A workers.

Currently, a number of employers seek labor certification from DOL but do not follow through by filing an H–2A petition with the Service. The Service and DOL believe that these cases represent situations where an employer was using the system as insurance against not obtaining adequate U.S. workers to perform the needed services. The new procedure will require all users of the H–2A process to file for both DOL and Service benefits.

This rule is designed to benefit employers who do need to hire H–2A temporary workers to perform needed services, by providing ease of use and greatly shortened processing times. The new, streamlined one-stop filing procedure allows an employer to access the Government system in a simplified process that requires less burdensome paperwork and provides faster service.

Effective Date of This Rule

We are publishing this as a delayed effective final rule to allow the Service and DOL time to establish the administrative systems needed to accomplish the electronic capture and transfer of data and funds between the agencies. Also, DOL needs to issue a notice of proposed rulemaking to modify its fee collection process and amount of the fee before the new H–2A process can begin. Delay is further justified to allow for clearance of the Form ETA–9079 joint application for labor certification issuance and petition approval. The Service is also making changes to the H–2A program in a new notice of proposed rulemaking included elsewhere in this issue of the **Federal Register**.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because the regulation is administrative in nature and merely transfers authority to make certain determinations to DOL. Moreover, it does not expand the existing process requirements. Finally, the rule does not involve an increase in fees.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988: Civil Justice Reform.

Paperwork Reduction Act

The information collection requirement addressed in this rule (Form I–129) has been previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers.

Instead of using Form I–129, H–2A petitioners who seek the services of foreign workers must complete Department of Labor Form ETA–9079, Application for Temporary Agricultural Labor Certification and H–2A Petition. The Form ETA–9079 will be submitted by the Department of Labor for OMB approval in accordance with the Paperwork Reduction Act. The effective date of this rule will be adjusted if necessary to make sure that it does not go into effect until that process has been completed.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies).

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.1 is amended by:

a. Revising paragraph (f)(3)(iii)(J); and by

b. Revising paragraph (f)(3)(iii)(W), to read as follows:

§ 103.1 Delegation of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(J) Petitions for temporary workers or trainees and fiancees or fiances of U.S. citizens under § 214.2 and § 214.6 of this chapter, except petitions for temporary agricultural workers (H–2As), which are delegated to the Secretary of Labor.

* * * * *

(W) Revoking approval of certain petitions, as provided in § 214.2 and § 214.6 of this chapter, except petitions for temporary agricultural workers (H–2As), which are delegated to the Secretary of Labor.

* * * * *

3. Section 103.7(b)(1) is amended by adding the entry for "Form ETA–9079" immediately following "Form EOIR–42", to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * * (1) * * *

* * * * *

Form ETA–9079. The fee for filing for a labor certification is designated in 20 CFR 655.100. The fee for filing the Service's petition portion of Form ETA–9079, to classify an agricultural worker as an H–2A nonimmigrant, is $110. The total fee will be the sum of DOL labor certification fee and the Service's fee. There is no additional fee if supplemental Form(s) ETA–9079W is filed with Form ETA–9079. A fee of $120 is required to file supplemental Form ETA–9079M (the equivalent to Form I–824).

* * * * *

PART 214—NONIMMIGRANT CLASSES

4. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

5. Section 214.1 is amended by:

a. Removing the reference to "H–2A," from the first sentence in paragraph (c)(1); and by

b. Adding a new sentence immediately after the first sentence in paragraph (c)(1) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(1) * * * An employer seeking extension of services for an H–2A must petition on Form ETA–9079 and ETA–9079W and file with the Department of Labor. * * *

* * * * *

6. Section 214.2 is amended by:

a. Revising paragraphs (h)(2)(i)(A), (B), (D), and (E);

b. Revising paragraphs (h)(2)(iii), (iv), and (v);

c. Revising paragraphs (h)(5)(i)(A), (B), (C), and (D);

d. Revising paragraph (h)(5)(ii);

e. Revising paragraph (h)(5)(iv)(B);

f. Revising paragraph (h)(5)(v);

g. Revising paragraph (h)(5)(ix);

h. Adding paragraph (h)(9)(i)(C);

i. Revising paragraph (h)(9)(ii)(C);

j. Revising paragraphs (h)(10)(ii) and (iii);

k. Revising paragraph (h)(11)(i);

l. Revising paragraph (h)(11)(ii);

m. Revising paragraph (h)(11)(iii)(A) introductory text and paragraph (h)(11)(iii)(B);

n. Revising paragraph (h)(12)(i);

o. Revising paragraph (h)(13)(i)(A);

p. Revising paragraph (h)(14);

q. Revising paragraph (h)(16)(ii); and by

r. Revising paragraph (h)(18), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) *General.* Except as provided in this section, even in emergency situations, a United States employer seeking to classify an alien as an H–1B, H–2B, or H–3 temporary employee must file a petition on Form I–129, Petition for Nonimmigrant Worker, with the service center which has jurisdiction in the area where the alien will perform services or receive training. A United States employer seeking to classify an alien as an H–2A worker must file a petition on Department of Labor (DOL) Form ETA–9079, Application for Temporary Agricultural Labor Certification and H–2A Petition, only with the DOL Regional Administrator having jurisdiction in the area where the alien will first perform services (see 20 CFR 655, Subpart B). All petitions for temporary workers, except petitions for temporary agricultural workers (H–2As), in Guam and the Virgin Islands, and petitions involving special filing situations as determined by Service Headquarters, must be filed with the local Service office or a designated Service office. Petitions for temporary agricultural workers (H–2A) in Guam and the Virgin Islands must be filed with the DOL Regional Administrator having jurisdiction. The petitioner may submit a legible photocopy of a document in support of the petition in lieu of the original document. However, the original document must be submitted if requested by the Service.

(B) *Service or training in more than one location.* A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office that has jurisdiction over petitions in the area where the petitioner is located, or in the case of H–2As, it must be filed with the DOL Regional Administrator having jurisdiction over the location where services will be performed first. The address that the petitioner specifies as its location on the petition must be where the petitioner is located for purposes of this paragraph.

* * * * *

(D) *Change of employers. (1)* If the alien is in the United States and seeks to change employers, the prospective new employer (except in the case of H–2As) must file a petition on Form I–129, with the fee required in § 103.7(b)(1) of this chapter, requesting classification and extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay must conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. The

alien is not authorized to begin the employment with the new petitioner until the petition is approved.

(*2*) [Reserved]

(*3*) An H–1A nonimmigrant alien may not change employers.

(E) *Amended or new petition.* The petitioner must file an amended or new petition, with fee, with the Service Center or, in the case of H–2A workers, with the DOL Regional Administrator where the original petition was filed, to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition. An amended or new H–1A, H–1B, or H–2B petition must be accompanied by a current or new DOL determination. An H–2A petition must be filed with a valid labor certification or an application for the certification. In the case of an H–1B petition, this requirement includes a new labor condition application.

* * * * *

(iii) *Named beneficiaries.* Nonagricultural petitions must include the names of beneficiaries and other required information at the time of filing. Under the H–2B classification, exceptions may be granted in emergency situations involving multiple beneficiaries at the discretion of the Service Center Director, and in special filing situations as determined by the Service's Headquarters. If all of the beneficiaries covered by an H–2B labor certification have not been identified at the time a petition is filed, multiple petitions naming subsequent beneficiaries may be filed at different times with a copy of the same labor certification. Each petition must reference all previously filed petitions for that labor certification. An H–2A petition may contain both named and unnamed beneficiaries and must agree in total number of positions with the labor certification request. The H–2A petition does not need to agree in total number when seeking an extension of stay for H–2A beneficiaries in the United States.

(iv) *Substitution of beneficiaries.* Beneficiaries may be substituted in H–2B petitions that are approved for a group, or H–2B petitions that are approved for unnamed beneficiaries, or approved H–2B petitions where the job offered to the alien(s) does not require any education, training, and/or experience. To request a substitution, the petitioner must, by letter and a copy of the petition approval notice, notify the consular office where the alien will apply for a visa or the port-of-entry where the alien will apply for admission. Where evidence of the qualifications of beneficiaries is required in petitions for unnamed beneficiaries, the petitioner must also submit such evidence to the consular office or port-of-entry prior to issuance of a visa or admission. (See paragraph (h)(5) of this section for substitution of H–2A beneficiaries.)

(v) *H–2A petitions.* Special criteria for admission, extension, maintenance of status, and substitution of beneficiaries apply to H–2A petitions and are specified in paragraph (h)(5) of this section. The other provisions of § 214.2(h) apply to H–2A only to the extent that they do not conflict with the special agricultural provisions in paragraph (h)(5) of this section.

* * * * *

(5) * * *

(i) * * *

(A) *General.* An H–2A petition must be filed on Form ETA–9079 with the DOL Regional Administrator having jurisdiction over the area of employment and be accompanied by the filing fee specified in § 103.7(b)(1) of this chapter. An H–2A petition may be filed by either the employer listed on the certification application, the employer's agent, or the association of United States agricultural producers named as a joint employer on the certification application.

(B) *Multiple beneficiaries.* The total number of beneficiaries of a petition must equal the number of workers indicated on the application for labor certification, except when the petitioner is seeking an extension of stay for H–2A beneficiaries in the United States. A petition can include more than one beneficiary even when all beneficiaries will not obtain a visa at the same consulate or are not required to have a visa and will not apply for admission at the same port-of-entry. A petition may also include beneficiaries seeking change of status or extension of stay.

(C) *Identification of beneficiaries.* The sole beneficiary of an H–2A petition must be named in the petition. All beneficiaries located in the United States must be named in the petition. The total number of unnamed beneficiaries must be shown on the petition. Names of beneficiaries located outside of the United States may be included on the petition, but are not required to be identified until application for visa issuance from the Department of State.

(D) *Evidence.* An H–2A petitioner must show that the proposed employment qualifies as a basis for H–2A status, and that any named beneficiary satisfies any qualifications for that employment. A petition will be automatically denied if filed without the initial evidence required in paragraph (h)(5)(v) of this section for each named beneficiary.

* * * * *

(ii) *Effect of the labor certification process.* The temporary agricultural labor certification process determines whether employment is for a temporary or seasonal agricultural worker, whether it is open to U.S. workers, if qualified U.S. workers are available, the adverse impact of employment of a qualified alien, and whether employment conditions, including housing, meet applicable requirements. In petition proceedings, a petitioner must establish that the employment and beneficiary meet the requirements of paragraph (h)(5) of this section.

* * * * *

(iv) * * *

(B) *Effect of permanent labor certification application.* Employment will be found not to be temporary or seasonal where an application for permanent labor certification has been filed for the same alien, or for another alien to be employed in the same position, by the same employer or by its parent, subsidiary or affiliate. This can be overcome only by the petitioner's demonstration that there will be at least a 6 month interruption of employment in the United States after H–2A status ends.

(v) The beneficiary's qualifications—

(A) *Eligibility requirements.* An H–2A petitioner must establish that any named beneficiary met the stated minimum requirements and was fully able to perform the stated duties when the application for certification was filed. It must be established at the time of application for an H–2A visa, or for admission if a visa is not required, that any unnamed beneficiary either met these requirements when the certification was applied for or passed any certified aptitude test at any time prior to visa issuance, or prior to admission if a visa is not required.

(B) *Initial evidence of employment/job training.* A petition must be filed with evidence that at the time of filing the named beneficiary met the certification's minimum employment and job training requirements. Initial evidence must be in the form of the past employer's detailed statement or actual employment documents, such as company payroll or tax records. Alternately, a petitioner must show that such evidence cannot be obtained, and submit affidavits from people who worked with the beneficiary that demonstrate the claimed employment.

(C) *Initial evidence of education and other training.* A petition must be filed with evidence that at the time of filing each named beneficiary met the certification's minimum post-secondary education and other formal training requirements. Initial evidence must be in the form of documents, issued by the relevant institution or organization, that show periods of attendance, majors, and degrees or certificates accorded.

* * * * *

(ix) *Substitution of beneficiaries after admission.* An H–2A petition may be filed with the DOL Regional Administrator to replace H–2A workers whose employment was terminated early. The petition must be filed with a copy of the labor certification, a copy of the approval notice covering the workers for whom replacements are sought, and other evidence required by paragraph (h)(5)(i)(D) of this section. It must also be filed with a statement giving each terminated worker's name, date and country of birth, termination date, and evidence the worker has departed the United States. A petition for a replacement may not be approved when the requirements of paragraph (h)(5)(vi) of this section have not been met. A petition for replacements does not constitute the notice to the Service that an H–2A worker has absconded or has ended authorized employment more than 5 days before the relating certification expires.

* * * * *

(9) * * *

(i) * * *

(C) For H–2As, the Department of Labor will issue a notice of petition approval as part of its notification of labor certification approval. The notice will conform with paragraph (h)(9)(i)(A) of this section.

(ii) * * *

(C) If the period of services or training requested by the petitioner exceeds the limit specified in paragraph (h)(5)(vii), or (h)(9)(iii) of this section, the petition will be approved only up to the limit specified in that paragraph.

* * * * *

(10) * * *

(ii) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director, or the DOL Regional Administrator in the case of H–2A petitions, must notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice (7 days for H–2A petitions) in which to do so. All relevant rebuttal material will be considered in making a final decision.

(iii) *Notice of denial.* The petitioner must be notified of the reasons for the petition denial, and of the right to appeal the denial of the petition under 8 CFR part 103, and in the case of H–2A petitions, under the rules established by DOL in 20 CFR 655, subpart B. There is no appeal from a decision to deny a change of status or an extension of stay to the alien.

(11) * * *

(i) *General.*

(A) The petitioner must immediately notify the Service (or the DOL Regional Administrator for H–2As) of any changes in the terms and conditions of employment of a beneficiary that may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. An amended petition on Form I–129, or on Form ETA–9079 in the case of H–2A workers, must be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner must send a letter notifying the director or the Regional Administrator who approved the petition.

(B) The director or the Regional Administrator who approved the petition may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner goes out of business or files a written withdrawal of the petition. No notice to the petitioner is required.

(iii) * * *

(A) *Grounds for revocation.* The director (or the DOL Regional Administrator in the case of H–2A workers) must send to the petitioner a notice of intent to revoke the petition, or relevant part of the petition, if he or she finds that:

* * * * *

(B) *Notice and decision.* The notice of intent to revoke must contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director or the DOL Regional Administrator must consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition must remain approved and a revised approval notice must be sent to the petitioner with the revocation notice.

(12) * * *

(i) *Denial.* A petition (other than an H–2A petition) denied in whole or in part by the Service may be appealed under 8 CFR part 103. In the case of an H–2A petition, the appeal must be filed with DOL concurrently with the appeal of the denial of a labor certification (or if the certification was not denied, within 30 days) under the rules established by DOL in 20 CFR 655 subpart B.

* * * * *

(13) * * *

(i) * * *

(A) A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition. (See paragraph (h)(5)(viii) of this section for admission and limits on admission for H–2As.)

* * * * *

(14) *Extension of petition validity.* Except with respect to H–2A petitions, the petitioner must file a request for a petition extension on Form I–129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act. Supporting evidence is not required unless requested by the director. A request for a petition extension may be filed only if the validity of the original petition has not expired. (See paragraph (h)(5)(x) of this section for extension requirements for H–2A petitions.)

* * * * *

(16) * * *

(ii) *H–2A, H–2B, and H–3 classification.* The approval of a permanent labor certification, or the filing of a preference petition for an alien currently employed by or in a training position with the same petitioner, may be a reason, by itself, to deny a petition extension request and the alien's extension of stay.

* * * * *

(18) *Use of approval notice, Form I–797 and DOL notification.* The Service must notify the petitioner on Form I–797 whenever a petition, an extension of a petition, or an alien's extension of stay is approved under the H classification (except with respect to H–2A). DOL must notify the petitioner as part of its certification notice whenever an H–2A petition or an extension of a petition is approved by a Regional Administrator. The beneficiary of an H petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port-of-entry to facilitate entry into the United States. A beneficiary who is required to present a

visa for admission and whose visa will have expired before the date of his or her intended return may use a copy of Form I–797 or DOL notification to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I–797 or DOL notification must be retained by the beneficiary and presented during the validity period of the petition when re-entering the United States to resume the same employment with the same petitioner.

* * * * *

Dated: July 5, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–17598 Filed 7–12–00; 8:45 am]

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DEPARTI

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[INS No. 2

RIN 1115–

Procedur Agricultu by the Se

AGENCY: I Service, J

ACTION: P

SUMMARY: amend th Naturaliz regulation agricultur The prop workers t change of provides including of status Departme provides petition f a part of a will furth petitionin published

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DATES: W submitted

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SUPPLEME

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, 248, and 264

[INS No. 2059–00]

RIN 1115–AF29

Procedures For Processing Temporary Agricultural Worker (H–2A) Petitions by the Secretary of Labor

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend the Immigration and Naturalization Service (Service) regulations regarding the temporary agricultural worker (H–2A) program. The proposed rule requires alien workers to sign a petition request for change of status or extension of stay; provides that all petition requests including extension of stay and change of status petitions must be field with the Department of Labor (DOL); and provides that the current Service petition fee will be collected by DOL as a part of a combined fee. These changes will further streamline the H–2A petitioning process. (See the final rule published elsewhere in this issue of the FEDERAL REGISTER in which the Attorney General has delegated the authority to adjudicate petitions for H–2A workers to the Secretary of Labor.)

DATES: Written comments must be submitted on or before August 14, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 2059–00 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Bert Rizzo, Supervisory Immigration Adjudications Officer, Programs Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4213, Washington, DC 20536, telephone (202) 307–8996.

SUPPLEMENTARY INFORMATION:

What is an H–2A petition?

The Immigration and Nationality Act (Act) provides for an employer to seek the services of foreign workers to perform temporary or seasonal agricultural services in the United States. These temporary agricultural workers are known as H–2A workers.

What Changes Does This Rule Make?

Under this proposed rule, the DOL would accept additional forms and fees associated with the H–2A program on the Service's behalf. The DOL would forward petitions requesting extension of stay or change of status to the Service for adjudication of those portions of the petitions. For example, the DOL would accept Service Forms I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, and Froms I–539, Application to Extend/Change Nonimmigrant Status, that are filed concurrently with the DOL's Form ETA–9079. Service Forms I–102 are sometimes filed by H–2A workers or their dependents to replace a Form I–94, Arrival-Departure Record. Forms I–539 are sometimes filed by accompanying dependents who need a change of nonimmigrant status or extension of stay to remain with the principal H–2A worker. The DOL would accept these forms and fees on the Service's behalf, and would forward them to the Service for adjudication after the ETA–9079 decision is made.

Are There Any Other Requirements Being Imposed?

Yes, the proposed regulation requires an alien worker who seeks a change of status or extension of stay as an H–2A worker to sign the application for this purpose. This requirement demonstrates the alien's assent to his or her benefit request ensuring that the alien has taken the legal responsibility for the information entered on the form concerning the alien, and that the alien is a responsible party to the request for extension of stay or change of nonimmigrant status.

What About Short Term Extensions of Employment?

Where an employer needs a short term extension of the employment period for up to 14 days, the existing procedure allows for the employer to obtain an extension of the petition authorization by filing a Form 1–129. The DOL provides an automatic co-extension of the underlying labor certification if the petition is approved. The proposed procedure provides that an automatic grace period of 14 days or the length of the labor certification if issued for less than 14 days, be added to the validity date of the approved labor certification and petition if the H–2A petition is approved. No separate application or fee is required to receive this grace period. Any extension of the employer's need beyond the initially authorized period (which includes the grace period) requires that a petition and application for labor certification be filed with the DOL along with an application to extend the alien's temporary stay. The Service requests comments on this change.

Is There Any Change in the Fee Required for the Service's Petition Portion of the H–2A Process?

No; the Service will not change the fee requirement for the petition at this time. The current fee charged for the Form I–129 will be charged as part of the combined fee for the DOL's new Form ETA–9079 ($110 plus the DOL fee). The Service will collect no separate fee for the adjudication of changes of status or extensions of stay at this time. The Service does conduct periodic reviews of its fees in order to ensure that the cost to the Service for adjudication of benefit applications and petitions is recovered. These reviews are scheduled every 2 years. The existing fee will be reevaluated during those periodic reviews and adjusted accordingly.

Is There Any Change in the Requirement to Report Workers Who Depart Before Completing the Services Requested?

The Service has required employers to report alien workers who abscond or leave their employment more than 5 days in advance of the completion of the stated employment period. The employer must make this report within 24 hours, and in order to avoid paying a liquidated damage, must establish that the worker departed from the United States or found other authorized status. The proposed rule requires this same reporting but specifies that the report be made to the Nebraska Service Center. This Center will handle all aspects of the H–2A process for the Service. The Service requires compliance with this reporting requirement in order to provide meaningful data on violations of the H–2A employment program, and to help ensure that employers do everything possible to assist the Service in ensuring the departure of these workers from the United States.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors: The regulation is administrative in nature and merely transfers authority to make certain determinations to the DOL. It does not

expand the existing process requirements. The interim rule does not involve an increase in fees. The number of Form I–129 petitions filed in the past few years has ranged from 1,400 to 4,000.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effective on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of poser and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 12132, it is determined tat this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 264

Reporting and recordkeeping requirement.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 would continue to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

Section 214.1 is amended by adding a new sentence at the end of paragraph (c) (2), to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(2) * * * A Form I–539 filed for dependents of an H–2A seeking extension(s) of stay must be filed along with the ETA–9079, and ETA–9079W, with the Department of Labor.

* * * * *

3. Section 214.2 is amended by:

a. Adding paragraph (h)(2)(i)(D)(*2*);

b. Revising paragraph (h)(5)(vi)(A);

c. Revising paragraphs (h)(5)(vii) and (h)(5)(x);

d. Revising paragraph (h)(9)(ii)(B);

e. Revising the parenthetical phrase at the end of paragraph (h)(14); and by

f. Revising paragraph (h)(15)(ii)(C), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(D) * * *

(*2*) A prospective new employer of H–2A workers must file a petition and a request for labor certification, if needed, on Form ETA–9079, with the appropriate fee specified in § 103.7(b)(1) of this chapter. Each named beneficiary must sign an individual request for extension of stay, if extension of that individual's stay is required, on Form ETA–9079W (Named Alien Addendum), along with the employer's application to the DOL. The Service fee submitted with the Form ETA–9079 includes processing of the petition for classification as an H–2A agricultural worker and for change(s) of nonimmigrant status to H–2A and extension(s) of stay. There is no separate direct fee for filing Form ETA–9079W (Named Alien Addendum) for change(s) of status and extension(s) of stay.

* * * * *

(5) * * *

(vi) *Petition agreements*—

(A) *Consent and liabilities.* In filing an H–2A petition, a petitioner and each employer consents to allow the Government access to the site where the labor is being performed for the purpose of determining compliance with H–2A requirements. The petitioner further agrees to notify the Nebraska Service Center, by overnight delivery service or overnight mail within 24 hours, if an H–2A worker absconds, or if the authorized employment ends more than 5 days before the relating certification document expires, and to pay liquidated damages of $10 for each instance where the petitioner cannot demonstrate compliance with this notification requirement. The petitioner also agrees to pay liquidated damages of $200 for each instance where the petitioner cannot demonstrate that its H–2A worker either departed the United States or obtained other authorized status during the period of admission of within 5 calendar days of early termination that is based upon the expiration date of the labor certification, whichever comes first.

* * * * *

(vii) *Validity.* An approved H–2A petition is valid through the expiration of the relating certification, plus 14 days (or the length of the labor certification if less than 14 days), for the purpose of allowing a beneficiary to seek issuance of an H–2A nonimmigrant visa, admission, change of status, or an extension of stay for the purpose of engaging in the specific certified employment.

* * * * *

(x) *Petition extensions.* All employers have received an automatic extension of an H–2A petition for 14 days (or the length of the labor certification if less than 14 days) as part of the initial approval. If the employer requests an extension beyond the initial petition validity, the employer must file a request for an H–2A petition extension with an application for an extension of a labor certification, with the DOL Regional Administrator on Form ETA–9079, including the fee specified in § 103.7(b)(1) of this chapter. For

extensions of stay for individual beneficiaries, see paragraph (h)(15) of this section.

* * * * *

(9) * * *

(ii) * * *

(B) If a new H petition is approved after the date the petitioner indicates that the services or training will begin, the approved petition and approval notice will show a validity period commencing with the date of approval and ending with the date requested by the petitioner, as long as that date does not exceed either the limits specified by paragraph (h)(5)(vii), or (h)(9)(iii) of this section, or other Service policy.

* * * * *

(14) * * * (See paragraph (h)(5)(x) of this section for extension requirements for H–2A petitions.)

(15) * * *

(ii) * * *

(C) *H–2A or H–2B extension of stay.* An extension of stay for an alien in H–2A status must be requested on Form ETA–9079W (Named Alien Addendum). It must be submitted concurrently with a petition filed by the employer on the alien's behalf with the DOL on Form ETA–9079. The DOL will forward the extension requests to the Nebraska Service Center for adjudication. An extension of stay for the beneficiary of an H–2A petition is included in the Form I–129 petition extension request. An extension of stay for the beneficiary of an H–2A or H–2B petition may be authorized for the validity of the labor certification and approved petition or for a period of up to 1 year, except as provided for in paragraph (h)(5)(x) of this section. The alien's total period of stay as an H–2A or H–2B worker may not exceed 3 years, except in the Virgin Islands where the alien's total period of stay may not exceed 45 days.

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

4. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

5. Section 248.3 is amended by:

a. Removing the reference to "H–2A," from the first sentence in paragraph (a);

b. Revising the first sentence of paragraph (b);

c. Adding a new sentence immediately after the first sentence of paragraph (b);

d. Redesignating paragraph (c) as paragraph (d); and by

e. Adding a new paragraph (c), to read as follows:

§ 248.3 Application.

* * * * *

(b) * * * Any nonimmigrant, except an H–2A, who desires a change of status to any other nonimmigrant classification, other than those listed in paragraph (a) of this section, or to E–1 or E–2 classification as the spouse or child of a principal E–1 or E–2, must apply for a change of status on Form I–539. A Form I–539 application filed by a dependent of an H–2A must be submitted along with the fee specified in § 103.7(b)(1) of this chapter, to the Department of Labor if filed at the same time as an ETA–9079, or submitted to the Nebraska Service Center, if filed at any other time. * * *

(c) *Change of status on Form ETA–9079W.* Any nonimmigrant seeking a change of status to H–2A must apply for that change on Form ETA–9079W. The application must be filed with the Form ETA–9079 filed by the prospective employer of the nonimmigrant. All Forms ETA 9079 and ETA 9079W are submitted to the Department of Labor, along with the fee specified in § 103.7(b)(1) of this chapter.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

6. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

7. Section 264.6 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 264.6 Application for an initial or replacement Form I–94, Nonimmigrant Arrival-Departure Document, or Form I–95, Crewmen's Landing Permit.

(a) * * * An application filed by an H–2A or the dependent of an H–2A must be submitted along with the fee specified in § 103.7(b)(1) of this chapter, to the Department of Labor, if filed at the same time as an ETA–9079, or submitted to the Nebraska Service Center, if filed at any other time.

* * * * *

Dated: June 9, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–17640 Filed 7–12–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB23

Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Delegation of Authority to Adjudicate Petitions

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the Employment and Training Administration (ETA) regulations to implement the delegation of authority to adjudicate petitions for temporary nonimmigrant agricultural workers (H–2A's) from the Department of Justice/Immigration and Naturalization Service (INS) to the United States Department of Labor (DOL or Department). Among the implementation measures is a new Form ETA 9079, *Application for Temporary Agricultural Labor Certification and H–2A Petition*, which consolidates two current forms, ETA 750 (Application for Alien Employment Certification) and INS I–129 (Petition for Nonimmigrant Workers) for use in the H–2A program. This form is set forth as an appendix to a proposed rule published simultaneously with this final rule to implement a new fee schedule. The proposed rule requests comments on the form in accordance with the Paperwork Reduction Act. This rulemaking further implements the delegation of authority, from INS to DOL, to hear appeals on determinations and to revoke petition approvals. The INS delegation is also published simultaneously in the **Federal Register**, together with a proposed rule regarding collection of the INS fee by DOL. The rule does not affect INS authority to make determinations at the port-of-entry of an alien's admissibility to the United States, to make determinations of an alien's eligibility for change of nonimmigrant status, or to make determinations of an alien's eligibility for extension of stay. This rule streamlines existing H–2A processes to make it more efficient for petitioners seeking the admission of temporary agricultural workers without diminishing the workplace rights of U.S. workers or foreign workers admitted under the program.

DATES: *Effective Date:* This final rule is effective November 13, 2000. Affected parties do not have to comply with the information and recordkeeping requirements in §§ 655.101(a)(1), 655.101(a)(2) and 655.101(h), until the Department publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210. Telephone: (202) 219–4369 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Changes

ETA published a proposed a rule on October 2, 1998, which included a proposal to delegate from INS to DOL authority to adjudicate certain temporary agricultural worker (H–2A) petitions. 63 FR 53244. As proposed, INS would delegate authority to ETA to adjudicate H–2A petitions for alien beneficiaries located outside of the United States. Under that proposal, INS would have continued to adjudicate petitions in those relatively few instances when the alien beneficiaries are located within the United States. The INS published a proposed rule to delegate this authority to DOL on December 7, 1998 (63 FR 6743).

INS is concurrently publishing a final rule implementing its delegation of petition and revocation authority to ETA. The INS rule addresses changes in its regulations necessary to effectuate this delegation and guide ETA in the exercise of its delegated authority to grant and revoke petitions. This final rule implements the delegation from INS. The process is being modified to require all H–2A petitions to be filed with ETA, hereafter the sole recipient of H–2A petitions. Requests for change of status and extension of stay for individual aliens already present in the United States made on the Form ETA 9079 at the time the H–2A petition is filed will be forwarded to INS by ETA so that INS can adjudicate the requests for extension of stay or change of status.

H–2A petition revocation authority also is being delegated to ETA as a natural extension of the adjudication process. INS currently confers that authority upon the person who was responsible for the initial determination. Granting to ETA INS revocation authority allows ETA to reexamine its original decision based on evidence sufficient to consider petition revocation using INS criteria found in 8 CFR 214.2.

Administrative appeals of petition denials and determinations to revoke petitions are also being delegated to DOL. Appeals of determinations made by ETA on petitions and revocations of H–2A petitions based on existing INS criteria will be decided by the Department's Office of Administrative Law Judges (OALJ). The OALJ is separate from the agency (ETA) making determinations on temporary agricultural labor certification applications, petitions, and revocation of petitions. The OALJ has the necessary separation of function and authority to allow for independent, impartial determinations from ETA. This administrative review process is similar to INS' separation of field office determinations and its Administrative Appeals Unit (AAU).

To implement the delegation of authority and to further streamline the H–2A process, ETA is developing a form that will allow the employer to submit a consolidated application that includes all the information concerning the application for certification and the petition. This new Form ETA 9079 will replace the current Form ETA 750 (Application for Alien Employment Certification), and Form I–129 (Petition for a Nonimmigrant Worker) for those employers seeking temporary agricultural workers under the H–2A program. This consolidated form will eliminate the need to submit multiple forms to multiple agencies and greatly reduce the paperwork burden associated with the H–2A program. Form ETA 9079 is incorporated as an appendix to a proposed rule separately published in the **Federal Register** as discussed below, and is available for public comment in accordance with the Paperwork Reduction Act.

The delegation of authority to the Department from INS also includes the authority to process applications from employers involving changes in the Consulate designated on a petition, to process requests for changes in the designation of the port of entry for aliens entering without visas, and requests for duplicate notices after a decision notice has been sent. Such applications must be filed with the Department on the ETA 9079M, Visa Issuance Change Addendum. The ETA 9079M is functionally equivalent to the I–824 that has been used by INS to

process changes in the Consulates and ports of entry designated on approved petitions.

ETA also publishes today a notice of proposed rulemaking to address issues concerning fees associated with both H–2A labor certification and H–2A petitions.

The changes made by this rule are a logical outgrowth of ETA's October 2, 1998, proposed rule (63 FR at 53244 and 53248), as well as INS' December 7, 1998, proposed rule (63 FR 67431). In any event, the changes from the ETA notice of proposed rulemaking are rules of agency procedure exempt from the requirements of the Administrative Procedure Act requiring notice of proposed rulemaking. See U.S.C. 553(b)(A). These changes merely affect the administration of the H–2A program without making material changes to or modifying any substantive requirements of the petition process.

The effect of this and the INS rule will be to greatly simplify the process H–2A users must use when seeking H–2A certification and petition adjudication. Instead of seeking a determination from two agencies on virtually the identical factual criteria, only one agency will be involved in the determinations. Instead of submitting two forms with redundant information, only one will be required: a combined H–2A certification application and H–2A petition. Finally, the time necessary to make determinations on labor certification and petitions will be greatly reduced, potentially eliminating weeks from the process.

Discussion of Comments

ETA received thirty-six comments on the proposed rule. Seventeen comments addressed the proposed delegation of petition authority from INS to ETA. The comments were from agricultural employer associations, farmworker advocacy organizations, State agencies, the American Immigration Lawyers Association (AILA), two private attorneys and one ETA regional office. Most commenters were generally supportive of the delegation. Some commenters raised concerns about the revised petition process and questioned whether or not the process, in fact, would result in less paperwork and a more efficient certification and petition process. AILA was opposed to the delegation. The specific comments are addressed below.

1. Comments on the Delegation of H–2A Petition Determination From INS to ETA

Four agricultural employer organizations commented on the proposal to delegate adjudication of the H–2A petition from INS to ETA. The Florida Fruit and Vegetable Association (FFVA) stated that it believed the delegation would "greatly expedite the grower's ability to receive the H–2A workers in a timely manner." The National Council of Agricultural Employers (NCAE) strongly supported the intent of the delegation but emphasized the need for combining the H–2A labor certification and petition into a single document and indicated that DOL and INS should issue a proposal in the **Federal Register** setting forth the precise regulation and procedures for public comment. In a similar vein the American Farm Bureau Federation urged the Department to withdraw the delegation proposal until the Department and INS have worked out the procedures and developed the forms so that an employer can file one form which will serve as a certification application and petition, ensuring that the certification also constitutes the visa approval decision. The New England Apple Council, a major user of the H–2A program, stated that the proposed delegation could make good common sense but also indicated that a more detailed proposal should be published so that it could comment intelligently, and emphasized the need for combining the H–2A labor certification and H–2A petition. This rule and the proposed rule published in this edition of the **Federal Register** have incorporated a combined form concept.

The Farmworker Justice Fund (FJF) opposed the delegation on the basis that the Department should institute a wide-ranging review and comprehensive approach to improving the administration of the H–2A program. FJF further stated that the delegation should be accomplished only after the Department addresses worker needs identified by FJF and the informational and data collection failings identified by the General Accounting Office.

Several State agencies commented on the delegation. Four States—Texas, Arizona, New Jersey, and Nevada—asserted that additional funding was needed for the regional offices performing the new function. A transfer of funds from INS to ETA to perform the new petition functions will address this concern. Three States—Washington, Idaho, and Kentucky—supported the delegation and stated it would result in reduced time needed for employers to obtain foreign workers. One State—Ohio—"guardedly" agreed with the change but expressed reservation because the proposed delegation may result in more work for State agencies, which are underfunded. AILA and two private attorneys expressed the greatest opposition to the proposal. They questioned the Department's capability to adjudicate visa petitions for a variety of reasons.

2. Combined Form

As indicated above the development of a combined labor certification and H–2A petition form discussed in the October 1998, Notice of Proposed Rulemaking (63 FR at 53246) were extremely important to some of the commenters. They were concerned in view of delays that employers have experienced in obtaining labor certifications, that sequential processing of two forms by DOL would lead to lengthening the time to complete the process necessary to obtain nonimmigrant H–2A workers. Extensive discussions have taken place between ETA and INS on the development of a combined H–2A labor certification and petition, which would enable the DOL to make a determination on both the labor certification and H–2A petition based on submission of a properly completed form and supporting documentation. Since most petitions are filed on behalf of unnamed aliens and most job opportunities involving named aliens require little or no skill, it would be an extremely rare occurrence that a certification would be issued and the H–2A petition would be denied. Further, it should also be recognized, as pointed out in the NPRM published today concerning fees for the H–2A labor certification and petition, that historically the denial rate for labor certifications has been low. The new Form ETA 9079, Application for Temporary Agricultural Labor Certification and H–2A Petition, will replace Form ETA 750 and INS Form I–129 for all H–2A filings. Whenever the employer is petitioning for named aliens the 9079W, an addendum to Form ETA 9079, must be completed and the Department will determine whether the aliens qualify for the proposed employment. Further, as explained in the proposed rule, requests to change nonimmigrant status or for extension of stay for named beneficiaries will be made on the form 9079W and will be sent to INS, which will continue to make determinations about the named beneficiaries' eligibility to change nonimmigrant status or eligibility for extension of stay. The new Form ETA 9079 is incorporated as an appendix to the proposed rule being published today and is available for public comment in accordance with the Paperwork Reduction Act.

3. Countervailing Evidence

As pointed out in the concurrently published INS final rule, INS' role in H–2A petition processing is limited. Most H–2A petitions are filed before the petitioner has identified or named the H–2A workers (beneficiaries) to be admitted. INS reviews the certification determinations made by ETA, and determines that the petitioner is making a valid job offer and that any INS assessed liquidated damages have been paid. Liquidated damages are assessed to an employer who fails to notify INS of the departure of H–2A workers from the United States or when the employer cannot establish that H–2A workers who have left employment have obtained other legal status. See 8 CFR 214.2(h)(5)(vi). The overwhelming majority of applications for temporary agricultural labor certifications and H–2A petitions are for unnamed aliens. In the rare cases with named beneficiaries, INS reviews the ability of the beneficiary to perform the needed temporary services. Also in rare cases, INS reviews countervailing evidence on the availability of U.S. workers to perform needed services under 8 U.S.C. 1101(a)(15)(H)(ii).

Three commenters indicated that the provision in the INS regulations which permits the filing of a petition with countervailing evidence with INS should be retained. In delegating adjudication of petition authority to the Secretary, INS has determined that a separate review concerning the availability of U.S. workers is unwarranted. ETA will make the labor certification and petition determination concurrently and administrative-judicial review of these determinations will be available through the existing appeal process before the Department of Labor Office of Administrative Law Judges. An additional review by INS would be redundant.

DOL and INS are establishing a mechanism to notify ETA of any unpaid liquidated damage claims, in order for ETA to consider this factor in its adjudication of the petition.

4. ETA Capabilities

Several commenters opposed the proposal due to concerns about ETA's ability to perform its current function in a timely manner. The INS and ETA believe that the new, consolidated process is not complex. Only rarely will ETA be required to make additional findings or consider additional evidence. The additional determinations to be made by ETA will encompass whether INS has notified ETA of a failure to pay liquidated damages. If a named beneficiary(ies) is included with the petition, ETA will determine whether the worker has the qualifications to perform the stated services. Knowledge of all areas of immigration law alluded to by AILA and some individual attorneys is not necessary to address the limited issues normally arising in the adjudication of H–2A petitions. Further, DOL and INS will be providing training to ETA personnel on the issues considered by INS under its current role in the H–2A process.

Finally, the processing time for the overwhelming majority of cases should be reduced substantially. Currently, three to six days are normally consumed by mail notification from ETA to the employer and the employer's subsequent H–2A petition filing with INS. INS then takes two to three weeks to process the petition. The additional work presented by the combined form and adjudication process should not adversely impact the H–2A process for ETA. The new process should result in a reduction from the current process of at least two to three weeks in the time taken from initial filing with ETA to completion of the certification and petition process. This is a very substantial time saving in a process that now commonly commences only 45 days before the "date of need." ETA is continuing to explore additional means for streamlining the H–2A nonagricultural labor certification program.

Some commenters expressed concern about the resources available to DOL to take on the additional responsibilities associated with processing visa petitions. The Department as explained in the NPRM concerning the fee issues published concurrently with this rule, will be collecting the petition fee on behalf of INS and will be reimbursed by INS for the costs it incurs in processing H–2A petitions.

5. Changes in Consulate or Port of Entry and Requests for Duplicate Approval Notices

In the interests of further simplifying the petition process INS has also delegated to ETA the responsibility of processing the small number of requests involving changes in the Consulate or port of entry (for aliens entering without visas) designated on the petition when it was approved, and to respond to requests for duplicates of approval notices. To make such requests the employer shall file the ETA Form 9079M, Visa Issuance Change Addendum, with the $120.00 fee currently required by INS to process an I–824, Application for Action on an Approved Application or Petition. The ETA 9079M is functionally equivalent to the I–824. The Department would, as explained in the above mentioned NPRM, collect the fee on behalf of INS and be reimbursed by INS for its costs in processing requests to make changes in the Consulates or port of entry that were designated on the approved H–2A petition.

6. Notification of State Department

Two attorneys raised concerns about notifying the Department of State (DOS) about approvals of H–2A petitions. This issue is fully addressed in the final rule transferring authority to adjudicate visa petitions concurrently published in the **Federal Register** by INS. As explained in INS' final rule, currently, the INS mails the duplicate copy of the H–2A petition to the consulate selected by the petitioner. Occasionally, when warranted, the INS notifies the consulate by telephone or telefax. The three agencies have now agreed that routine telefax notification from DOL to DOS will assist in streamlining the H–2A process and are finalizing the internal details to ensure that such notifications are secure. Telefax notification should result in an additional 2 to 3 days reduction in obtaining workers.

7. Certification 30 Days Before Date of Need

The regulations are amended to conform to Public Law 106–78, sec. 748, effective October 22, 1999, which amended section 218(c)(3)(A) of the Immigration and Nationality Act (Act) (8 U.S.C. 1188(c)(3)((A)) to enlarge the time that certifications must be issued before the employer's date of need from 20 days to 30 days. The Department points out that its regulation at 20 CFR 656.403, effective, July 29, 1999, requires that the employer's housing be in full compliance with the requirements of the housing standards at least 20 days before the date the housing is to be occupied, which in cases involving foreign agricultural workers is the employer's date of need. (See 64 FR 34958). The Act, however, also requires that employers furnish housing that meets the applicable standards before certification can be issued. (See section 218(c)(4) of the Act, 8 U.S.C. 1188(c)(4).) The amendment to the Act that certifications be issued 20 days before the employer's date of need does not negate the statutory requirement regarding housing in the Act. Consequently, certifications cannot be issued if housing does not meet applicable standards. ETA provided this guidance to its regional offices regarding

the administration of the H–2A program in light of amendments to the Act by section 748 of Public Law 107–78 in Field Memorandum No. 16–00, issued February 10, 2000, which is published as Appendix A to the preamble of this rule.

Effective Date of Final Rule

The 120 day effective date of this rule will allow INS and ETA to establish the automated systems needed to electronically capture and share data between the Department of Labor, INS, and the Department of State; seek comments and obtain OMB approval of the consolidated Form ETA 9079 to be used for the application for H–2A labor certification and petition; and complete the proposed rulemaking on the fee provisions.

Executive Order 12866

The Department has determined that this proposed rule should be treated as a "significant regulatory action," within the meaning of Executive Order 12866, because of the inter-agency coordination with INS. However, this rule is not an "economically significant regulatory action." because it would not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Regulatory Flexibility Act

At the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small entities. The amendments will enhance the administrative efficiency and convenience to employers by having them file a combined *Application for Temporary Agricultural Labor Certification and H–2A Petition* with one agency, as opposed to successively filing two forms to two agencies as at present.

The regulation is administrative in nature and merely transfers authority to make certain determinations from INS to ETA. It does not expand the existing procedural requirements and should reduce the administrative and paperwork burden on users, including small businesses. The total number of employers utilizing H–2A workers is only approximately 4,400.

Therefore, the amendments will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Paperwork Reduction Act

The combined Form ETA 9079 is being published for comment as an appendix with the proposed rule being published today, in accordance with the Paperwork Reduction Act of 1995.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* as Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment."

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and record keeping requirements, Specialty occupation, Students, Wages.

Appendix A Field Memorandum No. 16–00, Changes to H–2A Program

Note: Appendix A will not be codified in the Code of Federal Regulations.

U.S. Department of Labor

Employment and Training Administration, Washington, DC 20210

Classification: ES.
Correspondence Symbol: TEES.
Date: February 10, 2000.

DIRECTIVE: FIELD MEMORANDUM NO. 16–00
TO: ALL REGIONAL ADMINISTRATORS
FROM: LENITA JACOBS-SIMMONS, Deputy Assistant Secretary.
SUBJECT: CHANGES TO H–2A PROGRAM

1. *Purpose.* To provide policy and guidance regarding the effect on the H–2A program of recent amendments to the Immigration and Nationality Act by Pub. L. 106–78 sec. 748 (McConnell Amendment).

2. *References.* 20 CFR Part 655, Subpart B (H–2A Regulations); 29 CFR Part 501 (H–2A Enforcement); 20 CFR Part 653, Subpart F (Agricultural Clearance Orders); 20 CFR Part 654, Subpart E, and 29 CFR 1910.142 (Migrant Housing Standards); 8 U.S.C. 1188(c)(1) and (c)(3)(A), as amended by Pub. L. 106–78 sec. 748 (McConnell Amendment); 64 FR 34957–34966 (June 29, 1999).

3. *Background.* The McConnell Amendment became effective on June 29, 1999. The McConnell Amendment shortens the lead time for filing the certification before the date of need from 60 days to 45 days and requires that certifications be issued 30 days before the date of need. The reduction in the lead time for filing labor certification applications is consistent with the amendments to the labor certification regulations for temporary agricultural employment that were effective on July 29, 1999. (See 64 FR 34957–34966, June 29, 99). The new statutory requirement that certification be issued 30 days prior to date of need differs considerably from the current statutory and regulatory requirement that certification be issued 20 days before the date of need. While the requirement that the certification be issued 30 days prior to the date of need reduced the recruitment period prior to certification to 15 days, the employer continues to have an obligation to actively recruit U.S. workers up until the date on which the H–2A workers leave their home country of origin.

RESCISSIONS
EXPIRATION DATE: September 30, 2002.

The requirement that certification be issued 30 days before the date of need is inconsistent with the recent amendment to the regulations that the employer's housing be in full compliance with the requirements of the applicable housing standards at least 20 days before the date the housing is to be occupied, which in cases involving certification of foreign agricultural workers is 20 days before the date of need. However, the statute requires that employers furnish housing that meets the applicable standards before certification can be issued. (See section 218(c)(4) of the Immigration and Nationality Act of 1952 as amended.) The McConnell amendment does not negate this statutory requirement. Consequently, certifications cannot be issued if housing does not meet applicable standards.

The following guidance should be followed in processing H–2A applications to ensure the timeliness of certifications:

4. *Guidance:*

a. *Acceptance of Applications:* Regional offices should accept H–2A applications for consideration that are filed 45 days prior to the date of need.

b. *Housing:* Documentation that the employer's housing meets applicable standards must be received by Certifying Officers prior to certification being granted. State Employment Security Agencies (SESAs) should encourage employers who expect to obtain their certification 30 days before the date of need to have housing ready for inspection at the time of filing their application or earlier. SESAs should be prepared to conduct housing inspections prior to the filing of applications, as appropriate; and should even plan to schedule housing inspections prior to filing for those employers who regularly use the H–2A program.

c. *Recruitment:* The employer must show that an advertisement and job order have been placed prior to the issuance of the labor certification, however, recruitment results do not have to be finalized. The employer should provide a report on the recruitment results 24 hours prior to certification. If workers have been referred, the employer must also provide the disposition of those workers referred prior to the 30th day before the date of need. We anticipate that there will be some instances where the required advertising will not be completed prior to the certification date. Therefore, the employer must provide documentation to show that the job order has been placed and that advertising has been contracted for the job openings, by submitting the text of the contracted advertising. As soon as tear sheets are received they should be submitted to the Regional Office.

Moreover, the McConnell Amendment did not make any changes to the current recruitment requirements. 20 CFR 655.103(d)(1)(2)(i)(ii). All of the recruitment measures are still intact and employers should be instructed to place advertisements in order to attract potentially qualified and available U.S. workers. Even if advertising occurs after certification is granted, the employer remains obligated to hire workers until fifty percent of the period of the work contract has elapsed.

d. *Workers Compensation.* The employer must provide documentation to support the fact that workers compensation insurance coverage is in effect prior to the 30th day before the date of need.

5. *Action Required:* Regional Administrators are requested to provide the above guidance to appropriate staff in the Regional Offices and State Agencies.

6. *Inquiries.* Inquiries should be directed to Charlene G. Giles on (202) 219–5263 x113.

Final Rule

Accordingly, Part 655 of Chapter V of Title 20 of the Code of Federal Regulations is amended as follows:

PART 655—[AMENDED]

1. The authority citations for Part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); Pub. L. 103–206, 107 Stat 2419; 8 CFR 103.1(f)(3)(iii)(J) and (W); 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(5),(11), and (12).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; 8 CFR 103.1(f)(3)(iii)(J) and (W); 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(5), (11), and (12).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*; 8 CFR 103.1(f)(3)(iii)(J) and (W); 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(5), (11), and (12).

Subparts D and E issued under 8 U.S.C. 1101(a)(15) (H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c) and (d); and 29 U.S.C. 49 *et seq.*; and Pub. L. 103–206, 107 Stat. 2419.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

§ 655.0 [Amended]

2. Section 655.0 is amended by adding a new paragraph (a)(4), to read as follows:

§ 655.0 Scope and purpose of part.

(a) * * *

(4) *Subpart B; Delegation From Immigration and Naturalization Service.* Subpart B also contains the authority from the Commissioner of Immigration and Naturalization for the Secretary to consider H–2A petitions and revocations under criteria set out in 8 CFR 214.2(h) of the Immigration and Naturalization Service's regulations.

* * * * *

§ 655.00 [Amended]

3. Section 655.00 is amended by revising the second sentence to read as follows:

* * * The Director, however, may direct that certain applications, types of applications, H–2A petitions, or H–2A petition revocations shall be handled by, and the determinations made by, the United States Employment Service (USES) in Washington, DC. * * *

Subpart B—Labor Certification and Petition Process for Temporary Agricultural Employment in the United States (H–2A Workers)

3a. Subpart B is amended by revising the heading to read as set forth above.

§ 655.90 [Amended]

4. Section 655.90(a) is amended by adding before the last sentence a new sentence to read as follows: (a) * * * This subpart also describes the processes and procedures governing consideration of requests for H–2A petition approval and revocation, set out in the Immigration and Naturalization Service regulations at 8 CFR 214.2(h). * * *

§ 655.92 [Amended]

5. Section 655.92 is amended by revising the first sentence to read as follows:

Under this subpart and INS regulations at 8 CFR 214.2(h), the accepting for consideration, the making of temporary alien agricultural labor certification determinations, and H–2A petition determinations ordinarily are performed by the Regional Administrator (RA) of an Employment and Training Administration region, who, in turn, may delegate this responsibility to a designated staff member. * * *

§ 655.100 [Amended]

6. Section 655.100(a)(1) is amended as follows:

(a) By adding after "certification" in the first sentence, the phrase "and H–2A petition approval"; and

(b) By adding at the end thereof a new sentence to read as follows:

(a) * * * (1) * * * The term 'application' here used in this subpart shall mean an application for temporary alien labor certification and an H–2A petition unless otherwise stated.

7. Section 655.100(a)(4)(i) is amended as follows:

a. In the second sentence the phrase "20 calendar days" is removed and the phrase "30 calendar days" is added in lieu thereof.

b. In the last sentence the phrase "for certification" is removed.

8. Section 655.100(a)(4)(iv) is amended by removing the phrase "for temporary alien agricultural labor certification".

9. Section 655.100(b) is amended as follows:

a. In the final sentence of the definition of *Accept for consideration* by removing the phrase "in a temporary alien agricultural labor certification determination'; and

b. In the definition of "Immigration and Naturalization Service (INS)", by removing the phrase "which makes" and adding in lieu thereof the phrase "having the authority to make".

§ 655.101 [Amended]

10. Section 655.101(a)(1) is amended by removing from the first sentence the final period and by adding in lieu thereof the phrase "and H–2A petition on Form ETA 9079, Application for Temporary Agricultural Labor Certification and H–2A Petition."; and by removing from the second sentence the phrase "for temporary alien agricultural worker certification".

11. Section 655.101 is amended by revising paragraph (a)(2) and the section heading as follows:

§ 655.101 Temporary alien agricultural labor certification applications and petitions.

(a) * * *

(2) *Applications filed by agents.* If an employer intends to be represented by an agent, the employer shall sign the statement set forth on the Form ETA 9079—*Application for Temporary Agricultural Labor Certification and H–2A Petition* that the agent is representing the employer and that the employer takes full responsibility for the accuracy of any representations made by the agent. The agent may accept for interview workers being referred to the job and make hiring commitments on behalf of the employer.

12. Section 655.101(b)(1) is amended by removing from the first sentence the phrase "A copy of the" and adding in lieu thereof the word "The".

13. Section 655.101(b)(2) is amended by removing the period at the end of the sentence and adding in lieu thereof the phrase "; and".

14. Section 655.101 is amended by adding new paragraphs (b)(3) and (h) to read as follows:

§ 655.101 Temporary alien agricultural labor certification applications and petitions.

* * * * *

(b) * * *

(3) An H–2A petition.

* * * * *

(h) Requests to change Consulates or ports of entry designated on approved petitions or to request a duplicate approval notice, shall be made by filing an ETA Form 9079M, *Visa Issuance Change Addendum,* with the Certifying Officer that approved ETA Form 9079, *Application for Temporary Agricultural Labor Certification and H–2A Petition.*

15. Section 655.101(c), introductory text, is amended as follows:

a. In the first sentence the phrase "for temporary alien agricultrual labor certification is removed.

b. In the third sentence the phrase "20 calendar days" is removed and the phrase "30 calendar days" is added in lieu thereof.

16. Section 655.101(c)(2) is amended by removing the phrase "20 calendar days" in the four places it appears and the phrase "30 calendar days" is added in each place in lieu thereof.

§ 655.103 [Amended]

17. Section 655.103 is amended by removing from the first sentence of the introductory text the phrase "temporary alien agricultural labor certification".

§ 655.104 [Amended]

18. Section 655.104 (e) is amended by removing in the two places it appears the phrase "20 calendar days" and adding in each place the phrase "30 calendar days" in lieu thereof.

§ 655.105 [Amended]

19. Section 655.105 is amended by revising the section heading to read as follows:

§ 655.105 Recruitment of U.S. workers and final determinations on certification and H–2A petition.

* * * * *

20. Section 655.105(a) is amended by removing from the first sentence the word "H–2A'.

21. Section 655.105(b) is amended by removing the phrase "for temporary alien agricultural labor certification".

22. Section 655.105(c) is amended by removing from the last sentence the phrase "20 calendar days" and adding the phrase "30 calendar days" in lieu thereof.

23. Section 655.105(d) is amended as follows:

a. In the first sentence the phrase "20 calendar days" is removed and the phrase "30 calendar days" is added in lieu thereof.

b. Adding after the second sentence the following sentence:

(d) * * * If the RA denies the application for temporary alien agricultural labor certification, the RA shall also deny the petition for lack of a labor certification and any other applicable reason in accordance with the criteria set out in 8 CFR 214.2(h).* * *

§ 655.106 [Amended]

24. Section 655.106(a) is amended by removing the phrase "for temporary alien agricultural labor certification".

25. Section 655.106(b)(1) is amended by removing from the first sentence the phrase "20 calendar days" and adding the phrase "30 calendar days" in lieu thereof.

26. Section 655.106(c), introductory text, is amended by removing from the paragraph heading the phrase "temporary alien agricultural labor certifications", and adding in lieu thereof the word "applications".

27. Section 655.106(c)(1) is amended as follows:

a. By removing from the first sentence the phrase "Temporary alien agricultural labor certifications are" and adding in lieu thereof the phrase "The application is"; and

b. By removing from the third sentence the phrase "certification shall be" and adding in lieu thereof the phrase "certifications and H–2A petitions shall be".

28. Section 655.106(c)(2)(i) is amended as follows:

a. By removing from the first sentence the phrase "certification as a joint employer" and adding in lieu thereof the phrase "certification and H–2A petition as a joint employer" and by removing the phrase "the temporary alien agricultural labor certification granted" and adding in lieu thereof the phrase "the temporary labor certification and petition granted";

b. By removing from the second sentence the phrase "certification was" and adding in lieu thereof the phrase "certification and H–2A petition were";

c. By removing from the third sentence the phrase "certifications to associations" and adding in lieu thereof the phrase "certifications and H–2A petitions to associations'; and

d. By removing from the fourth sentence the phrase "certification as a sole employer" and adding in lieu thereof the phrase "certification and H–2A petition as a sole employer".

29. Section 655.106(d) is amended by removing from the first sentence the phrase "certification (in whole or in part)" and adding in lieu thereof the phrase "certification and H–2A petition (in whole or in part)".

30. Section 655.106(e)(1) is amended by removing the phrase "a temporary agricultural labor certification" and adding in lieu thereof the phrase "an application".

31. Section 655.106(h) is amended by removing from the first sentence the phrase "20 calendar days" and adding in lieu thereof the phrase "30 calendar days".

§ 655.108 [Amended]

32. Section 655.108(a) is amended as follows:

a. By removing from the first sentence the phrase "temporary alien agricultural labor certification" and adding in lieu thereof the phrase "an application"; and

b. By removing from the second sentence the word "certification" and adding in lieu thereof the phrase "certification and the determination on the H–2A petition cannot be made until the investigation has been completed'.

§ 655.112 [Amended]

33. Section 655.112(a)(1) is amended by removing from the first sentence the phrase "of the denial of the temporary alien agricultural labor certification" and adding in lieu thereof the phrase "of the denial of the temporary alien agricultural labor certification, the H–2A petition, or the revocation of an H–2A petition".

34. A new § 655.114 is added, to read as follows:

§ 655.114 Revocation of H–2A petition approval.

Determinations to revoke an approved H–2A petition shall be made by the RA in accordance with accordance with the criteria established by the Immigration and Naturalization Service at 8 CFR 214.2(h).

Signed at Washington, DC, this 7th day of July, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 00–17641 Filed 7–12–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB24

Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Modification of Fee Structure

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) proposes to amend its regulations relating to the temporary employment of nonimmigrant agricultural workers (H–2A workers) in the United States. The proposed amendments would require employers to submit the fees for labor certification and the associated H–2A petition with a consolidated application form at the time of filing. The proposal also would modify the fee structure for H–2A labor certification applications.

Concurrently with the publication of this proposed rule, the Department is publishing a final rule setting forth the procedures and requirements for submission and processing of a consolidated *Application for Temporary Agricultural Labor Certification and H–2A Petition* (Form ETA 9079). Form ETA 9079 is attached as Appendix A to the proposed rule and comments are requested thereon.

DATES: Interested persons are invited to submit written comments on the proposed rule, on or before August 14, 2000.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210, Attention: James H. Norris, Chief, Division of Foreign Labor Certifications.

FOR FURTHER INFORMATION: Contact Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 2, 1998, ETA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing amendments to ETA's regulations at 20 CFR part 655, subpart B, relating to the temporary employment of nonimmigrant agricultural H–2A workers in the United States. One of those proposed amendments was to implement a proposed delegation from the Commissioner, Immigration and Naturalization Service (INS), to the Secretary of Labor (Secretary) of authority to adjudicate petitions currently processed by INS under 8 CFR 214.2(h)(5), "Petition for alien to perform agricultural labor or services of a temporary or seasonal nature (H–2A)." 63 FR at 53244 and 53248 (Oct. 2, 1998). The INS published an NPRM on December 7, 1998, proposing to amend its regulations by delegating to the Department of Labor such adjudication of H–2A petitions. 63 FR 67431 (Dec. 7, 1998). The Department published a final rule on June 29, 1999, relating to most of the amendments it had proposed on October 2, 1998. 64 FR 34958 (June 29, 1999). However, amendments to implement the delegation of H–2A petition authority were not included in that final rule. At that time, INS had not completed the rulemaking necessary to delegate the processing of H–2A petitions to the Department. Further, a number of technical issues had to be resolved by INS and the Department to implement a delegation of H–2A petition authority to DOL. The Department noted in the preamble to the June 29 final rule, however, that it was committed to completing the necessary rulemaking and associated procedural changes as soon as possible, if INS delegated to DOL the authority to adjudicate H–2A petitions. Comments received on that issue during the course of the earlier rulemaking have been considered in the development of this proposed rule and the concurrently published final rule.

II. Statutory Standard and Implementing Regulation

The decision whether to grant or deny an employer's petition to import nonimmigrant agricultural workers to the United States for the purpose of temporary employment is the responsibility of the Attorney General or her designee. The Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) provides that the Attorney General may not approve a petition from an employer for employment of nonimmigrant agricultural workers (H–2A visa holders) for temporary or seasonal services or labor in agriculture unless the petitioner has applied to the Secretary for a labor certification showing that:

(A) There are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and

(B) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.)

The Department of Labor has published regulations at 20 CFR part 655, subpart B, and 29 CFR part 501 to implement its responsibilities under the H–2A program. Regulations affecting employer-provided agricultural worker housing are in 20 CFR part 654, subpart E, and 29 CFR 1910.42.

III. Change in H–2A Fee Structure

The change in the H–2A fee structure which this NPRM addresses enhances the administrative efficiency and convenience to employers of filing a combined *Application for Temporary Agricultural Labor Certification and H–2A Petition*. This efficiency can best be achieved if employers submit a single check to cover the fees for both the issuance of the labor certification and the processing of the H–2A petition at the time the consolidated application is submitted to the Department.

The proposed procedural modification in the method of fee payment would depart from the current process in which the employer pays for the labor certification *after* it is issued and subsequently submits the H–2A petition to INS together with the INS filing fee. It is important to note that the proposed rule provides that both the certification fee and the money collected for the H–2A petition would be refunded if the labor certification were denied. The Department interprets the H–2A statute as permitting the collection of a fee only if a certification is issued. In the course of the 1987 rulemaking under the H–2A program Senator Simpson, the primary sponsor of the 1986 amendments to the INA, pointed out in response to the Department's proposal to require employers to submit a fee with the application, that the statute used the language as a "condition of issuing the certification" and not as a condition of processing the application. See 8 U.S.C. 1188(a)(2) ("The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of

a fee to recover the reasonable costs of processing applications for certification."). Since the fee for labor certification would be returned if the application is denied, the money collected for the labor certification would remain a *certification* fee, as it is characterized in the statute and current regulations, as opposed to a *processing* fee. Few fees paid with requests for labor certification will require a refund as the denial rate has historically been low. Moreover, as stated above, the proposed rule provides that the H–2A petition fee would be returned to the employer if the certification is denied. Currently, the petition fee is collected as an up-front processing fee by INS and is not returned to the employer if the petition is denied. See 8 CFR 103.7. In the rare instances when certification is granted but the petition is denied, the fees would not be returned.

IV. Fee Structure

The proposed rule provides that the consolidated labor certification and H–2A petition application must be accompanied by a check or money order sufficient to cover the fee for the labor certification and the fee for the H–2A petition as specified by INS regulations at 8 CFR 103.7. The Department is proposing a three-tiered labor certification fee. Employers that file applications for 10 or fewer H–2A temporary workers would be charged $150.00 per certification issued, employers that file applications for more than 10 H–2A workers up to and including 99 workers would be charged $250.00 per certification issued, and employers that apply for 100 workers or more would be charged $1,000.00 per certification issued. The petition fee would be set at whatever fee is specified in INS regulation at 8 CFR 103.7. The petition fee is reviewed by INS every 2 years and currently is set at $110.00. 63 FR 43604 (Aug. 14, 1998). Consistent with current INS requirements, a joint employer association would pay one petition fee and, consistent with current DOL requirements, pay the appropriate labor certification fee for *each* of its members listed in the association's application.

The Department estimates that the proposed three-tiered fee structure for issuance of a labor certification would likely yield about the same revenue for a given number of employers as the current DOL fee structure, which requires employers to pay a fee of $100.00 for the issued certification plus $10.00 per H–2A job opportunity certified. In Fiscal Year 1998, ETA collected $775,380.00 in fees.

The Department is authorized by the INA, as amended by the Immigration Reform and Control Act of 1986, to require as a condition of certification a fee to recover the reasonable costs of processing applications for certification. 8 U.S.C. 1188(a)(2). The monies collected under the proposed certification fee structure will continue, like the current fee structure, to fall substantially short of the monies expended by ETA to administer the H–2A labor certification program.

ETA has not conducted a study to establish fees since the 1987 study referred to in the preamble to the 1987 rule. That study did not include all costs that could be attributed to the H–2A labor certification program. Specifically, the study did not include the cost of activities of State employment service agencies, post-certification activities and post-denial activities at all levels, ETA national office activities, DOL Office of the Solicitor activities, and DOL Office of Administrative Law Judges activities. 52 FR at 20499 (June 1, 1987). ETA plans to conduct a study to determine what it expends to administer the H–2A labor certification program at the same time INS will review its petition fee early in calendar year 2002.

As indicated above, fees for H–2A petitions are established by INS through notice and comment rulemaking. See 63 FR 1775 (Jan. 12, 1998) and 63 FR 43604 (Aug. 14, 1998). INS reviews the petition fee every two years, and, accordingly, the proposed rule would require that the fee collected for the H–2A petition be the amount specified in the INS regulations that are current at the time the *Application for Temporary Agricultural Labor Certification and H–2A Petition* is filed with the Department. It is contemplated that under the administrative procedures arrived at by INS and ETA to implement the delegation of H–2A petition authority from INS to the Department, DOL will collect the petition fee on behalf of INS and will be reimbursed by INS for the costs involved in processing the H–2A petition.

Consistent with INS' proposed rule, the Department's proposed rule would also provide that if the H–2A petition is approved, DOL will forward to INS for action any requests for change of status or extension of stay pertaining to H–2A petitions for named aliens made on Form ETA 9079W, Named Alien Addendum.

INS has also delegated to the Department the authority to process applications to change the Consulate or port of entry on an approved petitions when DOL has previously processed a request for temporary agricultural workers on INS' behalf, and to respond to requests for duplicate approval notices issued by DOL. Such applications shall be made on the ETA 9079M, Visa Issuance Change Addendum, and accompanied by a check or money order made payable to the "U.S. Department of Labor" in the amount specified by INS regulations at 8 CFR 103.7 for the I–824, Application for Action on an Approved Application or Petition—currently $120.00. The ETA 9079M is functionally equivalent to the I–824.

INS has also proposed to authorize DOL to accept on INS' behalf any Forms I–102, Application for Replacement/ Initial Nonimmigrant Arrival-Departure Document, and Forms I–539, Application to Extend/Change Nonimmigrant status, that are filed concurrently with DOL's form ETA–9079. The I–102 is used to obtain a replacement for a lost or mutilated arrival-departure document and the I–539 is used to extend or change the nonimmigrant status of dependents (H–4's) of the H–2A nonimmigrant. The submission of any Forms I–102 or I–539 must be accompanied by a check made payable to the "U.S. Department of Labor" in the amount specified by INS regulations at 8 CFR 103.7. The forms and fees will be forwarded to INS for adjudication after the ETA–9079 decision is made.

V. Short-term Extensions of Employment

INS is proposing to add automatically to every H–2A employer's petition a 14-day extension grace "period," and to discontinue charging a separate fee for such short-term extensions. Thus, an employer's H–2A petition for any requested/certified period of employment, if approved, would be granted for the requested/certified period plus an additional 14 days (or the length of the labor certification if issued for less than 14 days). Should this proposal be included in INS' final rule, DOL would add corresponding implementing regulations to Part 655. Comments are requested on such a change. Should this proposal not be included in the INS final rule, the current procedures (as described below) would continue, although a rule of agency procedure would be promulgated to delegate from INS to DOL the INS functions under the existing process.

Under the existing regulations and procedures, an employer seeking to extend the authorized period of employment by two weeks or less applies to INS for the short-term

extension. 8 CFR 214.2(h)(5)(x) (1999); and 20 CFR 655.106(c)(3)(i) (1999); see also 214.2(h)(15)(ii)(C) (1999). INS charges a fee of $120.00 for this service. In such circumstances, the employer is not required to apply for extension of the labor certification granted by DOL and is granted a 14 day grace period. It is the agency's experience that a small minority of employers seek short-term extensions and that INS rarely disapproves such requests. Thus, the proposed change would further streamline the H–2A process for those employers that seek short-term extensions.

An automatic 14-day "grace period" extension, as proposed, may encourage some H–2A employers to understate the offered period of employment disclosed on their labor certification application(s) and H–2A petition(s), thereby affecting recruitment of U.S. workers and such existing rights under the H–2A program as the "50 percent rule," the "three-quarter guarantee," and reimbursement of in-bound and return transportation. U.S. workers must be offered employment during the first half (50 percent) of the work contract, which is ordinarily the work period specified by the employer on the job offer (see 20 CFR 655.103(e) (1999); 29 CFR 501.10(d)); covered workers are guaranteed pay for three-quarters of the workdays offered by the employer under the work contract (see 20 CFR 655.102(b)(6)(i) (1999)), and reimbursement for in-bound transportation costs on completion and payment for return transportation on completion of the offered employment under the work contract (see 20 CFR 655.102(b)(5)(i) and (ii) (1999)). If adopted DOL would evaluate whether the proposed automatic 14-day "grace period" extension is treated as offered employment for these various purposes and the consequences which occur if a worker declines to continue employment during the 14-day "grace period" extension.

The agency requests comments on the extent, if any, to which the addition of the 14-day "grace period" automatic extension, as proposed, impacts U.S. and foreign workers' rights, including their rights under the underlying work contract, as well as employers' responsibilities and obligations.

Executive Order 12866

The Department has determined that this proposed rule should be treated as a "significant regulatory action," within the meaning of Executive Order 12866, because of the inter-agency coordination with INS. However, this rule is not an "economically significant regulatory action." because it would not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed amendments would enhance the administrative efficiency and convenience to employers by having them file a combined *Application for Temporary Agricultural Labor Certification and H–2A Petition* with one agency, as opposed to two forms filed with two agencies as at present. The total number of employers utilizing H–2A workers is only approximately 4,400.

Therefore, the proposed amendments would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

Title: Form ETA 9079 Application for Temporary Agricultural Labor Certification and H–2A Petition.

Summary: Section 218 of the Immigration and Nationality Act (Act) provides that an H–2A petition to import an H–2A worker may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that: (1) There are not sufficient workers who are able, willing and qualified, and who will not be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Section 214(c) of the Act provides the Attorney General with the authority to determine the admission of an alien for such and under such conditions as the attorney general may prescribe by regulation. The Attorney general has delegated her responsibilities under section 214(c) of the Act to the Commissioner, Immigration and Naturalization Service.

Currently, employers file an ETA Form 750 with the Department to obtain a labor certification and they file the labor certification in support of the I–129 to obtain a petition from INS.

Need: The current process has been criticized by some employers as complicated hard to understand, and too time consuming. In some instances the result has been that foreign workers have not arrived by the first date of the employer's need. In an effort to reduce the number of steps, paperwork and time necessary to obtain foreign workers necessary to perform critical agricultural functions the Department of Labor and INS issued final rules simultaneously with this proposed rule transferring the function of adjudicating H–2A petitions to the Department of Labor.

To streamline the process of obtaining certifications and petitions, the INS and DOL have developed the form ETA 9079 which includes all the information necessary to INS and DOL to administer and monitor the certification and petition process. The new form ETA 9079, and addendums thereto, will replace Form ETA 750 and INS Form I–129 for all H–2A filings. It is envisaged that the process will enable employers to obtain foreign agricultural workers by implementation of a one stop filing whereby all forms and supporting documentation are submitted to DOL. Currently employers have to complete a two step process to obtain a labor certification and petition which necessitates the filing of different forms with the Department and the Immigration and Naturalization Service. The final rule when it becomes effective and the Form ETA 9079 when it is approved will result in employers being able to obtain both the labor

certification and petition for aliens outside the United States from the Department. The Department of Justice estimates that transferring the authority to adjudicate petitions to DOL will result in a combined reduction of 18 to 27 days in the time now taken from initial filing with DOL to completion of the petition processing by INS.

In cases involving named aliens, employers would file with the Department an ETA 9079W, Named Alien Addendum. The proposed rule issued by INS would require the alien to sign the form if an extension of stay or change of status is requested. If the petition is approved, this form will be sent to INS for a determination on any extension of stay or change of status requested for the alien.

INS has also in the interests of further simplifying the petition process delegated to DOL the responsibility of processing the small number of requests involving changes in the Consulate or port of entry designated on the petition when it was approved, and issue duplicate approval notices it has issued. To make such requests the employer will be required to file form ETA 9079M, Visa Issuance Change Addendum, with the fee specified by INS regulations at 8 CFR 103.7 for the I–824, Application for Action on an Approved Application or Petition. The 9079M is functionally equivalent to the I–824.

Respondents and proposed frequency of response: ETA estimates that 2,270 sole employers and joint-employer associations filing on behalf of member employers will submit about 1.3 Forms ETA 9079 each year, for a total of 2,950 forms filed annually. The actual number filed will depend upon the needs of the employers, which are dependent in part upon agricultural conditions, such as crop maturation.

Estimated total annual burden for filing: ETA estimates that approximately 2,950 Forms ETA 9079 will be submitted each year. The reporting burden is estimated to average 1½ hours. This estimate includes the time for reviewing instructions, searching existing information/data sources, gathering and maintaining information and completing and reviewing the application.

The preparation of the application form may be done by a company employee, official, proprietor, or chief executive officer. Therefore, the salaries could range from about $5.15 an hour for an employee to $300.00 for a proprietor or chief executive officer of a large farming enterprise. The average hourly remuneration is estimated to be $25.00. This results in the estimated annual cost to respondents (employers) for filing the ETA 9079, "Application for Temporary Agricultural Labor Certification and H–2A Petition" of $110,625 (2,950 × 1½ × $25.00).

The public is invited to provide comments on this information collection requirement so that the Department of Labor may:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimates of the burdens of the collections of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Written comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, U.S. Department of Labor, Washington, D.C. 20503.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance as Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment."

List of Subjects:

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and record keeping requirements, Specialty occupation, Students, Wages.

Proposed Rule

Accordingly, part 655 of Chapter V of title 20, code of Federal Regulations is amended as follows:

PART 655—[AMENDED]

1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); P.L. 103–206, 107 Stat 2419; and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.* , and 8 CFR 103.1(f)(iii)(J), (W), 214.2(h)(5), (11) and (12).

Subparts D and E issued under 8 U.S.C. 1101(a)(15) (H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c) and (d); and 29 U.S.C. 49 *et seq.*; and P.L. 103–206, 107 Stat 2419.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

§ 655.100 [Amended]

2. Section 655.100 is amended by revising paragraph (a)(4)(iii) to read as follows:

§ 655.100 Overview of this subpart and definition of terms.

(a) * * *

(4) * * *

(iii) *Fees*—(A) *General.* Fees must be submitted with the Form ETA 9079 *Application for Temporary Agricultural Labor Certification and H–2A Petition.* The fees which must accompany the form must include the fee for the issuance of the labor certification, and the fee required for the H–2A petition as specified by INS regulations at 8 CFR 103.7. The amount of the labor certification fee is dependent upon the number of job openings for which the employer requests certification. The labor certification fee for applications for 10 job openings or fewer is $150.00, the certification fee for applications for more than 10 job openings up to and including 99 job openings is $250.00, and the certification fee is $1,000 when the application is for 100 job openings or more. The INS fee was set at $110.00 as of October 13, 1998 and is subject to revision by INS every two years. Requests for changes in the Consulate or

port of entry designated on the petition when it was approved or to request a duplicate of a lost approval notice shall be made by filing an ETA 9079M, which is functionally equivalent to INS Form I–824 (Application for Action on an Approved Application or Petition), and the fee specified in INS regulations at 8 CFR 103.7 with DOL. As of October 13, 1998, the INS fee for the Form I–824 was set at $120.00. INS has authorized DOL to accept on behalf of INS any Forms I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, and Forms I–539, Application to Extend/Change Nonimmigrant Status, which are filed concurrently with the DOL's new form ETA 9079. The submission of any Forms I–102 or I–539 must be accompanied by a check made payable to the "U.S. Department of Labor" in the amount specified by INS regulations at 8 CFR 103.7. Fees will be deposited in a special account while the application is being processed and adjudicated. If the labor certification is denied, all fees will be refunded. If certification is granted, but the petition is denied, the fees will not be refunded.

(B) *Payment.* Payment must be made by check or money drawn on a financial institution in the United States and payable to the "U.S. Department of Labor" in United States currency. A charge of $30.00 will be imposed if a check in payment of a fee is not honored by the financial institution on which it is drawn and, if a certification has not been issued, processing of the application will be suspended until a certified check or money order made payable to the U.S. Department of Labor is received by the Department.

(C) *Application and Petition.* Fees must be paid at the time the application is filed as follows:

(*1*) Sole employers filing a Form ETA 9079—*Application for Temporary Agricultural Labor Certification and H–2A Petition* shall submit with their application a single check or money order made payable to the "U.S. Department of Labor" for the total amount of the required fees to include:

(*i*) A certification fee of $150.00 when the application is for 10 job openings or fewer, $250.00 when the application is for more than 10 openings up to and including 99 job openings, or $1,000 when the application is for 100 job openings or more;

(*ii*) The fee required to pay for the processing of the H–2A petition as specified in INS regulations at 8 CFR 103.7.

(*2*) In the case of a joint employer association filing a single Form ETA 9079—*Application for Temporary Agricultural Labor Certification and H–2A Petition* on behalf of its members, the application shall be accompanied by a single check or money order made payable to the "U.S. Department of Labor" for the total amount of required fees. The amount of the check or money order must include:

(*i*) A certification fee of $150.00 for each member applying for 10 job openings or fewer, $250.00 for each member applying for more than 10 job openings up to and including 99 job openings, and $1000.00 for each member applying for 100 or more job openings. The joint employer association shall not be charged a separate fee; and

(*ii*) The fee required for the H–2A petition filed by the joint employer association as specified by the INS regulations at 8 CFR 103.7.

(*3*) In the case of an employer association acting as an agent for its employer-members in filing of individual applications by its members, each Form ETA 9079—*Application for Temporary Agricultural Labor Certification and H–2A Petition* shall be accompanied by a single check or money order made payable to the "U.S. Department of Labor" for an amount sufficient to include:

(*i*) A certification fee of $150.00 from each member applying for 10 job openings or fewer, $250.00 from each member applying for more than 10 job openings up to and including 99 job openings, and $1,000.00 from each member applying for 100 or more job openings;

(*ii*) The fee required for the processing of the H–2A petition from each member as specified by INS regulations at 8 CFR 103.7.

(D) *INS Forms I–102 and I–539.* Forms I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, and Forms I–539, Application to Extend/Change Nonimmigrant Status, which are filed concurrently with the DOL's form ETA 9079 must be accompanied by a check made payable to the "U.S. Department of Labor" in the amount specified by INS regulations at 8 CFR 103.7.

(E) *Refunds.* (*1*) If a labor certification is denied, all fees will be refunded to the employer or association as appropriate. If a labor certification is partially denied a refund shall be made, if appropriate, in accordance with the fee schedule in paragraph (a)(4)(iii)(C) of this section. If the certification is granted whole or in part, but the petition is denied, no refund will be made of the petition fee.

(*2*) If an amendment to decrease the number workers is made prior to an RA certification, a refund shall be made, if appropriate, in accordance with the fee schedule in paragraph (a)(4)(iii)(C) of this section.

(F) *Increase in Number of Workers.* Amendments to applications to increase the number of workers requested made prior to an RA certification determination shall be accompanied by an increase in fees that are in accordance with the fee schedule in paragraph (a)(4)(iii)(B) of this section. Amendments to increase the number of workers requested shall not be processed if they are not accompanied by a check made out to the "U.S. Department of Labor" sufficient to cover any increase in fees required due to the increase in workers requested.

(G) *Applications for Change in Consulate or to Obtain Duplicate Approval Notice.* Applications requesting changes in the notification to the Consulate or port of entry designated on an approved petition, or to request a duplicate approval notice, shall be filed on ETA Form 9079M, Visa Issuance Change Addendum, with the RA who originally processed the case, and must be accompanied by a check or money order made payable to the "U.S. Department of Labor" in the amount specified by INS regulations at 8 CFR 103.7.

* * * * *

3. Section 655.101 is amended by removing the period at the end of paragraph (b)(3) and adding in lieu thereof the phrase "; and", and by adding new paragraphs (b)(4) and (i) to read as follows:

§ 655.101 Temporary alien labor certification applications and petitions.

* * * * *

(b) * * *

(4) A check or money order for the fee in accordance with § 655.100(a)(4)(iii).

* * * * *

(i) *Changes of status and extensions of stay.* If the H–2A petition is granted, any requests to change nonimmigrant status or for extension of stay for named beneficiaries made on the Form ETA 9079W will be sent by ETA to INS, which will make determinations about the named beneficiaries' eligibility to change nonimmigrant status or eligibility for extension of stay.

§ 655.103 [Amended]

4. Section 655.103 is amended by removing paragraph (h).

§ 655.106 [Amended]

5. Section 655.106 is amended by removing paragraph (b)(2).

Signed at Washington, DC, this 7th day of July, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor for Employment and Training.

Appendix 1 (Not to be codified in the CFR): Form ETA 9079

Printed below is a copy of Form ETA 9079.

BILLING CODE 4510–30–P

Instructions for Completing ETA FORM 9079 PACKET

Application for Temporary Agricultural Labor Certification and H-2A Petition

Developed by the
Division of Foreign Labor Certification
United States Department of Labor

DRAFT

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Request for Extension of Labor Certification and H-2A Visas Petition

I. Instructions for Completing ETA Form 9079 Packet

Application for Temporary Agricultural Labor Certification and H-2A Petition

IMPORTANT: READ ALL INSTRUCTIONS!!
These instructions will help Applicants understand the information that is being requested. Please read the instructions carefully and follow them to minimize the chances of an application package being returned due to incomplete information.

The following forms, attachments, and statements must be submitted by an Applicant:

Mandatory Forms for ALL Applicants:			
9079	Base form, replaces ETA-750 and I-129 for unnamed alien workers.	All Applicants	Submit by regular and overnight mail only.
790	Agricultural and Food Processing Clearance Order. This is the job order portion of the application package. Information on form ETA 790 must be comprehensive and precise because form ETA 790, in effect, will constitute a contract between the employer and the worker, and can be the basis for enforcement. Includes all attachments and explanations.	All Applicants	Submit by regular and overnight mail only with ETA Form 9079.
ETA 9079 Addenda which may be used by any Applicant if needed:			
9079-W (I-539)	Named alien Workers for both new visas and modifications.	Any Applicants with named workers	Submit by regular or overnight mail or fax any time after acceptance and 5 days prior to certification.
9079-C	Allows for additional visa issuance locations (Consulates, port of entry, pre-flight issuance).	Applicants with more than one visa issuance location	Submit by regular or overnight mail or fax any time after acceptance letter and 5 days prior to certification.
ETA 9079 Addenda for Sole-Employer, including Associations as Sole-Employer (An Association filing an application on their own behalf):			
9079-S	Allows for additional Work-Site locations.	Sole-Employer Applicants with more than one work-site	Submit by regular or overnight mail or fax any time after acceptance letter and 5 days prior to certification.

I. Instructions for Completing ETA Form 9079 Packet

Application for Temporary Agricultural Labor Certification and H-2A Petition

IMPORTANT: READ ALL INSTRUCTIONS!!

These instructions will help Applicants understand the information that is being requested. Please read the instructions carefully and follow them to minimize the chances of an application package being returned due to incomplete information.

The following forms, attachments, and statements must be submitted by an Applicant:

FORM/ PART	PURPOSE/DESCRIPTION	WHO USES THIS FORM	WHEN AND HOW SUBMITTED
Mandatory Forms for ALL Applicants			
9079	Base form, replaces ETA-750 and I-129 for unnamed alien workers.	All Applicants	Submit by regular and overnight mail only
790	Agricultural and Food Processing Clearance Order. This is the job order portion of the application package. Information on form ETA 790 must be comprehensive and precise because form ETA 790, in effect, will constitute a contract between the employer and the worker, and can be the basis for enforcement. Includes all attachments and explanations.	All Applicants	Submit by regular and overnight mail only with ETA Form 9079
ETA 9079 Addenda which may be used by any Applicant if needed			
9079-W (I-539)	Named alien Workers for both new visas and modifications	Any Applicants with named workers	Submit by regular or overnight mail or fax any time after acceptance and 5 days prior to certification
9079-C	Allows for additional visa issuance locations (Consulates, port of entry, pre-flight issuance)	Applicants with more than one visa issuance location	Submit by regular or overnight mail or fax any time after acceptance letter and 5 days prior to certification
ETA 9079 Addenda for Sole-Employer, including Associations as Sole-Employer (An Association filing an application on their own behalf)			
9079-S	Allows for additional Work-Site locations	Sole-Employer Applicants with more than one work-site	Submit by regular or overnight mail or fax any time after acceptance letter and 5 days prior to certification

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

ETA 9079 Addenda for Joint-Employer (Two or more employers sharing workers and responsibility) & Joint-Employer Association (An Association and its members sharing employees and responsibility):			
FORM / PART	**PURPOSE/DESCRIPTION**	**WHO USES THIS FORM**	**WHEN AND HOW SUBMITTED**
9079-A	Register a Joint-Employer Association.	Associations	Submit by regular or overnight mail or fax prior to submission of any applications.
9079-E	Register an Employer as a member of an Association.	Associations	Submit by regular or overnight mail or fax prior to submission of any applications.
9079-L	Listing of employer information (member's EIN, City or County of work-site, number of workers requested, work hours, worker housing, and guaranteed wage for each crop activity) for an Association application.	Associations	Submit by regular or overnight mail or fax any time after acceptance letter and 5 days prior to certification.
ETA 9079 Addenda to be used AFTER CERTIFICATION:			
9079-M (I-824)	Move worker(s) from one Consulate to another.	Applicants who need to change the location where workers will apply for visas AFTER CERTIFICATION	Submit by regular or overnight mail after certification.
9079-X	Request for eXtension of the Labor Certification and H-2A Visas	Applicants meeting the criteria for an extension per the regulations	Submit by regular or overnight mail or fax.

BASIC PROCEDURE FOR FILING A LABOR CERTIFICATION AND H-2A VISA PETITION

There are four distinct types of Applicants:

1. **Sole-Employer**,
2. **Association as Sole-Employer** - an Association filing an application on their own behalf,
3. **Joint-Employer** - two or more employers sharing workers and responsibility,
4. **Joint-Employer Association** - an Association and its members sharing employees and responsibility.

In the steps below those which apply to *Associations only will be in italics*. Each of the other steps apply to all applicants.

1. *Submit form ETA 9079-A to register the Association.* ***This needs to be done only once per fiscal year.*** *The Association may complete form ETA 9079-A prior to filing the application or along with the application. Form ETA 9079-A goes to the Philadelphia or San Francisco Servicing Office (see page 6).*

2. *Submit form ETA 9079-E to register each of the member employers.* ***This needs to be done only once per fiscal year.*** *To change an employer's information, submit a corrected form ETA 9079-E. Form ETA 9079-E goes to the Philadelphia or San Francisco Servicing Office (see page 6).*

3. Complete forms ETA 9079 and ETA 790 with all of the required attachments and explanations. Please proof read the forms to avoid confusion. NOTE on form ETA 9079: There is an Employer's Control

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

Number (ECN) on each page. The ECN is used by the computer to make sure that the correct pages are kept together. Make sure that the ECN is the same on all pages.

4. Calculate the correct fee: Each application has a base charge of $110 for the Visa petition. Each employer on an application has a charge of $150 for 10 or fewer workers, $250 for 11 to 99 workers, and $1,000 for 100+ workers. This is indicated in the following tables. Associations will have the $110 charge plus a charge of $150, $250 or $1,000 for each employer based on the numbers of workers that each employer requests. Example: A Joint-Employer Association submits an application for 3 employers who wish to hire 3 workers each and 2 employers who wish to hire 12 workers each, for a total of five employers. The fee will be $(110 + (3x150)+ (2x250)) = $1060.

Each Application	$110.00

0-10	$150.00
11-99	$250.00
100+	$1000.00

5. Submit forms ETA 9079 and ETA 790 with all required attachments and explanations and a check for the correct fee to the appropriate Servicing Office (see page 6) at least 45 days prior to the date of need. **A copy of forms ETA 9079 and ETA 790 with all of the required attachments and explanations must be sent to the appropriate State Employment Security Agency at the same time as filing with the appropriate Servicing Office.**

6. The Servicing Office will check the application for completeness and correct fee upon receipt. If an application is incomplete, it will be returned. Otherwise, the application will be sent to the appropriate Regional Office for processing. The Regional Office will send an Acceptance Letter with the required recruitment efforts if the application package has been accepted for processing. If the package has not been accepted, a Modification Letter with the modifications needed for the application to be acceptable will be sent.

7. *Associations must submit form ETA 9079-L pages which support the initial application and the fee submitted with it to the appropriate Servicing Office.*

8. *Associations can now submit any needed changes to the application's employer list by sending an additional ETA 9079-L and a check for any fee change to the appropriate Servicing Office. The final changes must be received no later than 5 days prior to the certification date. Another way of saying this is 35 days before the date of need. This will ensure that all information has been updated and the certification granted is correct.*

9. If more than two consulates are to be used for the workers requested, submit form ETA 9079-C to the appropriate Servicing Office. If you wish to change where or how many workers will apply at the consulate, use form ETA 9079-C. Use zero in the number of workers section and that consulate will not be notified. The final changes must be received no later than 5 days prior to the certification date. Another way of saying this is 35 days before the date of need. This will ensure that all information has been updated.

10. If any of the workers covered by this application are already in the U.S., submit form ETA 9079-W for each worker to the appropriate Servicing Office. Each named worker will reduce the number requested from the last listed consulate. The final changes must be received no later than 5 days prior to the certification date. Another way of saying this is 35 days before the date of need. This will ensure that all information has been updated and the certification granted is correct.

11. Recruitment by the employer or Association should begin only upon instruction from the appropriate

ETA 9079 Addenda for Joint-Employer (Two or more employers sharing workers and responsibility) & Joint-Employer Association (An Association and its members sharing employees and responsibility)			
FORM/ PART	**PURPOSE/DESCRIPTION**	**WHO USES THIS FORM**	**WHEN AND HOW SUBMITTED**
9079-A	Register a Joint-Employer Association	Associations	Submit by regular or overnight mail or fax prior to submission of any applications
9079-E	Register an Employer as a member of an Association	Associations	Submit by regular or overnight mail or fax prior to submission of any applications.
9079-L	Listing of employer information (member's EIN, City or County of work-site, number of workers requested, work hours, worker housing, and guaranteed wage for each crop activity) for an Association application	Associations	Submit by regular or overnight mail or fax any time after acceptance letter and 5 days prior to certification
ETA 9079 Addenda to be used AFTER CERTIFICATION			
9079-M (I-824)	Move worker(s) from one Consulate to another.	Applicants who need to change the location where workers will apply for visas AFTER CERTIFICATION	Submit by regular or overnight mail after certification
9079-X	Request for eXtension of the Labor Certification and H-2A Visas	Applicants meeting the criteria for an extension per the regulations	Submit by regular or overnight mail or fax.

BASIC PROCEDURE FOR FILING A LABOR CERTIFICATION AND H-2A VISA PETITION

There are four distinct types of Applicants

1 **Sole-Employer**.
2. **Association as Sole-Employer** - an Association filing an application on their own behalf,
3 **Joint-Employer** - two or more employers sharing workers and responsibility,
4 **Joint-Employer Association** - an Association and its members sharing employees and responsibility.

In the steps below those which apply to *Associations only will be in italics*. Each of the other steps apply to all applicants

1. *Submit form ETA 9079-A to register the Association.* ***This needs to be done only once per fiscal year.*** *The Association may complete form ETA 9079-A prior to filing the application or along with the application. Form ETA 9079-A goes to the Philadelphia or San Francisco Servicing Office (see page 6)*

2. *Submit form ETA 9079-E to register each of the member employers.* ***This needs to be done only once per fiscal year.*** *To change an employer's information, submit a corrected form ETA 9079-E. Form ETA 9079-E goes to the Philadelphia or San Francisco Servicing Office (see page 6)*

3. Complete forms ETA 9079 and ETA 790 with all of the required attachments and explanations. Please proof read the forms to avoid confusion. NOTE on form ETA 9079: There is an Employer's Control

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

Number (ECN) on each page. The ECN is used by the computer to make sure that the correct pages are kept together. Make sure that the ECN is the same on all pages

4 Calculate the correct fee. Each application has a base charge of $110 for the Visa petition. Each employer on an application has a charge of $150 for 10 or fewer workers, $250 for 11 to 99 workers, and $1,000 for 100+ workers. This is indicated in the following tables. Associations will have the $110 charge plus a charge of $150, $250 or $1,000 for each employer based on the numbers of workers that each employer requests. Example: A Joint-Employer Association submits an application for 3 employers who wish to hire 3 workers each and 2 employers who wish to hire 12 workers each, for a total of five employers. The fee will be $(110 + (3x150)+ (2x250)) = $1060

	Cost
Each Application	$110.00

# of Workers	Cost
0-10	$150.00
11-99	$250.00
100+	$1000.00

Submit forms ETA 9079 and ETA 790 with all required attachments and explanations and a check for the correct fee to the appropriate Servicing Office (see page 6) at least 45 days prior to the date of need. **A copy of forms ETA 9079 and ETA 790 with all of the required attachments and explanations must be sent to the appropriate State Employment Security Agency at the same time as filing with the appropriate Servicing Office.**

The Servicing Office will check the application for completeness and correct fee upon receipt. If an application is incomplete, it will be returned. Otherwise, the application will be sent to the appropriate Regional Office for processing. The Regional Office will send an Acceptance Letter with the required recruitment efforts if the application package has been accepted for processing. If the package has not been accepted, a Modification Letter with the modifications needed for the application to be acceptable will be sent

ciations must submit form ETA 9079-L pages which support the initial application and the fee tted with it to the appropriate Servicing Office

ations can now submit any needed changes to the application's employer list by s nal ETA 9079-L and a check for any fee change to the appropriate Servicing Office es must be received no later than 5 days prior to the certification date. Another way of s ays before the date of need. This will ensure that all information has been updat ation granted is correct.

n two consulates are to be used for the workers requested, submit form E bsulate Servicing Office. If you wish to change where or how many wo ETA 9079-C.' Use zero in the number of workers section and t anges must be received no later than 5 days prior to the ce is 35 days before the date of need. This will ensure that all informat on has been update

workers covered by this application are already in the U.S., submit form ETA 90 to the appropriate Servicing Office. Each named wor ten consulate. The final changes must be received no later than 5 days prior to the date of need. Another way of saying this is 35 days before the date of need. This will ensure that a been updated and the certification granted is correct

Recruitment by the employer or Association should begi

Regional Office through the acceptance letter.

12. Obtain the appropriate Workers' Compensation insurance. Proof of the Workers' Compensation insurance may be submitted to the appropriate Regional Office at the time of the initial application. However, if not available at that time, it may be submitted to the appropriate Regional Office at any time during the processing of the application prior to certification.

13. Schedule a housing inspection by the State. A housing inspection may be submitted to the appropriate Regional Office at the time of the initial application. However, if it has not been completed at that time, it can be submitted at any time during the processing of the application prior to certification.

14. Recruitment results should be submitted to the appropriate Regional Office 24 hours prior to the certification date.

15. A final determination will be made 30 days prior to the date of need.

What is the difference between a Servicing Office and a Regional Office?

A Serving Office is a data entry and computer service facility. No decision making occurs at this site.

A Regional Office is where the review of the application will occur and where the technical expertise resides. The Regional Office coordinates processing of the application with the appropriate State agencies.

SERVICING OFFICE LOCATIONS

The Philadelphia Servicing Office processes applications from the following locations:

Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia.

The Philadelphia Servicing Office mailing address for applications is:

Department of Labor
Employment and Training Administration
3535 Market St., #13300
Philadelphia, PA 19104

The San Francisco Servicing Office processes applications from the following locations:

Alaska, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming.

The San Francisco Servicing Office mailing address for applications is:

Department of Labor
Employment and Training Administration
71 Stevens St., #715
San Francisco, CA 94105

II. INSTRUCTIONS FOR COMPLETION OF ETA FORM 9079

Application for Temporary Agricultural Labor Certification and H-2A Petition

These instructions will help employers understand the information that is being requested on the ETA FORM 9079. Please read the instructions carefully and follow them to minimize the chances of an application being returned due to incomplete information.

NOTE: Mark the box with an X to indicate that this is either a New Application or a Response to a Modification Letter. If it is a response to a Modification Letter, enter the DOL case number. This will ensure that the application is credited correctly and will not be returned due to not having a check for the fee attached.

SECTION I: APPLICANT'S INFORMATION (Page 1 of 5 of form ETA 9079)

1. Applicant Type:
Fill in the circle that indicates the appropriate applicant type. Fill in only one circle.

2. Full Legal Name of Applicant:
Enter the full name of the individual employer or Association. Associations will use the same information as entered on form ETA 9079-A.

3. Federal Employer ID Number:
Enter Applicant's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service. This is the EIN that will be used on subsequent Addenda for this application.

4. Applicant's Telephone Number:
Enter a ten digit telephone number (include the area code) for the Applicant. If applicable, use the four digits after the slash for the extension.

5. Return Fax Number:
Enter a ten digit fax number (include the area code) for the Applicant.

6. Contact's Telephone Number (Optional):
Enter a ten digit telephone number (include the area code) for the contact person for the individual employer or Association. If applicable, use the four digits after the slash for the extension.

7. Applicant's Address:
Enter the complete mailing address of the Applicant including number/street, city, state and postal (zip) code.

8. Contact's Name (Optional):
Enter the complete name of the person to which correspondence should be sent. Provide the family (last) name on the first line and the given (first) name and initial on the second line.

9. Correspondence Address:
Enter the complete mailing address where correspondence should be sent. Include number/street, city, state and postal (zip) code.

10. E-Mail Address:
Enter the complete e-mail address that matches the Correspondence Address if you would like notification via e-mail.

SECTION II: JOINT-EMPLOYERS AND JOINT-EMPLOYER ASSOCIATIONS ONLY

If you are an ASSOCIATION: The next item applies only to Associations.

1. **Number of Employers Requesting**:
Enter the number of employers for each category (less than 10 workers, 11 to 99 workers or 100+ workers) who will be initially included in the application using form ETA 9079-L which must be completed immediately after receipt of the Acceptance Letter.

SECTION III: SOLE-EMPLOYERS ONLY

If you are a SOLE-EMPLOYER: The next four items are for Sole-Employers only -- Associations will fill out forms ETA 9079-E and ETA 9079-L.

1. Total Number of Alien Workers Requested:
Enter the number of workers requested and include those who are already in the U.S.

2. Total Work Hours per Week:
Enter the number of normal hours per worker to be worked each week.

3. Number of Workers Which can be housed:
Enter the total number of employees which can be housed at the work-site.

4. Location of Work:
Enter the city or county where the alien workers will work.

EMPLOYER CONTROL NUMBER:
The Employer Control Number (ECN) must be completed by the Applicant and must be the same number on each page. The ECN can be any sequence of digits and is used to keep all pages together during processing. Failure to do so can delay the processing of the application.

SECTION IV: DATES OF NEED (Page 2 of 5 of form ETA 9079)

Dates of Need:
Enter the begin and end dates for the period of employment. The dates should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

SECTION V: JOB OPENING INFORMATION

1. Job Title:
Enter the payroll title/common name of the job being offered.

2. Education:
Fill in the appropriate circle that indicates the highest diploma or degree required for the job. Fill in only one circle. **NOTE: If 'None' or 'High School' is selected, do not fill in items 3 and 4.**

3. Foreign equivalent acceptable:
Mark the box with an X if a foreign equivalent is acceptable for this job.

4. Field of Study:
Enter the field of study that is needed to be successful in this job.

5. Field of Training:
Enter the type of training that is needed to be successful in this job. This training is above and beyond the training provided by the employer.

6. Months of Training:
Enter the minimum number of months of training necessary for the worker to carry out the described duties.

7. Field of Experience:
Enter the minimum experience necessary for the worker to carry out the described duties.

8. Months of Experience:
Enter the minimum number of months of experience necessary for the worker to carry out the described duties.

9. Job Description:
PLEASE PRINT CLEARLY. In step-by-step detail, describe the duties (work tasks) which make up the job. Avoid technical terms as much as possible. If they must be used, define them. The job description needs to include: equipment that will be used, worker performance standards, training (if provided), required experience, licenses or permits that are necessary, level of supervision that will be provided, and the provision of tools and equipment.

SECTION VI: CROP AND WAGE INFORMATION (Page 3 of 5 of form ETA 9079)

1. Crop Activity:
Enter the type of activity for each crop (e.g., Apple Picking Drops, Apple Picking Fresh Market, Apple Picking Processing, Blueberry, Mechanical Harvest Operator). If crop activity is more than 58 letters, use appropriate abbreviation. For example: Use the abbreviation "Oper." for the word "Operator."

2. Proposed Minimum Guaranteed Wage:

Enter the higher of the Adverse Effect Wage Rate (AEWR), Prevailing, Federal, State or Local hourly minimum wage (see ETA Form 790). Indicate the pay unit (hour, day, week, month). Note: If activity is a "Special Processing" activity, refer to those instructions for wage information. For example: Refer to special Sheep herding/Goat herding and Custom Combine procedures and prevailing wage memoranda.

SECTION VII: DESIGNATION OF AGENT (Page 4 of 5 of form ETA 9079)

1. Full Legal Name of Agent's Organization or Company:

Enter the full name of the agent's organization or company representing the employer.

2. Contact Name:

Enter the full name of the contact person from the agent's organization. Provide the family (last) name on the first line and the given (first) name and initial on the second line.

3. Federal Employer ID Number:

Enter employer's nine digit Federal Employer Identification Number (EIN) that has been assigned by the Internal Revenue Service.

4. Agent's Telephone Number:

Enter a ten digit telephone number (include the area code) for the Agent. If applicable, use the four digits after the slash for the extension.

5. Agent's Correspondence Address:

Enter the complete mailing address where all materials should be sent. Include number/street, city, state and postal (zip) code.

6. Agent's E-Mail Address:

Enter the complete e-mail address if you would like notification sent via e-mail.

7. Agent's Signature and Date:

After the agent reads the statement, they must sign the form with their full legal name. Do not let the signature extend beyond the box. The date of signing should be entered in the block to the right. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

8. Applicant's Signature and Date:

The Applicant's designated official that has hiring authority must sign the form with their full legal name. Do not let the signature extend beyond the box. The date of signing should be entered in the block to the right of the signature. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

SECTION VIII: VISA REQUEST INFORMATION

1. Number of Individuals who will apply at this site:

Enter the total number of alien workers who will apply at the location indicated in item 2.

2. City and Country of the Consulate/Port of Entry or Pre-flight Inspection:

Enter the location where non-immigrants will be applying for their Visas. If more than one location, you will need to fill out form ETA 9079-C after receiving the Acceptance Letter from the appropriate Regional Office and no more than 5 days prior to the scheduled certification date.

SECTION IX: STATE AGENCY JOB ORDER INFORMATION

This information must be filled out. Enter the city and state where you sent the duplicate application.

DRAFT June 6, 2000

SECTION X: DECLARATION OF EMPLOYER (Page 5 of 5 of form ETA 9079)

NOTE: By signing this form, the employer agrees to comply with all of the requirements of 20 CAR 655.90 et seq.

1. Hiring Official's Name:

Enter the hiring official's name. Provide the family (last) name on the first line and the given (first) name and initial on the second line.

2. Title of Hiring or Other Designated Official:

Enter the title of the person whose name appears above.

3. Applicant's Signature:

The Applicant must sign the form with their full legal name. Do not let the signature extend beyond the box. The date of signing should be entered in the block to the right of the signature. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

III. INSTRUCTIONS FOR COMPLETING ETA FORM 9079-W
Named Worker Addendum

General: This form is completed for each worker that is located within the United States at the time of filing form ETA 9079 with the DOL. A single form ETA 9079-W is used for each worker in the United States that is included on the ETA 9079. There is no additional fee required for form ETA 9079W. Upon approval of form ETA 9079, DOL will forward all ETA 9079-W's to the Immigration and Naturalization Service (INS) for adjudication. The employer and the workers will be contacted directly by INS with the results.

This Addendum to the application can be submitted at the time of filing form ETA 9079 or up to 5 days prior to certification.

SECTION I: DEPARTMENT OF LABOR CASE TRACKING INFORMATION

1. Applicant's Federal Employer ID Number:
Enter Applicant's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service. This must the same as the EIN from Section I, page 1 of 5 of form ETA 9079.

2. Department of Labor Case Number:
If form ETA 9079-W is submitted after form ETA 9079, enter the case number from the Acceptance Letter.

SECTION II: ALIEN BENEFICIARY INFORMATION

1. Full Legal Name of Alien:
Provide the alien's family (last) name on the first line and the given (first) name and initial on the second line.

2. Alien's Current U.S. Address:
Enter the complete mailing address of the Alien including number/street, city, state and postal (zip) code.

3. SSN:
Enter the alien's social security number if applicable.

4. Date of Birth:
Enter the alien's date of birth. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

5. Country where alien was born:
Enter the Country where the alien was born.

6. Country where alien's passport was issued:
Enter the Country where the alien's passport was issued.

7. City and Country of the Consulate/Port of Entry or Pre-flight Inspection:
Enter the location where non-immigrants will be applying for their visas.

8. Change of Status or Extension of Stay:
Mark an X in the appropriate box(s) to indicate if the alien requires a change of status and/or an extension of stay.

9. Date Passport Expires:
Enter the date when the alien's passport expires. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

10. Alien Registration Number:
Enter the Alien's Registration Number.

11. Is Alien already in the USA?
Indicate whether the alien is already in the USA.

12. Fill in the appropriate circle:
Fill in the appropriate circle to indicate whether this is new employment, continuation of employment or change in Employment Conditions. Fill in only one circle.

13. From I-94:

Provide the alien registration number (if any); I-94 number; date of arrival/admission (from I-94); date of expiration of stay (from I-94); visa/non-immigrant status (from I-94). Enter worker's current non-immigrant status (examples: H-2A, B-2, H-2B). All dates should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

14. Fill the appropriate circle for each questions below:

Fill in the appropriate yes or no circle as it pertains to the worker. Assure that the alien has provided any additional forms for replacement of I-94s or to seek changes for dependents (I-539 or I-102).

15. Alien's Signature:

The alien must sign the form with their full legal name. Their signature indicates that all of the above information is accurate and true. Do not let the signature extend beyond the box. The date of signing should be entered in the block to the right of the signature. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

DRAFT June 6, 2000

IV. INSTRUCTIONS FOR COMPLETING ETA FORM 9079-C

Visa Issuance Location Addendum

General: Form ETA 9079-C is a continuation form for form ETA 9079, **SECTION C:** "Visa Request Information". This form can be used to change where or how many workers will apply at a Consulate.

This Addendum to the application can be submitted at the time of filing form ETA 9079 or up to 5 days prior to certification.

SECTION I: DEPARTMENT OF LABOR CASE TRACKING INFORMATION

1. Applicant's Federal Employer ID Number:

Enter Applicant's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service. This must the same as the EIN from Section I, page 1 of 5 of form ETA 9079.

2. Department of Labor Case Number:

If form ETA 9079-C is submitted after form ETA 9079, enter the case number from the Acceptance Letter.

SECTION II: VISA ISSUANCE LOCATIONS AND NUMBERS

Repeat the information for items 1 and 2 for each location. The number of individuals at each location should add up to the total number of unnamed workers requested.

1. City and Country of the Consulate, Port of Entry or Pre-flight Inspection:

Enter location where non-immigrants will be applying for their visas.

2. Number of Individuals Who Will Apply At This Site:

Enter the number of H-2A non-immigrants that will apply. To remove a Consulate from the list, enter zero in this section.

DRAFT June 6, 2000

V. INSTRUCTIONS FOR COMPLETING ETA FORM 9079-S
Additional Work-Sites for a Sole-Employer Application Addendum

General: Only Sole-Employers or Associations as Sole-Employers should fill out this form. Complete a form for all additions, removal or updates of work-sites from the application (ETA Form 9079).

This Addendum to the application can be submitted at the time of filing form ETA 9079 or up to 5 days prior to certification.

SECTION I: DEPARTMENT OF LABOR CASE TRACKING INFORMATION

1. Applicant's Federal Employer ID Number:
Enter Applicant's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service. This must the same as the EIN from Section I, page 1 of 5 of form ETA 9079.

2. Department of Labor Case Number:
If form ETA 9079-S is submitted after form ETA 9079, enter the case number from the Acceptance Letter.

SECTION II: WORK-SITE INFORMATION

Action for 9079-S:
Fill in the appropriate circle: ADD to include work-site(s) on this application if they have not already been added; REMOVE to remove previously included work-site(s) from this application; UPDATE to change the information for a previously included work-site. Fill in only one circle.

1. City or County of Work Site:
Enter the City or County where the work will be performed.

2. H-2A Workers:
Enter the number of H-2A workers requested for each member. If two employers expect to be sharing the same workers, either split them number between them or enter them all for the first one and '0000' for the second. If only one employer has housing, list the total number of workers residing with the employer that has housing. Put '0000' for the number of workers residing with the employers that has no housing.

3. Work Hours Per Week:
Enter the number of hours workers will be expected to work per week.

4. Worker Housing:
Enter the number of workers which will be housed at the specific work site.

Crops A through E
Minimum Guaranteed Wage:
Enter the wage offered at the specific work site for the specific crop activity listed on form ETA 9079, page 3 of 5.

VI. INSTRUCTIONS FOR COMPLETING ETA FORM 9079-A

Joint-Employer & Joint-Employer Association Registration Addendum

General: Form ETA 9079-A is used to provide information regarding an Association.

This Addendum to the application must be filed before or at the same time as form ETA 9079 is filed.

SECTION I: APPLICANT'S INFORMATION

1. Applicant Type:
Fill in the appropriate circle to indicate if form ETA 9079-E is for a Joint-Employer or a Joint-Employer Association. Fill in only one circle.

2. Full Legal Name of Association:
Enter full name of the Association or primary employer's information.

3. Federal Employer I.D. Number:
Enter employer's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service.

4. Applicant's Telephone Number:
Enter a ten digit telephone number (include the area code) for the Applicant. If applicable, use the four digits after the slash for the extension.

5. Return Fax Number:
Enter a ten digit fax number (include the area code) for the Applicant.

6. Contact's Telephone Number (Optional):
Enter a ten digit telephone number (include the area code) of the person to call if there are questions regarding this application. If applicable, use the four digits after the slash for the extension.

7. Applicant's Address:
Enter the complete mailing address of the Applicant including number/street, city, state and postal (zip) code.

8. Contact's Name (Optional):
Enter the name of the person in the Association who will contacted concerning an application. This may be other than the hiring official. Provide the family (last) name on the first line and the given (first) name and initial on the second line.

9. E-Mail Address:
Enter an e-mail address if you would like to receive notification via e-mail.

VII. INSTRUCTIONS FOR COMPLETING ETA FORM 9079-E

Employer Membership in an Association Registration Addendum

General: This addendum is used in conjunction with form ETA 9079-A (Joint-Employer Association Registration) and ETA 9079-L (Listing of Members for an Association Application). This is used to declare membership in an Association and to authorize the Association to act on behalf of the employer on appropriate applications.

This Addendum to the application must be submitted before or at the same time as form ETA 9079 is filed.

SECTION I: EMPLOYER'S INFORMATION

1. Full Legal Of Employer:
Enter the business name as it is on record with the IRS.

2. Federal Employer I.D. Number:
Enter employer's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service.

3. Employer's Telephone Number:
Enter a ten digit telephone number (include the area code) for the employer. If applicable, use the four digits after the slash for the extension.

4. Return Fax Number:
Enter a ten digit fax number (include the area code) for the Applicant.

5. Contact Telephone Number:
Enter a ten digit telephone number (include the area code) for the contact. If applicable, use the four digits after the slash for the extension.

6. Employer's Address:
Enter the complete mailing address of the employer including number/street, city, state and postal (zip) code.

SECTION II: ASSOCIATION'S INFORMATION

1. Association's Federal Employer I.D. Number:
Use the Association's EIN from Section I of form ETA 9079-A

2. Name of Association:
Enter full legal name of the Association as it appears in Section I of form ETA 9079-A.

SECTION III: ASSOCIATION AUTHORIZATION

1. Hiring Official's Name:
Provide the family (last) name on the first line and the given (first) name and initial on the second line.

2. Title of Hiring Official or Other Designated Official:
Enter the title of the person whose name appears above.

3. Employer's Signature:
The Employer must sign the form with their full legal name. Do not let the signature extend beyond the box. The date of signing should be entered in the block to the right of the signature. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

VIII. INSTRUCTIONS FOR COMPLETING ETA FORM 9079-L

Listing of Members for an Association Application Addendum

General: Only Joint-Employer Associations should fill out this form. Complete a form for all additions, removals or updates of members from the application (form ETA 9079). This addendum is used in conjunction with ETA 9079-A (Registration of Association) and ETA 9079-E (Registration of Employer Membership in an Association)

This Addendum to the application can be submitted at the time of filing form ETA 9079 or up to 5 days prior to certification.

SECTION I: DEPARTMENT OF LABOR CASE TRACKING INFORMATION

1. Applicant's Federal Employer ID Number:

Enter Applicant's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service. This must the same as the EIN from Section I, page 1 of 5 of form ETA 9079.

2. Department of Labor Case Number:

If form ETA 9079-W is submitted after form ETA 9079, enter the case number from the Acceptance Letter.

SECTION II: MEMBER INFORMATION

Action for 9079-L:

Fill in the appropriate circle: ADD to include employer(s) on this application if they have not already been added; REMOVE to remove previously included employer(s) from this application, UPDATE to change the information for previously included employer(s). Fill in only one circle.

1. Member's EIN:

Enter each member's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service.

2. City or County of Work Site:

Enter the City or County where the work will be performed.

3. H-2A Workers:

Enter the number of H-2A workers requested for each member. If two employers expect to share the same workers, either split the workers between the employers or enter all workers for the first employer and '0000' for the second. If only one employer has housing, list the total number of workers residing with the employer that has housing. Put '0000' for the number of workers residing with the employer that has no housing.

4. Work Hours Per week:

Enter the number of hours workers will be expected to work per week.

5. Worker Housing:

Enter the number of workers which will be housed at the specific work site.

Crops A through E

Minimum Guaranteed Wage:

Enter the wage offered at the specific work site for the specific crop activity listed on form ETA 9079, page 3 of 5.

IX. Instructions for Completing ETA Form 9079-M

Post Certification Visa Issuance Location Change Addendum

General: This Addendum is used after certification and is equivalent to INS form I-824. A separate fee is required for this addendum to be processed. The current fee is $120. A check for this amount must be included with the form or the form will be returned. Use form ETA 9079-C to change Consulates before certification.

This Addendum to the application should be filed after the application has been certified.

SECTION I: DEPARTMENT OF LABOR CASE TRACKING INFORMATION

1. Applicant's Federal Employer ID Number:
Enter Applicant's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service. This must the same as the EIN from Section I, page 1 of 5 of form ETA 9079.

2. Department of Labor Case Number:
If form ETA 9079-W is submitted after form ETA 9079, enter the case number from the Acceptance Letter.

SECTION II: APPLICANT'S INFORMATION

1. Full Legal Name of Applicant:
Enter the full name of the individual employer or Association. Associations will use the same information as entered on form ETA 9079-A.

2. Applicant's Telephone Number:
Enter a ten digit telephone number (include the area code) for the Applicant.

3. Return Fax Number:
Enter a ten digit fax number (include the area code) for the Applicant.

4. Contact's Telephone Number:
This information is optional but recommended. Enter a ten digit telephone number (include the area code) for the contact person from the individual employer or Association.

5. Applicants's Address:
Enter the complete mailing address of the Applicant including number/street, city, state and postal (zip) code.

6. Contact's Name:
Enter the name of the contact.

7. Correspondence Address:
Enter the complete mailing address where correspondence is to be sent. Include number/street, city, state and postal (zip) code.

SECTION III: ACTION REQUEST

Fill in the appropriate circle to indicate the action requested. Fill in only one circle.

SECTION IV: CONSULATE CHANGE INFORMATION

Enter the new information for the two locations below. If you wish all of the H-2A visas to be moved from one location to the other enter '0000' where appropriate.

1. City and Country of the Consulate, Port of Entry or Pre-flight inspection:
Enter location where non-immigrants will be applying for their visas.

2. Number of individuals who will apply at this site:
Enter the number of H-2A non-immigrants that will apply.

SECTION IV: AUTHORIZATION FOR CHANGE

1. Hiring Official's Name:

Enter the hiring official's name. Provide the family (last) name on the first line and the given (first) name and initial on the second line.

2. Title of Hiring or Other Designated Official:

Enter the title of the person whose name appears above.

3. Applicant's Signature:

Applicant must sign the form with their full legal name. Do not let the signature extend beyond the box. The date of signing should be entered in the block to the right of the signature. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

X. INSTRUCTIONS FOR COMPLETING ETA FORM 9079-X

Request for Extension of Labor Certification and H-2AVisas Petition

This Addendum to the application should be filed after the application has been certified.

SECTION I: DEPARTMENT OF LABOR CASE TRACKING INFORMATION

1. Federal Employer I.D. Number:

Enter Applicant's nine digit Federal Employer identification Number (EIN) that has been assigned by the Internal Revenue Service. This must the same as the EIN from Section I, page 1 of 5 of form ETA 9079.

2. Department of Labor Case Number from Acceptance Letter

Enter the case number from the Acceptance Letter.

3. Full Legal Name of Applicant:

Enter the full name of the individual employer or Association. Associations will use the same information as entered on form ETA 9079-A.

4. Applicant's Telephone Number:

Enter a ten digit telephone number (include the area code) for the Applicant. If applicable, use the four digits after the slash for the extension.

5. Requested End Date:

Enter the new ending date you are requesting to be certified. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

SECTION II: REASON FOR REQUESTING EXTENSION

Enter the reason why an extension to the certified period is being requested.

SECTION III: AUTHORIZATION

1. Hiring Official's Name:

Enter the hiring official's name. Provide the family (last) name on the first line and the given (first) name and initial on the second line.

2. Title of Hiring or Other Designated Official:

Enter the title of the person whose name appears above.

3. Applicant's Signature:

Applicant must sign the form with their full legal name. Do not let the signature extend beyond the box. The date of signing should be entered in the block to the right of the signature. The date should be entered in an **MM/DD/YYYY** format and have a 0 in front of any number less than 10 (for example: February 5, 2002 is entered as 02/05/2002).

NOTE: Falsification of any statements on this form may subject the employer to civil or criminal prosecution (see 18 U.S.C. 1001), as well as to civil money penalties and debarment.

U.S. Department of Labor

Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079
OMB Approval:
Expiration Date:

Fill only one circle — New ○ Response to a Modification letter for DoL case number: ___ - ___ - ___

I. Applicant's Information

(1) Applicant Type: *Fill only one circle*

Sole-Employer ○ Association as a Sole-Employer ○ Joint-Employer ○ Joint-Employer Association ○

(2) Full Legal Name of Applicant

(3) Federal Employer I.D. Number (9 digits) (EIN from IRS) ___ - ___

(4) Applicant's Telephone Number ___ - ___ / ___

(5) Return FAX Number ___ - ___

(6) Contact's Telephone Number (Optional) ___ - ___ / ___

(7) Applicant's Address (Number / Street)(always use first line - use the second line when needed, otherwise leave it blank.)

City | State | Postal Code

(8) Contact's Name (Optional) (This may be any contact other than hiring official.) - Family name on the first line, Given name then initial on the second line.

(9) Correspondence Address (only use this area if correspondence should be sent to a location other than the Applicant or Agent)
Number / Street (always use first line - use the second line when needed, otherwise leave it blank.)

City | State | Postal Code

(10) E-mail Address

@

II. Joint-Employers & Joint-Employer Associations Only: *Sole employers go to the next section.*

(1) Number of employers requesting: 10 or fewer workers ___ 11 to 99 workers ___ 100 or more workers ___

III. Sole Employers Only (includes Associations as sole-employers)- Complete this section.

(1) Total Number of Alien Workers Requested (includes those already in the U.S.) ___

(2) Total Work Hours per Week ___ (3) Number of workers which can be housed ___

(4) Location of Work - City or County - use the 9079-S for additional Work-Sites

NOTE: See OMB notice on page 4 of this form.

Employer's Control Number ___

Employer's Control Number must be the same on all five (5) pages, including the last page

Draft

U.S. Department of Labor
Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079
OMB Approval:
Expiration Date:

IV. Dates of Need:
Begin Date M M / D D / Y Y Y Y End Date M M / D D / Y Y Y Y

V. Job Opening Information

(1) Job Title

(2) Education: Highest Diploma or Degree Required

Fill Only ONE Circle: None ○ High School ○ Associate ○ Bachelor ○ Master ○ Doctorate ○

(3) Foreign Equivalent Acceptable ☐

Field of Study

Field of Training

Months of Training

(3) Field of Experience

Months of Experience

(4) Job Description

U.S. Department of Labor
Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079
OMB Approval:
Expiration Date:

VI. Crop and Wage

(1) Crop Activity

(A)

(2) Proposed Minimum Guaranteed

$. PER Fill Only ONE Circle: Month ○ Week ○ Day ○ Hour ○

Any piece rate/ wage listed on the ETA 790 will be the required payment, subject to DoL approval. See form instructions for details.

Crop Activity

(B)

Proposed Minimum Guaranteed Wage

$. PER Fill Only ONE Circle: Month ○ Week ○ Day ○ Hour ○

Any piece rate/ wage listed on the ETA 790 will be the required payment, subject to DoL approval. See form instructions for details.

Crop Activity

(C)

Proposed Minimum Guaranteed Wage

$. PER Fill Only ONE Circle: Month ○ Week ○ Day ○ Hour ○

Any piece rate/ wage listed on the ETA 790 will be the required payment, subject to DoL approval. See form instructions for details.

Crop Activity

(D)

Proposed Minimum Guaranteed Wage

$. PER Fill Only ONE Circle: Month ○ Week ○ Day ○ Hour ○

Any piece rate/ wage listed on the ETA 790 will be the required payment, subject to DoL approval. See form instructions for details.

Crop Activity

(E)

Proposed Minimum Guaranteed Wage

$. PER Fill Only ONE Circle: Month ○ Week ○ Day ○ Hour ○

Any piece rate/ wage listed on the ETA 790 will be the required payment, subject to DoL approval. See form instructions for details.

NOTE: See OMB notice on page 4 of this form.

Employer's Control Number

Employer's Control Number must be the same on all five (5) pages, including the last page

Draft

U.S. Department of Labor
Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079
OMB Approval:
Expiration Date:

VII. Designation of Agent

(1) Full Legal Name of Agent's Organization or Company

(2) Contact's Name (Optional) - Family name on the first line, Given name then initial on the second line.

(3) Federal Employer I.D. Number (9 digits) (EIN from IRS) -

(4) Agent's Telephone Number - - /

(5) Agent's Correspondence Address (Number / Street)

City | State | Zip Code

(6) E-mail Address

@

I hereby agree to act as the agent for the applicant listed on page 1 of this application.

(7) **Agent's Signature** -- *DO NOT let signature extend beyond the box.* M M / D D / Y Y Y Y

I hereby designate the above as my agent.

(8) **Applicant's Signature** -- *DO NOT let signature extend beyond the* M M / D D / Y Y Y Y

VIII. Visa Request

(1) Number of Individuals who will apply at this site.

(2) City and Country of the Consulate, Port of Entry or Preflight

City

Country

IX. State Agency Job Order

City | State

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents obligation to reply to these reporting requirements are mandatory (INA Act, Section 205). Public reporting burden for this collection of information is estimated to average 1 1/4 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Division of Foreign Labor Certification, U.S. Department of Labor, Room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. (Paperwork Reduction Project 1205-0310). **DO NOT SEND THE COMPLETED FORM TO THIS OFFICE.**

Employer's Control Number

Employer's Control Number must be the same on all five (5) pages, including the last page

Draft

U.S. Department of Labor
Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079
OMB Approval:
Expiration Date:

x. Declaration Of Employer

By signing this form, the employer agrees to comply with all of the requirements of 20 C.F.R. § 655.90 et seq. including, but not limited to:

The obligation to engage in independent positive recruitment of U.S. workers.

The obligation to hire any qualified U.S. worker who applies for the position until 50% of the contract period has elapsed. U.S. workers may be rejected only for lawful job-related reasons.

The obligation to provide free housing meeting applicable standards for all workers who cannot reasonably return to their residence on the same day.

The obligation to provide three meals a day to each worker or furnish cooking facilities for workers to prepare their own meals. The employer's charge for such meals may not exceed the maximum amount permitted by the regulations.

The obligation to provide free transportation between the employer's housing the actual worksite.

The obligation to reimburse the worker's in-bound and home-bound transportation expenses under the terms described in the regulations.

The obligation to provide worker's compensation insurance. Where such insurance is not required by state law, the employer must provide insurance equivalent to that provided to covered workers.

The obligation to provide the tools and supplies necessary to carry out the work except as otherwise permitted by the regulations.

The obligation to guarantee each worker employment for at least three-fourths of the workdays in the contract under the conditions provided for in the regulations.

The obligation to keep accurate records with respect to worker's earnings.

The employer assures that the job opportunity for which H-2A certification is being sought is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet or counsel another to do so is a felony punishable by $10,000 or 5 years in the penitentiary or both (18 U.S.C. 1001). Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.

(1) Hiring Official's Name - Family name on the first line, Given name then initial on the second line.

(2) Title of Hiring or Other Designated Official

(3) **Applicant's Signature** -- *DO NOT let signature extend beyond the box.*

M M / D D / Y Y Y Y

FOR U.S. GOVERNMENT AGENCY USE ONLY:

Date Received	Case Number	Fiscal Control Number

NOTE: See OMB notice on page 4 of this form.

Employer's Control Number

Employer's Control Number must be the same on all five (5) pages, including this page

Draft

Named Worker
Addendum.
equivilent to I-539

U.S. Department of Labor

Application for Temporary Agricultural
Labor Certification and H-2A Petition

ETA Form 9079-W
OMB Approval:
Expiration Date:

I. Department of Labor Case Tracking Information

(1) Applicant's Federal Employer I.D. Number from Section A of ETA-9079 main form: ___ - _____

(2) Department of Labor Case Number from Acceptance Letter: ___ - _____ - _____

II. Alien Beneficiary Information

(1) Full Legal Name of Alien - Family name on the first line, Given name then initial on the second line.

(2) Alien's Current U.S. Address (Number / Street)

City | State | Postal Code

(3) SSN ___ - ___ - ____

(4) Date of Birth M M / D D / Y Y Y Y

(5) Country where alien was born:

(6) Country where alien's passport was issued:

(7) City and Country of the Consulate, Port of Entry or Preflight Inspection where alien will apply for a visa if change of status is

City

Country

(8) *Mark X in the appropriate box(s).*
☐ Change of Status ☐ Extension of Stay

(9) Date Passport Expires: M M / D D / Y Y Y Y

(10) Alien Registration Number: A _____

(11) *Fill the one appropriate circle* — Is alien already in the USA? Yes ○ No ○

(12) *Fill the one appropriate circle* ○ New Employment ○ Continuation ○ Change in Employment Conditions

From I-94

(13) I-94 Number

Date of Arrival: M M / D D / Y Y Y Y

Date of Expiration of I-94: M M / D D / Y Y Y Y

Current Status ___ - ___

(14) *Fill the one appropriate circle for each question below.*

Yes	No	
○	○	Have you filed a permanent petition for this worker?
○	○	Does the worker have dependents in the U.S. that need COS/EOS? (If yes include I-539)
○	○	Has worker ever been in exclusion/removal/deportation proceedings?
○	○	Are replacement I-94s needed? (If yes, include I-102 for each person needing new I-94)

(15) _____ M M / D D / Y Y Y Y

Alien'sSignature -- *DO NOT let signature extend beyond the box.*

NOTE: Falsification of any statements on this form may subject the violator to civil or criminal prosecution (see 18 U.S.C. 1001), as well as to civil money penalties.

Contains PRIVACY ACT INFORMATION Full stament should be inserted here to include reason for collection and ramifications of failure to provide the requested info and the required protections.

Contains PRIVACY ACT INFORMATION Full stament should be inserted here to include reason for collection and ramifications of failure to provide the requested info and the required

Draft

Visa Issuance Location Addendum

U.S. Department of Labor

Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079-C
OMB Approval:
Expiration Date:

I. Department of Labor Case Tracking Information

(1) Applicant's Federal Employer I.D. Number from Section A of ETA-9079 main form. ___ - _____

(2) Department of Labor Case Number from Acceptance Letter ___ - _____ - _____

II. Visa Issuance Locations and Numbers (the nubers on this page should add up to the total number of un-named workers

(1) City and Country of the Consulate, Port of Entry or Preflight

City

Country

(2) Number of Individuals who will apply at this site.

(1) City and Country of the Consulate, Port of Entry or Preflight

City

Country

(2) Number of Individuals who will apply at this site.

(1) City and Country of the Consulate, Port of Entry or Preflight

City

Country

(2) Number of Individuals who will apply at this site.

(1) City and Country of the Consulate, Port of Entry or Preflight

City

Country

(2) Number of Individuals who will apply at this site.

(1) City and Country of the Consulate, Port of Entry or Preflight

City

Country

(2) Number of Individuals who will apply at this site.

(1) City and Country of the Consulate, Port of Entry or Preflight

City

Country

(2) Number of Individuals who will apply at this site.

(1) City and Country of the Consulate, Port of Entry or Preflight

City

Country

(2) Number of Individuals who will apply at this site.

Draft

Additional Work-Sites for a Sole-Employer Application Addendum

U.S. Department of Labor
Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079-S
OMB Approval:
Expiration Date:

I. Department of Labor Case Tracking Information

(1) Applicant's Federal Employer I.D. Number from Section A of ETA-9079 main form. ___ - ___

(2) Department of Labor Case Number from Acceptance Letter ___ - ___ - ___

II. Work-Site Information

Fill Only ONE Circle ○ Add ○ Remove ○ Update the following work-sites for this Application

(1) City or County of Work-Site

(2) H-2A Workers (3) Work Hrs/Wk (4) Worker Housing

For the crop activities listed on the ETA9079 main form.

Crop A - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop B - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop C - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop D - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop E - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

(1) City or County of Work-Site

(2) H-2A Workers (3) Work Hrs/Wk (4) Worker Housing

For the crop activities listed on the ETA9079 main form.

Crop A - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop B - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop C - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop D - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop E - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

(1) City or County of Work-Site

(2) H-2A Workers (3) Work Hrs/Wk (4) Worker Housing

For the crop activities listed on the ETA9079 main form.

Crop A - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop B - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop C - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop D - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop E - Proposed Minimum Guaranteed Wage
$ ___.___ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Draft

Joint-Employer & Joint-Employer Association Registration Addendum

U.S. Department of Labor
Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079-A
OMB Approval:
Expiration Date:

I. Applicant's Information

(1) Applicant Type: *Fill only one circle*

Joint-Employer (Lead Employer)	Joint-Employer Association
○	○

When a group of employers who will be applying as a Joint-Employer does not incorperate the group into an Association, one the employers must act as the lead employer. This is an administrative funtion, only used for correspondence and tracking the application.

(2) Full Legal Name of Association

(3) Federal Employer I.D. Number (9 digits) (EIN from IRS)

(4) Applicant's Telephone Number

(5) Return FAX Number

(6) Contact's Telephone Number (Optional)

(7) Applicant's Address (Number / Street) (always use first line - use the second line when needed, otherwise leave it blank.)

City

State

Postal Code

(8) Contact's Name (Optional) (This may be any contact other than hiring official.) - Family name on the first line, Given name then initial on the second line.

(9) E-mail Address

@

Draft

Employer Membership in an Association Registration Addendum

U.S. Department of Labor

Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079-E
OMB Approval:
Expiration Date:

I. Employer's Information

(1) Full Legal Name of Employer

(2) Federal Employer I.D. Number (9 digits) (EIN from IRS)

(3) Employer's Telephone Number

(4) Return FAX Number

(5) Contact Telephone Number (Optional)

(6) Employer's Address (Number / Street)(always use first line - use the second line when needed, otherwise leave it blank.)

City

State

Postal Code

II. Association's Information

(1) Association's Federal Employer I.D. Number (9 digits) (EIN from IRS)

(2) Name of Association

III. Authorization

I hereby authorize the above Association to act on my half on appropriate ETA-9079 applications.

(1) Responsible Official's Name - Family name on the first line, Given name then initial on the second line.

Title of Responsible Official

M M / D D / Y Y Y Y

Employer's Signature -- *DO NOT let signature extend beyond the box.*

Draft

Listing of Members for an Association Application Addendum

U.S. Department of Labor
Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079-L
OMB Approval:
Expiration Date:

I. Department of Labor Case Tracking Information

(1) Applicant's Federal Employer I.D. Number from Section A of ETA-9079 main form. ___ - _____

(2) Department of Labor Case Number from Acceptance Letter ___ - _____ - _____

II. Member Information

Fill Only ONE Circle: Add ○ Remove ○ Update ○ the following members for this Application

(1) Member's EIN ___ - _____

(2) City or County of Work-Site _____

(3) H-2A Workers ____

(4) Work Hrs/Wk ____

(5) Worker Housing. ____

For the crop activities listed on the ETA9079 main form.

Crop A - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop B - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop C - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop D - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop E - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

(1) Member's EIN ___ - _____

(2) City or County of Work-Site _____

(3) H-2A Workers ____

(4) Work Hrs/Wk ____

(5) Worker Housing. ____

For the crop activities listed on the ETA9079 main form.

Crop A - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop B - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop C - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop D - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop E - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

(1) Member's EIN ___ - _____

(2) City or County of Work-Site _____

(3) H-2A Workers ____

(4) Work Hrs/Wk ____

(5) Worker Housing. ____

For the crop activities listed on the ETA9079 main form.

Crop A - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop B - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop C - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop D - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

Crop E - Proposed Minimum Guaranteed Wage
$ ____ . __ PER ○ Month ○ Week ○ Day ○ Hour (Fill Only ONE Circle)

FOR U.S. GOVERNMENT AGENCY USE ONLY: Fiscal Control Number _____

Draft

Post Certification Visa Issuance
Location Adjustment
Addendum *Equivilent to I-824*

U.S. Department of Labor

Application for Temporary Agricultural
Labor Certification and H-2A Petition

ETA Form 9079-M
OMB Approval:
Expiration Date:

I. Department of Labor Case Tracking Information

(1) Applicant's Federal Employer I.D. Number from Section A of ETA-9079 main form.

(2) Department of Labor Case Number from Acceptance Letter

II. Applicant Information (This should be the same as the original application)

(1) Full Legal Name of Applicant

(2) Applicant's Federal Employer I.D. Number from Section A of ETA-9079 main form.

(3) Applicant's Telephone Number

(4) Return FAX Number

(5) Contact's Telephone Number (Optional)

(6) Applicant's Address (Number / Street)

City

State

Postal Code

III. Action Requested Fill only one circle

Duplicate Approval Notice ○

Change of Consulate ○

IV. Consolate Change Information. Enter the locations and final numbers below (adding the two values should give the original)

(1) City and Country of the Consulate, Port of Entry or Preflight Inspection

(2) Number of Individuals who will apply at this site.

City

Country

(3) City and Country of the Consulate, Port of Entry or Preflight

(4) Number of Individuals who will apply at this site.

City

Country

V. Authorization for Change

(1) Hiring Official's Name - Family name on the first line, Given name then initial on the second line.

(2) Title of Hiring or Other Designated Official

M M / D D / Y Y Y Y

(3) **Applicant's Signature** -- *DO NOT let signature extend beyond the box.*

NOTE: Falsification of any statements on this form may subject the employer to civil or criminal prosecution (see 18 U.S.C. 1001), as well as to civil money penalties and debarment.

Draft

[FR Doc. 00-

BILLING CODE

Request for Extension of Labor Certification and H-2A Visas Addendum

U.S. Department of Labor

Application for Temporary Agricultural Labor Certification and H-2A Petition

ETA Form 9079-X
OMB Approval:
Expiration Date:

I. Department of Labor Case Tracking Information

(1) Applicant's Federal Employer I.D. Number from Section A of ETA-9079 main form. -

(2) Department of Labor Case Number from Acceptance Letter - -

(3) Full Legal Name of Applicant

(4) Applicant's Telephone Number - /

(5) Requested End Date: M M / D D / Y Y Y Y

II. Reason for Requesting Extension:

III. Authorization to Request Extension:

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.

(1) Hiring Official's Name - Family name on the first line, Given name then initial on the second line.

(2) Title of Hiring or Other Designated Official

(3) M M / D D / Y Y Y Y

Applicant's Signature – *DO NOT let signature extend beyond the box.*

NOTE: Falsification of any statements on this form may subject the employer to civil or criminal prosecution (see 18 U.S.C. 1001), as well as to civil money penalties and debarment.

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[FR Doc. 00–17642 Filed 7–12–00; 8:45 am]
BILLING CODE 4510–30–C

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Federal Register

Thursday,
July 13, 2000

Part VI

Environmental Protection Agency

40 CFR Part 9 et al.
Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 130

[FRL–6733–2]

Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's final rule revises and clarifies the Environmental Protection Agency's (EPA) current regulatory requirements for establishing Total Maximum Daily Loads (TMDLs) under the Clean Water Act (CWA) so that TMDLs can more effectively contribute to improving the nation's water quality. Clean water has been a national goal for many decades. While significant progress has been made, particularly in stemming pollution from factories and city sewage systems, major challenges remain. These challenges call for a focused effort to identify polluted waters and enlist all those who enjoy, use, or depend on them in the restoration effort. Today's action will establish an effective and flexible framework to move the country toward the goal of clean water for all Americans. It establishes a process for making decisions in a common sense, cost effective way on how best to restore polluted waterbodies. It is based on identifying and implementing necessary reductions in both point and nonpoint sources of pollutants as expeditiously as practicable. States, Territories, and authorized Tribes will develop more comprehensive lists of all waterbodies that do not attain and maintain water quality standards. States, Territories, and authorized Tribes will schedule, based on priority factors, the establishment of all necessary TMDLs over 10 years, with an allowance for another five years where necessary. The rule also specifies elements of approvable TMDLs, including implementation plans which contain lists of actions and expeditious schedules to reduce pollutant loadings. States, Territories, and authorized Tribes will provide the public with opportunities to comment on methodologies, lists, prioritized schedules, and TMDLs prior to submission to EPA. The rule lays out specific timeframes under which EPA will assure that lists of waters and TMDLs are completed as scheduled, and necessary National Pollutant Discharge Elimination System (NPDES) permits are issued to implement TMDLs. The final rule explains EPA's discretionary authority to object to, and reissue if necessary, State-issued NPDES permits that have been administratively continued after expiration where there is a need for a change in the conditions of the permit to be consistent with water quality standards and established and approved TMDLs.

EPA believes that these regulations are necessary because the TMDL program which Congress mandated in 1972 has brought about insufficient improvement in water quality. EPA had been concerned about this lack of progress for some time when, in 1996, it established a Federal Advisory Committee. The Committee was asked to advise EPA on possible improvements to the program. After careful deliberations, the Committee recommended that EPA amend several aspects of the regulations.

EPA believes that these regulations will benefit human health and the environment by establishing clear goals for identification of impaired waterbodies and establishment of TMDLs. The regulations will also ensure that States, Territories and authorized Tribes give a higher priority to restoring waterbodies which have a greater potential to affect human health or threatened or endangered species thereby focusing the benefits of these regulations on the most pressing problems.

DATES: This regulation is not effective until 30 days after the date that Congress allows EPA to implement this regulation. EPA will publish notice of the effective date in the **Federal Register**. This action is considered issued for purposes of judicial review, as of 1:00 p.m. Eastern Daylight Time, on July 27, 2000 as provided in § 23.2.

ADDRESSES: The complete administrative records for the final rule have been established under docket numbers W–98–31 and W–99–04, and include supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. The records are available for inspection and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EPA, East Tower Basement, 401 M Street, SW, Washington, DC. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Jim Pendergast, U.S. EPA, Office of Wetlands, Oceans and Watersheds (4503F), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460, (202) 260–9549 for information pertaining to Part 130 of today's rule, or Kim Kramer, U.S. EPA, Office of Wastewater Management (4203), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460, (202) 401–4078, for information regarding Parts 122, 123, and 124.

SUPPLEMENTARY INFORMATION:

A. Authority

Clean Water Act sections 106, 205(g), 205(j), 208, 301, 302, 303, 305, 308, 319, 402, 501, 502, and 603; 33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1311, 1312, 1313, 1315, 1318, 1329, 1342, 1361, 1362, and 1373.

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Entities Potentially Regulated by the Final Rule

State, Territorial or authorized Tribal Governments.

States, Territories and authorized Tribes.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you are regulated by this action, you should carefully examine the applicability criteria in § 130.20. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

Response to Comments

This preamble explains in detail the elements of the final TMDL regulations and the amendments which EPA is making to the NPDES program in order to support implementation of the TMDL program. EPA has made changes to its proposal in response to comments received on the proposed rules. EPA has evaluated all the significant comments it received including comments submitted after the close of the comment period and prepared a Response to Comment Document containing EPA's response to those comments. This document complements discussions in this preamble and is available for review in the Water Docket.

Before Reading This Preamble, You Should Read the Final Rule

I. Introduction

A. Background

1. What are the Water Quality Concerns Addressed by this Rule?

The CWA includes a number of programs aimed at restoring and maintaining water quality. These include national technology-based effluent limitation guidelines; national water quality criteria guidance; State, Territorial and authorized Tribal water quality standards; State, Territorial and authorized Tribal nonpoint source (NPS) management programs; funding provisions for municipal wastewater treatment facilities; State, Territorial and authorized Tribal water quality monitoring programs; and the NPDES permit program for point sources. These programs have produced significant and widespread improvements in water quality over the last quarter-century, but many waterbodies still fail to attain or maintain water quality standards due to one or more pollutants.

The National Water Quality Inventory Report to Congress for 1998 indicates that of the 23 percent of the Nation's rivers and streams that have been assessed, 35 percent do not fully support water quality standards or uses and an additional 10 percent are threatened. Of the 32 percent of estuary waterbodies assessed, 44 percent are not fully supporting water quality standards or uses and an additional 9 percent are threatened. Of the 42 percent of lakes, ponds, and reservoirs assessed (not including the Great Lakes), 45 percent are not fully supporting water quality standards or uses and an additional 9 percent are threatened. The report also indicates that 90 percent of the Great Lakes shoreline miles have been assessed, and that 96 percent of these are not fully supporting water quality standards and an additional 2 percent are threatened. The report indicates that pollutants in rainwater runoff from urban and agricultural land are a leading source of impairment. Agriculture is the leading source of pollutants in assessed rivers and streams, contributing to 59 percent of the reported water quality problems and affecting about 170,000 river miles. Hydromodification is the second leading source of impairment, and urban runoff/storm sewers is the third major source, contributing respectively 20 percent and 12 percent of reported water quality problems. EPA recognizes that a large percentage of streams has not been assessed but believes that there is sufficient information in hand to warrant concern over those unassessed waters and the slow pace at which many waters are attaining water quality standards.

The 1998 section 303(d) lists of impaired waterbodies submitted by States and Territories provided additional information. The section 303(d) lists relied, in part, on information in the section 305(b) reports. The States and Territories identified over 20,000 individual waterbodies including river and stream segments, lakes, and estuaries that do not attain State water quality standards despite 28 years of pollution control efforts. These impaired waterbodies include approximately 300,000 miles of river and shoreline and approximately 5 million acres of lakes. Approximately 210 million people live within 10 miles of these waterbodies. State and local governments also reported that they

issued 2,506 fish advisories and closed 353 beaches in 1998.

EPA believes that a significant part of the response to these problems must be a more rigorous implementation of the TMDL program. EPA believes that today's rule will provide the tools for States, Territories and authorized Tribes to bring the assessment and restoration authorities provided by section 303(d) into greater use and result in significant improvements in the quality of the Nation's waterbodies.

2. What are the Current Statutory Authorities That Support This Final Rule?

The goal of establishing TMDLs is to assure that water quality standards are attained and maintained. Section 303(d) of the CWA which Congress enacted in 1972 requires States, Territories and authorized Tribes to identify and establish a priority ranking for waterbodies for which technology-based effluent limitations required by section 301 are not stringent enough to attain and maintain applicable water quality standards, establish TMDLs for the pollutants causing impairment in those waterbodies, and submit, from time to time, the list of impaired waterbodies and TMDLs to EPA. EPA must review and approve or disapprove lists and TMDLs within 30 days of the time they are submitted. If EPA disapproves a list or a TMDL, EPA must establish the list or TMDL. In addition, EPA and the courts have interpreted the statute as requiring EPA to establish lists and TMDLs when a State fails to do so. Furthermore, the requirement to identify and establish TMDLs for waterbodies exists regardless of whether the waterbody is impaired by point sources, nonpoint sources or a combination of both. *Pronsolino* v. *Marcus*, 2000 WL 356305 (N.D. Cal. March 30, 2000.)

Listing impaired waterbodies and establishing TMDLs for waterbodies impaired by pollutants from nonpoint sources does not mean any new or additional implementation authorities are created. Once a TMDL is established, existing State, Territorial and authorized Tribal programs, other Federal agencies' policies and procedures, as well as voluntary and incentive-based programs, are the basis for implementing the controls and reductions identified in TMDLs.

CWA Section 402 establishes a program, the NPDES Program, to regulate the "discharge of a pollutant," other than dredged or fill materials, from a "point source" into "waters of the United States." The CWA and NPDES regulations define a "discharge of a pollutant," "point source," and "waters of the United States." The NPDES Program is administered at the federal level by EPA unless a State, Tribe or U.S. Territory assumes the program after receiving approval by the federal government. Under section 402, discharges of pollutants to waters of the United States are authorized by obtaining and complying with the terms of an NPDES permit. NPDES permits commonly contain numerical limits on the amounts of specified pollutants that may be discharged and specified best management practices (BMPs) designed to minimize water quality impacts. These numerical effluent limitations and BMPs or other non-numerical effluent limitations implement both technology-based and water quality-based requirements of the Act. Technology-based limitations represent the degree of control that can be achieved by point sources using various levels of pollution control technology. If necessary to achieve compliance with applicable water quality standards, NPDES permits must contain water quality-based limitations more stringent than the applicable technology-based standards.

3. What is the Regulatory Background of Today's Action?

a. What are the Current Requirements?

EPA issued regulations governing identification of impaired waterbodies and establishment of TMDLs, at § 130.7, in 1985 and revised them in 1992. These regulations provide that:

- State, Territorial and authorized Tribal lists must include those waters still requiring TMDLs because technology based effluent limitations required by the CWA or more stringent effluent limitations and other pollution controls (*e.g.*, management measures) required by local, State, or Federal authority are not stringent enough to attain and maintain applicable water quality standards;
- State, Territorial and authorized Tribal lists must be submitted to EPA every two years, beginning in 1992, on April 1 of every even-numbered year;
- The priority ranking for listed waters must include an identification of the pollutant or pollutants causing or expected to cause the impairment and an identification of the waterbodies targeted for TMDL development in the next two years;
- States, Territories and authorized Tribes, in developing lists, must assemble and evaluate all existing and readily available water quality-related data and information;
- States, Territories and authorized Tribes must submit, with each list, the methodology used to develop the list and provide EPA with a rationale for any decision not to use any existing and readily available water quality-related data and information; and
- TMDLs must be established at levels necessary to implement applicable water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

The regulations define a TMDL as a quantitative assessment of pollutants that cause water quality impairments. A TMDL specifies the amount of a particular pollutant that may be present in a waterbody, allocates allowable pollutant loads among sources, and provides the basis for attaining or maintaining water quality standards. TMDLs are established for waterbody and pollutant combinations for waterbodies impaired by point sources, nonpoint sources, or a combination of both point and nonpoint sources. Indian Tribes may be authorized to establish TMDLs for waterbodies within their jurisdiction. To date, however, no Tribe has sought or received CWA authority to establish TMDLs.

The NPDES regulations, in several provisions and under certain circumstances, allow the permitting authority and/or EPA to subject certain previously non-designated sources to NPDES program requirements. EPA established these jurisdictional regulations in 1973 when the Agency and the States focused permitting resources primarily on continuous discharges, for example, industrial and municipal sources. Also, in the early stages of CWA implementation, the Agency and the States focused on implementation of technology-based standards. At that time, EPA attempted to limit the scope of the NPDES permitting program to certain types of point sources. The D.C. Circuit rejected that attempt, however, and explained that EPA could not exempt point sources from the NPDES program. *NRDC* v. *Costle*, 568 F.2d 1369, 1377 (D.C. Cir. 1977). Although the Court rejected this attempt, it did recognize the Agency's discretion to define "point source" and "nonpoint source." The existing NPDES regulations identifying animal production and silvicultural sources represents an early attempt to do so.

Also, under the NPDES program regulations, a Regional Administrator may review and object to State-issued NPDES permits. The procedures by which a Regional Administrator may review and object to these permits are found in § 123.44. The existing objection authority, under section 402(d) of the Act, grants EPA 90 days within which to object to a proposed State permit that fails to meet the guidelines and requirements of the Act.

If a State fails to respond to an EPA objection within 90 days of objection, exclusive authority to issue the NPDES permit to that discharger passes to EPA.

b. What Changes Did EPA Propose in August 1999?

In 1996, the Office of Water determined that there was a need for a comprehensive evaluation of EPA's and State, Territorial and authorized Tribal implementation of section 303(d) requirements. EPA convened a committee under the Federal Advisory Committee Act (TMDL FACA committee) to undertake such an evaluation and make recommendations for improving implementation of the TMDL program, including recommendation for revised regulations and guidance. The TMDL FACA committee included 20 individuals with diverse backgrounds, including agriculture, forestry, environmental advocacy, industry, and State, local, and Tribal governments. On July 28, 1998, the committee submitted its final report to EPA which contained more than 100 consensus recommendations, a subset of which recommended regulatory changes. The TMDL FACA committee recommendations helped guide the development of the revisions which EPA proposed in August 1999.

In proposing revisions to the regulations governing TMDLs, EPA also relied upon the past experience of States and Territories. EPA's proposal recognized and responded to some of the issues raised by stakeholders regarding the effectiveness and consistency of the TMDL program. EPA also proposed changes intended to resolve some of the issues and concerns raised by litigation concerning the identification of impaired waterbodies and the establishment of TMDLs. Finally, EPA proposed changes to the NPDES permitting regulations to assist in the establishment and implementation of TMDLs and to better address point source discharges to waters not meeting water quality standards prior to establishment of a TMDL.

Key elements of the changes proposed in August, 1999 include:

- State, Territorial, and authorized Tribal section 303(d) listing methodologies would become more specific, subject to public review, and provided to EPA for review prior to submission of the list.
- States, Territories and authorized Tribes would develop a more comprehensive list of waterbodies impaired and threatened by pollution, organize it into four parts, and submit it to EPA.
- States, Territories and authorized Tribes would establish TMDLs only for waterbodies on the first part of the list.
- States, Territories and authorized Tribes would keep waterbodies on the lists until water quality standards were achieved.
- States, Territories and authorized Tribes would establish and submit to EPA schedules to establish all TMDLS within 15 years of listing.
- States, Territories, and authorized Tribes would rank TMDLs into high, medium or low priority.
- TMDLs would include 10 specific elements, one of which is an implementation plan.
- States, Territories, and authorized Tribes would notify the public and give them the opportunity to comment on the methodology, lists, priority rankings, schedules, and TMDLs prior to submission to EPA.
- New and significantly expanded discharges subject to NPDES permits would need to obtain an offset for the increased discharge before being allowed to discharge the increase.
- Certain point source storm water discharges from silviculture would be required to seek a permit if necessary to implement a TMDL.
- EPA could designate certain animal feeding operations and aquatic animal production facilities as sources subject to NPDES permits in authorized States.
- EPA could object to expired and administratively continued State-issued NPDES permits.
- Regulatory language would codify requirements pertaining to citizens' rights to petition EPA.

c. What has EPA Done to Gather Information and Input as it Developed This Final Rule?

EPA published the proposed rule on August 23, 1999, and provided for an initial 60 day comment period, which was later extended to a total of 150 days. EPA received about 34,000 comments on the proposal comprised of about 30,500 postcards, 2,700 letters making one or two points, and 780 detailed comments addressing many issues. EPA has reviewed all these comments as part of the development of today's final rule.

EPA also engaged in an extensive outreach and information-sharing effort following the publication of the proposed rule. The Agency sponsored and participated in six public meetings nationwide, to better inform the public on the contents of the proposed rules, and to get informal feedback from the public. These meetings took place in Denver, Los Angeles, Atlanta, Kansas City, Seattle, and Manchester, New Hampshire. In addition, EPA participated in numerous other meetings, conferences and information-sharing sessions to discuss the proposed rule and listen to alternative approaches to achieving the nation's clean water goals.

The Agency has had an ongoing dialogue with State and local officials and their national/regional organizations throughout the development of this rule. EPA has met with organizations representing State and local-elected officials including: the National Governors' Association, the Western Governors' Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities and EPA's State and Local Advisory Group. Many discussion sessions were held with officials who administer State and local programs related to water quality, agriculture, forestry, and harbors. Discussions were held with such organizations as the Environmental Council of the States, the Association of State and Interstate Water Pollution Control Administrators, the Association of Municipal Sewerage Agencies, the Association of Municipal Water Agencies, the National Association of State Agricultural Departments, the National Association of State Foresters, the Western States Water Council, the Association of State Drinking Water Administrators, the National Association of Flood and Storm Water Management Agencies, the Interstate Conference on Water Policy, and the Western States Land Commissioners

EPA met with groups representing business, industry, agriculture, and forestry interests, including the Electric Power Research Institute, the Utility Water Action Group, American Water Works Association, the American Forest and Paper Association, the Family Farm Alliance, the National Association of Conservation Districts, a number of State Farm Bureaus, corn and soybean grower organizations and forestry associations. EPA also met with environmental and citizen groups including the Natural Resources Defense Council, Sierra Club, Friends of the Earth and Earth Justice. EPA participated in numerous Congressional briefings and hearings held in Washington and in several field locations. The results of these meetings and discussions are reflected in today's rule.

B. What are the Significant Issues in Today's Rule?

1. What are EPA's Objectives for Today's Rule?

States, Territories, and authorized Tribes are essential in carrying out a successful program and EPA looks forward to working with them in developing this program. Further, we believe that, ultimately, any successful effort depends on a cooperative approach that pulls together the variety of entities and stakeholders involved in the watershed. EPA through this rulemaking seeks to provide a framework that facilitates this approach.

EPA received many comments regarding the overall purpose of the proposed rule. Many commenters expressed concerns that EPA was putting too much emphasis on TMDLs and ignoring other programs and initiatives under the CWA which are also aimed at restoring or maintaining water quality. A common theme through many comments was that the Agency should not attempt to force-fit clean up of every impairment through the TMDL process. EPA agrees with the commenters that for some waterbodies and watersheds, existing plans and agreements may accomplish much of what this rule intends. However, EPA believes that identifying waterbodies that are impaired and establishing TMDLs is both statutorily required and will help focus ongoing activities for more efficient attainment of water quality standards.

The CWA requires TMDLs for pollutants in impaired waterbodies if implementation of technology-based effluent limitations is not sufficient to attain water quality standards. Today's rule clarifies this concept to require that TMDLs be established for all pollutants in impaired waterbodies unless enforceable Federal, State, Territorial or authorized Tribal controls will result in attainment of water quality standards by the time the next list in the listing cycle is required.

EPA recognizes that watershed or other plans developed under other State, Territorial or authorized Tribal programs or by other Federal agencies, such as wet weather flow plans, Coastal Zone Management plans, or conservation plans administered by the Natural Resources Conservation Service, have the same goal as a TMDL. EPA believes that these other activities are crucial to the attainment of water quality standards either because they will result in attainment of water quality standards before a TMDL is established or because they are the basis for implementation of the controls required by TMDLs. Thus, today's rule provides a role for the various programs aimed at improving water quality—both as an alternative to developing a TMDL in certain circumstances, and a means for implementing TMDLs.

Many commenters also perceived EPA's proposal as an attempt to supplant State, Territorial or authorized Tribal primacy. Today's rule preserves the primary responsibilities of States, Territories and authorized Tribes and clarifies EPA's responsibilities under the CWA. EPA believes that today's rule provides greater clarity regarding the requirements for States, Territories and authorized Tribes and EPA's own responsibilities for the TMDL program. EPA believes that today's rule establishes a framework for effective, cooperative efforts between State, Territorial, authorized Tribal governments, individuals, local governments and other Federal agencies.

EPA is also conscious of the need for adequate resources. EPA has sought to increase funding for development and implementation of TMDLs in both the FY 2001 Federal budget and prior budgets. In the FY 2001 Federal budget the Agency has requested an additional $45 million in CWA Section 106 grants specifically for the TMDL program. In FY 2001, EPA requested $250 million for section 319 nonpoint source grants, an increase of $50 million (25%) over FY 2000. In addition, the FY 1999 and FY 2000 budgets of $200 million per year for section 319 grants represented a doubling (100% increase) of the prior section 319 funding. To further support State nonpoint source implementation, EPA has proposed an FY2002 budget that gives States and Territories the option to reserve up to 19% of their Clean Water State Revolving Fund capitalization grants to provide grants for implementing nonpoint source and estuary management projects.

2. What Are the Key Differences Between the Proposal and Today's Final Rule?

This section summarizes the significant changes EPA has made in the rule adopted today compared to the proposed rule. A more detailed discussion of all the changes is included in the specific sections for these changes in this preamble.

a. Threatened waterbodies. EPA proposed that threatened waterbodies be listed on Part 1 of the list, meaning that TMDLs would have to be established for them as for impaired waters. After carefully considering comments, particularly the concerns raised by commenters regarding the technical difficulties inherent in determining when water quality trends are declining and the difficulty in making listing decisions, EPA is not requiring that States, Territories or authorized Tribes list threatened waterbodies on the section 303(d) list or that TMDLs be prepared for these waterbodies. States, Territories and authorized Tribes retain, at their discretion, the option to list threatened waterbodies on their section 303(d) list and establish TMDLs for these waterbodies.

b. The four-part 303(d) list. EPA proposed that the section 303(d) list include all impaired waterbodies, sorted into four parts, and a priority ranking for those waterbodies with respect to establishing TMDLs. Part 1 of the list would include impaired waterbodies for which TMDLs would be required to be established within 15 years. Part 2 of the list would include waterbodies impaired by pollution that is not caused by a pollutant. TMDLs would not be required for these waterbodies. Part 3 of the list would include waterbodies for which TMDLs had been established but water quality standards not yet attained. Part 4 would include waterbodies for which technology-based controls or other enforceable controls would attain water quality standards by the next listing cycle. Today's final rule adds a clarification that if during the development of each list, a waterbody previously listed on Part 3 of the list has not made substantial progress towards attainment of water quality standards, it must be moved to Part 1 and a new TMDL must be established. Today's rule also allows States, Territories and authorized Tribes to submit their list in different formats. EPA will still approve all four parts of the list, but States, Territories and authorized Tribes may submit lists in any of three formats. Lists may be submitted to EPA as described in the proposal—that is, as one four-part list published by itself, as part of the section 305(b) water quality report, or with Part 1 submitted separately to EPA as a section 303(d) submission and Parts 2, 3 and 4 submitted to EPA as a section 303(d) component of the section 305(b) water quality report.

c. Inclusion of schedules in the section 303(d) list. EPA proposed that States, Territories and authorized Tribes should submit the list and priority rankings to EPA for approval, and should separately submit a schedule for establishing TMDLs which would not be subject to EPA approval. Today's rule requires States, Territories, and authorized Tribes to submit a prioritized schedule for establishing TMDLs for waterbodies listed on Part 1. Further, as

suggested by some commenters, the final regulations require that TMDL establishment be scheduled as expeditiously as practicable and within 10 years of July 10, 2000, or 10 years from the due date for the first list on which the waterbody appeared, whichever is later, rather than the 15 year period EPA proposed. However, the schedule can be extended for up to 5 years when a State, Territory, or authorized Tribe explains that despite expeditious action establishment of TMDLs within 10 years is not practicable.

d. Implementation plan. EPA proposed that TMDLs must contain an implementation plan as a required element for approval. Today's rule, like the proposal, requires an implementation plan as a mandatory element of an approvable TMDL, and includes substantial changes to the reasonable assurance and implementation plan requirements in response to the comments received. The implementation plan requirements differ depending on whether waterbodies are impaired only by point sources subject to an NPDES permit, only by other sources (including nonpoint sources), or by both. EPA is also adding specificity regarding when the NPDES permits implementing wasteload allocations must be issued. Finally EPA is establishing a goal of 5 years for implementing management measures or control actions to achieve load allocations, and a goal of 10 years for attaining water quality standards.

e. Reasonable assurance. EPA proposed that States, Territories and authorized Tribes provide reasonable assurance that the wasteload and load allocations reflected in TMDLs would be implemented. Today's final rule clarifies how reasonable assurance can be demonstrated for waterbodies impaired by all pollutant sources, and provides additional detail on how reasonable assurance can be demonstrated for nonpoint sources. These changes reflect and seek to address the uncertainties inherent in dealing with nonpoint pollutant sources and recognize the importance of voluntary and incentive-based programs. Finally, today's rule specifies how EPA will provide reasonable assurance when it establishes TMDLs.

f. The petition process. EPA proposed to codify requirements applicable to petitions which can be filed with the Administrator by citizens who believe that EPA has failed to comply with its TMDL responsibilities under the CWA. Today's rule does not include requirements codifying the petition process. EPA notes, however, that eliminating the proposed petition process from the rule does not change the fact that any person is entitled, under the Administrative Procedure Act (APA), to petition EPA to take specific actions regarding identification of impaired waterbodies and establishment of TMDLs.

g. Offsets. EPA proposed to require new and significantly expanded discharges subject to the NPDES permit program to obtain an offset for their increased load before being allowed to discharge the increase. Today's rule does not include any requirement for an offset.

h. Silviculture, Animal Feeding Operations, and Aquatic Animal Production Facilities. EPA proposed to allow EPA and States to designate certain point source storm water discharges from silviculture as subject to the NPDES permitting program. EPA also proposed to allow EPA to designate certain animal feeding operations and aquatic animal production facilities as point sources in NPDES authorized states. EPA has decided to withdraw this proposal.

II. Changes to Part 130

This section explains in detail the elements of the final Part 130 TMDL regulations and how these regulations differ from the proposal. EPA has made several significant changes to the proposal, clarified other requirements, and rewritten and reorganized the regulatory language. Most of these changes have been made in response to comments received on the proposed rule.

A. What Definitions are Included in This Final Rule? (§ 130.2)

Today's final action revises the definitions of load (or loading), load allocation, wasteload allocation, and TMDL, and adds definitions for the terms pollutant, total maximum daily thermal load, impaired waterbody, thermal discharge, reasonable assurance, management measures, waterbody, and list. In addition, for reasons explained in detail later in this section EPA has decided not to promulgate definitions which were not proposed but were suggested by the commenters.

1. What Definitions are Added or Revised?

a. New Definition of Pollutant (§ 130.2(d))

What did EPA propose? On August 23, 1999, EPA proposed to add a definition for "pollutant" that was the same as the definition in the CWA at section 502(6). EPA also proposed to clarify that, in EPA's view, the definition of pollutant would encompass drinking water contaminants that are regulated under section 1412 of the Safe Drinking Water Act and that may be discharged to waters of the U.S. that are the source water of one or more public water systems. EPA was proposing to clarify that drinking water contaminants that meet these criteria are pollutants as defined in the CWA.

What comments did EPA receive? EPA received many comments on this proposed definition which are addressed fully in the Response to Comment Document included in the Docket. Most commenters offered suggestions as to which particular substances (particularly naturally occurring pollutants, FIFRA registered pesticides, and flow) may or may not be pollutants, and requested specific recognition of these substances in the definition. Others objected to inclusion of drinking water contaminants in the definition, believing that they were better addressed by the Safe Drinking Water Act requirements. In addition, EPA received several requests for more examples to help clarify the distinction between pollutants and pollution. Some commenters understood EPA to propose that "pollutant" includes non-point source pollution while others did not. Others gave examples of situations where they believed it would be impossible to decide whether a waterbody was impaired by pollution or a pollutant. Examples given included: biological impairment due to displacement of bedload sediment during high intermittent streamflow caused by increased impervious surface, and impairment due to low dissolved oxygen levels in hydropower releases.

What is EPA promulgating today? EPA is promulgating a definition of pollutant that is identical to the definition in EPA's current NPDES regulations. That definition is identical to the CWA definition except that it excludes certain radioactive materials from the definition. *Train* v. *Colorado Public Int. Research Group,* 426 U.S. 1, 25 (1976) (Congress did not intend for materials governed by the Atomic Energy Act to be included in the category of pollutants subject to regulation by EPA under the CWA). In recognition that the CWA definition does not expressly discuss drinking water contaminants, EPA is not including a reference to drinking water contaminants in the final language. However, EPA interprets the CWA definition of pollutant to include, in most cases, drinking water contaminants that are regulated under

section 1412 of the Safe Drinking Water Act (SDWA). This interpretation is consistent with both the language and the intent of the CWA. First, drinking water contaminants fall within the meaning of one or more of the terms used by Congress to define pollutant. Second, the term "public water supplies" is listed under CWA section 303(c)(2)(A) as a potential beneficial use to be protected by water quality standards. EPA expects that virtually all drinking water contaminants that are regulated in the future will be encompassed by one of or more of the terms used to define pollutants.

EPA wishes to clarify the relationship between pollutants and pollution for purposes of section 303(d). Pollution, as defined by the CWA, and the current regulations is "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of a waterbody." This is a broad term that encompasses many types of changes to a waterbody, including alterations to the character of a waterbody that do not result from the introduction of a specific pollutant or the presence of pollutants in a waterbody at a level that causes an impairment. In other words, all waterbodies which are impaired by human intervention suffer from some form of pollution. In some cases, the pollution is caused by the presence of a pollutant, and a TMDL is required. In other cases it is caused by activities other than the introduction of a pollutant.

The following are two examples of pollution caused by pollutants. The discharge of copper from an NPDES regulated facility is the introduction of a pollutant into a waterbody. To the extent that this pollutant alters the chemical or biological integrity of the waterbody, it is also an example of pollution. (Copper is not likely to cause an alteration to the water's physical integrity.) Similarly, landscape actions that result in the introduction of sediment into a waterbody constitute pollution when that sediment (which is a pollutant) results in an alteration of the chemical, physical, or biological integrity of the waterbody. TMDLs would have to be established for each of these waterbodies.

Degraded aquatic habitat is evidence of impairment which may be caused solely by channelization of a stream's bottom. In this case the waterbody would be considered impaired by pollution that is not a result of the introduction or presence of a pollutant. However, if the channelization also caused the bottom to become smothered by excessive sediment deposition, then the waterbody impairment is caused by a pollutant (sediment) and a TMDL would be required.

Based on data contained in the 1998 section 303(d) lists, EPA believes that many waterbodies that fail to attain water quality standards, fail to do so because a specific substance or material, a pollutant, has been or is being introduced into the waterbody. EPA believes the vast majority of impairments are caused by the introduction of pollutants and does not anticipate large numbers of waterbodies to be identified as impaired only by pollution. Of the top 15 categories of impairment identified on the 1998 section 303(d) lists, 11 categories are directly or indirectly associated with pollutants: sediments, pathogens, nutrients, metals, low dissolved oxygen, temperature, pH, pesticides, mercury, organics, and ammonia. Together, these categories account for 77% of the total impairments listed. In comparison, three of the top 15 categories either are not associated with pollutants or the link to pollutants is generally unknown: habitat alterations, impaired biologic communities and flow alterations. These categories account for only 12% of the total number of listed impairments.

While TMDLs are not required to be established for waterbodies impaired by pollution but not a pollutant, they nonetheless remain waterbodies which fail to attain or maintain water quality standards. EPA believes that States, Territories and authorized Tribes should use approaches and institute actions other than TMDLs to begin the task of returning these waterbodies to full attainment of water quality standards. As explained later in the preamble, one of the reasons for including these waterbodies on Part 2 of the list is to ensure that they remain in the public's eye and are not simply ignored.

Another frequently asked question concerns pollutants that are "natural." Water quality standards often fail to distinguish between pollutants that are introduced into a waterbody as the result of some human activity and those that are present in a waterbody due to natural processes such as weathering of metals from geologic strata. Where a natural pollutant occurs along with an anthropogenic pollutant, they both must be accounted for within the TMDL so that the TMDL is established at a level that will implement the water quality standards. For example, cadmium originating from the natural weathering of a geologic outcrop, as well as cadmium from a mine tailings pond, must be accounted for in the wasteload allocation of a TMDL to ensure that the wasteload allocation is properly set to achieve water quality standards. EPA recognizes that there may be instances where the introduction of natural substances alone may cause the waterbody to exceed the water quality standards unless the standard contains an exception for addressing such situations. In those circumstances, EPA encourages States, Territories, and authorized Tribes to revise their water quality standards to reflect and recognize the presence and effect of substances that occur naturally.

EPA does not believe that flow, or lack of flow, is a pollutant as defined by CWA Section 502(6). Some commenters have urged EPA to revise the proposed regulations to require TMDLs for all forms of pollution, including hydromodification, which reduce the amount of water flowing through a river or stream. They argue that since low flow can lead to non-attainment of water quality standards, *e.g.*, use as a fishery, waterbodies impacted by low flow should be listed on Part 1 and have TMDLs established for them. While EPA believes that waterbodies which do not attain and maintain water quality standards solely because of low flow must be identified on Part 2 of a State's section 303(d) list. it does not believe section 303(d)(1)(C) requires that States must establish TMDLs for such waters. This is because EPA interprets section 303(d)(1)(C) to require that TMDLs be established for "pollutants" and does not believe "low flow" is a pollutant. Section 303(d)(1)(C) provides that States shall establish TMDLs "for those pollutants" which the Administrator identifies as suitable for such calculation. In 1978, EPA said that all pollutants under proper technical permit conditions were suitable for TMDL calculations. However, low flow is not a pollutant. It is not one of the items specifically mentioned in the list of pollutants Congress included at section 502(6) of the CWA. Nor does it fit within the meaning of any of those terms.

Instead, low flow is a condition of a waterbody (*i.e.*, a reduced volume of water) that when man-made or man-induced would be categorized under the CWA as pollution, provided it altered the physical, biological and radiological integrity of the water. Many forms of human activity, including the introduction of pollutants, can cause water pollution. Not all pollution-causing activities, however, must be analyzed and allocated in a TMDL. Section 303(d) is a mechanism that requires an accounting and allocation of pollutants introduced into impaired waters (whether from point or nonpoint

sources). If low flow in a river, even if man-induced, exacerbates or amplifies the impairing effect of a pollutant in that river by increasing its concentration, that factor is to be accounted for and dealt with in the TMDL by calculating and allocating the total pollutant load in light of, among other things, seasonal variations in flow. However, where no pollutant is identified as causing an exceedance of water quality standards, EPA does not believe the CWA requires a TMDL to be established.

The Supreme Court's decision in *PUD. No 1 of Jefferson County et al.* v. *Washington Dept. of Ecology et al.*, 511 U.S. 700 (1994), does not compel a different result. In that case a city and local utility district wanted to build a dam on the Dosewallips river in Washington State. The project would divert water from the river to run the dam's turbines and then return the water to the river below the dam. To protect salmon populations in the river, the state imposed a minimum flow requirement as part of its CWA section 401 certification of the project. The Court determined that compliance with section 303(c) water quality standards is a proper function of a section 401 certificate. Accordingly, the Court concluded that pursuant to section 401, the state may require the dam project to maintain minimum stream flow necessary to protect the river's designed use as salmon habitat.

The Supreme Court in *Jefferson County* did not interpret section 303(d) and did not hold that TMDLs had to be established for flow-impacted waters. The Court did reject petitioner's claim that the CWA is only concerned with water "quality" and does not allow the regulation of water "quantity." Like EPA, it recognized that water quantity may be closely related to water quality and that reduced stream flow may constitute "pollution" under the Act. However, in holding that section 401 certification applied to dam projects as a whole—including pollution-causing water withdrawals—and not just discharges of pollutants, the Court did not decide that a section 303(d) TMDL must be established for low flow-impaired waterbody. This is because *Jefferson County* did not decide that low flow was a pollutant. Under section 303(d) it is pollutants, not pollution, for which TMDLs must be established.

However, EPA recognizes that there will be cases where flow or lack thereof will enhance the ability of a pollutant to impair a waterbody. EPA has provided for this eventuality by requiring that States, Territories and authorized Tribes consider seasonal variations, including flow, when establishing TMDLs. (See discussion at § 130.32(b)(9).)

Also, EPA declines at this time to define "chemical wastes" as that term appears in the definition of "pollutant" to exclude pesticides designated for aquatic uses. EPA recognizes that the requirements of section 303(d) and this rule may lead to waterbodies being listed due to the presence of pesticides registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) because water quality standards for that chemical are exceeded. EPA will continue to evaluate the interface between its regulatory responsibilities under FIFRA and the CWA.

Note: EPA erroneously listed "pollution" as a proposed new definition in the preamble to the proposal. In fact, the definition of pollution is included in the current rules and has been revised by simply adding a citation of the CWA section defining that term.

b. Revised Definition of Loading (§ 130.2(e))

What did EPA propose? EPA proposed to make a grammatical revision to the definition of "load or loading" by using the words "loading of pollutant" to clarify that loading is the introduction of a pollutant whether man-made or naturally-occurring rather than as a parenthetical explanation of what is man-caused loading. EPA did not consider this change substantive and did not discuss it in the preamble to the proposed rule.

What comments did EPA receive? Some commenters expressed concern about perceived inconsistencies between (1) the proposed definition of loading and the expression of a TMDL at proposed § 130.34 and (2) between this definition and the proposed definition of a TMDL at § 130.2(h)(2). Other commenters requested revisions to clarify that the load describes when the water quality standard is attained, that the definition does not apply to nonpoint sources, or that ambient temperature increases are not a load. Another commenter suggested that EPA include the definition of load capacity included in the current requirements which EPA did not include in the proposal.

What is EPA promulgating today? EPA has carefully considered these comments but is promulgating this definition as proposed. EPA does not believe that there are inconsistencies between the definition and the manner in which TMDLs may be expressed pursuant to § 130.33. EPA does not interpret the final rule to require that TMDLs be always expressed as the load or load reduction of the pollutant causing the impairment. The final rule at § 130.33(b)(4) preserves the flexibility to express the TMDL as a quantitative expression of a modification to a characteristic of the waterbody that results in a certain load or load reduction. Similarly, EPA does not believe there are inconsistencies between the proposed definition of load as a substance or matter introduced in a waterbody and the proposed definition of a TMDL at § 130.2(h)(2) which would have required identification and quantification of the load "that may be present" in the waterbody. TMDLs are generally established using the principle of mass balance, which is the core principle of water quality modeling. The mass of a pollutant in a waterbody is a function of the mass introduced into the waterbody and the mass that flows out of the waterbody. The same principle applies for thermal energy.

EPA sees no inconsistency between describing loading as an introduction of a substance or matter into a waterbody and requiring identification of the pollutant load present within the waterbody for the purpose of establishing TMDLs. The characterization of a mass of material as a load into, or a load within, a waterbody will depend in some instances on how the State, Territory, or authorized Tribe decides to frame the TMDL.

EPA is not revising the definition of load to suggest that the load describes when the water quality standard is attained. The definition of "load or loading" merely refers to the quantity of matter or thermal energy introduced into a waterbody; it is not intended to include an interpretation of the environmental consequence of that load. It is the calculation of the TMDL and the resulting allocations which establish the loading targets necessary to achieve water quality standards.

EPA is not revising the definition of load or loading to exclude nonpoint sources. As noted above, EPA believes that section 303(d) applies to all sources including nonpoint sources, and that all sources are considered when allocations needed to attain or maintain water quality standards are established. EPA has consistently required the inclusion of pollutants from nonpoint sources in estimates of loading. By defining "load allocations" which pertain to nonpoint sources as "best estimate of loadings," the language of the current regulations clearly demonstrates that EPA intended for pollutants from nonpoint sources to be included in the definition of load and loading. Therefore, EPA believes it is simply a continuation of its policy to

consider the definition of loads to apply to nonpoint sources.

Similarly, EPA is not revising the definition of load or loading to exclude increases in temperature due to solar input. EPA does not believe that the source of a load should disqualify it from being a load. What needs to be done to mitigate heat load from solar input will be addressed by a State, Territory, or authorized Tribe when it establishes the TMDL.

Finally, EPA is not including the definition of load capacity contained in the existing regulations. EPA proposed to delete the definition of " load capacity" because retaining a separate definition of load capacity would only add confusion as to whether a TMDL consisted merely of the load capacity or the ten elements of the TMDL. The loading capacity is found as element three in the eleven elements of the TMDL. EPA continues to believe that retaining a separate definition of load capacity would only add confusion as to whether a TMDL consisted merely of the load capacity or the ten elements of the TMDL promulgated in today's regulation.

c. Revised Definition of Load Allocation (§ 130.2(f))

What did EPA propose? EPA proposed to simplify the existing definition of "load allocation" by defining it as simply the part of the total load in a TMDL that is allocated to nonpoint sources, including atmospheric deposition, or natural background sources, as opposed to wasteload allocation to point sources. In proposing this change, EPA moved the substantive requirement of how a load allocation is determined from the definition of load allocation to the description of a TMDL in proposed § 130.33(b).

What comments did EPA receive? EPA received a large number of comments with regard to its definition of load allocations, covering a range of issues. Again, many commenters asserted that EPA did not have the statutory authority to address pollutant loadings from nonpoint sources because Congress intended the TMDL provisions of the CWA to apply only to waterbodies impaired by point sources or waterbodies where control of point sources alone would result in attainment of water quality standards.

In contrast, many commenters supported the inclusion of pollutant loadings from nonpoint sources in the TMDL program. A frequently-cited reason for the need for such an approach was the commenters' belief that existing nonpoint source programs had so far failed to adequately address nonpoint source pollution. Numerous commenters urged EPA to require quantitative estimates of pollutant loadings from nonpoint sources, while acknowledging that doing so would be more difficult than for point sources.

Some commenters suggested that EPA retain the existing definition of load allocation, along with the definitions of wasteload allocation, loading capacity, and TMDL. These commenters believed that the current definitions provide more clarity as to how loadings are defined and allocated than did the proposed definitions.

Other commenters suggested that the definition of load allocation should not include specific reference to atmospheric deposition or natural background. These commenters contended that the technical uncertainties in linking atmospheric deposition sources to water quality and the lack of Clean Air Act authority to control atmospheric loadings would make it difficult to calculate and implement load allocations. Furthermore, the commenters contended that natural background cannot be reduced and therefore should not be part of the load allocation.

Several comments called for including point sources not covered by the NPDES permit program (such as certain types of storm water sources) under the load allocation portion of the TMDL, rather than the wasteload allocation portion.

What is EPA promulgating today? In response to comments, EPA is clarifying that pollutants from storm water runoff not regulated under NPDES must be accounted for in the load allocation. EPA is also clarifying that pollutants from other sources, such as groundwater, air deposition or background pollutants from upstream sources must be accounted for in the load allocation.

For the reasons discussed earlier in today's preamble, EPA continues to believe that the CWA requires TMDLs to consider loadings from nonpoint sources. For these reasons, EPA rejects the suggestions that EPA delete the definition of load allocation, and consider the TMDL to consist only of wasteload allocations for point sources regulated by NPDES permits. EPA also continues to believe that load allocations must reflect contributions from atmospheric deposition. Where these loads exist, they contribute to the overall load of a pollutant within a waterbody and must be accounted for in the TMDL. Otherwise, the sum of load and wasteload allocations will exceed the amount necessary for the waterbody to attain water quality standards. For these reason and the reasons expressed in the Response to Comment Document, EPA believes that load allocations must include pollutant loads from all sources not already reflected in the wasteload allocations.

EPA believes that, at a minimum, it is possible to determine the total of aggregated loadings from air deposition to a particular waterbody. As a result, EPA expects that States, Territories and authorized Tribes will initially develop load allocations based on nationwide reductions expected as a result of programs developed under the Clean Air Act, and any State-required reductions in emission from local sources. As techniques improve to quantify the relative contributions of different sources, EPA expects that States, Territories and authorized Tribes will more specifically identify air sources and the expected reduction from these sources.

EPA does not consider a loading to surface water from groundwater to necessarily be part of the background loading. The background loading in a TMDL is generally either the loading from upstream of the waterbody for which the TMDL is being established, or else is a loading to the waterbody that originates from natural, not anthropogenic, sources. Pollutants entering a waterbody from groundwater can originate from either natural or anthropogenic sources. For example, the chlorides in groundwater that seep into a waterbody can originate from the geological rock formations or from brine seeping from oil production wells. In either case, the load allocation will address these loadings as part of the load allocation.

EPA recognizes that by moving some of the details from the current definition of load allocation into the TMDL regulatory requirements of § 130.32, it has shortened the definition of load allocation in the current rule. EPA believes this is appropriate because the new § 130.32 provides sufficient additional information about the nature of a load allocation (and a wasteload allocation). EPA believes it is better to include this information in one place, and has selected to do so in § 130.32.

d. Revised Definition of Wasteload Allocation (§ 130.2(g))

What did EPA propose? EPA proposed to simplify the existing definition of "wasteload allocation" by defining it as simply the part of the total load in a TMDL that is allocated to a point source. In proposing this change, EPA moved the substantive requirement of how a wasteload allocation is

determined into the description of a TMDL in proposed § 130.33(b).

What comments did EPA receive? Some commenters said that wasteload allocations should include only loads from point sources covered by the NPDES permit program, but not include loads from point sources not covered by NPDES, such as some types of storm water. Other commenters indicated that all point sources should be included in the wasteload allocation, regardless of their status with regard to NPDES.

A significant number of commenters said EPA should retain language in the existing definition which states that wasteload allocations are a form of effluent limits. One commenter noted that wasteload allocations should be defined as allocated to individual, classes or groups of sources.

What is EPA promulgating today? Today's rule clarifies that only point sources subject to an NPDES permit need to be included in the wasteload allocation. All other sources of a pollutant, be they point source or nonpoint sources, are included in the load allocation. In 1985, when EPA published the definition contained in the existing regulations, all point source discharges were subject to an NPDES permit. The Water Quality Act of 1987, however, provided that not all storm water discharges from point sources were subject to NPDES permits. As a result, today some storm water discharges through point sources are not subject to NPDES requirements. Generally, these are storm water discharges that do not fall into the eleven categories of storm water associated with industrial activities or that are below the threshold of the storm water phase II regulations. To continue this approach, EPA is clarifying that wasteload allocations apply only to point source discharges which are or can be subject to an NPDES permit.

Also, EPA is clarifying that for waterbodies impaired by both point and nonpoint sources, anticipated load reductions from nonpoint sources may be taken into account in calculating the wasteload allocation. EPA received a number of comments stating that in such cases implementation of the TMDL may proceed on different schedules for point and nonpoint sources and supporting the recognition in the final rule of a such a phased approach to implementation of TMDLs (*i.e.* "phased TMDLs"). EPA interprets the term "phased TMDLs" to describe TMDLs where the wasteload allocations are based on expected reductions from sources other than those regulated by NPDES permits. A phased TMDL includes wasteload allocations that are based on those expected load allocations and includes a monitoring plan to verify the load reductions. See Guidance for Water Quality-Based Decisions: The TMDL process, EPA 440/4–91/001. EPA considers that the combination of requirements for reasonable assurance and the implementation plan in today's rule provide the structure for phased TMDLs. The definition of reasonable assurance provides the basis by which a State, Territory, or authorized Tribe can demonstrate that the load allocations in the TMDL are likely to occur. The implementation plan also requires that the TMDL establish a schedule or timetable which includes a monitoring or modeling plan to measure the effectiveness of point and nonpoint source control measures. Such a plan would include data collection, the assessment for water quality standards attainment, and, if needed, additional predictive modeling.

. EPA recognizes it is difficult to ensure with precision that implementing nonpoint source controls will achieve expected load reductions. For example, management measures for nonpoint sources may not perform according to expectations to achieve expected pollutant load reductions despite best efforts. EPA believes that an important part of the phased approach, as discussed above, is the recognition that ultimate success in achieving water quality standards for nonpoint sources may depend upon an iterative approach. States, Territories and authorized Tribes may determine to what extent nonpoint source management measures are meeting the performance expectations on which they are based and implement improved management measures, designs or operations and maintenance procedures. Today's rule at § 130.32(c)(2)(v) provides for interim, measurable milestones for determining whether management measures or other action controls are being implemented, and a process for implementing stronger and more effective management measures if necessary. EPA recognizes that this type of approach might involve very long time-frames before water quality standards are eventually realized. EPA also expects that information on actual performance of management measures may lead to questions concerning the appropriateness of the water quality standards and that, in some cases, States, Territories and authorized Tribes may initiate use attainability analyses to determine the appropriate use and, possibly, revise the use on the basis of the information gathered during implementation phase of the TMDL.

EPA is deleting the sentence in the current definition that defines a wasteload allocation as a type of water quality based effluent limitation. EPA acknowledges that water quality-based effluent limitations that derive from a TMDL are based on the TMDL wasteload allocation, but does not believe that wasteload allocations serve as water quality based effluent limits. EPA explained this in its 1991 "Technical Support Guidance for Water Quality-based Toxics Control." Wasteload allocations reflect the mass load of a pollutant that allows a waterbody to attain water quality standards based on the averaging period of the water quality standard. For example, a wasteload allocation based on attaining the 4-day average water quality criterion for copper reflects a 4-day mass load. Effluent limitations reflect periods established by NPDES regulations: generally weekly and monthly limits for publicly owned treatment works and daily and monthly limits for other facilities (see § 122.45(d)) and therefore are not the strict equivalent of a wasteload allocation.

e. Revised Definition of TMDL (§ 130.2(h))

What did EPA propose? EPA proposed to define a "TMDL" as a written plan and analysis established to ensure that an impaired waterbody attains and maintains water quality standards in the event of reasonably foreseeable increases in pollutant loads. Under the proposed revisions, a TMDL would also have had to include ten basic elements, which were described in § 130.33(b) and are listed in section I.A.3.b. of this preamble. EPA's proposal was meant to amplify the existing regulatory definition that a TMDL is the sum of load and wasteload allocations and a margin of safety, taking into consideration seasonal variations.

What comments did EPA receive? EPA received numerous comments regarding its proposed changes to the definition of TMDLs. Specific comments regarding the ten proposed elements of a TMDL are addressed later in the discussion of § 130.32(b) of today's rule. Some commenters expressed concerns that the proposed definition expanded the concept of a TMDL beyond that mandated by section 303(d). Additional commenters suggested that section 303(d) requires TMDLs only for point sources, and suggested that the TMDL definition reflect this. Others interpreted the proposed definition as going beyond the statutory concept of a

TMDL as simply a calculation of the total load necessary to attain and maintain water quality standards. Further comments suggested that the proposed definition was too vague. All these commenters recommended that the existing definition be retained.

Some commenters supported the proposed definition and agreed that it was consistent with section 303(d). These commenters suggested that EPA clarify how the ten elements of the TMDL achieve the statutory concept, *i.e.*, quantify the sum of load and wasteload allocations with a margin of safety and take into consideration seasonal variations.

Further comments expressed concern that the proposed definition required a separate TMDL analysis for each pollutant causing an impairment and for each waterbody. Several commenters believed EPA has no authority to require TMDLs to address growth and recommended that references to growth be stricken from the definition.

What is EPA promulgating today? Today's rule modifies the proposal in a number of ways. EPA is adding the word "quantitative" to the final definition at § 130.2(f) to clarify that the TMDL must contain a quantified plan for allocating pollutant loads to attain and maintain water quality standards. EPA is also clarifying that a TMDL must assure that water quality standards are attained and maintained throughout the waterbody and in all seasons of the year. EPA believes this revision clarifies that the TMDL quantifies how water quality standards will be attained and maintained. As proposed and promulgated, the total effect of all the elements of the TMDL require a quantification of the sum of load and wasteload allocations, along with a margin of safety and consideration of seasonal variations, and EPA believes that the definition in the final rule is consistent with section 303(d). Also, EPA has reorganized the provisions of two of the elements and split one, such that there are now eleven elements of a TMDL; this change is discussed in the preamble discussion of § 130.32(b).

EPA declines to use the existing regulatory definition of TMDL as suggested by many comments for several reasons. Based on its experience in reviewing and approving TMDLs, EPA continues to believe that the TMDL elements in the final rule definition specify in appropriate detail the information EPA considers necessary to quantify loadings and determine whether the loadings, once implemented, would result in attainment of water quality standards in the waterbody. They will also provide EPA with an element missing from the current regulations, *i.e.*, assurance that the TMDL will in fact be implemented. EPA believes that this information will allow the Agency to make timely and appropriate decisions on TMDLs submitted for review. It will also provide certainty to States, Territories and authorized Tribes on what an approvable TMDL is. Furthermore, as previously discussed in today's preamble, section 303(d) applies to both point sources and nonpoint sources.

EPA is deleting the reference to reasonable foreseeable increases in pollutant loads from the proposed introductory paragraph in the definition, because these increases are addressed in the element of the TMDL that pertains to increases in pollutant loading. EPA addresses other comments and concerns about how TMDLs consider increases in pollutant loads in the Response to Comments document and in today's preamble discussion about § 130.32(b).

Finally, in the promulgated definition, EPA is clarifying that it considers a TMDL to apply to one pollutant in a waterbody. However, this does not mean that EPA requires a separate data collection, data analysis, or report for each TMDL. Instead, EPA encourages States, Territories, and authorized Tribes to establish TMDLs on a coordinated basis for a group of waterbodies within a watershed, and that a single analysis can be conducted for several pollutants, instead of for only a single pollutant. EPA does not construe the new definition of waterbody at § 130.2(q) to limit the ability of States, Territories and authorized Tribes to establish TMDLs on a watershed basis. In fact, EPA encourages coordinating the establishment of TMDLs on a watershed basis. Also, EPA did not intend to require that States, Territories, and authorized Tribes conduct a separate TMDL analysis for each pollutant in a waterbody or watershed. EPA wants to provide States, Territories and authorized Tribes the flexibility to develop and focus their TMDLs as appropriate, *i.e.*, to address single or multiple impairments in a waterbody, in part of a waterbody, or in multiple waterbodies.

f. New Definition of TMDTL (§ 130.2(i))

EPA is promulgating a definition of the term "total maximum daily thermal load" or TMDTL to help promote clarity with respect to the requirements which apply to TMDTLs. A TMDTL is a TMDL for a waterbody impaired by thermal discharge(s). In general, the same requirements for an approvable TMDL also apply to TMDTLs, since they are a subset of TMDLs. However, waterbodies with a thermal discharge will be evaluated for listing based on whether the waterbody is supporting a balanced, indigenous population of shellfish, fish, and wildlife. If such waters are listed, they will receive a TMDTL which must be calculated to assure protection and propagation of such a population.

g. New Definition of Impaired Waterbody (§ 130.2(j))

What did EPA propose? EPA proposed a definition of "impaired waterbody" to define precisely waterbodies which should be considered as not attaining water quality standards and proposed to include within that definition waterbodies impaired by unknown causes.

What comments did EPA receive? Many commenters objected to that part of the definition which required them to account for waterbodies impaired by unknown causes. They believed that the concept was too vague and too broad. They were concerned that some would argue that certain waterbodies should be deemed impaired when there was no evidence of impairment.

What is EPA promulgating today? In response to the comments, EPA is making a change to the proposed definition to clarify its intent regarding waterbodies impaired by unknown causes. EPA does not intend for States, Territories, and authorized Tribes to list waterbodies in the absence of any information demonstrating an impairment. Rather, by proposing to require listing of impaired waters even if the pollutant causing the impairment is unknown, EPA wanted to ensure that lack of information regarding the specific pollutant would not be a reason for not listing an impaired water. After consideration of the comments received, EPA has decided to modify the proposed provision. In situations where the specific pollutant is unknown, but there is information showing impairment, such information tends to consist of biological information (*e.g.*, information showing a water is not supporting a designated or existing aquatic life habitat use). Therefore, EPA is replacing the reference to unknown causes of impairments in the proposal with a provision requiring that waterbodies be considered impaired (and thus listed) when biological information indicates that they do not attain and maintain water quality standards. Prior to developing a TMDL for such waters, the State, Territory, or authorized Tribe would need to identify the particular pollutant causing the

impairment. EPA is aware that in past lists, some States, Territories, and authorized Tribes have identified broad categories of pollutants, such as metals or nutrients, as the cause of impairments. Under today's regulation, the only situation in which the State may identify the pollutant as unknown until such time that the TMDL is developed is for waters where the only information demonstrating impairment is biological information. EPA is developing guidance to assist States, Territories, and authorized Tribes to identify the causes of a biological impairment. See draft "Stressor Identification Guidance", April 28, 2000. Otherwise, EPA expects that States will be able to identify the particular metal, nutrient, or other pollutant causing the impairment.

EPA is also modifying the definition of impaired waterbody to include waters that fail to attain and maintain water quality standards. EPA is using the phrase "attain and maintain" to mean that the waterbody must consistently continue to meet water quality standards throughout the waterbody in order to be considered not impaired. Any failure to meet an applicable standard would mean that the waterbody should be listed and a TMDL should be developed if it is listed on Part 1. The use of the phrase "attain and maintain" can be distinguished from the proposed requirement to list threatened waters, which is not included in today's action. Threatened waters are those that are meeting standards, but exhibit a declining trend in water quality such that they would likely exceed standards in the future. Such waters are not required to be included on the section 303(d) list though States can do so. By waters that do not attain and maintain standards, EPA intends to ensure that States, Territories, and authorized Tribes list waters that may occasionally meet an applicable standard, but fail to consistently do so. As in the proposal, the Agency is including in the promulgated definition language from section 303(d)(1)(B) which establishes the standard for considering a waterbody impaired by thermal discharges, *i.e.*, the waterbody does not have or maintain a balanced indigenous population of shellfish, fish and wildlife. As discussed in the preamble to the proposed rule (64 FR 46021–46022, August 23, 1999) and later in today's preamble, EPA interprets section 303(d) to require TMDLs only for waterbodies impaired by pollutants.

Finally, EPA believes that the term impaired waterbodies is a plain language definition of the pre-existing regulatory term water quality limited segment which derived from the CWA. EPA interprets section 303(d) as pertaining to parts of or complete waterbodies that do not attain and maintain water quality standards. For these waterbodies technology-based controls are insufficient to attain water quality standards and water quality-based controls are required, *i.e.*, they are water-quality limited. Also in today's rule, EPA defines waterbody to include one or multiple segments of rivers, lakes, estuaries, etc. Thus, EPA believes that the term "impaired waterbodies" is analogous to the term water-quality limited segment and more understandable to the general public.

h. New Definition of Management Measures (§ 130.2 (m))

What did EPA propose? EPA did not propose a definition for "management measures." Instead, the proposed regulations used the term Best Management Practices (BMPs), a definition of which was carried over in the proposal from the current requirements.

What comments did EPA receive? Commenters pointed out that the definition of BMPs in the current regulations refers only to nonpoint sources, and they suggested that it should be revised to refer to all sources to which BMPs could be applied. These would include some point sources such as certain storm water discharges. Commenters also were concerned that the reference to BMPs as being selected by an agency would limit the applicability of certain BMPs in the context of establishing TMDLs.

What is EPA promulgating today? EPA agrees with the commenters that it intended the term BMPs in the proposal to include the management of sources other than nonpoint sources. However, rather than modify the pre-existing definition of BMP to accomplish that result, which could have unforeseen impacts on other Agency programs which use this term, EPA is including a definition of "management measures" in today's regulation. This term and definition retain those concepts in the current definition of BMPs which are applicable to TMDLs but eliminate the references to nonpoint sources and selection by an agency. EPAbelieves the definition of "management measure" is a logical outgrowth of the proposed definition of "BMP" and a reasonable response to the above-referenced comments.

i. New Definition of Thermal Discharge (§ 130.2(o))

What did EPA propose? EPA proposed adding the definition of "thermal discharge" to clarify the meaning of the term for the purpose of identifying impaired waterbodies and establishing Total Maximum Daily Thermal Loads (TMDTLs) pursuant to section 303(d). EPA proposed to define the term as "the discharge of heat from a point source." EPA believed that the definition was important since waterbodies impaired by thermal discharge are subject to section 303(d) listing and TMDTL requirements, and furthermore, the test for measuring successful implementation is different than for other pollutants.

What comments did EPA receive? EPA received several comments on this definition. Some comments requested clarification of whether EPA meant discharge of heat from all point sources. Other comments suggested that the definition be revised to include nonpoint sources of heat.

What is EPA promulgating today? EPA is promulgating the proposed definition with a minor change to clarify that it applies to only those point sources "that are required to have NPDES permits." EPA provided detailed explanations in the preamble to the proposal regarding its interpretation of the statute as it pertains to inclusion of thermal discharges in the TMDL program. (64 FR 46017 August 23, 1999). As discussed in the preamble to the proposed rule, EPA believes the CWA reference to "balanced, indigenous population of shellfish, fish and wildlife" refers only to those discharges subject to sections 301 and 306, which relate to point sources subject to NPDES permits. Therefore EPA is not expanding the definition of thermal discharge to include nonpoint sources. EPA acknowledges that nonpoint sources and other sources not subject to NPDES permits can introduce heat into a waterbody. However, for reasons discussed in the preamble to the proposed rule, EPA believes that the CWA requires that TMDLs rather than TMDTLs be established for these waterbodies if they are impaired solely by these sources and that they must attain water quality standards, and not just a balanced, indigenous population of shellfish, fish and wildlife.

j. New Definition of Reasonable Assurance (§ 130.2(p))

What did EPA propose? EPA proposed to define "reasonable assurance" as a demonstration that wasteload allocations and load allocations in a TMDL would be implemented. EPA proposed that each TMDL provide reasonable assurance that allocations contained in a TMDL would, in fact, be implemented to attain

and maintain water quality standards in the waterbody. EPA incorporated the term in proposed § 130.33(b)(10)(iii) dealing with TMDL implementation plans to emphasize that implementation of the allocations in TMDLs is critical to the ultimate attainment of standards in impaired waterbodies across the country.

What comments did EPA receive? EPA received a number of comments generally opposing the concept of reasonable assurance. Some commenters believe that EPA does not have the authority to require States, Territories or authorized Tribes to demonstrate reasonable assurance, and that the definition of reasonable assurance was too prescriptive. EPA also received comments generally in support of the reasonable assurance provision, noting that it is important to have assurance that implementation will occur and that water quality standards will be met.

EPA received many comments on specific aspects of the proposed definition of reasonable assurance. A major theme was that the proposed definition did not recognize that State, Territorial and authorized Tribal nonpoint source programs are largely voluntary. Furthermore, many commenters noted that States may have limited regulatory authority to address nonpoint sources, and perceived the definition of reasonable assurance as forcing States to adopt regulatory controls on nonpoint sources. Many commenters urged that voluntary, incentive-based programs should be acceptable as reasonable assurance. Conversely, a number of commenters believed that regulatory controls for nonpoint sources were necessary to provide reasonable assurance, or that, in order to provide reasonable assurance, implementation plans needed to be enforceable. A few commenters suggested that States, Territories and authorized Tribes need to have regulatory authority to control pollutants from nonpoint sources in the event that voluntary programs do not succeed.

Numerous commenters expressed concern about the funding component of reasonable assurance. A frequently-cited concern was that States would not be able to guarantee full funding to implement the TMDL at the time a TMDL was established. Some commenters also believed that the funding provision was not well-defined, and that, when reviewing TMDLs, EPA would not be able to evaluate whether the State had demonstrated "adequate funding." Others noted that States, Territories and authorized Tribes lack adequate funding and staff to establish and implement TMDLs and that EPA needs to ensure adequate funding through the section and other programs.

EPA received some comments regarding the ability of existing State and Federal authorities and programs to satisfy the reasonable assurance provision. Some commenters suggested that approval of a State, Territorial or authorized Tribal nonpoint source program or nonpoint source management plan should by itself, constitute reasonable assurance. Other commenters disagreed and said that reference to existing programs by itself is not adequate, and that control actions assuring TMDL implementation must be specific to the source and the waterbody. Some commenters urged flexibility in allowing for a variety of implementation mechanisms to satisfy reasonable assurance such as other Federal and State forest and land management programs. Several comments pointed out that it would be difficult to provide reasonable assurance, given the challenge of aligning multiple State and Federal agencies, and multiple watershed groups.

Some commenters suggested that EPA needs to better define what it means that procedures and mechanisms relating to nonpoint sources of a pollutant must be implemented expeditiously, or specify a particular timeframe for their implementation. A few commenters believed that EPA was not in a position to evaluate what constitutes expeditious, and that the term should be eliminated.

A few commenters questioned EPA's authority to provide reasonable assurance when it establishes a TMDL for nonpoint sources. Some also questioned EPA's authority to condition section 319 grant funds as a way of providing reasonable assurance. Conversely, a few commenters supported EPA's full use of its authorities to implement TMDLs, or to condition section 319 funds, as necessary.

What is EPA promulgating today? Today's rule contains a revised definition of reasonable assurance. Reasonable assurance continues to mean a demonstration that TMDLs will be implemented through regulatory or voluntary actions, by Federal, State or local governments, authorized Tribes or individuals.

Reasonable assurance is a demonstration that a TMDL's implementation plan will indeed be implemented. (See § 130.32(c).) EPA believes that it has the authority to require the demonstration of reasonable assurance as part of the implementation plan. Section 303(d) requires that a TMDL be established at a level necessary to implement water quality standards and requires EPA to review and either approve or disapprove the TMDL. CWA section 501(a) also authorizes EPA to adopt regulations as necessary to implement the Act. To approve a TMDL, EPA believes it is necessary to determine whether a TMDL is in fact established at a level necessary to attain water quality standards. For EPA to determine that the TMDL will implement water quality standards, there must be a demonstration in the TMDL of reasonable assurance that the TMDL's load and wasteload allocations will be implemented. Otherwise, the allocations presented in a TMDL lack a necessary link to anticipated attainment of water quality standards.

Reasonable Assurance for Point Sources for Which an NPDES Permit is Required

Reasonable assurance for point sources for which an NPDES permit is required means that States, Territories and authorized Tribes must identify procedures that will ensure that permits will be modified, issued or reissued as expeditiously as practicable to incorporate effluent limits consistent with the wasteload allocations. For these demonstrations of reasonable assurance, the phrase "as expeditiously as practicable" means in general that the permitting authority, either an authorized State, Territory, or Tribe, or EPA, will issue the permit as follows. For facilities receiving a permit for the first time, "as expeditiously as practicable" means that the permitting authority must issue the permit that implements the wasteload allocation before the facility begins to discharge. Under EPA's current NPDES rules, a facility may only discharge pollutants from point sources into waters of the United States as authorized by an NPDES permit (§ 122.1). New facilities must receive their permit before they can lawfully discharge pollutants. Also, current NPDES regulations require that NPDES effluent limitations be consistent with the applicable wasteload allocation in an approved TMDL (§ 122.44(d)(1)(vii)(B)). Therefore, EPA believes that its interpretation of "as expeditiously as practicable" for facilities receiving their first permit is consistent with the current practice of the NPDES permit program. For facilities currently permitted, "as expeditiously as practicable" means that the permitting authority will reissue the permit as soon as it can after the permit expires, taking into account factors such as available permitting resources, staff and budget constraints, other competing

priorities, and watershed efficiencies. Alternatively, the permitting authority, may choose to modify the permit prior to expiration in accordance with the permitting authority's modification requirements.

The phrase "as expeditiously as practicable" adds a time element to the word "expeditiously", which was used in the proposal. The dictionary definition of "expeditiously" is fast or rapidly. EPA received comments about "how fast is fast," and whether any factor governed how quickly EPA expected a permitting authority to issue or reissue NPDES permits. EPA intended that permitting authorities would not delay their normal issuance or reissuance of permits and would modify the permits when they contained a reopener provision allowing modification of the permit conditions on the basis of new information. EPA is using the phrase "as expeditiously as practicable" in the final rule to clarify further what EPA means by the word "expeditiously" used in the proposal. This clarification should allow permit authorities to schedule permit issuance and reissuance actions consistent with the relevant factors discussed above.

Reasonable Assurance for Sources for Which an NPDES Permit is Not Required

For all other sources, including nonpoint sources, storm water sources for which an NPDES permit is not required, atmospheric deposition, groundwater and background sources, reasonable assurance means that actions implementing the load allocations meet a four-part test. The control actions or management measures must be (1) specific to the pollutant and waterbody for which the TMDL is being established, (2) implemented as expeditiously as practicable, (3) accomplished through reliable delivery mechanisms, and (4) supported by adequate funding. For these sources, each TMDL must meet each one of these tests prior to EPA approval.

(1) Specific to the pollutant and waterbody. The first part of the four part test for reasonable assurance is that the management measure or control be specific to the pollutant and waterbody. By this, EPA means that the State, Territory, or authorized Tribe knows of, and can point to, information showing that the management measure relied upon to achieve the reduction in the loading can reduce that pollutant. By "specific," EPA does not intend that States, Territories or authorized Tribes collect new or additional site-specific information, but rather that they provide EPA existing data that relates to the specific waterbody and pollutant. For example, a State may rely on a program that installs buffer strips to demonstrate reasonable assurance. In this example, the State would point to National Resource Conservation Service information showing that buffer strips are effective in mitigating erosion and thus can reduce loadings of the specific pollutant, *i.e.*, sediment. Also, the State would need to show which waterbodies within the watershed would receive buffer strips and explain the characteristic of these buffer strips. In this way, the State may fulfill the requirements of this part of the four part test. For atmospheric deposition, where the controls will result from Clean Air Act regulations, reference to current or anticipated Clean Air Act regulations should explain how those regulations relate to the specific pollutant of concern.

(2) As expeditiously as practicable. EPA intended that States, Territories, and authorized Tribes would implement management measures as quickly as they reasonably could in light of other water quality needs. For the reasons discussed above, EPA is using the phrase "as expeditiously as practicable" in the final rule to clarify the word "expeditiously" as used in the proposal. EPA expects that States, Territories, and authorized Tribes will make nonpoint source controls implementing a TMDL for which there are no point sources subject to NPDES permits a high priority for nonpoint source program funding. Scheduling of nonpoint source controls is also discussed in section II.P. of this preamble. For atmospheric deposition, adoption of Clean Air Act regulations and implementation of those regulations pursuant to the provisions of the Clean Air Act would satisfy the reasonable assurance requirement that implementation will occur as expeditiously as practicable.

(3) Reliable delivery mechanisms. EPA did not include the concept of "reliable delivery mechanism" in the proposed definition of reasonable assurance. EPA did discuss this concept in the preamble discussion of the definition. (64 FR 46033, August 23, 1999). Reliable delivery mechanism means the programmatic and administrative means by which the management measures and control actions will be implemented and monitored. Several comments expressed concern that the preamble discussion was not reflected in the rule language, and suggested that this preamble phrase should be included in the definition. EPA was persuaded by the comments that it should do this.

EPA is also adding the word "effective" to modify "reliable delivery mechanism." EPA believes that this concept is a logical outgrowth of the preamble to the proposed rule. There, EPA discussed that voluntary and incentive-based programs may be used to demonstrate reasonable assurance. It goes without saying that these programs must be "effective" in order to provide reasonable assurance. Nevertheless, to avoid confusion, EPA decided to be clear and add the word "effective" to the final rule.

Some existing nonpoint source relafed programs may also be reliable and effective delivery mechanisms specific to the waterbody and pollutant for purposes of providing reasonable assurance. Programs, procedures or authorities including State, Territorial or authorized Tribal programs approved under section 319 of the CWA or existing conservation or water quality protection programs administered by the United States Department of Agriculture which have demonstrated success in delivering water quality improvements in the past may be reliable delivery mechanisms for the purpose of § 130.2(p). State, Territories and authorized Tribes will need to explain how these programs will be implemented in the specific impaired waterbody and how they address the pollutant causing the impairment. For atmospheric deposition, implementation of the Clean Air Act regulatory program could provide the necessary reliable delivery mechanism.

(4) Adequate funding. Finally, today's rule clarifies what EPA considers to be "adequate funding" for the purpose of demonstrating reasonable assurance. In response to comments, EPA is including in the final rule the funding language from the proposed rule preamble, and providing a more detailed discussion of this term below. (64 FR 46033 to 46034, August 23, 1999). EPA believes that adequate funding means that existing water quality funds have been allocated to implement load allocations to the fullest extent practicable and in a manner consistent with the effective operation of the clean water program in the State, Territory, or authorized Tribe. EPA believes that implementing TMDLs is a central part of water quality management. At the same time EPA recognizes that effective water quality programs are comprised of many different activities which must be carried out concurrently. It would make no sense to fund only TMDL activities and eliminate other important activities. For atmospheric deposition, where controls will be required by Clean Air Act regulations, the process for adoption

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and implementation of those regulations should satisfy the requirement for adequate funding.

Today's rule requires that States, Territories and authorized Tribes identify adequate clean water program funding to implement load allocations. Clean water program funding includes Federal funding through the CWA and some related Federal, State, Territorial or authorized Tribal funding. In the event that funding is not currently adequate to implement the TMDL, EPA may approve the TMDL if the State, Territory, or authorized Tribe provides an explanation of when adequate funds will be available and a schedule by which these funds will be obtained and used to implement the TMDL. EPA believes that such a schedule identifying when load allocations will be implemented as funding becomes available is necessary to provide reasonable assurance that load allocations will be achieved where adequate funding is not currently available. As indicated in implementation plans provisions, such a schedule must assure that implementation will be as expeditious as practicable (*i.e.*, within 5 years when practicable) for waterbodies impaired only by sources which are not subject to NPDES permits, including nonpoint sources.

Use of Existing Programs

EPA believes that existing nonpoint source programs can provide the suite of control actions and management measures for States to rely on when meeting the reasonable assurance test. Examples of voluntary and incentive-based actions or existing programs include State, Territorial or authorized Tribal programs to audit implementation of agricultural management measures and memoranda of understanding between State, Territorial and authorized Tribal governments and organizations that represent categories, subcategories or individual sources which assure implementation and effectiveness of management measures.

A State, Territory, or authorized Tribe may need to consider other programs to address pollutants introduced in a waterbody by atmospheric deposition or groundwater. For example, the State, Territory, or authorized Tribe could rely on scheduled reductions in atmospheric sources under the Clean Air Act or similar State authority. Likewise, it could rely on reduced groundwater loadings as a result of remedial actions under the Resource Conservation and Recovery Act (RCRA) or similar State authority. If these programs cannot provide reasonable assurance that the pollutant loads will be reduced, the load reduction will have to be assigned to other sources.

Generally, a State, Territory, or authorized Tribe will demonstrate reasonable assurance for the part of the load allocation that addresses the loading of pollutants contributed by background sources by quantifying the loading so that it can be included in the calculation of the total loading in a waterbody. In these situations, this background loading would be presumed to be constant and load reductions will be assigned to other sources. However, if a State, Territory, or authorized Tribe expects that the background loadings will decrease as a result of some action and is relying on this decrease in the calculation of wasteload and load allocations, then the State, Territory, or authorized Tribe will need to apply the four-part test to demonstrate the reasonable assurance for this expected reduction.

The test of reasonable assurance in today's rule is not met simply by having programs, authorities or voluntary measures described in the definition of reasonable assurance in place. In order for such programs, authorities or measures to provide reasonable assurance each one of the four parts of the test must be satisfied. For example, if a State offers a particular voluntary program approved under section 319 as proof of reasonable assurance, EPA will review the program information to see whether it specifically addresses the waterbody/pollutant of concern, includes actions that will be implemented as expeditiously as practicable, will be accomplished through a reliable delivery mechanism with a good track record of success and meet the adequate funding test.

Reasonable Assurance When EPA Establishes TMDLs

In some cases, EPA will have to disapprove a State's TMDL and establish the TMDL. When establishing a TMDL, EPA will also have to provide reasonable assurance as required by §§ 130.32(c) and 130.2(p). In providing reasonable assurance, EPA may rely on various statutory or regulatory authorities to meet the four-part test which applies to load allocations for sources not subject to an NPDES permit. EPA cannot, of course, require States, Territories or authorized Tribes to use their own statutory or regulatory authorities to provide reasonable assurance for EPA. EPA may, however, condition some or all CWA grants to the fullest extent practicable and in a manner consistent with the effective operation of other CWA programs in order to meet the adequate funding part of the four-part reasonable assurance test. Such action would by itself serve to satisfy that part of the reasonable assurance test when EPA establishes a TMDL. For example, EPA may condition section 319 grants such that States can only use some or all of these funds to implement management measures in watersheds where EPA has established a TMDL that includes load reductions for nonpoint sources. Similarly, EPA may condition section 106 grants to States such that some of the funds for monitoring can only be used to support the monitoring specified in TMDL implementation plans. EPA may also use its voluntary, incentive-based programs, such as section 104(b)(3) demonstration grants for watershed restoration, to ensure that management measures are funded and implemented. EPA may provide reasonable assurance for wasteload allocations by issuing NPDES permits within the time frames prescribed by § 130.32(c)(1)(ii) where EPA is the permitting authority, or by objecting to expired State-issued permits so that new permits will be issued to implement wasteload allocations from approved TMDLs.

By requiring such a demonstration of reasonable assurance before it may approve or establish a TMDL, EPA does not intend to create a mandatory duty or legal obligation that either the State, Territory, authorized Tribe or EPA implement those actions identified as providing reasonable assurance. The reasonable assurance demonstration is a "snapshot-in-time" identification of those voluntary and regulatory actions that the State, Territory, authorized Tribe or EPA intends to take to ensure that the nonpoint source load allocations assigned in the TMDL will be realized. If such demonstration is deemed satisfactory at the time the TMDL is being reviewed or developed by EPA, the TMDL may be approved or established. If in the future, the State, Territory, authorized Tribe or EPA determines that the TMDL is not being implemented, or that the implementation plan needs to be revised, the State, Territory, authorized Tribe or EPA may take action, as appropriate under existing State, Territorial, Tribal or Federal legal authority, to effect implementation or revise the TMDL. Nothing in this rule, however, creates in EPA or the States new legal authority beyond that provided by existing State, Territorial, Tribal or Federal law to implement load allocations for nonpoint sources or

creates for EPA, States, Territories or authorized Tribes a mandatory duty to do so.

k. New Definition of Waterbody (§ 130.2(q))

What did EPA propose? EPA proposed a definition of the new term "waterbody" to codify EPA's interpretation of the term for the purposes of TMDLs. The proposed definition would have provided States, Territories, and authorized Tribes more flexibility than the current regulation which refers to segments and would have allowed States, Territories, and authorized Tribes to tailor the geographical size of the watershed for which the TMDL was being established to match the pollutants and nature of impairment.

What comments did EPA receive? EPA received a number of comments on this definition. Most commenters suggested that the definition exclude ephemeral streams and wetlands. These commenters expressed concern over the application of water quality standards to these waterbodies, and thus suggested that TMDLs should not be established for them. Other comments expressed concern that the definition would prevent establishment of a TMDL for one segment of a river.

What is EPA promulgating today? After review of comments, EPA is promulgating the proposed definition with two minor changes. First, EPA is revising the proposed language to recognize that waterbodies can be made up of one or more segments of rivers, streams, lakes, wetlands, coastal waters or ocean waters. EPA did not intend to require that a TMDL consider the full geographic extent of a waterbody. Rather EPA intended to give States, Territories and authorized Tribes the flexibility to establish TMDLs for one or more segments. Second, EPA is adding a recommendation to the rule that the use of segments should be consistent with the use of segments in a State's water quality standards. EPA is making this recommendation to help promote consistency between how TMDLs are developed and how water quality standards are expressed.

EPA does not believe that the nature of a waterbody, such as an ephemeral stream or a wetland, and the challenge that nature may pose to establishing a TMDL, should preclude it from being defined as a waterbody. EPA believes that this is a water quality standard issue and that the appropriate forum for resolving questions about water quality standards is in the development of the standards themselves, and not in the application of the standards in a TMDL context.

1. New Definition of List (§ 130.2(v))

What did EPA propose? EPA proposed to include a new definition to refer to the four elements of the list and the prioritized schedule. EPA proposed this revision to expedite reference to the four elements and schedule within the rule.

What comments did EPA receive? EPA received no substantial comments unique to this definition. Some commenters did offer suggestions on what are acceptable elements of a list; these comments are addressed in parts of today's preamble that address these elements.

What is EPA promulgating today? EPA is revising the proposed definition of "list of impaired waterbodies" to make it consistent with other provisions of the final rule. First, EPA is clarifying that the list consists of all four parts of the required submission. This is to ensure that there is no confusion over whether certain parts of the list that may be submitted along with the State's section 305(b) report are in fact part of the section 303(d) list. In addition, the definition states that Part 1 of the list includes both waterbodies identified for TMDL development and the prioritized schedule for those waterbodies. This revision makes the definition consistent with the requirement to submit the prioritized schedule as part of the list itself, subject to EPA approval or disapproval, rather than as a separate document with the list submission that EPA will review but not take action on.

2. Response to Requests for New Definitions

What did EPA propose? EPA's proposal of August 23, 1999, requested comments on all aspects of adding new definitions.

What comments did EPA receive? EPA received comments suggesting that EPA add several definitions for terms used in the proposed rule or discussed in comments which requested additions to the requirements of the final rule.

What is EPA promulgating today? EPA has decided not to add other definitions to § 130.2. EPA is not adding a definition of "balanced indigenous population of fish, shellfish, and wildlife." There is an existing regulatory definition of the term "balanced indigenous population" in § 125.70 that, although it explicitly applies only to the regulations implementing section 316(a), provides the Agency's interpretation of this term for purposes of identifying impaired waterbodies and establishing TMDLs pursuant to section 303(d).

EPA is not adding a definition of "watershed." The term is not used within the final rule to trigger a regulatory provision, and thus does not require definition. EPA prefers to allow States, Territories, and authorized Tribes the flexibility to define a watershed within the context of their own programs. However, EPA encourages the use of the hydrologic unit codes for watersheds defined by the U.S. Geologic Survey since they are a uniform system of watershed identification that will clearly identify to other States, Territories, Tribes, EPA and the public the boundaries of watersheds defined by the States in the context of their water quality programs.

EPA is not including a specific definition in the final rule for " trading" and thus declines to add trading-related definitions for "real," "quantifiable" or "surplus" as suggested by some comments as being necessary if EPA included regulatory provisions for trading.

EPA is not adding a definition of "existing and readily available," "man-made or man-induced," "point source," "nonpoint source," and "waters of the contiguous zone." This final rule at § 130.22(b) already provides a definition of existing and readily available water-quality related data and information by enumerating particular categories of water-quality related data and information that must be considered. The regulations clearly state that this list is not exhaustive, but rather is intended to identify specific kinds of water quality-related data and information that will be considered existing and readily available, in addition to water-quality related data and information in other relevant categories that are not explicitly listed in the regulations. EPA does not believe it can accurately identify each and every type of water-quality related data and information that should be considered in every state's listing process, in light of the broad variety of relevant water-quality related data and information that is and will be available. Therefore, it is appropriate to list specific categories that are likely to exist for every state, and leave it to the States, Territories, and authorized Tribes to collect and evaluate other relevant information.

The CWA itself uses the term "man-made or man-induced" within the statutory definition of pollution; EPA believes this term is very clear and needs no further clarification. The CWA already defines "point source" and EPA does not believe that today's rule needs to reiterate this definition. EPA

interprets "nonpoint source" to apply to all sources that do not meet the statutory definition of a point source. Finally, the CWA at section 502(a) already defines the term "contiguous zone" and EPA does not believe that it needs to reiterate this definition in today's final rule.

EPA disagrees that it should add a definition of "sensitive aquatic species." This term was used in the proposal merely to indicate a factor that States, Territories and authorized Tribes should consider when establishing priorities for TMDLs. Since this is a discretionary practice in the final rule, EPA believes that it need not define the term.

EPA also disagrees that it should add a definition of "seasonal variations." This term originates in CWA section 303(d)(1)(C). EPA believes it means seasonal variation in environmental conditions which affect a waterbody's character, *e.g.*, variations in a waterbody's temperature, flow rate, or dissolved oxygen level. EPA does not believe the term needs a separate regulatory definition. Further, § 130.32(b)(9) provides sufficient explanation of what is to be included in the assessment of seasonal variation.

EPA disagrees that it should add a definition of "comprehensive watershed management plan." This term is not used in the final rule, and thus does not require definition.

EPA disagrees that it should add a definition of "natural sources/causes" or "ephemeral stream." EPA believes these terms are best defined in State, Territorial and authorized Tribe's water quality standards. The term "natural sources/causes" was suggested to clarify how a TMDL would address impairments caused by natural sources or causes. EPA believes this question is best addressed when a State, Territory, or authorized Tribe decides the appropriate water quality criteria for that waterbody. The term "ephemeral stream" was suggested to identify a type of waterbody for which special water quality standards would be necessary. Again, EPA believes this question is best addressed when a State, Territory, or authorized Tribe decides the appropriate water quality criteria for that waterbody.

B. Who Must Comply With the Requirements of Subpart C? (§ 130.20)

What did EPA propose? EPA's proposal included a list of entities which would be subject to the subpart C regulations. The proposal defined the term "you" to pertain to States, Territories, and authorized Tribes. The proposal also stated that portions of subpart C apply to EPA.

What comments did EPA receive? EPA received only a few of comments on this section. These comments expressed concern that EPA was only subject to unspecified portions of subpart C, and recommended that EPA should be subject to the same requirements as are States, Territories, and authorized Tribes.

What is EPA promulgating today? EPA declines to further clarify this section. Its purpose is to explain that the term "you" as used in a rule written in plain English applies to States, Territories and authorized Tribes. As to the parts of the rule that apply to EPA, EPA considers that §§ 130.22, 130.23, 130.25, 130.26, 130.27, 130.28, 130.29,130.31, 130.32, 130.33, 130.36, and 130.37 apply to EPA when EPA establishes lists or TMDLs. These are the same substantive requirements that apply to States, Territories, and authorized Tribes.

Other sections of subpart C pertain to EPA's review and approval or disapproval of lists and TMDLs. These sections are specifically identified in the titles for the sections.

C. What is the Purpose of Subpart C? (§ 130.21)

EPA proposed to include this section in the regulations to give the reader an overall summary of the requirements included in §§ 130.22 through 130.37 of Subpart C. EPA received many comments regarding the purpose of its proposal. These comments are all addressed in other parts of this preamble or in the Response to Comments Document. For the sake of clarity, this section has been slightly expanded in today's rule to reflect decisions made on the various requirements which are explained in detail following sections of the preamble. In addition, the section clearly lays out the actions which EPA will undertake in the absence of approvable actions by a State, Territory, or authorized Tribe. Finally, this section is reorganized to group together requirements for States, Territories, and authorized Tribes, and those for EPA.

D. What Water-Quality Related Data and Information Must be Assembled To Develop the List of Impaired Waterbodies? (§ 130.22)

What did EPA propose? In § 130.22 of the proposal, EPA included a listing of the sources of water-quality related data and information which a State should consider in order to develop its list of impaired waterbodies. Generally, EPA proposed to retain the requirements of current § 130.7(b)(5) with one significant addition. EPA proposed at § 130.22(b)(4) that States, Territories and authorized Tribes should consider the information included in the Drinking Water Source assessments mandated by the Safe Drinking Water Act. EPA intended that the data obtained from these sources would then be analyzed using the State's methodology developed under proposed § 130.23.

What comments did EPA receive? EPA received a significant number of comments concerning both this section and proposed § 130.23. Some commenters specifically addressed the list of data sources proposed in § 130.22. Their comments are addressed in this section. EPA also received many comments dealing with the issues of data quality, types of data which should be considered as existing and readily available, and the use of monitored vs. modeled or evaluated data. Some commenters raised these issues in the context of § 130.22, others in the context of § 130.23 For the sake of clarity EPA is addressing these issues in the discussion of § 130.23.

As far as the list of sources, a significant number of commenters took exception to inclusion of the source water assessments while others supported it. Some commenters suggested that source water assessments were not appropriate sources of data because they are likely to be desk-top short-term qualitative documents containing no actual data, and suggested that sanitary surveys would be better sources of data. Others believed that EPA should clarify that ground water assessments should not be used for listing decisions. Other commenters suggested either additions or deletions from the list.

What is EPA promulgating today? After careful consideration of these comments, EPA is promulgating this section as proposed. The Agency appreciates that there are other sources of data available and does not intend the list to be exclusive. States must consider other types of water quality-related data and information that are existing and readily available. On the other hand, EPA does not expect the States, Territories and authorized Tribes to use data contained in the listed documents, including source water or groundwater assessments, in an indiscriminate fashion. The expressed purpose of § 130.23 is to document the decision process the States, Territories and authorized Tribes will use to consider how data from these and any other existing and readily available sources will be used in making listing decisions. Thus, States, Territories, and authorized Tribes must consider all existing and readily available water quality-related

data and information in the listing process, but may decide not to use certain such data or information as a basis for listing waters. These decisions will be explained in the state's methodology, discussed below, so that the public and EPA will have an opportunity to provide input on the decision process.

E. How Must the Methodology for Considering and Evaluating Existing and Available Water-Quality Related Data and Information to Develop the List be Documented? (§ 130.23)

What did EPA propose? Under the current regulations, States, Territories and authorized Tribes must submit to EPA documentation justifying their decisions to list or not list waterbodies at the same time they submit the list. EPA proposed to decouple the two requirements to provide for early input from stakeholders and EPA on this decision-making process. EPA's rationale was that resolving methodology issues early in the process would lead to better, more readily approvable lists. EPA proposed to require that States, Territories, and authorized Tribes develop a methodology covering all aspects of how existing and readily available data and information would be used to identify waterbodies as impaired, assign priorities and develop a schedule for establishing TMDLs.

What comments did EPA receive? EPA received a significant number of comments concerning the use of all existing and readily available data as a basis for listing and delisting impaired waters. Many commenters strongly advocated the use of data from all sources, with or without QA/QC documentation. These commenters were concerned that setting data quality requirements too high would result in a less than comprehensive assessment of all waters, and therefore dramatically limit or underestimate the identification and listing of impaired waters. They pointed out that listing and TMDL establishment is an iterative process, and that if necessary, States, Territories and authorized Tribes could collect supplemental data to confirm or make adjustments to their initial listing decisions. Numerous commenters suggested that data should not be used for the basis of listing and delisting unless it met rigorous QA/QC requirements, and was collected and processed with documented and scientifically valid protocols. Several commenters supported the establishment of prescribed QA/QC data quality guidelines in order to assure that all data met a minimum level of technical credibility.

Numerous commenters suggested that EPA specify in detail the contents of an adequate assessment methodology. In this approach, EPA would establish requirements for sampling design, data collection, and data analysis and interpretation. Other commenters objected to such a "one size fits all" approach, and believed that the format and contents of the methodology should be left to States, Territories and authorized Tribes.

Several commenters expressed concerns over the proposed requirement that there be a separate public participation process in the development of the methodology, while others asked for more specific public participation requirements which would mandate involvement of certain stakeholders. Several commenters also suggested that the methodology be adopted through rulemaking. Some commenters asked that the final methodology be made available to the public.

A number of commenters expressed concern over the adequacy of current monitoring programs to characterize and evaluate their waters in a comprehensive manner, regardless of how restrictive the States, Territories and authorized Tribes are in the use of existing and readily available data and information. They pointed out that State, Territorial and authorized Tribal monitoring programs needed to expand their spatial and temporal coverage, monitor for additional parameters, and rapidly incorporate biological and habitat quality indicators.

Finally, some commenters suggested that the methodology needed to consider how to resolve disagreements involving waterbodies that crossed Territorial and all Tribal boundaries.

What is EPA promulgating today? EPA is making several changes to the proposed language to conform with decisions explained elsewhere in this preamble. These changes reflect the decision that the section 303(d) list include four Parts, and for Part 1, the prioritized schedule for establishing TMDLs. Also, in recognition of the fact that EPA will be reviewing and commenting on, but not approving or disapproving, the methodology, EPA has revised the regulatory text to say that States, Territories, and authorized Tribes "should", rather than must, include certain elements in the methodology.

EPA is retaining the proposed requirement that there be a separate public participation process in the development of the methodology. EPA recognizes the cost savings of combining the public participation of the methodology with that of the list. However, EPA believes there is a significant benefit to the public to have reviewed the methodology before the public reviews the list of impaired waters. EPA is also adding language to encourage States, Territories and authorized Tribes to provide direct notification of the availability of the draft methodology to persons who submit a written request. This change conforms with changes made to § 130.36 and makes all public notice requirements contained in the final rule consistent. EPA believes it is reasonable to expect States to provide direct notification to such parties, and that it will not be burdensome. Public participation is essential to ensuring accurate, comprehensive lists, and providing persons with sufficient interest in the process to request notification in writing is a fairly simple way to further ensure that all interested parties receive notice of the availability of the draft methodology. EPA notes that States need not respond to such requests by providing copies of the methodology itself, but rather may simply notify the requesting parties that the methodology is available for public review and comment. EPA also agrees with the comment that the public should have access to the final methodology and is adding language to this effect. Today's final rule does not specify how States, Territories, and authorized Tribes are to make the methodology available. EPA expects that they will use their existing practices for doing so. EPA is requiring that the final methodology be made available to the public.

EPA also agrees with the commenter's concerns regarding State, Territorial and authorized Tribal monitoring protocols. The final regulations specify that the methodology should describe procedures that States, Territories and authorized Tribes will use to collect ambient water quality information. EPA believes this is reasonable and appropriate to provide as part of the methodology since this information will likely be critical in listing waterbodies as well as determining whether waterbodies are meeting standards and may be removed from the list. It is important for the public to be informed of the data collection methods the State, Territory, or authorized Tribe intends to use, and to have an opportunity to comment on such methods. EPA believes this process will serve to minimize concerns that would otherwise be raised later, when the State, Territory, or authorized Tribe lists

or removes waters based on data it has collected through its ambient water quality data collection programs.

EPA supports the collection and use of high quality data in decision making. EPA's grant regulations require that when grantee projects, such as State and Territorial water quality work using CWA section 106 funds, involve environmentally-related measurement or data generation, the grantee shall implement quality assurance practices that produce data of quality adequate to meet the project objectives. 40 CFR 31.45. Because regulations already require quality assurance practices, EPA declines to duplicate these requirements in today's rule. EPA has published guidance which governs EPA's own data collection activities and references quality assurance/quality control guidances for others. See "Policy and Program Requirements to Implement the Mandatory Quality Assurance Program", EPA Order 5360.1, April 3, 1984, as revised July 16, 1998.

Similarly, EPA recognizes the concern that quality assurance practices could be set at so high a level as to preclude consideration of most environmental water-quality related data. For this reason, EPA is committing in the final rule to comment about a State's, Territory's or authorized Tribe's assessment methodology. This will allow EPA to express concerns about the assessment methodology, including whether the State, Territory, or authorized Tribe inappropriately included or excluded water-quality related data. In addition, EPA will consider this when EPA reviews the list of impaired waters.

The final rule at § 130.23(e)(2) now provides that the State, Territory, or authorized Tribe should develop a process for resolving disagreements with other jurisdictions involving waterbodies crossed by Territorial and Tribal boundaries, in addition to the State and authorized Tribal boundaries discussed in the proposal. EPA is adding Territories to this provision because, under section 303(d), Territories are considered in the same way as States. EPA is adding Tribes that are not authorized to administer section 303(d) to this provision because, in part, Tribes without section 303(d) authorization may have authorization under section 303(d) for water quality standards, and a resolution of disputes over how to interpret and use water quality standards becomes relevant.

EPA also declines to specify in the final rule the detailed contents of an adequate assessment methodology. EPA believes that States, Territories, and authorized Tribes need the flexibility to tailor their assessment methodology to their monitoring programs and the waterbodies within their jurisdiction and that methods change over time. To assist States, Territories and authorized Tribes, EPA is, however, developing guidance on this subject which will include key elements of monitoring programs, monitoring design for achieving comprehensive coverage of assessments, and decision criteria for determining impairments. This guidance will be available to the States, Territories, and authorized Tribes in 2000, unless delayed by the TMDL rider.

EPA recognizes the concerns expressed by commenters over the adequacy of current monitoring programs to characterize and evaluate their waters in a comprehensive manner. EPA continues to work with States, Territories, and other stakeholders to increase the quality and comprehensiveness of water quality monitoring and assessment programs. This is achieved through data sharing and development of consistent monitoring designs and assessment criteria. EPA provides technical assistance, guidance and resources for monitoring design and implementation. EPA and its partners in States, Territories, Tribes and other Federal agencies are developing a consolidated assessment methodology that will provide a consistent approach for characterizing water quality.

F. When Must the Methodology be Provided to EPA? (§ 130.24)

What did EPA propose? EPA envisioned the methodology as an evolving document which States, Territories and authorized Tribes would revise as appropriate at some time during the listing cycle. EPA proposed that States, Territories and authorized Tribes would submit their first final methodology to EPA no later than January 31, 2000, and no later than January 31 of every year preceding the year when a list would be due, but noted in the preamble that the first date was subject to change based on the date when these regulations would be promulgated. EPA also proposed that it would review the listing methodology and provide comments to the State, Territory, or authorized Tribe. EPA proposed to consider the methodology in its approval or disapproval of the section 303(d) list and explained in the preamble to the proposal that it was considering using the way in which EPA's comments on the draft methodology were addressed as a factor in approving or disapproving the list.

What comments did EPA receive? Commenters expressed differing opinions on how frequently the methodology should be submitted. Some advocated a one time submission, with updates as needed. Others suggested that the methodology be submitted with each list. There was a diverse set of comments concerning the role of EPA in formally approving the methodology. Some commenters strongly endorsed a formal approval/disapproval of the methodology as part of EPA's action on the submitted list. Some commenters believed that EPA had no role in reviewing or approving the methodology. They believed that it was strictly a State, Territorial and authorized Tribal responsibility to establish and implement data collection and assessment protocols. Numerous commenters strongly advocated that EPA only provide advice, comment and technical guidance to States, Territories and authorized Tribes.

What is EPA promulgating today? EPA continues to believe that the methodology will be an evolving document; therefore, the final rule requires that it be provided to EPA during every listing cycle. However, EPA recognizes that not all aspects of the methodology may change during any given cycle, and the final rule provides that only revised portions of the methodology need be provided. EPA will already have the previous list's methodology, and will have provided comments on the unchanged portions during prior list cycles. Therefore, EPA's comments will likely focus on any changed portions of the methodology. However, the State, Territory, or authorized Tribe must make available to the public for comment the entire methodology, including portions unchanged from prior listing cycles. EPA expects the State, Territory, or authorized Tribe to address in its final methodology comments from the public on all aspects of the methodology, including those that were not changed.

As was proposed, the final rule requires that the methodology and updates to the methodology be provided to EPA at least once per four-year listing cycle. EPA's rationale for choosing a four year list submittal cycle is explained later in this preamble. Except for the first listing cycle pursuant to these regulations, States, Territories and authorized Tribes must provide the methodology no later than two years prior to the due date of the list. This time provides sufficient time for States, Territories and authorized Tribes to collect water-quality related data for the next section 303(d) list consistent with

their most recent assessment methodology. This schedule is compressed for the first list because EPA agrees with the commenters who expressed an urgency in seeing these regulations implemented. The methodology for the first list required to be submitted under today's regulations is due no later than November 1, 2001, five months before the list is due, unless the rider is in effect through that date. EPA believes this date strikes a balance between the competing concerns of allowing States, Territories and authorized Tribes sufficient time to develop a methodology (including providing an opportunity for the public to comment) consistent with today's regulations, and having state lists submitted under today's regulations without undue delay. States, Territories and authorized Tribes will have nine months to develop the methodology and submit it to EPA. EPA will review the methodology and provide comments within 60 days (by July 1, 2001). Thus, the State, Territory, or authorized Tribe will have nine months from the time it receives EPA's comments on its methodology to develop and submit its section 303(d) list.

EPA will not formally approve or disapprove the methodology but provide comments to help the State, Territory, or authorized Tribe develop appropriate methodologies for listing decisions so that the ultimate goal of § 130.23—approvable lists—is achieved. Thus, EPA's review of and comments on State, Territory, or authorized Tribe methodologies will focus on whether the methodology will result in an adequate review of all existing and readily available water quality-related information, whether the factors that will be used to make listing and removal decisions are reasonable, whether the process for evaluating different kinds of water-quality related data and information is sufficient, whether the process for resolving jurisdictional disagreements is sufficient, whether the process for developing a prioritized schedule is reasonable and consistent with the requirements of the CWA and EPA's regulations, and whether the State, Territory, or authorized Tribe has adequately responded to comments from the public on its draft methodology.

In its review of the State's, Territory's or authorized Tribe's list submission, EPA will consider whether the State, Territory, or authorized Tribe adequately addressed EPA's comments on its final methodology. In some cases, the failure to address such comments may result in a disapproval or partial disapproval of the state's list submission. For example, if EPA concludes that the state's methodology fails to adequately consider certain kinds of relevant water-quality related data and information, but this deficiency is not corrected in the final list submission, EPA may disapprove the list if it determines that this deficiency resulted in the state's failure to include certain waterbodies required to be listed. Therefore, EPA is in the final regulation committing to provide comments to States, Territories and authorized Tribes within 60 days of receiving the methodology. This should give States, Territories and authorized Tribes sufficient time to make necessary adjustments in their methodology to submit an approvable list to EPA.

EPA is also revising the proposed language to require in the final rule that States, Territories and authorized Tribes provide to EPA a summary of public comments they received on their final methodology and of their response to significant comments. EPA believes that it can better provide informed comments on State, Territory, and authorized Tribe methodologies if it knows what comments they received. Also, EPA believes it needs this information to assist in its review and approval or disapproval of the lists of impaired waterbodies in order to understand issues raised by members of the public and how they were addressed in the listing process.

In the event that the effective date of today's rule is later than May 1, 2001, States, Territories, and authorized Tribes are not required to develop the methodology for the year 2002 list under the requirements of this regulation. Instead, States, Territories, and authorized Tribes will need to provide a methodology under the previous regulation. See Section V.5 of the preamble.

G. What is the Scope of the List of Impaired Waterbodies? (§ 130.25)

What did EPA propose? EPA proposed to eliminate the term "water quality-limited segments still requiring TMDLs" from the regulations and to broaden the scope of the list. EPA proposed requiring States, Territories and authorized Tribes to list all impaired or threatened waterbodies, regardless of whether the waterbody was expected to attain water quality standards following the application of technology-based controls required by section 301 and 306 of the CWA, more stringent effluent limitations, or other required pollution controls.

EPA proposed that States, Territories and authorized Tribes would list all waterbodies impaired or threatened by pollutants, by pollution, by atmospheric deposition, and by unknown pollutants. EPA proposed that these waterbodies be listed regardless of the source of the impairment: point source, nonpoint source or a combination of both. EPA's rationale for this proposed section was to provide a list that served as a comprehensive public accounting of impaired and threatened waterbodies and provided all stakeholders with an ongoing record of success in attaining water quality standards as TMDLs were completed and implemented.

What comments did EPA receive? EPA received a significant number of comments suggesting that threatened waterbodies not be included on the section 303(d) lists. These commenters stated that the section 303(d) list was expressly for waterbodies not meeting water quality standards—not waterbodies currently meeting water quality standards even if they exhibited a declining trend in water quality. Several commenters supported the inclusion of threatened waters on the section 303(d) list. They asserted that protective pollution control efforts would prevent further deterioration of these waters, and prevent them from becoming "formally" impaired. Many commenters suggested that threatened waters not be listed, but be tracked and reported elsewhere. Some commenters expressed concern that EPA had not yet provided sufficient guidance on how to define a declining trend, and that radically different approaches would be employed by the States. In general the States were very concerned with the workload that requirement might entail, in light of what they believed to be a more expansive definition of a TMDL.

A significant number of commenters suggested that only waters impaired by an identified pollutant should be required to be listed, and that waters impaired by pollution, where no pollutant could be identified, should not be listed. It was their view that the section 303(d) list was intended to identify waterbodies for which TMDLs for a pollutant or pollutants were to be established. Numerous commenters supported the required listing of waterbodies impaired by pollution. It was their position that the inclusion of pollution impairments was a more comprehensive reporting of the status of the nation's waterbodies, and allowed States, Territories and authorized Tribes to target pollution control actions more effectively.

Several commenters objected to the use of drinking water standards as a basis for listing impaired waterbodies because they believed that MCLs are developed for protecting drinking water

at the tap and are wholly inappropriate for use as a standard to define ambient water quality impairments.

EPA received numerous comments suggesting that the requirement to list waterbodies impaired or threatened by an unknown pollutant be eliminated. Some commenters believe that this language was so wide-open as to lead members of the public to request that waterbodies be listed in the absence of any information even indicating an impairment. Many commenters were concerned that listing for an impairment without identifying a pollutant could have significant adverse regulatory implications. Several commenters were concerned that in many cases of biological impairment, the pollutant could never be identified. Other commenters supported listing waterbodies where the pollutant was unidentified. They endorsed the strategy to first list the waterbody, and then attempt to identify the pollutant as a first step in establishing the TMDL.

Several commenters strongly challenged EPA's authority to require the listing of waterbodies impaired by nonpoint source pollution. It was their interpretation of section 303(d) that the text "waterbodies for which effluent limitations required by section 301(b)(1)(A) and (B), and are not stringent enough to implement any water quality standard," applies expressly only to point sources, and, therefore, exempts waters impaired by nonpoint sources alone. Many commenters were concerned that the inclusion of nonpoint source only waters would greatly expand the number of waters listed, and because of excessive resource demands, reduce the effectiveness of dealing with point source impairments. Other commenters supported the requirement to list waters impaired only by nonpoint sources. In general, these commenters suggested that waters be listed regardless of the cause of the impairment—point source, nonpoint source or both.

A significant number of commenters suggested that EPA should not require the listing of waterbodies threatened by atmospheric deposition. Several of these commenters challenged EPA's statutory authority under the CWA to require that waters impaired by atmospheric deposition be listed. A number of these commenters suggested that the Clean Air Act was a more appropriate vehicle for addressing the effects and controls of air sources of pollutants. Many commenters stated that it was technically infeasible to link and estimate the significance of the atmospheric contribution of a pollutant, and that adequate technical tools to establish TMDLs for pollutants contributed by air deposition did not yet exist. Several commenters supported the listing of waterbodies impaired or threatened by atmospheric sources of pollutants. These commenters stated that the source of the impairment was irrelevant as to whether a waterbody should or should not be listed.

What is EPA promulgating today? EPA is making two significant changes to the proposed language. First, EPA is not requiring that States Territories or authorized Tribes, include threatened waters. However, EPA is encouraging States, Territories and authorized Tribes to include on the list those waterbodies which they anticipate will become impaired before the next listing cycle.

Waterbodies which exhibit a declining trend in water quality at the time a list is being developed such that water quality standards will likely be exceeded by the time of the next list submission are not required to be listed under the final rule. However, EPA expects that such waters will either exceed standards at the next listing cycle if the declining trend continues as expected and must then be listed or will attain standards by that time if the declining trend is reversed. Thus, a State, Territory, or authorized Tribe still has an incentive to adopt controls that address threatened waterbodies so that listing and TMDL development can ultimately be avoided. Moreover, if declining trends are not reversed, it is likely that the waterbody will be required to be included in the next list and scheduled for TMDL development if included on Part 1. For this reason, TMDL development will not be delayed more than four years compared to the proposed approach for requiring listing of threatened waters.

Alternatively, a State, Territory, or authorized Tribe could decide to list a threatened waterbody on the section 303(d) list, schedule a TMDL if the impairment was caused by a pollutant, and proceed with establishing the TMDL. If a State, Territory, or authorized Tribe chooses to do so, this TMDL will be subject to the requirements of subpart C, that is, the TMDL must be submitted to EPA for review, and EPA's approval or disapproval and establishment of a TMDL will be based on the requirements of subpart C. In addition, as required by § 130.35(a), EPA must establish a TMDL for any waterbody that a State, Territory, or authorized Tribe lists and does not make substantial progress in establishing the TMDL as compared to its approved schedule. The decision to include threatened waters or not is left entirely to the discretion of States, Territories, and authorized Tribes. EPA will not use grant conditions or other mechanisms to influence this decision.

Second, EPA is clarifying that in order for a waterbody to be listed in the absence of information regarding the presence of a pollutant, there has to be some biological information, (*e.g.* not supporting a designated or existing habitat use) supporting the impairment finding.

EPA is declining to make any of the changes suggested by the commenters pertaining to the scope of the list of impaired waterbodies as described by § 130.25. Most of the comments suggesting that the scope of the list should be narrowed based their rationale on their interpretation of the CWA and EPA's authority under section 303(d). As stated in section I.A.2. of this preamble, EPA believes that the CWA does require that States, Territories, or authorized Tribes list waters impaired regardless of the source, except for the statutory exception for those waters where the installation of technology-based treatment will attain and maintain water quality standards. Accordingly, today's rule provides more examples of the types of sources, including atmospheric deposition and ground water, that may cause impairments requiring placement of the waterbody on the section 303(d) list.

EPA continues to believe that there are merits in ensuring that the States, Territories and authorized Tribes have a complete accounting of impaired waterbodies and that the public should be able to have access to the list. As EPA explained in the preamble to the proposed regulations, there should be a close relationship between the information that States, Territories, or authorized Tribes used to develop the section 305(b) list and the information used to establish the section 303(d) list. Indeed, one requirement of § 130.22 is that States, Territories, or authorized Tribes evaluate and consider their most recent section 305(b) report in developing their section 303(d) lists of impaired waterbodies. Therefore EPA does not believe that requiring the more complete section 303(d) list imposes an undue burden on the States, Territories, or authorized Tribes because they are using water-quality related data and information that they have in hand and may have already evaluated for their section 305(b) report. In addition, as discussed later in this preamble, EPA is providing States, Territories and authorized Tribes with significant flexibility in the way they can provide the list to EPA which will further alleviate this burden.

Today's rule at § 130.25(a) also recognizes that the existing and readily available water-quality related data and information used by States, Territories and authorized Tribes for environmentally-related measurement or data generation must include appropriate quality assurance and quality control. EPA's grant regulations require that when grantee projects, such as State and Territorial water quality work using CWA section 106 funds, involve environmentally-related measurement or data generation, the grantee shall implement quality assurance practices that produce data of quality adequate to meet the project objectives. 40 CFR 31.45. Similarly, any monitoring or analysis activities undertaken by a Tribe with EPA funds must be performed in accordance with quality assurance/quality control practices.(§ 130.10). Therefore, EPA believes that it is consistent with the current requirements for how States, Territories and authorized Tribes consider data to recognize that the existing and ready available data and information must include appropriate quality assurance and quality control.

H. How do you Apply Your Water Quality Standards Antidegradation Policy to the Listing of Impaired Waterbodies? (§ 130.26)

What did EPA propose? EPA proposed to clarify how State, Territorial and authorized Tribal antidegradation policies should be used in identifying and listing impaired and threatened waterbodies under section 303(d). As described in the preamble to the proposed rule, antidegradation policies and associated implementation procedures are an essential part of State, Territorial and authorized Tribal water quality standards and are required under Part 131. The preamble further described the relationship between the section 303(d) listing requirements and antidegradation policies. EPA proposed requiring that any decline in water quality for Outstanding National Resource Waters (ONWRs) waterbodies would represent an impairment, and that such waterbodies should be identified and listed. EPA also proposed requiring identification and listing of unimpaired waterbodies as threatened when trend data and information indicated that a designated use would not be maintained and protected by the time of the next listing cycle. For all waterbodies, EPA proposed requiring identification and listing of waterbodies as impaired where the designated use, or a more protective existing use, was not maintained. An existing use is a use actually attained in the waterbody on or after November 28, 1975 (when the Water Quality Standards regulations were published), whether or not the use is included in the Water Quality Standard. See § 131.3(e). EPA also proposed listing such waterbodies as threatened when trend data indicated the designated use, or a more protective existing use, would no longer be attained at the end of the next listing cycle.

What comments did EPA receive? EPA received a number of comments specific to the use of antidegradation policies in identifying and listing threatened and impaired waterbodies. Many commenters disagreed that the definition of water quality standards in the CWA and Part 131 includes an antidegradation policy, thereby asserting that EPA does not have the authority to impose such policy on States and that antidegradation policies cannot serve as a basis for listings under section 303(d). Other commenters asserted that antidegradation policies, while part of water quality standards, are intended to apply only to waters that already attain water quality standards and thus antidegradation policies should not be considered when identifying and listing impaired waterbodies. Several commenters believed that ONRW waterbodies should not be listed as impaired based on a measurable change in water quality since there was no exceedance of a water quality standard; others asserted it was illogical since a decline in water quality could be temporary. Several commenters believed that EPA should remove the protection of existing uses from the water quality standards regulation. Several commenters believed that EPA should not require listing of threatened waters on the basis of a decline in water quality in unimpaired waterbodies, since EPA explicitly allows for a lowering of these waters' quality to accommodate important social and economic development. Finally, many commenters asserted that EPA lacks the statutory authority to require listing of threatened waters.

What is EPA promulgating today? After carefully considering the comments received on the use of State, Territorial and authorized Tribal antidegradation policies in identifying and listing impaired and threatened waterbodies, EPA is promulgating the following requirements. First, ONRW waterbodies are impaired and must be listed when the water quality of such waterbodies has declined. Second, any waterbody not maintaining a designated use or more protective existing use is impaired and must be listed. Consistent with the decision not to require listing of threatened waterbodies, EPA is not including in the final rule the proposed provision requiring listing of unimpaired waterbodies that are determined to be threatened based on adverse trend data and information.

EPA rejects the assertion made by many commenters that antidegradation policies are not part of water quality standards and that EPA lacks the authority to promulgate such policies for States, Territories or authorized Tribes. As described in the preamble to the proposed rule, antidegradation policies are a required element of State, Territorial and authorized Tribal water quality standards. The preamble to the Advance Notice of Proposed Rulemaking to the Water Quality Standards Regulation discusses at length both the statutory and regulatory basis for these longstanding requirements. (63 FR 36779–36787. July 7, 1998). Further, EPA has in the past, and may in the future, promulgate replacement Federal water quality standards when State, Territorial or authorized Tribal water quality standards do not include an antidegradation policy which provides protection of water quality consistent with the Federal antidegradation policy at § 131.12. (§ 131.32, 61 FR 64816 December 9, 1996). Quite simply, antidegradation policies are part of water quality standards.

EPA also rejects commenters' assertions that antidegradation policies should not be considered when identifying and listing impaired waterbodies because they apply only to waters that already attain water quality standards. As discussed in the preamble to the proposed rule, § 131.12(a)(1) requires that existing uses and the water quality necessary to protect them be maintained and protected. This is the fundamental level of water quality protection, applicable to all waters of the U.S., established by the Federal antidegradation policy. While existing uses and designated uses may be equivalent, this is not always the case. (63 FR 36751, July 7,1998). For example, a waterbody may be designated as a warm water fishery, but in reality be supporting a cold-water fishery, a more protective existing use. While the cold-water fishery has not yet been adopted as the designated use, as the existing use it must be maintained and protected. The intent of § 131.12(a)(1) is to ensure that the more protective existing use is maintained and protected. In this example if the cold-water fishery is an existing use and is impaired prior to its adoption as the designated use in the water quality standards, such impairment is a failure to meet an

existing use and the water must be listed. Therefore, EPA believes that waterbodies which are not maintaining designated uses or more protective existing uses are impaired and must be listed under section 303(d).

EPA rejects the suggestion to remove protection of existing uses. To the extent this comment is related to the water quality standards regulations, it is outside the scope of today's action. EPA recognizes the inherent challenges associated with identifying and protecting existing uses. However, EPA has long-standing requirements for the protection of existing uses—prohibiting the removal of existing uses and requiring the adoption of designated uses consistent with existing uses. The existing requirement that water quality necessary to protect existing uses be maintained and protected will ensure that past or present water quality, at a minimum, will be maintained and protected. Requiring listing of waterbodies that are not maintaining designated uses or more protective existing uses as impaired is not only consistent with these longstanding requirements, but further clarifies and strengthens the protection of existing uses.

EPA disagrees that degradation of the ONRW waterbody does not constitute an exceedance of a water quality standard. Section 131.12(a)(3) establishes the highest level of protection for waterbodies by prohibiting the lowering of water quality. Thus, the level of water quality present at the time a waterbody is classified as a ONRW water, even that which exceeds the threshold for designated use attainment, must be maintained and protected. The only exception to this prohibition, as discussed in the preamble to the water quality standards regulation (54 FR 54100, November 8, 1983), is for activities that result in short-term and temporary changes. EPA guidance has not defined short-term or temporary, but views these terms as limiting water quality degradation for weeks or months, not years, with the intent of limiting degradation to the shortest possible time. For an ONRW waterbody the applicable standard is the prohibition on lowering of water quality. Therefore, EPA believes that when degradation to a waterbody classified as an ONRW occurs (beyond that which is short-term and temporary), such waterbody is impaired and must be listed under section 303(d). EPA acknowledges that an ONRW waterbody may have very high water quality which far exceeds the threshold required for attainment of its designated use. However, the level of protection established by Tier 3 is intended to maintain that level of water quality into the future. EPA notes that classification of any individual waterbody as an ONRW is solely at the discretion of the State, Territory, or authorized Tribe.

I. What is the Format and Content of the List? (§ 130.27)

What did EPA propose? EPA's proposal at § 130.27 would have established a specific format and content for States, Territories, and authorized Tribes to follow, which organized the types of waterbodies included on the list and clearly identified which waterbodies would require the establishment of TMDLs. The proposed rule would have required that a list consist of four parts:

Part 1—Waterbodies impaired or threatened by one or more pollutants or unknown causes for which TMDLs would be required .

Part 2—Waterbodies impaired or threatened by pollution for which TMDLs would not be required.

Part 3—Waterbodies for which EPA has approved or established a TMDL and water quality standards have not yet been attained.

Part 4—Waterbodies that are impaired, but for which implementation of technology-based or other enforceable controls are expected to result in attainment of water quality standards by the next listing cycle. A TMDL would not be required for waterbodies on this part of the list.

EPA explained its belief that these four parts were necessary because the list no longer would include only waterbodies for which TMDLs were required. EPA wanted to ensure that the public and stakeholders would be aware of the different regulatory treatment afforded waterbodies depending on the basis of their inclusion on the various parts of the list.

EPA also specifically requested comments on the advisability of identifying specific situations where the proposed technical conditions for establishment of TMDLs are not met, what those situations might be and whether EPA should include waters impaired by pollutants in such circumstances on a separate part of the list. These comments are addressed fully in the Response to Comments Document and in section II.M. of this preamble.

What comments did EPA receive? EPA received many comments on the proposed format and content. In general, the same commenters who opposed the broader scope of the list also opposed the four parts proposed in § 130.27 for the same reasons—lack of statutory authority and burden for the States. These commenters suggested that EPA maintain the current regulation requiring a one part list of waterbodies impaired by a pollutant or pollutants, and for which a TMDL is required.

Some commenters who supported the proposed broader scope of the list also supported the four part list of impaired waterbodies. However, many commenters opposed the establishment of the Part 4 component of the four-part list. Some opposed it because they believed that all waterbodies impaired by a pollutant, for which a TMDL has not been established, should be listed on Part 1. Others opposed it, because they believed that the States should not have to list impaired waterbodies where a pollution control mechanism was being implemented.

Several commenters supported the establishment of the Part 4 component, but did not agree that only enforceable controls should be determinative for inclusion of waterbodies on Part 4. Many of these commenters stated that voluntary measures, including community-based initiatives and incentive-based measures should also qualify a waterbody for inclusion on Part 4.

EPA received numerous comments concerning the proposed requirement that a waterbody on Part 4 must attain water quality standards by the next listing cycle, or be moved to Part 1. They expressed the view that one listing cycle might not be a sufficient amount of time to achieve water quality standards, and that as long as reasonable progress towards attainment was being made, the waterbody should remain on Part 4. In contrast, several commenters supported the proposed requirements, based on their belief that one listing cycle should be sufficient to determine whether other controls were adequate to attain water quality standards.

A number of commenters were concerned about the implications of EPA's proposal to require the listing of waterbodies where impairment was caused by an unknown pollutant on Part 1. They were concerned that States would list waterbodies for broad and unspecified reasons, which would hinder the establishment of a TMDL.

Some commenters advocated tracking impaired waterbodies that met the

definition of EPA's proposed Parts 2, 3, and 4 by way of other existing reporting mechanisms (*e.g.*, the section 305(b) report). These commenters expressed support for identifying impaired waterbodies for any reason, but expressed a preference that section 303(d) be used only to address those waterbodies for which a TMDL is required.

What is EPA promulgating today? After analyzing all the comments received, EPA is making a number of significant changes to the proposed language but is retaining the concept that the list must be divided into four parts. EPA believes that the distinctions provided by the four parts are important to address some of the concerns expressed by commenters that the list would be confusing to the public and could lead some to believe that TMDLs were required for every waterbody on the section 303(d) list. EPA also believes that each part is important for different reasons. Parts 1, 3 and 4 will provide valuable information regarding the progress made by waterbodies impaired by pollutants. Progress in establishing TMDLs can be tracked by following the movement of waterbodies from Part 1 to Part 3 of the list. Effectiveness of control measures should result in waterbodies removed from Part 3 or Part 4 and from the list altogether. If control measures are effective, very few waterbodies should move from Part 4 to Part 1 or from Part 3 back to Part 1; the final regulations clarify circumstances which would warrant such changes. Part 2 helps ensure that stakeholders are aware of the extent to which waterbodies in a State, Territory, or authorized Tribe are impaired by pollution. In addition, if States, Territories or authorized Tribes decide to list the waterbodies which they anticipate will become impaired before the next listing cycle, and such waterbodies are included on Part 1, they must also include them in the prioritized schedule for TMDL establishment.

Today's final rule also requires that Part 3 waterbodies be moved to Part 1 of the list if a State, Territory, or authorized Tribe, or EPA determines that the waterbodies are not showing substantial progress towards attainment of standards. This review could be part of the analysis conducted by a State, Territory, or authorized Tribe for its section 303(d) list submittal. If a State, Territory, or authorized Tribe, or EPA determines that such progress is not occurring, then the State, Territory, or authorized Tribe must include the waterbody on Part 1 on the next section 303(d) list and revise the schedule to identify when the new TMDL will be established. This provision is consistent with EPA's proposal that TMDL implementation plans contain a description of when TMDLs must be revised, and is intended to ensure that such revisions will occur as envisioned by the implementation plan, and when otherwise appropriate. Thus, as part of their consideration of existing and readily available water quality-related data and information, States, Territories, and authorized Tribes must also consider any such data and information regarding Part 3 waterbodies and their progress towards attainment of standards. If, in that review, there is data or information that shows substantial progress is not being made, the waterbody must be moved to Part 1.

This provision is particularly important for waterbodies with TMDLs established prior to the effective date of today's rule or under the pre-existing regulations within 18 months of publication of today's rule because these TMDLs are not required to include implementation plans. Therefore, if there is data or information available to the State, Territory, or authorized Tribe that shows such waterbodies are not making substantial progress towards attainment of standards, the State, Territory, or authorized Tribe must include the waterbody on Part 1 and schedule a new TMDL. The new TMDL should be better able to achieve water quality standards, since it will be required to contain an implementation plan that meets the requirements of § 130.32(c).

EPA will use the TMDL implementation plan to assess whether the waterbodies on Part 3 of the list exhibit substantial progress towards attainment of water quality standards. As required by § 130.32(c), each TMDL established in accordance with today's rule will include a monitoring and/or modeling plan and criteria to determine whether substantial progress toward attaining water quality standards is not occurring and the TMDL needs to be revised. EPA will use the modeling and monitoring information and criteria to assess progress. For TMDLs established prior to the effective date of today's rule or prior to the end of the transition period described in § 130.37, EPA and the State may consider information from section 305(b) reports and other available water quality information along with information on implementation of wasteload and load allocations to determine whether the waterbody is making substantial progress. In this review, EPA will also consider the pollutant controlled by the TMDL and the size and expected response of the waterbody to changed loads.

The final rule requires that waterbodies that are expected to attain and maintain water quality standards by the next listing cycle through implementation of technology-based effluent limits or other enforceable controls (best practicable control technology and secondary treatment) be listed on Part 4 of the list. EPA believes that there is a benefit to the public of knowing that these waterbodies, though currently impaired, are expected to attain and maintain water quality standards once the technology-based requirements are implemented.

EPA continues to believe that impaired waterbodies can only be placed on Part 4 of the list (1) if they are subject to technology-based requirements of the CWA or other enforceable controls, and (2) for one listing cycle. Part 4 of the list can be construed as an exception to the requirement that TMDLs must be established for all waterbodies impaired by a pollutant or pollutants. Therefore EPA believes that it is appropriate to limit the scope and duration of this exception. Although EPA strongly supports the use of voluntary programs to resolve many impairment situations, EPA believes that enforceable controls will simplify the States, Territories and authorized Tribes' task of demonstrating that water quality standards will be attained within the relatively short period between listing cycles. Similarly EPA believes that a clear cut endpoint to this exception is necessary to ensure that the enforceable controls are sufficient to attain water quality standards.

EPA disagrees with commenters who stated that EPA lacks authority to require listing of impaired waters under the Clean Water Act. EPA's analysis is described in the preamble to the proposed rule. 64 FR 46020–23, August 23, 1999. In particular, EPA disagrees with the reading of section 303(d)(1)(A) as limited to waters that may need water quality-based effluent limitations, *i.e.*, only waters that are not meeting standards due to point source discharges. First, EPA disagrees that the use of the word "effluent limitations" in section 303(d) requires a reading of this section as limited to waters with sources that have effluent limitations. Rather, the term "effluent limitation" must be read in the context of the rest of section 303(d). Read in that context, EPA believes that Congress intended to exclude from listing only those waters where such limits are sufficient to implement standards, but did not mandate excluding any other categories

of waters. In the absence of plain language mandating such an exclusion, EPA believes that a reasonable interpretation of section 303(d), consistent with the broader goals of the Act, is that all other waters can be required to be listed, since all are waters where effluent limits are insufficient to implement standards.

In addition, there is no other indication in the statutory language that section 303(d)(1)(A) only requires listing of waters that require water quality-based effluent limitations. In fact, such limitations are to be established under a different section of the Act (section 302(a)), which is not mentioned in section 303(d). Moreover, EPA disagrees that the legislative history referenced by one commenter supports a different interpretation. The commenter notes that the legislative history of section 303(d) reveals a clear Congressional intent to provide a mechanism for establishing water quality effluent limitations. However, the commenter points to a statement in the legislative history that describes the section 302 process for establishment of water quality-related effluent limitations for a single point source or a group of point sources, not listing of waters under section 303(d). The legislative history simply describes the basis on which more stringent effluent limitations will be set (*i.e.*, the reduction needed to make the total load of the discharges from municipal and industrial sources consistent with water quality standards) under section 302(a), and does not support the proposition that only waters that need water quality-based effluent limitations should be listed under section 303(d). See H.R. 92–911 at 105–106, March 11, 1972.

EPA also believes its interpretation of section 303(d) is a different situation than the interpretation of section 211(k)(6) of the Clean Air Act addressed in *American Petroleum Institute* v. *EPA*, 198 F.3d. 275 (D.C. Cir. 2000). In that case, the court struck down EPA's interpretation of the phrase "marginal, moderate, serious, or severe" ozone nonattainment areas in the Clean Air Act to include other areas not classified as marginal, moderate, serious, or severe. In today's action, EPA is not interpreting a statutory phrase intended to circumscribe the limits of the availability of a regulatory option, as it was in the regulation at issue in the *API* case (in that case, the ability to opt-into the federal reformulated gasoline program). Rather, EPA is interpreting the language of section 303(d) to identify the universe of waterbodies that Congress clearly intended not be listed, and believes that universe consists of only one category of waters—those for which effluent limitations required by sections 301(b)(1)(A) and (B) are sufficient to implement standards. This is not a situation where Congress "makes an explicit provision for apples, oranges, and bananas," and therefore was "unlikely to have meant grapefruit." *Id.* at 278, citations omitted. Rather, it is a situation where Congress identified only a particular category to be excluded, and remained silent on what should be included. In light of the Act's silence on the waters that must be listed, EPA believes a reasonable interpretation is to require all waters not meeting standards to be listed. This ensures that such waters will have TMDLs developed if appropriate, and will otherwise have their water quality problems identified, tracked, and addressed.

Under this interpretation, each part of the list is authorized to be required by the Act, since none of the categories include waters expressly excluded by Congress. First, Part 1 includes those waters that are not meeting standards in spite of required effluent limitations, due to pollutants. Second, Part 2 also includes waters that are not meeting standards in spite of required effluent limitations, due to pollution where there is no pollutant causing or contributing to the impairment. Third, Part 3 includes waters that are not meeting standards in spite of required effluent limitations, where a TMDL has been completed. Fourth, Part 4 includes waters that are not meeting standards in spite of required effluent limitations, due to pollutants, where TMDL development need not be immediately scheduled because required controls on point and/or nonpoint sources are expected to result in achievement of standards by the next listing cycle. Thus, none of these categories include waters expressly excluded by Congress in Section 303(d), and all include waters not meeting standards. In light of the overall goals of the Act, EPA believes it is appropriate to require these waters to be listed to help ensure that they will ultimately meet standards.

EPA also disagrees that it lacks statutory authority in particular for requiring listing of Part 2 waters. Some commenters who opposed this provision argue that the reference to "pollution" in the second sentence of section 303(d)(1)(A) refers to the consequence of introducing pollutants rather than requiring the listing of waterbodies impaired by pollution. EPA disagrees, and believes that its interpretation of the statutory language is a reasonable one. EPA also notes that it is not relying solely on the presence of the word "pollution" in the second sentence of section 303(d)(1)(A) to support its authority to require listing of Part 2 waters. EPA's analysis of section 303(d) to authorize listing of waters beyond those requiring water quality-based effluent limitations is described above. The presence of the word "pollution" is simply additional indication that Congress did not intend to exclude Part 2 waters from the listing requirement, and provides further support for EPA's authority to require them to be listed. EPA believes that its interpretation of the presence of the word "pollution" is reasonable and more consistent with the goals of the Act than commenters' interpretation.

Finally, some commenters misconstrue statements EPA made in the proposal. The commenters state that the proposal recognizes that the reach of the section 303(d) list is co-extensive with the waters requiring TMDLs, based on a statement in the proposal regarding development of TMDLs for waters with nonpoint sources of pollutants. However, this statement was made to explain that there is no express exclusion of nonpoint source waters from section 303(d)(1)(A), and therefore such waters are not automatically excluded from the requirement to develop TMDLs. EPA's statement in the proposal was made to explain why TMDLs are required for nonpoint source pollutants, and was not an assertion that only waters that need TMDLs may be listed. In fact, EPA also states clearly in the proposal that its interpretation of the listing obligation is not limited to only those waters needing TMDLs. See 64 FR 46022 ("While EPA interprets section 303(d) to require identification of all waters not meeting water quality standards * * * EPA interprets section 303(d) to require that TMDLs only be established where a waterbody is impaired or threatened by a pollutant.")

The final regulations also clarify that when biological information indicates that waterbodies are impaired but the pollutant is unknown, these waterbodies should be placed on Part 1 of the list unless data and information clearly indicate that pollution, not a pollutant, is the cause of the impairment.

Waterbodies may be removed from Part 1 in several ways. If a TMDL is established and approved by EPA, the waterbody may be moved to Part 3 of the list for the pollutant the TMDL addresses. In the absence of a TMDL, if new data or information shows that the waterbody is meeting the applicable water quality standard for a particular pollutant, the waterbody may be

removed from the section 303(d) list for that pollutant.

EPA agrees with the commenters who suggested that information on Parts 2, 3 and 4 could be submitted as part of the section 305(b) report. The final regulations provide States, Territories and authorized Tribes with the flexibility to submit their list in any of three ways: as a stand alone list, as a clearly identified component of the section 305(b) report or in two sections: Part 1 as a stand alone list with Parts 2, 3 and 4 clearly identified in the section 305(b) report. Regardless of which format the States choose, the information must be consistent with the requirements of §§ 130.22, 130.25, 130.26, 130.27, 130.28, and 130.29. EPA will review and approve or disapprove all four parts of the list. When States, Territories or authorized Tribes elect to submit all or part of their list as a component of the section 305(b) report, it is only the information required by §§ 130.27 and 130.28 that is considered to be part of the section 303(d) submittal. EPA recognizes that the section 305(b) report includes information other than that required by §§ 130.27 and 130.28; this additional information is not considered as part of the section 303(d) list.

No matter which reporting format a State, Territory, or authorized Tribe chooses, EPA will take action on the entire list (*i.e.*, all four parts). These two options are included for the sole purpose of providing flexibility to those States that wish to coordinate their section 305(b) reports with their section 303(d) lists. While joint reporting of the section 305(b) report and the section 303(d) list is not required, coordination of the two reports provides benefits for States, Territories, and authorized Tribes willing to use this option. These benefits include eliminating possible redundancy in monitoring, assessing, and reporting on the condition of water quality for two related CWA requirements. They also include using limited monitoring resources more efficiently which may free resources to increase the numbers of waterbodies assessed and improve the quality of the data collected. Under the regulations, the most recent section 305(b) report is considered to be existing and readily available information that a State, Territory, or authorized Tribe must consider in assembling the section 303(d) lists and the methodology must describe how the section 305(b) report will be considered in the listing process. EPA notes that, even under the two options for the list format that allow for full or partial consolidation with the section 305(b) report submission, the regulations do not require that all waters identified as not meeting standards on the section 305(b) report be included on the section 303(d) list.

Finally, EPA is making a minor change to the proposed language of § 130.27(c) which would have required EPA and States to agree on the georeferencing system used to identify the geographic location of the impaired waterbodies. The final regulations require that States use either the National Hydrography Database or subsequent revisions, which is the system used by EPA and the U.S. Geological Survey or a compatible system.

J. What Must the Prioritized Schedule for Submitting TMDLs to EPA Contain? (§ 130.28)

What did EPA propose? In the proposal, EPA included proposed § 130.28 dealing with how States should prioritize the impaired waterbodies on Part 1 of their list and proposed § 130.31 which would have required States to provide to EPA a schedule depicting when TMDLs would be developed. Both the priority rankings and the schedule would have had to be submitted to EPA at the same time as the list but EPA proposed to only approve the list and priority ranking, not the schedule.

In § 130.28 EPA proposed that States, Territories, and authorized Tribes would assign either a high, medium or low priority to each waterbody and pollutant combination on Part 1 of the list. The proposal would have required States, Territories and authorized Tribes to consider in their priority ranking the two factors listed in section 303(d)(1) of the CWA, and the severity of the impairment and the designated use of the waterbody, and also listed a number of proposed optional factors. EPA further proposed that a high priority would have to be assigned to impaired waterbodies designated for use as public drinking water supplies, where the impairment was contributing to a violation of an Maximum Contaminant Level (MCL), and for waterbodies supporting a species listed as endangered or threatened under section 4 of the Endangered Species Act, unless the State, Territory, or authorized Tribe could demonstrate that the impairment did not affect the listed species. The proposal would have required States, Territories, and authorized Tribes to provide EPA with an explanation of how they had used the ranking factors in determining their priorities.

Section 130.31 of the proposal would have eliminated the current requirement that the listing submission include a list of the waterbody/pollutant combinations scheduled for TMDL development in the next two years. Instead, EPA proposed that States, Territories, and authorized Tribes be required to submit with Part 1 of their list comprehensive schedules for establishing TMDLs for all waterbody/pollutant combinations on Part 1 of their list as expeditiously as practicable and no later than 15 years after the initial listing with a reasonably paced workload and generally in accordance with their priority rankings. EPA also proposed to recommend, but not require, that TMDLs for high priority waterbody/pollutant combinations be established first.

What comments did EPA receive? EPA received a significant number of comments specific to the proposed priority ranking requirements. Several comments supported EPA's proposal, others, however, objected to this provision, for one of two reasons. Some comments said EPA should give States the flexibility to prioritize their waterbody/pollutant combinations anyway they choose. Others objected to this provision because of their opinion that a high, medium and low priority ranking was insufficiently precise.

There were a wide variety of comments with regard to the factors that should be employed in priority rankings of waterbody/pollutant combinations. Some comments said that only the two factors cited in section 303(d)(1) of the CWA—severity of impairment and uses of the waterbody—should be considered. Other comments said these two factors alone were too narrow to provide an adequate basis for ranking, and called for a variety of other factors to be considered. Some said that certain factors listed in EPA's proposed regulation—aesthetic, cultural, historic—should not be considered at all in priority ranking because they were not related to the goals and objectives of the CWA.

EPA received comments offering a variety of views on the issue of whether or not to specify certain factors that would automatically put a waterbody/pollutant combination in the high priority category. Some supported this concept in general, while other comments opposed it. Numerous comments objected to one or both of the two factors listed in EPA's proposal—presence of threatened or endangered species or contribution to a violation of an MCL in a waterbody designated for public water supply use. The most frequently expressed concern about the endangered species factor was the need to prove a negative (*i.e.* a pollutant is not harming the listed species). The most common criticism of the public

water supply ranking factor was that the EPA proposal seemed to be applying the Safe Drinking Water Act MCL in the raw water supply, rather than at the tap. Some comments, however, indicated that it was imperative to consider such situations as high priority, regardless of other, possibly mitigating, factors. Further comments suggested additional factors that should merit automatic high priority ranking for a waterbody/pollutant combination—waterbodies for which fish consumption advisories had been issued were mentioned several times in this regard.

EPA received numerous comments on the issue of schedules for TMDL establishment. Some comments supported retaining the existing regulatory requirement. Some comments said States should not have to provide any schedule for TMDL establishment while others supported the proposal. Several comments said that schedules laid out under a State's rotating basin/watershed approach, rather than priorities put forth in the proposal, should be the primary determinant of the schedule for TMDL development. Commenters were split on the issue of EPA review and approval of the schedule. A substantial number of comments said States should not get locked into the comprehensive 15 year schedules they would initially submit, and should be able to modify the schedules over time, to adjust to new information and changing circumstances. Some comments said that after the initial listing of a waterbody and pollutant combination, 15 years was a reasonable maximum time for TMDL establishment. On the other hand, quite a few comments said 15 years was far too long a period and recommended considerably shorter timelines for TMDL establishment. Still others said that 15 years might not be enough time for establishing certain types of TMDLs, particularly ones involving high degrees of complexity or difficult-to-address issues such as air deposition or legacy pollutants.

What is EPA promulgating today? Having considered the comments received on the proposal's provisions on priority ranking (§ 130.28) and scheduling (§ 130.31), EPA is promulgating a rule that requires States, Territories and authorized Tribes to develop and submit a prioritized schedule. This approach combines the two proposed provisions into one, § 130.28 of today's rule, entitled "What must your prioritized schedule for submitting TMDLs to EPA contain?" EPA is not promulgating the proposed requirement that waterbody/pollutant combinations be categorized into high, medium, and low priorities. Rather, today's rule requires that Part 1 of the list include a prioritized schedule for establishing TMDLs on Part 1 of the list. This change recognizes the close connection between prioritizing and scheduling waterbodies for TMDL development. Schedules are considered part of the list and subject to EPA review and approval.

Section 303(d) requires States to "establish a priority ranking" for the waters it identifies on the list, taking into account the severity of the pollution and the uses to be made of such waters, and to develop TMDLs "in accordance with the priority ranking." To implement this provision, EPA is requiring States, Territories and authorized Tribes to develop a schedule for TMDL establishment that identifies when each TMDL will be completed. In developing the schedule, States, Territories and authorized Tribes will need to decide which TMDLs are higher priority than others, taking into account the statutory factors identified above, as well as other relevant factors described in the regulations. EPA is not requiring States, Territories or authorized Tribes to specifically identify each TMDL as high, medium or low priority, since the scheduling process will require that each TMDL be ranked in priority order by date of development rather than by categorization as high, medium or low priority. The statute does not prescribe a particular method of establishing a priority ranking, and EPA believes that prioritizing by developing a schedule is a reasonable, efficient way to do this.

In particular, the schedule is preferable to simply requiring that waterbodies be categorized as high, medium or low priority, since it identifies a specific time frame within which the public can expect each TMDL to be developed, and thus better enables public participation in TMDL development because citizens can anticipate when work will happen on a particular TMDL that is of interest to them. Categorization would not necessarily inform the public when specific TMDLs are to be developed, but rather simply identifies which TMDLs the State, Territory, or authorized Tribe believes should be done first. In addition, requiring a prioritized schedule rather than categorization plus a schedule eliminates a step in the process that EPA believes is unnecessary and adds little value to the list. Once a schedule is developed, whether a State, Territory, or authorized Tribe believes a particular TMDL is of high, medium or low priority is unimportant and the relative priority of each TMDL will be apparent based on whether it is to be developed early or late in the schedule. The public will be able to comment on the time frame in which the State, Territory, or authorized Tribe intends to develop each TMDL. In this way the schedule provides the public better information on the State's, Territory's, or authorized Tribe's priority ranking for TMDL development than simply identifying waterbodies as high, medium, or low priority. Requiring a prioritized schedule eliminates the need for such categorization.

In today's rule, EPA is modifying the proposed regulations to require that the prioritized schedule for TMDL development be submitted as part of the section 303(d) list for EPA approval or disapproval. This approach is consistent with section 303(d) of the Act, which requires States, Territories, and authorized Tribes to both identify waters and establish a priority ranking for the identified waters as the first step in the process that is ultimately intended to result in the attainment of water quality standards. While the Act does not explicitly require EPA to approve or disapprove the priority ranking as part of the list submission, EPA believes that doing so is a reasonable exercise of its discretion to ensure that the goals of section 303(d) are achieved, consistent with EPA's authority under section 501(a) to adopt regulations necessary to carry out its functions under the Act. The priority ranking, embodied in the prioritized schedule required by today's regulations, is an essential step between the identification of waters and the development of TMDLs for waters that need them. The prioritized schedule ensures that TMDLs are developed at a reasonable, even pace and that the statutory factors (severity of pollution and uses to be made of the waters) are considered in deciding when particular TMDLs will be developed. Thus, because of the critical importance of the prioritized schedule in the overall section 303(d) process, EPA believes it needs to ensure that a State's, Territory's, or authorized Tribe's schedules are reasonable and consistent with the Act by reviewing and approving or disapproving the schedules as part of the list submissions, and establishing schedules in the event of a disapproval or a failure by the State, Territory, or authorized Tribe to do so.

For the sake of clarity the following discussion follows the structure of 130.28.

Expeditious Schedules (§ 130.28(b))

EPA is revising the proposal to require that establishment of TMDLs be evenly paced and as expeditious as practicable. In addition, States should schedule TMDLs no later than 10 years from July 11, 2000 or the initial listing date, which ever is later. The rule also provides that the schedule for specific TMDLs can be extended for an additional 5 years if a State, Territory, or authorized Tribe explains to EPA that the shorter schedule is not practicable.

EPA is shortening the proposed 15-year schedule to a requirement that the schedule be as expeditious as practicable and evenly paced, and that it should generally not extend beyond 10 years. As pointed out by many commenters, a ten year schedule is consistent with current EPA policy. See "New Policies for Establishing and Implementing Total Maximum Daily Loads," August 8, 1997. As stated in the 1997 policy memorandum, EPA was to work with States to help schedule TMDL establishment within 13 years, *i.e.*, by 2010. EPA believes that some States, Territories, or authorized Tribes can complete the TMDL development within 10 years, as evidenced by some current State schedules and by increased resources devoted to TMDL programs in many States as well as available through increased Federal funding. Currently, 46 States are developing TMDLs based on schedules of 13 years or less, 20 of which are developing TMDLs based on a 10-year schedule. Further, EPA believes that making this change is reasonable since the regulations also provide that the schedule can be extended up to an additional 5 years for a total of 15 years if the State, Territory, or authorized Tribe explains 'hat it needs the additional time to complete the task.

A State, Territory, or authorized Tribe would need to explain why a 10-year schedule is not practicable. For example, a State, Territory, or authorized Tribe could show that, despite working expeditiously, given the number of TMDLs that are required, they will require more than 10 years to complete all TMDLs. The State, Territory, or authorized Tribe could also show that the complexity of one or more TMDLs might require more time to collect information to quantify loadings from sources or to secure commitments for loading reductions for sources outside the State, Territory, or authorized Tribe. In these cases, the State, Territory, or authorized Tribe may schedule some TMDLs within an additional five years.

By changing "reasonably paced" to "evenly paced", EPA intends that States, Territories, and authorized Tribes must schedule TMDL development in a way that reflects a generally even pace in establishing TMDLs over the length of the schedule. EPA recognizes that States, Territories and authorized Tribes will have valid reasons for establishing more TMDLs in some years and fewer TMDLs is other years. This may occur due to the varying degree of complexity and efficiencies which pertain to TMDL development in different watersheds in a State, Territory, or authorized Tribe. However, the general trend and pace of TMDL establishment across the schedule, after allowing for understandable year-to-year variation, should, with some exceptions, be generally even. While current schedules appropriately account for the ramp-up period needed for monitoring and other preliminary activities, EPA believes by April 2002 (when new schedules are required) that States, Territories, and authorized Tribes should be in a position to schedule TMDL development on a more even pace. Of course, application of this general requirement must account for additional time that may be needed to develop particularly complex or data-intensive TMDLs. In those cases, establishment of a smaller number of TMDLs may be justified. Similarly, the number of TMDLs may be larger in a year in which a State, Territory, or authorized Tribe concentrates on waterbodies for which a substantial amount of information has already been gathered.

The proposed approach, which would have required TMDLs to be established as expeditiously as practicable but no later than 15 years from the time the waterbodies were listed on Part 1, could have led to the unintended result that TMDLs for waterbodies included on Part 4 would be delayed if the waterbody was later moved to Part 1. EPA believes that TMDLs for waters included on Part 4, where enforceable controls ultimately fail to result in attainment of standard by the next listing cycle, should not be unnecessarily delayed. The addition of a Part 4 of the list was not intended to encourage or allow for such delay. In addition, it is reasonable to expect TMDLs for such waterbodies to be developed within 10 years (or up to 15 years, for certain TMDLs, as described above) of initial listing on any part of the list, since States, Territories, or authorized Tribes will be keeping track of progress on Part 4 waters to determine how well the enforceable controls are working and should be able to use this information to develop TMDLs for such waters well within the timeframe required by today's regulations.

The final rule also clarifies that the provision that States, Territories, and authorized Tribes should generally schedule all TMDLs no later than 10 years (with a possible 5 year extension) from the later of July 11, 2000 or the date of initial listing of the waterbody/pollutant combination on a section 303(d) list applies to waterbodies on a section 303(d) list prior to today's action. Thus, TMDLs for waterbodies that appeared on a section 303(d) list prior to today's action would need to be established no later than July 11, 2010, unless the schedule is extended as described above. This avoids unreasonably short deadlines for TMDL establishment for States, Territories, and authorized Tribes which happened to have listed a substantial portion of their impaired waters well before the promulgation of this rule. EPA believes it is appropriate to use the July 11, 2000 (*i.e.*, the date of signature of today's action) as the baseline date for the 10-year schedule provision since States, Territories, or authorized Tribes have not been, until now, required by regulation to identify schedules for TMDL development other than specifying TMDLs that will be developed in the next 2 years. While States, Territories, or authorized Tribes should have schedules at this time in response to a request from EPA ("New Policies for Establishing and Implementing Total Maximum Daily Loads," August 8, 1997), in light of the new requirements in today's rule, States, Territories, or authorized Tribes should have an opportunity to reassess their TMDL development obligations and develop an appropriate schedule. Requiring TMDLs to be scheduled 10 years from the original listing could penalize States who had established comprehensive lists by 1992 by allowing them less time to complete TMDLs than those States, Territories, or authorized Tribes that more recently developed more comprehensive lists.

Identification of TMDLs to be Established (§ 130.28(c))

Today's rule provides more specificity regarding the minimum level of detail required in schedules for establishment of TMDLs than did the proposal. Today's rule requires States, Territories, and authorized Tribes to indicate in their schedule which specific TMDLs will be completed in each year of the schedule. EPA has chosen to require scheduling of TMDLs in year blocks to

provide sufficient detail to allow all those involved in TMDL development to plan for the workload involved at various points in time. States, Territories, and authorized Tribes can change the order of TMDL establishment within any year period without consulting with EPA or seeking EPA approval. EPA will approve schedules if they reflect the priority factors and timeframes outlined in the rule. The schedules must also demonstrate that establishment of TMDLs is as expeditious as practicable and evenly paced over the duration of the schedule.

EPA realizes that it is possible that States, Territories, and authorized Tribes will not be able to meet even this less precise schedule for each and every TMDL they must establish, and expects that States, Territories, and authorized Tribes will need to avail themselves of the opportunity to adjust schedules for TMDL establishment to reflect new information and other changing circumstances, and that such adjustments will be reflected in each subsequent list submitted on April 1 every fourth year. As long as States, Territories, and authorized Tribes establish each TMDL on Part 1 of their list as expeditiously as practicable and the revised list reflects even pacing of the overall TMDL establishment task, within the timeframes specified in the regulations, taking the required factors into account, EPA will approve such schedule modifications without requiring that the entire schedule be revised.

When a State, Territory, or authorized Tribe must develop multiple TMDLs within a watershed, EPA encourages the State, Territory, or authorized Tribe to schedule the TMDLs to be established at roughly the same time. This coordinated approach makes use of any efficiencies in coordinating monitoring, water quality analyses, implementation and public participation. It also helps integrate the establishment of TMDLs with the use of rotating basin or watershed approaches for restoring water quality. EPA is encouraging States, Territories and authorized Tribes to use a coordinated approach by making it one of the factors that may be considered and by including in the final rule language that explicitly recommends that States, Territories and authorized Tribes use this approach.

Priority Factors (§ 130.28(d), (e) (f))

The final rule incorporates the prioritizing scheme of the proposal into the final requirements for a prioritized list. The final rule retains the concept that the statutory factors of severity of impairment and designated use of the waterbody should form the basis for prioritizing waterbodies. In addition, the final rule requires States, Territories, and authorized Tribes to consider drinking water uses and presence of a threatened or endangered species as higher priorities. However, the final rule does not require that an impairment at a public drinking water supply or the presence of threatened or endangered species be an automatic high priority for TMDL establishment. Rather, the State, Territory, or authorized Tribe may give waterbodies with these two factors present a lower priority (*i.e.*, a later date for TMDL development) if the State, Territory, or authorized Tribe explains why this is appropriate. As another example, biological information might be available to allow a State, Territory, or authorized Tribe to show that other factors are the stressors to the threatened or endangered species.

Also, EPA is not including in today's rule the proposed language that strongly encouraged States, Territories, and authorized Tribes to establish all TMDLs for high priority waterbody/pollutant combinations before completing TMDLs for medium or low priority combinations. These provisions have become moot because today's final rule does not include a requirement for ranking each waterbody/pollutant combination as either high, medium or low priority. Rather, a date must be specified for TMDL development for each waterbody/pollutant combination on Part 1. Thus, rather than grouping each TMDL into one of 3 categories of priority States will rank each TMDL according to the most appropriate time frame for its establishment taking into account the factors described in this section. EPA believes that the prioritized schedules submitted by States, Territories and authorized Tribes, along with the explanations of how various factors were utilized in the development of such schedules, will serve the same purpose as the provisions it eliminated.

K. Can the List be Modified? (§ 130.29)

What did EPA propose? EPA proposed at § 130.29 to adopt the FACA Committee's recommendations that waterbodies should remain listed until water quality standards were attained, and that a previously listed impaired or threatened waterbody could be removed from the list at the time of the next list only when new data or information indicated that the waterbody has attained water quality standards.

What comments did EPA receive? Many commenters supported the regulations as proposed. Several commenters strongly encouraged EPA to allow for immediate removal of waterbodies that met the de-listing requirement (*i.e.* in the interim period between listing cycles) especially if the Agency decided to promulgate a four or five year cycle for the listing requirement. This reflected a concern that waterbodies that were not impaired would remain on the lists for several years, leaving the public with an incorrect impression about the condition of the waterbody. There was also a fear that States, Territories, and authorized Tribes would elect to, or be forced to, move ahead with development of TMDLs for such waters, even though they were no longer needed. A number of commenters suggested that the information requirements for removing a waterbody from the section 303(d) list should be no more rigorous than the requirements for listing a waterbody. Other commenters suggested that States, Territories, and authorized Tribes should be able to add some waterbodies between the times when the full lists are required. Commenters also asked that the regulations specify that the methodology and public participation requirements should apply to delisting. Finally, several commenters reiterated that waterbodies should not be removed from the section 303(d) list just because a point or nonpoint source control measure was implemented but had to remain listed until water quality standards were met.

What is EPA promulgating today? EPA generally agrees with the comments it received on this section. EPA agrees that States should be able to remove waterbodies from a list at times other than those when full lists must be submitted to EPA. This is consistent with section 303(d) which requires States, Territories, and authorized Tribes to submit lists of waters "from time to time." EPA has previously interpreted section 303(d) to allow removal of waterbodies that attain water quality standards at times other than when they make their biennial list submissions. See "Guidance for 1994 Section 303(d) Lists," November 26, 1993. By extension, EPA believes that the same flexibility should be provided for adding waterbodies to the list. Therefore EPA has reshaped this section in the final regulation to cover modifications of the list (*i.e.* listings, delistings and changes to the prioritized schedules). These provisions regarding modifications to the list at times other than required list submissions do not alter what is permitted under the pre-existing regulations. EPA is simply

adding regulatory language to clarify that States may modify their lists at times other than required submissions and to clarify the procedure for doing so. EPA is maintaining the proposed requirements that waterbodies must remain on the list until water quality standards are attained.

EPA is also adding a § 130.29(e) which specifies that changes to the schedule for TMDLs which the State, Territory, or authorized Tribe make must be considered a modification of the list if they involve rescheduling establishment of a TMDL from one year to another. Changes to the list are subject to EPA review and approval/disapproval. EPA notes that these modifications to the list may be time consuming and expects that States, Territories, and authorized Tribes will use these provisions no more than once a year, mostly to remove waterbodies which have attained water quality standards from the list.

EPA is adopting regulatory language to clarify the specific requirements that apply when a State, Territory, or authorized Tribe modifies its list in between required list submissions. First, the regulations provide that the scope of public notice and opportunity for comment on the modification shall be limited to the waterbodies and issues raised by the modification. For example, if the State, Territory, or authorized Tribe develops a draft list modification that removes certain waterbodies based on new information collected since the prior list submission, the public notice and the opportunity for comments would be limited to those particular waters and the water-quality related data the State, Territory, or authorized Tribe believes warrants removal from the list. Neither the State, Territory, or authorized Tribe nor EPA would be obligated to address comments on the remainder of the list or other unrelated waters. As another example, if the State, Territory, or authorized Tribe proposes to add or remove certain waterbodies based on a change to the methodology used in the prior list, the public notice and opportunity for comments would be limited to such change and to any waterbodies affected by it. Neither the State, Territory, or authorized Tribe nor EPA would be obligated to address comments on other aspects of the methodology or other unaffected waters.

When submitting list modifications, the same provisions apply to removal of waterbodies as for required list submissions. A State, Territory, or authorized Tribe may remove a listed waterbody only if new water-quality related data or information indicates it is attaining and maintaining applicable water quality standards. A State, Territory, or authorized Tribe may add a waterbody to the list if there is data or information showing it is impaired. When developing a list modification, the State, Territory, or authorized Tribe must satisfy the same public process requirements that apply to required list submissions—the State, Territory, or authorized Tribe must provide adequate notice to the public of the draft list modification, must provide at least 60 days for public comments on the modification, and must address relevant comments in its submission of the modification to EPA.

However, EPA is not requiring prior submission of a methodology for each list modification. Because the methodology is generally required to be submitted at least two years before required list submissions (after allowing the public an opportunity to comment), EPA believes it would be overly burdensome to require submission of the methodology for each list modification, and would undercut the purpose of the modification provision, *i.e.*, to allow States, Territories and authorized Tribes to more easily make appropriate changes in their lists in between required submissions. Thus, States, Territories and authorized Tribes are not required to submit a methodology for the modification prior to the submission of the modification. EPA expects that in most cases the State, Territory, or authorized Tribe will use the same methodology used in the most recent required list submission for modifications. However, where the modification includes a change to the methodology, EPA expects that the modification provided to EPA will identify and explain such change so that EPA can consider it in its review of and action on the modification. In addition, when providing public notice of a modification that includes a change to the pre-existing methodology, the State, Territory, or authorized Tribe would need to identify and explain such change to the public since it would be the basis for resulting additions to or removals from the list.

EPA is including a provision in the regulations clarifying that a State's, Territory's, or authorized Tribe's revisions to their prioritized schedules must be considered modifications to the list and submitted to EPA as such. This is consistent with the definition of the list to include both the identification of waters and pollutants and the prioritized schedule for TMDL development. Revisions to the schedule would include moving any TMDL from any one-year period to another, and must be based on new information in accordance with the priority ranking. Thus, for example, a State, Territory, or authorized Tribe may receive new information regarding newly found sources of pollutants in a particular year and may decide on that basis to move certain TMDLs earlier or later in the schedule. Similarly, the State, Territory, or authorized Tribe may become aware that water-quality related data relevant to development of a particular TMDL will be available earlier than expected, and may therefore decide to move that TMDL earlier in the schedule. In either case, the State, Territory, or authorized Tribe must constrain the modification such that it establishes at least the same number of TMDLs in the first four year period. This requirement serves to ensure that the State, Territory, or authorized Tribe establish TMDLs at an even pace. EPA will review revisions to the schedule to determine if they are consistent with the regulatory provisions governing development of the prioritized schedule, and will approve or disapprove them as appropriate.

Some waterbodies are listed by States, Territories, and authorized Tribes for multiple impairments. When a State, Territory, or authorized Tribe has new water-quality related data or information showing that a waterbody attains water quality standards, it may be for only some of the pollutants causing the impairment. In this instance, the States, Territories, and authorized Tribes may remove only those pollutants from the list that no longer cause impairment, but cannot remove the waterbody itself until it has new water-quality related data or information showing that the waterbody attains water quality standards for all the impairments that caused the listing.

EPA interprets "new water-quality related data or information" to include new water quality data or water quality modeling information that supplements water quality data. EPA also interprets "new data or information" to include such instances as when the State, Territory, and authorized Tribe has revised the applicable water quality standard consistent with Part 131, EPA has approved that standard, and existing water quality data shows that the waterbody attains the new water quality standard. EPA also interprets "new data or information" to include where the State, Territory, and authorized Tribe can show that the existing data actually showed that the water quality standards were attained and that the waterbody was listed in error due to a transcription, typographical, or some other clerical error. Therefore, "new" is not limited to data or information

collected after listing. The intent of the new requirement is to ensure that listed waterbodies (or pollutants) are not removed in the absence of data or information indicating attainment of water quality standards.

EPA does not interpret "new data or information" to allow removal of a waterbody (or pollutant) in instances where a State, Territory, and authorized Tribe disputes the quality of the information or reinterprets the same information that it previously used to list a water on the section 303(d) list and concludes the data or information did not support a finding of impairment. EPA is not suggesting that States, Territories, and authorized Tribes use poor quality data to support listing waterbodies on the section 303(d) list. Rather, in the absence of data or information supporting a determination that a waterbody is attaining water quality standards, a waterbody should not be removed from the list. The one exception that would allow removal would be a waterbody that was listed incorrectly. EPA recognized this possible situation in the August 23, 1999, proposal. (64 FR 46024, August 23, 1999). EPA intended this to cover situations where a water was listed due to an error such as a transcription or typographical error, not a re-evaluation of data on which the waterbody was originally listed. EPA will consider State, Territories and authorized Tribes methodologies in approving or disapproving lists but it is not obliged to approve decisions simply because they are consistent with the methodologies.

Finally, EPA is adding § 130.29(g) to allow EPA to modify a list consistent with the provisions of paragraph (c), (d), and (e) of this section. As described in today's preamble, EPA at times may be required to establish a TMDL. In the course of developing the TMDL, EPA may find new information that shows that the waterbody should not be listed on Part 1 of the list and a TMDL is not necessary. For example, EPA could find that, based on new data or information, the waterbody is attaining and maintaining the applicable water quality standards. This is the criterion that allows a State, Territory, or authorized Tribe to remove the waterbody/pollutant combination from the list. In this situation, the waterbody is not required to be listed and no TMDL is required. EPA could also find that, for waterbodies listed on the basis of biological information, the cause of the impairment is not a pollutant or pollutants, but rather some attribute of pollution. In this situation, the waterbody belongs on Part 2 of the list and no TMDL is required.

In examples such as these, there is no merit in developing a TMDL; yet in the absence of this new provision, the requirements of today's rule would have EPA establish the TMDL. For this reason, EPA believes it should have the same authority to modify a section 303(d) list to remove a waterbody/pollutant combination, in accordance with the same requirements that pertain to States, Territories, and authorized Tribes.

L. When Must the List of Impaired Waterbodies be Submitted to EPA and What Will EPA do With it? (§ 130.30)

What did EPA propose? EPA proposed that States, Territories, and approved Tribes would be required to submit their list of threatened and impaired waterbodies and the priority rankings of waterbody and pollutant combinations to EPA by October 1 at regular intervals. EPA noted that it was considering ranges of two, four or five years, for these intervals beginning with the year 2000. EPA proposed to maintain the current requirement that EPA review and either approve or disapprove a submitted list within 30 days of receipt. EPA also proposed to require States, Territories, and authorized Tribes to incorporate approved lists of impaired waterbodies in Water Quality Management Plans. Finally, EPA proposed to codify in the regulations its authority to establish lists for States, Territories, or authorized Tribes which do not.

What comments did EPA receive? The issue of how frequently States, Territories, and authorized Tribes should submit lists of impaired waters, priority rankings and schedules, was the subject of numerous comments. Regarding the frequency of submission of lists, priority rankings and schedules for TMDL establishment, five years was the most commonly supported period, with four years getting a large number of supporters. Retaining the current two year cycle also received a substantial amount of support.

Those supporting a longer listing cycle (more than two years) provided a variety of reasons for their position. A large number of commenters believed that a two year cycle forced States, Territories, and authorized Tribes to spend too much time preparing listing reports, thereby diverting limited resources away from developing and implementing TMDLs. Nearly as many commenters indicated that a longer cycle would enable States, Territories, and authorized Tribes to do a better job of assembling and interpreting data regarding the condition of waterbodies. Others observed that it is unusual for the condition of a waterbody to change measurably in just two years, and having to prepare a report saying "no change" was not a wise use of resources. Some commenters thought that longer cycles would encourage efforts to implement pollution controls and thereby prevent waters from going on the list (or at least Part 1) in the first place.

Those supporting a five-year cycle noted the correlation with the five year term of NPDES permits and the five-year cycle employed by most States that have adopted the watershed/rotating basin approach. Those supporting a four-year schedule noted that this would correspond to every second section 305(b) report submitted by States, Territories, and authorized Tribes. On the other hand, some supporters of longer cycles called for establishment of interim milestones such as water quality monitoring or source identification, during the cycle, to ensure adequate funding and budgeting by States, Territories, and authorized Tribes.

Those supporting retention of the current two-year cycle offered a number of reasons in support of their position. Numerous commenters feared that longer listing cycles would serve to delay the date by which TMDLs were established for some waterbodies, which in turn would delay the date on which water quality standards were attained. For example, commenters were worried that lengthening the listing cycle would result in more waterbodies being placed on Part 4 of the list, and such waterbodies staying on Part 4 longer, yet ultimately failing to meet water quality standards by the next listing cycle, and still needing TMDLs. Quite a few comments said the public needed more frequent, not less frequent, reports on which waters were impaired.

Comments were split with regard to whether April 1 or October 1 of the "listing year" should be the deadline for submission of the section 303(d) lists. Those favoring April 1 believed that having concurrent deadlines for the section 305(b) reports and the section 303(d) lists would reduce duplication of effort on the part of States, Territories, and authorized Tribes. Those favoring October 1 believed that it would be beneficial to have several months after the due date for the section 305(b) report to perform additional analysis needed for completing the section 303(d) report. EPA also received comments recommending against incorporation of approved lists of impaired waters in Water Quality Management Plans. These comments

expressed concern about the volume of information included in these plans.

What is EPA promulgating today? EPA is today promulgating the requirement that States, Territories, and authorized Tribes submit their lists of impaired waters including prioritized schedules by April 1 of every fourth year, starting in 2002.

EPA decided upon a longer listing cycle because of the reduction in reporting burdens, opportunity for more complete data gathering and analysis, and greater likelihood of observing changes in the condition of waters between listings. Concerns about improperly-listed waters later found to be meeting standards remaining on lists for nearly four years have been addressed by clarifying that there is an opportunity for States, Territories, and authorized Tribes to make modifications to their list as provided by § 130.29 discussed above.

EPA believes that the public will receive adequate updates regarding the condition of the nation's waters through the biennial section 305(b) reports that States, Territories, and authorized Tribes must submit according to the CWA. Though EPA recognizes that in the future, some TMDLs may be established a couple years later than would have been the case with a two-year listing cycle because they will be listed every four years rather than every two years, this decision has no impact on TMDLs already listed which must be established on the schedule required by today's rule.

EPA has selected a four-year listing cycle, as opposed to a five-year cycle because it believes that coordination between section 303(d) lists and section 305(b) reports provides significant efficiencies. States, Territories, and authorized Tribes will continue to be able to make use of their section 305(b) reports when they develop their section 303(d) lists. There should still be ample opportunity to coordinate between the section 303(d) listing process and the monitoring and implementation activities performed as part of a five-year watershed/rotating basin strategy. In a five-year watershed or rotating basin strategy, a State, Territory, or authorized Tribe identifies a process of collecting information, assessing the information, determining the watershed-wide loading requirements, and implementing those requirements. At any time during this five-year cycle, a State, Territory, or authorized Tribe can develop a list of impaired waterbodies for its jurisdiction based on the existing and readily available information it has collected. The State, Territory, or authorized Tribe can then develop a schedule for TMDLs that is in synchronization with the anticipated development of watershed-wide requirements in its five-year rotating basin plan. In this way, a State, Territory, or authorized Tribe can continue to address pollution problems in a five-year rotating basin cycle while fulfilling its obligations to develop lists of impaired waterbodies every four years.

After careful consideration of the comments and other relevant factors, EPA has decided that April 1 would be the best deadline for submission of the section 303(d) list. Since today's promulgation provides the opportunity for combining the section 303(d) list and the section 305(b) report, it seems logical to make the deadline for both of these reports fall on the same day of the year. By requiring section 303(d) lists to be submitted every four years, rather than every two years as previously required, EPA intends to provide States, Territories, and authorized Tribes with ample time to analyze data specifically relevant to section 303(d) listing, and therefore, does not believe that having the section 303(d) list due on the same day of the year as the section 305(b) report will pose additional burdens. In addition, this date is the same date as under the pre-existing rules (§ 130.7).

EPA has decided to retain the proposed requirement that States, Territories, and authorized Tribes incorporate the approved lists of impaired waterbodies in the Water Quality Management Plans. EPA recognizes the volume of information that the lists will include. Nevertheless, EPA believes the public needs to be able to find the lists of impaired waterbodies, and the Water Quality Management Plans is a logical place to find this information. A State, Territory, or authorized Tribe can satisfy this requirement by either incorporating the actual list on waters with the other parts of the Water Quality Management Plan, or by incorporating the list by reference. Furthermore, as stated in § 130.51(b), the Water Quality Management Plans are used to direct implementation. By requiring that the approved lists of impaired waterbodies are incorporated into the Water Quality Management Plans, EPA believes this is an efficient connection between the targets for implementation (impaired waters) and the implementation procedures. This is particularly useful for the Part 2 waterbodies where States, Territories, and authorized Tribes will need to incorporate in the Water Quality Management Plan implementation procedures to address pollution not associated with pollutants. Finally, EPA interprets section 303(d) as requiring that States, Territories, and authorized Tribes include the lists into their Water Quality Management Plans.

When a State, Territory, or authorized Tribe submits a list or modification to a list to EPA, EPA will approve it if it meets the applicable requirements. EPA will consider public comment on the list and may modify the list to assure that it complies with the regulations of Part 130. If a State, Territory, or authorized Tribe does not submit a list on time EPA will use its authority to establish the list for the State, Territory, or authorized Tribe. In response to comments, EPA has clarified which sections of subpart C it will use in reviewing the lists, and what actions EPA is obligated to take in its decisions. Therefore, the final rule uses the word "must" to represent EPA's statutory obligations to either approve or disapprove and establish a section 303(d) list of impaired waterbodies, and to establish a list for any State, Territory, or authorized Tribe that does not do so by April 1 of every fourth year.

Finally, EPA includes a statement in today's rule that EPA may establish a list of waterbodies that do not attain and maintain Federal water quality standards. EPA recognizes that there are some impaired waterbodies outside the jurisdiction of States, Territories, and authorized Tribes. Where EPA has established Federal water quality standards for these waters, EPA believes it clearly has the authority to list impaired waterbodies. These waterbodies are generally inside Indian Country where the Tribe is not authorized to implement section 303(d) or in Federal ocean waters.

M. Must TMDLs be Established? (§ 130.31)

What did EPA propose? EPA proposed that TMDLs be established for all waterbody and pollutant combinations listed on Part 1 of the list, but did not propose to require TMDLs for waterbody and pollutant combinations listed on Parts 2, 3, or 4 of the list. In addition, EPA proposed that States, Territories, and authorized Tribes establish TMDLs in accordance with the priority rankings required by proposed § 130.28. Finally, EPA proposed allowing States, Territories and authorized Tribes to establish TMDLs in a different order than provided by the most recently submitted schedule as long as the TMDLs were established in a manner consistent with the overall requirements of proposed § 130.31(a)(1) through (a)(3). EPA explained that it was planning to

consider the extent to which a State, Territory, or authorized Tribe had not or was not likely to meet its schedule for establishing TMDLs when making a decision to step in and establish TMDLs for the State, Territory, or authorized Tribe. (64 FR 46037, August 23, 1999).

What comments did EPA receive? EPA received many comments specific to this section. Some commenters reiterated their concerns about the four-part list. Other commenters pointed to inconsistencies between proposed §§ 130.32(b), 130.32(c), and 130.31(a)(3) and the need for more flexibility to establish TMDLs out of the planned sequence. Some commenters expressed the view that EPA should allow States to use existing programs that achieve the same results as a TMDL instead of requiring a TMDL for all Part 1 waterbodies. Other commenters inquired as to the requirements for "informational TMDLs" under section 303(d)(3).

EPA also received many comments regarding the issues of pollutants which might not be suitable for TMDL calculations. A number of commenters put forth the position that TMDLs were appropriate for all situations, and that EPA should not allow exemptions for technically complex impairments under any circumstances. EPA received a number of comments suggesting that the establishment of TMDLs for certain impairments resulting from atmospheric deposition (*e.g.* mercury and nitrogen) was not feasible because of a lack of appropriate technical tools (*e.g.* data, models), and therefore, EPA should exempt these waterbodies from the list. Similarly, several commenters stated that TMDLs for extremely difficult to solve problems (*e.g.* contaminated sediments) should also be exempt from TMDL establishment, or at least deferred until such time that the tools and data were available. Other commenters expressed a position that EPA had failed to meet its statutory duty under 304(a)(2)(D) to provide guidance on how to determine for which pollutants technical conditions exist to establish a TMDL. Therefore, these commenters felt that the States, Territories and authorized Tribes should be given maximum deference to make this determination for themselves, especially for toxics. A number of commenters suggested that a new part 5 of the list be established to accommodate impairments where the technical conditions were such that TMDLs could not be established until advances in data and models were made. A number of comments suggested that EPA should include the statutory language that recognizes that some pollutants may not be suitable for TMDL calculations. Some comments made specific recommendations that EPA should now determine that flow, biological criteria, temperature, sediment, any interpretation of narrative criteria, whole effluent toxicity, sediment toxicity, legacy pollutants, any pollutant originating from nonpoint sources or atmospheric deposition, mercury, and any pollutant found in an ephemeral stream are not suitable for TMDL calculation. A few comments suggested that TMDLs should be required for stream flow for legal and policy reasons.

What is EPA promulgating today? Based on its analysis of the many comments received on this section, EPA has made four changes to the proposed rule language. First, EPA is requiring in final § 130.31(a) that States, Territories, and authorized Tribes submit the TMDLs they establish to EPA. EPA made this change because although § 130.35 of the proposed rule addressed EPA's review of TMDLs submitted by States, Territories, and authorized Tribes, the proposed rule did not include a specific requirement that States, Territories, and authorized Tribes submit their established TMDLs to EPA.

Second, the final rule separates the requirement that States, Territories, and authorized Tribes establish TMDLs for waterbodies on Part 1 of the list from the statement that TMDLs are not required for waterbodies on Parts 2, 3, or 4. EPA believes this provides additional clarity as to which waterbodies require TMDLs.

Third, EPA is not promulgating the proposed requirement that States, Territories, and authorized Tribes establish TMDLs in accordance with their priority rankings. Instead EPA is requiring that States establish TMDLs in accordance with their approved schedule. EPA has changed the focus in the final rule from the priority ranking to the approved schedule because it has decided to equate a State's prioritization scheme with its schedule for establishing TMDLs for all waterbodies on Part 1 of the list. This is a reasonable interpretation and integration of sections 303(d)(1)(A) and 303(d)(1)(C). EPA believes it would be unreasonable for a State's TMDL schedule to differ significantly from its prioritization of waterbodies under section 303(d)(1)(A) and therefore believes its modification of the proposal in the final rule to require that TMDLs be established in accordance with a State's approved schedule is a logical outgrowth of the proposal.

Fourth, EPA is not promulgating the proposed allowance for States, Territories, and authorized Tribes to establish TMDLs in a different sequence than in their schedule. However, EPA recognizes that States, Territories, and authorized Tribes need the flexibility to adjust the order in which they establish TMDLs if newer information causes a lower priority TMDL to become of higher priority before the time of the next section 303(d) list submittal. The structure of § 130.28(c) provides States, Territories, and authorized Tribes with the flexibility to shift work within each twelve-month block of the schedule without seeking EPA approval. EPA believes that the public should have the opportunity to participate in decisions regarding more significant changes in the sequence by which TMDLs are established. Therefore, EPA expects that States, Territories, and authorized Tribes will use the provisions of § 130.29, which includes public participation, to make modifications to their schedules for TMDL establishment beyond those described above.

EPA does not agree as suggested by comments that it should allow States, Territories, and authorized Tribes to use other existing programs in lieu of establishing a TMDL for impaired waterbodies. The requirements of the CWA are very clear that TMDLs are required for all waterbodies impaired by a pollutant(s) where the technology-based requirements of the Act cannot ensure attainment of water quality standards. EPA recognizes that there are many Federal and State programs and mechanisms available to address impaired waterbodies, and EPA encourages States, Territories, authorized Tribes, and citizens to use them. However, EPA does not believe it can ignore the clear requirement of section 303(d) of the CWA that States, Territories, and authorized Tribes identify impaired waters on a section 303(d) list and develop TMDLs for these waters. To the extent that States, Territories, and authorized Tribes use other programs and mechanisms to achieve water quality standards prior to the establishment of a TMDL, those mechanisms can provide a basis for the State, Territory, or authorized Tribe to remove a waterbody from the section 303(d) list. Also, EPA anticipates that States, Territories, and authorized Tribes will rely on their various existing water quality-related programs and authorities as a means to implement TMDLs.

EPA acknowledges the comments on specific situations for which EPA should determine in this rulemaking that certain pollutants are not suitable

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for TMDL calculation. EPA acknowledges that the CWA only requires TMDLs for those pollutants that EPA has determined are suitable for calculation of TMDLs. EPA made the determination on December 28, 1978 (43 FR 60662) that all pollutants were suitable for TMDL calculation under the proper technical conditions. This 1978 finding is not part of today's rulemaking and although neither the determination nor this rulemaking foreclose any reconsideration at a later date for a specific pollutant, EPA is not making any changes to the determination in these regulations. EPA notes that this determination applies only to pollutants and not to all parameters used by EPA, States, Territories, or authorized Tribes to measure environmental health.

EPA rejects a suggestion that TMDLs are unsuitable for calculation when either (1) suitable data cannot be collected to accurately quantify levels of the pollutant of concern, or (2) the water quality assessment methodology for that pollutant has not developed sufficiently to enable defensible determinations of wasteload allocations and load allocations that are likely to eliminate the impairment. EPA believes that the first condition is more a matter of resources than a technical limitation for developing TMDLs. Indeed, under this suggestion, all TMDLs would be unsuitable for calculation in the absence of data, and thus there would be no motivation to collect the necessary data. EPA believes the second condition is too subjective a test, and that the best forum for making this decision is during the public review of a TMDL.

For whole effluent toxicity (WET), EPA recognizes that its own guidance states that chronic whole effluent toxicity measurements are not additive while one primary principle for calculating TMDLs is that mass is additive. EPA also previously declined to apply whole effluent toxicity to the TMDL provisions of Part 132. However, EPA does not believe that these previous guidances and statements mean that whole effluent toxicity is unsuitable for TMDL calculations in all instances. Rather, EPA believes that TMDL calculations for chronic whole effluent toxicity in situations of multiple discharges should be performed on the pollutant(s) causing the toxicity. In these situations, EPA believes the first logical step of analysis is to conduct an ambient toxicity identification evaluation to identify the pollutants causing the toxicity, as suggested by comments. EPA has developed guidance to assist States, Territories, authorized Tribes, and other interested parties in determining the pollutant(s) causing WET. See "Toxicity Identification Evaluations: Characterization of Chronically Toxic Effluents, Phase I," EPA/600/6–91–005F, 1992; "Methods for Aquatic Toxicity Identification Evaluations: Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity," EPA/600/R–92–080, 1993; "Methods for Aquatic Toxicity Identification Evaluations: Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity," EPA/600/R–92–081, 1993; "Marine Toxicity Identification Evaluation (TIR) Guidance Document, Phase I," EPA/600/R–96/054, 1996.

Where a TMDL is being established for only one source of the chronic whole effluent toxicity endpoint, there is no addition of different loadings involved and the TMDL calculations are identical to NPDES calculations. Where there are multiple sources of the acute whole effluent toxicity endpoint, EPA's guidance considers acute toxicity to be additive. See the "Technical Support Document for Water Quality-Based Toxics Control," EPA/505/2–90–001, 1991, at page 24. In these instances, EPA considers TMDL calculations are suitable because acute whole effluent toxicity exhibits additive characteristics.

EPA considers sediment toxicity to be a property of sediments resulting from the discharge of pollutants from multiple sources that were once in the water column and later settled into the sediments. Like chronic WET from multiple discharges, EPA believes that the TMDL calculations of sediment toxicity should be performed on the pollutants causing the toxicity. In these situations, EPA believes the first logical step of analysis is to conduct an ambient toxicity identification evaluation to identify the pollutants causing the toxicity, as suggested by comments. EPA has developed guidance to assist States, Territories, authorized Tribes, and other interested parties in determining the pollutant(s) causing sediment toxicity. See "Sediment Toxicity Identification Evaluation: Phase I (Characterization), Phase II (Identification), and Phase III (Confirmation) Modifications of Effluent Procedures", EPA/600/6–91/007, EPA, 1991.

In addition, EPA was asked in comments to clarify that TMDLs are suitable for addressing impairments caused by urban wet weather sources. EPA recognizes the additional complexity in collecting data and conducting the analyses for pollutant problems related to these sources, but believes that these issues can be addressed by States, Territories and authorized Tribes by providing more time to establish the TMDL in the schedule.

EPA does not consider flow to be a pollutant, and therefore the final rule does not require TMDLs for flow. However, EPA recognizes that there will be cases where flow or lack thereof will contribute to impairment by a pollutant. In some cases the requirement that States, Territories and authorized Tribes consider seasonal variations including flow when establishing TMDLs will result in States, Territories and authorized Tribes having to consider the effect of low and high flow on water quality. In addition anthropogenic changes may contribute to the presence of a pollutant. For example, flow withdrawals or diversions may remove water that once diluted pollutants in the stream or cause the in-stream temperature to rise. Another example is high flow which degrades the aquatic habitat through excessive sedimentation. In these instances, the final rule requires the State, Territory, or authorized Tribe to develop a TMDL for the pollutant (including heat) which is causing the water to exceed the water quality standards. The State, Territory, or authorized Tribe will have to identify in the implementation plan the approach it intends to use to bring the waterbody into compliance with water quality standards. When implementing a TMDL, the State, Territory, or authorized Tribe may find it necessary to address the non-discharge causes of elevated pollutants, including low flow. In these instances, the TMDL allocations will directly address the excessive loading of the pollutant and the implementation plan will indirectly address the pollution problems.

EPA recognizes that the proposal did not include the current regulatory requirements at § 130.7(e) which codify the statutory provisions of section 303(d)(3), which addresses "informational TMDLs." This section of the Act provides that States can at their discretion, establish TMDLs for waterbodies which are not impaired. These "informational TMDLs" which contain the load necessary to attain water quality standards with seasonal variations and a margin of safety are not subject to EPA review and approval and EPA does not believe regulatory language is needed to address them.

N. What is a TMDL? (§ 130.32(a))

What did EPA propose? EPA proposed new § 130.33(a), renumbered § 130.32(a) in today's final rule, to mirror the proposed definition of a TMDL, and to recognize that TMDLs provide the opportunity for comparing

relative contributions of pollutants from all sources and considering economic and technical trade-offs between point and nonpoint sources..

What comments did EPA receive? EPA received numerous comments on this subsection. Many echoed comments submitted on the definition of a TMDL. Some recommended that this section restate in the same words the definition of a TMDL. EPA received a number of comments concerning the ability of TMDLs to accommodate trade-offs between point and nonpoint sources. Many of these comments addressed the general topic of watershed-based effluent trading (as distinguished from comments specific to the offset provision set forth in the proposed NPDES companion rule). The majority of these comments supported the concept of "trading" in general, though most did not specify which of the numerous models of water pollutant trading they specifically endorsed. Reasons given for supporting the concept of trading included: (1) Ability to achieve water quality goals in the most cost-effective manner; (2) potential for achieving water quality goals sooner than otherwise would be the case; and (3) ability to go beyond (do better than) stated water quality goals/standards. Several comments called upon EPA to include language in the rule itself making it clear that "trading" was allowed as a component of a TMDL implementation plan.

On the other hand, some comments, though expressing support for the broad concept of "trading," urged EPA to proceed carefully with approval of individual trading programs, citing concerns about loss of accountability for point sources and reductions in opportunities for public participation in decisions regarding pollutant discharges from individual point sources.

EPA received many other comments regarding how loads are allocated between sources. Some comments suggested that EPA require that States, Territories, and authorized Tribes conduct specified analyses related to allocations. Other comments suggested that EPA require that allocations credit sources with pollutant reductions already achieved or require reductions in proportion to the existing loadings. Further comments suggested that all sources of loads must fairly share in load reductions, regardless of their size or relative contribution. In contrast, some comments stated that EPA has no authority to specify any allocation methodology or conditions, and that the allocation process is solely the authority of the State, Territory, or authorized Tribe. EPA received suggestions that EPA provide more examples of allocation methods in guidance.

Finally, a number of commenters have said that EPA should not have said that TMDLs should be set at levels that will "attain and maintain" water quality standards, and that in the final rule, EPA should not couple the two words.

What is EPA promulgating today? EPA is promulgating this subsection with revisions to make the first and second sentence match the first and second sentences in the definition of a TMDL. These revisions are described in today's preamble in the discussion of the TMDL definition.

Though EPA continues to support efforts by States, Territories, and authorized Tribes, as well as various stakeholders, to identify the most cost-effective means of achieving water quality standards through development and implementation of TMDLs, EPA does not believe it is necessary to provide specific regulatory language specifying how trading should occur. EPA has articulated its support for the trading concept in an "Effluent Trading in Watersheds Policy Statement," January 1996, and a "Draft Framework for Watershed-Based Trading," May 1996, and provided funding and technical support for a number of individual watershed trading projects, and continues to interact with those developing and implementing such projects.

EPA's position has been, and continues to be, that States, Territories, and authorized Tribes may employ in TMDLs any kind of system or policy for allocating pollutant loadings among sources, as long as the resulting allocations will lead to attainment and maintenance of water quality standards. Among the permissible allocation options are ones by which a source of pollutants would provide compensation to another source, in exchange for which the second source would accept a lower allocation, thereby offsetting a higher allocation for the first source. EPA encourages States, Territories and authorized Tribes to bring together stakeholders potentially affected by and interested in a planned TMDL to work together to explore ways in which a variety of allocation arrangements can be considered in selecting a scheme for a TMDL and reflected in the TMDL implementation plan.

EPA also declines to require that States, Territories or authorized Tribes conduct any specific prescribed analyses as part of their decision to allocate loads to point and nonpoint sources. Similarly, EPA declines to require that allocations credit sources with pollutant reductions already achieved, require reductions in proportion to the existing loadings, consider the ability to pay or treatment capacity or where reductions are the easiest to achieve, or require that all sources of loads must fairly share in load reductions, regardless of their size or relative contribution. EPA believes that the decision on how to identify the most cost-effective or equitable means of allocating loadings is best handled by the State, Territory, or authorized Tribe, when the State, Territory, or authorized Tribe establishes the TMDL. Therefore, EPA is not prescribing certain allocation methodologies for States, Territories, or authorized Tribes in this rule. Today's final rule requires that the wasteload and load allocations, when implemented together, will result in the attainment and maintenance of the water quality standard(s) applicable to the pollutant for which the TMDL is being established. EPA's review of the allocations will focus on whether they attain and maintain the water quality standards.

EPA believes the allocation methodology should create a technically feasible and reasonably fair division of the allowable load among sources. Understanding the relationship between pollutant loads and the condition of the waterbody is the basis for evaluating alternative allocation strategies. If there is a range of allocation strategies that could be implemented, EPA encourages the State, Territory, or authorized Tribe to consider various allocation options. This allows for a more rigorous evaluation and decision making process by the stakeholders and regulators. Ideally, States, Territories and authorized Tribes could bring together stakeholders potentially affected by and interested in a TMDL to work together to reach consensus on allocations that are believed by the stakeholders to be effective and equitable.

Pollutant reductions can be allocated among sources in numerous ways (see "Technical Support Document for Water Quality-based Toxics Control," EPA/505/2–90–001, 1991, Chapter 4.) States, Territories, and authorized Tribes may consider several factors, including technical and programmatic feasibility to reduce specific loads, cost-effectiveness, relative or proportional source contributions, ability of small entities to pay for pollutant load reductions, equity based on previous commitments to load reductions, and the likelihood of implementation, to develop the most effective allocation strategy. EPA encourages States, Territories, and authorized Tribes to consider these factors when they allocate loads.

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When EPA establishes a TMDL, EPA will seek advice from the applicable State, Territory, or authorized Tribe as to which allocation methodology it prefers that EPA use. As a general approach, EPA intends to use the same allocation methodology that the State, Territory, or authorized Tribe uses for TMDLs it establishes. However, if EPA is not able to establish reasonable assurance of implementation of needed pollution control measures, EPA will revise the pollutant reduction allocation as needed. EPA recognizes the benefit of guidance on the merits of various allocation methodologies, and intends to publish this guidance within a year following promulgation of today's rule for use by States, Territories, and authorized Tribes.

EPA believes the phrase "attain and maintain" is consistent with the language in CWA section 303(d)(1)(C) that requires that TMDLs be established at a level necessary to implement water quality standards. EPA interprets the term "implement" to include not just choosing a load necessary to attain the appropriate water quality standard at a given moment in time, *i.e.*, the date the TMDL is established, but also choosing a load that will ensure that the appropriate water quality standard is implemented over time. For that reason, EPA believes it has the authority to use the phrase "attain and maintain" and has modified the proposed rule in a number of places consistent with this belief.

O. What are the Minimum Elements of a TMDL? (§ 130.32(b))

EPA proposed in § 130.33(b), renumbered as § 130.32(b) in today's rule, that a TMDL include ten minimum elements. The final rule, for reasons explained later, includes eleven elements. Ten of these are discussed in this section. The issues raised by commenters regarding the eleventh element, *i.e.*, the implementation plan, and changes resulting from these comments are discussed in Section II.P. of this preamble. EPA is promulgating its proposal that TMDLs include all the elements. EPA recognizes that TMDLs for waterbodies with only NPDES-regulated point sources contributing the pollutant impairing the waterbody would not require a load allocation. In this situation, the TMDL could include a load allocation of zero. Similarly, TMDLs for waterbodies with only sources which are not subject to NPDES permits contributing the pollutant impairing the waterbody would not require a wasteload allocation. In this situation, the TMDL could include a wasteload allocation of zero.

1. Waterbody Name and Geographic Location

What did EPA propose? EPA proposed in § 130.33(b)(1) that the TMDL include the information provided on the section 303(d) list regarding the name and geographic location of the waterbody for which the TMDL was established, as well as the name and geographic location of upstream waterbodies which contributed a significant amount of the pollutant for which the TMDL was established.

What comments did EPA receive? EPA received very few comments regarding this proposed requirement. Some commenters were concerned that the requirement to identify upstream sources of pollutants meant that controls would have to be established for these sources.

What is EPA promulgating today? EPA is promulgating this section as proposed but now renumbered as § 130.32(b)(1). The Agency believes that it is important to identify upstream contributors of a pollutant for which a TMDL is being established because, as clarified in today's regulations at § 130.32(b)(4), this pollutant load must be accounted for in the TMDL as background loading. EPA recognizes that, due to limited information, a State Territory, or authorized Tribe may not be able to identify a specific upstream waterbody as being the source of pollutants that flow into the segment of the waterbody for which the TMDL is being established. EPA expects that the State, Territory, or authorized Tribe will only identify specific sources of that pollutant upstream of the segment for which the TMDL is being established to the extent those sources are known.

2. Identification and Quantification of the Pollutant Load, and Deviation From Loads

What did EPA propose? In proposed § 130.33(b)(2), and (3), EPA proposed that States, Territories and authorized Tribes identify the pollutant for which a TMDL was established, quantify the load of the pollutant which may be present in the waterbody and not cause an exceedance of a water quality standard, and identify the difference between that amount and the current loading.

What comments did EPA receive? EPA received few comments on these proposed sections. Commenters mostly requested technical clarifications on how to calculate pollutant loads. Other comments requested that the rule require disclosure of which water quality standards apply to a TMDL, and assurance that background loadings are accounted for in the TMDL.

What is EPA promulgating today? EPA is slightly reorganizing these sections to separate the requirements for identification of the pollutant, now contained in § 130.32(b)(2), from the quantification of the pollutant load necessary to attain water quality standards in § 130.32(b)(3) and the quantification of the deviation between current loading and that necessary to attain and maintain water quality standards in § 130.32(b)(4). EPA believes that this separation better clarifies the elements of the TMDL. This also results in there being 11 elements of the TMDL, because two requirements are reorganized into three requirements.

In addition, as suggested by comments, EPA is adding the requirement to consider pollutant loads from upstream sources as part of the background. EPA recognizes that the TMDL serves as a mechanism for accounting for the total load of a pollutant in a waterbody. In the TMDL, all pollutant loads need to be accounted for to ensure that when the total load is allocated, the sum of the allocations does not exceed the water quality standard. Without identifying loads from upstream sources as background loads, the allocation process is likely to over-allocate loadings to point and nonpoint sources, thus leading to an exceedance of the water quality standard.

EPA does not interpret quantification of loads as always requiring the direct monitoring of sources of pollutant loads or the pollutant load within a waterbody. States, Territories, and authorized Tribes have the flexibility to use any methodology that develops a number that expresses the pollutant load. Direct monitoring is one way, but there are others. For example, States, Territories, and authorized Tribes may use water quality modeling techniques, either empirical or deterministic, to quantify the load. They may use correlation methodologies to relate non-pollutant metrics to pollutant loads. In general, the State, Territory, or authorized Tribe needs to use a procedure by which it can develop a number that characterizes the load.

Also, as suggested by comments, EPA is clarifying that the applicable water quality standard must be identified along with the pollutant for which a TMDL is being established. EPA agrees that the public should have access to this information when they review and comment on a proposed TMDL because the water quality standard is the basis for the TMDL.

3. Source Categories

What did EPA propose? EPA proposed in § 130.33(b)(4) that a TMDL should include an identification of the source of the pollutant with as much precision as feasible, *i.e.*, individual or categorical, in accordance with the definitions of load allocation and wasteload allocations.

What comments did EPA receive? Many commenters repeated either their support or opposition to including nonpoint sources in the TMDL process. Several comments expressed support for identification of all sources, and suggested EPA encourage States, Territories, and authorized Tribes to identify all sources of a pollutant. Others repeated their concerns regarding designation of certain animal feeding operations and silviculture activities as point sources. These comments are addressed elsewhere in today's preamble.

What is EPA promulgating today? EPA is promulgating the proposed language with minor editorial modifications at § 130.32(b)(5) of today's rule. For reasons discussed previously in today's preamble, EPA believes that the requirement to identify and establish TMDLs for waterbodies exists regardless of whether the waterbody is impaired by point sources, nonpoint sources or a combination of both. *Pronsolino* v. *Marcus*, 2000 WL 356305 (N.D. Cal. March 30, 2000.) Therefore, EPA declines to revise the proposed requirement to exclude identification of nonpoint sources that contribute the pollutant causing an impairment.

4. Wasteload Allocation

What did EPA propose? EPA proposed that an individual wasteload allocation be assigned to each point source covered by the NPDES permit program, with two exceptions. First, EPA proposed that one waste load could be allocated to a category or subcategory of sources within a waterbody subject to a general permit under the NPDES program. Similarly, EPA proposed that pollutant loads from permitted facilities that did not need to be reduced in order to achieve water quality standards could be grouped into one category or subcategory, or considered as part of background loads.

EPA also proposed to require States, Territories, and authorized Tribes to provide technical analysis demonstrating that wasteload allocations, when implemented, would result in attainment and maintenance of water quality standards in the waterbody.

What comments did EPA receive? EPA received a wide variety of comments on the provisions in proposed § 130.33 dealing with wasteload allocations. (Other comments regarding the definition of "wasteload allocations" are addressed elsewhere in this preamble.)

The proposal that one wasteload allocation could be developed for all point sources subject to a general NPDES permit drew substantial and widely varied response. Some commenters endorsed this notion, saying it would reduce administrative burdens on States, Territories and authorized Tribes. On the other hand, there were a number of comments objecting to this provision. These commenters questioned the feasibility of estimating the total loading from all point sources covered by a general permit, particularly permits which do not require the sources wishing to be covered to send a Notice of Intent to the NPDES authority.

Commenters also opposed grouping all sources for which no load reduction was required. They questioned how EPA could ensure that dischargers included under a wasteload allocation, or bundled under the allocation to background, did not increase their loadings of the pollutant above levels discharged at the time of TMDL establishment.

A number of comments called upon EPA to require that States, Territories, and authorized Tribes directly notify any pollutant source potentially affected by the allocations in a proposed TMDL that had been published for public review and comment.

What is EPA promulgating today? After consideration of all comments received, EPA is promulgating a provision that is very similar to the one proposed. The one key change is aimed at clarifying that, for waterbodies affected by both nonpoint and point sources of the pollutant of concern, implementation of the wasteload allocation alone is not always expected to result in attainment of water quality standards. Rather, today's rule specifies that States, Territories, and authorized Tribes should submit, along with the wasteload allocation, supporting technical analyses demonstrating that wasteload allocations, when implemented in conjunction with necessary load allocations, will result in the attainment and maintenance of water quality standards in the waterbody.

As with the proposed rule, today's promulgation states that point sources subject to individual NPDES permits must be given individual wasteload allocations, except those that would not need to reduce their loadings. Point sources subject to individual NPDES permits that, according to the terms of the wasteload allocation for the waterbody into which they discharge, would not need to decrease their pollutant loadings, may be included within a single wasteload allocation for a category or subcategory of sources. Individual NPDES permits for point sources included in such categories or subcategories should have effluent limits (or other permit provisions) for the pollutant being addressed in the TMDL, ensuring that the permittee would not increase its discharge of that pollutant beyond the level it was assessed as discharging in calculating the TMDL's wasteload allocation for that category or subcategory of sources. In these instances, the current NPDES permit provides the regulatory control to prevent these sources of pollutants from increasing their pollutant loads.

Today's rule allows for wasteload allocations to be allotted to a category of sources seeking coverage under a general permit, *i.e.*, all sources seeking coverage under a general permit that are located on the waterbody for which the TMDL is established could be covered under one wasteload allocation (§ 130.32(b)(6)). General permits, like individual permits, must include effluent limits or conditions that are consistent with the assumptions and requirements of the wasteload allocation. Today's rule requires that the implementation plan identify the category of point sources subject to the TMDL which are regulated by a general permit and specify the general permit that applies or will apply to the sources (§ 130.32(c)(1)(i)). Today's rule also requires that the implementation plan identify the wasteload allocation that will be the basis for the effluent limitations (which may be in the form of Best Management Practices defined for NPDES at § 122.2) in the NPDES permit "that will be issued, reissued, or revised." *Id.*

Existing NPDES regulations require the permitting authority to develop water quality-based effluent limits that derive from and comply with all applicable water quality standards. These regulations also require that water quality-based effluent limits be consistent with the assumptions and requirements of any available wasteload allocation prepared by the State and approved by EPA pursuant to § 130.7 (see § 122.44(d)(1)(vii)(B)). Therefore, when an existing permit expires, upon reissuance of that permit, the permitting authority will evaluate whether the effluent limitations or conditions within the permit are consistent with the wasteload allocation in an applicable

TMDL. If not, the permitting authority must ensure the reissued permit includes effluent limitations that are consistent with the wasteload allocation. In the case of storm water permits, the effluent limitations may include best management practices that evidence shows are consistent with the wasteload allocation.

Where a State is establishing a TMDL and that State is authorized to administer general permits under the NPDES program, the State has the discretion and flexibility to determine whether to issue separate general or individual permits to implement the wasteload allocation or whether to revise or reissue a general permit to implement the wasteload allocation. A separate general permit would be specific to the waterbody for which the TMDL is established and may include a different set of conditions and requirements that would be designed or tailored to implement the applicable wasteload allocation under the TMDL. A State may also choose to revise the existing general permit to include additional conditions or effluent limitations applicable to those sources or categories of sources, consistent with the wasteload allocation. EPA believes that a new general permit (*e.g.* a storm water general permit) that includes best management practices, rather than numerical limitations on the mass or concentration of pollutants in the discharge, is adequate for the purposes of ensuring implementation of a wasteload allocation.

When a State is establishing a TMDL but that State is not authorized to administer general permits under the NPDES program, the State and EPA would work together to address how the applicable national general permit would be "issued, reissued or revised" to implement the wasteload allocations applicable to the category of sources subject to a TMDL covered by the general permit. EPA would also have the discretion and flexibility to determine whether to issue a separate general permit to implement the wasteload allocation, whether to issue an individual permit, or whether to revise or reissue the general permit to implement the wasteload allocation. This discretion and flexibility would also be available to EPA where the Agency is establishing a TMDL for a State that is not authorized to administer general permits under the NPDES program. In addition, where EPA is establishing a TMDL for a State and that State is authorized to administer general permits under the NPDES program, EPA, in developing the implementation plan, would need to work with the State to determine how the State-issued general permits would be "issued, reissued or revised" to implement the applicable wasteload allocation under the TMDL.

As would have been the case with the proposed rule, when EPA approves a TMDL, it will also be approving the component wasteload allocations and load allocations. EPA's review of wasteload allocations and corresponding load allocations will be aided by the supporting technical analyses demonstrating that implementation of wasteload allocations and load allocations (where applicable) is feasible and will result in attainment of water quality standards. EPA's review will also include a review of the sources of information that the State, Territory, or authorized Tribe cites in support of its technical analysis.

5. Load Allocation

What did EPA propose? The proposed rule required States, Territories, and authorized Tribes to assign individual load allocations to specific nonpoint sources (including air deposition and natural background) unless doing so would be impossible. In cases where it was not possible to assign individual load allocations, specific nonpoint sources could be grouped together into categories or subcategories. Each category or subcategory would be given a load allocation. In addition, where load reductions are not needed from certain sources, the load allocation for those sources could be grouped into one aggregate load allocation.

The proposal also required States, Territories, and authorized Tribes to provide technical analysis demonstrating that load allocations, when implemented, would result in attainment and maintenance of water quality standards.

What comments did EPA receive? EPA received a large number of comments with regard to load allocations, covering a range of issues. A number of these comments are also relevant to the proposed definition of "load allocation" at § 130.2(f), and are summarized in the discussion of that provision.

The proposal to allow States, Territories, and authorized Tribes to aggregate a number of individual nonpoint sources into a category or subcategory for which just one wasteload allocation would be required, received both favorable and unfavorable comments. Several commenters specifically objected to the language requiring States, Territories, and authorized Tribes to calculate individual load allocations for specific nonpoint sources if doing so were "possible" and encouraged EPA to use the word "feasible" or "practical" instead.

The issue of possible inequities in the allocation of allowable loads among sources of the pollutant for which a TMDL was being developed was the subject of a significant number of comments. A number of commenters expressed the fear that because of a lack of Federal regulatory authority (and often, State authority as well), States, Territories, and authorized Tribes would likely give relatively generous allocations to nonpoint sources, thereby requiring disproportionately large reductions by point sources. Some of those expressing this concern urged EPA to require that allocations of loadings be done "proportional to current loadings" from various sources. On the other hand, some called upon EPA and States, Territories, and authorized Tribes to take "achievability and assurance" of loadings reductions into account when doing allocations of loadings and indicated this meant that greater responsibility for loadings reductions would be assigned to sources either subject to enforcement or very likely to actually achieve reductions for other reasons.

What is EPA promulgating today? The provision of § 130.32 addressing load allocations that is being promulgated today is very similar to the proposed rule. A few changes have been made in response to comments. First, the provision was revised to be consistent with revisions to the definition of "load allocation" that were previously discussed in today's preamble. Second, based on comments, the condition to trigger developing separate load allocations was changed from "possible" to "feasible." EPA believes that a feasibility standard is better for making this decision. Developing a separate load allocation for a source may be possible but not feasible. In some instances, the loadings from nonpoint sources can only be feasiblely quantified on an aggregate basis. EPA does not intend States, Territories, or authorized Tribes to expend additional effort to develop separate load allocations if not feasible, and thus has made this change to the final rule.

6. Margin of Safety

What did EPA propose? EPA proposed in § 130.33(b)(7) to specify how States, Territories and authorized Tribes could satisfy the statutory requirement that TMDLs include a margin of safety. EPA proposed that the requirement could be satisfied either by expressing the margin of safety as

unallocated assimilative capacity, *i.e.*, demonstrating that the pollutant loading would be less than the assimilative capacity of the waterbody, or demonstrating that conservative assumptions had been built into the calculations of the wasteload and load allocations.

What comments did EPA receive? EPA received many comments asking for specific criteria to calculate the margin of safety while others suggested that EPA should keep this requirement as flexible as possible. Some commenters pointed out that water quality standards already account for scientific uncertainties. Some commenters suggested that the margin of safety should increase as uncertainties in the quality of the data used to establish the load and wasteload allocations increase.

What is EPA promulgating today? EPA believes that the margin of safety required by the section 303(d)(1)(C) for establishment of TMDLs allows for consideration of more factors than the scientific uncertainty included in the development of water quality standards and must also account for analytical uncertainties associated with all the calculations required to establish a TMDL. Nothing in the statute indicates that these factors are exclusive to all others in interpreting what margin of safety means. EPA has clarified this requirement at § 130.32(b)(8) in the final rule by explicitly stating that the margin of safety must appropriately account for uncertainty, including those associated with pollutant loads, water quality modeling, and monitoring. EPA has also clarified how the margin of safety could be expressed. EPA agrees with the commenters that the calculation of margin of safety is complex and that guidance addressing a variety of situations, including reliability of the data need to be developed. EPA is planning to issue such guidance soon after this rule is promulgated.

EPA does not believe that the margin of safety is addressed by how the water quality standards account for scientific uncertainties. CWA section 303(d) requires that TMDLs implement the applicable water quality standard. EPA interprets the margin of safety requirement of the CWA to address the relationship of the TMDL to the water quality standard, and not how the standard itself addresses uncertainties.

7. Consideration of Seasonal Variations

What did EPA propose? EPA proposed in § 130.33(b)(8) to codify the statutory requirement that TMDLs must account for seasonal variations and to require States, Territories and authorized Tribes to also consider other environmental factors which could affect the water quality impact of the pollutant for which a TMDL was established.

What comments did EPA receive? EPA received considerable support for this requirement. Many commenters pointed out that the amount of flow in a waterbody could have significant impact on the level of a pollutant and that EPA should require TMDLs to account for low flow as well as wet weather flow and storm water events. Other commenters however, construed this proposed requirement as an interference with States' water rights and allocation processes. Finally, many commenters did not agree that water quality standards must be attained in all seasons or during unusual events such as major storms.

What is EPA promulgating today? EPA is promulgating this requirement at § 130.32(b)(9) with a few changes. EPA agrees with the commenters that the level of flow in a waterbody can affect whether or not a waterbody attains and maintains water quality standards; therefore, EPA is specifically requiring that flow levels be taken into consideration as part of seasonal variations. By including this language, EPA is not intending that States, Territories or authorized Tribes make changes to established water allocations or water rights. Instead, EPA intends for the pollutant load allocation to take into account the impact of flows on the water quality of the impaired waterbody. EPA also believes that TMDLs must be established so that water quality standards are attained and maintained in all seasons and all flows. This includes consideration of storm conditions where storms or storm water runoff contribute the pollutants causing the impairment to the waterbody. EPA believes that this is the very reason consideration of seasonal variations is included in the statutory language, and EPA is adding language in the final rule to clarify this point. EPA's intent is that TMDLs must account for normal variations in seasonal conditions for environmental factors such as flow, precipitation or temperature, and not necessarily account for extreme unusual conditions such as 100-year storms or hurricanes.

States, Territories, and authorized Tribes can address seasonal variations in many different ways. One way is to use water quality modeling techniques, such as continuous or dynamic modeling, that directly consider variations in environmental conditions. Another way is to conservatively identify a suite of environmental conditions that represent the worse conditions experienced in the waterbody, and thus lead to identifying a load that is protective of all conditions. Yet another way is to establish TMDLs for each season or month that are representative of the environmental conditions in those seasons or months. Because there are different ways of addressing seasonal variations in environmental conditions such that water quality standards are met as required, EPA believes that it is more appropriate to address the details of this analysis in guidance rather than in today's rule.

8. Allowance for Increases in Pollutant Loads

What did EPA propose? EPA proposed at § 130.33(b)(9) that TMDLs include an allowance for future growth to account for reasonably foreseeable increases in pollutant loads. EPA included this provision to meet the statutory mandate that water quality standards must be attained and maintained. EPA believed that, absent such an allowance, it would be difficult to demonstrate maintenance of the standards. EPA explained in the preamble that it intended for the allowance to be based on existing and readily available data at the time the TMDL was established.

What comments did EPA receive? Many commenters pointed out that decisions about future growth were the province of local governments. They opposed the proposed language because they construed it as a requirement to control growth. Others were concerned that allowance for future growth would render TMDLs more stringent than necessary and unfairly place a burden on current dischargers.

What is EPA promulgating today? EPA is promulgating this requirement at § 130.32(b)(10) but is modifying the proposed language to clarify that the intent of this provision is not to control growth but to ensure that TMDLs take into account potential increases in loadings regardless of their cause. EPA believes accounting for any such potential increases is a necessary step in setting loads at a level necessary to implement standards and accordingly is authorized by § 303(d)(1)(c). If a State, Territory, or authorized Tribe does not anticipate increased loadings in a TMDL, it may satisfy this element by indicating it does not expect there to be such increases and providing a brief explanation why. Moreover, if the State, Territory, or authorized Tribe does not anticipate future increased loadings, it may find itself needing quickly to revise the TMDL to accommodate new

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discharges. On the other hand, if a State, Territory, or authorized Tribe includes an allocation for increases in pollutant loads, then any new loading or increase in pollutant loading that occurs will be addressed by that allocation without requiring that the TMDL be revised. EPA does not intend that, if a State, Territory, or authorized Tribe decides to specifically provide an allocation for increased pollutant loadings in a TMDL, it needs to identify the types of facilities or activities that would receive that allocation. Instead, EPA expects that the allowance for increased pollutant loadings would be an aggregate amount that could be applied to any future increase in loads. The specific decisions as to how to allocate that aggregate allowance for increased loads to new facilities or activities are best made by the State, Territory, and authorized Tribe along with local governments.

P. What Are the Requirements of the Implementation Plan (§ 130.32(c))?

What did EPA propose? EPA proposed that each TMDL include, as a minimum element required for approval, an implementation plan. The implementation plan as proposed contained eight minimum elements: (1) Intended control actions; (2) a time line; (3) reasonable assurance that wasteload and load allocations will be achieved; (4) legal authority; (5) time required to attain water quality standards; (6) monitoring plan; (7) milestones for attaining water quality standards; and (8) TMDL revision procedures. The proposal would have required States, Territories and authorized Tribes to submit implementation plans to show how each TMDL was to be implemented. The proposal recognized that it would be more effective and supportive of watershed approaches to have implementation plans that show how all TMDLs for a particular pollutant or a number of pollutants in particular basins, would be implemented. EPA specified that it would not approve a TMDL without an adequate implementation plan. The proposal linked the adequacy of the implementation plan to a determination by EPA that there was reasonable assurance that implementation would occur. If EPA could not approve the TMDL, EPA would have to establish the TMDL which would include an implementation plan and provide reasonable assurance.

What comments did EPA receive? EPA received numerous comments on the proposed implementation plan requirement. A few commenters supported the requirement as proposed. Many commenters opposed the requirement altogether. Among commenters who supported the requirement many questioned EPA's authority to require implementation plans as mandatory parts of TMDLs under the authority of section 303(d). These commenters suggested that EPA should continue to require implementation plans as part of a State's water quality management plan even if it meant promulgating amendments to the regulations at § 130.51 to make the plans enforceable. Some commenters opposed implementation plans because they believe they would considerably slow establishment of TMDLs. Others expressed concerns that the proposal was too inflexible and would lead to federal regulations of non point sources. Some commenters argued that separating the implementation plan from TMDL establishment would lead to more scientifically defensible TMDLs and that approved TMDLs would provide a clear goal and the impetus for better interaction between stakeholders in designing implementation plans. Some commenters supported the requirement for implementation plans but raised questions concerning the specific proposed elements of the implementation plan requirement, especially in regard to nonpoint sources.

What is EPA promulgating today? Today's rule at § 130.32(c) retains the requirement for implementation plans as required elements of TMDLs. As discussed in the August 23, 1999 preamble (64 FR 46032–46035), EPA believes that it has the authority to require implementation plans because section 303(d) requires that TMDLs be established at a level necessary to implement water quality standards. Today's rule establishes that one way EPA can determine whether a TMDL is approved at a level necessary to implement applicable water quality standards is to require an implementation plan. In addition, EPA believes that implementation plans provide the basis for demonstrating that water quality standards will be attained and maintained through pollution controls other than controls over point source discharges subject to an NPDES permit.

EPA believes that implementation of TMDLs is the most important aspect of today's rule. Without implementation, TMDLs are merely paper plans to attain water quality standards. The implementation plan requirement assures that the Nations' remaining water quality problems will actually be addressed by appropriate actions identified in the implementation plans submitted as part of the TMDLs.

Today's rule acknowledges that implementation plans will differ depending upon the type of sources causing the impairments in a particular waterbody. Therefore the final rule makes it clear that the purpose of the implementation plan is to describe, at a level of detail appropriate to the circumstances, actions necessary to implement the TMDL. Implementation plans are not meant to be lengthy or complex. They must however contain sufficient detail so that EPA and the public can determine whether the actions proposed in the plan can actually eliminate the impairment and whether there is reasonable assurance that they will occur and when.

The requirements of the implementation plan are now identified separately for waterbodies impaired (1) only by point sources required to have an NPDES permit, (2) only by sources other than those required to have an NPDES permit including nonpoint sources, or (3) by a combination of both point sources required to have an NPDES permit and other sources including nonpoint sources. Although the requirements are identified separately, they provide common information on what sources will be expected to reduce loadings, how these reductions will be accomplished, when these reductions will occur, and how the results will be measured.

Some elements of implementation plans are common to all sources: A schedule for implementation actions, the date by which the implementation plan will attain water quality standards, a modeling and/or monitoring plan and a description of interim, measurable milestones and criteria to be used to determine progress towards attaining water quality standards and when the TMDL needs to be revised. These provisions were included in the proposed rule, and except for one change discussed below, are unchanged in the final rule except for formatting changes.

In the final rule, EPA is making a small revision to the proposed language regarding the time to attain water quality standards. The proposal would have required "an estimate" of the time necessary to attain water quality standards. The final rule requires that the implementation plan must include "the date" by which the waterbody will attain water quality standards. EPA believes the phrasing of the final rule is a logical outgrowth of the proposal and a clearer description of what is intended—the "date" when the State, Territory, or authorized Tribe believes water quality standards will be attained.

Implementation Plans for Point Sources for Which an NPDES Permit is Required

For waterbodies impaired by only point sources subject to an NPDES permit, the implementation plan is expected to rely primarily on the NPDES permit(s) that will be issued, reissued or revised so their effluent limit(s) will be consistent with the wasteload allocations in the TMDL. The plan will identify which facilities are required to have permit limits that are consistent with the wasteload allocation, identify the limits to be incorporated into the permits, and identify the schedule by which the permits will be issued, reissued, or modified. EPA's expectation of when these permits will be issued, and EPA's commitment to ensure the proper and timely issuance of these permits, is described in the preamble discussion about EPA's objection to State-issued expired and administratively continued permits.

Implementation Plans for Sources for Which an NPDES Permit is Not Required

For waterbodies impaired only by sources other than those subject to an NPDES permit, including nonpoint sources, the implementation plans are required to contain several different elements. The plans for these waterbodies must identify the source categories, subcategories or individual sources that are expected to implement load allocations. These implementation plans must also include a description of specific regulatory or voluntary actions, including management measures or controls that State, Territorial, authorized Tribal or local governments and individuals will implement that provide reasonable assurance that load reductions will be achieved, and the schedule by which these measures are expected to be implemented.

EPA recognizes that nonpoint source problems are different from point source problems and that implementation plans for nonpoint sources must reflect the higher natural variability and relative imprecision of nonpoint sources in relation to point sources. EPA expects that implementation of load allocations will depend primarily upon recognized nonpoint source control activities. These actions are often those already undertaken in States, Territories and authorized Tribes to carry out programs and activities approved under CWA section 319, as well as those under the requirements of the Coastal Zone Act Reauthorization Amendments and the cooperative conservation and water quality programs carried out by the United States Department of Agriculture (USDA). These ongoing activities are expected to provide the foundation for nonpoint source implementation plans. EPA expects that nonpoint source implementation activities will rely upon management measures and that implementation plans will reflect performance expectations of these measures over time. In the case of nonpoint source impaired waterbodies, the detail and level of certainty that water quality standards will be attained through these management measures may be different from that for waterbodies impaired only by point sources.

EPA is also clarifying in § 130.32(c)(2)(iii) that implementation plans for other than point sources (primarily nonpoint sources) must include a schedule for implementing management measures or other controls in a TMDL within five years when implementation within that period is practicable. In response to comments, EPA has added a target date of five years for implementation of management measures and other controls where it is practicable to do so. The proposal required that implementation plans include a timeline, including interim milestones, for implementing control actions and/or management measures. The final rule requires this timeline be in the form of a schedule for implementing the control actions and/or management measures as well as a description of the interim milestones for determining whether the management measures and/or control actions are being implemented.

EPA added the five-year target in response to comments that there needed to be some target or goal for implementing the control actions and/or management measures. EPA never intended that implementation of the control actions and/or management measures would be open ended. The proposal included the requirement for milestones for implementation. The five-year target for implementation represents the Agency's expectation that, where practicable, the management measures and/or control actions should be implemented within five years. This is a logical outgrowth of the proposal that the implementation plan include an estimate of the time required to attain and maintain water quality standards and reasonable response to comments received. EPA expects that the public believes that the TMDL will be quickly implemented following its establishment. If implementation requires more than five years, EPA believes that the public is entitled to an explanation as to why five years is not practicable.

The final rule recognizes that the schedule may provide for more than five years. Where a State, Territory, or authorized Tribe determines that five years is not practicable, it must explain the basis for its determination. In determining whether it can implement management measures within five years, the State, Territory, or authorized Tribe may consider, but is not limited to, such factors as technical feasibility of installing controls and measures or changing practices within five years, competing program priorities in providing necessary funding and/or necessary technical assistance, and time to work with members of the affected community. The analysis of practicability in this provision is not intended to add a new requirement beyond the requirement to establish reasonable assurance that management measures and/or control actions will be implemented as expeditiously as practicable. It recognizes that if it is practicable to implement controls and measures within five years, they should be implemented within five years. EPA recognizes that even if controls and measures are implemented within five years, it reasonably would be expected to take additional time for the actions and measures to achieve their intended results and for load allocations to be met.

In general, EPA believes that, barring resource constraints or other impediments that make expeditious implementation impracticable, TMDLs can be implemented within five years of completion of the implementation plan. In the typical situation, the types of management measures that will be used to implementation the TMDL will consist of a set of well-established practices that are commonly practiced within the affected industries and can be implemented within a five-year time frame.

For example, to address soil erosion, well-established practices such as those that were used by USDA to implement the conservation compliance program on highly erodible cropland within the statutorily required five-year implementation period of 1985-1990 would typically be used. To address the impact of grazing upon water quality, typical approaches would include a USDA "conservation management system" or other similar range management plan to reduce cattle's access to the stream (*e.g.*, by providing alternative supplies of water, shade, and salt away from the stream; hardening the limited access points to the stream; and using fencing where necessary), and

to employ effective grazing rotation strategies that will ensure both that upland areas remain both productive and that soil erosion is reduced.

Similarly, the primary practices to be used to implement measures to address silvicultural nonpoint sources include road maintenance practices to reduce runoff and streamside management practices that will assure that sufficient protection is provided to provide adequate shade and erosion control in streamside management zones. For urban runoff, typical measures will include prevention techniques such as erosion and sediment control in new developments (which are required by new NPDES regulations for all developments larger than one acre); continued treatment of post-development runoff through a variety of urban best management practices, protection and restoration of riparian areas; and techniques to treat runoff in developed areas.

These and other nonpoint source measures can generally be implemented within five years from the time that it has been determined through a TMDL implementation plan that they will be needed to achieve water quality standards. EPA recognizes that in some situations, a five-year implementation period may prove to be impracticable. This situation is most likely to arise in some heavily developed areas where existing infrastructure limits the availability of effective technical approaches to very sophisticated and expensive treatment options. For this reason, the rule states that TMDLs should generally be implemented within a five-year period but allows for the State to make appropriate exceptions to the general five-year implementation period to address situations where the implementation plan cannot practicably be implemented within five years.

Implementation Plans for Blended Sources

For waterbodies impaired by both point sources required to have an NPDES permit and other sources, including nonpoint sources, implementation plans are required to include all of the elements applicable to these sources. In addition, implementation plans for waterbodies impaired by both types of sources must include a description of the extent to which wasteload allocations reflect the expected achievement of load allocations. EPA encourages implementation plans that reflect tradeoffs between wasteload and load allocations. A particular wasteload allocation may be set which anticipates that a load allocation will achieve a certain reduction in nonpoint source loadings. As long as the wasteload and load allocations together will achieve the TMDL, the TMDL is approvable. EPA does not expect that load allocations will actually be achieved before a corresponding wasteload allocation is established but the implementation plan must demonstrate the reasonable assurance that the practices will achieve the load reductions.

In the final rule at § 130.32(c)(4), EPA has clarified that implementation plans for all impaired waterbodies must be based on a "goal" of attaining and maintaining the applicable water quality standards "as expeditiously as practicable." EPA believes this new section is a logical outgrowth of its proposal that implementation plans include "an estimate of the time required to attain and maintain water quality standards and discussion of the basis for that estimate."

In response to comments, EPA is providing greater clarity in the final rule by identifying the goal that States, Territories and authorized Tribes should be striving to achieve in their implementation plans, *i.e.*, attaining and maintaining water quality standards as expeditiously as practicable. EPA has not expressed its sense of an appropriate time within which to attain water quality standards in the form of a rigid regulatory requirement. Instead, the goal of attaining water quality standards as expeditiously as practicable mirrors the provision in the reasonable assurance definition that TMDLs be implemented as expeditiously as practicable. The definition of reasonable assurance provides the criteria for determining if the TMDL is being implemented within 10 years whenever practicable. The provision in § 130.32(c)(4) is not intended to establish a test for TMDL approval that is different from the requirement to establish reasonable assurance. Attaining standards as expeditiously as practicable is stated in the rule as a goal whose achievement States should strive for as they develop their implementation plans.

The "practicability" of meeting standards within 10 years may be influenced by a wide variety of factors, such as the degree of water quality impairment, the time required to install controls or change practices, the time for such actions to have in-stream effects on water quality, the costs to implement such actions, and time to work with members of the affected community. EPA recognizes that there is a significant amount of uncertainty regarding how quickly implementation measures, once installed, will be effective in achieving water quality standards. In some cases, particularly water impaired by point sources where implementation will be accomplished through NPDES modifications, water quality standards may be achieved within months or a few years. For waterbodies impaired by nonpoint sources, where implementation involves significant habitat restoration or reforestation, water quality standards may not be met for decades. Accordingly, EPA has selected 10 years as a reasonable point between these extremes. If a State, Territory, or authorized Tribe expects that it will take longer than 10 years to achieve water quality standards it must explain why attainment within 10 years is not practicable.

In reviewing State, Territory, and authorized Tribe implementation plans, and particularly those components whose flexibility is conditioned upon a finding of "reasonableness" or "practicability", EPA is not required to, and does not intend to, engage in a detailed effort at second-guessing the judgment of a State, Territory, or authorized Tribe as to whether these conditions are met. Instead, EPA will review the State's, Territory's, or authorized Tribe's submission to determine whether the State, Territory, and authorized Tribe has provided a demonstration of "reasonableness" or "practicability", where such is required. If so, that will be the end of the inquiry. A State's, Territory's, or authorized Tribe's demonstration need not be extremely detailed to pass scrutiny. For example, it would be sufficient to demonstrate that the five-year implementation schedule requirement of § 130.32(c)(2)(iii) is not practicable by stating that section 319 grant money and other sources of funds to implement the relevant management measures will not be available until year six because the next five years worth of funds are already earmarked for other TMDL implementation.

Q. Total Maximum Daily Thermal Load (§ 130.32(d))

What did EPA propose? EPA proposed § 130.33(c) to restate the existing requirements at § 130.7(c)(2) in plain English format. This subsection requires that States, Territories, and authorized Tribes develop total maximum daily thermal loads (TMDTLs) for thermal discharges from point sources into thermally impaired waterbodies.

What comments did EPA receive? EPA received numerous comments on this subsection. Several comments

suggested that the balanced indigenous population (BIP) of shellfish, fish and wildlife standard should be used for both point and nonpoint sources, instead of just point sources. These commenters expressed the belief that Congress intended section 303(d)(1)(D) to apply to all discharges of heat and not just point sources. Other commenters suggested that this subsection was unnecessary, as these discharges are already regulated through NPDES permits. These commenters expressed a belief that most NPDES facilities discharging heat are already regulated based on a BIP standard, and that a thermal TMDL would not result in any greater reductions in heat discharged into the waterbody. One comment suggested that the subsection should recognize that calculations to determine the total maximum daily heat input should be focused on the waterbodies identified on the section 303(d) list as being impaired by point source thermal discharges.

What is EPA promulgating today? EPA is promulgating § 130.32(d) with three revisions. First, EPA is deleting the phrase "from point sources" because this phrase is redundant. Earlier in today's preamble, EPA explained that its definition of "thermal discharge" is limited to a point source discharge of heat. Thus, the phrase "from point sources" that modifies the phrase "thermal discharges" in § 130.32(d) is redundant. Second, EPA made the revision suggested by comments to clarify that the TMDTL calculations apply to waterbodies that are listed as impaired by thermal discharges. Third, EPA is clarifying that TMDTLs must meet the requirements of § 130.32(b) and (c). EPA recognizes that the proposal was unclear regarding whether the elements of a TMDL also apply to TMDTLs. EPA intended that they do. Moreover, the purpose of § 130.32(d) is to explain that TMDTLs are designed to achieve a balanced indigenous population of shellfish, fish, and wildlife instead of attaining the water quality criterion for temperature.

EPA declines to apply the BIP standard to TMDLs established for waterbodies impaired only by nonpoint sources of thermal loading. As discussed in the preamble to the proposed rule, EPA believes that section 303(d)(1)(B) and (D) applies the BIP standard only to thermal discharges from point sources. (64 FR 46017, August 23, 1999).

EPA also rejects the suggestions that § 130.32(d) be deleted because thermal discharges are already regulated through NPDES permits. Not all NPDES regulated discharges have permits that contain effluent limits for heat. For some discharges on thermally impaired waterbodies there may, therefore, be a need to develop thermal TMDLs to address for the first time impairments by thermal discharges. EPA recognizes that, where an NPDES regulated facility has obtained a section 316(a) variance from thermal water quality standards, the facility already is required to discharge at a level based on a BIP standard. However, this is no different than the situation where a point source discharging nitrogen is also regulated by an NPDES permit with effluent limitations based on the applicable water quality standard. Section 303(d) requires TMDLs and TMDTLs in both situations.

R. How Must TMDLs Take Into Account Endangered and Threatened Species (§ 130.32(e))

What did EPA propose? EPA proposed to include language at § 130.33(e) to explain that TMDLs must not be likely to jeopardize the continued existence of an endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of its designated critical habitat. In practice, EPA believes it would be highly unlikely TMDL activities could jeopardize listed species, since the TMDL program will result in substantial improvements in water quality, to the benefit of all water-dependent species.

What comments did EPA receive? A number of commenters opposed EPA's proposal. Grounds for these objections include allegations that EPA lacks authority to impose such a requirement, and that EPA is attempting to shift the burden of compliance with the Endangered Species Act away from EPA and to the States.

What is EPA promulgating today? EPA is promulgating this section as proposed. Today's rule provides a framework for the public, States, Territories and authorized Tribes and other Federal agencies to recognize and account for the effects of lists and TMDLs on endangered species.

The CWA provides ample authority for EPA to include this requirement. This requirement is consistent with the goals of restoring and maintaining the biological integrity of the nation's waters and protection of fish, shellfish and wildlife. See CWA section 101(a). Furthermore, the CWA requires that TMDLs be established at a level necessary to implement applicable water quality standards, and that standards consider propagation of fish and wildlife. See CWA sections 303(d)(1)(C) and 303(c)(2)(A). This is adequate authority to include a regulatory requirement designed to protect endangered or threatened species. See *American Iron & Steel Institute* v. *EPA*, 115 F.3d 979, 1003 (D.C. Cir. 1997). Although EPA does intend to require State, Territory, or authorized Tribe TMDL submissions to adhere to this provision, it is not EPA's intent to divest itself of any duty to comply with the ESA. Where the ESA imposes duties upon EPA, the Agency intends to comply with those requirements.

S. How are TMDLs Expressed? (§ 130.33)

What did EPA propose? EPA proposed at § 130.34 specific requirements regarding how TMDLs may be expressed. First, EPA clarified that all TMDLs must contain an expression of the pollutant load or load reduction necessary to assure that the waterbody will attain and maintain water quality standards. This includes aquatic and riparian habitats, and biological, channel, geomorphological, or other appropriate conditions that represent attainment or maintenance of the water quality standard. In these instances, the TMDL will contain the wasteload and load allocations necessary to maintain these conditions.

EPA also proposed that States, Territories, and authorized Tribes may use one of four approaches when expressing a TMDL. First, the TMDL could be expressed as the pollutant load that ensures that the waterbody does not exceed water quality standards. Second, the TMDL could be expressed as the pollutant load reduction that attains or maintains water quality standards. Third, the TMDL could be expressed as the pollutant load or load reduction that attains or maintains aquatic, riparian, biological, channel, or geomorphological measures so that water quality standards are attained and maintained. Fourth, the TMDL could be expressed as the pollutant load or load reduction that results from modifying a characteristic of the waterbody such that water quality standards are attained or maintained. EPA made this proposal to allow States, Territories, and authorized Tribes to express TMDLs in terms that are appropriate to the characteristics of the waterbody and pollutant combination. Finally, EPA proposed that TMDLs may, where appropriate, be expressed in other than daily terms, *e.g.*, weekly, monthly, seasonal, or annual, as needed, to ensure that the TMDL attains and maintains water quality standards. EPA made this proposal because EPA has found through the practice of

establishing TMDLs that for some pollutants and their applicable standards the concept of a "daily" load is simply not a technically appropriate way of expressing a TMDL in a manner necessary to implement water quality standards. In the preamble, EPA provided examples of three situations where a seasonal or average loading was more appropriate than a daily loading. (64 FR 46031, August 23, 1999). EPA believes that allowing flexibility in expressing the TMDL to reflect the environmental realities of the pollutant and waterbody better allows TMDLs to achieve the Congressional goal of establishing TMDLs at a "level necessary to implement the applicable water quality standards."

What comments did EPA receive? EPA received many comments specific to this section. Most comments focused on the legal and technical issues pertaining to expressing TMDLs as other than a daily load. Some comments expressed support for the flexibility to express TMDLs as daily, monthly, seasonal, or annual loads where appropriate, and believed this would allow TMDLs to better address nonpoint sources. Many comments expressed concerns that use of other than daily loads would allow for excessive loadings over short time periods. When averaged with periods of no loading, these short-term loads could cause the water quality standard to be exceeded. A number of comments stated that only daily loads are permissible under the CWA, including for nonpoint source loads. Other comments expressed the view that the need to use any expression other than a daily value is an indication that the pollutant is not suitable for TMDL calculations.

Some comments expressed concern that proposed § 130.34 implied that a TMDL was no longer a quantitative expression of the load necessary to attain water quality standards. Other comments expressed confusion whether the language of § 130.34(b) allowed TMDLs to be expressed as load reductions or not. A number of comments expressed concern that, because TMDLs are now required to be quantitative expressions of loads or load reductions, this removes the current flexibility to express TMDLs as measures of water quality improvement that do not directly express the load reductions. These comments supported retaining the current rule language.

Some comments expressed support for TMDLs addressing riparian and aquatic habitat, and biological, channel, geomorphological, or other appropriate conditions. Other comments expressed doubt that TMDLs could quantify the relationships between pollutant loads and these expressions of water quality standards. Further comments expressed the belief that TMDLs should only address numeric (and not narrative) criteria in water quality standards.

What is EPA promulgating today? Based on its analysis of the many comments received on this section, EPA is making the following changes to the proposed rule language. First, EPA is revising proposed § 130.34(a) to add the word "quantitative" to modify the phrase "expression of the pollutant load." EPA is making this change to respond to the concerns that the TMDL was no longer a quantification of the load necessary to attain water quality standards. As explained in the preambles to both the proposed and final rules, the purpose of the TMDL is to attain and maintain water quality standards, and the purpose of the wasteload and load allocations is to identify the loadings needed to attain and maintain these standards. EPA agrees there should be no confusion as to this requirement, and thus is making this change to the final rule.

Second, EPA is changing the word "represent" to "result in" in proposed § 130.34(a). EPA made this change based on concerns expressed in comments that loadings or loading reductions do not represent water quality standards but rather result in the attaining and maintaining of water quality standards. EPA agrees with the commenters that the words "represent" is imprecise.

Third, EPA is not promulgating the language of proposed § 130.34(b) that recognized that both the pollutant load and load reductions may be expressed as other than a daily value as appropriate to the characteristics of the waterbody and pollutant. This language allowed TMDLs to be expressed as monthly, seasonal, and annual averages as appropriate to the characteristics of the waterbody. EPA has decided not to include this provision in the final rule because EPA is concerned that it could be used to justify some TMDLs that do not in fact attain and maintain water quality standards in all seasons and for all flows. Instead, EPA is retaining a sentence it promulgated in the 1985 rule in the definition of a TMDL that speaks to how a TMDL can be expressed. That sentence says that TMDLs may be expressed "* * * in terms of either mass per time, toxicity, or other appropriate measure." EPA continues to believe that in some situations, it is reasonable to authorize TMDLs that are expressed in other than daily terms. As discussed in the August 1999 preamble, to conclude otherwise could frustrate the Congressional goal of establishing TMDLs at a level necessary to implement the applicable water quality standards. EPA disagrees with the comments asserting that only daily loads are permissible under the CWA. (64 FR 46031, August 23, 1999). The CWA does not define a TMDL. Nor does the Act specify how a TMDL may or should be expressed. Consequently, the Act does not mandate that a TMDL be expressed as a daily load, and does not require EPA to disapprove TMDLs expressed as daily loads. Rather, this matter is left to EPA's discretion because where a statute is silent on a specific issue, EPA's interpretive regulations are entitled to controlling weight. EPA's previous regulations at § 130.2(i) and current regulations at § 130.33(b)(5) expressly provide that a TMDL may be expressed in terms of either mass per time, toxicity, or other appropriate measure. Furthermore, EPA interprets its regulations to permit TMDLs to be expressed in terms other than daily loads as long as compliance with the applicable water quality standard is assured.

EPA acknowledges the concern that use of other than daily loads could allow for excessive loadings over short time periods that, when averaged with periods of no loading, might satisfy the wasteload and load allocations, but would cause the water quality standard to be exceeded. However, EPA continues to believe that there are situations where other than a daily load is appropriate to ensure that water quality standards are attained and maintained. Where other than a daily load is necessary to address relevant factors, such as the variability of nonpoint sources, the averaging period of the water quality standard or the physical size and hydraulic nature of the waterbody, EPA expects that the State, Territory, or authorized Tribe will use the most appropriate expression of the load amenable to those characteristics. To help ensure that this flexibility is appropriately used, EPA, in its review of the TMDL, will look for an explanation by the State, Territory, or authorized Tribe as to the reasons why it is appropriate to express the TMDL in terms other than a daily load. The TMDL documentation will need to show that the resulting allocations are sufficient to eliminate the impairment, addressing all aspects of the water quality standard and the adverse effects of the pollutant in question. For example, the documentation would discuss, where appropriate, the difference between acute short-term impacts during storm flows and long-term effects of the pollutants in the

system over time, or the difference between short-term changes in water column concentrations and the long-term impacts of pollutant concentrations in sediments and biota. If a TMDL for a particular pollutant contained an expression other than a daily load, and the situation indicated that expressing the TMDL as a daily load is a necessity to attain and maintain water quality standards, EPA would disapprove the TMDL as insufficient to attain and maintain water quality standards.

EPA does not interpret the final rule to require that TMDLs always be expressed as the load or load reduction of the pollutant causing the impairment. The final rule at § 130.32(b)(5) preserves the flexibility to express the TMDL as a quantitative expression of a modification to a characteristic of the waterbody that results in a certain load or load reduction. In these situations, the TMDL is required to identify the pollutant load present in the waterbody (§ 130.32(b)(3)) and the deviation from that load necessary to attain and maintain water quality standards (§ 130.32(b)(4)). However, the allocations and implementation plan monitoring measures could be expressed in terms of a surrogate measure of the necessary load reduction. In these situations, the relationship between a surrogate measure and the pollutant load should be clearly described in the TMDL documentation. For example, a TMDL that addresses exceedances of temperature criteria because of a denuded riparian corridor is ultimately expressed in terms of heat units, *e.g.*, BTU or calories per day, over time. However, the environmental measure that might be most appropriate for implementation plan monitoring purposes is temperature (degrees); for implementation plan management measures it might be miles or acres of riparian zone restored. These surrogate measures must correlate to their ability to reflect a reduction of heat load and decrease in water temperature. In this example, the TMDL documentation would calculate the total heat load that achieves either the temperature water quality standard, or a balanced, indigenous population of fish, shellfish and wildlife, whichever standard is applicable for the waterbody. The TMDL would then show how that heat load would be achieved by a quantified increase in forestation (the appropriate surrogate measure) designed to increase shading of the waterbody. In this way, the environmental measures of ambient temperature and riparian characteristics are quantitatively related to the thermal load expressed in the TMDL.

Other comments expressed doubt that TMDLs could quantify the relationships between pollutant loads and expressions of aquatic or riparian habitat health, and biological, channel, geomorphological, or other appropriate conditions in water quality standards. EPA recognizes there are many causes of elevated pollutants in surface waterbodies. Some situations do not involve a discharge of pollutants, but nevertheless affect the amount of a pollutant load in the waterbody. In these instances, the final rule language requires the State, Territory, or authorized Tribe to develop a TMDL for whatever pollutant (including heat) that causes the waterbody to exceed the water quality standard. For example, where the impairment of an aquatic habitat is caused by excessive sediment as a result of landslides or bank erosion, EPA expects that the TMDL would be established for the pollutant sediment. Another example is where an aquatic habitat is stressed by excessive temperature as a result of a denuded riparian habitat. In this instance, EPA expects the TMDL would be established for the pollutant heat. EPA has developed guidance on how to address impairments due to sediment, which was the most frequent cause of impairment mentioned in the States' 1998 section 303(d) lists. See "Protocol for Developing Sediment TMDLs," EPA 841–B–99–004, October 1999.

EPA declines changing the proposal to provide in the final rule that TMDLs need address only impairments of numeric criteria in water quality standards. EPA's long standing policy has been that narrative criteria apply to all designated uses at all flows and are a necessary component of State water quality standards. See section 303(c)(2)(A) of the CWA; and the Water Quality Standards Handbook, EPA–823–B–94–005a, August 1994, page 3–24. Narrative criteria descriptively accomplish what numeric criteria account for quantitatively. Narrative criteria are descriptions of the conditions of the waterbody necessary to attain and maintain its designated use, while numeric criteria are values expressed as levels, concentrations, toxicity units or other measures which quantitatively define the permissible level of protection. Thus, narrative water quality criteria establish the basic foundation for attainment of designated uses while numeric water quality criteria provide a specific quantitative translation of the necessary level of protection. In short, numeric criteria are specific, quantified expressions of the narrative criteria. States, Territories and authorized Tribes adopt translator procedures by which to derive a quantified numeric interpretation of the narrative criterion. Such procedures must be scientifically defensible, and are also subject to EPA review and approval. EPA recognizes that narrative water quality criteria are not expressed as numbers and thus are not directly amenable to TMDL calculations. However, as expressed in EPA guidance, a State, Territory, authorized Tribe, or EPA can quantify narrative criteria for use on regulatory actions. See "Technical Support Document for Water Quality-based Toxics Control," EPA/505/2–90/001, March 1991; § 122.44(d)(1); "Guidance for Water-Quality-based Decisions: The TMDL Process," EPA 440–4–91–001, 1991; § 132 Appendix F Procedure 3 [which speaks to "values" which are that rule's equivalent to quantifications of narrative criteria]. Therefore, EPA continues to believe that TMDLs can be calculated based on narrative criteria where those criteria can be quantified.

CWA section 303 directs States, with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States, Territories, and authorized Tribes are required to develop water quality standards for waters of the United States within the State. Section 303(c) provides that water quality standards shall include the designated use or uses to be made of the water. EPA regulations implementing section 303(c) are published at Part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include use designations for all water bodies in the State, water quality criteria sufficient to protect those use designations, and an antidegradation policy. Section 131.10 requires States and authorized Tribes to adopt appropriate uses to be achieved and protected. In no case can they adopt waste transport or assimilation as a use for any waters. EPA has in the past, and may in the future, promulgate designated uses for State waters where such action is necessary to meet the requirements of the CWA and the implementing federal regulations.

EPA's policy is that, because designated or existing uses of a waterbody are part of the water quality standards, they are also an appropriate basis for determining an impairment of that waterbody. All of the water quality protections established by the CWA follow from the waterbody's use—established, protected and maintained

under the authorities of section 303(c) of the CWA. Thus, designated uses establish the fundamental basis for determining whether the water quality standards of a waterbody are attained.

In certain circumstances it is possible that water quality criteria can be met, and the designated uses still not achieved. For example, factors such as food web structure, the concentration of dissolved organic carbon in the ambient water, and accumulations in the sediment may effect uptake of mercury into fish flesh on a site specific basis. In these circumstances, EPA recommends States, Territories, and authorized Tribes translate the applicable narrative criteria on a site specific basis, or adopt site specific numeric criteria, to protect designated uses. However, ultimately, the final determination of whether the water quality standard is attained is made by determining the attainment of the designated use.

T. What Actions Must EPA Take on TMDLs That are Submitted for Review? (§ 130.34)

What did EPA propose? In proposed § 130.35, EPA included several minor changes to its current regulatory submission and approval requirements for TMDLs to clarify how the approval process would work. The proposal provided that EPA would only approve a TMDL submission that included all required minimum elements. The proposal would have continued the requirements of the current regulations that when EPA establishes a TMDL, it would send it to the State, Territory, or authorized Tribe for incorporation into the water quality management plan. EPA also proposed to continue the requirements of the current regulations that, when EPA establishes a TMDL, it requests public comment on the TMDL for at least 30 days following its establishment. The proposal also would have added new requirements regarding how EPA would provide public notice and revise TMDLs it establishes based on the public comment it receives.

What comments did EPA receive? EPA received comments regarding the criteria it will use to review TMDLs. Some comments suggested that EPA's review should focus only on whether the TMDL included all required elements, and that EPA must approve any TMDL received if it contained all elements. In contrast, other comments suggested that EPA should review the elements for their consistency with the substantive requirements of this subpart, including whether the TMDL is set at a level sufficient to attain and maintain water quality standards. Further comments again expressed belief that the CWA only allows EPA to review the total load calculated for a waterbody and nothing else. (Today's preamble discusses this issue in section II.A.1.e.)

EPA also received comments about the timing of its actions. Many comments requested an automatic approval of TMDLs if EPA does not act to approve or disapprove the TMDLs within 30 days, or fails to send the State, Territory, or authorized Tribe comments on the TMDL. These comments expressed concern that EPA will not be able to take timely action on all TMDLs and that the new rules will make EPA's review take even longer.

EPA also received comments about its process for disapproving and establishing TMDLs. Several comments expressed concern that the proposal did not commit EPA to take action as required by the CWA. These comments suggested that EPA use the word "must" or "shall" where ever the section spoke to statutory obligations. Many comments requested that EPA provide an appeal process, public hearing, or consultation with States, Territories and authorized Tribes on disapproved TMDLs. Other comments requested that EPA explain to States, Territories and authorized Tribes and the public why it disapproved any TMDL. These comments generally expressed concern that EPA might make arbitrary decisions to disapprove TMDLs. Some comments expressed the view that EPA must follow the same public notice process as States, Territories and authorized Tribes when EPA establishes a TMDL.

EPA also received comments about the adoption of TMDLs into water quality management plans. Some comments requested that EPA establish a deadline by which States, Territories, and authorized Tribes must adopt TMDLs into their plans. Other comments expressed a belief that a TMDL is not effective until after a State, Territory, or authorized Tribe adopts it into its water quality management plan.

What is EPA promulgating today? Based on its analysis of the many comments received, EPA has revised this section, now numbered as § 130.34. First, EPA is deleting proposed paragraph § 130.35(a) because it was duplicative of the requirements of proposed paragraph § 130.35(b). Section § 130.35(a) would have required that EPA approve TMDLs that included the elements identified in proposed § 130.33(b), whereas proposed § 130.35(b) would have required that EPA approve TMDLs that met the requirements of proposed §§ 130.32, 130.33, and 130.34, i.e., established in accordance with the schedule, including the elements required by § 130.33(b) and appropriately expressed. EPA agrees with commenters that the review criterion in proposed § 130.35(a) was included within proposed § 130.35(b). Therefore, EPA is not including the language for proposed § 130.35(a) in the final rule.

The final regulations at § 130.34(a) provide that EPA will approve TMDLs if they are established for the appropriate waterbody/pollutant combination as required by § 130.31, include all elements prescribed by § 130.32, and are expressed in accordance with § 130.33. EPA will disapprove any TMDL submitted by a State, Territory, or authorized Tribe that does not include all elements of § 130.32(b) or fulfill the substantive requirements of §§ 130.31, 130.32, and 130.33. EPA will work with States, Territories, and authorized Tribes, including providing comments on TMDLs submitted to it in draft form, to help ensure that the TMDLs that EPA receives are approvable. EPA considers all elements of § 130.32(b) and the substantive requirements of §§ 130.31, 130.32, and 130.33 as necessary for determining whether a TMDL, when implemented, will attain and maintain water quality standards.

EPA declines to provide that TMDLs shall be deemed automatically fully or conditionally approved at the end of the 30-day review period if EPA has not acted. EPA acknowledges commenters' concerns regarding the timeliness of EPA's TMDL approval actions. However, an automatic full or conditional approval of a State's, Territory's or authorized Tribe's TMDL submission upon expiration of the 30-day review period is not consistent with section 303 of the CWA. Section 303(d) requires EPA to approve or disapprove a submitted TMDL. EPA has the responsibility to determine that submitted TMDLs fulfill the requirements of the CWA and these implementing regulations. EPA declines to adopt an approach which would result in automatic approval actions when EPA has not evaluated the sufficiency of the TMDL with respect to the requirements of section 303(d). As previously discussed, EPA expects to share comments and information with States, Territories and authorized Tribes on draft TMDLs submitted to EPA for informal review. EPA believes that such information sharing will help assure approvable TMDLs and will enable EPA to complete its review within the 30-day statutory time frame.

As requested by comments, EPA is clarifying what actions EPA is obligated to take in its decisions. Therefore, the

final rule uses the word "must" to represent EPA's statutory obligations to either approve or disapprove and establish a TMDL. The final rule also uses the word "must" with regards to EPA's public notice requirements when EPA disapproves and establishes a TMDL.

EPA declines to establish in the final rule an appeal or consultation process for States, Territories, and authorized Tribes when EPA disapproves their TMDLs. Because section 303(d) only allows EPA 30 days to establish a replacement TMDL after EPA disapproves one, EPA does not have sufficient time to allow for an appeal or consultation process. Also, the 30-day period for EPA to issue an order establishing a TMDL and the minimum 30-day public comment period on the TMDL allows time during which the State and EPA can consult on the new TMDL. If during that time, the State decided to adopt and EPA approved a TMDL meeting EPA's objectives, EPA would withdraw its TMDL. As previously discussed, EPA expects that sharing information with States, Territories, and authorized Tribes on TMDLs being drafted will help EPA and States, Territories, and authorized Tribes resolve differences over TMDLs before they are submitted.

EPA agrees that it needs to describe in the administrative record of its TMDL disapproval decisions the reasons for the disapproval and make that information available to States, Territories, authorized Tribes, and interested parties. EPA's public notice requirements at Part 25 describe the process by which EPA generally makes information available and receives public comment. As described later in the preamble, EPA patterned the TMDL public notice requirements on its own Part 25 requirements. EPA also declines to establish a deadline by which States, Territories, and authorized Tribes must adopt TMDLs into their water quality management plans. The CWA does not provide for or require such a deadline. EPA does not believe it is necessary to require adoption of TMDLs in the State's, Territory's or authorized Tribe's plan on a specified schedule once EPA approves or establishes it. A TMDL may be used as a basis for NPDES permits and other implementation actions once EPA approves or establishes it and before it is incorporated into the Water Quality Management Plan. States, Territories and authorized Tribes have different legal requirements for revising their Plans to incorporate TMDLs. EPA believes there is no compelling reason to require States, Territories, and authorized Tribes to revise their individual requirements solely to assure incorporation of all TMDLs into Water Quality Management Plans by a certain federally-prescribed date.

EPA is also adding § 130.34(b) and (c) to clarify how EPA will provide reasonable assurance when EPA establishes a TMDL. EPA will use its authority to condition CWA grants to the fullest extent practicable and in a manner consistent with the effective operation of clean water programs. For example, EPA may condition section 319 grants such that the funds can only be used to implement management measures in watersheds where EPA has established a TMDL that includes load reductions for nonpoint sources. Similarly, EPA may condition section 106 grants such that the funds for monitoring can only be used to support the monitoring specified in TMDL implementation plans. EPA may also use its voluntary, incentive-based programs to ensure that management measures are funded and implemented. EPA believes this authority to condition grants will generally be the sole or primary basis by which it will demonstrate reasonable assurance for the implementation of load allocations. EPA will also encourage States, Territories, and authorized Tribes to use their own statutory and regulatory authorities. EPA cannot, however, require States, Territories or authorized Tribes to use their statutory and regulatory authorities.

Where necessary, EPA will make use of its other statutory and regulatory authorities to provide reasonable assurance. EPA recognizes that its CWA regulatory authority is primarily limited to the NPDES permit program for point sources. In some cases, EPA may use authorities under section 504 of the CWA to address an "imminent and substantial endangerment to human health or welfare."

U. How Will EPA Assure That TMDLs Are Established? (§ 130.35)

What did EPA propose? EPA proposed in § 130.36 to codify its authority to establish TMDLs if the State, Territory, or authorized Tribe so requests, or if EPA determines that a State, Territory, or authorized Tribe has not or is not likely to establish TMDLs in accordance with their schedules, or if EPA determines it should establish TMDLs for interstate or boundary waterbodies. EPA made this proposal for a number of reasons. EPA explained that it may be necessary for EPA to establish TMDLs if interstate or international issues and coordination needs require EPA to assume a leadership role. 64 FR 46037, August 23, 1999.

EPA explained in the preamble that it anticipates that a decision to step in and establish TMDLs would be "rare and based on case specific decisions." Finally, EPA explained that it may have to exercise its authority to establish TMDLs where the State, Territory, or authorized Tribe requests this support from EPA. As discussed in the preamble, EPA recognizes that this authority to establish TMDLs absent a prior disapproval is not expressly stated in section 303(d). However, EPA explained that such authority is clearly implied in the CWA, is a reasonable interpretation of the Act, has been required of EPA by the courts, and is necessary to accomplish the purposes of the Act. 64 FR 46037, August 23, 1999.

What comments did EPA receive? EPA received comments about the conditions under which EPA proposed to establish TMDLs. Some comments expressed a belief that EPA must step in when a State, Territory, or authorized Tribe is likely not to or does not establish TMDLs according to its schedule. Others were concerned about the phrase "likely not to" and suggested that EPA establish TMDLs only after a State, Territory, or authorized Tribe fails to do so. Further comments expressed the belief that EPA has no authority to establish TMDLs outside of a disapproval except when a State requests EPA to do so.

EPA received comments about the conditions under which EPA would establish a TMDL for interstate waterbodies. Some comments supported the proposal. Others believed that EPA must establish interstate TMDLs on behalf of the States. Further comments expressed the view that this authority is limited to situations where EPA determines that States, Territories and authorized Tribes are not making progress in establishing TMDLs. More comments expressed the view that this authority is limited to situations where States, Territories and authorized Tribes or interstate commissions ask EPA to establish TMDLs. A few comments rejected EPA's suggested option to require States, Territories and authorized Tribes jointly to develop interstate TMDLs. Others suggested that EPA's role is to coordinate with States, Territories and authorized Tribes on interstate TMDLs and not establish them for States, Territories and authorized Tribes.

What is EPA promulgating today? In § 130.36 of the proposal, EPA proposed to codify its authority to establish TMDLs for waterbodies on Part 1 of a list under certain circumstances,

including if EPA determined that a State, Territory, or authorized Tribe had not or was not likely to establish TMDLs consistent with its schedule. In response to comments and to better ensure that TMDLs will be established, EPA has added a new § 130.35 to the final rule which codifies steps EPA will take to implement its authority under section 303(d) to assure that TMDLs are established for listed waters. In addition to "working with" States, Territories, and authorized Tribes to assure establishment in accordance with approved schedules, EPA will ensure that TMDLs are established for States, Territories, and authorized Tribes if they have not made "substantial progress" in establishing TMDLs in accordance with their "approved schedule." A discussion of what EPA means by "substantial progress" and a more detailed discussion of EPA's schedule for acting if States, Territories, and authorized Tribes fail to demonstrate "substantial progress" appears below.

As requested by comments, EPA is clarifying that it is obligated to ensure that States, Territories, and authorized Tribes establish TMDLs in accordance with their approved schedules. EPA believes the requirements it is placing on itself to act in § 130.35 are both consistent with CWA section 303(d) as it has been interpreted by a number of courts and a logical outgrowth of the proposal. They are a logical outgrowth in that, in the proposal, EPA clearly noticed its intent to exercise its authority under section 303(d) to step in and establish TMDLs when it determines a State was not likely to do so. In the final rule, EPA is simply clarifying and expanding upon that concept and stating under what specific conditions and upon what schedule EPA will do that. EPA's decision to codify the circumstances under which it will ensure that TMDLs are established is also consistent with the decisions of a number of courts which have interpreted CWA section 303(d) as placing upon EPA a duty to establish TMDLs where a State, Territory, or authorized Tribe has failed to do so, or in the words of the courts, where a State has made a "constructive submission" of no TMDLs.

EPA is also identifying two ways by which it will assure that all TMDLs are established as planned for in the schedule for TMDLs. First, EPA must work with the State, Territory, or authorized Tribe in establishing TMDLs. EPA may do this by providing technical or financial assistance consistent with EPA's abilities and resources, or by establishing certain TMDLs upon the request of the State, Territory, or authorized Tribe. Where a State, Territory, or authorized Tribe has not made substantial progress on establishing a TMDL in accordance with its approved schedule, EPA must ensure that the TMDL is established. EPA does not expect to invoke this authority frequently. Based on its experience to date under court-ordered schedules, EPA believes that the States, Territories, and authorized Tribes will be able to establish most of their TMDLs according to the dates in their schedules.

Today's final rule also explains how EPA will determine if a State, Territory, or authorized Tribe has made substantial progress in establishing a TMDL. Under § 130.28(c), States, Territories, and authorized Tribes will specify which TMDLs they intend to establish in each one year period. If a State, Territory, or authorized Tribe has not established the TMDL by the end of the one year period within which the TMDL was scheduled to be established, it has not made "substantial progress" as described in today's rule. At this point, EPA must ensure that the TMDL is established within two years. In a case where EPA develops a TMDL, the Agency expects to publish the TMDL within 2 years. In rare instances, where there is a compelling need for additional time, the Administrator may extend the 2 year period by up to an additional 2 years. The Administrator must publish a description of a decision to provide an extension in the **Federal Register**. If the State, Territory, or authorized Tribe establishes the "missed" TMDL before EPA establishes it pursuant to this section, EPA must review and either approve or disapprove that TMDL pursuant to section 303(d), and if approved at that time its obligation to establish the TMDL expires. EPA will also look at the stage of development of a TMDL in comparison to the schedule in determining if a State, Territory, or authorized Tribe is making substantial progress. Where the State, Territory, or authorized Tribe is close to completing the TMDL at the time called for by the schedule, EPA will interpret this as substantial progress.

As discussed in the August 1999 preamble, EPA has the authority to establish TMDLs even when it has not disapproved a State, Territorial, or authorized Tribal submission. 64 FR 46037–46038, August 23, 1999. EPA recognizes the merit, in some instances, for it to take the lead in establishing TMDLs for interstate and boundary waterbodies and expects to exercise this authority primarily for interstate waterbodies. For this reason, EPA is including in the final rule a provision allowing EPA the discretion to establish TMDLs for interstate or boundary waters. Boundary waters are those rivers, streams and lakes which form part of the boundary between States, Territories and Indian Country. These waters present special problems because, in many instances, the waterbody is governed by two or more potentially differing sets of water quality standards. Similar problems may be present for interstate water which—rather than forming a jurisdictional boundary—flow out of one jurisdiction and into another. In exercising this authority, EPA will encourage States, Territories and authorized Tribes to take the lead in developing TMDLs for such waterbodies because EPA interprets the CWA as giving States, Territories and authorized Tribes the lead responsibility for doing so. EPA also strongly encourages States, Territories and authorized Tribes to work with interstate river basin and other commissions, where appropriate, when establishing TMDLs for interstate or boundary waters. These commissions are uniquely positioned, by virtue of their multi-state membership and technical expertise, to assist EPA and the States in establishing TMDLs for such waters.

EPA anticipates at least two instances in which it might need to exercise its authority to establish interstate and boundary water TMDLs. The first is when the States, Territories and authorized Tribes have not made substantial progress in establishing interstate and boundary water TMDLs according to their schedules. The second is where individual adjacent State schedules are so different with respect to interstate or boundary waters that they may defeat the ability of the States, Territories and authorized Tribes to work together to establish an interstate or boundary water TMDL. EPA believes the final rule language should allow EPA the flexibility to establish TMDLs for interstate and boundary waters under such circumstances. Finally, EPA is not including in the final rule a requirement that States, Territories and authorized Tribes work together jointly to establish TMDLs on interstate waters. Instead, EPA will continue to serve as a facilitator to help States, Territories and authorized Tribes establish interstate TMDLs, and EPA will use its authority when necessary to ensure that interstate TMDLs are established.

EPA is also adding a statement at § 130.35(b)(2) that EPA may establish TMDLs for waterbodies to implement Federal water quality standards. As previously discussed in today's

preamble, EPA recognizes that there are some impaired waterbodies outside the jurisdiction of States, Territories, and authorized Tribes. Where EPA has established Federal water quality standards for these waterbodies, such as waterbodies located on tribal lands where the Tribe has yet to be authorized under section 303, EPA believes it has the authority to also establish TMDLs for the reasons given above.

V. What Public Participation Requirements Apply to the Lists and TMDLs? (§ 130.36)

What did EPA propose? EPA proposed a number of specific requirements for public participation. EPA proposed to require that States, Territories and authorized Tribes provide the public with at least 30 days to review and comment on all aspects of the list, the priority ranking, the schedule for developing TMDLs, and the TMDLs themselves prior to their submission to EPA. EPA also proposed that, at the time States, Territories, and authorized Tribes submit their list, schedule or TMDLs to EPA, they provide EPA with a written summary of any public comments received during the public comment period and their response to such comments. In addition, EPA proposed to require States, Territories, and authorized Tribes to send, at the time of public notice, copies of lists, priority rankings, TMDL schedules and TMDLs to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services), where appropriate (*e.g.*, coastal areas). The proposal also provided that, if requested, EPA would send this information to the Services on behalf of the State, Territory, or authorized Tribe.

As proposed, the rule also encouraged States, Territories, and authorized Tribes to establish processes with both Services to provide for the early identification and resolution of threatened and endangered species issues as they may relate to lists of impaired waterbodies, priority rankings, schedules, and TMDLs. The proposal also would have required States, Territories, and authorized Tribes to consider any comments received from the Services prior to the submission of their lists of impaired or threatened waterbodies, priority rankings, schedules, and TMDLs to EPA. EPA proposed these provisions to help ensure timely input from the wildlife agencies as lists and TMDLs are being developed.

What comments did EPA receive? EPA received a number of comments specific to the public participation process. Most comments supported the inclusion of public participation requirements. Many comments, however, stated that a 30-day period was too short. A number of comments suggested that the public comment period should be 60 days or longer to facilitate better understanding of the complex issues related to lists and TMDLs. Some commenters recommended specific requirements for the purpose of ensuring notice to interested parties and incorporation of their comments on listing and TMDL decisions. Most comments which addressed this issue recommended that EPA pattern the public notice requirement after those for NPDES permits. Specifically, commenters asked that States, Territories and authorized Tribes be required to establish and maintain mailing lists. Other commenters recommended that EPA be subject to the same public participation requirements as proposed for States, Territories, and authorized Tribes. Further comments suggested that any action to remove a waterbody from a section 303(d) list be subject to the same public participation process as the listing of a waterbody. Many comments objected to the detailed requirements governing how States, Territories and authorized Tribes should address comments they receive and the amount of information about those comments, including responses, they should supply to EPA. Commenters also expressed concern that the proposal gave special notice consideration to the Services, and thus seemed to transfer EPA's obligations under the Endangered Species Act to States, Territories, and authorized Tribes.

What is EPA promulgating today? After carefully considering the comments received on the public participation requirements, EPA is today promulgating the requirements as proposed with a few changes. EPA is making conforming changes throughout the section to reflect the fact, as discussed earlier, that the list of impaired waterbodies includes a prioritized schedule for establishing TMDLs.

The final rule maintains the requirement for a minimum 30-day comment period on lists and TMDLs. EPA recognizes that decisions on lists and TMDLs can sometimes benefit from a significant amount of technical information and analysis related to decisions on lists, rankings, schedules, and TMDLs. States, Territories and authorized Tribes may in such circumstances find a need to allow for longer than 30-day comment periods on lists and TMDLs. However, the rule as proposed and promulgated today specifies 30 days as the minimum comment period. In some instances, particularly where the issues and analyses related to a TMDL are not complex, States, Territories, and authorized Tribes should find that a 30-day comment period is adequate. The final rule, however, gives States, Territories, and authorized Tribes the flexibility to increase their comment periods as appropriate.

EPA is also adding language in the final rule also to encourage States, Territories, and authorized Tribes to notify directly those parties who submit a written request for notification. EPA received a number of comments suggesting that direct notification be a requirement in the same way that authorized State NPDES programs are required to directly notify parties that request such notice. EPA does not believe that establishment of TMDLs is entirely comparable to issuance of an NPDES permit for notice purposes (*e.g.* the number of potentially affected parties may be much larger for a TMDL). EPA however, is including in the final regulation a recommendation that States, Territories and authorized Tribes provide direct notification to parties that request it.

EPA is not including in this section of the final rule public participation requirements for EPA. Today's final rule at § 130.34 includes public participation requirements for EPA regarding disapproval and establishment of TMDLs. In addition, EPA's rules at Part 25 already provide general public participation guidance and requirements for EPA, which include notice to parties that request notice, publication of notice in a newspaper of general circulation, and response to significant comments.

EPA recognizes the importance of public participation on all aspects of section 303(d) decisions, including decisions to remove a waterbody/pollutant combination from the section 303(d) list. EPA has added provisions in the final rule at § 130.29(a) to require that all actions to add or remove waterbodies from the list follow the public participation requirements. In this way, the public is kept informed as to the nature and reasons for any changes to the section 303(d) list.

EPA agrees with the comments which suggested that the proposal was too detailed regarding how States, Territories and authorized Tribes should respond to comments. As suggested by some comments, EPA has reviewed the rules pertaining to NPDES permitting and EPA's rules at Part 25 and has simplified the response to comments requirements for the final rule. The final

rule now requires a response to "all significant comments" instead of "all comments," as proposed. The final rule no longer includes specific requirements as to what is to be included in the response to comments document. EPA believes this change will allow States, Territories, and authorized Tribes the flexibility they need when addressing public comments. EPA's public participation rules for rulemaking and permitting at Part 25 require EPA to respond to significant comments and to include at a minimum, a summary of public views, significant comments, criticisms and suggestions, and set forth the Agency's specific responses in terms of modification of the proposed action or an explanation for rejection of proposals made by the public (§ 25.8). EPA is persuaded by the comments that States, Territories and authorized Tribes should not be held to a higher standard than EPA. Pursuant to the final rule, States, Territories and authorized Tribes need only consider significant comments and indicate how they were addressed in the final action or why they were not addressed.

The rule recognizes that the Fish and Wildlife Service and the National Marine Fisheries Service have an interest in a State's, Territory's or authorized Tribe's list and TMDLs. By including the provisions of § 130.36(c), EPA is not giving the Services greater opportunity to receive information or to comment than is afforded anyone else. Nor is EPA attempting to transfer its obligations under the Endangered Species Act to States, Territories or authorized Tribes. The provisions of § 130.36(c)(1) require States, Territories, and authorized Tribes to provide the Services with copies of lists, including prioritized schedules and TMDLs. However, under the public participation requirements of § 130.36(a), any interested party may also request similar access to this information by making a written request to the State for direct notification. EPA is promulgating § 130.36(c)(1) because the Services have expressed to EPA an interest in reviewing section 303(d) lists and TMDLs. In recognition of the potential burdens on the States which such information sharing might impose, EPA agreed it would undertake this information sharing responsibility with the Services if requested by a State, Territory, or authorized Tribe.

The provisions of § 130.36(c)(2) encourage, but do not require, States, Territories, and authorized Tribes to engage the Services in a dialogue related to Endangered Species Act concerns. EPA believes that it can reduce the number of times it may need to disapprove a list or TMDL based on endangered species concerns if the States, Territories, and authorized Tribes communicate with the Services early in the process of developing lists and TMDLs. For this reason, EPA is including in the final rule a recommendation that States, Territories and authorized Tribes establish processes with the Services that will provide for the early identification and resolution of their concerns as they relate to lists and TMDLs. States, Territories and authorized Tribes are not required to establish such a process, but may find it advantageous to do so.

Section 130.36(c)(3) requires States, Territories, and authorized Tribes to consider comments from the Services and EPA in the same way that § 130.36(b) requires States, Territories, and authorized Tribes to provide a response to significant comments and an explanation of how those comments were addressed in the final action or why they were not addressed. Section 130.36(c)(3) does not require States, Territories, and authorized Tribes to agree with or adopt comments or recommendations from EPA and the Services; however, it does require an explanation of how these comments were considered in the final decision. This is the standard set by § 130.36(b) for all comments received by a State, Territory, or authorized Tribe.

The provisions of § 130.36(d) recognize that EPA will consider the comments of the Services when EPA reviews lists and TMDLs. EPA does not believe that this provision provides the Services with any greater access to the decision maker than other commenters. Rather, this provision alerts States, Territories, and authorized Tribes that EPA will consider the comments of the Services and how those comments were addressed.

W. What is the Effect of This Rule on TMDLs Established When the Rule is First Implemented? (§ 130.37)

What did EPA propose? EPA proposed a transitional period for implementing the TMDL requirements of the new rule. Specifically, EPA proposed that it would approve any TMDL submitted to it for review within 12 months of the final rule's effective date if it met either the pre-promulgation requirements in § 130.7 or the post-promulgation requirements in §§ 130.31, 130.32 and 130.33. EPA proposed this transitional period to give States, Territories, authorized Tribes and EPA the security of knowing they could develop TMDLs prior to promulgation of the new rules without them later being determined inadequate as a result of the adoption of the new rule. In this way, States, Territories, authorized Tribes and EPA would not delay work towards establishing TMDLs until after the final rule was published. Also, EPA requested comment on whether the new TMDL requirements would affect the ability of States, Territories, or authorized Tribes to establish TMDLs on a schedule consistent with consent decree or settlement agreement schedules, and if so, how to address the issue.

What comments did EPA receive? EPA received a number of comments specific to the transitional period and actions EPA should take to facilitate establishing TMDLs in accordance with schedules in consent decrees and settlement agreements. Most comments supported the transitional period and many supported a period longer than 12 months. Some comments requested that some TMDLs be developed under the current requirements for "good cause." Two comments suggested no transitional period, with one suggesting that States, Territories, and authorized Tribes be allowed to submit implementation plans no more than six months after submitting the other parts of the TMDL. EPA also received comments suggesting that EPA must establish TMDLs using either the current or new rules during the transitional period, and that EPA should work to establish TMDLs quickly using the new rules. Finally, EPA received some comments suggesting that all schedules should be revised because of these new regulations.

What is EPA promulgating today? After carefully considering the comments received on the transitional period, EPA is today promulgating a transition period for the new elements of TMDLs lasting 18 months from the date of publication of this rule in the **Federal Register** or nine months from the effective date of this rule, whichever is later. EPA recognizes the concerns voiced in many comments about the challenge of now drafting an implementation plan for a TMDL already nearing completion, and the benefit of including stakeholders in implementation decisions at the beginning of the TMDL development process in order to better integrate the implementation strategies with the allocation of loads. Most States, Territories and authorized Tribes, as

well as State associations, supported a transitional period of up to 18 months. Of the comments suggesting more than 18 months, only one provided a reason, *i.e.*, the average TMDL requires 24 months to complete. EPA does not believe States need to begin implementation plans at the onset of TMDL development. One comment describes the first 18 months of TMDL development to consist of collecting data, developing models, and conducting the analysis. EPA believes that at least the first six months of this work, especially data collection and modeling, can be conducted before approaching stakeholders to start developing the implementation plan. For this reason, EPA is including a transitional period of 18 months in the final rule unless the rule's effective data is delayed, in which case the transition period will be 9 months from the rule's effective date.

EPA rejects the suggestion not to allow a transitional period based on the commenter's belief that implementation plans could be quickly developed, or that States, Territories, and authorized Tribes have had sufficient notice to begin developing these plans in anticipation of the new regulatory requirements. EPA does not believe that the mere fact that implementation plans were part of the proposal would by itself have caused States, Territories, or authorized Tribes reasonably to believe that the final rule would necessarily require submission of an implementation plan with the rest of the TMDL. EPA received many comments, some from States, Territories and authorized Tribes, contesting the legal authority to require States, Territories, and authorized Tribes to submit implementation plans as part of the TMDL. (This issue was discussed previously in today's preamble.) EPA believes these comments illustrate that many States, Territories, and authorized Tribes have waited to see the final rule before beginning to develop these plans.

EPA also rejects the suggestion not to provide a transitional period but rather to defer submittal of implementation plans up to six months following submittal of the rest of the TMDL. As discussed in today's preamble, EPA considers the implementation plan to be an integral part of the TMDL that is reviewed by EPA under section 303(d). Under today's rule EPA cannot approve the TMDL if it does not contain all the required elements, including an implementation plan. Therefore, the suggestion to defer submission of such plans to a later date would only further delay TMDL approvals, which is what EPA is attempting to prevent.

Today's rule also revises the proposed language regarding EPA's establishment of a TMDL during the transition. EPA proposed at § 130.38(b) that it may establish TMDLs using either approach, *i.e.*, the pre-promulgation or post-promulgation requirements. Some commenters misconstrued this language as a statement by EPA that it may choose not to establish TMDLs even if required to do so by court order or the statute. To eliminate confusion on this issue, EPA is using the word "will" instead or "may" in the final regulations. It is EPA's intention to use the new regulations as soon as possible. However, EPA recognizes that it may need to establish a TMDL where a State, Territory, or authorized Tribe has not, and to do so, EPA may need as much time as a State, Territory, or authorized Tribe to develop an implementation plan.

In particular instances, before the end of the transition period, where a schedule in a consent decree or settlement agreement would make it impossible to establish TMDLs with an implementation plan under the schedule, EPA would consider approaching the Plaintiffs to request an extension of the schedule so that TMDLs could be established using the new requirements. EPA expects that by the end of the transition period, States, Territories, and authorized Tribes will have established procedures for integrating implementation plan into TMDLs. EPA's expectation is that the transition period should greatly reduce the need for EPA to establish TMDLs pursuant to the existing consent decrees and settlement agreements.

X. Continuing Planning Process (§ 130.50)

What did EPA propose? EPA proposed to make only minor changes to the continuing planning process (CPP) requirements currently found at § 130.5. The proposal renumbered the section as § 130.50 and revised the current regulatory requirements to clarify that States, Territories and authorized Tribes have discretion to go beyond the mandatory plan elements set out in the regulation and also include other processes, such as watershed-based planning and implementation. The proposal also makes clear that a CPP need not be a single document but may be a compendium of many different State, Territorial and authorized Tribal planning documents. Finally, the proposal made conforming changes to citations to sections that are renumbered by the proposal.

What comments did EPA receive? EPA received a number of comments specific to this section. Three comments supported the proposal. One comment expressed concern that the proposed change required that the CPP be a document. A number of other comments suggested additional revisions to the existing CPP requirements.

What is EPA promulgating today? Based on its analysis of the comments received on this section, EPA is making one change to § 130.50(b) of the proposed rule. EPA is changing the final rule to recognize that the CPP need not be a single document. EPA acknowledges that the CPP is a process often described in numerous documents, rather than being a single document. EPA believes the revision in the final rule removes the confusion expressed over this. EPA declines to make the other requested changes for the reasons expressed in the Response to Comments Document.

Y. Water Quality Management Plans (§ 130.51)

What did EPA propose? EPA proposed to make only minor changes to the water quality management plan requirements currently found at § 130.6. EPA proposed to renumber the section as § 130.51 and to revise the current regulatory requirements to clarify that updates to water quality management plans should incorporate approved TMDLs and generally have a watershed focus. In addition, EPA rewrote proposed § 130.51(a) in plain English format.

What comments did EPA receive? EPA received a number of comments specific to this section. In most instances, only one commenter suggested a specific revision or addition. In four instances, multiple commenters made the same or similar comment. Two comments supported the proposal. Two comments suggested that § 130.51(a) retain the references to sections 208, 303, and 305 of the CWA that were in the existing rule. Two comments requested a change to or clarification of the part of the rule dealing with nonpoint source regulatory programs. Three commenters requested revisions to the existing rule language to clarify what a nonpoint source is. Another comment suggested that EPA recognize the link between the State Revolving Fund (SRF) and § 130.51(f).

What is EPA promulgating today? Based on its analysis of the comments received on this section, EPA is making three changes to § 130.51(a) of the proposed rule. First, EPA is reinstating the reference to CWA section 208 and 303(e) in the sentence describing the initial water quality management plan. Second, EPA is reinstating the reference

to CWA section 305(b) reports in the sentence describing what the annual planning should include. These references were in the existing regulation. EPA agrees that these references describe the authority and context for the water quality management plan, and wishes to maintain continuity between the requirements for water quality management plans prior to and after today's final rule. Third, EPA is adding a sentence to § 130.51(f) to recognize the link between the SRF and Water Quality Management Plans. This is a requirement of CWA section 603(f) that had not yet been incorporated into Part 130.

EPA does not interpret the revision of § 130.51(a) to require all States, Territories, and authorized Tribes to rewrite their initial water quality management plan. Again, the purpose of the revision is to clarify that updates to water quality management plans should incorporate approved TMDLs and generally have a watershed focus. Also, EPA does not interpret this revision to be a change in focus of the water quality management plan or CPP. EPA interprets the phrase "focus on priority issues and geographical areas" to mean essentially the same as the phrase "shall be based upon water quality problems identified in the latest section 305(b) reports." The section 305(b) reports generally identify priority water quality issues in geographical areas.

EPA declines to make other requested changes to the water quality management plan for the reasons stated below and in the Response to Comments document. EPA declines to require that States, Territories, and authorized Tribes adopt regulatory programs for nonpoint sources. The final rule continues the existing rule requirements that States, Territories, and authorized Tribes develop regulatory programs if they find it necessary. EPA also declines to revise § 130.51(c)(4)(iii) to further clarify what a nonpoint source is. EPA acknowledges that some residual waste, agriculture and silviculture, mines, construction, and urban storm water activities are considered point sources and are subject to NPDES permits. At the same time, some are not. EPA interprets § 130.51(c)(4) to apply only to activities that are not required to have an NPDES permit. Because EPA has referenced these sources in the context of "nonpoint source management and control," EPA believes that it is reasonable for others to make the same interpretation.

Z. Petitions to EPA to Establish TMDLs (§ 130.65)

What did EPA propose? EPA proposed to codify specific requirements to formalize a petition process for the public to request that EPA step in and perform duties imposed on States, Territories and authorized Tribes by section 303(d) when they fail to perform these duties. This petition process has been available to the public under the authority of the Administrative Procedure Act, but has seldom been used in the context of section 303(d). EPA made this proposal to increase public awareness of this procedure for requesting EPA action.

What comments did EPA receive? EPA received a number of comments specific to the petition process. Very few comments were fully supportive. Most comments argued that EPA should drop the provision entirely. Many comments expressed a concern that EPA was trying to impose this procedure as a mandatory first step before a party could bring a judicial action against EPA, and saw the petition process as an administrative barrier which would delay the party's right of redress. Other comments expressed concern that the petition process provided EPA a way to by-pass or undermine State authority and suggested that the final rule require petitioners to exhaust all State administrative remedies prior to petitioning EPA. Finally, other comments saw the petition provision as a way to exclude stakeholders from dialogue on TMDLs.

What is EPA promulgating today? Based on its analysis of the many comments received on this section, EPA is not including the petition provision in the final regulations. EPA continues to believe that a petition process would present the advantages outlined in the proposal at 64 FR 46040–46041, August 23, 1999. However, this opportunity is already available to the public as a matter of law. See 5 U.S.C. section 555(b). EPA does not believe it needs to provide specific regulatory requirements relating to a petition process.

EPA recognizes the concerns expressed in comments, and believes it has responded to these comments by not promulgating any specific provision for a TMDL petition. Many commenters misconstrued EPA's intent as creating an administrative process that either delays a party's right of judicial redress or excludes most stakeholders, including States, Territories and authorized Tribes, from a dialogue on TMDLs. These were not EPA's intentions. On the contrary, EPA believed the petition process provided a more expeditious way of resolving a party's concerns than the judicial process. Given the misunderstanding on the purpose and use of the petition process, EPA is not providing a specific petition process for TMDLs in the regulations. However, section 555(b) of the Administrative Procedure Act does allow any party to petition EPA to take action regarding lists and TMDLs, despite the absence of a specific TMDL petition process in Part 130.

AA. Water Quality Monitoring and Report (§ 130.10 and 130.11)

What did EPA propose? EPA proposed three minor changes to these sections. First, EPA proposed to identify the current EPA quality assurance guidance referred to in § 130.10(a). Second, EPA added source water assessments to the list of uses for data collected by State, Territorial, or authorized Tribal water quality monitoring in § 130.10(b). Finally, EPA proposed to revise § 130.11(a) to recommend that water quality problems identified in a section 305(b) report should be used in source water assessments.

What comments did EPA receive? EPA received many comments on these sections. Most of the comments suggested EPA adopt regulatory requirements to improve monitoring. These comments called for EPA to define the elements of an adequate monitoring program and provide both incentives and penalties to ensure that States monitor all waters of the State. Commenters also suggested EPA improve coordination among the many entities that monitor water quality. Comments on the water quality inventory report point out that this report is a state's comprehensive accounting of water quality, including healthy, threatened and impaired waters. Some commenters cited the need to improve these reports by requiring States monitor all waters of the State. Other suggested improvements include better analysis of the costs and benefits of achieving the goals of the CWA. A number of commenters expressed concern that EPA's proposed regulation makes the section 303(d) list a comprehensive accounting of State water quality which is redundant with the section 305(b) report. Some commenters suggested the water quality inventory report and the section 303(d) list should be consolidated, while others recommended they be kept distinct.

What is EPA promulgating today? EPA is promulgating these section as proposed with one change. EPA is moving the reference to the current

quality assurance guidance to a note. EPA made this change to facilitate including references to any future updates to this guidance.

EPA declines to make other changes to these sections as suggested by comments. EPA did not propose any regulatory requirements for monitoring or reporting, and believes that it would need to propose any such requirements before promulgating requirements.

AB. Other Sections (§§ 130.0, 130.1, 130.3, 130.7, 130.61, 130.62, 130.63, and 130.64)

What did EPA propose? EPA's August 23, 1999 recodification included sections of existing regulations for which EPA did not propose changes or request comment. These were included in the proposal to show how they would be reformatted in Part 130. 64 FR 46015, August 23, 1999. EPA explicitly identified the following sections as unchanged in the proposal: §§ 130.0, 130.1, 130.60, 130.61, 130.62, 130.63, and 130.64. EPA did propose a conforming change to § 130.64 to reflect that the citation for a TMDL had moved from § 130.7. EPA also proposed to delete § 130.3 and 130.61(d), and replace § 130.7 with the new requirements of subpart C. EPA believed § 130.3 duplicates the definition of "water quality standard" found in Part 131. EPA also believes that § 130.61(d) is obsolete because it pertains to a one-time data submittal under section 304(l) that was completed almost a decade ago.

What comments did EPA receive? EPA received no substantive comments on the sections that were proposed to be deleted. EPA received many comments on other sections, especially § 130.62, and § 130.63. Most comments did not suggest revisions to the final rule, but rather offered suggestions on how EPA could improve implementation of the TMDL program. The comments that suggested revisions were diverse and covered many themes. Other comments suggested specifically recognizing coastal nonpoint source programs, Federal land management, and the Great Lakes Water Quality Guidance in the regulations. Other comments offered suggestions on regulatory language related to improving the participation of indigenous people in all aspects of water quality planning and implementation. Finally, EPA received a comment that the language of § 130.61(b)(2) was inconsistent with the provisions proposed for lists of waterbodies, priority rankings, and schedules of TMDLs.

What is EPA promulgating today? With the exception of §§ 130.7 and 130.61, EPA is promulgating these sections as proposed. EPA did not propose revisions to §§ 130.0, 130.1, 130.60, 130.61, 130.62, 130.63, and 130.64 except for a conforming citation in § 130.64, nor did EPA request comment on these sections. Instead, EPA included these sections solely to illustrate the reformatting of Part 130 that results from writing the TMDL regulations in plain English format. Thus, EPA believes any comment on these sections is beyond the scope of the proposed rulemaking and declines to make changes as a result of comments. EPA will try to be mindful of any comments received on these sections when and if it does any further rulemaking on Part 130

EPA's proposed §§ 130.20 through 130.37 replace the requirements of § 130.7. However, for the period of 18 months from publication or nine months from the effective date of today's rule, whichever occurs later, § 130.37 allows States, Territories, authorized Tribes, and EPA to establish TMDLs consistent with either the requirements of §§ 130.31 through 130.33 of today's rule or § 130.7 from the previous rule. States, Territories, and authorized Tribes will need to be able to find the requirements of § 130.7(c), which contains the TMDL requirements, until they are no longer needed. For this reason, today's rule removes § 130.7 except for paragraph (c), and revises paragraph (c) to refer to the listing requirements of today's rule.

With respect to § 130.61, EPA found during the development of the final rule that § 130.61(b)(2), which requires identification of water-quality limited waters requiring TMDLs, and of waters targeted for TMDL development within the next two years, is inconsistent with both the proposed and final requirements for listing waterbodies. Therefore, EPA is deleting the requirements of § 130.61(b)(2) and reserving this paragraph. EPA believes that without this change, the Part 130 regulations would include two conflicting requirements causing confusion over what the regulations require. EPA believes this change is technical in nature and a logical outgrowth of EPA's proposal. EPA recognizes that it is making this change without soliciting public comment on this specific change. However, EPA did solicit comment on §§ 130.25 through 130.30, which are the technical and procedural requirements for section 303(d) lists of impaired waterbodies. Based on those comments, EPA promulgated the final rule for those sections. EPA expects that, had it solicited comments on whether it should revise § 130.61(b)(2) to conform with the information in §§ 130.25 through 130.30, the comments would have been supportive. Therefore, EPA believes that there is good cause under Administrative Procedure Act section 555(b)(3)(B) not to provide notice on this change because it is unnecessary to do so. Furthermore, EPA believes it is contrary to the public interest to expend the resources to solicit comment on eliminating an inconsistency in its rules when to do so is unnecessary. Therefore, consistent with the "good cause" provision of Administrative Procedure Act section 553(b)(3)(B), EPA believes it has good cause to delete and reserve § 130.61(b)(2) without proposing that change.

III. Changes to Parts 122, 123, and 124

A. Reasonable Further Progress Toward Attaining Water Quality Standards in Impaired Waterbodies in the Absence of a TMDL

1. Background

On August 23, 1999, EPA proposed revisions to the National Pollutant Discharge Elimination System (NPDES) Program and the Federal Antidegradation Policy in support of the revisions to the Water Quality Planning and Management regulations. These proposed revisions included new requirements and explicit authority to achieve reasonable further progress toward the attainment of water quality standards in impaired waterbodies in the absence of an EPA approved or established TMDL. EPA proposed a new requirement under the Federal antidegradation policy and proposed to revise the NPDES permitting regulations to implement that requirement. The proposed antidegradation requirement applied to all large new dischargers and existing dischargers undergoing a significant expansion proposing to discharge, to an impaired waterbody, the pollutant(s) for which the waterbody was impaired. The proposal stated that these dischargers would be required to achieve reasonable further progress toward the attainment of water quality standards in the waterbody to which they proposed to discharge. To achieve reasonable further progress, the proposal required these dischargers to obtain an offset of their new or increased loading of the pollutant(s) for which the waterbody was impaired. To obtain an offset, these dischargers would need to secure reductions from another existing source(s) discharging the pollutant(s) of concern into the same waterbody. The net effect of this offset would be a reduction in the loading of the pollutant of concern in the waterbody. Thus, reasonable further

progress toward the attainment of water quality standards in the waterbody would be achieved.

Also to achieve reasonable further progress in the absence of an EPA approved or established TMDL, EPA proposed explicit language describing the Regional Administrator's discretionary authority to review, object to, and reissue, if necessary, State-issued permits that are "administratively continued" after expiration. The proposal stated that this authority would be available when an expired permit authorizes a discharge into an impaired waterbody and the existing permit limits need to be revised. These permits were referred to as "environmentally-significant permits." The two situations in which EPA proposed to invoke this authority were when an expired permit contains effluent limitations or conditions inconsistent with water quality standards or inconsistent with an established TMDL. In the absence of a TMDL, invoking this authority would allow the Regional Administrator to review, object to, and reissue, if necessary, expired permits inconsistent with water quality standards to ensure that those permits contain adequate water quality-based effluent limitations. Permits that contain adequate water quality-based effluent limitations would, in turn, be consistent with water quality standards and, thus, reasonable further progress toward the attainment of water quality standards would be achieved. See section III.B.5. below for a discussion of where this authority could be invoked to ensure that an expired permit is consistent with an established TMDL.

2. Requirements for New and Significantly Expanding Dischargers

What did EPA propose? EPA proposed a new requirement under the Federal antidegradation policy and proposed revisions to the NPDES permitting regulations to implement that requirement, to achieve reasonable further progress toward the attainment of water quality standards in impaired waters in the absence of an EPA approved or established TMDL. EPA proposed these new requirements in response to the TMDL FACA recommendation that EPA actively encourage and support stakeholders stabilizing and enhancing water quality in impaired waterbodies before a TMDL is in place. Both EPA and the FACA recognized the significant time lag that could exist between the initial listing of a waterbody under CWA section 303(d) and the actual completion and approval of a TMDL. (See "Report of the Federal Advisory Committee on the Total Maximum Daily Load (TMDL) Program", EPA 100–R–98–006, July 1998.) As discussed in the preamble to the proposed rule, EPA believes that progress toward the section 101(a) goals of the CWA should occur even in the interim period between the initial listing of a waterbody under CWA Section 303(d) and the actual completion, approval and implementation of a TMDL. EPA therefore proposed to require that certain dischargers, located on an impaired waterbody discharging the pollutant for which the waterbody is impaired, achieve "reasonable further progress" toward the attainment of water quality standards.

The NPDES dischargers required to achieve reasonable further progress included a subset of dischargers proposing to discharge new loadings of a pollutant of concern to an impaired waterbody. This subset of dischargers included all large new dischargers and existing dischargers undergoing a significant expansion. EPA proposed revisions to the definition of a "new discharger" at § 122.2 as well as proposed a new definition of an "existing discharger" and what constitutes a "significant expansion" of an existing discharger. These proposed definitions were revised or added with the intent of defining the subset of dischargers subject to the proposed offset requirement.

EPA believed that the best way for these dischargers to achieve reasonable further progress was through an offset mechanism. The proposed offset mechanism would have required these dischargers to offset any new or increased loading of the pollutant of concern to an impaired waterbody by obtaining or securing reductions in the loading of the same pollutant from an existing source(s) located on the same waterbody. EPA stated that an offset of at least one and one half to one would generally be appropriate as a means of ensuring reasonable further progress. The proposal also specified several additional requirements for implementing offsets through NPDES permits. These revisions to the NPDES permitting regulations were designed to ensure that the offset and resulting reductions would be realized and, therefore, reasonable further progress would be achieved. The Agency believed that reasonable further progress toward meeting the applicable water quality standard would be achieved through this mechanism because the total load of the pollutant(s) to the impaired waterbody would be reduced.

The proposal also would have required the permitting authority to include, in the fact sheet for the permit (required under § 124.8), an explanation of how and why any limitations and/or requirements were derived to satisfy an offset requirement. Where fact sheets are not required, EPA proposed that similar information be included in the statement of basis for the permit (required under § 124.7).

To emphasize the importance of State antidegradation policies, including the proposed offset requirement, EPA proposed to include the phrase "State antidegradation provisions" in its water quality-based permitting regulations at § 122.44(d)(1). Section 122.44 contains the requirements for establishing limitations, standards and other permit conditions in NPDES permits necessary to ensure that NPDES permits are protective of water quality standards. The purpose of including this phrase was clarifying only and was not intended to create a substantive change. Including this phrase in these provisions was intended to give added notice and clarification to the longstanding requirement at § 131.12 that States, at a minimum, include in their water quality standards an antidegradation policy consistent with the Federal antidegradation policy, and identify their methods and procedures for implementing that policy.

What comments did EPA receive? The following summarizes certain major comments the Agency received on the proposal requiring large new and significantly expanding existing dischargers located on impaired waterbodies to obtain offsets of their new pollutant loads. There was widespread concern that the proposal to require offsets was virtually impossible to implement and environmental efficacy on a national scale would have therefore been unlikely. Many commenters noted that a one-size-fits-all approach was infeasible due to the differences between the types of sources subject to the offset requirement, the differences in the nature of the discharges from the sources subject to the offset requirement, and the differences in the types of NPDES permitting used for sources subject to the offset requirement. A significant number of commenters also expressed concern regarding the requirement that the offset be achieved on or before a source could begin discharging as well as the distinct likelihood that there might be no source in the waterbody from which an offset could be obtained. They pointed out that this would cause significant delay in the operation or construction of their business and

possibly even prevent them from operating at all.

Several commenters stated that the offset provision, as proposed, would be particularly difficult to implement with respect to wet weather sources. With respect to storm water, commenters expressed that it would be difficult to predict the contents and/or flow of storm water runoff because wet weather events vary in terms of frequency and duration of rainfall as well as other uncontrollable factors (e.g., the use of copper brake pads, leaking oil pans on cars) that contribute to the contents and/or flow of storm water runoff. Similar concerns were raised with respect to obtaining offsets from nonpoint sources. Commenters stated that pollution reductions would be difficult to measure or quantify due to the variability in flow, pollutants and loading. They also noted the difficulty in demonstrating the impact or level of reductions achieved by nonpoint source control measures or BMPs. The Agency also received many comments that claimed that the offset provisions, as proposed, would have an adverse effect on trading. For point source to nonpoint source trades, commenters asserted that the offset provision would provide a disincentive for point sources to trade because they would be held liable for a nonpoint source's failure to achieve the requisite reductions.

Commenters expressed concern over the implications the offset requirement would have on the use of general permits. Many stated that offsets could not be implemented through general permits. Although the Agency did not propose an approach to implement offsets for dischargers that seek coverage under general permits, many commenters were concerned that the offset requirement, as proposed, would have caused a large number of dischargers to seek coverage under individual permits instead of general permits. Commenters also noted that they would experience considerable delays in their operations and increased costs if they had to seek coverage under an individual permit.

A significant number of commenters stated that the proposal to require offsets established an inequitable allocation of responsibility between large and small dischargers and was, thus, inconsistent with the goals of the CWA. Many asserted that the proposal to require offsets conflicted with and impeded the TMDL program thereby delaying the attainment of water quality standards. Some commenters also asserted that the proposal to allow new discharges and require offsets would have undercut the ability to interpret § 122.4(i) as requiring an absolute prohibition on new discharges to impaired waters. Finally, while many commenters agreed that there should be reasonable further progress toward improving water quality in the period before a TMDL is approved or established, they asserted that the proposed offset requirements would undercut State primacy in determining what actions are necessary to attain water quality standards.

The Agency also received several comments on the proposed definitions for existing, new and significantly expanding dischargers. The Agency proposed these definitions for the sole purpose of implementing the offset provision. Many commenters suggested that these definitions were "confusing and unworkable." Most commenters were concerned that the definitions were not consistent with existing definitions for related and separate programs. Some commenters also stated that the definition describing significant expansion was not scientifically based. For example, the definition did not specify whether the 20% increase in loadings was related to concentration or mass.

What is EPA promulgating today? After considering comments received and upon further analysis of what the Agency proposed, EPA is not promulgating the revisions to the Federal antidegradation policy and NPDES regulations that would require certain dischargers to achieve reasonable further progress toward the attainment of water quality standards by obtaining an offset of their new or increased pollutant loads (hereafter "the offset requirement"). EPA continues to believe, however, that further degradation of already impaired waterbodies should be prevented and that progress toward the attainment of water quality standards should be made in the interim period between the identification of an impaired waterbody and the establishment of a TMDL. EPA does not believe it is necessary to amend the antidegradation regulations to explicitly include such a requirement because EPA has concluded that the offset requirement, as proposed, is not the best mechanism to achieve progress in impaired waters in the absence of a TMDL. The Agency based this conclusion on several considerations.

Subsequent to the proposal, EPA gained additional insight into current practices for deriving water quality-based effluent limits for sources located on impaired waters and discharging the pollutant(s) for which the waterbody is impaired. EPA found a wide range of practices for deriving such limits with respect to both new dischargers and existing dischargers. The Agency believes that there is considerable room for improvement in establishing water quality-based effluent limits for all dischargers (new dischargers being permitted for the first time and expanding and existing dischargers undergoing permit reissuance) discharging pollutant(s) of concern to an impaired waterbody (emphasis added). EPA therefore concluded that its existing regulations, implemented consistently at the time of permit issuance, would provide greater progress toward the attainment of water quality standards in impaired waters than through the proposed offset requirement.

As proposed, the offset requirement (in addition to existing regulatory requirements) would be very difficult to apply and only affect a small subset of dischargers. Thus, the likelihood of achieving additional progress toward attaining water quality standards for a significant number of impaired waterbodies through the offset provision, in the aggregate, would be quite small. EPA further believes that expanding the application of the requirement to additional dischargers, as some commenters suggested, would still not have significant environmental benefit for the reasons discussed below.

Many commenters pointed out, and upon further analysis EPA agrees, that the proposed offset requirement, a one-size fits all method for specifying reasonable further progress, is simply unworkable. As proposed, it would have been extremely difficult for a majority of the sources within the very small subset of sources to which it would have applied, to implement an offset requirement (*e.g.*, those sources with intermittent discharges or discharges only as a result of storm events and those regulated through general permits by best management practices (BMPs)). Calculating what constitutes a one and one half to one offset for sources with intermittent discharges would have often been extremely subjective. Likewise, as proposed, it would have been difficult or infeasible to implement the offset requirement with respect to dischargers that seek NPDES permit coverage under a general permit. Typically, general permits do not contain numeric water quality-based effluent limitations (WQBELs); they contain BMPs designed to ensure protection of water quality standards. It would have been difficult or infeasible to quantify, and thereafter implement, a one and one half to one offset from a source whose water quality impacts are controlled solely by BMPs.

EPA also concluded that the additional environmental benefits from the offset requirement, in many cases, would have been minimal at best, even if expanded to cover additional dischargers as some commenters suggested. The offset requirement would have been a requirement over and above the requirements under current NPDES permitting regulations at §§ 122.44(d)(1)(vii) and 122.4(i). Section 122.44(d)(1)(vii) requires permits to include, where necessary, effluent limits that derive from and comply with water quality standards. Section 122.4(i) prohibits the issuance of permits to a new source or a new discharger if the discharge will cause or contribute to a violation of water quality standards. For those dischargers who would have been subject to the offset requirement, consistent implementation of §§ 122.44(d)(1)(vii) and 122.4(i) following existing EPA guidance would result in permits, if issued, containing limits and conditions for the pollutant(s) of concern that derive from and comply with applicable water quality standards. These limits and conditions are water quality-based effluent limits and, if derived in compliance with existing regulations, ensure that the discharge will not cause or contribute to a violation of water quality standards. These limits would define the amount of the pollutant(s) in the discharger's effluent that could not be exceeded. In most cases, where a discharge is to an impaired water, this amount (the water quality-based effluent limit) would be quite small. Using either a numeric criterion or a quantitative translation of a narrative criterion, the limits would be calculated to ensure that the discharger did not cause or contribute to an excursion of that criterion in the receiving water. Also, a permitting authority may determine that this limit must reflect an overall reduction in pollutant loading to the waterbody in order to ensure that the discharge does not cause or contribute to a violation of water quality standards. Thus, where existing regulations for water quality-based permitting are appropriately implemented, the additional offset that EPA proposed to require of such dischargers (150% of the water quality-based effluent limit), in most cases, would not have had a significant effect on ambient water quality. Given this and the fact that applying the offset to many types of discharges would be extremely difficult or even infeasible, as discussed above, EPA concluded that the net environmental benefits from the offset requirement would be insignificant.

Although EPA is not promulgating regulations containing the offset requirement, EPA expects to achieve progress toward the attainment of water quality standards in impaired waters in the absence of a TMDL. EPA believes that progress toward the attainment of water quality standards prior to a TMDL would be achieved through consistent implementation of EPA's existing regulatory authorities.

EPA's current water quality-based permitting regulations and accompanying guidance apply not only to new and expanding dischargers, but to all dischargers. These regulations require that NPDES permits have conditions as necessary to achieve water quality standards established under section 303(c) of the CWA. § 122.44(d)(1). The permitting authority must therefore determine whether a discharge causes, has reasonable potential to cause, or contributes to an in-stream excursion above the applicable water quality standard. In making this determination, the permitting authority must "account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and, where appropriate, the dilution of the effluent in the receiving water." § 122.44(d)(1)(ii). Where water quality-based effluent limits are needed, the regulations are designed to ensure that those limits derive from and comply with water quality standards and, therefore, ensure that dischargers subject to such limits will not cause or contribute to the violation of water quality standards. §§ 122.44(d)(1)(vii) and 122.4(i).

EPA has developed guidance for applying the water quality-based permitting regulations. The "Technical Support Document for Water Quality-Based Toxics Control" (TSD) U.S. EPA, EPA/505/2–90–001, March 1991 and the Water Quality Guidance for the Great Lakes System (60 FR 15366, March 23, 1995) (hereafter "Great Lakes Guidance") include procedures for making the determination of whether a discharge causes, has reasonable potential to cause, or contributes to an instream excursion above the applicable water quality criteria (the "reasonable potential analysis"). These procedures also present options for developing wasteload allocations (the basis for effluent limits) which ensure that a discharge does not cause or contribute to the nonattainment of applicable water quality standards. Thus, while both are primarily focused on toxics, and the Great Lakes Guidance applies to the Great Lakes, both serve as practical guides for developing effluent limits to ensure compliance with both §§ 122.44(d) and 122.4(i).

As mentioned above, the Agency found various interpretations and implementation methods for applying the water quality-based permitting regulations and the Agency's accompanying guidance. For example, EPA found varied consideration of other source contributions and background concentrations in the receiving water when determining the need for water quality-based effluent limits and setting water quality-based effluent limits for pollutants of concern in compliance with § 122.44(d). EPA notes it has a longstanding interpretation of § 122.44(d) regarding consideration of source contributions and background concentrations, as presented in the TSD since 1991.

EPA notes that the TSD references using background concentration when calculating wasteload allocations. For example, on p. 97, the TSD states, "Traditional single-value or two-value steady-state wasteload allocation models calculate wasteload allocations at critical conditions, which are usually combinations of worst-case assumptions of flow, effluent, and environmental effects. For example, a steady-state model for ammonia considers the maximum effluent discharge to occur on the day of lowest river flow, *highest upstream concentration*, highest pH, and highest temperature" (emphasis added). Also, it is particularly noteworthy that every case example in the TSD uses an ambient background concentration value of the pollutant of concern when determining reasonable potential and calculating wasteload allocations and effluent limits.

An assessment of the ambient background concentration in the receiving water is *the* element of the reasonable potential analysis presented in the TSD that represents the nonattained condition of waters not meeting water quality standards because they are exceeding water quality criteria. This element of the reasonable potential analysis is necessary to account for existing controls on point and nonpoint sources of pollution and available dilution as required by § 122.44(d)(1)(ii). Failure to use a background value would result in evaluating the discharge to the nonattained water as if the water were actually attaining its water quality standards. Simply put, use of valid, verifiable ambient background values is imperative to technically sound effluent characterization and analysis of the

need for water quality-based effluent limits.

Furthermore, where there is valid, verifiable background data indicating existing impairment of a waterbody, such data must be taken into consideration when developing water quality-based effluent limits for a discharge to an impaired water. EPA is aware that some permitting authorities, when calculating wasteload allocations that are the basis for water quality-based effluent limits, have, on occasion, made the assumption that background concentrations of the pollutant(s) of concern are zero, even in view of valid and verifiable background data, and have proceeded to allocate all of a waterbody's assimilative capacity to one or more point sources. Such an assumption is inconsistent with NPDES regulations requiring that water quality-based effluent limits derive from and comply with water quality standards (§ 122.44(d)(1)(vii)), and longstanding Agency guidance and policy on complying with the regulations.

Once again, EPA notes that the TSD indicates the need to consider background concentrations of the pollutant(s) of concern when developing wasteload allocations and water quality-based effluent limits. Where valid, verifiable data and information that are representative of ambient conditions indicate that the waterbody is not attaining water quality standards, there is no basis for permitting a discharge to an impaired water as if the waterbody were not impaired. Where such data are available, the permitting authority has no alternative but to use those data when calculating wasteload allocations and effluent limits. For discharges to an impaired water where ambient pollutant concentration is the cause of impairment, including background pollutant concentrations in all permit limit calculations will result in water quality-based effluent limits based on a wasteload allocation that attains the applicable criteria or a lower pollutant concentration in the effluent (*i.e.*, "criteria end of pipe" or better). Of course, a permitting authority may have new or additional data about the ambient water quality, presented by the discharger or collected by the permitting authority itself. Those additional data would allow for a more site-specific evaluation of the need for water quality-based effluent limits and of the calculation of wasteload allocations and effluent limits than was perhaps possible when a decision was made to list the waterbody on the section 303(d) list.

EPA recognizes the need for further clarification to authorities implementing the NPDES program of existing NPDES regulations and guidance on water quality-based permitting. In addition, further guidance is needed to ensure that permitting authorities adequately protect designated uses through complete consideration of both applicable narrative and numeric criteria when developing effluent limits that derive from and comply with all applicable water quality standards (§ 122.44(d)(1)(vii)). Narrative water quality criteria establish the basic foundation for attainment of designated uses, while numeric water quality criteria provide a specific quantitative translation of the necessary level of protection.

In some situations, there are no numeric criteria for a pollutant of concern or the permitting authority may determine that the existing numeric criteria are not designed to address an important endpoint of concern. When numeric criteria are developed, it is not possible to anticipate all pollutants or endpoints or derive some types of criteria that will apply generally across the Nation's waters or all of the waters of a State or Tribe. Often there are not sufficient data to develop site-specific numeric water quality criteria at the time of water quality standards adoption. Recognizing these situations, standards setting authorities adopt narrative criteria to ensure full protection of designated uses. Narrative criteria can descriptively accomplish what numeric criteria, in many cases, cannot account for quantitatively at the time water quality standards are adopted. For example, fish contamination as a result of site-specific bioaccumulation or algal blooms from nutrient over enrichment may impair a designated use, but may not be sufficiently addressed by adopted numeric water quality criteria. Applicable narrative criteria, however, can often be translated into a quantitative measurement that will protect a specific endpoint from a specific pollutant not accounted for by the applicable numeric criteria.

The NPDES regulations at § 122.44(d)(1)(v) and (vi) are particularly instructive to permitting authorities developing water quality-based effluent limits from narrative water quality criteria in order to meet the requirement that such limits derive from and comply with all applicable water quality standards. The NPDES regulations require that if a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion of an applicable narrative criterion, the permit must contain effluent limits for whole effluent toxicity. Whole effluent toxicity limits are not necessary, however, if the permitting authority demonstrates that chemical-specific effluent limits for the effluent are sufficient to attain and maintain applicable numeric *and narrative* water quality standards (emphasis added). The regulations describe how to develop water quality-based effluent limits for a specific pollutant in this situation. The permitting authority must develop effluent limits based on one of the following options: (1) use a calculated numeric water quality criterion that the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use [This criterion may be derived using a criterion proposed by the standards setting authority or an explicit policy or regulation interpreting the authority's narrative criterion, supplemented with other relevant information]; (2) on a case-by-case basis, use EPA's water quality criteria, published under Section 304(a) of the Clean Water Act, supplemented where necessary by other relevant information; or (3) under certain conditions, use an indicator parameter for the pollutant of concern.

EPA understands that permitting authorities will take a variety of approaches to interpreting designated uses and the criteria necessary to protect those uses, characterizing effluent quality, and deriving wasteload allocations and permit limits. EPA believes, however, that permitting authorities do not always quantitatively translate applicable narrative criteria, nor do they always apply the most stringent permit limit when both numeric criteria and numeric interpretations of narrative criteria are available and applicable. The NPDES regulations require permitting authorities to evaluate the reasonable potential for an effluent to cause or contribute to an excursion of *both numeric and narrative criteria* in order to evaluate whether the underlying designated use will be maintained and protected and, where necessary, derive water quality-based effluent limitations from those criteria. Where there is uncertainty about what numeric value should be used that represents either the numeric or narrative water quality criterion (the water quality value on which the effluent characterization must be based), EPA believes this uncertainty must be resolved before a permit is issued. EPA believes that, instead of resolving this uncertainty, some permitting authorities may be issuing permits with inadequate permit limits

that do not conform to the water quality-based permitting regulations.

EPA believes that further clarification and additional guidance on interpreting and implementing the water quality-based permitting regulations are needed. Rather than promulgating a new regulatory requirement that is difficult to apply and offers potentially little environmental benefit over adequate implementation of current NPDES regulations, the Agency believes that improved implementation of the current regulatory program will yield better and more significant progress in attaining and maintaining water quality standards nationwide. The Agency, therefore, is intending to achieve more consistent implementation of existing NPDES regulations and guidance. EPA intends to provide further guidance to clarify the Agency's recommendations for methods and procedures for developing water quality-based effluent limits for sources discharging a pollutant of concern to an impaired waterbody in the absence of a TMDL. EPA expects that this guidance will address approaches to deriving permit limits both in situations where there are applicable numeric criteria that address the cause of impairment and situations where there are no applicable numeric criteria that address the cause of impairment.

In summary, EPA believes that ensuring adequate and consistent implementation of existing water quality-based permitting regulations for all dischargers located on impaired waterbodies will lead to substantial improvement in the quality of the Nations's waters. EPA notes that the TMDL, once established, may include waste load allocations that may result in the need for permit limits to change.

Definitions

EPA is not promulgating the proposed revisions to the definition of a "new discharger" (§ 122.2) as well as the proposed new definition for an "existing discharger" and what constitutes a "significant expansion" of an existing discharger. EPA is not promulgating these proposed definitions because it is not promulgating the proposed offset requirement. These proposed definitions were revised or added with the intent of defining the subset of dischargers subject to the proposed offset requirement.

Fact Sheet and Statement of Basis

EPA is not promulgating revisions to the regulatory provisions on fact sheets (§ 124.56) or revisions to the regulatory provisions on statement of basis (§ 124.7) as proposed. EPA proposed changes to these provisions to clarify that the permit writer must provide all information necessary to explain the derivation of permit conditions. In particular, these proposed changes were designed to capture, in the record of the permit, the rationale for and derivation of the proposed offset requirement. Because EPA is not promulgating the offset requirement, the proposed changes regarding fact sheets and statements of basis are unnecessary. EPA continues to believe, however, that it is important to clarify the type of information that a permit writer must provide to explain the basis for and derivation of permit limits and conditions. In light of the scope of today's rule, the Agency believes that providing an adequate explanation is particularly important for permits that authorize discharges to impaired waters both prior to and after the establishment of a TMDL. EPA is therefore establishing such clarifications to the fact sheet regulations at § 124.8 and to the statement of basis regulations at § 124.7.

Section 124.8 requires that a fact sheet be prepared for certain permits identified under that section. Section 124.7 requires EPA to prepare a statement of basis for every draft permit for which a fact sheet is not prepared. The purpose of including a fact sheet or a statement of basis with the permit is to provide a mechanism that helps the permittee and any other interested party understand how and why limits, conditions, and/or requirements in the accompanying NPDES permit were derived. This information also helps the permittee and other interested parties participate in the decision-making on what will be included in the final permit; an explanation of how and why these measures were derived enables the public to participate in the final decision.

Today's rule clarifies what data and information must be placed in the fact sheet and statement of basis for permits authorizing discharges to impaired waters. Specifically, the clarifications to the fact sheet and statement of basis regulations concern information which must be provided when a permit is developed for the discharge of a pollutant into a water which is impaired for that pollutant. Where a fact sheet or statement of basis is required, the Agency believes the records for such permits must contain a full explanation of the basis for water quality-based limits including those for a pollutant(s) for which a waterbody is impaired. Specifically, the fact sheet or statement of basis must contain: (1) In cases where a TMDL has not been established for an impaired waterbody, an explanation of how permit limits and/or conditions were derived for all pollutants in the discharger's effluent for which the waterbody is impaired; and (2) in cases where a TMDL has been established for an impaired waterbody, any TMDL that has been established for a pollutant contained in the discharger's effluent; the applicable wasteload allocation derived for the pollutant under the TMDL for that discharger; and an explanation of how permit limits for the pollutant of concern were derived as well as how those limits are consistent with the applicable wasteload allocation.

EPA interprets its existing regulations to require this information already. Specifically, § 124.8(b)(4) requires the fact sheet to include "a brief summary of the basis for the draft permit conditions * * *." Section 124.7 requires the statement of basis to "briefly describe the derivation of the conditions of the draft permit and the reasons for them* * *;" Also, § 122.44(d)(1)(vii)(B) requires the permitting authority to ensure that "effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to § 130.7." Evidence of this longstanding interpretation is found in EPA's "Technical Support Document for Water Quality-based Toxics Control" where the Agency refers to the fact sheet regulations at § 124.56 and states that "the wasteload allocations along with the required long-term average and coefficient of variation used and the calculations deriving them must be included or referenced in the fact sheet. The permit limit derivation method used must also be explained in the permit documentation." (EPA/505/2–90–001, March 1991, p.110). By revising these regulations to include today's clarifications, the Agency is merely emphasizing the importance of providing data and information for permit limits and conditions contained in permits authorizing discharges to impaired waters both prior to and after the establishment of a TMDL. Making this concept completely explicit in the regulations will help to clarify EPA's previous intent behind these provisions and ensure consistency in fact sheets and statements of basis accompanying permits for discharges into impaired waters. In addition, these clarifications to the existing regulations are consistent with the provisions in the proposal requiring fact sheets and statements of

basis to include an explanation for the basis of any offset obtained in an impaired water.

Adding these clarifications also improves the ability to track whether permits requiring a fact sheet or statement of basis contain limits that derive from and comply with applicable water quality standards as well as whether the limits are consistent with an applicable TMDL. EPA intends to track information in order to monitor and report progress nationally on permitting in impaired waters. The Agency believes tracking this information supports the purposes and goals of the CWA, to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The Administrator also bears a statutory responsibility under CWA section 303(d) to ensure timely establishment of TMDLs and an obligation under CWA section 301(b)(1)(C) to ensure that permits include water quality-based effluent limits as necessary to meet water quality standards. Tracking these data will help to ensure that needed water quality-based effluent limits are placed in all permits requiring them prior to a TMDL. It will also help to ensure that TMDLs, once established, are in fact, implemented.

Revisions to the Water Quality-based Permitting Regulations

Although EPA is not promulgating the offset requirement, the Agency still believes emphasis should be placed on State antidegradation policies as part of a State's water quality standards. EPA, therefore, is promulgating the clarifying change to the water quality-based permitting regulations by adding the phrase "State antidegradation provisions" to section § 122.44(d)(1).

3. EPA Authority to Reissue Expired and Administratively-Continued NPDES Permits Issued by Authorized States

What did EPA propose? Under the NPDES program regulations, a Regional Administrator may review and object to an NPDES permit that an authorized State proposes to issue. The procedures by which a Regional Administrator may review and object to these permits are found in § 123.44. EPA proposed a new mechanism by which a Regional Administrator could trigger these procedures for two purposes. EPA proposed to grant the Regional Administrator the discretion to trigger these procedures to (1) achieve reasonable further progress toward the attainment of water quality standards in impaired waters in the absence of a TMDL; and (2) ensure that established TMDLs are, in fact, implemented. This proposed discretionary authority would be available to the Regional Administrator to achieve these goals by using the procedures in § 123.44 to address a subset of existing expired State-issued NPDES permits. This authority could be exercised when an NPDES permit that has been administratively-continued after expiration authorizes a discharge to a waterbody that does not attain and maintain water quality standards where there is a need for a change in the existing permit limits to be protective of water quality standards. In the preamble to the proposal, these permits were referred to as "environmentally-significant permits."

To achieve reasonable further progress toward the attainment of water quality standards in impaired waters in the absence of a TMDL, proposed § 123.44(k) would give EPA the discretion to treat a subset of environmentally-significant State-issued permits that are administratively-continued after expiration as the State's submission of a permit for EPA review under § 123.44. This subset of permits includes those permits that authorize discharges of a pollutant(s) of concern (*i.e.*, a pollutant(s) for which the waterbody is impaired) to a waterbody that does not attain and maintain water quality standards for those pollutants and for which EPA has not established or approved a TMDL. EPA proposed that this authority be available to the Agency where there is a need for a change in the existing permit limits. Specifically, this authority could be invoked where there is a need to include more adequate and protective water quality-based effluent limits in order to ensure that such limits derive from and comply with applicable water quality standards. See § 122.44(d)(1)(vii).

EPA proposed to assert the Agency's discretion to exercise the authority to use these procedures for a State-issued permit that meets the conditions above, where that permit has been expired and administratively-continued for more than 90 days, and where the State has failed to reissue that permit. The Agency's NPDES regulations require that an existing permittee submit a new permit application at least 180 days before an existing permit expires (§ 122.21(d)(2)). When a permittee has submitted a timely and complete application for renewal, but the State Director fails to act on the permittee's application before the existing permit expires, States' laws often provide that the existing permit continues in effect by operation of law. The permit remains in effect by operation of law until the State takes final action on the permittee's application (until the State makes a final decision to grant or deny a new permit). This is often referred to as "administrative continuance." These State laws, like the corresponding provisions in § 122.6 and the Federal Administrative Procedure Act at 5 U.S.C. 558(c), aim to protect a permittee who has submitted a timely and complete application for renewal. Such State laws protect a permittee from losing its authorization to discharge simply because the permit-issuing authority has not issued a new permit before the existing permit expires.

In some cases, administrative continuance of expired permits provides States with flexibility to prioritize their action without significant adverse impacts on receiving waters. However, administrative continuance also may lead to inappropriate delays in reissuing permits that need revision to comply with current requirements. State administrative-continuance laws typically allow an expired permit to remain administratively-continued indefinitely. Therefore, a lengthy administrative continuance of a permit for a discharge into an impaired waterbody can significantly delay the implementation of needed water quality-based effluent limitations. Under EPA's existing regulations, no mechanism currently exists by which to invoke the Agency's permit review and objection authority to address this situation. The proposed authority and the procedures to invoke this authority would provide that procedural mechanism.

The proposal provided that if, after notice, the State failed to submit to EPA a draft or proposed permit for a discharge into an impaired waterbody within 90 days following the permit expiration date, the Regional Administrator could treat the expired and administratively-continued permit as the State's submission of a draft or proposed permit for EPA review under § 123.44. For EPA to exercise this discretionary review authority, EPA would give the State and the discharger 90-days notice of its intent to treat the administrative-continuance as the reissuance of a permit containing the same terms as the permit that had expired. EPA could provide this notice at any time following the 90-day period after permit expiration. EPA's use of this new mechanism would be discretionary.

Once the environmentally-significant, administratively-continued permit was subject to review under § 123.44 procedures, EPA would be able to comment on, object to, or recommend

changes to the permit. If the State, under § 123.44(a), submitted a draft or proposed permit for EPA review at any time before authority to issue the permit passed to EPA under § 123.44(h), EPA would withdraw its notice of intent to assume permitting authority. At that point, existing rules on EPA objection to State-issued permits would govern. Therefore, EPA could take any appropriate action, including transmission of comments on or possible objection to the new draft or proposed permit submitted by the State. Furthermore, EPA's ability to invoke this authority would continue until the State issues the final permit. In other words, if a State submits a draft or proposed permit that EPA believes resolves all of the concerns under the objection but fails to issue the final permit, EPA could invoke this authority again and object to the original (expired and administratively-continued) permit.

In the proposal, the Agency stressed that the new review mechanism would be used only in those circumstances where other means of working with the State to reissue the permit failed. At any time during this process, the State is encouraged to explain to EPA the reasons for not reissuing the expired permit. The Agency will carefully consider any such explanation before proceeding with these objection procedures. Similarly, the Agency would not expect to depend heavily upon the proposed mechanism in States whose administrative continuance laws operate for limited periods of time.

As noted in the preamble to the proposed rule, § 123.44(k) would apply only to those expired, State-issued permits for which a timely and complete application for renewal has been submitted to the State, and for which State law has provided for continuation of the expired permit. The new provision would not apply to unpermitted discharges. Existing authority allows the Agency to institute judicial or administrative actions against unpermitted dischargers for discharging without a permit, even if they have submitted an application to the State and the State has not issued the permit.

EPA recognized in the preamble to the proposed rule that many administratively-continued permits for discharges into impaired waters have not been reissued and that the Agency expects to exercise its discretion to use this authority only in very rare instances and only with respect to environmentally-significant permits. The Agency intends to use its discretion under this provision as one way to help ensure that these permits will be issued in a timely manner to support the fulfillment of the CWA goals to ensure that water quality standards are maintained and protected.

EPA's authority to make these changes to its regulations was discussed at length in the proposal. EPA restates the most important elements of that discussion here. Section 301(b)(1)(C) of the Act directs EPA and the States to include water quality-based effluent limitations in NPDES permits that will enable the waterbody to meet the applicable water quality standards. Also, CWA section 501(a) allows the Agency to promulgate a regulation to implement CWA section 402(b)(1)(B) and EPA's authority in CWA section 402(d) to prevent a State from avoiding (or postponing by lengthy administrative continuance), what otherwise would be required by reissuance. The Agency bears an obligation under CWA section 402(c)(2) to ensure that State programs and State-issued permits comply with the requirements of the Act including section 402(b)(1)(B). NPDES permits may not be issued for periods exceeding five years (CWA section 402(b)(1)) and should be reviewed and revised in a timely fashion to ensure compliance with the CWA and applicable regulations.

What comments did EPA receive? The following summarizes the major comments received on the proposed authority for EPA to review, object to, and reissue, if necessary, a State-issued NPDES permit that has been administratively-continued after expiration. The majority of comments received on this proposed provision asserted that EPA does not have the statutory authority under the CWA to amend the NPDES regulations to permit the Agency to review, object to, and reissue State-issued NPDES permits that have been administratively-continued. Many of these commenters stated that Congress intended authorized States to have complete authority to administer the NPDES program and that EPA should not undermine any portion of that authority. Some commenters asserted that the only statutorily-authorized mechanism EPA has to address State-issued, administratively-continued permits is to withdraw the approval of a State's NPDES program.

Several commenters expressed their concern that EPA does not have the resources to effectively take on this additional regulatory responsibility. To support this argument, these commenters cited EPA's current permit backlog. Many also asserted that EPA does not have the expertise to do a better job than the State. These commenters argued that State agencies have a much closer relationship with their NPDES permittees and would, therefore, have a better understanding of all aspects of the permits and necessary requirements.

A number of commenters strongly supported this proposed change to the NPDES regulations. Some commenters expressed their belief that EPA already has the authority to review any and all NPDES permits. These commenters argued that EPA has an obligation under the CWA to ensure that all State programs and State-issued permits comply with the requirements of the Act. Some expressed their belief that the proposed regulatory language limits EPA's review of expired permits by allowing this authority to be invoked only for those expired permits authorizing discharges to waters that do not attain and maintain water quality standards. These commenters suggested that the authority be broadened to allow for review of all State-issued permits that have been administratively-continued after expiration. Several commenters also expressed their belief that this authority should be mandatory rather than discretionary, *i.e.*, EPA should be required to review, and reissue, if necessary, all administratively-continued permits. These commenters asserted that delaying review results in unlawful continued approval of permits authorizing discharges in violation of water quality standards and established TMDLs.

Some commenters expressed procedural concerns regarding the proposed provision. Many asserted that this proposed authority constituted a "second veto" authority because the Agency already had the chance to object to the permit after the State's notification of its intent to issue the original NPDES permit. Others suggested extending the period for States to Act after EPA notice from 90 days to two years. These commenters argued that this time is necessary to resolve all permitting issues, including the very complex process of incorporating the applicable wasteload allocations that are derived under a TMDL. Some recommended that EPA only allow this authority in waters that do not attain and maintain water quality standards where a TMDL has been established.

What is EPA promulgating today?

After considering all of the comments EPA received on the proposed mechanism and considering further the purpose of the underlying authority, EPA is today promulgating the

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regulations proposed at § 123.44(k) except as explained later in today's preamble. The Regional Administrator will generally have the discretionary authority to review, object to, and reissue, if necessary, environmentally-significant State-issued NPDES permits that have been administratively-continued after expiration. An environmentally-significant permit authorizes a discharge to a waterbody that does not attain and maintain water quality standards where there is a need for a change in the existing permit limits to be protective of water quality standards.

The availability of this authority is important for permits that authorize discharges of pollutant(s) of concern to waterbodies in the absence of an EPA approved or established TMDL. In particular, the availability of this authority, under these circumstances, is important for permits that do not contain limits and/or conditions that derive from and comply with water quality standards. Again, the Agency expects to use this authority only in rare instances as States will continue to have the primary role in administering the NPDES program. The Agency believes that this mechanism advances the goals of the CWA, to attain and maintain water quality standards. The Agency further believes that this authority is necessary to facilitate the fulfillment of EPA's statutory responsibility to include water quality-based effluent limitations in NPDES permits that meet the applicable water quality standards. (CWA section 301(b)(1)(C)).

In response to comments opposing this provision, EPA does not believe that Congress intended authorized States to have unfettered discretion with regard to NPDES permitting after authorization. Congress expressed its clear intent regarding State-issued NPDES permits in the specific text of CWA sections 402(b)(1)(B) and (c)(2) and today's rule improves implementation of those provisions. EPA action on this provision of today's rule does not undermine State authority, but rather enhances the authority and responsibility of authorized States to the extent that a discharger with an expired permit may affirmatively seek action from the State (compared to the status quo where the discharger with an expired permit has no incentive to seek action from the State).

B. New Tools To Ensure Implementation of TMDLs

1. Background

In addition to ensuring reasonable further progress toward the attainment of water quality standards prior to an EPA approved or established TMDL (described above), EPA proposed revisions that included new tools to ensure implementation of EPA approved or established TMDLs. EPA proposed explicit language describing the authority of EPA and States with approved NPDES programs to designate certain currently unregulated sources as discharges requiring NPDES permits. These sources would have included certain animal feeding operations, aquatic animal production facilities and silvicultural operations. The proposal stated that EPA could invoke this authority when necessary to provide reasonable assurance that an EPA approved or established TMDL would be implemented with respect to the particular source to be designated. Moreover, EPA proposed that it could invoke this authority when necessary to provide reasonable assurance that the designated source would achieve its allocated load reductions under the TMDL.

EPA also proposed explicit language describing the Agency's discretionary authority to review, object to, and reissue, if necessary, State-issued permits that are "administratively-continued" after expiration, authorizing discharges into waters that do not attain and maintain water quality standards with an EPA approved or established TMDL. EPA proposed that it could exercise this authority when necessary to ensure that those permits are consistent with applicable wasteload allocations under a TMDL.

What comments did EPA receive? The following summarizes the major comments received on the proposed new tools to ensure that established TMDLs are implemented. Several comments expressed support for EPA's authority to designate certain animal feeding operations (AFOs), aquatic animal production facilities (AAPFs), and silvicultural activities as subject to the NPDES program. Conversely, several commenters expressed their concern that additional prescriptive, command and control requirements would be counterproductive, impede economic sustainability, and stall progress already made at the local level. Some commenters added that the proposed rule would alienate the partners and cooperators with whom working relationships should be fostered. These commenters asserted that water quality improvements could instead be achieved by good locally lead, incentive-based programs, and voluntary best management practices. Some commenters noted that voluntary programs, including the CWA section 319 program, were inadequately funded and that additional resources directed to these programs would be more effective in achieving water quality goals than through additional regulatory mechanisms.

Many comments stated that nonpoint source pollution derived from agricultural and silvicultural activities should not be regulated. Several comments stated that Congress did not intend to regulate AFOs or silviculture activities under the Clean Water Act or subsequent amendments. EPA also received many comments regarding whether EPA has the authority to designate sources in NPDES-authorized States. These commenters expressed their belief that the proposal was designed to extract from States more rigorous (i.e. enforceable) "reasonable assurances" that nonpoint source load allocations will be met.

Some comments noted that the determination regarding whether or not to permit an AFO, AAPF, or silviculture activity should be based upon whether or not the operation or activity met the statutory definition of a point source rather than on case-by-case determinations. Several comments specifically addressed the definition of "point source" and emphasized that any discernible, confined and discrete conveyance falls within that definition and, therefore, all operations with such conveyances should be regulated as point sources. Other comments that addressed this same issue asserted that only those operations with a discrete, confined and discernible conveyance fall within the definition of point source and only those can thus be permitted.

The Agency received comments asserting that requiring permits on a case-by-case basis violates the due process rights of the permittee since there are no clear standards to apply and no hearing rights provided to challenge abusive decision-making regarding NPDES permitting. The comments further noted that permit decisions should be based upon fixed rules rather than on-the-spot decisions by Federal employees.

2. Designation of concentrated animal feeding operations (CAFOs)

What Did EPA Propose? EPA proposed changes to the NPDES regulations regarding the designation of concentrated animal feeding operations (CAFOs). EPA proposed explicit language describing the Agency's authority, in States with approved NPDES programs, to designate animal feeding operations (AFOs) as CAFOs. Once designated, these sources would be subject to NPDES program requirements. This designation authority, like the authority of NPDES-

authorized States and EPA in unauthorized States, would be discretionary. The proposed authority was limited to instances when EPA establishes a TMDL and determines designation is necessary to provide reasonable assurance that the TMDL will be implemented. If the Agency chose to invoke this authority, it would do so on a case-by-case basis and only in those instances where other means of working with the State were not successful.

The NPDES regulations for CAFOs first define the term "animal feeding operation" (AFO) and then the term "concentrated animal feeding operation" (CAFO). An operation must first be an AFO before it can be defined or designated as a CAFO. The term "animal feeding operation" is defined in EPA regulations as a "lot or facility" where animals "have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility" See § 122.23.

Once a facility meets the AFO definition, its size, determined by the total numbers of animals confined, is a fundamental factor in determining whether it is a CAFO. The animal livestock industry is diverse and includes a number of different types of animals that are kept and raised in confined situations. To define these various livestock sectors, EPA regulations established the concept of an "animal unit" (AU) (Part 122 Appendix B). An AU varies according to animal type. One animal is not necessarily equal to one AU. The regulations assign a multiplication factor for each livestock type, except poultry.

An AFO is a CAFO either if it meets the regulatory definition of a CAFO or it is designated as a CAFO on a case-by-case basis. An AFO is defined as a CAFO where more than 1,000 AUs (as defined by the existing regulation) are confined at a facility. These CAFOs are considered "large CAFOs." In general, a medium-sized AFO where more than 300 AUs are confined at a facility is also defined as a CAFO where pollutants are discharged either into navigable waters through a manmade ditch, or directly into waters that originate outside of and pass over, across, or through the facility, or come into direct contact with the confined animals. Today's regulation does not address AFOs that are defined as CAFOs under these criteria.

As mentioned, an AFO can become a CAFO subject to NPDES permitting through case-by-case designation. See § 122.23(c). Case-by-case designations are based on a Director's determination that the operation or facility is a significant contributor of pollutants to waters of the United States. In designating an operation or facility as a significant contributor of pollutants, the Director essentially finds that the facility's discharges are more like point sources already subject to NPDES regulation than those agricultural nonpoint sources that are not. EPA regulations define the term "Director" as the EPA Regional Administrator or the State Director (in States authorized to administer the NPDES program), as the context requires, or an authorized representative. See § 122.2. This definition explains that when there is an approved State program, "Director" normally means the State Director but that in some circumstances, EPA retains the authority to take certain actions even when there is an approved State program. In the proposed rule, EPA identified designation of CAFOs and concentrated aquatic animal production facilities (CAAPFs) as instances, where the context requires, that EPA retain authority in authorized States.

In making the determination that a source is a significant contributor of pollutants to waters of the United States, the Director conducts an on-site inspection of the facility and considers the following factors: (1) The size of the animal feeding operation and the amount of wastes reaching waters of the United States; (2) the location of the animal feeding operation relative to waters of the United States; (3) the means of conveyance of animal wastes and process waste waters into waters of the United States; (4) the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and (5) other relevant factors. See § 122.23(c). One such relevant factor could be the water quality of the receiving water, including the degree of nonattainment of water quality standards.

EPA has designated AFOs as CAFOs in States where it is the NPDES permitting authority although it has done so only on rare occasions. EPA believes it should be able to designate facilities in NPDES-authorized States as well, for example, to assure implementation of an EPA-established TMDL. EPA, therefore, proposed to revise § 122.23 to include explicit language describing the Agency's authority (under certain circumstances discussed below) to make such designations in instances when the State has not already done so.

The proposed regulatory change limited the exercise of this discretion to the situation where EPA establishes a TMDL for a waterbody in an authorized State and determines that designation is necessary to provide reasonable assurance that the wasteload allocations and load allocations under the TMDL will be achieved. EPA may establish a TMDL for a State where a State fails to establish a TMDL for a waterbody in accordance with its approved schedule or where EPA disapproves a State-established TMDL. States must submit each TMDL they establish to EPA for approval. EPA is today promulgating regulations to require States to submit a plan to implement the load allocations and wasteload allocations of a TMDL. EPA will evaluate the adequacy of the implementation plan (a required element of a TMDL) in determining whether to approve a TMDL. If EPA disapproves a TMDL based on a determination that the implementation plan is inadequate EPA would then need to establish the TMDL itself, including an implementation plan.

The implementation plan must provide reasonable assurance that the control actions and/or management measures required to implement the load allocations and wasteload allocations of the TMDL will be put in place and the load allocations and wasteload allocations will be met. Thus, EPA may disapprove the TMDL if the Agency determines that the wasteload allocation or load allocation is not appropriate, or the implementation plan does not provide such reasonable assurance. For example, EPA may determine that the implementation plan lacks reasonable assurance that certain AFOs will achieve and maintain their respective pollutant load allocations. Under these circumstances, EPA proposed that it would work with the State to provide the necessary reasonable assurance. EPA might suggest to the State, for example, that certain additional management measures be put in place to control the water quality impacts from AFOs contributing to the water quality impairment necessitating the TMDL. EPA also might recommend that certain improvements be made to existing State programs, whether voluntary or regulatory, to control water quality impacts from such sources.

If working with the State to achieve reasonable assurance has failed, however, EPA proposed that it would disapprove the TMDL and thereafter establish the TMDL, including an implementation plan. Under these

circumstances, EPA proposed that the Agency may then determine that an AFO is a significant contributor of pollutants to waters of the United States. EPA may also determine that the best way for EPA to provide reasonable assurance that such feedlot pollutant sources achieve and maintain assigned pollutant load allocations is through the issuance (and enforcement) of an NPDES permit. Under the proposal, EPA could then invoke its designation authority and require the AFO to seek an NPDES permit as a CAFO.

What comments did EPA receive? In addition to the comments noted above under the section titled "What Comments Did the Agency Receive on These Proposed New Tools," the Agency received several comments specific to the proposed designation of animal feeding operations. The following discussion summarizes some of the major comments received on this provision. EPA received several comments supporting the proposed authority to designate certain AFOs. Many commenters also recommended that using its designation authority, the Agency correct NPDES-authorized States that fail to properly permit all large AFOs as CAFOs.

Many commenters, on the other hand, opposed EPA designation in NPDES-authorized States. These commenters asserted that States should have the lead in regulating AFOs and expressed concern that the proposed rule would result in increased coordination costs for Federal and State governments. Others expressed concern that EPA designation of AFOs in NPDES-authorized States would not be consistent with a State's designation authority. These commenters asserted that EPA is not required to conduct the same analysis as a State when deciding whether to require a permit.

Several comments stated that EPA could not intervene in NPDES-authorized States unless it decides to withdraw the NPDES program. Commenters stated that EPA designation in authorized States would conflict with State decisions regarding its NPDES program, for example, by overriding a State's decision not to regulate certain AFOs. One commenter expressed concern that the rule could result in inconsistent permitting decisions for similar sources located in different EPA Regions.

EPA also received comments recommending that a limit or threshold level be established for the number of small AFOs that would be designated on a case-by-case basis under this rule. These commenters suggested that such a limitation would place a cap on the potential strain to State resources caused by the inclusion of a large number of additional facilities that would be added to the NPDES program. Some comments stated that only AFOs that discharge pollutants from a point source—a discrete, confined, discernable conveyance—can be permitted whereas nonpoint source dischargers could not. Others commented that Congress only intended to regulate large AFOs.

What is EPA promulgating today? In response to comments received on the proposed rule, EPA is not taking final action on the proposed changes to the NPDES regulations applicable to AFOs and CAFOs at § 122.23.

3. Designation of Concentrated Aquatic Animal Production Facilities (CAAPFs)

What did EPA propose? EPA proposed changes to the NPDES regulations regarding the designation of concentrated aquatic animal production facilities (CAAPFs). EPA proposed explicit language describing its authority, in States with approved NPDES programs, to designate aquatic animal production facilities (AAPFs) as CAAPFs. Once designated, these sources would become subject to NPDES program requirements. This designation authority would be discretionary and if invoked, would be used on a case-by-case basis. The proposed authority was limited to instances where EPA is establishing a TMDL and the Agency determines that designation is necessary to provide reasonable assurance that the TMDL will be implemented. The Agency's purpose and basis for this action is nearly identical to the purpose and basis explained for EPA designation of CAFOs in NPDES-authorized States.

Under existing regulations, concentrated aquatic animal production facilities are subject to the NPDES program. As with AFOs, one situation in which an AAPF is considered "concentrated" and thus subject to NPDES permitting, is when the Director so designates the operation or facility on a case-by-case basis. See § 122.24(c). As with case-by-case designations of CAFOs, case-by-case designations of CAAPFs are based on a determination that the operation or facility is a significant contributor of pollutants to waters of the United States. In designating an operation or facility as a significant contributor of pollutants, the Director essentially finds that the facility's discharges are more like point sources already subject to NPDES regulation than agricultural nonpoint sources that are not.

In making the determination that an AAPF is a significant contributor of pollutants to waters of the United States, the Director conducts an on-site inspection of the facility and considers the following factors: (1) The location and quality of the receiving waters of the United States; (2) the holding, feeding and production capacities of the facility; (3) the quantity and nature of the pollutants reaching waters of the United States; and (4) other relevant factors. See § 122.24(c). The proposed regulatory change would restrict EPA's authority to exercise the discretion to designate CAAPFs to the same limiting situations for designating CAFOs, specifically, when EPA establishes a TMDL for a waterbody in an authorized State and determines that designation is necessary to provide reasonable assurance that the wasteload allocations and load allocations under the TMDL will be achieved.

In addition, the preamble to the proposed rule offered an interpretation of the distinction between "aquaculture" and "concentrated aquatic animal production facilities." Based on additional consultation, today's preamble offers a clarification to that interpretation as explained below.

What comments did EPA receive? In addition to the comments noted above under the section titled "What Comments Did EPA Receive on These Proposed New Tools," the Agency received several comments specific to the designation of CAAPFs. EPA received very few comments addressing issues relevant solely to the designation of CAAPFs. The following is a summary of those comments. One comment expressed support for the proposal but suggested that the scope of designation authority should be broadened. This commenter expressed concern that there were too many exemptions under which a facility would not be covered under the NPDES program and that the proposal should be revised to allow for designation of all CAAPFs in every instance.

Most of the comments received opposed EPA's proposal to designate certain AAPFs in those instances where other means of working with a State have failed. One commenter expressed concern that the proposal was a questionable expansion of EPA's authority to supercede current State actions that efficiently and economically regulate CAAPFs. This commenter stated that States with large aquatic production industries already have a comprehensive regulatory framework, enforcement authority and compliance assistance, as well as voluntary incentives, including operator

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training and certification, complaint systems, and coordination with various State agencies.

What is EPA promulgating today? In response to comments received on the proposed rule, EPA is withdrawing the proposed changes to the NPDES regulations applicable to AAPFs and CAAPFs at § 122.24.

By today's preamble, however, EPA offers a clarification of its interpretation of the distinction between "aquaculture" and "concentrated aquatic animal production facilities." The preamble to the proposed rule differentiated between "aquaculture" and "aquatic animal production facilities" based on the location of aquatic stock confinement relative to jurisdictional waters of the United States. The proposal indicated that with respect to "aquaculture," aquatic stock is confined within jurisdictional waters whereas aquatic stock in "aquatic animal production facilities" is not confined within jurisdictional waters but the facilities discharge to jurisdictional waters. Upon closer review of the original CWA legislative history, the regulations for aquaculture and aquatic animal production facilities, and past Agency statements on the matter, EPA today clarifies the statements in the preamble to the proposed rule. As an initial matter, the Agency notes that it did not intend to amend or revise existing EPA interpretations regarding the scope of the two regulations, but merely to provide clarification for the reader. EPA regrets any confusion fostered by the proposal.

Section 318 of the CWA specifically addresses "aquaculture." The CWA does not specifically address "concentrated aquatic animal production facilities." The latter are a type of "concentrated animal feeding operation," which the CWA explicitly identifies as a "point source." The legislative history is clear that "aquaculture," as the term is used in Section 318 of the Act, is intended to refer to controlled conditions at an approved aquaculture project, i.e., innovative reuse of effluent discharged from municipal and/or industrial sources. In 1977, EPA explained that aquaculture projects were viewed as one way to put existing pollution to productive use. (42 FR 25478, May 17, 1977.) ("aquaculture projects using pollutants within navigable waters will be unique since discharges in excess of those permitted pursuant to effluent limitations are to be allowed within the project area."). When EPA proposed the aquaculture regulations in August 1978, the proposed regulatory text provided:

> The regulations are intended to authorize, on a selective basis, controlled discharges which could otherwise be unlawful under the Act in order to determine, in a carefully supervised manner, the existing and potential feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially and to encourage such projects, while at the same time protecting the other beneficial uses of the waters.

Section 125.15(b) (as proposed at 43 FR 37132 on August 21, 1978). The Agency further proposed that:

> These regulations do not apply to those aquaculture facilities such as fish hatcheries, fish farms, and similar projects which do not use discharges of wastes from a separate industrial or municipal point source for the maintenance, propagation and/or production of harvestable freshwater, marine, or estuarine organisms. Such projects are regulated directly as aquatic animal production facilities under section 402 of the Act.

Section 125.15(c) (as proposed on August 21, 1978). The 1978 proposal was nearly identical to the aquaculture regulations then in existence under Part 115. Its purpose was to incorporate the Part 115 regulations into the NPDES permit regulations, reflecting the Agency's intent to merge aquaculture permitting into the NPDES program following changes to Section 318 in the 1977 CWA amendments. While the current regulations addressing aquaculture have changed slightly and been renumbered, the proposed regulatory text quoted above most clearly illustrates the distinction between "aquaculture" within the meaning of CWA section 318 and regulated under § 122.25, and "concentrated aquatic animal production facilities" regulated under § 122.24. Therefore, by today's final rule, EPA is clarifying that the distinction between "aquaculture" and "concentrated aquatic animal production facilities" is not based on the location of aquatic stock confinement relative to jurisdictional waters of the United States. Most commercial fish husbandry that the layperson refers to as "aquaculture," including fish farms located in waters of the U.S., is subject to NPDES regulation under the rubric "concentrated aquatic animal production facility." As with feedlots, an "aquatic animal production facility" is subject to regulation under the NPDES permitting program only if the facility is "concentrated" according to the NPDES regulations.

4. Designation of Point Source Storm Water Discharges Associated With Silvicultural Operations

What did EPA propose? The proposed regulations would have provided States authorized to administer the NPDES program and EPA with the opportunity to use the NPDES program to manage pollution from forestry operations under certain circumstances. As proposed, a State could designate a forestry operation not already subject to NPDES permit requirements, as requiring an NPDES permit only (1) where the operation includes a physical "discharge" of storm water from a discrete, confined, discernible conveyance (a physical point source); and (2) upon a determination that the operation was a "significant contributor of pollutants" or was contributing to the violation of a water quality standard. The proposal would have also provided EPA with this designation authority. The Agency's use of this authority, however, would have been limited to instances where the Agency establishes a TMDL and designation is deemed necessary to provide "reasonable assurance" that a source would meet its allocated load reductions under the TMDL.

Under the proposed regulations, pollutants from forestry operations that do not cause significant water quality problems would not be subject to the NPDES program. Even where forestry activities were causing significant water quality problems, State permitting authorities would have retained the option of determining that approaches other than the NPDES program, such as State voluntary or alternate regulatory programs, would be more effective and sufficient to restore the health of the polluted waterbody.

As proposed, where a State identifies a polluted waterbody, the State would be required to develop a TMDL to restore the water and provide "reasonable assurance" that the necessary pollution controls would actually be implemented. States authorized to administer the NPDES program would have, among others, the option to issue an NPDES permit for a point source discharge of storm water associated with a forestry operation to provide "reasonable assurance" that the pollution control measures would be implemented. EPA noted in the proposal that the Agency expected that States would use this permit option only to address "bad actors" who had not responded to various non-regulatory approaches and were not adequately implementing best management

practices to control water quality impacts.

The Clean Water Act requires that EPA review and approve TMDLs as adequate to restore the health of polluted waters. Where a State TMDL is not adequate and EPA disapproves the TMDL, EPA is required to establish the TMDL. In cases where EPA establishes a TMDL that identifies silvicultural activities as a significant source of pollutant loadings, the Agency proposed that it would work with the States and rely on voluntary, incentive-based approaches, where such approaches are proven to be effective, to provide reasonable assurance that the loads and wasteloads allocated in the TMDL would be achieved. Where working with the State did not prove successful, the proposed regulations would have allowed EPA to designate, as a point source discharge, the addition of pollutants from forestry activities that discharge storm water through a discrete, confined, discernible conveyance. As discussed in the preamble to the proposed regulations, EPA expected that the Agency would use this authority only as a last resort. To accomplish this objective and achieve the intended result in the least burdensome fashion, EPA proposed changes to the silviculture and storm water permit provisions at §§ 122.27 and 122.26.

Forests have a significant role in protecting the quality of our Nation's waters. Covering about one-third of the Nation's land area, forests are the source of about two-thirds of the Nation's runoff, excluding Alaska. Vegetated forested lands help to dissipate rain, reduce flooding and slow storm water runoff. In addition, forested lands help to refill underground aquifers, cool and cleanse water, and provide critical habitat for fish and wildlife. Forests also improve our quality of life by providing abundant recreational opportunities.

EPA recognized that implementing properly designed forest management plans can result in silvicultural activities that are both profitable and protective of water quality. These plans can be designed to include mechanisms that would accommodate the full range of forestry activities that might otherwise pollute waters (*e.g.*, by designating special areas for protection; planning the proper timing of forestry activities; describing best management measures for road layout, design, construction, and maintenance; and identifying the most appropriate methods for harvesting and forest regeneration). EPA also recognized that in many parts of the country, Federal agencies, States, and professional forest managers are implementing effective forest management plans combining a range of tools including education, financial assistance, and regulatory requirements.

Despite these public and private forest management efforts, silvicultural activities may yet contribute to water quality impairments and aquatic habitat loss (*e.g.*, when operators resist such forest management efforts or when forest management efforts become outdated or unresponsive to current conditions). Impairments and habitat loss may occur due to sediment and nutrient pollutant loadings, adverse impacts to runoff and infiltration patterns, and water temperature increases. Discharges due to improper road design, location, maintenance and use also can impair aquatic ecosystems and result in physical alterations in stream channel morphology and substrate composition, stream bank destablization, changes in flow regime, habitat fragmentation, etc. ("Environmental Assessment to the Interim Rule: Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction and Reconstruction in Unroaded Areas," February 1999, USDA Forest Service). Sedimentation due to uncontrolled discharges from silviculture activities, for example, discharges from forest road building, threatens water quality and important aquatic habitat.

In 1998, 32 States identified forestry as a source of water quality problems that affect more than 20,000 miles of rivers and streams, 220,000 acres of lakes, and 15 square miles of coastal waters. This data was derived from an unpublished analysis using data from the 1998 section 303(d) lists and the CWA section 305(b) reports. The Agency believes that these numbers underestimate the number of waters impaired by forestry operations due to a number of data limitations.

EPA proposed changes to the NPDES regulations for silviculture and for storm water discharges in order to address this potential source of significant impairment. Most discharges of storm water associated with road building and other land disturbing activity that disturbs more than five acres of land are currently regulated under the NPDES permitting program pursuant to the NPDES permit regulations for storm water discharges at § 122.26. EPA published the storm water discharge application regulations in 1990. After promulgation of those regulations, and in discussions with stakeholders, it became clear to EPA that, at a minimum, there was a perception of a "gap" in regulatory treatment of silviculture roads compared to all other types of roads. This regulatory gap arose based on the NPDES regulation addressing silvicultural sources which identified, among other things, silvicultural "road construction and maintenance from which there is natural runoff" as a nonpoint source silvicultural activity.

The Agency believes that it acted within its delegated authority when it proposed to remove this sentence from the regulation. EPA proposed that, under limited circumstances, when a silvicultural activity results in a "physical" point source discharge that can and should be regulated under NPDES permits, like those for other storm water discharges, States and EPA should have the option of using the NPDES program as a means to address the water quality impacts from a significant remaining, unregulated source of pollutants causing adverse impacts to water quality. Specifically, the Agency believed that this option should be available to address those sources that are doing a poor job of implementing measures designed to prevent water quality problems.

The proposal would have provided all NPDES permitting authorities with sufficient authority to regulate "physical" point source discharges from silvicultural sources not already subject to NPDES permit requirements. Again, the Agency hastens to note that the existing limitation on regulation of discharges from silvicultural sources was not compelled by the CWA. EPA promulgated the existing regulation on silviculture based on the interpretive authority for rulemaking under CWA section 501(a), which authorizes the Administrator to prescribe regulations that are necessary to carry out her functions under the Act. The CWA preserves the rights of States to experiment with alternative regulatory (and non-regulatory) approaches to control nonpoint sources of pollution. The CWA does not provide specific legal authority for EPA to regulate nonpoint sources in a way that would assure the attainment of water quality standards. Such authority is reserved for the States.

Under the proposed rule, EPA would have deleted a sentence from the existing NPDES regulations that identifies a series of nonpoint source silvicultural activities (§ 122.27(b)(1)). While most such activities, in fact, can result in diffuse runoff (*i.e.*, a nonpoint source of pollutants), some discharges from some silvicultural activities may physically resemble point source discharges. As early as 1976, the Agency

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struggled to articulate a general definition for the term nonpoint source. (41 FR 24709, 24710 col.2, June 18, 1976). There was, and perhaps remains, however, no precise and absolute definition. *Id.* In the 1976 preamble, EPA relied on three criteria to characterize nonpoint sources: Pollutants discharged are induced by natural processes; pollutants discharged are not traceable to any discrete or identifiable facility; and pollutants discharged are better controlled through the utilization of BMPs, including process and planning techniques. As evidenced by implementation of the NPDES permitting program for storm water discharges associated with construction, the first and third of these criteria are probably less meaningful in the current context of silvicultural road building and maintenance.

As explained in the preamble to the proposed rule, EPA premised the existing silviculture regulation (at § 122.27) on a judicial decision that held that EPA could not exempt any point sources from the NPDES permitting program. *See Natural Resources Defense Council, Inc.* v. *Costle*, 568 F.2d 1369 (D.C. Cir. 1977). EPA interprets the 1987 storm water amendments in CWA section 402(p)(1) to essentially supercede this judicial finding and create a new category of "unregulated point sources." In place of this regulatory gap from permitting for silvicultural discharges, the proposed rule would allow for case-by-case regulation of a new category of "unregulated point sources" associated with the silvicultural activities that are currently unregulated under the NPDES program. Note that "return flows from irrigated agriculture" and "agricultural storm water" are "statutory" nonpoint sources (based on CWA section 502(14)). As such, EPA can not and would not attempt to regulate those statutory nonpoint sources under the NPDES permitting program. The Agency emphasizes that the proposal would have affected only those currently unregulated silvicultural activities that cause "physical" point source discharges. As discussed previously, except for some CAFOs, a term specifically included in the definition of "point source," the NPDES permit requirement only applies when a particular source has the "physical characteristics" of a point source discharge. As a threshold matter, regulation as a point source requires a "discrete, confined, and discernible conveyance." CWA section 502(14), 33 U.S.C. section 1362(14).

In the 1987 amendments to the CWA, Congress established a general moratorium against permitting discharges composed entirely of storm water in CWA section 402(p)(1). As such, the section created the category of "unregulated" point sources of storm water described above. Unregulated point sources of storm water are point sources to which the NPDES permitting program does not apply. CWA section 402(p)(2) identified discharges that are *not* subject to the moratorium, including discharges from municipal separate storm sewer systems serving populations over a certain size, as well as storm water discharges associated with industrial activity.

Of particular interest, CWA section 402(p)(2)(E) specifically identifies a category of discharges—other than municipal or industrial storm water discharges—that can be regulated on a case-by-case at some future time. EPA regulations that implement section 402(p)(2)(E) are found at § 122.26(a)(1)(v). Section 402(p)(2)(E) is the basis and the only basis, upon which physical *point source discharges* from the currently unregulated silvicultural activities would be required to obtain an NPDES permit. Designation under section 402(p)(2)(E) is only available for point sources. The sentence in EPA's current silviculture regulation that identified nonpoint source discharges from silvicultural activities enabled inconsistent interpretations regarding whether discharges from such activities, which otherwise would appear to add pollutants from a discrete, confined, discernible conveyance, could be designated under section 402(p)(2)(E). EPA proposed deletion of this sentence to clarify the circumstances when such sources can and should be regulated under the NPDES permitting program for storm water discharges.

As noted above, the reason EPA proposed to remove the sentence describing silvicultural nonpoint sources was to provide States with an additional tool to manage water quality impacts from these sources as well as to ensure that EPA could implement a TMDL that the Agency might be required to establish in the event of State default. Accordingly, the proposed rule would have imposed a restriction on EPA that would not exist for States. Specifically, the Agency could not have designated discharges from currently unregulated silvicultural activities except in instances where EPA must establish a TMDL. This additional tool would be provided to NPDES-authorized States and to EPA under the combination of the existing storm water regulations which allow for case-by-case designation of certain storm water discharges at § 122.26(a)(1)(v) and by amending the silviculture regulations at § 122.27.

EPA notes that it did not provide an accurate cite for one of the documents cited in the proposal that described the impacts of silviculture on water quality. The Agency did not intend to misrepresent the views of the authors of the cited publication. EPA erroneously cited the wrong document authored by one of the same authors of a document in the same year (1989). The paper that the Agency intended to cite is titled, "An Overview of Nonpoint Source Pollution in the Southern United States" authored by Neary, D.G., Swank, W.T., Riekerk, H., which was published in "Proceedings of the Symposium: Forested Wetlands of the Southern U.S.," July 12–14, 1988, Orlando Fl., U.S. Forest Service. General Technical Report SE–50, published January 1989.

The proposed rule contained the statement, "silviculture contributes approximately three to nine percent of nonpoint source pollution to the Nation's waters." EPA meant to state that, based on State assessments reported in the 1988 section 305(b) Report to Congress (EPA Document #440–4–90–003), three to nine% of assessed rivers are impaired by silviculture. The Neary *et al.* document that the Agency intended to cite supports this statement. This document contains the statement that, "except for two [of the reported] states, (Arkansas and Louisiana), silviculture was responsible for <8% of the impacts on surface waters." This number falls within the range reported by the States in the 1988 section 305(b) report.

What comments did EPA receive? In addition to the comments noted above under the section titled "What Comments Did EPA Receive on These Proposed New Tools," the Agency received many comments specific to the designation of silvicultural activities. The following discussion summarizes these comments. An overwhelming number of commenters had a basic misunderstanding of what the Agency proposed. These commenters misinterpreted the proposal to mean that, upon promulgation of the rule, each and every existing and future silvicultural operation would be required to obtain an NPDES permit. Based on this misunderstanding, these commenters also misunderstood the proposal as a mechanism that would unfairly and unnecessarily regulate even those operators that are adequately implementing appropriate measures to protect water quality. As discussed above, the scope of the proposed authority was much narrower, it only

applied in very limited circumstances, and would have been a mechanism to address bad actors only.

Several commenters claimed that obtaining and issuing NPDES permits would be an economic burden to the forestry industry as well as the government and that the money to obtain and issue these permits would not be well spent because it would not produce a meaningful change in water quality. Claiming that forestry has been reported as only a minor source of water quality pollution, commenters further claimed that EPA lacks the data to support this regulatory change. Commenters also asserted that the economic analysis to the proposal underestimated the costs to landowners of obtaining an NPDES permit. Many commenters expressed their belief that existing regulatory and voluntary State Forest Management programs are adequate to manage the environmental impacts from silviculture and that the proposal, if finalized, would undercut these programs.

A significant number of commenters asserted that EPA lacks the authority to make the proposed regulatory changes. These commenters disagreed with the Agency's position that the CWA provides adequate statutory authority to make these revisions. Several commenters stated that EPA did not have the authority to redefine general silvicultural practices as point sources unless there was an associated conveyance. Other commenters argued that EPA cannot and should not shield sources with discharges from discrete, discernible, confined conveyances from NPDES permit requirements. These commenters asserted that all sources with discharges from discrete, discernible, confined conveyances are and should be required to obtain NPDES permits. EPA also received a significant number of comments that asserted that EPA does have the statutory authority to make these regulatory changes. These commenters pointed out that in the absence of clear statutory language excluding silvicultural activities from the definition of a point source, EPA has the authority to regulate them as point sources. These commenters also highlighted the court decision in *NRDC* v. *Costle*, where the U.S. Court of Appeals for the D.C. Circuit explicitly held that "the power to define point and nonpoint sources is vested in EPA." 568 F.2d at 1382.

The Agency received numerous comments in support of the proposed authority to designate certain silvicultural operations as requiring NPDES permits. Several commenters provided data and case examples describing the need to permit silvicultural activities including data describing the adverse impacts to water quality from increased sediment loadings, road construction and the use of herbicides. Many commenters stated that the proposed authority was too restrictive to provide meaningful environmental results. These commenters encouraged EPA to expand designation authority to allow EPA to designate a source outside of the context of a TMDL and to expand the authority to apply universally to sources discharging into any water of the United States.

Many commenters encouraged EPA to require NPDES permits for all silvicultural operations that discharge pollutants from a point source to waters of the United States as opposed to the proposed case-by-case approach. Several commenters expressed their concern that the proposed case-by-case designation authority was retroactive in effect because designation was limited to instances where the State or EPA had already determined that the operator is a significant contributor of pollutants or contributes to a violation of water quality standards. These commenters supported a more proactive approach that would place less of a burden on the State or EPA. To preserve unspoiled waters, many also suggested that the authority be available to the State or EPA to designate sources currently located on these waters and those sources that wish to locate on these waters in the future.

Commenters expressed their concern regarding the potential for citizens to petition the State or EPA to issue an NPDES permit to silviculture operators. They were concerned that citizen suits would be costly and cause significant delays in operation. Conversely, some commenters supported the ability for citizens to use the petition process so that citizens can help to identify silvicultural operations that are causing significant water quality problems. Others expressed concern that sources undergoing land clearing activities incidental to activities such as farming or construction and development would claim that they are conducting silvicultural activities and therefore would be exempt from NPDES permit requirements (unless and until designated).

Some commenters asserted that the proposed requirement would override State control over land use decisions. These commenters asserted that requiring an NPDES permit constituted a Federal "taking" of a private landowner's use of property. Commenters also suggested that States (and the sources within States) that have effective and adequately protective forestry programs should be exempt from the effects of the proposed provisions. These commenters suggested that EPA develop reporting criteria that allow for a reasoned determination of whether a State is demonstrating the level of effort sufficient to warrant a determination that its forestry program provides "reasonable assurance" that water quality will be protected.

What is EPA promulgating today? In response to comments received on the proposed rule, EPA is not taking final action in today's rule on the proposed changes to the NPDES regulations applicable to silviculture at §§ 122.26 and 122.27. EPA has no plans at present to repropose changes to the silviculture exemption or to finalize the August 1999 proposal, but will continue to evaluate how to best address the water quality impacts from forestry.

5. EPA Authority To Reissue Expired and Administratively-Continued NPDES Permits Issued by Authorized States

What did EPA propose? As discussed in Section III.A.3, Reasonable Further Progress Toward Attaining Water Quality Standards in Impaired Waterbodies in the Absence of a TMDL, of this preamble, EPA proposed to grant the Regional Administrator the discretion to trigger the objection procedures of § 123.44 to ensure that established TMDLs are, in fact, implemented.

What comments did EPA receive? The comments received on this proposal are discussed in III.A.3, Reasonable Further Progress Toward Attaining Water Quality Standards in Impaired Waterbodies in the Absence of a TMDL above.

What is EPA promulgating today? After carefully considering all of the comments EPA received on the proposed mechanism and considering further the purpose underlying the authority, EPA is today promulgating proposed § 123.44(k) as reflected in today's **Federal Register**. A discussion of EPA's authority to review, object to, and reissue State-issued NPDES permits that have been administratively-continued authorizing discharges to impaired waters is contained in Section III.A.3. of this preamble and below. The scope of this provision is consistent with what the Agency proposed on August 23, 1999 except as discussed below. The Regional Administrator will generally have the discretionary authority to review, object to, and reissue, if necessary, environmentally-significant State-issued NPDES permits

that have been administratively-continued after expiration. An environmentally-significant permit authorizes a discharge to a waterbody that does not attain and maintain water quality standards where there is a need for a change in the existing permit limits to be protective of water quality standards.

The availability of this authority is important for permits that authorize discharges of pollutant(s) of concern to waterbodies where a TMDL has been established but not implemented through permits. Under these circumstances, the availability of this authority for these permits is important because they do not contain limits and/or conditions that are consistent with applicable wasteload allocations established in a TMDL. In response to comments supporting the proposal and suggesting that EPA commit to action more strongly, EPA has modified the proposed rule as it relates to the operation of the provision after the establishment of a TMDL. In § 130.32(c)(1)(ii) of today's rule, EPA commits to exercise its authority to act on expired State-issued permits (when State law "administratively continues" the expired permit) to ensure the incorporation of effluent limitations (based on the wasteload allocation(s) in a TMDL) into the NPDES permit. EPA commits to exercise this authority to ensure that such limits are incorporated into the permits within two years from the expiration of the permit term, or, when the permit term expired prior to the establishment of the TMDL, within two years from the establishment of the TMDL. In order to ensure that these limits are incorporated into the permits, EPA intends to monitor the State's progress in incorporating the appropriate limits into the permits within one year after the permit expires or, when the permit expired prior to establishment of the TMDL, within one year of establishment of the TMDL. In accordance with the new provisions of § 130.32(c)(1)(ii), if EPA concludes that the State will not issue the permit within the applicable timeframe, with the appropriate limits, EPA will trigger these review and objection procedures. These provisions apply only to TMDLs approved after the effective date of today's rule.

Implementation plans for TMDLs (described in the revisions to Part 130 elsewhere in today's **Federal Register**) need to contain a schedule for reissuing or revising relevant NPDES permits as expeditiously as practicable in order to incorporate effluent limits consistent with the wasteload allocation(s) in the TMDL. Where EPA is the NPDES permitting authority, EPA must reissue or revise the permits within two years after the establishment of the TMDL. EPA will rely on existing regulations at § 122.62(a)(2) as a basis to modify permits during their term to revise existing WQBELs or incorporate new WQBELs to implement the wasteload allocation(s) in the TMDL (which, in turn, implement existing water quality standards). EPA explained the operation of § 122.62(a)(2) in an earlier rulemaking preamble. (45 FR 33290, 33315 col. 1, May 19, 1980). A TMDL that implements a water quality standard where that water quality standard was in existence at the time of permit issuance represents "new information" that did not exist at the time of permit issuance. This justifies new permit requirements to implement those standards. [**Note:** Where a TMDL implements a water quality standard and that water quality standard is revised or issued after the issuance of a permit, the applicable regulation would be § 122.62(a)(3) rather than (a)(2). Thus, modification of the permit prior to expiration would not be authorized unless (A) the permit condition to be modified was based on EPA approved or promulgated water quality standards, (B) EPA has approved a State action with regard to the water quality standard on which the permit condition was based and (C) the permittee requests modification in accordance with § 124.5 within 90 days of the **Federal Register** notice of the action on which the request is based.]

The Agency believes that this mechanism is necessary to support the goals of the CWA to attain and maintain water quality standards. The Agency further believes that this authority is necessary to facilitate the fulfillment of EPA's statutory responsibility to ensure timely establishment and implementation of TMDLs and to ensure that permits include water quality-based effluent limitations that will enable the waterbody to meet the applicable water quality standards. CWA sections 303(d) and 301(b)(1)(C). The wasteload allocations derived from the TMDL provide the basis for the water quality-based effluent limitations that permits must contain. EPA has concluded that the time frames discussed above are necessary to ensure timely TMDL implementation.

IV. Costs of the Rule

The incremental costs associated with today's rule are contained in "Analysis of the Incremental Cost of Final Revisions to the Water Quality Planning and Management Regulation and the National Pollutant Discharge Elimination System Program". **You should read that document for a complete description of the cost estimates and the basis for those estimates.** The following is a summary from that report.

Revision to the current program	Annualized cost (2000 $ in millions/yr)
Revisions to the listing requirements	$0.066
Revisions affecting the content and development of TMDLs	13.708
Revisions requiring TMDLs to be developed within 10 years	9.030
EPA reissuance of state-issued expired and administratively continued permits	0.078
Total annualized cost	$22.882

For the Water Quality Planning and Management Rule (changes to part 130), EPA estimated the incremental costs that will accrue from today's regulation over the period from 2000 through 2008. This period of analysis was chosen because it spans a 10 year period, the full time during which most TMDLs will be developed for waterbodies included on the 1998 section 303(d) lists of impaired waters. Today's final rule allows States, Territories, and authorized Tribes up to 2010 to establish all the TMDLs for waterbodies included on the 1998 section 303(d) list; therefore, the actual costs may be lower than estimated. The incremental costs that are analyzed are the additional requirements of today's rule above the current requirements associated with developing all the section 303(d) lists and all the TMDLs that will be completed during this period. In accordance with today's rule, section 303(d) lists will be developed in 2002, in 2006, and in 2010. During this period, all TMDLs will be developed for waterbodies on the 1998 lists, most of the TMDLs will be developed for waterbodies newly listed in 2002, some of the TMDLs will be developed for waterbodies newly listed in 2006, etc.

As shown above, the net annualized cost that is attributable to the revisions to the listing requirements over and above the current program amounts to about $0.066 million. This reflects the net of the additional cost attributable to the listing requirement (about $0.229 million) offset by the annualized savings associated with extending the listing cycle from two years to four years (about $0.163 million). The additional cost of revised requirements for developing TMDLs is estimated to be about $13.708 million annually for the TMDLs that will be developed for waterbodies on

the 1998 303(d) list. For perspective, these additional costs represent about a 9% increase in the baseline costs of developing these TMDLs as required under the current program prior to the revision of the Water Quality Planning and Management Rule. Finally, the revised requirements are expected to result in accelerating the development of about 17% of the TMDLs for the 1998 section 303(d) lists. The additional cost associated with developing these TMDLs on a more rapid schedule than would have occurred in the baseline is estimated to be about $9.03 million annually through 2008.

For the provision in the new regulation affecting the NPDES program (parts 122, 123, and 124), EPA estimated the incremental costs relating to EPA reissuing expired State-issued and administratively continued permits where necessary to implement a TMDL. The analysis of the incremental costs of the NPDES program revision is limited to the incremental costs that the regulation will impose in connection with waterbodies on the current section 303(d) list and associated sources. TMDLs for waterbodies on the 1998 section 303(d) lists are assumed to be developed during the period from 2000 through 2008.

As shown above, the total annualized cost associated with the provision is estimated to be $0.078 million per year. Costs to State and Federal permit authorities include the additional permitting and evaluation burdens associated with the proposed revision. The annualized costs shown above reflect all costs projected to be incurred from 2000 onward and are presented in March 2000 dollars.

V. Regulatory Requirements

A. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business according to the RFA default definition for small business (based on the Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. For purposes of the RFA, States, Territories and tribal governments are not considered small government jurisdictions since they are independent sovereigns.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's rule established requirements applicable only to EPA, States, Territories, and authorized Tribes. Thus, EPA is not required to prepare a regulatory flexibility analysis.

Court decisions make it clear that the RFA imposes no obligation on an agency to prepare a small entity impact analysis of the effect of a rule on entities which the rule itself does not regulate. Rules which do not regulate small entities directly—rules which affect the decisions made by other regulators for example—do not require an analysis of such effects. Therefore, the key issue in deciding whether EPA must prepare a regulatory impact analysis here is whether today's rule will "regulate" small entities. Court decisions provide further guidance on when, for purposes of triggering the RFA requirement, a small entity is not subject to a rule or not regulated by a rule.

For example, the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Federal Energy Regulatory Commission (FERC) was not required to analyze the effects of two rules on small entities that were not subject to the requirements of the rules. In the first case, the rule had the effect of increasing the rates that electric utilities could charge their wholesale customers for electricity. The agency certified that the rule would not have a significant impact on a substantial number of small entities because virtually none of the utilities it regulated were small entities. Challengers to the agency argued that the RFA applied to all rules that affect small entities, whether the small entities are directly regulated or not. In their view, therefore, FERC should have considered the effect of the rule on customers of the electric utilities subject to rate regulation by FERC. The court disagreed, finding that under the RFA, an agency may properly certify that no regulatory flexibility analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule.* "Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy." *Mid-Tex Elec. Coop., Inc.* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985).

In the second FERC case, the court reaffirmed this earlier conclusion. In this case, the rule regulated the rates natural gas pipeline company charged local gas distribution companies for the sale (or transportation) of natural gas purchased by them. Under its enabling statute, FERC had no jurisdiction to regulate the local distribution of gas, only the interstate sale and transportation of natural gas. The local distribution companies argued that the rule would have a significant economic impact on them as customers of the regulated utilities. The court again held that no analysis is required when the agency determines the rule will not have a substantial economic impact on the small entities subject to the rule. FERC had no obligation to prepare an analysis of the economic effects of a rule on small entities which the rule itself did not regulate. *United Distribution Company* v. *FERC,* 88 F.3d 1105, 1048 (D.C. Cir. 1996).

In addition, there are also a number of cases that have addressed EPA's obligation under the RFA when proposing and promulgating Clean Air Act (CAA) rules. The D.C. Circuit sustained EPA's certification of a rule establishing Federal automobile on-board emissions diagnostic devices. The rule allowed automobile manufacturers to comply with Federal requirements by complying with certain California regulations. EPA certified that the rule would not have a substantial economic impact on a significant number of automobile manufacturers. Businesses that manufacture, rebuild and sell car parts to replace the parts installed by the original manufacturers challenged EPA's failure to consider the effect of the rule on their businesses. The court held that, because the rule did not subject the car parts market itself to regulation, EPA was not required to prepare a flexibility analysis as to small businesses dealing in car parts. EPA only was obliged to consider the impact of the rule on small automobile manufacturers subject to the rule. *Motor & Equipment Mfrs, Ass'n* v. *Nichols,* 142 F,3d 449, 467 (D.C. Cir. 1998).

Recently, the D.C. Circuit determined that EPA properly certified that its revisions to the ozone and particulate national ambient air quality standards (NAAQS) would not have a significant economic impact on a substantial number of small entities. Under the CAA, EPA must promulgate NAAQS and State must then adopt State Implementation Plans (SIPs) providing for the implementation, maintenance and enforcement of the standards. 42 U.S.C. § 7410(a)(1). The NAAQS themselves impose no regulation upon emission sources. Rather, the States regulate sources of emissions through the SIP. EPA may call for revisions to SIPs if EPA finds that the SIP is inadequate to meet the NAAQS or to otherwise comply with the CAA. 42 U.S.C. § 7410(k)(5). Only if a State does not submit a SIP that complies with CAA requirements must EPA adopt an implementation plan of its own.

The court held that EPA correctly determined that the NAAQS will not directly affect small entities because EPA has no authority to impose any burden upon such entities. The States have broad discretion in determining the manner in which they will achieve compliance with the NAAQS. The court concluded that the possible effects of the NAAQS on small entities were no different from the indirect effects on wholesale customers not subject to regulation in Mid-Tex. In the court's view, because States must submit SIPs that will achieve compliance with the NAAQS does not render small entities potentially regulated by the States "subject" to the NAAQS for RFA purposes. The court concluded that the States" nearly complete discretion in determining which entities would bear the burden of achieving the NAAQS made these entities not subject to regulation by EPA. *American Trucking Associations* v. *EPA*, 175 F. 3d 1027, 1044–45 (D.C. Cir. 1999).

More recently, the D.C. Circuit determined that a CAA rule which would require States to develop, adopt and submit revisions to SIPs to achieve required reductions in air emissions does not regulate small entities because it leaves to the States the task of determining how to obtain the reductions, including which entities to regulate. EPA does not tell States how to achieve compliance with required air quality levels. Rather, EPA merely provides the levels to be achieved by *state-determined* compliance mechanisms. Under the CAA, States retain the power to determine which sources are burdened by regulation and to what extent. The rule leaves the control measures selection decision to the States. The rule in question did not directly regulate individual sources of emissions and therefore would not establish requirements applicable to small entities. Therefore, the court concluded that EPA properly certified the rule under section 605(b) of the RFA. *State of Michigan* v. *EPA*, 2000 WL 18.0650, p. 56 (D.C. Cir. Mar. 3, 2000).

In today's regulations, EPA is adopting changes to its water quality planning and management regulations and the NPDES permitting program. In the case of its planning and management regulations, these amendments modify requirements of EPA's current TMDL program. The second area addressed by these changes is EPA's NPDES permitting program, where EPA is adopting provisions which require EPA to step in and reissue NPDES permits in authorized States where the State has failed to take certain actions required under the regulations.

The Agency received numerous comments asserting that today's rule will have a direct, adverse impact on small governments and small businesses such as farmers and landowners, and that EPA has not met the requirements of the Regulatory Flexibility Act because it did not prepare a regulatory flexibility analysis. EPA disagrees with this conclusion for the reasons explained in sections 1 and 2 that follow. More detailed analysis is presented in the economic assessment document.

1. Changes to the TMDL Program

The changes to EPA's listing and TMDL regulations do not directly regulate individual dischargers and therefore do not establish requirements applicable to small entities. As such, certification is proper.

Under section 303(c) of the CWA water quality standards program, States, Territories, and authorized Tribes must adopt water quality standards for their waters that must be submitted to EPA for approval. These State, Territorial, or Tribal standards (or EPA-promulgated standards in the absence of EPA-approved State, Territorial, or Tribal standards) are implemented through various water quality control programs including the NPDES program that limits discharges to navigable waters in compliance with an EPA permit or permit issued under an approved State or Tribal NPDES program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet State or Tribal water quality standards. A State or Tribe has discretion in deciding how to achieve compliance with its water quality standards and in developing discharge limits as needed to meet the standards. For example, in circumstances where there is more than one discharger to a waterbody that is subject to a water quality standard, a State or Tribe has discretion in deciding which dischargers will be subject to permit discharge limits necessary to meet the revised standards and whether and how such limits will be distributed among the discharges.

Section 303(d) of the CWA requires States, Territories and authorized Tribes (and, under certain circumstances, EPA) to establish lists of waterbodies where water quality does not meet applicable State, Territorial or Tribal water quality standards even after application of technology-based effluent limitations on point source dischargers. States, Territories and authorized Tribes (and EPA in some cases) must also develop TMDLs for those waterbodies with reference to criteria contained in those water quality standards.

Today's final regulation amends certain provisions of EPA's existing water quality management and planning regulations dealing with the listing of impaired waters and TMDL requirements. The regulation establishes new requirements for the listing program and requires schedules for completing TMDLs. Further, the rule establishes new requirements for the content and development of TMDLs, including development of an implementation plan as a required element of a TMDL, and also includes new public participation elements. (See Section II of the preamble for a full discussion of these specific changes). These new requirements allow States, Territories and authorized Tribes to tailor their water quality programs to address the characteristics, problems, risks and implementation tools available in individual watersheds, with meaningful involvement from stakeholders in the local community, by using a TMDL to align implementation under current programs. These final rules apply only to EPA, States, Territories and authorized Tribes and do not impose specific listing or TMDL development requirements upon any small entities. Under today's rule, EPA is not requiring or ordering any group of small businesses or government to change their method of operation/practices in any prescribed way.

Even if future listing or TMDL actions ultimately may have some discernable effect on small entities, such impacts would actually arise from requirements already established under section 303(d) of the CWA and the States', Territories' and authorized Tribes' water quality

standards as described above, and not directly from these final regulatory amendments. Independent of today's final amendments, States, Territories and authorized Tribes (and, under certain circumstances, EPA) already have an obligation to list waterbodies and to calculate and apportion TMDLs and their component load and wasteload allocations necessary to implement the State, Territorial, and authorized Tribal water quality standards. Today's final rule merely amends EPA's existing regulations implementing those statutory requirements. Therefore, any potential impacts to small entities result from the independent statutory obligation to establish TMDLs that implement the State, Territorial and authorized Tribal water quality standards, and not from these final regulatory requirements.

Moreover, any potential future effect on small entities that may result from State, Territorial or Tribal action in establishing TMDLs or changing current TMDLs as a consequence of adoption of today's regulation is not directly attributable either to the new or even existing TMDL rules. TMDLs are not self-implementing. They require State, Territorial and Tribal decision to implement them. Under the CWA and EPA's regulations, TMDL wasteload allocation do not automatically translate into NPDES permit limitations for point sources nor do they necessarily apply without modification to non-point sources. State, Territorial and Tribal authorities retain discretion in how they apportion wasteload allocations. Under EPA's NPDES permitting rules, effluent limits in point source permits must be "consistent with" (but not necessarily identical to) wasteload allocations in approved TMDLs. With respect to nonpoint sources, the load allocations in a TMDL are only "enforceable" to the extent State, Territorial, or authorized Tribes chose to bind themselves to these allocation. A State, Territory, or EPA decision to allocate load reductions to nonpoint sources does not bring that operator into a permit or regulatory program. Instead, implementation of the load allocation would be based on current State and local mechanisms, including implementation of State/local nonpoint source programs, and other voluntary and incentive-based actions. There are no Federal requirements that such load allocations must be met by small (or any other) entities.

2. Changes to the NPDES Permitting Program

Today's final rule also amends the NPDES program regulations to require EPA, in certain circumstances, to reissue state-issued permits that have not been reissued following the expiration of their 5-year term. Where water quality standards (or applicable effluent limitations guidelines) change during a permit term, the permittee generally is protected during the permit term against new or more stringent permit conditions necessary to implement the new water quality standards or effluent limitations guidelines, until a new permit is issued. In most cases, permittees submit timely applications for renewal and permitting authorities reissue these permits in a timely manner. In some cases, authorized States may not reissue NPDES permits at the end of their 5-year term as is currently required, and the existing permits continue in effect under general principles of administrative law. (Administrative continuance protects the permittee who has submitted a timely application for renewal from being penalized for discharging without a permit.)

This final rule requires EPA to reissue a State issued permit that has expired in those cases where the State has not reissued the permit within two years from expiration. EPA's exercise of this authority is limited to circumstances in which a permit authorizes discharges to impaired waterbodies or the permit does not currently contain limits consistent with an applicable waste load allocation in an EPA approved or established TMDL. In addition, where a State permit has expired prior to the establishment of the TMDL, the regulations require EPA to exercise its authority to reissue the permit within two years from the establishment of the TMDL if the State has not acted. While EPA expects that authorized States will expeditiously reissue permits after they have expired with the required water quality-based effluent limits (because CWA section 402 allows a maximum five year permit term), where States do not reissue such permits, EPA would use this new authority to issue such permits in a timely manner.

This provision also would not impose any additional costs on dischargers, including small entities. This is because as a matter of law, the discharger's new permit, when issued, already must include any applicable new or more stringent conditions. Therefore, the effect of the change is, at most, to accelerate the timing of reissuing expired permits such that they contain the legally-mandated new or more stringent conditions. Consequently, EPA has concluded that adoption of a rule to authorize future action by EPA would not result in the imposition of any new costs on small entities.

B. Regulatory Planning and Review, Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestion or recommendations will be documented in the public record.

A detailed presentation and discussion of the costs and impacts of today's amendments to the TMDL and NPDES programs, and the methodologies used to assess them, are included in the document "Analysis of the Incremental Costs of Final Revisions to the Water Quality Planning and Management Regulation and the NPDES Program Regulation", which is available in the docket for the final rulemaking. In addition, the Agency is preparing a supplemental cost and benefit analysis of the current TMDL program with publication planned in the near future.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal or local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and Tribal governments, in the

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aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's rule contains no Federal mandates (as defined by the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule does not impose enforceable duties on any State, local or Tribal government or the private sector. If a State, territory or authorized tribe chooses not to implement this regulation, in whole or in part, EPA cannot compel or enforce compliance. Rather, EPA must undertake the actions the State, Territory, or authorized tribe has declined to implement.

As described in detail previously, the total incremental cost associated with today's rule is not expected to exceed $22.88 million in any one year, and therefor does not exceed the $100 million threshold of UMRA. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments, including Tribal governments. The requirements in today's rule relating to identification of impaired waters and establishment of TMDLs apply directly only to States, Territories and authorized Tribes. They do not apply to small governments of cities, counties or towns. Such entities are not required by today's rule to establish lists of impaired waters or TMDLs. Thus, the requirements of today's rule do not significantly or uniquely affect them in any direct way. To the extent that such small governments might in some indirect way be affected by a State's application of these regulations (*e.g.*, its identification of a particular waterbody on a section 303(d) list, or its establishment of a TMDL for a particular waterbody with wasteload allocations that contemplate permit reductions for a particular small government's waste treatment plant), such indirect effects are not significant or unique to small governments. They are not unique because they might be felt by any entity covered by a wasteload or load allocation in a given TMDL.

Today's rule will not significantly or uniquely affect Tribal governments. As explained earlier in this preamble, the Clean Water Act authorizes EPA to treat an Indian Tribe in the same manner as a State for purposes of establishing lists of waters and TMDLs, and EPA today is clarifying the test an Indian Tribe must meet to be authorized to establish lists of impaired waters and TMDLs. Currently, there are no Tribes authorized to establish TMDLs under section 303(d). Further, there are only fifteen Tribes with EPA approved or promulgated water quality standards. In addition, there are no Tribes authorized to administer the NPDES program. Consequently, this final rule will not significantly or uniquely affect Tribal governments. However, as Tribes continue to build their Clean Water Act capacity and establish water quality programs, more Tribes are likely to adopt water quality standards and seek approval to administer the NPDES program and establish TMDLs. Therefore, EPA included a Tribal representative on the TMDL FACA Committee that developed a set of recommendations that served as the framework for EPA in developing the TMDL proposal. The Committee's final report addressed Tribal issues, and recommended that EPA increase efforts to educate Tribes about water quality programs, including TMDLs, and ensure that EPA and State water quality staff respect the government-to-government relationship with Tribes in all TMDL activities. Additionally, once this rule is in effect, EPA will participate in Tribal conferences and workshops to inform and educate Tribal participants about the TMDL program and offer training to Tribes interested in administering the TMDL program on how to comply with the requirements of this rule.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in part 130 of this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0071.

The requirements of part 130 guide how States and Territories (there are no currently authorized Tribes) identify and rank waterbodies which do not attain and maintain water quality standards following implementation of technology-based controls and establish TMDLs for those waterbodies that do not meet standards as a result of pollutant discharges. These activities are required by section 303(d) of the CWA. EPA also uses the information submitted under section 303(d) to review the section 303(d) lists submitted to review whether they comply with the requirements of the statute and EPA's regulations and reflect an accurate accounting of waterbodies not meeting water quality standards after the application of technology-based controls. Also as required by section 303(d), EPA reviews TMDLs developed and submitted by the States and Territories to determine their technical sufficiency and whether they otherwise comply with the requirements of section 303(d) and the EPA regulations. Information collected through the proposed activities is not confidential because all respondents are State and Territorial agencies working entirely in a public forum.

The revisions to part 130 increase the burden to States and Territories for four activities related to preparation of the section 303(d) lists: revising the listing methodology, establishing schedules for TMDL development, increased public participation, and providing the listing methodology in a new format. The revisions also increase the burden for two activities related to establishing TMDLs: developing the implementation plans and writing responses to public comments. EPA's currently approved ICR for the period March 1999 through April 2003 was based on the burden to respondents of the current program and did not include consideration of the impact of the proposed regulations. The revised ICR include the increased section 303(d) listing burden to States and Territories that would result under the proposed regulations in the first three years following the effective date of the regulation.

The average additional burden associated with the revised 303(d) rule requirements is estimated to be 6,497 hours per respondent, and the total annual burden for all 56 respondents is estimated to be 363,845 hours. The information for lists of impaired waterbodies and the methodologies to develop those lists is required every four years. TMDLs are required consistent with schedules that are developed by States and Territories as part of the lists. The average additional cost associated with the revised 303(d) rule requirements is estimated to be $252,676 per respondent, and the total annual cost for all 56 respondents is estimated to be $14,149,932. This estimate is entirely labor costs, and thus does not include a total capital and start-up cost component annualized over its expected useful life, a total operation and maintenance component, or a purchase of services component.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this rule.

E. Federalism, Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

EPA received numerous comments asserting that today's rule does have federalism impacts and that the Agency had not met the requirements specified under E.O. 13132. Some commenters stated that EPA has no statutory or regulatory authority to require States to develop implementation plans as one of the required elements of TMDLs, and that such a requirement does substantially alter the relationship between EPA and the States in the TMDL Program. Other commenters believed that EPA did not work closely enough with the States or enable them to provide input on the rule. EPA also received comments claiming that the Agency's part 122 provisions enabling EPA to reissue State-issued expired and administratively-continued permits represents a significant intrusion into the functioning of State authorities and a substantial revision of existing relationships. Others stated that the NPDES provisions would lead to a shift in the traditional relationship between States and the federal government beyond what was intended by Congress in the Clean Water Act. EPA disagrees with these comments that today's rule has federalism implications, for the reasons described below.

Today's final rule amends the existing TMDL rule to clarify how impaired waters are identified and how TMDLs are established so that they can more effectively contribute to improving the nation's water quality. The regulation establishes new requirements for the content and format of the lists and the methodology for developing lists. It also establishes new requirements for the content and development of TMDLs, including development of an implementation plan as a required element of a TMDL and new public participation elements. These new requirements continue to allow the States, Territories and authorized Tribes to better tailor their water quality programs to address the characteristics, problems, risks and implementation tools available in individual watersheds, with meaningful involvement from stakeholders in the local community. Under this new rule, States continue to have primary responsibility for identifying impaired waters, setting priorities, and developing TMDLs. EPA's role continues to be one of reviewing State actions and exercising its authority to identify waters and develop TMDLs only in the face of inadequate State action or in unique circumstances where there are interstate waters or Federal water quality standards.

As explained previously in the preamble, EPA has estimated that the total incremental costs to the States associated with parts 130 and 123 of the rule, are estimated to be $22.88 million per year, with no direct costs being incurred by local governments.

After careful consideration, EPA does not believe that this final rule has federalism implications within the meaning of the Executive Order. However, EPA places great value on the views of state, local, and tribal governments, and in the spirit of the Executive Order undertook a consultation process along the lines specified in the Executive Order. EPA initiated or participated in many meetings, teleconferences and exchanges or correspondence with state, local, and tribal governments. Hundreds of hours of in-depth discussions with state, tribal and local officials and organizations representing them preceded and followed the August proposals. Prior to the proposal, EPA convened a Federal Advisory Committee to make recommendations for improving the efficiency and effectiveness of TMDLs. The TMDL FACA Committee was comprised of 20 members, including four senior level State officials, an elected local official, and a Tribal consortium representative. Over a period of one and one-half years, the TMDL FACA Committee held six meetings at locations throughout the country. These meetings were open to the general public, as well as representatives of State, local, and Tribal governments, and all included public comment sessions. The TMDL FACA Committee focused its deliberations on four broad issue areas: identification and listing of waterbodies; development and approval of TMDLs; EPA management and oversight; and science and tools. On July 28, 1998, the TMDL FACA Committee submitted its

final report to EPA containing more than 160 recommendation (100 of them were consensus recommendations) advocating changes and improvements to the existing TMDL rules. EPA notes that the one local elected official did file a minority report taking exception with major portions of the Report. As explained throughout this preamble, EPA carefully reviewed the TMDL FACA Committee's recommendations and incorporated, in whole or in part, most of the majority recommendations in this proposal.

Following completion of the FACA Committee process, EPA continued to meet with State and local government officials to seek their views on needed changes to the TMDL regulations and the NPDES regulations in support of TMDLs. Following the proposal, the Agency sponsored and participated in six public meetings nationwide, to better inform the public on what was included in the proposed rules, and to get informal feedback from the general public. These meetings took place in Denver, CO; Atlanta, GA; Kansas City, MO; Seattle, WA; Manchester, NH; and Los Angeles, CA. In addition, EPA has participated in numerous other meetings, conferences and public fora to discuss the proposed rule and listen to alternative approaches to achieving the nation's clean water goals. The Agency has had an ongoing dialogue with State and local officials and their national/regional organizations throughout the development of this rule. In particular, EPA has met with organizations representing State and local elected officials including: National Governors' Association, Western Governors' Association, Conference of State Legislatures, National Association of Counties, National League of Cities, and EPA's Local Government Advisory Committee. EPA also participated in numerous Congressional briefings and hearings on the proposed rule. There were numerous meetings with members and staff of organizations representing appointed officials of state government who play key roles in implementing the Clean Water Act, including the Environmental Commission of the States, the Association of State and Interstate Water Pollution Control Administrators, the Coastal States Organization, and International City Managers Association.

While expressing support for many of the final changes being considered by EPA, State officials and their representatives also expressed concerns about the capacity of State governments to carry out the new requirements in today's final rule. In particular, States were concerned about the capacity of the State governments to carry out any new requirements beyond those in the current regulations. Local government officials expressed concerns in particular about any TMDL allocation approaches that could in their view, result in municipal point sources having to bear an inequitable share of the pollutant load reductions need to attain water quality standards. Both levels of government were concerned that, by including the requirement for an implementation plan, EPA was directing specific activities that States and local governments must use to implement TMDLs. The final rule does not direct specific activities that State and local governments must use to implement TMDLs. In developing implementation plans State and local governments are accorded significant flexibility to choose which management measures and other activities whey will undertake to implement the load and wasteload allocations in a TMDL. In developing today's rule, EPA considered the concerns of State, local and Tribal governments and determined the need to revise the TMDL regulations to provide States, Territories and Tribes with clear, consistent, and balanced direction for listing waters and developing TMDLs and thereby improve the effectiveness, efficiency and pace of TMDL establishment and water quality improvement.

States were also concerned about the role of EPA in reissuing State-issued expired and administratively-continued NPDES permits. EPA determined that the exercise of its authority in limited circumstances is necessary to assure reasonable further progress in impaired waterbodies prior to the establishment of a TMDL and to provide reasonable assurance that TMDLs will be implemented. In developing today's final rule, EPA considered the concerns of State and local governments and determined the need to revise the NPDES and Water Quality Standards regulations to provide opportunities for further progress toward meeting water quality standards in impaired waterbodies and to provide reasonable assurance of effective TMDL development. Today's rule improves the effectiveness, efficiency and pace of water quality improvement and TMDL establishment.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with these governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

As explained above in the discussion of UMRA requirements, today's rule does not significantly or uniquely affect the communities of Indian tribal governments. In addition, today's rule does not impose any direct compliance costs on Tribes. There are no currently authorized tribal section 303(d) programs; therefore there are no current costs. To the extent that a Tribe decides to apply for section 303(d) authorization, EPA expects that the Tribe will consider the costs in its decisions to apply. Since Tribal assumption of section 303(d) programs is voluntary, the costs of the program are voluntarily assumed. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. Nonetheless, as stated in the discussion of UMRA, EPA intends to comply with the requirements of section 203 once the rule goes into effect by participating in Tribal conferences and workshops to inform and educate Tribal participants about the TMDL program and offer training to Tribes interested in administering the TMDL program on how to comply with the requirements of this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 Fed. Reg. 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must

evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final rule is not subject to Executive Order 13045 because it is not "economically significant" as defined under Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have disappropriate effect on children.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

Under the Congressional Review Act, a rule is "major" if the Administrator of the Office of Information and Regulatory Affairs (OIRA) finds that it is likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and expert markets. The OIRA Administrator finds that this rule is major because it will impose a major increase in costs on State and local government agencies.

J. H.R. 4425 and Implementation of this Rulemaking

Pending for the President's signature is an enrolled bill, H.R. 4425, which among other provisions includes the following, hereafter referred to as the "TMDL rider.

> None of the funds made available for fiscal years 2000 and 2001 for the Environmental Protection Agency may be used to make a final determination on or implement any new rule relative to the Proposed Revisions to the National Pollutant Discharge Elimination System Program and Federal Antidegradation Policy and the Proposed Revisions to the Water Quality Planning and Management Regulations Concerning Total Maximum Daily Load, published in the **Federal Register** on August 23, 1999.

EPA is carefully evaluating this provision, with the assistance of the Office of Legal Counsel, Department of Justice. There is virtually no legislative history which accompanies this provision. The Statement of Managers in the Conference Report simply repeats the bill language with the statement that the provision was added.

H.R. 4425 is an appropriations bill, and if it becomes law, it will remain in effect until October 1, 2001, at which time barring other action by Congress this rule would be allowed to be implemented. The TMDL rider in HR 4425 could also be repealed prior to that time. To accommodate this uncertainty, the final rule has an effective date of 30 days after Congress allows the rule to be implemented, which will be more than 30 days after the rule is published in the **Federal Register**. In this way, the effective date of today's rule will comply with section 553(d) of the Administrative Procedure Act, the Congressional Review Act requirements for major rules, and HR 4425. *In the time period before Congress allows EPA to implement this regulation, the pre-existing regulations will remain in place and EPA will continue to implement those regulations.*

Most of the unique elements of the new rules are scheduled to be phased in after October 1, 2001, such as new listing requirements in 2002, and new elements of TMDLs 18 months after publication of the rule. The only requirement of the new rule that would normally come into effect prior to October 1, 2001, is the requirement for providing the listing methodology to EPA by May 1, 2001. If the rider is in effect on that date, the rule is not effective and States, Territories, and authorized Tribe are not required to provide the methodology by that date. For this reason, if the rider is in effect at that time and the rule is not effective, the final rule requires States, Territories, and authorized Tribes to provide EPA at the time of submission of their year 2002 lists a description of the methodology used to develop their 2002 lists and a description of the data and information used to identify waters (including a description of the existing and readily available data and information used by the State, Territory, and authorized Tribe). These are the requirements of § 130.7(b), which is the listing requirement of the rules in effect prior to today's rule.

In addition, today's rule adjusts the date on which States, Territories, and authorized Tribes must comply with the new TMDL requirements. That date is either 18 months after the date of publication in the **Federal Register**, or nine months after effective date of the rule, which ever occurs later. This approach reflects a balance between providing sufficient time for States, Territories, and authorized Tribes to revise their procedures consistent with the new TMDL requirements and implementing the new requirements as quickly as practicable. As discussed previously in today's preamble, EPA believes 18 months provides States, Territories, and authorized Tribes sufficient time to complete TMDLs underway at the time today's rule is published. Also, States, Territories, and authorized Tribes will have sufficient notice of Congress' action, and thus will have sufficient time to complete TMDLs currently underway.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Hazardous substances, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 130

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 11, 2000.

Carol Browner,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR parts 9, 122, 123, 124, and 130 as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1, amend the table by removing the entries "130.6–130.10" and "130.15", and adding new entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Water Quality Planning and Management	
130.7	2040–0071
130.11	2040–0071
130.20–130.37	2040–0071
130.51	2040–0071
130.60–130.61	2040–0071
130.64	2040–0071

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 122.44 to revise paragraphs (d) introductory text and (d)(1) introductory text to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) *Water quality standards and State requirements:* any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality and State antidegradation provisions.

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 123.44 to add paragraph (k) to read as follows:

§ 123.44 EPA review of and objections to State permits.

* * * * *

(k)(1) Where a State fails to submit a new draft or proposed permit to EPA within 90 days after the expiration of the existing permit, EPA may review the administratively-continued permit, using the procedure described in paragraphs (a)(1) through (h)(3) of this section, if:

(i) The administratively-continued permit allows the discharge of pollutant(s) into a waterbody for which EPA has established or approved a TMDL and the permit is not consistent with an applicable wasteload allocation; or

(ii) The administratively-continued permit allows the discharge of a pollutant(s) of concern into a waterbody that does not attain and maintain water quality standards and for which EPA has not established or approved a TMDL.

(2) To review an expired and administratively-continued permit under this paragraph (k) EPA must give the State and the discharger at least 90 days written notice of its intent to consider the expired permit as a proposed permit. At any time beginning 90 days after permit expiration, EPA may submit this notice.

(3) If the State submits a draft or proposed permit for EPA review at any time before EPA issues the permit under paragraph (h) of this section, EPA will withdraw its notice of intent to take permit authority under this paragraph (k) and will evaluate the draft or proposed permit under this section.

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

2. Revise § 124.7 to read as follows:

§ 124.7 Statement of basis.

(a) EPA shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. In particular, the statement of basis shall include:

(1) In cases where a TMDL has not been established for an impaired waterbody, an explanation of how permit limits and/or conditions were derived for all pollutants in the discharger's effluent for which the waterbody is impaired; and

(2) In cases where a TMDL has been established for an impaired waterbody, any TMDL that has been established for a pollutant contained in the discharger's effluent; the applicable wasteload allocation derived for the pollutant in the TMDL for that discharger; and an explanation of how permit limits for the pollutant of concern were derived as well as how those limits are consistent with the applicable wasteload allocation.

(b) The statement of basis shall be sent to the applicant and, on request, to any other person.

3. Amend § 124.8 by adding paragraphs (b)(4)(i) and (b)(4)(ii) to read as follows:

§ 124.8 Fact sheet.

* * * * *

(b) * * *

(4) * * *

(i) In cases where a TMDL has not been established for an impaired waterbody, an explanation of how permit limits and/or conditions were derived for all pollutants in the discharger's effluent for which the waterbody is impaired; and

(ii) In cases where a TMDL has been established for an impaired waterbody, any TMDL that has been established for a pollutant contained in the discharger's effluent; the applicable wasteload allocation derived for the pollutant in the TMDL for that discharger; and an explanation of how permit limits for the pollutant of concern were derived as well as how those limits are consistent with the applicable wasteload allocation.

* * * * *

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Redesignate §§ 130.4 through 130.6, and 130.8 through 130.15 as follows:

§§ 130.4 through 130.15 [Redesignated]

Old section	New section
130.4	130.10
130.5	130.50
130.6	130.51
130.8	130.11
130.9	130.60
130.10	130.61
130.11	130.62
130.12	130.63
130.15	130.64

§ 130.3 [Removed]

3. Section 130.3 is removed.

§§ 130.0 through 130.2 and § 130.7 [Redesignated as Subpart A]

4. Sections 130.0 through 130.2 and 130.7 are designated as Subpart A and a subpart heading is added to read as follows:

Subpart A—Summary, Purpose and Definitions

§§ 130.10 and 130.11 [Redesignated as Subpart B]

5. Sections 130.10 and 130.11 are designated as Subpart B and a subpart heading is added to read as follows:

Subpart B—Water Quality Monitoring and Reporting

§§ 130.50 and 130.51 [Redesignated as Subpart D]

6. Sections 130.50 and 130.51 are designated as Subpart D and a subpart heading is added to read as follows:

Subpart D—Water Quality Planning and Implementation

§§ 130.60 through 130.64 [Redesignated as Subpart E]

7. Sections 130.60 through 130.64 are designated as Subpart E and a subpart heading is added to read as follows:

Subpart E—Miscellaneous Provisions

8. Amend § 130.1 to revise paragraph (a) as follows:

§ 130.1 Applicability.

(a) This part applies to all State, eligible Indian Tribe, interstate, areawide and regional and local CWA water quality planning and management activities undertaken on or after February 11, 1985 including all updates and continuing certifications for approved Water Quality Management plans developed under sections 208 and 303 of the Act.

* * * * *

9. Amend § 130.2 to revise paragraphs (c) (d), (e), (f), (g), (h), (i), (j), and (m), and add paragraphs (o), (p), (q), and (r) as follows:

§ 130.2 Definitions.

* * * * *

(c) *Pollution.* The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water. (See Clean Water Act section 502(19).)

(d) *Pollutant.* Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. This term does not mean: "sewage from vessels" within the meaning of section 312 of the Clean Water Act; or water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that such injection or disposal will not result in the degradation of ground or surface water resources. (See Clean Water Act section 502(6).)

(e) *Load or loading.* An amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading of pollutants may be either man-caused or natural (natural background loading).

(f) *Load allocation.* The portion of a TMDL's pollutant load allocated to a nonpoint source, storm water source for which a National Pollutant Discharge Elimination System (NPDES) permit is not required, atmospheric deposition, ground water, or background source of pollutants.

(g) *Wasteload allocation.* The portion of a TMDL's pollutant load allocated to a point source of a pollutant for which an NPDES permit is required. For waterbodies impaired by both point and nonpoint sources, wasteload allocations may reflect anticipated or expected reductions of pollutants from other sources if those anticipated or expected reductions are supported by reasonable assurance that they will occur.

(h) *Total maximum daily load (TMDL).* A TMDL is a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant. TMDLs may be established on a coordinated basis for a group of waterbodies in a watershed. TMDLs must be established for waterbodies on Part 1 of the list of impaired waterbodies and must include the following eleven elements:

(1) The name and geographic location of the impaired waterbody;

(2) Identification of the pollutant and the applicable water quality standard;

(3) Quantification of the pollutant load that may be present in the waterbody and still ensure attainment and maintenance of water quality standards;

(4) Quantification of the amount or degree by which the current pollutant load in the waterbody, including the pollutant load from upstream sources that is being accounted for as background loading, deviates from the pollutant load needed to attain and maintain water quality standards;

(5) Identification of source categories, source subcategories or individual sources of the pollutant;

(6) Wasteload allocations;

(7) Load allocations;

(8) A margin of safety;

(9) Consideration of seasonal variations;

(10) Allowance for reasonably foreseeable increases in pollutant loads including future growth; and

(11) An implementation plan.

(i) *Total Maximum Daily Thermal Load (TMDTL).* A TMDTL is a TMDL for impaired waterbodies receiving a thermal discharge.

(j) *Impaired waterbody.* Any waterbody of the United States that does not attain and maintain water quality standards (as defined in 40 CFR Part 131) throughout the waterbody due to an individual pollutant, multiple pollutants, or other causes of pollution, including any waterbody for which biological information indicates that it does not attain and maintain water quality standards. Where a waterbody receives a thermal discharge from one or more point sources, impaired means that the waterbody does not have or maintain a balanced indigenous population of shellfish, fish, and wildlife.

* * * * *

(m) *Management measures.* Best practical and economically achievable measures to control the addition of pollutants to waters of the United States through the application of nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, best management practices, or other alternatives.

* * * * *

(o) *Thermal discharge.* The discharge of the pollutant heat from a point source

that is required to have an NPDES permit.

(p) *Reasonable assurance.* Reasonable assurance means a demonstration that TMDLs will be implemented through regulatory or voluntary actions, including management measures or other controls, by Federal, State or local governments, authorized Tribes, or individuals.

(1) For point sources regulated under section 402 of the Clean Water Act, the demonstration of reasonable assurance must identify procedures that ensure that NPDES permits will be issued, reissued, or revised as expeditiously as practicable to implement applicable TMDL wasteload allocations for point sources.

(2) For nonpoint sources, storm water sources for which an NPDES permit is not required, atmospheric deposition, ground water or background sources of a pollutant, the demonstration of reasonable assurance must show that management measures or other control actions to implement the load allocations contained in each TMDL meet the following four-part test: they specifically apply to the pollutant(s) and the waterbody for which the TMDL is being established; they will be implemented as expeditiously as practicable; they will be accomplished through reliable and effective delivery mechanisms; and they will be supported by adequate water quality funding.

(i) Adequate water quality funding means that the State, Territory, or authorized Tribe has allocated existing water quality funds from any source to the implementation of the TMDL load allocations to the fullest extent practicable and in a manner consistent with the effective operation of its clean water program. In the event that existing funding is not adequate to fully implement the TMDL load allocations, you may satisfy the funding requirement of reasonable assurance by including an explanation of when adequate funds will become available and the schedule by which these funds will be used to implement the TMDL load allocations. When EPA establishes a TMDL, EPA must show there is adequate funding. It may do so by conditioning Clean Water Act grants to the fullest extent practicable and in a manner consistent with effective operation of other Clean Water Act programs.

(ii) Voluntary and incentive-based actions, or existing programs, procedures or authorities are acceptable means of demonstrating reasonable assurance if they satisfy the four-part test. Examples of voluntary and incentive-based actions include: State, Territorial, or authorized Tribal programs to audit implementation of agricultural or forestry best management practices; memoranda of understanding between States, Territories, authorized Tribes, and organizations representing categories, subcategories, or individual sources; or State-, Territory-, or authorized Tribe-approved programs for categories, subcategories or individual sources to ensure effectiveness of best management practices.

(iii) Examples of existing programs, procedures or authorities that may be reliable delivery mechanisms include State, Territorial, and authorized Tribal programs approved by EPA under section 319 of the Clean Water Act; participation in existing United States Department of Agriculture conservation or water quality protection programs; participation in existing programs under the Coastal Zone Act Reauthorization Amendments; regulations; local ordinances; performance bonds; contracts; cost-share agreements; memoranda of understanding; site-specific or watershed-specific voluntary actions; and compliance audits of best management practices.

(q) *Waterbody.* A geographically defined portion of navigable waters, waters of the contiguous zone, and ocean waters under the jurisdiction of the United States, made up of one or more of the segments of rivers, streams, lakes, wetlands, coastal waters and ocean waters. Identifications of waterbodies should be consistent with the way in which segments are described in State, Territorial, or authorized Tribal water quality standards.

(r) *List of Impaired Waterbodies or "List."* The list of all impaired waterbodies submitted by a State, Territory, or authorized Tribe. This list consists of Parts 1, 2, 3, and 4 described in § 130.27 and the prioritized schedule described in § 130.28. Part 1 of the list consists of the identification of the waterbodies for which TMDLs must be established and a prioritized schedule for establishing TMDLs.

10. Revise § 130.7 as follows:

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

(a)–(b) [Reserved]

(c) *Development of TMDLs and individual water quality based effluent limitations.* This paragraph will expire January 11, 2002 or nine months from the effective date of this rule, whichever occurs later.

(1) Each State shall establish TMDLs for the waterbodies identified at § 130.27(a) and in accordance with the priority ranking. For pollutants other than heat, TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.

(i) TMDLs may be established using a pollutant-by-pollutant or biomonitoring approach. In many cases both techniques may be needed. Site-specific information should be used wherever possible.

(ii) TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards as identified pursuant to § 130.27(a). Calculations to establish TMDLs shall be subject to public review as defined in the State CPP.

(2) Each State shall estimate for the waterbodies identified at § 130.27(a) that require thermal TMDLs, the total maximum daily thermal load which cannot be exceeded in order to assure protection and propagation of a balanced, indigenous population of shell-fish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in the identified waters or parts thereof.

11. Amend newly designated § 130.10 in paragraph (a) by adding a note to the paragraph, and revise paragraph (b) as follows:

§ 130.10 Water quality monitoring.

(a) * * *

Note to paragraph (a): EPA recommends that you use "Policy and Program Requirements to Implement the Mandatory Quality Assurance Program", EPA Order 5360.1, April 3, 1984, as revised July 16, 1998, or subsequent revisions.

(b) The State's water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data. The uses of

these data include determining abatement and control priorities; developing and reviewing water quality standards, total maximum daily loads, wasteload allocations and load allocations; assessing compliance with National Pollutant Discharge Elimination System (NPDES) permits by dischargers; reporting information to the public through the section 305(b) report and reviewing site-specific monitoring efforts and source water assessments conducted under the Safe Drinking Water Act.

12. Amend newly designated § 130.11 to revise paragraph (a) as follows:

§ 130.11 Water quality report.

(a) Each State shall prepare and submit biennially to the Regional Administrator a water quality report in accordance with section 305(b) of the Act. The water quality report serves as the primary assessment of State water quality. Based upon the water quality data and problems identified in the 305(b) report, States develop water quality management (WQM) plan elements to help direct all subsequent control activities. Water quality problems identified in the 305(b) report should be analyzed through water quality management planning leading to the development of alternative controls and procedures for problems identified in the latest 305(b) report. States may also use the 305(b) report to describe ground-water quality and to guide development of ground-water plans and programs. Water quality problems identified in the 305(b) report should be emphasized and reflected in the State's WQM plan and annual work program under sections 106 and 205(j) of the Clean Water Act and where the designated use includes public water supply, in the source water assessment conducted under the SDWA.

* * * * *

13. Add Subpart C consisting of §§ 130.20 through 130.37 as follows:

Subpart C—Identifying Impaired Waterbodies And Establishing Total Maximum Daily Loads (TMDLs)

What This Subpart Covers

Sec.

130.20 Who must comply with subpart C of this part?
130.21 What is the purpose of this subpart?

Listing Impaired Waterbodies, and Documenting Your Methodology for Making Listing Decisions

130.22 What data and information do you need to assemble and consider to identify and list impaired waterbodies?
130.23 How do you develop and document your methodology for considering and evaluating all existing and readily available data and information to develop your list?
130.24 When must you provide your methodology to EPA?
130.25 What is the scope of your list of impaired waterbodies?
130.26 How do you apply your water quality standards antidegradation policy to the listing of impaired waterbodies?
130.27 How must you format your list of impaired waterbodies?
130.28 What must your prioritized schedule for submitting TMDLs to EPA contain?
130.29 Can you modify your list?
130.30 When must you submit your list of impaired waterbodies to EPA and what will EPA do with it?

Establishment and EPA Review of TMDLs

130.31 Which waterbodies need TMDLs?
130.32 What are the minimum elements of a TMDL submitted to EPA?
130.33 How are TMDLs expressed?
130.34 What actions must EPA take on TMDLs that are submitted for review?
130.35 How will EPA assure that TMDLs are established?

Public Participation

130.36 What public participation requirements apply to your lists and TMDLs?

TMDLs Established During the Transition

130.37 What is the effect of this rule on TMDLs established during the transition?

Subpart C—Identifying Impaired Waterbodies And Establishing Total Maximum Daily Loads (TMDLs)

What This Subpart Covers

§ 130.20 Who must comply with subpart C in this part?

(a) Subpart C applies to States, Territories, and authorized Tribes. The term "you" in this subpart refers to these three governmental entities.

(b) Portions of this subpart apply to the United States Environmental Protection Agency (EPA). When this is the case, the rule specifies EPA's responsibilities and obligations.

§ 130.21 What is the purpose of this subpart?

(a) This subpart explains how to identify and list impaired waterbodies and establish TMDLs in accordance with section 303(d) of the Clean Water Act. The subpart also explains how EPA reviews and approves or disapproves your lists and TMDLs. Specifically, the subpart explains how to:

(1) Assemble all existing and readily available water quality-related data and information;

(2) Document your methodology for considering and evaluating all existing and readily available water quality-related data and information to make decisions on your list and provide the methodology to EPA and the public;

(3) Identify impaired waterbodies to be included on the list and decide which of those waterbodies will have TMDLs established for them;

(4) Identify the pollutant or pollutants causing the impairment for all waterbodies on Part 1 of your list;

(5) Develop a prioritized schedule for establishing TMDLs for waterbodies on Part 1 of your list;

(6) Establish TMDLs for waterbodies on Part 1 of your list and submit them to EPA for review;

(7) Provide public notice and an opportunity for public comment on your methodology, your list, and TMDLs prior to final submission to EPA.

(b) It also explains how EPA must:

(1) Review and approve or disapprove your list of impaired waterbodies;

(2) Develop a list where you fail to do so or if EPA disapproves your list;

(3) Review and approve or disapprove your TMDLs;

(4) Establish TMDLs if you have not made substantial progress in establishing TMDLs in accordance with your approved schedule, or if EPA disapproves your TMDLs .

Listing Impaired Waterbodies, and Documenting Your Methodology for Making Listing Decisions

§ 130.22 What data and information do you need to assemble and consider to identify and list impaired waterbodies?

(a) You need to assemble and consider all existing and readily available water quality-related data and information when you develop your list of impaired waterbodies.

(b) Existing and readily available water quality-related data and information includes at a minimum the data and information in and forming the basis for the following:

(1) Your most recent EPA approved section 303(d) list;

(2) Your most recent Clean Water Act section 305(b) report;

(3) Clean Water Act section 319 nonpoint source assessments;

(4) Drinking water source water assessments under section 1453 of the Safe Drinking Water Act;

(5) Dilution calculations, trend analyses, or predictive models for determining the physical, chemical or biological integrity of streams, rivers, lakes, and estuaries; and

(6) Data, information, and water quality problems reported from local, State, Territorial, or Federal agencies (especially the U.S. Geological Survey National Water Quality Assessment (NAWQA) and National Stream Quality Accounting Network (NASQAN)), Tribal

governments, members of the public, and academic institutions.

§ 130.23 How do you develop and document your methodology for considering and evaluating all existing and readily available data and information to develop your list?

(a) Your methodology needs to explain how you will consider and evaluate all existing and readily available water quality-related data and information to determine which waterbodies you will include on Parts 1, 2, 3, and 4 of your list, and to determine how you will prioritize your schedule for establishing TMDLs for waterbodies on Part 1 of your list. You must develop a draft methodology and notify the public of the availability of the draft methodology for review and comment. You should notify directly those who submit a written request for notification. You must provide the public an opportunity to submit comments on the draft methodology for no less than 60 days. You must provide a summary of all comments received and your responses to significant comments when you provide a copy of the final methodology to EPA, as required by § 130.24 of this subpart. You must make your final methodology available to the public when you provide a copy to EPA.

(b) The methodology should explain how you will consider and evaluate the following types of data and information when you make listing decisions and develop your prioritized schedule for TMDL establishment:

(1) Physical data and information;

(2) Chemical data and information;

(3) Biological data and information;

(4) Aquatic and riparian habitat data and information; and

(5) Other data and information about waterbody impairments, including drinking water susceptibility analyses.

(c) Your methodology should, at a minimum, identify those types of data and information that you will treat as "existing and readily available" and explain how you consider the following factors in making listing decisions and in developing your prioritized schedule for TMDL establishment:

(1) Data quality and age;

(2) Degree of confidence you have in the information you use to determine whether waterbodies are impaired, including a description of the quality assurance/quality control factors you will apply to data and information; and

(3) Number and degree of exceedances of numeric or narrative criteria and periods of nonattainment of designated uses or other factors used to determine whether waterbodies are impaired.

(d) Your methodology should describe the procedures and methods you will use to collect ambient water quality information.

(e) Your methodology should, at a minimum, also include the following:

(1) A description of the selection factors you will use to include and remove waterbodies from your list;

(2) A process for resolving disagreements with other jurisdictions involving waterbodies crossed by State, Territorial, Tribal or international boundaries; and

(3) A description of the method and factors you will use to develop your prioritized schedule for establishing TMDLs.

§ 130.24 When must you provide your methodology to EPA?

(a)(1) If this section is not effective by May 1, 2001, you must provide to EPA a description of the methodology used to develop your 2002 list and a description of the data and information used to identify waters (including a description of the existing and readily available data and information used by the State, Territory, and authorized Tribe) by April 1, 2002. The provisions of § 130.23(b) through (e) do not apply to this methodology.

(2) If this section is effective on or before May 1, 2001, you must provide your final methodology for your 2002 list and a summary of public comments on your methodology by November 1, 2001. This methodology will apply to the list required in 2002.

(b) You must provide to EPA the final methodology and a summary of public comments for your 2006 and subsequent lists submitted under § 130.30(a) no later than two years before you submit your next list, beginning in the year 2004. For example, you provide to EPA the methodology for your 303(d) list for 2006 on or before April 1, 2004. When providing final methodologies to EPA, you need to provide only the parts of the previous methodology you are revising; however, prior to submitting your final methodology to EPA, the entire methodology must be available to the public.

(c) EPA will review your final methodology and will provide you with comments within 60 days of receiving it. EPA will not approve or disapprove your methodology. EPA will consider your methodology in its review and approval or disapproval of your next list.

§ 130.25 What is the scope of your list of impaired waterbodies?

(a) Your approvable list of impaired waterbodies includes, based on all existing and readily available water quality-related data and information using appropriate quality assurance/quality control:

(1) Waterbodies that are impaired by individual pollutants, multiple pollutants, or pollution from any source, including point sources, nonpoint sources, storm water sources for which a National Pollutant Discharge Elimination System (NPDES) permit is not required, ground water, and atmospheric deposition.

(2) Waterbodies for which biological information indicates that they do not attain and maintain water quality standards.

(3) Waterbodies that are impaired by point sources only, nonpoint sources only, or by a combination of point and nonpoint sources.

(b) Your list may include, at your option, waterbodies that are not impaired, but which, based on expected changes in loadings or conditions, you anticipate will become impaired in the next four years.

§ 130.26 How do you apply your water quality standards antidegradation policy to the listing of impaired waterbodies?

(a) Water quality standards as defined at 40 CFR Part 131 include several requirements, including one for a State antidegradation policy. Your list must include waterbodies consistent with your antidegradation policy as described below.

(1) Any waterbody is impaired if it is not maintaining a designated use or more protective existing use that was attained on or after November 28, 1975.

(2) Any Tier 3 waterbody is impaired when the level of water quality that existed at the time the waterbody was designated as Tier 3 has declined. Tier 3 waters are waters you have designated as outstanding national resource waters.

(b) [Reserved]

§ 130.27 How must you format your list of impaired waterbodies?

(a) Your list of impaired waterbodies must include the following four parts:

(1) *Part 1.* Waterbodies impaired by one or more pollutant(s) as defined by § 130.2(d), unless listed in Part 3 or 4. Waterbodies identified as impaired through biological information must be listed on Part 1 unless you know that the impairment is not caused by one or more pollutants, in which case you may place the waterbody on Part 2 of the list. Where the waterbody is listed due to biological information, the first step in establishing the TMDL is identifying the pollutant(s) causing the impairment. Waterbodies must also be included on Part 1 where you or EPA have determined, in accordance with §§ 130.32(c)(1)(v), (2)(vii), and (3)(i),

that a TMDL needs to be revised. Waterbodies that you chose to list pursuant to § 130.25(b), because you anticipate that they will become impaired by one or more pollutant(s), must be included on Part 1 of your list. A TMDL is required for waterbodies on Part 1 of the list.

(2) *Part 2.* Waterbodies impaired by pollution as defined by § 130.2(c) but not impaired by one or more pollutants. A TMDL is not required for waterbodies on Part 2 of the list.

(3) *Part 3.* Waterbodies for which EPA has approved or established a TMDL and water quality standards have not yet been attained. The waterbody must be placed on Part 1 of the list and scheduled for establishment of a new TMDL if you or EPA determine that substantial progress towards attaining the water quality standard is not occurring.

(4) *Part 4.* Waterbodies that are impaired, for which the State, Territory, or authorized Tribe demonstrates that water quality standards will be attained by the date of submission of the next list as a result of implementation of technology-based effluent limitations required by sections 301(b), 306, or 307 of the Clean Water Act or other controls enforceable by State, Territorial or authorized Tribal or Federal law or regulation (including more stringent water quality-based effluent limitations in NPDES permits). A TMDL is not required for waterbodies on Part 4. If a waterbody listed on Part 4 does not attain water quality standards by the time the next list is required to be submitted to EPA, such waterbody must be included on Part 1 unless you can demonstrate that the failure to attain water quality standards is due to failure of point source dischargers to comply with applicable NPDES permit effluent limitations, which are in effect. TMDLs for waterbodies moved from Part 4 to Part 1 of the list must be scheduled for establishment in accordance with the requirements of § 130.28(b).

(b) You must identify:

(1) The pollutant or pollutants causing the impairment for each waterbody on Part 1 of the list, or for waterbodies for which the impairment is a result of biological information, the pollutant or pollutants if known.

(2) The type of pollution causing the impairment for each waterbody on Part 2.

(3) The geographic location of each waterbody on the list, using the National Hydrography Database or subsequent revisions, or a compatible georeferenced database.

(c) Any one of the three reporting formats described in this paragraph are acceptable.

(1) *Separate section 303(d) list.* You may submit your list as a separate four-part section 303(d) list.

(2) *Consolidated section 303(d) list and section 305(b) report.* You may submit your list as a component of your water quality report (section 305(b) report) . You must clearly identify the parts of your water quality report you are submitting as your four-part section 303(d) list.

(3) *Part 1 waterbodies in section 303(d) report and Parts 2, 3, and 4 waterbodies in section 305(b) report.* You may submit Part 1 of your list as a separate section 303(d) list, provided you include Parts 2, 3, and 4 of your list as a component of your section 305(b) water quality report and clearly identify the parts of your water quality report that you are submitting as Parts 2, 3, and 4 of your section 303(d) list.

(d) EPA will approve or disapprove your four-part section 303(d) list regardless of the reporting format that you use.

§ 130.28 What must your prioritized schedule for submitting TMDLs to EPA contain?

(a) Your list must include a prioritized schedule for establishing TMDLs for all waterbodies and pollutant combinations on Part 1 of your list.

(b) You must schedule establishment of TMDLs:

(1) as expeditiously as practicable, evenly paced over the duration of the schedule;

(2) no later than 10 years from July 10, 2000, if the waterbody and pollutant was listed on any part of the list before that date or 10 years from the due date of the first subsequent list after July 10, 2000, on which the waterbody and pollutant is initially included. You may extend the schedule for one or more TMDLs by no more than five years if you explain to EPA as part of your list submission that, despite expeditious actions, establishment of all TMDLs on Part 1 of your list within 10 years is not practicable.

(c) You must identify each specific TMDL you intend to establish and the one year period during which it is scheduled to be established. Your schedule should provide for the coordinated establishment of TMDLs within a watershed to the fullest extent practicable.

(d) You must:

(1) explain how you considered the severity of the impairment and the designated use of the waterbody in prioritizing waterbodies for TMDL establishment on your schedule.

(2) Identify waterbodies:

(i) That are designated in water quality standards as a public drinking water supply, or are used as a source of drinking water, and are impaired by a pollutant that is contributing to a violation of a national primary drinking water regulation (NPDWR) by a public water system or causes a public water system to be vulnerable to a violation of a NPDWR; or

(ii) Where species listed as threatened or endangered under section 4 of the Endangered Species Act are present in the waterbody.

(3) Waterbodies identified in this subsection must be given a higher priority unless you explain why a different priority is appropriate.

(e) When identifying and scheduling your waterbodies for TMDL establishment, you may also consider the presence of sensitive aquatic species and other factors such as the historical, cultural, economic and aesthetic uses of the waterbody. You may consider other factors in prioritizing your schedule, including the value and vulnerability of particular waterbodies; the recreational, economic, and aesthetic importance of particular waterbodies; TMDL complexity; the degree of public interest and support; State, Territorial and authorized Tribal policies and priorities; national policies and priorities; or the efficiencies that might result from coordinating the establishment of TMDLs for multiple waterbodies located in the same watershed. If you are using a rotating basin approach, you may take that approach into account when prioritizing waterbodies on your schedule because of the inherent efficiencies of such an approach.

(f) If you consider other factors, you should identify each factor and explain how you used each factor in prioritizing your schedule.

§ 130.29 Can you modify your list?

(a) You may modify your list at times other than those required by § 130.30, in accordance with this section. If you modify your list and prioritized schedule, you must submit your list to EPA as a modification to your list under this section and follow the public participation requirements of § 130.36, except that such requirements shall apply only to waterbodies and issues addressed by the modification. The requirements of subsections (b), (c), (d), and (e) of this section apply to lists submitted under § 130.30(a) or at any other time.

(b) You must keep each impaired waterbody on your list for a particular

pollutant until it is attaining and maintaining applicable water quality standards for that pollutant.

(c) You may remove a listed waterbody for a particular pollutant if new data or information indicate that the waterbody is attaining and maintaining the applicable water quality standards for that pollutant.

(d) You may add a waterbody to your list if you have data or information indicating that it is impaired.

(e) You may modify your prioritized schedule for establishing TMDLs in accordance with § 130.28 based on new information provided that the modification does not reduce the number of TMDLs scheduled for completion during the first four years of the current approved schedule.

(f) EPA must issue an order approving or disapproving the modification of your list or prioritized schedule in accordance with § 130.30(b).

(g) EPA may also issue an order modifying a list consistent with the provisions of paragraphs (c), (d) and (e) of this section, after providing notice and an opportunity for public comment.

§ 130.30 When must you submit your list of impaired waterbodies to EPA and what will EPA do with it?

(a) You must submit your list of impaired waterbodies to EPA by April 1 of every fourth year, beginning in the year 2002.

(b) EPA must:

(1) Issue an order approving or disapproving your list or modification of your list, within 30 days of receipt, in whole or in part if it is not consistent with the requirements of §§ 130.25 through 130.29.

(2) By order, within 30 days of disapproval, issue a new list consistent with §§ 130.25 through 130.29 if EPA disapproves or partially disapproves your list or modification of your list.

(3) Publish the order required by paragraph (b)(2) of this section in the **Federal Register** and a general circulation newspaper in your State, Territory, or where your Tribe is located and request public comment for at least 30 days.

(4) Issue a subsequent order revising the new list after the close of the public comment period, as appropriate, if EPA revises its initial order required by paragraph (b)(2) of this section based on public comment.

(5) Send you a copy of its order(s).

(6) Establish a list of impaired waterbodies for your State, Territory, or authorized Tribe consistent with §§ 130.25 through 130.29 if you fail to do so by April 1 of every fourth year.

(c) EPA may establish lists of waterbodies that do not attain and maintain Federal water quality standards.

(d) You must incorporate into your water quality management plan those portions of your list that EPA approves or establishes.

Establishment and EPA Review of TMDLs

§ 130.31 Which waterbodies need TMDLs?

(a) You must establish TMDLs for all waterbodies and pollutant combinations on Part 1 of your list in accordance with your approved schedule and submit the TMDLs to EPA.

(b) You do not need to establish TMDLs for waterbodies on Parts 2, 3, and 4 of your list.

§ 130.32 What are the minimum elements of a TMDL submitted to EPA?

(a) A TMDL is a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant. TMDLs may be established on a coordinated basis for a group of waterbodies in a watershed. A TMDL provides the opportunity to compare relative contributions of pollutants from all sources and consider technical and economic trade-offs between point and nonpoint sources.

(b) You must include the following minimum elements in any TMDL submitted to EPA:

(1) The name and geographic location, as required by § 130.27(b)(3), of the impaired waterbody for which the TMDL is being established and, to the extent known, the names and geographic locations of the waterbodies upstream of the impaired waterbody that contribute significant amounts of the pollutant for which the TMDL is being established;

(2) Identification of the pollutant and the applicable water quality standard for which the TMDL is being established;

(3) Quantification of the pollutant load that may be present in the waterbody and still ensure attainment and maintenance of water quality standards;

(4) Quantification of the amount or degree by which the current pollutant load in the waterbody, including the pollutant load from upstream sources that is being accounted for as background loading, deviates from the pollutant load needed to attain and maintain water quality standards;

(5) Identification of source categories, source subcategories, or individual sources of the pollutant consistent with the definitions of load and wasteload allocation in §§ 130.2(f) and (g), respectively, for which the wasteload allocations and load allocations are being established;

(6) Wasteload allocations assigned to point sources permitted under section 402 of the Clean Water Act discharging the pollutant for which the TMDL is being established that will, when implemented in conjunction with assigned load allocations, if any, result in the attainment and maintenance of water quality standards in the waterbody. Wasteload allocations that reflect pollutant load reductions for point sources needed to ensure that the waterbody attains and maintains water quality standards must be expressed as individual wasteload allocations for each source. Wasteload allocations that do not reflect pollutant load reductions from point sources needed for the waterbody to attain and maintain water quality standards may be expressed as an individual wasteload allocation for a source or may be included within a wasteload allocation for a category or subcategory of sources. Wasteload allocations for sources subject to a specified general permit, regardless of whether they reflect pollutant reductions, may be allotted to categories of sources. You should submit supporting technical analyses demonstrating that wasteload allocations, when implemented in conjunction with necessary load allocations, will result in the attainment and maintenance of the water quality standard(s) applicable to the pollutant for which the TMDL is being established;

(7) Load allocations, ranging from reasonably accurate estimates to gross allotments, for nonpoint sources of a pollutant, storm water sources for which an NPDES permit is not required, atmospheric deposition, ground water or background sources of a pollutant that, when implemented in conjunction with assigned wasteload allocations, if any, result in the attainment and maintenance of water quality standards in the waterbody. If feasible, a separate load allocation must be allocated to each source of a pollutant. Where this is not feasible, load allocations may be allocated to categories or subcategories of sources. Pollutant loads from sources that do not need to be reduced for the waterbody to attain and maintain water quality standards may be included within a category of sources or subcategory of sources. You should submit supporting technical analyses demonstrating that load allocations, when implemented in conjunction with necessary wasteload allocations, will result in the attainment and maintenance of water quality standards

applicable to the pollutant for which the TMDL is being established;

(8) A margin of safety that appropriately accounts for uncertainty related to the TMDL, including uncertainties associated with pollutant loads, modeling water quality, and monitoring water quality. A margin of safety may be expressed as unallocated assimilative capacity or conservative analytical assumptions used in establishing the TMDL;

(9) Consideration of seasonal variations, stream water flow levels, and other environmental factors that affect the relationship between pollutant loadings and water quality impacts, such that the allocations will result in attainment and maintenance of water quality standards in all seasons of the year and during all flow conditions;

(10) Allowance for reasonably foreseeable increases in pollutant loads including future growth; and

(11) An implementation plan which meets the requirements of paragraph (c) of this section.

(c) The purpose of the implementation plan is to provide a description, in a level of detail appropriate to the circumstances, of actions necessary to implement the TMDL so that the waterbody attains and maintains water quality standards. EPA does not expect the implementation plan to be a complex, lengthy document.

(1) For waterbodies impaired only by point sources for which NPDES permits will implement the TMDL, an implementation plan must include:

(i) An identification of the wasteload allocation(s) that the effluent limitation(s) must be consistent with pursuant to § 122.44(d)(1)(vii)(B) in the NPDES permit(s) that will be issued, reissued, or revised. In all instances, the NPDES permit effluent limitation(s) must be consistent with the applicable wasteload allocation(s). You must identify:

(A) The point sources that are or will be regulated by individual permits and the categories or subcategories of point sources that are or will be regulated by general permits that will be subject to such effluent limitations.

(B) The permit, if you intend to implement the wasteload allocation by requiring a point source to apply for coverage under an existing NPDES general permit.

(C) The elements of the general permit necessary to ensure implementation of the wasteload allocation, if you intend for a point source to be regulated by a new general permit.

(ii) A schedule for issuing, reissuing or revising the NPDES permit(s) as expeditiously as practicable to include effluent limits consistent with the wasteload allocation(s) in the TMDL. EPA must:

(A) Reissue or revise the permit(s) within two years after the establishment of the TMDL where EPA is the NPDES permitting authority.

(B) Notify the NPDES Director of EPA's intent to object to the permit pursuant to the provisions of § 123.44(k) within one year after expiration of the permit term, or where the permit term expired prior to the establishment of the TMDL, within one year from establishment of the TMDL where the State is the NPDES permitting authority, and the permit term has expired.

(C) Issue an NPDES permit that incorporates effluent limitations based on wasteload allocation(s) in the TMDL within one year thereafter where the State has not done so. Nothing in this paragraph (c)(1)(ii) limits EPA's authority to reissue a permit after the expiration of the two-year time frame set forth in this paragraph (c)(1)(ii), or invoke the mechanism described in § 123.44(k) after the expiration of either of the one-year time frames set forth in this paragraph (c)(1)(ii).

(iii) The date by which the implementation plan will result in the waterbody attaining and maintaining applicable water quality standards and the basis for that determination;

(iv) A monitoring and/or modeling plan designed to measure the effectiveness of the controls implementing the wasteload allocations and the progress the waterbody is making toward attaining water quality standards; and

(v) The criteria you will use to determine that substantial progress toward attaining water quality standards is being made and if not, the criteria for determining whether the TMDL needs to be revised.

(2) For waterbodies impaired only by nonpoint source(s), storm water sources for which an NPDES permit is not required, atmospheric deposition, ground water or background sources of a pollutant where no NPDES permit will implement the TMDL, the implementation plan must include:

(i) An identification of the source categories, source subcategories, or individual sources of the pollutant which must be controlled to implement the load allocations;

(ii) A description of specific regulatory or voluntary actions, including management measures or other controls, by Federal, State or local governments, authorized Tribes, or individuals that provide reasonable assurance, consistent with § 130.2(p), that load allocations will be implemented and achieve the assigned load reductions. Your selection of management measures for achieving the load allocation may recognize both the natural variability and the difficulty in precisely predicting the performance of management measures over time;

(iii) A schedule, which is as expeditious as practicable, for implementing the management measures or other control actions to achieve load allocations in the TMDL within 5 years, when implementation within this period is practicable;

(iv) The date by which the implementation plan will result in the waterbody attaining and maintaining applicable water quality standards, and the basis for that determination;

(v) A description of interim, measurable milestones for determining whether management measures or other control actions are being implemented;

(vi) A monitoring and/or modeling plan designed to measure the effectiveness of the management measures or other controls implementing the load allocations and the progress the waterbody is making toward attaining water quality standards, and a process for implementing stronger and more effective management measures if necessary; and

(vii) The criteria you will use to determine that substantial progress toward attaining water quality standards is being made and if not, the criteria for determining whether the TMDL needs to be revised.

(3) For waterbodies impaired by both point sources and nonpoint sources where NPDES permits and management measures or other control actions for nonpoint or other sources will implement the TMDL, the implementation plan must include:

(i) The elements of paragraphs (c)(1) and (2) of this section; and

(ii) A description of the extent to which wasteload allocations reflect expected achievement of load allocations requiring reductions in loadings.

(4) For all impaired waterbodies, the implementation plan must be based on a goal of attaining and maintaining the applicable water quality standards within ten years whenever attainment and maintenance within this period is practicable.

(d) TMDTLs must meet all the requirements of paragraphs (b) and (c) of this section, except that, rather than estimating a TMDTL at a level necessary to attain and maintain water quality standards, you must estimate the TMDTL as required by statute at a level

necessary to ensure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, taking into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and dissipative capacity of the waterbody for which the TMDTL is being established. Estimates for those waterbodies must include a calculation of the maximum heat input and a margin of safety that takes into account any lack of knowledge concerning the development of thermal water quality criteria.

(e) A TMDL must not be likely to jeopardize the continued existence of an endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of its designated critical habitat.

§ 130.33 How are TMDLs expressed?

(a) A TMDL must contain a quantitative expression of the pollutant load or load reduction necessary to ensure that the waterbody will attain and maintain water quality standards, or, as appropriate, the pollutant load or load reduction required to attain and maintain aquatic or riparian habitat, biological, channel or geomorphological or other conditions that will result in attainment and maintenance of water quality standards.

(b) As appropriate to the characteristics of the waterbody and pollutant, the pollutant load or load reduction may be expressed in one or more of the following ways:

(1) The pollutant load that can be present in the waterbody and ensure that it attains and maintains water quality standards;

(2) The reduction from current pollutant loads required to attain and maintain water quality standards;

(3) The pollutant load or reduction of pollutant load required to attain and maintain aquatic, riparian, biological, channel or geomorphological measures so that water quality standards are attained and maintained;

(4) A quantitative expression of a modification of a characteristic of the waterbody, *e.g.*, aquatic and riparian habitat, biological, channel, geomorphological, or chemical characteristics, that results in a pollutant load or reduction of pollutant load so that water quality standards are attained and maintained; or

(5) In terms of either mass per time, toxicity or other appropriate measure.

§ 130.34 What actions must EPA take on TMDLs that are submitted for review?

(a) EPA must:

(1) Review each TMDL you submit to determine if it meets the requirements of §§ 130.31, 130.32 and 130.33 and issue an order approving or disapproving each TMDL you submit within 30 days after you submit it.

(2) Disapprove the TMDL if it does not meet all those requirements.

(3) Issue an order establishing a new TMDL for a waterbody and pollutant within 30 days of EPA's disapproval or determination of the need for revision, if EPA disapproves a TMDL you submit or determines that an existing TMDL needs to be revised.

(4) Publish this order in the **Federal Register** and a general circulation newspaper and request public comment for at least 30 days.

(5) Issue a subsequent order revising the TMDL after the close of the public comment period, as appropriate, if EPA revises its initial order based on public comment.

(6) Send you the final TMDL EPA establishes. You must incorporate any EPA-established or EPA approved TMDL into your water quality management plan.

(b) When EPA establishes a TMDL it must provide reasonable assurance. It may satisfy the adequate funding requirement of reasonable assurance by conditioning Clean Water Act grants to the fullest extent practicable and in a manner consistent with effective operation of other Clean Water Act programs.

(c) EPA may also use any of its statutory or regulatory authorities and voluntary, incentive-based programs, as it determines appropriate, to supplement conditioning Clean Water Act grants in demonstrating reasonable assurance.

§ 130.35 How will EPA assure that TMDLs are established?

(a) EPA must assure that TMDLs for waterbodies and pollutants identified on Part 1 of your list are established. EPA must do this by:

(1) Working with you to assure that TMDLs are established in accordance with your schedule; and

(2) Establishing a TMDL if you have not made substantial progress in establishing the TMDL in accordance with your approved schedule. Substantial progress means that you have established a TMDL not later than the end of the one-year period during which it was scheduled to be established. EPA must establish the TMDL within two years of the date on which you fail to make substantial progress. The Administrator may extend this period for no more than two years on a case-by-case basis if there is a compelling need for additional time. Notice of such extension shall be published in the **Federal Register**.

(b) EPA may establish TMDLs under other circumstances including:

(1) You request that EPA do so; or

(2) EPA determines it is necessary to establish a TMDL for an interstate or boundary waterbody or to implement Federal water quality standards.

(c) In establishing any TMDL pursuant to this section, EPA shall provide notice and an opportunity for public comment on such order.

Public Participation

§ 130.36 What public participation requirements apply to your lists and TMDLs?

(a) You must provide public notice and allow the public no less than 30 days to review and comment on your list of impaired waterbodies and TMDLs prior to submission to EPA. You should notify directly those who submit a written request for notification.

(b) At the time you make your submission to EPA, you must provide EPA with a summary of all public comments received on your list and TMDLs and your response to all significant comments, indicating how the comments were considered in your final decision.

(c) Prior to your submission to EPA, and at the time that you provide the public the opportunity to review and comment on your list and TMDLs:

(1) You must provide a copy of each of these documents to EPA, the U.S. Fish and Wildlife Service, and to the National Marine Fisheries Service where appropriate (*e.g.*, coastal areas), unless you request EPA to provide these documents to the Services, in which case EPA will do so.

(2) You are encouraged to establish processes with both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that will provide for the early identification and resolution of threatened and endangered species concerns as they relate to your list and TMDLs. To facilitate consideration of endangered and threatened species in the listing and TMDL process, EPA will ask the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, where appropriate, to provide you and EPA with any comments that they may have on your lists and TMDLs.

(3) You must consider any comments from EPA, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service in establishing your list and TMDLs and document your consideration of these comments in

accordance with paragraph (b) of this section.

(d) EPA will review any comments submitted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service and consider how you addressed these and EPA's comments prior to EPA's approval or disapproval of your submission.

TMDLs Established During the Transition

§ 130.37 What is the effect of this rule on TMDLs established during the transition?

(a) EPA will approve any TMDL submitted to it for review before January 11, 2002 or nine months from the effective date of this rule, whichever occurs later, if the TMDL meets either the requirements in § 130.7 in effect prior to July 13, 2000 or the requirements in §§ 130.31, 130.32 and 130.33 of this Subpart C.

(b) EPA will establish TMDLs before Janaury 11, 2002 or nine months from the effective date of this rule, whichever occurs later, either according to the requirements in § 130.7 in effect prior to July 13, 2000 or the requirements in §§ 130.31, 130.32 and 130.33 of this Subpart C.

14. Amend newly designated § 130.50 to revise paragraph (b) introductory text and (b)(3) as follows:

§ 130.50 Continuing planning process

* * * * *

(b) *Content.* The State may determine the format of its CPP as long as the minimum requirements of the CWA and this regulation are met. A State CPP need not be a single document, provided the State identifies in one document (i.e., an index) the other documents, statutes, rules, policies and guidance that comprise its CPP. The following processes must be described in each State CPP and the State may include other processes, including watershed-based planning and implementation, at its discretion.

* * * * *

(3) The process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations for pollutants in accordance with section 303(d) of the Act and §§ 130.31 through 130.36 of this Part.

* * * * *

15. Amend newly designated § 130.51 to revise paragraphs (a), (c)(1), and (f) as follows:

§ 130.51 Water quality management plans

(a) *Water quality management plans.* You must base continuing water quality planning on initial water quality management plans produced in accordance with sections 208 and 303(e) of the Clean Water Act and certified and approved updates to those plans. Your annual water quality planning should focus on priority issues and geographic areas identified in your latest section 305(b) reports and have a watershed focus. Water quality planning should be directed at the removal of conditions placed on previously certified and approved water quality management plans and updates to support the implementation of wasteload allocations and load allocations contained in TMDLs.

* * * * *

(c) * * *

(1) *Total Maximum Daily Loads.* TMDLs in accordance with section 303(d) and (e)(3)(C) of the Act and §§ 130.2 and 130.31 through 130.36; also lists of impaired waters in accordance with §§ 130.2 and 130.22 through 130.30.

* * * * *

(f) *Consistency.* Construction grant and permit decisions must be made in accordance with certified and approved WQM plans as described in §§ 130.63(a) and (b). Likewise, financial assistance under the State water pollution control revolving funds may be made only to projects which are in conformity with such plans as specified in section 603(f) of the Act.

* * * * *

§ 130.61 [Amended]

16. Amend newly designated § 130.61 to remove and reserve paragraph (b)(2), and remove paragraph (d).

17. Revise newly designated § 130.64 as follows:

§ 130.64 Processing application for Indian Tribes

The Regional Administrator shall process an application of an Indian Tribe submitted under § 130.51(d) in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

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Part VII

The President

Proclamation 7329—President Lincoln and Soldiers' Home National Monument

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Presidential Documents

Title 3—

The President

Proclamation 7329 of July 7, 2000

President Lincoln and Soldiers' Home National Monument

By the President of the United States of America

A Proclamation

Each year from 1862 through 1864, President Abraham Lincoln and his family left the White House to take up residence during the warm weather months at Anderson Cottage, a home in northwest Washington, D.C., on the grounds of a site then known as the Soldiers' Home. It is estimated that President Lincoln spent one quarter of his presidency at this home, riding out to it many evenings from late June until early November. The house and surrounding land are now part of the U.S. Soldiers' and Airmen's Home, a component of the Armed Forces Retirement Home, an independent establishment in the executive branch. This house and its grounds are objects of great historic significance and interest.

It was here, in September of 1862, that President Lincoln completed the drafting of the Emancipation Proclamation. His second floor bedroom and much of the rest of the house are configured as they were when he was in residence, and original mantels, woodwork, and windows are retained. A magnificent copper beech tree under which he read and relaxed is still growing at the site. It was also from this house that, in July of 1864, he traveled 2 miles north to view the battle of Fort Stevens, during which he actually came under fire as he stood beside the Union troops defending the capital. The house has been designated a National Historic Landmark by the National Park Service.

The land was purchased by the Federal Government through the Soldiers' Home Trust Fund in 1851 to establish a home for invalid and disabled soldiers of the U.S. Army, the first such attempt to provide for members of the regular army. The house was first used as a summer retreat by President Buchanan from 1857 to 1860, and continued to be used as such by several presidents, including President Hayes from 1877 to 1880 and President Arthur from 1882 to 1884. It became known as Anderson Cottage in honor of Major Robert Anderson, the Union commanding officer at Fort Sumter at the outbreak of the Civil War.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of lands, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the President Lincoln and Soldiers' Home National Monument:

NOW, THEREFORE, I, William J. Clinton, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the President Lincoln and Soldiers' Home National Monument for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United

States within the boundaries of the area described on the map entitled "President Lincoln and Soldiers' Home National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 2.3 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land or other Federal laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The monument historically has been a part of the U.S. Soldiers' and Airmen's Home, a facility administered by the Armed Forces Retirement Home, an independent establishment of the Executive Branch. The Armed Forces Retirement Home, through the U.S. Soldiers' and Airmen's Home, shall manage the monument as an integral part of that surrounding facility and consistent with the purposes and provisions of this proclamation. In managing the monument, the Armed Forces Retirement Home shall consult with the Secretary of the Interior through the National Park Service.

For the purpose of preserving, restoring, and enhancing the public's appreciation of the monument, the Armed Forces Retirement Home shall prepare, in consultation with the Secretary of the Interior through the National Park Service, a management plan for this monument within 3 years of this date. Further, to the extent authorized, the Armed Forces Retirement Home shall promulgate, in consultation with the Secretary of the Interior through the National Park Service, regulations for the proper care and management of the objects identified above.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation. Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of July, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

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H.R. 3051/P.L. 106–243

To direct the Secretary of the Interior, the Bureau of Reclamation, to conduct a feasibility study on the Jicarilla Apache Reservation in the State of New Mexico, and for other purposes. (July 10, 2000; 114 Stat. 497)

S. 1309/P.L. 106–244

To amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans. (July 10, 2000; 114 Stat. 499)

S. 1515/P.L. 106–245

Radiation Exposure Compensation Act Amendments of 2000 (July 10, 2000; 114 Stat. 501)

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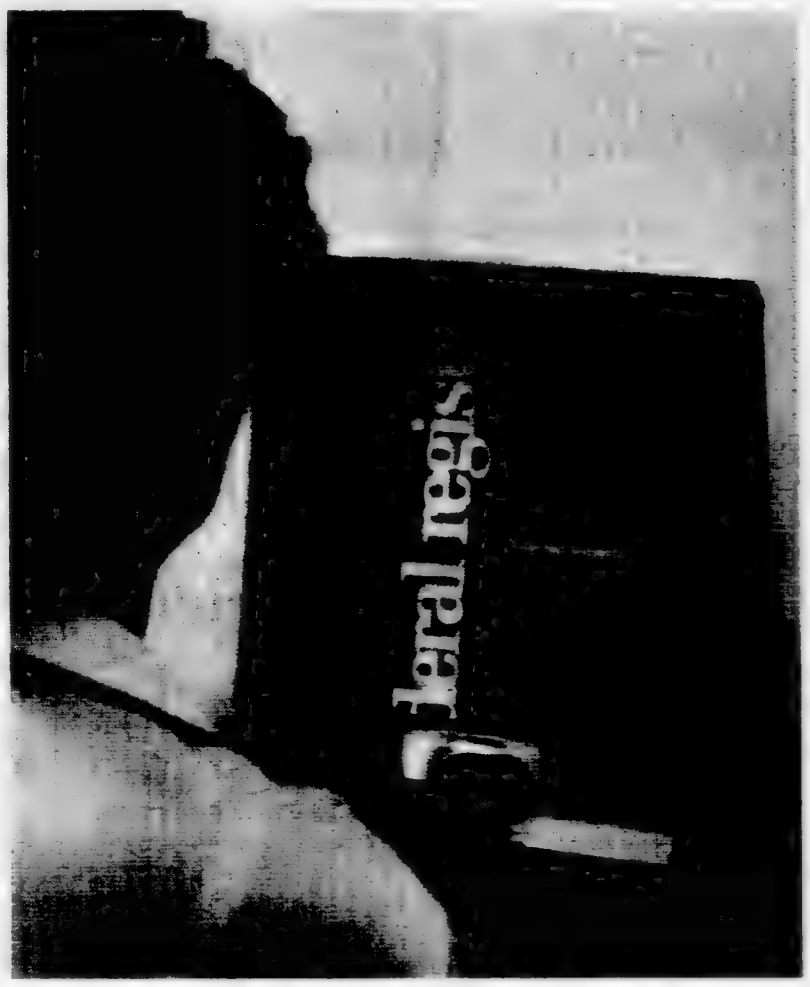

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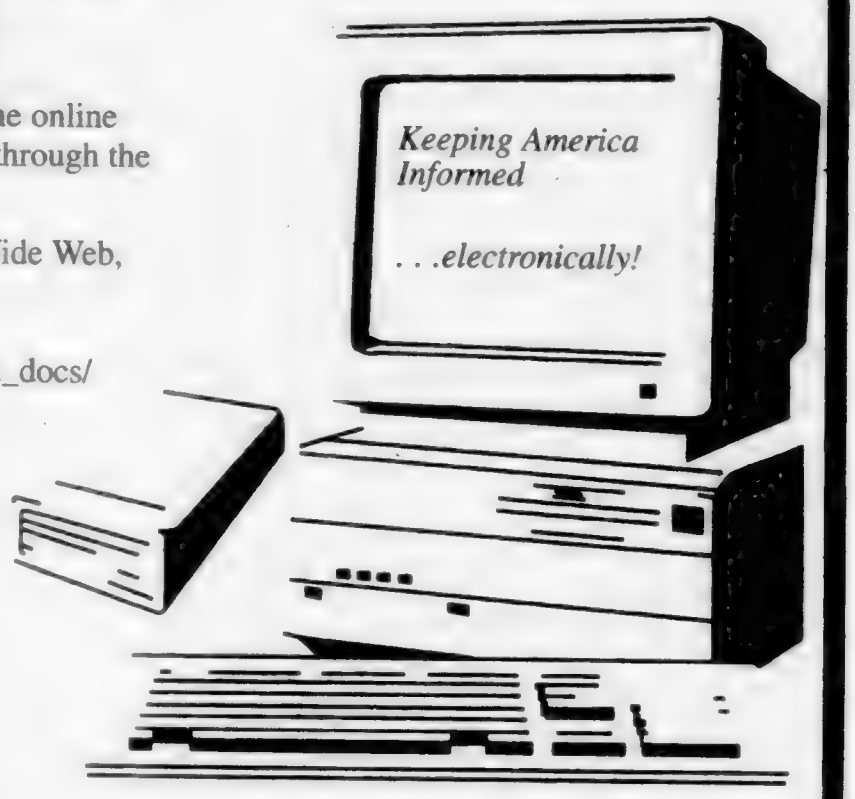

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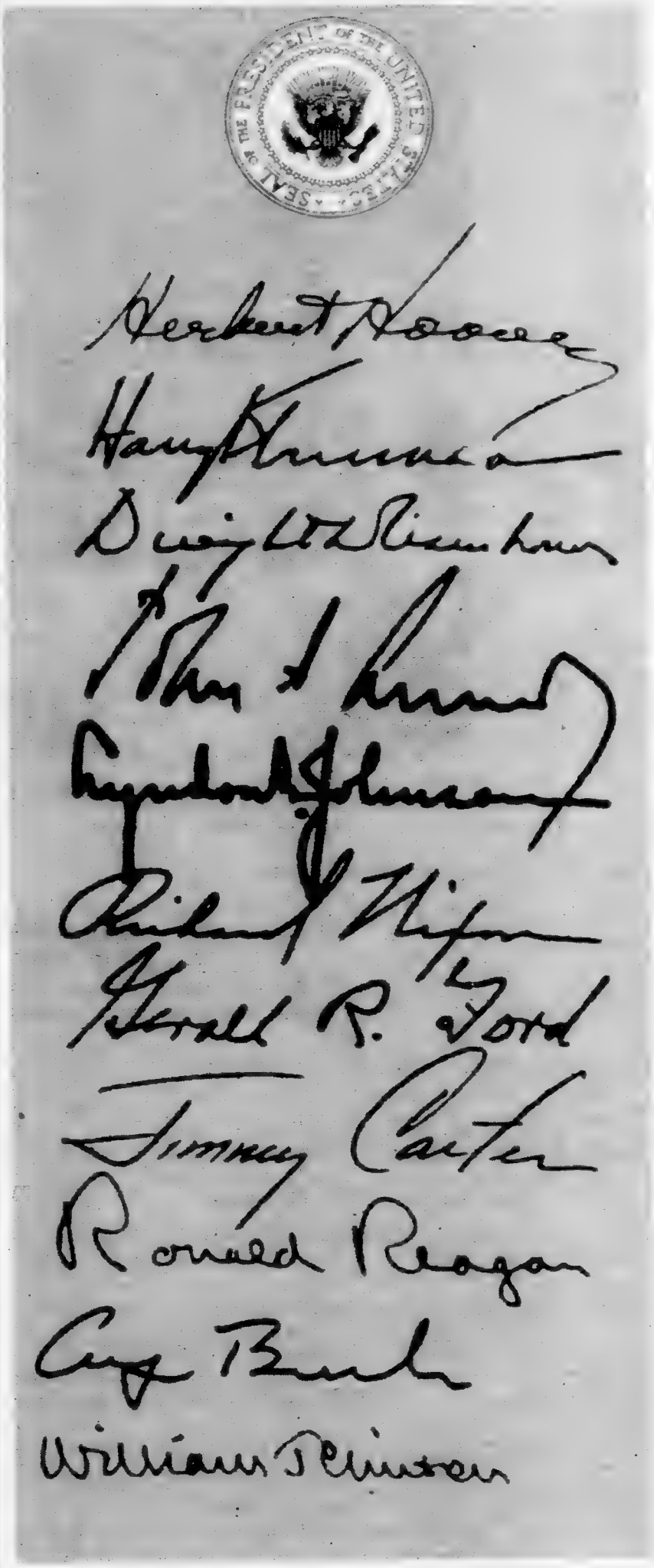

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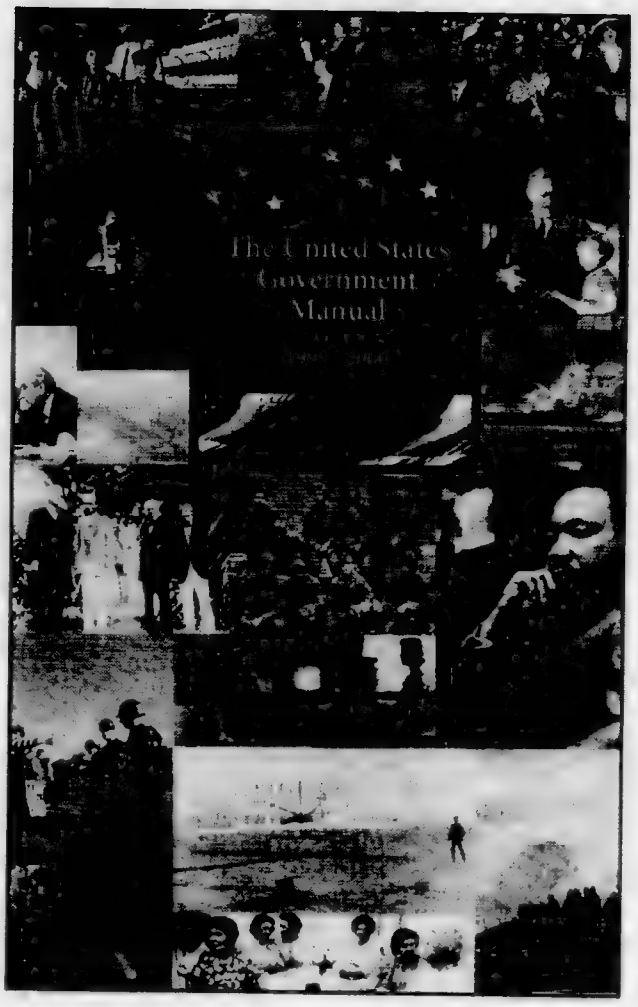

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 236, 274a and 299

[INS No. 1823–96]

RIN 1115–AE72

Implementation of Hernandez v. Reno Settlement Agreement; Certain Aliens Eligible for Family Unity Benefits After Sponsoring Family Member's Naturalization; Additional Class of Aliens Ineligible for Family Unity Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations to provide changes that are necessary to implement that portion of the settlement agreement in *Hernandez* v. *Reno*, C.A. No. 9:93 CV 63 (E.D. Tex., filed Dec. 30, 1997), requiring the development and implementation of a single application form to be used in connection with the adjudication of requests for benefits under the Family Unity Program, including voluntary departure and an employment authorization document. This interim rule also clarifies the regulations to provide that certain aliens will not lose their eligibility for the Family Unity Program simply because their sponsoring family member has become a naturalized United States citizen. In addition, this interim rule adds a class of aliens who are ineligible for Family Unity benefits. Individuals who, as juveniles, committed an act of juvenile delinquency which, if committed by an adult would be classified as a felony "crime of violence against another individual," are ineligible for benefits under the Family Unity Program. Finally, this rule deletes as matter of agency procedure the category for Family Unity Program-based employment authorization set forth at 8 CFR 274a.12(c)(12). The Service recognizes that this category is redundant in light of the existence of a virtually identical category set forth at 8 CFR 274a.12(a)(13).

DATES: *Effective date:* This interim rule is effective July 14, 2000.

Comment date: Written comments must be submitted on or before September 12, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington DC 20536. To ensure proper handling please reference INS No. 1823–96 on your correspondence. Comments are available or public inspection at the above address by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Anne Gyemant, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3214, Washington DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Family Unity Program?

Established by section 301 of the Immigration Act of 1990, IMMACT 1990, Public Law 101–649 (November 29, 1990), the Family Unity Program provides renewable periods of voluntary departure and employment authorization for the eligible spouses and children of legalized aliens. A legalized alien is a person who has been granted temporary or permanent residence status under section 210 (Special Agricultural Worker (SAW)) or section 245A (Legalization) programs of the Immigration and Nationality Act (Act), or a permanent resident under the Cuban/Haitian Adjustment Act under section 202 of the Immigrant Reform and Control Act of 1986 (IRCA), Public Law 99–603 (November 6, 1986). To establish eligibility for the benefits, the family relationship must have existed as of May 5, 1988, for the Legalization and Cuban/Haitian Adjustment Act programs or as of December 1, 1988, for SAW recipients. The family members must also have been present in the United States prior to May 5 or December 1, 1988, as applicable, and have resided in the U.S. since that date.

What Are the Changes to the Family Unity Program Created by the Settlement of the Hernandez v. Reno Class Action Lawsuit?

As part of the settlement of a Nationwide class action lawsuit, *Hernandez* v. *Reno*, C.A. No. 9:93 CV 63 (E.D. Tex., filed Dec. 30, 1997), the Service agreed to revise the existing Family Unity Program benefits application system so that an applicant no longer had to file one application (Form I–817, Application for Voluntary Departure under the Family Unity Program) to receive a grant of voluntary departure under the Family Unity Program and then file a separate application (Form I–7657, Application for Employment Authorization) to receive an employment authorization document. The implementation of this aspect of the settlement agreement has involved two phases. During the first phase, which was implemented effective January 29, 1998, the Service issued supplemental instructions which provided that from then forward, the Form I–765 would be treated as a supplement to and not a form separate from the Form I–817. The Form I–765 supplement was attached to each Form I–817 that was mailed to potential applicants. Applicants were encouraged to file the two forms jointly and were required to pay only the filing fee applicable to the Form I–817.

What Is the Fee Required for the Form I–817?

Since the implementation of phase one, the Service revised its fee structure including the amount charged for the Form I–817. (See 63 FR 43604). The amount currently charged as a result of the change is $120. The fee is necessary to recover the cost to the Government of both the adjudication of a request for voluntary departure and the issuance of an employment authorization document under the Family Unity Program. (63 FR 1775). A separate application and fee, however, will be required of any person granted Family Unity benefits who seeks to replace a Family Unity Program benefit based on an employment authorization document that is lost, misplaced, mutilated, or destroyed.

What Is the Single Application System Created Using the Revised Form I–817?

Phase two of the implementation of the "single application" system agreed to under the *Hernandez* v. *Reno* settlement agreement involved the development and issuance of a revised Form I–817 that would contain sufficient requests for information from the applicant so that an employment authorization document could be issued without resorting to the use of the Form I–765 as a supplement. Such a form has now been developed and has been sent to the Office of Management and Budget (OMB) for review. Approval of the revised Form I–817, now entitled "Application for Benefits under the Family Unity Program," will result in the grant of voluntary departure for a 2-year period and the issuance of an employment authorization document valid for the same period as the grant of voluntary departure.

Who Is an "Eligible Immigrant" Under the Family Unity Program?

Under the Family Unity Program, an applicant is an "eligible immigrant" for purposes of the program if he or she is a spouse or unmarried child of a legalized alien. A legalized alien has been defined under 8 CFR § 236.11 as a temporary or permanent resident under section 210 (SAW) and section 245A (Legalization) programs of the Act or a permanent resident under the Cuban/Haitian Adjustment Act under section 202 of IRCA.

An alien has been defined, for purposes of this Act, to include, "any person not a citizen or national of the United States." See 8 U.S.C. 1101(a)(3) (Supp. IV 1998). The Service recognizes that defining "legalized alien" to include naturalized U.S. citizens is exceptional. Nevertheless, in light of the congressional policies of family reunification and encouragement of naturalization, we think it is clear that Congress did not intend to deprive eligible legalized residents of family unity benefits under these provisions on the basis of their having obtained U.S. citizenship through naturalization. The regulatory definition thus addresses a specific situation and has not application outside this context.

Will an Applicant Lose Eligibility if His or Her Sponsoring Family Member Naturalizes?

This rule clarifies that an applicant does not lose eligibility under the Family Unity Program when the family member through whom the applicant claims eligibility becomes a naturalized U.S. citizen provided that the lawful permanent resident maintained status as a legalized alien up until the time of his/her naturalization. However, the naturalized family member should file a Form I–130, Petition for Alien Relative, on the applicant's behalf so that the applicant can apply for adjustment of status to become a lawful permanent resident. If the applicant is an "immediate relative," which includes the spouse, parents and minor children of a U.S. citizen, the naturalized family member may apply for adjustment of status by submitting Form I–485, Application for Adjustment of Status to Permanent Resident at the same time as the Form I–130 petition. All other applicants may apply for adjustment of status by filing Form I–485 as soon as a Form I–130 petition is approved for them, and they are notified that a visa number is available. The visa number must be available at both the time of application and the time of approval of the Form I–485. All approved applicants will remain eligible for Family Unity Program benefits until their adjustment of status to that of a lawful permanent resident. If the sponsoring family member filed a Form I–130 petition for the family-based 2A preference category, Spouse and Children and Unmarried Sons and Daughters of Permanent Residents, for the applicant before naturalization, he may file a new Form I–130 petition after naturalization for the family-based 1A preference category, Unmarried Sons and Daughters of Citizens. The change of preference classification may significantly accelerate the applicant's priority date.

What Is the Purpose of Making Certain Juvenile Offenders a New Class of Aliens Ineligible for Family Unity Benefits?

On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208. Section 383 of IIRIRA provides that aliens who committed a specific act of juvenile delinquency, as defined in 18 U.S.C. 5031, are ineligible for benefits under the Family Unit Program. Disqualifying acts include acts which if committed by an adult, would be classified either (1) as a felony crime of violence that involved the use or attempted use of physical force against another individual, or (2) a felony offense which intrinsically involved a substantial risk of the use of such physical force.

What Is the Definition of a "Juvenile" Under This Rule, and Where Does the Definition Come From?

The definitions to be used in implementing section 383 of IIRIRA are drawn from the United States Code. A "juvenile" is defined as a "person who has not attained his eighteenth birthday." 18 U.S.C. 5031. "Juvenile deliquency" is defined as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult." 18 U.S.C. 5031. As a result, the class of aliens ineligible for Family Unity Program benefits now includes individuals who, while under the age of 18, violated a law of the United States which, if committed by an adult, would have constituted either (1) a felony crime of violence involving the use or the attempted use of physical force against another individual, or (2) a felony offense involving a substantial risk of the use of violence against another individual. Section 383 also applies to any alien who is over the age of 18, and who committed such an act of juvenile delinquency before his or her 18th birthday.

What Is the Effective Date of This Section?

The amendments made by section 383 of IIRIRA apply to benefits granted or extended after September 30, 1996.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The reason and the necessity for immediate implementation of this interim rule without prior notice and comment is because parts of this rule merely codify in the Service's regulation the statutory mandates in section 383 of Public Law 104–208. In addition, some of the changes in this rule are beneficial to the affected public in that they either serve to implement the *Hernandez* v. *Reno* settlement agreement or to clarify that certain aliens do not lose eligibility because their sponsoring family member has naturalized. Therefore, it is impracticable and unnecessary to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d). The removal of 8 CFR 274a.12(c)(12), Family Unity Program-based employment authorization, is an agency rule of

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practice and procedure and, therefore, exempt from the requirements of 5 U.S.C. 553.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. While this rule does affect individuals, the number affected will be minimal. There is no impact on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the OMB for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationships between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Family Policymaking Assessment

The Commissioner of the Immigration and Naturalization Service has reviewed this regulation and has determined that it may affect family well-being as that term is used in section 654 of the Treasury-General Government Appropriations Act, 1999, Public Law 105–277 Div. A. Accordingly, the Service has assessed this action in accordance with the criteria specified by section 654(c)(1). This regulation will create a positive effect on the family by allowing Family Unity Program beneficiaries to retain eligibility when their sponsoring family member naturalizes. This will have the effect of keeping families together by encouraging their adjustment of status to that of a legal permanent resident while allowing them to retain Family Unity Program benefits until that time. Additionally, when the sponsoring family member naturalizes, the subsequent change of preference classification may significantly move forward the applicant's priority date, allowing them to adjust their status even sooner. Finally, this regulation will have the effect of strengthening the stability of the family and establishing an explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

Paperwork Reduction Act of 1995

The Service has requested expedited OMB review of the revised Form I–817 in order to comply with the settlement agreement in the *Hernandez* v. *Reno* litigation. During the course of the development of the revised Form I–817, the Service made several revisions unrelated to the implementation of the *Hernandez* v. *Reno* settlement. These additional revisions were necessary due to changes in the Family Unity provisions and inadmissibility grounds affected by the IIRIRA. Finally, changes were made on the form to reflect the changes made to the regulations by this interim rule. The Service is requesting comments on revised Form I–817.

List of Subjects

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

1. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; sec. 303(b) of Div. C of Pub. L. No. 104–208, 8 CFR part 2.

2. Section 236.11 is amended by revising the definition "*Legalized alien*" to read as follows:

§ 236.11 Definitions.

* * * * *

For purposes of §§ 236.10 to 236.18 only, *Legalized alien* means an alien who:

(1) Is a temporary or permanent resident under section 210 or 245A of the Act;

(2) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment); or

(3) Is a naturalized U.S. citizen who was a permanent resident under section 210 or 245A of the Act or section 202 of the Immigrant Reform and Control Act of 1986 (IRCA) (Cuban/Haitian Adjustment), and maintained such a status until his or her naturalization.

3. Section 236.12(a)(2) is revised to read as follows:

§ 236.12 Eligibility.

(a) * * *

(2) That as of May 5, 1988, (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2) (C) of section 301 of IMMACT 90) or as of December 1, 1988, (in the case of a relationship to a legalized alien described in subsection (b)(2) (A) of section 301 of IMMACT 90), he or she was the spouse or unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored immigrant status under section 203(a) (1), (2), or (3) or as an immediate relative under section 201 (b)(2) of the Act based on the same relationship.

* * * * *

4. Section 236.13 is amended by:

a. Removing the "or" at the end of paragraph (b);

b. Removing the period at the end of paragraph (c), and inserting in its place a "; or" ; and by

c. Adding a new paragraph (d) to read as follows:

§ 236.13 Ineligible aliens.

* * * * *

(d) An alien who has committed an act of juvenile delinquency (as defined in 18 U.S.C. 5031) which if committed by an adult would be classified as:

(1) A felony crime of violence that has an element the use or attempted use of physical force against another individual; or

(2) A felony offense that by its nature involves a substantial risk that physical force against another individual may be used in the course of committing the offense.

5. Section 236.14(a) is revised to read as follows:

§ 236.14 Filing.

(a) *General.* An application for benefits under the Family Unity Program must be filed at the service center having jurisdiction over the alien's place of residence. A Form I-817 Application for Benefits Under the Family Unity Program, must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

* * * * *

6. Section 236.15 is amended by revising paragraphs (d), (e), and (f) to read as follows:

§ 236.15 Voluntary departure and eligibility for employment.

* * * * *

(d) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and will receive an employment authorization document. The validity period of the employment authorization document will coincide with the period of voluntary departure.

(e) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I-817 along with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, or a naturalized U.S. citizen who was a lawful permanent resident under section 210 or 245A of the Act or section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 66–903, and maintained such status until his or her naturalization, and a petition for family-sponsored immigrant status has not been filed on behalf of the applicant. In such case, the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I-817 once the petition, Form I-130, has been filed on his or her behalf. No charging document will be issued for a period of 90 days from the date of the denial.

(f) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous application(s). The extension application shoud only include changes to previous applications and evidence of continuing eligibility since the date of prior approval.

§ 236.18 [Amended]

7. Section 236.18 is amended by removing the phrase "or who are" from paragraph (a)(2).

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

8. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, 8 CFR part 2.

§ 274a.12 [Amended]

9. Section 274a.12 is amended by removing and reserving paragraph (c)(12).

PART 299—IMMIGRATION FORMS

10. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 8 CFR part 2.

11. Section 299.1 is amended in the table by revising the entry for Form I–817 to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
.	.	.
I–817	05–30–99	Application for Benefits under the Family Unity Program.
.	.	.

Dated: July 5, 2000.

Doris Meissner,

Commissioner, Immigrationa nd Naturalization Service.

[FR Doc. 00–17814 Filed 7–13–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–033–2]

Change in Disease Status of the Republic of Korea Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that removed the Republic of Korea from the list of regions declared free of rinderpest and foot-and-mouth disease. We took this action because the existence of foot-and-mouth disease was confirmed there. The interim rule prohibits or restricts the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the

United States from the Republic of Korea. The interim rule was necessary to protect the livestock of the United States from foot-and-mouth disease.

EFFECTIVE DATE: The interim rule became effective on March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import & Export, VS, APHIS, 4700 River Road 38, Riverdale, MD 20737–1231; (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective March 20, 2000, and published in the **Federal Register** on April 18, 2000 (65 FR 20713–20714, Docket No. 00–033–1), we amended the regulations in 9 CFR part 94 by removing the Republic of Korea from the list of countries in § 94.1 declared free of rinderpest and foot-and-mouth disease (FMD). We also removed the Republic of Korea from the list of countries in § 94.11 declared free of these diseases, but subject to certain restrictions because of their proximity to or trading relationships with FMD-affected regions. We took this action because the existence of foot-and-mouth disease was confirmed in the Republic of Korea. As a result of this action, the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from the Republic of Korea is prohibited or restricted.

Comments on the interim rule were required to be received on or before June 19, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations in 9 CFR part 94 governing the importation of certain animals, meat, and other animal products by removing the Republic of Korea from the list of regions declared free of rinderpest and FMD. We took this action because of an outbreak of FMD in that country. The interim rule prohibits or restricts the importation of any ruminant or swine and any fresh (chilled or frozen) meat or other products of ruminants or swine into the United States from the Republic of Korea. The interim rule was necessary to protect the livestock of the United States from FMD.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

FMD is a highly communicable viral disease of cattle and swine. It also affects sheep, goats, and other cloven-hooved ruminants. The disease is characterized by fever and blisterlike lesions on the tongue and lips, in the mouth, on the teats, and between the hooves. It causes severe losses in the production of meat and milk. Many affected animals recover, but the disease leaves them debilitated. FMD is present in many parts of the world, but the United States has been free of the disease since 1929.

FMD viruses can be spread by animals, people, or materials that bring the virus into physical contact with susceptible animals. Imports of animal products contaminated with the virus pose the greatest risk of introducing FMD into the United States. For example, the virus can survive in chilled, frozen, salted, cured and partially cooked meats. Because it spreads widely and rapidly and has grave economic as well as physical consequences, FMD is one of the animal diseases that livestock owners dread most.

Animals in the United States are highly susceptible to FMD viruses because they have not developed immunity to the disease and are not vaccinated against it. If an outbreak did occur in the United States, this disease could spread rapidly to all sections of the country by routine livestock movements unless detected early and eradicated immediately. If allowed to spread unchecked, it could take years and cost billions of dollars to eradicate FMD from the United States.

The livestock industry plays a significant role in the U.S. economy. There were approximately 1,115,650 cattle operations in the United States in 1998,[1] with approximately 99.7 million head of cattle valued at $60.1 billion. About 99 percent of these operations had gross receipts of less than $500,000. There were approximately 114,470 hog producers in the United States in 1998, with approximately 61.1 million hogs valued at just under $5.0 billion. More than 99 percent of these producers had gross receipts of less than $500,000. There were approximately 68,810 sheep and lamb operations in the United States in 1998, with approximately 7.8 million sheep and lambs valued at $798 million. More than 99 percent of these operations had receipts of less than $500,000. Based on the 1997 Census of Agriculture, there were approximately 57,900 goat producers in the United States in 1997. They raised 1,989,799 goats with an approximate value of $74 million. More than 99 percent of these goat producers had receipts of less than $500,000.

The U.S. livestock industry also plays an important role in international trade. U.S. competitiveness in international markets relies to a great degree upon this country's reputation for producing high quality disease-free animals and animal products. Maintaining these favorable trade conditions depends, in part, on continued aggressive efforts to prevent any threat of FMD introduction into the United States. A single outbreak of FMD, anywhere in the United States, would close our major export markets of livestock and livestock products overnight. Most exports of meat, animals and byproducts would be stopped until the disease was completely eradicated. In 1998, total earnings from U.S. exports of ruminants and swine, and fresh (chilled or frozen) meat and other products of ruminants and swine were approximately $4.5 billion. Consequently, an outbreak of FMD could result in the potential loss of export sales in the billions of dollars as well as other costs to those involved in the U.S. livestock industry.

This action will produce economic benefits by protecting against the introduction of FMD into the United States. We expect that prohibiting or restricting the importation into the United States of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from the Republic of Korea will have little or no effect on U.S. entities (importers, members of the public, and producers), large or small. U.S. imports of these products from the Republic of Korea are very small. For example, between 1996 and 1998, the United States did not import any reportable amounts of ruminants and swine or fresh (chilled or frozen) meat or other products of ruminants and swine from the Republic of Korea, other than $4,000 in imported dairy products in 1998. Since the Republic of Korea is not a significant source of these products for the U.S. market, restrictions on imports from the Republic of Korea should not have a noticeable effect on producer, wholesale, or consumer prices in the United States. Any shortfall of supply could easily be met from domestic or other sources. Therefore, we expect that there will be very little or no effect on

[1] An operation is any place having one or more cattle on hand during the year.

U.S. entities as a result of this restriction.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 65 FR 20713–20714 on April 18, 2000.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 11th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–17886 Filed 7–13–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–031–2]

Change in Disease Status of Japan Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that removed Japan from the list of regions declared free of rinderpest and foot-and-mouth disease. We took this action because the existence of foot-and-mouth disease was confirmed there. The interim rule prohibits or restricts the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Japan. The interim rule was necessary to protect the livestock of the United States from foot-and-mouth disease.

EFFECTIVE DATE: The interim rule became effective on March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import & Export, VS, APHIS, 4700 River Road 38, Riverdale, MD 20737–1231; (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective March 8, 2000, and published in the **Federal Register** on April 18, 2000 (65 FR 20712–20713, Docket No. 00–031–1), we amended the regulations in 9 CFR part 94 by removing Japan from the list of countries in § 94.1 declared free of rinderpest and foot-and-mouth disease (FMD). We also removed Japan from the list of countries in § 94.11 declared free of these diseases, but subject to certain restrictions because of their proximity to or trading relationships with FMD-affected regions. We took this action because the existence of foot-and-mouth disease was confirmed there. As a result of this action, the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Japan is prohibited or restricted.

Comments on the interim rule were required to be received on or before June 19, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations in 9 CFR part 94 governing the importation of certain animals, meat, and other animal products by removing Japan from the list of regions declared free of rinderpest and FMD. We took this action because of an outbreak of FMD in that country. The interim rule prohibits or restricts the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Japan. The interim rule was necessary to protect the livestock of the United States from FMD.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

FMD is a highly communicable viral disease of cattle and swine. It also affects sheep, goats, and other cloven-hooved ruminants. The disease is characterized by fever and blisterlike lesions on the tongue and lips, in the mouth, on the teats, and between the hooves. It causes severe losses in the production of meat and milk. Many affected animals recover, but the disease leaves them debilitated. FMD is present in many parts of the world, but the United States has been free of the disease since 1929.

FMD viruses can be spread by animals, people, or materials that bring the virus into physical contact with susceptible animals. Imports of animal products contaminated with the virus pose the greatest risk of introducing FMD into the United States. For example, the virus can survive in chilled, frozen, salted, cured and partially cooked meats. Because it spreads widely and rapidly and has grave economic as well as physical consequences, FMD is one of the animal diseases that livestock owners dread most.

Animals in the United States are highly susceptible to FMD viruses because they have not developed immunity to the disease and are not vaccinated against it. If an outbreak did occur in the United States, this disease could spread rapidly to all sections of the country by routine livestock movements unless detected early and eradicated immediately. If allowed to spread unchecked, it could take years and cost billions of dollars to eradicate FMD from the United States.

The livestock industry plays a significant role in the U.S. economy. There were approximately 1,115,650 cattle operations in the United States in 1998,[1] with approximately 99.7 million head of cattle valued at $60.1 billion. About 99 percent of these operations had gross receipts of less than $500,000. There were approximately 114,470 hog producers in the United States in 1998, with approximately 61.1 million hogs valued at just under $5.0 billion. More than 99 percent of these producers had gross receipts of less than $500,000. There were approximately 68,810 sheep and lamb operations in the United States in 1998, with approximately 7.8

[1] An operation is any place having one or more cattle on hand during the year.

million sheep and lambs valued at $798 million. More than 99 percent of these operations had receipts of less than $500,000. Based on the 1997 Census of Agriculture, there were approximately 57,900 goat producers in the United States in 1997. They raised 1,989,799 goats with an approximate value of $74 million. More than 99 percent of these goat producers had receipts of less than $500,000.

The U.S. livestock industry also plays an important role in international trade. U.S. competitiveness in international markets relies to a great degree upon this country's reputation for producing high quality disease-free animals and animal products. Maintaining these favorable trade conditions depends, in part, on continued aggressive efforts to prevent any threat of FMD introduction into the United States. A single outbreak of FMD, anywhere in the United States, would close our major export markets of livestock and livestock products overnight. Most exports of meat, animals and byproducts would be stopped until the disease was completely eradicated. In 1998, total earnings from U.S. exports of ruminants and swine, and fresh (chilled or frozen) meat and other products of ruminants and swine were approximately $4.5 billion. Consequently, an outbreak of FMD could result in the potential loss of export sales in the billions of dollars as well as other costs to those involved in the U.S. livestock industry.

This action will produce economic benefits by protecting against the introduction of FMD into the United States. We expect that prohibiting or restricting the importation into the United States of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Japan will have little or no effect on U.S. entities (importers, members of the public, and producers), large or small. In 1998, the United States imported from Japan ruminants and swine and fresh (chilled or frozen) meat of ruminants and swine valued at approximately $3.8 million. This represents less than 1 percent of the total U.S. imports of these products. Since Japan is not a significant source of these products for the U.S. market, restrictions on imports from Japan should not have a noticeable effect on producer, wholesale, or consumer prices in the United States. Any shortfall of supply could easily be met from domestic or other sources. Therefore, we expect that there will be very little or no effect on U.S. entities as a result of this restriction.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERFEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 65 FR 20712–20713 on April 18, 2000.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 11th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–17885 Filed 7–13–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–20]

Amendment to Class E Airspace; Oakley, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Oakley Municipal Airport, Oakley, KS. A review of the Class E airspace area for Oakley Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 30, 2000.

Comments for incusion in the Rules Docket must be received on or before September 6, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–20, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Oakley, KS. A review of the Class E airspace for Oakley Municipal Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Oakley Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–20." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Oakley, KS [Revised]

Oakley Municipal Airport, KS
(Lat. 39°06′36″ N., long. 100°48′59″ W.)
Oakley NDB
(Lat. 39°06′45″ N., long. 100°48′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Oakley Municipal Airport and within 2.6 miles each side of the 175° bearing from the Oakley NDB extending from the 6.5-mile radius to 7.4 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on July 3, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–17871 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–19]

Amendment to Class E Airspace; Atwood, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Atwood-Rawlins County City-County Airport, Atwood, KS. A review of the Class E airspace area for Atwood-Rawlins County City-County Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airpsace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 5, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–19, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Atwood, KS. A review of the Class E airspace for Atwood-Rawlins County-City Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Atwood-Rawlins County-City County Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–18." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Atwood, KS [Revised]

Atwood-Rawlins County-City County Airport, KS

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(Lat 39°50′25″ N., long. 101°02′31″ W.)
Atwood NDB
(Lat 39°50′20″ N., long. 101°02′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Atwood-Rawlins County-City County Airport and within 2.6 miles each side of the 258° bearing from the Atwood NDB extending from the 6.5-mile radius to 7.4 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on July 3, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–17870 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–21]

Amendment to Class E Airspace, Columbia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E surface area at Columbia Regional Airport, Columbia, MO, from part time status to full time status. The Class E surface area designation as full time is necessary to accommodate Instrument Flight Rules (IFR) operations during the periods when the Airport Traffic Control Tower (ATCT) is closed.

The intended effect of this rule is to convert the Class E surface area from part time status to full time status and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 17, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division. ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–21, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: There are Part 135 operations at the Columbia Regional Airport after the ATCT is closed. A revision to the Class E surface area changes the status from part time to full time. The Class E surface area will provide controlled airspace for Part 135 and other IFR operations when the ATCT is closed. Class E surface areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarized each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–21." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ACE MO E2 Columbia, MO [Revised]

Columbia Regional Airport, MO
(Lat. 38°49′05″ N., long. 92°13′11″ W.)

Within a 4.3-mile radius of the Columbia Regional Airport.

* * * * *

Issued in Kansas City, MO, on July 5, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–17868 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 000407096–0196–02; I.D. 040300C]

RIN 0648–AN51

Fisheries of the Northeastern United States Northeast Multispecies; Framework Adjustment 33 to the Northeast Multispecies Fishery Management Plan; Reporting Requirement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; effectiveness of collection-of-information requirement.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of a collection-of-information requirement contained in Framework Adjustment 33 to the Northeast Multispecies Fishery Management Plan (FMP) and issues a final rule to make effective the restrictions and related prohibitions contained in Framework 33 for charter/party vessel operators fishing in the Gulf of Maine closed areas and the Nantucket Lightship Closed Area. Charter/party vessels are required to obtain a certificate in exchange for access to the Gulf of Maine closed areas. As a condition of the certificate, the vessel owner must agree to abide by charter/party regulations and to not utilize days at sea during the 3 months covered by the certificate. This final rule also codifies the OMB control number for the approved information collection in 50 CFR part 902. The intent of this final rule is to inform the public of the effective date of the charter/party vessel requirements and publish the OMB control number for the related collection-of-information requirement.

DATES: Sections 648.14(b)(2), 648.81(g)(2)(iii), and 648.89(e) published at 65 FR 21658 (April 24, 2000) and 15 CFR 902.1 are effective on August 28, 2000.

ADDRESSES: Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Patricia Kurkul, Regional Director, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Rick Pearson, Fishery Policy Analyst, 978–281–0279.

SUPPLEMENTARY INFORMATION: A final rule that implemented the measures contained in Framework 33 to the Northeast Multispecies FMP was published in the **Federal Register** on April 24, 2000 (65 FR 21658), and most of the measures were made effective on May 1, 2000. However, because OMB approval of the reporting requirement contained in Framework 33 had not yet been received as of the effective date of that rule, effectiveness of the Charter/party vessel requirements and related prohibitions contained in the framework was delayed. OMB approval for those measures was received on June 20, 2000. Consequently, this rule makes §§ 648.14(b)(2), 648.81(g)(2)(iii), and 648.89(e), which were codified in the April 24, 2000, final rule, effective.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0412 for §§ 648.81 and 648.89.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

This rule has been determined to be not significant for the purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA that has been approved by OMB under 0648–0412. The estimated time per response for a telephone call to request a Multispecies Charter/party Gulf of Maine Closed Area Exemption Certificate is 2 minutes.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the

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data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: July 9, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, is amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order a new OMB control number, "–0412", to § 648.81 and by adding in numerical order § 648.89 and its corresponding OMB control number "–0412" to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
648.81	*** and –0412
* * * * *	
648.89	–0412
* * * * *	

[FR Doc. 00–17894 Filed 7–13–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM98–10–000 and RM98–12–000]

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

July 10, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule: Clarification of Filing Procedures for Order No. 637 Compliance Filings.

SUMMARY: In Order No. 637–A (65 FR 35706, June 5, 2000), issued on May 19, 2000, the Federal Energy Regulatory Commission established procedures for filing *pro forma* tariff sheets electronically through Internet E-Mail. This document clarifies the filing procedures for the *pro forma* compliance filings.

DATES: This rule is effective July 10, 2000.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294.

William P. Bushey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0130.

SUPPLEMENTARY INFORMATION:

Notice Clarifying Filing Procedures for Order No. 637 Compliance Filings

In Order No. 637–A, issued on May 19, 2000,[1] the Federal Energy Regulatory Commission (Commission) established procedures for filing *pro forma* tariff sheets in compliance with the order electronically through Internet E-Mail. Pipelines are to make the required filings on June 15, July 17, and August 15, 2000.[2] According to the procedures, pipelines may file the electronic *pro forma* tariff sheets through Internet E-Mail to *637FASTR@ferc.fed.us* in the following format: on the subject line, specify the name of the filing entity; in the body of the E-Mail, specify the name, telephone number, and E-Mail address of a contact person; the pro forma tariff sheets should be attached to the E-Mail message. Pipelines not filing using Internet E-Mail are to file the *pro forma* tariffs on diskette along with the paper filing and must label the diskette as containing *pro forma* tariff sheets.

During the first set of compliance filings, questions about the procedures were raised. The following is intended to clarify the procedures for the last two sets of filings.

1. To identify the Pro Forma tariff sheets, the word "Pro Forma" should appear on each sheet before the volume name, e.g., Pro Forma Second Revised Volume No. in the upper left hand side of each sheet. The word Pro Forma need not appear before the sheet number on the upper right hand side of each sheet.

2. The E-mail file containing the Pro Forma tariff sheets should be labeled ⟨company name, or abbreviation, limited to two words⟩ followed by 637.asc. For example, Columbiagulf637.asc; MIGC637.asc; or Transco637.asc is acceptable.

3. A diskette containing an electronic copy of the notice of filing is not required for the initial Order No. 637 compliance filing. A basket notice will be issued identifying all pipelines filing on July 17 and August 15, 2000. However, if the initial Order No. 637 application is amended, the amended filing must contain a diskette with a copy of the notice. The electronic notice for an amended application should not be filed as part of the E-mail filing which should only contain the Pro Forma tariff sheets.

4. For the purpose of paginating tariff sheets, the Pro Forma tariff sheet is for informational purposes and is not an effective tariff sheet. The Pro Forma tariff sheet cannot be superseded, so the pagination of any subsequent live tariff filing should be made as if the Pro Forma Sheet had not been filed.

David P. Boergers,

Secretary.

[FR Doc. 00–17863 Filed 7–13–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637–A, 65 FR 35706, 35764 (Jun. 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,649 (May 19, 2000).

[2] Regulation of Short-Term Natural Gas Transportation Services, 91 FERC ¶ 61,020 (2000).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 163

[T.D. 00–49]

RIN 1515–AC55

Export Certificates for Sugar-Containing Products Subject to Tariff-Rate Quota

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, the interim rule amending the Customs Regulations that was published in the **Federal Register** on February 4, 2000, as T.D. 00–7. The interim rule set forth the form and manner by which an importer establishes that a valid export certificate is in effect for certain sugar-containing products subject to a tariff-rate quota, that are products of a participating country, as defined in regulations of the United States Trade Representative (USTR). The export certificate is necessary to enable the importer to claim the in-quota rate of duty on the sugar-containing products.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTACT: Leon Hayward, Office of Field Operations, (202–927–9704).

SUPPLEMENTARY INFORMATION:

Background

As a result of the Uruguay Round Agreements, approved by Congress in section 101 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465), the President, by Presidential Proclamation No. 6763, established a tariff-rate quota for imported sugar-containing products.

Under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota tariff rate would be applicable only to the extent that the aggregate in-quota quantity of a product allocated to a country had not been exceeded.

Under Presidential Proclamation No. 7235, dated October 7, 1999, the United States Trade Representative (USTR) was given authority under section 404(a) of the URAA to implement the tariff-rate quota for sugar-containing products to ensure that they do not disrupt the orderly marketing of such products in the United States. The USTR has already assigned Canada an in-quota allocation of the sugar-containing products (64 FR 54719; October 7, 1999).

As part of the implementation of this tariff-rate quota, the USTR has established an export-certificate program under which exporting countries that have an allocation of the in-quota quantity and that wish to participate in the program may use export certificates for their sugar-containing products that are exported to the United States. The USTR issued regulations for this export-certificate program (15 CFR part 2015) (64 FR 67152; December 1, 1999).

An exporting country wishing to participate in the export-certificate program must notify the USTR and provide the necessary supporting information. As defined in the USTR regulations (15 CFR 2015.2(e)), a participating country is a country that has received an allocation of the in-quota quantity of the tariff-rate quota, and that the USTR has determined, and has so informed Customs, is eligible to use export certificates for their sugar-containing products exported to the United States. The USTR has stated that it intends to publish a notice in the **Federal Register** whenever a country becomes, or ceases to be, a participating country.

The particular sugar-containing products subject to a tariff-rate quota for which the USTR has established the export-certificate program are described in additional U.S. Note 8 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, unless excepted as provided in additional U.S. Note 3 to chapter 17, HTSUS, the imported sugar-containing products covered by the export-certificate program contain over 10 percent by dry weight of sugars derived from cane or sugar beets, whether or not mixed with other ingredients, and they are classified under one of the following HTSUS subheadings: 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78, or 2106.90.95.

While a country does not need to participate in the export-certificate program in order to receive the in-quota tariff rate for its share of the in-quota quantity, using export certificates assures the exporting country that only those exported sugar-containing products that it intends for the United States market are counted against its in-quota allocation. As already noted, this helps ensure that such products do not disrupt the orderly marketing of sugar-containing products in the United States.

On December 4, 1998, the Governments of the United States and Canada entered into a Record of Understanding regarding Areas of Agricultural Trade. In Annex 17 of this Record of Understanding, the United States agreed to require an export permit issued by the Government of Canada in order to enable an importer to claim the in-quota tariff rate for those sugar-containing products of Canadian origin described in additional U.S. Note 8 to chapter 17, HTSUS. Canada was thus a participating country in this export-certificate program as of January 31, 2000, the effective date of the USTR rule.

In accordance with the rulemaking of the USTR, by a document published in the **Federal Register** (65 FR 5430) on February 4, 2000, Customs issued an interim rule that added a new § 132.17 to the Customs Regulations (19 CFR 132.17), in order to prescribe the form and manner by which an importer establishes that a valid export certificate exists, including a unique number for the certificate that must be referenced on the entry or withdrawal from warehouse for consumption, whether filed in paper form or electronically. This was intended to ensure that no imports of the specified sugar-containing products of a participating country are counted against the country's in-quota allocation unless the products are covered by a proper export certificate. The export certificate is necessary in this regard in order to enable the importer to claim the in-quota rate of duty on the sugar-containing products.

In addition, the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), that lists the records required for the entry of merchandise, was revised to add a reference to the requirement in new § 132.17 that an importer possess a valid export certificate for sugar-containing products that are subject to a tariff-rate quota and that are products of a participating country, in order for the importer to be able to claim the applicable in-quota rate of duty.

Also, § 132.15, Customs Regulations (19 CFR 132.15), was revised to make provision for electronic entry filing in the case of beef subject to a tariff-rate quota, for which the importer must similarly possess a valid export certificate in order to claim the in-quota rate of duty.

No comments were received from the public in response to the interim rule, and Customs has now determined to

adopt the interim rule as a final rule without change.

The Regulatory Flexibility Act and Executive Order 12866

As discussed in the interim rule, since the amendments are not subject to the notice and public procedure requirements of the Administrative Procedure Act (5 U.S.C. 553), they are not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Also, because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Paperwork Reduction Act

The collections of information involved in this interim rule have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Entry summary and continuation sheet) and 1515–0214 (General recordkeeping and record production requirements). This rule does not propose any substantive changes to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

List of Subjects

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the interim rule amending 19 CFR parts 132 and 163, which was published in the **Federal Register** at 65 FR 5430 on February 4, 2000, is adopted as a final rule without change.

Raymond W. Kelly,

Commissioner of Customs.

Approved: June 14, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–17927 Filed 7–13–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 821, 895, and 900

[Docket No. 00N–1361]

Code of Federal Regulations; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to correct some errors that have become incorporated into the regulations. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective July 14, 2000.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy, Planning, and Legislation (HF–927), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: FDA has discovered that errors have been incorporated into the agency's codified regulations for 21 CFR parts 821, 895, and 900. This document corrects those errors. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects

21 CFR Part 821

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 895

Administrative practice and procedure, Labeling, Medical devices.

21 CFR Part 900

Electronic products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 821, 895, and 900 are amended as follows:

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

1. The authority citation for 21 CFR part 821 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, 374.

§ 821.50 [Amended]

2. Section 821.50 *Availability* is amended in paragraph (a) by removing "Form FD 482" and by adding in its place "Form FDA 482".

PART 895—BANNED DEVICES

3. The authority citation for 21 CFR part 895 continues to read as follows:

Authority: 21 U.S.C. 352, 360f, 360h, 360i, 371.

§ 895.21 [Amended]

4. Section 895.21 *Procedures for banning a device* is amended in the fourth sentence of paragraph (d)(8) by removing "201(y)" and by adding in its place "201(x)".

PART 900—MAMMOGRAPHY

5. The authority citation for 21 CFR part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

§ 900.12 [Amended]

6. Section 900.12 *Quality standards* is amended in paragraph (e)(5)(iii)(A)(*1*) by removing "Cycles/millimeters" and by adding in its place "Cycles/millimeter", and in the third sentence of paragraph (f)(3) by removing "results and notifying" and by adding in its place "results and for notifying".

Dated: June 27, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17811 Filed 7–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–187F]

RIN 1117–AA51

Schedules of Controlled Substances: Exempt Anabolic Steroids Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) published an interim rule with request for comments (65 FR 3124, Jan. 20, 2000, as corrected at 65 FR 5024, Feb. 2, 2000) which identified six anabolic steroid products as being exempt from certain regulatory provisions of the Controlled Substances Act (21 U.S.C. 801 *et seq.*) (CSA). No

comments were received. Therefore, the interim rule is being adopted without change.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537; Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Does This Rule Accomplish and by What Authority Is It Being Issued?

This rule finalizes an interim rule (65 FR 3124, Jan. 20, 2000, as corrected at 65 FR 5024, Feb. 2, 2000) which identified six products as being exempt from certain portions of the Controlled Substances Act (21 U.S.C. 801 *et seq.*) (CSA). Section 1903 of the Anabolic Steroids Control Act of 1990 (title XIX of Pub. L. 101–647) (ASCA) provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the CSA if the products have no significant potential for abuse. The procedure for implementing this section of the ASCA is described in 21 CFR 1308.33. Exempt status removes each product from application of the registration, labeling, records, reports, prescription, physical security, and import and export restrictions associated with Schedule III substances.

Why Did DEA Add Six Products to the List of Exempt Anabolic Steroids Products?

Manufacturers of six anabolic steroid products submitted exempt status applications to the Deputy Assistant Administrator for the DEA Office of Diversion Control in accordance with 21 CFR 1308.33. Each application delineated a set of facts which the applicant believed justified the exempt status of its product. The applicants provided information which they believed showed that because of the specific product preparation, concentration, mixture, or delivery system these products had no significant potential for abuse. Upon acceptance of the applications, the Deputy Assistant Administrator requested from the Assistant Secretary for Health, Department of Health and Human Services (HHS) a recommendation as to whether these products should be considered for exemption from certain portions of the CSA. The Deputy Assistant Administrator received the determination and recommendation of the Assistant Secretary for Health and Surgeon General that there was sufficient evidence to establish that each product does not possess a significant potential for abuse.

Which Anabolic Steroid Products Are Effected and When Does the Rule Become Affective?

In the interim rule, the Deputy Assistant Administrator identified the following six products as being exempt from application of sections 302 and through 309 and 1002 through 1004 of the CSA (21 U.S.C. 822–829 and 952–954) and 21 CFR 1301.13, 1301.22, and 1301.71 through 1301.76:

EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	NDC No.	Form	Ingredients	Quantity
Component E–H in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.	.....	Pail or drum ...	Testosterone propionate	10 parts
Component E–H in process pellets.	Ivy Laboratories, Inc., Overland Parks, KS.	.....	Pail	Estradiol benzoate	1 part
				Testosterone propionate	25 mg/
Component TE–S in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.	.....	Pail or drum ...	Estradiol benzoate	2.5 mg/pellet
				Trenbolone acetate	5 parts
Component TE–S in process pellets.	Ivy Laboratories, Inc., Overland Parks, KS.	.....	Pail	Estradiol USP	1 part
				Trenbolone acetate	120 mg/
Testoderm with Adhesive 4 mg/d.	Alza Corp., Palo Alto,CA	Export only	Patch	Estradiol USP	24 mg/pellet
				Testosterone	10 mg
Testosterone Ophthalmic Solutions.	Allergan, Irvine, CA	.....	Ophthalmic Solutions.	Testosterone	≤0.6% w/v

The interim rule became immediately effective on publication in the **Federal Register,** January 20, 2000, in order to provide a health benefit to the public by more expeditiously increasing the access to these anabolic steroid products and to reduce regulatory restrictions that DEA (in consultation with HHS) has determined to be an unnecessary burden on the businesses manufacturing these products.

What Comments to the Interim Rule Were Received?

Comments to the interim rule were requested, none were received.

What Exempt Anabolic Steroid Products are Included in the List Referred to in 21 CFR 1308.34?

With the publication of this final rule, the complete list of products referred to in 21 CFR 1308.34 is as follows:

EXEMPT ANABOLIC STEROID PRODUCTS

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
Andro-Estro 90–4	Rugby Laboratories, Rockville Centre, NY.	)536–1605	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml
Androgyn L.A.	Forest Pharmaceuticals, St. Louis, MO.	0456–1005	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml

EXEMPT ANABOLIC STEROID PRODUCTS—Continued

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
Component E–H in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.		Pail or drum ...	Testosterone propionate	10 parts
				Estradiol benzoate	1 part
Componenet E–H in process pellets.	Ivy Laboratories, Inc., Overland Park, KS.		Pail	Testosterone propionate	25 mg/
				Estradiol benzoate	2.5 mg/pellet
Component TE–S in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.		Pail or drum ...	Trenbolone acetate	5 parts
				Estradiol USP	1 part
Component TE–S in process pellets.	Ivy Laboratories, Inc., Overland Park, KS.		Pail	Trenbolone acetate	120 mg/
				Estradiol USP	24 mg/pellet
depANDROGYN	Forest Pharmaceuticals, St. Louis, MO.	0456–1020	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
DEPTO–T.E.	Quality Research Pharm., Carmel, IN.	52765–257	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
Depo-Testadiol	The Upjohn Company, Kalamazoo, MI.	0009–0253	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
depTESTROGEN	Martica Pharmaceuticals, Phoenix, AZ.	51698–257	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
Duomone	Wintec Pharmaceutical, Pacific, MO.	52047–360	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml
DUO–SPAN II	Primedics Laboratories, Gardena, CA.	0684–0102	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
DURATESTRIN	W. E. Hauck, Alpharetta, GA	43797–016	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
Estratest	Solvay Pharmaceuticals, Marietta, GA.	0032–1026	TB	Esterifield estrogens	1.25 mg
				Methyltestosterone	2.5 mg
Estratest HS	Solvay Pharmaceuticals, Marietta, GA.	0032–1023	TB	Esterifield estrogens	0.625 mg
				Methyltestosterone	1.25 mg
Menogen	Sage Pharmaceuticals, Shreveport, LA.	59243–570	TB	Esterifield estrogens	1.25 mg
				Methyltestosterone	2.5 mg
Menogen HS	Sage Pharmaceutical, Shreveport, LA.	59243–560	TB	Esterifield estrogens	.0625 mg
				Methyltestosterone	1.25 mg
PAN ESTRA TEST	Pan American Labs., Covington, LA.	0525–0175	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
Premarin with Methyltestosterone.	Ayerst Labs. Inc,. New York, NY.	0046–0878	TB	Conjugated estrogens	0.625 mg
				Methyltestosterone	5.0 mg
Premarin with Methyltestosterone.	Ayerst Labs. Inc., New York, NY.	0046–0879	TB	Conjugated estrogens	1.25 mg
				Methyltestosterone	10.0 mg
Synovex H in-process bulk pellets.	Syntex Animal health, Palo Alto, CA.		Drum	Testosterone propionate	25 mg
				Estradiol benzoate	2.5 mg/pellet
Synovex H in-process granulation.	Syntex Animal Health, Palo Alto, CA.		Drum	Testosterone propionate	10 part
				Estradiol benzoate	1 part
Synovex Plus in-process bulk pellets.	Fort Dodge Animal Health, Fort Dodge, IA.		Drum	Trenbolone acetate	25 mg/
				Estradiol benzoate	3.50 mg/pellet
Synovex Plus in-process granulation.	Fort Dodge Animal Health, Fort Dodge, IA.		Drum	Trenbolone acetate 25 parts.	
				Estradiol benzoate	3.5 parts
Testagen	Clint Pharmaceuticals, Nashville, TN.	55553–257	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
TEST–ESTRO Cypionates	Rugby Laboratories Rockvill Centre, NY.	0536–9470	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml

EXEMPT ANABOLIC STEROID PRODUCTS—Continued

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
Testoderm 4 mg/d	Alza Copr., Palo Alto, CA	17314–4608	Patch	Testosterone	10 mg
Testoderm 6 mg/d	Alza Corp., Palo Alto, CA	17314–4609	Patch	Testosterone	15 mg
Testoderm with Adhesive 4 mg/d.	Alza Corp., Palo Alto, CA	Export only	Patch	Testosterone	10 mg
Testoderm with Adhesive 6 mg/d.	Alza Corp., Palo Alto, CA	17314–2836	Patch	Testosterone	15 mg
Testoderm in-process film	Alza Corp, Palo Alto, CA		Sheet	Testosterone	0.25 mg/cm2
Testoderm with Adhesive in-process film.	Alza Corp., Palo Alto, CA		Sheet	Testosterone	0.25 mg/cm2
Testosterone Cypionate/Estradiol Cypionate Injection.	Best Generics, No. Miami Beach, FL.	54274–530	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Goldline Labs, Ft. Lauderdale, Fl.	0182–3069	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2mg/ml
Testosterone Cyp 50 Estradiol Cyp 2.	I.D.E.-Interstate, Amityville, NY.	0814–7737	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Schein Pharmaceuticals, Port Washington, NY.	0364–6611	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Steris Labs. Inc., Phoenix, AZ.	0402–0257	Vial	Testosterone cypionate	50 mg/ml
				Estradiol cypionate	2 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Goldline Labs, Ft. Lauderdale, Fl.	0182–3073	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Schein Pharmaceuticals, Port Washington, NY.	0364–6618	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Steris Labs. Inc., Phoenix, AZ.	0402–0360	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml
Testosterone Ophthalmic Solutions.	Allergan, Irvine, CA		Ophthalmic solutions.	Testosterone	≤0.6% w/v
Tilapia Sex Reversal Feed (Investigational).	Rangen, Inc., Buhl, ID		Plastic bags	Methyltestosterone	60 mg/kg fish feed
Tilapia Sex Reversal Feed (Investigational).	Ziegler Brothers, Inc., Gardners, PA.		Plastic bags	Methyltestosterone	60 mg/kg fish feed

Additional copies of this list may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537.

Plain Language Instructions

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, for the DEA Office of Diversion Control, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this rule and by approving it, certifies that it will not have significant economic impact on a substantial number of small business entities. The granting of exempt status relieves persons who handle the exempt products in the course of legitimate business from the registration, labeling, records, reports, prescription, physical security, and import and export restrictions imposed by the CSA.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866, section 1(b). The Office of Management and Budget (OMB) reviewed the interim rule as a significant action; the DEA received no comments regarding the interim rule. This final rule falls into a category of regulatory actions which OMB has determined are exempt from regulatory review. Therefore, this action has not been reviewed by the OMB.

Executive Order 13132

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132 and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not

result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

PART 1308—[AMENDED]

Pursuant to the authority delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100 and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration Office of Diversion Control, pursuant to 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby adopts as a final rule, without change, the interim rule which was published at 65 FR 3124 on Jan. 20, 2000 and corrected at 65 FR 5024, on Feb. 2, 2000, amending the list described in 21 CFR 1308.34.

Dated: July 3, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 00–17915 Filed 7–13–00; 8:45 am]

BILLING CODE 4410–09–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in August 2000. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022). (See the PBGC's two final rules published March 17, 2000, in the **Federal Register** (at 65 FR 14752 and 14753). Effective May 1, 2000, these rules changed how the interest assumptions are used and where they are set forth in the PBGC's regulations.)

Accordingly, this amendment (1) Adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during August 2000, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during August 2000, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during August 2000.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 7.10 percent for the first 25 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for July 2000) of 0.30 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for July 2000) of 0.25 percent for the period during which a benefit is in pay status and for the seven-year period directly preceding the benefit's placement in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during August 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 82, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
	*	*	*	*	*	*	*	
82	8–1–00	9–1–00	5.25	4.50	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 82, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
	*	*	*	*	*	*	*	
82	8–1–00	9–1–00	5.25	4.50	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
	*	*	*	*	*	*
August 2000	.0710	1–25	.0625	>25	N/A	N/A

Issued in Washington, DC, on this 7th day of July 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–17911 Filed 7–13–00; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 01–00–140]

RIN 2115–AA97

Safety Zone: Iron Spring Farm Fireworks Display.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Iron Spring Farm Fireworks Display to be held in the Atlantic Ocean, Southampton, NY, on July 19, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 8:45 p.m. on July 19, 2000 to 9:40 p.m. on July 19, 2000.

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ADDRESSES: Documents relating to this temporary final rule are available for inspection or copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512 between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer C. D. Stubblefield, Command Center, Captain of the Port, Long Island Sound at (203) 468–4428.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553(b)(B), a notice of proposed rulemaking (NPRM) will not be published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the fact that plans for this event were recently finalized, there was insufficient time to draft and publish a NPRM. Any delay encountered in this regulation's effective date would be contrary to the public interest since immediate action is needed to protect the maritime public from the hazards associated with the fireworks display, which is intended for public entertainment.

Background and Purpose

The Iron Spring Farm, Inc., is sponsoring a 10 minute fireworks display in the Atlantic Ocean, Southampton, NY. The safety zone will be in effect from 8:45 p.m., July 19, 2000 until 9:40 p.m. Eastern Daylight Savings Time, July 19, 2000. The safety zone covers all waters of the Atlantic Ocean within a 800 foot radius of the fireworks launching barge which will be located in the Atlantic Ocean, Southampton, NY, in approximate position; 40°–51′20″N, 072°–24′00″W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone involves only a portion of the Atlantic Ocean and entry into this zone will be restricted for only 55 minutes. Although this regulation prevents traffic from transiting this section of the Atlantic Ocean, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Governments having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This

final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–140 to read as follows:

§ 165.T01–140 The Iron Spring Farm Fireworks Display, Southampton, NY.

(a) *Location.* The safety zone includes all waters of the Atlantic Ocean within a 800 foot radius of the launch barge located in the Atlantic Ocean, Southampton, NY. in approximate position 40°-51′20″N, 072°-24′00″W (NAD 1983).

(b) *Effective date.* This section is effective on July 19, 2000 from 8:45 p.m. until 9:40 p.m., July 19, 2000.

(c) *Regulations.* (1) The general regulations covering safety zones contained in section 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 25, 2000.

David P. Pekoske,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 00–17913 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–012]

RIN 2115–AA97

Safety Zone: Mashantucket Pequot Fireworks Display, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Mashantucket Pequot Fireworks Display to be held on the Thames River, New London, CT on July 15, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on July 15, 2000, from 8:55 p.m. until 10:10 p.m. In case of inclement weather, July 16, 2000 is the scheduled rain date for this event.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4443.

FOR FURTHER INFORMATION CONTACT: Chief Chris Stubblefield, Group/MSO Long Island Sound, New Haven, Connecticut (203) 468–4428.

SUPPLEMENTARY INFORMATION:

Request for Comments

Pursuant to 5 U.S.C. 553(b)(B), a notice of proposed rulemaking (NPRM) will not be published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the fact that plans for this event were recently finalized, there was insufficiant time to draft and publish a NPRM. Any delay encountered in this regulation's effective date would be contrary to the public interest since immediate action is needed to protect the maritime public from the hazards associated with the fireworks display, which is intended for public entertainment.

However, we encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD01–00–012 indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Group/MSO Long Island Sound Command Center at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Mashantucket Pequot Tribal Nation of Mashantucket, CT. is sponsoring a 30 minute fireworks display in the Thames River, New London, CT. The fireworks display will occur on July 15, 2000, from 9:25 p.m. until 9:55 p.m.. The safety zone covers all waters of the Thames River within a 1000 foot radius of the fireworks launching barges which will be located off New London, CT., in approximate positions; barge one, 41° – 21′01.5″N, 072° – 05′25″W, barge two, 41° – 20′58″N, 072° – 05′23″W, and barge three, 41° – 20′53.5″N, 072° – 05′21″W (NAD 1983). This zone is required to protect the maritime from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)

(44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of the Thames River and entry into this zone will be restricted for 75 minutes on July 15, 2000. Although this regulation prevents traffic from transiting this section of Thames River, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Chief Chris Stubblefield, telephone (203) 468–4428.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132, and has determined that this regulations does not have federalism implications under that Order.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under Addresses.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–012 to read as follows:

§ 165.T01–012; Mashantucket Pequot Fireworks Display, Thames River, New London, CT.

(a) *Location.* The safety zone includes all waters of Thames River within a 1000 foot radius of the launch site located on the Thames River, New London, CT., in approximate positions: Barge one; 41°–21′01.5″N, 072°–05′25″W, Barge two: 41°–20′58″N, 072°–05′23″W, and Barge three; 41°–20′53.5″N, 072°–05′21″W (NAD 1983).

(b) *Effective date.* This section is effective on July 15, 2000 from 8:55 p.m. until 10:10 p.m. In case of inclement weather, July 16, 2000, is the scheduled rain date for this event.

(c)(1) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the

designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 16, 2000.

David P. Pekoske,

Captain, U.S. Coast Guard, Captain of the Port, Group/Marine Safety Office Long Island Sound.

[FR Doc. 00–17914 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK04

The Veterans Millennium Health Care and Benefits Act

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to reflect changes made by the Veterans Millennium Health Care and Benefits Act. These changes concern payment of dependency and indemnity compensation to the surviving spouses of certain former prisoners of war; the provision of health care, education and home loan benefits to surviving spouses upon termination of their remarriages; and the addition of bronchiolo-alveolar carcinoma to the list of diseases that VA presumes are the result of exposure to radiation during active military service.

DATES: *Effective Dates:* The amendments to 38 CFR 3.22 and 3.309 are effective November 30, 1999. The amendment to 38 CFR 3.55 is effective December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Russo (211), Attorney-Advisor, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: On November 30, 1999, the President signed into law the Veterans Millennium Health Care and Benefits Act, Pub. L. 106–117 (the Act). Three provisions of the Act directly affect the payment of VA benefits. These provisions concern: (1) Payment of dependency and indemnity compensation (DIC) to the surviving spouses of certain former prisoners of war (POWs); (2) provision of health care, education and home loan benefits to surviving spouses upon termination of their remarriages; and (3) addition of bronchiolo-alveolar carcinoma to the list of diseases that VA presumes are the result of exposure to radiation during active military service.

DIC benefits are generally payable to the survivors of veterans who died from their service-connected disabilities. In addition, 38 U.S.C. 1318 authorizes VA to pay DIC benefits to survivors of veterans whose deaths were not service-connected but who were continuously rated totally disabled due to service-connected disabilities for ten years or more immediately preceding the veteran's death, or for five years from the date of such veteran's discharge. Section 501 of Pub. L. 106–117 authorizes payment of DIC to the survivors of former POWs who died after September 30, 1999, and who were continuously rated totally disabled due to a service-connected disability for a period of not less than one year immediately preceding death. This provision is effective November 30, 1999, the date of enactment. This document amends 38 CFR 3.22, to reflect this change.

In 1998, Pub. L. 105–178 restored eligibility to DIC to a surviving spouse of a veteran if that person's subsequent remarriage had been terminated by death or divorce, or if a subsequent relationship had been terminated. Eligibility to DIC was restored effective October 1, 1998. This law restored eligibility only to DIC. Eligibility to ancillary benefits—including VA Civilian Health Care and Medical Program (CHAMPVA), chapter 35 education, and home loan guaranty benefits—was not restored.

Section 502 of Pub. L. 106–117 restores eligibility to health care benefits under 38 U.S.C. chapter 17 (CHAMPVA), education benefits under chapter 35, and home loan guaranty benefits under chapter 37 to a surviving spouse if his or her remarriage has been terminated by death or divorce, or if a surviving spouse has ceased living with another person and holding himself or herself out openly to the public as that person's spouse. Section 502 states that its changes shall take effect on the first day of the first month beginning after the month in which the Act is enacted, *i.e.*, December 1, 1999. This document amends 38 CFR 3.55 to reflect these changes.

Section 503 of the Act adds bronchiolo-alveolar carcinoma to the list of diseases that VA presumes result from exposure to radiation during active military service. This provision of the law is effective November 30, 1999. This document amends 38 CFR 3.309(d) to reflect these changes.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. These amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: June 28, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.22 is amended by:

A. In paragraph (a)(2)(i), removing the word "or" after the semi-colon at the end of the paragraph.

B. In paragraph (a)(2)(ii), removing the period at the end of the paragraph and adding, in its place, "; or".

C. Adding paragraph (a)(2)(iii) to read as follows:

§ 3.22 DIC benefits for survivors of certain veterans rated totally disabled at the time of death.

(a) * * *

(2) * * *

(iii) Rated by VA as totally disabling for a continuous period of not less than one year immediately preceding death, if the veteran was a former prisoner of war who died after September 30, 1999. (Authority: 38 U.S.C. 1318(b))

* * * * *

3. Section 3.55 is amended by redesigning paragraphs (a)(4), (a)(5), and

(a)(6) as paragraphs (a)(5), (a)(6) and (a)(8), respectively; and adding new paragraphs (a)(4) and (a)(7) to read as follows:

§ 3.55 Reinstatement of benefits eligibility based upon terminated marital relationships.

(a) * * *

(4) On or after December 1, 1999, remarriage of a surviving spouse terminated by death, divorce, or annulment, will not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1713, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37, unless the Secretary determines that the divorce or annulment was secured through fraud or collusion.

(Authority: 38 U.S.C. 103(d))

* * * * *

(7) On or after December 1, 1999, the fact that a surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of such other person will not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1713, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37 to the surviving spouse if he or she ceases living with such other person and holding himself or herself out openly to the public as such other person's spouse.

(Authority: 38 U.S.C. 103(d)).

* * * * *

4. Section 3.309 is amended by adding paragraph (d)(2)(xvi) and an authority citation after the Note to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(d) * * *

(2) * * *

(xvi) Bronchiolo-alveolar carcinoma.

* * * * *

(Authority: 38 U.S.C. 1112(c)(2))

[FR Doc. 00–17901 Filed 7–13–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6729–7]

Finding of Failure To Submit a Required State Implementation Plan for Carbon Monoxide; Anchorage, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Finding of Failure to Submit.

SUMMARY: EPA is taking final action in making a finding, under the Clean Air Act (CAA or Act), that Alaska failed to make a carbon monoxide (CO) nonattainment area state implementation plan (SIP) submittal required for Anchorage under the Act. Under certain provisions of the Act, states are required to submit SIPs providing for, among other things, reasonable further progress and attainment of the CO national ambient air quality standards (NAAQS) in areas classified as serious. The deadline for submittal of this plan for Anchorage was January 13, 2000. This action triggers the 18-month time clock for mandatory application of sanctions and the two-year time clock for a federal implementation plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

EFFECTIVE DATE: This action is effective as of July 13, 2000.

ADDRESSES: Written comments should be addressed to: Ms. Debra Suzuki, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: John Pavitt, U.S. EPA, Region 10, Alaska Operations Office, 222 W. 7th Avenue, #19, Anchorage, Alaska 99513–7588, Telephone (907) 271–5083.

SUPPLEMENTARY INFORMATION:

I. Background

The CAA Amendments of 1990 were enacted on November 15, 1990. Under section 107(d)(1)(c) of the amended CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Anchorage area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the Act, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Anchorage area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56846 (November 6, 1991).

(1) The CO nonattainment area is the "Anchorage Area, Anchorage Election District (part), Anchorage nonattainment area boundary." 40 CFR 81.302.

States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit SIPs designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995. Under section 186(a)(4), Alaska requested and EPA granted a one-year extension of the December 31, 1995 attainment deadline (61 FR 33676, June 28, 1996).

(2) The moderate area SIP requirements are set forth in section 187(a) of the Act and differ depending on whether the area's design value is above or below 12.7 ppm. The Anchorage area has a design value above 12.7 ppm. 40 CFR 81.302.

Anchorage exceeded the CO NAAQS three times during calendar year 1996. On June 12, 1998, EPA made a final finding that the Anchorage CO nonattainment area did not attain the CO NAAQS under the CAA-mandated attainment date after having received a one-year extension from the mandated attainment date of December 31, 1995 for moderate nonattainment areas to December 31, 1996. As a result of that finding, which went into effect on July 13, 1998, (63 FR 32128, June 12, 1998) the Anchorage, Alaska CO nonattainment area was reclassified as serious. The State had 18 months or until January 13, 2000 to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000, the CAA attainment date for serious areas. Anchorage complied with the CO NAAQS in 1997, 1998, and 1999, with one or fewer exceedances recorded in each of these years, and no exceedances in the year 2000 to date.

The Alaska Department of Environmental Conservation (ADEC) and the Municipality of Anchorage (MOA) have been conducting local research aimed at quantifying the impact of motor vehicle cold start emissions and warm-up idling on ambient CO in Anchorage. The local research program included: (1) A CO saturation monitoring study to better characterize the nature of the CO problem in Anchorage's neighborhoods and near major roadways; (2) a driver

idling behavior study to quantify the prevalence and duration of extended warm-up idling among Anchorage drivers in the winter months; (3) cold weather motor vehicle emission testing to quantify the proportion of emissions that occur during cold starts and warm-up idles; and (4) a "real world" CO emissions inventory that would better reflect unique winter season driving behaviors and cold weather motor vehicle emissions. MOA and ADEC anticipate that the information provided by these studies will be critical to the preparation of a credible SIP. Notwithstanding significant efforts to complete its CO SIP, the State failed to meet the January 13, 2000 deadline for the required SIP submission. EPA is therefore compelled to find that the State of Alaska has failed to make the required SIP submission for Anchorage. The CAA establishes specific consequences if EPA finds that a State has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provisions. Section 179(a) sets forth four findings that form the basis for applications of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If Alaska has not made the required complete submittal by January 13, 2002, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submission by July 13, 2002, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31. In addition, CAA section 110(c) provides that EPA must promulgate a federal implementation plan (FIP).

(3) In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed six months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

The sanctions will not take effect if, before January 13, 2002, EPA finds that the State has made a complete submittal of a plan addressing the serious area CO requirements for Anchorage. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal before July 13, 2002 (section 110(c)(1) of the Act). EPA encourages the responsible parties in Alaska to continue working together on a CO SIP which can eliminate the need for potential sanctions and a FIP.

II. Final Action

A. Rule

Today, EPA is making a finding of failure to submit for the Anchorage CO nonattainment area, due to failure of the State to submit a SIP revision addressing the serious area CO requirements of the CAA.

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because the Agency has treated this type of action as rulemaking in the past. However, EPA believes that it has the authority to issue this action in an informal adjudication, and is considering which administrative process—rulemaking or informal adjudication—is appropriate for future actions of this kind. Because EPA is issuing this notice as a rulemaking, the Administrative Procedures Act (APA) applies. Today's notice is effective as of July 13, 2000. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State is aware of the applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a "clock" that will not result in sanctions for 18 months, which the State may "turn off" through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This notice is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see Section II.C in this **Federal Register** action), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action is not a regulation that will have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this action, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729,

February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 13, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: June 26, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 00–17190 Filed 7–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KS 105–1105a; FRL–6733–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators (HMIWI); State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the state of Kansas' section 111(d) plan for controlling emissions from existing HMIWIs. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA). The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

DATES: This rule is effective on September 12, 2000 without further notice, unless EPA receives adverse comment by August 14, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments must be submitted to Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What are the requirements of section 129 of the CAA?

What is a section 111(d) state plan?

What is Subpart Ce?

What are the requirements for the HMIWI state plan? What is contained in the Kansas state plan?

What are the approval criteria for the state plan?

What Are the Requirements of Section 129 of the CAA?

Section 129 of the CAA Amendments of 1990 requires us to set air emission standards and emission guidelines (EG) under the authority of section 111 of the CAA to reduce pollution from incinerators that burn solid waste. Incinerators that burn medical waste are classified as solid waste incinerators and therefore must be regulated.

What Is a Section 111(d) State Plan?

Section 111(d) of the CAA, "Standards of Performance for New Stationary Sources," authorizes us to set air emissions standards for certain categories of sources. These standards are called new source performance standards (NSPS). When an NSPS is promulgated for new sources, we also publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a state plan to adopt the EG into its body of regulations and submit it to us for approval. The state plan is called a 111(d) plan.

What Is Subpart Ce?

We issued regulations to reduce air pollution from incinerators that are used to burn hospital waste and/or medical/infectious waste. The NSPS at 40 CFR Part 60, Subpart Ec, and the EG, Subpart Ce, were promulgated by us on September 15, 1997 (62 FR 48374). These rules apply to new and existing incinerators used by hospitals and health care facilities, as well as to incinerators used by commercial waste disposal companies to burn hospital waste and/or medical/infectious waste. The EG applies to existing HMIWIs that commenced construction on or before June 20, 1996.

The Subpart Ce EG is not a direct Federal regulation but is a "guideline" for states to use in regulating existing HMIWIs. The EG requires states to submit for our approval a section 111(d) state plan containing air emission regulations and compliance schedules for existing HMIWIs.

What Are the Requirements for the HMIWI State Plan?

A section 111(d) state plan submittal must meet the requirements of 40 CFR Part 60, Subpart B, sections 60.23 through 60.26, and 40 CFR Part Ce. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules,

emission inventories, source surveillance, and compliance assurance and enforcement requirements. The technical requirements for existing HMIWI sources are contained in Subpart Ce. A state will generally address the HMIWI technical requirements by adopting by reference Subpart Ce. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, *i.e.*, by September 15, 1998.

Prior to submittal to us, the state must make available to the public the state plan and provide opportunity for public comment. If a state fails to have an approvable plan in place by September 15, 1999, sources will be subject to a Federal plan when it is promulgated.

What Is Contained in the Kansas State Plan?

The state of Kansas submitted its section 111(d) state plan to us for approval on May 4, 2000. The state adopted the EG requirements into Kansas Department of Health and Environment (KDHE) rules at Kansas Administrative Regulations (K.A.R.) Article 19, rules 28–19–729 through 28–19–729h. The state effective date of these rules is May 5, 2000. The section 111(d) state plan contains:

1. A demonstration of the state's legal authority to implement the section 111(d) state plan. Pages one and two of the plan list 15 separate Kansas statutes which provide the basis for Kansas' authority to adopt and implement the 111(d) plan.

2. State rules K.A.R. 28–19–729 through 28–19–729h, as the enforceable mechanism. The specific rules are:

- 28–19–729—Standards for "hospital/medical/infectious waste incinerators."
- 28–19–729a—"Hospital/medical/infections waste incinerators"; definitions.
- 28–19–729b—"Hospital/medical/infections waste incinerators"; emission standards.
- 28–19–729c—Standards for "Hospital/medical/infections waste incinerators"; compliance schedule.
- 28–19–729d—"Hospital/medical/infections waste incinerators"; operation, operator training, and qualification standards.
- 28–19–729e—"Hospital/medical/infections waste incinerators"; waste management plan.
- 28–19–729f—"Hospital/medical/infections waste incinerators"; inspections.
- 28–19–729g—"Hospital/medical/infections waste incinerators"; compliance, performance testing, and monitoring guidelines.
- 28–19–729h—"Hospital/medical/infections waste incinerators"; reporting and recordkeeping.

3. An inventory of sources in Appendix A.

4. An emissions inventory on pages six through eleven, and in Table 2 of the plan.

5. Emission limits, as protective as the EG, are contained in rule 28–19–729b and Table 1 of the rule.

6. A final compliance date of September 15, 2002, which is specified in rule 28–19–729c(b)(2).

7. Testing, monitoring, and inspection requirements, which are contained in rule 28–19–729g.

8. Reporting and recordkeeping requirements, which are contained in rule 28–19–729h.

9. Operator training and qualification requirements, which are contained in rule 28–19–729d.

10. Requirements for the development of waste management plans, which are contained in rule 28–19–729e.

11. A record of the public notice and hearing requirements is provided starting on page 14 of the plan.

12. Provisions for progress reports to EPA is discussed on page 15 of the plan.

13. Title V permit application due date requirements are specified on page 13 of the plan. Title V permit applications must be submitted no later than September 15, 2000.

14. A final compliance date of September 15, 2002, is specified in the plan on page 13 and in rule 28–19–729c.

What Are the Approval Criteria for the State Plan?

The state plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, Subpart B, "Adoption and Submittal of State Plans for Designated Facilities," and 40 CFR 60, 60.30e through 60.39e, Subpart Ce, "Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators." A detailed discussion of our evaluation of the state plan is included in our technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The state plan meets all of the applicable approval criteria.

Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Kansas' May 4, 2000, section 111(d) state plan for the control of HMIWI emissions, except for those facilities located in Indian country. Any facilities located in Indian country will be subject to a Federal plan. In Kansas there are no known HMIWIs in Indian country. Nothing in this action should be construed as making any determinations or expressing any position with regard to Kansas' audit law (K.S.A. 60–3332, *et seq.*), and this action does not express or imply any viewpoint regarding any legal deficiencies in this or any other Federally authorized, deleted, or approved program resulting from the effect of Kansas's audit law.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the state plan should adverse comments be filed. This rule will be effective September 12, 2000 without further notice unless the Agency receives adverse comments by August 14, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 12, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as

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specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a state plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan submission, to use VCS in place of a state plan submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 20, 2000.

Michael Sanderson,

Acting Regional Administrator, Region 7.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

2. Subpart R is amended by adding § 62.4179 and an undesignated center heading to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

§ 62.4179 Identification of plan.

(a) Identification of plan. Kansas plan for the control of air emissions from hospital/medical/infectious waste incinerators submitted by the Kansas Department of Health and Environment on May 4, 2000.

(b) Identification of sources. The plan applies to existing hospital/medical/infectious waste incinerators constructed on or before June 20, 1996.

(c) Effective date. The effective date of the plan is September 12, 2000.

[FR Doc. 00–17872 Filed 7–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301013; FRL–6593–1]

RIN 2070–AB78

Pyridaben; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-choropyridazin-3(2H)-one] in or on citrus; citrus pulp, dried; citrus oil; apple; apple pomace, wet; pear; tree nuts; almond hulls; pistachio; peach (and nectarine); plum; prune; grape; and cranberry. Time-limited tolerances are established for residues of pyridaben on apricot and cherry (sweet and tart) which will expire and are revoked on June 30, 2004. This regulation also establishes tolerances for residues of pyridaben and its metabolites PB–7 and PB–9 in or on the following ruminant commodities: milk, and milk-by-product, fat, and meat of cattle, goat, hog, and sheep. BASF Corporation and the Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective July 14, 2000. Objections and requests for hearings, identified by docket control number OPP–301013, must be received by EPA on or before September 12, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301013 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Melody A. Banks, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone

number: 703–305–5413; and e-mail address: Banks.Melody@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301013. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

II. Background and Statutory Findings

In the **Federal Register** of January 9, 1998 (63 FR 1457) (FRL–5762–6) and February 13, 1998 (63 FR 7414) (FRL–5768–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 7F4881) for a tolerance by BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by BASF Corporation, Agricultural Products. Also, in the **Federal Register** of December 22, 1999 (64 FR 71767) (FRL–6396–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide petition (PP 9E6002) for a tolerance by IR-4, Center for Minor Crop Pest Management, North Brunswick, NJ 08902–3390. There were no comments received in response to either notice of filing.

The petition requested that 40 CFR 180.494 be amended by establishing a tolerance for residues of pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio-4-choropyridazin-3(2H)-one], in or on the following crops and crop groups: peach and nectarine at 2.4 ppm; plum and prune (fresh) at 0.7 ppm; prune (dried) at 2.2 ppm; cherry and apricot at 0.05 ppm; grape at 1.4 ppm; and tree nut crops at 0.05 ppm. IR-4 proposed a tolerance for cranberry at 0.50 ppm in support of regional registration. Registration for use on cranberry will be geographically limited based on the available residue data to the states of Maine, New Jersey, Rhode Island, Massachusetts, New York, Connecticut, New Hampshire, Vermont, and Delaware. Persons seeking broader registration should contact the appropriate EPA product manager concerning additional residue data required to expand the use area.

Time-limited tolerances currently exist in 40 CFR 180.494 for pyridaben on apple, pear, almond, and citrus. After further reassessment of the data base in lieu of additional data submitted by the petitioner for tolerances originally established for pyridaben on the forementioned commodities, BASF petitioned EPA to reestablish tolerances for pyridaben on apple and pear. As a result of additionally submitted crop field trial data, EPA is proposing that the tolerances be adjusted as follows: apple from 0.6 ppm to 0.5 ppm and pear from 0.75 ppm to 0.6 ppm; tolerances for citrus and almond will remain the same. Currently, a separate tolerance exists in 40 CFR 180.494(a) for pyridaben on almond. Since the crop group, tree nuts, includes almond, the existing almond tolerance is being removed. However, the existing tolerance for almond hulls at 4.0 ppm will remain the same.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that " there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable

certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of pyridaben in or on peach at 2.5 ppm; nectarine at 2.5 ppm; plum at 0.75 ppm; cherry, sweet at 0.05 ppm; cherry, tart at 0.05 ppm; apricot at 0.05 ppm; crop group 14, tree nuts at 0.05 ppm; pistachio at 0.05 ppm; grape at 1.5 ppm; prune at 2.5 ppm; and cranberry at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyridaben are discussed in this unit.

Pyridaben belongs to the pyridazinone class of pesticides. Other active ingredients that belong to this class of pesticides include pyrazon and norflurazon. EPA does not currently have data available to determine with certainty whether pyridaben has a common mechanism of toxicity with any other substances. For the purposes of this human health risk assessment, EPA has not assumed that pyridaben has a common mechanism of toxicity with other pesticides.

In general, the acute toxicology studies conducted on technical grade pyridaben demonstrate that it has moderate to mild toxic effects. It was classified as Toxicity Category III based upon the acute oral LD_{50} of 1,100 milligrams/kilograms (mg/kg) in male rats and 570 mg/kg in female rats. The dermal LD_{50}, in rabbits was greater than or equal to 2,000 mg/kg (Toxicity Category III) and the inhalation LC_{50} was 0.66/0.64 milligram/liter (mg/L) in male/female rats, respectively (Toxicity Cateogry III). The eye irritation study (rabbits) produced slight ocular irritation (Toxicity Cateogry III). Pyridaben was not a dermal irritant (Toxicity Cateogry IV) or sensitizer.

There are guideline acute and subchronic neurotoxicity studies. The neurological symptoms in the available neurotoxicity studies and some of the other studies, were seen only at relatively high doses. The neurotoxic effects (piloerection, hypocricturty, tremors, partially closed eyes) were weak, sporadic, transient and/or non-reproducible with no neuropathological effects. In a 90–day rat study, plasma cholinesterase enzyme (ChE) was statistically-significantly inhibited in the females at the highest dose tested (HDT) of 350 ppm (25.71 mg/kg/day for males or 27.68 mg/kg/day for females). Based on these neurotoxic effects, EPA has required that a developmental neurotoxicity study be submitted. There are developmental toxicity studies in rats and rabbits (by the oral or dermal routes), and a multi-generation reproduction study in rats. The developmental and reproduction toxicity studies showed no effect on reproduction and no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to pyridaben as demonstrated by a higher developmental lowest observed adverse effect level (LOAEL) than those observed to produce maternal toxicity.

The most common toxicity endpoint across the various studies and tested species was decreased body weight/decreased body weight gain followed by decreased feed consumption and/or feed efficiency. These effects were observed in 13–week feeding studies in mice, rats, and dogs, in a 21–day dermal toxicity study in rats, in a 28–day inhalation toxicity study in rats, in a 13–week neurotoxicity study in rats, in 1-year feeding studies in dogs, in a 78–week feeding/carcinogenicity study in mice, in developmental toxicity studies in rats and rabbits, in a 2-generation reproduction study in rats, and in a 2-year feeding/carcinogenicity study in rats. It is noteworthy that the LOAELs were always based on decreases in body weight gain/decreases in body weight or decreases in food consumption. Other effects were sporadic and involved changes in certain clinical chemistry values or increases or decreases in organ weights. There is no evidence of increased susceptibility of infants and children to any of these endpoints.

In an acceptable rat metabolism study by the oral route, pyridaben was mainly eliminated in feces where 80–97% of the administered dose was excreted regardless of dose or site of label (pyridazinone or benzyl ring). Nearly 20% of the excreted residue in the feces was unmetabolized parent compound and there was some evidence of glucuronide conjugate(s) in the bile. The plasma levels following a single low oral dose (3 mg/kg) peaked at 2–3 hours while peak levels at the high dose (30 mg/kg) were at approximately 24 hours post-dose due, at least in part, to enterohepatic circulation where nearly 22–30% of an administered radioactive dose is excreted in bile within a period of 24 hours. Residual radioactivity was at or near background levels for most tissues by 72 to 168 hours. Generally, there seemed to be increased distribution to fat over time and, compared to other tissues, fat seemed to have relatively more residual radioactivity. Several metabolites, totaling up to 20–30, were resolved in urine and feces and some were structurally identified.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute reference dose (RfD) of 0.13 mg/kg/day NOAEL = 13 mg/kg/day, uncertainty factor (UF) = 100 for use in assessing acute dietary risk for females 13 years and older. This acute RfD is based upon the developmental toxicity study with rats in which developmental effects (decreased fetal body weight and increased delayed bone ossification) were observed at the development LOAEL of 30 mg/kg/day. The acute population adjusted dose (PAD) = acute RfD/FQPA factor (1x) = 0.13 mg/kg/day for females 13 years older.

An acute RfD of 0.50 mg/kg/day (NOAEL = 50 mg/kg/day, UF = 100) was selected for use in assessing acute dietary risk for the general population. This acute RfD is based upon the acute oral neurotoxicity study with rats in which the following effects were observed at the LOAEL of 100 mg/kg/day: clinical signs of toxicity, decreased food consumption, and decreased body weight gain. The acute PAD = acute RfD/FQPA factor (1x) = 0.5 mg/kg/day for the U.S. population.

2. *Short-term and intermediate-term toxicity.* A NOAEL of 100 mg/kg/day was selected based on a 21–day dermal toxicity study in rats that resulted in decreased body weight gain in female rats at 300 mg/kg/day (LOAEL). A margin of exposure (MOE) of 100 or

greater is adequate since the FQPA factor was reduced to 1X.

EPA concluded that for short-term and intermediate-term aggregate exposure risk assessment the MOEs cannot be combined since the toxicological endpoints were different via the oral, dermal, and inhalation routes (i.e., no common endpoint of concern).

3. *Long-term dermal toxicity.* A long-term dermal endpoint was not selected as the use pattern does not indicate a potential for long-term exposure.

4. *Chronic toxicity.* A chronic RfD of 0.005 mg/kg/day (NOAEL = < 0.50 mg/kg/day; UF = 100) was selected for use in assessing chronic dietary risk. This chronic RfD is based on the chronic toxicity study in dogs, in which the following effects were observed at the LOAEL of 0.5 mg/kg/day: increased incidence of clinical signs in both sexes and decreased body weight gain in females. An additional uncertainty factor (3x, for not establishing a NOAEL) was not applied to the chronic RfD because the toxic response observed was very minimal and was considered to be a threshold effect. The 100x UF for use in assessing chronic dietary risk was considered to be adequate. The chronic cPAD = chronic RfD/FQPA factor (1x) = 0.005 mg/kg/day.

5. *Carcinogenicity.* Based on the lack of evidence of carcinogenicity in acceptable studies in male and female rats and mice, pyridaben was classified as a "not likely" human carcinogen based upon the proposed EPA Weight-of-the-Evidence Categories. Also, there was no indication that pyridaben is mutagenic in acceptable *in vitro* and *in vivo* studies.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.494) for the residues of pyridaben, in or on a variety of raw agricultural commodities. Pyridaben is currently registered for use on almond, apple, citrus fruit, and pear. Time-limited tolerances are established in conjunction with these uses. Additionally, a time-limited tolerance for pyridaben in/on cranberries is established in conjunction with a section 18 request. BASF Corporation has proposed to make the tolerances for pyridaben in/on citrus fruit and pear permanent. Additionally, in today's action, tolerances will be established for pyridaben in/on tree nuts, pistachio, peach, nectarine, plum, prune, apricot, cherry, grape, and cranberry.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

EPA used the Dietary Exposure Evaluation Model (DEEM) software for conducting a Tier 1 acute dietary (food only) risk analysis. DEEM is a dietary exposure analysis system developed by Novigen Sciences, Inc. that is used to estimate exposure to a pesticide chemical in foods comprising the diets of the U.S. population, including population subgroups. DEEM contains food consumption data as reported by respondents in the Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals conducted in 1989-1992. The assumptions of the Tier 1 acute dietary exposure analysis are tolerance level residues and 100 percent crop-treated estimates. The tolerance levels were adjusted to account for organosoluble residue content.

The acute DEEM analysis indicates the resulting dietary food exposures (at the 95th percentile) occupy up to 19% of the acute PAD for population subgroups exclusive to females 13 years and older. The highest exposed subgroup for females 13 years and older is females (13+/nursing). The analysis also shows that the resulting dietary food exposures (at the 95th percentile) occupy up to 18% of the acute PAD for population subgroups not specific to females 13 years and older. The highest exposed subgroup for population subgroups not specific to females 13 years and older is all infants (< 1-year).

ii. *Chronic exposure and risk.* EPA used DEEM software for conducting a Tier 2 chronic (non-cancer) dietary (food only) risk analysis. The assumptions of the Tier 2 chronic dietary exposure analysis are anticipated residue estimates and 100% crop-treated estimates. The chronic DEEM analysis indicates that the most highly exposed population subgroup is non-nursing infants which occupy up to 64% of the chronic PAD.

2. *From drinking water.* The Agency currently lacks sufficient water-related exposure data from monitoring to complete a quantitative drinking water exposure analysis and risk assessment for pyridaben. Therefore, the Agency is presently relying on computer-generated Estimated Environmental Concentrations (EECs). GENEEC and/or PRZM/EXAMS (both produce estimates of pesticide concentration in a farm pond) are used to generate EECs for surface water and SCI-GROW (an empirical model based upon actual monitoring data collected for a number of pesticides that serve as benchmarks) predicts EECs in ground water. These models take into account the use patterns and the environmental profile of a pesticide, but do not include consideration of the impact that processing raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for assessing whether a pesticide is likely to be present in drinking water at concentrations which would exceed human health levels of concern.

For any given pesticide, the SCI-GROW model generates a single EEC value of pesticide concentration in ground water. That EEC is used in assessments of both acute and chronic dietary risk. It is not unusual for the ground water EEC to be significantly lower than the surface water EECs. The GENEEC model generates several time-based EECs of pesticide concentration in surface water, ranging from 0–days (peak) to 56-days (average). The GENEEC peak EEC is used in assessments of acute dietary risk; the GENEEC 56–day (average) EEC is used in assessments of chronic (non-cancer and cancer) dietary risk. PRZM/EXAMS provides longer duration (up to 36 years) values of pesticide concentration in surface water and is mainly used when a refined EEC is needed.

A drinking water level of comparison (DWLOC) is the concentration of a pesticide in drinking water that would be acceptable as a theoretical upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. EPA uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for a pesticide, the DWLOC is used as a point of comparison against the conservative

EECs provided by computer modeling (SCI-GROW, GENEEC < PRZM/EXAMS).

EPA back-calculates DWLOCs by a two-step process: exposure food + (if applicable) residential is subtracted from the PAD to obtain the maximum acceptable exposure allowed in drinking water; DWLOCs are then calculated using that value and default body weight and drinking water consumption figures. In assessing human health risk, DWLOCs are compared to EECs. When EECs are less than DWLOCs, HED considers the aggregate risk from food + water + (if applicable) residential exposures to be acceptable.

EPA conducted its Tier II screening-level assessments using the simulation models SCI-GROW and PRZM/EXAMS to generate EECs for ground and surface water, respectively. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for pyridaben (0.5 lbs active ingredient (ai/acre) x 2 applications/acre/year on apples). The EECs are summarized in Table 1 below.

TABLE 1.—ESTIMATED ENVIRONMENTAL CONCENTRATIONS (EECS)

SCI-GROW [1] (µg/L) [2]	PRZM/EXAMS [3] (µg/L)	
0.006 (acute & chronic)	0.215 (peak)	0.020 (long-term mean)

[1] SCI-GROW (Screening Concentration in Ground Water) is an empirical model for predicting pesticide levels in ground water. The value from SCI-GROW is considered an upper bound concentration estimate.
[2] µg/L = parts per billion (ppb).
[3] PRZM (Pesticide Root Zone Model—simulates the transport of a pesticide off the agricultural field) and EXAMS (Exposure Analysis Modeling System—simulates fate and transport of a pesticide in surface water. PRZM/EXAMS can substantially overestimate true pesticide concentrations in drinking water.

i. *Acute exposure and risk.* Drinking Water Levels of Comparison (DWLOCs). The DWLOCs value are shown in Table 2. For each population subgroup listed, the acute PAD and the acute dietary (food only) exposure for that subgroup were used to calculate the acute DWLOC for the subgroup, using the formulas in footnotes 1 and 2 of Table 2.

TABLE 2.—DWLOCS FOR ACUTE DIETARY EXPOSURE

Population Subgroup	Acute PAD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure (mg/kg/day) [1]	SCI-GROW (µg/L)	PRZM/EXAMS Peak EEC (µg/L)	DWLOC (µg/L) [2,3,4]
U.S. Population (all seasons)	0.50	0.023	0.48	0.006	0.215	1.6×10^4
Females 13+ [5]	0.13	0.024	0.11			3.2×103
Infants/Children [5]	0.50	0.091	0.41			4.1×10^3
Other [5]	0.50	0.029	0.47			1.6×10

[1] Maximum Water Exposure (mg/kg/day) = Acute PAD (mg/kg/day)—Acute Food Exposure + Acute Residential Exposure (mg/kg/day). Pyridaben has no registered residential uses.
[2] DWLOC (µg/L) = Maximum Water Exposure (mg/kg/day) x body wt (kg) (10^{-3} mg/µg) x water consumed daily (L/day). µ/L = ppb.
[3] Default body weights are: general U.S. Population, 70 kg; males (13+ years old), 70 kg; females (13+ years old), 60 kg; other adult populations, 70 kg; and, all infants/children, 10 kg.
[4] Default daily drinking rates are 2 L/day for adults and 1 L/day for children.
[5] Within each of these subgroups, the subpopulation with the highest (acute) food exposure was selected; namely, females (13+/nursing); all infants (< 1-year); and, the non-Hispanic other, respectively.

ii. *Chronic exposure and risk.—Chronic (Non-Cancer) Dietary (Drinking Water) Exposure—Drinking water levels of comparison (DWLOCs).* The DWLOC value are shown in Table 3. For each population subgroup listed, the chronic PAD (0.005 mg/kg/day) and the chronic dietary (food only) exposure for that subgroup were used to calculate the chronic DWLOC for the subgroup, using the formulas in footnotes 1 and 2 of Table 3.

TABLE 3.—DWLOCS FOR CHRONIC (NON-CANCER) DIETARY EXPOSURE

Population Subgroup	Chronic PAD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure (mg/kg/day) [1]	SCI- GROW (µg/L)	PRZM/EXAMS Chronic EEC (µg/L)	DWLOC (µg/L) [2,3,4]
U.S. population (48 contiguous States, all seasons)	0.0050	0.00073	0.0043	0.006	0.020	1.4×10^2
Females 13+ [5]		0.0011	0.0039			1.2×10^2
Infants/children [5]		0.0032	0.0018			18

TABLE 3.—DWLOCS FOR CHRONIC (NON-CANCER) DIETARY EXPOSURE—Continued

Population Subgroup	Chronic PAD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure (mg/kg/day) [1]	SCI- GROW (µg/L)	PRZM/EXAMS Chronic EEC (µg/L)	DWLOC (µg/L) [2,3,4]
Other [5]		0.00094	0.0041			1.4 x 10

[1] Maximum Water Exposure (mg/kg/day) = Chronic PAD (mg/kg/day)—Chronic Food Exposure + Chronic Residential Exposure (mg/kg/day). Pyridaben has no registered residential uses.
[2] DWLOC (µg/L) = Maximum Water Exposure (mg/kg/day) x body weightt (kg) (10^{-3} mg/µg) x water consumed daily (L/day). µg/L = ppb.
[3] HED default body weights are: General U.S. population, 70 kg; males (13+ years old), 70 kg; females (13+ years old), 60 kg; other adult populations, 70 kg; and, all infants/children, 10 kg.
[4] HED default daily drinking rates are 2 L/day for adults and 1 L/day for children.
[5] Within each of these subgroups, the subpopulation with the highest (chronic) food exposure was selected; namely, females (13+/nursing); non-nursing infants (< 1-year); and the Pacific Region, respectively.

3. *From non-dietary exposure.* At present, there are no registered or proposed residential uses of pyridaben. Thus, a residential exposure assessment is not required. There is a potential for occupational exposure to pyridaben during mixing, loading, and application activities. However, risks from these routes of exposure are considered negligible.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether pyridaben has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyridaben does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyridaben has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population and Infants and Children.

1. *Acute risk.* Acute aggregate risk is the sum of exposures resulting from acute dietary food + acute drinking water. This acute aggregate risk assessment was conducted for all population subgroups, and the acute PAD of 0.13 mg/kg/day is applied to all population subgroups exclusive to females 13 years and older and the acute PAD of 0.50 mg/kg/day is applied to all other population subgroups.

EPA used DEEM software for conducting a Tier 1 acute dietary (food only) risk analysis. The assumptions of the Tier 1 dietary exposure analysis are tolerance level residues and 100% crop-treated estimates. The tolerance levels were adjusted to account for organosoluble residue content.

The resulting dietary food exposures (at the 95th percentile) occupy up to 19% of the acute PAD for population subgroups exclusive to females 13 years and older (females (13+/nursing)). The resulting dietary food exposures (at the 95th percentile) occupy up to 18% of the acute PAD for population subgroups not specific to females 13 years and older (all infants (< 1-year)).

The EECs for assessing acute aggregate dietary risk are 0.006 ppb (in ground water, based on SCI-GROW) and 0.215 ppb (in surface water, based on the PRZM/EXAMS). The back-calculated DWLOCs (Table 2) for assessing acute aggregate dietary risk range from 3.2×10^3 ppb for the most highly exposed population subgroup (females 13 years and older/nursing) to 1.6×10^4 ppb for the U.S. population (all seasons) and non-Hispanic others.

The SCI-GROW and PRZM/EXAMS acute EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for pyridaben residues in drinking water as a contribution to acute aggregate exposure. EPA thus concludes with reasonable certainty that residues of pyridaben in drinking water will not contribute significantly to the aggregate acute human health risk and that the acute aggregate exposure from pyridaben residues in food and drinking water will not exceed the Agency's level of concern (100% of the acute PAD) for acute dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the acute PAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, conservative, and very protective of human health.

2. *Chronic risk.* Chronic (non-cancer) aggregate risk is the sum of exposures resulting from chronic dietary food + chronic drinking water + chronic residential uses. Pyridaben has no registered residential uses. Therefore, this risk assessment is the aggregate of chronic dietary food + chronic drinking water exposures only. This chronic aggregate risk assessment was conducted for all population subgroups, and the chronic PAD is applied to all population subgroups.

EPA used DEEM software for conducting a Tier 2 chronic (non-cancer) dietary (food) exposed analysis. Tier 2 assumptions are anticipated residue levels and 100% crop-treated estimates.

The resulting dietary food exposures occupy up to 64% of the chronic PAD for the most highly exposed population subgroup, non-nursing infants. These results should be viewed as conservative (health protective) risk estimates. Refinements such as use of percent crop-treated information and/or additional refinements of the anticipated residue estimates would yield even lower estimates of chronic dietary exposure.

The EECs for assessing chronic aggregate dietary risk are 0.006 ppb (in ground water, based on SCI–GROW) and 0.020 ppb (in surface water, based on the PRZM/EXAMS). The back-calculated DWLOCs for assessing chronic aggregate dietary risk range from 18 ppb for the most highly exposed population subgroup (non-nursing infants, < 1-year old) to 1.4×10^2 ppb for the U.S. population (48 contiguous States—all seasons).

The SCI–GROW and PRZM/EXAMS chronic EECs are less than the Agency's

level of comparison (the DWLOC value for each population subgroup) for pyridaben residues in drinking water as a contribution to chronic aggregate exposure. EPA thus, concludes with reasonable certainty that residues of pyridaben in drinking water will not contribute significantly to the aggregate chronic human health risk and that the chronic aggregate exposure from pyridaben residues in food and drinking water will not exceed the Agency's level of concern (100% of the chronic PAD) for chronic dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the chronic PAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, conservative, and very protective of human health.

Cancer aggregate risk is based on the sum of exposures resulting from chronic dietary food + chronic drinking water + chronic residential uses. Pyridaben is classified as a "not likely" human carcinogen based upon the proposed EPA Weight-of-the-Evidence Categories. Thus, pyridaben does not pose a cancer risk.

3. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyridaben residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—*i. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using UF in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard UF (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Conclusion*. There is a complete toxicity data base for pyridaben and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10x safety factor to protect infants and children should be removed. The FQPA factor is removed because:

a. The toxicity data base is complete for the assessment of the effects following *in utero* and /or postnatal exposure to pyridaben.

b. The toxicity data provided no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.

c. Although a developmental neurotoxicity study is required, this requirement is not based on criteria reflecting some special concern for developing fetuses or the young which are generally used for requiring a developmental neurotoxicity study and retention of the FQPA safety factor; and, therefore, does not warrant retention of the FQPA safety factor.

d. The exposure assessments will not underestimate the potential dietary (food and water) exposures for infants and children from the use of pyridaben (currently no residential exposure is expected).

2. *Acute risk*. The resulting dietary food exposures (at the 95th percentile) occupy up to 19% of the acute PAD for population subgroups exclusive to females 13 years and older (females (13+/nursing). The resulting dietary food exposures (at the 95th percentile) occupy up to 18% of the acute PAD for population subgroups not specific to females 13 years and older (all infants < 1-year).

The EECs for assessing acute aggregate dietary risk are 0.006 ppb (in ground water, based on SCI-GROW) and 0.215 ppb (in surface water, based on the PRZM/EXAMS). The back-calculated DWLOCs for assessing acute aggregate dietary risk range from 3.2×10^3 ppb for the most highly exposed population subgroup (females 13 years and older/ nursing) to 1.6×10^4 ppb for the U.S. population (all seasons) and non-Hispanic others.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to pyridaben from food will utilize 64% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pyridaben in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short-term or intermediate-term risk*. These aggregate risk assessments take into account chronic dietary exposure from food and water (considered to be a background exposure level) plus (short-term, intermediate-term, or long-term, as applicable) indoor and outdoor residential exposure. Since pyridaben is not registered for residential uses, short-term and intermediate-term, and long-term aggregate risk is captured by the assessment for aggregate chronic risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyridaben residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. *Nature of residues in plants*. EPA concludes that the tolerance expression for plant commodities will include pyridaben only and that all organosoluble residues may be presumed to be of comparable toxicity to the parent. Thus, the risk assessment for human dietary consumption of pyridaben-treated plant commodities will include all organosoluble residues. EPA has calculated a ratio of pyridaben to organosoluble residues based upon the low dose pyridaben apple and orange metabolism studies. These studies were chosen because they approximate the proposed use of pyridaben on citrus and apples. For dietary exposure analysis, tolerance levels of pyridaben in/on plant commodities will be multiplied by the ratio of organosoluble residues to pyridaben.

2. *Nature of residues in animals*. EPA concludes that the tolerance expression for ruminant commodities will include pyridaben and its metabolites PB–7 and PB–9 and that all organosoluble residues may be presumed to be of comparable toxicity to the parent. Thus, the risk assessment for human consumption of ruminant commodities will also include all organosoluble residues. For liver, EPA will calculate a ratio of pyridaben, PB–7 and PB–9 residues to organosoluble residues based upon the ruminant metabolism study. For milk and other tissues, best estimates of residues of concern for risk assessment may need to be based on total organosoluble residues in the goat metabolism study. Dietary exposure of

poultry to pyridaben residues is not expected as a result of the proposed uses.

3. *Enforcement analytical methods—Plants—Apple, pear, peach, plum, cherry, apricot, grape, pistachio and tree nuts.* BASF Method D9312A: For solid samples, residues of pyridaben are extracted by blending the sample with a solution of acetone/water (8:2 v/v). For juice, residues are extracted by mixing the sample with 80% acetone/water (v/v). Following filtration to remove the sample material, the solvent is exchanged to water and an aliquot of the extract is applied to a mini-C18 silica gel column. Residues are eluted with 80% methanol/water (v/v) and the solvent is exchanged to toluene for analysis. Residues of pyridaben are quantified by analysis of the sample extracts by gas chromatography (GLC) utilizing an electron capture detector (63Ni—ECD) and a fused silica column. The method has been validated to a quantification limit of 0.05 p.m. This method has been independently validated for use with apple and pear commodities as per PR Notice 88-5.

BASF Method D9312 has been adequately validated in both apples and almonds. The submitted method is adequate for the enforcement of the proposed tolerances for residues of pyridaben in/on apples, pears, and almonds. This method has been validated by EPA and was submitted to the Food and Drug Administration (FDA) for inclusion in PAM, Volume II.

4. *Citrus BASF Method D9309B* BASF Method D9309B is briefly described as follows: whole fruit are homogenized and then blended with acetone:water. Sodium chloride is added to the extract and the residues are partitioned into dichloromethane, dried by evaporation, dissolved in DCM:hexane (3:7, v/v) and cleaned up on a silica gel column eluted with DCM:hexane (11:9, v/v). The samples are then dried, dissolved in toluene, and analyzed by GC/ECD. This method has been independently validated for use with citrus commodities as per PR Notice 88-5. The submitted method is adequate for enforcement of permanent tolerances for residues of pyridaben in/on citrus and will be forwarded to the Food and Drug Administration for publication in PAM Vol. II.

5. *Enforcement analytical method—Animals—BASF Method D9405 for animal matrices.* BASF Method D9405 is briefly described as follows: macerate animal tissue with acetone/water and milk with acetone. Filter and wash the sample with the same solvent. Methylate a portion of the extract with diazomethane. After adding water, load the methylated sample onto a octadecylsilane column and elute with methanol/water. The sample is then evaporated to dryness, dissolved in acetonitrile and analyzed by GC/ECD. This method has been independently validated for use with milk and liver commodities as per PR Notice 88–5. BASF Method D9405 has been validated in both liver and milk.

B. International Residue Limits

There are no established or proposed Codex, Canadian or Mexican limits for residues of pyridaben in/on plant commodities or for pyridaben and its metabolites (PB–7 and PB–9) in/on livestock commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances discussed in this risk assessment.

V. Conclusion

Therefore, the tolerance is established for residues of pyridaben, in or on peach at 2.5 ppm; nectarine at 2.5 ppm; plum at 0.75 ppm; cherry, sweet at 0.05 ppm; cherry, tart at 0.05 ppm; apricot at 0.05 ppm; crop group, 14, tree nuts at 0.05 ppm; almond hulls at 4.4 ppm; pistachio at 0.05 ppm; grape at 1.5 ppm; prune at 2.5 ppm; cranberry at 0.5 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301013 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 12, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources

and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301013, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States. on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28,2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: . 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.494 is revised to read as follows:

§ 180.494 Pyridaben; tolerance for residues.

(a) *General.* Tolerances are established for residues of the insecticide pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one] on the following plants, and of the insecticide pyridaben and its metabolites (2-tert-butyl-5-(4-(1-carboxy-1-methylethyl)benzylthio)-4-chloropyridazin-3(2H)-one] and (2-tert-butyl-5-[4(-1,1-dimethyl-2-hypdroxyethyl)benzylthio-4-chloropyridazinn-3(2H)-one) on animals, as indicated in the following table.

Commodity	Parts per million	Revocation/expiration date
Almond hulls	4.0	None
Apple	0.5	None
Apple, wet pomace	0.75	None
Apricot	0.05	6/30/04
Cattle, fat	0.05	None
Cattle, meat	0.05	None
Cattle, meat by-products	0.05	None
Cherry, sweet	0.05	6/30/04
Cherry, tart	0.05	6/30/04
Citrus, crop group	0.05	None
Citrus, dried pulp	1.5	None
Citrus, oil	10.0	None
Goat, fat	0.0	None
Goat, meat	0.05	None
Goat meat by-products	0.05	None
Grape	1.5	None
Hog, fat	0.05	None
Hog, meat	0.05	None
Hog meat by-products	0.05	None
Horse, fat	0.05	None
Horse meat	0.05	None
Horse meat by-products	0.05	None
Milk	0.01	None
Nectarine	2.5	None
Nut, tree crop group	0.05	None
Peach	2.5	None
Pear	0.75	None
Pistachio	0.05	None
Plum	2.5	None
Prune	2.5	None
Sheep, fat	0.05	None
Sheep, meat	0.05	None
Sheep, meat by-product	0.05	None

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n) are established for residues of the insecticide pyridaben [2-tert-butyl-5(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one] in or on the following raw agricultural commodity:

Commodity	Parts per million	Expiration Date
Cranberry	0.5	None

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 00–17619 Filed 7–13–00; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 80, and 90

[WT Docket No. 99–332; FCC 00–220]

Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to designate marine VHF Channel 05A for port operations communications in Los Angeles and Long Beach, California ports. The effect of this rule is that it will foster reliable marine communications and increase safe vessel transit in the ports. The action will allow the LA/LB Pilots to manage vessel traffic in that area more efficiently and protect the marine environment by preventing collisions and groundings.

EFFECTIVE DATE: August 14, 2000.

FOR FURTHER INFORMATION CONTACT: James Shaffer, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Report and Order* (R&O) FCC 00–220, adopted on June 15, 2000, and released on June 20, 2000. The full text of this *R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W. Washington, D.C. 20037.

Summary of Report and Order

2. By letter the Los Angeles and Long Beach Port Pilots (jointly, LA/LB Pilots) request the assignment of an intership

marine VHF channel dedicated to port operations (namely, pilot-tug communications) in the Ports of Los Angeles and Long Beach, California. They note that marine VHF Channels 01A (156.050 MHz), 05A (156.250 MHz), and 63A (156.175 MHz) are currently used for U.S. Coast Guard (Coast Guard) designated Vessel Traffic Service (VTS) systems in defined areas of the United States. The LA/LB Pilots recommend that the Commission designate one of these for intership communications regarding port operations to improve vessel traffic safety in the Los Angeles and Long Beach port area.

3. Based on the record in this proceeding, we conclude that designating 156.250 MHz for intership communications related to port operations for the ports of Los Angeles and Long Beach, CA will allow the Marine Exchange of Los Angeles-Long Beach Harbor, Inc. to manage vessel traffic in those areas more efficiently. Further this action will help protect the marine environment by preventing vessel collisions and groundings. Therefore, we are amending § 80.373(f) of the Commission's Rules to indicate that frequency 156.250 MHz (marine VHF Channel 05A) is available only for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. The radio protection area will be defined as "within a 25-nautical mile radius of Point Fermin, California."

4. In light of our action designating 156.250 MHz for intership communications related to port operations for the ports of Los Angeles and Long Beach, CA, we will lift the current freeze imposed on licensing the Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles. The freeze will be lifted as of the date of the release of this *R&O*. In addition, we are adopting our proposal to make assignments on these Public Safety Pool frequencies within 100 miles of the geographic center of Los Angeles, CA secondary to marine port operations on 156.250 MHz. By secondary, we mean that radio communications from licensees on the Public Safety Pool frequencies 156.240 and 156.2475 MHz may not cause interference to marine port operations on 156.250 MHz and licensees on the Public Safety Pool frequencies are not protected from interference from marine port operations on 156.250 MHz.

5. Finally, we amend 47 CFR 0.331 of the Commission's Rules to authorize the Chief, WTB to amend the maritime service rules at the request of the Coast Guard to indicate that the use of marine VHF private communications frequencies in defined port areas are available for intership communications related to such port operations in order to alleviate the communications congestion related to such port operations.

6. We do not envision or anticipate that allowing the Chief, WTB at the request of the Coast Guard to amend the frequency table in 47 CFR 80.373(f) and make marine VHF frequencies available for intership port operations communications in defined port areas will impact those licenses sold in Auction No. 20, VHF Public Coast (VPC) Service. The forty-two licenses that were auctioned involved the nine channels ("working frequencies") in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands assignable to VHF public coast stations for public correspondence. These auctioned frequencies are assigned for radiotelephone working frequencies and are assignable to ship and public coast stations. The frequencies in 47 CFR 80.373(f) are for private communications and are assignable for ship-to-ship and ship-to-coast private communications and are below the frequency range of the auctioned public correspondence frequencies. Therefore the auctioned public correspondence frequencies will not be considered for intership port operations.

7. Overall, we believe the approach outlined above will allow the Commission to expedite Coast Guard requests, which will promote increased safe vessel transit and protect U.S. waters and associated natural resources from environmental harm.

8. Accordingly, we adopt rules: to amend § 80.373(f) of the Commission's Rules to indicate that frequency 156.250 MHz (marine VHF Channel 05A) is available only for intership communications related to port operations within the Los Angeles and Long Beach harbor areas (The radio protection area for these harbors will be defined as "within a 25-nautical mile radius of Point Fermin, California"); to amend § 90.20(c) of the Commission's Rules to indicate that assignments on public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles are secondary to marine port operations on 156.250 MHz; and to amend § 0.331 of the Commission's Rules to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the Coast Guard to indicate that the use of marine VHF private communications frequencies in defined port areas are available for intership communications related to port operations. We conclude that adoption of these rule changes will allow the vessel traffic in the congested areas of the Los Angeles and Long Beach harbors to be managed more efficiently and will protect the marine environment by preventing vessel collisions and groundings.

Final Regulatory Flexibility Analysis (FRFA)

9. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (NPRM) prepared in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comments on the IRFA. This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

10. In this proceeding, we amend parts 0, 80 and 90 of the Commission's Rules to indicate that frequency 156.250 MHz (marine VHF Channel 05A) is available for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. The adopted rules will promote safe vessel transit and protect U.S. waters and associated natural resources from environmental harm.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

11. No comments were submitted specifically in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field. The adopted rules would apply to small businesses in the marine radio services that use a marine VHF radio. According to SBA's regulations, a radiotelephone (wireless) must employ no more than 1,500 persons less in order to qualify as a small business concern. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

13. There are no reporting, recordkeeping and other compliance requirements proposed.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

14. By making frequency spectrum available, the adopted rules will have a beneficial economic impact on small business entities that use the frequency 156.250 for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. This flexible approach allows the vessel pilots to manage vessel traffic in the Los Angeles and Long Beach harbor areas more efficiently and protect the marine environment by preventing vessel collisions and groundings. Currently under the rules frequency 156.250 MHz is similarly made available to maritime mobile and was made available for port operations purposes within the Coast Guard designated Houston and New Orleans, and Seattle Vessel Traffic Service (VTS) systems. The alternative in this context—to retain the allocation for maritime mobile in the two ports—would not assist the maritime community in the way expected, including the small entities affected. We believe that the adopted rules are sufficient to alleviate the communications congestion related to port operations in the Los Angeles and Long Beach harbor areas. This decision benefits small entities and seeks to ensure reliable marine communications, increase safe vessel transit to protect U.S. waters and associated natural resources from environmental harm, and increase port efficiency thereby promoting growth within the shipping community.

Report to Congress: The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

15. Pursuant to the authority of § 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 332(a)(2), parts 0, 80 and 90 of the Commission's Rules, are amended as set forth.

16. The rule changes will become effective August 14, 2000.

17. The Commission's Reference Information Center, Consumer Information Bureau, SHALL SEND a copy of this *R&O*, WT Docket No. 99–332, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

18. Pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that this proceeding is *terminated*.

List of Subjects

47 CFR Part 0

Administrative practice and procedure.

47 CFR Part 80

Communications equipment, marine safety.

47 CFR Part 90

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

For reasons discussed in the preamble, Title 47 of the Code of Federal Regulations, parts 0, 80 and 90, are proposed to be amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.331 is amended by adding new paragraph (d)(3) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) * * *

(3) Designate by footnote to frequency table in § 80.373(f) of this chapter marine VHF frequencies are available for intership port operations communications in defined port areas.

PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307 (e), 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307 (e), 309 and 322 unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. In § 80.373 (f), footnote 2 to the table is revised as follows:

§ 80.373 Private communications frequencies.

* * * * *

[2] 156.250 MHz is available for port operations communications use only within the U.S. Coast Guard designated VTS radio protection areas of New Orleans and Houston described in § 80.383. 156.250 MHz is available for intership port operations communications used only within the area of Los Angeles and Long Beach harbors, within a 25-nautical mile radius of Point Fermin, California.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

5. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

6. Section 90.20 (c) (3) is amended by revising the entry to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
156.240	do	43, 79	PH

* * * * *

7. Section 90.20(d) is amended by designating the second paragraph (77) as (78) and by adding paragraph (79) to read as follows:

(d) * * *

(79) This frequency will be secondary to marine port operations within 100 miles of Los Angeles (coordinates 34° 03′ 15″ north latitude and 118° 14′ 28″ west longitude).

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[FR Doc. 00–17665 Filed 7–13–00; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144, GN Docket No. 93–252, PP Docket No. 93–253; FCC 99–368]

Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission addresses petitions for reconsideration of the 800 MHz Specialized Mobile Radio (SMR) proceeding in which the Commission reconsidered the rules governing the upper 200 channels of the SMR.

DATES: Effective July 14, 2000.

FOR FURTHER INFORMATION CONTACT: Alice Elder, Wireless Telecommunications Bureau, Industry Analysis Division (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Memorandum Opinion and Order on Reconsideration (*Second MO&O*) in PR Docket No. 93–144, adopted November 23, 1999 and released December 2, 1999. The complete text of this *Second MO&O* is available for inspection and copying during normal business hours in the Commission's Reference Center, room CY–A257, 445 12th Street SW, Washington, DC. This *Second MO&O* is also available through the Internet at http://www.fcc.gov/Bureaus/Wireless/Orders/1999/. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.) at 1231 20th Street NW, Washington, DC 10036, (202) 857–3800.

1. Two petitions for reconsideration ("Petitions"), were filed with the Commission seeking reconsideration of the Amendment of Part 1 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration (First MO&O)*, 62 FR 41225 (July 31, 1997). In that document the Commission reconsidered the rules governing the upper 200 channels of the 800 MHz Specialized Mobile Radio (SMR). No pleadings were filed in response to these petitions.

2. First, petitioners request reconsideration of the Commission's decision to modify its competitive bidding rules to eliminate installment payments and adopt larger bidding credits for entities qualifying as small businesses for the auction of the upper 200 channels of the 800 MHz SMR service. Second, one petitioner claims that the Commission acted in violation of its rules regarding delegation of authority and the Administrative Procedure Act (APA), by delegating the authority to set the level of upfront payments to the Wireless Telecommunications Bureau ("Bureau"). Third, one petitioner requests review of the Commission's decisions to license the upper 200 channels of the 800 MHz SMR spectrum in contiguous blocks, eliminate the finder's preference program, and use competitive bidding to license the upper 200 channels in the 800 MHz spectrum band. Finally, one petitioner requests clarification of the Commission's decision to require incumbents seeking geographic licenses to show that their external site facilities are constructed and operational.

3. On reconsideration, the Commission affirms its decision to eliminate installment payments. At the outset, the Commission notes that Congress did not require the use of installment payments in all auctions, but rather recognized them as one means of promoting the objectives of section 309(j)(3) of the Communications Act. However, Congress has not dictated that installment payments are the only tool in assisting small business. The Commission's experience with the installment payment program has led it to conclude that installment payments may not always serve the public interest. As noted in the First MO&O, the Commission has found that obligating licensees to pay for their licenses as a condition of receipt requires greater financial accountability from applicants. The Commission determined in its Amendment of Part 1 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Third Report and Order and Second Further Notice of Proposed Rule Making (Third R&O)*, 63 FR 2315 (January 15, 1998), that installment payments should not be used in the immediate future as a means of financing small business participation in our auction program. Moreover, in recent legislation, Congress dictated that certain future auctions effectively be conducted without installment payments. The Balanced Budget Act of 1997 requires the Commission to conduct the competitive bidding required by that act in a manner that ensures that the proceeds of such bidding are deposited in the U.S. Treasury by September 30, 2002. After careful consideration, the Commission concludes that it has met its statutory obligations without offering installment payment plans for 800 MHz SMR licensees. The Commission notes further that in place of installment payments, it established larger bidding credits for the 800 MHz SMR auction to provide for qualifying small businesses.

4. The Commission disagrees with petitioner's contentions that installment payments are necessary to ensure a meaningful opportunity for small businesses to participate in the 800 MHz SMR auction. The rules were changed more than ten weeks before the filing deadline, providing an adequate opportunity for the parties to alter their business plans, if necessary. The Commission also notes that the elimination of installment payments

and the timing of that auction did not prevent the participation of small businesses in the 800 MHz SMR auction, in which 52 of the 62 qualified bidders were eligible for small or very small business credits.

5. Second, the Commission rejects the claim that the Bureau's authority to set the level of upfront payments constitutes an illegal delegation of authority. Section 0.131 of the Commission's rules explicitly states that the Bureau has delegated authority to develop, recommend and administer policies, programs and rules concerning auctions of spectrum for wireless telecommunications. In the Amendment of Part 1 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Order and Memorandum Opinion & Order (Part 1 Order)*, 62 FR 13540 (March 21, 1997), rulemaking, the Commission clarified that pursuant to § 0.131 of its rules, the Chief of the Wireless Telecommunications Bureau has delegated authority to implement all of the Commission's rules pertaining to auctions procedures. This includes the authority to choose competitive bidding designs and methodologies; conduct auctions; administer application, payment, licenses grant and denial procedures; and determine upfront and down payment amounts as well as minimum opening bids. These actions do not fall under the prohibited activities set forth in § 0.331 of the Commission's rules, which include acting upon complaints, petitions, requests, applications for review and notices of proposed rulemaking. The Commission concludes that the Bureau's actions are valid, as they affect procedural rather than substantive issues, and are, therefore, in compliance with our rules. Furthermore, the Bureau's actions were in compliance with the APA. Pursuant to 5 U.S.C. 553(b), an agency may modify procedural rules without notice and comment. Because the rule modifications were procedural in nature and did not affect the substantive rights of interested parties, the Bureau's actions fall within that exception.

6. Third, the Commission dismisses as repetitions the request that it reconsider its decisions to allocate licenses in the upper 200 channels of the 800 MHz SMR spectrum in contiguous blocks, eliminate the finder's preference program, and use competitive bidding as the licensing mechanism for the upper 200 channels in the 800 MHz band. The Commission disagrees with petitioner's contention that these decisions were unsupported by evidence and therefore, arbitrary and capricious. These conclusions were set forth first in the Amendment of Part 1 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking (First R&O)*, 61 FR 6212 (February 16, 1996), and reaffirmed in the *First MO&O*. In each case, the Commission set forth reasoned explanations for its decision. It is not in the public interest to revisit these issues.

7. Finally, the Commission finds it unnecessary to address the request for clarification of the Commission's decision to require incumbents seeking geographic licenses to show that their facilities are constructed and operational. In the *First R&O*, the Commission stated that such licensees are required to make a one-time filing of specific information for each of their external base station sites to assist the staff in updating the Commission database after the close of the auction for the upper 200 channels of the 800 MHz SMR spectrum. Under that decision, the Commission also requires evidence that such facilities are constructed and placed in operation and that, by operation of its rules, no other licensees would be able to use these channels within a geographic area.

8. It is ordered that the Petitions are denied.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17848 Filed 7–13–00; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration.

ACTION: Final Rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to: include a requirement for contractors and subcontractors working with NASA unclassified Information Technology Systems to take certain Information Technology (IT) security related actions; document those actions; and submit related reports to NASA.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTRACT: Karl Beisel, NASA Headquarters (Code HC), Washington, DC, (202) 358–0416, email: *Karl.Beisel@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on January 5, 2000 (65 FR 429–431). Comments were received from two respondents, an industry association and the NASA Office of Inspector General (OIG). All comments were considered in the development of this final rule. This final rule includes changes for clarification of meaning, consistency of wording (and phrasing), and to eliminate informational redundancies within the clause as it references information in other related documents.

This final rule requires NASA contractors and subcontractors to comply with the security requirements outlined in NASA Policy Directive (NPD) 2810.1, Security of Information Technology, and NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology, and additional safeguarding requirements delineated in the contract clause. Currently, NASA contractors have no definitive contractual requirement to follow NASA directed policy in safeguarding unclassified NASA data held via information technology (computer systems). This final rule establishes these requirements in a contract clause. These policies apply to all IT systems and networks under NASA's purview operated by or on behalf of the Federal Government, regardless of location.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The changes merely formalize standard procedures in using Government computer systems and databases. Small entities will not need to significantly revise internal procedures to satisfy the NFS changes.

C. Paperwork Reduction Act

An Office of Management and Budget (OMB) approval for data collection has been approved under OMB Control No. 2700–0098.

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List of Subjects in 48 CFR Parts 1804 and 1852.

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1804 and 1852 are amended as follows:

1. The authority citation of 48 CFR Parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Revise the title of section 1804.470 to read as follows:

1804.470 Security requirements for unclassified information technology resources.

3. Revise sections 1804.470–2, 1804.470–3, and 1804.470–4 to read as follows:

1804.470–2 Policy.

(a) NASA policies and procedures on security for automated information technology are prescribed in NPD 2810.1, Security of Information Technology, and in NPG 2810.1, Security of Information Technology. Security requirements for safeguarding sensitive information contained in unclassified Federal computer systems are required in the following:

(1) All contracts for information technology resources or services. This includes, but is not limited to information technology hardware, software, and the management, operation, maintenance, programming, and system administration of information technology resources, to include computer systems, networks, and telecommunications systems.

(2) Contracts under which contractor personnel must have physical or electronic access to NASA's sensitive information contained in unclassified systems or information technology services that directly support the mission of the agency.

(b) The contractor must not use or redistribute any NASA information processed, stored, or transmitted by the contractor except as specified in the contract.

1804.470–3 Security plan for unclassified Federal Information Technology systems.

(a) The contracting officer, with the concurrence of the requiring activity, the center Chief Information Officer (CIO), and the center Information Technology (IT) Security Manager, may require the contractor to submit for post-award Government approval, a detailed Security Plan for Unclassified Federal Information Technology Systems. The plan must be required as a contract data deliverable that must be subsequently incorporated into the contract as a compliance document after Government approval. The plan must demonstrate a thorough understanding of NPG 2810.1 and NPD 2810.1 and must include, as a minimum, the security measures and program safeguards planned to ensure that the information technology resources acquired and used by contractor and subcontractor personnel—

(1) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;

(2) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(3) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;

(4) Have appropriate technical, personnel, administrative, environmental, and access safeguards;

(5) Document and follow a virus protection program for all IT resources under its control; and

(6) Document and follow a network intrusion detection and prevention program for all IT resources under its control.

(b) The contractor must be required to develop and maintain IT System Security Plans, in accordance with NPG 2810.1, for systems for which the contractor has primary operational responsibility on behalf of NASA.

1804.470–4 Contract clauses.

The contracting officer must insert the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts involving unclassified information technology resources.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 1852.204–76 to read as follows:

1852.204–76 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 1804.470–4, insert the following clause:

Security Requirements for Unclassified Information Technology Resources July, 2000

(a) The Contractor shall comply with the security requirements outlined in NASA Policy Directive (NPD) 2810.1, Security of Information Technology, and NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology. These policies apply to all IT systems and networks under NASA's purview operated by or on behalf of the Federal Government, regardless of location.

(b)(1) The Contractor shall ensure compliance by its employees with Federal directives and guidelines that deal with IT Security including, but not limited to, OMB Circular A–130, Management of Federal Information Resources, OMB Circular A–130 Appendix III, Security of Federal Automated Information Resources, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*), and all applicable Federal Information Processing Standards (FIPS).

(2) All Federally owned information is considered sensitive to some degree and must be appropriately protected by the Contractor as specified in applicable IT Security Plans. Types of sensitive information that may be found on NASA systems that the Contractor may have access to include, but are not limited to—

(i) Privacy Act information (5 U.S.C. 552a *et seq.*);

(ii) Export Controlled Data, (e.g. Resources protected by the International Traffic in Arms Regulations (22 CFR Parts 120–130)).

(3) The Contractor shall ensure that all systems connected to a NASA network or operated by the Contractor for NASA conform with NASA and Center security policies and procedures.

(c)(1) The Contractor's screening of Contractor personnel will be conducted in accordance with NPG 2810.1, Section 4.5 for personnel requiring unescorted or unsupervised physical or electronic access to NASA systems, programs, and data.

(2) The Contractor shall ensure that all such employees have at least a National Agency Check investigation. The Contractor shall submit a personnel security questionnaire (NASA Form 531), Name Check Request for National Agency Check (NAC) investigation, and Standard Form 85P, Questionnaire for Public Trust Positions (for specified sensitive positions), and a Fingerprint Card (FD–258 with NASA overprint in Origin Block) to the Center Chief of Security for each Contractor employee requiring screening. The required forms may be obtained from the Center Chief of Security. In the event that the NAC is not satisfactory, access shall not be granted. At the option of the Government, background screenings may not be required for employees with recent or current Federal Government investigative clearances.

(3) The Contractor shall have an employee checkout process that ensures—

(i) Return of badges, keys, electronic access devices and NASA equipment;

(ii) Notification to NASA of planned employee terminations at least three days in advance of the employee's departure. In the case of termination for cause, NASA shall be notified immediately. All NASA accounts and/or network access granted terminated employees shall be disabled immediately upon the employee's separation from the Contractor; and

(iii) That the terminated employee has no continuing access to

systems under the operation of the Contractor for NASA. Any access must be disabled the day the employee separates from the Contractor.

(4) Granting a non-permanent resident alien (foreign national) access to NASA IT resources requires special authorization. The Contractor shall obtain authorization from the Center Chief of Security prior to granting a non-permanent resident alien access to NASA IT systems and networks.

(d)(1) The Contractor shall ensure that its employees with access to NASA information resources receive annual IT security awareness and training in NASA IT Security policies, procedures, computer ethics, and best practices.

(2) The Contractor shall employ an effective method for communicating to all its employees and assessing that they understand any Information Technology Security policies and guidance provided by the Center Information Technology Security Manager (CITSM) and/or Center CIO Representative as part of the new employee briefing process. The Contractor shall ensure that all employees represent that they have read and understand any new Information Technology Security policy and guidance provided by the CITSM and Center CIO Representative over the duration of the contract.

(3) The Contractor shall ensure that its employees performing duties as system and network administrators in addition to performing routine maintenance possess specific IT security skills. These skills include the following:

(i) Utilizing software security tools.

(ii) Analyzing logging and audit data.

(iii) Responding and reporting to computer or network incidents as per NPG 2810.1.

(iv) Preserving electronic evidence as per NPG 2810.1.

(v) Recovering to a safe state of operation.

(4) The Contractor shall provide training to employees to whom they plan to assign system administrator roles. That training shall provide the employees with a full level of proficiency to meet all NASA system administrators' functional requirements. The Contractor shall have methods or processes to document that employees have mastered the training material, or have the required knowledge and skills. This applies to all system administrator requirements.

(e) The Contractor shall promptly report to the Center IT Security Manager any suspected computer or network security incidents occurring on any system operated by the Contractor for NASA or connected to a NASA network. If it is validated that there is an incident, the Contractor shall provide access to the affected system(s) and system records to NASA and any NASA designated third party so that a detailed investigation can be conducted.

(f) The Contractor shall develop procedures and implementation plans that ensure that IT resources leaving the control of an assigned user (such as being reassigned, repaired, replaced, or excessed) have all NASA data and sensitive application software permanently removed by a NASA-approved technique. NASA-owned applications acquired via a "site license" or "server license" shall be removed prior to the resources leaving NASA's use. Damaged IT storage media for which data recovery is not possible shall be degaussed or destroyed. If the assigned task is to be assumed by another duly authorized person, at the Government's option, the IT resources may remain intact for assignment and use of the new user.

(g) The Contractor shall afford NASA, including the Office of Inspector General, access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases and personnel. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data, and to preserve evidence of computer crime.

(h)(1) The Contractor shall document all vulnerability testing and risk assessments conducted in accordance with NPG 2810.1 and any other IT security requirements specified in the contract or as directed by the Contracting Officer.

(2) The results of these tests shall be provided to the Center IT Security Manager. Any Contractor system(s) connected to a NASA network or operated by the Contractor for NASA may be subject to vulnerability assessment or penetration testing as part of the Center's IT security compliance assessment and the Contractor shall be required to assist in the completion of these activities.

(3) A decision to accept any residual risk shall be the responsibility of NASA. The Contractor shall notify the NASA system owner and the NASA data owner within 5 working days if new or unanticipated threats or hazards are discovered by the Contractor, made known to the Contractor, or if existing safeguards fail to function effectively. The Contractor shall make appropriate risk reduction recommendations to the NASA system owner and/or the NASA data owner and document the risk or modifications in the IT Security Plan.

(i) The Contractor shall develop a procedure to accomplish the recording and tracking of IT System Security Plans, including updates, and IT system penetration and vulnerability tests for all NASA systems under its control or for systems outsourced to them to be managed on behalf of NASA. The Contractor must report the results of these actions directly to the Center IT Security Manager.

(j) When directed by the Contracting Officer, the Contractor shall submit for NASA approval a post-award security implementation plan outlining how the Contractor intends to meet the requirements of NPG 2810.1. The plan shall subsequently be incorporated into the contract as a compliance document after receiving Government approval. The plan shall demonstrate thorough understanding of NPG 2810.1 and shall include as a minimum, the security measures and program safeguards to ensure that IT resources acquired and used by Contractor and subcontractor personnel—

(1) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;

(2) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(3) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;

(4) Have appropriate technical, personnel, administrative, environmental, and access safeguards;

(5) Document and follow a virus protection program for all IT resources under its control; and

(6) Document and follow a network intrusion prevention program for all IT resources under its control.

(k) Prior to selecting any IT security solution, the Contractor shall consult with their Center IT Security Manager to ensure interoperability and compatibility with other systems with which there is a data or system interface requirement.

(l) The Contractor shall comply with all Federal and NASA encryption requirements for NASA flight programs (*e.g.*, secure flight termination systems, encryption for satellite uplinks, encryption for flight and satellite command and control for both up and down link) and involve the Center Communications Security (COMSEC) Manager when selecting encryption solutions.

(m) The Contractor shall incorporate this clause in all subcontracts where the requirements identified in this clause are applicable to the performance of the subcontract.

(End of clause)

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Proposed Rules

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Friday, July 14, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–35–AD]

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for Eurocopter France Model AS332C, L, and L1 helicopters. That proposed AD would have required inspecting the horizontal stabilizer spar tube (spar tube) for corrosion, hardness, cracks, and scratches, and if necessary, replacing any unairworthy spar tube and bushing with an airworthy spar tube and bushing. That proposal was prompted by the loss of a horizontal stabilizer in flight due to a spar tube failure. This action revises the proposed AD by correcting the model number given in the applicability section. The actions specified by this proposed AD are intended to prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 12, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed AD by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed AD. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this Supplemental Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW–35-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an AD for Eurocopter France Model AS332C, L, and L1 helicopters was published as an NPRM in the **Federal Register** on March 28, 2000 (65 FR 16352). That NPRM would have required inspecting any spar tube, part number (P/N) 330A13–2024–01, –02, –03, –04, installed on horizontal stabilizers, P/N's 332A13–1000–00, –01, –02, –03, and 332A13–1040–00, –01, for corrosion, hardness, cracks, or scratches. The NPRM also would have required replacing the spar tube and bushing, as necessary, with an airworthy spar tube and bushing. That NPRM was prompted by the loss of a horizontal stabilizer in flight due to a spar tube failure. That condition, if not corrected, could result in failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

Since the issuance of that NPRM, the FAA discovered an error in the model number given in the applicability section of the proposed AD. The helicopter models that are affected are Model AS332C, L, and L1 helicopters; the NPRM incorrectly listed Model AS322C, L, and L1 helicopters.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,200.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 99–SW–35–AD.

Applicability: Model AS332C, L, and L1 helicopters with horizontal stabilizer spar tube (spar tube), part number (P/N) 330A13–2024–01, –02, –03, –04, installed on horizontal stabilizer, P/N 332A13–1000–00, –01, –02, –03 or 332A13–1040–00, –01, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters on which the horizontal spar tube (spar tube) composite bushing (bushing), P/N 330A13–2024–31, has been replaced and since replacement has accumulated:

(1) Less than 1400 hours time-in-service (TIS) or less than 30 calendar months:

(i) Prior to accumulating 1600 hours TIS or 32 calendar months, whichever occurs first, and thereafter at intervals not to exceed (NTE) 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube in accordance with (IAW) the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of Eurocopter France Service Bulletin No. 01.00.57, Revision 1, dated November 24, 1999 (SB).

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, and crack inspection of paragraph 2.B.2. of the SB, replace the bushing with a new bushing, before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2. of the SB, replace the spar tube with an airworthy spar tube before further flight.

(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) 1400 or more hours TIS or 30 or more calendar months:

(i) Within 200 hours TIS or 2 calendar months, whichever occurs first, and thereafter at intervals NTE 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, and crack inspection of paragraph 2.B.2 of the SB, replace the bushing with a new bushing before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2 of the SB, replace the spar tube with an airworthy spar tube before further flight.

(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(b) For all spar tubes:

(1) With less than 7500 hours TIS or 144 calendar months since original installation:

(i) Prior to accumulating 7500 hours TIS or 144 calendar months, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(1)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) With 7500 or more hours TIS or 144 or more calendar months since original installation:

(i) Within 500 hours TIS or 12 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(2)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of the SB.

(3) After accomplishing the requirements of either paragraph (b)(1) or (b)(2) of this AD, as applicable, thereafter, at intervals NTE 7500 hours TIS or 144 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1999–039–073(A)R1, dated December 29, 1999.

Issued in Fort Worth, Texas, on June 30, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–17839 Filed 7–13–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–26]

Proposed Amendment to Class D Airspace, Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class D airspace at Melbourne International Airport, FL, by lowering the airspace ceiling from 2,500 feet above ground level (AGL) to 1,900 feet AGL. Due to the high number of overflying aircraft, in the interest of safety the airspace above 1,900 AGL has been delegated by the Melbourne Air Traffic Control Tower, which provides Visual Flight Rules (VFR) service to aircraft operating in the vicinity of the Melbourne International Airport, to the Daytona Beach Radar Approach Control Facility, which provides Instrument Flight Rules (IFR) air traffic control service to the Melbourne International Airport. This proposed action will also change the name of the airport in the legal description from Melbourne Regional to Melbourne International Airport.

DATES: Comments must be received on or before August 14, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–26, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice musk submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being place don a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 17 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Melbourne International Airport, FL, by lowering the airspace ceiling from 2,500 AGL to 1,900 feet AGL and changing the airport name in the legal description from Melbourne Regional to Melbourne International Airport. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this comment would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Melbourne, FL [Revised]

Melbourne International Airport, FL
(Lat. 28°06′10″ N, long. 80°38′45″ W)

That airspace extending upward from the surface, to and including 1,900 feet MSL within a 4.3-mile radius of the Melbourne International Airport, excluding the portion north of a line connecting the points of intersection with a 5.3-mile radius circle centered on Patrick AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 30, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–17869 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117162–99]

RIN 1545–AY23

Tax Treatment of Cafeteria Plans; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to the tax treatment of cafeteria plans.

DATES: The public hearing is being held on August 17, 2000, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by August 3, 2000.

ADDRESSES: The public hearing is being held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Regulations Unit CC (REG–117162–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG–117162–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting them directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Treena Garrett, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–117162–99) that was published in the **Federal Register** on March 23, 2000 (65 FR 15587).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by August 3, 2000.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00–17806 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–118–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the Virginia Surface Mining Reclamation Regulations concerning subsidence control. The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal regulations.

DATES: If you submit written comments, they must be received on or before 4:00 p.m. (local time), on August 14, 2000. If requested, a public hearing on the proposed amendment will be held on August 8, 2000. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on July 31, 2000.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the address listed below.

You may review copies of the Virginia program, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Mr. Robert A. Penn, Director, Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303, E-mail: rpenn@osmre.gov

Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (540) 523–8100, E-mail: whb@mme.state.va.us

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated June 27, 2000 (Administrative Record Number VA–999) the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that on December 22, 1999, OSM suspended and modified portions of 30 CFR 784.20 and 30 CFR 817.121 pursuant to an order of the United States Appeals Court for the District of Columbia. The DMME

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further stated that the corresponding sections of the Virginia Surface Mining Reclamation Regulations also contain the same language the court found inappropriate and which OSM consequently removed from the Federal rules. The DMME stated that it proposes to amend its rules to be consistent with and in the same manner that OSM modified the Federal regulations.

The Energy Policy Act was enacted October 24, 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) (hereinafter, "The Energy Policy Act or EPAct"). Section 2504 of that Act, 106 Stat. 2776, 3104, amends SMCRA, 30 U.S.C. 1201 *et seq.* Section 2504 of EPAct added a new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified by section 720(a)(1), and compensation must be provided to the owners in the full amount of the diminution in value resulting from the subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies which have been adversely affected by underground coal mining operations. Under section 720(b), the Secretary of the Interior was required to promulgate final regulations to implement the provisions of section 720(a).

On September 24, 1993 (58 FR 50174), OSM published a proposed rule to amend the regulations applicable to underground coal mining and control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. We adopted final regulations on March 31, 1995 (60 FR 16722).

The rules were challenged by the National Mining Association in the District Court for the District of Columbia and in the U.S. Court of Appeals for the District of Columbia Circuit. On April 27, 1999, the U.S. Court of Appeals issued a decision vacating certain portions of the regulatory provisions of the subsidence regulations. See National Mining Association v. Babbitt, 173 F.3d 906 (1999). We suspended those regulatory provisions that are inconsistent with the rationale provided in the U.S. Court of Appeals' decision. The following Federal provisions were suspended.

1. 30 CFR 817.121(c)(4)(i)–(iv)

This regulation provided that if damage to any non-commercial building or occupied residential dwelling or structures related thereto occurred as a result of earth movement within an area determined by projecting a specific angle of draw from the outer-most boundary of any underground mine workings to the surface of the land, a rebuttable presumption would exist that the permittee caused the damage. The presumption typically would have applied to a 30-degree angle of draw. Once the presumption was triggered, the burden of going forward shifted to the mine operator to offer evidence that the damage was attributable to another cause. The purpose of this regulatory provision was to set out a procedure under which damage occurring within a specific area would be subject to a rebuttable presumption that subsidence from underground mining was the cause of any surface damage to non-commercial buildings or occupied residential dwellings and related structures.

The Court of Appeals vacated, in its entirety, this rule that established an angle of draw and that created a rebuttable presumption that damage to EPAct protected structures within an area defined by an "angle of draw" was in fact caused by the underground mining operation. 173 F.3d at 913.

In reviewing the regulation, the Court rejected the Secretary's contention that the angle of draw concept was reasonably based on technical and scientific assessments and that it logically connected the surface area that could be damaged from earth movement to the underground mining operation. The angle of draw provided the basis for establishing the surface area within which the rebuttable presumption would apply. The Secretary had explained that the rebuttable presumption merely shifted the burden of document production to the operator in evaluating whether the damage was actually caused by the underground mining operation within the surface area defined by the angle of draw. The Court nevertheless held that the angle of draw was irrationally broad and that the scientific facts presented did not support the logical inference that damage to the surface area would be caused by earth movement from underground mining within the area.

Based on the conclusion that there was no scientific or technical basis provided for establishing a rational connection between the angle of draw and surface area damage, the Court further concluded that the rebuttable presumption failed. In reviewing the rebuttable presumption requirement, the Court held "an evidentiary presumption is 'only permissible if there is sound and rational connection between the proved and inferred facts, and when proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact * * * until the adversary disproves it.'" That is to say, for the presumption to be permissible, the facts would have to demonstrate that the earth movement from the underground mining operation "more likely than not" caused the damage at the surface. See National Mining Association, 173 F.3d at 906–910. In compliance with the Court of Appeals' decision of April 27, 1999, we suspended 30 CFR 817.121(c)(4)(i) through (iv).

Paragraph (v) within this section applies generally to the types of information that must be considered in determining the cause of damage to an EPAct protected structure and is not limited to or expanded by the area defined by the angle of draw. Therefore, paragraph (v) remains in force.

2. Section 784.20(a)(3)

This regulatory provision required, unless the applicant was denied access for such purposes by the owner, a survey which identified certain features. First, the survey had to identify the condition of all non-commercial buildings or occupied residential dwellings and related structures which were within the area encompassed by the applicable angle of draw and which might sustain material damage, or whose reasonably foreseeable use might be diminished, as a result of mine subsidence. Second, the survey had to identify the quantity and quality of all drinking, domestic, and residential water supplies within the proposed permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. In addition, the applicant was required to notify the owner in writing that denial of access would remove the rebuttable presumption that subsidence from the operation caused any postmining damage to protected structures that occurred within the surface area that corresponded to the angle of draw for the operation. (See discussion of angle of draw above). This regulatory provision was challenged insofar as it required a specific structural condition survey of all EPAct protected structures. The Court of Appeals vacated the specific structural condition survey regulatory requirement in its decision on April 27, 1999. In reviewing the

Secretary's requirement, the Court clearly upheld the Secretary's authority to require a pre-subsidence structural condition survey of all EPAct protected structures. The Court accepted the Secretary's explanation that this specific structural condition survey was necessary, among other requirements, in order to determine whether a subsidence control plan would be required for the mining operation. However, because of the Court's ruling on the "angle of draw" regulation discussed above, it vacated the requirement for a specific structural condition survey because it was tied directly to the area defined by the "angle of draw."

In compliance with the Court of Appeals' decision, we suspended that portion of 30 CFR 784.20(a)(3) which required a specific structural condition survey of all EPAct protected structures. The remainder of this section continues in force to the extent that it applies to the EPAct protected water supplies survey and any technical assessments or engineering evaluations necessarily related thereto.

The amendment submitted by the DMME is described below.

4 VAC 25–130–784.20. Subsidence Control Plan

Subsection 4 VAC 25–130–784.20(a)(3) is amended by adding the following language at the end of subdivision (3).

However, the requirements to perform a survey of the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the areas encompassed by the applicable angle of draw is suspended consistent with the Secretary's suspension of the corresponding federal rule.

4 VAC 25–130–817.121. Subsidence Control

Section 4 VAC 25–130–817.121(c)(4), is revised by deleting the title "Rebuttable presumption of causation by subsidence," and by deleting paragraphs (c)(4)(i) through (iv). New language is added which states that "Section (4)(i) through (iv) are suspended consistent with the Secretary's suspension of the corresponding federal rule". The paragraph designation "(v)" is deleted.

As amended, section 4 VAC 25–130-817.121(c)(4) provides the following.

(4) Section (4)(i) through (iv) are suspended consistent with the Secretary's suspension of the corresponding federal rule.

Information to be considered in determination of causation. In determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the division.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments, on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

If you submit written or electronic comments on the proposed amendment during the 30–day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments

Please submit Internet comments as an ASCII, Word Perfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. VA–118–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Field office at (540) 523–4303.

Availability of Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during our regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. (local time), on July 31, 2000. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society

and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 5, 2000.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–17899 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ092–002; FRL–6736–1]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM–10 Standard; Further Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; further extension of comment period.

SUMMARY: EPA is extending the comment period for its proposed action to approve provisions of the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County (Phoenix) Nonattainment Area, February 2000, and the control measures on which it relies, that address the annual PM–10 national ambient air quality standard. As part of this proposal, we also proposed to grant Arizona's request to extend the Clean Air Act deadline for attaining the annual PM–10 standard in the Phoenix area from 2001 to 2006 and to approve two particulate matter rules adopted by the Maricopa County Environmental Services Department and Maricopa County's Residential Woodburning Restrictions Ordinance.

DATES: Comments must be received by July 28, 2000.

ADDRESSES: Mail comments to Frances Wicher, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, (415) 744–1248.

SUPPLEMENTARY INFORMATION: On April 13, 2000 (65 FR 19963), we proposed to approve the serious area air quality plan for attainment of the annual PM–10 standard in the Phoenix, Arizona, metropolitan area. The proposed actions are based on our initial determination that this plan complies with the Clean Air Act's requirements for attainment of the annual PM–10 standard in serious PM–10 nonattainment areas.

Specifically, we proposed to approve the following elements of the plan as they apply to the annual PM–10 standard:

- The base year emissions inventory of PM–10 sources,
- The demonstration that the plan provides for implementation of

reasonably available control measures (RACM) and best available control measures (BACM), the demonstration that attainment of the PM–10 annual standard by the Clean Air Act deadline of December 31, 2001 is impracticable,

• The demonstration that attainment of the PM–10 annual standard will occur by the most expeditious alternative date practicable, in this case, December 31, 2006,

• The demonstration that the plan provides for reasonable further progress and quantitative milestones,

• The demonstration that the plan includes to our satisfaction the most stringent measures found in the implementation plan of another state or are achieved in practice in another state, and can feasibly be implemented in the area.

• The demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations of the annual PM–10 standard, and

• The transportation conformity budget.

We also proposed to grant Arizona's request to extend the attainment date for the annual PM–10 standard from December 31, 2001 to December 31, 2006.

Finally, we are proposing to approve Maricopa County's fugitive dust rules, Rules 310 and 301.01, and its residential woodburning restriction ordinance.

The proposal action provided a 60 day public comment period that ended on June 12, 2000. We have already extended the comment period to July 3, 2000. In response to a request from City of Tempe, Arizona, we are extending the comment period for an additional 14 days.

Dated: July 5, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–17877 Filed 7–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–063–0026; FRL–6735–9]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a disapproval of revisions to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). The revisions concern volatile organic compound (VOC) emissions from organic solvents, dry cleaners, coating operations, and degreasers. We have evaluated these revisions and are proposing to disapprove these revisions because they are not consistent with the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments are due on or before August 14, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted rules and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rules at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012

Pinal County Air Quality Control District, 31 North Pinal Street, Building F, Florence, AZ 85232

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the date that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAQCD	5–9–278	Applicability	10/12/95	11/27/95
PCAQCD	5–9–280	Organic Solvents	10/12/95	11/27/95
PCAQCD	5–10–330	Petroleum Solvent Dry Cleaning	10/12/95	11/27/95
PCAQCD	5–11–350	Chlorinated Synthetic Solvent Dry Cleaning	10/12/95	11/27/95
PCAQCD	5–12–370	Architectural Coating Operations	10/12/95	11/27/95
PCAQCD	5–13–390	Spray Paint and Other Surface Coating Operations	10/12/95	11/27/95
PCAQCD	5–15–622	Degreasers	10/12/95	11/27/95
PCAQCD	7–3–3.4	Organic Solvents (rescission)	10/12/95	11/27/95

On February 2, 1996, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 5–9–278, 5–9-280, 5–10–330, 5–11–350, 5–12–370, 5–13–390, and 5–15–622 (Chapter 5 Rules) in the SIP. These Chapter 5 Rules were adopted by the PCAQCD on October 12, 1995 and submitted to us by the ADEQ on November 27, 1995.

We approved a version of Rule 7–3–3.4 into the SIP on April 12, 1982. The PCAQCD rescinded the SIP-approved version of Rule 7–3–3.4 on October 12, 1995 and ADEQ submitted the rescission request to us on November 27, 1995.

C. What Is the Purpose of the Submitted Rules?

The submitted rules control emissions of VOCs from a variety of sources, including degreasers, dry cleaners, and coating operations. Except for Rule 5–9–278 which limits the applicability of Rule 5–9–280, the Chapter 5 Rules were meant to replace SIP approved Rule 7–3–3.4. Most of the provisions originally found in the SIP approved version of Rule 7–3–3.4 are now found in Rule 5–9–280. The TSD has more information about these rules.

D. What Revisions Do the Submitted Rules Make to the SIP?

The submitted rules revise the SIP approved version of Rule 7–3–3.4 by:

- Limiting the applicability of Rule 5–9–280 to an area along the northwest border of Pinal County,
- increasing the allowable discharge of organic materials exposed to heat from 15 to 40 pounds per day,
- Exempting sources subject to other portions of the PCAQCD Code of Regulations,
- Allowing some sources to exceed the 1.5 gallon disposal limit for photochemically reactive solvents, and
- Allowing the use of alternative "rational control technology" approved by the control officer.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The PCAQCD regulates an ozone attainment area (see 40 CFR part 81), so the submitted rules are not required to meet RACT.

Guidance and policy documents that we used to evaluate the submitted rules include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document," (the "Blue Book"), notice of availability published in the May 25, 1988 **Federal Register**.

B. Do the Rules Meet the Evaluation Criteria?

These rules weaken the SIP by establishing less stringent emission limits and narrowing the scope of regulated sources. These rules are inconsistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

These provisions conflict with section 110 and part D of the Act and prevent approval of the SIP revision.

1. Rule 5–9–278 relaxes the SIP by regulating potentially fewer sources.
2. Rule 5–9–280 relaxes the SIP by increasing the allowable discharge of organic materials exposed to heat.
3. Eliminating the 1.5 gallon disposal limit for photochemically reactive solvents relaxes the SIP by allowing some sources to emit more VOCs.
4. Rule 5–9–280 is unenforceable because it gives the control officer discretion in approving the use of alternative controls.
5. Rule 5–9–280 is unenforceable because it refers to other portions of the PCAQCD Code of Regulations which have not been approved into the SIP.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a disapproval of the submitted rules. This means that the version of Rule 7–3–3.4 that was approved into the SIP on April 12, 1982 will remain in the federally enforceable SIP. If this disapproval is finalized, the federal implementation plan (FIP) requirement under section 110(c) will not be triggered and section 179 sanctions will not be imposed even if EPA fails to approve subsequent SIP revisions that correct the rule deficiencies because PCAQCD is an ozone attainment area. Note that the submitted rules have been adopted by the PCAQCD, and EPA's final disapproval would not prevent the local agency from enforcing them.

We will accept comments from the public on the proposed disapproval for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These rules are not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2000.

Nora L. McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 00–17878 Filed 7–13–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KS 105–1105b; FRL–6733–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators (HMIWI); State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: EPA proposes to approve the state of Kansas' section 111(d) plan for controlling emissions from existing HMIWIs. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act. The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by August 14, 2000.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 20, 2000.

Michael Sanderson,

Acting Regional Administrator, Region 7.

[FR Doc. 00–17873 Filed 7–13–00; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1837

Acquisition of Training Services

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by removing Subpart 1837.70—Acquisition of Training, to conform the acquisition of training with FAR Part 6.

DATES: Comments should be submitted on or before September 12, 2000.

ADDRESSES: Interested parties should submit written comments to James H. Dolvin, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to: jdolvin1@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, (202) 358–1279, or jdolvin1@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In 1991, Subpart 1837.70—Acquisition of Training, was added to the NFS. Section 1837.7000, Acquisition of off-the-shelf training courses, provided that the Government Employees Training Act of 1958, 5 U.S.C. 4101 *et seq.*, could be used as the authority for acquisition of "non-Governmental off-the-shelf training courses which are available to the public." Section 1837.7001, Acquisition of new training courses, provided that acquisition of new training courses "developed to fill a specific NASA need" must be conducted in accordance with the FAR. This subpart is being removed because it has caused confusion within NASA about the relevance of the FAR to training service procurement.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the deletion of this subpart will not alter the manner in which NASA is required to acquire training.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Tom Luedtke,

Associate Administrator for Procurement.

List of Subjects in 48 CFR Part 1837

Government procurement.

Accordingly, 48 CFR Part 1837 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 1837 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1837—SERVICE CONTRACTING

2. Amend Part 1837 by removing Subpart 1837.70.

[FR Doc. 00–17880 Filed 7–13–00; 8:45 am]

BILLING CODE 7510–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF45

Endangered and Threatened Wildlife and Plants; Clarification of Take Prohibitions for Coastal Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; clarification.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide notice that the Endangered Species Act prohibitions against take of threatened species will apply to Southwestern Washington/Columbia River coastal cutthroat trout and will go into effect on the effective date of listing, if the proposed listing of this species is finalized. We also provide lists of actions that would, and would not, likely constitute a violation of section 9 of the Act and seek comment on those lists.

DATES: Comments from all interested parties must be received by August 14, 2000.

ADDRESSES: Comments and materials should be sent to the U.S. Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266 (telephone 503/231–6179; facsimile 503/231–6195), email: coastal__cutthroat@fws.gov. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, State Supervisor, 503/231–6179.

SUPPLEMENTARY INFORMATION: Based on questions we have received regarding the application of the take prohibition of section 9 of the Endangered Species Act of 1973, as amended (Act), to the potential listing of coastal cutthroat trout (*Oncorhynchus clarki clarki*) as threatened, we are providing the following clarification of our position relative to take prohibitions for threatened species.

Background

On April 5, 1999, the National Marine Fisheries Service (NMFS) and the Service jointly published a proposed rule (64 FR 16397) to list the Southwestern Washington/Columbia River coastal cutthroat trout evolutionarily significant unit (ESU) in Washington and Oregon as threatened. On November 22, 1999, we assumed sole regulatory jurisdiction over all life forms of coastal cutthroat trout under the Act (see 65 FR 21376). On April 14, 2000 (65 FR 20123), we extended by 6 months (until October 5, 2000) the timeframe to take final action on the proposed rule. We needed additional time to review new information available since the status review was published and to examine the role of hatchery and above-barrier populations of the coastal cutthroat trout within southwest Washington and the Columbia River and their importance to conservation of the species in this area. Consequently, we will take final action on the April 5, 1999, proposed rule by October 5, 2000.

Section 9 of the Act prohibits certain activities, including take, for endangered species. Section 4(d) of the Act allows the prohibition of any of these activities for threatened species, through promulgation of a special rule. The April 5, 1999, proposed rule included the stipulation that protective regulations pursuant to section 4(d) of the Act would be addressed in the future and that all relevant National Environmental Policy Act (NEPA) and Regulatory Flexibility Act (RFA) requirements would be met at that time. This stipulation reflects the approach that NMFS takes when proposing a species as threatened under the Act. However, the Service promulgated regulations establishing prohibitions for all threatened species under its jurisdiction on April 28, 1978 (43 FR 18181), and amended these regulations on May 31, 1979 (44 FR 31580). As a result, our regulations at 50 CFR 17.31 apply all of the take prohibitions for endangered species at § 17.21, except § 17.21(c)(5), to threatened wildlife. Since we now have sole regulatory authority for coastal cutthroat trout, these regulations will apply at the time of listing of any coastal cutthroat trout. Therefore, further action relative to NEPA and RFA requirements is not necessary for application of these regulations to coastal cutthroat trout in Southwestern Washington/Columbia River region, should the proposed listing be finalized.

The regulations at 50 CFR 17.21 and 17.31 prohibit taking (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is defined as creating the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

We recognize that some activities that provide for the conservation of the species may result in harm or harassment to individual coastal cutthroat trout. These activities may be permitted through a section 10(a)(1)(A) permit. In the future, we may also implement a section 4(d) rule to remove the prohibition against take resulting from activities that contribute to the conservation of the species. Such a 4(d) rule must go through a full regulatory process, including publication of a proposal in the **Federal Register** and a public comment period. For example, a section 4(d) rule could remove the prohibition against take resulting from State-regulated recreational fisheries or activities covered by local land-use planning regulations, so long as such activities provide for the conservation of the species. Activities that may result in harm or harassment to individual coastal cutthroat trout may also be permitted through section 10(a)(1)(B) with the development of a habitat conservation plan that minimizes and mitigates the impact to the maximum extent practical.

Activities That Would Not Constitute a Violation of Section 9 of the Act

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act, as stipulated in 50 CFR 17.21 and 17.31. By presenting this information, we hope to increase public awareness of the potential effects of the proposed listing on new and ongoing activities within the range of coastal cutthroat trout in the Southwest Washington/Columbia River region. We believe the following actions would not be likely to result in a violation of section 9, provided the activities are carried out in accordance with all existing regulations and permit requirements:

(1) Actions that may affect coastal cutthroat trout and are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act;

(2) State, local, and other activities for the conservation of the coastal cutthroat trout approved by us under section 4(d), section 6(c)(1), or section 10(a)(1) of the Act;

(3) The planting of native vegetation within riparian areas, using hand tools or mechanical auger. This does not include any site preparation that involves the removal of native vegetation (such as deciduous trees and shrubs) or that goes beyond that necessary to plant individual trees, shrubs, or other plants;

(4) The installation of fences to exclude livestock impacts to the riparian area and stream channel. The installation of new off-channel livestock watering facilities and the operation and maintenance of existing off-channel livestock watering facilities when such facilities consist of low-volume pumping, gravity feed, or well systems, and employ in-water intakes that are screened consistent with NMFS' current Juvenile Fish Screen Criteria For Pump Intakes. This does not include the potential impacts associated with the grazing activity itself or negative effects attributable to depleting stream flow due to water withdrawal;

(5) The placement of human access barriers, such as gates, fences, boulders, logs, vegetative buffers, and signs, to limit use- and disturbance-associated impacts. These impacts may include timber theft, disturbance to wildlife, poaching, illegal dumping of waste, erosion of soils, and sedimentation of aquatic habitats, particularly in sensitive areas such as riparian habitats or geologically unstable zones. This does not include road maintenance or the potential impacts associated with the road itself;

(6) The current operation and maintenance of fish screens on various water facilities that meet the current NMFS' Juvenile Fish Screen Criteria for

Pump Intakes. This does not include the use of traps or other collection devices at screen installations, operation of the diversion structure, or negative effects attributable to depleting stream flow due to water diversion;

(7) The installation, operation, and maintenance of screens where the existing canal or ditch is located off the main stream channel when: (a) The canal or ditch is dewatered prior to screen and bypass installation and prior to fish entering the canal or ditch; (b) Installed screens and bypass structures meet the current NMFS' Juvenile Fish Screen Criteria; and (c) Bypass is accomplished through free (volitional) access, with adequate velocities, construction materials, and stream re-entry conditions that will not result in harm or death to fish. This does not include the use of traps or other collection devices at screen installations, placement or operation of the diversion structure, or negative effects attributable to depleting stream flow due to water diversion;

(8) The general maintenance of existing structures, such as homes, apartments, and commercial buildings, which may be located in close proximity to a stream corridor, but outside of the stream channel. This does not include potential impacts associated with sediment or chemical releases that may adversely affect coastal cutthroat trout or their habitat, nor does this include those activities that may degrade existing riparian areas or alter streambanks (such as removal of streamside vegetation and streambank stabilization); and

(9) The lawful use of existing State, county, city, and private roads. This does not include road maintenance and the potential impacts associated with the road itself that may destroy or alter coastal cutthroat trout habitat (such as grading unimproved roads, stormwater and contaminant runoff from roads, failing road culverts, and road culverts that block fish migration), unless authorized by us through section 6, 7, or 10 of the Act.

Activities That Would Constitute a Violation of Section 9 of the Act

We believe that the following could result in a violation of section 9:

(1) Take of coastal cutthroat trout without a permit or other authorization from us. Take includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State, National Park Service, and Tribal fish and wildlife conservation laws and regulations;

(2) To possess, sell, deliver, carry, transport, or ship illegally taken coastal cutthroat trout;

(3) Introduction of nonnative fish species that compete or hybridize with, or prey on, coastal cutthroat trout;

(4) Implementation of activities that destroy or alter coastal cutthroat trout habitat including, but not limited to: dredging, channelization or diversion; riparian vegetation removal that leads to reduced shade or the recruitment of large woody debris; in-stream vehicle operation or streambed material removal; grading unimproved roads; road maintenance activities such as side-casting into riparian zones or waterways; failure to control stormwater and contaminant runoff from roads or to maintain failing road culverts; and installation of road culverts that block fish migration; or other activities that result in the destruction or significant degradation of water quality or quantity, water temperature, cover, channel stability, substrate composition, turbidity, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(5) Discharges, release, or dumping of toxic chemicals, silt, or other pollutants into waters supporting coastal cutthroat trout that result in death or injury of individuals of the species, including misuse of toxic chemicals that enter the water and result in death or injury of individuals; and

(6) Destruction or alteration of stream, riparian, estuarine, or lakeshore habitat and adjoining uplands of waters supporting coastal cutthroat trout by timber harvest, grazing, mining, hydropower development, road construction, habitat restoration, or other development activities that result in long- or short-term destruction or significant degradation of water quality or quantity, water temperature, cover, channel stability, substrate composition, turbidity, and migratory corridors used by the species for foraging, cover, migration, and spawning.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. We do not consider these lists to be exhaustive and provide them as information to the public.

Comments Solicited

This rulemaking action does not propose any changes to the regulation prohibiting take for threatened wildlife, as stipulated in 50 CFR 17.31, or the manner in which this prohibition is applied. We are soliciting comments on the above list of activities that would, and would not, likely constitute a violation of section 9 of the Act. We are not soliciting comments on the application of this regulation to any other populations of coastal cutthroat trout that may be listed in the future.

Author: The primary authors for this rulemaking action are John A. Young, Regional Office, Region 1, and Robin Bown, Oregon State Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 6, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–17921 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–55–P

VOL 65 ISS 136 JL 14 2000 UMI

Notices

Federal Register
Vol. 65, No. 136
Friday, July 14, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–053–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an information collection to gather data on the health status of swine by conducting a national on-farm study of swine, Swine 2000, in support of the National Animal Health Monitoring System.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 12, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–053–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–053–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information on the Swine 2000 activities, contact Ms. Marj Swanson, Management Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 555 S. Howes, Fort Collins, CO 80521; (970) 490–7978. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System (Swine 2000).

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture is responsible for protecting and improving the health, quality, and marketability of our nation's animal and poultry populations by preventing the spread of contagious, infectious, or communicable animal diseases from one State to another and by eradicating such diseases from the United States when feasible. In connection with this mission, the Animal and Plant Health Inspection Service operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases. Information from these studies is disseminated and used by livestock and poultry producers, consumers, animal health officials, private veterinary practitioners, animal industry groups, policymakers, public health officials, the media, educational institutions, and others to improve agriculture's productivity and competitiveness.

NAHMS' national studies have evolved into a collaborative industry and government initiative. We are the only agency responsible for collecting national data on animal and poultry health. Participation in any NAHMS study is voluntary, and all data are confidential.

The Swine 2000 project will identify factors associated with the shedding of specific pathogens by swine, describe antimicrobial usage, and describe animal health management practices and their relationship to swine health. In addition, data collected through our Swine 2000 project will be used to describe the changes in management practices and animal health in swine operations by comparing certain data gathered in 1990 and 1995 with data gathered in the Swine 2000 project.

We are asking the Office of Management and Budget (OMB) to approve the use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .64577 hours per response.

Respondents: Industry personnel, private veterinary practitioners, company and independent producers, academicians, State veterinary medical officers, and State public health officials.

Estimated annual number of respondents: 17,800.

Estimated annual number of responses per respondent: 1.03089.

Estimated annual number of responses: 18,350.

Estimated total annual burden on respondents: 11,850 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–17887 Filed 7–13–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–064–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

DATES: Sessions will be held from 8 a.m. to 5 p.m. on August 1–2, 2000, and from 8 a.m. to 12 noon on August 3, 2000.

ADDRESSES: The meeting will be held at the USDA Center at Riverside in Conference Centers C and D, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Annelli, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231;
(301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The meeting will focus on the U.S. animal health emergency management system and the foreign animal disease situation worldwide and its relevance to the United States. The meeting will be open to the public. However, due to the time constraints, the public will not be allowed to participate in the Committee's discussions.

You may obtain an agenda for the meeting by contacting Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.**

You may file written statements on meeting topics with the Committee before or after the meeting by sending them to Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.** You may also file written comments at the time of the meeting. Please refer to Docket No. 00–064–1 when submitting your comments.

This meeting notice is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 11th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–17888 Filed 7–13–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee Meeting

AGENCY: Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on August 16–17, 2000 at the Confederated tribes of Warm Springs Forestry and Fire Management Conference room at 4430 Upper Dry Creek Road in Warm Springs, Oregon. The first day will be a field trip starting at 10 am to visit vegetation management projects on Tribal lands. The second day will be a business meeting starting at 9 am at the Jefferson County Firehall on the corner of Adam and "J" Street in Madras, Oregon. Agenda items will include Rechartering, United Federal Policy on Water Quality Monitoring, Roadless Area EIS, Recreation Initiative, Update on the Lower Snake Dams, Hosmer EA, Info Sharing and a Public Forum from 3 pm till 3:30 pm. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd, Bend, OR 97701, Phone (541) 383–4769.

Dated: July 10, 2000.

Rebecca Heath,

Acting Deschutes National Forest Superior.

[FR Doc. 00–17907 Filed 7–13–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: August 14, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 24, April 21 and May 26, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 15897, 21395 and 34145) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

PVA Sponge Mop Refill

M.R. 1037

Computer Accessories

6150–00–NIB–0005 (Surge Protectors)
6150–00–NIB–0006 (Surge Protectors)
7045–00–NIB–0052 (CD Jewel Cases)
7045–00–NIB–0053 (Computer Maintenance Products)
7045–00–NIB–0056 (Computer Maintenance Products)
7045–00–NIB–0057 (Computer Maintenance Products)
7045–00–NIB–0076 (Keyboard Drawers)
7045–00–NIB–0077 (Anti-Glare Screens)
7045–00–NIB–0103 (CD Jewel Cases)
7045–00–NIB–0104 (CD Jewel Cases)
7045–00–NIB–0105 (Keyboard Drawers)
7045–00–NIB–0106 (Keyboard Drawers)
7045–00–NIB–0107 (Computer Maintenance Products)
7045–00–NIB–0108 (Computer Maintenance Products)
7045–00–NIB–0111 (Anti-Glare Screens)
7045–00–NIB–0112 (Anti-Glare Screens)
7045–00–NIB–0113 (Computer Maintenance Products)
7045–00–NIB–0121 (Desktop Media Storage)
7045–00–NIB–0123 (Desktop Media Storage)
7045–00–NIB–0124 (Desktop Media Storage)
7045–00–NIB–0125 (Desktop Media Storage)
7045–00–NIB–0126 (Desktop Media Storage)
7045–00–NIB–0129 (Desktop Media Storage)
7045–00–NIB–0131 (Desktop Media Storage)

Services

Grounds Maintenance

U.S. Army Reserve Centers at the following locations:

Lydia Street Extension, Waterbury, Connecticut
Phelps Road, East Windsor, Connecticut

AMSA 69

26 Seamans Lane, Milford, Connecticut
499 Mile Lane, Middletown, Connecticut

AMSA 72

536 Spring Street, Windsor Locks, Connecticut
200 Wintergreen Avenue, New Haven, Connecticut
180 High Street, Fairfield, Connecticut
700 South Quaker Lane, West Hartford, Connecticut

Janitorial/Custodial

Bureau of Land Management, Montana State Office Fire Office Complex for the following locations in Billings, Montana:

The Fire Operations and Air Tanker Base Building, 1299 Rimtop Drive
Billings Zone Fire Cache Building, Airport Industrial Park IP–7, 551 Northview Drive

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Liner, Trousers, Cold Weather
8415–01–180–0376
8415–01–180–0377

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–17891 Filed 7–13–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 14, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement

List for production by the nonprofit agencies listed:

Administrative/General Support Services, U.S. Customs Service CMC, 423 Canal Street, New Orleans, Louisiana, NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana

Food Service Attendant, Pope Air Force Base, North Carolina, NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia

Furniture Rehabilitation, U.S. Department of Agriculture, 14th & Independence Avenue, SW, Washington, DC (10% of the USDA's requirement), NPA: J. M. Murray Center, Inc., Cortland, New York

Janitorial/Custodial, Department of the Treasury, Federal Law Enforcement Training Center, Child Care Center, Building 315, Glynco, Georgia, NPA: Goodwill Industries of the Coastal Empire, Inc., Savannah, Georgia

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–17892 Filed 7–13–00; 8:45 am]

BILLING CODE 6353–01–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, July 21, 2000, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of June 16, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Arkansas and Oklahoma
VI. "Fair Employment Enforcement Efforts: Overcoming the Past, Focusing on the Future: An Assessment of EEOC's Enforcement Efforts" Report
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications, (202) 376–8312.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–18021 Filed 7–12–00; 2:11 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–2000]

Proposed Foreign-Trade Zone—City of Erie (County of Erie), Pennsylvania Amendment of Application

Notice is hereby given that the application of the Erie-Western Pennsylvania Port Authority, to establish a general-purpose foreign-trade zone in the City of Erie (County of Erie), Pennsylvania (Doc. 6–2000, 65 FR 12970, 3/10/00), has been amended to include an additional non-contiguous site (450 acres) at the Erie International Airport in Erie. The site includes air cargo facilities and a planned industrial park. The site is owned and operated by the Erie Municipal Airport Authority. The Erie International Airport is a Customs port of entry (within the Cleveland Customs Service port area).

As amended, the zone proposal will consist of a total of two sites (476 acres) in the City of Erie. The application otherwise remains unchanged.

The comment period is reopened until August 17, 2000. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

A copy of the application and the amendment and accompanying exhibits are available for public inspection at the following locations:

Erie County Public Library, Raymond M. Blasco, MD, Memorial Library, 160 East Front Street, Erie, PA 16507.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 10, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–17905 Filed 7–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–2000]

Foreign-Trade Zone 173—Grays Harbor County, Washington; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Port of Grays Harbor (PGH), grantee of Foreign-Trade Zone 173, requesting authority to expand its zone in Grays Harbor County, Washington, adjacent to the Aberdeen Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 10, 2000.

FTZ 173 was approved on February 1, 1991 (Board Order 503, 56 FR 5384, 2/11/91) and includes subzone status for the manufacturing plant of Lamb-Grays Harbor Company (Subzone 173A) in Hoquiam. The general-purpose zone currently consists of five sites (589 acres) in Grays Harbor County: *Site 1* (292 acres)—PGH Port Industrial area, including a marine terminal complex, Aberdeen and Hoquiam; *Site 2* (45 acres)—PGH Industrial Development District No.1, Harbor Navigation Channel, Hoquiam; *Site 3* (132 acres)—Bowerman Airfield and adjacent industrial park, Grays Harbor County; *Site 4* (117 acres)—PGH industrial parcel on State Highway 105, Westport Marina, Westport; and, *Site 5* (3 acres)—Westport Marina, Main Dock, Westport.

The applicant is now requesting authority to expand its general-purpose zone to enlarge Site 1 and to add 2 new sites in Grays Harbor County. Site 1 will be expanded from 292 acres to 367 acres at the PGH-Port Industrial Area site in Hoquiam and Aberdeen. The two new proposed sites are as follows: *Proposed Site 6* (150 acres)—PGH Terminal 3, Marine Terminal and Industrial Park, 616 Airport Way and 400 Airport Way, Hoquiam; and, *Proposed Site 7* (440 acres)—Satsop Development Park, 471 Lambert Road, Elma. Expanded Site 1 and Proposed Site 3 are owned by PGH and Proposed Site 2 is owned by the Grays Harbor Public Development Authority. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 12, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 27, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port of Grays Harbor, 111 S. Wooding Street, Aberdeen, WA 98520.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 10, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–17906 Filed 7–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Aadministration

[Application No. 00–00003]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to North American Fruit Trading Alliance, L.L.C. ("NAFTA"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1999).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Processed red cherries (prunus cerasus); cherry products including but not limited to cherry pie filling, water pack cherries, cherry juice concentrate, dried cherries, frozen pack cherries, individually quick frozen cherries, cherry sausage, cherry jams, jellies and sauces.

Processed sweet cherries including but not limited to individually quick frozen and stored in freezer (IQF); cherries canned in water, light syrup, heavy syrup, extra heavy syrup or as a pie fill; and juice from sweet cherries.

2. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works, involving cherry processing.

3. Export Trade Facilitation Services (as they Relate to the Export of Products and Technology Rights)

Trade promotion, marketing, sales, and transportation services (including packing, transportation, wharfing and handling, trade documentation, freight forwarding, storage, and customs clearance).

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (Within the Meaning of Section 325.2(1) of the Regulations)

Graceland Fruit, Inc., Frankfort, MI; Burnette Foods, Inc., Elk Rapids, MI; Milne Fruit Products, Inc., Prosser, WA (Controlling Entity: Ocean Spray Cranberries, Inc., Lakeville, MA); and Northern Michigan Fruit Co., Omena, MI.

Export Trade Activities and Methods of Operation

NAFTA and its Members may engage in the following activities with respect to Export Markets:

1. Negotiate and enter into agreements with buyers in the Export Markets;
2. Negotiate and enter into agreements with foreign governments and other persons in the Export Markets regarding the quantities, time periods, prices, terms, and conditions upon which the Members will export Products and/or Technology Rights through NAFTA;
3. Allocate export sales and/or Export Markets among the Members on the basis of each Member's commitment of Products and/or Technology Rights for export;
4. Establish prices and terms of sale for the Export Markets;
5. Use the NAFTA or other common brand or label;
6. Negotiate and enter into agreement, on behalf of and with the advice of the Members, for the provision of Export Trade Facilitation Services (including trade shows, advertising, and contract marketing services);
7. Share among the Members the cost of Export Trade Facilitation Services;
8. Enter into exclusive distribution agreements in Export Markets for Products and/or Technology Rights with non-Members; "Exclusive" means that the non-Member distributor may agree not to represent any person or firms other than NAFTA in the export of Products and/or Technology Rights in any Export Markets; and/or NAFTA may agree not to export Products and/or Technology Rights in any Export Market through any distributor other than that non-Member distributor;
9. Advise and cooperate with the United States Government or any agency of the United States Government in establishing procedures regulating the export of Products and/or Technology Rights; and
10. Conduct product research and design for Products (and develop, obtain, and license associated Technology Rights) only when conducted exclusively for export, including meeting foreign regulatory requirements and foreign buyers specifications, and identifying and designing for foreign buyer preferences; provided, however, that the Export Trade Activities and Methods of Operation do not cover activity that relates to the use of Technology Rights for the U.S. domestic market.

Definition

"Supplier" means a person, including each member, who produces, provides, or sells Products, Technology Rights, or Export Trade Facilitation Services.

"Member" means a person who has membership in NAFTA and who has been certified as a "Member" within the meaning of Section 325.2(l) of the Regulations.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, neither NAFTA nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier any information that is about its or any other Member's or Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods,

unless (1) such information is already generally available to the trade or public, or (2) the information disclosed is a necessary term or condition (*e.g.*, price, time required to fill an order, etc.) Of an actual or potential bona fide sale and the disclosure is limited to the prospective purchasing Member.

2. Meetings at which NAFTA allocates export sales among Members and establishes export prices shall not be open to the public.

3. Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for sales of Products, Services or Technology Rights in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving written notice to NAFTA, a copy of which NAFTA shall promptly transmit to the Secretary of Commerce and the Attorney General.

4. NAFTA and the Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

5. Each Member shall determine independently the quantities of Products it will offer to export or sell through NAFTA. NAFTA may not require any Member to accept any order for sale or to export any minimum quantity of Products.

Protection Provided by the Certificate

This Certificate protects NAFTA, its Members and their directors, officers, and employees acting on their behalf, from private treble damage actions and governmental criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Dated: July 11, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–17909 Filed 7–13–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 00–00002]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce issued an Export Trade Certificate of Review to Consol Energy, Inc. ("CEI") on June 30, 2000. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1997). The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Product

Bituminous Coal.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

CEI and its Member may engage in the following activities with respect to Export Markets:

1. Gather and share market intelligence about CEI's and Member's mutual international competition and the purchasing decisions made by foreign buyers in the Export Markets;

2. Allocate export market opportunities between CEI and Member. As sales opportunities arise in foreign countries, CEI and Member may jointly determine which one of them will bid for the business. CEI and Member will not compete against each other with respect to export market opportunities assigned to the other;

3. Jointly determine the price at which the Product will be sold for each such foreign business opportunity;

4. Predetermine which of CEI's or Member's coal production sources would be used for each foreign business opportunity;

5. Solicit non-Member Suppliers of bituminous coal as necessary to meet the quantities and/or specifications required by a particular foreign business opportunity;

6. Jointly develop logistical arrangements for the export of bituminous coal to predetermined markets, including jointly arranging shipping schedules and negotiating rates with

Definitions

1. "Member" (within the meaning of Section 325.2(1) of the Regulations) means AMCI Export Corporation.

2. "Non-Member Supplier" means a person, not a Member of the Certificate, who produces, provides, or sells bituminous coal.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, neither CONSOL Energy Inc. nor its Member shall intentionally disclose, directly or indirectly, to each other (including parent companies, subsidiaries, or other entities related to CONSOL Energy Inc. or the Member) or to any non-Member Suppliers any information regarding CONSOL Energy Inc.'s or Member's costs, production, inventories, domestic prices, domestic sales, capacity to produce Products for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already

generally available to the trade or public.

2. CONSOL Energy Inc. and its Member shall determine independently the quantities of Product each will offer to export. Neither may require the other to export any minimum quantity of Product.

3. Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing) shall be in connection only with actual or potential bona fide export transactions or opportunities and shall include only CONSOL Energy, Inc. and the Member.

4. Participation by CONSOL Energy, Inc. and the Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary, subject to the honoring of contractual commitments for sales of Products in specific export transactions.

5. CONSOL Energy Inc. and the Member will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303 (a) of the Act.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: July 6, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–17910 Filed 7–13–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071100C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: American Fisheries Act: Vessel and Processor Permit Applications.

Form Number(s): None.

OMB Approval Number: 0648–0393.

Type of Request: Regular submission.

Burden Hours: 83.

Number of Respondents: 141.

Average Hours Per Response: 2 hours for a permit application, 30 minutes for a replacement vessel application.

Needs and Uses: The American Fisheries Act (AFA) established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). NOAA issued an emergency interim rule to give immediate effect to all AFA-mandated management measures. Under the AFA, only vessels and processors that meet specific qualifying criteria are eligible to fish for and process pollock in the BSAI. The BSAI pollock quota is suballocated to groups of vessel owners who form fishing vessel cooperatives under the AFA. NOAA administers new AFA fishing, processing, and cooperative permits for the BSAI pollock fishery through application form requirements for the participants to identify and permit the vessels and processors that are eligible to participate in the BSAI pollock fishery by requiring the owners of vessels and processors to submit evidence of their qualification to participate in the BSAI pollock fishery.

Affected Public: Business and other for-profit organizations.

Frequency: Annual, every four years, and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 7, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17896 Filed 7–13–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Alcoa Point Comfort/Lavaca Bay NPL Site, Point Comfort, Texas: Notice of Availability and Request for Comments on a Draft Damage Assessment and Restoration Plan/Environmental Assessment for Ecological Injuries and Service Losses

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Department of the Interior (DOI); Texas Parks and Wildlife Department (TPWD); Texas General Land Office (TGLO); Texas Natural Resources and Conservation Commission (TNRCC).

ACTION: Notice of availability of a Draft Damage Assessment and Restoration Plan and Environmental Assessment for ecological injuries and service losses associated with the Alcoa Point Comfort/Lavaca Bay NPL Site, and of a 30-day period for public comment on the draft plan beginning July 14, 2000.

SUMMARY: Pursuant to 43 CFR 11.32 and 11.81—.82, notice is hereby given that a document entitled, "Draft Damage Assessment and Restoration Plan and Environmental Assessment for the Point Comfort/Lavaca Bay NPL Site Ecological Injuries and Service Losses" (Draft DARP/EA) is available for public review and comment. This document has been prepared by the state and federal natural resource trustee agencies listed above to address natural resource injuries and resource services losses of an ecological nature attributable to releases of hazardous substances from the Alcoa Point Comfort/Lavaca Bay NPL Site (Site). This Draft DARP/EA presents the Trustees' assessment of the natural resource injuries and service losses attributable to the Site, and their proposed plan to compensate for those losses by restoring ecological resources and services. In an effort to expedite

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completion of the restoration planning process for this Site, the current document also includes an evaluation of the terrestrial resource injuries and ecological losses after 1999, and their corresponding restoration requirements, based on an anticipated final remedy. The need for a future Draft DARP/EA to complete restoration planning will be determined based on the final remedy decision for the Site and the consistency of this evaluation with that decision. The Trustees will consider comments received during the public comment period, including this evaluation, before finalizing the DARP/EA for these ecological losses.

DATES: Comments on the Draft DARP/EA must be submitted in writing on or before August 14, 2000.

ADDRESSES: Requests for copies of the Draft DARP/EA should be sent to Richard Seiler of TNRCC, MC142, P.O. Box 13087, Austin, TX 78711–3087 or John Kern of NOAA, 9721 Executive Center Drive North, Suite 134, St. Petersburg, FL 33702. Written comments on the plan should be sent either to Richard Seiler of TNRCC or John Kern of NOAA at the addresses listed above.

SUPPLEMENTARY INFORMATION: The Alcoa Point Comfort/Lavaca Bay NPL Site is located in Point Comfort, Calhoun County, Texas and encompasses releases of hazardous substances from Alcoa's Point Comfort Operations facility. Between 1948 and the present, Alcoa has constructed and operated several types of manufacturing processes at this facility, including aluminum smelting, carbon paste and briquette manufacturing, gas processing, chlor-alkali processing, and alumina refining. Past operations at the facility have resulted in the release of hazardous substances into the environment, including through the discharge of mercury-containing wastewater into Lavaca Bay from 1966 to 1970 and releases of mercury into the bay through a groundwater pathway. In April 1988, the Texas Department of Health (TDH) issued a "closure order" prohibiting the taking of finfish and crabs for consumption from a specified area of Lavaca Bay near the facility due to elevated mercury concentrations found in these species.

The Alcoa Point Comfort/Lavaca Bay Site was added to the National Priorities List (NPL), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, on March 25, 1994 (59 FR 8724; February 23, 1994). The Site was listed primarily due to the presence of mercury in several species of finfish and crabs in Lavaca Bay, the fishing closure imposed by TDH, and the presence of mercury and other hazardous substances in bay sediments adjacent to the facility. Alcoa, the State of Texas and the U.S. Environmental Protection Agency (EPA) signed an Administrative Order on Consent (AOC) under CERCLA in March 1994 for the conduct of a remedial investigation and feasibility study (RI/FS) for the Site.

NOAA, DOI, TPWD, TGLO and TNRCC (collectively, the Trustees) are designated natural resource trustees under section 107(f) of CERCLA, section 311 of the Federal Water Pollution and Control Act (FWPCA), 33 U.S.C. 1321, and other applicable federal or state laws, including Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300.600—300.615. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore natural resources injured or lost as a result of discharges or releases of hazardous substances.

Paralleling the RI/FS process for the Site, the Trustees have undertaken an assessment of the natural resource injuries and service losses attributable to hazardous substances at the Site. The assessment for this Site has been aided and supported by Alcoa's cooperation pursuant to a Memorandum of Agreement between Alcoa and the Trustees, which was effective January 14, 1997. The Draft DARP/EA released today has been developed under the cooperative assessment framework outlined in the MOA. It is focused on natural resource injuries or services losses of an ecological nature caused by the hazardous substances at the Site based on known contamination and response actions initiated at the Site as of the end of 1999. The Draft DARP/EA released today embodies the second stage of the assessment and restoration planning process for the Site. The first stage focused on the recreational fishing service losses resulting from the closure area and is covered by a Draft DARP/EA for Recreational Service Losses released on September 28, 1999, and a Revised Draft DARP/EA for Recreational Service Losses released on May 12, 2000. Finalization of the DARP/EA for Recreational Service Losses is anticipated to occur in July 2000.

The Draft DARP/EA released today identifies the information and methods being used to define the natural resource injuries and losses of an ecological nature, including the scale of restoration actions, and identifies the restoration actions which are preferred for use to restore, replace or acquire resources or services equivalent to those lost. The current document also includes an evaluation of the terrestrial resource injuries and remaining ecological losses, including their corresponding restoration requirements, based on an anticipated final remedy. If the final remedy differs from that which the Trustees' have anticipated, then the analysis may not be appropriate and a third and final stage Draft DARP/EA may be required. However, if the analysis is consistent with the actual choice of final remedy, then by including this information for public review in the current document, there will be no need to develop any further Draft DARP/EAs to complete the assessment and restoration planning process for this Site.

FOR FURTHER INFORMATION CONTACT: Richard Seiler at (512) 239–2523, email: rseiler@tnrcc.state.tx.us or John Kern, at (727) 570–5391 x 158, email: john.kern@noaa.gov

Dated: July 10, 2000.

Captain Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 00–17833 Filed 7–13–00; 8:45 am]

BILLING CODE 3510–JE–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071000A]

Marine Mammals; File No. 782–1446

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Alaska Fisheries Science Center, National Marine Mammal Laboratory, 7600 Sand Point Way, NE, Seattle, WA 98115 has been issued an amendment to scientific research Permit No. 782–1446.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box. 21668, Juneau, AK 99802–1668 (907/586–7221); and

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand

Point Way, NE, BIN C15700, Seattle, WA 98115–0070 (206/526–6150).

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 22, 2000, notice was published in the **Federal Register** (65 FR 32077) that an amendment of Permit No. 782–1446, issued May 8, 1998 (63 FR 27265), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 782–1446 authorizes the permit holder to annually conduct aerial, ground and vessel surveys and capture and tagging studies for stock assessment of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and northern elephant seals (*Mirounga angustirostris*).

The amendment now authorizes the chemical immobilization of 6 adult male California sea lions in Oregon, Washington, and California for the removal of Satellite-Linked Time Depth Recorders.

Dated: July 10, 2000.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–17893 Filed 7–13–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore; Republication

June 30, 2000.

Editorial Note: FR Doc. 00–17161 was originally scheduled to be published in the issue of Friday, July 7, 2000, at page 41962. It was inadvertently omitted. It is published below in its entirety.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, carryforward and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54874, published on October 8, 1999.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 7, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
222	702,393 kilograms.
331	657,384 dozen pairs.
338/339	1,728,914 dozen of which not more than 1,053,038 dozen shall be in Category 338 and not more than 1,127,744 dozen shall be in Category 339.
347/348	1,362,563 dozen of which not more than 846,912 dozen shall be in Category 347 and not more than 621,213 dozen shall be in Category 348.
604	1,072,871 kilograms.
639	4,123,826 dozen.
642	354,086 dozen.
648	1,765,424 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Editorial Note: FR Doc. 00–17161 was originally scheduled to be published in the issue of Friday, July 7, 2000 at page 41962. It was inadvertently omitted due to typesetting errors.

[FR Doc. 00–17161 Filed 7–6–00; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Professional Qualifications, Medical and Peer Reviewers; CHAMPUS For 780; OMB Number 0720–0005.

Type of Request: Reinstatement.

Number of Respondents: 60.

Responses Per Respondent: 1.

Annual Responses: 60.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 30

Needs and Uses: The information collection requirement is necessary to obtain and record the professional qualifications of medical and peer reviewers utilized within CHAMPUS. The form is included as an exhibit in an appeal or hearing case file as evidence of the reviewer's professional

qualifications to review the medical documentation contained in the case file. Respondents are medical professionals who provide medical and peer review of cases appealed to the Office of Appeals and Hearings, TRICARE Management Activity.

Affected Public: Individuals or households; Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 10, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17849 Filed 7–13–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the United States Commission on National Security/21st Century

AGENCY: Department of Defense, Office of the Undersecretary of Defense (Policy).

ACTION: Notice of closed meeting.

SUMMARY: The United States Commission on National Security/21st Century will meet in closed session on July 25–26, 2000. The Commission was originally chartered by the Secretary of Defense on 1 July 1998 (charter revised on 18 August 1999) to conduct a comprehensive review of the early twenty-first century global security environment; develop appropriate national security objectives and a strategy to attain these objectives; and recommend concomitant changes to the national security apparatus as necessary. This meeting is being announced less than fifteen days before the meeting dates dues to scheduling difficulties.

The Commission will meet in closed session on July 25–26, 2000, to receive updates on Phase Three research and analysis and to provide overall guidance on the structure and content of the Phase Three report. By Charter, the Phase Three report is to be delivered to the Secretary of Defense no later than February 16, 2001.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

DATES: Tuesday and Wednesday, July 25–26, 2000, 8:30 a.m.–5 p.m.

ADDRESSES: The Airlie Center, 6809 Airlie Road, Warrenton, VA 20187.

FOR FURTHER INFORMATION CONTACT: Keith A. Dunn, National Security Study Group, Suite 532, Crystal Mall 3, 1931 Jefferson Davis Highway, Arlington, VA 22202–3805. Telephone 703–602–4175.

Dated: July 10, 2000.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 00–17850 Filed 7–13–00; 8:45 am]

BILLING CODE 5000–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership—2000 DLA PRB (Amended).

SUMMARY: This notice amends the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency, with respect to pay level adjustments and performance awards, and other actions related to management of the SES cadre.

EFFECTIVE DATE: July 1, 2000.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, STE 2533, Fort Belvoir, Virginia 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Coward, Workforce Effectiveness and Development Group, Human Resources, Defense Logistics Agency, Department of Defense, (703) 767–6427.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as a members of the SES PRB. Members will serve a 2-year term, effective July 1, 2000.

PRB Chair: Mr. Gary Thurber, Executive Director,

Members: Mr. Frank Lotts, Deputy Director, Logistics Operations, Ms. Phyllis Campbell, Deputy Commander, Defense Distribution Center, Dr. Linda Furiga, Comptroller.

Gary S. Thurber,

Executive Director, Defense Logistics Agency.

[FR Doc. 00–17853 Filed 7–13–00; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Announce a Determination of Surplus in the Federal Register

AGENCY: U.S. Army Corps of Engineers, Sacramento District, DoD.

ACTION: Dispose of surplus property.

SUMMARY: In accordance with Public Laws 103–421, 100–526 and 103–337, this is a Notice of Availability for Surplus Land, Buildings and Utilities located at Sierra Army Depot, Herlong, California. This notice identifies the surplus real property located at Sierra Army Depot (SIAD), Herlong, California. SIAD is located approximately 55 miles north northwest of Reno, Nevada just north of U.S. Highway 395. SIAD is a base realignment facility and major portions of the installation are being retained for active missions.

The surplus real property consists of approximately 3661 acres. The current range of uses include: Airport, light industrial, storage, and commercial facilities; water, sanitary sewer and electric distribution systems.

Notices of interest must be submitted to the appropriate Federal Agency as specified in the Notice of Surplus Determination within 20 days from June 27, 2000 with a copy forwarded to Lassen County Local Reuse Authority, Attention: Ms. Tricia Stewart, Project Coordinator, 815 Cottage Street, Susanville, California 96130 and Mr. Ramon Aberasturi, U.S. Army Corps of Engineers, Sacramento District (CESPK–RE–MC), 1325 J Street, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: For more information regarding a particular

building or parcel (*i.e.*, acreage, floor plans, existing utilities, exact street address), contact Ms. Lori McDonald, SIAD PAO at (530) 827–4488 or regarding the Notice of Surplus Determination, contact Mr. Ramon Aberasturi, Realty Specialist, (916) 557–6865.

Keneth L. Fox,

Chief, Management and Disposal Branch Real Estate Division.

[FR Doc. 00–17852 Filed 7–13–00; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC), and invites people to participate. Notice of this meeting is required under section 644(c) of the Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities. The FICC will attend to ongoing work including reports from committees and task forces. A Policy Forum on Reaching Out to Families who are Homeless with Young Children with Disabilities sponsored by the Office of Special Education Programs and Rehabilitative Services, will be held on Thursday September 14, from 9:00 a.m.–12:00 noon in the Barnard Auditorium, U.S. Department of Education, 400 Maryland Ave. S.W., Washington, DC 20202. The meeting is open to the public.

DATE AND TIME: FICC Meeting: Thursday, September 14, 2000 from 1:30 p.m. to 5:00 p.m.

ADDRESSES: U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, S.W., Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, S.W., Room 3080, Switzer Building, Washington, DC 20202, Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 644(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities: (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

The meeting for the FICC is open to the public and is physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Obral Vance at (202) 205–5507 (voice) or (202) 205–9754 (TDD) ten days in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, S.W., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–17820 Filed 7–13–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–9–001 and ER99–2331–002]

Cherokee County Cogeneration Partners, L.P., v. Duke Energy Corporation and Duke Energy Corporation; Notice of Filing

July 10, 2000.

Take notice that on June 30, 2000, Duke Energy Corporation (Duke), tendered for filing a Stipulation and Settlement Agreement (Settlement) between Duke and Cherokee County Cogeneration Partners, L.P. (Cherokee), an Explanatory Statement and a revised Operating Agreement. Duke states that the Settlement is the Commission-jurisdictional portion of a comprehensive resolution of disputes and litigation between Duke and Cherokee.

Duke states that copies of its filing have been mailed to each person designated on the official service list in this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17815 Filed 7–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3068–000]

FPL Energy Cape, LLC; Notice of Filing

July 10, 2000.

Take notice that on June 29, 2000, FPL Energy Cape, LLC, 100 Middle Street, Portland Maine 04101, tendered for filing with the Federal Energy Regulatory Commission an application for approval of rate schedule under which they may make wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates pursuant to Section 205 of the Federal Power Act, Part 35 of the Commission's Regulations and Rules 203 and 205 of the Commission's Rules of Practice and Procedure.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17819 Filed 7–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–375–000]

Panhandle Eastern Pipe Line Company; Notice of Tariff Filing

July 7, 2000.

Take notice that on June 30, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets as listed on Appendix A attached to the filing, to be effective March 27, 2000 and August 1, 2000.

Panhandle states that the purpose of this filing is to comply with the Commission's Regulation of Short-term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) as clarified in Docket Nos. RM98–10–001, *et al.* issued on May 19, 2000, 91 FERC ¶ 61,169 (Order NO. 637–A). Specifically, the proposed changes revise the applicable sections of the General Terms and Conditions of Panhandle's tariff to remove the price cap for short-term capacity releases until September 30, 2002 and to modify the applicability of the right of first refusal as directed by Order Nos. 637 and 637–A.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us./online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17862 Filed 7–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1864–005]

Upper Peninsula Power Company; Notice of Site Visit

July 10, 2000.

The Federal Energy Regulatory Commission (Commission) has received an application for relicense of the existing Bond Falls Hydroelectric Project No. 1864–005. The Bond Falls Project is located on the Ontonagon River system in the western part of Michigan's Upper Peninsula and a small portion of neighboring Wisconsin, and is owned and operated by Upper Peninsula Power Company (UPPCO).

On June 18, 1996, the Commission issued a notice that the project was ready for environmental analysis. A site visit was held on October 10 and 11, 1995, and scoping meetings were held on January 10 and 11, 1996. A site visit and public meetings to discuss a draft Offer of Settlement were held on May 25 and 26, 1999. Since then the Offer of Settlement has been finalized and the Commission's staff assigned to this project has changed. Therefore, it is necessary that an additional site visit be conducted prior to completion of environmental analysis.

The Commission's staff will visit the project site on Wednesday, July 19 and Thursday, July 20, 2000. The site visit will begin during the early afternoon of July 19 from the parking lot of the AmericInn, Watersmeet, Michigan, and continue on July 20 from the same location. Interested individuals, organizations, and agencies are invited to attend the site visit to gain a better understanding of the existing project. People interested in attending the site visit should provide their own transportation. Please contact the UPPCO representative, Mr. Robert Meyers, at (906) 485–2419 to be included on the site visit and to obtain specific meeting times for July 19 and 20.

If you have any questions please contact Mr. Patrick Murphy at (202) 219–2659.

David P. Boergers,

Secretary.

[FR Doc. 00–17864 Filed 7–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–1721–001 and ER00–1737–001]

Virginia Electric and Power Company; Notice of Filing

July 10, 2000.

Take notice that on June 30, 2000, Virginia Electric and Power Company, tendered for filing revised tariff sheets in compliance with the Commission's order issued May 31, 2000 in Virginia

Electric and Power Company, 91 FERC ¶ 61,209 (2000). The Company requests that the Commission accept these compliance tariff sheets for filing and make them effective June 1, 2000, the date the Commission permitted the modified OATT and the modified market-based sales tariff to become effective.

Copies of the filing were served upon the office service list compiled by the Secretary is this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17818 Filed 7–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–36–000]

Guardian Pipeline, L.L.C.; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Guardian Pipeline Project

July 10, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft environmental impact statement (draft EIS) on natural gas pipeline facilities proposed by Guardian Pipeline, L.L.C. (Guardian) in the above-referenced docket.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS evaluates alternatives to the proposal, including system alternatives; route alternatives; and minor route variations.

The draft EIS assesses the potential environmental effects of the construction and operation of the following facilities in Illinois and Wisconsin:

- 140.2 miles of 36-inch diameter pipeline extending from Joliet, Illinois to Ixonia, Wisconsin;
- 8.5 miles of 16-inch-diameter lateral pipeline in Walworth and Waukesha Counties, Wisconsin (Eagle Lateral);
- A total of 0.16 mile of 30, 24, and 16-inch-diameter pipeline to connect the project to existing pipeline systems in Will County, Illinois;
- One 25,080-horsepower compressor station (Joliet Compressor Station) in Will County, Illinois;
- Seven new meter stations; and
- Associated pipeline facilities, including eight mainline valves.

Wisconsin Gas Company (WGC) also proposes to construct about 35 miles of 30 –, 24 –, and 16–inch diameter pipeline (WGC Lateral Line Project) extending eastward from the northern terminus of the Guardian Pipeline in Wisconsin. WGC's Lateral Line Project is under the jurisdiction of the Public Service Commission of Wisconsin (PSCW). Although these facilities are not under the jurisdiction of the FERC, they are analyzed in this draft EIS. The PSCW is participating in the EIS process as a cooperating agency, as is the Wisconsin Department of Natural Resources (WIDNR). FERC is coordinating the public comment process on the draft EIS and will share any comments on the WGC Lateral Line Project with the PSCW and WIDNR.

The purpose of the Guardian Pipeline Project is to transport up to 750,000 decatherms per day of natural gas from the Chicago Hub to markets in northern Illinois and Wisconsin. According to Guardian, the project would:

- Introduce a competitive alternative natural gas pipeline to markets in northern Illinois and Wisconsin;
- Provide area shippers with access to competing providers of transportation, storage, and related services at or upstream of the Chicago Hub; and
- Contribute toward increasing electric reliability in the upper Midwest by providing additional pipeline capacity to meet the growth in gas-fired electric generation plants.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Regulatory Energy Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the DEER Gas Group 1, PJ 11.1;
- Reference Docket No. CP00–36–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 28, 2000.

In addition to written comments, we will hold four public meetings in the project area to receive comments on the draft EIS. All meetings will begin at 7 p.m., and are scheduled as follows:

August 14, 2000

Joliet, Illinois, Fireside Resort Hotel, 4200 West Jefferson, (815) 725–0111

DeKalb, Illinois, Northern Illinois University, Holmes Student Center, Normal & Lucinda Roads, (815) 753–1744

August 15, 2000

Delavan, Wisconsin, Lake Lawn Lodge, 2400 East Geneva St., (800) 338–5253

Oconomowoc, Wisconsin, Olympia Conference Center, 1350 Royale Mile Road, (800) 558–9573

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impact described in the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments filed on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above. You do not need intervener status to have your comments considered.

This draft EIS has been placed in the public files of the FERC and is available for public inspection at: Federal

Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the draft EIS have been mailed to Federal, state, and local agencies, public interest groups, individuals who have requested the draft EIS, newspapers, and parties to this proceeding.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS"link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. Or assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–17816 Filed 7–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–165–000]

Transcontinental Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Sundance Expansion Project, Request for Comments on Environmental Issues, and Schedule to Hold Site Visits

July 10, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Sundance Expansion Project (Sundance Project) involving construction and operation of facilities by Transcontinental Gas Pipe Line Company (Transco) in several counties in North Carolina, Georgia, Alabama, and Mississippi.[1] These facilities would consist of about 38 miles of 42- and 48-inch diameter pipeline, 41,225 horsepower (hp) of additional compression, piping modification at one compressor station, and installation of gas coolers at another compressor station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need to Know?" was attached to the project notice Transco provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (ww.ferc.fed.us).

Summary of the Proposed Project

Transco wants to expand the capacity of its mainline pipeline facility in Mississippi, Alabama, Georgia, and North Carolina to transport an additional 236,383 dekatherms per day of natural gas to 12 shippers. Transco seeks authority to construct and operate the following facilities:

- 12.03 miles of 42-inch diameter pipeline loop from milepost 772.81 on transco's mainline in Clark County, Mississippi to milepost 784.84 in Choctaw County, Alabama (the "Desoto loop");
- 9.36 miles of 48-inch diameter pipeline loop from milepost 851.46 on Transco's main line in Dallas County, Alabama to milepost 860.82 in Perry County, Alabama (the "Summerville loop");
- Piping modifications at Transco's existing Compressor Station No. 105, located in Coosa County, Alabama;
- 8.97 miles of 42-inch diameter pipeline loop from milepost 1247.03 on Transco's mainline in Cleveland County, North Carolina to milepost 1256.00 in Gaston County, North Caroline (the "Kings Mountain loop");
- 7.67 miles of 42-inch diameter pipeline loop from milepost 1287.11 on Transco's mainline to milepost 1294.78 in Iredell County, North Carolina (the "Mooresville loop"):
- One new 18,975 horsepower compressor unit, and the uprating of an existing 15,000 horsepower compression unit, and an existing 16,500 horsepower compressor unit to 18,975 horsepower each at Transco's existing Compressor Station No. 115, located in Coweta County, Georgia. The proposed Sundance project will increase the total certificated compression at this station to 56,425 horsepower;
- One new 15,000 horsepower compression unit, and the uprating of an existing 4,000 horsepower compression unit to 4,800 horsepower at Transco's existing Compressor Station No. 125, located in Walton County, Georgia. The proposed Sundance project will increase the total certificated compression at this station to 38,800 horsepower; and
- Gas coolers at Transco's existing Compressor Station No. 150, located in Iredell County, North Carolina.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed pipeline additions would require about 516.4 acres of land. Following construction, about 164.9 acres would be maintained as new pipeline right of way. The remaining 351.5 acres of land would be restored and allowed to revert to its former use.

Installation of new facilities at the four existing compressor stations would require a total of about 8.1 acres of land area. However, no increase in land area would be required during operation of these facilities.

[1] Transco's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commissions' regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their area of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section at the beginning of page 6.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils
  - —Erosion control and right-of-way restoration.
  - —Potential for mixing of topsoil and subsoil.
- Water Resources and Wetlands
  - —A total of 85 perennial water bodies would be crossed.
  - —A total of 61 wetlands, including 7.18 acres of forested and 5.76 acres of non-forested wetlands along the pipeline construction right of way, would be crossed.
- Biological Resources
  - —Impacts on 24 federally threatened and/or endangered species that may be present in the project area.
  - —Impacts on about 213 acres of upland forest and scrub-shrub habitat.
- Cultural Resources
  - —Impacts on prehistoric and historic sites
  - —Native American concerns
- Land Use
  - —Impacts on about 226 acres of rangeland.
  - —Impacts on residential areas.
  - —Visual effects of the aboveground facilities on surrounding areas.
  - —Impacts on 15 residents within 50 feet of the proposed construction area.
- Air and Noise Quality
  - —Impacts on local air and noise environment as a result of operation of the new compressor upgrades.
- Alternatives
  - —Evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.
- Nonjurisdictional Facilities
  - —We have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas/Hydro Group.
- Reference Docket No. CP00–165–000.
- Mail your comments so that they will be received in Washington, DC on or before August 31, 2000.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Schedule of Site Visits

The Commission staff will be conducting an environmental site visit

of each facility proposed for the Sundance Expansion project during the week beginning on August 14 and continuing through August 18, 2000. The following list specifies the time and location to meet staff at each project facility.

Monday, August 14, 2000

Mooresville Loop: Noon, First United Methodist Church parking lot, Hwy. 115 at Fairview Road, Mt. Mourne, NC.

Tuesday, August 15, 2000

Kings Mountain Loop: 9 a.m., Ramada Inn Limited parking lot, 728 York Road, Kings Mountain, NC.

Wednesday, August 16, 2000

Transco's Compressor Station 125: 9 a.m., 1001 James Huff Road, Monroe, GA.

Transco's Compressor Station 115: 1 p.m., 510 Keith Road, Newnan, GA.

Thursday, August 17, 2000

Transco's Compressor Station 105: 9 a.m., 235 Hwy. 22 East, Rockford, AL.

Summerfield Loop: 1 p.m., Black Belt Regional Research and Extension Center, Main Building parking lot, County Road 58, 0.3-mile west of County Road 45, Marion Junction, AL.

Friday, August 18, 2000

DeSoto Loop: 9 a.m., First United Methodist Church parking lot, 203 E. Franklin Street, Quitman, MS.

Anyone interested in participating in the site visit may contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 with any questions, or to obtain updates on the above schedule should changes occur while staff is en route to the meeting locations. Participants must provide their own transportation.

David P. Boergers,

Secretary.

[FR Doc. 00–17817 Filed 7–13–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6609–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly Receipt of Environmental Impact Statements Filed July 3, 2000 Through July 7, 2000 Pursuant to 40 CFR 1506.9

EIS No. 000231, FINAL EIS, BLM, OR, John Day River Proposed Management Plan, Implementation, Two Rivers and John Day Resource Management Plan Amendments, John Day River Basin, Gilliam, Grant, Wheeler, Crook, Harney, Jefferson, Morrow, Sherman, Umatilla, Union and Wasco Counties, OR, Due: August 14, 2000, Contact: Mike William (541) 416–6862.

EIS No. 000232, FINAL EIS, IBR, CA, Contra Costa Water District Multi-Purpose Pipeline (MPP) Project, Construction and Operation of Raw Water Delivery System, Contra Costa Canal, COE Section 10 and 404 Permits, Contra Costa County, CA, Due: August 14, 2000, Contact: Bob Eckart (916) 978–5051.

EIS No. 000233, FINAL EIS, NPS, NJ, Great Egg Harbor National Scenic and Recreation River, Comprehensive Management Plan, Implementation, Atlantic Gloucester, Camden and Cape May Counties, NJ, Due: August 14, 2000, Contact: Mary Vavra (215) 597–9115.

EIS No. 000234, DRAFT EIS, APH, Importation of Unmanufactured Wood Articles from Mexico, With Consideration for Cumulative Impact of Methyl Bromide Use, Due: August 28, 2000, Contact: Gene W. Kersey (301) 734–7495.

EIS No. 000235, DRAFT EIS, FHW, TX, US Highway 183 Alternate Project, Improvements from RM–620 to Approximately Three Miles North of the City of Leander, Williamson County, TX, Due: August 28, 2000, Contact: Walter Waidelich (512) 916–5511.

EIS No. 000236, FINAL EIS, FAA, OH, Cleveland Hopkins International Airport, To Provide Capacity, Facilities, Highway Improvements and Enhancement to Safety, Funding, Cugahoga County, OH, Due: August 14, 2000, Contact: Ernest P. Gubry (734) 487–7280.

EIS No. 000237, DRAFT EIS, COE, NC, Dare County Beaches (Bodie Island Portion) Hurricane Wave Protection and Beach Erosion Control, The towns of Nags Head, Kill Devil Hills, Kitty Hawk, Dare County, NC , Due: August 28, 2000, Contact: Charles Wilson (910) 251–4746.

EIS No. 000238, FINAL EIS, FHW, UT, Legacy Parkway Project, Construction from I–215 at 2100 North in Salt Lake City to I–15 and US 89 near Farmington, Funding and COE Section 404 Permit, Salt Lake and Davis Counties, UT, Due: September 05, 2000, Contact: Gregory Punske (801) 963–0182.

EIS No. 000239, DRAFT EIS, IBR, AZ, NV, CA, Colorado River Interim Surplus Criteria, To Determine Water Surplus for use within the States Arizona, California and Nevada (from 2001 through 2015), Colorado River Basin, AZ, CA and NV, Due: September 08, 2000, Contact: Dave Curtis (702) 293–8132.

EIS No. 200240, DRAFT EIS, USN, VA, Marine Corps Heritage Center (MCHC) Complex, Construction and Operation at Marine Corps Base (MCB) Quantico, VA, Due: August 28, 2000, Contact: Hank Riek (202) 685–3064.

EIS No. 000241, FINAL EIS, AFS, ID, Silver Creek Integrated Resource Project, Implementation, Middle Fork Payette River, Boise National Forest, Boise and Valley Counties, ID, Due: August 14, 2000, Contact: Chris Worth (208) 365–7000.

EIS No. 000242, DRAFT EIS, FRC, IL, WI, Guardian Pipeline Project, Propose to Construct and Operate an Interstate Natural Gas Pipeline that would extend from Joliet (Will County), IL and Ixonia (Jefferson County), WI, Due: August 28, 2000, Contact: Paul McKee (202) 208–1088.

Dated: July 11, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–17923 Filed 7–13–00; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6609–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–FAA–E51047–NC Rating EO2, Piedmont Triad International Airport, Construction and Operation, Runway 5L/23R and New Overnight Express Air Cargo Sorting and Distribution Facility, and Associated Developments, Funding, NPDES and COE Section 404 Permit, City of Greensboro, Guilford County, NC.

Summary: EPA expressed environmental objections since the EIS did not fully describe the proposed air cargo operations and the associated potential noise impacts. EPA requested that there be specific commitments to both avoid or reduce air cargo operational noise.

ERP No. D–GSA–B80007–MA Rating LO, U.S. Courthouse Springfield, Construction, Hampden County, MA.

Summary: EPA had no objections to the project.

ERP No. D–IBW–G29002–00 Rating EC2, El Paso—Las Cruces Regional Sustainable Water Project, To Secure Future Drinking Water Supplies, United States and New Mexico.

Summary: EPA expressed concern regarding potential impacts to water/terrestrial resources, habitats, air quality, cultural resources and socioeconomics. EPA requested the final document include additional information and mitigation measures on these issues.

Final EISs

ERP No. F–AFS–J65288–CO Uncompahgre National Forest Travel Plans Revision, Implementation, Grand Mesa, Uncompahgre and Gunnison National Forests, Garrison, Hinsdale Mesa, Montrose, Ouray and San Juan Counties, CO.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FAA–B51018–CT Tweed-New Haven Airport Runway Safety Area and Taxiway Improvements, Safety Improvements to Runway 2/20 and Taxiways 'B' and 'E', Funding, COE Section 10 and 404 Permits, New Haven County, CT.

Summary: EPA has no objections to the project.

ERP No. F–HUD–K80040–CA City of Monterey Park Project, Construction and Operation of the Monterey Park Towne Plaza, North of the Pomona Freeway and west of Paramount Boulevard, Los Angeles County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USA–K26001–HI Schofield Barracks Wastewater Treatment Plant (WWTP), Effluent Treatment and Disposal, NPDES Permit and COE Section 404 Permit, City of County of Honolulu, Oahu, HI.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 11, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–17924 Filed 7–13–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439B; FRL–6597–4]

Pesticide Program Dialogue Committee (PPDC); Inert Disclosure Stakeholder Workgroup; Notice of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: This notice announces a conference call meeting of the Inert Disclosure Stakeholder Workgroup. The workgroup was established to advise the Pesticide Program Dialogue Committee on ways of making information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide, and Rodenticide Act and related confidential business information concerns.

DATES: The meeting will be held by conference call on Tuesday, July 25, 2000, from noon to 3 p.m.

ADDRESSES: Members of the public may listen to the meeting discussions on site at: Crystal Mall #2, Conference Room 1123, 1921 Jefferson Davis Hwy., Arlington, VA. Seating is limited and will be available on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 11th Floor, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA; (703) 305–5454; smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION: The Inert Disclosure Stakeholder Workgroup is composed of participants from the following sectors: Environmental/public interest and consumer groups; industry and pesticide users; Federal, State, and local governments; the general public; academia and public health organizations.

The Inert Disclosure Stakeholder Workgroup will advise EPA, through the Pesticide Program Dialogue Committee (PPDC), on potential measures to increase the availability to the public of information about inert ingredients (also called "other ingredients") under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Among the factors the workgroup has been asked to consider in preparing its recommendations are: Existing law regarding inert ingredients and confidential business information (CBI); current Agency processes and policies for disseminating inert ingredient information to the public, including procedures for the protection of CBI; informational needs for a variety of stakeholders; and business reasons for limiting the disclosure of inert ingredient information.

The Inert Disclosure Stakeholder Workgroup meeting is open to the public. Written public statements are welcome and should be submitted to the OPP administrative docket OPP–00439A. Any person who wishes to file a written statement can do so before or after the conference call. These statements will be provided to the workgroup members for their information.

How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper handling by EPA, it is imperative that you identify docket control number OPP–00439A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in items 1 and 2 above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00439A. Electronic comments may also be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 5, 2000.

Joseph J. Merenda,

Acting Director, Office of Pesticide Programs.

[FR Doc. 00–17993 Filed 7–12–00; 11:44 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–420478; FRL–6550–6]

South Dakota State Plan for Certification of Applicators of Restricted Use Pesticides; Notice of Intent to Amend Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State of South Dakota has submitted to EPA a proposed amendment to their State Certification Plan which would allow the use of M-44 Sodium Cyanide Devices by both commercial and private applicators to control coyotes (*Canis latrans*) that prey upon livestock and poultry. The proposed amendment establishes new requirements for the training, certification, recertification, and recordkeeping of individuals that use M-44 Sodium Cyanide Devices. Notice is hereby given of the intention of the Regional Administrator, Region VIII, to approve the revised South Dakota State Plan for the Certification of Applicators of Restricted Use Pesticides. EPA is soliciting comments on the proposed amendments.

DATES: Comments, identified by docket control number OPP–42078, must be received on or before August 28, 2000.

ADDRESSES: Copies of the amended South Dakota State Certification Plan are available for public inspection, see Unit I.B. of the **SUPPLEMENTARY INFORMATION** for locations.

FOR FURTHER INFORMATION CONTACT: By mail: Ron Schiller, Environmental Protection Agency, Region VIII, Mail Code 8P–P3T, 999 18th St., Suite 500, Denver, CO, 80202; telephone number: (303) 312–6017; e-mail address: schiller.ron@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to those involved in ranching and certain types of food production. Other types of entities could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

To obtain copies of the proposed amendment to the South Dakota State Certification Plan or additional information, contact:

1. Ron Schiller at the address/telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

2. Tim Hagen, South Dakota Department of Agriculture, Division of Agricultural Services, Foss Building, 523 East Capitol, Pierre, SD 57501; telephone number: (605) 773–4432; e-mail address: Tim.Hagen@state.sd.us

3. John MacDonald: By mail: Office of Pesticide Programs, Field and External Affairs Division (7506C), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1121, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone number: (703) 305–7370; e-mail: macdonald.john@epa.gov.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically to Ron Schiller at the address listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–42078 in the subject line on the first page of your response. Electronic comments can be submitted by e-mail, or you can submit a computer disk. When submitting comments electronically do not submit any information that you would consider to be CBI. Avoid the use of special characters and any form of encryption. All comments in electronic form must be identified by docket control number OPP–42078.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is EPA Taking?

EPA has reviewed the revised South Dakota State Certification Plan and finds it in compliance with FIFRA and 40 CFR part 171 and is announcing its intention to approve the amended Plan and seeks public comment.

List of Subjects

Environmental protection.

Dated: June 29, 2000.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–17879 Filed 7–13–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6736–2]

Middlefield-Ellis-Whisman Superfund Site Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with the Middlefield-Ellis-Whisman (MEW) Superfund Site was executed by the United States Environmental Protection Agency (EPA) on February 29, 2000. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) against Haury Properties IV, a California limited liability company (the Purchaser). The Purchaser plans to acquire a 1.17 acre parcel located at 405 National Avenue, Mountain View, California, within the MEW Superfund Site, for the purposes of redeveloping and leasing commercial office space. The proposed settlement would require the Purchaser to pay EPA a one-time payment of $75,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before August 14, 2000.

ADDRESSES: The proposed Prospective Purchaser Agreement and additional background documents relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "Haury Properties PPA, MEW Superfund Site" and "Docket No. 2000–05" and should be addressed to William Keener at the above address.

FOR FURTHER INFORMATION CONTACT: William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 744–1356; fax (415) 744–1041; e-mail: *keener.bill@epa.gov.*

Dated: July 7, 2000.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. 00–17874 Filed 7–13–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 7, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 12, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0105.

Title: Licensee Qualification Report.

Form No.: FCC 430.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 1500.

Estimated Hours Per Response: 2 hours.

Frequency of Response: Reporting, on occasion and annually.

Cost to Respondents: $0.

Estimated Total Annual Burden: 3000 hours.

Needs and Uses: FCC Form 430 is filed by new applicants or annually by licensees if substantial changes occur in the organizational structure to provide information concerning corporate structure, alien ownership, and character of applicant or licensee. FCC 430 is also filed by applicants soliciting authority for assignment or transfer of control. The information will be used by the Commission to determine whether the applicant is legally qualified to become or remain a licensee, as required by the Communications Act.

OMB Control No.: 3060–0599.

Title: Implementation of Sections 3(n) and 332 of the Communications Act.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or other for-profit (P), Not-for-profit institutions, and State, Local or Tribal Government.

Number of Respondents: 10.

Estimated Time Per Response: 1.66 hours.

Frequency of Response: On occasion.

Total Annual Burden: 10.

Total Annual Cost: 4,854.00.

Needs and Uses: The information collected will create regulatory symmetry among similar mobile services. The symmetrical regulatory structure will promote competition in the mobile services marketplace and will serve the interests of consumers while also benefiting the national economy.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17847 Filed 7–13–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3154–EM]

New Mexico; Amendment No. 7 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency disaster for the State of New Mexico (FEMA–3154–EM), dated May 10, 2000, and related determinations.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective July 7, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–17898 Filed 7–13–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 5, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–17897 Filed 7–13–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 2000–N–4]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2000–02 second quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2000–02 second quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before August 28, 2000.

ADDRESSES: Bank members selected for the 2000–02 second quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, or by electronic mail at FITZGERALDE@FHFB.GOV.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at FITZGERALDE@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the

community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the August 28, 2000 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before July 28, 2000, each Bank will notify the members in its district that have been selected for the 2000–02 second quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: WWW.FHFB.GOV. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2000–02 second quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Superior Savings of New England	Branford	Connecticut.
First FS & LA of East Hartford	East Hartford	Connecticut.
Enfield Federal Savings & Loan Association	Enfield	Connecticut.
Essex Savings Bank	Essex	Connecticut.
First International Bank	Hartford	Connecticut.
First City Bank	New Britain	Connecticut
Citizens Bank	New London	Connecticut.
Cargill Bank	Putnam	Connecticut.
Auburn Savings & Loan	Auburn	Maine.
Augusta Federal Savings Bank	Augusta	Maine.
First National Bank of Bar Harbor	Bar Harbor	Maine.
First FS & LA of Bath	Bath	Maine.
Aroostook County FS & LA	Caribou	Maine.
Kennebunk Savings Bank	Kennebunk	Maine.
Skowhegan Savings Bank	Skowhegan	Maine.
Kennebec Federal Savings and Loan Association	Waterville	Maine.
North Middlesex Savings Bank	Ayer	Massachusetts.
Boston Private Bank & Trust Company	Boston	Massachusetts.
First Federal Savings Bank of Boston	Boston	Massachusetts.
First Trade Union Bank	Boston	Massachusetts.
Hyde Park Savings Bank	Boston	Massachusetts.
Investors Bank and Trust Company	Boston	Massachusetts.
Peoples Federal Savings Bank	Brighton	Massachusetts.
Cambridge Savings Bank	Cambridge	Massachusetts.
East Cambridge Savings Bank	Cambridge	Massachusetts.
Dedham Institution for Savings	Dedham	Massachusetts.
Eagle Bank	Everett	Massachusetts.
Citizens-Union Savings Bank	Fall River	Massachusetts.
Foxboro Federal Savings and Loan Association	Foxboro	Massachusetts.
Georgetown Savings Bank	Georgetown	Massachusetts.
First Essex Bank, FSB	Lawrence	Massachusetts.
Marblehead Savings Bank	Marblehead	Massachusetts.
Medford Co-operative Bank	Medford	Massachusetts.
Plymouth Savings Bank	Middleboro	Massachusetts.
Millbury Savings Bank	Millbury	Massachusetts.
Monson Savings Bank	Monson	Massachusetts.
Lawrence Savings Bank	North Andover	Massachusetts.
Warren Five Cents Savings Bank	Peabody	Massachusetts.
Saugus Co-operative Bank	Saugus	Massachusetts.
Scituate Federal Savings Bank	Scituate	Massachusetts.
Spencer Savings Bank	Spencer	Massachusetts.
Hampden Savings Bank	Springfield	Massachusetts.
Bristol County Savings Bank	Taunton	Massachusetts.
Middlesex Federal Savings	West Somerville	Massachusetts.
Federal Savings Bank	Dover	New Hampshire.
Bank of New Hampshire, N.A.	Farmington	New Hampshire.
Franklin Savings Bank	Franklin	New Hampshire.
Meredith Village Savings Bank	Meredith	New Hampshire.
Salem Co-operative Bank	Salem	New Hampshire.
First Brandon National Bank	Brandon	Vermont.
Vermont National Bank	Brattleboro	Vermont.
Howard Bank, N.A.	Burlington	Vermont.

Federal Home Loan Bank of New York—District 2

Liberty Bank	Avenel	New Jersey.
Pamrapo Savings Bank, S.L.A.	Bayonne	New Jersey.
National Bank of Sussex County	Branchville	New Jersey.
Farmers & Mechanics Bank	Burlington	New Jersey.
Freehold Savings and Loan Association	Freehold	New Jersey.
GSL Savings Bank	Guttenberg	New Jersey.
Oritani Savings Bank	Hackensack	New Jersey.
Investors Savings Bank	Millburn	New Jersey.
Millington Savings Bank	Millington	New Jersey.
Dollar Savings Bank	Newark	New Jersey.
Ocean City Home Bank	Ocean City	New Jersey.
Amboy National Bank	Old Bridge	New Jersey.
Ridgewood Savings Bank of New Jersey	Ridgewood	New Jersey.
OceanFirst Bank	Tom Rivers	New Jersey.
First Savings Bank, SLA	Woodbridge	New Jersey.
Brooklyn Federal Savings Bank	Brooklyn	New York.

Canisteo Savings and Loan Association	Canisteo	New York.
Elmira Savings and Loan, F.A	Elmira	New York.
The Upstate National Bank	Fayetteville	New York.
The National Bank of Geneva	Geneva	New York.
Glens Falls NB&T Company	Glens Falls	New York.
Maple City Savings and Loan Association	Hornell	New York.
Sunnyside FS&LA of Irvington	Irvington	New York.
The Lyons National Bank	Lyons	New York.
Maspeth Federal Savings & Loan Association	Maspeth	New York.
Massena Savings and Loan Association	Massena	New York.
Medina Savings and Loan	Medina	New York.
Cross County Federal Savings Bank	Middle Village	New York.
Provident Savings Bank, F.A	Montebello	New York.
Dime Savings Bank of New York, FSB	New York	New York.
The Berkshire Bank	New York	New York.
Carver Federal Savings Bank	New York	New York.
Ogdensburg FS&LA	Ogdensburg	New York.
Wilber National Bank	Oneonta	New York.
Union State Bank	Orangeburg	New York.
First Federal Savings Bank	Peekskill	New York.
First Tier Bank and Trust	Salamanca	New York.
Saratoga National Bank and Trust Company	Saratoga Springs	New York.
The National Bank of Stamford	Stamford	New York.
Yonkers Savings and Loan Association FA	Yonkers	New York.

Federal Home Loan Bank of Pittsburgh—District 3

Delaware National Bank	Georgetown	Delaware.
Artisans' Bank	Wilmington	Delaware.
Laurel Savings Bank	Allison Park	Pennsylvania.
Reliance Savings Bank	Altoona	Pennsylvania.
Investment Savings Bank	Altoona	Pennsylvania.
Peoples Home Savings Bank	Beaver Falls	Pennsylvania.
Pennwood Savings Bank	Bellevue	Pennsylvania.
Keystone Savings Bank	Bethlehem	Pennsylvania.
Columbia County Farmers National Bank	Bloomsburg	Pennsylvania.
The Bryn Mawr Trust Company	Bryn Mawr	Pennsylvania.
Community Bank, N.A	Carmichaels	Pennsylvania.
Charleroi Federal Savings Bank	Charleroi	Pennsylvania.
Citizens National Bank of Evans City	Evans City	Pennsylvania.
IGA Federal Savings	Feasterville	Pennsylvania.
Armstrong County Building & LA Ford City	Pennsylvania.	
Greenville Savings Bank	Greenville	Pennsylvania.
Grange National Bank	Laceyville	Pennsylvania.
Westmoreland FS&LA of Latrobe	Latrobe	Pennsylvania.
First National Bank of Leesport	Leesport	Pennsylvania.
Mifflin County Savings Bank	Lewistown	Pennsylvania.
First Citizens National Bank	Mansfield	Pennsylvania.
First National Bank of Mifflintown	Mifflintown	Pennsylvania.
First Federal Savings Bank	Monessan	Pennsylvania.
Parkvale Savings Bank	Monroeville	Pennsylvania.
Community State Bank of Orbisonia	Orbisonia	Pennsylvania.
Beneficial Mutual Savings Bank	Philadelphia	Pennsylvania.
FirsTrust Bank	Philadelphia	Pennsylvania.
Prudential Savings Bank	Philadelphia	Pennsylvania.
NorthSide Bank	Pittsburgh	Pennsylvania.
Workingmens Savings Bank	Pittsburgh	Pennsylvania.
Liberty Savings Bank, F.S.B	Pottsville	Pennsylvania.
Elk County Savings & Loan Association	Ridgway	Pennsylvania.
Scottdale Bank and Trust Company	Scottdale	Pennsylvania.
Sewickley Savings Bank	Sewickley	Pennsylvania.
Keystone State Savings Bank	Sharpsburg	Pennsylvania.
First National Bank of Slippery Rock	Slippery Rock	Pennsylvania.
Union National Bank and Trust Company	Souderton	Pennsylvania.
East Stroudsburg Savings Association	Stroudsburg	Pennsylvania.
Washington Federal Savings Bank	Washington	Pennsylvania.
First FS&LA of Greene County	Waynesburg	Pennsylvania.
Citizens & Northern Bank	Wellsboro	Pennsylvania.
West View Savings Bank	Wexford	Pennsylvania.
First Century Bank, N.A.	Bluefield	West Virginia.
Huntington Federal Savings Bank	Huntington	West Virginia.
Doolin Security Savings Bank FSB	New Martinsville	West Virginia.
United National Bank	Parkersburg	West Virginia.
One Valley Bank of Mercer County, Inc.	Princeton	West Virginia.
First FS&LA of Ravenswood	Ravenswood	West Virginia.
First Federal Savings Bank	Sistersville	West Virginia.
The Williamstown National Bank	Williamstown	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

Delaware National Bank	Georgetown	Delaware.
Brantley Bank and Trust Company	Brantley	Alabama.
Bank of Carbon Hill	Carbon Hill	Alabama.
Heritage Bank	Decatur	Alabama
Robertson Banking Company	Demopolis	Alabama.
The Citizens Bank	Greensboro	Alabama.

City Bank of Hartford	Hartford	Alabama.
Security Federal Savings Bank	Jasper	Alabama.
Gulf Federal Bank, a FSB	Mobile	Alabama.
The Bank	Monroeville	Alabama.
The Citizens Bank	Moulton	Alabama.
Phenix-Girard Bank	Phenix City	Alabama.
Bank of Vernon	Vernon	Alabama.
Bank of Wedowee	Wedowee	Alabama.
Bank of Belle Glade	Belle Glade	Florida.
Community Bank of Manatee	Bradenton	Florida.
CommerceBank, N.A.	Coral Gables	Florida.
Peoples State Bank of Groveland	Groveland	Florida.
First State Bank of the Florida Keys	Key West	Florida.
International Finance Bank	Miami	Florida.
Charlotte State Bank	Port Charlotte	Florida.
First American Bank of Walton County	Santa Rosa Beach	Florida.
Bank of St. Augustine	St. Augustine	Florida.
Central Bank of Tampa	Tampa	Florida.
Florida Bank, N.A.	Tampa	Florida.
Wauchula State Bank	Wauchula	Florida.
ebank	Atlanta	Georgia.
Bank of Early	Blakely	Georgia.
Planters and Citizens Bank	Camilla	Georgia.
Claxton Bank	Claxton	Georgia.
First Clayton Bank and Trust Company	Clayton	Georgia.
Central Bank and Trust	Cordele	Georgia.
First Community Bank of Dawsonville	Dawsonville	Georgia.
Bank Atlanta	Decatur	Georgia.
Colony Bank Southeast	Douglas	Georgia.
Bank of Eastman	Eastman	Georgia.
Gilmer County Bank	Ellijay	Georgia.
Capital Bank	Fort Oglethorpe	Georgia.
Bank of Hiawassee	Hiawassee	Georgia.
Citizens Bank	Homerville	Georgia.
Farmers State Bank	Lincolnton	Georgia.
Peoples Bank	Lyons	Georgia.
Mount Vernon Bank	Mt. Vernon	Georgia.
The Citizens Bank	Nashville	Georgia.
Regions Bank	Newnan	Georgia.
Community Bank of Wilcox	Pitts	Georgia.
Greater Rome Bank	Rome	Georgia.
Georgia Central Bank	Social Circle	Georgia.
Citizens Security Bank	Tifton	Georgia.
Athens First Bank & Trust Company	Watkinsville	Georgia.
AmericasBank	Baltimore	Maryland.
Community First Bank	Baltimore	Maryland.
Homewood Federal Savings Bank	Baltimore	Maryland.
Mercantile Safe Deposit and Trust Company	Baltimore	Maryland.
Community Bank of Maryland	Bowie	Maryland.
Easton Bank and Trust Company	Easton	Maryland.
Jarrettsville Federal S&L Association	Jarrettsville	Maryland.
Maryland Bank and Trust Company	Lexington Park	Maryland.
First National Bank of North East	North East	Maryland.
North Arundel Federal Savings Bank, FSB	Pasadena	Maryland.
The East Carolina Bank	Engelhard	North Carolina.
Catawba Valley Bank	Hickory	North Carolina.
First Bank	Troy	North Carolina.
Loyal American Life Insurance Company	Cincinnati	Ohio.
Bank of Belton	Belton	South Carolina.
Sandhills Bank	Bethune	South Carolina.
The Peoples Bank of Iva	Iva	South Carolina.
Carolina Community Bank	Latta	South Carolina.
The Palmetto Bank	Laurens	South Carolina.
The Citizens Bank	Olanta	South Carolina.
First State Bank	Danville	Virginia.
F&M Bank—Northern Virginia	Fairfax	Virginia.
Powell Valley National Bank	Jonesville	Virginia.
Bank of Charlotte County	Phenix	Virginia.
Valley Bank, N.A.	Roanoke	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

First Federal Bank for Savings	Ashland	Kentucky.
Bank of Edmonson County	Brownsville	Kentucky.
United Citizens Bank and Trust Company	Campbellsburg	Kentucky.
Citizens Bank & Trust Company	Campbellsville	Kentucky.
Farmers & Traders Bank	Campton	Kentucky.
Carrollton Federal Savings and Loan	Carrollton	Kentucky.
First National Bank	Central City	Kentucky.
Peoples Bank of Northern Kentucky	Crestview Hills	Kentucky.
Farmers National Bank	Cynthiana	Kentucky.
Central Kentucky Federal Savings Bank	Danville	Kentucky.
United Kentucky Bank of Pendleton County	Falmouth	Kentucky.
Columbia Federal Savings Bank	Ft. Mitchell	Kentucky.
Bank of Germantown	Germantown	Kentucky.
HNB Bank, N.A.	Harlan	Kentucky.

State Bank and Trust Company	Harrodsburg	Kentucky.
First Financial Bank	Harrodsburg	Kentucky.
First Federal Savings and Loan Association	Hazard	Kentucky.
Bank of Magnolia	Hodgenville	Kentucky.
Mid America Bank, FSB	LaGrange	Kentucky.
First Lancaster Federal Savings Bank	Lancaster	Kentucky.
Citizens National Bank	Lebanon	Kentucky.
Farmers Deposit Bank of Middleburg	Liberty	Kentucky.
Home Federal Bank	Middlesboro	Kentucky.
First State Bank of Pineville	Middlesboro	Kentucky.
Middlesboro Federal Bank	Middlesboro	Kentucky.
The Bank of Mt. Vernon	Mt. Vernon	Kentucky.
Peoples Bank Mt. Washington	Mt. Washington	Kentucky.
Family Bank, FSB	Paintsville	Kentucky.
The Central Bank of North Pleasureville	Pleasureville	Kentucky.
First Bank and Trust Company	Princeton	Kentucky.
Bullitt County Bank	Shepardsville	Kentucky.
Liberty National Bank	Ada	Ohio.
The Bartlett Farmers Bank	Barlow	Ohio.
Industrial Savings and Loan Association	Bellevue	Ohio.
Bridgeport Savings and Loan Association	Bridgeport	Ohio.
Peoples Savings and Loan Company	Bucyrus	Ohio.
FNB of Southeastern Ohio	Caldwell	Ohio.
First Safety Bank	Cincinnati	Ohio.
Clifton Heights Loan and Building Company	Cincinnati	Ohio.
The Savings Bank	Circleville	Ohio.
The Peoples Bank Company	Coldwater	Ohio.
First City Bank	Columbus	Ohio.
Ohio Heritage Bank	Coshocton	Ohio.
Valley Savings Bank	Cuyahoga Falls	Ohio.
First Federal Savings and Loan	Defiance	Ohio.
Fidelity Federal Savings & Loan Association	Delaware	Ohio.
The Peoples Banking Company	Findlay	Ohio.
Heartland Bank	Gahanna	Ohio.
First FS&LA of Galion	Galion	Ohio.
The Home Building and Loan Company	Greenfield	Ohio.
Greenville FS&LA	Greenville	Ohio.
Home Federal Bank	Hamilton	Ohio.
First Federal Savings Bank of Ironton	Ironton	Ohio.
Lawrence Federal Savings Bank	Ironton	Ohio.
Liberty Federal Savings and Loan Association	Ironton	Ohio.
Ohio River Bank	Ironton	Ohio.
Kingston National Bank	Kingston	Ohio.
The Citizens Bank of Logan	Logan	Ohio.
Mechanics Savings Bank	Mansfield	Ohio.
Peoples FS&L of Massillon	Massillon	Ohio.
Metropolitan Bank and Trust Company	Mayfield Heights	Ohio.
Miami Savings and Loan Company	Miamitown	Ohio.
The Middlefield Banking Company	Middlefield	Ohio.
Nelsonville Home and Savings Association	Nelsonville	Ohio.
First FS&LA of Newark	Newark	Ohio.
Geauga Savings Bank	Newbury	Ohio.
Security Dollar Bank	Niles	Ohio.
The National Bank of Oak Harbor	Oak Harbor	Ohio.
Valley Central Savings Bank	Reading	Ohio.
The Citizens Banking Company	Sandusky	Ohio.
Peoples Federal Savings & Loan Association	Sidney	Ohio.
Commodore Bank	Somerset	Ohio.
Monroe Federal Savings and Loan Association	Tipp City	Ohio.
Van Wert Federal Savings Bank	Van Wert	Ohio.
Home Savings Bank of Wapakoneta	Wapakoneta	Ohio.
The Waterford Commercial & Savings Bank	Waterford	Ohio.
Adams County Building and Loan Company	West Union	Ohio.
Commerce National Bank	Worthington	Ohio.
Dollar Bank, FSB	Pittsburgh	Pennsylvania.
Bank of Bartlett	Bartlett	Tennessee.
Bank of Bolivar	Bolivar	Tennessee.
Farmers and Merchants Bank	Clarksville	Tennessee.
Farmers and Merchants Bank	Dyer	Tennessee.
First Citizens National Bank	Dyersburg	Tennessee.
Elizabethton Federal Savings Bank	Elizabethton	Tennessee.
Progressive Savings Bank	Jamestown	Tennessee.
Home Federal Bank of Tennessee	Knoxville	Tennessee.
First Central Bank	Lenoir City	Tennessee.
American Savings Bank	Livingston	Tennessee.
Volunteer Federal Savings and Loan	Madisonville	Tennessee.
First National Bank	McMinnville	Tennessee.
Jefferson Federal Savings and Loan Association	Morristown	Tennessee.
TNBank	Oak Ridge	Tennessee.
Union Planters Bank of N.W. TN, FSB	Paris	Tennessee.
Citizens Community Bank	Winchester	Tennessee.
First Federal Savings Bank of Angola	Angola	Indiana.
Peoples FSB of DeKalb County	Auburn	Indiana.
Peoples Federal Savings Bank	Aurora	Indiana.
Farmers and Mechanics FS&LA	Bloomfield	Indiana.
First State Bank	Bourbon	Indiana.

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English State Bank	English	Indiana.
Home Loan Bank, FSB	Fort Wayne	Indiana.
Farmers Bank, Frankfort	Frankfort	Indiana.
Newton County Loan & Savings Association	Goodland	Indiana.
First Federal Savings & Loan	Greensburg	Indiana.
Lake FS&LA of Hammond	Hammond	Indiana.
HFS Bank, F.S.B	Hobart	Indiana.
Security Federal Savings Bank	Logansport	Indiana.
First Federal Savings Bank of Marion	Marion	Indiana.
Michigan City Savings & Loan	Michigan City	Indiana.
The First National Bank of Mitchell	Mitchell	Indiana.
First National Bank of Monterey	Monterey	Indiana
First Merchants Bank, N.A	Muncie	Indiana.
Mutual Federal Savings Bank	Muncie	Indiana.
American Savings, FSB	Munster	Indiana.
Community Bank	Noblesville	Indiana.
First National Bank of Odon	Odon	Indiana.
Lincoln Federal Savings Bank	Plainfield	Indiana.
Harrington Bank, FSB	Richmond	Indiana.
First Parke State Bank	Rockville	Indiana.
Scottsburg Building & Loan Association	Scottsburg	Indiana.
Home Federal Savings Bank	Seymour	Indiana.
Owen Community Bank, SB	Spencer	Indiana.
First Farmers State Bank	Sullivan	Indiana.
Peoples Community Bank	Tell City	Indiana.
Terre Haute First National Bank	Terre Haute	Indiana.
1st American Bank	Vincennes	Indiana.
First Federal Savings Bank of Wabash	Wabash	Indiana.
First FS&LA of Washington	Washington	Indiana.
Home Building Savings Bank, FSB	Washington	Indiana.
Peoples National Bank	Washington	Indiana.
Bank of Wolcott	Wolcott	Indiana.
First Federal S&LA of Alpena	Alpena	Michigan.
Bank of Ann Arbor	Ann Arbor	Michigan.
Farmers State Bank Breckenridge	Breckenridge	Michigan.
Eaton Federal Savings Bank	Charlotte	Michigan.
Huron Community Bank	East Tawas	Michigan.
Hastings City Bank	Hastings	Michigan.
Bay Port State Bank	Pigeon	Michigan.
Kalamazoo County State Bank	Schoolcraft	Michigan.
Franklin Bank, N.A	Southfield	Michigan.
First National Bank of St. Ignace	St. Ignace	Michigan.
Northwestern Savings Bank and Trust	Traverse City	Michigan.

Federal Home Loan Bank of Chicago—District 7

West Pointe Bank and Trust Company	Belleville	Illinois.
he Belvidere National Bank & Trust Company	Belvidere	Illinois.
Central Illinois Bank	Bloomington	Illinois.
Citizens Savings Bank	Bloomington	Illinois.
American Enterprise Bank	Buffalo Grove	Illinois.
Farmers State Bank of Camp Point	Camp Point	Illinois.
Cornerstone Bank & Trust, N.A	Carrollton	Illinois.
First FSB—Champaign-Urbana	Champaign	Illinois.
Charleston Federal Savings and Loan Association	Charleston	Illinois.
Broadway Bank	Chicago	Illinois.
Central FS&LA of Chicago	Chicago	Illinois.
Columbus Savings Bank	Chicago	Illinois.
Fidelity Federal Savings Bank	Chicago	Illinois.
First Security Federal Savings Bank	Chicago	Illinois.
Liberty Bank for Savings	Chicago	Illinois.
Lincoln Park Savings Bank	Chicago	Illinois.
Mutual FS&LA of Chicago	Chicago	Illinois.
Universal Federal Savings Bank	Chicago	Illinois.
Collinsville Building and Loan Association	Collinsville	Illinois.
Home Federal S&LA of Collinsville	Collinsville	Illinois.
Covest Banc, NA	Des Plaines	Illinois.
First Federal Savings and Loan Association	Edwardsville	Illinois.
Forreston State Bank	Forreston	Illinois.
Hickory Point Bank and Trust, FSB	Forsyth	Illinois.
Marquette Bank Fulton	Fulton	Illinois.
Glenview State Bank	Glenview	Illinois.
Guardian Savings Bank FSB	Granite City	Illinois.
The First National Bank of Grant Park	Grant Park	Illinois.
The Granville National Bank	Granville	Illinois.
The Bradford National Bank of Greenville	Greenville	Illinois.
The Havana National Bank	Havana	Illinois.
Herrin Security Bank	Herrin	Illinois.
South End Savings, s.b	Homewood	Illinois.
The First National Bank of Jonesboro	Jonesboro	Illinois.
Eureka Savings Bank	La Salle	Illinois.
First State Bank of Western Illinois	La Harpe	Illinois.
First National Bank of Illinois	Lansing	Illinois.
Lisle Savings Bank	Lisle	Illinois.
First National Bank of Litchfield	Litchfield	Illinois.
West Suburban Bank	Lombard	Illinois.

First Security Bank	Macknaw	Illinois.
The First National Bank of Manhattan	Manhattan	Illinois.
Milford Building and Loan Association	Milford	Illinois.
Southeast National Bank of Moline	Moline	Illinois.
Nashville Savings Bank	Nashville	Illinois.
Northview Bank and Trust	Northfield	Illinois.
Illini State Bank	Oglesby	Illinois.
Peoples Bank and Trust of Pana	Pana	Illinois.
The Poplar Grove State Bank Poplar	Poplar Grove	Illinois.
Citizens First National Bank	Princeton	Illinois.
First Robinson Savings Bank, N.A.	Robinson	Illinois.
Alpine Bank of Illinois	Rockford	Illinois.
First FS&LA of Shelbyville	Shelbyville	Illinois.
The First National Bank	Vandalia	Illinois.
The International Bank of Amherst	Amherst	Wisconsin.
The First National Bank of Bangor	Bangor	Wisconsin.
The Bank of Brodhead	Brodhead	Wisconsin.
Bank of Deerfield	Deerfield	Wisconsin.
Meridian Capital Bank, N.A.	Edgar	Wisconsin.
Fox Valley Savings and Loan Association	Fond du Lac	Wisconsin.
National Exchange Bank and Trust	Fond du Lac	Wisconsin.
First Northern Savings Bank, S.A.	Green Bay	Wisconsin.
Park Bank	Holmen	Wisconsin.
Ixonia State Bank	Ixonia	Wisconsin.
First FSB La Crosse-Madison	La Crosse	Wisconsin.
Ladysmith FS&LA	Ladysmith	Wisconsin.
Markesan State Bank	Markesan	Wisconsin.
Fidelity National Bank	Medford	Wisconsin.
Merrill Federal S&LA	Merrill	Wisconsin.
Continental Savings Bank, S.A.	Milwaukee	Wisconsin.
Guaranty Bank, S.S.B.	Milwaukee	Wisconsin.
Lincoln Community Bank	Milwaukee	Wisconsin.
Bank of Elmwood	Racine	Wisconsin.
M&I Lakeview Bank	Sheboygan	Wisconsin.
Spencer State Bank	Spencer	Wisconsin.
First Bank	Tomah	Wisconsin.
The Farmers State Bank of Waupaca	Waupaca	Wisconsin.
Paper City Savings Association	Wisconsin Rapids	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

Brenton Savings Bank, FSB	Ames	Iowa.
First American Bank	Ames	Iowa.
Citizens Savings Bank	Anamosa	Iowa.
Community State Bank	Ankeny	Iowa.
Ashton State Bank	Ashton	Iowa.
Atkins Savings Bank	Atkins	Iowa.
Midwest FS&LA of Eastern Iowa	Burlington	Iowa.
Iowa Trust and Savings Bank	Centerville	Iowa.
First Security Bank and Trust	Charles City	Iowa.
Page County Federal Savings Association	Clarinda	Iowa.
First FSB of Creston, F.S.B.	Creston	Iowa.
State FS&LA of Des Moines	Des Moines	Iowa.
Principal Bank	Des Moines	Iowa.
Fidelity Bank and Trust	Dyersville	Iowa.
Community Savings Bank	Edgewood	Iowa.
First American Bank	Fort Dodge	Iowa.
Hampton State Bank	Hampton	Iowa.
Independence Federal Bank for Savings	Independence	Iowa.
Hawkeye State Bank	Iowa City	Iowa.
First Community Bank, FSB	Keokuk	Iowa.
Keokuk Savings Bank and Trust Company	Keokuk	Iowa.
Iowa State Savings Bank	Knoxville	Iowa.
Cedar Valley Bank & Trust	LaPorte City	Iowa.
Farmers and Merchants Savings Bank	Lone Tree	Iowa.
Keystone Savings Bank	Marengo	Iowa.
United Community Bank	Milford	Iowa.
New Albin Savings Bank	New Albin	Iowa.
City State Bank	Norwalk	Iowa.
Northwestern State Bank Orange City	Orange City	Iowa.
Clarke County State Bank	Osceola	Iowa.
First Trust and Savings Bank	Oxford	Iowa.
Citizens State Bank	Pocahontas	Iowa.
Citizens Bank	Sac City	Iowa.
American State Bank	Sioux Center	Iowa.
Solon State Bank	Solon	Iowa.
Northwest Federal Savings Bank	Spencer	Iowa.
First FSB of the Midwest	Storm Lake	Iowa.
Randall-Story State Bank	Story City	Iowa.
Waukee State Bank	Waukee	Iowa.
West Liberty State Bank	West Liberty	Iowa.
Viking Savings Association, F.A.	Alexandria	Minnesota.
First State Bank of Bigfork	Bigfork	Minnesota.
Brainerd S&LA, a FSB	Brainerd	Minnesota.
The Oakley National Bank of Buffalo	Buffalo	Minnesota.
State Bank in Eden Valley	Eden Valley	Minnesota.

Bank Midwest, Minnesota Iowa, N.A.	Fairmont	Minnesota.
The State Bank of Faribault	Faribault	Minnesota.
First Minnesota Bank, N.A.	Glencoe	Minnesota.
State Bank of Kimball	Kimball	Minnesota.
The First National Bank of Menahga	Menahga	Minnesota.
TCF National Bank Minnesota	Minneapolis	Minnesota.
Northern National Bank	Nisswa	Minnesota.
The First National Bank of Osakis	Osakis	Minnesota.
Valley State Bank of Oslo	Oslo	Minnesota.
First National Bank	Plainview	Minnesota.
The Goodhue County National Bank	Red Wing	Minnesota.
21st Century Bank	Rogers	Minnesota.
Minnwest Bank South	Slayton	Minnesota.
Citizens Independent Bank	St. Louis Park	Minnesota.
The First National Bank of St. Peter	St. Peter	Minnesota.
Tracy State Bank	Tracy	Minnesota.
Queen City Federal Savings Bank	Virginia	Minnesota.
Missouri Federal Savings Bank	Cameron	Missouri.
Southwest Missouri Bank	Carthage	Missouri.
First Bank	Creve Coeur	Missouri.
North American Savings Bank, FSB	Grandview	Missouri.
MCM Savings Bank, FSB	Hannibal	Missouri.
Bluff City Mutual Savings and Loan	Hannibal	Missouri.
First Federal Bank, F.S.B.	Kansas City	Missouri.
Laclede County Bank	Lebanon	Missouri.
Liberty Savings Bank, F.S.B.	Liberty	Missouri.
Clay County Savings and Loan Association	Liberty	Missouri.
First Home Savings Bank	Mountain Grove	Missouri.
Home S&LA of Norborne, F.A.	Norborne	Missouri.
Southern Missouri Bank & Trust Company	Poplar Bluff	Missouri.
Central Federal Savings & Loan Assn.	Rolla	Missouri.
Montgomery First National Bank	Sikeston	Missouri.
Guaranty Federal Savings Bank	Springfield	Missouri.
Midwest FS&LA of St. Joseph	St. Joseph	Missouri.
Provident Bank, FSB	St. Joseph	Missouri.
Bremen Bank and Trust Company	St. Louis	Missouri.
Lindell Bank and Trust	St. Louis	Missouri.
Southern Commercial Bank	St. Louis	Missouri.
BNC National Bank	Bismarck	North Dakota.
First Southwest Bank	Bismarck	North Dakota.
Ramsey National Bank & Trust Company	Devils Lake	North Dakota.
American State B&T of Dickinson	Dickinson	North Dakota.
Security State Bank	Dunseith	North Dakota.
First National Bank North Dakota	Grand Forks	North Dakota.
The National Bank of Harvey	Harvey	North Dakota.
Walhalla State Bank	Walhalla	North Dakota.
Dacotah Bank, Aberdeen	Aberdeen	South Dakota.
First Federal Bank, fsb	Beresford	South Dakota.
First Savings Bank	Beresford	South Dakota.
First National Bank in Brookings	Brookings	South Dakota.
Bryant State Bank	Bryant	South Dakota.
First Western Federal Savings Bank	Rapid City	South Dakota.

Federal Home Loan Bank of Dallas—District 9

First National Bank of Sharp County	Ash Flat	Arkansas.
Arkansas National Bank	Bentonville	Arkansas.
Heartland Community Bank	Camden	Arkansas.
Corning Savings and Loan	Corning	Arkansas.
Bank of Glenwood	Glenwood	Arkansas.
First State Bank of Gurdon	Gurdon	Arkansas.
First Arkansas Bank and Trust	Jacksonville	Arkansas.
Arkansas Bankers' Bank	Little Rock	Arkansas.
Diamond State Bank	Murfreesboro	Arkansas.
First National Bank	Paragould	Arkansas.
Peoples Bank of Paragould	Paragould	Arkansas.
Pocahontas Federal Savings and Loan Association	Pocahontas	Arkansas.
Bank of Rogers	Rogers	Arkansas.
Bank of Star City	Star City	Arkansas.
Bank of Waldron	Waldron	Arkansas.
First National Bank USA	Boutte	Louisiana.
Citizens Progressive Bank	Columbia	Louisiana.
Beauregard Federal Savings Bank	DeRidder	Louisiana.
Home Savings Bank, FSB	Lafayette	Louisiana.
First FS&LA of Lake Charles	Lake Charles	Louisiana.
Greater New Orleans Homestead	Metairie	Louisiana.
Minden Building and Loan Association	Minden	Louisiana.
Algiers Homestead Association	New Orleans	Louisiana.
Dryades Savings Bank, F.S.B.	New Orleans	Louisiana.
Fifth District Savings & Loan Association	New Orleans	Louisiana.
Union Savings and Loan Association	New Orleans	Louisiana.
Plaquemine Bank and Trust Company	Plaquemine	Louisiana.
Rayne Building and Loan Association	Rayne	Louisiana.
Citizens Bank and Trust Company	Springhill	Louisiana.
First National Bank of Lucedale	Lucedale	Mississippi.

First National Bank of Ponotoc	Pontotoc	Mississippi.
Lamar Bank	Purvis	Mississippi.
North Central Bank For Savings	Winona	Mississippi.
Alamogordo Federal Savings and LA	Alamogordo	New Mexico.
First National Bank	Artesia	New Mexico.
The First National Bank of New Mexico	Clayton	New Mexico.
Matrix Capital Bank	Las Cruces	New Mexico.
First National Bank in Las Vegas	Las Vegas	New Mexico.
First Federal Bank	Roswell	New Mexico.
Charter Bank	Santa Fe	New Mexico.
Tucumcari Federal S& LA	Tucumcari	New Mexico.
United Bank and Trust	Abilene	Texas.
Alamo Bank of Texas	Alamo	Texas.
FirstBank Southwest NA	Amarillo	Texas.
First Savings Bank, FSB	Arlington	Texas.
Brenham National Bank	Brenham	Texas.
Texas Bank	Brownwood	Texas.
The First State Bank	Celina	Texas.
First National Bank of Chillicothe	Chillicothe	Texas.
First Bank of West Texas	Coahoma	Texas.
The First State Bank	Columbus	Texas.
First Bank of Conroe	Conroe	Texas.
First Commerce Bank	Corpus Christi	Texas.
Citizens National Bank	Crockett	Texas.
Cuero State Bank, ssb	Cuero	Texas.
Dalhart Federal Savings and Loan Association	Dalhart	Texas.
Preston National Bank	Dallas	Texas.
Mercantile Bank & Trust, FSB	Dallas	Texas.
First Prosperity Bank	El Campo	Texas.
Union State Bank	Florence	Texas.
Citizens National Bank	Fort Worth	Texas.
Colonial Savings, F.A.	Fort Worth	Texas.
Summit Community Bank N.A.	Fort Worth	Texas.
Guaranty National Bank	Gainesville	Texas.
National Bank	Gatesville	Texas.
Gilmer Savings Bank, FSB	Gilmer	Texas.
Gladewater National Bank	Gladewater	Texas.
Planters and Merchants State Bank	Hearne	Texas.
Houston Community Bank, N.A.	Houston	Texas.
Affiliated Bank	Hurst	Texas.
Justin State Bank	Justin	Texas.
City National Bank	Kilgore	Texas.
Farmers and Merchants State Bank	Krum	Texas.
Fayette Savings Bank, ssb	La Grange	Texas.
National Bank & Trust	La Grange	Texas.
Commerce Bank	Laredo	Texas.
Falcon National Bank	Laredo	Texas.
East Texas Professional Credit Union	Longview	Texas.
Longview Bank and Trust	Longview	Texas.
The First State Bank	Louise	Texas.
First Bank and Trust Company	Lubbock	Texas.
Lubbock National Bank	Lubbock	Texas.
Northeast National Bank	Mesquite	Texas.
City National Bank	Mineral Wells	Texas.
First National Bank of Mount Vernon	Mount Vernon	Texas.
First National Bank in Munday	Munday	Texas.
Morris County National Bank	Naples	Texas.
First Federal Community Bank	Paris	Texas.
Peoples National Bank— Paris	Paris	Texas.
Gulf Coast Educators Federal Credit Union	Pasadena	Texas.
PointBank, N.A.	Pilot Point	Texas.
Pilgrim Bank	Pittsburg	Texas.
Wood County National Bank	Quitman	Texas.
Robert Lee State Bank	Robert Lee	Texas.
Intercontinental National Bank	San Antonio	Texas.
Balcones Bank, S.S.B.	San Marcos	Texas.
Citizens State Bank	Sealy	Texas.
Southern National Bank of Texas	Sugar Land	Texas.
Heritage Savings Bank, ssb	Terrell	Texas.
The American National Bank of Texas	Terrell	Texas.
Citizens First Bank	Tyler	Texas.
Hill Bank and Trust Company	Weimar	Texas.
American National Bank	Wichita Falls	Texas.
Wilson State Bank	Wilson	Texas.
Fannin Bank	Windom	Texas.

Federal Home Loan Bank of Topeka—District

Vectra Bank Colorado—Alamosa	Alamosa	Colorado.
San Luis Valley Federal Bank	Alamosa	Colorado.
Collegiate Peaks Bank	Buena Vista	Colorado.
Pikes Peak National Bank	Colorado Springs	Colorado.
Community Banks of Colorado	Cripple Creek	Colorado.
Rocky Mountain Bank and Trust	Florence	Colorado.
First State Bank of Fort Collins	Fort Collins	Colorado.
First National Bank	Fort Collins	Colorado.

Gunnison Savings & Loan Association	Gunnison	Colorado.
American Bank	Loveland	Colorado.
Rio Grande Savings & Loan Association	Monte Vista	Colorado
Montrose Bank	Montrose	Colorado.
FirsTier Bank	Northglenn	Colorado.
The First National Bank of Ordway	Ordway	Colorado.
Paonia State Bank	Paonia	Colorado
The Minnequa Bank of Pueblo	Pueblo	Colorado
Rocky Ford Federal Savings and Loan	Rocky Ford	Colorado.
Century Savings and Loan Association	Trinidad	Colorado.
Park State Bank	Woodland Park	Colorado.
Prairie State Bank	Augusta	Kansas.
First National Bank	Cimarron	Kansas.
Golden Belt Bank, FSA	Ellis	Kansas.
The Girard National Bank	Girard	Kansas.
Farmers Bank and Trust, N.A.	Great Bend	Kansas.
Central National Bank	Junction City	Kansas.
Argentine Federal Savings	Kansas City	Kansas
Citizens Bank of Kansas, N.A.	Kingman	Kansas.
University National Bank	Lawrence	Kansas.
Mutual Savings Association, FSA	Leavenworth	Kansas.
The Citizens State Bank	Liberal	Kansas.
The Citizens State Bank	Moundridge	Kansas.
Midland National Bank	Newton	Kansas.
Bank of Blue Valley	Overland Park	Kansas.
Firstar Bank Midwest	Overland Park	Kansas.
Peoples Bank	Overland Park	Kansas
Peabody State Bank	Peabody	Kansas.
The Bank of Perry	Perry	Kansas.
The Plains State Bank	Plains	Kansas
The Peoples Bank	Pratt	Kansas.
First Bank Kansas	Salina	Kansas.
Security Savings Bank, F.S.B.	Salina	Kansas.
The Stockton National Bank	Stockton	Kansas.
First National Bank	Syracuse	Kansas.
The Bank of Tescott	Tescott	Kansas.
Silver Lake Bank	Topeka	Kansas.
Capitol Federal Savings Bank	Topeka	Kansas.
Southwest Bank, N.A.	Ulysses	Kansas.
Kendall State Bank	Valley Falls	Kansas.
The Bank of Commerce and Trust Company	Wellington	Kansas.
Garden Plain State Bank	Wichita	Kansas.
Commerce Bank, N.A.	Wichita	Kansas.
Community First National Bank	Alliance	Nebraska.
Western Heritage Credit Union	Alliance	Nebraska.
Farmers and Merchants National Bank	Ashland	Nebraska.
Beatrice National Bank and Trust Company	Beatrice	Nebraska.
Clarkson Bank	Clarkson	Nebraska.
Nebraska Energy Federal Credit Union	Columbus	Nebraska.
American Interstate Bank	Elkhorn	Nebraska.
The Genoa National Bank	Genoa	Nebraska.
Overland National Bank	Grand Island	Nebraska.
United Nebraska Bank	Grand Island	Nebraska.
First Federal Lincoln Bank	Lincoln	Nebraska.
NB of Commerce Trust and S.A.	Lincoln	Nebraska.
First National Bank of McCook	McCook	Nebraska.
Platte Valley National Bank	Morrill	Nebraska.
Otoe County Bank and Trust Company	Nebraska City	Nebraska.
The Nehawka Bank	Nehawka	Nebraska.
Enterprise Bank, N.A.	Omaha	Nebraska.
Platte Valley National Bank—Scottsbluff	Scottsbluff	Nebraska.
First National Bank	Sidney	Nebraska.
The Wymore State Bank	Wymore	Nebraska.
Anadarko Bank & Trust Company	Anadarko	Oklahoma.
Community Bank	Bristow	Oklahoma.
Oklahoma Bank and Trust Company	Clinton	Oklahoma.
American Bank of Oklahoma	Collinsville	Oklahoma.
Arvest United Bank	Del City	Oklahoma.
Citizens Bank	Edmond	Oklahoma.
First National Bank and Trust	Elk City	Oklahoma.
Bank of the Panhandle	Guymon	Oklahoma.
Legacy Bank ACB	Hinton	Oklahoma.
McCurtain County National Bank	Idabel	Oklahoma.
First State Bank	Keyes	Oklahoma.
City National Bank & Trust Company	Lawton	Oklahoma.
First National Bank in Marlow	Marlow	Oklahoma.
Community National Bank of Okarche	Okarche	Oklahoma.
First National Bank in Okeene	Okeene	Oklahoma.
BancFirst	Oklahoma City	Oklahoma.
Bankers Bank of Oklahoma City	Oklahoma City	Oklahoma.
Calhoun County Bank	Oklahoma City	Oklahoma.
National Bank of Commerce	Oklahoma City	Oklahoma.
Citizens Bank and Trust Company	Okmulgee	Oklahoma.
The Okmulgee Savings and Loan Association	Okmulgee	Oklahoma.
Bank of the Lakes, N.A.	Owasso	Oklahoma.
First State Bank	Porter	Oklahoma.

Farmers State Bank	Quinton	Oklahoma.
First National Bank and Trust Company	Shawnee	Oklahoma.
Triad Bank, N.A.	Tulsa	Oklahoma.
Valley National Bank	Tulsa	Oklahoma.
The First NB&TC of Vinita	Vinita	Oklahoma.
First American Bank, N.A.	Woodward	Oklahoma.

Federal Home Loan Bank of San Francisco—District 11

Founders Bank of Arizona	Scottsdale	Arizona.
Trust Bank, F.S.B.	Arcadia	California.
Borrego Springs Bank NA	Borrego Springs	California.
Fullerton Community Bank	Fullerton	California.
Western Financial Bank	Irvine	California.
Scripps Bank	La Jolla	California.
Silvergate Bank	La Mesa	California.
Broadway FS&LA of Los Angeles	Los Angeles	California.
California Federal Bank, A FSB	Los Angeles	California.
Family Savings Bank, FSB	Los Angeles	California.
Founders National Bank of Los Angeles	Los Angeles	California.
Monterey County Bank	Monterey	California.
Standard Savings Bank, FSB	Monterey Park	California.
Capitol Thrift and Loan Association	Napa	California.
Cerritos Valley Bank	Norwalk	California.
Metropolitan Bank	Oakland	California.
Community Bank	Pasadena	California.
Bank of Petaluma	Petaluma	California.
El Dorado Savings Bank	Placerville	California.
Frontier State Bank	Redondo Beach	California.
Kings River State Bank	Reedley	California.
Life Bank	San Bernardino	California.
Sincere Federal Savings Bank	San Francisco	California.
East-West Bank	San Marino	California.
Bay View Bank, N.A.	San Mateo	California.
First FS&LA of San Rafael	San Rafael	California.
First Federal Bank of California	Santa Monica	California.
National Bank of the Redwoods	Santa Rosa	California.
Sunwest Bank	Tustin	California.
Desert Community Bank	Victorville	California.
First FS&LA of San Gabriel Valley	West Covina	California.
Citibank, FSB	New York	New York.
Washington Mutual Bank, FA	Seattle	Washington.

Federal Home Loan Bank of Seattle—District 12

First Interstate Bank of Alaska, N.A.	Anchorage	Alaska.
First National Bank of Anchorage	Anchorage	Alaska.
Mt. McKinley Mutual Savings Bank	Fairbanks	Alaska.
Bank of Guam	Agana	Guam.
American Savings Bank, F.S.B.	Honolulu	Hawaii.
Mountain West Bank	Coeur D'Alene	Idaho.
Big Sky Western Bank	Big Sky	Montana.
First Security Bank of Bozeman	Bozeman	Montana.
Glacier Bank of Eureka	Eureka	Montana.
Heritage Bank, a F.S.B.	Great Falls	Montana.
Ravalli County Bank	Hamilton	Montana.
American Federal Savings Bank	Helena	Montana.
Glacier Bank, fsb	Kalispell	Montana.
Montana First National Bank	Kalispell	Montana.
Manhattan State Bank	Manhattan	Montana.
Stockman Bank of Montana	Miles City	Montana.
Western Security Bank	Missoula	Montana.
Bank of Astoria	Astoria	Oregon.
Security Bank	Coos Bay	Oregon.
Bank of Salem	Salem	Oregon.
Columbia River Bank	The Dalles	Oregon.
First Security Bank of Utah	Salt Lake City	Utah.
Cascade Bank	Everett	Washington.
InterWest Bank	Oak Harbor	Washington.
North Sound Bank	Poulsbo	Washington.
Raymond Federal Savings Bank	Raymond	Washington.
EvergreenBank	Seattle	Washington.
Washington Federal Savings	Seattle	Washington.
Sterling Savings Bank	Spokane	Washington.
Buffalo Federal Savings Bank	Buffalo	Wyoming.
Hilltop National Bank	Casper	Wyoming.
Big Horn Federal Savings Bank	Greybull	Wyoming

To encourage the submission of public comments on the community support performance of Bank members, on or before July 28, 2000, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2000–02 second quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community

support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2000–02 second quarter review cycle must be delivered to the Finance Board on or before the August 28, 2000 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.

William W. Ginsberg,

Managing Director.

[FR Doc. 00–17134 Filed 7–13–00; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 28, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. James Steve Daniels, Livingston, Tennessee; to retain voting shares of American BancShares Corporation, Livingston, Tennessee, and thereby indirectly retain voting shares of American Savings Bank, Livingston, Tennessee.

Board of Governors of the Federal Reserve System, July 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17822 Filed 7–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. First Home Bancorp, Inc., Seminole, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Home Bank, Seminole, Florida.

2. Integrity Bancshares, Inc., Alpharetta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Integrity Bank, Alpharetta, Georgia (in organization).

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Jackass Creek Land & Livestock Company, Ennis, Montana; to acquire an additional 50.1 percent, for a total of 73.9, of the voting shares of First Boulder Valley Bank, Boulder, Montana.

Board of Governors of the Federal Reserve System, July 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17824 Filed 7–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. UniCredito Italiano, S.p.A., Milan, Italy; to acquire The Pioneer Group, Inc., Boston, Massachusetts, and thereby engage in acting as investment and financial adviser to any person, pursuant to § 225.28(b)(6) of Regulation Y; acting as investment adviser to variable annuities investment fund, see Banque Nationale de Paris, 89 Fed. Res. Bull. 638 (1994); providing administrative services to mutual funds, see Lloyds TSB Group, plc, 84 Fed. Res. Bull. 116 (1998); acting directly or

indirectly as general partner or, managing member in, or otherwise controlling investment funds that invest in up to 5 percent of the voting securities and 25 percent of the nonvoting equity of companies under section 4(c)7 of the Bank Holding Company Act and The Dresdner Bank, A.G., 84 Fed. Res. Bull. 361, (1998), and The Bessemer Group, 82 Fed. Res. Bull. 569 (1996); acting as a commodity pool operator, see The Dresdner Bank, A.G., 84 Fed. Res. Bull. 361, (1998), and The Bessemer Group, 82 Fed. Res. Bull. 569 (1996); and conducting agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, July 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17823 Filed 7–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m., Wednesday, July 19, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 12, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17980 Filed 7–12–00; 10:28 am]

BILLING CODE 6210–01–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Notice of Intent To Seek Approval To Extend an Information Collection

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Truman Scholarship Foundation (Foundation) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment: The first was published in the **Federal Register** [May 10, 2000 (Volume 65, Number 91), page 30122–30123], and no comments were received. The Foundation is forwarding the proposed renewal submission to OMB for clearance simultaneously with the publication of this second notice.

COMMENTS: Comments regarding (a) Whether the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques for other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Harry S. Truman Scholarship Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Louis H. Blair, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20005 or send e-mail to *Lblair@truman.gov*.

DATES: Comments regarding this information collection is best assured of having their full effect if received on or before August 13, 2000. Copies of the submission may be obtained at 202–395–7433.

FOR FURTHER INFORMATION CONTACT: Louis H. Blair, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20005 or send e-mail to *Lblair@truman.gov*.

SUPPLEMENTARY INFORMATION:

Title of Collection: Truman Scholar Payment Request Form.

OMB Approval Number. 3200–0005.

Proposed Project: The Foundation has been providing scholarships since 1977 in compliance with PL 93–642. This data collection instrument is used to collect essential information to enable the Truman Scholarship Foundation to determine the amount of funds to be disbursed to each Scholar in accordance with the Foundation's regulations, the institution's cost of attendance budget, and sources of scholarship support received by the Scholar.

A total response rate of 100% was provided by the 273 Truman Scholars who received Foundation support in FY 1999.

Estimate of Burden: The Foundation estimates that, on average, 0.2 hours per respondent will be required to complete the payment request for a total of 55 hours for all respondents.

Respondents: Individuals.

Estimated Number of Responses: 275 per year.

Estimated Total Annual Burden on Respondents: 55 hours.

Dated: July 11, 2000.

Louis H. Blair,

Executive Secretary.

[FR Doc. 00–17865 Filed 7–13–00; 8:45 am]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality; Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Director, AHRQ, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Bioterrorism Initiative". The RFP was published in the Commerce Business Daily on May 30, 2000.

The upcoming TRC meeting will be closed to the public in accordance with

the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—"Bioterrorism Initiative".

Date: August 8, 2000 (Closed to the public).

Place: Agency for Healthcare and Quality, 6010 Executive Blvd., 3rd Floor, Conference Room A, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact William Baine, Center for Outcomes and Effectiveness Research, Agency for Healthcare Research and Quality, 6010 Executive Blvd., Suite 300, Rockville, Maryland 20852, 301–594–0524.

Dated: July 7, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–17809 Filed 7–13–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 01002]

Public Health Conference Support Grant Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of fiscal year (FY) 2001 funds for a grant program for Public Health Conference Support. This program addresses the health promotion and disease prevention objectives of "Healthy People 2010". This announcement is related to the focus areas of Arthritis, Osteoporosis, and Chronic Back Conditions, Cancer, Diabetes, Disability and Secondary Conditions, Educational and Community-Based Programs, Environmental Health, Heart Disease and Stroke, Immunization and Infectious Disease, Injury and Violence Prevention, Maternal, Infant and Child Health, Occupational Safety and Health, Oral Health, Physical Activity and Fitness, Public Health Infrastructure, Respiratory Disease, Sexually Transmitted Diseases, and Tobacco Use. For a complete description see: http://www.health.gov/healthypeople/Document/tableofcontents.htm.

Conferences on Access to Quality Health Services, Family Planning, Food Safety, Health Communications, Medical Product Safety, Mental Health and Mental Disorders, Nutrition and Overweight, Substance Abuse, and Vision and Hearing, are not priority focus areas of CDC or ATSDR, and should be directed to other Federal Agencies. HIV is not included in this Program Announcement.

The purpose of conference support funding is to provide partial support for specific non-federal conferences in the areas of health promotion and disease prevention information and education programs, and applied research.

Because conference support by CDC/ATSDR creates the appearance of CDC/ATSDR co-sponsorship, there will be active participation by CDC/ATSDR in the development and approval of the conference agenda. CDC/ATSDR funds will be expended only for approved portions of the conference.

The mission of CDC is to promote health and improve the quality of life by preventing and controlling disease, injury, and disability.

CDC supports local, State, academic, national, and international health efforts to prevent unnecessary disease, disability, and premature death, and to improve the quality of life. This support often takes the form of education, and the transfer of high quality research findings and public health strategies and practices through symposia, seminars, and workshops. Through the support of conferences and meetings in the areas of public health research, education, prevention research in program and policy development in managed care and prevention application, CDC is meeting its overall goal of dissemination and implementation of new cost-effective intervention strategies.

ATSDR focus areas are: (1) Health effects of hazardous substances in the environment; (2) disease and toxic substance exposure registries; (3) hazardous substance removal and remediation; (4) emergency response to toxic and environmental disasters; (5) risk communication; (6) environmental disease surveillance; and (7) investigation and research on hazardous substances in the environment.

The mission of ATSDR is to prevent both exposure and adverse human health effects that diminish the quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR's systematic approaches are needed for linking applicable resources in public health with individuals and organizations involved in the practice of applying such research. Mechanisms are also needed to shorten the time frame between the development of disease prevention and health promotion techniques and their practical application. ATSDR believes that conferences and similar meetings that permit individuals to engage in hazardous substances and environmental health research, education, and application (related to actual and/or potential human exposure to toxic substances) to interact, are critical for the development and implementation of effective programs to prevent adverse health effects from hazardous substances.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations. Public and private non-profit entities include but are not limited to State and local governments or their bona fide agents, voluntary associations, foundations, civic groups, scientific or professional associations, universities, and Federally-recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Only conferences planned for May 1, 2001 through September 30, 2002 are eligible to apply under this announcement.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

Applications for ATSDR support may be submitted by the official public health agencies of the States, or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Island, the Republic of Palau, and Federally-recognized Indian Tribal

governments. State organizations, including State universities, State colleges, and State research institutions must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant. Also eligible are nationally recognized associations of health professionals and other chartered organizations generally recognized as demonstrating a need for information to protect the public from the health effects of exposure to hazardous substances.

C. Availability of Funds

Approximately $1,100,000 may be available from CDC in FY 2001 to fund approximately 45 to 55 awards. It is expected that the average award will be $20,000. For FY 2001 awards will be made for three cycles A B & C each with a 12-month budget period within a 12-month project period. Funding estimates may change.

Approximately $50,000 is available from ATSDR in FY 2001 to fund approximately six awards. It is expected that the average award will be $8,000, ranging from $5,000 to $10,000. It is expected that the awards will begin on or about thirty days before the date of the conference and will be made for a 12-month budget period within a 12-month project period. Funding estimates may change.

D. Use of Funds

1. Funds may be used for direct cost expenditures: salaries; speaker fees (for services rendered); rental of necessary conference related equipment; registration fees; and transportation costs (not to exceed economy class fare) for non-Federal individuals.

2. Funds may be used for only those parts of the conference specifically supported by CDC or ATSDR as documented in the grant award.

3. Funds may not be used for the purchase of equipment; payments of honoraria (for conferring distinction); alterations or renovations; organizational dues; support entertainment or personal expenses; food or snack breaks; cost of travel and payment of a Federal employee; per diem or expenses for local participants (other than local mileage). Travel for federal employees will be supported by CDC/ATSDR. Travel for other Federal employees will be supported by the federal agency.

4. Funds may not be used for reimbursement of indirect costs.

5. CDC and ATSDR will not fund 100 percent of any conference proposed under this announcement. Part of the cost of the proposed conference must be supported with other than Federal funds.

6. CDC and ATSDR will not fund a conference after it has taken place.

7. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

E. Program Requirements

Grantees must meet the following requirements:

1. The conference organizer(s) may use CDC's/ATSDR's name only in factual publicity for the conference. CDC/ATSDR involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, or products or the content of speakers' presentations.

2. Any conference co-sponsored under this announcement shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations.

3. Manage all activities related to program content (e.g., objectives, topics, attendees, session design, workshops, special exhibits, speaker's fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC or ATSDR project personnel.

4. Provide draft copies of the agenda and proposed ancillary activities to CDC or ATSDR for approval. All but 10 percent of the total funds awarded for the proposed conference will be restricted pending approval of a full final agenda by CDC or ATSDR. The remaining 90 percent of funds will be released by letter to the grantee upon the approval of the final agenda. CDC and ATSDR reserves the right to terminate co-sponsorship at any time.

5. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press, etc.). CDC or ATSDR must review and approve any materials with reference to CDC or ATSDR involvement or support.

6. Manage all registration processes with participants, invitee, and registrants (*e.g.*, travel, reservations, correspondence, conference materials and handouts, badges, registration procedures, etc.).

7. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

8. Analyze data from conference activities that pertain to the impact of prevention. Adequately assess increased knowledge, attitudes, and behaviors of the target audience.

F. Application Content

A letter of intent (LOI) is required for this Program Announcement.

Letter of Intent (LOI) Instructions

Interested applicants are required to submit an original and two copies of a two to three-page in-depth typewritten Letter of Intent (LOI). Use English only and avoid jargon and unusual abbreviations. Upon review of the LOI's, CDC or ATSDR will extend written invitations to perspective applicants to submit applications. CDC or ATSDR will accept applications by invitation only. Availability of funds may limit the number of applicants, regardless of merit, that receive an invitation to submit applications. The LOI should specifically describe the following required information:

1. Justification of the conference, including the problems it intends to clarify and the developments it may stimulate.

2. Title of the proposed conference—include the term "Conference", "Symposium","Workshop", or similar designation;

3. Location of conference—city, state, and physical facilities required for the conduct of the meeting;

4. Expected registration—the intended audience, approximate number and profession of persons expected to attend;

5. Date(s) of conference—inclusive dates of conference (LOIs without date of conference will be considered non-responsive to this program announcement and returned to the applicant without review);

6. Summary of conference format, projected agenda (including list of principal areas or topics to be addressed), including speakers or facilitator. In addition, information should be provided about all other national, regional, and local conferences held on the same or similar subject during the last three years; and also include on the first page:

a. the name of the organization,
b. primary contact person=s name,
c. mailing address,
d. telephone number,
e. and if available, fax number and e-mail address.

The LOI must include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100 percent) being requested from CDC or ATSDR.

Requests for 100 percent funding will be considered non-responsive to this program announcement and will be returned to the applicant without review. No Appendices, booklets, or other documents accompanying the LOI will be considered.

An invitation to submit an application will be made on the basis of the proposed conference's relationship, as outlined in the LOI, to the CDC or ATSDR funding priorities and availability of funds. LOIs should be provided by over night mail service, or U.S. postal service.

The three page limitation (inclusive of letterhead and signatures), must be observed or the letter of intent will be returned without review.

Application

Applicants may apply to CDC or ATSDR for conference support only after their LOI has been reviewed by CDC and ATSDR and a written invitation, including an application form, has been received by the prospective applicant.

An invitation to submit an application does not constitute a commitment on the part of CDC or ATSDR to fund the application.

In addition to the following required information, use the information in the Program Requirements and Evaluation Criteria sections to develop the application content:

1. A project summary cover sheet that includes:
   (a) name of organization
   (b) name of conference
   (c) location of conference
   (d) date(s) of conference
   (e) intended audience and number
   (f) dollar amount requested
   (g) total conference budget amount
2. A brief background of the organization—include the organizational history, purpose, and previous experience related to the proposed conference topic.
3. A clear statement of the need for and purpose of the conference. This statement should also describe any problems the conference will address or seek to solve, and the action items or resolutions it may stimulate.
4. An elaboration on the conference objectives and target audience. A list should be included of the principal areas or topics to be addressed. A proposed or final agenda must be included.
5. A clear description of the evaluation plan and how it will assess the accomplishments of the conference objectives. A sample of the evaluation instrument that will be used must be included and a step-by-step schedule and detailed operation plan of major conference planning activities necessary to attain specified objectives.
6. Biographical sketches are required for the individuals responsible for planning and implementing the conference. Experience and training related to conference planning and implementation as it relates to the proposed topic should be noted.
7. Letters of endorsement or support—Letters of endorsement or support for the sponsoring organization and its capability to perform the proposed conference activity.
8. Budget plan and justification—A clearly justified budget narrative that is consistent with the purpose, objectives, and operation plan of the conference. This will consist of a budget that includes the share requested from this grant as well as those funds from other sources, including organizations, institutions, conference income and/or registration fees.

General Instructions

The narrative should be no more than 12 double-spaced pages, printed on one side, with one-inch margins, and 12-point font. Use English only and avoid jargon and unusual abbreviations. Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two required copies of the application must be submitted unstapled and unbound. Materials which should be part of the basic plan should not be in the appendices.

Send LOIs and Applications to: Edna M. Green, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Koger Center, Colgate Bldg., 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

G. Submission and Deadline for All Applicants

Letter of Intent (LOI)
Letter of Intent Due Dates:
Cycle A: October 2, 2000
For conferences May 1, 2001–April 30, 2002
Cycle B: January 2, 2001
For Conferences August 1, 2001–July 31, 2002
Cycle C: April 2, 2001
For Conferences November 1, 2001–September 30, 2002

The letter of intent (LOI) must be submitted on or before October 2, 2000, January 2, 2001 and April 2, 2001. The applicant must submit an original and two signed copies of the LOI to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

Application

Applicants invited to apply should also submit the original and two copies of PHS form 5161–1, (OMB Number 0937–0189). Forms are in the application kit. Forms are also available at: http://forms.psc.gov/forms/phs/ps5161-1.pdf

Application due dates	Earliest possible award dates
Cycle A: December 11, 2000.	April 1, 2001.
Cycle B: March 09, 2001.	July 1, 2001.
Cycle C: June 15, 2001.	September 30, 2001.

Deadline: Filing deadlines have now been imposed for all conference support grants and dates should be strictly followed by applicants to ensure that their LOI's are received in a timely manner.

There will be three Conference Support reviews per year and awards will be made in the months of April 2001, July 2001, and September 2001.

If your conference dates fall between Oct 1, 2000 to April 30, 2001 you should have applied under the previous program Announcement 00017 otherwise your LOI will be considered unresponsive to Cycle A under the 2001 Announcement.

If your Conference dates fall between May 1, 2001 to April 30, 2002 you can apply under Cycle A 2001.

If your Conference dates fall between August 1, 2001 to July 31, 2002 you can apply in Cycle B 2001.

If your Conference dates fall between November 1, 2001 to September 31, 2002 you can apply under Cycle C 2001. Letters of Intent and Applications shall be considered as meeting the deadline if they are either:

(a.) Received on or before the date, or

(b.) Postmarked on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a.) or (b.) above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Letter of Intent

A conference is a symposium, seminar, workshop, or any other organized and formal meeting lasting portions of one or more days, where persons assemble to exchange information and views or explore or clarify a defined subject, problem, or area of knowledge, whether or not a published report results from such meeting. The conference should support CDC or ATSDR's public health principles in furtherance of CDC's mission or ATSDR's mission. CDC will review the LOIs and compare conference objectives with our respective missions and funding priorities to determine if a full application will be invited. Less than thirty-three percent of LOI applicants are invited to submit full applications.

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Section 1.a., is ATSDR specific

Section 1.b., is CDC specific

Section 1.c., and all other sections in these criteria are applicable to both CDC and ATSDR,

1. Proposed Program and Technical Approach (25 points)

a. The public health significance of the proposed conference including the degree to which the conference can be expected to influence the prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases and other sources of pollution present in the environment. (Applicable to ATSDR applications only).

b. The applicant's description of the proposed conference as it relates to specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs (except mental health, and substance abuse), including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. Evaluation will be based also on the extent of the applicant's collaboration with other organizations serving the intended audience. (Applicable to all CDC applications except ATSDR)

c. The applicant's description of conference objectives in terms of quality, specificity, and the feasibility of the conference based on the operational plan.

2. Applicant's Capability (10 points) Adequacy of applicant's resources (additional sources of funding, organization's strengths, staff time, proposed physical facilities, etc.) available for conducting conference activities.

3. The Qualification of Program Personnel (20 points).

Evaluation will be based on the extent to which the application has described:

a. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

b. The competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish conference objectives.

c. The degree to which the applicant demonstrates the knowledge of nationwide and educational efforts currently underway which may affect, and be affected by, the proposed conference.

4. Conference Objectives (25 points)

a. The overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall work plan and timetable for accomplishment.

b. The likelihood of accomplishing conference objectives as they relate to disease prevention and health promotion goals, and the feasibility of the project in terms of the operational plan.

5. Evaluation Methods (20 points)

Evaluation instrument(s) for the conference should adequately assess increased knowledge, attitudes, and behaviors of the target audience.

6. Budget Justification and Adequacy of Facilities (not scored)

The proposed budget will be evaluated on the basis of its reasonableness; concise and clear justification; and consistency with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing or proposed facilities and resources for conducting conference activities.

I. Other Requirements

Technical Reporting Requirements

Provide the Grants Management Office with original plus two copies of:

1. A Performance Report, or in lieu of a performance report, proceedings of the conference, no more than 90 days after the end of the budget/project period.

2. Financial status report, no more than 90 days after the end of the budget/project period.

The following additional requirements are applicable to this program. (See appendix 1)

AR–7 Executive Order 12372 Review

AR–8 Public Health System Reporting Requirements

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–15 Proof of Non-Profit Status

AR–20 Conference Support

J. Authority and Catalog of Federal Domestic Assistance Number

The CDC program is authorized under Section 301 of the Public Health Service Act, [42 U.S.C. 241] as amended. The Catalog of Federal Domestic Assistance number is 93.283.

The ATSDR program is authorized under Sections 104(i)(14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), [42 U.S.C. 9604(i)(14) and (15)]. The Catalog of Federal Domestic Assistance number is 93.161 for ATSDR.

K. Where To Obtain Additional Information

To receive additional written information, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Edna M. Green, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Koger Center, Colgate Bldg., 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–3724, Telephone (770) 488–2743, Email address ecg4@cdc.gov,

See also the CDC home page on the Internet: http://www.cdc.gov/od/pgo/funding/01002.htm

For program technical assistance, contact: C.E. Criss Crissman, Resource Analysis Specialist, Office of the Director Extramural Services Activity, Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, MS K–38, Atlanta, Georgia 30341–3714, Telephone (770) 488–2513, Email address cec1@cdc.gov

Dated: July 7, 2000.

Mary Anne Bryant,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Agency for Toxic Substances and Disease Registry.

[FR Doc. 00–17846 Filed 7–13–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 00102]

Announcement of a Cooperative Agreement With the Hispanic-Serving Health Professions Schools (HSHPS), Inc. To Enhance Research, Infrastructure, and Capacity Building

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of fiscal year (FY) 2000 funds for a cooperative agreement program with the Hispanic-Serving Health Professions Schools, Inc. (HSHPS). The purpose of the program is to assist the HSHPS in developing the commitment and capacity of their member institutions to promote education, development, research, leadership and community partnerships that enhance the health status of Hispanics in the United States and enhance the participation of Hispanics in the health professions.

The CDC and ATSDR are committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the 2010 objectives which specify improving the health of groups of people bearing a disproportionate burden of poor health as compared to the total population. Several themes distinguished "Healthy People 2010" from past efforts, reflecting the progress and experience of 10 years, as well as an expanded science base for developing health promotion and disease prevention objectives. The framework of "Healthy People 2010" consists of two broad goals which are to:

1. Increase quality and years of healthy life; and
2. Eliminate health disparities.

"Healthy People 2010" is well established as the Nation's prevention goals and as a scorecard for monitoring health status. The new national goals and objectives for "Healthy People 2010" will build upon this foundation by establishing a small set of leading health indicators that could be presented to the general public and non-health professionals as an introduction to "Healthy People". "Healthy People 2010" will be a tool for monitoring America's health. For the conference copy of "Healthy People 2010" visit the internet site: <<http://www.health.gov/healthypeople>

The life expectancy of Americans has steadily increased. In 1979, when the first set of national health targets was published in "Health People: The Surgeon General's Report on Health Promotion and Disease Prevention", average life expectancy was 73.7 years. Based on current mortality experience, babies born in 1995 are expected to live 75.8 years. However, people have become increasingly interested in other health goals, such as preventing disability, improving functioning, and relieving pain and the distress caused by physical and emotional symptoms.

The proportion of the population who assess their current health status positively has not changed substantially during the past decade. In 1987, the percentage was 90.4 percent. During the same period, the percentage of the population reporting that they were limited in major activity due to chronic conditions actually increased from 18.9 percent in 1988, to 21.4 percent in 1995.

Eliminating disparities by the year 2010 will require new knowledge about the determinants of disease and effective interventions for prevention and treatment. It will also require improved access for all to the resources that influence health. Reaching this goal will necessitate improved collection and use of standardized data to correctly identify all high-risk populations and monitor the effectiveness of health interventions targeting these groups. Research dedicated to a better understanding of the relationships between health status and income, education, race and ethnicity, cultural influences, environment, and access to quality medical services will help us acquire new insights into eliminating the disparities and developing new ways to apply our existing knowledge toward this goal. Improving access to quality health care and the delivery of preventive and treatment services will require working more closely with communities to identify culturally sensitive implementation strategies.

Although health statistics on race, ethnicity, socioeconomic status and disabilities are sparse, the data we do have demonstrate the volume of work needed to eliminate health disparities. The greatest opportunities for improvement and the greatest threats to the future health status of the nation reside in the population groups that have historically been disadvantaged economically, educationally and politically. We must do a better job in identifying the disparities that exist, work toward elimination, and strive to create better health for all.

B. Eligible Applicants

Assistance will be provided only to the Hispanic-Serving Health Professions Schools (HSHPS). No other applications are solicited.

The Hispanic-Serving Health Professions Schools (HSHPS), Inc. is a non-profit 501(c)(3) organization established in 1996 in response to the President's Executive Order 12900, "Educating Excellence for Hispanic Americans." The mission of the HSHPS is to develop the commitment of the member institutions to promote education, research, leadership and community partnership that enhance the participation of Hispanics in the health professions and to enhance the health status of Hispanics in the United States. The HSHPS are the most appropriate and qualified institutions to provide services specified under this cooperative agreement because:

1. HSHPS represents 16 medical schools across the country with a 9 percent Hispanic student enrollment. These schools represent a primary educational system that educate and train Hispanic health care providers across the United States, with a potential for encompassing a full spectrum of the health care providers needed by the Hispanic population groups.

2. HSHPS principle goals are:

a. to strengthen the nation's capacity to educate and increase the numbers of high-quality Hispanic health care providers to serve and improve the health status of Hispanics and other populations now and into the 21st century;

b. to develop educational opportunities for health professions schools in curriculum, research, and clinical experiences that will enable Hispanic and non-Hispanic health professions students to provide excellent health care to Hispanic populations;

c. to establish or expand outreach projects, grants and scholarships for Hispanics to enter health professions careers;

d. to stimulate health professions institutions to increase, promote and retain Hispanic faculty and researchers;

e. to identify targeted health outcomes which will improve the health of

Hispanic populations and support health policies, systems of care, and projects which help to achieve these outcomes; and

f. to promote collaboration at the regional and national levels between educational institutions, communities and other partners.

3. Through the collective efforts of its member institutions, the HSHPS has demonstrated the ability to work with academic institutions, government health agencies, and the private sectors on mutual education, service, and research endeavors.

4. The HSHPS has demonstrated that it has the leadership necessary to attract minority health professions into public health or health related professional careers.

5. The HSHPS has the infrastructure to consult with Hispanic health professionals through its national organizations whose member institutions are all predominately Hispanic-serving health professions institutions with excellent professional performance records.

C. Availability of Funds

Approximately $300,000 is available in FY 2000 to fund this cooperative agreement. Subawards will be funded through CDC and ATSDR. A cumulative award of approximately $2,000,000 to the HSHPS is expected during FY 2000. It is expected that the awards will begin on September 30, 2000.

Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

D. Where to Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, M.S. E–15, Koger Center, Colgate Building, Atlanta, Georgia 30341–3724. Telephone 770–488–2736. E-mail address dpr7@cdc.gov.

Program technical assistance may be obtained from Karen E. Harris, Senior Advisor for Research Projects, Office of the Associate Director for Minority Health, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, Northeast, Mailstop D–39, Atlanta, Georgia 30333. Telephone (404) 639–4313, E-mail address keh2@cdc.gov.

Dated: July 10, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17835 Filed 7–13–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00130]

HIV/AIDS Prevention Program Development and Technical Assistant Collaboration with Countries Targeted by the Leadership and Investment in Fighting the Epidemic (LIFE) Initiative; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for HIV/AIDS Prevention Program Development and Technical Assistance Collaboration with Countries Targeted by the LIFE (Leadership and Investment in Fighting an Epidemic) Initiative.

In July 1999, the Administration announced the LIFE Initiative to address the global AIDS pandemic. The LIFE initiative, an effort to expand and intensify the global response to the growing AIDS pandemic and its serious impact, is part of the United States (U.S.) Government's participation in the International Partnership Against HIV/AIDS in Africa (IPAA). A central feature of the LIFE Initiative is a $100 million increase in U.S. support for sub-Saharan African countries and India, which are working to prevent the further spread of HIV and to care for those affected by this devastating disease. This additional funding is a critical step by the U.S. Government in recognizing the impact that AIDS continues to have on individuals, families, communities, and nations and responding to the imperative to do more. The Department of Health and Human Services (HHS), through the Centers for Disease Control and Prevention (CDC) is administering $35 million of the $100 million allocated to the LIFE Initiative by Congress.

The purpose of the program is to support HIV/AIDS prevention program development and technical assistance for countries designated by the U.S. Congress under the LIFE Initiative. At present, those countries are Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda, Rwanda, Zimbabwe, Ethiopia, Mozambique, Malawi, Tanzania, Nigeria, Senegal, Zambia and India. The countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active.

The goals of the program are to address and support three program elements of the LIFE initiative: Primary Prevention, Capacity and Infrastructure Development, and Community and Home-Based Care and Treatment. The program described in this announcement calls for the delivery of HIV/AIDS prevention program development and technical assistance to the LIFE countries through a variety of recipient activities. The result will be enhancement of the skills of officials from LIFE country national AIDS program in strategic planning, implementation, evaluation, and communication relating to HIV/AIDS prevention and care programs.

B. Eligible Applicant

Assistance will be provided only to the National Alliance of State and Territorial AIDS Directors (NASTAD) for this project. No other applications are solicited or will be accepted. This announcement and application will be sent to NASTAD. NASTAD is the appropriate and only qualified agency to provide the services specified under this cooperative agreement because:

1. NASTAD is the only officially established organization that represents the State and Territorial AIDS Directors in all 50 U.S. States and all U.S. Territories. As such, it represents the officials from throughout the U.S. who have responsibility for designing, implementing, and evaluating HIV/AIDS prevention programs protecting the health of U.S. citizens against the threat of HIV and acquired immunodeficiency syndrome (AIDS). This place NASTAD in a unique position to act as a liaison between state and territorial HIV/AIDS prevention programs and LIFE country public health officials. In addition, the same set of knowledge, skills, and abilities NASTAD has developed in working with State and Territorial AIDS Directors are of critical importance in improving the technical capacity of national AIDS control programs in African countries and India.

2. Health threats such as HIV are not confined by geographic boundaries.

NASTAD was formed to promote coordination of HIV/AIDS prevention efforts among the States and territories. The organization is uniquely positioned to collaborate not only with national organizations, including Federal agencies, but also with national AIDS control program officials in the LIFE countries, on policy and program issues from a U.S. government model, multi-state perspective. In this collaboration NASTAD is positioned to monitor, assess, and improve HIV/AIDS prevention program design, implementation, and evaluation in the LIFE countries.

3. In the U.S., NASTAD coordinates the effort of HIV/AIDS Prevention Program Directors, who work together with CDC to monitor the implementation of prevention programs across States and territories, assess the impact of prevention programs, share successes and challenges, monitor issues and obstacles to implementation of effective interventions, provide technical assistance and consult with CDC, one another, and other governmental and non-governmental prevention partners on these issues. Therefore, NASTAD possesses unique knowledge and insight that can be applied to the LIFE initiative through the provision of technical assistance aimed at strengthening the ability of national AIDS control programs to develop HIV/AIDS prevention programs based on the best practices of U.S. State and territory programs.

4. NASTAD represents the nation's HIV/AIDS Prevention Program Directors who have responsibility for HIV prevention within their jurisdictions, and whose mission is to work collaboratively with individual AIDS Directors to provide multi-jurisdiction perspectives and translate knowledge, skills, and abilities to State AIDS control programs. Thus NASTAD is in a unique position to facilitate the transfer of the same body of knowledge, skills and abilities to national AIDS control program officials in the LIFE countries.

5. NASTAD has already established mechanisms for communicating HIV/AIDS prevention information to the States and the political subdivisions of the States that carry out the nation's HIV/AIDS prevention programs. These mechanisms can serve as models to exchange information between the States and public health officials in the LIFE countries to identify and develop effective prevention information networks and dissemination systems. Because of their experience and established communications mechanisms, NASTAD is in a unique position to assist national AIDS control program officials with the dissemination of HIV/AIDS prevention information.

Note: Public Law 104–65 states than an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to support this award. It is expected that the award will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Peer-to-peer training, technical assistance, and other activities (including but not limited to those described below under Program Requirements—Recipient Activities) conducted outside the U.S. by persons under this award are limited to forty-five (45) days per person per year.

Applicant may contract with other organizations under these cooperative agreements, however, the applicant must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Scroll down the page, then click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharon Robertson, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Room 3000, 2920 Brandywine Road, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, E-mail: sqr2@cdc.gov

Programmatic technical information may be obtained from: Leo Weakland, Deputy Coordinator, Global AIDS Activity (GAA), National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop E–07, Atlanta, GA 30333, Telephone number (404) 639–8016, Email address: lfw0@cdc.gov

Dated: July 10, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17836 Filed 7–13–00; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 62, No. 129, pp. 36294 and 36295, dated Monday, July 7, 1997) is amended to reflect the elimination of the Chief of Operations. This amendment will change the reporting relationships for the Offices of Internal Customer Support, Information Services, and Financial Management, which will now report directly to the Administrator, HCFA.

The specific amendment to Part F is described below:

Section F.10.A.5. (Organization) is amended to read as follows:

1. Press Office (FAE)
2. Office of Legislation (FAF)
3. Office of Equal Opportunity and Civil Rights (FA)
4. Office of Strategic Planning (FAK)
5. Office of Communications and Operations Support (FAL)
6. Office of Clinical Standards and Quality (FAM)
7. Center for Beneficiary Services (FAQ)
8. Center of Health Plans and Providers (FAR)
9. Center for Medicaid and State Operations (FAS)

10. Consortium #1 (FAU)
11. Consortium #2 (FAV)
12. Consortium #3 (FAW)
13. Consortium #4 (FAX)
14. Office of Internal Customer Support (FBA)
15. Office of Information Services (FBB)
16. Office of Financial Management (FBC)

Dated: June 8, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–17810 Filed 7–13–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency Act of 1990-Title IV (OMB #0915–0206)—Extension

This is a request for extension of the reporting system of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Title IV as amended by the Ryan White CARE Act Amendments of 1996. It authorizes a reporting system to collect information from grantees and the service providers that are their subcontractors as governed under Section 2671 of the Public Health Service (PHS) Act (42 USC 300ff–71).

Title IV provides support for coordinated HIV services and access to research for children, youth, women, and families. It supports efforts to develop comprehensive, coordinated, culturally competent, family-centered systems of care and to provide access to research for those infected or affected by HIV infection. The Title IV program supports a broad variety of interventions in health care delivery that are designed to link clients receiving health care to other essential and supporting services and to clinical research. Grants are made to public and private non-profit health centers and other appropriate public or non-profit private entities that are linked to a comprehensive health care system. This system includes clinical research for children, youth, and women. The HIV/AIDS Bureau (HAB) within HRSA administers funds for Title IV of the CARE Act.

There are 53 grantees under Title IV's Children, Youth, Women and Families Program, with approximately 125 affiliated service providers, for a total of 178 entities who report information about the clients they serve and the services they provide. Grantees are located in 27 States, Puerto Rico and the District of Columbia.

ESTIMATED BURDEN HOURS

Form name	No. of respondents	Responses per respondent	Total responses	Hrs. per response	Total burden hours
Designation of Local Reporting Entitles Table 1A	53	1	53	.25	13.25
Local Network Profile Table 1B	178	1	178	.5	89
Person-based Demographic and Clinical Status Summary Table 2	178	1	178	30	5,340
Service Utilization Summary Table 3	178	1	178	20	3,560
Prevention, Outreach, and Education Activities Table 4	178	1	178	4	712
Total	178	1	178	54.75	9,746

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 7, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–17812 Filed 7–13–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States

Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on January 7, 2000, through March 31, 2000.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Kathy Timoteo and Montez Boyd on behalf of Cydney J. Boyd, Deceased, Torrance, California, Court of Federal Claims Number 00–0009

2. Bernadette Elkins on behalf of Jaclyn Christin Elkins, Pasadena, Texas, Court of Federal Claims Number 00–0014

3. Kathy and Dan Cassidy on behalf of Shane Cassidy, Vienna, Virginia, Court of Federal Claims Number 00–0017

4. Katie and Ralph Hallenborg on behalf of Eric Miles Hallenborg, Vienna, Virginia, Court of Federal Claims Number 00–0019

5. Cheryl Pisano, Ocala, Florida, Court of Federal Claims Number 00–0019

6. Jessica and Scott Phillips on behalf of Cody James Phillips, Deceased, Altamont, New York, Court of Federal Claims Number 00–0024

7. Alicia B. Hicks on behalf of Melvin B. Paschal, Jr., Deceased, Atlanta, Georgia, Court of Federal Claims Number 00–0026

8. Geoffrey Dubrowsky on behalf of Daniel Dubrowsky, Red Bank, New Jersey, Court of Federal Claims Number 00–0027

9. Mary L. and Davy B. Wildman on behalf of Nickolas B. Wildman, Butler, Pennsylvania, Court of Federal Claims Number 00–0032

10. Linda Swisher on behalf of Joshua R. McNellis, Long Beach, California, Court of Federal Claims Number 00–0033

11. Svetlana Drozdova on behalf of Dennis A. Drozdova, Brooklyn, New York, Court of Federal Claims Number 00–0041

12. Catherine Anne Scully-Luderer, Encino, California, Court of Federal Claims Number 00–0042

13. Lisa and David Masha on behalf of Travis Masha, Grosse Pointe, Michigan, Court of Federal Claims Number 00–0044

14. Barbara Aiello-Fallon on behalf of William Gabriel Fallon, Staten Island, New York, Court of Federal Claims Number 00–0045

15. Elizabeth Feather on behalf of Shae Feather, Boston, Massachusetts, Court of Federal Claims Number 00–0047

16. Andrea Shaffer and Timothy Hawthorne on behalf of Matthew Aubrey Shaffer, Harker Heights, Texas, Court of Federal Claims Number 00–0052

17. Lucinda Valdovi Montano on behalf of Joanne Montano, Los Angeles, California, Court of Federal Claims Number 00–0058

18. Deann and Joseph Comiskey on behalf of Jaclynne R. Comiskey, Deceased, Albuquerque, New Mexico, Court of Federal Claims Number 00–0060

19. Luann Parker, Cincinnati, Ohio, Court of Federal Claims Number 00–0072

20. Barbara and Jerry Pharr on behalf of Shelia Pharr, Lincolnton, North Carolina, Court of Federal Claims Number 00–0079

21. Jason Coulter and Jill Bonovic on behalf of Sierra Coulter, Appleton, Wisconsin, Court of Federal Claims Number 00–0081

22. Gary Jacob on behalf of Tanya Jacob, Santa Monica, California, Court of Federal Claims Number 00–0084

23. Rosalinda and Jose Lopez on behalf of Steven Lopez, Premont, Texas, Court of Federal Claims Number 00–0088

24. Brenda Ejemai, Brooklyn, New York, Court of Federal Claims Number 00–0090

25. Letecia and Timothy Tremaine on behalf of Devine Sara Tremaine, Merrionette Park, Illinois, Court of Federal Claims Number 00–0094

26. Eileen and Robert Seemayer on behalf of Patrick Robert Seemayer, Redwood City, California, Court of Federal Claims Number 00–0095

27. Michelle Carlisle on behalf of Justin Hunter Carlisle, Houston, Texas, Court of Federal Claims Number 00–0110

28. Martha Marie Valasquez on behalf of Joseph Adam Ward, Crockett, Texas, Court of Federal Claims Number 00–0117

29. Michel Tudor on behalf of Bria Tudor, New York, New York, Court of Federal Claims Number 00–0118

30. Jennifer and Carroll Williams on behalf of Steven Paul Williams, Deceased, Iuka, Mississippi, Court of Federal Claims Number 00–0123

31. John R. Taylor, Atkinson, Nebraska, Court of Federal Claims Number 00–0126

32. Gerald W. Doffing, Polk, Wisconsin, Court of Federal Claims Number 00–0131

33. Pennie and Darrell Summers on behalf of Darrius Nathan Summers, Hyattsville, Maryland, Court of Federal Claims Number 00–0132

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34. Evangelina Guzman-DeMello on behalf of Jeremy Xavier DeMello, St. Paul, Minnesota, Court of Federal Claims Number 00–0133

35. Nikki Embree on behalf of Mackenzie Embree, Independence, Missouri, Court of Federal Claims Number 00–0142

36. Norma Jean Allen, Indianapolis, Indiana, Court of Federal Claims Number 00–0145

37. George C. Lewis, Beeville, Texas, Court of Federal Claims Number 00–0146

38. Patricia A. Nash on behalf of James Todd Nash, Markham, Illinois, Court of Federal Claims Number 00–0149

39. Cindy Cairns on behalf of Mitchell Cairns, San Jose, California, Court of Federal Claims Number 00–0158

40. Margaret Althen, Boston, Massachusetts, Court of Federal Claims Number 00–0170

Claude Earl Fox,

Administrator.

[FR Doc. 00–17813 Filed 7–13–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Clinical Center, Diagnostic Radiology Department, Division of Special Procedures (NIHCC): Opportunity for Cooperative Research and Development Agreement (CRADA) in the Field of Percutaneous Soft Tissue Ablation

AGENCY: NIHCC, NIH, PHS, DHHS.

ACTION: Notice of a Cooperative Research and Development Agreement (CRADA) opportunity.

SUMMARY: The Special Procedures division of the Diagnostic Radiology Department of the National Institutes of Health Clinical Center (NIHCC) are developing a research initiative in the area of percutaneous thermal ablation technologies, including radio-frequency, microwave, ultrasound, laser, and cryotherapy. Consequently, the NIHCC is seeking one or more partners for (a) Cooperative Research and Development Agreement(s) (CRADA) to further develop applications and to study clinical applications and the engineering basis of minimally-invasive percutaneous methods of soft tissue ablation.

Currently, the NIHCC is conducting studies to develop new clinical applications for thermal ablation, including kidney tumors, adrenal tumors, and painful soft tissue tumors for palliation. The NIHCC also plans to implement studies to combine radiofrequency ablation with other treatment modalities and therapies, as well as to develop guidance and treatment planning systems for thermal ablations. Please see *www.cc.nih.gov/drd/rfa* for more information regarding the NIHCC ablation program.

Consequently, the NIHCC would like to further its research by establishing a collaborative, bench-to-bedside, basis-science initiative for investigating the potential applications of thermal ablation techniques, while refining existing ablative technologies. The collaborative effort will involve clinical refinements in ablation technology, development of novel imaging-guided techniques, and attempts to solve basis recurrent problems relating to local oncological ablative therapies. The collaboration, in part, will investigate the potential of combining new technology with existing surgical, medical, immunological, genetic, and radiation therapies.

The anticipated term of the CRADA is four(4) years.

Successful respondent(s) will be selected based upon their ability to collaborate with the NIHCC in the development of soft tissue ablation technologies.

DATES: Interested parties should submit a one-paragraph statement of interest addressing the collaborator's ability to perform the collaboration responsibilities. The statement of interest should be submitted to the NIHCC in writing no later than August 14, 2000.

ADDRESSES: Inquiries and statements of interest regarding this opportunity should be addressed to Steve Galen, Technology Development Coordinator, National Institutes of Health Clinical Center. Phone: (301) 594–4509, FAX (301) 402–2143, 6011 Executive Boulevard, Suite 511, Rockville, MD 20852.

SUPPLEMENTARY INFORMATION: A CRADA is the anticipated joint agreement to be entered into by the NIHCC pursuant to the Federal Technology Transfer Act of 1986 as amended by the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113 (Mar. 7, 1996)) and by Executive Order 12591 of April 10, 1987.

Under a CRADA, the NIHCC can offer selected collaborators access to facilities, staff, materials, and expertise. The collaborator may contribute facilities, staff, materials, expertise and funding to the collaboration. THE NIHCC CANNOT CONTRIBUTE FUNDING. The CRADA collaborator may elect an option to an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA and may qualify as a co-inventor of new technology developed under the CRADA.

The objective of the CRADA is the rapid publication of research findings and the timely commercialization of improved diagnostic and treatment strategies in the field of soft tissue ablation.

CRADA proposals will be evaluated under the following criteria:

- Corporate research and development competencies;
- Demonstrated abilities to collaborate productively in research programs;
- Expertise in performing clinical trials and regulatory affairs;
- The nature of resources to be contributed to the collaboration;
- Key staff expertise, qualifications, and relevant experience;
- Willingness to assign technical staff to participate in on-site collaborative efforts; and
- Ability to commercialize new discoveries effectively.

It is anticipated that the role of the NIHCC under the CRADA will include the following:

- Provide expertise in thermal ablation;
- Provide expertise in ablation engineering;
- Provide input on probe, generator, and treatment algorithm design;
- Evaluate technological considerations for patient safety;
- Provide an ongoing evaluation of the technologic advances and designs of the probes;
- Develop study designs to scientifically evaluate thermal ablation concepts; and
- Provide an existing protocol or create a new protocol for the phase 1 clinical study of the resulting device, if appropriate for clinical use.

It is anticipate that the role of the CRADA Collaborator will include the following:

- Provide expertise in thermal ablation;
- Provide advice and support in ablation engineering;
- Assist in the production of a probe prototype for clinical testing; and
- Provide equipment necessary to study the probe.

Dated: June 6, 2000.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, NCI.

[FR Doc. 00–17828 Filed 7–13–00; 8:45 am]

BILLING CODE 4140–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Clinical Center: Cooperative Research and Development Agreement (CRADA) Opportunity for the Development of Medical Magnetic Imaging Methods for Diagnostic or Therapeutic Purposes

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health Clinical Center (NIHCC), Laboratory of Diagnostic Radiology Research, has developed technology in the area of Magnetic Resonance Imaging (MRI) and *in vivo* cell tracking and wishes to further develop the technology through a collaboration with a company or institution having expertise in the areas of medical imaging and/or medical diagnostics. Companies with expertise in transplantation of cells, including neural cells, stem cells, transgenic cells, or other cell types, and companies with expertise in therapeutic cell research, including the possible therapeutic use of stem cells, are encouraged to apply. The NIHCC's Laboratory of Diagnostic Radiology Research (LDRR) has developed a compound and technique for magnetically tagging cells—without the use of radioisotopes—and imaging those cells using MRI. The NIHCC system of magnetic tagging transfers nanoparticles of iron oxide into a cell via a monoclonal antibody to the cell's transferrin receptor. The cells internalize the iron particles in the endosomes. In early neurological disease studies related to repair of demyelination, LDRR researchers tagged oligodendrocyte precursor cells *in vitro* and introduced the tagged cells into myelin-deficient rats. The researchers followed the migration and integration of these cells in the spinal cord by non-invasive techniques and found that the distribution of the tagged precursor cells correlated with the extent of myelination. Thus, this non-invasive tracking method may be useful in human transplantation studies and for diagnostic procedures. In the proposed project, other cell types, including tumor or other transplantable cells could be labeled and tracked. Additionally, direct *in vivo* labeling methods using this tagging system could be developed. Clinical applications using imaging of the tagged cells could be investigated. Also, new methods which use the magnetic tag applied to a variety of therapeutic compounds or other clinically relevant molecules could be developed. Research data suggests that the iron tag does not impair the viability, migration or other cellular functions of the labeled cells.

The NIH has filed a patent application on the technology and is currently preparing to file a second related application that involves a new method for magnetic tagging of cells. Any successful CRADA collaborator may need to negotiate a license on the patent applications in order to commercialize developments under this CRADA. Contact information to obtain information on the patent applications is listed below.

The proposed duration of the collaboration is two (2) years.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Steven Galen, Technology Development Coordinator, NIHCC, tel: (301) 594–4509, fax: (301) 402–2143 or David A. Steffes, Technology Development and Commercialization Branch, National Cancer Institute, Tel: (301) 496–0477, Fax: (301) 402–2117.

DATES: Interested parties should submit a one page statement of interest that outlines the proposed research project and addresses the collaborator's ability to fulfill its collaborative responsibilities. The statement of interest should be submitted in writing no later than August 14, 2000. CRADA proposals submitted thereafter may be considered if a suitable CRADA collaborator has not been found.

SUPPLEMENTARY INFORMATION: A "Cooperative Research and Development Agreement" or "CRADA" is the anticipated joint agreement to be entered into by the NIHCC pursuant to the Federal Technology Transfer Act of 1986 as amended by the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113 (Mar. 7, 1996)) and by Executive Order 12591 of October 10, 1987.

Under a CRADA, the NIHCC can contribute facilities, staff, materials, and expertise to the effort. The NIHCC Cannot Contribute Funding. The CRADA collaborator receives an exclusive option to negotiate an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA in a pre-determined field of use and may qualify as a co-inventor of new technology developed under the CRADA.

Background information, including reprints of this announcement and issued patents pertaining to the technology, is available from the above-referenced address. Patent applications and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement.

The CRADA objective is the development and timely commercialization of imaging techniques and clinical diagnostic and therapeutic methods based on the magnetic tagging procedures developed by the NIHCC.

CRADA proposals will be evaluated under the following criteria:

- Corporate research and development competencies.
- Demonstrated ability to collaborate productively in research programs.
- The nature of resources to be contributed to the collaboration.
- Key staff expertise, qualifications and relevant experience.
- Willingness to assign technical staff to on-site collaborative efforts.
- Ability to commercialize new discoveries effectively.
- For collaborations involving stem cells, whether the proposed study complies with current federal regulations and NIH policy concerning stem cell research.

The roles of the NIHCC for the proposed CRADA may include the following responsibilities. Additional responsibilities may be added if the parties agree to other relevant and scientifically appropriate collaborative research projects.

1. Participate in identification of various cell types to label with the magnetic tagging system.
2. Participate in imaging studies for detection and tracking of various labeled cell types.
3. Participate in development of methods for *in vivo* labeling of cells.
4. Participate in development of methods to magnetically tag clinically relevant molecules.
5. Participate in development of diagnostic and therapeutic magnetic imaging methods using magnetically tagged compounds or cells.
6. Jointly publish research results.

The roles of the Collaborator for the proposed CRADA may include the following responsibilities. Additional responsibilities may be added if the parties agree to other relevant and scientifically appropriate collaborative research projects.

1. Development of methods to label various cell types with the magnetic tagging system.
2. Participate in imaging studies for detection and tracking of various labeled cell types.
3. Participate in development of methods for *in vivo* labeling of cells.

4. Participate in development of methods to magnetically tag clinically relevant molecules.

5. Participate in development of diagnostic and therapeutic magnetic imaging methods using magnetically tagged compounds or cells.

6. Jointly publish research results.

Dated: July 6, 2000.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, NCI.

[FR Doc. 00–17827 Filed 7–13–00; 8:45 am]

BILLING CODE 4140–18–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4566–N–08]

Notice of Proposed Information Collection; Comment Request; Community Development Block Grant Entitlement Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed information collection for public comments.

SUMMARY: The proposed information collection requirement for the Community Development Block Grant (CDBG) entitlement program described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 12, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Acting Director, Entitlement Communities Division, (202) 708–1577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Community Development Block Grant Entitlement Program.

OMB Control Number, if applicable: 2506.0077.

Description of the need for the information and proposed use:

Agency form numbers, if applicable: Community Development Block Grant (CDBG) Entitlement grantees are required by 24 CFR 570.506 to retain records necessary to document compliance with statutes, regulations, Executive Orders, and OMB Circulars applicable to the CDBG Entitlement Program. Also, Description of the need for the information and Entitlement grantees are required by Section 104(e) of Title I of the Housing and Community Development Act to annually submit a performance report, which is necessary for the Secretary to perform an annual review of performance required by that section of the law, as well as providing the documentation necessary to prepare the Annual Report to Congress on the CDBG program.

Entitlement grantees report on their CDBG activities in the Consolidated Annual Performance and Evaluation Report (CAPER) (which also includes performance report information for the HOME Investment Partnership, Emergency Shelter Grants [ESG], and Housing Opportunities for Persons with AIDS [HOPWA] programs as well, should the CDBG grantee also be a recipient of any funds under these programs).

The automated Integrated Disbursement and Information System (IDIS) is a key component in the production of the CAPER report. Grantees input information about their CDBG program activities into IDIS on a on-going basis throughout their program year, reducing duplication of information and inconsistent reporting. There are no standard forms required to be used in the CAPER; therefore, grantees have much flexibility with respect to its design and format.

The proposed information collection requirement includes a revision of the currently approved recordkeeping and reporting requirements for entitlement grantees in the CDBG program based on an increase in the number of eligible grantees over the past three years. The exiting approval granted under OMB Number 2506–0077 is due to expire September 30, 2000.

Although the IDIS and the CAPER can contain information on a grantee's CDBG, HOME, ESG, and HOPWA programs, this information collection requirement submitted to OMB requests approval for CDBG Entitlement Program recordkeeping and reporting requirements only.

The Department has converted all of its CDBG entitlement grantees into the IDIS and each new grantee begins using IDIS at the time it first elects to take its status as an entitlement. Also, since this Information Collection was last approved, the required Financial Summary report has been integrated into IDIS, although IDIS does not yet collect/generate all information necessary to meet all reporting requirements for the Entitlement CDBG program. As a result, the estimation shown below does not reflect a decrease in the number of reporting hours used annually, on average, by each grantee. Grantees have to review the financial data and identify any adjustments that need to be input prior to generating the Financial Summary, and some supplementary documents may have to be submitted with the CAPER to meet the CDBG reporting requirements.

Members of affected public: Entitlement grantees (metropolitan cities and urban counties) of the Community Development Block Grant program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The Department estimates that each of its 1,013 grantees will annually use, on average, 125 hours to keep records (non-IDIS recordkeeping) on their CDBG activities, and 305 hours to prepare reports on activities (both IDIS-generated and non-IDIS reports).

570.506 (recordkeeping) (on-going): 1,013 × 125 hours = 126,625 hours.

570.507 (reporting) 1,103 × 305 hours = 308,965 hours

Total burden hours = 435,590.

(Quarterly and annual reports from IDIS, annual total) 1,013 × 284 = 287,692 hours.

(Non-IDIS reports, Supplemental Annual): 1,013 × 21 hours = 21,273.

Total reporting hours = 308,965.

Status of the proposed information collection: Reinstatement, with change; of a previously approved collection for which approval is near expiration and request for OMB renewal for three years. The current OMB approval expires in September 2000.

This report does not include hours spent on Consolidated Plan preparation and submission. Those hours are reported with 2606–0117.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 10, 2000.

Cardell Cooper,

Assistant Secretary for Community Planning and Development

[FR Doc. 00–17821 Filed 7–13–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–28]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 6, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–17522 Filed 7–13–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meeting of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on August 2 and 3 is to convene the full Advisory Committee and receive input on the first draft of the National Invasive Species Management Plan. The meeting will be open to the public. Attendance will be limited to space available.

DATES: Meeting of Invasive Species Advisory Committee: 9 a.m., Wednesday, August 2, 2000 and Thursday, August 3, 2000.

ADDRESSES: Warwick Hotel, 401 Lenora Street, Seattle, WA 98121. The meeting will be in the Cambridge Room.

FOR FURTHER INFORMATION CONTACT: Kelsey Passé, National Invasive Species Council Program Assistant; Email: kelsey_passe@ios.doi.gov; Phone: (202) 208–6336; Fax: (202) 208–1526. Further information is also available at www.invasivespecies.gov.

Dated: July 10, 2000.

Gordon Brown,

National Invasive Species Council.

[FR Doc. 00–17861 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Tewaukon National Wildlife Refuge, Cayuga, ND

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Tewaukon National Wildlife Refuge Draft Comprehensive Conservation Plan and Environmental Assessment. This Plan describes how the FWS intends to manage the Tewaukon NWR Complex for the next 10–15 years.

ADDRESSES: A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, Tewaukon NWR Complex, 9754 143½ Avenue SE, Cayuga, ND 50813.

The Plan can also be obtained electronically through the U.S. Fish and Wildlife Service Region 6 Land Acquisition and Refuge Planning HomePage. The Internet address to access the Plan is as follows: http://www.r6.fws.gov/larp/. Select the link to "CCP Status in Region 6," click on North Dakota on the Region 6 map, and look under the "Refuge" column for links to the Tewaukon Draft CCP.

FOR FURTHER INFORMATION CONTACT: Allison Banks, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225. 303/236–8145 extension 626; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: Tewaukon NWR Complex is located in southeast North Dakota. Implementation of the Plan will focus on adaptive resource management of glaciated prairie wetlands, tall and mixed grass prairie grasslands, riparian woodlands, and opportunities for wildlife-dependent recreation. Habitat monitoring and evaluation will be emphasized as the Plan is implemented. Opportunities for compatible wildlife-dependent recreation will continue to be provided.

The comment period for this document will be reopened until August 14, 2000. All comments need to be addressed to: Allison Banks, Refuge Planner, Branch of Refuge Planning, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, Colorado 80225.

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Dated: July 10, 2000.

Elliott Sutta,

Regional Director, Denver, Colorado.

[FR Doc. 00–17837 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–022–1320–DB]

Notice of Availability

AGENCY: Bureau of Land Management (BLM), Montana, Miles City Field Office, Interior.

ACTION: Notice of availability of the environmental assessment, Powder River resource area resource mangement plan amendment (PRRA RMP), and request for public comment on the fair market value (FMV) and maximum economic recovery (MER) report for Spring Creek Coal Company, Powder River coal region, Big Horn County, Montana.

SUMMARY: The Bureau of Land Management announces the availability of the Environmental Assessment (EA) and RMP Amendment for Spring Creek Coal Company's Federal Coal Lease Application MTM 88405 and the Finding of No Significant Impact (FONSI) for the federal coal resources subject to the federal lease application. This preferred alternative would amend the Powder River Resource Management Plan (1985) if certain federal coal leasing unsuitability designations on or adjacent to the federal coal tracts are changed. The analysis is based on existing statutory requirements and will meet the requirements of the Federal Land Policy and Management Act (FLPMA) of 1976 and the Surface Mining Control and Reclamation Act (SMCRA) of 1977. The public is invited to submit written comments on the FMV, and MER. Notice is also given that a public hearing on the EA, FMV and MER will be held on Tuesday, August 1, 2000, at 1:00 p.m., Mountain Daylight Time, at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana.

On June 26, 1998, Spring Creek Coal Company (SCCC) filed an application with the BLM to lease a 150 acre tract containing about 19.8 million tons of federally owned coal reserves near the Spring Creek Coal Mine. On June 3, 1998, Spring Creek Coal Company filed an application with the State of Montana Department of Natural Resources and Conservation (DNRC) to lease a 479 acre state owned coal tract. The tract, which would consist of three separate state leases, contains an estimated 62.1 million tons of state owned coal.

As Co-Lead Agencies, the BLM and Montana DNRC prepared one EA to evaluate the impacts of coal mining which would result from leasing the tracts of federal and state coal.

The resource management planning process includes an opportunity for review of BLM's decisions through a plan protest to the Director of the BLM. Any person or organization who participated in the planning process and has an interest which is or may be adversely affected by the approval of BLM's decisions in the resource management plan amendment may protest the plan. Careful adherence to the following guidelines will assist in preparing a protest which will assure the greatest consideration for your viewpoint.

Only those persons or organizations who participated in the planning process may protest the plan.

A protesting party may raise only those issues which were commented on during the planning process.

Additional issues may be raised at any time and should be directed to the Miles City Field Office for consideration in plan implementation, as potential plan amendments, or as otherwise appropriate.

DATES: The protest period lasts 30 days and begins the day the Notice of Availability for this document is published in the **Federal Register**. There is no provision for an extension of time. Protests filed late, or filed with the State Director or Field Office Manager shall be rejected by the Director. In order to be "timely", your protest must be sent to the Director of BLM and must be postmarked no later than August 14, 2000. Although not a requirement, sending your protest by certified mail, return receipt requested, is recommended.

The comment period on the FMV and MER also lasts 30 days. Comments on FMV and MER must be received on or before August 14, 2000 and should be sent to Randy Heuscher, Chief Branch of Solid Minerals, Montana State Office, P.O Box 36800, Billings, Montana 59107. The public hearing on the EA, FMV and MER will be held on Tuesday, August 1, 2000, at 1:00 p.m., Mountain Daylight Time, at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana.

ADDRESSES: All protests must be filed in writing to: Director, Bureau of Land Management, Attention: Miss Brenda Williams, Protests Coordinator, 1849 C Street N.W., WO–210/LS–1075, Department of the Interior, Washington, D.C. 20240.

Overnight mail address: Director, Bureau of Land Management, Attention: Miss Brenda Williams, Protests Coordinator, 1620 L Street N.W., Room 1075, Washington, D.C. 20036.

To expedite consideration, in addition to the original sent by mail, a copy may be sent by: FAX (202) 452–5112; or Email to *bhudgens@wo.blm.gov*.

In order to be considered complete, your protest must contain, at a minimum, the following information:

1. The name, mailing address, telephone number and interest of the person filing the protest.

2. A statement of the issue being protested.

3. A statement of the portion of the plan being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, and maps in the proposed plan.

4. A copy of all documents addressing the issue submitted during the planning process or a reference to the date the issue was discussed for the record.

5. A concise statement explaining why the BLM State Director's decision is believed to be incorrect is a critical part of the protest. Take care to document all relevant facts and to reference or cite the planning documents, environmental analysis documents, and available planning records (meeting minutes, summaries, correspondence). A protest without data will not provide BLM with the benefit of your information and insight, and the Directors review will be based on the existing analysis and supporting data.

At the end of the 30-day protest period, the BLM may issue a Decision Record, approving implementation of any portion of the proposed plan not under protest. Approval will be withheld on any portion of the plan under protest with BLM until the protest is resolved.

At the end of the 30 day protest period, the Montana DNRC may issue a Decision Record for the minerals they administer.

Comments on the FMV and MER should be sent to Randy Heuscher, Chief Branch of Solid Minerals, Montana State Office, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Dan Benoit, Project Leader, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301, phone (406) 232–7001 ext. 3646. Copies of the EA are also available from this address.

SUPPLEMENTARY INFORMATION: In accordance with the Federal coal

management regulations at 43 CFR 3422 and 3425, not less than 30 days prior to publication of a notice of sale, the Secretary shall solicit public comments on the proposed sale, fair market value, and maximum economic recovery on the proposed lease tract. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59102, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Comments should be sent to the Bureau of Land Management, P.O. Box 36800, Billings, Montana 59017–6800, and should include, but not necessarily be limited to the following:

1. The quality and quantity of the coal resources;

2. The mining method or methods which would achieve maximum economic recovery of the coal including specification of the seams to be mined, timing and rate of production, restriction to mining, and inclusion of the tract in an existing mining operation; and

3. The fair market value appraisal including but not limited to the evaluation of the tract as an incremental unit of an existing mine, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate, and any comparable sales data of similar coal lands.

The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

The EA addresses the cultural, socioeconomic, environmental and cumulative impacts that would likely result from leasing these coal lands. The Proposed Action and two alternatives are addressed in the EA:

Proposed Action—would involve leasing the coal tracts containing about 82 million tons of state and federal coal. Certain coal leasing unsuitability designations for wildlife habitat concerns attached to the federal lease tract would require mitigation in order to lease the coal.

Alternative A (Preferred Alternative)—would involve leasing the coal tracts as well as redesignating certain coal leasing unsuitability designations established for wildlife habitat concerns adjacent to the proposed lease tracts and to the Spring Creek Mine property in general.

Alternative B—would reject or deny the federal coal lease application. The federal coal lands would not be offered for lease.

The lands included in the coal lease applications are located in Big Horn County, Montana and are described as follows:

Federal Lease Tract MTM 88405

T. 8 S., R. 39 E., P.M.M.

Sec. 13: SW¼SW¼SW¼, SW¼SE¼SW¼SW¼;
Sec. 14: S½SW¼NE¼SE¼, S½NE¼SE¼SE¼, NW¼NE¼SE¼SE¼, S½SE¼SE¼, NW¼SE¼SE¼;
Sec. 23: NE¼NE¼, SE¼SW¼NW¼NE¼, N½SW¼NW¼NE¼, E½NW¼NE¼;
Sec. 24: NW¼SE¼NW¼NW¼, N½SW¼NW¼NW¼, N½NW¼NW¼.

150 acres, more or less.

State of Montana Lease Tracts

Lease C–1099–XX.

T. 8 S., R., 39 E., P.M.M.

Sec. 14: S½S½NW¼, SW¼, W½SE¼.

Lease C–1100–XX.

T. 8 S., R., 39 E., P.M.M.

Sec. 15: NE¼SW¼SE¼, SE¼SE¼, N½SE¼, S½SE¼NE¼.

Lease C–1101–XX.

T. 8 S., R., 39 E., P.M.M.

Sec. 23: N½N½NW¼, NW¼NW¼NE¼.

479.16 acres, more or less.

The BLM and Montana DNRC are also coordinating the preparation of a mineral evaluation pursuant to 77–3–312, MCA, covering the state coal tracts. This document is available for review and comment from Montana DNRC. For further information, or to obtain a copy of the mineral evaluation, contact Monte Mason, Montana DNRC, phone (406) 444–3843.

Dated: June 26, 2000.

Timothy M. Murphy,

Field Manager.

[FR Doc. 00–17218 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1990–EX]

Notice of Intent To Prepare an Environmental Impact Statement for the Oil-Dri Corporation Reno Clay Project Plan of Operations

AGENCY: Bureau of Land Management, Carson City Field Office, Carson City, Nevada

ACTION: Notice of intent to prepare an environmental impact statement (EIS) for the Oil-Dri Corporation Reno Clay Project mining plan of operations; and notice of scoping period and public meetings.

SUMMARY: The Bureau of Land Management (BLM), Carson City Field Office will direct the preparation of an EIS to be produced by a third-party contractor on the impacts (direct, indirect, and cumulative) of a proposed clay mining operation in Washoe County, Nevada. The BLM invites comments on the scope of the analysis.

DATES: One public scoping meeting will be held on August 8, 2000 to allow the public an opportunity to identify issues and concerns to be addressed in the EIS. Representatives of the BLM and Oil-Dri Corporation will be available to answer questions about the proposed Reno Clay Project and the EIS process. Comments will be accepted until August 21, 2000.

The scheduled public meeting is:

Reno, NV (5:30–7:30 p.m.)—August 8, 2000.

Reno-Sparks Convention Center, North Meeting Room B–1, 4590 S. Virginia St., Reno, NV.

A Draft EIS (DEIS) is expected to be completed by December, 2000 and made available for public review and comment. At that time a Notice of Availability (NOA) of the DEIS will be published in the **Federal Register**. The comment period on the DEIS will be 60 days from the date the NOA is published.

FOR FURTHER INFORMATION: Scoping comments may be sent to: Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701. ATTN: Clay EIS Project Manager. For additional information, write to the above address or call Terri Knutson, EIS Project Manager at (775) 885–6156.

SUPPLEMENTARY INFORMATION: In July 1999 Oil-Dri Corporation of Nevada submitted a plan of operations to the BLM Carson City Field Office for a clay mining operation in Hungry Valley. The plan of operations was held in abeyance pending a determination of locatability

under the mining law until May 2000 when the clay mineral was determined locatable by BLM mineral examiners. At that time processing of the plan of operations commenced and BLM managers determined an environmental impact statement (EIS) would be prepared to analyze potential impacts resulting from the mining operations. The proposed mining operation would occur in phases over 20 years, in two pits, on a total of 340 acres of the 6,000 acres of mining claims Oil-Dri holds in the area. The processing plant for drying, crushing, and packaging of the clay material (cat litter) would be located on Oil-Dri private land located to the south of the mine area. Initially, the mine and processing plant would employ approximately 50 individuals, with an increase to 100 employees over time with expanded production.

The EIS will address issues brought forth through scoping comments and will be evaluated by an interdisciplinary team of specialists. A range of alternatives and mitigating measures will be considered to evaluate and minimize environmental impacts and to assure that the proposed action does not result in undue or unnecessary degradation of public lands.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM decision on the proposed plan of operations are invited to participate in the scoping process with respect to this environmental analysis. These entities and individuals are also invited to submit comments on the DEIS.

It is important that those interested in the proposed activities participate in the scoping and commenting processes. Comments should be as specific as possible.

The project schedule is as follows:

Begin Public Comment Period—July, 2000.
Issue Draft EIS—December 2000.
Issue Final EIS—May 2001.
Issue Record of Decision—June 2001.

The BLM's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives; (3) notification of interested groups, individuals, and agencies so that additional information concerning these issues, or other issues, can be obtained.

Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m.–5:00 p.m.), Monday through Friday and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: July 10, 2000.

John Singlaub,

Manager, Carson City Field Office.

[FR Doc. 00–17838 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–930–1060–JJ–241E]

Notice of Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: A public hearing is scheduled at the Bureau of Land Management State Office. A formal hearing will be conducted to receive statements from the public concerning the use of helicopters and motor vehicles in wild horse gather operations within Idaho for calendar year 2000.

DATE AND TIME: July 27, 2000, 6–8 p.m. Location at the B.L.M.'s Idaho State Office, Sagebrush/Ponderosa Room, 1387 South Vinnell Way, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Mike Courtney, Rangeland Management Specialist, Salmon Field Office, Highway 93 South, Route 2, Box 610, Salmon, Idaho 83467, telephone (208) 756–5469, or Sam Mattise, Wild Horse and Burro Specialist, Boise Field Office, 3948 Development Avenue, Boise, Idaho 83705, telephone (208) 384–3356.

The meeting is open to the public and interested persons may make oral statement on the subject. All statements will be recorded.

Dated: June 27, 2000.

Kate Kitchell,

Lower Snake River District Manager.

[FR Doc. 00–17856 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–ET; WYW 67917]

Public Land Order No. 7458; Revocation of Bureau of Land Management Order Dated August 17, 1948, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes, in its entirety, a Bureau of Land Management order insofar as it affects 7,016.29 acres of public lands withdrawn for the Bureau of Reclamation's Missouri Basin Project, Big Horn Unit No. 3. The lands are no longer needed for reclamation purposes. Of the lands included in this revocation, 4,536.29 acres will not be opened to surface entry and mining until the completion of a planning review. These lands have been and will remain open to mineral leasing. The remaining 2,480 acres have been conveyed out of Federal ownership and the revocation on this portion is a record-clearing action only.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828 (MS–921), Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Bureau of Land Management Order dated August 17, 1948, which withdrew the following described lands for the Bureau of Reclamation's Missouri Basin Project, Big Horn Unit 3, is hereby revoked in its entirety:

Sixth Principal Meridian

T. 49 N., R. 92 W.,
Secs. 7, 18, 19, 30, and 31.
T. 49 N., R. 93 W.,
Sec. 12, NW¼NW¼, S½NW¼, SW¼, NW¼SE¼, and S½SE¼
Secs. 13, 24, 25, and 36.

The areas described aggregate 7,016.29 acres in Big Horn County.

2. The following described public lands, which are included in paragraph 1, will not be opened to until a planning review and analysis are completed to determine if any of these lands need special designation and protection or have exchange potential:

Sixth Principal Meridian

T. 49 N., R. 92 W..
Sec. 18, lots 6 to 9, inclusive;

Sec. 19, lots 5 to 13, inclusive;
Sec. 30, lots 5 to 18, inclusive;
Sec. 31, lots 5 to 15, inclusive.
T. 49 N., R. 93 W.,
Sec. 12, NW¼NW¼, S½NW¼, SW¼, NW¼SE¼, and S½SE¼;
Secs. 13, 24, 25, and 36.
The area described contains 4,536.29 acres in Big Horn County.

3. The remaining lands, which comprise 2,480 acres, have been conveyed out of Federal ownership and this is a record-clearing action only. A more specific legal description of these private lands may be obtained by contacting the address or phone number listed above.

Dated: June 26, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–17855 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–7130–BJ–7334–241A]

Colorado: Filing of Plats of Survey

June 29, 2000

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., June 29, 2000. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines and section 21, and the dependent resurvey of the subdivision of sections 20 and 22 in T. 33 N. R. 10 W., New Mexico Principal Meridian, Group 1064, Colorado, was accepted May 9, 2000.

This survey was requested by the Bureau of Indian Affairs for administrative purposes.

The plat representing the dependent resurvey of portions of the Montezuma Townsite and Mineral Survey No. 1292 B, Monarch Millsite, and a metes and bounds survey in the northwest quarter of the northeast quarter of section 35, T. 5 S., R. 76 W., Sixth Principal Meridian, Group 1258, Colorado was accepted April 25, 2000.

This survey was requested by the Forest Service for administrative purposes.

The plat, in 6 sheets, representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and certain mineral claims in section 1, and the subdivision survey of section 1 and a metes-and-bounds survey in section 1, T. 1 N., R. 73 W., Sixth Principal Meridian, Group 875, Colorado, was accepted April 26, 2000.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, and certain homestead entry surveys, and the subdivision of certain sections in T. 11 N., R. 102 W., Sixth Principal Meridian, Group 1219, Colorado, was accepted April 14, 2000.

The plat representing the dependent resurvey of portions of the subdivisional lines, and certain tracts, and the subdivision of certain sections in T. 11 N., R. 101 W., Sixth Principal Meridian, Group 1219, Colorado, was accepted April 14, 2000.

The plat, in 2 sheets, represents the dependent resurvey of a portion of the subdivisional lines, and the dependent resurvey of certain mineral claims, and the subdivision of sections 16 and 17, and the metes-and-bounds survey of certain lot lines, T. 22 S., R. 72 W., Sixth Principal Meridian, Group 1166, Colorado, was accepted April 11, 2000.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 26, T. 2 N., R. 78 W., Sixth Principal Meridian, Group 1259, Colorado, was accepted April 6, 2000.

The plat representing the dependent resurvey of the west boundary (Ute Meridian) and a portion of the north boundary, subdivisional lines, and the subdivision of section 6, and the subdivision of a portion of section 6, and the meanders of the present right bank of the Gunnison River of section 6 in Fractional T. 2 S., R. 1 E., Ute Meridian, Group 1163, Colorado, was accepted June 21, 2000.

The plat representing the dependent resurvey of a portion of the north boundary, and the survey of the boundary between lots 1 and 2 in section 1, of Fractional T. 2 S., R. 1 W., Ute Meridian, Group 1163, Colorado, was accepted June 21, 2000.

The plat representing the dependent resurvey of a portion of the east boundary (Ute Meridian), and the survey of the boundary between lots 12 and 14, of section 36, the survey of the partition line between sections 31 and 36, and the meanders of the present right bank of the Gunnison River in lot 14 of section 36, and the informative traverse of the meanders of the present right bank of the Gunnison River in lot 12, of section 36, T. 1 S., R. 1 W., Ute Meridian, Group 1163, Colorado, was accepted June 21, 2000.

The plat representing the dependent resurvey of a portion of the subdivisional lines and portions of certain mineral surveys the subdivision of section 28, and the remonumentation of certain original corners, T. 20 S., R. 71 W., Sixth Principal Meridian, Group 1209, Colorado, was accepted June 5, 2000.

The plat representing the dependent resurvey of a portion of the east boundary, subdivisional lines, and the subdivision of section 13, and the subdivision of a portion of section 13, T. 1 S., R. 2 E., Ute Meridian, Group 1204, Colorado, was accepted May 24, 2000.

The plat representing the metes-and-bounds survey of a portion of the centerline of Colorado State Highway No. 64 with ties to certain tract corners in sections 29 and 32, T. 1 N., R. 95 W., Sixth Principal Meridian, Group 1226, Colorado, was accepted May 24, 2000.

The plat representing the dependent resurvey of certain mineral surveys designed to restore the corners in their true original locations according to the best available evidence in suspended T. 42 N., R. 7 W., New Mexico Principal Meridian, Group 1239, Colorado, was accepted May 11, 2000.

The plat representing the entire record of the dependent resurvey of certain mineral surveys designed to restore the corners in their true original locations according to the best available evidence in suspended T. 42 N., R. 7 W., New Mexico Principal Meridian, Group 1239, Colorado, was accepted May 11, 2000.

The plat representing the entire record of the dependent resurvey of M.S. No. 2140B, Buckingham Mill Site, and M.S. No. 5112B, May B. Mill Site, in suspended T. 43 N., R. 7 W., New Mexico Principal Meridian, Group 1206, Colorado, was accepted May 11, 2000.

The plat, in 5 sheets, representing the dependent resurvey of certain mineral claims designed to restore the corners in their true original locations according to the best available evidence, suspended T. 42 N., R. 7 W., New Mexico Principal Meridian, Group 1206, Colorado, was accepted May 11, 2000.

The plat represents the dependent resurvey of a portion of the South boundary and a portion of the South boundary and a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and the subdivision surveys of certain sections, T. 1 S., 81 W., Sixth Principal Meridian, Group 1232, Colorado, was accepted May 4, 2000.

The supplemental plat creating new lot 26 in the North ½ of section 13, T. 15 S., R. 70 W., Sixth Principal

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Meridian, Colorado, was accepted April 3, 2000.

The supplemental plat creating new lot 13 from the portion of unpatented M.S. 1516, Little Wonder Lode excluded from M.S. 18519, Susie, Nettie, and Little May Lodes, in the SW ¼ of Section 32, T. 41 N., R. 11 W., New Mexico Principal Meridian, Colorado, was accepted April 10, 2000.

These surveys were requested by the BLM for Administrative Purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 00–17857 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement for Anacapa Island Restoration Plan Channel Islands National Park, Ventura County, California; Notice of Availability

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 81–190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of eradicating the Black rat on Anacapa Island. This DEIS identifies and analyzes the effects of a proposed action and five alternatives for accomplishing the following objectives: (1) Eradication of the introduced Black rat on Anacapa Island; (2) emergency response for accidental introductions of rodents on Anacapa, Santa Barbara, Prince, and Sutil Islands; and (3) prevention strategies to reduce the potential for rodents to be accidentally introduced to Park islands. The proposed action was developed in concert with the Island Conservation and Ecology Group and is based on other successful island rat eradication efforts worldwide. Actions to manage existing and potential Black rat infestations is necessary because of the ecological impacfs that it is having on Anacapa Island, and the potential negative impact they would have if introduced to other Park islands.

Proposal: The actions proposed for eradicating rats on Anacapa Island-identified in the DEIS as Alternative Two-are modeled after other island rate eradication projects that have successfully been completed worldwide. Due to the steep cliffs of the island, an aerial broadcast is necessary to deliver rodenticide to every rat's territory, a condition that has to be met to accomplish eradication. This broadcast effort would use a rodent bait containing brodifacoum. The proposed target date is the late fall period; which is the optimum period to apply the bait for three reasons: (1) the Endangered brown pelicans are not breeding on the island; (2) rats are in decline due to lack of available food sources, which would cause them to eat the bait more readily; and (3) onset of the rainy season would expedite the degradation of any residual bait not consumed by the target species. East islet would be treated in November/December of Year 1, and Middle islet would be treated in November/December in Year 2. Approximately 20ha of Middle Island would be treated in Year 1 and may be treated intermittently throughout Year 2 to prevent rats from re-invading East Island from Middle Island. The population size of the rats on Anacapa fluctuates between about 750–2000 total, depending on local conditions.

Alternatives: After identifying the significant environmental issues associated with the proposed action, the Park began developing alternatives to the proposed action. Modifying the eradication strategies to address the environmental issue concerns was the basis the Park used to develop five alternatives, as follows: Alternative One (no-action) would maintain existing management. Alternative Three would utilize bait stations for the top of islands and aerial broadcast the cliffsides and use the rodent bait containing brodifacoum. Alternative Four would use an aerial broadcast of a rodent bait containing bromadiolone. Alternative Five would use bait stations for the top of islands and aerial broadcast the cliffsides with the rodent bait bromadiolone. Alternative Six would aerial broadcast a rodent bait containing diphacinone followed by a rodent bait containing brodifacoum. Mitigation measures for implementing each alternative are identified, and elements common to all action alternatives include: (1) Implementation of a Non-native Rodent Introduction Prevention Plan; (2) Protection of Native Anacapa Deer Mouse Population; and (3) Implementation of the Rate Detection Response Plan.

Comments and Supplementary Information: The DEIS is now available for public review. Interested persons and organizations wishing to express any concerns or provide relevant information are encouraged to contact the Superintendent, Channel Islands National Park, 1901 Spinnaker Dr. Ventura, California, 93001, or via telephone at (805) 658–5700. The document may be obtained from the park, and is also available at the Ventura local library and on the Park's website *(http:www.nps.gov/chis/naturalresources/AIRP.html).*

All written comments must be postmarked not later than 60 days from the date of the Environmental Protection Agency's notice of DEIS filing in the **Federal Register** (anticipated to be approximately September 12, 2000). If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision: After the formal DEIS review period has concluded, all comments and suggestions received will be considered in preparing a final EIS. Currently the final EIS is anticipated to be completed during fall, 2000; its availability will be similarly announced in the **Federal Register.** Subsequently a Record of Decision would be executed no sooner than 30 (thirty) days after release of the final EIS. The official responsible for the final decision is the Regional Director, Pacific West Region; the official responsible for implementation is the Superintendent; Channel Islands National Park.

Dated: June 29, 2000.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 00–17429 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 8, 2000. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC

20240. Written comments should be submitted by July 31, 2000.

Carol D. Shull,

Keeper of the National Register.

California

Monterey County: Steinbeck, John, House, 132 Central Ave., Salinas, 00000856

Connecticut

Hartford County: Manchester Historic District, Roughly bounded by Center Spring Park, Main St., I–384 and Campfield Rd., Manchester, 00000857

Kentucky

Estill County:

Irvine Grade School, 228 Broadway, Irvine, 00000865

Irvine Historic Business District, Roughly the jct. of KY 52 and KY 89, Irvine, 00000866

Jackson County: Lakes, Arthur, Log House, 401 Lakes Creek Rd., McKee, 00000867

Jefferson County: Lee, Addison W., House, 4218 Upper River Rd., Louisville, 00000868

Wirth, Lang and Company—The Louisville Leather Company Tannery Building, 711–715 Brent St., Louisville, 00000869

Jessamine County: Camp Nelson, US 27, Nicholasville, 00000861

Kenton County: Moser Family Houses, 1224 and 1226 Highway Ave., Covington, 00000858

McCracken County: Home of the Friendless, 1335 Burnett St., Paducah, 00000860

Warren County: Shake Rag Historic District, Roughly bounded by US 31W Bypass, Chestnut St., E. 5th Ave. and College St., Bowling Green, 00000859

Maryland

Baltimore Independent city: Eastern High School, 101 E 33rd St., Baltimore, 00000870

Massachusetts

Plymouth County: Winslow, Isaac, House, 64 Careswell St., Marshfield, 00000872

Suffolk County: Dearborn School, 25 Ambrose St., Boston, 00000871

Montana

Lewis and Clark County: Wick—Seiler House, 729 11th Ave., Helena, 00000873

Missoula County: Lenox Flats (Missoula MPS), 300–306 West Broadway, Missoula, 00000874

New Mexico

Taos County: Black Copper Mine and Stamp Mill, Black Copper Canyon Rd., Red River, 00000875

New York

Allegany County: West Almond Churches, Cty. Rte. 2, West Almond, 00000876

Chemung County: Christ Episcopal Church, (Historic Churches of the Episcopal Diocese of Central New York MPS), 117 Main St., Wellsburg, 00000879

Columbia County:

Donnelly House, Cty. Rd. 5, New Lebanon, 00000880

Riders Mills Historic District, NY 66, Bachus Rd., Riders Mills Rd., Chatham, 00000877

Tioga County: Grace Episcopal Church, (Historic Churches of the Episcopal Diocese of Central New York MPS), 445 Park Ave., Waverly, 00000878

North Carolina

Gates County: Rountree Family Farm, 049 NC 37 N, Gatesville, 00000881

Pennsylvania

Greene County: Kent, Thomas, Jr., Farm, 208 Laurel Rd., Waynersburg, 00000882

Texas

Burnet County: Briggs State Bank, Loop 308, approx. 0.5 mi. N of jct. with US 183, Briggs, 00000885

Comal County: Groos, Carl W.A., House, 228 S. Seguin St., New Braunfels, 00000884

Harris County: Rothko Chapel, 1409 Sul Ross Ave., Houston, 00000883

Virginia

Alexandria Independent city: Bruin's Slave Jail, 1707 Duke St., Alexandria, 00000890

Fluvanna County:

Glen Burnie, US 15, 0.25 mi. N of Palmyra, Palmyra, 00000893

Melrose, VA 640, SW of jct. of VA 640 and VA 650, Fork Union, 00000892

Isle Of Wight County: Windsor Castle Farm, 301 Jericho Rd., Smithfield, 00000897

Lancaster County: Irvington, King Carter Drive and Irvington Road, Irvington, 00000895

Lexington Independent city: Reid—White—Philbin House, 208 W. Nelson St., Lexington, 00000889

Petersburg Independent city:

Lee Memorial Park, 1832 Johnson Rd., Petersburg, 00000896

Peabody Building of the Peabody—Williams School, Jones St., Petersburg, 00000891

Richmond Independent city:

Church Hill North Historic District (Boundary Increase), Roughly bounded by 25th St., T St., 32nd St. and M St., Richmond, 00000887

Manchester Industrial Historic District, Roughly bounded by Perry St., James R., Mayo's Bridge, Maury St., and 10th St., Richmond, 00000886

Smyth County: Marion Historic District, Roughly along Main, Cherry, Strother, Lee, North College and College Sts., Marion, 00000888

Surry County: Cedar Ridge, 4861 Laurel Dr., Disputanta, 00000894

A request for REMOVAL has been made for the following resources:

Alaska

Yukon-Koyukuk County: Taylor, James, Cabins (Yukon River Lifeways TR), Right Bank of the Yukon opposite Fourth of July Creek, Eagle vicinity, 87001203

Minnesota

Goodhue County: Roscoe Store (Goodhue County MRA), Co. Hwy. 11 Pine Island, 80002055

Hennepin County: Dania Hall, Corner of 5th St. and Cedar Ave. Minneapolis, 74001020

Lac Qui Parle County: Hotel Lac qui Parle 202 6th Ave. Madison, 90001820

Redwood County: Milroy Block (Redwood County MRA), Euclid Ave. and Cherry St. Milroy, 80002136

Steele County: Owatonna High School 333 E. School St., Owatonna, 86002124

Big Stone County: Shannon Hotel, Studdart Ave. and 2nd St., Graceville, 85001773

Wright County:

Marsh Octagon Barn (Wright County MRA), Off Co. Hwy. 14, Rockford, 79001278

Middleville Township Hall (Wright County MRA), CR 6, Howard Lake vicinity, 79001271

Oregon

Multnomah County: Clarke—Woodward Drug Company Building, 911 NW Hoyt, Portland, 89000121

[FR Doc. 00–17922 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Animas-La Plata Project, Colorado and New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Supplemental Environmental

Impact Statement for the Animas-La Plata Project.

INT–FES–00–23.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a Final Supplemental Environmental Impact Statement (FSEIS) for the Animas-La Plata Project (ALP). The proposed federal action is to implement the Colorado Ute Indian Water Rights Settlement Act of 1988 (Pub. L. 100–585) (Settlement Act) by providing the Colorado Ute Tribes an assured long-term water supply and water acquisition fund in order to satisfy the Tribes' senior water rights claims as quantified in the Settlement Act, and to provide for identified municipal and industrial water needs in the project area.

ADDRESSES: Copies of the FSEIS may be obtained from Mr. Pat Schumacher, Four Corners Division Manager, Bureau of Reclamation, 835 East Second Avenue, Suite 300, Durango, Colorado 81301–5475; telephone: (970) 385–6590. The document is available on CD–ROM or the Internet at http://www.uc.usbr.gov under the Environmental Studies, Summaries & Reports heading.

Copies of the FSEIS are also available for public review and inspection at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, N.W., Washington, D.C. 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 67, Denver, Colorado 80225.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138.
- Bureau of Reclamation, Four Corners Division of the Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado 81301–5475.
- Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, Colorado 81506.
- Local Affairs Department/Division of Local Government, Attention: Charles Unseld, 1313 Sherman Street, Room 521, Denver, Colorado 80203.
- Energy, Minerals and Natural Resources Department, Attention: Jennifer A. Salisbury, Secretary, 2040 South Pacheco Street, Santa Fe, New Mexico 87505.

Libraries

Copies will also be available for public review and inspection at the following public libraries:

Colorado

Colorado State University Library, Ft. Collins
Cortez City Library
Denver City Library
Durango High School Library
Durango Public Library
Ft. Lewis College Library, Durango
University of Northern Colorado Library, Greeley
University of Denver, Penrose Library, Denver
University of Colorado, Norlin Library, Boulder

New Mexico

Albuquerque Public Library
Alturian Public Library, Aztec
Bloomfield City Library
Farmington Public Library
Navajo Community College Library, Shiprock
New Mexico State Library, Santa Fe
New Mexico State University Library, Las Cruces
San Juan College Library, Farmington
University of New Mexico Library, Albuquerque
Zimmerman Library, Albuquerque

FOR FURTHER INFORMATION CONTACT: Mr. Pat Schumacher, Four Corners Division Manager, Bureau of Reclamation, 835 East Second Avenue, Suite 300, Durango, Colorado 81301–5475; telephone (970) 385–6590.

SUPPLEMENTARY INFORMATION: The Draft Supplemental Environmental Impact Statement for the Animas-La Plata Project (DSEIS) was issued on January 14, 2000. Responses to comments received from interested organizations and individuals on the DSEIS are addressed in the FSEIS. The FSEIS evaluates the environmental impacts of ten alternatives for final implementation of the Settlement Act. One of the alternatives analyzed is the Administration Proposal to finalize the Colorado Ute Settlement which includes a down-sized version of the original project. The Administration proposal also includes a non-structural element which allows for the acquisition of additional water supplies to the Ute tribes. The FSEIS identifies a Preferred Alternative, Refined Alternative 4 (a refined version of the Administration Proposal), which achieves the fundamental purpose of implementing the 1988 Settlement Act by securing the Colorado Ute Tribes an assured long-term water supply in satisfaction of their water rights as well as for identified municipal and industrial water needs in the project area.

The FSEIS will be used by decisionmakers in Reclamation and the Department of the Interior. A record of decision can be executed 30 days after publication of release of the FSEIS in the **Federal Register**. The record of decision will state the action that will be implemented and will discuss all factors leading to the decision.

Dated: July 5, 2000.

Terrence N. Martin,

Acting Director, Office of Environmental Policy and Compliance, Department of the Interior.

[FR Doc. 00–17638 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 18, 2000 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–639–640 (Review)(Forged Stainless Steel Flanges from India and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 26, 2000.)
5. Inv. No. 731–TA–663 (Review)(Paper Clips from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 28, 2000.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 11, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17989 Filed 7–12–00; 10:43 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 17, 2000, American Radiolabeled Chemical, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Phencyclidine (7471)	II
Hydromorphone (9150)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compound.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 12, 2000.

Dated: June 26, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–17916 Filed 7–13–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 19, 2000, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 12, 2000.

Dated: June 29, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–17918 Filed 7–13–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 15, 2000, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II

The firm plans to bulk manufacture amphetamine and methamphetamine to produce products for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 12, 2000.

Dated: June 29, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–17917 Filed 7–13–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 28, 2000, and published in the **Federal Register** on April 4, 2000, (65 FR 17675), Pressure Chemical Company, 3419 Spellman Street, Pittsburgh, Pennsylvania 15201, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2, 5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to bulk manufacture 2, 5-dimethoxyamphetamine for distribution to its customers.

No comment or objectives have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Pressure Chemical Company to manufacture 2, 5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated Pressure Chemical Company to ensure that the company's continued registration is consistent with the public interest. These investigations included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR

0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 29, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–17919 Filed 7–13–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
- MA000006 (Feb. 11, 2000)
- MA000008 (Feb. 11, 2000)
- MA000009 (Feb. 11, 2000)
- MA000010 (Feb. 11, 2000)
- MA000013 (Feb. 11, 2000)
- MA000017 (Feb. 11, 2000)
- MA000019 (Feb. 11, 2000)
- MA000020 (Feb. 11, 2000)
- MA000021 (Feb. 11, 2000)

Volume II

District of Columbia
- DC000001 Feb. 11, 2000)
- DC000003 Feb. 11, 2000)

Maryland
- MD000006 (Feb. 11, 2000)
- MD000010 (Feb. 11, 2000)
- MD000012 (Feb. 11, 2000)
- MD000034 (Feb. 11, 2000)
- MD000035 (Feb. 11, 2000)
- MD000040 (Feb. 11, 2000)
- MD000048 (Feb. 11, 2000)
- MD000056 (Feb. 11, 2000)
- MD000057 (Feb. 11, 2000)
- MD000058 (Feb. 11, 2000)

Virginia
- VA000005 (Feb. 11, 2000)
- VA000022 (Feb. 11, 2000)
- VA000023 (Feb. 11, 2000)
- VA000025 (Feb. 11, 2000)
- VA000031 (Feb. 11, 2000)
- VA000033 (Feb. 11, 2000)
- VA000036 (Feb. 11, 2000)
- VA000067 (Feb. 11, 2000)
- VA000078 (Feb. 11, 2000)
- VA000079 (Feb. 11, 2000)
- VA000085 (Feb. 11, 2000)
- VA000087 (Feb. 11, 2000)
- VA000088 (Feb. 11, 2000)
- VA000092 (Feb. 11, 2000)
- VA000099 (Feb. 11, 2000)

Volume III

None

Volume IV

Michigan
- MI000030 (Feb. 11, 2000)
- MI000031 (Feb. 11, 2000)
- MI000035 (Feb. 11, 2000)
- MI000046 (Feb. 11, 2000)
- MI000047 (Feb. 11, 2000)
- MI000050 (Feb. 11, 2000)

Wisconsin
- WI000027 (Feb. 11, 2000)
- WI000029 (Feb. 11, 2000)
- WI000032 (Feb. 11, 2000)
- WI000033 (Feb. 11, 2000)
- WI000049 (Feb. 11, 2000)

Volume V

Louisiana
- LA000001 (Feb. 11, 2000)
- LA000005 (Feb. 11, 2000)
- LA000012 (Feb. 11, 2000)
- LA000015 (Feb. 11, 2000)
- LA000018 (Feb. 11, 2000)
- LA000040 (Feb. 11, 2000)
- LA000046 (Feb. 11, 2000)
- LA000047 (Feb. 11, 2000)
- LA000048 (Feb. 11, 2000)
- LA000052 (Feb. 11, 2000)

New Mexico
- NM000001 (Feb. 11, 2000)
- NM000003 (Feb. 11, 2000)

Volume VI

Colorado
- CO000001 (Feb. 11, 2000)
- CO000002 (Feb. 11, 2000)
- CO000003 (Feb. 11, 2000)
- CO000004 (Feb. 11, 2000)
- CO000005 (Feb. 11, 2000)

CO000006 (Feb. 11, 2000)
CO000007 (Feb. 11, 2000)
CO000008 (Feb. 11, 2000)
CO000009 (Feb. 11, 2000)
CO000010 (Feb. 11, 2000)
CO000011 (Feb. 11, 2000)
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CO000018 (Feb. 11, 2000)
CO000020 (Feb. 11, 2000)
CO000021 (Feb. 11, 2000)
CO000023 (Feb. 11, 2000)
CO000024 (Feb. 11, 2000)
CO000025 (Feb. 11, 2000).
Oregon
OR000001 (Feb. 11, 2000)
South Dakota
SD000006 (Feb. 11, 2000)
SD000011 (Feb. 11, 2000)
SD000017 (Feb. 11, 2000)
Washington
WA000001 (Feb. 11, 2000)
WA000005 (Feb. 11, 2000)
WA000008 (Feb. 11, 2000)
Wyoming
WY000004 (Feb. 11, 2000)
WY000013 (Feb. 11, 2000)
WY000023 (Feb. 11, 2000)

Volume VIII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 7th day of July 2000.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–17579 Filed 7–13–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–078)]

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13: 44 U.S.C. 3506(c)(2)(A)). This information is used to determine whether the requested survey should be granted.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before September 12, 2000.

ADDRESSES: All comments should be addressed to Ms. Linda Connell, MS 262–7, Ames Research Center, National Aeronautics and Space Administration, Moffett Field, CA 94035–1000. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: National Aviation Operations Monitoring Service.

OMB Number: 2700–_____

Type of review: New.

Need and Uses: This data collection will be used to help evaluate national aviation safety through the establishment of a survey based methodology. Information provided will be used to measure and monitor aviation safety; namely the pilots, air traffic controllers, mechanics and flight attendants who routinely operate aircraft and provide support services.

Affected Public: Individuals or households.

Number of Respondents: 5,000.

Responses Per Respondent: 1–4.

Annual Responses: 8,000.

Hours Per Request: ½ hr to ¾ hr.

Annual Burden Hours: 5,907.

Frequency of Report: Annually/ Quarterly.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–17841 Filed 7–13–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 00–079]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information is required to evaluate bids and proposals submitted to NASA for the award of contracts of value more than $500k for goods and services in support of NASA's mission, and in response to contractual requirements.

DATES: All comments should be submitted on or before September 12, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA acquisition process, bids and proposals for contracts with an estimated value more than $500,000.

OMB Number: 2700–0085.

Type of review: Extension.

Need and Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission, and in response to contractual requirements.

Affected Public: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Number of Respondents: 1,496.
Responses Per Respondent: 1.
Annual Responses: 1,496.
Hours Per Request: 400–620.
Annual Burden Hours: 663,520.
Frequency of Report: On occasion.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.
[FR Doc. 00–17842 Filed 7–13–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–080]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information is required to evaluate bids and process invoices submitted to NASA for the award of purchase orders or for bank card actions for goods and services for purchases $100k or less in support of NASA's mission.

DATES: All comments should be submitted on or before September 12, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA simplified acquisition for goods and services with a value of $100,000 or less.
OMB Number: 2700–0086.
Type of review: Extension.
Need and Uses: Information collection is required to evaluate bids and proposals from offerors in order to award purchase orders and to use bank cards for required goods and services in support of NASA's mission and for the administrative requirements from such orders.
Affected Public: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 250,865.
Responses Per Respondent: 1.
Annual Responses: 250,865.
Hours Per Request: 15–20 min.
Annual Burden Hours: 73,380.
Frequency of Report: On occasion.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.
[FR Doc. 00–17843 Filed 7–13–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (00 081)]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information is required to evaluate bids and proposals submitted to NASA for the award of contracts of value less than $500k for goods and services in support of NASA's mission, and in response to contractual requirements.

DATES: All comments should be submitted on or before September 12, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA acquisition process, bids and proposals for contracts with an estimated value less than $500,000.
OMB Number: 2700–0087.
Type of review: Extension.
Need and Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contacts for required goods and services in support of NASA's mission.
Affected Public: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 11,000.
Responses Per Respondent: 1.
Annual Responses: 11,000.
Hours Per Request: 250–300.
Annual Burden Hours: 2,790,000.
Frequency of Report: On occasion.

David B. Nelson,
Deputy Chief Information Officer, Office of the Administrator.
[FR Doc. 00–17844 Filed 7–13–00; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (00 082)]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information is required to monitor contract compliance in support of NASA's mission and in response to contractual requirements.

DATES: All comments should be submitted on or before September 12, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA acquisition process, reports required for contracts with an estimated value more than $500,000.
OMB Number: 2700–0089.
Type of review: Extension.
Need and Uses: Information collection is required to effectively manage and administer contracts that furnish goods and services in support of NASA's mission. The requirement for this information is set forth in the federal Acquisition Regulation, the NASA Federal Acquisition Regulation Supplement, and approved mission requirements.
Affected Public: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.
Number of Respondents: 1,360.
Responses Per Respondent: 56.
Annual Responses: 76,160.
Hours Per Request: 8.
Annual Burden Hours: 609,280.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–17845 Filed 7–13–00; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Consolidated Edison Company of New York, Inc.; Facility Operating License No. DPR–26 Receipt of Additional Information Relating to Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that additional information has been submitted in support of a Petition dated March 14, 2000, filed by Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists, the Nuclear Information & Resource Service, the PACE Law School Energy Project, and Public Citizen's Critical Mass Energy Project (petitioners). The petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Indian Point Nuclear Generating Unit No. 2 (IP2), owned and operated by the Consolidated Edison Company of New York, Inc. (the licensee). The petitioner requested that the NRC issue an order to the licensee preventing the restart of IP2, or modify the license for IP2 to limit it to zero power, until (1) all four steam generators are replaced, (2) the steam generator tube integrity concerns identified in Dr. Joram Hopenfeld's differing professional opinion (DPO) and in Generic Safety Issue (GSI–163) are resolved, and (3) potassium iodide tablets are distributed to residents and businesses within the 10-mile emergency planning zone (EPZ) or stockpiled in the vicinity of IP2. The original Petition was published in the **Federal Register** on April 11, 2000 (65 FR 19398). The supplemental information consisted of a letter from Mr. Lochbaum dated April 14, 2000, a letter from Mr. Riccio dated April 12, 2000, and information provided at an April 7, 2000, public meeting.

As stated in the original **Federal Register** notice, the request that the NRC prevent the licensee from restarting IP2 until all four steam generators are replaced is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The original request that the NRC prevent the licensee from restarting IP2 until the DPO filed by Dr. Hopenfeld is resolved and until potassium iodide tablets are distributed to people and businesses within the 10-mile EPZ or stockpiled in the vicinity of IP2 was not being treated at that time pursuant to 10 CFR 2.206 of the Commission's regulations. However, the petitioners provided additional information at the April 7, 2000, public meeting and in Mr. Riccio's April 12, 2000, letter concerning the population density in the vicinity of the IP2 site and difficulties in emergency planning at the site which, in their view, make adequate evacuation and/or sheltering of the local population impossible. Based on this additional information, the NRC staff has determined that the request that the NRC issue an order to prevent Con Ed from restarting IP2, or modify the license for IP2 to limit it to zero power, until potassium iodide tablets are distributed to people and businesses within the 10-mile EPZ or stockpiled in the vicinity of IP2 meets the criteria of 10 CFR 2.206. As provided by section 2.206, action will be taken on this request within a reasonable time.

In their April 14, 2000, letter, the petitioners contend that the information in NUREG/CR–5752, "Assessment of Current Understanding of Mechanisms of Initiation, Arrest, and Reinitiation of Stress Corrosion Cracks in PWR Steam Generator Tubing," is relevant to their request to replace the IP2 steam generators and to resolve Dr. Hopenfeld's DPO prior to IP2 restart. However, the information in NUREG/CR–5752 is a schematic or generalized presentation of the process for crack initiation and growth and was not intended to be representative of actual plant conditions. Thus, NUREG/CR–5752 is not directly applicable to IP2 and does not provide information specific to IP2 restart. Therefore, the request that the NRC prevent the licensee from restarting IP2 until the DPO filed by Dr. Hopenfeld is resolved will not be treated pursuant to 10 CFR 2.206 of the Commission's regulations.

Copies of the Petition and additional information are available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www/nrc.gov).

Dated at Rockville, Maryland, this 26th day of June 2000.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17883 Filed 7–13–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. SSD 99–27 ASLBP No. 00–778–06–ML]

Atomic Safety and Licensing Board Panel; Notice of Hearing and of Opportunity to Petition for Leave To Intervene or To Participate as an Interested Governmental Entity (Denial of Sealed Source Registration Application)

July 10, 2000.

Before Administrative Judges: G. Paul Bollwerk, III, Presiding Officer, Frederick J. Shon, Special Assistant

In the Matter of Graystar, Inc., (Suite 103, 200 Valley Road, Mt. Arlington, NJ 07856)

In this proceeding, GrayStar, Inc., (GrayStar) has requested a hearing to challenge the NRC staff's May 24, 2000 determination denying the request of GrayStar, as set forth in its April 19, 1999 application and September 27, 1999 letter, to register the Model GS–42 sealed source and the Model 1 irradiator. By memorandum and order issued June 13, 2000, the Commission referred the GrayStar request to the Atomic Safety and Licensing Board Panel's Chief Administrative Judge for appointment of a Presiding Officer to conduct a 10 CFR Part 2, Subpart L informal adjudicatory proceeding relative to the GrayStar request. *See* CLI–00–10, 51 NRC ____ (Jun. 13, 2000). This Presiding Officer and Special Assistant were appointed on June 16, 2000. *See* 65 FR 38,867 (2000). By memorandum and order issued this date, the Presiding Officer has granted the GrayStar hearing request.

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. As noted above, this hearing will be governed by the informal hearing procedures set forth in 10 CFR Part 2, Subpart L (10 CFR 2.1201–.1263) and the parties currently designated in this proceeding are GrayStar and the staff.

Further, in accordance with 10 CFR 2.1205(j), please take notice that within thirty days from the date of publication of this notice of hearing in the **Federal Register** (1) any person whose interest may be affected by this proceeding may file a petition for leave to intervene; and (2) any interested governmental entity may file a request to participate in this proceeding in accordance with 10 CFR 2.1211(b). Any petition for leave to intervene must set forth the information required by 10 CFR 2.1205(e), including a detailed description of (1) the interest of the petitioner in the proceeding; (2) how that interest may be affected by the

results of the proceeding, including the reasons why the petitioner should be permitted to intervene with respect to the factors set forth in 10 CFR 2.1205(h); (3) the petitioner's areas of concern regarding the staff's May 24, 2000 denial of GrayStar's registration application; and (4) the circumstances establishing that the petition to intervene is timely in accordance with 10 CFR 2.1205(d). In accordance with 10 CFR 2.1211(b), any request to participate by an interested governmental entity must state with reasonable specificity the requestor's areas of concern regarding the staff's May 24, 2000 denial of GrayStar's registration application.

In addition, pursuant to 10 CFR 2.1211(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence, but may assist the Presiding Officer and/or parties in the definition of the issues being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001, Attention: Docketing and Service Branch. A copy of the statement also should be served on the Presiding Officer and the Special Assistant.

In the initial order issued this date, the Presiding Officer directed that on or before Tuesday, August 1, 2000, the staff shall file the hearing file for this proceeding. Once the hearing file is received, pursuant to 10 CFR 2.1233 the Presiding Officer will establish a schedule for the filing of written presentations by GrayStar and the staff, which may be subject to supplementation to accommodate the grant of any intervention petition or request to participate by an interested governmental entity. After receiving the parties' written presentations, pursuant to 10 CFR 2.1233(a), 2.1235, the Presiding Officer may submit written questions to the parties or any interested governmental entity or provide an opportunity for oral presentations by any party or interested governmental entity, which may include oral questioning of witnesses by the Presiding Officer.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Additionally, documents relating to this proceeding submitted after November 1, 1999, are available electronically through the NRC's Agencywide Documents Access and Management System (ADAMS), with access to the public through the NRC's Internet Web site Public Electronic Reading Room link at <http://www.nrc.gov/NRC/ADAMS/index.html>. Also, general information regarding the conduct of agency adjudicatory proceedings, including the provisions of 10 CFR Part 2, Subpart L, can be found by accessing the Atomic Safety and Licensing Board Panel's Web site at <http://www.nrc.gov/NRC/ASLBP/homepage.html>.

By the Presiding Officer *.

Dated: Rockville, Maryland, July 10, 2000.

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 00–17882 Filed 7–13–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2]

Notice of Issuance of Amendment to Materials License SNM–2501 Virginia Electric and Power Company Surry Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 11 to Materials License SNM–2501 held by Virginia Electric and Power Company (Virginia Power) for the receipt, possession, transfer, and storage of spent fuel at the Surry Independent Spent Fuel Storage Installation (ISFSI), located in Surry County, Virginia. The amendment is effective the date of issuance.

By application dated April 5, 1999, as supplemented on February 29, 2000, VA Power requested to amend its ISFSI license to permit the continued storage of burnable poison rod assemblies and/or thimble plug devices within the already loaded GNSI CASTOR V/21, Westinghouse MC–10, and NAC–I28 casks used at Surry. This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

Also in connection with this action, the Commission prepared an Environmental Assessment (EA) and Finding of no Significant Impact (FONSI). The EA and FONSI were published in the **Federal Register** on July 3, 2000 (65 FR 41108).

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 6th day of July 2000.

For The Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17884 Filed 7–13–00; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in July 2000. The interest assumptions for performing multiemployer plan valuations

following mass withdrawal under part 4281 apply to valuation dates occurring in August 2000. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in July 2000 is 5.04 percent (*i.e.*, 85 percent of the 5.93 percent yield figure for June 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between August 1999 and July 2000.

For premium payment years beginning in:	The assumed interest rate is:
August 1999	5.08
September 1999	5.16
October 1999	5.16
November 1999	5.32
December 1999	5.23
January 2000	5.40
February 2000	5.64
March 2000	5.30
April 2000	5.14
May 2000	4.97
June 2000	5.23
July 2000	5.04

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 2000, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	9/30/00	9

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the third quarter (July through September) of 2000 (*i.e.*, the rate reported for June 15, 2000) is 9.50 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	9/30/00	9.50

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in August 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 7th day of July 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–17912 Filed 7–13–00; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27197]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

July 7, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for

public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 1, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 1, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–8875)

Northeast Utilities ("NU"), a registered public utility holding company, located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, and its wholly-owned utility subsidiary companies, Western Massachusetts Electric Company, located at the same address, Holyoke Water Power Company, located at Canal Street, Holyoke, Massachusetts 01040, Public Service Company of New Hampshire and North Atlantic Energy Corporation, located at 1000 Elm Street, Manchester, New Hampshire 03015, and NU's nonutility subsidiaries, NU Enterprises, Inc., Northeast Generation Service Company, Northeast Generation Company, Select Energy, Inc., Mode 1 Communications, Inc., The Rocky River Realty Company (Ricky River), The Quinnehtuk Company (Quinnehtuk), and Northeast Nuclear Energy Company (NNEC), located at 107 Selden Street, Berlin, Connecticut 06037, HEC Inc. (HEC), located at 24 Prime Parkway, Natick, Massachusetts 01760 (the "Current Money Pool Participants"), Yankee Energy System, Inc. ("YES"), a wholly owned exempt subsidiary holding company of NU by order under section 3(a)(1) of the Act, HCAR No. 26737 (January 31, 2000), a wholly owned gas utility subsidiary of YES, Yankee Gas Services Company ("Yankee Gas"), and YES' wholly owned nonutility subsidiaries, Yankee Energy Financial Services Company, NorConn Properties, Inc., Yankee Energy Services Company and R. M. Services, Inc. ("Yankee Subsidiaries"), located at 599 Research Parkway, Meriden, Connecticut 06450, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43(a) and 45 under the Act.

By order dated November 20, 1996 (HCAR No. 26612)("November Order"), and supplemented February 11, 1997 (HCAR No. 26665), March 25, 1997 (HCAR No. 26692), May 29, 1997 (HCAR No. 26721), January 16, 1998 (HCAR No. 26816), May 13, 1999 (HCAR No. 7022) and November 17, 1999 (HCAR No. 27103), the Current Money Pool Participants were authorized to engage in various financing and related transactions through December 31, 2000 ("Authorization Period"). The November Order also authorized, among other things, the Current Money Pool Participants to continue to engage in a NU system money pool arrangement ("Money Pool") through the Authorization Period.

Applicants now request the following:

1. Authorization for YES and Yankee Subsidiaries to participate in the Money Pool

2. Authorization for YES and Yankee Gas to incur short-term debt through the authorization period, subject to the limits and on the terms as described in the declaration.

3. Elimination of any maximum limit on borrowings by nonutility subsidiaries from the Money Pool.

4. Clarification of the inclusion of NNEC, Quinnehtuk, Rocky River and HEC as participants in the Money Pool.

Entergy Corporation, et al. 70–9123

Entergy Corporation ("Entergy"), a registered holding company, 639 Loyola Avenue, New Orleans, Louisiana 70113, and its wholly owned nonutility subsidiary companies, Entergy Enterprises, Inc., Entergy Power, Inc., Entergy Global Power Operations Corporation, Entergy Power Operations U.S., Inc., Entergy Power Marketing Corp., all located at Parkwood Two Building, 10055 Grogan's Mill Road. The Woodlands, Texas 77380, Entergy Nuclear, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213, and Entergy Operations Services, Inc., 110 James Parkway West, St. Rose Louisiana 70087 (collectively, "Applicants") have filed a post-effective amendment under sections 6(a), 7, and 12(b) of the Act and rules 45 and 54 under the Act to their application-declaration that was previously authorized by Commission order dated June 22, 1999 (HCAR No. 27039) ("June 1999 Order").

The June 1999 Order authorized, among other things, Entergy and its Nonutility Companies [1] to engage in a host of financing transactions including issuing guarantees or providing other forms of credit support or enhancements to, or for the benefit of the Nonutility Companies in an aggregate amount not to exceed $750 million through December 31, 2002. Guarantees may take the form of Entergy or a Nonutility Company agreeing to guarantee, undertake reimbursement obligations, assume liabilities or other obligations in respect of or act as surety on bonds, letters of credit, evidences of indebtedness, equity commitments, power purchase agreements, leases, liquidated damages provisions, and other obligations undertaken by Entergy's Nonutility Companies ("Guarantees"). Under the June 1999 Order, Entergy currently has the capacity to issue Guarantees to or for the benefit of the Nonutility Companies in an aggregate principal amount of approximately $360 million.

The Applicants now propose to issue Guarantees to or for the benefit of Nonutility Companies from time to time through December 31, 2005, in an aggregate principal amount not to exceed $2 billion at any one time outstanding. The terms and conditions of Guarantees would continue to be established at arm's length, based upon market conditions. Any Guarantees provided by Entergy to Exempt Projects (defined as EWGs and FUCOs) would be subject to the limitation on aggregate investment in EWGs and FUCOs set forth in rule 53(a), as modified by order of the Commission dated June 13, 2000 (HCAR No. 27184). Specifically, Entergy would only issue Guarantees to Exempt Projects to the extent that the amount of any such Guarantee, when added to Entergy's aggregate investment in Exempt Projects, would not exceed 100% of Entergy's consolidated retained earnings. Any Guarantees provided to energy-related companies would be subject to the limitations on "aggregate investment" in energy-related companies set forth in rule 58.

Entergy Corp. (70–9189)

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, has filed a declaration under sections

[1] For the purposes of the filing, exempt wholesale generators, as defined in section 32 of the Act, ("EWGs"), foreign utility companies, as defined in section 33 of the Act, ("FUCOs"), exempt telecommunications companies, energy-related companies as defined under rule 58 under the Act, operations and maintenance services subsidiaries, New Subsidiaries as defined in the June 1999 Order, and the Applicants other than Entergy, are referred to collectively as "Nonutility Companies."

6(a) and 7 of the Act and rule 54 under the Act.

By order dated July 10, 1998 (HCAR No. 26895), Entergy was authorized through December 31, 2008 to issue up to 12 million shares of its common stock ("Common Stock") in connection with awards of Common Stock, options on the Common Stock ("Options"), and other equity awards granted under the 1998 Equity Ownership Plan of Entergy Corporation and Subsidiaries ("1998 Equity Plan"). Eligible key employees of Entergy and its subsidiaries and members of the board of directors of Entergy ("Board") who are not otherwise employed by Entergy or its subsidiaries are eligible to participate in the 1998 Equity Plan.

More recently, the Board adopted the Equity Awards Plan ("2000 Awards Plan") as an amendment to the 1998 Equity Plan.[2] In connection with the intended grant of awards under this plan, Entergy requests authority to issue, through December 31, 2010, up to 30 million shares of Common Stock, Options, and equity awards in the form of phantom stock units (collectively, "Awards").

A committee of the Board ("Committee") will administer the 2000 Awards Plan. Officers and other personnel of Entergy and its subsidiaries who are not subject to Section 16(b) of the Securities Exchange Act of 1934 ("Exchange Act")[3] and whom the Committee identifies as having significant responsibility for the continued growth, development and financial success of Entergy and its subsidiaries ("Key Employees") are eligible to participate in the 2000 Awards Plan.

Entergy states that the 2000 Awards Plan was adopted to promote effective leadership of Entergy and its subsidiaries and to closely tie the interests of Key Employees with Entergy's stockholders.

Shares of Common Stock awarded under the 2000 Awards Plan may be either authorized but unissued shares or shares acquired in the open market. Shares of Common Stock covered by awards which are not earned, or which are forfeited and Options which expire unexercised, will again be available for subsequent awards under the 2000 Awards Plan.

[2] Entergy states that the 2000 Award Plan does not require shareholder approval.

[3] Section 16(b) of the Exchange Act imposes restrictions on certain officers of corporations issuing stock. In general, under the statute, profits realized by the purchase and subsequent sale or sale and subsequent purchase of stock within six months, by an officer of the corporation issuing the stock is recoverable by the corporation. Under the 1998 Equity Plan, employees of Entergy or its subsidiaries were eligible for equity compensation even if they were subject to section 16(b) of the Exchange Act. Applicant states that stock options awarded under the 1998 Equity Plan to individuals who are not subject to section 16(b) of the Exchange Act will be rescinded and replaced with awards to be granted under the 2000 Awards Plan. Entergy further states that shares of Common Stock underlying the rescinded options will become available for grant under the 1998 Equity Plan.

Northeast Utilities, et al. (70–9657)

Northeast Utilities ("NU") a registered holding company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01090, Yankee Energy System, Inc. ("YES"), 599 Research Parkway, Meriden, Connecticut 06450, a wholly owned exempt subsidiary holding company of NU by order under section 3(a)(1)(of the Act, HCAR No. 26737 (January 31, 2000) ("January 2000 Order"), Yankee Gas Services Company, 599 Research Parkway, Meriden, Connecticut 06450, a wholly owned gas utility subsidiary of YES, YES' wholly owned nonutility subsidiaries, Yankee Financial Services Company, NorConn Properties, Inc., and Yankee Energy Services Company, all located at 599 Research Parkway, Meriden, Connecticut 06450, and R.M. Services, Inc., 639 Research Parkway, Meriden, Connecticut 06450, a wholly owned nonutility subsidiary of YES (collectively, "Applicants") have filed a declaration under section 12(c) of the Act and rules 46 and 54 under the Act.

In summary, Applicants request authority through June 30, 2000, ("Authorization Period") for each of YES and its subsidiaries to repurchase stock from its parent and pay dividends out of capital and unearned surplus.

The January 2000 Order, authorized NU to acquire all of YES' outstanding voting securities ("Merger"), which was accounted for using the "purchase" method of accounting. In accordance with the Commission's Staff Accounting Bulletin No. 54, Topic 5J, this method of accounting provides for the "push down" of the goodwill generated by the Merger ("Merger Goodwill") from the holding company to subsidiaries and categorizes the amount pushed down in the subsidiaries' financial statements as additional paid-in-capital.

Applicants estimate that Merger Goodwill will approximate $310 million, resulting in an adverse impact on YES' annual income due to the required amortization of the Merger Goodwill. In addition, YES and its subsidiaries do not have recourse to retained earnings existing at the time of the Merger to pay out dividends, since the purchase accounting method requires that these retained earnings be recharacterized as additional paid-in-capital. Consequently, YES and its subsidiaries request authorization to pay dividends out of its additional paid-in-capital account up to the amount of its retained earnings just prior to the Merger and out of earnings before the amortization of the Merger Goodwill.

In addition, each of YES and its subsidiaries request authority through the Authorization Period to repurchase its stock from its parent out of capital or unearned surplus. Applicants state that, after the Merger, and giving effect to the push down of the Merger Goodwill and its periodic amortization, YES' consolidated common equity as a percentage of total capital will be 67%.

Alliant Energy Corporation, et al. (70–9695)

Alliant Energy Corporation ("Alliant"), a registered public utility holding company, and its wholly owned electric-utility subsidiary, Wisconsin Power & Light Company ("WPL" and, together with Alliant, "Applicants"), both located at 222 West Washington Avenue, Madison, Wisconsin 53703, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 456 and 54 under the Act.

Applicants request authority to: (1) Acquire a membership interest in American Transmission Company, LLC, a limited liability company to be organized under Wisconsin law ("Transco"); and (2) acquire a percentage of the capital stock of ATC Management Co. ("Manager"), a corporation to be formed under Wisconsin law. Alliant also requests authority, through September 30, 2001, to guarantee Transco's payment obligations under a credit agreement and to enter into a reimbursement agreement with Transco.

In 1999, the state of Wisconsin enacted legislation that facilitates the formation of Transco as a single-purpose, for-profit transmission company (the "Transco Legislation").[4] The Transco Legislation is intended to encourage public utility affiliates of Wisconsin holding companies, including WPL, to transfer ownership of their transmission assets to Transco.

Manager will manage Transco's assets and will also hold a portion of Transco's membership interests. All Transco participants will ultimately own direct or indirect interests in Transco and manager in proportion to the value of the transmission assets each participant contributes to Transco.

[4] 1999 Wisconsin Act 9, sections 2335tr to 2335uh (Assembly Amendment to Assembly Subcommittee Amendment 1 to 1999 Assembly Bill 133).

In addition to Applicants, several other Wisconsin public utilities or public utility holding companies are expected to participate in Transco, including: South Beloit Water, Gas and Electric Company ("South Beloit"), a wholly owned subsidiary of WPL with transmission assets in Illinois; Wisconsin Energy Corporation ("WEC"), an exempt holding company which owns Wisconsin Electric Power Company; Wisconsin Public Power, Inc. ("WPPI"); WPS Resources Corporation ("WPS"), an exempt holding company which owns Wisconsin Public Service Corporation; and Madison Gas & Electric Company.[5] Other transmission-owning utilities may, in the future, decide to become members of Transco.

WPL and the other participating Wisconsin utilities intend to contribute their transmission assets to Transco on or about January 1, 2001 (the "Operations Date").[6] In this Application the Applicants only seek authority to make initial contributions before the Operations Date to enable Transco and Manager to conduct start-up and other interim operations, including the leasing of office space and the negotiation of financing arrangements.

Therefore, in this Application Applicants propose: (1) To acquire, for a consideration not to exceed $125,000, a membership interest in Transco; and (2) to acquire, for a consideration not to exceed $125,000, 100 shares of the capital stock to be issued by Manager, each of which will have a par value of $1.00. Depending on the number of initial members of Transco, it is expected that Applicants' interest in Transco and Manager will be between 35% and 40% of each entity. Transco's other participants will make similar initial contributions.

Transco intends to enter into a credit agreement with Bank One, NA (the "Credit Agreement").[7] The Credit Agreement will permit borrowings by Transco in an aggregate amount not to exceed $30 million, which Transco will use to fund its activities during its developmental stages. Notes issued under the Credit Agreement will bear interest at: (1) A rate equal to the sum of (a) the quotient of (i) the London Interbank Offered Rate in effect at the time, divided by (ii) one minus the reserve requirement imposed under Regulation D of the Board of Governors of the Federal Reserve System on Eurocurrency Liabilities, plus (b) 0.30% per annum; (2) the "Alternate Base Rate" (as defined below); or (3) a higher rate after default under the terms of the Credit Agreement. The "Alternate Base Rate" is defined as a rate of interest per annum equal to the higher of: (1) The Bank One, NA corporate base rate; or (2) the sum of the Federal Funds effective rate plus 0.5% per annum. Transco may also issue letters of credit ("L/Cs") under the Credit Agreement in a maximum aggregate face amount for all L/Cs outstanding of $12.5 million. The aggregate amount that Transco may borrow under the Credit Agreement will be reduced by the face amount of all outstanding L/Cs.

Alliant propose to guarantee to the lenders the payment of all principal, interest and other fees incurred under the Credit Agreement ("the Guaranty agreement). The Guaranty Agreement is intended to operate only until Transco is able to establish its credit standing as an independent entity and will terminate when Transco receives an "A-" or higher credit rating from Moody's Investors Services, Inc. Alliant states that the Guaranty Agreement will be non-recourse to Alliant's affiliates, and that the Guaranty Agreement will not, in any event, extend beyond September 30, 2001.

Alliant also proposes to enter into a reimbursement agreement with Transco (the "Reimbursement Agreement"), under which Transco will reimburse Alliant for all amounts it pays in respect of the Guaranty Agreement.[8] It is expected that all other participants in Transco, except WPPI, will ultimately enter into one or more indemnification and reimbursement agreements with Alliant under which each participant will agree to reimburse Alliant for its payments under the Guaranty Agreement in proportion to each participant's ownership interest in Transco.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17825 Filed 7–13–00; 8:45 am]

BILLING CODE 8010–01–M

[5] As exempt public utility holding companies, WEC and WPS are required to file separate applications to request authority to participate in Transco under section 9(a)(2) of the Act.

[6] WPL and South Beloit will file a separate application seeking Commission authority to transfer their transmission assets to Transco, to engage in certain affiliated transactions, and to carry out other related activities.

[7] Additional lenders may participate in the Credit Agreement in the future through Bank One, NA's syndication.

[8] In the Reimbursement Agreement, Transco also agrees to obtain the release of Alliant from its obligations under the Guaranty agreement 60 days after transmission assets are transferred to Transco.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3269]

State of North Dakota

As a result of the President's major disaster declaration on June 27, 2000, I find that the following Counties and Indian Reservations in the State of North Dakota constitute a disaster area due to damages caused by severe storms, flooding, and ground saturation beginning on June 12, 2000 and continuing: Benson, Bottineau, Cass, Eddy, Foster, Grand Forks, Griggs, Kidder, McHenry, McLean, Nelson, Pierce, Ramsey, Ransom, Sheridan, Traill, Walsh, and Wells Counties, and the Indian Reservations of the Spirit (Devil's) Lake Tribal Reservation and the Turtle Mountain Band of Chippewa. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 26, 2000, and for loans for economic injury until the close of business on March 27, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Barnes, Burleigh, Cavalier, Dickey, Emmons, LaMoure, Logan, Mercer, Montrail, Oliver, Pembina, Penville, Richland, Rolette, Sargent, Steele, Stutsman, Towner, and Ward Counties in North Dakota, and Clay, Kittson, Marshall, Norman, Polk, and Wilkin Counties in Minnesota.

The interest rates are:

	Percent
For Physical Damage	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 326906. For economic injury the numbers are

9H5900 for North Dakota, and 9H6000 for Minnesota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 5, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–17889 Filed 7–13–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3271]

State Of Minnesota

As a result of the President's major disaster declaration on June 27, 2000 for Public Assistance only, and an amendment thereto on June 30 adding Individual Assistance, I find that Becker, Clay, Norman, and Mahnomen Counties and the White Earth Indian Reservation in the State of Minnesota constitute a disaster area due to damages caused by severe storms and flooding beginning on May 17, 2000, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 29, 2000 and for economic injury until the close of business on March 30, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clearwater, Hubbard, Otter Tail, Polk, Wadena, and Wilkin in the State of Minnesota may be filed until the specified date at the above location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 327106 and for economic injury the number is 9H7500. (Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 6, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–17890 Filed 7–13–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Childhood Disability Evaluation Form—0960–0568. The information collected on form SSA–538 by the Social Security Administration (SSA) is used by SSA and the State Disability Determination Services to record medical and functional findings concerning the severity of impairments of children who are claiming Supplemental Security Income (SSI) benefits based on disability. The form is used for initial determinations of eligibility, in appeals, and in initial continuing disability reviews. We are revising the form in order to make it easier for those who use it to better record their medical and functional findings.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 312,500 hours.

2. Employment Support Representative Position: Survey of Beneficiaries and Community Organizations—0960–NEW. SSA has created a new position, the Employment Support Representative (ESR) to provide employment support information and counseling to SSA disability beneficiaries and community organizations. The positions are established initially in a pilot program supporting 51 service areas. SSA proposes to test three models, which vary by organizational placement and assigned duties of the ESR. SSA will evaluate the models to determine which model or feature(s) of the model(s) are most effective through information we will collect from individuals and organizations who made contact with, or received services from, ESRs in each of the models during the pilot.

	Individuals	Organizations
Number of Respondents:	1,332	894
Frequency of Response:	1	1
Average Burden Per Response:	10 minutes	15 minutes
Estimated Annual Burden:	222 hours	224 hours

SSA Address

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

OMB Address

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: July 11, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–17851 Filed 7–13–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3363]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) or 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the 25 letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) or 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: July 5, 2000.

William J. Lowell,

Director, Office of Defense Trade Controls.

United States Department of State,

Washington, D.C. 20520.
June 7, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical information, assistance and raw materials to Sweden for the manufacture of F414–GE–400 engine components.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 021–00.

United States Department of State,

Washington, D.C. 20520.
June 7, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control

Act, I am transmitting, herewith, certification of a proposed Manufacturing License Agreement with Norway.

The transaction described in the attached certification involves the transfer of technical information and know-how to Norway for the manufacture of Composite Propellant Gas Generators for the Penguin Missile for the Kingdom of Norway, Sweden, Greece and Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 022–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520
June 7, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of ■ proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, assistance and defense articles for the manufacture in Turkey of IFF equipment for the Turkish National Radar/IFF Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 024–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.
June 9, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of ■ proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical data and defense services in support of the AC–130 Gunship ALLTV Program, in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 28–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.
June 21, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and articles to the United Kingdom in support modification and maintenance of Aircrew Training Devices (ATDs) for the KC–10, C–130, and E–3 Aircraft, and the integration of the Global Air Traffic Management System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Enclosure: Transmittal No. DTC 29–00.

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.

June 6, 2000.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves an extension in the duration of 100–99, relating to the export of defense services to establish a formal structure for civilian control of the military, train the Federation of Bosnia and Herzegovina forces in defensive tactics, and improve their capability to deter hostile forces and defend their territory if deterrence fails.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Enclosure: Transmittal No. DTC 30–00.

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.

June 21, 2000.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services in support of six commercial communications satellite launches aboard Delta Class Expendable Launch Vehicles with France.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Enclosure: Transmittal No. DTC 31–00.

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.

June 6, 2000.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of data to Australia to support prediction and avoidance collision systems for the Iridium Satellite Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Enclosure: Transmittal No. DTC 033–00.

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.

June 21, 2000.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services for the Avionics Upgrade of the F–111C and RF–111C Aircraft in Australia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Enclosure: Transmittal No. DTC 34–00.

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.

June 21, 2000.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data and defense services for the manufacture and production of F/A–18 E/F Nose Landing Gear Systems in Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Enclosure: Transmittal No. DTC 35–00.

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.

June 9, 2000.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36 (c) & (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the amendment of a manufacturing license agreement with Japan for the coproduction of the AN/AAS–36 Forward Looking Infrared (FLIR) Detecting Sets.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 38–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,
Washington, D.C. 20520.
June 9, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to support the co-development by Japan and the U.S. of the SM–3 Block II Missile for the Navy Theater Wide (NTW) Theater Ballistic Missile Defense (TBMD).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 039–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,
Washington, D.C. 20520.
June 9, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Republic of Korea.

The transaction described in the attached certification involves the transfer of technical data and assistance in the manufacture of the Korean Commander's Panoramic Sight for the Korean Army's K1 Main Battle Tank.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 040–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,
Washington, D.C. 20520.
June 9, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of ■ proposed license for the export of technical data and/or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the export to the Republic of Korea of technical data and assistance in the manufacture of Gunners Primary Tank Thermal Sight for end use by the ROK Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 043–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,
Washington, D.C. 20520.
June 21, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles and defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export to Germany of technical data and assistance in the manufacture of Infrared Target Acquisition and Tracking Equipment for end use by the governments of Germany, Norway, Belgium, Denmark, France, Greece, Italy, The Netherlands, and Sweden.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Enclosure: Transmittal No. DTC 044–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,
Washington, D.C. 20520.
June 6, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of ■ proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction involved in the attached certification involves the export of an A2100 commercial communications satellite to Baikonur Cosmodrone in Kazakhstan for launch on a Proton launch vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 045–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,
Washington, D.C. 20520.
June 6, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmittlng herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of communication payloads to Germany for integration on commercial satellites and subsequent launch from Kazakhstan and/or Russia. The satellites will comprise a low-Earth orbit, mobile data communications system to provide commercial, non-voice, wireless communication services.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 046–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,
Washington, D.C. 20520.
June 19, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a

proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the export of an INTELSAT IX commercial communications satellite to French Guiana for launch on an Ariane launch vehicle. Upon orbit, it will be operated by the INTELSAT telecommunications organization located in Washington, D.C.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 047–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.
June 9, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of one commercial communications satellite (PAS–10) to Baikonour Cosmodrone in Kazakhstan for launch on a Proton launch vehicle. Upon orbit, it will be operated by PanAmSat in Greenwich, Connecticut.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 34–00.
Enclosure: Transmittal No. DTC 049–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.
June 9, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of ■ proposed Manufacturing License Agreement with Canada.

The transaction described in the attached certification involves the manufacture of optical assemblies for the U. S. Army Advanced Threat Infrared Countermeasures (ATIRCM) program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 050–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.
June 9, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Canada.

The transaction described in the attached certification involves the manufacture of inertial navigation system components for use on Canadian CF–18 fighter and CP–140 maritime patrol aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 051–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.
June 21, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and defense articles to support the development and deployment of the Optus C1 communications satellite for end use by Australia after launch from French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 053–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.
June 15, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement with Canada.

The transaction described in the attached certification involves the export of requirements for the design and manufacture of helicopter hangar doors for the U. S. Navy LPD–17 program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Enclosure: Transmittal No. DTC 58–00.
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.
June 21, 2000.
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and defense articles for the Armed Forces Combat Training Center for end-use by the Egyptian Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the

applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Enclosure: Transmittal No. DTC 062–00.

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

United States Department of State,

Washington, D.C. 20520.

June 21, 2000.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed manufacturing license agreement.

The transaction contained in the attached certification involves the export to France, of defense services for the design, development, production and support of the SPW 2000 Liquid Hydrogen/Liquid Oxygen Upperstage Rocket Engine.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Enclosure: Transmittal No. DTC 63–00.

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

[FR Doc. 00–17904 Filed 7–13–00; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–00–6833]

Fitness Determination of Northwest Seaplanes, Inc.

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of order to show cause (Order 2000–7–10).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Northwest Seaplanes, Inc., is fit, willing, and able, to conduct scheduled passenger operations as a commuter air carrier.

DATES: Persons wishing to file objections should do so no later than July 25, 2000.

ADDRESSES: Objections and answers to objections should be filed in the Docket OST–00–6833 and addressed to the Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: July 10, 2000.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–17866 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Anthony F. Fazio, Director, Office of Rulemaking, ARM–1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9677 or fax (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations and practices with Europe and Canada.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

The ARAC Executive Committee will establish a Fuel Tank Inerting Harmonization Working Group. The Fuel Tank Inerting Harmonization Working Group will prepare a report to the FAA that provides recommended regulatory text for new rulemaking and the data needed for the FAA to evaluate the options for implementing new regulations that would require eliminating or significantly reducing the development of flammable vapors in fuel tanks on in-service, new production, and new type design transport category airplanes. The level of reduction in flammable vapors that would be proposed in this FAA rulemaking would be based on achieving the lowest flammability level that could be provided by a design that would meet FAA regulatory evaluation requirements. This effort is an extension of the previous work performed by the Fuel Tank Harmonization Working Group.

The report should contain a detailed discussion of the technical issues associated with the prevention of, or reduction in, the exposure of fuel tanks to a flammable environment through the use of the following inerting design methods, and any other inerting methods determined by the Working Group, or its individual members, to merit consideration.

Ground-Based Inerting: The system shall inert fuel tanks that are located near significant heat sources or do not cool at a rate equivalent to an unheated wing tank using ground based nitrogen gas supply equipment. The affected fuel tanks shall be inerted once the airplane reaches the gate and while the airplane is on the ground between flights.

On-Board Ground-Inerting: The system shall inert fuel tanks that are located near significant heat sources or are not cooled at a rate equivalent to an unheated wing tank using on-board nitrogen gas generating equipment. The affected fuel tanks shall be inerted while the airplane is on the ground between flights.

On-Board Inert Gas Generating System (OBIGGS): The system shall inert all fuel tanks with an on-board nitrogen gas generating system such that the tanks remain inert during normal ground and typical flight operations. Non-normal operations are not to be included in the OBIGGS mission requirements. For example, the tanks should remain inert during normal takeoff, climb, cruise, descent, landing, and ground operations (except for ground maintenance operations when the fuel tank must be purged for maintenance access); however, the fuel tanks do not need to remain inert during non-normal operations such as during an emergency descent.

For the purposes of this task, an "unheated wing tank" is a conventional aluminum structure, integral tank of a subsonic transport wing, with minimum heat input from aircraft systems or other fuel tanks that are heated. This is the same definition provided in draft Advisory Circular 25.981–2X that was made available for comment by the notice published in the **Federal Register** on February 2, 2000.

The report shall provide detailed discussion of technical considerations (both pro and con), as well as comparisons between each of the above design methods for incorporation into the following portion of the large transport airplane fleet: (a) In-service airplanes, (b) new production airplanes, and (c) new airplane designs. Because the working group may consist of members having differing views regarding the technical issues associated with inerting fuel tanks, the report should include discussion of such views and any supporting information provided by the membership.

In developing recommendations to the FAA, the report should also include consideration of the following:

1. The threat of fuel tank explosions used in the analysis should include explosions due to internal and external tank ignition sources for the major fuel system designs making up the transport fleet, as defined in the July 1998 ARAC Fuel Tank Harmonization Working Group report. The service history in the analysis should be further developed to include incidents involving post crash fuel tank fires. The FAA awarded a research contract to develop a database that may be useful in this endeavor. This data should be evaluated when determining what benefits may be derived from implementing ground based or on-board inerting systems. The report is titled, *A Benefit Analysis for Nitrogen Inerting of Aircraft Fuel Tanks Against Ground Fire Explosion*, Report Number DOT/FAA/AR–99/73, dated December 1999.

2. The evaluation of ground-based inerting should consider:

a. The benefits and risks of limiting inerting of fuel tanks to only those times when conditions, such as lower fuel quantities or higher temperature days, could create flammable vapors in the fuel tank. This concept would be analogous to deicing of aircraft when icing conditions exist.

b. Various means of supplying nitrogen (e.g., liquid, gaseous separation technology; centralized plant and/or storage with pipeline distribution system to each gate, individual trucks to supply each airplane after refueling, individual separation systems at each gate, etc.), and which means would be most effective at supplying the quantity of nitrogen needed at various airports within the United States and, separately, other areas of the world.

c. Methods of introducing the nitrogen gas into the affected fuel tanks that should be considered include displacing the oxygen in fuel tanks with nitrogen gas, saturating the fuel with nitrogen in ground storage facilities (for example, in the trucks or central storage tanks), injecting nitrogen directly into the fuel as the fuel is loaded onto the airplane, and combinations of methods.

d. The benefits and risks of limiting inerting of fuel tanks to only those fuel tanks located near significant heat sources, such as center wing tanks located above air conditioning packs.

3. The evaluation of on-board ground-inerting should consider the benefits and risks of limiting inerting of fuel tanks to only those fuel tanks located near significant heat sources, such as center wing tanks located above air conditioning packs.

4. The evaluation of the cost of an OBIGGS for application to new type designs should assume that the design can be optimized in the initial airplane design phase to minimize the initial and recurring costs of a system.

5. Evaluations of all systems should include consideration of methods to minimize the cost of the system. For example, reliable designs with little or no redundancy should be considered, together with recommendations for dispatch relief authorization using the master minimum equipment list (MMEL) in the event of a system failure or malfunction that prevents inerting one or more affected fuel tanks.

6. Information regarding the secondary effects of utilizing these systems (e.g., increased extracted engine power, engine bleed air supply, maintenance impact, airplane operational performance detriments, dispatch reliability, etc.) must be analyzed and provided in the report.

7. In the event that the working group does not recommend implementing any of the approaches described in this tasking statement, the team must identify all technical limitations for that system and provide an estimate of the type of improvement in the concept (i.e., manufacturing, installation, operation and maintenance cost reduction, etc.; and/or additional safety benefit required) that would be required to make it practical in the future.

8. In addition, guidance is sought that will describe analysis and/or testing that should be conducted for certification of all systems recommended.

Unless the working group produces data that demonstrates otherwise, for the purposes of this study a fuel tank is considered inert when the oxygen content of the ullage (vapor space) is less than ten per cent by volume.

The ground-based inerting systems shall provide sufficient nitrogen to inert the affected fuel tanks while the airplanes are on the ground after landing and before taking off for the following flight. In addition to the ground equipment requirements and airframe modifications required for the nitrogen distribution system, any airframe modifications required to keep the fuel tank inert during ground operations, takeoff, climb, and cruise, until the fuel tank temperatures fall below the lower flammability range, should be defined.

The on-board ground inerting systems shall be capable of inerting the affected fuel tanks while the airplane is on the ground after touchdown and before taking off for the following flight. As for the ground-based inerting system, in addition to the inert gas supply equipment and distribution system, any airframe modifications required to keep the fuel tank inert during ground operations, takeoff, climb, and cruise, until the time the fuel tank temperatures fall below the lower flammability range, should be defined. Consideration should be given to operating the on-board inert gas generating system during some phases of flight as an option to installing equipment that might otherwise be necessary (e.g., vent system valves) to keep the fuel tank inert during those phases of flight, and as a cost tradeoff that could result in reduced equipment size requirements.

The data in the report will be used by the FAA in evaluating if a practical means of inerting fuel tanks can be found for the in-service fleet, new production airplanes, and new airplane designs. The FAA may propose regulations to further require reducing the level of flammability in fuel tanks if studies, including this ARAC task and independent FAA research and development programs, indicate that a means to significantly reduce or eliminate the flammable environment in fuel tanks, beyond that already proposed in Notice 99–18, is practical. Such a proposal would be consistent with the recommendations made by the ARAC Fuel Tank Harmonization Working Group in their July 1998 report.

The report shall be submitted to the FAA within 12 months after the date of this notice.

ARAC Acceptance of Task

ARAC has accepted this task and has chosen to assign it to a new Fuel Tank Inerting Harmonization Working Group. The new working group will serve as staff to the ARAC Executive Committee to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it will forward them to the FAA as ARAC recommendations.

The Fuel Tank Inerting Harmonization Working Group should coordinate with other harmonization working groups, organizations, and specialists as appropriate. The working group will identify to ARAC the need for additional new working groups when existing groups do not have the appropriate expertise to address certain tasks.

Working Group Activity

The Fuel Tank Inerting Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the ARAC Executive Committee meeting held following the establishment and selection of the working group.
2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.
3. Draft a report and/or any other collateral documents the working group determines to be appropriate.
4. Provide a status report at each meeting of the ARAC Executive Committee.

Participation in the Working Group

The Fuel Tank Inerting Harmonization Working Group will be composed of experts having an interest in the assigned task. Participants of the working group should be prepared to devote a significant portion of their time to the ARAC task for a 12-month period. A working group member need not be a representative or a member of the committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should contact: Regina L. Jones, ARM–23, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9822, fax (202) 267–5075, or e-mail Regina.Jones@faa.gov, expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than August 11, 2000. The requests will be reviewed by the ARAC chair, the executive director, and the working group chair, and the individuals will be advised whether or not requests can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC Executive Committee will be open to the public. Meetings of the Fuel Tank Inerting Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on July 10, 2000.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–17860 Filed 7–11–00; 2:12 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: 30109]

Aviation Noise Abatement Policy 2000

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed policy document, Request for comments.

SUMMARY: In 1976, the Department of Transportation published its Aviation Noise Abatement Policy, which provided a course of action for reducing aviation noise impact. The principles contained in that document and subsequent legislative and regulatory action have resulted in a dramatic reduction in the number of Americans adversely exposed to aviation noise.

The changes in transportation use, public expectations, and technology warrant a review of the policy, which the Department is now undertaking. In particular, the Department is considering issuing a revised policy statement, which may extend to all forms of transportation noise, in order to provide direction to its efforts over the next 25 years.

Although the 1976 policy document was signed by the Secretary of Transportation and the Administrator of the Federal Aviation Administration, the future document will be divided into two parts: first, the Secretary will publish a policy statement broadly addressing noise concerns. Based on this policy statement, the FAA Administrator will issue aviation noise policy guidelines.

The issuance of this draft document on aviation noise abatement represents a first step in a process to develop an aviation noise policy. It is intended to stimulate ideas that will result in comments to the public docket. These comments will be evaluated, along with other inputs, in the development of a comprehensive policy statement and guidance document.

This proposed FAA policy document reaffirms and incorporates the major tenets of the 1976 Aviation Noise Abatement Policy and includes subsequent developments. It summarizes current conditions affecting aviation and sets forth goals, policies, and strategies for addressing them. This policy document also outlines the foundations and methodologies for assessing aviation noise, promoting research and development in aircraft noise reduction technology and noise abatement procedures, and promoting compatible usage of noise impacted lands. Finally, it presents a selective listing of reference materials that form the basis for the Federal Government's aviation noise policies.

DATES: Comments must be received on or before August 28, 2000.

ADDRESSES: Comments should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. [30109], 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas L. Connor, Noise Division, AEE–100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone, (202) 267–8933; facsimile, (202) 267–5594.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate by submitting such written data, views, or arguments as they may desire. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the

Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this proposed policy. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this document will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. xxxxx." The postcard will be date stamped and mailed to the commenter.

Issued in Washington, DC on July 7, 2000.

James D. Erickson,

Director of Environment and Energy.

FAA Aviation Noise Abatement Policy 2000

Section 1: Introduction

The first comprehensive aviation noise abatement policy was issued by the Secretary of Transportation and the Administrator of the Federal Aviation Administration (FAA) on November 18, 1976. At that time, six to seven million Americans residing near airports were exposed to significant levels of aircraft noise—defined by FAA as those areas in which noise levels are Day-Night Average Sound Level (DNL) 65 dB or higher. Aircraft noise had become a growing problem in the 1960's with the introduction of jet aircraft and the rapidly increasing number of commercial aircraft operations in the United States. Aircraft noise, and its adverse impacts on residential and other noise sensitive land uses, was recognized as a major constraint on the further development of the aviation system, threatening to limit the further construction and expansion of airports and ground access to them. The 1976 Policy outlined a national effort under Federal leadership to reduce aircraft noise, with aircraft noise source reduction being a key component of the policy.

The 1976 Policy has been highly successful. It has guided actions over a period of almost 25 years that have substantially reduced aviation noise and its impacts. By the year 2000, the FAA estimates that there will be about 500,000 Americans exposed to significant levels of aircraft noise—down substantially from the six to seven million people exposed in 1976. Even as noise has been so dramatically reduced, the national aviation system, including the airport component of that system where aircraft noise is the most severe, has grown significantly in this last quarter of the century.

As we stand at the threshold of the 21st century, the achievements realized from the 1976 Policy provide a solid foundation for the future. The successive phaseouts of Stage 1 and Stage 2 aircraft are responsible for the larger component of the considerable success in reducing noise levels around the airports. With all civil turbojet aircraft heavier than 75,000 pounds now Stage 3 compliant, the most severe aircraft noise will be limited to within or very near the airport boundaries. The long-term outlook beyond 2000 is for a generally stable situation with respect to noise contours around airports, followed by further reduction as the result of advances in noise abatement technology and the replacement of hushkitted Stage 3 airplanes by built—as Stage 3 airplanes. One of the cornerstones of the FAA's year 2000 aviation noise abatement policy is the continuation of aircraft source-noise reduction. The FAA is aggressively pursuing a variety of approaches, including source noise abatement technologies, with the goal of substantially reducing community noise exposure. In late 1999, the Secretary of Transportation supported this effort by announcing as one of his flagship initiatives the need for more stringent aircraft noise standards. The initiative states "Promote the development of international certification noise standards for turbojet airplanes that will be more stringent than the current Stage 3 standards; and, develop models to assess new noise abatement technologies that will encourage introduction of quieter planes."

The 21st century will offer opportunities for additional noise reduction not only from its source, through improved aircraft design, but also from other technological advances. New tools such as Global Positioning System (GPS) technology, which will be used for greater safety and efficiency of air transportation, will also be used to mitigate noise by keeping aircraft tightly within their designated noise corridors. Noise abatement flight procedures are constantly evolving with advances in technology, improved aircraft design, and more refined airspace management procedures. State-of-the-art navigational technology will enable us to refine the ability to define, and the pilot's ability to fly, flight tracks with increased precision in the vicinity of noise sensitive areas.

The continued development of aviation growth is a vital element of U.S. transportation, and the aviation industry is, in turn, a powerful generator of economic activity and jobs within communities. Notwithstanding anticipated technological improvements, aircraft noise will remain and will be a pivotal quality-of-life issue. While the number of Americans exposed to significant levels of aviation noise has been dramatically reduced since the 1976 Policy was issued, a large number of people still remain so impacted. Furthermore, even as Americans stimulate aviation growth by their increased air travel, they also express an ever-increasing desire for a quieter neighborhood environment. As significant noise around the Nation's airports is dramatically reduced, people will direct more attention to the lower but still annoying noise levels. Unless aircraft noise is addressed with purpose and vigor, it will likely become a potential impediment to the robust airport and aviation system growth and operation that will be needed as public demand for access to aviation services continues to grow.

The FAA continues to place great emphasis on reducing the number of persons residing in areas of significant noise exposure around airports. Each airport with areas of significant noise exposure outside its boundary is encouraged to evaluate its current and projected noise levels, and to develop a program that both reduces the number of persons significantly impacted by noise, and prevents new noncompatible development from occurring. This may be accomplished through either the Federal voluntary airport noise compatibility planning process, with FAA technical and financial assistance, or through a locally-determined process. Community involvement is a critical part of airport noise compatibility planning. It serves to provide input on noise mitigation measures that are the most desirable to airport neighbors, while informing the public of the technical and reasonable limits to noise reduction.

Noise relief continues to be a shared responsibility, as described in the 1976 Policy. The FAA and the aviation industry have the primary responsibility to address aircraft source noise, technological advances, and air traffic procedures. Airport proprietors, State and local governments, and citizens have the primary responsibility to address airport noise compatibility planning and local land use planning and zone. The airport operator must be

involved in local land use planning and control efforts on a continuing basis.

The 1976 Policy encouraged airport proprietors and others to consult with FAA about their plans and proposals and to suggest innovative ways to meet the noise problem in their communities. Airport proprietors were encouraged to consult and review proposals to restrict use with airport users and the FAA before implementation. FAA advised airports so that "uncoordinated and unilateral restrictions at various individual airports do not work separately or in combination to create an undue burden on foreign or interstate commerce, unjustly discriminate, or conflict with FAA's statutory authority." This policy foreshadowed the national noise policy announced by the Airport Noise and Capacity Act of 1990 (ANCA). Citing similar concerns, the Act, among other things, established a national program for review of airport Noise and access restriction proposals.

At the time of the 1976 Policy, before the phaseout of Stage 1, there was limited potential for effective control of the sizeable land area subjected to significant noise levels. Land use solutions were to a large extent beyond the reach of local affected communities until effective aircraft source noise reduction was implemented. However, with the year 2000 phaseout of Stage 2, compatible land use has become a viable, effective, and necessary solution. With the vast reduction in land area that is significantly impacted by aviation noise, the major actions needed at the beginning of the 2000's decade to achieve and maintain noise compatibility around airports are land use and developmental actions outside the airport boundary appropriate to the airport's remaining and future noise.

The Federal Government generally does not control land use—zoning authority is reserved to the States and their subdivisions. The FAA has established a compatible land use initiative program to encourage and guide State and local governments having land use control authority, to exercise that authority in a way that serves both the airport and the community. Jurisdictions are particularly urged to refrain from permitting noise sensitive land uses to develop ever closer to airports as the Stage 2 phaseout shrinks their noise contours. In some communities, it may be possible to establish a broad noise buffer beyond areas of significant noise exposure, between the airport and the community, where noise sensitive land uses would either be prohibited or remediated in some way. Noise buffers are subject to determinations of local feasibility and decisions. The FAA will respect and support such locally established buffers.

Beyond the airports' environs, with responsible airspace management and safety being the first consideration, the FAA's goal is to design prospective air traffic routes and procedures to minimize noise consistent with local consensus. The FAA will carefully review the noise impact of prospective changes to air traffic routes and procedures on communities and, in response to requests, will consider alternatives to minimize noise sensitive areas as described above. Locations with unique noise sensitivities in national parks, national wildlife refuges, and other Federally managed areas merit and will receive special consideration as FAA manages the navigable airspace and evaluates aviation actions that raise noise concerns for these areas.

The 1976 Policy initiated the first pilot program under which the Federal government funded up to 25 airport noise control plans a year. That modest beginning was expanded in the 1980's and 1990's by legislation and policies. By the end of the century, the FAA had issued Airport Improvement Program (AIP) grants for over $2.6 billion from an earmarked noise set-aside. Since the statutory establishment of the Passenger Facility Charge (PFC) program in 1990, the FAA has approved PFC collection at commercial service airports exceeding $1.6 billion for noise mitigation projects. Additional AIP funding is provided to mitigate the noise impact of airport expansion projects. In addition to these Federal administered funds, airports finance substantial noise mitigation with locally generated funds. U.S. Department of Transportation (DOT) policy on airport rates and charges identifies aircraft noise abatement and mitigation as an environmental cost recoverable through fees charged to air carriers for the use of airport facilities and services. All funding sources must be used responsibly to ensure continuing strong financial support for noise mitigation, including exploration of innovative financing and creative public/private partnerships. In summary, the FAA's year 2000 aviation noise abatement goals are the following:

- Continue to reduce aircraft noise at its source.
- Use new technologies to mitigate noise impacts.
- Bring existing land uses into compatibility with levels of significant noise exposure around airports, and prevent the development of new noncompatible uses in these areas.
- Design prospective air traffic routes and procedures to minimize aviation noise impacts in areas beyond legal jurisdiction of airport proprietors, consistent with local consensus and safe and efficient use of the navigable airspace.
- Provide special consideration to locations in national parks and other Federally managed areas having unique noise sensitivities.
- Ensure strong financial support for noise compatibility planning and for mitigation projects.

This document is comprised of five sections plus an appendix of references, with this introduction being Section 1. Section 2 is the heart of the policy, and outlines FAA's noise goals and policies, with a brief discussion of each policy element. Section 3 describes the legal and regulatory framework governing aviation noise and the shared responsibilities of all those who must act in complementary ways to mitigate the noise problem—government, aviation, and private citizens. Section 4 presents the FAA's' methods and standards for measuring and assessing noise impacts, which are derived from scientific research and a series of Federal interagency committee reviews. Section 5 provides greater detail on aircraft source noise reduction, history, research, and future prospects.

As stated previously, the 1976 Policy has served the nation well. This comprehensive update to that Policy seeks to build upon ANCA and meet the challenges of the first part of the 21st century. It is a task that must be shared by government at all levels, by the aviation industry, and by citizens. Solutions depend on technological advances, solid airport noise compatibility programs, strong land use commitments, noise-responsible airspace management, and adequate financial resources.

Section 2: Goals and Policies

This section is the heart of the Aviation Noise Abatement Policy. It outlines FAA's noise goals and policies, and provides a brief discussion of each element. This policy fully incorporates and amplifies, clarifies, and supplements the 1976 Policy, based upon our experience and changing needs.

2.1 Aviation Noise Goals

Since it was issued, the 1976 Policy has successfully guided actions on civil aviation noise in the United States. To keep pace with changing technology and the projected growth in aircraft operations, the FAA must set realistic and achievable aviation noise goals, and

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develop new policies to support the safety and efficiency of the National Airspace System (NAS) while seeking to minimize the adverse impacts of aviation noise on people and the environment. Building on past successes in the area of aviation noise, the FAA's goals are to:

Goal 1: Continue to reduce aircraft noise at the source

The successive phaseouts of noisier Stage 1 and Stage 2 aircraft have been largely responsible for the considerable reduction in the number of persons exposed to significant levels of aircraft noise in the United States. Ongoing research and development programs by FAA, NASA, and industry to develop quieter aircraft, combined with regulatory action by FAA will result in achievable future reductions in the number of persons exposed to significant levels of aircraft noise.

Goal 2: Use new technologies to mitigate noise impacts

New technologies bring with them the challenge to integrate noise planning and mitigation into their deployment. GPS, automated flight guidance, free flight, and other innovations will all be examined for their potential to mitigate noise impacts while improving safety and efficiency.

Goal 3: Encourage development of compatible land uses in areas experiencing significant noise exposure around airports, to the extent feasible, and prevent the development of new noncompatible uses in these areas

In the year 2000, there will still be an estimated 500,000 Americans residing in areas of significant noise exposure. A top priority for 2000 and beyond will be to achieve compatibility in these areas. It is important that there be a corresponding emphasis on protecting these gains by preventing new noise sensitive land uses from becoming established in these areas, through stronger State and local land use commitments. The FAA's airport noise compatibility program and compatible land use—have and will continue to support this goal.

Goal 4: Design air traffic routes and procedures to minimize aviation noise impacts in areas beyond the legal jurisdiction of the airport proprietor, consistent with local consensus and safe and efficient use of the navigable airspace

The trend in recent decades has been a growing expectation by Americans of continuing environmental improvement, including a quieter noise environment. In the airport environs, State and local jurisdictions are strongly encouraged to prevent noise sensitive land uses from developing ever more closely to airports as noise contours shrink with the transition to an all Stage 3 fleet. Creating an extra margin of noise buffer outside significant noise exposure areas is possible for some communities, and locally-established buffers will be supported and respected by the FAA—where a community has adopted and implemented noise standards which are more stringent than FAA's noise compatibility standards, FAA will respect those local standards in its actions which could cause growth of the airport's noise contours, through appropriate mitigation actions.

Goal 5: Provide specific consideration to locations in national parks and other Federally managed areas having unique noise sensitivities

The American heritage is enriched with national parks, national wildlife refuges, and other Federally managed areas containing locations with unique noise sensitivities. These locations merit specific noise considerations as the FAA manages the navigable airspace and evaluates other aviation actions.

Goal 6: Ensure strong financial support for noise compatibility planning and for mitigation projects

The 1976 Policy opened the door to Federal funding of local noise abatement planning and programs. That modest beginning has since grown into a sizeable noise set aside in Airport Improvement Program funding, and was joined in the 1990s by the use of Passenger Facility Charges and more substantial contributions from airport revenues to fund noise mitigation. Future reliable sources of funding are vital, including the exploration of innovative finance programs and public/private partnerships to accelerate adequate financing of noise mitigation projects.

2.2 Aviation Noise Policies

The seven elements comprising FAA's policies to achieve the aviation noise goals outlined above are as follows:

1. The FAA will aggressively pursue the development and prescription of a new generation of more stringent noise standards and regulations in order to protect public health and welfare.
2. The FAA will examine new operational technologies for their potential to mitigate noise impacts while maximizing aviation system efficiencies.
3. The FAA will carefully review the noise impacts of prospective changes to air traffic routes and procedures and, in response to requests, will consider alternative actions to minimize noise impacts for residents of communities surrounding airports and for noise sensitive areas that are outside the airport proprietor's legal area of interest.
4. The FAA will encourage airport proprietors, in consultation with airport users, local planning officials, and the interested public, to implement airport noise compatibility programs that will reduce existing noncompatible land uses around airports, and prevent new noncompatible uses.
5. As requested, the FAA will assist State and local governments and planning agencies in establishing policies and practices to minimize noise sensitive land uses around airports, including locally determined buffers outside areas of significant noise exposure.
6. The FAA will take into account the specific circumstances of locations in national parks and other Federally managed areas with unique noise sensitivities in managing the navigable airspace and evaluating proposed FAA actions that raise aviation noise concerns.
7. The FAA will continue strong support for noise compatibility planning and noise mitigation projects with financial programs under its jurisdiction, with airport rates and charges policy, and by encouraging innovative funding mechanisms including creative public/private partnerships.

2.3 Discussion of Noise Policy Elements

The above seven elements that together comprise the FAA's year 2000 aviation noise abatement policy are briefly discussed by number in the remainder of this section.

Policy Element 1: Aircraft Source Noise Reduction

The FAA will aggressively pursue the development and prescription of a new generation of more stringent noise standards and regulations in order to protect public health and welfare.

Discussion: Although the reductions in noise impacted populations and the reductions in new noncompatible uses resulting from the airport noise compatibility program have been significant, over the last quarter century the reduction of aircraft noise at its source has provided the greater amount of noise relief to the public. The FAA has a long-standing commitment to achieve increasingly effective source noise reduction and, in accordance with the Secretary of Transportation's

flagship initiative, is aggressively pursuing the development of even more stringent noise standards. In 1968, the FAA first began developing noise certification standards, initially for measuring and later for limiting aircraft source noise. These certification standards, which paralleled technological improvements in airplane engine design, were codified as 14 CFR Part 36 (Part 36). Effective December 1, 1969, Part 36 set limits on noise emissions of large turbojet aircraft of new design by establishing Stage 2 certification standards. The Noise Control Act of 1972 (49 U.S.C. 44709, 44715) gave the FAA broader authority to set limits for aircraft source noise. Using this authority, the FAA established more stringent Stage 3 standards in Part 36, set limits on source noise for all newly produced airplanes, and required in 14 CFR Part 91 (Part 91) the phaseout of Stage 1 turbojet aircraft over 75,000 pounds by January 1, 1985.

Stage 3 Transition

The Airport Noise and Capacity Act of 1990 (ANCA) required the phased elimination of Stage 2 turbojet airplanes weighing more than 75,000 pounds operating in the contiguous United States. After December 31, 1999, civil turbojet airplanes over 75,000 pounds must be Stage 3 compliant to operate within the contiguous 48 states. To bring about the earliest feasible reduction of noise levels, interim compliance deadlines of 1994, 1996, and 1998 were established in the general operating rules (Part 91, Subpart 1).

The Stage 2 phaseout regulations required all operators of affected airplanes to report compliance progress to the FAA on an annual basis. The regulations also provided separate criteria for interim and final compliance waivers. As prescribed in the ANCA, a final compliance waiver could only be granted to a domestic air carrier that had achieved a fleet mix of at least 85 percent Stage 3 airplanes by July 1, 1999—no waiver may extend beyond December 31, 2003. The benefits of the Stage 3 transition will continue to accrue after completion of the Statutory compliance process. Newly manufactured Stage 3 aircraft are quieter than their predecessors, and significantly quieter than older hushkitted Stage 3 airplanes. Even with substantial growth in operations, noise contours around many U.S. airports will continue to shrink as hushkitted and older Stage 3 airplanes reach the end of their service lives and are replaced by newer airplanes.

Source Noise Research

In early 1992, the FAA and NASA began co-sponsorship of a multiyear program focused on achieving significant advances in noise reduction technology. In October 1992, Congress reinforced this effort by mandating that the FAA and NASA jointly conduct an aircraft noise reduction research program with the goal of developing technologies for subsonic jet aircraft to operate at reduced noise levels. The goal of this program is to identify noise reduction technology to reduce the community noise impacts of future subsonic airplanes by 10 dB (relative to 1992 technology) by the year 2001. Based on the progress in this program and in fulfillment of its legislative mandate, the FAA plans to amend aircraft noise standards and regulations during the first decade of the century to take advantage of feasible noise reduction technologies.

In addition, the FAA is supporting NASA's proposal to extend the research program in order to reach the enabling technology goals in its own "Aeronautics & Space Transportation Technology: Three Pillars for Success" program. Working closely with industry, government, and academia, NASA has set bold goals to sustain U.S. leadership in civil aeronautics and space. The goals are grouped into Three Pillars: "Global Civil Aviation," Revolutionary Technology Leaps, and "Access to Space." Included among the ten enabling technology goals of the program is "Environmental Compatibility." Its noise goal is to reduce the perceived noise levels of future aircraft by a factor of two by 2007 and by a factor of four by 2022, compared to 1995 technology. This effort could result in even greater aircraft source noise reductions.

The FAA is also a major participant on an ICAO Committee on Aviation Environmental Protection (CAEP) technical working group that is formulating proposals for an increase in stringency of the international noise standard for subsonic jet and large propeller-driven airplanes. The FAA plans to set new Stage 4 standards by early in the next century. New standards would result in a future timed transition to a generation of airplanes quieter than Stage 3, similar to source-noise reduction transitions that have been implemented since the 1976 Policy.

Future Supersonic Transport (SST) Airplanes

With respect to future SST airplanes, specific noise standards have not yet been established. The FAA anticipates that any future standards for SST airplanes would be proposed so as to produce no greater noise impact on a community than a subsonic airplane certified to Stage 3 noise limits. Accordingly, the Stage 3 noise limits prescribed in Part 36 for subsonic airplanes may be used as guidelines for developing any future SST airplanes. This policy is consistent with Chapter 4 of the International Civil Aviation Organization's Annex 16, Volume 1, which states that Chapter 3 (equivalent to Stage 3) noise levels applicable to subsonic airplanes may be used as guidelines for future SST airplanes. Any provisions for noise certification of future SST airplanes will give consideration, to the extent possible, to the unique operational flight characteristics of future SST designs.

Policy Element 2: New Operational Technologies

The FAA will examine new operational technologies for their potential to mitigate noise impacts while maximizing aviation system efficiencies.

Discussion: The National Airspace System (NAS) is the infrastructure within which aviation operates in the United States. The NAS includes airports, automated flight service stations, air traffic control towers, terminal radar control facilities, and en route air traffic control centers. The FAA continually seeks to improve various aspects of the NAS. In 1996, the FAA began to develop a NAS modernization plan to define what the aviation system of the future would look like and how it would be implemented. This plan—termed the NAS architecture—is a collaborative effort between the FAA and the aviation community. Several NAS modernization programs have the potential to influence aviation noise.

GPS Augmentation

It appears that the principal navigation system for the 21st century will be based upon the Global Navigation Satellite System (GNSS). The Global Positioning System (GPS) provides a practical starting point for eventual development of the GNSS, but will not totally satisfy all civil aviation requirements for navigation and landing. For use in civil aviation, augmentations are required to improve GPS accuracy for precision approaches, provide integrity and continuity for all phases of flight, and provide availability necessary to meet radio navigation requirements. These GPS augmentations are being implemented incrementally.

The first augmentation being developed in the United States is the Wide Area Augmentation System (WAAS). The WAAS is a safety-critical navigation system that will provide a quality of positioning information never before available to the aviation community. It is a geographically expansive augmentation to the basic GPS service. The WAAS improves the accuracy, integrity, and availability of the basic GPS signals. When fully implemented, this system will allow GPS to be used as a primary navigation system from departure through Category I precision approach. The wide area of coverage for this system includes the entire United States and portions of Canada and Mexico. WAAS will be deployed in phases. The final operating capability will satisfy enroute through Category I precision approach capability requirements for using GPS/WAAS as the only radio navigation aid.

Another augmentation to the GPS signal being developed in the United States is the Local Area Augmentation System (LAAS). The LAAS is intended to complement the WAAS. Together, the two systems will supply users of the NAS with seamless satellite based navigation for all phases of flight. In practical terms, this means that at locations where the WAAS is unable to meet existing navigation and landing requirements, the LAAS will fulfill those requirements. The LAAS will meet the more stringent Category II/III requirements that exist at selected locations throughout the United States. The LAAS will be implemented in stages, with full completion expected in 2006.

When fully implemented, these WAAS and LAAS enhancements to the GPS will permit greater precision in directing aircraft operations than currently is available. The FAA anticipates that this increased precision will permit the refinement of procedures, particularly airport approaches and departures, to abate aircraft noise and minimize exposure levels in noise sensitive areas.

Automated Flight Guidance

Automated flight guidance capabilities have steadily increased and improved with time. Air carrier crews now routinely use autoflight features that are operational during takeoff and landing. An Auto Flight Guidance System (AFGS) includes features such as an autopilot, autothrottles, displays, and controls that are interconnected in such a manner as to allow the crew to automatically control the aircraft's lateral and vertical flight path and speed. A flight management system (FMS) is sometimes associated with an AFGS. An FMS is an integrated system used by flight crews for flight planning, navigation, performance management, aircraft guidance and flight progress monitoring. Some aircraft now have automated features identified for operations specifically at low altitudes—for noise abatement—which when used, contribute to performance, workload, cost, noise, and safety benefits. Such features are certificated on the aircraft by either type certification or supplemental type certification.

Free Flight

The introduction of technologies such as GPS and Auto Flight Guidance allows the future NAS Architecture to be built on a concept of air traffic management called "free flight." This concept is predicated on greater sharing of information between pilots and air traffic controllers to facilitate air traffic management. It is designed to permit aircraft operators to select their own routes as alternatives to the published preferred instrument flight rule (IFR) routes, thereby removing the constraints currently imposed on these users. By providing increased controller-planning support through decision support tools, pilots will be permitted to select the most direct, cost-effective routes between takeoff and landing. As traffic density increases however, the free flight concept calls for structured flow. The same tools that provide flexibility en route and in low-density traffic areas will also help ensure the most efficient flow within a highly structured airspace such as a terminal area.

Free flight is being implemented incrementally. Many of the tools necessary to achieve free flight are currently available; others are still being developed. Enhanced satellite navigation will significantly enhance free flight capability. Full implementation will occur as procedures are modified and technologies become available and are acquired by users and service providers. The dispersal of aircraft at higher altitudes because of free flight can reduce lower-level noise exposure on the ground. At lower altitudes, such as when approaching and departing airports, it would normally be more desirable to concentrate flights (and noise) over those areas least sensitive to noise rather than dispensing the aircraft. Here, free flight's technology may also have applicability to landing, takeoff, and lower altitude flight tracks, by safely concentrating aircraft into narrowly defined corridors which have been protected from noise sensitive development and helping them to avoid the more noise sensitive land areas.

Policy Element 3: Air Traffic Procedures

The FAA will carefully review the noise impact of prospective changes to air traffic routes and procedures and in designing these changes will consider actions to minimize noise impacts for residents of communities surrounding airports and for noise sensitive areas that are outside the airport proprietor's legal area of interest consistent with safety, efficiency, and local consensus.

Discussion: By law, the FAA has the sole authority to establish flight operational procedures and to manage the air traffic control system and navigable airspace in the United States. The FAA is responsible for evaluating actions under the National Environmental Policy Act (NEPA). The FAA's environmental goal is to make and implement air traffic decisions that minimize the noise and other environmental impacts on residential and other noise sensitive areas, consistent with the highest standards of aviation safety and the need for effective and efficient air traffic management. FAA's Community Involvement Policy ensures that FAA will seek and consider community input before making decisions that affect the public. This policy emphasizes active, early, and continuous communication with affected members of the public throughout the NEPA process.

Airspace Changes

The basic structure of the airspace has not changed appreciably over the last ten years. However, in that decade aircraft, navigation aides, and technology in general have advanced by several generations. Free flight has been established as the key direction for the evolution of the NAS. Airspace is a major component of the free flight concept. These advances create the need to redesign the airspace to meet evolving needs. Changes in airspace configuration, architecture, or structure will have implications for air traffic control, air traffic management, the user community, and the environment.

The FAA's policy is to ensure appropriate consideration of noise impacts in decisions on airspace changes, together with safety, technical, and economic factors. The FAA has developed the Integrated Noise Model (INM), a computerized modeling tool widely used by the civilian aviation community for evaluating aircraft noise impacts in the airport environs. The FAA is developing the Noise Integrated Routing System (NIRS), a computerized

research tool for assessing the environmental impacts of air traffic actions beyond the airport environs, up to 18,000 feet above ground level (AGL). NIRS adapts the noise data and algorithms from the INM for use in an air traffic design system. The program requires integration with air traffic models which contain the routes and events used to assess delay, capacity, and workload. NIRS provides airspace planners with environmental noise screening assessments for airspace design changes encompassing a wide area. NIRS allows an airspace design team to perform noise evaluations concurrently with other modeling requirements. The enables the same routes, procedures and events used in delay/capacity analyses to be used in the related environmental analyses. Predicted noise levels over noise sensitive areas for both existing and alternative scenarios are modeled, and a change of exposure criteria is used to determine if the proposes action is likely to be controversial on environmental grounds. If controversy is anticipated, FAA may use NIRS to identify alternatives or mitigation. Whenever practicable in designing routes and procedures, the FAA seeks to identify and avoid environmentally sensitive areas and to minimize noise effects when such areas cannot reasonably be avoided.

Noise Abatement in the Airport Environs

Most noise impacts related to air traffic procedures are in the airport environs where aircraft operate in the closest proximity to people and homes. FAA requires an environmental assessment for new or revised procedures which would route air traffic over noise sensitive areas at less than 3,000 feet above ground level (AGL).

Where runway use, flight procedure, or air traffic changes are not necessary for operational reasons, but are proposed for noise abatement reasons, the FAA relies on airport proprietors to submit requests for such changes. Airport proprietors are the appropriate initiators of such noise abatement proposals because of the liability they bear for noise impacts in the airport environs. Noise abatement proposals are submitted to the FAA by airport proprietors in a variety of ways, including recommendations in airport noise compatibility programs. The airport proprietor and the FAA both have roles in environmental review and affording opportunities for public participation for proposed air traffic changes in the airport environs.

FAA Advisory Circular (AC) 91.53A, Noise Abatement Departure Profiles (NADP), provides standards for noise abatement departure procedures for subsonic turbojet-powered airplanes with maximum certificated takeoff weights exceeding 75,000 pounds.

The AC provides guidance for selecting the most effective procedures for specific airport environments, while standardizing those choices within a practical number of options in order to increase the margin of safety by superseding a growing number of unique, airport-specific practices. AC 91–53A provides two standard departure procedures, one to benefit noise sensitive communities that are the closest to the airport, and one to benefit more distant noise sensitive communities. It does not mandate the selection of either the AC's close-in or distant NADP. Rather, it allows discretion to select either of the NADPs described in the AC or to use the standard NADP in 14 CFR 25.111(a).

In some cases, local communities seek assurance that certain air traffic procedures will remain in place in perpetuity for noise abatement reasons. Airport proprietors do not have the authority to make air traffic commitments for the FAA because of Federal preemption of airspace use and management. Airport proprietors do have the discretion to assure communities that they will not in the future request the FAA to make any procedural changes at the airport for noise abatement purposes that differ from the procedures at issue. Consistent with its policy, the FAA does not initiate noise abatement procedural changes absent an airport proprietor's request and would only consider changes on its own initiative necessary to assure the highest standards of safety and efficiency in the use of the navigable airspace.

The FAA will make every possible effort to maintain noise abatement procedures that have the community's support. However, unforeseen future circumstances may render current procedures untenable for airspace safety and efficiency, and the FAA cannot abrogate its airspace responsibility in local agreements. It is also possible that future circumstances may render today's noise abatement procedures unnecessary or less desirable from a noise standpoint than alternative arrangements, resulting in local decisions to revisit them. Changes in air traffic procedures that have potentially significant noise impacts on communities surrounding an airport require preparation of an environmental assessment or impact statement.

Beyond the Airport Environs

Beyond the airport environs, aircraft following air traffic routes and procedures normally do not significantly influence the noise environment of underlying land uses. Air traffic procedures for operations over 3,000 feet AGL are normally categorically excluded from FAA environmental assessment requirements. At the same time, in recognition that some actions that are normally categorically excluded can be highly controversial on environmental grounds, the FAA has developed the Air Traffic Noise Screening Model (ATNS), which allows air traffic specialists and planners to evaluate potential noise impacts from proposed air traffic changes. The ATNS can evaluate proposed changes in arrival and departure procedures between 3,000 and 18,000 feet AGL for large civil jet aircraft weighing over 75,000 pounds. Where a proposed change would cause an increase in noise of DNL 5 dB or greater, FAA considers whether there are extraordinary circumstances warranting preparation of an environmental assessment.

Where air traffic changes are not necessary for operational purposes, the FAA is willing in the appropriate circumstances to consider changes for noise abatement reasons for communities at greater distances from airports that are outside the airport proprietor's legal area of interest and already at noise levels consistent with Federal land use compatibility guidelines. In these cases, proposed changes must first be consistent with safe and efficient use of the navigable airspace, and also reflect local consensus. Final decisions will then reflect the FAA policy that operational changes made for noise abatement reasons must reduce the number of people affected by noise and the severity of the effect, without increasing noise effects in natural environments with unique noise sensitivities.

Overflights of Noise Sensitive Areas

The FAA Advisory Circular 91–36C, Visual Flight Rules (VFR) Flight Near Noise-Sensitive Areas, identifies 2,000 feet AGL as the minimum recommended altitude for overflights of noise sensitive areas when aircraft are not landing at or taking off from an airport. It identifies typical noise sensitive areas to include: outdoor assemblies, churches, hospitals, schools, nursing homes, residential areas designated as sensitive by airports, and units of the National Park System. Consistent with aviation safety and efficiency, the FAA will actively assist

other agencies in seeking the voluntary cooperation of operators with regard to the 2,000 feet AGL minimum altitude advisory. This assistance includes proposals for regulation of low-flying fixed-wing airplanes, helicopters, ultralight vehicles, balloons, and gliders.

Policy Element 4: Airport Noise Compatibility Planning

The FAA will encourage airport proprietors, in consultation with airport users, local planning officials, and the interested public, to implement airport noise compatibility programs that will minimize aviation noise impacts, reduce existing noncompatible land uses around airports, and prevent new noncompatible uses.

Discussion: Airport noise compatibility planning is the primary tool used by many airport proprietors and local officials to minimize aviation noise impacts in the vicinity of airports. Airport noise compatibility planning involves an evaluation of an airport's existing and future noise exposure, the selection of effective measures to reduce noise and noncompatible land uses, and the implementation of those measures. The measures to be implemented are analyzed in a document called an airport noise compatibility program (NCP).

The FAA has provided technical and financial support for airport noise compatibility planning since 1976. FAA's current program derives from the Aviation Safety and Noise Abatement Act of 1979 (ASNA), implemented through 14 CFR Part 150 (Part 150) in 1985. ASNA directed the FAA to establish by regulation a single system for measuring aircraft noise exposure, to identify land uses that are normally compatible with various noise exposure levels, and to receive voluntary submissions of noise exposure maps and noise compatibility programs from airport proprietors. Airport sponsors who prepare noise exposure maps are immune from certain future liability for noise damages. After preparing the map, airport operators may prepare noise compatibility programs. These programs contain measures that an airport operator plans to take to reduce existing or prevent the development of new noncompatible land uses in the area covered by the noise exposure map. Airport sponsors must consult affected parties and provide the opportunity for a public hearing. Airport proprietor participation in airport noise compatibility planning is voluntary. Over 230 airports are participating in the program and 193 airports have FAA approved NCPs in place—this includes about two-thirds of our busiest commercial airports.

Airport noise compatibility planning addresses both existing and future aviation noise impacts. Noise exposure maps use noise contours to depict the extent of existing and future noise exposure within the community and the location of noise sensitive land uses (*e.g.*, residences, schools, hospitals, churches) within the contours. Knowledge of future noise exposure provides a basis for long-term local planning and investment in noise mitigation for particular noise sensitive areas, including how to compatibly develop any vacant land or to redevelop older urban areas around airports into compatible uses.

Based on the noise exposure maps, strategies are developed and evaluated to reduce noise exposure and noncompatible land uses around an airport. Noise solutions are airport-specific—no two airports are alike in their noise and land use environments. The best solutions for one airport may not be effective or desirable in another location. ASNA makes the airport proprietor responsible for airport noise compatibility planning, including selecting the specific noise abatement and mitigation measures deemed appropriate for inclusion in the airport noise compatibility program.

The FAA reviews airport noise compatibility programs submitted by airport proprietors under Part 150 for consistency with criteria established by law and regulation. Program measures must be reasonably consistent with the goals of reducing existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses. Program measures must not derogate safety or adversely affect the safe and efficient use of airspace. Program measures must not impose an undue burden on interstate or foreign commerce. Program measures must not be unjustly discriminatory or violate other airport grant agreement assurances. Program measures should be designed to meet both local needs and needs of the national air transportation system. Finally, program measures must be consistent with all of the powers and responsibilities of the FAA Administrator.

The FAA is directed by law to approve airport noise compatibility programs that meet the specified criteria. The FAA may request that an airport proprietor consider additional or alternative program measures, but the FAA does not have the authority to substitute its judgment for that of the airport proprietor regarding which measures to select for implementation. The FAA may only approve or disapprove program measures recommended by an airport proprietor in accordance with established statutory and regulatory criteria. If an airport noise compatibility program is not acted on by the FAA within the statutory 180-day timeframe, it is automatically approved by law with the exception of flight procedures. Flight procedures are not subject to automatic approval.

Although the FAA has established, under ASNA and Part 150, a uniform system for measuring the noise in and around airports, the responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. In preparing noise compatibility programs, airport sponsors may support the use of state and local land use compatibility standards more stringent than Federal guidelines.

If an airport proprietor proposes an airport noise and access restriction subject to the requirements of 14 CFR Part 161 (Part 161), the FAA encourages the proprietor to integrate the required Part 161 analysis into a Part 150 planning process which first analyzes nonrestrictive measures to mitigate noise, and then analyzes the proposed restriction.

For Stage 2 restrictions, which are not subject to FAA approval under Part 161, the FAA advises airport proprietors who have integrated a Part 161 analysis into a Part 150 study to await the FAA's determinations under Par 150 before adopting the restriction. FAA's Part 150 determinations may provide valuable insight regarding the proposed restriction's consistency with existing laws and the position of the FAA with respect to the restriction.

Stage 3 restrictions are subject to either formal agreement among airport users or to FAA approval under Part 161. If an airport proprietor integrates a Stage 3 restriction proposal and analysis into a Part 150 program, the proprietor may submit a combined Part 150/Part 161 submission to the FAA, as provided for in the Part 161 regulation. The FAA will evaluate the proposed Stage 3 restriction under Part 161 requirements in addition to evaluating the submission under Part 150 requirements.

Effective airport noise compatibility planning is a continuous process, rather than a one-time accomplishment. A number of airport proprietors have prepared updates to previously approved airport noise compatibility program as changes have occurred over

time. For the foreseeable future. Part 150 will remain the primary FAA program for evaluating and mitigating aircraft noise in an airport's vicinity.

Part 150 is a valuable tool for supporting and complementing local land use planning and zoning efforts. A primary goal of part 150 is to improve the compatibility of land uses surrounding airports by reducing existing noncompatible land uses and preventing the introduction of new noncompatible land uses. In response to congressional concerns, as of October 1, 1998, FAA policy is to place additional emphasis on the prevention of new noncompatible land uses by limiting Federal funding to soundproof new homes built in noise-impacted areas. FAA's policy is that new noise sensitive land uses should be prevented from developing around airports or, in cases where prevention is not feasible, they should be rendered compatible with noise exposure levels through measures such as sound insulation during construction.

Policy Element 5: Land Use Planning and Zoning

The FAA will assist State and local governments and planning agencies in establishing policies and practices to minimize noise sensitive land uses around airports, including locally determined buffers outside areas of significant noise exposure.

Discussion: Both the 1976 Policy and Part 150 clearly assert that State and local governments, including airport proprietors and planning agencies, are responsible for determining the acceptable and permissible land uses around airports and defining the relationship between specific properties and airport noise contours. The airport operator must be an integral part of this planning process, and bears its own responsibility for tracking planning and development taking place in its environs, and interceding with local governments as may be appropriate to help assure long-term compatibility. Where permitted by law, the FAA is prepared to support compatible land buss planning and actions by providing planning guidance, as well as technical and financial assistance. Toward this end, the FAA has engaged in a national compatible land use initiative in a cooperative partnership with the National Association of State Aviation Officials (NASAO).

The transition by the year 2000 to an all Stage 3 fleet of large commercial airplanes significantly reduces aviation noise from levels previously experienced. Noise contours will continue to shrink well into the 21st century around many airports. This reduction in aviation noise exposure presents both a challenge and an opportunity to institute and maintain effective compatible land use policies and practices.

There will be significant pressure to develop residential and other noise sensitive land uses closer to some airports as noise contours shrink towards the airport boundary. Such development should be undertaken only after prudent, thoughtful community planning and appropriate mitigation. The general trend over the past few decades has been an increasing interest on the part of the American public in continuing to upgrade environmental standards. Once noise exposure levels have stabilized with the transition to an all Stage 3 fleet, the demand by residents near airports for an ever quieter environment may outpace the delivery of further source-noise gains from advances in aircraft noise abatement technology. Additionally, not every airport will remain relatively static with respect to aircraft noise; some airports will experience high levels of growth and expansion of their facilities after completion of the Stage 3 transition, with consequent growth of their noise contours.

It is important for the various governmental entities that own airports and control land uses around those airports to coordinate airport and land use planning, and to undertake complementary actions that take into account the needs and operational requirements of the airport and the developmental goals and environmental needs of the community. The FAA encourages airport noise compatibility planning pursuant to Part 150.

The FAA encourages local jurisdictions with responsibility for land use planning and zoning to take the strongest compatible land use actions with in those areas around airports still subject to significant noise exposure after the transition to an all Stage 3 fleet. According to FAA guidance, areas of significant noise exposure are those in which noise levels are DNL 65 dB or higher. Significant noise exposure is not compatible with a variety of noise-sensitive land uses, as delineated in FAA's compatible land use guidelines in Part 150. Jurisdictions should take all possible actions to make existing land uses compatible and to prevent new noncompatible land uses form developing at DNL 65 dB and above.

The FAA further encourages jurisdictions to guard against development of new noise sensitive land uses in areas that have been compatible within the DNL 65 dB contour in the last decade or more, but will be just outside that contour with Stage 3 transition. In situations where noise compatibility measures were funded by Federal grants, Federal grant assurances require that these properties must not become residential or zoned for other noise sensitizes uses, but must remain non-noise sensitive even if shrinking noise contours place them outside DNL 65 dB.

Based upon local factors, local jurisdictions may take a more comprehensive approach to aviation noise exposure below DNL 65. Some communities are more noise sensitive than others. Part 150 guidelines recognize local discretion to define noise sensitivity. Some communities have better opportunities than others, because of vacant land or urban redevelopment projects, to reduce and prevent noise sensitive land uses beyond the DNL 65 dB countour. Stage 3 transition and the noise compatibility gains otherwise achieved since the 1976 Policy increase the feasibility in certain locations of dealing with noise exposure below significant levels. A few airport proprietors and local jurisdictions have already begun to address areas outside DNL 65 dB to create an extra margin of noise buffer between the airport and the community.

The FAA will support local efforts to establish noise buffers by agreement between the airport proprietor and the local community, evidenced through both commitments and land use actions by affected jurisdictions. If jurisdictions firmly and consistently act to reduce, prevent, or mitigate noise sensitive development in buffer areas, the FAA will recognize such areas and actions accordingly in NEPA assessments for proposed airport development and in Part 150 noise compatibility programs, and any resulting noise mitigation recommendations.

Local jurisdictions may use the complete array of available methods to address noise sensitive land uses. Several of the most widely used methods are briefly described below, although these are not intended to preclude the use of other methods. A combination of methods, comprising a graduated response from the most to the least adversely affected land uses, may serve communities effectively and can prudently balance costs with levels of noise exposure. The FAA strongly encourages the reduction and prevention of noncompatible land uses at noise exposure levels of DNL 65 dB and higher. Mitigation techniques short of reduction and prevention may be more viable in buffer areas. Methods may support each other for the same

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properties, such as combining sound insulation, an easement, and disclosure. In applying the basic Federal policy elements, the FAA encourages local jurisdictions to.

- Establish zoning ordinances or other control measures to preclude new noise sensitive development; acquire existing noncompatible properties and relocate people; implement policies and programs to redevelop noise sensitive areas into more compatible land uses.
- If noise sensitive development cannot be removed or precluded: acoustically insulate existing structures; establish local building codes for new residential and other noise sensitive construction requiring attenuation of exterior noise levels; purchase noise easements.
- Require formal disclosure of aviation noise exposure levels as a part of real estate transactions for properties located near airports, where authorized by State and local law; provide transaction assistance to noise impacted property owners wishing to sell.

Policy Element 6: Areas With Unique Noise Sensitivities

The FAA will take into account the specific circumstances of locations in national parks and other Federally managed areas with unique noise sensitivities in managing the navigable airspace and evaluating proposed FAA actions that raise aviation noise concerns.

Discussion: The FAA's Noise Policy for Management of Airspace Over Federally Managed Areas, issued November 8, 1996, affirms the FAA commitment to carefully balance the interests of the general public and aviation transportation with the need to protect certain natural environments from the impact of aviation noise. This policy statement addresses FAA's management of the navigable airspace over locations in national parks and other Federally managed areas with unique noise sensitive values. It affirms that the FAA will exercise leadership in achieving an appropriate balance among environmental concerns, airspace efficiency, and technical practicability, while maintaining the highest practicable level of safety. This policy envisions joint efforts by the FAA and resource-managing Federal agencies to enhance compatibility by coordinating management of the airspace and the management goals of these specific areas.

In order to promote an effective balance of agency missions, the Secretaries of Transportation and the Interior are jointly reviewing the environmental and safety concerns resulting from park overflights, developing a national policy on overflights of national parks, and working toward resolution of overflight issues in specific national parks. The overarching goal is to identify how best to provide access to the airspace over national parks while ensuring all park visitors a quality experience and protecting park resources.

The FAA and the National Park Service have initiated individual and joint efforts to achieve a better understanding of the effects of aviation noise on areas within national parks, preserves, and wildlife refuges. A primary focus for FAA is to identify the extent to which low-level noise (*i.e.*, noise levels below existing thresholds of significant, or even adverse, impact for most common land uses) may adversely impact areas with unique noise sensitivities. At present, no scientifically verified, predictable criteria have been established. Until standardization of criteria has been achieved to the satisfaction of the Federal agencies with noise and land use responsibilities, particular interfaces of concern between aviation and special resource areas will be carefully reviewed on a case-by-case basis by the FAA and the Federal agency with jurisdiction over the area.

Pursuant to Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," the FAA is committed to removing obstacles that detrimentally affect or impede working directly and effectively with tribal governments. FAA will engage in meaningful consultation with tribal governments whenever significant impacts on trust resources are identified. When requested by a tribal government, the FAA will use best efforts to make aeronautical charts available to tribal representatives, as well as information on how to identify types of aircraft that may be overflying tribal lands. Additionally, on request from tribal officials, the FAA will use best efforts to depict Native American lands that are of significance on a year-around basis on visual flight rules aeronautical sectional maps. The areas will be depicted using the demarcation associated with flying over noise sensitive national park areas. All aircraft are requested to maintain a minimum altitude of 2,000 feet above the surface while flying over these types of areas. On request from tribal officials, the FAA will also use best efforts to assist in alerting pilots of Native American seasonal events of significance through Notice to Airmen (NOTAMs) or a graphical depiction in the appropriate Airport Facility Directory.

Policy Element 7: FAA Financial Programs

The FAA will continue strong support for noise compatibility planning and noise mitigation projects with financial programs under its jurisdiction, with airport rates and charges policy, and by encouraging innovative funding mechanisms including creative public/private partnerships.

Discussion: The 1976 Policy initiated a pilot program under which the FAA awarded the first grants to airport proprietors to develop comprehensive airport noise control plans. This pilot program was expanded in the Aviation Safety and Noise Abatement Act of 1979 (ASNA), which created airport noise compatibility planning under Federal Aviation REgulations (FAR) Part 150 that continues today. ASNA authorizes the FAA to fund the preparation of airport noise compatibility plans and to fund the implementation of noise compatibility programs developed under those plans, subject to FAA's approval of the program measures.

All public airports are eligible to apply for Federal assistance in preparing and implementing airport noise compatibility programs under Part 150. An approved Part 150 program is required for an airport proprietor to receive specifically earmarked grant funds for a broad array of noise mitigation projects. A statutory exception is sound insulation of educational or medical buildings in a noise impact area, which may be funded without an approved Part 150 program. Units of local government in the airport area may also apply for grants to help carry out parts of approved Part 150 programs that are both within their jurisdiction and ability to implement.

The Airport and Airway Improvement Act of 1982 established the first reservation, referred to as a "set-aside," of Airport Improvement Program (AIP) funds specifically for noise compatibility planning and projects under Part 150. The first noise set-aside was established at 8 percent of the total available annual AIP. In 1982, approximately $41 million was given in noise grants. Since 1982, the noise set-aside has remained a key component in AIP legislation, while the set-aside has remained a key component in AIP legislation, while the set-aside percentage has been increased to reflect the growing demand for noise funding. In the last funding year of the century, the noise set-aside (established at 31 percent of AIP discretionary funding) has been over $168.8 million. From the inception of airport noise compatibility funding through fiscal year 1999, the

FAA has issued noise planning and project grants totaling over $2.6 billion under the Airport Improvement Program.

In addition to the AIP noise set-aside, the FAA administers other statutory provisions and supports decisions that result in additional funding for noise mitigation. The FAA is responsible for evaluating the environmental impact of proposed airport development projects submitted for FAA approval and funding.

FAA's airport funding statue includes environmental requirements. For example, FAA may only approve a grant for a major airport development project that has a potentially significant impact on natural resources if there is no possible and prudent alternative and the project includes reasonable steps to minimize the harm. These mitigation commitments are included in the FAA decision and any subsequent grant agreements. Such commitments are eligible for AIP funding from sources other than the noise set-aside as part of the cost of the airport development project.

The Passenger Facility Charge (PFC) program, established by the Aviation Safety and Capacity Expansion Act of 1990, includes among its objectives the funding of projects to mitigate airport noise impacts. PFC-eligible projects include mitigation for areas adversely impacted by noise, with or without an approved Part 150 program. Since the inception of the PFC program, the FAA has approved PFC collection authority exceeding $1.6 billion for noise mitigation projects—an important and growing supplement to Federal funding provided through the AIP.

Another important source of airport funding for noise mitigation is airport-generated revenue. As part of its role in administering the AIP, the FAA assumes a stewardship role related to the protection of the Federal investment in airports. Generally, an airport accepting Federal assistance must agree to use all airport revenue for related costs. The FAA has long recognized that noise mitigation associated with an airport capital development project qualifies as a capital cost of the airport and, therefore, is an appropriate use of airport revenue. In June 1996, DOT issued its Policy Regarding Airport Rates and Charges, 61 FR 31994, outlining the expenses an airport proprietor may include in establishing cost-based fees charged to air carriers for the use of airport facilities and services. The policy permits the recovery, through rates and charges, of reasonable environmental costs to the extent that the airport proprietor incurs a corresponding actual expense. The policy expressly identifies aircraft noise abatement and mitigation as a permitted recoverable environmental cost. These provisions were not vacated in a ruling on the policy, *Air Transport Association v. Department of Transportation*, 119 F.3d 38 (D.C. Cir. 1997).

In the future, the FAA will continue to make Federal funding available for measures directed at mitigating noise around airports, reducing noncompatible land uses, and protecting currently compatible land uses, when such funding is financially feasible and permitted by law. The challenge is to ensure adequate financial support for noise mitigation. The FAA manages available AIP funds in a manner to sustain airport noise compatibility planning and programs for as many airports as possible with noise affected communities, giving priority consideration to mitigating the most significant higher noise levels. The FAA evaluates the national demand for Federal noise funding and recommends adjustments to the Congress in reauthorizations of airport grant legislation. Increasingly, the FAA seeks to leverage available Federal funding with other funding sources, including PFCs and airport revenue. In the last two years, the FAA has explored innovative financing proposals. The FAA approved an innovative project to relocate a large number of people on an accelerated schedule from an area of airport noise impact through a Federal/local public and private sector partnership arrangement of shared costs and responsibility. The noise mitigation advantages of this project were obvious, and the overall costs were lower in terms of AIP demand than would have been the case under the traditional approach to funding. Future innovative finance arrangements can help to sustain a strong funding commitment to noise. The FAA will work with State and local governments and the private sector to create new partnerships and opportunities to increase reliable sources of funding and to accelerate adequate financing of noise mitigation projects.

Section 3: Authorities and Responsibilities—Legal Framework

3.1 Legal Responsibilities of the Federal Government

The principal aviation responsibilities assigned to the Federal Avaiation Administrator and since 1966 to the Secretary of Transportation, under the Federal Aviation Act of 1958, as amended, 49 U.S.C. 40101 *et seq.*, concern promoting the development of civil aeronautics and safety of air commerce. The basic national policies intended to guide our actions under the Federal Aviation Act are set forth in section 103, 49 U.S.C. 40101(d), which provides public interest standards, including:

(1) Assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce;

(2) Regulating air commerce in a way that best promotes safety and fulfills national defense requirements;

(3) Encouraging and developing civil aeronautics, including new aviation technology;

(4) Controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations;

(5) Consolidating research and development for air navigation facilities and the installation and operation of those facilities; and

(6) Developing and operating a common system of air traffic control and navigation for military and civil aircraft.

To achieve these statutory purposes, sections 307(a), (b), and (c) of the Federal Aviation Act, 49 U.S.C. 40103(b), 44502, and 44721, provide extensive and plenary authority to the FAA concerning use and management of the navigable airspace, air traffic control, and air navigation facilities. The FAA has exercised this authority by promulgating wide-ranging and comprehensive Federal regulations on the use of navigable airspace and air traffic control.[1] Similarly the FAA has exercised its aviation safety authority, including the certification of airmen, aircraft, air carriers, air agencies, and airports under Title VI of the Federal Aviation Act, section 601 *et seq.*, 49 U.S.C. 44701 *et seq.* by extensive Federal regulatory action.[2] In legal terms the Federal government, through this exercise of its constitutional and statutory powers, has preempted the areas of airspace use and management, air traffic control and aviation safety. The legal doctrine of preemption, which flows from the Supremacy Clause of the Constitution, is essentially that state and local authorities do not have legal power to act in an area that already is subject to comprehensive Federal regulation.

Because of the increasing public concern about aircraft noise that accompanied the introduction of turbojet powered aircraft into commercial service in the 1960s, and

[1] See 14 CFR Parts 71, 73, 75, 91, 93, 95, and 97

[2] See 14 CFR Parts 21–43, 61–67, 91, 121 through 149.

the constraints such concern posed for the continuing development of civil aeronautics and the air transportation system of the United States, the Federal government in 1968 sought—and Congress granted—broad authority to regulate aircraft for the purpose of noise abatement. Section 611 of the Federal Aviation Act, 49 U.S.C. 44715, constitutes the basic authority for Federal regulation of aircraft noise. In 1972, displaying some dissatisfaction with the FAA's methodical regulatory practice under section 611, the Congress amended that statute in two important respects. To the original statement of purpose, "to afford present and future relief from aircraft noise and sonic boom," it added consideration of, "protection to the public health and welfare." It also added the Environmental Protection Agency (EPA) to the rulemaking process. Section 611 now requires the FAA to publish EPA proposed regulations as a notice of proposed rulemaking within 30 days of receipt. If the FAA does not adopt an EPA proposal as a final rule after notice and comment, it is obliged to publish an explanation for not doing so in the **Federal Register**.

Whether considering a rule it proposes on its own initiative or in response to the EPA, the FAA is required by section 611(d) to consider whether a proposed aircraft noise rule is consistent with the highest degree of safety in air commerce and air transportation, economically reasonable, technologically practicable and appropriate for the particular type of aircraft.

The FAA acted promptly in implementing section 611. On November 18, 1969, it promulgated the first aircraft noise regulations, Federal Aviation Regulations Part 36, 14 CFR Part 36, which set a limit on noise emissions of large aircraft of new design. It reflected the technological development of the high-bypass ratio type engine, and was initially applied to the Lockheed 1011, the Boeing 747, and the McDonnell-Douglas DC–10. The Part 36 preamble announced a basic policy on source noise reduction and a logically phased strategy of bringing it about. Essentially, Part 36 established the quietest uniform standard then possible, taking into account safety, economic reasonableness, and technological feasibility. Part 36 was initially applicable only to new types of aircraft. As soon as the technology had been demonstrated, the standard was to be extended to all newly manufactured aircraft of already certificated types. Ultimately, the preamble indicated, when technology was available the standard would be extended to aircraft already manufactured and in operation. The last step would require modification or replacement of all aircraft in the fleet that did not meet the Part 36 noise levels. The first two steps have already been accomplished. This third step is being taken now.

In accordance with the Federal noise abatement program announced in the 1976 Policy, the FAA adopted regulations in 14 CFR Part 91 to phase out operations in the United States of so-called "Stage 1 aircraft" by January 1, 1985. These aircraft were defined as civil subsonic aircraft with a gross weight of more than 75,000 pounds that do not meet Stage 2 or 3 Part 36 noise standards. In 1980, pursuant to the Aviation Noise Abatement Act of 1979, the FAA extended the phaseout requirement to foreign international operators, and was directed to issue exemptions to operators of two-engine turbojets with 100 or fewer seats for small community service until January 1, 1988.

In addition to its regulatory authority over aircraft safety and noise, the FAA has long administered a program of Federal grants-in-aid for airport construction and development. By virtue of its decision-making on whether to fund particular projects, the FAA has been able, to a degree, to ensure that new airports or runways will be selected with noise impacts in mind. That indirect authority was measurably strengthened when in 1970 the Airport and Airway Development Act expanded and revised the FAA's grant-in-aid program for airport development, and added environmental considerations to project approval criteria. These criteria include consideration of whether the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport. The 1976 amendments to the 1970 Act increased funding levels and provided new authority to share in the costs of certain noise abatement activities, as part of a pilot program initiated under the 1976 Policy. Under this program, the FAA funded up to 25-airport noise control plans per year

In 1979, Congress enacted the Aviation Safety and Noise Abatement Act, 49 USC 47501 *et seq.*, to support Federal efforts to encourage development of compatible land uses around civil airports in the United States. In 1981, the FAA adopted 14 CFR Part 150 to implement ASNA. As explained in detail in Section 2, under ASNA, FAA is authorized to provide grants to airport sponsors to fund voluntary preparation of noise exposure maps, comprehensive noise compatibility planning, and soundproofing, land acquisition, and other projects to carry out noise compatibility programs. Noise compatibility programs are developed in consultation with surrounding communities and airport users. The airport must notify the public and afford an opportunity to comment at a public hearing.

The Airport and Airway Improvement Act of 1982 (AAIA) established the Airport Improvement Program (AIP) and first made funds available for noise compatibility planning and to carry out noise compatibility programs authorized under ASNA. The AAIA has been amended several times, and authorizes the current Federal AIP program. Since 1976, the ability of the FAA to provide financial assistance under the AIP has remained limited in terms of both percentage of project costs and the types of projects eligible for Federal aid. Applications for airport development projects have consistently exceeded available funding, although the amounts available for obligation under the AIP have ranged from approximately $450 million in Fiscal Year 1982 to a recent high of approximately $1.9 billion in Fiscal year 1992. Through additional legislation, FAA gained authority to grant AIP funds to units of local government in order to soundproof public schools and hospitals.

In 1990, Congress established a National Aviation Noise Policy in the Airport Noise and Capacity Act, 49 USC 47521 (ANCA). This Policy had three primary elements. The first was a program for transition to an all-Stage 3 civil subsonic turbojet fleet. In 1991, pursuant to ANCA, the FAA amended Part 91 to establish a phased program to require operations by civil subsonic turbojet airplanes weighing more than 75,000 pounds to meet Stage 3 noise standards by the year 2000. This phaseout requirement applied to all operators of large Stage 2 airplanes, not just air carriers, operating in the contiguous United States.

The second element was a national program for review of airport noise and access restrictions on operations by Stage 2 and 3 aircraft. ANCA applies to restrictions on operations by Stage 2 aircraft proposed after October 1, 1990, and to restrictions on operations by Stage 3 aircraft not in effect before October 1, 1990. In 1991, as a companion rulemaking to the Part 91 amendment, the FAA adopted Part 161 to implement the requirements under ANCA relating to airport restrictions.

After careful study, the FAA determined that Part 161 should cover operations by all Stage 2 aircraft, including those weighing less than 75,000 pounds that are not subject to the phaseout requirement. Part 161 also applies to proposals to restrict operations by helicopters that are certificated as Stage 2. ANCA, as implemented by Part 161, provides that airports must give 180 days notice and an opportunity for public comment on a cost-benefit analysis concerning proposals to restrict operations by Stage 2 aircraft. Proposals to restrict operations by Stage 3 aircraft must (1) be agreed upon by the airport and all users at the airport or (2) satisfy procedural requirements similar to proposals to restrict Stage 2 operations and be approved by FAA. To be approved, restrictions must meet the following statutory criteria:

(1) The restriction is reasonable, nonarbitrary and nondiscriminatory.

(2) The restriction does not create an undue burden on interstate or foreign commerce.

(3) The proposed restriction maintains safe and efficient use of the navigable airspace.

(4) The proposed restriction does not conflict with any existing Federal statute or regulation.

(5) The applicant has provided adequate opportunity for public comment on the proposed restriction.

(6) The proposed restriction does not create an undue burden on the national aviation system.

ANCA does not supersede preexisting law except to the extent required by the application of its terms. Preexisting law governing airport noise and access restrictions is discussed in detail below, under "Legal Responsibilities of Airport Proprietors." FAA encourages airport proprietors to seek to enter into voluntary agreements with users. Voluntary agreements are not subject to ANCA, and may include agreed-upon enforcement mechanisms that are consistent with Federal law.

The final element of the national noise policy was the provision of another source of funds eligibility, conditions upon compliance with the national program for review of airport noise and access restrictions. In 1990, Congress amended the Anti-Head Tax provisions of the Federal Aviation Act to authorize FAA to approve collection and use of PFCs by public agencies.[3] Public agencies that control commercial service airports may, subject to FAA approval, receive passenger facility charges collected from enplaning passengers using the airport, and use these charges for airport development or noise abatement projects. PFCs charges may be used, among other things, to finance remedial measures that would qualify for AIP funding if included in an approved airport noise compatibility program. The PFC program has assumed increasing importance in providing revenue for noise as well as capacity-enhancing projects.

3.2 Legal Responsibilities of State and Local Governments

While the Federal government's exclusive statutory responsibility for noise abatement through regulation of flight operations and aircraft design is broad, the noise abatement responsibilities of state and local governments, through exercise of their basic police powers, are circumscribed. The scope of their authority has been most clearly described in negative terms, arising from litigation over their rights to act.

The chief restrictions on state and local police powers arise from the exclusive Federal control over the management of airspace. Local authorities have been long prevented by Federal preemption of authority in the area from prohibiting or regulating overflight for any purposes.[4] That principle was found in 1973 to include any exercise of police power relating to aircraft operations in *City of Burbank* v. *Lockheed Air Terminal*, 411 U.S. 624 (1973). In the *Burbank* case, the Supreme Court struck down a curfew imposed by the City in the exercise of its police power at an airport not owned by it. The court stated that, "the pervasive nature of the scheme of Federal regulation of aircraft noise leads us to conclude that there is Federal preemption." 411 U.S. at 633. The national character of the subject matter also supported preemption. 411 U.S. at 625. "If we were to uphold the Burbank ordinance and a significant number of municipalities followed suit, it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of the FAA in controlling air traffic flow. The difficulties of scheduling flights to avoid congestion and the concomitant decrease in safety would be compounded." 411 U.S. at 639. Although control of noise is deep-seated in the police power of the states (411 U.S. at 638), the Court found that Congress unequivocally intended that the Federal government have "full control over aircraft noise, preempting state and local control." 411 U.S. 625, 627–28, 639. The Court's reliance on the legislative history of section 611 of the Federal Aviation Act and its 1972 amendments indicates that other types of police power regulation, such as restrictions on the type of aircraft using a particular airport, are equally proscribed. The Court, however, specifically excluded consideration of what limits, if any, apply to a municipality acting in its proprietary capacity.

In two subsequent cases, Federal courts determined that the constitutionality of state airport noise regulations depended upon whether they sought to directly control aircraft noise or mitigate its effects. In *Air Transport Association* v. *Crotti*, 389 F. Supp. 58 (N.D. Cal., 1975) a state airport noise statute that imposed noise abatement duties on airport proprietors without directly regulating aircraft operation was upheld. California's statutory and regulatory scheme established permissible cumulative noise (community noise equivalent noise levels or CNEL) standards for continued operation of airports, monitoring requirements, and ultimate noise levels for surrounding land uses. In upholding the validity of the statutory scheme, the court noted that airport authorities were left to choose among suggested procedures, and were free to use other noise control measures beyond those suggested to achieve the prescribed noise standards.

The court indicated that efforts to control aircraft traffic under the CNEL might be suspect, but since no action had been taken the court refrained from ruling upon limitations to the airport proprietor's authority. In this same case, the court struck down maximum single event noise exposure levels (SENEL) for takeoff and landings of aircraft, which had been established by the State for enforcement by counties through criminal fines levied against aircraft operators. The court held that these state regulations were per se unlawful exercises of police power because they attempted to regulate noise levels occurring when aircraft were in direct flight in clear contravention of FAA's statutory authority.[5]

[4] *American Airlines* v. *Town of Hempstead*, 398 F.2d 369 (2d Cir. 1968) Town noise ordinance that prohibited overflights over the village by aircraft that did not meet certain noise standards held invalid because Congress had preempted the field of aircraft operation. Compliance with the ordinance would have required the alteration of FAA-promulgated flight patterns and procedures controlling aircraft in the New York City area; *American Airlines* v. *City of Audubon Park*, 297 F. Supp. 207, 407 F.2d 1306 (6th Cir. 1969) Court held that local ordinance conflicted with the glide slope which aircraft were required to follow in approaching the airport.

[5] See also, *Minnesota Public Lobby* v. *Metropolitan Airport Commission*, 520 N.W. 2d 388 (Minn. 1994) Minnesota Supreme Court held that

In 1981, the Ninth Circuit Court of Appeals addressed a measure that the state required an airport proprietor to implement in order to comply with the airport noise standards upheld in *Crotti*. In *San Diego Unified Port District* v. *Gianturco*, 651 F.2d 1306 (9th Cir. 1981), cert den. 455 U.S. 1000 (1982), the State of California sought to require the Port District, as owner of Lindbergh Field, to extend a curfew. The State made extension of the curfew a condition of the variance needed to continue to operate the airport, which was not in compliance with California noise standards. Like the curfew in *City of Burbank*, the court found that the State's curfew impinged on airspace management by directing when planes may fly in the San Diego area, and on Federal control of aircraft noise at its source by restricting the permissible flight times of aircraft solely on the basis of noise. The court explained that the Federal government has only preempted local regulation of the source of noise, not the entire field of aviation noise. The effects of noise may be mitigated by state and local government independently of source noise control. "Local governments may adopt local noise abatement plans that do not impinge upon aircraft operations." 651 F.2d at 1314. The court declined to interpret the 1976 Aviation Noise Abatement Policy as evidence that the Federal Government had abdicated its duties to regulate aircraft noise or for the proposition that states may use their police power to coerce political subdivisions to use proprietary powers. The court also found that the State of California was not a proprietor of Lindbergh Field, and thus could not rely upon Burbank's proprietor exception permitting airports utilizing their proprietary powers (rather than police powers) to enact reasonable, nonarbitrary, and nondiscriminatory rules defining the permissible level of noise which can be created by aircraft using the airport.

The ruling in *City of Burbank* was held to govern the exercise of zoning authority to ban a taxiway project in *Burbank-Glendale Pasadena Airport Authority* v. *City of Los Angeles*, 979 F.2d 1339 (9th Cir. 1992). In the BGPAA case, the Ninth Circuit Court of Appeals reviewed the constitutionality of an ordinance that required prior submission and approval of plans for development of a 54-acre parcel of land. The land, which was used solely for aircraft landings and takeoffs at Burbank Airport, was slated for construction of a taxiway project that was expected to produce significant safety improvements and noise benefits. The ordinance was enacted by the City of Los Angeles just before construction of a taxiway project was to begin, and applied exclusively to the parcel of land owned by the airport but located in the jurisdiction of the City of Los Angeles. The court found that the City was prohibited from conditioning airport development on prior City approval. It stated that proper placement of taxiways and runways is critical to the safety of takeoffs and landings and essential to the efficient management of the navigable airspace. The Court stated that Federal aviation safety interests preempted control of airport ground facilities. The Court held that nonproprietor jurisdictions may not abuse their land use powers by delaying a safety project and withholding a building permit until the FAA and the airport proprietor agree to aircraft noise control terms.

Recent years have witnessed a steady increase in state and local ordinances and zoning measures that seek to regulate growth and expansion of large metropolitan airports.[6] Federal law and policy continues to confirm that state and local police power regulation of aircraft noise is Federally preempted when it impinges on airspace management, aircraft flight, and operations. Non-proprietors may take noise impacts into account in siting airports and other facilities, and may mitigate the effects of noise. Federal aviation statutes do not direct the Federal government to decide where airports should be located, or whether and where an existing airport should acquire additional property for expansion; instead, such decisions are the primary responsibility of airport owners and operators. However, Federal authority to control the navigable airspace necessarily encompasses the placement, size, and configuration of runways. Likewise, the Airport and Airway Improvement Act of 1982 prescribes a dominant role for the FAA in airport development, which encompasses constructing, repairing, or improving public use airports, and imposes significant program responsibilities on the FAA. Non-proprietor jurisdictions have no role in determining the legal requirements for runway expansion and development within the boundaries of the existing airport. Federal aviation law preempts local ordinances designed to control and impede air navigation facilities, airport safety projects, or development projects on airport property at major airports as a means of controlling aircraft noise, and to otherwise control flight operations and impede safe and efficient airspace management. As a corollary of this principle, state and local governments may not use their police powers to require airport proprietors to exercise their proprietary powers to control aircraft noise at its source. The FAA is closely scrutinizing actions by state and local governments seeking to limit airport expansion, particularly of major metropolitan airports. FAA has and will continue to intervene in appropriate cases to assure that state and local governments exercise their authorities in full accord with the principles in City of Burbank and its progency.

In addition to established case law, Section 105 of the Airline Deregulation Act of 1978, 49 U.S.C. 41713 expressly provides that States, political subdivisions of States, and political authorities of at least two States, are prohibited from enacting or enforcing any law relating to a price, route, or service of an air carrier. This statute was intended to ensure that States would not undo Federal deregulation with regulation of their own. This statute prohibits state laws or local noise ordinances that would constitute a direct or indirect regulation of a price, route or service of an air carrier. As noted in the Section entitled "Legal Responsibilities of Airport Proprietors," it preserves the authority of airport proprietors.

The FAA encourages local authorities to implement airport noise compatibility planning and protect their citizens from unwanted aircraft noise, principally through their powers of land use control. Control of land use around airports to ensure that only compatible development may occur in noise-impacted areas is a key tool in limiting

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the Metropolitan Airports Commission was not required to develop a plan to comply with state pollution control noise standards in operating Minneapolis-St. Paul International Airport. The State's noise standards as applied to MAC impinged on aircraft operations because (1) enforcement of the standards would severely limit the flexibility of the FAA in controlling aircraft flow and (2) compliance would be impossible without either substantially reducing aircraft operations, converting much of South Minneapolis and the surrounding suburbs to non-residential areas, or moving the airport. In the opinion of the court the State had no power to require an airport proprietor such as MAC to use its proprietary powers in certain ways that may have achieved compliance with the noise standards.

[6] See, e.g., *Dallas Ft. Worth International Airport Board* v. *City of Irving*, 854 S.W.2d 750 (Ct. of Appeals Texas 1993), writ denied, 894 S.W.2d 456 (Tex. App-Ft. Worth 1995); *City of New Orleans* v. *Kenner*, 1992 U.S. Dist. LEXIS 1046 (ED La 1992), rev'd__F.2d__ (5th Cir. 8/6/92); *City of Cleveland* v. *City of Brook Park*, 893 F. Supp 742 (ND Ohio 1995); *City of Burbank* v. *BGPAA* (85 Cal Rpt. 2d 28 (1999), review den., 1999 Cal. LEXIS 5393 (Cal Sup. Ct. 8/11/99).

the number of citizens exposed to noise impacts, and it remains exclusively in the control of state and local governments. Occasionally, it is a power enjoyed by individual airport operators; some operators are municipal governments that can impose appropriate land use controls through zoning and other authority. But even where municipal governments themselves are operators, the noise impacts of their airports often occur in areas outside their jurisdiction. Other police power measures, such as requirements that noise impacts be revealed in real estate transactions, are also available to them. Other measures are also available to mitigate the effects of noise, such as by baffling existing noise or resetting those affected by noise. Finally, local governments have legal authority to take noise impacts into account in their own activities, such as their choice of location and design for new airports, new schools, hospital or other public facilities, as well as sewers, highways and other basic infrastructure services that influence land development.

3.3 Legal Responsibilities of Airport Proprietors

Under the Supremacy Clause of the U.S. Constitution, Federal law preempts state or local law when Congress expressly or impliedly indicates an intention to displace state or local law, or when that law actually conflicts with Federal law. As discussed above, in 1973, the Supreme Court held that the pervasive scope of Federal regulation of the airways implied a congressional intention to preempt municipal aircraft noise restrictions based upon the police power. The court left the door open to noise regulations imposed by municipalities acting as airport proprietors,[7] however, based on such municipalities legitimate interest in avoiding liability for excessive noise generated by the airports they own. After *Burbank*, Congress expressly provided that the proprietary powers and rights of municipal airport owners are not preempted by Federal law. 49 U.S.C. 41713 (section 105 of the Airline Deregulation Act of 1978). Thus, the task of protecting the local population from airport noise has fallen to the agency, usually the local government, that owns and operates the airport.

Subsequent to the *Burbank* decision, the courts have confirmed that Congress has reserved a limited role for local airport proprietors to regulate noise levels at their airports. Thus, the responsibilities of state and local governments as airport proprietors are less restricted than those of non-proprietor governments. The rationale for the airport proprietor exception is that airport proprietors bear monetary liability for excessive noise under the Supreme Court decision in *Griggs* v. *Allegheny County*, 369 U.S. 84 (1962). The Court found that because the airport proprietor had that liability, fairness dictated that airport proprietors must also have the power to insulate themselves from that liability. The proprietor, the court reasoned, planned the location of the airport, the direction and length of the runways, and has the ability to acquire more land around the airport. From this control flows the liability, based on the constitutional requirement of just compensation for property taken for a public purpose. The Court concluded: "Respondent in designing the Greater Pittsburgh Airport had to acquire some private property. Our conclusion is that by constitutional standards it did not acquire enough." The role of the proprietor described by the Court remains the same today.

In contrast, it is understandable that non-proprietor localities in the vicinity of major airports cannot be permitted an independent role in controlling the noise of passing aircraft. In the words of the Second Circuit Court of Appeals.

> [t]he likelihood of multiple, inconsistent rules would be a dagger pointed at the heart of commerce—and the rule applied might come literally to depend on which way the wind was blowing. The task of protecting the local population from airport noise has, accordingly, fallen to the agency, usually of local government, charged with operating the airport.

British Airways Board v. *Port Authority of New York and New Jersey*, 558 F.2d 75, 83 (2d Cir. 1977).

An airport proprietor's powers, however, are not unlimited. For example, Federal case law consistently holds that proprietors are vested only with the power to promulgate reasonable, nonarbitrary, and nondiscriminatory regulations establishing acceptable noise levels for the airport and its immediate environs that avoid the appearance of irrational or arbitrary action. *National Helicopter Corp.* v. *City of New York*, 137 F.3d 81, 89 (2d Cir. 1998); *British Airways Board* v. *Port Authority of New York and New Jersey*, 558 F.2d 75, 564 F.2d 1002 (2d Cir. 1977). The Department of Transportation's own policy statement similarly states that an airport owner's conduct is not preempted as an exercise of its proprietary powers when such exercise is reasonable, nondiscriminatory, nonburdensome to interstate commerce, and designed to accomplish a legitimate State objective in a manner that does not conflict with the provisions and policies of the aviation provisions of Title 49 of the United States Code. 14 CFR 399.110(f).

In the British Airways case, the Port Authority of New York and New Jersey banned the Concorde SST aircraft from using Kennedy International Airport pending a six-month study of operating experience at other U.S. airports. Rather than applying its 1951 noise standard to the new Concorde aircraft, the Port Authority banned the aircraft based on its low frequency sound. Air France and British Airways challenged the ban, arguing among other things, that the ban was preempted by DOT's authorization of Concorde landings at JFK and provision of detailed regulations for noise control at the airport, and that it was discriminatory and an undue burden on commerce. The Court of Appeals held that the Port Authority possessed the power and bore the responsibility to establish fair, even-handed and nondiscriminatory regulations designed to abate the effect of aircraft noise on surrounding communities and directed the lower court to conduct an evidentiary hearing on the reasonableness of the Port Authority's ban based upon low frequency sound.

Subsequent to the first ruling, the Port Authority resisted in responding to the airlines' desire to secure a fair test of their aircraft in New York. The Port Authority refused to accord landing rights to an airplane that was capable of meeting its rule that had consistently been applied to all other aircraft for nearly 20 years—112 PNdB. As a result, the carriers brought suit again. In the second *British Airways case*, the Court of Appeals affirmed its prior ruling concerning the limitations of proprietary powers. The court then affirmed the enjoining of further prohibition of Concorde operations at Kennedy Airport until the Port Authority promulgated a reasonable, nonarbitary and nondiscriminatory noise regulation that all aircraft were afforded the opportunity to meet. The action of the Port Authority purporting to exercise delegated authority to regulate noise was held to constitute unjust discrimination within the meaning of the AAIA when the action resulted in denial of use of the airport to aircraft that met noise standards applies to other aircraft allowed to use the airport.

The court pointed out that with respect to the reasonableness of airport

[7] Traditionally, airport proprietors own and operate the airport, promote the airport, and have the legal power to acquire necessary approach easements.

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use restrictions, it is important that they be found on "definitive findings, based on substantial evidence, that the proposed use would jeopardize the health, safety, or welfare of the public." British Airways, 564 F.2d 102, 1014 (2d Cir. 1977).

A noise curfew prohibiting the arrival or departure on a non-emergency basis of any aircraft between the hours of 12 midnight and 7 a.m. applying to all aircraft regardless of the noise emission level of degree of noise produced was found to be an unreasonable, arbitrary, and discriminatory and overbroad exercise of power by the county in *U.S.* v. *Westchester*, 571 F. Supp. 786 (S.D.N.Y. 1983).

In *City and County of San Francisco* v. *FAA*, 942 F.2d 1391 (9th Cir. 1991), a city regulation was interpreted to ban a retrofitted Q–707 meeting Stage 2 standards from using the airport while other Stage 2 aircraft making similar levels of noise were permitted. The aircraft operator filed a complaint with the FAA alleging that exclusion of its retrofitted 707 was unjustly discriminatory in violation of the city's Airport Improvement Program grant assurances. A DOT law judge found that the city had breached its grant assurance that it would operate the airport without unjust discrimination. The FAA Administrator affirmed the law judge's finding because the city's noise regulation allowed aircraft that were equally noisy or noisier than Q–707's to operate at the airport and increase in number without limit, while excluding the Q–707 based on a characteristic that had no bearing on noise (date of type-certification as meeting Stage 2 requirements). Thus, the regulation violated the statutory requirement and the city's grant assurance requirement that the airport would be available without unjust discrimination. The Ninth Circuit Court of Appeals upheld the FAA's interpretation of the statutory and grant assurance requirements as reasonable. This case, as in the *British Airways* cases, illustrates that use of noise control regulations by an airport proprietor to bar aircraft on a basis other than noise, or without a factual basis, was found to be inconsistent with a fair and efficient national air transportation system.

Airport proprietors are also prohibited from enacting noise restrictions that would impose an undue burden on interstate commerce. The Commerce Clause prohibits any state or local government actions that would unconstitutionally burden interstate commerce. For the most part, noise ordinances that would violate the Commerce Clause when the particular means chosen by the proprietor to achieve its goals are irrational, arbitrary or unrelated to those goals. For example, a court would likely strike down a noise ordinance if its purpose was in fact to disfavor interstate commerce, its benefits were illusory or insignificant, or impermissible parochial considerations unconstitutionally burdened interstate commerce. In *U.S.* v. *Westchester*, 571 F. Supp. 786 (S.D.N.Y. 1983), the court found that a blanket nighttime curfew regardless of noise emission had an adverse impact on the flow of air commerce because it interfered with and prevented the efficient use of the navigable airspace, resulting in bunching of flights, delays in flights not only at Westchester County Airport but at LaGuardia and other airports in the metropolitan area, and disruption in the flow of air traffic in the New York City metropolitan area. The curfew further represented an unlawful exercise of local police power by the County.

In *National Aviation* v. *Hayward*, 418 F. Supp. 417 (N.D. Cal. 1976), the court reviewed the constitutionality of an ordinance which prohibited the operation of aircraft between the hours of 11 p.m. and 7 a.m. by aircraft which exceeded a noise level of 75 dBA. The plaintiffs argued that the ordinance burdened interstate commerce by forcing them to make their flights from Oakland Airport rather than Hayward Air Terminal, thereby impairing their ability to deliver mail and newspapers to customers in California and other nearby states. The court upheld the airport's nighttime noise level limitation as a valid exercise of proprietary rights. On application of a balancing test under the Commerce Clause, the court found that the burden imposed on the flow of commerce was incidental and did not overcome the local interest in controlling noise levels at Hayward Air Terminal during late evening and morning hours. The nighttime noise level limitation did not sufficiently reduce the value of aircraft operator leases so as to be an unlawful taking under the 14th Amendment.

In *Santa Monica Airport association* v. *City of Santa Monica*, 659 F.2d 100 (9th Cir. 1981), the court stuck down an airport ban on the operation of jet aircraft on the basis of noise under the Commerce and Equal Protection Clauses of the U.S. Constitution because the quality and quantity of noise emitted by the jets had no greater tendency to irritate and annoy than that emitted by permitted propeller-driven aircraft.

In *Alaska Airlines* v. *City of Long Beach*, 951 F.2d 977 (9th Cir. 1991), the City of Long Beach had enacted a curfew in 1981 which limited air carrier flights to 15 per day and required carriers to use quieter aircraft. The Court of Appeals overruled the district court's findings that the ordinance was preempted by Federal law, impermissibly burdened interstate commerce, violated equal protection principles, and was arbitrary and capricious, or otherwise not rationally related to legitimate governmental concerns. The Court of Appeals found that each of the challenged provisions of the ordinance was sufficiently supported by a reasonable and legitimate justification.

Airports that are recipients of Federal airport development grants have specific contractual duties, under the terms of their airport development grant agreements, to ensure that their facilities are available under equitable conditions. These obligations include the duty to ensure that the airport is available for public use on fair and reasonable terms and without unjust discrimination, and that no restriction results in the establishment of an exclusive right. The courts have made it clear that these contractual obligations are an important aspect of the limitations on an airport owner's authority to control aircraft noise, for example, in the issuance of curfews.

In *U.S.* v. *Westchester*, 571 F. Supp. 786 (S.D.N.Y. 1983), discussed in part above, the court also found that the county had obligated itself by the FAA's grant assurances to make the airport available for public use on fair and reasonable terms, without unjust discrimination, and at all times. The court noted that failure to comply with the conditions of a grant authorized the FAA to suspend current grant payments and withhold future grants. The court held that Westchester's curfew on flight operations constituted a breach of the terms, conditions, and assurances set forth in the grant-in-aid agreements between the county and the FAA, and that the FAA properly refused to pay further grant monies to the county based on its failure to comply with grant conditions and assurances.

The power thus left to the proprietor—to control what types of aircraft use its airports, to impose curfews or other use restrictions, and, subject FAA approval, to regulate runway use and flight paths—is not unlimited. Though not preempted, the proprietor is subject to two important Constitutional restrictions. It first may not take any action that imposes an undue burden on interstate or foreign commerce, and second may not unjustly discriminate between different categories of airport users. As discussed,

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airport proprietors that are recipients of FAA airport development grants are subject to certain statutory and contractual obligations including that to make the airport available for public use on reasonable terms and conditions. Also, states, political subdivisions of states, and political authorities of at least two states may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier, unless that law or regulation is consistent with the proprietary exception. See, 49 U.S.C. 41713.

Our concept of the legal framework underlying this Policy Statement is that proprietors retain the flexibility to impose such restrictions if they do not violate any Constitutional or statutory proscription. We have been urged to undertake—and have considered carefully and rejected—full and complete Federal preemption of the field of aviation noise abatement. In our judgment the control and reduction of airport noise must remain a shared responsibility among airport proprietors, users, and governments.

Summary

The legal framework with respect to noise may be summarized as follows:

- The Federal Government has preempted the areas of airspace use and management, air traffic control, safety and the regulation of aircraft noise at its source. The Federal government also has substantial power to influence airport development through its administration of the Airport Improvement Program.
- Other powers and authorities to control airport noise rest with the airport proprietor—including the power to select an airport site, acquire land, assure compatible land use, and control airport design, scheduling and operations—subject to Constitutional prohibitions against creation of an undue burden on interstate and foreign commerce, and unreasonable, arbitrary, and unjust discriminatory rules that advance the local interest, other statutory requirements, and interference with exclusive Federal regulatory responsibilities over safety and airspace management.
- State and local governments may protect their citizens through land use controls and other police power measures not affecting airspace management or aircraft operations. In addition, to the extent they are airport proprietors, they have the powers described in the preceding section.

The authorities and responsibilities under the Policy may be summarized as follows:

- The Federal Government has the authority and responsibility to control aircraft noise by the regulation of source emissions, by flight operational procedures, and by management of the air traffic control system and navigable airspace in ways that minimize noise impact on residential areas, consistent with the highest standards of safety. The Federal government also provides financial and technical assistance to airport proprietors for noise reduction planning and abatement activities and, working with the private sector, conducts continuing research into noise abatement technology.
- Airport Proprietors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optimal site location, improvements in airport design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the Federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate or foreign commerce.
- State and Local Governments and Planning Agencies should provide for land use planning and development, zoning, and housing regulations that are compatible with airport operations.
- Air Carriers are responsible for retirement, replacement or retrofit for older jets that do not meet Federal noise level standards, and for scheduling and flying airplanes in a way that minimizes the impact of noise on people.
- Air Travelers and Shippers generally should bear the cost of noise reduction, consistent with established Federal economic and environmental policy that the costs of complying with laws and public policies should be reflected in the price of goods and services.
- Residents and Prospective Residents in areas surrounding airports should seek to understand the noise problem and what steps can be taken to minimize its effect on people. Individual and community responses to aircraft noise differ substantially and, for some individuals, a reduced level of noise may not eliminate the annoyance or irritation. Prospective residents of areas impacted by airport noise thus should be aware of the effect of noise on their quality of life and act accordingly.

Section 4: Assessing Aviation Noise

4.1 Foundations

The Federal government's methods and standards for measuring and assessing noise impacts derive from scientific research and a series of interagency committee reviews.

Federal Interagency Committee on Urban Noise

In 1979 the Federal Interagency Committee on Urban Noise (FICUN) was formed to develop Federal policy and guidance on noise. The committee's membership included the Environmental Protection Agency (EPA), the FAA, the Federal Highway Administration, and the Departments of Defense (DOD), Housing and Urban Development (HUD), and Veterans Affairs (VA). Among other things, it developed consolidated Federal agency land use compatibility guidelines using Yearly Day-Night Average Sound Levels (DNL) as the common descriptor of noise levels. In order to develop the guidelines, it was also necessary to establish a correlation between land use and noise exposure classifications.

The FICUN issued its report entitled Guidelines for Considering Noise in Land Use Planning and Control in June 1980. This report established the Federal government's DNL 65 dB standard and related guidelines. The FICUN generally agreed that standard residential construction was compatible for noise exposure from all sources up to DNL 65 dB. Their land use compatibility guidelines for noise exposure between DNL 65–70 dB called for building codes to require at least 25 dB outdoor to indoor noise level reduction (NLR); between DNL 70–75 dB, at least 30 dB NLR.

The FICUN considered noise exposure above DNL 75 dB to be "incompatible" with all residential uses except transient lodging with NLR of at least 35 dB. The report contained a comprehensive guidelines table. This table contains the following footnote regarding residential and certain other noise-sensitive uses in the moderate exposure zone from DNL 55–65 dB:

The designation of these uses as "compatible" in this [moderate impact] zone reflects individual Federal agencies' consideration of general cost and feasibility factors as well as past community experiences and program objectives. Localities, when evaluating the application of these guidelines to specific situations, may have different concerns or goals to consider.

The designations contained in the FICUN's land use compatibility table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific

properties and specific noise contours rests with the local authorities.

Aviation Safety and Noise Abatement Act of 1979

The ASNA was the first Federal legislation specifically addressing airport noise compatibility. The FAA implemented the ASNA's provisions in Part 150. This regulation adopted the DNL metric and the 65 dB land use compatibility guideline. This Federal guideline has been widely accepted by airport proprietors as a threshold for limiting new residential development and for sound insulation where new development is permitted above this guideline. The subsection on Airport Noise Compatibility Planning in Section 2 addresses Part 150 provisions in greater detail.

Federal Interagency Committee on Noise

In 1991, the FAA and EPA initiated the Federal Interagency Committee on Noise (FICON) to review technical and policy issues related to assessment of noise impacts around airports. Membership included representatives from DOD, DOT, HUD, the Department of Justice, VA, and the Council on Environmental Quality. The FICON review focused, among other things, on the manner in which noise impacts are determined and described and the extent of impacts outside of DNL 65 dB that should be reviewed in a NEPA document. The FICON's findings and recommendations were published in an August 1992 report, Federal Agency Review of Selected Airport Noise Analysis Issues.

With respect to DNL, the FICON found that there are no new descriptors or metrics of sufficient scientific standing to substitute for the present DNL cumulative noise exposure metric. It further recommended continuing the use of the DN metric as the principal means for describing long-term noise exposure of civil and military aircraft operations. The FICON reaffirmed the methodology employing DNL as the noise exposure metric and appropriate dose-response relationships (primarily the Schultz curve for Percent Highly Annoyed) to determine community noise impacts.

Based on these findings, the FICON supported agency discretion in the use of supplemental noise analysis. It also recommended that further analysis should be conducted of noise-sensitive areas between DNL 60–65 db having an increase of 3 dB or more if screening analysis shows that noise-sensitive areas at or above DNL 65 dB will have an increase of DNL 1.5 dB or more. The FICON decided not to recommend evaluation of aviation noise impact below DNL 60 dB because public heath and welfare effects below that level have not been established.

The FICON strongly supported increasing research efforts on methodology development and on the impact of aircraft noise. It recommended a standing Federal interagency committee be established to assist agencies in providing adequate forums for discussion of public and private sector proposals identifying needed research and in encouraging research and development in these areas.

Federal Interagency Committee on Aviation Noise

The Federal Interagency Committee on Aviation Noise (FICAN) was formed in 1993 based on the FICON report's policy recommendation to form a standard interagency committee for facilitating research on methodology development and on the impact of aircraft noise. Membership includes representatives from DOD, HUD, DOT and the Department of the Interior, as well as NASA and the EPA. Each of the Federal agencies conducting significant research on aviation-related noise is represented on FICAN. Some member agencies, such as HUD and EPA, are not currently conducting research but have broad policy roles with respect to aviation noise issues.

The FICAN does not conduct or directly fund any research. Rather, it serves as a clearinghouse for Federal aircraft noise research and development (R&D) efforts and as a focal point for questions and recommendations on aviation noise R&D. Products include various reports, studies, analyses, findings, and conclusions. The FICAN holds periodic meetings, including a public forum, and issues a report on its activities annually. Since its inception in 1993, it has reached the following conclusions:

- Interagency communication between researchers will help researchers to understand other agencies' goals and objectives in their research programs; afford the opportunity for researchers to discuss the projects ongoing at their own or other agencies; and result in more efficient use of Federal funds by reducing redundancy of research, increasing collaboration, and pooling the talents of various agency scientists.
- The public forum is a valuable mechanism for soliciting input from interested members of the aviation profession and community members.
- The Acoustical Society of America should form a working group tasked with development a revised standard for predicting noise-induced sleep disturbance.

Current and future FICAN activities include:

- Working with researchers to develop individual agency priorities for research to address issues regarding overflight noise in parks and wilderness areas.
- Publishing technical positions on aviation noise topics based on definitive research by member agencies. Such topics include noise-induced sleep disturbance, non-auditory health effects, and land use compatibility guidelines.

4.2 Assessment Methodologies

Yearly Day-Night Average Sound Levels (DNL)

The FAA and other Federal agencies use DNL as the primary measure of noise impacts on people and land uses. This cumulative metric is the Federal standard because it:

- Correlates well with the results of attitudinal surveys of residential noise impact;
- Increases with the duration of noise events, which is important to people's reaction;
- Takes into account the number of noise events of the full 24 hours in a day, which also is important to people's reaction;
- Takes into account the increased sensitivity to noise at night by including a 10-dB nighttime penalty between 10:00 p.m. and 7:00 a.m. to compensate for sleep disturbance and other effects;
- Allows composite measurements of all sources of community noise; and
- Allows quantitative comparison of noise from various sources with a community.

DNL is the only metric backed with a substantial body of scientific survey data on the reactions of people to noise. It provides a simple method to compare the effectiveness of alternative airport scenarios. Land use planners have acquired over 20 years of working experience applying this metric to make zoning and planning decisions. DNL is a sound and workable tool for land use planning and in relating aircraft noise to community reaction. Experience indicates that DNL provides a very good measure of impacts on the quality of the human environment, forming an adequate basis for decisions that influence major transportation infrastructure projects. In an August 1992 report, the FICON reaffirmed both DNL as the appropriate metric for measuring aviation noise exposure and DNL 65 dB as the Federal Government's level of significance for assessing noise impacts.

Some people challenge the use of DNL to assess aviation noise because it is a measure of exposure from cumulative events over time rather than a measure of exposure from a single noise event. Commonly cited as potential alternative metrics are the Sound Exposure Level (SEL), which describes cumulative noise exposure from a single event, and Maximum Level (L_{max}), the highest level during a single event. Although sometimes useful as supplemental measures of noise exposure, single event metrics pose problems. They present neither an accurate picture of noise exposure nor the overall impact of noise on a community. Because single event metrics by definition are not composites of cumulative events, 100 aircraft operations a day would be no worse than one operation. Similarly, one event at 90 dB would be assessed as worse than 100 events at 89 dB. These effects clearly do not reflect noise impacts or annoyance reactions accurately. Alternatively, DNL increases with the number of operations, while single event measures do not. DNL combines the number of operations with the loudness of each operation into a cumulative noise dose. The resulting values correlate well with independent tests of annoyance from all sources of noise.

Human response to noise involves both the maximum level and its duration, so the maximum sound level alone is not sufficient to evaluate the effect of noise on people. Clearly, people are bothered by individual noise events, but their sense of annoyance increases with the number of those noise events, and with those that occur late at night. The DNL metric provides a combined measure of these factors that can be used to evaluate existing and predicted future conditions on an unambiguous, single-number basis. Although DNL is an average of cumulative noise levels, sound levels of the loudest events control the DNL calculation. Both L_{max} and SEL measure individual sound events that may occur only once, or may occur several times during the day. The number of times these events occur and when they occur are important in measuring the noise environment. DNL is a time-average of the total sound energy over a 24–hour period, adjusted by providing a 10 dB penalty to sound levels occurring between 10PM and 7AM. This 10 dB penalty means that one nighttime sound event is equivalent to 10 daytime events of the same level. Accordingly, DNL combines both the intensity and number of single noise events with a nighttime weighting factor in a manner that is strongly influenced by maximum sound levels.

Recognizing that DNL often is criticized based on perceptions of community annoyance, the FICON reaffirmed that complaints are an inadequate indicator of the full extent of noise effects on a population. The DNL 65 dB level of significance does not mean that no one is annoyed below that level. Extensive research has been conducted to evaluate annoyance. In an attempt to meet demand for a usable and uniform relationship between noise and annoyance, T.J. Schultz reviewed the results of 161 social surveys where data were available to make a consistent judgment concerning what percent of the population was "highly annoyed" (%HA). The surveys were of community reactions to several types of transportation noises such as road traffic, railroad, and aircraft noises. The results agreed fairly well with one another, and Schultz developed an equation for describing the relationship between the level of exposure (in DNL) and percent of population highly annoyed. Schultz published the results of the surveys in 1978 in "Synthesis of Social Surveys on Noise Annoyance." In 1992, the US Air Force updated Schultz's research with a total of 400 surveys. Comparison of the original and updated results indicate that they differ by less than two percent in the DNL range from 45 to 75 dB. The following chart presents the relationship between %HA and DNL:

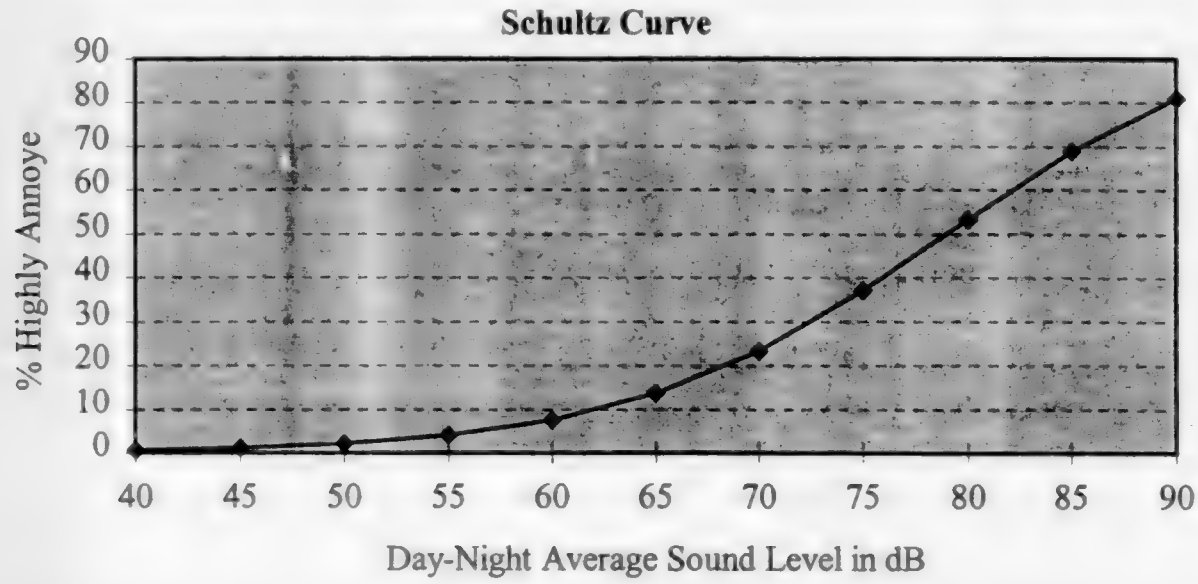

The Schultz curve indicates that about 12 percent of people living at DNL 65 dB report themselves to be "highly annoyed" by transportation noise. About 3 percent are highly annoyed at a DNL of 55 dB.

Noise Analysis Criteria for Changes in DNL

The DNL 65 dB contour remains the FAA's lower limit for defining significant noise impact on people. For a variety of reasons, noise predictions and interpretations are frequently less reliable below DNL 65 dB. DNL prediction models tend to degrade in accuracy at large distances from the airport. Smaller proportions of the population are highly annoyed with successive decreases in noise levels below DNL 65 dB. The FICON studied criteria for predicting changes in community annoyance below DNL 65

dB. It found that a DNL 3 dB increase at the DNL 60 dB level is generally consistent with the existing DNL 1.5 dB screening criterion at the DNL 65 dB level. This finding was based on using the Schultz curve to relate changes in impact level with changes in DNL. Increases of 5 dB at DNL 55 dB, 3 dB at DNL 60 dB, and 1.5 dB at DNL 65 dB all resulted in a three percent increase in %HA.

For airport development and other actions in the vicinity of an airport, the FAA guidelines for screening based on changes in aviation noise impacts above and below DNL 65 dB follow:

DLN 65 dB and above—An increase in noise exposure of 1.5 dB or more at these levels is considered a significant addition of noise. A Federal action resulting in such an increase would require an environmental impact statement (EIS).

DLN 60–65 dB—Increases in noise of 3 dB or more that remain between DNL 60–65 dB do not result in significant exposure but can be noticeable and may be highly annoying to some people. The FAA will consider mitigation options but would not require an EIS in noise-sensitive areas between DNL 60–65 dB that are projected to have an increase of 3 dB or more as a result of the proposed changes.

For air traffic changes farther away from an airport, FAA recognizes that some actions in areas below DNL 60 dB may produce noticeable noise increases and generate adverse community reaction. Although increases in noise in these areas are well below the standard criteria for significant impact, the FAA's air traffic screening procedures provide mechanisms to identify whether there are extraordinary circumstances warranting an EA.

Supplemental Metrics

The FICON recognized that DNL can be supplemented by other metrics on a case-by-case basis, but advised continued agency discretion in the use of supplemental noise analysis. It found that the use of supplemental metrics is limited because threshold levels of significant impact have not been established and there is no accepted methodology for aggregating these values into a cumulative impact description. Supplemental metrics can be useful in characterizing specific events and enhancing the public's understanding of potential effects resulting from proposed changes in aircraft operations. Supplemental single event analysis sometimes is conducted to evaluate sleep disturbance and, less frequently, specific speech interference issues. For proposed FAA actions in the vicinity of national parks in pristine areas and land uses such a wildlife refuges where the Part 150 land use compatibility guidelines bear little relevance, the FAA supplements DNL noise analysis with other metrics on a case-by-case basis. The following metrics are useful for site-specific applications on a case-by-case basis:

Equivalent Sound Level (L_{eq}) is a cumulative metric that can be appropriate where aircraft noise can affect activity periods of less than 24-hour duration.

Maximum Sound Level (L_{max}) is a single event metric that can be used to describe the greatest sound level in decibels during a given time period at a noise-sensitive location.

Sound Exposure Level (SEL) is a single event metric that can be used to describe noise exposure at noise-sensitive locations. This metric can be expressed both in terms of maximum levels and number of occurrences at varying levels.

Time Above dBA Threshold (TA) is a metric that can be used in the same situations as L_{eq}, such as measuring noise exposure within specific time periods. The designation of threshold to be used in supplemental TA measurements may be defined with respect to speech interference or the ambient (background) noise level.

4.3 Aircraft Research in National Parks

In 1987, the U.S. Congress enacted Public Law (PL) 100–91, the National Parks Overflight Act, which called for the NPS to recommend to the FAA actions for the substantial restoration "natural quiet" to the Grand Canyon National Park (GCNP). One year later, the FAA issued the Special Federal Aviation Regulation (SFAR) 50–2, creating a Special Flight Rules Area, flight-free zones, and defined routes for commercial air tours and sightseeing within the GCNP. Another milestone occurred in 1995 when the NPS presented a report to Congress on aircraft noise in national parks.

The FAA and the NPS initiated a model validation process. In August 1999, the agencies hosted a two-day meeting at Grand Canyon National Park of eight internationally recognized acoustics experts (the Technical Review Committee (TRC)). Representatives from Harris, Miller, Miller and Hanson; Volpe National Transportation System Center; and Wylie Laboratories worked with the TRC to develop a protocol that would measure the output of various acoustic models against the actual acoustic environment in the Grand Canyon National Park. The desired outcome of the process is a level of confidence in the ability of the tested models to replicate the conditions found in the park. The on-site data was collected during the month of September 1999 and a Spring 2000 report is planned. The TRC will be asked to review and comment on the results.

4.4 Research on Low Frequency Noise

The issue of low frequency aircraft noise and its impact on structural integrity and human health was explored in detail as part of the environmental assessment of the introduction of Concorde supersonic transport operations into the United States. Potential impacts were found to be negligible. Field studies found that the noise-induced vibrations as a result of Concorde operations cause no structural damage. In addition, the Concorde sound pressure levels at low frequencies were found to be well below the EPA threshold for potential health impact. As a result of these findings, the FAA concluded that low frequency noise of subsonic aircraft in a typical airport environment had no significant impact on structures or human health. This does not mean that there may not be some noticeable vibration in certain cases.

Human annoyance resulting from the effects of aircraft noise induced structural vibration is a recently raised concern. Low frequency noise and perceptible vibration may be experienced when aircraft noise levels are high (near the start of takeoff roll) and there are many aircraft events. This same combination of factors also tends to lead to high DNL levels (generally within the 65 DNL contour or higher). However, unlike the widely accepted relationship between aircraft noise exposure in DNL and community annoyance, there does not currently exist a scientific consensus or Federal guidelines on the human annoyance effects of noise-induced structural vibration.

Overall evidence recently evaluated by the FAA suggests low frequency noise is not a separate impact phenomenon, but rather is connected to high cumulative aircraft noise exposure levels. It may be of concern under certain conditions in areas already within the 65 DNL contour due to higher frequency noise. Perceptible vibration due to low frequency noise may be a secondary effect under certain conditions (*e.g.*, home location relative to takeoff roll and aircraft fleet composition) in homes that are exposed to high levels of aircraft noise as calculated with the DNL metric. The

FAA supports and promotes further research on this issue through FICAN.

Section 5: Source Noise Reduction

Commercial air transportation became a major factor in the U.S. economy with the introduction of jet-powered civil transport aircraft into passenger service in the early 1960's. The economic vitality of jet service triggered explosive growth both in the air transportation industry and in those cities and industries it serviced. However, as airports grew in size and importance, the areas adversely impacted by aviation noise also expanded. Despite economic and transportation benefits, as air service expanded to new communities and flight frequencies increased, complaints about aviation's noise impact became common.

As noise became a major concern, both the Federal government and the aviation industry sponsored research into ways to resolve noise problems. In the 1960's, aircraft and engine manufacturers jointly developed the first generation of low-bypass ratio turbofan engines that were both lower in noise and more fuel-efficient than the turbojet engines then in use. In the early 1970s, another major technological advancement occurred with the introduction of the second generation of high-bypass turbofan engines. These research efforts contributed to considerable progress in aircraft noise reduction through quiet engine designs.

5.1 Aircraft Source Noise Standards

On July 21, 1968, Congress passed the Aircraft Noise Abatement Act of 1968 (49 U.S.C. 44709, 44715), giving the FAA its first express authority to regulate aircraft noise through the establishment of aircraft noise standards. Beginning in 1968, the FAA developed certification standards, first for measuring and then for limiting aircraft noise at the source. These certification standards, which paralleled technological improvements in airplane engine designs, are codified in 14 CFR Part 36. The adoption of Part 36 in 1969 prohibited the further escalation of aircraft noise levels of subsonic civil turbojet and transport category airplanes, and required new airplane types to be markedly quieter than the generation of turbojets that were developed in the late 1950's and early 1960's.

The historical evolution of the FAA's certification standards from Stage 1 to Stage 2 to Stage 3 assisted U.S. airframe manufacturers in gaining a competitive advantage by providing the quietest and most fuel-efficient airplanes available. Effective December 1, 1969, the first U.S. aircraft noise regulations in Part 36 set a limit on noise emissions of large aircraft of new design by establishing Stage 2 certification standards. Stage 2 criteria served as the basic standard for engine noise and were based on then-current technology and initially applied only to new types of airplanes. Under the Noise Control Act of 1972, the FAA was given broader authority to set limits for aircraft noise emissions. This authority is codified in 49 U.S.C. 44715.

On February 25, 1977, the FAA amended Part 36 to establish three levels (or stages) of aircraft noise with specified limits, and prescribed definitions for identifying those airplanes classified under each stage. It also required applicants for new type certificates applied for on or after November 5, 1975, to comply with what are now known as Stage 3 noise standards, and to prescribe the acoustical change requirements for airplanes in each noise level stage under Part 36. The amendment was "intended to encourage the introduction of the newest generation of airplanes, as soon as practicable" and provide a compliance schedule to maximize the incentive to replace rather than retrofit older aircraft. This amendment prescribed the noise level standards for that "newest generation of airplanes." The three stages of aircraft noise established in Part 36 have been used as the noise operating limits for civil subsonic turbojet aircraft in the phaseouts of both Stage 1 and Stage 2 airplanes.

5.2 Airplane Operating Noise Limits—Stage 1 Phaseout

When the 1976 Policy was published, it announced a program which would ultimately prohibit operation within U.S. airspace of any civil, subsonic turbojet airplanes with a standard airworthiness certificate and with maximum takeoff weights of more than 75,000 pounds that had not been shown to meet the Stage 2 noise standards contained in Part 36. In accordance with the 1976 Policy, the FAA adopted regulations that in part established a phased compliance program for U.S. domestic operations to reduce aircraft noise. Subpart 1 of Part 91 required that civil subsonic airplanes with a gross weight of more than 75,000 pounds comply with Part 36 Stage 2 or Stage 3 noise levels by January 1, 1985, in order to operate in the United States. Compliance could be achieved by (1) replacing the older fleet with new, quieter airplanes; (2) re-engining the aircraft; or (3) using noise reduction technology, such as hushkits, that has been shown to be technologically feasible and economically reasonable for use on older turbojets.

On February 18, 1980, the Congress enacted the Aviation Safety and Noise Abatement Act of 1979 (ASNA). Title III of that Act required the FAA to promulgate regulations extending application of the January 1, 1985, cut-off date for turbojet aircraft to U.S. and foreign international operators if no international agreement could be achieved on a compliance deadline. Since no such agreement could be reached, on November 28, 1980, the FAA amended § 91.303 to make it applicable to all operators for their operations in the U.S. The ASNA also mandated that certain civil two-engine turbojet airplanes with 100 of fewer seats be given exemptions from the noise rule until January 1, 1988 (the so-called "small community service" exemptions). The FAA implemented the "service to small community" exemption for two-engine subsonic airplanes in § 91.307.

5.3 Airplane Operating Noise Limits—Stage 2 Phaseout

Through passage of the Airport Noise and Capacity Act of 1990 (ANCA), Congress directed that domestic and foreign civil subsonic turbojet airplanes with maximum weight of more than 75,000 pounds must meet Stage 3 standards to operate within the contiguous United States after December 31, 1999. In implementing this statutory requirement, the FAA promulgated a rule in 14 CFR Part 91, Subpart I, requiring that domestic and foreign airplanes that do not meet Part 36 Stage 3 noise levels either be retired or modified to meet those levels. To bring about the earliest feasible reduction of noise levels, interim compliance deadlines for phaseout of Stage 2 and transition to Stage 3 airplane fleets were established on the basis of technological and economic reasonableness. Interim compliance options and related deadlines are:

Phaseout Method

An operator could choose to reduce the number of Stage 2 airplanes it maintains on its operations specifications for operation in the contiguous United States to the required percentage of its established base level number on each compliance date as follows:

After December 31, 1994, 75 percent of its base level;

After December 31, 1996, 50 percent of its base level; and

After December 31, 1998, 25 percent of its base level.

Fleet Mix Method

An aircraft operator could choose to increase the number of Stage 3 airplanes it maintains on its operations specifications for operation in the contiguous United States so that its fleet consists of:

Not less than 55 percent Stage 3 airplanes after December 31, 1994;

Not less than 65 percent Stage 3 airplanes after December 31, 1996; and,

Not less than 75 percent Stage 3 airplanes after December 31, 1998.

New Entrant Compliance

A new entrant air carrier (a domestic or foreign air carrier beginning service in the contiguous United States after November 5, 1990) must increase the number of Stage 3 airplanes it maintains on its operations specifications for operation in the contiguous United States so that its fleet consists of:

At least 25 percent Stage 3 airplanes after December 31, 1994;

At least 50 percent Stage 3 airplanes after December 31, 1996; and

At least 75 percent Stage 3 airplanes after December 31, 1998.

The regulations require all operators of subject airplanes to report compliance progress to the FAA annually. They also provide separate criteria for interim and final compliance waivers. As prescribed in ANCA, a final compliance waiver may only be granted by the Secretary of Transportation (through delegation, by the FAA) to a domestic air carrier for no more than 15 percent of its fleet and that has achieved a fleet mix of at least 85 percent Stage 3 airplanes by July 1, 1999. Any final compliance waiver granted may not extend beyond December 31, 2003.

5.4 Potential Gains From Source Noise Reduction Research

Federal policy recognizes noise impacts on populations and emphasizes source reduction to alleviate those impacts. This policy initiated the Stage 1 phaseout, which subsequently was codified into Federal law. It also resulted in the establishment of Stage 3 standards. In conjunction with additional Federal legislation, the Federal government's aviation noise policy facilitated the phaseout of Stage 2 airplanes by the year 2000. In keeping with this policy, the FAA places a high priority on developing future aircraft noise reduction technology to support the continued expansion of the national aviation system.

In early 1992, the FAA and NASA began sponsorship of a multiyear program focused on achieving significant noise reduction technology advances. In October 1992, Congress mandated that the FAA and NASA jointly conduct an aircraft noise reduction research program, the goal of which is to develop, by the year 2001, technologies for subsonic jet aircraft to operate at reduced noise levels. Current and projected funding of this project in the FAA's and NASA's co-sponsored research program will exceed $200 million by the year 2000. The project's stated goal is to develop technology to reduce the community noise impact of the future subsonic airplanes by 10 dB (relative to 1992 technology).

Future Noise Standards

The FAA is a major participant on an ICAO Committee on Aviation Environmental Protection (CAEP) technical working group that is formulating proposals for an increase in stringency of the international noise standard for subsonic jet and large propeller-driven airplanes. The FAA plans to set new Stage 4 standards by early in the next century. New standards would result in a future timed transition to a generation of airplanes quieter than Stage 3, similar to source-noise reduction transitions that have been implemented since the 1976 Policy.

The Secretary of Transportation's flagship initiative supports the development of more stringent aircraft noise standards. FAA is aggressively pursuing the development of international certification noise standards for turbojet airplanes that will be more stringent than the current Stage 3 standards; and, developing models to assess new noise abatement technologies that will encourage introduction of quieter planes.

Source Noise Reductions for Aircraft Under 75,000 lbs.

Commercial and business aircraft of not more than 75,000 pounds gross weight make a significant contribution to aviation in the United States. They often provide the bridge between smaller communities and the major air carrier airports. Generally, this task is performed by commuter aircraft and specialized air traffic services. Privately owned business aircraft also make a contribution to the system by providing specialized point-to-point service for corporate executives and staff. This service saves valuable time and relieves hub congestion while providing increased aircraft capacity to the system. Each of these classes of smaller aircraft makes its unique contribution to the overall efficiency of aviation. Together, they extend air service to many smaller outlying areas, both rural settings and suburban.

The Stage 1 and Stage 2 airplane phaseouts affected only large commercial airplanes with a gross weight of more than 75,000 pounds. There are no provisions in either Federal law or FAA regulations that are directed at phasing out airplanes of not more than 75,000 pounds. In 1990–91, the FAA undertook a study in accordance with the provisions of 49 U.S.C. 47525 to determine whether requirements governing noise and access restrictions in Part 161 should apply to Stage 2 airplanes of not more than 75,000 pounds as well as to those above that weight. After careful consideration of the various issues involved and of comments received from the public, the FAA concluded that the analysis, notice, and comment provisions for proposed restrictions should apply to all Stage 2 aircraft operations regardless of gross weight. This conclusion was based on the need to protect the interests of all segments of aviation and of the general public.

The National Business Aviation Association (NBAA) passed a resolution in January 1998 that is a first step in voluntary elimination of noisy business aircraft. Coordinated with the FAA, the resolution calls for the NBAA's 5,200 members to refrain from adding Stage 1 aircraft to their fleets beginning in January 2000 and to end the operation of Stage 1 aircraft by January 2005. This resolution affects business aircraft at or below 75,000 pounds. In the absence of specific Federal legislation, the FAA encourages and supports voluntary efforts by the aviation industry that will result in reducing noise of Stage 1 and Stage 2 aircraft of not more than 75,000 pounds in gross weight.

Helicopter Noise Reduction Research

44 U.S.C. 44715 directs the FAA to prescribe and amend aircraft noise standards taking into consideration whether the standard is economically reasonable, technologically feasible and appropriate for the applicable aircraft, aircraft engine, appliance, or certificate. An FAA research project seeks to demonstrate the technological and economical feasibility of incorporating existing noise abatement technology concepts into the designs of light helicopters produced by small manufacturers. The project is a technology transfer effort that will address existing noise abatement design concepts for individual small helicopter designs. Prototype hardware will be constructed and tested, or existing airframe designs modified, to demonstrate the airworthiness and noise reduction potential of the noise abatement designs. The FAA-sponsored

activity is a follow-on to the similar NASA research program directed toward the larger, more technologically advanced manufacturers and involving the development of advanced noise design technologies.

General Aviation Noise Reduction Research

In 1994, Congress directed that the FAA and NASA jointly conduct a noise study of propeller-driven small airplanes and rotorcraft to identify noise reduction technologies, evaluate the status of R&D and determine the need for addition research activities. For propeller-drive small airplanes, the study identified the need for user-friendly tools to design quieter propellers, engine systems optimized for low noise, and demonstration of these concepts.

The FAA and NASA initiated a government/industry/university partnership for acoustics technologies following the findings of the study. This research supports the General Aviation Action Plan (GAAP), which was developed by the general aviation (GA) industry and the FAA. One of the goals of the GAAP is to promote the development of new methodologies and technologies that will reduce the overall perceived noise footprint of GA aircraft. In response, the FAA and NASA are co-sponsoring a research program that seeks to identify and develop propeller-driven aircraft noise reduction and control technologies. The objective of the project is to enable U.S. manufacturers to produce quieter propeller-driven airplanes.

Appendix: References

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Aviation Safety and Noise Abatement Act of 1979 (ASNA) (49 U.S.C. 40116, 46505, 47501–47508).

Airport Noise and Capacity Act of 1990 (ANCA) (49 U.S.C. 47521–47533).

National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*)

Regulations in 14 CFR

Part 36, Noise Standards: Aircraft Type and Airworthiness Certification.

Part 91, General Operating and Flight Rules; Subpart I, Operating Noise Limits.

Part 150, Airport Noise Compatibility Planning.

Part 161, Notice and Approval of Airport Noise and Access Restrictions.

[FR Doc. 00–17784 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2000–7601]

Notice of Request for Clearance of a New Information Collection: Design/Build Research Study

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget's (OMB) approval for a new information collection involving responses to a questionnaire concerning design/build projects. The information to be collected will be used to analyze the affected public's perception of safety related issues and impacts on private property that may be attributed directly to design/build projects. This information is necessary to address certain details and provide feedback to the FHWA's evaluation of right-of-way acquisition and relocation on design/build projects.

DATES: Comments must be submitted on or before September 12, 2000.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. David Walterscheid, (202) 366–9901, Office of Real Estate Services, Federal

Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Design/Build Research Study.

Background: The Transportation Equity Act for the 21st Century (TEA–21), section 1307, prescribes the interim provisions under which projects can be advanced utilizing design/build contracting procedures. TEA–21 mandates that regulations will be developed to carry out the amendments made by section 1307. The regulations will identify the criteria to be used by the Secretary of Transportation in approving the use of and establishing the procedures for design/build contracting by a State transportation department or a local transportation agency. With the increased funding available under TEA–21, States are expected to increase their use of design/build contracting to advance projects. One unique aspect of design/build contracting is that it authorizes construction at the time the project agreement is signed. This allows the contractor to begin construction on a parcel of land as soon as it is acquired. This process could lead to safety concerns and possible coercive actions for vacant landowners, homeowners and/or businesses that await acquisition of, or relocation from, their property for right-of-way purposes. Several design/build projects that included right-of-way acquisition activities have been identified. These projects are located in California, South Carolina and Virginia. The FHWA's Office of Real Estate Services in conjunction with South Carolina State University will conduct a survey of approximately 100 property owners, residents, business owners and various contractors involved in a design/build project to ascertain their perceptions of possible safety related issues or coercive actions that may have affected them. The information will be collected by telephone/written surveys, personal interviews and/or site visits. The information gathered from the survey will be used by the Office of Real Estate Services to assist in the drafting of the regulations as prescribed in TEA–21.

Respondents: The respondents to the survey will be approximately 100 property owners, residents, business owners and various design/build and right-of-way contractors located in California, South Carolina, and Virginia.

Estimated Average Burden per Response: The estimated average burden per response is 30 minutes.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 50 hours.

Frequency: This is a one-time survey.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Access: Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register's** home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Authority: The Transportation Equity Act for the 21st Century, (Pub. L. 105–178), section 1307 and 49 CFR 1.48.

Issued on: July 10, 2000.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 00–17867 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Yellowstone and Carbon Counties, Montana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA hereby gives notice that it intends to prepare an environmental impact statement (EIS) for the proposed reconstruction of US 212 between Rockvale and Laurel in Yellowstone and Carbon County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Program Development Engineer, Federal Highway Administration, 2880 Skyway Drive, Helena, MT 59602; Telephone: (406) 449–5303 ext. 239; or Joel Marshik, P.E., Environmental Services and Tribal Liaison Manager, Montana Department of Transportation, PO Box 201001, 2701 Prospect Avenue, Helena, MT 59602–1001; Telephone: (406) 444–7632.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA in cooperation with the Montana Department of Transportation (MDT), will prepare an EIS to determine the appropriate location, design and alternatives for the proposed future reconstruction of US 212 from Rockvale, Montana [Reference, or "Mile" Post (RP) 42.640±] to just south of Laurel, Montana (RP 53.841±). The EIS will examine the short and long-term impacts on the natural, physical, and human environments. The impact assessment will include, but not be limited to, impacts on wetlands, wildlife, and fisheries; social environment; changes in land use; aesthetics; changes in traffic; and economic impacts. Title VI of the Civil Rights Act (42 U.S.C. 2000d) and Environmental Justice (as outlined in Executive Order 12898) will also be addressed as part of the impact assessment. The EIS will also examine measures to mitigate significant adverse impacts resulting from the proposed action.

Comments are being solicited from appropriate Federal, State, and local agencies and from private organizations and citizens who have interest in this proposal. Public information meetings will be held in the project area to discuss the potential alternatives. A draft of the EIS will be available for public and agency review, and a public hearing will be held to receive comments. Public notice will be given of the time and place of all meetings and hearings.

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Comments and/or suggestions from all interested parties are requested to ensure that the full range of all issues and significant environmental issues, in particular, are identified and reviewed. Comments or questions concerning this proposed action and/or its EIS should be directed to the FHWA or the Montana Department of Transportation (MDT) at the addresses listed previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 10, 2000.

Dale Paulson,

Program Development Engineer, FHWA.

[FR Doc. 00–17840 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Highway Administration

[FRA Docket No. FRA–1998–4759]

Financial Assistance To Eliminate Highway-Railroad Grade Crossing Hazards on Designated High-Speed Rail Corridors

AGENCIES: Federal Railroad Administration (FRA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of solicitation of modified and new applications for the designation of additional high-speed corridors.

SUMMARY: On December 11, 1998, pursuant to the Transportation Equity Act for the 21st Century (TEA–21), the FRA and FHWA published a notice in the **Federal Register** (at 63 FR 68499–68501) soliciting applications from States for the designation of up to three additional high-speed rail corridors. Applications were received on behalf of three corridors by the March 11, 1999 deadline, namely, from the States of Maine and New Hampshire and the Commonwealth of Massachusetts: (1) Boston, Massachusetts and Portland, Maine; and from the State of Ohio: (2) Chicago, Illinois and Cleveland, Ohio (via Toledo, Ohio); and (3) Cleveland and Cincinnati, Ohio (via Columbus and Dayton).

Since receiving these applications, the FRA has been reviewing them carefully and seeking supplemental information from the States in order to assure that the statutory considerations pertaining to designation are properly addressed.

Circumstances have altered with respect to certain of the pending applications since their receipt by the FRA.

In collaboration with the prior applicant States for the Boston-Portland route, the State of Vermont has requested an expansion of the proposed designation for Northern New England, to include a route from Boston through Nashua, Manchester, and Concord, New Hampshire, thence to Montpelier and Burlington, Vermont, and potentially to St. Albans, Vermont and Montreal, P.Q., Canada.

The Midwestern States and Amtrak have continued to develop their plans for the Midwest Regional Rail Initiative (MRRI), of which the Chicago-Cleveland corridor would form an integral part. In recognition of the MRRI's progress and in response to the State of Ohio's request that Chicago-Cleveland be considered as an extension of the existing designated Chicago Hub Network, the FRA has elected to evaluate that route as an extension, rather than as an independent corridor. Since there are now two pending applications (Boston-Portland and Cleveland-Cincinnati) for three potential designations, the FRA can entertain additional applications with the certainty that at least one opportunity exists for a new designation.

Accordingly, in this notice, the FRA is (1) soliciting additional applications from States for designation of a high-speed rail corridor, and is (2) allowing applicant States additional time to modify (and include additional States in) their pending applications.

The FRA and the FHWA are jointly administering this program.

DATES: Signed, written comments on this notice must be received by the FRA on or before August 4, 2000. Completed applications for an additional corridor designation, or for modification of pending applications for designation submitted under the predecessor notice, at 63 FR 68499, must be received by the FRA on or before August 14, 2000.

ADDRESSES: The public is invited to submit written comments on this notice. Written comments should refer to the docket number appearing at the top of this notice and be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address. Docket hours at the Nassif Building are Monday through Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

Applications for corridor designation and requests for modifications of pending applications should be submitted to: The Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, ATTN: HSR Designations, RDV–11, Mail Stop 20, 1120 Vermont Avenue, NW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Neil E. Moyer, Chief, Program Development Division, Office of Railroad Development, (telephone: 202–493–6365; E-mail address: Neil.Moyer@fra.dot.gov), or Mr. Gareth Rosenau, Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mailstop 10, Washington, DC 20590 (telephone 202–493–6054; E-mail address: Gareth.Rosenau@fra.dot.gov).

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communication software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Purpose

The purpose of this notice is to afford States the opportunity (1) to submit applications for additional corridor designations under the 23 U.S.C. 104(d)(2) program to eliminate highway-railroad grade crossing hazards in designated high-speed rail corridors (Section 104(d)(2) Program), and (2) to submit requests to modify pending applications submitted under the previous notice at 63 FR 68499. The public is invited to submit comments on this notice.

Rules for Application Submissions

Applications for the designation of new high-speed rail corridors under the Section 104(d)(2) Program, and requests

for modification of pending applications, shall be submitted to the address cited in this notice, and electronically in either WordPerfect or MS Word format. Electronic versions are to be submitted either on 3–1/2 inch floppy disks, Zip disks, or compact disks (CDs) to the address above, or by electronic mail to Neil.Moyer@fra.dot.gov. Applications shall be submitted by the dates indicated in this notice, and shall comply with the requirements specified in this notice.

Past Designations of High-Speed Rail Corridors

As previously noted, the Secretary is authorized to designate eleven high-speed rail corridors under the Section 104(d)(2) Program. To date the DOT has designated the following eight corridors:

(1) California Corridor (San Francisco Bay Area to Los Angeles and San Diego);

(2) Pacific Northwest Corridor (Eugene, OR via Portland, OR and Seattle, WA to Vancouver, BC);

(3) Chicago Hub Corridor, extending from Chicago to St. Louis, Detroit, Cincinnati, and Minneapolis/St. Paul via Milwaukee;

(4) Florida Corridor (Miami—Orlando—Tampa);

(5) Southeast Corridor (Washington, DC—Richmond, VA (with an extension to Newport News, VA)—Raleigh, NC (with an extension to Columbia, SC, Savannah, GA, and Jacksonville, FL)—Greensboro, NC—Charlotte, NC (with an extension to Atlanta and Macon, GA).

(6) Gulf Coast Corridor, between Houston, TX, New Orleans, LA, and Mobile, AL; also New Orleans and Birmingham, AL;

(7) Keystone Corridor, between Philadelphia and Harrisburg, PA, over the route of the former Pennsylvania Railroad; and

(8) Empire State Corridor, between New York City, Albany, and Buffalo, NY, over the route of the former New York Central Railroad.

Of the designations to date, (1) through (5), above, were originally made in 1992 under Section 1010 of the Intermodal Surface Transportation Efficiency Act of 1991. Designations (6) through (8) were specified by the Congress in TEA–21 and implemented by the Secretary of Transportation in the predecessor notice at 63 FR 68499.

Applications From States for Additional Corridor Designation(s)

Any State, either singly or in conjunction with other States, may request the FRA to designate a corridor under the Section 104(d)(2) Program. As previously noted, applications for designation must be received by the FRA by August 14, 2000.

Section 104(d)(2) requires that the Secretary consider the following:

(1) Whether the proposed corridor includes rail lines where railroad speeds of 90 miles or more per hour are occurring or can reasonably be expected to occur in the future, as specifically mandated by Section 104(d)(2);

(2) The projected ridership associated with the proposed corridor;

(3) The percentage of the corridor over which trains will be able to operate at maximum cruise speed, taking into account such factors as topography and other traffic on the line;

(4) The projected benefits to nonriders, such as congestion relief on other modes of transportation servicing the corridor (including congestion in heavily traveled air passenger corridors);

(5) The amount of State and local financial support that can reasonably be anticipated for the improvement of the line and related facilities; and

(6) The cooperation of the owner of the right-of-way that can reasonably be expected in the operation of the high-speed rail passenger service in the corridor.

Applications from States for designation of high-speed rail corridors, and for modifications of pending applications for designation, will need to explicitly address, in as full and specific a manner as possible, each of the six criteria listed above.

Authority: 23 U.S.C. 315; 49 U.S.C. 20103; section 1103(c), Public Law 105–178, 112 Stat. 107, 122 (1998).

Issued in Washington, D.C. on July 5, 2000.

Mark E. Yachmetz,

Associate Administrator for Railroad Development, Federal Railroad Administration.

Frederick G. Wright, Jr.,

Program Manager, Safety Core Business Unit, Federal Highway Administration.

[FR Doc. 00–17757 Filed 7–13–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00–15]

Notice of Request for Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing for comment a written request for the OCC's opinion about whether Federal law preempts certain provisions of the Massachusetts bank insurance sales statute and regulations promulgated pursuant to that statute by the Division of Banks and the Division of Insurance. This Notice refers to the statute and regulations collectively as the Massachusetts Law. The purpose of this notice and request for comment is to provide interested persons with an opportunity to submit comments prior to the OCC's issuance of a written opinion in this matter.

DATES: Comments must be received on or before August 14, 2000.

ADDRESSES: Comments should be sent to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Attention: Docket No. 00–15, Washington, DC 20219. You may submit comments electronically to regs.comments@occ.treas.gov or by facsimile transmission to (202) 874–5274. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: MaryAnn Orr Nash, Senior Attorney, or Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC has received a request from the Massachusetts Bankers Association (Requester) for a determination that Federal law preempts certain provisions of the Massachusetts Law.

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 generally requires the OCC to publish in the **Federal Register** a descriptive notice of certain requests that the OCC receives for preemption opinions. 12 U.S.C. 43. Under section 114, the OCC must publish notice before it issues any opinion letter or interpretive rule concluding that Federal law preempts the application to a national bank of any State law in four designated areas: Community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches. Pursuant to section 114, interested persons have at least 30 days to submit written comments. Without making a determination as to whether section 114 applies to this request, the OCC has decided that it is appropriate to use

notice and comment procedures given the broad interest in the issues presented. The OCC will publish in the **Federal Register** any final opinion letter we issue concluding that Federal law preempts the provisions of Massachusetts Law that are the subject of the request.

Description of the Request for OCC Preemption Opinion

The OCC has been asked to determine whether section 104 the Gramm-Leach-Bliley Act (GLBA), Pub. L. 106–102, 113 Stat. 1338, 1352–59 (Nov. 12, 1999) (to be codified at 15 U.S.C. 6701), preempts certain specific provisions of the Massachusetts Law.

Section 104(d)(2)(A) of GLBA provides that "[i]n accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County*, N.A. v. *Nelson*, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity." However, GLBA does not preempt state actions that are "substantially the same as but no more burdensome or restrictive than" any of the thirteen specific actions described in section 104(d)(2)(B) of the Act (Safe Harbors). The Requester asserts that GLBA preempts three prohibitions contained in the Massachusetts Law and that none of the Safe Harbors protects these limitations.

The Referral Prohibition and the Referral Fee Prohibition

The Requester asserts that section 2A(b)(2) of the Massachusetts bank insurance sales statute, Mass. Gen. Laws Ann. Ch. 167F, § 2A (Lexis 2000 Supp.), and the corresponding regulations set forth in 209 CMR 49.06(3) and 211 CMR 142.05(3) (2000) prohibit non-licensed bank personnel from referring prospective customers to a licensed insurance agent or broker except upon an inquiry initiated by the customer (the Referral Prohibition). The Requester further asserts that these provisions prohibit non-licensed bank personnel from receiving any additional compensation for making a referral, even if the compensation is not conditioned upon the sale of insurance (the Referral Fee Prohibition). For example, section 2A(b)(1) of the Massachusetts statute provides that:

> Officers, tellers, and other employees of a bank who are not licensed as insurance agents may refer a customer of said bank to a licensed insurance agent of the bank only when such customer initiates an inquiry relative to the availability or acquisition of insurance products. No such officer, teller, or other employee shall be further or additionally compensated for making said referrals.

The Requester asserts that the Referral Prohibition and Referral Fee Prohibition are not protected by any of the Safe Harbors. The Requester contends that these prohibitions are broader than section 104(d)(2)(B)(iv), the Safe Harbor which generally protects restrictions prohibiting the payment or receipt of any commission, brokerage fee, or other valuable consideration for services as an insurance agent or broker to or by any persons other than validly licensed insurance personnel. This Safe Harbor specifically excludes from protection any state law limiting compensation for "a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions." Based on this exclusion, the Requester asserts that the Referral Prohibition and Referral Fee Prohibition are the type of state limitation that Congress explicitly declined to protect in GLBA.

Similarly, the Requester contends that the Referral Prohibition and Referral Fee Prohibition extend beyond the protections of the Safe Harbor contained in section 104(d)(2)(B)(v). That Safe Harbor protects limitations on the payment of insurance commissions and referral fees to unlicensed personnel based upon the purchase of insurance by a prospective customer. The Requestor asserts that the Massachusetts Law does not come within this Safe Harbor because it prohibits referral fees regardless of whether they are based upon the sale of insurance.

The Requester further asserts that GLBA preempts both the Referral Prohibition and the Referral Fee Prohibition because these prohibitions significantly interfere with the ability of a depository institution to engage in insurance sales, solicitation, and crossmarketing activities. In the case of the Referral Prohibition, bank employees may not refer customers to licensed insurance personnel unless the customer initiates the inquiry. In the case of the Referral Fee Prohibition, a bank employee may not receive compensation for making a referral to licensed insurance personnel, even if such compensation is not contingent on the sale of insurance. The Requester asserts that these prohibitions effectively prevent bank employees from engaging in the crossmarketing activities permitted by the GLBA.

Waiting Period Requirement

The Requester also asserts that GLBA preempts section 2A(b)(4)(ii) of the Massachusetts bank insurance sales statute and the corresponding regulations, 209 CMR 49.06(5)(2000) and 211 CMR 142.06 (2000), that require a bank to refrain from making an insurance solicitation in connection with an application for an extension of credit until after the application has been approved and, in the case of an extension of credit secured by a mortgage on real estate, until after the customer has accepted the bank's written commitment to extend credit (the Waiting Period Requirement). Specifically, section 2A(b)(4)(ii) provides that:

> No solicitation for the sale of insurance in conjunction with any application for the extension of credit shall be permitted until said application has been approved, such approval and the disclosures required by this section have been provided to said applicant in writing, and the receipt of both said approval and disclosures has been acknowledged in writing by said applicant. The date, time and method of the communication of said approval and disclosures to the applicant, together with the applicant's acknowledgment of the receipt thereof, shall be made a permanent part of the bank record of such extension of credit. This paragraph shall not apply in situations where a bank contacts a customer in the course of direct or mass marketing of insurance products to a group of persons in a manner that bears no relation to any such person's loan application or credit decision.

The Requester asserts that none of the Safe Harbors protects the Waiting Period Requirement. Although the Safe Harbor contained in section 104(d)(2)(B)(viii) protects certain types of state anti-tying limitations, it specifically excludes any limitation that would prevent a depository institution from informing a customer that insurance is available from the depository institution. Thus, the Requester contends that the Waiting Period Requirement is not substantially the same as any of the Safe Harbors and, in fact, is the type of state limitation that Congress explicity declined to protect in GLBA.

The Requester further asserts that GLBA preempts the Waiting Period Requirement because it requires a depository institution to complete processing of a credit application before even informing an applicant that insurance is available through the institution. Thus, a depository institution may never have an opportunity to market its insurance

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products to loan customers, who may arrange to obtain insurance through another firm while the loan is in process. Accordingly, the Requester asserts that the Waiting Period Requirement significantly interferes with the ability of a depository institution to sell, solicit, and cross-market insurance. The Requester also asserts that the Waiting Period Requirement is overbroad because it applies to all types of insurance and not simply insurance required in connection with a loan.

Request for Comments

The OCC requests comments on whether Federal law preempts the provisions of Massachusetts Law cited and described in this notice.

Dated: June 30, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–17826 Filed 7–13–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 940 and 940–PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 940–PR, Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA).

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (Form 940) and Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA) (Form 940–PR).

OMB Number: 1545–0028.

Form Number: 940 and 940–PR.

Abstract: Internal Revenue Code section 3301 imposes a tax on employers based on the first $7,000 of taxable wages paid to each employee. The tax is computed and reported on Forms 940 and 940–PR (Puerto Rico employers only). IRS uses the information on Forms 940 and 940–PR to ensure that employers have reported and figured the correct FUTA wages and tax.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals, or households, and farms.

Estimated Number of Respondents: 1,367,000.

Estimated Time Per Respondent: 14 hr., 26 min.

Estimated Total Annual Burden Hours: 19,736,544.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 7, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17793 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8628, 8635, and 9383

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8628, Order Blank for Federal Income Tax Forms for "Plan Only" Accounts, Form 8635, BPOL Order Blank for Federal Income Tax Forms, and Form 9383, Fax Order Blank for BPOL Reorders.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 8628, Order Blank for Federal Income Tax Forms for "Plan Only" Accounts, Form 8635, BPOL Order Blank for Federal Income Tax Forms, and Form 9383, Fax Order Blank for BPOL Reorders.

OMB Number: 1545–1222.

Form Number: Forms 8628, 8635, and 9383.

Abstract: Forms 8628, 8635, and 9383 allow banks, post offices and libraries to order tax forms and publications to distribute to taxpayers at convenient locations. Participation is on a voluntary basis and done as a public service for the Internal Revenue Service.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 63,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 5,450.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17794 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–D

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–D, United States Additional Estate Tax Return Under Code Section 2057.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: United States Additional Estate Tax Return Under Code Section 2057.

OMB Number: 1545–1680.

Form Number: 706–D.

Abstract: A qualified heir will use Form 706–D to report and to pay the additional estate tax imposed by Code section 2057. Section 2057 requires an additional tax when certain "taxable events" occur with respect to a qualified family-owned business interest received by a qualified heir. IRS will use the information to determine that the additional estate tax has been properly computed.

Current Actions: This a new form currently being developed.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

Estimated Number of Responses: 180.

Estimated Time Per Respondent: 2 hours, 42 minutes.

Estimated Total Annual Burden Hours: 486.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 5, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17795 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8844

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form

8844, Empowerment Zone Employment Credit.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Empowerment Zone Employment Credit.

OMB Number: 1545–1444.

Form Number: 8844.

Abstract: Employers who hire employees who live and work in one of the eleven designated empowerment zones can receive a tax credit for the first $15,000 of wages paid to each employee. The credit is applicable from the date of designation through the year 2004.

Current Actions: The order of Part II, Tax Liability Limit, was revised for this form. Section 501 of Public Law 106–170 extended the provision that allows individuals to offset the regular tax liability in full for personal credits. Previously filers were allowed to claim credits to the extent that the regular tax liability exceeded the tentative minimum tax. For tax years beginning in 2000 and 2001, personal nonrefundable credits may offset both the regular tax and the minimum tax. Also, the computation was changed in Part II to reflect and to conform to changes that were made to the tax computation on Form 1040. A new line 13 was added to show the sum of the regular tax before credits and the alternative minimum tax. Also, because the alternative minimum tax is added to the regular tax (line 13), we no longer need to differentiate how the credit is applied against income tax and alternative minimum tax. Therefore, lines 24 and 25 were eliminated. In addition, the instructions were revised to include two new urban empowerment zones, Cleveland, OH, and Los Angeles, CA.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms, and non-profit institutions.

Estimated Number of Respondents: 40,000.

Estimated Time Per Response: 14 hours, 19 minutes.

Estimated Total Annual Burden Hours: 572,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 5, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17796 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8586

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8586, Low-Income Housing Credit.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit.

OMB Number: 1545–0984.

Form Number: 8586.

Abstract: Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a tax credit for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by the IRS to verify that the correct credit has been claimed.

Current Actions: The order of Part II, Tax Liability Limit, was revised for this form. Section 501 of Public Law 106–170 extended the provision that allows individuals to offset the regular tax liability in full for personal credits. Previously filers were allowed to claim credits to the extent that the regular tax liability exceeded the tentative minimum tax. For tax years beginning in 2000 and 2001, personal nonrefundable credits may offset both the regular tax and the minimum tax. Also, the computation was changed in Part II to reflect and to conform to changes that were made to the tax computation on Form 1040. A new line 10 was added to show the sum of the regular tax before credits and the alternative minimum tax.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 168,137.

Estimated Time Per Response: 13 hours, 31 minutes.

Estimated Total Annual Burden Hours: 2,271,531.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17797 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6478

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6478, Credit for Alcohol Used as Fuel.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Alcohol Used as Fuel.

OMB Number: 1545–0231.

Form Number: 6478.

Abstract: IRC section 38(b)(3) allows a nonrefundable income tax credit for businesses that sell or use alcohol mixed with other fuels or sold as straight alcohol. Small ethanol producers are also allowed a nonrefundable credit for production of qualified ethanol. Form 6478 is used to compute the credits.

Current Actions: The order for figuring the tax liability limitation (lines 12 through 22) was revised for this form. Section 501 of Public Law 106–170 extended the provision that allows individuals to offset the regular tax liability in full for personal credits. Previously filers were allowed to claim credits to the extent that the regular tax liability exceeded the tentative minimum tax. For tax years beginning in 2000 and 2001, personal nonrefundable credits may offset both the regular tax and the minimum tax. Also, the computation was changed to reflect and to conform to changes that were made to the tax computation on Form 1040. A new line 14 was added to show the sum of the regular tax before credits and the alternative minimum tax.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,594.

Estimated Time Per Respondent: 12 hrs., 46 min.

Estimated Total Annual Burden Hours: 20,339.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17798 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 990–PF and 4720

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, and Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, and Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

OMB Number: 1545–0052.

Form Numbers: 990–PF and 4720.

Abstract: Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990–PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Form 4720 is used by foundations and/or related persons to report prohibited activities in detail and pay the tax on them.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Non-profit institutions.

Estimated Number of Respondents: 52,214.

Estimated Time Per Response: 201 hours, 45 minutes.

Estimated Total Annual Burden Hours: 10,533,968.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 5, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17799 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Letter 109C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Letter 109C, Return Requesting Refund Unlocatable or Not Filed; Send Copy.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection of information should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return Requesting Refund Unlocatable or Not Filed; Send Copy.

OMB Number: 1545–0393.

Form Number: Letter 109C.

Abstract: If a taxpayer inquires about not receiving a refund and no return is found, this letter is sent requesting the taxpayer to file another return. The taxpayer must complete an affidavit stating that if they receive a second refund check, it will be returned to the IRS.

Current Actions: There are no changes being made to the letter at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, business or other for profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 18,223.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,513.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17800 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–246250–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–246250–96 (TD 8818), Public Disclosure of Material Relating to Tax-Exempt Organizations (§§ 301.6104(d)–3, 301.6104(d)–4, and 301.6104(d)–5).

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Public Disclosure of Material Relating to Tax-Exempt Organizations.

OMB Number: 1545–1560.

Regulation Project Number: REG–246250–96.

Abstract: Under section 6104(e) of the Internal Revenue Code, certain tax-exempt organizations are required to make their annual information returns and applications for tax exemption available for public inspection. In addition, certain tax-exempt organizations are required to comply with requests made in writing or in person from individuals who seek a copy of those documents or, in the alternative, to make their documents widely available. This regulation provides guidance concerning these disclosure requirements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for profits institutions.

Estimated Number of Respondents: 1,100,000.

Estimated Average Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 551,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17801 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8871

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8871, Political Organization Notice of Section 527 Status.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Political Organization Notice of Section 527 Status.

OMB Number: 1545–1693.

Form Number: 8871.

Abstract: Public Law 106–230 amended Internal Revenue Code section 527(i) to require certain political organizations to provide information to the IRS regarding their name and address, their purpose, and the names and addresses of their officers, highly compensated employees, Board of Directors, and related entities within the meaning of section 168(h)(4)). Form 8871 is used to report this information to the IRS.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 4 hours, 23 minutes.

Estimated Total Annual Burden Hours: 43,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 7, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17802 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[FI–88–86]

Internal Revenue Service Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–88–86 (TD 8458), Real Estate Mortgage Investment Conduits (§§ 1.860E–2(a)(5), 1.860E–2(a)(7), and 1.860E–2(b)(2)).

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Real Estate Mortgage Investment Conduits.

OMB Number: 1545–1276.

Regulation Project Number: FI–88–86.

Abstract: Internal Revenue Code section 860E(e) imposes an excise tax on the transfer of a residual interest in a real estate mortgage investment conduit (REMIC) to a disqualified party. The amount of the tax is based on the present value of the remaining anticipated excess inclusions. This regulation requires the REMIC to furnish, on request of the party responsible for the tax, information sufficient to compute the present value of the anticipated excess inclusions. The regulation also provides that the tax will not be imposed if the record holder furnishes to the pass-thru or transferor an affidavit stating that the record holder is not a disqualified party.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,600.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17803 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5558.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5558 Application for Extension of Time To File Certain Employee Plan Returns.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File Certain Employee Plan Returns.

OMB Number: 1545–0212.

Form Number: 5558.

Abstract: This form is used by employers to request an extension of time to file the employee plan annual information return/report (Form 5500 series) or the employee plan excise tax return (Form 5330). The data supplied on Form 5558 is used to determine if such extension of time is warranted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 335,000.

Estimated Time Per Respondent: 33 min.

Estimated Total Annual Burden Hours: 185,724.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17804 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1000.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1000, Ownership Certificate.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Ownership Certificate.

OMB Number: 1545–0054.

Form Number: 1000.

Abstract: Form 1000 is used by citizens, resident individuals, fiduciaries, and partnerships in connection with interest on bonds of a domestic, resident foreign, or nonresident foreign corporation containing a tax-free covenant and issued before January 1, 1934. IRS uses the information to verify that the correct amount of tax was withheld.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Responses: 1,500.

Estimated Time Per Response: 3 hrs., 22 min.

Estimated Total Annual Burden Hours: 5,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17805 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 2210 and 2210–F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts, and Form 2210–F, Underpayment of Estimated Tax by Farmers and Fishermen.

DATES: Written comments should be received on or before September 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Underpayment of Estimated Tax by Individuals, Estates, and Trusts (Form 2210) and Underpayment of Estimated Tax by Farmers and Fishermen (Form 2210–F).

OMB Number: 1545–0140.

Form Number: 2210 and 2210–F.

Abstract: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. Form 2210 is used by individuals, estates, and trusts and Form 2210–F is used by farmers and fishermen to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether taxpayers are subject to the penalty, and to verify the penalty amount.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 2 hrs., 47 mins.

Estimated Total Annual Burden Hours: 2,481,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 7, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–17807 Filed 7–13–00; 8:45 am]

BILLING CODE 4830–01–U

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0394]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, for a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to verify school attendance of Restored Entitlement Program for Survivors (REPS) child beneficiaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 12, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0394" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of School Attendance—REPS, VA Form 21–8926.

OMB Control Number: 2900–0394.

Type of Review: Reinstatement, without change, for a previously approved collection for which approval has expired.

Abstract: VA Form 21–8926, Certification of School Attendance—REPS is used to verify that an individual who is receiving REPS benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The program pays VA benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: June 5, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–17903 Filed 7–13–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before August 14, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0113."

SUPPLEMENTARY INFORMATION:

Title: Application for Fee Personnel Designation, VA Form 26–6681.

OMB Control Number: 2900–0113.

Type of Review: Revision of a currently approved collection.

Abstract: The form solicits information on the fee personnel applicant's background and experience in the real estate valuation field. VA regional offices and centers use the information contained on the form to evaluate applicants' experience for the purpose of designating qualified individuals to serve on the fee roster for their stations.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 2000, at page 18150.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,067 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,200.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0113" in any correspondence.

Dated: June 5, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–17902 Filed 7–13–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans Advisory Committee on Environmental Hazards, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Veterans' Advisory Committee on Environmental Hazards has been renewed for a 2-year period beginning July 5, 2000, through July 5, 2002.

Dated: July 5, 2000.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–17900 Filed 7–13–00; 8:45 am]

BILLING CODE 8320–01–M

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Corrections

Federal Register
Vol. 65, No. 136
Friday, July 14, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–6707–6]

RIN 2050–AE64

Oil Pollution Prevention and Response; Non–Transportation–Related Facilities

Correction

In rule document 00–13976 beginning on page 40776 in the issue of Friday, June 30, 2000, make the following correction:

Appendix F to Part 112 [Corrected]

On page 40816, in the first column, in amendatory instruction 11f., after "section 1.8.3" add "and section 1.9".

[FR Doc. C0–13976 Filed 7–13–00; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA084/101–5045a; FRL–6562–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Format for Materials Being Incorporated by Reference; Approval of Recodification of the Virginia Administrative Code

Correction

In the issue of Wednesday, July 5, 2000, on page 41525, in the correction of rule document 00–9535, amendatory instruction 2. and the corresponding table should read as follows:

§52.2420 [Corrected]

"2. On page 21334, under the heading "*Article 29 Can Coating Application Systems [Rule 4-29]*" add the following line to the end of the table:"

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
Article 29 Can Coating Application Systems [Rule 4–29]				
5–40–4150	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2915.

[FR Doc. C0–9535 Filed 7–13–00; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 130

[FRL–6733–2]

Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation

Correction

In rule document 00–17831 beginning on page 43586 in the issue of Thursday, July 13, 2000, make the following correction:

On page 43586, in the third column, under **FOR FURTHER INFORMATION CONTACT:**, in the fifth line, "(202) 260–9549" should read "(202) 401–4078".

[FR Doc. C0–17831 Filed 7–13–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
July 14, 2000

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6719–3]

RIN 2060–AG27

National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing boat manufacturing facilities. The processes regulated include fiberglass resin and gel coat operations, carpet and fabric adhesive operations, and aluminum boat painting operations. The EPA has identified boat manufacturing as a major source of hazardous air pollutants (HAP), such as styrene, methyl methacrylate (MMA), methylene chloride (dichloromethane), toluene, xylenes, n-hexanes, methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), and methyl chloroform (1,1,1-trichloroethane). These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). We estimate the proposed NESHAP would reduce nationwide emissions of HAP from these facilities by approximately 36 percent from the 1997 level of emissions.

DATES: *Comments.* Submit comments on or before September 12, 2000.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 3, 2000, a public hearing will be held on August 14, 2000.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–44, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

Docket. Docket No. A–95–44 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Morris, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5416, morris.mark@epamail.epa.gov. For public hearing information contact Maria Noell, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711,,(919) 541–5607.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Maria Noell, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5607 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Maria Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect" version 5.1, 6.1 or Corel ∎ file format. All comments and data submitted in electronic form must note the docket number: A–95–44. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mark Morris, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed NESHAP will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of regulated entities
Industrial	336612	3732	Boat manufacturing facilities that perform fiberglass production operations or aluminum coating operations.
		3731	Shipbuilding and repair facilities that perform fiberglass production operations or aluminum coating operations.
Federal Government	336612	3731 3732	Federally owned facilities (*e.g.*, Navy shipyards) that perform fiberglass production operations or aluminum coating operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in section II.A. of this preamble. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Introduction
A. What is the purpose of the proposed NESHAP?
B. What is the statutory authority for the proposed NESHAP?
C. What are the potential health effects of the HAP emitted by the boat manufacturing industry?
D. How were the proposed NESHAP developed?
E. What processes and operations constitute boat manufacturing?
II. Summary of the Proposed NESHAP
A. What sources and operations are subject to the proposed NESHAP?
B. What pollutants are regulated by the proposed NESHAP?
C. What do the proposed NESHAP require?
D. What is the MACT model point value and how is it used in the proposed NESHAP?
E. When must I comply with the proposed NESHAP?
F. How do I demonstrate compliance with the proposed NESHAP?
G. How do I demonstrate compliance if I use an enclosure and an add-on control device?
III. Summary of Environmental, Energy, and Economic Impacts
A. What facilities are affected by the proposed NESHAP?
B. What are the air quality impacts?
C. What are the water quality impacts?
D. What are the solid and hazardous waste impacts?
E. What are the energy impacts?
F. What are the cost impacts?
G. What are the economic impacts?
IV. Rationale for the Proposed NESHAP
A. How did EPA determine the source category to regulate?
B. What pollutants are regulated under the proposed NESHAP?
C. What is the "affected source" and how did EPA select the operations to be regulated by the proposed NESHAP?
D. What is a new affected source?
E. How did EPA determine the MACT floor for existing sources?
F. How did EPA determine the MACT floor for new sources?
G. Did EPA consider control options more stringent than the MACT floor?
H. Why are some boat manufacturing operations not being covered by the proposed NESHAP?
I. How did EPA select the format of the proposed NESHAP?
J. How did EPA select the test methods for determining compliance with the proposed NESHAP?
K. How did EPA determine the monitoring and recordkeeping requirements?
L. How did EPA select the notification and reporting requirements?
V. Relationship to Other Standards and Programs under the CAA
A. National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 CFR Part 63, Subpart SS)
B. Shipbuilding and Repair (Surface Coating) NESHAP (40 CFR Part 63, Subpart II)
C. Wood Furniture Manufacturing Operations NESHAP (40 CFR Part 63 Subpart JJ)
D. Plastic Parts and Products (Surface Coating) NESHAP
E. Relationship Between Operating Permit Program and the Proposed Standards
VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Executive Order 13132, Federalism
D. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act
G. National Technology Transfer and Advancement Act
H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

I. Introduction

A. What Is the Purpose of the Proposed NESHAP?

The purpose of the proposed NESHAP is to protect the public health by reducing emissions of HAP from boat manufacturing facilities.

B. What Is the Statutory Authority for the Proposed NESHAP?

The CAA was created, in part, "* * * to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population * * *" (see section 101(b) of the CAA). The proposed NESHAP are consistent with the requirements of the CAA.

Section 112 of the CAA requires that we promulgate regulations for the control of HAP from both new and existing major sources. The CAA requires the regulations to reflect the maximum degree of reduction in emissions of HAP that is achievable taking into consideration the cost of achieving the emissions reductions, any non-air-quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the maximum achievable control technology.

We based the proposed NESHAP for boat manufacturing for new and existing sources on the MACT floor control level. The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that all major HAP emission sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each category. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing ■ sources for categories or subcategories with fewer than 30 sources).

We estimate that major sources in the boat manufacturing source category collectively emit 9,000 megagrams per year (Mg/yr) (9,920 tons per year (tons/yr)) of HAP. A major source of HAP is defined as any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 9.1 Mg/yr (10 tons/yr) or more of any single HAP or 22.7 Mg/yr or more (25 tons/yr) of multiple HAP.

In developing MACT, we also must consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost, non-air-quality health and environmental impacts, and energy requirements.

C. What Are the Potential Health Effects of the HAP Emitted by the Boat Manufacturing Industry?

The following is a summary of the potential health and environmental effects associated with exposure, at some level, to emitted pollutants that the proposed NESHAP would reduce.

Styrene. Humans exposed to styrene for short periods through inhalation may exhibit irritation of the eyes and mucous membranes, and gastrointestinal effects. Styrene inhalation over longer periods may cause central nervous system effects including headache, fatigue, weakness, and depression. Exposure may also damage peripheral nerves and cause changes to the kidney and blood. Chronic inhalation studies with animals have indicated that styrene affects the central nervous system, liver, and kidney, and irritates eye and nasal membranes. The EPA has developed a reference concentration of 1 milligram per cubic meter (mg/m^3) for styrene based on central nervous system effects in exposed workers. Inhalation of this concentration or less over a lifetime would be unlikely to result in adverse noncancer effects. Epidemiological studies have suggested an association between styrene exposure and increased incidence of leukemia and lymphoma. The EPA considers this evidence to be inconclusive because of multiple chemical exposures and inadequate information on the levels and duration of exposure. Animal cancer studies have produced variable results but provide limited evidence for carcinogenicity. The EPA has not classified styrene with respect to carcinogenicity. The EPA is currently reviewing its assessment of styrene.

Methyl methacrylate. Humans exposed to MMA for short periods through inhalation may experience depression of the central nervous system and irritation of the skin, eyes, and mucous membranes. Dermal exposure may cause a severe allergic response. Short-term animal studies have indicated that MMA inhalation damages the liver and lung. Kidney and liver lesions have been observed in humans who ingested MMA over longer periods and in animals exposed either orally or by inhalation. Workers exposed through inhalation have indicated headaches, fatigue, sleeping disturbances, and irritability. Exposed workers have also suffered reproductive effects, including pregnancy complications in women and sexual disorders in both men and women. Fetal abnormalities have been reported in animals exposed to MMA by injection and inhalation. The EPA has developed a reference concentration of 0.7 mg/m^3 for MMA. Inhalation of this concentration or less over a lifetime would be unlikely to result in adverse noncancer effects. Several animal studies observed no carcinogenic effects. The EPA has classified MMA in Group E, not likely to be carcinogenic in humans.

Methylene chloride. Short-term exposure of humans to high-levels of methylene chloride affects the central nervous system, causing impairment of vision and hearing. These effects are reversible once exposure ceases. Long-term exposure also affects the central nervous system, causing headaches, dizziness, nausea, and memory loss. Studies of methylene chloride exposure to animals have indicated effects to the liver, kidney, and cardiovascular system. Animal studies have indicated that methylene chloride inhalation causes tumors of the lung, liver, and mammary glands. Based on this evidence, EPA has classified methylene chloride in Group B2, a probable human carcinogen, with an inhalation unit risk of 4.7×10^{-7} per microgram per cubic meter ($\mu g/m^3$).

Toluene. Humans exposed to toluene for short periods may experience irregular heartbeat and effects to the central nervous system such as fatigue, sleepiness, headache, and nausea. Repeated exposure to high concentrations may induce loss of coordination, tremors, decreased brain size, and involuntary eye movements, and may impair speech, hearing, and vision. Chronic exposure to toluene in humans has also been indicated to irritate the skin, eyes, and respiratory tract, and to cause dizziness, headaches, and difficulty with sleep. Children exposed to toluene before birth may suffer central nervous system dysfunction, attention deficits, and minor face and limb defects. Inhalation of toluene by pregnant women may increase the risk of spontaneous abortion. The EPA has developed a reference concentration of 0.4 mg/m^3 for toluene. Inhalation of this concentration or less over a lifetime would be unlikely to result in adverse noncancer effects. No data exist that suggest toluene is carcinogenic. The EPA has classified toluene in Group D, not classifiable as to human carcinogenicity.

Xylenes. Short-term inhalation of mixed xylenes (a mixture of three closely related compounds) in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Long-term inhalation of xylenes in humans may result in central nervous system effects such as headache, dizziness, fatigue, tremors, and incoordination. Other reported effects include labored breathing, heart palpitation, severe chest pain, abnormal electrocardiograms, and possible effects on the blood and kidneys. Developmental effects have been indicated from xylene exposure via inhalation in animals. Not enough information exists to determine the carcinogenic potential of mixed xylenes. The EPA has classified xylenes in Group D, not classifiable as to human carcinogenicity.

n-Hexane. Short-term inhalation exposure of humans to high levels of n-hexane causes mild central nervous system depression. Dermal exposure may cause irritation of the skin and mucous membrane. The nervous system effects include dizziness, giddiness, slight nausea, and headache in humans, with numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue observed. Neurotoxic effects have also been exhibited in rats. Mild inflammatory and degenerative lesions in the nasal cavity have been observed in rodents chronically exposed through inhalation. The reference concentration for hexane is 0.2 mg/m^3. The EPA estimates that inhalation of this concentration or less over a lifetime would not likely result in the occurrence of chronic noncancer effects. No information is available on the carcinogenic effects of hexane in humans or animals. The EPA has classified hexane as a Group D, not classifiable as to human carcinogenicity.

Methyl ethyl ketone (MEK). Short-term inhalation exposure to MEK in humans may irritate the eyes, nose, and throat, and cause central nervous system depression. Limited information is available on long-term effects of MEK exposure to humans, but chronic inhalation studies in animals have indicated effects on the central nervous system, liver, and respiratory system. The EPA's reference concentration for MEK is 1 mg/m^3, based on decreased fetal birth weight in mice. Inhalation of this concentration or less over a lifetime would be unlikely to result in adverse noncancer effects. Limited data exist on carcinogenic effects of MEK. The EPA has classified MEK in Group D, not classifiable as to human carcinogenicity.

Methyl isobutyl ketone (MIBK). Short-term exposure to MIBK may irritate the eyes and mucous membranes, and cause weakness, headache, and nausea. Long-term exposure by workers has been observed to cause nausea, headache, burning eyes, insomnia, intestinal pain, and slight enlargement of the liver. No information is available on reproductive or developmental effects of MIBK in humans, but studies with rats and mice have indicated neurological effects and increased liver and kidney weights. The EPA has not established a reference concentration or classified MIBK with respect to carcinogenicity.

1,1,1-trichloroethane. Short-term inhalation exposure of humans to 1,1,1-trichloroethane causes mild hepatic effects, central nervous system depression, dizziness, nausea, vomiting, diarrhea, loss of consciousness, and decreased blood pressure. Cardiac arrhythmia and respiratory arrest may result from the depression of the central nervous system. After long-term inhalation exposure to 1,1,1-trichloroethane, some liver damage was observed in mice and ventricular arrhythmias in humans. The reference concentration for 1,1,1-trichloroethane is under review by EPA. The EPA has classified 1,1,1-trichloroethane as a Group D, not classifiable as to human carcinogenicity, based on no reported human data and inadequate animal data.

D. How Were the Proposed NESHAP Developed?

We consulted many representatives of the boat manufacturing industry, State and Federal representatives, and material and equipment vendors in developing the proposed NESHAP. We held a series of approximately 50 stakeholder meetings over a period of nearly 4 years. These meetings were held to keep stakeholders informed and to solicit data and information on issues relevant to the NESHAP development. Stakeholders helped in data gathering, arranged site visits, and reviewed questionnaires. Stakeholders also shared data, identified issues and provided information to help resolve issues in the rulemaking process.

We identified the MACT floor control level with information obtained through questionnaire responses, site visits, telephone contacts, and operating permits.

E. What Processes and Operations Constitute Boat Manufacturing?

The proposed NESHAP regulate fiberglass and aluminum boat manufacturing operations. The emissions from these boat manufacturing operations and processes are fugitive emissions. Fugitive emissions result from HAP evaporating from the resins, gel coats, solvents, adhesives, and surface coatings used in manufacturing processes.

The following is a brief description of these processes and operations found at boat manufacturing facilities: fiberglass boat manufacturing operations; fabric and carpet adhesive operations; and aluminum boat surface coating operations.

Fiberglass boat manufacturing operations. Fiberglass boats are built from glass fiber reinforcements laid in a mold and saturated with a polyester or vinylester plastic resin. The resin hardens to form a rigid plastic part reinforced with the fiberglass. The resin is mixed with a catalyst as it is applied that causes a cross-linking reaction between the resin molecules. The cross-linking reaction causes the resin to harden from a liquid to a solid.

Fiberglass manufacturing processes are generally considered either "open molding" or "closed molding." In open molding, fiberglass boat parts are built "from the outside in" according to three basic process steps:

(1) The mold is sprayed with a layer of gel coat, which is a pigmented polyester resin that hardens and becomes the smooth outside surface of the part.

(2) The inside of the hardened gel coat layer is coated with a "skin coat" of chopped glass fibers and polyester or vinylester resin.

(3) Additional layers of fiberglass cloth or chopped glass fibers saturated with resin are added until the part is the final thickness.

The same basic process is used to build or repair molds with tooling gel coat and tooling resin.

In closed molding, the resin is applied to fabric placed between the halves of a two-piece mold. Three basic types of closed molding used in boat manufacturing are resin infusion molding, resin transfer molding (RTM), and compression molding with sheet molding compound (SMC).

The polyester and vinylester resins that are used in fiberglass boat manufacturing contain styrene as a solvent and a cross-linking agent. Gel coats also contain MMA as a solvent, and styrene. Styrene and MMA are HAP, and a fraction evaporates during resin and gel coat application and curing. Resins and gel coats containing styrene and MMA are also used to make the molds used in producing fiberglass parts.

Mixing is done to stir the resin or gel coat and promoters, fillers, or other additives before being applied to the parts. Some HAP from the resin and gel coat are emitted during the mixing process.

Resin and gel coat application equipment requires solvent cleaning to remove uncured resin or gel coat when not in use. The resin or gel coat will catalyze in the hoses or gun if not flushed with a solvent after each use.

Fabric and carpet adhesive operations. The interiors of many types of fiberglass boats and aluminum boats are covered with carpeting or fabric to improve the appearance, provide traction, or deaden sound. The material is bonded to the interior with contact adhesives. The HAP-containing solvents, such as methylene chloride, toluene, xylenes, and methyl chloroform (1,1,1-trichloroethane), are used in these adhesives. The solvents evaporate as the adhesives dry.

Aluminum boat surface coatings. Aluminum boat hull topsides and decks are painted with coatings applied with spray guns. These coatings may be high-gloss polyurethane coatings or low-gloss single-part coatings. These surface coatings often contain HAP solvents, such as toluene, xylenes, and isocyanates.

The HAP-containing solvents are also used to clean surfaces before finishing (wipe-down solvents) and for cleaning paint and coating spray guns.

II. Summary of Proposed NESHAP

This preamble section discusses the proposed NESHAP as they apply to "you," the owner or operator of a new or existing boat manufacturing facility.

A. What Sources and Operations Are Subject to the Proposed NESHAP?

The proposed NESHAP would regulate HAP from major sources that manufacture fiberglass boats or noncommercial, nonmilitary aluminum boats. Coating operations on aluminum commercial and military vessels are covered by the shipbuilding and repair NESHAP (40 CFR part 63, subpart II).

The proposed NESHAP apply to fiberglass boat manufacturers making all sizes and types of fiberglass boats using the operations listed below:

- All open molding operations, including pigmented gel coat, clear gel coat, production resin, tooling resin, and tooling gel coat.
- All closed molding resin operations.
- All resin and gel coat application equipment cleaning.
- All resin and gel coat mixing operations.
- All carpet and fabric adhesive operations.

The proposed NESHAP apply to aluminum boat manufacturing facilities performing the operations listed below:

- All aluminum boat surface coatings and associated spray gun cleaning and wipe-down solvent operations.
- All carpet and fabric adhesive operations.

B. What Pollutants are Regulated by the Proposed NESHAP?

The proposed NESHAP regulate the total HAP content in the materials used in each regulated operation. The proposed NESHAP do not set limits for individual species of HAP. The HAP emitted by boat manufacturing facilities typically include styrene, MMA, toluene, xylenes, methyl chloroform (1,1,1-trichloroethane), MEK, n-hexane, and MIBK. However, the total HAP content limit includes all HAP listed in section 112(b) of the CAA.

C. What Do the Proposed NESHAP Require?

The proposed NESHAP have various formats for the different operations being regulated. For open molding resin and gel coat operations, you must comply with a HAP emission limit that is calculated for your facility using MACT model point value equations, which are described in section II.D., for each open molding operation.

You can demonstrate compliance with the HAP emissions limit for your facility either by (1) averaging emissions with the MACT model point value equations, (2) complying with equivalent material HAP content requirements for each type of open molding operation, or (3) using an add-on control device. The HAP emissions limit and equivalent HAP content requirements are the same for new and existing sources. You may use averaging for all of your open molding operations or only for some of them. For those operations not included in the emissions average, you must comply with one of the alternative provisions.

For resin operations, different HAP content requirements apply to atomized and nonatomized resin application methods. The HAP content requirements for open molding are presented in table 2 of the proposed NESHAP. If you use an add-on control device to meet the emissions limit, the emissions limit is calculated using the MACT model point value operations and is in units of kilograms (kg) of HAP per megagram (1000 kg) of resin or gel coat consumed.

As stated above, you may use a combination of compliance options for the different resin and gel coat operations within your facility. For example, a hull production line may use several resins and gel coats. The skin coat resin may comply with the HAP content requirements, while you may decide to use the averaging approach to comply by averaging between the laminating resin and production gel coats. In another example, you could include in the average all production resins and pigmented gel coats at your facility, but decide not to include clear gel coat, tooling resin, and tooling gel coat. You could also use averaging to use a mix of atomized and nonatomized resin application methods but at different HAP contents from those in table 2 of the proposed NESHAP.

Other operations regulated by the proposed NESHAP would be subject to work practice requirements or HAP content limits. Resin and gel coat mixing containers with a capacity of 208 liters (55 gallons) or more must be covered. Routine resin and gel coat application equipment cleaning operations must use zero-HAP solvents, but solvents used to remove cured resin or gel coat from equipment would be exempt. The containers used to hold the exempt solvent and to soak the equipment with cured resin and gel coat must be covered. Carpet and fabric adhesive operations must use zero-HAP adhesives. Aluminum boat wipedown solvents and surface coatings would be subject to HAP content limits. Aluminum boat spray gun cleaning operations would be subject to a work practice requirement. The NESHAP for these operations are the same for new and existing sources. The proposed NESHAP have no averaging compliance options for these operations. Today's proposed NESHAP contain the specific requirements for each operation regulated by this proposal.

Compliance with all of the emissions limits in the proposed NESHAP are based on a 3-month rolling average except when an add-on control device is used. At the end of every month, you determine compliance for each operation based on the HAP content and material consumption data collected over the past 3 months. When an add-on control device is used, compliance is determined through a one-time test and subsequent monitoring.

D. What Is the MACT Model Point Value and How Is It Used In the Proposed NESHAP?

The MACT model point value is a number calculated for each open molding operation and is a surrogate for emissions. The MACT model point value is a way to rank the relative performance of different resin and gel coat emissions reduction techniques. This approach allows you to create control strategies using different resin and gel coat emissions reduction techniques. The proposed NESHAP provide equations to calculate MACT model point values based on HAP content and application method for each material that you use. These MACT model point values are then averaged and compared to limits in the proposed NESHAP to determine if your open molding operations are in compliance.

The MACT model point values have units of kilograms of HAP per megagram of resin or gel coat applied. It is important to note that the MACT model point values are surrogates for emissions, and the MACT model point value equations are used only for determining compliance with the emissions limit for open molding operations. The MACT model point value equations should not be used in other environmental programs for estimating emissions in place of true emission factor equations.

The MACT model point value equations account only for HAP content and application method. Other factors (including curing time, part thickness, and operator technique) can have significant effects on emissions, and these factors are not accounted for in the MACT model point value equations. Determining the HAP content of materials and the method of application is relatively easy, but it is difficult to determine the other factors. Therefore, these factors are not included in the MACT model point value equations.

E. When Must I Comply With the Proposed NESHAP?

Existing boat manufacturing facilities must comply within 3 years of the date the promulgated NESHAP are published in the **Federal Register**. New sources that commence construction after today's date must comply immediately upon startup or by the promulgation date, whichever is later.

F. How Do I Demonstrate Compliance With the Proposed NESHAP?

Unless you are using an add-on control device, you must measure and record the HAP contents of all the materials regulated by the proposed NESHAP. You may determine HAP content using EPA Method 311, but you may also use documentation provided by the material manufacturer, such as a material safety data sheet (MSDS) or HAP data sheet to show compliance. Although you may use either EPA Method 311 or the manufacturer's documentation to show compliance, EPA will use EPA Method 311 results to

determine compliance if they differ from the manufacturer's documentation.

Compliance with the HAP content limits is based on the weighted-average HAP content for each material on a 3-month rolling-average basis. Compliance is determined at the end of every month (12 times per year) based on the past 3 months of data. To determine weighted-average HAP content, you will also need to monitor and record the amount of each regulated material used per month, as well as HAP content.

If all of the material in a particular operation meets the applicable HAP content limit, then you would not need to record the amount of material used. Likewise, you would not need to perform and record any calculations to determine weighted-average HAP content.

For open molding resin and gel coat operations, how you show compliance will depend on which compliance option you choose. For example, if you choose to average among several open molding resin and gel coat operations, you will have greater operating flexibility, but you will also need to do more recordkeeping and calculations to show compliance than if you comply with the HAP content limits. Also, you must complete an implementation plan for the open molding operations at your facility that are included in an averaging option. The implementation plan must describe the resin and gel coat materials you plan to use, their HAP contents, and how you will apply those materials so that you are in compliance. The plan must also include calculations showing that your choice of materials and application methods will achieve compliance.

You must keep records of the HAP content of all materials that are subject to HAP content limits. You must also keep records of the amount of material used and any calculations you perform to determine compliance using weighted-average HAP contents or the averaging option for open molding operations. Every month, you must inspect the covers required by the work practice standards for resin and gel coat mixing containers and aluminum boat coating spray gun cleaners. You must also keep records of the results of these inspections and any repairs made to the covers. All records must be kept for 5 years (at least the last 2 years of records must be kept onsite).

Today's proposed NESHAP contain the specific monitoring, recordkeeping, and reporting requirements for each operation regulated by this proposal.

G. How Do I Demonstrate Compliance If I Use an Enclosure and an Add-On Control Device?

If you use an enclosure (such as a spray booth) and add-on control, you must use EPA Method 204 to prove that the enclosure is a total enclosure. If the enclosure is not a total enclosure, you must use a temporary enclosure to measure the fugitive emissions from the enclosure and the control device. Stack testing is used to determine compliance with the emissions limit. You must use either EPA Method 25A to measure emissions as total hydrocarbons (as a surrogate for total HAP) or EPA Method 18 for specific HAP.

During and after the initial performance test, you must monitor and record certain control device parameters to ensure that the control device continues to be operated as it was during the test. For example, for thermal oxidizers, you must monitor and record combustion temperature and maintain the temperature above an allowable minimum value. The monitoring requirements for several add-on control devices (including absorbers, adsorbers, and condensers) are contained in 40 CFR part 63, subpart SS, and are referenced in the proposed NESHAP. For other control devices not listed in subpart SS, you must identify parameters that demonstrate proper control device operation and have these parameters approved by the EPA. Monitored operating parameters must be kept within the allowable ranges to demonstrate compliance with the control device operating requirements.

III. Summary of Environmental, Energy, and Economic Impacts

A. What Facilities Are Affected by the Proposed NESHAP?

There are approximately 119 existing facilities manufacturing fiberglass boats or aluminum boats that are major sources and would be subject to the proposed NESHAP. The rate of growth for the boat manufacturing industry is estimated to be five new facilities per year for the next 5 years.

B. What Are the Air Quality Impacts?

The 1997 baseline emissions from the boat manufacturing industry are approximately 9,000 Mg/yr (9,920 tons/yr). The proposed NESHAP would reduce HAP from existing sources by 3,220 Mg/yr (3,550 tons/yr) from the baseline level, a reduction of 36 percent. Table 2 shows the amount of HAP reduced by each type of operation.

TABLE 2.—NATIONAL BASELINE EMISSIONS AND EMISSIONS REDUCTIONS FOR EACH TYPE OF OPERATION (1997 DATA)

Operation	Baseline emissions		Potential emissions reductions	
	Mg/yr	Percent of total	Mg/yr	Percent
Production resin	5,320	59.2	2,020	38
Tooling resin	80	0.9	30	43
Pigmented gel coat	2,440	27.0	330	14
Clear gel coat	190	2.1	5	2
Tooling gel coat	40	0.4	7	19
Closed molding resin	NE	NE	NE	NE
Resin and gel coat mixing	NE	NE	NE	NE
Fiberglass application equipment cleaning solvents	130	1.5	130	100
Carpet and fabric adhesives	543	6.0	540	100
Aluminum Wipedown Solvents	60	0.7	40	65
Aluminum Boat Surface Coatings	190	2.1	100	54
Totals	9,000	.....	3,223	36

NE means "not estimated."

The proposed NESHAP will not result in any increase in other air pollution emissions. While combustion devices can result in increased sulfur dioxide and oxides of nitrogen emissions, we do not expect anyone to comply by

installing new combustion devices during the next 5 years.

C. What Are the Water Quality Impacts?

We estimate that the proposed boat manufacturing NESHAP will have no adverse water quality impacts. We do not expect anyone to comply by using add-on control devices or process modifications that would generate wastewater.

D. What Are the Solid and Hazardous Waste Impacts?

We estimate that the proposed NESHAP will decrease the amount of solid waste generated by the boat manufacturing industry by approximately 360 Mg/yr (400 tons/yr). The decrease in solid waste is directly related to switching to nonatomized resin application equipment (*i.e.*, flowcoaters and resin rollers). Switching to flowcoaters results in a decrease in overspray because of a greater transfer efficiency of resin from flowcoaters to the part being manufactured. A decrease in resin overspray consequently reduces the amount of waste from disposable floor coverings, cured resin waste, and personal protective equipment (PPE) for workers. Disposable floor coverings are replaced on a periodic basis to prevent resin buildup on the floor. We estimate that solid waste generation of floor coverings will decrease by approximately 320 Mg/yr (350 tons/yr), and that cured resin solid waste will decrease by approximately 45 Mg/yr (50 tons/yr).

Decreased overspray from flowcoaters will result in a decreased usage of PPE, which also consequently reduces the amount of solid waste. Workers who use flowcoaters typically wear less PPE than when using spray guns because of the reduced presence of resin aerosols and lower styrene levels in the workplace. Because we did not have information on the many different types of PPE currently used, we did not estimate this decrease in solid waste.

Some facilities that switch from spray guns to flowcoaters may have a small increase of hazardous waste from the used flowcoater cleaning solvents. However, most facilities will not see an increase, and the overall impact on the industry will be small relative to the solid waste reductions. Nearly all flowcoaters require resin and catalyst to be mixed inside the gun (internal-mix) and must be flushed when work is stopped for more than a few minutes. External-mix spray guns do not need to be flushed because resin is mixed with catalyst outside the gun. Facilities that switch from external-mix spray guns to flowcoaters will use more solvent. Solvent usage should not change at facilities switching from internal-mix spray guns to flowcoaters.

The most common flushing solvents are acetone and water-based emulsifiers. Only a couple of ounces of solvent are typically needed to flush the mixing chamber and nozzle of flowcoaters and internal-mix spray guns. We have observed during site visits that this small quantity of solvent is usually sprayed into the air or onto the floor coverings and allowed to evaporate.

The EPA does not have adequate data to predict the potential solvent waste impact from switching to flowcoaters. The magnitude of the impact depends on the type of gun currently used (internal- or external-mix), the frequency of flushing, and the type of solvent used. However, because of the small amount of solvent used, and since most is allowed to evaporate, we believe the overall solvent waste increase will be small compared to the solid waste reductions.

E. What Are the Energy Impacts?

We estimate that energy consumption for new and existing facilities will not increase. No new or existing facilities are expected to install add-on control devices to comply with the proposed NESHAP in the first 5 years after promulgation. One facility currently uses a thermal oxidizer to control some of their styrene and MMA emissions from fiberglass boat manufacturing operations. No increase in energy use is anticipated to comply with the proposed NESHAP.

F. What Are the Cost Impacts?

We estimate that nationwide annual compliance costs for the existing facilities will be $14 million. This estimate includes annualized capital costs and increased material costs for purchasing more expensive, lower-HAP materials. Annual costs also include monitoring, recordkeeping, and reporting costs. The estimated annual cost of reduced HAP is $4,350/Mg ($3,950/ton).

Table 3 shows the estimated costs to reduce emissions from the operations at the 119 major source boat manufacturing facilities regulated by the proposed NESHAP.

TABLE 3.—COST IMPACTS

Type of operation	Nationwide annual costs (millions) in 1998 dollars
Production resin (including nonspray equipment)	4.9
Pigmented gel coat	2.1
Clear gel coat	0.05
Tooling resin	0.9
Tooling gel coat	0.1
Resin and gel coat new product testing cost	0.5
Fiberglass application equipment cleaning	0.3
Resin and gel coat mixing	0.04
Closed molding resin	0
Aluminum and fiberglass boat carpet and fabric adhesives and application equipment	2.5
Aluminum wipedown solvent	0.03
Aluminum boat surface coating	1.0
Monitoring, recordkeeping and reporting costs	1.6
Total	14

The capital costs would be for purchase of new resin application equipment, resin mixer covers, and adhesive application equipment. The estimated cost of new resin application equipment (flowcoaters) is $6,000 per unit (includes flowcoater, hoses, and resin and catalyst pumps). The estimated cost of new adhesive

application equipment is also approximately $6,000 per unit. The resin and gel coat mixer covers will be approximately $180 per year per container.

No capital costs are predicted for mold construction or aluminum boat surface coating operations.

G. What Are the Economic Impacts?

The EPA prepared an economic impact analysis to evaluate the primary and secondary impacts of the proposed NESHAP on the boat manufacturing market, consumers, and society. Because the characteristics of boats vary greatly throughout the industry, we evaluated the market by assessing the impacts on six separate market segments of the industry, including: outboard boats, inboard runabouts/sterndrive, inboard cruisers/yachts, jet boats/personal watercraft, sailboats, and canoes. The total annualized social cost (in 1994 dollars) of the proposed NESHAP on the industry is $13.0 million, which is 0.2 percent of total baseline revenue. Generally, the analysis indicates a minimal change in market prices and quantity of boats sold. Imports will increase negligibly, with a corresponding decrease in exports. The analysis also suggests a loss (at the maximum) of 48 employees out of the 51,500 employees in the industry. The impacts on specific market segments are summarized in the table below.

TABLE 4.—ECONOMIC IMPACT OF PROPOSED NESHAP ON BOAT MARKET SEGMENTS

Boat market segment	Change in price (percent)	Change in market output (percent)
Outboard Boats	0.1	−0.3
Inboard Runabouts/Sterndrive	0.1	−0.1
Inboard Cruisers/Yachts	0.0	−0.0
Jet Boats/Personal Watercraft	0.0	−0.0
Sailboats	0.1	−0.2
Canoes	0.1	−0.1

The analysis also predicts the number of facilities that would close as a result of the cost of complying with the proposed NESHAP. The EPA used market level information on total predicted change in quantity to infer how many plants would close if the quantity decrease was borne entirely by one (or more) facility. For example, if the market analysis predicts that 1,000 fewer boats are produced and the average facility produces 500 boats, then the impact is equivalent to two facility closures. Using this approach, the predicted reduction in quantity did not equal even one facility closure in any of the six market segments. While this does not mean that no facilities will close as a result of the proposed NESHAP, it does indicate that the proposed NESHAP have minimal total impacts, and that any facility closure will likely be the result of poor baseline cost conditions rather than a direct result of the compliance burden.

IV. Rationale for Proposed NESHAP

A. How Did EPA Determine the Source Category To Regulate?

The proposed NESHAP applies to fiberglass boat and aluminum boat manufacturing facilities that are located at major sources of HAP. Section 112(c) of the CAA directs us to list each category of major source emitting any HAP listed in section 112(b). Boat manufacturing (major sources only) was included on the initial list of source categories published on July 16, 1992 (57 FR 31576). The initial notice of the source category list stated that we would refine category descriptions during the rulemaking process, based on additional information available.

We redefined the category to include aluminum boat manufacturing facilities (64 FR 63025, November 18, 1999). The initial source category definition included only fiberglass boat manufacturing operations. We added aluminum boat manufacturing facilities to the source category because many of these facilities are major sources of HAP. Aluminum boats are defined as noncommercial, nonmilitary aluminum boats. Aluminum commercial and military boats are not included in the source category because the HAP-emitting process in the construction of these boats (surface coatings) is regulated by the shipbuilding and repair NESHAP (40 CFR 63, subpart II).

B. What Pollutants Are Regulated Under the Proposed NESHAP?

The proposed NESHAP regulate total HAP, rather than individual HAP compounds. A standard for total HAP simplifies compliance and enforcement, compared with standards for individual HAP compounds. Moreover, the proposed NESHAP will affect the formulation of chemical products used by the industry. It is not reasonable to regulate the content of individual constituents in these complex mixtures. Styrene is the HAP emitted in the largest magnitude (about 87 percent of emissions). Other HAP emitted from boat manufacturing facilities include MMA, methylene chloride (dichloromethane), toluene, xylenes, methyl chloroform (1,1,1-trichloroethane), n-hexane, and MIBK.

C. What Is the "Affected Source" and How Did EPA Select the Operations To Be Regulated by the Proposed NESHAP?

The affected source is the combination of all regulated operations at a single boat manufacturing facility. The following regulated operations are typically performed at fiberglass boat manufacturing facilities and are part of the affected source:

- Open molding operations, including pigmented gel coat, clear gel coat, production resin, tooling resin, and tooling gel coat;
- Closed molding resin operations;
- Resin and gel coat application equipment cleaning operations; and
- Resin and gel coat mixing operations.

Carpet and fabric adhesive operations are performed at both fiberglass boat and aluminum boat manufacturing facilities and are part of the affected source at those facilities.

The following regulated operations are typically performed at aluminum boat manufacturing facilities and are part of the affected source:

- Aluminum wipedown solvent operations;
- Aluminum boat surface coating operations; and
- Aluminum coating spray gun cleaning operations.

These are the typical operations found at fiberglass boat and aluminum boat manufacturing facilities, and we were able to determine MACT for these operations. If a single facility

manufactures both aluminum boat and fiberglass boats, the facility is a single affected source.

Mold sealing and release agents, mold stripping and cleaning solvents, solvents used to clean cured resin and gel coat from application equipment, wood coatings, fiberglass hull and deck coatings, and antifoulant coatings are not covered by the proposed NESHAP. See section IV.H. for the rationale for why these operations are not regulated by the proposed NESHAP.

We defined the affected source as the combination of all of these operations at a site to provide compliance flexibility. This broad source definition allows a manufacturer to determine compliance by averaging the HAP content of different products used throughout the facility within certain defined operations, and to use different application techniques as needed to meet product quality specifications. This approach is consistent with the way that the HAP content and application data were analyzed to determine the MACT floor.

D. What Is a New Affected Source?

A new affected source is any fiberglass boat or aluminum boat manufacturing facility that meets both of these criteria:

- It began construction after today's date, and
- It is a new fiberglass or aluminum boat manufacturing operation at a site that does not presently contain any boat manufacturing operations.

We selected this broad definition of new source for two reasons. First, the MACT for new and existing sources is the same, so there is no difference in emission control requirements for new and existing sources. Second, we concluded that it would be unreasonably costly to demonstrate compliance separately for both new and existing source operations that are located at the same site. Because the equipment is easily portable, it can be difficult to define exactly what would constitute a new line or operation. Also, it would be burdensome to monitor and record equipment and material usage for separate operations that were considered new and existing because the equipment is portable, and material is often dispensed from centralized bulk storage containers.

Although some sources might be required to achieve compliance earlier under a narrower new source definition, the small emissions reductions do not justify the additional long-term compliance burden.

E. How Did EPA Determine the MACT Floor for Existing Sources?

We determined separate MACT floors for each type of boat manufacturing operation based on data collected from about one-half of the major source boat manufacturers. We received data through questionnaire responses from 54 fiberglass and 13 aluminum boat manufacturers, site visits to 10 boat manufacturers (9 fiberglass and 1 aluminum), and through telephone contacts and operating permits for several more boat manufacturers. The data collected from the fiberglass boat manufacturers represent both large and small companies, as well as power and sailboat manufacturers who build vessels ranging in size from small runabouts to large, luxury yachts. Therefore, we believe the data are representative of the fiberglass boat industry segment. Our database also includes all the major source aluminum boat manufacturers known to us; therefore, the database also accurately represents this industry segment.

Using the data collected from boat manufacturers, we determined separate existing source MACT floors for each type of boat manufacturing operation (*e.g.*, open molding operations, carpet and fabric adhesives operations). For each operation, the facilities were ranked from lowest to highest emitting. Emissions were computed as a facilitywide average for each operation to account for the variety of materials within each operation that are required to construct a boat. For open molding resin operations (production and tooling), we estimated the HAP using the MACT model point value equations. This approach takes into account the combined effect of application method and the HAP content of the resins used, but is not an estimate of actual HAP to the atmosphere.

To determine MACT floors for the production resin operations, we evaluated open molding and closed molding as separate types of emission sources. Closed molding is a lower-emitting operation than open molding, but at this time has not been demonstrated to be generally applicable for all types of boats. Boat manufacturers typically use closed molding to achieve specific product qualities, such as two finished sides, higher fiber-to-resin ratios, or higher production levels that cannot be achieved with open molding. Therefore, closed molding operations were not used in setting the MACT floor for open molding.

Also, we determined MACT floors separately for fiberglass and aluminum boat manufacturers because the regulated operations at these facilities differ. The one exception was for carpet and fabric adhesive operations, where the MACT floor analysis was based on a combined data set. Fiberglass and aluminum boat manufacturers both have carpet and fabric adhesive operations and use the same adhesives.

We determined MACT floors based on the median facility of the lowest-emitting 12 percent for production resin, pigmented gel coat, tooling resin, tooling gel coat, resin and gel coat application equipment cleaning and carpet and fabric adhesives. For clear gel coat, closed molding resin, aluminum boat surface coatings, aluminum coating spray gun cleaning operations, and aluminum wipe-down solvents, we used the median of the five lowest-emitting facilities because we had data on fewer than 30 sources. We selected the median facility rather than the arithmetic average of the lowest-emitting facilities in order to represent the performance of an actual facility.

A more detailed summary of the results of the MACT floor analysis, the data and the considerations used to determine the MACT floors for the boat manufacturing source category can be found in Docket No. A–95–44.

F. How Did EPA Determine the MACT Floor for New Sources?

We believe that the existing source MACT floor also represents the new source floor. The existing source MACT floor represents the greatest degree of emissions reductions that is achievable under all circumstances within each particular operation regulated by the proposed NESHAP.

For new sources, the CAA requires the MACT floor to be based on the degree of emissions reductions achieved in practice by the best-controlled similar source. A variety of chemical materials and application methods are available for each operation within the boat manufacturing source category. The suitability of these materials and methods depends on several product and manufacturing requirements. These requirements typically include part size and shape, strength, durability, production volume and schedule, product mix, color, and worker safety.

Therefore, an emission control option (*e.g.*, HAP content and application method) that is applicable at one facility with a particular mix of these requirements may not be applicable at another facility with different requirements. While some facilities are using lower-HAP materials and techniques than represented by the existing source MACT floor, we do not

believe that the lowest-emitting options are universally applicable to all new boat manufacturers. Sometimes, the lower-HAP materials are used to produce particular colors and geometric shapes that do not represent the range of boats that are manufactured. Accordingly, the lowest-HAP-emitting facilities may not be using materials or techniques that can be used by new sources in all circumstances.

Some facilities do use the lower-HAP materials or techniques for particular products. However, we have no data to precisely define the particular combination of requirements where these lower-emitting options can be used and still maintain the minimum required strength and durability requirements of these products. These facilities, consequently, do not represent the new source MACT floor, and we are unable to establish subcategories for purposes of determining a more stringent MACT floor for new sources. The existing source MACT floor level of control is universally applicable to all boat manufacturers because it has been demonstrated at several different facilities that produce a range of products that represent the industry, and that use different combinations of materials and methods to achieve the emissions reductions. Therefore, the existing source MACT floor is achievable by all new sources and also represents the new source floor.

G. Did EPA Consider Control Options More Stringent Than the MACT Floor?

Because no control options more stringent than the MACT floor are feasible for new and existing sources, we have determined that MACT for new and existing sources is the MACT floor level of control. We considered three potential options for MACT that might be more stringent than the MACT floors, but found that these options were not achievable. The options we considered were lower-HAP materials, zero-HAP materials and add-on control devices. The following analysis applies equally to new and existing source MACT.

As noted in the discussion of the new source MACT floor in the previous section, some facilities use materials with HAP contents lower than the new and existing source MACT floor. However, as also noted in that discussion, EPA does not have the data to define subcategories in which these lower-HAP materials can be used. Therefore, these lower-HAP materials are not a viable option more stringent than the MACT floor for new or existing sources.

For carpet and fabric adhesives, as well as resin and gel coat application equipment cleaning solvents, the new and existing source MACT floor is zero-HAP materials. In these two cases, zero-HAP materials are also MACT for new and existing sources because no more stringent level of control is achievable.

For the other operations regulated by the proposed NESHAP, no zero-HAP substitutes are currently available. No zero-HAP substitutes for polyester and vinylester resins or gel coats have been demonstrated for large-scale production boat manufacturing. The zero-HAP alternatives for aluminum wipe-down solvents, such as acetone, are too volatile and flammable for this operation. No waterborne coatings or powder coatings have been demonstrated as substitutes for the solvent-borne coatings currently used in aluminum boat surface coating operations.

We also evaluated add-on control devices. We are aware of one facility using a thermal oxidizer to control HAP from resin and gel coat operations in the manufacture of small jet boats. Thermal oxidizers are generally effective controls for HAP emission sources.

The experience of the jet boat facility with thermal oxidation suggests that thermal oxidation has not been effectively demonstrated as a control option for boat manufacturing. During the MACT analysis, no emission test data were available to us or to the State permitting authority to confirm the performance of this control device. Also, after several years of operation, the facility had not received an operating permit with an enforceable emission limit and was still operating under an extension of their construction permit.

Moreover, the facility with the thermal oxidizer uses restricted airflow to capture concentrated HAP near the surface of the molds. The restricted airflow management is feasible at this facility because the facility is dedicated to the construction of only two models of small jet boats, 4.4 and 5.5 meters (14.5 and 18 feet, respectively) long. The restricted airflow management was implemented with the intention to use robotics to apply some of the resin and gel coat.

The restricted airflow management as practiced at this facility would not be suitable for other facilities in the industry. All other facilities produce a variety of products and parts and must have the operational flexibility to change product mix over time. Restricted airflow management would not be feasible in operations where workers apply the resin and gel coat, and a range of different types of boats are produced.

Accordingly, we have concluded that thermal oxidizers have not been demonstrated for this industry. While theoretically feasible, we have no data to demonstrate the cost or the effectiveness of the thermal oxidizer at the air flow rates and HAP concentrations that exist at typical boat manufacturing plants.

H. Why Are Some Boat Manufacturing Operations Not Being Covered by the Proposed NESHAP?

The proposed NESHAP would not regulate the following operations:

- Mold sealing and release agents;
- Mold stripping and cleaning solvents;
- Solvents used to clean cured resin and gel coat from application equipment;
- Wood coatings;
- Fiberglass hull and deck coatings; and
- Antifoulant coatings.

We excluded wood finishing operations, fiberglass hull and deck coating operations, and antifoulant coating (bottom coating) operations because they are performed only by a relatively small percentage of boat manufacturers and are not typical of the majority of major source boat manufacturers. These three operations collectively account for about only 0.5 percent of HAP from major source boat manufacturers.

The proposed NESHAP would not regulate mold sealing and release agents and mold stripping and cleaning solvents because we were unable to set MACT floors or determine MACT for these operations. In both cases, the information and data available to us suggest that mold maintenance practices, part shape and size, and production schedules determine emissions more than the HAP content of these materials. The EPA does not have sufficient data to identify and prescribe work practices to reduce emissions from these operations. Therefore, the proposed NESHAP do not regulate these materials. A more detailed explanation of why we could not determine the MACT is in Docket No. A–95–44. These two operations collectively emit less than 1 percent of HAP from boat manufacturing.

Most boat manufacturers in our database use mold sealing and release agents that contain only a small percentage of HAP (less than 10 percent HAP) sold by two suppliers. Boat manufacturers use the same group of products but in different amounts leading to differences in facilitywide average HAP. Differences among facilities are probably due to differences

in facility-specific work practices that are dictated by production requirements, such as mold cycle time and frequency, the size and shape of parts, and mold maintenance. We do not have sufficient data to identify the MACT floor or MACT based on differences in work practices among facilities.

Mold stripping and cleaning solvents are not regulated by the proposed NESHAP because we do not have sufficient data to determine a MACT floor. The amount of HAP used per unit of mold surface area applied depends on facility-specific mold maintenance practices and production requirements. These may include mold cycle time, how often the mold is used, and even whether the mold is stored indoors or outdoors. The size of the part may also influence mold maintenance. We do not have sufficient data to identify those differences in production requirements or work practices that determine mold cleaning solvent usage. Therefore, we cannot identify a MACT floor or MACT.

We are not regulating solvents used for cleaning cured resin or gel coat from application equipment because we know of no emission controls. Cured resin or gel coat inside a gun is usually the result of operator error or an equipment failure. To clean cured resin and gel coat, an aggressive solvent is needed and no low-HAP alternatives are available. The equipment is usually soaked in a covered bucket resulting in little evaporation of the solvent. The amount of solvent needed per year is determined by the size of the facility, degree of operator error, and equipment failure rates. Because operator error and equipment failure are hard to predict, we could determine no basis for an annual limit of solvent usage that would be achievable by all facilities. The proposed NESHAP, therefore, allow HAP-containing solvents only for cleaning cured resin and gel coat from the application equipment. The use of HAP-containing solvents for routine gun flushing is prohibited.

I. How Did EPA Select the Format of the Proposed NESHAP?

We decided to offer several formats for complying with the proposed NESHAP. The purpose of multiple formats is to provide the flexibility to comply in the most cost effective and efficient manner. We considered the following factors in selecting the format of the proposed NESHAP:

- The format must allow for multiple compliance techniques for the various types of facilities in the industry.
- The format must simplify compliance and ensure that the cost of compliance is not excessive.
- The format must be enforceable.

The format of the proposed NESHAP is based on a combination of HAP content limits, equipment standards, and work practice standards. Section 112(h) of the CAA states that "* * * if it is not feasible in the judgement of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof * * *." Section 112(h)(2) further defines the phrase "not feasible to prescribe or enforce an emission standard" as any situation in which "* * * a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, * * * or the application of measurement methodology to a particular class of sources is not practicable * * *."

In general, numerical emission limits are not feasible to prescribe or enforce. Most boat manufacturing operations occur in large buildings where emissions are released to the atmosphere through general building ventilation, windows, and doors. These emission points have high air volumes and low HAP concentrations that would pose unreasonably high costs to capture the emissions. Some coating operations are carried out in spray booths that are vented through a single stack, but these emissions also have high air volumes and low HAP concentrations. Therefore, the most reasonable format for these situations is to specify HAP content limits for materials, application equipment requirements, and work practices to minimize emissions.

The formats of the proposed NESHAP include both numerical emission limits and work practice/equipment standards (HAP content limits and application equipment requirements). We included both types of formats so boat manufacturers could choose to comply using either averaging provisions, low-HAP materials and alternative application equipment, or add-on controls. However, very few boat manufacturers will probably choose to comply with emission limit controls because it is not practical to capture the emissions for use with add-on controls.

The following subsections describe the selection of the formats for each type of limit included in the proposed NESHAP.

HAP Content Limits for Fiberglass Boat Manufacturing Operations. The proposed NESHAP for open molding operations, resin and gel coat equipment cleaning solvents, and carpet and fabric adhesives include weight-percent HAP content limits for these materials. The HAP content is an accurate measure of the relative emission potential of materials. The HAP content is already reported on the material safety data sheet for each material. Therefore, HAP content can simplify compliance by allowing you to purchase compliant materials. If you add HAP to your materials before use, you must include the additional HAP in your HAP content calculations; do not include HAP catalysts used for resins and gel coats in the HAP content calculation.

Emission Averaging Using Kilogram of HAP per Megagram of Material Applied. The proposed NESHAP for open molding operations include a HAP emissions limit that is kilogram of HAP per megagram of material applied. This format is used in the emissions averaging compliance option. This format was selected to provide compliance flexibility by allowing you to use varying HAP content materials and different application techniques in the open molding operations and average the emissions using the MACT model point value equations described in section II.D. The averaging approach will allow you to use higher-HAP materials and spray application techniques for some open molding operations while using lower-HAP materials and lower-emitting application methods for others.

The proposed NESHAP do not allow you to average between open and closed molding resin operations. However, the EPA is soliciting comments on allowing averaging between open and closed molding operations under certain circumstances. Industry representatives have requested this option and have argued that it will encourage pollution prevention and long-term emissions reductions by encouraging the development of more widely applicable closed molding technologies.

The EPA developed separate MACT floors and standards for open and closed molding processes because open molding is currently considered a separate manufacturing process from closed molding. The NESHAP for open molding require you to use low-emitting resins and application methods to reduce emissions. On the other hand, closed molding is an inherently low-emitting process, so the proposed NESHAP impose no additional requirements to reduce emissions from closed molding. Because today's proposed NESHAP have no numerical emission limit for closed molding, you cannot "over control" closed molding

for greater emissions reductions to offset excess emissions from open molding. Therefore, the proposed NESHAP do not include closed molding in the averaging approach that is based on a source-wide emission limit for resin and gel coat operations.

The EPA is, however, considering the feasibility of allowing closed molding as a control technology in a source-wide limit in cases where the closed molding is used as a substitute or replacement for an existing open molding operation. Here, any reduction from switching to closed molding could be applied to excess emissions from other open molding operations. Consider, for example, a boat manufacturing facility that makes 16-foot and 20-foot boats on two separate lines using open molding. If the facility adopts closed molding on the 20-foot line and ceases open molding, then this is an operational change that reduces emissions from the 20-foot boat line. The excess emissions reductions (above the level that would be required by the open molding standard) would allow the operator to use higher-HAP materials on the 16-foot boat line.

Under this proposal, EPA would allow averaging only when the closed molding resin application is a replacement for existing open molding resin application. This proposal includes this restriction because MACT for open molding resin application is nonatomized application of resin with 35 percent HAP content. If this restriction were not included, a facility spray applying a higher-HAP resin and using closed molding could comply without any emissions reductions simply by averaging the open and closed molding. Moreover, a facility that adds new closed molding capacity to increase production would be allowed to switch to higher HAP materials in their existing open molding operations. In these cases, the facility would not be reducing emissions from the open molding operations and would not be achieving an open molding control level equal to MACT (*i.e.*, 35 percent HAP content and nonatomized application).

Therefore, EPA is soliciting comments on allowing averaging between open and closed molding by including closed molding in a source-wide emission limit. Under this proposal, you could average open and closed molding if you meet all of the following three conditions: (1) Your facility must be an existing source that is operating prior to today's proposal date, (2) you must begin the closed molding operation after today's proposal date, and (3) the closed molding operation must replace an equivalent amount of open molding production capacity that existed before today's proposal date. The EPA welcomes comments on the feasibility of this approach, and whether it would provide any additional operating flexibility to existing boat manufacturing facilities or encourage more closed molding.

HAP Content Limits for Aluminum Boat Surface Coatings. The proposed standard for aluminum boat surface coatings is expressed as mass of HAP per volume of coating solids. For coating operations, weight-percent HAP is not an accurate predictor of relative HAP. For this operation, the amount of coating needed to cover a surface is determined by the solids content of the coating. Coatings with similar weight-percent HAP contents, but different solids contents, will have different HAP because different amounts of coating will be needed for the same job.

In addition, coatings often have low-HAP solvents added to control viscosity and achieve other coating liquid properties. Such low-HAP solvents reduce HAP content as weight-percent, but increase the volume needed to achieve the same dry-film thickness. The proposed format of mass of HAP per volume of coating solids assures that coatings are being compared on an equal basis.

HAP Content Limit for Aluminum Wipe-Down Solvents. The proposed standard for aluminum wipe-down solvents is expressed as mass of HAP per volume of solids from aluminum primers or clear coats applied to bare aluminum. This format allows you to use a greater range of solvents and compares HAP on an equal basis.

The data available to us indicate that weight-percent HAP content for the wipe-down solvents is not an accurate predictor of emissions. Some facilities using higher-HAP solvents have lower HAP per unit of coating applied than those using lower-HAP solvents. These data indicate it is possible to use some higher-HAP solvents more efficiently than lower-HAP solvents and, therefore, a limit on solvent HAP content could be counterproductive.

Ideally, we would use HAP mass per unit surface area, but this is not practicable. It is not practical to measure or monitor the surface area to be cleaned prior to coating because of the complicated three-dimensional shape of aluminum boats and the variety of boats produced. Therefore, the volume of solids of aluminum clear coat primer applied to bare aluminum was selected as a surrogate for the amount of surface area to be cleaned prior to coating.

Selection of Averaging Time for Demonstrating Compliance. As a boat manufacturer, you must show compliance with the emissions limits in the proposed NESHAP on a 3-month, rolling-average basis. You must determine compliance at the end of each month from the data collected over the past 3 months. A 3-month averaging time provides a balance between operating flexibility and enforceability of the proposed standard. The 3-month period is sufficiently long so that you can identify potential compliance problems and change your operations in time to maintain compliance. The rolling-average aspect provides an enforceable emission limit 12 times per year.

Many boat manufacturers already track material usage monthly to comply with State regulations and permit requirements, so monthly tracking is consistent with current practice. Tracking on a more frequent basis would be unnecessarily burdensome. Boat manufacturers need a 3-month rolling-average period to respond to both short-term variations in HAP content that is inherent in all chemical products and short-term needs for higher-HAP materials.

J. How Did EPA Select the Test Methods for Determining Compliance With the Proposed NESHAP?

The proposed NESHAP give you the option of complying by either meeting HAP content limits (among other requirements) or using an enclosure and add-on control device to meet numerical emission limits. The reference method for measuring the HAP content of resin, gel coat, adhesives, aluminum boat surface coatings, and wipe-down solvents subject to the proposed NESHAP is EPA Method 311 (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph). This is an established method that is appropriate for measuring the types of HAP used in these materials. You may use alternative methods for measuring HAP content if approved by EPA.

The proposed NESHAP do not require a compliance test for HAP content, nor do they require you to test every shipment of materials that you receive. You are responsible, however, for ensuring, by any means that you choose (*e.g.*, periodic testing, manufacturers' certification), that the HAP content of your materials complies with the requirements of the proposed NESHAP. We may require you to conduct a test at any time using EPA Method 311 (or any approved alternative method) to confirm the HAP content in the compliance reports that you submit. If there is any inconsistency between the results of the

EPA Method 311 test and any other means of determining HAP content, the Method 311 results will govern.

If you choose to use an enclosure and add-on control device, you must determine the capture efficiency of the enclosure and measure the HAP from the control device. To determine the capture efficiency of the enclosure, you must use EPA Method 204 (Criteria for and Verification of Permanent or Temporary Total Enclosure). If the enclosure meets the criteria in EPA Method 204 for a permanent total enclosure, then you may assume that its capture efficiency is 100 percent. If the enclosure is not a total enclosure, then you must build a total temporary enclosure (TTE) around it that meets the definition of a TTE in EPA Method 204. You must then measure emissions from both the control device and the TTE and use the combined emissions to determine compliance.

To measure HAP, you may use either EPA Method 18 (Measurement of Gaseous Organic Compound Emissions by Gas Chromatography) to measure the sum of individual species of HAP or EPA Method 25A (Determination of Total Gaseous Organic Matter Concentration Using a Flame Ionization Analyzer) for total hydrocarbons (THC) as a surrogate for total HAP. The EPA Method 25A allows you the flexibility to use a simpler method than EPA Method 18 that does not speciate HAP in cases where measuring THC is sufficient to demonstrate compliance. You can measure THC as a surrogate for total HAP if most of the THC emitted from an enclosure are HAP, such as styrene and MMA from resin and gel coat operations. For compliance determinations, the EPA will assume that all THC measured with EPA Method 25A are HAP.

K. How Did EPA Determine the Monitoring and Recordkeeping Requirements?

The monitoring and recordkeeping requirements you must meet will depend on how you choose to comply with the proposed NESHAP. For each compliance option, the proposed monitoring and recordkeeping requirements are the minimum necessary to determine initial and ongoing compliance and are consistent with the general provisions (40 CFR part 63, subpart A).

Compliance with HAP Content Limits. For all operations subject to HAP content limits, you must perform three tasks: monitor and record the HAP content of the material used, monitor and record the monthly consumption of the material, and record the computations to show that the weighted average HAP content over the past 3 months meets the standard. If all the materials used in an operation meet the HAP content limit, then you only need to record HAP content, and you do not need to track monthly consumption or record the computations.

Compliance with Averaging Provisions. To comply with the averaging provisions for open molding operations, you must monitor and record HAP content, amount of material applied by spray, and the amount applied by nonspray; and you must record the computations needed to show compliance. You must use these data as well as the MACT model point value equations in the proposed NESHAP to calculate the HAP emitted for the materials used in that operation for the past 3 months. Compliance is then determined relative to the allowable HAP limit calculated for those operations for the past 3 months.

Compliance with Equipment and Work Practice Standards. The proposed NESHAP require resin and gel coat mixing containers to be fitted with covers that have no visible gaps. The proposed NESHAP also require that aluminum coating spray guns be cleaned in enclosed gun cleaners or sprayed into containers that can be closed when not in use. You will be required to inspect container covers and enclosed gun cleaners each month to ensure the covers are in place and properly maintained. You must record the results of the inspections. The inspections should be sufficient to ensure that the covers are in place and properly maintained. We believe that monthly inspections are a reasonable interval because the nature of failure in these pieces of equipment is likely due to wear and tear and not a sudden failure. Longer time periods between inspections, however, would allow a failure to go too long before being repaired.

The proposed NESHAP for production resin and tooling resin will require most manufacturers to use nonatomized resin application methods to comply. These methods include flowcoaters and pressure-fed resin rollers, among others. We could identify no parameters to monitor whether these methods were being used. Rather, compliance would be determined during enforcement inspections as to whether these methods were being used. As long as flowcoaters, pressure-fed resin rollers, or other similar devices are installed and operated according to manufacturer's specifications, they will comply with the requirements to use nonatomized resin application methods.

Compliance for Sources Using Enclosures and Add-on Control Devices. You have the option of using an enclosure and add-on control instead of complying with HAP content or application equipment standards. The requirements in the proposed NESHAP are consistent with other air quality regulations that require capture and control of emissions. They are the minimum needed to demonstrate that the capture and control system is operated properly.

You must initially demonstrate compliance with the emission limit by demonstrating that the enclosure is a total enclosure or by also measuring the fugitive emissions that escape the enclosure. You must also measure the efficiency of the add-on control using EPA Method 25A for THC (as a surrogate for HAP) or EPA Method 18 for HAP. The EPA Method 18 measures individual HAP that you sum to calculate total HAP.

After the initial compliance test, you must monitor control device parameters to demonstrate that the control device continues to be operated as it was during the initial test. In the case of thermal oxidizers, you must monitor and record combustion temperature every 15 minutes both during and after the performance test. You must calculate the average temperature achieved during the test. After the test, you must maintain the average temperature at or above the temperature achieved during the performance test. Temperature monitors and recorders are standard features on thermal oxidizers. For other devices, you must determine appropriate parameters to monitor and receive our approval to use these parameters.

L. How Did EPA Select the Notification and Reporting Requirements?

The required notices and reports are the minimum needed to determine if you are subject to the proposed NESHAP and whether you are in compliance. You must submit an initial notification stating that you are subject to the proposed NESHAP. After the compliance date for your facility, you must submit a notification of your compliance status. You must also submit semiannual reports of your compliance status. If you have an add-on control device and you identify deviations, you must submit quarterly reports of your compliance status until we approve a request to return to semiannual reporting.

If your facility is a new source, you will have additional preconstruction notification requirements. You will also have additional notification and

reporting requirements if you use an add-on control device, including notifications and reports for the control device performance test. These notification and reporting requirements are consistent with those specified in the general provisions (subpart A) for part 63 and are the minimum needed for us to determine compliance for sources with add-on control devices.

The startup, shutdown, and malfunction plan specified by the general provisions will be required only for sources using an add-on control device and will apply only to the add-on control device. For operations not using a control device, the nature of the materials and equipment used to comply with the proposed boat manufacturing NESHAP is such that malfunctions will not lead to excess emissions.

V. Relationship to Other Standards and Programs Under the CAA

A. National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 CFR Part 63, Subpart SS)

If you use an add-on control device other than a thermal oxidizer to control emissions from resin and gel coat operations, you will need to comply with certain provisions in 40 CFR part 63, subpart SS, for add-on controls. The standards in subpart SS cited by the proposed NESHAP are applicable to most sources using an add-on control device. The proposed NESHAP cite these sections in subpart SS rather than repeating them in the proposed regulatory text.

B. Shipbuilding and Repair (Surface Coating) NESHAP (40 CFR Part 63, Subpart II)

Coating operations on commercial or military aluminum boats and ships are subject to the Shipbuilding and Repair NESHAP. Today's proposed boat manufacturing NESHAP cover coating operations only on nonmilitary and noncommercial aluminum boats. Some boat manufacturers may be potentially subject to both NESHAP because they manufacturer both noncommercial, nonmilitary aluminum boats and either commercial or military vessels. However, there is no conflict between the two NESHAP because the coating operations on any single vessel would be subject to only one NESHAP depending on the intended function of that vessel.

C. Wood Furniture Manufacturing Operations NESHAP (40 CFR Part 63, Subpart JJ)

Boat manufacturers, particularly builders of large yachts, build wood furniture (such as beds, cabinets, and partitions) into the boat interiors and finish this furniture with stains, sealers, and varnishes that are similar to finishing materials used for household furniture. However, wood furniture finishing operations on boats are not subject to the requirements of 40 CFR part 63, subpart JJ, because the EPA has determined that wood furniture on a boat is integral to the boat cabin and is not comparable to the furniture regulated by 40 CFR part 63, subpart JJ (see Docket No. A–95–44). Wood surface coating operations are not covered by the proposed boat manufacturing NESHAP.

D. Plastic Parts and Products (Surface Coating) NESHAP

The NESHAP for plastic parts are still being developed and could potentially cover antifoulant and hull and deck surface coating operations at fiberglass boat facilities.

E. Relationship Between Operating Permit Program and the Proposed Standards

Under the operating permit program codified at 40 CFR parts 70 and 71, all major sources subject to standards under section 111 or 112 of the CAA must obtain an operating permit (See § 70.3(a)(1) and § 71.3(a)(1)). Therefore, all major sources subject to the proposed NESHAP must obtain an operating permit. Area sources in this source category are not regulated by the proposed NESHAP, and, therefore, would not be required to obtain an operating permit unless a State with an approved operating permit program chooses to permit all nonmajor sources.

Some boat manufacturers may be major sources based solely on their potential to emit even though their actual emissions are below the major source level. These boat manufacturers may choose to obtain a federally enforceable limit on their potential to emit so that they are no longer considered major sources and not subject to the proposed NESHAP. Sources that opt to limit their potential to emit (*e.g.*, limits on operating hours or amount of material used) are referred to by the EPA as "synthetic area" sources. To become a synthetic area source, you must contact your local permitting authority to obtain an operating permit with the appropriate operating limits. These operating limits will then be federally enforceable under § 70.6(b).

The EPA believes that the boat manufacturing category could benefit from the development of a general permit. Under part 70, State permitting authorities are allowed to develop general permits for categories of sources containing numerous similar sources. In deciding which source should be covered by general permits, State regulators must consider three primary criteria: (1) Source categories covered by general permits should contain similar operations and emit pollutants with similar characteristics; (2) sources should not be subject to case-by-case standards; and (3) sources should be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, and recordkeeping.

There are several benefits to a general permit. If a general permit developed by a permitting authority has been approved after public participation and EPA and affected State review, the permitting authority may then grant or deny a general permit to a source without further public participation or EPA and affected State review. The action of granting or denying a general permit is also not subject to judicial review. Another benefit of a general permit that would be particularly advantageous for the boat manufacturing industry is that sources may use general permits strictly for the purposes of becoming synthetic area sources (*i.e.*, limiting their potential to emit).

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a proposed regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 1966.01) and a copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division, Office of Environmental Information, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at "farmer.sandy@epa.gov," or by calling (202) 260–2740. A copy may also be downloaded from the internet at "http://www.epa.gov/icr."

The proposed NESHAP contain monitoring, reporting, and recordkeeping requirements. The required notices and reports are the minimum needed by us to determine who is subject to the NESHAP and whether you are in compliance. The proposed recordkeeping requirements are the minimum necessary to determine initial and ongoing compliance. Based on reported information, we would decide which boat manufacturers and what records or processes should be inspected. The recordkeeping and reporting requirements are consistent with the general provisions of 40 CFR part 63.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B, "Confidentiality of Business Information."

The EPA expects the proposed NESHAP to affect a total of 134 boat manufacturing facilities over the first 3 years. The EPA assumes that five new boat manufacturing facilities will become subject to the proposed NESHAP during each of the first 3 years. The EPA expects 119 existing facilities to be affected by the proposed NESHAP, and these existing facilities will begin complying in the third year.

The estimated average annual burden for the first 3 years after promulgation of the proposed NESHAP for industry and the implementing agency is outlined below. You can find the details of this information collection in the "Standard Form 83 Supporting Statement for ICR No. 1966.01," in Docket No. A–95–44.

Affected entity	Total hours	Labor costs	Capital costs	Operating and maintenance costs	Total costs
Industry	10,343	635,526	0	895	636,421
Implementing agency	2,456	141,073	0	0	141,073

The EPA estimates that there are no capital or startup costs for these new facilities because they are expected to comply by limiting the HAP content of materials. The implementing agency would not incur any capital or startup costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, Office of Environmental Information, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 14, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by August 14, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed rule. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local

officials early in the process of developing the proposed rule.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No boat manufacturing facilities subject to the proposed NESHAP are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from this proposed rule. Furthermore, EPA is directed to develop the proposed NESHAP by section 112 of the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

D. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, we are required by Executive Order 13084 to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments are believed to be affected by this proposed rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total cost to the private sector is approximately $14 million per year. This proposed rule contains no mandates affecting State, local, or Tribal governments. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires us to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. We must prepare a regulatory flexibility analysis unless we certify that the rule will not have a "significant economic impact on a substantial number of small entities." Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

We have determined that 66 out of the 2,307 small firms in the industry (2.9 percent) may be affected by this proposed rule. In a screening of impacts on these small firms, we found that 47 firms have costs that comprise less than 1 percent of firm revenues, and 19 firms have estimated compliance costs that exceed 1 percent of their revenues. Based on available data of industry profit margins, the average return on sales for the industry is 3.4 percent. Of the 19 firms with costs greater than one percent of revenues, only one firm is estimated to experience costs exceeding 3 percent of revenues. Thus, reviewing the range of costs to be borne by small businesses in light of the 3.4 percent profit margins typical of this industry, the Agency has determined the costs are

typically small and, overall, do not constitute a significant impact on a substantial number. In addition, this proposed rule is likely to also increase profits at the 2,241 small firms that are not affected by the proposed rule due to the very slight increase in market prices. The economic impacts are summarized in section III.G. of this document and in the economic impact analysis contained in Docket No. A–95–44.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of this proposed rule on small entities. We have met with ten of these small firms and their trade association. They have been fully involved in this rulemaking, and their concerns have been considered in the development of this proposed rule. In developing these proposed standards, we have provided the maximum degree of flexibility to minimize impacts on small businesses by providing several different compliance options, several of which require a minimum amount of recordkeeping and reporting. Also, these proposed standards, which are based on MACT floor level control technology, reflect the minimum level of control allowed under the CAA. Small businesses that are subject to the proposed rule will not be systematically impacted more than larger operations. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

Pursuant to the provisions of 5 U.S.C. 605(b), we hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Publication L. No. 104–113), all Federal agencies are required to use voluntary consensus standards in their regulatory and procurement activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards for use in emissions testing. The search for emissions testing procedures identified 16 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing the available standards, EPA determined that six of the candidate consensus standards identified for measuring emissions of HAP or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation and validation data. Nine of the remaining candidate consensus standards are under development or under EPA review. The EPA plans to follow, review and consider adopting these standards after their development and further review by EPA is completed.

The ASTM D4457–85 (Reapproved 1991) is an acceptable alternative to EPA Method 311 for only dichloromethane (methylene chloride) and 1,1,1–trichlorethane (methyl chloroform). The EPA is requesting comment on the incorporation by reference of ASTM D4457 for the purposes of the proposed NESHAP. Five consensus standards (ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94) are already incorporated by reference in EPA Method 311.

The ASTM D6420–99 is currently under EPA review as an approved alternative to EPA Method 18. The EPA will compare this final ASTM standard to methods previously approved as alternatives to EPA Method 18 with specific applicability limitations. These methods, designated as ALT–017 and CTM-028, are available through EPA's Emission Measurement Center Internet site at www.epa.gov/ttn/emc/tmethods.html. The final ASTM D6420–99 standard is very similar to these approved alternative methods, which may be equally suitable for specific applications. The EPA plans to continue their review of the final standard and will consider adopting the ASTM standard at a later date.

The EPA requests comment on compliance demonstration requirements proposed in this rulemaking and specifically invites the public to identify potentially applicable voluntary consensus standards. Comments should explain why this regulation should adopt these voluntary consensus standards in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A was used).

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, this proposed rule is not economically significant as defined by Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: June 12, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart VVVV to read as follows:

Subpart VVVV—National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

Sec.

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What the Subpart Covers

§ 63.5680 What is the purpose of this subpart?

(a) This subpart establishes national emission standards for hazardous air pollutants (HAP) for new and existing boat manufacturing facilities with resin and gel coat operations, carpet and fabric adhesive operations, or aluminum boat surface coating operations. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.5683 Does this subpart apply to me?

(a) This subpart applies to you if you meet both of the criteria listed in paragraphs (a)(1) and (2) of this section.

(1) You are the owner or operator of a boat manufacturing facility that builds fiberglass boats or aluminum boats.

(2) Your boat manufacturing facility is a major source of HAP either in and of itself, or because it is collocated with other sources of HAP, such that all sources combined constitute a major source.

(b) A boat manufacturing facility is a facility that manufactures hulls or decks of boats from fiberglass or aluminum, or assembles boats from premanufactured hulls and decks, or builds molds to make fiberglass hulls or decks. A facility that manufactures only parts of boats (such as hatches, seats, or lockers) or boat trailers is not considered a boat manufacturing facility for the purpose of this subpart.

(c) A major source is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or can potentially emit, considering controls, in the aggregate, 9.1 megagrams (10 tons) or more per year of a single HAP or 22.7 megagrams (25 tons) or more per year of a combination of HAP.

(d) This subpart does not apply to aluminum coating operations on aluminum boats intended for commercial or military use, antifoulant coatings, fiberglass assembly adhesives, fiberglass hull and deck coatings, mold sealing and release agents, mold stripping and cleaning solvents, and wood coatings as defined in § 63.5779. This subpart does not apply to materials contained in handheld aerosol cans.

§ 63.5686 How do I demonstrate that my facility is not a major source?

(a) To demonstrate that your facility is not a major source based on emissions, you must demonstrate that your facility does not emit, and does not have the potential to emit, considering federally enforceable permit limits, 9.1 megagrams (10 tons) or more per year of a single HAP or 22.7 megagrams (25 tons) or more per year of a combination of HAP. To calculate your facility's potential to emit, you must include emissions from the boat manufacturing facility and all other sources that are collocated and under common ownership or control with the boat manufacturing facility.

(b) To demonstrate that you are not a major source based on material consumption, you must: manufacture either fiberglass or aluminum boats at your facility, but not both; demonstrate that you are not collocated with another source of HAP; and meet the requirement in paragraph (b)(1) or (2) of this section.

(1) If your facility is a fiberglass boat manufacturing facility, you must demonstrate that it consumes less than 45.4 megagrams (50 tons) per year of all polyester- and vinylester-based resins and gel coats, including tooling and

production resins and gel coats, and clear gel coats.

(2) If your facility is an aluminum boat manufacturing facility, you must demonstrate that it consumes less than 18.2 megagrams (20 tons) per year of all carpet and fabric adhesives, surface wipe-down and application gun cleaning solvents, and paints and coatings.

§ 63.5689 What parts of my facility are covered by this subpart?

The affected source (the portion of your boat manufacturing facility covered by this subpart) is the combination of all of the boat manufacturing operations listed in paragraphs (a) through (f) of this section.

(a) Open molding resin and gel coat operations (including pigmented gel coat, clear gel coat, production resin, tooling gel coat, and tooling resin).

(b) Closed molding resin operations.

(c) Resin and gel coat mixing operations.

(d) Resin and gel coat application equipment cleaning operations.

(e) Carpet and fabric adhesive operations.

(f) Aluminum hull and deck coating operations, including solvent wipe-down operations and paint spray gun cleaning operations, on aluminum boats.

§ 63.5692 How do I know if my boat manufacturing facility is a new affected source or an existing affected source?

(a) A boat manufacturing facility is a new affected source if it meets the criteria in paragraphs (a)(1) through (3) of this section.

(1) You commence construction of the affected source after July 14, 2000.

(2) It is a major source.

(3) It is a completely new boat manufacturing affected source where no other boat manufacturing affected source existed prior to the construction of the new affected source.

(b) For the purposes of this subpart, an existing affected source is any affected source that is not a new affected source.

§ 63.5695 When must I comply with this subpart?

You must comply with the standards in this subpart by the dates specified in table 1 to this subpart.

Standards for Open Molding Resin and Gel Coat Operations

§ 63.5698 What emission standard must I meet for open molding resin and gel coat operations?

(a) You must control HAP emissions from the five open molding operations listed in paragraphs (a)(1) through (5) of this section to the emission standard specified in paragraph (b) of this section.

(1) Production resin.

(2) Pigmented gel coat.

(3) Clear gel coat.

(4) Tooling resin.

(5) Tooling gel coat.

(b) You must limit HAP emissions from open molding operations to the standard specified by equation 1, based on a 3-month rolling average.

$$\text{HAP Limit} = \left[46\left(M_R\right) + 159\left(M_{PG}\right) + 291\left(M_{CG}\right) + 54\left(M_{TR}\right) + 214\left(M_{TG}\right)\right] \quad \text{(Eq. 1)}$$

Where:

HAP Limit= total allowable HAP that can be emitted from the open molding operations, kilograms.

M_R = mass of production resin used in the past 3 months, megagrams.

M_{PG} = mass of pigmented gel coat used in the past 3 months, megagrams.

M_{CG} = mass of clear gel coat used in the past 3 months, megagrams.

M_{TR} = mass of tooling resin used in the past 3 months, megagrams.

M_{TG} = mass of tooling gel coat used in the past 3 months, megagrams.

(c) The open molding emission standard is the same for both new and existing sources.

§ 63.5701 What are my options for complying with the open molding emission standard?

You must use one or more of the options listed in paragraphs (a) through (c) of this section to meet the emission standard in § 63.5698 for the resins and gel coats used in open molding operations at your facility.

(a) *Maximum achievable control technology (MACT) model point value averaging option.* (1) Demonstrate that emissions from the open molding resin and gel coat operations that you average meet the emission standard in § 63.5698 based on weighted-average MACT model point values as described in § 63.5710. Compliance with this option is based on a 3-month rolling average.

(2) Those operations and materials not included in the average must comply with either paragraph (b) or (c) of this section.

(b) *Compliant materials option.* Demonstrate compliance with the emission standard in § 63.5698 by using open molding resins and gel coats that meet the HAP content requirements in table 2 to this subpart. Compliance with this option is based on a 3-month rolling average.

(c) *Add-on control option.* Use an enclosure and add-on control device and demonstrate that the resulting emissions meet the emission standard in § 63.5698. Compliance with this option is based on a control device performance test and control device monitoring.

§ 63.5704 What are the general requirements for complying with the open molding emission standard?

(a) *Maximum achievable control technology model point value averaging option.* For those open molding operations and materials complying using the MACT model point value averaging option, you must demonstrate compliance by performing the steps in paragraphs (a)(1) through (5) of this section.

(1) Use the methods specified in § 63.5758 to determine the HAP content of resins and gel coats.

(2) Complete the calculations described in § 63.5710 to show that the HAP emissions do not exceed the standard specified in § 63.5698.

(3) Keep records as specified in paragraphs (a)(3)(i) through (iv) of this section for each resin and gel coat.

(i) Hazardous air pollutant content.

(ii) Amount of material used per month.

(iii) Application method used for production resin and tooling resin. This record is not required if all production resins and tooling resins are applied with nonatomized technology.

(iv) Calculations performed to demonstrate compliance based on MACT model point values, as described in § 63.5710.

(4) Prepare and submit the implementation plan described in § 63.5707 to the Administrator and keep it up to date.

(5) Submit semiannual compliance reports to the Administrator as specified in § 63.5764.

(b) *Compliant materials option.* For each open molding operation complying using the compliant materials option, you must demonstrate compliance by performing the steps in paragraphs (b)(1) through (4) of this section.

(1) Use the methods specified in § 63.5758 to determine the HAP content of resins and gel coats.

(2) Complete the calculations described in § 63.5713 to show that the weighted-average HAP content does not exceed the requirement specified in table 2 to this subpart.

(3) Keep records as specified in paragraphs (b)(3)(i) through (iv) of this section for each resin and gel coat.

(i) Hazardous air pollutant content.

(ii) Application method for production resin and tooling resin. This record is not needed if all production resins and tooling resins are applied with nonatomized technology.

(iii) Amount of material used per month. This record is not needed for an operation if all materials used for that operation comply with the HAP content requirements.

(iv) Calculations performed, if needed, to demonstrate compliance based on weighted-average HAP content as described in § 63.5713.

(4) Submit semiannual compliance reports to the Administrator as specified in § 63.5764.

(c) *Add-on control option.* If you are using an add-on control device, you must demonstrate compliance by performing the steps in paragraphs (c)(1) through (5) of this section.

(1) Conduct a performance test of the control device as specified in §§ 63.5719 and 63.5722 to demonstrate initial compliance.

(2) Use the performance test results to determine control device parameters to monitor after the performance test as specified in § 63.5725.

(3) Comply with the control device monitoring and operating requirements specified in § 63.5725 to demonstrate continuous compliance.

(4) Keep the records specified in § 63.5767.

(5) Submit to the Administrator the notifications and reports specified in §§ 63.5761 and 63.5764.

§ 63.5707 What is an implementation plan for open molding operations and when do I need to prepare one?

(a) You must prepare an implementation plan for all open molding operations for which you comply by using the MACT model point value averaging option described in § 63.5704(a).

(b) The implementation plan must describe the steps you will take to bring the open molding operations covered by this subpart into compliance. For each operation included in the MACT model point value average, your implementation plan must include, at a minimum, the elements listed in paragraphs (b)(1) through (3).

(1) A description of each operation included in the average.

(2) The maximum HAP content of the materials used, the application method used (if any atomized resin application methods are used in the average), and any other methods used to control emissions.

(3) Calculations showing that the operations covered by the plan will comply with the open molding emission standard specified in § 63.5698.

(c) You must submit the implementation plan to the Administrator with the notification of compliance status specified in § 63.5761.

(d) You must keep the implementation plan on site and provide it to the Administrator when asked.

(e) If you revise the implementation plan, you must submit the revised plan with your next semiannual compliance report specified in § 63.5764.

§ 63.5710 How do I demonstrate compliance using MACT model point value averaging?

(a) Compliance using the MACT model point value averaging option is demonstrated on a 3-month rolling-average basis and is determined at the end of every month (12 times per year).

(b) At the end of every month, use equation 2 to demonstrate that the HAP emissions from those operations included in the average do not exceed the emission standard in § 63.5698. (Include terms in equation 1 in § 63.5698 and equation 2 for only those operations and materials included in the average.)

$$\text{HAP emissions} = \left[(PV_R)(M_R) + (PV_{PG})(M_{PG}) + (PV_{CG})(M_{CG}) + (PV_{TR})(M_{TR}) + (PV_{TG})(M_{TG}) \right] \quad \text{(Eq. 2)}$$

Where:

HAP emissions=HAP emissions calculated using MACT model point values for each operation included in the average, kilograms.

PV_R=Weighted-average MACT model point value for production resin used in the past 3 months, kilograms per megagram.

M_R=Mass of production resin used in the past 3 months, megagrams.

PV_{PG}=Weighted-average MACT model point value for pigmented gel coat used in the past 3 months, kilograms per megagram.

M_{PG}=Mass of pigmented gel coat used in the past 3 months, megagrams.

PV_{CG}=Weighted-average MACT model point value for clear gel coat used in the past 3 months, kilograms per megagram.

M_{CG}=Mass of clear gel coat used in the past 3 months, megagrams.

PV_{TR}=Weighted-average MACT model point value for tooling resin used in the past 3 months, kilograms per megagram.

M_{TR}=Mass of tooling resin used in the past 3 months, megagrams.

PV_{TG}=Weighted-average MACT model point value for tooling gel coat used in the past 3 months, kilograms per megagram.

M_{TG}=Mass of tooling gel coat used in the past 3 months, megagrams.

(c) At the end of every month, use equation 3 to compute the weighted-average MACT model point value for each open molding resin and gel coat operation included in the average.

$$PV_{OP} = \frac{\sum_{i=1}^{n} (M_i PV_i)}{\sum_{i=1}^{n} (M_i)} \quad \text{(Eq. 3)}$$

Where:

PV_{OP}=weighted-average MACT model point value for each open molding operation (PV_R, PV_{PG}, PV_{CG}, PV_{TR}, and PV_{TG}) included in the average, kilograms of HAP per megagram of material applied.

M_i=mass of resin or gel coat i used within an operation in the past 3 months, megagrams.

n=number of different open molding resins or gel coats used within an operation in the past 3 months.

PV_i=the MACT model point value for resin or gel coat i used within an operation in the past 3 months, kilograms of HAP per megagram of material applied.

(d) You must use the equations in table 3 to this subpart to calculate the MACT model point value (PV_i) for each resin and gel coat used in each operation in the past 3 months.

(e) If the HAP emissions, as calculated in paragraph (b) of this section, are less than the HAP limit calculated in § 63.5698(b), then you are in compliance with the emission standard in § 63.5698

for those operations and materials included in the average.

§ 63.5713 How do I demonstrate compliance using compliant materials?

(a) Compliance using the HAP content requirements listed in table 2 to this subpart is based on a 3-month rolling average that is calculated at the end of every month.

(b) At the end of every month, review the HAP contents of the resins and gel coats used in the past 3 months in each operation. If all resins and gel coats used in an operation have HAP contents no greater than the applicable HAP content requirements in table 2 to this subpart, then you are in compliance with the emission standard specified in § 63.5698 for that 3-month period for that operation. In addition, you do not need to complete the weighted-average HAP content calculation contained in paragraph (c) of this section for that operation.

(c) At the end of every month, you must use equation 4 to calculate the weighted-average HAP content for all resins and gel coats used in that operation in the past 3 months.

$$\text{Weighted-Average HAP Content (\%)} = \frac{\sum_{i=1}^{n}(M_i HAP_i)}{\sum_{i=1}^{n}(M_i)} \quad \text{(Eq. 4)}$$

Where:

M_i = mass of open molding resin or gel coat i used in the past 3 months in an operation, megagrams.

HAP_i = HAP content, by weight percent, of open molding resin or gel coat i used in the past 3 months in an operation. Use the methods in § 63.5758 to determine HAP content.

n = number of different open molding resins or gel coats used in the past 3 months in an operation.

(d) If the weighted-average HAP content does not exceed the applicable HAP content requirement specified in table 2 to this subpart, then you are in compliance with the emission standard specified in § 63.5698.

Demonstrating Compliance for Open Molding Operations Controlled by Add-On Control Devices

§ 63.5716 When must I conduct a performance test?

(a) You must conduct an initial control device performance test within 180 calendar days after the compliance date specified in § 63.5695 and according to the provisions in § 63.7(a)(2).

(b) If you commenced construction between today's date and the effective date of the subpart, you must demonstrate initial compliance with either the proposed emission standard or the promulgated emission standard no later than 180 calendar days after the effective date of the regulation or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(c) If you commenced construction between today's date and the effective date of the subpart, and you chose to comply with the proposed emission standard when demonstrating initial compliance, you must conduct a second compliance demonstration for the promulgated emission standard within 3 years and 180 calendar days after the effective date of the subpart, or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) You must conduct a performance test every 5 years as part of renewing your 40 CFR part 70 or part 71 operating permit.

§ 63.5719 How do I conduct a performance test?

(a) You must capture the emissions using a permanent enclosure (such as a spray booth or similar containment device) and direct the captured emissions to the add-on control device.

(b) You must measure emissions as specified in paragraph (b)(1) or (2) of this section.

(1) If the enclosure vented to the control device is a permanent total enclosure as defined in Method 204 of appendix M to 40 CFR part 51, then you may measure emissions only at the outlet of the control device.

(2) If the permanent enclosure vented to the control device is not a total enclosure, you must build a temporary total enclosure, as defined in Method 204 of appendix M to 40 CFR part 51, around the permanent enclosure. You must then simultaneously measure emissions from the control device outlet and the emissions from the total temporary enclosure outlet. You determine compliance from the combined emissions from the control device outlet and the total temporary enclosure outlet.

(c) You must conduct the control device performance test using the emission measurement methods specified in paragraphs (c)(1) through (3) of this section.

(1) Use either Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select the sampling sites.

(2) Use Method 2, 2A, 2C, 2D, 2F or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 18 of appendix A to 40 CFR part 60 to measure HAP emissions or use Method 25A of appendix A to 40 CFR part 60 to measure total gaseous organic emissions as a surrogate for total HAP emissions. If you use Method 25A, you must assume that all gaseous organic emissions measured as carbon are HAP emissions. If you use Method 18 and the number of HAP in the exhaust stream exceeds five, you must take into account the use of multiple chromatographic columns and analytical techniques to get an accurate measure of at least 90 percent of the total HAP mass emissions. Do not use Method 18 to measure HAP emissions from a combustion device; use instead Method 25A and assume that all gaseous organic mass emissions measured as carbon are HAP emissions.

(d) The control device performance test must consist of three runs and each run must last at least 1 hour. The production conditions during the test runs must represent normal production conditions with respect to the types of parts being made and material application methods. The production conditions during the test must also represent maximum potential emissions with respect to the HAP content of the materials being applied and the material application rates.

(e) During the test, you must also monitor and record separately the amounts of production resin, tooling resin, pigmented gel coat, clear gel coat, and tooling gel coat applied inside the enclosure that is vented to the control device.

§ 63.5722 How do I use the performance test data to demonstrate initial compliance?

Demonstrate initial compliance with the open molding emission standard as

described in paragraphs (a) through (c) of this section:

(a) Calculate the HAP limit you must achieve using equation 1 in § 63.5698. For determining initial compliance, the HAP limit is based on the amount of material used during the performance test, in megagrams, rather than during the past 3 months. Calculate the limit using the megagrams of resin and gel coat applied inside the enclosure during the three runs of the performance test and equation 1 in § 63.5698.

(b) Add the total measured emissions, in kilograms, from all three of the 1-hour runs of the performance test.

(c) If the total emissions from the three 1-hour runs of the performance test are less than the HAP limit calculated in paragraph (a) of this section, then you have demonstrated initial compliance with the emission standard in § 63.5698 for those operations performed in the enclosure and controlled by the add-on control device.

§ 63.5725 What are the requirements for monitoring and demonstrating continuous compliance?

(a) You must establish control device parameters that indicate proper operation of the control device.

(b) You must install, operate, and maintain a continuous parameter monitoring system as specified in paragraphs (b)(1) through (6) of this section.

(1) The continuous parameter monitoring system must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four successive cycles of operation to have a valid hour of data.

(2) You must have valid data from at least 90 percent of the hours during which the process operated.

(3) You must determine the hourly average of all recorded readings.

(4) You must determine the daily average of all recorded readings for each operating day.

(5) You must determine the 30-day average for each 30-day period.

(6) You must record the results of each inspection, calibration, and validation check.

(c) *Enclosure bypass line.* You must meet the requirements of paragraph (c)(1) and either paragraph (c)(2) or (3) of this section for each enclosure ventilation system that contains bypass lines that could divert emissions from a control device.

(1) If the bypass lines are opened, you must include a description of the bypass and its duration in the compliance reports required in § 63.5764(c).

(2) You must properly install, operate, and maintain a flow measurement device that records the presence of a gas stream flow in each bypass line. You must meet the requirements in paragraph (b) and paragraphs (c)(2)(i) through (v) of this section for each flow measurement device.

(i) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow.

(ii) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(iii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iv) Conduct a flow sensor calibration check at least semi-annually.

(v) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(3) You must secure the bypass line in a nondiverting position with a seal in such a way that the valve or closure mechanism cannot be opened without breaking the seal. You must inspect the seal at least once per month and record the results of the inspection.

(d) *Thermal oxidizers.* If you are using a thermal oxidizer or incinerator as an add-on control device, you must comply with the requirements in paragraphs (d)(1) through (6) of this section.

(1) You must install a combustion temperature monitoring device in the firebox of the thermal oxidizer or incinerator, or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. You must meet the requirements in paragraph (b) and paragraphs (d)(1)(i) through (vii) of this section for each temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a minimum tolerance of 2.2° C or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20° F.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7° C of the process temperature sensor's reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(2) Before or during the performance test, you must conduct a performance evaluation of the combustion temperature monitoring system according to § 63.8(e). Section 63.8(e) specifies the general requirements for continuous monitoring systems and requirements for notifications, the site-specific performance evaluation plan, conduct of the performance evaluation, and reporting of performance evaluation results.

(3) During the performance test required by § 63.5716, you must monitor and record the combustion temperature and determine the average combustion temperature for the three 1-hour test runs.

(4) Following the performance test, you must continuously monitor the combustion temperature and record the average combustion temperature no less frequently than every 15 minutes.

(5) You must operate the incinerator or thermal oxidizer so that the average combustion temperature in any 3-hour period does not fall below the average combustion temperature recorded during the performance test.

(6) If the average combustion temperature in any 3-hour period falls below the average combustion temperature recorded during the performance test, or if you fail to collect the minimum data specified in paragraph (d)(4) of this section, it is a deviation.

(e) *Absorbers, condensers, and carbon adsorbers.* If you are using an absorber, condenser, or carbon adsorber as an add-on control device, you must comply with the operating, testing, and monitoring requirements in § 63.990.

(f) *Other control devices.* If you are using a control device other than those listed in paragraphs (d) and (e) of this section, then you must comply with the operating, testing, and monitoring requirements in § 63.995.

Standards for Closed Molding Resin Operations

§ 63.5728 What standards must I meet for closed molding resin operations?

(a) If a resin application operation meets the definition of closed molding specified in § 63.5779, there is no

requirement to reduce emissions from that operation.

(b) If the resin application operation does not meet the definition of closed molding, then you must comply with the standard for open molding resin operations specified in § 63.5698.

(c) Open molding resin operations that precede a closed molding operation must comply with the standard for open molding resin and gel coat operations specified in § 63.5698. Examples of these operations include gel coat or skin coat layers that are applied before lamination is performed by closed molding.

Standards for Resin and Gel Coat Mixing Operations

§ 63.5731 What standards must I meet for resin and gel coat mixing operations?

(a) All resin and gel coat mixing containers with a capacity equal to or greater than 208 liters (55 gallons) must have a cover with no visible gaps in place at all times.

(b) The work practice standard in paragraph (a) of this section does not apply when material is being manually added to or removed from a container, or when mixing or pumping equipment is being placed in or removed from a container.

(c) To demonstrate compliance with the work practice standard in paragraph (a) of this section, you must visually inspect all mixing containers subject to this standard at least once per month. The inspection should ensure that all containers have covers with no visible gaps between the cover and the container, or between the cover and equipment passing through the cover.

(d) You must keep records of which mixing containers are subject to this standard and the results of the inspections, including a description of any repairs or corrective actions taken.

Standards for Resin and Gel Coat Application Equipment Cleaning Operations

§ 63.5734 What standards must I meet for resin and gel coat application equipment cleaning operations?

(a) For routine flushing of resin and gel coat application equipment (*e.g.*, spray guns, flowcoaters, brushes, rollers, and squeegees), you must use a cleaning solvent that contains no HAP. This emission standard does not apply to solvents used for removing cured resin or gel coat from application equipment.

(b) You must store HAP-containing solvents used for removing cured resin or gel coat in containers with covers. The covers must have no visible gaps and must be in place at all times, except when equipment is placed in or removed from the container. Cured resin or gel coat means resin or gel coat that has changed irreversibly from a liquid to a solid.

(c) Recycled cleaning solvents that contain trace amounts of HAP (5 percent HAP or less by weight) are considered to contain no HAP for the purposes of this subpart.

§ 63.5737 How do I demonstrate compliance with the resin and gel coat application equipment cleaning standards?

(a) Determine and record the HAP content of the cleaning solvents subject to the standards specified in § 63.5734 using the methods specified in § 63.5758.

(b) Record the amount of cleaning solvents purchased as recycled cleaning solvents, and, therefore, may contain trace amounts of HAP.

(c) At least once per month, you must visually inspect any containers holding HAP-containing solvents used for removing cured resin and gel coat to ensure that the containers have covers with no visible gaps. Keep records of the monthly inspections and any repairs made to the covers.

Standards for Carpet and Fabric Adhesive Operations

§ 63.5740 What standards must I meet for carpet and fabric adhesive operations?

(a) You must use carpet and fabric adhesives that contain no HAP.

(b) To demonstrate compliance with the emission standard in paragraph (a) of this section, you must determine and record the HAP content of the carpet and fabric adhesives using the methods in § 63.5758.

Standards for Aluminum Boat Surface Coating Operations

§ 63.5743 What standards must I meet for aluminum boat surface coating operations?

(a) You must use aluminum wipe-down solvents with a weighted-average HAP content that does not exceed 2.57 kilograms of HAP per liter of solids from aluminum primers and clear coats applied over bare aluminum (21.5 pounds of HAP per gallon of solids). Compliance is based on a 3-month rolling average that is calculated at the end of every month. This limit does not apply to surfaces receiving decals or adhesive graphics.

(b) You must use aluminum boat surface coatings (including thinners, activators, primers, topcoats, and clear coats) with a weighted-average HAP content that does not exceed 1.22 kilograms of HAP per liter of coating solids (10.2 pounds of HAP per gallon of coating solids). Compliance is based on a 3-month rolling average that is calculated at the end of every month.

(c) You must comply with the work practice standard in paragraph (c)(1), (2), or (3) of this section when cleaning aluminum coating spray guns with HAP-containing solvents. You do not need to comply with these work practice standards if you are using a cleaning solvent that contains no HAP.

(1) Clean spray guns in an enclosed device. Keep the device closed except when you place spray guns in or remove them from the device.

(2) Disassemble the spray gun and manually clean the components in a vat. Keep the vat closed when you are not using it.

(3) Clean spray guns by placing solvent in the pressure pot and forcing the solvent through the gun. Do not use atomizing air during this procedure. Direct the used cleaning solvent from the spray gun into a container that you keep closed when you are not using it.

§ 63.5746 How do I demonstrate compliance with the standards for aluminum wipe-down solvents and aluminum coatings?

To demonstrate compliance with the emission standards for aluminum wipe-down solvents and aluminum coatings specified in § 63.5743 (a) and (b), you must meet the requirements of paragraphs (a) through (f) of this section.

(a) Determine and record the HAP content (kilograms of HAP per kilogram of material, or weight fraction) of each aluminum wipe-down solvent and aluminum coating (including primers, topcoats, clear coats, thinners, and activators). Use the methods in § 63.5758 to determine HAP content.

(b) Obtain from the aluminum coating manufacturer's formulation the solids content (liters of solids per liter of coating, or volume fraction) of each aluminum surface coating, including primers, topcoats, and clear coats. Keep records of the solids content.

(c) Compliance is based on a 3-month rolling average calculated at the end of every month.

(d) At the end of every month, use the procedures in § 63.5749 to calculate the HAP from aluminum wipe-down solvents per liter of coating solids. Use the procedures in § 63.5752 to calculate the kilograms of HAP from aluminum coatings per liter of coating solids.

(e) Keep records of the calculations used to determine compliance.

(f) *Approval of alternative means of demonstrating compliance.* You may apply to the Administrator for permission to use an alternative means (such as an add-on control system) of limiting emissions from aluminum

wipe-down solvent and coating operations and demonstrating compliance with the standards in paragraphs (a) and (b) in § 63.5743.

(1) The application must include the information listed in paragraphs (f)(1)(i) through (iii) of this section.

(i) An engineering evaluation that compares the emissions using the alternative means to the emissions that would result from using the strategy specified in paragraphs (a) through (d) of this section. The engineering evaluation may include the results from an emission test that accurately measures the capture efficiency and control device efficiency achieved by the control system and the composition of the associated coatings so that the emissions comparison can be made.

(ii) A proposed monitoring protocol that includes operating parameter values to be monitored for compliance and an explanation of how the operating parameter values will be established through a performance test.

(iii) Details of appropriate recordkeeping and reporting procedures.

(2) The Administrator will approve the alternative means of limiting emissions if the Administrator determines that HAP emissions will be no greater than if the source uses the procedures described in paragraphs (a) through (d) of this section to demonstrate compliance.

(3) The Administrator's approval may specify operation, maintenance, and monitoring requirements to ensure that emissions from the regulated operations are no greater than those that would otherwise result from regulated operations in compliance with this subpart.

§ 63.5749 How do I calculate the HAP content of aluminum wipe-down solvents?

(a) Use equation 5 to calculate the weighted-average HAP content of aluminum wipe-down solvents used in the past 3 months.

$$HAP_{WD} = \frac{\sum_{i=1}^{n}(Vol_{WDi})(D_{WDi})(W_{WDi})}{\sum_{j=1}^{m}(Vol_{Pj})(Solids_{Pj})} \quad \text{(Eq. 5)}$$

Where:

HAP_{WD} = weighted-average HAP content of aluminum wipe-down solvents, kilograms of HAP per liter of solids from aluminum primers and clear coats applied to bare aluminum.

n = number of different wipe-down solvents used in the past 3 months.

Vol_{WDi} = volume of aluminum wipe-down solvent i used in the past 3 months, liters.

D_{WDi} = density of aluminum wipe-down solvent i, kilograms per liter.

W_{WDi} = mass fraction of HAP in aluminum wipe-down solvent i.

m = number of different aluminum primers and clear coats used in the past 3 months that were applied to bare aluminum.

Vol_{Pj} = volume of aluminum primer or clear coat j used in the past 3 months, liters.

$Solids_{Pj}$ = solids content of aluminum primer or clear coat j, liter solids per liter of coating.

(b) Compliance is based on a 3-month rolling average. If the weighted-average HAP content does not exceed 2.57 kilograms of HAP per liter of solids (21.5 pounds of HAP per gallon solids), then you are in compliance with the emission standard specified in § 63.5743(a).

§ 63.5752 How do I calculate the HAP content of aluminum boat surface coatings?

(a) Use equation 6 to calculate the weighted-average HAP content for all aluminum surface coatings used in the past 3 months.

$$HAP_{SC} = \frac{\sum_{i=1}^{m}(Vol_{Ci})(D_{Ci})(W_{Ci}) + \sum_{j=1}^{n}(Vol_{Tj})(D_{Tj})(W_{Tj})}{\sum_{i=1}^{m}(V_{Si})(Vol_{Ci})} \quad \text{(Eq. 6)}$$

Where:

HAP_{SC} = weighted-average HAP content for all aluminum coating materials, kilograms of HAP per liter of coating solids.

m = number of different coatings used in the past 3 months.

Vol_{Ci} = total volume of coating i used in the past 3 months, liters.

D_{Ci} = density of coating i, kilograms per liter.

W_{Ci} = mass fraction of HAP in coating i, kilograms of HAP per kilogram of coating.

n = number of different thinners and activators used in the past 3 months.

Vol_{Tj} = total volume of thinner or activator j used in the past 3 months, liters.

D_{Tj} = density of thinner or activator j, kilograms per liter.

W_{Tj} = mass fraction of HAP in thinner or activator j, kilograms of HAP per kilogram of thinner or activator.

V_{Si} = volume fraction of solids in coating i, liter solids per liter coating, from coating manufacturer's formulation.

(b) Compliance is based on a 3-month rolling average. If the weighted-average HAP content does not exceed 1.22 kilograms of HAP per liter of coating solids (10.2 pound per gallon), then you are in compliance with the emission standard specified in § 63.5743(b).

§ 63.5755 How do I demonstrate compliance with the aluminum boat surface coating spray gun cleaning standards?

You must demonstrate compliance with the aluminum coating spray gun cleaning work practice standards by meeting the requirements of paragraph (a) or (b) of this section.

(a) Demonstrate that solvents used to clean the aluminum coating spray guns contain no HAP by determining HAP content with the methods in § 63.5758. Keep records of the HAP content determination.

(b) For HAP-containing solvents, comply with the requirements in paragraph (b)(1) or (2), and (b)(3) of this section.

(1) If you are using an enclosed spray gun cleaner, visually inspect it at least once per month to ensure that covers are in place and will close properly when the cleaner is not in use, and that there are no leaks from hoses or fittings.

(2) If you are manually cleaning the gun or spraying solvent into a container that can be closed, visually inspect all solvent containers at least once per month to ensure that the containers have covers.

(3) Keep records of the monthly inspections and any repairs that are made to the enclosed gun cleaners or the covers.

Methods for Determining Air Pollutant Content

§ 63.5758 How do I determine the HAP content of materials?

(a) To determine the HAP content of the materials used in your open molding resin and gel coat operations, carpet and fabric adhesive operations, or aluminum boat surface coating operations, use EPA Method 311 of appendix A to 40 CFR part 63. You may use EPA Method 311, an alternative method as provided in paragraph (b) of this section, or any other reasonable means for determining the HAP content. Other reasonable means of determining HAP content include, but are not limited to, a material safety data sheet (MSDS) or a manufacturer's hazardous air pollutant data sheet as defined in § 63.5779. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations, except as provided in paragraph (b) of this section.

(b) You may use an alternative to EPA Method 311 for determining HAP content if that method has been approved by the Administrator according to § 63.7(f). The Administrator will approve alternative methods on a case-by-case basis.

(c) If HAP content data are reported by a material supplier or manufacturer as a range, the upper limit of that range will be used for determining compliance.

Notifications, Reports, and Records

63.5761 What notifications must I submit and when?

(a) You must submit all of the notifications in table 4 to this subpart that apply to you, by the dates in table 4 to this subpart. The notifications are described more fully in the sections of 40 CFR part 63, subpart A, General Provisions, referenced in table 4 to this subpart.

(b) If you change any information submitted in any notification, you must submit the changes in writing to the Administrator within 15 calendar days after the change.

63.5764 What reports must I submit and when?

(a) You must submit the applicable reports specified in paragraphs (b) through (d) of this section. To the extent possible, you must organize each report according to the operations covered by this subpart and the compliance procedure followed for that operation.

(b) If your facility is not controlled by an add-on control device (*i.e.*, you are complying with HAP content limits, application equipment requirements, or MACT model point value averaging provisions), you must submit a semiannual compliance report. The semiannual reporting period is each subsequent 6-month period after your compliance date. Unless the Administrator has approved a different schedule, you must submit each report so that it is postmarked or delivered no later than 30 calendar days following the end of each reporting period. The compliance report must include the information specified in paragraphs (b)(1) through (8) of this section.

(1) Company name and address.

(2) Name, title, and signature of the responsible official certifying the accuracy of the report.

(3) A statement certifying as to the truth, accuracy, and completeness of the report.

(4) The date of the report and the beginning and ending dates of the reporting period.

(5) A description of any changes in the manufacturing process, continuous monitoring system, or controls since the last compliance report.

(6) A statement or table showing, for each regulated operation, the applicable HAP content limit, application equipment requirement, or MACT model point value averaging provision with which you are complying. The statement or table must also show the actual weighted-average HAP content or weighted-average MACT model point value (if applicable) for each operation during each of the rolling 3-month averaging periods that end during the reporting period.

(7) If you were in compliance with a standard during the reporting period, you must include a statement to that effect.

(8) If you were not in compliance with a standard or identified deviations during the reporting period, you must also include the information listed in paragraphs (b)(8)(i) through (iv) of this section in the semiannual compliance report.

(i) A description of the operation that was not in compliance with the standard.

(ii) The quantity, HAP content, and application method (if relevant) of the materials not in compliance.

(iii) A description of any corrective action you took to minimize noncompliance and actions you have taken to prevent it from happening again.

(iv) A statement of whether or not your facility was in compliance for the 3-month averaging period that ended at the end of the reporting period.

(c) If your facility has an add-on control device, you must submit semiannual compliance reports and quarterly excess emission reports as specified in § 63.10(e). The contents of the reports and the schedule for submitting them are specified in § 63.10(e).

(d) If your facility has an add-on control device, you must complete a startup, shutdown, and malfunction plan as specified in § 63.6(e), and you must submit the startup, shutdown, and malfunction reports specified in § 63.10(e)(5).

63.5767 What records must I keep?

You must keep the records specified in paragraphs (a) through (d) of this section in addition to records specified in individual sections of this subpart.

(a) You must keep a copy of each notification and report that you submitted to comply with this subpart.

(b) You must keep all documentation supporting any notification or report that you submitted.

(c) If your facility is not controlled by an add-on control device (*i.e.*, you are complying with HAP content limits, application equipment requirements, or MACT model point value averaging provisions), you must keep the records specified in paragraphs (c)(1) through (3) of this section.

(1) The total amounts of open molding production resin, pigmented gel coat, clear gel coat, tooling resin, and tooling gel coat used per month and the weighted-average HAP contents for each

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operation, expressed as weight-percent. For open molding production resin and tooling resin, you must also record the amounts of each applied by atomized and nonatomized methods.

(2) The total amount of aluminum coating used per month (including primers, top coats, clear coats, thinners, and activators) and the weighted-average HAP content as determined in § 63.5752.

(3) The amount of each aluminum wipe-down solvent used per month and the weighted-average HAP content as determined in § 63.5749.

(d) If your facility has an add-on control device, you must keep the records specified in § 63.10(b) relative to control device startup, shut down, and malfunction events; control device performance tests; and continuous monitoring system performance evaluations.

63.5770 In what form and for how long must I keep my records?

(a) Your records must be readily available and in a form so they can be easily inspected and reviewed.

(b) You must keep each record for 5 years following the date that each record is generated.

(c) You must keep each record on site for at least 2 years after the date that each record is generated. You can keep the records offsite for the remaining 3 years.

(d) You can keep the records on paper or an alternative media, such as microfilm, computer, computer disks, magnetic tapes, or on microfiche.

Other Information You Need to Know

63.5773 What parts of the general provisions (40 CFR part 63, subpart A) apply to me?

You must comply with the requirements of the general provisions in 40 CFR part 63, subpart A, as specified in table 5 to this subpart.

63.5777 Who implements and enforces this subpart?

(a) If the Administrator has delegated authority to your State or local agency, the State or local agency has the authority to implement and enforce this subpart.

(b) In delegating implementation and enforcement authority of this subpart to a State or local agency under section 40 CFR part 63, subpart E, the authorities that are retained by the Administrator of the U.S. EPA and are not transferred to the State or local agency are listed in paragraphs (b)(1) and (2) of this section.

(1) Under § 63.6(g), the authority to approve alternatives to the standards listed in paragraphs (b)(1)(i) through (vii) of this section is not delegated.

(i) § 63.5698—Standard for open molding resin and gel coat operations.

(ii) § 63.5728—Standards for closed molding resin operations.

(iii) § 63.5731(a)—Standards for resin and gel coat mixing operations.

(iv) § 63.5734—Standards for resin and gel coat application equipment cleaning operations.

(v) § 63.5740(a)—Standards for carpet and fabric adhesive operations.

(vi) § 63.5743—Standards for aluminum boat surface coating operations.

(vii) § 63.5746(f)—Approval of alternative means of demonstrating compliance with the standards for aluminum boat surface coating operations.

(2) Under § 63.7(f), the authority to approve alternatives to the test methods listed in paragraphs (b)(2)(i) through (iv) of this section are not delegated.

(i) § 63.5719(b)—Method for determining whether an enclosure is a total enclosure.

(ii) § 63.5719(c)—Methods for measuring emissions from a control device.

(iii) § 63.5725(d)(1)—Performance specifications for thermal oxidizer combustion temperature monitors.

(iv) § 63.5758—Method for determining hazardous air pollutant content of regulated materials.

Definitions

§ 63.5779 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative (for example, a State delegated the authority to carry out the provisions of this subpart).

Aluminum boat means any marine or freshwater vessel that meets both of the following two criteria: the hull or the deck is constructed primarily of aluminum, and the vessel is designed and manufactured for noncommercial and nonmilitary purposes.

Aluminum boat surface coating operation means the application of primers or top coats to aluminum boats. Aluminum boat surface coating operations do not include the application of wood coatings or antifoulant coatings to aluminum boats.

Aluminum coating spray gun cleaning means the process of flushing or removing paints or coatings from the interior or exterior of a spray gun used to apply aluminum primers or top coats to aluminum boats.

Aluminum wipe-down solvents means solvents used to remove oil, grease, welding smoke, or other contaminants from the aluminum surfaces of a boat before priming or painting. Aluminum wipe-down solvents contain no coating solids; aluminum surface preparation materials that contain solids are considered coatings for the purpose of this subpart and are not wipe-down solvents.

Antifoulant coating means any coating that is applied to the underwater portion of a boat specifically to prevent or reduce the attachment of biological organisms and that is registered with EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136, *et seq.*). For the purpose of this subpart, primers used with antifoulant coatings to prepare the surface to accept the antifoulant coating are considered antifoulant coatings.

Atomized resin application means a resin application technology in which the resin leaves the application equipment and breaks into droplets or an aerosol as it travels from the application equipment to the surface of the part. Atomized resin application includes, but is not limited to, resin spray guns and resin chopper spray guns.

Boat means any type of vessel, other than a seaplane, that can be used for transportation on the water.

Boat manufacturing facility means a facility that manufacturers the hulls or decks of boats from fiberglass or aluminum or assembles boats from premanufactured hulls and decks or builds molds to make fiberglass hulls or decks. A facility that manufacturers only parts of boats (such as hatches, seats, or lockers) or boat trailers, but no boat hulls or decks or molds for fiberglass boat hulls or decks, is not considered a boat manufacturing facility for the purpose of this subpart.

Carpet and fabric adhesive means any chemical material that permanently attaches carpet, fabric, or upholstery to any surface of a boat.

Clear gel coat means gel coats that are clear or translucent so that underlying colors are visible. Clear gel coats are used to manufacture parts for sale. Clear gel coats do not include tooling gel coats used to build or repair molds.

Closed molding means any molding process in which pressure is used to distribute the resin through the

reinforcing fabric placed between two mold surfaces to either saturate the fabric or fill the mold cavity. The pressure may be clamping pressure, fluid pressure, atmospheric pressure, or vacuum pressure used either alone or in combination. The mold surfaces may be rigid or flexible. Closed molding includes, but is not limited to, compression molding with sheet molding compound, infusion molding, resin injection molding (RIM), vacuum-assisted resin transfer molding (VARTM), resin transfer molding (RTM), and vacuum-assisted compression molding. Processes in which a closed mold is used only to compact saturated fabric or remove air or excess resin from the fabric (such as in vacuum bagging), are not considered closed molding. Open molding steps, such as application of a gel coat or skin coat layer by conventional open molding prior to a closed molding process, are not closed molding.

Cured resin and gel coat means resin or gel coat that has been catalyzed and changed from a liquid to a solid.

Deviation means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limit, operating limit, or work practice requirement;

(2) Fails to meet any term or condition which is adopted to implement an applicable requirement in this subpart and which is included in the operating permit for any affected source required to obtain such permit; or

(3) Fails to meet any emission limit, operating limit, or work practice requirement in this subpart during any startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Enclosure means a structure, such as a spray booth, that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Fiberglass assembly adhesive means any chemical material used in the joining of one fiberglass part to another to form a temporary or permanently bonded assembly. Assembly adhesives include, but are not limited to, methacrylate adhesives and putties made from polyester or vinylester resin mixed with inert fillers or fibers.

Fiberglass boat means a vessel in which either the hull or deck is built from a composite material consisting of a thermosetting resin matrix reinforced with fibers of glass, carbon, aramid, or other material.

Fiberglass hull and deck coatings means coatings applied to the exterior or interior surface of fiberglass boat hulls and decks on the completed boat. Polyester and vinylester resins and gel coats used in building fiberglass parts are not fiberglass hull and deck coatings for the purpose of this subpart.

Gel coat means a thermosetting resin surface coating containing styrene (Chemical Abstract Service or CAS No. 100–42–5) or methyl methacrylate (CAS No. 80–62–6), either pigmented or clear, that provides a cosmetic enhancement or improves resistance to degradation from exposure to the elements.

Hazardous air pollutant or HAP means any air pollutant listed in, or added to the list in section 112(b) of the Clean Air Act.

Hazardous air pollutant content or HAP content means the amount of HAP contained in a regulated material at the time it is applied to the part being manufactured. If no HAP is added to a material as a thinner or diluent, then the HAP content is the same as the HAP content of the material as purchased from the supplier. For resin and gel coat, HAP content does not include any HAP contained in the catalyst added to the resin or gel coat during application to initiate curing. For filled resins, HAP content is the fraction of HAP contained in the resin before any filler is added.

Hazardous air pollutant data sheet (HDS) means documentation furnished by a material supplier or an outside laboratory to provide the HAP content of the material by weight, measured using EPA Method 311, manufacturer's formulation data, or an equivalent method. For aluminum coatings, the HDS also documents the solids content by volume, determined from the manufacturer's formulation data. The purpose of the HDS is to help the affected source in showing compliance with the HAP content limits contained in this subpart. The HDS must state the maximum total HAP concentration, by weight, of the material. It must include any HAP concentrations equal to or greater than 0.1 percent by weight for individual HAP that are carcinogens, as defined by the Occupational Safety and Health Administration Hazard Communication Standard (29 CFR part 1910), and 1.0 percent by weight for all other individual HAP, as formulated. The HDS must also include test conditions if EPA Method 311 is used for determining HAP content.

Maximum achievable control technology (MACT) model point value means a number calculated for open molding operations that is a surrogate for emissions and is used to determine if your open molding operations are in compliance with the provisions of this subpart. The units for MACT model point values are kilograms of HAP per megagram of resin or gel coat applied.

Manufacturer's certification means documentation furnished by a material supplier that shows the HAP content of a material and includes a HDS.

Mold means the cavity or surface into or on which gel coat, resin, and fibers are placed and from which finished fiberglass parts take their form.

Mold sealing and release agents means materials applied to a mold to seal, polish, and lubricate the mold to prevent parts from sticking to the mold. Mold sealers, waxes, and glazing and buffing compounds are considered mold sealing and release agents for the purposes of this subpart.

Mold stripping and cleaning solvents means materials used to remove mold sealing and release agents from a mold before the mold surface is repaired, polished, or lubricated during normal mold maintenance.

Month means a calendar month.

Nonatomized resin application means any application technology in which the resin is not broken into droplets or an aerosol as it travels from the application equipment to the surface of the part. Nonatomized resin application technology includes, but is not limited to, flowcoaters, chopper flowcoaters, pressure fed resin rollers, resin impregnators, and hand application (for example, paint brush or paint roller).

Open molding resin and gel coat operation means any process in which the reinforcing fibers and resin are placed in the mold and are open to the surrounding air while the reinforcing fibers are saturated with resin. For the purposes of this subpart, open molding includes operations in which a vacuum bag or similar cover is used to compress an uncured laminate to remove air bubbles or excess resin, or to achieve a bond between a core material and a laminate.

Pigmented gel coat means opaque gel coats used to manufacture parts for sale. Pigmented gel coats do not include tooling gel coats used to build or repair molds.

Production resin means any resin used to manufacture parts for sale. Production resins do not include tooling resins used to build or repair molds, or fiberglass assembly adhesives as defined in this section.

Recycled resin and gel coat application equipment cleaning solvent means cleaning solvents returned to the supplier or another party to remove resin or gel coat residues so that the solvent can be reused.

Resin means any thermosetting resin containing styrene (CAS No. 100–42–5) or methyl methacrylate (CAS No. 80–62–6) and used to encapsulate and bind together reinforcement fibers in the construction of fiberglass parts.

Resin and gel coat application equipment cleaning means the process of flushing or removing resins and gel coats from the interior or exterior of equipment that is used to apply resin or gel coat in the manufacture of fiberglass parts.

Resin and gel coat mixing operation means any operation in which resin or gel coat is combined with additives that include, but are not limited to, fillers, promoters, or catalysts.

Roll-out means the process of using rollers, squeegees, or similar tools to compact reinforcing materials saturated with resin to remove trapped air or excess resin.

Skin coat is a layer of resin and fibers applied over the gel coat to protect the gel coat from being deformed by the next laminate layers.

Tooling resin means the resin used to build or repair molds (also known as tools) or prototypes (also known as plugs) from which molds will be made.

Tooling gel coat means the gel coat used to build or repair molds (also known as tools) or prototypes (also known as plugs) from which molds will be made.

Vacuum bagging means any molding technique in which the reinforcing fabric is saturated with resin and then covered with a flexible sheet that is sealed to the edge of the mold and where a vacuum is applied under the sheet to compress the laminate, remove excess resin, or remove trapped air from the laminate during curing. Vacuum bagging does not include processes that meet the definition of closed molding.

Wood coatings means coatings applied to wooden parts and surfaces of boats, such as paneling, cabinets, railings, and trim. Wood coatings include, but are not limited to, primers, stains, sealers, varnishes, and enamels. Polyester and vinylester resins or gel coats applied to wooden parts to encapsulate them or bond them to other parts are not wood coatings.

Tables To Subpart VVVV

TABLE 1 TO SUBPART VVVV.—COMPLIANCE DATES FOR NEW AND EXISTING BOAT MANUFACTURING FACILITIES

If your facility is * * *	and * * *	then you must comply by this date:
1. An existing source	is a major source on or before the promulgation date of the rule.	3 years after the promulgation date of the rule.
2. An area source	becomes a major source after the promulgation date of the rule.	1 year after becoming a major source or 3 years after the promulgation date of the rule, whichever is later.
3. A new source	is a major source at startup[a]	upon startup or the promulgation date of the rule, whichever is later.

[a] Your facility is a major source if it is a stationary source or group of stationary sources located within a contiguous area and under common control that emits or can potentially emit, considering controls, in the aggregate, 9.1 megagrams (10 tons) or more per year of a single hazardous air pollutant or 22.7 megagrams (25 tons) or more per year of a combination of hazardous air pollutants.

TABLE 2 TO SUBPART VVVV.—ALTERNATIVE HAP CONTENT REQUIREMENTS FOR OPEN MOLDING RESIN AND GEL COAT OPERATIONS

For this operation * * *	And this application method * * *	You must not exceed this weighted-average HAP content (weight percent) requirement:
1. Production resin operations	Atomized (spray)	28 percent.
2. Production resin operations	Nonatomized (nonspray)	35 percent.
3. Pigmented gel coat operations	Any method	33 percent.
4. Clear gel coat operations	Any method	48 percent.
5. Tooling resin operations	Atomized (spray)	30 percent.
6. Tooling resin operations	Nonatomized (nonspray)	39 percent.
7. Tooling gel coat operations	Any method	40 percent.

TABLE 3 TO SUBPART VVVV.—MACT MODEL POINT VALUE EQUATIONS FOR OPEN MOLDING OPERATIONS[a]

For this operation * * *	And this application method * * *	Use this formula to calculate the MACT model plant value for each resin and gel coat
1. Production resin, tooling resin	(i) Atomized	$0.014 \times (\text{Resin HAP\%})^{2.425}$
	(ii) Atomized, plus vacuum bagging with roll-out	$0.01185 \times (\text{Resin HAP\%})^{2.425}$
	(iii) Atomized, plus vacuum bagging without roll-out	$0.00945 \times (\text{Resin HAP\%})^{2.425}$
	(iv) Nonatomized	$0.014 \times (\text{Resin HAP\%})^{2.275}$
	(v) Nonatomized, plus vacuum bagging with roll-out	$0.0110 \times (\text{Resin HAP\%})^{2.275}$

TABLE 3 TO SUBPART VVVV.—MACT MODEL POINT VALUE EQUATIONS FOR OPEN MOLDING OPERATIONS [a]—Continued

For this operation * * *	And this application method * * *	Use this formula to calculate the MACT model plant value for each resin and gel coat
	(vi) Nonatomized, plus vacuum bagging without roll-out	$0.0076 \times (\text{Resin HAP\%})^{2.275}$
2. Pigmented gel coat, clear gel coat, tooling gel coat.	All methods	$0.445 \times (\text{Gel coat HAP\%})^{1.675}$

[a] Equations calculate MACT model point value in kilograms of HAP per megagrams of resin or gel coat applied. The equations for vacuum bagging with roll-out are applicable when a facility rolls out the applied resin and fabric prior to applying the vacuum bagging materials. The equations for vacuum bagging without roll-out are applicable when a facility applies the vacuum bagging materials immediately after resin application without rolling out the resin and fabric. HAP% = HAP content expressed as a weight-percent value between 0 and 100%.

TABLE 4. TO SUBPART VVVV—APPLICABILITY AND TIMING OF NOTIFICATIONS

If your facility * * *	You must submit * * *	By this date * * *
1. Is an existing source subject to this subpart ..	an initial notification containing the information specified in § 63.9(b)(2).	no later than the dates specified in § 63.9(b)(2).2.
2. Is a new source subject to this subpart	the notifications specified in § 63.9(b)(3) to (5)	no later than the dates specified § 63.9(b)(4) and (5).
3. Qualifies for a compliance extension as specified in § 63.9(c).	a request for a compliance extension as specified in § 63.9(c).	no later than the dates specified in § 63.6(i).
4. Is complying with HAP content limits, application equipment requirements, or MACT model point value averaging provisions.	a notification of compliance status as specified in § 63.9(h).	no later than 30 calendar days after the end of the first 3-month averaging period after your facility's compliance date.
5. Is complying by using an add-on control device.	(i) a notification of intent to conduct a performance test as specified in § 63.9(e).	no later than the date specified in § 63.9(e).
	(ii) a notification of the date for the continuous monitoring system performance evaluation as specified in § 63.9(g).	with the notification of intent to conduct a performance test.
	(iii) a notification of compliance status as specified in § 63.9(h).	no later than 60 calendar days after the completion of the add-on control device performance test and continuous monitoring system performance evaluation.

TABLE 5.—TO SUBPART VVVV.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART VVVV

Citation	Requirement	Applies to subpart VVVV	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes.	
§ 63.1(a)(5)	.....	No	[Reserved].
§ 63.1(a)(6)–(8)	.....	Yes.	
§ 63.1(a)(9)	.....	No	[Reserved].
§ 63.1(a)(10)–(14)	.....	Yes.	
§ 63.1(b)	Initial Applicability Determination	Yes.	
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)	.....	Yes	Area sources are not regulated by subpart VVVV.
§ 63.1(c)(3)	.....	No	[Reserved].
§ 63.1(c)(4)–(5)	.....	Yes.	
§ 63.1(d)	.....	No	[Reserved].
§ 63.1(e)	Applicability of Permit Program	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.5779.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(3)	Prohibited Activities	Yes.	
§ 63.4(a)(4)	.....	No	[Reserved].
§ 63.4(a)(5)	.....	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)	Requirements for Existing, Newly Constructed, and Reconstructed Sources..	Yes.	
§ 63.5(b)(2)	.....	No	[Reserved].
§ 63.5(b)(3)–(6)	.....	Yes.	

TABLE 5.—TO SUBPART VVVV.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART VVVV—Continued

Citation	Requirement	Applies to subpart VVVV	Explanation
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction/ Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on prior State Review.	Yes.	
§ 63.6(a)	Compliance with Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(5)	Compliance Dates for New and Reconstructed Sources.	Yes	§ 63.5695 specifies compliance dates.
§ 63.6(b)(6)		No	[Reserved].
§ 63.6(b)(7)		Yes.	
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Yes	§ 63.5695 specifies compliance dates.
§ 63.6(c)(3)–(c)(4)		No	[Reserved].
§ 63.6(c)(5)		Yes	Any area source that becomes a major source must comply by the date in § 63.5695 for existing sources or by the date 1 year after becoming a major source, whichever is later.
§ 63.6(d)		No	[Reserved].
§ 63.6(e)(1)–(2)	Operation and Maintenance Requirements	No	Operating requirements for open molding operations with add-on controls are specified in § 63.5725.
§ 63.6(e)(3)	Startup, Shut Down, and Malfunction Plans	Yes	Only sources with add-on controls must complete startup, shutdown, and malfunction plans.
§ 63.6(f)	Compliance with Nonopacity Emission Standards.	Yes.	
§ 63.6(g)	Use of an Alternative Nonopacity Emission Standard.	Yes.	
§ 63.6(h)	Compliance with Opacity/Visible Emissions Standards.	No	Subpart VVVV does not specify opacity or visible emission standards.
§ 63.6(i)(1)–(14)	Extension of Compliance with Emission Standards.	Yes.	
§ 63.6(i)(15)		No	[Reserved].
§ 63.6(i)(16)		Yes.	
§ 63.6(j)	Exemption from Compliance with Emission Standards.	Yes.	
§ 63.7	Performance Test Requirements	Yes.	
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability	Yes	All of § 63.8 applies only to sources with add-on controls. Additional monitoring requirements for sources with add-on controls are found in § 63.5725.
§ 63.8(a)(3)		No	[Reserved].
§ 63.8(a)(4)		No	Subpart VVVV does not refer directly or indirectly to § 63.11.
§ 63.8(b)(1)	Conduct of Monitoring	Yes.	
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Continuous Monitoring Systems (CMS).	Yes	Applies to sources that use a CMS on the control device stack.
§ 63.8(c)(1)–(4)	Continuous Monitoring System Operation and Maintenance.	Yes.	
§ 63.8(c)(5)	Continuous Opacity Monitoring Systems (COMS).	No	Subpart VVVV does not have opacity or visible emission standards.
§ 63.8(c)(6)–(8)	Continuous Monitoring System Calibration Checks and Out-of-Control Periods.	Yes.	
§ 63.8(d)	Quality Control Program	Yes.	
§ 63.8(e)	CMS Performance Evaluation	Yes.	
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	Yes	Applies only to sources that use continuous emission monitoring systems (CEMS).
§ 63.8(g)	Data Reduction	Yes.	
§ 63.9(a)	Notification Requirements—Applicability	Yes.	
§ 63.9(b)	Initial Notifications	Yes.	
§ 63.9(c)	Request for Compliance Extension	Yes.	
§ 63.9(d)	Notification That a New Source Is Subject to Special Compliance Requirements.	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to sources with add-on controls.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart VVVV does not have opacity or visible emission standards.

TABLE 5.—TO SUBPART VVVV.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART VVVV—Continued

Citation	Requirement	Applies to subpart VVVV	Explanation
§ 63.9(g)(1)	Additional CMS Notifications—Date of CMS Performance Evaluation.	Yes	Applies only to sources with add-on controls.
§ 63.9(g)(2)	Use of COMS Data	No	Subpart VVVV does not require the use of COMS.
§ 63.9(g)(3)	Alternative to Relative Accuracy Testing	Yes	Applies only to sources with CEMS.
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes.	
§ 63.9(h)(4)		No	[Reserved].
§ 63.9(h)(5)–(6)	Notification of Compliance Status (continued).	Yes.	
§ 63.9(i)	Adjustment of Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	§§ 63.5767 and 63.5770 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i)–(xi)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Applies only to sources with add-on controls.
§ 63.10(b)(2)(xii)–(xiv)	General Recordkeeping Requirements	Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes	Specifies applicability determinations for non-major sources.
§ 63.10(c)	Additional Recordkeeping for Sources with CMS.	Yes	Applies only to sources with add-on controls.
§ 63.10(d)(1)	General Reporting Requirements	Yes	§ 63.5764 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance Test Results	Yes	§ 63.5764 specifies additional requirements for reporting performance test results.
§ 63.10(d)(3)	Opacity or Visible Emissions Observations	No	Subpart VVVV does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress Reports for Sources with Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to sources with add-on controls
§ 63.10(e)(1)	Additional CMS Reports-General	Yes	Applies only to sources with add-on controls.
§ 63.10(e)(2)	Reporting Results of CMS Performance Evaluations.	Yes	Applies only to sources with add-on controls.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	Yes	Applies only to sources with add-on controls.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart VVVV does not specify opacity or visible emission standards.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements—Applicability	No	Facilities subject to subpart VVVV do not use flares as control devices.
§ 63.12	State Authority and Delegations	Yes	§ 63.5776 lists those sections of subpart A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	No	Subpart VVVV does not incorporate any material by reference.
§ 63.15	Availability of Information/ Confidentiality	Yes.	

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Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 15 et al.

Trust Management Reform: Leasing/ Permitting, Grazing, Probate and Funds Held in Trust and Encumbrances of Tribal Land—Contract Approvals; Proposed Rules

VOL 65 ISS 136 JL 14 2000 UMI

DEPARTMENT OF THE INTERIOR

25 CFR Parts 15, 114, 115, 162 and 166

RIN 1076–AE00

Trust Management Reform: Leasing/Permitting, Grazing, Probate and Funds Held in Trust

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), proposes to revise its regulations in the areas of probate, funds held in trust for Indian tribes and individual Indians, leasing/permitting, and grazing. These revisions are meant to further fulfill the Secretary's fiduciary responsibility to federally-recognized tribes and individual Indians. Particularly, revisions to the probate regulations would institute necessary procedures to expedite the probate process for Indian decedents' estates. Revisions to regulations dealing with funds held in trust will standardize the process for collecting, distributing, and accounting for individual Indian monies and monies held in trust for tribal governments. Revisions to leasing/permitting regulations will implement the Indian Agricultural Resource Management Act and will address appropriate procedures for entering into leases and permits on Indian lands and, more importantly, in properly determining and accounting for the value of such leases to individual land owners and tribal entities. Revisions in the grazing permit regulations will address similar concerns and further standardize the process and forms utilized in granting permits on Indian lands. In the interests of economy of administration, and because all the proposed revisions clarify and standardize Departmental policy, they are proposed under one rulemaking vehicle.

DATES: Written comments must be submitted no later than October 12, 2000.

ADDRESSES: Comments (2 copies) should be addressed to: U.S. Forest Service (CAET), 200 E. Broadway, Missoula, MT 59807 Attn: Trust Rule. Comments on the information collection burdens should be copied to the same address with the original comment sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 Attn: Interior Desk Officer.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Department of the Interior, Office of the Secretary, 1849 C Street, NW, MS 7412 MIB, Washington, DC 20240, telephone 202/208–4582.

SUPPLEMENTARY INFORMATION:

I. Background
II. Part by Part Analysis
III. Public Comments
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
E. Review Under the Paperwork Reduction Act
F. Review Under Executive Order 13132 Federalism
G. Review Under the National Environmental Policy Act
H. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

In an effort to strengthen the services provided by the Secretary of the Interior to federally-recognized tribes and individual Indians and in recognition of its fiduciary responsibility to such tribes and individuals as identified in the Department's "Trust Management Improvement Project—High Level Implementation Plan," as revised and updated on February 29, 2000. The Department of the Interior, BIA, identified certain parts within 25 CFR that needed immediate attention and subsequent revision. These parts were identified through an internal review by the BIA in consultation with the Office of the Special Trustee for American Indians (OST), and from tribal responses to consultations held in the field over a period of years. Additionally, tribal non-governmental organizations were consulted for their opinions on what areas of BIA trust management needed clarification and more uniform application of policy and administration throughout Indian Country. The importance of the protection of tribal trust resources and the administration of monies held in trust for individual Indians and tribal governments were identified as critical to providing better services to federally-recognized tribes and individual Indians. Surface leasing and permitting of tribal and individual Indian resources, including grazing permits, were identified as those areas which generate the most revenues from individual Indian and tribal resources. Additionally, addressing the severe backlog in the Department's disposition of Indian decedents' estates was identified as an important step in assuring the orderly transfer of Indian trust funds and lands. Therefore, this proposed rulemaking was initiated as an appropriate response to the Administration's stated goal of improving the administration and management of individual Indian and tribal trust resources. The proposed rule was developed with attention to Secretarial Order 3215, "Principles for the Discharge of the Secretary's Trust Responsibility," of April 28, 2000.

The development of this proposed rulemaking was achieved through informal consultation with affected tribal governments and Indian individuals. Drafts of the various parts were initially developed through the use of in-house teams within the Bureau of Indian Affairs. These teams consisted of federal personnel from headquarters and the field, and included program officers and Department attorneys possessing extensive knowledge and experience with the particular subject matter of the parts. These drafts were then shared with tribal entities and national tribal organizations for their input and recommendations for improvement. In many cases, areas were further expanded to respond to tribal concern with clarity and ease of administration. Tribal participation was further secured through the National Congress of American Indians (for member tribes), which established a working group to assist in the development of the regulations, and from BIA field personnel who contacted their respective tribes on a regional basis and transmitted drafts of the rulemaking to them for discussion and comment. In accordance with the government-to-government relationship with tribes, formal consultations will be scheduled during the comment period to facilitate an informed final rule.

While the proposed rulemaking responds to many of the concerns of Indian Country and the Administration's initiatives, the leasing and grazing parts of the rulemaking respond (in part) to the American Indian Agricultural Resource Management Act of 1993 (AIARMA)(107 Stat. 2011), as amended. One of the requirements of AIARMA was the development of regulations to implement the Act. The regulations for AIARMA were to protect, conserve, utilize, and maintain the highest productive potential on Indian agricultural lands through the application of sound conservation practices and techniques. In addition, the regulations were to meet the objectives of increasing productivity and the diversity and availability of agricultural products for subsistence, income, and employment; to manage agricultural resources consistent with integrated resource management plans;

to enable Indian farmers and ranchers to achieve the maximum potential from their resources; to promote self-sustaining Indian communities; and to assist in a reasonable annual return for Indian resources. One of the specific requirements of AIARMA was the development of regulations that would establish civil penalties for the commission of trespass on Indian agricultural lands and the designation of responsibility within the Department of the Interior for the detection and investigation of Indian agricultural lands trespass. Consequently, the Bureau of Indian Affairs is designated as the responsible agency in this proposed rulemaking.

This proposed rule rewrites parts 15, 115, 162 and 166 of 25 CFR in their entirety and removes the text of part 114 in its entirety. This revision is meant to streamline the policies, procedures, provisions and clauses that better reflect the Department's administration of its trust responsibility with respect to Indian trust resources. Practices in the field will be clarified and codified in the revised parts of 25 CFR. The issuance of this rulemaking will set a uniform standard of administration of Indian trust resources by the BIA throughout Indian Country. It is important to note, however, that, with the exception of the newly promulgated part 15—Indian Probate, the established practices currently codified in the above-referenced parts have not been discarded but, rather, have been revised to reflect a clearer understanding of the Department's administration of such parts. The thrust of these revisions are reflected in the part-by-part analysis below. After consultation with the Department's constituency in Indian Country during the comment period, it is anticipated that a final rulemaking will be issued in December 2000.

II. Part-by-Part Analysis

A. 25 CFR Part 15—Probate of Indian Estates, Except for Members of the Five Civilized Tribes

The purpose of this regulation is to describe the authorities, policies and procedures the BIA uses to probate an Indian decedent's trust estate, except for members of the Five Civilized Tribes. This is a revision to the existing part and amends and replaces the part in its entirety.

The regulation proposes to implement administrative procedures by which the BIA would process and determine certain probate cases where a hearing is not required or requested. These procedures, embodying a reassumption by the BIA of responsibility to determine these probate cases, are the result of the Department's Indian Probate Reinvention Lab (IPRL). Formed in 1999, the IPRL examined the Department's Indian probate process from a multi-agency perspective, including the BIA, the Department's Office of Hearings and Appeals (OHA), which handles Indian probate cases requiring hearings, and the OST. Based on its analysis, which included reviewing reports from previous studies of Indian probate matters, site visits and interviews of customers and employees, the IPRL recommended, among other things, that the BIA establish attorney decision-makers at regional offices to handle certain probate cases under criteria to be established by regulation. This proposed revision of part 15 would implement in the BIA the procedural aspects of the IPRL's recommendations. At the appropriate time, the OHA will amend its regulations to accommodate the BIA's reassumption of responsibility for these probate cases, and to ensure that the same standards and criteria for determining heirs and paying claims are consistently applied between the BIA and the OHA. The reports of the IPRL are available on the BIA's home page www.doi.gov.

In addition to establishing the process by which the attorney-decision makers in the BIA will handle certain probate cases, the proposed regulations in part 15 also address the handling of summary distributions of estates by the BIA. Formerly handled only by agency superintendents, summary distributions also will be handled by the attorney-decision makers. See 65 FR 25449–25450 (May 2, 2000).

The various subparts of part 15 address the purpose and scope of the Indian probate procedures; the mechanics of initiating the probate process, including the appropriate notifications and assignments of interest; the preparation of the probate package itself, including the identification of necessary documents to facilitate a timely process; the disposition of claims against an estate and the ultimate distribution of the decedent's assets to the determined heirs; and an appeals process to follow should any disputes arise during any stage of the probate process. Cross references have been made to the hearings and appeals procedures of the OHA, including the determination of heirs, and to the use and disposition of funds held in trust for decedents (other than decedents of the Five Civilized Tribes) which may be included in an Indian decedent's estate.

B. 25 CFR Part 114—Special Deposits

The purpose of this part was to set forth the conditions governing the deposit, investment, and distribution of principal and interest on trust funds held by the Department in special deposit accounts. In addition, this part provided procedures required for determination of ownership and distribution of funds which are on deposit in account 14X6703 "Indian Moneys Proceeds of Labor Escrow Account—Pending Determination of Ownership." This special deposit account (IMPL Escrow Account) has been obsolete since September 30, 1987, as any unobligated balances were then deposited into miscellaneous receipts of the U.S. Treasury. Since this part dealt largely with this IMPL Escrow Account, the text of this part has been deleted in its entirety. Those provisions concerning other "special deposit accounts" are now referenced and explained in the newly revised part 115 below. It was the decision of the Department to move those provisions to part 115 because that part deals specifically with tribal and individual Indian trust funds. It is proposed, therefore, that part 114 be "reserved."

The chart below provides a crosswalk reflecting, by section, the proposed reorganization of pertinent sections of part 114 that have been situated in subpart E of part 115, and descriptions of the revisions being proposed.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS

Current citation	New citation	Title	Remarks
114.1	N/A	N/A	Purpose of "special deposit accounts" has been subsumed in the purpose section of the introductory language of part 115.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS—Continued

Current citation	New citation	Title	Remarks
114.2	115.002	What are special deposits?	The definition of "special deposits" is the only term requiring explanation in this subpart of part 115.
114.3	115.404	May the BIA deposit into a special deposit account money that is paid prior to approval of a conveyance or contract instrument for land sales, right-of-ways, resource sales, grazing, or leasing, etc.?	The section under 114.3 referred to investments of special deposit funds. The new citation explains that monies paid to the BIA prior to approval of a contractual agreement do not earn interest until the monies are actually placed in a trust fund account upon such approval.
114.4	115.400	Who receives the interest earned on a special deposit account?	The section under 114.4 referred to the distribution of interest earned on a special deposit account. The new citation reflects the same understanding that interest follows principal.
114.5	N/A	N/A	The section under 114.5 referred to the IMPL Escrow Accounts. They have been obsolete since September 30, 1987, and the regulations referring to such accounts are likewise obsolete. This has been removed in its entirety from 25 CFR.

C. 25 CFR Part 115—Trust Funds for Tribes and Individual Indians

The purpose of this regulation is to describe how the Secretary, primarily through the Bureau of Indian Affairs (BIA) and the Office of Trust Funds Management (OTFM) within the OST, carries out the trust duties owed to tribes and individual Indians in managing and administering trust assets for the exclusive benefit of tribal and individual Indian beneficiaries. The regulation also implements provisions of the American Indian Trust Fund Management Reform Act. This is a revision to the existing part 114 and 115 and amends and replaces those parts in their entirety.

The proposed rule making includes in subpart B sections on "frequently asked questions" about the sources of monies that are deposited and disbursed from both tribal and individual Indian accounts. These questions include an explanation of which financial resources may be accepted for deposit into a tribal account or an individual Indian money (IIM) account; the process for depositing money into an account; and an explanation of how money deposited into trust earns interest. We are requesting comments on whether the Secretary should accept into trust tribal income from products directly derived from trust land within the tribe's jurisdiction. For example, under such a distinction, income from a logging mill that processes trees harvested from trust land within the tribe's jurisdiction may be considered income; however, income derived from other businesses merely located on trust land, but not directly using the land for production of income, such as gaming profits or smoke shop profits, will not be considered trust income. When commenting on tribal trust income, please include a list of tribal operations, other than logging mills, that might be included in this category; any suggestions for a definition of tribal income that is directly derived from trust land; and the documentation that would be sufficient to evidence that the income was directly derived from the tribe's trust land.

One of the most significant revisions to this part is the addition, in subpart C, of the procedures used in administering tribal trust funds. These procedures have been the standard method of operation in the field; however, they have never been codified in the Code of Federal Regulations. With this addition, questions concerning tribal trust account management are explained in detail with an emphasis placed on everyday operations for such accounts. These issues include opening a tribal account; depositing or withdrawing monies from tribal accounts; the investments and other cash management operations of tribal accounts; accounting information, record keeping, and standards of performance in administration of tribal accounts; and the disposition of certain judgment funds in tribal accounts. A new provision will encourage tribes, where submitting an annual budget to the Secretary is not required by law, to provide annual cash flow projections to assist the Secretary in making investment decisions to meet a tribes cash flow needs. The regulation will also inform tribes to what extent funds withdrawn from tribal trust accounts may be re-deposited into trust.

Subpart D contains much of the current information concerning IIM accounts, especially with respect to depositing and withdrawing money from such accounts. New provisions have been added to this subpart to explain how court orders may impact an IIM account; how the account holder can access his account information; the frequency of statements of performance for an IIM account; and the conditions under which the Department will provide account information to a third party. Information is also provided concerning administrative matters regarding these accounts, such as changes in address, time period for cashing IIM checks, process for reporting lost or stolen checks, the circumstances when check proceeds may be re-credited to an IIM account, and the reporting of IIM account information to outside agencies. Additional provisions address withdrawing limited funds from an estate account immediately following

the death of an account holder for burial-related costs and receiving income from life-estate accounts. We are eliminating the provision that allowed voluntary deposits to IIM accounts in limited circumstances. One procedural issue that continues to present practical problems is the treatment of accounts belonging to individuals whom we cannot contact because their whereabouts are unknown. We are requesting comments on how to locate IIM account holders whose whereabouts are unknown. In addition, we would like comments on how the funds in IIM accounts for account holders whose whereabouts are unknown should be treated. These accounts will be maintained as unrestricted accounts unless we have specific information requiring that they be maintained as restricted accounts.

Subpart D includes a detailed explanation of how the Secretary supervises restricted accounts for minors or adults who are *non compos mentis* or have been adjudicated to be in need of financial management assistance. We are proposing to eliminate the administrative process for determining when to supervise an IIM account for an adult who is in need of financial management assistance. Rather, we are proposing to supervise such accounts only when a court of competent jurisdiction has determined that an adult IIM account holder is in need of financial management assistance. Therefore, an account holder with a supervised IIM account must have a legal guardian or conservator appointed by a court of competent jurisdiction. Although we propose to no longer make this determination ourselves, we are retaining the category of adults in need of financial management assistance in recognition of the fact that there are individuals who require such assistance but are not incompetent. These proposals are intended to ensure that account holders have decision making authority regarding their accounts unless a court with authority to make such decisions determines that an account holder is unable to manage his or her funds. We request comments about the impact of these proposals on tribal courts as well as account holders.

In order to fully protect holders of supervised and restricted IIM accounts, we propose to require additional duties for legal guardians in regard to their responsibilities for IIM funds, including working with the BIA to develop annual distribution plans for IIM funds, making an annual accounting to the BIA for all IIM funds expended, reviewing any IIM statements of performance for errors, and filing any tax returns associated with IIM funds. Consistent with existing regulations, we will continue to accept proceeds from other federal government agencies for IIM account holders, but only when the account holder is under legal disability and does not have a legal guardian, unless the BIA is acting in the capacity of a guardian. We also propose to not recognize a power of attorney for purposes of distributing money from an IIM account to a party other than the account holder.

Subpart D also addresses in detail the procedures related to the supervision of a minor's account, consistent with our trust obligations. We propose to allow withdrawals from a minor's account only under a BIA approved distribution plan when those withdrawals are directly related to the minor's health, education, and welfare. We propose that a custodial parent or a guardian who withdraws funds from a minor's IIM account on behalf of the minor must account annually to the BIA for the use of those funds. We request comments on whether we should define "minor" in such a manner that would incorporate a tribal law that specifies an age of majority that is different than 18. If we were to define minor as such, then an account holder who is subject to the tribal law would not have unrestricted access to his or her IIM account funds until the account holder reached the age of majority as defined by the tribal law.

Subpart D clarifies existing practices and proposes new language to allow an IIM account holder to encumber his or her account and to permit the BIA to involuntarily restrict an IIM account in fulfillment of an obligation made by the account holder to a third party. An account holder may authorize the OTFM to place a hold on his or her IIM account so that income deposited into the account remains in the account as opposed to being automatically disbursed to the account holder when the account reaches a specific balance. An account holder would be able to voluntarily authorize the OTFM to make third-party payments from his or her IIM account so long as the account balance on the date of payment is sufficient to cover the authorized third party payments. These instructions could be changed upon request of the IIM account holder. An account holder would continue to be able to assign IIM income as security for a debt to a third party, which result in the creation of legal rights to IIM funds for satisfaction of a debt or an obligation to the third party, which cannot be voluntarily removed by the account holder. Under this proposal, the third party will have to perfect the security interest prior to presenting the assignment of IIM income to the BIA for payment. To perfect an assignment of IIM income as security, the third party generally will have to present the IIM assignment made by the account holder and the account holder's record of payment(s), including any unpaid balance, to a court of competent jurisdiction and obtain a judgment that determines the amount owed by the IIM account holder to the third party. Under this proposal, other than a debt secured under the Indian Finance Act, the only assignment of income that the BIA would recognize without a court order or judgment perfecting a third party's interest in an IIM account is an assignment of income for health care emergencies made by the account holder directly to the service provider. We recognize that these proposed limitations on the ability of third parties to obtain legal rights to funds in an IIM account may require many creditors, such as tribal credit programs, to revise their debt collection practices, and may have an impact on the amount of funding available for a loan other than one secured under the Indian Finance Act. These proposals are intended to ensure that the Secretary can properly exercise his or her trust responsibility to individual account holders such that the funds to be remitted to a third party are in fact owed by the account holder. We invite comments on the extent to which these proposals will impact credit programs and individual account holders.

Subpart E, which replaces part 114, limits the types of funds that may be deposited into special deposit accounts. This subpart includes an explanations of special deposit accounts and their administration by the BIA and the OTFM. Specifically, sections address whether and how special deposit accounts earn interest; and the inability to deposit cash bonds in a special deposit account.

Subpart F outlines the notice requirement and hearing process associated with an involuntary restriction on an IIM account. This subpart outlines the circumstances under which the BIA will place an involuntary restriction on an IIM account, including where an account holder has given a third party legal rights to the funds held in his or her IIM account, where an administrative error has been caused by the BIA or the OTFM in the depositing or disbursing of IIM funds, and under limited court order involving the need to supervise an account. We propose to place a restriction on an IIM account five days after the BIA mails the account holder notice by certified mail of its decision

to place a restriction on the IIM account. If we do not have an address for the account holder, we propose to give notice through publication and a restriction will be placed on the account five days after the date of the final publication of the public notice.

Many of the procedures in subpart F are found in the current regulation; however, the revised subpart goes into greater detail regarding the process that must be followed prior to restricting an IIM account.

Subpart G makes reference to general appeals. Subpart H refers to applicable record-keeping responsibilities.

Subpart I merely renumbers the sections of the current regulation regarding disposition of accounts held by the Osage Agency and those accounts administered on behalf of members of the Five Civilized Tribes.

The chart below provides a crosswalk reflecting, by section, the proposed reorganization of part 115, along with remarks explaining the revisions or the inclusion of new sections dealing with the clarification of existing practices.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED NEW CITATIONS

Current citation	New citation	Title	Remarks
115.1	115.002	What definitions do I need to know?	More extensive definitions listing.
115.2	115.803	Osage Agency.	Redesignated. No change.
115.3	115.328	How do I withdraw money from my IIM account?	Plain language.
115.4(a)	115.364	When will the BIA authorize withdrawals from a minor's account?	Plain language, more explanation.
115.4(b)	115.366	Will I automatically receive all my IIM funds when I turn 18?	Clarification of judgment fund disbursements.
115.5	(1)	Prior: Adults Under Legal Disability.	More explanation on disbursement requirements for all types of restricted accounts referenced throughout the part.
115.6	115.325	May I deposit money into my IIM account?	Clearer guidance on what funds may be deposited into accounts.
	1115.326	May I redeposit IIM funds back into my trust account once I receive the money?	
115.7	115.102(c)	What specific sources of money may be deposited into a trust fund account?	Clearer guidance.
115.8	115.333	May I authorize the OTFM to make payments directly to a third party on my behalf?	Clearer guidance on vendors.
	115.334	Will BIA ever withdraw money from my account without my authorization?	Clearer guidance on special payment circumstances.
115.9; 115.10(a)	115.374	May I authorize the OTFM to make third party payments from my IIM account to pay my monthly bills on other obligations?	Clearer guidance on encumbrance.
	115.502	How will I be notified if a decision has been made to place my IIM account under supervision or encumbrance?	Guidance on notice requirements.
115.10(a)	115.505	What information will the BIA include in its notice?	Notice letter requirements.
115.10(b)	115.384	If I have an encumbrance on my account, may I make withdrawals?	Plain language.
115.10(c)(1)	115.507	When will the BIA conduct a hearing to allow me to challenge its decision to restrict my account?	Plain language.
115.10(c)(2)	115.508	Will I be allowed to present personal testimony?	Plain language.
115.10(c)(3)	115.511	May I be represented by an attorney at my hearing?	Plain language.
115.10(c)(4)	115.517	If the BIA decides to restrict my account after my hearing, do I have the right to appeal that decision?	Plain language.
115.10(c)(5)	115.512	Will the BIA record the hearing?	Plain language.
115.10(c)(6)	115.514	How long after the hearing will the BIA make its final decision?	Plain language.

[1] None.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED NEW CITATIONS—Continued

Current citation	New citation	Title	Remarks
115.10(d)	115.518	If I decide to appeal the BIA's decision after my hearing, will BIA restrict my account during the appeal?	Plain language.
115.11	115.801	Funds of deceased Indians of the Five Civilized Tribes.	Redesignated. No change.
115.12	115.801	Funds of deceased Indians of the Five Civilized Tribes.	Redesignated. No change.
115.13	115.802	Assets of members of the Agua Caliente Band of Mission Indians.	Redesignated. No change.
115.14	115.600	Do I have a right to appeal any decision made under this part?	Plain language.
115.15	N/A	N/A	Section deleted. Information collection requirements have been identified for clearance.
New	115.001	What is the purpose of this part?	Explains the inclusion of tribal trust accounts with the regulations specific to IIM accounts.
New	115.103–110	Frequently asked questions.	Pertains to tribal and individual accounts. Meant as explanatory tool for service constituency. Concerns what monies may be deposited, process for depositing, and investments/interest monies.
New	115.200–221	Administration of tribal accounts.	Clarifies current practice.
New	115.300–302	Basic elements of IIM accounts.	Clarifies understandings and current practice.
New	115.303–312	Obtaining information on IIM accounts, use of accounts as collateral for a loan, and reports to the IRS.	Clarifies current practice.
New	115.317–324	Personal administrative concerns regarding IIM accounts, *e.g.*, changes, lost checks, decedents' estates deposits, etc.	Clarifies current practice.
New	115.328–332, 115.335–336	Withdrawing funds from IIM account.	Clarifies current practice.
New	115.340–404	Administration of special accounts: Supervised accounts, minors accounts, encumbered accounts, special deposit accounts.	Clarifies current practice.
New	115.500–504	Civil procedures necessary in restricting or otherwise encumbering an account.	Clarifies current practice.
New	115.700	Who owns the records associated with this part?	Provides guidance for record keeping.
	115.701	What are a tribe's obligations regarding trust fund records?	
	115.702	How long must a tribe keep its records?	

[1] None.

D. 25 CFR Part 162—Leases and Permits on Indian Lands

The purpose of this part is to describe the authorities, policies and procedures the BIA uses to grant, approve and administer surface leases and permits on certain lands held by the United States in trust for tribes and individual Indians and certain lands owned by the federal government. It revises, amends and entirely replaces the existing part 162, and implements the American Indian Agricultural Resource Management Act (AIARMA), 25 USC 3703, *et seq.* with regard to leases on Indian agricultural land. With respect to those regulations governing the administration of leases on specific reservation lands, the proposed rule will not effect any changes, but rather will merely renumber those sections.

The AIARMA, enacted in December, 1993, requires that the Secretary conduct all "land management activities"—defined in section 4(12)(D) to include the "administration and supervision of agricultural leasing and permitting activities, including a determination of proper land use * * * appraisal, advertisement, negotiation, contract preparation, collecting, recording and distributing lease rental receipts"—on Indian agricultural lands in accordance with agricultural resource management plans, integrated resource management plans, and all tribal laws and ordinances, except where such compliance would be contrary to the trust responsibility of the United States.

Under the mandate of section 301 of the AIARMA, the BIA met with tribal representatives to produce the first draft set of implementing regulations in March, 1994. This first draft, distributed for comment to nearly 3000 addresses on April 29, 1994, did not consolidate the leasing and grazing provisions of 25 CFR parts 162 and 166, respectively. After five formal hearings across the nation, a second draft regulation was distributed for comment on June 28, 1994. This draft contained leasing and grazing rules in a single part. A final draft that included language for the proposed subpart D was distributed on November 30, 1994, and published in the **Federal Register** as a proposed rule on June 17, 1996, 61 FR 30560–70. The proposed rule was withdrawn.

This proposed part balances the responsibilities the Secretary has as trustee of Indian land with the need for tribes and individual Indian landowners to exercise maximum control over their Indian agricultural lands and business affairs. The proposed regulation includes five new sections that clarify the Secretary's responsibilities regarding business leases (Subpart E), compensation to landowners (Subpart F), violation of lease terms (Subpart H), leases that include a non-trust interest (Subpart J), and the procedures for handling trespass on tribal or individual Indian trust lands (Subpart L). It does not include grazing permits, which are covered in the proposed part 166.

Several tribes, and the NCAI, have suggested that the Secretary has discretion under existing statutes to permit tribes to grant their own short-term leases with a routine BIA approval process, reserving a more extensive review and approval process for long-term leases that may adversely affect the preservation of tribal culture and society. We request comments on how such a lease approval process might work under existing law, in light of the Secretary's trust responsibility.

Subpart A, "Purpose and Definitions," defines key terms used throughout the proposed regulation. These terms are consistent with those found in the AIARMA.

Subpart B, "Lease Provisions and Requirements," contains general rules and principles that pertain to leases of Indian agricultural land. Section 162.4 would clarify the existing requirement that lessees comply with all applicable tribal laws and ordinances. Failure to comply with such requirements would be considered a violation of the lease. Also, in some instances, the lessee would be required to provide an environmental baseline survey of the property in order to protect the Indian landowner from potential liability resulting from the lessee's use of hazardous materials during the lease term. Lessees would be required to provide a bond for each lease acquired, unless the Indian landowner requests that the BIA waive the requirement.

Many tribes and individuals have expressed a desire that the current practice of allowing direct payments of lease income to Indian landowners be continued under this part. The BIA recognizes the utility of direct payments and does not propose to alter the practice at this time. Nevertheless, we continue to struggle to fashion a system that accommodates both the ability of the Indian landowner to receive lease payments directly from the lessee and the Secretary's legal obligation under the American Indian Trust Fund Management Reform Act to account for that income. The BIA believes that it may be sufficient to satisfy both interests by establishing direct pay arrangements for leases on tribal lands through contracts or compacts under the Indian Self Determination and Education Assistance Act ("Self Determination Act"). The BIA requests comments on: (1) The continued need for direct payments for tribal and individual Indian lands; (2) the advisability of contracts or compacts under the Self Determination Act as the sole method for direct payments to tribes; and (3) the compatibility of such payments with the Secretary's legal obligation as trustee to obtain the information regarding payment history that is needed to perform the necessary accounting.

Consistent with the AIARMA, the proposed Subpart B would make clear that, when specifically authorized by a tribal resolution that establishes a general policy for leasing of Indian agricultural lands, the Secretary, with regard to such leases, will: Provide a preference to Indians in the issuance of agricultural leases and permits; waive or modify the requirement that a lessee provide a bond, or require another type of surety; and approve leases of tribally owned agricultural land at rates set by the tribal governing body. When the tribal resolution defines "highly fractionated individual heirship land," the Secretary may waive or modify notice requirements pertaining to such land.

Also consistent with the AIARMA, the proposed Subpart B would provide that individual Indian landowners of at least 50% of the beneficial interest in a tract of agricultural land could exempt their land from the Secretary's implementation of the tribal general policy discussed above by submitting a written request to the BIA.

The proposed Subpart B preserves the individual Indian landowner's flexibility to negotiate his or her own lease terms, subject to BIA approval, by allowing multiple tracts of trust land to be combined into one lease and by requiring no standard lease form. Leases under the new regulation would need to conform only to the substantive requirements outlined in the subpart; individual Indian landowners would be able to use any lease form they think best serves their business purposes.

The new Trust Asset Accounting and Management System (TAAMS), an automated accounting system currently being fielded by the BIA, will greatly enhance the Secretary's ability to collect and manage income from trust assets. For example, as outlined in the proposed Subpart B, the system will allow the BIA to notify Indian landowners that lessees have violated the lease by failing to make timely payment and that late payment penalties have been assessed.

Proposed § 162.44 in Subpart B would clarify the BIA practice of reviewing the lease every 5 years to determine whether an adjustment should be made to the lease payments. Several tribes have suggested that the BIA could use the Consumer Price Index (CPI) or the Producer Price Index (PPI) to determine lease payment adjustments. However, recognizing that there may be several appropriate standardized price indicators by which the adjustment could be based, the BIA requests comment on an appropriate method of adjusting lease payments under the new regulation.

The BIA recognizes that Indian landowners may in some situations receive maximum value from their trust lands by allowing the lessee to use his or her leasehold interest as collateral for a loan. § 162.23 in subpart B describes the proposed circumstances under which the BIA could approve a leasehold mortgage of trust property. Because economic conditions and local practices vary somewhat among regions, the BIA requests comment on the extent to which the proposed § 162.23 supports Indian landowners' business activities, reflects current business practices and allows the Secretary to fulfill trust responsibilities.

The proposed subpart B would allow a lessee to assign his interest in a lease that is subject to a leasehold mortgage to a party other than the mortgagee if the assignee agrees to be bound by the terms of the lease. In such cases, the lease may provide the Indian landowner with a

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right of first refusal on the assignment of the leasehold interest.

The new subpart B also proposes to require that all leases with a lease term greater than one year be recorded in the BIA's Land Titles and Records Office (LTRO).

Subpart C, "Process for Obtaining a Lease," highlights the policy of providing for maximum Indian landowner control consistent with the Secretary's trust responsibilities. Under the proposal, the Indian landowner is primarily responsible for leasing Indian land, with the assistance and approval of the Secretary. The regulation would change current practice, not addressed in the existing part 162 regulations, in that the BIA would no longer give conditional lease approvals. However, the proposed provision preserves flexibility in business affairs by providing that Indian landowners may contract to lease land at a future date, with the contract specifying essential lease terms and any conditions to be satisfied—such as National Environmental Policy Act (NEPA) compliance—before the Secretary would approve the lease. Subpart C would also relieve parents, guardians or others acting in a legal capacity in place of a parent from the requirement to obtain a lease to use Indian agricultural lands owned entirely by their minor children when certain conditions are met.

In order to provide maximum protection for all trust property beneficiaries, in situations where an Indian landowner does not own a 100% interest in trust land, the proposed § 162.67 in subpart C would require that the Indian owner of the fractionated interest obtain a lease from all co-owners of the land before using the land exclusively for his or her own purposes. The BIA recognizes the unique burdens placed on potential users of fractionated land, and requests comment on the proposed requirement.

Subpart D, "Granting a Lease," restates the statutory mandate that tribes and individual Indians may grant a lease of their own trust lands with the Secretary's approval. It clarifies who may represent an individual Indian landowner in granting a lease when, for example, the landowner is a minor or unable to manage his or her own affairs due to illness or other incapacity. The subpart also allows the Secretary to protect trust assets by granting a short-term revocable permit for a third party to enter trust lands in certain situations, such as where it is not practical to provide notice to every Indian landowner.

Subpart E, "Business Leases," covers both ground leases and leases of developed land for purposes other than farming, grazing, or use as an individual homesite. Under the proposed subpart, entities seeking to lease Indian land for business purposes would negotiate terms directly with an Indian landowner, but the lease would continue to be approved by the Secretary. The proposed rule provides that business leases generally must require that the lessee pay fair rental value; exceptions are clearly enumerated and would require the Secretary's approval.

Although in most instances assignments, sublets, or mortgages of business leases would require our approval, Subpart E would allow Indian landowners considerable flexibility to support commercial or residential development on Indian lands. However, several tribes have suggested that business subleases should be routinely approved by the BIA when income under the sublease is set below a certain amount. The BIA must balance the additional business flexibility this proposal might provide Indian landowners against its trust obligations and requirements of federal law. Therefore, the BIA seeks comment on the proposal that business subleases of less than $250,000 under subpart E be routinely approved by the BIA.

Subpart F, "Compensation to Indian Landowners," details what the BIA would do with rent payments received from lessees of Indian land. Several tribes have suggested that the BIA should apportion lease revenues to beneficiaries based on the productivity of a tract in situations where the lease includes several discrete parcels of land. The proposed regulation would continue the current BIA practice of prorating lease revenue based on the number and size of the tracts in relation to the total leasehold, then distributing revenue to each owner according to his or her fractional share of each tract. Recognizing that the method used for distributing trust property income has significant impact on Indian landowners, the BIA requests comments on methods to divide lease income from multi-tract leases.

Subpart G, "Administrative Fees," contains a table of administrative fees the BIA proposes to charge for approving leases and related documents. The subpart would allow the BIA to waive all or part of an administrative fee in certain circumstances, and would allow a tribe to establish and collect its own schedule of administrative fees.

Consistent with its responsibility as trustee, the BIA would assume affirmative responsibilities in the event the lessee violates the terms of the lease in Subpart H, "Lease Violations." In this subpart, when reasonable grounds exist based on facts known to us, the Secretary would reserve the right to enter onto leased land with or without prior notice to the lessee to enforce compliance with the lease provisions and to protect trust assets. In the event of a lease violation, the BIA would give the lessee notice by certified mail of the violation and specific period of time to correct it. If the violation is not corrected, the BIA may take action up to and including canceling the lease and ordering the lessee to vacate. Subpart I, "Appeals," outlines general appeal procedures by reference to 25 CFR Part 2, "Appeals From Administrative Actions.".

Proposed Subpart J, "Non-Trust Interests," would assert that the Department has constructive authority to grant or approve only leases of trust interests in Indian land; under the proposed regulation, undivided non-trust interests in Indian land would be leased directly from owners of these interests. The proposed regulation would clarify that the Secretary has no obligation to lease or collect rental payments for the non-trust interests in Indian lands. Payments for the non-trust interests would be made according to the terms negotiated between the lessee and the owners of the non-trust interests.

We recognize that the fractionation of ownership of Indian lands has made the leasing of Indian lands for trust beneficiaries more complex. Additionally, the Secretary's trust obligation to lease Indian lands does not run to the owners of undivided non-trust interests. Not only does the BIA lack statutory authority to lease or collect rental payments on behalf of such interests, but we may not know who the current owners are because we do not maintain or update non-trust ownership records after the title passes from Indian ownership. Nevertheless, there may be a non-trust obligation to account to the owners of the non-trust interests for the income from leases on the undivided land received on behalf of Indian landowners. Were the BIA to undertake this accounting, the additional workload burden could not be met with existing resources, and our ability to lease fractionated Indian lands on behalf of the Indian owners would be severely curtailed. This would be detrimental to the Secretary's ability to meet the trust responsibility to Indian landowners. We request comments on how to resolve the conflict between the interests of the owners of non-trust interests in the activity on the

undivided lands, and the Secretary's trust responsibility to Indian landowners.

As trustee, the BIA must determine the fair annual rental value of Indian land in order to assist Indian landowners in negotiating a lease with potential lessees and to allow the Secretary to determine if a lease is in the best interest of the landowner. Subpart K, "Valuation," would allow the BIA to determine fair annual rental value for a lease of Indian land by appraisal, advertisement, competitive bidding or any other appropriate method that is consistent with the Uniform Standards of Professional Appraisal Practices (USPAP). The BIA does not intend to specify in part 162 the method for appraising Indian land; flexibility in choosing an appraisal method would allow the Secretary to most effectively discharge his responsibility as trustee.

Leases of Indian agricultural lands generally must bring the landowner fair annual rental value. The proposed subpart K would clarify the statutory authority allowing the Secretary to approve a lease of individually owned Indian land at less than fair annual rental value when, for example, the lease is for religious, educational, recreational or another public purpose, or when the lease is for a homesite for a person related to the individual Indian landowner. The Secretary also would approve a lease of tribal land at less than fair annual rental if certain conditions are met. In each instance, the Secretary would be required to determine that approving the lease at less than fair annual rental value is in the best interest of the tribe or individual Indian landowner.

Under the proposed subpart L, "Trespass," the BIA would investigate accidental, willful or incidental trespass by third parties onto Indian agricultural land and would have the authority to assess penalties or seek damages against the trespasser or seize or impound the trespasser's property. The proposed rule would establish a civil penalty for trespass that is consistent with the AIARMA. Tribes that adopt the provisions of subpart L would have concurrent jurisdiction with the Secretary to enforce the new trespass provisions. Tribes may also request that the BIA allow a tribal court to prosecute trespass on Indian agricultural land.

Subpart M of the proposed regulation would simply renumber existing regulations governing administration of leases on specific reservation lands; it does not propose to effect any changes to those existing provisions.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED NEW CITATIONS

Current citation	New citation	Title	Remarks
162.1	162.2	What key terms do I need to know?	More extensive definitions listing.
162.2	162.70	Who may grant a lease?	Cross references differing authorities for granting leases.
	162.71	Who may represent an individual Indian landowner in grant a lease?	
	162.72	May an emancipated minor grant a lease on his or her own Indian land?	
	162.73	When may the Secretary grant permits on behalf of individual landowners?	
162.3	162.70	Who can grant a lease?	Includes general provisions for tribes, Indian landowners, and the BIA.
162.4	162.68	Do the parents or guardian of minors who own Indian land have to obtain a lease before using the land?	Qualifies use as one that directly benefits the children.
162.5(a)	162.18	Is there a standard lease form?	Plain language.
162.5(b)	162.83	How much rent must a lessee pay?	Includes exceptions to fair annual rental rate.
162.5(b)(1)	162.80	What types of leases are covered by this subpart?	Included under business leases as separate and apart from usual agricultural leaseholds.
162.5(b)(2)&(3)	162.83	How much rent must a lessee pay?	Includes lease payments for less than fair annual rental rate.
	162.152	Will BIA ever grant or approve a lease at less than fair annual rental?	
162.5(c)	162.45	Must a bond be submitted for a lease?	Plain language.
162.5(c)(1)(2)(3)	162.46	How do we determine the amount of the bond?	Plain language.
162.5(d)	162.51	Is insurance required for a lease?	Describes types of insurance.
162.5(e)	162.27	How long is a lease term?	Plain language.
162.5(f)	162.41	To whom are lease payments paid?	
	162.42	May a lessee send a lease payment directly to the Indian landowner?	Describes current practice. Comments are requested.
162.5(g)(1)(2)(3)	162.26	Are there specific provisions that must be included in a lease?	Same obligations, plain language.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED NEW CITATIONS—Continued

Current citation	New citation	Title	Remarks
162.5(h)(1)(2)	162.42	May a lessee send a lease payment directly to the Indian landowner?	Describes current practice. Comments are requested.
162.6	162.10	How is a lease on Indian land obtained?	Includes negotiated & bid leases.
162.7	162.10	How is a lease on Indian land acquired?	Includes negotiated & bid leases.
162.8	162.27	How long is a lease term?	Includes all term variables.
162.9	162.30	What happens to improvements constructed on Indian lands when the lease has been terminated?	Plain language. Disposition of improvements in all events.
	162.31	What happens if the improvements are not removed within the specified time period?	
162.10	162.17	Can more than one tract of land be combined into one lease?	Plain language.
162.11	162.26	Are there specific provisions that must be included in a lease?	Conservation concerns inclusive in listing of lease provisions.
162.12(a)(b)	162.21	Can a lease be amended, modified, assigned, transferred, or sublet?	Plain language.
162.12(c)	162.22	Can a lease be used as collateral for a leasehold mortgage?	Plain language.
162.12(d)	162.25	Can the encumbrancer assign the leasehold interest after a sale or foreclosure of an approved encumbrance?	Fuller explanation.
162.13(a)	162.114	Are there any other administrative or tribal fees, taxes or assessments that must be paid?	Fuller explanation.
162.13(b)	162.110	Are there administrative fees for a lease?	Plain language.
162.13(b)(1)(2)	162.111	How are administrative fees determined?	Use of explanatory table.
162.14	162.122	What happens if a violation of a lease occurs?	Break-down of explanation.
	162.123	What will a written notice of violation contain?	
162.15	162.190	Crow Reservation	Redesignated. No change.
162.16	162.191	Fort Belknap Reservation	Redesignated. No change.
162.17	162.192	Cabazon, Augustine, et al.	Redesignated. No change.
162.18	162.193	Colorado River Reservation	Redesignated. No change.
162.20	162.194	Salt River and San Xavier Reservations	Redesignated. No change.
New	162.4–162.9	Applicability of tribal laws	Clarifies current practice.
New	162.14–162.16	Procedures for recording lease	Clarifies current practice.
New	162.36–162.43	Time and form of rental payments	Clarifies current practice
New	162.50–162.52	Types/disposition of bonds accepted	Clarifies current practice.
New	162.80–162.91	General provisions of business leases	Clarifies current practice.
New	162.100–162.102	Receipt and distribution of rental payments	Clarifies current practice.
New	162.124–162.127	Process for curing lease violations	Clarifies current practice.
New	162.128–162.128	Emergency actions by the Secretary	Clarifies property protection responsibility of the Secretary.
New	162.140–162.147	Non-trust property interests	Clarifies current practice.
New	162.150–162.152	Determination of fair annual rental rate	Clarifies current practice.
New	162.160–162.179	Trespass Provisions	Responds to AIARMA direction.
New	162.180	Who owns records associated w/ this part?	Responds to field question.

E. 25 CFR Part 166—Grazing Permits on Indian Lands

The purpose of this part is to describe the authorities, policies and procedures the Secretary uses to grant, approve and administer grazing permits on agricultural lands that are restricted against alienation or are held by the United States in trust for federally recognized Indian tribes and individual Indians, and certain lands owned by the federal government. It revises and entirely replaces the existing part 166, and implements the AIARMA, 25 U.S.C. 3703, *et seq.*, with regard to grazing

permits on Indian agricultural land and education in agriculture management.

Under the mandate of section 301 of the AIARMA, in consultation with tribal representatives, the BIA developed a first draft of regulations to address grazing permits on Indian agricultural land in 1994. The history of this process is described above under the proposed 25 CFR Part 162—Leases and Permits on Indian Land.

This proposed part balances the Secretary's responsibilities as trustee of Indian land and resources with the need for Indian tribes and individual Indian landowners to exercise control over their agricultural trust lands and business affairs. The proposed regulation is organized to include twelve subparts for the convenience of the reader. The expanded proposed sections would clarify existing policy and procedures governing the administration of grazing permits on Indian agricultural lands and is intended to bring consistency to the administration of grazing permits across the BIA. This part does not include surface leases and permits for purposes other than grazing, which are covered in the proposed part 162.

Subpart A, "Purpose and Definitions," defines key terms used throughout the proposed regulation. These terms are consistent with those found in the AIARMA.

Subpart B, "Grazing Permit Requirements," describes general requirements and principles for obtaining a permit, obtaining a permit (leasehold) mortgage, modifying and assigning a permit, and subpermitting. These general grazing permit provisions would be consistent with their corresponding leasing provisions proposed under 25 CFR Part 162—Leases and Permits on Indian Land.

The duration of permits is addressed in proposed § 166.107. This section would recognize the authority of tribes to determine the duration of permits on tribal lands. Under the AIARMA, grazing permits would be generally granted for a period of ten years, unless a longer term of up to 25 years is appropriate.

This proposed subpart would assert that the Department has constructive authority to grant or approve only permits of trust interests in Indian lands. Non-trust interests in Indian lands would be treated in the same manner as provided in the proposed 25 CFR Part 162—Leases and Permits on Indian Land. Like the proposed provisions for part 162, the Secretary may have a non-trust obligation to the owners of the non-trust interests to account for the trust income received on behalf of Indian landowners from permits on the undivided lands. We request comments on how to resolve the conflict between the owners of non-trust interests on undivided lands, and the Secretary's trust responsibility to Indian landowners.

To ensure the preservation and proper use of trust lands, the proposed subpart B would make clear that, under the AIARMA, the Secretary would require permittees to conduct grazing operations in accordance with tribal goals and priorities for multiple use, sustained yield, agricultural resource management planning and sound conservation practices. Subpart B would also require permittees to fulfill all financial obligations to the Indian landowners and to conduct only those activities authorized by the grazing permit. Failure by a permittee to meet these expectations may result in an imposition of fines or penalties under subpart H, "Permit Violations" or subpart I, "Trespass" of the proposed regulation to protect the interests of the Indian landowners.

Subpart C, "Land Operations and Management," describes how the BIA proposes to clarify how range units and grazing capacity are established in consultation with Indian landowners. Section 166.205 of the subpart changes current practice in that the BIA would no longer include non-permitted land in the calculation of grazing capacity, but rather would limit the determination of grazing capacity to the Indian land that is included in the permit.

All grazing permits issued under this proposed part would have to be consistent with an agricultural resource management plan prepared, in accordance with the AIARMA, by a tribe or by the BIA in consultation with a tribe. To ensure that a permittee's intended objectives regarding animal husbandry and other grazing issues represent sound practice, the regulation proposes that a conservation management plan be developed for each permit. The conservation management plan would be consistent with the tribe's approved agricultural resource management plan.

Subpart D, "Tribal Policies and Laws Pertaining to Permits," consistent with the AIARMA, would make clear that when authorized by an appropriate tribal resolution, the Secretary will comply with certain general policies pertaining to permitting on Indian agricultural lands as described above with respect to the proposed regulations for 25 CFR Part 162–Leases and Permits on Indian Land. Also consistent with the AIARMA and the proposed regulations for part 162, the proposed subpart D would provide that the Indian landowners of at least 50% of the beneficial interest in a tract of agricultural land could exempt their land from the Secretary's implementation of a tribe's general policy by submitting a written request to the BIA.

Under proposed subpart D, tribal law and ordinances, including laws regulating the environment, cultural or historic preservation, land use and other activities under tribal jurisdiction, will apply to grazing permits on Indian agricultural lands unless such tribal laws and ordinances are prohibited by federal law. Tribes are responsible for enforcing tribal laws and ordinances pertaining to Indian agricultural lands with the assistance of the Secretary.

Subpart E, "Grazing Rental Rates," would preserve the ability of tribes to establish grazing rental rates on tribal lands. The BIA would continue to set the grazing rental rates for individually owned Indian land. The subpart clarifies the procedures by which tribes may set grazing rental rates higher or lower than BIA's established fair annual rental rate.

As trustee, the Secretary must determine the fair annual rental value of Indian trust lands in order to assist Indian landowners in negotiating permits with potential permittees and to determine if a permit is in the best interest of the landowner. The proposed subpart E clarifies that the BIA would determine fair annual rental value for grazing permits on trust lands by appraisal, advertisement, competitive bidding or any other appropriate method that complies with the Uniform Standards of Professional Appraisal Practices (USPAP). The BIA does not intend to specify in part 166 the particular method for appraising trust land; rather, ensuring flexibility in choosing an appraisal method would allow the Secretary to most effectively discharge his responsibility as trustee.

As they have with regard to the proposed 25 CFR Part 162—Leases and Permits on Indian Land, many tribes have expressed a desire that grazing rental payments be made directly to Indian landowners under this proposed part. As stated with regard to the proposed 25 CFR part 162, we recognize the utility of direct payments and do not propose to alter the practice at this time. Nevertheless, we continue to struggle to fashion a system that accommodates both the ability of the Indian landowner to receive lease payments directly from the lessee and the Secretary's legal obligation under the American Indian Trust Fund Management Reform Act to account for that income. The BIA

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believes that it may be sufficient to satisfy both interests by establishing direct payment arrangements for leases on tribal lands through contracts or compacts under the Self Determination Act. The BIA requests comments on: (1) The continued need for direct payments on tribal and individual Indian lands; (2) the advisability of contracts or compacts under the Self Determination Act as the sole method for direct payments to tribes; and (3) the compatibility of such payments with the Secretary's legal obligation as trustee to obtain the information regarding payment history that is needed to perform the necessary accounting.

In subpart E, § 166.425 also proposes that the BIA would prorate grazing rental payments made to each owner according to his or her fractional share of each permitted tract of Indian agricultural land. Several tribes have suggested that the BIA should apportion grazing permit revenues to beneficiaries based on the productivity of a tract in situations where the grazing permit includes several discreet parcels of land. Recognizing that the method used for distributing trust income has significant impact on Indian landowners, the BIA requests comments on methods to prorate grazing rental payments in this manner.

Subpart F, "Administrative and Tribal Fees," would provide a schedule of administrative fees, which varies based on the dollar value of the permit. The subpart provides a minimum and maximum administrative fee amount. The BIA would continue to be able to waive such administrative fees. This subpart also would acknowledge that tribes may establish and collect their own administrative fees.

Subpart G, "Bonding and Insurance Requirements", would clarify current BIA practices by requiring that a bond be provided for each permit acquired to ensure performance and compliance with permit terms. Upon request of an Indian landowner, the BIA may waive the bond requirement. For permits on tribal lands, the proposed subpart recognizes the tribe's ability to negotiate the form of the bond.

Subpart H, "Violations," would provide for action to be taken by the Secretary should we learn that a violation of the terms of a grazing permit has occurred. This subpart is the same as the requirements stated above in the proposed 25 CFR Part 162–Leases and Permits on Indian Land.

Subpart I, "Trespass," defines trespass under a grazing permit to include any unauthorized occupancy, use of or action on Indian agricultural or government lands assigned to the control of a tribe. Like the proposed 25 CFR part 162–Leases and Permits on Indian Land, above, this subpart would describe the process for trespass notification, enforcement, actions and penalties, damages and costs.

Subpart J, "Appeals," notifies readers that BIA decisions may be appealed under 25 CFR part 2.

Subpart K, "Records" clarifies that records generated for the fulfillment of this part are the property of the United States and must be maintained according to approved records retention procedures.

Subpart L, Agriculture Education, Education Assistance, Recruitment, and Training would outline the provisions for implementing subchapter II of the AIARMA, Education in Agriculture Management.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS

Current citation	New citation	Title	Remarks
166.1	166.002	What terms do I need to know?	More extensive definition listing.
166.2	(1)	Authority	Listing of citations only. No narrative provided.
166.3	166.001	What is the purpose of this part?	Encompasses objectives and goals of rulemaking.
166.4	166.106	What provisions must be contained in a permit?	Permit forms include all necessary information on applicable regulations, exemptions, and scope of activity permitted through the form.
	166.300	What tribal policies will we apply to permitting on Indian agricultural lands?.	Qualifies tribal jurisdiction over permitting process.
166.5	166.202	How is a range unit created?	Plain language.
166.6	166.204	When is grazing capacity determined?.	Plain language.
166.7	166.102	Who can grant a permit?	Incorporates authority of the BIA to grant permits on certain lands.
166.8	166.100	Must Indian owners of Indian land obtain a permit before using land for grazing purposes?.	Explains those lands exempt from BIA permit requirements.
166.9	166.102(b)	Who can grant a permit?	Explains BIA authority to grant permits to various individuals upon permission from tribe or court(s) of competent jurisdiction.
166.10	166.118	How do I acquire a permit through tribal allocation?	More detailed explanation of eligibility requirements for tribal allocations.
166.11(a)	166.117	How do I acquire a permit on Indian land?	Plain language.
166.11(b)	166.118	How do I acquire a permit through tribal allocation?	Plain language.
	116.119	How do I acquire a permit through negotiation?	Plain language.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS—Continued

Current citation	New citation	Title	Remarks
166.12	166.206	What livestock can I graze on permitted Indian land?	Plain language.
166.13	166.401	How does the Secretary establish grazing rental rates?	More detailed explanation given.
	166.404	Whose grazing rental rate will be applicable for a permit on tribal land?	
	166.405	Whose grazing rental rate will be applicable for a permit on individually owned Indian land?	
	166.406	Whose grazing rental rate will be applicable for a permit on government land?	
166.14	166.107	How long is a permit term?	Plain language.
166.15(a)	166.136	How can Indian land be removed from an existing permit?	More detailed explanation of removal, notices, forms, and timelines for processing.
	166.138	Other than to remove land, how can a permit be amended, modified, assigned, transferred, or subpermitted?	Plain language.
166.15(b)	166.702	What happens if a violation of a permit occurs?	Plain language.
166.16	166.112	Must I comply with any standards of conduct if I am granted a permit?	Incorporates conservation and other resource protections.
166.17	166.208	Can improvements be constructed on permitted Indian land?	More detailed explanation of issue.
	166.209	What happens to improvements constructed on Indian lands when the permit has been terminated?	
166.18	166.504	Are there any other administrative or tribal fees, taxes, or assessments that must be paid?	More detailed fee structure with extensive explanations.
	166.502	Are administrative fees refundable?	
166.19	166.112	Must I comply with any standards of conduct if I am granted a permit?	Incorporates legal parameters for holding a lease.
166.20(a)	166.600	Must a permittee provide a bond for a permit?	Plain language
166.20(b)	166.607	What types of insurance may be required?	Plain language.
166.21	166.421	May a permittee make a grazing rental payment in advance of the due date?	Qualifies when advance payment may be made—not before 30 days before lease goes into effect.
166.22	166.504	Are there any other administrative and or tribal fees, taxes, or assessments that must be paid?	Plain language.
166.23	166.205	Will grazing capacity be increased if I graze adjacent trust or non-trust range-lands not covered by the permit?	Plain language.
166.24	166.800–819	Subpart I—Trespass	Amended and replaced in its entirety. New subpart has sections to address policy, notification, actions upon a finding of trespass, penalties and costs.
166.25	166.207	What must a permittee do to protect livestock from exposure to disease?	Plain language.
New	166.124	Can I use a permit as collateral for a loan?	Clarifies existing practice.
New	166.128–135	Non-trust interests	Provides uniform guidance on dealing w/lands which have non-trust status for permitting.
New	166.300–304	Tribal policies and laws pertaining to permits.	Recognizes and clarifies existing practice.
New	166.410–422	Rental payments	Clarifies existing practice.
New	166.601–605	Bonding requirements.	Explains forms of surety bonds.

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CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS—Continued

Current citation	New citation	Title	Remarks
New	166.701–703	Notice of violation provisions	Clarifies existing practice.
New	166.1100–1110	Education provisions.	Responds to AIARMA direction.

[1]Authority.

III. Public Comments

The amendments proposed in this rulemaking constitute primarily technical and conforming changes resulting from the reorganization of parts 15, 115, 162, and 166 and implementation of statutory requirements. Many of these revisions are simply plain language changes; however, greater detail and explanation has been included in all the revised parts. Additionally, new sections within these parts address current practice in the field and they are included here to ensure a uniform implementation of Departmental policy and procedure for certain issues. The public is invited to make substantive comment on any of these changes, whether they be with respect to organization or substance.

Two copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection at the Department of the Interior, Office of the Secretary, MS 7214 MIB, Washington, DC 20240. Comments may also be telefaxed to the following number: 406/329–3021. Email comments will be accepted at: mailroom_wo_caet@fs.fed.us All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. The Department of the Interior reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Nevertheless, the Department does plan to hold consultation meetings with impacted tribes, Indian individuals, and tribal entities at given locations as will be noticed by the various regional offices of the BIA. All tribal and non-tribal persons having interest in this rulemaking are encouraged to participate in these consultations.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rule describes how the federal government will administer its trust responsibility in managing the trust fund accounts. Thus, the impact of the rule is confined to the federal government and the Indian trust beneficiaries and does not impose a compliance burden on the economy generally. Accordingly, it has been determined that this rule is not a "significant regulatory action" from an economic standpoint, or otherwise creates any inconsistencies or budgetary impacts to any other agency or federal program. However, the Department has submitted the revised part 115, Trust Funds for Tribes and Individual Indians, for review by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) as a significant policy matter impacting all federally-recognized Indian tribes and individual Indians. This decision was made because of the magnitude of the monies involved in Indian trust matters and the notion that any revisions to existing regulations that impact trust account management could have significant impacts on tribal governments, communities and individual Indians. The Department conducted an economic analysis of the revisions to part 115 and found that there were significant benefits in management, security and reporting of trust accounts and only small increases on tribal governments or individual Indians. The increased benefits are better identification of funds, ability to gain performance reports on tribal or individual accounts, clarifications in what funds could be deposited into such accounts, better distribution procedures, and clarifications on when and how such accounts could be restricted or otherwise encumbered. The revisions were found to have potential for administrative savings. The Department is especially interested in receiving comments on the revisions to part 115 and whether the administrative and technical clarifications address tribal concerns for better management of funds held in trust.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines

issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the proposed regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule streamlines the Department's policies, procedures, provisions and clauses that apply to certain Indian trust resources. Indian tribes are not small entities under the Regulatory Flexibility Act. Any impacts on identified small entities affected by this proposed rulemaking are minimal as they would concern a small number of farmers, ranchers, and individuals doing business on Indian lands (*e.g.*, convenience stores, gasoline stations, sundry shops). Accordingly, the Department of the Interior has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100,000,000 or more. The Department is treating each revised part as a unit of the proposed rulemaking and no one unit has an economic impact of $100,000,000 or more. The revised parts represent programs that are ongoing within the BIA and no new monies are being introduced into the stream of commerce. This proposed rule will not result in a major increase in costs or prices. The effect of this proposed rulemaking will be to streamline ongoing policies, procedures and management operations of the BIA in their handling of tribal and individual Indian trust resources. No increases in costs for administration will, therefore, be realized and no prices would be impacted through these administrative and technical clarifications of existing field practice. This proposed rulemaking will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the proposed rulemaking will be realized by tribal governments and individual Indians having a protected trust resource. These administrative and technical clarifications of Departmental policy and procedure will not otherwise have a significant impact any other small business businesses or enterprises.

E. Review Under the Paperwork Reduction Act

This proposed regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act of 1995, Public Law 104–13, is required. An OMB form 83–I has been reviewed by the Department and sent to OMB for approval. As part of the Department's continuing effort to reduce paperwork burdens, the Department invites the general public to take this opportunity to comment to the Office of Management and Budget (OMB) on the information collections contained in this proposed rulemaking, as required by the Paperwork Reduction Act. Such comments should be sent to the following address: Attention—Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Please also send a copy of your comments to the Department at the location noted under the heading **ADDRESSES.** OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days; therefore, public comments to OMB should be submitted within 30 days in order to assure their maximum consideration. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the BIA, including whether the information shall have practical utility; (2) the accuracy of the BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The information collection will be used to enable the BIA to better administer the programs subject to this rulemaking (Indian probate, funds held in trust for tribal governments and individual Indians, leasing/permitting, and grazing permits). In all instances, the Department has strived to lessen the burden on the constituent public and ask for only that information that is absolutely essential to the appropriate administration of the programs affected and in keeping with the Department's fiduciary responsibility to federally-recognized tribes.

A synopsis of the information collection burdens for all four parts proposed for regulatory revision are provided below. Take note of the variables used in each information collection estimate—in some instances the standard used for measurement will be a fixed number of occurrences gathered from our various annual reports (*e.g.*, number of probates, number of leases, number of permits, number of account holders, number of appeals in a given year). The explanatory summary of each information collection section identified will indicate what measurable standard has been used as a baseline for further calculations of burden hours (both public and government) and operations and maintenance costs to the government. Burden is defined as the total time, effort, or financial resources expended (including filing fees) by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.

ESTIMATED BURDEN HOURS

CFR section	Number of respondents	Responses per respondent	Burden per response	Total annual burden (hours)
15.4 Notice of Recordkeeping[1]	1	3,164	1 minute	53
15.101 Reporting req.—death certificate	3,164	1	4 hours	12,656

ESTIMATED BURDEN HOURS—Continued

CFR section		Number of respondents	Responses per respondent	Burden per response	Total annual burden (hours)
15.104	Reporting funeral expenses(¾)	2,373	1	2 hours	4,746
15.105	Provide probate documents	3,164	1	40 hours	126,560
15.109	Provide disclaimer information (¼)	791	1	1 hour	791
15.202	Required elements in probate form[1]	1	3,164	40 hours	126,560
15.203	Provide response to transmittal	3,164	1	5 minutes	264
15.303	Provide info. on creditor claim (6 per probate)	18,984	1	30 minutes	9,492
15.305	Provide info. for priority claims[1] (4 per probate)	1	12,656	30 minutes	6,328
15.402	Provide info. for filing appeal (¼)	791	1	2 hours	1,582
15.405	Provide info. for extraordinary appeal process	158	1	2 hours	316

[1] Indicates Government responsibility in whole or part.

Note: For purposes of this part only, we have used the number 3,164 as the number of decedents' estates that are probated on the average each year. The cost of reporting and recordkeeping by the public is estimated to be approximately $10/hour. We have used this figure as a medium figure that would indicate the cost of having a form typed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. Costs of operation and maintenance for the government were based, for purposes of an average, upon a GS 9/5 salaried person @ $40,017/year or a cost of $19.24/hour.

Summary

Section 15.4 Will the Department probate all the property in Indian estates?

This section notifies the general public and Indian individuals that the Bureau will only probate trust or restricted property of an Indian decedent. We will not probate: (1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property; (2) restricted property derived from allotments in the estates of members of the Five Civilized Tribes; and (3) trust or restricted interests derived from allotments made to Osage Indians in Oklahoma and Osage Headright interests. (It would take approximately one minute to inform an individual of the above.)

Burden hours = number of probates per year (3,164) divided by.60 minutes = # burden hours per year (53). Burden dollars based on a GS–9/5 @$40,017 per year. $40,017 divided by # of pay periods per year (26) = $1,539.24 divided by # hours per pay period (80) = cost per hour ($19.24). Total annual burden dollars to the government (operations and management) = 53 hours @$19.24 = $1,019.72. .

Section 15.101 How do I begin the BIA probate process?

This section tells an individual to report the death of an Indian by bringing in a death certificate to the nearest BIA agency or regional office as soon as possible. If a death certificate does not exist, they are to provide (1) a copy of the obituary notice from a local newspaper; (2) an affidavit of death prepared by someone who knows about the decedent; or (3) any other document that the BIA accepts that verifies the death, such as a church record or a court record. (Death certificates may be obtained from funeral homes, hospitals, coroner, or State Department of Vital Statitistics.) Cost may vary from $.25 for a photocopy to $25.00 for a certified copy. The time involved to obtain a death certificate may range from a five minute telephone call to an all day trip to the State Capital. To compute burden hours and burden costs, we will use the mid-range cost of $10.00 and four hours.

Burden hours = 4 hours multiplied by the number of probates per year (3,164) = 12,656. Note: Approximately 90 percent (%) of the death certificates are supplied by the general public. Ninety percent of 12,656 = 11,390.40 burden hours. The BIA obtains approximately 10 percent (%) of 12,656 = 1,265 burden hours.

Burden costs based on a $10 death certificate multiplied by the total number of probates per year (3,164) = $31,640. Approximately 90 percent (%) of this cost is to the general public for a total of $28,476 and 10% to the BIA for a total of $3,614 to the government.

Section 15.104 Can I get assistance immediately for funeral expenses?

This section states that if an individual is responsible for making funeral arrangements of a decedent who had an IIM account, the BIA may release up to $1,000 for funeral expenses if certain conditions are met. To apply for this benefit, the individual must submit (1) an original itemized receipt, contract or statement for each service; and (2) an affidavit signed by the vendor stating that the service provided is a necessary funeral expense. (We estimate that approximately ¾ of the respondents will request this service.) Itemized statements may take from 5 minutes for computer generated originals to 2 hours for a hand written statement. We use 2 hours here.

Burden hours = ¾ of 3,164 = 2,373 respondents × 2 hours = 4,746 burden hours and a cost of $47,460 to the public.

Section 15.105 Do I need to give the BIA any other documents?

This section requires that respondents supply the BIA with approximately 12 documents, if available. We estimate that it would take respondents approximately 40 hours to acquire all the documents.

Burden hours = 3,164 respondents × 40 hours = 126,560 and a maximum cost to the public of $1,265,600.

Section 15.109 Can I give up my interest if I am an heir?

This section states that if an individual wishes to give up their interest in an estate, they must file a notarized statement to the probate specialist. This should take approximately 1 hour to complete and submit to the BIA. Approximately ¼ of the heirs will sign this type of statement.

Burden hours = ¼ × 3,164 = 791 × 1 hour = 791 and a cost of $7,910 to the public.

Section 15.202 What must the probate package contain?

This section lists all the documents that musf be included in a probate package. It takes the BIA approximately 40 hours to assemble all documents, review for accuracy, arrange in order, make additional copies, *etc.*

Burden hours = 3,164 probates × 40 hours = 126,560. This represents a total operations and maintenance cost to the government of $2,437,014.

Section 15.203 What happens after BIA prepares the probate package?

Within 120 days the probate specialist will review the probate package and determine whether to send it to the Attorney-Decision maker or the Administrative Law Judge. If we send the probate package to the Attorney-Decision maker, we will notify all potential heirs that they have 20 days in which to tell us that they want a hearing. We estimate that it would take approximately 5 minutes to check the appropriate square on the notice form and prepare an envelope for mailing.

Burden hours = 3,164 × 5 minutes = 264 and a cost of $2,640 to the public.

Section 15.303 If the decedent owed me money, how do I file a claim?

In this section we explain how to submit a claim if the decedent owed you money. We estimate that there would be approximately 6 claims per probate and that it would take approximately ½ hour to fill out an itemized statement and make 2 copies.

Burden hours = 6 × 3,164 = 18,984 respondents divided by ½ hour = 9,492 and a cost of $94,920 to the public.

Section 15.305 Which claims will be paid first?

We will pay 4 priority claims first: (1) Funeral expenses; (2) medical expenses for last illness; (3) nursing home or other care facility; and (4) claims of the U.S. Government.

Burden hours = 4 respondents per probate = 12,656 divided by ½ hour = 6,328 hours. This represents a total operations and maintenance cost to the government of approximately $121,749.

Section 15.402 How do I file an appeal?

This section explains how to file an appeal. We estimate that approximately ¼ of the probate cases will be appealed. It should not take over 2 hours to write out a statement of reasons for appeal.

Burden hours = ¼ of 3,164 = 791 respondents × 2 hours = 1,582 and a cost of $15,820 to the public.

Section 15.405 If I miss the 60-day appeal period, do I have any other rights?

We estimate that approximately 5% of 3,164 probates will be appealed under the extraordinary appeal process.

Burden hours = 5% of 3,164 = 158 × 2 hours = 316 and a cost of $3,160 to the public.

ESTIMATED BURDEN HOURS [1]

CFR section		Number of respondents	Responses per respondent	Burden per response (hours)	Total annual burden (hours)
115.108	Provide court order to deposit monies in trust account	285,000	1	½	142,500
115.205	Submit an annual plan prior to distribution of trust funds	500	1	16½	8,250
115.210	BIA certifies distribution [1]	1	1,400	½	700
115.214	Provide info. on unclaimed per capita money	75	1	½	37½
115.219	Provide form for withdrawal	500	1	1¼	625
115.320	Provide claim form to stop payment of check	285,000	1	½	142,500
115.328	Provide form for withdrawal of IIM funds	285,000	1	½	142,500
115.338	Provide info. on funeral expenses	285,000	1	½	142,500
115.343	Guardian form contents	1	1,425	N/A	N/A
115.353	Form for Social Service Assessment [1]	1	5,700	10	57,000
115.355	Provide info. on appeal request	285,000	1	1	285,000
115.360	Record keeping req. Review receipts [1]	1	5,700	3	17,100
115.363	Provide info. prior to withdrawal of minor's account	1,425	1	½	712
115.372	Provide info. to restrict your account	285,000	1	1	285,000
115.506	Provide form for hearing	285,000	1	1½	427,500

[1] Indicates Government responsibility in whole or part.

Note: For purposes of this part only, we have used the number 500 where referring to the estimated tribal respondents. Not all federally-recognized tribes will be making distribution requests; however, the majority will have to provide some information to the BIA to receive a benefit from their accounts. The number of individual respondents is noted, in most instances, as 285,000 which is the number of individual Indian accounts on file. While not all individual Indians will make requests from the BIA for some action on their accounts, we have included the total number here to indicate that they might make such requests. Where the section could apply to both individual Indian accounts and tribal accounts (there are 1,400 tribal accounts), the respondent number is identified as 287,000. The cost of reporting and recordkeeping by the public is estimated to be approximately $10/hour. We have used this figure as a medium figure that would indicate the cost of having a form typed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. The large cost to the public would be realized ONLY if all account holders were providing information to receive a particular benefit. While we do not anticipate this occurrence, we have estimated for the maximum cost to the public for purposes of this review. Costs of operation and maintenance for the government were based, for purposes of an average, upon a GS 9/5 salaried person @$40,017/year or a cost of $19.24/hour.

Summary

Section 115.108 When funds are awarded or assessed by a court of competent jurisdiction involving trust lands or resources, what documentation is required to deposit the funds into a trust account?

This section requires that the respondent forward to OTFM a court order to have certain monies deposited into individual Indian or tribal accounts. The tribe is allowed to deposit these monies into their trust accounts only if it is operating a program under the Indian Self-Determination and Education Assistance Act.

Burden hours = 287,000 individual Indian and tribal respondents × ½ hour = 142,500 hours and a cost of $1,425,000.

Section 115.205 Does a tribe have to submit an annual budget for use of its trust funds?

Approximately 500 tribes would submit an annual plan, even though not specifically required to do so, showing projected cash flow needs. This enables OTFM to plan investments accordingly. This task would involve a tribal account to spend approximately 16½ hours (2 working days) to make such assessments. Approval by the tribal council or other appropriate tribal

governing body is not included in this burden estimate.

Burden hours = 500 tribal entities × 16½ hours = 8,250 hours and a cost of $82,500.

Section 115.210 How will the BIA assist in the administration of tribal judgment fund accounts?

The BIA will certify a tribal request for distribution of judgment funds. The review of a tribal request is typically made pursuant to a tribal distribution plan. The plan has been reviewed beforehand, as a rule, and the certification here would not involve a time burden greater than ½ hour per request for the government at a cost of approximately $13,468.00 (½ hour × 700 hours × $19.24/hour).

Section 115.214 May the OTFM return money in a tribal per capita account to a tribal account?

In the rare instance where tribes have not already filed for a return of unclaimed judgment fund accounts, the procedure pursuant to Pub. L. 87–283 would only require ½ hour to complete—once accounts have been identified. We estimate approximately 75 tribes would have such unclaimed judgment fund accounts necessitating information collection authorization, the completion of a form particular to Pub. L. 87–283.

Burden hours = 75 tribal entities × ½ hour = 37½ hours and a cost of $375.

Section 115.219 How does a tribe request money from its trust account?

This provision describes the process involved with tribal requests for funds distribution. Preparing the request and having it signed will take approximately ½ hour. Drafting a tribal resolution and then having it voted through by a tribal executive action would entail approximately 1 additional hour. The alternative authorization noted in 25 CFR 1200 (B) would entail ½ hour preparation by a tribal employee. We estimate a 50/50 split on time with respect to passing a tribal resolution or completing an application pursuant to 25 CFR 1200(B).

Burden hours = 500 tribes × 1¼ hours (the difference between a tribal resolution and 25 CFR 1200(B)) = 625 hours and a cost of $6,250.

Section 115.320 What happens if I lose my check or I do not receive my check because it was stolen?

All 285,000 individual IIM account holders may claim a lost or stolen check, request a copy of a canceled check, or ask for a stop payment on a check. In any instance, this would not have an hour burden greater than ½ hour to file the proper notice/request for such service.

Burden hours = 285,000 accounts × ½ hour = 142,500 hours and a cost of $1,425,000 to the public.

Section 115.328 How do I withdraw money from my IIM account?

These provisions allow individual Indian money account holders to withdraw monies from their account upon a written request. All 285,000 individual Indian money account holders could ask for certain withdrawals from their unrestricted accounts. This direction to the Secretary would take approximately ½ hour.

Burden hours = 285,000 account holders × ½ hour = 142,500 hours and a cost of $1,425,000 to the public.

Section 115.338 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?

Upon proper authorization, designated persons may apply for emergency funeral expenses (up to $1,000) from an Indian decedent's IIM account. These expenses will only be paid to the vendor and not to the individual requesting the monies. All 285,000 account holders (or those making their funeral arrangements) may avail themselves of this special distribution of an IIM account under probate. The person making such a request must submit information on the nature of the expense and the person to whom payment is to be directly made.

Burden hours = 285,000 account holders × ½ hour = 142,500 hours and a cost of $1,425,000 to the public.

Section 115.343 What are the qualifications for guardians who manage IIM accounts for individual account holders?

This section details the requirements for becoming a guardian of an IIM account. We note this here because it is the form (its necessary contents) that is required by BIA. The BIA estimates 1,425 IIM accounts have guardians assigned to them.

Section 115.353 What information must be included in a social services assessment?

The BIA is responsible for making social service assessments, as necessary. The information included in this assessment would entail at least 2 hours of review once the information had been collected. Since the collection would be the primary task of the BIA, it is estimated that 8 hours would be required to compile, review and organize the file for a social service assessment. A total government hour burden is estimated, therefore, at 10 hours per assessment. There are an average of 5,700 social service assessments completed in any given year.

Burden hours = 5,700 assessments × 10 hours = 57,000 hours. This represents a government operations and maintenance expense of $1,096,680.

Section 115.355 How may I challenge a decision to place my account in supervised status?

All 285,000 individual Indian account holders could have a supervised status account upon which they could file an appeal for review. The time to make this appeal would be approximately 1 hour, unless extenuating circumstances were involved. This section is really making notice of an appeal—not arguing the appeal itself.

Burden hours = 285,000 × 1 hour = 285,000 hours and a cost of $2,850,000.

Section 115.360 What is the review process for a supervised account?

The BIA must thoroughly review an account that is being supervised to ensure that the monies distributed were pursuant to an approved plan and that supervision is or is not further recommended. This review would entail approximately 2 hours to compile and review information regarding the account and approximately 1 hour to formulate a recommendation—totaling a government burden of 3 hours per review. We have used 5,700 as the number of responses here because there are 5,700 social service assessments completed (in furtherance of a supervised account) done per year.

Burden hours = 5,700 reviews × 3 hours = 17,100 hours × $19.24/hour = $329,004 operations and maintenance expense to the government.

Section 115.363 When will the BIA authorize withdrawals from a minor's account?

The guardian of a minor's judgment account must make application under Pub. L. 97–458 for withdrawals from such accounts. For other minor's IIM accounts, the guardian must act pursuant to a distribution plan. We have used 1,425 as the number of respondents providing information for authorization for withdrawals since it is estimated that BIA administers 1,425 IIM accounts with a designated guardian. It would take approximately ½ hour to make such application for withdrawal pursuant to Pub. L. 97–458 or pursuant to a simple request in accordance with an approved distribution plan.

Burden hours = 1,425 guardian accounts × ½ hour = 712 hours and a cost of $7,120.

Section 115.372 What type of encumbrances may I place on my IIM account?

All 285,000 individual Indian money account holders may request a voluntary encumbrance upon their account. The BIA will so encumber the account only upon receiving the appropriate information (physician prescription or recommendation) from the account holder. It is estimated that it would take 1 hour to secure such information and mail or deliver to the appropriate BIA office.

Burden hours = 285,000 account holders × 1 hour = 285,000 hours and a cost of $2,850,000.

Section 115.506 How do I request a hearing to challenge the BIA's decision to restrict my IIM account?

All 285,000 individual Indian money account holders could request a hearing if their account was being placed under supervision. The BIA will only provide such a hearing, however, if the account holder provides the necessary information in the form of a letter to set up a hearing. This letter of appeal would take approximately 1½ hours to complete and mail.

Burden hours = 285,000 account holders × 1½ hours = 427,500 hours and a cost of $4,275,000.

ESTIMATED BURDEN HOURS

CFR section		Number of respondents	Responses per respondent	Burden per response	Total annual burden (hours)
162.7	Landowner provides information [1] to make objection to tribal policy	1	500	30 min	250
		500	1	30 min	250
162.8	Provides notification of new laws [1]	1	14,500	30 min	7,250
		14,500	1	30 min	7,250
162.12	BIA review of all leases [1]	1	14,500	2 hrs	29,000 hrs
162.14	BIA recordation of all leases [1]	1	14,500	30 min	7,250 hrs
162.18	BIA approval of lease form [1]	14,500	1 hr	1	14,500
14,500				1 hr	14,500
162.20	Maintenance of certified plat [1]	1	14,500	¼ hr	3,625 hrs
162.22	Review/Approve loans [1]	1	14,500	1 hr	14,500 hrs
		14,500	1	1 hr	14,500
162.30	Report disposition of construction improvements [1]	1	14,500	1 hr	14,500
162.32	Report on rental due dates [1]	1	14,500	15 min	3,625
162.37	Report on late rental payments [1]	1	3,625	15 min	906.25
162.48	Bond forms [1]	1	14,500	30 min	7,250
		14,500	1	1 hr	14,500
162.52	Insurance requirements [1]	1	14,500	15 min	3,625 hrs.
		14,500	1	1 hr	14,500
162.61	Negotiated & bidder lease approvals [1]	1	14,500	3 hrs	43,500
162.68	Report on minor's benefit	1	145	30 min	72
162.82(a)	Provide business records	587	1	30 min	293.5
162.82(b)	Provide appraisals/financial info.	587	1	1 hr	587
162.82(c)	Provide financial statements and Credit reports	587	1	1 hr	587
162.82(d)	New construction requirements	587	1	1 hr	587
162.83	Deviation of fair annual rental rate	725	1	1 hr	725
162.113	Provide information to waive fees [1]	1	145	30 min	72.5
		145	1	1 hr	145
162.126	Decision letter—form [1]	1	145	30 mins	72.5
162.164	Provide info. on disputed trespass	3,625	1	30 mins	1,812.5

[1] Indicates Government responsibility in whole or part.

Note: There are approximately 51,213 tribal and 50,505 individual Indian surface leases and permits. For purposes of this information collection request, however, we have used the number of 14,500 as the average number of new cases (or lease actions) that occur in a given year. We have used this average number because for the information collection requirements to be triggered a lease action would have to be initiated. Therefore, the use of the larger number (101,718 tribal/individual leases and permits) would not accurately reflect the activity realized by the public or the bureau in the administration of leases and permits on tribal and Indian lands. Other baseline figures are explained in the section summary below. The cost of reporting and recordkeeping by the public is estimated to be approximately $10/hour. We have used this figure as a medium figure that would indicate the cost of having a form typed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. Costs of operation and maintenance for the government were based, for purposes of an average, upon a GS 9/5 salaried person @$40,071/year or a cost of $19.24/hour.

Summary

Section 162.7 May individual Indian landowners exempt their land from tribal policies for leasing on Indian agricultural lands?

Indian landowner(s) of a tract or an individual interest having at least 50% interest in such tract may exempt their Indian land from tribal policies by submitting a written objection to the BIA. This burden goes to the individual submitting the letter of objection to the BIA and to the BIA for receiving the letter and acting upon the objection and subsequently notifying the respective tribe of the objection and exemption.

Burden hours = 500 (average number of objections received by the BIA) written letters of objection × ½ hour to complete letter and deliver to the BIA = 250 burden hours and a cost of $2,500 to the public. Burden hours realized by the BIA to receive the letters of objection and subsequently notify the respective tribe of the objection and exemption of certain Indian lands from tribal = 500 × ½ hour = 250 burden hours and an estimated governmental

operations and maintenance cost of $4,810.

Section 162.8 What notifications are required that tribal law applies to a lease on Indian agricultural land?

Tribal laws apply to tribal lands. Therefore, tribes must notify affected landowners of applicable tribal laws. The tribes will have to provide information to the BIA of the content, record of public notice and hearings, and effective dates of new tribal laws. The BIA will, in turn, notify any persons or entities undertaking activities on Indian lands of applicable tribal laws. This information burden goes to the tribe in informing the BIA of the applicable laws and, also, goes to the BIA in properly informing the affected public.

Burden hours = 14,500 leases which may be affected by tribal laws × ½ hour to prepare submission of information to the BIA = 7,250 burden hours and a cost to the public of $72,500. Burden hours realized by the BIA = 14,500 potential tribal submissions × ½ hour of time for recordkeeping and notification to affected persons = 7,250 burden hours and an estimated governmental operations and maintenance expense of $19.24/hour × 7,250 hours = $139,490.

Section 162.12 How will the Secretary decide whether to grant and/or approve a lease?

This section describes the various elements that go into the BIA review and approval of leases on Indian lands. This includes the preparation of appropriate environmental documents and review of community impacts. This is a governmental burden estimated to take an average of 2 hours per review (some reviews will take less time, but some will consume twice this estimate, so an average of 2 hours is used here) × 14,500 new cases per year = 29,000 burden hours to the government. The estimated governmental operations and maintenance expense is estimated at $19.24/hour × 29,000 burden hours = $557,960.

Section 162.14 Must a lease be recorded?

All leases in excess of 1 year must be recorded. All new cases initiated were in excess of 1 year (in many cases for periods of 5 years or more) and, therefore, we have used the average number of new cases (14,500) as the baseline for computation of the burden hour. Recording each lease would take an average of ½ hour to process.

Burden hours = 14,500 new cases × ½ hour for processing = 7,250 hours. The governmental operations and maintenance expense is estimated to be $19.24/hour × 7,250 burden hours = $139,490.

Section 162.18 Is there a standard lease form?

There is no standard lease form. However, all leases made pursuant to these regulations must be in a form approved by the BIA. It is estimated that it would take both the tribal entity (tribal government/Indian landowner) and a realty specialist and/or clerk an average of 1 hour to complete and review all the components of a proposed lease to ascertain whether or not it contained all the necessary elements for BIA review and approval of the lease.

Burden hours = 14,500 new cases × 1 hour = 14,500 and a cost to the public of $145,000 and a governmental operations and maintenance expense of $19.24/hour × 14,500 = $278,980.

Section 162.20 How is leased land described?

The land described in a lease must be described by aliquot parts or by a certified plat by a registered surveyor. It is the responsibility of the BIA to provide this accurate description of the land being leased. It is estimated that it would take approximately ¼ hour to review the proposed lease for description by aliquot parts or order a certified plat, receive the plat, and commit its description to the lease document.

Burden hours = 14,500 new cases × ¼ hour = 3,625 hours and a governmental operations and maintenance expense of $19.24/hour × ¼ hour or $69,745.

Section 162.22 May a lease be used as collateral for a leasehold?

The BIA may approve a lease authorizing the lessee to encumber his leasehold interest for the development and improvement of the leased premises. The BIA must approve the leasehold mortgage. This will require that the BIA review the loan documents, the lease, and approve the subsequent loan for development and/or other improvements to the premises. This will involve a burden to the public in providing the appropriate documents for BIA review and the time spend by the BIA for subsequent approval.

Burden hours = 14,500 new cases × 1 hour = 14,500 burden hours or a cost to the public of $145,000. Burden hours for the government = $14,500 new cases × 1 hour = 14,500 burden hours for a governmental operations and maintenance expense of $278,980.

Section 162.30 What happens to improvements constructed on Indian lands when the lease has been terminated?

If improvements are to be constructed on the land, the lease must have a provision that allows that such improvements remain on the lands upon termination of the lease or are removed within a time period specified in the lease. It is the responsibility of the BIA to ensure that such lease provision is included if improvements are to be constructed on Indian land. This is a form requirement—the inclusion of a provision to the lease. To make the appropriate inquiry of the lessor and lessee regarding construction improvements and include a provision to the lease to stipulate the understanding between lessor and lessee would take approximately 1 hour by the appropriate BIA realty specialist.

Burden hours = 14,500 new cases × 1 hour = 14,500 hours for a governmental operations and maintenance expense of $19.24/hour × 14,500 hours = $278,980.

Section 162.32 When must a lease payment be made?

Rents are due and payable by the payment date specified in the lease. In order to determine whether lease payments are in arrears, the BIA realty specialist or clerk will have to review every rental payment against every lease. It would take an average of ¼ hour to match check to lease × 14,500 new cases.

Burden hours = 14,500 new cases × ¼ hour = 3,625 hours and a governmental operations and maintenance expense of $19.24/hour × 3,625 = $69,745.

Section 162.37 Is there a penalty for late payment on a lease?

A lease will contain a provision that specifies the late payment penalty that will be assessed and collected for late payment. On the average 25% of the leases are delinquent each year. Therefore, we have used 25% of the number of new cases (14,500) or 3,625 as the baseline for determining burden hours to the government. It would take approximately ¼ hour to assess the delinquency and inform the lessee of the deficiency.

Burden hours = 3,625 delinquent cases × ¼ hour = 906.25 hours and a governmental operations and maintenance expense of $19.24/hour × 906.25 = $17,432.

Section 162.48 What forms of bonds will the BIA accept?

This section describes the various forms of bonds that the BIA will accept as surety of a lease. Each form has its

own special requirements for acceptance. The lessee must provide the BIA with the appropriate bond form and then the BIA, in turn, must process the form and ensure that it is adequate for surety. This imposes a burden on the public of 1 hour to obtain the appropriate bond form and a burden on the government of ½ hour for processing.

Burden hours = 14,500 new cases × 1 hour = 14,500 burden hours and a cost to the public of $145,000. Burden hours for the government will 14,500 cases × ½ hour = 7,250 burden hours and a governmental operational and maintenance expense of $19.24/hour × 7,250 burden hours = $139,490.

Section 162.52 What types of insurance may be required?

The BIA may require any or all of the following types of insurance depending upon the activity conducted under the lease: property and liability; casualty: fire, flood, hazardous materials. This will involve a burden upon the public of providing the appropriate insurance documents to the BIA for their review and the BIA subsequently certifying that appropriate insurance has been taken for the particular type of leasehold proposed. The burden hours are estimated to be 1 hour for the lessee and ¼ hour for the BIA to certify once documents have been provided.

Burden hours = 14,500 new cases × 1 hour = 14,500 burden hours and a cost of $145,000 to the public. Burden hours for the government = 14,500 new cases × ¼ hour = 3,625 burden hours × $19.24/hour = $69,745.

Section 162.61 How do I acquire a lease on Indian land?

This section describes that there are two ways to acquire a lease on Indian land—by negotiated or advertised bid. Both vehicles involve the collection and maintenance of certain documents by the BIA and its subsequent approval of the lease, in whatever form. This section deals with the mechanisms required by the BIA to secure necessary information and its steps for completing the leasing process. It is estimated that the BIA will spend up to 3 hours to ensure that all elements of a negotiated or advertised bid lease have been met and are properly recorded and maintained for the Indian landowner.

Burden hours = 14,500 new cases × 3 hours = 43,500 hours and a governmental operations and maintenance expense of $19.24/hour × 43,500 = $836,940.

Section 162.68 Must the parents or guardians of minors who own Indian land obtain a lease before using the land?

A parent, guardian, or other person standing *in loco parentis* does not need to obtain a lease for lands owned by their minor children if those minor children own 100% of the land and the minor children directly benefit from the use. Only 1% of the new leases that are entered into every year (of 14,500 new cases on the average) involve minors who own Indian land. Therefore, we have used 145 minor cases as the baseline to ascertain burden hours to the government. It is the responsibility of the BIA to ascertain whether or not the minor Indian landowners obtain a benefit from a proposed lease; therefore, this section deals only with the estimated ½ hour burden to the government in its administration of each of those 145 minor cases.

Burden hours = 145 minor cases × ½ hour = 72 burden hours for a governmental operations and maintenance expense of $19.24 × 72 burden hours = $1,385.

Section 162.82 What supporting documents must I provide?

This section details the required supporting documents that must be submitted for certain business leases on Indian lands. This section applies to corporations, limited liability companies, partnerships, joint ventures, or other legal entities doing business on Indian lands. There are approximately 587 new business lease cases per year as reported by the BIA. Therefore, we have 587 business cases as the baseline for determining the burden hours for this section. It is estimated that it would take 30 minutes to provide business records 162.73(a), and 1 hour to provide appraisals, financial information, financial statements, credit reports, and new construction requirement as listed in 162.73 (b)–(d). We have used the total 3 ½ hours as the burden hour × 587 new business leases to determine total burden hours.

Burden hours = 587 new business leases × 3 ½ hours = 2,054.5 total burden hours and a cost to the public of $20,545.

Section 162.83 How much rent must a lessee pay?

This section is noteworthy in that it allows approval of a negotiated lease of tribal land or individually-owned land for less than a fair annual rental if it is in the best interest of the tribe (a determination for the tribe and the BIA) or if the lease is for religious, educational, recreational or other public purposes or is a lease within the lessor's family. Only 5% of the new cases administered by the BIA fall under this extraordinary less-than-fair-annual-rental provision. Therefore, we have used the number of 725 extraordinary leases as the baseline for determining burden hours to the public. It is estimated that it would take approximately 1 hour for each instance of an extraordinary lease to be explained and otherwise justified to the appropriate BIA realty specialist for subsequent approval.

Burden hours = 725 extraordinary lease cases × 1 hour = 725 total burden hours and a cost to the public of $7,250.

Section 162.113 May the Secretary waive administrative fees?

The administrative fee, based on annual rental, can be waived for a justifiable reason. Only 1% of the new cases administered per year (average 14,500 new cases per year) ask for a waiver of administrative fees. Therefore, we have used the number 145 as the number of waiver cases per year to determine burden hours. It is estimated that it would take ½ hour for a waiver claim to be made by a lessee either in writing or in person to the appropriate BIA realty officer. It is estimated that the government would spend approximately ½ hour to process and approve a waiver request.

Burden hours = 145 waiver cases × 1 hour = 145 hours and a cost to the public of $1,450. The burden hours for the government = 145 waiver cases × ½ hour for process = 72.5 hours and a governmental operations and maintenance expense of $1,387.

Section 162.126 What happens if you do not cure a lease violation?

This section explains what happens if a lease violation is not cured and gives specific contents required in a letter to the lessee for an alleged lease violation. This a form requirement for the government. Since this instance of non-cured violations occurs only 1% of the time, we have used 1% of the total 14,500 new cases to arrive at the number 145 as the baseline for determining burden hours. It is estimated that it would take the appropriate BIA realty officer ½ hour to prepare and mail a letter with all the attending requirements of this section.

Burden hours = 145 violation cases × ½ hour = 72.25 hours and a governmental operations and maintenance expense of $19.24/hour × 72.25 hours = $1,387.

Section 162.164 What can I do if I receive a trespass notice?

This section details what a person found in a trespass violation must do within a specific time frame for his case to be finally disposed. The lessee will have to comply with the notice of trespass or submit an explanation to the BIA as to why a trespass violation should not be rendered. Approximately 25% of the new lease cases have a resulting trespass violation alleged. Therefore, we have used 25% of the 14,500 new cases (3,625) to use as a baseline for determining burden hours. It is estimated that the submission of an explanation to the appropriate BIA realty officer would entail ½ hour to compose and deliver.

Burden hours = 3,625 trespass violation cases × ½ hour = 1,812.5 total burden hours and a cost of $18,125 to the public.

ESTIMATED BURDEN HOURS

CFR section		Number of respondents	Reponses per respondent	Burden per response	Total annual burden (hours)
166.106	Form/Requirements [1]	1	1,000	1	1,000
166.108	Permit Recording [1]	1	1,000	¼	250
166.124	Provide info. for loan [1]	100	1	½	50
		1	100	½	50
166.122	Form for advertisements [1]	1	1,000	2	2,000
166.123	Forms for permits [1]	1	1,000	1	1,000
		1,000	1	1	1,000
166.138	Forms for amendments, assignments, modifications, subpermits, *etc.* 1	1	1,000	¼	250
		1,000	1	½	500
166.206	Provide info. on livestock class	200	1	½	100
166.207	Provide info. on livestock care [1]	1,000	1	¼	250
166.209	Removal of improvements [1]	1	100	½	50
166.210	Provide tribal integrated resource mgmt. plan	250	1	2	500
166.211	Develop conservation plan[1]	250	1	2	500
166.303	Provide info. on public notices/hearings	250	1	½	125
166.601	Provide info on bond requirements [1]	1	1,000	½	500
166.602	Forms of bonds[1]	1	1,000	½	500
166.607	Provide insurance information [1]	1	1,000	¼	250
166.703	Form for letter of violation [1]	1	100	½	50
166.803	Form for trespass notice [1]	1	100	½	50
166.804	Provide info on trespass violation	100	1	½	50
166.809	Provide info on ownership	50	1	¼	12.5

[1] Indicates Government responsibility in whole or part.

Note: There are approximately 1,000 new grazing permit cases each year that are administered through the BIA. Because information collection requirements would not be triggered unless and until a new case is initiated, we have used 1,000 as our baseline for tribal and individual Indian respondents. Other numbers in reference to tribal or individual Indian respondents are explained below. The cost of reporting and recordkeeping by the public is estimated to be approximately $10/hour. We have used this figure as a medium figure that would indicate the cost of having a form typed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. For purposes of governmental operations and maintenance expense, we have used the salary of a GS–9/5 as the average salary base. This would be approximately $19.24/hour and is reflected as such in total governmental expenses.

Summary

Section 166.106 What provisions must be contained in a permit?

This section describes the minimal elements that must be included in a permit. BIA will not approve a grazing permit unless these elements are present, in some form, to satisfy minimum contractual needs. This is the responsibility of the BIA to review the content and form of the permit. It is estimated that it would take the BIA one hour to review and approve the contents of this form.

Burden hours = 1,000 new permit cases × 1 hour = 1,000 hours for a governmental operations and maintenance cost of $19.24/hour = $19,240.

Section 166.108 Are permits recorded?

This is a recordkeeping requirement of the BIA. All permits must be recorded with the Land Titles and Records Offices in the region that covers the permitted area. It is estimated that it would take ¼ hour to receive and properly record these permits pursuant to 25 CFR 150 *et seq.*

Burden hours = 1,000 new permit cases × ¼ hour = 250 hours for a governmental operations and maintenance cost of $19.24/hour = $4,810.

Section 166.124 Can I use a permit as collateral for a loan?

We have estimated that approximately 100 permit holders submit information to the BIA for their approval to encumber the permit interest for the development and improvement of the permitted Indian land. It would take approximately ½ hour for the permit holder to submit this information to the BIA and another ½ hour for the BIA to review that information to approve the further encumbrance.

Burden hours = 100 loan applicants × ½ hour = 50 burden hours to the public and a cost of $500 to the public. Burden for the government = 100 loan applicants × ½ hour = 50 burden hours for a governmental operations and maintenance cost of $19.24/hour × 50 hours = $962.00.

Section 166.122 How do I acquire an advertised permit through competitive bidding?

This section describes the 3 ways permits may be acquired. The tribe may grant permits on range units containing trust or restricted land which is entirely tribally owned or which contains only

tribal and government land under the control of the tribe. The BIA will grant permits for range units containing, in whole or part, individually owned Indian land and range units that consist of, in whole or part, tribal or government land. A permit may be acquired, also, be negotiation between the parties. In all instances such permits must be properly advertised, negotiated, or terms otherwise determined by an equitable standard. While this will entail the tribe or Indian individual to do certain things, it is the responsibility of the BIA to ensure that the permitting process has been conducted in accordance with such equitable standards. It is estimated that, whichever method of permit process is used, it will take the BIA approximately 2 hours to review the form and subsequently approve the permit. Agency form 5–5514 would be utilized for portions of this information.

Burden hours = 1,000 new permit cases × 2 hours = 2,000 burden hours for a governmental operations and maintenance expense of $19.24/hour × 2,000 hours = $38,480.

Section 166.123 Are there standard permit forms?

There are standard permit forms, including bid forms, permit forms, and permit modification forms. These forms are available at the various BIA agency offices. We have estimated the hourly burden to be approximately 1 hour for the public in submitting any type of form and approximately 1 hour for the BIA to receive, record and maintain. Agency forms 5–5515, 5–5516, 5–5517, 5–5524, 5–5525, and 5–5528 would be utilized for portions of this information collection.

Burden hours = 1,000 new permit cases × 1 hour = 1,000 total burden hours and a cost of $10,000 to the public. Burden hours for the government are estimated at 1,000 new permit cases 1 hour = 1,000 burden hours for a governmental operations and maintenance expense of $19.24/hours × 1,000 hours = $19,240.00.

Section 166.138 Other than to remove land, how can a permit be amended, modified, assigned, transferred, or subpermitted?

This section describes the elements that must be included in any permit amendments, modifications, etc. Each instance requires approval by the BIA. It is estimated that it would take approximately ½ hour for a tribal entity or individual Indian to fill out the requisite form/format for a change in the permit and ¼ hour for the BIA to record and maintain this change. Agency forms 5–5522 and 5–5523 would be utilized for portions of this information collection.

Burden hours = 1,000 new permit cases × ½ hour = 500 total burden hours and a cost of $5,000 to the public. Government burden is calculated at 1,000 new permit cases × ¼ hour = 250 hours at a governmental operations and maintenance expense of $19.24/hour × 250 hours = $4,810.00.

Section 166.206 What livestock can I graze on permitted Indian land?

This section allows the tribe to determine the class of livestock that may be grazed on range units composed entirely of tribal land or in combination with government land, subject to grazing capacity. Also, this section notes that the BIA will adopt the tribal determination of this class of livestock if it is consistent with a determination of grazing capacity. In both instances, information must be provided with respect to the range in question, class of livestock, and an approved grazing determination. The tribal entity or individual Indian would have to provide this information which we have determined would take approximately ½ hour to compile. This sort of classification on tribal lands would happen on an average of 200 instances per year. Agency forms 5–5526 and 5–5527 could be utilized for portions of this information collection.

Burden hours = 200 new cases × ½ hour = 100 total burden hours and a cost of $1,000 to the public.

Section 166.207 What must a permittee do to protect livestock from exposure to disease?

Permittees must vaccinate, treat exposed animals, and restrict movement of exposed or infected livestock. We have used a baseline of 1,000 new permit cases here because all new grazing permits would require that livestock, of whatever nature and in whatever identified range unit, comply with this standard of care. It is estimated that it would take ½ hour for the tribal entity or individual Indian to provide this information the appropriate BIA office and ½ hour for that office to record and process this information for compliance with this health standard.

Burden hours = 1,000 new permit cases × ¼ hour = 250 total burden hours and a cost of $2,500 to the public. Burden for the government is estimated at 1,000 new permit cases × ¼ hour = 250 hours for a governmental operations and maintenance expense of $19.24/hour × 250 hours = $4,810.00.

Section 166.209 What happens to improvements constructed on Indian lands when the permit has been terminated?

This section allows improvements to be removed on permitted Indian land if proper provision has been made in the permit. An extension of time may, also, be provided for in the permit's provisions. This is the responsibility of the BIA to review these "removal of improvements" provisions, record them, and allow for removals as prescribed in the permit. Improvements to the land are accounted for in approximately 10% of the new cases in any given year, or approximately 100 cases. It is estimated that it would take ½ hour to facilitate this recordkeeping.

Burden hours = 100 new cases involving improvements on Indian land × ½ hour = 50 hours for a governmental operations and maintenance expense of 50 hours × $19.24/hour = $962.00.

Section 166.210 Is an agricultural resource management plan required?

Section 166.211 Is a conservation plan required?

An agricultural resource management plan must be developed either by the tribe or by the BIA in consultation with the affected tribe(s). This plan should be consistent with the tribe's integrated resource management plan. We estimate that tribal conservation officers and/or environmental compliance officers for the tribe, in consultation or not in consultation with the BIA, would require a minimum of 2 hours to work up an agricultural resource management plan consistent with their integrated resource management plan. We have used a baseline of 250 tribes as being the number of tribes in any given year that would be allowing grazing on their lands subject to these plans. This number could be much reduced, depending upon the frequency of newly permitted grazing activities and renewals of existing plans.

Burden hours = 250 tribal entities requiring an agricultural resource management plan × 2 hours = 500 burden hours and a cost of $5,000 to the public for such production of plans.

Section 166.303 What notifications are required that tribal laws apply to permits on Indian agricultural lands?

Tribal grazing laws apply to permits on tribal and individually owned Indian land under tribal jurisdiction. However, tribes must notify the BIA of the record of public notices and hearings, and the content and effective dates of new tribal grazing laws. We have used a baseline of 250 tribes as providing the BIA

information on such new tribal grazing laws as a high-end average. This number could be greatly reduced in proportion to the number of new grazing laws enacted every year. This notification to the BIA would take approximately ½ hour for each new instance.

Burden hours = 250 instances of newly enacted tribal grazing laws × ½ hour = 125 total burden hours and a cost of $1,250 to the public.

Section 166.601 How is the amount of the bond determined?

The BIA will determine the amount of the bond based upon the value of one year's grazing rental payment, the value of improvements constructed, the cost of performance of any additional obligations, and the cost of restoration and reclamation. In addition, the BIA can adjust the security or bond requirements at any time, depending upon the circumstances. The BIA will collect this information from available sources on file and make such determination of bond amount. It is estimated that it would take approximately ½ hour to evaluate these variables and determine the appropriate bond.

Burden hours = 1,000 new permit cases × ½ hour = 500 hours for a governmental operations and maintenance expense of $9,620.00

Section 166.602 What form of bonds will the BIA accept?

The BIA will only accept bonds in cash, negotiable Treasury securities, certificates of deposit, or irrevocable letters of credit. This is a recordkeeping responsibility of the BIA and is estimated to take approximately ½ hour to review and accept for appropriate security. Agency forms 5–5519 and 5–5423 can be used for portions of this information collection.

Burden hours = 1,000 new permit cases × ½ hour = 500 hours for a governmental operations and maintenance expense of $9,620.00

Section 166.607 What types of insurance may be required?

The BIA may require a permittee to provide insurance in an amount sufficient to protect any improvements on the permit premises, cover losses such as personal injury or death, and protect the landowner's interests. This is a responsibility of the BIA and the agency will review each permit case to determine what sort of insurance coverage is necessary for the proposed permitted use. This review would take approximately ¼ hour to complete.

Burden hours = 1,000 new permit cases × ¼ hour = 250 burden hours for a governmental operations and maintenance expense of $4,810.00.

Section 166.703 What will a written notice of a violation contain?

This section details the form the BIA will use to inform a permittee that his permit is in violation. This is a recordkeeping responsibility for the agency and will take approximately ½ hour to compose and send to the permittee.

Burden hours = 100 permit violations × ½ hour = 50 hours for a governmental operations and maintenance expense of $19.24/hour × 50 hours = $962.00

Section 166.803 How are trespassers notified of a trespass determination?

This section details what must be included in a written notice of trespass. This is a responsibility of the BIA and would be realized upon approximately 100 alleged trespassers in any given year. To send such a written notice would take approximately ½ hour in order to compile the particulars of the trespass and properly inform the alleged trespasser of his rights.

Burden hours = 100 trespass violations × ½ hour = 50 hours for a governmental operations and maintenance expense of $19.24/hour × 50 hours = $962.00.

Section 166.804 What can I do if I receive a trespass notice?

If an alleged trespasser wishes to contest a trespass notice, he must contact the agency in writing to explain why the trespass is in error. We have used 100 trespass violations as the baseline for the computation of burden hours and an estimated ½ hour to complete a letter of explanation to the agency.

Burden hours = 100 notices of trespass × ½ hour to respond = 500 total burden hours and a cost of $5,000 to the public.

Section 166.809 What happens after my unauthorized livestock or other property are impounded?

In those cases where livestock or other property have been impounded due to a trespass violation, the trespasser may redeem his property by providing proof of ownership. We estimate only 50 cases of impoundment per year and the requirement of showing proof of ownership to not exceed ¼ hour.

Burden hours = 50 impoundment cases × ¼ hour = 12.5 total burden hours and a cost of $125 to the public.

F. Review Under Executive Order 13132 Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. While this proposed rule will impact tribal governments, there is no Federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

G. Review Under the National Environmental Policy Act of 1969

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. This proposed rule will not result in the expenditure by the state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Department, however, has determined that because the proposed rulemaking will uniquely affect tribal governments it will follow Departmental and Administration protocols in consulting with tribal governments on the rulemaking. These consultations will be in keeping with the President's Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Consequently, tribal governments will be notified through this publication in the **Federal Register** and through the field offices of the BIA of the

ramifications of this rulemaking. This will enable tribal officials and the affected tribal constituency throughout Indian Country to have meaningful and timely input in the development of the final rule. This will reinforce good intergovernmental relations with tribal governments and better inform, educate, and advise such tribal governments on compliance requirements of the rulemaking.

List of Subjects

25 CFR Part 15

Estates, Indians-law.

25 CFR Part 114

Accounting, Indians = business and finance.

25 CFR Part 115

Administrative practice and procedure, Indians-business and finance.

25 CFR Part 162

Indians-lands.

25 CFR Part 166

Grazing lands, Indians-lands, Livestock.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR as follows:

PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

1. Part 15 is revised to read as follows:

Subpart A—Introduction

Sec.

15.1 What is the purpose of this part?
15.2 What terms do I need to know?
15.3 Will the Department probate all the property in Indian estates?
15.4 How does the probate process work?

Subpart B—Starting the Probate Process

15.101 How do I begin the BIA probate process?
15.102 May I notify the BIA of a death if I'm not related to the decedent?
15.103 Is there a deadline for notifying the BIA of a death?
15.104 Can I get assistance immediately for funeral expenses?
15.105 Do I need to give the BIA any other documents?
15.106 Will the BIA wait to begin the probate process until it is notified of the decedent's death?
15.107 Who prepares an Indian probate package?
15.108 If the decedent was not an enrolled member of a tribe, but own interests in trust or restricted property, what agency prepares the probate package?
15.109 Can I give up my interest in trust or restricted lands or trust funds if I am an heir?

Subpart C—Preparing the Probate Package

15.201 What will the BIA do with the documents that I provide?
15.202 What must the probate package contain?
15.203 What happens after the BIA prepares the probate package?
15.204 Is there a summary process for distributing a trust estate with cash assets?
15.205 Will I be notified where my probate is sent?
15.206 When will the BIA refer a probate to the OHA?

Subpart D—Claims and Distributions

15.301 What does the attorney decision-maker do with the probate package?
15.302 What happens if the decedent owes debts?
15.303 If the decedent owed me money, how do I file a claim?
15.304 When will I know if my claim will be paid?
15.305 Which claims will be paid first?
15.306 Can the attorney decision-maker reduce claims?
15.307 What if there is not enough money in the IIM account to pay all claims?
15.308 Will the BIA keep the estate open and use future income to pay claims?
15.309 Will the attorney decision-maker authorize payment of interest or penalties on claims?
15.310 Will the BIA file tax returns for the decedent or the estate?
15.311 When will the BIA send me a copy of the probate decision?
15.312 What happens after the decision is made?

Subpart E—Appeals

15.401 May I appeal the decision of the attorney decision-maker?
15.402 How do I file an appeal?
15.403 How long do I have to file an appeal?
15.404 What will happen to the estate if an appeal is filed?
15.405 If I miss the 60-day appeal period, do I have any other rights?

Subpart F—Information and Records

15.501 If I have a question about a probate case that has been assigned to an attorney decision-maker, may I contact the attorney decision-maker directly?
15.502 How can I find out the status of a probate?
15.503 What is a nationwide Indian probate tracking system?

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 588, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022, 25 U.S.C. 372, 373, 374, 373a, 373b. Cross reference: For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see Title 43, Code of Federal Regulations, Part 4, Subpart D; Funds of deceased Indians other than the Five Civilized Tribe see Title 25 Code of Federal Regulations, Part 115.

Subpart A—Introduction

§ 15.1 What is the purpose of this part?

This part contains the procedures that the Secretary follows to probate the trust estate of a deceased individual Indian who owned trust or restricted property. This part tells you how to file the necessary documents to probate the trust estate.

§ 15.2 What terms do I need to know?

ALJ—Means an administrative law judge or other employee of the Department of the Interior's Office of Hearings and Appeals (OHA) upon whom authority has been conferred by the Secretary to conduct hearings in accordance with 43 CFR part 4 subpart D.

BIA—Means the Bureau of Indian Affairs within the Department of the Interior.

IIM account—Means Individual Indian Money Account.

LTRO—Means the Land Titles and Records Office within the BIA.

OHA—Means the Hearings Division, Office of Hearings and Appeals, Department of the Interior.

Agency—Means the agency or any other designated office in the BIA having jurisdiction over trust or restricted property and money. This term also means any office of a tribe which has contracted or compacted the probate function.

Attorney decision-maker—Means an attorney with the BIA who reviews a probate package, determines heirs and beneficiaries, determines creditors claims, and issues a written decision based on the record.

Beneficiary—Means any individual who receives trust or restricted property or money in a decedent's will.

Day—Means a calendar day.

Deciding official means the official with the delegated authority to make a decision on a probate matter, and may include a BIA regional director, agency superintendent, or field representative, an ALJ or other designated official.

Decision—Means a written document issued by the deciding official determining heirs and beneficiaries, approving creditors claims, and ordering distribution of property and money.

Form OHA–7—Means a form issued by the OHA which lists data for heirship and family history, and provides information on any wills, trust and restricted property, adoptions, names and addresses of all interested persons.

Heir—Means any individual who receives trust or restricted property or

money from a decedent by operation of law.

Interested person—Means any potential or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

Intestate—Means the decedent died without a will.

Minor—Means an individual that has not reached the age of majority as defined by the applicable tribal or state law.

Probate—Means the legal process by which applicable tribal or State laws affecting the distribution of property is applied to:

(1) Determine the heirs and beneficiaries of a decedent's trust and restricted real property; and

(2) Transfer any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

Probate specialist—Means a BIA or tribal paralegal trained in Indian probate law.

Secretary—Means the Secretary of the Interior or an authorized representative.

Superintendent or Field Representative—Means an authorized representative of the Secretary of the Interior who is the officer in charge of a BIA agency or field office.

Vendor or Creditor—Means any individual or company who submits a claim for payment from a decedent's estate.

We—Means either an official of the BIA or a tribe performing probate functions under a BIA contract or compact.

Will—Means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

You/I—Means an interested person, as defined herein, with an interest in the decedent's estate unless a specific section says otherwise.

§ 15.3 Will the Department probate all the property in Indian estates?

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

(1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;

(2) Restricted property derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma; and

(3) Trust or restricted interests derived from allotments made to Osage Indians in Oklahoma and Osage headright interests.

(c) We will probate trust or restricted property in the estates of members of the Five Civilized Tribes or Osage Indians when that trust or restricted property is derived from other tribal allotments.

§ 15.4 How does the probate process work?

The basic steps of the probate process are:

(a) We find out about a person's death (see subpart B of this part for details);

(b) We prepare a probate package which includes documents that you send us (see subpart C of this part for details);

(c) We refer the completed probate package to a deciding official in BIA or OHA (see subpart D of this part for details);

(d) The deciding official decides how to distribute the property (see subparts D and E of this part for details).

Subpart B—Starting the Probate Process

§ 15.101 How do I begin the BIA probate process?

To begin the probate process, as soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled. You must provide a copy of the death certificate, if one exists. If a death certificate does not exist, you may provide one or more of the following:

(a) A copy of the obituary notice from a local newspaper;

(b) An affidavit of death prepared by someone who knows about the decedent; or

(c) Any other document that we accept that verifies the death, such as a church record or a court record.

§ 15.102 May I notify the BIA of a death if I'm not related to the decedent?

You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested person.

§ 15.103 Is there a deadline for notifying the BIA of a death?

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

§ 15.104 Can I get assistance immediately for funeral services?

If you are responsible for making the funeral arrangements of a decedent who had an IIM account and have an immediate need to pay for funeral arrangements prior to burial, you may make a request to the agency for up to $1,000 from the decedent's IIM account if the decedent's IIM account has more than $2,500 in the account at the date of death. The agency may approve reasonable costs for this purpose. We will not pay this money directly to you; we will only pay the persons who provide the funeral services. To apply for this assistance you must submit the following to us:

(a) An original itemized receipt, contract or statement for each service; and

(b) An affidavit signed by the vendor or provider stating that the service rendered is necessary for tribal burial services.

§ 15.105 Do I need to give the BIA any other documents?

(a) You must provide us with the following documents and information before we can begin to process the probate package.

(1) Social Security number of the decedent;

(2) The birth certificate or other record of birth;

(3) All death records including those listed in § 15.101;

(4) A list of known creditors and their addresses;

(5) Current names and addresses of potential heirs and beneficiaries;

(6) Any statements renouncing an interest in the estate;

(7) All marriage licenses of the decedent;

(8) All divorce decrees of the decedent;

(9) Adoption and guardianship records;

(10) All original or certified copies of wills and codicils;

(11) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity; and

(12) Additional documents that we request.

(b) You must inform us if any of the documents or information identified in these regulations are not available.

§ 15.106 Will the BIA wait to begin the probate process until it is notified of the decedent's death?

No. We may find out about the death of a person without being notified by an interested person. If we do, and if the decedent meets the criteria in § 15.3, we will initiate the process without notification. You should not assume that we will find out about a death. It is still your responsibility to notify us as required by § 15.101.

§ 15.107 Who prepares an Indian probate package?

The probate specialist or probate clerk at the agency or tribe where the decedent is an enrolled member will prepare the probate package.

§ 15.108 If the decedent was not an enrolled member of a tribe, but owns interests in trust or restricted property, what agency prepares the probate package?

If the decedent was not an enrolled member of a tribe, but owns interests in trust or restricted property, the agency that has jurisdiction over the trust property of the decedent, or the greater amount of trust property will prepare the probate package.

§ 15.109 Can I give up my interest in trust or restricted lands or trust funds if I believe am an heir?

(a) If you are a non-Indian, you may give up all or part of your interest by submitting a notarized statement in which you renounce your interest in the estate. You must send the statement to the probate specialist at the agency preparing the probate.

(b) If you are an Indian and you wish to give up all or part of your interest, we must refer your request to OHA in accordance with 43 CFR part 4, subpart D.

(c) You must file your statement renouncing your interest with the OHA or the probate specialist before the deciding official issues an order.

Subpart C—Preparing the Probate Package

§ 15.201 What will the BIA do with the documents that I provide?

Once we receive the documents that you provide us under § 15.105, the probate specialist or probate clerk will:

(a) Use the documents to prepare a probate package; and

(b) Consult with you and any other sources to obtain any additional information needed for a complete package.

§ 15.202 What must the probate package contain?

The probate package must contain all of the following:

(a) A copy of the death certificate, if one exists, or some other reliable evidence of death as required by § 15.101;

(b) A completed Form OHA–7, "Data for Heirship Findings and Family History," certified by the superintendent;

(c) A certified inventory of trust or restricted real property including a description of any income generating activity that may produce income during the probate process;

(d) A copy of the decedent's IIM account ledger showing:

(1) The balance of the account at date of death;

(2) The balance of the account at date of probate package submission; and

(3) An IIM account history for five (5) years previous to the date of death;

(e) All original wills, codicils and any revocations of wills or codicils. We will accept copies if original wills, codicils or any revocations of wills or codicils are unavailable;

(f) All statements renouncing interest;

(g) All documentation of payment of claims paid prior to probate hearing;

(h) Claims of creditors;

(i) Other supporting documents, such as marriage license, divorce decrees, birth certificate, adoption decrees, guardianship decrees, any affidavits (which may include paternity, maternity issues, or adoptions);

(j) Tribal options to purchase interests of a decedent; and

(k) Any other information that may be required at the time of proceedings.

§ 15.203 What happens after the BIA prepares the probate package?

Within 120 days after we receive all the documents required by § 15.105 and after all the probate documents listed in § 15.202 are received, a probate specialist will review the probate package and refer it to the superintendent, attorney decision-maker or the appropriate ALJ in the OHA in accordance with §§ 15.204 and 15.206.

§ 15.204 Is there a summary process for distributing a trust estate with cash assets?

(a) Yes, when an Indian dies intestate, leaving in a trust estate only trust personal property or cash of a value less than $5,000, not including any interest that may have accrued after the death of the decedent, the superintendent or the attorney decision-maker will review the probate package, identify the legal heirs and determine the proper distribution of the trust estate.

(b) Within 20 days after receipt of notice under § 15.205, the apparent heirs may request that an ALJ assume jurisdiction and hold a hearing to determine the proper distribution of the trust estate.

(c) Within 60 days after determining the proper distribution of the trust estate, the superintendent or attorney decision-maker will prepare and distribute to the interested persons a memorandum showing the date of the decedent's death and the value and distribution of the trust estate, or refer the probate to an ALJ.

(d) In the disposition of the trust estate, the superintendent or the attorney decision-maker will:

(1) Order the payment of creditors' claims as provided in §§ 15.302–307; and

(2) Order the balance of the trust estate remaining after payment of claims, if any, to be transferred to the legal heirs of the decedent.

(e) Interested persons may appeal a summary distribution determination in accordance with subpart E of this part or 25 CFR part 2.

§ 15.205 Will I be notified where the probate is sent?

Yes, the BIA will notify you and post notice of the designated office where the probate has been sent.

(a) After the probate specialist has forwarded the probate package under paragraph (a) of this section, we will notify you where we have sent the probate package:

If we send the probate to	We will send you	And
(1) A superintendent or attorney decision-maker under § 15.204.	A letter that gives you 20 days to tell us if you want the probate package sent to the OHA for a hearing.	If we don't hear from you within the 20 days, we will have the superintendent or the attorney decision-maker process the probate package based on the documents in the probate package.
(2) An attorney decision-maker.	A letter that gives you 20 days to tell us if you want the probate package sent to the OHA for a hearing.	If we don't hear from you within the 20 days, we will have the attorney decision-maker process the probate package based on the documents in the probate package.

If we send the probate to	We will send you	And
(3) The OHA	A notification that we are sending the probate to the OHA for a hearing.	We will notify the potential heirs that they may ask the OHA for an in-person hearing at a site convenient to most of the parties, a video conference or teleconference hearing (if available), or a decision based on documents in the probate package.

(b) We will post notice identifying the designated office that has been assigned the probate package. We will post the notice for at least 20 days in five or more conspicuous places in the vicinity of the designated office.

§ 15.206 When will the BIA refer a probate to the OHA?

We will refer a probate to the OHA under § 15.204(b) if the probate specialist decides that a referral is appropriate. In deciding whether to refer a probate to the OHA, the probate specialist will consider all of the criteria listed below. The probate specialist will refer a case to the OHA based upon the following criteria:

(a) *Problems with the will.* The probate specialist will refer the case to the OHA if the will:

(1) Is likely to be contested;

(2) Is complex or ambiguous; or

(3) Is of questionable validity.

(b) *Contested claims.* The probate will be referred to the OHA if you:

(1) Contest a creditor claim; or

(2) Contest a claim made by a family member.

(c) *Other problems.* The probate will be referred to the OHA if:

(1) There are substantial questions about family relationships;

(2) There is a conflict in prior probates;

(3) There are problems with the evidence;

(4) The adoption of an heir is questionable;

(5) You are seeking a presumption of death;

(6) There are minor heirs whose rights may be jeopardized; or

(7) The case involves determinations of escheat under 43 CFR 4.205.

Subpart D—Claims and Distributions

§ 15.301 What does the attorney decision-maker do with the probate package?

The attorney decision-maker reviews the probate package and determines whether the issues of fact or law of the case indicate that the probate package should be referred to the OHA. If the probate package is not referred to the OHA, the attorney decision-maker will:

(a) Determine validity of the will and any codicils;

(b) Determine intestate heirs;

(c) Determine beneficiaries in self-proved wills;

(d) Approve claims according to §§ 15.302 through 15.310; and

(e) Issue a written decision.

§ 15.302 What happens if the decedent owes debts?

The attorney decision-maker may order payment of some or all of the debts of the decedent.

§ 15.303 If the decedent owed me money, how do I file a claim?

If you wish to make a claim against the estate of a decedent, you must submit to us an original and two copies of an itemized statement of the debt showing the amount of the original debt and the remaining balance on the date of the decedent's death as soon as possible. We must receive your claim within 60 days from the date of death to be included as part of the probate file.

§ 15.304 When will I know if my claim will be paid?

The attorney decision-maker may direct the payment of some or all of the debts of the decedent after reviewing the probate package. No claim prohibited by 43 CFR part 4, subpart D will be paid. The order to pay claims will be included in the attorney decision-maker's final decision.

§ 15.305 Which claims will be paid first?

The first claims to be paid, referred to as priority claims, are listed in paragraphs (a) through (d) of this section. Following payment of the priority claims, the attorney decision-maker will authorize all remaining claims, referred to as general claims. Priority claims that will be paid first are:

(a) Funeral expenses (including the cemetery marker);

(b) Medical expenses for the last illness; and

(c) Nursing home or other care facility expenses.

(d) A claim of the United States Government.

§ 15.306 Can the attorney decision-maker reduce claims?

The attorney decision-maker has the discretion to decide that part or all of an otherwise valid claim is unreasonable and reduce the claim to a reasonable amount.

(a) If a claim is reduced, the attorney decision-maker will authorize payment only of the reduced amount.

(b) The attorney decision-maker may reduce both priority claims and general claims.

§ 15.307 What if there is not enough money in the IIM account to pay all claims?

If there is not enough money in the IIM account to pay all claims, the attorney decision-maker will authorize payment of the priority claims first. If there is not enough in the IIM account to pay the priority claims, the attorney decision-maker will authorize payment of the priority claims on a pro rata basis.

§ 15.308 Will the BIA keep the estate open and use future income to pay claims?

(a) The attorney decision-maker will review the history of the IIM account and may order the estate to remain open under the following conditions:

If within * * *	The account can generate * * *	Then * * *
(1) 5 years	Enough money to pay at least 20 percent of the priority claims.	The attorney decision-maker may order the estate to remain open for up to 5 years to pay priority claims in accordance with §§ 15.305–15.307.
(2) 3 years	Enough money to pay all of the priority claims and at least 20 percent of the general claims.	The attorney decision-maker may order the estate to remain open for up to 3 years to pay general claims in accordance with §§ 15.305–15.307.

(b) If the attorney decision-maker decides that the IIM account cannot meet the requirements in paragraph (a)(1) of this section, the estate will be closed and any remaining balance in the IIM account will be distributed to the legal heirs. The unpaid balance of any claims will not be enforceable against the estate or any of its assets.

§ 15.309 Will the attorney decision-maker authorize payment of interest or penalties on claims?

No. The attorney decision-maker will not authorize payment of interest or penalties charged after date of death as part of either priority claims or general claims.

§ 15.310 Will the BIA file tax returns for the decedent or the estate?

No. It is the responsibility of the administrator of the estate to file any federal or state tax returns that may be required on behalf of the decedent or the estate.

§ 15.311 When will the BIA send me a copy of the probate decision?

Within 30 working days after the attorney decision-maker has determined how the estate will be distributed, we will send all interested persons a written decision that identifies the heirs and the distribution of the trust and restricted property, including funds in the IIM account. It will also list the amounts of the claims to be paid. The decision will state what date it is mailed and how you may file an appeal.

§ 15.312 What happens after the decision is made?

We will not pay claims or transfer property or money for 60 days after the decision is mailed to the interested persons. After 60 days, if there is no appeal, we will pay claims, transfer property or money according to the decision, and the LTRO will change its land title records for the trust and restricted property in accordance with the decision.

Subpart E—Appeals

§ 15.401 May I appeal the decision of the attorney decision-maker?

You have a right to appeal the decision made by the attorney decision-maker if you are an interested party and are affected by the probate decision.

§ 15.402 How do I file an appeal?

(a) To file an appeal, you may send or deliver a signed, written statement to the superintendent or field representative of the agency where the probate package was assembled that contains:

(1) The name of the decedent;

(2) A description of your relationship to the decedent:

(3) An explanation of why you are appealing; and

(4) Any errors you believe the attorney decision-maker made.

(b) The superintendent or field representative will notify all other interested parties of the appeal in writing within ten working days from date of receipt of the appeal.

§ 15.403 How long do I have to file an appeal?

You must send or deliver your written appeal within 60 days of the date that the attorney decision-maker mailed his decision to you. If you mail your appeal, it must be postmarked within 60 days of the date of the postmark of the decision.

§ 15.404 What will happen to the estate if an appeal is filed?

We will refer your appeal to the OHA in accordance with 43 CFR Part 4, Subpart D. We will not pay claims or distribute any funds or property, nor will the LTRO modify the land title records until the appeal has been resolved.

§ 15.405 If I miss the 60-day appeal period, do I have any other rights?

(a) Yes. You have a right to file a written statement with the superintendent or field representative asking to have the decision changed for one or more of the following reasons:

(1) You did not receive notice of the probate;

(2) You have new evidence or information pertaining to the probate; or

(3) Known evidence was not included in the probate package.

(b) After we receive your request, we will forward it to the OHA for action in accordance with 43 CFR Part 4, Subpart D. After a request has been filed, we will not distribute any funds or property in the estate until directed by the OHA.

Subpart F—Information and Records

§ 15.501 If I have a question about a probate that has been assigned to an attorney decision-maker, may I contact the attorney decision-maker directly?

No. In order to avoid communications with the attorney decision-maker that might be interpreted as affecting the distribution of the estate, you should direct your questions to the attorney decision-maker's clerk or the probate specialist.

§ 15.502 How can I find out the status of a probate?

You may request information about the status of an Indian probate from any BIA agency or regional office. Information will be retrieved for you from a nationwide Indian probate tracking system.

§ 15.503 What is a nationwide Indian probate tracking system?

A nationwide Indian probate tracking system is an electronic computer program that tracks all Indian probate proceedings that have been filed in BIA or OHA offices.

PART 114—SPECIAL DEPOSITS—[REMOVED AND RESERVED]

2. Under authority of 25 U.S.C. 2, 25 U.S.C. 9; Pub. L. 97–100; and Pub. L. 97–257 part 114 is removed and reserved.

PART 115—TRUST FUNDS FOR TRIBES AND INDIVIDUAL INDIANS

3. Part 115 is revised to read as follows:

Subpart A—Purpose, Definitions, and Public Information

Sec.
115.1 What is the purpose of this part?
115.2 What definitions do I need to know?

Subpart B—Trust Fund Accounts—Generally

115.100 Why is money held in trust for tribes and individual Indians?
115.101 What types of accounts are maintained for Indian trust funds?
115.102 What specific sources of money will OTFM accept for deposit into a trust fund account?

Frequently Asked Questions

115.103 If a tribe or individual Indian is paid directly under a lease, permit or contract of sale for trus' land or trust resources, may the Secretary accept those payments from an account holder for deposit into a trust account?
115.104 If a direct payment for the use or sale of trust lands or resources is returned to the payor as undeliverable, may the payor present the payment to the BIA for deposit into a trust account?
115.105 If a tribe operates a business located on trust or restricted land, may the Secretary accept for deposit into a trust account profits from the business?
115.106 May the Secretary accept for deposit into a trust account money not specified in § 115.102?
115.107 May the Secretary accept for deposit in a trust account money awarded or assessed by a court of competent jurisdiction?
115.108 When funds are awarded or assessed by a court of competent jurisdiction involving trust lands or resources, what documentation is required to deposit the funds into a trust account?
115.109 Will the Secretary accept administrative fees for deposit into a trust account?
115.110 How quickly will payments received on behalf of tribes or individual Indians be deposited?

Investments and Interest

115.111 Does money in a trust account earn interest?
115.112 How does the OTFM invest money in a trust account?
115.113 What is the interest rate earned on money in a trust account?
115.114 When does money in a trust account start earning interest?

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115.201 How often will a tribe receive information about its trust account(s)?
115.202 May a tribe make a request to receive information about its account more frequently?
115.203 What information will be provided in a statement of performance?
115.204 Will an annual audit be conducted on tribal accounts?
115.205 Does a tribe have to submit an annual budget for use of its trust funds?
115.206 When a tribe is required to complete a budget for use of its trust funds, must the tribe submit the budget to the BIA for approval?
115.207 Does a tribe have any flexibility to modify its budget after the budget has been approved by the BIA?
115.208 Is a tribe responsible for expenditures that do not comply with an approved budget for those trust funds?
115.209 What will the OTFM consider in deciding how to meet a tribe's projected cash flow needs?
115.210 How will the BIA assist in the administration of tribal judgment fund accounts?
115.211 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for the particular purpose or project?

Recovering Unclaimed Judgment Funds

115.212 What happens if a tribal member does not cash his or her judgment per capita check?
115.213 What steps will the OTFM take to locate an individual whose judgment per capita check is returned as undeliverable?
115.214 May the OTFM return money in a tribal per capita account to a tribal account?

Investing and Managing Money in Tribal Accounts

115.215 Can tribal trust fund investments made by the Department lose money?
115.216 May a tribe recommend how the OTFM invests the tribe's trust funds?
115.217 May a tribe directly invest and manage its trust funds?
115.218 May a tribe return funds to the OTFM that were previously withdrawn under the Trust Reform Act for investment by the tribe?

Requesting Money From Tribal Accounts

115.219 How does a tribe request money from its trust account?
115.220 May a tribe's request for a withdrawal of money from its trust account be delayed or denied?
115.221 How does the OTFM send money to a tribe?

Subpart D—Individual Indian Money (IIM) Accounts

General Provisions

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115.301 How many IIM accounts should a person have?
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Information About Your IIM Account

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115.304 What information will be provided in a statement of performance?
115.305 Will an annual audit be conducted on IIM accounts?
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115.307 Who has access to information about my account?
115.308 If I apply for a loan with a private lender, will the OTFM give the lender information about my account?
115.309 What information about an IIM account does the OTFM report to the Internal Revenue Service (IRS)?
115.310 How will I know how much income OTFM reported to the IRS?
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115.358 What must be in a distribution plan?
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Authority: R.S. 441, as amended, R.S. 468, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 43 U.S.C. 1457; 25 U.S.C. 4001; 25 U.S.C. 161(a); 25 U.S.C. 162a; 25 U.S.C. 164; Pub. L. 87–283; Pub. L. 97–100; Pub. L. 97–257; Pub. L. 103–412; and Pub. L. 97–458.

Subpart A—Purpose, Definitions, and Public Information

§ 115.1 What is the purpose of this part?

This part sets forth guidelines for the Secretary of the Interior to carry out his trust responsibility to tribes and individual Indians in managing and administering trust assets for the exclusive benefit of tribal and individual Indian beneficiaries.

§ 115.2 What definitions do I need to know?

Account holder means a tribe or a person who owns the funds in a tribal or IIM account.

Account means a record of trust funds owned by a tribe or a person.

Adult means someone who has reached the age of majority.

Adult in need of financial management assistance means an individual who is adjudicated by a court of competent jurisdiction to be in need of financial management assistance, as determined by a psychological or medical assessment that deems the individual incapable of administering or managing property or money and incapable of performing day-to-day living activities.

Assignment of income means a transfer of interest for a specific amount of funds in or the total contractual amounts due to be paid into an IIM account within 12 months of the assignment to a third party for a health care emergency. BIA will not be a party to any assignment of income.

Assignment of income as security means a transfer of interest for a specific amount of funds in or owed to an IIM account from future IIM income to a third party that is used as collateral for a loan. The assignment of income as security will only be acted upon in the event of default on the loan. The third party must present the assignment to a court of competent jurisdiction to perfect an interest in an IIM account unless the loan being secured is guaranteed under the Indian Finance Act.

BIA means the Bureau of Indian Affairs, Department of the Interior, or its authorized representative.

Cash bond, cash performance bond, surety bond means a bond for a sum of money to secure an action by the issuer of the bond up to the amount of the bond in the event of a default.

Court of competent jurisdiction means a court with jurisdiction over the subject matter, usually a tribal or federal court.

Day means a calendar day.

Department means the Department of the Interior or its authorized representative.

Deposits means receiving funds into a treasury general account normally through a Federal Reserve Bank.

Emancipated minor means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself and to enter into a contract on his or her own behalf.

Encumber or encumbrance means a limitation on the access to assets held by the Secretary, such as a claim against a specified amount of funds in an IIM encumbered account.

Encumbered account means a trust fund account where some portion of the proceeds are obligated to third parties by court order or voluntary contractual agreements that have been approved by the BIA.

Estate account means an account for a deceased IIM account holder. IIM accounts are classified as estate accounts at the time we receive notification of death and are maintained until the trust estate has been probated and the account balance has been distributed.

FOIA means the Freedom of Information Act, 5 U.S.C. 552.

Guardian means a person who is legally responsible for the care and management of an individual and his or her estate. This definition includes, but is not limited to, conservator or guardian of the property.

Guardian bond means a type of surety bond posted by a guardian. In the event of a finding by a court of competent jurisdiction that there was mismanagement, malfeasance or theft by the guardian, the bond will be turned over to the account holder proportionally to the amount of damage.

Indian land means:

(1) Lands held by the United States in trust for a tribe or an individual Indian; or

(2) Lands legally owned in fee simple by a tribe or an individual Indian that are subject to federal restrictions against alienation or encumbrance.

Indian resources means any matter derived from Indian land which when extracted or used has economic value.

Individual Indian Money (IIM) account means an interest bearing account for trust funds held by the Secretary that belongs to an individual Indian, an heir of an Indian account holder, or a life estate holder of Indian trust assets. These accounts are under the control and management of the Secretary. There are four categories of IIM accounts: unrestricted, restricted-supervised, restricted-encumbered, and restricted estate accounts.

IRS means the Internal Revenue Service.

Judgment funds means funds awarded by the Indian Claims Commission or the United States Court of Federal Claims, and authorized and appropriated by the Congress of the United States to be used or distributed based on a plan approved by Congress.

Judgment per capita means a distribution of funds among persons identified in the settlement or use and distribution plan.

Judgment per capita IIM account means an IIM account established for a judgment per capita for minors.

Legislative settlement means monetary compensation appropriated by the US Congress as trust funds.

MSW means a Master of Social Work degree from an accredited college or university.

Minor means a person who has not reached the age of 18, unless a Federal law, a judgment settlement, or a use and distribution plan specifies a different age for distribution of IIM funds.

Non-compos mentis means an individual who has been found by a court of competent jurisdiction, based on established criteria that includes a psychological or medical evaluation, to be of unsound mind or incapable of transacting or conducting business and managing his or her own affairs.

OST means the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

OTFM means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Perfect means to present documentation to a neutral party (i.e., the BIA or a court of competent jurisdiction) proving an interest in an IIM account based on an assignment of income or an assignment of income as security.

Per capita means a distribution process under which persons entitled to funds receive a share.

Power of attorney means an instrument authorizing a person to act as the agent of another. The power may be general or specific.

Privacy Act means the Federal Privacy Act, 5 U.S.C. 552a.

Probate means the process by which claims against an Indian estate are heard and considered, and then the trust and restricted property are transferred to the decedent's heirs, or other persons or entities entitled by law.

Resolution means the formal manner in which a tribal government expresses its legislative will.

Restricted lands means land that a tribe or individual Indian holds in fee simple title that is subject to limitations or restrictions against alienation.

Secretary means the Secretary of the Interior or an authorized representative; it also means a tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. 450f) or a Self-Governance compact (pursuant to 25 U.S.C. 558cc).

Special deposit account means a temporary account for the deposit of trust funds that cannot immediately be credited to the rightful account holder.

Statement of performance means a quarterly report that identifies the source, type, and status of the funds; the beginning balance; the gains and losses; receipts and disbursements; and the ending balance.

Supervised account means an account for minors, emancipated minors, and adults who have been judged to be non-compos mentis or in need of financial management assistance from which disbursements must be approved by the BIA.

Surety bond means a contract by which one party agrees to make good up to the amount specified the default or debt of another.

Tribal account or tribal trust account generally means an account for a federally recognized tribe that is held in trust by the Secretary.

Tribal per capita account means a tribal account for judgment fund checks that have been returned to the Secretary as undeliverable to the account holder or where the judgment fund checks were not cashed by the account holder within 12 months of issuance of the check.

Tribe means any Indian tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act which is federally recognized by the U.S. government for special programs and services provided by the Secretary to Indians because of their status as Indians. For this purpose, it also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary.

Trust account means a tribal account, an IIM account or a special deposit account for funds held in trust.

Trust funds means money that the Secretary must accept into trust and deposits into a tribal account, IIM account, or a special deposit account.

Trust personalty means money in an IIM account or owed to a decedent's IIM account at time of death.

Trust Reform Act means the American Indian Trust Fund Management Reform Act of 1994, Pub.L. 103–412, 108 Stat. 4239, 25 U.S.C. 4001.

Unrestricted account means an IIM account in which an individual Indian may determine the timing and amount of disbursements from the account.

Us or *We* means the Secretary as defined in this part.

Use and distribution plan means a document submitted to Congress by the Secretary on behalf of a tribe or enacted by Congress for the use of judgment funds or legislative document.

Voluntary hold means a request by an individual with an unrestricted account to keep his or her trust funds in a trust account instead of having the funds automatically disbursed to the account holder.

You means an IIM account holder, or his or her legal guardian.

Subpart B—Trust Fund Accounts—Generally

§ 115.100 Why is money held in trust for tribes and individual Indians?

Congress has passed a number of laws that require the Secretary to establish trust fund accounts for Indian tribes and certain individual Indians who have an interest in Indian lands and resources or trust assets.

§ 115.101 What types of accounts are maintained for Indian trust funds?

Indian trust funds are deposited in tribal accounts, Individual Indian Money (IIM) accounts, and special deposit accounts. The following table provides information on each of these trust accounts.

Type of trust account	Qualified by	Qualified by	Description
Individual Indian Money (IIM) Account.	Unrestricted IIM	.....	There are no restrictions on these accounts. Funds may be left on deposit, or paid to the account holder based upon instructions by the account holder
	Restricted IIM	Supervised	These accounts are established for: • Minors, • Emancipated minors, • Adults who are non-compos mentis, and • Adults in need of financial management assistance. Funds from these accounts can be withdrawn only in compliance with an approved distribution plan.
		Encumbered	A restriction is placed on the account until money owed to a third party is paid pursuant to a payment plan. An encumbrance can be placed on an account involuntarily by the BIA. The account holder may withdraw any money above the amount owed to the third party.
		Estate Account	An account for a deceased IIM account holder.
Tribal account	.....	.....	An account for trust funds that belong to a tribe.
Special Deposit account	.....	.....	An account for the temporary deposit of trust funds that cannot be distributed immediately to its rightful owners.

§ 115.102 What specific sources of money will be accepted for deposit into a trust fund account?

For tribal or IIM accounts, OTFM must accept proceeds on behalf of tribes or individual Indians from any of the following sources:

Sources	Accounts			
	Tribal	Individual Indian money		
		Unrestricted	Restricted supervised	Restricted encumbered
(a) Payments from the United States as a Result of—				
(1) Federal laws requiring deposits in trust accounts	✔	✔	✔	✔
(2) Settlement of a claim related to Indian lands or resources that requires the trust funds to be deposited in trust accounts	✔	✔	✔	✔
(3) A final order from a United States court for a cause of action directly related to trust resources or assets requiring funds to be deposited in trust accounts	✔	✔	✔	✔
(4) Unspent forestry funds specifically appropriated as trust funds to the BIA	✔			
(5) Certain Federal assistance payments, such as VA benefits, Social Security, or Supplemental Security Income, *but only* if the account holder has a supervised account *and* the account holder does not have a legal guardian other than the BIA			✔	
(b) Payments resulting from—				
(1) Purchase or use of Indian lands or resources, including any late payment penalties, when paid directly to the Secretary	✔	✔	✔	✔
(2) Civil penalties for trespass on Indian lands	✔	✔	✔	✔
(3) Default or breach of the terms of a contract for the lease or purchase of Indian lands or resources arising from cash performance or surety bonds, or other source(s)	✔	✔	✔	✔
(c) Deposits from Indian Tribes—				
(1) Redeposit of tribal trust funds previously withdrawn under an investment plan submitted and approved pursuant to the American Indian Trust Fund Management Reform Act of 1994, Pub.L. 103–412, 108 Stat. 4239, 25 U.S.C. 4001 (Trust Reform Act)	✔			
(2) Tribal funds derived directly from trust resources	✔			
(3) Judgment funds legislation settlement withdrawn, but not spent, for a specific project. Documentation showing source of funds is required.				
(d) Other—				
(1) Interest earned on trust fund deposits	✔	✔	✔	✔
(2) Trust to trust transfers of trust funds from tribal accounts to existing IIM accounts of tribal members, or from IIM estate accounts to IIM accounts of heirs pursuant to probate orders		✔	✔	✔

Frequently Asked Questions

§ 115.103 If a tribe or individual Indian is paid directly under a lease, permit or contract of sale for trust land or trust resources, may the Secretary accept those payments from an account holder for deposit into a trust account?

No. Tribal and individual account holders should not forward direct payments they receive to the Secretary for deposit into a trust account. The BIA will return such direct payments to the account holders.

§ 115.104 If a direct payment for the use or sale of trust lands or resources is returned to the payor as undeliverable, may the payor present the payment to the BIA for deposit into a trust account?

Yes. The payor must submit proof of attempted delivery, including additional information that may assist OTFM in ensuring payment to the correct account.

§ 115.105 If a tribe operates a business located on trust or restricted land, may the Secretary accept for deposit into a trust account profits from the business?

The only funds that will be accepted into trust are those identified in § 115.102.

§ 115.106 May the Secretary accept for deposit into a trust account money not specified in § 115.102?

No funds will be accepted in trust except from the sources specifically identified in the table in § 115.102.

§ 115.107 May the Secretary accept for deposit in a trust account money awarded or assessed by a court of competent jurisdiction?

Money awarded or assessed by a court of competent jurisdiction for a violation that affects Indian lands or resources, an approved trust agreement, or a trust land contract may be deposited into a trust account. Other funds awarded by a court of competent jurisdiction may not be deposited into a trust account.

§ 115.108 When funds are awarded or assessed by a court of competent jurisdiction involving trust lands or resources, what documentation is required to deposit the funds into a trust account?

We must receive a copy of the court's order and the funds to be deposited.

§ 115.109 Will the Secretary accept administrative fees for deposit into a trust account?

No. Administrative fees are not trust funds. Tribal programs that assess administrative fees may not deposit those funds into a trust account. However, a tribe may deposit administrative fees into a non-interest bearing, non-trust tribal account with the BIA or in a private sector account in accordance with tribal policies.

§ 115.110 How quickly will payments received on behalf of tribes or individual Indians be deposited?

Generally, deposits will be made within twenty-four hours of the receipt of funds, or no later than the close of business on the next business day following the receipt of funds, in a designated federal depository.

Investments and Interest

§ 115.111 Does money in a trust account earn interest?

Yes. All money deposited in a trust account is invested and earns interest or yield returns, or both.

§ 115.112 How does the OTFM invest money in a trust account?

The OTFM's investment decisions regarding trust funds are governed by federal statute. See 25 U.S.C. 161(a) and 162a.

§ 115.113 What is the interest rate earned on money in a trust account?

The rate of interest changes based on how the money is invested and how those investments perform.

§ 115.114 When does money in a trust account start earning interest?

Funds must remain on deposit at least one business day before interest is earned to the account. Interest earnings of less than one cent are not credited to any account.

Subpart C—Tribal Accounts

§ 115.200 When does the OTFM open a tribal account?

A tribal account is opened when the OTFM receives income from the sources described in § 115.102.

§ 115.201 How often will a tribe receive information about its trust account(s)?

The OTFM will send each tribe a statement of performance every quarter, no later than 20 business days after the close of each calendar quarter. The calendar quarters end on March 31, June 30, September 30, and December 31.

§ 115.202 May a tribe make a request to receive information about its account more frequently?

Yes. A tribe may contact the OTFM at any time to:

(a) Request information about account transactions and balances;

(b) Make arrangements to access account information electronically; or

(c) Receive a monthly statement.

§ 115.203 What information will be provided in a statement of performance?

The statement of performance will identify the source, type, and status of the trust funds; the beginning balance; the gains and losses; receipts and disbursements; and the ending account balance.

§ 115.204 Will an annual audit be conducted on tribal accounts?

Each tribe will be notified when the Secretary has caused to be conducted an annual audit on a fiscal year basis of all the trust funds held by the United States for the benefit of tribes deposited or invested under 25 U.S.C. 162a. This notice will be provided in the first quarterly statement of performance following the audit.

§ 115.205 Does a tribe have to submit an annual budget for use of its trust funds?

(a) Tribes must submit annual budgets to the BIA for:

(1) Accounts with funds that have specific use and distribution plans;

(2) Forest land assistance accounts; and

(3) Other accounts, when required by federal law.

(b) If there is no federal law that requires a tribe to submit an annual budget, a tribe does not need to submit an annual budget. However, tribes are encouraged to voluntarily submit annual projected cash flow needs to the OTFM because the plans assist the OTFM in developing prudent investment strategies to meet the tribe's needs.

§ 115.206 When a tribe is required to complete a budget for use of its trust funds, must the tribe submit the budget to the BIA for approval?

Yes. If a tribe is required to develop a budget for the use of its trust funds, the budget must be submitted to the BIA for approval. The BIA will act on a budget request within thirty days. If BIA, after consultation with the OTFM, approves the budget, the BIA will forward the budget to the OTFM. If the budget is not approved, the BIA will return it to the tribe with an explanation of needed changes and will work with the tribe to obtain approval.

§ 115.207 Does a tribe have any flexibility to modify its budget after the budget has been approved by the BIA?

When the BIA, after consultation with the OTFM, approves the budget, the BIA will specify, by dollar or percentage, the amount allowable for transfer among the approved budget categories. If a tribe wishes to exceed the amount allowed for transfer, an amended budget must be submitted to the BIA for approval. The BIA will approve or disapprove the budget modification request within 30 days. If the budget is not approved, the BIA will return it to the tribe with an explanation.

§ 115.208 Is a tribe responsible for expenditures that do not comply with an approved budget for those trust funds?

Yes. If a tribe expends money for goods or services not within the approved budget, the Secretary may require the tribe to reimburse the trust fund account for those expenditures.

§ 115.209 What will the OTFM consider in deciding how to meet a tribe's projected cash flow needs?

The OTFM, in conjunction with tribal officials, will review:

(a) The balance of a tribe's trust funds;

(b) The date when a tribe needs specific funds; and

(c) Any requirements for the use and distribution of trust funds that were specified in congressional directives, court orders, court-approved settlements, settlement agreements, bond or loan payments, or use and distribution plans.

§ 115.210 How will the BIA assist in the administration of tribal judgment fund accounts?

(a) The BIA will provide technical assistance to a tribe in developing a judgment use and distribution plan if the tribe requests assistance or if Congress directs the BIA to provide that assistance.

(b) The BIA will review all tribal requests for distribution of tribal judgment money and certify to the OTFM that each request complies with any requirements associated with the use of that money found in congressional directives, court orders, court-approved settlements, settlement agreements, bond or loan payments, or use and distribution plans.

§ 115.211 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for the particular purpose or project?

(a) A tribe may redeposit funds not used for a particular purpose or project if the tribe can provide documentation showing the source of the funds and if the funds were withdrawn in accordance with:

(1) The terms of Trust Reform Act;

(2) The terms of the legislative settlement; or

(3) The terms of a judgment use and distribution plan.

(b) Funds withdrawn from a tribe's proceeds of labor account may not be returned to a trust account.

Recovering Unclaimed Judgment Funds

§ 115.212 What happens if a tribal member does not cash his or her judgment per capita check?

(a) If a tribal member does not cash his or her judgment per capita check within twelve months, the money will be deposited to a tribal per capita account where the funds will be held for the use of the tribal member or for disposition under § 115.214.

(b) If a tribal member's judgment per capita check is returned as undeliverable, the money is

immediately deposited into a tribal per capita account. Funds in a tribal per capita account are for the use of the tribal member or for disposition under § 115.214.

§ 115.213 What steps will the OTFM take to locate an individual whose judgment per capita check is returned as undeliverable?

The OTFM will notify a tribe of the judgment fund checks that have been returned as undeliverable and will take reasonable action, including utilizing electronic search tools, to locate the individual entitled to receive the judgment per capita funds after the funds are returned as undeliverable.

§ 115.214 May the OTFM return money in a tribal per capita account to a tribal account?

Yes. A tribe may apply under 25 U.S.C. 164 and Pub. L. 87–283, 75 Stat. 584 (1961), to have the unclaimed judgment per capita money returned to its account for the tribe's use after six years have passed.

Investing and Managing Money in Tribal Accounts

§ 115.215 Can tribal trust fund investments made by the Department lose money?

Yes, a tribal trust fund investment can vary depending on the investment and, including but not limited to, any one or more of the following:

(a) Current interest rates;

(b) Whether the investment is held to its maturity; and

(c) Original purchase price.

§ 115.216 May a tribe recommend how the OTFM invests the tribe's trust funds?

(a) Tribes may recommend certain investments to the OTFM, but the recommendations must be in accordance with the statutory requirements set forth in 25 U.S.C. 161a and 162a. The OTFM will make the final investment decision based on prudent investment practices.

(b) Upon request, the OTFM will consult with tribes at least annually to develop investment strategies to accommodate the cash flow needs of the tribe.

§ 115.217 May a tribe directly invest and manage its trust funds?

Yes, a tribe may apply to withdraw some or all of its trust funds from the OTFM for management by the tribe. The request for withdrawal of funds must be in accordance with the Trust Reform Act requirements in 25 CFR part 1200 subpart (B).

§ 115.218 May a tribe return funds to the OTFM that were previously withdrawn under the Trust Reform Act for investment by the tribe?

Yes, a tribe may return funds withdrawn under the Trust Reform Act to the OTFM, under the following conditions:

(a) A tribe wishing to return funds withdrawn under the Trust Reform Act must make its request in writing to the OTFM.

(b) A tribe may return all or part of the withdrawn funds to the OTFM.

(c) No funds may be redeposited during the first six months after withdrawal.

(d) Funds may only be returned a maximum of twice a year.

(e) The return of trust funds must be in accordance with the Trust Reform Act requirements in 25 CFR part 1200 subpart (C).

Requesting Money From Tribal Accounts

§ 115.219 How does a tribe request money from its trust account?

(a) Generally, before money may be withdrawn from a tribal trust account:

(1) A tribe must submit to the BIA or the OTFM:

(i) A written request signed by the proper authorizing officials, and

(ii) An approved tribal resolution, or

(2) A tribe may contact the OTFM to withdraw funds in accordance with the Trust Reform Act and 25 CFR part 1200.

(b) However, by law or regulation additional documentation or information may be required to withdraw certain trust funds. If additional documentation or information is required, OTFM will notify the tribe of the additional requirement(s).

(c) Upon receipt of all necessary documentation, the OTFM will process the request for disbursement and send the tribe the requested amount of money within one business day.

§ 115.220 May a tribe's request for a withdrawal of money from its trust account be delayed or denied?

(a) Action on a tribe's request for a withdrawal may be delayed or denied if:

(1) The tribe did not submit all the necessary documentation;

(2) The tribe's request is not signed by the proper authorizing officials;

(3) The tribe's request is in conflict with a settlement agreement or an approved use and distribution plan for the money they requested; or

(4) The BIA or the OTFM requires clarification regarding the disbursement request.

(b) If action on a tribe's request will be delayed or denied, the BIA or the OTFM will:

(1) Notify the tribe within 10 working days of the date of a request made under § 115.219(a)(1)–(2) or for requests under the Trust Reform Act, and

(2) Provide technical assistance to the tribe to address any problems.

§ 115.221 How does the OTFM send money to a tribe?

Whenever possible, funds will be sent electronically to a bank account designated by the tribe. If there are circumstances that preclude electronic payments, the OTFM will mail a check to an address specified by the tribe.

Subpart D—Individual Indian Money (IIM) Accounts

General Provisions

§ 115.300 What funds are held in an IIM account?

See § 115.102 for sources of trust funds that may be deposited into IIM accounts.

§ 115.301 How many IIM accounts should a person have?

A person should have only one IIM account unless the account holder is entitled to receive judgment funds in addition to other trust income.

§ 115.302 How long may I leave money in my IIM account?

You may leave your funds on deposit in an IIM account for as long as you choose. The only exception applies to non-Indian life estate holders. See § 115.339.

Information About Your IIM Account

§ 115.303 How do I obtain my IIM account balance?

We will send you a statement of performance every three months. If you need to know the balance of your account between statements, you may call any OTFM office or you may go in person to a BIA or OTFM office to request your current balance.

§ 115.304 What information will be provided in a statement of performance?

The statement of performance will identify the source, type, and status of the funds; the beginning balance; the gains and losses; receipts and disbursements; and the ending balance.

§ 115.305 Will an annual audit be conducted on IIM accounts?

Each IIM account holder will be notified when the Secretary has caused to be conducted an annual audit on a fiscal year basis of all trust funds held by the United States for the benefit of

individual Indians deposited or invested under 25 U.S.C. § 162a. This notice will be provided in the first quarterly statement of performance following the audit.

§ 115.306 When will I receive a statement of performance?

The Department will send each IIM account holder a statement of performance every quarter, not later than 20 business days after the close of a calendar quarter.

§ 115.307 Who has access to information about my account?

The only people who may obtain information about your account are:

(a) You;

(b) your guardian, if you have a supervised account;

(c) those DOI employees who are specifically authorized by the Secretary to access account information;

(d) any other federal or state agency or tribal program for which you have given a signed authorization;

(e) any third party to whom you have given a signed and notarized statement;

(f) any federal court that orders us to provide the information; and

(g) other parties permitted access under the Privacy Act.

§ 115.308 If I apply for a loan with a private lender, will the OTFM give the lender information about my account?

Yes, if you or the private lender provides the OTFM with a signed notarized authorization from you to release the information.

§ 115.309 What information about an IIM account does the OST report to the Internal Revenue Service (IRS)?

The OST will report annually to the IRS the account holder's name and address, tax identification number, taxable interest earned, and related earnings information on an IIM account.

§ 115.310 How will I know how much income is reported to the IRS?

The account holder will be mailed a copy of the IRS Form 1099 that was sent to the IRS.

§ 115.311 Who is responsible for filing tax returns on trust income which may be reportable income?

The following table lists the person responsible for filing taxes for each type of IIM account.

IIM account	Account holder	Tax filer
Unrestricted	All	Account holder.
Restricted—Supervised	non-compos mentis	Guardian, if there is one, otherwise the BIA may authorize the use of account funds to pay for the preparation and filing of your tax return.
	minor	Parent or guardian.
	emancipated minor	Account holder.
	adult in need of financial management assistance.	Guardian, if there is one, otherwise the BIA may authorize the use of account funds to pay for the preparation and filing of your tax return.
Restricted—Involuntary Encumbered.	All	Account holder.
Estate account	All	Administrator or Executor of the estate. If the BIA is administering the trust estate, then the BIA may authorize the use of account funds to pay for the preparation and filing for that portion of the trust estate.
Life estate		Account holder.

§ 115.312 If I apply for government-funded public assistance will my IIM account balance be considered in determining my eligibility?

You must contact the agency providing the assistance to determine whether your IIM funds will be considered in determining eligibility for service(s).

Moving and Changing Addresses

§ 115.313 If I move to a new address how will I receive money from my IIM account?

It is your responsibility to give the OTFM your new address so that the OTFM can mail your checks and other information about your account to you.

§ 115.314 How do I give the OTFM my new address?

You may give the OTFM or the BIA your new address:

(a) In person, but you must have your request for a change of address signed by a DOI employee to whom you have shown verifiable photo identification, See § 115.329, or

(b) Through the mail.

(1) If you mail us a change of address you must include:

(i) Your name,

(ii) Your old address,

(iii) Your new address, and

(iv) Your notarized signature.

(2) You may also provide any of the following information to assist us in verifying your account:

(i) Your account number,

(ii) Your birth date,

(iii) Your social security number,

(iv) Your tribal affiliation,

(v) Your tribal enrollment number (if applicable), and

(vi) Your phone number.

§ 115.315 If I move, will the post office forward my check to my new address?

No. Federal law does not allow the post office to forward checks that are issued by the federal government. You must provide us with a change of address so that your check can be sent directly to your new address.

§ 115.316 If I don't have a permanent address or I move frequently, may I receive money from my IIM account?

Yes. You may receive the money in your IIM account, but you must keep us updated on your current bank account information so that we can electronically deposit your funds or your most current address where we can send your checks.

Uncashed Checks and Stolen Checks

§ 115.317 How long do I have to cash my IIM check?

The check is good for one year from the date printed on the check. If you do not cash your IIM check within one year of the check being issued, the check will be canceled and the money will be redeposited into your IIM account.

§ 115.318 What should I do if I cannot cash my check because it is torn or damaged?

If your check is torn or damaged you must contact an OTFM office to request a replacement check.

§ 115.319 How long do I have to request a replacement check?

You have one year from the date the check was issued to request a replacement check.

§ 115.320 What happens if I lose my check or I do not receive my check because it was stolen?

If you lost your check or if your check was stolen, you must contact the OTFM to file a claim for the amount of the check and to request a stop payment on the check. See § 115.323.

§ 115.321 How long do I have to file a claim if my check was lost or stolen?

You have one year from the date on the check.

§ 115.322 What happens if I do not file a claim for my check within one year from the date on the check?

If you do not file a claim within one year of the date on the check, one of two things may happen:

(a) If the check has not been cashed within 12 months from the date on the check, the OTFM will re-deposit the money into your IIM account. If you have an unrestricted IIM account, a new check will be automatically sent after the funds have been credited to your account. If your account has a voluntary hold, the money will be credited to your account and will remain in the account until you make a request for withdrawal. If your account is restricted, the money will be credited to your account.

(b) If your check has been cashed by someone else, the money will not be redeposited into your IIM account and you will not be able to request a new check. You may contact the OTFM to request a copy of the canceled check. The OTFM may be able to provide assistance in contacting the proper investigatory officials regarding your check.

§ 115.323 Does the OTFM charge to stop payment on an IIM check?

No. The OTFM does not charge for this service.

§ 115.324 Who may authorize a stop payment on my IIM check?

Account holders and guardians of account holders and estate administrators may place a stop payment on an IIM check. However, if we send you a check in error, the OTFM may place a stop payment on that check. The OTFM will notify you if it places a stop payment on your check.

Depositing Money into an IIM Account

§ 115.325 May I deposit money into my IIM account?

No. You may not deposit money into your IIM account.

§ 115.326 May I redeposit IIM funds back into my trust account once I receive the money?

No. IIM funds cannot be redeposited once withdrawn.

§ 115.327 If a court orders that money be deposited into my IIM account, will the BIA or the OTFM honor the court order?

If the source of the money to be deposited is included in the chart in § 115.102, we will deposit the funds ordered by a court.

Withdrawing Money From an Unrestricted IIM Account

§ 115.328 How do I withdraw money from my IIM account?

(a) If you have an unrestricted IIM account, you may request a withdrawal from your account

(1) In person, but you must have your request for withdrawal signed by a DOI employee to whom you have shown verifiable photo identification, see § 115.329; or

(2) Through the mail, but your signature on your request must be notarized.

(b) You may request that the OTFM:

(1) Make a one time withdrawal for you;

(2) Automatically send you your total account balance when the account balance reaches a predetermined threshold amount; or

(3) Send you a specific amount of money from your account on specific dates.

§ 115.329 What is "verifiable photo identification"?

If you make a request in person, you must provide the BIA or the OTFM with one of the following types of photo identification:

(a) A valid driver's license;

(b) A government-issued identification card, such as a passport or a security badge; or

(c) A photo identification card issued by your tribe.

§ 115.330 What if I do not have any photo identification?

If you cannot show us verifiable identification with your picture on it, we will talk with you and review information in your file to see if we can be certain that you are who you say you are. If we cannot verify your identity, we will not accept your request to withdraw funds from an IIM account.

§ 115.331 Where should I mail my request for a withdrawal from my IIM account?

You may mail your request to your local OTFM office or to one of the regional offices that serves your current address. The address of your local OTFM office is printed on your quarterly statement of performance.

§ 115.332 How will the OTFM send me my money from my IIM account?

The OTFM will either:

(a) Make a direct deposit to your checking or savings account at a financial institution. A direct deposit into your checking or savings account will eliminate lost, stolen or damaged checks and the money will be available to you sooner as there is no mail time involved, or

(b) Mail you a check.

§ 115.333 May I authorize the OTFM to make payments directly to a third party on my behalf?

If your account balance will cover your payment authorization on the date payment is to be made, you may authorize the OTFM to make payments to third parties on your behalf. See § 115.374.

§ 115.334 Will the BIA ever withdraw money from my account without my authorization?

The BIA may withdraw money from your account only after a decision has been made to supervise or involuntarily encumber your IIM account. See subpart F of this part.

§ 115.335 May I always withdraw money from my IIM account?

(a) If you have a supervised account, you will not be able to withdraw money from your account without BIA approval. See § 115.348.

(b) If you have an encumbered account and the entire account balance is encumbered, you will not be able to withdraw any money from your account. See § 115.371 *et seq.*

§ 115.336 Will I receive notice when money is withdrawn from my IIM account?

All transactions regarding your account will be reflected on your quarterly statement of performance which you should review to ensure that you are aware of all disbursements. In addition, if the OTFM transfers funds electronically to your checking or savings account, we will mail a notice each time that a deposit has been made.

Estate Accounts

§ 115.337 Who inherits the money in an IIM account when an account holder dies?

At the end of all probate procedures, funds remaining in a decedent's IIM

account will be distributed or credited from the decedent's IIM account into an IIM account of the decedent's heirs, beneficiaries, or other persons or entities entitled by law to receive the funds. See 25 CFR Part 15.

§ 115.338 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?

If the IIM account has a minimum balance of $2,500.00, including any trust funds owed to the IIM account holder or estate on the date of death pursuant to sources of income in section 155.102, anyone responsible for making the funeral arrangements for the deceased account holder may make a written request to the BIA for funeral expenses up to $1,000.00. Payment will be made directly to the funeral service provider(s).

§ 115.339 If I am a non-Indian who has a life estate in income-producing trust or restricted property, how do I receive the income?

If a non-Indian has a life estate in trust or restricted property which is earning income, the OTFM will open an IIM-life estate account. The OTFM will deposit income from the trust or restricted property into the IIM-life estate account, and will send a check or directly deposit funds into a checking or savings account as soon as practicable after the receipt of the funds into the life estate account. Life estate funds are due to the life estate holder at the time funds are deposited.

Supervised Accounts

§ 115.340 Who receives statements of performance for supervised accounts?

If the account is for * * *	Then the OTFM will send the statement of performance to* * *
A minor	The parent or guardian.
An emancipated minor.	The account holder.
A non-compos mentis	The guardian.
An adult in need of financial management assistance.	The guardian.

§ 115.341 If an account is supervised does the account holder have to have a legal guardian?

If an account is supervised and the account holder is * * *	Then the account holder * * *
A minor	Must have a parent or other legal guardian.
An emancipated minor.	Is not required to have a guardian; however the account will be supervised.
Non-compos mentis	Must have a guardian.
An adult in need of financial management assistance.	Must have a guardian.

§ 115.342 Who appoints a legal guardian?

A legal guardian can only be appointed by a tribal court or a federal court, whichever has competent jurisdiction over the Indian individual.

§ 115.343 What are the qualifications for guardians who manage IIM accounts for individual account holders?

Qualifications	If the guardian is * * *	
	Related	Not related
Must not be a convicted felon	✔	✔
Must be over the age of 18	✔	✔
Must live near the account holder	✔	✔
Must complete guardianship training, when required	✔	✔
Must have no conflict of interest		✔
Must post a surety bond, if required		✔

§ 115.344 As a parent with custody of a minor or as a guardian of an account holder, what are my responsibilities?

If you are a parent with custody of a minor or a guardian of an individual with a supervised account, you must:

(a) Work with the BIA to develop and sign an annual distribution plan;

(b) Follow any applicable court order and the terms of an approved distribution plan;

(c) Provide receipts for all expenses paid out of the account holder's IIM funds to the BIA social services official;

(d) Review the statements of performance for the IIM account for errors;

(e) File tax returns on behalf of the account holder; and

(f) Notify the BIA social services of any change in circumstances that impairs your performance of your obligations under this part or that threatens the account holder's interest in his or her trust account.

§ 115.345 If I am a parent with custody of a minor or a guardian of an account holder, may BIA disburse funds without my knowledge?

No. The BIA will only disburse funds in accordance with an approved distribution plan and the BIA will consult with the guardian/parent to develop the distribution plan.

§ 115.346 Who receives a copy of an approved distribution plan and any amendments to the annual plan?

An annual distribution plan, once approved, will be made available to:

(a) The account holder;

(b) The parent with custody of a minor;

(c) The guardian of an account holder; and

(d) The BIA and the OTFM.

§ 115.347 What will we do if we find that a distribution plan has not been followed or a guardian or minor's custodial parent has acted improperly in regard to his or her duties involving the trust funds of an account holder?

If we find that a distribution plan has not been followed, or a guardian or minor's custodial parent has failed to satisfactorily account for expenses or has not used account funds for the primary benefit of the beneficiary, or has otherwise failed to properly execute the payee's duties, we will:

(a) Notify the guardian and the court which appointed the guardian; and

(b) Take action to protect the interests of the account holder, which may include

(1) Demanding repayment from any person improperly withdrawing or expending trust funds;

(2) Proceeding against any bond posted by the guardian;

(3) Immediately modifying the distribution plan for up to sixty days, including suspending the authority of a

guardian or minor's custodial parent to make further withdrawals; or

(4) Referring the matter for civil or criminal legal action.

§ 115.348 When will the BIA authorize a withdrawal from a supervised account?

The BIA may only authorize withdrawals from a supervised account in accordance with an approved distribution plan or an approved amendment to the distribution plan.

Supervised Accounts—Adults

§ 115.349 Will the BIA place an adult's account under supervision at the request of the account holder or other interested party?

No. We will not place an adult's account under supervision at the request of the account holder or an interested party without an order by a court of competent jurisdiction stating that the adult is *non compos mentis* or in need of financial management assistance. However, an account holder or interested party may request orally or in writing that the BIA conduct a social services assessment to determine whether the BIA should recommend guardianship proceedings to a court of competent jurisdiction for the account holder.

§ 115.350 What is a social service assessment?

A social service assessment is an evaluation of an account holder's circumstances and abilities, including the extent to which the account holder needs assistance in managing his or her affairs.

§ 115.351 What happens once the BIA receives an order from a court of competent jurisdiction?

The BIA will perform a social services assessment, if not already completed.

§ 115.352 Who is responsible for performing a social services assessment?

A BIA social worker will perform the assessment which must be approved by a BIA social worker who has a Master of Social Work degree.

§ 115.353 What information must be included in a social services assessment?

A social services assessment must contain:

(a) Identifying information about the account holder (for example, name, address, age, gender, social security number, telephone number, certificate of Indian blood, education level), family history and medical history of the account holder;

(b) Description of the household composition: Information on each member of the household (*e.g.,* name, age, and gender) and that person's relationship to the account holder;

(c) The account holder's current resources and future income (*e.g.,* VA benefits, retirement pensions, trust assets, employment income, judgment funds, general assistance benefits, unemployment benefits, social security income, supplemental security income and other governmental agency benefits);

(d) A discussion of the circumstances which justify special services, including ability of the account holder to handle his or her financial affairs and to conduct day-to-day living activities. Factors to be considered should include, but are not limited to:

(1) Age

(2) Developmental disability

(3) Chronic alcoholism or substance abuse

(4) Lack of family assistance or social support systems, or abandonment

(5) Self-neglect

(6) Financial exploitation or abuse

(7) Physical exploitation, neglect or abuse

(8) Senility

(9) Dementia

(e) Documentation supporting the need for assistance (*e.g.,* medical reports, police reports, court orders, letters from interested parties, prior assessments or evaluations, diagnosis by psychologist/psychiatrist);

(f) Summary of findings including proposed services and an annual distribution plan; and

(g) Final recommendation signed by a BIA social worker with a MSW degree.

§ 115.354 Will the BIA notify me if a decision is made to place my account in supervised status?

Yes. We will notify you of the decision to place your account under supervision based on a court order. The notice will advise you of your rights to request a hearing to challenge the decision to supervise your account. See subpart F of this part.

§ 115.355 How may I challenge a decision to place my account in supervised status?

To challenge a decision by the BIA to supervise your account, you must request a hearing within forty (40) days from the date on the certified mail receipt of the letter that we mailed to you regarding the decision to supervise your account. See subpart F of this part.

§ 115.356 How may I change my account status from supervised to unrestricted?

You may petition a court of competent jurisdiction to make a determination that you are capable of managing your financial affairs or not *non compos mentis.* If the court issues an order declaring that you are capable of managing your financial affairs or are no longer *non compos mentis,* the BIA will honor the court's decision and remove your account from supervision.

§ 115.357 How will a supervised account be managed?

The BIA social services staff (in conjunction with a guardian) will:

(a) Evaluate the needs of the account holder;

(b) Develop an annual distribution plan and amendments to the distribution plan, as needed, for approval by the BIA;

(c) Authorize the OTFM to distribute IIM funds in accordance with an approved distribution plan;

(d) Monitor the implementation of the approved distribution plan to ensure that the funds are expended in accordance with the plan;

(e) Review the supervised account every six months or more often as necessary if conditions have changed:

(1) To warrant a recommendation to a court to change the status of the account holder, or (2) to modify the distribution plan.

§ 115.358 What must be in a distribution plan?

A distribution plan must contain the following:

(a) Information about the reasons for supervision, including

(1) The date of all applicable guardianship orders and the court that issued them;

(2) The date of the most recent applicable social services assessment and the name(s) of the preparer;

(3) A concise statement of the reason for supervision; and

(4) The name of the person or court who initiated the request for supervision.

(b) The names and identifying information for individuals to whom disbursements may be made, including, as applicable

(1) A guardian;

(2) Any third parties, such as landlords or long-term-care facilities, to whom the BIA will make payment; and

(3) The account holder, if an allowance is to be paid directly.

(c) A description of what disbursements are authorized, including

(1) The amounts that can be disbursed to each authorized payee;

(2) The purposes for which disbursement may be made;

(3) The frequency or dates of authorized disbursements

(d) Any additional requirements, such as frequency and documents required for an accounting by the guardian;

(e) The dates the disbursement plan was developed, approved, amended, and reviewed, and the date for the next scheduled review;

(f) The signature of the BIA official approving the plan with the following certification:

(1) The plan is in the best interest of the account holder, and

(2) The guardian meets the criteria contained in § 115.314.

(g) The signature of the guardian, with date signed, certifying that he or she has read the plan or had it read to him or her and that the guardian will follow the disbursement plan.

§ 115.359 How may funds in a supervised account be used under a distribution plan?

A distribution plan for an individual whose account is supervised may authorize disbursements and expenses for the primary benefit of the account holder. Such expenses may include, among other items, amounts for the account holder's food, clothing, shelter, medical care, transportation, education, institutional care, recreation, and religious observances, and for support of the account holder's minor dependents. Expenses must be reasonable in amount, considering the account holder's needs and available resources.

§ 115.360 What is the review process for a supervised account?

A review will be conducted every six months and social services will:

(a) Consult with a guardian to verify that the money was spent in accordance with a distribution plan by

(1) Reviewing the receipts for an account holder's expenses, or

(2) Accepting the court's accounting, if a court is monitoring the guardianship of IIM funds, instead of reviewing receipts from the guardian if that annual review includes accounting for the proceeds of an IIM account;

(b) Review all case worker reports and notes, and any information submitted by the account holder;

(c) Review BIA/OTFM account records to insure that withdrawals and payments were made in accordance with the distribution plan;

(d) Decide whether the distribution plan needs to be modified; and

(e) Evaluate the recommendation made to the court regarding the need for the guardianship of the account holder to continue.

§ 115.361 If I have a power of attorney for an account holder, may I withdraw money from the account holder's IIM account?

No. We will not recognize a power of attorney for purposes of distributing money from an IIM account to anyone other than the account holder.

§ 115.362 If I am incarcerated will the BIA automatically supervise my account?

No. Your account will not be automatically supervised just because you are in prison or in jail.

§ 115.363 How do I continue to receive my IIM funds and statements of performance if I am incarcerated?

To continue receiving your IIM funds and statements of performance, you must notify the OTFM of your address change in accordance with § 115.326 and the amount of money you wish to receive from your account.

Supervised Accounts—Minors

§ 115.364 When will the BIA authorize withdrawals from a minor's account?

(a) Judgment fund account: withdrawals may only be made upon BIA approval of an application made under Pub.L. 97–458. See 25 CFR 1.2.

(b) Other trust fund accounts: withdrawals may only be made under a BIA-approved distribution plan based on a justified need for the minor's health, education, or welfare.

§ 115.365 May the BIA permit a parent or legal guardian to receive funds from a minor's IIM account?

The BIA will not permit a minor's parent or guardian to withdraw funds unless it is in accordance with an approved distribution plan. See § 115.345.

§ 115.366 Will I automatically receive all my IIM funds when I turn 18?

No. We will not automatically send your IIM funds to you when reach the age of majority.

§ 115.367 What do I need to do when I reach the age of majority to access my trust fund account?

You must contact the OTFM to request the withdrawal of any or all of your IIM funds.

§ 115.368 Will my account lose its supervised status when I reach the age of majority?

Your account status will no longer be supervised when you reach the age of majority, unless a court of competent jurisdiction has found you to be *non compos mentis* or in need of financial management assistance and the BIA has decided to supervise your account.

§ 115.369 Are there any reasons other than supervision that would prevent me from obtaining my funds once I reach the age of 18?

(a) If you have a judgment fund account, a tribal use and distribution plan for judgment funds may contain restrictions or requirements that must be met prior to obtaining your money once you turn 18 years of age.

(b) If your account has tribal per capita funds, the tribe may specify that additional requirements be met prior to obtaining these funds.

§ 115.370 If I am an emancipated minor may I withdraw funds from my account?

(a) For a judgment fund account: An emancipated minor may not make withdrawals from his or her account until the individual is no longer a minor. Exceptions are only granted upon the approval of an application made under Pub.L. 97–458. See 25 CFR 1.2.

(b) For other IIM accounts: You may be able to withdraw some or all of your funds, but the BIA must approve all requests for withdrawals from your account. You may work with the BIA to develop a distribution plan to access the funds in your account. In no instance will the BIA allow an emancipated minor to make unsupervised withdrawals.

Encumbered Accounts

§ 115.371 Are all encumbrances on an IIM account the same?

No, there are two types of encumbrances that may be placed on an IIM account:

(a) Encumbrances, including placing a hold on the account, authorized by an account holder; and

(b) Involuntary encumbrances authorized by the BIA.

§ 115.372 What type of encumbrances may I place on my IIM account?

(a) You may:

(1) Request a voluntary hold on your account so that your funds remain in your account;

(2) Request that the OTFM make third-party payments out of your account;

(3) Make an assignment of IIM income to a third party but only for health care emergencies under §§ 115.377 and 115.378;

(4) Make an assignment of IIM income as security for a debt to a third party; and

(5) Make an assignment of IIM income as security for a debt that is secured under the authority of the Indian Finance Act.

(b) The table below provides further information on encumbrances that may be placed on your account.

	Unrestricted accounts		Restricted accounts			
	Voluntary hold on an account by the account holder	Payments to third parties as directed by the account holder	Assignment of IIM income for a health care emergency	Assignment of IIM income as security for a loan	Assignment of IIM income as security for loans under the Indian Finance Act	Child support payments
Is BIA a signatory to the encumbrance?	No	No	No	No	Yes	No.
Is a court order necessary to encumber the account?	No	No	No	Yes	No	Yes.
May I make withdrawals from my account?	Yes, up to the balance in the account.		Yes, where the account balance exceeds the amount of the encumbrance and based on the payment plan.			
May an account be overdrawn to fulfill an encumbrance?	No	No	No.			
When will the encumbrance be removed?	OTFM will remove the encumbrance upon request by the account holder.		OTFM will remove the encumbrance upon receipt of notification that the debt or obligation is satisfied or upon expiration of the payment plan.			
Who may authorize the removal of an encumbrance?	Account holder	Account holder	BIA	BIA	BIA	Court of competent jurisdiction.

§ 115.373 How may I request a voluntary hold on my account?

You must contact the OTFM to authorize a voluntary hold on any or all income that is currently in or will be deposited into your IIM account.

§ 115.374 May I authorize the OTFM to make third-party payments from my IIM account to pay my monthly bills or other obligations?

You may authorize the OTFM to make third-party payments from your IIM account, but your account balance on the date of payment must be sufficient to cover your authorized payments. If your account balance is insufficient to cover your authorized payment(s) in full, no payment(s) will be made, including partial payment(s). The OTFM will notify you if the payment(s) was not made because of an insufficient account balance.

§ 115.375 If I have a voluntary hold on my account, may I make a withdrawal from my account?

You may withdraw any amount up to your current balance.

§ 115.376 How do I remove a voluntary hold from my account?

Contact the OTFM to authorize the removal of a voluntary hold.

§ 115.377 When may I assign my current account balance and any future income to be deposited into my IIM account directly to a third party?

The BIA will only honor an assignment of IIM income for health care emergencies made directly to a service provider for prescription drugs, medical equipment or other medical needs as supported by a physician's prescription or a physician's written recommendation.

§ 115.378 What amount of my IIM income may I assign directly to a third party for health care emergencies?

You may only assign and the BIA will only recognize an assignment of IIM income in an amount that is not greater than your current account balance plus the total contractual amounts due to be paid into the IIM account within one year from the date of the assignment of income made directly to a third party to pay for a health care emergency as defined in § 115.377. After the assignment of income is presented to the BIA, the assignment of income will no longer be voluntary. No trust account will be overdrawn to make third-party payments.

§ 115.379 How will an assignment of IIM income made directly to a third party for health care emergencies be paid from my account?

An assignment of income made directly to a third party in accordance with § 115.337 must be presented to the BIA for payment. The BIA will honor the direct assignment by authorizing an involuntary hold on your current and future account balance up to the amount you assigned for payment. Payments to third parties will be made in accordance with a payment plan. No account will be overdrawn to make third-party payments.

§ 115.380 May I assign future IIM income as security for a debt?

Yes, you may make an assignment of IIM income as security for a debt. However, unless the debt is secured under the authority of the Indian Finance Act, the creditor must perfect the security interest by obtaining an order from a court of competent jurisdiction specifying the amount of the debt to be secured by your assignment of IIM income prior to presenting the court order to the BIA for payment. We will not pre-approve or be a signatory party to any account holder's assignment of IIM income as security unless the debt being secured is secured under the authority of the Indian Finance Act. If the debt is secured under

the Indian Finance Act, the BIA will be a signatory party to the account holder's assignment of IIM income as security and the creditor.

§ 115.381 What must a third party do to acquire a right to receive disbursements from my IIM account?

(a) Before the BIA will consider placing an involuntary encumbrance on an IIM account, a third party must:

(1) Perfect an assignment of IIM income as security in a court of competent jurisdiction by obtaining an order/judgment stating the amount to be paid under the assignment unless the debt being secured is a debt secured under the authority of the Indian Finance Act;

(2) Perfect with the BIA an assignment of IIM income as security for a debt that was secured under the authority of the Indian Finance Act to determine the amount to be paid under the assignment. To perfect this interest, the third party must present to the BIA the original loan documentation, payment history, date of default, proposed payment schedule, and proof of assignment;

(3) Obtain an order or judgment from a court of competent jurisdiction for child support; or

(4) Present an assignment of income made by an account holder for a health care emergency as defined by § 115.377.

(b) Once a court of competent jurisdiction has issued an order for third party claims under paragraphs (a)(1) and (a)(3) stating the amount owed or the amount to be paid to the creditor or awardee, the creditor or awardee must present the order to the BIA.

§ 115.382 If the court order specifies that my account be encumbered immediately, will the Secretary honor the court order before my time for a hearing has expired?

No. A hold will not be placed on your account until five days after the date on which BIA mailed your notice or after five days after the final publication of your public notice.

§ 115.383 If I assign my income to a third party for health care emergencies or make an assignment of income as security for a secured loan under the Indian Finance Act, will my account be encumbered immediately?

No. A hold will not be placed on your account until five days after the date on which BIA mailed your notice or after five days after the final publication of your public notice.

§ 115.384 If I have an involuntary encumbrance on my account, may I make withdrawals from my account?

If the encumbrance(s) on your IIM account are less than your current account balance, you may withdraw the difference between the amount owed or obligated and the remaining balance.

§ 115.385 When will BIA place an involuntary encumbrance on my IIM account?

(a) The BIA may place an involuntary encumbrance on your IIM account for a specific amount of money to pay:

(1) A child support order from a court of competent jurisdiction;

(2) A debt owed to the United States;

(3) A debt secured under the authority of the Indian Finance Act where the account holder assigned his or her IIM income as security for the loan and the lender has presented the BIA with the loan documents, payment history, date of default, and schedule of payments;

(4) A debt or claim where an account holder assigned his or her IIM income as security for a transaction and there is an order from a court of competent jurisdiction stating the amount of the debt to be paid from the account holder's IIM account;

(5) An assignment of income for a health care emergency made by an account holder to a service provider under §§ 115.377 and 115.378; and

(6) Debt(s) ordered to be paid under a probate order.

(b) Before an IIM account is involuntarily encumbered by the BIA, the BIA will decide whether and what amount of the court ordered debt, child support award, or assignment of income will be paid from the account and develop a schedule for third-party payment.

(c) The BIA will not authorize payment to third parties under an involuntary hold until the account holder has been given an opportunity for a hearing. See subpart F of this part.

§ 115.386 How does the BIA determine the amount of an involuntary encumbrance?

The BIA will review all claims against an IIM account and will only recognize those listed in § 115.385. The BIA will determine the amount of money to be paid to a third party and the payment schedule based on the claim against your IIM account, the resources available to you, and the amount of funds in your account. The BIA will also consider your basic welfare needs such as food, clothing, and shelter in making its determination.

§ 115.387 When will the BIA remove an involuntary encumbrance?

(a) The BIA will authorize the removal of an involuntary encumbrance under the following circumstances:

(1) If the BIA decides during the hearing process that the debt or obligation should not be paid from your IIM account; or

(2) Upon satisfaction of your debt or obligation.

(b) The BIA will notify the account holder that it has authorized the removal of the involuntary encumbrance.

§ 115.388 If my account is supervised or involuntarily encumbered, when will the BIA develop a payment schedule?

(a) If your account is supervised, the BIA will develop an annual distribution plan in consultation with you and/or your guardian.

(b) If your account is involuntarily encumbered a distribution plan will be developed by the BIA prior to making any third party payments from your account. However, this plan may be modified based upon future claims against your account.

§ 115.389 Will the payment schedule developed to pay a debt or other obligation expire?

Yes. The payment schedule should state the time period in which third-party payments are to be made from your account. However, if a payment schedule does not specify a final payment date, the payment schedule will expire when the obligation or debt is paid in full or in five (5) years from the initial date of the restriction. However, there will be no expiration date for a payment schedule to fulfill a child support award other than the time period specified in the court order.

§ 115.390 If I have multiple encumbrances on my trust account, will there be a priority of payment for those encumbrances?

(a) Yes, the encumbrances will be paid with the following priority:

(1) A child support order from a court of competent jurisdiction;

(2) A debt to the United States;

(3) Assignment of income as security for a secured debt under the Indian Finance Act;

(4) A federal court order;

(5) A tribal court order;

(6) Assignment for a heath care emergency made in accordance with § 115.377.

(b) Where there is more than one encumbrance in one of the preceding categories, the encumbrance will be paid in the order received (*i.e.*, first in time).

(c) Whenever a new encumbrance is placed on an account, the BIA will review all payment schedules and revise as necessary.

Subpart E—Special Deposit Accounts

§ 115.400 Who receives the interest earned on a special deposit account?

Generally, interest follows principal. The tribal or individual account holder who owns the money will receive the interest earned in a special deposit account. The amount of interest paid will be directly proportional to the amount of principal owned by the account holder.

§ 115.401 When will the money in a special deposit account be credited or paid out to the owner of the funds?

The OTFM will disburse the money from a special deposit account as soon as the BIA certifies the ownership of the funds.

§ 115.402 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?

No. Administrative or land conveyance fees that are paid to reimburse the federal government for services provided will be retained by the BIA to cover the cost of such services.

§ 115.403 May cash bonds (e.g., performance bonds, bid deposits, appeal bonds, etc.) be deposited into a special deposit account?

No. All cash bonds held by the Secretary will be deposited in non-interest bearing accounts until the term of the bonds expire.

§ 115.404 May the BIA deposit into a special deposit account money that is paid prior to approval of a conveyance or contract instrument for land sales, right-of-ways, resource sales, grazing, or leasing, etc.?

No. All payments made prior to the BIA's approval of a transaction will be deposited by the BIA into a non-interest bearing, non-trust account. Once the transaction is approved by the BIA, the funds will be deposited into a trust fund account.

Subpart F—Hearing Process for Restricting an IIM Account

§ 115.500 Under what circumstances may the BIA restrict my IIM account through supervision or an involuntary encumbrance?

(a) Your IIM account may be restricted through an involuntary encumbrance if:

(1) The BIA receives an order or judgment from a court of competent jurisdiction:

(i) Perfecting an assignment of IIM income as security; or

(ii) Awarding child support from your IIM account; or

(2) The BIA is presented with your signed direct assignment of IIM income for a health care emergency as defined by § 115.377.

(3) The BIA is presented with your assignment of IIM income as security for a debt that is secured under the authority of the Indian Finance Act.

(b) Your IIM account may be restricted through supervision if the BIA receives an order from a court of competent jurisdiction that you are non-compos mentis or an adult in need of financial management assistance.

(c) Your IIM account may be restricted through an involuntary encumbrance if an administrative error caused a deposit or disbursement to be made to you, your IIM account, or to a third party on your behalf.

§ 115.501 Will I be notified if the BIA decides to place an involuntary encumbrance on or supervise my account?

If the BIA decides to place an involuntary encumbrance on or supervise your IIM account, the BIA will notify you and provide you with an opportunity to challenge the decision.

§ 115.502 How will the BIA notify me of its decision to place a hold on my account?

The BIA will notify you of its decision by:

(a) Certified mail to your address;

(b) Personal delivery to you or your address;

(c) Publication in your tribal newspaper if your whereabouts are unknown and in the local newspaper serving your last known mailing address; or

(d) First class mail to you in care of the warden, if you are incarcerated. The BIA may send a copy of the notification to your attorney if known.

§ 115.503 What happens if the notice by certified mail is returned to the BIA marked undeliverable?

If the notice by certified mail is returned to the BIA marked undeliverable, the BIA will remove the restriction, which was placed on your account five days after the notice was mailed, and will publish a notice in accordance with § 115.502(c).

§ 115.504 When will the BIA restrict my IIM account once it has decided to involuntarily encumber or supervise my account?

The BIA will place a restriction on your account:

(a) 5 days after the BIA mails you a notice of its decision to restrict your account;

(b) 1 day after personal delivery to you or your address of BIA's notice of its decision to restrict your account; or

(c) 5 days after the final publication of your public notice of BIA's decision to restrict your account.

§ 115.505 What information will the BIA include in its notice ?

(a) A letter providing notice of the BIA's decision to restrict your account must contain:

(1) The name on the account;

(2) The amount and reason for the restriction;

(3) An explanation that your IIM account will be restricted 5 days after the date on the certified mail receipt on your notice;

(4) Information explaining that you have 40 days from the date on the certified mail receipt on your notice to request a hearing to challenge the restriction;

(5) Information that explains how to request a hearing;

(6) Information that the BIA will conduct the hearing and that you are assured a fair hearing;

(7) A copy of the fair hearing guidelines;

(8) Information that you may contact the BIA to authorize immediate payment from your IIM account to pay the claim;

(9) The address and phone number of the BIA office that provided the notice; and

(10) Other information as may be determined appropriate by the BIA.

(b) Public notice of the BIA's decision to restrict your account must contain:

(1) The name on the account;

(2) The initial publication date;

(3) A statement that the BIA has been presented with a claim against your account;

(4) A statement that the BIA has decided to place a restriction on your account to pay the claim;

(5) A statement that the public notice will be published once a week for four consecutive weeks and that the initial publication date will be the first week of publication;

(6) A statement that the BIA will place a restriction on your account 5 days from the date of the fourth publication of the public notice;

(7) A statement that you have 30 days from the fourth publication date to challenge the BIA's decision to restrict your account; and

(8) An address and telephone number of the BIA office publishing the notice to request further information and instructions on how to request a hearing to challenge the decision.

§ 115.506 How do I request a hearing to challenge the BIA's decision to restrict my IIM account?

You must contact the BIA office that provided you notice of the restriction to request a hearing. Your request must:

(1) Be in writing;

(b) Specifically request a hearing to challenge the restriction;

(c) Be postmarked within:

(1) 40 days of the date of the certified mail receipt on your notice from the BIA or the date of personal delivery of your letter of notice, or

(2) 30 days of the final publication date of the public notice.

§ 115.507 When will the BIA conduct a hearing to allow me to challenge its decision to restrict my account?

The BIA will conduct a hearing within 10 working days from its receipt of your written request for a hearing.

§ 115.508 Will I be allowed to present testimony?

Yes. You will be provided the opportunity to present testimony during your hearing. You may not challenge the court order or judgment in this proceeding. Your testimony must be confined to why your IIM account should not be restricted.

§ 115.509 Will I be allowed to present witnesses?

Yes. You may present witnesses during a hearing. However, you are responsible for any and all expenses incurred with presenting witnesses.

§ 115.510 Will I be allowed to question opposing witnesses?

Yes. You may question all opposing witnesses in your hearing and present witnesses to challenge opposing witness testimony.

§ 115.511 May I be represented by an attorney at my hearing?

Yes. You may, at your own expense, have an attorney or other person represent you at your hearing.

§ 115.512 Will the BIA record the hearing?

Yes. The BIA will record the hearing.

§ 115.513 Why is the hearing recorded?

The hearing record must be made available for review if the hearing process is appealed under § 115.600. The record must be preserved in accordance with Subpart H of this part.

§ 115.514 How long after the hearing will the BIA make its final decision?

The BIA will provide a final written decision to all parties within 10 working days of the hearing.

§ 115.515 What happens if the BIA decides to supervise my account after my hearing?

BIA social services staff will consult with you and/or your guardian to develop an annual distribution plan. Upon approval by the BIA, the distribution plan will be valid for one year.

§ 115.516 What happens if the BIA or OST decides to restrict my account because of an administrative error which resulted in funds that I do not own being paid to me or a third party on my behalf?

The DOI will consult with the account holder to develop a repayment plan.

§ 115.517 If the BIA decides that the restriction on my account will be continued after my hearing, do I have the right to appeal that decision?

Yes, you have the right to appeal the BIA's decision under § 115.600.

§ 115.518 If I decide to appeal the BIA's decision made after my hearing, will BIA restrict my account during the appeal?

Yes. Your account will be restricted up to the amount at issue in the appeal. No third-party payments will be made until your appeal is decided.

Subpart G—Appeals

§ 115.600 Do I have a right to appeal any decision made under this part?

Appeals from an action taken by the BIA may be taken pursuant to 25 CFR part 2, subject to the terms of subpart F in this part.

Subpart H—Records

§ 115.700 Who owns the records associated with this part?

Any records generated in fulfillment of this part are the property of the United States.

§ 115.701 What are a tribe's obligations regarding trust fund records?

(a) A tribe must make and preserve all financial records that track the source and use of all trust fund expenditures under an approved budget.

(b) Tribal records documenting expenditures of trust funds under an approved budget are considered to be federal records that are subject to the Federal Records Act, 44 U.S.C. Chapter 31 *et seq.*

§ 115.702 How long must a tribe keep its records?

A tribe must preserve its records documenting expenditures of trust funds for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. The records, and related records management practices and safeguards required under the Federal Records Act, are subject to inspection by the Secretary and the National Archives and Records Administration.

Subpart I—Exceptions

§ 115.801 Funds of deceased Indians of the Five Civilized Tribes.

Funds of a deceased Indian of the Five Civilized Tribes may be disbursed to pay *ad valorem* and personal property taxes, Federal and State estate and income taxes, obligations approved by the Secretary or his authorized representative prior to the death of the decedent, expenses of last sickness and burial, and claims found to be just and reasonable which are not barred by the statute of limitations, costs of determining heirs to restricted property by the State courts, and claims allowed pursuant to part 16 of this chapter.

§ 115.802 Assets of members of the Agua Caliente Band of Mission Indians.

(a) The provisions of this section apply to money or other property, except real property, held by the United States in trust for such Indians, which may be used, advanced, expended, exchanged, deposited, disposed of, invested, and reinvested by the Director, Palm Springs Office, in accordance with the Act of October 17, 1968 (Pub. L. 90–597). The management or disposition of real property is covered in other parts of this chapter.

(b) Investments made by the Director, Palm Springs Office, under the Act of October 17, 1968, supra, shall be of such a nature as will afford reasonable protection of the assets of the individual Indian involved. The Director is authorized to enter into contracts for the management of the assets (except real property) of individual Indians. The consent of the individual Indian concerned must be obtained prior to the taking of actions affecting his assets, unless the Director determines, under the provisions of section (e) of the Act, that consent is not required.

(c) The Director may, consistent with normal business practices, establish appropriate fees for reports he requires from guardians, conservators, or other fiduciaries appointed under State law for members of the Band.

§ 115.803 Osage Agency.

The provisions of this part do not apply to funds the deposit or expenditure of which is subject to the provisions of part 117 of this chapter.

PART 162—LEASES AND PERMITS

4. Part 162 is revised to read as follows:

Subpart A—Purpose and Definitions

Sec.
162.1 What is the purpose of this part?
162.2 What key terms do I need to know?

Subpart B—General Lease Provisions and Requirements

162.3 What leases are covered by this subpart?

General Provisions

162.4 Do tribal laws apply to leases?
162.5 How will the Secretary implement tribal laws on Indian agricultural lands?
162.6 What tribal policies will we apply for leasing on Indian agricultural lands?
162.7 May individual Indian landowners exempt their land from tribal policies for leasing on Indian agricultural lands?
162.8 What notifications are required that tribal law applies to a lease on Indian agricultural land?
162.9 Who enforces tribal laws pertaining to Indian agricultural lands?
162.10 How is a lease on Indian land obtained?
162.11 Is an agricultural resource management plan required?
162.12 How will the Secretary decide whether to grant and/or approve a lease?
162.13 What supporting documents must a potential lessee provide?
162.14 Must a lease be recorded?
162.15 Where are leases recorded?
162.16 Who is responsible for recording a lease?
162.17 Can more that one tract of land be combined into one lease?
162.18 Is there a standard lease form?
162.19 Will we notify the lessee of any change in land title status?
162.20 How is leased land described?
162.21 May a lease be amended, modified, assigned, transferred or sublet?
162.22 May a lease be used as collateral for a leasehold mortgage?
162.23 What factors does the BIA consider when reviewing a leasehold mortgage?
162.24 May a lessee voluntarily assign a leasehold interest under an approved encumbrance?
162.25 May the holder of a leasehold mortgage assign the leasehold interest after the sale or foreclosure of an approved encumbrance?

Rent and Terms

162.26 Are there specific provisions that must be included in a lease?
162.27 How long is a lease term?
162.28 When may a lessee take possession of leased Indian land?
162.29 Can improvements be constructed on Indian lands?
162.30 What happens to improvements constructed on Indian lands when the lease has been terminated?
162.31 What happens if the improvements are not removed within the specified time period?
162.32 When must a lease payment be made?
162.33 When is a lease payment late?
162.34 Will a lessee be notified when a lease payment is due?
162.35 What happens if a lessee does not receive notice that a lease payment is due?
162.36 What will the BIA do to collect lease payments that are not made in accordance with the terms of a lease?
162.37 Is there a penalty for late payment on a lease?
162.38 Does the BIA accept partial payment for a lease payment due?
162.39 May a lessee make a lease payment in advance of the due date?
162.40 May an individual Indian landowner modify the terms of the lease on a fractionated tract for advance lease payment?
162.41 To whom are lease payments made?
162.42 May a lessee send a lease payment directly to the Indian landowner?
162.43 What forms of payment are acceptable to the Secretary?
162.44 When required under a lease, how will the BIA adjust the lease payment?

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162.46 How do we determine the amount of the bond?
162.47 What forms of bonds will the BIA accept?
162.48 How will a cash bond be administered?
162.49 Is interest paid on a cash performance bond?
162.50 Are cash performance bonds refunded?
162.51 Is insurance required for a lease?
162.52 What types of insurance may be required?

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162.60 Who is responsible for leasing Indian land?
162.61 How do I acquire a lease on Indian land?
162.62 How do I acquire a lease through negotiation?
162.63 What are the basic steps for acquiring a lease through negotiation?
162.64 Must I negotiate with and obtain the consent of all of the Indian landowners of a fractionated tract for a lease other than an agricultural lease?
162.65 Can I negotiate a contract with an Indian landowner to lease land at a future date?
162.66 How do I acquire an advertised lease through competitive bidding?
162.67 Must Indians who own Indian land obtain a lease before using this land for their purposes (owner's use)?
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162.70 Who may grant a lease?
162.71 Who may represent an individual Indian landowner in granting a lease?
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Subpart E—Business Leases

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Consents and Approvals

162.87 How and when can a lease be amended?
162.88 May a lease be assigned, sublet, or mortgaged without the consent of the Indian landowners?
162.89 May the Indian landowners withhold their consent to an assignment or encumbrance?
162.90 May a lease be assigned, sublet, or mortgaged without BIA approval?
162.91 How will the BIA decide whether to approve an assignment or sublease?

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162.100 What does the BIA do with rent payments received from lessees?
162.101 How do Indian landowners receive rent payments?
162.102 How will the rent be distributed if the lease covers more than one tract of land with different owners?

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162.110 Are there administrative fees for a lease?
162.111 How are administrative fees determined?
162.112 Are administrative fees refundable?
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162.114 Are there any other administrative or tribal fees, taxes or assessments that must be paid?

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162.120 What lease violations are addressed by this subpart?
162.121 How will the Secretary enforce compliance with lease provisions?
162.122 What happens if a violation of a lease occurs?
162.123 What will a written notice of violation contain?
162.124 Can a determination of a violation be contested?
162.125 What happens to a bond if a violation occurs?
162.126 What happens if you do not cure a lease violation?
162.127 If you do not cure a lease violation, what may an Indian landowner do?
162.128 Can the Secretary take emergency action without prior notice if the leased premises are being damaged?
162.129 What rights does a lessee have if the Secretary takes emergency action under this subpart?

Subpart I—Appeals

162.130 May decisions by the Secretary be appealed?

Subpart J—Non-Trust Interests

162.140 May the Secretary grant or approve leases for non-trust interests in Indian land?
162.141 Are non-trust interests included in a lease?
162.142 How will a lessee know there is a non-trust interest in Indian land?
162.143 From whom must a lessee lease a non-trust interest?
162.144 Is the non-trust interest shown in a lease of Indian land?
162.145 How much rent is due for the non-trust interest?
162.146 May a lessee payment made by a lessee to the BIA or to an Indian landowner include payment for any non-trust interest?
162.147 Will the BIA grant or approve a lease on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest?

Subpart K—Valuation

162.150 Why must the Secretary determine the fair annual rental of Indian land?
162.151 How does the Secretary determine the fair annual rent of Indian land?
162.152 Will the BIA ever grant or approve a lease at less than fair annual rental?

Subpart L—Trespass

162.160 What is trespass?
162.161 What is the BIA's trespass policy?
162.162 Who can enforce this subpart?

Notification

162.163 How are trespassers notified of a trespass determination?
162.164 What can I do if I receive a trespass notice?
162.165 Who else will the BIA notify?

Actions

162.166 What actions does the BIA take against trespassers?
162.167 When will we impound unauthorized livestock or other property?
162.168 How will you be notified if your unauthorized livestock or other property are to be impounded?
162.169 What will we do after we impound unauthorized livestock or other property?
162.170 How do I redeem my impounded livestock or other property?
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162.172 What are the penalties, damages, and costs payable by trespassers on Indian land?
162.173 How will the BIA determine the value of forage or crops consumed or destroyed?
166.174 How will the BIA determine the value of the product illegally used or removed?
162.175 How will the BIA determine the amount of damages to Indian land?
162.176 How will the BIA determine the costs associated with enforcement of the trespass?
162.177 What happens if I do not pay the assessed penalties, damages and costs?
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162.179 What happens if the BIA does not collect enough money to satisfy the penalty?

Subpart M—Records

162.180 Who owns records associated with this part?

Subpart N—Special Requirements for Certain Reservations

162.190 Crow Reservation
162.191 Fort Belknap Reservation
162.192 Cabazon, Augustine and Torres-Martinez Reservations, California
162.193 Colorado River Reservation
162.194 Salt River and San Xavier Reservations
162.195 Tulalip Reservation

Authority: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968, 107 Stat. 2011, 108 Stat. 4572, March 20, 1996, 110 Stat. 4016; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 409a,413, 415, 415a, 415b, 415c, 415d, 477, 635, 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733.

Subpart A—Purpose and Definitions

§ 162.1 What is the purpose of this part?

(a) The purpose of this part is to describe the authorities, policies, and procedures the Secretary will use to grant, approve, and administer, a surface lease or permit on Indian land or government land. This part does not apply to grazing permits, which are administered under part 166 of this chapter, or Indian forest land, which is administered under part 153 of this chapter.

(b) This part includes a subpart N, which applies to leases and permits on specific reservations. All of the requirements in subparts A through M of this part apply to these reservations unless the provisions contained in subpart N of this part for each specific reservation state otherwise.

§ 162.2 What key terms do I need to know?

For purposes of this part:

Adult means an individual who is 18 years of age or older.

Agricultural lease or permit means a lease or permit for farming and/or grazing purposes on Indian agricultural land.

Agricultural resource management plan means a ten year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the BIA and by Indian tribal governments.

AIARMA means American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), as amended on November 2, 1994, (108 Stat. 4572).

Appeal bond means a type of bond that guarantees payment of an amount that may be owed after the completion of an appeal process.

Approving/approval means the action taken by the BIA to approve a lease.

Assign means to transfer the contract rights in a lease or permit for use of Indian land to an individual, company, corporation or partnership in exchange for compensation or other consideration. The party receiving the assignment (assignee) assumes all of the rights and obligations of the lease.

Assignee means the person to whom the contract rights for use of Indian land were assigned.

BIA means Bureau of Indian Affairs within the Department of the Interior.

Bond means an agreement in writing in which a surety, or an obligor for a personal bond, guarantees performance or compliance with the lease terms.

Crop share means the agreed upon percentage of an agricultural crop taken in kind as payment of rent under a lease.

Encumbrance means a mortgage, deed of trust or other instrument which secures a debt owed by a lessee to a lender or other encumbrancer.

Environmental baseline survey means an investigation that results in a qualitative and quantitative statement of the nature and magnitude of environmental contamination physically present on a defined tract of real property.

Fair annual rental means a reasonable annual return on fair market value, as this value may be determined by appraisal, advertisement, competitive bidding, negotiation, or any other appropriate method in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP).

Fractionated tract means a parcel of Indian land with more than one owner.

Government land means the surface estate of a tract of land, or any interest therein, which is acquired or reserved by the United States for the Bureau of Indian Affairs administrative purposes. Indian land is not government land.

Grant/granting means the process of agreeing or consenting to a lease.

I/You means the person to whom this part directly applies.

In loco parentis means the person whom the BIA recognizes as standing in place of a parent.

Indian agricultural land means Indian land, including farmland and rangeland, excluding Indian forest land (except where authorized grazing occurs) that is used for production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

Indian land means:

(1) The surface (non-mineral) estate of a tract of land, or any interest therein, which is held by the United States in trust for a tribe or an individual Indian; or

(2) A tract of land, or any interest therein, which is owned by a tribe or an individual Indian, subject to federal restrictions against alienation or encumbrance.

Indian landowner means an Indian tribe or individual Indian who owns an interest in Indian land.

Individually owned Indian land means Indian land or an interest therein owned by an individual.

Lease means a contract which grants the right to possess or use Indian land for a specified purpose and duration in exchange for compensation or other consideration.

Leasehold means the interest in real property held by a lessee.

Lessee means an individual, company, corporation, or partnership who has entered into a lease on tribal and/or Indian lands in exchange for compensation.

Life estate means an interest in Indian land that expires upon the death of the interest holder, as administered under part 179 of this chapter.

Majority interest means the total amount of tribal and/or Indian land interest that is more than 50 percent of the entire ownership in the land.

Negotiable Treasury securities means securities issued by the Treasury Department of the United States.

NEPA means the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*)

Non compos mentis means a person who has been legally determined not capable of handling his/her own affairs.

Non-trust interest means an undivided interest in Indian land that is owned in fee simple, rather than in trust or restricted status.

Permit means a privilege, revocable at will in the discretion of the Secretary and not assignable, to enter on and use a specified tract of land for a specified purpose.

Restricted land means land for which a tribe or individual Indian holds fee simple title subject to limitations or restrictions against alienation or encumbrance as set forth in the title and/or by operation of law.

Secretary means the Secretary of the Interior or an authorized representative; it also means a tribe or tribal organization if that entity is administering specific programs, functions services or activities, previously administered by the Secretary, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. 450f) or a Self-Governance compact (pursuant to 25 U.S.C. 558cc). Such authority does not include inherently federal functions.

Surety means one who guarantees the performance, default or debt of another.

Sublease means a lease granted by a lessee of the property.

Trespass means an unauthorized occupancy, use of, or action on Indian agricultural lands.

Tribal land means land for which the United States holds fee title in trust for the benefit of a tribe, and includes assignments of tribal land.

Tribal law means the body of non-federal law that governs tribal lands and activities, and includes ordinances or other enactments by a tribe, tribal constitutions, tribal court rulings, and tribal common law.

Trust land means land, or an interest therein, for which the United States holds fee title in trust for the benefit of a tribe or an individual Indian.

Undivided interest means that the interest of co-owners is in the entire property and that each such interest is indistinguishable from every other interest: The interest has not been divided out from the whole parcel. (Example: If you own ¼ interest in 160 acres, you do not own an identifiable 40 acre tract. You own ¼ of the whole 160 acres because your 1/4 interest has not been divided out from the whole 160 acres.)

Us/We/Our means the Secretary, as defined in this part.

Uniform Standards of Professional Appraisal Practice (USPAP) means the standards promulgated by the Appraisal Standards Board of The Appraisal Foundation which establish requirements and procedures for professional real property appraisal practice.

Subpart B—General Lease Provisions and Requirements

§ 162.3 What leases are covered by this subpart?

This subpart applies to all leases under this part unless otherwise specified, such as business leases.

General Provisions

§ 162.4 Do tribal laws apply to leases?

Tribal laws will apply to leases of Indian land under the jurisdiction of the tribe enacting such laws, unless those tribal laws are inconsistent with applicable federal law.

§ 162.5 How will the Secretary implement tribal laws on Indian agricultural lands?

Unless prohibited by federal law, the Secretary will comply with laws or ordinances adopted by the tribal government to regulate land use or other activities under tribal jurisdiction and with tribal laws and ordinances pertaining to Indian agricultural lands, including laws regulating the environment and historic or cultural preservation.

§ 162.6 What tribal policies will we apply for leasing on Indian agricultural lands?

(a) When specifically authorized by an appropriate tribal resolution establishing a general policy for leasing of Indian agricultural lands, the Secretary will:

(1) Provide a preference to Indian lessees in issuing or renewing a lease, so long as the Indian landowner receives fair annual rental;

(2) Waive or modify the requirement that a lessee must post a surety or performance bond;

(3) Provide for posting of other collateral or security in lieu of a bond; and

(4) Approve leases on tribal lands at rates determined by the tribal governing body.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for leasing of Indian agricultural lands, and subject to paragraph (c) of this section, the Secretary may:

(1) Waive or modify any general notice requirement of federal law; and

(2) Grant or approve a lease on "highly fractionated undivided heirship lands" as defined by tribal law.

(c) The Secretary may take the action specified in paragraph (b) of this section only if:

(1) The tribe defines by resolution what constitutes "highly fractionated undivided heirship lands;"

(2) The tribe adopts a plan for notifying Indian landowners in place of any notice requirements of federal law; and

(3) The Secretary's action is necessary to prevent waste, reduce idle land acreage and ensure income.

§ 162.7 May individual Indian landowners exempt their land from tribal policies for leasing on Indian agricultural lands?

(a) The individual Indian landowner(s) of a tract of land or an undivided interest may exempt their Indian agricultural land from our application of a tribal leasing policy referred to in § 162.6 if:

(1) The Indian landowner(s) have at least 50% interest in such tract; and

(2) The Indian landowner(s) submit a written objection to us.

(b) The same procedure applies to withdrawing a request for exemption.

(c) Upon verification of the written objection we will notify the tribe of the landowners' exemption from the specific tribal policy. If the individual Indian landowner withdraws a request for exemption, we will notify the tribe of the withdrawal.

§ 162.8 What notifications are required that tribal law applies to a lease on Indian agricultural land?

(a) Tribes must notify us of the content and effective dates of new tribal laws that supercede these regulations.

(b) We will then notify any persons or entities undertaking activities on Indian lands of the superseding effect of the tribal law. We will provide:

(1) Individual written notice to each affected lessee; or

(2) Public notice posted at the tribal community building and at the United States Post Office, and published in the local newspaper nearest to the Indian lands where activities are occurring.

§ 162.9 Who enforces tribal laws pertaining to Indian agricultural land?

(a) The tribe is responsible for enforcing tribal laws and ordinances pertaining to Indian agricultural lands.

(b) The Secretary will:

(1) Provide assistance in the enforcement of tribal laws; and

(2) Require appropriate federal officials to appear in tribal forums when requested by a tribe.

§ 162.10 How is a lease on Indian land obtained?

A lease on Indian lands is granted by the Indian landowner and approved by us. However, there are exceptions to this general rule, as discussed in 25 U.S.C. 415 and subpart D of this part.

§ 162.11 Is an agricultural resource management plan required?

An agricultural resource management plan must be developed either by the tribe or by us in consultation with the affected tribe(s). This plan should be consistent with the tribe's integrated resource management plan. The agricultural resource management plan must:

(a) Determine available agricultural resources;

(b) Identify specific tribal agricultural resource goals and objectives;

(c) Establish management objectives for the resources;

(d) Define critical values of the Indian tribe and its members and identify holistic management objectives;

(e) Identify actions to be taken to reach established objectives;

(f) Be developed through public meetings;

(g) Use the public meeting records, existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities; and

(h) Be completed within three years of the initiation of activity to establish the plan.

§ 162.12 How will the Secretary decide whether to grant and/or approve a lease?

(a) Before we grant or approve a lease, we must determine in writing that a lease is in the best interest of the Indian landowner by:

(1) Reviewing the lease and supporting documents;

(2) Identifying potential environmental impacts and ensuring compliance with all applicable environmental laws, land use laws, and ordinances (including preparation of the appropriate review under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, et seq.));

(3) Recommending lease modifications or mitigation measures that are needed to satisfy any preliminary federal and tribal land use requirements; and

(4) After the parties agree to make the recommended modifications, making specific written findings that our grant or approval will further the best interests of the Indian landowners.

(b) In making the findings required by this section, we must specifically consider:

(1) The relationship between the use of the leased lands and use of neighboring lands;

(2) The height, quality, and safety of any structures or other facilities to be constructed on such lands;

(3) The availability of police and fire protection, utilities, and other essential community services;

(4) The availability of judicial forums for all criminal and civil matters arising on the leased lands;

(5) The effect on the environment of the uses to which the leased lands will be subject; and (6) The tribe's assessment of the potential impacts of the proposed use on the preservation of the Indian community, the continued practice of Indian cultural activities, and the exercise of tribal government authority on the leased lands and on other nearby land of that tribe.

(c) We will not grant or approve a lease more than 12 months before its beginning date.

§ 162.13 What supporting documents must a potential lessee provide?

(a) If the potential lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, it must provide organizational documents, certificates, filing records, financial statements, and resolutions or other authorization documents, as needed to show that the lease will be enforceable against the lessee and the lessee will be able to perform all of its lease obligations.

(b) If the lease authorizes new construction, the potential lessee must provide environmental reports, which may include an environmental baseline survey, archaeological reports, and other planning documents as we may determine are necessary to facilitate our compliance with NEPA and other federal and tribal environmental and land use requirements.

§ 162.14 Must a lease be recorded?

All leases on Indian land in excess of one year must be recorded.

§ 162.15 Where are leases recorded?

Leases are recorded in the appropriate BIA Land Titles and Records Office.

§ 162.16 Who is responsible for recording a lease?

We are responsible for ensuring that all leases that we approve or grant are recorded in the Land Titles and Records Office. Tribes are responsible for recording leases that do not require our approval.

§ 162.17 Can more than one tract of land be combined into one lease?

Yes. A lease may include more than one tract of land. The tracts may be owned by a tribe, individual(s), or a combination of tribe and individual(s). Leases may include tribal, individual, or government lands, or any combination thereof.

§ 162.18 Is there a standard lease form?

In order to accommodate the variety of leases that may be let on Indian land,

there is no standard lease form. However, the provisions of the lease must conform to the requirements of this part.

§ 162.19 Will we notify the lessee of any change in land title status?

Yes. We will notify the lessee if a fee patent is issued or if restrictions are removed, but the lease continues in effect for its term. After we notify the lessee, our obligation under § 162.8 and this section ceases.

§ 162.20 How is leased land described?

The land should be described by aliquot parts. However, if the land cannot be described by aliquot parts, a current certified plat by a registered surveyor or other acceptable description of the land being leased must be provided.

§ 162.21 May a lease be amended, modified, assigned, transferred or sublet?

(a) We must approve an amendment, modification, assignment, transfer or sublease with the written consent of all parties to the lease and the sureties in accordance with paragraphs (b) through (d) of this section.

(b) An Indian landowner may designate in writing one or more co-owners or other representatives to negotiate and/or agree to amendments on the landowner's behalf.

(1) The designated landowner or representative may:

(i) Negotiate or agree to amendments; and

(ii) Consent to or approve other items as necessary.

(2) The designated landowner or representative may not:

(i) Negotiate or agree to amendments that reduce the rentals payable to the other landowners; or

(ii) Terminate or modify the term of the lease.

(c) We may approve a lease for tribal land to individual members of a tribe or to tribal housing authorities which contains a provision permitting the assignment of the lease by the lessee or the lender without our approval when a lending institution or an agency of the United States:

(1) Makes, insures or guarantees a loan for the construction of housing for Indians on the leased premises;

(2) Accepts the leasehold as security for the loan; or

(3) Obtains the leasehold through foreclosure or otherwise.

(d) We may approve a lease containing a provision which authorizes the lessee to sublease the premises in whole or in part without further approval.

(e) Subleases made under this provision do not relieve the sublessor (lessee of record) from any liability under the lease, nor will it diminish our authority to take any action authorized under this subpart to protect the trust asset.

§ 162.22 May a lease be used as collateral for a leasehold mortgage?

Yes. We may approve a lease containing a provision that authorizes the lessee to encumber the leasehold interest for the development, improvement or refinancing of the leased premises. We must approve the leasehold mortgage before it can be effective. We will record the approved leasehold mortgage instrument.

§ 162.23 What factors does the BIA consider when reviewing a leasehold mortgage?

(a) We will approve the leasehold mortgage if:

(1) All consents required in the lease have been obtained from the Indian landowner and any surety or guarantor;

(2) The mortgage covers only the interest in the leased premises, and no unrelated collateral belonging to the lessee;

(3) The financing being obtained will be used only in connection with the development or use of the leased premises, and the mortgage does not secure any unrelated obligations owed by the lessee to the mortgagee; and

(4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian landowner.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The ability to perform the lease obligations would be adversely affected by the cumulative mortgage obligations;

(2) Any negotiated lease provisions as to the allocation or control of insurance or condemnation proceeds would be modified;

(3) The remedies available to us or to the Indian landowners would be limited (beyond the additional notice and cure rights to be afforded to the mortgagee), if the lessee defaults on the lease; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a foreclosure, assignment in lieu of foreclosure, or issuance of a "new lease" to the mortgagee.

(c) We will notify the Indian landowners of our approval of the leasehold mortgage.

§ 162.24 May a lessee voluntarily assign a leasehold interest under an approved encumbrance?

Yes. With our approval, under an approved encumbrance a lessee voluntarily may assign the leasehold interest to someone other than the holder of a leasehold mortgage if the assignee agrees in writing to be bound by the terms of the lease. A lease may provide the Indian landowner with a right of first refusal on the conveyance of the leasehold interest.

§ 162.25 May the holder of a leasehold mortgage assign the leasehold interest after the sale or foreclosure of an approved encumbrance?

Yes. The holder of a leasehold mortgage may assign a leasehold interest obtained by the sale or foreclosure of an approved encumbrance without our approval if the assignee agrees in writing to be bound by the terms of the lease. A lease may provide the Indian landowner with a right of first refusal on the conveyance of the leasehold interest.

Rent and Terms

§ 162.26 Are there specific provisions that must be included in a lease?

Yes. In addition to other provisions identified in this part, all leases must provide at a minimum for the following:

(a) The lessee and sureties maintain an obligation to the United States and the Indian landowners;

(b) The lease will not delay or prevent the issuance of a fee patent.

(c) Except for agricultural leases, there must not be a preference right to future leases;

(d) There must not be any unlawful conduct, creation of a nuisance, illegal activity, negligent use or waste of property;

(e) Farming and grazing operations must be conducted in accordance with the principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in tribal laws;

(f) Lessees must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. If a lessee does not comply with the lease provisions and requirements, the lease is considered to be in violation (see subparts H and I of this part for violation, cancellation, and remedies available);

(g) A citation of the authority used to grant and the delegation of authority for the approval of the lease;

(h) A statement indicating that any rental payments of a fixed amount will be adjusted under section 162.48, including:

(1) When the adjustments will be made;

(2) Who will make the adjustments;

(3) How the adjustment will be determined; and

(4) How any disputes arising from the adjustments will be settled;

(i) A legal description or current certified plat of the lands being leased, or other acceptable description of the land being leased; and

(j) The lessee will indemnify the United States and the Indian landowner against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials or the release or discharge of any hazardous material from the lease premises that occur during the lease term, regardless of fault.

§ 162.27 How long is a lease term?

(a) The lease term (including any renewal period permitted under § 162.16(g) of this subpart), must be reasonable, given the purpose of the lease and the type of financing and level of investment required. A longer term may be permitted, if it is necessary to ensure that the land value is preserved and that the land is utilized to the maximum benefit of the Indian owners.

(b) Unless otherwise authorized by federal statute (such as 25 U.S.C. 415(a) or 4211(b)), leases for public, religious, educational, recreational, residential or business purposes will have a maximum primary term that does not exceed 25 years and may include an option to extend for one additional term that may not exceed 25 years.

(c) Leases for housing development and residential purposes can not exceed 50 years including renewals, unless a federal statute (such as 25 U.S.C. 415(a)) has authorized a longer period for leases of land within certain reservations.

(d) Leases for agricultural purposes will not usually exceed five years for dry-farming land or ten years for irrigable lands. If substantial investment in the development or production of a specialized crop is required, agricultural leases may be made for up to 25 years. To determine if a term longer than ten years is justified, we will consider the feasibility of the proposed development, crop production, or consideration of the amount of investment required by the lessee or other relevant factors;

(e) For the undetermined heirs of an individual Indian decedent owning 100 percent (%) interest in the land, we will grant leases for a maximum term of two years.

(f) A lease can be extended only by renewal or extension as defined in the lease. Leases may provide multiple options for termination; and

(g) A lease will specify the beginning and ending dates of the term allowed, as well as any option to renew, extend, or terminate.

§ 162.28 When may a lessee take possession of leased Indian land?

The lessee may take possession of leased Indian land on the date specified in the lease as the beginning date of the term, but not before we approve the lease.

§ 162.29 Can improvements be constructed on Indian lands?

Improvements may be constructed if the lease contains a provision allowing them.

§ 162.30 What happens to improvements constructed on Indian lands when the lease has been terminated?

If improvements are to be constructed on the land, the lease must contain a provision that improvements will either:

(a) Remain on the lands upon termination of the lease, in a condition that is in compliance with applicable building, health and other codes, and will become the property of the Indian landowner; or

(b) Be removed within a time period specified in the lease. The lands must be restored as close as possible to the original condition prior to construction of such improvements. At the request of the lessee we may, at our discretion, grant an extension of time for the removal of improvements for circumstances beyond the control of the lessee.

§ 162.31 What happens if the improvements are not removed within the specified time period?

If a lessee fails to remove the improvements within the time allowed in the lease, the lessee may forfeit the right to remove the improvements and the improvements may become the property of the Indian landowner.

§ 162.32 When must a lease payment be made?

A lease payment is due by the date specified in the lease. The BIA will not accept a lease payment beyond the lease term, except in collection of unpaid lease payments.

§ 162.33 When is a lease payment late?

A lease payment is deemed to be late if it is not received within 15 days of the payment date specified in the lease.

§ 162.34 Will a lessee be notified when a lease payment is due?

Each lessee will receive written notice stating when lease payments are due. Additionally, each lease informs the lessee of the schedule of payments agreed to by the parties.

§ 162.35 What happens if a lessee does not receive notice that a lease payment is due?

If a lessee does not receive notice that a lease payment is due, the lessee remains responsible for making timely payment of all amounts due under the lease.

§ 162.36 What will the BIA do to collect lease payments that are not made in accordance with the terms of a lease?

Failure to make payments in accordance with the terms of a lease will be enforced against the lessee as a lease violation under subpart H of this part.

§ 162.37 Is there a penalty for late payment on a lease?

Yes. A lease will contain a provision that specifies the penalty that will be assessed and collected for late payment.

§ 162.38 Does the BIA accept partial payment for a lease payment due?

Yes, in special circumstances. Ordinarily, the total amount is due and payable by the payment date specified in the lease, and failure to make complete payment may constitute a violation of the lease. Exceptions are rarely granted and require a specific written request and the consent of the parties to the lease and our approval. For example, partial payment may be allowed for the bankruptcy of a lessee.

§ 162.39 May a lessee make a lease payment in advance of the due date?

Rent may be paid only 30 days in advance of the due date as specified in the lease. The BIA will not accept a lease payment more than 30 days prior to the beginning of the new lease term.

§ 162.40 May an individual Indian landowner modify the terms of the lease on a fractionated tract for advance lease payment?

No. An individual Indian landowner of a fractionated tract may not modify a lease to permit a lease payment in advance of the due date specified in the lease.

§ 162.41 To whom are lease payments made?

All lease payments must be submitted as provided in the lease. The lessee must make payments payable to the party identified in the lease in the amount due, including any late payment, penalties, interest, or other amount if applicable.

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§ 162.42 May a lessee send a lease payment directly to the Indian landowner?

Yes, if the lease provides for direct payment.

§ 162.43 What forms of payment are acceptable to the Secretary?

Payment must be in accordance with the lease. Payments of money must be United States currency in one of the following forms:

(a) Postal money order;

(b) Bank money order;

(c) Cashier's check;

(d) Certified check; or

(e) Electronic funds transfer.

§ 162.44 When required under a lease, how will the BIA adjust the lease payment?

(a) We will adjust the lease payment every fifth year.

(b) We will make our adjustments by appropriate valuation method, taking into account the value of any improvements made under the lease, unless the lease provides otherwise. These adjustments will be retroactive, if they are not made at the time specified in the lease.

(c) For leases granted by tribes, we will consult with the granting tribe to determine whether an adjustment of the lease payment should be made. The lease must be modified to document the granting tribe's waiver of the adjustment.

Bonds and Insurance

§ 162.45 Must a lessee, assignee or sublessee provide a bond for a lease?

Yes. A lessee, assignee or sublessee must provide a bond for each lease interest acquired. Upon request by an Indian landowner, we may waive the bond requirement.

§ 162.46 How do we determine the amount of the bond?

(a) We will determine the amount of the bond for each lease based on the following considerations, as appropriate:

(1) The value of one year's rental;

(2) The value of any improvements to be constructed;

(3) The cost of performance of any additional obligations, such as irrigation charges; and

(4) The cost of performance of restoration and reclamation.

(b) Tribal policy made applicable by § 162.6 of this part may establish or waive specific bond requirements for leases.

(c) We may adjust security or bond requirements at any time to reflect changing conditions.

§ 162.47 What forms of bonds will the BIA accept?

(a) We will only accept bonds in the following forms:

(1) Cash;

(2) Negotiable Treasury securities that:

(i) Have a market value at least equal to the bond amount; and

(ii) Are accompanied by a statement granting full authority to the Secretary to sell such securities in case of a violation of the terms of the lease.

(3) Certificates of deposit that indicate on their face that Secretarial approval is required prior to redemption by any party;

(4) Irrevocable letters of credit (LOC) issued by federally-insured financial institutions authorized to do business in the United States. LOC's must:

(i) Contain a clause that grants the Secretary authority to demand immediate payment if the lessee defaults or fails to replace the LOC within 30 calendar days prior to its expiration date;

(ii) Be payable to the Department of the Interior, BIA;

(iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date the BIA receives it; and

(iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides the BIA with written notice at least 90 calendar days before the letter of credit's expiration date that it will not be renewed;

(5) Surety bond; or

(6) Any other form of highly liquid, non-volatile security subsequently approved by us that is easily convertible to cash by us and for which Secretarial approval is required prior to redemption by any party.

(b) For tribal leases, a tribe may negotiate a lease term that specifies the use of any of the bond forms described in paragraph (a) of this section.

§ 162.48 How will a cash bond be administered?

If you submit a cash bond, the BIA will establish an account in your name with the Office of Trust Funds Management to retain the funds.

§ 162.49 Is interest paid on a cash performance bond?

No. We will not pay interest on a cash performance bond.

§ 162.50 Are cash performance bonds refunded?

Yes. If the cash performance bond has not been forfeited for cause, we will refund the principal amount deposited to the depositor at the end of the lease period.

§ 162.51 Is insurance required for a lease?

When we determine it to be in the best interest of the Indian landowners, we will require a lessee to provide insurance. If insurance is required, it must:

(a) Be provided in an amount sufficient to:

(1) Protect any improvements on the leased premises;

(2) Cover losses such as personal injury or death; and

(3) Protect the interest of the Indian landowner.

(b) Identify the Indian landowners and the United States as insured parties.

§ 162.52 What types of insurance may be required?

We may require any or all of the following types of insurance depending upon the activity conducted under the lease: Property, crop, liability, and casualty (such as for fire, hazard, or flood).

Subpart C—Process for Obtaining a Lease

§ 162.60 Who is responsible for leasing Indian land?

The Indian landowner is primarily responsible for leasing Indian land, with the assistance and approval of the Secretary,except where otherwise provided by law. You may contact the local BIA office for assistance in leasing Indian land.

§ 162.61 How do I acquire a lease on Indian land?

You may acquire a lease on Indian land through either negotiation or responding to an advertisement for competitive bids. A tribe may lease land under either of these methods. We must approve all leases of Indian land in order for the leases to be valid.

§ 162.62 How do I acquire a lease through negotiation?

(a) Leases may be negotiated and granted by the Indian landowners with the lessee of their choice. The Secretary also may negotiate and grant leases on behalf of Indian landowners pursuant to § 162.60 (b) and (c) of this part.

(b) Upon the conclusion of negotiations with the Indian landowners or their representatives, and the satisfaction of any applicable conditions, you may submit an executed lease and any required supporting documents to us for appropriate action.

(c) In negotiating a lease, the Indian owners may choose to contribute their land to the project in exchange for their

receipt of a share of the revenues or profits generated by the lease. Under such an arrangement, the lease may be granted to a joint venture or other legal entity owned, in part, by the Indian owners of the land. Unless otherwise required by this title, we will not enter into or approve any agreements related to the formation of such a joint venture or other legal entity.

(d) Receipt of lease payments based upon income received from the land will not, of itself, make the Indian landowner a partner, joint venturer, or associate of the lessee(s).

(e) We will assist prospective lessees in contacting the Indian landowners or their representatives for the purpose of negotiating a lease.

§ 162.63 What are the basic steps for acquiring a lease through negotiation?

The basic steps for acquiring a lease by negotiation are:

(a) We receive a request to lease from an Indian landowner or potential lessee;

(b) We prepare the lease documents and provide them to the Indian landowner or potential lessee, or assist the Indian landowner to prepare the documents;

(c) The Indian landowner, or the Secretary on the landowner's behalf, grants (agrees to) a lease;

(d) A potential lessee completes the requirements for securing a lease, *e.g.* bond, payment of administrative fee, etc.;

(e) We review the lease for proper completion and compliance with all applicable laws and regulations;

(f) We issue a decision on the lease based upon our review;

(g) We send the approved lease to the lessee and, upon request, to the Indian landowner; and

(h) We record and maintain the approved lease.

§ 162.64 Must I negotiate with and obtain the consent of all of the Indian landowners of a fractionated tract for a lease other than an agricultural lease?

Yes. All Indian landowners of fractionated interests must consent to an agricultural lease.

§ 162.65 Can I negotiate a contract with an Indian landowner to lease land at a future date?

In negotiating a lease with Indian landowners or their representatives, a prospective lessee may enter into a contract to lease the land at a future date, with the contract specifying the essential lease terms, as described in § 162.30 of this part, as well as any conditions that must be satisfied before the lease may be granted or approved.

(a) The conditions to be satisfied may require that the lessee comply with NEPA or other preliminary federal or tribal land use requirements; the conditions also may require that certain permits or financing commitments be obtained before the lease is granted or approved.

(b) We may participate in the contract negotiations (in order to ensure that all of the necessary terms and conditions are identified), but we will not be a party to such a contract.

(c) We will not approve such a contract unless approval is required under 25 U.S.C. § 81 and part 84 of this chapter.

§ 162.66 How do I acquire an advertised lease through competitive bidding?

(a) Advertised leases on Indian lands are awarded to the successful bidder after a public bidding process. We will grant or approve the lease on behalf of the Indian landowners and then, approve the lease. The basic steps for acquiring an advertised lease are:

(1) We prepare and distribute an advertisement of lands available for lease that identifies the terms and conditions of the lease sale, including, for agricultural leases, any preference rights;

(2) We solicit sealed bids and conduct the public lease sale;

(3) We determine and accept the highest bid(s), which may require further competitive bidding after the bid opening;

(4) We prepare leases for successful bidders;

(5) The successful bidder completes and submits the lease and satisfies its requirements, e.g., bond, payment of administrative fee, etc.;

(6) We review the lease for proper completion and compliance with all applicable laws and regulations;

(7) We grant the lease on behalf of Indian landowners where we are authorized to do so by law;

(8) We approve the lease;

(9) We distribute the approved lease to successful bidder/lessee and, upon request, to the Indian landowner; and

(10) We record and maintain the approved lease.

(b) [Reserved]

§ 162.67 Must Indians who own Indian land obtain a lease before using this land for their purposes (owners' use)?

(a) Indian landowners who own 100 percent (%) of a tract of land are not required to obtain a lease.

(b) If an Indian landowner does not own 100 percent (%) of a tract of land and wants to use the land, he or she must obtain a lease from the co-owners in the tract of land.

§ 162.68 Must the parents or guardians of minors who own Indian land obtain a lease before using the land?

A parent, guardian, or other person standing in loco parentis does not need to obtain a lease for lands owned by their minor children if:

(a) Those minor children own 100 percent (%) of the land; and

(b) The minor children directly benefit from the use. We may require the user of the land to provide evidence of a direct benefit to the minor children. When any of the minor children reach the age of majority, the user of the land must obtain a lease from the child for the use to continue.

Subpart D—Granting a Lease

§ 162.70 Who may grant a lease?

(a) Tribes grant leases of tribal land, including any tribally-owned undivided interest(s) in a fractionated tract. A lease granted by the tribe must be approved by us, unless the lease is authorized by a charter approved by us under 25 U.S.C. § 477, or unless our approval is not required under other applicable federal law. In order to lease tribal land in which the beneficial interest has been assigned to another party, the assignee and the tribe must both grant the lease, subject to our approval.

(b) Individual Indian landowners may grant a lease of their own land, including their undivided interest in a fractionated tract, subject to our approval. Except as otherwise provided in this part, these landowners may include the owner of a life estate holding 100 percent (%) interest in the lease tract.

(c) We may grant a lease on behalf of an individual Indian landowner, as provided in section 162.71.

(d) We will grant permits on Government lands.

§ 162.71 Who may represent an individual Indian landowner in granting a lease?

The following individuals or entities may represent an individual Indian landowner:

(a) An adult acting on behalf of :

(1) His or her minor children; or

(2) Other minor children to whom the adult stands *in loco parentis* who do not have a guardian or other legal representative;

(b) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;

(c) An adult or legal entity who has been given a written power of attorney which:

(1) Meets all of the formal requirements of any applicable tribal or state law;

(2) Identifies the attorney-in-fact and the land to be leased; and

(3) Describes the scope of the power granted and any limits thereon.

(d) The BIA acting on behalf of:

(1) An individual who is non compos mentis;

(2) An orphaned minor;

(3) An individual Indian landowner who has granted us a durable power of attorney to lease his or her land;

(4) The undetermined heirs and devisees of a deceased Indian landowner;

(5) An Indian landowner whose whereabouts are unknown to us after a reasonable attempt is made to locate the owner;

(6) The Indian landowners of a fractionated tract who:

(i) Have received actual notice of our intent to grant a lease on their behalf; and

(ii) Are unable to agree upon a lease during the three month negotiation period following the notice;

(7) The owners of a minority interest in the Indian ownership of a fractionated tract of Indian agricultural land when the majority interest has consented, as long as the minority interest owners receive fair annual rental;

(8) The owners of "highly fractionated undivided heirship lands," for agricultural leases, consistent with § 162.6 of this part; or (9) The individual Indian owners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

§ 162.72 May an emancipated minor grant a lease on his or her own Indian land?

No. An emancipated minor, a person who is under 18 years of age and declared by a court of competent jurisdiction to be an adult, may not grant a lease on his or her own Indian land.

§ 162.73 When may the Secretary grant permits?

(a) We may grant a permit on behalf of all individual Indian landowners covering all trust and restricted interests if it is impractical to provide notice to the landowners and no substantial injury to the land would occur.

(b) We will not grant permits on tribal lands except upon request by a tribe.

(c) We will grant permits on Government land.

§ 162.74 What requirements apply to an agricultural lease on fractionated tracts?

(a) The owners of a majority interest in the Indian ownership of a fractionated tract may grant an agricultural lease without giving prior notice to the minority owners as long as the minority interest owners receive fair annual rental. We must approve such leases.

(b) We may grant an agricultural lease on behalf of all owners of a fractionated tract without giving prior notice to the minority owners. Before granting such a lease, we will offer a preference right to any Indian owner who:

(1) Possesses the entire lease tract;

(2) Submits a written offer to lease the land, subject to any required or negotiated terms and conditions, prior to our granting a lease to another party; and

(3) Provides any supporting documents needed to demonstrate the ability to perform all of the lessee's obligations under the proposed lease.

§ 162.75 When is a decision by the BIA regarding leases effective?

A decision by the BIA regarding leases is effective 30 days after the issuance of the decision document and exhaustion of all appeal rights.

Subpart E—Business Leases

General Provisions

§ 162.80 What types of leases are covered by this part?

(a) This subpart covers both ground leases (undeveloped land) and leases of developed land (together with the improvements thereon), authorizing the development or use of the leased premises for purposes other than farming, grazing, or use as an individual homesite. The regulations in this subpart also apply to leases made for those other purposes, if appropriate.

(b) Leases covered by this subpart may authorize the construction of single-purpose or mixed use projects designed for use by any number of tenants or occupants. These leases may include:

(1) Residential development leases;

(2) Leases for public, religious, educational, and recreational purposes; and

(3) Commercial or industrial leases for retail, office, manufacturing, storage, and/or other business purposes.

§ 162.81 How is a business lease obtained?

You may obtain a lease from an Indian landowner through negotiation. Generally, business leases will not be advertised for competitive bid. We will assist you in contacting the Indian landowners or their representatives for the purpose of negotiating a lease.

§ 162.82 What supporting documents must I provide?

(a) If you are a corporation, limited liability company, partnership, joint venture, or other legal entity, you must provide organizational documents, certificates, filing records, and resolutions or other authorization documents, as needed to show that the lease will be enforceable against the lessee and that the lessee will be able to perform all of its lease obligations.

(b) You must provide an appraisal, or other appropriate valuation, and financial *pro forma*, to support any negotiated rent and term provisions in the lease.

(c) You must provide current financial statements and credit reports or, where such records are not available, other appropriate documentation, to show that you will be able to meet the monetary obligations under the lease.

(d) If the lease authorizes new construction, you must provide:

(1) Environmental reports, which may include an environmental baseline survey, and archaeological reports and other documents, as determined by us to be necessary to facilitate our compliance with federal and tribal environmental and land use requirements;

(2) A preliminary site plan identifying the proposed location of any new buildings, roads and utilities, and a construction schedule showing the tentative commencement and completion dates for those improvements; and

(3) A certified survey plat depicting the boundaries of the leased premises and the location of any existing improvements and encumbrances.

Rent and Term

§ 162.83 How much rent must a lessee pay?

(a) The lease must require the initial payment of a fair annual rental, based on a fixed amount and/or a percentage of the projected income to be derived from the land, unless a lesser amount is permitted under paragraphs (b)–(c) of this section. If new construction is required, the lease may provide for the payment of less than a fair annual rental during the pre-development and construction periods specified in the lease.

(b) We will approve a negotiated lease of tribal land which provides for the payment of nominal rent, or less than a fair annual rental, if the tribe provides a resolution (or appropriate final tribal decision) and a written explanation indicating how approval will serve the tribe's best interest over the entire period in which the reduced rent will be paid.

(c) We will approve (but not grant) a lease of individually owned Indian land which provides for the payment of nominal rent, or less than a fair annual rental, if:

(1) The lease is for religious, educational, recreational, or other public purposes;

(2) The lease is for business purposes, and the lessee is the individual Indian landowner's spouse, brother, sister, lineal ancestor, lineal descendant, or co-owner; or

(3) The lessee is a joint venture or other legal entity in which the Indian owners directly participate in the revenues or profits generated by the lease, and the distribution of profits or revenues to the owners is projected to exceed the rent which would otherwise be paid over the entire lease term.

(d) The lease must provide for a rental adjustment at least every fifth year, unless the lessee is paying less than a fair annual rental or a rental based primarily on a percentage of the income derived from the land. If adjustments are required, the lease must specify:

(1) When adjustments are made;

(2) Who makes the adjustments;

(3) What the adjustments are based on; and

(4) How disputes arising from the adjustments are resolved.

§ 162.84 Is a surety bond or guaranty required?

(a) Yes. Unless the lease provides otherwise, you must furnish a surety bond or unconditional guaranty to secure the contractual obligations. If a bond or guaranty is required, you must furnish it before we grant or approve the lease.

(b) The lease may require that the surety bond or guaranty remain effective throughout the lease term and any holdover or renewal period. Alternatively, the lease may provide for the bond or guaranty to be modified or released:

(1) After a specified period of time;

(2) When the income generated by the lease reaches a specified level;

(3) If we determine that the original bond or guaranty is no longer needed to secure the contractual obligations; or

(4) If, for leases on tribal lands, the tribe requests the modification or release of the bond, and we approve the request.

(c) If the lease does not initially require a surety bond or guaranty, or if it provides for modification or release at some future date, the lease must allow us to establish or reinstate a bond or guaranty requirement at any time we deem it necessary to secure the contractual obligations. A tribe may request that we establish or reinstate a bond or guaranty requirement as may be necessary.

(d) We will review the surety bond or guaranty documents to ensure that they include the necessary waivers. We may require that the surety or guarantor provide any supporting documents needed to show that the bond or guaranty will be enforceable, and that the surety or guarantor will be able to perform the guaranteed obligations. The bond must be provided by a company certified by the Department of the Treasury as an acceptable surety on federal bonds.

(e) The lease must require that you obtain the consent of the surety or guarantor, with respect to any amendment, assignment, sublease, or leasehold mortgage. The lease must also provide for the surety or guarantor to receive a copy of any notice of default issued to the lessee by us or by the Indian owners.

§ 162.85 Can a lease be renewed?

(a) Unless otherwise provided by law (such as 25 U.S.C. 415(a)), the lease may provide the lessee with an option to renew the lease for a single renewal period of no more than 25 years, so long as the maximum term permitted under federal law is not exceeded. If an option to renew is provided, the lease must specify:

(1) The time and manner in which the option must be exercised; and

(2) Any additional consideration which will be due upon the exercise of the option or the commencement of the renewal period.

(b) The lease may not:

(1) Be renewed or extended by holdover;

(2) Provide an option to renew which covers less than the entire lease tract; or

(3) Provide a right of first refusal or any other type of preference with respect to a new lease.

§ 162.86 May a lease be terminated prior to its expiration date?

(a) Yes. The lease may provide either party with one or more options to cancel, for any reason. If an option to cancel is provided, the lease must specify the time and manner in which the option must be exercised. If the lessee is a joint venture or other legal entity in which the Indian owners participate directly in the revenues or profits generated by the lease, the lease must:

(1) Provide the Indian landowners with an option to cancel if the actual revenues or profits fall significantly below the initial projections; and

(2) Specify the time, manner, and terms upon which a new lease will be entered into with the successor-in-interest to the joint venture or legal entity whose lease is being canceled.

(b) The lease may provide the Indian landowners with a buyout option or an option to recapture the land upon the occurrence of certain conditions, such as a proposed renewal or assignment of the lease. If such an option is provided, the lease must specify the time and manner in which the option must be exercised.

(c) The lease may be terminated by agreement with the Indian landowners, subject to our approval. The lease may not be surrendered without such an agreement, nor will it be terminated if the Indian landowners retake possession upon abandonment of the land.

(d) In a default, the lease may be terminated by us or by the Indian landowners, in accordance with the negotiated remedies provided in the lease. The lease may also be canceled by us for cause under subpart H of this part.

Consents and Approvals

§ 162.87 How and when can a lease be amended?

A lease may be amended at any time, with the consent of the parties to the lease and our approval. The consent of the Indian landowners must be obtained in the same manner as the original grant of the lease, unless the lease authorizes one or more of the landowners to consent to certain types of amendments on behalf of all of the Indian landowners. The lease may not provide such an authorization with respect to any amendment which:

(a) Modifies the lessee's payment obligations;

(b) Extends the lease term;

(c) Expands the lease area; or

(d) Terminates the lease.

§ 162.88 May a lease be assigned, sublet, or mortgaged without the consent of the Indian landowners?

(a) Unless the lease provides otherwise, the leased premises may only be assigned, sublet, or mortgaged without the consent of the Indian landowners in the circumstances described in paragraphs (b)–(e) of this section. If the owners' consent is required, it must be obtained in the same manner as the original grant of the lease, unless the lease authorizes one or more of the Indian landowners to consent on behalf of all such owners.

(b) The lease may be assigned without the consent of the Indian landowners if:

(1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance; and

(2) The assignee agrees in writing to assume all of the lessee's obligations under the lease.

(c) Part of the leased premises may be sublet without the consent of the Indian landowners when:

(1) The sublease is:

(i) Part of a large commercial development;

(ii) Part of a housing development; or

(iii) For residential purposes (including a development by a tribally designated housing entity as defined under 25 U.S.C. 4103(21)); and

(2) We have approved a sublease form and rent schedule for use in the project.

(d) The lease may be mortgaged without further consent of the Indian landowners if the lease contains a general authorization for such a mortgage, and the lease was negotiated with the understanding that it would be used to secure certain types of financing.

§ 162.89 May the Indian landowners withhold their consent to an assignment or encumbrance?

Yes. However, Indian landowners are encouraged not to withhold their consent unreasonably. A lease may require that:

(a) The Indian landowners specify their reasons for withholding consent; and

(b) The owners' consent will be deemed granted if a response to a request for consent is not given within a specified time period.

§ 162.90 May a lease be assigned, sublet, or mortgaged without the BIA's approval?

(a) The lease may not be mortgaged without our approval of the mortgage instrument. Except as provided in paragraphs (b)–(c) of this section, the leased premises may not be assigned or sublet without our approval.

(b) The lease may be assigned without our approval if:

(1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance; and

(2) The assignee agrees in writing to assume all of the obligations under the lease.

(c) Part of the leased premises may be sublet without our approval when:

(1) The sublease is part of a large commercial or residential development; and

(2) We have approved a sublease form and rent schedule for use in the project.

(d) Assignees and sublessees must meet all bonding requirements for the leasehold interest, as provided in § 162.49.

§ 162.91 How will the BIA decide whether to approve an assignment or sublease?

(a) We will approve the assignment or sublease if:

(1) The required consents have been obtained from the Indian owners and any sureties or guarantors;

(2) The lessee is not in default, and will remain liable under the lease;

(3) The assignee agrees to be bound by, or the sublessee agrees to be subordinated to, the terms of the lease; and

(4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian owners.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) An equitable division of the income from the assignment or sublease is needed;

(2) The proposed use by the assignee or sublessee will require an amendment of the lease;

(3) The value of any part of the leased premises not covered by the assignment or sublease would be adversely affected; and

(4) The assignee or sublessee has provided supporting documents which demonstrate that the lease or sublease will be enforceable against the assignee or sublessee, and that the assignee or sublessee will be able to perform its obligations under the lease or sublease.

Subpart F—Compensation to Indian Landowners

§ 162.100 What does the BIA do with rent payments received from lessees?

Rent will be distributed to the Indian landowners in accordance with the interest that each owns in the leased land. The rent will be deposited to the appropriate account maintained by the Office of Trust Funds Management in accordance with 25 CFR part 115.

§ 162.101 How do Indian landowners receive rent payments?

Funds will be paid to the Indian landowners by the Office of Trust Funds Management in accordance with 25 CFR part 115.

§ 162.102 How will the rent be distributed if the lease covers more than one tract of land with different owners?

Except where otherwise provided in the lease, the rent will be prorated based upon the number and size of the tracts in relation to the total leasehold, and distributed to each owner according to their fractional share of each tract.

Subpart G—Administrative Fees

§ 162.110 Are there administrative fees for a lease?

Yes. We will charge an administrative fee before approving any lease, permit, sublease, assignment, encumbrance, modification, or other related document.

§ 162.111 How are administrative fees determined?

(a) Except as provided in paragraph (b) of this section, we will charge administrative fees based on the annual rent, according to the following table:

If the annual rent is * * *	Then the administrative fee will be * * *
Less than $500	3% of the annual rent.
Between $500.00 and $5,000.00.	2% of the annual rent.
Greater than $5,000.00.	1% of the annual rent.
Percentage rental	Based on the minimum annual rental or an estimated percentage of rental.
Crop share rental	Based on estimated value of the crop share.

(b) The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00.

(c) If a tribe performs all or part of the administrative duties for this part under Public Law 93–638, the tribe may establish, collect, and use reasonable fees to cover its costs associated with the performance of administrative duties.

(d) The fees for subleases, assignments, encumbrances, modifications, or other related documents will be in accordance with the table in paragraph (a) of this section.

§ 162.112 Are administrative fees refundable?

No. We will not refund administrative fees.

§ 162.113 May the Secretary waive administrative fees?

Yes. We may waive the administrative fee for a justifiable reason.

§ 162.114 Are there any other administrative or tribal fees, taxes, or assessments that must be paid?

(a) The lessee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land as determined by us or by the tribe.

(b) If the leased land is within an Indian irrigation project or drainage district, the lessee must pay all charges that may accrue during the term of the

lease. These may include charges for operation and maintenance of the irrigation project unless superseded by part 171 of this chapter. The lessee must pay the appropriate official in charge of the irrigation project or drainage district having jurisdiction.

Subpart H—Lease Violations

§ 162.120 What lease violations are addressed by this subpart?

This subpart addresses violations of lease provisions other than trespass. Trespass is addressed under subpart L of this part.

§ 162.121 How will the Secretary enforce compliance with lease provisions?

When reasonable grounds exist, the Secretary may enter the leased premises, consistent with provisions in the lease, at any reasonable time with or without prior notice to determine whether there has been a violation of the lease provisions and to protect Indian trust assets.

§ 162.122 What happens if a violation of a lease occurs?

If we determine that a violation of the lease has occurred based on facts known to us, as soon as practicable we will notify the lessee and the sureties of the violation by certified mail—return receipt requested. This notice will include an explanation of the violation.

§ 162.123 What will a written notice of a violation contain?

The written notice will provide the lessee with ten days from the receipt of the notice to:

(a) Cure the violation and notify us that the violation is cured;

(b) Explain why we should not cancel the lease; or

(c) Request in writing additional time to complete corrective actions. If additional time is granted, we may require that you take certain corrective actions immediately.

§ 162.124 Can a determination of a violation be contested?

Yes. In the written notice of violation we will advise the lessee of the procedure to follow to contest our determination that a violation of the lease has occurred.

§ 162.125 What happens to a bond if a violation occurs?

We may apply the bond to remedy the violation, in which case we will require you to submit a replacement bond of an appropriate amount. Our decision setting the amount of the appeal bond may not be appealed.

§ 162.126 What happens if you do not cure a lease violation?

(a) We will:

(1) Issue a written determination to cancel the lease if the violation is not cured. The decision letter will contain:

(i) An explanation why we are canceling the lease;

(ii) An order to vacate the property;

(iii) Notice of the right to appeal under part 2 of this chapter;

(iv) An order to pay delinquent rentals, damages, and other charges; and

(v) A requirement to post an appeal bond if applicable.

(2) Notify all interested parties, including the Indian landowners, in writing as soon as practicable, by certified mail—return receipt requested, of our determination to cancel a lease.

(b) We may require you to post an appeal bond in an amount determined by us. The amount of the appeal bond will be the amount of damages, and additional rentals expected to accrue during the settlement of the appeal.

§ 162.127 If you do not cure a violation, what may an Indian landowner do?

(a) If a violation is not cured within the required time frame, the lessor may exercise rights under the lease, including a right of entry, if any, or request that we cancel the lease.

(b) If a lease authorizes termination according to tribal or other law, or provides for the resolution of certain types of disputes through alternative dispute resolution methods, the lease provisions will govern in place of this part.

§ 162.128 Can the Secretary take emergency action without prior notice if the leased premises are being damaged?

Yes. If the lessee causes or contributes to a severe harm to the premises, the Secretary may take appropriate emergency action, in consultation with the Indian landowner, by:

(a) Initiating action to cancel the lease;

(b) Requiring immediate cessation of the activity resulting in the harm;

(c) Ordering the lessee to vacate the premises immediately; and

(d) Taking legal action as may be appropriate, including seeking emergency judicial action.

§ 162.129 What rights does a lessee have if the Secretary takes emergency action under this subpart?

A lessee may:

(a) Agree to remedy the harm in a manner and time frame satisfactory to the Secretary and the Indian landowner;

(b) Seek to have the lease reinstated after the harm to the property has been cured; and

(c) Contest the Secretary's emergency actions under 25 CFR Part 2.

Subpart I—Appeals

§ 162.130 May decisions by the Secretary be appealed?

(a) Except where otherwise provided in this part, appeals from decisions of the Secretary under this part may be taken pursuant to 25 CFR part 2.

(b) As may be necessary to protect the interests of the Indian landowner, we may require the appellant (or lessee) to post a bond in an amount sufficient to guarantee restoration of the Indian land if our decision to grant or approve the lease is reversed.

Subpart J—Non-Trust Interests

§ 162.140 May the Secretary grant or approve leases for non-trust interests in Indian land?

No. The Secretary has no statutory authority to grant or approve leases for non-trust interests in Indian land.

§ 162.141 Are non-trust interests included in a lease?

No. The undivided non-trust interests are not included in a lease granted or approved by the BIA.

§ 162.142 How will a lessee know there is a non-trust interest in Indian land?

When we lease Indian land, we will advise the lessee that the title to the Indian land contains non-trust interest(s). Upon request, and subject to applicable law, we will provide the lessee with the information we have in our records identifying the owner of the non-trust interest(s).

§ 162.143 From whom must a lessee lease a non-trust interest?

A lessee must lease any non-trust interest(s) directly from owner(s) of the non-trust interest(s).

§ 162.144 Is the non-trust interest shown in a lease of Indian land?

No. The lease terms will describe only the Indian owned interest. For example, if the Indian owned interests constitutes ¾ of the Indian land, the land will be described as: An undivided ¾ interest in and to the W/2 SW/4, Section 1, Township 10 North, Range 1 East, Principal Meridian, Billings, Montana. This will notify the lessee that the full interest in the tract has not been leased. The remaining undivided ¼ interest is the non-trust interest and the lessee must contact the non-trust interest owners directly to secure a lease of their interest.

§ 162.145 How much rent is due for the non-trust interest?

It is the responsibility of the lessee to contact the non-trust owners to negotiate the amount of rental to be paid and to make rental payments to the owners of the non-trust interest.

§ 162.146 May a lease payment made by a lessee to the BIA or to an Indian landowner include payment for any non-trust interest?

No. Payment for a non-trust interest must be made to the owner of that interest.

§ 162.147 Will the BIA grant or approve a lease on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest?

We will grant or approve a lease on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest only when it is necessary to preserve the value of the trust interests in the land.

Subpart K—Valuation

§ 162.150 Why must the Secretary determine the fair annual rental of Indian land?

The BIA must determine the fair annual rental of Indian land in order to:

(a) Assist the Indian landowner in negotiating a lease with potential lessees; and

(b) Enable the Secretary to determine whether a lease is in the best interests of the Indian landowner.

§ 162.151 How does the Secretary determine the fair annual rent of Indian land?

The Secretary determines the fair annual rent for lease by appraisal, advertisement, competitive bidding, negotiation, or any other appropriate method, in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP).

§ 162.152 Will the BIA ever grant or approve a lease at less than fair annual rental?

(a) We will grant an agricultural lease of individually owned Indian land at less than fair annual rental if, after advertising the lease, we determine that such action would be in the best interests of the individual Indian landowners.

(b) We may approve a lease of individually owned Indian land at less than fair annual rental if:

(1) The lease is for religious, educational, recreational, or other public purposes;

(2) The lease is for a homesite for the landowner's spouse, brother, sister, lineal ancestor, lineal descendent or co-owner; or

(3) We determine it is in the best interest of the Indian landowners.

(c) We may approve a lease of tribal land at less than fair annual rental if:

(1) The lease is for religious, educational, recreational, or other public purposes;

(2) The lease is for residential, agricultural, or business purposes and the lessee is a tribal member or tribal entity; or

(3) We determine that it is in the best interest of the tribe.

(d) We will not grant or approve leases not addressed in paragraphs (a) through (c) of this section at less than fair annual rental.

Subpart L—Trespass

§ 162.160 What is trespass?

Under this part, trespass is any unauthorized occupancy, use of, or action on Indian agricultural and government lands. The following are some examples of trespass:

(a) Cultivating or harvesting of irrigated or non-irrigated crops or the harvesting of native hay, forage, or seed;

(b) Erecting or damaging fencing, gates or other structures;

(c) Developing water resources;

(d) Commercial filming or photography;

(e) Sale or barter of goods or services;

(f) Placing or storing of beehives;

(g) Cutting, damaging, taking, harvesting, or removing agricultural products for commercial purposes, including but not limited to: berries, nuts, flowers, seeds, moss, cones, leaves, mushrooms, cactus, yucca, and greenery;

(h) Recreation, hunting, trapping, or fishing;

(i) Disturbing soil, plants, or otherwise exposing or disturbing, damaging, or removing archaeological or paleontological resources;

(j) Littering or disposing of agricultural related products, hazardous waste, household or business waste, or garbage;

(k) Applying pesticides without proper certification or misusing pesticides;

(l) Aquaculture or the harvesting of fish raised for commercial sale or consumption;

(m) Unauthorized livestock activities, including:

(1) Driving livestock across Indian land without an approved crossing permit;

(2) Allowing livestock to drift and graze on Indian land without an approved grazing permit;

(3) Grazing livestock within an area closed to grazing of that class of livestock; and

(4) Grazing livestock in an area withdrawn from use by the BIA when damage to the Indian land is occurring due to improper handling of livestock; and

(n) Other actions designated by tribes as acts of trespass on Indian agricultural lands.

§ 162.161 What is the BIA's trespass policy?

We will:

(a) Investigate accidental, and willful, or incidental trespass.

(b) Respond to alleged trespass in a prompt, efficient manner.

(c) Assess trespass penalties for the value of products used or removed, cost of damage to the Indian land, and enforcement costs incurred as a consequence of the trespass.

(d) Ensure that unnecessary or undue damage to Indian lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

§ 162.162 Who can enforce this subpart?

(a) The BIA enforces the provisions of this subpart. If the tribe adopts the provisions of this subpart, the tribe will have concurrent jurisdiction to enforce this subpart. Additionally, if the tribe so requests, we will defer to tribal prosecution of trespass on Indian agricultural lands.

(b) The provisions in this subpart are exclusive of, and in addition to, any tribal action that may be taken under tribal law.

Notification

§ 162.163 How are trespassers notified of a trespass determination?

(a) Unless otherwise provided under tribal law, when we have reason to believe that a trespass on Indian agricultural land has occurred, we or the authorized tribal representative will provide written notice to the alleged trespasser, the possessor of trespass property, any known lien holder, and the beneficial Indian landowner, as appropriate. The written notice will include the following:

(1) The basis for the trespass determination;

(2) A legal description of where the trespass occurred;

(3) A verification of brands in the State Brand Book for cases of livestock trespass;

(4) Corrective actions that must be taken;

(5) Time frames for taking the corrective actions; and

(6) Potential consequences and penalties for failure to take corrective action.

(b) If we determine that the identity of the alleged trespasser or possessor of

trespass property is unknown or if the trespasser refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building and at the United States Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) Trespass notices under this subpart are not subject to appeal under 25 CFR part 2.

§ 162.164 What can I do if I receive a trespass notice?

If you receive a trespass notice, you may within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact us in writing to explain why the trespass notice is in error. You may contact us by telephone, but any official explanation of trespass must be in writing. If we determine that we issued the trespass notice in error, we will withdraw the notice.

§ 162.165 Who else will the BIA notify?

We will notify anyone in possession of the Indian land on which the unauthorized livestock or other property has been identified that such property could be Indian trust property and that no action to remove or otherwise dispose of the unauthorized livestock or other property may be taken unless authorized by us.

Actions

§ 162.166 What actions does the BIA take against trespassers?

If the trespasser fails to comply with the corrective action specified by us, we may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. We may keep such seized property for use as evidence.

(b) Assess penalties, damages, and costs, under § 162.172.

§ 162.167 When will we impound unauthorized livestock or other property?

We will impound unauthorized livestock or other property under the following conditions:

(a) If there is imminent danger of severe injury to a growing or harvestable crop or destruction of the range forage.

(b) When either you or your representative refuses to accept delivery of a written notice of trespass and you do not remove the unauthorized livestock or other property within the period prescribed in the written notice.

(c) Any time after five days of providing notice of impoundment if you failed to correct the trespass.

§ 162.168 How will you be notified if your unauthorized livestock or other property are to be impounded?

(a) We will send written notice of the intent to impound unauthorized livestock or other property to you or your representative, and to any known lien holder of the unauthorized livestock or other property, if you do not correct the trespass in the time specified in the initial trespass notice.

(b) If we determine that the identity of the owner of the unauthorized livestock or other property or his/her representative is unknown, or if the owner or his/her representative refuses delivery of the written notice, a public notice of intent to impound will be posted at the tribal community building and the United States Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After we have given notice as described in paragraphs (a) and (b) of this section, we will impound unauthorized livestock or other property without any further notice.

§ 162.169 What will we do after we impound unauthorized livestock or other property?

Following the impoundment of unauthorized livestock or other property, we will provide notice that we will sell the impounded property as follows:

(a) We will provide written notice of the sale to the owner, his/her representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed prior to the sale.

(b) We will provide public notice of sale of impounded property by posting at the tribal community building and the United States Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time and place of the public sale. The sale date must be at least five days after the publication and posting of notice.

§ 162.170 How do I redeem my impounded livestock or other property?

You may redeem impounded property by submitting proof of ownership and paying all penalties, damages, and costs under § 162.172, and completing all corrective actions that we identify under § 162.163.

§ 162.171 How will the sale of impounded livestock or other property be conducted?

(a) Unless the owner or known lien holder of the impounded property redeems the property prior to the time set by the sale, by submitting proof of ownership and the settlement of all obligations under § 162.163 and § 162.172, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, we may reoffer the property for sale, return it to the owner, condemn and destroy it, or otherwise dispose of it.

(c) We will give the purchaser a bill of sale or other written receipt evidencing the sale.

Penalties, Damages and Costs

§ 162.172 What are the penalties, damages, and costs payable by trespassers on Indian land?

Trespassers on Indian land must pay the following penalties and costs:

(a) A penalty of three times the daily equivalent of the rental rate under the permit for each day of trespass;

(b) The reasonable value of forage or crops consumed or destroyed;

(c) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 162.167;

(d) The costs associated with any damage to Indian land;

(e) The value of the property illegally used or removed, plus a penalty of double its value;

(f) The costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees; and

(g) All other penalties authorized by law.

§ 162.173 How will the BIA determine the value of forage or crops consumed or destroyed?

We will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value for such property or privileges.

§ 166.174 How will the BIA determine the value of the product illegally used or removed?

We will determine the value of the property illegally used or removed based upon a valuation of similar property.

§ 162.175 How will the BIA determine the amount of damages to Indian land?

We will determine the damages by considering the costs of rehabilitation and revegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

§ 162.176 How will the BIA determine the costs associated with enforcement of the trespass?

Costs of enforcement may include detection and all processes through prosecution and collection of damages. This covers field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

§ 162.177 What happens if I do not pay the assessed penalties, damages and costs?

Unless otherwise provided by tribal law:

(a) We will refuse to issue you a permit for the use, development, or occupancy of Indian lands.

(b) We will forward the case for appropriate legal action.

§ 162.178 How are the proceeds from trespass distributed?

Unless otherwise provided by tribal law:

(a) We will treat any amounts recovered under § 162.175 as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.

(b) All amounts collected in excess of the amounts assessed under § 162.172 will be applied by us against costs associated with the enforcement of this subpart.

(c) If we seize and dispose of impounded livestock or other property of the trespasser, we will apply any cash or other proceeds to satisfy the penalties and costs of enforcement. If any money is left over, we will return it to the trespasser or, where we cannot identify the owner of the impounded property, we will deposit the net proceeds of the sale into the accounts of the landowners where the trespass occurred.

§ 162.179 What happens if the BIA does not collect enough money to satisfy the penalty?

If we do not collect enough money from the trespasser, we will distribute collected penalties as follows:

(a) All amounts collected up to and including the amount assessed under §§ 162.171 through 162.172 will be distributed equally between the beneficial Indian landowner and towards the cost of restoring the Indian land.

(b) Written notice will be sent to the trespasser and any known lienholders to demand immediate settlement and to advise the trespasser that unless settlement is received within five working days from the date of receipt, the case will be forwarded for appropriate legal action.

Subpart M—Records

§ 162.180 Who owns records associated with this part?

Any records generated in the fulfillment of the part are the property of the United States, and must be maintained in accordance with approved records retention procedures under the Federal Records Act, 44 U.S.C. § 3101, *et seq.*

Subpart N—Special Requirements for Certain Reservations

§ 162.190 Crow Reservation.

(a) Notwithstanding the regulations in other sections of this part 162, Crow Indians classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended, may lease their trust lands and the trust lands of their minor children for farming or grazing purposes without the approval of the Secretary pursuant to the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). However, at their election Crow Indians classified as competent may authorize the Secretary to lease, or assist in the leasing of such lands, and an appropriate notice of such action shall be made a matter of record. When this prerogative is exercised, the general regulations contained in this part 162 shall be applicable. Approval of the Secretary is required on leases signed by Crow Indians not classified as competent or made on inherited or devised trust lands owned by more than five competent devisees or heirs.

(b) The Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80), provides that no lease for farming or grazing purposes shall be made for a period longer than five years, except irrigable lands under the Big Horn Canal; which may be leased for periods of ten years. No such lease shall provide the lessee a preference right to future leases which, if exercised, would thereby extend the total period of encumbrance beyond the five or ten years authorized by law.

(c) All leases entered into by Crow Indians classified as competent, under the above-cited special statutes, must be recorded at the Crow Agency. Such recording shall constitute notice to all persons. Under these special statutes, Crow Indians classified as competent are free to lease their property within certain limitations. The five-year (ten-year in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The essence of this protection is the right to deal with the property free, clear, and unencumbered at intervals at least as frequent as those provided by law. If lessees are able to obtain new leases long before the termination of existing leases, they are in a position to set their own terms. In these circumstances lessees could perpetuate their leaseholds and the protection of the statutory limitations as to terms would be destroyed. Therefore, in implementation of the foregoing interpretation, any lease which, on its face, is in violation of statutory limitations or requirements, and any grazing lease executed more than 12 months, and any farming lease executed more than 18 months, prior to the commencement of the term thereof or any lease which purports to cancel an existing lease with the same lessee as of a future date and take effect upon such cancellation will not be recorded. Under a Crow tribal program, approved by the Department of the Interior, competent Crow Indians may, under certain circumstances, enter into agreements which require that, for a specified term, their leases be approved. Information concerning whether a competent Crow Indian has executed such an instrument is available at the office of the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana. Any lease entered into with a competent Crow Indian during the time such instrument is in effect and which is not in accordance with such instrument will be returned without recordation.

(d) Where any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition:

(1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease;

(2) There is, of record, a lease on the land for all or a part of the same term;

(3) The lease does not contain stipulations requiring sound land utilization plans and conservation practices; or

(4) There are other deficiencies such as, but not limited to, erroneous land descriptions, and alterations which are not clearly endorsed by the lessor.

(e) Any adult Crow Indian classified as competent shall have the full responsibility for obtaining compliance with the terms of any lease made by him

pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians shall be subject to the right to issue permits and leases to prospect for, develop, and mine oil, gas, and other minerals, and to grant rights-of-way and easements, in accordance with applicable law and regulations. In the issuance or granting of such permits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of said damage.

§ 162.191 Fort Belknap Reservation.

Not to exceed 20,000 acres of allotted and tribal lands (nonirrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding 10 years.

§ 162.192 Cabazon, Augustine, and Torres-Martinez Reservations, California.

(a) Upon a determination by the Secretary that the owner or owners are not making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the regulations in this part for the benefit of the owner or owners.

(b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the county recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leases lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 968).

§ 162.193 Colorado River Reservation.

The Act of April 30, 1964 (78 Stat. 188), fixed the beneficial ownership of the Colorado River Reservation in the Colorado River Indian Tribes of the Colorado River Reservation and authorized the Secretary of the Interior to approve leases of said lands for such uses and terms as are authorized by the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415 *et seq.*), including the same uses and terms as are permitted thereby on the Agua Caliente (Palm Springs), Dania, Navajo, and Southern Ute Reservations. Regulations in this part 162 govern leasing under the Act of August 9, 1955. Therefore, part 162 shall also govern the leasing of lands on the Colorado River Reservation: Provided, however, That application of this part 162 shall not extend to any lands lying west of the present course of the Colorado River and south of sec. 12 of T. 5 S., R. 23 E., San Bernardino base and meridian in California and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation; Provided further, That any of the described lands in California shall be subject to the provisions of this part 162 when and if determined to be within the reservation.

§ 162.194 San Xavier and Salt River Pima-Maricopa Reservations.

(a) Purpose and scope. The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Ariz., in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415). When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in part 162 apply. The purpose of this section is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to leases made for purposes that are subject to the laws governing mining leases on Indian lands.

(b) Duration of leases. Leases made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The terms of a grazing lease shall not exceed 10 years; the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed 10 years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain an option to renew which extends the total term beyond the maximum term permitted by this section.

(c) Required covenant and enforcement thereof. Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.

(d) Notification regarding leasing proposals. If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.

(e) Applicability of other regulations. The regulations in part 162 of this chapter shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this section.

(f) Mission San Xavier del Bac. Nothing in the 1966 Act authorizes development that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

PART 166—GRAZING PERMITS

5. Part 166 is revised to read as follows:

Sect.

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166.2 What terms do I need to know?

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166.806 What actions does the BIA take against trespassers?
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Penalties, Damages, and Costs

166.812 What are the penalties, damages, and costs payable by trespassers on Indian agricultural land?
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Authority: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; Sec. 6, 96 Stat. 986, 25 U.S.C. 466. Interpret or apply R.S. 2078, 25 U.S.C. 68; R.S. 2117, 25 U.S.C. 179; Sec. 3, 26 Stat. 795, 25 U.S.C. 397; Sec 1, 28 Stat. 305, 25 U.S.C. 402; Sec. 4, 36 Stat. 856, 25 U.S.C. 403; Sec. 1; 39 Stat. 128, 25 U.S.C. 394; Sec. 1, 41 Stat. 1232, 25 U.S.C. 393; Secs. 16, 17, 48 Stat. 987, 988, 25 U.S.C. 476, 477; Secs. 1, 2, 4, 5, 6, 69 Stat. 539, 540, 25 U.S.C. 415, 415a, 415b, 415c, 415d, 25 U.S.C. 3701, 3702, 3703, 3711, 3712, 3713, 3714, 3731, 3732, 3733, 3734, 3741, 3742, 3743, 3744, 3745, 107 Stat. 2011.

Subpart A—Purpose, Policy, and Definitions

§ 166.1 What is the purpose of this part?

(a) The purpose of this part is to describe the authorities, policies, and procedures the Secretary uses to approve, grant, and administer a permit for grazing on tribal land, individually owned Indian land, or government land.

(b) If the Secretary's approval is not required for a permit, these regulations will not apply.

(c) Nothing contained in the permit will operate to delay or prevent a termination of the Secretary's trust responsibility with respect to the Indian land by the issuance of a fee patent or otherwise during the term of the permit.

§ 166.2 What terms do I need to know?

Adult means an individual Indian who is 18 years of age or older.

Agency means the agency or field office or any other designated office in the Bureau of Indian Affairs (BIA) having jurisdiction over trust or restricted property or money.

Agricultural product means:

(1) Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(2) Domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animals specifically raised and used for food or fiber or as a beast of burden;

(3) Forage, hay, fodder, food grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and

(4) Other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

Agricultural resource management plan means a ten year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the Secretary and Indian tribal governments.

AIARMA means American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), and amended on November 2, 1994 (108 Stat. 4572).

Appeal bond means a type of bond that guarantees payment of an amount owed after the completion of an appeal process.

Approving/approval means the action taken by the BIA to approve a permit.

Assign means to transfer the contract rights in a permit for use of Indian land to an individual, company, corporation or partnership in exchange for compensation or other consideration.

Assignee means the person to whom the contract rights for use of Indian land were assigned.

Allocation means the apportionment of grazing privileges without competition to tribal members or tribal entities, including the tribal designation of permittees and the number and kind of livestock to be grazed.

Animal Unit Month (AUM) means the amount of forage required to sustain one cow or one cow with one calf for one month.

Bond means an agreement in writing in which a surety, or an obligor for a personal bond, guarantees performance or compliance with the permit terms.

BIA means the Bureau of Indian Affairs within the Department of the Interior.

Conservation plan means a statement of management objectives for grazing, including contract stipulations defining required uses, operations, and improvements. A conservation plan will be developed with the permittee and reviewed by us on an annual basis.

Day means a calendar day unless otherwise specified.

Encumbrance means mortgage, deed of trust or other instrument which secures a debt owed by a permittee to a lender or other holder of a leasehold mortgage on the permit interest.

Fair annual rental means a reasonable annual return on fair market value, as this value may be determined by appraisal, advertisement, competitive bidding, negotiation, or any other appropriate method in accordance with Uniform Standards of Professional Appraisal Practices (USPAP).

Farmland means Indian land, excluding Indian forest land, that is used for production of food, feed, fiber, forage, and seed, oil crops, or other agricultural products, and may be either dry land, irrigated land, or irrigated pasture.

Fractionated tract means a parcel of Indian land with more than one owner.

Government land means the surface estate of a tract of land, or any interest therein, which is acquired or reserved by the United States for the Bureau of Indian Affairs administrative purposes. Indian land is not government land.

Grant/granting means the process of agreeing or consenting to a permit.

Grazing capacity means the maximum sustainable number of livestock that may be grazed on a defined area and within a defined period, usually expressed in Animal Unit Month (AUM).

Grazing rental payment means the total of the grazing rental rate multiplied by the number of AUMs or acres in the permit.

Grazing rental rate means the amount you must pay for an AUM or acre based on the fair annual rental.

I/You means the person to whom these regulations directly apply.

Immediate family means the spouse, brothers, sisters, lineal ancestor, or lineal descendant of Indian blood.

In loco parentis means the person whom the BIA recognizes as standing in place of a parent.

Indian agricultural land means Indian land, including farmland and rangeland, excluding Indian forest land (except where authorized grazing occurs) that is used for production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

Indian land means: (1) The surface estate (non-mineral) of a tract of land, or any interest therein, which is held by the United States in trust for a tribe or an individual Indian; or (2) A tract of land, or any interest therein, which is owned by a tribe or an individual Indian subject to federal restrictions against alienation or encumbrance.

Indian landowner means an Indian tribe or individual Indian who owns an interest in Indian land.

Individually owned Indian land means Indian land or an interest therein owned by an individual Indian.

Integrated resource management plan means the plan developed pursuant to the process used by tribal governments to assess available resources and to provide identified holistic management objectives that include quality of life, production goals, and landscape description of all designated resources that may include (but not limited to) water, fish, wildlife, forestry, agriculture, minerals, and recreation, as well as cultural, community, and municipal resources, and may include any previously adopted tribal codes and plans related to such resources.

Irrevocable letter of credit means an arrangement, with specified conditions, including the incapability of being recalled or revoked, whereby a bank agrees to substitute its credit for a customer's.

Majority interest means the total amount of tribal and/or Indian land ownership interest that is more than 50 percent of the entire ownership in the land.

Irrevocable letter of credit means an arrangement, with specified conditions, including the incapability of being recalled or revoked, whereby a bank agrees to substitute its credit for a customer's.

Majority interest means the total amount of tribal and/or Indian land ownership interest that is more than 50 percent of the entire ownership in the land.

Minor means an individual who is not 18 years of age or older.

Negotiable treasury securities means securities issued by the Treasury Department of the United States.

Non compos mentis means an individual who has been found by a court of competent jurisdiction, based on established criteria that include a medical or psychological evaluation, to be of unsound mind or incapable of transacting or conducting business and managing his or her own affairs.

Non-trust interest means an undivided interest in Indian land that is owned in fee simple, rather than in trust or restricted status.

Permit means a contract which grants the right to possess, use, and enjoy Indian land for grazing purpose and duration in exchange for compensation or other consideration, but which can be revoked.

Permittee means an individual, company, corporation, or partnership, who has entered into a permit for grazing on tribal, individually owned Indian, and/or government lands in exchange for compensation.

Range unit means rangelands consolidated to form a unit of land for the management and administration of grazing under a permit. A range unit may consist of a combination of tribal, individually owned Indian, and/or government land.

Rangeland means Indian land, excluding Indian forest land, on which native vegetation is predominantly grasses, grass-like plants, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands re-vegetated naturally or artificially to provide a forage cover that is managed as native vegetation.

Restricted land means land for which a tribe or individual Indian holds fee simple title subject to limitations or restriction against alienation or encumbrance as set forth in the title or by operation of law or both.

Secretary means the Secretary of the Interior or an authorized representative; it also means a tribe or tribal organization if that entity is administering specific programs, functions services or activities, previously administered by the

Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. 450f) or a Self-Governance compact (pursuant to 25 U.S.C. 558cc). Such tribal authority does not include inherently federal functions.

Subpermit means a permit granted by a permittee of all or part of the permitted property for a period up to the expiration date of the initial permit.

Surety means one who guarantees the performance, default or debt of another.

Sustained yield means the yield of agricultural products that a unit of land can produce continuously at a given level of use.

Trespass means any unauthorized occupancy, use of, or action on Indian agricultural lands.

Tribal land means land for which the United States holds fee title in trust for the benefit of a tribe, and includes assignments of tribal land.

Tribal law means the body of non-federal law that governs tribal lands and activities, and includes ordinances or other enactments by a tribe, tribal constitutions, tribal court rulings and tribal common law.

Trust land means land, or an interest therein, for which the United States holds fee title in trust for the benefit of a tribe or an individual Indian.

Undivided interest means that the interest of co-owners is in the entire property and that such interest is indistinguishable. The interest has not been divided out from the whole parcel. (Example: If you own ¼ interest in 160 acres, you do not own an identifiable 40 acre tract. You own ¼ of the whole 160 acres because your ¼ interest has not been divided out from the whole 160 acres.)

Us/We/Our means the Secretary as defined in this section.

Uniform Standards of Professional Appraisal Practices (USPAP) means the standards promulgated by the Appraisal Institute which establish requirements and procedures for professional real property appraisal practice.

Written notice means actual written letter mailed by way of United States mail, certified return receipt requested, postage prepaid, or hand delivered letter.

Subpart B—Permit Requirements

General Requirements

§ 166.100 Must Indian owners of Indian land obtain a permit before using land for grazing purposes?

(a) Indian landowners who own 100 percent (%) of a tract of land are not required to obtain a permit.

(b) If an Indian landowner does not own 100 percent (%) of a tract of land and wants to use the land for grazing purposes, a permit must be obtained from the co-owners of the tract of land.

§ 166.101 Must parents or guardians of Indian minors who own Indian land obtain a permit before using land for grazing purposes?

Parents, guardians, or other persons standing *in loco parentis* need not obtain a permit for Indian lands owned by their minor Indian children if:

(a) Those minor children own 100 percent (%) of the land; and

(b) The minor children directly benefit from the use. We may require the user to provide evidence of a direct benefit to the minor children. When one of the minor children becomes an adult, a permit must be obtained from the former minor child for the use to continue.

§ 166.102 Who can grant a permit?

(a) Tribes grant permits of tribal land, including any tribally-owned undivided interest(s) in a fractionated tract. A permit granted by the tribe must be approved by us, unless the permit is authorized by a charter approved by us under 25 U.S.C. 477, or unless our approval is not required under other applicable federal law. In order to permit tribal land in which the beneficial interest has been assigned to another party, the assignee and the tribe must both grant the permit, subject to our approval.

(b) Individual Indian landowners may grant a permit of their own land, including their undivided interest in a fractionated tract, subject to our approval. Except as otherwise provided in this part, these landowners may include the owner of a life estate holding 100 percent (%) interest in the permit tract.

(c) We may grant a permit on behalf of:

(1) An individual Indian landowner as provided in § 166.103; and

(2) Tribes that give us written authority to grant permits on their behalf.

(d) We will grant permits on Government lands.

§ 166.103 Who may represent an individual Indian landowner in granting a permit?

The following individuals or entities may represent an individual Indian landowner in granting a permit:

(a) An adult acting on behalf of:

(1) His or her minor children; or

(2) Other minor children to whom the adult stands in *loco parentis* who do not have a guardian or other legal representative;

(b) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;

(c) An adult or legal entity who has been given a written power of attorney that:

(1) Meets all of the formal requirements of any applicable tribal or state law;

(2) Identifies the attorney-in-fact and the land to be permitted; and

(3) Describes the scope of the power granted and any limits thereon.

(d) The BIA acting on behalf of:

(1) An individual who is non compos mentis;

(2) An orphaned minor;

(3) An individual Indian landowner who has granted us written authority to permit his or her land;

(4) The undetermined heirs and devisees of a deceased Indian landowner;

(5) An Indian landowner whose whereabouts are unknown to us after a reasonable attempt is made to locate the owner;

(6) The Indian landowners of a fractionated tract who:

(i) Have received actual notice of our intent to grant a permit on their behalf; and

(ii) Are unable to agree upon a permit during the three month negotiation period following the notice;

(7) The owners of a minority interest in the Indian ownership of a fractionated tract of Indian agricultural land when the majority interest has consented, as long as the minority interest owners receive fair annual rental;

(8) The owners of "highly fractionated undivided heirship lands," for agricultural permits, under 166.300; or

(9) The individual Indian owners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

§ 166.104 May an emancipated minor grant a permit?

No. An emancipated minor, a person who is under 18 years of age and declared by a court of competent jurisdiction to be an adult for certain purposes, may not grant a permit.

§ 166.105 What requirements apply to a permit on a fractionated tract?

(a) The owners of a majority interest in the Indian ownership of a fractionated tract may grant a permit without giving prior notice to the minority owners as long as the minority interest owners receive fair annual rental. We must approve the permit.

(b) We may grant a permit on behalf of all owners of a fractionated tract as

long as the owners receive fair annual rental. Before granting such a permit, we may offer a preference right to any Indian owner who:

(1) Possesses the entire tract;

(2) Submits a written offer to permit the land, subject to any required or negotiated terms and conditions, prior to our granting a permit to another party; and

(3) Provides any supporting documents needed to demonstrate the ability to perform all of the permittee's obligations under the proposed permit.

§ 166.106 What provisions must be contained in a permit?

A permit, at a minimum, must include:

(a) Authorized use(s);

(b) Prohibited use(s);

(c) Prohibition against creating a nuisance, any illegal activity, and negligent use or waste or resources;

(d) Numbers and types of livestock allowed;

(e) Season(s) of use;

(f) Grazing rental rate;

(g) Administrative fees;

(h) Tribal fees, if applicable;

(i) Payment methodology;

(j) Location of range unit;

(k) Animal identification requirements;

(l) A description (preferably a legal description) of the permitted area;

(m) Term of permit;

(n) Conditions for making improvements, if any; and

(o) A right of entry by the Secretary for purposes of inspection or enforcement purposes.

§ 166.107 How long is a permit term?

(a) The duration must be reasonable given the purpose of the permit and the level of investment required by the permittee to place the property into productive use.

(b) We will not grant or approve a permit more than 12 months before its beginning date.

(c) On behalf of the undetermined heirs of an individual Indian decedent owning 100 percent (%) interest in the land, we will grant or approve permits for a maximum term of two years.

(d) Permits granted for agricultural purposes will not usually exceed ten years. A term longer than ten years, but not to exceed 25 years unless authorized by other federal law, may be authorized when a longer term is determined by us to be in the best interest of the Indian landowners and when such permit requires substantial investment in the development of the lands by the permittee.

(e) A tribe may determine the duration of permits composed entirely of its tribal land or in combination with government land, subject to the same limitations provided in paragraph (d) of this section.

(f) A permit may be extended only by renewal or extension as defined in the permit. Permits may provide multiple options for termination.

(g) A permit will specify the beginning and ending dates of the term allowed, as well as any option to renew, extend, or terminate.

§ 166.108 Are permits recorded?

All permits on Indian land in excess of one year must be recorded.

§ 166.109 Where are permits recorded?

Permits are recorded in the appropriate BIA Land Titles and Records Office.

§ 166.110 Who is responsible for recording permits?

We are responsible for ensuring that all permits we approve or grant are recorded in the Land Titles and Records Office. Tribes must record those permits not requiring our approval.

§ 166.111 When may a permittee take possession of permitted Indian land?

The permittee may take possession of permitted Indian land on the date specified in the permit as the beginning date of the term, but not before we approve the permit.

§ 166.112 Must I comply with any standards of conduct if I am granted a permit?

Yes. Permittees are expected to:

(a) Conduct grazing operations in accordance with the principles of sustained yield management, agricultural resource management planning, sound conservation practices, and other community goals as expressed in tribal laws, agricultural resource management plans, and similar sources.

(b) Comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. You must also pay all applicable penalties if you do not comply.

(c) Fulfill all financial obligations of your permit owed to the Indian landowners and the United States.

(d) Conduct only those activities authorized by the permit.

§ 166.113 Will the BIA notify the permittee of any change in land title status?

Yes. We will notify the permittee if a fee patent is issued or if restrictions are removed, but the permit continues in effect for its term. After we notify the permittee our obligation under 166.303 and this section ceases.

§ 166.114 When is a decision by the BIA regarding a permit effective?

A decision by the BIA regarding a permit is effective 30 days after the issuance of the decision document and exhaustion of all appeal rights.

Obtaining a Permit

§ 166.115 How can I find Indian land available for grazing?

You may contact a local BIA office or tribal office to determine what Indian land may be available for grazing permits.

§ 166.116 Who is responsible for permitting Indian land?

The Indian landowner is primarily responsible for permitting Indian land, with the assistance and approval of the Secretary except where otherwise provided by law. You may contact the local BIA or tribal office for assistance in obtaining a permit for grazing purposes on Indian land.

§ 166.117 How do I acquire a permit on Indian land?

(a) A tribe may permit tribal land through tribal allocation, negotiation, or advertisement. We must approve all permits of Indian land in order for the permit to be valid.

(b) We will grant permits through negotiation or advertisement for range units containing, in whole or part, individually owned Indian land and range units that consist of, or in combination with individually owned Indian land, tribal or government land, under § 166.102. We will consult with tribes prior to granting permits for range units that include tribal land.

§ 166.118 How do I acquire a permit through tribal allocation?

(a) A tribe may allocate grazing privileges on range units containing trust or restricted land which is entirely tribally owned or which contains only tribal and government land under the control of the tribe.

(b) A tribe may allocate grazing privileges to its members and to tribally authorized Indian entities without competitive bidding on tribal and tribally controlled government land.

(c) We may implement the tribe's allocation procedure by authorizing the grazing privileges on individually owned Indian land.

(d) A tribe may prescribe the eligibility requirements for allocations 60 days before granting a new permit or before an existing permit expires. The eligibility requirements are subject to our written agreement.

(e) 120 days before the expiration of existing permits, we will notify the tribe

of the 60 day period during which the tribe may prescribe eligibility requirements.

(f) We will prescribe the eligibility requirements after the expiration of the 60 day period in the event satisfactory action is not taken by the tribe.

(g) Other than for tribal members, grazing rental rates for grazing privileges allocated from an existing permit, in whole or in part, must equal or exceed the rates paid by the preceding permittee(s) unless market conditions dictate a lower price. Tribal members will pay grazing rental rates established by the tribe.

§ 166.119 How do I acquire a permit through negotiation?

(a) Permits may be negotiated and granted by the Indian landowners with the permittee of their choice. The Secretary also may negotiate and grant permits on behalf of Indian landowners pursuant to § 166.102 of this part.

(b) Upon the conclusion of negotiations with the Indian landowners or their representatives, and the satisfaction of any applicable conditions, you may submit an executed permit and any required supporting documents to us for appropriate action.

(c) In negotiating a permit, the Indian owners may choose to contribute their land in exchange for their receipt of a share of the revenues or profits generated by the permit. Under such an arrangement, the permit may be granted to a joint venture or other legal entity owned, in part, by the Indian owners of the land. Unless otherwise required by this title, we will not enter into or approve any agreements related to the formation of such a joint venture or other legal entity.

(d) Receipt of permit payments based upon income received from the land will not, of itself, make the Indian landowner a partner, joint venturer, or associate of the permittee(s).

(e) We will assist prospective permittees in contacting the Indian landowners or their representatives, for the purpose of negotiating a permit.

§ 166.120 What are the basic steps for acquiring a permit through negotiation?

The basic steps for acquiring a permit by negotiation are as follows:

(a) We receive a request to permit from an Indian landowner or potential permittee;

(b) We prepare the permit documents and provide them to the Indian landowner or potential permittee, or assist the Indian landowner to prepare the documents;

(c) The Indian landowner, or the Secretary on the Indian landowner's behalf, grants (agrees to) a permit;

(d) A potential permittee completes the requirements for securing a permit, *e.g.*, bond, payment of administrative fee, *etc.*;

(e) We review the permit for proper completion and compliance with all applicable laws and regulations;

(f) We issue a decision on the permit based upon our review;

(g) We send the approved permit to the permittee and, upon request, to the Indian landowner; and

(h) We record and maintain the approved permit.

§ 166.121 Can I negotiate a contract with an Indian landowner to permit land at a future date?

In negotiating a permit with Indian landowners or their representatives, a prospective permittee may enter into a contract to permit the land at a future date, with the contract specifying the essential permit terms, as described in § 166.107 of this part, as well as any conditions that must be satisfied before the permit may be granted or approved.

(a) The conditions to be satisfied may require that the permittee prepare environmental documents that comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) or other preliminary federal or tribal land use requirements; the conditions also may require that certain permits or financing commitments be obtained before the permit is granted or approved.

(b) We may participate in the contract negotiations (in order to ensure that all of the necessary terms and conditions are identified), but we will not be a party to such a contract.

(c) We will not approve such a contract unless approval is required under 25 U.S.C. 81 and part 84 of this chapter.

§ 166.122 How do I acquire an advertised permit through competitive bidding?

Advertised permits on Indian lands are awarded to the successful bidder after a public bidding process. We will grant or approve the permit on behalf of the Indian landowners. The basic steps for acquiring an advertised permit are as follows:

(a) We prepare and distribute an advertisement of lands available for permit that identifies the terms and conditions of the permit sale, including, for agricultural permits, any preference rights;

(b) We solicit sealed bids and conduct the public permit sale;

(c) We determine and accept the highest bid(s), which may require further competitive bidding after the bid opening;

(d) We prepare permits for successful bidders;

(e) The successful bidder completes and submits the permit and satisfies requirements, *e.g.*, bond, payment of administrative fee, *etc.*;

(f) We review the permit for proper completion and compliance with all applicable laws and regulations;

(g) We grant the permit on behalf of Indian landowners where we are authorized to do so by law;

(h) We approve the permit;

(i) We distribute the approved permit to successful bidder/permittee and, upon request, to the Indian landowner; and

(j) We record and maintain the approved permit.

§ 166.123 Are there standard permit forms?

Yes. Standard permit forms, including bid forms, permit forms, and permit modification forms are available at our agency offices.

Permit (Leasehold) Mortgage

§ 166.124 Can I use a permit as collateral for a loan?

We may approve a permit containing a provision that authorizes the permittee to encumber the permit interest, known as a leasehold mortgage, for the development and improvement of the permitted Indian land. We must approve the leasehold mortgage that encumbers the leasehold mortgage before it can be effective. We will record the approved leasehold mortgage instrument.

§ 166.125 What factors does the BIA consider when reviewing a leasehold mortgage?

(a) We will approve the leasehold mortgage if:

(1) All consents required in the permit have been obtained from the Indian landowners and any surety or guarantor;

(2) The mortgage covers only the interest in the permitted premises, and no unrelated collateral belonging to the permittee;

(3) The financing being obtained will be used only in connection with the development or use of the permitted premises, and the mortgage does not secure any unrelated obligations owed by the permittee to the mortgagee; and

(4) We find no compelling reason to withhold our approval, in order to protect the best interests of the Indian landowner.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The ability to perform the permit obligations would be adversely affected by the cumulative mortgage obligations;

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(2) Any negotiated permit provisions as to the allocation or control of insurance or condemnation proceeds would be modified;

(3) The remedies available to us or the Indian landowners would be limited (beyond the additional notice and cure rights to be afforded to the mortgagee), if the permittee defaults on the permit;

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a foreclosure, assignment in lieu of foreclosure, or issuance of a "new permit" to the mortgagee.

(c) We will notify the Indian landowners of our approval of the leasehold mortgage.

§ 166.126 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?

With our approval, under an approved encumbrance, a permittee voluntarily may assign the leasehold interest to someone other than the holder of a leasehold mortgage if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the leasehold interest.

§ 166.127 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?

Yes. The holder of a leasehold mortgage may assign a leasehold interest obtained by a sale or foreclosure of an approved encumbrance without our approval if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the permit interest (leasehold).

Non-Trust Interest

§ 166.128 May the Secretary grant or approve a permit for non-trust interests in Indian land?

No. The Secretary has no statutory authority to grant or approve a permit for non-trust interests in Indian land.

§ 166.129 Are non-trust interests in Indian land included in a permit?

No. The undivided non-trust interests are not included in a permit granted or approved by the BIA.

§ 166.130 How will a permittee know there are non-trust interests in Indian land?

When we permit Indian land, we will advise the permittee whether the title to the Indian land contains non-trust interests. Upon request, and subject to applicable law, we will provide the permittee with the information we have in our records identifying the owner(s) of the non-trust interest.

§ 166.131 From whom must a permittee permit a non-trust interest?

A permittee must obtain a permit on any non-trust interest(s) directly from owner(s) of the non-trust interest(s).

§ 166.132 Is the non-trust interest shown in a permit of Indian land?

No. The permit will describe only the Indian owned interests. For example, if the Indian owned interests constitutes ¾ of the Indian land, the land will be described as: An undivided ¾ interest in and to the W/2 SW/4, Section 1, Township 10 North, Range 1 East, Principal Meridian, Billings, Montana. This will notify the permittee that the full interest in the tract has not been permitted. The remaining undivided ¼ interest is the non-trust interest and the permittee must contact the non-trust interest owners directly to secure a permit of their interest.

§ 166.133 How much rent is due for the non-trust interest?

It is the responsibility of the permittee to contact the non-trust owners to negotiate the amount of rental to be paid and to make rental payments to the owners of the non-trust interest.

§ 166.134 May a grazing rental payment made by a permittee to the BIA or to an Indian landowner include payment for any non-trust interest?

No. Payment for a non-trust interest must be made to the owner of that interest.

§ 166.135 Will the BIA grant or approve a permit on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest?

We will grant or approve a permit on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest only when it is necessary to preserve the value of the trust interest in the land.

Modifying a Permit

§ 166.136 How can Indian land be removed from an existing permit?

(a) We will remove Indian land from your permit if:

(1) The trust status of the Indian land terminates;

(2) The Indian landowners request removal, and we determine that the removal is beneficial to such interests;

(3) A tribe allocates grazing privileges for Indian land covered by your permit under § 166.117;

(4) The permittee requests removal and we determine that the removal is warranted; or

(5) We determine that removal is appropriate.

(b) We will revise the grazing capacity to reflect the removal of Indian land and show it on the permit.

§ 166.137 How will the BIA provide notice if Indian land is removed from an existing permit?

If the reason for removal is:

(a) *Termination of trust status.* We will notify the parties to the permit in writing within 30 days. The removal will be effective on the next anniversary date of the permit.

(b) *A request from Indian landowners or the permittee, or our determination.* We will notify the parties to the permit in writing within 30 days of such request. The removal will be effective immediately if all sureties, Indian landowners, and permittee agree. Otherwise, the removal will be effective upon the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

(c) *Tribal allocation under § 166.117.* We will notify the parties to the permit in writing within 180 days of such action. The removal of tribal land will be effective on the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

(d) *Request by the permittee.* We will notify the Indian landowner in writing within 30 days of such request.

§ 166.138 Other than to remove land, how can a permit be amended, modified, assigned, transferred, or subpermitted?

(a) We must approve an amendment, modification, assignment, transfer, or subpermit with the written consent of all parties to the permit and the sureties.

(b) Indian landowners may designate in writing one or more of their co-owners or representatives to negotiate and/or agree to amendments on their behalf.

(1) The designated landowner or representative may:

(i) Negotiate or agree to amendments; and

(ii) Consent to or approve other items as necessary.

(2) The designated landowner or representative may not:

(i) Negotiate or agree to amendments that reduce the grazing rental payments payable to the other Indian landowners; or

(ii) Terminate the permit or modify the term of the permit.

(c) We may approve a permit for tribal land to individual members of a tribe which contains a provision permitting the assignment of the permit by the permittee or the lender without our approval when:

(1) A lending institution or an agency of the United States:

(i) Accepts the interest in the permit (leasehold) as security for the loan; and

(ii) Obtains the interest in the permit (leasehold) through foreclosure or otherwise.

(d) We may approve a permit containing a provision which authorizes the permittee to subpermit the Indian land in whole or in part without further approval. Subpermits made under this provision do not relieve the original permittee (permittee of record) from any liability under the permit, nor will it diminish our authority.

(e) We will revise the grazing capacity and show it on your permit.

Subpart C—Land and Operations Management

§ 166.200 How is Indian agricultural land managed?

Tribes, individual Indian landowners, and the BIA will manage Indian agricultural land either directly or through contracts, compacts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

§ 166.201 How is Indian land for grazing purposes described?

Indian land for grazing purposes should be described by aliquot parts, metes and bounds, or other acceptable description.

§ 166.202 How is a range unit created?

We create a range unit after we consult with the Indian landowners of rangeland, by designating units of compatible size, availability, and location. Range units can be modified under §§ 166.136 through 166.138. A permit may cover more than one range unit.

§ 166.203 Can more than one tract of Indian land be combined into one permit?

Yes. A permit may include more than one tract of Indian land. Permits may include tribal land, individually owned Indian land, or government land, or any combination thereof.

§ 166.204 When is grazing capacity determined?

Before we grant, modify, or approve a permit, in consultation with the Indian landowners, we will establish the grazing capacity for each range unit and the season(s) of use on Indian lands. In consultation with the Indian landowners, we will review the grazing capacity on a continuing basis using the best evaluation method(s) relevant to the ecological region.

§ 166.205 Will grazing capacity be increased if I graze adjacent trust or non-trust rangelands not covered by the permit?

No. You will not receive an increase in grazing capacity if you graze trust or non-trust rangeland in common with the permitted land. Grazing capacity will be established only for tracts of land covered by your permit

§ 166.206 What livestock can I graze on permitted Indian land?

(a) Tribes may determine the class of livestock that may be grazed on range units composed entirely of tribal land or which include government land, subject to the grazing capacity prescribed by us under § 166.204.

(b) For permits on range units containing, in whole or part, individually owned Indian land, we will adopt the tribal determination in paragraph (a) of this section if it is consistent with the grazing capacity determination under § 166.204.

§ 166.207 What must a permittee do to protect livestock from exposure to disease?

Permittees must:

(a) Vaccinate livestock in accordance with applicable law.

(b) Treat all livestock exposed to or infected with contagious or infectious diseases in accordance with applicable law.

(c) Restrict the movement of exposed or infected livestock in accordance with applicable law.

Improvements

§ 166.208 Can improvements be constructed on permitted Indian land?

Improvements may be constructed on permitted Indian land if the permit contains a provision allowing improvements.

§ 166.209 What happens to improvements constructed on Indian lands when the permit has been terminated?

(a) If improvements are to be constructed on Indian land, the permit must contain a provision that improvements will either:

(1) Remain on the land upon termination of the permit, in a condition that is in compliance with applicable building, health and other codes, to become the property of the Indian landowner; or

(2) Be removed and the land restored within a time period specified in the permit. The land must be restored as close as possible to the original condition prior to construction of such improvements. At the request of the permittee we may, at our discretion, grant an extension of time for the removal of improvements and restoration of the land for circumstances beyond the control of the permittee.

(b) If the permittee fails to remove improvements within the time allowed in the permit, the permittee may forfeit the right to remove the improvements and the improvements may become the property of the Indian landowner.

Management Plans and Environmental Compliance

§ 166.210 Is an agricultural resource management plan required?

An agricultural resource management plan must be developed either by the tribe or by us in consultation with the affected tribe. This plan should be consistent with the tribe's integrated resource management plan. The agricultural resource management plan must:

(a) Determine available agricultural resources;

(b) Identify specific tribal agricultural resource goals and objectives;

(c) Establish management objectives for the resources;

(d) Define critical values of the tribe and its members and provide identified holistic management objectives;

(e) Identify actions to be taken to reach established objectives;

(f) Be developed through public meetings;

(g) Use the public meeting records, existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities; and

(h) Be completed within three(3) years of the initiation of activity to establish the plan.

§ 166.211 Is a conservation plan required?

A conservation plan must be developed by the permittee for each permit and approved by us prior to the issuance of the permit. The conservation plan must be consistent with the tribe's agricultural resource management plan and integrated resource management plan, and must address the permittee's management objectives regarding animal husbandry and resource conservation. The conservation plan must cover the entire permit period.

§ 166.212 Is environmental compliance required?

Actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*),

applicable regulations of the Council on Environmental Quality (40 CFR 1500.1 *et seq.*), and applicable tribal laws and regulations.

Subpart D—Tribal Policies and Laws Pertaining to Permits

§ 166.300 What tribal policies will we apply to permitting on Indian agricultural lands?

(a) When specifically authorized by an appropriate tribal resolution establishing a general policy for permitting of Indian agricultural lands, the Secretary will:

(1) Provide a preference to Indian permittees in issuing or renewing a permit, so long as the Indian landowner receives fair annual rental;

(2) Waive or modify the requirement that a permittee post a surety or performance bond;

(3) Provide for posting of other collateral or security in lieu of a bond; and

(4) Approve permits on tribal lands at rates determined by the tribal governing body.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for leasing of Indian agricultural lands, and subject to paragraph (c) of this section, the Secretary may:

(1) Waive or modify any general notice requirement of federal law; and

(2) Grant or approve a permit on "highly fractionated undivided heirship lands" as defined by tribal law.

(c) The Secretary may take the action specified in paragraph (b) of this section only if:

(1) The tribe defines by resolution what constitutes "highly fractionated undivided heirship lands';

(2) The tribe adopts an alternative plan for notifying Indian landowners; and

(3) The Secretary's action is necessary to prevent waste, reduce idle land acreage and ensure income.

§ 166.301 May individual Indian landowners exempt their land from tribal policies for permitting on Indian agricultural lands?

(a) The individual Indian landowner(s) of a tract of land or an undivided interest may exempt their land from our application of a tribal policy referred to under § 166.300 if:

(1) The Indian landowner(s) have at least 50% interest in such tract; and

(2) The Indian landowner(s) submit a written objection to us.

(b) The same procedure applies to withdrawing a request for exemption.

(c) Upon verification of the written objection we will notify the tribe of the Indian landowners' exemption from the specific tribal policy. If the individual Indian landowner withdraws a request for exemption, we will notify the tribe of the withdrawal.

§ 166.302 Do tribal laws apply to permits?

Tribal laws will apply to permits of Indian land under the jurisdiction of the tribe enacting such laws, unless those tribal laws are inconsistent with applicable federal law.

§ 166.303 What notifications are required that tribal laws apply to permits on Indian agricultural lands?

(a) Tribes must notify us of the content and effective dates of new tribal laws.

(b) We will then notify any persons or entities undertaking activities on Indian lands of the superseding or modifying effect of the tribal law. We will provide:

(1) Individual written notice to each permittee; or

(2) Public notice. This notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian lands where activities are occurring.

§ 166.304 Who enforces tribal laws pertaining to Indian agricultural land?

(a) The tribe is responsible for enforcing tribal laws and ordinances pertaining to Indian agricultural lands.

(b) The Secretary will:

(1) Provide assistance in the enforcement of tribal laws; and

(2) Require appropriate federal officials to appear in tribal forums when requested by a tribe.

Subpart E—Grazing Rental Rates

Rental Rate Determination and Adjustment

§ 166.400 Who establishes grazing rental rates?

(a) For tribal lands, a tribe may establish a grazing rental rate that is less or more than the grazing rental rate established by us. We will assist a tribe to establish a grazing rental rate by providing the tribe with available information concerning the value of grazing on tribal lands.

(b) We will establish the grazing rental rate by determining the fair annual rental for:

(1) Individually owned Indian lands; and

(2) Tribes that have not established a rate under paragraph (a) of this section.

(c) Indian landowners may give us written authority to grant grazing privileges on their individually owned Indian land at a grazing rental rate that is:

(1) Above the grazing rental rate set by us; or

(2) Below the grazing rental rate set by us, subject to our approval, when the permittee is a member of the Indian landowner's immediate family as defined in this part.

§ 166.401 How does the Secretary establish grazing rental rates?

The Secretary establishes grazing rental rates by determining the fair annual rental through appraisal, advertisement, competitive bidding, negotiation, or any other appropriate method, in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP).

§ 166.402 Why must the Secretary determine the fair annual rental of Indian land?

(a) The Secretary must determine the fair annual rental of Indian land to:

(1) Assist the Indian landowner in negotiating a permit with potential permittees; and

(2) Enable us to determine whether a permit is in the best interests of the Indian landowner.

§ 166.403 Will the Secretary ever grant or approve a permit at less than fair annual rental?

(a) We will grant a permit for grazing on individually owned Indian land at less than fair annual rental if, after advertising the permit, we determine that such action would be in the best interests of the individual Indian landowners.

(b) We may approve a permit for grazing on individually owned Indian land at less than fair annual rental if:

(1) The permit is for the Indian landowner's immediate family or co-owner; or

(2) We determine it is in the best interest of the Indian landowners.

(c) We may approve a permit for grazing on tribal land at less than fair annual rental if:

(1) The permittee is a tribal member or tribal entity; or

(2) We determine that it is in the best interest of the tribe.

§ 166.404 Whose grazing rental rate will be applicable for a permit on tribal land?

The following grazing rental rate schedule will apply for tribal land:

If you are * * *	And if * * *	Then you will pay * * *
(a) Grazing livestock on tribal land	The tribe established the grazing rental rate	The rate set by the tribe.
(b) Grazing livestock on tribal land	No tribal grazing rental rate has been established.	The rate set by the BIA.
(c) The successful bidder for use of any of these specific tracts of Indian land.		Your rental rate bid, but not less than the minimum bid rate advertised.

§ 166.405 Whose grazing rental rate will be applicable for a permit on individually owned Indian land?

The following grazing rental rate schedule will apply for individually owned Indian land:

If you are * * *	Then you will pay * * *
(a) Grazing livestock on individually owned Indian land	The rate set by the BIA.
(b) The successful bidder for use of any of these specific tracts of Indian land.	Your rental rate bid, but not less than the minimum bid rate advertised.

§ 166.406 Whose grazing rental rate will be applicable for a permit on government land?

The following grazing rental rate schedule will apply for government land:

If you are * * *	And if * * *	Then you will pay * * *
(a) Grazing livestock on government land	The tribe has control over the land or the tribe has authority to set the rate.	The rate set by the tribe.
(b) Grazing livestock on government land	Government controls all use of the land	The rate set by the BIA.

§ 166.407 If a range unit consists of tribal and individually owned Indian lands, what is the grazing rental rate?

The grazing rental rate for tribal land will be the rate set by the tribe. The grazing rental rate for individually owned Indian land will be the grazing rental rate set by us.

§ 166.408 Can tribal members graze livestock that they do not own on tribal land at the grazing rental rate established for tribal members?

Yes. Tribal members may graze livestock that they do not own on tribal land at the rate set by the tribe.

§ 166.409 Is the grazing rental rate established by the BIA adjusted periodically?

Yes. To ensure that Indian landowners are receiving the fair annual return, we may adjust the grazing rental rate established by the BIA, based upon an appropriate valuation method, taking into account the value of improvements made under the permit, unless the permit provides otherwise, following the Uniform Standards of Professional Appraisal Practice.

(a) We will review the grazing rental rate prior to each anniversary date or when specified by the permit.

(b) We will provide you with written notice of any adjustment of the grazing rental rate 60 days prior to each anniversary date.

(c) The adjusted grazing rental rate may be less than the fair annual rental if we determine that such a rate is in the best interest of the Indian landowner.

(d) If adjusted, the grazing rental rate will become effective on the next anniversary date of the permit following the date of adjustment.

(e) These adjustments will be retroactive, if they are not made at the time specified in the permit.

(f) For permits granted by tribes, we will consult with the granting tribe to determine whether an adjustment of the grazing rental payment should be made. The permit must be modified to document the granting tribe's waiver of the adjustment.

Rental Payments

§ 166.410 How is my grazing rental payment determined?

The grazing rental payment is the total of the grazing rental rate multiplied by the number of AUMs or acres covered by the permit.

§ 166.411 When do I pay grazing rental payments?

All grazing rental payments are due and payable as specified in the permit. The BIA will not accept a grazing rental payment beyond the permit term, except in collection of unpaid grazing rental payments.

§ 166.412 When is a grazing rental payment late?

A grazing rental payment is late if it is not received within fifteen days of the payment date specified in the permit.

§ 166.413 Will a permittee be notified when a grazing rental payment is due?

Each permittee will receive written notice stating when grazing rental payments are due. In addition, each permit informs the permittee of the schedule of payments agreed to by the parties.

§ 166.414 If a permittee does not receive notice that a grazing rental payment is due must the scheduled payment still be made?

If a permittee does not receive notice that a grazing rental payment is due, the permittee remains responsible for making timely payment of all amounts due under the permit.

§ 166.415 What will the BIA do to collect grazing rental payments that are not made in accordance with the terms of a permit?

Failure to make grazing rental payments in accordance with the terms of a permit may be a permit violation. The Secretary will enforce permit violations under subpart H of this part.

§ 166.416 Will I have to pay a penalty for late grazing rental payments?

Yes. The permit will contain a provision that specifies the late grazing rental payment penalty that will be assessed and collected for late payments.

§ 166.417 What forms of grazing rental payments are acceptable?

Payments of money must be United States currency in one of the following forms:

(a) Postal money order;
(b) Bank money order;
(c) Cashier's check;
(d) Certified check; or
(e) Electronic funds transfer.

§ 166.418 To whom are grazing rental payments made?

All grazing rental payments must be submitted as provided in the permit. The permittee must make payments payable to the party identified in the permit in the amount due, including any late payment, penalties, interest, or other amount if applicable.

§ 166.419 May a permittee send a grazing rental payment directly to the Indian landowner?

Yes. A permittee may send grazing rental payments directly to the Indian landowner if the permit provides for direct payment.

§ 166.420 Does the BIA accept partial payment for a grazing rental payment due?

Yes, in special circumstances. Ordinarily, the total amount is due and payable by the payment date specified in the permit, and failure to make complete payment may constitute a violation of the permit. Exceptions are rarely granted and require a specific written request and the consent of the parties to the permit and our approval.

§ 166.421 May a permittee make a grazing rental payment in advance of the due date?

Rent may be paid no more than 30 days in advance of the due date as specified in the permit. The BIA will not accept a grazing rental payment more than 30 days prior to the beginning of the new permit term.

§ 166.422 May an individual Indian landowner modify the terms of the permit on a fractionated tract for advance grazing rental payment?

No. An individual Indian landowner of a fractionated tract may not modify a permit to allow a grazing rental payment in advance of the due date specified in the permit.

Compensation to Indian Landowners

§ 166.423 What does the BIA do with grazing rental payments received from permittees?

Rent will be distributed to the Indian landowners in accordance with the interest that each owns in the permitted land. The rent will be deposited to the appropriate account maintained by the Office of Trust Funds Management in accordance with 25 CFR part 115.

§ 166.424 How do Indian landowners receive grazing rental payments that the BIA has received from permittees?

Funds will be paid to the Indian landowners by the Office of Trust Funds Management in accordance with 25 CFR part 115.

§ 166.425 How will the rent be distributed if the permit covers more than one tract of land with different owners?

The rent will be prorated based upon the number and size of the tracts in relation to the total permit interest (leasehold), and distributed to each owner according to their fractional share of each tract.

Subpart F—Administrative and Tribal Fees

§ 166.500 Are there administrative fees for a permit?

Yes. We will charge an administrative fee before approving any permit, subpermit, assignment, encumbrance, modification, or other related document.

§ 166.501 How are administrative fees determined?

(a) Except as provided in subsection (b), we will charge administrative fees based on the annual grazing rental rate, according to the following table:

If the annual grazing rental rate is * * *	Then the administrative fee will be * * *
(1) Less than $500.00	3% of the annual rent.
(2) Between $500.00 and $5,000.00	2% of the annual rent.
(3) Greater than $5,000.00	1% of the annual rent.
(4) Percentage rental	Based on the minimum annual rental or an estimated percentage of rental.

(b) The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00.

(c) If a tribe performs all or part of the administrative duties for this part under Pub. L. 93–638, the tribe may establish, collect, and use reasonable fees to cover its costs associated with the performance of administrative duties.

(d) The fees for subpermits, assignments, encumbrances, modifications, or other related documents will be in accordance with this table.

§ 166.502 Are administrative fees refundable?

No. We will not refund administrative fees.

§ 166.503 May the Secretary waive administrative fees?

Yes. We may waive the administrative fee for a justifiable reason.

§ 166.504 Are there any other administrative or tribal fees, taxes, or assessments that must be paid?

(a) The permittee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land as determined by us or by the tribe.

(b) If the permitted land is within an Indian irrigation project or drainage district, the permittee must pay all charges that may accrue during the term of the permit. These may include charges for operation and maintenance of the irrigation project unless superseded by part 171 of this chapter. The permittee must pay the appropriate official in charge of the irrigation project or drainage district having jurisdiction.

Subpart G—Bonding and Insurance Requirements

§ 166.600 Must a permittee provide a bond for a permit?

Yes. A permittee, assignee or subpermittee must provide a bond for each permit interest acquired. Upon request by an Indian landowner, we may waive the bond requirement.

§ 166.601 How is the amount of the bond determined?

(a) The amount of the bond for each permit is based on the:

(1) Value of one year's grazing rental payment;

(2) Value of any improvements to be constructed;

(3) Cost of performance of any additional obligations such as irrigation charges; and

(4) Cost of performance of restoration and reclamation.

(b) Tribal policy made applicable by § 166.300 of this part may establish or waive specific bond requirements for permits.

(c) We may adjust security or bond requirements at anytime to reflect changing conditions.

§ 166.602 What form of bonds will the BIA accept?

(a) We will only accept bonds in the following forms:

(1) Cash;

(2) Negotiable Treasury securities that:

(i) Have a market value equal to the bond amount; and

(ii) Are accompanied by a statement granting full authority to the Secretary to sell such securities in case of a violation of the terms of the permit.

(3) Certificates of deposit that indicate on their face that Secretarial approval is required prior to redemption by any party;

(4) Irrevocable letters of credit (LOC) issued by federally-insured financial institutions authorized to do business in the United States. LOC's must:

(i) Contain a clause that grants the Secretary authority to demand immediate payment if the permittee defaults or fails to replace the LOC within 30 calendar days prior to its expiration date;

(ii) Be payable to the "Department of the Interior, BIA";

(iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date we receive it; and

(iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides the BIA with written notice at least 90 calendar days before the letter of credit's expiration date that it will not be renewed;

(5) Surety bond; or

(6) Any other form of highly liquid, non-volatile security subsequently approved by us that is easily convertible to cash by us and for which our approval is required prior to redemption by any party.

(b) For tribal permits, a tribe may negotiate a permit term that specifies the use of any of the bond forms described in paragraph (a) of this section.

§ 166.603 If cash is submitted as a bond, how is it administered?

If cash is submitted as a bond, we will establish an account in your name with the Office of Trust Funds Management to retain the funds.

§ 166.604 Is interest paid on a cash performance bond?

No. Interest will not be paid on a cash performance bond.

§ 166.605 Are cash performance bonds refunded?

If the cash performance bond has not been forfeited for cause, the principal amount deposited will be refunded to the depositor at the end of the permit period.

§ 166.606 Is insurance required for a permit?

When we determine it to be in the best interest of the Indian landowners, we will require a permittee to provide insurance. If insurance is required, it must:

(a) Be provided in an amount sufficient to:

(1) Protect any improvements on the permit premises;

(2) Cover losses such as personal injury or death; and

(3) Protect the interest of the Indian landowner.

(b) Identify the tribe, individual Indian landowners, and United States as insured parties.

§ 166.607 What types of insurance may be required?

We may require any or all of the following types of insurance depending upon the activity conducted under the permit: liability, casualty (such as for fire, hazard, or flood).

Subpart H—Permit Violations

§ 166.700 What permit violations are addressed by this subpart?

This subpart addresses violations of permit provisions other than trespass. Trespass is addressed under subpart I of this part.

§ 166.701 How will the Secretary enforce compliance with permit provisions?

When reasonable grounds exist, the Secretary may enter the permitted premises at any reasonable time with or without prior notice to determine whether there has been a violation of the permit provisions and to protect Indian trust assets and resources.

§ 166.702 What happens if a violation of a permit occurs?

If we determine that a violation of the permit has occurred based on facts known to us, as soon as practicable, we will provide written notice to the permittee and the sureties of the violation. This written notice will include an explanation of the violation.

§ 166.703 What will a written notice of a violation contain?

The written notice will provide the permittee with 10 days from the receipt of the written notice to:

(a) Cure the violation and notify us that the violation is cured.

(b) Explain why we should not cancel the permit; or

(c) Request in writing additional time to complete corrective actions. If additional time is granted, we may require that certain corrective actions be taken immediately.

§ 166.704 Can a determination of violation be contested?

In the written notice of violation, we will advise the permittee of the procedure to follow to contest our determination that a violation of the permit has occurred.

§ 166.705 What happens to a bond if a violation occurs?

We may apply the bond to remedy the violation, in which case we will require the permittee to submit a replacement bond of an appropriate amount.

§ 166.706 What happens if a permit violation is not cured?

(a) We will:

(1) Issue a written determination to cancel the permit if the violation is not cured. The decision letter will contain:

(i) An explanation why we are canceling the permit;

(ii) An order to vacate the property;

(iii) Notice of the right to appeal under 25 CFR part 2;

(iv) An order to pay delinquent rentals, damages, and other charges; and

(v) A requirement to post an appeal bond if applicable.

(2) Notify all interested parties, including the Indian landowners, by written notice as soon as practicable, of our determination to cancel a permit.

(b) We may require the permittee to post an appeal bond in an amount

determined by us. The amount of the appeal bond will be the amount of damages, and additional rentals expected to accrue during the settlement of the appeal.

§ 166.707 If a violation is not cured, what may an Indian landowner do?

(a) If a violation is not cured within the required time frame, the Indian landowner may exercise rights under the permit, including a right of entry, if any, or request that we cancel the permit.

(b) If a permit authorizes termination according to tribal or other law, or provides for the resolution of certain types of disputes through alternative dispute resolution methods, the permit provisions will govern in place of these regulations.

§ 166.708 Can the Secretary take emergency action without prior notice if the permitted premises are being damaged?

Yes. If the permittee causes or contributes to a severe harm to the premises, the Secretary may take appropriate emergency action, in consultation with the Indian landowner, by:

(a) Initiating action to cancel the permit;

(b) Requiring immediate cessation of the activity resulting in the harm;

(c) Ordering the permittee to vacate the premises immediately; and

(d) Taking formal legal action as may be appropriate, including seeking emergency judicial action.

§ 166.709 What rights does a permittee have if the Secretary takes emergency action under this subpart?

A permittee may:

(a) Agree to remedy the harm in a manner and time frame satisfactory to the Secretary and the Indian landowner;

(b) Seek to have the permit reinstated after the harm to the property has been cured; and

(c) Contest the Secretary's emergency actions under 25 CFR part 2.

Subpart I—Trespass

§ 166.800 What is trespass?

Under this part, trespass is any unauthorized occupancy, use of, or action on Indian agricultural and government lands assigned to the control of a tribe. The following are some examples of trespass:

(a) Cultivating or harvesting of irrigated or non-irrigated crops or the harvesting of native hay, forage, or seed;

(b) Erecting or damaging fencing, gates, or other structures;

(c) Developing water resources;

(d) Commercial filming or photography;

(e) Sale or barter of goods or services;

(f) Placing or storing of beehives;

(g) Cutting, damaging, taking, harvesting, or removing agricultural products for commercial purposes, including but not limited to: berries, nuts, flowers, seeds, moss, cones, leaves, mushrooms, cactus, yucca, and greenery;

(h) Recreation, hunting, trapping, or fishing;

(i) Disturbing soil, plants, or otherwise exposing or disturbing, damaging, or removing archaeological or paleontological resources;

(j) Littering or disposing of agricultural related products, hazardous waste, household or business waste, or garbage;

(k) Applying pesticides without proper certification or misusing pesticides;

(l) Aquaculture or the harvesting of fish raised for commercial sale or consumption;

(m) Unauthorized livestock activities, including:

(1) Driving livestock across Indian agricultural land without an approved crossing permit;

(2) Allowing livestock to drift and graze on Indian agricultural land without an approved permit;

(3) Grazing livestock within an area closed to grazing of that class of livestock; and

(4) Grazing livestock in an area withdrawn from use by the BIA when damage to the Indian agricultural land is occurring due to improper handling of livestock; and

(n) Other actions designated by tribes as acts of trespass on Indian agricultural lands.

§ 166.801 What is the BIA's trespass policy?

We will:

(a) Investigate accidental, and willful, or incidental trespass on Indian agricultural land.

(b) Respond to alleged trespass in a prompt, efficient manner.

(c) Assess trespass penalties for the value of products used or removed, cost of damage to the Indian agricultural land, and enforcement costs incurred as a consequence of the trespass.

(d) Ensure that damage to Indian agricultural lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

§ 166.802 Who can enforce this subpart?

(a) The BIA enforces the provisions of this subpart. If the tribe adopts the provisions of this subpart, the tribe will have concurrent jurisdiction to enforce this subpart. Additionally, if the tribe so requests, we will defer to tribal prosecution of trespass on Indian agricultural lands.

(b) The provisions in this subpart are exclusive of and in addition to any tribal action that may be taken under tribal law.

Notification

§ 166.803 How are trespassers notified of a trespass determination?

(a) Unless otherwise provided under tribal law, when we have reason to believe that a trespass on Indian agricultural land has occurred, we or the authorized tribal representative will provide written notice to the alleged trespasser, the possessor of trespass property, any known lien holder, and beneficial Indian landowner, as appropriate. The written notice will include the following:

(1) The basis for the trespass determination;

(2) A legal description of where the trespass occurred;

(3) A verification of brands in the State Brand Book for cases of livestock trespass;

(4) Corrective actions that must be taken;

(5) Time frames for taking the corrective actions; and

(6) Potential consequences and penalties for failure to take corrective action.

(b) If we determine that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) Trespass notices under this subpart are not subject to appeal under 25 CFR part 2.

§ 166.804 What can I do if I receive a trespass notice?

If you receive a trespass notice, you may within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact us in writing to explain why the trespass notice is in error. You may contact us by telephone but any explanation of trespass you wish to provide must be in writing. If we determine that we issued the trespass notice in error, we will withdraw the notice.

§ 166.805 Who else will the BIA notify?

We will notify anyone in possession of the Indian agricultural land on which the unauthorized livestock or other

property has been identified that such property could be Indian trust property and that no action to remove or otherwise dispose of the unauthorized livestock or other property may be taken unless authorized by us.

Actions

§ 166.806 What actions does the BIA take against trespassers?

If the trespasser fails to take the corrective action specified by us, we may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. We may keep such property we seize for use as evidence.

(b) Assess penalties, damages, and costs, under § 166.812.

§ 166.807 When will we impound unauthorized livestock or other property?

We will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or his/her representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after five days of providing notice of impoundment if you failed to correct the trespass.

§ 166.808 How are trespassers notified if their unauthorized livestock or other property are to be impounded?

(a) If the trespass is not corrected in the time specified in the initial trespass notice, we will send written notice of our intent to impound unauthorized livestock or other property to the owner or his/her representative, and any known lien holder of the unauthorized livestock or other property.

(b) If we determine that the owner of the unauthorized livestock or other property or his/her representative is unknown or refuses delivery of the written notice, we will post a public notice of intent to impound at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After we have given notice as described above, we will impound unauthorized livestock or other property without any further notice.

§ 166.809 What happens after my unauthorized livestock or other property are impounded?

Following the impoundment of unauthorized livestock or other property, we will provide notice that we will sell the impounded property as follows:

(a) We will provide written notice of the sale to the owner, his/her representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed prior to the sale.

(b) We will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least five days after the publication and posting of notice.

§ 166.810 How do I redeem my impounded livestock or other property?

You may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under § 166.812. and completing all corrective actions identified by us under § 166.803.

§ 166.811 How will the sale of impounded livestock or other property be conducted?

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and settling all obligations under § 166.803 and § 166.811, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.

(c) We will give the purchaser a bill of sale or other written receipt evidencing the sale.

Penalties, Damages, and Costs

§ 166.812 What are the penalties, damages, and costs payable by trespassers on Indian agricultural land?

Trespassers on Indian agricultural land must pay the following penalties and costs:

(a) The reasonable value of forage or crops consumed or destroyed;

(b) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 166.807;

(c) The costs associated with any damage to Indian agricultural land;

(d) The value of the property illegally used or removed plus a penalty of double their values;

(e) The costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees; and

(g) All other penalties authorized by law.

§ 166.813 How will the BIA determine the value of forage or crops consumed or destroyed?

We will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value for such property or privileges.

§ 166.814 How will the BIA determine the value of the property illegally used or removed?

We will determine the value of the property illegally used or removed based upon a valuation of similar property.

§ 166.815 How will the BIA determine the amount of damages to Indian agricultural land?

We will determine the damages by considering the costs of rehabilitation and revegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

§ 166.816 How will the BIA determine the costs associated with enforcement of the trespass?

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

§ 166.817 What happens if I do not pay the assessed penalties, damages and costs?

Unless otherwise provided by applicable tribal law:

(a) We will refuse to issue you a permit for use, development, or occupancy of Indian agricultural lands; and

(b) We will forward your case for appropriate legal action.

§ 166.818 How are the proceeds from trespass distributed?

Unless otherwise provided by tribal law:

(a) We will treat any amounts recovered under § 166.812 as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.

(b) All amounts collected in excess of the amounts assessed under § 166.812 will be applied by us against costs associated with the enforcement of this subpart.

(c) If we seize and dispose of impounded livestock or other property of the trespasser, we will apply any cash or other proceeds to satisfy the penalties and costs of enforcement. If any money is left over, we will return it to the trespasser or, where we cannot identify the owner of the impounded property, we will deposit the net proceeds of the sale into the accounts of the landowners where the trespass occurred.

§ 166.819 What happens if the BIA does not collect enough money to satisfy the penalty?

If we do not collect enough money from the trespasser, we will distribute collected penalties as follows:

(a) All amounts collected up to and including the amount assessed under §§ 166.810 through 166.811 will be distributed equally:

(1) Between the beneficial Indian landowner; and

(2) Towards the cost of restoring the Indian agricultural land.

(b) We will send written notice to the trespasser and any known lien holders demanding immediate settlement and advising the trespasser that unless settlement is received within five working days from the date of receipt, we will forward the case for appropriate legal action.

Subpart J—Appeals

§ 166.900 Can decisions by the BIA be appealed?

Except as otherwise provided in this part, appeals from decisions of the BIA under this part may be taken pursuant to 25 CFR part 2.

Subpart K—Records

§ 166.1000 Who owns records associated with this part?

Any records generated in the fulfillment of this part are the property of the United States, and must be maintained in accordance with approved records retention procedures under the Federal Records Act, 44 U.S.C. 3101, *et seq.*

Subpart L—Agriculture Education, Education Assistance, Recruitment, and Training

§ 166.1100 How are the Indian agriculture education programs operated?

(a) The purpose of the Indian agriculture education programs is to recruit and develop promising Indian and Alaska Natives who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional resource managers and other agriculture-related professionals by approved organizations.

(b) We will operate the student educational employment program as part of our Indian agriculture education programs in accordance with the provisions of 5 CFR 213.3202(a) and (b).

(c) We will establish an education committee to coordinate and carry out the agriculture education assistance programs and to select participants for all agriculture education assistance programs. The committee will include at least one Indian professional educator in the field of natural resources or agriculture, a personnel specialist, a representative of the Intertribal Agriculture Council, and a natural resources or agriculture professional from the BIA and a representative from American Indian Higher Education Consortium. The committee's duties will include the writing of a manual for the Indian and Alaska Native Agriculture Education and Assistance Programs.

(d) We will monitor and evaluate the agriculture education assistance programs to ensure that there are adequate Indian and Alaska Native natural resources and agriculture-related professionals to manage Indian natural resources and agriculture programs by or for tribes and Alaska Native Corporations. We will identify the number of participants in the intern, student educational employment program, scholarship, and outreach programs; the number of participants who completed the requirements to become a natural resources or agriculture-related professional; and the number of participants completing advanced degree requirements.

§ 166.1101 How will the BIA select an agriculture intern?

(a) The purpose of the agriculture intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native agricultural land. In keeping with this purpose, we will work with tribes and Alaska Natives:

(1) To obtain the maximum degree of participation from Indians and Alaska Natives in the agriculture intern program;

(2) To encourage agriculture interns to complete an undergraduate degree program in natural resources or agriculture-related field; and

(3) To create an opportunity for the advancement of natural resources and agriculture-related technicians to professional resource management positions with the BIA, other federal agencies providing an agriculture service to their respective tribe, a tribe, or tribal agriculture enterprise.

(b) Subject to restrictions imposed by agency budgets, we will establish and maintain in the BIA at least 20 positions for the agriculture intern program. All Indians and Alaska Natives who satisfy the qualification criteria may compete for positions.

(c) Applicants for intern positions must meet the following criteria:

(1) Be eligible for Indian preference as defined in 25 CFR part 5;

(2) Possess a high school diploma or its recognized equivalent;

(3) Be able to successfully complete the intern program within a 3-year period; and

(4) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that one will be sent within 90 days.

(d) We will advertise vacancies for agriculture intern positions semi-annually, no later than the first day of April and October, to accommodate entry into school.

(e) In selecting agriculture interns, we will seek to identify candidates who:

(1) Have the greatest potential for success in the program;

(2) Will take the shortest time period to complete the intern program; and

(3) Provide the letter of acceptance required by paragraph (c)(4) of this section.

(f) Agriculture interns must:

(1) Maintain full-time status in an agriculture-related curriculum at an accredited post secondary school;

(2) Maintain good academic standing;

(3) Enter into an obligated service agreement to serve as a professional resource manager or agriculture-related professional with an approved organization for two years in exchange for each year in the program; and

(4) Report for service with the approved organization during any break in attendance at school of more than three weeks.

(g) The education committee will evaluate annually the performance of the agriculture intern program participants against requirements to

ensure that they are satisfactorily progressing toward completion of program requirements.

(h) We will pay all costs for tuition, books, fees, and living expenses incurred by an agriculture intern while attending an accredited post secondary school.

§ 166.1102 How can I become an agriculture educational employment student?

(a) To be considered for selection, applicants for the student educational employment program must:

(1) Meet the eligibility requirements in 5 CFR part 308; and

(2) Be accepted into or enrolled in a course of study at an accredited post secondary institution which grants degrees in natural resources or agriculture-related curricula.

(b) Student educational employment steering committees established at the field level will select program participants based on eligibility requirements without regard to applicants' financial needs.

(c) A recipient of assistance under the student educational employment program will be required to enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for one year in exchange for each year in the program.

(d) We will pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for the cooperative education program.

§ 166.1103 How can I get an agriculture scholarship?

(a) We may grant agriculture scholarships to Indians and Alaska Natives enrolled as full time students in accredited post-secondary and graduate programs of study in natural resources and agriculture-related curricula.

(b) The education committee established in § 166.1100(a) will select program participants based on eligibility requirements stipulated in paragraphs (e) through (g) of this section without regard to applicants' financial needs or past scholastic achievements.

(c) Recipients of scholarships must reapply annually to continue to receive funding beyond the initial award period. Students who have received scholarships in past years, are in good academic standing, and have been recommended for continuation by their academic institution will be given priority over new applicants for scholarship assistance.

(d) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and is subject to yearly change.

(e) Preparatory scholarships may be available for a maximum of 3 academic years of general, undergraduate course work leading to a degree in natural resources or agriculture-related curricula and may be awarded to individuals who:

(1) Possess a high school diploma or its recognized equivalent; and

(2) Are enrolled and in good academic standing at an acceptable post secondary school.

(f) Undergraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who:

(1) Have completed a minimum of 55 semester hours toward a bachelor's degree in a natural resources or agriculture-related curriculum; and

(2) Have been accepted into a natural resource or agriculture-related degree-granting program at an accredited college or university.

(g) Graduate scholarships are available for a maximum of five academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in natural resources or agriculture-related fields.

(h) A recipient of assistance under the scholarship program must enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with the BIA, other federal agency providing assistance to their respective tribe, a tribe, tribal agriculture enterprise, or an ANCSA Corporation for one year for each year in the program.

(i) We will pay all scholarships approved by the education committee established in § 166.1100(d)(a) for which funding is available.

§ 166.1104 What is agriculture education outreach?

(a) We will establish and maintain an agriculture education outreach program for Indian and Alaska Native youth that will:

(1) Encourage students to acquire academic skills needed to succeed in post secondary mathematics and science courses;

(2) Promote agriculture career awareness;

(3) Involve students in projects and activities oriented to agriculture related professions early so students realize the need to complete required pre college courses; and

(4) Integrate Indian and Alaska Native agriculture program activities into the education of Indian and Alaska Native students.

(b) We will develop and carry out the program in consultation with appropriate community education organizations, tribes, ANCSA Corporations, Alaska Native organizations, and other federal agencies providing agriculture services to Indians.

(c) The education committee established under § 166.1100(a) will coordinate and implement the program nationally.

§ 166.1105 Who can get assistance for postgraduate studies?

(a) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native natural resource and agriculture-related professionals working for an approved organization so that the best possible service is provided to Indian and Alaska Natives.

(b) We may pay the cost of tuition, fees, books, and salary of Alaska Natives and Indians who are employed by an approved organization and who wish to pursue advanced levels of education in natural resource or agriculture-related fields.

(c) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a natural resources or agriculture-related field. Requirements of the postgraduate study program are:

(1) The duration of course work cannot be less than one semester or more than three years; and

(2) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program.

(d) Program applicants must submit application packages to the education committee. At a minimum, such packages must contain a resume and an endorsement signed by the applicant's supervisor clearly stating the need for and benefits of the desired training.

(e) The education committee must use the following criteria to select participants:

(1) Need for the expertise sought at both the local and national levels;

(2) Expected benefits, both locally and nationally; and

(3) Years of experience and the service record of the employee.

(f) Program participants will enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for two years for each year in the program. We may reduce the obligated service requirement if the employee receives

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supplemental funding such as research grants, scholarships, or graduate stipends and, as a result, reduces the need for financial assistance under this part. If the obligated service agreement is breached, we will collect the amount owed us in accordance with § 166.1110.

§ 166.1106 What can happen if we recruit you after graduation?

(a) The purpose of the post graduation recruitment program is to recruit Indian and Alaska Native natural resource and trained agriculture technicians into the agriculture programs of approved organizations.

(b) We may assume outstanding student loans from established lending institutions of Indian and Alaska Native natural resources and agriculture technicians who have successfully completed a post-secondary natural resources or agriculture-related curriculum at an accredited institution.

(c) Indian and Alaska Natives receiving benefits under this program will enter into an obligated service agreement in accordance with § 166.1110. Obligated service required under this program will be one year for every $5,000 of student loan debt repaid.

(d) If the obligated service agreement is breached, we will collect student loan(s) in accordance with § 166.1110.

§ 166.1107 Who can be an intern?

(a) Natural resources or agriculture personnel working for an approved organization may apply for an internship within agriculture-related programs of agencies of the Department of the Interior or other federal agencies providing an agriculture service to their respective reservations.

(b) Natural resources or agriculture-related personnel from other Department of the Interior agencies may apply through proper channels for "internships" within the BIA's agriculture programs. With the consent of a tribe or Alaska Native organization, the BIA can arrange for an Intergovernmental Personnel Act assignment in tribal or Alaska Native agriculture programs.

(c) Natural resources and agriculture personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an "internship" within the BIA and, with the consent of a tribe or Alaska Native organization, we can facilitate an Intergovernmental Personnel Act assignment in a tribe, tribal agriculture enterprise, or Alaska Native Corporation.

(d) Natural resources or agriculture personnel from a tribe, tribal agriculture enterprise, or Alaska Native Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise, or ANCSA Corporation agriculture program.

(e) The employing agency of participating federal employees will provide for the continuation of salary and benefits.

(f) The host agency for participating tribal, tribal agriculture enterprise, or Alaska Native Corporation agriculture employees will provide for salaries and benefits.

(g) A bonus pay incentive, up to 25 percent (%) of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and must be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

§ 166.1108 Who can participate in continuing education and training?

(a) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of natural resources and agriculture personnel employed by approved organizations. This program will emphasize continuing education and training in three areas:

(1) Orientation training including tribal-federal relations and responsibilities;

(2) Technical agriculture education; and

(3) Developmental training in agriculture-based enterprises and marketing.

(b) We will maintain an orientation program to increase awareness and understanding of Indian culture and its effect on natural resources management and agriculture practices and on federal laws that effect natural resources management and agriculture operations and administration in the Indian agriculture program.

(c) We will maintain a continuing technical natural resources and agriculture education program to assist natural resources managers and agriculture-related professionals to perform natural resources and agriculture management on Indian land.

(d) We will maintain an agriculture land-based enterprise and marketing training program to assist with the development and use of Indian and Alaska Native agriculture resources.

§ 166.1109 What are my obligations to the BIA after I participate in an agriculture education program?

(a) Individuals completing agriculture education programs with an obligated service requirement may be offered full time permanent employment with an approved organization to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If employment is not offered within the 90 day period, the student will be relieved of obligated service requirements. Not less than 30 days before to the start of employment, the employer must notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the BIA, the employer must also notify us.

(b) Employment time that can be credited toward obligated service requirement will begin the day after all program education requirements have been completed, with the exception of the agriculture intern program which includes the special provisions outlined in § 166.1101(f)(4). The minimum service obligation period will be one year of full time employment.

(c) The employer has the right to designate the location of employment for fulfilling the service obligation.

(d) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a deferment of obligated service to pursue postgraduate or post-doctoral studies. In such cases, we will issue a decision within 30 days of receipt of the request for deferral. We may grant such a request; however, deferments granted in no way waive or otherwise affect obligated service requirements.

(e) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a waiver of obligated service based on personal or family hardship. We may grant a full or partial waiver or deny the request for waiver. In such cases, we will issue a decision within 30 days of receiving the request for waiver.

§ 166.1110 What happens if I do not fulfill my obligation to the BIA?

(a) Any individual who accepts financial support under agriculture education programs with an obligated service requirement, and who does not accept employment or unreasonably terminates employment must repay us in accordance with the following table:

If you are * * *	Then the costs that you must repay are * * *	And then the costs that you do not need to repay are * * *
(1) Agriculture intern	Living allowance, tuition, books, and fees received while occupying position plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization
(2) Cooperative education	Tuition, books, and fees plus interest	
(3) Scholarship	Costs of scholarship plus interest	
(4) Post graduation recruitment	All student loans assumed by us under the program plus interest.	
(5) Postgraduate studies	Living allowance, tuition, books, and fees received while in the program plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization.

(b) For agriculture education programs with an obligated service requirement, we will adjust the amount required for repayment by crediting toward the final amount of debt any obligated service performed before breach of contract.

Dated: June 22, 2000.

Kevin Gover,

Assistant Secretary-Indian Affairs.

[FR Doc. 00–17195 Filed 7–13–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

25 CFR Part 84

RIN 1076–AE03

Encumbrances of Tribal Land—Contract Approvals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are issuing a proposed rule stating which types of contracts or agreements encumbering tribal land are not subject to approval by the Secretary of the Interior under the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179. The proposed rule also provides, in accordance with the Act, that Secretarial approval is not required (and will not be granted) for any contract or agreement that the Secretary determines is not covered by the Act. Finally, for contracts and agreements that are covered by the Act, the proposed rule sets out mandatory conditions for the Secretary's approval.

DATES: You must submit any written comments no later than October 12, 2000.

ADDRESSES: Comments (2 copies) should be addressed to: U.S. Forest Service (CAET), 200 E. Broadway, Missoula, MT 59807 Attn: Trust Rule.

FOR FURTHER INFORMATION CONTACT: Art Gary, Bureau of Indian Affairs, Trust Policies and Procedures Project, 202–208–6422.

SUPPLEMENTARY INFORMATION:

I. Background

In 1871, Congress enacted Section 2103 of the Revised Statutes, codified at 25 U.S.C. 81 (Section 81). It placed several restrictions, including a requirement for approval by the Secretary of the Interior, on contracts between any person and any Indian tribe or individual Indians for

> the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States.

Section 81 reflected Congressional concern that Indian tribes and individual Indians were incapable of protecting themselves from fraud in their financial affairs. To that end, it also required that the Secretary approve any contracts for legal services between an Indian tribe and an attorney, and provided that any person could bring an action in the name of the United States to enforce the Section's requirements (the "qui tam" provision).

Over the years, administration of this statute became difficult. Although it was interpreted early on not to apply to leases of Indian land (see *Lease of Indian Lands for Grazing Purposes,* 18 Op. Atty. Gen. 235 (1885)), parties opposed to such leases still asked courts to invalidate them based on alleged non-compliance with Section 81. See, *e.g., United States ex rel. Harlon* v. *Bacon,* 21 F.3d 209 (8th Cir. 1994) (a suit under the qui tam provision). As time went on, there was confusion over exactly what contracts Section 81 did or did not cover. The Bureau of Indian Affairs (BIA) began to issue "accommodation approvals" for contracts that did not require the Secretary's approval, but where the relevant Indian tribe requested that they be approved anyway to avoid casting any doubt upon the tribe's authority to enter into the contract. To accommodate the tribe's request, the BIA would "approve" the contract, even though such "approval" was not required under Section 81.

In addition to administrative problems, Section 81 became outdated. It was a relic of a paternalistic policy towards Indian tribes prevalent at the end of the nineteenth century. As noted by the Senate Committee on Indian Affairs in its report on Pub. L. 106–179 (the Senate Report), "Indian tribes, their corporate partners, courts, and the BIA have struggled for decades with how to apply Section 81 in an era that emphasizes tribal self-determination, autonomy, and reservation economic development." Congress attempted to address some of these concerns through enactment of later statutes such as the Indian Reorganization Act (IRA) of 1934, 48 Stat. 984; the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93–638; and the Indian Mineral Development Act of 1982, Pub. L. 97–382. Since, however, Congress did not change the provisions of Section 81 (except for a minor amendment in 1958), the uncertainty in its application continued.

To address this uncertainty, Congress enacted the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (the Act), Pub. L. 106–179, in March 2000. Section 2 of the Act replaces the text of Section 81 with six subsections. Subsection (a) supplies definitions, which are incorporated into the proposed regulations. Subsection (b) provides that agreements or contracts with Indian tribes that encumber Indian lands for a period of seven or more years are not valid unless they bear the approval of the Secretary of the Interior or a designee of the Secretary. By making this change, Section 81 no longer applies to a broad range of commercial transactions. Instead, as noted in the Senate Report, Section 81 will apply only to those transactions where the contract between the tribe and a third

party could allow that party to exercise exclusive or nearly exclusive proprietary control over the Indian lands. The intent is to protect the tribe from loss of proprietary control of its lands and to provide the measure of certainty in the application of Section 81 that was lacking in the prior law.

Subsection (c) provides that a determination by the Secretary that an agreement is not covered by Section 81 has the effect of making the section inapplicable. The Senate Report notes that "it would contradict the law's intent if parties made a practice of submitting agreements where Section 81 is patently inapplicable, simply to obtain an official endorsement of this conclusion." Thus, with the removal of the uncertainty regarding the validity of such agreements, the BIA will no longer issue "accommodation approvals." Also, and most importantly for purposes of this proposed rule, this subsection is meant to work in conjunction with subsection (e) that requires that the Secretary enact regulations within 180 days from the law's enactment establishing which types of agreements are not covered by Section 81.

Subsection (d) requires the Secretary to disapprove any agreement otherwise covered by the law, if it is in violation of federal law. The Secretary must disapprove, also, if the contract or agreement fails to address sovereign immunity in one or more of the three ways specified, specifically a provision that: provides remedies to address a breach of the agreement; provides a reference to applicable law (found in tribal code, ordinance, or competent court ruling) that discloses the tribe's right to assert immunity; or waives immunity in some manner. As noted in the Senate Report, "consistent with the principles of tribal self-determination, this bill does not direct the BIA to substitute its business judgment over that of a tribal government." These are, therefore, the only criteria in the Act for approval or disapproval of contracts or agreements that are subject to the Act.

Subsection (f) removes the statutory requirement that attorney contracts must be approved by the Secretary. It also makes clear that the Act is not intended to make any changes to provisions of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, which require federal approval. Finally, consistent with the long-standing principle that the federal trust obligation may not be unilaterally terminated, the Act does not alter those tribal constitutions that require federal approvals for specific tribal actions, such as attorney contracts. Thus, the Secretary must still approve or disapprove attorney contracts if a tribal constitution so requires. The criteria, if any, for approval of such contracts will be those in the tribal constitution.

Those tribes with corporate charters under Section 17 of the IRA, 25 U.S.C. 477 are exempt from the requirements of the Act.

II. Section-by-Section Analysis of the Proposed Rule

Section 84.001 states the purpose of the proposed rule as being the implementation of the Indian Economic Development and Contract Encouragement Act of 2000, Pub. L. 106–179.

Section 84.002 contains terms necessary for understanding the proposed rule. The term "encumber," which Congress did not define in the Act, refers, consistent with the Senate Report, to the possibility that a third party could gain exclusive or nearly exclusive proprietary control over tribal land. We have defined "Indian tribe" as it is defined in the Act. The definition of "tribal lands" in the proposed rule is the same as the definition of "Indian lands" in the Act. We have used "tribal lands" to make it clear that the provisions of the Act and this proposed rule do not apply to individually owned lands.

Section 84.003 indicates that, unless otherwise exempted, those contracts and agreements that encumber tribal lands for a period of seven or more years require Secretarial approval under this proposed rule. The Senate Report uses the following examples:

> For example, a lender may finance a transaction on an Indian reservation and receive an interest in tribal lands as part of that transaction, If, for example, one of the remedies for default would allow this interest to ripen into authority to operate the facility, this would constitute an adequate encumbrance to bring the contract within Section 81. By contrast, if the transaction concerned "limited recourse financing" and the lender merely acquired the first right to all of the revenue derived from specified lands for a period of years, this would not constitute a sufficient encumbrance to bring the transaction within Section 81.

Section 84.004 indicates that the following types of contracts or agreements are not subject to this proposed rule:

- Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. Congress did not repeal any other requirement for Secretarial approval of encumbrances, nor did it state that the Act imposed an additional approval process. This exemption is also consistent with previous opinions of both the Department of the Interior and the Department of Justice, judicial decisions, and legislative history of the Indian Mineral Development Act, all of which consistently state that the requirements of Section 81 do not apply to leases, rights-of-way, and other documents that convey a present interest in tribal land. Note, however, that contracts and agreements that are similar to those approved under other federal law or regulation, but are not subject to that approval, such as a contract between a tribe and another party to enter into a lease, may be subject to approval under this Part.
- Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415. Currently, this exemption only applies to certain leases by the Tulalip tribes.
- Subleases and assignments of leases of tribal land that do not require approval by the Secretary under part 162 of this title. We have waived approval of these instruments either in a master lease approved by us or by regulation.
- Contracts or agreements that convey any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members. Such assignments are internal tribal matters. We would approve any further encumbrances of the assigned tribal land under this part or another relevant regulation (*e.g.*, 25 CFR part 162).

Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more. By definition, such contracts or agreements do not encumber the land under the Act. Such contracts or agreements may include contracts for personal services; construction contracts; contracts for services performed for tribes on tribal lands; and bonds, loans, security interests in personal property, or other financial arrangements that do not and could not involve interests in land.

- Contracts that are entered into by tribal corporations chartered under 25 U.S.C. 477. As noted above, the Act specifically does not apply to such tribes.
- Tribal attorney contracts. However, as noted above, although the Act repealed the federal statutory requirements for approval of attorney contracts, the BIA must still do so if required under a tribal constitution.
- Attorney and other professional contracts by Indian tribal governments identified as Self-Governance Tribes under 25 U.S.C. 450, as amended. This is to conform to the exemption of these contracts from approval by the Secretary under 25 U.S.C. 458cc(h)(2).

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• Contracts or agreements that are subject to approval by the National Indian Gaming Commission. The Act specifically exempts these contracts and agreements from its provisions, and the National Indian Gaming Commission will continue to review and approve contracts that provide for management of a tribal gaming activity.

• Contracts or agreements under the Federal Power Act (FPA) relating to the use of tribal lands that meet the definition of a "reservation" under the FPA, with certain conditions. The provisions of the FPA cited in the conditions already provide for review of such contracts or agreements by the Secretary.

Section 84.005 makes it clear that the Secretary will return to the submitting tribes those contracts and agreements that do not require his approval. Therefore, we will no longer issue "accommodation approvals."

Section 84.006 establishes the criteria for disapproval of a contract or agreement under this proposed rule. Specifically, the Secretary must disapprove those contracts or agreements that would violate federal law or those that do not contain provision(s) regarding the exercise of tribal sovereign immunity. As noted above, consistent with the legislative history of the Act, these are the only criteria for Secretarial review under this proposed rule.

Section 84.007 states, consistent with Section 2(b) of the Act, that the effect of disapproval of a contract or agreement under this part (as opposed to return of a contract or agreement under § 84.005 of this proposed rule) is that the contract or agreement is invalid.

III. Public Comments

The addition of a new part 84 to 25 CFR is necessitated by the enactment of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179. The Department is responding to the statutory requirement that regulations to implement the law be developed within 180 days of the enactment of Pub. L. 106–179. The public is invited to make substantive comments on the Department's proposed promulgation of this new part. Two copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments will be available for public inspection at the Department of the Interior, Office of the Secretary, MS 7214 MIB, Washington, DC 20240. Comments may also be telefaxed to the following number: 406/329–3021. Email comments will be accepted at: mailroom__wo__caet@fs.fed.us All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of a final rule.

Our practice is to make comments, including the names and addresses of persons commenting, available for public review during regular business hours. Persons commenting as private individuals may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a commenter's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. Comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" from an economic or policy standpoint. This proposed rule is pursuant to a statutory mandate and is consistent with the Department's policy of encouraging tribal self-determination and economic development. The proposed rule reduces the number of contracts the Department has to review each year. Prior to the amendments enacted under Pub. L. 106–179, tribes had to submit certain contracts for approval by the Secretary of the Interior for which Secretarial approval has now (through enactment of Pub. L. 106–179) been deemed unnecessary. Those tribes having contracts or agreements covered under the new law, however, must include a statement regarding their sovereign immunity. This is an intergovernmental mandate; however, it would not affect the rights of either party under such contracts and agreements, but would only require that these rights be explicitly stated. The cost burden on the tribes for including this provision would be minimal. Otherwise, the proposed rule has no direct or indirect impact on any other agency, does not materially alter the budgetary impact of financial programs, or raise novel legal or policy issues.

B. Review Under Executive Order 12988

With respect to the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this proposed rule because it applies only to tribal governments, not State and local governments.

D. Review Under the Small Business Regulatory Enforcement Act of 1996 (SBREFA)

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100 million or more. This proposed rule will not result in a major increase in costs or prices. In fact, it is estimated that the Department will save time and resources through the proposed rule because the number of contracts submitted for Secretarial approval will be reduced. Therefore, no increases in costs for administration will be realized and no prices would be impacted through the streamlining of the contract approval process within the Department and the BIA. The effect of the proposed rule is to encourage and foster tribal contracting and, consequently, strengthen tribal self-determination and economic development. This proposed rule will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the proposed rule will be realized by tribal governments in the economy of administration accorded contract negotiation between tribes and third parties. Unless the contracts contemplate an encumbrance of Indian lands or could otherwise lead to the loss of tribal proprietary control over such lands, the Department would not require such contracts and agreements to be submitted to the BIA for approval. The Department anticipates, therefore, that the impacts to small business or enterprises and the tribes themselves will be positive and, indeed, allow for greater flexibility in contracting for certain services on Indian lands.

E. Review Under the Paperwork Reduction Act

No information or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Review Under Executive Order 13132 Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Review Under the National Environmental Policy Act of 1969

This proposed rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the Federal actions under this proposed rule (*i.e.*, approval or disapproval of contracts or agreements that could encumber Tribal lands for a period of seven years or more) will be subject at the time of the action itself to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This proposed rule will not result in the expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Department does take notice, however, that the proposed rule (in response to Pub. L. 106–179) requires that a tribe entering into a covered contract include a specific statement regarding its sovereign immunity. This is an additional enforceable duty imposed on the tribes, and so would constitute an intergovernmental mandate under the Unfunded Mandates Reform Act. However, the cost of this mandate would be minimal.

I. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 14, 1998, "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655) and 512 DM 2, we have evaluated any potential effects upon Federally recognized Indian tribes and have determined that there are no potential adverse effects. No action is taken under this proposed rule unless a tribe voluntarily enters into a contract or agreement that could encumber tribal land for seven years or more. Tribes will be asked for comments prior to publication as a final regulation of this proposed rule and their comments will be considered prior to publication.

List of Subjects in 25 CFR Part 84

Administrative practice and procedure, Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR chapter I by adding part 84 to read as follows:

PART 84—ENCUMBRANCES OF TRIBAL LAND

Sec.

84.001 What is the purpose of this part?
84.002 What terms must I know?
84.003 What types of contracts and agreements require Secretarial approval under this part?
84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?
84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?
84.006 When will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?
84.007 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

Authority: 25 U.S.C. 81, Pub. L. 106–179.

§ 84.001 What is the purpose of this part?

The purpose of this part is to implement the provisions of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179, which amends Section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

§ 84.002 What terms must I know?

The Act means the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179, which amends Section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

Encumber means to attach a claim, lien, charge, right of entry or liability to real property (referred to generally as encumbrances). Encumbrances covered by this part may include leasehold mortgages, easements, and other contracts or agreements that could give to a third party exclusive or nearly exclusive proprietary control over tribal land.

Indian tribe means any Indian tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act, which is federally-recognized by the United States government for special programs and services provided by the Secretary to Indians because of their status as Indians.

Secretary means the Secretary of the Interior or his or her designated representative.

Tribal lands means those lands held by the United States in trust for a tribe or those lands owned by a tribe subject to federal restrictions against alienation, as referred to in Public Law 106–179 as "Indian lands."

§ 84.003 What types of contracts and agreements require Secretarial approval under this part?

Unless otherwise provided in this part, contracts and agreements entered into by an Indian tribe that encumber tribal lands for a period of seven or more years require Secretarial approval under this part.

§ 84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?

Yes. The following types of contracts or agreements do not require Secretarial approval:

(a) Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. See, for example, 25 CFR parts 152, 162, 163, 166, 169, 200, 211, 216, and 255;

(b) Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415;

(c) Subleases and assignments of leases of tribal land that do not require approval by the Secretary under part 162 of this chapter;

(d) Contracts or agreements that convey any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members.

(e) Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more;

(f) Contracts or agreements that are entered into by tribal corporations chartered under 25 U.S.C. 477;

(g) Tribal attorney contracts;

(h) Attorney and other professional contracts by Indian tribal governments identified as Self-Governance Tribes under 25 U.S.C. 450, as amended, for the period that a Self-Governance agreement is in effect;

(i) Contracts or agreements that are subject to approval by the National Indian Gaming Commission under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*, and the Commission's regulations; or

(j) Contracts or agreements relating to the use of tribal lands that meet the definition of a "reservation" under the Federal Power Act (FPA), provided that:

(1) the Federal Energy Regulatory Commission (FERC) has issued a license or an exemption;

(2) FERC has made the finding under Section 4(e) of the FPA (16 U.S.C. 797(e)) that the license or exemption will not interfere or be inconsistent with the purpose for which such reservation was created or acquired; and

(3) the FERC license or exemption includes the Secretary's conditions for protection and utilization of the reservation under Section 4(e) and payment of annual use charges to the tribe under Section 10(e) of the FPA (16 U.S.C. 803(e)).

§ 84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?

No. The Secretary will not approve contracts or agreements that do not encumber tribal lands for a period of seven or more years. The Secretary will return such contracts and agreements with a statement explaining why Secretarial approval is not required. The provisions of the Act will not apply to those contracts or agreements the Secretary determines are not covered by the Act.

§ 84.006 When will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?

The Secretary will disapprove a contract or agreement that requires Secretarial approval under this part if the Secretary determines that such contract or agreement:

(a) Violates federal law; or

(b) Does not contain at least one of the following:

(1) A provision that provides for remedies in the event the contract or agreement is breached;

(2) A provision that references a tribal code, ordinance or ruling of a court of competent jurisdiction that discloses the right of the tribe to assert sovereign immunity as a defense in an action brought against the tribe; or

(3) A provision that includes an express waiver of the right of the tribe to assert sovereign immunity as a defense in any action brought against the tribe, including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action.

§ 84.007 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

If the Secretary disapproves a contract or agreement that requires Secretarial approval under this part, the contract or agreement is invalid as a matter of law.

Dated: July 5, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–17562 Filed 7–13–00; 8:45 am]

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Federal Register

Friday,
July 14, 2000

Part IV

Department of Education

Office of Educational Research and Improvement: Field-Initiated Studies Education Research Grant Program; Inviting Applications for New Awards for Fiscal Year 2001; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.305T]

Office of Educational Research and Improvement: Field-Initiated Studies (FIS) Education Research Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: The Field-Initiated Studies (FIS) Education Research Grant Program awards grants to conduct education research in which topics and methods of study are generated by investigators.

Eligible Applicants: Institutions of higher education; State and local education agencies; public and private organizations, institutions, and agencies; and individuals.

Applications Available: July 21, 2000.

Application packages will be available by mail and electronically on the World Wide Web at the following sites:

http://www.ed.gov/offices/OERI/FIS/
www.ed.gov/GrantApps/

Deadline for Transmittal of Applications: September 15, 2000.

Deadline for Receipt of Letters of Intent: August 18, 2000.

Note: A Letter of Intent is optional, but encouraged, for each application. The Letter of Intent is for OERI planning purposes and will not be used in the evaluation of the application. Instructions for the Letter of Intent will be in the application package.

Tentative Award Date: December 15, 2000.

Estimated Available Funds: $15 million for two FY 2001 FIS cycles.

The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, depends on final congressional action. We are inviting applications before an appropriation for FY 2001 in order to allow enough time to consider holding two grant competition cycles in FY 2001.

Estimated Range of Awards: The size of the awards will be commensurate with the nature and scope of the work proposed. In the most recent FIS competition, the grant awards ranged from approximately $270,000 (for 18 months) to about $1,740,000 (for 36 months).

Budget Period: 12-month period.

Project Period: 12 to 36 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 (part 86 applies to IHEs only), 97, 98, and 99. (b) The regulations in 34 CFR part 700.

SUPPLEMENTARY INFORMATION: The FIS Education Research Grant Program is highly competitive. Strong applications for FIS grants clearly address each of the applicable selection criteria. They make a well-reasoned and compelling case for the national significance of the problems or issues that will be the subject of the proposed research, and present a research design that is complete, clearly delineated, and incorporates sound research methods. In addition, the personnel descriptions included in strong applications make it apparent that the project director, principal investigator, and other key personnel possess training and experience commensurate with their duties.

The project period of the grant may be from one to three years. In the application, the project period should be divided into 12-month budget periods. Each 12-month budget should be clearly delineated and justified in terms of the proposed activities.

Collaboration: We encourage collaboration in the conduct of research. For example, major research universities and institutions may collaborate with historically underrepresented institutions, such as Historically Black Colleges and Universities, Hispanic-Serving Institutions, and Tribal Colleges and Universities.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its web site: http://www.ed.gov/pubs/edpubs.html

Or you may contact ED Pubs at its E-mail address:

Edpubs@inet.ed.gov

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.305T.

FOR FURTHER INFORMATION CONTACT: Seresa Simpson, Field-Initiated Studies Education Research Grants Program, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., room 606c, Washington, DC 20208–5510. Telephone: (202) 219–1591. E-Mail: seresa_simpson@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application.

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Program Authority: 20 U.S.C. 6031(c)(2)(B).

Dated: July 11, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–17925 Filed 7–13–00; 8:45 am]

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Friday,
July 14, 2000

Part V

Department of Education

Office of Educational Research and Improvement Comprehensive School Reform Research Grant Program: Application Review Procedures for New Awards for Fiscal Year 2000; Notice

VOL 65 ISS 136 JL 14 2000 UMI

DEPARTMENT OF EDUCATION

[CFDA No: 84.306S]

Office of Educational Research and Improvement (OERI) Comprehensive School Reform Research Grant Program: Notice of Application Review Procedures for New Awards for Fiscal Year (FY) 2000

SUMMARY: On April 20, 2000, we published in the **Federal Register** (65 FR 21284) a notice inviting applications for new awards for FY 2000 for the Comprehensive School Reform Research Grant Program. This notice explains the procedures that we will use to review your application.

SUPPLEMENTARY INFORMATION:

Application Review Procedure

We will use a two-tier review process for the new Comprehensive School Reform Research Grant competition for FY 2000. All reviewers will meet the qualifications for reviewers established in the regulations at 34 CFR 700.11. This two-tier process and scoring system are authorized by and in accordance with OERI program regulations in 34 CFR part 700, particularly §§ 700.21 and 700.30.

Tier I. At the Tier I level, your application will be assigned to at least three reviewers, or subpanel members, from the full panel of 12–15 members. Reviewers from each subpanel will evaluate and score applications in accordance with the four selection criteria in the application package:

(1) National Significance. (30 points)

(2) Quality of the Project Design. (35 points)

(3) Quality and Potential Contributions of Personnel. (20 points)

(4) Quality of the Management Plan and Adequacy of Resources. (15 points)

For each application, reviewers will review 50-page narratives, 5-page management plans, 3-page-per-individual biographical sketches, and budget information. In accordance with page limits as described in the closing date notice and application package, all pages in excess of the maximum will be removed unread.

The Tier I reviewers will meet in the Washington, DC metropolitan area, and subpanel members will discuss their assigned applications and their numerical ratings. Following discussion and any re-evaluation and re-rating, reviewers in each subpanel will independently place each application in one of three categories, either "highly recommended," "recommended" or "not recommended."

OERI will then calculate the Tier I score for each application by averaging the scores assigned by subpanel members. OERI numerically ranks all applications according to their average score and establishes a cut-off point to determine which applications advance to Tier II. Only those applications with a Tier I score higher than the established cut-off point will advance to Tier II review, with the following exception. All applications that receive a "highly recommended" rating from a majority of subpanel members will advance to Tier II regardless of their average score.

In determining the cut-off point, OERI will consider the following two factors: clear distinctions between clusters of scores as evidenced by gaps in the ranking, and the number of proposals required to ensure a competitive Tier II evaluation.

Tier II. If your application advances to the Tier II level, it will be read, rated, and commented on by all members of the full panel. Each reviewer will independently apply the same selection criteria and scoring system that were used in the Tier I review. After a common discussion of all applications, reviewers will give final numerical ratings and comments. OERI will rank the applications to form the recommended slate. Should there be a number of applications at the cut-off point, then the competitive priority would be applied. In the event of a tie, the Assistant Secretary would determine which application or applications from that group fill the most critical gaps in comprehensive school reform research.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed regulations. Section 437(d)(1) of the General Education Provision Act (GEPA), 20 U.S.C. 1232 (d)(1), however, exempts rules that apply to the first competition under a new or substantially revised program from the requirements. Therefore, the Assistant Secretary of OERI, in accordance with section 437 (d)(1) of GEPA, to ensure timely awards, has decided to forego public comment with respect to these procedures. These procedures will apply only to the FY 2000 grant competition.

(The valid OMB control number for this collection of information is 1850–0763.)

FOR FURTHER INFORMATION CONTACT: Debra Hollinger Martinez, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 615A, Washington, DC 20208–5521. Telephone: (202) 219–2239. (E-mail: Debra_Hollinger_Martinez@ed.gov). If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Program Authority: 20 U.S.C. 6031.

Dated: July 11, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

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AGRICULTURE DEPARTMENT
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South Atlanic Region; coral, coral reefs, and live/hard bottom habitats; published 6-14-00

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JUSTICE DEPARTMENT
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H.R. 3051/P.L. 106–243

To direct the Secretary of the Interior, the Bureau of Reclamation, to conduct a feasibility study on the Jicarilla Apache Reservation in the State of New Mexico, and for other purposes. (July 10, 2000; 114 Stat. 497)

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S. 1309/P.L. 106–244
To amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans. (July 10, 2000; 114 Stat. 499)

S. 1515/P.L. 106–245
Radiation Exposure Compensation Act Amendments of 2000 (July 10, 2000; 114 Stat. 501)

Last List July 11, 2000

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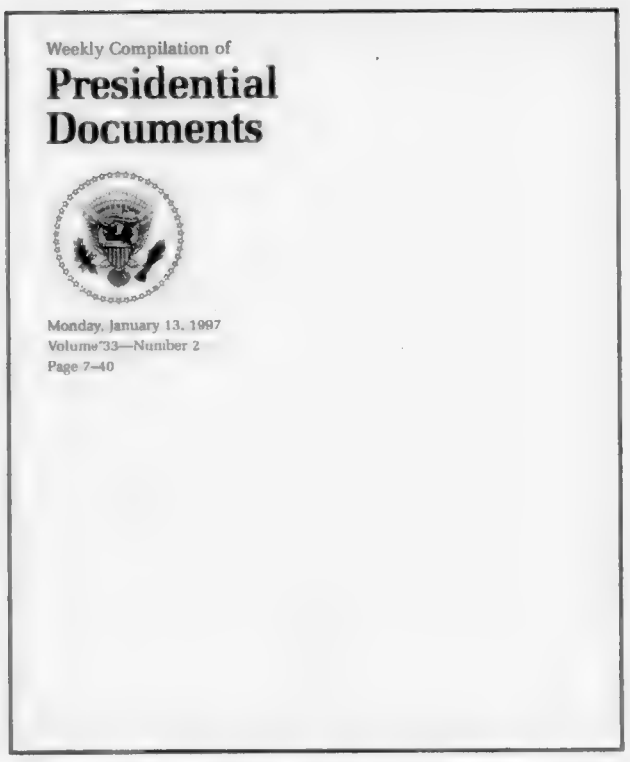

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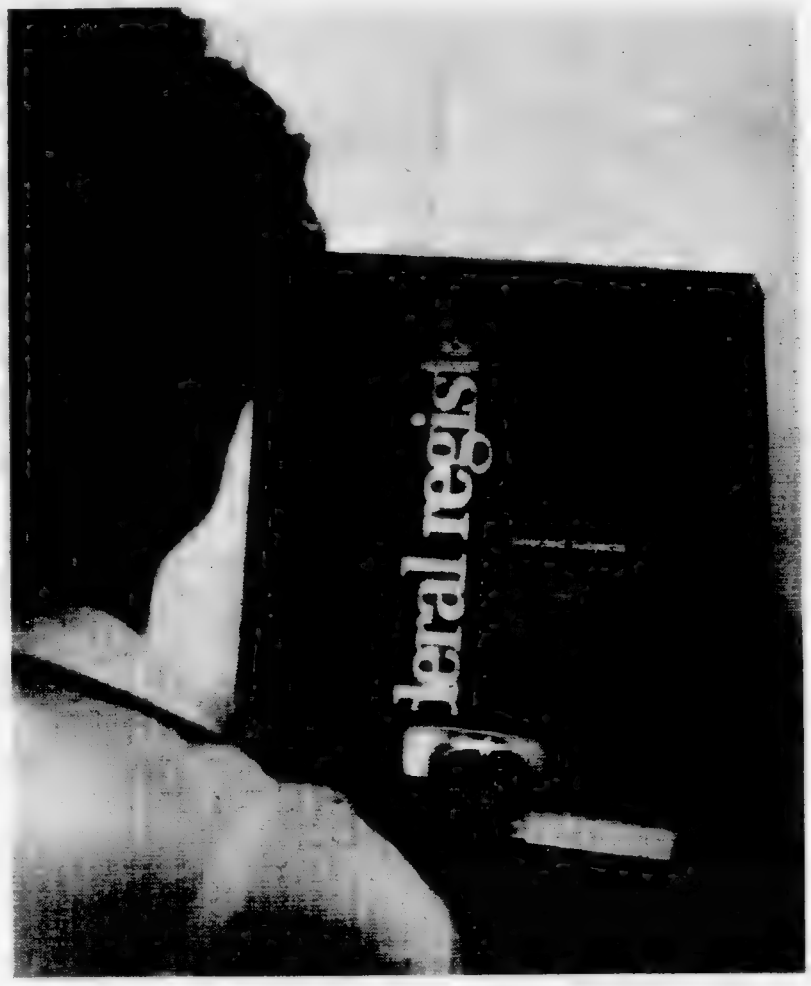

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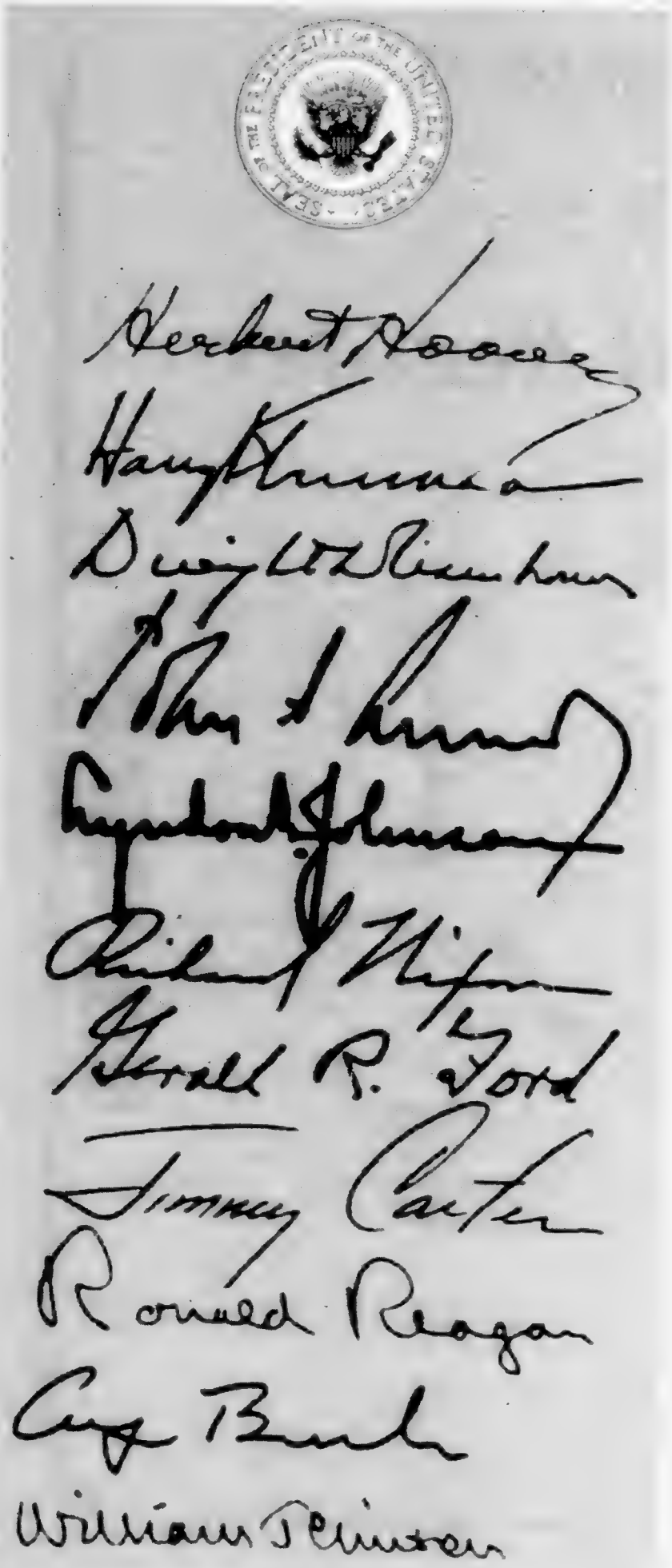

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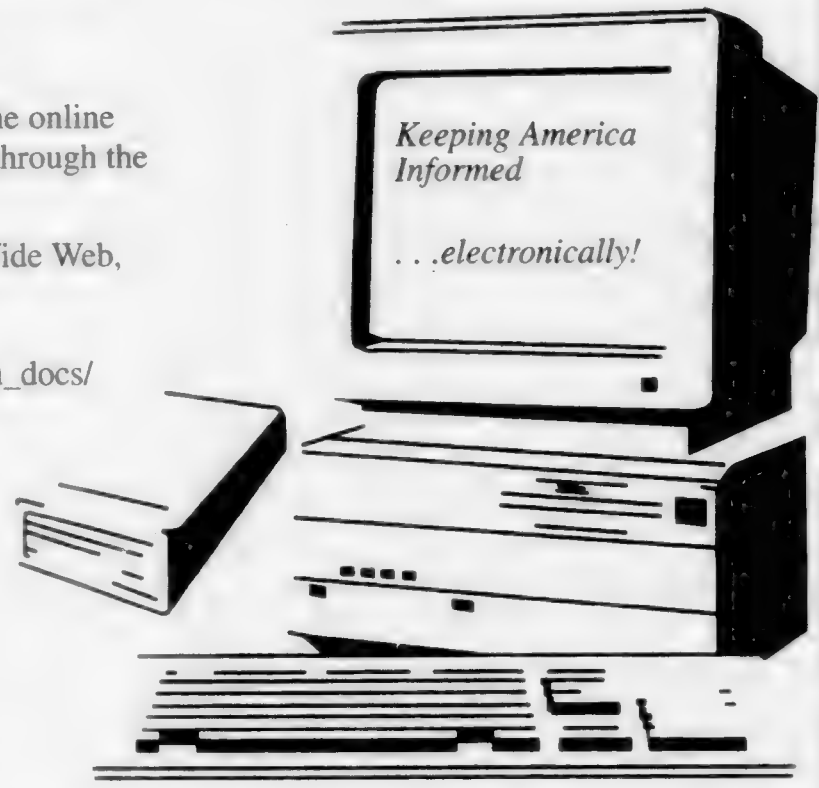

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[FV–99–701–FR]

RIN 0581–AB78

Blueberry Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a Blueberry Promotion, Research, and Information Order (Order) under the Commodity Promotion, Research, and Information Act of 1996. Under the Order, cultivated blueberry producers and importers will pay an assessment of $12 per ton, which will be paid to the U.S.A. Blueberry Council (USABC). Producers and importers of less than 2,000 pounds of fresh and processed cultivated blueberries annually will be exempt from the assessment. First handlers will remit the assessments to the USABC. The USABC will use the funds collected to conduct a generic program of promotion, research, consumer information, and industry information to maintain and expand markets for cultivated blueberries. The U.S. Department of Agriculture (USDA or the Department) conducted a referendum among eligible producers and importers of cultivated blueberries to determine whether they favor the implementation of the Order. The Order was approved by a majority of those voting who also represented a majority of the pounds of cultivated blueberries represented in the referendum.

EFFECTIVE DATE: August 16, 2000.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535–S, Washington, DC 20250–0244; telephone (202) 720–5976, fax (202) 205–2800, or e-mail at oliver.flake@usda.gov.

SUPPLEMENTARY INFORMATION: This Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7401–7425; Public Law 104–127].

Previous documents in this proceeding: Proposed Rule Number 1 (July 1999 proposed rule) on the Order published in the July 22, 1999, issue of the **Federal Register** [64 FR 39790]; a proposed rule on referendum procedures published in the July 22, 1999, issue of the **Federal Register** [64 FR 39803]; Proposed Rule Number 2 (February 2000 proposed rule) on the Order, which included a Referendum Order, published in the February 15, 2000, issue of the **Federal Register** [65 FR 7657]; a final rule on referendum procedures published in the February 15, 2000, issue of the **Federal Register** [65 FR 7652].

Question and Answer Overview

Why Is a Final Rule Being Published?

In a recent referendum, eligible producers and importers of cultivated blueberries voted in favor of implementing the Order. This final rule, which will become effective in 30 days, completes the implementation process.

What Is the Purpose of the Program?

The purpose of the program is to develop and finance an effective and coordinated program of promotion, research, and information to maintain and expand the markets for fresh and processed cultivated blueberries.

Who Is Covered by This Rule?

Cultivated blueberry producers who grow and importers who import 2,000 pounds or more of cultivated blueberries annually will be subject to this rule and pay an assessment.

What Is the Assessment Rate?

The assessment rate is $12 per ton.

When Will the Assessment Be Due?

Domestic assessments for the 2001 crop year will be due by November 30, 2001. Assessments for the subsequent crop years will be due by November 30 of the crop year. The U.S. Customs Service will collect assessments on imports at the time of entry into the United States, starting on January 2, 2001.

Will I Have To Pay the Assessment Forever?

Assessments will be due as long as the Order is in effect. However, every five years, USDA will conduct a referendum to determine whether producers and importers of cultivated blueberries want the program to continue. The program will continue if a majority of the voters in the referendum vote for approval and those voters represent a majority of the pounds of cultivated blueberries produced and imported by the voters in the referendum.

Who Will Administer This Order?

The USABC will administer the Order with supervision from USDA. The USABC members will be appointed by the Secretary of Agriculture (Secretary) from nominations received from the blueberry industry.

Who Will Be on the USABC?

The USABC will consist of 13 members: One producer member from each of four producer regions; one producer member from each of the top five cultivated-blueberry-producing states; one importer; one exporter (a foreign producer who ships cultivated blueberries into the United States from the largest foreign cultivated blueberry production area); one first handler; and one public member. Each member will have an alternate. Currently, the top five states (in descending order) are Michigan, New Jersey, Oregon, Georgia, and North Carolina.

When Will USABC Members Be Appointed?

The nomination process for the producer members and alternates will begin soon after the Order becomes effective. The North American Blueberry Council (NABC) will assist USDA in this process for the initial nominations. Future nominations will be managed by the USABC.

It is expected that the producer members and alternates will be appointed by the Secretary in time for the USABC to hold its organizational meeting in Washington, DC, in late 2000. The USABC will nominate persons to serve as the importer, exporter, handler, and public member

and alternates after it is appointed and has met.

I Am a Producer of Cultivated Blueberries, and I Would Like To Serve on the USABC. How Can I Get Nominated?

The NABC will notify all producers of cultivated blueberries when the nomination process will begin. Voting for nominees will be by mail ballot. In states where there is a state commission or marketing order committee for cultivated blueberries, the commission or committee will have the opportunity to nominate members and alternates to serve on the USABC. The commissions and committees must submit two nominees for each member and two nominees for each alternate. Producers in these states should contact their state commission or committee to express interest in being nominated.

In states where no commission or committee exists, the NABC will seek nominations from the cultivated blueberry producers in those states, place the names on a ballot for each state and region, and send the ballot to the producers in the appropriate states and regions to vote on the nominees of their choice. The person receiving the highest number of votes cast for each seat on the USABC will be the first choice nominee for the member. The person receiving the second highest number of votes cast will be the first choice nominee for the alternate member. The persons with the third and fourth highest number of votes cast will be designated as additional nominees for the member and alternate positions. Each nominee will complete and submit to the NABC a background form. The NABC will then submit the nominees and their background forms to the Secretary for consideration.

Executive Orders 12988 and 12866

This rule has been reviewed under Executive Order (E.O.) 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

This rule has been determined "not significant" for purposes of E.O. 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency examined the impact of this rule on small entities and prepared a final regulatory flexibility analysis that was included in the proposed rule published in the **Federal Register** on February 15, 2000. The analysis indicates that the agency minimized the economic impacts of the Order provisions on small entities to the fullest extent reasonably possible while adhering to the program's objectives.

In addition, the Order's provisions were carefully reviewed, and every effort was made to minimize any unnecessary information collection and recordkeeping costs or requirements. In accordance with the OMB regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by this Order were submitted to OMB and approved under OMB control numbers 0505–0001 and 0581–0093.

Copies of the final regulatory flexibility analysis and the discussion of the information collection and recordkeeping requirements contained in this rulemaking can be obtained from Oliver Flake at the address listed above or by e-mail at *oliver.flake@usda.gov*.

Background

In December 1998, the North American Blueberry Council, Inc. (proponent or NABC) submitted a proposal for a national promotion, research, and information order for cultivated blueberries pursuant to the Act. The Department published the proponent's proposal, with modifications, for public comment in the July 1999 proposed rule. Eight comments were received by the September 20, 1999, deadline. These comments, and related changes to the Order, were discussed in the February 15, 1999 proposed rule, which included a Referendum Order. A referendum was conducted from March 13 to April 14, 2000. In the referendum, producers and importers of 2,000 pounds of cultivated blueberries voted to implement the program.

Under the program, producers and importers of 2,000 pounds or more of cultivated blueberries will pay an assessment of $12 per ton annually. The producer assessment will be collected by first handlers, and the importer assessment will be collected by the U.S. Customs Service.

The program will be administered by the USABC under USDA supervision. The USABC will have 13 members: one producer member from each of four producer regions; one producer member from each of the top five cultivated-blueberry-producing states; one importer; one exporter (a foreign producer who ships cultivated blueberries into the United States from the largest foreign cultivated blueberry production area); one first handler; and one public member. Each member will have an alternate.

The USABC will conduct a generic program of promotion, research, consumer information, and industry information to maintain and expand markets for cultivated blueberries.

The Order is summarized as follows: Sections 1218.1 through 1218.23 of the Order define certain terms, such as blueberries, producer, and importer, which are used in the Order.

Sections 1218.40 through 1218.48 include provisions relating to the USABC. These provisions cover establishment and membership, nominations and appointments, term of office, vacancies, alternate members, procedures for conducting USABC business, compensation and reimbursement, powers and duties of the USABC, and prohibited activities. The USABC is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about blueberries, subject to oversight of the Secretary.

Sections 1218.50 through 1218.56 cover budget review and approval; financial statements; authorize the collection of assessments; specify how assessments will be used, including reimbursement of necessary expenses

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incurred by the USABC for the performance of its duties and expenses incurred for USDA's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; outline exemption procedures; address programs, plans, and projects; require the USABC to periodically conduct an independent review of its overall program; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

There will be an assessment rate of $12 per ton for domestic cultivated blueberries and imported fresh and processed cultivated blueberries. The assessment rate may be raised or lowered after the initial continuance referendum which will be conducted after the program has been in operation five years. The assessment rate may be raised or lowered without a referendum.

The federal debt collection procedures referenced above and in § 1218.52(f) include those set forth in 7 CFR §§ 3.1 through 3.36 for all research and promotion programs administered by AMS [60 FR 12533, March 7, 1995].

Sections 1218.60 through 1218.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Sections 1218.70 through 1218.78 describe the right of the Secretary; address referenda; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after termination; address personal liability, separability, and amendments; and provide OMB control numbers.

General Findings

The Department conducted a referendum among producers and importers of cultivated blueberries from March 13 through April 14, 2000, to determine whether the Order would become effective. The representative period for establishing voter eligibility was from January 1 through December 31, 1999. Producers and importers who produced or imported 2,000 pounds or more of cultivated blueberries during the representative period were eligible to vote.

It is determined that a majority of the eligible producers and importers voting who also represent a majority of the pounds of cultivated blueberries represented in the referendum favored implementation of the Order. After consideration of all relevant material presented, including the initial proposal, comments received, and the referendum results, it is found that the Order is consistent with and effectuates the declared policy and purpose of the Act.

The effective date of this action will be 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 7 of chapter XI of the Code of Federal Regulations is amended as follows:

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for part 1218 continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

2. Subpart A is added to part 1218 to read as follows:

Subpart A—Blueberry Promotion, Research, and Information Order

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Subpart A—Blueberry Promotion, Research, and Information Order

Definitions

§ 1218.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Pub. L. 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1218.2 Blueberries.

Blueberries means cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry Vaccinium *Angustifolium*.

§ 1218.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the U.S.A. Blueberry Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the USABC for anything of economic value.

§ 1218.4 Crop year.

Crop year means the 12-month period from November 1 through October 31 of the following year or such other period approved by the Secretary.

§ 1218.5 Department.

Department means the U.S. Department of Agriculture.

§ 1218.6 Exporter.

Exporter means a person involved in exporting blueberries from another country to the United States.

§ 1218.7 First handler.

First handler means any person, (excluding a common or contract carrier), receiving blueberries from producers and who as owner, agent, or otherwise ships or causes blueberries to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing blueberries in commercial quantities. This definition includes a retailer, except a retailer who purchases or acquires from, or handles on behalf of any producer, blueberries. The term first handler includes a producer who handles or markets blueberries of the producer's own production.

§ 1218.8 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as approved by the Secretary.

§ 1218.9 Importer.

Importer means any person who imports fresh or processed blueberries into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles fresh or processed blueberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such blueberries.

§ 1218.10 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of blueberries on a national or international basis. These include:

(a) *Consumer information,* which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of blueberries; and

(b) *Industry information,* which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the blueberry industry, and activities to enhance the image of the blueberry industry.

§ 1218.11 Market or marketing.

(a) *Marketing* means the sale or other disposition of blueberries in any channel of commerce.

(b) To *market* means to sell or otherwise dispose of blueberries in interstate, foreign, or intrastate commerce.

§ 1218.12 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1218.13 Part and subpart.

Part means the Blueberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

§ 1218.14 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1218.15 Processed blueberries.

Processed blueberries means blueberries which have been frozen, dried, pureed, or made into juice.

§ 1218.16 Producer.

Producer means any person who grows blueberries in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, blueberries beyond the person's own family use and having value at first point of sale.

§ 1218.17 Promotion.

Promotion means any action taken to present a favorable image of blueberries to the general public and the food industry for the purpose of improving the competitive position of blueberries both in the United States and abroad and stimulating the sale of blueberries. This includes paid advertising and public relations.

§ 1218.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of blueberries, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value, health research, and marketing of blueberries.

§ 1218.19 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1218.20 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1218.21 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1218.22 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1218.23 USABC.

USABC, or U.S.A. Blueberry Council, means the administrative body established pursuant to § 1218.40.

U.S.A. Blueberry Council

§ 1218.40 Establishment and membership.

(a) *Establishment of the U.S.A. Blueberry Council.* There is hereby established a U.S.A. Blueberry Council, hereinafter called the USABC, composed of no more than 13 members and alternates, appointed by the Secretary from the nominations as follows:

(1) One producer member and alternate from each of the following regions:

(i) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(ii) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(iii) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, D.C., and West Virginia.

(iv) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

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(2) One producer member and alternate from each of the top five blueberry producing states, based upon the average of the total tons produced over the previous three years. Average tonnage will be based upon North American Blueberry Council production figures for the initial election and production and assessment figures generated by the USABC thereafter.

(3) One importer and alternate.

(4) One exporter and alternate shall be filled by foreign blueberry producers currently shipping blueberries into the United States from the largest foreign blueberry production area, based on a three-year average.

(5) One first handler member and alternate shall be filled by a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries.

(6) One public member and alternate.

(b) *Adjustment of membership.* At least once every five years, the USABC will review the geographical distribution of United States production of blueberries and the quantity of imports. The review will be conducted through an audit of state crop production figures and USABC assessment receipts. If warranted, the USABC will recommend to the Secretary that membership on the USABC be altered to reflect any changes in geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the USABC.

§ 1218.41 Nominations and appointments.

(a) Voting for regional and state representatives will be made by mail ballot.

(b) In a case where a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members and alternates to serve on the USABC. At least two nominees shall be submitted to the Secretary for each member and for each alternate.

(c) Nomination and election of regional, and state representatives where no commission or order is in place will be handled by the USABC, provided that the initial nominations will be handled by the North American Blueberry Council. The USABC will seek nominations for members and alternates from the specific states and/or regions. Nominations will be returned to the USABC and placed on a ballot which will then be sent to producers in the state and/or region for vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(d) Nominations for the importer, exporter, first handler, and public member positions will be made by the USABC. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(e) From the nominations, the Secretary shall select the members of the USABC and alternates for each position on the USABC.

§ 1218.42 Term of office.

USABC members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A USABC member may serve as an alternate during the years the member is ineligible for a member position. When the USABC is first established, the state representatives, first handler member, and their respected alternates will be assigned initial terms of three years. Regional representatives, the importer member, the exporter member, public member, and their alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. USABC nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

§ 1218.43 Vacancies.

(a) In the event that any member of the USABC ceases to be a member of the category of members from which the member was appointed to the USABC, such position shall automatically become vacant.

(b) If a member of the USABC consistently refuses to perform the duties of a member of the USABC, or if a member of the USABC engages in acts of dishonesty or willful misconduct, the USABC may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the USABC shows adequate cause, the Secretary shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be appointed in the manner specified in § 1218.40 and § 1218.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1218.44 Alternate members.

An alternate member of the USABC, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that both a producer member of the USABC and the alternate are unable to attend a meeting, the USABC may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1218.45 Procedure.

(a) At a USABC meeting, it will be considered a quorum when a minimum of seven members, or their alternates serving in the absence, are present.

(b) At the start of each fiscal period, the USABC will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All USABC members and alternates will receive a minimum of 10 days advance notice of all USABC and committee meetings.

(d) Each member of the USABC will be entitled to one vote on any matter put to the USABC, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the USABC members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Alternates may also be assigned to committees as necessary. Committees may also consist of individuals other than USABC members and such individuals may vote in committee meetings. These committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the USABC.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the USABC such action is considered necessary, the USABC may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and

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effect as though such action had been taken at a properly convened meeting of the USABC. All votes shall be recorded in USABC minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member.

(i) The organization of the USABC and the procedures for the conducting of meetings of the USABC shall be in accordance with its bylaws, which shall be established by the USABC and approved by the Secretary.

§ 1218.46 Compensation and reimbursement.

The members of the USABC, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the USABC, incurred by them in the performance of their duties as USABC members.

§ 1218.47 Powers and duties.

The USABC shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the USABC, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the USABC a chairperson, other officers, committees, and subcommittees, as the USABC determines to be appropriate;

(d) To employ persons, other than the members, as the USABC considers necessary to assist the USABC in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the USABC shall develop and submit to the USABC a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the USABC of activities conducted under the contract or agreement; and make such other reports available as the USABC or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the USABC a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the USABC of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the USABC may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a USABC contractor and who receives or otherwise uses funds allocated by the USABC shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1218.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the USABC;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the USABC as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the USABC to the Secretary;

(j) To act as intermediary between the Secretary and any producer, first handler, importer, or exporter;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the USABC considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the blueberry industry's position in the marketplace; maintain and expand existing markets and uses for blueberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the blueberry industry.

§ 1218.48 Prohibited activities.

The USABC may not engage in, and shall prohibit the employees and agents of the USABC from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the USABC under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

Expenses and Assessments

§ 1218.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the USABC shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least on preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the USABC's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The USABC is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the USABC for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such

expenses shall be paid from funds received by the USABC.

(e) With approval of the Secretary, the USABC may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the USABC. Any funds borrowed by the USABC shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the USABC.

(f) The USABC may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the USABC shall retain complete control of their use.

(g) The USABC may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(h) The USABC shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(i) The USABC may not expend for administration, maintenance, and functioning of the USABC in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the USABC for that fiscal year. Reimbursements to the Secretary required under paragraph (h) are excluded from this limitation on spending.

(j) The USABC may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided* that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

§ 1218.51 Financial statements.

(a) As requested by the Secretary, the USABC shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The USABC shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1218.52 Assessments.

(a) The funds to cover the Council's expenses shall be paid from assessments on producers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board including those collected pursuant to § 1218.56 and subject to the limitations contained therein.

(b) The collection of assessments on domestic blueberries will be the responsibility of the first handler receiving the blueberries. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments.

(c) Such assessments shall be levied at a rate of $12 per ton on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary, after the first referendum is conducted as stated in § 1218.71(b).

(d) Each importer of fresh and processed blueberries shall pay an assessment to the USABC on blueberries imported for marketing in the United States, through the U.S. Customs Service.

(1) The assessment rate for imported fresh and processed blueberries shall be the same or equivalent to the rate for fresh blueberries produced in the United States.

(2) The import assessment shall be uniformly applied to imported fresh and frozen blueberries that are identified by the numbers 0810.40.0028 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Assessments on other types of imported processed blueberries, such as dried blueberries, puree, and juice, may be added at the recommendation of the USABC with the approval of the Secretary.

(3) The assessments due on imported fresh and processed blueberries shall be paid when they enter or are withdrawn for consumption in the United States.

(e) All assessment payments and reports will be submitted to the office of the USABC. All final payments for a crop year are to be received no later than November 30 of that year. A late payment charge shall be imposed on any handler who fails to remit to the USABC, the total amount for which any such handler is liable on or before the due date established by the USABC. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(g) The USABC may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1218.53 Exemption procedures.

(a) Any producer who produces less than 2,000 pounds of blueberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1218.42 shall apply to the USABC, on a form provided by the USABC, for a certificate of exemption. Such producer shall certify that the producer's production of blueberries shall be less than 2,000 pounds for the fiscal year for which the exemption is claimed. Any importer who imports less than 2,000 pounds of fresh and processed blueberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1218.52 shall apply to the USABC, on a form provided by the USABC, for a certificate of exemption. Such importer shall certify that the importer's importation of fresh and processed blueberries shall not exceed 2,000 pounds, for the fiscal year for which the exemption is claimed.

(b) On receipt of an application, the USABC shall determine whether an exemption may be granted. The USABC then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. Each producer who is exempt from assessment must provide an exemption number to the first handler in order to be exempt from the collection of an assessment on blueberries. First handlers and importers, except as otherwise authorized by the USABC, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the USABC.

(c) Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the USABC for reimbursement of such assessments paid. No interest will be paid on assessments collected by the U.S. Customs Service. Requests for reimbursement shall be submitted to the USABC within 90 days of the last day of the year the blueberries were actually imported.

(d) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the USABC, on a form provided by the USABC, for a certificate of exemption.

(e) The USABC may require persons receiving an exemption from assessments to provide to the USABC reports on the disposition of exempt blueberries and, in the case of importers, proof of payment of assessments.

§ 1218.54 Programs, plans, and projects.

(a) The USABC shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to fresh and processed blueberries; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of fresh and processed blueberries, and the creation of new products thereof, to the end that the marketing and use of blueberries may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of fresh and processed blueberries.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the USABC shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the USABC to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the USABC that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the USABC shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging another agricultural commodity. Blueberries of all origins shall be treated equally.

§ 1218.55 Independent evaluation.

The USABC shall, not less often than every five years, authorize and fund, from funds otherwise available to the USABC, an independent evaluation of the effectiveness of the Order and other programs conducted by the USABC pursuant to the Act. The USABC shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1218.56 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the USABC under this subpart shall be the property of the U.S. Government as represented by the USABC and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the USABC; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the USABC; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1218.73 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1218.60 Reports.

(a) Each first handler subject to this subpart may be required to provide to the USABC periodically such information as may be required by the USABC, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds handled;

(2) Number of pounds on which an assessment was collected;

(3) Name and address of person from whom the first handler has collected the assessments on each pound handled; and

(4) Date collection was made on each pound handled. All reports are due to the USABC 30 days after the end of the crop year.

(b) Each producer and importer subject to this subpart may be required to provide to the USABC periodically such information as may be required by the USABC, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds produced;

(2) Number of pounds on which an assessment was paid;

(3) Name and address of the producer;

(4) Date collection was made on each pound produced. All reports are due to the USABC 30 days after the end of the crop year.

§ 1218.61 Books and records.

Each first handler, producer, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

§ 1218.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the USABC, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to USABC members, producers, importers, exporters, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1218.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the USABC shall be submitted to the Secretary for approval.

§ 1218.71 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless:

(1) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of producers and importers

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voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(b) *Subsequent referenda.* Every five years, the Secretary shall hold a referendum to determine whether blueberry producers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries. The Secretary will also conduct a referendum if 10 percent or more of all eligible blueberry producers and importers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

§ 1218.72 Suspension and termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1218.73 Proceedings after termination.

(a) Upon the termination of this subpart, the USABC shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the USABC. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the USABC, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the USABC under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the USABC and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the USABC or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the USABC and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the blueberry producer organizations in the interest of continuing blueberry promotion, research, and information programs.

§ 1218.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1218.75 Personal liability.

No member, alternate member, or employee of the USABC shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty or willful misconduct.

§ 1218.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1218.77 Amendments.

Amendments to this subpart may be proposed from time to time by the USABC or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1218.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093, except for the USABC nominee background statement form which is assigned OMB control number 0505–001.

Dated: July 11, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–17956 Filed 7–14–00; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 940, 950, 955, 956 and 966

[No. 2000–33]

RIN 3069–AA98

Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adding regulations to authorize the Federal Home Loan Banks (Banks) to hold acquired member assets (AMA) and is amending its regulations to enumerate the types of core mission assets (CMA) that must be addressed in the Banks' strategic business plans. The Finance Board is also making related changes to

its regulations governing the Banks' investment, advances and debt issuance authorities.

DATES: This final rule is effective on July 17, 2000.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director and Chief Economist, (202) 408–2821; Scott L. Smith, Deputy Director, (202) 408–2991; Ellen Hancock, Senior Financial Analyst, (202) 408–2906; Christina K. Muradian, Senior Financial Analyst, (202) 408–2584, Office of Policy, Research and Analysis; or Eric M. Raudenbush, Senior Attorney-Advisor, (202) 408–2932; Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On May 3, 2000, the Finance Board published for comment a proposed rule to: (1) Add new provisions in part 940 enumerating the Bank activities that are considered to be CMA; (2) add to the regulations a new part 955 setting forth in regulation the authority and requirements for Banks' AMA programs; (3) revise part 956 of the regulations, governing Bank investments; and (4) amend part 950 of the regulations, governing advances, so that inter-district advances activity would be subject to the same requirements as inter-district AMA activities. *See* 65 FR 25676 (May 3, 2000). The initial 30-day public comment period for the proposed rule was later extended to 43 days, see 65 FR 34127 (May 27, 2000), and closed on June 15, 2000. The Finance Board received a total of 107 comment letters about the proposed rule. Among the comment letters considered in preparing the final rule were 19 that were accepted after the official close of the comment period.

II. Analysis of Comment Letters and Changes Made in the Final Rule

A. Core Mission Activities—Part 940

1. General Commentary

As part of its statutory duty to ensure that the Banks carry out their housing finance mission, the Finance Board recently adopted a regulatory requirement, set forth in § 917.5 of the regulations, that each Bank's board of directors have in effect at all times a strategic business plan that describes how the Bank's business activities will achieve the mission of the Bank consistent with part 940 of the regulations. *See* 65 FR 25267 (May 1, 2000). At the same time, the Finance Board adopted § 940.2 of the regulations, which states the mission of the Banks in its broadest terms and, by way of cross-reference, gives meaning to the strategic business plan requirement of § 917.5. *See id.*

This final rule adds to part 940 a new § 940.3, which enumerates the specific Bank activities that qualify as core mission activities. The intent of this new regulatory provision is to further focus the Banks' strategic business plans on the activities that the Finance Board has determined are most central to the fulfillment of the Banks' statutory mission. In so doing, the Finance Board means to stress the importance that must be placed upon this category of activities as each Bank plans and undertakes its ongoing business activities. Aside from the strategic business plan requirements set forth in § 917.5, there currently are no other regulatory requirements pertaining to CMA.

In the proposed rule, activities that would have qualified as CMA were listed in § 940.3(a). Proposed § 940.3(b) stated that, should the Finance Board impose upon the Banks any future requirement regarding the level of Bank CMA holdings, the requirement would not prevent the Banks from holding to maturity, or funding with the proceeds of consolidated obligations, assets acquired under sections II.B.8 through II.B.11 of the Bank System Financial Management Policy (FMP) (consisting mostly of agency and privately-issued mortgage-backed securities (MBS) and asset-backed securities (ABS)). As discussed in detail below, this provision has been removed in the final rule. Accordingly, the list of activities that qualify as CMA, which appeared as § § 940.3(a)(1) through (9) in the proposed rule, appears as § § 940.3(a) through (i) in the final rule.

Of the comment letters addressing aspects of part 940, support for and opposition to the CMA provisions was about evenly divided. Most of the commenters who generally supported the CMA provisions of the proposed rule agreed with the Finance Board's goal of focusing the Banks on their housing finance and community lending mission, and especially upon extending the reach of the Banks' resources into underserved communities. One commenter (a Bank) agreed with the Finance Board that Bank members will be unable to make intelligent choices about their Banks' new capital plans without understanding the future direction of the Bank System, including the asset categories to be supported by the new capital structure.

Of those opposed to the rule, many stated as the primary reason for their opposition a belief that the Finance Board should wait until after it has promulgated new capital regulations as required by the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), Title VI of the Gramm-Leach-Bliley Act, Pub. L. 106–102 (1999), and the Banks have adopted new capital plans under those regulations, before putting into place any further mission regulations. Most of these commenters expressed the opinion that, at a time when Congress has recently made membership in the Bank System completely voluntary and when, as a result, the Banks will need to market "Class B" stock to their members in order to establish a base of permanent capital, the Finance Board should not be implementing actual or implied asset requirements that could result in earnings volatility.

Many commenters stressed their belief that the uncertain ability of any Bank to maintain strong earnings and pay an attractive dividend while focusing upon the business activities enumerated in § 940.3 could dissuade members or potential members from purchasing Bank stock. Several commenters noted especially that the reference in proposed § 940.3(b) to possible future requirements regarding Bank CMA, combined with a failure to detail what those requirements could be, raises the possibility that a Bank may in the future be required to divest itself of legally-acquired investments, making the future balance sheet composition of the Banks particularly uncertain for potential investors.

Many of the commenters expressing generally negative reactions to proposed § 940.3 raised concerns that the CMA provisions would limit the Banks' flexibility in managing their balance sheets and, therefore, would adversely impact Bank profits and possibly the safety and soundness of the Banks. Frequently mentioned in this regard was the Finance Board's exclusion of investments in most types of MBS from the list of activities that qualify as CMA. Two commenters (both Banks) specifically requested that the Finance Board continue to permit the Banks to hold MBS in an amount up to three times capital (as is currently the limit under the FMP).

Regarding the exclusion of most MBS from the list of CMA, many commenters expressed a belief that MBS are an important balance sheet management tool for the Banks that may be especially useful in deploying Bank capital prudently during periods of cyclical business downturns. Several commenters stressed the Banks' roles as reliable sources of liquidity for their

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members and stated that failure to permit the Banks to continue to invest in MBS could threaten the Banks' abilities to act in this role. Others questioned whether it is appropriate for the Finance Board to restrict Bank investment in assets, like MBS, that are specifically authorized by statute as legal investments for a Bank. Still others argued that MBS do play an important role in helping Banks to carry out their mission in that, as low-risk investments with a reasonable record of return, MBS improve the Bank System's financial strength and help to reduce rates on advances. Some commenters also asserted that MBS are mission-related in that, despite the statements of the Finance Board to the contrary, the Banks' purchase of these securities do result in increased availability of funds for housing and in reduced cost of housing funds.

More generally, several Bank members commented that § 940.3, as proposed, would restrict the Banks' abilities to respond to members' needs with well-priced advances by encouraging the Banks to focus upon "programs" required by regulation. Several other commenters expressed the opinion that Congress has adequately addressed the "mission" of the Banks in the Federal Home Loan Bank Act (Bank Act) and that, by its failure to impose mission requirements as part of the Modernization Act, Congress expressed its intent that such requirements should not be imposed through regulation. Several also pointed out that the Modernization Act devolved the remaining elements of corporate governance authority to the Banks and claimed that the manner in which the Banks carry out their statutory mission is a matter of corporate governance to be decided upon by the Banks' own boards of directors, subject only to the safety and soundness regulation of the Finance Board.

Finally, one commenter stated that the CMA provisions, as proposed, would violate the spirit of an October 18, 1999 letter from Finance Board Chairman Bruce Morrison to Senator Phil Gramm and Congressman Jim Leach. In that letter, Chairman Morrison stated that, upon the enactment of the Modernization Act, the Finance Board would withdraw its Financial Management and Mission Achievement (FMMA) proposed rulemaking, *see* 64 FR 52163 (1999), and would take no action to promulgate proposed or final regulations limiting Bank assets or advances beyond those regulations currently in effect (except to the extent necessary to protect the safety and soundness of the Banks) until such time as the Finance Board's new capital regulations take effect.

2. The Final Rule—Background

The Bank Act authorizes the Finance Board to supervise the Banks and to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of the Bank Act. *See* 12 U.S.C. 1422b(a)(1). Among the provisions of the Bank Act are those outlining the duties of the Finance Board, which include the duty to "ensure" that the Banks carry out their housing finance mission. *See id.* at 1422a(a)(3)(B)(ii). The use of the word "ensure" in section 2A(a)(3)(B)(ii) of the Bank Act makes clear that, consistent with the safe and sound operation of the Banks, the Finance Board has the duty to take active measures to see to it that the Banks carry out their housing finance mission.

Because Congress has not expressly defined the term "housing finance mission," it is the responsibility and the privilege of the Finance Board—as the body charged with the duty to ensure that the Banks fulfill that mission and, more generally, as the supervisory regulator of the Banks and the agency charged with the administration of the Bank Act—to construe the term reasonably in light of the totality of the Act. It is the position of the Finance Board that, when Congress amended the Bank Act in 1989 to require the Banks to offer Affordable Housing Programs (AHP) and Community Investment Programs (CIP) and authorized the Banks to offer Community Investment Cash Advance Programs (CICA), the Banks' "housing finance mission," as referenced in section 2A(a)(3)(B)(ii), came to include support not only for the financing of traditional housing-related activities, but also for those types of community lending that the Banks are authorized by statute to support and that indirectly enhance traditional housing finance by helping to create and sustain thriving and livable communities. *See* 12 U.S.C. 1430(i), (j).

Having earlier set forth its construction of the Banks' mission in § 940.2 of the regulations, *see* 65 FR 25267 (May 1, 2000), the Finance Board is now further fulfilling its duty to ensure that the Banks carry out that mission by requiring that the Banks focus on the CMA listed in new § 940.3 as part of their strategic planning process. Under the Finance Board's regulations, as amended by this final rule, this is the only regulatory requirement regarding CMA.

The material formerly contained in proposed § 940.3(b) was intended to give the Banks and their members some assurance that, if the Finance Board were to promulgate at some point in the future any effective limits on non-CMA Bank activities, MBS and other investments previously made under sections II.B.8 through II.B.11 of the FMP would not adversely affected. However, based on the comments it is apparent that rather than providing reassurance, the effect of including this provision in the proposed rule has been to raise the specter of as-yet-undisclosed future limits on non-CMA activities, while obscuring the fact that no such limits are being contemplated or implemented. Accordingly, the Finance Board has eliminated proposed § 940.3(b) and its reference to possible limits on non-CMA activities from the final rule. Although this declaration of intent has been eliminated from the language of the rule, the Finance Board stresses again that: (1) It has no current plans to impose limits on non-CMA activities; and (2) if any such limits were ever to be imposed, the agency has no current plans to require any Bank to divest itself of otherwise legal and safe investments already held.

Because this rule does not limit Bank assets or activities to a greater extent than the limits to which they are subject under the FMP, the rule does nothing to violate either the spirit, or the literal language, of Chairman Morrison's letter to Senator Gramm and Congressman Leach.

The Finance Board disagrees with comments that the Banks would suffer from lower profits and reduced balance-sheet management flexibility as a result of the Finance Board's failure to characterize MBS as CMA. First and foremost, the rule contains no new restrictions on the Banks' ability to invest in MBS. The only limit on the Banks' authority to invest in MBS is the current FMP "three times capital" limit (which will remain in effect until expressly repealed by the Finance Board). Second, the loans and pools of loans a Bank may acquire through AMA programs authorized under part 955 of the final rule (which is discussed in more detail below) would be substantially similar to loans that are normally acquired in securitized form through the purchase of MBS.

Since 1989, the Banks have gained substantial experience in managing the risks associated with MBS. This experience should be transferable to the management of what would essentially be "self-securitized" MBS acquired under an AMA program. While the rate of return on AMA could be lower than that on MBS depending upon the price structure of a particular AMA program,

the slight difference in return would inure to the benefit of the selling member, in keeping with the cooperative nature of the Bank System. The purchase of MBS from the capital markets typically does little or nothing to enhance the availability of any reasonably-priced product or service to any member or housing associate.

Finally, the Finance Board rejects the notion that the promulgation of the CMA strategic planning requirement should be postponed until after the Banks have put into effect their new capital plans. As the Banks' mission regulator, the Finance Board has made decisions regarding the broad activities it believes are preferable for the Banks to be pursuing in the context of their housing finance and community lending mission. Having made these decisions, the Finance Board finds it most logical to state those preferences as clearly as possible and as soon as possible prior to the development of the Banks' new capital plans. In doing so, the Finance Board is enabling the Banks to structure their capital plans with specific mission considerations in mind, as opposed to amending the plans after they have already been developed. In addition, members and potential members will be aware in advance of the CMA in which the Banks are encouraged to engage. To do otherwise would serve only to undermine the capital planning process and the expectations of investors in the Bank System, and to no good purpose.

3. Definition of CMA and Government-Insured or -Guaranteed AMA Loans—§ 940.3(b)

Under § 940.3(b) of the final rule, all AMA authorized under new part 955 qualify as CMA, except for certain United States government-insured or guaranteed whole single-family residential mortgage loans acquired under a commitment entered into after April 12, 2000. The latter shall qualify as CMA only in a cumulative dollar amount up to 33 percent of: the cumulative total dollar amount of AMA acquired by a Bank after April 12, 2000, less the cumulative dollar amount of United States government-insured or guaranteed whole single-family residential mortgage loans acquired after April 12, 2000 under commitments entered into on or before April 12, 2000. At the discretion of two or more Banks, this percentage calculation may be made based on aggregate transactions among those Banks.

This provision appeared as § 940.3(a)(2) in the proposed rule. Section 940.3(b) of the final rule differs from the proposal in that the "33 percent" calculation regarding government-insured and -guaranteed loans has been made to apply on a cumulative basis, as opposed to a year-to-year basis.

The Finance Board received a total of 20 comments regarding the CMA definition as applied to government-insured or -guaranteed loans. Seventeen commenters were opposed to that aspect of the CMA definition that would result in only a portion of the government-insured or -guaranteed loans acquired by a Bank being considered as CMA. Two commenters supported the definition as proposed, and one noted that the issue required further discussion.

Generally, the commenters opposed to this aspect of the CMA definition noted that the Banks should be provided maximum flexibility in meeting the needs of their members. It was noted that the exclusion of a portion of government-insured or -guaranteed loans from the definition of CMA would have a detrimental effect on the ability of private sector lenders to pass the full benefits of AMA programs on to consumers. It was also noted that the Banks should have unlimited flexibility to acquire government insured or guaranteed loans, similar to the unlimited flexibility afforded Fannie Mae and Freddie Mac. One commenter added that no limitation should exist since there are no safety and soundness or mission reasons to justify such a limitation. Another commenter suggested that the April 12, 2000 date, relating to prior acquisition of government-insured and -guaranteed loans, be either deleted or moved to the date of enactment of the final rule. Yet another commenter requested that the 33 percent limitation should not take effect until 2002.

One of the comments in favor of the proposed definition noted that the Banks should be encouraged to focus on conventional and prime rate mortgages that are made to minorities and low-and moderate-income populations. Another commenter supporting the proposed definition added that the use of mortgage insurance would significantly reduce the need for Banks to purchase government-insured or -guaranteed loans, since such purchases to date have been the result of the recourse capital treatment for members selling conventional loans.

The Finance Board considered the comments received regarding the CMA definition as applied to government-insured and -guaranteed loans and decided that the definition should remain as proposed, although the calculation thereunder should be made on a cumulative, as opposed to a year-to-year, basis. The distribution of the Banks' current mortgage portfolio indicates that a high percentage of government-insured loans have been acquired when compared to the percentage of these loans in the total mortgage market. The final rule encourages the composition of the Banks' mortgage portfolios to more closely reflect the distribution of loans in the marketplace. This provision is intended to reduce the emphasis on government-insured loans that currently exists in the Banks' mortgage portfolios and to provide incentive for Bank acquisition of conventional mortgages.

The parenthetical at the end of § 940.3(b) makes clear that the calculation of the percentage of AMA loans that qualify as CMA may be made based on aggregate transactions between two or more Banks so long as the relevant Banks agree (or, even on a System-wide basis if all Banks agree). This provision is intended to provide flexibility among the Banks such that if one Bank's acquisition of government-insured or guaranteed loans exceeds 33 percent of total AMA in a given year, it may combine its portfolio for purposes of the calculation with another Bank that may not have reached the maximum allowed CMA purchase of such loans.

4. Targeted Investments—§ 940.3(e)

Under § 940.3(e) of the final rule, certain targeted debt and equity investments may qualify as CMA. As stated in § 940.3(e)(1), these include debt or equity investments that primarily benefit households having a targeted income level, or areas targeted for redevelopment by local, state, tribal or Federal government, by providing or supporting: housing; economic development; community services; permanent jobs; or area revitalization or stabilization. The term "targeted income level" is defined in § 940.1 by cross-referencing to the first two paragraphs of the definition of the same term under the Finance Board's CICA regulation. *See* 12 CFR 952.3. There, "targeted income level" is defined to refer to a household income that is at or below 115 percent of the area median income in rural areas, and at or below 100 percent of the area median income in urban areas. *See* 12 CFR 952.3. Section 940.3(e)(1) also requires that a significant proportion of the households with a targeted income level must have incomes at or below 80 percent of area median income. An example of a housing project that would meet the targeted income requirement would be a project that qualifies for a federal Low Income Housing Tax Credit where either 20 percent of the units are affordable to

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households with incomes at or below 50 percent of area median income or 40 percent of the units are affordable to households with incomes at or below 60 percent of area median income.

Section 940.3(e)(2) provides that, if the targeted investment is an MBS or ABS, the acquisition of these securities by the Bank must substantially contribute to expanding liquidity for loans that are not otherwise adequately provided by the private sector and do not have a readily-available or well-established secondary market in order for the investment to qualify as CMA. Whether the investment is an MBS or ABS, or a non-securitized asset, § 940.3(e)(3) requires that the investment must in all cases involve one or more members or housing associates in a manner, financial or otherwise, and to a degree to be determined by the Bank.

Most of the comments addressing the targeted lending provision were generally supportive, although many suggested additions, clarifying language or other modifications. Many of the commenters who praised the provision specifically supported Bank debt and equity investments in Community Development Financial Institutions (CDFIs) and secondary capital in community development credit unions, which, as mentioned in the preamble to the proposed rule, would qualify as CMA under § 940.3(e). Several commenters also stated generally that the Finance Board should make clear that § 940.3(e) is intended to encompass whole loans, whole loan portfolios or participations in whole loans or whole loan portfolios, where these loans meet the requirements of the provision.

As proposed, § 940.3(e)(1) (which appeared at § 940.3(a)(5)(i) of the proposed rule) required that these investments primarily benefit "low- or moderate-income households," which the proposed rule defined as a household with an income that is at or below 115 percent of area median income. With regard to these income targets, several commenters stated that the Finance Board should amend its definition of "low- or moderate-income households" to include only those households with incomes up to 80 percent of area median income. The commenters noted that this would correspond with the income targets under the Community Reinvestment Act (CRA) and would enhance the ability of Bank members to meet their CRA requirements by making CRA-related loans and investments.

After considering all of the relevant factors, the Finance Board decided that it was desirable to keep the parameters of "targeted" Bank activities like CICA programs and targeted investments consistent. Therefore, in the final rule, the Finance Board as amended the income target provision to cross-reference the CICA regulation.

As indicated, in the realm of targeted lending, the term "low- or moderate-income households" refers to households with an income that is at or below 80 percent of the area median income. In order to avoid confusion, the Finance Board has removed the term "low- or moderate-income households" and has used instead referred to households having a "targeted income level," a term which is used in the Finance Board's CICA regulation. *See* 12 CFR 952.3. By cross-referencing this definition in the CICA regulation, the agency has effectively modified the income targets that were set forth in proposed § 940.3(a)(5)(i) by tightening the requirement from 115 to 100 percent of area median income for urban households. The target remains at 115 percent of area median income for rural households.

As proposed, only "non-securitized" debt and equity investments could have qualified as CMA under § 940.3(e). However, this provision has been revised in the final rule to include targeted MBS and ABS as CMA under this section where the requirements of § 940.3(e)(2) (described above) have been met. In the proposed rule, the Finance Board requested comment on appropriate rule language that might allow for MBS and ABS that substantially contribute to opening an underserved market to qualify as CMA, while continuing to exclude securities that, while they may be backed by loans that could qualify as "targeted," actually trade in a well established and liquid market.

While two commenters provided the Finance Board with suggestions regarding income targets for loans backing securitized targeted CMA investments, these comments did not address the Finance Board's concern regarding the market in which the securities trade. The income requirements for MBS and ABS are the same as those for non-securitized assets.

Upon consideration of the issue, the Finance Board decided that MBS and ABS that are backed by mortgages or other assets that meet the targeting requirements, and the purchase of which would substantially contribute to expanding liquidity for loans that would not otherwise be adequately provided by the private sector and that do not have a readily available or well-established secondary market should be deemed to be CMA. MBS or ABS where less than half of the dollar amount of the assets underlying each of the securities meet the targeting requirements of this provision would not be considered to primarily benefit targeted areas or households with a targeted income level as required under § 940.3(e)(1).

The Banks are encouraged to invest in MBS and ABS backed by assets consisting of whole loans and loan participations that address financially underserved income-targeted households or area-targeted markets identified by a Bank. Currently, there are a number of financing opportunities where the secondary market is not fully developed and the Banks' involvement could facilitate the growth and liquidity of loans provided to underserved markets. There are many such types of MBS and ABS where the majority of the underlying assets are composed of loans for households with targeted incomes or loans in targeted areas, for example: Single-family home purchase mortgages that do not meet the underwriting standards of the secondary market Government Sponsored Enterprises (GSEs); mortgages on owner-occupied two- to four-unit homes; home equity conversion (reverse) mortgages; single-family rehabilitation or combination acquisition/rehabilitation loans; home purchase loans for households with incomes less than 80 percent of area median income in areas where GSE purchases are less than the proportion of loans made to such households in those areas; loans of less than $3 million for the acquisition, construction or rehabilitation of small multifamily buildings; homeowner and rental property loans on tribal lands; community facility and economic development loans in low-income census tracts or rural areas; and economic development and housing loans originated by nonprofit organizations.

Many commenters mentioned specific programs, agencies, non-profit organizations and other projects and investments and requested confirmation by the Finance Board that each was a type of targeted investment that could qualify as CMA under § 940.3(e). The elements to be considered under that section can in some cases be known only with respect to a specific investment. While it is impossible to list every type of investment that might qualify as CMA under § 940.3(e), there are several types of investment that would clearly qualify as CMA in most circumstances, such as investments in: Community Development Venture Capital Funds; SBIC "fund-of-funds"; - and equity investments in governmentally-aided economic

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development entities structured similarly to SBICs, where the investment primarily benefits low- or moderate-income individuals or areas.

Section 940.3(e)(3) of the rule (§ 940.3(a)(5)(ii) in the proposed rule) requires that, to qualify as CMA, an otherwise qualifying targeted investment by a Bank must involve one or more members or housing associates in a manner, financial or otherwise, and to a degree to be determined by the Bank. One commenter opposed any requirement that, to qualify as CMA, a targeted investment must have the direct financial involvement of one or more members or housing associates and recommended that the rule permit a range of involvement from sponsorship through financial participation. Section 940.3(e)(3) does not require direct financial participation on the part of the member or housing associate and, in fact, clearly allows the Bank itself to determine the extent and nature of its involvement with its member or housing associate. Accordingly, the Finance Board believes that, as worded, the rule allows for levels of member or housing associate involvement from sponsorship through financial participation.

5. SBIC Investments—§ 940.3(g)

Under § 940.3(g) of the final rule, SBIC debentures, the short-term tranche of SBIC securities and other debentures guaranteed by the Small Business Administration (SBA) under Title III of the Small Business Act of 1958 are considered to be CMA. Under the proposed rule, this provision (which appeared at § 940.3(a)(7)) would have defined only the short-term tranche of SBIC securities as CMA. Two commenters (a Bank and the SBA) asked the Finance Board to broaden the provision to include all securities insured by the SBA under Title III of the Small Business Act, in order to provide needed funding for SBICs and to accommodate new programs that the Bank and the SBA are pursuing. In the final rule, the Finance Board has expanded the provision to encompass the investments that the Bank has proposed to make and other similar SBA-guaranteed debt investments. SBIC-related equity investments would not count as CMA under this provision, but could qualify under § 940.3(f).

B. Acquired Member Assets—Part 955

Part 955 of the final rule addresses AMA—that is, whole loans and certain interests in whole loans that a Bank may acquire from or through its members or housing associates in a transaction that is in purpose and economic substance functionally equivalent to the business of making advances in that: (1) It allows the member or housing associate to use its eligible assets to access liquidity for further mission-related lending; and (2) all, or a material portion of, the credit risk attached to the assets is being borne by the member or housing associate.

1. Three-Part Test—§ 955.2

Section 955.2 of the final rule sets forth a three-part test for determining whether an asset may qualify as AMA. As adopted, it is substantially similar the proposal, except for one change relating to state or local housing finance agency (HFA) bonds. This section provides that AMA must be: (a) Whole loans or certain interests in whole loans; (b) originated or held for a valid business purpose by a member or housing associate, and acquired from a member, housing associate, or another Bank; and (c) structured such that a member or housing associate is responsible for a significant portion of the credit risk of the investment and otherwise in compliance with § 955.3.

Two commenters opposed the requirement of proposed § 955.2(a)(1)(i) prohibiting the purchase of single-family mortgages where the loan amount exceeds the conforming loan limits established for Fannie Mae and Freddie Mac. *See* 12 U.S.C. 1717(b)(2). One commenter noted that this limitation would prevent the Bank from fully serving its mission. The second commenter requested relief from the loan limit specifically for "Difficult Development Areas," where housing costs are a significant burden relative to other areas in the region.

The Finance Board considered these comments and decided to maintain the prohibition on the purchase of single-family mortgages where the loan amount exceeds the conforming loan limit. This provision is intended to prohibit the acquisition of "jumbo" loans. Additionally, the Finance Board's intent is to create a level playing field among the Banks, Fannie Mae and Freddie Mac with respect to the types of loans eligible for purchase.

At the request of one commenter, the Finance Board here clarifies that, under § 955.2(a)(1), a Bank may acquire certificates representing interests in whole loans as AMA only if: (1) The certificates are rated by an NRSRO to meet the credit enhancement requirement of § 955.3; (2) the certificates are issued following the execution of, and for the purpose of implementing an agreement between and initiated by the Bank and a Bank System member or housing associate to share risks in compliance with the requirements of § 955.3(b); and (3) the initiating Bank or Banks acquire substantially all of the certificates. It is the Finance Board's view that, in such a case, the use of a third party to securitize the whole loans would merely represent a vehicle to invest in certain types of AMA under more favorable terms and should therefore be permitted under the rule. However, if the certificates have been created as a security initially available to investors generally, they will not be considered to qualify as "whole loans" under § 955.2(a)(1).

Three commenters addressed the requirements of § 955.2, as applied to the acquisition of HFA bonds. All of the commenters were opposed to the proposed rule's treatment of HFA bonds to varying degrees. Of primary concern was the "member or housing associate nexus" requirement set forth in § 955.2(b). The commenters were generally more concerned with whether HFA bonds could qualify as CMA under § 940.3, than with the status of such bonds under the AMA provisions of part 955.

One commenter stated that HFA bonds should qualify as CMA whether or not the Bank purchased the bond from an housing associate of the Bank, or was granted permission by another Bank to purchase such bonds in its district. The commenter believes that this restriction has the potential to increase interest rates on taxable securities issued by HFAs by decreasing the competition for purchase of such securities. The commenter further noted that some Banks may be unwilling to grant permission to deal with HFAs in their district and, even where Banks are so willing, the cost of crafting a transaction would be onerous and unnecessary.

Another commenter noted that constraining the Banks to acquire HFA bonds from out-of-district housing associates only if the Bank has an agreement with the housing associate's District Bank granting permission to make such an acquisition is inappropriate and could cause transactions with housing associates to take place at non-market-clearing prices. The final commenter noted that costs and time would be reduced and HFAs would be able to access a pool of funds to provide low-interest loans for affordable housing if HFAs could privately place bonds, using the agencies' investment grade stand alone rating. The commenter further stated that it would be helpful if the rule would provide a clear description of the criteria applicable to HFAs to engage in selling bonds to Banks, in joint lending

arrangements, in shared risk and credit enhancement programs for affordable housing properties, and in programs with member banks and through Banks directly.

The Finance Board considered the comments received and has, for HFA bonds only, modified the requirement that the bonds may be acquired from out-of-district housing associates only with the permission of the Bank in whose district the HFA is located (local Bank). Instead the final rule requires that the HFA first give the local Bank a right-of-first-refusal to purchase, or negotiate the terms of, a particular bond issue. If the local Bank refuses, or does not respond within three days, the HFA may then offer the bonds to an out-of-district Bank. This has been done in order to preserve the integrity of the Bank Districts, while at the same time preventing any one Bank from denying an HFA in its District financing that another Bank is willing to provide.

At any rate, under final §§ 956.2(f) and 956.3(a)(4)(iii) Banks retain their existing authority to invest in AA-rated HFA bonds regardless of the District in which the issuer is located. However, HFA bonds that are acquired under Part 956 only and that do not meet the AMA requirements of § 955.2 do not qualify as CMA.

2. Required AMA Credit Risk-Sharing Structure—§ 955.3

Section 955.3 elaborates upon the credit risk-sharing requirement that is the third part of the AMA test set forth in § 955.2. The risk-sharing requirements of § 955.3 are based on risk-sharing structures that have evolved during the three-and-one-half years that the AMA pilots have been in operation. Though somewhat detailed, the credit risk-sharing requirements of § 955.3 are intended to produce a simple result: a recourse model for capital markets participation in the mortgage business that overcomes the traditional problems with the capital treatment on recourse transactions for financial institutions and results in a reasonable capital charge for the participating member or housing associate.

Although the credit risk of mortgage loans is typically low, it is still important to find the most economical way to manage that risk. The Finance Board believes that the recourse model, under which the seller of a mortgage retains all or part of the credit risk, is a more economically efficient system for bringing the benefits of the capital markets to the mortgage industry. Under the recourse model, entities that underwrite the loans benefit from good underwriting and therefore are economically disciplined to reduce credit risk. In contrast to the insurance-based secondary market model, under which Fannie Mae and Freddie Mac are paid a premium to insure against credit losses, the recourse model allows an originator to take on more credit risk (so long as that risk is adequately capitalized) and to profit from successful management of that credit risk. Thus, credit risk is dispersed among the many potential originators in the Bank System, and even further dispersed through the permitted insurance and credit derivative structures.

Section 955.3 differs from the proposed rule in several respects. These changes generally provide additional clarification and do not represent a change in the Finance Board's intent regarding AMA activities. In some sections additional requirements have been specified to ensure safe and sound operations.

In general, § 955.3 enables the Bank and the member to take best advantage of their core competencies by: (1) Requiring the member to bear most of the economic cost and the management burden associated with lowering the credit risk of AMA assets to levels comparable with investment grade rates securities; thus (2) leaving the Bank with AMA assets that have a risk profile similar to the securities that have historically been a normal part of Bank operations.

Under § 955.3(a), a Bank is required to determine, for each AMA product, the total credit enhancement needed to enhance an AMA asset or pool of assets to a credit quality that is equivalent to that of an instrument having at least the fourth highest credit rating from an NRSRO, or the credit enhancement associated with such other rating equivalent above the lowest investment grade that the Bank may choose. It further requires that the determination be made using a methodology that is confirmed in writing by an NRSRO to be comparable to a methodology that the NRSRO would use in determining credit enhancement levels when conducting a rating review of the asset or pool of assets in a securitization transaction. In addition, this determination must be made at the earlier of 270 days from the date of the Bank's acquisition of the first loan in a pool, or the date at which the amount of a pool's assets reaches $100 million.

The portion of § 955.3(a) regarding the confirmation by NRSROs combines §§ 955.3(a)(1)(ii) and 955.3(a)(2) of the proposed rule. The NRSRO's confirmation of the method used to determine the required credit enhancement ensures that the Bank's estimates of credit ratings are reasonably accurate. However, the Finance Board acknowledges that an NRSRO conducting a formal rating of an asset or pool of assets may take into account qualitative factors that may not be considered by a theoretical model. Hence, the estimate of the credit enhancement requirement by a Bank would not be required to be identical to that determined by an NRSRO, but should produce roughly the equivalent rating, or equivalent ratings on average, to a formal rating review of the assets or pools of assets.

The NRSRO confirmations required by this part help ensure that AMA assets have risk and return characteristics that are more transparent, because of their similarity to rated instruments, than if the Banks simply accepted assets with unspecified levels of credit risk, or with credit risk measures that did not map to publicly available rating categories. Finance Board discussions with NRSROs indicate that it will be possible to obtain confirmations that give the Finance Board reasonable assurance regarding the soundness of the approach used to estimate the credit risk of AMA assets.

By specifying that the credit enhancement requirement be determined at the earlier of 270 days from the date of the Bank's acquisition of the first loan in a pool, or the date at which the amount of a pool's assets reaches $100 million, the rule ensures that large volumes of AMA assets cannot be acquired without a determination of their credit quality. This requirement did not appear in the proposed rule and was added to address the safety and soundness concerns that could arise if the credit enhancement determination were not performed on large pools that were formed over extended periods of time. However, the specified period in which the determination may be made still allows Banks latitude to assemble AMA assets in sufficient quantity to achieve and measure the benefit of diversification.

The rule no longer includes the text of proposed § 955.3(a)(1)(i), which specifically required the Bank to determine, at the time of acquisition of member assets, the expected credit losses on the asset or pool of assets using a method confirmed by a NRSRO. However, this determination likely still must be made to comply with § 955.3(b)(2)(ii), regarding the member's incentive to reduce actual credit losses.

Seven comments were received regarding the impact of geographic concentration and pool size on the calculation of the credit risk

requirement and the resulting impact on small originators. These two diversification factors are taken into account by the NRSROs and the credit rating software that would be used to comply with § 955.3(a). Such software is likely to indicate substantially higher credit enhancement requirements for loan pools provided by smaller originators because the marketplace for such originators does not allow them to produce large numbers of geographically dispersed loans. The commenters proposed that the portion of credit enhancement requirements attributable to the lack of diversification not be included in determining compliance with § 955.3(a) for small members because such members could incur higher capital charges from the significantly higher credit enhancement requirements.

The Finance Board believes that such an approach would be detrimental to the safety and soundness of the acquiring Bank because the credit risk associated with the lack of diversification is a real risk that must be accounted for and managed. However, the Banks are not precluded from proposing a credit enhancement structure that appropriately manages the risk associated with the two diversification factors as confirmed by an NRSRO. In addition, 955.3(b)(1)(iii) of this rule now includes a provision allowing a narrow form of pool insurance, discussed more fully below, as one means for the Banks to address this issue.

A comment was also received advocating that § 955.3(a) should allow the recalculation of the amount of the credit enhancement on AMA pools some period of time after the establishment of the pool for the purpose of reducing the amount if such a reduction were found to be appropriate. The rule does not restrict the Bank from performing such recalculation. However, the timing of recalculations and any actions taken by the Bank to apply such new estimates of credit enhancements must be deemed appropriate, *a priori*, in writing, by an NRSRO.

Under § 955.3(b) of the final rule, the member must provide an enhancement to the credit quality of the prospective AMA asset that is sufficient to raise the credit quality of the asset to be comparable with a rated investment grade instrument. The final rule is similar to the provisions of § 955.3(b)(2) of the proposed rule that address the total amount of the credit enhancement. Under final § 955.3(b), the member must provide and bear the economic cost of the required amount of the credit enhancement. The amount of the credit enhancement must cover losses from the first dollar up to at least the coverage of an equivalent rated investment grade instrument and must be designed to extend for the life of the asset or pool of assets. The requirement that the amount of the credit enhancement extend for the life of the asset or pool of assets is intended to exclude, for example, structures that would comply with the credit rating requirement in the first year, but would then scale back the amount of the member's credit enhancement enough in future years so that the pool no longer meets the credit rating requirement. Furthermore, although the Bank may provide loan loss reserves for AMA assets, unless it can be demonstrated that, in substance, the economic cost of such reserves is borne by the member, such reserves would not be included in the credit enhancement for the purpose of determining compliance with this section. However, Bank reserves can be included in calculating the risk-based capital requirement associated with the asset.

Section 955.3(b) does not specify the form of the credit enhancement, only that it must be provided by the member subject to some limitations. By allowing flexibility in the form of the credit enhancement structure, the Banks can pursue alternative structures that meet member needs while providing the best overall return on the AMA activity.

Specifically, § 955.3(b)(1)(i) has been added to the final rule to authorize an insurance affiliate of the member to hold a portion of the credit enhancement obligation, to accommodate corporate structures common to some members that allow the credit enhancement obligation to be held by an entity that incurs a lower capital charge than the member. Also, § 955.3(b)(1)(ii), which replaces § 955.3(b)(ii)(2)(B)(3) of the proposed rule, allows loan-level insurance as a part of the credit enhancement but requires that the insurer be rated not lower than the second highest rating category. However, both of these insurance provisions are subject to the same limitation, which is contained in both §§ 955.3(b)(1)(i) and 955.3(b)(1)(ii)(B). The limitation requires that any insurance, regardless of the source, only absorb losses that remain after the member has economically absorbed all losses associated with the economic incentives described in § 955.3(b)(2). This limitation was added to ensure that members retain an ongoing economic interest in the actual credit losses of the asset even though much of the overall exposure to credit losses might be covered through an insurance arrangement.

Section 955.3(b)(1)(iii)(A) allows pool-level insurance as part of the credit enhancement subject to two limitations. This provision was added to the rule to permit a member to help offset the very high credit enhancement requirements that may be incurred by members that are unable to produce asset pools with sufficient pool size and geographic diversity. However, pool insurance may be used for the sole purpose of allowing groups of members, that would otherwise have to manage financially impractical credit enhancement requirements arising from a lack of diversification, to offset only that portion of the requirement that arises from a lack of diversification. Section 955.3(b)(1)(iii)(B) further requires that such pool insurance must only cover loss exposure that arises after all other credit support structures have been exhausted.

Section 955.3(b)(1)(iv) incorporates and clarifies § 955.3(b)(2)(ii)(B)(*2*) of the proposed rule by allowing a member to contract with another member or housing associate in the Bank's district or in another Bank's district, pursuant to an arrangement with that Bank, to provide a contractual enhancement or undertaking against losses to the Bank in return for some compensation.

Section 955.3(b)(2) of the final rule has been revised from proposed § 955.3(b)(2)(i) and (ii) regarding the member's incentive to reduce actual credit losses. Taken together, § 955.3(b)(2)(i) and (ii) provide that the member must bear the direct economic consequences of actual credit losses in an amount at least equal to expected losses and positioned in the credit enhancement structure no later than immediately after expected losses (and also before any loan-level or pool insurance, as required by §§ 955.3(b)(1)(ii)(B) and (iii)(B)). This design requirement for the credit enhancement structure is intended to ensure that the member retains an economic incentive to reduce actual losses that is both material in amount and early enough in the structure to be meaningful to the member.

"Expected losses" are defined in § 955.1 as losses on the underlying assets expected under prevailing economic conditions—*i.e.*, the base loss scenario—as estimated at the time the credit enhancement requirement was determined under § 955.3(a). Expected losses may be calculated as the mean of the losses associated with economic conditions represented by the sixth ratings category (*e.g.* single-B)

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determined by computer rating models that map to NRSRO ratings.

Recognizing that advantages exist under each structure, the Finance Board is giving the Banks the flexibility to offer products or programs under either of the structures. However, any combination that removes the incentive to reduce actual credit losses is prohibited.

The economic responsibility of the expected credit losses may be borne by the member or housing associate in a variety of ways. For instance, under the product developed by the Federal Home Loan Bank of Chicago known as MPF 100®, a Bank establishes an account to absorb credit losses. As the Bank incurs losses, it is reimbursed by the member through the reduction of credit enhancement fees paid to the member by the Bank. Essentially, the fees paid to the member are contingent upon the performance of the asset.

The Finance Board has determined that the amount represented by expected credit losses is typically of sufficient size that members or housing associates, when responsible for such losses, have incentive to seek ways to achieve better than expected performance. In the case of acquiring mortgage loans, by requiring that the member or housing associate bear direct economic responsibility for such an amount, position early in the structure, a system of risk and reward is established that is based on the core competencies of the participating institutions. Since member financial institutions are most knowledgeable regarding their local housing markets, this structure allows members the opportunity to benefit from their expertise in underwriting mortgage loans in their communities. The credit risk sharing structure is based on the concept that different institutions have different capacities. The Banks are capital market specialists, with the ability to bear market risks well, while depository institutions are experts in credit risk evaluation since they know their communities best. Therefore, by establishing a structure where the member or housing associate from which the Bank acquired the asset or pool of assets bears economic responsibility for the amount of the expected credit losses, members or housing associates are rewarded for their credit risk management expertise.

Regardless of how credit loss coverage is allocated, the economic cost of expected credit losses must be borne by the member or housing associate from which the Bank acquired the asset or pool of assets. In the case of an FHA-insured loan, the loan would meet the risk-sharing requirements since it is insured by the government; however, the member or housing associate would have to bear the economic responsibility of all unreimbursed servicing expenses, up to the amount of expected losses on the loan or loan pool. In the case of HFA bonds, the Banks are only permitted to purchase bonds that have been assigned a credit rating of at least investment grade, and that rating cannot be achieved unless the housing associate selling the bonds has somehow credit enhanced the underlying loans in an amount sufficient to earn the credit rating. In particular, HFA bonds are usually rated in at least the third highest credit rating category based on the fact that the bonds are backed by FHA-insured, VA-guaranteed or private mortgage insurance (PMI)-insured whole loans. In many cases the bonds are backed by loans securitized by the Government National Mortgage Association (Ginnie Mae), Fannie Mae or Freddie Mac and are rated in the highest credit rating category. Additional bondholder protections frequently include mortgage reserve funds.

Section 955.3(b)(3) of the final rule adds a provision requiring the member's credit enhancement obligation to be fully secured. This provision was added to address the concern that the Bank might be exposed to credit risk if the member were not able to comply with its contractual credit enhancement obligation. This provision requires that the member's credit enhancement obligation must be secured in parallel with the requirement for advances to members under part 950.

Section 955.3(b)(4) requires the Bank to obtain written confirmation from an NRSRO regarding the sufficiency of the credit enhancement. This section generally expands and clarifies § 955.3(b) of the proposed rule. The rule clarifies that the confirmation must be satisfactory to the Finance Board and must be based on the underlying economic terms of the credit enhancement structure as represented by the Bank for each AMA product. This confirmation may be provided in two forms. Section 955.3(b)(4)(i) allows the NRSRO to verify that the level of credit enhancement provided by the member or housing associate is generally sufficient to enhance the asset or pool of assets to a credit quality that is equivalent to that of an instrument having the fourth highest credit rating from an NRSRO, or such higher rating as the Bank may require. In this case the NRSRO is, in essence, describing the value of the credit enhancement structure hypothetically for the purpose of determining a credit rating.

Section 955.3(b)(4)(ii) allows that the NRSRO may confirm that the methodology used by the Bank for estimating the level of credit enhancement provided by the member or housing associate is in accordance with the practices established by the NRSRO. In this approach the NRSRO does not provide the value of the credit enhancement but rather indicates whether the Bank is estimating the value of the credit enhancement structure in a way that is comparable to the methodology used by the NRSRO in determining the sufficiency of credit enhancements.

Section 955.3(c), regarding the timing of NRSRO confirmations, was added to the rule to ensure that the confirmations are received on a timely basis for already-established programs. It requires that ongoing AMA programs shall acquire these confirmations within 90 days of the effective date of this rule. This provision was added because established AMA programs have acquired large portfolios even as of the date of the proposed rule.

Two comments were received advocating that certain mortgage financing instruments, if backed by member loans, should be included within the general definition of AMA assets. One of the comments specifically discussed securitized structures in which the Bank would acquire an investment grade senior portion and the member would retain the credit support tranches necessary to support the investment grade tranches. A Bank would not be in compliance with part 955 if it the transaction were merely a capital markets purchase of senior tranches resulting from securitizations of this type. However, it is expected that such structures would meet the requirements of part 955 if the structure were implemented through a Bank's AMA program using assets that conform with the AMA requirements that were previously held by the member for a valid business purpose. In this regard, the structure contemplated by the comment is similar to a "sequential" loan participation program previously approved by the Finance Board. The fact that such a structure might include rated subordinate credit tranches would not constitute non-compliance with part 955 as long as the structure were arranged cooperatively with the Bank and the member bore the risk of holding or selling the credit support tranches.

Six comments were received advocating a provision in part 955 that would give members participating in AMA programs the ability to transfer

credit enhancement obligations and the servicing of AMA loans to other members in the same or other Bank districts. The final rule does not explicitly address, nor does it restrict, such transfers, though they may only be undertaken with the concurrence of the Bank of which the transferee is a member. In addition, such transfers must be accompanied by a similar undertaking by the transferee of the incentive requirements in § 955.3(b)(2). Finally, the credit enhancement obligations must be secured according to the same requirements that apply to advances pursuant to part 950.

3. AMA Reporting Requirements—§ 955.4

A total of 24 comment letters were received regarding the AMA reporting requirements set forth in § 955.4 of the rule, and in appendices A and B to part 955. Eighteen of the comments, while not opposed to reporting requirements in general, were opposed to certain aspects of the requirements. Six commenters supported all of the reporting requirements.

In general, the commenters that stated some opposition to the reporting requirements were most concerned with the burden of requiring data elements in addition to those already required by the Department of Housing and Urban and Development (HUD) and Office of Federal Housing Enterprise Office (OFHEO) of Fannie Mae and Freddie Mac. The commenters noted that any data elements in excess of what was already required of members selling loans to Fannie Mae and Freddie Mac would require expensive computer programming and procedural changes. It was further noted that any such changes required to be made to members' systems would make AMA programs less attractive in the marketplace. Some commenters also objected to the lack of a transition period within which the Banks would be required to begin reporting to the Finance Board.

Some commenters were supportive of the reporting requirements in the proposal. These commenters generally were in favor of collecting of "prepayment penalty" data on single-family mortgages, noting that predatory lending is a problem in the U.S. and the collection of prepayment penalty data will help prevent the Banks from engaging in anti-borrower activities. One commenter stated that the data elements submitted by the Banks to the Finance Board should be made publicly available and that the Finance Board should consider mandating reporting requirements on all CMA activities. Another commenter supporting the reporting requirements suggested additional data elements to be collected.

The Finance Board has considered the comments received regarding reporting requirements and has made a number of revisions to the final rule in response. In the proposed rule, the Finance Board based its list of data elements on HUD's and OFHEO's requirements of Fannie Mae and Freddie Mac. In addition to the data elements required by HUD and OFHEO for single-family and multifamily mortgage loans, the Finance Board included a total of ten additional data elements to the two lists. Six of these data elements, "originating lender institution," "originating lender city" and "originating lender state" for both single-family and multifamily acquisitions, are not regularly reported to Fannie Mae and Freddie Mac by financial institutions selling loans. Given the comments received, the Finance Board has decided it would be too burdensome to require the members to provide this data to the Banks and has eliminated these data elements from both the single-family and multifamily data element lists in the rule (Appendices A and B). The Finance Board's original intent was to use this information to monitor compliance with the valid business purpose requirement set forth in § 955.2(b)(1)(ii). The Finance Board has determined that the cost burden on members and housing associates would exceed the benefits of collecting such data on a System-wide and regular basis.

The additional four items not reported to HUD or OFHEO include, "front-end ratio," "back-end ratio," "self-employment indicator," and "prepayment penalties." Although not reported to either HUD or OFHEO, financial institutions selling loans to Fannie Mae and Freddie Mac currently report front-end ratio, back-end ratio, and self-employment indicator to the GSEs. The prepayment penalties data element is currently reported by Fannie Mae and Freddie Mac to OFHEO for multifamily loans. Although not reported by Fannie Mae and Freddie Mac for single-family loans, prepayment penalties for single-family loans have become more prevalent in the marketplace.

Upon consideration, the Finance Board has determined that the collection of the four above-mentioned data elements does not cause undue burden on members and is necessary to evaluate the risk of the loans acquired under AMA programs. Therefore, these four items will remain on the list of required data elements for reporting purposes.

The Finance Board has added three data elements to the single-family and multifamily lists published in the proposed rules. These items are "owner-occupied" on the single-family list and "construction loan" and "total number of units" on the multifamily list. All three of these data elements are reported by Fannie Mae and Freddie Mac to HUD, but were inadvertently omitted from the proposed rule.

In addition to the changes made to the data elements by the Finance Board, the Finance Board has specified in the final rule the date on which Banks must begin to collect and report information to the Finance Board. The Banks must begin collecting from their members the required information on loans acquired as of January 1, 2001. By allowing this transition period, the Finance Board is providing the Banks ample time to design and implement the systems necessary for this type of data collection. The first mortgage report the Banks must submit to the Finance Board will be due no later than May 31, 2001, which is 60 days after the end of the first quarter.

4. Risk-Based Capital Requirements for AMA—§ 955.6

Section 955.6(a) of the rule sets forth capital requirements for AMA that shall apply until the Finance Board's new capital rule is finalized later in 2000. In the proposed rule, the provision would have required each Bank to hold retained earnings plus specific loan loss reserves as support for the credit risk of all AMA estimated by the Bank to be below the second highest credit rating, in an amount equal to or greater than: the outstanding balance of the assets or pools of assets times a factor associated with the credit rating of the assets or pools of assets as determined by the Finance Board. In the final rule, the reference to specific loan loss has been changed to refer to "general" loan loss reserves, as was originally intended and a table has been added setting forth the factors applying to single-family AMA.

The Finance Board received three comments regarding the proposed risk-based capital requirement, all of which were opposed in varying degrees to the provision. One of the comments noted that the proposed rule, because it stated that the amount of retained earnings the Banks would be required to hold would be "as determined by the Finance Board," provided little real guidance and made it difficult for the Banks to comply in an effective manner. Another commenter suggested that the Finance Board's risk-based capital requirements were overly complex since they were included in separate regulations. The

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commenter further noted that loan-loss reserves established under GAAP should be deducted from risk-based capital.

After considering the comments, the Finance Board has included in final § 955.6(a) a table stipulating the percentage applicable to the on-balance sheet equivalent value of single-family AMA rated below the second highest rating category. The percentages included in the table for the third through sixth categories take into account the difference, in a sample of AMA assets, between the credit enhancement requirement for these grades and the second highest investment grade with a base requirement of 100 percent for pools below the sixth highest investment grade. The sample of AMA assets used to produce these percentages is thought to be representative of the general level of credit risk in AMA. The percentage in the table for AMA with credit quality below the sixth national grade coincides with the requirement that all AMA have credit quality estimated to be equal to or better than similar investment grade instruments. The Finance Board may adjust this requirement going forward if there is information indicating that higher or lower percentages are necessary.

The percentages in table differ from those set forth in the table for single-family mortgage loans contained in the proposed capital regulation. At this time, while the Bank System is still largely subject to the restrictive safety and soundness parameters of the FMP, the Banks will not be required to hold capital against AMA that have a putative rating (calculated in accordance with the requirements of § 955.3) in the second highest credit rating category or higher. Correspondingly, the factors listed for AMA having a rating below the second highest credit rating category are intended to result in a Bank's entire AMA portfolio having the same risk of uncapitalized loss as an instrument rated in at least the second highest credit rating category. Thus, the interim risk-based capital requirement for AMA has been calibrated to be consistent with the risk management regime now in place under the FMP. Once the Finance Board's new capital regulations are in place, banks will need to hold risk based capital against all assets, including those rated in the second highest category or higher, but in amounts determined on a different basis than that reflected in § 955.6(a).

The Finance Board also modified the provision for risk-based capital requirements for AMA by adding § 955.6(b), which requires that, for risk-based capital purposes, each Bank shall recalculate the estimated credit rating of a pool of AMA if there is evidence that a decline in the credit quality of the may have occurred. This provision was added to ensure that any downgrade in credit status of a pool would be reflected in the risk-based capital charge.

5. Removal of Pilot Status of AMA Programs

A total of 13 comments were received regarding the pilot status of the AMA programs. Eleven commenters were in favor of removing the pilot status and two commenters were opposed.

In general, the commenters in favor of converting the AMA programs from pilot to permanent status noted the success of the current MPF program in terms of Bank and member cooperation, allocation of risk, and safety and soundness. It was noted that the AMA cap of $9 billion needed to be lifted so that AMA programs could provide further benefits to members and consumers. It was also noted that pilot status of the AMA program creates unnecessary concern and uncertainty about the Banks' ability to fulfill its obligations.

Two commenters opposed the removal of the pilot status on AMA programs. One commenter noted that the Finance Board should defer any action on the cap until the changes to the Banks' capital structures mandated by the Modernization Act are put into place. The second commenter noted that the cap on AMA programs should not be removed since the performance of the MPF program has not been fully evaluated.

The Finance Board considered the comments received on the removal of the pilot status of these programs and determined that existing AMA programs had, in their pilots stages, proved to be a safe and sound investment for the Banks, as well as a valuable, alternative means for its members and housing associates to sell loans to the secondary market. Accordingly, the Finance Board finds it appropriate to authorize AMA programs on a permanent basis and to ensure the safety and soundness of these programs through appropriate risk-based capital, collateral and credit-risk sharing requirements, as well as through thorough supervisory examinations.

6. Effect of New Business Activities Requirement of Part 980 on AMA

Section 955.2 of the rule makes all Bank AMA activities subject to the "new business activity" requirements of part 980 of the Finance Board's regulations. Part 980 is being finalized as part of the Finance Board's rule on advances collateral, which was approved at the Board of Directors meeting of June 29, 2000. Thereunder, Banks are required to provide 60 days notice to the Finance Board before undertaking any new business activity (defined in § 980.1). To the extent that an AMA transaction involves acquisition of a new class of asset, new types of risk or risk structures, or new types of operations, Banks will need to follow the notice procedures set out in part 980 before proceeding. It is anticipated that new AMA products will almost always be new business activities for purposes of part 980. In addition, new classes of transactions engaged in under existing AMA programs may also be new business activities, and thus subject to part 980, if they expose the Bank to new loans types, risks, or operations.

The Finance Board received eight comments on the 60-day approval period for new business activities. All commenters found the approval period was to be lengthy and thought it would hinder product innovation and development. However, the Finance Board believes that this requirement is most needed as a safety and soundness measure where, as with AMA, the Banks will be taking part in transactions with which they have little past experience.

7. Predatory Lending

On June 20, 2000, HUD and the Department of Treasury released a report entitled "Curbing Predatory Home Mortgage Lending—A Joint Report" that describes the damaging impact predatory lending practices have on individuals and whole neighborhoods. Predatory lending practices include loan flipping (refinancing borrowers' loans repeatedly in a short period of time), excessive fees, financing single premium credit life insurance products in the mortgage, lending without regard to the borrower's ability to repay, and outright fraud.

The report included recommendations for actions that the Finance Board, working to assure consistency with any requirements that HUD will impose on Fannie Mae and Freddie Mac, could apply to the Federal Home Loan Banks to help end predatory lending. Specifically, the Finance Board could prohibit purchases of high cost mortgages with excessive fees, prepayment penalties (except in circumstances that benefit the borrower, where the terms are fully disclosed, and alternative options are offered), and prepaid single-premium credit life insurance products, as well as

mortgages from a seller/servicer that fails to document monthly that it is submitting payment information to a credit bureau.

Six commenters to the proposed rule recommended that the Finance Board consider prohibitions on the purchase or funding of predatory loans, or that certain information be added to the reporting requirements for AMA so the Finance Board could determine whether AMA included predatory loans.

On June 26, 2000, the Federal Home Loan Banks of Chicago, Atlanta, Boston, Dallas, Des Moines, Indianapolis, New York, Pittsburgh, and Topeka voluntarily agreed to adopt guidelines pertaining to predatory lending, which will be consistent with the relevant secondary market guidelines. In particular, these guidelines will focus on not purchasing or funding loans through the MPF Program that meet the characteristics of a high cost mortgage under the Home Owners' Equity Protection Act of 1994.

The Finance Board anticipates that in a future rulemaking it, working closely with HUD as it develops regulatory requirements for Fannie Mae and Freddie Mac, will propose for public comment parallel requirements for the AMA and Bank debt investments to assure that they will not include predatory loans or contribute to predatory lending practices.

C. Investments—Part 956

Part 956 of the final rule governs Bank investments. Along with the advances, AMA and standby letter of credit regulations (parts 950, 955 and 961, respectively), part 956 provides the authority necessary for the Banks to carry out several of the core mission activities listed in § 940.3. The final provision remains largely unchanged from the that in the proposed rule. However, three modifications have been made.

First, the investment authorization set forth in § 956.2 has been amended to make explicit that, except for those provisions in the FMP that are directly overridden by this proposed rule, all provisions of the FMP will remain in effect until expressly repealed by the Finance Board. Accordingly, Bank investment in agency and private MBS, CMOs and REMICs and in asset-backed securities secured by manufactured housing or home equity loans would continue to be limited to a total amount equal to 300 percent of a Bank's capital. It is anticipated that the remaining provisions of the FMP will be repealed, or at least codified as regulations, at such time as the Finance Board promulgates a final rule on capital and risk management.

Second, § 956.4(a)(4) has been changed in the final rule so that targeted investments described in § 940.3(e) of the CMA regulation are exempted from the list from the general prohibition on Bank investment in whole loans or interests in loans other than pursuant to the AMA requirements. The omission of this provision from the proposed rule was merely an oversight. Its inclusion ensures that targeted loan purchase programs such as the Federal Home Loan Bank of Atlanta's AMPP will qualify as CMA.

Finally, under proposed § 956.4, the Banks must hold retained earnings plus specific loan loss reserves as support for the credit risk of all investments that are not rated by an NRSRO, or are rated below the second highest credit rating, in an amount equal to or greater than the outstanding balance of the investments times a factor associated with the credit rating of the investments as determined by the Finance Board. The Finance Board has clarified in the final provision that the factor shall be 0.08 for unrated assets. It is expected that this specific § 956.4 will be superceded at the time that a final capital rule is promulgated, to be replaced by specific requirements set forth in the capital regulation relating to each credit rating category.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* at 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

In the proposed rule, the Finance Board inadvertently failed to include a notice and request for comment regarding the Paperwork Reduction Act implications of the information collection contained in § 955.4 of the rule, described more fully in part II of the **SUPPLEMENTARY INFORMATION.** That notice and request for comment are being provided here.

The data collected are intended to be used to create a data base and reporting infrastructure for monitoring the Banks' risk management and achievement of the public purpose of the residential mortgage-related AMA programs. Responses are required in order obtain or retain a benefit. The Finance Board will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation, and agency policy. Books or records relating to this collection of information must be retained as provided in the regulation.

Likely respondents and/or recordkeepers will be Banks, institutions that are members or housing associates of a Bank and the Finance Board. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by the OMB. *See* 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents: 412.

b. Total annual responses: 1600.

Percentage of these responses collected electronically: 75%.

c. Total annual hours requested: 38,880.

d. Current OMB inventory: n/a.

e. Difference: n/a.

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs: $300,000.00.

b. Total annual costs (O&M): 0.

c. Total annualized cost requested: $1,212,297.94.

d. Current OMB inventory: n/a.

e. Difference: n/a.

The Finance Board will accept written comments concerning the accuracy of the burden estimates and suggestions for reducing the burden at the address listed above.

The Finance Board submitted an analysis of the information collection to the Office of Management and Budget (OMB) for review. Subsequent to submitting the analysis to OMB, the Finance Board decided to reduce the level of reporting required in the final rule and, therefore, has reduced the estimated annual reporting and recordkeeping hour and cost burden. OMB assigned a control number, 3069–0058, and temporarily approved the information collection with an expiration date of December 31, 2000. Prior to the expiration of this temporary approval, the Finance Board will again submit the collection of information to OMB for review, with the intent of obtaining a full three-year approval and will publish a final notice regarding the information collection.

Comments regarding the proposed collection of information may be submitted in writing to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board,

Washington, D.C. 20503 by September 15, 2000.

List of Subjects in 12 CFR Parts 900, 940, 950, 955 and 956

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, Code of Federal Regulations, as follows:

PART 900—GENERAL DEFINITIONS

1. The authority citation for part 900 is revised to read as follows:

Authority: 12 U.S.C. 1422, 1422b(a)(1).

2. Amend § 900.1 by adding, in alphabetical order, definitions of the term "acquired member assets or AMA" and "NRSRO" to read as follows:

§ 900.1 Definitions applying to all regulations.

* * * * *

Acquired member assets or *AMA* means those assets that may be acquired by a Bank under part 955 of this chapter.

* * * * * *

NRSRO means a credit rating organization regarded as a Nationally Recognized Statistical Rating Organization by the Securities and Exchange Commission.

* * * * *

PART 940—CORE MISSION ACTIVITIES

3. The heading for part 940 is revised to read as set forth above.

4. The authority citation for part 940 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1430, 1430b, 1431.

5. In part 940, amend § 940.1 by adding, in alphabetical order, definitions of the terms "Financial Management Policy (FMP)", "low- or moderate-income household", "SBIC", and "Targeted income level" to read as follows:

§ 940.1 Definitions.

* * * * *

Financial Management Policy (FMP) has the meaning set forth in § 956.1 of this chapter.

SBIC means a small business investment company formed pursuant to 15 U.S.C. 681(d).

Targeted income level has the meaning set forth in paragraphs (1) and (2) of the definition of "targeted income level" in § 952.3 of this chapter.

6. Amend part 940 by adding a new § 940.3, to read as follows:

§ 940.3 Core mission activities.

The following Bank activities qualify as core mission activities:

(a) Advances;

(b) Acquired member assets (AMA), except that United States government-insured or guaranteed whole single-family residential mortgage loans acquired under a commitment entered into after April 12, 2000 shall qualify only in a cumulative dollar amount up to 33 percent of: The cumulative total dollar amount of AMA acquired by a Bank after April 12, 2000, less the cumulative dollar amount of United States government-insured or guaranteed whole single-family residential mortgage loans acquired after April 12, 2000 under commitments entered into on or before April 12, 2000 (which calculation, at the discretion of two or more Banks, may be made based on aggregate transactions among those Banks);

(c) Standby letters of credit;

(d) Intermediary derivative contracts;

(e) Debt or equity investments:

(1) That primarily benefit households having a targeted income level, a significant proportion of which must benefit households with incomes at or below 80 percent of area median income, or areas targeted for redevelopment by local, state, tribal or Federal government (including Federal Empowerment Zones and Enterprise and Champion Communities), by providing or supporting one or more of the following activities:

(i) Housing;

(ii) Economic development;

(iii) Community services;

(iv) Permanent jobs; or

(v) Area revitalization or stabilization;

(2) In the case of mortgage- or asset-backed securities, the acquisition of which would expand liquidity for loans that are not otherwise adequately provided by the private sector and do not have a readily available or well established secondary market; and

(3) That involve one or more members or housing associates in a manner, financial or otherwise, and to a degree to be determined by the Bank;

(f) Investments in SBICs, where one or more members or housing associates of the Bank also make a material investment in the same activity;

(g) SBIC debentures, the short term tranche of SBIC securities, ore other debentures that are guaranteed by the Small Business Administration under title III of the Small Business Investment Act of 1958, as amended (15 U.S.C. 681 *et seq.*);

(h) Section 108 Interim Notes and Participation Certificates guaranteed by the Department of Housing and Urban Development under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5308); and

(i) Investments and obligations issued or guaranteed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

PART 950—ADVANCES

7. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

8. Amend part 950 by adding a new subpart C consisting of § 950.25 to read as follows:

Subpart C—Advances to Out-of-District Members and Housing Associates

§ 950.18 Advances to out-of-district members and housing associates.

(a) *Establishment of creditor/debtor relationship.* Any Bank may become a creditor to a member or housing associate of another Bank through the purchase of an outstanding advance, or a participation interest therein, from the other Bank, or through an arrangement with the other Bank that provides for the establishment of such a creditor/debtor relationship at the time an advance is made.

(b) *Applicability of advances requirements.* Any debtor/creditor relationship established pursuant to paragraph (a) of this section shall be subject to all of the provisions of this part that would apply to an advance made by a Bank to its own members or housing associates.

9. In subchapter G, add a new part 955 to read as follows:

PART 955—ACQUIRED MEMBER ASSETS

Sec.

955.1 Definitions.
955.2 Authorization to hold acquired member assets.
955.3 Required credit-risk sharing structure.
955.4 Reporting requirements for acquired member assets.
955.5 Administrative and investment transactions between Banks.
955.6 Risk-based capital requirement for acquired member assets.
Appendix A to Part 955—Reporting requirements for single-family acquired member assets that are residential mortgages: loan-level data elements

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Appendix B to Part 955—Reporting requirements for multi-family acquired member assets that are residential mortgages: loan-level data elements

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1430, 1430b, 1431.

§ 955.1 Definitions.

As used in this section:

Affiliate has the meaning set forth in § 950.1 of this chapter.

Expected losses means the base loss scenario in the methodology of an NRSRO applicable to that type of AMA asset.

Residential real property has the meaning set forth in § 950.1 of this chapter.

State has the meaning set forth in § 925.1 of this chapter.

§ 955.2 Authorization to hold acquired member assets.

Subject to the requirements of part 980 of this chapter, each Bank may hold assets acquired from or through Bank System members or housing associates by means of either a purchase or a funding transaction (AMA), subject to each of the following requirements:

(a) *Loan type requirement.* The assets are either:

(1) Whole loans that are eligible to secure advances under §§ 950.7 (a)(1)(i), (a)(2)(ii), (a)(4), or (b)(1) of this chapter, excluding:

(i) Single-family mortgages where the loan amount exceeds the limits established pursuant to 12 U.S.C. 1717(b)(2); and

(ii) Loans made to an entity, or secured by property, not located in a state;

(2) Whole loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or

(3) State and local housing finance agency bonds;

(b) *Member or housing associate nexus requirement.* The assets are:

(1) Either:

(i) Originated or issued by, through, or on behalf of a Bank System member or housing associate, or an affiliate thereof; or

(ii) Held for a valid business purpose by a Bank System member or housing associate, or an affiliate thereof, prior to acquisition by a Bank; and

(2) Acquired either:

(i) From a member or housing associate of the acquiring Bank;

(ii) From a member or housing associate of another Bank, pursuant to an arrangement with that Bank, which, in the case of state and local finance agency bonds only, may be reached in accordance with the following process:

(A) The housing finance agency shall first offer the Bank in whose district the agency is located (local Bank) a right of first refusal to purchase, or negotiate the terms of, its proposed bond offering;

(B) If the local Bank indicates, within a three day period, that it will negotiate in good faith to purchase the bonds, the agency may not offer to sell or negotiate the terms of a purchase with another Bank; and

(C) If the local Bank declines the offer, or has failed to respond within the three day period, the acquiring Bank will be considered to have an arrangement with the local Bank for purposes of this section and may offer to buy or negotiate the terms of a bond sale with the agency;

(iii) From another Bank; and

(c) *Credit risk-sharing requirement.* The transactions through which the Bank acquires the assets either:

(1) Meet the credit risk-sharing requirements of § 955.3 of this part; or

(2) Were authorized by the Finance Board under section II.B.12 of the FMP and are within any total dollar cap established by the Finance Board at the time of such authorization.

§ 955.3 Required credit risk-sharing structure.

(a) *Determination of necessary credit enhancement.* At the earlier of 270 days from the date of the Bank's acquisition of the first loan in a pool, or the date at which the amount of a pool's assets reaches $100 million, a Bank shall determine the total credit enhancement necessary to enhance the asset or pool of assets to a credit quality that is equivalent to that of an instrument having at least the fourth highest credit rating from an NRSRO, or such higher credit rating as the Bank may require. The Bank shall make this determination for each AMA product using a methodology that is confirmed in writing by an NRSRO to be comparable to a methodology that the NRSRO would use in determining credit enhancement levels when conducting a rating review of the asset or pool of assets in a securitization transaction.

(b) *Credit risk-sharing structure.* A Bank acquiring AMA shall implement, and have in place at all times, a credit risk-sharing structure for each AMA product under which a member or housing associate of the Bank or, with the approval of both Banks, a member or housing associate of another Bank, provides a sufficient credit enhancement from the first dollar of credit loss for each asset or pool of assets such that the acquiring Bank's exposure to credit risk for the life of the asset or pool of assets is no greater than that of an asset rated in the fourth highest credit rating category, as determined pursuant to paragraph (a) of this section, or such higher rating as the acquiring Bank may require. This credit enhancement structure shall meet the following requirements:

(1) A portion of the credit enhancement may be provided by:

(i) Contracting with an insurance affiliate of that member or housing associate to provide an enhancement or undertaking against losses to the Bank, but only where such insurance is positioned in the credit enhancement structure so as to cover only losses remaining after the member or housing associate has borne losses as required under paragraph (b)(2) of this section;

(ii) Purchasing loan-level insurance, which may include United States government insurance or guarantee, but only where:

(A) The member or housing associate is legally obligated at all times to maintain such insurance with an insurer rated not lower than the second highest credit rating category; and

(B) Such insurance is positioned in the credit enhancement structure so as to cover only losses remaining after the member or housing associate has borne losses as required under paragraph (b)(2) of this section;

(iii) Purchasing pool-level insurance, but only where such insurance:

(A) Insures that portion of the required credit enhancement attributable to the geographic concentration and size of the pool; and

(B) Is positioned last in the credit enhancement structure so as to cover only those losses remaining after all other elements of the credit enhancement structure have been exhausted; or

(iv) Contracting with another member or housing associate in the Bank's district or in another Bank's district, pursuant to an arrangement with that Bank, to provide an enhancement or undertaking against losses to the Bank in return for some compensation;

(2) The member or housing associate that is providing the credit enhancement required under paragraph (b)(1) of this section shall in all cases bear the direct economic consequences of actual credit losses on the asset or pool of assets:

(i) From the first dollar of loss up to the amount of expected losses; or

(ii) Immediately following expected losses, but in an amount equal to or exceeding the amount of expected losses; and

(3) The portion of the credit enhancement that is an obligation of a

Bank System member or housing associate shall be fully secured;

(4) The Bank shall obtain written verification from an NRSRO that concludes to the satisfaction of the Finance Board, based on the underlying economic terms of the credit enhancement structure as represented by the Bank for each AMA product, that either:

(i) The level of credit enhancement provided by the member or housing associate is generally sufficient to enhance the asset or pool of assets to a credit quality that is equivalent to that of an instrument having the fourth highest credit rating from an NRSRO, or such higher rating as the Bank may require; or

(ii) The methodology used by the Bank for estimating the level of credit enhancement provided by the member or housing associate is in accordance with the practices established by the NRSRO.

(c) *Timing of NRSRO opinions.* For AMA programs already in operation at the time of the effective date of this rule, a Bank shall have 90 days from the effective date of this rule to obtain the NRSRO verifications required under paragraphs (a) and (b)(4) of this section.

§ 955.4 Reporting requirements for acquired member assets.

(a) *Loan-Level Data Elements.* Each Bank that acquires AMA that are residential mortgages shall collect and maintain loan-level data on each mortgage held, as specified in appendix A (for single-family mortgage assets) or appendix B (for multifamily mortgage assets) to this part.

(b) *Quarterly Mortgage Reports.* Beginning with calendar year 2001, within 60 days of the end of every quarter of every calendar year, each Bank that acquires AMA that are residential mortgages shall submit to the Finance Board a Mortgage Report, which shall include:

(1) Aggregations of the loan-level mortgage data compiled by the Bank pursuant to paragraph (a) of this section for year-to-date mortgage acquisitions, in a format specified by the Finance Board;

(2) Year-to-date dollar volume, number of units and number of mortgages on owner-occupied and rental properties relating to AMA acquired by the Bank; and

(3) For the second and fourth quarter Mortgage Reports only, year-to-date loan-level data that:

(i) Comprises the data elements required to be collected and maintained by the Bank under paragraph (a) of this section; and

(ii) Appears in a machine-readable format specified by the Finance Board.

(c) *Additional Reports.* The Finance Board may at any time require a Bank to submit reports in addition to those required under paragraph (b) of this section.

§ 955.5 Administrative and investment transactions between Banks.

(a) *Delegation of administrative duties.* A Bank may delegate the administration of an AMA program to another Bank whose administrative office has been examined and approved by the Finance Board to process AMA transactions. The existence of such a delegation, or the possibility that such a delegation may be made, must be disclosed to any potential participating member or housing associate as part of any AMA-related agreements are signed with that member or housing associate.

(b) *Terminability of Agreements.* Any agreement made between two or more Banks in connection with any AMA program shall be made terminable by either party after a reasonable notice period.

(c) *Delegation of Pricing Authority.* A Bank that has delegated its AMA pricing function to another Bank shall retain a right to refuse to acquire AMA at prices it does not consider appropriate.

§ 955.6 Risk-based capital requirement for acquired member assets.

(a) *General.* Each Bank shall hold retained earnings plus general allowance for losses as support for the credit risk of all AMA estimated by the Bank to represent a credit risk that is greater than that of comparable instruments that have received the second highest credit rating from an NRSRO in an amount equal to or greater than the outstanding balance of the assets or pools of assets times a factor associated with the putative credit rating of the assets or pools of assets as determined by the Finance Board on a case-by-case basis. For single-family mortgage assets, the factors are as set forth in Table 1 of this part.

TABLE 1

Putative rating of single-family mortgage assets	Percentage applicable to on-balance sheet equivalent value of AMA
Third Highest Investment Grade	0.90
Fourth Highest Investment Grade	1.50
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade	2.25
Second Highest Below Investment Grade	2.60
All Other Below Investment Grade	100.00

(b) *Recalculation of credit enhancement.* For risk-based capital purposes, each Bank shall recalculate the estimated credit rating of a pool of AMA if there is evidence that a decline in the credit quality of that pool may have occurred.

Appendix A to Part 955—Reporting Requirements for Single-Family Acquired Member Assets That Are Residential Mortgages: Loan-Level Data Elements

1. *Bank District Flag*—Two-digit numeric code designating the District Bank that originally acquired the loan.

2. *Participating Bank District Flag*—Two-digit numeric code designating the District Bank that purchased a participation in the loan.

3. *Loan Number*—Unique numeric identifier used by the Banks for each mortgage acquisition.

4. *US Postal State*—Two-digit numeric Federal Information Processing Standard (FIPS) code.

5. *US Postal Zip Code*—Five-digit zip code for the property.

6. *MSA Code*—Four-digit numeric code for the property's metropolitan statistical area (MSA) if the property is located in an MSA.

7. *Place Code*—Five-digit numeric FIPS code.

8. *County*—County, as designated in the most recent decennial census by the Bureau of the Census.

9. *Census Tract/Block Numbering Area (BNA)*—Tract/BNA number as used in the most recent decennial census by the Bureau of the Census.

10. *Census Tract-Percent Minority*—Percentage of a census tract's population that is minority based on the most recent decennial census by the Bureau of the Census.

11. *Census Tract-Median Income*—Median family income for the census tract based on the most recent decennial census.

12. *Local Area Median Income*—Median income for the area based on the most recent decennial census.

13. *Tract Income Ratio*—Ratio of the census tract median income based on the most recent decennial census to that year's local area median income (*i.e.*, loan-level data element number 11 divided by loan-level data element number 12).

14. *Borrower(s) Annual Income*—Combined income of all borrowers.

15. *Area Median Family Income*—Current median family income for a family of four for the area as established by HUD.

16. *Borrower Income Ratio*—Ratio of Borrower(s) annual income to area median family income.

17. *Acquisition Unpaid Principal Balance (UPB)*—UPB in whole dollars of the mortgage when acquired by the Bank.

18. *Loan-to-Value (LTV) Ratio at Origination*—LTV ratio of the mortgage at the time of origination.

19. *Participation Percentage*—Where the mortgage acquisition is a participation, the percentage of the mortgage for each Bank listed in loan-level data element number 2.

20. *Date of Mortgage Note*—Date the mortgage note was created.

21. *Date of Acquisition*—Date the Bank acquired the mortgage.

22. *Purpose of Loan*—Indicates whether the mortgage was a purchase money mortgage, a refinancing, a construction mortgage, or a financing of property rehabilitation.

23. *Cooperative Unit Mortgage*—Indicates whether the mortgage is on a dwelling unit in a cooperative housing building.

24. *Product Type*—Indicates the product type of the mortgage (*i.e.*, fixed rate, adjustable rate mortgage (ARM), balloon, graduated payment mortgage (GPM) or growing equity mortgages (GEM), reverse annuity mortgage, or other).

25. *Federal Guarantee*—Numeric code that indicates whether the mortgage has a Federal guarantee, and from which agency.

26. *Term of Mortgage at Origination*—Term of the mortgage at the time of origination in months.

27. *Amortization Term*—For amortizing mortgages, the amortization term of the mortgage in months.

28. *Acquiring Lender Institution*—Name of the institution from which the Bank acquired the mortgage.

29. *Acquiring Lender City*—City location of the institution from which the Bank acquired the mortgage.

30. *Acquiring Lender State*—State location of the institution from which the Bank acquired the mortgage.

31. *Type of Acquiring Lender Institution*—Type of institution that the Bank acquired the mortgage from (*i.e.*, mortgage company, Savings Association Insurance Fund (SAIF) insured depositary institution, Bank Insurance Fund (BIF) insured depositary institution, National Credit Union Association (NCUA) insured credit union, or other seller).

32. *Number of Borrowers*—Number of borrowers.

33. *First-Time Home Buyer*—Numeric code indicating whether the mortgagor(s) are first-time homebuyers (second mortgages and refinancings are not treated as first-time homebuyers).

34. *Mortgage Purchased under the Banks' Community Investment Cash Advances (CICA) Programs*—Indicates whether the mortgage is on a project funded under an AHP, CIP or other CICA program.

35. *Acquisition Type*—Indicates whether the Bank acquired the mortgage with cash, by swap, with a credit enhancement, a bond or debt purchase, reinsurance, risk-sharing, real estate investment trust (REIT), or a real estate mortgage investment conduit (REMIC), or other.

36. *Bank Real Estate Owned*—Indicates whether the mortgage is on a property that was in the Bank's real estate owned (REO) inventory.

37. *Borrower Race or National Origin*—Numeric code indicating the race or national origin of the borrower.

38. *Co-Borrower Race or National Origin*—Numeric code indicating the race or national origin of the co-borrower.

39. *Borrower Gender*—Numeric code that indicates whether the borrower is male or female.

40. *Co-Borrower Gender*—Numeric code that indicates whether the co-borrower is male or female.

41. *Age of Borrower*—Age of borrower in years.

42. *Age of Co-Borrower*—Age of co-borrower in years.

43. *Occupancy Code*—Indicates whether the mortgaged property is an owner-occupied principal residence, a second home, or a rental investment property.

44. *Number of Units*—Indicates the number of units in the mortgaged property.

45. *Unit—Number of Bedrooms*—Where the property contains non-owner-occupied dwelling units, the number of bedrooms in each of those units.

46. *Unit—Affordable Category*—Where the property contains non-owner-occupied dwelling units, indicates under which, if any, of the special affordable goals the units qualified.

47. *Unit—Reported Rent Level*—Where the property contains non-owner-occupied dwelling units, the rent level for each unit in whole dollars.

48. *Unit—Reported Rent Plus Utilities*—Where the property contains non-owner-occupied dwelling units, the rent level plus the utility cost for each unit in whole dollars.

49. *Unit—Owner Occupied*—Indicates whether each of the units are owner-occupied.

50. *Geographically Targeted Indicator*—Numeric code that indicates loans made in census tracts classified as underserved by HUD.

51. *Interest Rate*—Note rate on the loan.

52. *Loan Amount*—Loan balance at origination.

53. *Front-end Ratio*—Ratio of principal, interest, taxes, and insurance to borrower(s) income.

54. *Back-end Ratio*—Ratio of all debt payments to borrower(s) income.

55. *Borrower FICO Score*—Fair, Isaacs, Co. credit score of borrower.

56. *Co-Borrower FICO Score*—Fair, Isaacs, Co. credit score of co-borrower.

57. *PMI Percent*—Percent of original loan balance covered by private mortgage insurance.

58. *Credit Enhancement*—Numeric code indicating type of credit enhancement.

59. *Self-Employed Indicator*—Numeric indicator for whether the borrower is self-employed.

60. *Property Type*—Numeric indicator for whether the property is single-family detached, condominium, townhouse, PUD, etc.

61. *Default Status*—Numeric indicator for whether the loan is currently in default.

62. *Termination Date*—Date on which the loan terminated.

63. *Termination Type*—Numeric indicator for whether the loan terminated in a prepayment, foreclosure, or other types of termination.

64. *ARM Index*—Index used for the calculation of interest on an ARM.

65. *ARM margin*—Margin added to the index for calculation of the interest on an ARM.

66. *Prepayment Penalty Terms*—Numeric indicator for types of prepayment penalties.

Appendix B to Part 955—Reporting Requirements for Multi-Family Acquired Member Assets That Are Residential Mortgages: Loan-Level Data Elements

1. *Bank District Flag*—Two-digit numeric code designating the District Bank that originally acquired the loan.

2. *Participating Bank District Flag*—Two-digit numeric code designating the District Bank that purchased a participation in the loan.

3. *Loan Number*—Unique numeric identifier used by the Banks for each mortgage acquisition.

4. *US Postal State*—Two-digit numeric Federal Information Processing Standard (FIPS) code.

5. *US Postal Zip Code*—Five-digit zip code for the property.

6. *MSA Code*—Four-digit numeric code for the property's metropolitan statistical area (MSA) if the property is located in an MSA.

7. *Place Code*—Five-digit numeric FIPS code.

8. *County*—County, as designated in the most recent decennial census by the Bureau of the Census.

9. *Census Tract/Block Numbering Area (BNA)*—Tract/BNA number as used in the most recent decennial census by the Bureau of the Census.

10. *Census Tract-Percent Minority*—Percentage of a census tract's population that is minority based on the most recent decennial census by the Bureau of the Census.

11. *Census Tract-Median Income*—Median family income for the census tract based on the most recent decennial census.

12. *Local Area Median Income*—Median income for the area based on the most recent decennial census.

13. *Tract Income Ratio*—Ratio of the census tract median income based on the most recent decennial census to that year's local area median income (*i.e.*, loan-level data element number 11 divided by loan-level data element number 12).

14. *Area Median Family Income*—Current median family income for a family of four for the area as established by HUD.

15. *Affordability Category*—Indicates under which, if any, of the special affordable goals mandated by HUD for Fannie Mae and Freddie Mac, the property would qualify.

16. *Acquisition Unpaid Principal Balance (UPB)*—UPB in whole dollars of the mortgage when purchased by the Bank.

17. *Loan-to-Value (LTV) Ratio at Origination*—LTV ratio of the mortgage at the time of origination.

18. *Participation Percentage*—Where the mortgage acquisition is a participation, the percentage of the mortgage when the note was created for each Bank listed in loan-level data element number 2.

19. *Date of Mortgage Note*—Date the mortgage note was created.

20. *Date of Acquisition*—Date the Bank acquired the mortgage.

21. *Purpose of Loan*—Indicates whether the mortgage was a purchase money mortgage, a refinancing, a construction mortgage, or a financing of property rehabilitation.

22. *Cooperative Project Loan*—Indicates whether the mortgage is a project loan on a cooperative housing building.

23. *Mortgagor Type*—Indicates the type of mortgagor (*i.e.*, an individual, a for-profit entity such as a corporation or partnership, a nonprofit entity such as a corporation or partnership, a public entity, or other type of entity).

24. *Product Type*—Indicates the product type of the mortgage (*i.e.*, fixed rate, adjustable rate mortgage (ARM), balloon, graduated payment mortgage (GPM) or growing equity mortgages (GEM), reverse annuity mortgage, or other).

25. *Construction Loan*—Indicates whether the mortgage is for a construction loan.

26. *Government Insurance*—Indicates whether any part of the mortgage has government insurance.

27. *FHA Risk Share Percent*—The percentage of the risk assumed for the mortgage purchased under a risk-sharing arrangement with FHA.

28. *Mortgage Purchased under the Banks' Community Investment Cash Advances (CICA) Programs*—Indicates whether the mortgage is on a project under an AHP, CIP or other CICA program.

29. *Acquisition Type*—Indicates whether the FHLBank acquired the mortgage with cash, by swap, with a credit enhancement, a bond or debt purchase, reinsurance, risk-sharing, real estate investment trust (REIT), or a real estate mortgage investment conduit (REMIC), or other.

30. *Term of Mortgage at Origination*—Term of the mortgage at the time of origination in months.

31. *Amortization Term*—For amortizing mortgages, the amortization term of the mortgage in months.

32. *Acquiring Lender Institution*—Name of the entity from which the Bank acquired the mortgage.

33. *Acquiring Lender City*—City location of the entity from which the Bank acquired the mortgage.

34. *Acquiring Lender State*—State location of the institution from which the Bank acquired the mortgage.

35. *Type of Acquiring Lender Institution*—Type of institution that the Bank acquired the mortgage from (*i.e.*, mortgage company, Savings Association Insurance Fund (SAIF) insured depositary institution, Bank Insurance Fund (BIF) insured depositary institution, National Credit Union Association (NCUA) insured credit union, or other seller).

36. *Bank Real Estate Owned*—Indicates whether the mortgage is on a property that was in the Bank's real estate owned (REO) inventory.

37. *Number of Units*—Indicates the number of units in the mortgaged property.

38. *Geographically Targeted Indicator*—Numeric code that indicates loans made in census tracts classified as underserved by HUD.

39. *Public Subsidy Program*—Indicates whether the mortgage property is involved in a public subsidy program and which level(s) of government are involved in the subsidy program (*i.e.*, Federal government only, other only, Federal government, etc.).

40. *Unit Class Level*—The following data apply to unit types in a particular mortgaged property. The unit types are defined by the Banks for each property and are differentiated based on the number of bedrooms in the units and on the average contract rent for the units. A unit type must be included for each bedroom size category in the property;

A. Unit Type XX-Number of Bedroom(s)—the number of bedrooms in the unit type;

B. Unit Type XX-Number of Units—the number of units in the property within the unit type;

C. Unite Type XX-Average Reported Rent Level—the average rent level for the unit type in whole dollars; and

D. Unit Type XX-Average Reported Rent Plus Utilities—the average reported rent level plus the utility cost for each unit in whole dollars; and

E. Unit Type XX-Affordability Level—the ratio of the average reported rent plus utilities for the unit type to the adjusted area median income;

F. Unit Type XX-Tenant Income Indicator—indicates whether the tenant's income is less than 60 percent of area median income, greater than or equal to 60 percent but less than 80 percent of area median income, greater than or equal to 80 percent but less than 100 percent of area median income, or greater than or equal to 100 percent of area median income.

41. *Interest Rate*—Note rate on the loan.

42. *Debt Service Coverage Ratio*—Ratio of net operating income to debt service.

43. *Total Number of Units*—Indicates the number of dwelling units in the mortgaged property.

44. *Default Status*—Numeric indicator for whether the loan is currently in default.

45. *Termination Date*—Date on which the loan terminated.

46. *Termination Type*—Numeric indicator fo whether the loan terminated in a prepayment, foreclosure, or other types of termination.

47. *ARM Index*—Index used for the calculation of interest on an ARM.

48. *ARM margin*—Margin added to the index for calculation of the interest on an ARM.

49. *Prepayment Penalty Terms*—Numeric indicator for types of prepayment penalties.

10. In subchapter G, revise part 956 to read as follows:

PART 956—FEDERAL HOME LOAN BANK INVESTMENTS

Sec.

956.1 Definitions.
956.2 Authorized investments.
956.3 Prohibited investments and prudential rules.
956.4 Risk-based capital requirement for investments.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1431, 1436.

§ 956.1 Definitions.

As used in this part:

Deposits in banks or trust companies has the meaning set forth in § 969.3 of this chapter.

Financial Management Policy means the Financial Management Policy For The Federal Home Loan Bank System approved by the Finance Board pursuant to Finance Board Resolution No. 96–45 (July 3, 1996), as amended by Finance Board Resolution No. 96–90 (Dec, 6, 1996), Finance Board Resolution No. 97–05 (Jan. 14, 1997), and Finance Board Resolution No. 97–86 (Dec. 17, 1997).

GAAP means Generally Accepted Accounting Principles.

Investment grade means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest credit rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or other similar standards.

NRSRO has the meaning set forth in § 966.1 of this chapter.

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§ 956.2 Authorized investments.

In addition to assets enumerated in parts 950 and 955 of this chapter and subject to the applicable limitations set forth in this part, in the Financial Management Policy and in part 980 of this chapter, each Bank may invest in:

(a) Obligations of the United States;

(b) Deposits in banks or trust companies;

(c) Obligations, participations or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

(d) Mortgages, obligations, or other securities that are, or ever have been, sold by the Federal Home Loan Mortgage Corporation pursuant to 12 U.S.C. 1454 or 1455;

(e) Stock, obligations, or other securities of any small business investment company formed pursuant to 15 U.S.C. 681(d), to the extent such investment is made for purposes of aiding members of the Bank; and

(f) Instruments that the Bank has determined are permissible investments for fiduciary or trust funds under the laws of the state in which the Bank is located.

§ 956.3 Prohibited investments and prudential rules.

(a) *Prohibited investments.* A Bank may not invest in:

(1) Instruments that provide an ownership interest in an entity, except for investments described in § § 940.3(e) and (f) of this chapter;

(2) Instruments issued by non-United States entities, except United States branches and agency offices of foreign commercial banks;

(3) Debt instruments that are not rated as investment grade, except:

(i) Investments described in § 940.3(e) of this chapter;

(ii) Debt instruments that were downgraded to a below investment grade rating after acquisition by the Bank; or

(4) Whole mortgages or other whole loans, or interests in mortgages or loans, except:

(i) Acquired member assets;

(ii) Investments described in § 940.3(e) of this chapter;

(iii) Marketable direct obligations of state, local, or tribal government units or agencies, having at least the second highest credit rating from a NRSRO, where the purchase of such obligations by the Bank provides to the issuer the customized terms, necessary liquidity, or favorable pricing required to generate needed funding for housing or community lending;

(iv) Mortgage-backed securities, or asset-backed securities collateralized by manufactured housing loans or home equity loans, that meet the definition of the term "securities" under 15 U.S.C. 77b(a)(1); and

(v) Loans held or acquired pursuant to section 12(b) of the Act (12 U.S.C. 1432(b)).

(b) *Foreign currency or commodity positions prohibited.* A Bank may not take a position in any commodity or foreign currency. If a Bank participates in consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, the currency, commodity and equity risks must be hedged.

§ 956.4 Risk-based capital requirement for investments.

Each Bank shall hold retained earnings plus general allowance for losses as support for the credit risk of all investments that are not rated by a NRSRO, or are rated or have a putative rating below the second highest credit rating, in an amount equal to or greater than the outstanding balance of the investments multiplied by:

(a) A factor associated with the credit rating of the investments as determined by the Finance Board on a case-by-case basis for rated assets to be sufficient to raise the credit quality of the asset to the second highest credit rating category; and

(b) 0.08 for assets having neither a putative nor actual rating.

PART 966—CONSOLIDATED OBLIGATIONS

11. The authority citation of part 966 continue to read as follows:

Authority: 12 U.S.C. 1442a, 1422b, and 1431.

12. Amend section 966.1 by removing the definition of the term "NRSRO".

Dated: June 29, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–17663 Filed 7–14–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–100–7390a; FRL–6735–3]

Approval and Promulgation of Implementation Plans; Texas; Permitting of New and Modified Sources in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP) for the permitting of new major sources and major modifications in areas which do not meet the national ambient air quality standards (NAAQS) promulgated by EPA (nonattainment areas). The EPA is approving these revisions to satisfy the provisions of the Clean Air Act (Act) which relate to the permitting of new and modified sources which are located in nonattainment areas. Today's action approves the recodification of and revisions to the nonattainment permitting regulations. Today's action also approves revisions relating to when nonattainment area permitting requirements apply to emissions of nitrogen oxides (NO_X) as a precursor to ozone in an ozone nonattainment area.

EFFECTIVE DATE: This rule is effective on August 16, 2000.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell of EPA Region 6 Air Permits Section at (214) 665–7212 at the address above, or at spruiell.stanley@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" means EPA.

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I. What Action Are We Taking?

We are finalizing our approval of the recodification of and revisions to Title 30, Texas Administrative Code (TAC) Chapter 116, "Control of Air Pollution by Permits for New Construction or Modification," as indicated in Table 1 below:

TABLE 1.—REGULATIONS THAT EPA IS APPROVING

Recodified section of 30 TAC chapter 116	Submittal dates of recodified section	Title or description	Former section of 30 TAC chapter 116
Section 116.12	August 31, 1993 July 18, 1996 April 13, 1998 March 16, 1999	Nonattainment Review Definitions	Section 101.1.
Section 116.150	August 31, 1993 November 1, 1995 April 13, 1998 March 16, 1999	New Major Source or Major Modification in Ozone Nonattainment Areas.	Section 116.3(a)(7) and (8).
Section 116.151	August 31, 1993 April 13, 1998	New Major Source or Major Modification in Nonattainment Area Other than Ozone.	Section 116.3(a)(10).
Section 116.170	August 31, 1993	Applicability for Reduction Credits	Section 116.3(c).

This proposal includes portions of revisions submitted by the Governor of Texas to EPA on the following dates:

- August 31, 1993.
- November 1, 1995.
- July 18, 1996.
- April 13, 1998.
- March 16, 1999.

We are taking this rulemaking action under sections 110, 301 and part D of the Act. We are acting only on those parts of these submittals which relate to permitting sources in nonattainment areas.

II. What Is the Background for This Action?

On January 18, 2000, we published a notice of proposed rulemaking (NPR) proposing full approval of the recodification of and revisions to Texas' regulations for the permitting of new major sources and major modifications in nonattainment areas. The Governor submitted revisions to these nonattainment area permitting requirements as described above.

As explained in the NPR, we have determined that Texas' recodification of and revisions to its nonattainment permitting requirements continue to meet the requirements of part D of the Act and 40 CFR 51.165 (Permit Requirements). The NPR provided opportunity for the public to comment on the proposed action. The public comment period for our action ended February 17, 2000. We received no comments on the NPR. As a result, we are finalizing our proposed approval without changes. For more details on these submittals, please refer to the proposed rulemaking.

III. What Did Texas Submit?

Table 2 below summarizes each individual SIP submittal that we are approving in today's action.

TABLE 2.—SUMMARY OF EACH INDIVIDUAL SIP SUBMITTAL

Date adopted by state	Date submitted to EPA	Description of SIP submittal
August 16, 1993	August 31, 1993	Recodification and revisions to SIP relating to permitting under part D of the Act. This includes submittal of the following recodified Sections of Chapter 116: —Section 116.12, —Section 116.150, and —116.151, and —Section 116.170(1) and (3).
October 26, 1995	November 1, 1995	Revisions to Section 116.150 to address nonattainment permitting requirements for NO_X (as an ozone precursor) in the Dallas-Fort Worth, El Paso, Houston-Galveston, and Beaumont-Port Arthur ozone nonattainment areas consistent with waivers approved by EPA pursuant to section 182(f) of the Act.
May 15, 1996	July 18, 1996	Revisions to Table I of Section 116.12 to conform to NO_X waivers approved by EPA pursuant to section 182(f) of the Act.
March 18, 1998	April 13, 1998	Revisions to Sections 116.12, Table I of Section 116.12, and 116.150, and 116.151. Texas revised the SIP to reinstate NO_X as an ozone precursor in the Houston-Galveston and Beaumont-Port Arthur ozone nonattainment areas.
February 24, 1999	March 16, 1999	Revisions to Chapter 116, which reinstate the requirement to review NO_X as an ozone precursor in the Dallas-Fort Worth ozone nonattainment area.

IV. What Are the Federal Requirements for Permitting Major Sources and Major Modifications in Nonattainment Areas?

A. What Are the Statutory Requirements for Permitting Major Sources and Major Modifications in Nonattainment Areas?

The statutory requirements governing permitting in nonattainment areas are in part D of the Act. Specifically, the Act requires that a major source or major modification meet the criteria in Table 3 below.

TABLE 3.—SUMMARY OF REQUIREMENT FOR PERMITTING MAJOR SOURCES AND MAJOR MODIFICATIONS IN NONATTAINMENT AREAS

Requirement of Act	Where specified in the Act	Citation in state regulations
Base emissions offsets on the same emissions baseline used in the demonstration of reasonable further progress..	Section 173(a)(1)(A)	Section 116.150(a)(4), Section 116.151(3).
Apply Lowest Achievable Emission Rate (LAER)	Section 173(a)(2)	Section 116.150(a)(1), Section 116.151(1).
Demonstrate that all other major stationary sources under the same ownership or operation in the State are complying with the Act.	Section 173(a)(3)	Section 116.150(a)(2), Section 116.151(2).
State cannot issue a permit if the EPA Administrator finds that the State is not adequately enforcing the provisions of the applicable implementation plan for the nonattainment area in which the source proposes to construct or modify.	Section 173(a)(4)	The EPA has made no such determination for Texas. If EPA makes this determination in the future, EPA will address this matter with Texas at that time.
• Analyze alternative sites, sizes, production processes, and environmental control techniques for proposed sources. • Demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs associated with its location, construction, or modification.	Section 173(a)(5)	Section 116.150(a)(4). Section 116.151(4).
Prohibits use of growth allowance included in a SIP prior to the Act Amendments of 1990 in an area which receives notice that such plan is substantially inadequate.	Section 173(b)	Not Applicable.
A sources may obtain offsets in another nonattainment area under the following conditions. • The area in which the offsetting reductions originate has an equal or higher nonattainment classification, and. • The emissions from the nonattainment area where the offsetting reductions originate will contribute to a NAAQS violation in the area in which the source would construct.	Section 173(c)(1)	Section 116.150(a)(3). Section 116.151(3).
A new or modified major stationary source must offset a proposed emissions increase with real reductions in actual emissions.	Section 173(c)(1)	Section 116.150(a)(3). Section 116.151(3). Section 116.12(14)—Definition of "Offset ratio".
Must not use emission reductions otherwise required by the Act	Section 173(c)(2)	Section 116.170(1).
A State may allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning.	Section 173(e)	Section 116.170(3).

B. Who Is Affected by This Action?

The requirements described in Table 3 above apply to each owner and/or operator who constructs or modifies a stationary source in a nonattainment area in Texas if the stationary source is major for the air pollutant for which the area is nonattainment. A stationary source is major if it emits, or has the potential to emit, the nonattaining pollutant, or precursor thereto, in amounts greater than the major source threshold for the nonattaining pollutant.

C. What Are the Major Source Thresholds for Nonattainment Pollutants?

The major source threshold varies, depending on the pollutant and the classification of the nonattainment area. Any owner or operator who proposes to construct a major stationary source must obtain a permit which complies with the regulations that we are approving herein. Table 4 below lists the major source threshold for each pollutant.

TABLE 4.—MAJOR SOURCE THRESHOLDS

Pollutant: classification	Major source threshold in tons per year (TPY)	Where specified in the Act
Ozone:		
Marginal	100 of volatile organic compounds (VOC) or NO_X	Section 302(j).
Moderate	100 of VOC or NO_X	Section 302(j).
Serious	50 of VOC or NO_X	Section 182(c).
Severe	25 of VOC or NO_X	Section 182(d).

TABLE 4.—MAJOR SOURCE THRESHOLDS—Continued

Pollutant: classification	Major source threshold in tons per year (TPY)	Where specified in the Act
Carbon monoxide (CO):		
Moderate	100	Section 302(j).
Serious	50	Section 187(c)(1).
Particulate matter less than 10 micrometers (PM–10):		
Moderate	100	Section 302(j).
Serious	70	Section 189(b)(3).
Sulfur dioxide (SO_2)	100	Section 302(j).
NO_X	100	Section 302(j).
Lead	100	Section 302(j).

Table 4 above refers to classifications for areas designated nonattainment for ozone, CO, and PM–10. These nonattainment classifications are defined in the Act as follows:

• Section 181(a) defines five area classifications for ozone. These five classifications are marginal, moderate, serious, severe, and extreme. Texas has no extreme ozone nonattainment areas and does not address such areas in its regulations.

• Section 186(a) defines two area classifications for CO. These two classifications are moderate and serious.

• Section 188 defines two area classifications for PM–10. These two classifications are moderate and serious.

A detailed description of the individual area classifications for ozone, CO, and PM–10 nonattainment areas is contained in EPA's General Preamble for the Implementation of Title I of the 1990 Amendments, 57 FR 13498 (April 16, 1992).

D. What Is a Major Modification?

A major modification is any physical change, or change in the method of operating, a major stationary source which significantly increases net emissions of the air pollutant, or precursor, for which the area is nonattainment and for which the source is a major source before the modification.

Any owner or operator who proposes a major modification must obtain a permit that complies with the regulations that we are approving herein. Table 5 below lists the significance level for each pollutant which is used in determining whether a net emissions increase is a major modification.

TABLE 5.—SIGNIFICANCE LEVELS FOR MAJOR MODIFICATIONS

Pollutant: Classification	Significance level in TPY	Where specified in the Act or regulations
Ozone:		
Marginal	40 of VOC or NO_X	40 CFR 51.165(a)(x).
Moderate	40 of VOC or NO_X	40 CFR 51.165(a)(x).
Serious	25 of VOC or NO_X	Section 182(c)(6) of the Act.
Severe	25 of VOC or NO_X	Section 182(c)(6) of the Act.
CO:		
Moderate	100	40 CFR 51.165(a)(x).
Serious	50	a.
PM–10:		
Moderate	15	a.
Serious	15	a.
SO_2	40	40 CFR 51.165(a)(x).
NO_X	40	40 CFR 51.165(a)(x).
Lead	0.6	40 CFR 51.165(a)(x).

a—No significance level is specified in the Act nor in the regulations. The significance levels specified in Table 5 are the significance levels that we approved for Texas on September 27, 1995 (60 FR 49781).

The major source thresholds and significance thresholds in Tables 4 and 5 above are required by Texas in section 116.12—Definition of "major modification," Table I.

E. What Are the Offset Requirements in Ozone Nonattainment Areas?

Section 182 of the Act also specifies the offset ratios that are required for marginal, moderate, serious, severe and extreme ozone nonattainment areas. Table 6 below lists the applicable offset ratio for each type of ozone nonattainment area.

TABLE 6.—OFFSET RATIOS FOR EACH TYPE OF OZONE NONATTAINMENT AREA

Ozone nonattainment classification	Offset ratio	Clean Air Act citation for offset ratio
Marginal	1.10 to 1	Section 182(a)(4).
Moderate	1.15 to 1	Section 182(b)(5).
Serious	1.20 to 1	Section 182(c)(10).
Severe	1.30 to 1	Section 182(d)(2).

The offset ratios in Table 6 above are required by Texas in section 116.12—Definition of "major modification," Table I.

F. Does the Act Have Other Provisions That Apply in Serious and Severe Ozone Nonattainment Areas?

Sections 182(c)(6), (7), and (8) of the Act contain provisions which apply to modifications at major sources located in serious and severe ozone nonattainment areas.

Tables 7 and 8 below summarize the requirements of sections 182(c)(6), (7), and (8) and describe how Texas addresses these requirements in Chapter 116. The reader should refer to the NPR which contains detailed discussions of the Act's requirements and our analysis of how Chapter 116 meets these requirements of the Act.

TABLE 7.—REQUIREMENTS OF THE ACT FOR OZONE NONATTAINMENT AREAS

Section of Act	Summary of Act's requirement	Section of chapter 116 which addresses Act's requirement	Summary of requirement of chapter 116
Section 182(c)(6)—*De minimis rule.*	*Netting Trigger.* The source determines the "increase in net emissions" from the proposed modification. The net emissions from the proposed modification (the "project net") is the sum of all proposed creditable emissions increases and decreases proposed at the source between: (A) the date of application for the modification and (B) the date the modification begins emitting. An increase or decrease is creditable if it meets the criteria described in 40 CFR 51.165(a)(1)(vi).	Section 116.150	*Netting Trigger.* Proposed project triggers contemporaneous netting unless the proposed project meets at least one of the following conditions: —The proposed increase is less than five TPY without consideration of other decreases at the source, or —The "project net" is zero or less. Texas definition of "project net" in Section 116.12 is consistent with that term as described in the second column of this Table.
Section 182(c)(6)—*De minimis* rule.	*Contemporaneous Period.* If the project net is an emissions increase, then the source aggregates the project net emissions increase with all other "net increases in emissions from the source" over a period of five consecutive calendar years which includes the year in which the source increase occurs (the "contemporaneous net"). If the contemporaneous net increase is greater than 25 TPY, then the proposed modification is subject to nonattainment new source review (NNSR).	Section 116.12. Definition of "contemporaneous period".	*Contemporaneous Period.* As described in Table 8 below.
Section 182(c)(7)—Special rule for modifications of sources emitting less than 100 tons per year.	Project is not a modification subject to NNSR if source elects to internally offset the same pollutant at an offset ratio of at least 1.3 to 1 the proposed increase of VOC or NO_X[a].	Section 116.150(a)(3)(A).	NNSR is not required if the project increases are offset with internal offsets of the same pollutant at a ratio of at least 1.3 to 1.
	Best available control technology (BACT) is substituted for LAER, if a source elects not to use internal offsets.	Section 116.150(a)(1)	If source elects not to use internal offsets, it can substitute BACT for LAER.
Section 182(c)(8)—Special rule for modifications of sources emitting 100 tons per year or more.	The requirements of LAER otherwise required by section 173(a)(2) of the Act do not apply, if the source elects to internally offset the same pollutant at 1.3 to 1 such proposed increase of VOC or NO_X[a].	Section 116.150(a)(3)(B).	Source can substitute BACT for LAER, if the project increases are offset with internal offsets of the same pollutant at a ratio of at least 1.3 to 1.
	A source which elects to avoid LAER by satisfying the provisions of section 182(c)(8) may use the 1.3 to 1 internal offset ratio in lieu of the general offset ratio.	Section 116.150(a)(3)(B).	Internal offsets used as described above can also be applied to satisfy the offset requirement.

[a] Applies to a proposed increase of VOC or NO_X from any discrete operation, unit, or other pollutant emitting activity at the source.

TABLE 8.—DESCRIPTION OF TEXAS' CONTEMPORANEOUS PERIODS

Pollutant	Contemporaneous period begins	Contemporaneous period ends
If source has potential to emit (PTE) less than 250 TPY		
VOC	Five years before commencement of construction	Date that new or modified source begins operation.
NO_X	Latter of	Date that new or modified source begins operation.
	—November 15, 1992, or	
	—Five years before commencement of construction	

TABLE 8.—DESCRIPTION OF TEXAS' CONTEMPORANEOUS PERIODS—Continued

Pollutant	Contemporaneous period begins	Contemporaneous period ends
	If source has PTE equal to or greater than 250 TPY	
VOC	The earlier of —Five years before commencement of construction, or —November 15, 1992	Date that new or modified source begins operation.
NO_X	November 15, 1992	Date that new or modified source begins operation.

V. Summary of Texas' 182(f) NO_X Waivers

A. What Does Section 182(f) of the Act Require?

Section 182(f) sets forth the presumption that NO_X is an ozone precursor unless the Administrator makes a finding of nonapplicability or grants a waiver pursuant to criteria contained therein. Specifically, section 182(f) provides that requirements applicable for major stationary sources of VOC shall apply to major stationary sources of NO_X, unless otherwise determined by the Administrator, based upon certain determinations related to the benefits or contribution of NO_X control to air quality, ozone attainment, or ozone air quality.

B. Did We Approve NO_X Waivers in Texas?

We approved petitions submitted by Texas under section 182(f) to waive NO_X provisions in Texas, as follows:

- On November 28, 1994, we conditionally approved two petitions from Texas, each dated June 17, 1994. This action exempted Dallas-Fort Worth (DFW) [1] and El Paso (ELP) [2] ozone nonattainment areas from NO_X control requirements of section 182(f) of the Act. *See* 59 FR 60709.
- On April 19, 1995, we approved a petition from Texas dated August 17, 1994. This action temporarily exempted the Houston-Galveston (HGA) [3] and Beaumont-Port Arthur (BPA) [4] ozone nonattainment areas from the NO_X control requirements of section 182(f) of the Act. These temporary exemptions expired December 31, 1996. *See* 60 FR 19515.
- On May 23, 1997, we approved a petition from Texas dated March 8, 1996, to extend the NO_X waiver in HGA and BPA until December 31, 1997. *See* 62 FR 28344.
- On April 20, 1999, we approved a petition from Texas dated November 13, 1998, to rescind the conditional NO_X exemption for the DFW ozone nonattainment area. Texas petitioned for rescission of the exemption after EPA reclassified DFW from a moderate ozone nonattainment area to a serious ozone nonattainment area. The modeling for this serious ozone nonattainment area SIP shows that control of NO_X sources will help the area to attain the air quality standard for ozone. See 64 FR 19283.

C. What Is the Current Status of Texas NO_X Waivers?

On December 31, 1997, the NO_X waiver in HGA and BPA expired. On February 12, 1998, we published a document in the **Federal Register** concerning Texas' decision not to petition for further extension of the NO_X exemption in the HGA and BPA areas. *See* 63 FR 7071. Since the extension of the temporary exemption expired on December 31, 1997, the State must implement the numerous requirements relating to NO_X in the HGA and BPA areas. Accordingly, any new source review (NSR) permits that Texas had not deemed to be administratively complete prior to January 1, 1998, must comply with the NO_X NSR requirements, consistent with the policy set forth in the EPA's NSR Supplemental Guidance memorandum dated September 3, 1992, from John Seitz, Director, EPA's Office of Air Quality Planning and Standards.

On February 18, 1998, we published our finding that the DFW nonattainment area has not attained the 1-hour ozone NAAQS by the applicable attainment date in the Act for moderate ozone nonattainment areas, November 15, 1996. As a result of this finding, the DFW ozone nonattainment area was reclassified by operation of law as a serious ozone nonattainment area, effective March 20, 1998. Texas was required to submit a new SIP, no later that March 20, 1999, addressing attainment of that standard by November 15, 1999. Texas submitted a revised plan on March 16, 1999, in satisfaction of this requirement.

In its revised plan, Texas again recognizes NO_X as an ozone precursor in the DFW nonattainment area. Texas also forwarded a petition to us on November 13, 1998, requesting that we withdraw the waiver for NO_X that we had approved on November 28, 1994, for the DFW nonattainment area. On April 20, 1999, we approved this petition and reinstated NO_X as an ozone precursor in the DFW nonattainment area.

D. What Rule Changes Did Texas Submit to Accommodate the Section 182(f) NO_X Waivers?

Texas submitted the following SIP revisions indicated in Table 9 below to incorporate the section 182(f) NO_X waivers and subsequent reinstatement for NO_X as an ozone precursor:

TABLE 9.—SUMMARY OF TEXAS SIP SUBMITTALS WHICH INCORPORATE THE SECTION 182(f) NO_X WAIVERS

Date of SIP submittal	Description
November 1, 1995	Texas submitted revisions to Section 116.150 to implement the NO_X waivers approved for the DAL, ELP, HGA, and BPA ozone nonattainment areas.
July 18, 1996	Texas submitted revisions to Table I in Section 116.12 [5] to remove NO_X as an ozone precursor, consistent with EPA's approval of the NO_X waivers.
April 13, 1998	Texas submitted revisions to Sections 116.12 (Table I) and 116.150(c), to reinstate NO_X as an ozone precursor in the HGA and BPA areas following the expiration of the temporary waivers for those areas on December 31, 1997.

[1] Includes the following Texas counties: Collin, Dallas, Denton, and Tarrant Counties in Texas

[2] Includes El Paso County in Texas

[3] Includes the following Texas counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

[4] Includes the following Texas counties: Hardin, Jefferson, and Orange Counties.

TABLE 9.—SUMMARY OF TEXAS SIP SUBMITTALS WHICH INCORPORATE THE SECTION 182(f) NO_X WAIVERS—Continued

Date of SIP submittal	Description
March 16, 1999	Texas submitted revisions to Sections 116.12 (definition of "major modification" and Table I) and 116.150(b), to again require NO_X to be treated as an ozone precursor in the DFW area.

[5] Table I of section 116.12 specifies the various classifications of nonattainment along with the associated emission levels which designate a major modification for those areas. A detailed discussion of the changes to Table I is included in section of the preamble describing the submitted definition of "major modification."

The above described revisions to section 116.150 are discussed in the following paragraphs.

E. What Are Texas' Provisions for Addressing NO_X Waivers in DFW and ELP?

Texas addresses the NO_X waivers for DFW and ELP in section 116.150(b) submitted November 1, 1995. section 116.150(b) is consistent with the NO_X waiver approved by EPA on November 28, 1994. Following the redesignation of DFW to a serious ozone nonattainment area, Texas revised section 116.150(b) to revoke applicability of the NO_X waiver in DFW. As revised, section 116.150(b) now identifies ELP as the only area in Texas where a section 182(f) waiver continues to apply. Texas submitted these revisions to section 116.150(b) on March 16, 1999.

F. What Are Texas' Provisions for Addressing NO_X Waivers in HGA and BPA?

Texas addresses the NO_X waivers for HGA and BPA in section 116.150(c) submitted November 1, 1995. This section temporarily removed the requirements relating to NO_X emissions (as an ozone precursor) in these areas.

Section 116.150(c) exempted NO_X from otherwise applicable nonattainment area permitting requirements [6] (except for NO_X offsets). The requirements for obtaining NO_X offsets continue to apply, and will be included in the source's permit. However, the requirement to obtain such offsets was held in abeyance until January 1, 1998.

Section 116.150(c) further required a source to document any proposed increase of NO_X equal to or greater than 40 TPY and submit documentation of netting calculations associated with the proposed increase, and the source must otherwise comply with the requirements of sections 116.150(a).

Texas submitted further revisions to section 116.150(c) on April 13, 1998. This submittal reinstates the NSR requirements for NO_X in HGA and BPA, effective January 1, 1998. The submittal further provides that sources with NO_X offsets in the HGA and BPA areas held in abeyance should have obtained the required NO_X offsets no later than January 1, 2000.

[6] Section 116.150(c) exempts NO_X from the application of lowest achievable emission rate, statewide compliance by all sources under common control with the applicant, and alternate site analysis, which are otherwise required by section 116.150(a)(1), (2), and (4), respectively.

VI. Why Can We Approve the Requested SIP Revisions?

Consistent with the above discussion and with the NPR we find that the NNSR regulations submitted by Texas meet the requirements of the Act. We therefore approve these regulations as revisions to the Texas SIP.

VII. Final Action

We are approving the revisions to 30 TAC Chapter 116 which relate to the permitting of major sources and major modifications in nonattainment areas. Specifically, for the reasons stated herein, we are approving sections 116.12, 116.150, 116.151, 116.170, and 116.170(1) and (3).

VIII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of

the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective August 16, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 5, 2000.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270(c) the first table is amended by deleting the entry for Section 101.1 Table I (Definitions—Major Source/Major Modification Emission Thresholds), revising the entries for Section 101.1 (Definitions) and for Section 116.03 (Consideration for Granting a Permit to Construct and Operate), and by adding new entries in numeric order to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval date	EPA approval date	Explanation
	Chapter 101—General Rules			
Section 101.1	Definitions	08/16/93	[07/17/00 and page number]	Ref 52.2299(c)(102) Note: Nonattainment review definitions repealed from 101.1 and added to 116.12.
*	*	*	*	*
	Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification			
*	*	*	*	*
Section 116.03	Consideration for Granting a Permit to Construct and Operate.	08/16/93	[07/17/00 and page number]	Ref 52.2299(c)(102) Note:(a)(7), (8), (9), (10), (11), and (12); (c); (d); and (e) NOT in SIP.
*	*	*	*	*
	Subchapter A—Definitions			
*	*	*	*	*
Section 116.12	Nonattainment Review Definitions	02/24/99	[07/17/00 and page number]	Includes Table I, Major Source/Major Modification Emission Thresholds.
*	*	*	*	*
	Subchapter B—New Source Review Permits Nonattainment Review			
Section 116.150	New Major Source or Major Modification in Ozone Nonattainment Area.	02/24/99	[07/17/00 and page number]	
Section 116.151	New Major Source or Major Modification in Nonattainment Area Other than Ozone.	03/18/98	[07/17/00 and page number]	
*	*	*	*	*
	Subchapter B—New Source Review Permits Emission Reductions: Offsets			
Section 116.170	Applicability for Reduction Credits	08/16/93	[07/17/00 and page number]	Note: 116.170(2) Not in SIP.

[FR Doc. 00–17876 Filed 7–14–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL53–200019(a); FRL–6735–6]

Approval and Promulgation of State Plans—Alabama: Approval of Revisions to the Alabama State Implementation Plan: Transportation Conformity Interagency Memorandum of Agreement; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: The United States Environmental Protection Agency (EPA) published in the Federal Register on May 11, 2000, a document approving the transportation conformity rule submitted by the Alabama Department of Environmental Management for the State of Alabama. The rule is being clarified and corrected to remove a sentence that was inadvertently included in the **Federal Register** document.

DATES: This correction is effective on July 17, 2000.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler at (404) 562–9042, sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION: The May 11, 2000, (65 FR 30358–30362) rulemaking included a statement in the first full paragraph in the first column on page 30360 that reads "The MOA is enforceable against the parties by their consent in the MOA to allow the Attorney General for the State of Alabama to sue any or all of the agencies for specific performance of other relief on behalf of the citizens of Alabama in parren patrial." The Federal requirements for conformity do not require that the Attorney General for a state have this legal authority. Since the State of Alabama's submittal does not contain any such provisions for the Alabama Attorney General, the preamble language is amended to delete this sentence in its entirety.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final

without prior proposal and opportunity for comment because we are merely correcting the preamble language in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of July 17, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the identification of plan for Alabama is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: June 30, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–18024 Filed 7–14–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 90 and 95

[ET Docket No. 99–255; PR Docket No. 92–235; FCC 00–211]

Wireless Medical Telemetry Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates new spectrum and establishes rules for a Wireless Medical Telemetry Service (WMTS) that allows potentially life-critical equipment to operate on an interference-protected basis. Medical telemetry equipment is used in hospitals and health care facilities to transmit patient measurement data, such as pulse and respiration rates to a nearby receiver, permitting greater patient mobility and increased comfort. This action will increase the reliability of medical telemetry equipment.

DATES EFFECTIVE: October 16, 2000.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 99–255 and PR Docket 92–235, FCC 00–211, adopted June 8, 2000, and released June 12, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Report and Order

1. The Report and Order establishes a new Wireless Medical Telemetry Service (WMTS) which will enhance the ability of health care providers to offer high quality and cost-effective care to patients with acute and chronic health care needs. This action addresses consumer concerns that medical telemetry devices are increasingly at risk of harmful interference due to more extensive use of spectrum resources by other applications. The Commission allocates 14 Megahertz (MHz) to WMTS on a primary basis, which will allow potentially life-critical medical telemetry equipment to operate on an interference-protected basis. The Commission also adopts service rules for WMTS that "license by rule" to minimize regulatory procedures to facilitate rapid deployment. Medical telemetry equipment is used in hospitals and health care facilities to transmit patient measurement data, such as pulse and respiration rates to a nearby receiver, permitting greater patient mobility and increased comfort. As this service permits remote monitoring of several patients simultaneously it could also potentially decrease health care costs. The Commission's action will improve the reliability of this vital service.

2. In the Notice of Proposed Rule Making (NPRM), 64 FR 41891, August 2, 1999, in this proceeding, we proposed to allocate spectrum where medical telemetry equipment could operate on a primary basis. We also proposed to establish a new Wireless Medical Telemetry Service (WMTS) under part

95 of the rules. The Commission's proposal was based on recommendations provided by the American Hospital Association's (AHA) Medical Telemetry Task Force, which was established in coordination with the FDA, in response to the incidence of interference to medical telemetry equipment from a DTV station.

Spectrum Allocation

3. We are making available 14 MHz of spectrum in three blocks located at 608–614 MHz, 1395–1400 MHz, and 1429–1432 MHz for wireless medical telemetry. In making available 14 MHz of spectrum, we note that these bands each have significant constraints, such that the entire allocation is unlikely to be available in any individual market. The 608–614 MHz band is constrained as a result of radio astronomy quiet zones, including some sites in large markets, and interference from adjacent TV channels. The remaining 8 MHz that we are allocating is constrained by adjacent band interference from high power radars located below 1390 MHz and grandfathered protected Federal sites. However, this allocation ensures that at least 6 MHz is available for WMTS in all locations, consistent with the AHA needs assessment, with at least some additional spectrum available to accommodate long term needs. We note that this is in fact significantly less than the amount of spectrum that is currently available to medical telemetry on an unprotected basis. However, we find that the benefits of a primary allocation dedicated to this service compensates for the reduced availability of spectrum. We wish to underscore that we do not anticipate any further allocations for medical telemetry devices and expect manufacturers and the health care community to ensure that this spectrum is used efficiently to meet long term needs. We also wish to note that this medical telemetry allocation is an exception to the approach we have been taking toward more flexible allocations that are not service specific. A specific allocation is necessary in this case to protect the public safety by providing spectrum where medical telemetry equipment can operate without interference. Further, it will resolve conflicts that have delayed the land mobile refarming and that are affecting the deployment of DTV.

Frequency Bands

4. The Notice proposed the following two options for frequency bands to be allocated to the WMTS:

Option 1	Option 2
608–614 MHz 1395–1400 MHz 1429–1432 MHz.	608–614 MHz 1391–1400 MHz

The 608–614 MHz band corresponds to TV channel 37, which is not used for TV stations and is currently reserved for radio astronomy. It is available for medical telemetry under part 15 of the rules on an unlicensed basis. The other proposed bands are former government bands that were reallocated for non-government use under the Omnibus Budget Reconciliation Act of 1993. Government operations in those bands may continue at certain sites around the country for a number of years.

5. We conclude that it is necessary to allocate spectrum where medical telemetry equipment can operate on a primary basis. Based on the record, we also conclude that WMTS's planned use is best accommodated by making three blocks of spectrum available in the 608–614 MHz, 1395–1400 MHz, and 1429–1432 MHz bands. We will coordinate the frequency allocations with Canadian and Mexican governments as appropriate. Given the low-power nature of this equipment, we do not anticipate any interference issues in border areas.

6. *608–614 MHz.* We find the 608–614 MHz band to be suitable for WMTS because, other than radio astronomy, it is only used for medical telemetry under part 15 of the rules. We also note that no commenters opposed the use of this band. Accordingly, we allocate this band to medical telemetry equipment on a co-primary basis with radio astronomy. Operation of medical telemetry equipment in this band must not cause interference to sensitive radio astronomy operations, and users will be required to coordinate their operation with radio astronomy facilities. We note that medical telemetry service providers operating on 608–614 MHz (television channel 37) currently must accept adjacent channel interference from broadcast television stations operating on channels 36 and 38. With this allocation, we are not requiring television broadcasters to protect WMTS from adjacent band interference. We believe that the multi-band approach that we are adopting provides sufficient flexibility to WMTS. WMTS providers can operate on one of the other bands that we are making available in situations where a hospital is in close proximity to a television station operating on channels 36 or 38. Furthermore, WMTS providers can design equipment to provide sufficient protection from adjacent channel interference as is current practice.

7. *1395–1400 MHz and 1429–1432 MHz.* In addition to the 608–614 MHz band, we are allocating the 1395–1400 MHz and 1429–1432 MHz bands for medical telemetry. Allocating the 1395–1400 MHz band instead of the alternative band we proposed will result in a 4 MHz greater frequency separation between medical telemetry and government radars operating below 1385 MHz, thereby reducing the risk of interference to medical telemetry equipment. We find that the frequency separation between the 1395–1400 MHz and the 1429–1432 MHz bands will give greater flexibility for medical telemetry by making the bands more useful for two-way communications than a single contiguous band at 1391–1400 MHz.

Service Rules

8. We adopt service rules for the new Wireless Medical Telemetry Service (WMTS). These service rules only apply to the WMTS that will operate at 608–614 MHz, 1395–1400 MHz, and 1429–1432 MHz, and not to the current medical telemetry operations permitted under parts 15 and 90. The rules include licensing requirements and technical standards for the equipment, as well as a frequency coordination procedure.

9. *Definition.* In the NPRM, 64 FR 41892, August 2, 1999, we proposed the following definition for medical telemetry:

Wireless medical telemetry is defined as the measurement and recording of physiological parameters and other patient-related information via radiated bi- or unidirectional electromagnetic signals.

10. We agree that allowing bi-directional transmissions could promote the development of more advanced medical telemetry equipment and encourage more efficient use of the spectrum. The split frequency allocation we are adopting in this item was selected in part to facilitate two-way communications. Accordingly, we are adopting a definition of medical telemetry that will allow bi-directional transmissions. We find it unnecessary to exclude voice and video transmissions in the definition for medical telemetry.

11. *Licensing.* There were no comments opposing our proposal that WMTS equipment be "licensed by rule", rather than requiring individual operators" licenses. Individual licensing is generally designed to give a licensee a protected service area, and thus establishes rights among competing entities in the same service. Operators in the WMTS will not be in competition

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with each other as are parties in other radio services. The WMTS spectrum will be shared among medical telemetry users, and there will be no mutual exclusivity between users. In addition, "licensing by rule" will minimize regulatory procedures and thus facilitate deployment. We are therefore adopting our proposal that the WMTS exist as one of the Citizen's Band services contained in part 95 of the rules and that the equipment used in this service be "licensed by rule". The Commission has authority under Section 307(e) of the Communications Act to define the citizen's band radio services and to license them by rule.

12. *Eligibility.* We proposed that only authorized health care providers be eligible to operate transmitters in the WMTS. For the purpose of this service, an "authorized health care provider" would be defined as (1) a physician or other individual authorized under state or federal law to provide health care services; (2) a health care facility operated by or employing individuals authorized under state or federal law to provide health care services; or (3) any trained technician under the supervision and control of an individual or health care facility authorized under state or federal law to provide health care services. We proposed to define a "health care provider facility" as a hospital or other establishment that offers services, facilities and beds for use beyond a 24 hour period in rendering medical treatment, and organizations regularly engaged in providing medical services through clinics, public health facilities and similar establishments, including government entities and agencies such as Veterans Administration Hospitals. Health care facilities on tribal lands would also be included under our proposed definition. A health care facility would not include an ambulance or other moving vehicle, and this definition would also not allow home use of WMTS equipment. We are adopting these eligibility definitions as proposed.

13. *Frequency coordination.* The comments supported our proposal to designate a frequency coordinator to maintain a database of all WMTS equipment identified by location, operating frequency, emission type and output power. NTIA notes that a frequency coordinator would facilitate band sharing between hospitals and the remaining government operations at protected sites. Accordingly, we are adopting the proposal to designate a frequency coordinator to maintain a database of WMTS equipment. Without a database, there would be no record of WMTS usage because WMTS transmitters will not be individually licensed. The database will provide a record of the frequencies used by each facility or device to assist parties in selecting frequencies to avoid interference. The database will be used by eligible users and manufacturers to plan for specific frequency use within a geographic area, especially where numerous WMTS operations may occur.

14. The frequency coordinator will not be a decision maker as to which frequency should be used. Rather, the coordinator will notify users of potential frequency conflicts, and users should be able to resolve any conflicts among themselves. We expect that there will be few conflicts between users of WMTS equipment due to its low operating power, but the Commission will make the final decision on a case-by-case basis in disputes between users, if necessary. The coordinator must be familiar with the medical telemetry user community, and must make its services available to all parties on a first-come, first-served and non-discriminatory basis. The frequency coordinator must be willing to serve a five-year term, which could be renewed by the Commission. In the event that a frequency coordinator does not wish to continue at the end of its term, it will have to transfer its database to another designated entity.

15. The NPRM, 64 FR 41892, August 2, 1999, asked for comments on the following questions about the frequency coordinator: (1) any other qualifications that a frequency coordinator must have, (2) whether a single entity or multiple entities should be designated as frequency coordinator(s), (3) how the frequency records could be maintained with multiple coordinators, and (4) whether we should limit the fees the frequency coordinator(s) can charge.

16. Several entities expressed an interest in being a frequency coordinator for WMTS. In the past the Commission has tried, where appropriate, to introduce market forces into the frequency coordination process. Therefore, rather than adopt a Commission rule restricting database management of WMTS spectrum to a single coordinator, we will leave the ultimate decision on the number of coordinators up to the Commission's Wireless Telecommunications Bureau (WTB). WTB already has delegated authority to select frequency coordinators in the services it administers. WTB will announce its coordination selection procedures in a Public Notice in the near future. We have not found it necessary to set limits on the fees charged by coordinators in other services, and we have no reason to believe that fee limits will be necessary in the WMTS. Accordingly, we will allow the designated coordinator to set the fee structure as necessary to recoup costs.

17. The NPRM, 64 FR 41892, August 2, 1999, proposed that certain information be submitted to the frequency coordinator for inclusion on the database, including:

(1) Frequency range(s) used
(2) Modulation scheme used
(3) Effective radiated power
(4) Number of transmitters in use at the health care facility at the time of registration
(5) Legal name of the authorized health care provider
(6) Location of transmitter (coordinates, street address, building)
(7) Point of contact for the authorized health care provider.

We find that including the equipment manufacturer and model number in the database could be useful for helping the frequency coordinator and users in determining the interference potential of WMTS equipment. This information could also assist the Commission or the FDA in locating certain devices in the event a question of compliance with the rules arose. Accordingly, we will specify that the equipment manufacturer and model number be submitted to the frequency coordinator for inclusion on the database. Much of the other information (fax numbers, e-mail addresses, assigned frequencies and occupied bandwidth) simply represents a more detailed description of the information we proposed. We agree with these recommendations and are including them in the final rules. We recognize that including the name of the health care provider and point of contact in the database could possibly make that information available to commercial entities. However, we find that this information is necessary to allow the coordinator and parties using the WMTS to contact other users to verify information and resolve potential conflicts. Thus, we will require the name of the health care provider and a point of contact to be included on the database. Including this information should not raise issues of privacy of patient information, because the database will not contain the patient names or other patient identification information.

18. We find that requiring periodic equipment registration renewals from health care providers to be an unnecessary burden. Most hospitals would find it difficult to remember to renew their registrations after five years have passed, and requiring coordinators

to send out periodic renewal notices and process renewal applications could significantly increase their workload. However, we will not preclude coordinators from verifying the continued use of registered equipment on an "as needed" basis, such as when the database shows a conflict between a registered user and a new user. Accordingly, we are adopting our proposal that equipment registrations will remain valid until the health care provider requests cancellation. Restricting access to the database to certain parties would be difficult and burdensome for the coordinator because the coordinator would have to verify that each and every party accessing the database has a need for the information that is related to health care. Such restrictions could make it difficult for parties with legitimate needs for information to view the database. We therefore find that the database should be open to all parties.

19. *Permissible communications.* We proposed that the WMTS could be used for all types of communications, except for voice or video transmissions. We proposed to exclude these types of transmissions because we were concerned that video could occupy a significant portion of the spectrum allocated to the WMTS, and that allowing voice transmissions could encourage the equipment to be used as a form of wireless intercom.

20. We find that the transmission of waveform information such as electrocardiograms (ECGs) is within the intended purpose of the WMTS, which is to transmit vital patient data. Accordingly, we will permit the transmission of waveform information in the WMTS. However, allowing the general purpose use of video in the WMTS could potentially result in video occupying a large portion of the available spectrum. This is a greater concern initially because portions of the WMTS spectrum will be unavailable for a number of years in parts of the country due to grandfathered government operations. We are not persuaded that there is currently a need for voice capabilities in telemetry equipment, and we reiterate our concern that allowing such capabilities could encourage use of the equipment for other than its intended purpose of transmitting patient data. Accordingly, we will prohibit voice and video transmissions in the WMTS at this time, but we may revisit the issue at a later date after government operations cease in the WMTS bands.

21. *Technical Standards.* We proposed only minimal technical standards for WMTS equipment to give manufacturers the flexibility to develop different applications for medical telemetry. We did not propose a specific channelization scheme for the 1395–1400 MHz and 1429–1432 MHz bands. However, to prevent users from monopolizing the 608–614 MHz band, we proposed that equipment using broadband technologies, such as spread spectrum, be capable of operating on channels of 1.5 MHz each, up to a maximum of 6 MHz. Such equipment would operate on the minimum number of channels necessary, and must have the capability of being "throttled back" so it will occupy as little as one 1.5 MHz channel, if necessary, to allow multiple users to share that band. There were no objections to the proposed requirement on maximum channel usage in the 608–614 MHz band, so we are adopting this requirement which will allow the WMTS spectrum to be used more efficiently.

22. We proposed the following field strength limits for transmitters in the WMTS.

Frequency band	Maximum field strength	Measurement distance	Measurement bandwidth	Detector function
608–614 MHz	200 mV/m	3 meters	120 +/ – 20 kHz	CISPR QP.
1395–1400 MHz	740 mV/m	3 meters	1 MHz	Average.
1429–1432 MHz	740 mV/m	3 meters	1 MHz	Average.

23. We proposed the same out-of-band field strength limits for transmitters in the WMTS bands that are used for most intentional radiators under part 15 of the rules. We have found those limits to be effective at controlling interference. There were no objections to applying the part 15 out-of-band emission limits to WMTS equipment, and we are adopting them.

24. *Protection of other existing services.* The WMTS must not cause interference to radio astronomy operations, and to certain grandfathered government operations. We are therefore adopting rules requiring the coordination of WMTS operations in the 608–614 MHz band with radio astronomy operations, which are the same as the coordination requirements currently found in part 15. The rules also require operators in the 1395–1400 MHz and 1429–1432 MHz bands to protect certain government operations. Finally, parties using WMTS equipment should be aware that the operation of transmitters in close proximity to medical equipment could cause interference to the operation of the medical equipment. The rules provide a warning to this effect, which is the same warning found in part 15.

25. *RF Safety.* We do not currently require the routine evaluation of medical telemetry equipment for compliance with the radiofrequency (RF) radiation safety guidelines in our rules due to the low power of the equipment. The NPRM, 64 FR 41892, August 2, 1999 did not propose to require RF safety measurements for WMTS equipment because such equipment would also operate at relatively low power levels.

26. Our rules for RF safety classify equipment into two categories: (1) mobile devices, which normally operate with at least a 20 centimeter separation from the radiating element to the body of the user or a nearby person , and (2) portable devices, which normally operate with less than a 20 centimeter separation from the radiating element to the body of the user. Based upon our analysis, we agree that portable WMTS equipment could possibly exceed the RF safety guidelines in our rules. Accordingly, we will require routine environmental evaluation for RF exposure of portable WMTS equipment prior to equipment authorization or use. We expect that the majority of WMTS equipment will be classified as "portable" because medical telemetry transmitters are typically worn on the body. However, we realize that there may be some applications where the transmitter is separated from the body by more than 20 centimeters, such as a unit mounted on a bed or incorporated within a separate device. Consistent with the RF safety requirements for other services, mobile WMTS equipment will be categorically excluded from routine environmental evaluation because WMTS equipment complying with the technical requirements we are adopting will operate with an effective radiated power (ERP) of less than 1.5 watts, which is the threshold for the exclusion of equipment operating below 1.5 GHz.

27. *Equipment authorization requirement.* The NPRM, 64 FR 41892,

August 2, 1999 proposed authorizing WMTS transmitters through the Declaration of Conformity (DoC) procedure in part 2 of the rules. DoC is a manufacturer's self-approval procedure where the equipment is tested to ensure it complies with the Commission's technical standards, and may then be marketed without an approval by the Commission.

28. The certification procedure requires the manufacturer to file electronically a test report showing the equipment complies with the rules along with other supporting documentation to the Commission or to a designated Telecommunication Certification Body (TCB). The equipment may not be marketed until an approval has been received from the Commission or a TCB. Upon further consideration, we agree that certification is the appropriate authorization procedure for WMTS equipment. WMTS equipment involves new technologies, and the majority will be subject to routine environmental evaluation for RF safety. Requiring certification is consistent with the actions we have taken in similar cases, such as the Medical Implant Communication Service (MICS) in part 95. However, we note that procedures for making the RF exposure measurements are currently under development. When such procedures are developed, we may consider relaxing the certification requirement for medical telemetry equipment.

Transition Provisions

29. *Equipment authorization.* We proposed that all new medical telemetry equipment that receives an equipment authorization starting two years after the adoption of final rules must operate in the newly authorized frequency bands. Two years is a reasonable timetable for requiring manufacturers to produce equipment to operate in the new bands. Based on the comments received, we are confident that manufacturers will be able to meet this deadline. We decline to allow equipment approved after that deadline to have the capability of operating in the current part 15 and part 90 bands. Our goal in this proceeding is to not only provide spectrum where medical telemetry he Commission has taken, such as the freeze in the 450–470 MHz band and the requirement for DTV stations to notify nearby health care facilities, affect other parties. We therefore wish to encourage medical telemetry users to migrate out of the current frequency bands and into the new frequency bands. Allowing the development of new equipment that can operate in the old bands after the transition date would discourage the eventual migration to the new bands.

30. *Grandfathering.* Requiring the replacement of functional medical telemetry systems that are not subject to interference would be an unnecessary financial burden on hospitals. Accordingly, we will permit medical telemetry equipment that has received an equipment authorization to operate in current part 15 and part 90 bands prior to the two year transition date to be manufactured, imported, marketed and operated without a cutoff date. This action will ensure that manufacturers will be able to make replacement parts for systems operating in the old bands, and that hospitals will be permitted to operate their existing systems as long as possible until replacement is necessary due to age or interference concerns.

31. *Existing equipment registration.* We find it unlikely that a complete database of all part 15 and part 90 medical telemetry transmitters could be developed prior to the transition to the new frequency bands. However, placing even some transmitters in a database could possibly assist parties in avoiding cases of interference. We therefore have no objection to allowing the voluntary registration of existing part 15 and part 90 medical telemetry devices. The rules we are adopting allow frequency coordinators to process voluntary requests to register equipment operating under parts 15 and 90.

450–470 MHz Freeze

32. In 1995, the Commission adopted changes to part 90 of the rules to allow more efficient use of the spectrum for land mobile services. These changes permitted high power operations on channels in the 450–470 MHz band. However, under the new channeling scheme, high-power primary users of the band would be able to operate on the same frequencies used for medical telemetry equipment. This could possibly result in interference to medical telemetry equipment. For this reason, on August 11, 1995, the Commission placed a freeze on the filing of applications for high power operation in the 450–470 MHz band on the 12.5 kHz offset channels.

33. *450–460 MHz band freeze.* On October 20, 1999, the Commission issued a public notice asking parties operating medical telemetry equipment in the 450–460 MHz band to provide certain information to the Commission. We received responses from 25 parties around the country operating in this band. The majority of these users were operating a small number of devices on a limited number of frequencies around 457 and 458 MHz. Based on the limited usage of the 450–460 MHz band for medical telemetry, we find that the freeze on high-power land mobile applications in the 450–460 MHz band can be lifted. Accordingly, the Wireless Telecommunications Bureau will issue a public notice announcing the lifting of the freeze in this band in the near future.

34. *460–470 band freeze.* We find that a five-year transition period is longer than is necessary to prepare for the lifting of the freeze in the 460–470 MHz band. The freeze was announced almost five years ago, so hospitals have been on notice that they may eventually have to change frequencies. Equipment is already available to operate in the 608–614 MHz band we are allocating in this proceeding, and equipment to operate in the other bands allocated in this proceeding should become available over the next two years. Five more years should not be required for hospitals to make the transition. We will therefore lift the freeze on high power land mobile application in the 460–470 MHz band within three years from the effective date of final rules in this proceeding.

35. The NPRM, 64 FR 41892, August 2, 1999, did not propose to preclude medical telemetry equipment from operating in the ISM bands under part 15 because only a small number of devices operate under these provisions. Therefore, there is not the same potential for a large number of cases of interference to medical telemetry equipment in these bands as there is for medical telemetry equipment operating in the TV and PLMR bands. We expect that the majority of medical telemetry equipment manufacturers will design equipment for the new bands allocated in this proceeding, and that only a small number of devices will continue to use the ISM bands. There, we will continue to allow medical telemetry equipment to operate in the ISM bands under part 15. While such operation will be permissible, manufacturers and users are cautioned that equipment operating in these bands has no protection from interference from ISM equipment operating under part 18 of the rules or other low power transmitters operating under part 15 of the rules.

36. Pursuant to sections 4(I), 11, 301, 302, 303(e), 303(f), 303(r) 304, 307 and 332(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 301, 302, 303(3), 303(f), 303(r), 304, 307 and 332(b).

Final Regulatory Flexibility Analysis

37. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making, Amendment of parts 2 and 95 of the Commission's Rules to Establish a Wireless Medical Telemetry Service.[2] The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

38. Medical telemetry equipment currently operates on an unlicensed basis on certain unused TV channels under part 15 of the rules, and on a secondary basis to private land mobile services in the 450–470 MHz band under part 90 of the rules. With the transition to digital TV service, both full power and low-power TV stations may begin operating on some of the vacant channels used by medical telemetry equipment. In addition, the new channelization scheme being implemented in the 450–470 MHz band will allow high-power operation on the channels currently reserved for low-power use where medical telemetry equipment operates. Both of these changes could result in severe interference to medical telemetry equipment. The rules adopted in the Report and Order allocate new frequency bands where medical telemetry equipment can operate on a primary basis without receiving interference.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

39. There were no timely filed comments in response to the IRFA. The Office of Advocacy, U.S. Small Business Administration (SBA) filed "reply comments" after the comment deadline, but prior to the reply comment deadline. Because they do not respond to comments on the IRFA, they are in fact untimely filed comments. Nevertheless, we will address the issues raised by the SBA.

40. The SBA claims two deficiencies on the part of the Commission in this proceeding. First, SBA states that the NPRM did not consider the impact of the proposed rules on small businesses.[4] Second, SBA states that the IRFA does not describe the impact of the rules on small businesses and does not provide significant alternatives designed to minimize this impact.[5]

41. We believe SBA is clearly in error on the first point. The RFA only requires agencies to provide an analysis of the impact of the proposed rules on small businesses in the IRFA.[6] There is no requirement in the RFA to provide such an analysis in the NPRM, which would unnecessarily duplicate the analysis in the IRFA. Thus we reject SBA's first claim.

42. We disagree with SBA on the second point as well. The RFA requires the Commission to provide an analysis that discusses significant alternatives such as (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.[7] These are merely examples of the type of information that should be included; this list is not a rigid checklist. The IRFA included with the NPRM in this proceeding did in fact include an analysis of the type required by the RFA. Specifically, it discussed the simplified compliance and reporting requirements we considered to minimize the impact of the rules on small businesses. We considered the effect on small business from the outset and made the rules apply equally to all parties. Thus, we consider the IRFA in this proceeding to be adequate. We further note that no other parties had any objections to the IRFA or considered it to be inadequate.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

43. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[8] Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

44. The Commission has not developed a definition of small entities applicable to RF Equipment Manufacturers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment." According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.[9] Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[10] Therefore, we believe that many of the companies that manufacture RF equipment would qualify as small entities.

45. According to the SBA's regulations, nursing homes and hospitals must have annual gross receipts of $5 million or less in order to qualify as a small business concern. 13 CFR 121.201. There are approximately 11,471 nursing care firms in the nation, of which 7,953 have annual gross receipts of $5 million or less.[11] There are approximately 3,856 hospital firms in the nation, of which 294 have gross receipts of $5 million or less. Thus, the approximate number of small confined setting entities to which the Commission's new rules will apply is 8,247.

[1] See *5 U.S.C. 603*. The RFA, see *5 U.S.C. 601* et seq., has been amended by the Contract With America Advancement Act of 1996, *Public Law 104–121*, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] See *Notice of Proposed Rule Making* in ET Docket 99–255, 64 FR 41891, 41896 (August 2, 1999).

[3] See *5 U.S.C. 604*.

[4] See SBA comments at 1–2.

[5] See SBA comments at 2–3.

[6] See *5 U.S.C. 603*(a).

[7] *See 5 U.S.C. 603*(c).

[8] *See 5 U.S.C. 603*(b)(3).

[9] *See 13 CFR 121.201*, Standard Industrial Classification (SIC) Code 3663.

[10] *See* U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663.

[11] *See* Small Business Administration Tabulation File, SBA Size Standards Table 2C, January 23, 1996, SBA, Standard Industrial Code (SIC) categories 8050 (Nursing and Personal Care Facilities) and 8060 (Hospitals). (SBA Tabulation File)

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

46. WMTS equipment will be authorized through the certification procedure. The certification procedure requires the manufacturer to file electronically a test report showing the equipment complies with the rules along with other supporting documentation to the Commission or to a designated Telecommunication Certification Body (TCB). The equipment may not be marketed or operated until an approval has been received from the Commission or TCB. This is the same process adopted by the Commission for the Medical Implant Communication Service (MICS).[12] We are requiring that all parties including small businesses have their equipment approved though the certification procedure because of concerns over radiofrequency radiation safety.

47. Parties operating the equipment will not be required to obtain an individual operator's license from the Commission, but they will have to register with a frequency coordinator designated by the Commission. The Commission may designate multiple coordinators to provide competition to keep costs at a minimum. The information submitted to the frequency coordinator will be:

(1) Specific frequencies or frequency range(s) used;

(2) Modulation scheme used (including occupied bandwidth);

(3) Effective radiated power;

(4) Number of transmitters in use at the health care facility as of the date of registration (including manufacturer name(s) and model numbers);

(5) Legal name of the authorized health care provider;

(6) Location of transmitter (coordinates, street address, building);

(7) Point of contact for the authorized health care provider (name, title, office, phone number, fax number, e-mail address).

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

48. We are not requiring individual operators' licenses for equipment in the WMTS. Instead, the equipment will be "licensed by rule", meaning that users are permitted to operate WMTS equipment that complies with rules without the need to apply for a license from the Commission. Licensing by rule benefits small businesses by eliminating the expense and delays that would result if parties were required to obtain individual operators' licenses.

49. New equipment for the WMTS will not have to operate in the newly allocated frequency bands until two years after the effective date of the new rules. This will allow sufficient time for manufacturers to develop equipment for the new bands, thus reducing the development costs for small businesses. We are also allowing equipment in the old frequency bands that has received an equipment authorization before the two year transition date to be manufactured, imported, marketed and operated without a cutoff date. This will ensure that replacement parts are available for existing telemetry systems and that hospitals will be able to use their existing systems as long as possible before replacement is required, thus reducing expenses for small businesses.

50. There is currently a freeze on high-power land mobile operations in the 450–470 MHz band. The freeze was put in effect in 1995 to protect medical telemetry in that band from interference. We are providing a three-year transition period before lifting the freeze in the 460–470 MHz band. This will assist small businesses by providing adequate time for medical telemetry users to begin migration to the new frequency bands, if necessary. The freeze in the 450–460 MHz band will be lifted shortly after release of this Order because we have determined that little medical telemetry equipment operates in this portion of the band. Therefore, there will be little impact on small businesses.

Report to Congress: The Commission will send a copy of the *Report and Order, Amendment of parts 2 and 95 of the Commission's Rules to Establish ■ Wireless Medical Telemetry Service*, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the SBA.

List of Subjects

47 CFR Part 1

Reporting and recordkeeping requirements

47 CFR Part 2 and 95

Communications equipment, Reporting and recordkeeping requirement.

47 CFR Part 15

Communications equipment.

47 CFR Part 90

Communications equipment, Emergency medical services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 15, 90, and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.1307 is amended by revising paragraph (b)(2) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services (ship earth stations only) and the Specialized Mobile Radio Service authorized under Subpart H of parts 22, 24, 25, 26, 27, 80, and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.253(f), 15.255(g), 15.319(i), and 15.407(f) of this chapter. Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) is subject to routine environment evaluation as specified in §§ 2.1093 and 95.1125 of this chapter. Equipment authorized for use in the Medical Implant Communications Service (MICS) as a medical implant transmitter (as defined in Appendix 1 to Subpart E of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in § 2.1093 of this chapter by finite difference time domain computational

[12] *See* para. 53, *supra.*

modeling or laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that specific absorption rate measurement data be submitted. All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307, 336, and 337, unless otherwise noted.

4. Section 2.106 is amended as follows:

a. Revise the entries for the MHz bands of the Table of Frequency Allocations to read as follows.

b. In the United States (US) footnotes, revise footnote US246 and add footnotes US350, US351, and US352.

c. In the Government (G) footnotes, revise footnotes G27, G30, and G114.

The revisions and additions read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

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470-849 MHz (UHF) Page 37

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile S5.292 S5.293	470-585 FIXED MOBILE BROADCASTING S5.291 S5.298	470-608	470-512 FIXED BROADCASTING LAND MOBILE NG66 NG114 NG127 NG128 NG149	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING S5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION		512-608 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	S5.149 S5.305 S5.306 S5.307	608-614 LAND MOBILE US350 RADIO ASTRONOMY US74 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile	610-890 FIXED MOBILE BROADCASTING	614-890	614-698 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcast. (74)
				698-746 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Note: Band to be reallocated and auctioned by Sept. 30, 2002.

1300-1350 AERONAUTICAL RADIONAVIGATION S5.337 Radiolocation S5.149		1300-1350 AERONAUTICAL RADIO-NAVIGATION S5.337 Radiolocation G2 S5.149	1300-1350 AERONAUTICAL RADIO-NAVIGATION S5.337 S5.149	Aviation (87)
1350-1400 FIXED MOBILE RADIOLOCATION	1350-1400 RADIOLOCATION	1350-1390 FIXED MOBILE RADIOLOCATION G2 S5.149 S5.334 S5.339 US311 G27 G114	1350-1390 S5.149 S5.334 S5.339	
		1390-1395 RADIOLOCATION G2 Fixed Mobile S5.149 S5.339 US311 US351 G27 G114	1390-1395 S5.149 S5.339 US351	Note: 1390-1395 MHz became non-Federal Government exclusive spectrum in January 1999
S5.149 S5.338 S5.339	S5.149 S5.334 S5.339	1395-1400 LAND MOBILE US350 S5.149 US5.339 US311 US351	1395-1400 LAND MOBILE US350 S5.149 US5.339 US311 US351	Personal (95)
1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.341		1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) S5.341 US246		
1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile S5.341		1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile S5.341 G30	1427-1429 SPACE OPERATION (Earth-to-space) Fixed (telemetry) Land mobile (telemetry and telecommand) S5.341	Satellite Communications (25) Private Land Mobile (90) Note: 1427-1429 MHz became non-Federal government exclusive spectrum in January 1999

1429-1610 MHz (UHF) Page 43

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1429-1452 FIXED MOBILE except aeronautical mobile S5.341 S5.342	1429-1452 FIXED MOBILE S5.343 S5.341		1429-1432 LAND MOBILE US350 S5.341 US352	1429-1432 LAND MOBILE US350 Fixed (telemetry) Land mobile (telemetry and telecommand) S5.341 US352	Private Land Mobile (90) Personal (95)
			1432-1435 FIXED MOBILE S5.341 G30	1432-1435 Fixed (telemetry) Land mobile (telemetry and telecommand) S5.341	Private Land Mobile (90) Note: 1432-1435 MHz became mixed-use spectrum in January 1999.
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING S5.345 S5.347 BROADCASTING-SATELLITE S5.345 S5.347 S5.341 S5.342	1452-1492 FIXED MOBILE S5.343 BROADCASTING S5.345 S5.347 BROADCASTING-SATELLITE S5.345 S5.347 S5.341 S5.344		1435-1525 MOBILE (aeronautical telemetry) S5.341 US78		Aviation (87)
1492-1525 FIXED MOBILE except aeronautical mobile S5.341 S5.342	1492-1525 FIXED MOBILE S5.343 MOBILE-SATELLITE (space-to-Earth) S5.348A S5.341 S5.344 S5.348	1492-1525 FIXED MOBILE S5.341 S5.348A			
1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Mobile except aeronautical mobile S5.349 S5.341 S5.342 S5.350 S5.351 S5.352A S5.354	1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Fixed Mobile S5.343 S5.341 S5.351 S5.354	1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Mobile S5.349 S5.341 S5.351 S5.352A S5.354	1525-1530 MOBILE-SATELLITE (space-to-Earth) Mobile (aeronautical telemetry) S5.341 S5.351 US78		Satellite Communications (25) Aviation (87)

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1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.353A Earth exploration-satellite Fixed Mobile except aeronautical mobile S5.341 S5.342 S5.351 S5.354	1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.353A Earth exploration-satellite Fixed Mobile S5.343 S5.341 S5.351 S5.354	1530-1535 MOBILE-SATELLITE (space-to-Earth) MARITIME MOBILE-SATELLITE (space-to-Earth) Mobile (aeronautical telemetry) S5.341 S5.351 US78 US315	
1535-1559 MOBILE-SATELLITE (space-to-Earth) S5.341 S5.351 S5.353A S5.354 S5.355 S5.356 S5.357 S5.357A S5.359 S5.362A		1535-1544 MOBILE-SATELLITE (space-to-Earth) MARITIME MOBILE-SATELLITE (space-to-Earth) S5.341 S5.351 US315	Satellite Communications (25) Maritime (80)
		1544-1545 MOBILE-SATELLITE (space-to-Earth) S5.341 S5.356	
		1545-1549.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) Mobile-satellite (space-to-Earth) S5.341 S5.351 US308 US309	Aviation (87)
		1549.5-1558.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.341 S5.351 US308 US309	
		1558.5-1559 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) S5.341 S5.351 US308 US309	
1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.341 S5.355 S5.359 S5.363		1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.341 US208 US260	Note: The *NTIA Manual* (footnote G126) states that differential GPS stations may be authorized in the 1559-1610 MHz band, but the FCC has not yet addressed this footnote.

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US24
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614 MH
authoriz
bands:
1660.5–
4990–5
15.35–1
31.8 GH
GHz, 64
GHz, 10

Eglin AF
Dugway
China La
Ft. Huac
Cherry P
Patuxent
Aberdeen
Wright-P
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US35
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5. Sec
revising

United States (US) Footnotes

* * * * *

US246 Except for medical telemetry equipment operating in the band 608–614 MHz, no stations shall be authorized to transmit in the following bands: 608–614 MHz, 1400–1427 MHz, 1660.5–1668.4 MHz, 2690–2700 MHz, 4990–5000 MHz, 10.68–10.70 GHz, 15.35–15.40 GHz, 23.6–24.0 GHz, 31.3–31.8 GHz, 51.4–54.25 GHz, 58.2–59.0 GHz, 64–65 GHz, 86–92 GHz, 100–102 GHz, 105–116 GHz, 164–168 GHz, 182–185 GHz and 217–231 GHz. Medical telemetry equipment shall not cause harmful interference to radio astronomy operations in the band 608–614 MHz and shall be coordinated under the requirements found in 47 CFR 95.1119.

* * * * *

US350 In the bands 608–614 MHz, 1395–1400 MHz, and 1429–1432, the land mobile service is limited to medical telemetry and telecommand operations. Additionally, the band 1429–1432 MHz may be used on secondary basis for non-Government land mobile telemetry and telecommand and fixed telemetry.

US351 In the band 1390–1400 MHz, Government operations, except for medical telemetry operations in the sub-band 1395–1400 MHz, are on a non-interference basis to authorized non-Government operations and shall not hinder implementation of any non-Government operations. However, Government operations authorized as of March 22, 1995 at 17 sites identified below will be continued on a fully protected basis until January 1, 2009.

Sites	Lat/Long	Radius (km)	Sites	Lat/Long	Radius (km)
Eglin AFB, FL	30°28′N/086°31′W	80	Ft. Greely, AK	63°47′N/145°52′W	80
Dugway PG, UT	40°11′N/112°53′W	80	Ft. Rucker, AL	31°13′N/085°49′W	80
China Lake, CA	35°41′N/117°41′W	80	Redstone, AL	34°35′N/086°35′W	80
Ft. Huachuca, AZ	31°33′N/110°18′W	80	Utah Test Range, UT	40°57′N/113°05′W	80
Cherry Point, NC	34°57′N/076°56′W	80	WSM Range, NM	32°10′N/106°21′W	80
Patuxent River, MD	38°17′N/076°25′W	80	Holloman AFB, NM	33°29′N/106°50′W	80
Aberdeen PG, MD	39°29′N/076°08′W	80	Yuma, AZ	32°29′N/114°20′W	80
Wright-Patterson AFB, OH	39°50′N/084°03′W	80	Pacific Missile Range, CA	34°07′N/119°30′W	80
Edwards AFB, CA	34°54′N/117°53′W	80			

US352 In the band 1429–1432 MHz, Government operations, except for medical telemetry operations, are on a non-interference basis to authorized non-Government operations and shall not hinder the implementation of any non-Government operations. However, Government operations authorized as of March 22, 1995 at 14 sites identified below will be continued on a fully protected basis until January 1, 2004.

Sites	Lat/Long	Radius (km)	Sites	Lat/Long	Radius (km)
Patuxent River, MD	38°17′N/076°25′W	70	Mountain Home AFB, ID	43°01′N/115°50′W	160
NAS Oceana, VA	36°49′N/076°02′W	100	NAS Fallon, NV	39°24′N/118°43′W	100
MCAS Cherry Point, NC	34°54′N/076°52′W	100	Nellis AFB, NV	36°14′N/115°02′W	100
Beaufort MCAS, SC	32°26′N/080°40′W	160	NAS Lemore, CA	36°18′N/119°47′W	120
NAS Cecil Field, FL	30°13′N/081°52′W	160	Yuma MCAS, AZ	32°39′N/114°35′W	160
NAS Whidbey IS., WA	48°19′N/122°24′W	70	China Lake, CA	35°29′N/117°16′W	80
Yakima Firing Ctr AAF, WA	46°40′N/120°15′W	70	MCAS Twenty Nine Palms, CA	34°15′N/116°03′W	80

* * * * *

G27 In the bands 225–328.6, 335.4–399.9, and 1350–1395 MHz, the fixed and mobile services are limited to the military services.

G30 In the bands 138–144, 148–149.9, 150.05–150.8, 1427–1429, and 1432–1435 MHz, the fixed and mobile services are limited primarily to operations by the military services.

* * * * *

G114 In the band 1350–1395 MHz, the frequency 1381.05 MHz with emissions limited to ±12 MHz is also allocated to fixed and mobile satellite services (space-to-earth) for the relay of nuclear burst data.

* * * * *

5. Section 2.1093 is amended by revising paragraph (c) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, the Wireless Medical Telemetry Service (WMTS) and the Medical Implant Communications Service (MICS), authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 26 of this chapter, part 27 of this chapter, part 80 of this chapter (ship earth station devices only), part 90 of this chapter, subparts H and I of part 95, and unlicensed personal communication service, unlicensed NII devices and millimeter wave devices authorized under subparts D and E, § 15.253 and § 15.255 of part 15 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. All other portable transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be

submitted to the Commission upon request.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

6. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

7. Section 15.37 is amended by adding a new paragraph (i).

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(i) Effective October 16, 2002, an equipment approval may no longer be obtained for medical telemetry equipment operating under the provisions of § 15.241 or § 15.242. The requirements for obtaining an approval for medical telemetry equipment after this date are found in Subpart H of Part 95 of this chapter.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

8. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

9. Section 90.203 is amended by revising paragraph (a)(1) to read as follows:

§ 90.203 Certification required.

(a) * * *

(1) Effective October 16, 2002, an equipment approval may no longer be obtained for in-hospital medical telemetry equipment operating under the provisions of this part. The requirements for obtaining an approval for medical telemetry equipment after this date are found in Subpart H of Part 95 of this chapter.

PART 95—PERSONAL RADIO SERVICES

10. The authority citation for Part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

11. Section 95.401 is amended by adding a new paragraph (d) to read as follows:

§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?

* * * * *

(d) The Wireless Medical Telemetry Service (WMTS)—a private, short distance data communication service for the transmission of patient medical information to a central monitoring location in a hospital or other medical facility. Voice and video communications are prohibited. Waveforms such as electrocardiograms (ECGs) are not considered video. The rules for this service are contained in subpart H of this part.

12. Section 95.601 is amended by revising the last sentence of the introductory text to read as follows:

§ 95.601 Basis and purpose.

* * * The Personal Radio Services are the GMRS (General Mobile Radio Service)-subpart A, the Family Radio Service (FRS)-subpart B, the R/C (Radio Control Radio Service)-subpart C, the CB (Citizens Band Radio Service)-subpart D, the Low Power Radio Service (LPRS)-subpart G, the Wireless Medical Telemetry Service (WMTS)-subpart H, and the Medical Implants Communication Service (MICS)-subpart I.

13. Section 95.630 is added to read as follows:

§ 95.630 WMTS transmitter frequencies.

WMTS transmitters may operate in the frequency bands specified below:

608–614 MHz
1395–1400 MHz
1429–1432 MHz

14. Section 95.631 is amended by adding a new paragraph (h) to read as follows:

§ 95.631 Emission types.

* * * * *

(h) A WMTS station may transmit any emission type appropriate for communications in this service, except for video and voice. Waveforms such as electrocardiograms (ECGs) are not considered video.

15. Section 95.639 is amended by adding a new paragraph (f) to read as follows:

§ 95.639 Maximum transmitter power.

* * * * *

(f) The maximum field strength authorized for WMTS stations in the 608–614 MHz band is 200 mV/m, measured at 3 meters. For stations in the 1395–1400 MHz and 1429–1432 MHz bands, the maximum field strength is 740 mV/m, measured at 3 meters.

16. Section 95.649 is revised to read as follows:

§ 95.649 Power capability.

No CB, R/C, LPRS, FRS, MICS or WMTS unit shall incorporate provisions for increasing its transmitter power to any level in excess of the limits specified in § 95.639.

17. Section 95.651 is revised to read as follows:

§ 95.651 Crystal control required.

All transmitters used in the Personal Radio Services must be crystal controlled, except an R/C station that transmits in the 26–27 MHz frequency band, a FRS unit, a LPRS unit, a MICS transmitter, or a WMTS unit.

18. Appendix 1 to Subpart E to Part 95—Glossary of Terms is revised to add the term "WMTS. Wireless Medical Telemetry Service." at the end of the list.

19. A new Subpart H is added to Part 95 to read as follows:

Subpart H—Wireless Medical Telemetry Service (WMTS)

General Provisions

Sec.

95.1101 Scope.
95.1103 Definitions.
95.1105 Eligibility.
95.1107 Authorized locations.
95.1109 Equipment authorization requirement.
95.1111 Frequency coordination.
95.1113 Frequency coordinator.
95.1115 General technical requirements.
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95.1119 Specific requirements for wireless medical telemetry devices operating in the 608–614 MHz band.
95.1121 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 MHz and 1429–1432 MHz bands.
95.1123 Protection of medical equipment.
95.1125 RF Safety.
95.1127 Station identification.
95.1129 Station inspection.

* * * * *

Subpart H—Wireless Medical Telemetry Service (WMTS)

General Provisions

§ 95.1101 Scope.

This part sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz and 1429–1432 MHz frequency bands.

§ 95.1103 Definitions.

(a) Authorized health care provider. A physician or other individual authorized under state or federal law to provide health care services, or any other health care facility operated by or employing individuals authorized under state or federal law to provide health care services, or any trained technician operating under the supervision and control of an individual or health care facility authorized under state or federal law to provide health care services.

(b) Health care facility. A health care facility includes hospitals and other establishments that offer services, facilities and beds for use beyond a 24 hour period in rendering medical treatment, and institutions and organizations regularly engaged in providing medical services through clinics, public health facilities, and similar establishments, including government entities and agencies such as Veterans Administration hospitals; except the term health care facility does not include an ambulance or other moving vehicle.

(c) Wireless medical telemetry. The measurement and recording of physiological parameters and other patient-related information via radiated bi-or unidirectional electromagnetic signals in the 608–614 MHz, 1395–1400 MHz, and 1429–1432 MHz frequency bands.

§ 95.1105 Eligibility.

Authorized health care providers are authorized by rule to operate transmitters in the Wireless Medical Telemetry Service without an individual license issued by the Commission provided the coordination requirements in § 95.1111 have been met. Manufacturers of wireless medical telemetry devices and their representatives are authorized to operated wireless medical telemetry transmitters in this service solely for the purpose of demonstrating such equipment to, or installing and maintaining such equipment for, duly authorized health care providers. No entity that is a foreign government or which is active in the capacity as a representative of a foreign government is eligible to operate a WMTS transmitter.

§ 95.1107 Authorized locations.

The operation of a wireless medical telemetry transmitter under this part is authorized anywhere within a health care facility provided the facility is located anywhere a CB station operation is permitted under § 95.405. This authority does not extend to mobile vehicles, such as ambulances, even if those vehicles are associated with a health care facility.

§ 95.1109 Equipment authorization requirement.

(a) Wireless medical telemetry devices operating under this part must be authorized under the certification procedure prior to marketing or use in accordance with the provisions of Part 2, Subpart J of this chapter.

(b) Each device shall be labeled with the following statement:

Operation of this equipment requires the prior coordination with a frequency coordinator designated by the FCC for the Wireless Medical Telemetry Service.

§ 95.1111 Frequency coordination.

(a) Prior to operation, authorized health care providers who desire to use wireless medical telemetry devices must register all devices with a designated frequency coordinator. The registration must include the following information:

(1) Specific frequencies or frequency range(s) used;

(2) Modulation scheme used (including occupied bandwidth);

(3) Effective radiated power;

(4) Number of transmitters in use at the health care facility as of the date of registration including manufacturer name(s) and model numbers);

(5) Legal name of the authorized health care provider;

(6) Location of transmitter (coordinates, street address, building);

(7) Point of contact for the authorized health care provider (name, title, office, phone number, fax number, e-mail address).

(b) An authorized health care provider shall notify the frequency coordinator whenever a medical telemetry device is permanently taken out of service, unless the device is replaced with another transmitter utilizing the same technical characteristics as those reported on the effective registration. An authorized health care provider shall maintain the information contained in each registration current in all material respects, and shall notify the frequency coordinator when any change is made in the location or operating parameters previously reported which is material.

§ 95.1113 Frequency coordinator.

(a) The Commission will designate a frequency coordinator(s) to manage the usage of the frequency bands for the operation of medical telemetry devices.

(b) The frequency coordinator shall (1) Review and process coordination requests submitted by authorized health care providers as required in § 95.1111; (2) maintain a database of WMTS use; (3) notify users of potential conflicts; and (4) coordinate WMTS operation with radio astronomy observatories and Federal Government radar systems as specified in §§ 95.1119 and 95.1121.

§ 95.1115 General technical requirements.

(a) *Field strength limits.* (1) In the 608–614 MHz band, the maximum allowable field strength is 200 mV/m, as measured at a distance of 3 meters, using measuring instrumentation with a CISPR quasi-peak detector.

(2) In the 1395–1400 MHz and 1429–1432 MHz bands, the maximum allowable field strength is 740 mV/m, as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1 MHz measurement bandwidth.

(b) *Undesired emissions.* (1) Out-of-band emissions below 960 MHz are limited to 200 μ/m, as measured at a distance of 3 meters, using measuring instrumentation with a CISPR quasi-peak detector.

(2) Out-of-band emissions above 960 MHz are limited to 500 μm as measured at a distance of 3 meters using measuring equipment with an averaging detector and a 1 MHz measurement bandwidth.

(c) *Emission types.* A wireless medical telemetry device may transmit any emission type appropriate for communications in this service, except for video and voice. Waveforms such as electrocardiograms (ECGs) are not considered video.

(d) *Channel use.* (1) In the 1395–1400 MHz and 1429–1432 MHz bands, no specific channels are specified. Wireless medical telemetry devices may operate on any channel within the bands authorized for wireless medical telemetry use in this part.

(2) In the 608–614 MHz band, wireless medical telemetry devices utilizing broadband technologies such as spread spectrum shall be capable of operating within one or more of the following channels of 1.5 MHz each, up to a maximum of 6 MHz, and shall operate on the minimum number of channels necessary to avoid harmful interference to any other wireless medical telemetry devices.

608.0–609.5 MHz
609.5–611.0 MHz
611.0–612.5 MHz
612.5–614.0 MHz

(3) Channel usage is on a co-primary shared basis only, and channels will not be assigned for the exclusive use of any entity.

(4) Authorized health care providers, in conjunction with the equipment manufacturers, must cooperate in the selection and use of frequencies in order to reduce the potential for interference with other wireless medical telemetry devices, or other co-primary users. Operations in the 608–614 MHz band (television channel 37) are not protected from adjacent band interference from broadcast television operating on channels 36 and 38.

(e) *Frequency stability.* Manufacturers of wireless medical telemetry devices are responsible for ensuring frequency stability such that an emission is maintained within the band of operation under all of the manufacturer's specified conditions.

§ 95.1117 Types of communications.

(a) All types of communications except voice and video are permitted, on both a unidirectional and bidirectional basis, provided that all such communications are related to the provision of medical care. Waveforms such as electrocardiograms (ECGs) are not considered video.

(b) Operations that comply with the requirements of this part may be conducted under manual or automatic control, and on a continuous basis.

§ 95.1119 Specific requirements for wireless medical telemetry devices operating in the 608–614 MHz band.

For a wireless medical telemetry device operating within the frequency range 608–614 MHz and that will be located near the radio astronomy observatories listed below, operation is not permitted until a WMTS frequency coordinator specified in § 95.1113 has coordinated with, and obtain the written concurrence of, the director of the affected radio astronomy observatory before the equipment can be installed or operated

(a) Within 80 kilometers of:

(1) National Astronomy and Ionosphere Center, Arecibo, Puerto Rico: 18°20′38.28″ North Latitude, 66° 45′09.42″ West Longitude.

(2) National Radio Astronomy Observatory, Socorro, New Mexico: 34° 04′43″ North Latitude, 107°37′04″ West Longitude.

(3) National Radio Astronomy Observatory, Green Bank, West Virginia: 38°26′08″ North Latitude, 79°49′42″ West Longitude.

(b) Within 32 kilometers of the National Radio Astronomy Observatory centered on:

Very long baseline array stations	Latitude (north)	Longitude (west)
Pie Town, NM	34° 18′	108° 07′
Kitt Peak, AZ	31° 57′	111° 37′
Los Alamos, NM	35° 47′	106° 15′
Fort Davis, TX	30° 38′	103° 57′
North Liberty, IA	41° 46′	91° 34′
Brewster, WA	48° 08′	119° 41′
Owens Valley, CA	37° 14′	118° 17′
Saint Croix, VI	17° 46′	64° 35′
Mauna Kea, HI	19° 49′	155° 28′
Hancock, NH	42° 56′	71° 59′

The National Science Foundation point of contact for coordination is: Spectrum Manager, Division of Astronomical Sciences, NSF Room 1045, 4201 Wilson Blvd., Arlington, VA 22230, telephone: 703–306–1823.

§ 95.1121 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 MHz and 1429–1432 MHz bands.

Due to the critical nature of communications transmitted under this part, the frequency coordinator in consultation with the National Telecommunications and Information Administration shall determine whether there are any federal government radar systems whose operations could affect, or could be affected by, proposed wireless medical telemetry operations in the 1395–1400 MHz and 1429–1432 MHz bands. The locations of government radar systems in these bands are specified in footnotes US351 and US352 of § 2.106 of this chapter.

§ 95.1123 Protection of medical equipment.

The manufacturers, installers and users of WMTS equipment are cautioned that the operation of this equipment could result in harmful interference to other nearby medical devices.

§ 95.1125 RF safety.

Portable devices as defined in § 2.1093(b) of this chapter operating in the WMTS are subject to radio frequency radiation exposure requirements as specified in §§ 1.1307(b) and 2.1093 of this chapter. Applications for equipment authorization of WMTS devices must contain a statement confirming compliance with these requirements. Technical information showing the basis for this statement must be submitted to the Commission upon request.

§ 95.1127 Station identification.

A WMTS station is not required to transmit a station identification announcement.

§ 95.1129 Station inspection.

All WMTS transmitters must be available for inspection upon request by an authorized FCC representative.

[FR Doc. 00–17970 Filed 7–14–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1441; MM Docket No. 99–225; RM–9635]

Radio Broadcasting Services; Saint Regis, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 256C2 to Saint Regis, Montana, in response to a petition filed by the Battani Corporation. *See* 64 FR 34753, June 29, 1999. The coordinates for Channel 256C2 at Saint Regis are 47–15–56 NL and 114–51–29 WL. There is a site restriction 18.1 kilometers east of the community. Canadian concurrence has been received for the allotment of Channel 256C2 at Saint Regis. A filing window for Channel 256C2 at Saint Regis will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–225, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Saint Regis, Channel 256C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18054 Filed 7–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 00–169; MM Docket No. 94–78; RM–8472 and RM–8525]

Radio Broadcasting Services; Cloverdale, Montgomery, and Warrior, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: This document denies an application for review filed by William P. Rogers that appeals the *Memorandum Opinion and Order*, 62 FR 9375 (March 3, 1997), in this proceeding insofar as it refused to accept Rogers' counterproposal to allot Channel 254A to Florence, Alabama. Rogers' counterproposal was rejected primarily because it did not provide 100 percent city-grade coverage of Florence, as required by Section 73.315(a) of the Commission's Rules. This document does not deal with Pulaski Broadcasting, Inc.'s proposal to allot FM Channel 254A to Cloverdale, Alabama, which was rejected in a previous order. Nor does this document consider a joint counterproposal filed by former licensees of Stations WBHK(FM), Warrior, Alabama, and Station WBAM–FM, Montgomery, Alabama, which was granted by a previous order.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 94–78, adopted May 12, 2000, and released June 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street NW., Washington, DC 20036.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–18051 Filed 7–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1448; MM Docket No. 99–114; RM–8902]

Television Broadcasting Services, DTV Broadcasting Services; Lake Havasu City, AZ and Laughlin, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots NTSC Channel 34+ and paired DTV Channel 32 from Lake Havasu City, Arizona, to Laughlin, Nevada, and modifies the authorization of Mojave Broadcasting Company (formerly Meridian Communications Company) for television Station KMCC, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 64 FR 23036, April 29, 1999. The reallotment will provide a first local television transmission and DTV service to Laughlin. Coordinates used for NTSC Channel 34+ and DTV Channel 32 at Laughlin, Nevada, are 35–03–12 NL and 114–37–10 WL. Additionally, as Laughlin is located within 320 kilometers (199 miles) of the Mexico border, concurrence of the Mexican government to the reallotment request was obtained.

DATES: Effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–114, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Television and DTV broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Arizona, is amended by removing Lake Havasu City, Channel 34+.

3. Section 73.606(b), the Table of TV Allotments under Nevada, is amended by adding Laughlin, Channel 34+.

§ 73.622 [Amended]

4. Section 73.622(b), the Table of DTV Allotments under Arizona, is amended by removing Lake Havasu City, Channel 32.

5. Section 73.622(b), the Table of DTV Allotments under Nevada, is amended by adding Laughlin, Channel 32.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18055 Filed 7–14–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 051100D]

Fisheries of the Exclusive Economic Zone off Alaska; Halibut Bycatch Mortality Allowance in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reapportionment of Pacific halibut bycatch mortality allowance specified for the nontrawl fishery categories.

SUMMARY: NMFS issues this amendment to the final 2000 harvest specifications that reapportions the 2000 halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery category to the other nontrawl fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of species constrained by the other nontrawl halibut bycatch mortality allowance, in particular Greenland turbot, while not further restricting the hook-and-line Pacific cod fishery. This action is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Islands Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 12, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The BSAI halibut prohibited species catch (PSC) limit for nontrawl gear is an amount of halibut equivalent to 900 metric tons (mt) of halibut mortality (§ 679.21(e)(2)(i)). The apportionment of the nontrawl halibut PSC limit to bycatch allowances for the Pacific cod hook-and-line fishery, other nontrawl fisheries and prohibited species quota reserve was established by the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000) as 748 mt, 84 mt, and 67 mt, respectively.

At its April 2000 meeting, the Council requested NMFS to amend the 2000 harvest specifications to reapportion 75 mt of the halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery to the other nontrawl fishery category. This proposed amendment to the 2000 harvest specifications was published in the *Federal Register* on May 22, 2000 (65 FR 32070), for public comment and review. No comments were received during the comment period that ended June 6, 2000. In order to provide greater opportunity to harvest the BSAI Greenland turbot total allowable catch (TAC) while not jeopardizing the opportunity to harvest the amount of the Pacific cod TAC allocated to hook-and-line vessels, NMFS increases the halibut bycatch mortality allowance specified for the other nontrawl fishery category by 75 mt and reduces the halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery by the same amount.

The halibut bycatch mortality specifications for the 2000 BSAI nontrawl fisheries are listed in Table 7 of the Final 2000 Harvest Specifications for Groundfish (65 FR 8282, February 18, 2000). To accommodate the final action, the 2000 BSAI final harvest specifications are amended by adding the following Table 7A.

TABLE 7A. 2000 BSAI PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI NON-TRAWL FISHERIES

Non-trawl fisheries	*Halibut mortality (mt) BSAI*
Pacific cod–Total	673
Jan. 1–April 30	457
May 1–Sept. 1	0
Sept. 1–Dec. 31	216
Other non-trawl–Total	159
May 1–Dec. 31	159
Groundfish pot & jig	exempt
Sablefish hook-and-line	exempt

Classification

This action is authorized under 50 CFR 679.21(e)(4) and is exempt from OMB review under E.O. 12866.

NMFS prepared an environmental assessment (EA) and final regulatory flexibility assessment (FRFA) for the 2000 harvest specifications. These documents are available by contacting: Lori Gravel, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668. The reapportionment of the BSAI nontrawl halibut PSC limit is intended to provide fuller opportunity to conduct the fishing activities considered in the EA/FRFA and is fully within the scope of these analyses.

The need to implement this reapportionment promptly to provide greater opportunity to harvest the BSAI Greenland turbot TAC and to prevent the unnecessary economic hardships to fishermen that would result from a fishery closure constitutes good cause under 5 U.S.C. 553(d) to waive the 30-day effective date and make this reapportionment effective July 12, 2000 through 2400 hrs, A.l.t., December 31, 2000.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: July 11, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18020 Filed 7–12–00; 2:38 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 137
Monday, July 17, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–130–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require inspections of certain components, and corrective action, if necessary. This action is necessary to prevent deterioration and deformation of the mass-balance weights of the aileron, which could affect the surface balance of the aileron and result in loss of aileron control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 16, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–130–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–130–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6082; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–130–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–130–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that the mass-balance weights of the aileron may deteriorate or become deformed. Such deterioration or deformation could affect the surface balance and lead to chafing between the exposed end of the mass-balance weight and the adjoining aileron hinge attachment. This condition, if not corrected, could result in loss of aileron control and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–27–0077, Change No. 01, dated October 24, 1997, which, for certain airplanes, describes procedures for repetitive visual inspections to measure the gap between the mass-balance weights and aileron hinge attachment, and corrective action, if necessary. For all airplanes, the service bulletin describes procedures for performing a one-time detailed visual inspection of the mass-balance weights to detect any cavity, hole, or delamination, and follow-on actions. For affected airplanes, accomplishment of the one-time detailed visual inspection eliminates the need for the repetitive inspections described previously. If no cavity, hole, or delamination is found,

follow-on actions involve visual inspection of the surface of the mass-balance weights to detect white powder, and removal of any detected white powder. If any cavity, hole, or delamination is found, corrective action involves replacement of the mass-balance weights with new, improved parts. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 98–01–02, dated January 15, 1998, in order to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Differences Between DAC's Airworthiness Directive and This Proposed AD

Operators should note that the DAC's airworthiness directive recommends that repetitive measurements of the gap between the mass-balance weights and aileron hinge attachment, and corrective action, if necessary, be accomplished on all airplanes manufactured since March 1, 1995. The FAA finds that it is clearer to refer to the airplanes affected by this AD by serial number rather than by date of manufacture. Therefore, this proposed AD would require these repetitive measurements for airplanes with serial numbers 120–0291, 120–0294, and 120–0296 through 120–0333 inclusive.

In addition, operators should note that, for the one-time detailed visual inspection of the mass-balance weights to detect any cavity, hole, or delamination, the DAC's airworthiness directive specifies separate compliance times depending on whether the airplane was manufactured before or after March 1, 1995. However, this proposed AD would require that this action be accomplished on all airplanes subject to this AD within 2,000 flight hours after the effective date of this AD. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the DAC's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the date the DAC's recommendation was issued. In light of these factors, the FAA finds that 2,000 flight hours represents an appropriate interval of time allowable for all affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that approximately 28 U.S.-registered airplanes would be affected by the proposed requirement to measure the gap between the mass-balance weights and aileron hinge attachment. It would take approximately 2 work hours per airplane to accomplish the proposed measurement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $3,360, or $120 per airplane, per inspection cycle.

The FAA estimates that approximately 230 U.S.-registered airplanes would be affected by the proposed detailed visual inspection of the mass-balance weights to detect any cavity, hole, or delamination. It would take approximately 8 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed requirements on U.S. operators is estimated to be $110,400, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2000–NM–130–AD.

Applicability: Model EMB–120 series airplanes, serial numbers 120–0001 through 120–0333 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent deterioration and deformation of the mass-balance weights of the aileron, which could affect the surface balance of the aileron and result in loss of aileron control and consequent reduced controllability of the airplane, accomplish the following:

Measurement of Clearance and Corrective Actions

(a) For airplanes having serial numbers 120–0291, 120–0294, and 120–0296 through 120–0333 inclusive: Within 150 flight hours after the effective date of this AD, measure the clearance between the aileron mass-balance weights and attach fittings on the left and right sides of the airplane, in accordance with PART I of the Accomplishment Instructions of EMBRAER Service Bulletin 120–27–0077, Change No. 01, dated October 24, 1997.

(1) If the clearance is within the acceptable limits described in the service bulletin, thereafter, repeat the measurement at intervals not to exceed 1,000 flight hours until the actions required by paragraph (b) of this AD have been accomplished.

(2) If the clearance is outside the acceptable limits described in the service bulletin, prior to further flight, replace the affected mass-balance weight with a new, improved mass-balance weight, in accordance with PART III of the Accomplishment Instructions of the service bulletin. Such replacement terminates the requirement to accomplish paragraph (b) of this AD.

Detailed Visual Inspection and Follow-On Actions

(b) *For all airplanes:* Within 2,000 flight hours after the effective date of this AD, perform a one-time detailed visual inspection of the aileron mass-balance weights to detect any cavity, hole, or delamination, in accordance with PART II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–27–0077, Change No. 01, dated October 24, 1997. Such inspection constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD for airplanes subject to paragraph (a) of this AD.

(1) If no cavity, hole, or delamination is detected: Prior to further flight, perform a one-time detailed visual inspection to detect white powder on the surface of the mass-balance weights, in accordance with PART II of the Accomplishment Instructions of the service bulletin. If any white powder is found, remove the white powder in accordance with the service bulletin.

(2) If any cavity, hole, or delamination is found, prior to further flight, replace the affected mass-balance weight with a new, improved mass-balance weight, in accordance with PART III of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 98–01–02, dated January 15, 1998.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18042 Filed 7–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–041–FOR; North Dakota State Program Amendment No. XXX]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposes revisions of rules about: Rulemaking notices; prime farmland reclamation plans; permit approval and denial criteria; performance bond liability period; bond release applications; surface water monitoring; revegetation success standards; prime farmland reclamation standards; and small operator assistance.

North Dakota intends to revise its program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: We will accept written comments on this amendment until 4:00 p.m., m.d.t. August 16, 2000. If requested, we will hold a public hearing on the amendment on August 11, 2000. We will accept requests to speak until 4:00 p.m., m.d.t. on August 1, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Casper Field Office.

Guy Padgett, Chief, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918

James R. Deutsch, Director, Reclamation Division, North Dakota Public Service Commission, Capitol Building, Bismarck, North Dakota 58505, Telephone: 701–328–2251.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307–261–6550. Internet: GPadgett@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program.
II. Description of the Proposed Amendment.
III. Public Comment Procedures.
IV. Procedural Determinations.

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980 **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15 and 934.16.

II. Description of the Proposed Amendment

By letter dated June 20, 2000, North Dakota sent us a proposed amendment to its program (Amendment number XXX, administrative record No. ND–EE–01) under SMCRA (30 U.S.C. 1201 *et*

seq.). North Dakota sent the amendment in response to a July 17, 1997 letter (administrative record No. ND–EE–02) that we sent to it in accordance with 30 CFR 732.17(c) and, in addition, to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

The provisions of the North Dakota Administrative Code that North Dakota proposes to revise are: (1) NDAC 69–05.2–01–03, Rulemaking notices; (2) NDAC 69–05.2–09–15, Prime farmland reclamation plans; (3) NDAC 69–05.2–10–03(6)(c), Permit approval or denial criteria; (4) NDAC 69–05.2–12–09, Period of performance bond liability; (5) NDAC 69–05.2–12(2), Bond release applications; (6) NDAC 69–05.2–16–05, Surface water monitoring; (7) NDAC 69–05.2–22–07, Revegetation success standards; (8) NDAC 69–05.2–26–05, Prime farmland revegetation requirements; and (9) NDAC 69–05.2–29–03, Small operator assistance.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we request your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written comments to us at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Casper Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. ND–041–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261–6550.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on August 1, 2000. If you are disabled and need special accommdations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

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Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relief upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 7, 2000.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00–18009 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1539, MM Docket No. 00–124, RM–9893]

Digital Television Broadcast Service; Bryan, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KWTX/KBTX Licensee Corporation, licensee of station KBTX, NTSC Channel 3, Bryan, Texas, requesting the substitution of DTV Channel 33 for its assigned DTV Channel 59. DTV Channel 33 can be allotted to Bryan, Texas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (30–33–16 N. and 96–01–51 W.). As requested, we propose to allot DTV Channel 33 to Bryan with a power of 1000 and a height above average terrain (HAAT) of 477 meters.

DATES: Comments must be filed on or before September 5, 2000, and reply comments on or before September 20, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Barr, Pepper & Corazzini, LLP, 1776 K Street, NW, Suite 200, Washington, DC 20006–2334 (Counsel for KWTX/KBTX Licensee Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00-125, adopted July 12, 2000, and released July 13, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–18053 Filed 7–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1538, MM Docket No. 00–125, RM–9908]

Digital Television Broadcast Service; Miami, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by NBC Stations Management, Inc., licensee of station WTVJ(TV), NTSC Channel 6, Miami, Florida, requesting the substitution of DTV Channel 31 for its assigned DTV Channel 30. DTV Channel 31 can be allotted to Miami, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (25–58–07 N. and 80–13–20 W). As requested, we propose to allot DTV Channel 31 to Miami with a power of 1000 and a height above average terrain (HAAT) of 318 meters.

DATES: Comments must be filed on or before September 5, 2000, and reply comments on or before September 20, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Diane Zipursky, National Broadcasting Company, Inc.,

1229 Pennsylvania Avenue, NW., 11th Floor, Washington, DC 20004 (Counsel for NBC Stations Management, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–125, adopted July 12, 2000, and released July 13, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–18052 Filed 7–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1446; MM Docket No. 99–232; RM–9321]

Radio Broadcasting Services; Fort Bridger, WY and Hyrum, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: M. Kent Frandsen requested the downgrade of Channel 256C1 to Channel 256C3 at Fort Bridger, Wyoming, the reallotment of Channel 256C3 from Fort Bridger to Hyrum, Utah, and the modification of Station KNYN(FM)'s construction permit accordingly. *See* 64 FR 36323, July 6, 1999. On June 16, 2000, petitioner filed a request for dismissal. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, we will dismiss the instant petition.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–232, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18056 Filed 7–14–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000629198–0198–01; I.D. 051500D]

RIN 0648–AM72

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 66 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) to remove the allocation of squid to the Western Alaska Community Development Quota (CDQ) Program. This proposed rule also would implement regulatory amendments under the American Fisheries Act (AFA) requiring that only pollock caught while directed fishing for pollock CDQ accrue against the pollock CDQ allocation, and revising the definition of "directed fishing for pollock CDQ." Pollock caught incidentally in other groundfish CDQ fisheries would accrue against the pollock incidental catch allowance (ICA) established under the AFA. This action is necessary to implement Amendment 66 and the CDQ Program-related provisions of the AFA. It is intended to further the goals and objectives of the FMP.

DATES: Comments must be received by August 31, 2000.

ADDRESSES: Written comments should be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Comments also may be hand delivered or couriered to the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 66 to the FMP and the two Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analyses (EA/RIR/IRFA) prepared for these actions are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7389, sally.bibb@noaa.gov.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 66 for Secretarial review. NMFS published a Notice of Availability of the FMP amendment at 65 FR 34434, May 30, 2000, and invited comments on the FMP amendment through July 31, 2000. All written comments received by July 31, 2000, whether specifically directed to the FMP amendment, the proposed rule, or both, will be considered in the

approval/disapproval decision on the FMP amendment.

Two issues are addressed in this proposed rulemaking. First, the proposed rule would add a definition to 50 CFR part 679 for "directed fishing for pollock CDQ" to permanently implement the intent of the AFA with respect to pollock CDQ accounting. The proposed definition would determine whether pollock caught while CDQ fishing accrues against the pollock CDQ allocation or the pollock ICA. Second, the proposed rule would remove the allocation of squid to the CDQ Program to prevent the catch of squid CDQ from limiting the catch of pollock CDQ.

Defining Directed Fishing for Pollock CDQ

Section 206(a) of the AFA specifies that "10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands Management Area shall be allocated as a directed fishing allowance to the Western Alaska Community Development Quota Program established under section 305(i) of the Magnuson-Stevens Act." Under section 206(b) of the AFA the incidental catch of pollock in non-pollock CDQ fisheries does not accrue against the pollock CDQ allocation created in section 206(a). Rather, the incidental catch of pollock in the CDQ fisheries accrues against the pollock ICA established in the groundfish specifications for pollock incidental catch from the CDQ and non-CDQ fisheries.

NMFS regulations at the time the AFA became effective required that all pollock caught in all groundfish CDQ fisheries accrue against the CDQ group's pollock CDQ allocation. NMFS issued an emergency interim rule (EIR) on January 26, 1999 (64 FR 3877, which was extended through December 31, 1999, at 64 FR 34743 on June 29, 1999), to revise CDQ catch accounting regulations for 1999 to be consistent with the AFA. Permanent rulemaking is necessary to revise CDQ catch accounting regulations to implement the AFA.

NMFS and the Council have considered four alternatives for defining directed fishing for pollock CDQ. Alternative 1 is the status quo, which would not distinguish between pollock caught while directed fishing for pollock CDQ from pollock caught incidentally to other groundfish CDQ fisheries. This alternative is not consistent with the AFA.

Alternative 2 would define directed fishing for pollock CDQ in the same manner as was implemented under the EIR in 1999. Pollock caught in hauls by a catcher/processor or deliveries by a catcher vessel in which pollock represents 40 percent or more of the total groundfish catch by weight would accrue against the pollock CDQ (the "40–percent threshold"). Pollock caught in hauls or deliveries in which pollock represents less than 40 percent of the total groundfish catch would accrue against the pollock ICA.

Alternative 3 is the same as Alternative 2 except that the threshold for defining directed fishing for pollock CDQ would be increased from 40 percent to 60 percent.

Alternative 4 would use maximum retainable amounts to define directed fishing for pollock CDQ, which is the method used to define directed fishing in all non-CDQ groundfish fisheries. A vessel operator would be directed fishing for pollock CDQ if the weight of pollock CDQ retained onboard the vessel was 20 percent or more of the weight of all retained CDQ species onboard the vessel. Under Alternative 4, vessel operators could control whether they were directed fishing for pollock CDQ by discarding the amount of pollock that exceeded the maximum retainable amount. Under Alternatives 2 and 3, vessel operators cannot discard pollock to control whether they are directed fishing for pollock CDQ because the determination of their directed fishery is made on the basis of the percent of pollock in each haul rather than on retained catch composition.

At its June 1999 meeting, the Council considered the alternatives presented in a draft analysis, catch data from the 1998 pollock CDQ fisheries, NMFS' projections about catch in the 1999 CDQ fisheries, public testimony at the Council meeting, and the recommendation of the Council's Advisory Panel (AP). The Council agreed with the AP's recommendations to increase the percentage threshold from 40 percent (Alternative 2) to 60 percent (Alternative 3) for the following reasons. The Council recognized that the AFA allows the CDQ groups to harvest incidental catches of pollock without that pollock catch accruing against the CDQ group's pollock CDQ allocation. The Council believed that NMFS' estimates of the maximum potential incidental catch of pollock under all of the alternatives were high and unlikely to be realized in the actual CDQ fisheries. The Council also believed that the CDQ groups would discourage non-pollock CDQ partners from maximizing the amount of pollock that they can legally catch under the preferred alternative because the CDQ groups are aware that if NMFS' maximum estimates of pollock incidental catch prove true, the Council may be requested to re-evaluate this issue and consider more restrictive measures for the CDQ fisheries.

The Council also recognized that vessels not intending to target on pollock periodically would catch hauls with a high proportion of pollock. The objective in selecting the appropriate percentage threshold is to minimize situations in which (1) a haul or delivery by a vessel intending to target pollock did not meet the definition of directed fishing for pollock CDQ, and (2) a haul or delivery by a vessel not intending to target pollock CDQ did meet the definition of directed fishing for pollock CDQ. However, regardless of the percentage threshold selected, some pollock caught by vessels intending to target pollock would be caught in hauls or deliveries that do not meet the definition of directed fishing for pollock CDQ and that pollock would accrue against the pollock ICA. The opposite situation also may occur. Some vessels not intending to target pollock CDQ may catch pollock in hauls or make deliveries that exceed the 60–percent threshold, in which case, this pollock would accrue against the CDQ group's pollock CDQ allocation.

Three categories of vessels catch pollock in the CDQ fisheries: (1) Trawl vessels that the CDQ group identifies as intending to catch pollock CDQ; (2) trawl vessels intending to target other groundfish CDQ species, such as flatfish, Atka mackerel, rockfish, or Pacific cod; and (3) vessels using nontrawl gear. The proposed definition of directed fishing for pollock CDQ would apply only to vessels using trawl gear. Therefore, all catch of pollock by vessels using longline, pot, jig, or any other nontrawl gear would accrue against the pollock ICA.

In 1999, approximately 100,000 mt of pollock were caught by vessels participating in some CDQ fishery. Of this, 98,800 mt of pollock was caught in trawl hauls in which pollock was equal to or greater than 60 percent of the total catch. The remaining 1,200 mt accrued against the pollock ICA because it was caught by CDQ vessels using nontrawl gear (500 mt pollock) or in trawl hauls in which pollock represented less than 60 percent of the total catch (700 mt).

Removing Squid as a CDQ Species

Currently, all groundfish species or species groups allocated to the CDQ Program are considered CDQ species and each CDQ group is prohibited from exceeding its allocation of any CDQ species. The CDQ groups are expected to reach quotas for some CDQ species

before they fully harvest all of their CDQ allocations.

Squid incidental catch is caught primarily by vessels using pelagic trawl gear to fish for pollock. Very little squid is caught in any other BSAI fisheries. Since implementation of the MS CDQ Program in 1998, the CDQ groups have been particularly concerned that they will reach their squid CDQ allocations before they harvest all of their pollock CDQ allocations. The increase of the pollock CDQ allocation to 10 percent of the pollock TAC under the AFA without an increase in the squid CDQ allocation heightened these concerns.

The proposal to remove squid as a CDQ species arose in mid-1998. In the 1998 pollock CDQ fisheries, approximately 342 mt of squid were caught. The squid CDQ allocation was not effective for the 1998 pollock CDQ fisheries. However, the squid catch of 342 mt significantly exceeded 7.5 percent of the squid TAC (148 mt). Catch in the 1998 pollock CDQ fisheries indicated that 148 mt of squid were harvested by August 22, 1998, when the pollock CDQ catch was 57,153 mt. If the squid CDQ allocation had been effective in 1998, this would have resulted in the CDQ groups being unable to harvest 27,669 mt of pollock (84,822 mt—57,153 mt). Based on an average royalty value of $200 per mt for pollock harvested during the B-season, this amount of pollock would have been valued at $5.5 million. Under the 10–percent pollock CDQ allocation, and assuming the same pollock and squid catch rates as achieved in 1998, the amount and value of the pollock catch CDQ that could be foregone would be approximately 42,200 mt (99,200 mt—57,000 mt) and $8.4 million. No specific provision exists in current regulation to allocate back to the non-CDQ fisheries any unharvested pollock CDQ or any other CDQ species.

The 1998 experience with squid incidental catch in the BSAI groundfish fisheries did not occur in 1999. Total squid incidental catch decreased from 915 mt in 1998 to 441 mt in 1999 and squid incidental catch in the CDQ fisheries decreased from 342 mt in 1998 to 41 mt in 1999. The reason for this change in squid incidental catch is not known. However, catch statistics presented in the analysis indicate that squid incidental catch has varied between several hundred mt to over 1,000 mt in the last 10 years.

NMFS and the Council considered two alternatives for the status of squid as a CDQ species: (1) The status quo, which would continue to allocate 7.5 percent of the squid TAC to the CDQ Program; and (2) discontinuing the squid CDQ allocation. An increase of the squid CDQ allocation corresponding to the AFA's increased pollock CDQ allocation is not an available management measure. Section 305(i)(1)(C)(ii)(II) of the Magnuson-Stevens Act requires that, until October 1, 2001, the percentage of a groundfish TAC allocated to the CDQ Program cannot exceed the amount approved by the Council prior to October 1, 1995.

If the allocation of 7.5 percent of the squid TAC to the CDQ Program were removed, squid would no longer be a CDQ species, and the individual CDQ groups would no longer receive allocations of squid CDQ each year. The catch of squid in the CDQ fisheries would accrue to a single squid TAC together with the squid catch from the non-CDQ fisheries. The catch of squid by a CDQ group would not prevent the harvest of their other CDQ species, such as pollock CDQ, because the CDQ groups are only prohibited from exceeding allocations of those species allocated to the CDQ Program.

If squid is removed from the CDQ allocations, NMFS would manage the overall squid TAC to ensure that catch in CDQ and non-CDQ fisheries combined remains within the TAC and does not exceed the overfishing limit. If the catch of squid reaches the overfishing level of 2,620 mt, NMFS would be required to take action to limit all fisheries in which squid catch occurs to ensure that the squid OFL is not exceeded.

In the EA/RIR/IRFA, NMFS presents information about the squid overfishing, acceptable biological catch, TAC limits, and estimated total catch, for the years 1994 through 1999. This information shows that the squid catch by the CDQ and non-CDQ fisheries combined has not exceeded the TAC since 1996 (revisions to ABC and overfishing level definitions were implemented under Amendment 44 to the BSAI FMP in 1997). Based on these data, the overall catch of squid should not exceed amounts harvested in previous years, unless factors related to the amount or location of squid change (factors not related to the pollock catch).

At its June 1999 meeting, the Council recommended removal of squid as a CDQ species. Discontinuing the allocation of squid to the CDQ Program would eliminate the possibility that the incidental catch of squid would constrain a CDQ group's ability to harvest its pollock CDQ allocations. In making this recommendation, the Council believed that allowing the CDQ fisheries to harvest more than 7.5 percent of the squid TAC would not negatively affect overall management of squid and would remove a significant barrier to the CDQ group's realizing the full value of its pollock CDQ allocations.

Removal of squid as a CDQ species would require an amendment to the FMP because Section 13.4.7.3.5 of the FMP currently states that "CDQs will be issued for 7.5 percent of the TAC for all BSAI groundfish species not already covered by another CDQ program." Squid is one of the groundfish TAC species. The FMP language would have to be amended to issue CDQs for all BSAI groundfish species except squid.

Description of the Proposed Regulations

NMFS proposes the following regulatory amendments to 50 CFR part 679:

1. Define directed fishing for pollock CDQ at § 679.2 as a haul by a catcher/processor or a delivery by a catcher vessel in which pollock represents 60 percent or more of the groundfish catch by weight in the haul or delivery. Clarify that the groundfish species used to calculate total catch includes all species categories defined in Table 1 of the annual BSAI specifications, including squid.

2. In § 679.20, revise paragraph (b)(1)(iii)(A) to remove the allocation of 7.5 percent of the squid TAC to the CDQ Program.

3. In § 679.31(f), remove the reference to the squid CDQ from the paragraph describing the non-specific CDQ reserve. Under this proposed rule, squid would no longer be allocated to the CDQ Program, so NMFS could not allocate a portion of the squid CDQ to each CDQ groups' non-specific CDQ reserve.

4. In § 679.32, permanently implement paragraphs (a)(2) and (e), which were in effect in 1999 under the EIR. Paragraph (a)(2) is a reference to the location of the pollock CDQ catch accounting regulations at paragraph (e). Paragraph (e) contains the requirements that pollock catch meeting the definition of directed fishing for pollock CDQ would accrue against the pollock CDQ allocation, and all other catch of pollock in the CDQ fisheries would accrue against the pollock ICA. Paragraph (e) also reiterates that 100 percent of all pollock caught in the groundfish CDQ fisheries, regardless of the percent of pollock in the haul or delivery, would be retained under the Improved Retention/Improved Utilization regulations at § 679.27.

Classification

At this time, NMFS has not determined that the FMP amendment this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other

applicable law. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This action has been determined to be not significant for purposes of E.O. 12866.

NMFS has prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available (see **ADDRESSES**). The IRFA consists of the IRFA for Amendment 66, the IRFA for defining directed fishing for pollock CDQ, and the preamble to this proposed rule. The following is a summary of the IRFA that (1) identifies all of the entities that NMFS believes would be impacted by these proposed regulatory amendments, (2) identifies which of these impacted entities are considered small entities under the Regulatory Flexibility Analysis (RFA), (3) describes how the small entities could be affected by the proposed regulatory amendments and the alternatives considered, (4) discusses significant alternatives that would minimize the economic impacts on these small entities, and (5) describes the projected cumulative effects on small entities of the proposed regulatory amendments to define directed fishing for pollock CDQ and to remove squid as a CDQ species.

The following table summarizes the total number of entities that could be affected by the proposed regulations and the number that are small entities under the RFA. The table shows that the proposed regulatory amendments would affect (1) the six CDQ groups representing the 65 western Alaska communities that are eligible for the CDQ Program; (2) the owners of 10 trawl catcher/processors, 1 mothership, 22 trawl catcher vessels, 3 shoreside processors that harvest and process pollock CDQ; (3) the owners of 7 trawl catcher/processors fishing for other groundfish CDQ; and (4) up to 20 catcher/processors, 3 motherships, 8 shoreside processors, and 120 catcher vessels that participate in the AFA pollock fisheries. The CDQ groups and the communities they represent are small entities under the RFA, as are 40 of the 120 catcher vessels that participate in the AFA pollock fisheries. However, none of the catcher/processors, motherships, shoreside processors, the 22 trawl catcher vessels participating in the CDQ fisheries, or 80 of the 120 trawl catcher vessels participating in the AFA pollock fisheries are small entities.

Category	Total Number That Could Be Affected	Number That are Small Entities
CDQ groups	6 groups representing 65 communities	6 groups representing 65 communities
Vessels and Processors in the BSAI Pollock Fisheries	20 trawl catcher/processors(c/p) 3 motherships 8 shoreplants 120 trawl catcher vessels (cv)	40 trawl cv
Number that also Participate in Pollock CDQ Fisheries	10 c/p 1 mothership 3 shoreplants 22 trawl cv	0
Trawl Vessels that Participate in non-Pollock CDQ Fisheries	7 trawl c/p	0

The IRFA, and the remainder of this summary, describes the impacts of the proposed regulatory amendment and alternatives on the affected small entities: the CDQ groups and the communities they represent, and the 40 trawl catcher vessels that participate in the AFA pollock fisheries but do not participate in the CDQ fisheries.

This proposed rule involves two distinct changes that could affect small entities individually or cumulatively: by creating a definition of directed fishing for pollock CDQ, and by removing squid from the CDQ allocations. The proposed definition of directed fishing for pollock CDQ would affect CDQ groups because it would determine how much of the pollock caught by vessels fishing for the CDQ groups would accrue against the pollock CDQ allocation and how much would accrue against the pollock ICA. The total catch of pollock in the CDQ fisheries is the sum of pollock that accrues against the pollock CDQ allocation and pollock that accrues against the pollock ICA. In general, the more pollock from the CDQ fisheries that accrues against the pollock ICA, the higher the royalties to the CDQ groups. In comparison with the status quo, the proposed rule would benefit the CDQ groups because it would allow some pollock catch in the CDQ fisheries to accrue against the pollock ICA rather than requiring all pollock catch in the CDQ fisheries to accrue against the pollock CDQ allocation.

The 40 catcher vessels in the BSAI pollock fisheries that are small entities do not participate in the CDQ fisheries. However, the proposed definition could affect them because any pollock from the CDQ fisheries that accrues against the pollock ICA reduces the pollock directed fishing allowances available to the sector under the AFA. Therefore, the more pollock from the CDQ fisheries that accrues against the pollock ICA, the less pollock that is available to these 40 catcher vessels in directed pollock fisheries. In comparison to the status quo, the proposed rule would not benefit the 40 catcher vessels because it could slightly reduce the amount of pollock available to these 40 catcher vessels in their directed pollock fisheries.

If this proposed definition had been in place in 1999, approximately 98,800 mt of pollock would have accrued to the pollock CDQ allocation and approximately 1,200 mt to the pollock ICA. If this 1,200 mt had been required to accrue against the pollock CDQ allocation (under the status quo), this 1,200 mt would have been available for the directed AFA fisheries. The 40 catcher vessels from the AFA that are small entities could have participated in a 600 mt increase in the pollock AFA allocation to the inshore sector (because

the inshore sector is allocated 50 percent of the pollock available to the directed AFA fisheries; 1,200 mt * 50 percent = 600 mt). However, 600 mt of pollock is about 1/10 percent of the total pollock allocation to the inshore sector (423,187 mt pollock). Therefore, NMFS believes that the increase in pollock that would accrue to the pollock ICA under this proposed rule would have a minimal negative impact on the small entities participating in the pollock AFA fisheries (the 40 trawl catcher vessels).

The proposal to remove squid as a CDQ species would likely affect only the 6 CDQ groups. The proposed rule should allow the CDQ groups to fully harvest their pollock CDQ allocations. Without this proposed action, some risk exists that the squid CDQ allocation would be reached before all of the pollock CDQ was harvested. If this occurs, the CDQ groups would lose the opportunity to harvest all of their pollock CDQ and the royalties associated with this pollock catch. Based on the 1998 squid incidental catch rates, this potential loss to the CDQ groups could range from $0 to $8.4 million annually. In addition to the loss of royalty revenue, the CDQ groups also would lose profit sharing and employment opportunities that would have been associated with full harvest of the pollock CDQ. Therefore, NMFS expects this proposed action to benefit the CDQ groups.

The proposal to remove squid as a CDQ species is not expected to negatively affect any other entity participating in the BSAI groundfish fisheries. The catch of squid in the CDQ fisheries would accrue against the overall squid TAC together with squid catch from the non-CDQ fisheries. The CDQ and non-CDQ trawl fisheries could be restricted if the total catch of squid exceeded the squid TAC or overfishing limit. However, the squid TAC has not been exceeded since 1996. NMFS does not expect that the TACs for squid or pollock would be exceeded in future years as a result of the proposed action.

The cumulative impacts of the proposed action to define directed fishing for pollock CDQ and to remove squid as a CDQ species on small entities are (1) benefits to the CDQ groups and the 65 communities they represent in the form of increased total catch of pollock in the CDQ fisheries and decreased potential that they would catch less than their full pollock CDQ allocation due to the incidental catch of squid; and (2) potential costs to 40 trawl catcher vessels in the BSAI pollock AFA fisheries in the form of slightly reduced pollock directed fishing allowances to allow for the incidental catch of pollock in the CDQ fisheries as required by the AFA.

NMFS considered several alternatives that could have minimized the negative economic impacts on some of the small entities. The Council could have recommended a definition of directed fishing for pollock CDQ that further increased the amount of pollock catch in the CDQ fisheries that would accrue against the pollock ICA, thereby increasing the benefits to certain small entities. Using maximum retainable amounts to define directed fishing for pollock CDQ would have allowed the CDQ groups to catch as much pollock as they wished while CDQ fishing and to discard amounts of pollock above the maximum retainable amounts. This alternative would require regulatory discards of pollock catch that exceeds the maximum retainable amounts. In addition, this alternative would increase the potential negative impacts to another group of small entities affected by the proposed action—the 40 catcher vessels in the AFA pollock fisheries—because increases in the amount of pollock from the CDQ fisheries accruing against the pollock ICA would decrease the directed pollock allowance to the AFA fisheries.

The Council also considered an alternative that could have further minimized negative economic impacts on the 40 catcher vessels in the AFA pollock fisheries: establishing a 40–percent threshold rather than 60 percent. Under this alternative, less pollock from the CDQ fisheries would accrue against the pollock ICA than would accrue under the preferred alternative. However, the Council considered the trade-off in impacts to the participants in the AFA pollock fisheries and the CDQ fisheries and determined that the amount of pollock that would accrue against the pollock ICA under the preferred alternative was not likely to significantly affect the 40 trawl catcher vessels or other participants in the AFA fisheries.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 9, 2000 .

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In § 679.2, the definition for "Directed fishing for pollock CDQ" is added to read as follows:

§ 679.2 Definitions.

* * * * *

Directed fishing for pollock CDQ means, for purposes of determining whether pollock caught while CDQ fishing accrues against the pollock CDQ allocation or the pollock incidental catch allowance, a vessel operator using trawl gear is directed fishing for pollock CDQ if pollock represents 60 percent or more of the total catch of groundfish species by weight in a haul by a catcher/processor or a delivery by a catcher vessel. The groundfish species used to calculate total catch includes all species categories defined in Table 1 of the annual BSAI specifications.

* * * * *

3. In § 679.20, paragraph (b)(1)(iii)(A) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) *Groundfish CDQ Reserve.* Except as limited by § 679.31(a), one half of the nonspecified reserve established by paragraph (b)(1)(i) of this section for all species except squid is apportioned to the groundfish CDQ reserve.

* * * * *

4. In § 679.31, paragraph (f) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(f) *Non-specific CDQ reserve.* Annually, NMFS will apportion 15 percent of each arrowtooth flounder and "other species" CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific CDQ reserve to the CDQ group's arrowtooth flounder or "other species" CDQ is a technical amendment to a

community development plan as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

* * * * *

5. In § 679.32, paragraph (a)(2) is revised and paragraph (e) is added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) * * *

(2) *Pollock CDQ.* Requirements for the accounting of pollock while CDQ fishing are at paragraph (e) of this section.

* * * * *

(e) *Pollock CDQ.* (1) *Directed fishing for pollock CDQ.* Owners and operators of vessels directed fishing for pollock CDQ as defined at § 679.2 and processors taking deliveries from vessels directed fishing for pollock CDQ must comply with all applicable requirements of paragraphs (a) through (d) of this section. Pollock catch by vessels directed fishing for pollock CDQ will accrue against the pollock CDQ for the CDQ group.

(2) *Catch of pollock by vessels not directed fishing for pollock CDQ.* Pollock catch by vessels groundfish CDQ fishing, but not directed fishing for pollock CDQ as defined at § 679.2, will not accrue against the pollock CDQ for the CDQ group.

(3) Operators of all vessels participating in any CDQ fishery must retain all pollock caught while CDQ fishing as required at § 679.27 (IR/IU).

* * * * *

[FR Doc. 00–18019 Filed 7–14–00; 8:45 am]

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–98–03]

United States Standards for Dry Whey; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** of June 20, 2000 (65 FR 38235) a document (DA–98–03) soliciting comments on a proposal to change the United States Standards for Dry Whey. Text was inadvertently omitted in four paragraphs in the Notice, in one place a word was misspelled, and in another place an incorrect title for an industry organization appeared. This document corrects those errors.

DATES: July 17, 2000.

FOR FURTHER INFORMATION CONTACT: Duane R. Spomer, Chief, Dairy Standardization Branch, AMS/USDA/Dairy Programs, Room 2764-South, P.O. Box 96956, Washington, DC 20090–6456; telephone (202) 720–7473; fax (202) 720–2643; e-mail Duane.Spomer@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Department of Agriculture (Department) published a Notice (DA–98–03) in the **Federal Register** of June 20, 2000 (65 FR 38235). The Notice (issued on June 13, 2000) solicited comments on a proposal to change the United States Standards for Dry Whey. AMS is proposing changes that would lower the bacterial estimate of not more than 50,000 per gram to not more than 30,000 per gram, incorporate maximum scorched particle content as a requirement for U.S. grade, and expand the Test Methods section to allow product evaluation using the latest methods included in Standard Methods for Examination of Dairy Products, in the Official Methods of Analysis of the Association of Official Analytical Chemists, and in standards developed by the International Dairy Federation. These changes are being proposed to strengthen the quality requirements of this Standard to reflect improvements that have occurred in dry whey quality since the Standards were last reviewed. AMS is also proposing editorial changes to provide consistency with other dry milk standards. This Notice Correction is necessary in order to provide complete data on which to solicit comments. The due date for comments on the proposed changes (August 21, 2000) is unchanged.

Correction

This **Federal Register** Notice makes correction to the Notice published on June 20, 2000 (65 FR 38235). The Department makes the following corrections:

(1) In the third column, under "Proposed by Dairy Programs, Agricultural Marketing Service" (FR page 38235), the paragraph which begins "Concerning the suggestion by the * * *", change "American Dairy Products Association" to read "American Dairy Products Institute."

(2) In the first paragraph of the first column "current standard," second sentence (FR page 38236), correct the spelling of "Mositure" to read "Moisture".

(3) In paragraph (a)(1) of the first column, "Requirements for U.S. grade," (FR page 38236), add the following omitted words in the Current standard section immediately following the last published line in the paragraph (which reads "possess the following flavors to a."):

"* * * slight degree: Bitter, fermented, storage, and utensil; and the following to a definite degree: feed and weedy."

The paragraph should read as follows:

(1) Flavor. (Applies to the reliquefied form). Shall have a normal whey flavor free from undesirable flavors, but may possess the following flavors to a slight degree: Bitter, fermented, storage, and utensil; and the following to a definite degree: feed and weedy.

(4) In paragraph (1) of that same section (Requirements for U.S. grade) (FR page 38236) add the following omitted words in the second column, Proposed section immediately following the last published line in the paragraph (which reads "and the following to a definite degree: feed and"):

"* * * weedy. See Table 1 of this section."

The paragraph should read as follows:

(1) Flavor. Reconstituted whey shall have a normal whey flavor free from undesirable flavors, but may possess the following flavors to a slight degree: Bitter, fermented, storage, and utensil; and the following to a definite degree: feed and weedy. See Table 1 of this section.

(5) In the paragraph of that same section (FR page 38236) add the following omitted words in the third column (Discussion section), immediately following the words in the last published line in that paragraph (which reads "and their"):

"intensities. This would allow the reader to quickly identify flavor characteristics and intensities included in this standard."

The paragraph should read as follows:

We propose to change "reliquefied" to "reconstituted" to more accurately describe the process of converting dry whey to a liquid product. We propose to provide a Table 1 that includes the allowed flavors and their intensities. This would allow the reader to quickly identify flavor characteristics and intensities included in this standard.

(6) Proposed paragraph (b) in the second column under "Test Methods" (FR page 38238), add the following omitted words in the Proposed column immediately following the last published line in the paragraph (which reads "Methods for the Examination of Dairy."):

"Products," available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005, or by methods published by the International Dairy Federation, available from the International Dairy Federation, 41 Square Vergate, B–1030 Brussels, Belgium."

The paragraph should read as follows:

(b) All other tests shall be performed by the methods contained in the latest edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists," published by the Association of Official Analytical Chemists International, 481 North

Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2504; by the methods provided in the latest edition of the "Standard Methods for the Examination of Dairy Products," available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005, or by methods published by the International Dairy Federation, available from the International Dairy Federation, 41 Square Vergate, B–1030 Brussels, Belgium.

Authority: (7 U.S.C. 1621–1627).

Dated: July 11, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–17957 Filed 7–14–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics

Notice of the Advisory Committee on Agricultural Biotechnology Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Advisory Committee on Agricultural Biotechnology (ACAB).

SUPPLEMENTARY INFORMATION: The ACAB has scheduled its second meeting on July 26–27, 2000. The topics to be discussed will include: (1) finalization of ACAB Bylaws and Operating Procedures; (2) update on recent relevant issues, projects, and activities; (3) potential impacts of the licensing of USDA Control of Gene Expression (CGE) patents; (4) agricultural biotechnology statistics collection and analyses; (5) topics for potential consideration by the National Academy of Sciences' Standing Committee on Biotechnology, Food and Fiber Production, and the Environment; (6) FY 2002 biotechnology budget priorities; and (7) framing of additional issues for future ACAB deliberations.

Background information regarding the work of the ACAB is available on the USDA web site at *http://www.usda.gov/agencies/biotech/acab.html*. Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing or via E-mail at the indicated addresses at least three business days before the meeting. On July 26, 2000, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. Interested individuals may file written comments with the committee before or after the meeting by sending them to Dr. Schecntman at the address below. Written comments may be submitted by regular mail, fax, or e-mail.

DATES: The meeting will be held in the Empire Room in the Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008, on July 26–27, 2000. The meeting is scheduled to run from 8:30 am until 7 pm on July 26 and 8:30 am until 5 pm on July 27. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Cindi White at (202) 690–8647, by fax at (202) 720–3191 or by E-mail at *cwhite@ars.usda.gov* at least 7 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW, Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov*.

Floyd P. Horn,

Administrator.

[FR Doc. 00–17939 Filed 7–14–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Gold Project, Idaho Panhandle National Forests, Bonner County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to document and disclose the potential environmental effects of proposed activities within the West Gold watershed in the Sandpoint Ranger District, Idaho Panhandle National Forests. The watershed is located about 25 miles south of Sandpoint, Idaho, near the town of Lakeview.

The proposal was designed using science from broad scale assessments including the Interior Columbia Basin Ecosystem Management Project. The proposal is intended to improve the health and productivity of terrestrial and aquatic habitats by: (1) Restoring desired forest structures, habitats, and species composition where they are decreasing and where root disease occurs, (2) restoring fire as an ecological process, (3) reducing the level of forest fuels and the risk of catastrophic wildfire; (4) reducing existing and potential sediment risks and improving aquatic habitat, and (5) providing public access and managing motorized recreation to protect resource values such as wildlife and water.

Activities would include thinning overcrowded stands of trees, cutting stands dead or dying from insects and root disease and replanting them with longer lived seral species; burning to reduce fuels, improve growing conditions, and improve forage for wildlife; placing woody debris in stream segments where needed, improving drainage structures and the design of existing roads; decommissioning or recontouring unneeded road segments; and redesigning gates to allow limited, dry season, off-road vehicle use on some existing roads.

The Sandpoint Ranger District of the Idaho Panhandle National Forests in Bonner County, Idaho will administer these activities. The EIS will tier to the Idaho Panhandle National Forests Forest Plan (September 1987).

DATES: Comments should be postmarked on or before August 16, 2000. Please include your name and address and the name of the project you are commenting on.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on the project mailing list by writing to: West Gold Project, Attn: Judy York Sandpoint Ranger District, 1500 Hwy 2, Suite 110, Sandpoint, ID 83864.

FOR FURTHER INFORMATION CONTACT: Judy York, Project Team Leader, Sandpoint Ranger District, 208–265–6665.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217, Additionally, pursuant to 7 CFR 1.27(D), any person may request the agency to withhold a submission from the public record by

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showing how the Freedom of Information Act (FOIA) permits such confidentiality. For persons requesting such confidentiality, it may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

SUPPLEMENTARY INFORMATION: The legal description for the project area includes all or portions of sections 13, 14, 23, 24, 25, 26, 35, and 36 in Township 53 North; Range 2 West and sections 8, 9, 10, 16, 17, 20, 21, and 29 in Township 53 North, Ranger 1 West. This project was initially presented in a letter to the public in June of 1997, soliciting comments on a proposal to be analyzed in an environmental analysis. An update letter was sent in October of 1998 describing public and Forest Service issues identified and alternatives developed by the interdisciplinary team at that time. Key issues identified were the effects of logging and road construction on the watershed, aquatic habitat, fisheries, wildlife, and noxious weed spread, and how much motorized access should occur on existing roads.

A new proposal has been developed and the Forest Service is now preparing an environmental impact statement. In the new proposal, treatment of vegetation would occur on about 1,300 acres of a 4,500-acre project area. Cutting techniques would include thinning to reduce competition and increase tree growth within stands. Irregular shelterwood, seed tree with reserves, final removal with reserves, and rehabilitation would be used to improve forest health and promote longer-lived seral species in areas of root disease and insect infestations. Prescribed fire would be used to reduce fuels and prepare some sites for planting. There would be approximately 3 miles of road construction for short-term treatment access, and 15 miles of existing road reconstruction (most of which includes road reconditioning) to reduce potential sediment risk to the watershed. Of the 3 miles of road construction, all except ⅓ of a mile would be fully recontoured upon completion of project activities. An additional 2 miles of existing road would be fully recontoured. Logs and other woody debris would be placed in headwater areas where needed, and in other areas where lacking.

Two periods are specifically designated for comments on this analysis: (1) During the scoping period which is 30 days from the date of this notice in the **Federal Register** and (2) during the draft EIS comment period. The mailing list for this project will include those individuals who have previously expressed interest in this project as well as adjacent landowners and those responding to this NOI or to the Idaho Panhandle National Forests Quarterly Schedule of proposed Actions. In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The forest Service will continue to seek information, comments, and assistance from Federal, Tribal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed actions. The United States Fish and Wildlife Service will be consulted concerning any effects to threatened and endangered species. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

Comments from the public and other agencies will be used in preparation of the Draft EIS to identify potential issues and concerns, potential alternatives to the proposed action and to promote communications with members of the public or other agencies.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and made available for public review in September of 2000. The final environmental impact statement is expected to be completed in November or December of 2000.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts and agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues related to the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1–800–245–6340 (voice) or (202) 720–1127 (TDD). USDA is an equal employment opportunity employer.

The Idaho Panhandle National Forests Supervisor is the responsible official who will make the decision on this project. The decision will be made after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations and policies. The decision and supporting reasons will be documented in a Record of Decision upon release of the Final EIS.

Dated: June 30, 2000.

David J. Wright,

Forest Supervisor, Idaho Panhandle National Forests.

[FR Doc. 00–17946 Filed 7–14–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Santa Fe Municipal Watershed Wildland-Urban Interface Fuels Reduction Project, Santa Fe National Forest, Santa Fe County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environment impact statement.

SUMMARY: The Forest Service and City of Santa Fe (City) are proposing a project to reduce the potential for a large scale, high intensity wildfire to destroy the municipal watershed and impact the City's potable water supply. Current conditions indicate that the watershed is at high risk of catastrophic wildfire and subsequent severe flooding.

The Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of treating vegetation in portions of the municipal watershed to reduce the severity of a high intensity wildfire. The EIS will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500 to 1508), and USDA NEPA Policies and Procedures (7 CFR part 1b; Forest Service Manual 1950).

The City of Sante Fe, Sangre de Cristo Water Division, is a cooperating agency in the proposed project.

The proposed project would be accomplished in multiple stages, treating several hundred acres each year, over a five-to-ten year period. Treatment effectiveness and results would be evaluated and adjustments made as needed, prior to implementing the following years treatments. The proposal involves thinning the smaller trees in the forest over approximately 2,500 acres. After removing thinned trees that are accessible along the existing road and chipping and hauling out the limbs and tops from along the road, any remaining thinned materials would be piled and burned. In addition, approximately 4,500 acres would be broadcast prescribed burned to reduce fuels on the steep, remote upper slopes. The proposed project does NOT involve road construction, commercial timber sales, or removal of mature trees. The proposed project would treat patches of forested land on both National Forest System and City lands within the Santa Fe municipal watershed.

DATES: Written comments and suggestions should be received on or before July 31, 2000. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in October 2000. A Final Environmental Impact Statement is expected to be published in January 2001.

ADDRESSES: Submit written comments and suggestions on the proposal, or requests to be placed on the project mailing list, to Land Management Planning, Santa Fe National Forest, 1474 Rodeo Road, P.O. Box 1689, Santa Fe, NM 87505–1689.

FOR FURTHER INFORMATION CONTACT: David W. Tippets, Project Public Affairs Leader, (505) 438–7685 or *dtippets@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Santa Fe River watershed within the national forest was designated a municipal watershed and closed to public entry in 1932. Within the national forest boundary, the City has two reservoirs, potable water delivery system facilities, stream flow gauging stations, and a primitive service road. Most of the canyon is roadless and very rugged. The watershed is the source of approximately 40 percent of Santa Fe's drinking water.

The proposed treatments are within piñon-juniper, ponderosa pine, and drier mixed conifer forest. Treatments are designed primarily to break up fuel continuity, increase soil-stabilizing grasses and shrubs, and reduce the amount of small trees, which act as fuel ladders and carry fire into the tree crowns. Treatments would also enhance the diversity of vegetation and wildlife habitats over the landscape. The treatments proposed are consistent with the Santa Fe National Forest Land and Resource Management Plan.

Preliminary issues include potential effects to human health and safety; soil and water; air quality; aquatic, riparian and upland habitats; threatened, endangered, and sensitive wildlife, fish, and plants; social and economic; and the effectiveness of treatments on fuel loading and fire behavior. To address these issues, the Forest Service and City will develop a range of alternatives, including a No Action alternative and other action alternatives.

Public participation has been an integral component of this proposed project and will continue to be important throughout the course of the NEPA process. During the last year, the Forest Service has been actively seeking information, comments, and assistance from individuals and organizations, State, local agencies, Indian tribes, and other Federal agencies that may be interested in, or affected by, the proposed project. Local environmental groups, other non-profit organizations, and scientists from universities and research stations have been active participants and partners throughout the early stages of the planning for this proposed project. Involvement efforts have included numerous public field trips, a January 2000 scoping letter, meetings with interest groups, and a scientific forum with the community.

The public involvement scoping process includes: (1) Identification of potential issues: (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. For the Forest Service to best use the scoping input, comments should be received no later than 30 days from the date of this publication.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency and available for public review in October 2000. At that time, the EPA will publish a Notice of Availability of the DEIS in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. A final environmental impact statement (FEIS) will be published after all comments are reviewed and responded prepared. A Record of Decision (ROD) will be published at the time the FEIS is released. The final decision will be subject to administrative review under CFR 215.17.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service

at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record and available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service is the lead agency for the preparation of the Environmental Impact Statement. The Responsible Official for this environmental analysis is Leonard Atencio, Forest Supervisor, Santa Fe National Forest.

Dated: July 5, 2000.

Leonard Atencio,

Forest Supervisor, Santa Fe National Forest.

[FR Doc. 00–17945 Filed 7–14–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Industrial Reports Program—Wave I (Voluntary).

Form Number(s): M336L, MQ325B, MQ327D, MQ332E.

Agency Approval Number: 0607–0393.

Type of Request: Extension of a currently approved collection.

Burden: 2,092 hours.

Number of Respondents: 1,006.

Avg Hours Per Response: 2.08 hours over all forms in this request.

Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

For clearance purposes, the surveys are divided into "waves." Each wave has an associated voluntary and mandatory clearance package, making 6 separate clearances. Each year, one wave (2 clearance packages) is submitted for review. Some voluntary CIR surveys have annual "counterparts" which collect data on a mandatory basis from firms that do not participate in the more frequent voluntary collection. This clearance contains counterpart collections.

In this request, we are seeking a 3-year extension of the current clearance.

Affected Public: Businesses or other for-profit organizations.

Frequency: This request contains monthly, quarterly, and annual collections.

Respondent's Obligation: Monthly and quarterly forms are Voluntary; Annual counterpart collections are mandatory.

Legal Authority: Title 13 USC, Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6068, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17940 Filed 7–14–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Industrial Reports Program—Wave I (Mandatory).

Form Number(s): M311H, M311M, M311N, MA325F, MA327C, MA331A, MA331B, MA331E, MA332Q, MA333A, MA333M, MA334B, MA334R, MA335A, MA335F, MA335H, MA335K.

Agency Approval Number: 0607–0392.

Type of Request: Revision of a currently approved collection.

Burden: 12,825 hours.

Number of Respondents: 10,275.

Avg Hours Per Response: 1.25 hours over all forms in this request.

Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

For clearance purposes, the surveys are divided into "waves." Each wave has an associated voluntary and mandatory clearance package, making 6 separate clearances. Each year, one wave (2 clearance packages) is submitted for OMB review.

In this request, we are seeking a 3-year extension of the clearance and we are discontinuing MA332K, "Steel Shipping Drums and Pails," due to budgetary reductions.

Affected Public: Businesses or other for-profit organizations.

Frequency: This request contains both monthly and annual collections.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 61, 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by

calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17941 Filed 7–14–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071100A]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on August 15–17, 2000. The Council will convene on Wednesday, August 16, 2000, from 9:00 a.m. to 5:00 p.m., through Thursday, August 17, 2000, from 9:00 a.m. until noon, approximately.

The Administrative Committee will meet on Tuesday, August 15, 2000, from 2:00 p.m. to 5:00 p.m., to discuss administrative matters regarding Council operation.

ADDRESSES: All meetings will be held at the Windward Passage Holiday Inn Hotel, located at Veterans Drive, Charlotte Amalie, St. Thomas, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 101st regular public meeting to discuss the items contained in the following agenda:

Call to Order

Adoption of Agenda

Consideration of 100th Council Meeting Summary Minutes

Executive Director's Report

Outreach Program Sea Grant

Coral Fishery Management Plan (FMP)

—Marine Conservation District Research Progress Report
—Coral Reef Task Force

Dolphin/Wahoo FMP

—Public Hearings Report
—Final Action in the Ten Measures for the Gulf, South Atlantic and Caribbean
—Councils' Areas

Reef Fish FMP

—Discussion on Next Amendment to the Reeffish FMP

Queen Conch FMP

—Amendment Number 1 Public Hearings Report
—Regulatory Impact Review

Enforcement

—Federal Government
—Puerto Rico
—U.S. Virgin Islands

Administrative Committee Recommendations

Meetings Attended by Council Members and Staff

Other Business

Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 11, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18016 Filed 7–14–00; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071100B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Allocation Committee will hold a meeting which is open to the public.

DATES: The meeting will begin on Wednesday, August 9 at 8 a.m. and will continue through Thursday, August 10, as necessary.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council Office, 2130 SW Fifth Avenue, Suite 224, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Fishery Management Coordinator, telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop preliminary options for allocations and other management measures involved in rebuilding plans for canary rockfish and cowcod rockfish. In addition, the Committee will evaluate current Council and catch levels of lingcod and bocaccio, and may propose inseason adjustments. The Committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of overfished species in the various groundfish fisheries, and to reduce bycatch in non-groundfish fisheries. The Committee will prepare recommendations and contribute to draft rebuilding plans for cowcod and canary rockfish that will be presented to the Council at its September meeting. If available, the Committee may also

review new assessments for Pacific ocean perch and coastwide lingcod stocks and may propose revisions to the current rebuilding plans and management measures.

Although non-emergency issues not contained in this agenda may come before this Committee for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 11, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18017 Filed 7–14–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062600C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Rachel Cartwright, P.O. Box 1317, Lahaina, Hawaii 96767, has been issued an amendment to scientific research Permit No. 895–1450.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Protected Species Program Manager, Pacific Islands Area Office, Southwest Region, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI (808/973–2937);

Alaska Regional Office, Federal Building Room 461, 709 West 9th Street, Juneau, Alaska (907/586–7235).

SUPPLEMENTARY INFORMATION: On March 30, 2000, notice was published in the **Federal Register** (65 FR 16894) that an amendment of Permit No. 895–1450, issued December 23, 1998 (64 FR 862), had been requested by the above-named person. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222). The amendment authorizes the extension of the study to specified Alaskan waters with no increase in takes.

Issuance of this amendment, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 11, 2000.

Jeannie Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–18018 Filed 7–14–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 15, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 11, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Indian Vocational Education Program.Technology Survey.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 38; Burden Hours: 95.

Abstract: This collection will assess the technology and technical assistance needs of current Indian Vocational Education Program grantees. Program staff will use the results of this collection to promote greater and more effective use of technology by vocational and technical education programs that serve Native Americans.

Requests for copies of the proposed information collection request may be

accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–17977 Filed 7–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 11, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Gun-Free Schools Act Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 12,672; Burden Hours: 27,042.

Abstract: The Gun-Free Schools Act (GFSA) requires each State to provide annual reports to the Secretary concerning implementation of the Act's requirements regarding expulsions from schools resulting from weapons violations. The GFSA requires the Secretary to report to Congress if any State is not in compliance with the GFSA, and requires the Secretary to collect data on the incidence of children with disabilities engaging in threatening behavior or bringing weapons to school.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–17978 Filed 7–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Semi-Annual Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Semi-Annual Chairs Meeting. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Thursday, August 3, 2000—7:30 a.m.–4:30 p.m.; Friday, August 4, 2000—7:30 a.m.–4:30 p.m.; Saturday, August 5, 2000—7:30 a.m.–11:30 a.m.

ADDRESS: The Ambassador Hotel, 3100 I–40 West, Amarillo, TX 79102, 806–358–6161.

FOR FURTHER INFORMATION CONTACT: Martha Crosland, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington DC, 20585, (202) 586–5793.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities.

Tentative Agenda

Thursday August 3, 2000: EM SSAB Chairs Meeting (Day 1)

07:30–8:15 a.m. Registration.
08:15–08:45 Opening Remarks/Welcome (Martha Crosland, Director, EM–11 Hqtrs and John Bernier, Deputy Manager, DOE, Amarillo Area Office).
08:45–09:00 Welcoming/Ground Rules (Facilitator).
09:00–11:30 Round robin (limit to 20 min or less/each site). A representative(s) from each SSAB will discuss:
—Site issues of concern.
—Site Ground Water Issues/Technologies.
—Board Outreach to the Community (as requested by Oak Ridge SSAB).
10:00–10:15 Break.
11:30–12:30 Status Update by (David Huizenga, Deputy Assistant Secretary, Deputy Assistant Secretary, Office of Integration and Disposition, DOE Headquarters.
- Integration.
- Transportation.
- Implementation of the Records of Decision for Mixed and Low Level Waste.
- WIPP.

12:30–01:10 Depart Hotel on Bus to Pantex Site for:
01:10–01:35 Introductions.
—Security Briefings.
—Stage Right Videos.

(For this tour you must be a U.S. Citizen, wear shoes with closed toes and show a driver's license or picture ID)

01:35–02:10 Lunch in Building 16–12 (Prepared by Pantex —Cost will be $6.00 per person (includes drinks and dessert)).

02:15–04:00 Board Bus for DOE Pantex Site "Windshield Tour".

04:15 Return to the Ambassador Hotel to rest and freshen up for the evening show of "Texas".

06:00 Meet bus at the Hotel for trip to the Palo Duro Canyon for dinner and the show. Prior to this spectacular show, (6–8 pm, a barbeque dinner will be served. Additional cost is $6.50 adults, $5.50 for children and should be paid at that time).

—6:45 Dinner.
—7:45 Seating for show.
—8:00 Showtime ends at 11:00 pm.

Friday August 4, 2000: EM SSAB Chairs Meeting (Day 2)

07:30–08:20 Coffee in meeting room.

08:30–08:45 Opening Remarks—Martha Crosland & Dr. James Hallmark, Facilitator.

08:50–10:00 Ground water Contamination Presentation, Paul Beam, Office of Integration and Disposition, EM–20, DOE, Headquarters).

- Overview presentation on ground water contamination around the complex and remediation of such contamination.
- Discussion of the integration of these issues (problems and solutions) around the complex.
- Discussion of the technologies for characterizing and remediating ground water contamination around the complex.

10:00–10:15 a.m. Break.

10:15–11:30 a.m. Conflict of Interest Discussion (Gregg Burgess, General Counsel, DOE Headquarters) (will include question & answer period).

11:30–12:30 DOE–EM Informational and Status Updates (Martha Crosland).

- SSAB Guidance Document.
- Stewardship Activities.
- NEPA (EIS/EA) Status Updates.
- National Nuclear Security Administration.
- Environmental Management Advisory Board.

12:30–02:00 p.m. Lunch.

02:00–02:30 Pantex case study—what is being done to solve the problem (likely to be given by State of Texas regulators and by site representative).

02:30–02:45 Break.

03:00–03:45 SSAB Common Values (Martha Crosland, Director, EM–11).

- Discussion and finalization of SSAB Common Values.

04:00–04:30 Wrap up Day 2 session—(Dr. Hallmark).

Saturday, August 5, 2000, EM SSAB Chairs Meeting (Day 3)

07:30–08:20 Coffee (meeting room).

08:30–08:45 Opening Remarks (Martha Crosland & Dr. Hallmark).

08:45–09:30 Planning for Rocky Flats SSAB Stewardship Workshop Ken Korkia, Rocky Flats Advisory Board.

09:30–09:45 Break.

10:00–10:30 General discussion items: Martha Crosland.

—Location and subject of the next SSAB Chairs' Meeting.
—Future EM SSAB Seminars/Workshops.
—New business.

10:30–11:00 Public comment period.

11:00–11:30 Closing remarks/wrap-up session (Dr. Hallmark).

11:35 Meeting adjournment (Martha Crosland).

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda)

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at their specific site, or Fred Butterfield at the address listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer, Martha Crosland, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: A written summary of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. The meeting summary will also be available by writing the EM–SSAB Chair or Designated Deputy Federal Officer of every EM–SSAB that participated in the meeting.

Issued at Washington, DC on July 11, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–18005 Filed 7–14–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: August 3, 2000 from 8 AM to 5 PM, and August 4, 2000 from 8 AM to 1 PM. Phone: 800/689–6765 or 910/256–8696.

PLACE: The Ocean View Inn and Resort, Gloucester, MA.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda:

- Introduction of new members and discussion of new member nominees.
- Discussion of current energy end use and supply issues.
- National Lab Presentation
- Review of STEAB contract support
- STEAB Committee updates

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 11, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–18004 Filed 7–14–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3091–000]

MidAmerican Energy Company; Notice of Filing

July 11, 2000.

Take notice that on June 14, 2000, MidAmerican Energy Company (MidAmerican), tendered for filing in compliance with the Commission's May 26, 2000 Commission Order in Docket No. ER00–2317–000, notice that the open access tariff of MidAmerican Energy Company is modified, effective May 1, 2000, to incorporate the Mid-Continent Area Power Pool's Line Loading Relief Procedures.

Any person desiring to be heard or to protest filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17962 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–381–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

July 11, 2000.

Take notice that on June 30, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff Fourth Revised Volume No. 1, the following tariff sheet to become effective July 1, 2000.

Twenty Fourth Revised Sheet No. 9

National asserts that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, et al. Under Article I, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 7.81 cents per dth.

Further, National states that under Article II, Section 1, of the settlement, it is required to recalculate the maximum Interruptible Gathering ("IG") rate semi-annually and to charge that rate to be effective July 1 and on January 1. The recalculation produced an IG rate of 13 cents per dth, which is the same as National's current IG rate. National also states that Article II, Section 2 is not applicable as the monthly recalculation did not result in a rate more than 2 cents above or below the semi-annual calculation. As there is no change in National's IG rate, Appendix E is filed for informational purposes only.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17965 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1927–008]

Pacificorp; Notice

July 11, 2000.

Vince Yearick, of the Commission's Office of Energy Projects, (202) 219–3073, has been assigned to participate in any settlement discussions that may transpire in the above-captioned proceeding. He has been separated from, and will not participate as, advisory staff in this proceeding.

David P. Boergers,

Secretary.

[FR Doc. 00–17966 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3090–000]

PJM Interconnection, L.L.C.; Notice of Filing

July 11, 2000.

Take notice that on July 7, 200, PJM Interconnection, L.L.C. (PJM), tendered for filing supplements to the Appendix of Attachment K of the PJM Open Access Transmission Tariff (PJM Tariff) and a supplement to Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to set forth a Customer Load Reduction Pilot Program to be implemented on a temporary basis to ensure the continued reliability of the electric power system during the summer. For informational purposes, PJM also included its streamlined procedures pursuant to section 36.12 of the PJM Tariff for the interconnection of generation of less than 10 megawatts. In the alternative, to the extent these procedures are considered amendments to the PJM Tariff, PJM proposed these procedures also be accepted for filing.

PJM requests a waiver of the Commission's 60-day notice requirement to permit an effective date of July 8, 2000 for the amendments. PJM also requested that responses to the filing be due on July 17, 2000 and that the Commission issue a final order by July 26, 200.

Copies of this filling were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Any person desiring to be heard or to protest such filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 18, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17961 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–397–000]

PNM Electric and Gas Services, Inc. and PNM Gas Services, a Division of Public Service Company of New Mexico; Notice of Filing

July 11, 2000.

Take notice that on June 29, 2000, PNM Electric and Gas Services, Inc. (UtilityCo), 414 Silver Avenue S.W., Albuquerque, New Mexico, 87158, and PNM Gas Services, a Division of Public Service Company of New Mexco (PNM), Alvarado Square, MN 0920, Albuquerque, New Mexico, 87158, filed in Docket No. CP00–397–000 an application for Natural Gas Act Section 3 authorization and a Presidential Permit for the exportation of natural gas at the international border with Mexico, and for authorization to relinquish the permit that presently grants such authority, all as more fully set forth in the filing which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

UtilityCo states that this filing is being made in connection with a corporate reorganization of Public Service Company of New Mexico mandated by the Electric Utility Industry Restructuring Act of 1999 (Restructuring Act). As stated in the application, UtilityCo's requested Section 3 authorization and Presidential Permit are for the facilities and operations for which the Commission issued Section 3 authorization and a Presidential Permit to PNM in Docket No. CP93–98–000. It is also stated that PNM proposes to relinquish its Presidential Permit issued in Docket No. CP93–98–000 effective on the date on which the Presidential Permit and Section 3 authorization are issued to UtilityCo. It is stated that the purpose and substantive effect will be to permit the PNM corporate family to continue to conduct the same business activity previously authorized by the Commission but using new corporate entities required by the Restructuring Act. UtilityCo states that it is not seeking any authorizations that are different from those held by PNM. It is also stated that upon the receipt of the necessary regulatory approvals, including the Commission's disposition of this application, the existing gas transmission and distribution facilities and operations of PNM will be acquired by and operated by UtilityCo. It is further stated that UtilityCo, as the successor to PNM, will be a natural gas distribution company with facilities located entirely within the State of New Mexico, and that all of the gas purchased by UtilityCo will be subject to regulation by the New Mexico Public Regulation Commission with respect to its natural gas rates, services and facilities. The contact person for this filing is Thomas J. Wander, Director, Gas Regulatory Policy, Public Service Company of New Mexico, Alvarado Square, MS 0920, Albuquerque, New Mexico 87158, (505) 241–2479.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before August 1, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 00–17959 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–282–001]

Questar Pipeline Company; Notice of Compliance Filing

July 12, 2000.

Take notice that on June 23, 2000, in response to the Commission's June 9, 2000, order in the captioned docket, Questar Pipeline Company (Questar) submitted clarifications of its May 12, 2000, tariff filing.

On May 12, 2000, Questar filed proposed tariff language to allow its Rate Schedule PKS peaking storage reservoir customers to leave working gas in place in Questar's Leroy and Coalville storage reservoirs during the summer months. By the Commission's June 9 order, Questar was directed to provide additional information and clarification of its tariff language. Questar's June 23 filing is submitted in response to the June 23 order, and is on file with the Commission.

Any person desiring to comment or protest this filing should file a comment or protest with the Federal Energy Regulatory Commission 888 First Street, NE, Washington, D.C. 20426. all such comments or protests should be filed on or before July 19, 2000. Protest must be filed in accordance with Section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18000 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. RP00–289–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

July 11, 2000.

Take notice that on June 30, 2000, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of

its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets with an effective date of August 1, 2000:

Sixteenth Revised Sheet No. 26
Eight Revised Sheet No. 413

Tennessee states that it is also including with this filing the information concerning Ocean State Power I and Ocean State Power II (Ocean State) requested by the Commission.

Tennessee states that the filing is being made in compliance with the Commission's order issued June 15, 2000 in Docket No. RP00–289 (91 FERC ¶ 61,266 (2000). In the October 15th order, the Commission directed Tennessee, within 15 days of issuance of the order, to (1) respond the issues raised by Ocean State, (2) list the tariff as containing material deviations the contracts with Ocean State and Orchard Gas Corporation (MassPower) and (3) delete footnote 4 transmittal letter comply with the requirements of the order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17964 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–7–004]

Texas Eastern Transmission Corporation; Notice of Refund Report

July 12, 2000.

Take notice that on June 29, 2000, Texas Eastern Transmission Cororation (Texas Eastern) tendered for filing a refund report of Storage Cost Credit amounts totaling $145,767.07 credited to customers on their June 10, 2000, invoices. Texas Eastern states that the refund was made pursuant to the Commission's Order On Rehearing and Compliance issued on April 14, 2000, in Docket Nos. RP00–7–001 and RP00–7–002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 18, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17999 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–17–002]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 11, 2000.

Take notice that on June 30, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets listed on Appendix A attached to the filing. Such tariff sheets are proposed to be effective September 1, 2000.

Transco states that the purpose of the instant filing is to implement Transco's proposal in the referenced docket to limit capacity usage to the extent that combined nominations of releasing and replacement shippers in a segment exceed the releasing shipper's original firm capacity entitlement, consistent with the Commission's November 12, 1999 "Order on Pro Forma Tariff Sheets Establishing Technical Conference" in the referenced docket ("November 12 Order"). In order to implement its proposal, Transco also is filing to remove the Rate Schedules FT–R and FTN–R Commodity Form of Service Agreement from its Tariff and make changes to its Rate Schedules FT–R and FTN–R Demand Form of Service Agreement to reflect that removal.

Transco states that it is serving copies of the instant filing to the affected customers, State Commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17963 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–104–000, et al.]

El Paso Electric Company, et al.; Electric Rate and Corporate Regulation Filings

July 7, 2000.

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company, El Paso Electric Generating Company, El Paso Electric Transmission and Distribution Company

[Docket Nos. EC00–104–000, ER00–2870–000 and ES00–46–000]

Take notice that on June 16, 2000, El Paso Electric Company (EPE), El Paso Electric Generating Company (EPE Genco), and El Paso Electric Transmission and Distribution Company (T&D Utility) (collectively, Applicants) tendered for filing an application under section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities and under section 204 of the Federal Power Act for approval of certain securities transactions necessary to implement a corporate restructuring. The Applicants also tendered for filing under section 205 of the Federal Power

Act certain related wholesale power sale contracts.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. CD Stillwater-A, Inc.

[Docket No. EG00–195–000]

Take notice that on June 29, 2000, CD Stillwater-A, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. CD Stillwater-B, Inc.

[Docket No. EG00–196–000]

Take notice that on June 29, 2000, CD Stillwater-B, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. CD Stillwater-C, Inc.

[Docket No. EG00–197–000]

Take notice that on June 29, 2000, CD Stillwater-C, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. CE Puna Limited Partnership

[Docket No. EG00–198–000]

Take notice that on June 29, 2000, CE Puna Limited Partnership (Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Aques Investments Corporation II

[Docket No. EG00–199–000]

Take notice that on June 29, 2000, Aques Investments Corporation II (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. CD Soda III, Inc.

[Docket No. EG00–200–000]

Take notice that on June 29, 2000, CD Soda III, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. CD ACE I, Inc.

[Docket No. EG00–201–000]

Take notice that on June 30, 2000, CD ACE I, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. CD ACE II, Inc.

[Docket No. EG00–202–000]

Take notice that on June 30, 2000, CD ACE II, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. CD ACE III, Inc.

[Docket No. EG00–203–000]

Take notice that on June 30, 2000, CD ACE III, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

11. CD ACE IV, Inc.

[Docket No. EG00–204–000]

Take notice that on June 30, 2000, CD ACE IV, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

12. CE Wayne I, Inc.

[Docket No. EG00–205–000]

Take notice that on June 30, 2000, CE Wayne I, Inc. (the Applicant), with its principal place of business at 111 Market Place, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission)

an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

13. COSI Sunnyside, Inc.

[Docket No. EG00–206–000]

Take notice that on June 30, 2000, COSI Sunnyside, Inc. (Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

14. Sunnyside II, L.P.

[Docket No. EG00–207–000]

Take notice that on June 30, 2000, Sunnyside II, L.P. (Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

15. COSI Central Wayne, Inc.

[Docket No. EG00–208–000]

Take notice that on June 30, 2000, COSI Central Wayne, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

16. Oleander Power Project, Limited Partnership

[Docket No. EG00–209–000]

Take notice that on June 30, 2000, Oleander Power Project, Limited Partnership (Oleander), a Florida limited partnership with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Oleander proposes to construct, own and/or operate, a nominally rated approximately 875 MW natural gas and oil fired, simple cycle power plant (the "Eligible Facility") in Brevard County, Florida and to sell electricity exclusively at wholesale. The proposed Eligible Facility is expected to commence commercial operation in the second quarter of 2002. All capacity, energy, and ancillary services from the Eligible Facility will be sold by Oleander exclusively at wholesale.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

17. Wolf Hills Energy, LLC

[Docket No. EG00–210–000]

Take notice that on June 30, 2000, Wolf Hills Energy, LLC (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

18. Holland Energy, LLC

[Docket No. EG00–211–000]

Take notice that on June 30, 2000, Holland Energy, LLC (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

19. University Park Energy, LLC

[Docket No. EG00–212–000]

Take notice that on June 30, 2000, University Park Energy, LLC (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

20. CD Panther Partners, L.P.

[Docket No. EG00–213–000]

Take notice that on June 30, 2000, CD Panther Partners, L.P. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

21. Constellation Operating Services

[Docket No. EG00–214–000]

Take notice that on June 30, 2000, Constellation Operating Services (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

22. Rio Nogales Power Project, L.P.

[Docket No. EG00–215–000]

Take notice that on June 30, 2000, Rio Nogales Power Project, L.P. (Rio Nogales), a Delaware limited partnership with its principal place of

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business at 111 Market Place, Suite 200, Baltimore, MD 21202 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Rio Nogales proposes to construct, own and/or operate, a nominally rated approximately 800 MW natural gas-fired, combined cycle power plant (the Eligible Facility) to be located in Seguin, Texas and to sell electricity exclusively at wholesale. The proposed Eligible Facility is expected to commence commercial operation in the second quarter of 2002. All capacity, energy and ancillary services from the Eligible Facility will be sold by Rio Nogales exclusively at wholesale.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

23. CE Colver Limited Partnership

[Docket No. EG00–216–000]

Take notice that on June 30, 2000, CE Colver Limited Partnership (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

24. CE Colver I, Inc.

[Docket No. EG00–217–000]

Take notice that on June 30, 2000, CE Colver I, Inc. (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

25. CE Central Wayne Energy Recovery, Limited Partnership

[Docket No. EG00–218–000]

Take notice that on June 30, 2000, CE Central Wayne Energy Recovery, Limited Partnership (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

26. COSI A/C Power, Inc.

[Docket No. EG00–219–000]

Take notice that on June 30, 2000, COSI A/C Power, Inc., with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

27. ANP Operations Company

[Docket No. EG00–220–000]

Take notice that on July 3, 2000, ANP Operations Company (Applicant), a Delaware corporation, whose address is 10000 Memorial Drive, Suite 500, Houston, Texas 77024, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant intends to operate the following eligible facilities: (i) An approximate 1,650 MW natural gas-fired combined-cycle independent power production facility, including ancillary and appurtenant structures, located near Midlothian, Texas; (ii) an approximate 550 MW natural gas-fired combined-cycle independent power production facility, including ancillary and appurtenant structures, located in Bellingham, Massachusetts; (iii) an approximate 550 MW natural gas-fired combined-cycle independent power production facility, including ancillary and appurtenant structures, located in Blackstone, Massachusetts; and (iv) an approximate 1,100 MW natural gas-fired combined-cycle independent power production facility, including ancillary and appurtenant structures, located in Hays County, Texas (collectively, the Facilities). The Facilities are or, to the extent currently under development, will be operated by Applicant.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

28. ISO New England Inc.

[Docket Nos. EL00–59–001, EL00–62–003, ER00–2005–001, ER00–2016–001 and ER00–2052–004]

Take notice that on June 30, 2000, the New England Power Pool (NEPOOL) submitted the Fifty-Seventh Agreement Amending New England Power Pool Agreement (Fifty-Seventh Agreement) which extends the termination date for the conceptual agreement for a replacement Congestion Cost allocation methodology until the implementation effective date of a Commission order regarding a new Congestion Cost allocation methodology. A June 1, 2000 effective date has been requested.

NEPOOL states that copies of these materials were sent to the New England state governors and regulatory commissions and the NEPOOL Participants.

Comment date: July 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Entergy Services, Inc.

[Docket No. ER00–2854–000]

Take notice that on June 27, 2000, Entergy Services, Inc. (ESI), on behalf of the Entergy Operating Companies' (collectively, Entergy) filed amendments to the System Agreement consisting of work papers associated with the testimony contained in the June 15, 2000 filing in the above-referenced docket.

Comment date: July 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17958 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–148–000, et al.]

Electric Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 10, 2000.

Take notice that the following filings have been made with the Commission:

1. Electric Energy, Inc.

[Docket No. EG00–148–000]

Take notice that on July 7, 2000, Electric Energy, Inc. (EEInc), 2100 Portland Road, P.O. Box 165, Joppa, IL 62953, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–3066–000]

Take notice that on July 3, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing the First Revised Service Agreement No. 20 under the Market Rate Tariff to incorporate a Netting Agreement with Cinergy Services, Inc. into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Netting Agreement effective as of June 5, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3067–000]

Take notice that on July 3, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Service Agreement No. 314 to add Cinergy Services, Inc., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is June 30, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER00–3070–000]

Take notice that on July 5, 2000, the California Independent System Operator Corporation, tendered for filing a Scheduling Coordinator Agreement between the ISO and the City of Glendale for acceptance by the Commission.

The ISO states that this filing has been served on the City of Glendale and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of June 21, 2000.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER00–3071–000]

Take notice that on July 5, 2000, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Gas Recovery Systems, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Gas Recovery Systems, Inc., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective June 12, 2000.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Otter Tail Power Company

[Docket No. ER00–3072–000]

Take notice that on July 5, 2000, Otter Tail Power Company (OTP), tendered for filing a Service Agreement between OTP and the Energy Authority, Inc. (Energy Authority). The Service Agreement allows Energy Authority to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER00–3073–000]

Take notice that on July 5, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an Interconnection and Operating Agreement with Formosa Plastics Corporation (Formosa), and a Generator Imbalance Agreement with Formosa.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER00–3075–000]

Take notice that on July 5, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an Interconnection and Operating Agreement with CITGO Petroleum Corporation (CITGO), and a Generator Imbalance Agreement with CITGO.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Tucson Electric Power Company

[Docket No. ER00–771–004]

Take notice that on July 3, 2000, Tucson Electric Power Company (Tucson), tendered for filing a

compliance filing with respect to the Commission's May 19, 2000, Commission Order concerning the above listed dockets.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Madison Gas and Electric Company

[Docket No. ER00–3069–000]

Take notice that on July 3, 2000, Madison Gas and Electric Company (MGE), tendered for filing service agreements under MGE's Market-Based Power Sales Tariff with:

- Rainbow Energy Marketing Corporation
- Reliant Energy Services, Inc.

MGE requests the agreements be effective the date of filing.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER99–3393–003]

Take notice that on July 5, 2000, Jersey Central Power & Light Company (doing business as GPU Energy), tendered for filing an amendment to the Refund Report originally submitted on May 30, 2000 in this docket.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. TransÉnergie U.S. Ltd

[Docket No. ER00–1–002]

Take notice that on July 3, 2000, TransÉnergie US Ltd., tendered for filing, in compliance with the Commission's Order of June 1, 2000, 91 FERC ¶ 61,230 (2000), a report specifying the procedures for customers to reassign their firm transmission rights over the Cross Sound Cable Interconnector and a description of the procedures for implementing the Standards of Conduct required under Order No. 889.

Copies of the filing have been served on the parties to this proceeding.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Central Power and Light Company Public Service Company of Oklahoma Southwestern Electric Power Company West Texas Utilities Company

[Docket No. ER00–2100–001]

Take notice that on July 5, 2000, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company in compliance with Commission staff request tendered for filing additional information in the above-captioned proceeding.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER00–2739–001]

Take notice that on July 5, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing a tariff sheet numbered "Original Sheet No. 1" that is blank and marked "Reserved" under Virginia Electric and Power Company, FERC Electric Tariff, Second Revised Volume No. 5 in compliance with Designation of Electric Rate Schedule Sheets, 90 FERC ¶ 61,352 (2000).

Virginia Power respectfully requested that the tariff sheet be accepted for filing as of June 7, 2000.

Copies of the filing were served upon the public utility's jurisdictional customers, Virginia State Corporation Commission and North Carolina Utilities Commission.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Carolina Power & Light Company

[Docket No. ER00–2741–001]

Take notice that on July 5, 2000, Carolina Power & Light Company (CP&L), tendered for filing a title page with no pagination and a tariff sheet numbered "Original Sheet No. 1" that is blank and marked "Reserved" under Carolina Power & Light Company, FERC Electric Tariff, Second Revised Volume No. 3 in compliance with Designation of Electric Rate Schedule Sheets, 90 FERC ¶ 61,352 (2000).

CP&L respectfully requested that the sheets be accepted for filing as of June 7, 2000.

Copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission and South Carolina Public Service Commission.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–2763–001]

Take notice that on July 5, 2000, Wisconsin Energy Corporation Operating Companies (Wisconsin Energy), tendered for filing a title page with the correct designation and a tariff sheet numbered "Original Sheet No. 1" that is blank and marked "Reserved" under Wisconsin Energy Corporation Operating Companies, FERC Electric Tariff, First Revised Volume No. 1 in compliance with Designation of Electric Rate Schedule Sheets, 90 FERC ¶ 61,352 (2000).

Wisconsin Energy requested that the sheets be accepted for filing as of June 7, 2000.

Copies of the filing were served upon the public utility's jurisdictional customers, Public Service Commission of Wisconsin and Michigan Public Service Commission.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER00–2838–001]

Take notice that on July 5, 2000, Wisconsin Electric Power Company tendered for filing an amendment to its FERC Electric Tariff No. 1, Wholesale Power Service " Schedule W. The amendment provides for the addition of Sheet No. 1, marked "Reserved."

Copies of the filing were served upon the public utility's jurisdictional customers, Public Service Commission of Wisconsin and Michigan Public Service Commission.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. FirstEnergy System

[Docket No. ER00–3064–000]

Take notice that on July 3, 2000, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for The Legacy Energy Group, LLC , the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is June 30, 2000 for the above mentioned Service Agreement in this filing.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. FirstEnergy System

[Docket No. ER00–3065–000]

Take notice that on July 3, 2000, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for The Legacy Energy Group, LLC, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

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The proposed effective date under this Service Agreement is June 30, 2000, for the above mentioned Service Agreement in this filing.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E: Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17997 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF00–2012–000, et al.]

Department of Energy, et al.; Electric Rate and Corporate Regulation Filings

July 11, 2000.

Take notice that the following filings have been made with the Commission:

1. U.S. Department of Energy, Bonneville Power Administration

[Docket Nos. EF00–2012–000 and EF00–2013–000]

Take notice that the Bonneville Power Administration (BPA) on July 6, 2000, tendered for filing proposed rate adjustments for its wholesale power rates pursuant to pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839e(a)(2). BPA seeks interim approval of its proposed rates effective September 15, 2000, pursuant to Commission regulation 300.20, 18 CFR 300.20. Pursuant to Commission regulation 300.21, 18 CFR 300.21, BPA seeks interim approval and final confirmation of the proposed rates for the periods set forth in this notice.

BPA requests approval effective October 1, 2001, through September 30, 2006, for the following proposed wholesale power rates: PF–02 Priority Firm Power Rate, RL–02 Residential Load Firm Power Rate, NR–02 New Resource Firm Power Rate, IP–02 Industrial Firm Power Rate, including the IPTAC, and NF–02 Nonfirm Energy Rate. In addition, BPA requests approval of the General Rate Schedule Provisions (GRSPs) for the period of October 1, 2001, through September 30, 2006. The GRSPs will apply to the 2002 wholesale power rates. BPA requests approval of the methodology used to calculate the rate for the Slice product sold under the PF rate schedule for the period October 1, 2001, to September 30, 2011. BPA requests final approval be granted by January 19, 2001, for the rate adjustments discussed above.

BPA requests interim approval by September 15, 2000, and final approval by December 8, 2000, of an adjustment to the 1996 GRSPs to enable BPA to recover costs of serving load unanticipated and not forecast in the 1996 rate case. This charge, known as Targeted Adjustment Charge for Uncommitted Loads (TACUL), will impose on certain PF–96 and NR–96 customers, only for the period December 8, 2000, to September 30, 2001, the costs of acquiring power to serve these loads which were not served by BPA during the 1996 rate period, but which are returning to BPA service before the 1996 rate period ends as these customers' other supply contracts expire.

Comment date: August 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. EL00–89–000]

Take notice that on June 30, 2000, Southern California Edison Company (SCE) filed a Petition for Declaratory order pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)). Southern California Edison asks the Commission to declare that the decision of the U.S. Court of Appeals for the District of Columbia Circuit in Southern California Edison Co. v. FERC, 195 F.3d 17 (1999) invalidating the "essential fixed assets" standard announced in Luz Solar Partners, Ltd., 30 FERC ¶ 61,122 at p. 61, 226 (1985), under which the Commission permitted uses of fossil fuel not authorized by PURPA by qualifying small power production facilities, is retroactively applicable to all qualifying small power production facilities; and that qualifying small power production facilities may not continue to use fossil fuel under the "essential fixed assets" standard and may be required to make refunds. SCE has attached to its petition a list of qualifying small power production facilities from which it purchases power and which it has served with a copy of the petition. SCE has asked the Commission to set this matter for alternative dispute resolution (ADR).

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER00–3074–000]

Take notice that on July 6, 2000, Western Resources, Inc., tendered for filing a Service Agreement between Western Resources, Inc. and City of Columbia, Missouri, Water and Light Department (City). Western Resources states that the purpose of this agreement is to permit the City to take service under Western Resources' Market Based Power Sales Tariff on file with the Commission.

This agreement is proposed to be effective July 6, 2000.

Copies of the filing were served upon the City and the Kansas Corporation Commission.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER00–3076–000]

Take notice that on July 6, 2000, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Lassen Municipal Utility District for acceptance by the Commission.

The ISO states that this filing has been served on Lassen Municipal Utility District and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective June 28, 2000.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER00–3077–000]

Take notice that on July 6, 2000, Public Service Company of New Mexico (PNM), tendered for filing two executed service agreements with Cinergy

Services, Inc., dated June 27, 2000, under PNM's Open Access Transmission Service Tariff. One agreement is for non-firm point-to-point transmission service and one agreement is for firm point-to-point transmission service. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Cinergy Services, Inc., and to the New Mexico Public Regulation Commission.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER00–3079–000]

Take notice that on July 6, 2000, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Revisions to Exhibits to the General Transfer Agreement between PacifiCorp and the Bonneville Power Administration (Bonneville).

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Otter Tail Power Company

[Docket No. ER00–3080–000]

Take notice that on July 6, 2000, Otter Tail Power Company (Otter Tail), tendered for filing with the Federal Energy Regulatory Commission a Wholesale Market-Based Rate Tariff and a *pro forma* Service Agreement, and proposed modifications to Otter Tail's Wholesale Coordination Sales Tariff No. 2. Otter Tail has mailed a copy of this filing to all of its customers under its Wholesale Coordination Sales Tariff No. 2.

Otter Tail states that its Wholesale Market-Based Rate Tariff and pro forma Service Agreement are being filed in order to conform to a pro forma tariff prepared by a group of representatives from various segments of the electric industry. Otter Tail will continue to utilize its existing Wholesale Coordination Sales Tariff No. 2 for existing service agreements, until such agreements expire.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Southwest Power Pool, Inc.

[Docket No. ER00–3081–000]

Take notice that on July 6, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service and Loss Compensation Service with DTE Energy Trading, Inc (DTE).

SPP seeks an effective date of June 26, 2000 for each of the service agreements.

Copies of this filing were served on DTE.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER00–3082–000]

Take notice that on July 7, 2000, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Allegheny Energy Supply Company, L.L.C. for Non-Firm transmission service and Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements are permitted to become effective on July 7, 2000.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket No. ER00–3083–000]

Take notice that on July 6, 2000, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing DTE Energy Trading, Inc., as a non-firm point-to-point customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon DTE Energy Trading, Inc. and the South Carolina Public Service Commission.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. MidAmerican Energy Company

[Docket No. ER00–3084–000]

Take notice that on July 7, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Corn Belt Power Cooperative (Corn Belt Power), dated June 12, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 15, 2000 for the Agreements with Corn Belt Power, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Corn Belt Power, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Ameren Services Company

[Docket No. ER00–3085–000]

Take notice that on July 28, 2000, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and Entergy Power Marketing Corp. (Entergy). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Entergy pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. MidAmerican Energy Company

[Docket No. ER00–3086–000]

Take notice that on July 7, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Cedar Falls Utilities (Cedar Falls), dated June 15, 2000, and a Non-Firm Transmission Service Agreement with Cedar Falls, dated June 15, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 15, 2000 for the Agreements with Cedar Falls, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Cedar Falls Utilities, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Cleco Utility Group Inc.

[Docket No. ER00–3087–000]

Take notice that on July 7, 2000, Cleco Utility Group, Inc. (CLECO), tendered for filing Non-Firm and Short term firm point-to-point transmission service agreements under its Open Access Transmission Tariff with The Energy Authority, Inc.

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CLECO requests that the Commission accept the Service Agreement with an effective date of July 7, 2000.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER00–3088–000]

Take notice that on July 7, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Short-Term Firm Transmission Service Agreements with Edison Mission Marketing & Trading, Inc. (EMMT) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of ComEd of June 10, 2000, for the agreement with EMMT, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Northern Indiana Public Service Company

[Docket No. ER00–3089–000]

Take notice that on July 7, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Detroit Edison Merchant Operations (Transmission Customer).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Transmission Customer pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested waivers to permit the Service Agreement to become effective as of June 1, 2000.

Copies of this filing have been sent to Detroit Edison Merchant Operations, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17996 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–32–000]

Tennessee Gas Pipeline Company; Notice of Termination of Service

July 11, 2000.

Take notice that on June 19, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a notice of its intent to terminate service to certain shippers pursuant to Article XXVIII of its General Terms and Conditions. Tennessee proposes that the termination be made effective on July 19, 2000.

Tennessee states that these shippers are part of the Service Package 8822 group of shippers that entered into a single transportation agreement on February 1, 1995, with Tennessee to receive and deliver gas to Columbia Gas Transmission Corporation under Rate Schedule FT–A. Tennessee states that after several and various attempts they have not been able to verify the creditworthiness of certain shippers and, therefore, proposes to remove them from the list of eligible shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 18, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17960 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11150–000–Michigan]

Cameron Gas and Electric Company; Notice of Availability of Draft Environmental Assessment

July 12, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the unlicensed Smithville and Mix Hydroelectric Project located on the Grand River, in the city of Eaton Rapids, Eaton County, Michigan, and has prepared a draft Environmental Assessment (EA) for the project. In the draft EA, the Commission's staff has analyzed the potential environmental effects of the project and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. The draft EA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1–A, Washington, D.C. 20426. Please affix "Smithville and Mix Hydroelectric Project No. 11150" to all comments. For further information, contact William Guey-Lee at (202) 219–2808.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–17998 Filed 7–14–00; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Notice of Order Confirming and Approving an Extension of the Firm Electric Service Rate for Rate Order No. WAPA–89

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Loveland Area Projects' (LAP) firm electric service rate, Rate Order No. WAPA–51, through September 30, 2003. The existing firm electric service rate will expire January 31, 2001. This notice of an extension of the rate is issued pursuant to 10 CFR 903.23. Rate Order No. WAPA–51, previously extended under Rate Order No. WAPA–82, is further extended under Rate Order WAPA–89.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 461–7442, or e-mail dpayton@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary.

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in firm electric service rate adjustments at 10 CFR part 903, Western's LAP firm electric service rate was submitted to FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5181–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm electric service rate for LAP. LAP consists of the Fryingpan-Arkansas Project and the Pick-Sloan Missouri Basin Program, Western Division. The rate set forth in Rate Order No. WAPA–51 was approved for a 5-year period beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–82, the Deputy Secretary extended the existing rate for a 2-year period beginning February 1, 1999, through January 31, 2001. On January 31, 2001, the LAP firm electric rate will expire.

Western proposed to extend the existing rate of $2.85/kilowattmonth for capacity and 10.85 mills/kilowatthour for energy which is sufficient to recover the LAP annual revenue requirement of $44.3 million. This requirement includes project expenses, interest, and capital requirements through September 30, 2003. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost evaluation period have made this possible. Western, therefore, has decided to extend the existing rate pursuant to 10 CFR 903.23.

In accordance with 10 CFR 903.23(a)(2), Western did not have a consultation and comment period. The notice of proposed extension of the firm electric service rate was published in the **Federal Register** on March 29, 2000.

Following review of Western's proposal within the Department of Energy, I approved Rate Order No. WAPA–89, which extends the existing Loveland Area Projects' firm electric service Rate Schedule L–F4 on an interim basis through September 30, 2003.

Dated: July 10, 2000.

T.J. Glauthier,

Deputy Secretary.

Department of Energy Deputy Secretary

In the Matter of: Western Area Power Administration Rate Extension for Loveland Area Projects Firm Electric Service Rate.

Rate Order No. WAPA–89

Order Confirming and Approving an Extension of the Loveland Area Projects' Firm Electric Service Rate

(_____, 2000)

This rate was established pursuant to section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)), through which the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary.

Background

In the order issued July 14, 1994, in Docket No. ER94–5181–000 at 68 FERC ¶ 62,040, FERC confirmed, approved, and placed into effect on a final basis Rate Order No. WAPA–51 for the firm electric service rate for the Loveland Area Projects (LAP). The rate was approved for the period from February 1, 1994, through January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–82, the Deputy Secretary extended the existing rate for a 2-year period beginning February 1, 1999, through January 31, 2001. On January 31, 2001, the LAP firm electric rate will expire. This makes it necessary to extend the current rate pursuant to 10 CFR part 903. With this approval, Rate Order No. WAPA–51, previously extended under Rate Order No. WAPA–82, will be extended under Rate Order No. WAPA–89.

Discussion

The LAP consists of the Pick-Sloan Missouri Basin Program, Western Division, and the Fryingpan-Arkansas Project. The existing LAP rate of $2.85/kilowattmonth for capacity and 10.85 mills/kilowatthour for energy is sufficient to recover the LAP annual revenue requirement of $44.3 million. This requirement includes project expenses, interest, and capital requirements through September 30, 2003. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost evaluation period have made this possible.

In accordance with 10 CFR 903.23(a)(2), Western did not have a consultation and comment period. The notice of proposed extension of the firm electric service rate was published in the **Federal Register** on March 29, 2000.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby extend for the period effective February 1, 2001, through September 30, 2003, the existing Rate Schedule L-F4 on an interim basis for firm electric service for the Loveland Area Projects.

Dated: July 10, 2000.

T.J. Glauthier,

Deputy Secretary.

[FR Doc. 00–18002 Filed 7–14–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program-Eastern Division—Notice of Order Confirming and Approving an Extension of the Firm Power Service and Firm Peaking Power Service Rates for Rate Order No. WAPA–90

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED) firm power service and firm peaking power service rates, Rate Order No. WAPA–60, through September 30, 2003. The existing firm power service and firm peaking power service rates will expire January 31, 2001. This notice of an extension of rates is issued pursuant to 10 CFR 903.23. Rate Order No. WAPA–60, previously extended under Rate Order No. WAPA–83, is further extended under Rate Order No. WAPA–90.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, telephone (406) 247–7388, or e-mail riehl@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy.

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in power rate adjustments at 10 CFR part 903, Western's P–SMBP–ED firm power service and firm peaking power service rates were submitted to FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm power service and firm peaking power service rates for the P–SMBP–ED. The rates set forth, Rate Order No. WAPA–60, were approved for the 5-year period beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA 83, the Deputy Secretary extended the existing rates for a 2-year period beginning February 1, 1999, and ending January 31, 2001.

On January 31, 2001, the P-SMBP-ED firm power service and firm peaking power service rates will expire.

Western proposed to extend the existing rate of $3.20/kilowattmonth for capacity and the rate of 8.32 mills/kilowatthour for energy which are sufficient to recover project expenses, including interest, and capital requirements through September 30, 2003. Increased revenue from good hydrologic conditions and effective cost containment efforts have resulted in lower operation and maintenance expenses over the cost-evaluation period to make this possible. For the Pick-Sloan Missouri Basin Program, the rate setting study projected the deficit associated with the drought starting in 1989 to peak at $178 million in fiscal year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid, with interest, in FY 1997. The total revenue requirement of $135.2 million is sufficient to cover the expenses and capital requirements through September 30, 2003. Western, therefore, has decided to extend the existing rates pursuant to 10 CFR 903.23.

In accordance with 10 CFR 903.23(a)(2), Western did not have a consultation and comment period. The notice of an extension of the firm power service and firm peaking power service rates was published in the **Federal Register** on March 29, 2000.

Following review of Western's proposal within the Department of Energy, I approved Rate Order No. WAPA–90, which extends the existing P–SMBP–ED firm power service and firm peaking power service rate schedules P–SED–F6 and P–SED–FP6 on an interim basis through September 30, 2003.

Dated: July 10, 2000.

T.J. Glauthier,

Deputy Secretary.

Department of Energy Deputy Secretary

Rate Order No. WAPA–90

In the Matter of: Western Area Power Administration Extension of the Firm Power Service and Firm Peaking Power Service Rates for the Pick-Sloan Missouri Basin Program-Eastern Division

Order Confirming and Approving an Extension of the Pick-Sloan Missouri Basin Program-Eastern Division Firm Power Service and Firm Peaking Power Service Rates

This rate extension was established pursuant to section 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. This rate extension is issued pursuant to the Delegation Order and the Department of Energy rate extension procedures at 10 CFR part 903.

Background

In the order issued July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, FERC confirmed, approved, and placed in effect on a final basis Rate Order No. WAPA–60, for the firm power service and firm peaking power service rates for the Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED), The rates were approved for the period from February 1, 1994, through January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–83 the Secretary extended the existing rates for a 2-year period beginning February 1, 1999, through January 31, 2001. On January 21, 2001, the P–SMBP–ED firm power service and firm peaking power service rates will expire. This makes it necessary to extend the current rates pursuant to 10 CFR part 903. With this

approval, Rate Order No. WAPA–60, previously extended under Rate Order No. WAPA–83, will be extended under Rate Order WAPA–90. A notice of an extension of the firm power and firm peaking power service rates was published in the **Federal Register** on March 29, 2000. Therefore, Western is extending P–SMBP–ED firm power and firm peaking power service rates under Rate Order No. WAPA–90.

Discussion

The existing P–SMBP–ED rate is $3.20/kilowattmonth for capacity and 8.32 mills/kilowatthour for energy. The existing rates are sufficient to recover project expenses, including interest and capital requirements through September 30, 2003. Increased revenue from good hydrologic conditions and effective cost containment efforts have resulted in lower operation and maintenance expenses over the cost-evaluation period. For the Pick-Sloan Missouri Basin Program, the rate setting study projected the deficit associated with the drought starting in 1989 to peak at $178 million in fiscal year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid, with interest, in FY 1997. The total revenue requirement of $135.2 million is sufficient to cover the expenses and capital requirements through September 30, 2003.

In accordance with 10 CFR part 903.23(a)(2), Western did not have a consultation and comment period. The notice of proposed extension of the firm power service and firm peaking power service rates was published in the **Federal Register** on March 29, 2000.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby extend for a period effective February 1, 2001, and ending September 30, 2003, the existing Rate Schedules P–SED–F6 for firm power service and P–SED–FP6 on an interim basis for firm peaking power service for the P–SMBP–ED.

Dated: July 10, 2000.

T.J. Glauthier,

Deputy Secretary.

[FR Doc. 00–18003 Filed 7–14–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Land Disposal Restrictions No-Migration Variances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Land Disposal Restrictions No-Migration Variances, OMB Control Number 2050–0062, EPA ICR No. 1353.06 expiring on August 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 16, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1353.06. For technical questions about the ICR contact David A. Eberly on 703–308–8645.

SUPPLEMENTARY INFORMATION:

Title: Land Disposal Restrictions No-Migration Variances, OMB Control Number 2050–0062, EPA ICR No. 1353.06, expiring August 31, 2000. This is a request for extension of a currently approved collection.

Abstract: To receive a variance from the hazardous waste land disposal prohibitions, owner/operators of hazardous waste storage or disposal facilities may petition the Environmental Protection Agency to allow land disposal of a specific restricted waste at a specific site. The EPA Regional Offices will review the petitions and determine if they successfully demonstrate "no migration." The applicant must demonstrate that hazardous wastes can be managed safely in a particular land disposal unit, so that "no migration" of any hazardous constituents occurs from the unit for as long as the waste remains hazardous. If EPA grants the variance, the waste is no longer prohibited from land disposal in that particular unit. If the owner/operator fails to make this demonstration, or chooses not to petition for the variance, best demonstrated available technology (BDAT) requirements of 40 CFR 268.40 must be met before the hazardous wastes are placed in a land disposal unit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 22, 2000 (65 FR 8699); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,137 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 1.

Estimated Number of Respondents: 1.

Frequency of Response: once every three years.

Estimated Total Annual Hour Burden: 3,137 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $72.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1353.06 and OMB Control No. 2050–0062 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822),

1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 1, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–18026 Filed 7–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6736–3]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Certification of Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of EPA certification of equipment provided by Turbodyne Systems, Inc.

SUMMARY: Today's **Federal Register** document announces EPA's decision to certify equipment to the 0.10 g/bhp-hr standard for the Urban Bus Retrofit/Rebuild Program. The equipment is provided by Turbodyne Systems, Inc. (Turbodyne).

Turbodyne submitted to EPA a notification of intent to certify equipment, signed November 14, 1997, pursuant to the program regulations at 40 CFR part 85, subpart O. On April 19, 1999, EPA published a document in the **Federal Register** that the Turbodyne notification had been received and made the notification available for public review and comment for a period of 45 days (64 FR 19151). EPA has completed its review and the Director of the Certification & Compliance Division has determined that it meets all requirements for certification. Accordingly, EPA approves the certification of this equipment effective July 17, 2000.

The equipment consists of the base engine components used on the 25% reduction retrofit/rebuild kit certified by the Detroit Diesel Corporation (DDC), components from the 25% retrofit catalyst kit certified by Engine Control Systems, Ltd. (ECS) and a TurboPac supercharger system supplied by Turbodyne that supplies additional air for combustion during engine acceleration. This Turbodyne kit is identical to the kit that was certified by the Detroit Diesel Corporation on May 14, 1998 (63 FR 26798) and is applicable to the same models, and model year engines as the DDC kit.

The kit is applicable to 6V92TA urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 and equipped with mechanical unit injectors (MUI), and may be used immediately by transit operators in compliance with program requirements. The kit is available in three horsepower levels (253, 277, and 294).

EPA has determined that this Turbodyne kit complies with the 0.10 gram per brake horsepower-hour (g/bhp-hr) particulate matter (PM) standard for the applicable engines. EPA has not determined that Turbodyne's notification complies with the life cycle cost requirements of the program regulations because no life cycle costs were supplied with the application.

Today's **Federal Register** document does not trigger any additional program requirements for transit operators. The 0.10 g/bhp-hr PM level has already been triggered for all engines covered by this notification.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XXIII–A of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment." This docket is located at the address listed below.

Additional details concerning this certification, the Turbodyne kit, and responsibilities of transit operators, are provided below.

DATES: Today's **Federal Register** document dated July 17, 2000, is the certification date for this equipment. The 0.10 g/bhp-hr standard was triggered on March 14, 1997 (62 FR 12166) for all engines covered by this certification.

ADDRESSES: The Turbodyne notification of intent to certify, as well as other material specifically relevant to it, are contained at the U.S. Environmental Protection Agency's Public Air Docket A–93–42 (Category XXIII–A), Room M–1500, 401 "M" Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Certification & Compliance Division (6403J), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460. Telephone: (202) 564–9259. Email Address: ERB.ANTHONY@EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Description of the Certified Kit

The certified kit described in today's **Federal Register** document, is provided by Turbodyne. It is certified to the 0.10 g/bhp-hr standard. It is not required to comply with the applicable life cycle cost requirements of the program. No cost data were provided in the notification.

The certification described in today's document applies to 1979 though 1989 model year DDC 6V92TA engines that are equipped with mechanical unit injectors (MUI) and certified to federal emissions standards. It does not apply to engines certified to California emissions standards. The impact of this decision on transit operators is discussed in more detail in the "Transit Operator Requirements" section below.

The kit, described further below, consists of base engine components used on the 25% reduction kit certified by DDC earlier, a catalytic exhaust muffler supplied by Engine Control Systems, Ltd. (ECS), and a TurboPac supercharger system supplied by Turbodyne Systems, Inc. that supplies additional combustion air during acceleration. The kit is available in three horsepower (hp) ratings (253, 277, and 294 hp). The kit being certified by Turbodyne is identical to the kit certified by DDC earlier (63 FR 26798).

For retrofit with the Turbodyne kit, an engine is rebuilt in accordance with standard DDC rebuild procedures, using specified engine components. This component set essentially includes the equipment certified by EPA to provide a 25% particulate reduction on October 2, 1995, at 60 FR 51472. These components are provided in two separate sets of parts. The first set of components is comprised of newly manufactured parts, including a gasket kit, air inlet hose, cylinder kits (piston assemblies and cylinder liners) a by-pass valve and a truck type throttle delay. The second set of components includes Reliabilt™ remanufactured parts, including the fuel injectors, camshafts, blower assembly, turbocharger, and head assemblies. Kit usage is based on engine rotation (righthand (RH) or lefthand (LH)), engine orientation, right bank cam gear mounting (bolt or nut), and engine power output based on injector size. The only difference from the previously certified equipment is the inclusion of a truck-style throttle delay, adjustment of the throttle delay and injector timing settings to improve driveability. Additionally, the cylinder kit components have been modified to improve durability.

The converter is the same as the catalytic converter muffler certified by DDC for the Urban Bus Program as described in the **Federal Register** on May 14, 1998 (63 FR 26798), is a direct replacement for the original equipment muffler, and is designed to fit the specific bus/engine combination. The use of diesel fuel that has been mixed with crankcase oil is prohibited.

The third constituent of the kit consists of an electrically powered supercharger system which is supplied by Turbodyne Systems, Inc. This component set, referred to as the TurboPac™ supplies additional intake air during engine acceleration from low engine speeds. Turbodyne states that in addition to decreasing PM emissions and visible smoke during engine acceleration, the supercharger also improves engine response and vehicle driveability by reducing the fuel modulation during acceleration. The basic system consists of a supercharger blower, a diverter valve, a boost pressure sensor, an electrical control box and power cables, and a throttle switch for detecting the start of the engine acceleration mode. It will be supplied in two kits. One kit includes those components common to all installations. The second kit accommodates the installation requirements of the various engine and vehicle configurations.

To complete an engine rebuild two (2) base engine component kits, one (1) converter muffler kit, and two(2) supercharger kits are required. The specific kits used will depend on the engine/vehicle combination.

There are no differences in the service intervals or maintenance practices for the base engine associated with the installation of the upgrade kit. The converter/muffler requires no regularly scheduled maintenance, only an occasional cleaning if the maximum back pressure of the exhaust system is exceeded. The supercharger does not require scheduled maintenance: however, a visual inspection for air leaks is recommended whenever the engine is serviced.

Standard procedures as described in the service manual for 92 Series engines are to be used when rebuilding the base engines using the candidate equipment. No unique rebuild procedures are required.

Use of the candidate kit is restricted to 6V92TA Detroit Diesel Corporation engines manufactured from January. 1979 through December 1989, equipped with mechanical unit fuel injectors (MUI), and originally certified to meet Federal emission standards. The required fuel is low sulfur (0.05% max by weight) diesel fuel, either number 1 or number 2.

All of the testing presented for this certification was conducted using original equipment "OE" parts, except for the converter muffler and the TurboPac components. EPA has no assurance that engines rebuilt using parts that are not "OE" would comply with the 0.10 g/bhp-hr standard. Therefore, use of engine parts that are not the specified OE parts are not covered by the certification described in today's **Federal Register** document.

Pursuant to 40 CFR 85.1409, Turbodyne will provide a 100,000-mile defect warranty and a 150,000-mile emissions performance warranty for the kit, and all of its components.

EPA's certification of the Engelhard Corporation's ETX™ kit (62 FR 12166; March 14, 1997) triggered the 0.10 g/bhp-hr standard for 1979–1989 6V92TA MUI engines. That kit provided the three power ratings: 253, 277, and 294 hp that are included in this certification. Consequently, the certification of the kit described in today's **Federal Register** document, does not trigger the 0.10 g/bhp-hr standard for engines included in the certification.

II. Background and Basis for Certification

In a notification of intent to certify equipment, composed of an initial document signed November 14, 1997 and subsequent documents, Turbodyne applied for certification of the kit under the Environmental Protection Agency's (EPA) Urban Bus Retrofit/Rebuild Program. Engines applicable to the certified kit are 6V92TA urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 that are equipped with mechanical unit injectors (MUI) and certified to, or rebuilt to, comply with federal emissions standards. The certifier's principal place of business is: Turbodyne Systems, Inc., 6155 Carpinteria Avenue, Carpinteria, CA 93013.

Using engine dynamometer (transient) testing in accordance with the Federal Test Procedure for heavy-duty diesel engines, Turbodyne demonstrated compliance with the 0.10 g/bhp-hr particulate matter (PM) emissions standard. This is the same test data that was presented for the DDC certification dated May 14, 1998 as referenced earlier. Engine dynamometer data, shown below in Table A, is the basis for the certification approval of the kit when used on applicable engines. The emissions test data is part of Turbodyne's notification of intent to certify, which is available in the public docket located at the above-mentioned address. All testing was conducted using #2 low-sulfur diesel fuel.

TABLE A.—EXHAUST EMISSIONS SUMMARY

Gaseous and Particulate Test:	g/bhp-hr	
	1989 HDDE Standards	6V92TA MUI with Turbodyne kit
HC	1.3	0.1
CO	15.5	0.4
NOx	10.7	9.8
PM	0.60	0.091
BSFC [1]		0.464
Smoke Test:	Standards	
ACCEL	20%	3.3%
LUG	15	2.5
PEAK	50	4.2

[1] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

The exhaust emissions data presented by Turbodyne is from testing a Detroit Diesel Corporation (DDC) engine model 6V92TA, in accordance with procedures set forth at 40 CFR part 86, subparts N and I. The engine model was tested after being equipped with the Turbodyne kit. The 6V92 engine was tested in one horsepower (hp) rating: 277hp.

The data of Table A demonstrates that for the test engine, when rebuilt with the kit, PM emissions are less than 0.10 g/bhp-hr, and emissions of hydrocarbon (HC), carbon monoxide (CO), NOx and smoke opacity are within applicable federal standards.

This action applies a PM emissions level of 0.10 g/bhp-hr to all 1979 through 1989 DDC 6V92TA MUI urban bus engines, when properly equipped with the Turbodyne kit and when using either diesel fuel #1 or #2. Table B lists the applicable engine models and certification levels associated with the certification announced in today's **Federal Register**.

TABLE B.—CERTIFICATION LEVEL OF TURBODYNE KIT

Engine models	Engine codes	Certification PM level
1979–1989, DDC 6V92TA MUI	All certified to meet federal emissions standards.	0.10 g/bhp-hr.

All engines for which the Turbodyne kit is intended to apply are expected to meet the 0.10 g/bhp-hr PM standard because the kit instructs the rebuilder to replace all emissions-related parts during the rebuild with Turbodyne specified parts included in the kit, install the converter muffler and install the TurboPac system. The engine-out emissions level (upstream of the catalyst) is expected to be predictable because all emission-related parts are replaced using the Turbodyne specified emissions-related parts and settings of the kit. As demonstrated by the test engine, the combination of the specified parts, the specified settings of the kit, the converter muffler and the TurboPac system, result in a PM level less than 0.10 g/bhp-hr.

A life cycle cost analysis is necessary only for certification of equipment that is meant to trigger a program emissions standard. Certification of Engelhard Corporation's ETX™ kit triggered the 0.10 g/bhp-hr standard for 6V92TA MUI engines, and made available kits rated at 253, 277, and 294 hp. The Turbodyne certification does not include a cost analysis and one is not necessary for this certification. Turbodyne states that engines equipped with the kit will have no additional maintenance or service requirements.

III. Summary and Analysis of Comments and Concerns

No comments were received in response to the **Federal Register** document of April 19, 1999 (64 FR 19151). However, comments were received from five commenters on the identical equipment which was certified by DDC earlier. Comments or issues on the earlier DDC certification fell into the following general categories: (A) applicability of the kit; (B) description of the kit; (C) testing demonstration and documentation; (D) life cycle cost analysis; (E) warranty; (F) durability, and (G) in-use experience. All correspondence, comments, and other documentation are located in the public docket at the address above. Interested parties may wish to review these comments which are located in the Public Air Docket A–93–42 (Category XX–A) at the address listed earlier in this document as they would also be relevant to the Turbodyne certification discussed herein due to the fact that the equipment being certified is identical. The comments were summarized in the **Federal Register** Document that was published on May 14, 1998 announcing DDC's certification of identical equipment.

IV. Certification

The Agency has reviewed the notification of intent to certify and other information provided by Turbodyne, and finds that the Turbodyne kit described herein:

(1) complies with the particulate matter exhaust emissions standard of 0.10 g/bhp-hr, without causing the applicable engine families to exceed other exhaust emissions standards;

(2) will not cause an unreasonable risk to the public health, welfare, or safety;

(3) will not result in any additional range of parameter adjustability; and, (4) meets other requirements necessary for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR 85.1401 through 85.1415).

Therefore, today's **Federal Register** document announces certification of the above-described Turbodyne kit for use in the urban bus retrofit/rebuild program as discussed below in section V.

V. Transit Operator Responsibilities

Today's **Federal Register** document announces certification of the above-described Turbodyne kit, when properly applied, as meeting the 0.10 g/bhp-hr particulate matter standard of the Urban Bus Retrofit/Rebuild Program.

In a **Federal Register** document dated March 14, 1997 (62 FR 12166), EPA announced certification of a retrofit/rebuild kit produced by the Engelhard Corporation (the ETX™ kit). That certification means that urban bus operators using compliance program 1 must use equipment certified to the 0.10 g/bhp-hr standard when rebuilding or replacing applicable 1979 through 1989 model year DDC 6V92TA MUI model engines after September 14, 1997. The certified Turbodyne equipment described in today's document may be used by operators in compliance with the 0.10 g/bhp-hr standard. Operators using compliance program 2 having applicable engines may use the certified Turbodyne kit and claim the certification PM level from Table B above, when calculating their Fleet Level Attained (FLA). Under program 2, an operator must use sufficient certified equipment so that its actual fleet emission level complies with the target level for its fleet.

As mentioned above, certification of the Engelhard ETX™ kit triggered the 0.10 g/bhp-hr standard for applicable 1979—1989 6V92TA MUI engines. That kit provides three power ratings: 253, 277, and 294 horsepower. Turbodyne will offer this kit in these three power ratings as well: 253, 277, and 294hp.

The kit discussed in today's **Federal Register** document is not applicable to urban bus engines certified to meet California emission standards. Additionally, the 0.10 g/bhp-hr PM standard is not triggered for engines certified to meet California emission standards. Operators of such urban buses, who choose to comply with program 1, are not required to use equipment certified to the 0.10 g/bhp-hr PM standard until the standard has been triggered for such engines. Operators of urban buses having engines certified to meet California emission standards, and who choose to comply with program 2, may not use the kit described in today's document to meet program requirements.

As stated in the program regulations (40 CFR 85.1401 through 85.1415), operators must, beginning January 1, 1995, maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements of the Urban Bus Retrofit/Rebuild Program. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 00–18023 Filed 7–14–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–1]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 311(b)(9)(A), CERCLA Section 311(b)(3) "Announcement of Competition for EPA's Brownfields Job Training and Development Demonstration Pilots"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency will begin accepting applications for Brownfields Job Training and Development Demonstration Pilots through October 16, 2000. The application period will close October 16, 2000 and the Agency intends to competitively select ten Pilots by December 2000. All funding will be contingent upon availability of appropriated funds.

DATES: This action is effective July 17, 2000. All proposals must be received by October 16, 2000.

ADDRESSES: Interested applicants must submit a response to the Brownfields Job Training and Development Demonstration Pilot Guidelines. Job training guidelines can be obtained via the Internet: http://www.epa.gov/brownfields/, or by calling the Superfund Hotline at 1–800–424–9346 (TDD for the hearing impaired at 1–800–553–7672).

FOR FURTHER INFORMATION CONTACT: EPA's Office of Solid Waste and Emergency Response, Myra Blakely, Outreach and Special Projects Staff, (202) 260–4527 or Doris Thompson at (202) 260–4483.

SUPPLEMENTARY INFORMATION: The Brownfields Job Training and Development Demonstration Pilots will each be funded up to $200,000 over two-years. These funds are to be used to bring together community groups, job training organizations, employers, investors, lenders, developers, and other affected parties to address the issue of providing training for residents in communities impacted by brownfields. The goals of the pilots are to facilitate cleanup of brownfields sites contaminated with hazardous substances and prepare the trainees for future employment in the environmental field. The pilot projects must prepare trainees in activities that can be usefully applied to a cleanup employing an alternative or innovative technology.

EPA expects to select approximately 10 Brownfields Environmental Job Training and Development pilots by the end of December 2000. Pilot applicants must be located within or near one of the 362 pre-2001 brownfields assessment pilot communities. Colleges, universities, non-profit training centers, community-based job training organizations, states, cities, towns, counties, U.S. Territories, and Federally recognized Indian Tribes are eligible to apply for funds. EPA welcomes and encourages applications from coalitions of such entities, but a single eligible entity must be identified as the legal recipient. Entities with experience in providing environmental job training and placement programs are invited to apply. The deadline for applications is October 16, 2000.

EPA's Brownfields Initiative is an organized commitment to help communities revitalize abandoned contaminated properties, and to thereby eliminate potential health risks and restore economic vitality to areas where these properties exist. EPA defines brownfields as abandoned, idled or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: July 10, 2000.

Barbara Bassuener,

Acting Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 00–18025 Filed 7–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–3]

Focus Group Meeting on Draft Reference Guide for Public Participation in Permitting Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency is drafting a Reference Guide (Guide) of the requirements and recommended best practices in public participation for use by states authorized to implement the air, water, and waste permitting programs. The purpose of this focus group meeting is to exchange information on the development and content of the Guide and to seek feedback with the expected outcomes of refining the Guide and the methods for distributing it. Comments and questions from the general public will also be discussed at this meeting. The authority to issue this notice is in the EPA Policy on Public Participation, published on January 19, 1981 at 46 FR 5736.

DATES: The meeting date is Tuesday, August 1, 2000 at the Houston Laboratory. To accommodate the wide range of schedules from all interested parties, two sessions will be held. The first session will be from 2:00 p.m. to 5:00 p.m., and then 7:00 p.m. to 10:00 p.m (CST).

ADDRESSES: Environmental Protection Agency Laboratory, 10625 Fallstone Rd., Houston, Texas 77099, phone, 281–983–2100.

FOR FURTHER INFORMATION CONTACT: David S. Nicholas, U.S. EPA, 1200 Pennsylvania Avenue NW (5103) Washington DC 20460, phone: (202) 260–4512, facsimile: (202) 401–1496 or email: *nicholas.david@epa.gov*

SUPPLEMENTARY INFORMATION: The Guide describes the current public participation requirements within the EPA programs and discusses how all permitting programs can effectively inform and involve the public during the permitting process. This document has undergone significant review by EPA's media program offices as well as the Environmental Council of States (ECOS) and the National Environmental Justice Advisory Council (NEJAC). In addition, a focus group meeting was held in Washington DC on June 26, and was attended by a number of associations with permitting expertise, environmental groups, and industry. The purpose of these focus group meetings is to obtain comments on what

information needs to be in the Guide in order for it to be a valuable resource. While the Guide will be available to the public and to regulated entities, the primary audience for the Guide is the regulating community, specifically the states and tribes that are authorized to implement these programs. To prepare for the upcoming meeting participants should focus their review and comments around these questions:

(1) Are the events, processes, and/or milestones that occur in the permitting process that currently provide meaningful public involvement accurately described in the Guide?

(2) Are there any lessons you have learned in the permitting process that lend themselves to developing a comprehensive effective strategy for community involvement (milestones, steps, key principles/actions)?

(3) Are there any potential regulatory gaps in existing public participation activities?

As a point of clarification, this public participation Guide does not address Title VI issues. It is important to note that while EPA's Office of Civil Rights plans to hold a public listening session to receive comments on the new Title VI Guidance document in Dallas, Texas, these are separate EPA initiatives. Again, the Guide that will be discussed at the August 1 meeting will only address public participation activities within the context of EPA's existing permitting regulations.

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact EPA at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 7, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–18027 Filed 7–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–7]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of two meetings of Committees of the US EPA Science Advisory Board on the dates and times noted below. All times noted are Eastern Daylight Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Radiation Advisory Committee (RAC) Teleconference—August 1, 2000

The Science Advisory Board's (SAB) Radiation Advisory Committee (RAC) will conduct a public teleconference meeting on Tuesday, August 1, 2000, between the hours of 11:00 a.m.–2:00 p.m (Eastern Daylight Time). The meeting will be coordinated through a conference call connection in Room 6013 in the Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004 (adjacent to the escalator to the Federal Triangle Metro Station on 12th Street NW). The public is welcome to attend the meeting in person or through a telephonic link, to the extent that lines are available (phone lines will be very limited). Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun at (202) 564–4544, or via e-mail at: *pozun.diana@epa.gov* by Thursday, July 27, 2000.

Purpose of the Meeting—At this meeting the RAC plans to review and recap the EPA's response to the Committee's Low Activity Mixed Waste Advisory (EPA–SAB–RAC–ADV–99–006), receive a brief overview presentation on a Multi-Agency Radiation Laboratory Analytical Protocols (MARLAP) Manual by the Office of Radiation and Indoor Air (SAB Project 00–22), and tentatively have a discussion on RAC FY2001 self-initiated projects and other Agency proposed FY2001 projects.

Availability of Review Materials: Single copies of the EPA response to the RAC's Low Activity Mixed Waste Advisory (EPA–SAB–RAC–ADV–99–006) USEPA are available from Ms. Diana Pozun, Radiation Advisory Committee, Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Ms. Pozun can also be reached by telephone at (202) 564–4544, fax at (202) 501–0582, or e-mail: *pozun.diana@epa.gov*. The Committee's report (EPA–SAB–RAC–ADV–99–006) is available on the SAB Website (*www.epa.gov/sab*) under the *Reports* heading. An electronic copy of the overview of MARLAP is available at the website address: *http://www.epa.gov/radiation/marlap/* by clicking on the underlined hotlink titled *"Introduction to MARLAP"*.

For Further Information: Members of the public desiring additional information about the meeting should contact Ms. Melanie Medina-Metzger, Designated Federal Officer, Radiation Advisory Committee, Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–5987; fax at (202) 501–0582; or via e-mail at *medina-metzger.melanie@epa.gov*. A copy of the draft agenda is available from Ms. Diana Pozun at (202) 564–4544 or by FAX at (202) 501–0582 or via e-mail at *pozun.diana@epa.gov*. Members of the public who wish to make a brief oral presentation to the Committee (in Room 6013 only) must contact Ms. Medina-Metzger in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Standard Time, Friday, July 28, 2000 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization; 15 minutes total. The request should identify the name of the individual making the presentation, and the organization (if any) that they will represent. *Please note:* If we receive more requests than we can accommodate, time of receipt of the materials at the office will determine priority, with the first three requests granted time (additional requests may be granted to the extent that time is available, as determined by the RAC Chair at the time of the meeting). All others will have to provide written comments. Written comments of any length may be submitted to Ms. Medina-Metzger at any time until the date of the meeting.

2. Drinking Water Committee (DWC) Meeting—August 8–9, 2000

The Drinking Water Committee of the US EPA Science Advisory Board (SAB), will meet on August 8 and 9, 2000 in Room 120/126 of the Andrew W. Breidenbach Environmental Research Center, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7772. The meeting will begin at 9:00 a.m. on August 8 and adjourn no later than 3:00 p.m. on August 9, 2000.

Purpose of the Meeting—The Drinking Water Committee will conduct a review of EPA's draft research plan in support of the Safe Drinking Water Act's Candidate Contaminant Listing (CCL) program. The Committee will also complete its deliberations on the EPA proposed arsenic drinking water

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regulation and discuss possible interactions it might have with the Agency on the pending Microbial/Disinfection Byproduct Stage 2 rule-making proposal.

Background—(a) Research Plan for Candidate Contaminant Listing (CCL)—The Safe Drinking Water Act (SDWA), as amended in 1996, requires the EPA to establish a list of unregulated microbiological and chemical contaminants to aid in priority setting for the Agency's drinking water program. A new list must be published every five years. The first Contaminant Candidate List (CCL1) was first proposed by EPA in 1997 and was then finalized in 1998, following extensive consultation with stakeholders.

The Agency must select five or more contaminants from the CCL1 and determine, by August 2001, whether they should be regulated. To support these decisions, the Agency will have to evaluate when and where these contaminants occur, the extent of exposure and risk to public health, and determine if cost effective control methods are available.

EPA has sorted CCL1 contaminants into categories depending upon whether they need additional research (Research or Occurrence Priorities categories) or have sufficient data for the evaluation of exposure and risk to public health, and therefore enough data to support a drinking water standard (Regulatory Determination Priorities category). The contaminants considered for selection and regulatory determination by August 2001 will be drawn from the Regulatory Determination category and are not duplicated under the Research or Occurrence Priorities categories.

A Research Plan has been prepared to describe the nature, timing and priority of research needed in order to meet the CCL research information needs of the Agency. The plan focuses on contaminants that are on CCL1. Nevertheless, it is important for some research to be conducted on emerging pathogens and chemicals to ensure that any future CCL includes contaminants that are of potential public health concern. The SAB has been asked to review this plan.

(b) Proposed Arsenic Drinking Water Standard—The DWC met from June 5–7, 2000 to discuss various elements of the proposed EPA proposal for an arsenic drinking water standard (for further information, see 65 FR 30589–30590). The charge questions were discussed by panelists and a number of conclusions reached on responses. The report to EPA is now being drafted to convey the SAB's advice on the arsenic proposal. The discussion at the August 8–9, 2000 DWC meeting will focus on, and reach closure on, any remaining issues that are identified as the Committee reviews and comments on its draft report to the Administrator.

Charge to the Committee—(a) CCL—EPA asks whether: (i) It considered the appropriate existing information about CCL contaminants in formulating the Plan; (ii) it identified the key science questions; (iii) they identified appropriate research by subject and scope to address the identified science questions; (iv) the relative priorities and timetable proposed for the planned research are appropriate; and (v) the process used to identify data gaps and prioritize research needs is sound.

(b) Arsenic—Questions asked of the DWC for the June arsenic review included: (i) Concentration on inorganic arsenic as principal form causing health effects—Does the SAB have perspectives on this issue that it believes EPA should consider in developing its risk assessment?

(ii) Implications of natural arsenic exposure through food—Does SAB agree with the implied NRC perspective that relative source contribution of food should be taken into consideration in the setting of the drinking water standard and how might we consider this and communicate it to the public?

(iii) Accounting for Cardiovascular Health End Point—Is precautionary advice on use of low-arsenic water in preparation of infant formula appropriate given the available information?

(iv) Decision tree for waste disposal options for arsenic treatment brines and spent media—Based upon a review of the submitted materials, does the SAB believe that the EPA produced an accurate projection of the likely disposal options for arsenic residuals and the distribution of these options by treatment type? What are the SAB's views on the advantages and the limitations of the various waste disposal options? What effect, if any, would the SAB's analysis of these advantages and limitations have on the probabilities assigned? What are the SAB's views on which options will be more likely used by small systems (less than 10,000 people), and which will be more likely used by larger ones?

(v) Decision tree for ground water treatment technologies—Does the SAB agree with the principal "branches" of EPA's decision tree described in the submitted documents and the likelihood that these options will be used for systems of various sizes with various source water characteristics? What views does the SAB have on EPA's description of the advantages and limitations of these treatment technologies? Would the SAB's views on these advantages and limitations affect the probabilities assigned?

Availability of Review Materials—Additional information on the materials provided to the Committee for its arsenic review can be obtained by contacting Ms. Irene Dooley, US EPA Office of Water by telephone at (202) 260–9531 or by e-mail at *dooley.irene@epa.gov*. Additional information on the materials provided to the Committee for its CCL Research Plan review can be obtained by contacting Dr. Robert Clark, US EPA, National Risk Management Research Laboratory, Cincinnati, OH by telephone at (513) 569–7201 or by e-mail at *clark.robertm@epa.gov*.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Thomas O. Miller, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4558; FAX (202) 501–0582; or via e-mail at *miller.tom@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Miller no later than noon Eastern Time on August 2, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the

comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 10, 2000.

John R. Fowle, III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 00–18028 Filed 7–14–00; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Thursday, July 27, 2000 at 2 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW, Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Open Session

The 10th Anniversary of the Americans with Disabilities Act: EEOC's Past Accomplishments and Future Trends.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued: July 13, 2000.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 00–18084 Filed 7–13–00; 11:19 am]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL TRADE COMMISSION

[FTC File No. P974405]

Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers

AGENCIES: Federal Communications Commission and Federal Trade Commission.

ACTION: Notice of issuance of joint policy statement.

SUMMARY: This document was issued by the Federal Communications Commission and the Federal Trade Commission to jointly address questions raised by the proliferation of advertisements for dial-around numbers, long-distance calling plans, and other new telecommunications services, as well as to address an increase in the number of complaints regarding how these services are promoted and how the principles of truthful advertising apply in this dynamic marketplace. Commissioner Furchtgott-Roth of the FCC dissented and issued a separate statement available from the FCC.

DATES: Adopted by the FCC on February 29, 2000. Adopted by the FTC on February 23, 2000. Jointly released on March 1, 2000.

FOR FURTHER INFORMATION CONTACT: Emmitt Carlton, Assistant Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, (202) 418–7320, or Lesley Fair, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, (202) 326–3081. This document is available from the FTC's web site at *http://www.ftc.gov/bcp/menu-call.htm* or you may call the FTC's Consumer Response Center at (877) FTC–HELP. This document is available from the FCC's website at *http://www.fcc.gov/Bureaus/Enforcement/Orders/2000/fcc00072.doc* or you may visit the Reference Information Center at the FCC's headquarters located at 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The FCC reference center is open to the public Monday from 9:45 a.m. until 4:30 p.m. and Tuesday through Friday from 9:00 a.m. until 4:30 p.m. You may also reach the reference center at (202) 418–0270. As an alternative, information that is routinely available to the public can be obtained from International Transcription Services (ITS), a private government contractor. ITS has an office at the FCC's Washington, DC location and can be reached directly at (202) 857–3800.

SUPPLEMENTARY INFORMATION:

Policy Statement

I. Introduction

1. In recent years there has been an explosion in competition and innovation in the telecommunications industry. Long-distance customers have reaped substantial benefits in the form of greater choice in deciding which carrier to use and a greater diversity in the prices charged for those calls. For example, dial-around (or "10–10") numbers allow consumers to bypass or "dial-around" their chosen long-distance carrier to get a better rate in certain circumstances. Consumers also can opt for calling plans that offer a fixed per-minute rate during certain hours or on particular days.

2. Numerous carriers, both large and small, promote their services through national television, print, and direct mail advertising campaigns. Because no one plan is right for everyone, advertising plays a critical role in informing consumers about the myriad choices in long-distance calling and, in the case of dial-around services, advertising is generally the only source of information consumers typically have before incurring charges. With accurate information, consumers benefit from being able to choose the particular carrier that meets their long-distance calling needs at the most economical price. However, if consumers are deceived by the advertising claims, they cannot make informed purchasing decisions and ultimately the growth of competition in the long-distance market will be stifled.

3. The proliferation of advertisements for dial-around numbers, long-distance calling plans, and other new telecommunications services, as well as an increase in the number of complaints regarding how these services are promoted, have raised questions about how the principles of truthful advertising apply in this dynamic marketplace. To address these questions

the Federal Trade Commission and the Federal Communications Commission issue this Joint Policy Statement.

4. Section 201(b) of the Communications Act of 1934, as amended, requires that common carriers' "practices * * * for and in connection with * * * communications service, shall be just and reasonable, and any such * * * practice * * * that is unjust or unreasonable is hereby declared to be unlawful * * *."[1] The FCC has found that unfair and deceptive marketing practices by common carriers constitute unjust and unreasonable practices under section 201(b).[2] Principles of truth-in-advertising law developed by the FTC under section 5 of the FTC Act[3] provide helpful guidance to carriers regarding how to comply with section 201(b) of the Communications Act in this context.

5. The FTC's truth-in-advertising law can be boiled down to two common-sense propositions: (1) Advertising must be truthful and not misleading; and (2) before disseminating an ad, advertisers must have adequate substantiation for all objective product claims.[4] A deceptive ad is one that contains a misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances about a material fact.[5] Material facts are those that are important to a consumer's decision to buy or use a product. Information pertaining to the central characteristics of the product or service is presumed material. The cost of a product or service is an example of an attribute presumed material.[6]

6. Advertisers are responsible for substantiating all objective express and implied claims that an ad conveys to reasonable consumers, regardless of whether the advertiser intended to convey those claims. In determining the claims that an ad conveys, the FTC looks to the "net impression" conveyed to consumers—often described as "the entire mosaic, rather than each tile separately."[7] Even if the wording of an ad may be literally truthful, the net impression conveyed to consumers may still be misleading. The entire advertisement, transaction or course of dealing will be considered. The issue is whether the act or practice is likely to mislead, rather than whether it causes actual deception.

7. An ad may be deceptive by omission. For example, an ad may be deceptive if it fails to disclose qualifying information that, in light of the representations made, would be necessary to prevent consumers from being misled. The failure to disclose is examined in light of expectations and understandings of the typical buyer regarding the claims made.[8]

8. In many circumstances, reasonable consumers do not read the entirety of an ad or are directed away from the importance of the qualifying phrase by the acts or statements of the seller. Depending on the circumstances, accurate information in the text may not remedy a misleading impression created by a headline because reasonable consumers may glance only at the headline. Written disclosures in fine print may be insufficient to correct a misleading impression. Legalistic disclaimers too complex for consumers to understand may not cure otherwise deceptive messages or practices. Qualifying disclosures must be legible and understandable. The totality of the ad or the practice must be evaluated with questions such as: How clear is the representation? How conspicuous is any qualifying information? How important is the omitted information? Do other sources for the omitted information exist? How familiar is the public with the product or service?

9. At the outset, it is important to note that these fundamental principles apply across the board. For example, a misrepresentation or omission of material information in an advertisement for a dial-around service would likely be deceptive if the same misrepresentation or omission occurred in an ad for a long-distance calling plan. Furthermore, the same standards of truthfulness apply regardless of the medium advertisers choose to communicate their message to consumers. Although the most effective method for disclosing information to consumers may vary depending on the medium, the principles of truth and accuracy apply to advertisements conveyed via television, radio, magazines, newspapers, direct mail, telemarketing, the Internet, or oral representations made by customer service operators.[9]

10. In issuing this Policy Statement, the FCC and the FTC hope to provide guidance for carriers who market long-distance service. As a matter of clarification, we note that this Policy Statement does not preempt existing state law.

II. Discussion

A. Misrepresentations in Advertisements for Long-Distance Calling Services

11. As a general matter, advertisers are free to highlight whatever attribute of their products or services they choose—quality, convenience, customer service, availability, price, or other benefit. However, once an advertisement makes an implied or express objective claim that conveys a material representation to reasonable consumers, the advertiser is responsible for the truthfulness of the representation and for substantiating the representation, regardless of whether the advertiser intended to convey those messages to consumers. If a claim is false, a disclosure that provides contradictory information is unlikely to cure the deception.

Example #1: The headline of a direct mail ad for a dial-around service reads, "All day. All night. All calls. 10¢ a minute." In fact,

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[1] 47 U.S.C. 201(b).

[2] Business Discount Plan, Inc., 14 FCC Rcd 340, 355–358 (1998); AT&T Corp., 71 RR2d 775 (1992).

[3] 15 U.S.C. 45. Section 5 declares unlawful "unfair or deceptive acts or practices in or affecting commerce.

[4] These principles are articulated in the FTC's Deception Policy Statement and Advertising Substantiation Policy Statement. See generally Federal Trade Commission Policy Statement on Deception, appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 *et seq.* (1984) ("Deception Statement"); Advertising Substantiation Policy Statement, appended to Thompson Medical Co., 104 F.T.C. 648, 839 (1984), aff'd, 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 479 U.S.1086 (1987). The FTC also has authority to challenge unfair trade practices. An unfair practice is one that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. 45(n). The majority of FTC advertising cases are brought pursuant to the FTC's deception authority.

[5] The FCC has taken a similar approach under section 201(b) of the Communications Act: "BDP knew, or should have known, that customers acting reasonably under the circumstances would be misled and confused by misrepresentations regarding the material issue of BDP's identity, and that customers would rely on such misrepresentations to their detriment." Business Discount Plan, 14 FCC Rcd at 356.

[6] Deception Statement, 103 F.T.C. at 182.

[7] *Id.* at 179, quoting FTC v. Sterling Drug, Inc., 317 F.2d 669, 674 (2d Cir. 1963).

[8] The law does not require that every item of information that might be useful or interesting to consumers be disclosed in advertising. Only information necessary to prevent consumer deception on a matter of importance to them must be disclosed. See International Harvester Co., 104 F.T.C. 949, 1059–60 (1984).

[9] The FTC's Telemarketing Sales Rule, ("TSR"), 16 CFR part 310, provides specific provisions on what constitute material misrepresentations in the context of telemarketing, and what material information must be disclosed in order to avoid deceiving consumers through telemarketing. The TSR covers all "telemarketing"—defined as any plan, program, or campaign to sell goods or services through interstate telephone calls. It applies to all telemarketers, regardless of on whose behalf they are calling or what product or service they are selling, even telemarketing companies that call on behalf of organizations whose activities are exempt from FTC jurisdiction. Coverage of the Rule extends both to calls placed to and received from consumers, so long as the calls are part of a plan, program, or campaign to sell goods or services through interstate telephone calls.

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the rate is applicable only for state-to-state calls after 7 p.m. and on weekends. Even an otherwise prominent disclosure to that effect will likely not be sufficient considering that the disclosure directly contradicts the express, and false, representations in the headline.

B. Material Information That Should Be Disclosed in Advertisements for Long-Distance Calling Services

12. In situations where an advertisement makes claims that are not directly false but might be misleading in the absence of qualifying or limiting information, advertisers are responsible both for making any necessary disclosures and for ensuring that they are clear and conspicuous. The following are some of the types of disclosures that may be necessary to prevent price claims in long-distance telephone advertising from deceiving customers.

1. Minimum Per-Call Charges, Monthly Fees, and Other Cost-Related Information

13. The central characteristic touted in most long-distance advertising is price. As noted above, price representations are presumptively material to consumers. What matters to consumers is not just the per-minute rate, but rather how that rate, along with all additional fees and charges, will ultimately be reflected in the charges they see on their monthly phone bills.[10] Therefore, advertisers should exercise the greatest care in ensuring the accuracy of their claims related to price, including the clear and conspicuous disclosure [11] of information such as minimum per-call charges, monthly fees, fees for additional minutes beyond the initial calling period, and other information that significantly affects the total charge of a particular call or calling plan or service.

Example #2—Minimum Charges: An advertisement conveys the message that long-distance calls cost 10¢ a minute. In fact, all calls are subject to a 50¢ minimum charge. Given that reasonable consumers would likely conclude from the "10¢ a minute" representation that a one-minute call would cost 10¢, and would not expect there to be a substantial additional charge, the advertiser's failure to clearly and conspicuously disclose the minimum fee in the ad would likely be deceptive.

Example #3—Monthly Fees: An advertisement says that long-distance calls cost 10¢ a minute. In fact, that rate is only available if customers pay a $5.95 monthly fee. Because the imposition of the monthly fee would significantly increase the consumer's per-minute charge, the advertiser's failure to clearly and conspicuously disclose the monthly fee in the ad would likely be deceptive.

Example #4—Cost After Initial Promoted Calling Period: A company advertises "all calls up to 20 minutes for only $1.00," but charges 10¢ for each additional minute. Consumers are likely to be misled by the affirmative claim in the absence of a disclosure about the significantly higher rate after 20 minutes. Because many consumers will make calls that last longer than 20 minutes, the cost of each minute beyond the first 20 minutes' duration of a call is information that likely would be material to consumers considering whether to use the service. Thus, the advertiser's failure to clearly and conspicuously disclose in the ad the per-minute rate for calls longer than the initial calling period would likely be deceptive.

2. Time Restrictions or Limitations on the Availability of the Advertised Rate

14. Given the importance of price information, any significant conditions or limitations on the availability of the advertised rates should also be clearly and conspicuously disclosed. Examples of such restrictions would include limitations on the time of day or day of the week that the rate applies or the fact that the rate is good only during a limited promotional or sale period.

Example #5—Time Restrictions: A company's advertisements prominently feature the phrase "10¢ a minute." In fact, the 10¢ a minute rate is good only between 7 p.m. and 7 a.m. Consumers are likely to view this time limitation as a significant restriction on the availability of the advertised 10¢ a minute rate. The advertiser's failure to clearly and conspicuously disclose the limited hours in the ad would likely be deceptive.

Example #6—Promotional Rates: A company's advertisements prominently feature the phrase "5¢ a minute." Peel-off stickers, intended to be placed on the phone, featuring the "5¢ a minute" offer accompany the advertisement. In fact, the 5¢ a minute rate is a special promotional offer good only for 60 days. Consumers are likely to view the limited duration of the 5¢ a minute rate as a significant qualification. The advertiser's failure to clearly and conspicuously disclose this limitation in the ad would likely be deceptive. Furthermore, in this instance, the use of peel-off stickers advertising the 5¢ a minute rate without adequate disclosure of the limited duration of the offer would likely be deceptive because the stickers would remain on consumers' telephones long after the promotional rate had expired.

3. Geographic Restrictions

15. Another important qualification that would likely be material to consumers and necessary to disclose to avoid deception is a significant geographic restriction on the applicability of an advertised rate. For example, many long-distance services and plans are limited to state-to-state calls. The disclosure of this information is particularly important because in-state long-distance rates are often substantially more expensive than state-to-state rates, a fact that may be surprising and significant to reasonable consumers. Where reasonable consumers may be deceived about such significant differences in price between in-state and state-to-state calls, the advertiser should clearly and conspicuously disclose whether the advertised service includes in-state calls, and the fact that such calls are charged at a higher rate, if such is the case.

Example #7—Geographic Restrictions: A company advertises a "10¢ a minute" rate. In fact, that rate is good only for state-to-state calls, and in-state calls may be charged at a significantly higher rate. The failure to clearly and conspicuously disclose in the ad, for example, that "in state rates may be higher," would likely be deceptive.

4. The Use of the Phrase "Basic Rates"

16. Advertisers should also exercise care to adequately explain phrases such as "basic rates" in their ads. The meaning of an ad is evaluated from the point of view of the "reasonable consumer"—the typical person looking at the ad. A telecommunications professional may understand the term "basic rate" to refer to a specific class of tariffed service, which may be billed at the most expensive rates. However, the typical consumer would likely interpret the phrase differently, concluding that it refers to the discounted rates he or she is normally charged by his or her selected carrier. Therefore, when making claims using such terms as "basic rates" or "regular rates," advertisers should be mindful that those terms will be evaluated from the point of view of the reasonable consumer, and may be deceptive.

Example #8—"Basic Rates": A company offers consumers a directory assistance service for 99¢. According to the television ad, callers who use this service can be connected to the requested number at no additional charge. In fact, consumers who opt to be connected to the requested number are connected via the advertiser's network and are billed at the advertiser's expensive per-minute rates. This information is disclosed only by a superscript reading "basic rates apply." Reasonable consumers would expect to pay the promoted 99¢ charge, but would not likely expect to pay a charge greater than the amount their selected long-distance carrier would charge for a call to the

[10] For example, if a consumer paying 10¢ a minute and a $5.95 monthly fee places 100 minutes of calls per month, his or her total would be $15.95 a month or almost 16¢ per minute. This figure would contrast sharply with the "10¢ a minute" rates prominently touted in typical ads for long-distance calling plans.

[11] See Section III for a discussion of the factors to consider in assessing whether a disclosure is "clear and conspicuous."

requested number. Because the consumer will be charged a rate higher than the consumer's presubscribed rate, use of the term "basic rates apply," even if clearly and conspicuously disclosed, would not likely be sufficient to avoid deception. The advertiser's failure to disclose that the consumer will be charged a rate higher than the consumer's presubscribed rate would likely be deceptive.

5. Comparative Price Claims

17. A technique commonly employed in long-distance advertising is the comparison of an advertiser's price to the prices of its competitors. By representing a competitor's rates, an advertiser is making an implied claim that these rates are reasonably current. As in the case of any other objective claim, the advertiser must have a reasonable basis for this representation. The time elapsing between the creation of an ad and the distribution of the ad to the public may vary, depending upon the medium in which the ad appears. This is a consideration in determining whether an advertiser possesses a reasonable basis for a claim that compared rates are reasonably current.

Example #9—Comparative Price Claims: In an advertisement in a daily newspaper, an advertiser conveys the message that its rates are the lowest, using a chart that compares its per-minute rate to the rates offered by two competitors. The stated rates of one of the competitors are three months old, and the stated rate of the other is eight months old. By representing the competitors' rates, the advertiser is implying that those rates are reasonably current. If the information upon which the ad is based is outdated and the rates have changed materially, the ad would likely be deceptive.

Example #10—Comparative Price Claims: An advertisement in a monthly magazine states that the advertiser's rates are better than those of another competitor. In January the advertiser verified that the competitor was offering the rate as stated in the ad. When the ad is published in February, it clearly and conspicuously discloses that the competitor's rate is as of January of this year. This disclosure is likely to be sufficient to avoid deception.

6. The Effect of the Use of Toll-Free Numbers and Other Alternate Sources of Information

18. The fact that information about significant limitations or restrictions on advertised prices may be available by calling a toll-free number or a clicking on a Web site is generally insufficient to cure an otherwise deceptive price claim in advertising. Advertisers are encouraged to use customer service numbers and Internet sites to offer consumers more information, but these sources cannot cure misleading information in the ad itself.[12]

19. Dial-around services are unique in that consumers typically incur charges for using them before receiving any information other than what is conveyed in the dial-around service's advertising. This underscores the importance that significant restrictions and limitations on price claims be disclosed in the ad itself; users of those services must rely on the information contained in the ad as the basis for determining whether to choose a particular service. However, even if the use of an advertised service requires a consumer to interact further with the advertiser—for example, if a consumer must call a toll-free customer service number to switch to a different calling plan—it would still be deceptive if the advertisement failed to disclose significant restrictions necessary to qualify representations made in the ad.

Example #11—Use of Toll-Free Numbers: A television advertisement for a long-distance calling plan prominently features the phrase "10¢ a minute" as a graphic and in the narration read by the spokesperson. The ad gives a toll-free number and tells consumers "call now to switch." In fact, the 10¢ a minute rate is good only between 7 p.m. and 7 a.m. The inclusion of a superscript that reads "call for restrictions" would not likely be effective to qualify the claim.

C. Principles Related to the Clear and Conspicuous Disclosure of Material Information in Advertisements for Long-Distance Calling Services

20. When the disclosure of qualifying information is necessary to prevent an ad from being deceptive, that information should be presented clearly and prominently so that it is actually noticed and understood by consumers. Disclosures should be effectively communicated to consumers. A fine-print disclosure at the bottom of a print ad, a disclaimer buried in a body of text unrelated to the claim being qualified, a brief video superscript in a television ad, or a disclaimer that is easily missed on an Internet Web site is not likely to be effective. To ensure that disclosures are effective, advertisers should use clear and unambiguous language, avoid small type, place any qualifying information close to the claim being qualified, and avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure.

21. In some cases, the FTC has specified the precise fashion in which qualifying disclosures must be conveyed.[13] However, more frequently, the FTC has used the term "clear and conspicuous" to describe a general performance standard flexible enough to take into account both the consumer's right to accurate information necessary to make an informed purchase decision and the many ways that creative advertisers can effectively convey that information.[14] Because the FTC considers the disclosure in the context of all of the elements of the ad, the focus is not on the wording of the specific disclosure in isolation, but rather on the overall or "net" impression that the entire advertisement—including the disclosure—conveys to reasonable consumers.[15]

22. Ordinarily, a disclosure is "clear and conspicuous," and therefore is effectively communicated, when it is displayed in a manner that is readily noticeable, readable and/or audible, and understandable to the audience to whom it is disseminated. Factors that the FTC considers in evaluating the effectiveness of disclosures include:

- The prominence of the qualifying information, especially in comparison to the advertising representation itself;
- The proximity and placement of the qualifying information, vis-a-vis the representation that it modifies;
- The absence of distracting elements, such as text, graphics, or sound that may distract a consumer's attention away from the disclosure; and
- The clarity and understandability of the text of the disclosure.[16]

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[12] See generally General Motors Corp., 123 F.T.C. 241 (1997); American Honda Motor Co., 123 F.T.C. 262 (1997); American Isuzu Motor Co., 123 F.T.C. 275 (1997); Mitsubishi Motor Sales of America, Inc., 123 F.T.C. 288 (1997); Mazda Motor of America, Inc., 123 F.T.C. 312 (1997) (consent orders) (complaint alleging that ads touting "zero down" are deceptive even though fine print disclosures and/or point of sale or other sources make clear that significant costs apply at lease inception; order defining clear and conspicuous disclosure of terms in ads for car leases as "readable [or audible] and understandable to a reasonable consumer").

[13] See, *e.g.*, Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, 16 CFR 307.

[14] The FTC has also used phrases such as "clear and prominent" and "of sufficient clarity and conspicuousness" to articulate the same concept. 63 FR 25002, FTC's Notice Seeking Comment on the Interpretation of FTC Rules and Guides for Electronic Media (May 6, 1998).

[15] Deception Statement, 103 F.T.C. at 175–76. See also American Home Products, 98 F.T.C. 136, 374 (1981), aff'd, 695 F.2d 681 (3d Cir. 1982).

[16] See generally General Motors Corp., 123 F.T.C. 241 (1997); American Honda Motor Co., 123 F.T.C. 262 (1997); American Isuzu Motor Co., 123 F.T.C. 275 (1997); Mitsubishi Motor Sales of America, Inc., 123 F.T.C. 288 (1997); Mazda Motor of America, Inc., 123 F.T.C. 312 (1997) (consent orders) (complaint alleging that ads touting "zero down" are deceptive even though fine print disclosures and/or point of sale or other sources make clear that significant costs apply at lease inception; order defining clear and conspicuous disclosure of terms in ads for car leases as "readable [or audible] and

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23. Reference to an existing regulatory scheme provides considerable guidance. In 1992 Congress passed the Telephone Disclosure and Dispute Resolution Act ("TDDRA"), directing the FCC and the FTC to issue regulations governing, among other things, the advertising and marketing of pay-per-call services. TDDRA was enacted in response to a history of fraudulent or abusive practices. In adopting its Pay-Per-Call Rule (previously called the 900-Number Rule),[17] the FTC provided very specific provisions on how to make effective disclosures of material cost information in the context of advertising telephone-based entertainment or information programs that are billed to consumers' telephone bills. The basic principles embodied in the advertising provisions of the Rule show how the FTC determines whether a particular disclosure of cost information is clear and conspicuous in the context of advertising for pay-per-call services. According to the Rule's provisions governing the advertising of those services, the provider must "clearly and conspicuously" disclose in the advertisement the total cost of the call. If there is a flat fee for the call, the ad must state the total cost. If the call is billed on a time-sensitive basis, the ad must state "the cost per minute and any minimum charges." If the call is billed on a variable rate basis, the ad must state the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged for the service including any other fees that will be charged for the service. Regardless of how the service is billed, the Rule requires that "the advertisement shall disclose any other fees that will be charged for the service."

24. To ensure that consumers understand the central factor in the transaction—the cost of the call—the Rule specifies that all necessary disclosures must be made clearly and conspicuously. Initially, the Rule specifies that these disclosures must be made in the same language as the advertisement; for print disclosures, "in a color or shade that readily contrasts with the background of the ad"; and for oral disclosures, "in a slow and deliberate manner and in a reasonably understandable volume." However, the Rule outlines with more specificity the required type size of these disclosures, their proximity to the triggering information, and the necessity of both oral and visual disclosures for television ads.

25. In print advertisements, the FTC Rule requires:

(1) That the cost of the call shall be placed adjacent to each presentation of the pay-per-call number; and

(2) That each letter or numeral of any necessary price disclosures shall be, "at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent."

26. For television advertisements, the FTC Rule requires:

(1) That a visual disclosure shall appear adjacent to each visual presentation of the pay-per-call number;

(2) That each letter or numeral of any necessary price disclosures shall be, "at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent";

(3) That a visual disclosure shall appear on the screen for the duration of the presentation of the pay-per-call number; and

(4) That an oral disclosure shall be made at least once, simultaneously with a visual presentation of the disclosure.

27. The measures that the FTC thought were necessary to ensure that cost disclosures were clear and conspicuous in the context of pay-per-call services—the prominent disclosure of important cost information adjacent to the central feature of the ad—are certainly relevant to price advertising by dial-around services and long-distance calling plans. While not every single aspect of the Rule may be appropriate or required to ensure truthful, nondeceptive advertising by the long-distance telephone industry, the Rule nonetheless offers guidance and a set of "best practices" to advertisers of dial-around and other long-distance telephone services.

1. Prominence

28. Disclosures that are large in size, are emphasized through a sharply contrasting color, and, in the case of television advertisements, remain visible and/or audible for a sufficiently long duration are likely to be more effective than those lacking such prominence. The FTC's experience consistently demonstrates that fine-print footnotes and brief video superscripts are often overlooked. For example, in concluding that a television superscript was insufficiently clear and conspicuous to qualify a nutritional claim in a food ad, the FTC stated, "[g]enerally recognized marketing principles suggest that, given the distracting visual and audio elements and the brief appearance of the complex superscript in the middle of the commercial, it is unlikely that the visual disclosure is effective as a corrective measure." [18]

29. The FTC's analysis focuses not just on whether the type size of the disclosure is large enough to be *readable* when read in isolation, but rather whether the disclosure itself is prominent enough so that typical consumers will actually read and understand it in the context of an actual ad. Although the FTC has not, as a general rule, required disclosures to be identical in size and repeated the same number of times as the triggering representation, substantial disparities between the two reduce the likelihood that a disclosure will be clear and conspicuous.

Example #12: In a full-page newspaper ad for a long-distance calling plan, the phrase "10¢ a minute" appears in 70-point type at the top of the page. In fact, the advertised 10¢ a minute rate applies only with a $3.95 monthly fee. The fee is disclosed in the body of the ad in 12-point type. Given the disparity in type size between the "10¢ a minute" claim and the $3.95 monthly fee, it is unlikely that the disclosure of the monthly fee is sufficiently clear and conspicuous to avoid deception.

Example #13: In a 30-second television ad for a dial-around service, the phrase "10¢ a minute" is used four times by the narrator and appears as a graphic twice. A superscript appearing on the bottom of the screen for three seconds reads "Rate available from 7 p.m. until 7 a.m., Monday through Friday and all day weekends." In fact, calls before 7 p.m. cost 25¢ per minute. Given the prominence of the "10¢ a minute" claim and the complexity and small print of the superscript, it is unlikely that the disclosure of the time restrictions is sufficiently clear and conspicuous to avoid deception

Example #14: In a full-page newspaper ad for a long-distance calling plan, the phrase "10¢ a minute" appears in 70-point type at the top of the page. Immediately under it, the phrase "plus $3.95 monthly fee" appears in 35-point type. Given the proportional similarity in type size between the "10¢ a minute" claim and the $3.95 monthly fee and their proximity, the disclosure of the monthly fee is likely to be sufficient to avoid deception.

2. Proximity and Placement

30. In addition to their size and duration, the proximity and placement of disclosures are important factors in determining whether they are clear and

understandable to a reasonable consumer"). See also *United States v. Mazda Motor of America, Inc.*, (C.D. Cal. Sept. 30, 1999) (consent decree) ($5.25 million total civil penalty for violations of FTC and state orders related to disclosures in car leasing advertising).

[17] 16 CFR part 308.

[18] *Kraft, Inc.* 114 F.T.C. 40, 124 (1991), *aff'd*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 479 U.S. 1086 (1987). See Thompson Medical Co., 104 F.T.C. 648, 797–98 & n. 22 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987); Deception Statement, 103 F.T.C. at 180.

conspicuous. The effectiveness of disclosures is ordinarily enhanced by their proximity to the representation they qualify, because reasonable consumers do not necessarily read an ad in its entirety.[19] The placement of qualifying information away from the triggering representation—for example, in footnotes, in margins, or on a separate page of a multi-page promotion—reduces the effectiveness of the disclosure.[20] Furthermore, when significant qualifying information about the cost of a long-distance plan or service is necessary to prevent the ad from misleading consumers, the use of an asterisk will generally be considered insufficient to draw a consumer's attention to a disclosure placed elsewhere in an ad.[21]

Example #15: A full-page newspaper advertisement for a company's long-distance calling plan features in 70-point type the statement, "7¢ a minute all the time" followed by an asterisk. A 12-point disclosure at the bottom of the page states, "*$5.95 monthly fee applies." Given the disparity in prominence and location between the two lines of text, it is unlikely that the disclosure of the monthly fee is sufficiently clear and conspicuous.

Example #16: A dial-around company promotes its services via a three-page direct mail letter sent to consumers. The envelope includes a depiction of a nickel surrounded by the phrase "long-distance calls for just 5¢ a minute," a depiction repeated on the first page of the letter. In fact, the 5¢ a minute rate is good only for state-to-state calls 20 minutes or longer. That information is prominently disclosed only on the last page of the letter. The disclosure of these material conditions on the third page of the letter would likely be ineffective.

Example #17: In a 60-second television ad, a company wants to promote both its domestic and international dial-around service. In the first 50 seconds of the ad, the spokesperson refers to the company's rate as "7¢ a minute" three times with an accompanying graphic. In the last 10 seconds of the ad, the spokesperson says, "And call 878–555–0000 to find out about our low international rates." During the 10-second segment in which the spokesperson discusses the company's international rates, the superscript appears "7¢ a minute rate applies after 7:00 p.m. Monday-Friday and all day weekends." Given the lack of proximity between the "7¢ a minute" claim and the disclosure of the material time restriction, the superscript would likely not be considered clear and conspicuous.

Example #18: A company wants to promote its international long-distance service by reducing its regular prices during a special promotional period. The print ad features the prominent headline, "Big holiday sale! Call between November 1, 2000, and December 31, 2000, and save on all international calls." The ad also features a box listing ten foreign cities. The list, prominently headed "sale prices good through December 31, 2000" gives the cost per minute to each of the advertised cities. Considering the close proximity between the promotional per-minute rates and the prominently displayed information that the advertised rates are good only until December 31, 2000, the disclosure would likely be effective.

3. Absence of Distracting Elements

31. Even if a disclosure is large in size and long in duration, other elements of an advertisement may distract consumers so that they may fail to notice the disclosure. As the FTC has held, consumers may be "directed away from the importance of the qualifying phrase by the acts or statements of the seller."[22] Advertisers should take care not to undercut the effectiveness of disclosures by placing them in competition with other arresting elements of the ad.

Example #19: A 30-second television advertisement for a dial-around service features a famous movie star as a spokesperson. On three occasions, the celebrity states that calls completed through this service cost 10¢ a minute. The ad closes with a quick-cut montage of the celebrity talking on the telephone in front of the Grand Canyon, Niagara Falls, Golden Gate Bridge, and other visually arresting national landmarks. In fact, calls are subject to a 50¢ minimum. This information is disclosed only through a visual superscript appearing at the bottom of the screen during the montage. Given the likelihood that consumers will focus on the quick-cut montage rather than on the superscript, it is unlikely that the disclosure would be considered clear and conspicuous.

4. Factors Relating Specifically to Television Ads

32. In television ads, the same factors of prominence, proximity, and absence of distractions determine whether material information is disclosed in a manner that consumers notice and understand. Other considerations specific to television ads include volume, cadence, and placement of any audio disclosures.[23] Disclosures generally are more effective when they are made in the same mode (visual or oral) in which the claim necessitating the disclosure is presented. Furthermore, research suggests that disclosures that are made simultaneously in both visual and audio modes generally are more effectively communicated than disclosures made in either mode alone.[24] For example, the FTC's Pay-Per-Call Rule requires that the price of a call to a 900-number service be disclosed in both the video and audio in a television ad. Thus, for television ads for long-distance services, a disclosure that includes both a sufficiently large superscript and a voice-over statement is likely to be more effective than a superscript alone.

Example #20: A 30-second television advertisement for a long-distance calling plan features a spokesperson who on three occasions states that calls on the plan are "10¢ a minute anytime." In addition, a graphic reading "10¢ a minute anytime" is depicted twice during the ad. In fact, the 10¢ a minute rate requires the payment of a $5.95 monthly fee. The only disclosure of the monthly fee is through a visual superscript at the end of the ad. Especially because the triggering representation—that calls on the plan are "10¢ a minute anytime"was made both orally and visually, the visual superscript would likely be less effective in disclosing the monthly fee than had the same information been conveyed both orally and visually.

III. Ordering Clause

33. Accordingly, *it is ordered that* this Policy Statement *is adopted.*

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[19] Deception Statement, 103 F.T.C. at 180–81.

[20] See, *e.g.*, Dell Computer Corp., C–3888 (Aug. 6, 1999) (consent order); Micron Electronics, Inc., C–3887 (Aug. 6, 1999) (consent order); Häagen-Dazs Co., 119 F.T.C. 762 (1995) (consent order); Stouffer Foods Corp., 118 F.T.C. 746, 802 n.10 (1994).

[21] See, *e.g.*, Frank Bommartino Oldsmobile, Inc., C–3774 (Jan. 5, 1998) (consent order); Archer Daniels Midland Co., 117 F.T.C. 403 (1994) (consent order).

[22] Deception Statement, 103 F.T.C. at 180–81.

[23] *See* generally General Motors Corp., 123 F.T.C. 241 (1997); American Honda Motor Co., 123 F.T.C. 262 (1997); American Isuzu Motor Co., 123 F.T.C. 275 (1997); Mitsubishi Motor Sales of America, Inc., 123 F.T.C. 288 (1997); Mazda Motor of America, Inc., 123 F.T.C. 312 (1997) (consent orders) (complaint alleging that ads touting "zero down" are deceptive even though fine print disclosures and/or point of sale or other sources make clear that significant costs apply at lease inception; order defining clear and conspicuous disclosure of terms in television and other ads for car leases as "readable [or audible] and understandable to a reasonable consumer"). See also *United States* v. *Mazda Motor of America, Inc.*, (C.D. Cal. Sept. 30, 1999) (consent decree) ($5.25 million total civil penalty for violations of FTC and state orders related to disclosures in car leasing advertising); Kraft, Inc., 114 F.T.C. 40, 124 (1991), aff'd, 970 F.2d 311 (7th Cir. 1992), cert. denied, 507 U.S. 909 (1993); Thompson Medical Co., 104 F.T.C. 648, 797–98 (1984), aff'd, 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987).

[24] Maria Grubbs Hoy & Michael J. Stankey, Structural Characteristics of Televised Advertising Disclosures: A Comparison with the FTC Clear and Conspicuous Standard, J. Advertising, June 1993, at 47, 50; Todd Barlow & Michael S. Wogalter, Alcoholic Beverage Warnings in Magazine and Television Advertisements, 20 J. Consumer Res. 147, 151, 153 (1993); Noel M. Murray, *et al.*, Public Policy Relating to Consumer Comprehension of Television Commercials: A Review and Some Empirical Results, 16 J. Consumer Pol'y 145, 164 (1993).

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
Federal Trade Commission.
Donald S. Clark,
Secretary.
[FR Doc. 00–17995 Filed 7–14–00; 8:45 am]
BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0021]

Submission for OMB Review; Comment Request Entitled Profit and Loss Statement—Operating Statement

AGENCY: Regional Support Division (PMR), GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0021).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Office of Acquisition Policy will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Profit and Loss Statement—Operating Statement. This information collection was published in the **Federal Register** on May 3, 2000 at 65 FR 25730 allowing for the standard 60-day public comment period. No comments were received.

DATES: *Comment Due Date:* August 16, 2000.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to Marjorie Ashby, General Services Administration (MVP), Room 4011, 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Deborah Purdie, (202) 501–4226.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Profit and Loss Statement—Operating Statement is the financial planning document in an offeror's proposal to perform a GSA cafeteria service contract and its contents are one factor considered by the contracting officer in deciding to award a contract. The GSA Form 2817 is also the non-ADP financial reporting vehicle used by cafeteria contractors.

B. Annual Reporting Burden

Respondents: 250; *annual responses:* 250; *average hours per response:* 1; *burden hours:* 250.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–3822.

Dated: July 7, 2000.
David A. Drabkin,
Deputy Associate Administrator for Acquisition Policy.
[FR Doc. 00–18035 Filed 7–14–00; 8:45 am]
BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Announcement on Tribal Consultation With American Indian/Alaskan Native Tribal Representatives

The Department of Health and Human Services policy on consultation with American Indian/Alaska Native (AI/AN) Governments and Organizations calls for each OPDIV to convene a meeting with AI/AN Tribal Representatives.

In accordance with Departmental policy on Tribal Consultation with AI/AN Governments and Organizations, the Administration on Aging will be hosting a one day session to give AI/AN Tribal Representatives and their Title VI Director an opportunity to discuss Indian elder issues related to (1) Policy Directions; (2) Capacity Building; (3) Long-Term Care; and (4) Health Care and to develop recommendations to be presented to the Assistant Secretary for Aging.

This Tribal Listening Session will be held from 9 am to 4 pm on August 8, 2000 at: Hubert Humphrey Building; 200 Independence Avenue, SW, Washington, DC 20201.

A final agenda will be distributed at the meeting when you sign in.

To register and for additional information please contact: M. Yvonne Jackson, Ph.D., Director, Office for American Indian, Alaskan Native and Native Hawaiian Programs, Administration on Aging, 330 Independence Ave., SW, Washington, DC 20201, (202) 619–2713, Email: Yvonne.Jackson@aoa.gov.

Purpose: In accordance with Departmental policy on consultation with (AI/AN) Governments and Organizations, AoA will host this meeting to give AI/AN Tribal Representatives an opportunity to discuss the four above mentioned areas and develop recommendations to present to the Assistant Secretary on Aging.

Date and Time: August 8, 2000, 9 am–4 pm EST.

Matters to be Discussed: The agenda will include opening remarks/break-out sessions to discuss the four above mentioned areas, a general session, open comment time and closing remarks.

If you are unable to attend but wish to provide comments or Tribal Resolutions these may be faxed to M. Yvonne Jacksons attention at (202) 260–1012.

Dated: July 11, 2000.
Jeanette C. Takamura,
Assistant Secretary for Aging.
[FR Doc. 00–17920 Filed 7–14–00; 8:45 am]
BILLING CODE 4150–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–43]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Nursing Homes' Access to Influenza Vaccine and Use of Rapid Influenza Tests and Antivirals—New—National Center for Infectious Diseases (NCID)—Uncontrolled nursing home influenza outbreaks can result in illness in ≥ 60 percent and death in ≥ 10 percent of residents. Vaccine is the primary means to prevent influenza and its complications. However, outbreaks can occur despite high vaccination levels. The use of rapid diagnostic tests and the timely administration of antiviral medications can lessen the impact of influenza outbreaks. In 1998, a study was conducted among nursing homes in 9 states to determine the use of vaccine, rapid influenza tests, and antivirals, amantadine and rimantadine. Since that time, new rapid diagnostic tests and neuraminidase inhibitor antiviral medications have been approved. In addition, a substantial delay in the distribution of influenza vaccine and ■ possible vaccine shortage are anticipated for the 2000–01 influenza season.

The purpose of this study is to assess nursing homes' access to vaccine in 2000–01, the use of rapid influenza diagnostic tests, and the influenza inhibitor antivirals. A survey will be mailed to a sample of randomly selected nursing homes in the same 9 states surveyed in 1998. The results will be used to evaluate resident and staff vaccination levels and the use of rapid influenza tests and antiviral medications. We will also assess the relationship between access to vaccine and the occurrence of outbreaks. There is no cost to the respondents.

Respondents	Number of respondents	Number of responses per respondent	Avg. burden/ respondents (in hrs)	Total burden
Nursing Home staff	1017	1	10/60	170

Dated: July 11, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17982 Filed 7–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: LIHEAP Household Report

OMB No.: 0970–0060

Description: The report is an annual activity which is required by law of Low Income Home Energy Assistance Program (LIHEAP) grantees for receipt of federal LIHEAP block grant funds. States, the District of Columbia, and the Commonwealth of Puerto are required to report statistics for the previous federal fiscal year on the number and income levels of LIHEAP applicant and assisted households, and the number of LIHEAP assisted households with at least one member who is elderly, disabled or a young child. Insular areas receiving less than $200,000 annually in LIHEAP funds and Indian Tribal Grantees are required to submit data only on the number of households receiving heating, cooling, energy crisis, or weatherization benefits. The information is being collected for the Department's annual LIHEAP report to Congress. The data also provide information about the need for LIHEAP funds. Finally, the data are being used in the calculation of LIHEAP performance measures under the Government Performance Results Act of 1993.

Respondents: State Governments, Tribal Governments and Territories

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Recommended LF LIHEAP assist. household	52	1	25	1,300
Recommended SF LIHEAP assist. household	132	1	1	132
Recommended format for LIHEAP applicant households	52	1	13	676
Estimated Total Annual Burden Hours				2,108

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–17938 Filed 7–14–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1373]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements for Mammography Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for mammography facilities, standards, and lay summaries for patients.

DATES: Submit written comments on the collection of information by September 15, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping Requirements for Mammography Facilities—21 CFR Part 900 (OMB Control Number 0910–0309)—Extension

Public Law 102–539, the Mammography Quality Standards Act of 1992 (MQSA) (42 U.S.C. 263b) as amended by the Mammography Quality Standards Reauthorization Act (MQSRA) of 1998 (Public Law 105–248) establishes the authority for a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. MQSRA extended the life of the MQSA program for 4 years from its original expiration date of 1998 until 2002, and also modified some of the provisions. The most significant modification from a report and recordkeeping viewpoint under 21 CFR 900.12(c)(2) was that mammography facilities were required to send a lay summary of each examination to the patient.

FDA, under this regulation, collects information from accreditation bodies and mammography facilities by requiring each accreditation body to submit an application for approval and to establish a quality assurance program. On the basis of accreditation, facilities are certified by FDA and must prominently display their certificate. FDA uses the information to ensure that private, nonprofit organizations or State agencies meet the standards established by FDA for accreditation bodies to accredit facilities that provide mammography services. Information collected from mammography facilities has also been used to ensure that the personnel, equipment, and quality systems has and continues to meet the regulations under MQSA and will be used by patients to manage their health care properly. The intent of these regulations is to assure safe, reliable, and accurate mammography on a nationwide level. The most likely respondents to this information collection will be accreditation bodies and mammography facilities seeking certification.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.3	6	1	6	60	360		
900.3(b)(3)	10	1	10	60	600	$50	
900.3(c)	4	0.14	0.56	15	8.4		
900.3(e)	1	0.2	0.2	1	0.2		
900.3(f)(2)	1	0.2	0.2	200	40		
900.4(c)	834	1	834	1	834		
900.4(e)	10,000	1	10,000	8	80,000		
900.4(f)	1,000	1	1,000	14.5	14,500		
900.4(h)	6	1	750	6	4,500		
900.4(i)(2)	1	1	1	1	1		
900.6(c)(1)	1	1	1	1	1		
900.11(b)(2)	25	1	25	2	50		
900.11(b)(3)	5	1	5	0.5	2.5		

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.11(c)	10,000	0.0050	50	20	1,000		$1,000
900.12(c)(2)	9,800	4,080	39,984,000	5 Minutes	3,332,000		
900.12(j)(1)	10	1	10	1	10		
900.12(j)(2)	1	1	1	50	50		
900.15(d)(3)(ii)	10,000	0.0020	20	2	40		$100
900.18(c)	10,000	0.0005	6	2	12		$60
900.18(e)	10	0.1000	1	1	1		$10
TOTAL					3,434,010	$50	$1,170

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating & Maintenance Costs
900.3(f)(1)	10	130	1,300	200	2,000	
900.4(g)	10,000	1	10,000	1	10,000	
900.11(b)(1)	1,000	1	1,000	1	1,000	
900.12(c)(4)	10,000	1	10,000	1	10,000	
900.12(e)(13)	6,000	52	312,000	0.125	39,000	
900.12(f)	10,000	1	10,000	1	10,000	
900.12(h)	10,000	2	20,000	0.5	10,000	$20,000
TOTAL					82,000	$20,000

[1] There are no capital costs associated with this collection of information.

All costs of implementing requirements for certification of mammography facilities will be borne by accreditation bodies; the incremental costs that accreditation bodies will face are not expected to be significant. The collection's burden is based upon the estimated number of summaries received by FDA, which in turn is based on the estimated number of examinations expected to be performed in a given year. If mammography examinations increase in number in subsequent years, which is expected for at least the foreseeable future, the annual burden and costs to meet this requirement will increase.

Included in the burden estimate is the FDA estimate for mammography lay summaries, which is the practice of notifying the patient in layman's terms of the results of the patient's mammography examination. FDA estimates that there are 9,800 facilities performing mammography in the United States. FDA also estimates that those facilities perform a total of 40 million mammography examinations in a year. In 90 percent of these cases, the notification to the patient can be established by a brief standardized letter to the patient. FDA estimates that preparing and sending this letter will take approximately 5 minutes. In the 10 percent of the cases in which there is a finding of "Suspicious" or "Highly suggestive of malignancy," the facility is required to make reasonable attempts to ensure that the results are communicated to the patients as soon as possible. FDA believes that this requirement can be met by a 5 minute call from the health professional to the patient.

Dated: July 10, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–17944 Filed 7–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0356]

Agency Information Collection Activities; Announcement of OMB Approval; Survey of Incidence of Gastroenterological Parasitic Infections in the United States as a Result of Consumption of Raw Fish

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Survey of Incidence of Gastroenterological Parasitic Infections in the United States as a Result of Consumption of Raw Fish" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 2000 (65 FR 33329), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0443. The approval expires on June 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 10, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–17943 Filed 7–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cooperative Family Registry for Breast Cancer Study.

Date: August 2, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute National Institutes of Health, 6116 Executive Boulevard, Room 8070, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17931 Filed 7–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: July 23–24, 2000.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martin H. Goldrosen, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8050, Rockville, MD 20852–7408, (301) 496–7930.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17932 Filed 7–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: July 21, 2000.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To discuss the DCLG Team Leaders Reports on: Clinical Trials Participation, Advocacy Involvement, Communications Extraordinary Opportunity, NCI Brand, DCLG Operations, NCI Website, Quality Cancer Care Committee/Health Disparities, NCI Priorities and to discuss agenda topics for the upcoming September 2000 Advocates Summit Conference.

Place: Federal Building, Room 6C10, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Lee, Acting Executive Secretary, Office of Liaison Activities, National Cancer Institute, National Institutes of Health, Federal Building, Room 6C10, Bethesda, MD 20892–2580, (301) 594–3194.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17933 Filed 7–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel

Date: August 8, 2000.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Conference Room B2B32/Bldg 31, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalog of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17934 Filed 7–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: August 3–4, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: John R. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17935 Filed 7–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A.

Date: July 26, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Room 1AS19, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17936 Filed 7–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 14, 2000.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2000.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joe Marwah, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701

Rockledge Drive, Room 5188, MSC 7846,Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2000.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate.grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (301) 435–1507.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2000.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19, 2000.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramanda Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jay Cinque, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19, 2000.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–21, 2000.

Time: 8:30 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Eldorado Hotel, 309 W. San Francisco St., Santa Fe, NM 87501.

Contact Person: Mike Radtke, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Integrated Review Group, International and Cooperative Projects Study Section.

Date: July 20–21, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.

Contact Person: Sandy Warren, DMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Ann A. Jerkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2000.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Betty Hayden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jerry L. Klein, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 21, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

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Contact Person: Gordon L. Johnson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, (301) 435–1212, johnsong@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 21, 2000.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rita Anand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 21, 2000.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariana Dimitrov, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 21, 2000.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17930 Filed 7–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–17]

Notice of Proposed Information Collection: Comment Request; Monthly Reports for Establishing Net Income

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 15, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–3000, (this is not a toll-free number) for copies of the proposed forms and other available.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information;

Title of Proposal: Monthly Reports for Establishing Net Income.

OMB Control Number, if applicable: 2502–0108.

Description of the need for the information and proposed use: Field Office staff use Monthly Accounting Reports to assess the need for remedial actions to correct project deficiencies or to prevent a potential default of the project of the project mortgage. HUD Forms 93480 and 93481 are related to the project owners costs. When a project is experiencing rent collection problems, expenses directly effect this income. Loan Servicers are responsible for reviewing trends in a project's expenses and income.

Agency form numbers, if applicable: HUD–93479, 93480, 93481.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents for each form (HUD–93479, 93480, and 93481) is 4,000, the frequency of responses per form is one per month (12 yearly). The number of responses for the 3 forms is 48,000, for a total of 144,000 responses per year. The hours per response is 1.50 hours for HUD–93479, 1 hour for forms HUD–93480 and HUD–93481, estimating the annual burden hours requested to be 168,000.

Status of the proposed information collection: Reinstatement, without change, of previously approved collection for which approved has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 6, 2000.

William C. Apgar,

Assistant Secretary for Housing-FHC.

[FR Doc. 00–17969 Filed 7–14–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on the approximately 0.25-Acre Lot 1217, Unit 1, Block 9 in the Tahitian Village Subdivision, Bastrop County, Texas (Broussard)

SUMMARY: Gordon and Mary Broussard (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–029946–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (Bufo houstonensis). The proposed take would occur as a result of the construction and occupation of one single family residence on up to 0.25 acres of the approximately 0.25-acre Lot 1217, Unit 1, Block 9 in the Tahitian Village Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 16, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029946–0 (Broussard) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Gordon and Mary Broussard plan to construct a single family residence on up to 0.25 acres of the 0.25-acre Lot 1217, Unit 1, Block 9, of the Tahitian Village Subdivision, Bastrop County, Texas. This action will eliminate 0.25 acres or less of Houston toad habitat and result in indirect impacts within the lot. The Applicants propose to compensate for this incidental take of the Houston toad by providing $1,000.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Renne Lohoefener,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17983 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on 0.5 Acres of the 2.57-Acre Lots 18 (1.38 Acres) and 19 (1.19 Acres), Section 5, in the Circle D Country Acres Subdivision, Bastrop County, Texas (Miles)

SUMMARY: William and Phyllis Miles (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–029947–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 2.57-acre Lots 18 (1.38 acres) and 19 (1.19 acres), Section 5, in the Circle D Country Acres Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 16, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029947–0 (Miles) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17 22.

Applicant

William and Phyllis Miles plan to construct a single family residence on 0.5 acres of the 2.57-acre Lots 18 (1.38 acres) and 19 (1.19 acres), Section 5, in the Circle D Country Acres Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston

toad habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Renne Lohefener,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17984 Filed 7–14–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of Two Single Family Residences on up to 0.5 acres Each of the 0.567-acre Lot 48, Section 8, and of the 0.493-acre Lot 70, Section 8, in the Circle D Country Acres Subdivision, Bastrop County, Texas (Rush)

SUMMARY: Jim Rush, Green Builder Inc. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–029949–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad *(Bufo houstonensis)*. The proposed take would occur as a result of the construction and occupation of two single family residences on up to 0.5 acres each of the following two lots in the Circle D Country Acres Subdivision, Bastrop County, Texas: (1) the 0.567-acre Lot 48, Section 8, and, (2) the 0.493-acre Lot 70, Section 8.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 16, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029949–0 (Rush) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Jim Rush, Green Builder, Inc. plans to construct a single family residence on up to 0.5 acres of the 0.567-acre Lot 48, Section 8 and of the 0.493-acre Lot 70, Section 8 in the Circle D Country Acres Subdivision, Bastrop County, Texas. This action will eliminate less than 1.0 acre (0.5 acres or less per homesite) of Houston toad habitat and result in indirect impacts within the lot. The Applicant proposes to compensate for this incidental take of the Houston toad by providing $3,000.00 ($1,500.00 per homesite) to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Renne Lohoefener,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17985 Filed 7–14–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW147899]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for the reinstatement of oil and gas lease WYW147899 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW147899 effective March 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 00–17950 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW147898]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW147898 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee

has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW147898 effective March 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 00–17951 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW147897]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW147897 for lands in Sweetwater Counter, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW147897 effective March 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 00–17952 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 134972]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

June 29, 2000.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW134972 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW134972 effective February 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 00–17953 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–1430–EU; AZA 29964, AZA 29970, AZA 29972–AZA 29975, AZA 29977, AZA 29979–AZA 29983, AZA 29985–AZA 29989]

Arizona: Notice of Realty Action; Competitive Sale of Public Land in Quartzsite, La Paz County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of notice.

SUMMARY: The following land in La Paz County, Arizona has been found suitable for disposal under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713; 90 Stat. 2757, 43 U.S.C. 1719). The extension will allow additional time to complete the sale.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 22, NE¼NE¼SE¼;
Sec. 23, NE¼SW¼,S½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼;
Sec. 29, W½NE¼NE¼NE¼, W½NW¼NE¼NE¼, NW¼NE¼, W½NE¼NW¼, SE¼NE¼NW¼, NW¼NW¼.

Aggregating 215.00 acres, more or less.

SUPPLEMENTARY INFORMATION: On December 20, 1996, the Yuma Field Office published a notice for this public land sale in the **Federal Register** (61 FR 67342). This notice segregated the subject public land from appropriation under the public land laws, including the mining laws, pending disposition of the action or 270 days from the date of publication of the notice in the **Federal Register**. Four extensions of the Notice have been published in the **Federal Register:** October 15, 1999 (64 FR 55956); September 23, 1997 (62 FR 49701); June 1, 1998 (63 FR 29746); and January 22, 1999 (64 FR 3543–3544). Upon publication of this Notice in the **Federal Register**, the segregation will be extended pending disposition of the action or for another 270-day period, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Debbie DeBock, Realty Specialist, Bureau of Land Management, Yuma Field Office, 2555 East Gila Ridge Road, Yuma, AZ 85365, (520) 317–3208.

Dated: July 11, 2000.

Maureen A. Merrell,

Assistant Field Manager/Acting Field Manager.

[FR Doc. 00–17988 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Realty Action; Competitive Sale of Public Lands in Clark County, Nevada

The following lands have been designated for disposal under Public Law 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343); they will be sold competitively in accordance with Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713,1719, and 1740) at not less than the appraised fair market value (FMV).

MOUNT DIABLO MERIDIAN, NEVADA

Serial No.	Legal description	Gross acreage
N–66693–00–90	T. 21 S., R. 60 E., sec. 17: SW¼NW¼SE¼	10.00
N–66694–00–91	T. 21 S., R. 60 E., sec. 18: E½NW¼SE¼SW¼	5.00
N–66695–00–92	T. 21 S., R. 60 E., sec. 31: lot 13	5.00
N–66696–00–93	T. 21 S., R. 60 E., sec. 31: E½SW¼SW¼NE¼	5.00
N–66697–00–94	T. 22 S., R. 60 E., sec. 11: NE¼NW¼NW¼	10.00
N–66698–00–95	T. 22 S., R. 60 E., sec. 12: SE¼NE¼SE¼NW¼, E½SE¼SE¼NW¼	7.50
N–66699–00–96	T. 22 S., R. 60 E., sec. 12: NE¼SE¼NE¼NE¼	2.50
N–66700–00–97	T. 22 S., R. 60 E., sec. 12: S½SW¼NW¼NE¼	5.00
N–66701–00–98	T. 22 S., R. 60 E., sec. 12: SE¼SE¼NW¼NE¼	2.50
N–66702–00–99	T. 22 S., R. 60 E., sec. 12: E½SW¼SE¼NE¼, SW¼SE¼SE¼NE¼	7.50
N–66703–00–100	T. 22 S., R. 60 E., sec. 12: SW¼SE¼NE¼NE¼, N½NE¼SE¼NE¼, NE¼NW¼SE¼NE¼, W½NW¼SE¼NE¼.	15.00
N–66704–00–101	T. 22 S., R. 60 E., sec. 12: E½SE¼SW¼NE¼	5.00
N–66705–00–102	T. 22 S., R. 61 E., sec. 7: SE¼SE¼NW¼	10.00
N–66706–00–103	T. 22 S., R. 61 E., sec. 19: lot 5	1.25
N–66707–00–104	T. 22 S., R. 61 E., sec. 19: lot 9	1.25
N–66708–00–105	T. 22 S., R. 61 E., sec. 19: lot 10	1.25
N–66709–00–106	T. 22 S., R. 61 E., sec. 19: lot 11	1.25
N–66710–00–107	T. 22 S., R. 61 E., sec. 19: lot 12	1.25
N–66711–00–108	T. 22 S., R. 61 E., sec. 19: lot 14	1.33
N–66712–00–109	T. 22 S., R. 61 E., sec. 20: lot 60	5.00
N–66713–00–110	T. 22 S., R. 61 E., sec. 20: lot 79	5.00
N–66714–00–111	T. 22 S., R. 61 E., sec. 20: lot 80	5.00
N–66715–00–112	T. 22 S., R. 61 E., sec. 20: lot 72	5.00
N–66716–00–113	T. 22 S., R. 61 E., sec. 20: lot 84	5.00
N–66717–00–114	T. 22 S., R. 61 E., sec. 20: lot 87	5.00
N–66729–00–115	T. 22 S., R. 61 E., sec. 19: lot 15	1.25

Upon publication of this notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel being offered for sale. Any applications filed after this notice for rights-of-way, permits, leases, and other uses will be returned to the applicants with no action taken. If the land is sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonrefundable filing fee in conjunction with the final payment for processing of the conveyance of the locatable mineral interests.

The terms and conditions applicable to the sale are as follows:

All Parcels Subject to the Following

1. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licensees, and lessees, retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid and existing rights. Encumbrances of record are available for review during business hours, 7:30 a.m. to 4:15 p.m., Monday through Friday, at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

4. All land parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchaser's/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgements, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

The appraisal reports for each parcel will be available for public review at the BLM's Las Vegas Field Office on or before September 1, 2000.

Each parcel will be offered via the Internet, by sealed bid, and at oral auction. Pre-auction bidding via the

Internet will be conducted from September 25, 2000, through October 24, 2000. Internet bidding procedures will be available on or before September 25, 2000 at www.auctionrp.com. All sealed bids must be received in the BLM's Las Vegas Field Office(LVFO), 4765 Vegas Drive, Las Vegas, NV 89108, by no later than 4:15 p.m. PST, October 30, 2000. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and sale date. Bids must be for not less than the appraised fair market value (FMV), with a separate bid submitted for each parcel.

Each sealed bid and the highest written Internet bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid.

The bid deposit for the highest qualified written Internet bid must be received at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108 by 4:15 PST on October 27, 2000. The highest qualified written Internet bid or sealed bid on each parcel will determine the starting monetary point for oral bidding. If no written Internet bids or sealed bids are received, oral bidding will begin at the appraised FMV. The parcels will be offered for competitive sale by oral auction beginning at 9 a.m. PDT, November 2, 2000, at the Clark County Commission Chambers, Clark County Government Center, 500 S. Grand Central Parkway, Las Vegas, Nevada. Registration for oral bidding will begin at 8 a.m. the day of sale and will continue throughout the auction. All bidders oral are required to register.

The highest qualifying bid for any parcel, whether written Internet, sealed, or oral, will be declared the highest bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The remainder of the full bid price, whether written Internet, sealed or oral, must be paid within 180 calendar days of the date of the sale. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM. Unsold parcels may be offered on the Internet beginning November 13, 2000. Internet auction procedures will be available at www.auctionrp.com on or before November 13, 2000. If unsold on the Internet, parcels may be offered at future auctions without additional legal notice.

Federal law requires that bidders must be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale; conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents, is available at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108, or by calling (702) 647–5114. Some but not all of this information will also available on the Internet at http://www.nv.blm.gov. Click on Southern Nevada Public Land Management Act, then click on Land Sale Information.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined not in the publics interest. Any comments received during this process, as well as the commentors name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: June 30, 2000.

Mark T. Morse,

Field Manager.

[FR Doc. 00–17854 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–1230–00; 8371]

Arizona: Long-Term Visitor Area Program for 2000–2001 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma Field Office, Arizona, and California Desert District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules for Long-Term Visitor Areas within the California Desert District, El Centro Resource Area.

SUMMARY: The Bureau of Land Management (BLM) Yuma Field Office and California Desert District announce revisions to the Long-Term Visitor Area (LTVA) Program. The program, which was instituted in 1983, established

designated LTVAs and identified an annual long-term use season from September 15 to April 15. During the long-term season, visitors who wish to camp to public lands in one location for extended periods must stay in the designated LTVAs and purchase an LTVA permit.

EFFECTIVE DATE: September 15, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, Yuma Field Office, 2555 East Gila Ridge Road, Yuma, Arizona 85365, telephone (520) 317–3210; and Anna Atkinson, Outdoor Recreation Planner, Palm Springs-South Coast Research Area, 690 West Garnet Avenue, North Palm Springs, California 92258, telephone (760) 251–4800; or Bob Haggerty, Outdoor Recreation Planner, El Centro Resource Area, 1661 South Fourth Street, El Centro, California 92243, telephone (760) 337–4400.

SUPPLEMENTARY INFORMATION: The purpose of the LTVA program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of LTVAs assures that specific locations are available for long-term use year after year, and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside of LTVAS, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period.

Authority for the designation of LTVAs is contained in Title 43, Code of Federal Regulations, Subpart 8372, Sections 0–3 and 0–5(g). Authority for the establishment of an LTVA program is contained in Title 43, Code of Federal Regulations, Subpart 8372, Section 1, and for the payment of fees in Title 36, Code of Federal Regulations, Subpart 71. The authority for establishing supplementary rules is contained in Title 43, Subpart 8365, Section 1–6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected, and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

The following are the supplemental rules for the designated LTVAs and are in addition to rules of conduct set forth in Title 43, Code of Federal Regulations, Subpart 8365, Section 0.1 through 1–7.

The following supplemental rules apply year-long to all public land users who enter the LTVAS.

1. The Permit. A permit is required to camp in a designated LTVA between September 15 and April 15. The permit authorizes the permittee to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period from September 15 to April 15. There are two types of permits: Long-term and short-visit. The long-term permit fee is $100.00, U.S. funds only, for the entire season and any part of the season. The short-term permit is $20.00 for seven (7) consecutive days. The short-visit permit may be renewal an unlimited number of times for the cost of $20.00 for seven consecutive days. *No refunds are made on permit fees.*

2. The Permit. The be valid, the short-visit permit decal or long-term permit decal must be affixed at the time of purchase, with the adhesive backing, to the bottom right-hand corner of the windshield of all transportation vehicles and in a clearly visible location on all camping units. A maximum of two (2) secondary vehicles is permitted.

3. Permit Transfers. The permit may not be reassigned or transferred by the permittee.

4. Permit Revocation. An authorized BLM officer may revoke, without reimbursement, any LTVA permit issued to any person when the permittee violates any BLM rule or regulation, or when the permittee, permittee's family, or guest's conduct is inconsistent with the goal of BLM's LTVA Program. Failure to return any LTVA permit to an authorized BLM officer upon demand is a violation of this supplemental rule. Any permittee whose permit is revoked must remove all property and leave the LTVA system within 12 hours of notice. The revoked permittee will not be allowed into any other LTVA in Arizona or California for the remainder of the LTVA season.

5. Unoccupied Camping Units. Camping units or campsites must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by an authorized BLM officer.

6. Parking. For your safety and privacy, you must maintain a minimum of 15 feet of space between dwelling units.

7. Removal of Wheels and Campers. Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. Pickup campers may be set on jacks manufactured for that purpose.

8. Quiet Hours. Quiet hours are from 10 p.m. to 6 a.m. in accordance with applicable State time zone standards, or as otherwise posted.

9. Noise. Operation of audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise as determined by the authorized BLM officer is prohibited. Amplified music is allowed only within La Posa and Imperial Dam LTVAs and only in locations designated by BLM or when approved in advance by an authorized BLM officer.

10. Access. Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

11. Structures and Landscaping. Fixed structures of any type are prohibited and temporary structures must conform to posted policies. This includes, but is not limited to fences, dog runs, storage units, and windbreaks. Alterations to the natural landscape are not allowed. Painting rocks or defacing or damaging any natural or archaeological feature is prohibited.

12. Livestock. Boarding of livestock (horses, cattle, sheep, goats, *etc.*) within LTVA boundaries is permitted only when approved in advance by an authorized BLM officer.

13. Pets. Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for clean-up and sanitary disposal of pet waste.

14. Cultural Resources. Do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

15. Trash. Place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Depositing trash or holding-tank sewage in vault toilets is prohibited. An LTVA permit is require for trash disposal within all LTVA campgrounds except for the Mule Mountain LTVA. The changing of motor oil, vehicular fluids, or disposal and possession of these used substances within an LTVA is strictly prohibited.

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16. Dumping. Absolutely no dumping of sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products: Federal, state and county sanitation laws and county ordinances specifically prohibit these practices. Sanitary dump station locations are shown in the LTVA brochure. LTVA permits are required for dumping within all LTVA campgrounds except for the Midland LTVA.

17. Self-Contained Vehicles. In Pilot Knob, Midland, Tamarisk, and Hot Springs LTVAs, camping is restricted to self-contained camping units only. Self-contained units must have a permanent affixed waste water holding tank of 10-gallon minimum capacity. Port-a-potty systems, or systems which utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self-contained. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self-contained camping units, except within 500 feet of a vault or rest room.

18. Campfires. Campfires are permitted in LTVAs subject to all local, state, and Federal regulations. Comply with posted rules.

19. Wood Collection. No wood collection is permitted within the LTVAs. Possession of native firewood is prohibited. Please contact the nearest BLM office for current regulations concerning wood collection.

20. Speed Limit. The speed limit in LTVAs is 15 mph or as otherwise posted.

21. Off-Highway Vehicle Use. Motorized vehicles must remain on existing roads, trails, and washes.

22. Vehicle Use. It is prohibited to operate any vehicle in violation of State or local laws and regulations relating to use, standards, registration, operation, and inspection.

23. Firearms. The discharge or use of firearms or weapons if prohibited inside or within ½ mile of the LTVAS.

24. Vending Permits. Any commercial activity requires a vending permit. Please contact the nearest BLM office for information on vending or concession permits.

25. Aircraft Use. Landing or taking off of aircraft, including ultralights and hot air balloons, is prohibited in LTVAs.

26. Perimeter Camping. No camping is allowed within 1 mile of Hot Spring, Tamarisk, Pilot Knob LTVAs and within 2 miles of Midland LTVA.

27. Hot Spring Spa and Day Use Area: Food, beverages, glass containers, soap, and pets are prohibited within the fenced-in area at the Hot Springs Spa. Day use hours are 5 a.m. to midnight.

28. Mule Mountain LTVA. All camping within Wiley's Well and Coon Hollow campgrounds is restricted to designated sites only and is limited to one (1) camping or dwelling unit per site.

29. Imperial Dam and La Posa LTVAs. Overnight occupancy is prohibited in desert washes in Imperial Dam and La Posa LTVAs.

30. La Posa LTVA. Access to La Posa LTVA is restricted to legal access roads along U.S. Highway 95. Construction and use of other access points are prohibited. This includes removal or modification of barricades, such as fences, ditches, and berms.

31. Posted Rules. Observe all posted rules. Individual LTVAs may have additional specific rules. If posted rules differ from these supplemental rules, the posted rules take precedence.

32. Other Laws. LTVA permit holders are required to observe all Federal, State, and local laws and regulations applicable to the LTVA and shall keep the LTVA and, specifically, their campsite, in a neat, orderly, and sanitary condition.

33. Length of Stay. Length of stay in an LTVA between April 16 and September 14 is limited to 14 days in a 28–day period. After the 14th day of occupation campers must move outside of a 25–mile radius of the previous location.

Violation of these supplementary rules may result in revocation of the LTVA permit, issuance of a citation, and/or arrest which may require appearance before a U.S. Magistrate or penalties upt o $100,000 and/or one-year imprisonment.

This notice is published under the authority of Title 43, Code of Federal Regulations, Subpart 8365, Section 1–6.

Dated: June 30, 2000.

Gail Acheson,

Field Manager, Yuma Field Office.

James G. Kenna,

Field Manager, Palm Spring-South Coast Field Office.

Elayn Briggs,

Acting Field Manager, El Centro Field Office.

[FR Doc. 00–17858 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–2810–HT; GPO–0284]

Notice of Regulated Fire Closure for Bureau of Land Management Public Lands in the State of Washington

AGENCY: Bureau of Land Management, Spokane District.

SUMMARY: Pursuant to 43 CFR 9212.2, the following acts are prohibited on public lands within the Spokane District, Bureau of Land Management (BLM) including Juniper Forest/Juniper Dunes Recreation Area, and areas surrounding Hog Canyon, Miller Ranch/Fishtrap, Pacific Lake, Twin Lakes, Coffeepot, Yakima River Canyon, Douglas Creek, Chopaka/Palmer Mountain, Split Rock, Liberty, Saddle Mountains, Lakeview Ranch/Lake Creek, Boundary Dam, and Escure Ranch/Rock Creek recreation sites, beginning at noon July 15, 2000 until further notice.

1. Building, maintaining, attending or using a fire, campfire or stove fire, including charcoal briquette fire (43 CFR 9212.2).

Note: Liquified and bottled gas stoves and heaters are permitted provided that they are within an area at least 10 feet in diameter that is barren or clear of all flammable material.

2. Smoking while traveling in timber, brush or grass areas, except in vehicles on roads, on barren or cleared areas at least 3 feet in diameter or boats on rivers and lakes.

3. Operating any type of motorized vehicle off developed roadways. Parking of vehicles off roadways must be done in an area barren of flammable materials (43 CFR 9212.2(b)(1)).

Note: Developed roadways are those which are clear of flammable debris, berm to berm. Juniper Dunes Recreation Area is Exempt.

Pursuant to 43 CFR 9212.3(a) the following persons are exempt from this order:

1. Persons with a permit that specifically authorized the otherwise prohibited act or omission.

2. Any Federal, State or local officer or a member of an organized rescue or firefighting force in the performance of an official duty.

Violation of these prohibitions is punishable by a fine of not more than $1,000.00 or to imprisonment of not more than 12 months, or both.

FOR FURTHER INFORMATION CONTACT: Scott Boyd, Fire Management Officer, Bureau of Land Management, Spokane District Officer, 1103 N. Fancher Road, Spokane Washington, 99212; or call (509) 536–1200.

Dated July 11, 2000.

Joseph K. Buesing,

District Manager.

[FR Doc. 00–17987 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–33–U

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the dates specified:

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 16 and 17, T. 5 S., R. 36 E., Boise Meridian, Idaho, Group Number 945 (Part 1 of 2), was accepted April 12, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs, Fort Hall Agency.

The plat representing the corrective dependent resurvey of portions of the west and north boundaries, and the dependent resurvey of portions of the north boundary, subdivisional lines, and the subdivision of sections 4, 5, 6, 7, and 9, T. 5 S., R. 36 E., Boise Meridian, Idaho, Group Number 945 (Part 2 of 2), was accepted April 12, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs, Fort Hall Agency.

The plat representing the dependent resurvey of portions of the subdivisional lines and of the subdivision of sections 21 and 22, and the further subdivision of section 21, and the subdivision of section 27, T. 2 N., R. 5 W., Boise Meridian, Idaho, Group Number 1049, was accepted April 17, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and adjusted 1892 meanders of the left bank of the Clearwater River, and the subdivision of section 33, the survey of 1997 meanders of the left bank of the Clearwater River, and the metes-and-bounds survey of certain partition lines in section 33, T. 37 N., R. 2 W., Boise Meridian, Idaho, Group Number 1006, was accepted April 20, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs, Northern Idaho Agency.

The plat representing the dependent resurvey of portions of the south boundary, the east boundary, the subdivisional lines, and of the subdivision of sections 23, 25, 26, 27, 34, 35, and 36, and the additional subdivision of sections 23, 25, 26, 27, 34, 35, and 36, and the metes-and-bounds survey of a portion of the centerline of Webb Road in section 23, T. 35 N., R. 4 W., Boise Meridian, Idaho, Group Number 1018, was accepted April 20, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs, Northern Idaho Agency.

A supplemental plat was prepared to correct certain erroneously depicted distances and lines in sections 6, 7, and 8, T. 47 N., R. 5 E., and to correct a portion of the plat accepted July 1, 1997, and was accepted May 8, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management, Idaho.

The plat representing the dependent resurvey of a portion of the north boundary, and a portion of the subdivisional lines, and the subdivision of section 2, and a metes-and-bounds survey in section 2, T. 5 S., R. 3 E., Boise Meridian, Idaho, Group Number 1063, was accepted May 8, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey in former lot 18 in section 7, T. 5 S., R. 36 E., Boise Meridian, Idaho, Group Number 1069, was accepted May 12, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs, Fort Hall Agency.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 14, T. 10 N., R. 4 E., Boise Meridian, Idaho, Group Number 990, was accepted May 26, 2000.

The plat was prepared to meet certain administrative needs of the USDA, Forest Service, Boise National Forest.

The plat representing the dependent resurvey of portions of the east boundary, the subdivisional lines, and the subdivision of sections 1 and 11, and the subdivision of section 12, T. 8 S., R. 12 E., Boise Meridian, Idaho, Group Number 1024, was accepted June 1, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 27, 28, 29, 32, and 34, T. 9 S., R. 12 E., Boise Meridian, Idaho, Group Number 1057, was accepted June 15, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 3, T. 10 S., R. 12 E., Boise Meridian, Idaho, Group Number 1058, was accepted June 16, 2000.

The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 2 S., R. 9 E., Boise Meridian, Idaho, Group Number 1051, was accepted June 21, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 14, and the execution of a metes-and-bounds survey of the centerline of an existing road in section 14, T. 13 S., R. 4 E., Boise Meridian, Idaho, Group Number 1073, was accepted June 21, 2000. The plat was prepared to meet certain administrative needs of the U.S.A.F., Mountain Home Air Force Base.

The plat representing the dependent resurvey of portions of the west boundary and of the subdivisional lines, and the subdivision of section 30, T. 1 N., R. 4 W., Boise Meridian, Idaho, Group Number 1047, was accepted June 22, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the corrective dependent resurvey of a portion of the subdivisional lines, and the corrective resurvey of the subdivision of sections 14 and 15, and the further subdivision of section 14, T. 12 S., R. 20 E., Boise Meridian, Idaho, Group Number 1053, was accepted June 30, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Duane Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: July 6, 2000.

Duane E. Olsen,

Chief, Cadastral Surveyor for Idaho.

[FR Doc. 00–17949 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–00–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

New Mexico Principal Meridian, New Mexico

T. 29 N., R. 11 W., approved June 8, 2000, for Group 944 NM.

Tigua Indian Reservation, approved June 8, 2000, Supplemental Plat.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: July 6, 2000.

John P. Bennett,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. 00–17948 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of the Great Egg Harbor National Scenic and Recreational River Final Comprehensive Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Great Egg Harbor National Scenic and Recreational River Final Comprehensive Management Plan and Environmental Impact Statement.

SUMMARY: The National Park Service has finalized the Comprehensive Management Plan and Environmental Impact Statement for the management, protection, and use of the Great Egg Harbor National Scenic and Recreational River in New Jersey. Comments will be accepted for 30 days from the date of this notice. Please be advised that, if requested, the National Park Service is required to supply the names and addresses of individuals providing comments. For more information about this document, contact Mary Vavra, National Park Service Manager by letter or telephone.

FOR FURTHER INFORMATION CONTACT: Mary Vavra, Program Manager, National Park Service, Philadelphia Support Office, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106, (215) 597–9175.

Dated: July 6, 2000.

Marie Rust,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 00–18033 Filed 7–14–00; 8:45 am]

BILLING CODE 4310–70–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–884 (Preliminary)]

Anhydrous Sodium Sulfate From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–884 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of anhydrous sodium sulfate, provided for in subheadings 2833.11.10 and 2833.11.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 24, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 31, 2000.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or ffischer@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on July 10, 2000, by Cooper Natural Resources, Tulsa, OK, and IMC Chemicals Inc., New York, NY.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level)

representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 31, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179 or ffischer@usitc.gov) not later than July 24, 2000, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 3, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with § 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.
Issued: July 11, 2000.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–17992 Filed 7–14–00; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–831–832, 835, 837 (Final)]

Certain Cold-Rolled Steel Products From China, Indonesia, Slovakia, and Taiwan

Determination

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China, Indonesia, Slovakia, and Taiwan of certain cold-rolled steel products that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective June 2, 1999, following receipt of petitions filed with the Commission and the Department of Commerce by Bethlehem Steel Corporation (Bethlehem, PA); U.S. Steel Group (Pittsburgh, PA); Ispat Inland, Inc. (East Chicago, IL); LTV Steel Co., Inc. (Cleveland, OH); National Steel Corporation (Mishawaka, IN); Gulf States Steel, Inc. (Gadsden, AL); Steel Dynamics, Inc. (Butler, IN); Weirton Steel Corporation (Weirton, WV); and the United States Steelworkers of America, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain cold-rolled steel products from China, Indonesia, Slovakia, and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 1, 1999 (64 FR 67307). The hearing was held in Washington, DC, on January 20, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 10, 2000. The views of the Commission are contained in USITC Publication 3320 (July 2000), entitled *Certain Cold-Rolled Steel Products from China, Indonesia, Slovakia, and Taiwan: Investigations Nos. 731–TA–831–832, 835, 837 (Final).*

Issued: July 11, 2000.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–17991 Filed 7–14–00; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–697 (Review)]

Pure Magnesium From Russia

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in April 2000 to determine whether revocation of the existing antidumping duty order on pure magnesium from Russia would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On July 7, 2000, the Department of Commerce published notice that it was revoking the order "[b]ecause no domestic party responded to the sunset review notice of initiation by the applicable deadline" (65 FR 41944). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Lynn M. Bragg dissenting.

(19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

Issued: July 10, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17990 Filed 7–14–00; 8:45 am]

BILLING CODE 7020–02–P

MERIT SYSTEMS PROTECTION BOARD

Notice; Relocation of Headquarters

AGENCY: Merit Systems Protection Board.

ACTION: Notice of relocation of the Board's headquarters offices.

SUMMARY: The Merit Systems Protection Board (MSPB) publishes this notice to announces to the public the relocation of its headquarters offices. The Board will continue to receive filings through the move, which will take place over the weekend beginning on Friday night, July 21, 2000. Filings due to the Board after July 21, 2000 are to be addressed to U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419. Headquarters telephone numbers, fax numbers and e-mail addresses will not change. The telephone, fax and e-mail systems will be out of operation from 12 noon on July 21, 2000 until 8:30 am Monday, July 24, 2000. The headquarters office will be open for business beginning on July 24, 2000.

EFFECTIVE DATE: July 17, 2000.

ADDRESSES: Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Matthew Shannon, or Shannon McCarthy(202) 653–7200.

Dated: July 11, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–17976 Filed 7–14–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506 as follows:

Theater/Musical Theater section B (Creativity and Organizational Capacity categories)—July 31—August 4, 2000, Room 714. A portion of this meeting, from 3:30 p.m. to 5:30 p.m. on August 3rd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 7 p.m. on July 31st—August 2nd, from 9:30 a.m. to 3:30 p.m. on August 3rd, and from 9:30 a.m. to 5 p.m. on August 4th, will be closed.

Local Arts Agencies section (Creativity and Organizational Capacity categories)—August 8–9, 2000, Room 730. A portion of this meeting, from 10:30 a.m. to 12 p.m. on August 9th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 5 p.m. on August 8th and from 9 a.m. to 10:30 a.m. and 12 p.m. to 3 p.m. on August 9th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: July 7, 2000.

Kathy Plowitz-Worden,

Panel Coordination, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–18048 Filed 7–14–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Geosciences (1755).

Date and Time: August 1–3, 2000; 8 a.m. to 5 p.m. each day.

Place: Room 770; National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Part-Open (See Agenda, below).

Contact Person: Dr. Clifford Jacobs, Section Head, UCAR and Lower Atmospheric Facilities Oversight Section, Room 775, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1521.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda

Closed: August 1 from 1 p.m.–5 p.m. and August 2 from 8 a.m.–12 p.m. To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the UCAR and Lower Atmospheric Facilities Oversight Section.

Open: August 1 from 8 a.m.–12 p.m.; August 2 from 1 p.m.–5 p.m.; and August 3 from 8 a.m.–5 p.m.—To assess the results of

NSF program investments in the UCAR and Lower Atmospheric Facilities Oversight Section. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C.. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 11, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17974 Filed 7–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Graduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education (57).

Date/Time: September 25th and 26th 2000, 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 375, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Paul W. Jennings, Program Director and co-chairperson, IGERT and Ms. Deborah A. Daniels, Senior Program Assistant, Division of Graduate Education, National Science Foundation, 4201 Wilson Blvd., Room 907N, Arlington, VA 22230. (703) 306–1697.

Purpose of Meeting: To provide advice and recommendations concerning preproposals submitted to NSF for financial support.

Agenda: To review and evaluate applications submitted to the NSF-Integrative Graduate Education and Research Traineeship (IGERT) Program as part of the selection process for awards.

Reason for Closing: The preproposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 11, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17975 Filed 7–14–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681]

International Uranium (USA) Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Request from International Uranium (IUSA) Corporation to Amend Source Material License SUA–1358 to Receive and Process Alternate Feed Materials Notice of Opportunity for Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has received, by letter dated July 5, 2000, a request from International Uranium (IUSA) Corporation to amend its NRC Source Material License SUA–1358, to allow its White Mesa Uranium Mill near Blanding, Utah, to receive and process up to 2000 cubic yards of alternate feed material from the Heritage Minerals Site located in Lakehurst, New Jersey. The Heritage site is in decommissioning under NRC Source Materials License No. SMB–1541. The Final Status Survey Plan ("Decommissioning Plan") includes the removal of a monazite sand pile for shipment off-site. IUSA proposes to process the material for it's uranium content and dispose of the tailings in their tailings cells.

FOR FURTHER INFORMATION CONTACT: Mr. William von Till, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555. Telephone (301) 415–6251. 2

SUPPLEMENTARY INFORMATION: By its submittal dated July 5, 2000, IUSA requested that the NRC amend Materials License SUA–1358 to allow the receipt and processing of material other than natural uranium ore (*i.e.*, alternate feed material) at its White Mesa uranium mill located near Blanding, Utah. These materials would be used as an "alternate feed material" (*i.e.*, matter that is processed in the mill to remove the uranium but which is different from natural uranium ores, the normal feed material).

IUSA proposes to receive and process, for it's uranium content, monazite sands that are being stored at the Heritage Minerals, Inc. (HMI) site in Lakehurst, New Jersey. This site is regulated by the NRC under Source Material License SMB–1541 and is in decommissioning. This material consists of monazite sands which were processed for heavy minerals (primarily titanium mineral ilmenite) by mechanical methods with no chemical leaching or extraction. IUSA estimates the amount of material for this amendment request to be up to 2000 yds^3. HMI has estimated that the material has a uranium content of approximately 0.05 weight percent, or greater. IUSA has determined that the material does not contain listed hazardous waste as defined in the Resource Recovery and Conservation Act, as amended, 42 U.S.C. Section 6901–6991. IUSA proposes to process the material in a similar manner to normal processing of conventional ore, either alone or in combination with other approved alternate feed materials.

IUSA has proposed that It will be a condition of the license that the mill shall not accept any of the Heritage material at the site unless and until the mill's Safety and Environmental Review Panel (SERP) has determined that the mill has sufficient licensed tailings capacity. The tailings capacity must be sufficient to permanently store:

(1) All 11e.(2) byproduct material, as defined under the Atomic Energy act, that would result from the processing of all of the material;

(2) All other ores and alternate feed materials on site; and

(3) All other materials required to be disposed of in the mill's tailings impoundments pursuant to the mill's reclamation plan.

The material will be shipped by rail and truck in intermodal containers. The covered containers will be loaded onto railcars and transported cross-country to a transfer point where the intermodal containers will then be loaded onto trucks for the final leg of the trip to the mill. The transfer point is expected to be either near Grand Junction, Colorado; Cisco, Utah; Green River, Utah; or East Carbon, Utah. The material will be shipped in exclusive containers as "low specific activity" (LSA) Hazard Class 7 Hazardous Material as defined by Department of Transportation regulations.

This application will be reviewed using NRC formal guidance, "Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores' and the guidance contained in the Nuclear Regulatory Commission's Memorandum and Order, *International Uranium (IUSA) Corp.*, CLI–00–01, (February 10, 2000). The NRC has approved similar amendment requests in the past for separate alternate feed material under this license.

The amendment application is available for public inspection and copying at the NRC Public Document

Room, in the Gelman Building, 2120 L Street NW., Washington DC 20555.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, International Uranium (USA) Corporation, Independence Plaza, Suite 950, 1050 Seventeenth Street, Denver, Colorado 80265; Attention: Michelle Rehmann; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 11 day of July 2000.

For the U.S. Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–18031 Filed 7–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its March 2, 1999, application for proposed amendment to Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

The proposed amendment would have revised the operability requirements for the service water pumps and their associated strainers.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 5, 1999, (64 FR 24198). However, by letter dated June 12, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 2, 1999, and the licensee's letter dated June 12, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 29th day of June 2000.

For the Nuclear Regulatory Commission.

Victor Nerses,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18032 Filed 7–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on July 11, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, July 11, 2000—1:00 p.m. until the conclusion of business.*

The Subcommittee will review the NRC framework for risk information 10 CFR Part 50 described in SECY–00–0086, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

The transcript record will be held open for ten additional days subsequent to the availability of the transcript to the public to enable persons who desire to have written comments or oral statements entered into the official record to do so.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be

considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: July 11, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–18015 Filed 7–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.54, "Service Level I, II, and III Protective Coatings Applied to Nuclear Power Plants," provides guidance on practices and programs that are acceptable to the NRC staff for the selection, application, qualification, inspection, and maintenance of protective coatings applied in nuclear power plants. This guide endorses multiple standards of the American Society for Testing and Materials to provide this guidance.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For further information on the guide, contact A.W. Serkiz at (301) 415–6563 or by email at <AWS@NRC.GOV>.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Recent regulatory guides, both draft and active, may be read or downloaded from the NRC website at http://www.nrc.gov. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 6th day of July 2000.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 00–18030 Filed 7–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Supplementary Changes to Revision 8 of NUREG–1021, "Operator Licensing Examination Standards for Power Reactors;" Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and extension of comment period.

SUMMARY: On March 20, 2000 (65 FR 15020), the Nuclear Regulatory Commission (NRC) issued for public comment and voluntary use, on a trial basis, a draft supplementary change to Revision 8 of NUREG–1021, "Operator Licensing Examination Standards for Power Reactors." The Commission uses NUREG–1021 to provide policy and guidance for the development, administration, and grading of written examinations and operating tests used to determine the qualifications of individuals who apply for operator and senior operator licenses at nuclear power plants pursuant to the Commission's regulations. NUREG–1021 provides similar guidance for verifying the continued qualifications of licensed operators when the staff determines that NRC requalification examinations are necessary.

Based upon the small number of examinations that have thus far been prepared using the revised examination guidance, the NRC has decided to extend the trial use and public comment period for the draft supplementary change in order to allow additional opportunities for feedback that will support the issuance of the final supplement. This delay in preparing the final supplement has also created an opportunity to solicit comments on some additional changes that will bring NUREG–1021 into conformance with Revision 3 of Regulatory Guide (RG) 1.8, "Qualification and Training of Personnel for Nuclear Power Plants," which has been published since the original draft supplement was issued on March 20, 2000. Revision 3 of RG 1.8 has revised a long-standing regulatory position regarding operator license eligibility by endorsing, with additions, exceptions, and clarifications, the 1993 version of ANSI/ANS 3.1, "Selection, Qualification, and Training of Personnel for Nuclear Power Plants."

The draft supplement and the newly issued addendum are available for review via the NRC Public Electronic Reading Room (http://www.nrc.gov/NRC/ADAMS/index.html), on the NRC's Operator Licensing web site (http://www.nrc.gov/NRC/REACTOR/OL/OLguidance.html), and at the NRC Public Document Room, 2120 L Street NW, Washington, DC. If you do not have electronic access to NRC documents, you may request a single copy of the draft supplement by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (Facsimile: 301–512–2289). Telephone requests cannot be accommodated. NUREG documents are not copyrighted, and Commission approval is not required to reproduce them.

The draft supplement is being implemented on a voluntary, trial basis. The NRC will evaluate any comments and recommendations that are received and any lessons that are learned during the trial period, incorporate any additional changes, as appropriate, and, thereafter, publish final Supplement 1 for general use.

DATE: The comment period ends October 31, 2000. Comments received after this date will be considered if it is practical to do so, but the staff is able

to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. You may also provide comments via the NRC's Operator Licensing web site (http://www.nrc.gov/NRC/REACTOR/OL/OLguidance.html). Copies of comments received may be examined on the NRC Public Electronic Reading Room (http://www.nrc.gov/NRC/ADAMS/index.html) and at the NRC Public Document Room, 2120 L Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S. Guenther by telephone at (301) 415–1056, or by e-mail sxg@nrc.gov.

Dated at Rockville, Maryland, this 6th day of July 2000.

For the Nuclear Regulatory Commission.

Glenn M. Tracy,

Chief, Operator Licensing, Human Performance and Plant Support Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18022 Filed 7–14–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17g–1; SEC File No. 270–208; OMB Control No. 3235–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of approval of rule 17g–1 [17 CFR 270.17g–1] under the Investment Company Act of 1940 (the "Act").

Rule 17g–1 governs the fidelity bonding of officers and employees of registered management investment companies ("funds") and their advisers. Rule 17g–1 requires, in part, the following:

• *Independent Directors' Approval Requirements.* At least annually, the independent directors of a fund must approve the form and amount of the fund's fidelity bond. Rule 17g–1 provides a schedule of minimum amounts for fidelity bonds based on a fund's size. The independent directors also must approve the amount of any premium paid for any "joint bond" covering multiple funds or certain other affiliates of the fund.

• *Fidelity Bond Content Requirements.* The fidelity bond must provide that it shall not be cancelled, terminated or modified except upon 60-days written notice to the affected party and to the Commission. In addition, a joint bond must provide that the fidelity insurance company will provide all funds covered by the bond with (i) a copy of the bond and any amendments to the bond; (ii) a copy of any formal filing of a claim on the bond; and (iii) notification of the terms of the settlement on any claim prior to execution of that settlement.

• *Joint Bond Agreement Requirement.* A fund that is insured by a joint bond must enter into an agreement with all other parties insured by the joint bond regarding recovery under the joint bond.

• *Required Filings with the Commission.* Upon execution of a fidelity bond or any amendment thereto, a fund must file with the Commission a copy of: (i) the executed fidelity bond; (ii) the resolution of the fund's independent directors approving the fidelity bond; and (iii) a statement as to the period for which the fidelity bond premiums have been paid. In the case of a joint bond, a fund also must file a copy of: (i) a statement showing the amount of a single insured bond the fund would have maintained under the rule had it not been named under a joint bond; and (ii) each agreement between the fund and all other insured parties. A fund also must notify the Commission in writing within 5 days of any claim and settlement on a claim made under a fidelity bond.

• *Required Notices to Directors.* A fund must notify by registered mail each member of its board of directors of (i) any cancellation, termination or modification of the fidelity bond at least 45 days prior to the effective date; and (ii) the filing or settlement of any claim under the fidelity bond when the notification is filed with the Commission.

Rule 17g–1's independent directors' annual review requirements, fidelity bond content requirements, joint bond agreement requirement and required notices to directors are designed to ensure the safety of fund assets against losses due to the conduct of persons who may obtain access to those assets. These requirements also facilitate oversight of a fund's fidelity bond. The rule's required filing with the Commission are designed to assist the Commission in monitoring funds' compliance with the fidelity bond requirements.

The Commission staff estimates that approximately 3500 funds are subject to the requirements of rule 17g–1, and that on average a fund spends approximately one hour per year complying with the rule's paperwork requirements. The Commission staff therefore estimates the total annual burden of the rule's paperwork requirements to be 3500 hours.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a respresentative survey or study of Commission rules. The collection of information required by rule 17g–1 is mandatory and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the information above to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 11, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17967 Filed 7–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 17Ad–4(b) & (c), SEC File No. 270–264, OMB Control No. 3235–0341.
Rule 15, SEC File No. 270–360, OMB Control No. 3235–0409.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension on the previously

approved collections of information discussed below.

Rule 17Ad–4(b) & (c) Notices Regarding Exempt Transfer Agent Status

Rule 17Ad–4(b) & (c) is used to document when transfer agents are exempt, or no longer exempt, from the minimum performance standards and certain recordkeeping provisions of the Commission's transfer agent rules. Rule 17Ad–4(c) sets forth the conditions under which a registered transfer agent loses it exempt status. Once the conditions for exemption no longer exist, the transfer agent, to keep the appropriate regulatory authority ("ARA" apprised of its current status, must prepare, and file if the ARA for the transfer agent is the Board of Governors of the Federal Reserve System ("BGFRS") or the Federal Deposit Insurance Corporation ("FDIC"), a notice of loss of exempt status under paragraph (c). The transfer agent then cannot claim exempt status under Rule 17Ad–4(b) again until it remains subject to the minimum performance standards for non-exempt transfer agents for six consecutive months. The ARAs use the information contained in the notice to determine whether a registered transfer agent qualifies for the exemption, to determine when a registered transfer agent no longer qualifies for the exemption, and to determine the extent to which the transfer agent is subject to regulation.

The BGFRS receives approximately twelve notices of exempt status and six notices of loss of exempt status annually. The FDIC receives approximately eighteen notices of exempt status and three notices of loss of exempt status annually. The Commission and the Office of the Comptroller of the Currency ("OCC") do not require transfer agents to file notice of exempt status or loss of exempt status. Instead, transfer agents whose ARA is the Commission or OCC need only to prepare and maintain these notices. The Commission estimates that approximately sixteen notices of exempt status and loss of exempt status are prepared annually by transfer agents whose ARA is the Commission. Similarly, the OCC estimates that the transfer agents for which it is the ARA, prepare and maintain approximately fifteen notices of exempt status and loss of exempt status annually. Thus, a total of approximately seventy notices of exempt status and loss of exempt status are prepared and maintained by transfer agents annually. Of these seventy notices, approximately forty are filed with an ARA. Any additional costs associated with filing such notices would be limited primarily to postage, which would be minimal. Since the Commission estimates that no more than one-half hour is required to prepare each notice, the total annual burden to transfer agents is approximately thirty-five hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance to the transfer agent community is $1,050.

Rule 17Ad–15 Signature Guarantees

Rule 17Ad–15 requires approximately 1,093 transfer agents to establish written standards for accepting and rejecting guarantees of securities transfers from eligible guarantor institutions. Transfer agents are also required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the rejection, identification of the guarantor, and whether the guarantor filed to meet the transfer agent's guaranteed standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 1,093 registered transfer agents. Of the 1,093 registered transfer agents, approximately 120 will receive fewer than 100 items for transfer. The staff expects that more small transfer agents will have few, if any, rejections. The average number of hours necessary for every transfer agents agent to comply with the Rule 17Ad–15 is about forty hours annually. The total burden is 43,720 hours for all transfer agents. The average cost per hour is approximately $30. Therefore, the total cost of compliance for all transfer agents is about $1,311,600.

The retention period for the recordkeeping requirement under Rule 17Ad–15 is three years following the date of a rejection of transfer. The recordkeeping requirement under the rule is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503. and (ii) Micheal E. Bartell, Associate Executive Director, Office of Information Technology; Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 10, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18006 Filed 7–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43021; File No. SR–NASD–99–41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to the Opening of Day-Trading Accounts

July 10, 2000.

I. Introduction

On August 20, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the opening of day-trading accounts.

The proposed rule change was published for comment in the **Federal Register** on September 21, 1999.[3] The Commission received three comment letters on the proposed rule change.[4] On

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41432 (September 14, 1999), 64 FR 51165.

[4] *See* Letters from James H. Lee, President, Electronic Traders Association ("ETA"), to Jonathan G. Katz, Secretary, SEC, dated October 11, 1999; Bradley W. Skolnik, President, Indiana Securities Commissioner, North American Securities Administrators Association ("NASAA"), to Jonathan G. Katz, Secretary, SEC, dated October 12, 1999; and Lee B. Spencer, Jr., Chairman, Federal Regulation Committee, Everett Lang, Co-Chairman, Discount Brokerage Committee, Michael L. Michael, Chairman, Ad-Hoc Committee on Technology and

February 18, 2000, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[5] Amendment No. 1 was published for comment in the **Federal Register** on March 2, 2000.[6] The Commission received four comment letters on the proposed rule change in Amemdment No. 1.[7] On June 21, 2000, NASD Regulation submitted Amendment No. 2 to the proposed rule change.[8] In this notice and order, the Commission is seeking comment from interested persons on Amendment No. 2 and approving the proposed rule change and Amendment No. 1, and is approving Amendment No. 2 on an accelerated basis.

II. Description of the Proposal

The NASD, through NASD Regulation, proposes to add two new rules to its Rule 2300 series.[9] New Rules 2360, approval Procedures for Day-Trading Accounts, and 2361, Day-Trading Risk Disclosure Statement, only apply to firms that are "promoting a day-trading strategy."

The proposal focuses on disclosing the basis risks of engaging in a day-trading strategy and assessing the appropriateness of day-trading strategies for individuals. In particular, the proposal would require a firm that is "promoting a day-trading strategy," directly or indirectly, to deliver a specified risk disclosure statement to a non-institutional customer prior to opening an account for the customer. In addition to delivering the risk disclosure statement, the proposal would require a firm to either: (1) Approve the customer's account for day trading; or (2) obtain a written agreement from the customer stating that the customer does not intend to use the account for day-trading activities. A firm would not be permitted to rely on the written agreement from the customer if the firm knows that the customer intends to use the account for day trading. In addition, if a firm knows that a customer who provided such an agreement is engaging in a day-trading strategy, the firm would be required to approve the account for day trading.

As part of approving an account for day trading, a firm would be required to have reasonable grounds for believing that the day-trading strategy is appropriate for the customer. In making this determination, the firm would be required to exercise reasonable diligence to ascertain the essential facts about the customer, including his or her financial situation, tax status, prior investment and trading experience, and investment objectives. The firm also would be required to prepare a record setting forth the basis on which the firm has approved the customer's account for day trading. Any record or written statement prepared or obtained by the firm pursuant to the proposed rule change would have to be preserved in accordance with NASD Rule 3110(a).

A. Scope of Proposal

1. Firms "Promoting a Day-Trading Strategy"

As discussed below, the proposed new rules only apply to firms that are "promoting a day-trading strategy" and to new accounts opened by all non-institutional customers at those firms.[10] While the proposal does not expressly define "promoting a day-trading strategy," it does state that none of the following actions alone would trigger the proposed rule's requirements: (1) The promotion by a member of efficient execution services or lower execution costs based on multiple trades; (2) providing general investment research or advertising the high quality or prompt availability of such general research; and (3) having a web site that provides general financial information or news or that allows the multiple entry of intra-day purchases and sales of the same securities.[11]

The proposal would apply to a member that affirmatively promotes day-trading activities or strategies through advertising, training seminars, or direct outreach programs. The proposal would only be triggered by the firm's general promotional efforts or by firm-sponsored promotional efforts.[12] For instance, a firm generally would be subject to the proposed rule if its advertisements address the benefits of day trading, rapid-fire trading, or momentum trading, or encourage persons to trade or profit like a professional trader. A firm also would be subject to the proposed rule if it promotes its day-trading services through a third party. Moreover, the fact that many of a firm's customers are engaging in a day-trading strategy would be relevant in determining whether a firm has promoted itself in this way. Firms may not, however, promote day trading through individuals in an effort to circumvent the proposed rule. In addition, if a principal or officer of the firm is aware that brokers in the firm are soliciting customers for day trading, then firm will be deemed to be promoting day trading.[13]

While the proposal does not define the term "promoting a day-trading strategy," NASD Regulation represents that firms could submit their advertisements to NASD Regulation's Advertising/Investment Companies Regulation Department for review and guidance on whether the content of the

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Regulation, and Michael Anderson, Co-Chairman, Discount Brokerage Committee, Securities Industry Association ("SiA"), to Margaret H. McFarland, Deputy Secretary, SEC, dated October 22, 1999.

[5] In Amendment No. 1, NASD Regulation responded to issues raised in the initial three comment letters by revising the proposed rule change and the proposed rule text with respect to: modifying the disclosure statement; revising the method for delivering the disclosure statement; describing certain activities that will not trigger application of the proposed day-trading rules; and clarifying information-gathering requirements. *See* Letter from Alden S. Adkins, Sr. Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated February 10, 1999 ("Amendment No. 1").

[6] Securities Exchange Act Release No. 42452 (February 23. 2000), 65 FR 11353.

[7] *See* Letters from The Honorable Susan M. Collins, Chairman, Permanent Subcommittee on Investigations, The Honorable Carl Levin, Ranking Minority Member, Permanent Subcommittee on Investigations, and The Honorable Richard J. Durbin, Committee on Governmental Affairs, U.S. Senate, to Jonathan G. Katz, Secretary, SEC, dated March 17, 2000 ("Senators"); Linda Lerner, General Counsel, All-Tech Direct, Inc., to Jonathan G. Katz, Secretary, SEC, dated March 20, 2000 ("All-Tech"); Bradley W. Skolnik, President, Indiana Securities Commissioner, NASAA, to Jonathan G. Katz, Secretary, SEC, dated March 23, 2000; and Robert P. Mazzarella, Chairman, Discount Brokerage Committee, and Michael L. Michael, Chairman, Ad Hoc Committee on Technology and Regulation, SIA, to Jonathan G. Katz, Secretary, SEC, dated March 23, 2000.

[8] In Amendment No. 2, NASD Regulation responded to the comment letters submitted on Amendment No. 1 and incorporated several recommendations from the letters into the proposed disclosure statement. *See* Letter from Joan Conley, Senior Vice President and Corporate Secretary, NASD Regulations, to Nancy Sanow, Assistant Director, Division, SEC, dated June 21, 2000 ("Amendment No. 2").

[9] NASD's 2300 series of rules covers *Transactions With Customers*.

[10] As proposed, "day-trading strategy" is defined as "an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities." The proposed definition would include those instances where an individual regularly transmits one or more purchase and sale (*i.e.*, "round-trip") transactions in a single day. The proposed definition of "day-trading strategy" also includes orders transmitted by non-electronic means, such as by telephone.

[11] In the original filing, activities that would not alone trigger application of the rule were described in the proposed rule change but were not part of the proposed rule text. In Amendment No. 1, NASD Regulation added these provisions to the proposed rule text. *See* Amendment No., *supra* note 5.

[12] *See* amendment Nos. 1 and 2, *supra* notes 5 and 8.

[13] *Id.* In Amendment No. 2, NASD Regulation noted that NASD Rule 3010(a) requires that firms maintain a system to supervise the activities of each registered representative that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with NASD rules.

advertisement constitutes such activity for purposes of the proposal.[14]

2. Accounts Covered by the Proposed Rule

The term "non-institutional customer" would mean a customer that does not qualify as an "institutional account" to mean the account of: (1) A bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing similar functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.[15] The proposal would not apply to an existing customer unless the customer opens a new account at a firm that is promoting a day-trading strategy.

B. Requirements for New Customer Accounts of Firms Promoting a Day-Trading Strategy

Before opening a new account for a customer, a firm that is promoting a day-trading strategy must deliver a risk disclosure document and either approve the account for day trading or obtain a written agreement from the customer stating that the customer does not intend to use the account for day-trading activities. Each of these requirements is described below.

1. Requirement to Provide a Day-Trading Risk Disclosure Statement

As discussed above, the proposal would require a firm that is promoting a day-trading strategy to deliver a risk disclosure statement, discussing the unique risks posed by day trading, to all non-institutional customers prior to opening an account for such customers.[16] The disclosure statement would include several factors that a customer should consider before engaging in day trading, including that: The customer should be prepared to lose all of the funds that he or she uses for day trading; day trading generally requires significant resource;[17] and day trading on margin or short selling may result in losses beyond the initial investment.

The disclosure statement also would include a provision stating that day trading generally is not appropriate for persons of limited resources and limited investment or trading experience and low risk tolerance. Another provision would explain that a day trader should know its firm's business practices[18] because under certain market conditions, a day trader may find it difficult or impossible to liquidate a position quickly at a reasonable price, such as when the market for a stock suddenly drops, or if trading is halted due to recent news events or unusual trading activity. The provision would further state that the more volatile a stock is, the greater the likelihood that problems may be encountered in executing a transaction.[19]

The disclosure statement would further explain that, because a day-trading strategy requires frequent trades, payment of commissions will add to losses or significantly decrease earnings. The disclosure document also would provide an example of how much annual profit a day trader would need to generate just to cover commission costs.[20] The disclosure statement would conclude with a provision that informs investors of the potential need to register as an investment adviser or as a broker or dealer under federal and state registration requirements.[21]

The firm would be permitted to develop an alternative risk disclosure statement, provided that the alternative statement was substantially similar to the mandated statement and was filed with, and approved, by NASD Regulation's Advertising/Investment Companies Regulation Department. In addition, NASD Regulation encourages all firms, particularly firms that provide on-line trading capability, to provide the mandated risk disclosure statement or a substantially similar disclosure statement to their customers. The proposed risk disclosure statement, as amended, follows. Proposed additions from Amendment No. 2 are in italics and proposed deletions are in brackets.[22]

Rule 2361. Day-Trading Risk Disclosure Statement

(a) Except as provided in paragraph (b), no member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer unless, prior to opening the account, the member has furnished to each customer, individually, in writing or electronically, the following disclosure statement:

You should consider the following points before engaging in a day-trading strategy. For purposes of this notice, a "day-trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

Day trading can be extremely risky. Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day-trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required to meet your living expenses. *Further, certain evidence indicates that an investment of less than $50,000 will significantly impair the ability of a day trader to make a profit. Of course, an investment of $50,000 or more will in no way guarantee success.*

Be cautious of claims of large profits from day trading. You should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.

Day trading requires knowledge of securities markets. Day trading requires in-depth knowledge of the securities markets and trading techniques and strategies. In attempting to profit through day trading, you must compete with professional, licensed traders employed by securities firms. You should have appropriate experience before engaging in day trading.

Day trading requires knowledge of a firm's operations. *You should be familiar with a securities firm's business practices, including the operation of the firm's order execution systems and procedures.* Under certain market conditions, you may find it difficult or impossible to liquidate a position quickly at a reasonable price. This can occur, for example, when the market for a stock suddenly drops, or if trading is halted due to recent news events or unusual trading activity. The more volatile a stock is, the greater the likelihood that problems may be

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[14] As a result, NASD Regulation believes that the proposal should both limit concerns about any effect of the proposal on the NASD's general suitability rule and allow firms to better determine whether a particular advertisement would trigger the rule prior to publication or distribution of the advertisement.

[15] NASD Regulation believes that applying the proposed rule change to non-institutional customers would ensure that most individuals would be covered by the proposal, regardless of whether they engage in day-trading activities in their own name or in the name of a corporation or partnership.

[16] NASD Regulation did not recommend that all firms, whether or not they promote day trading, be required to disseminate the disclosure statement to all new customers because the benefits of such a requirement are unclear. However, NASD Regulation advised that it will continue to monitor the growth of day-trading activities to determine whether, in the future, such a requirement might be justified. *See* Amendment No. 1, *supra* note 5.

[17] In Amendment No. 2, NASD Regulation adopted the Senators' suggestion to include in the risk disclosure statement a warning that investors with less than $50,000 in risk capital are not likely to succeed as day traders. *See* Amendment No. 2, *supra* note 8.

[18] *See* Amendment No. 2, *supra* note 8.

[19] *See* Amendment No. 1, *supra* note 5.

[20] *See* Amendment No. 2, *supra* note 8.

[21] *Id.*

[22] Proposed NASD Rule 2360, pertaining to approval procedures for day trading accounts, remains unchanged from Amendment No. 1 and therefore its text is not set forth in this release.

encountered in executing a transaction. In addition to normal market risks, you may experience losses due to system failures.

Day trading will generate substantial commissions, even if the per trade cost is low. [Day trading may result in your paying large commissions.] Day trading *involves* [may require you to trade your account] aggressive[ly] *trading*, and *generally* you *will* [may] pay commissions on each trade. The total daily commissions that you pay on your trades *will* [may] add to your losses or significantly reduce your earnings. *For instance, assuming that a trade cost $16 and an average of 29 transactions are conducted per day, an investor would need to generate an annual profit of $111,360 just to cover commission expenses.*

Day trading on margin or short selling may result in losses beyond your initial investment. When you day trade with funds borrowed from a firm or someone else, you can lose more than the funds you originally placed at risk. A decline in the value of the securities that are purchased may require you to provide additional funds to the firm to avoid the forced sale of those securities or other securities in your account. Short selling as part of your day-trading strategy also may lead to extraordinary losses, because you may have to purchase a stock at a very high price in order to cover a short position.

Potential Registration Requirements. *Persons providing investment advice for others or managing the securities accounts for others may need to register as either an "Investment Advisor" under the Investment Advisors Act of 1940 or as a "Broker" or "Dealer" under the Securities Exchange Act of 1934. Such activities may also trigger state registration requirements.*

(b) In lieu of providing the disclosure statement specified in paragraph (a), a member that is promoting a day-trading strategy may provide to the customer, individually, in writing or electronically, prior to opening the account, an alternative disclosure statement, provided that:

(1) The alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a); and

(2) The alternative disclosure statement shall be filed with the Association's Advertising Department (Department) for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changes are recommended by the Association, shall be withheld from use until any changes specified by the Association have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, Association approval. The member must provide with each filing the anticipated date of first use.

(c) For purposes of this rule, the term "day-trading strategy" shall have the meaning provided in Rule 2360(e).

(d) For purposes of this *R*[r]ule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 3110(c)(4).

* * * * *

2. Customer Acknowledgment

The proposal would require firms to deliver the disclosure statement to each customer individually, by mail or electronic means, prior to opening the account. A firm would not satisfy the proposal's requirements by posting the disclosure statement in a remote location on its web site, and claiming that it was delivered to all customers in such manner. The proposal would not require customers to sign the disclosure statements.[23]

3. Approving Customer Accounts for Day Trading

In addition to delivering a risk disclosure document. A firm must approve a customer's account for a day-trading strategy in accordance with certain procedures. Specifically, to approve a customer's account for a day-trading strategy, a firm must have reasonable grounds for believing that the strategy is appropriate for the customer and to exercise reasonable diligence to ascertain the essential facts relative to the customer. The proposal would expressly require a firm to review a customer's investment objectives, investment and trading experience and knowledge, financial situation (including estimated annual income from all sources, estimated net worth exclusive of family residence, and estimated liquid net worth), tax status, employment status (name of employer, self-employed or retired, marital status, number of dependents, and age.[24] The proposal would not required firms to determine the source of funds, primarily because of concerns with defining the scope of any such obligation and the risks of imposing disproportionate burdens on firms.[25]

4. Accounts Used for Purposes Other Than Day-Trading Activities

As an alternative to approving an account for a day-trading strategy, the proposal would permit a firm that is promoting a day-trading strategy to obtain from the customer a written agreement that the customer does not intend to use the account for the purposes of day trading ("other-use agreement").[26] A firm would not be permitted to rely on an other-use agreement if it knows that the customer intends to use the account for day trading. Moreover, if a firm opens an account for a customer in reliance on an other-use agreement, but later knows that the customer is using the account for day-trading activities, then the firm would be required to approve the customer's account for day trading in accordance with the rule as soon as practicable, but in no event later than ten days from the date of discovery. The standard of knowledge is one of actual knowledge.[27]

III. Summary of Comments

After the original publication of the proposed rule change in the **Federal Register**,[28] the Commission received comment letters form the ETA, NASAA, and the SIA, [29] generally supporting aspects of the proposed rule change but recommending numerous significant changes to the proposal itself. NASD Regulation responded to these letters in Amendment No. 1.[30] The Commission then published Amendment No. 1 for comment,[31] and, in response, the commission received comments letters form All-Tech, the SIA, NASAA, and the Senators, again generally supporting features of the proposal but recommending various modifications.[32]

A. Issues Raised in Comment Letters to Amendment No. 1

1. Application of the Rule

In its comment letter to Amendment No. 1, the SIA restated its concern that individual solicitations by a broker or brokers of a day-trading strategy could cause an entire firm to be deemed to be promoting a day-trading strategy. In Amendment No. 1, NASD Regulation stated that if a broker targeted, for example, five customers for day trading without the firm's knowledge, the firm would not be deemed to be promoting day trading. However, if a principal or officer of the firm knew that the firm's brokers were promoting a day-trading strategy, the firm would be deemed to

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[23] NASD Regulation added the "individual" delivery requirement in Amendment No. 1. NASD Regulation believes that any abuses of the delivery requirement could be detected during routine examinations. *See* Amendment No. 1, *supra* note 5.

[24] The proposed rule change originally included only an evaluation of the investment objectives, investment and trading experience and knowledge, financial situation and tax status. The additional factors were added in Amendment No. 1. *See* Amendment No. 1, *supra* note 5.

[25] *See* Amendment No. 2, *supra* note 8.

[26] The firm would be required to provide a risk disclosure statement to the customer even if the firm obtains an other-use agreement

[27] *See* Amendment No. 1, *supra* note 5. NASD Regulation believes that it is proper to hold a firm accountable for facts known to the firm. *See* Amendment No. 2, *supra* note 8.

[28] *See supra* note 3.

[29] *See supra* note 4.

[30] *See* Amendment No. 1 *supra* note 5. A summary of comments received on the original filing is included in Securities Exchange Act Release No. 42452 (February 23, 2000), 65 FR 11353 (March 2, 2000).

[31] *See supra* note 6.

[32] *See supra* note 7.

be promoting day trading. The SIA argued that knowing the strategies employed by its brokers is a good supervisory practice and should not trigger application of the day-trading rules to the entire firm. Alternatively, the SIA argued that the commentary accompanying the proposal should state that a number of the firm's brokers would need to be individually soliciting customers to day trade for these solicitations to cause the firm itself to be considered to be promoting a day-trading strategy. In response, NASD Regulation stated that, while solicitations by individual brokers would not alone cause a firm to be considered to be promoting a day-trading strategy, when an officer or a principal has knowledge of brokers soliciting accounts for day trading, the firm would be deemed to be promoting day trading and thus subject to the day-trading rules.[33]

The SIA also suggested that the proposal unfairly assigns the firm the responsibility for customers changing their minds with respect to the "other use" agreement. The SIA stated that because firms maintain records of customers' trades, it can be argued that firms always have actual knowledge. The NASD responded that, on balance, it believes the provision is appropriate and not overly burdensome, and that it is proper to hold a firm accountable for facts known to the firm.[34]

On the other hand, NASAA expressed concern that the proposal could be read narrowly so as to not cover certain firms promoting day-trading activities. Accordingly, NASAA recommended that the NASD clarify that although the enumerated activities would not by themselves be deemed to be promoting a day-trading strategy, they could nevertheless still be considered part of a plan to promote day trading when combined with other acts. NASD Regulation stated that it believes that the proposed rule, as amended, addresses NASAA's concerns and pointed out that the proposed rule language specifies that firms would not be deemed to be promoting day trading activities *solely* by engaging in one of the listed activities, and that therefore such activities may be considered part of a plan to promote day-trading activities when combined with other acts.[35]

Finally, All-Tech argued that the risk disclosure requirements were "hypocritical" because they would impose additional regulatory requirements on day-trading firms and not on other firms that facilitate online trading. Citing findings by the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, the NASD responded that it believes day-trading strategies present unique investor protection concerns that do not necessarily translate to other forms of trading. Thus, the NASD determined that there is no reason to change its position on this issue.[36]

Risk Disclosure Statement

The Senators recommended that the risk disclosure statement warn customers that investors with less than $50,000 in risk capital are not likely to succeed as day traders. NASD Regulation adopted this recommendation in Amendment No. 2, and qualified the warning by stating that risking capital of $50,000 or more does not, however, guarantee successful day trading. The Senators also recommended a provision explaining that there is substantial evidence that most day traders would need to generate at least $100,000 per year just to cover commission costs and trading fees. NASD Regulation incorporated this suggestion into the risk disclosure statement by supplementing the statement with a mathematical example highlighting the need to generate substantial earnings to cover day-trading costs.

In addition, NASAA recommended changing the provision, captioned "Day trading requires knowledge of a firm's operations," to include the language removed by NASD Regulation in Amendment No. 1. NASD Regulation, in Amendment No. 1, replaced language in the original proposal with language suggested in a comment letter. NASAA stated that it believes that the deleted language better explained the need for customers to understand their own firm's execution systems and evaluate potential problems for themselves. Agreeing with the suggestion, NASD Regulation reinserted the removed text into the risk disclosure document.[37]

Appropriateness Determination

As mentioned above, the Senators suggested establishing a "rebuttable presumption" that if an investor has less than $50,000 of risk capital, day trading is not appropriate for the customer. This presumption could be rebutted by other factors that the firm concludes outweigh the inadequate risk capital. The Senators further suggested that where a firm determines that day trading is an appropriate strategy for customers who do not possess $50,000 for investment purposes, the firm would be required to prepare and maintain a record setting forth the reasons that it deemed day trading to be appropriate for the customers. NASD Regulation chose not to incorporate this presumption into Amendment No. 2 for several reasons. First, NASD Regulation stated its belief that the $50,000 threshold may make sense for many investors, but it arguably is too low for very active day traders and too high for less active day traders. Second, imposing such a presumption could encourage individuals to misrepresent the value of their assets. Finally, NASD Regulation noted that the current proposal already requires a firm to document the basis on which it approves an account for a day-trading strategy.[38]

NASAA again recommended that the proposal incorporate some additional recordkeeping requirements included in the NASD options rules. Noting that it had considered this issue in preparing Amendment No. 1, NASD Regulation disagreed with this suggestion because it believes that many of these requirements are duplicative of obligations currently imposed on firms.[39]

4. Sources of Customer funds

The Senators suggested modifying the proposal to require broker-dealers that are promoting day-trading strategies to inquire whether parties opening accounts plan to trade for others, and if so, to require firms to determine if parties need to be registered as investment advisors. In Amendment No. 2, NASD Regulation responded to this comment by stating that it believes that it would "be difficult, if not impossible" for firms to make this determination. However, NASD Regulation stated that customers should be informed of potential registration requirements and therefore amended the risk disclosure statement to include such a warning.

[33] *See* Amendment Nos. 1 and 2, *supra* notes 5 and 8.

[34] *See* Amendment No. 1, *supra* note 5.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *See* Amendment Nos. 1 and 2, *supra* notes 5 and 8.

NASAA recommended that the proposal require firms to obtain information on the sources of customer funds invested because of the prevalence of day traders using borrowed money to fund their accounts. NASD Regulation represented in Amendment No. 2 that is it considering a separate response to address this concern.[40]

B. Issues Raised in Comment Letters to Amendment No. 2

Although Amendment No. 2 was not yet published, the Commission received one comment letter regarding the amendment.[41] The SIA reiterated its concern that the proposed rule language may undermine what the SIA refers to as the safe harbor provision of the proposed rule. The SIA is concerned that, under the proposed rule, a firm could engage in the activities listed in proposed Rule 2360(g) and have the fact that they engage in those activities—activities that are specifically enumerated in the Rule as not deemed to be promoting a day-trading strategy—used in the determination that the firm is promoting a day-trading strategy.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[42] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds the proposal is consistent with the requirements of Section15A(b)(6) of the Act,[43] because the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

During the past few years, the problems and risks associated with day trading have received widespread attention by regulators, legislators, the media, and the public. For example, on February 25 of this year, the Commission's staff issued a report providing the results of its examination of 47 registered broker-dealers providing day-trading facilities to the general public.[44] In addition, earlier this year, the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs held a series of hearings detailing day trading practices.[45] The NASD Regulation proposal, as amended, is intended to provide a measured regulatory response to assure that firms promoting a day-trading strategy check to make certain that day trading is an appropriate investment strategy for a customer opening a day-trading account and that the customer is aware of its risks.

Certain brokerage firms focus primarily, or even exclusively, on promoting day-trading strategies to individuals. These firms generally advertise on the Internet and elsewhere as "day-trading" firms or otherwise highlight their execution and other services as desirable for "serious" or "professional" traders. In addition, many of these firms offer training on day-trading techniques, as well as provide computer facilities and software packages specifically designed to support and accommodate day trading.

Day trading, however, raises unique investor protection concerns. In general, day traders seek to profit from very small movements in the price of a security. Such a strategy often requires aggressive trading of a brokerage account and the use of strategies including margin trading and short selling. As a result, day trading generally requires a significant amount of capital, a sophisticated understanding of securities markets and trading techniques, and a high tolerance for risk. Even experienced day traders with in-depth knowledge of the securities markets may suffer severe and unexpected financial losses.

The Commission finds that requiring a member firm to disclose the risks of day trading to non-institutional customers when the firm promotes a day-trading strategy should help alert individuals who are new to day trading to the risks associated with that strategy. In addition, requiring a member firm to determine whether a day-trading strategy is appropriate for a customer should help to assure that individuals who are unable to bear the risks of day trading, or who have investment objectives incompatible with day trading, are not approved for day trading. In summary, the Commission finds that the risk disclosure statement and appropriateness review mandated by the proposed NASD rules are thoughtfully designed and tailored to address investor protection concerns raised by the increasingly popular trading strategy referred to as day trading.

The Commission notes that the proposed rule change focuses on the promotion of trading strategies that can present high risks to individuals that do not have the investing experience or financial means to sustain those risks and, as revised, the proposed NASD rules should not be unduly burdensome for firms to apply. Firms that are actively promoting a day-trading strategy should be responsible for assessing whether the strategy is appropriate for an individual who opens a day-trading account at that firm. These firms also should be required to disclose the risks of engaging in a day-trading strategy to an individual prior to opening an account for that individual.

While the commenters generally favored the concept of providing greater disclosure of day-trading risks, they also suggested various modifications to the proposal. The Commission believes that NASD Regulation has responded adequately to commenters' concerns and suggestions by incorporating some recommendations into the proposal and explaining why it was not incorporating others. In particular, in response to comments submitted on the original proposed rule change, NASD Regulation: (1) Refined the definition of "day-trading strategy," (2) added more detail regarding the information that a firm must obtain at a minimum from a customer before approving the account for a day-trading strategy; (3) incorporated into the rule those activities that would not be deemed to be "promoting a day-trading strategy," and (4) revised the disclosure statement to discuss the risks associated with trade executions during volatile market conditions and systems failures, among other revisions.

Amendment No. 2 further refines the risk disclosure document to take into account various comments and suggestions submitted regarding Amendment No.1. Amendment No.2 amends the risk disclosure document to: (1) Indicate that an investment of less than $50,000 will impair the ability of a day trader to profit, while an investment of $50,000 or more does not guarantee success; (2) provide an example of the annual profits needed to cover commission costs; (3) encourage investors to become familiar with the firm's business practices, including its order execution systems and procedures; and (4) inform investors

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[40] *See* Amendment No. 2, *supra* note 8.

[41] *See* Letter from Michael L. Michael, Chairman, Technology and Regulation Committee, and Michael Hogan, Chairman, Ad-hoc Online Brokerage Legal Committee, SIA, to Nancy Sanow, Assistant Director, SEC, dated June 30, 2000 ("June 30 SIA Letter").

[42] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78*o*–3(b)(6).

[44] This study, *Report of Examinations of Day-Trading Broker-Dealers*, is available on the internet at http://www.sec.gov/news/studies/daytrep.htm.

[45] Staff of the Permanent Subcommittee on Investigations, Senate Comm. On Governmental Affairs. 106th Cong., 2d Sess., Memorandum on Day Trading (February 24, 2000).

about the potential need to register as an investment advisor or broker-dealer under certain conditions.

As noted above, the SIA expressed concern about a statement in Amendment No. 2 advising firms that the activities specified in Rule 2360(g) may be considered part of a plan to promote day trading when combined with other acts.[46] Rule 2360(g) provides that firms will not be deemed to be promoting a day-trading strategy *solely* by engaging in one of the listed activities. The Commission believes that NASD Regulation addressed this concern in its Amendment No. 2 by correctly noting that Rule 2360(g) would not subject a firm to the new rules *solely* by engaging in the activities listed in that rule. The Commission finds that, in making the determination of whether a firm is promoting a day-trading strategy, it is reasonable for NASD Regulation to consider all of the firm's activities, including those listed in Rule 2360(g).

Finally, the Commission notes that the NASD will announce the operational date of the proposed rule change in a Notice of Members to be published no later than 60 days following the date of approval by the Commission. The operational date will be 30 days following the date of publication of the Notice to Members announcing Commission approval.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission finds that the additional disclosures noted in Amendment No. 2 will provide greater information to investors about the risk of day trading and thus should strengthen the proposal. Moreover, the amendment raises no significant regulatory issues. Accordingly, the Commission finds good cause, consistent with Sections 15A(b)(6)[47] and 19(b)(2)[48] of the Act, to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refeer to File No. SR–NASD–99–41 and should be submitted by August 7, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[49] that the proposed rule change (SR–NASD–99–4), as amended, is approved and Amendment No. 2 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[50]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17968 Filed 7–14–00; 8:45 am]

BILLING CODE 8010–01–M

[46] *See* June 30 SIA Letter, *supra* note 29.

[47] 15 U.S.C. 78*o*–3(b)(6).

[48] 15 U.S.C. 78s(b)(2).

[49] 15 U.S.C. 78s(b)(2).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43023; File No. SR–OCC–99–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Price Used in Calculating Premium Margin

July 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 26, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would set an option's marking price at the last sale price for purposes of calculating premium margin.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC proposes to amend Rule 601 (relating to margining of equity options) and Rule 602 (relating to margining of non-equity options) to set marking prices at the last sale price, adjusted to the highest bid if the last sale price is below the highest bid or adjusted to the lowest offer if the last sale price is above the lowest offer. The purpose of the proposed rule change is twofold. First, OCC believes that the proposed change results in a more accurate assessment of risk and therefore a more appropriate margin requirement. Second, OCC believes that the proposed rule change will provide consistency with the marking practices of clearing members, the majority of whom are believed to use the method currently proposed.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[3] and the rules and regulations thereunder applicable to OCC because the proposed rule change will enable OCC to better facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

[2] The Commission has notified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78q–1(b)(3)(A).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–14 and should be submitted by August 7, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18007 Filed 7–14–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43022; File No. SR–OCC–99–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Adjustments to Index Options

July 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 2, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's By-Laws governing index option adjustment to permit the substitution of a successor index for an underlying index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary reason for the proposed rule change is to provide for the substitution of a successor index for an underlying index. Because substitution of a successor index for an underlying index may require changes to the terms of outstanding options, OCC also seeks the authority to make adjustments to such terms as necessary to reflect the substitution. While OCC believes such substitution and adjustment are already implicitly provided for under the provisions of OCC's By-Laws at Article XVII, Section 4 ("Unavailability or Inaccuracy of Current Index Value"), OCC seeks to clarify its authority through the proposed rule change.

New paragraph (d) of Article XVII, Section 3 will provide that a successor index may be substituted for an underlying index in the event that the underlying index's publication is discontinued, when the underlying index is replaced with another index, or when an index's composition or method of calculation has so materially changed that it is deemed to be a different index. As in the case of other adjustments, the determination to substitute a successor index and the selection of the index will be made by an adjustment panel. The successor index is to be an index which is deemed to be reasonably comparable to the index for which it substitutes.

Article XVII, Section 3, paragraph (c), which is applicable to adjustments to index options generally, will be amended to provide for adjustments as necessary to accommodate a successor index. In addition, paragraph (c) will be amended to expand the rule in other respects to cover a broader range of potential changes in the calculation of index values and to give added flexibility to OCC in making appropriate adjustments to reflect such changes.

These amendments will grant OCC the authority to adjust outstanding options in the event that an exchange increases or decreases the index multiplier for any index option contract or in the event that any change in the method of calculation of an underlying index creates a discontinuity or change in the level of the index that does not reflect a change in the prices or values of the index's constituent securities. Such a change would occur, for example, if the value of an index were reset from 10,000 to 1,000, which would create a discontinuity that would affect all outstanding options. The changes proposed to Article 1, Section 1 and to Article XVII, Section 1 are designed to

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

clarify and conform the terminology to usage as it has developed since the index options provisions were originally drafted.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it refines and amplifies existing OCC rules that have proven effective in promoting the prompt and accurate clearance and settlement of securities transactions and in safeguarding securities and funds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such larger period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–12 and should be submitted by August 7, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18008 Filed 7–14–00; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1521).

TIME AND DATE: 9 a.m. (EDT), July 19, 2000.

PLACE: TVA Knoxville West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 21, 2000.

New Business

C—Energy

C1. Award of contracts to General Electric Company and TurboCare for the engineering, manufacturing, and supply of steam turbine blades to support TVA's fleet of steam turbine rotors.

E—Real Property Transactions

E1. Sale of a noncommercial, nonexclusive permanent easement to Emerson Fizer affecting approximately 0.017 acre of land on Tellico Reservoir in Loudon County, Tennessee, for the construction, operation, and maintenance of private water-use facilities (Tract No. XTELR–215RE).

E2. Grant of a permanent easement to the City of New Johnsonville, Tennessee, affecting approximately 14 acres of land on Kentucky Reservoir in Humphreys County, Tennessee, for a road (Tract No. XTGIR–937H).

E3. Grant of a permanent easement to the State of Tennessee for highway improvement purposes affecting approximately 0.16 acre of TVA land on Chickamauga Reservoir in Hamilton County, Tennessee (Tract No. XTCR–196H).

E4. Grant of a permanent easement to the Sevier Water Board, Inc., for the expansion of a water system intake site affecting approximately 1 acre of TVA land on Douglas Reservoir in Sevier County, Tennessee (Tract No. XTDR–34E).

F—Unclassified

1. Approval of file a condemnation case to acquire permanent easements and rights-of-way for transmission lines and a temporary right to enter upon land to survey and appraise for an electric transmission line at Madison West-South Jackson in Madison County, Tennessee, and the Rock Springs-Center Point transmission line in Whitfield County, Georgia.

Information Items

1. Amendments to the section 16, Variable Annuity Plan, and section 1(1) Definitions, of the Rules and Regulations of the TVA Retirement System.

2. Delegation of authority to the Vice President, Fuel Supply and Engineering Services, or such officer's designee, to modify Contract No. P97P01–196487 with Bowie Resources, Limited, resulting from renegotiation under a reopener provision.

3. Approval to implement results of negotiations with the Tennessee Valley Trades and Labor Council over Revised Project Agreements and Wage Rates for Trades and Labor Work Performed by TVA Contractors.

4. Public auction sale of approximately 6.17 acres of TVA's Nashville, Tennessee, Power Service Center site located in Davidson County, Tennessee (Tract No. XNTPSC–3).

5. Approval to file condemnation cases to acquire permanent easements and rights-of-way for the Weaver-Young Cane Transmission Line in Union County, Georgia.

6. Concurrence by the individual Board members of the Board of Directors for the issuance of TVA Power Bonds.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: July 12, 2000.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 00–18129 Filed 7–13–00; 2:08 am]

BILLING CODE 8120–08–M

[3] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Applications of Servicios Aereos Profesionales, Inc. for Issuance of New Certificate Authority

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause (Order 2000–7–15). Dockets OST–00–6978 and 00–6979.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) Finding Servicios Aereos Profesionales, Inc., fails to meet the U.S. citizenship requirements of 49 U.S.C. 41102(a)(15), (2) denying it certificates to engage in interstate and foreign scheduled air transportation of persons, property, and mail, and (3) canceling its existing air taxi authority.

DATES: Persons wishing to file objections should do so no later than July 28, 2000.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–00–6978 and OST–00–6979 and addressed to Department of Transportation Dockets (SVC–124, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: July 12, 2000.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–18014 Filed 7–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Crow Wing and Mille Lacs Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 169 in Crow Wing and Mille Lacs Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, Box 75, 175 East Fifth Street, Suite 500, St. Paul, Minnesota 55101–2904, Telephone (651) 291–6120; or Jim Hallgren, Project Manager, Minnesota Department of Transportation—District 3, 1991 Industrial Park, Baxter, Minnesota 56425, Telephone (218) 828–2773; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare an EIS on a proposal to improve TH 169 from the north junction of TH 27 near Onamia to the junction of TH 18 in Garrison in Crow Wing and Mille Lacs Counties, Minnesota, a distance of approximately 28.2 kilometers.

The proposed action is being considered to address transportation demand, safety problems, access management, interregional corridor status, design deficiencies and pavement condition. Alternatives under consideration include (1) No build; and (2) variations of "Build" alternatives involving reconstruction and/or realignment and new construction of TH 169, including the expansion of the two lane roadway to a four-lane facility.

The "Trunk Highway 169 Scoping Document/Draft Scoping Decision Document" will be published in the late summer 2000. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A 30-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 6, 2000.

Alan R. Steger,

Division Administrator, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 00–17955 Filed 7–14–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Martin County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Martin County, Florida.

FOR FURTHER INFORMATION CONTACT: Patrick A. Bauer, Program Operation Engineer, Federal Highway Administration, 227 North Bronough Street, Tallahassee, Florida 32301, Telephone: (850) 942–9650, Extension 3035.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to provide an additional crossing of the St. Lucie River in Martin County, Florida. The proposed improvements will involve utilizing existing roadways as footprints for a new corridor. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand.

Alternatives under consideration include (1) taking no action; (2) widening the existing State Road 714 corridor to a six- or eight-lane roadway; (3) an additional four-lane corridor; or (4) two additional two-lane corridors.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in the proposal. A series of public meetings will be held in Martin County between October 2000 and January 2001. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be made available for public and agency review and comment. A formal

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scoping meeting is planned in the project vicinity site during the latter part of 2000.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program.)

Issued on: July 6, 2000.

Patrick A. Bauer P.E.,

Program Operations Engineer, Tallahassee, Florida.

[FR Doc. 00–17954 Filed 7–14–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6324; Notice 1]

EMB Incorporated; Application for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 120

We are asking for comments on the application by EMB Incorporated ("EMB") of Sebastopol, California, for a 2-year exemption from portions of Federal Motor Vehicle Safety Standard Nos. 108 *Lamps, Reflective Devices and Associated Equipment*, and 120 *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*. The company does business as Electric Motorbike, Inc., and has petitioned on behalf of its Lectra VR24 motorcycle. In the opinion of the company, a temporary exemption "would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle" (49 U.S.C. 30113(b)(3)(B)(iii)).

We are publishing this notice of receipt of the application in accordance with our regulations on temporary exemptions. This action does not mean that we have made any judgment about the merits of the application. The discussion that follows is based on information contained in EMB's application.

Why EMB Needs a Temporary Exemption

The company is developing zero-emission (electric battery-powered) vehicles. Due to a lack of readily-available components for these vehicles needed to comply with Federal Motor Vehicle Safety Standards Nos. 108 and 120, as explained below, EMB must petition for an exemption from portions of them, until July 1, 2001, as explained below.

Why an Exemption Would Make Easier the Development and Field Evaluation of a Low-Emission Motor Vehicle and Would Not Unreasonably Degrade the Safety of That Vehicle

In order to make the company's products available for wider use, EMB believes that a test and development period is required to optimize product features and functions. During the development stage, it is likely that several design changes will be made "to optimize the product for acceptance by the wider public."

It is important to place a limited number of product in service in order to gain insights into the features, functions and operating characteristics of the product.

In order to do so, the following temporary exemptions are requested:

1. Standard No. 108

EMB utilizes a 24-volt lighting system which presently creates an incompatibility with available lighting equipment, requiring a temporary exemption from three requirements of Standard No. 108.

Table IV of Standard No. 108 requires motorcycle turn signal lamps to meet the applicable requirements of SAE Standard J588NOV84 *Turn Signal Lamps*. However, S5.1.1.7 of Standard No. 108 provides that "a motorcycle turn signal lamp need meet only one-half of the minimum photometric values specified in Table 1 and Table 3" of SAE J588NOV84. EMB states that "turn signals which operate at this voltage are difficult to locate." However, it has found a supplier in Spain "which offers European-compliant turn signals for 24-volt operation." The turn signal unit that the company has found "meets European requirements 50R E9." EMB believes that the European standard is equivalent to that of S5.1.1.7, e.g., that an exemption would not unduly degrade the safety of the vehicle.

Table III of Standard No. 108 requires motorcycles to be equipped with turn signal lamps and a turn signal operating unit. S5.5.6 requires all vehicles equipped with a turn signal operating unit to also have an illuminated pilot indicator, which will inform the operator when one or more turn signal lamps fails to operate. However, no indication is required if a variable-load turn signal flasher has been installed on a motor vehicle type specified in S5.5.6. A motorcycle is not one of the vehicle types specified, and the Lectra VR24 incorporates a variable load flasher. As noted above, the company uses a 24-volt DC power source for turn signal lamps. Outage indication is not presently available in 24 volt DC flasher units, therefore, the turn signal indicator on the dash board will not indicate a failed lamp.

EMB argues that the open nature of the motorcycle makes it "easy for an operator to check for proper operation of all lights and signals. * * *"

EMB also seeks exemption from certain portions of S7.9 which specifies headlighting requirements for motorcycles. In pertinent part, EMB has chosen to meet the photometric specifications of Figure 32. At the present time, motorcycle headlamps are not available in 24-volt versions, and the company has chosen "a military vehicle headlamp" manufactured by "Wagner Corporation." This headlamp "does meet requirements for passenger car headlighting systems." The upper beam of the headlamp meets all requirements for motorcycle headlamp upper beams, and complies with all lower beam test points as well, with the exception of Test Point 2D–3L, where there is a shortfall of 7 percent.

EMB argues that the shortfall does not unreasonably degrade safety because the Lectra VR24 is designed for a cruising speed of 30 mph and the headlamp does meet requirements for this equipment on motor driven cycles.

Finally, the lens of the headlamp will not be marked "motorcycle" as required by S7.9.5 for a headlamp of the type intended to be used.

During the exemption period, EMB plans to develop a lighting system that fully complies with Standard No. 108.

2. Standard No. 120

S5.2 *Rim marking* of Standard No. 120 requires, in pertinent part, that each rim be embossed or debossed with certain specified information. The wheel that EMB has selected was not embossed with the information at time of manufacture but has been subsequently stamped with indelible ink. All the information is present and in the required location. These wheels meet ISO 8644, ISO 8645, and TUV specifications. EMB will work with suppliers to ensure that future rims are properly marked.

Why Exempting EMB Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

EMB "is developing zero-emission vehicles which are consistent with the goals and desires of society for a cleaner and quieter environment, and reduced reliance on fossil fuels."

Even with the exemptions requested, EMB believes that the Lectra VR24 exhibits an overall level of safety equivalent to that prescribed by the Federal motor vehicle safety standards.

How To Comment on EMB's Application

If you would like to comment on EMB's application, send two copies of your comments, in writing, to: Docket Management, National Highway Traffic Safety Administration, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590, in care of the docket and notice number shown at the top of this document.

We shall consider all comments received before the close of business on the comment closing date stated below. To the extent possible, we shall also consider comments filed after the closing date. You may examine the docket in Room PL–401, both before and after that date, between 10 a.m. and 5 p.m.

When we have reached a decision, we shall publish it in the **Federal Register**.

Comment closing date: August 16, 2000.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: July 11, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–18010 Filed 7–14–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7616; Notice 1]

Piaggio & c., S.p.A.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

Piaggo & c., S.p.A. ("Piaggio"), an Italian corporation, of Pontedera, Italy, has applied for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays.* The basis of the request is that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. 30113(b)(3)(B)(iv).

We are publishing this notice of receipt of an application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

Piaggio has applied on behalf of its Vespa ET4 (125 and 150 cc) motor scooters. The scooters are defined as "motorcycles" for purposes of compliance with the Federal motor vehicle safety standards. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control (the left handlebar is permissible only for a motor driven cycle (Item 11, Table 1), *i.e.*, a motorcycle with a motor that produces 5 brake horsepower or less).

Piaggio petitions that it be allowed to use the left handlebar as the control for the rear brakes of its Vespa ET4, which is a motorcycle and not a motor driven cycle. The model features an automatic clutch that eliminates the left-hand clutch lever as well as any left-foot gearshift lever. According to Piaggio, "the motor scooter is therefore very similar to a bicycle, both in ergonomic stance and operation." The model will feature a hand-actuated lever on the left handlebar that will actuate the rear brake, and a hand-actuated lever on the right handlebar that will control the front brake.

Piaggio argues that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. The Vespa ET4 is equipped with disc brakes on the front wheels, and "easily meets and exceeds all the performance requirements of FMVSS 122" for motorcycle brake systems. The vehicle meets the braking performance requirements of ECE 93/14 as well.

Piaggio avers that no other country in Europe, Japan, or elsewhere in Asia requires scooters to be equipped with a right foot-operated brake control. Absent an exemption, then, Piaggio will be unable to sell the Vespa ET4 in the United States. Piaggio "is in the process of introducing a complete modification of the Vespa braking system to conform with FMVSS 123," and intends to complete its development work during the two-year period that its exemption would be in effect.

Piaggio will not sell more than 2,500 scooters a year while an exemption is in effect. The exemption would cover Model Year 2000 and 2001 vehicles. The company believes that an exemption would be consistent with the objectives of traffic safety because the scooter provide "for much more natural braking response by the rider than non-exempt vehicles." Extended use in Europe and the rest of the world has not resulted in either consumer groups or governmental authorities raising any safety concerns. The exemption would also be in the public interest because it is "environmentally clean and fuel efficient * * * convenient urban transportation."

You may submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You should send at least two copies.

We shall consider all comments received before the close of business on the comment closing date indicated below. Comments will be available for examination in the docket at the above address both before and after that date. The Docket Room is open from 10:00 a.m. until 5:00 p.m. To the extent possible, comments filed after the closing date will also be considered.

We shall publish a notice of final action on the application pursuant to the authority indicated below.

Comment closing date: August 16, 2000.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on July 11, 20000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–18011 Filed 7–14–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the

nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 13, 2000 [65 FR 19961–19962].

DATES: Comments must be submitted on or before August 16, 2000.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, (202) 366–4387, DOT, Office of Airline Information, Room 4125, K–25, 400 Seventh Street, NW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Passenger Origin Destination Survey Report.

Type of Request: Extension of a currently approved Collection.

OMB Control Number: 2139–0001.

Affected Public: Large certificated scheduled passenger air carriers.

Abstract: DOT uses the Passenger Origin-Destination Survey Report in administering its international aviation program, in evaluating carrier fitness, monitoring passenger fares, assessing airline competition and assessing airport needs.

Estimated Annual Burden Hours: 38,080.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC on July 10, 2000.

Donald W. Bright,

Acting Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 00–18013 Filed 7–14–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of cancellation of open meeting of Citizen Advocacy Panel, Brooklyn District.

SUMMARY: The meeting scheduled for July 20, 2000 has been cancelled due to scheduling conflicts.

DATES: The meeting will be rescheduled and published at a later date.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel originally scheduled for Thursday July 20, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201 has been cancelled due to scheduling conflicts. The meeting will be rescheduled and published at a later date.

Dated: June 29, 2000.

M. Cathy Vanhorn,

Director, CAP, Communications & Liaison.

[FR Doc. 00–18001 Filed 7–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0569]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to customer satisfaction surveys.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 15, 2000.

ADDRESSES: Submit written comments on the collection of information to Lynne R. Heltman, Veterans Benefits Administration (245), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0569" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Lynne R. Heltman at (202) 273–5440.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Veterans Benefits Administration Customer Satisfaction Surveys.

OMB Control Number: 2900–0569.

Type of Review: Extension of a currently approved collection.

Abstract: VBA administers integrated programs of benefits and services, established by law for veterans and their survivors, and service personnel. Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. VBA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VBA

service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households, non-profit organizations, educational institutions, veterans' service organizations, and businesses or other for-profits.

NATIONAL SURVEY ACTIVITIES

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
Survey of Veterans' Satisfaction With the VA Compensation and Pension Claims Process			
2001	22,800	5,700	One-time.
2002	22,800	5,700	Do.
2003	22,800	5,700	Do.
Survey of Veterans' Satisfaction With the VA Education Claims Process			
2001	3,200	800	One-time.
2002	3,200	800	Do.
2003	3,200	800	Do.
Survey of Educational Institution Certifying Officials			
2002	1,000	330	One-time.
2003	1,000	330	Do.
Loan Guaranty Customer Satisfaction Survey—Veteran			
2001	7,200	1,202	One-time.
2002	7,200	1,202	Do.
2003	7,200	1,202	Do.
Loan Guaranty Customer Satisfaction Survey—Lender			
2001	1,000	330	One-time.
2002	1,000	330	Do.
2003	1,000	330	Do.
Vocational Rehabilitation & Employment Program Survey			
2001	10,800	2,700	One-time.
2002	10,800	2,700	Do.
2003	10,800	2,700	Do.
Insurance Customer Surveys			
2001	2,800	280	One-time.
2002	2,800	280	Do.
2003	2,800	280	Do.
Undetermined Focus Groups			
2001	500	1,000	One-time.
2002	500	1,000	Do.
2003	500	1,000	Do.
National Telephone Survey			
2001	7,200	1,224	One-time.
2002	7,200	1,224	Do.
2003	7,200	1,224	Do.
VA Regional Office-Based Survey Activities—VA Regional Office-Based Customer Satisfaction Focus Groups			
2001	600	1,800	One-time.
2002	600	1,800	Do.

NATIONAL SURVEY ACTIVITIES—Continued

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
2003	600	1,800	Do.
VA Regional Office-Specific Service Improvement Initiatives (Comment Card)			
2001	139,200	11,554	One-time.
2002	139,200	11,554	Do.
2003	139,200	11,554	Do.

Most customer satisfaction surveys will be recurring so that VBA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate VBA's performance. VBA expects to conduct an estimated 100 focus groups and receive up to 139,200 comment cards involving a total of 14,354 hours each year for 2001, 2002, and 2003. In addition, VBA expects to distribute written surveys with a total annual burden of approximately 12,236 hours in 2001, 12,566 hours in 2002, and 12,566 hours in 1999. The grand totals for both focus groups, comment cards, and written surveys are: 26,590 hours in 2001, 26,920 hours in 2002, and 26,920 hours in 2003.

Anyone may view the results of previously administered surveys on the internet by going to the following VBA surveys website: http://www.vba.va.gov/surveys/.

The areas of concern to VBA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys, focus groups and to send out comment cards. Participation in the surveys, focus groups, and comment cards will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. VBA will consult with OMB regarding each specific information collection during this approval period.

Dated: June 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–17971 Filed 7–14–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0570]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the burden estimates relating to customer satisfaction surveys.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 15, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0570" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Veterans Health Administration Customer Satisfaction Surveys.

OMB Control Number: 2900–0570.

Type of Review: Extension of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing services. VHA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VHA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households.

Listing of Survey Activities

I. Special Emphasis Programs

The following list of activities is a compendium of customer satisfaction survey plans by VHA. Different special emphasis programs will be surveyed annually; however, program selections have not been made for FYs 2001–2003. Burden hours for the out-years are based on FY 2000 estimates.)

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2001	46,800	11,700	Annually
2002	46,800	11,700	Do.
2003	46,800	11,700	Do.

II. Local Facilities Surveys

Year	Number of respondents	Estimated annual burden (hours)	Frequency
1998	12,000	2,000	One-time.
1999	12,000	2,000	Do.
2000	12,000	2,000	Do.

Most customer satisfaction surveys will be recurring so that VHA can create ongoing measures of performance and to determine how well the Agency meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate VHA's performance. VHA expects to distribute written surveys with a total annual burden of approximately 13,700 hours in FYs 2001, 2002, and 2003.

Dated: June 8, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–17972 Filed 7–14–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) is revising an existing routine use to the system of records entitled "Personnel and Accounting Pay System-VA" (27VA047) as set forth in the **Federal Register** 40 FR 38095 (8/26/75) and amended in 48 FR 16372 (4/15/83), 50 FR 23009 (5/30/85), 51 FR 6858 (2/26/86), 51 FR 25968 (7/17/86), 55 FR 42534 (10/19/90), 56 FR 23952 (5/24/91), 58 FR 39088 (7/21/93), 58 FR 40852 (7/30/93), 60 FR 35448 (7/7/95), 62 FR 41483 (8/1/97), 62 FR 68362 (12/31/97), and 65 FR 20850 (4/18/00). This system of records contains information on current and former salaried VA employees.

The Federal Labor Relations Authority (FLRA) was established in accordance with 5 U.S.C. 7104. The FLRA's powers and duties are outlined in 5 U.S.C. 7105. These include the investigation and resolution of allegations of unfair labor practices, exceptions to arbitrator awards when a question of material fact is raised, and matters before the Federal Service Impasses Panel. The FLRA also investigates representation petitions and conducts or supervises representation elections. The FLRA's purpose, scope, powers, and duties are also set forth in Subchapter C of Title 5 of the Code of Federal Regulations (CFR). As part of its powers and duties, the FLRA may make any appropriate inquiry to carry out its duties. The FLRA has the authority to request certain information, including employee names and home addresses, in connection with its investigations and other activities. Employee's home addresses are necessary information for FLRA investigation of elections where the elections are by mail ballot, rather than by on-site election.

The Privacy Act (5 U.S.C. 552a) requires any records under the control of a federal agency from which information is retrieved by the name of an individual, or by some identifying number, symbol, or other identifying particular assigned to an individual, to be grouped in a system of records. Information cannot be released from a Privacy Act system of records without the individual's consent, unless an exception applies or a routine use for the release of the information is developed for the system of records.

The VA Office of General Counsel has determined that release of information to FLRA from Privacy Act system of records "Personnel and Accounting Pay System-VA" (27VA047), including the names and home addresses of employees, is necessary to comply with the statutory mandate under which FLRA operates. It has also been determined that the release of information for this purpose is a necessary and proper use of the information in this system of records and the addition of the new routine use number 33 for transfer of this information is appropriate.

An altered system of records report and a copy of the revised system notice have been sent to the House of Representatives Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 37916–18 (7/25/94)).

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. All relevant material received before August 16, 2000, will be considered. All written comments

received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the new routine use statement is effective August 16, 2000.

Approved: June 29, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Notice of Amendment to System of Records

In the system of records identified as 27VA047, "Personnel and Accounting Pay System-VA," as set forth in the **Federal Register** 40 FR 38095 (8/26/75) and amended in 48 FR 16372 (4/15/83), 50 FR 23009 (5/30/85), 51 FR 6858 (2/26/86), 51 FR 25968 (7/17/86), 55 FR 42534 (10/19/90), 56 FR 23952 (5/24/91), 58 FR 39088 (7/21/93), 58 FR 40852 (7/30/93), 60 FR 35448 (7/7/95), 62 FR 41483 (8/1/97), 62 FR 68362 (12/31/97), and 65 FR 20850 (4/18/00) the system is amended as follows:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

33. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

* * * * *

[FR Doc. 00–17973 Filed 7–14–00; 8:45 am]

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VOL 65 ISS 137 JL 17 2000 UMI

Federal Register

Monday,
July 17, 2000

Part II

Office of Personnel Management

5 CFR Part 591
Cost-of-Living Allowances (Nonforeign Areas); Guam and the Commonwealth of the Northern Mariana Islands and Honolulu, HI; Interim and Final Rules

Report on 1998 Surveys Used To Determine Cost-of-Living Allowances in Nonforeign Areas; Notice

VOL 65 ISS 137 JL 17 2000 UMI

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AJ15

Cost-of-Living Allowances (Nonforeign Areas); Guam and the Commonwealth of the Northern Mariana Islands

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is publishing an interim regulation to increase the cost-of-living allowance (COLA) rate paid to certain Federal employees in Guam and the Commonwealth of the Northern Mariana Islands (CNMI). This regulation increases the local retail COLA rate for the Guam/CNMI allowance area from 22.5 percent to 25 percent. This increase is a result of cost-of-living surveys conducted in October and November 1998 using our current methodology for calculating COLA rates. A settlement agreement that is currently awaiting court approval calls for OPM to use a new methodology in conducting future surveys and in calculating future COLA rates. Therefore, the survey results reflected in this rule are not an indication of what survey results or COLA rates would be under the new methodology.

DATES: *Effective date:* July 17, 2000. *Implementation date:* First day of the first pay period beginning on or after July 17, 2000. *Comment date:* Submit comments on or before October 16, 2000.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; fax: (202) 606–4264; or email: COLA@opm.gov.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606–2838; fax: (202) 606–4264; or email: COLA@opm.gov.

SUPPLEMENTARY INFORMATION: The Federal Government pays cost-of-living allowances (COLAs) to General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The Office of Personnel Management (OPM) conducts cost-of-living surveys in each allowance area to determine whether, and to what degree, local living costs are higher than those in the Washington, DC, area. OPM sets the COLA rate for each area based on the results of these surveys.

In October and November 1998, we conducted cost-of-living surveys in Alaska, Hawaii, Guam, Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area. We compared the results of the Washington, DC, area survey with the results of the other surveys to derive an index for each of the areas. We provide the details of this process in a separate report in this issue of the **Federal Register**.

The 1998 surveys indicate that the local retail COLA rate for the Guam/CNMI allowance area should be increased to 25 percent, as shown in the following table. Under the Treasury, Postal Service, and General Government Appropriations Act, 1992 (Pub. L. 102–141), as amended, no COLA rates may decrease until after December 31, 2000.

INCREASE IN COLA RATE

Allowance area/category	Current rate	New rate
Guam/CNMI, Local Retail ...	22.5	25

Appendix text changes

We inadvertently omitted the introductory text to appendix A of subpart B in the interim rule published with our 1997 survey report. (See 63 FR 56430, October 21, 1998.) We are reinstating the text with this rule. We have also rewritten a portion of the introductory text and other text in appendix A to improve clarity. These changes are not substantive.

Rulemaking waivers

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), OPM finds that good cause exists to waive the publication of proposed rulemaking and the 30-day delay in the effective date of this regulation. Because of unexpected delays in completing these surveys and calculating the living-cost indexes, we believe it is in the public interest to implement the COLA rate increase immediately. In the future, as we have done in the past, we plan to announce COLA rate adjustments in a proposed rule for public notice and comment.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Appendix A of subpart B is revised to read as follows:

Appendix A of Subpart B—Places and Rates at Which Allowances Shall Be Paid

This appendix lists the places approved for a cost-of-living allowance and shows the allowance rate and any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage/allowance category	Authorized allowance rate (percent)
State of Alaska	
City of Anchorage and 80-kilometer (50-mile) radius by road:	
All Employees	25.0
City of Fairbanks and 80-kilometer (50-mile) radius by road:	
All Employees	25.0
City of Juneau and 80-kilometer (50-mile) radius by road:	
All Employees	25.0

Geographic coverage/allowance category	Authorized allowance rate (percent)
Rest of the State:	
All Employees	25.0
State of Hawaii	
City and County of Honolulu:	
All Employees	25.0
County of Hawaii:	
All Employees	15.0
County of Kauai:	
All Employees	22.5
County of Maui and County of Kalawao:	
All Employees	22.5
Territory of Guam and Commonwealth of the Northern Mariana Islands	
Local Retail	25.0
Commissary/Exchange	20.0
Commonwealth of Puerto Rico	
All Employees	10.0
U.S. Virgin Islands	
All Employees	20.0

Definitions of Allowance Categories

The following are definitions of the allowance categories used in the tables in this appendix.

All Employees: This category covers all Federal employees eligible for an allowance under 5 U.S.C. 5941.

Local Retail: This category covers all Federal employees eligible for an allowance who do *not* have unlimited access to commissary and exchange facilities by virtue of their Federal civilian employment.

Commissary/Exchange: This category covers all Federal employees eligible for an allowance who have unlimited access to commissary and exchange facilities by virtue of their Federal civilian employment.

Note: The appropriate military department determines eligibility for access to military commissary and exchange facilities. If an employee is furnished with these privileges for reasons associated with his or her Federal civilian employment, he or she will receive an identification card that authorizes access to such facilities. Possession of such an identification card is sufficient evidence that the employee uses the facilities.

[FR Doc. 00–17568 Filed 7–14–00; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AI38

Cost-of-Living Allowances (Nonforeign Areas); Honolulu, HI

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting as final an interim increase in the cost-of-living allowance (COLA) rate for Honolulu. The increase was the result of our 1997 cost-of-living surveys in certain nonforeign areas. We are also making a change in the Miscellaneous Expense category we use in the COLA methodology that will identify education as an expense. This increase is a result of cost-of-living surveys conducted in the summer of 1997 using our current methodology for calculating COLA rates. A settlement agreement that is currently awaiting court approval calls for OPM to use a new methodology in conducting future surveys and in calculating future COLA rates. Therefore, the survey results reflected in this rule are not an indication of what survey results or COLA rates would be under the new methodology.

DATES: *Effective date:* August 16, 2000.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606–2838; fax: (202) 606–4264; or email: COLA@opm.gov.

SUPPLEMENTARY INFORMATION: The Federal Government pays cost-of-living allowances (COLAs) to General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The Office of Personnel Management (OPM) conducts cost-of-living surveys in each allowance area to determine whether, and to what degree, local living costs are higher than those in Washington, DC. OPM sets the COLA rate for each area based on the results of these surveys.

On October 21, 1998, we published an interim rule for comment in the **Federal Register** (63 FR 56430) that—

—Increased the COLA rate for the Honolulu allowance area from 22.5 percent to 25 percent based on the 1997 survey results, and

—Broadened the composition of the Miscellaneous Expense category used in the COLA methodology.

We received one comment on the interim regulations. The commenter felt that the change in the Miscellaneous Expense category should identify education as an expense. Alternatively, the commenter thought we should emphasize that other expenses are possible or describe the kinds of expenses that may be included in the category. We agree that adding education to the listing would be helpful, and we have changed the wording as suggested.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is adopting the interim regulations for 5 CFR part 591 published on October 21, 1998, at 63 FR 56430 as final with one change, as set forth below:

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PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.205, paragraph (b)(4) is revised to read as follows:

§ 591.205 Comparative cost index.

* * * * *

(b) * * *

(4) *Miscellaneous expenses.* Miscellaneous expenses, including expenses for health care, gifts, contributions, savings and investments, retirement, life insurance, and education, are estimated from consumer expenditure surveys and other data appropriate for Federal employees for each income level.

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[FR Doc. 00–17569 Filed 7–14–00; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

Report On 1998 Surveys Used to Determine

Cost-of-Living Allowances in Nonforeign Areas

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice publishes the "Report on 1998 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas." The Federal Government uses the results of these surveys to set cost-of-living allowance (COLA) rates for General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Based on the survey findings, the Office of Personnel Management is increasing the local retail COLA rate for the Guam and Commonwealth of the Northern Mariana Islands allowance area in an interim regulation published with this notice. This increase is a result of cost-of-living surveys conducted in October and November 1998 using our current methodology for calculating COLA rates. A settlement agreement that is currently awaiting court approval calls for OPM to use a new methodology in conducting future surveys and in calculating future COLA rates. Therefore, the survey results reflected in this rule are not an indication of what survey results or COLA rates would be under the new methodology.

DATES: We must receive comments on or before November 14, 2000.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; fax: (202) 606–4264; or email: COLA@opm.gov.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606–2838; fax: (202) 606–4264; or email: COLA@opm.gov.

SUPPLEMENTARY INFORMATION: Section 591.206(c) of title 5, Code of Federal Regulations, requires the Office of Personnel Management (OPM) to publish nonforeign area cost-of-living allowance (COLA) survey summaries and calculations in the **Federal Register**. We are publishing the complete "Report on 1998 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas" with this notice. In the report, we explain the methodologies, calculations, and findings of the 1998 COLA surveys.

Results of Surveys

Using an index scale with the living costs in the Washington, DC, area equal to 100, we computed index values of relative living costs in each of the allowance areas. (See the final cost comparison indexes in the Executive Summary of the report.) The results of the surveys show that the local retail COLA rate for the Guam and Commonwealth of the Northern Mariana Islands allowance area should increase from 22.5 percent to 25 percent, the COLA rates for two other areas are currently at the appropriate level, and the COLA rates in eight areas are above the levels indicated by the living-cost indexes. However, the Treasury, Postal Service, and General Government Appropriations Act, 1992 (Pub. L. 102–141), as amended, prohibits reductions in COLA rates through December 31, 2000. Therefore, the interim regulation contains no COLA rate reductions.

Corrections to the 1997 Report

In preparing our report on the 1998 surveys, we discovered three errors in the 1997 survey report. We discuss these errors below, and we have corrected them in the 1998 analyses and report. We note that these corrections did not affect the COLA rates for any allowance area.

Median values for housing. We further analyzed our data on 1997 median housing values and discovered an error that resulted in our publishing incorrect values for Anchorage and Fairbanks in appendix 9. We made these corrections. Although these changes had no effect on the Anchorage index, the Fairbanks index decreased from 107.57 to 107.53. The original and corrected home sales values are as follows:

	Original	Corrected
Anchorage:		
Lower	$86,859	$86,733
Middle	119,561	119,236
Upper	149,073	149,124
Fairbanks:		
Lower	78,804	76,086
Middle	97,110	No change
Upper	122,196	112,128

Guam indexes. We had inadvertently omitted cellular phone service when calculating telephone expenses for the homeowner and renter indexes in Guam. We had also used an incorrect value for the Guam personal insurance and pensions index. While correcting these increased the Guam local retail total comparative cost index to 122.63 and the Guam commissary and exchange index to 119.09, these increases did not increase the actual COLA rates for Guam.

Renter characteristics and survey communities. In Table 4–2, Housing Profiles, we should have shown one bath instead of two for middle income renters. For upper income renters, we should have shown the rooms as 2–3 bedrooms and 4–5 rooms total. Also, in appendix 11, we should have noted in the footnotes that we relaxed the community specifications for the broker data. We have made these corrections in the 1998 survey report. None of these changes affected the indexes.

Comments on 1997 Survey Report

OPM published the report on the 1997 surveys for comment in the **Federal Register** on October 21, 1998 (63 FR 56432). We received five written comments and additional oral comments.

Generally, the commenters believed the surveys did not fully consider all expenses incurred in the allowance areas. Some commenters felt the surveys did not account for dissimilarities between the allowance areas and the Washington, DC, area, and that this affected the accuracy of the survey results.

OPM recently participated in a major initiative under a memorandum of understanding with plaintiffs in certain COLA litigation. That initiative studied many of these issues. We also engaged in a 2-year partnership pilot project that looked into many of the same issues. We describe these two efforts below, then discuss the substantive comments we received in response to the 1997 survey report.

Memorandum of Understanding and Report to Congress

In 1996, OPM entered into a memorandum of understanding (MOU) with litigants in the cases of *Alaniz* v. *Office of Personnel Management* and *Karamatsu* v. *United States*. The MOU committed OPM and the litigants to a "Safe Harbor" process for conducting studies relating to the COLA program and the compensation of Federal employees in the allowance areas. The purpose of the Safe Harbor process was to resolve long-contested COLA issues and to assist OPM in preparing a report to Congress on the COLA program. This report, required by the Treasury, Postal Service, and General Government Appropriations Act, 1992 (Pub. L. 102–141), as amended, was due by March 1, 2000. However, the Government and

plaintiffs are currently negotiating to settle the contested issues. If the parties achieve settlement, OPM will make many substantive changes in the COLA methodology. Therefore, we have notified Congress that we will report after we conclude the settlement process.

During the Safe Harbor process, we avoided making substantive policy changes in the COLA program. We made administrative changes as necessary and implemented other improvements in response to the comments we received. We list these changes in the survey report.

COLA Partnership

In November 1996, we established a 2-year pilot project to involve agency and employee representatives in a partnership with OPM to help us administer the nonforeign area COLA program. Our goal was to introduce a cooperative effort to help us plan and conduct COLA surveys, explore ways to improve the COLA program, and help everyone, including OPM, better understand issues related to the compensation of Federal employees in the COLA areas.

OPM worked with committees established under the pilot project to plan and conduct both the 1997 and 1998 living-cost surveys in the COLA areas. Although the pilot project expired in November 1998, OPM continued to work informally with interested committee members in the analysis of the 1998 survey results.

Goods and Services

One commenter suggested that we survey costs for building materials such as plywood, framing lumber, cabinets, carpet, and roofing materials. The commenter noted that delivery of these materials to Juneau takes a minimum of 2 weeks, resulting in project delays and higher costs. We currently survey various building material items, including paint, electrical outlets, area rugs, and caulking. We also survey the cost for interior painting and an electrical project, which should reflect higher costs due to material supply delays. Based on this suggestion, we collected prices for plywood on a test basis during the 1998 surveys. We obtained usable data and included these prices in our analysis.

The same commenter suggested that OPM consider surveying the cost of an oil change, appliance repair, and dry cleaning. In this and previous surveys, we surveyed both the cost of oil changes and dry cleaning. This year, we added appliance repair as a test item and found that we were able to collect comparable data across areas. Therefore, we used the results of this test item.

The commenter also suggested that OPM survey landfill charges for trash and recyclable material disposal. Consumer trash removal is often a tax-supported service or is included in the water-sewer bill. We believe the extent to which consumers pay landfill fees in lieu of higher taxes or utility fees probably differs significantly by area, and we have no information that would allow us to take these differences into consideration. Therefore, we are not adopting this suggestion.

One commenter suggested that OPM consider pricing both basic cable TV service and the next higher level of service, at least on a test basis. We adopted the change as a test item for the 1998 survey, but found we could not obtain comparable data across areas. Therefore, we did not use prices for level 1 cable TV service in any area.

The same commenter noted that some hospitals in Hawaii have only private rooms, not semi-private rooms as OPM surveyed in 1997. The commenter suggested pricing both private and semi-private hospital rooms. We adopted this change for the 1998 survey.

A commenter suggested surveying the price of specially formulated paints that inhibit mildew or pricing mildew additive. For the 1998 survey, we priced mildew additive in each area and added it to the price of a gallon of paint.

A commenter suggested OPM add personal computers to the survey. We researched this, but found that it was not feasible to survey comparable brands and models across areas. However, we plan to reconsider surveying this item, perhaps on a test basis, in future surveys.

One commenter noted that sales taxes were increasing in Juneau to cover various new facilities and services. We include the local sales tax in the price of items we survey; therefore, the data we use in our price comparisons reflect sales tax increases.

The same commenter remarked that the closing of a department store and pharmacy in Juneau reduced the availability of certain items. The extent to which fewer goods or services leads to higher costs is reflected in the item prices we collect. The availability of goods and services in the allowance areas was one of the research topics under the MOU.

One commenter remarked on the frequency of sales in the Washington, DC, area compared to Juneau. In the 1998 and previous surveys, we compared only non-sale prices of identical items from similar outlets. In future surveys, however, we plan to survey the price of the item at the time of the survey. If we adopt this change, we will collect both sale prices and regular prices, depending on whether the item is on sale at the time we visit the outlet.

Housing

One commenter felt that the median price used by OPM for upper income house sales in Anchorage was too low to be an accurate reflection of prices for upper income homes. The commenter believed that the lower priced homes could not have been in liveable condition or in a safe neighborhood. We used data provided by an Anchorage real estate broker on homes that were sold during the period August 1, 1996, through July 31, 1997. We looked at over 750 upper income home sale prices in south Anchorage, and we believe these produced a representational median.

The same commenter recommended that we examine earthquake and flood insurance needs by individual allowance area. In 1992, OPM's contractor for the cost-of-living surveys, Runzheimer International, investigated homeowner/renter insurance coverage for floods and earthquakes in each individual allowance area. Runzheimer found that less than 10 percent of the population in each of the allowance areas purchased these coverages. Because most homeowners and renters do not purchase an earthquake rider, we do not include it in our surveys. Furthermore, whether lenders require homeowners to buy flood insurance depends on where the property is located, and this can be an insurance requirement in any area, including for properties along the rivers and streams in the Washington, DC, area. We are not aware of any data source that would allow us to determine for each survey area the percent of properties in a flood zone.Therefore, we do not survey the cost of this type of coverage. However, we do survey the cost of hurricane and typhoon insurance in tropical COLA areas, where lenders typically require this coverage.

Another commenter noted that housing costs are high in Juneau. Our survey of home sales data and other housing expenses in Juneau should capture these costs.

A commenter from the Virgin Islands noted that many employees live on the island of St. John. Recognizing that it was not feasible to price all survey items on St. John, the commenter suggested that OPM survey home sales and rental prices and combine these data with the St. Thomas data. We adopted this change for the 1998 survey.

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Transportation Component

Two commenters suggested that OPM reconsider the models of automobiles it prices in the COLA surveys. One commenter suggested that OPM survey more sports utility vehicles. The other suggested that OPM survey a luxury brand, such as BMW. We did not adopt either of these suggestions. We survey three models—Honda Civic, Ford Taurus, and Chevrolet Blazer. These are popular brands and models, although their popularity differs from one area to the next. It was not feasible for us to vary the brands and models by area with the 1998 survey. However, it may be possible to do this in future surveys. As with all survey items, we will consider changing models and brands in future surveys in response to changes in consumer preferences.

One commenter believed we should include the cost of windshield repairs in our survey of vehicle repair costs for Alaskans. In the 1997 survey, we surveyed the frequency and cost of windshield replacement in all of the COLA areas and in the DC area. We found that frequency of windshield replacement was greater in Alaska than in the DC area, but that the frequency of windshield replacement in the other COLA areas was about the same as in the DC area. We also found that the cost of windshield replacement in Alaska was greater than the automobile insurance deductible priced in the COLA surveys. Since consumers pay only the deductible for these repairs, we do not need to survey this item. Instead, we add the cost of the deductible to the annual private transportation costs for the Alaska areas. This was done for both the 1997 and 1998 surveys.

One commenter suggested that we use the NADA or Kelly Blue Book for the Pacific region to determine the used car values we use in the COLA model. We use the residual value of a car after 4 years to calculate the annual depreciation expense associated with owning an automobile. We currently use books covering the Eastern region. We researched this issue and found that prices in the Pacific region books tend to be slightly higher than in the Eastern region books. However, for administrative simplicity, we did not adopt the proposal because using different residual values for some areas and not others would have significantly complicated the COLA model. The effect of retaining the current practice may slightly overstate living costs in the COLA areas.

One commenter noted that airline competition decreased in Juneau. Our survey of airfare costs should capture any higher ticket prices that result from reduced competition.

Another commenter suggested that OPM price the cost of an airline ticket purchased 2 weeks in advance. As used in the COLA model, airfares reflect the cost of vacation travel. We researched the availability and prices of airline tickets and found that generally the best deals were available if the ticket was purchased at least 3 weeks in advance and the traveler flew mid-week (*i.e.*, Tuesday through Thursday). Therefore, for the 1998 surveys in both the COLA areas and the Washington, DC, area, we priced the lowest airfares available 3 weeks in advance, departing on a Tuesday and returning on a Thursday, because this best reflects likely vacation travel.

Miscellaneous Component

Medical care. One commenter felt that medical care in Juneau was limited, resulting in higher health care costs and inferior health care. The commenter said there was a need for costly travel outside the area to obtain some medical services. We currently price a range of medical services within each area, and the COLA model captures any higher local prices.

Travel outside the area for medical service is another issue. Some travel may result from an employee's perceptions about the quality of local medical services. We know of no source that allows us to compare objectively the quality of medical services across areas. Therefore, we do not take into account the cost of unreimbursed travel for medical services or any differences in the quality of health care.

A commenter from Puerto Rico believed that a major health benefits plan in that area provided a lower level of coverage than most plans in the DC area. The commenter also said the service covered was inconvenient because it required the employee to use preferred providers who often did not accept appointments. Employees had to show up and wait to be seen. The commenter suggested that OPM review and compare the various Federal health benefits plans. We were unable to do this because it would require us to make subjective decisions about what employees do. For example, if an employee chooses a plan that is less convenient or provides a lower level of coverage, the employee accepts inconvenience and lower coverage as a trade-off for the lower insurance premium, presumably with the expectation that the service/coverage may not be necessary. It is a highly subjective decision that each employee makes. We know of no objective way to quantify this.

Another commenter suggested that OPM price psychiatric counseling. We believe it might be feasible to collect prices for this service in each area, but under the current methodology, the weight we would assign it would be very small. (We discuss how we derive and assign weights in section 2.3 of the report.) Therefore, we did not add this item to the survey because it would have increased the administrative and public burden of the survey with little chance of affecting the results.

Other Comments

Locality pay. One commenter noted that Federal employees in Juneau do not receive the locality pay increases received by employees in the Washington, DC, area. The locality pay law (5 U.S.C. 5304) prohibits the Government from providing locality pay to employees outside the 48 States and the District of Columbia.

Retirement. The same commenter was concerned that COLAs do not count for retirement purposes for employees in the allowance areas. Federal law excludes allowances (including COLAs) from basic pay in the computation of retirement annuities. (See 5 U.S.C. 8331(3) and 8401(4).)

Office of Personnel Management.

Janice R. Lachance,

Director.

Report on 1998 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas

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Executive Summary

The Government pays cost-of-living allowances (COLAs) to Federal employees in nonforeign areas in consideration of living costs higher than in the Washington, DC, area. The Office of Personnel Management (OPM) conducts living-cost surveys in order to set the COLA rates. This report provides the results of the 1998 living-cost surveys and compares living costs in the nonforeign COLA areas to those in the Washington, DC, area.

We conducted surveys in Alaska, Hawaii, Guam, Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area. We then analyzed the survey data and produced this report. For the surveys, we contacted about 4,000 outlets and collected approximately 26,000 prices on about 252 items representing typical consumer purchases. We then combined the data using consumer expenditure information developed by the Bureau of Labor Statistics. The final result is a series of living-cost indexes, shown in Table E–1, that compare living costs in the allowance areas to those in the Washington, DC, area. The index for the DC area (not shown) is 100.00 because it is, by definition, the reference area.

TABLE E–1.—FINAL COST COMPARISON INDEXES

Allowance area	Index
Anchorage, Alaska	105.65
Fairbanks, Alaska	109.19
Juneau, Alaska	110.46
The rest of the State of Alaska	131.58
City and County of Honolulu, Hawaii	124.51
Hawaii County, Hawaii	110.89
Kauai County, Hawaii	117.19
Maui County, Hawaii	120.32
Guam/CNMI*, Local Retail	125.23
Guam/CNMI, Commissary/Exchange	121.12
Puerto Rico	105.93
U.S. Virgin Islands	116.33

*CNMI=Commonwealth of the Northern Mariana Islands

1. Introduction

1.1 Report Objectives

This report provides the results of the 1998 surveys. Appendix 1 lists previous survey reports and their publication dates. The analyses show the comparative living-cost differences between the Washington, DC, area and the allowance areas listed below. By law, Washington, DC, is the base or "reference" area for the nonforeign area cost-of-living allowance program.

1. Anchorage, Alaska
2. Fairbanks, Alaska
3. Juneau, Alaska
4. The rest of the State of Alaska
5. City and County of Honolulu, Hawaii
6. Hawaii County, Hawaii
7. Kauai County, Hawaii
8. Maui County, Hawaii
9. Guam and the Commonwealth of the Northern Mariana Islands (CNMI)
10. Puerto Rico
11. U.S. Virgin Islands

1.2 The COLA Partnership Pilot Project

In November 1996, OPM established the COLA Partnership Pilot Project, a 2-year pilot project designed to assist us in administering the COLA program. (See 61 FR 59173.) The pilot project established COLA Partnership Committees and Subcommittees in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. Members of the committees and subcommittees included representatives from local area unions and agencies, as well as representatives from OPM.

The Committees and Subcommittees worked with OPM in varying degrees to plan the COLA surveys, observe the data collection, and advise OPM on the COLA program and on compensation issues relating to the COLA areas. We have adopted a number of the changes recommended by the Committees and Subcommittees since the start of the project. However, OPM did not renew the COLA Partnership Pilot Project

when it expired because we were involved in discussing the nature of future employee involvement in the COLA program as part of the MOU process. The pilot project ended on November 23, 1998.

1.3 The Safe Harbor Process

In 1996, we entered into a memorandum of understanding (MOU) with litigants in the cases of *Alaniz* v. *Office of Personnel Management* and *Karamatsu* v. *United States*. Under the MOU, we committed to a "Safe Harbor" process with the litigants to conduct studies relating to the COLA program and the compensation of Federal employees in the allowance areas. The Safe Harbor process had two primary goals: (1) To resolve long-contested issues in the COLA program and (2) to assist OPM in preparing a report to Congress on the COLA program.

This report, required by the Treasury, Postal Service, and General Government Appropriations Act, 1992 (Pub. L. 102–141), as amended, was due by March 1, 2000. However, since the Government is currently negotiating to settle several pending court cases in the COLA areas, we will not report to Congress until after the Government concludes these negotiations.

1.4 Changes in the 1998 Survey

During the course of the COLA Partnership Pilot Project and the Safe Harbor process, we generally avoided making substantive changes in the COLA program. As with previous surveys, we did make a few non-substantive changes in the 1998 surveys. The majority of these changes related to items or outlets surveyed. (See Appendix 6.)

One of the changes was in the Goods and Services Component that involved obtaining more price quotes for each item. In previous surveys, we attempted to get three price quotes (one for each item at three different suitable outlets) for most items in each survey area. In the 1998 survey, we attempted to obtain up to nine price quotes for many items. This significantly increased the number of price observations we used in this survey.

1.5 Pricing Period

We traveled to the COLA areas in October and November 1998 to collect the living-cost data. During the same time frame, we collected data in the Washington, DC, area. We collected the prices of some items—those dependent upon the pricing of other items—later. Because we conducted the surveys in October and November, we were not able to collect prices for some winter items, such as downhill skiing.

As in previous surveys, we priced some catalog items. We used only catalogs that sell merchandise in both the allowance areas and the Washington, DC, area. To ensure consistent catalog pricing, we used only current catalogs for all catalog items surveyed.

2. The Cola Model

2.1 Measurement of Living-Cost Differences

The COLA model measures living-cost differences between the allowance areas and the Washington, DC, area by—

—Selecting typical items that people purchase in these locations,
—Calculating their respective cost differences, and
—Combining costs according to their relative importance to each other (as measured by relative percentage of expenditures).

This involves the following major steps:

Step 1: Identify the segment of the population for the target analysis (*i.e.*, typical Federal white-collar employees).

Step 2: Estimate how these people spend their money.

Step 3: Select items to represent the types of expenditures people usually make and outlets at which people typically make purchases for each selected item.

Step 4: Conduct pricing surveys of the selected items in each area.

Step 5: Compute price ratios for the surveyed items and aggregate them according to the relative importance of each item.

2.2 Step 1: Identifying the Target Population

The study estimates living-cost differences for typical white-collar Federal employees who have annual base salaries between approximately $13,000 and $94,300, the range of the 1998 General Schedule. Because living costs may vary depending on an employee's income level, we analyze living costs at three income levels.

2.2.1 Federal Salaries

To determine the appropriate income levels, we—

1. Analyzed the 1998 distribution of salaries for General Schedule employees in all of the allowance areas combined;
2. Divided this distribution into three income groups of equal size and identified the minimum, maximum, and median salary in each group;
3. Rounded the median values to the nearest $100 to produce the three representative income levels of $23,300, $35,300, and $52,700;
4. Compared living costs at each of these three income levels to produce three sets of estimated expenditures for each allowance area and for the Washington, DC, area; and
5. Combined these estimated expenditures into a single overall index for each allowance area using the employment weights described below.

2.2.2 Federal Employment Weights

We used the minimum and maximum values of each income group and the 1998 distribution of General Schedule employees by salary in each allowance area to derive employment weights. We combined these with similar data from 1995 and 1996 to produce a moving average. (We use moving averages to lessen index changes caused by the introduction of new weights over time.) From these averages, we calculated the percentage of the General Schedule workforce in each income group in each area. These percentages became the weights we used to combine estimated expenditures to compute the final index. Appendix 2 shows the General Schedule employment distributions and how we derived the percentage weights. Appendix 21 shows how we used the weights in the final calculations.

2.3 Step 2: Estimating How People Spend Their Money

2.3.1 Consumer Expenditure Survey

We base expenditure patterns used in the calculations on national data from the Consumer Expenditure Survey (CES). We obtained from the Bureau of Labor Statistics (BLS) "prepublished" CES results for 1994, 1995, and 1997. BLS has advised us that "prepublished" CES data may not be statistically significant. To our knowledge, however, it is the only source of comprehensive consumer expenditure information by income level. Therefore, we use it in the model.

We use CES data in two ways: (1) To identify appropriate items for the survey and (2) to derive item, category, and component weights. The item weights are not income-sensitive. We analyze aggregated CES data by income level to derive category and component weights. These weights are income-sensitive. Appendices 3 and 4 show the CES data we used in this study. As with the Federal employment weights, we combined the 3 years of CES data to produce a moving average.

2.3.2 Expenditure Categories and Components

BLS groups CES items into small, logical families. For example, BLS

groups CES pre-published data for beef into four subcategories: Ground beef, roast, steak, and other. BLS further separates the steak and roast groupings into smaller clusters of items (*e.g.*, sirloin and round steak, chuck and round roast). We separated the CES items into the four main cost components specified in our regulations: Consumption Goods and Services, Transportation, Housing, and Miscellaneous Expenses. To develop weighting patterns for the three income levels, we performed linear regression analyses on the CES data shown in Appendix 3.[1] These analyses produced estimated expenditures at the three income levels identified in section 2.2.1, above. We converted these expenditures to percentages of total expenditures for the four components to produce the values shown in table 2–1. These were the weights we used to combine the expenditures for each of the components into an overall value for each income level in each allowance area and the Washington, DC, area.

TABLE 2–1.—COMPONENT EXPENSES EXPRESSED AS A PERCENTAGE OF TOTAL EXPENSES

1998 income level	1995 adjusted income level*	Goods and services (percent)	Housing (percent)	Transportation (pecent)	Misc. (percent)	Total (percent)
$23,300	$21,826	38.07	26.42	19.24	16.27	100.00
35,300	33,071	37.48	25.00	19.12	18.40	100.00
52,700	49,326	36.96	23.72	19.01	20.68	100.00

NOTE: Values may not total 100 because of rounding.
*Income levels are adjusted as described in footnote 1.

We further separated Goods and Services Component items into 10 categories and used linear regression techniques to estimate expenditures on these 10 categories by income level. Section 3.1 shows the weights for these categories. We also used the same technique to compute category weights for the Transportation and Miscellaneous Expense Components and to produce ratios of renters to homeowners at each income level.

2.4 Step 3: Selecting Items and Outlets

2.4.1 Item Selections—The Market Basket

As noted above, we grouped CES items into "clusters" of expenses to determine which items to survey. We chose these clusters so that no market basket item would have an overwhelmingly large or an insignificantly small item weight.

For each of these clusters, we identified a set of items to price. Collectively, we call these items a "market basket." Because it would have been impractical to survey each of the thousands of items consumers might buy, the market basket contains representative items. For example, cheddar cheese represents itself and the many other cheeses and related products that consumers purchase. The market basket that we used had approximately 250 items ranging from table salt to new cars to home purchases.

Whenever practical, we included in the item description the exact brand, model, type, and size, so that we could price exactly the same items in all areas if possible. For example, we selected a 10.5-ounce can of Campbell's vegetable soup for the survey because it is typical of canned soups, consumers commonly purchase it, and we find it in all areas. Appendix 5 lists the items we survey and their descriptions.

Changes in the item list and descriptions are an important aspect of the COLA survey. These changes are necessary to improve the survey and keep the item descriptions current. For this survey, we changed several of the items and descriptions. Appendix 6 lists the major changes and the reason for each.

2.4.2 Geographic Coverage and Outlet Selection

Just as it is important to select commonly-purchased items and survey the same items in all areas, it is important to select outlets frequented by consumers and find equivalent outlets in all areas. This involves deciding which geographic areas to survey and which outlets to survey within these geographic areas.

2.4.2.1 Geographic Areas

For some areas, the choice of which area(s) to survey was obvious. On St. Thomas, for example, we survey essentially the whole island because the island is not that large, and Federal employees live throughout the island. For other areas, we had to identify specific communities. To do this, we relied mainly on the results of the 1992 Federal Employee Housing and Living Patterns Survey. Among other things, that survey obtained information on where Federal employees lived. We used this information, in consultation with the COLA Partnership Committees and Subcommittees, to select the living communities for pricing housing costs. Again in consultation with the Committees and Subcommittees, we identified outlets within a normal shopping radius of these housing communities. We generally considered outlets within a living community or within an adjoining living community to be within a normal shopping radius.

2.4.2.2 Similarity of Outlets

Whenever possible, we (and the Committees/Subcommittees) selected outlets that were popular with consumers and that were comparable to outlets in other areas. For example, we surveyed grocery items at supermarkets in all areas because most people purchase their groceries at such stores and because supermarkets exist in nearly all areas.[2] The selection of comparable outlets is particularly important because of the significant price variations that may occur between dissimilar outlets (*e.g.*, comparing supermarket prices with convenience store prices).

Although major supermarkets, department stores, and discount stores represented a sizable portion of the survey, we also selected outlets to represent the diversity of consumer shopping options. For example, we could have used department stores for

[1] The midpoint of the moving average of CES data was 1995. Therefore, for the purpose of these regressions, we adjusted Federal salaries to reflect 1995 pay rates. We used the pay increases for 1996 (2.0%), 1997 (2.3%), and 1998 (2.3%) to deflate the 1998 salaries. This produced adjusted Federal salaries of $21,826, $33,071, and $49,326 for use in the regression equations.

[2] We surveyed groceries at two kinds of supermarkets (*i.e.*, full-service supermarkets and "warehouse-type" supermarkets) in areas where both types of supermarkets were common and within a normal shopping radius of the living communities surveyed. We note, however, that some areas do not have warehouse-type supermarkets. We did not survey mebership stores, such as Costco, in any area.

pricing all clothing items. However, this would not have reflected the range of consumer choices. Therefore, we priced some clothing items in department stores, others in shoe stores, others in discount stores, and still others via mail order. For each item, we selected the same type of outlet (*e.g.*, clothing store, discount store, department store) in each area whenever possible.

2.4.2.3 Catalog Pricing

We collected 13 item prices by catalog in the survey to reflect this common purchasing option. Catalog pricing also allowed the comparison of items that we would have had difficulty pricing otherwise. We included in the catalog prices any charges for shipping and handling and all applicable taxes.

2.5 Step 4: Surveying Prices

As noted earlier, we obtained approximately 26,000 prices on about 250 items from about 4,000 outlets. The 26,000 price observations represents a significant increase over the 1997 survey. In prior surveys, we attempted to get three price quotes (one for each item at three different suitable outlets) for most items in each survey area. In the 1998 survey, we attempted to obtain up to nine price quotes for many items, although we frequently were not able to achieve this goal. Also, there were certain exceptions. For example, we obtained essentially all of the available home sales and rental data meeting the survey specifications. For other items, such as utilities and real estate tax rates, we obtained only one quote in each area because these items have uniform rates within an area. Because the Washington, DC, area has six survey areas, we attempted to get up to nine price quotes for many items in each survey area.

2.5.1 Data Collection

To avoid possible conflicts of interest, OPM central office staff collected the price data in each area. In many of the COLA areas, data collection observers, usually designated by the local COLA Partnership Committee or Subcommittee, accompanied our staff. The observers advised and assisted us in contacting outlets, matching items, and selecting substitutes. The observers also advised us on living costs and related compensation issues in their areas. We found this to be a very informative process.

We collected most data onsite in stores, repair shops, etc. However, we priced many items, such as insurance, home maintenance services, and private education expenses, by telephone. We collected some items, such as property tax rates, from websites on the Internet. We also purchased home sales and some rental data from various sources.

2.5.2 Inclusion of Sales and Excise Taxes

For all items subject to sales and/or excise taxes, we added the appropriate amount of tax prior to analysis. We gathered applicable information on taxes by contacting appropriate sources of information in the allowance areas and the Washington, DC, area.

2.5.3 Surveying the Washington, DC, Area

As noted above, we attempted to get more price quotes in the DC area than in the allowance areas because of the size and diversity of the DC metropolitan area and because DC is the basis for all comparisons. For the purposes of the COLA surveys, we divided the DC area into six survey areas: two in the District of Columbia, two in Maryland, and two in Virginia. We surveyed outlets within a normal shopping radius of the housing communities identified in Appendix 8. We combined survey data from each of the six DC survey areas using equal weights.

As in the COLA areas, OPM central office staff collected data onsite and by phone in the DC area. Due to funding limitations, allowance area data collection observers did not travel to the DC area to observe and assist in data collection.

2.6 Step 5: Analyzing Data and Computing Indexes

2.6.1 Indexes

We derive nonforeign area COLAs from living-cost indexes. These indexes are mathematical comparisons of living costs in the allowance areas to living costs in the Washington, DC, area. An index is a way to state the difference between two prices (or sets of prices). For example, if a can of green beans costs $1.00 in the allowance area and 80 cents in the DC area, canned green beans are 25 percent more expensive in the allowance area than in DC. We can state that difference as a price index of 125.

2.6.2 Item Weights

We computed indexes for hundreds of items. As briefly described in section 2.3, we used weights derived from the CES to combine these indexes. These weights reflected the relative amount consumers normally spend on different items. For example, the price of a can of green beans has a lower weight than the price of a pound of apples because, according to the CES, people generally spend less on canned green beans than on apples. (People typically buy more apples than green beans.)

The COLA model uses a fixed-weight indexing methodology. The model bases the weights used on the expenditure patterns of consumers nationwide as reported by the CES. This is the only source we are aware of that provides expenditure information by income level.

2.6.3 Category and Component Weights

As described in section 2.3.2, we also computed income sensitive category and component weights. This allowed us to combine comparative price data in a manner that reflected the spending patterns of people at each income level. The way we combined data varied among the components.

For the Goods and Services and Miscellaneous Expense Components, we combined indexes within each category using the CES weights to derive an overall index for the category. We then combined the category indexes into an overall component index using the income-sensitive category weights described above. For the Transportation and Housing Components, we used the same approach in combination with a cost-build-up approach. For example, we computed the annual cost of owning and operating an automobile by taking individual prices (*e.g.*, automobile financing, insurance, gas and oil, and maintenance) and computing an overall dollar cost for each area. We compared these costs with those in the DC area to compute the Private Transportation Category index. We then combined this index with the Other Transportation Category index using income sensitive category weights to compute an overall Transportation Component index for each area.

2.6.4 Computing the Overall Index

We combined the item, category, and component indexes using the process prescribed in section 591.205(c) of title 5, Code of Federal Regulations. This is a five-step process that involves converting the indexes to dollar values, which we then weight, combine, and compare to compute a final weighted-average index. We describe the process in detail below.

First, we used the CES data and the income ranges described in section 2.2.1 to determine how much money consumers typically spend on each component at each income level. These amounts appear in the table below and in Appendix 21. We derived the amounts by taking the component weights shown in Table 2–1 and multiplying them times the

representative income levels described in section 2.2.1.

TABLE 2–2.—TYPICAL CONSUMER EXPENDITURES BY INCOME LEVEL AND COMPONENT

Income level	Goods and services	Own/rent	Transportation	Misc.	Total
Lower	$8,870	$6,156	$4,483	$3,791	$23,300
Middle	13,230	8,825	6,749	6,495	35,300
Upper	19,478	12,500	10,018	10,709	52,700

NOTE: Values may not total because of rounding here and in Table 2–1.

Second, for each allowance area, we multiplied the dollar values above by the component indexes for the allowance area. Because the housing component consisted of two indexes (one for owners and another for renters), we produced total relative costs separately for owners and renters.

Third, for each allowance area and income level, we combined the total relative costs for owners and renters using as weights the proportion of owners and renters as identified in the CES. (See section 4.2.1.) This produced an overall expenditure dollar amount for each income level in each allowance area.

Fourth, we computed a single overall average expenditure for each allowance area by combining the income level expenditures using the allowance area General Schedule employment distribution as weights. This produced a single overall dollar expenditure value for the allowance area. Using the same General Schedule employment weights, we also computed a single overall dollar expenditure value for the DC area.

The final step was to divide the overall dollar expenditure for the allowance area by the overall dollar expenditure for the DC area to compute a final index. The last section of this report and Appendix 22 show these indexes.

3. Consumption Goods and Services

3.1 Categories and Category Weights

Based on the CES data, we identified 10 categories of expenses within the Goods and Services Component. Using linear regression analyses and the CES data, we identified the portion of total Goods and Services expenditures that the typical consumer spends in each category at various income levels. Table 3–1 shows the categories and the relative expenditures.

TABLE 3–1.—CATEGORY WEIGHTS EXPRESSED AS A PERCENTAGE OF GOODS AND SERVICES EXPENDITURES BY INCOME LEVEL

Category	Income levels		
	Lower	Middle	Upper
Food at home	27.03	24.05	21.30
Food away from home	13.43	14.18	14.87
Tobacco	2.82	2.34	1.90
Alcohol	2.33	2.40	2.47
Furnishings & household operations	15.36	16.64	17.82
Clothing	13.02	13.50	13.94
Domestic service	1.73	1.95	2.15
Professional services	7.09	6.82	6.57
Personal care	3.91	3.77	3.64
Recreation	13.27	14.35	15.34
			&radic
Totals	100.00	100.00	100.00

NOTE: Values may not total 100 because of rounding.

3.2 Goods and Services Survey Results

Section 2.6 of this report provides a detailed explanation of the economic model used to analyze the price data. As it applies to Goods and Services, the approach involved comparing the average prices of market basket items in each allowance area with those in the Washington, DC, area. We aggregated the resulting price ratios into subcategory and then category indexes using the moving-average expenditure weights derived from the CES data.

Appendix 7 shows for each allowance area 10 category indexes, the weights used at each of the 3 income levels, and the overall Goods and Services Component indexes. The appendix does not include the Washington, DC, area because it is, by definition, the reference area. Therefore, the DC indexes are 100.

3.2.1 Exchange and Commissary Expenditure Research

Executive Order 10000, as amended, requires OPM to adjust COLA rates when employees have special purchasing privileges, such as unlimited access to commissaries and exchanges. In Guam, some employees have such access, so we priced the same market basket of Goods and Services items at the commissaries and exchanges in Guam as we used for the local retail pricing. We obtained one price quote for each market basket item found in these facilities.

Employees who have access to military facilities make some of their purchases in these facilities and make other purchases elsewhere. Therefore, we used the results of a survey of Federal employees to determine the percentage of purchases that families typically make in military facilities versus local outlets. For example, as Table 3–2 shows, we estimated that employees with commissary/exchange

access in Guam purchase approximately 70 percent of their Food at Home items at a commissary and purchase the remaining 30 percent in local retail outlets.

TABLE 3–2.—PERCENTAGES OF PURCHASES MADE AT THE COMMISSARIES AND EXCHANGES IN GUAM

Category	Percentage
Food at home	70.0
Food away	0.0
Tobacco	64.0
Alcohol	76.0
Furnishings & hsld. oper	64.5
Clothing	43.7
Domestic service	0.0
Professional services	0.0
Personal care	49.3
Recreation	49.7

We used these percentages to aggregate the local retail and commissary/exchange prices into one set of appropriate, blended prices, which we refer to as the Commissary/PX prices. We compared the blended prices to the local retail prices in the Washington, DC, area to compute Commissary/PX Goods and Services Category indexes. We then combined these indexes using CES weights to derive an overall Commissary/PX Goods and Services Component index. Just as with the Guam Local Retail Goods and Services Component index, we combined the Guam Commissary/PX Goods and Services Component index with the indexes for the Housing, Transportation, and Miscellaneous Expense Components to derive a single, overall Commissary/PX index for the Guam allowance area.

4. Housing

4.1 Component Overview

The Housing Component consists of the following expenses related to owning or renting a dwelling:

- Mortgage or rent payments,
- Utilities,
- Real estate taxes,
- Homeowner's or renter's insurance,
- Home maintenance, and
- Telephone expenses.

At each of the three income levels, we measured the annual housing costs for homeowners and renters separately. We then combined the results using as weights the percentages of owners and renters reported by the CES.

4.2 Housing Model

4.2.1 Expenditure Research

We used the CES to determine the national average ratio of families who own, as opposed to rent, their residences at each income level. Using the tenure data by income range as input into a linear regression analysis, we calculated the owner and rental weights shown in Table 4–1 and in Appendix 22. We excluded data for homeowning families without a mortgage because they were not typical of Federal homeowners in the base area or in the allowance areas.

TABLE 4–1.—OWNER/RENTER WEIGHTS

Category	Income levels		
	Lower (percent)	Middle (percent)	Upper (percent)
Homeowner with mortgage	37.96	47.26	60.70
Renter	62.04	52.74	39.30
Totals	100.00	100.00	100.00

We also used the CES data to identify which home-maintenance items to price and to establish the relative importance of those items.

4.2.2 Housing Profiles

To compare housing costs in all locations, we used six typical housing profiles—three for homeowners and three for renters. Table 4–2 shows these profiles. We assigned one owner and one renter profile to each income level. We attempted to collect information on the living area, numbers and types of rooms, and other information that might influence home sale or rental prices. This information was rarely available for rental units, so we relied on bedroom count and living community to segregate rental prices by income level. We used the additional information shown in Table 4–2, however, during the interview of rental brokers to collect broker data.

Information about characteristics of houses sold was also difficult to collect on a consistent basis across all areas. Although detailed information about the houses sold was available for many areas, it was not available for other areas, including the District of Columbia and the Maryland suburbs of the Washington, DC, area. The only housing characteristics that were consistently available across all areas were house type and size. We surveyed only the prices of single family detached houses in each area and relied mainly on house size and living community to segregate home sales by income level. As shown in Table 4–2, these size ranges overlap. Therefore, when we priced housing in the same living community at two or more income levels, we used the additional information to separate home sales observations into the appropriate income level so that no single home sale observation appeared at more than one income level.

TABLE 4–2.—HOUSING PROFILES

Income level	Renters		Owners	
	Key characteristic	Additional information	Key characteristic	Additional information
Lower	1 bedroom apartment	3 rooms total, 1 bath; reference size: 600 sq. ft.	Detached house, 600 to 1,200 sq. ft.	4 rooms total, 2 bedrooms, 1 bath; reference size: 900 sq. ft.
Middle	2 bedroom apartment	4 rooms total, 1 bath; reference size: 900 sq. ft.	Detached house, 1,000 to 1,600 sq. ft.	5 rooms total, 3 bedrooms, 1 bath; reference size: 1,300 sq. ft.

TABLE 4–2.—HOUSING PROFILES—Continued

Income level	Renters		Owners	
	Key characteristic	Additional information	Key characteristic	Additional information
Upper	2 bedroom townhouse or detached house.	4 rooms total, 2 baths; reference size: 1,100 sq. ft.	Detached house, 1,400 to 2,300 sq. ft.	7 rooms total, 3 bedrooms, 2 baths; reference size: 1,700 sq. ft.

We use the reference sizes in Table 4–2 for the calculation of utility costs in the model. (See section 4.2.4.1.) As noted above, they are not the only sizes surveyed for each profile.

4.2.3 Living Community Selection

As discussed briefly in section 2.4.2.1, we identified the living communities for the survey based on the results of the 1992 Federal Employee Housing and Living Patterns Survey and in consultation with the COLA Partnership Committees and Subcommittees. Appendix 8 identifies the survey communities. As with previous surveys, we identified nine homeowner and nine renter communities for the Washington, DC, area—one for each income level in each of the three areas (DC, Maryland, and Virginia). In the allowance areas, we identified up to three homeowner and three renter communities—one for each income level.

We could not achieve the three-community owner/renter goal in many of the allowance areas because of the relatively few home sales and rental opportunities or data availability in these areas. In such areas, we collected prices for the entire survey area or allowance area rather than in specific communities. We did this in Fairbanks, Juneau, Nome, Hilo, Kailua Kona, Kauai, Maui, Guam, St. Croix, and St. Thomas/St. John. In these areas, we included all home sales and/or rental rates meeting the housing characteristics for the particular income group in the analysis.[3]

For most areas in which we identified discrete living communities, we used zip code boundaries. The exceptions were Anchorage and San Juan. In Anchorage, we used the multiple listing service location codes that realtors commonly use in that area. In San Juan, we used the name of the municipio or community.

4.2.4 Housing-Related Expenses

Based on the CES data, we categorized housing-related expense items into one of five groups in the COLA model. These groups were—

—Utilities,
—Real estate taxes,
—Owners/renters insurance,
—Maintenance, and
—Telephone expenses.

4.2.4.1 Utilities

Electricity, oil, gas, and water. Many utility companies were able to provide current charges per unit of consumption and average consumption patterns for all households. The companies were not, however, able to provide separate consumption patterns by the size or type of housing.

Because many utility costs vary by size of house, we needed a factor to derive the utility rates at each of the home profiles. Table 4–3 shows the standard square foot sizes and utility factors used for each home profile. We calculated the factors by assuming that utility use increases or decreases at half the rate that square footage increases or decreases.

TABLE 4–3.—UTILITY FACTORS

Income level	Renter profile		Owner profile	
	Sq. ft.	Factor	Sq. ft.	Factor
Lower	600	.73	900	.85
Middle	900	.85	1,300	1.00
Upper	1,100	.92	1,700	1.15

In each area, we obtained the price of each of the types of utilities noted above. Where available, we also gathered from local utility companies information on average annual consumption data per household. We used the local rates and consumption information to compute average annual utility costs. We then used the above factors to adjust the total annual utility costs for each of the various housing profiles.

In the DC area, we were unable to obtain estimates for electricity usage for houses heated by gas or oil. However, we were able to obtain kilowatt usage for all-electric houses. In order to avoid potential double counting of utility costs, we used the all-electric data for the DC area. Double counting utility costs was not a problem in the warm-area COLA areas, where there is little heat expense. It also was not a problem in Alaska, where most consumers use gas or oil heat, not electric heat. In the Alaska surveys, we price gas or oil in addition to electricity.

Telephone. Telephone expenses consisted of local service charges, additional charges for local calls (if applicable), charges for long distance calls, and basic cellular phone service. To measure estimated expenses for local service and local calls, we surveyed the cost of touch-tone service with unlimited calling in each area. To estimate long distance charges in all areas, we priced from a major long distance provider the cost of three 10-minute direct dial calls per month to large U.S. mainland cities (Los Angeles, Chicago, and New York). As in previous surveys, we priced a call placed in the survey area at the time of day necessary to be received in the respective city at 8:00 p.m. local time. In many areas, this resulted in pricing a combination of daytime and evening-rate calls.

We also priced the basic monthly plan for cellular phone service in each area. We derived weights from CES data to

[3] In Puerto Rico we were able to obtain relatively few broker rental quotes for the communities identified in the survey specifications. Therefore, we relaxed the community specifications and used broker rental data for all communities in the greater San Juan metropolitan area.

account for the portion consumers spend on regular phone service and cellular phone service. We then used these weights to combine the prices of these two types of phone service.

4.2.4.2 Real Estate Taxes

For this study, we contacted the local tax assessors or municipal websites on the Internet to obtain real estate tax information on the living communities surveyed. We applied these real estate tax formulas to the median home values for each income level to estimate annual real estate taxes.

4.2.4.3 Owners/Renters Insurance

We gathered homeowners' insurance rates for each of the survey areas for both renter and owner profiles. For renters, we used the following estimated content values: $25,000 at the lower income level, $30,000 at the middle income level, and $35,000 at the upper income level. We raised the values for the middle and upper income levels this year after examining test data collected during the 1997 surveys at the request of the Guam COLA Partnership Committee.

For homeowners, the cost of insurance was dependent on the median home values calculated as part of this survey. In most areas, we assumed that the structure was equal to 80 percent of the total home value. In Hawaii, where the land represents a greater proportion of property value, we used 50 percent.

We priced hurricane insurance in all of the Hawaii allowance areas, Guam, Puerto Rico, and the U.S. Virgin Islands. In research previously conducted for OPM, the contractor found that homeowners and renters rarely purchased insurance coverage for other disasters, such as floods and earthquakes, in any of the allowance areas. (See section 4.2.4.3 of the Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, DC, Area, December 10, 1992, at 57 FR 58556.) Insurers we contacted in the 1998 survey indicated that this is still the case. Therefore, we did not survey additional riders for flood or earthquake insurance.

4.2.4.4 Home Maintenance

We computed estimated home maintenance expenses for each of the homeowner and renter profiles. We derived separate home maintenance expenditure amounts for both owners and renters from the CES. Not surprisingly, the CES indicates that renters spend relatively little on home maintenance compared with homeowners.

As done in previous surveys, we priced both home maintenance services as well as home maintenance commodities using the CES information to identify items to price and the weights associated with these items. The maintenance service items priced were interior painting, plumbing repair, electrical repair, and pest control. In the Nome area, however, we did not price pest control because local sources indicated it is not necessary. The maintenance commodities priced were bathroom caulking, a kitchen faucet set, an electrical outlet, latex interior paint, and a fire extinguisher.

To compute home maintenance cost differences between each allowance area and the Washington, DC, area for the homeowner and renter profiles, we computed an index for each maintenance item by comparing the allowance area price to the DC area price. As with the Goods and Services Component items, we used the CES data to weight these maintenance indexes into an overall home maintenance index for each area.

To combine the maintenance indexes with the other homeowner and renter costs, which were expressed in dollar amounts, we converted the indexes to dollars. We did this by multiplying the index for each area by the average maintenance expense reported in the CES for owners and renters. We assigned this cost to the middle-income homeowner and renter profile. Logically, maintenance costs for larger homes would generally be greater than costs for middle-sized homes, while costs for smaller homes would generally be less. Therefore, we applied the same owner and renter multipliers used in the utilities model to recognize differences in maintenance costs due to house size at the various income levels.

4.3 Housing Data Collection Procedures

We collected home sales information from multiple listing type services and rental information mainly from rental brokers and advertisements.

4.3.1 Homeowner Data Collection

We obtained the selling prices of homes that matched the housing profiles in each living community for home sales that occurred roughly during the 12-month period preceding and including the survey month. The amount of data obtained depended on the number of home sales in the community and the availability of square footage and other information on housing characteristics. This in turn depended on the size of the community, economic conditions, the quality and quantity of realty data available, and the willingness and ability of local realty professionals to provide data.

We obtained relatively large quantities of home sales data in all areas except Nome. In Nome, home sales were extremely limited because Nome is not very large. In previous surveys, we also obtained relatively little data in St. Thomas. This year, we obtained and used housing data for both St. Thomas and St. John. Also, with the assistance of the Virgin Islands Assessor's Office, we obtained significantly more data than we have been able to get in previous years. These data identified houses that had been significantly damaged by hurricanes or other factors, and we excluded these from our calculations.

Identifying houses that were uninhabitable, severely damaged, or otherwise in need of significant repairs was impossible for most areas, given the limited amount of information available from the listing services. As discussed in section 4.4.1 below, we use the median rather than the average home value to compute housing costs. (The median is the middle value in a rank-ordered set of observations and tends to be less sensitive than the average to unusually low or high values at the ends of a range of data.) Nevertheless, in some of the databases we purchased, the quantity of exceptionally low priced homes had a significant effect on the median. Therefore, in all areas, we trimmed home sale prices that were less than $30,000, recognizing that $30,000 was probably a conservative price threshold for most areas. We trimmed homes of $1,000,000 or more at the upper level. We also trimmed properties of 1 acre or larger.

4.3.2 Renter Data Collection

We also obtained rental data from a variety of sources, *e.g.*, brokers, rental management firms, property managers, newspaper advertisements, and other listings. Analyses of these data revealed what appeared to be two separate rental markets: A broker market and a non-broker market. Rental rates and estimates provided by brokers generally exceeded those obtained from other sources. We discuss the methodology used to analyze these two data sets in section 4.4.2.

4.4 Housing Analysis

4.4.1 Homeowner Data Analysis

One of the most important factors relating to the price of a home is the number of square feet of living space. For each income profile in each allowance area and the Washington, DC,

area, we computed price per square foot for each of the comparables and determined the median price per square foot. We use the median to reduce the volatility of the housing data from one survey to the next because a relatively few extremely high or low home prices could significantly influence average housing prices. We then multiplied the median price per square foot by the reference square footage for the income level to determine the home purchase price.

As was done in the last survey, we also used historical housing data in addition to data collected in this survey. Appendix 9 shows these data. For all areas except Oahu, the historical data are from previous living-cost surveys that were published in the **Federal Register** beginning with the 1990 report. (See Appendix 1 for a listing of these publications). The data for the period prior to 1990 were published with the results of the 1991–1992 living-cost surveys at 57 FR 58617 (December 10, 1992) . All housing values are based on the community selections and analytical methodologies used at the time of each respective survey.

For Oahu, we surveyed housing prices in new living communities beginning with the 1997 surveys. Because our historical data did not cover these communities, we obtained additional historical price data for use in our 1997 and subsequent survey analyses.

The historical housing data used were estimated annual principal plus interest payments by income level in each area. To combine these data, we used weights that we derived from the 1992 Federal Employee Housing and Living Patterns Survey. These weights reflect the proportion of Federal employee homeowners by year of purchase in all allowance areas and in the Washington, DC, area. Appendix 10 shows the historical housing weights and analyses.

4.4.2 Rental Data Analysis

We assigned each rental quote to a single income level based on the criteria shown in Table 4–2. As discussed earlier, we received rental data from both broker and non-broker sources. In each area, the quantity of data obtained from either source varied significantly. Therefore, we found that analyzing all of the rental data (both broker and non-broker) together for an area and income level was undesirable. Instead, we analyzed broker and non-broker data separately by income level.

As with the housing data analyses, we used the median rental values. For each income level, we separately ranked rental rates from low to high for broker and non-broker data. We determined the median values for broker and non-broker data for each group and then averaged them to compute a single rental value for each income level. Because we have no information on how the Federal employees who rent generally secure their lodgings, we applied equal weights to the broker and non-broker data to compute an overall average rental rate for the area and income level.

Because there was insufficient non-broker data in the unfurnished rental units category, we used partly furnished and unfurnished units in the Hawaii areas. Similarly, we used apartment and furnished units in St. Croix at the middle and upper income levels because no other data were available.

Appendix 11 shows the broker and non-broker medians and final results. As noted in the appendix, we found inexplicable rental price trends in some of the data, particularly in the broker data. Therefore, as we explain in the footnotes of the appendix, we adjusted the rental data to address these anomalies.

4.5 Housing Survey Results

In the above sections, we described the processes used for determining the costs for maintenance, insurance, utilities, real estate taxes, rents, and homeowner mortgages. Appendix 12 shows the cost of each of these items for renters and homeowners in each allowance area and in the Washington, DC, area. Appendix 13 compares the total cost of these items by income level in each allowance area with the total cost of the same items by income level in the DC area. Again, there are separate comparisons for renters and homeowners. The final housing-cost comparisons take the form of indexes that are used in Appendix 21 to derive the total, overall indexes for owners and renters.

5. Transportation

5.1 Component Overview

The transportation component consists of two categories: Automobile Expense and Other Transportation Costs. The Automobile Expense Category reflects costs relating to owning and operating a car in each area. The Other Transportation Costs Category is represented by the cost of air travel from each location to common points within the contiguous 48 States.

5.2 Private Transportation Methodology

As in previous surveys, we analyzed automobile transportation costs for three commonly purchased vehicles: A domestic auto, an import auto, and a utility vehicle. We used new car costs for these analyses because we believe pricing used vehicles of equivalent quality in each area would require value judgments that could introduce inconsistencies.

5.2.1 Vehicle Selection and Pricing

We surveyed the same three models of automobiles in all areas—

—Domestic: Ford Taurus SE 4-door sedan 3.0L 6 cyl.
—Import: Honda Civic DX 4-door sedan 1.5L 4 cyl.
—Utility: Chevrolet S10 Blazer 4X4 2 door 4.3L 6 cyl.

For each model car, we collected new vehicle prices at dealerships in each area. All vehicles had standard options, such as automatic transmission, AM/FM stereo radio, and air conditioning. In Alaska locations, we included special additional equipment (*i.e.*, engine-block heaters and heavy-duty batteries) in new-vehicle prices. We also priced snow tires in Alaska. (See section 5.2.5.) In addition to the manufacturer's suggested retail price, the price included additional charges such as shipping, dealer preparation, additional dealer markup, excise tax, sales tax, documentation fees, and any other one-time taxes or charges.

We encountered problems in obtaining comparable car sales data in each area because of survey timing. As stated in section 1.5, we conducted the survey in October and November 1998, when the dealers were just beginning to receive shipments of the new 1999 models. However, not all dealers had the models we were surveying. Therefore, we obtained the prices of both the 1998 and 1999 models (to the extent the 1999 prices were available). Not surprisingly, we discovered that many dealers were charging significant markups for the 1999 models and significantly reducing or eliminating markups on the 1998 models. We found this in many areas, including the Washington, DC, area. Because we had only 1998 model prices across all areas, we used the 1998 model prices instead of the 1999 model prices. To overcome the problem caused by the usual dealer markups, we used the dealer markup for the same brands surveyed in the 1997 survey on the premise that these markups, which were obtained in the summer of 1997, were more typical.

5.2.2 Vehicle Trade Cycle

Calculating the cost of owning and operating a vehicle requires knowing the mileage and period of ownership. The automobile industry uses the term

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"trade cycle" to describe these two factors. The trade cycle is the length of time (in months or years) and the total number of miles driven in that time period. The OPM model uses this information to compute annual costs related to fuel, oil, tires, maintenance, and depreciation. As with the previous living-cost analyses, we used a 4-year, 60,000-mile trade cycle in all areas.

5.2.3 Fuel Performance and Type

All vehicles in the 1998 study used regular unleaded fuel. We collected self-service cash prices of unleaded regular gasoline at name-brand gas stations in the Washington, DC, area and in all allowance areas. In Alaska, we surveyed both self-serve and full-serve gas prices.

To establish average fuel-performance ratings, the COLA model uses the "city driving" figures published by the U.S. Environmental Protection Agency (EPA). The model uses the "city" figures instead of "highway" figures because all locations contained considerable stop-and-go driving conditions or required cautious driving because of poor road conditions. As in previous COLA surveys, we included in our analysis the following fuel-performance factors: temperature, road surface, and gradient.

OPM conducted previous research to determine these factors. We discuss this research and the factors below.

5.2.3.1 Impact of Temperature Upon Fuel Performance

Temperature affects gas mileage. The lower the temperature, the fewer miles-per-gallon achieved, and vice versa. According to EPA's *Passenger Car Fuel Economy: EPA and Road*, the temperature at which no adjustments to fuel performance occur is 77°F. Below that temperature, miles-per-gallon achieved drops. Above 77°F miles-per-gallon achieved improves. The model uses the average monthly temperatures for each allowance area and the DC area as reported in *The Weather Almanac*, published by Ruffner and Blair. For each location and month, the model uses the appropriate factor from the EPA study based on the average monthly temperature for the area. We then average these factors to derive a single overall factor for each location. Table 5–1 shows the results of these calculations.

5.2.3.2 Impact of Road Surface Upon Fuel Performance

The model assumes that Federally controlled roadways are typically composed of concrete and/or high-load asphalt and that locally controlled roadways are typically composed of low-load asphalt. EPA's research indicates that cars are generally more fuel-efficient on the firmer, high-load surfaces than on the softer, low-load surfaces. Although traffic patterns and road usage vary among areas, previous research conducted for OPM produced no relevant findings regarding this issue. Therefore, the model uses the assumption that Federally-controlled roadways generally support twice the traffic of, or are used at least twice as much as, locally controlled roadways.

In each allowance area, we collected the total mileage falling into either the Federal or local categories. For example, Alaska contains 5,512 miles of Federally controlled roads and 7,120 miles of locally controlled roads. The usage assumption increased Federal road mileage by a factor of two for the Alaska allowance areas.

We applied the average low-load asphalt factor (which reflects dry, wet, and snowy conditions) to the local mileage percentage and the average concrete and/or high-load asphalt factor to the Federal mileage percentage. This produced two weighted average factors—one for the Alaska allowance areas and another for the other allowance areas. Table 5–1 shows these factors. We assigned the Washington, DC, area a factor of 1.00 on the premise that the vast majority of traffic in that area travels on dry, high-load surfaces. Section 5.2.3.4 describes the application of these factors.

5.2.3.3 Impact of Gradient Upon Fuel Performance

We also estimated the effect of gradient on gas mileage from EPA's *Passenger Car Fuel Economy: EPA and Road*. Local topography (*i.e.*, gradient) affects fuel efficiency. EPA provides mileage factors based upon various gradients ranging from less than 0.5 percent (essentially flat) to greater than 6 percent (steep).

In research previously conducted for OPM, the contractor reviewed the topographic features of each area and found a wide range of road conditions. However, the contractor was unable to find relevant information on the types of terrain drivers typically encounter in each area or the number of miles drivers travel in each type of terrain. Lacking such information, the contractor assumed that drivers in the allowance areas generally traveled roads having approximately the same gradients that are found on average in the United States.

Applying the information from EPA's research, we computed a fuel-performance factor of 0.98 for this type of driving.

We assigned this factor to each allowance area. For the DC area, we used a factor of 1.00 on the premise that the vast majority of traffic in that area travels on major freeways and highways that are relatively flat. The next section describes the application of these factors.

5.2.3.4 Overall Impact Upon Fuel Performance

We applied the factors described above to make adjustments in the average gas mileage ratings for each type of automobile surveyed for each allowance area and for the Washington, DC, area. The adjustment factors compound; that is, the total adjustment is the result of multiplying the three individual factors together for each area.

In Table 5–1, the factor 1.00 means that no adjustment in EPA fuel performance is appropriate. A factor of less than 1.00 means that the estimated gasoline mileage in the area is less than the EPA average. For example, the total adjustment factor for Juneau is 0.84. This means that the estimated gasoline mileage in Juneau is 84 percent of the EPA estimated average. Note that the adjustment factor for the DC area (0.94) indicates that average gasoline mileage in that area is also below the EPA estimate.

TABLE 5–1.—SUMMARY OF FUEL-PERFORMANCE ADJUSTMENTS

Location	Temperature	Road surface	Gradient	Total
Anchorage	0.88	0.96	0.98	0.83
Fairbanks	0.85	0.96	0.98	0.80
Juneau	0.89	0.96	0.98	0.84
Nome	0.85	0.96	0.98	0.80
Hawaii	0.99	0.98	0.98	0.95
Virgin Islands	1.01	0.98	0.98	0.97

TABLE 5–1.—SUMMARY OF FUEL-PERFORMANCE ADJUSTMENTS—Continued

Location	Tempera-ture	Road sur-face	Gradient	Total
Puerto Rico	1.01	0.98	0.98	0.97
Guam	0.99	0.98	0.98	0.95
Washington, DC	0.94	1.00	1.00	0.94

5.2.4 Vehicle Maintenance

We surveyed the cost of common maintenance services and repairs performed on the vehicles surveyed. The services and repairs were:

- Tuneup
- Oil change
- Automatic transmission fluid change
- Flush/fill coolant
- Muffler/exhaust pipe replacement
- Constant velocity joint (CVJ) boot replacement
- Windshield replacement

We used the automobile manufacturers' recommended maintenance schedules to determine the frequency of performing each of the first five maintenance jobs. Maintenance schedules vary, depending on the driving conditions typically encountered.

Consistent with the assumptions used for fuel economy and tire mileage, we assumed that driving conditions in the allowance areas are generally severe, and the maintenance schedules used reflected that kind of driving. For the DC area, we assumed that driving conditions are normal, and the maintenance schedules used for that area reflected that kind of driving.

We combined the recommended frequency of performing each of these jobs with the prices charged by local dealers and service stations to compute an estimated annual maintenance expense. We collected the cost of the complete maintenance service or repair job for each vehicle. For example, we collected the cost of a complete oil change for each vehicle, including the total charge for parts and the total charge for labor.

Previous research conducted for OPM revealed varying replacement cycles for constant velocity joint (CVJ) boots among the Alaska allowance areas and between the Alaska areas and the DC area. These were: Anchorage and Juneau—every 45,000 miles (3 years), Nome—every 30,000 miles (2 years), Fairbanks—every 15,000 miles (1 year), and the Washington, DC, area—every 60,000 miles (4 years). We used the Washington, DC, area frequency of repair for the other (*i.e.*, non-Alaska) COLA areas. In each area, we factored the cost of replacement for all three vehicle types into the indexes based upon the frequency of the replacement. In Fairbanks, for example, we included 100 percent of the cost because previous research indicated annual replacement was the norm.

To determine the frequency of replacement of windshields, we contacted local dealers and automobile repair shops. Based on the information obtained, we determined that windshield replacement was much more frequent in Alaska than in the other allowance areas or the Washington, DC, area. Therefore, we assumed that windshields had to be replaced every 2 years in the Alaska areas but rarely (*i.e.*, never) in the other areas or in the DC area during the 4-year trade cycle used in the COLA model. The owner's automotive insurance normally covers windshield replacement. Therefore, we used the deductible rather than the surveyed price of windshield replacement, since the deductible was always less than the replacement prices.

5.2.5 Tires

Research previously conducted for OPM revealed that various factors (*e.g.*, road quality/state of repair, road composition) appeared to reduce tread life (*i.e.*, the average number of miles a tire is expected to last) in the allowance areas compared with the Washington, DC, area. Based on this research, the model uses tire expense based on a 40,000-mile tread life in allowance areas and a 55,000-mile tread life in the DC area.

We priced the cost of a new set of tires, including mounting and balancing and all applicable taxes, in each area. We converted this cost into an annual cost by dividing the estimated number of annual miles driven by the expected tread life and multiplying this by the new tire price. Previous research indicated that four extra studded snow tires would be required for all three vehicles in the Alaska allowance areas (but not in the DC area). Therefore, we surveyed the prices of studded snow tires for all vehicles in Anchorage, Fairbanks, Juneau, and Nome. We also priced the cost of rims and switching snow and street tires semi-annually in these Alaska areas.

5.2.6 License and Registration Fees and Miscellaneous Taxes

We obtained information regarding license and registration fees, miscellaneous taxes, and personal property taxes (where applicable). We included license and registration fees as part of the annual cost of owning an automobile. We computed miscellaneous and personal-property taxes for each year of the vehicle's 4-year trade cycle using the vehicle's estimated used-car value for each year. We then averaged the resulting four personal property tax values and included that average as part of the annual cost of owning an automobile.

As stated in section 5.2.1, we included sales and excise taxes in the purchase price of the vehicle and accounted for them under the annual vehicle purchase and finance costs. We also include vehicle inspection fees in any area that requires periodic vehicle inspections.

5.2.7 Depreciation

The single largest annual expense related to owning and operating a new car is depreciation—the lost value of the vehicle as it ages and is driven. The COLA model calculates total depreciation by subtracting from the purchase price the estimated residual value (used car value) 4 years later. The model then divides this value by four to produce an annual depreciation amount.

As described earlier, the new car price was the manufacturer's suggested retail price plus any additional charges, such as shipping, dealer prep, additional dealer markup, documentation fees, excise tax, and sales tax. We based the used car value on information from sources such as the *Kelly Blue Book*. Although such sources track prices of vehicles sold only in the contiguous 48 States, previous research performed by a contractor for OPM did not indicate that used cars in allowance areas were (on average) worth more or less than used cars in the DC area, except for Fairbanks and Nome. For Fairbanks and Nome, we used 90 percent of the projected residual values to reflect more severe conditions.

We note that identical residual values did not result in identical depreciation

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amounts. Depreciation amounts were generally higher in the allowance areas than in the Washington, DC, area because new car prices were generally higher in the allowance areas.

5.2.8 Finance Expense

The COLA model assumes that employees finance new car purchases. Therefore, we surveyed banks in all areas to obtain their auto-loan interest rates for a 48-month loan with 80 percent financing. We computed the finance cost for each vehicle in each area and included it in the annual cost of owning and operating an automobile.

5.2.9 Vehicle Insurance

We surveyed the cost of car insurance in each location using the following common coverages, limits, and deductibles:

Bodily Injury	$100,000/$300,000.
Property Damage	$25,000.
Medical	$15,000.
Uninsured Motorist	$100,000/$300,000.
Comprehensive	$100 Deductible.
Collision	$250 Deductible.

For the 1998 surveys, we adjusted the limits for Property Damage and Medical based on recommendations from insurance carriers during the 1997 surveys.

In each survey area, we identified the common automobile insurance companies and attempted to obtain three insurance price quotes for each type of car surveyed. We averaged these quotes by type of car to produce estimated insurance costs for each area.

As in previous surveys, we found that some insurance companies in Guam, Puerto Rico, and the Virgin Islands did not offer the coverages, limits, and deductibles shown above. To allow the comparison of the cost of these different policies with Washington, DC, area costs, we surveyed the cost of insurance in the DC area with comparable offerings in the three allowance areas. We then compared the costs of these equivalent policies to derive adjustment factors that could be applied to the cost of the standard coverage shown above. By applying these factors to the DC area average price, we estimated the cost of equivalent coverage for these particular allowance areas. Appendix 15 shows the factors and their derivation.

5.2.10 Overall Annual Costs

As described above, we surveyed the annual costs for fuel, maintenance and oil, tires, licensing, taxes, depreciation, finance, and insurance for three types of automobiles in each allowance area and in the Washington, DC, area. We then summed these costs to determine the overall annual costs by area for owning and operating each type of automobile. Appendix 14 shows these costs for each area by type of vehicle.

5.3 Other Transportation Costs—Air Fares

Air fare is the only item we price for the Other Transportation Costs Category. For this item, we surveyed the lowest priced round-trip air fare on a major carrier with a 3-week advance purchase, a 1-week stay over, and travel on Tuesdays and Thursdays. In the previous survey, we used Monday as the travel day. In this survey we used Tuesday (departure date) and Thursday (return date) to avoid peak business travel days and reflect choices consumers might make for recreational travel. While the selection of Tuesday and Thursday as travel days tended to reduce airfares for all areas, it greatly reduced airfares from the Washington, DC, area. This substantially raised the airfare index for each of the COLA areas.

We priced trips from each allowance area and the Washington, DC, area to Chicago, Los Angeles, Miami, New York, Seattle, St. Louis, and Omaha. We selected these cities to represent a range of travel destinations coast-to-coast for COLA-area and DC-area Federal employees. To compute the category indexes, we averaged the costs of the trips from each allowance area and then compared these average costs with the average cost of the trips from the DC area. Appendix 16 shows the fares.

5.4 Transportation Component Analyses

We compared the total cost of private auto transportation for each vehicle in each allowance area with the total cost for the same vehicle in the Washington, DC, area. We express these comparisons as indexes and show them in Appendix 17. Likewise, we compared the cost of air fares for each area with those for the DC area and computed a cost index. Appendixes 16 and 18 show these indexes. We used national average expenditure data to derive weights that reflected how much consumers typically spend to own and operate an automobile versus other transportation expenses. We used these weights, which vary by income level, to combine the Automobile Expense Category index with the Other Transportation Costs index by area to derive the overall Transportation Component index for the area. Appendix 18 shows the weights, computations, and final Transportation Component indexes.

6. Miscellaneous Expenses

6.1 Component Overview

The Miscellaneous Expense Component consists of four categories of expenses:

- Medical care.
- Private education (K–12).
- Contributions (including gifts to non-family members).
- Personal insurance and retirement contributions/investments.

6.2 Component Weights

We used CES data to determine the appropriate weights for each of the items and categories in the Miscellaneous Expense Component. We show the category weights in Table 6–1 and in Appendix 20. Appendix 19 shows item weights.

TABLE 6–1.—MISCELLANEOUS EXPENSE CATEGORIES AND WEIGHTS

Categories	Income level		
	Lower (percent)	Middle (percent)	Upper (percent)
Medical care	40.96	31.24	24.27
Private education (K–12)	0.98	1.26	1.45
Contributions	16.63	16.27	16.01
Personal insurance and retirement contributions	41.44	51.24	58.27
Totals	100.00	100.00	100.00

Note: Values may not total 100 because of rounding.

6.3 Component Categories

6.3.1 Medical Expense Category

We surveyed the price of medical care items using essentially the same approach we used for the Goods and Services Component items. We priced the following medical care items in each allowance area and in the Washington, DC, area:

- Nonprescription pain reliever
- Prescription drugs
- Contact lenses
- Dental service
- Doctor visit
- Hospital room
- Federal health insurance

In addition, we surveyed the price of hospital attendant services in Puerto Rico and air ambulance insurance in the U.S. Virgin Islands. We researched these services during the 1997 surveys, and we found that hospital attendant services were available only in Puerto Rico, where hospital services are significantly different from those in the Washington, DC, area. Therefore, we added the price of hospital attendant service to the price of a hospital room in Puerto Rico. We also found air ambulance insurance to be available only in the Virgin Islands, where on-island hospital services are limited. Therefore, we added the price of air ambulance insurance to the cost of health insurance in the Virgin Islands.

We used Federal employee health benefit enrollment information from OPM's Central Personnel Data File along with Federal health benefit premiums to compute average health benefit expense by areas. These expenses varied by area, and we used these averages rather than assuming that costs were constant among areas.

We surveyed the cost of the health care items in both the allowance areas and in the DC area. We compared the prices to produce an index for each item in each area, then combined these indexes using CES weights to produce a single Medical Care Category index for each area.

6.3.2 Private Education (K–12) Category

Since not everyone sends their children to private school, we derived use factors from the results of the 1992/93 Federal Employee Housing and Living Patterns Survey. Table 6–2 shows these factors and the resulting adjustment of price indexes by area. The factors reflect the relative extent to which Federal employees make use of private education in the COLA areas compared with the Washington, DC, area. For example, the table indicates a use factor of 4.1066 for Puerto Rico because about 54 percent of Federal employees with school age children there send at least one child to private school, compared with about 13 percent for the DC area.

TABLE 6–2.—SUMMARY OF PRIVATE EDUCATION USE FACTORS AND INDEXES

Location	Employees w/children in private schools		Use factor	Price index	Price index w/use factor
	Local area	DC area			
Anchorage	10.34	13.23	0.7816	55.53	43.40
Fairbanks	8.56	13.23	0.6470	41.59	26.91
Juneau	12.43	13.23	0.9395	57.30	53.84
Nome	8.08	13.23	0.6107	38.42	23.46
Honolulu	26.86	13.23	2.0302	113.03	229.48
Hilo*	18.94	13.23	1.4316	44.23	63.32
Kona*	18.94	13.23	1.4316	87.03	124.59
Kauai	22.46	13.23	1.6977	95.72	162.50
Maui	20.39	13.23	1.5412	89.05	137.24
Guam	42.26	13.23	3.1943	90.95	290.52
Puerto Rico	54.33	13.23	4.1066	66.85	274.52
St. Croix	57.27	13.23	4.3288	90.26	390.72
St. Thomas	51.90	13.23	3.9229	95.78	375.74

*Use data available only for Hawaii County.

6.3.3 Contributions Category

The index for the Contributions Category is the same as the Goods and Services Component index for the area. We use the Goods and Services index based on our assumption that the relative level of contributions is roughly equivalent to that reflected by the Goods and Services index.

6.3.4—Personal Insurance and Retirement Category

We assume the index for personal insurance and retirement contributions and investments to be constant among areas. The cost of Federal Employees Group Life Insurance is a matter of personal preference and is constant in all areas for the same age, salary, and benefit option combinations. Likewise, retirement contributions are a matter of personal preference, and the minimum contribution requirements are constant among areas for equivalent salary levels.

6.4 Miscellaneous Expense Analyses

As with the Goods and Services Component, we combined the indexes for each of the Miscellaneous Component categories using CES weights to produce component indexes by income level for each area. Appendix 20 shows these indexes. Section 2.6 describes how we combine miscellaneous expense component indexes with the other component indexes to derive the final index for each area.

7. Final Results

7.1 Total Comparative Cost Indexes

The total comparative cost indexes appear in Table 7–1. Appendix 22 shows how we derived each index from the component indexes.

TABLE 7–1.—FINAL COST COMPARISON INDEXES

Allowance area	Index
Anchorage, Alaska	105.65
Fairbanks, Alaska	109.19
Juneau, Alaska	110.46
The rest of the State of Alaska	131.58
City and County of Honolulu, Hawaii	124.51
Hawaii County, Hawaii	110.89
Kauai County, Hawaii	117.19
Maui County, Hawaii	120.32
Guam/CNMI, Local Retail	125.23
Guam/CNMI, Commissary/Exchange	121.12

TABLE 7–1.—FINAL COST COMPARISON INDEXES—Continued

Allowance area	Index
Puerto Rico	105.93

TABLE 7–1.—FINAL COST COMPARISON INDEXES—Continued

Allowance area	Index
U.S. Virgin Islands	116.33

Appendix 1—Publication in the Federal Register of Prior Survey Results: 1990–1998

Citation	Title	Contents
56 FR 7902	Cost-of-Living Allowances and Post Differentials (Nonforeign Areas).	Results of summer 1990 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
57 FR 58556	Report on 1991/1992 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas.	Results of summer 1991 and winter 1992 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
58 FR 45558	Report on 1992/1993 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas.	Results of summer 1992 and winter 1993 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
58 FR 27316	Report on Summer 1993 Surveys Used to Determine Cost-of-Living Allowances in Nonforegin areas.	Results of summer 1993 living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
59 FR 45066	Report on Winter 1994 Surveys Used to Determine Cost-of-Living allowances in Alaska..	Results of winter 1994 living-cost surveys conducted in Alaska.
60 FR 61332	Report on Summer 1994 Surveys Used to Determine Cost-of-Living Allowances in Selected Nonforeign Areas.	Results of summer 1994 living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
61 FR 4070	Report on Winter 1995 Surveys Used to Determine Cost-of-Living Allowances in Alaska.	Results of winter 1995 living-cost surveys conducted in Alaska.
61 FR 14190	Report on 1996 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas.	Results of 1996 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
63 FR 56432	Report on 1997 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas.	Results of 1997 living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.

Appendix 2.—Federal Employment Weights

MULTIPLE INCOME LEVELS: 1998 SURVEY

[Data from multiple income levels within a single allowance area]

Location and income level	1995	1996	1998	Average	Weights
Anchorage:					
Lower	1,540	1,445	1,401	1,462	27.02
Middle	1,754	1,719	1,500	1,658	30.64
Upper	2,522	2,448	1,903	2,291	42.34
Totals				5,411	100.00
Fairbanks:					
Lower	388	449	466	434	35.20
Middle	446	456	386	429	34.79
Upper	405	397	308	370	30.01
Totals				1,233	100.00
Juneau:					
Lower	139	126	100	122	18.91
Middle	203	199	174	192	29.77
Upper	341	346	306	331	51.32
Totals				645	100.00
Rest of Alaska:					
Lower	349	363	306	339	23.96
Middle	703	687	543	644	45.51
Upper	481	462	352	432	30.53
Totals				1,415	100.00
Honolulu:					
Lower	4,140	4,453	3,919	4,171	33.01
Middle	3,952	4,009	3,858	3,940	31.19
Upper	4,514	4,476	4,580	4,523	35.80
Totals				12,634	100.00
Hawaii:					
Lower	139	152	138	143	35.40
Middle	164	163	160	162	40.10
Upper	98	101	99	99	24.50
Totals				404	100.00
Kauai:					

MULTIPLE INCOME LEVELS: 1998 SURVEY—Continued

[Data from multiple income levels within a single allowance area]

Location and income level	1995	1996	1998	Average	Weights
Lower	73	59	51	61	27.23
Middle	76	80	64	73	32.59
Upper	97	92	80	90	40.18
Totals	.....	.....	.....	224	100.00
Maui:					
Lower	35	35	23	31	22.79
Middle	59	62	60	60	44.12
Upper	51	51	33	45	33.09
Totals	.....	.....	.....	136	100.00
Guam/CNMI:					
Lower	947	873	763	861	45.15
Middle	669	640	561	623	32.67
Upper	464	430	375	423	22.18
Totals	.....	.....	.....	1,907	100.00
Puerto Rico:					
Lower	2,370	2,281	2,205	2,285	39.89
Middle	2,166	2,177	2,073	2,139	37.34
Upper	1,303	1,286	1,322	1,304	22.77
Totals	.....	.....	.....	5,728	100.00
Virgin Islands:					
Lower	98	123	88	103	32.49
Middle	133	137	130	133	41.96
Upper	83	76	84	81	25.55
Totals	.....	.....	.....	317	100.00

MULTIPLE SURVEY AREAS: 1998 SURVEY

[Data from multiple survey areas within a single allowance area]

Location	1995	1996	1998	Average	Weights
Hawaii County:					
Hilo	304	308	300	304	75.81
Kona	97	96	97	97	24.19
Totals	.....	.....	.....	401	100.00
Virgin Islands:					
St. Croix	154	166	140	153	48.26
St. Thomas/St. John	160	170	162	164	51.74
Totals	.....	.....	.....	31	100.00

Appendix 3—Consumer Expenditure Surveys

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*

	Total complete reporting			
	1994	1995	1997	Average
Average before tax income	36,838.00	36,948.00	39,926.00	37,904.00
Average annual expenditures	32,762.99	33,610.38	36,145.95	34,173.11
Food	4,526.94	4,690.51	4,902.06	4,706.50
Food at home	2,764.21	2,885.98	2,970.28	2,873.49
Cereals and bakery products	439.36	454.64	464.66	452.89
Cereals and cereal products	166.94	169.16	165.56	167.22
Flour	7.93	8.93	8.94	8.60
Prepared flour mixes	13.20	13.29	16.51	14.33
Ready-to-eat and cooked cereals	102.02	99.83	92.76	98.20
Rice	15.47	19.43	18.21	17.70
Pasta, commeal and other cereal products	28.32	27.68	29.13	28.38
Bakery products	272.42	285.49	299.10	285.67
Bread	77.20	78.18	86.16	80.51
White bread	38.02	38.37	42.35	39.58
Bread, other than white	39.17	39.81	43.81	40.93

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Crackers and cookies	64.36	70.09	70.06	68.17
Cookies	43.78	46.76	45.86	45.47
Crackers	20.58	23.33	24.19	22.70
Frozen and refrigerated bakery products	22.16	22.42	23.43	22.67
Other bakery products	108.70	114.79	119.45	114.31
Biscuits and rolls	37.26	39.48	42.66	39.80
Cakes and cupcakes	31.12	36.15	34.41	33.89
Bread and cracker products	4.68	4.45	4.68	4.60
Sweetrolls, coffee cakes, doughnuts	23.08	21.57	23.58	22.74
Pies, tarts, turnovers	12.55	13.14	14.11	13.27
Meats, poultry, fish, and eggs	728.89	758.30	756.18	747.79
Beef	226.73	232.15	226.37	228.42
Ground beef	89.79	87.81	84.79	87.46
Roast	37.79	40.70	40.06	39.52
Chuck roast	12.10	12.54	13.59	12.74
Round roast	14.18	13.55	12.01	13.25
Other roast	11.51	14.62	14.46	13.53
Steak	85.81	87.57	89.04	87.47
Round steak	16.44	18.92	17.82	17.73
Sirloin steak	24.09	22.70	23.86	23.55
Other steak	45.28	45.95	47.36	46.20
Other beef	13.34	16.06	12.48	13.96
Pork	154.66	157.51	161.13	157.77
Bacon	23.01	20.26	26.23	23.17
Pork chops	37.47	39.03	39.60	38.70
Ham	36.74	38.51	38.45	37.90
Ham, not canned	33.91	36.23	36.03	35.39
Canned ham	2.84	2.28	2.43	2.52
Sausage	22.63	21.35	25.09	23.02
Other pork	34.80	38.36	31.75	34.97
Other meats	94.34	105.31	98.81	99.49
Frankfurters	19.13	22.78	23.52	21.81
Lunch meats (cold cuts)	65.67	71.55	67.48	68.23
Bologna, liverwurst, salami	23.25	25.15	23.88	24.09
Other lunch meats	42.41	46.40	43.60	44.14
Lamb, organ meats and others	9.54	10.98	7.80	9.44
Lamb and organ meats	9.31	8.92	7.10	8.44
Mutton, goat and game	0.24	2.06	0.70	1.00
Poultry	135.32	136.43	145.61	139.12
Fresh and frozen chickens	107.49	105.79	114.50	109.26
Fresh whole chicken	NA	NA	NA	NA
Fresh and frozen whole chicken	29.05	28.37	29.94	19.44
Fresh and frozen chicken parts	78.44	77.43	84.56	80.14
Other poultry, incl. whole frozen chickens	NA	NA	NA	NA
Other poultry	27.83	30.64	31.11	20.58
Fish and seafood	87.13	95.34	90.67	91.05
Canned fish and seafood	15.60	17.95	14.42	15.99
Fresh and frozen shellfish	NA	NA	NA	NA
Fresh and frozen finfish	NA	NA	NA	NA
Fresh fish and shellfish	48.29	50.11	51.69	50.90
Frozen fish and shellfish	23.23	27.28	24.55	25.92
Eggs	30.72	31.55	33.59	31.95
Dairy products	297.87	311.48	328.97	312.77
Fresh milk and cream	131.98	129.41	134.35	131.91
Whole milk	NA	NA	NA	NA
Other milk and cream	NA	NA	NA	NA
Fresh milk, all types	123.44	119.84	124.37	122.10
Cream	8.55	9.56	9.97	9.76
Other dairy products	165.88	182.07	194.62	180.86
Butter	11.78	13.03	15.08	13.30
Cheese	84.78	93.13	99.99	92.63
Ice cream and related products	48.15	53.06	54.45	51.89
Miscellaneous dairy products	21.17	22.85	25.11	23.04
Fruits and vegetables	446.10	467.45	485.34	466.30
Fresh fruits	135.12	148.22	154.00	145.78
Apples	25.34	29.98	28.67	28.00
Bananas	30.25	31.09	32.54	31.29
Oranges	16.05	16.21	18.05	16.77
Other fresh fruits	63.49	70.94	74.73	69.72
Fresh vegetables	138.99	140.83	145.02	141.61

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Potatoes	28.24	28.75	26.24	27.74
Lettuce	17.65	18.31	19.04	18.33
Tomatoes	21.59	21.89	24.47	22.65
Other fresh vegetables	71.52	71.89	75.27	72.89
Processed fruits	95.31	96.98	104.68	98.99
Frozen fruits and fruit juices	16.38	17.35	15.49	16.41
Frozen orange juice	9.57	9.19	8.56	9.11
Other frozen fruits and juices	6.81	8.15	6.93	7.30
Canned and dried fruits	21.11	20.11	20.50	20.57
Fresh, canned or bottled fruit juices	57.83	59.52	68.69	62.01
Processed vegetables	76.68	81.42	81.65	79.92
Frozen vegetables	24.78	29.55	27.14	27.16
Canned and dried vegetables and juices	51.90	51.88	54.51	52.76
Canned beans	10.61	11.26	11.95	11.27
Canned corn	6.99	6.80	7.38	7.06
Other canned and dried veg. and juices	34.30	33.80	35.17	34.42
Other food at home	851.99	894.10	935.13	893.74
Sugar and other sweets	110.67	119.49	118.31	116.16
Candy and chewing gum	66.52	73.02	71.95	70.50
Sugar	18.30	17.88	19.59	18.59
Artificial sweeteners	3.57	4.56	3.45	3.86
Jams, preserves, other sweets	22.28	24.02	23.32	23.21
Fats and oils	80.76	83.63	83.38	82.59
Margarine	14.68	13.13	12.25	13.35
Other fats, oils, and salad dressing	47.48	51.88	51.07	50.14
Nondairy cream and imitation milk	6.71	6.96	8.56	7.41
Peanut butter	11.89	11.66	11.50	11.68
Miscellaneous foods	369.77	394.39	424.58	396.25
Frozen prepared foods	65.79	69.94	82.25	72.66
Frozen meals	20.54	21.71	21.74	21.33
Other frozen prepared foods	45.25	48.22	60.51	51.33
Canned and packaged soups	30.21	31.92	33.24	31.79
Potato chips, nuts, and other snacks	75.91	84.32	88.63	82.95
Potato chips and other snacks	59.81	65.63	70.36	65.27
Nuts	16.10	18.69	18.27	17.69
Condiments and seasonings	82.47	89.18	91.74	87.80
Salt, spices, other seasonings	19.68	20.55	20.23	20.15
Olives, pickles, relishes	10.76	10.13	11.26	10.72
Sauces and gravies	38.05	41.78	43.18	41.00
Baking needs and misc. products	13.98	16.71	17.07	15.92
Other canned and packaged prepared foods	115.39	119.03	128.73	121.05
Salads and desserts	19.30	23.19	25.84	22.78
Baby food	27.68	25.42	28.65	27.25
Miscellaneous prepared foods	68.41	70.42	74.24	71.02
Nonalcoholic beverages	241.81	250.31	254.04	248.72
Cola	93.27	94.76	94.27	94.10
Other carbonated drinks	40.20	43.28	45.17	42.88
Coffee	43.29	47.76	49.87	46.97
Roasted coffee	29.20	32.11	33.41	31.57
Instant and freeze dried coffee	14.09	15.65	16.47	15.40
Noncarbonated fruit flavored drinks	NA	NA	NA	NA
Noncarb. fruit flavored drinks, inc. non-frozen lemonade	23.02	25.18	19.81	15.00
Tea	16.75	16.01	15.22	15.99
Nonalcoholic beer	0.76	1.17	0.33	0.75
Other nonalcoholic beverages	24.52	22.13	29.37	25.34
Food prepared by consumer unit on out-of-town trips	48.98	46.29	54.82	50.03
Food away from home	1,762.72	1,804.53	1,931.78	1,833.01
Meals at restaurants, carry-outs and other	1,363.26	1,426.22	1,516.51	1,435.33
Lunch	475.88	499.50	517.92	497.77
Dinner	668.88	691.44	753.30	704.54
Snacks and nonalcoholic beverages	110.46	126.30	128.93	121.90
Breakfast and brunch	108.05	108.98	116.35	111.13
Board (including at school)	50.40	58.40	49.67	52.82
Catered affairs	55.38	37.05	40.15	44.19
Food on out-of-town trips	213.45	204.85	235.69	218.00
School lunches	54.93	49.47	55.88	53.43
Meals as pay	25.30	28.53	33.87	29.23
Alcoholic beverages	296.57	301.83	330.23	309.54
At home	175.40	179.33	190.83	181.85
Beer and ale	108.74	94.20	98.68	100.54

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PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Whiskey	14.25	12.83	14.43	13.84
Wine	36.06	54.77	54.55	48.46
Other alcoholic beverages	16.36	17.53	23.17	19.02
Away from home	121.17	122.51	139.40	127.69
Beer and ale	42.50	36.61	43.35	40.82
Wine	16.74	22.55	26.02	21.77
Other alcoholic beverages	30.22	33.33	35.10	32.88
Alcoholic beverages purchased on trips	31.71	30.02	34.93	32.22
Housing	10,189.41	10,576.98	11,348.00	10,704.80
Shelter	5695.83	5912.61	6339.07	5982.50
Owned dwellings	3464.04	3750.08	3933.15	3715.76
Mortgage interest and charges	1925.26	2120.77	2235.07	2093.70
Mortgage interest	1825.30	1997.99	2114.98	1979.42
Interest paid, home equity loan	44.67	56.26	60.52	53.82
Interest paid, home equity line of credit	54.73	66.06	59.38	60.06
Prepayment penalty charges	0.56	0.46	0.19	0.40
Property taxes	879.41	909.28	946.59	911.76
Maintenance, repairs, insurance, other expenses	659.37	720.02	751.49	710.29
Homeowners and related insurance	209.07	224.86	233.28	222.40
Fire and extended coverage	6.34	7.31	8.19	7.28
Homeowners insurance	202.73	217.55	225.09	215.12
Ground rent	40.26	33.61	37.61	37.16
Maintenance and repair services	312.65	366.16	369.97	349.59
Painting and papering	43.27	38.26	38.94	40.16
Plumbing and water heating	36.45	32.01	35.81	34.76
Heat, a/c, electrical work	55.08	75.83	62.71	64.54
Roofing and gutters	48.91	66.13	81.75	65.60
Other repair and maintenance services (old)	NA	NA	NA	NA
Other repair and maintenance services	112.39	136.51	128.52	88.34
Repair and replacement of hard surface flooring	14.76	15.56	20.35	16.89
Repair of built in appliances	1.78	1.86	1.89	1.84
Maintenance and repair commodities	75.59	70.72	88.29	78.20
Paints, wallpaper and supplies	18.95	19.73	19.34	19.34
Tools and equipment for painting and wallpapering	2.04	2.12	2.08	2.08
Plumbing supplies and equipment	8.57	7.42	6.15	7.38
Electrical supplies, heating and cooling equipment	5.86	4.97	4.16	5.00
Materials for hard surface flooring, repair/replace	5.08	3.33	7.78	5.40
Materials and equipment for roof and gutters	5.94	4.96	8.88	6.59
Materials for plaster, paneling, siding, doors, etc.	12.78	10.72	16.64	13.38
Materials for patio, walk, fence, driveway, etc.	0.52	0.59	0.72	0.61
Materials for landscaping maintenance	1.48	1.66	4.99	2.71
Miscellaneous supplies and equipment	14.37	15.22	17.55	15.71
Material for insulation, other maint., and repair	10.19	11.05	10.06	10.43
Materials to finish basements, remodeling, etc.	4.18	4.17	7.49	5.28
Property management and security	21.59	24.67	20.87	22.38
Property management	12.78	18.44	17.75	16.32
Management and upkeep services for security	8.81	6.22	3.12	6.05
Parking	0.21	0.00	1.47	0.74
Rented dwellings	1,828.52	1,786.70	1,979.74	1,864.99
Rent	1,755.05	1,716.57	1,867.90	1,779.84
Rent as pay	42.31	48.19	75.65	55.38
Maintenance, insurance and other expenses	31.16	21.94	36.18	29.76
Tenant's insurance	9.65	7.50	10.07	9.07
Maintenance and repair services	11.56	5.29	18.06	11.64
Repair or maintenance services (old)	NA	NA	NA	NA
Repair or maintenance services	10.37	4.97	16.63	7.20
Repair and replacement of hard surface flooring	1.05	0.25	1.40	0.90
Repair of built-in appliances	0.13	0.07	0.04	0.08
Maintenance and repair commodities	9.95	9.15	8.05	9.05
Paint, wallpaper, and supplies	2.09	1.62	1.57	1.76
Tools and equipment for painting and wallpapering	0.22	0.17	0.17	0.19
Materials for plastering, panels, roofing, gutters, etc.	1.23	0.87	1.10	1.07
Materials for patio, walk, fence, driveway, etc.	0.09	0.04	0.00	0.04
Plumbing supplies and equipment	0.70	1.35	0.40	0.82
Electrical supplies, heating and cooling equipment	1.36	0.37	0.09	0.61
Miscellaneous supplies and equipment	3.41	4.00	3.30	3.57
Material for insulation, other maint. and repair	1.13	1.51	1.10	1.25
Termite and pest control (capital improvement)	NA	NA	NA	NA
Materials for additions, finishing basements, etc.	1.67	2.44	1.88	2.00

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Construction materials for jobs not started	0.61	0.04	0.31	0.32
Material for hard surface flooring	0.54	0.27	0.92	0.58
Material for landscape maintenance	0.31	0.47	0.49	0.42
Other lodging.				
Owned vacation homes	122.14	110.00	135.60	122.58
Mortgage interest and charges	43.30	38.31	59.25	46.95
Mortgage interest	39.56	36.36	57.41	44.44
Interest paid, home equity loan	0.43	0.15	0.72	0.43
Interest paid, home equity line of credit	3.31	1.80	1.11	2.07
Prepayment penalty charge	NA	NA	NA	NA
Property taxes	51.02	48.11	54.07	51.07
Maintenance, insurance, and other expenses	27.82	23.58	22.28	24.56
Homeowners and related insurance	7.66	5.66	4.66	5.99
Homeowners insurance	7.35	5.53	4.25	5.71
Fire and extended coverage	0.31	0.14	0.41	0.29
Ground rent	3.62	2.15	1.10	2.29
Maintenance and repair services	11.87	11.13	11.54	11.51
Repair and remodeling services (old)	NA	NA	NA	NA
Repair and remodeling services	11.40	11.07	11.35	7.47
Repair and replacement of surface flooring	0.47	0.06	0.19	0.24
Maintenance and repair commodities	1.35	2.35	0.98	1.56
Paints, wallpaper, supplies	0.16	0.58	0.37	0.37
Tools and equip. for painting and wallpapering	0.02	0.06	0.04	0.04
Materials for plaster., panel., roof., gutters, etc.	0.10	0.51	0.35	0.32
Material for patio, walk, fence, drive, masonry, etc	NA	NA	NA	NA
Plumbing supplies and equipment	0.05	0.07	0.08	0.07
Electrical supplies, heating and cooling equipment	NA	NA	NA	NA
Miscellaneous supplies and equipment	0.99	0.29	0.14	0.47
Material for insulation, other maint. and repair	0.99	0.29	0.13	0.47
Material for finishing basements & remodeling rooms	NA	NA	0.00	0.00
Materials for hard surface flooring	0.03	0.84	0.00	0.42
Materials for landscaping maintenance	NA	NA	NA	NA
Property management and security	3.27	2.28	3.67	3.07
Property management	2.36	1.51	3.24	2.37
Management and upkeep services for security	0.91	0.77	0.43	0.70
Parking	0.06	0.00	0.33	0.13
Housing while attending school	59.54	56.69	57.09	57.77
Lodging on out-of-town trips	221.60	209.14	233.48	221.41
Utilities, fuels, and public services	2,170.32	2,180.19	2,407.84	2,252.78
Natural gas	280.09	268.59	298.08	282.25
Utility—natural gas (renter)	60.54	60.43	60.79	60.59
Utility—natural gas (owned home)	216.97	206.77	235.78	219.84
Utility—natural gas (owned vacation)	2.53	1.25	1.35	1.71
Utility—natural gas (rented vacation)	0.05	0.14	0.17	0.12
Electricity	846.21	854.21	899.68	866.70
Electricity (renter)	207.80	201.80	211.65	207.08
Electricity (owned home)	630.39	643.72	679.66	651.26
Electricity (owned vacation)	7.36	7.78	7.45	7.53
Electricity (rented vacation)	0.65	0.92	0.92	0.83
Fuel oil and other fuels	98.11	85.56	109.11	97.59
Fuel oil	59.27	48.19	54.87	54.11
Fuel oil (renter)	6.49	3.92	5.14	5.18
Fuel oil (owned home)	52.38	43.76	49.16	48.43
Fuel oil (owned vacation)	0.40	0.47	0.54	0.47
Fuel oil (rented vacation)	NA	0.04	0.04	0.03
Coal	1.66	2.47	0.94	1.69
Coal (renter)	0.55	0.10	0.02	0.22
Coal (owned home)	1.12	2.37	0.92	1.47
Coal (owned vacation)	NA	NA	NA	NA
Coal (rented vacation)	NA	NA	NA	NA
Bottled gas	30.68	28.71	45.55	34.98
Gas, btld/tank (renter)	4.19	4.12	5.18	4.50
Gas, btld/tank (owned home)	23.43	21.80	37.31	27.51
Gas, btld/tank (owned vacation)	3.03	2.78	3.04	2.95
Gas, btld/tank (rented vacation)	0.04	0.02	0.02	0.02
Wood and other fuels	6.49	6.19	7.75	6.81
Wood/other fuels (renter)	0.61	0.80	1.66	1.02
Wood/other fuels (owned home)	5.81	5.36	5.99	5.72
Wood/other fuels (owned vacation)	0.06	0.04	0.09	0.06
Wood/other fuels (rented vacation)	NA	NA	0.01	0.00

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PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Telephone services	688.52	709.69	809.32	735.84
Telephone (old)	NA	NA	NA	NA
Telephone services in home city, excluding car phones	674.31	683.24	755.32	704.29
Telephone services for mobile car phone	14.21	26.45	54.00	40.22
Water and other public services	257.41	262.14	291.65	270.40
Water and sewerage maintenance	182.67	188.59	210.76	194.01
Water/sewer maint. (renter)	26.75	26.25	28.93	27.31
Water/sewer maint. (owned home)	154.37	160.72	179.88	164.99
Water/sewer maint. (owned vacation)	1.50	1.47	1.79	1.59
Water/sewer maint. (rented vacation)	0.04	0.16	0.16	0.12
Trash and garbage collection	73.48	71.56	78.22	74.42
Trash/garb. coll. (renter)	9.37	8.40	9.16	8.98
Trash/garb. coll. (owned home)	62.61	62.16	67.47	64.08
Trash/garb. coll. (owned vacation)	1.45	0.96	1.52	1.31
Trash/garb. coll. (rented vacation)	0.04	0.05	0.08	0.06
Septic tank cleaning	1.26	1.99	2.68	1.98
Septic tank clean. (renter)	0.01	0.02	0.17	0.07
Septic tank clean. (owned home)	1.23	1.88	2.49	1.87
Septic tank clean. (owned vacation)	NA	0.08	0.01	0.03
Septic tank clean. (rented vacation)	0.01	0.00	0.00	0.00
Household operations	499.86	517.87	561.77	526.50
Personal services	240.70	263.71	272.92	259.11
Babysitting	81.17	78.64	76.94	78.92
Care for elderly, invalids, handicapped, etc	19.24	32.74	24.69	25.56
Day-care centers, nursery, and preschools	140.29	152.33	171.29	154.64
Other household expenses	259.16	254.16	288.84	267.39
Housekeeping services	82.83	86.51	76.51	81.95
Gardening, lawn care service	69.73	63.82	73.37	68.97
Water softening service	2.65	3.12	5.11	3.63
Household laundry, dry cleaning, sent out (nonclothing)	1.79	1.78	10.34	4.64
Coin-operated laundry and dry cleaning (nonclothing)	5.40	4.72	4.74	4.95
Services for termite/pest control maintenance	7.46	12.01	11.71	11.86
Other home services	20.11	16.38	16.58	17.69
Termite/pest control products	0.29	0.13	0.15	0.19
Moving, storage, freight express	27.54	27.59	32.44	29.19
Appliance repair, including service center	15.24	15.45	13.77	14.82
Reupholstering, furniture repair	11.03	11.54	11.78	11.45
Repair/rental of lawn/garden equipment, tools, etc.	9.20	5.85	5.47	6.84
Appliance rental	1.55	1.76	1.10	1.47
Rental of office equipment for nonbusiness use	0.31	0.35	0.46	0.37
Repair of misc. household equipment and furnishings	2.46	1.98	1.25	1.90
Repair of computer systems for nonbusiness use	1.57	1.18	2.70	1.82
Computer information services	NA	NA	21.35	7.12
Housekeeping supplies	424.30	465.39	484.90	458.20
Laundry and cleaning supplies	117.94	117.93	124.91	120.26
Soaps and detergents	66.49	66.92	69.41	67.61
Other laundry cleaning products	51.45	51.00	55.50	52.65
Other household products	187.75	207.85	222.40	206.00
Cleansing and toilet tissue, paper towels and napkins	60.17	65.62	69.32	65.04
Miscellaneous household products	80.66	74.41	94.06	83.04
Lawn and garden supplies	46.92	67.82	59.02	57.92
Postage and stationery	118.61	139.62	137.60	131.94
Stationery, stationery supplies, giftwraps	62.86	68.49	67.06	66.14
Postage	55.74	71.12	70.54	65.80
Household furnishings and equipment	1399.10	1500.92	1554.42	1484.81
Household textiles	106.15	107.85	81.91	98.64
Bathroom linens	13.89	17.82	12.07	14.59
Bedroom linens	52.67	47.70	35.52	45.30
Kitchen and dining room linens	7.27	9.73	2.39	6.46
Curtains and draperies	19.08	18.51	16.52	18.04
Slipcovers, decorative pillows	2.08	1.38	2.40	1.95
Sewing material for slipcovers, curtains, etc.	10.11	11.54	11.73	11.13
Other linens	1.04	1.18	1.28	1.17
Furniture	323.70	320.03	380.46	341.40
Mattress and springs	44.00	41.99	45.54	43.84
Other bedroom furniture	53.64	52.39	60.38	55.47
Sofas	76.89	69.70	89.42	78.67
Living room chairs	34.47	35.69	51.17	40.44
Living room tables	14.27	17.12	21.35	17.58
Kitchen, dining room furniture	49.61	48.99	46.41	48.34

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Infants' furniture	6.04	6.46	11.19	7.90
Outdoor furniture	12.29	10.46	12.33	11.69
Occasional furniture	32.50	37.23	42.67	37.47
Floor coverings	131.65	211.89	82.77	142.10
Wall-to-wall carpeting (renter)	2.50	4.40	1.92	2.94
Wall-to-wall carpet, installed (renter)	2.12	3.79	1.49	2.47
Wall-to-wall carpet, not installed carpet squares (renter)	0.38	0.61	0.43	0.47
Wall-to-wall carpet (replacement) (owned home)	34.44	33.43	35.44	34.44
Wall-to-wall carpet, not installed, carpet squares (owner)	1.81	2.20	2.72	2.24
Wall-to-wall carpet, installed (replacement) (owner)	32.63	31.24	32.72	32.20
Room size rugs and other floor covering, nonpermanent	94.72	174.05	45.41	104.73
Major appliances	152.32	155.56	174.03	160.64
Dishwashers (built-in), garbage disposals, etc. (renter)	0.75	1.00	0.89	0.88
Dishwashers (built-in), garbage disposals, etc. (owner)	10.97	9.72	11.18	10.62
Refrigerators, freezers (renter)	6.90	6.34	10.51	7.92
Refrigerators, freezers (owned home)	38.91	41.01	49.16	43.03
Washing machines (renter)	6.05	4.51	5.51	5.36
Washing machines (owned home)	14.39	15.37	17.52	15.76
Clothes dryers (renter)	4.04	2.99	4.64	3.89
Clothes dryers (owned home)	9.31	11.07	12.07	10.82
Cooking stoves, ovens (renter)	2.42	2.79	2.87	2.69
Cooking stoves, ovens (owned home)	22.97	18.73	18.99	20.23
Microwave ovens (renter)	3.35	3.29	3.15	3.26
Microwave ovens (owned home)	6.48	5.74	6.97	6.40
Portable dishwasher (renter)	0.08	0.21	0.51	0.27
Portable dishwasher (owned home)	0.49	0.64	0.23	0.45
Window air conditioners (renter)	2.83	3.08	2.04	2.65
Window air conditioners (owned home)	3.93	9.56	3.78	5.76
Electric floor cleaning equipment	13.92	13.86	16.13	14.64
Sewing machines	2.92	4.88	3.49	3.76
Miscellaneous household appliances	1.61	0.75	4.38	2.25
Small appliances, miscellaneous housewares	85.73	90.94	100.26	92.31
Housewares	60.60	67.05	72.38	66.68
Plastic dinnerware	1.60	1.69	1.89	1.73
China and other dinnerware	11.63	12.23	9.65	11.17
Flatware	5.16	4.46	4.42	4.68
Glassware	8.14	7.26	8.60	8.00
Silver serving pieces	1.31	2.20	2.69	2.07
Other serving pieces	1.63	1.26	1.92	1.60
Nonelectric cookware	15.22	16.70	16.34	16.09
Tableware, nonelectric kitchenware	15.92	21.25	26.86	21.34
Small appliances	25.13	23.90	27.88	25.64
Small electric kitchen appliances	18.19	16.55	17.50	17.41
Portable heating and cooling equipment	6.94	7.34	10.38	8.22
Miscellaneous household equipment	599.55	614.64	734.99	649.73
Window coverings	14.48	11.21	11.69	12.46
Infants' equipment	7.46	8.08	8.25	7.93
Laundry and cleaning equip.	11.25	12.49	14.51	12.75
Outdoor equipment	5.48	4.61	15.99	8.69
Clocks	5.32	3.28	5.03	4.54
Lamps and lighting fixtures	36.98	33.94	13.73	28.22
Other household decorative items	119.06	158.39	134.65	137.37
Telephones and accessories	38.10	16.02	103.30	52.47
Lawn and garden equipment	53.17	44.68	40.53	46.13
Power tools	13.51	16.39	17.48	15.79
Small miscellaneous furnishings	1.88	2.64	0.00	1.51
Office furniture for home use	0.00	0.00	12.79	4.26
Hand tools	9.88	11.98	9.99	10.62
Indoor plants, fresh flowers	52.70	49.20	53.57	51.82
Closet and storage items	8.33	8.09	9.57	8.66
Rental of furniture	4.53	3.62	3.50	3.88
Luggage	8.00	10.25	10.01	9.42
Computers and computer hardware nonbusiness use	115.01	145.69	169.01	143.24
Computer software/accessories for nonbusiness use	20.05	19.51	26.83	22.13
Telephone answering devices	3.95	3.74	3.52	3.74
Calculators	2.35	2.10	2.10	2.18
Business equipment for home use	4.75	4.63	2.54	3.97
Other hardware	25.27	16.69	26.24	22.73
Smoke alarms (owned home)	0.86	1.32	0.94	1.04
Smoke alarms (renter)	0.15	0.18	0.18	0.17

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	Total complete reporting			
	1994	1995	1997	Average
Smoke alarms (owned vacation)	NA	NA	NA	NA
Other household appliances (owned home)	6.69	4.94	8.05	6.56
Other household appliances (renter)	1.36	1.10	1.61	1.36
Miscellaneous household equipment and parts	28.95	19.90	29.39	26.08
Apparel and services	1688.22	1770.53	1786.46	1748.40
Men and boys	418.74	437.23	422.86	426.28
Men, 16 and over	320.76	339.22	337.81	332.60
Men's suits	32.42	33.44	34.72	33.53
Men's sportcoats, tailored jackets	13.87	13.43	14.51	13.94
Men's coats and jackets	29.56	31.87	32.90	31.44
Men's underwear	12.90	19.04	13.47	15.14
Men's hosiery	10.30	14.66	10.13	11.70
Men's nightwear	2.73	3.93	2.74	3.13
Men's accessories	29.43	32.09	32.41	31.31
Men's sweaters and vests	14.23	12.51	15.51	14.08
Men's active sportswear	11.96	10.37	11.60	11.31
Men's shirts	79.19	78.33	81.15	79.56
Men's pants	62.55	65.60	68.67	65.61
Men's shorts, shorts sets	15.91	18.79	15.16	16.62
Men's uniforms	3.35	4.01	2.13	3.16
Men's costumes	2.34	1.14	2.70	2.06
Boys, 2 to 15	97.98	98.01	85.05	93.68
Boys' coats and jackets	6.61	11.14	8.48	8.74
Boys' sweaters	2.76	1.94	2.87	2.52
Boys' shirts	21.53	21.66	17.77	20.32
Boys' underwear	4.57	5.52	3.22	4.44
Boys' nightwear	2.13	0.81	2.05	1.66
Boys' hosiery	3.75	4.69	2.99	3.81
Boys' accessories	7.57	5.72	4.53	5.94
Boys' suits, sportcoats, vests	[illegible]10	3.30	3.04	4.15
Boys' pants	21.77	23.82	22.80	22.80
Boys' shorts, shorts sets	12.15	12.16	8.92	11.08
Boys' uniforms, active sportswear	7.76	6.45	7.16	7.12
Boys' costumes	1.30	0.81	1.22	1.11
Women and girls	653.73	694.23	699.25	682.40
Women, 16 and over	552.35	591.01	591.18	578.18
Women's coats and jackets	49.54	45.93	44.40	46.62
Women's dresses	81.37	93.51	86.35	87.08
Women's sportcoats, tailored jackets	4.15	4.49	3.39	4.01
Women's vests and sweaters	32.73	31.47	40.33	34.84
Women's shirts, tops, blouses	96.49	106.16	99.89	100.85
Women's skirts	19.13	22.83	20.99	20.98
Women's pants	58.46	72.07	74.88	68.47
Women's shorts, shorts sets	23.01	25.21	22.75	23.66
Women's active sportswear	24.30	29.46	29.78	27.85
Women's sleepwear	24.72	22.66	24.69	24.02
Women's undergarments	24.46	31.17	31.74	29.12
Women's hosiery	25.02	21.93	24.03	23.66
Women's suits	37.27	33.78	36.91	35.99
Women's accessories	49.54	46.86	46.34	47.58
Women's uniforms	0.42	2.00	2.40	1.61
Women's costumes	1.73	1.48	2.30	1.84
Girls, 2 to 15	101.38	103.22	108.07	104.22
Girls' coats and jackets	7.23	6.84	6.87	6.98
Girls' dresses, suits	13.99	13.73	13.78	13.83
Girls' shirts, blouses, sweaters	25.48	20.64	25.29	23.80
Girls' skirts and pants	16.06	17.94	20.22	18.07
Girls' shorts, shorts sets	9.07	9.98	9.5[illegible]	9.54
Girls' active sportswear	6.56	12.65	7.[illegible]1	8.94
Girls' underwear and sleepwear	7.49	7.67	6.85	7.34
Girls' hosiery	5.82	4.87	5.30	5.33
Girls' accessories	4.55	4.61	5.78	4.98
Girls' uniforms	2.15	1.94	3.49	2.53
Girls' costumes	2.98	2.35	3.31	2.88
Children under 2	83.32	83.72	83.64	83.56
Infant coat, jacket, snowsuit	2.69	3.30	3.19	3.06
Infant dresses, outerwear	22.30	23.32	15.99	20.54
Infant underwear	49.15	48.46	48.36	48.66
Infant nightwear, loungewear	3.94	3.78	4.65	4.12
Infant accessories	5.23	4.86	11.46	7.18

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Infant hosiery	NA	NA	NA	NA
Footwear	258.43	287.27	325.60	290.43
Men's footwear	84.05	103.76	102.71	96.84
Boys' footwear	34.18	28.94	30.90	31.34
Women's footwear	113.26	121.72	160.65	131.88
Girls' footwear	26.94	32.85	31.34	30.38
Other apparel products and services	274.00	268.09	255.13	265.74
Material for making clothes	7.24	5.46	4.55	5.75
Sewing patterns and notions	2.57	2.13	5.49	3.40
Watches	24.45	20.37	30.26	25.03
Jewelry	108.96	109.19	144.54	120.90
Shoe repair and other shoe service	3.16	2.88	2.47	2.84
Coin-operated apparel laundry and dry cleaning	37.33	40.94	20.94	33.07
Apparel alteration and repair	6.90	5.90	6.41	6.40
Clothing rental	3.75	3.46	4.00	3.74
Watch and jewelry repair	5.99	5.41	5.54	5.65
Apparel laundry and dry cleaning not coin operated	73.18	71.82	30.57	58.52
Clothing storage	0.47	0.52	0.35	0.45
Transportation	6075.53	6123.07	6669.29	6289.30
Vehicle purchases (net outlay)	2703.01	2677.81	2856.48	2745.77
Cars and trucks, new	1333.33	1188.62	1310.11	1277.35
New cars	727.70	688.75	748.92	721.79
New trucks	605.63	499.87	561.19	555.56
Cars and trucks, used	1320.82	1456.39	1499.72	1425.64
Used cars	866.68	963.07	935.75	921.83
Used trucks	454.14	493.32	563.97	503.81
Other vehicles	48.85	32.80	46.64	42.76
New motorcycles	25.77	17.64	26.57	23.33
New aircraft	NA	NA	NA	NA
Used motorcycles	23.09	15.16	18.52	18.92
Used aircraft	NA	NA	1.55	0.52
Gasoline and motor oil	989.97	1014.48	1110.22	1038.22
Gasoline	877.48	904.95	990.79	924.41
Diesel fuel	9.16	10.91	10.97	10.35
Gasoline on out-of-town trips	90.64	86.11	94.78	90.51
Gasohol	0.18	0.00	0.00	0.06
Motor oil	11.60	11.64	12.73	11.99
Motor oil on out-of-town trips	0.92	0.87	0.96	0.92
Other vehicle expenses	1989.07	2064.09	2312.48	2121.88
Vehicle finance charges	238.49	267.24	304.80	270.18
Automobile finance charges	139.82	154.84	166.22	153.63
Truck finance charges	86.72	99.05	122.32	102.70
Motorcycle and plane finance charges	1.05	1.36	1.64	1.35
Other vehicle finance charges	10.90	11.98	14.63	12.50
Maintenance and repairs	700.79	675.26	719.82	698.62
Coolant, additives, brake, transmission fluids	6.32	5.79	6.21	6.11
Tires—purchased, replaced, installed	89.79	90.02	91.83	90.55
Parts, equipment, and accessories	111.43	64.20	55.56	77.06
Vehicle audio equipment, excluding labor	5.45	10.74	2.59	6.66
Vehicle products	5.28	3.89	8.44	6.16
Misc. auto repair, servicing	33.34	36.88	62.12	44.11
Body work and painting	36.88	32.55	34.22	34.55
Clutch, transmission repair	46.56	45.07	44.96	45.53
Drive shaft and rear-end repair	5.94	6.61	4.90	5.82
Brake work	43.70	48.70	59.86	50.75
Repair to steering or front-end	18.42	20.05	17.55	18.67
Repair to engine cooling system	22.60	24.32	20.86	22.59
Motor tune-up	42.86	43.84	47.84	44.85
Lube, oil change, and oil filters	39.86	44.30	56.59	46.92
Front-end alignment, wheel balance	NA	NA	NA	NA
Front-end alignment, wheel balance and rotation	9.78	11.19	12.81	8.00
Shock absorber replacement	7.04	6.98	5.46	6.49
Brake adjustment	3.89	3.18	0.00	2.36
Gas tank repair, replacement	2.52	1.73	1.50	1.92
Repair tires and other repair work	27.94	34.28	30.50	30.91
Vehicle air conditioning repair	14.87	15.01	19.49	17.25
Exhaust system repair	20.56	20.98	19.73	20.42
Electrical system repair	31.39	30.57	30.71	30.89
Motor repair, replacement	69.19	68.10	78.68	71.99
Auto repair service policy	5.17	6.27	7.41	6.28

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	Total complete reporting			
	1994	1995	1997	Average
Vehicle insurance	698.00	726.03	779.47	734.50
Vehicle rental, leases, licenses, other charges	351.79	395.56	508.38	418.58
Leased and rented vehicles	196.83	230.89	325.60	251.11
Rented vehicles	39.82	38.99	41.38	40.06
Auto rental	6.03	7.41	7.28	6.91
Auto rental, out-of-town trips	26.09	26.90	27.04	26.68
Truck rental	1.68	1.13	2.20	1.67
Truck rental, out-of-town trips	4.61	3.35	4.43	4.13
Motorcycle rental	NA	NA	NA	NA
Aircraft rental	0.16	0.00	0.12	0.08
Motorcycle rental, out-of-town trips	0.09	0.12	0.07	0.09
Aircraft rental, out-of-town trips	1.16	0.09	0.24	0.50
Leased vehicles	157.01	191.89	284.22	211.04
Car lease payments	104.24	125.21	157.26	128.90
Cash downpayment (car lease)	9.84	12.91	12.37	11.71
Termination fee (car lease)	0.44	0.28	1.88	0.87
Truck lease payments	38.15	51.07	99.28	62.83
Cash downpayment (truck lease)	4.30	2.13	12.66	6.36
Termination fee (truck lease)	0.03	0.29	0.78	0.37
State and local registration	82.74	89.55	102.43	91.57
Driver's license	7.34	7.34	7.75	7.48
Vehicle inspection	8.78	9.52	9.42	9.24
Parking fees	27.47	27.86	30.22	28.52
Parking fees (old)	NA	NA	NA	NA
Parking fees in home city, excluding residence	24.17	24.09	26.27	24.84
Parking fees, out-of-town trips	3.30	3.77	3.95	3.67
Tolls	10.47	12.04	14.49	12.33
Tolls on out-of-town trips	4.69	4.76	4.53	4.66
Towing charges	5.37	5.11	5.24	5.24
Automobile service clubs	8.10	8.49	8.68	8.42
Public transportation	393.48	366.69	390.11	383.43
Airline fares	253.06	234.86	253.59	247.17
Intercity bus fares	11.57	14.61	11.46	12.55
Intracity mass transit fares	49.28	49.60	54.55	51.14
Local trans. on out-of-town trips	10.19	9.25	12.23	10.56
Taxi fares on trips	5.99	5.43	7.18	6.20
Taxi fares	8.23	7.61	9.81	8.55
Intercity train fares	17.13	19.01	21.26	19.13
Ship fares	36.91	25.86	18.98	27.25
School bus	1.12	0.47	1.05	0.88
Health care	1768.03	1746.75	1897.69	1804.16
Health insurance	818.43	864.44	899.75	860.87
Commercial health insurance	251.06	234.49	202.04	229.20
Blue Cross, Blue Shield	159.34	170.15	196.27	175.25
Health maintenance plans (HMO's)	127.97	150.70	232.26	170.31
Medicare payments	157.72	175.97	166.85	166.85
Commercial medicare supplements	122.35	133.13	102.33	119.27
Medical services	567.28	501.51	543.63	537.47
Physician's services	159.89	140.03	137.85	145.92
Dental services	194.50	192.07	209.60	198.72
Eyecare services	29.81	29.82	27.68	29.10
Service by professionals other than physician	32.95	38.29	40.94	37.39
Lab tests, x-rays	25.73	22.15	24.56	24.15
Hospital room	44.70	32.45	33.78	36.98
Hospital service other than room	54.60	28.76	50.70	44.69
Medical care in retirement community	NA	NA	NA	NA
Care in convalescent or nursing home	13.21	8.79	12.24	11.41
Repair of medical equipment	NA	NA	0.31	0.10
Other medical care services	11.88	9.16	5.98	9.01
Drugs	294.24	293.39	341.61	309.75
Nonprescription drugs	84.17	86.92	117.91	96.33
Prescription drugs	210.08	206.47	223.69	213.41
Medical supplies	88.07	87.41	112.71	96.06
Eyeglasses and contact lenses	54.20	55.05	61.25	56.83
Hearing aids	0.94	0.00	12.21	0.47
Topicals and dressings	24.55	23.49	31.34	26.46
Medical equipment for general use	2.41	2.90	2.67	2.66
Supportive and convalescent medical equipment	3.82	4.61	2.87	3.77
Rental of medical equipment	0.72	0.34	0.44	0.50
Rental of supportive, convalescent medical equipment	1.43	1.02	1.92	1.46

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Entertainment	1619.28	1687.41	1867.58	1724.76
Fees and admissions	451.13	447.26	490.22	462.87
Recreation expenses, out-of-town trips	22.00	22.61	26.13	23.58
Social, recreation, civic club membership	87.17	80.62	78.75	82.18
Fees for participant sports	73.87	69.49	76.71	73.36
Participant sports, out-of-town trips	27.40	27.94	30.43	28.59
Movie, theater, opera, ballet	78.89	75.36	89.89	81.38
Movie, other admissions, out-of-town trips	37.79	42.78	44.47	41.68
Admission to sporting events	32.52	31.57	35.80	33.30
Admission to sports events, out-of-town trips	12.59	14.26	14.82	13.89
Fees for recreational lessons	56.90	60.02	67.09	61.34
Other entertainment services, out-of-town trips	22.00	22.61	26.13	23.58
Television, radios, sound equipment	545.23	560.84	596.05	567.37
Televisions	376.08	376.88	411.26	388.07
Community antenna or cable tv	209.78	220.04	265.14	231.65
Black and white tv	2.23	2.51	0.75	1.83
Color tv—console	25.51	27.65	24.22	25.79
Color tv—portable, table model	54.63	47.71	41.13	47.82
VCR's and video disc players	32.98	29.11	28.25	30.11
Video cassettes, tapes, and discs	22.55	25.44	23.81	23.93
Video game hardware and software	19.24	15.27	20.40	18.30
Repair of tv, radio, and sound equipment	8.79	7.99	7.31	8.03
Rental of televisions	0.36	1.16	0.26	0.59
Radios, sound equipment	169.15	183.96	184.79	179.30
Radios	9.05	12.59	13.28	11.64
Phonographs	NA	NA	NA	NA
Tape recorders and players	5.86	12.77	7.72	8.78
Sound components and component systems	31.51	33.69	31.48	32.23
Miscellaneous sound equipment	1.51	0.64	0.77	0.97
Sound equipment accessories	4.83	4.82	5.84	5.16
Satellite dishes	NA	NA	2.98	0.99
Compact disc, tape, record and video mail order clubs	13.11	13.35	11.02	12.49
Records, CDs, audio tapes, needles	37.80	40.00	41.96	39.92
Rental of VCR, radio, and sound equipment	0.35	0.28	0.46	0.36
Musical instruments and accessories	17.62	20.47	24.88	20.99
Rental and repair of musical instruments	2.06	1.86	1.78	1.90
Rental of video cassettes, tapes, films, and discs	45.45	43.48	42.63	43.85
Pets, toys, and playground equipment	305.98	348.78	339.01	331.26
Pets	177.55	223.00	207.71	202.75
Pet food	82.75	86.92	94.36	88.01
Pet purchase, supplies, medicine	29.36	57.03	40.02	42.14
Pet services	16.52	20.41	17.95	18.29
Vet services	48.92	58.65	55.38	54.32
Toys, games, hobbies, and tricycles	125.48	123.52	130.24	126.41
Playground equipment	2.95	2.26	1.06	2.09
Other entertainment supplies, equipment, and services	316.93	330.53	442.30	363.25
Unmotored recreational vehicles	29.18	30.46	44.74	34.79
Boat without motor and boat trailers	5.16	3.63	9.03	5.94
Trailer and other attachable campers	24.02	26.84	35.71	28.86
Motorized recreational vehicles	81.72	77.55	133.84	97.70
Motorized camper coaches and other vehicles	43.13	36.43	34.01	37.86
Purchase of boat with motor	38.58	41.12	99.84	59.85
Rental of recreational vehicles	2.42	3.01	3.86	3.10
Rental noncamper trailer	0.13	0.14	0.03	0.10
Boat and trailer rental, out-of-town trips	0.74	1.24	2.77	1.58
Rental of campers, etc. on out-of-town trips (old)	NA	NA	NA	NA
Rental of campers on out-of-town trips	0.39	0.36	0.33	0.36
Rental of other vehicles on out-of-town trips	0.66	1.03	0.54	0.74
Rental of boat	0.10	0.01	0.03	0.05
Rental of campers, other r.v.'s	0.40	0.24	0.15	0.26
Outboard motors	2.05	0.44	2.84	1.78
Docking and landing fees	5.05	4.76	8.96	6.26
Sports, recreation and exercise equipment	115.10	115.57	133.36	121.34
Athletic gear, game tables, and exercise equipment	54.37	51.11	61.04	55.51
Bicycles	14.10	13.23	16.25	14.53
Camping equipment	3.61	7.30	8.56	6.49
Hunting and fishing equipment	20.58	17.87	18.35	18.93
Winter sports equipment	4.99	3.73	5.48	4.73
Water and miscellaneous sport equipment	15.51	20.52	21.51	19.18
Rental and repair of misc. sports equipment	1.95	1.83	2.18	1.99

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PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Photographic equipment and supplies	74.17	87.03	94.84	85.35
Film	20.48	20.91	21.93	21.11
Other photographic supplies	0.31	0.40	1.29	0.67
Film processing	28.34	29.72	30.86	29.64
Repair and rental of photographic equipment	0.33	0.30	0.56	0.40
Photographic equipment	12.63	12.58	14.83	13.35
Photographer fees	12.09	23.10	25.37	20.19
Fireworks	0.76	2.69	2.93	2.13
Souvenirs	0.49	0.18	0.91	0.53
Visual goods	1.49	1.76	3.55	2.27
Pinball, electronic video games	4.50	7.07	12.48	8.02
Personal care products and services	414.76	429.80	551.28	465.28
Personal care products	235.24	229.70	262.83	242.59
Hair care products	49.23	42.18	55.39	48.93
Nonelectric articles for the hair	7.26	4.70	7.59	6.52
Wigs and hairpieces	0.89	0.89	1.35	1.04
Oral hygiene products, articles	25.52	23.92	29.26	26.23
Shaving needs	12.64	13.06	11.85	12.52
Cosmetics, perfume, bath preparation	106.82	112.96	120.23	113.34
Deodorants, feminine hygiene, misc. personal care	28.40	28.04	32.35	29.60
Electric personal care appliances	4.46	3.94	4.80	4.40
Personal care services	179.53	200.11	288.45	222.70
Personal care service for females	89.46	107.59	190.41	129.15
Personal care service for males	89.94	92.24	97.86	93.35
Repair of personal care appliances	0.12	0.28	0.18	0.19
Reading	171.39	170.42	171.24	171.02
Newspapers	70.94	71.14	69.98	70.69
Magazines	39.53	38.06	36.36	37.98
Newsletters	0.15	0.27	0.00	0.14
Books thru book clubs	11.44	10.29	11.18	10.97
Books not thru book clubs	47.99	48.98	52.79	49.92
Encyclopedia and other sets of reference books	1.33	1.67	0.94	1.31
Education	469.39	477.94	547.80	498.38
College tuition	275.33	271.57	303.14	283.35
Elementary and high school tuition	65.45	76.52	87.97	76.65
Other schools tuition	15.34	14.55	16.61	15.50
Other school expenses including rentals	19.50	17.94	28.77	22.07
School books, supplies, equipment for college	39.14	36.93	47.48	41.18
School books, supplies, etc. for elementary and high school	9.71	8.71	12.88	10.43
School books, supplies, etc. for day care, nursery, other	3.49	1.99	2.95	2.81
School supplies, etc.—unspecified	41.43	49.73	48.00	46.39
Tobacco products and smoking supplies	261.81	271.59	271.17	268.19
Cigarettes	238.23	244.94	237.35	240.17
Other tobacco products	21.96	25.50	31.47	26.31
Smoking accessories	1.62	1.15	2.35	1.71
Miscellaneous	810.79	808.33	888.10	835.74
Miscellaneous fees, pari-mutuel losses	50.63	53.69	54.63	52.98
Legal fees	119.22	99.93	124.33	114.49
Funeral expenses	91.97	86.77	69.79	82.84
Safe deposit box rental	5.79	5.47	6.65	5.97
Checking accounts, other bank service charges	27.69	27.35	25.65	26.90
Cemetery lots, vaults, maintenance fees	19.45	14.55	20.06	18.02
Accounting fees	44.90	41.35	50.62	45.62
Miscellaneous personal services	27.76	23.44	41.30	30.83
Finance charges excluding mortgage and vehicle	228.84	244.92	272.33	248.70
Occupational expenses	94.19	115.56	115.16	108.30
Expenses for other properties	94.77	90.93	102.70	96.13
Interest paid, home equity line of credit (other property)	0.50	0.15	0.57	0.41
Credit card memberships	5.08	4.23	4.32	4.54
Cash contributions	1066.81	1034.59	1084.76	1062.05
Cash contributions to non-CU memb., incl. child sup., etc.	292.68	256.97	265.70	271.78
Gifts of cash, stocks and bonds to non-CU members	228.78	198.88	246.98	224.88
Contributions to charity	102.81	97.57	112.21	104.20
Contributions to church	404.30	428.54	426.74	419.86
Contributions to educational organizations	22.66	40.51	18.37	27.18
Contributions to political organizations	8.33	3.69	7.27	6.43
Other contributions	7.25	8.44	7.48	7.72
Personal insurance and pensions	3404.08	3520.62	3830.30	3585.00
Life and other personal insurance	413.43	382.39	386.53	394.12
Life, endowment, annuity, other personal insurance	395.89	369.76	376.74	380.80

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	Total complete reporting			
	1994	1995	1997	Average
Other nonhealth insurance	17.54	12.63	9.79	13.32
Pensions and Social Security	2990.65	3138.23	3443.76	3190.88
Deductions for government retirement	84.07	81.20	99.84	88.37
Deductions for railroad retirement	5.38	6.53	2.81	4.91
Deductions for private pensions	324.08	399.84	416.13	380.02
Non-payroll deposit to retirement plans	331.09	352.23	426.72	370.01
Deductions for Social Security	2246.03	2298.44	2498.27	2347.58

*Data might not be statistically significant.
Source: Bureau of Labor Statistics.

Appendix 4—CES Category and Component Expenditures

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*

	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Average income before taxes:						
1994	$12,340.00	$17,229.00	$24,721.00	$34,402.00	$44,388.00	$84,162.24
1995	12,420.00	17,341.00	24,603.00	34,606.00	44,408.00	81,698.83
1997	12,411.00	17,393.00	24,599.00	34,583.00	44,396.00	83,479.01
Average	12,390.33	17,321.00	24,641.00	34,530.33	44,397.33	83,113.36
Goods and services:						
1994	6,989.07	8,346.77	10,014.51	12,274.85	14,404.18	21,193.80
1995	7,340.81	8,788.33	10,287.78	12,679.10	14,447.22	21,289.89
1997	7,126.13	9,182.97	10,341.33	12,694.83	14,648.83	21,839.22
Average	7,152.00	8,772.69	10,214.54	12,549.59	14,500.08	21,440.97
Food at home:						
1994	2,219.92	2,437.04	2,597.85	2,833.99	3,175.54	3,797.84
1995	2,205.73	2,732.23	2,611.14	2,906.99	3,358.72	3,871.65
1997	2,155.29	2,634.17	2,700.57	3,061.75	3,221.35	3,947.54
Average	2,193.65	2,601.15	2,636.52	2,934.24	3,251.87	3,872.34
Food away from home:						
1994	822.30	1,089.35	1,334.07	1,820.82	2,211.78	3,383.08
1995	866.36	1,148.01	1,454.82	1,803.04	2,139.09	3,265.04
1997	850.96	1,129.49	1,408.37	1,826.26	2,208.13	3,334.44
Average	846.54	1,122.28	1,399.09	1,816.71	2,186.33	3,327.52
Alcohol:						
1994	135.15	215.61	287.46	347.42	327.07	495.08
1995	194.58	179.17	218.69	242.44	378.37	568.80
1997	127.94	189.83	255.66	319.14	362.58	562.22
Average	152.56	194.87	253.94	303.00	356.01	542.03
Domestic Service:						
1994	85.17	111.05	203.94	235.13	310.43	489.65
1995	111.01	126.23	166.25	343.84	349.86	473.43
1997	135.46	140.64	173.64	179.50	271.20	557.40
Average	110.55	125.97	181.28	252.82	310.50	506.83
Furnishings & household operations:						
1994	1,128.53	1,178.62	1,521.80	1,938.32	2,574.21	4,075.65
1995	1,109.71	1,246.51	1,649.53	1,999.62	2,229.32	4,360.44
1997	1,142.56	1,394.61	1,559.08	2,066.86	2,519.05	4,160.24
Average	1,126.93	1,273.25	1,576.80	2,001.60	2,440.86	4,198.78
Clothing:						
1994	790.15	1,079.54	1,464.58	1,672.99	1,890.64	3,188.54
1995	923.98	1,186.11	1,469.03	1,658.21	2,075.29	3,128.63
1997	771.06	1,183.65	1,363.48	1,772.40	1,778.08	3,041.32
Average	828.4	1,149.77	1,432.36	1,701.20	1,914.67	3,119.50
Recreation:						
1994	828.97	1,060.46	1,342.40	1,741.22	2,128.85	3,451.76
1995	988.13	1,015.06	1,357.80	1,942.08	2,113.61	3,445.93
1997	924.79	1,174.72	1,414.87	1,672.88	2,223.76	3,794.38
Average	913.96	1,083.41	1,371.69	1,785.39	2,155.41	3,564.02
Personal Care:						
1994	256.43	286.31	348.68	454.00	491.54	693.28
1995	272.68	299.08	362.99	450.49	541.39	685.06
1997	329.05	402.15	497.08	593.70	571.42	836.32
Average	286.05	329.18	402.92	499.40	534.78	738.22
Tobacco:						
1994	222.20	250.93	280.57	340.50	295.12	278.18
1995	198.73	275.38	309.00	324.43	274.74	297.88

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PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
1997	248.16	271.68	263.44	320.89	286.42	287.99
Average	223.03	266.00	284.34	328.61	285.43	288.02
Professional Services:						
1994	500.25	637.86	633.16	890.46	999.00	1,340.74
1995	469.90	580.55	688.53	1,007.96	986.83	1,193.04
1997	440.86	662.03	705.14	881.45	1,206.84	1,317.38
Average	470.34	626.81	675.61	926.62	1,064.22	1,283.72
Housing:						
1994	5,231.62	5,948.47	6,764.14	7,878.29	9,000.79	12,785.95
1995	5,523.22	6,036.42	6,602.85	8,126.79	9,423.94	13,031.92
1997	5,600.14	6,512.21	7,049.74	8,407.00	10,626.32	13,497.32
Average	5,451.66	6,165.70	6,805.58	8,137.36	9,683.68	13,105.07
Transportation:						
1994	2,757.80	4,313.27	5,598.36	6,010.98	8,886.15	10,415.29
1995	3,326.35	4,016.68	5,281.03	6,411.15	7,505.49	10,725.91
1997	3,145.83	4,234.05	5,248.86	7,139.14	8,443.90	10,957.66
Average	3,076.66	4,188.00	5,376.08	6,520.42	8,278.51	10,699.62
Private transportation:						
1994	2,560.05	4,021.24	5,343.02	5,696.30	8,493.93	9,583.58
1995	3,141.90	3,812.35	5,051.61	6,087.00	7,181.50	9,948.58
1997	2,996.28	4,017.36	4,992.24	6,851.42	8,086.29	10,183.37
Average	2,899.41	3,950.32	5,128.96	6,211.57	7,920.57	9,905.18
Air fares & other transportation expenses:						
1994	197.75	292.03	255.34	314.68	392.22	831.71
1995	184.45	204.33	229.42	324.15	323.99	777.33
1997	149.55	216.69	256.62	287.72	357.61	774.29
Average	177.25	237.68	247.13	308.85	357.94	794.44
Miscellaneous:						
1994	2,574.86	3,285.99	4,378.03	6,077.48	7,606.33	13,486.24
1995	2,572.70	3,626.25	4,410.77	5,771.32	7,520.24	13,325.24
1997	2,586.22	3,756.39	4,956.00	5,797.64	7,733.97	13,397.80
Average	2,577.93	3,556.21	4,581.60	5,882.15	7,620.18	13,403.09
Education, K–12, Private:						
1994	7.13	47.92	41.54	58.93	79.83	216.02
1995	38.05	9.99	45.96	39.93	75.34	252.12
1997	13.92	32.62	113.72	60.22	115.60	222.99
Average	19.70	30.18	67.07	53.03	90.26	230.38
Health care:						
1994	1,484.32	1,666.38	1,578.60	1,761.97	2,007.63	2,447.22
1995	1,485.92	1,612.11	1,724.73	1,666.17	1,959.98	2,329.26
1997	1,562.88	1,830.30	1,917.78	1,819.54	2,052.42	2,434.81
Average	1,511.04	1,702.93	1,740.37	1,749.23	2,006.68	2,403.77
Cash contributions:						
1994	396.39	455.67	771.77	1,049.71	1,005.01	2,428.04
1995	452.91	804.69	730.13	816.26	1,046.00	2,171.79
1997	380.68	827.79	998.84	841.16	1,176.10	1,934.48
Average	409.99	696.05	833.58	902.38	1,075.70	2,178.10
Personal insurance:						
1994	687.02	1,116.02	1,986.12	3,206.87	4,513.86	8,394.96
1995	595.82	1,199.46	1,909.95	3,248.96	4,438.92	8,572.07
1997	628.74	1,065.68	1,925.66	3,076.72	4,389.85	8,805.52
Average	637.19	1,127.05	1,940.58	3,177.52	4,447.54	8,590.85
Consumer units:						
1994	9,780	7,851	13,975	10,922	8,280	20,609
1995	8,725	7,724	12,643	10,648	8,191	20,952
1997	9,096	7,424	12,415	10,392	7,949	24,635
Percentage of Owners with Mortgage:						
1994	14%	17%	31%	44%	53%	68%
1995	14%	24%	31%	42%	52%	70%
1997	14%	20%	26%	40%	51%	68%
Percentage of Renters:						
1994	49%	47%	42%	34%	25%	15%
1995	49%	43%	39%	35%	26%	13%
1997	47%	43%	42%	38%	28%	15%
Owners with Mortgages as Percentage of Renters Plus Owners with Mortgages:						
1994	22.22%	26.56%	42.47%	56.41%	67.95%	81.93%
1995	22.22%	35.82%	44.29%	54.55%	66.67%	83.78%
1997	22.95%	31.75%	38.24%	51.28%	64.56%	81.57%
Average	22.46%	31.38%	41.67%	54.08%	66.39%	82.43%
Renters as Percentage of Renters Plus Owners with Mortgages:						

PRE-PUBLISHED DATA FOR ALL CONSUMER UNITS NATIONWIDE*—Continued

	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
1994	77.78%	73.44%	57.53%	43.59%	32.05%	18.07%
1995	77.78%	64.18%	55.71%	45.45%	33.33%	16.22%
1997	77.05%	68.25%	61.76%	48.72%	35.44%	18.43%
Average	77.54%	68.62%	58.33%	45.92%	33.61%	17.57%

*Data may not be statistically significant.

Appendix 5—Item Descriptions

Accounting services—Hourly rate for individual tax work (not business). Obtain rate for preparing Federal 1040 and Schedule A tax forms with typical itemized deductions. Price separately and note in comments the charge for preparing equivalent State or local tax forms.

Apples, fresh—Price per lb of apples, loose (not in bag). If only bagged apples are available, report the weight of the bag. Use: Red delicious, Golden delicious.

Area rug—Catalog Item. 8 × 11 braided rug, 100% wool or wool blend. Include shipping and handling. Use: JC Penney.

ATV—All terrain sports vehicle with 4-wheel drive and a 250 to 300 CC (approximate size) engine. Do not price industrial ATVs (similar to sports model but heavier duty) or Arctic Cat models. Use: Honda TRX399FW, Suzuki 250LT4WDT, Polaris W968040.

Automobile finance—Interest rate for a 4-year loan based on a down payment of 20 percent. Assume the loan applicant is a current bank customer who will make payments by cash/check and not by automatic deduction from the account.

Baby food—4 oz jar strained vegetables or fruit. Use: Gerber Second Foods, Heinz.

Babysitter—Use minimum hourly wage appropriate to area.

Bacon, sliced—16 oz (1 lb) package USDA grade, regular sliced bacon. Do not price Canadian bacon, extra thick sliced, or extra lean. Use: Oscar Mayer, Hormel, Armour.

Baking dish—8″ square glass baking dish (any color), no cover or lid. Use: Pyrex, Anchor Hocking.

Bananas, fresh—1 lb of bananas. If sold by bunch, report price and weight of bunch. Use: Available Variety.

Basic cable service—Rate for one month of lowest level of service for cable TV. Report the number of channels offered. If service provides 12 or fewer channels, price the next level of service. Do not include hookup charges or premium (*e.g.*, movie) channels. Convert monthly cost to price per channel, per month.

Bath towel—Catalog Item. 27 × 50″ bath towel made of 100% cotton. Include shipping and handling. Use: JC Penney Fieldcrest Royal Velvet.

Bathroom caulking—5.5 oz plastic tube (not caulking gun type) of latex white bathroom caulking. Use: DAP Kwik Seal, Red Devil.

Bed sheet set—Catalog Item. One flat queen-size no iron cotton/polyester percale sheet (200 thread count). Include shipping and handling. Use: JC Penney Home Collection.

Bedroom set—Catalog Item. Five-piece oak bedroom set; vertical mirror, triple dresser, five-drawer chest, nightstand, full/queen headboard. Include shipping and handling. Use: JC Penney.

Beer at home—Six-pack of 12 oz cans (Puerto Rico—10 oz cans). Do not price refrigerated beer unless that is the only type available. Use: Budweiser.

Beer away—One glass of Budweiser/Miller Lite beer. Use: Same restaurant where dinner price is obtained.

Board game—Do not price deluxe edition. Use: Monopoly, Sorry, Scrabble.

Book—Store price (not publisher's price unless that is the store price) for top selling paperback. Use: Special Delivery, Cold Mountain, Devine.

Bottled water—One gallon (128 fl oz) bottled spring water. Do not price sparkling or distilled water. Use: Store brand.

Bowling—One game of open (or non-league) 10-pin bowling on Saturday night. Exclude shoe rental. If priced by the hour, report the estimated number of games per hour. Do not price duck-pin bowling.

Boy's jeans—Regular fit (size 9–14), inexpensive jeans. Do not price bleached, stone-washed, or designer jeans. Use: Wrangler, Rustlers.

Boy's polo shirt—Knit polo shirt with collar, solid color, preferably without embroidered emblem. Size 7–14. Price department store brand not Izod, Polo or equivalents. Use: JC Penney, Sears.

Boy's t-shirt—Screen-printed t-shirt commonly worn by boys ages 8 thru 10 (size 7–14). Pullover with crew neck, short sleeves and polyester/cotton blend. Use: Ocean Pacific, Team Shirts (NFL), Miller.

Bread, white—16 oz loaf of sliced white bread. Do not price store brand. Use: Wonder, Sunbeam.

Breakfast—One breakfast consisting of 2 strips of bacon or 2 sausages, 2 eggs, toast, and coffee or juice. Report percentages added for tax. Use: Denny's, Holiday Inn type, IHOP type.

Broker rental low—Monthly rent for three room, one bedroom, one bath apartments (average size roughly 600 sq ft.). Obtain three price estimates of the prevailing range of rental rates in area (low, median & high). To the extent practical, obtain square footage, age of the unit, total room count, whether utilities are included, and special amenities.

Broker rental mid—Monthly rent for four room, two bedroom, one bath apartments (average size roughly 900 sq ft.). Obtain three price estimates of the prevailing range of rental rates in area (low, median & high). To the extent practical, obtain square footage, age of the unit, total room count, whether utilities are included, and special amenities.

Broker rental upr—Monthly rent for four room, two bedroom, two bath townhouse or detached house (average size roughly 1100 sq ft.). Obtain three price estimates of the prevailing range of rental rates in area (low, median & high). To the extent practical, obtain square footage, age of the unit, total room count, whether utilities are included, and special amenities.

Camera film—35 millimeter, 24 exposure, 100 ASA Kodak camera film in single pack. Use: Kodak, Fuji.

Candy bar—One regular size candy bar. Weight could range from 1.55 oz to 2.13 oz. Do not price king-size or multi-pack candy bars. Use: Snickers, Hersheys, Mars.

Canned soup—One can Campbell's soup, regular size (approximately 10 oz). Do not price hearty, reduced fat or salt free varieties. Use: Campbell's Vegetable, Campbell's Chicken Noodle.

Celery, fresh—Price per pound for celery. Do not price celery hearts or Pascal type celery. If celery is sold only by the bunch, report the price and the weight of an average bunch. Find equivalent size bunches at each store. Use: Available Brand.

Cereal—20 oz box of cereal. Do not price significantly larger or smaller size. Use: Post Raisin Bran, Kellogg's Raisin Bran.

Charge card annl fee—Annual fee on major charge card through local bank. Note: Finance charges are reported as Charge Card Finance (see item description immediately below). Both charges must be obtained for the same card. Use: Mastercard, Visa.

Charge card finance—Finance charges on a major charge card through a local bank. Record Annual Percentage Rate. Report the financial charge on the first month's balance of $1500. Do not include principal payments. Note: Annual fees are reported as a Charge Card Annual Fee (see item description immediately above). Both charges must be for the same card. Do not price special introductory rates. Use: Mastercard, Visa.

Cheddar cheese—10 oz package cheese. Price mild cheddar if available. Use: Kraft, Cracker Barrel, Tillamook.

Chevy AFT change—Automatic transmission fluid change for a 1-year-old Chevrolet Blazer, similar to current year model. Include parts and labor for the following: Drain and replace transmission fluid and test vehicle. Include filter and pan gasket replacement.

Chevy blazer—Chevrolet Blazer, current year model, T-Series, 2-door, 4-wheel drive, 4.3 liter, 6 cylinder. Use: Chevrolet Blazer T10.

Chevy coolant serv—Flush and fill engine coolant in a 1-year-old Chevrolet Blazer, similar to current year model. Include parts and labor for the following: Remove old

coolant, flush contaminants, and replace with new coolant.

Chevy CVJ boots—Replacement cost of the inner and outer CVJ (constant velocity joint) boots on both front wheels for a 3-year old Chevrolet Blazer, T-Series, 2-Door, 4-wheel drive, 4.3 liter, 6 cylinder.

Chevy license/reg—Title fee, lien fee, passenger vehicle registration fees, plate fees, administration/clerical/other fees, and any local added fees for a current year Chevrolet Blazer, T-Series, 2-door, 4-wheel drive, 4.3 liter, 6 cylinder.

Chevy min insurance—DC AND VI ONLY. Assume that vehicles are used in commuting 15 miles one-way per day, 15,000 miles per year, and that the driver is a 35-year-old married male with no accidents or violations in the last 5 years. Include related fees and taxes. Include applicable safety feature discounts. COVERAGES (BI minimum avail., PD minimum, Med minimum or PIP minimum, and UM minimum. Com 250 deductible. Col 500 ded. If these deductibles are not avail., price the policy with the closest coverage.

Chevy misc taxes—Annual miscellaneous tax (*e.g.*, personal property tax, use tax, etc) for a current year model Chevrolet Blazer, T-Series, 2-door, 4-wheel drive, 4.3 liter, ■ cylinder. Report how rate is determined and formula for new vehicle purchase and for subsequent years (2 to 5). Explain billing.

Chevy muffler—Complete muffler system for a 4-year-old Chevrolet Blazer, T-Series, 2-door, 4-wheel drive, 4.3 liter, 6 cylinder. Include parts and labor for the following: Install all parts after the catalytic converter. These parts include mid pipes, clamps, muffler, and tail pipes.

Chevy oil change—Oil change for a 1-year-old Chevrolet Blazer, T-Series, 2-door, 4-wheel drive, 4.3 liter, 6 cylinder. Include parts and labor for the following: Drain old oil, replace oil filter and refill with appropriate number of qts of 10W30 SG grade oil. If SG grade not available, price SF grade oil.

Chevy reg insurance—Assume that vehicles are used in commuting 15 miles one-way per day, 15,000 miles per year and that the driver is a 35-year-old married male with no accidents or violations in the last 5 years. Include related expense fees and taxes. Include applicable safety feature discounts. COVERAGES (BI 100/300,000 PD 25,000 Med 15,000 or PIP 50,000 UM 100/300,000. Com 100 deductible. Col 250 deductible.). If these deductibles are not available, price the policy with the closest coverage.

Chevy regular tires—Black side wall tires size P205/75R15 for Chevrolet Blazer. Use: Goodyear Wrangler AT, Michelin XCHF, BF Goodrich Radial TA.

Chevy snow tire—Studded snow tire size P205/75R15 for the Chevy Blazer. Use: Goodyear Ultra Grip, Michelin XM+S ALPIN, BF Goodrich Trailmaker Plus.

Chevy tire change—Remove street tire and mount snow tire. Model adjusts for 4 tires.

Chevy tune-up—Basic tune-up for a 1-year-old Chevrolet Blazer. Include replacing spark plugs (do not price platinum), check distributor cap, and rotor. Check and adjust ignition timing, adjust idle, inspect air cleaner. Do not include cost to replace PVC valve, fuel filter or air filter. Sales tax should not be included in price.

Chevy 4-yr value—Retail value of a 4-year-old Chevrolet Blazer.

Chevy windshield rpl—Windshield replacement on 1-year-old Chevy Blazer. Ask outlet about the frequency of windshield replacement and record in comments. Price at specialty shop or, if not available, at car dealer.

Chicken, whole—Price per pound of USDA grade fresh whole fryer chicken. Price store brand if available, otherwise record brand. Do not price family-pack, value-pack, super-saver pack or equivalent; frozen chicken or roasters. Use: Whole fryer.

China—Corelle Abundance pattern tableware set consisting of 20 pieces: 4 dinner plates, 4 luncheon plates, 4 bowls, 4 cups, and 4 saucers. The pattern is beige with a fruit and flower motif. Use: Corelle Impressions, New Corelle.

Cigarettes king size—One soft pack of filter kings. Do not price generic brand. Use: Winston, Marlboro, Salem.

Coffee, ground—13 oz can ground coffee. Do not price decaffeinated or special roasts. Use: Folger's, Maxwell House, Hills Bros.

Coin laundry—One regular-size load of laundry using top loading commercial washing machine. Do not include cost of drying.

Color television—20″ table model color TV with a remote, auto channel search, closed captions, sleep timer, on-screen channel/time and menus, channel flashback, and 181 channel tuning. Use: Sony KV20S40, JVC AV20820, Panasonic CT20G23, or brand equivalents.

Compact disc—Current best-selling CD. Do not price double CDs. Use: Armageddon Soundtrack, Backstreet Boys, Come On Over.

Compact disc player—5-disc CD player with rotary changer system, 10 key access, 32 track programming, 8 times over sampling, and a remote. Use: Sony CDP-CE315, JVC XLF254BK, Technics SL–PD888.

Contact lenses—1-year supply of soft 2-week replacement contact lenses. Use: Medalists, Sequence, AcuVue.

Cookies—18 or 20 oz package. Use: Nabisco Oreo Cookies, Keebler Chips Deluxe, Nabisco Chips Ahoy.

Cooking oil—48 fl oz bottle. Use: Crisco, Wesson.

Day-care—One month of day-care for a 3-year-old child (5 days a week, about 10 hours per day). If monthly rate is not available: (1) Obtain weekly rate and record in the comment section (2) multiply weekly rate by 4.33 to obtain monthly rate. Price at day care center in a Federal building (but not on a military base) if available.

Dentist clean/check—Rate for x-rays, exam and prophylaxis (light scaling and polishing) or cleaning of teeth without special treatment of gums or teeth. Do not price initial visit. Do not price specialist or oral surgeon.

Dining table—Catalog Item. Pedestal oak veneer tabletop with 4 standard spindled hardwood chairs. Include shipping and handling. Use: JC Penney.

Dinner—One dinner consisting of a New York strip steak, small side dish (*e.g.*, rice or potato), side salad or salad bar, and coffee. Meal should not include dessert. Use: Denny's type, TGIF type, Chart House type.

Disposable diaper—34 count package of Stage 2 disposable diapers (child 12–18 lbs). Do not price jumbo, overnight, or larger size diapers. Use: Pampers, Huggies.

Doctor office visit—Typical fee for an office visit with patient's regular physician when medical advice or simple treatment is needed. Do not include the charge for a regular physical examination, injections, medication or lab tests (routine brief visit). Price general practitioner, not specialist.

Drill, cord-type—3/8″ reversible, variable speed, 3 amp (1200 rpm. max) electric drill with 6' cord. Price a typical homeowner's drill. Do not price Dewalt, Milwaukee, or similar brands used by professionals. Use: Black & Decker 7152, Makita 6406, Skil 6340.

Drill, cordless—3/8″ reversible, variable speed, 7 to 9 volt, cordless electric drill with 3-hour recharge. Price a typical homeowner's drill. Do not price Makita, Dewalt, Milwaukee, or similar brands used by professionals. Use: Skil 2380 and 2375.

Dry clean man's suit—2-piece man's suit of typical fabric. Do not price for silk, suede or other unusual materials.

Education, K–12 priv—Tuition rate, books and uniforms (if required) for K–12 education at a private school.

Eggs, large—One dozen. Do not price brown eggs. Use: Local brand, Regional brand, non-local brand.

Electric bill—Average monthly cost including any additional charges. Record the average monthly consumption in KWH, cost for first xxx KWH, and cost over xxx KWH. If monthly amounts vary based on time of year, obtain data on annual basis. In Alaska (except Juneau) assume oil or gas for heating. In all other areas, assume all electric homes.

Electrical outlet—2-plug 15-amp (duplex) grounded electrical outlet. Note: This is a standard wall outlet or plug commonly found in homes. Price single blister pack or cardboard mounted package, and a loose electric outlet or 20 amp outlet. Use: GE, Levitron, Eagle.

Electrical work—Labor cost per hour to add circuit breaker for dishwasher. Description: Cut 3/4″ hole in wooden floor for cable and connect dishwasher directly to power box (power box is easy to reach). Obtain estimated time for job and travel. Exclude cost of materials. Ask whether outlet is a licensed contractor.

Fast food—Hamburger meal consisting of Big Mac, medium french fries, and medium soft drink. Pizza meal consisting of personal size cheese pizza (or one slice of cheese pizza) and small soft drink. Do not include salad. Report percentages added for tax. Use: McDonald's type and Pizza Hut type.

Film developing—Cost to process and print 35 millimeter, 24 exposure, 100 ASA color. Regular size (3 x 5) single prints only. Price at local lab with 2–3 day service. Do not price Kodak or mail order service.

Fire extinguisher—Fire extinguisher with a UL rating of 10 BC, 2.5 pound size. Do not price an ABC type extinguisher. Use: Kidde, First Alert.

Fish filet, frozen—Price per pound of frozen ocean whitefish filet. Do not price breaded filets. Do not price family-pack, value-pack, super-saver pack or equivalent. Use: Cod, Haddock, Snapper.

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Fish, fresh—Price per pound of salmon steak. Do not price previously frozen (PF) or specially prepared skinless or boneless varieties. Do not price family-pack, value-pack, super-save pack, or equivalent. Use: Salmon steak.

Ford ATF change—Automatic transmission fluid change in a 1-year-old Ford. Include parts and labor for the following: Drain and replace transmission fluid and test vehicle. Include filter and pan gasket replacement.

Ford coolant serv—Flush and fill engine coolant in a 1-year-old Ford Taurus similar to current year model. Include parts and labor for the following: Remove old coolant, flush contaminants, and replace with new coolant.

Ford CVJ boots—Replacement cost of the inner and outer CVJ Boots (constant velocity joint) on both front wheels for a 3-year-old Ford Taurus GL 4-door sedan, 3.0 liter, 6 cylinder.

Ford license/reg—Title fee, lien fee, passenger vehicle registration fees, plate fees, administration/clerical/other fees and any local added fees for a current year Ford Taurus GL 4-door sedan, 3.0 liter, 6 cylinder.

Ford min insurance—DC AND VI ONLY. Assume that vehicles are used in commuting 15 miles one-way per day, 15,000 miles per year and that the driver is a 35-year-old married male with no accidents or violations in the last 5 years. Include related fees and taxes. Include applicable safety feature discounts. COVERAGES (BI minimum avail., PD minimum, Med minimum or PIP minimum, and UM minimum. Com 250 deductible. Col 500 deductible.) If these deductibles are not available, price the policy with the closest coverage.

Ford misc taxes—Annual miscellaneous tax (*e.g.*, personal property tax, use tax, etc) for a current year model Ford Taurus. Report how rate is determined, give formula for new vehicle purchase and for subsequent years (2 to 5). Explain billing.

Ford muffler—Complete muffler system for a 4-year-old Ford Taurus. Include parts and labor for the following: Install all parts after the catalytic converter. These parts include mid pipes, clamps, muffler, and tail pipes.

Ford oil change—Oil change for a 1-year-old Ford Taurus. Include parts and labor for the following: Drain old oil, replace oil filter and refill with appropriate number of quarts of 10W30 SG grade oil. If SG grade not available, price SF grade oil.

Ford reg insurance—Assume that vehicles are used in commuting 15 miles one-way per day, 15,000 miles per year and that the driver is a 35-year-old married male with no accidents or violations in the last 5 years. Include related fees and taxes. Include applicable safety feature discounts COVERAGES (BI 100/300,000 PD 25,000 Med 15,000 or PIP 50,000 UM 100/300,000. Com 100 deductible. Col 250 ded.). If these deductibles are not available, price the policy with the closest coverage available.

Ford regular tires—Black side wall tire size P205/65R15 for the Ford Taurus GL. Use: Goodyear Invicta GL, Michelin XW4, BF Goodrich Touring TA.

Ford snow tire—Studded snow tire size P205/65R15 for the Ford Taurus GL. Use: Goodyear Ultra Grip, Michelin XM+S ALPIN, BF Goodrich Trailmaker Plus.

Ford Taurus—Ford Taurus, current year model, GL 4-door sedan, 3.0 liter, 6 cylinder.

Ford Taurus—Ford Taurus, current year model, GL 4-door sedan, 3.0 liter, 6 cylinder.

Ford tire change—Remove street tire and mount snow tire. Model adjusts for 4 tires.

Ford tune-up—Basic tune-up for a 1-year-old Ford Taurus GL. Include replacing spark plugs (do not price platinum), check distributor cap, and rotor. Check and adjust ignition timing. Adjust idle speed. Inspect air cleaner. Do not include cost to replace PVC valve, fuel filter or air filter. Sales tax should not be included in price.

Ford 4-yr value—Retail value of a 4-year-old Ford Taurus.

Ford windshield rpl—Windshield replacement on 1-year-old Ford Taurus GL. Ask outlet about the frequency of windshield replacement and record in comments. Price at specialty shop or, if not available, at car dealer.

Frankfurter—16 oz (1 lb) package, all beef, USDA graded. Do not price chicken, turkey, extra lean, or fat free frankfurters. Use: Oscar Mayer, Hormel, Ball Park.

Frozen dinner—One 1.5 oz frozen turkey dinner including whipped potatoes, peas, and fruit compote. Do not price Hungry Man or equivalent extra-portion sizes. Use: Swanson.

Frozen orange juice—12 fl oz orange juice concentrate (makes 48 fl oz). Do not price calcium fortified, pulp free, country style etc. Use: Minute Maid, Sunkist.

Frozen waffles—8 to 10 waffles approximately 11 oz package. Use: Kellogg's Eggo, Aunt Jemina, Hungry Jack.

Fruit drink—64 fl oz glass or plastic bottle. Do not price powdered mixes or individual serving sized drinks. Use: Hawaiian Punch, HI-C regular.

Fruit juice—48 oz glass or plastic bottle of cranberry juice. Do not price frozen or boxed drink or drink in significantly different size bottle. Use: Ocean Spray Cranberry Cocktail, Ocean Spray Cranapple Cocktail.

Funeral services—Cost of direct cremation. Includes removal of remains, local transportation to crematory, necessary body care and minimal services of the staff. Do not include the fee for the crematory, container, or use of facilities and staff.

Gas/oil bill—ALASKA ONLY (except Juneau). Average monthly cost including all charges. Record in comments average monthly consumption in cu. ft./gallons, customer service charge, cost for first cu. ft./gallons, and cost for over first xxx cu. ft/gallons.

Gasoline full serv—Price per gallon for full-service unleaded regular gasoline. Record in comments prevalence of self-serve vs. full-serve pumps.

Gasoline self serv—Price per gallon for self-service unleaded regular gasoline.

Girl's dress—Cotton blend short or long-sleeve dress appropriate for school for ages 8 to 10 (size 7–14). Minimal ornamentation. Use: Amy Too, Disorderly Kids, Swat.

Girl's jeans—Basic plain jeans for girls ages 8 to 10 (size 7–14). Use: Lee.

Girl's knit top—Knit short or long sleeve pullover of cotton/poly blend for girls ages 8 to 10 (size 7–14). Use: Basic Edition, Route 66, One Story Up.

Golf—18 holes of golf on a weekend. Do not price par 3 courses. Do not include golf-cart rental, early-bird specials, or off-hours pricing. If only 9-hole rate is available, note and report twice. If only daily rate is available (unlimited number of holes), report the Saturday or Sunday rate. Ask if course is publicly or privately-owned and note in the comment section.

Green beans, canned—14.5 oz can of plain cut green beans. Do not price French style, Italian style, canned vegetable mixtures or similar variations. Use: Del Monte, Green Giant.

Ground beef—Price per pound of fresh USDA graded (select not choice) with no more than 30% fat content. Do not price lean, ground round, frozen beef, etc. Do not price family-pack, value-pack, super-saver pack, or equivalent. Use: Regular ground beef.

Ham, canned—3 lb tin of canned ham. Do not price Hormel's supreme cut ham or equivalent. Use: Hormel, Dubuque, Bar–S.

Hamburger buns—8-count package of sliced enriched white hamburger buns. Do not price store brand, whole wheat or sesame seed buns. Use: Wonder, Sunbeam, Regional brand.

Hammer—Curved claw hammer with a 16 oz head, wood handle, high carbon steel head, black finish. Overall length 13 1/4". This is a typical homeowner's hammer. Do not price hammers with non-wooden handles or those typically used by carpenters or cabinet makers. Use: Stanley 51616, Sears Craftsman 38312.

Health club—Regular individual membership for 1 year for existing member. Do not include any initial fees assessed only to new members or any special offers provided only to new members. If yearly rate is not available, price per month and note as such. Minimum services must include free weights, cardiovascular equipment, and aerobic classes. Note if pool, tennis, racquet ball, or other significant services are also offered.

Home sale low—Obtain comparable sales between 600 and 1200 square feet. Collect selling price, sale date, and square footage for each comparable. Collect age and room count when available. Obtain data for the most recently available 12 month time frame. 4 rooms, 2 BR, 1 bath; condo or detached house.

Home sale mid—Obtain comparable sales between 1000 and 1600 square feet. Collect selling price, sale date, and square footage for each comparable. Collect age and room count when available. Obtain data for the most recently available 12 month time frame. 5 rooms, 3 BR, 1 bath; detached house.

Home sale upr—Obtain comparable sales between 1400 and 2300 square feet. Collect selling price, sale date, and square footage for each comparable. Collect age and room count when available. Obtain data for the most recently available 12 month time frame. 7 rooms, 3 BR, 2 baths; detached house.

Homeowner insur low—Annual renewal premium for HO–2 type coverage. If the company does not refer to the coverage as HO–2, obtain the cost for a comprehensive coverage that covers all risk for dwelling and named peril as required by mortgage companies in the area for contents with

contents at replacement value. as required by mortgage companies in the area.

Homeowner insur mid—Annual renewal premium for HO–2 type coverage. If the company does not refer to the coverage as HO–2, obtain the cost for a comprehensive coverage that covers all risk for dwelling and named peril as required by mortgage companies in the area for contents with contents at replacement value.

Homeowner insur upr—Annual renewal premium for HO–2 type coverage. If the company does not refer to the coverage as HO–2, obtain the cost for a comprehensive coverage that covers all risk for dwelling and named peril as required by mortgage companies in the area for contents with contents at replacement value.

Honda ATF change—Automatic transmission fluid change in a 1-year-old Honda Civic DX. Include parts and labor for the following: Drain and replace transmission fluid and test vehicle.

Honda civic—Honda Civic current year model, DX 4-door sedan, 1.5 liter, 4 cylinder.

Honda coolant serv—Flush and fill engine coolant in a 1-year-old Honda Civic DX. Include parts and labor for the following: remove old coolant, flush contaminants, and replace with new coolant.

Honda CVJ boots—Replacement cost of the inner and outer CVJ (constant velocity joint) boots on both front wheels for a 3-year-old Honda Civic DX 4-door sedan, 1.5 liter, 4 cylinder.

Honda license/reg—Title fee, lien fee, passenger vehicle registration fees, plate fees, administration/clerical/other fees and local added fees for a current year Honda Civic DX 4-door sedan, 1.5 liter, 4 cylinder.

Honda min insurance—DC AND VI ONLY. Assume that vehicles are used in commuting 15 miles one-way per day, 15,000 miles per year and that the driver is a 35-year-old married male with no accidents or violations in the last 5 years. Include related fees and taxes. Include applicable safety feature discounts. COVERAGES (BI minimum avail., PD minimum, Med minimum or PIP minimum, and UM minimum. Com 250 deductible Col 500 deductible.) If these deductibles are not available, price the policy with the closest coverage.

Honda misc taxes—Annual miscellaneous tax (*e.g.*, personal property tax, use tax, etc.) for a current year model Honda Civic DX 4-door sedan, 1.5 liter, 4 cylinder. Report how rate is determined and give formula for new vehicle purchase and for subsequent years (2 to 5). Explain billing.

Honda muffler—Complete muffler system for a 4-year-old Honda Civic DX . Include parts and labor for the following: install all parts after the catalytic converter. These parts include mid pipes, clamps, muffler, and tail pipes.

Honda oil change—Oil change for a 1-year-old Honda Civic DX. Include parts and labor for the following: drain old oil, replace oil filter and refill with appropriate number of quarts of 10W30 SG grade oil. If SG grade not available, price SF grade oil.

Honda reg insurance—Assume that vehicles are used in commuting 15 miles one-way per day, 15,000 miles per year and that the driver is a 35-year-old married male with no accidents or violations in the last 5 years. Include related fees and taxes. Include applicable safety feature discounts. COVERAGES (BI 100/300,000 PD 25,000 Med 15,000 or PIP 50,000 UM 100/300,000. Com 100 deductible. Col 250 deductible.) If these deductibles are not available, price the policy with the closest coverage.

Honda regular tires—Black side wall tire size P175/70R13 for the Honda Civic. Use: Goodyear Invicta GL, Michelin LX1, BF Goodrich Touring TA.

Honda snow tire—Studded snow tire size P175/70R13 for Honda Civic DX. Use: Goodyear Ultra Grip, Michelin XM+S ALPIN, BF Goodrich Trailmaker Plus.

Honda tire change—Remove street tire and mount snow tire. Model adjusts for 4 tires.

Honda tune-up—Basic tune-up for a 1-year-old Honda Civic DX. Include replacing spark plugs (do not price platinum), check distributor cap, and rotor. Check and adjust ignition timing. Adjust idle speed. Inspect air cleaner. Do not include cost to replace PVC valve, fuel filter or air filter. Sales tax should not be included in price.

Honda 4-yr value—Retail value of a 4-year old Honda Civic DX.

Honda windshield rpl—Windshield replacement on 1-year-old Honda Civic DX. Ask outlet about the frequency of windshield replacement and record in comments. Price at specialty shop or, if not available, at car dealer.

Hospital attendant—Nightly charge for an attendant (*e.g.* LPN). Price only if typical hospital service is not equivalent to that found in DC area.

Hospital room—Nightly charge for a semi-private room. Include food and routine care. Does not include cost of operating room, surgery, medicine, lab fees, etc. Do not price speciality rooms, *e.g.*, those in cardiac care units.

Housekeeping service—Job rate for twice per month cleaning. HOUSE: approximately 2,000 sq. ft., family of four (2 adults, 2 children), no pets. Includes 1.5 bathrooms—clean floor, counter, bathtub, toilet. Kitchen—clean floor, counter, cabinets, sink. Living and dining room—dust furniture and vacuum. Two bedroom—dust furniture and vacuum. Note any other routine services and estimated number of hours to complete service. Exclude initial house cleaning service. Ask if price varies if ranch-style or two-story type house (latter would include vacuuming stairs).

Ice cream—½ gallon (2 qts) of vanilla ice cream. Do not price ice milk or frozen yogurt. Use: Store brand.

Ice cream cone—Regular (one scoop) vanilla ice cream on cone. Do not price frozen yogurt or soft-serve ice cream. Use: Baskin-Robbins type, Lapperts type.

Infant's sleeper—One-piece sleeping garment with legs, covering the body including the feet. Use: Gerber, Playskool, Sesame Street.

Insurance, air ambul—Annual premium for air ambulance insurance for family of four.

Interior painting—Job rate to repaint living room (one coat over same color)—12′ x 14′ with 8′ ceiling, 2 standard-sized sash windows, 1 standard-size door. Walls are drywall in good repair with simple wood baseboards and moulding (no crown moulding). Existing paint is flat-white latex, smooth finish, about 3 years old. Trim paint is gloss-white latex enamel, also 3 years old. No surface prep required. Include time estimate for job and travel costs. If only hourly rate available, obtain time estimate. Do not include materials.

Jello gelatin—3 oz box gelatin dessert. Use: Jello, Royal.

Jewelry—One pair 6mm 14K gold ball earrings for pierced ears.

Ketchup—28 oz plastic squeeze bottle. Use: Heinz.

Kitchen faucet—Single control chrome-plated faucet with spray. Solid brass and stainless steel with copper waterways, triple chrome plating, and washerless design. Sprayer sits in a separate hole in the sink. Do not price decorator models. Guaranteed for 2 years or longer. Use: Peerless 8500–ECP, Delta 400, Moen 87511.

Kitchen range—30″ wide electric range. Features: Upswept cook-top, removable coil elements, electronic clock with timer, oven light, delay-start cook control, storage drawer, glass front with see-thru window, self-cleaning oven with two oven racks and a porcelain enamel broiler pan. Use: Maytag MER5530, General Electric JBP26BYWH.

Latex interior paint—One gallon flat-white interior latex paint. Price a national brand with one coat coverage. Use: Dutch Boy, Glidden, Benjamin Moore, Pittsburgh.

Laundry soap—100 fl oz of liquid household laundry detergent. Do not price detergent with bleach or whiteners. Use: Tide, Cheer, Wisk.

Lawn care service—Cut and trim a ¼ acre lot on a weekly basis. Do not include any other yard services (*e.g.* fertilizing, raking, or watering).

Lawn trimmer—Gas powered 31 CC two-cycle engine, dual feed line, 16 to 17″ wide cut. Bump or semi-automatic line feed.

LD call Chicago—Cost of a 10 minute call using AT&T, received in Chicago (use Chicago time) on a weekday at 8:00 p.m.; direct dial from the location being surveyed. Include any Federal, State, local, or excise tax that is applicable. Use: AT&T Regional Service.

Ld call LA—Cost of a 10 minute call using AT&T, received in Los Angeles (use LA time) on a weekday in LA at 8:00 p.m.; direct dial from the location being surveyed. Include any Federal, State, local, or excise tax that is applicable. Use: AT&T Regional Service.

Ld call NYC—Cost of a 10 minute call using AT&T, received in New York (use NY time) on a weekday at 8:00 p.m.; direct dial from the location being surveyed. Include any Federal, State, local, or excise tax that is applicable. Use: AT&T Regional Service.

Legal services—Hourly rate for preparing a simple will or trust. Obtain lawyer fee, not paralegal.

Lettuce, fresh—Price per pound of iceberg lettuce. If sold by the head, report the price and weight of an average head. Find equivalent-size heads at each store. Use: Available Brand.

Lipstick—One tube of lipstick. Use: Revlon Super Lustrous, Revlon Moondrops.

Living room chair—Catalog Item. Flexsteel rocker/recliner. Include shipping and handling. Use: JC Penney.

Lunch—One lunch consisting of a cheeseburger platter with fries and small soft drink. Use: Denny's type, TGIF type, Chart House type.

Lunch meat—8 oz pkg. Do not price all beef variety. Use: Oscar Mayer Bologna, Oscar Mayer Cotto Salami.

Magazine—Store price (not publisher's price unless that is the store price) for a single copy. Use: Time, Newsweek, US News & World Report.

Man's boots—ALASKA AND DC ONLY. 8" shaft, waterproof leather upper, padded collar (top of shaft), Cambrelle lining, insulated, rubber lug-type sole. Do not price steel toe. Use: Timberland, Sorel, Wolverine.

Man's dress shirt—White or solid color, long sleeve, button cuff, plain collar dress shirt, approximately 35% cotton, 65% polyester. Use: Arrow, Van Heusen, Moose Creek.

Man's haircut—Typical haircut. Do not include wash.

Man's jacket—Catalog Item. TROPICAL AND DC ONLY. Summer weight denim jacket. Relaxed fit and machine washable. Include shipping and handling. Use: JC Penney, Lands' End, L.L. Bean.

Man's jeans—Regular loose fit, non-designer jeans. Do not price bleached, stone-washed or designer jeans. Use: Wrangler, Rustlers.

Man's Parka—Catalog Item. ALASKA AND DC ONLY. Water resistant nylon-outer shell, insulated, nylon lining, removable hood, multiple pockets, drawstring waist. Machine washable. Include shipping and handling. Use: JC Penney, Lands' End, L.L. Bean.

Man's shoes—100% leather wing tips or plain toe. Remaining parts are man-made materials. Lightweight with rubber/EVA sole. Use: Rockport, Bostonian.

Man's suit—Catalog Item. Double-breasted worsted wool, ventless back. Include shipping and handling. Use: JC Penney, Bachrach.

Man's undershirt—White 100% cotton undershirts with short sleeves, set of three. If not in set of three, report the number per package. Use: Fruit of the Loom, Hanes, Northwest Territory.

Margarine—1 lb (4 sticks) regular margarine. Do not price reduced fat variety. Use: Parkay, Fleishmans.

Milk, 2%—One Gallon (128 fl oz). Use: Store brand.

Mortgage interest—Current interest rate for a 30-year loan on the average house assuming 80 percent financing.

Motor scooter—Price for a 50 CC scooter. One seater with electric start, oil injection 2-stroke engine. Use: Yamaha JOG CY 50, Honda Elite SA 50.

Movie theater—Typical adult price for regular length, current-release (currently advertised on television) evening film. Report weekend evening price if different from weekday.

Moving—Hourly rate for a within-city move, two men, enclosed van. Include any van rental fees. Do not include any extra insurance options or specialty packaging options. If more than two men, note number of workers.

Non-aspirin pain rel—60 tablets of extra-strength Tylenol. Do not price caplets or gelcaps.

Non-broker rntl low—Monthly rent for 3 room, 1 BR, 1 bath apartments (average size roughly 600 sq ft.). If possible, obtain square footage, age, room count whether utilities are included and special amenities.

Non-broker rntl mid—Monthly rent for 4 room, 2 BR , 1 bath apartments (average size roughly 900 sq ft.). If possible, obtain square footage, age, room count whether utilities are included and special amenities.

Non-broker rntl upr—Obtain monthly rent for 4 room, 2 BR, 2 bath townhouse or detached house (average size roughly 1100 sq ft.). If possible, obtain square footage, age, room count whether utilities are included and special amenities.

Oranges, fresh—Price per pound of loose Valencia oranges. If only bagged oranges are available, also report the weight of the bag. Use: California Valencia, Florida Valencia.

Parcel post—Cost of mailing a 5 pound package to each of the following cities: Chicago, Los Angeles, New York Use: United States Postal.

Peaches, canned—16 oz can sliced yellow cling peaches. Do not price lite. Use: Libby, Del Monte.

Peas, frozen—16 oz package. Do not price peas with sauce or Green Giant Select. Use: Green Giant, Birdseye, Hanover.

Pen—10-count package round stick medium pen. Use: Bic Round Stic, Paper Mate.

Pest control—Basic pest control maintenance (one visit to control crawling insects, not wood eating), based on the inside of a 1,200 sq. ft. single story home. Price follow-up maintenance only, not the initial application.

Pet food—5.5 oz can of cat food. Use: Purina, 9 Lives, Whiskas.

Piano lessons—Private lesson for a beginner one-half hour in length. Price through a music studio if possible.

Plant food—24 oz container of granulated indoor plant food. Use: Miracle Grow.

Pork chops, bone in—Price per pound of an average size USDA graded (select not choice) package. Do not price family-pack, value-pack, super-saver pack or equivalent. Do not price frozen chops. Use: Center cut rib chop, Loin chop with bone.

Postage stamp—First Class postage.

Potatoes—1 lb of potatoes. Use: Russet baking and No 2. White.

Real estate tax low—Current real property tax rate, any special charges that are added to the tax bill and any homestead credits that might be deducted from the bill. Report when properties were last assessed and to what base year the tax rate should be applied. Report when rates are certified and when bills are mailed.

Real estate tax mid—Current real property tax rate, any special charges that are added to the tax bill and any homestead credits that might be deducted from the bill. Report when properties were last assessed and to what base year the tax rate should be applied. Report when rates are certified and when bills are mailed.

Real estate tax upr—Current real property tax rate, any special charges that are added to the tax bill and any homestead credits that might be deducted from the bill. Report when properties were last assessed and to what base year the tax rate should be applied. Report when rates are certified and when bills are mailed.

Red roses, fresh cut—One dozen long stemmed, fresh cut red roses. Do not price boxed or arranged.

Refrigerator—No-frost top-mount 20.5 to 21.5 cubic ft. refrigerator with reversible doors, glass shelves, moisture controlled crisper drawers, and meat drawer. Door contains one or more covered compartments and adjustable bins. Freezer has adjustable wire shelves, door bins and ice trays. Do not price models with ice makers, chilled water dispensers, or other extra features. Use: Maytag MTB2154A, General Electric TBX2IIABAA.

Regional newspaper—1 year of home delivery of the largest selling daily regional paper (including Sunday edition) distributed in the area. Do not include tip. In Alaska, price the major Anchorage newspaper. In Hawaii, price the major Honolulu newspaper.

Renter insur low—HO–4 type coverage; assume value of contents at $25,000.

Renter insur mid—HO–4 type coverage; assume value of contents at $30,000.

Renter insur upr—HO–4 type coverage; assume value of contents at $35,000.

Round roast boneless—Price per pound of an average size USDA graded (select not choice) package. Do not price family-pack, value-pack, super-saver pack or equivalent. Do not price frozen roast. Use: Boneless rump, Sirloin tip rolled, Boneless top round.

Round steak boneless—Price per pound of an average size USDA graded (select not choice) package. Do not price family-pack, value-pack, super-saver pack or equivalent. Do not price frozen steak. Use: Boneless beef round, Boneless top round, Boneless bottom rnd.

Round trip Chicago—Lowest round trip ticket to Chicago, IL, with 3-week advance reservation departing and returning midweek. Disregard restrictions, super-saver fares and special promotions. (In reference area, price all flights from National Airport.)

Round trip LA—Lowest round trip ticket to Los Angeles, CA, with 3-week advance reservation, departing and returning midweek. Disregard restrictions, super-saver fares and special promotions. (In reference area, price all flights from National Airport.)

Round trip Miami—Lowest round trip ticket to Miami, FL, with 3-week advance reservation departing and returning midweek. Disregard restrictions, super-saver fares and special promotions. (In reference area, price all flights from National Airport.)

Round trip NYC—Lowest round trip ticket to New York, NY, with 3-week advance reservation departing and returning midweek. Disregard restrictions, super-saver fares and special promotions. (In reference area, price all fares from National Airport.)

Round trip Omaha—Lowest round trip ticket to Omaha, NE, with 3-week advance reservation departing and returning midweek. Disregard restrictions, super-saver fares and special promotions. (In reference area, price all flights from National Airport.)

Round trip Seattle—Lowest round trip ticket to Seattle, WA, with 3-week advance

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reservation departing and returning midweek. Disregard restrictions, super-saver fares and special promotions. (In reference area, price all flights from National Airport.)

Round trip St. Louis—Lowest round trip ticket to St. Louis, MO, with 3-week advance reservation departing and returning midweek. Disregard restrictions, super-saver fares and special promotions. (In reference area, price all flights from National Airport.)

Salt—26 oz box of iodized salt. Do not price sea-salt, kosher-style salt etc. Use: Morton, Ivory, Regional Brand.

Shampoo—15 ounce bottle of shampoo for normal hair. Use: Suave, VO5, White Rain.

Snack cake—Package of two cellophane wrapped, cream-filled sponge cake deserts. Do not price fresh baked desserts, boxed, or family packs. Use: Hostess Twinkees, Krispy Kreme, Hostess Cupcakes.

Snack food—6 oz bag or box of regular potato chips. Use: Ruffles, Lays.

Soft drink—2 liter, plastic bottle. Use: Coca-Cola, Pepsi.

Spaghetti, dry—16 oz box or bag. Do not price store brand. Use: Creamette, American Beauty Mission.

Sugar, granulated—5 lb bag of granulated cane or beet sugar. Do not price superfine or generic. Use: Non-store brand, Store brand.

Telephone service—Monthly cost for unmeasured touchtone service. Include tax. Do not include options such as call waiting, call forwarding or fees for equipment rental.

Telephone, cellular—Cost of basic monthly cellular phone service plus 10 prime-time 2-minute calls per month. Do not price special offers.

Tennis balls—One can, 3 heavy-duty felt, yellow, tennis balls. Do not price special gas-filled or premium tennis balls. Use: Wilson, Penn.

Tetracycline—Price of 40 capsules of tetracycline, 250 milligram strength. Record whether generic or non-generic. If price differs record both prices in comment area.

Toilet tissue—Regular 4-roll pack. Do not price family-pack, double roll, value-pack, super-saver size package, or equivalent. Use: Cottonelle, Northern, Charmin.

Tomatoes, fresh—Price per pound of medium-size tomatoes. Do not price organic, hydro, plum, or extra fancy tomatoes. Note quality in comments. Use: Available Variety.

Tuna, canned—Chunk light, packed in water (6.0 oz to 6.13 oz). Do not price fancy style. Use: Star Kist, Chicken of the Sea, Bumble Bee.

Two-slice toaster—Two-slice toaster, chrome body, wide slot with pastry defrost setting. Use: Proctor-Silex 22425, Proctor Silex 22430.

Unclog drain—Hourly rate to unclog kitchen sink drain by mechanical means (small snake or auger, etc.). Assume clog is in the plumbing inside the house, not in the yard. Exclude extra charges such as excess travel, overtime, weekend rates or emergencies. If JOB RATE get low-end quote because this is a simple clog.

Vacuum—Upright vacuum cleaner with approximately 12 amps, 120 volts, minimum 5 above-the-floor attachments, height adjustment, regular bag and 20 to 25 foot cord. Use: Eureka 4470 and 4471, Dirt Devil Swivel Glide 86400 and 86410.

Veterinary services—Routine annual exam for a small dog (approx. 25 to 30 lbs.). No booster shots, medication, or other extras such as nail clipping, ear cleaning, etc.

Video recorder—4-head Hi-Fi Stereo. FEATURES: VCR Plus programming, on-screen menu system, multi-lingual, universal remote. Use: Sony SLV678 and SLV778.

Video rental—One video tape, 1-day or minimum rental rate for Saturday night. Non-member fee. Do not price new releases, oldies or classics where price is different from a regular rental.

Washing machine—FEATURES: Super capacity, 3 water temperatures, 8 wash cycles, 3 water levels, white porcelain tub (no stainless steel), self-clean lint filter, fabric softener & bleach dispenser, 2 speed combinations. Use: Maytag LAT9306, General Electric WJX(S)R2080XXX, Whirlpool LSR8233EQ.

Water bill—Average monthly consumption in gallons and dollars (cost for first xxx gallons; cost for over xxx gallons), sewage and related charges, and customer service charge.

Window shade—Catalog Item. Light-filtering unfringed 37.5″ width. Include shipping and handling. Use: JC Penney.

Wine at home—1.5 liter of Chablis blanc. Use: Gallo, Inglenook.

Wine away—One glass of house white wine. Use: Same restaurant where dinner price is obtained.

Woman's accessory—Clutch/checkbook style wallet. Split-grain, cowhide leather. Do not price eel skin, snake skin or other varieties. Use: Princess Gardner, Mundi, Buxton.

Woman's blouse—100 % polyester, white, long sleeve, button front blouse with minimum trim. Use: Laura Scott, Christy Jill, Impressions.

Woman's boots—ALASKA AND DC ONLY. Calf height boot, pile or fleece lining, urethane upper, broad-based 1″ heel, non-skid traction sole, prefer zipper closure if available. Use: Sorel, Naturalizer.

Woman's coat—Catalog Item. ALASKA AND DC ONLY. 100 % wool, double-breasted coat. Include shipping and handling. Use: JC Penney, Chadwicks.

Woman's cut & style—Wash, cut, and styled blow dry. Exclude curling iron if extra. Price hair salons in major department stores and malls.

Woman's dress—Catalog Item. Sheath style dress appropriate for office attire. Dress is fully lined and 100% polyester. Include shipping and handing. Use: JC Penney.

Woman's shoes—TROPICAL AND DC ONLY. Plain pump (not open toed or open back style), tapered 2″ heel matches shoe (not stacked/wooden type or extra thick), leather uppers, the remaining parts are man-made materials. Use: JC Penney, Worthington, Sears Apostrophe and Luv Comfort, Life Stride.

Woman's slacks—Unlined, cotton/polyester blend with or without a belt appropriate for office attire. Do not price elastic waist. Use: Donnkenny, Alfred Dunner, Fundamental Things.

Woman's sweater—Catalog Item. Cotton knit crewneck pullover sweater. Machine washable. Include shipping and handling. Use: JC Penney, Lands' End.

Appendix 6—Principal Pricing Changes

FOR HOME SALE AND RENTAL COMMUNITIES, SEE APPENDIX B

Current	Previous	Reason
Babysitter, area minimum wage	Hourly rate	Change improves price comparison.
Bath Towel, catalog	Department store	Change improves price comparison.
Bed Sheet, catalog	Department store	Change improves price comparison.
Cigarettes, single pack (convenience store)	Carton, grocery store	Change improves price comparison.
Dryer repair (test)	Not surveyed	Improves appliance repair comparison.
Hospital attendant, nightly charge	Daily charge	Change reflects more common use.
Housekeeping, job rate	Hourly rate	Specification improves price comparison.
Man's insulated undershirt, discount store	Department store	More widely used outlet type.
Man's undershirt, discount store	Department store	More widely used outlet type.
Plywood	Not surveyed	Improves building material selection.
Snack cake, 8–10 cnt, grocery store	2 pack, convenience store	Change improves price comparison.
Woman's dress, catalog	Department store	Change improves price comparison.
Waffles: 11 oz package or package of 8	Package of 8	Change improves price comparison.
Dropped	Frozen fish, lawn trimmer, skiing	Insufficient data.
Not surveyed	Car rental	Test.

Appendix 7—Consumption Goods and Services Analysis

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights*	Subtotal	Weights*	Subtotal	Weights*	Subtotal
Anchorage, AK:							
1. Food At Home	119.33	27.03	32.25	24.05	28.70	21.30	25.42
2. Food Away From Home	102.93	13.43	13.82	14.18	14.60	14.87	15.31
3. Tobacco	130.23	2.82	3.67	2.34	3.05	1.90	2.47
4. Alcohol	97.03	2.33	2.26	2.40	2.33	2.47	2.40
5. Furnishings and Household Operations	109.49	15.36	16.82	16.64	18.22	17.82	19.51
6. Clothing	108.71	13.02	14.15	13.50	14.68	13.94	15.15
7. Domestic Services	106.58	1.73	1.84	1.95	2.08	2.15	2.29
8. Professional Services	106.88	7.09	7.58	6.82	7.29	6.57	7.02
9. Personal Care	103.12	3.91	4.03	3.77	3.89	3.64	3.75
10. Recreation	121.90	13.27	16.18	14.35	17.49	15.34	18.70
Total Weights		100.00		100.00		100	
Total Indexes:							
Lower			112.60				
Middle					112.33		
Upper							112.02
Fairbanks, AK:							
1. Food At Home	119.70	27.03	32.35	24.05	28.79	21.30	25.50
2. Food Away From Home	106.53	13.43	14.31	14.18	15.11	14.87	15.84
3. Tobacco	125.45	2.82	3.54	2.34	2.94	1.90	2.38
4. Alcohol	106.36	2.33	2.48	2.40	2.55	2.47	2.63
5. Furnishings and Household Operations	114.81	15.36	17.63	16.64	19.10	17.82	20.46
6. Clothing	105.24	13.02	13.70	13.50	14.21	13.94	14.67
7. Domestic Services	98.31	1.73	1.70	1.95	1.92	2.15	2.11
8. Professional Services	109.56	7.09	7.77	6.82	7.47	6.57	7.20
9. Personal Care	107.48	3.91	4.20	3.77	4.05	3.64	3.91
10. Recreation	130.29	13.27	17.29	14.35	18.70	15.34	19.99
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			114.97				
Middle					114.84		
Upper							114.69
Juneau, AK:							
1. Food At Home	126.62	27.03	34.23	24.05	30.45	21.30	26.97
2. Food Away From Home	109.41	13.43	14.69	14.18	15.51	14.87	16.27
3. Tobacco	127.39	2.82	3.59	2.34	2.98	1.90	2.42
4. Alcohol	110.14	2.33	2.57	2.40	2.64	2.47	2.72
5. Furnishings and Household Operations	119.83	15.36	18.41	16.64	19.94	17.82	21.35
6. Clothing	100.45	13.02	13.08	13.50	13.56	13.94	14.00
7. Domestic Services	105.65	1.73	1.83	1.95	2.06	2.15	2.27
8. Professional Services	107.46	7.09	7.62	6.82	7.33	6.57	7.06
9. Personal Care	109.96	3.91	4.30	3.77	4.15	3.64	4.00
10. Recreation	138.92	13.27	18.43	14.35	19.94	15.34	21.31
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			118.75				
Middle					18.56		
Upper							118.37
Nome, AK:							
1. Food At Home	167.79	27.03	45.35	24.05	40.35	21.30	35.74
2. Food Away From Home	162.90	13.43	21.88	14.18	23.10	14.87	24.22
3. Tobacco	136.45	2.82	3.85	2.34	3.19	1.90	2.59
4. Alcohol	113.45	2.33	2.64	2.40	2.72	2.47	2.80
5. Furnishings and Household Operations	129.08	15.36	19.83	16.64	21.48	17.82	23.00
6. Clothing	115.22	13.02	15.00	13.50	15.55	13.94	16.06
7. Domestic Services	110.89	1.73	1.92	1.95	2.16	2.15	2.38
8. Professional Services	105.83	7.09	7.50	6.82	7.22	6.57	6.95
9. Personal Care	111.36	3.91	4.35	3.77	4.20	3.64	4.05
10. Recreation	161.55	13.27	21.44	14.35	23.18	15.34	24.78

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights*	Subtotal	Weights*	Subtotal	Weights*	Subtotal
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			143.76				
Middle					143.15		
Upper							142.57
Honolulu, HI:							
1. Food At Home	138.34	27.03	37.39	24.05	33.27	21.30	29.47
2. Food Away From Home	122.35	13.43	16.43	14.18	17.35	14.87	18.19
3. Tobacco	118.94	2.82	3.35	2.34	2.78	1.90	2.26
4. Alcohol	105.07	2.33	2.45	2.40	2.52	2.47	2.60
5. Furnishings and Household Operations	116.34	15.36	17.87	16.64	19.36	17.82	20.73
6. Clothing	104.69	13.02	13.63	13.50	14.13	13.94	14.59
7. Domestic Services	97.91	1.73	1.69	1.95	1.91	2.15	2.11
8. Professional Services	94.12	7.09	6.67	6.82	6.42	6.57	6.18
9. Personal Care	99.83	3.91	3.90	3.77	3.76	3.64	3.63
10. Recreation	113.05	13.27	15.00	14.35	16.22	15.34	17.34
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			118.38				
Middle					117.72		
Upper							117.10
Hilo, HI:							
1. Food At Home	137.49	27.03	37.16	24.05	33.07	21.30	29.29
2. Food Away From Home	104.45	13.43	14.03	14.18	14.81	14.87	15.53
3. Tobacco	135.87	2.82	3.83	2.34	3.18	1.90	2.58
4. Alcohol	103.93	2.33	2.42	2.40	2.49	2.47	2.57
5. Furnishings and Household Operations	111.57	15.36	17.14	16.64	18.57	17.82	19.88
6. Clothing	99.56	13.02	12.96	13.50	13.44	13.94	13.88
7. Domestic Services	83.88	1.73	1.45	1.95	1.64	2.15	1.80
8. Professional Services	99.85	7.09	7.08	6.82	6.81	6.57	6.56
9. Personal Care	98.19	3.91	3.84	3.77	3.70	3.64	3.57
10. Recreation	107.12	13.27	14.21	14.35	15.37	15.34	16.43
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			114.12				
Middle					113.08		
Upper							112.09
Kailua Kona, HI:							
1. Food At Home	138.67	27.03	37.48	24.05	33.35	21.30	29.54
2. Food Away From Home	114.54	13.43	15.38	14.18	16.24	14.87	17.03
3. Tobacco	125.05	2.82	3.53	2.34	2.93	1.90	2.38
4. Alcohol	104.12	2.33	2.43	2.40	2.50	2.47	2.57
5. Furnishings and Household Operations	107.66	15.36	16.54	16.64	17.91	17.82	19.19
6. Clothing	109.30	13.02	14.23	13.50	14.76	13.94	15.24
7. Domestic Services	114.65	1.73	1.98	1.95	2.24	2.15	2.46
8. Professional Services	106.15	7.09	7.53	6.82	7.24	6.57	6.97
9. Personal Care	106.17	3.91	4.15	3.77	4.00	3.64	3.86
10. Recreation	110.47	13.27	14.66	14.35	15 85	15.34	16.95
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			117.91				
Middle					117.02		
Upper							116.19
Kauai County, HI:							
1. Food At Home	158.55	27.03	42.86	24.05	38.13	21.30	33.77
2. Food Away From Home	111.51	13.43	14.98	14.18	15.81	14.87	16.58
3. Tobacco	123.62	2.82	3.49	2.34	2.89	1.90	2.35
4. Alcohol	96.92	2.33	2.26	2.40	2.33	2.47	2.39
5. Furnishings and Household Operations	120.85	15.36	18.56	16.64	20.11	17.82	21.54

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights*	Subtotal	Weights*	Subtotal	Weights*	Subtotal
6. Clothing	103.95	13.02	13.53	13.50	14.03	13.94	14.49
7. Domestic Services	83.64	1.73	1.45	1.95	1.63	2.15	1.80
8. Professional Services	101.86	7.09	7.22	6.82	6.95	6.57	6.69
9. Personal Care	118.62	3.91	4.64	3.77	4.47	3.64	4.32
10. Recreation	115.83	18.27	15.37	14.35	16.62	15.34	17.77
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			124.36				
Middle					122.97		
Upper							121.70
Maui County, HI:							
1. Food at Home	150.10	27.03	40.57	24.05	36.10	21.30	31.97
2. Food Away From Home	115.59	13.43	15.52	14.18	16.39	14.87	17.19
3. Tobacco	121.17	2.82	3.42	2.34	2.84	1.90	2.30
4. Alcohol	103.03	2.33	2.40	2.40	2.47	2.47	2.54
5. Furnishings and Household Operations	117.89	15.36	18.11	16.64	19.62	17.82	21.01
6. Clothing	109.61	13.02	14.27	13.50	14.80	13.94	15.28
7. Domestic Services	87.16	1.73	1.51	1.95	1.70	2.15	1.87
8. Professional Services	105.42	7.09	7.47	6.82	7.19	6.57	6.93
9. Personal Care	102.40	3.91	4.00	3.77	3.86	3.64	3.73
10. Recreation	129.32	13.27	17.16	14.35	18.56	15.34	19.847
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			124.43				
Middle					123.53		
Upper							122.66
Guam:							
1. Food At Home	134.59	27.03	36.38	24.05	32.37	21.30	28.67
2. Food Away From Home	120.67	13.43	16.21	14.18	17.11	14.87	17.94
3. Tobacco	64.70	2.82	1.82	2.34	1.51	1.90	1.23
4. Alcohol	84.25	2.33	1.96	2.40	2.02	2.47	2.08
5. Furnishings and Household Operations.	136.07	15.36	20.90	16.64	22.64	17.82	24.25
6. Clothing	110.96	13.02	14.45	13.50	14.98	13.94	15.47
7. Domestic Services	77.30	1.73	1.34	1.95	1.51	2.15	1.66
8. Professional Services	99.36	7.09	7.04	6.82	6.78	6.57	6.53
9. Personal Care	110.81	3.91	4.33	3.77	4.18	3.64	4.03
10. Recreation	120.06	13.27	15.93	14.35	17.23	15.34	18.42
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			120.36				
Middle					120.33		
Upper							120.28
Guam Blend:**							
1. Food At Home	101.83	27.03	27.52	24.05	24.49	21.30	21.69
2. Food Away From Home	120.67	13.43	16.21	14.18	17.11	14.87	17.94
3. Tobacco	64.70	2.82	1.82	2.34	1.51	1.90	1.23
4. Alcohol	84.25	2.33	1.96	2.40	2.02	2.47	2.08
5. Furnishings and Household Operations	129.21	15.36	19.85	16.64	21.50	17.82	23.03
6. Clothing	108.56	13.02	14.13	13.50	14.66	13.94	15.13
7. Domestic Services	77.30	1.73	1.34	1.95	1.51	2.15	1.66
8. Professional Services	99.36	7.09	7.04	6.82	6.78	6.57	6.53
9. Personal Care	99.33	3.91	3.88	3.77	3.74	3.64	3.62
10. Recreation	111.73	13.27	14.83	14.35	16.03	15.34	17.14
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			108.58				
Middle					109.35		
Upper							110.05
Puerto Rico:							
1. Food At Home	116.37	27.03	31.45	24.05	27.99	21.30	24.79

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights*	Subtotal	Weights*	Subtotal	Weights*	Subtotal
2. Food Away From Home	113.32	13.43	15.22	14.18	16.07	14.87	16.85
3. Tobacco	74.87	2.82	2.11	2.34	1.75	1.90	1.42
4. Alcohol	109.87	2.33	2.56	2.40	2.64	2.47	2.71
5. Furnishings and Household Operations	109.16	15.36	16.77	16.64	18.16	17.82	19.45
6. Clothing	104.21	13.02	13.57	13.50	14.07	13.94	14.53
7. Domestic Services	57.76	1.73	1.00	1.95	1.13	2.15	1.24
8. Professional Services	103.09	7.09	7.31	6.82	7.03	6.57 6.77	
9. Personal Care	106.65	3.91	4.17	3.77	4.02	3.64	3.88
10. Recreation	114.33	13.27	15.17	14.35	16.41	15.34	17.54
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes:							
Lower	.....	.....	109.33	.....	.....	.....	.....
Middle	.....	.....	.....	.....	109.27	.....	.....
Upper	.....	.....	.....	.....	.....	.....	109.18
St. Croix, VI:							
1. Food At Home	127.69	27.03	34.51	24.05	30.71	21.30	27.20
2. Food Away From Home	122.82	13.43	16.49	14.18	17.42	14.87	18.26
3. Tobacco	53.92	2.82	1.52	2.34	1.26	1.90	1.02
4. Alcohol	102.26	2.33	2.38	2.40	2.45	2.47	2.53
5. Furnishings and Household Operations	134.22	15.36	20.62	16.64	22.33	17.82	23.92
6. Clothing	103.59	13.02	13.49	13.50	13.98	13.94	14.44
7. Domestic Services	53.37	1.73	0.92	1.95	1.04	2.15	1.15
8. Professional Services	121.62	7.09	8.62	6.82	8.29	6.57	7.99
9. Personal Care	113.40	3.91	4.43	3.77	4.28	3.64	4.13
10. Recreation	118.08	13.27	15.67	14.35	16.94	15.34	18.11
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes:							
Lower	.....	.....	118.65	.....	.....	.....	.....
Middle	.....	.....	.....	.....	118.70	.....	.....
Upper	.....	.....	.....	.....	.....	.....	118.75
St. Thomas, VI:							
1. Food At Home	138.12	27.03	37.33	24.05	33.22	21.30	29.42
2. Food Away From Home	114.63	13.43	15.39	14.18	16.25	14.87	17.05
3. Tobacco	62.90	2.82	1.77	2.34	1.47	1.90	1.20
4. Alcohol	93.07	2.33	2.17	2.40	2.23	2.47	2.30
5. Furnishings and Household Operations	125.64	15.36	19.30	16.64	20.91	17.82	22.39
6. Clothing	100.85	13.02	13.13	13.50	13.61	13.94	14.06
7. Domestic Services	58.97	1.73	1.02	1.95	1.15	2.15	1.27
8. Professional Services	131.69	7.09	9.34	6.82	8.98	6.57	8.65
9. Personal Care	111.77	3.91	4.37	3.77	4.21	3.64	4.07
10. Recreation	112.32	13.27	14.90	14.35	16.12	15.34	17.23
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes:							
Lower	.....	.....	118.72	.....	.....	.....	.....
Middle	.....	.....	.....	.....	118.15	.....	.....
Upper	.....	.....	.....	.....	.....	.....	117.64

*Numbers might not add to 100 due to rounding.
**Local Retail and Commissary/Exchange.

Consumption Goods and Services Analysis—Composites

Location	Weights	Total indexes		
		Lower income	Middle income	Upper income
Hilo, HI	75.81	114.12	113.08	112.09
Kailua Kona, HI	24.19	117.91	117.02	116.19
Total weight	100.00	.....	.....	.....

CONSUMPTION GOODS AND SERVICES ANALYSIS—COMPOSITES—Continued

Location	Weights	Total indexes		
		Lower income	Middle income	Upper income
Hawaii County, HI		115.04	114.03	113.08
St. Croix, VI	48.26	118.65	118.70	118.75
St. Thomas, VI	51.74	118.72	118.15	117.64
Total weight	100.00			
Virgin Islands		118.69	118.42	118.18

Appendix 8—OPM Living Community List

	Low	Middle	High
Anchorage, AK:			
Homeowner	North Anchorage*	North Anchorage*	South Anchorage*.
Renter	North Anchorage*	North Anchorage*	South Anchorage*.
Fairbanks, AK:			
Homeowner	Fairbanks	Fairbanks	Fairbanks.
Renter	Fairbanks	Fairbanks	Fairbanks.
Juneau, AK:			
Homeowner	Juneau/Mendenhall	Juneau/Mendenhall	Juneau/Mendenhall.
Renter	Juneau/Mendenhall	Juneau/Mendenhall	Juneau/Mendenhall.
Nome, AK:			
Homeowner	Nome	Nome	Nome.
Renter	Nome	Nome	Nome.
Honolulu:			
Homeowner	Pearl City	Kailua	Aina Haina.
	Waipahu	Kaneohe	Hawaii Kai.
		Mililani Town	Kaimuki.
			Manoa.
Renter	Kalihi	Aiea	Aina Haina.
	Pearl Harbor Area	Kailua	Hawaii Kai.
		Kaneohe	Kaimuki.
		Mililani Town	Manoa.
Hawaii County—Hilo:			
Homeowner	Hilo	Hilo	Hilo.
Renter	Hilo	Hilo	Hilo.
Hawaii County—Kailua Kona:			
Homeowner	Kailua Kona Area	Kailua Kona Area	Kailua Kona Area.
Renter	Kailua Kona Area	Kailua Kona Area	Kailua Kona Area.
Kauai:			
Homeowner	Kauai	Kauai	Kauai.
Renter	Kauai	Kauai	Kauai.
Maui:			
Homeowner	Maui	Maui	Maui.
Renter	Maui	Maui	Maui.
Guam:			
Homeowner	Guam	Guam	Guam.
Renter	Guam	Guam	Guam.
Puerto Rico:			
Homeowner	Bayamon	Rio Piedras including VA Hospital Area.	Guaynabo.
	Carolina		
Renter	Bayamon	Isla Verde	Condado.
	Carolina	Rio Piedras excluding VA Hospital Area.	Guaynabo.
	Rio Piedras excluding VA Hospital Area.		
St. Croix:			
Homeowner	St. Croix	St. Croix	St. Croix.
Renter	St. Croix	St. Croix	St. Croix.
St. Thomas:			
Homeowner	St. Thomas	St. Thomas	St. Thomas.
Renter	St. Thomas	St. Thomas	St. Thomas.
Washington, DC—DC:			
Homeowner	Southeast DC	Northeast DC	Northwest DC**.
Renter	Southeast DC	Northeast DC	Northwest DC**.
Washington, DC—MD:			
Homeowner	Capitol Heights/Suitland	Gaithersburg/Silver Spring	Rockville.

	Low	Middle	High
Renter	Capitol Heights/Suitland	Hyattsville/College Park	Rockville.
Washington, DC—VA:			
Homeowner	Woodbridge/Dale City	Springfield	Alexandria.
Renter	Woodbridge/Dale City	Alexandria	Arlington.

*Dividing line between North and South Anchorage is Tudor Road.
**Excludes Georgetown, but includes Dupont Circle, Cleveland Park, and Adams Morgan.

Appendix 9—Historical Home Market Values and Interest Rates

Area	Year	Interest rate (percent)	Income level	Market value	Annual P & I*
Anchorage, AK	1988	10.500	Lower	$74,218	$6,517.44
			Middle	101,300	8,895.60
			Upper	117,190	10,291.08
	1989	11.125	Lower	67,538	6,235.80
			Middle	93,454	8,628.72
			Upper	112,532	10,390.20
	1990	10.250	Lower	60,784	5,229.00
			Middle	87,071	7,490.40
			Upper	114,783	9,874.32
	1992	9.000	Lower	65,700	5,074.92
			Middle	96,200	7,430.88
			Upper	139,400	10,767.84
	1993	8.125	Lower	70,902	5,053.92
			Middle	99,073	7,061.88
			Upper	130,815	9,324.48
	1994	7.625	Lower	72,216	4,906.92
			Middle	99,099	6,733.56
			Upper	124,780	8,478.60
	1995	8.625	Lower	83,286	6,218.76
			Middle	102,089	7,622.76
			Upper	134,580	10,048.80
	1996	7.125	Lower	83,646	5,409.96
			Middle	112,671	7,287.24
			Upper	139,689	9,034.68
	1997	7.792	Lower	86,859	5,997.96
			Middle	119,561	8,256.24
			Upper	149,073	10,294.20
	1998	6.875	Lower	92,484	5,832.48
			Middle	123,136	7,765.56
			Upper	154,139	9,720.84
Fairbanks, AK	1988	10.500	Lower	64,696	5,681.28
			Middle	93,191	8,183.52
			Upper	123,467	10,842.24
	1989	11.125	Lower	57,553	5,313.96
			Middle	88,424	8,164.32
			Upper	115,101	10,627.44
	1990	10.250	Lower	50,604	4,353.24
			Middle	83,619	7,193.40
			Upper	107,143	9,217.08
	1992	9.000	Lower	70,851	5,472.84
			Middle	101,400	7,832.52
			Upper	137,000	10,582.44
	1993	8.125	Lower	69,498	4,953.84
			Middle	101,478	7,233.36
			Upper	115,787	8,253.24
	1994	7.625	Lower	76,302	5,184.60
			Middle	112,580	7,649.64
			Upper	127,829	8,685.72
	1995	8.708	Lower	68,940	5,186.76
			Middle	84,240	6,337.80
			Upper	108,426	8,157.48
	1996	7.125	Lower	72,918	4,716.12
			Middle	92,625	5,990.76
			Upper	115,855	7,493.16
	1997	8.183	Lower	78,804	5,647.92
			Middle	97,110	6,959.88
			Upper	122,196	8,757.72
	1998	6.938	Lower	79,200	5,026.80
			Middle	110,903	7,038.96
			Upper		

Area	Year	Interest rate (percent)	Income level	Market value	Annual P & I*
Juneau, AK	1988	10.500	Lower	76,441	6,712.68
			Middle	93,787	8,235.96
			Upper	113,874	9,999.84
	1989	11.125	Lower	68,797	6,352.08
			Middle	86,284	7,966.68
			Upper	106,131	9,799.20
	1990	10.250	Lower	78,429	6,746.88
			Middle	99,227	8,536.08
			Upper	123,324	10,609.08
	1992	9.000	Lower	89,470	6,911.04
			Middle	114,400	8,836.68
			Upper	146,300	11,300.76
	1993	8.125	Lower	87,570	6,241.92
			Middle	115,518	8,234.04
			Upper	134,232	9,568.08
	1994	7.625	Lower	92,826	6,307.32
			Middle	117,364	7,974.72
			Upper	140,760	9,564.36
	1995	8.625	Lower	102,879	7,681.80
			Middle	138,723	10,358.16
			Upper	163,812	12,231.48
	1996	7.125	Lower	114,255	7,389.72
			Middle	143,767	9,298.44
			Upper	169,507	10,963.20
	1997	7.792	Lower	130,266	8,995.44
			Middle	162,955	11,252.76
			Upper	185,011	12,775.80
	1998	6.958	Lower	126,783	8,063.16
			Middle	160,927	10,234.68
			Upper	188,003	11,956.68
Nome, AK	1988	10.500	Lower	78,763	6,916.56
			Middle	104,159	9,146.76
			Upper	125,312	11,004.24
	1989	11.125	Lower	76,243	7,039.56
			Middle	100,826	9,309.36
			Upper	121,302	11,199.96
	1990	10.250	Lower	73,803	6,348.96
			Middle	97,600	8,396.16
			Upper	117,420	10,101.12
	1992	9.000	Lower	71,100	5,492.04
			Middle	97,500	7,531.32
			Upper	122,400	9,454.68
	1993	8.125	Lower	56,453	4,023.96
			Middle	77,415	5,518.08
			Upper	97,186	6,927.36
	1994	7.625	Lower	82,365	5,596.56
			Middle	112,948	7,674.60
			Upper	141,794	9,634.68
	1995	8.625	Lower	81,711	6,101.16
			Middle	118,027	8,812.80
			Upper	154,343	11,524.44
	1996	7.125	Lower	80,856	5,229.48
			Middle	119,171	7,707.60
			Upper	139,213	9,003.84
	1997	8.183	Lower	99,324	7,118.52
			Middle	143,468	10,282.32
			Upper	187,612	13,446.12
	1998	8.250	Lower	86,479	6,237.00
			Middle	124,914	9,009.00
			Upper	163,350	11,781.00
Honolulu, HI	1988	11.000	Lower	134,388	12,286.20
			Middle	173,823	15,891.48
			Upper	335,274	30,651.72
	1989	10.500	Lower	182,268	16,005.84
			Middle	231,218	20,304.36
			Upper	410,550	36,052.44
	1990	10.250	Lower	248,571	21,383.52
			Middle	299,702	25,782.12
			Upper	510,714	43,934.42
	1991	9.125	Lower	258,300	20,175.48
			Middle	320,866	25,062.48
			Upper	501,701	39,187.20

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Area	Year	Interest rate (percent)	Income level	Market value	Annual P & I*
	1992	8.125	Lower	192,168	13,697.64
			Middle	323,752	23,076.96
			Upper	483,820	34,486.56
	1993	7.125	Lower	243,072	15,721.20
			Middle	331,006	21,408.48
			Upper	470,730	30,445.44
	1994	9.333	Lower	257,814	20,510.40
			Middle	340,392	27,079.80
			Upper	466,242	37,091.88
	1996	7.025	Lower	220,896	14,144.04
			Middle	303,849	19,455.60
			Upper	417,095	26,706.72
	1997	7.875	Lower	213,003	14,826.48
			Middle	278,759	19,403.52
			Upper	401,642	27,957.00
	1998	7.250	Lower	190,800	12,495.24
			Middle	266,955	17,482.56
			Upper	399,092	26,136.12
Hilo, HI	1988	11.000	Lower	68,410	6,254.28
			Middle	92,371	8,444.88
			Upper	114,412	10,459.92
	1989	10.500	Lower	77,386	6,795.60
			Middle	102,559	9,006.24
			Upper	122,727	10,777.32
	1990	10.250	Lower	121,688	10,468.32
			Middle	108,821	9,361.44
			Upper	164,283	14,132.52
	1991	9.125	Lower	134,100	10,474.44
			Middle	180,700	14,114.28
			Upper	204,000	15,934.20
	1992	8.125	Lower	130,743	9,319.32
			Middle	162,903	11,611.68
			Upper	197,863	14,103.60
	1993	7.125	Lower	127,854	8,269.20
			Middle	173,095	11,195.28
			Upper	202,018	13,065.96
	1994	9.333	Lower	114,696	9,124.92
			Middle	162,500	12,927.96
			Upper	196,146	15,604.80
	1996	7.000	Lower	115,750	7,392.84
			Middle	164,711	10,519.92
			Upper	183,841	11,741.76
	1997	7.792	Lower	89,064	6,150.24
			Middle	139,191	9,611.76
			Upper	186,983	12,912.00
	1998	7.125	Lower	90,000	5,820.96
			Middle	137,436	8,889.00
			Upper	163,489	10,573.92
Kailua Kona, HI	1988	11.000	Lower	100,662	9,202.80
			Middle	137,180	12,541.44
			Upper	160,692	14,691.00
	1989	10.500	Lower	112,444	9,874.32
			Middle	151,973	13,345.56
			Upper	181,087	15,902.16
	1990	10.250	Lower	134,609	11,579.88
			Middle	189,900	16,336.32
			Upper	225,100	19,364.40
	1991	9.130	Lower	154,800	12,096.60
			Middle	204,100	15,949.08
			Upper	256,700	20,059.44
	1992	8.125	Lower	159,867	11,395.32
			Middle	222,950	15,891.84
			Upper	261,018	18,605.28
	1993	7.125	Lower	153,666	9,938.64
			Middle	219,902	14,180.16
			Upper	261,902	16,939.08
	1994	9.333	Lower	152,235	12,111.36
			Middle	215,826	17,170.44
			Upper	224,128	17,830.92
	1996	6.958	Lower	144,434	9,186.12
			Middle	191,923	12,206.40
			Upper	220,752	14,039.88

Annual P & I*
6,712.68
8,235.96
9,999.84
6,352.08
7,966.68
9,799.20
6,746.88
8,536.08
10,609.08
6,911.04
8,836.68
11,300.76
6,241.92
8,234.04
9,568.08
6,307.32
7,974.72
9,564.36
7,681.80
10,358.16
12,231.48
7,389.72
9,298.44
10,963.20
8,995.44
11,252.76
12,775.80
8,063.16
10,234.68
11,956.68
6,916.56
9,146.76
11,004.24
7,039.56
9,309.36
11,199.96
6,348.96
8,396.16
10,101.12
5,492.04
7,531.32
9,454.68
4,023.96
5,518.08
6,927.36
5,596.56
7,674.60
9,634.68
6,101.16
8,812.80
11,524.44
5,229.48
7,707.60
9,003.84
7,118.52
10,282.32
13,446.12
6,237.00
9,009.00
11,781.00
12,286.20
15,891.48
30,651.72
16,005.84
20,304.36
36,052.44
21,383.52
25,782.12
43,934.42
20,175.48
25,062.48
39,187.20

Area	Year	Interest rate (percent)	Income level	Market value	Annual P & I*
	1997	8.042	Lower	141,552	10,010.88
			Middle	186,056	13,158.36
			Upper	219,674	15,535.92
	1998	7.375	Lower	156,699	10,389.84
			Middle	180,557	11,971.80
			Upper	225,284	14,937.36
Kauai County, HI	1988	11.000	Lower	91,046	8,323.68
			Middle	124,556	11,387.28
			Upper	145,581	13,309.44
	1989	10.500	Lower	103,516	9,090.24
			Middle	142,818	12,541.56
			Upper	177,900	15,622.32
	1990	10.250	Lower	177,351	15,256.80
			Middle	233,846	20,116.80
			Upper	295,854	25,451.04
	1991	9.125	Lower	174,336	13,617.12
			Middle	229,900	17,957.16
			Upper	290,800	22,714.08
	1992	8.125	Lower	171,792	12,245.28
			Middle	221,624	15,797.28
			Upper	273,921	19,524.96
	1993	7.125	Lower	171,964	11,122.08
			Middle	221,858	14,349.12
			Upper	274,195	17,734.08
	1994	9.333	Lower	163,350	12,995.64
			Middle	222,196	17,677.20
			Upper	255,000	20,287.08
	1996	6.958	Lower	176,907	11,251.32
			Middle	228,147	14,510.28
			Upper	265,084	16,859.40
	1997	8.042	Lower	151,551	10,718.04
			Middle	209,781	14,836.32
			Upper	235,688	16,668.48
	1998	7.292	Lower	150,885	9,922.56
			Middle	191,646	12,603.12
			Upper	229,534	15,094.80
Maui County, HI	1988	11.000	Lower	121,107	11,071.92
			Middle	160,693	14,691.00
			Upper	202,081	18,474.84
	1989	10.500	Lower	151,384	13,293.84
			Middle	200,866	17,639.04
			Upper	252,601	22,182.12
	1990	10.250	Lower	174,092	14,976.36
			Middle	230,996	19,871.64
			Upper	290,491	24,989.64
	1991	9.125	Lower	210,651	16,453.68
			Middle	279,500	21,831.36
			Upper	351,494	27,454.80
	1992	8.125	Lower	207,913	14,820.00
			Middle	275,925	19,667.88
			Upper	346,925	24,728.76
	1993	7.125	Lower	180,099	11,648.28
			Middle	255,476	16,523.40
			Upper	310,845	20,104.56
	1994	9.333	Lower	180,000	14,320.32
			Middle	250,588	19,936.08
			Upper	278,443	22,152.12
	1996	7.000	Lower	192,575	12,299.64
			Middle	260,593	16,643.88
			Upper	283,138	18,083.76
	1997	7.417	Lower	182,448	12,147.36
			Middle	234,429	15,608.28
			Upper	274,074	18,247.80
	1998	7.292	Lower	192,636	12,668.28
			Middle	233,779	15,373.92
			Upper	263,653	17,338.56
Guam	1988	11.000	Lower	84,271	7,704.36
			Middle	103,920	9,500.64
			Upper	207,287	18,950.76
	1989	10.375	Lower	93,709	8,145.12
			Middle	116,079	10,089.48
			Upper	225,735	19,620.72

Puerto Rico

St. Croix, VI

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Area	Year	Interest rate (percent)	Income level	Market value	Annual P & I*
	1990	10.500	Lower	103,174	9,060.24
			Middle	128,151	11,253.60
			Upper	244,245	21,448.32
	1991	10.125	Lower	113,491	9,662.04
			Middle	140,966	12,001.08
			Upper	268,670	22,873.20
	1992	9.491	Lower	130,855	10,554.60
			Middle	162,534	13,109.88
			Upper	309,777	24,986.28
	1993	7.750	Lower	144,738	9,954.48
			Middle	189,280	13,017.84
			Upper	258,978	17,811.36
	1994	10.050	Lower	133,452	11,290.32
			Middle	188,240	15,925.44
			Upper	244,375	20,674.56
	1996	7.875	Lower	130,746	9,100.80
			Middle	180,074	12,534.36
			Upper	224,347	15,616.08
	1997	7.917	Lower	149,292	10,433.52
			Middle	162,500	11,356.56
			Upper	212,500	14,850.96
	1998	7.500	Lower	121,500	8,155.68
			Middle	162,500	10,907.76
			Upper	204,000	13,693.44
Puerto Rico	1988	10.875	Lower	64,485	5,837.04
			Middle	78,985	7,149.48
			Upper	114,326	10,348.44
	1989	10.375	Lower	70,934	6,165.48
			Middle	86,884	7,551.84
			Upper	122,329	10,632.72
	1990	10.375	Lower	78,027	6,782.04
			Middle	95,572	8,307.00
			Upper	134,562	11,696.04
	1991	8.875	Lower	82,800	6,324.48
			Middle	100,255	7,657.68
			Upper	141,100	10,777.44
	1992	8.125	Lower	62,271	4,438.68
			Middle	84,721	6,038.88
			Upper	151,946	10,830.72
	1993	7.125	Lower	61,389	3,970.44
			Middle	84,084	5,438.28
			Upper	151,878	9,822.96
	1994	8.750	Lower	66,843	5,048.16
			Middle	102,232	7,720.92
			Upper	143,633	10,847.64
	1996	7.792	Lower	69,714	4,814.04
			Middle	107,367	7,414.20
			Upper	168,385	11,627.76
	1997	7.770	Lower	73,683	5,077.32
			Middle	108,849	7,500.60
			Upper	172,244	11,869.08
	1998	6.500	Lower	77,859	4,724.40
			Middle	118,937	7,216.92
			Upper	175,032	10,620.72
St. Croix, VI	1988	12,000	Lower	66,051	6,522.36
			Middle	85,592	8,451.96
			Upper	145,231	14,341.08
	1989	11.750	Lower	64,730	6,272.52
			Middle	83,880	8,128.20
			Upper	142,326	13,791.84
	1990	11.250	Lower	80,912	7,544.28
			Middle	104,850	9,776.28
			Upper	177,908	16,588.32
	1991	10.250	Lower	85,281	7,336.32
			Middle	110,500	9,505.80
			Upper	187,500	16,129.80
	1992	9,500	Lower	103,635	8,365.68
			Middle	151,866	12,258.96
			Upper	188,037	15,178.68
	1993	8,375	Lower	112,962	8,242.44
			Middle	174,161	12,708.00
			Upper	194,004	14,155.92

Area	Year	Interest rate (percent)	Income level	Market value	Annual P & I*
	1994	9.083	Lower	77,409	6,024.00
			Middle	128,076	9,966.84
			Upper	210,035	16,344.96
	1996	9.042	Lower	86,304	6,691.32
			Middle	124,863	9,680.88
			Upper	180,796	14,017.44
	1997	9.250	Lower	78,489	6,198.84
			Middle	128,076	10,115.04
			Upper	152,099	12,012.24
	1998	8.420	Lower	62,793	4,600.92
			Middle	98,020	7,182.12
			Upper	193,188	14,155.32
St. Thomas, VI	1988	12.000	Lower	121,129	11,961.12
			Middle	153,265	15,134.40
			Upper	182,929	18,063.60
	1989	11.750	Lower	126,943	12,301.20
			Middle	160,622	15,564.84
			Upper	191,710	18,577.32
	1990	11.250	Lower	122,500	11,422.08
			Middle	155,000	14,452.32
			Upper	185,000	17,249.64
	1991	10.250	Lower	126,900	10,916.64
			Middle	180,700	15,544.80
			Upper	210,800	18,134.28
	1992	9.000	Lower	128,930	9,959.04
			Middle	183,591	14,181.24
			Upper	214,173	16,543.56
	1993	8.250	Lower	139,680	10,074.00
			Middle	198,829	14,339.88
			Upper	231,949	16,728.48
	1994	9.083	Lower	106,533	8,290.44
			Middle	190,164	14,798.52
			Upper	195,381	15,204.60
	1996	8.292	Lower	137,936	9,987.00
			Middle	197,134	14,273.16
			Upper	187,673	13,588.08
	1997	8.333	Lower	137,936	10,025.52
			Middle	197,134	14,328.24
			Upper	187,673	13,640.52
	1998	7.000	Lower	223,632	14,283.12
			Middle	193,388	12,351.48
			Upper	261,902	16,727.40
Washington, DC (DC)	1988	10.500	Lower	76,327	6,702.60
			Middle	126,817	11,136.48
			Upper	202,310	17,765.88
	1989	9.625	Lower	82,128	6,701.52
			Middle	140,619	11,474.40
			Upper	218,495	17,829.00
	1990	9.875	Lower	87,877	7,325.52
			Middle	140,974	11,751.84
			Upper	235,975	19,671.24
	1991	9.250	Lower	90,104	7,116.12
			Middle	144,550	11,416.08
			Upper	242,000	19,112.40
	1992	8.313	Lower	90,828	6,589.32
			Middle	127,270	9,233.04
			Upper	241,230	17,500.56
	1993	7.375	Lower	93,369	6,190.80
			Middle	115,021	7,626.48
			Upper	286,564	19,000.56
	1994	8.677	Lower	82,242	6,170.04
			Middle	104,657	7,851.72
			Upper	305,541	22,922.64
	1996	7.625	Lower	73,177	4,972.20
			Middle	110,425	7,503.12
			Upper	290,563	19,743.24
	1997	7.823	Lower	56,115	3,886.56
			Middle	82,940	5,744.52
			Upper	220,779	15,291.24
	1998	6.938	Lower	64,827	4,114.56
			Middle	91,585	5,812.92
			Upper	236,640	15,019.44

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Area	Year	Interest rate (percent)	Income level	Market value	Annual P & I*
Washington, DC (MD)	1988	10.375	Lower	73,295	6,370.68
			Middle	113,498	9,865.20
			Upper	135,043	11,737.80
	1989	10.000	Lower	81,357	6,854.04
			Middle	125,983	10,613.64
			Upper	149,898	12,628.44
	1990	9.875	Lower	89,493	7,460.28
			Middle	138,581	11,552.28
			Upper	164,888	13,745.28
	1991	8.750	Lower	93,475	7,059.48
			Middle	144,748	10,931.88
			Upper	169,958	12,835.80
	1992	8.313	Lower	104,198	7,559.28
			Middle	131,118	9,512.28
			Upper	207,502	15,053.64
	1993	7.375	Lower	92,655	6,143.52
			Middle	118,911	7,884.36
			Upper	204,264	13,543.68
	1994	8.688	Lower	90,963	6,831.24
			Middle	167,349	12,567.72
			Upper	214,030	16,073.40
	1996	6.896	Lower	109,369	6,912.12
			Middle	222,845	14,083.80
			Upper	224,792	14,206.80
	1997	7.920	Lower	94,536	6,608.76
			Middle	160,823	11,242.56
			Upper	199,648	13,956.72
	1998	6.969	Lower	94,779	6,034.56
			Middle	166,049	10,572.24
			Upper	173,162	11,025.12
Washington, DC (VA)	1988	10.500	Lower	83,413	7,324.92
			Middle	94,122	8,265.36
			Upper	156,059	13,704.36
	1989	9,500	Lower	90,086	7,271.88
			Middle	101,652	8,205.60
			Upper	168,544	13,605.24
	1990	10.000	Lower	97,293	8,196.60
			Middle	109,784	9,249.00
			Upper	182,028	15,335.28
	1991	8.938	Lower	103,462	7,947.48
			Middle	117,650	9,037.44
			Upper	187,000	14,364.60
	1992	8.250	Lower	100,103	7,219.56
			Middle	126,315	9,110.04
			Upper	182,810	13,184.52
	1993	7.500	Lower	94,905	6,370.44
			Middle	126,874	8,516.40
			Upper	181,705	12,196.92
	1994	8.698	Lower	99,657	7,490.88
			Middle	167,876	12,618.72
			Upper	228,191	17,152.44
	1996	7.083	Lower	108,327	6,976.80
			Middle	169,472	10,914.84
			Upper	206,918	13,326.60
	1997	7.858	Lower	104,364	7,252.56
			Middle	160,706	11,168.04
			Upper	229,925	15,978.24
	1998	6.948	Lower	103,662	6,586.08
			Middle	160,849	10,219.44
			Upper	229,024	14,550.84

Appendix 10—Historical Housing Data

Year	Weights	Lower amounts	Subtotal	Middle amounts	Subtotal	Upper amounts	Subtotal
Anchorage, AK:							
1988	6.31	6,517.44	411.25	8,895.60	561.31	10,291.08	649.37
1989	6.77	6,235.80	422.16	8,628.72	584.16	10,390.20	703.42
1990	8.19	5,229.00	428.26	7,490.40	613.46	9,874.32	808.71
1992	7.03	5,074.92	356.77	7,430.88	522.39	10,767.84	756.98
1993	7.72	5,053.92	390.16	7,061.88	545.18	9,324.48	719.85
1994	8.32	4,906.92	408.26	6,733.56	560.23	8,478.60	705.42

Year	Weights	Lower amounts	Subtotal	Middle amounts	Subtotal	Upper amounts	Subtotal
1995	10.08	6,218.76	626.85	7,622.76	768.37	10,048.80	1,012.92
1996	12.92	5,409.96	698.97	7,287.24	941.51	9,034.68	1,167.28
1997	13.78	5,997.96	826.52	8,256.24	1,137.71	10,294.20	1,418.54
1998	18.88	5,832.48	1,101.17	7,765.56	1,466.14	9,720.84	1,835.29
Totals	100.00	.....	5,670.37	.....	7,700.46	.....	9,777.78
Fairbanks, AK:							
1988	6.31	5,681.28	358.49	8,183.52	516.38	10,842.24	684.15
1989	6.77	5,313.96	359.76	8,164.32	552.72	10,627.44	719.48
1990	8.19	4,353.24	356.53	7,193.40	589.14	9,217.08	754.88
1992	7.03	5,472.84	384.74	7,832.52	550.63	10,582.44	743.95
1993	7.72	4,953.84	382.44	7,233.36	558.42	8,253.24	637.15
1994	8.32	5,184.60	431.36	7,649.64	636.45	8,685.72	722.65
1995	10.08	5,186.76	522.83	6,337.80	638.85	8,157.48	822.27
1996	12.92	4,716.12	609.32	5,990.76	774.01	7,493.16	968.12
1997	13.78	5,647.92	778.28	6,959.88	959.07	8,757.72	1,206.81
1998	18.88	5,026.80	949.06	7,038.96	1,328.96	7,803.24	1,473.25
Totals	100.00	.....	5,132.81	.....	7,104.63	.....	8,732.71
Juneau, AK:							
1988	6.31	6,712.68	423.57	8,235.96	519.69	9,999.84	630.99
1989	6.77	6,352.08	430.04	7,966.68	539.34	9,799.20	663.41
1990	8.19	6,746.88	552.57	8,536.08	699.10	10,609.08	868.88
1992	7.03	6,911.04	485.85	8,836.68	621.22	11,300.76	794.44
1993	7.72	6,241.92	481.88	8,234.04	635.67	9,568.08	738.66
1994	8.32	6,307.32	524.77	7,974.72	663.50	9,564.36	795.75
1995	10.08	7,681.80	774.33	10,358.16	1,044.10	12,231.48	1,232.93
1996	12.92	7,389.72	954.75	9,298.44	1,201.36	10,963.20	1,416.45
1997	13.78	8,995.44	1,239.57	11,252.76	1,550.63	12,775.80	1,760.51
1998	18.88	8,063.16	1,522.32	10,234.68	1,932.31	11,956.68	2,257.42
Totals	100.00	.....	7,389.65	.....	9,406.92	.....	11,159.44
Nome, AK:							
1988	6.31	6,916.56	436.43	9,146.76	577.16	11,004.24	694.37
1989	6.77	7,039.56	476.58	9,309.36	630.24	11,199.96	758.24
1990	8.19	6,348.96	519.98	8,396.16	687.65	10,101.12	827.28
1992	7.03	5,492.04	386.09	7,531.32	529.45	9,454.68	664.66
1993	7.72	4,023.96	310.65	5,518.08	426.00	6,927.36	534.79
1994	8.32	5,596.56	465.63	7,674.60	638.53	9,634.68	801.61
1995	10.08	6,101.16	615.00	8,812.80	888.33	11,524.44	1,161.66
1996	12.92	5,229.48	675.65	7,707.60	995.82	9,003.84	1,163.30
1997	13.78	7,118.52	980.93	10,282.32	1,416.90	13,446.12	1,852.88
1998	18.88	6,237.00	1,177.55	9,009.00	1,700.90	11,781.00	2,224.25
Totals	100.00	.....	6,044.49	.....	8,490.98	.....	10,683.04
Honolulu, HI:							
1988	6.31	12,286.20	775.26	15,891.48	1,002.75	30,651.72	1,934.12
1989	6.77	16,005.84	1,083.60	20,304.36	1,374.61	36,052.44	2,440.75
1990	8.19	21,383.52	1,751.31	25,782.12	2,111.56	43,934.52	3,598.24
1991	7.03	20,175.48	1,418.34	25,062.48	1,761.89	39,187.20	2,754.86
1992	7.72	13,697.64	1,057.46	23,076.96	1,781.54	34,486.56	2,662.36
1993	8.32	15,721.20	1,308.00	21,408.48	1,781.19	30,445.44	2,533.06
1994	10.08	20,510.40	2,067.45	27,079.80	2,729.64	37,091.88	3,738.86
1996	12.92	14,144.04	1,827.41	19,455.60	2,513.66	26,706.72	3,450.51
1997	13.78	14,826.48	2,043.09	19,403.52	2,673.81	27,957.00	3,852.47
1998	18.88	12,495.24	2,359.10	17,482.56	3,300.71	26,136.12	4,934.50
Totals	100.00	.....	15,691.02	.....	21,031.36	.....	31,899.73
Hilo, HI:							
1988	6.31	6,254.28	394.65	8,444.88	532.87	10,459.92	660.02
1989	6.77	6,795.60	460.06	9,006.24	609.72	10,777.32	729.62
1990	8.19	10,468.32	857.36	9,361.44	766.70	14,132.52	1,157.45
1991	7.03	10,474.44	736.35	14,114.28	992.23	15,934.20	1,120.17
1992	7.72	9,319.32	719.45	11,611.68	896.42	14,103.60	1,088.80
1993	8.32	8,269.20	688.00	11,195.28	931.45	13,065.96	1,087.09
1994	10.08	9,124.92	919.79	12,927.96	1,303.14	15,604.80	1,572.96
1996	12.92	7,392.84	955.15	10,519.92	1,359.17	11,741.76	1,517.04
1997	13.78	6,150.24	847.50	9,611.76	1,324.50	12,912.00	1,779.27

Year	Weights	Lower amounts	Subtotal	Middle amounts	Subtotal	Upper amounts	Subtotal
1998	18.88	5,820.96	1,099.00	8,889.00	1,678.24	10,573.92	1,996.36
Totals	100.00		7,677.31		10,394.44		12,708.78
Kailua Kona, HI:							
1988	6.31	9,202.80	580.70	12,541.44	791.36	14,691.00	927.00
1989	6.77	9,874.32	668.49	13,345.56	903.49	15,902.16	1,076.58
1990	8.19	11,579.88	948.39	16,336.32	1,337.94	19,364.40	1,585.94
1991	7.03	12,096.60	850.39	15,949.08	1,121.22	20,059.44	1,410.18
1992	7.72	11,395.32	879.72	15,891.84	1,226.85	18,605.28	1,436.33
1993	8.32	9,938.64	826.89	14,180.16	1,179.79	16,939.08	1,409.33
1994	10.08	12,111.36	1,220.83	17,170.44	1,730.78	17,830.92	1,797.36
1996	12.92	9,186.12	1,186.85	12,206.40	1,577.07	14,039.88	1,813.95
1997	13.78	10,010.88	1,379.50	13,158.36	1,813.22	15,535.92	2,140.85
1998	18.88	10,389.84	1,961.60	11,971.80	2,260.28	14,937.36	2,820.17
Totals	100.00		10,503.36		13,942.00		16,417.69
Kauai, HI:							
1988	6.31	8,323.68	525.22	11,387.28	718.54	13,309.44	839.83
1989	6.77	9,090.24	615.41	12,541.56	849.06	15,622.32	1,057.63
1990	8.19	15,256.80	1,249.53	20,116.80	1,647.57	25,451.04	2,084.44
1991	7.03	13,617.12	957.28	17,957.16	1,262.39	22,714.08	1,596.80
1992	7.72	12,245.28	945.34	15,797.28	1,219.55	19,524.96	1,507.33
1993	8.32	11,122.08	925.36	14,349.12	1,193.85	17,734.08	1,475.48
1994	10.08	12,995.64	1,309.96	17,677.20	1,781.86	20,287.08	2,044.94
1996	12.92	11,251.32	1,453.67	14,510.28	1,874.73	16,859.40	2,178.23
1997	13.78	10,718.04	1,476.95	14,836.32	2,044.44	16,668.48	2,296.92
1998	18.88	9,922.56	1,873.38	12,603.12	2,379.47	15,094.80	2,849.90
Totals	100.00		11,332.10		14,971.46		17,931.50
Maui, HI:							
1988	6.31	11,071.92	698.64	14,691.00	927.00	18,474.84	1,165.76
1989	6.77	13,293.84	899.99	17,639.04	1,194.16	22,182.12	1,501.73
1990	8.19	14,976.36	1,226.56	19,871.64	1,627.49	24,989.64	2,046.65
1991	7.03	16,453.68	1,156.69	21,831.36	1,534.74	27,454.80	1,930.07
1992	7.72	14,820.00	1,144.10	19,667.88	1,518.36	24,728.76	1,909.06
1993	8.32	11,648.28	969.14	16,523.40	1,374.75	20,104.56	1,672.70
1994	10.08	14,320.32	1,443.49	19,936.08	2,009.56	22,152.12	2,232.93
1996	12.92	12,299.64	1,589.11	16,643.88	2,150.39	18,083.76	2,336.42
1997	13.78	12,147.36	1,673.91	15,608.28	2,150.82	18,247.80	2,514.55
1998	18.88	12,668.28	2,391.77	15,373.92	2,902.60	17,338.56	3,273.52
Totals	100.00		13,193.40		17,389.87		20,583.39
Guam:							
1988	6.31	7,704.36	486.15	9,500.64	599.49	18,950.76	1,195.79
1989	6.77	8,145.12	551.42	10,089.48	683.06	19,620.72	1,328.32
1990	8.19	9,060.24	742.03	11,253.60	921.67	21,448.32	1,756.62
1991	7.03	9,662.04	679.24	12,001.08	843.68	22,873.20	1,607.99
1992	7.72	10,554.60	814.82	13,109.88	1,012.08	24,986.28	1,928.94
1993	8.32	9,954.48	828.21	13,017.84	1,083.08	17,811.36	1,481.91
1994	10.08	11,290.32	1,138.06	15,925.44	1,605.28	20,674.56	2,084.00
1996	12.92	9,100.80	1,175.82	12,534.36	1,619.44	15,616.08	2,017.60
1997	13.78	10,433.52	1,437.74	11,356.56	1,564.93	14,850.96	2,046.46
1998	18.88	8,155.68	1,539.79	10,907.76	2,059.39	13,693.44	2,585.32
Totals	100.00		9,393.28		11,992.10		18,032.95
Puerto Rico:							
1988	6.31	5,837.04	368.32	7,149.48	451.13	10,348.44	652.99
1989	6.77	6,165.48	417.40	7,551.84	511.26	10,632.72	719.84
1990	8.19	6,782.04	555.45	8,307.00	680.34	11,696.04	957.91
1991	7.03	6,324.48	444.61	7,657.68	538.33	10,777.44	757.65
1992	7.72	4,438.68	342.67	6,038.88	466.20	10,830.72	836.13
1993	8.32	3,970.44	330.34	5,438.28	452.46	9,822.96	817.27
1994	10.08	5,048.16	508.85	7,720.92	778.27	10,847.64	1,093.44
1996	12.92	4,814.04	621.97	7,414.20	957.91	11,627.76	1,502.31
1997	13.78	5,077.32	699.65	7,500.60	1,033.58	11,869.08	1,635.56
1998	18.88	4,724.40	891.97	7,216.92	1,362.55	10,620.72	2,005.19
Totals	100.00		5,181.23		7,232.03		10,978.29

Year	Weights	Lower amounts	Subtotal	Middle amounts	Subtotal	Upper amounts	Subtotal
St. Croix, VI:							
1988	6.31	6,522.36	411.56	8,451.96	533.32	14,341.08	904.92
1989	6.77	6,272.52	424.65	8,128.20	550.28	13,791.84	933.71
1990	8.19	7,544.28	617.88	9,776.28	800.68	16,588.32	1,358.58
1991	7.03	7,336.32	515.74	9,505.80	668.26	16,129.80	1,133.92
1992	7.72	8,365.68	645.83	12,258.96	946.39	15,178.68	1,171.79
1993	8.32	8,242.44	685.77	12,708.00	1,057.31	14,155.92	1,177.77
1994	10.08	6,024.00	607.22	9,966.84	1,004.66	16,344.96	1,647.57
1996	12.92	6,691.32	864.52	9,680.88	1,250.77	14,017.44	1,811.05
1997	13.78	6,198.84	854.20	10,115.04	1,393.85	12,012.24	1,655.29
1998	18.88	4,600.92	868.65	7,182.12	1,355.98	14,155.32	2,672.52
Totals	100.00	.....	6,496.02	.....	9,561.50	.....	14,467.12
St. Thomas, VI:							
1988	6.31	11,961.12	754.75	15,134.40	954.98	18,063.60	1,139.81
1989	6.77	12,301.20	832.79	15,564.84	1,053.74	18,577.32	1,257.68
1990	8.19	11,422.08	935.47	14,452.32	1,183.65	17,249.64	1,412.75
1991	7.03	10,916.64	767.44	15,544.80	1,092.80	18,134.28	1,274.84
1992	7.72	9,959.04	768.84	14,181.24	1,094.79	16,543.56	1,277.16
1993	8.32	10,074.00	838.16	14,339.88	1,193.08	16,728.48	1,391.81
1994	10.08	8,290.44	835.68	14,798.52	1,491.69	15,204.60	1,532.62
1996	12.92	9,987.00	1,290.32	14,273.16	1,844.09	13,588.08	1,755.58
1997	13.78	10,025.52	1,381.52	14,328.24	1,974.43	13,640.52	1,879.66
1998	18.88	14,283.12	2,696.65	12,351.48	2,331.96	16,727.40	3,158.13
Totals	100.00	.....	11,101.62	.....	14,215.21	.....	16,080.04
Washington, DC (DC):							
1988	6.31	6,702.60	422.93	11,136.48	702.71	17,765.88	1,121.03
1989	6.77	6,701.52	453.69	11,474.40	776.82	17,829.00	1,207.02
1990	8.19	7,325.52	599.96	11,751.84	962.48	19,671.24	1,611.07
1991	7.03	7,116.12	500.26	11,416.08	802.55	19,112.40	1,343.60
1992	7.72	6,589.32	508.70	9,233.04	712.79	17,500.56	1,351.04
1993	8.32	6,190.80	515.07	7,626.48	634.52	19,000.56	1,580.85
1994	10.08	6,170.04	621.94	7,851.72	791.45	22,922.64	2,310.60
1996	12.92	4,972.20	642.41	7,503.12	969.40	19,743.24	2,550.83
1997	13.78	3,886.56	535.57	5,744.52	791.59	15,291.24	2,107.13
1998	18.88	4,114.56	776.83	5,812.92	1,097.48	15,019.44	2,835.67
Totals	100.00	.....	5,577.36	.....	8,241.79	.....	18,018.84
Washington, DC (MD):							
1988	6.31	6,370.68	401.99	9,865.20	622.49	11,737.80	740.66
1989	6.77	6,854.04	464.02	10,613.64	718.54	12,628.44	854.95
1990	8.19	7,460.28	611.00	11,552.28	946.13	13,745.28	1,125.74
1991	7.03	7,059.48	496.28	10,931.88	768.51	12,835.80	902.36
1992	7.72	7,559.28	583.58	9,512.28	734.35	15,053.64	1,162.14
1993	8.32	6,143.52	511.14	7,884.36	655.98	13,543.68	1,126.83
1994	10.08	6,831.24	688.59	12,567.72	1,266.83	16,073.40	1,620.20
1996	12.92	6,912.12	893.05	14,083.80	1,819.63	14,206.80	1,835.52
1997	13.78	6,608.76	910.69	11,242.56	1,549.22	13,956.72	1,923.24
1998	18.88	6,034.56	1,139.32	10,572.24	1,996.04	11,025.12	2,081.54
Totals	100.00	.....	6,699.66	.....	11,077.72	.....	13,373.18
Washington, DC (VA):							
1988	6.31	7,324.92	462.20	8,265.36	521.54	13,704.36	864.75
1989	6.77	7,271.88	492.31	8,205.60	555.52	13,605.24	921.07
1990	8.19	8,196.60	671.30	9,249.00	757.49	15,335.28	1,255.96
1991	7.03	7,947.48	558.71	9,037.44	635.33	14,364.60	1,009.83
1992	7.72	7,219.56	557.35	9,110.04	703.30	13,184.52	1,017.84
1993	8.32	6,370.44	530.02	8,516.40	708.56	12,196.92	1,014.78
1994	10.08	7,490.88	755.08	12,618.72	1,271.97	17,152.44	1,728.97
1996	12.92	6,976.80	901.40	10,914.84	1,410.20	13,326.60	1,721.80
1997	13.78	7,252.56	999.40	11,168.04	1,538.96	15,978.24	2,201.80
1998	18.88	6,586.08	1,243.45	10,219.44	1,929.43	14,550.84	2,747.20
Totals	100.00	.....	7,171.22	.....	10,032.30	.....	14,484.00

Anchorage, A
Low ....
Middle ...
High ....
Fairbanks, A
Low ....
Middle ...
High ....
Juneau, AK:
Low ....
Middle ...
High ....
*Nome, AK:
Low ....
Middle ...
High ....
Honolulu, HI
Low ....
Middle ...
High ....
Hilo, HI:
Low ....
Middle ...
High ....
Kailua Kona,
Low ....
Middle ...
High ....
Kauai, HI:
Low ....
Middle ...
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Maui, HI:
Low ....
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Guam:
Low ....
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Low ....
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Low ....
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Appendix 11—Summary of Rental Analyses

	1998 data medians					
	Broker & non-broker		Non-Broker		Broker	
	#	$	#	$	#	$
Anchorage, AK:						
Low	22	$563	15	$575	7	$550
Middle	18	668	12	698	6	638
High	30	1,013	23	1,175	7	850
Fairbanks, AK:						
Low	9	520	6	505	3	535
Middle	14	698	9	695	5	700
High	10	888	9	1,000	1	775
Juneau, AK:						
Low	7	750	3	725	4	775
Middle	15	890	8	930	7	850
High	11	1,225	5	1,350	6	1,100
*Nome, AK:						
Low	2	750	2	750	0	750
Middle	4	869	4	913	0	825
High	0	988	0	0	0	988
Honolulu, HI:						
Low	130	723	119	695	11	750
Middle	205	900	192	850	13	950
High	310	1,373	302	1,395	8	1,350
Hilo, HI:						
Low	65	441	65	375	0	506
Middle	44	575	39	450	5	700
High	207	698	201	695	6	700
Kailua Kona, HI:						
Low	62	569	60	550	2	588
Middle	24	713	21	625	3	800
High	126	1,038	124	975	2	1,100
Kauai, HI:						
Low	54	588	48	525	6	650
Middle	24	669	12	638	12	700
High	74	875	72	850	2	900
Maui, HI:						
Low	157	675	142	650	15	700
Middle	39	800	26	725	13	875
High	400	1,035	388	950	12	1,119
Guam:						
Low	8	700	3	500	5	900
Middle	26	900	17	800	9	1,000
High	14	1,100	9	1,200	5	1,000
**Puerto Rico:						
Low	31	613	18	425	13	800
Middle	24	775	10	600	14	950
High	11	1,238	11	975	0	1,500
St. Croix, VI:						
Low	8	494	4	438	4	550
Middle	9	694	4	638	5	750
High	8	850	5	700	3	1,000
St. Thomas, VI:						
Low	25	663	13	625	12	700
Middle	21	900	9	800	12	1,000
High	22	1,213	11	1,200	11	1,225
***Washington, DC (DC):						
Low	16	489	10	438	6	540
Middle	13	695	4	645	9	745
High	13	1,275	13	1,000	0	1,550
Washington, DC (MD):						
Low	12	589	6	553	6	624
Middle	18	739	10	689	8	788
High	25	1,275	12	1,300	13	1,250
****Washington, DC (VA):						
Low	5	628	5	665	0	590
Middle	31	979	14	798	17	1,159
High	68	1,425	49	1,200	19	1,650

* Used 1997 broker rental values at all income levels because this year's data were unavailable.
** Used broker quote data for all communities in the greater San Juan area except at the upper income level, for which 1997 broker rental value was used because this year's data reflected incomplete rental information.
*** Used 1997 broker rental at the upper income level because this year's data reflected incomplete rental information.
**** Used 1997 broker rental value at the lower income level because this year's data were unavailable.

Appendix 12—Housing Cost Analysis

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Anchorage, AK:						
Maintenance	$796	$62	$936	$73	$1,077	$78
Insurance	390	117	472	$129	560	$141
Utilities	2,094	1,840	2,411	2,094	2,728	2,242
Real estate taxes	1,710	.....	2,277	.....	2,500	.....
Housing	5,670	6,756	7,700	8,016	9,778	12,156
Total annual cost	10,660	8,775	13,796	10,312	16,723	14,617
Fairbanks, AK:						
Maintenance	764	60	898	70	1,033	75
Insurance	374	150	472	168	511	180
Utilities	2,814	2,466	3,250	2,814	3,685	3,018
Real estate taxes	1,368	.....	1,995	.....	2,233	.....
Housing	5,133	6,240	7,105	8,376	8,733	10,656
Total annual cost	10,453	8,916	13,720	11,428	16,195	13,929
Juneau, AK:						
Maintenance	814	64	958	74	1,101	80
Insurance	412	127	493	139	567	152
Utilities	2,245	1,976	2,583	2,245	2,920	2,403
Real estate taxes	1,524	.....	1,934	.....	2,260	.....
Housing	7,390	9,000	9,407	10,680	11,159	14,700
Total annual cost	12,385	11,167	15,375	13,138	18,007	17,335
Nome, AK:						
Maintenance	736	58	866	67	995	73
Insurance	511	250	663	250	701	250
Utilities	3,633	3,174	4,206	3,633	4,780	3,901
Real estate taxes	961	.....	1,388	.....	1,815	.....
Housing	6,044	9,000	8,491	10,428	10,683	11,856
Total annual cost	11,885	12,482	15,614	14,378	18,974	16,080
Honolulu, HI:						
Maintenance	695	54	817	63	940	69
Insurance	580	319	682	364	907	412
Utilities	1,776	1,585	2,015	1,776	2,253	1,887
Real estate taxes	526	.....	792	.....	1,253	.....
Housing	15,691	8,676	21,031	10,800	31,900	16,476
Total annual cost	19,268	10,634	25,337	13,003	37,253	18,844
Hilo, HI:						
Maintenance	784	61	922	71	1,060	77
Insurance	423	276	487	314	548	351
Utilities	2,314	2,041	2,654	2,314	2,994	2,472
Real estate taxes	425	.....	828	.....	1,050	.....
Housing	7,677	5,292	10,394	6,900	12,709	8,376
Total annual cost	11,623	7,670	15,285	9,599	18,361	11,276
Kailua Kona, HI:						
Maintenance	737	58	867	67	997	73
Insurance	531	145	587	161	676	351
Utilities	2,308	2,036	2,648	2,308	2,989	2,467
Real estate taxes	992	.....	1,195	.....	1,575	.....
Housing	10,503	6,828	13,942	8,556	16,418	12,456
Total annual cost	15,071	9,067	19,239	11,092	22,655	15,347
Kauai County, HI:						
Maintenance	1,103	86	1,297	100	1,492	109
Insurance	517	329	609	365	716	416
Utilities	1,876	1,657	2,151	1,876	2,425	2,004

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Real estate taxes	582	.....	795	.....	994	.....
Housing	11,332	7,056	14,971	8,028	17,932	10,500
Total annual cost	15,410	9,128	19,823	10,369	23,559	13,029
Maui County, HI:						
Maintenance	1,074	84	1,263	98	1,452	106
Insurance	629	307	711	349	723	390
Utilities	1,679	1,495	1,908	1,679	2,137	1,786
Real estate taxes	725	.....	920	.....	1,062	.....
Housing	13,193	8,100	17,390	9,600	20,583	12,420
Total annual cost	17,300	9,986	22,192	11,726	25,957	14,702
Guam:						
Maintenance	963	75	1,133	88	1,303	95
Insurance	1,429	329	1,912	394	2,400	460
Utilities	3,103	2,720	3,582	3,103	4,061	3,327
Real estate taxes	330	.....	459	.....	590	.....
Housing	9,393	8,400	11,992	10,800	18,033	13,200
Total annual cost	15,218	11,524	19,078	14,385	26,387	17,082
Puerto Rico:						
Maintenance	538	42	633	49	728	53
Insurance	497	247	778	297	1,163	323
Utilities	2,031	1,797	2,325	2,031	2,618	2,168
Real estate taxes	46	.....	708	.....	1,611	.....
Housing	5,181	7,356	7,232	9,300	10,978	14,856
Total annual cost	8,293	9,442	11,676	11,677	17,098	17,400
St. Croix, VI:						
Maintenance	491	38	577	45	664	48
Insurance	1,195	684	1,472	772	2,797	890
Utilities	1,371	1,237	1,539	1,371	1,707	1,449
Real estate taxes	283	.....	548	.....	1,261	.....
Housing	6,496	5,928	9,562	8,328	14,467	10,200
Total annual cost	9,836	7,887	13,698	10,516	20,896	12,587
St. Thomas, VI:						
Maintenance	542	42	638	49	733	53
Insurance	3,213	700	2,777	822	3,759	890
Utilities	1,372	1,237	1,539	1,372	1,707	1,450
Real estate taxes	1,490	.....	1,188	.....	1,777	.....
Housing	11,102	7,956	14,215	10,800	16,080	14,556
Total annual cost	17,719	9,935	20,357	13,043	24,056	16,949
Washington, DC (DC):						
Maintenance	611	48	719	56	827	60
Insurance	252	127	350	161	800	136
Utilities	2,432	2,144	2,791	2,432	3,151	2,599
Real estate taxes	334	.....	591	.....	1,984	.....
Housing	5,577	5,868	8,242	8,340	18,019	15,300
Total annual cost	9,206	8,187	12,693	10,989	24,781	18,095
Washington, DC (MD):						
Maintenance	611	48	719	56	827	60
Insurance	212	145	294	159	302	148
Utilities	2,040	1,800	2,340	2,040	2,641	2,180
Real estate taxes	1,175	.....	2,059	.....	2,147	.....
Housing	6,700	7,068	11,078	8,868	13,373	15,300
Total annual cost	10,738	9,061	16,490	11,123	19,290	17,688
Washington, DC (VA):						
Maintenance	611	48	719	56	827	60
Insurance	226	126	282	141	358	156

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Utilities	2,401	2,122	2,749	2,401	3,097	2,563
Real estate taxes	1,410	.....	1,978	.....	2,462	.....
Housing	7,171	7,536	10,032	11,748	14,484	17,100
Total annual cost	11,819	9,832	15,760	14,346	21,228	19,879

HOUSING COST ANALYSIS—COMPOSITES

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
Hilo, HI	75.81	$11,623	$7,670	$15,285	$9,599	$18,361	$11,276
Kailua Kona, HI	24.19	15,071	9,067	19,239	11,092	22,655	15,347
Total weight	100.00	.....	.....	.....	.....	.....	.....
Hawaii County, HI	.....	12,457	8,008	16,241	9,960	19,400	12,261
St. Croix, VI	48.26	9,836	7,887	13,698	10,516	20,896	12,587
St. Thomas, VI	51.74	17,719	9,935	20,357	13,043	24,056	16,949
Total weight	100.00	.....	.....	.....	.....	.....	.....
Virgin Islands	.....	13,915	8,947	17,143	11,823	22,531	14,844
Washington, DC, DC	33.34	9,206	8,187	12,693	10,989	24,781	18,095
Washington, DC, MD	33.33	10,738	9,061	16,490	11,123	19,290	17,688
Washington, DC, VA	33.33	11,819	9,832	15,760	14,346	21,228	19,879
Total weight	100.00	.....	.....	.....	.....	.....	.....
DC area		10,588	9,027	14,981	12,153	21,767	18,554

Appendix 13—Housing Analysis

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Anchorage, AK:						
Lower income	$10,660	$10,588	100.68	$8,775	$9,027	97.21
Middle income	13,796	14,981	92.09	10,312	12,153	84.85
Upper income	16,723	21,767	76.83	14,617	18,554	78.78
Fairbanks, AK:						
Lower income	10,453	10,588	98.72	8,916	9,027	98.77
Middle income	13,720	14,981	91.58	11,428	12,153	94.03
Upper income	16,195	21,767	74.40	13,929	18,554	75.07
Juneau, AK:						
Lower income	12,385	10,588	116.97	11,167	9,027	123.71
Middle income	15,375	14,981	102.63	13,138	12,153	108.10
Upper income	18,007	21,767	82.73	17,335	18,554	93.43
Nome, AK:						
Lower income	11,885	10,588	112.25	12,482	9,027	138.27
Middle income	15,614	14,981	104.23	14,378	12,153	118.31
Upper income	18,974	21,767	87.17	16,080	18,554	86.67
Honolulu, HI:						
Lower income	19,268	10,588	181.98	10,634	9,027	117.80
Middle income	25,337	14,981	169.13	13,003	12,153	106.99
Upper income	37,253	21,767	171.14	18,844	18,554	101.56
Hawaii County, HI:						
Lower income	12,457	10,588	117.65	8,008	9,027	88.71
Middle income	16,241	14,981	108.41	9,960	12,153	81.96
Upper income	19,400	21,767	89.13	12,261	18,554	66.08
Kauai County, HI:						
Lower income	15,410	10,588	145.54	9,128	9,027	101.12
Middle income	19,823	14,981	132.32	10,369	12,153	85.32
Upper income	23,559	21,767	108.23	13,029	18,554	70.22

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	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Maui County, HI:						
Lower income	17,300	10,588	163.39	9,986	9,027	110.62
Middle income	22,192	14,981	148.13	11,726	12,153	96.49
Upper income	25,957	21,767	119.25	14,702	18,554	79.24
Guam:						
Lower income	15,218	10,588	143.73	11,524	9,027	127.66
Middle income	19,078	14,981	127.35	14,385	12,153	118.37
Upper income	26,387	21,767	121.22	17,082	18,554	92.07
Puerto Rico:						
Lower income	8,293	10,588	78.32	9,442	9,027	104.60
Middle income	11,676	14,981	77.94	11,677	12,153	96.08
Upper income	17,098	21,767	78.55	17,400	18,554	93.78
Virgin Islands:						
Lower income	13,915	10,588	131.42	8,947	9,027	99.11
Middle income	17,143	14,981	114.43	11,823	12,153	97.28
Upper income	22,531	21,767	103.51	14,844	18,554	80.00

Appendix 14—Private Transportation Cost Analysis

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4 WD 2 dr
Anchorage, AK:			
Fuel	$762	$1,143	$1,429
Maintenance/oil	728	695	657
Tires	123	163	152
License and registration	69	69	74
Miscellaneous tax	50	50	50
Depreciation	2,167	3,595	4,111
Finance expense	687	875	1,023
Insurance	1,321	1,247	1,491
Total annual cost	5,907	7,837	8,987
Fairbanks, AK:			
Fuel	739	1,109	1,386
Maintenance/oil	915	916	829
Tires	97	131	160
License and registration	74	74	79
Miscellaneous tax	0	0	0
Depreciation	2,457	3,556	4,535
Finance expense	724	861	1,078
Insurance	1,336	1,271	1,477
Total annual cost	6,342	7,918	9,544
Juneau, AK:			
Fuel	813	1,220	1,525
Maintenance/oil	756	758	771
Tires	112	151	154
License and registration	44	44	49
Miscellaneous tax	0	0	0
Depreciation	1,954	3,390	4,043
Finance expense	636	821	985
Insurance	981	966	1,064
Total annual cost	5,296	7,350	8,591
Nome, AK:			
Fuel	1,264	1,897	2,371
Maintenance/oil	796	774	708
Tires	124	159	169
License and registration	44	44	49
Miscellaneous tax	0	0	0
Depreciation	3,013	4,190	5,218
Finance expense	784	928	1,145
Insurance	1,202	1,244	1,656

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4 WD 2 dr
Total annual cost	7,227	9,236	11,316
Honolulu, HI:			
Fuel	802	1,202	1,503
Maintenance/oil	626	581	571
Tires	112	147	0
License and registration	103	118	128
Miscellaneous tax	0	0	0
Depreciation	2,665	3,871	5,194
Finance expense	947	1,139	1,476
Insurance	1,197	1,146	1,326
Total annual cost	6,452	8,204	10,198
Hilo, HI:			
Fuel	955	1,433	1,791
Maintenance/oil	513	500	505
Tires	85	163	175
License and registration	75	86	110
Miscellaneous tax	0	0	0
Depreciation	2,415	3,261	4,790
Finance expense	967	1,099	1,503
Insurance	1,189	1,226	1,455
Total annual cost	6,199	7,768	10,329
Kailua Kona, HI:			
Fuel	928	1,393	1,741
Maintenance/oil	660	662	666
Tires	100	154	131
License and registration	95	105	129
Miscellaneous tax	0	0	0
Depreciation	2,353	3,660	4,855
Finance expense	921	1,140	1,464
Insurance	1,684	1,663	1,783
Total annual cost	6,741	8,777	10,769
Kauai, HI:			
Fuel	866	1,299	1,623
Maintenance/oil	674	710	615
Tires	123	160	204
License and registration	72	82	87
Miscellaneous tax	0	0	0
Depreciation	2,634	3,559	4,984
Finance expense	1,027	1,178	1,566
Insurance	1,110	1,141	1,279
Total annual cost	6,506	8,129	10,358
Maui, HI:			
Fuel	893	1,339	1,674
Maintenance/oil	685	714	612
Tires	138	183	181
License and registration	82	97	105
Miscellaneous tax	0	0	0
Depreciation	1,989	3,366	5,242
Finance expense	880	1,120	1,595
Insurance	1,115	1,151	1,369
Total annual cost	5,782	7,970	10,778
Guam:			
Fuel	956	1,434	1,792
Maintenance/oil	472	501	569
Tires	112	195	134
License and registration	36	41	43
Miscellaneous tax	0	0	0
Depreciation	2,228	4,047	4,552
Finance expense	928	1,259	1,454

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Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4 WD 2 dr
Insurance	1,326	1,794	1,763
Total annual cost	6,058	9,271	10,307
Puerto Rico:			
Fuel	534	800	1,000
Maintenance/oil	334	351	450
Tires	111	159	152
License and registration	304	329	342
Miscellaneous tax	0	0	0
Depreciation	2,215	4,002	5,804
Finance expense	858	1,158	1,584
Insurance	1,482	1,702	2,024
Total annual cost	5,838	8,501	11,356
St. Croix, VI:			
Fuel	688	1,031	1,289
Maintenance/oil	447	409	485
Tires	80	160	142
License and registration	69	78	90
Miscellaneous tax	0	0	0
Depreciation	2,198	3,565	4,629
Finance expense	899	1,132	1,434
Insurance	1,754	1,723	1,998
Total annual cost	6,135	8,098	10,067
St. Thomas, VI:			
Fuel	739	1,108	1,385
Maintenance/oil	558	561	614
Tires	102	146	126
License and registration	69	78	90
Miscellaneous tax	0	0	0
Depreciation	2,749	3,537	5,463
Finance expense	930	1,038	1,474
Insurance	1,810	1,728	1,877
Total annual cost	6,957	8,196	11,029
Washington, DC (DC):			
Fuel	545	817	1,021
Maintenance/oil	404	379	346
Tires	133	115	81
License and registration	109	109	142
Miscellaneous tax	0	0	0
Depreciation	1,866	3,243	4,143
Finance expense	599	767	960
Insurance	1,409	1,296	1,508
Total annual cost	5,065	6,726	8,201
Washington, DC (MD):			
Fuel	537	805	1,006
Maintenance/oil	409	387	340
Tires	86	112	111
License and registration	83	83	97
Miscellaneous tax	0	0	0
Depreciation	1,865	3,248	4,845
Finance expense	587	753	1,040
Insurance	1,171	1,120	1,348
Total annual cost	4,738	6,508	8,787
Washington, DC (VA):			
Fuel	506	760	949
Maintenance/oil	386	386	385
Tires	64	94	110
License and registration	37	37	37
Miscellaneous tax	556	626	878

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4 WD 2 dr
Depreciation	1,892	3,173	3,969
Finance expense	609	766	946
Insurance	827	740	922
Total annual cost	4,877	6,582	8,196

PRIVATE TRANSPORTATION COST ANALYSIS—COMPOSITES

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4 WD 2 dr
Hilo, HI	75.81	$6,199	$7,768	$10,329
Kailua Kona, HI	24.19	6,741	8,777	10,769
Total weight	100.00			
Hawaii County, HI	N/A	6,330	8,012	10,435
St. Croix, VI	48.26	6,135	8,098	10,067
St. Thomas, VI	51.74	6,957	8,196	11,029
Total weight	100.00			
Virgin Islands	N/A	6,560	8,149	10,565
Washington, DC, DC	33.34	5,065	6,726	8,201
Washington, DC, MD	33.33	4,738	6,508	8,787
Washington, DC, VA	33.33	4,877	6,582	8,196
Total weight	100.00			
DC area	N/A	4,893	6,605	8,395

Appendix 15—Auto Insurance Calculation Worksheet—Special Limits Adjustments

	Honda	Ford	Chevy
Guam:			
Average Local Insurance Price	1,288.67	1,739.33	1,718.67
Price of Equivalent Reference Area Coverage	1,113.04	1,030.85	1,255.59
Index	115.78	168.73	136.88
Price of Reference Area UM 100/300 Coverage	32.57	32.57	32.57
Estimated Local Equivalent UM Coverage	37.71	54.96	44.58
Adjusted Local Insurance Price	1,326.38	1,794.29	1,763.25
Puerto Rico:			
Average Local Insurance Price	1,439.67	1,650.00	1,972.40
Price of Equivalent Reference Area Coverage	1,113.04	1,030.85	1,255.59
Index	129.35	160.06	157.09
Price of Reference Area UM 100/300 Coverage	32.57	32.57	32.57
Estimated Local Equivalent UM Coverage	42.13	52.13	51.16
Adjusted Local Insurance Price	1,481.80	1,702.13	2,023.56
St. Croix:			
Average Local Insurance Price	1,516.68	1,484.76	1,746.28
Price of Equivalent Reference Area Coverage	990.67	916.48	1,125.90
Index	153.10	162.01	155.10
Price of Specified Reference Area Coverage	1,145.61	1,063.42	1,288.16
Adjusted Local Insurance Price	1,753.93	1,722.85	1,997.94
St. Thomas:			
Average Local Insurance Price	1,565.09	1,489.16	1,640.52
Price of Equivalent Reference Area Coverage	990.67	916.48	1125.90
Index	157.98	162.49	145.71
Price of Specified Reference Area Coverage	1,145.61	1,063.42	1,288.16

	Honda	Ford	Chevy
Adjusted Local Insurance Price	1,809.83	1,727.95	1,876.98

Note: Special adjustments were required for Guam, Puerto Rico, and U.S. Virgin Islands automobile insurance prices because the coverage available was significantly less than that surveyed in the other locations. In Guam and Puerto Rico, uninsured motorist (UM) coverage had significantly lower coverage or was not available. For both areas, we compared the average price of the local policy with the average price of equivalent coverage in the DC area and computed an index. We used that index to adjust the price of the DC area specified UM coverage, which we then added to the average local prices. In the U.S. Virgin Islands, all coverage (bodily injury, property damage, medical, collision, and comprehensive) was significantly less than that priced elsewhere. For these areas, we compared the average price of the local policy with equivalent coverage in the DC area and computed an index. We used that index to adjust the price of the DC specified coverage.

Appendix 16—Air Fares Cost Analysis

Location	Average allowance area air fares	Average DC area air fares	Index
Anchorage, AK	$519	$240	216.25
Fairbanks, AK	691	240	287.92
Juneau, AK	663	240	276.25
Nome, AK	1,161	240	483.75
Honolulu, HI	727	240	302.92
Hawaii County, HI	907	240	377.92
Kauai, HI	907	240	377.92
Maui, HI	859	240	357.92
Guam	1,277	240	532.08
Puerto Rico	448	240	186.67
Virgin Islands	685	240	285.42

AIR FARES—COMPOSITES

Location	Weights	Costs
Hilo, HI	75.81	$907
Kailua Kona, HI	24.19	907
Total	100.00	.....
Hawaii County, HI cost	.....	907
St. Croix, VI	48.26	682
St. Thomas, VI	51.74	688
Total	100.00	.....
Virgin Islands cost	.....	685

Appendix 17—Transportation Analysis

	Total annual cost	Total cost DC area	Index
Anchorage, AK:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	$5,907	$4,893	120.72
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	7,837	6,605	118.65
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	8,987	8,395	107.05
Average index	.....	.....	115.47
Fairbanks, AK:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	6,342	4,893	129.61
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	7,918	6,605	119.88
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	9,544	8,395	113.69
Average index	.....	.....	121.06
Juneau, AK:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	5,296	4,893	108.24
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	7,350	6,605	111.28
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	8,591	8,395	102.33
Average index	.....	.....	107.28
Nome, AK:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	7,227	4,893	147.70

	Total annual cost	Total cost DC area	Index
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	9,236	6,605	139.83
3. Chevy S10 Blazer 4WD 2.dr 4.3L 6 cyl	11,316	8,395	134.79
Average index	.....	.....	140.77
Honolulu, HI:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	6,452	4,893	131.86
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	8,204	6,605	124.21
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	10,198	8,395	121.48
Average index	.....	.....	1125.85
Hawaii County, HI:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	6,330	4,893	129.37
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	8,012	6,605	121.30
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	10,435	8,395	124.30
Average index	.....	.....	124.99
Kauai County, HI:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	6,506	4,893	132.97
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	8,129	6,605	123.07
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	10,358	8,395	123.38
Average index	.....	.....	126.47
Maui County, HI:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	5,782	4,893	118.17
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	7,970	6,605	120.67
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	10,778	8,395	128.39
Average index	.....	.....	122.41
Guam:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	6,058	4,893	123.82
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	9,271	6,605	140.37
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	10,307	8,395	122.78
Average index	.....	.....	128.99
Puerto Rico:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	5,838	4,893	119.31
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	8,501	6,605	128.71
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	11,356	8,395	135.27
Average index	.....	.....	127.76
Virgin Islands:			
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	6,560	4,893	134.07
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	8,149	6,605	123.38
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	10,565	8,395	125.85
Average index	.....	.....	127.77

Appendix 18—Transportation Summary

	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Anchorage, AK:							
Private transportation	115.47	95.22	109.95	94.57	109.20	93.97	108.51
Air fares and other transportation expenses	216.25	4.78	10.34	5.43	11.74	6.03	13.04
Total weights	.....	100.00	.....	100.00	.....	100.00	
Total indexes:							
Lower	.....	.....	120.29	.....	.....	.....	.....
Middle	.....	.....	.....	.....	120.94	.....	.....
Upper	.....	.....	.....	.....	.....	.....	121.55
Fairbanks, AK:							
Private transportation	121.06	95.22	115.27	94.57	114.49	93.97	113.76

	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Air fares and other transportation expenses	287.92	4.78	13.76	5.43	15.63	6.03	17.36
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			129.03				
Middle					130.12		
Upper							131.12
Juneau, AK:							
Private transportation	107.28	95.22	102.15	94.57	101.45	93.97	100.81
Air fares and other transportation expenses	276.25	4.78	13.20	5.43	15.00	6.03	16.66
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			115.35				
Middle					116.45		
Upper							117.47
Nome, AK:							
Private transportation	140.77	95.22	134.04	94.57	133.13	93.97	132.28
Air fares and other transportation expenses	483.75	4.78	23.12	5.43	26.27	6.03	29.17
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			157.16				
Middle					159.40		
Upper							161.45
Honolulu, HI:							
Private transportation	125.85	95.22	119.83	94.57	119.02	93.97	118.26
Air fares and other transportation expenses	302.92	4.78	14.48	5.43	16.45	6.03	18.27
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			134.31				
Middle					135.47		
Upper							136.53
Hawaii County, HI:							
Private transportation	124.99	95.22	119.02	94.57	118.20	93.97	117.45
Air fares and other transportation expenses	377.92	4.78	18.06	5.43	20.52	6.03	22.79
Total weights		100.00		100.00		100.00	
Total indexes:.							
Lower			137.08				
Middle					138.72		
Upper							140.24
Kauai County, HI:							
Private transportation	126.47	95.22	120.42	94.57	119.60	93.97	118.84
Air fares and other transportation expenses	377.92	4.78	18.06	5.43	20.52	6.03	22.79
Total weights		100.00		100.00		100.00	
Total indexes:.							
Lower			138.48				
Middle					140.12		
Upper							141.63
Maui County, HI:							
Private transportation	122.41	95.22	116.56	94.57	115.76	93.97	115.03

	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Air fares and other transportation expenses	357.92	4.78	17.11	5.43	19.44	6.03	21.58
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			133.67				
Middle					135.20		
Upper							136.61
Guam:							
Private transportation	128.99	95.22	122.82	94.57	121.99	93.97	121.21
Air fares and other transportation expenses	532.08	4.78	25.43	5.43	28.89	6.03	32.08
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			148.25				
Middle					150.88		
Upper							153.29
Puerto Rico:							
Private transportation	127.76	95.22	121.65	94.57	120.82	93.97	120.06
Air fares and other transportation expenses	186.67	4.78	8.92	5.43	10.14	6.03	11.26
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			130.57				
Middle					130.96		
Upper							131.32
Virgin Islands:							
Private transportation	127.77	95.22	121.66	94.57	120.83	93.97	120.07
Air fares and other transportation expenses	285.42	4.78	13.64	5.43	15.50	6.03	17.21
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			135.30				
Middle					136.33		
Upper							137.28

Appendix 19—Miscellaneous Expense Analysis—Category Development

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Anchorage, AK:						
Medicalcare						113.31
Non-aspirin pain reliever	$7.35	$6.95	1.06	5.34	5.65	
Tetracycline	7.91	7.03	1.13	11.83	13.31	
Dentist clean/check	158.33	103.26	1.53	15.51	23.78	
Doctor office visit	66.67	58.86	1.13	11.39	12.90	
Hospital room	748.00	625.35	1.20	2.89	3.46	
Health Insurance	1,275.77	1,232.98	1.03	47.72	49.38	
Contact Lenses	167.33	185.77	0.90	5.32	4.79	
Fairbanks, AK:						
Medical care						116.20
Non-aspirin pain reliever	6.70	6.95	0.96	5.34	5.15	
Tetracycline	8.55	7.03	1.22	11.83	14.38	
Dentist clean/check	173.67	103.26	1.68	15.51	26.09	
Doctor office visit	71.67	58.86	1.22	11.39	13.87	
Hospital room	637.00	625.35	1.02	2.89	2.94	
Health Insurance	1,250.20	1,232.98	1.01	47.72	48.39	
Contact Lenses	188.00	185.77	1.01	5.32	5.38	
Juneau, AK:						
Medical care		ENT				118.83
Non-aspirin pain reliever	9.41	6.95	1.35	5.34	7.23	
Tetracycline	7.72	7.03	1.10	11.83	12.99	

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Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Dentist clean/check	183.33	103.26	1.78	15.51	27.54	
Doctor office visit	73.50	58.86	1.25	11.39	14.22	
Hospital room	656.97	625.35	1.05	2.89	3.04	
Health Insurance	1,252.03	1,232.98	1.02	47.72	48.46	
Contact Lenses	1186.67	185.77	1.00	5.32	5.35	
Nome, AK:						
Medical care						134.92
Non-aspirin pain reliever	10.46	6.95	1.51	5.34	8.04	
Tetracycline	14.75	7.03	2.10	11.83	24.83	
Dentist clean/check	153.50	103.26	1.49	15.51	23.06	
Doctor office visit	94.00	58.86	1.60	11.39	18.19	
Hospital room	1,100.00	625.35	1.76	2.89	5.08	
Health Insurance	1,260.90	1,232.98	1.02	47.72	48.80	
Contact Lenses	240.00	185.77	1.29	5.32	6.87	
Honolulu, HI:						
Medical care						104.33
Non-aspirin pain reliever	9.10	6.95	1.31	5.34	7.00	
Tetracycline	7.74	7.03	1.10	11.83	13.03	
Dentist clean/check	123.92	103.26	1.20	15.51	18.61	
Doctor office visit	59.76	58.86	1.02	11.39	11.56	
Hospital room	675.99	625.35	1.08	2.89	3.12	
Health Insurance	1,170.63	1,232.98	0.95	47.72	45.31	
Contact Lenses	197.92	185.77	1.07	5.32	5.67	
Hilo, HI:						
Medical care						99.48
Non-aspirin pain reliever	9.67	6.95	1.39	5.34	7.43	
Tetracycline	5.79	7.03	0.82	11.83	9.74	
Dentist clean/check	127.99	103.26	1.24	15.51	19.23	
Doctor office visit	66.93	58.86	1.14	11.39	12.95	
Hospital room	558.50	625.35	0.89	2.89	2.58	
Health Insurance	1,085.58	1,232.98	0.88	47.72	42.02	
Contact Lenses	192.49	185.77	1.04	5.32	5.51	
Kailua Kona, HI:						
Medical care						99.97
Non-aspirin pain reliever	8.67	6.95	1.25	5.34	6.67	
Tetracycline	6.23	7.03	0.89	11.83	10.48	
Dentist clean/check	154.51	103.26	1.50	15.51	23.21	
Doctor office visit	49.82	58.86	0.85	11.39	9.64	
Hospital room	558.33	625.35	0.89	2.89	2.58	
Health Insurance	1,085.58	1,232.98	0.88	47.72	42.02	
Contact Lenses	187.35	185.77	1.01	5.32	5.37	
Kauai County, HI:						
Medical care						96.07
Non-aspirin pain reliever	9.26	6.95	1.33	5.34	7.12	
Tetracycline	6.60	7.03	0.94	11.83	11.11	
Dentist clean/check	143.75	103.26	1.39	15.51	21.59	
Doctor office visit	40.68	58.86	0.69	11.39	7.87	
Hospital room	605.04	625.35	0.97	2.89	2.80	
Health Insurance	1,015.92	1,232.98	0.82	47.72	39.32	
Contact Lenses	218.17	185.77	1.17	5.32	6.25	
Maui County, HI:						
Medical care						110.26
Non-aspirin pain reliever	7.85	6.95	1.13	5.34	6.03	
Tetracycline	6.53	7.03	0.93	11.83	10.98	
Dentist clean/check	162.50	103.26	1.57	15.51	24.41	
Doctor office visit	65.95	58.86	1.12	11.39	12.76	
Hospital room	558.50	625.35	0.89	2.89	2.58	
Health Insurance	1,206.89	1,232.98	0.98	47.72	46.71	
Contact Lenses	236.11	185.77	1.27	5.32	6.76	
Guam:						
Medical care						124.85
Non-aspirin pain reliever	9.32	6.95	1.34	5.34	7.16	
Tetracycline	4.00	7.03	0.57	11.83	6.73	
Dentist clean/check	166.50	103.26	1.61	15.51	25.01	
Doctor office visit	49.00	58.86	0.83	11.39	9.48	
Hospital room	289.50	625.35	0.46	2.89	1.34	
Health Insurance	1,635.28	1,232.98	1.33	47.72	63.29	
Contact Lenses	413.33	185.77	2.23	5.32	11.84	
Puerto Rico:						
Medical care						80.01
Non-aspirin pain reliever	6.65	6.95	0.96	5.34	5.11	
Tetracycline	4.00	7.03	0.57	11.83	6.73	
Dentist clean/check	95.33	103.26	0.92	15.51	14.32	

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Doctor office visit	31.67	58.86	0.54	11.39	6.13	
Hospital room	510.92	625.35	0.82	2.89	2.36	
Health Insurance	923.04	1,232.98	0.75	47.72	35.72	
Contact Lenses	336.67	185.77	1.81	5.32	9.64	
St. Croix, VI:						
Medical care						111.69
Non-aspirin pain reliever	7.97	6.95	1.15	5.34	6.13	
Tetracycline	6.13	7.03	0.87	11.83	10.32	
Dentist clean/check	91.67	103.26	0.89	15.51	13.77	
Doctor office visit	45.83	58.86	0.78	11.39	8.87	
Hospital room	650.00	625.35	1.04	2.89	3.00	
Health Insurance	1,636.82	1,232.98	1.33	47.72	63.35	
Contact Lenses	217.23	185.77	1.17	5.32	6.22	
St. Thomas, VI:						
Medical care						118.59
Non-aspirin pain reliever	7.89	6.95	1.14	5.34	6.06	
Tetracycline	9.80	7.03	1.39	11.83	16.50	
Dentist clean/check	77.00	103.26	0.75	15.51	11.57	
Doctor office visit	61.25	58.86	1.04	11.39	11.85	
Hospital room	512.50	625.35	0.82	2.89	2.37	
Health Insurance	1,636.82	1,232.98	1.33	47.72	63.35	
Contact Lenses	240.00	185.77	1.29	5.32	6.87	

Appendix 20—Miscellaneous Expense Analysis—Total Index Development

	Category indexes	Lower income		Middle income		Upper income	
		Weights*	Subtotal	Weights*	Subtotal	Weights*	Subtotal
Anchorage, AK:							
1. Medical care	113.31	40.96	46.41	31.24	35.40	24.27	27.50
2. Cash contributions:							
Lower income	112.60	16.63	18.73				
Middle income	112.33			16.27	18.28		
Upper income	112.02					16.01	17.93
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	35.35	0.98	0.35	1.26	0.45	1.45	0.51
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			106.93				
Middle					105.37		
Upper							104.21
Fairbanks, AK:							
1. Medical care	116.20	40.96	47.60	31.24	36.30	24.27	28.20
2. Cash contributions:							
Lower income	114.97	16.63	19.12				
Middle income	114.84			16.27	18.68		
Upper income	114.69					16.01	18.36
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	20.41	0.98	0.20	1.26	0.26	1.45	0.30
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			108.36				
Middle					106.48		
Upper							105.13
Juneau, AK:							
1. Medical care	118.83	40.96	48.67	31.24	37.12	24.27	28.84
2. Cash contributions:							
Lower income	118.75	16.63	19.75				
Middle income	118.56			16.27	19.29		
Upper income	118.37					16.01	18.95
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	39.18	0.98	0.38	1.26	0.49	1.45	0.57
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			110.24				

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	Category indexes	Lower income		Middle income		Upper income	
		Weights*	Subtotal	Weights*	Subtotal	Weights*	Subtotal
Middle					108.14		
Upper							106.63
Nome, AK:							
1. Medical care	134.92	40.96	55.26	31.24	42.15	24.27	32.75
2. Cash contributions:							
Lower income	143.76	16.63	23.91				
Middle income	143.15			16.27	23.29		
Upper income	142.57					16.01	22.83
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	17.44	0.98	0.17	1.26	0.22	1.45	0.25
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			120.78				
Middle					116.90		
Upper							114.10
Honolulu, HI:							
1. Medical care	104.33	40.96	42.73	31.24	32.59	24.27	25.32
2. Cash contributions:							
Lower income	118.38	16.63	19.69				
Middle income	117.72			16.27	19.15		
Upper income	117.10					16.01	18.75
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	177.14	0.98	1.74	1.26	2.23	1.45	2.57
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			105.60				
Middle					105.21		
Upper							104.91
Hilo, HI:							
1. Medical care	99.48	40.96	40.75	31.24	31.08	24.27	24.14
2. Cash contributions:							
Lower income	114.12	16.63	18.98				
Middle income	113.08			16.27	18.40		
Upper income	112.09					16.01	17.95
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	173.58	0.98	1.70	1.26	2.19	1.45	2.52
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			102.87				
Middle					102.91		
Upper							102.88
Kailua Kona, HI:							
1. Medical care	99.97	40.96	40.95	31.24	31.23	24.27	24.26
2. Cash contributions:							
Lower income	117.91	16.63	19.61				
Middle income	117.02			16.27	19.04		
Upper income	116.19					16.01	18.60
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	135.21	0.98	1.33	1.26	1.70	1.45	1.96
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			103.33				
Middle					103.21		
Upper							103.09
Kauai County, HI:							
1. Medical care	96.07	40.96	39.35	31.24	30.01	24.27	23.32
2. Cash contributions:							
Lower income	124.36	16.63	20.68				
Middle income	122.97			16.27	20.01		
Upper income	121.70					16.01	19.48
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27

	Category indexes	Lower income		Middle income		Upper income	
		Weights*	Subtotal	Weights*	Subtotal	Weights*	Subtotal
4. Education	132:28	0.98	1.30	1.26	1.67	1.45	1.92
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			102.77				
Middle					102.93		
Upper							102.99
Maui County, HI:							
1. Medical care	110.26	40.96	45.16	31.24	34.45	24.27	26.76
2. Cash contributions:							
Lower income	124.43	16.63	20.69				
Middle income	123.53			16.27	20.10		
Upper income	122.66					16.01	19.64
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	73.39	0.98	0.72	1.26	0.92	1.45	1.06
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			108.01				
Middle					106.71		
Upper							105.73
Guam:							
1. Medical care	124.85	40.96	51.14	31.24	39.00	24.27	30.30
2. Cash contributions:							
Lower income	120.36	16.63	20.02				
Middle income	120.33			16.27	19.58		
Upper income	120.28					16.01	19.26
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	242.12	0.98	2.37	1.26	3.05	1.45	3.51
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			114.97				
Middle					112.87		
Upper							111.34
Puerto Rico:							
1. Medical care	80.01	40.96	32.77	31.24	25.00	24.27	19.42
2.Cash contributions:							
Lower income	109.33	16.63	18.18				
Middle income	109.27			16.27	17.78		
Upper income	109.18					16.01	17.48
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	211.32	0.98	2.07	1.26	2.66	1.45	3.06
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			94.46				
Middle					96.68		
Upper							98.23
St. Croix, VI:							
1. Medical care	111.69	40.96	45.75	31.24	34.89	24.27	27.11
2. Cash contributions:							
Lower income	118.65	16.63	19.73				
Middle	118.70			16.27	19.31		
Upper income	118.75					16.01	19.01
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	245.79	0.98	2.41	1.26	3.10	1.45	3.56
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			109.33				
Middle					108.54		
Upper							107.95

	Category indexes	Lower income		Middle income		Upper income	
		Weights*	Subtotal	Weights*	Subtotal	Weights*	Subtotal
St. Thomas, VI:							
1. Medical care	118.59	40.96	48.57	31.24	37.05	24.27	28.78
2. Cash contributions:							
Lower income	118.72	16.63	19.74				
Middle income	118.15			16.27	19.22		
Upper income	117.64					16.01	18.83
3. Personal insurance/pensions	100.00	41.44	41.44	51.24	51.24	58.27	58.27
4. Education	274.01	0.98	2.69	1.26	3.45	1.45	3.97
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			112.44				
Middle					110.96		
Upper							109.85

*Numbers might not add to 100 due to rounding.

MISCELLANEOUS EXPENSE ANALYSIS—COMPOSITES

Location	Weights	Total Indexes		
		Lower income	Middle income	Upper income
Hilo, HI	75.81	102.87	102.91	102.88
Kailua Kona, HI	24.19	103.33	103.21	103.09
Total weight	100.00			
Hawaii County, HI	N/A	102.98	102.98	102.93
St. Croix, VI	48.26	109.33	108.54	107.95
St. Thomas, VI	51.74	112.44	110.96	109.85
Total weight	100.00			
Virgin Islands	N/A	110.94	109.79	108.93

Appendix 21—Component Expenditure Amounts

	Incomes	Indexes					Amounts				
		CG&S	Own	Rent	Transp	Misc	CG&S	Own	Rent	Transp	Misc
Reference Wts/Amts	23,300	38.07	26.42	26.42	19.24	16.27	$8,870	$6,156	$6,156	$4,483	$3,791
	35,300	37.48	25.00	25.00	19.12	18.40	13,230	.8,825	8,825	6,749	6,495
	52,700	36.96	23.72	23.72	19.01	20.32	19,478	12,500	12,500	10,018	10,709
Anchorage, AK	Lower	112.60	100.68	97.21	120.29	106.93	9,988	6,198	5,984	5,393	4,054
	Middle	112.33	92.09	84.85	120.94	105.37	14,861	8,127	7,488	8,162	6,844
	Upper	112.02	76.83	78.78	121.55	104.21	21,819	9,604	9,848	12,177	11,160
Fairbanks, AK	Lower	114.97	98.72	98.77	129.03	108.36	10,198	6,077	6,080	5,784	4,108
	Middle	114.84	91.58	94.03	130.12	106.48	15,193	8,082	8,298	8,782	6,916
	Upper	114.69	74.40	75.07	131.12	105.13	22,339	9,300	9,384	13,136	11,258
Juneau, AK	Lower	118.75	116.97	123.71	115.35	110.24	10,533	7,201	7,616	5,171	4,179
	Middle	118.56	102.63	108.10	116.45	108.14	15,685	9,057	9,540	7,859	7,024
	Upper	118.37	82.73	93.43	117.47	106.63	23,056	10,341	11,679	11,768	11,419
Nome, AK	Lower	143.76	112.25	138.27	157.16	120.78	12,752	6,910	8,512	7,045	4,579
	Middle	143.15	104.23	118.31	159.40	116.90	18,939	9,198	10,441	10,758	7,593
	Upper	142.57	87.17	86.67	161.45	114.10	27,770	10,896	10,834	16,174	12,219
Honolulu, HI	Lower	118.38	181.98	117.80	134.31	105.60	10,500	11,203	7,252	6,021	4,003
	Middle	117.72	169.13	106.99	135.47	105.21	15,574	14,926	9,442	9,143	6,833
	Upper	117.10	171.14	101.56	136.53	104.91	22,809	21,393	12,695	13,678	11,235
Hawaii County, HI	Lower	115.04	117.65	88.71	137.08	102.98	10,204	7,243	5,461	6,145	3,904
	Middle	114.03	108.41	81.96	138.72	102.98	15,086	9,567	7,233	9,362	6,689
	Upper	113.08	89.13	66.08	140.24	102.93	22,026	11,141	8,260	14,049	11,023
Kauai County, HI	Lower	124.36	145.54	101.12	138.48	102.77	11,031	8,959	6,225	6,208	3,896
	Middle	122.97	132.32	85.32	140.12	102.93	16,269	11,677	7,529	9,457	6,685

	Incomes	Indexes					Amounts				
		CG&S	Own	Rent	Transp	Misc	CG&S	Own	Rent	Transp	Misc
	Upper	121.70	108.23	70.22	141.63	102.99	23,705	13,529	8,778	14,188	11,029
Maui County, HI	Lower	124.43	163.39	110.62	133.67	108.01	11,037	10,058	6,810	5,992	4,095
	Middle	123.53	148.13	96.49	135.20	106.71	16,343	13,072	8,515	9,125	6,931
	Upper	122.66	119.25	79.24	136.61	105.73	23,892	14,906	9,905	13,686	11,323
Guam (Local Retail)	Lower	120.36	143.73	127.66	148.25	114.97	10,676	8,848	7,859	6,646	4,359
	Middle	120.33	127.35	118.37	150.88	112.87	15,920	11,239	10,446	10,183	7,331
	Upper	120.28	121.22	92.07	153.29	111.34	23,428	15,153	11,509	15,357	11,923
Guam (Comm.&Exch.)	Lower	108.58	143.73	127.66	148.25	114.97	9,631	8,848	7,859	6,646	4,359
	Middle	109.35	127.35	118.37	150.88	112.87	14,467	11,239	10,446	10,183	7,331
	Upper	110.05	121.22	92.07	153.29	111.34	21,436	15,153	11,509	15,357	11,923
Puerto Rico	Lower	109.33	78.32	104.60	130.57	94.46	9,698	4,821	6,439	5,853	3,581
	Middle	109.27	77.94	96.08	130.96	96.68	14,456	6,878	8,479	8,838	6,279
	Upper	109.18	78.55	93.78	131.32	98.23	21,266	9,819	11,723	13,156	10,519
Virgin Islands	Lower	118.69	131.42	99.11	135.30	110.94	10,528	8,090	6,101	6,065	4,206
	Middle	118.42	114.43	97.28	136.33	109.79	15,667	10,098	8,585	9,201	7,131
	Upper	118.18	103.51	80.00	137.28	108.93	23,019	12,939	10,000	13,753	11,665

Appendix 22—Total Comparative Cost Indexes

	Income	Income weights	Own	Rent	Total	WDC	Index
	Lower	23,300	37.96	62.04	.....	.....	.....
	Middle	35,300	47.26	52.74	.....	.....	.....
	Upper	52,700	60.70	39.30			
Anchorage, AK	Lower	27.02	$25,633	$25,419	$25,500	$23,300	.....
	Middle	30.64	37,994	37,355	37,657	35,300	.....
	Upper	42.34	54,760	55,004	54,856	52,700	.....
	.....	100.00	.....	.....	41,654	39,425	105.65
Fairbanks, AK	Lower	35.20	26,167	26,170	26,169	23,300	.....
	Middle	34.79	38,973	39,189	39,087	35,300	.....
	Upper	30.01	56,033	56,117	56,066	52,700	.....
	.....	100.00	.....	.....	39,635	36,298	109.19
Juneau, AK	Lower	18.91	27,084	27,499	27,341	23,300	.....
	Middle	29.77	39,625	40,108	39,880	35,300	.....
	Upper	51.32	56,584	57,922	57,110	52,700	.....
	.....	100.00	.....	.....	46,351	41,960	110.46
Nome, AK	Lower	23.96	31,286	32,888	32,280	23,300	.....
	Middle	45.51	46,488	47,731	47,144	35,300	.....
	Upper	30.53	67,059	66,997	67,035	52,700	.....
	.....	100.00	.....	.....	49,655	37,737	131.58
Honolulu, HI	Lower	33.01	31,727	27,776	29,276	23,300	.....
	Middle	31.19	46,476	40,992	43,584	35,300	.....
	Upper	35.80	69,115	60,417	65,697	52,700	.....
	.....	100.00	.....	.....	46,777	37,568	124.51
Hawaii County, HI	Lower	35.40	27,496	25,714	26,390	23,300	.....
	Middle	40.10	40,704	38,370	39,473	35,300;	
	Upper	24.50	58,239	55,358	57,107	52,700	.....
	.....	100.00	.....	.....	39,162	35,315	110.89
Kauai County, HI	Lower	27.23	30,094	27,360	28,398	23,300	.....
	Middle	32.59	44,088	39,940	41,900	35,300	.....
	Upper	40.18	62,451	57,700	60,584	52,700	.....
	.....	100.00	.....	.....	45,731	39,024	117.19
Maui County, HI	Lower	22.79	31,182	27,934	29,167	23,300	.....
	Middle	44.12	45,471	40,914	43,068	35,300	.....
	Upper	33.09	63,807	58,806	61,842	52,700	.....
	.....	100.00	.....	.....	46,112	38,323	120.32
Guam (Local Retail)	Lower	45.15	30,529	29,540	29,915	23,300	.....
	Middle	32.67	44,673	43,880	44,255	35,300	.....
	Upper	22.18	65,861	62,217	64,429	52,700	.....

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	Income	Income weights	Own	Rent	Total	WDC	Index
	.....	100.00	.....	.....	42,255	33,741	125.23
Guam (Comm.&Exch.)	Lower	45.15	29,484	28,495	28,870	23,300	.....
	Middle	32.67	43,220	42,427	42,802	35,300	.....
	Upper	22.18	63,869	60,225	62,437	52,700	.....
	.....	100.00	.....	.....	40,867	33,741	121.12
Puerto Rico	Lower	39.89	23,953	25,571	24,957	23,300	.....
	Middle	37.34	36,451	38,052	37,295	35,300	.....
	Upper	22.77	54,760	56,664	55,508	52,700	.....
	.....	100.00	.....	.....	36,520	34,475	105.93
Virgin Islands	Lower	32.49	28,889	26,900	27,655	23,300	.....
	Middle	41.96	42,097	40,584	41,299	35,300	.....
	Upper	25.55	61,376	58,437	60,221	52,700	.....
	.....	100.00	.....	.....	41,701	35,847	116.33

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Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410 and 414

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2001; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 414

[HCFA–1120–P]

RIN 0938–AK11

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2001

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make several changes affecting Medicare Part B payment. The changes include: Refinement of resource-based practice expense relative value units (RVUs); changes to the geographic practice cost indices; resource-based malpractice RVUs; critical care RVUs; care plan oversight and physician certification/recertification; observation care codes; ocular photodynamic therapy and other ophthalmological treatments; electrical bioimpedance; the global period for insertion, removal, and replacement of pacemakers and cardioverter defibrillators; antigen supply; low intensity ultrasound; and the implantation of ventricular assist devices. This proposed rule also discusses or clarifies the payment policy for incomplete medical direction, pulse oximetry services, outpatient therapy supervision, outpatient therapy caps, and the second 5-year refinement of work RVUs for services furnished beginning January 1, 2002. We are proposing these changes to ensure that our payment systems are updated to reflect changes in medical practice and the relative value of services. We solicit comments on the proposed policy changes.

DATES: To be assured of consideration, we must receive comments at the appropriate address, as provided below, no later than 5 p.m. on September 15, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1120–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays. If you prefer, you may deliver your written comments by courier (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244.

Comments mailed to the two above addresses may be delayed and received too late to be considered.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1120–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT:

Bob Ulikowski, (410) 786–5721 (for issues related to resource-based malpractice relative value units and geographic practice cost index changes).

Carolyn Mullen, (410) 786–4589 or Marc Hartstein, (410) 786–4539, (for issues related to resource-based practice expense relative value units).

Rick Ensor, (410) 786–5617 (for issues related to care plan oversight and physician certification/recertification).

Jim Menas, (410) 786–4507 (for issues related to incomplete medical direction and the 5-year review).

Roberta Epps, (410) 786–1858 (for outpatient therapy-related issues).

Cathleen Scally, (410) 786–5714 (for issues related to observation care codes).

Diane Milstead, (410) 786–3355 (for all other issues).

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the Federal Register online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: http://www.access.gpo.gov/nara/index.html.

Information on the Lewin report referenced in the preamble can be found on our homepage. This data can be accessed by using the following directions:

1. Go to the HCFA homepage (http://www.hcfa.gov).
2. Click on "Medicare."
3. Click on "Professional/Technical Information."
4. Select Medicare Payment Systems.
5. Select Physician Fee Schedule.

Or, you can go directly to the Physician Fee Schedule page by typing the following: http://www.hcfa.gov/medicare/pfsmain.htm.

To assist readers in referencing sections contained in this preamble, we are providing the following table of contents. Some of the issues discussed in this preamble affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations.

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In addition, because of the many organizations and terms to which we refer by acronym in this proposed rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AMA American Medical Association
BBA Balanced Budget Act of 1997
BBRA Balanced Budget Refinement Act
CF Conversion factor
CFR Code of Federal Regulations
CPT [Physicians'] Current Procedural Terminology [4th Edition, 1997, copyrighted by the American Medical Association]
CPEP Clinical Practice Expert Panel
CRNA Certified Registered Nurse Anesthetist
E/M Evaluation and management
EB Electrical bioimpedance
FMR Fair market rental
GAF Geographic adjustment factor
GPCI Geographic practice cost index
HCFA Health Care Financing Administration
HCPCS HCFA Common Procedure Coding System
HHA Home health agency
HHS [Department of] Health and Human Services
IDTFs Independent Diagnostic Testing Facilities
MCM Medicare Carrier Manual
MEDPAC Medicare Payment Advisory Commission
MEI Medicare Economic Index
MGMA Medical Group Management Association
MSA Metropolitan Statistical Area
NAMCS National Ambulatory Medical Care Survey
OBRA Omnibus Budget Reconciliation Act
PC Professional component
PEAC Practice Expense Advisory Committee
PPAC Practicing Physicians Advisory Council
PPS Prospective payment system
RUC [AMA's Specialty Society] Relative [Value] Update Committee
RVU Relative value unit
SGR Standard growth rate
SMS [AMA's] Socioeconomic Monitoring System
TC Technical component

I. Background

A. *Legislative History*

Since January 1, 1992, Medicare has paid for physician services under section 1848 of the Social Security Act (the Act), "Payment for Physicians' Services." This section contains three major elements—(1) a fee schedule for the payment of physicians' services; (2) a sustainable growth rate for the rates of increase in Medicare expenditures for physicians' services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If adjustments to RVUs cause expenditures to change by more than $20 million, we must make adjustments to the conversion factors (CFs) to preserve budget neutrality.

B. *Published Changes to the Fee Schedule*

We published a final rule on November 25, 1991 (56 FR 59502) to implement section 1848 of the Act by establishing a fee schedule for physicians' services furnished on or after January 1, 1992. In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's (AMA's) Physicians' Current Procedural Terminology (CPT) through an "interim RVU" process every year. We published the updates to the RVUs and fee schedule policies are as follows:

- November 25, 1992, a final notice with comment period on new and revised RVUs only (57 FR 55914).
- December 2, 1993, a final rule with comment period (58 FR 63626) revised the refinement process used to establish physician work RVUs and to revise payment policies for specific physicians' services and supplies. (We solicited comments on new and revised RVUs only.)
- December 8, 1994, a final rule with comment period (59 FR 63410) revised the geographic adjustment factor (GAF) values, fee schedule payment areas, and payment policies for specific physicians' services. The final rule also discussed the process for periodic review and adjustment of RVUs not less frequently than every 5 years as required by section 1848(c)(2)(B)(i) of the Act.
- December 8, 1995, a final rule with comment period (60 FR 63124) revised various policies affecting payment for physicians' services including Medicare payment for physicians' services in teaching settings, the RVUs for certain existing procedure codes, and established interim RVUs for new and revised procedure codes. The rule also included the final revised 1996 geographic practice cost indices (GPCIs).
- November 22, 1996, a final rule with comment period (61 FR 59490) revised the policy for payment for diagnostic services, transportation in connection with furnishing diagnostic tests, changes in geographic payment areas (localities), and changes in the procedure status codes for a variety of services.
- October 31, 1997, a final rule with comment period (62 FR 59048) revised the GPCIs, physician supervision of diagnostic tests, establishment of independent diagnostic testing facilities, the methodology used to develop reasonable compensation equivalent limits, payment to participating and nonparticipating suppliers, global surgical services, caloric vestibular testing, and clinical consultations. It also implemented certain provisions of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), enacted on August 5, 1997, and implemented the RVUs for certain existing procedure codes and established interim RVUs for new and revised procedure codes.
- November 2, 1998, a final rule with comment period (63 FR 58814) revised the policy for resource-based practice expense RVUs, medical direction rules for anesthesia services, and payment for abnormal Pap smears. We also rebased the Medicare economic index (MEI) from a 1989 base year to a 1996 base year. Under the law, we were also required to develop a resource-based system for determining practice expense RVUs. The BBA delayed, for 1 year, implementation of the resource-based practice expense RVUs until January 1, 1999. Also, the BBA revised our payment policy for nonphysician practitioners, for outpatient rehabilitation services, and for drugs and biologicals not paid on a cost or prospective payment basis. In addition, the BBA permitted certain physicians and practitioners to opt out of Medicare and furnish covered services to Medicare beneficiaries through private contracts and permits payment for professional consultations via

interactive telecommunication systems. Furthermore, we finalized the 1998 interim RVUs and issued interim RVUs for new and revised codes for 1999. The final rule also announced the CY 1999 Medicare physician fee schedule CF under the Medicare Supplementary Medical Insurance (Part B) program as required by section 1848(d) of the Act. The 1999 Medicare physician fee schedule CF was $34.7315.

• November 2, 1999, a final rule with comment period (64 FR 59380) made several changes affecting Medicare Part B payment. The changes included: implementation of resource-based malpractice insurance RVUs; refinement of resource-based practice expense RVUs; payment for physician pathology and independent laboratory services; discontinuous anesthesia time; diagnostic tests; prostate screening; use of CPT modifier -25; qualifications for nurse practitioners; an increase in the work RVUs for pediatric services; adjustments to the practice expense RVUs for physician interpretation of Pap smears; and a number of other changes relating to coding and payment. Furthermore, we finalized the 1999 interim physician work RVUs and issued interim RVUs for new and revised codes for 2000. The final rule solicited public comments on the second 5-year refinement of work RVUs for services furnished beginning January 1, 2002 and requested public comments on potentially misvalued work RVUs for all services in the CY 2000 physician fee schedule. The final rule conformed the regulations to existing law and policy regarding: removal of the x-ray as a prerequisite for chiropractic manipulation; the exclusion of payment for assisted suicide; and optometrist services. The final rule also announced the CY 2000 Medicare physician fee schedule CF under the Medicare Supplementary Medical Insurance (Part B) program as required by section 1848(d) of the Act. The 2000 Medicare physician fee schedule CF was $36.6137.

This proposed rule would affect the regulations set forth at Part 410, Supplementary medical insurance (SMI) benefits and Part 414, Payment for Part B medical and other services.

II. Specific Proposals for Calendar Year 2001

A. Resource-Based Practice Expense Relative Value Units

1. Resource-Based Practice Expense Legislation

Section 121 of the Social Security Act Amendments of 1994 (Public Law 103–432), enacted on October 31, 1994, required us to develop a methodology for a resource-based system for determining practice expense RVUs for each physician's service beginning in 1998. In developing the methodology, we were to consider the staff, equipment, and supplies used in providing medical and surgical services in various settings. The legislation specifically required that, in implementing the new system of practice expense RVUs, we must apply the same budget-neutrality provisions that we apply to other adjustments under the physician fee schedule.

Section 4505(a) of the BBA delayed the effective date of the resource-based practice expense RVU system until January 1, 1999. In addition, section 4505(b) of the BBA provided for a 4-year transition period from charge-based practice expense RVUs to resource-based RVUs. The practice expense RVUs for CY 1999 were the product of 75 percent of charge-based RVUs and 25 percent of the resource-based RVUs. For CY 2000, the RVUs were 50 percent charge-based and 50 percent resource-based. For CY 2001, the RVUs will be 25 percent charge-based and 75 percent resource-based. After CY 2001, the RVUs will be totally resource-based.

Section 4505(e) of the BBA provided that, in 1998, the practice expense RVUs be adjusted for certain services in anticipation of implementation of resource-based practice expenses beginning in 1999. As a result, we increased practice expense RVUs for office visits. For other services in which practice expense RVUs exceeded 110 percent of the work RVUs and were furnished less than 75 percent of the time in an office setting, we reduced the 1998 practice expense RVUs to a number equal to 110 percent of the work RVUs. This limitation did not apply to services that had proposed resource-based practice expense RVUs that increased from their 1997 practice expense RVUs as reflected in the June 18, 1997 proposed rule (62 FR 33196). The services affected, and the final RVUs for 1998, were published in the October 1997 final rule (62 FR 59103).

The most recent legislation affecting resource-based practice expense was included in the Balanced Budget Refinement Act of 1999 (BBRA) (Public Law 106–113). Section 212 of the BBRA stated that we must establish a process under which we accept and use, to the maximum extent practicable and consistent with sound data practices, data collected or developed by entities and organizations. These data would supplement the data we normally collect in determining the practice expense component of the physician fee schedule for payments in CY 2001 and CY 2002.

2. Current Methodology for Computing Practice Expense Relative Value Unit System

Effective with services on or after January 1, 1999, we established a new methodology for computing resource-based practice expense RVUs that used the two significant sources of actual practice expense data we have available: the Clinical Practice Expert Panel (CPEP) data and the AMA's Socioeconomic Monitoring System (SMS) data. The methodology was based on an assumption that current aggregate specialty practice costs are a reasonable way to establish initial estimates of relative resource costs of physicians' services across specialties. The methodology allocated these aggregate specialty practice costs to specific procedures and, thus, can be seen as a "top-down" approach. The methodology can be summarized as follows:

(a) Practice Expense Cost Pools. We used actual practice expense data by specialty, derived from the 1995 through 1997 SMS survey data, to create six cost pools—administrative labor, clinical labor, medical supplies, medical equipment, office supplies, and all other expenses. There were three steps in the creation of the cost pools.

• Step (1) We used the AMA's SMS survey of actual cost data to determine practice expenses per hour by cost category. The practice expenses per hour for each physician respondent's practice was calculated as the practice expenses for the practice divided by the total number of hours spent in patient care activities. The practice expenses per hour for the specialty were an average of the practice expenses per hour for the respondent physicians in that specialty. In addition, for the CY 2000 physician fee schedule, we used data from a survey submitted by the Society of Thoracic Surgeons in calculating the thoracic and cardiac surgery's practice expense per hour. (See the November 1999 final rule (64 FR 59391) for additional information concerning acceptance of this data.)

• Step (2) We determined the total number of physician hours (by specialty) spent treating Medicare patients. This was calculated from physician time data for each procedure code and from Medicare claims data.

• Step (3) We calculated the practice expense pools by specialty and by cost category by multiplying the specialty practice expenses per hour for each category by the total physician hours.

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For services with work RVUs equal to zero (including the technical component (TC) of services with a TC and professional component (PC)), we created a separate practice expense pool using the average clinical staff time from the CPEP data (since these codes by definition do not have physician time), and the "all physicians" practice expense per hour.

(b) Cost Allocation Methodology. For each specialty, we separated the six practice expense pools into two groups and used a different allocation basis for each group.

(1) Direct Costs

For direct costs (including clinical labor, medical supplies, and medical equipment), we used the CPEP data as the allocation basis. The CPEP data for clinical labor, medical supplies, and medical equipment were used to allocate the clinical labor, medical supplies, and medical equipment cost pools, respectively.

For the separate practice expense pool for services with work RVUs equal to zero, we used 1998 practice expense RVUs to allocate the direct cost pools (clinical labor, medical supplies, and medical equipment cost pools) as an interim measure. Also, for all radiology services that are assigned work RVUs, we used the 1998 practice expense relative values for radiology services as an interim measure to allocate the direct practice expense cost pool for radiology. For all other specialties that perform radiology services, we used the CPEP data for radiology services in the allocation of that specialty's direct practice expense cost pools.

(2) Indirect Costs

To allocate the cost pools for indirect costs, including administrative labor, office expenses, and all other expenses, we used the total direct costs, as described above, in combination with the physician fee schedule work RVUs. We converted the work RVUs to dollars using the Medicare CF (expressed in 1995 dollars for consistency with the SMS survey years).

The SMS pool was divided by the CPEP pool for each specialty to produce a scaling factor that was applied to the CPEP direct cost inputs. This was intended to match costs counted as practice expenses in the SMS survey with items counted as practice expense in the CPEP process. When the specialty specific scaling factor exceeds the average scaling factor by more than three standard deviations, we used the average scaling factor. (See the November 1999 final rule (64 FR 59390) for further discussion of this issue).

For procedures performed by more than one specialty, the final procedure code allocation was a weighted average of allocations for the specialties that perform the procedure, with the weights being the frequency with which each specialty performs the procedure on Medicare patients.

(c) Other Methodological Issues.

(1) Global Practice Expense Relative Value Units

For services with the PC and TC paid under the physician fee schedule, the global practice expense RVUs were set equal to the sum of the PC and TC.

(2) Practice Expenses Per Hour Adjustments and Specialty Crosswalks

Since many specialties identified in our claims data did not correspond exactly to the specialties included in the practice expense tables from the SMS survey data, it was necessary to crosswalk these specialties to the most appropriate SMS specialty category. We also made the following adjustments to the practice expense per hour data (for the rationale for these adjustments to the practice expense per hour see the November 1998 final rule (63 FR 58841):

- We set the medical materials and supplies practice expenses per hour for the specialty of "oncology" equal to the "all physician" medical materials and supplies practice expenses per hour.
- We based the administrative payroll, office, and other practice expenses per hour for the specialties of "physical therapy" and "occupational therapy" on data used to develop the salary equivalency guidelines for these specialties. We set the remaining practice expense per hour categories equal to the "all physician" practice expenses per hour from the SMS survey data.
- Due to uncertainty concerning the appropriate crosswalk and time data for the nonphysician specialty "audiologist," we derived the resource-based practice expense RVUs for codes performed by audiologists from the practice expenses per hour of the other specialties that perform these codes.
- For the specialty of "emergency medicine," we used the "all physician" practice expense per hour to create practice expense cost pools for the categories "clerical payroll" and "other expenses."
- For the specialty of "podiatry," we used the "all physician" practice expense per hour to create the practice expense pool.
- For the specialty of "pathology," we removed the supervision and autopsy hours reimbursed through Part A of the Medicare program from the practice expense per hour calculation.
- For the specialty "maxillofacial prosthetics," we used the "all physician" practice expense per hour to create practice expense cost pools and, as an interim measure, allocated these pools using the 1998 practice expense RVUs.
- We split the practice expenses per hour for the specialty "radiology" into "radiation oncology" and "radiology other than radiation oncology" and used this split practice expense per hour to create practice expense cost pools for these specialties.

(3) Time Associated With the Work RVUs

The time data resulting from the refinement of the work RVUs have been, on average, 25 percent greater than the time data obtained by the Harvard study for the same services. We increased the Harvard research team's time data to ensure consistency between these data sources.

For services with no assigned physician time (such as, dialysis, physical therapy, psychology, and many radiology and other diagnostic services), we calculated estimated total physician time based on work RVUs, maximum clinical staff time for each service as shown in the CPEP data, or the judgment of our clinical staff.

We calculated the time for CPT codes 00100 through 01996 using the base and time units from the anesthesia fee schedule and the Medicare allowed claims data.

3. Refinement

(a) Background. Section 4505(d)(1)(C) of the BBA required us to develop a refinement process to be used during each of the 4 years of the transition period. We did not propose a specific long-term refinement process in the June 1998 proposed rule (63 FR 30835). Rather, we set out the parameters for an acceptable refinement process for practice expense RVUs and solicited comments on our proposal. We received a large variety of comments about broad methodology issues, practice expense per hour data, and detailed code level data. We made some adjustments to our proposal when we were convinced an adjustment was appropriate. We also indicated that we would consider other comments for possible refinement and that the values of all codes would be considered interim for 1999 and for future years during the transition period.

We outlined in the November 1998 final rule (63 FR 58832) the steps we were undertaking as part of the initial

refinement process. These steps included—

- Establishment of a mechanism to receive independent advice for dealing with broad practice expense RVU technical and methodological issues;
- Evaluation of any additional recommendations from the General Accounting Office, the Medicare Payment Advisory Commission (MedPAC), and the Practicing Physicians Advisory Council (PPAC); and
- Consultation with physician and other groups about these issues.

We also discussed a proposal submitted by the AMA's Specialty Society Relative Value Update Committee (RUC) for development of a new advisory committee, the Practice Expense Advisory Committee (PEAC), to review comments and recommendations on the code-specific CPEP data during the refinement period. In addition, we solicited comments and suggestions about our practice expense methodology from organizations that have a broad range of interests and expertise in practice expense and survey issues.

In the July 22, 1999 proposed rule and the November 1999 final rule, we provided further information on refinement activities underway, including the formation of the PEAC and the support contract that we awarded to focus on methodologic issues. The following is an update on activities with respect to these initiatives, as well as the status of refinement with respect to other areas of concern such as the SMS data and CPEP inputs.

(b) SMS Data. We have received many comments on both our 1998 and 1999 proposed and final rules from a number of medical specialty societies expressing concerns regarding the accuracy of the SMS data. Some commenters stated their belief that the sample size for their specialty was not large enough to yield reliable data. Other specialties not represented in the SMS survey objected that the crosswalk used for their practice expense per hour was not appropriate and requested that their own data be used instead. Commenters also raised questions about whether the direct patient care hours for their specialty were overstated by the SMS to the specialty's disadvantage.

We consider dealing with these issues to be one of the major priorities of the refinement effort. Therefore, we have undertaken the following activities:

(1) Interim Final Rule on Supplemental Practice Expense Survey Data

On May 3, 2000, we published an interim final rule (65 FR 25664) that set forth the criteria for physician and non-physician specialty groups to submit supplemental practice expense survey data for use in determining payments under the physician fee schedule. Section 212 of the BBRA required us to establish a process under which we will accept and use, to the maximum extent practicable and consistent with sound data practices, data collected or developed by entities and organizations to supplement the data we normally collect in determining the practice expense component of the physician fee schedule for payments in CY 2001 and CY 2002.

To obtain data that could be used in computing practice expense RVUs beginning January 1, 2001, we published the criteria in the May 2000 interim final rule (65 FR 25666) that we will apply to supplemental survey data submitted to us by August 1, 2000. We also provided a 60-day period for submission of comments on the criteria that we will consider for survey data submitted between August 2, 2000 and August 1, 2001 for use in computing the practice expense RVUs for the CY 2002 physician fee schedule. (See the May 2000 interim final rule for further information on the criteria and process). We intend to respond to comments received on this interim final rule in the physician fee schedule final rule to be published this fall. We believe this is an important step in addressing the concerns of those specialties that believe they are underrepresented in the SMS survey data or believe they have not been surveyed by the SMS.

(2) Proposals for SMS Refinement

As we indicated in the November 1999 final rule, we awarded a contract to The Lewin Group to obtain independent advice dealing with broad practice expense RVU technical and methodological issues. Specific activities we requested the contractor to evaluate included the following:

- Evaluation of SMS data for validity and reliability.
- Identification and evaluation of alternative and supplementary data sources from specialty and multi-specialty societies.
- Development of options for validating the Harvard/RUC physician procedure time data.
- Evaluation of the indirect cost allocation methodology.
- Advice on developing a process for the 5-year review of practice expense RVUs.

The Lewin Group issued their first draft report, "Practice Expense Methodology," dated September 24, 1999. We have placed this report on our homepage under the title "Practice Expense Methodology Report." (Access to our homepage is discussed under the "Supplementary Information" section above.) The report contains various recommendations aimed at increasing the validity and reliability of the AMA's SMS survey. As we discuss below, the AMA will no longer be collecting data through the SMS survey. However, the AMA is currently pilot-testing an alternative practice expense survey of physician practices. Although The Lewin Group's recommendations were made specifically to address improving the SMS survey for calculating practice expense RVUs, we believe the recommendations will be useful in making refinements to the practice level survey or designing any other survey instrument that may be used in calculating practice expense RVUs. The recommendations fell into the three following areas:

- The use of data supplementary to the SMS survey.
- Suggested changes to the survey instrument.
- Recommendations for using the data in calculating the specialty-specific practice expense per hour.

The report recognized the need for additional data obtained either through oversampling or additional surveys. We would welcome the receipt of additional objective and valid data that would help ensure that our specialty-specific practice expense per hour calculations are as accurate as possible. However, to ensure consistency of the data across specialties, the report also stressed the need for any supplementary data to adhere to the same format, survey instrument, sample frame, and definitions as the SMS survey. We share this concern, and in the May 2000 interim final rule we identified the specific criteria that all supplementary surveys must meet to ensure that data are valid, reliable, and consistent with the SMS data already in use.

In line with the report's recommendations on the use of the SMS data, we are proposing to do the following:

- The Lewin Group recommended that we update the SMS survey data currently being used for practice expense per hour with new SMS data. They also recommended using a rolling 3-year average to determine practice expense per hour values. We are currently using data from the 1995 through 1997 SMS survey (1994 through 1996 practice expense data). The latest data available is from the 1998 SMS survey and we have incorporated this data into our practice expense per hour calculations. Although The Lewin

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Group has recommended using a rolling 3-year average, we have decided to base the practice expense per hour calculations on a 4-year average. We are concerned that substituting data from the 1998 SMS for data from the 1999 SMS may exacerbate changes in the practice expense per hour calculations that may be explained by sampling error. We believe that using an additional year of SMS data will have the advantage of minimizing changes in the practice expense per hour data that result from sampling error, while allowing our calculations to be based on more survey data.

• The Lewin Group recommended that we standardize survey data from the SMS so that it reflects a common base year. They raised a concern that variations in sample size for a given specialty across the 3 years may produce a different result than if the survey response were standardized to reflect a common year. This could disadvantage those specialties that were more heavily sampled in the early years. We evaluated this recommendation and found that standardizing the SMS data we are currently using to reflect a 1995 cost year has virtually no impact on the practice expense per hour calculations. However, this issue will be more of a concern in using the later SMS data because response rates were lower in the 1998 SMS survey than in prior years. For this reason, we are standardizing the practice expense data so that it reflects a common base year. Using the MEI, we standardized the practice expense data so that it reflects a 1995 cost year consistent with the pricing information that we are using for the estimates of practice expense inputs for individual procedures.

The table below reflects the practice expense per hour calculations we are using in determining the CY 2001 practice expense RVUs.

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SPECIALTY	NON-PHYS PAYROLL PER HOUR	CLERICAL* PAYROLL PER HOUR	OFFICE EXPENSE PER HOUR	SUPPLIES EXPENSE PER HOUR	EQUIPMENT EXPENSE PER HOUR	OTHER EXPENSE PER HOUR	TOTAL** EXPENSE PER HOUR
ALL PHYSICIANS	27.4	15.1	19.5	7.3	3.1	11.5	68.6
GENERAL/FAMILY PRACTICE	29.7	15	17.9	7.9	3.3	8.5	67.2
GENERAL INTERNAL MEDICINE	23.7	14.2	18	6.2	2.1	6.6	56.6
CARDIOVASCULAR DISEASE	29.9	15.1	20.9	6.4	6.2	19.8	83.2
GASTROENTEROLOGY	24.8	16.4	18.7	3	1.9	11.7	60.1
ALLERGY/IMMUNOLOGY	64.3	27.1	31.4	17.1	3.1	16.6	132.5
PULMONARY DISEASE	18	11.5	14.9	2.4	1.5	6.5	43.4
ONCOLOGY	50.2	23.1	27.4	7.3	4.8	9.1	98.8
GENERAL SURGERY	22.2	15.3	17	3	1.8	10	54.1
OTOLARYNGOLOGY	43.1	24.6	32.8	7.5	5.7	18.1	107.2
ORTHOPEDIC SURGERY	45.2	27.9	29.9	10.4	3.7	19	108.3
OPHTHALMOLOGY	52.6	26.7	35.3	10.5	8.3	21.4	128.1
UROLOGICAL SURGERY	30	17.6	23.8	24.9	5.7	11.1	95.6
PLASTIC SURGERY	32.4	19.5	32.9	19.1	5	25.4	114.8
NEUROLOGICAL SURGERY	33.9	24.5	29.1	1.7	1.2	16.7	82.6
CARDIAC/THORACIC SURGERY	35.1	16.9	16.8	1.8	2.2	13.3	69.2
PEDIATRICS	25.4	13	19.5	10.5	1.6	8.2	65.2
OBSTETRICS/GYNECOLOGY	34	17.3	23.2	7.2	3.2	11.2	78.9
RADIATION ONCOLOGY	24	9.4	12.1	5.7	10.2	16	68
RADIOLOGY	19.8	10.5	14.2	4.6	7	21.8	67.4
PSYCHIATRY	6.9	5.1	10.5	0.4	0.3	7.3	25.5
ANESTHESIOLOGY	14.1	3.7	6.1	0.3	0.4	6	26.9
PATHOLOGY	21.2	10.4	11.4	6.4	2.1	21.5	62.8
DERMATOLOGY	51	28.3	31.8	12.5	4.6	16.6	116.4
EMERGENCY MEDICINE	6	15.1	1.8	0.8	0.1	11.5	32.7
NEUROLOGY	29.3	22.8	17.9	4.8	4.3	8.6	64.9
PHYS MED/RHEUMATOLOGY	39.2	24.1	32	5.8	4.7	12.2	93.9
OTHER SPECIALTY	23.1	13.6	20.5	4.4	1.8	9.5	59.3

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*Clerical payroll is included in total non-physician payroll.							
**Total expenses exclude professional liability insurance premiums and employee physician payroll.							
Notes:							
(1) Only self-employed non-federal non-resident patient care physicians who responded to all relevant expense questions are included							
Self-employed physician respondents with no practice expenses for the year are excluded.							
(2) Physicians whose typical number of hours worked in patient care activities per week is missing, less than 20, or equal to 168 are excluded.							
Physicians whose number of weeks worked the previous year is missing or less than 26 are excluded.							
(3) For each respondent, total practice expense and expense components per hour are calculated as (4) / (5) below.							
(4) Expenses adjusted for practice size = self-employed respondent expenses X # physician owners							
(5) Hours adjusted for practice size = (respondent hours * # physician owners) + (employee physician hours (see (6) below) * # employee physicians)							
(6) The typical number of hours worked in patient care activities for the employee physician(s) of a self-employed physician's practice is not known.							
Mean hours worked in patient care activities for employee physicians of each specialty are used as an estimate of employee physician hours.							
(7) As described earlier in this proposed rule, the practice expense per hour shown above reflect:							
- the "All Physician" supplies expense per hour for Oncology							
- use of supplemental practice expense data for Cardiac and Thoracic Surgery							
- removal of hours spent in Part A activities for Pathology.							
- Using the "All Physician" administration and other practice expense data for Emergency Medicine.							

• The Lewin Group also recommended that we revise edits and trims to the SMS survey data, both practice expenses and hours, to exclude data that fall outside set acceptable ranges (for example, three standard deviations from the geometric mean). We asked the AMA about their reaction to The Lewin Group's recommendation and the AMA replied:

> Trimming outlier values will further reduce sample size. Trimming expense values can also be problematic because high expense responses on the SMS are often justified when practice size and structure are taken into account. A trim may also disproportionately impact specialties with highly skewed distributions of PE–HR.

For this reason, we are not taking action in response to The Lewin Group's recommendation at this time.

• In addition, The Lewin Group recommended that we account for item non-response to questions related to practice expenses and patient care hours. We asked the AMA for their reaction to this recommendation as well. The AMA replied that they would need more information and added that there is no evidence that a pattern of non-response bias exists for practice expense, although it is a possibility. We are considering whether to study this issue further but, at this time, are not making any adjustments in response to this recommendation.

The report also makes suggestions on changes to the survey instrument used to collect practice expense data from practitioners. Though the original SMS survey does collect some information on practice expenses, it was not designed as a vehicle to calculate a specialty-specific practice expense per hour. We, and the contractor, have held several meetings with the AMA's SMS staff to discuss revisions to the survey that would help make our calculations more precise.

We understand that the AMA is currently piloting a new practice-level survey designed to address some of the limitations of the SMS. If the pilot of the survey is successful, we earlier understood that the AMA plans were to conduct the practice survey initially in CY 2000 and, in alternate years thereafter, the practice expense survey and the SMS survey. The AMA has recently indicated that its plans about the future of the SMS and collection of practice level survey data are unclear at this time. While the AMA has not made a final decision at this time about whether the practice level survey will be done, they have indicated concern to us about low response rates from the pilot test. Nevertheless, we are proceeding to make recommendations to the AMA regarding collection of practice expense data through the practice level survey. We will continue our discussion with the AMA regarding its plans for future practice expense data collection following completion of the practice level survey. And, as we stated earlier, we believe these recommendations will be useful in the design of the practice level survey or any other survey of practice expenses used in developing RVUs for practice expenses.

The use of this practice level survey, as it is currently contemplated, responds to several of our contractor's recommendations. For example, it would address the recommendation that information be collected on each physician's percent share of practice expense and hours within the practice by collecting information at the total practice, rather than the individual physician owner level. The practice level survey also currently contains, as requested, questions on the number of hours the physician's office is open in a typical week and on the salaries for the mid-level practitioners used by the practice (that is, physician assistants, nurse practitioners, clinical nurse specialists, nurse mid-wives, certified registered nurse anesthetists, and physical and occupational therapists).

We are also suggesting additional changes in the survey questions or directions, generally reflecting our contractor's recommendations. We believe that the following changes would give more precise and reliable data on which to base our practice expense calculations:

• Emphasize the benefit of involving the practice manager or accountant in the completion of the survey and the need to link the practice expense data to the practice's tax information whenever possible.

• Include a question concerning how many patient care hours are spent on uncompensated care, that is, care that the law requires one to provide, but for which one is not compensated. This would not include charity care that is voluntarily provided.

• Add a question concerning the amount or percentage of revenue generated by mid-level practitioners.

• Add a question concerning the amount or percentage of supply costs that relates to separately billable supplies (for example, drugs, casting supplies, and laboratory supplies).

• In addition, we are recommending that the survey include more specific questions on patient care hours and that separately billed mid-level practitioner hours be included.

The Lewin Group also recommended that the survey include questions about a typical week, rather than the most recent week. We are not adopting this suggestion because we believe that questions about the most recent week are likely to yield more concrete, accurate answers, whereas questions about a typical week are more likely based on estimates. As we have already stated, the AMA will no longer be collecting data through the SMS and the AMA has also expressed concern about low response rates from the pilot of the practice level survey. At this time, we are unclear as to the AMA's plans with regard to future practice expense data collection efforts.

As we indicated earlier, we are currently proposing to use data from the 1998 SMS in developing the 2001 practice expense relative value units. Furthermore, data from the 1999 SMS will become available later this year. In addition, section 1848(c)(2)(B) of the Act requires that not less often than every 5 years, we review and make adjustments to RVUs. Thus, by law we are required to review and make adjustments to the practice expense RVUs no later than 2007. Regardless of whether the AMA continues to collect data on practice expenses, we will be developing plans for making refinements to practice expense RVUs beyond 2002.

We welcome comments on long-term strategies for refining the practice expense RVUs and any suggestions for how to collect practice expense data in the event it is no longer collected by the AMA. We will consider these comments and any further decisions by the AMA with regard to its practice expense data collection efforts in developing our refinement strategy beyond 2002.

(3) Direct Patient Care Hours

We have received many comments from specialty societies concerning our calculation of direct patient care hours. This is a major issue because the patient care hours are one half of the ratio used to determine the practice expense per hour for each specialty. (The practice expenses of practitioners in a specialty are divided by the direct patient care hours in order to calculate the practice expense per hour). If the reported hours do not reflect the actual average billable hours for a specialty, the practice expense per hour will be over-or understated.

Several commenters representing surgical specialty societies have raised concern that the hours computed for their specialties have been overstated. This may be a result of SMS survey respondents including non-billable

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hours (such as stand-by time) when asked how many hours they worked each week. If this is the case, this would decrease the practice expense per hour for these specialties. In addition, commenters representing emergency room physicians raised the issue that the hours spent on uncompensated care were probably also included in the survey responses to the detriment of this specialty.

We agree with the commenters that there is a need to increase the level of confidence in the direct patient care hour data. We are already taking steps to improve the future accuracy of these data. As mentioned above, we are recommending that the future survey questions be worded more precisely so that only the appropriate practitioner hours are included. In addition, we have asked our contractor to give priority to recommendations on steps we can take to improve the accuracy of the patient care hours.

As a first step in accomplishing this, The Lewin Group issued their second draft report on December 6, 1999, entitled "Validating Patient Care Hours Used in HCFA's Practice Expense Methodology." This report explores alternative methods that we might use to validate the time data collected by the SMS survey. The validation techniques attempt to achieve two goals: (1) Identifying inaccurate existing data and (2) identifying inconsistencies in new data to be derived from future survey efforts.

The Lewin Group developed the following four validation techniques to analyze the SMS data used in computing the specialty-specific patient care hours:

- Method 1: Compare the patient care hour data reported at the beginning of the SMS survey (that asks for the total hours worked in a week) to responses from the detailed questions on patient care hours appearing later in the SMS survey.
- Method 2: Calculate ratios of SMS time pools to Harvard/RUC time pools by specialty, using Harvard/RUC procedure time data and Medicare claims data.
- Method 3: Compare newly reported SMS data to historical SMS data to identify outliers.
- Method 4: Compare SMS data on annual hours worked with annual hours data reported in the Medical Group Management Association's (MGMA) "Physician Compensation and Production Survey".

We have placed this report on our homepage under the title "Validating Patient Care Hours."

We agree with our contractor that no single validation approach exists that can be used to validate both existing and new data on patient care hours with a high level of confidence. However, the approaches described above, when used together, could be effective tools that will help to ensure the accuracy and reliability of existing and future data used in the calculation of practice expense RVUs. These validation efforts would allow us, and the medical community, to be more confident in the use of future data to update practice expense RVUs. Therefore, we extended The Lewin Group's contract so that, among other refinement tasks, the above analyses can be carried out. We are aware that even with the above initiatives, it might not be possible to address all concerns regarding refinement of the patient care hours in the short term. Therefore, we welcome any comments and suggestions as to other steps we could take to verify and improve the accuracy of the specialty-specific patient care hours.

(c) CPEP Data.

(1) Relative Value Update Committee's Practice Expense Advisory Committee

The PEAC, a subcommittee of the RUC, held its initial meetings last year and the RUC made recommendations on CPEP inputs for clinical staff times, supplies, and equipment on approximately 65 CPT codes. We discussed our actions with regard to these recommendations in the November 1999 final rule. The PEAC continues to meet to refine the CPEP direct cost inputs, and we anticipate that we will receive additional RUC recommendations in July. We will address these recommendations in this year's physician fee schedule final rule.

In the November 1999 final rule, we deferred action on the RUC recommendations for a few groups of CPT codes on which we had significant questions. We are now proposing to accept the RUC recommendations with the revisions noted below:

Prostate Procedures

52647 Non-contact laser coagulation of prostate, including control of postoperative bleeding, complete (vasectomy, meatotomy, cystourethroscopy, urethral calibration and/or dilation, and internal urethrotomy are included)
53850 Transurethral destruction of prostate tissue; by microwave thermotherapy
53852 Transurethral destruction of prostate tissue; by radiofrequency thermotherapy

We are accepting the total clinical staff time recommended for the in-office setting, but are moving 60 minutes from post to intra-service time for each of the above procedures because the staff time for observation of the patient during recovery from anesthesia belongs in the intra-service period. We are reducing the out of office preservice clinical staff time for CPT codes 52647 and 53852 to 30 minutes to match the RUC recommendation for CPT code 53850 and the time allotted in the office for each service and are making the out-of-office postservice time equal to the in-office postservice time because we believe there is no reason that these times should differ.

The supplies for all three procedures were adjusted to reflect three postoperative visits and to conform with the overall adjustment to supplies made in the November 1999 final rule. For CPT code 52647, we deleted the flexible cystoscope from the equipment because only one scope is required for the procedure. We also deleted the sterilizer because it is not typically used. For CPT code 53850, the RUC recommendations included the inputs for two different scenarios using two different devices. We chose what we believe to be the most typically used device and the inputs that accompany this. For CPT code 53852, we deleted the cystoscopes and sterilizer from the equipment because we believe that they are not typically used.

Chemotherapy Procedures

96408 Chemotherapy administration, intravenous; push technique
96410 Chemotherapy administration, intravenous; infusion technique, up to one hour

The RUC had recommended 102 minutes of clinical staff time for CPT code 96408 and 121 minutes for CPT code 96410. In the November 1999 final rule, we solicited comments on these codes to assist us in our review. In response, the American Society of Clinical Oncology provided a breakdown by specific tasks of the above staff times. Included in this breakdown were 20 minutes for pre- and postprocedure education and 15 minutes for three phone calls after each visit.

Because we believe that the times for patient education and phone calls should be averaged over the whole course of chemotherapy treatment, and because there appeared to be some duplication in the pre- and postprocedure education tasks, we reduced both the patient education and phone call times by 5 minutes. Therefore, we are proposing 92 minutes

of clinical staff time for CPT code 96408 and 111 minutes for CPT code 96410. For supplies, the specialty society agreed that we should delete the silver nitrate stick and HEPA filters from both procedures and the infusion pump cassette from CPT code 96408.

(2) Clinical Staff Time

In the November 1999 final rule, we removed estimates of all clinical staff time allotted to the use of clinical staff in the facility setting from the CPEP data. Commenters have since noted that the clinical staff times reported by some CPEP panels for pre- and postservice times for 0-day global services performed in the office were recorded in the intra-service field in the CPEP database. These times were, therefore, deleted along with the times for the use of clinical staff in the facility setting, unlike the pre- and postservice times for 10 and 90-day global services that were entered into the separate pre and post data fields. The commenters argued that these pre- and postservice staff times for the relevant 0-day global services should be reinstated because these times are for staff in the office before and after the patient is in the facility.

We agree that these data are not comparable to the data we excluded for clinical staff used in the facility setting. We reviewed the "CPEP Recorders' Notes Files" compiled for each CPEP panel by Abt Associates, Inc., the contractor managing the CPEP panels. When the notes indicate that clinical staff estimates were for activities performed in physicians' offices, we are proposing to reinstate the time data for 0-day global services. The fact that we have reinstated these time data does not mean that we necessarily agree that the amount of time assigned is correct. Like all the other raw CPEP data, these time data are subject to refinement and possible revision.

The entire recorders' notes file is available on our website and is entitled "CPEP Recorders' Notes Files." Addendum C shows a list of the codes for which pre- or postclinical staff time has been added, as well as the times that are now assigned.

(3) Supplies

In the November 1999 final rule (64 FR 59392), we indicated that casting materials are bundled into the payment for the initial fracture management procedures and that separate billing for the supplies is not allowed. However, commenters noted that our policy has been to allow separate payment for splints, casts, and other devices used for the reduction of all fractures and dislocations under section 1861(s)(5) of the Act. Since we provide separate payment for splints and casting supplies, we are now proposing to remove these types of expenses from practice expense inputs for all applicable fracture management and cast/strapping application procedure codes under the physician fee schedule.

In the November 1999 final rule, we deleted certain casting supplies (fiberglass roll, cast padding, and cast shoe) from the list of supplies for the casting and strapping CPT codes 29000 through 29750. We have identified additional CPT codes for the treatment of fractures/dislocations that have these supplies included in the CPEP data. Since these supplies are currently separately billable, we are proposing to remove the fiberglass roll, cast padding, and cast shoe from the following CPT codes: 23500 through 23680; 24500 through 24685; 25500 through 25695; 26600 through 26785; 27500 through 27566; 27750 through 27848; and 28400 through 28675.

In addition, we are also proposing to remove additional casting and splinting supplies from all the CPT codes referenced above because these supplies are also currently separately billable under section 1861(s)(5) of the Act. The list of supplies is as follows: stockingnet/stockinette; plaster bandage; Denver splint; dome paste bandage; cast sole; elastoplast roll; fiberglass splint; Ace wrap; Kerlix; Webril; Malleable Archbars; and elastics.

We welcome comments on whether these supplies should be deleted from additional procedures outside the code ranges referenced above, and whether we have appropriately identified all the casting supplies in our supply list.

(4) Equipment

We are currently using the original CPEP definitions for equipment that distinguish between "procedure specific equipment" and "overhead" equipment. The main distinction between the two categories is that procedure specific equipment is used only for a limited number of procedures, while overhead equipment is used over a wide range of services. In terms of actual application, we assume a 50-percent utilization rate for procedure specific equipment, but a 100-percent rate for all overhead equipment. In addition, the methodology assumes that the procedure specific equipment is used only during the intraservice period, while it assumes that the overhead equipment is used for the entire service. We believe this distinction was more important under our original "bottom-up" methodology when the accuracy of the practice expense RVUs was almost totally dependent on the precision of the CPEP inputs. Under our current "top-down" methodology, however, when the CPEP inputs are used only as allocators of the specialty-specific practice expense pools, the distinction has served to hinder the process of refining the CPEP inputs while not leading to a substantive distinction in how we value services.

We are proposing to combine both categories of equipment into a single "equipment" category, assuming an average 50-percent utilization for all equipment. We believe that this will be beneficial to our refinement process for the following reasons:

- The current definition of the two categories of equipment necessitates many subjective decisions. While it might be obvious that an examination table is used for a wide range of services and, therefore, would be overhead equipment, it is somewhat more arbitrary to classify equipment such as cystoscopes or specific x-ray machines as overhead or procedure specific.
- The various CPEP panels were not consistent in their application of the distinction between the two categories. Most of the items that were classified by some of the CPEP panels as overhead equipment were classified by another panel as procedure specific. In addition, equipment that would seem to be very similar was sometimes treated in different ways. For example, an examination table or a stretcher were considered to be overhead, but an electric table or a wheelchair were considered procedure-specific.
- It would simplify the refinement process to have only one category of equipment to consider rather than having to decide for all 7000 codes to which category each piece of equipment belongs.

We are also proposing to delete from the CPEP data equipment that is not used typically with any service, but is on "standby" for many services, or that is used for multiple services at the same time. In either of these cases, it is difficult to allocate the cost of this equipment appropriately to individual CPT codes. Examples of "standby" equipment are crash carts, defibrillators, wheelchairs, and stretchers. Examples of equipment used for multiple procedures at the same time are cabinets, refrigerators, and autoclaves.

Following is the list of equipment that we are proposing to delete at this time from the CPEP inputs of all services: autoclave, wheelchair, refrigerator, film file cabinet, hazard material spill kit, embryo freezer, water system, flammable reagent cabinet, utility freezer, ultra low temperature freezer,

acid cabinet, bulk storage refrigerator, abortion clinic security system, abortion clinic security guard, gomco suction machine, doppler, laser printer, lead shielding, defibrillator with cardiac monitor, blood pressure/pulseox monitor, blood pressure monitor, printer, crash cart—no defibrillator, and smoke evacuator.

The following is a list of equipment that we are proposing to delete as "standby" equipment for most codes, but that we believe typically may be used with a designated subset of procedures:

- X-ray view box—four panel (retain when currently in the CPEP data for codes in the range CPT codes 70010 through 79999).
- ECG machine—3 channel (retain when currently in the CPEP data for CPT codes 93000 through 93221).
- Pulse oximeter (retain when currently in the CPEP data for CPT codes 94620, 94621, 94680, 94681 and 94690; 94760 through 94770, 95807 through 95811 and 95819).
- ECG/blood pressure monitor—3 channel (retain when currently in the CPEP data for CPT codes 43200 through 43202 and 43234 through 43239).
- Cardiac monitor (retain when currently in the CPEP data for CPT codes 31615 through 31628).
- ECG-Burdick (except for HCPCS code G0166).

We welcome comments on this proposal and on any additional equipment that should not be considered a direct expense because the cost cannot appropriately be allocated to an individual service. Neither of these proposals to improve the CPEP equipment data have a significant impact on any specialty.

(5) CPEP Anomalies

In the November 1999 final rule, we made corrections to the CPEP data for a number of codes that we learned contained errors and anomalies that we could easily correct. Since that time, we have discovered some additional anomalies, and we are proposing to correct them at this time. As we stated in the final rule, though certain revisions may be made now, all practice expense inputs for these codes are still subject to further comment, refinement, and potential PEAC and RUC review and recommendations.

- We have identified several CPT codes that were not costed by the CPEP panels and were not assigned CPEP inputs. We are now crosswalking these services to the CPEP inputs of the most appropriate other service. The CPEP inputs for these codes are subject to refinement. We welcome comments on the crosswalks that we have chosen. The codes and their crosswalks are shown below:

CPT and HCPCS code	Crosswalk
27347 Remove knee cyst	27345 Removal of knee cyst.
28289 Repair hallux rigidus	28288 Partial removal of foot bone.
31643 Diag bronchoscope/catheter	31629 Bronchoscopy with biopsy.
36831 Av fistula excision	34111 Removal of arm artery clot.
36833 Av fistula revision	36832 Av fistula revision.
45126 Pelvic exenteration	58240 Removal of pelvis contents.
57106 Remove vagina wall, partial	57110 Removal of vagina wall, complete.
57107 Remove vagina tissue, part	57111 Remove vagina tissue, complete.
59610 Vbac delivery	59400 Obstetrical care.
59612 Vbac delivery only	59409 Obstetrical care.
59614 Vbac care after delivery	59410 Obstetrical care.
59618 Attempted vbac delivery	59410 Obstetrical care.
59620 Attempted vbac delivery only	59514 Cesarean delivery only.
59622 Attempted vbac after care	59515 Cesarean delivery.
67220 Treatment of choroid lesion	67208 Treatment of retinal lesion.
76831 Echo exam, uterus	76830 Echo exam, transvaginal.
78206 Liver image (3d) w/flow	78205 Liver imaging (3D).

- The following services can be performed in the office, but either have no CPEP data for the office setting or have been assigned the same inputs as for the facility setting. Until these codes can be refined, we are proposing the following crosswalks for the in-office practice expense inputs so that costs in the office setting are appropriately reflected.

CPT code	Crosswalk
20225 Bone biopsy, trocar/needle	20220 Bone biopsy, trocar/needle.
57105 Biopsy of vagina	57100 Biopsy of vagina (for intraservice period)

- Because the following either are not performed in the office setting or because we do not have appropriate CPEP inputs for the in-office setting for these services, we are designating the following CPT and HCPCS codes as "N/A" in the office setting: 99183 (Hyperbaric oxygen therapy); 21493 (Treatment of hyoid bone fracture); 21494 (Treatment of hyoid bone fracture with manipulation); 32997 (Total lung lavage); 33968 (Remove aortic assist device); 66830 (Removal of lens lesion); 69990 (Micro-surgery add-on); 92961 (Cardioversion, electric, internal) and we are designating G0167 (Hyperbaric oxygen treatment; no physician required) as carrier priced.
- The TC for CPT code 93660 (Tilt table evaluation) is carrier priced, but we are proposing to price it nationally. Therefore, we are reinstating the original CPEP data.
- We are crosswalking all CPEP inputs for CPT code 44201 (Laparascopy, jejunostomy) from the inputs for CPT code 44200 (Laparoscopy, enterolysis) to reflect that it is a 90-day global service.
- We are adjusting the CPEP inputs for CPT codes 15001 (Skin graft add-on); 15351 (Skin hemograft add-on); and 15401 (Skin heterograft add-on) to reflect that these are ZZZ services.
- CPT code 00103 (Anesthesia for blepharoplasty), which was not costed by the anesthesia CPEP panel, was inadvertently crosswalked to the CPEP inputs of two different CPT codes. We are deleting the crosswalk to the procedure CPT code 21450 and will

retain the crosswalk to the anesthesia CPT code 00140 (Anesthesia for procedures on eye).

• We believe that the supply inputs for the retrobulbar injection codes (CPT codes 67500, 67505, and 67515) have been inappropriately crosswalked by the CPEP panel from adjacent surgical procedure codes. After consultation with an ophthalmology specialty society, we have adjusted the supplies so that the list now includes one alcohol swab, one pair of nonsterile gloves, one 5-cc syringe, and one 25-gauge needle.

• In several of the in-office ophthalmology codes, the supply list includes the costs for 50 to 100 sterile towels. The specialty society has confirmed that this is a typographical error and that the quantity should not exceed five for any one visit or procedure. We have made the appropriate adjustments.

• The supply list for CPT code 68761 (Close tear duct opening by plug), currently does not include the costs of a punctal plug. We have received a comment from the specialty society representing optometrists requesting that we add this supply because it is typically used for this procedure. We agree with this comment and are proposing the addition of a punctal plug to the CPEP supplies. We have also deleted the inappropriate inputs from HCPCS code A4263, permanent tear duct plug.

• We have discovered a calculation error that affects the total cost of supplies for some of the codes for which the RUC made recommendations in 1999. We have made the appropriate corrections and are using the corrected values for this rule.

• We have adjusted the clinical staff and supply inputs for HCPCS code G0170, skin biograft, to reflect that it is a 10-day global service with one postprocedure visit.

After consultation with the specialty society, we have also adjusted the supplies for CPT code 53040, drainage of deep periurethral abscess, to correct for anomalies in the quantity of supplies between the in and out of office settings.

(d) Calculation of Practice Expense Pools—Other Issues.

(1) Technical Refinement to Practice Expense Pools

The Act requires payment of some practitioner services (services of certified registered nurse anesthetists, nurse practitioners, clinical nurse specialists, physician assistants, and certified nurse mid-wives) based on a percentage of the physician fee schedule payment amount. Since the payment under the physician fee schedule for a service performed by a midlevel practitioner is required to be based on a percentage of the amount paid to a physician for a service, we are proposing using only physician practice expense data in determining the practice expense RVUs for each practitioner service. Removal of the services performed by midlevel practitioners from the practice expense calculations would assist in simplifying the methodology and would also be consistent with the statutory requirement that we pay for their services based on a percentage of the fee schedule amount.

(2) Medicare Utilization Data

We have received comments from several surgical specialties urging us to evaluate the Medicare claims data to eliminate potential errors. (For example, claims for non-surgeons performing complex surgeries that are generally performed by surgical specialties only.) These commenters were concerned that incorrect specialty utilization will decrease a specialty's practice expense pool and recommended that these claims should either be reassigned to the appropriate specialty or excluded during refinement. To determine whether potential errors in the claim data have an adverse impact on any specialty or merely represent "noise" that creates no significant effect, we ran the following analyses:

First, we analyzed the utilization for CPT codes 63045 through 63048, the highest volume neurosurgical procedures performed by neurosurgeons. Our utilization data indicates that 91 percent of allowed services for these codes are performed by neurosurgeons and orthopedic surgeons. Of the 9 percent of allowed services when the utilization data indicates another specialty, 3 percent are attributed to general surgeons. An additional 2 percent are attributed to the HCFA specialty code for a clinic or other group practice, when it is likely that a surgeon who is a member of a multispecialty clinic is providing the surgical service. Of the remaining 4 percent of allowed services, the data indicates a specialty of general practice, family practice, or neurology.

For the utilization attributed to general and family practitioners, the data indicate that, in most cases, these physicians are serving as assistants-at-surgery. With respect to neurology (2 percent of the allowed services), we believe it is possible that a physician may practice as both a neurologist and neurosurgeon and designate neurology as the specialty for reporting on Medicare claims. For an insignificant percentage of the allowed services (under 1 percent of the allowed services for all remaining specialties combined), our data indicate a specialty that would not be expected to perform the neurosurgical procedure. In these cases, the incorrect CPT code might have been transcribed on the Medicare claim or the incorrect specialty code may have been reported. There was a similar pattern for services associated with other surgical specialties.

We then tested the impact of reassigning to the dominant specialty this small proportion of allowed services associated with specialties not expected to perform them. We selected three of the specialties that commented on the possibility of erroneous utilization data and identified the complete range of specialized codes associated with each specialty. We reassigned to each dominant specialty the utilization currently assigned to other specialties not expected to perform the services. In addition, to test the "worst-case" scenario, we then crosswalked all frequencies for their complete range of codes to the selected individual specialty.

Neurosurgery

When we recoded CPT codes 61000 through 64999 to neurosurgery only, the impact on neurosurgery was a 0.55-percent increase. When we recoded the specialty for only those specialties that would not be expected to provide CPT codes 61000 through 64999 (specialties other than neurosurgery, orthopedic surgery, group practice or physician assistant) to neurosurgery, the resulting impact on neurosurgery was a 0.69-percent increase. In reviewing the utilization data for this code range, we found services that are predominantly performed by radiologists and anesthesiologists (such as CPT code 62311). When we recoded only those services predominantly performed by neurosurgeons, the impact was even less.

Ophthalmology

When we recoded the specialty for all utilization in the range of CPT codes 65091 through 68899 to ophthalmology only, the impact on ophthalmology was 0.31 percent. When we recoded the specialty for only those specialties that would not be expected to provide CPT codes 65091 through 68899 to ophthalmology, the resulting impact on ophthalmology was a 0.32-percent increase.

Otolaryngology

When we recoded the specialty for all utilization in the range of CPT codes

69000 through 69979 to otolaryngology, the impact on otolaryngology was a −0.36 percent. When we recoded the specialty for only those specialties that would be expected to provide CPT codes 69000 through 69979 to otolaryngology, the resulting impact on otolaryngology was −0.35 percent.

We believe that these simulations exaggerate the potential impact of possible errors in the utilization data because, as discussed in the above analysis of CPT codes 63045 to 63048, our simulations likely reassigned the specialty in situations in which the specialty was correctly coded. In any case, in no scenario did the impacts even approach a 1-percent increase or decrease.

We also believe these simulations demonstrate that the small percentage of potential errors in our very large database have no adverse effect on specialty-specific practice expense RVUs. Therefore, we are not proposing any further action at this time.

(3) Allocation of Practice Expense Pools to Codes

The Lewin Group has recently begun the third phase of the project. This phase will concentrate specifically on evaluating the indirect cost allocation methodology. They will evaluate the validity of our current methodology that allocates indirect costs using direct costs and work RVUs and consider alternatives to allocating indirect costs by the current method. The Lewin Group will perform a variety of tasks during this phase of the project to evaluate the advantages and shortcomings of our current indirect cost allocation methodology, as well as of any alternative methodologies. The preliminary tasks for Phase III include—

- Analyzing the current indirect cost allocation methodology to identify its advantages and shortcomings;
- Considering alternate ways in which our methodology might weight direct costs and work RVUs in the allocation of indirect costs and predicting the effects of these alternatives;
- Evaluating the impact and value of changing the methodology to use time rather than work measurements to allocate indirect costs;
- Interviewing experts in the field on potential alternatives to the current indirect cost allocation methodology; and
- Reviewing other relevant efforts to allocate indirect costs associated with physician and non-physician practice expenses.

The Lewin Group's draft final report will present the findings from all three phases of The Lewin Group's analysis of our practice expense methodology. As mentioned above, we are planning to extend The Lewin Group's contract for another year to obtain additional assistance on issues related to practice expense refinement.

(e) Site of Service. Clarifying the Definition of Facility/Nonfacility.

For purposes of practice expense calculations, we make a distinction between services performed in a non-facility and a facility setting. This distinction takes into account the higher expenses of the practitioner in the non-facility setting when the practitioner typically bears the cost of the resources (for example, clinical staff, supplies, and equipment) associated with the services. In the facility setting, because these costs are not incurred by the physician, Medicare payment to the facility includes the cost of the resources for the services furnished. The purpose of the distinction in the site-of-service is to ensure that Medicare does not duplicate payment, to the physician and the facility, for any of the practice expenses incurred in performing a service for a Medicare patient.

For purposes of applying the site-of-service differential, we are defining hospitals, skilled nursing facilities, and ambulatory surgical centers as facilities because they will receive a facility payment for their provision of services. We have been advised that community mental health centers (CMHCs) should also be defined as a facility setting since CMHCs also receive a separate facility payment for their services. Therefore, we are proposing to revise § 414.22(b)(5)(i) (Practice expense RVUs) to add CMHCs to the settings listed in which we would apply the facility practice expense RVUs.

In addition, while we have indicated in previously published rules that the non-facility practice expense RVUs are applicable to outpatient therapy services (physical therapy, occupational therapy, and speech language pathology) furnished by comprehensive outpatient rehabilitation facilities or outpatient rehabilitation providers, there is confusion about this issue. Only the facility can bill for therapy services furnished to hospital and SNF patients. Because this facility payment must include amounts reflecting practice expenses, the higher nonfacility RVUs are used to pay for therapy services even in the facility setting. Therefore, we would amend § 414.22(b)(5)(i) to specifically provide that the nonfacility practice expense RVUs are applicable to outpatient therapy services regardless of the actual setting.

B. Geographic Practice Cost Index Changes

1. Background

The Act requires that payments vary among fee schedule areas according to the extent that relative costs vary as measured by the GPCIs. Generally, the fee schedule areas that existed under the prior reasonable charge system were retained under the fee schedule from calendar years 1992 to 1996. We implemented a comprehensive revision in fee schedule payment areas (localities) in 1997, reducing the number of localities from 210 to 89. A detailed discussion of fee schedule areas can be found in the July 2, 1996 proposed rule (61 FR 34615) and the November 1996 final rule (61 FR 59494). We are required by section 1848(e)(1)(A) of the Act to develop separate indices to measure relative cost differences among fee schedule areas compared to the national average for each of the three fee schedule components. While requiring that the practice expense and malpractice indices reflect the full relative cost differences, the Act requires that the work index reflect only one-quarter of the relative cost differences compared to the national average.

Section 1848(e)(1)(C) requires us to review and, if necessary, adjust the GPCIs at least every 3 years. This section of the Act also requires us to phase in the adjustment over 2 years and implement only one-half of any adjustment in the first year if more than 1 year has elapsed since the last GPCI revision.

The GPCIs were first implemented in 1992. The first review and revision was implemented in 1995, and the second review was implemented in 1998. This constitutes the third GPCI review and revision and will be implemented in 2001.

2. Development of the Geographic Practice Cost Indices

The GPCIs were developed by a joint effort of researchers at the Urban Institute and the Center for Health Economics Research under contract to HCFA. Indices were developed that measured the relative cost differences among areas compared to the national average in a "market basket" of goods. In this case, the market basket consists of the resources involved with operating a private medical practice. The resource inputs are physician work or net income; employee wages; office rents; medical equipment, supplies; malpractice insurance; and other miscellaneous expenses. Employee wages, rents, medical equipment,

supplies, and other miscellaneous expenses are combined to comprise the practice expense component of the GPCI. The weights of these components in the original GPCIs (from 1992 through 1994), the first (1995 through 1997) and second (1998 through 2000) GPCI revisions, and the new weights for the third proposed GPCI revision (2001 through 2003) are as follows:

GPCI COMPONENT WEIGHTS

	1992–1994 GPCIs	1995–2000 GPCIs	2001–2003 GPCIs
Physician Work	54.2	54.2	54.5
Practice Expense	40.2	41.0	42.3
(Employee Wages)	(15.7)	(16.3)	(16.8)
(Rent)	(11.1)	(10.3)	(11.6)
(Miscellaneous)	(13.4)	(14.4)	(13.9)
Malpractice	5.6	4.8	3.2
	100.0	100.0	100.0

The resource inputs and their weights were obtained from the AMA's Socioeconomic Characteristics of Medical Practice Survey. The weights for the 1992 through 1994 GPCIs were from the AMA's 1987 survey, the latest available when the original GPCIs were being developed. The weights for the 1995 through 1997 and 1998 through 2000 GPCIs were from the 1989 survey. The 1989 weights are those used in the revised Medicare Economic Index (MEI) discussed in the November 25, 1992 final rule (Medicare Program; Revision of the Medicare Economic Index) (57 FR 55899). The weights in the proposed 2001 through 2003 GPCIs are from the 1997 AMA survey and were used in the MEI revision discussed in November 2, 1998 final rule (Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999) (63 FR 58846).

The MEI is a measure of annual increases in the cost of operating a private medical practice and is used in the annual update of the physician fee schedule CFs. Because the GPCIs and the MEI use the same resource inputs to measure the costs of a private medical practice (the GPCIs measure relative costs among areas while the MEI measures the national annual rate of increase in costs), we believe the same weights should be used.

Once the components and their weights were determined, data sources had to be found that were widely and consistently available in all physician fee schedule areas to measure costs. After examining many sources, the following proxies were selected as the best available sources for measuring each component of the original 1992 through 1994 GPCIs:

- Physician work—The median hourly earnings, based on a 20 percent sample of 1980 census data, of workers in six professional specialty occupation categories (engineers, surveyors, and architects; natural scientists and mathematicians; teachers, counselors, and librarians; social scientists, social workers, and lawyers; registered nurses and pharmacists; writers, artists, and editors) with 5 or more years of college. Adjustments were made to produce a standard occupational mix in each area. The actual reported earnings of physicians were not used to adjust geographical differences in fees because these fees are, in large part, the determinants of the earnings. We believe that the earnings of physicians will vary among areas to the same degree that the earnings of other professionals vary.
- Employee wages—Median hourly wages of clerical workers, registered nurses, licensed practical nurses, and health technicians were also based on a 20-percent sample of 1980 census data.
- Office rents—Residential apartment rental data produced annually by the Department of Housing and Urban Development (HUD) were used because there were insufficient data on commercial rents across all physician fee schedule areas.
- Miscellaneous expenses—The Urban Institute and the Center for Health Economics Research assumed that this component is represented by a national market and that costs do not vary appreciably among areas. This component's index is 1.000 for all areas to indicate no variation from the national average.
- Malpractice—Premiums in 1985 and 1986 for a mature "claims made" policy (a policy that covers malpractice claims made during the covered period) providing $100,000 to $300,000 of coverage were used. Adjustments were made to incorporate the costs of $1 million to $3 million coverage and mandatory patient compensation fund requirements. Premium data were collected for physicians in three risk classes—low-risk (general practitioners who do not perform surgery), moderate risk (general surgeons), and high-risk (orthopedic surgeons).

The areas selected for measurement purposes were the Metropolitan Statistical Areas (MSAs). Non-MSA areas within a State were aggregated into one residual area. Using MSAs for measurement satisfied the criteria of (1) homogeneity in resource input prices within the area, and (2) a size large enough so that market areas are self-contained to minimize border crossing; that is, physicians would not move their offices a few miles to secure higher payments and patients would tend to receive services within their area.

The Act requires, however, that the GPCIs reflect cost differences among fee schedule areas. Thus, it was necessary to map Medicare localities to the MSA and non-MSA aggregation of GPCI data. Where localities crossed MSA boundaries, MSA indices were converted to Medicare locality indices by population weights.

Detailed discussions of the methodology and data sources of the 1992 through 1994 GPCIs can be obtained by requesting the following studies from the National Technical Information Service by calling 1–800–553–NTIS or, for residents of Springfield, Virginia, (703) 487–4650.

- The Urban Institute report "The Geographic Medicare Index: Alternative Approaches," NTIS PB89–216592.
- The supplement to "The Geographic Medicare Index: Alternative Approaches," NTIS PB91–113506. This was published in the September 4, 1990 notice for the model fee schedule (55 FR 36238).
- The Urban Institute report, "Refining the Malpractice Geographic Practice Cost Index," February 1991, NTIS PB91–155218. The related diskette is NTIS PB91–507491. This is the final version of the 1992 through 1994 GPCIs

as published in the November 1991 final rule (56 FR 59785).

3. Revised 1995 Through 1997 Geographic Practice Cost Indices

The main criticism of the original GPCIs was that they were outdated because they were based on old data; for example, 1980 census data and 1985 and 1986 malpractice premiums. This was, however, the most recent data available when the GPCIs were established. The revised 1995 through 1997 GPCIs were based on the most current data available when they were developed in 1993 and 1994.

We made some minor changes from the original GPCI methodology in calculating some of the revised 1995 through 1997 indices. One methodological change was made that applied across all indices. As mentioned earlier, under the original GPCIs, where Medicare localities crossed MSA boundaries, MSA indices were converted to locality indices by population weights. Medicare expenditure weights were not used because the expenditures under the reasonable charge system contained large differences unrelated to relative cost differences among areas. In calculating the revised GPCIs, where localities crossed MSA boundaries, locality indices were calculated by weights based on the proportion of localities' RVUs provided in each MSA to reflect relative cost differences among areas. Full fee schedule RVUS were used rather than actual 1993 payments because 1993 fee schedule payments still reflected some reasonable charge payment levels. The advantages of RVU weighting are (1) the GPCIs more closely reflect physician practice costs in the area where the services are provided rather than where the population lives, and (2) budget neutrality is preserved when we combine multiple localities into larger areas, such as statewide localities.

a. Work Geographic Practice Cost Indices. Data from the 20-percent sample of census data of median hourly earnings for the same six categories of professional specialty occupations as used in the 1992 through 1994 work GPCIs were used in calculating the 1995 through 1997 work GPCIs. The 1992 through 1994 work GPCIs were calculated using 1980 census data of earnings for professionals with 5 or more years of college. That sample was no longer available with the 1990 census. The 1990 census educational classifications were by highest degree earned and not by years of schooling as in the 1980 census. Thus, it was not possible to obtain earnings data that exactly compared to the 1980 data.

For 1990, data were available for all-education and advanced-degree samples, but not for 5 or more years of college. We elected to use the all-education sample because its larger sample sizes made it more stable and accurate in the less populous areas. Although it could be argued that physicians' earnings might more closely approximate the earnings of professionals with advanced degrees, the differences between the all-education and advanced-degree indices were negligible in all but a few of the smallest localities. We believed that the small sample sizes of advanced-degree occupations in these small localities may produce inaccurate results.

The 1992 through 1994 work GPCIs used metropolitan-wide median wages for each county within an MSA. That is, all counties within an MSA were assigned the MSA-wide median wage even if there were wage variations within the MSA. We believed that this was appropriate for all but Consolidated Metropolitan Statistical Areas (CMSAs), the largest of the MSAs, such as New York. In these CMSAs, we replaced metropolitan-wide earnings with county-specific earnings. We believed this change was appropriate because costs were, in fact, higher in central city areas (for example, Manhattan and San Francisco) than in the rest of the CMSA. County earnings better account for cost variation within these large metropolitan areas.

b. Practice Expense Geographic Practice Cost Indices. (1) Employee Wage Indices. Data from the 20-percent sample of census data of median hourly earnings for the same categories of medical and clerical occupations used in the 1992 through 1994 practice expense GPCIs were used in the 1995 through 1997 practice expense GPCIs. The 1995 through 1997 practice expense GPCIs used 1990 rather than 1980 census data. As with the work GPCIs, county level data were used for CMSAs to better reflect the cost variations within these large metropolitan areas.

(2) Rent Indices. As with the original rent indices, the HUD fair market rental (FMR) data for residential rents were again used as the proxy for physician office rents. The 1995 through 1997 practice expense GPCIs reflect 1994 HUD FMRs. Like the work GPCI and the employee wage index of the practice expense GPCIs, county level data were used in CMSAs to recognize the variations within the CMSA.

The major criticism of the rent indices was that residential rather than commercial rent data were used. As mentioned earlier, for constructing the GPCIs, we needed data that were widely and consistently available across all physician fee schedule areas. As with the original GPCIs, we again searched for private sources of commercial rent data that were widely and consistently available.

The private sources we found were not adequate. None of the sources collected data for nonmetropolitan areas, nor did any collect data for all metropolitan areas. The sources did not reflect the average commercial space in the area, but rather the particular type of space most relevant to the needs of a particular source's clients. In addition, the sample sizes were small. A comparison of the average rental for any particular city showed significant variation depending upon the source. Also, the private commercial rent data tended to be for very high priced real estate of the type likely to be used by large institutions such as banks, insurance companies, or financial firms and not for the type of office space used by physicians.

Among the sources of commercial rent data available, the most promising were data from the Building Owners and Managers Association, the General Services Administration, and the U.S. Postal Service. These data were analyzed in depth. We did not use data from the Building Owners and Managers Association and the General Services Administration because of poor geographic coverage, especially outside of large metropolitan areas. That is, data were not widely and consistently available for all physician fee schedule areas. The U.S. Postal Service data had much better geographic coverage, but sample sizes in many areas were unacceptably small and could have led to erroneous results.

No acceptable national commercial rent data are readily available for physician office rents. Thus, some proxy must be used for this portion of the index. In addition, commercial rent data are not available for all areas from published statistical sources.

We believe that the HUD FMR data remain the best available data for constructing the office rental index. They are available for all areas, are updated on an annual basis, and are consistent among areas and from year to year. Moreover, physicians are frequently located in areas and office space that are residential rather than commercial (for example, in apartment complexes and small strip commercial centers adjacent to residential areas).

(3) Medical Equipment, Supplies, and Miscellaneous Expenses. As mentioned earlier, the GPCI assumes that this

component has a national market and that input prices do not vary among geographic areas. We were unable to find any data sources that demonstrated price differences by geographic area. Anecdotal and interview data from suppliers and manufacturers were inconclusive. While some price differences may exist, they are more likely to be based on volume discounts rather than on geographic areas. Generally, it appears that manufacturers' prices do not vary among areas except for shipping costs. Since manufacturers and suppliers are located all over the country, shipping costs on the mainland do not vary significantly.

We did consider an add-on for shipping costs to Alaska, Hawaii, and Puerto Rico to recognize the added shipping distance. We decided against the add-on because there were no data to indicate how much the costs of shipping medical equipment and supplies to these areas increased their total costs. We were able to ascertain that commercial shippers like United Parcel Service and Federal Express generally charge about 10 percent more to ship to Puerto Rico and about 20 percent more to ship to Alaska and Hawaii from the mainland.

Medical equipment and supplies represent about 7 percent of physician practice costs. Even assuming that shipping costs represent 5 percent of total equipment and supply costs, which we believe to be a high estimate, recognizing a 20 percent increase in shipping costs would only increase payment levels by 0.07 percent or 0.0007 (.20 × .05 × .07 = .0007). The medical equipment, supplies, and miscellaneous expense index for all areas continued to be 1.000 in the revised 1995 through 1997 GPCIs.

c. Malpractice Geographic Practice Cost Indices. Again, malpractice premium data for a $1 million to $3 million mature "claims made" policy were collected, with mandatory patient compensation funds considered. However, more recent and more comprehensive malpractice insurance data were used in calculating the 1995 through 1997 malpractice GPCIs. The 1995 through 1997 malpractice GPCIs were based on 1990 through 1992 premium data. Malpractice premiums are very volatile and may change significantly from year to year. We decided to use the most recent 3-year average available rather than just the most recent single year to smooth out this volatility and present a more accurate indication of malpractice premium trends over time.

We collected data on more specialties and from more insurers. We collected data on 20 specialties, rather than on only three as in the 1992 through 1994 malpractice GPCIs. The 1992 through 1994 malpractice GPCI data were largely drawn from a single nationwide insurer (St. Paul Fire and Marine) and were supplemented by several State-specific carriers in States in which St. Paul did not offer coverage. Subsequent analyses suggest that these data were not representative of insurers operating in many States. For the revised malpractice GPCI, data were collected from insurers that, on average, represented 82 percent of the market in each State, with the lowest State market share being 60 percent. We believe that the more recent and much more comprehensive data greatly improved the accuracy of the malpractice GPCIs for 1995 through 1997.

Detailed discussions of the methodology and data sources of the 1995 through 1997 GPCIs can be obtained by requesting the following studies from NTIS by calling 1–800–553–NTIS, or (703) 487–4650 in Springfield, Virginia:

- "Updating the Geographic Practice Cost Index: Revised Cost Shares." Debra A. Dayhoff, John E. Schneider, and Gregory C. Pope. NTIS PB94–161072.
- "Updating the Geographic Practice Cost Index: The Physician Work GPCI." Gregory C. Pope and Deborah A. Dayhoff. NTIS PB94–161080.
- "Updating the Geographic Practice Cost Index: The Practice Expense GPCI." Gregory C. Pope, Deborah A. Dayhoff, Angella R. Merrill, and Killard W. Adamache. NTIS PB94–161098.
- "Updating the Geographic Practice Cost Index: The Malpractice GPCI." Stephen Zuckerman and Stephen Norton. NTIS PB94–161106.

4. Revised 1998 Through 2000 Geographic Practice Cost Indices

The same data sources and methodology used for the 1995 through 1997 GPCIs were used for the revised 1998 through 2000 GPCIs with a few very minor modifications. No acceptable additional data sources were found. The cost shares were the same as in the 1995 through 1997 GPCIs because no changes were made in the MEI weights.

Indices for fee schedule areas are based on the indices for the individual counties within the fee schedule area. Fee schedule RVUs are again used to weight the county indices (to reflect volumes of services within counties) when mapping to fee schedule areas and in constructing the national average indices. However, we used more recent data, 1994 rather than 1992 RVUs, in the county, locality, and national mapping in the proposed GPCIs. The payment effect of this is negligible in most cases and generally results in changes at the third decimal point if at all.

a. Work Geographic Practice Cost Indices. The work GPCIs are based on the decennial census. The 1992 through 1994 work GPCIs were based on 1980 census data because 1990 census data were not yet available. The work GPCIs were revised in 1995 with new data from the 1990 census. New census data will not be available again until after the 2000 census. We searched for other data that would enable us to update the work GPCIs between the decennial censuses but no acceptable data sources were found. The most promising sources of data were the hospital wage data that we collected to calculate the prospective payment system (PPS) hospital wage index and the payroll per worker data collected by the U.S. Bureau of Labor Statistics from State unemployment insurance agencies ("the ES–202 data").

The PPS hospital wage data were examined when we constructed the original GPCIs. They were rejected in favor of census data because of their lack of an occupation mix adjustment and their unrepresentative occupational composition (hospital employees rather than professionals or physician office employees). ES–202 data consist of total payroll divided by counts of wage and salary workers. Their major disadvantages were that they did not measure hourly earnings, only payroll per employee, and no occupational detail is available. Also, they did not adjust for part-time or full-time and hours worked, and the numbers of workers are small for certain States, leading to unstable estimates of payroll per worker. We compared the changes by State from 1989 to 1993 in the PPS wage data and the ES–202 data to see if there was any correlation between the two series. The correlation between the two was only moderate: 0.55. The changes indicated by both series were generally small, for example, a few percentage points. The difference between the two series by State was in many cases as large as, or greater than, the change indicated by either series. The average difference between the two series (2.1 percent) is as large as the change indicated by either series. In addition, changes for particular States were substantially different between the two series. For example, Indiana relative wages rose by 1.9 percent according to the PPS data, but fell 5.7 percent according to the ES–202 data.

Since we were unable to find an acceptable data source for updating the work GPCIs, we examined the

consequences of not updating the work GPCIs between the decennial censuses. We compared the changes between the 1992 through 1994 work GPCIs, based on the 1980 census and the 1995 through 1997 GPCIs, based on the 1990 census. On average, the full variation State work GPCIs changed by about 5 percent. This translates to about a 1.2 percent change in the quarter work GPCI required by law. Since work makes up about one-half of the GPCI cost shares, this translates into an average payment change per State of about 0.6 percent from updating the work GPCI based on the 10-year change in relative wages indicated by the census data. Even the maximum change in the full variation State work GPCIs from the 1992 through 1994 to the 1995 through 1997 GPCIs of 14 percent translates into only about a 1.8 percent change in payments. The largest full work GPCI changes for individual payment areas were from 16 to 20 percent, or about a 4 to 5 percent change in the quarter work GPCI, or about a 2.4 percent change in payments. However, 80 percent of payment areas experienced payment changes of less than 1 percent, and 50 percent of payment localities experienced payment changes of less than 0.5 percent as a result of changes in the census data from 1980 to 1990.

We, therefore, made no changes in the 1998 through 2000 work GPCIs from the 1995 through 1997 work GPCIs, other than the generally negligible changes resulting from using 1994, rather than 1992, RVUs for this GPCI update because we were unable to find acceptable data for use between the decennial censuses. We believe that making no changes is preferable to making inaccurate changes based on unacceptable data. We believe that this is a reasonable position given the generally small magnitude of the changes in payments resulting from the changes in the work GPCIs from the 1980 to the 1990 census data.

b. Practice Expense Geographic Practice Cost Indices. (1) Employee Wage Indices. As with the work GPCIs, the employee wage portion of the practice expense GPCIs is based on decennial census data. For the same reasons discussed above pertaining to the work GPCIs, we made no changes in the employee wage indices during the 1998 through 2000 GPCI update. The average change from the 1992 through 1994 to the 1995 through 1997 employee wage indices across States was about 6 percent. Since the employee wage index had a weight of about 16 percent in the GPCI cost shares, this translated into a 1 percent average change in payments. The maximum payment change in any payment area resulting from changes from the 1992 through 1994 to the 1995 through 1997 employee wage indices was about 3.2 percent. Payment changes in over two-thirds of the payment areas were less than 1 percent.

(2) Rent Indices. The office rental indices were again based on HUD residential rent data. The rental indices were based on 1996 HUD data as opposed to the 1994 HUD data in the 1995 through 1997 GPCIs. HUD made two small methodological changes in developing the data. First, HUD used the 40th percentile of area rents rather than the 45th percentile. This did not materially affect the GPCIs, which measure relative rents among areas. Second, HUD established a rental floor for rural counties at the statewide rural average. This had the effect of raising the office rental indices slightly in rural areas.

We made one methodological change in the rent indices. HUD publishes FMRs only for metropolitan areas as a whole. For the 1995 through 1997 GPCIs, HUD used a special tabulation of the 1990 census data to allocate rents by county within CMSAs. In some metropolitan areas, this had the effect of reducing the central city index below the suburban index, probably because of lower unmeasured housing quality in central cities than in suburbs. This may not have been the best indicator of relative physician rents, since the GPCIs are intended to measure rental costs for offices of similar quality in different areas. The metropolitan-wide rent is most appropriate for measuring the cost of space of an average quality across the metropolitan area, which is why HUD publishes only metropolitan-wide FMRs. Also, the census county adjustments can be updated only once every 10 years. For this reason, we believed that the county-specific adjustment should not be made for all large metropolitan areas, but should be retained only for the New York City Primary MSA. Available evidence suggested that rents vary substantially among the boroughs of New York City and that, given the current locality configuration, the county-specific rental adjustment appropriately reflected these patterns in the New York City area, especially the higher rents in Manhattan.

(3) Medical Equipment, Supplies, and Miscellaneous Expenses. As with the 1992 through 1994 and 1995 through 1997 GPCIs, this component was given a national value of 1.000, indicating no measurable difference among areas in costs.

c. Malpractice Geographic Practice Cost Indices. Again, malpractice premium data were collected for a mature "claims made" policy with $1 million to $3 million limits of coverage, with adjustments made for mandatory patient compensation funds. As with the 1995 through 1997 GPCIs, data were collected for the 20 largest Medicare-billing physician specialties. The premium data represent at least 50 percent of the market in each State. Again, we used an average of the 3 most recent premium years to smooth out the considerable year-to-year fluctuations that can occur in malpractice premiums. The revised 1998 through 2000 malpractice indices were based on 1992 through 1994 premium data, the latest years available when the Health Economics Research (HER) GPCI study was being conducted in 1995 through 1996. Another change from the 1995 through 1997 indices is that we weighted the specialty shares of the 20 specialties by fee schedule RVUs rather than allowed charges.

Detailed discussions of the methodology and data sources of the 1998 through 2000 GPCIs may be obtained by requesting the following study from NTIS by calling 1–800–533–NTIS, or, for residents of Springfield, Virginia, (703) 487–4650: "Second Update of the Geographic Practice Cost Index." Gregory C. Pope and Killard W. Adamache.

5. Proposed 2001 Through 2003 Geographic Practice Cost Indices

We propose using the same data sources and methodology used for the 1998 through 2000 GPCIs for the 2001 through 2003 GPCIs (hereafter referred to as proposed GPCIs). No acceptable additional data sources were found. The only differences between the 1998 through 2000 GPCIs and the proposed GPCIs are in the cost shares and RVU weighting. As shown in the cost share table in the discussion of the development of the GPCIs, the cost shares have been changed to reflect the revisions in the MEI. This does not affect the work or malpractice GPCIs since they are stand-alone indices. The change has a small effect on the practice expense GPCIs because it changes slightly the weights among the employee wage, rents and miscellaneous components of the practice expense index. We used more recent RVU data—1998 rather than 1994—in the county, locality, and national mapping in the proposed GPCIs. The payment effect of this is generally negligible.

a. Work Geographic Practice Cost Indices. For the same reasons discussed

in the section on the 1998 through 2000 work GPCIs, no significant changes are being proposed in the 2001 through 2003 work GPCIs because we were unable to find acceptable data for use between the decennial censuses. There are general negligible changes resulting from the use of 1998 rather than 1994 RVUs for weighting.

b. Practice Expense Geographic Practice Cost Indices. (1) Employee Wage Indices. As with the work GPCIs, the employee wage indices are based on decennial census data. For the same reasons discussed above pertaining to the work GPCIs, we are proposing no changes in the employee wage indices during this GPCI update.

(2) Rent Indices. The office rental indices are again based on HUD residential rent data. No changes have been made in the methodology. The proposed rental indices are based on 2000 rather than 1994 HUD data.

The proposed rental indices are compared to the current rental indices in Addendum D. A reduction in an area's rent index does not necessarily mean that rents have gone down in that area since the last GPCI update. Since the GPCIs measure area costs compared to the national average, a decrease in an area's rent index means that an area's rental costs have decreased when compared to the change in national average rental costs. The indices are arranged in descending order of change. The rental index has a cost share of about 12 percent of the GPCI. This means that the actual effect on payments will be about 12 percent of the change in the rental indices. While the new rental indices show significant changes in a few areas, primarily in the San Francisco Bay area, 80 of the 89 areas change by less than 10 percent, which translates into about a 1 percent change in payments.

(3) Medical Equipment, Supplies, and Miscellaneous Expenses. As with all previous GPCIs, this component would be given a national value of 1.000, indicating no measurable differences among areas in costs.

c. Malpractice Geographic Practice Cost Indices. We propose using the same methodology described in the 1998 through 2000 malpractice GPCI section in the proposed malpractice GPCIs for 2001 through 2003. The only difference is that we used more recent data. The proposed malpractice indices are based on 1996 through 1998 data compared to the 1992 through 1994 data used in the previous GPCI update.

Addendum E shows the changes from the 1998 through 2000 indices to the proposed malpractice GPCIs. A change in an area's malpractice GPCI does not mean that absolute malpractice premiums have changed by that amount. It, rather, reflects the area's new position compared to the national average. As with past GPCI revisions, the changes in the proposed malpractice GPCIs are relatively large in some cases, reflecting the significant changes in malpractice premiums that occur from year to year. As Addendum E shows, two-thirds of the payment areas experience changes of less than 12 percent. It should be noted, however, that the weight of the malpractice GPCI is only about 3 percent of the total GPCI. Therefore, a 12 percent change in the malpractice GPCI translates into only a 0.4 percent change in payments. Even the largest 42 percent change in the malpractice GPCI translates into only a 1.3 percent change in payments. The mean change in the malpractice GPCIs is 11 percent, or about a 0.4 percent change in payments.

The proposed 2002 fully-effective revised GPCIs and the transitional 2001 revised GPCIs can be found at Addendum F and Addendum G, respectively. Since the proposed revised GPCIs could result in total payments either greater or less than payments that would have been made if the GPCIs were not revised, it was necessary to adjust the GPCIs for budget neutrality as required by law. Therefore, we adjusted the 2001 through 2002 GPCIs as follows: work by 0.99699; practice expense by 0.99235; and malpractice by 1.00215.

C. Resource-Based Malpractice Relative Value Units

In the July 1999 proposed rule (64 FR 39610) and the November 1999 final rule (64 FR 59383) for the CY 2000 physician fee schedule, we discussed the methodology used to calculate resource based malpractice RVUs and proposed interim RVUs effective January 1, 2000. (See "Legislative History" section for dates and **Federal Register** citations for these rules.) The methodology can be briefly summarized as follows:

- Actual malpractice premium data were collected for the top 20 Medicare physician specialties.
- All Medicare specialties were mapped to insurer rating classes (ISO codes).
- A national average premium was calculated for every specialty.
- Specialty risk factors showing the relative malpractice costs among specialties were created by dividing each specialty national average premium by the lowest average premium.
- Specialty-weighted malpractice RVUs were calculated for each procedure by summing, for all specialties providing the procedure, the product of each specialty's risk factor times the proportion of total service count for that procedure provided by the specialty.
- This number was multiplied by the procedure's work RVUs to account for differences in risk-of-service among procedures.
- The new malpractice RVUs were adjusted by the appropriate factor to attain budget neutrality.

The malpractice RVUs were based on 1993 through 1995 premium data, the most recent premium data readily available. In last year's proposed and final rules we stated that we planned to collect more recent data, but did not expect that newer data would change the values significantly since malpractice premiums have been remarkably stable in recent years.

We have now obtained, and are currently examining, malpractice premium data for 1996 through 1998. The malpractice RVUs in the fall final rule will reflect the newer data. While we have not yet completed the proposed malpractice RVU calculations, the table below compares the 1993 through 1995 average premiums (that were used to calculate the 2000 malpractice RVUs) with the 1996 through 1998 average premiums (that will be used to calculate the 2001 malpractice RVUs). As the table below shows, there was very little change in the national average premiums from 1993 through 1995 to 1996 through 1998. We, therefore, anticipate minimal changes in malpractice RVUs from use of the more recent data.

National Average Premiums By Surveyed Specialties

ISO	Specialty	1996 avg	1997 avg	1998 avg	93-95	96-98	Trend
80114	Ophthalmology	11,304	11,377	10,945	10,960	11,209	0.75%
80143	General surgery	27,667	28,116	27,694	27,020	27,825	0.98%
80144	Thoracic surgery	39,056	39,020	38,359	38,789	38,812	0.02%
80145	Urology	16,799	17,163	16,911	15,817	16,958	2.35%
80151	Anesthesiology	15,708	15,468	14,904	17,231	15,360	-3.75%
80152	Neurosurgery	58,104	58,263	56,735	54,610	57,701	1.85%
80154	Orthopedic surgery	39,182	38,882	37,688	38,877	38,584	-0.25%
80156	Plastic surgery	31,670	31,708	31,062	30,599	31,480	0.95%
80159	Otolaryngology	20,603	19,845	19,521	19,748	19,990	0.41%
80244	Gynecology	8,445	8,690	8,790	n/a	8,642	n/a
80249	Psychiatry	6,645	6,533	6,664	7,240	6,614	-2.96%
80269	Pulmonary disease	9,352	9,553	9,620	8,594	9,508	3.42%
80274	Gastroenterology	11,691	11,890	11,655	11,008	11,745	2.18%
80280	Diagnostic radiology	12,099	12,651	12,365	10,783	12,372	4.68%
80281	Cardiology	13,265	13,367	12,980	12,465	13,204	1.94%
80282	Dermatology	10,690	10,865	10,394	10,946	10,650	-0.91%
80284	Internal medicine	11,770	11,941	11,798	11,491	11,836	0.99%
80288	Neurology	14,000	13,758	13,421	12,396	13,726	3.45%
80292	Pathology	9,633	9,690	9,439	8,913	9,587	2.46%
80423	General practice	11,181	11,354	11,167	10,465	11,234	2.39%
n/a -data not available							

In addition, in response to comments received on last year's rules, we are proposing to accept a comment regarding crosswalking specialties. We are proposing to crosswalk surgical oncology to general surgery rather than to all physicians. The malpractice values to be included in the final rule reflecting the updated data will remain interim.

D. Critical Care Relative Value Units

In the November 1999 final rule (64 FR 59423), we established interim work RVUs for CPT codes 99291 and 99292 (critical care services) of 3.6 and 1.8, respectively, which were decreased from the previous RVUs for these services. These work RVUs were established because of the change in the CPT definition of critical care services in CPT 2000. We also discussed in detail what changes in the definition most concerned us. We received many comments on the interim work RVUs for critical care.

This year we proposed new coding language to the AMA CPT Editorial Panel (the Panel) to resolve physician concerns. The Panel, with input from various specialty societies, accepted the language that we proposed with some modifications. The AMA has given us copyright permission to publish the introduction for CPT codes 99291 and 99292 as it will appear in CPT 2001. For CPT 2001, the introduction for critical care services will be as follows (new language in italics):

Critical care is the direct delivery by a physician(s) of medical care for a critically ill or *critically* injured patient. A critical illness or injury acutely impairs one or more vital organ systems such that *there is a high probability of imminent or life threatening deterioration in the patient's condition.* Critical care involves decision making of high complexity, to assess, manipulate, and support *vital system function(s) to treat single or multiple vital organ system failure and/or to prevent further life threatening deterioration of the patient's condition. Examples of vital organ system failure include, but are not limited to:* central nervous system failure, circulatory failure, shock, renal, hepatic, metabolic *and/or* respiratory failure. *Although critical care typically requires* interpretation of multiple *physiologic parameters and/or* application of advanced technology*(s), critical care may be provided in life threatening situations when these elements are not present.* Critical care may be provided on multiple days, even if no changes are made in the treatment rendered to the patient, provided that the patient's condition continues to require the level of physician attention described above.

Providing medical care to a critically ill, injured, or post-operative patient qualifies as a critical care service only if both the illness or injury and the treatment being provided meet the above requirements. Critical care is usually, but not always, given in a critical care area, such as the coronary care unit, intensive care unit, pediatric intensive care unit, respiratory care unit, or the emergency care facility. Critical care services provided to infants older * * * [no change to this paragraph]

Services for a patient who is not critically ill but happens to be in a critical care unit are reported using other appropriate E/M codes.

Critical care and other E/M services may be provided to the same patient on the same date by the same physician.

The following services are included in reporting critical care when performed during the critical period by the physician(s) providing critical care: the interpretation of cardiac output measurements (93561,93562), chest x-rays (71010, 71015, 71020), *pulse oximetry (94760, 94761, 94762),* blood gases, and information data stored in computers (eg, ECGs, blood pressures, hematologic data (99090); gastric intubation (*43762,* 91105); temporary transcutaneous pacing (92953); ventilator management (94656, 94657, 94660, and 94662); and vascular access procedures (36000, 36410, 36415, *36540* and 36600). Any services performed which are not listed above should be reported separately.

The critical care codes 99291 and 99292 are used to report the total duration of time spent by a physician providing critical care services to a critically ill or critically injured patient, even if the time spent by the physician on that date is not continuous. For any given period of time spent providing critical care services, the physician must devote his or her full attention to the patient and, therefore, cannot provide services to any other patient during the same period of time.

Time spent with the individual patient should be recorded in the patient's record.

The time that can be reported as critical care is the time spent engaged in work directly related to the individual patient's care whether the time was spent at the immediate bedside or elsewhere on the floor or unit. For example, time spent on the unit or at the nursing station on the floor reviewing test results or imaging studies, discussing the critically ill patient's care with other medical staff or documenting critical care services in the medical record would be reported as critical care, even though it does not occur at the bedside. Also, when the patient is unable or clinically incompetent to participate in discussions, time spent on the floor or unit with family members or surrogate decision makers obtaining a medical history, reviewing the patients condition or prognosis, or discussing treatment or limitation(s) of treatment may be reported as critical care, provided that the conversation *bears directly on the management of the patient.*

Time spent in activities that occur outside of the unit or off the floor (eg, telephone calls, whether taken at home, in the office, or elsewhere in the hospital) may not be reported as critical care since the physician is not immediately available to the patient. Time spent in activities that do not directly contribute to the treatment of the patient may not be reported as critical care, even if they are performed in the critical care unit (eg, participation in administrative meetings or telephone calls to discuss other patients). *Time spent performing separately reportable procedures or services should not be included in the time reported as critical care time.*

The remainder of the introduction as published in CPT 2000, as well as the descriptors for the two CPT codes (99290 and 99291), remains unchanged.

Adoption of this revised introduction for the critical care CPT codes 99291 and 99292 is consistent with our view of the appropriate intensity of these services and addresses the concerns we had raised in the November 1999 final rule. Therefore, based on implementation of this revised introduction for critical care services for CY 2001, we are proposing to value the physician work at 4.0 RVUs for CPT code 99291 and 2.0 RVUs for CPT code 99292.

In addition, consistent with our discussion in the proposal for electrical bioimpedance (EB) (see section II.H), we are proposing to not allow separate Medicare payment for EB when provided in conjunction with critical care services (CPT codes 99291 and 99292).

E. Care Plan Oversight and Physician Certification/Recertification

The Panel considered changes to the definition of care plan oversight for 2001. After analyzing the definition changes, we are concerned that these codes (CPT codes 99375 and 99378) will no longer be consistent with our coverage criteria.

In anticipation of the likely CPT revisions, we would establish two new HCPCS codes for care plan oversight that are consistent with our coverage criteria. For the 2001 physician fee schedule, we would establish a new HCPCS code Gxxx1, that will use the CPT 2000 definition associated with CPT code 99375 and a new HCPCS code Gxxx2, that will use the CPT 2000 definition associated with CPT code 99378. The current policy guidance that applied to CPT codes 99375 and 99378, including our past responses to questions on care plan oversight, will continue to apply to these G codes. The current payments for CPT codes 99375 and 99378 will be maintained in Gxxx1 and Gxxx2.

In addition, we would establish two new HCPCS codes (Gxxx3 and Gxxx4) to describe the services involved in physician certification (and recertification) and development of a plan of care for a patient for whom the physician has prescribed Medicare-covered home health services. The proposed text of the new codes will read as follows:

Gxxx3 ..... Physician services for initial certification of Medicare-covered services by a home health agency, per patient's home health certification period.

This code would be used when the patient has not received Medicare-covered home health services for at least 60 days.

Gxxx4 ..... Physician services for recertification of Medicare-covered services by a home health agency, per patient's home health certification period

This code would be used after a patient has received services for at least 60 days (or one certification period) when the physician signs the certification after the initial certification period.

The use of these HCPCS codes (Gxxx3 and Gxxx4) would be restricted to physicians who are permitted to certify that home health services are required by a patient pursuant to section 1814(a)(2)(C) and section 1835(a)(2)(A) of the Act. The Gxxx3 code would be billed only once every 60 days, except in the rare situation when the patient starts a new episode before 60 days elapses and requires a new plan of care to start a new episode. Consistent with section 1835(a)(2) of the Act, a physician who has a significant ownership interest in, or a significant financial or contractual relationship with a home health agency (HHA), generally cannot bill this code for patients served by that HHA.

For services within the episode (generally beyond the first week or two of care plan implementation) that are consistent with the definition of care plan oversight (HCPCS code Gxxx1), the care plan oversight code (CPT code 99375) would be used.

Because we believe that the physician work associated with HCPCS code Gxxx3 equates to that of a level 3 established patient office visit (CPT code 99213), we are proposing a value of .67 for the work RVUs. For Gxxx4, because we believe the work equates to a level 2 established patient office visit (CPT code 99212), we are proposing a value of .45 for the work RVUs. For practice expense RVUs, we are proposing to crosswalk both Gxxx3 and Gxxx4 to the practice expense inputs currently used for care plan oversight (CPT code 99375).

F. Observation Care Codes

In 1998, the AMA added new CPT codes 99234 to 99236, Observation or inpatient hospital care services (including the admission and discharge services) for a patient on the same date. We accepted the RUC recommendations for work RVUs for these new codes. The work RVUs for each code are the sum of the applicable admission work for CPT codes 99218 to 99220 (or CPT codes 99221 to 99223) plus the discharge work (CPT codes 99217 or 99238). For example, CPT code 99234 has 2.56 work RVUs, which is the sum of the work RVUs for CPT code 99221 (1.28) plus the work RVUs for CPT code 99217 (1.28). However, it has come to our attention that allowing payment for these CPT codes conflicts with two policies currently in the Medicare Carrier Manual (MCM).

Section 15505.1(c) of the MCM states that we will pay for only the initial hospital care service code when a patient is admitted as an inpatient and discharged on the same day. Physicians are not paid for both an inpatient hospital admission and hospital discharge management on the same day. In addition, section 15504.b of the MCM instructs that CPT codes 99218 to 99220 (Initial observation care) should be used if the patient is discharged on the same day as the admission for observation because each of these codes represents a full day of care and, thus, paying for a code representing both admission and discharge on the same day would be duplicative. CPT code 99217 (Observation care discharge) may be billed only on the second or subsequent days in observation.

These two payment policies result in different payments for patients whose inpatient stay is less than 24 hours based solely on whether they were in the hospital at midnight. For example, a physician who admits a patient to observation or to inpatient care at 8 a.m. and then discharges the patient at 8 p.m. the same day, would be allowed payment for only the admission service. On the other hand, a physician who admits a patient to observation or to inpatient care at 8 p.m. and then discharges the patient at 8 a.m. the next day, would be allowed payment for both the admission and discharge services.

In response to these concerns, and to clarify our payment policy, we are proposing the following:

Inpatient stay of 24 hours or more—We would pay for both inpatient hospital admission services (CPT codes 99221 to 99223) and hospital discharge services (CPT codes 99238 to 99239) when a patient is a hospital inpatient for a period of 24 hours or more. The medical record must document that the patient was an inpatient for at least 24 hours for both of these services to be paid.

Inpatient or observation stay of less than 8 hours—If a patient is admitted as a hospital inpatient or an observation patient for less than 8 hours, we would pay for only the admission service (CPT codes 99221 to 99223 or 99218 to 99220) on that day. The discharge service is not considered to be a separately billable service.

Inpatient or observation stay of 8 or more hours, but less than 24 hours—If a patient is admitted as a hospital inpatient or an observation patient for a period of 8 or more hours, but less than 24 hours, we would pay for both the admission and discharge services under CPT codes 99234 to 99236 with the following proposed physician work RVUs and documentation requirements:

Physician Work RVUs—To properly value both the admission and discharge work of these services, we are proposing to continue valuing the admission portion of the physician work as equivalent to CPT codes 99218 to 99220 (or CPT codes 99221 to 99223), but to reduce the discharge work RVUs from 1.28 to 0.67. This would make the discharge portion of the work equal to the work for CPT code 99213 (Office or other outpatient visits) instead of CPT code 99217 (or CPT code 99238). Thus, the proposed work RVUs would be as follows: CPT code 99234—1.95 RVUs; CPT code 99235—2.81 RVUs; CPT code 99236—3.66 RVUs. We would not pay CPT codes 99217, 99238, and 99239 for hospital inpatient or observation admissions between 8 and 24 hours in length.

Our reasoning for these proposed RVUs is that we believe that the physician work typically required for discharging an inpatient or observation admission patient after a period of at least 8 hours, but less than 24 hours, is less than that required for an admission of 24 hours or more. The typical work (for example, history, physical examination, and medical decision making) and the typical face to face time required to discharge such a patient is comparable to the requirements for CPT code 99213. Moreover, the typical time for CPT code 99238 is up to 30 minutes and the physician work is 1.28 RVUs, so a clear work anomaly would be created if we made the work value of discharging a patient with a stay of less than 24 hours identical to the work of discharging a patient with a length of stay of 24 hours or more.

Our proposal would avoid creating such a rank order anomaly and would place admission and discharge valuation in proper order. For example, for observation stays of less than 8 hours, we would pay only the admission portion and would not pay separately for the discharge because the extra work is minimal. For observation stays of more than 8 hours, but less than 24 hours, we would recognize the discharge component since there is significant extra work involved, but not as much as a discharge for a 24 hour or longer admission for which we would pay the full value of CPT code 99238. Our proposal would allow payment for CPT codes 99234 through 99236 only for stays of equal to or greater than 8 hours, but less than 24 hours.

In addition to the documentation guidelines for history, physical examination, and medical decision making described in CPT 2000 for CPT codes 99234 to 99236, we would require the following to be documented in the medical record:

- A stay involving 8 hours, but less than 24 hours.
- That the billing physician was present and personally performed the services.
- Admission and discharge notes written by the billing physician.

We believe this policy would harmonize current policy on hospital admissions and discharges and also accommodate the observation codes as they are described in CPT 2000. The policy would not be tied to the "midnight" time frame of the hospital inpatient census.

If these proposals are adopted in the final rule, the work RVUs for CPT codes 99234 to 99236 would be considered interim for 2001.

G. Ocular Photodynamic Therapy and Other Ophthalmological Treatments

Ocular photodynamic therapy is a treatment recently approved by the Food and Drug Administration for age-related macular degeneration, the most common cause of blindness in the elderly. For CPT 2000, ocular photodynamic therapy was added to CPT code 67220, which was formerly limited to photocoagulation by laser.

We believe that ocular photodynamic therapy is significantly different from laser photocoagulation and, therefore, we are proposing to establish new HCPCS codes that specifically identify these procedures. A discussion of each of these codes follows:

Gxxx5 ..... Destruction of localized lesion of choroid (*e.g.*, choroidal neovascularization); photocoagulation (*e.g.*, by laser), one or more sessions

This code would be used in place of CPT code 67220. We would maintain the work and malpractice RVUs and the CPEP inputs presently used for CPT code 67220 for payment of this new "G" code.

Gxxx6 ..... Destruction of localized lesion of choroid (*e.g.*, choroidal neovascularization); ocular photodynamic therapy (includes intravenous infusion)

We are proposing a value of 0.55 work RVUs for Gxxx6. This value is half the physician work value for CPT code 96570 (Photodynamic therapy by endoscopic application of light to ablate abnormal tissue via activation of photosensitive drug(s); first 30 minutes), and it is identical to the physician work value for CPT code 96571 (Photodynamic therapy by endoscopic application of light to ablate abnormal tissue via activation of photosensitive drug(s); each additional 15 minutes). We note that the total time of laser light application for ocular photodynamic therapy is 83 seconds, which is considerably shorter than the time of laser light application for CPT codes 96570 and 96571.

We are also proposing that the global period for Gxxx6 be "XXX." Because of the global designation, significant, separately identifiable evaluation and management (E/M) services may be billed on the same day as Gxxx6 with the use of the –25 modifier. Patients will, typically, have fluorescein angiography as well as an E/M service before ocular photodynamic therapy to determine whether they will benefit from the therapy and to discuss the

treatment. Any E/M services performed after the treatment may be billed separately.

For Gxxx6 we are proposing the following practice expense inputs for non-facility settings:

- Clinical Staff Time: Registered nurse/ophthalmology technician—40 minutes.
- Supplies: Ophthaine, mydriacil, myolfrin, gonisol, post myd spectacles, verteporfin and also infusion supplies including sterile and non-sterile gloves, butterfly needle, syringe, band aid, alcohol swab, staff gown, iv infusion set, and infusion pump cassette.
- *Equipment:* Laser, infusion pump, and exam lane.

For the malpractice component of Gxxx6, we are proposing 0.52 RVUs (the value assigned to CPT code 67220, Destruction of localized lesion of choroid). Although we are establishing procedure codes for ocular photodynamic therapy, coverage of the procedure is at the discretion of the local carrier.

In instances where both eyes are treated the same day, we are proposing the use of the following HCPCS add-on code:

Gxxx7 Destruction of localized lesion of choroid (for example, choroidal neovascularization); ocular photodynamic therapy (includes intravenous infusion)—other eye (List separately in addition to Gxxx6)

For this add-on code we are proposing a "ZZZ" global period, with .28 work RVUs (half of that proposed for Gxxx6) and .52 malpractice RVUs (identical to that proposed for Gxxx6). The practice expense inputs for services in the non-facility setting would be as follows:

- *Clinical Staff Time:* Registered nurse/ophthalmology technician—5 minutes.
- *Supplies:* Ophthaine, mydriacil, myolfrin, gonisol.

In addition, we have identified several other specific ophthalmological treatments that are not distinctly identified in CPT 2000. We are proposing to establish specific HCPCS codes for these procedures.

Gxxx8 Destruction of localized lesion of choroid (*e.g.*, choroidal neovascularization); transpupillary thermotherapy, one or more sessions

Gxxx9 Destruction of localized lesion of choroid (*e.g.*, choroidal neovascularization); photocoagulation, feeder vessel technique, one or more sessions

Gxx10 Destruction of macular drusen, photocoagulation, one or more sessions

We are not proposing RVUs for HCPCS codes Gxxx8 through Gxx10. These codes are being established for tracking purposes only. These procedures are considered experimental in nature at this time and, therefore, are not covered under Medicare.

H. Electrical Bioimpedance

Electrical bioimpedance (EB), a noninvasive method of measuring cardiac input, is a covered procedure under Medicare, if medically necessary. Performance of this procedure is reported by the Level 2 HCPCS code M0302, and the procedure is currently carrier priced. We are proposing the following RVUs for this procedure:

1. Practice Expense

We are proposing the following direct inputs for determining practice expense RVUs. (We note, however, that a final determination of the practice expense RVUS will depend on how we value physician work.) The practice expense RVU in Addendum B reflects the value for the technical portion of the service. If the service is given physician work, a separate PC will be established with an additional practice expense RVU.

- *Clinical staff:* Registered nurse—15 minutes.
- *Supplies:* Four disposable sensors, patient gown, exam table paper, and pillowcase.
- *Equipment:* Cardiac output monitor and exam table.

2. Malpractice

We are proposing 0.02 RVUs for this procedure. This value is equivalent to the TC of an EKG, which is a similar procedure.

3. Physician Work

The uses for which this procedure are covered (for example, differentiating cardiogenic from pulmonary causes of acute dyspnea, the need for intravenous inotropic therapy, fluid management, and the uses indicated in section 50–54 of the Coverage Issues Manual, HCFA Pub. 6) require a clinical evaluation of the patient on the same day that EB is performed. The procedure reports measurements that can not be interpreted without other clinical information.

With respect to proposed RVUs for physician work, we have insufficient information to propose a work value. We are collecting information and invite comments on this subject as well as on the proposed inputs for practice expense and malpractice. In your comments, please be sure to compare your proposed value for the physician work component for this service to other similar services with established physician work values. Please also include the reason why you believe the physician work is similar. At this time, we have received comments proposing no physician work values, proposing physician work values similar to that for the interpretation of an EKG (CPT code 93010—0.17 work RVUs), proposing work values similar to total body plethysmography (CPT code 93720—0.17 work RVUs), and similar to interpretation of cardiovascular stress test (CPT code 93018—0.30 work RVUs).

We also are proposing that the payment for this procedure be included in reporting critical care. Therefore, separate payment would not be made for this procedure when provided in conjunction with critical care services (CPT codes 99291 and 99292).

I. Global Period for Insertion, Removal, and Replacement of Pacemakers and Cardioverter Defibrillators

Currently, there is a 90-day global period in the physician fee schedule for all CPT codes involving the insertion, removal, and replacement of pacemakers or cardioverter defibrillators. During the global surgical period, no separate payment may be made for any E/M service furnished by the surgeon, unless the visit is: (1) Unrelated to the diagnosis for which the surgical procedure was performed; (2) for treating the underlying condition; or (3) an added course of treatment that is not part of normal recovery from surgery.

In these situations, the surgeon must use CPT modifier -24 that attests that the E/M service provided, although performed during the postoperative period, was for a reason unrelated to the original procedure. Services submitted with a -24 modifier must be sufficiently documented to establish that the visit was unrelated to the surgery. An ICD–9–CM code that clearly indicates that the reason for the encounter was unrelated to the surgery is acceptable documentation.

Many patients receiving pacemakers or cardioverter defibrillators have clinically serious cardiac diseases (related to the reason for the procedure) that require significant postoperative care. In these cases, it is difficult to separate care during the postoperative period for the related cardiac problem(s) from the postoperative care for the pacemaker or cardioverter defibrillator procedure. As medical practice has changed, cardiologists predominantly perform pacemaker or cardioverter defibrillator procedures. Thus, the physician performing the pacemaker or cardioverter defibrillator procedure now is typically the same physician who is expected to furnish care for the patient's

related cardiac disease. Therefore, a single physician is providing postoperative care for both the pacemaker or cardioverter defibrillator insertion and the related medical problem(s), but can be paid only for the insertion because of the global period policy.

We believe it is common for patients undergoing pacemaker and cardioverter defibrillator procedures to require significant care for related cardiac disease during the postoperative period. This care overlaps substantially with the care furnished for the pacemaker or cardioverter defibrillator procedure and may be coded with the same ICD–9–CM diagnosis code; therefore, using the -24 modifier is inadequate to allow appropriate payment for the physician performing both postoperative care and care for the patient's other cardiac conditions.

We are proposing to change the global period for CPT codes 33206, 33207, 33208, 33212, 33213, 33214, 33216, 33217, 33218, 33220, 33233, 33234, 33235, 33240, 33241, 33244, 33249, 33282, and 33284 from 90 days to 0 days. This would permit separate payment for any care furnished during the postoperative period by the physician who performed the pacemaker or cardioverter defibrillator procedure.

We are soliciting comments on whether it is appropriate to reduce the global period for these CPT codes. We are also proposing to ask the RUC to revise the RVUs for these CPT codes. If RUC recommendations are not received in time for our consideration for the CY 2001 physician fee schedule final rule, we propose to implement interim work RVUs, as listed below.

CPT code	2000 work RVUs	Proposed work RVUs
33206	6.67	3.11
33207	8.04	3.30
33208	8.13	2.64
33212	5.52	3.32
33213	6.37	4.92
33214	7.75	4.27
33216	5.39	3.21
33217	5.75	3.57
33218	5.44	3.26
33220	5.52	2.90
33233	3.29	1.11
33234	7.82	5.64
33235	9.40	4.58
33240	7.50	5.13
33241	3.24	1.51
33244	13.76	9.85
33249	14.23	11.41
33282	4.17	2.83
33284	2.50	1.16

In calculating the proposed interim RVUs, we have subtracted the work RVUs of all postoperative visits after the day of surgery from the total work RVUs. We used our database to calculate the number of postoperative visits. Where our database did not contain the number of postoperative visits, we crosswalked a number from the most clinically similar procedure. We have included an example to illustrate the calculation.

Example: For CPT code 33206, the 2000 work relative value is 6.67 units. The proposed work value is 3.11 (6.67 minus 3.56). The 3.56 units represents the work based on the pattern of E/M services in the global period.

E/M	Frequency	Work	Total
99213	1.5	.67	1.00
99231	2.0	.4	1.28
99238	1.0	1.28	1.28
Total E/M Work			3.56

We would also adjust practice expense inputs for supplies, staff time, and equipment to account for the change in the global period. Because these would be 0-day global services only priced in the facility setting, there would be no direct CPEP inputs associated with them. The adjusted practice expense RVUs are reflected in Addendum B.

We welcome comments on our proposed calculation of interim RVUs and request that commenters recommending RVUs include the methodology employed so that we can appropriately evaluate the recommended RVUs. As an alternative to applying a 0-day global period as discussed above, we are interested in other suggestions that might address the issue of assuring appropriate payment for these services (for example, adjusting the global period to 10 days for these services). We invite public comment on such alternatives.

J. Antigen Supply

Section 410.68(b), Antigens: Scope and conditions, provides for beneficiaries to receive a supply of antigen for no more than 12 weeks at one time. A specialty society has indicated that this limitation is not reflective of current industry standards and guidelines (for example, duration of potency for allergy extracts has changed since the policy was implemented.) Therefore, we are proposing to change this limitation from 12 weeks to 12 months and would revise the regulations to reflect this change. We are requesting comments on this proposal.

K. Low Intensity Ultrasound

In the November 1999 (64 FR 59419) final rule, we assigned RVUs to CPT code 20979, low intensity ultrasound stimulation to aid bone healing. Commenters expressed concern about the RVUs assigned to this service. Because of the concerns raised by commenters, and because CPT code 20979 is a noncovered service under Medicare, we are proposing to remove the RVUs that were assigned to this code at this time. We may reconsider this at a future date.

L. Implantation of Ventricular Assist Devices

In the April 11, 2000 correction notice (65 FR 19332) to the November 1999 final rule, we inadvertently published practice expense RVUs based on the work RVUs associated with a 90-day global period for CPT codes 33975 and 33976 (implantation of ventricular assist devices). However, in the same notice, the global periods and associated work RVUs for CPT codes 33975 and 33976 were revised to reflect an "XXX" (the global concept does not apply). In calculating the practice expense RVUs, we reflected changes made in CPEP data that result from changes in the global period. However, the practice expense RVUs are also a function, in part, of the physician work RVUs. In calculating the revised practice expense RVUs, we did not use the work RVUs that reflected the global period change. Effective January 1, 2001, we would revise the practice expense RVUs associated with these CPT codes to reflect the revision in the global periods and work RVUs.

III. Other Issues

A. Incomplete Medical Direction

Under current policy, medical supervision by an anesthesiologist occurs if the anesthesiologist is involved in furnishing more than four concurrent procedures or is performing other services while directing fewer than four concurrent procedures. Payment is based on three base units plus one unit for induction if the physician is present at induction.

Under current policy, medical direction by an anesthesiologist occurs if the anesthesiologist is involved in two to four concurrent anesthesia procedures or a single anesthesia procedure with a qualified anesthetist. For each anesthesia procedure, the anesthesiologist must—

- Perform a pre-anesthesia examination and evaluation;
- Prescribe the anesthesia plan;
- Personally participate in the most demanding procedures of the anesthesia plan, including emergence and induction;
- Ensure that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified anesthetist;
- Monitor the course of anesthesia administration at frequent intervals;
- Remain physically present and available for immediate diagnosis and treatment of emergencies; and
- Provide indicated post anesthesia care.

We currently do not have a national policy that instructs the carriers how to pay for a service when the anesthesiologist does not fulfill all the medical direction requirements. One option carriers may use is to instruct the anesthesiologist to report this service as a reduced or unusual service and determine appropriate payment. We are considering clarifying this policy and making other revisions to the medical supervision payment policy. We are considering the following:

1. To specify that the physician furnishing medical supervision must perform, at a minimum, the preoperative evaluation, participate in induction, remain available for consultation, and provide a minimum level of monitoring.
2. To establish payment for medical supervision at 40 percent of the payment amount for the service performed by the physician alone.
3. To apply the proposed medical supervision payment amounts to incompletely medically-directed cases.
4. To limit the number of concurrent cases the physician can supervise to five concurrent cases.

Payment for medical supervision is payment for the physician service. In addition, the certified registered nurse anesthetist (CRNA) service furnished under medical supervision is paid at 50 percent of the amount that would have been paid if the service had been performed by the physician alone.

We invite comments from the public, but in particular, the physicians and practitioners most affected by this policy. We are not proposing a change at this time, but will consider the comments we receive should we develop a future proposal.

B. Payment for Pulse Oximetry Services

In the November 1999 final rule (64 FR 59413), we indicated that we would adopt our proposal to bundle payment for certain diagnostic codes, including pulse oximetry CPT codes 94760 and 94761, into the payment for other services. We believe that continuing to pay separately for these codes duplicates amounts included in both facility payments and practice expense RVUs. However, we did not address how we would treat situations when these services are performed without any other billable service and, thus, are not reflected in facility payments or other practice expense RVUs. We will continue to pay separately for these services (CPT codes 94760 and 94761) when they are medically necessary and there are no other services payable under the physician fee schedule billed on the same date by the same supplier.

C. Outpatient Therapy Supervision

In the November 1998 final rule (63 FR 58868), we stated that we were maintaining our current requirement that therapy assistants of therapists in private practice (formerly known as therapists in independent practice (PTIP)) must be personally supervised by the therapist and be employed directly by the therapist; employed by the partnership or group to which the therapist belongs; or employed by the same practice. Personal supervision requires that the therapist be in the same room during the performance of the service. Levels of supervision are defined at § 410.32 (Diagnostic X-ray tests, diagnostic laboratory, and other diagnostic tests: Conditions.)

The November 1998 final rule did not change pre-existing regulations at § 410.60(c)(2) (Supervision of physical therapy services) for therapy assistants in a private practice setting. In that final rule, we codified the statutory requirements for coverage of outpatient occupational therapy services by establishing § 410.59 (Outpatient occupational therapy services: Conditions). Section 410.59 parallels the requirements in § 410.60 for outpatient physical therapy, as revised in the November 1998 final rule. We also made conforming changes in § 410.61 (Plan of treatment requirements for outpatient rehabilitation services) to include occupational therapy.

The personal supervision requirements for therapy assistants and aides in a private practice setting are long-standing. The outpatient physical therapy benefit, enacted in 1972, applied to PTIP (that is, individual therapists in independent practice in their own offices). Services performed by employees of a PTIP were covered if furnished under the direct personal supervision of the PTIP. This requirement was necessary to assure beneficiary health and safety and quality of care.

In 1981, in response to the conference committee report (H.R. 96–1479) accompanying the Omnibus Reconciliation Act of 1980 (Public Law 96–499), we revised our Medicare Carriers Manual instructions (see section 2215F, HCFA Pub. 6). These revised instructions stated that the services of employees of a PTIP who are not qualified physical therapists must be furnished under the direct personal supervision of a supervising therapist who must be the employer or on the employer's staff. Therefore, a licensed physical therapist had to directly and personally supervise the services of assistants and aides. Thus, even before the November 1998 final rule, the regulations and manuals clearly stated that the PTIP must directly and personally supervise all services for which he or she bills.

As noted above, pre-existing supervision requirements for therapy assistants in a private practice setting were not affected by the November 1998 final rule. However, we received comments from the therapy industry and other interested parties who erroneously believed that we had either misinterpreted the supervision requirement or had established a new requirement for therapy assistants in the private practice setting.

These comments and the confusion possibly resulted from the one revision in supervision requirements made in the final rule. This revision related not to therapy assistants, but to qualified therapists in a private practice setting. As referenced in the November 1998 final rule (63 FR 58868), the Congress was concerned about the requirement for therapists in independent practice to directly supervise all services performed by their employees, even if those employees were fully-licensed

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therapists. The therapist in independent practice had to be on the premises whenever services were furnished to Medicare beneficiaries, including services furnished by a licensed therapist. Therefore, a therapist in independent practice could not have more than one office open at the same time because he or she could not be on both premises at once. Congressional statements in both the House and Senate committee reports associated with our fiscal year 1997 appropriations process addressed this issue. The House committee report urged us to modify the regulations so that certified therapists need not be on the premises to supervise other licensed therapists. We were also urged by the Senate to review this concern and recommend changes in our regulations or instructions. To address this concern expressed in both the 1997 House and Senate Appropriations Committee reports, we revised the regulations at § 410.59(c)(2) and § 410.60(c)(2).

Accordingly, effective January 1, 1999, as specified in the November 1998 final rule, the revised regulations permit legally authorized (see § 410.59(c)(1)(i) and § 410.60(c)(1)(i)) therapists who own the practice to be off the premises when other legally authorized therapists are present to furnish supervision for therapy assistants. These regulations also restated which practitioners are qualified as therapists under section 1861(p) of the Act. In accordance with the November 1998 final rule, the term "independent" was removed from the description of a therapist in independent practice. In its place, the term "private" was added. The benefit is now described in terms of an individual physical therapist or occupational therapist in private practice.

This change did not affect the required degree of supervision for physical therapist assistants. Assistants still must be personally supervised by the therapist in private practice and employed directly by the therapist, by the partnership, or group to which the therapist belongs.

D. Outpatient Therapy Caps

Section 221 of the BBRA placed a 2-year moratorium on Medicare Part B outpatient therapy caps (the $1500 cap on outpatient physical therapy services including speech language-pathology services and the $1500 cap on outpatient occupational therapy services in all nonhospital settings). The two $1500 caps were implemented in 1999 as required by the BBA.

The BBRA also requires us to submit to the Congress a report by January 1, 2001 that includes recommendations on—(1) the establishment of a mechanism for assuring appropriate utilization of outpatient therapy services; (2) the establishment of an alternative payment policy for these services based on classifications of individuals by diagnostic category, functional status, prior use of services (in both inpatient and outpatient settings), and other criteria, in place of uniform dollar limitations; and (3) how to do this in a budget-neutral manner.

We are gathering information on alternatives or options that we can use to achieve these objectives. We have received the following informal recommendations for legislation:

- Institute a cap per diagnosis rather than per year.
- Establish payment based on patient groupings by primary diagnosis and average number of treatments, with options for variants.
- Base payment on an episode of occurrence of illness or injury, with a cap amount adjusted to address geographic differences in the cost of furnishing services.
- Develop a sustainable growth rate (SGR) for outpatient therapy services to control growth in the volume of services.

The outpatient therapy cap was also a topic of discussion at the PPAC meeting in December 1999. As a result of these discussions, the PPAC recommended continuation of the current moratorium with focused medical review, indicating that such a review could lead to the desired budget-neutral outcome.

We would like comments from the public on additional alternatives that we could consider in developing a payment policy for outpatient therapy services. We will consider this information as we prepare our report to the Congress on outpatient therapy services.

IV. Five-Year Refinement of Relative Value Units

Section 1848(c)(2)(B)(i) of the Act requires that we review all RVUs for services in the physician fee schedule no less often than every 5 years. The first 5-year review was undertaken as part of the final rule published December 1994 (59 FR 63140), with the resulting changes effective for services furnished beginning January 1, 1997. In the final rule published November 1999 (64 FR 59427), we included a discussion of the first 5-year refinement and outlined our plans for the second 5-year refinement of work RVUs. We also solicited comments on potentially misvalued work RVUs as well as data sources and methodologies to assist us in identifying misvalued services. We received comments from approximately 30 specialty groups, organizations, and individuals. While some of the comments were on the proposed process, comments also included requests for evaluating over 900 codes.

As we had discussed in the November 1999 final rule, in addition to performing internal review and analysis, we will be sharing these comments with the RUC, which currently makes recommendations to us on the assignment of RVUs to new and revised CPT codes. The RUC's perspective will be helpful because of its experience in recommending RVUs for the codes that have been added to the CPT, or revised by the CPT panel, since we implemented the physician fee schedule in 1992. We emphasize, however, as we reiterated for the first 5-year review, we have the responsibility for analyzing the comments concerning the 5-year review and deciding whether to revise RVUs. We are not delegating this responsibility to the RUC or any other organization.

Current initiatives underway (see discussion that follows on physician time) will assist us in our identification of misvalued codes. However, we will not be able to identify those codes that we believe have misvalued work RVUs before late in the year 2000 or early in the year 2001. We propose to perform the 5-year review in two phases. The first phase will take place in CY 2000 with consideration of public comments. The second phase will occur in CY 2001 when we use the contracted research to identify misvalued codes. We will work with the RUC and the medical community to minimize work duplication. For example, we will ask the RUC to defer action in CY 2000 on those codes that were identified by public comments and that our research later indicates might be misvalued. Furthermore, to focus on each phase of the review and prevent duplicative work, we propose to concentrate on intraspecialty issues and anomalies in CY 2000 and consider cross specialty misvaluations and issues in CY 2001. This is because we believe that validation of time across a wide range of services will allow direct comparison of pre-, intra-, and postservice work RVUs across specialties with the potential to identify a large number of misvalued codes. Again, we will work closely with the medical community to analyze and interpret the data as well as to organize the review in an efficient manner.

Physician Time Data

We currently have initiatives underway to validate the physician time

data and identify potentially misvalued codes to be considered during the 5-year review. A discussion of these activities follows.

Under a contract with HCFA, Health Economics Research (HER) is reviewing secondary data sources to validate time estimates for physicians' services. Physician time estimates are a factor used in the calculation of the practice expense RVUs and one of the primary determinates of physician work. These secondary data sources are as follows:

- The National Ambulatory Medical Care Survey (NAMCS).
- D.J. Sullivan Associates Hospital Data.
- MGMA Practice Cost Survey Data.

The NAMCS is a survey conducted by the Center for Disease Control that collects self-reported information on over 20,000 office visits annually including physician face-to-face time (called the duration of the visit). Various comparative analyses, both at the physician specialty level and for all physicians, can be made between projected E/M codes in the NAMCS data and with the actual E/M codes reported in the Medicare Part B National Claims History. (E/M codes are not captured in the NAMCS data. However, a method is used to map the time of the physician visit to an appropriate E/M code. This represents the "projected" E/M code.) The analysis was performed on the 1997 NAMCS.

The D.J. Sullivan database groups approximately 495,000 inpatient and outpatient records into 177 small clinically similar classes. The database captures information from the hospital record such as the procedure, time the patient enters the operating room, time of incision, time of wound closure, and time the patient exits the operating room. Data are presented for all hospitals and for all hospitals by categories: community hospitals, teaching hospitals, and university-based hospitals.

HER is analyzing a sample of the D.J. Sullivan database to determine whether it can be used for validating skin-to-skin time for selected surgical procedures. The selected procedures are high volume procedures or procedures on the RUC multispecialty list.

The MGMA Physician Profiling Database contains information at the physician practice level on the number of services by CPT code, physician specialty, and clinical work week. The database contains information on almost 4,000 physicians, primarily from Florida, Minnesota, New York, and Washington. Analysis will focus on comparing expected clinical times based on current time estimates attributable to CPT codes to total practice hours worked.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and we will respond to the major comments in the final rule.

VII. Regulatory Impact Analysis

We have examined the impacts of this proposed rule as required by Executive Order of 1993 (EO) 12866, the Unfunded Mandates Reform Act of 1995 (EO) 12875 (UMRA) (Public Law 104–4), the Regulatory Flexibility Act of 1980 (RFA) (Public Law 96–354) and the Federalism Executive Order of 1999 (EO) 13132.

EO 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). While the changes in the Medicare physician fee schedule are for the most part, budget neutral, they do involve redistribution of Medicare spending among procedures and physician specialties and geographic areas. However, the redistributive effect of this rule on any particular specialty or geographic area is, in our estimate, unlikely to exceed $100 million. The effect of the practice expense changes are estimated to increase payments to one specialty by about $90 million and decrease payments to another specialty by approximately $45 million. All other physician specialties will be affected by less than these amounts. The GPCI changes are expected to increase payments by less than $10 million in one locality and decrease payments by about $20 million in another locality. The effect on all other payment localities are likely to be less than these amounts. Since we estimate that these changes are unlikely to redistribute more than $100 million in Medicare allowed charges, we are not considering this proposed rule to be a major rule. However, we will reconsider this decision for the final rule if our estimates based on new data exceed $100 million.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more. We have determined that this proposed rule will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below the above stated threshold as well.

The RFA requires that we analyze regulatory options for small businesses and other small entities. We prepare a Regulatory Flexibility Analysis unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. The analysis must include a justification of why action is being taken, the kinds and number of small entities the rule affects, and an explanation of any meaningful options that achieve the objectives and lessen significant adverse economic impact on the small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

For purposes of the RFA, all physicians are considered to be small entities. There are about 700,000 physicians and other practitioners who receive Medicare payment under the physician fee schedule. We have prepared the following analysis, which, together with the rest of this preamble, meets all four assessment requirements. It explains the rationale for and purpose of the rule, details the costs and benefits of the rule, analyzes alternatives, and presents the measures we considered to minimize the burden on small entities.

A. Resource-Based Practice Expense Relative Value Units

Revisions in resource-based practice expense RVUs for physicians' services are calculated to be budget neutral, that

is, the total practice expense RVUs for calendar year 2001 are calculated to be the same as the total practice expense RVUs that we estimate would have occurred without the changes proposed in this regulation. This also means that increases in practice expense RVUs for some services will necessarily be offset by corresponding decreases in values for other services.

Table 1 shows the impact on total allowed charges by specialty of this proposed rule's practice expense changes. There are six changes that we made that have on effect on payment for practice expenses. We show the impact of each individual provision and the combined impact on the practice expense RVUs.

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Table 1 -- Impact of Specific Practice Expense Changes on Total Allowed Charges by Specialty

Specialty	Allowed Charges	Clinical Staff	Overhead Equipment	*Standby Equipment	Midlevel Practitioners	New SMS Data	Other	Total
ANESTHESIOLOGY	1.5	0%	-0%	0%	-1%	0%	-0%	-1%
CARDIAC SURGERY	0.3	-0	0	-0	-1	-2	0	-3
CARDIOLOGY	3.9	-0	-0	0	0	-0	-0	-0
CLINICS	1.5	-0	0	-0	0	0	-0	0
DERMATOLOGY	1.3	-0	1	-1	0	-0	0	-0
EMERGENCY MEDICINE	0.9	0	-0	0	0	-0	0	0
FAMILY PRACTICE	3.2	-0	0	-0	0	-0	-0	-0
GASTROENTEROLOGY	1.1	2	-0	-0	0	0	0	2
GENERAL PRACTICE	1.0	-0	0	-0	0	0	-0	0
GENERAL SURGERY	1.9	0	0	-0	-0	-0	-0	-1
HEMATOLOGY ONCOLOGY	0.6	-0	-0	-0	0	-0	-0	-1
INTERNAL MEDICINE	6.7	-0	-0	-0	0	-0	-0	-0
NEPHROLOGY	0.9	0	0	0	0	1	0	2
NEUROLOGY	0.8	-0	-1	-0	0	0	0	-0
NEUROSURGERY	0.3	-0	-0	-0	-0	-1	0	-1
OBSTETRICS/GYNECOLOGY	0.4	-0	-1	-0	0	-0	0	-1
OPHTHALMOLOGY	3.7	-0	0	0	0	-2	0	-1
ORTHOPEDIC SURGERY	2.2	-0	0	-0	-0	0	-0	-0
OTHER PHYSICIAN	1.3	-0	-0	-0	0	1	-0	1
OTOLARYNGOLOGY	0.6	-0	-0	-0	0	-1	-0	-1
PATHOLOGY	0.6	0	-1	1	0	-2	1	-1
PLASTIC SURGERY	0.2	-0	0	-0	0	0	-0	0
PSYCHIATRY	1.1	0	0	-0	0	-1	-0	-1
PULMONARY	1.0	0	-0	-0	0	-0	-0	-0
RADIATION ONCOLOGY	0.6	0	-0	0	0	0	0	1
RADIOLOGY	2.9	0	-0	0	0	3	-0	3
RHEUMATOLOGY	0.3	-0	-0	-0	0	0	-0	-1
THORACIC SURGERY	0.5	-0	0	-0	-1	-1	-0	-2
UROLOGY	1.3	-0	0	-0	0	-0	-0	-0
VASCULAR SURGERY	0.3	-0	-0	-0	-0	-0	-0	-1
OTHERS:								
CHIROPRACTOR	0.4	0	-0	-0	1	1	-0	1
NONPHYSICIAN PRACTITIONER	0.9	-0	0	0	0	3	-0	4
OPTOMETRIST	0.5	-0	0	0	0	-2	0	-2
PODIATRY	1.1	-0	0	-0	0	-0	0	0
SUPPLIERS	0.5	0	-3	2	0	-1	0	-1
Note: Total may not add due to rounding.								

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The column labeled "Clinical Staff" refers to the proposal discussed earlier with respect to clinical staff times and 0-day global surgical services. As we indicated, clinical staff times for pre- and postsurgical services provided in the office were reinstated to the estimates of practice expense inputs for individual procedures. This change has nearly a 2.0 percent increase in payments for gastroenterology and small positive or negative impacts for all other specialties. The negative impacts on some specialties offset the positive impact for other specialties.

The column labeled "Overhead Equipment" refers to the provision described earlier to remove the distinction between procedure specific and overhead equipment. As we indicated, this change is largely designed to simplify the refinement process and remove a distinction that was more relevant under the "bottom-up" rather than the "top-down" methodology for determining the practice expense RVUs. This proposal has some small impacts on a few specialties.

The column labeled "Standby Equipment" refers to our proposal to remove certain types of equipment from equipment inputs that are used to value individual procedure codes. These types of equipment are not typically used with any individual service, but are on "standby" or used for multiple services at the same time. This proposal also has some small impact on payments to a few specialties.

The column labeled "Midlevel Practitioners" refers to the provision we described earlier to remove utilization data associated with the provision of services by midlevel practitioners that are paid a percentage of the physician fee schedule amount. This change to the model would mean that we would no longer create separate practice expense pools for midlevel practitioners. It would also mean that specialty-specific practice expense RVUs for midlevel practitioners determined after the scaling factor adjustments are made would no longer be used in the weight averaging step.

The greater the extent that allowed services for midlevel practitioners represent a higher proportion of the total number of allowed services for a given code, the more likely this change will have an impact on the practice expense RVU for the service. In some cases, this change would mean that we are no longer weight averaging specialty-specific practice expense RVUs that are higher in value than the RVUs determined for the remaining physician specialties. This would cause the practice expense value for the service to decline in value from what would result from including higher specialty-specific practice expense RVUs for the midlevel practitioner. In general, the impact of this provision would be small for most specialties. The impact on specialty level payments are more likely for specialties that frequently perform services in conjunction with midlevel practitioners.

The column labeled "New SMS Data" refers to our proposal to recalculate the practice expense per hour data based on data from the 1995 through 1998 SMS. (We refer to the SMS based on its publication year. The practice expense data is actually from surveys performed the year prior to publication. For example, the 1998 SMS includes 1997 cost data.) As indicated in the table, this change would have an impact on specialty level payments. These changes in payment would be in the same direction as relative changes in the practice expense per hour. That is, an increase in practice expense per hour for a specialty relative to other specialties would result in increased payments for that specialty. For cardiac and thoracic surgery, there is an additional factor influencing the impact. As we indicated in the November 1999 final rule (64 FR 59391), we weight averaged 1998 SMS data from an oversample for cardiac and thoracic surgery with data from the 1996 and 1997 SMS. At that time, we did not use data from the 1995 SMS in determining the practice expense per hour. Since we are using 1995 through 1998 SMS data for all other physician specialties, we recalculated the practice expense per hour for cardiac and thoracic surgery using data from the 1995 through 1998 SMS. In addition, we are continuing to use 1998 SMS data from the oversample in this calculation.

The total impact column shows the product of each individual provision for the years 2001 and 2002 relative to continuing with our current policy. The figures may not add due to rounding. Table 2 shows the total impact over the 2001 and 2002 period of these changes and the 2001 impact. The difference between the two columns reflects the effect of the transition to fully implemented practice expense RVUs. That is, the impact in the 2001 column will reflect 75 percent of the impact on the fully implemented RVUs. These impacts are in addition to the impacts announced in previous rules related to the adoption of resource-based practice relative value units.

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Table 3
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Table 2 -- Impact of Practice Expense Changes Transition and 2001-2002 Impact

Specialty	Allowed Charges	Year 2001 Impact	2001-2002 Impact
ANESTHESIOLOGY	1.5	-1%	-1%
CARDIAC SURGERY	0.3	-2	-3
CARDIOLOGY	3.9	-0	-0
CLINICS	1.5	0	0
DERMATOLOGY	1.3	-0	-0
EMERGENCY MEDICINE	0.8	0	0
FAMILY PRACTICE	3.2	-0	-0
GASTROENTEROLOGY	1.1	2	2
GENERAL PRACTICE	1.0	0	0
GENERAL SURGERY	1.9	-0	-1
HEMATOLOGY ONCOLOGY	0.6	-0	-1
INTERNAL MEDICINE	6.7	-0	-0
NEPHROLOGY	0.9	1	2
NEUROLOGY	0.8	-0	-0
NEUROSURGERY	0.3	-1	-1
OBSTETRICS/GYNECOLOGY	0.4	-1	-1
OPHTHALMOLOGY	3.8	-1	-1
ORTHOPEDIC SURGERY	2.2	-0	-0
OTHER PHYSICIAN	1.3	0	1
OTOLARYNGOLOGY	0.6	-1	-1
PATHOLOGY	0.6	-0	-1
PLASTIC SURGERY	0.2	0	0
PSYCHIATRY	1.1	-0	-1
PULMONARY	1.0	-0	-0
RADIATION ONCOLOGY	0.5	1	1
RADIOLOGY	2.9	2	3
RHEUMATOLOGY	0.3	-1	-1
THORACIC SURGERY	0.5	-2	-2
UROLOGY	1.3	-0	-0
VASCULAR SURGERY	0.3	-1	-1
OTHERS:			
CHIROPRACTOR	0.4	1	1
NONPHYSICIAN PRACTITIONER	0.9	3	4
OPTOMETRIST	0.5	-1	-2
PODIATRY	1.1	0	0
SUPPLIERS	0.5	-1	-1

Table 3 shows the impact on payments for selected high volume procedures of all of the practice expense changes previously discussed. This table isolates the impact of the practice expense changes only on payments. It does not show what actual payments for these procedures will be in 2001 because the payment calculations do not include the effect of the transition or the impact of the physician fee schedule update which is unknown at this time.

Table 3 -- Total Payment for Selected Procedures

Code	Mod	Description	Old Non-facility	New Non-facility	Percent Change	Old Facility	New Facility	Percent Change
11721		Debride nail, 6 or more	39.542796	39.908933	0.009	28.924823	28.924823	0
17000		Destroy benign/premal lesion	60.046468	58.948057	-1.8293	32.586193	32.586193	0
27130		Total hip replacement	NA	NA	NA	1448.0718	1435.9893	-0.834
27236		Treat thigh fracture	NA	NA	NA	1082.6671	1079.3719	-0.304
27244		Treat thigh fracture	NA	NA	NA	1098.411	1097.3126	-0.1
27447		Total knee replacement	NA	NA	NA	1518.3701	1505.5553	-0.844
33533		CABG, arterial, single	NA	NA	NA	1853.7516	1803.957	-2.686
35301		Rechanneling of artery	NA	NA	NA	1126.2374	1112.3242	-1.235
43239		Upper GI endoscopy, biopsy	250.071571	288.149819	15.2269	142.06116	152.31299	7.2165
45385		Lesion removal colonoscopy	465.726264	482.934703	3.69497	278.63026	291.44505	4.5992
66821		After cataract laser surgery	203.938309	208.69809	2.33393	177.94258	185.63146	4.321
66984		Remove cataract/insert lens	NA	NA	NA	665.27093	665.27093	0
67210		Treatment of retinal lesion	603.027639	602.661502	-0.061	551.03619	550.67005	-0.07
71010	26	Chest x-ray	8.787288	9.153425	4.16667	8.787288	9.153425	4.1667
71020		Chest x-ray	34.416878	35.149152	2.12766	NA	NA	NA
71020	26	Chest x-ray	10.617973	11.350247	6.89655	10.617973	11.350247	6.8966
77430		Weekly radiation therapy	189.292829	190.757377	0.77369	189.29283	190.75738	0.7737
78465		Heart image (3d), multiple	528.335691	533.461609	0.9702	NA	NA	NA
88305		Tissue exam by pathologist	82.014688	87.140606	6.25	NA	NA	NA
88305	26	Tissue exam by pathologist	41.007344	40.641207	-0.8929	41.007344	40.641207	-0.893
90801		Psy dx interview	146.088663	144.990252	-0.7519	138.76592	138.39979	-0.264
90806		Psytx, off, 45-50 min	98.124716	97.392442	-0.7463	94.097209	93.731072	-0.389
90807		Psytx, off, 45-50 min w/e&m	103.982908	103.250634	-0.7042	99.589264	99.223127	-0.368
90862		Medication management	51.625317	50.893043	-1.4184	47.231673	46.865536	-0.775
90921		ESRD related services, month	259.95727	260.689544	0.28169	259.95727	260.68954	0.2817
90935		Hemodialysis, one evaluation	NA	NA	NA	62.24329	74.325811	19.412
92004		Eye exam, new patient	123.022032	116.797703	-5.0595	87.140606	86.774469	-0.42
92012		Eye exam established pat	63.707838	64.440112	1.14943	36.6137	36.247563	-1
92014		Eye exam & treatment	90.435839	91.53425	1.21457	58.948057	58.58192	-0.621
92980		Insert intracoronary stent	NA	NA	NA	809.52891	809.89504	0.045
92982		Coronary artery dilation	NA	NA	NA	608.15356	608.88583	0.1204
93000		Electrocardiogram, complete	26.361864	26.361864	0	NA	NA	NA
93010		Electrocardiogram report	8.787288	9.153425	4.16667	8.787288	9.153425	4.1667
93015		Cardiovascular stress test	105.081319	105.447456	0.34843	NA	NA	NA
93307		Echo exam of heart	199.910802	200.643076	0.3663	NA	NA	NA
93307	26	Echo exam of heart	50.160769	50.160769	0	50.160769	50.160769	0
93510	26	Left heart catheterization	232.130858	232.130858	0	232.13086	232.13086	0
98941		Chiropractic manipulation	34.783015	35.515289	2.10526	30.389371	30.755508	1.2048
99202		Office/outpatient visit, new	72.495126	69.932167	-3.5354	45.400988	45.400988	0
99203		Office/outpatient visit, new	101.786086	98.490853	-3.2374	68.833756	68.833756	0
99204		Office/outpatient visit, new	144.257978	139.13206	-3.5533	101.78609	102.15222	0.3597
99205		Office/outpatient visit, new	177.942582	170.619842	-4.1152	134.37228	134.73842	0.2725
99211		Office/outpatient visit, est	25.62959	26.728001	4.28571	9.153425	9.153425	0
99212		Office/outpatient visit, est	38.810522	39.176659	0.9434	23.066631	23.066631	0
99213		Office/outpatient visit, est	51.625317	51.991454	0.70922	33.684604	34.050741	1.087
99214		Office/outpatient visit, est	80.55014	76.88877	-4.5455	55.652824	56.018961	0.6579
99215		Office/outpatient visit, est	114.967018	112.037922	-2.5478	89.703565	89.703565	0
99221		Initial hospital care	NA	NA	NA	65.172386	65.538523	0.5618

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B. Geogra Changes

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Code	Mod	Description	Old Non-facility	New Non-facility	Percent Change	Old Facility	New Facility	Percent Change
99222		Initial hospital care	NA	NA	NA	108.01042	108.37655	0.339
99223		Initial hospital care	NA	NA	NA	149.3839	149.75003	0.2451
99231		Subsequent hospital care	NA	NA	NA	32.586193	32.586193	0
99232		Subsequent hospital care	NA	NA	NA	53.456002	53.456002	0
99233		Subsequent hospital care	NA	NA	NA	75.790359	76.156496	0.4831
99236		Observ/hosp same date	NA	NA	NA	212.35946	212.7256	0.1724
99238		Hospital discharge day	NA	NA	NA	64.073975	64.073975	0
99239		Hospital discharge day	NA	NA	NA	87.140606	87.506743	0.4202
99241		Office consultation	61.877153	58.58192	-5.3254	33.684604	34.050741	1.087
99242		Office consultation	101.419949	96.660168	-4.6931	67.003071	67.369208	0.5464
99243		Office consultation	128.14795	121.191347	-5.4286	89.337428	89.703565	0.4098
99244		Office consultation	175.74576	169.155294	-3.75	131.44318	132.17546	0.5571
99245		Office consultation	221.879022	216.386967	-2.4752	175.37962	176.47803	0.6263
99251		Initial inpatient consult	NA	NA	NA	36.979837	36.979837	0
99252		Initial inpatient consult	NA	NA	NA	71.396715	71.396715	0
99253		Initial inpatient consult	NA	NA	NA	97.026305	97.026305	0
99254		Initial inpatient consult	NA	NA	NA	138.03365	138.39979	0.2653
99255		Initial inpatient consult	NA	NA	NA	188.92669	189.65897	0.3876
99261		Follow-up inpatient consult	NA	NA	NA	23.432768	23.432768	0
99262		Follow-up inpatient consult	NA	NA	NA	45.400988	45.400988	0
99263		Follow-up inpatient consult	NA	NA	NA	66.270797	66.270797	0
99282		Emergency dept visit	NA	NA	NA	26.361864	26.361864	0
99283		Emergency dept visit	NA	NA	NA	58.215783	58.215783	0
99284		Emergency dept visit	NA	NA	NA	90.801976	91.168113	0.4032
99285		Emergency dept visit	NA	NA	NA	140.96275	141.32888	0.2597
99291		Critical care, first hour	185.631459	185.997596	0.19724	177.21031	177.94258	0.4132
99292		Critical care, addl 30 min	94.829483	94.829483	0	87.87288	88.239017	0.4167
99301		Nursing facility care	NA	NA	NA	59.680331	59.680331	0
99302		Nursing facility care	NA	NA	NA	79.817866	80.184003	0.4587
99303		Nursing facility care	NA	NA	NA	99.589264	99.955401	0.3676
99311		Nursing fac care, subseq	NA	NA	NA	30.023234	30.023234	0
99312		Nursing fac care, subseq	NA	NA	NA	49.428495	49.428495	0
99313		Nursing fac care, subseq	NA	NA	NA	70.298304	70.664441	0.5208
99348		Home visit, est patient	72.128989	71.762852	-0.5076	66.270797	66.270797	0
99350		Home visit, est patient	162.564828	162.198691	-0.2252	153.04527	153.4114	0.2392

BILLING CODE 4120–01–C

B. Geographic Practice Cost Index Changes

Section 1848(e)(1)(A) of the Act requires that payments under the Medicare physician fee schedule vary among payment areas only to the extent that area costs vary as reflected by the area GPCIs. The GPCIs measure area cost differences in the three components of the physician fee schedule: physician work, practice expenses (employee wages, rent, medical supplies, and equipment), and malpractice insurance. Section 1848(e)(1)(C) of the Act requires that the GPCIs be reviewed and, if necessary, revised at least every 3 years. The first GPCI revision was implemented in 1995. The second revision was implemented in 1998, and the next revision will be implemented in 2001. Section 1848(e)(1)(C) of the Act also requires that the GPCI revisions be phased in equally over a 2-year period if more than one year has elapsed since the last adjustment.

An estimate of the overall effects of proposed GPCI changes on fee schedule area payments can be demonstrated by a comparison of area geographic adjustment factors (GAFs). The GAFs are a weighted composite of each area's work, practice expense, and malpractice expense GPCIs using the national GPCI cost share weights. While not actually used in computing the fee schedule payment for a specific service, the GAFs are useful in comparing overall area costs and payments. The actual effect on payment for any actual service will deviate from the GAF to the extent that the service's proportions of work, practice expense, and malpractice expense RVUs differ from those of the GAF. Addendum H shows the estimated effects of the proposed GPCIs on area GAFs in descending order.

Only 14 of the 89 fee schedule areas would change by at least 2 percent. Only 16 areas would change by from 1 to 1.9 percent. The remaining 59 areas are estimated to experience payment changes of less than 1 percent under the proposed changes. These are very minor changes that would be expected in that we are revising only the rent indices, comprising 11.6 percent of the total GPCI, and the malpractice expense indices, comprising 3.2 percent of the GPCI. Thus, only about 15 percent of the GPCI would be subject to change. The effects in the transition year 2001, would only be one-half of these amounts as the proposed revised GPCIs would be phased in over a 2-year period as required by law.

C. Resource-Based Malpractice Relative Value Units

As indicated earlier, we are currently examining the more recent malpractice data. The malpractice RVUs in the fall final rule will reflect the newer data and the refinements made as a result of comments made on last year's rules.

While we anticipate there would be little impact, this would be fully discussed in the final rule.

D. Critical Care Relative Value Units

As we explained earlier in the preamble in the November 1999 final rule, we established interim work RVUs for 2000 for CPT codes 99291 and 99292 (critical care services). These RVUs were decreased due to concerns about changes in the CPT definition for these services. In this proposed rule, based on changes the Panel is making to the definition for critical care for CY 2001, we are proposing to increase the work RVUs for critical care services and value the physician work at 4.0 RVUs for CPT code 99291 and 2.0 RVUs for CPT code 99292. Any impact of this proposal would be incorporated in the physician fee budget neutrality calculation.

E. Care Plan Oversight

We are proposing to establish two new HCPCS codes for care plan oversight that are consistent with our coverage criteria. We would also establish two new HCPCS codes to describe the services involved in physician certification or recertification and development of a plan of care for a patient for whom the physician has prescribed Medicare-covered home health services.

We are assuming there would be no additional cost or savings as a result of the two new HCPCS codes for care plan oversight. We are merely instituting these codes for consistency with our coverage criteria, and they would be used in place of the CPT codes when these services are provided.

For the new HCPCS codes for physician certification or recertification and development of a plan of care, the payment for these services is currently included in the payment for a variety of services such as E/M that are provided independently to patients as part of a global surgical service. Under this proposal, we would instead pay separately. Since we are proposing to pay separately for a service that is currently included in our payment for other services, this proposal would increase Medicare expenditures for physicians' services without an adjustment to the physician fee schedule CF. For this reason, we are proposing to adjust the physician fee schedule CF to ensure that Medicare payments for physicians' services do not increase as a result of this proposal.

F. Observation Care Codes

Our proposal is budget-neutral. We believe physicians have not been billing for the discharge component of a hospital or observation stay of less than 24 hours so those physicians would be seeing an increase in payment. However, physicians who have been billing 99234 to 99236 and physicians who have been billing 99238 or 99217 for stays less than 24 hours in length (for example, where the patient was in the hospital at the time of the midnight census) would see a small reduction in payment. This policy clarification will give clear guidance to physicians and Medicare contractors in reviewing medical records and would assure consistent payment across contractors.

G. Ocular Photodynamic Therapy and Other Ophthalmological Treatments

As previously stated, we would establish national HCPCS codes and payment amounts for ocular photodynamic therapy. If we did not establish national codes and pricing for this procedure, carriers that determined that this procedure is covered would use unlisted codes and determine pricing locally. There will be no budget effects associated with establishing national codes and payment amounts for this service since national pricing would substitute for use of unlisted codes and carrier pricing.

H. Electrical Bioimpedance

As stated earlier, we are establishing a national payment amount for electrical bioimpedance. This change will have little impact on the Medicare program costs. It establishes national pricing amounts for a service currently priced by carriers.

I. Global Period for Insertion, Removal, and Replacement of Pacemakers and Cardioverter Defibrillators

We are proposing to change the global period for certain CPT codes involving the insertion, removal, and replacement of pacemakers and cardioverter defibrillators from 90 days to 0 days. We would also implement interim RVUs to account for the change in the global period from 90 to 0 days. Since we are making RVU adjustments to accommodate the change in global period, we do not anticipate any costs or savings. There is no redistributive impact of this proposal since it only affects physicians that insert, remove or replace pacemakers or cardioverter defibrillators.

J. Antigen Supply

Our proposal to change from a 12-week to a 12-month supply of antigen could benefit beneficiaries since they could obtain a year's supply of medication in a single visit. We anticipate that this proposed change would have no impact on program costs. There is no redistributive impact of this proposal since it only aggregates four prescriptions into one and the cost to the beneficiary remains the same.

Other issues mentioned in the preamble are merely discussions or clarifications and, therefore, have no budgetary impact.

Budget-Neutrality

Each year since the fee schedule has been implemented, our actuaries have determined any adjustments needed to meet the budget-neutrality requirement of the statute. A component of the actuarial determination of budget-neutrality involves estimating the impact of changes in the volume-and-intensity of physicians' services provided to Medicare beneficiaries as a result of the proposed changes. Consistent with the provision in the November 1998 final rule, the actuaries would use a model that assumes a 30 percent volume-and-intensity response to price reductions.

Impact on Beneficiaries

Although changes in physicians' payments when the physician fee schedule was implemented in 1992 were large, we detected no problems with beneficiary access to care. Furthermore, since beginning our transition to a resource-based practice expense system in 1999, we have not found that there are problems with beneficiary access to care.

VIII. Federalism

We have reviewed this proposed rule under the threshold criteria of EO 13132, Federalism, and we have determined that the proposed rule does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare,

Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, HCFA proposes to amend 42 CFR chapter IV as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.68, republish the introductory text and revise the introductory text for paragraph (b) to read as follows:

§ 410.68 Antigens: Scope and conditions.

Medicare Part B pays for—

* * * * *

(b) A supply of antigen sufficient for not more than 12 months that is—

* * * * *

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395(hh), and 1395rr(b)(1).

2. Revise § 414.22(b)(5)(i) to read as follows:

§ 414.22 Relative value units (RVUs).

* * * * *

(b) * * *

(5) * * *

(i) Usually there are two levels of practice expense RVUs that correspond to each code.

(A) *Facility practice expense RVUs.* The lower facility practice expense RVUs apply to services furnished to patients in the hospital, skilled nursing facility, community mental health center, or in an ambulatory surgical center when the physician performs procedures on the ASC approved procedures list. (The facility practice expense RVUs for a particular code may not be greater than the non-facility RVUs for the code.)

(B) *Non-facility practice expense RVUs.* The higher non-facility practice expense RVUs apply to services performed in the following settings: a physician's office, a patient's home, an ASC if the physician is performing a procedure not on the ASC approved procedures list, a nursing facility, or a facility or institution other than a hospital or skilled nursing facility.

(C) *Outpatient therapy services.* Outpatient therapy services billed under the physician fee schedule are paid using the non-facility practice expense RVU component.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 25, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 26, 2000.

Donna E. Shalala,

Secretary.

Note: These addenda will not appear in the Code of Federal Regulations.

Addendum A—Explanation and Use of Addendum B

The addenda on the following pages provide various data pertaining to the Medicare fee schedule for physicians' services furnished in 2001. Addendum B contains the RVUs for work, non-facility practice expense, facility practice expense, and malpractice expense, and other information for all services included in the physician fee schedule.

Addendum B—2001 Relative Value Units and Related Information Used in Determining Medicare Payments for 2001

This addendum contains the following information for each CPT code and alphanumeric HCPCS code, except for alphanumeric codes beginning with B (enteral and parenteral therapy), E (durable medical equipment), K (temporary codes for nonphysicians' services or items), or L (orthotics), and codes for anesthesiology.

1. *CPT/HCPCS code.* This is the CPT or alphanumeric HCPCS number for the service. Alphanumeric HCPCS codes are included at the end of this addendum.

2. *Modifier.* A modifier is shown if there is a technical component (modifier TC) and a professional component (PC) (modifier –26) for the service. If there is a PC and TC for the service, Addendum B contains three entries for the code: One for the global values (both professional and technical); one for modifier –26 (PC); and one for modifier TC. The global service is not designated by a modifier, and physicians must bill using the code without a modifier if the physician furnishes both the PC and the TC of the service.

Modifier –53 is shown for a discontinued procedure. There will be RVUs for the code (CPT code 45378) with this modifier.

3. *Status indicator.* This indicator shows whether the CPT/HCPCS code is in the physician fee schedule and whether it is separately payable if the service is covered.

A = Active code. These codes are separately payable under the fee schedule if covered. There will be RVUs for codes with this status. The presence of an "A" indicator does not mean that Medicare has made a national decision regarding the coverage of the service. Carriers remain responsible for coverage decisions in the absence of a national Medicare policy.

B = Bundled code. Payment for covered services is always bundled into payment for other services not specified. If RVUs are shown, they are not used for Medicare payment. If these services are covered, payment for them is subsumed by the payment for the services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient.)

C = Carrier-priced code. Carriers will establish RVUs and payment amounts for these services, generally on a case-by-case basis following review of documentation, such as an operative report.

D = Deleted code. These codes are deleted effective with the beginning of the calendar year.

E = Excluded from physician fee schedule by regulation. These codes are for items or services that we chose to exclude from the physician fee schedule payment by regulation. No RVUs are shown, and no payment may be made under the physician fee schedule for these codes. Payment for them, if they are covered, continues under reasonable charge or other payment procedures.

G = Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code for reporting of, and payment for, these services.

N = Noncovered service. These codes are noncovered services. Medicare payment may not be made for these codes. If RVUs are shown, they are not used for Medicare payment.

P= Bundled or excluded code. There are no RVUs for these services. No separate payment should be made for them under the physician fee schedule.

—If the item or service is covered as incident to a physician's service and is furnished on the same day as a physician's service, payment for it is bundled into the payment for the physician's service to which it is

incident (an example is an elastic bandage furnished by a physician incident to a physician's service).

—If the item or service is covered as other than incident to a physician's service, it is excluded from the physician fee schedule (for example, colostomy supplies) and is paid under the other payment provisions of the Act.

R = Restricted coverage. Special coverage instructions apply. If the service is covered and no RVUs are shown, it is carrier-priced.

T = Injections. There are RVUs for these services, but they are only paid if there are no other services payable under the physician fee schedule billed on the same date by the same provider. If any other services payable under the physician fee schedule are billed on the same date by the same provider, these services are bundled into the service(s) for which payment is made.

X = Exclusion by law. These codes represent an item or service that is not within the definition of "physicians' services" for physician fee schedule payment purposes. No RVUs are shown for these codes, and no payment may be made under the physician fee schedule. (Examples are ambulance services and clinical diagnostic laboratory services.)

4. *Description of code.* This is an abbreviated version of the narrative description of the code.

5. *Physician work RVUs.* These are the RVUs for the physician work for this service in 2001. Codes that are not used for Medicare payment are identified with a "+."

6. *Fully implemented non-facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for non-facility settings.

7. *Year 2001 Transition non-facility practice expense RVUs.* Blended non-facility practice expense RVUs for use in 2001.

8. *Fully implemented facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for facility settings.

9. *Year 2001 transition facility practice expense RVUs.* Blended facility practice expense RVUs for use in 2001.

10. *Malpractice expense RVUs.* These are the RVUs for the malpractice expense for the service for 2001.

11. *Fully implemented non-facility total.* This is the sum of the work, fully implemented non-facility practice expense, and malpractice expense RVUs.

12. *Year 2001 transition non-facility total.* This is the sum of the work, transition non-facility practice expense, and malpractice expense RVUs for use in 2001.

13. *Fully implemented facility total.* This is the sum of the work, fully implemented facility practice expense, and malpractice expense RVUs.

14. *Year 2001 transition facility total.* This is the sum of the work, transition facility practice expense, and malpractice expense RVUs for use in 2001.

15. *Global period.* This indicator shows the number of days in the global period for the code (0, 10, or 90 days). An explanation of the alpha codes follows:

MMM = The code describes a service furnished in uncomplicated maternity cases including antepartum care, delivery, and postpartum care. The usual global surgical concept does not apply. See the 1999 Physicians' Current Procedural Terminology for specific definitions.

XXX = The global concept does not apply.

YYY = The global period is to be set by the carrier (for example, unlisted surgery codes).

ZZZ = The code is part of another service and falls within the global period for the other service.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
10120		A	Remove foreign body	1.22	1.67	1.38	0.67	0.63	0.10	2.99	2.70	1.99	1.95	010
10121		A	Remove foreign body	2.69	2.61	2.23	1.70	1.55	0.24	5.54	5.16	4.63	4.48	010
10140		A	Drainage of hematoma/fluid	1.53	1.32	1.12	0.82	0.75	0.11	2.96	2.76	2.46	2.39	010
10160		A	Puncture drainage of lesion	1.20	1.45	1.19	0.73	0.65	0.09	2.74	2.48	2.02	1.94	010
10180		A	Complex drainage, wound	2.25	1.32	1.28	1.24	1.22	0.23	3.80	3.76	3.72	3.70	010
11000		A	Debride infected skin	0.60	0.52	0.50	0.24	0.29	0.04	1.16	1.14	0.88	0.93	000
11001		A	Debride infected skin add-on	0.30	0.29	0.29	0.12	0.16	0.02	0.61	0.61	0.44	0.48	ZZZ
11010		A	Debride skin, fx	4.20	2.39	2.87	2.10	2.65	0.36	6.95	7.43	6.66	7.21	010
11011		A	Debride skin/muscle, fx	4.95	3.67	4.03	2.61	3.24	0.48	9.10	9.46	8.04	8.67	000
11012		A	Debride skin/muscle/bone, fx	6.88	4.94	5.49	4.14	4.89	0.71	12.53	13.08	11.73	12.48	000
11040		A	Debride skin, partial	0.50	0.45	0.45	0.21	0.27	0.03	0.98	0.98	0.74	0.80	000
11041		A	Debride skin, full	0.82	0.61	0.61	0.33	0.40	0.06	1.49	1.49	1.21	1.28	000
11042		A	Debride skin/tissue	1.12	0.85	0.82	0.46	0.52	0.09	2.06	2.03	1.67	1.73	000
11043		A	Debride tissue/muscle	2.38	2.41	2.30	1.38	1.53	0.22	5.01	4.90	3.98	4.13	010
11044		A	Debride tissue/muscle/bone	3.06	3.11	3.10	1.81	2.12	0.30	6.47	6.46	5.17	5.48	010
11055		R	Trim skin lesion	0.27	0.34	0.33	0.12	0.16	0.02	0.63	0.62	0.41	0.45	000
11056		R	Trim skin lesions, 2 to 4	0.39	0.38	0.38	0.16	0.22	0.03	0.80	0.80	0.58	0.64	000
11057		R	Trim skin lesions, over 4	0.50	0.42	0.39	0.21	0.23	0.03	0.95	0.92	0.74	0.76	000
11100		A	Biopsy of skin lesion	0.81	1.47	1.24	0.38	0.42	0.04	2.32	2.09	1.23	1.27	000
11101		A	Biopsy, skin add-on	0.41	0.68	0.59	0.20	0.23	0.02	1.11	1.02	0.63	0.66	ZZZ
11200		A	Removal of skin tags	0.77	1.03	0.89	0.31	0.35	0.04	1.84	1.70	1.12	1.16	010
11201		A	Remove skin tags add-on	0.29	0.42	0.36	0.12	0.14	0.02	0.73	0.67	0.43	0.45	ZZZ
11300		A	Shave skin lesion	0.51	0.98	0.88	0.22	0.31	0.03	1.52	1.42	0.76	0.85	000
11301		A	Shave skin lesion	0.85	1.08	0.99	0.40	0.48	0.04	1.97	1.88	1.29	1.37	000
11302		A	Shave skin lesion	1.05	1.18	1.13	0.48	0.60	0.05	2.28	2.23	1.58	1.70	000
11303		A	Shave skin lesion	1.24	1.29	1.34	0.56	0.79	0.06	2.59	2.84	1.86	2.09	000
11305		A	Shave skin lesion	0.67	0.78	0.73	0.29	0.36	0.04	1.49	1.44	1.00	1.07	000
11306		A	Shave skin lesion	0.99	1.03	0.97	0.44	0.52	0.05	2.07	2.01	1.48	1.56	000
11307		A	Shave skin lesion	1.14	1.13	1.10	0.51	0.64	0.05	2.32	2.29	1.70	1.83	000
11308		A	Shave skin lesion	1.41	1.21	1.29	0.62	0.85	0.07	2.69	2.77	2.10	2.33	000
11310		A	Shave skin lesion	0.73	1.08	1.00	0.34	0.44	0.04	1.85	1.77	1.11	1.21	000
11311		A	Shave skin lesion	1.05	1.19	1.12	0.51	0.61	0.05	2.29	2.22	1.61	1.71	000
11312		A	Shave skin lesion	1.20	1.27	1.26	0.58	0.74	0.05	2.52	2.51	1.83	1.99	000

[1] CPT codes and descriptions only are copyright 2000 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
11313		A	Shave skin lesion	1.62	1.51	1.54	0.76	0.98	0.08	3.21	3.24	2.46	2.68	000
11400		A	Removal of skin lesion	0.91	2.30	1.87	0.71	0.68	0.07	3.28	2.85	1.69	1.66	010
11401		A	Removal of skin lesion	1.32	2.34	1.94	0.87	0.84	0.10	3.76	3.36	2.29	2.26	010
11402		A	Removal of skin lesion	1.61	2.42	2.06	0.95	0.96	0.11	4.14	3.78	2.67	2.68	010
11403		A	Removal of skin lesion	1.92	2.63	2.29	1.08	1.13	0.15	4.70	4.36	3.15	3.20	010
11404		A	Removal of skin lesion	2.20	2.78	2.46	1.17	1.25	0.18	5.16	4.84	3.55	3.63	010
11406		A	Removal of skin lesion	2.76	3.07	2.81	1.39	1.55	0.25	6.08	5.82	4.40	4.56	010
11420		A	Removal of skin lesion	1.06	1.92	1.58	0.76	0.71	0.08	3.06	2.72	1.90	1.85	010
11421		A	Removal of skin lesion	1.53	2.25	1.88	0.97	0.92	0.11	3.89	3.52	2.61	2.56	010
11422		A	Removal of skin lesion	1.76	2.44	2.09	1.04	1.04	0.12	4.32	3.97	2.92	2.92	010
11423		A	Removal of skin lesion	2.17	2.73	2.40	1.21	1.26	0.17	5.07	4.74	3.55	3.60	010
11424		A	Removal of skin lesion	2.62	2.87	2.53	1.38	1.41	0.20	5.69	5.35	4.20	4.23	010
11426		A	Removal of skin lesion	3.78	3.51	3.13	1.85	1.89	0.32	7.61	7.23	5.95	5.99	010
11440		A	Removal of skin lesion	1.15	2.45	2.03	0.92	0.88	0.08	3.68	3.26	2.15	2.11	010
11441		A	Removal of skin lesion	1.61	2.59	2.17	1.14	1.09	0.11	4.31	3.89	2.86	2.81	010
11442		A	Removal of skin lesion	1.87	2.66	2.30	1.24	1.24	0.13	4.66	4.30	3.24	3.24	010
11443		A	Removal of skin lesion	2.49	3.12	2.73	1.54	1.55	0.18	5.79	5.40	4.21	4.22	010
11444		A	Removal of skin lesion	3.42	3.55	3.06	1.93	1.85	0.25	7.22	6.73	5.60	5.52	010
11446		A	Removal of skin lesion	4.49	4.02	3.50	2.45	2.32	0.32	8.83	8.31	7.26	7.13	010
11450		A	Removal, sweat gland lesion	2.73	3.83	3.60	1.08	1.54	0.24	6.80	6.57	4.05	4.51	090
11451		A	Removal, sweat gland lesion	3.95	4.79	4.38	1.56	1.96	0.37	9.11	8.70	5.88	6.28	090
11462		A	Removal, sweat gland lesion	2.51	3.82	3.52	1.01	1.41	0.23	6.56	6.26	3.75	4.15	090
11463		A	Removal, sweat gland lesion	3.95	5.26	4.49	1.63	1.77	0.39	9.60	8.83	5.97	6.11	090
11470		A	Removal, sweat gland lesion	3.25	4.28	3.97	1.30	1.73	0.31	7.84	7.53	4.86	5.29	090
11471		A	Removal, sweat gland lesion	4.41	5.38	4.70	1.81	2.03	0.42	10.21	9.53	6.64	6.86	090
11600		A	Removal of skin lesion	1.41	2.47	2.16	0.97	1.04	0.09	3.97	3.66	2.47	2.54	010
11601		A	Removal of skin lesion	1.93	2.56	2.30	1.09	1.20	0.11	4.60	4.34	3.13	3.24	010
11602		A	Removal of skin lesion	2.09	2.62	2.46	1.29	1.46	0.12	4.83	4.67	3.50	3.67	010
11603		A	Removal of skin lesion	2.35	2.79	2.70	1.36	1.63	0.15	5.29	5.20	3.86	4.13	010
11604		A	Removal of skin lesion	2.58	2.96	2.92	1.44	1.78	0.18	5.72	5.68	4.20	4.54	010
11606		A	Removal of skin lesion	3.43	3.50	3.47	1.75	2.16	0.28	7.21	7.18	5.46	5.87	010
11620		A	Removal of skin lesion	1.34	2.44	2.19	0.99	1.11	0.09	3.87	3.62	2.42	2.54	010
11621		A	Removal of skin lesion	1.97	2.59	2.42	1.24	1.41	0.11	4.67	4.50	3.32	3.49	010
11622		A	Removal of skin lesion	2.34	2.75	2.66	1.45	1.69	0.14	5.23	5.14	3.93	4.17	010
11623		A	Removal of skin lesion	2.93	2.70	2.73	1.69	1.97	0.20	5.83	5.86	4.82	5.10	010
11624		A	Removal of skin lesion	3.43	3.01	3.13	1.91	2.30	0.25	6.69	6.81	5.59	5.98	010
11626		A	Removal of skin lesion	4.30	3.96	3.90	2.29	2.64	0.34	8.60	8.54	6.93	7.28	010
11640		A	Removal of skin lesion	1.53	2.53	2.35	1.16	1.32	0.10	4.16	3.98	2.79	2.95	010
11641		A	Removal of skin lesion	2.44	2.88	2.73	1.61	1.78	0.14	5.46	5.31	4.19	4.36	010
11642		A	Removal of skin lesion	2.93	2.79	2.79	1.82	2.06	0.16	5.90	5.90	4.93	5.17	010
11643		A	Removal of skin lesion	3.50	3.12	3.16	2.10	2.39	0.24	6.86	6.90	5.84	6.13	010
11644		A	Removal of skin lesion	4.55	3.74	3.76	2.60	2.90	0.32	8.61	8.63	7.47	7.77	010
11646		A	Removal of skin lesion	5.95	4.94	4.88	3.31	3.66	0.46	11.35	11.29	9.72	10.07	010
11719		R	Trim nail(s)	0.11	0.48	0.43	0.04	0.10	0.01	0.60	0.55	0.16	0.22	000
11720		A	Debride nail, 1–5	0.32	0.40	0.39	0.13	0.19	0.02	0.74	0.73	0.47	0.53	000
11721		A	Debride nail, 6 or more	0.54	0.51	0.53	0.21	0.31	0.04	1.09	1.11	0.79	0.89	000
11730		A	Removal of nail plate	1.13	0.72	0.66	0.45	0.46	0.07	1.92	1.86	1.65	1.66	000
11732		A	Remove nail plate, add-on	0.57	0.28	0.28	0.23	0.24	0.04	0.89	0.89	0.84	0.85	ZZZ
11740		A	Drain blood from under nail	0.37	0.64	0.59	0.14	0.21	0.03	1.04	0.99	0.54	0.61	000
11750		A	Removal of nail bed	1.86	1.49	1.69	0.78	1.16	0.12	3.47	3.67	2.76	3.14	010
11752		A	Remove nail bed/finger tip	2.67	1.84	2.15	1.65	2.00	0.20	4.71	5.02	4.52	4.87	010
11755		A	Biopsy, nail unit	1.31	0.97	1.00	0.57	0.70	0.08	2.36	2.39	1.96	2.09	000
11760		A	Repair of nail bed	1.58	1.54	1.41	1.13	1.10	0.13	3.25	3.12	2.84	2.81	010
11762		A	Reconstruction of nail bed	2.89	1.97	2.18	1.75	2.01	0.20	5.06	5.27	4.84	5.10	010
11765		A	Excision of nail fold, toe	0.69	0.93	0.84	0.42	0.45	0.05	1.67	1.58	1.16	1.19	010
11770		A	Removal of pilonidal lesion	2.61	2.77	2.80	1.27	1.68	0.24	5.62	5.65	4.12	4.53	010
11771		A	Removal of pilonidal lesion	5.74	5.00	4.98	3.95	4.19	0.55	11.29	11.27	10.24	10.48	090
11772		A	Removal of pilonidal lesion	6.98	5.85	5.70	4.45	4.65	0.70	13.53	13.38	12.13	12.33	090
11900		A	Injection into skin lesions	0.52	0.69	0.59	0.22	0.23	0.02	1.23	1.13	0.76	0.77	000
11901		A	Added skin lesions injection	0.80	0.82	0.73	0.37	0.39	0.03	1.65	1.56	1.20	1.22	000
11920		R	Correct skin color defects	1.61	2.01	1.83	0.78	0.91	0.17	3.79	3.61	2.56	2.69	000
11921		R	Correct skin color defects	1.93	2.21	2.04	1.00	1.13	0.20	4.34	4.17	3.13	3.26	000
11922		R	Correct skin color defects	0.49	0.36	0.37	0.26	0.29	0.05	0.90	0.91	0.80	0.83	ZZZ
11950		R	Therapy for contour defects	0.84	1.01	1.08	0.35	0.59	0.06	1.91	1.98	1.25	1.49	000
11951		R	Therapy for contour defects	1.19	1.34	1.33	0.53	0.72	0.09	2.62	2.61	1.81	2.00	000
11952		R	Therapy for contour defects	1.69	2.09	1.89	0.80	0.92	0.11	3.89	3.69	2.60	2.72	000
11954		R	Therapy for contour defects	1.85	2.36	2.09	0.71	0.86	0.20	4.41	4.14	2.76	2.91	000
11960		A	Insert tissue expander(s)	9.08	NA	NA	10.01	9.61	0.89	NA	NA	19.98	19.58	090
11970		A	Replace tissue expander	7.06	NA	NA	4.89	5.78	0.75	NA	NA	12.70	13.59	090
11971		A	Remove tissue expander(s)	2.13	5.96	5.10	3.56	3.30	0.22	8.31	7.45	5.91	5.65	090
11975		N	Insert contraceptive cap	1.48	1.46	1.38	0.59	0.73	0.11	3.05	2.97	2.18	2.32	XXX
11976		R	Removal of contraceptive cap	1.78	1.52	1.49	0.65	0.84	0.13	3.43	3.40	2.56	2.75	XXX
11977		N	Removal/reinsert contra cap	3.30	2.19	2.28	1.31	1.62	0.25	5.74	5.83	4.86	5.17	XXX
11980		A	Implant hormone pellet(s)	1.48	1.46	1.46	0.59	0.59	0.11	3.05	3.05	2.18	2.18	000
12001		A	Repair superficial wound(s)	1.70	2.17	1.78	0.78	0.74	0.15	4.02	3.63	2.63	2.59	010
12002		A	Repair superficial wound(s)	1.86	2.26	1.91	0.82	0.83	0.16	4.28	3.93	2.84	2.85	010
12004		A	Repair superficial wound(s)	2.24	2.45	2.15	0.94	1.02	0.20	4.89	4.59	3.38	3.46	010
12005		A	Repair superficial wound(s)	2.86	2.84	2.53	1.17	1.28	0.26	5.96	5.65	4.29	4.40	010
12006		A	Repair superficial wound(s)	3.67	3.97	3.46	1.74	1.79	0.34	7.98	7.47	5.75	5.80	010
12007		A	Repair superficial wound(s)	4.12	4.29	3.71	2.04	2.02	0.38	8.79	8.21	6.54	6.52	010
12011		A	Repair superficial wound(s)	1.76	2.27	1.90	0.79	0.79	0.16	4.19	3.82	2.71	2.71	010
12013		A	Repair superficial wound(s)	1.99	2.38	2.07	0.84	0.91	0.18	4.55	4.24	3.01	3.08	010

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
12014		A	Repair superficial wound(s)	2.46	2.68	2.33	1.01	1.08	0.22	5.36	5.01	3.69	3.76	010
12015		A	Repair superficial wound(s)	3.19	3.09	2.76	1.20	1.34	0.29	6.57	6.24	4.68	4.82	010
12016		A	Repair superficial wound(s)	3.93	3.35	3.13	1.50	1.74	0.36	7.64	7.42	5.79	6.03	010
12017		A	Repair superficial wound(s)	4.71	5.03	4.69	2.11	2.50	0.44	10.18	9.84	7.26	7.65	010
12018		A	Repair superficial wound(s)	5.53	5.66	5.64	2.54	3.30	0.46	11.65	11.63	8.53	9.29	010
12020		A	Closure of split wound	2.62	2.59	2.27	1.51	1.46	0.23	5.44	5.12	4.36	4.31	010
12021		A	Closure of split wound	1.84	2.00	1.67	1.11	1.00	0.15	3.99	3.66	3.10	2.99	010
12031		A	Layer closure of wound(s)	2.15	2.66	2.19	1.16	1.07	0.14	4.95	4.48	3.45	3.36	010
12032		A	Layer closure of wound(s)	2.47	2.74	2.34	1.23	1.21	0.15	5.36	4.96	3.85	3.83	010
12034		A	Layer closure of wound(s)	2.92	2.97	2.63	1.39	1.44	0.24	6.13	5.79	4.55	4.60	010
12035		A	Layer closure of wound(s)	3.43	2.98	2.76	1.62	1.74	0.32	6.73	6.51	5.37	5.49	010
12036		A	Layer closure of wound(s)	4.05	4.89	4.30	2.34	2.39	0.40	9.34	8.75	6.79	6.84	010
12037		A	Layer closure of wound(s)	4.67	5.11	4.67	2.81	2.95	0.44	10.22	9.78	7.92	8.06	010
12041		A	Layer closure of wound(s)	2.37	2.95	2.44	1.19	1.12	0.17	5.49	4.98	3.73	3.66	010
12042		A	Layer closure of wound(s)	2.74	2.93	2.52	1.36	1.34	0.18	5.85	5.44	4.28	4.26	010
12044		A	Layer closure of wound(s)	3.14	2.99	2.68	1.54	1.60	0.26	6.39	6.08	4.94	5.00	010
12045		A	Layer closure of wound(s)	3.64	3.33	3.08	1.80	1.93	0.32	7.29	7.04	5.76	5.89	010
12046		A	Layer closure of wound(s)	4.25	4.95	4.48	2.40	2.57	0.37	9.57	9.10	7.02	7.19	010
12047		A	Layer closure of wound(s)	4.65	4.99	4.83	2.79	3.18	0.44	10.08	9.92	7.88	8.27	010
12051		A	Layer closure of wound(s)	2.47	2.91	2.46	1.35	1.29	0.17	5.55	5.10	3.99	3.93	010
12052		A	Layer closure of wound(s)	2.77	2.88	2.56	1.30	1.38	0.17	5.82	5.50	4.24	4.32	010
12053		A	Layer closure of wound(s)	3.12	3.03	2.75	1.45	1.57	0.23	6.38	6.10	4.80	4.92	010
12054		A	Layer closure of wound(s)	3.46	3.36	3.23	1.57	1.88	0.29	7.11	6.98	5.32	5.63	010
12055		A	Layer closure of wound(s)	4.43	4.12	3.97	2.09	2.45	0.39	8.94	8.79	6.91	7.27	010
12056		A	Layer closure of wound(s)	5.24	5.87	5.69	2.89	3.45	0.43	11.54	11.36	8.56	9.12	010
12057		A	Layer closure of wound(s)	5.96	5.55	5.67	3.52	4.15	0.49	12.00	12.12	9.97	10.60	010
13100		A	Repair of wound or lesion	3.12	3.25	2.75	1.83	1.68	0.22	6.59	6.09	5.17	5.02	010
13101		A	Repair of wound or lesion	3.92	3.54	3.22	2.28	2.28	0.23	7.69	7.37	6.43	6.43	010
13102		A	Repair wound/lesion add-on	1.24	0.72	0.72	0.57	0.57	0.08	2.04	2.04	1.89	1.89	ZZZ
13120		A	Repair of wound or lesion	3.30	3.39	2.91	1.82	1.73	0.25	6.94	6.46	5.37	5.28	010
13121		A	Repair of wound or lesion	4.33	3.76	3.54	2.32	2.46	0.27	8.36	8.14	6.92	7.06	010
13122		A	Repair wound/lesion add-on	1.44	0.84	0.84	0.66	0.66	0.09	2.37	2.37	2.19	2.19	ZZZ
13131		A	Repair of wound or lesion	3.79	3.64	3.27	2.17	2.17	0.26	7.69	7.32	6.22	6.22	010
13132		A	Repair of wound or lesion	5.95	4.50	4.62	3.19	3.63	0.34	10.79	10.91	9.48	9.92	010
13133		A	Repair wound/lesion add-on	2.19	1.19	1.19	1.01	1.01	0.12	3.50	3.50	3.32	3.32	ZZZ
13150		A	Repair of wound or lesion	3.81	4.97	4.21	2.50	2.35	0.29	9.07	8.31	6.60	6.45	010
13151		A	Repair of wound or lesion	4.45	4.98	4.40	2.95	2.88	0.30	9.73	9.15	7.70	7.63	010
13152		A	Repair of wound or lesion	6.33	5.64	5.62	3.85	4.28	0.40	12.37	12.35	10.58	11.01	010
13153		A	Repair wound/lesion add-on	2.38	1.32	1.32	1.09	1.09	0.15	3.85	3.85	3.62	3.62	ZZZ
13160		A	Late closure of wound	10.48	NA	NA	6.26	5.60	1.08	NA	NA	17.82	17.16	090
13300		D	Repair of wound or lesion	5.27	2.09	3.12	2.09	3.12	0.44	7.80	8.83	7.80	8.83	010
14000		A	Skin tissue rearrangement	5.89	7.03	6.20	4.52	4.32	0.46	13.38	12.55	10.87	10.67	090
14001		A	Skin tissue rearrangement	8.47	8.26	7.48	5.82	5.65	0.67	17.40	16.62	14.96	14.79	090
14020		A	Skin tissue rearrangement	6.59	7.45	6.92	5.13	5.18	0.51	14.55	14.02	12.23	12.28	090
14021		A	Skin tissue rearrangement	10.06	8.94	8.39	6.89	6.85	0.73	19.73	19.18	17.68	17.64	090
14040		A	Skin tissue rearrangement	7.87	7.82	7.70	5.80	6.19	0.53	16.22	16.10	14.20	14.59	090
14041		A	Skin tissue rearrangement	11.49	9.68	9.40	7.65	7.88	0.69	21.86	21.58	19.83	20.06	090
14060		A	Skin tissue rearrangement	8.50	8.34	8.36	6.60	7.05	0.60	17.44	17.46	15.70	16.15	090
14061		A	Skin tissue rearrangement	12.29	10.66	10.84	8.55	9.26	0.75	23.70	23.88	21.59	22.30	090
14300		A	Skin tissue rearrangement	11.76	9.70	10.34	8.10	9.14	0.92	22.38	23.02	20.78	21.82	090
14350		A	Skin tissue rearrangement	9.61	NA	NA	5.92	6.09	0.90	NA	NA	16.43	16.60	090
15000		A	Skin graft	0.04	2.40	2.38	1.93	2.03	0.36	2.80	2.78	2.33	2.43	000
15001		A	Skin graft add-on	0.01	0.60	0.60	0.48	0.48	0.09	0.70	0.70	0.58	0.58	ZZZ
15050		A	Skin pinch graft	4.30	4.82	4.10	3.66	3.23	0.41	9.53	8.81	8.37	7.94	090
15100		A	Skin split graft	9.05	6.17	5.86	6.01	5.74	0.94	16.16	15.85	16.00	15.73	090
15101		A	Skin split graft add-on	1.72	1.15	1.30	0.77	1.01	0.18	3.05	3.20	2.67	2.91	ZZZ
15120		A	Skin split graft	9.83	8.09	7.84	6.56	6.56	0.80	18.63	18.27	17.19	17.19	090
15121		A	Skin split graft add-on	2.67	1.69	2.06	1.29	1.76	0.26	4.62	4.99	4.22	4.69	ZZZ
15200		A	Skin full graft	8.03	8.74	7.68	5.43	5.19	0.72	17.49	16.43	14.18	13.94	090
15201		A	Skin full graft add-on	1.32	1.08	1.27	0.66	0.95	0.13	2.53	2.72	2.11	2.40	ZZZ
15220		A	Skin full graft	7.87	9.02	8.08	5.95	5.78	0.68	17.57	16.63	14.50	14.33	090
15221		A	Skin full graft add-on	1.19	0.86	1.08	0.58	0.87	0.11	2.16	2.38	1.88	2.17	ZZZ
15240		A	Skin full graft	9.04	8.62	8.12	6.69	6.67	0.77	18.43	17.93	16.50	16.48	090
15241		A	Skin full graft add-on	1.86	1.40	1.70	0.95	1.36	0.17	3.43	3.73	2.98	3.39	ZZZ
15260		A	Skin full graft	10.06	8.73	8.57	7.27	7.48	0.65	19.44	19.28	17.98	18.19	090
15261		A	Skin full graft add-on	2.23	1.52	1.91	1.15	1.64	0.17	3.92	4.31	3.55	4.04	ZZZ
15350		A	Skin homograft	0.04	7.54	6.24	4.12	3.67	0.40	7.98	6.68	4.56	4.11	090
15351		A	Skin homograft add-on	0.01	0.80	0.80	0.46	0.46	0.09	0.90	0.90	0.56	0.56	ZZZ
15400		A	Skin heterograft	0.04	4.25	3.48	4.25	3.48	0.34	4.63	3.86	4.63	3.86	090
15401		A	Skin heterograft add-on	0.01	0.80	0.80	0.46	0.46	0.09	0.90	0.90	0.56	0.56	ZZZ
15570		A	Form skin pedicle flap	9.21	8.32	7.73	5.85	5.88	0.91	18.44	17.85	15.97	16.00	090
15572		A	Form skin pedicle flap	9.27	7.55	7.12	5.21	5.37	0.87	17.69	17.26	15.35	15.51	090
15574		A	Form skin pedicle flap	9.88	8.04	7.50	6.45	6.30	0.86	18.78	18.24	17.19	17.04	090
15576		A	Form skin pedicle flap	8.69	8.41	7.16	6.13	5.45	0.71	17.81	16.56	15.53	14.85	090
15580		D	Attach skin pedicle graft	9.46	3.75	3.98	3.75	3.98	0.98	14.19	14.42	14.19	14.42	090
15600		A	Skin graft	1.91	5.35	4.69	2.20	2.33	0.19	7.45	6.79	4.30	4.43	090
15610		A	Skin graft	2.42	2.39	2.56	2.39	2.56	0.25	5.06	5.23	5.06	5.23	090
15620		A	Skin graft	2.94	6.16	5.55	3.12	3.27	0.27	9.37	8.76	6.33	6.48	090
15625		D	Skin graft	1.91	0.76	1.14	0.76	1.14	0.20	2.87	3.25	2.87	3.25	090
15630		A	Skin graft	3.27	5.77	5.31	3.38	3.51	0.29	9.33	8.87	6.94	7.07	090
15650		A	Transfer skin pedicle flap	3.97	6.52	6.08	3.51	3.82	0.33	10.82	10.38	7.81	8.12	090
15732		A	Muscle-skin graft, head/neck	17.84	NA	NA	11.13	12.55	1.47	NA	NA	30.44	31.86	090

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
15734		A	Muscle-skin graft, trunk	17.79	NA	NA	11.07	13.46	1.88	NA	NA	30.74	33.13	090
15736		A	Muscle-skin graft, arm	16.27	NA	NA	10.44	12.23	1.72	NA	NA	28.43	30.22	090
15738		A	Muscle-skin graft, leg	17.92	NA	NA	11.01	11.76	1.91	NA	NA	30.84	31.59	090
15740		A	Island pedicle flap graft	10.25	8.51	9.20	6.82	7.94	0.64	19.40	20.09	17.71	18.83	090
15750		A	Neurovascular pedicle graft	11.41	NA	NA	8.03	9.27	1.17	NA	NA	20.61	21.85	090
15756		A	Free muscle flap, microvasc	35.23	NA	NA	21.45	24.25	3.62	NA	NA	60.30	63.10	090
15757		A	Free skin flap, microvasc	35.23	NA	NA	21.62	24.38	3.37	NA	NA	60.22	62.98	090
15758		A	Free fascial flap, microvasc	35.10	NA	NA	21.39	24.21	3.40	NA	NA	59.89	62.71	090
15760		A	Composite skin graft	8.74	8.14	8.08	6.03	6.50	0.72	17.60	17.54	15.49	15.96	090
15770		A	Derma-fat-fascia graft	7.52	NA	NA	5.73	6.32	0.81	NA	NA	14.06	14.65	090
15775		R	Hair transplant punch grafts	3.96	2.92	2.97	1.58	1.97	0.42	7.30	7.35	5.96	6.35	000
15776		R	Hair transplant punch grafts	5.54	5.40	5.14	2.20	2.74	0.59	11.53	11.27	8.33	8.87	000
15780		A	Abrasion treatment of skin	7.29	6.57	5.34	6.57	5.34	0.54	14.40	13.17	14.40	13.17	090
15781		A	Abrasion treatment of skin	4.85	4.69	4.54	4.41	4.33	0.29	9.83	9.68	9.55	9.47	090
15782		A	Abrasion treatment of skin	4.32	4.04	3.35	3.73	3.12	0.27	8.63	7.94	8.32	7.71	090
15783		A	Abrasion treatment of skin	4.29	4.43	3.83	3.12	2.84	0.26	8.98	8.38	7.67	7.39	090
15786		A	Abrasion, lesion, single	2.03	1.69	1.44	1.24	1.10	0.11	3.83	3.58	3.38	3.24	010
15787		A	Abrasion, lesions, add-on	0.33	0.28	0.27	0.18	0.20	0.02	0.63	0.62	0.53	0.55	ZZZ
15788		R	Chemical peel, face, epiderm	2.09	2.82	2.52	1.04	1.18	0.10	5.01	4.71	3.23	3.37	090
15789		R	Chemical peel, face, dermal	4.92	5.69	4.67	3.38	2.94	0.30	10.91	9.89	8.60	8.16	090
15792		R	Chemical peel, nonfacial	1.86	2.68	2.15	1.62	1.35	0.11	4.65	4.12	3.59	3.32	090
15793		A	Chemical peel, nonfacial	3.74	NA	NA	3.42	2.70	0.16	NA	NA	7.32	6.60	090
15810		A	Salabrasion	4.74	3.80	3.88	3.80	3.88	0.38	8.92	9.00	8.92	9.00	090
15811		A	Salabrasion	5.39	3.94	3.97	3.94	3.97	0.57	9.90	9.93	9.90	9.93	090
15819		A	Plastic surgery, neck	9.38	NA	NA	6.41	6.98	0.83	NA	NA	16.62	17.19	090
15820		A	Revision of lower eyelid	5.15	7.27	6.99	6.76	6.61	0.30	12.72	12.44	12.21	12.06	090
15821		A	Revision of lower eyelid	5.72	7.76	7.53	6.87	6.86	0.30	13.78	13.55	12.89	12.88	090
15822		A	Revision of upper eyelid	4.45	7.00	6.58	6.08	5.89	0.23	11.68	11.26	10.76	10.57	090
15823		A	Revision of upper eyelid	7.05	8.32	8.33	7.20	7.49	0.33	15.70	15.71	14.58	14.87	090
15824		R	Removal of forehead wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15825		R	Removal of neck wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15826		R	Removal of brow wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15828		R	Removal of face wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15829		R	Removal of skin wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15831		A	Excise excessive skin tissue	12.40	NA	NA	7.24	8.10	1.24	NA	NA	20.88	21.74	090
15832		A	Excise excessive skin tissue	11.59	NA	NA	7.78	8.09	1.20	NA	NA	20.57	20.88	090
15833		A	Excise excessive skin tissue	10.64	NA	NA	7.42	7.25	1.31	NA	NA	19.37	19.20	090
15834		A	Excise excessive skin tissue	10.85	NA	NA	6.16	6.57	1.23	NA	NA	18.24	18.65	090
15835		A	Excise excessive skin tissue	11.67	NA	NA	5.60	6.10	1.36	NA	NA	18.63	19.13	090
15836		A	Excise excessive skin tissue	9.34	NA	NA	6.08	6.13	0.95	NA	NA	16.37	16.42	090
15837		A	Excise excessive skin tissue	8.43	6.36	6.39	6.36	6.39	0.82	15.61	15.64	15.61	15.64	090
15838		A	Excise excessive skin tissue	7.13	NA	NA	5.41	5.65	0.53	NA	NA	13.07	13.31	090
15839		A	Excise excessive skin tissue	9.36	6.10	5.24	5.57	4.84	0.80	16.28	15.42	15.75	15.02	090
15840		A	Graft for face nerve palsy	13.26	NA	NA	9.46	11.05	1.06	NA	NA	23.78	25.37	090
15841		A	Graft for face nerve palsy	23.26	NA	NA	14.47	15.43	2.51	NA	NA	40.24	41.20	090
15842		A	Graft for face nerve palsy	37.96	NA	NA	22.96	25.09	5.53	NA	NA	66.45	68.58	090
15845		A	Skin and muscle repair, face	12.57	NA	NA	8.67	10.26	0.87	NA	NA	22.11	23.70	090
15850		B	Removal of sutures	0.78	1.32	1.09	0.31	0.33	0.05	2.15	1.92	1.14	1.16	XXX
15851		A	Removal of sutures	0.86	1.48	1.19	0.34	0.34	0.06	2.40	2.11	1.26	1.26	000
15852		A	Dressing change,not for burn	0.86	1.63	1.34	0.35	0.38	0.07	2.56	2.27	1.28	1.31	000
15860		A	Test for blood flow in graft	1.95	1.11	1.20	0.87	1.02	0.19	3.25	3.34	3.01	3.16	000
15876		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15877		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15878		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15879		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15920		A	Removal of tail bone ulcer	7.95	NA	NA	5.38	4.84	0.75	NA	NA	14.08	13.54	090
15922		A	Removal of tail bone ulcer	9.90	NA	NA	6.94	6.83	1.03	NA	NA	17.87	17.76	090
15931		A	Remove sacrum pressure sore	9.24	NA	NA	5.52	4.94	0.95	NA	NA	15.71	15.13	090
15933		A	Remove sacrum pressure sore	10.85	NA	NA	7.87	7.78	1.13	NA	NA	19.85	19.76	090
15934		A	Remove sacrum pressure sore	12.69	NA	NA	8.16	8.15	1.34	NA	NA	22.19	22.18	090
15935		A	Remove sacrum pressure sore	14.57	NA	NA	9.76	10.37	1.53	NA	NA	25.86	26.47	090
15936		A	Remove sacrum pressure sore	12.38	NA	NA	8.76	9.36	1.30	NA	NA	22.44	23.04	090
15937		A	Remove sacrum pressure sore	14.21	NA	NA	9.97	11.13	1.49	NA	NA	25.67	26.83	090
15940		A	Remove hip pressure sore	9.34	NA	NA	5.84	5.34	0.96	NA	NA	16.14	15.64	090
15941		A	Remove hip pressure sore	11.43	NA	NA	9.32	8.90	1.20	NA	NA	21.95	21.53	090
15944		A	Remove hip pressure sore	11.46	NA	NA	8.41	8.82	1.19	NA	NA	21.06	21.47	090
15945		A	Remove hip pressure sore	12.69	NA	NA	9.35	10.04	1.33	NA	NA	23.37	24.06	090
15946		A	Remove hip pressure sore	21.57	NA	NA	13.99	15.00	2.15	NA	NA	37.71	38.72	090
15950		A	Remove thigh pressure sore	7.54	NA	NA	5.21	4.73	0.77	NA	NA	13.52	13.04	090
15951		A	Remove thigh pressure sore	10.72	NA	NA	7.94	8.03	1.11	NA	NA	19.77	19.86	090
15952		A	Remove thigh pressure sore	11.39	NA	NA	7.10	7.26	1.19	NA	NA	19.68	19.84	090
15953		A	Remove thigh pressure sore	12.63	NA	NA	8.66	8.96	1.31	NA	NA	22.60	22.90	090
15956		A	Remove thigh pressure sore	15.52	NA	NA	10.36	12.40	1.61	NA	NA	27.49	29.53	090
15958		A	Remove thigh pressure sore	15.48	NA	NA	10.45	12.46	1.59	NA	NA	27.52	29.53	090
15999		C	Removal of pressure sore	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
16000		A	Initial treatment of burn(s)	0.89	0.91	0.78	0.26	0.29	0.07	1.87	1.74	1.22	1.25	000
16010		A	Treatment of burn(s)	0.87	1.01	0.85	0.36	0.36	0.07	1.95	1.79	1.30	1.30	000
16015		A	Treatment of burn(s)	2.35	1.62	1.77	0.99	1.30	0.21	4.18	4.33	3.55	3.86	000
16020		A	Treatment of burn(s)	0.80	0.99	0.84	0.25	0.28	0.06	1.85	1.70	1.11	1.14	000
16025		A	Treatment of burn(s)	1.85	1.58	1.31	0.67	0.63	0.16	3.59	3.32	2.68	2.64	000
16030		A	Treatment of burn(s)	2.08	2.51	2.02	0.89	0.81	0.19	4.78	4.29	3.16	3.08	000
16035		A	Incision of burn scab	4.82	2.82	2.63	2.09	2.08	0.48	8.12	7.93	7.39	7.36	090

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
17000		A	Destroy benign/premal lesion	0.60	0.99	0.86	0.27	0.32	0.03	1.62	1.49	0.90	0.95	010
17003		A	Destroy lesions, 2–14	0.15	0.24	0.22	0.07	0.09	0.01	0.40	0.38	0.23	0.25	ZZZ
17004		A	Destroy lesions, 15 or more	2.79	2.34	2.37	1.28	1.57	0.11	5.24	5.27	4.18	4.47	010
17106		A	Destruction of skin lesions	4.59	4.03	3.55	2.68	2.53	0.27	8.89	8.41	7.54	7.39	090
17107		A	Destruction of skin lesions	9.16	6.56	5.93	4.90	4.68	0.51	16.23	15.60	14.57	14.35	090
17108		A	Destruction of skin lesions	13.20	8.58	8.96	7.14	7.88	0.76	22.54	22.92	21.10	21.84	090
17110		A	Destruct lesion, 1–14	0.65	0.93	0.81	0.26	0.30	0.04	1.62	1.50	0.95	0.99	010
17111		A	Destruct lesion, 15 or more	0.92	1.13	1.01	0.38	0.45	0.05	2.10	1.98	1.35	1.42	010
17250		A	Chemical cautery, tissue	0.50	0.62	0.56	0.20	0.24	0.04	1.16	1.10	0.74	0.78	000
17260		A	Destruction of skin lesions	0.91	1.22	1.22	0.41	0.62	0.04	2.17	2.17	1.36	1.57	010
17261		A	Destruction of skin lesions	1.17	1.34	1.38	0.55	0.79	0.05	2.56	2.60	1.77	2.01	010
17262		A	Destruction of skin lesions	1.58	1.54	1.65	0.75	1.06	0.06	3.18	3.29	2.39	2.70	010
17263		A	Destruction of skin lesions	1.79	1.65	1.85	0.84	1.24	0.07	3.51	3.71	2.70	3.10	010
17264		A	Destruction of skin lesions	1.94	1.72	1.99	0.90	1.38	0.08	3.74	4.01	2.92	3.40	010
17266		A	Destruction of skin lesions	2.34	1.92	2.29	0.99	1.59	0.11	4.37	4.74	3.44	4.04	010
17270		A	Destruction of skin lesions	1.32	1.41	1.42	0.60	0.81	0.06	2.79	2.80	1.98	2.19	010
17271		A	Destruction of skin lesions	1.49	1.50	1.60	0.71	1.01	0.06	3.05	3.15	2.26	2.56	010
17272		A	Destruction of skin lesions	1.77	1.64	1.83	0.85	1.24	0.07	3.48	3.67	2.69	3.08	010
17273		A	Destruction of skin lesions	2.05	1.78	2.04	0.97	1.43	0.08	3.91	4.17	3.10	3.56	010
17274		A	Destruction of skin lesions	2.59	2.04	2.40	1.24	1.80	0.11	4.74	5.10	3.94	4.50	010
17276		A	Destruction of skin lesions	3.20	2.35	2.69	1.59	2.12	0.15	5.70	6.04	4.94	5.47	010
17280		A	Destruction of skin lesions	1.17	1.25	1.39	0.54	0.85	0.05	2.47	2.61	1.76	2.07	010
17281		A	Destruction of skin lesions	1.72	1.61	1.78	0.82	1.18	0.07	3.40	3.57	2.61	2.97	010
17282		A	Destruction of skin lesions	2.04	1.77	2.03	0.98	1.43	0.08	3.89	4.15	3.10	3.55	010
17283		A	Destruction of skin lesions	2.64	2.07	2.37	1.24	1.75	0.11	4.82	5.12	3.99	4.50	010
17284		A	Destruction of skin lesions	3.21	2.35	2.72	1.51	2.09	0.13	5.69	6.06	4.85	5.43	010
17286		A	Destruction of skin lesions	4.44	2.93	3.37	2.45	3.01	0.21	7.58	8.02	7.10	7.66	010
17304		A	Chemosurgery of skin lesion	7.60	7.45	6.68	3.67	3.84	0.31	15.36	14.59	11.58	11.75	000
17305		A	2nd stage chemosurgery	2.85	3.44	3.19	1.38	1.65	0.11	6.40	6.15	4.34	4.61	000
17306		A	3rd stage chemosurgery	2.85	3.47	2.98	1.40	1.43	0.11	6.43	5.94	4.36	4.39	000
17307		A	Followup skin lesion therapy	2.85	3.27	2.85	1.41	1.48	0.11	6.23	5.81	4.37	4.42	000
17310		A	Extensive skin chemosurgery	0.95	1.37	1.06	0.48	0.40	0.05	2.37	2.06	1.48	1.40	000
17340		A	Cryotherapy of skin	0.76	1.30	1.05	0.26	0.27	0.05	2.11	1.86	1.07	1.08	010
17360		A	Skin peel therapy	1.43	1.46	1.17	0.76	0.64	0.06	2.95	2.66	2.25	2.13	010
17380		R	Hair removal by electrolysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
17999		C	Skin tissue procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
19000		A	Drainage of breast lesion	0.84	1.15	0.97	0.30	0.33	0.07	2.06	1.88	1.21	1.24	000
19001		A	Drain breast lesion add-on	0.42	0.78	0.65	0.15	0.18	0.03	1.23	1.10	0.60	0.63	ZZZ
19020		A	Incision of breast lesion	3.57	6.16	5.00	3.17	2.76	0.34	10.07	8.91	7.08	6.67	090
19030		A	Injection for breast x-ray	1.53	9.87	7.54	0.53	0.53	0.06	11.46	9.13	2.12	2.12	000
19100		A	Biopsy of breast	1.27	3.14	2.53	0.45	0.51	0.09	4.50	3.89	1.81	1.87	000
19101		A	Biopsy of breast	3.18	9.36	7.66	2.82	2.75	0.23	12.77	11.07	6.23	6.16	010
19110		A	Nipple exploration	4.30	7.17	6.05	4.16	3.79	0.42	11.89	10.77	8.88	8.51	090
19112		A	Excise breast duct fistula	3.67	6.51	5.52	2.91	2.82	0.35	10.53	9.54	6.93	6.84	090
19120		A	Removal of breast lesion	5.56	4.14	3.89	3.43	3.36	0.55	10.25	10.00	9.54	9.47	090
19125		A	Excision, breast lesion	6.06	4.75	4.35	3.61	3.50	0.60	11.41	11.01	10.27	10.16	090
19126		A	Excision, addl breast lesion	2.93	NA	NA	1.10	1.22	0.30	NA	NA	4.33	4.45	ZZZ
19140		A	Removal of breast tissue	5.14	8.52	7.56	3.50	3.79	0.52	14.18	13.22	9.16	9.45	090
19160		A	Removal of breast tissue	5.99	NA	NA	4.32	4.36	0.59	NA	NA	10.90	10.94	090
19162		A	Remove breast tissue, nodes	13.53	NA	NA	7.73	8.34	1.33	NA	NA	22.59	23.20	090
19180		A	Removal of breast	8.80	NA	NA	5.68	5.78	0.87	NA	NA	15.35	15.45	090
19182		A	Removal of breast	7.73	NA	NA	4.85	5.29	0.77	NA	NA	13.35	13.79	090
19200		A	Removal of breast	15.49	NA	NA	8.87	9.43	1.51	NA	NA	25.87	26.43	090
19220		A	Removal of breast	15.72	NA	NA	8.85	9.55	1.49	NA	NA	26.06	26.76	090
19240		A	Removal of breast	0.16	NA	NA	8.61	9.02	1.58	NA	NA	10.35	10.76	090
19260		A	Removal of chest wall lesion	15.44	NA	NA	10.02	8.89	1.68	NA	NA	27.14	26.01	090
19271		A	Revision of chest wall	18.90	NA	NA	13.36	13.81	2.13	NA	NA	34.39	34.84	090
19272		A	Extensive chest wall surgery	21.55	NA	NA	13.92	13.86	2.52	NA	NA	37.99	37.93	090
19290		A	Place needle wire, breast	1.27	4.76	3.69	0.44	0.45	0.05	6.08	5.01	1.76	1.77	000
19291		A	Place needle wire, breast	0.63	1.64	1.30	0.22	0.23	0.03	2.30	1.96	0.88	0.89	ZZZ
19316		A	Suspension of breast	10.69	NA	NA	7.28	8.65	1.13	NA	NA	19.10	20.47	090
19318		A	Reduction of large breast	15.82	NA	NA	10.09	11.42	1.65	NA	NA	27.36	28.89	090
19324		A	Enlarge breast	5.85	NA	NA	3.58	3.58	0.61	NA	NA	10.04	10.04	090
19325		A	Enlarge breast with implant	8.45	NA	NA	5.03	5.37	0.90	NA	NA	14.38	14.72	090
19328		A	Removal of breast implant	5.68	NA	NA	4.38	4.31	0.60	NA	NA	10.66	10.59	090
19330		A	Removal of implant material	7.59	NA	NA	5.11	4.89	0.80	NA	NA	13.50	13.28	090
19340		A	Immediate breast prosthesis	6.33	NA	NA	3.25	4.33	0.67	NA	NA	10.25	11.33	ZZZ
19342		A	Delayed breast prosthesis	11.20	NA	NA	7.61	8.64	1.19	NA	NA	20.00	21.03	090
19350		A	Breast reconstruction	8.92	12.18	11.06	6.56	6.84	0.95	22.05	20.93	16.43	16.71	090
19355		A	Correct inverted nipple(s)	7.57	12.61	10.80	4.45	4.68	0.75	20.93	19.12	12.77	13.00	090
19357		A	Breast reconstruction	18.16	NA	NA	13.19	13.19	1.92	NA	NA	33.27	33.27	090
19361		A	Breast reconstruction	19.26	NA	NA	11.68	14.22	2.04	NA	NA	32.98	35.52	090
19364		A	Breast reconstruction	0.41	NA	NA	24.19	22.67	4.22	NA	NA	28.82	27.30	090
19366		A	Breast reconstruction	21.28	NA	NA	11.78	13.29	2.15	NA	NA	35.21	36.72	090
19367		A	Breast reconstruction	25.73	NA	NA	15.11	16.80	2.72	NA	NA	43.56	45.25	090
19368		A	Breast reconstruction	32.42	NA	NA	17.88	18.87	3.46	NA	NA	53.76	54.75	090
19369		A	Breast reconstruction	29.82	NA	NA	17.95	18.93	3.17	NA	NA	50.94	51.92	090
19370		A	Surgery of breast capsule	8.05	NA	NA	5.86	6.07	0.86	NA	NA	14.77	14.98	090
19371		A	Removal of breast capsule	9.35	NA	NA	6.90	7.32	0.99	NA	NA	17.24	17.66	090
19380		A	Revise breast reconstruction	9.14	NA	NA	7.07	7.50	0.97	NA	NA	17.18	17.61	090
19396		A	Design custom breast implant	2.17	4.88	4.09	1.15	1.29	0.23	7.28	6.49	3.55	3.69	000
19499		C	Breast surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
20000		A	Incision of abscess	2.12	1.92	1.67	1.16	1.10	0.15	4.19	3.94	3.43	3.37	010
20005		A	Incision of deep abscess	3.42	2.69	2.52	2.14	2.10	0.31	6.42	6.25	5.87	5.83	010
20100		A	Explore wound, neck	10.08	5.57	5.53	4.71	4.88	0.94	16.59	16.55	15.73	15.90	010
20101		A	Explore wound, chest	3.22	3.07	2.73	1.87	1.83	0.30	6.59	6.25	5.39	5.35	010
20102		A	Explore wound, abdomen	3.94	3.50	3.15	1.88	1.93	0.39	7.83	7.48	6.21	6.26	010
20103		A	Explore wound, extremity	5.30	3.96	3.67	3.01	2.96	0.53	9.79	9.50	8.84	8.79	010
20150		A	Excise epiphyseal bar	13.69	NA	NA	9.58	10.55	1.03	NA	NA	24.30	25.27	090
20200		A	Muscle biopsy	1.46	1.56	1.48	0.62	0.77	0.17	3.19	3.11	2.25	2.40	000
20205		A	Deep muscle biopsy	2.35	3.53	3.16	0.99	1.25	0.28	6.16	5.79	3.62	3.88	000
20206		A	Needle biopsy, muscle	0.99	2.80	2.36	0.36	0.53	0.06	3.85	3.41	1.41	1.58	000
20220		A	Bone biopsy, trocar/needle	1.27	4.00	3.36	2.50	2.23	0.06	5.33	4.69	3.83	3.56	000
20225		A	Bone biopsy, trocar/needle	1.87	3.63	3.37	2.72	2.69	0.10	5.60	5.34	4.69	4.66	000
20240		A	Bone biopsy, excisional	3.23	NA	NA	3.80	3.36	0.27	NA	NA	7.30	6.86	010
20245		A	Bone biopsy, excisional	3.95	NA	NA	4.18	4.11	0.36	NA	NA	8.49	8.42	010
20250		A	Open bone biopsy	5.03	NA	NA	3.92	4.32	0.46	NA	NA	9.41	9.81	010
20251		A	Open bone biopsy	5.56	NA	NA	4.43	4.91	0.67	NA	NA	10.66	11.14	010
20500		A	Injection of sinus tract	1.23	4.92	3.79	3.48	2.71	0.09	6.24	5.11	4.80	4.03	010
20501		A	Inject sinus tract for x-ray	0.76	10.92	8.27	0.26	0.28	0.03	11.71	9.06	1.05	1.07	000
20520		A	Removal of foreign body	1.85	4.52	3.58	2.81	2.30	0.15	6.52	5.58	4.81	4.30	010
20525		A	Removal of foreign body	3.50	5.52	4.75	3.82	3.47	0.34	9.36	8.59	7.66	7.31	010
20550		A	Inject tendon/ligament/cyst	0.86	1.79	1.45	0.22	0.27	0.06	2.71	2.37	1.14	1.19	000
20600		A	Drain/inject, joint/bursa	0.66	1.23	1.05	0.27	0.33	0.05	1.94	1.76	0.98	1.04	000
20605		A	Drain/inject, joint/bursa	0.68	1.53	1.27	0.27	0.33	0.05	2.26	2.00	1.00	1.06	000
20610		A	Drain/inject, joint/bursa	0.79	1.90	1.55	0.51	0.51	0.06	2.75	2.40	1.36	1.36	000
20615		A	Treatment of bone cyst	2.28	3.83	3.01	2.41	1.94	0.16	6.27	5.45	4.85	4.38	010
20650		A	Insert and remove bone pin	2.23	3.81	3.15	2.75	2.36	0.17	6.21	5.55	5.15	4.76	010
20660		A	Apply,remove fixation device	2.51	NA	NA	1.42	1.49	0.45	NA	NA	4.38	4.45	000
20661		A	Application of head brace	4.89	NA	NA	6.04	5.57	0.83	NA	NA	11.76	11.29	090
20662		A	Application of pelvis brace	6.07	NA	NA	4.96	5.50	0.64	NA	NA	11.67	12.21	090
20663		A	Application of thigh brace	5.43	NA	NA	4.17	4.39	0.55	NA	NA	10.15	10.37	090
20664		A	Halo brace application	8.06	NA	NA	7.71	6.82	1.38	NA	NA	17.15	16.26	090
20665		A	Removal of fixation device	1.31	2.16	1.76	1.13	0.98	0.17	3.64	3.24	2.61	2.46	010
20670		A	Removal of support implant	1.74	5.07	4.00	3.24	2.63	0.17	6.98	5.91	5.15	4.54	010
20680		A	Removal of support implant	3.35	4.28	4.11	4.28	4.11	0.33	7.96	7.79	7.96	7.79	090
20690		A	Apply bone fixation device	3.52	NA	NA	1.90	2.42	0.33	NA	NA	5.75	6.27	090
20692		A	Apply bone fixation device	6.41	NA	NA	3.39	4.04	0.64	NA	NA	10.44	11.09	090
20693		A	Adjust bone fixation device	5.86	NA	NA	10.52	8.57	0.66	NA	NA	17.04	15.09	090
20694		A	Remove bone fixation device	4.16	7.47	6.31	5.40	4.76	0.43	12.06	10.90	9.99	9.35	090
20802		A	Replantation, arm, complete	41.15	NA	NA	22.58	27.17	3.51	NA	NA	67.24	71.83	090
20805		A	Replant, forearm, complete	0.50	NA	NA	39.31	42.01	3.56	NA	NA	43.37	46.07	090
20808		A	Replantation hand, complete	61.65	NA	NA	47.48	51.18	5.46	NA	NA	114.59	118.29	090
20816		A	Replantation digit, complete	30.94	NA	NA	43.71	40.46	3.20	NA	NA	77.85	74.60	090
20822		A	Replantation digit, complete	25.59	NA	NA	34.68	32.36	2.64	NA	NA	62.91	60.59	090
20824		A	Replantation thumb, complete	30.94	NA	NA	41.90	39.10	3.26	NA	NA	76.10	73.30	090
20827		A	Replantation thumb, complete	26.41	NA	NA	39.21	35.93	2.72	NA	NA	68.34	65.06	090
20838		A	Replantation foot, complete	41.41	NA	NA	24.36	28.51	4.99	NA	NA	70.76	74.91	090
20900		A	Removal of bone for graft	5.58	5.46	4.86	5.46	4.86	0.55	11.59	10.99	11.59	10.99	090
20902		A	Removal of bone for graft	7.55	NA	NA	7.80	7.19	0.78	NA	NA	16.13	15.52	090
20910		A	Remove cartilage for graft	5.34	7.05	5.50	6.05	4.75	0.43	12.82	11.27	11.82	10.52	090
20912		A	Remove cartilage for graft	6.35	NA	NA	6.46	6.10	0.55	NA	NA	13.36	13.00	090
20920		A	Removal of fascia for graft	5.31	NA	NA	5.07	4.87	0.51	NA	NA	10.89	10.69	090
20922		A	Removal of fascia for graft	6.61	9.82	8.56	5.79	5.53	0.84	17.27	16.01	13.24	12.98	090
20924		A	Removal of tendon for graft	6.48	NA	NA	6.30	6.20	0.68	NA	NA	13.46	13.36	090
20926		A	Removal of tissue for graft	5.53	NA	NA	5.49	4.82	0.73	NA	NA	11.75	11.08	090
20930		B	Spinal bone allograft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
20931		A	Spinal bone allograft	1.81	NA	NA	0.95	1.18	0.31	NA	NA	3.07	3.30	ZZZ
20936		B	Spinal bone autograft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
20937		A	Spinal bone autograft	2.79	NA	NA	1.48	1.83	0.34	NA	NA	4.61	4.96	ZZZ
20938		A	Spinal bone autograft	3.02	NA	NA	1.58	1.97	0.44	NA	NA	5.04	5.43	ZZZ
20950		A	Fluid pressure, muscle	1.26	NA	NA	1.89	1.71	0.13	NA	NA	3.28	3.10	000
20955		A	Fibula bone graft, microvasc	39.21	NA	NA	27.44	30.31	3.88	NA	NA	70.53	73.40	090
20956		A	Iliac bone graft, microvasc	39.27	NA	NA	26.61	27.26	4.68	NA	NA	70.56	71.21	090
20957		A	Mt bone graft, microvasc	40.65	NA	NA	18.71	21.60	4.84	NA	NA	64.20	67.09	090
20962		A	Other bone graft, microvasc	39.27	NA	NA	25.96	26.77	4.28	NA	NA	69.51	70.32	090
20969		A	Bone/skin graft, microvasc	43.92	NA	NA	29.77	33.22	4.12	NA	NA	77.81	81.26	090
20970		A	Bone/skin graft, iliac crest	43.06	NA	NA	28.35	31.93	4.49	NA	NA	75.90	79.48	090
20972		A	Bone/skin graft, metatarsal	42.99	NA	NA	18.95	24.96	3.89	NA	NA	65.83	71.84	090
20973		A	Bone/skin graft, great toe	45.76	NA	NA	27.76	32.28	4.73	NA	NA	78.25	82.77	090
20974		A	Electrical bone stimulation	0.62	0.39	1.22	0.31	1.16	0.04	1.05	1.88	0.97	1.82	000
20975		A	Electrical bone stimulation	2.60	NA	NA	1.38	1.81	0.31	NA	NA	4.29	4.72	000
20979		N	Us bone stimulation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
20999		C	Musculoskeletal surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21010		A	Incision of jaw joint	10.14	NA	NA	6.91	7.96	0.50	NA	NA	17.55	18.60	090
21015		A	Resection of facial tumor	5.29	NA	NA	6.39	6.37	0.52	NA	NA	12.20	12.18	090
21025		A	Excision of bone, lower jaw	10.06	6.87	6.28	6.28	5.83	0.77	17.70	17.11	17.11	16.66	090
21026		A	Excision of facial bone(s)	4.85	4.92	4.54	4.62	4.32	0.38	10.15	9.77	9.85	9.55	090
21029		A	Contour of face bone lesion	7.71	5.99	6.79	5.61	6.51	0.62	14.32	15.12	13.94	14.84	090
21030		A	Removal of face bone lesion	6.46	5.03	4.68	4.36	4.18	0.47	11.96	11.61	11.29	11.11	090
21031		A	Remove exostosis, mandible	3.24	3.11	3.33	2.04	2.53	0.24	6.59	6.81	5.52	6.01	090
21032		A	Remove exostosis, maxilla	3.24	3.09	3.37	2.13	2.65	0.25	6.58	6.86	5.62	6.14	090
21034		A	Removal of face bone lesion	16.17	9.33	8.89	9.33	8.89	1.32	26.82	26.38	26.82	26.38	090
21040		A	Removal of jaw bone lesion	2.11	2.75	2.81	1.67	2.00	0.16	5.02	5.08	3.94	4.27	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
21041		A	Removal of jaw bone lesion	6.71	5.21	5.47	4.15	4.68	0.49	12.41	12.87	11.35	11.88	090
21044		A	Removal of jaw bone lesion	11.86	NA	NA	7.44	8.17	0.89	NA	NA	20.19	20.92	090
21045		A	Extensive jaw surgery	16.17	NA	NA	9.67	11.01	1.25	NA	NA	27.09	28.43	090
21050		A	Removal of jaw joint	10.77	NA	NA	10.66	11.21	0.74	NA	NA	22.17	22.72	090
21060		A	Remove jaw joint cartilage	10.23	NA	NA	10.05	10.59	0.77	NA	NA	21.05	21.59	090
21070		A	Remove coronoid process	8.20	NA	NA	5.81	6.06	0.71	NA	NA	14.52	14.97	090
21076		A	Prepare face/oral prosthesis	13.42	9.51	11.14	7.16	9.38	0.94	23.87	25.50	21.52	23.74	010
21077		A	Prepare face/oral prosthesis	33.75	23.92	28.02	18.00	23.58	2.44	60.11	64.21	54.19	59.77	090
21079		A	Prepare face/oral prosthesis	22.34	16.90	20.25	12.45	16.92	1.51	40.75	44.10	36.30	40.77	090
21080		A	Prepare face/oral prosthesis	25.10	18.99	22.76	13.99	19.01	1.74	45.83	49.60	40.83	45.85	090
21081		A	Prepare face/oral prosthesis	22.88	17.31	20.74	12.75	17.32	1.60	41.79	45.22	37.23	41.80	090
21082		A	Prepare face/oral prosthesis	20.87	14.79	17.32	11.13	14.58	1.47	37.13	39.66	33.47	36.92	090
21083		A	Prepare face/oral prosthesis	19.30	14.60	17.50	10.76	14.62	1.31	35.21	38.11	31.37	35.23	090
21084		A	Prepare face/oral prosthesis	22.51	17.03	20.41	12.54	17.04	1.61	41.15	44.53	38.66	41.16	090
21085		A	Prepare face/oral prosthesis	0.09	6.38	7.47	4.80	6.29	0.66	7.13	8.22	5.55	7.04	010
21086		A	Prepare face/oral prosthesis	24.92	18.85	22.59	13.89	18.87	1.84	45.61	49.35	40.65	45.63	090
21087		A	Prepare face/oral prosthesis	24.92	17.66	20.68	13.29	17.41	1.81	44.39	47.41	40.02	44.14	090
21088		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
21089		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
21100		A	Maxillofacial fixation	4.22	4.63	3.76	3.57	2.97	0.24	9.09	8.22	8.03	7.43	090
21110		A	Interdental fixation	5.21	4.87	5.15	3.78	4.34	0.34	10.42	10.70	9.33	9.89	090
21116		A	Injection, jaw joint x-ray	0.81	6.59	5.14	0.30	0.42	0.05	7.45	6.00	1.16	1.28	000
21120		A	Reconstruction of chin	4.93	10.09	8.54	36	5.00	0.40	15.42	13.87	10.69	10.33	090
21121		A	Reconstruction of chin	7.64	7.18	6.92	5.67	5.79	0.60	15.42	15.16	13.91	14.03	090
21122		A	Reconstruction of chin	8.52	NA	NA	6.54	6.60	0.72	NA	NA	15.78	15.84	090
21123		A	Reconstruction of chin	11.16	NA	NA	8.28	8.42	0.90	NA	NA	20.34	20.48	090
21125		A	Augmentation, lower jaw bone	10.62	7.83	7.15	7.23	6.70	0.81	19.26	18.58	18.66	18.13	090
21127		A	Augmentation, lower jaw bone	11.12	8.80	8.75	6.67	7.15	0.92	20.84	20.79	18.71	19.19	090
21137		A	Reduction of forehead	9.82	NA	NA	7.56	7.60	0.88	NA	NA	18.26	18.30	090
21138		A	Reduction of forehead	12.19	NA	NA	7.64	8.14	1.06	NA	NA	20.89	21.39	090
21139		A	Reduction of forehead	14.61	NA	NA	9.69	10.16	1.27	NA	NA	25.57	26.04	090
21141		A	Reconstruct midface, lefort	18.10	NA	NA	10.87	12.04	1.42	NA	NA	30.39	31.56	090
21142		A	Reconstruct midface, lefort	18.81	NA	NA	12.55	13.44	1.77	NA	NA	33.13	34.02	090
21143		A	Reconstruct midface, lefort	19.58	NA	NA	10.42	11.99	1.21	NA	NA	31.21	32.78	090
21145		A	Reconstruct midface, lefort	19.94	NA	NA	10.50	11.77	1.46	NA	NA	31.90	33.17	090
21146		A	Reconstruct midface, lefort	20.71	NA	NA	10.73	12.08	1.61	NA	NA	33.05	34.40	090
21147		A	Reconstruct midface, lefort	21.77	NA	NA	11.27	12.63	1.53	NA	NA	34.57	35.93	090
21150		A	Reconstruct midface, lefort	25.24	NA	NA	12.53	14.41	1.85	NA	NA	39.62	41.50	090
21151		A	Reconstruct midface, lefort	28.30	NA	NA	18.33	19.36	3.25	NA	NA	49.88	50.91	090
21154		A	Reconstruct midface, lefort	30.52	NA	NA	16.26	18.21	3.14	NA	NA	49.92	51.87	090
21155		A	Reconstruct midface, lefort	34.45	NA	NA	16.97	19.54	3.54	NA	NA	54.96	57.53	090
21159		A	Reconstruct midface, lefort	42.38	NA	NA	24.58	26.85	3.77	NA	NA	70.73	73.00	090
21160		A	Reconstruct midface, lefort	46.44	NA	NA	22.57	26.14	3.51	NA	NA	72.52	76.09	090
21172		A	Reconstruct orbit/forehead	27.80	NA	NA	14.67	16.51	1.92	NA	NA	44.39	46.23	090
21175		A	Reconstruct orbit/forehead	33.17	NA	NA	18.18	20.25	3.75	NA	NA	55.10	57.17	090
21179		A	Reconstruct entire forehead	22.25	NA	NA	16.07	16.46	2.52	NA	NA	40.84	41.23	090
21180		A	Reconstruct entire forehead	25.19	NA	NA	18.29	18.73	2.21	NA	NA	45.69	46.13	090
21181		A	Contour cranial bone lesion	9.90	NA	NA	7.67	7.68	1.04	NA	NA	18.61	18.62	090
21182		A	Reconstruct cranial bone	32.19	NA	NA	21.35	22.42	2.77	NA	NA	56.31	57.38	090
21183		A	Reconstruct cranial bone	35.31	NA	NA	20.50	22.39	3.14	NA	NA	58.95	60.84	090
21184		A	Reconstruct cranial bone	38.24	NA	NA	23.46	25.21	6.52	NA	NA	68.22	69.97	090
21188		A	Reconstruction of midface	22.46	NA	NA	14.77	15.48	1.87	NA	NA	39.10	39.81	090
21193		A	Reconstruct lower jaw bone	17.15	NA	NA	10.11	10.92	1.42	NA	NA	28.68	29.49	090
21194		A	Reconstruct lower jaw bone	19.84	NA	NA	11.79	12.71	1.64	NA	NA	33.27	34.19	090
21195		A	Reconstruct lower jaw bone	17.24	NA	NA	11.58	12.03	1.34	NA	NA	30.16	30.61	090
21196		A	Reconstruct lower jaw bone	18.91	NA	NA	12.33	12.94	1.50	NA	NA	32.74	33.35	090
21198		A	Reconstruct lower jaw bone	14.16	NA	NA	10.93	12.22	1.03	NA	NA	26.12	27.41	090
21206		A	Reconstruct upper jaw bone	14.10	NA	NA	9.40	9.80	1.02	NA	NA	24.52	24.92	090
21208		A	Augmentation of facial bones	10.23	8.98	9.79	7.88	8.96	0.79	20.00	20.81	18.90	19.98	090
21209		A	Reduction of facial bones	6.72	6.89	6.41	5.19	5.14	0.55	14.16	13.68	12.46	12.41	090
21210		A	Face bone graft	10.23	8.24	9.23	7.69	8.82	0.75	19.22	20.21	18.67	19.80	090
21215		A	Lower jaw bone graft	10.77	8.20	9.37	6.51	8.10	0.78	19.75	20.92	18.06	19.65	090
21230		A	Rib cartilage graft	10.77	NA	NA	9.26	9.76	0.96	NA	NA	20.99	21.49	090
21235		A	Ear cartilage graft	6.72	10.51	9.89	7.24	7.44	0.53	17.76	17.14	14.49	14.69	090
21240		A	Reconstruction of jaw joint	14.05	NA	NA	11.16	12.57	1.09	NA	NA	26.30	27.71	090
21242		A	Reconstruction of jaw joint	12.95	NA	NA	11.56	12.54	1.09	NA	NA	25.60	26.58	090
21243		A	Reconstruction of jaw joint	20.79	NA	NA	13.46	14.00	1.53	NA	NA	35.78	36.32	090
21244		A	Reconstruction of lower jaw	11.86	NA	NA	8.38	9.83	0.95	NA	NA	21.19	22.64	090
21245		A	Reconstruction of jaw	11.86	9.40	10.16	9.40	10.16	0.91	22.17	22.93	22.17	22.93	090
21246		A	Reconstruction of jaw	12.47	9.52	9.54	9.52	9.54	0.96	22.95	22.97	22.95	22.97	090
21247		A	Reconstruct lower jaw bone	22.63	NA	NA	15.57	18.43	1.62	NA	NA	39.82	42.68	090
21248		A	Reconstruction of jaw	11.48	8.26	9.62	7.35	8.94	0.85	20.59	21.95	19.68	21.27	090
21249		A	Reconstruction of jaw	17.52	10.88	13.39	9.72	12.52	1.33	29.73	32.24	28.57	31.37	090
21255		A	Reconstruct lower jaw bone	16.72	NA	NA	9.49	12.11	1.66	NA	NA	27.87	30.49	090
21256		A	Reconstruction of orbit	16.19	NA	NA	12.52	14.22	1.38	NA	NA	30.09	31.79	090
21260		A	Revise eye sockets	16.52	NA	NA	9.95	12.39	0.67	NA	NA	27.14	29.58	090
21261		A	Revise eye sockets	31.49	NA	NA	19.07	19.13	2.38	NA	NA	52.94	53.00	090
21263		A	Revise eye sockets	28.42	NA	NA	14.51	19.37	1.12	NA	NA	44.05	48.91	090
21267		A	Revise eye sockets	18.90	NA	NA	14.03	14.49	1.12	NA	NA	34.05	34.51	090
21268		A	Revise eye sockets	24.48	NA	NA	14.81	15.27	3.89	NA	NA	43.18	43.64	090
21270		A	Augmentation, cheek bone	10.23	7.86	8.50	7.86	8.50	0.89	18.98	19.62	18.98	19.62	090
21275		A	Revision, orbitofacial bones	11.24	NA	NA	9.88	9.84	1.05	NA	NA	22.17	22.13	090

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
21280		A	Revision of eyelid	6.03	NA	NA	5.99	6.29	0.29	NA	NA	12.31	12.61	090
21282		A	Revision of eyelid	3.49	NA	NA	4.96	4.76	0.20	NA	NA	8.65	8.45	090
21295		A	Revision of jaw muscle/bone	1.53	NA	NA	4.26	3.46	0.11	NA	NA	5.90	5.10	090
21296		A	Revision of jaw muscle/bone	4.25	NA	NA	4.31	4.22	0.35	NA	NA	8.91	8.82	090
21299		C	Cranio/maxillofacial surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21300		A	Treatment of skull fracture	0.72	2.35	2.01	0.28	0.46	0.08	3.15	2.81	1.08	1.26	000
21310		A	Treatment of nose fracture	0.58	2.28	1.91	0.16	0.32	0.06	2.92	2.55	0.80	0.96	000
21315		A	Treatment of nose fracture	1.51	2.88	2.65	1.15	1.35	0.12	4.51	4.28	2.78	2.98	010
21320		A	Treatment of nose fracture	1.85	4.06	3.68	1.87	2.04	0.14	6.05	5.67	3.86	4.03	010
21325		A	Treatment of nose fracture	3.77	NA	NA	3.39	3.65	0.31	NA	NA	7.47	7.73	090
21330		A	Treatment of nose fracture	5.38	NA	NA	5.02	5.37	0.47	NA	NA	10.87	11.22	090
21335		A	Treatment of nose fracture	8.61	NA	NA	6.57	7.50	0.65	NA	NA	15.83	16.76	090
21336		A	Treat nasal septal fracture	5.72	NA	NA	4.95	4.82	0.47	NA	NA	11.14	11.01	090
21337		A	Treat nasal septal fracture	2.70	4.90	4.44	2.92	2.96	0.23	7.83	7.37	5.85	5.89	090
21338		A	Treat nasoethmoid fracture	6.46	NA	NA	5.95	5.82	0.53	NA	NA	12.94	12.81	090
21339		A	Treat nasoethmoid fracture	8.09	NA	NA	6.31	6.66	0.65	NA	NA	15.05	15.40	090
21340		A	Treatment of nose fracture	10.77	NA	NA	9.24	9.35	0.69	NA	NA	20.70	20.81	090
21343		A	Treatment of sinus fracture	12.95	NA	NA	9.34	9.49	1.20	NA	NA	23.49	23.64	090
21344		A	Treatment of sinus fracture	19.72	NA	NA	12.80	12.09	1.78	NA	NA	34.30	33.59	090
21345		A	Treat nose/jaw fracture	8.16	7.45	7.73	7.41	7.70	0.64	16.25	16.53	16.21	16.50	090
21346		A	Treat nose/jaw fracture	10.61	NA	NA	8.90	9.23	0.83	NA	NA	20.34	20.67	090
21347		A	Treat nose/jaw fracture	12.69	NA	NA	9.02	9.58	1.08	NA	NA	22.79	23.35	090
21348		A	Treat nose/jaw fracture	16.69	NA	NA	9.60	10.28	1.44	NA	NA	27.73	28.41	090
21355		A	Treat cheek bone fracture	3.77	3.49	3.04	2.04	1.95	0.32	7.58	7.13	6.13	6.04	010
21356		A	Treat cheek bone fracture	4.15	NA	NA	3.02	3.51	0.34	NA	NA	7.51	8.00	010
21360		A	Treat cheek bone fracture	6.46	NA	NA	5.24	5.86	0.52	NA	NA	12.22	12.84	090
21365		A	Treat cheek bone fracture	14.95	NA	NA	10.72	11.39	1.28	NA	NA	26.95	27.62	090
21366		A	Treat cheek bone fracture	17.77	NA	NA	11.76	12.10	1.52	NA	NA	31.05	31.39	090
21385		A	Treat eye socket fracture	9.16	NA	NA	6.79	7.70	0.67	NA	NA	16.62	17.53	090
21386		A	Treat eye socket fracture	9.16	NA	NA	7.48	8.07	0.75	NA	NA	17.39	17.98	090
21387		A	Treat eye socket fracture	9.70	NA	NA	7.82	7.89	0.78	NA	NA	18.30	18.37	090
21390		A	Treat eye socket fracture	10.13	NA	NA	8.15	9.14	0.74	NA	NA	19.02	20.01	090
21395		A	Treat eye socket fracture	12.68	NA	NA	9.36	9.63	1.16	NA	NA	23.20	23.47	090
21400		A	Treat eye socket fracture	1.40	2.87	2.61	0.92	1.14	0.12	4.39	4.13	2.44	2.66	090
21401		A	Treat eye socket fracture	3.26	4.25	3.89	2.99	2.94	0.25	7.76	7.40	6.50	6.45	090
21406		A	Treat eye socket fracture	7.01	NA	NA	5.96	5.88	0.60	NA	NA	13.57	13.49	090
21407		A	Treat eye socket fracture	8.61	NA	NA	7.39	7.47	0.70	NA	NA	16.70	16.78	090
21408		A	Treat eye socket fracture	12.38	NA	NA	10.01	9.81	1.21	NA	NA	23.60	23.40	090
21421		A	Treat mouth roof fracture	5.14	6.39	6.46	5.27	5.62	0.38	11.91	11.98	10.79	11.14	090
21422		A	Treat mouth roof fracture	8.32	NA	NA	7.00	7.73	0.69	NA	NA	16.01	16.74	090
21423		A	Treat mouth roof fracture	10.40	NA	NA	7.66	8.41	0.82	NA	NA	18.88	19.63	090
21431		A	Treat craniofacial fracture	7.05	NA	NA	5.51	5.77	0.54	NA	NA	13.10	13.36	090
21432		A	Treat craniofacial fracture	8.61	NA	NA	7.63	7.56	0.94	NA	NA	17.18	17.11	090
21433		A	Treat craniofacial fracture	25.35	NA	NA	15.99	16.87	2.11	NA	NA	43.45	44.33	090
21435		A	Treat craniofacial fracture	17.25	NA	NA	12.27	12.80	1.36	NA	NA	30.88	31.41	090
21436		A	Treat craniofacial fracture	28.04	NA	NA	17.76	17.30	1.88	NA	NA	47.68	47.22	090
21440		A	Treat dental ridge fracture	2.70	5.00	4.58	3.20	3.23	0.20	7.90	7.48	6.10	6.13	090
21445		A	Treat dental ridge fracture	5.38	6.14	6.26	4.89	5.33	0.42	11.94	12.06	10.69	11.13	090
21450		A	Treat lower jaw fracture	2.97	5.56	4.94	2.21	2.43	0.23	8.76	8.14	5.41	5.63	090
21451		A	Treat lower jaw fracture	4.87	5.91	6.02	4.91	5.27	0.37	11.15	11.26	10.15	10.51	090
21452		A	Treat lower jaw fracture	1.98	7.04	5.66	3.86	3.27	0.15	9.17	7.79	5.99	5.40	090
21453		A	Treat lower jaw fracture	5.54	6.56	6.72	5.62	6.02	0.44	12.54	12.70	11.60	12.00	090
21454		A	Treat lower jaw fracture	6.46	NA	NA	5.14	5.79	0.48	NA	NA	12.08	12.73	090
21461		A	Treat lower jaw fracture	8.09	8.05	8.45	7.27	7.87	0.65	16.79	17.19	16.01	16.61	090
21462		A	Treat lower jaw fracture	9.79	8.97	9.65	7.50	8.55	0.76	19.52	20.20	18.05	19.10	090
21465		A	Treat lower jaw fracture	11.91	NA	NA	7.31	7.77	0.95	NA	NA	20.17	20.63	090
21470		A	Treat lower jaw fracture	15.34	NA	NA	9.27	11.53	1.21	NA	NA	25.82	28.08	090
21480		A	Reset dislocated jaw	0.61	1.47	1.32	0.18	0.35	0.05	2.13	1.98	0.84	1.01	000
21485		A	Reset dislocated jaw	3.99	3.51	3.23	3.01	2.85	0.27	7.77	7.49	7.27	7.11	090
21490		A	Repair dislocated jaw	11.86	NA	NA	7.14	7.07	0.84	NA	NA	19.84	19.77	090
21493		A	Treat hyoid bone fracture	1.27	NA	NA	2.96	2.63	0.10	NA	NA	4.33	4.00	090
21494		A	Treat hyoid bone fracture	6.28	NA	NA	4.95	5.75	0.45	NA	NA	11.68	12.48	090
21495		A	Treat hyoid bone fracture	5.69	NA	NA	5.11	5.14	0.41	NA	NA	11.21	11.24	090
21497		A	Interdental wiring	3.86	4.17	4.21	3.45	3.67	0.30	8.33	8.37	7.61	7.83	090
21499		C	Head surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21501		A	Drain neck/chest lesion	3.81	3.83	3.37	3.38	3.03	0.37	8.01	7.55	7.56	7.21	090
21502		A	Drain chest lesion	7.12	NA	NA	7.34	6.65	0.78	NA	NA	15.24	14.55	090
21510		A	Drainage of bone lesion	5.74	NA	NA	7.54	6.69	0.63	NA	NA	13.91	13.06	090
21550		A	Biopsy of neck/chest	2.06	2.16	1.85	1.24	1.16	0.12	4.34	4.03	3.42	3.34	010
21555		A	Remove lesion, neck/chest	4.35	4.09	3.50	2.48	2.30	0.39	8.83	8.24	7.22	7.04	090
21556		A	Remove lesion, neck/chest	5.57	NA	NA	3.20	3.43	0.52	NA	NA	9.29	9.52	090
21557		A	Remove tumor, neck/chest	8.88	NA	NA	7.42	7.87	0.81	NA	NA	17.11	17.56	090
21600		A	Partial removal of rib	6.89	NA	NA	8.46	7.57	0.79	NA	NA	16.14	15.25	090
21610		A	Partial removal of rib	14.61	NA	NA	10.21	9.06	1.99	NA	NA	26.81	25.66	090
21615		A	Removal of rib	9.87	NA	NA	8.99	9.49	1.30	NA	NA	20.16	20.66	090
21616		A	Removal of rib and nerves	12.04	NA	NA	12.12	11.06	1.45	NA	NA	25.61	24.55	090
21620		A	Partial removal of sternum	6.79	NA	NA	8.80	8.46	0.78	NA	NA	16.37	16.03	090
21627		A	Sternal debridement	6.81	NA	NA	14.79	12.46	0.84	NA	NA	22.44	20.11	090
21630		A	Extensive sternum surgery	17.38	NA	NA	13.86	13.89	1.95	NA	NA	33.19	33.22	090
21632		A	Extensive sternum surgery	18.14	NA	NA	15.27	14.58	2.27	NA	NA	35.68	34.99	090
21700		A	Revision of neck muscle	6.19	7.62	6.84	7.24	6.56	0.74	14.55	13.77	14.17	13.49	090
21705		A	Revision of neck muscle/rib	9.60	NA	NA	6.97	6.54	1.27	NA	NA	17.84	17.41	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
21720		A	Revision of neck muscle	5.68	6.76	6.11	6.06	5.59	0.82	13.26	12.61	12.56	12.09	090
21725		A	Revision of neck muscle	6.99	NA	NA	6.21	5.97	0.68	NA	NA	13.88	13.64	090
21740		A	Reconstruction of sternum	16.80	NA	NA	15.15	13.80	1.95	NA	NA	33.90	32.55	090
21750		A	Repair of sternum separation	10.77	NA	NA	13.25	11.93	1.35	NA	NA	25.37	24.05	090
21800		A	Treatment of rib fracture	0.96	1.80	1.56	0.79	0.80	0.09	2.85	2.61	1.84	1.85	090
21805		A	Treatment of rib fracture	2.75	NA	NA	6.10	4.94	0.29	NA	NA	9.14	7.98	090
21810		A	Treatment of rib fracture(s)	6.86	NA	NA	7.31	7.47	0.56	NA	NA	14.73	14.89	090
21820		A	Treat sternum fracture	1.28	2.18	2.01	1.14	1.23	0.12	3.58	3.41	2.54	2.63	090
21825		A	Treat sternum fracture	7.41	NA	NA	11.97	10.85	0.95	NA	NA	20.33	19.21	090
21899		C	Neck/chest surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21920		A	Biopsy soft tissue of back	2.06	2.26	1.91	0.81	0.82	0.10	4.42	4.07	2.97	2.98	010
21925		A	Biopsy soft tissue of back	4.49	10.40	8.33	4.30	3.76	0.43	15.32	13.25	9.22	8.68	090
21930		A	Remove lesion, back or flank	0.05	4.41	4.05	2.66	2.73	0.47	4.93	4.57	3.18	3.25	090
21935		A	Remove tumor, back	17.96	NA	NA	11.85	10.68	1.79	NA	NA	31.60	30.43	090
22100		A	Remove part of neck vertebra	9.73	NA	NA	8.02	8.09	1.34	NA	NA	19.09	19.16	090
22101		A	Remove part, thorax vertebra	9.81	NA	NA	8.02	8.19	1.23	NA	NA	19.06	19.23	090
22102		A	Remove part, lumbar vertebra	9.81	NA	NA	8.21	7.38	1.37	NA	NA	19.39	18.56	090
22103		A	Remove extra spine segment	2.34	NA	NA	1.21	1.51	0.33	NA	NA	3.88	4.18	ZZZ
22110		A	Remove part of neck vertebra	12.74	NA	NA	10.11	10.22	1.88	NA	NA	24.73	24.84	090
22112		A	Remove part, thorax vertebra	12.81	NA	NA	10.01	10.19	1.57	NA	NA	24.39	24.57	090
22114		A	Remove part, lumbar vertebra	12.81	NA	NA	9.71	9.25	1.37	NA	NA	23.89	23.43	090
22116		A	Remove extra spine segment	2.32	NA	NA	1.18	1.49	0.32	NA	NA	3.82	4.13	ZZZ
22210		A	Revision of neck spine	23.82	NA	NA	15.82	15.62	3.46	NA	NA	43.10	42.90	090
22212		A	Revision of thorax spine	19.42	NA	NA	14.23	15.36	1.99	NA	NA	35.64	36.77	090
22214		A	Revision of lumbar spine	19.45	NA	NA	13.92	14.54	2.35	NA	NA	35.72	36.34	090
22216		A	Revise, extra spine segment	6.04	NA	NA	3.18	3.76	0.81	NA	NA	10.03	10.61	ZZZ
22220		A	Revision of neck spine	21.37	NA	NA	14.41	15.32	3.15	NA	NA	38.93	39.84	090
22222		A	Revision of thorax spine	21.52	NA	NA	13.17	13.57	1.01	NA	NA	35.70	36.10	090
22224		A	Revision of lumbar spine	21.52	NA	NA	14.80	15.08	2.43	NA	NA	38.75	39.03	090
22226		A	Revise, extra spine segment	6.04	NA	NA	3.14	3.73	0.73	NA	NA	9.91	10.50	ZZZ
22305		A	Treat spine process fracture	2.05	2.74	2.67	1.69	1.88	0.21	5.00	4.93	3.95	4.14	090
22310		A	Treat spine fracture	2.61	3.91	3.62	2.98	2.92	0.27	6.79	6.50	5.86	5.80	090
22315		A	Treat spine fracture	8.84	NA	NA	8.43	7.82	1.14	NA	NA	18.41	17.80	090
22318		A	Treat odontoid fx w/o graft	21.50	NA	NA	14.06	14.06	3.89	NA	NA	39.45	39.45	090
22319		A	Treat odontoid fx w/graft	0.24	NA	NA	16.20	16.20	4.34	NA	NA	20.78	20.78	090
22325		A	Treat spine fracture	18.30	NA	NA	13.71	12.54	2.29	NA	NA	34.30	33.13	090
22326		A	Treat neck spine fracture	19.59	NA	NA	14.47	15.18	3.18	NA	NA	37.24	37.95	090
22327		A	Treat thorax spine fracture	19.20	NA	NA	14.25	15.02	2.64	NA	NA	36.09	36.86	090
22328		A	Treat each add spine ■	4.61	NA	NA	2.40	3.00	0.68	NA	NA	7.69	8.29	ZZZ
22505		A	Manipulation of spine	1.87	3.92	3.30	2.67	2.36	0.13	5.92	5.30	4.67	4.36	010
22548		A	Neck spine fusion	25.82	NA	NA	17.04	18.95	4.66	NA	NA	47.52	49.43	090
22554		A	Neck spine fusion	18.62	NA	NA	12.91	15.06	3.14	NA	NA	34.67	36.82	090
22556		A	Thorax spine fusion	23.46	NA	NA	16.15	18.00	3.20	NA	NA	42.81	44.66	090
22558		A	Lumbar spine fusion	22.28	NA	NA	14.70	16.50	2.62	NA	NA	39.60	41.40	090
22585		A	Additional spinal fusion	5.53	NA	NA	2.86	3.61	0.85	NA	NA	9.24	9.99	ZZZ
22590		A	Spine & skull spinal fusion	20.51	NA	NA	14.50	16.73	3.38	NA	NA	38.39	40.62	090
22595		A	Neck spinal fusion	19.39	NA	NA	13.54	15.94	3.23	NA	NA	36.16	38.56	090
22600		A	Neck spine fusion	16.14	NA	NA	11.95	13.78	2.53	NA	NA	30.62	32.45	090
22610		A	Thorax spine fusion	16.02	NA	NA	11.94	13.74	2.22	NA	NA	30.18	31.98	090
22612		A	Lumbar spine fusion	0.21	NA	NA	14.60	16.54	2.62	NA	NA	17.43	19.37	090
22614		A	Spine fusion, extra segment	6.44	NA	NA	3.43	4.11	0.82	NA	NA	10.69	11.37	ZZZ
22630		A	Lumbar spine fusion	20.84	NA	NA	14.78	16.09	3.05	NA	NA	38.67	39.98	090
22632		A	Spine fusion, extra segment	5.23	NA	NA	2.75	3.42	0.72	NA	NA	8.70	9.37	ZZZ
22800		A	Fusion of spine	18.25	NA	NA	12.94	15.15	2.09	NA	NA	33.28	35.49	090
22802		A	Fusion of spine	30.88	NA	NA	20.27	22.89	3.38	NA	NA	54.53	57.15	090
22804		A	Fusion of spine	36.27	NA	NA	23.15	25.05	3.82	NA	NA	63.24	65.14	090
22808		A	Fusion of spine	26.27	NA	NA	17.62	18.21	3.79	NA	NA	47.68	48.27	090
22810		A	Fusion of spine	30.27	NA	NA	19.42	19.56	3.51	NA	NA	53.20	53.34	090
22812		A	Fusion of spine	32.70	NA	NA	20.84	22.67	3.60	NA	NA	57.14	58.97	090
22818		A	Kyphectomy, 1–2 segments	31.83	NA	NA	19.46	22.26	4.31	NA	NA	55.60	58.40	090
22819		A	Kyphectomy, 3 or more	36.44	NA	NA	21.62	23.88	4.93	NA	NA	62.99	65.25	090
22830		A	Exploration of spinal fusion	10.85	NA	NA	9.03	10.01	1.31	NA	NA	21.19	22.17	090
22840		A	Insert spine fixation device	12.54	NA	NA	7.83	7.50	1.61	NA	NA	21.98	21.65	ZZZ
22841		B	Insert spine fixation device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
22842		A	Insert spine fixation device	12.58	NA	NA	6.66	6.86	1.63	NA	NA	20.87	21.07	ZZZ
22843		A	Insert spine fixation device	13.46	NA	NA	7.13	7.67	1.64	NA	NA	22.23	22.77	ZZZ
22844		A	Insert spine fixation device	16.44	NA	NA	10.23	10.51	1.76	NA	NA	28.43	28.71	ZZZ
22845		A	Insert spine fixation device	11.96	NA	NA	7.53	7.20	1.95	NA	NA	21.44	21.11	ZZZ
22846		A	Insert spine fixation device	12.42	NA	NA	7.82	8.01	0.02	NA	NA	20.26	20.45	ZZZ
22847		A	Insert spine fixation device	13.80	NA	NA	8.46	8.73	1.63	NA	NA	23.89	24.16	ZZZ
22848		A	Insert pelv fixation device	0.06	NA	NA	4.50	4.93	0.64	NA	NA	5.20	5.63	ZZZ
22849		A	Reinsert spinal fixation	18.51	NA	NA	12.98	12.93	2.25	NA	NA	33.74	33.69	090
22850		A	Remove spine fixation device	9.52	NA	NA	7.91	8.42	1.19	NA	NA	18.62	19.13	090
22851		A	Apply spine prosth device	6.71	NA	NA	4.78	5.32	0.93	NA	NA	12.42	12.96	ZZZ
22852		A	Remove spine fixation device	9.01	NA	NA	7.70	8.44	1.09	NA	NA	17.80	18.54	090
22855		A	Remove spine fixation device	15.13	NA	NA	10.71	10.06	2.35	NA	NA	28.19	27.54	090
22899		C	Spine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
22900		A	Remove abdominal wall lesion	5.80	NA	NA	4.20	3.97	0.57	NA	NA	10.57	10.34	090
22999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
23000		A	Removal of calcium deposits	4.36	7.21	6.29	6.05	5.42	0.40	11.97	11.05	10.81	10.18	090
23020		A	Release shoulder joint	8.93	NA	NA	9.25	8.91	0.93	NA	NA	19.11	18.77	090
23030		A	Drain shoulder lesion	3.43	5.16	4.46	3.87	3.49	0.33	8.92	8.22	7.63	7.25	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
23031		A	Drain shoulder bursa	2.74	5.07	3.94	3.59	2.83	0.26	8.07	6.94	6.59	5.83	010
23035		A	Drain shoulder bone lesion	8.61	NA	NA	13.34	11.69	0.88	NA	NA	22.83	21.18	090
23040		A	Exploratory shoulder surgery	9.20	NA	NA	10.17	10.14	0.95	NA	NA	20.32	20.29	090
23044		A	Exploratory shoulder surgery	7.12	NA	NA	8.88	8.54	0.74	NA	NA	16.74	16.40	090
23065		A	Biopsy shoulder tissues	2.27	2.51	2.06	1.35	1.19	0.11	4.89	4.44	3.73	3.57	010
23066		A	Biopsy shoulder tissues	4.16	6.46	5.17	5.60	4.52	0.41	11.03	9.74	10.17	9.09	090
23075		A	Removal of shoulder lesion	2.39	4.55	3.87	2.82	2.57	0.23	7.17	6.49	5.44	5.19	010
23076		A	Removal of shoulder lesion	7.63	NA	NA	7.40	6.51	0.78	NA	NA	15.81	14.92	090
23077		A	Remove tumor of shoulder	16.09	NA	NA	12.87	11.66	1.58	NA	NA	30.54	29.33	090
23100		A	Biopsy of shoulder joint	6.03	NA	NA	7.77	7.63	0.60	NA	NA	14.40	14.26	090
23101		A	Shoulder joint surgery	5.58	NA	NA	7.56	7.34	0.57	NA	NA	13.71	13.49	090
23105		A	Remove shoulder joint lining	8.23	NA	NA	8.88	9.12	0.85	NA	NA	17.96	18.20	090
23106		A	Incision of collarbone joint	5.96	NA	NA	7.72	7.08	0.64	NA	NA	14.32	13.68	090
23107		A	Explore treat shoulder joint	8.62	NA	NA	9.11	9.41	0.88	NA	NA	18.61	18.91	090
23120		A	Partial removal, collar bone	7.11	NA	NA	8.29	7.47	0.73	NA	NA	16.13	15.31	090
23125		A	Removal of collar bone	9.39	NA	NA	9.53	9.45	0.97	NA	NA	19.89	19.81	090
23130		A	Remove shoulder bone, part	7.55	NA	NA	8.46	8.26	0.77	NA	NA	16.78	16.58	090
23140		A	Removal of bone lesion	6.89	NA	NA	7.59	6.82	0.68	NA	NA	15.16	14.39	090
23145		A	Removal of bone lesion	9.09	NA	NA	9.27	9.16	0.84	NA	NA	19.20	19.09	090
23146		A	Removal of bone lesion	7.83	NA	NA	9.24	8.35	0.82	NA	NA	17.89	17.00	090
23150		A	Removal of humerus lesion	8.48	NA	NA	8.56	8.22	0.85	NA	NA	17.89	17.55	090
23155		A	Removal of humerus lesion	10.35	NA	NA	11.00	10.64	1.08	NA	NA	22.43	22.07	090
23156		A	Removal of humerus lesion	8.68	NA	NA	8.91	8.76	0.89	NA	NA	18.48	18.33	090
23170		A	Remove collar bone lesion	6.86	NA	NA	9.29	8.27	0.72	NA	NA	16.87	15.85	090
23172		A	Remove shoulder blade lesion	6.90	NA	NA	8.46	7.75	0.72	NA	NA	16.08	15.37	090
23174		A	Remove humerus lesion	9.51	NA	NA	10.19	9.96	0.94	NA	NA	20.64	20.41	090
23180		A	Remove collar bone lesion	8.53	NA	NA	13.76	11.49	0.88	NA	NA	23.17	20.90	090
23182		A	Remove shoulder blade lesion	8.15	NA	NA	15.56	13.45	0.84	NA	NA	24.55	22.44	090
23184		A	Remove humerus lesion	9.38	NA	NA	13.89	12.81	0.95	NA	NA	24.22	23.14	090
23190		A	Partial removal of scapula	7.24	NA	NA	7.41	7.21	0.74	NA	NA	15.39	15.19	090
23195		A	Removal of head of humerus	9.81	NA	NA	9.72	9.71	1.02	NA	NA	20.55	20.54	090
23200		A	Removal of collar bone	12.08	NA	NA	13.47	12.59	1.22	NA	NA	26.77	25.89	090
23210		A	Removal of shoulder blade	12.49	NA	NA	12.91	2.13	1.25	NA	NA	26.65	25.87	090
23220		A	Partial removal of humerus	14.56	NA	NA	13.24	13.20	1.47	NA	NA	29.27	29.23	090
23221		A	Partial removal of humerus	17.74	NA	NA	13.30	14.90	1.26	NA	NA	32.30	33.90	090
23222		A	Partial removal of humerus	23.92	NA	NA	18.68	18.09	2.43	NA	NA	45.03	44.44	090
23330		A	Remove shoulder foreign body	1.85	4.49	3.52	3.23	2.57	0.18	6.52	5.55	5.26	4.60	010
23331		A	Remove shoulder foreign body	7.38	NA	NA	8.38	6.90	0.76	NA	NA	16.52	15.04	090
23332		A	Remove shoulder foreign body	11.82	NA	NA	10.68	10.65	1.19	NA	NA	23.49	23.46	090
23350		A	Injection for shoulder x-ray	0.01	9.23	7.06	0.35	0.40	0.04	9.28	7.11	0.40	0.45	000
23395		A	Muscle transfer,shoulder/arm	16.85	NA	NA	12.97	12.75	1.74	NA	NA	31.56	31.34	090
23397		A	Muscle transfers	16.13	NA	NA	13.20	13.69	1.68	NA	NA	31.01	31.50	090
23400		A	Fixation of shoulder blade	13.54	NA	NA	12.60	12.12	1.42	NA	NA	27.56	27.08	090
23405		A	Incision of tendon & muscle	8.37	NA	NA	9.54	9.19	0.86	NA	NA	18.77	18.42	090
23406		A	Incise tendon(s) & muscle(s)	10.79	NA	NA	10.12	10.14	1.13	NA	NA	22.04	22.06	090
23410		A	Repair of tendon(s)	12.45	NA	NA	11.14	11.32	1.27	NA	NA	24.86	25.04	090
23412		A	Repair of tendon(s)	13.31	NA	NA	11.64	12.36	1.36	NA	NA	26.31	27.03	090
23415		A	Release of shoulder ligament	9.97	NA	NA	9.04	8.19	1.02	NA	NA	20.03	19.18	090
23420		A	Repair of shoulder	13.30	NA	NA	12.33	13.22	1.36	NA	NA	26.99	27.88	090
23430		A	Repair biceps tendon	9.98	NA	NA	9.86	9.39	1.02	NA	NA	20.86	20.39	090
23440		A	Remove/transplant tendon	10.48	NA	NA	10.06	9.51	1.08	NA	NA	21.64	21.07	090
23450		A	Repair shoulder capsule	13.40	NA	NA	11.50	12.09	1.37	NA	NA	26.27	26.86	090
23455		A	Repair shoulder capsule	14.37	NA	NA	12.18	13.36	1.47	NA	NA	28.02	29.20	090
23460		A	Repair shoulder capsule	15.37	NA	NA	12.93	13.52	1.56	NA	NA	29.86	30.45	090
23462		A	Repair shoulder capsule	15.30	NA	NA	12.51	13.49	1.50	NA	NA	29.31	30.29	090
23465		A	Repair shoulder capsule	15.86	NA	NA	13.04	13.62	1.63	NA	NA	30.52	31.10	090
23466		A	Repair shoulder capsule	14.22	NA	NA	12.07	13.30	1.47	NA	NA	27.76	28.99	090
23470		A	Reconstruct shoulder joint	17.15	NA	NA	13.68	14.81	1.76	NA	NA	32.59	33.72	090
23472		A	Reconstruct shoulder joint	16.92	NA	NA	13.56	15.22	1.74	NA	NA	32.22	33.88	090
23480		A	Revision of collar bone	11.18	NA	NA	10.44	9.62	1.16	NA	NA	22.78	21.96	090
23485		A	Revision of collar bone	13.43	NA	NA	11.62	11.80	1.37	NA	NA	26.42	26.60	090
23490		A	Reinforce clavicle	11.86	NA	NA	10.42	10.52	1.24	NA	NA	23.52	23.62	090
23491		A	Reinforce shoulder bones	14.21	NA	NA	11.99	12.44	1.48	NA	NA	27.68	28.13	090
23500		A	Treat clavicle fracture	2.08	3.25	2.89	1.98	1.93	0.21	5.54	5.18	4.27	4.22	090
23505		A	Treat clavicle fracture	3.69	5.01	4.46	3.42	3.26	0.37	9.07	8.52	7.48	7.32	090
23515		A	Treat clavicle fracture	7.41	NA	NA	7.20	7.28	0.76	NA	NA	15.37	15.45	090
23520		A	Treat clavicle dislocation	2.16	3.36	2.90	2.24	2.06	0.21	5.73	5.27	4.61	4.43	090
23525		A	Treat clavicle dislocation	3.60	4.33	3.79	3.22	2.95	0.37	8.30	7.76	7.19	6.92	090
23530		A	Treat clavicle dislocation	7.31	NA	NA	6.84	6.92	0.74	NA	NA	14.89	14.97	090
23532		A	Treat clavicle dislocation	8.01	NA	NA	7.06	7.28	0.84	NA	NA	15.91	16.11	090
23540		A	Treat clavicle dislocation	2.23	3.76	3.24	1.95	1.86	0.21	6.20	5.68	4.39	4.32	090
23545		A	Treat clavicle dislocation	3.25	4.21	3.70	3.06	2.83	0.32	7.78	7.27	6.63	6.40	090
23550		A	Treat clavicle dislocation	7.24	NA	NA	7.13	7.51	0.73	NA	NA	15.10	15.48	090
23552		A	Treat clavicle dislocation	8.45	NA	NA	7.82	7.84	0.84	NA	NA	17.11	17.13	090
23570		A	Treat shoulder blade fx	2.23	3.27	2.91	2.24	2.14	0.23	5.73	5.37	4.70	4.60	090
23575		A	Treat shoulder blade fx	4.06	5.31	4.73	3.84	3.63	0.41	9.78	9.20	8.31	8.10	090
23585		A	Treat scapula fracture	8.96	NA	NA	8.31	8.32	0.92	NA	NA	18.19	18.20	090
23600		A	Treat humerus fracture	2.93	5.05	4.58	3.13	3.14	0.30	8.28	7.81	6.36	6.37	090
23605		A	Treat humerus fracture	4.87	7.53	6.94	5.92	5.73	0.51	12.91	12.32	11.30	11.11	090
23615		A	Treat humerus fracture	9.35	NA	NA	8.96	9.53	0.96	NA	NA	19.29	19.84	090
23616		A	Treat humerus fracture	21.27	NA	NA	14.89	17.22	2.19	NA	NA	38.35	40.68	090
23620		A	Treat humerus fracture	2.40	4.75	4.35	2.84	2.91	0.25	7.40	7.00	5.49	5.56	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
23625		A	Treat humerus fracture	3.93	6.64	6.02	4.91	4.72	0.41	10.98	10.36	9.25	9.06	090
23630		A	Treat humerus fracture	7.35	NA	NA	7.19	7.59	0.75	NA	NA	15.29	15.69	090
23650		A	Treat shoulder dislocation	3.39	4.63	4.04	2.59	2.51	0.32	8.34	7.75	6.30	6.22	090
23655		A	Treat shoulder dislocation	4.57	NA	NA	3.53	3.44	0.46	NA	NA	8.56	8.47	090
23660		A	Treat shoulder dislocation	7.49	NA	NA	6.92	7.43	0.69	NA	NA	15.10	15.61	090
23665		A	Treat dislocation/fracture	4.47	6.69	5.93	5.19	4.80	0.46	11.62	10.86	10.12	9.73	090
23670		A	Treat dislocation/fracture	7.90	NA	NA	7.60	8.06	0.81	NA	NA	16.31	16.77	090
23675		A	Treat dislocation/fracture	6.05	7.64	6.80	6.07	5.62	0.62	14.31	13.47	12.74	12.29	090
23680		A	Treat dislocation/fracture	10.06	NA	NA	8.81	9.61	1.03	NA	NA	19.90	20.70	090
23700		A	Fixation of shoulder	2.52	NA	NA	3.01	2.83	0.26	NA	NA	5.79	5.61	010
23800		A	Fusion of shoulder joint	14.16	NA	NA	12.61	13.69	1.41	NA	NA	28.18	29.26	090
23802		A	Fusion of shoulder joint	16.60	NA	NA	10.43	11.64	1.70	NA	NA	28.73	29.94	090
23900		A	Amputation of arm & girdle	19.72	NA	NA	14.47	14.26	1.86	NA	NA	36.05	35.84	090
23920		A	Amputation at shoulder joint	14.61	NA	NA	12.09	12.83	1.52	NA	NA	28.22	28.96	090
23921		A	Amputation follow-up surgery	5.49	6.18	5.79	6.17	5.79	0.50	12.17	11.78	12.16	11.78	090
23929		C	Shoulder surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
23930		A	Drainage of arm lesion	2.94	4.99	4.18	3.53	3.09	0.29	8.22	7.41	6.76	6.32	010
23931		A	Drainage of arm bursa	1.79	4.71	3.74	3.09	2.52	0.17	6.67	5.70	5.05	4.48	010
23935		A	Drain arm/elbow bone lesion	6.09	NA	NA	10.72	9.31	0.62	NA	NA	17.43	16.02	090
24000		A	Exploratory elbow surgery	5.82	NA	NA	5.39	5.78	0.58	NA	NA	11.79	12.18	090
24006		A	Release elbow joint	9.31	NA	NA	7.69	7.71	0.96	NA	NA	17.96	17.98	090
24065		A	Biopsy arm/elbow soft tissue	2.08	4.92	3.91	2.84	2.35	0.11	7.11	6.10	5.03	4.54	010
24066		A	Biopsy arm/elbow soft tissue	5.21	7.51	6.37	5.97	5.21	0.55	13.27	12.13	11.73	10.97	090
24075		A	Remove arm/elbow lesion	3.92	6.99	5.78	5.32	4.53	0.38	11.29	10.08	9.62	8.83	090
24076		A	Remove arm/elbow lesion	6.30	NA	NA	6.39	5.79	0.64	NA	NA	13.33	12.73	090
24077		A	Remove tumor of arm/elbow	11.76	NA	NA	12.18	11.79	1.17	NA	NA	25.11	24.72	090
24100		A	Biopsy elbow joint lining	4.93	NA	NA	5.70	5.42	0.46	NA	NA	11.09	10.81	090
24101		A	Explore/treat elbow joint	6.13	NA	NA	6.01	6.34	0.63	NA	NA	12.77	13.10	090
24102		A	Remove elbow joint lining	8.03	NA	NA	7.06	7.69	0.83	NA	NA	15.92	16.55	090
24105		A	Removal of elbow bursa	3.61	NA	NA	4.48	4.38	0.37	NA	NA	8.46	8.36	090
24110		A	Remove humerus lesion	7.39	NA	NA	8.52	8.48	0.78	NA	NA	16.69	16.65	090
24115		A	Remove/graft bone lesion	9.63	NA	NA	9.29	9.05	0.85	NA	NA	19.77	19.53	090
24116		A	Remove/graft bone lesion	11.81	NA	NA	10.82	10.75	1.20	NA	NA	23.83	23.76	090
24120		A	Remove elbow lesion	6.65	NA	NA	6.03	6.16	0.68	NA	NA	13.36	13.49	090
24125		A	Remove/graft bone lesion	7.89	NA	NA	6.68	6.58	0.76	NA	NA	15.33	15.23	090
24126		A	Remove/graft bone lesion	8.31	NA	NA	7.03	7.28	0.87	NA	NA	16.21	16.46	090
24130		A	Removal of head of radius	6.25	NA	NA	6.08	6.38	0.65	NA	NA	12.98	13.28	090
24134		A	Removal of arm bone lesion	9.73	NA	NA	13.90	12.78	0.94	NA	NA	24.57	23.45	090
24136		A	Remove radius bone lesion	7.99	NA	NA	5.71	6.67	0.80	NA	NA	14.50	15.46	090
24138		A	Remove elbow bone lesion	8.05	NA	NA	7.08	7.04	0.84	NA	NA	15.97	15.93	090
24140		A	Partial removal of arm bone	9.18	NA	NA	14.49	13.25	0.95	NA	NA	24.62	23.38	090
24145		A	Partial removal of radius	7.58	NA	NA	9.69	9.00	0.77	NA	NA	18.04	17.35	090
24147		A	Partial removal of elbow	7.54	NA	NA	9.78	9.13	0.80	NA	NA	18.12	17.47	090
24149		A	Radical resection of elbow	14.20	NA	NA	10.47	11.28	1.46	NA	NA	26.13	26.94	090
24150		A	Extensive humerus surgery	13.27	NA	NA	13.12	13.66	1.34	NA	NA	27.73	28.27	090
24151		A	Extensive humerus surgery	15.58	NA	NA	13.96	14.22	1.50	NA	NA	31.04	31.30	090
24152		A	Extensive radius surgery	10.06	NA	NA	8.75	8.41	0.95	NA	NA	19.76	19.42	090
24153		A	Extensive radius surgery	11.54	NA	NA	6.76	7.90	0.67	NA	NA	18.97	20.11	090
24155		A	Removal of elbow joint	11.73	NA	NA	8.75	9.48	1.18	NA	NA	21.66	22.39	090
24160		A	Remove elbow joint implant	7.83	NA	NA	6.94	6.52	0.78	NA	NA	15.55	15.13	090
24164		A	Remove radius head implant	6.23	NA	NA	6.05	6.04	0.65	NA	NA	12.93	12.92	090
24200		A	Removal of arm foreign body	1.76	4.50	3.53	2.68	2.16	0.14	6.40	5.43	4.58	4.06	010
24201		A	Removal of arm foreign body	4.56	7.24	6.26	5.90	5.26	0.48	12.28	11.30	10.94	10.30	090
24220		A	Injection for elbow x-ray	1.31	10.07	7.69	0.46	0.48	0.07	11.45	9.07	1.84	1.86	000
24301		A	Muscle/tendon transfer	10.20	NA	NA	8.30	8.37	1.04	NA	NA	19.54	19.61	090
24305		A	Arm tendon lengthening	7.45	NA	NA	6.79	5.93	0.75	NA	NA	14.99	14.13	090
24310		A	Revision of arm tendon	5.98	NA	NA	7.11	6.13	0.63	NA	NA	13.72	12.74	090
24320		A	Repair of arm tendon	10.56	NA	NA	8.99	9.24	0.98	NA	NA	20.53	20.78	090
24330		A	Revision of arm muscles	9.60	NA	NA	7.94	8.33	1.03	NA	NA	18.57	18.96	090
24331		A	Revision of arm muscles	10.65	NA	NA	8.36	8.88	1.11	NA	NA	20.12	20.64	090
24340		A	Repair of biceps tendon	7.89	NA	NA	6.92	7.09	0.81	NA	NA	15.62	15.79	090
24341		A	Repair arm tendon/muscle	7.90	NA	NA	6.92	7.09	0.82	NA	NA	15.64	15.81	090
24342		A	Repair of ruptured tendon	10.62	NA	NA	8.47	9.17	1.10	NA	NA	20.19	20.89	090
24350		A	Repair of tennis elbow	5.25	NA	NA	5.42	5.21	0.54	NA	NA	11.21	11.00	090
24351		A	Repair of tennis elbow	5.91	NA	NA	5.92	5.68	0.62	NA	NA	12.45	12.21	090
24352		A	Repair of tennis elbow	6.43	NA	NA	6.28	6.26	0.66	NA	NA	13.37	13.35	090
24354		A	Repair of tennis elbow	6.48	NA	NA	6.15	6.14	0.68	NA	NA	13.31	13.30	090
24356		A	Revision of tennis elbow	6.68	NA	NA	6.36	6.75	0.70	NA	NA	13.74	14.13	090
24360		A	Reconstruct elbow joint	12.34	NA	NA	9.30	10.66	1.27	NA	NA	22.91	24.27	090
24361		A	Reconstruct elbow joint	14.08	NA	NA	10.11	11.15	1.46	NA	NA	25.65	26.69	090
24362		A	Reconstruct elbow joint	14.99	NA	NA	10.56	11.49	1.34	NA	NA	26.89	27.82	090
24363		A	Replace elbow joint	18.49	NA	NA	12.70	15.04	1.91	NA	NA	33.10	35.44	090
24365		A	Reconstruct head of radius	8.39	NA	NA	7.30	7.52	0.87	NA	NA	16.56	16.78	090
24366		A	Reconstruct head of radius	9.13	NA	NA	7.66	8.47	0.95	NA	NA	17.74	18.55	090
24400		A	Revision of humerus	11.06	NA	NA	11.09	10.61	1.13	NA	NA	23.28	22.80	090
24410		A	Revision of humerus	14.82	NA	NA	12.58	13.25	1.37	NA	NA	28.77	29.44	090
24420		A	Revision of humerus	13.44	NA	NA	15.22	14.75	1.36	NA	NA	30.02	29.55	090
24430		A	Repair of humerus	12.81	NA	NA	11.39	12.37	1.32	NA	NA	25.52	26.50	090
24435		A	Repair humerus with graft	13.17	NA	NA	12.30	13.16	1.36	NA	NA	26.83	27.69	090
24470		A	Revision of elbow joint	8.74	NA	NA	7.50	7.78	0.92	NA	NA	17.16	17.44	090
24495		A	Decompression of forearm	8.12	NA	NA	9.76	8.88	0.91	NA	NA	18.79	17.91	090
24498		A	Reinforce humerus	11.92	NA	NA	11.03	11.09	1.23	NA	NA	24.18	24.24	090

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
24500		A	Treat humerus fracture	3.21	4.58	4.13	2.80	2.79	0.32	8.11	7.66	6.33	6.32	090
24505		A	Treat humerus fracture	5.17	8.00	7.22	6.14	5.83	0.53	13.70	12.92	11.84	11.53	090
24515		A	Treat humerus fracture	11.65	NA	NA	10.15	10.23	1.16	NA	NA	22.96	23.04	090
24516		A	Treat humerus fracture	11.65	NA	NA	10.54	10.52	1.20	NA	NA	23.39	23.37	090
24530		A	Treat humerus fracture	3.50	5.56	4.91	4.12	3.83	0.35	9.41	8.76	7.97	7.68	090
24535		A	Treat humerus fracture	6.87	8.06	7.36	6.18	5.95	0.72	15.65	14.95	13.77	13.54	090
24538		A	Treat humerus fracture	9.43	NA	NA	9.30	9.14	0.96	NA	NA	19.69	19.53	090
24545		A	Treat humerus fracture	10.46	NA	NA	9.07	9.51	1.08	NA	NA	20.61	21.05	090
24546		A	Treat humerus fracture	15.69	NA	NA	12.32	11.95	1.62	NA	NA	29.63	29.26	090
24560		A	Treat humerus fracture	2.80	4.38	3.87	2.51	2.47	0.28	7.46	6.95	5.59	5.55	090
24565		A	Treat humerus fracture	5.56	6.97	6.16	5.29	4.90	0.57	13.10	12.29	11.42	11.03	090
24566		A	Treat humerus fracture	7.79	NA	NA	8.61	8.10	0.78	NA	NA	17.18	16.67	090
24575		A	Treat humerus fracture	10.66	NA	NA	7.58	7.80	1.10	NA	NA	19.34	19.56	090
24576		A	Treat humerus fracture	2.86	4.16	3.71	2.79	2.68	0.29	7.31	6.86	5.94	5.83	090
24577		A	Treat humerus fracture	5.79	7.36	6.61	5.60	5.29	0.60	13.75	13.00	11.99	11.68	090
24579		A	Treat humerus fracture	11.60	NA	NA	9.20	9.17	1.19	NA	NA	21.99	21.96	090
24582		A	Treat humerus fracture	8.55	NA	NA	9.11	8.63	0.88	NA	NA	18.54	18.06	090
24586		A	Treat elbow fracture	15.21	NA	NA	10.30	11.72	1.56	NA	NA	27.07	28.49	090
24587		A	Treat elbow fracture	15.16	NA	NA	10.15	11.34	1.46	NA	NA	26.77	27.96	090
24600		A	Treat elbow dislocation	4.23	6.17	5.16	4.11	3.61	0.42	10.82	9.81	8.76	8.26	090
24605		A	Treat elbow dislocation	5.42	NA	NA	4.37	3.90	0.56	NA	NA	10.35	9.88	090
24615		A	Treat elbow dislocation	9.42	NA	NA	7.21	7.93	0.98	NA	NA	17.61	18.33	090
24620		A	Treat elbow fracture	6.98	NA	NA	5.96	5.50	0.70	NA	NA	13.64	13.18	090
24635		A	Treat elbow fracture	13.19	NA	NA	14.41	13.81	1.37	NA	NA	28.97	28.37	090
24640		A	Treat elbow dislocation	1.20	2.98	2.51	1.33	1.27	0.11	4.29	3.82	2.64	2.58	010
24650		A	Treat radius fracture	2.16	4.07	3.66	2.31	2.34	0.22	6.45	6.04	4.69	4.72	090
24655		A	Treat radius fracture	4.40	6.56	5.74	4.70	4.34	0.45	11.41	10.59	9.55	9.19	090
24665		A	Treat radius fracture	8.14	NA	NA	8.26	8.13	0.84	NA	NA	17.24	17.11	090
24666		A	Treat radius fracture	9.49	NA	NA	9.03	9.56	0.98	NA	NA	19.50	20.03	090
24670		A	Treat ulnar fracture	2.54	4.01	3.54	2.60	2.48	0.26	6.81	6.34	5.40	5.28	090
24675		A	Treat ulnar fracture	4.72	6.71	5.99	5.01	4.71	0.49	11.92	11.20	10.22	9.92	090
24685		A	Treat ulnar fracture	8.80	NA	NA	8.61	8.74	0.91	NA	NA	18.32	18.45	090
24800		A	Fusion of elbow joint	11.20	NA	NA	8.79	9.47	1.13	NA	NA	21.12	21.80	090
24802		A	Fusion/graft of elbow joint	13.69	NA	NA	10.59	11.25	1.37	NA	NA	25.65	26.31	090
24900		A	Amputation of upper arm	9.60	NA	NA	9.51	9.22	0.01	NA	NA	19.12	18.83	090
24920		A	Amputation of upper arm	9.54	NA	NA	10.71	9.87	0.95	NA	NA	21.20	20.36	090
24925		A	Amputation follow-up surgery	7.07	NA	NA	7.99	7.69	0.71	NA	NA	15.77	15.47	090
24930		A	Amputation follow-up surgery	10.25	NA	NA	10.57	10.14	0.99	NA	NA	21.81	21.38	090
24931		A	Amputate upper arm & implant	12.72	NA	NA	8.32	9.27	1.29	NA	NA	22.33	23.28	090
24935		A	Revision of amputation	15.56	NA	NA	11.27	12.17	1.58	NA	NA	28.41	29.31	090
24940		C	Revision of upper arm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
24999		C	Upper arm/elbow surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
25000		A	Incision of tendon sheath	3.38	NA	NA	6.31	5.74	0.35	NA	NA	10.04	9.47	090
25020		A	Decompression of forearm	5.92	NA	NA	9.90	8.61	0.66	NA	NA	16.48	15.19	090
25023		A	Decompression of forearm	12.96	NA	NA	15.26	12.92	1.34	NA	NA	29.56	27.22	090
25028		A	Drainage of forearm lesion	5.25	NA	NA	9.03	7.33	0.53	NA	NA	14.81	13.11	090
25031		A	Drainage of forearm bursa	4.14	NA	NA	8.88	6.84	0.36	NA	NA	13.38	11.34	090
25035		A	Treat forearm bone lesion	7.36	NA	NA	14.13	12.31	0.74	NA	NA	22.23	20.41	090
25040		A	Explore/treat wrist joint	7.18	NA	NA	8.10	7.62	0.74	NA	NA	16.02	15.54	090
25065		A	Biopsy forearm soft tissues	1.99	2.38	1.99	2.38	1.99	0.10	4.47	4.08	4.47	4.08	010
25066		A	Biopsy forearm soft tissues	4.13	NA	NA	7.02	5.68	0.42	NA	NA	11.57	10.23	090
25075		A	Removal of forearm lesion	3.74	NA	NA	6.64	5.58	0.36	NA	NA	10.74	9.68	090
25076		A	Removal of forearm lesion	4.92	NA	NA	11.14	9.38	0.51	NA	NA	16.57	14.81	090
25077		A	Remove tumor, forearm/wrist	9.76	NA	NA	13.92	12.74	0.97	NA	NA	24.65	23.47	090
25085		A	Incision of wrist capsule	5.50	NA	NA	9.05	8.04	0.57	NA	NA	15.12	14.11	090
25100		A	Biopsy of wrist joint	3.90	NA	NA	6.23	5.84	0.41	NA	NA	10.54	10.15	090
25101		A	Explore/treat wrist joint	4.69	NA	NA	6.87	6.55	0.49	NA	NA	12.05	11.73	090
25105		A	Remove wrist joint lining	5.85	NA	NA	9.39	8.79	0.60	NA	NA	15.84	15.24	090
25107		A	Remove wrist joint cartilage	6.43	NA	NA	9.68	8.69	0.67	NA	NA	16.78	15.79	090
25110		A	Remove wrist tendon lesion	3.92	NA	NA	7.29	6.23	0.39	NA	NA	11.60	10.54	090
25111		A	Remove wrist tendon lesion	3.39	NA	NA	5.61	5.08	0.34	NA	NA	9.34	8.81	090
25112		A	Reremove wrist tendon lesion	4.53	NA	NA	6.48	5.87	0.47	NA	NA	11.48	10.87	090
25115		A	Remove wrist/forearm lesion	8.82	NA	NA	14.82	13.05	0.92	NA	NA	24.56	22.79	090
25116		A	Remove wrist/forearm lesion	7.11	NA	NA	13.57	12.30	0.74	NA	NA	21.42	20.15	090
25118		A	Excise wrist tendon sheath	4.37	NA	NA	6.82	6.42	0.46	NA	NA	11.65	11.25	090
25119		A	Partial removal of ulna	6.04	NA	NA	9.52	8.94	0.62	NA	NA	16.18	15.60	090
25120		A	Removal of forearm lesion	6.10	NA	NA	13.04	11.55	0.64	NA	NA	19.78	18.29	090
25125		A	Remove/graft forearm lesion	7.48	NA	NA	13.71	12.14	0.77	NA	NA	21.96	20.39	090
25126		A	Remove/graft forearm lesion	7.55	NA	NA	12.31	11.08	0.77	NA	NA	20.63	19.40	090
25130		A	Removal of wrist lesion	5.26	NA	NA	7.11	6.48	0.54	NA	NA	12.91	12.28	090
25135		A	Remove & graft wrist lesion	6.89	NA	NA	7.85	7.37	0.73	NA	NA	15.47	14.99	090
25136		A	Remove & graft wrist lesion	5.97	NA	NA	6.73	6.33	0.62	NA	NA	13.32	12.92	090
25145		A	Remove forearm bone lesion	6.37	NA	NA	13.10	11.44	0.66	NA	NA	20.13	18.47	090
25150		A	Partial removal of ulna	7.09	NA	NA	10.39	9.60	0.72	NA	NA	18.20	17.41	090
25151		A	Partial removal of radius	7.39	NA	NA	13.68	11.82	0.77	NA	NA	21.84	19.98	090
25170		A	Extensive forearm surgery	11.09	NA	NA	15.34	14.16	1.16	NA	NA	27.59	26.41	090
25210		A	Removal of wrist bone	5.95	NA	NA	7.52	6.97	0.62	NA	NA	14.09	13.54	090
25215		A	Removal of wrist bones	7.89	NA	NA	10.54	10.26	0.81	NA	NA	19.24	18.96	090
25230		A	Partial removal of radius	5.23	NA	NA	6.97	6.74	0.53	NA	NA	12.73	12.50	090
25240		A	Partial removal of ulna	5.17	NA	NA	9.08	8.25	0.53	NA	NA	14.78	13.95	090
25246		A	Injection for wrist x-ray	1.45	9.41	7.19	0.51	0.52	0.06	10.92	8.70	2.02	2.03	000
25248		A	Remove forearm foreign body	5.14	NA	NA	9.35	7.61	0.51	NA	NA	15.00	13.26	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
25250		A	Removal of wrist prosthesis	6.60	NA	NA	7.76	7.35	0.68	NA	NA	15.04	14.63	090
25251		A	Removal of wrist prosthesis	9.57	NA	NA	11.62	10.95	0.98	NA	NA	22.17	21.50	090
25260		A	Repair forearm tendon/muscle	7.80	NA	NA	14.75	12.31	0.81	NA	NA	23.36	20.92	090
25263		A	Repair forearm tendon/muscle	7.82	NA	NA	15.68	13.33	0.81	NA	NA	24.31	21.96	090
25265		A	Repair forearm tendon/muscle	9.88	NA	NA	15.12	13.49	1.02	NA	NA	26.02	24.39	090
25270		A	Repair forearm tendon/muscle	0.06	NA	NA	13.71	11.20	0.62	NA	NA	14.39	11.88	090
25272		A	Repair forearm tendon/muscle	7.04	NA	NA	14.21	11.59	0.74	NA	NA	21.99	19.37	090
25274		A	Repair forearm tendon/muscle	8.75	NA	NA	14.57	12.72	0.91	NA	NA	24.23	22.38	090
25280		A	Revise wrist/forearm tendon	7.22	NA	NA	13.53	11.29	0.74	NA	NA	21.49	19.25	090
25290		A	Incise wrist/forearm tendon	5.29	NA	NA	15.56	12.34	0.55	NA	NA	21.40	18.18	090
25295		A	Release wrist/forearm tendon	6.55	NA	NA	13.48	10.94	0.68	NA	NA	20.71	18.17	090
25300		A	Fusion of tendons at wrist	8.80	NA	NA	8.84	8.63	0.87	NA	NA	18.51	18.30	090
25301		A	Fusion of tendons at wrist	8.40	NA	NA	8.59	8.28	0.83	NA	NA	17.82	17.51	090
25310		A	Transplant forearm tendon	8.14	NA	NA	13.96	12.41	0.84	NA	NA	22.94	21.39	090
25312		A	Transplant forearm tendon	9.57	NA	NA	14.54	12.98	0.98	NA	NA	25.09	23.53	090
25315		A	Revise palsy hand tendon(s)	10.20	NA	NA	15.39	13.73	1.10	NA	NA	26.69	25.03	090
25316		A	Revise palsy hand tendon(s)	12.33	NA	NA	17.72	16.16	1.23	NA	NA	31.28	29.72	090
25320		A	Repair/revise wrist joint	10.77	NA	NA	10.08	9.89	1.11	NA	NA	21.96	21.77	090
25332		A	Revise wrist joint	11.41	NA	NA	10.55	10.62	1.16	NA	NA	23.12	23.19	090
25335		A	Realignment of hand	12.88	NA	NA	12.61	12.55	1.36	NA	NA	26.85	26.79	090
25337		A	Reconstruct ulna/radioulnar	10.17	NA	NA	11.84	11.21	1.06	NA	NA	23.07	22.44	090
25350		A	Revision of radius	8.78	NA	NA	14.38	12.85	0.91	NA	NA	24.07	22.54	090
25355		A	Revision of radius	10.17	NA	NA	14.58	13.41	1.05	NA	NA	25.80	24.63	090
25360		A	Revision of ulna	8.43	NA	NA	14.20	12.39	0.90	NA	NA	23.53	21.72	090
25365		A	Revise radius & ulna	12.40	NA	NA	15.38	14.33	1.20	NA	NA	28.98	27.93	090
25370		A	Revise radius or ulna	13.36	NA	NA	13.22	13.11	1.30	NA	NA	27.88	27.77	090
25375		A	Revise radius & ulna	13.04	NA	NA	15.79	15.47	1.27	NA	NA	30.10	29.78	090
25390		A	Shorten radius or ulna	10.40	NA	NA	15.26	13.84	1.07	NA	NA	26.73	25.31	090
25391		A	Lengthen radius or ulna	13.65	NA	NA	17.57	16.23	1.42	NA	NA	32.64	31.30	090
25392		A	Shorten radius & ulna	13.95	NA	NA	15.11	14.71	1.46	NA	NA	30.52	30.12	090
25393		A	Lengthen radius & ulna	15.87	NA	NA	17.48	16.97	1.62	NA	NA	34.97	34.46	090
25400		A	Repair radius or ulna	10.92	NA	NA	15.57	14.60	1.13	NA	NA	27.62	26.65	090
25405		A	Repair/graft radius or ulna	14.38	NA	NA	17.81	16.73	1.48	NA	NA	33.67	32.59	090
25415		A	Repair radius & ulna	13.35	NA	NA	16.86	15.74	1.39	NA	NA	31.60	30.48	090
25420		A	Repair/graft radius & ulna	16.33	NA	NA	18.39	17.78	1.69	NA	NA	36.41	35.80	090
25425		A	Repair/graft radius or ulna	13.21	NA	NA	23.60	20.96	1.33	NA	NA	38.14	35.50	090
25426		A	Repair/graft radius & ulna	15.82	NA	NA	18.25	16.87	1.33	NA	NA	35.40	34.02	090
25440		A	Repair/graft wrist bone	10.44	NA	NA	9.94	9.91	1.09	NA	NA	21.47	21.44	090
25441		A	Reconstruct wrist joint	12.90	NA	NA	11.18	11.47	1.35	NA	NA	25.43	25.72	090
25442		A	Reconstruct wrist joint	10.85	NA	NA	10.12	9.51	1.13	NA	NA	22.10	21.49	090
25443		A	Reconstruct wrist joint	10.39	NA	NA	11.43	11.12	1.09	NA	NA	22.91	22.60	090
25444		A	Reconstruct wrist joint	11.15	NA	NA	11.68	11.51	1.16	NA	NA	23.99	23.82	090
25445		A	Reconstruct wrist joint	9.69	NA	NA	11.68	11.57	0.01	NA	NA	21.38	21.27	090
25446		A	Wrist replacement	16.55	NA	NA	13.37	14.97	1.70	NA	NA	31.62	33.22	090
25447		A	Repair wrist joint(s)	10.37	NA	NA	9.93	10.07	1.07	NA	NA	21.37	21.51	090
25449		A	Remove wrist joint implant	14.49	NA	NA	14.15	12.74	1.50	NA	NA	30.14	28.73	090
25450		A	Revision of wrist joint	7.87	NA	NA	12.13	11.08	0.65	NA	NA	20.65	19.60	090
25455		A	Revision of wrist joint	9.49	NA	NA	10.71	10.40	0.72	NA	NA	20.92	20.61	090
25490		A	Reinforce radius	9.54	NA	NA	13.69	12.63	0.99	NA	NA	24.22	23.16	090
25491		A	Reinforce ulna	9.96	NA	NA	14.89	13.64	1.04	NA	NA	25.89	24.64	090
25492		A	Reinforce radius and ulna	12.33	NA	NA	13.65	13.28	1.29	NA	NA	27.27	26.90	090
25500		A	Treat fracture of radius	2.45	3.72	3.42	2.31	2.37	0.23	6.40	6.10	4.99	5.05	090
25505		A	Treat fracture of radius	5.21	6.95	6.18	5.06	4.76	0.53	12.69	11.92	10.80	10.50	090
25515		A	Treat fracture of radius	9.18	NA	NA	8.77	8.65	0.86	NA	NA	18.81	18.69	090
25520		A	Treat fracture of radius	6.26	7.20	6.96	5.77	5.89	0.64	14.10	13.86	12.67	12.79	090
25525		A	Treat fracture of radius	12.24	NA	NA	10.45	10.86	1.28	NA	NA	23.97	24.38	090
25526		A	Treat fracture of radius	12.98	NA	NA	13.57	13.39	1.34	NA	NA	27.89	27.71	090
25530		A	Treat fracture of ulna	2.09	3.73	3.46	2.38	2.45	0.21	6.03	5.76	4.68	4.75	090
25535		A	Treat fracture of ulna	5.14	6.75	6.03	5.19	4.86	0.51	12.40	11.68	10.84	10.51	090
25545		A	Treat fracture of ulna	8.90	NA	NA	8.68	8.57	0.92	NA	NA	18.50	18.39	090
25560		A	Treat fracture radius & ulna	2.44	3.76	3.44	2.24	2.30	0.23	6.43	6.11	4.91	4.97	090
25565		A	Treat fracture radius & ulna	5.63	7.23	6.69	5.24	5.20	0.57	13.43	12.89	11.44	11.40	090
25574		A	Treat fracture radius & ulna	7.01	NA	NA	7.62	7.81	0.73	NA	NA	15.36	15.55	090
25575		A	Treat fracture radius/ulna	10.45	NA	NA	9.50	10.03	1.08	NA	NA	21.03	21.56	090
25600		A	Treat fracture radius/ulna	2.63	4.08	3.82	2.50	2.65	0.27	6.96	6.72	5.40	5.55	090
25605		A	Treat fracture radius/ulna	5.81	7.43	6.65	5.58	5.26	0.60	13.84	13.06	11.99	11.67	090
25611		A	Treat fracture radius/ulna	7.77	NA	NA	8.73	8.18	0.80	NA	NA	17.30	16.75	090
25620		A	Treat fracture radius/ulna	8.55	NA	NA	8.32	8.18	0.88	NA	NA	17.75	17.61	090
25622		A	Treat wrist bone fracture	2.61	4.01	3.63	2.44	2.45	0.27	6.89	6.51	5.32	5.33	090
25624		A	Treat wrist bone fracture	4.53	6.71	6.03	4.70	4.52	0.47	11.71	11.03	9.70	9.52	090
25628		A	Treat wrist bone fracture	8.43	NA	NA	8.42	8.25	0.89	NA	NA	17.74	17.57	090
25630		A	Treat wrist bone fracture	2.88	4.17	3.72	2.44	2.43	0.29	7.34	6.89	5.61	5.60	090
25635		A	Treat wrist bone fracture	4.39	6.59	5.86	4.42	4.23	0.45	11.43	10.70	9.26	9.07	090
25645		A	Treat wrist bone fracture	7.25	NA	NA	7.67	7.57	0.75	NA	NA	15.67	15.57	090
25650		A	Treat wrist bone fracture	3.05	4.16	3.84	2.59	2.67	0.31	7.52	7.20	5.95	6.03	090
25660		A	Treat wrist dislocation	4.76	NA	NA	4.48	3.86	0.48	NA	NA	9.72	9.10	090
25670		A	Treat wrist dislocation	7.92	NA	NA	8.33	8.17	0.82	NA	NA	17.07	16.91	090
25675		A	Treat wrist dislocation	4.67	6.25	5.31	4.56	4.04	0.47	11.39	10.45	9.70	9.18	090
25676		A	Treat wrist dislocation	8.04	NA	NA	8.36	8.26	0.81	NA	NA	17.21	17.11	090
25680		A	Treat wrist fracture	5.99	NA	NA	5.67	4.92	0.53	NA	NA	12.19	11.44	090
25685		A	Treat wrist fracture	9.78	NA	NA	9.16	9.26	0.98	NA	NA	19.92	20.02	090
25690		A	Treat wrist dislocation	5.50	NA	NA	6.22	5.99	0.56	NA	NA	12.28	12.05	090

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
25695		A	Treat wrist dislocation	8.34	NA	NA	8.42	8.23	0.87	NA	NA	17.63	17.44	090
25800		A	Fusion of wrist joint	9.76	NA	NA	9.55	10.08	0.01	NA	NA	19.32	19.85	090
25805		A	Fusion/graft of wrist joint	11.28	NA	NA	10.41	11.18	1.17	NA	NA	22.86	23.63	090
25810		A	Fusion/graft of wrist joint	10.57	NA	NA	9.98	10.64	1.08	NA	NA	21.63	22.29	090
25820		A	Fusion of hand bones	7.45	NA	NA	8.42	8.54	0.74	NA	NA	16.61	16.73	090
25825		A	Fuse hand bones with graft	9.27	NA	NA	9.25	9.71	0.95	NA	NA	19.47	19.93	090
25830		A	Fusion, radioulnar jnt/ulna	10.06	NA	NA	14.63	13.31	1.03	NA	NA	25.72	24.40	090
25900		A	Amputation of forearm	9.01	NA	NA	12.78	11.51	0.95	NA	NA	22.74	21.47	090
25905		A	Amputation of forearm	9.12	NA	NA	14.20	12.58	0.95	NA	NA	24.27	22.65	090
25907		A	Amputation follow-up surgery	7.80	NA	NA	14.07	12.11	0.82	NA	NA	22.69	20.73	090
25909		A	Amputation follow-up surgery	8.96	NA	NA	13.79	11.85	0.96	NA	NA	23.71	21.77	090
25915		A	Amputation of forearm	17.08	NA	NA	14.03	14.82	1.83	NA	NA	32.94	33.73	090
25920		A	Amputate hand at wrist	8.68	NA	NA	8.72	8.44	0.92	NA	NA	18.32	18.04	090
25922		A	Amputate hand at wrist	7.42	NA	NA	8.81	8.11	0.77	NA	NA	17.00	16.30	090
25924		A	Amputation follow-up surgery	8.46	NA	NA	9.23	8.96	0.61	NA	NA	18.30	18.03	090
25927		A	Amputation of hand	8.80	NA	NA	12.32	10.95	0.93	NA	NA	22.05	20.68	090
25929		A	Amputation follow-up surgery	7.59	NA	NA	7.83	7.16	0.76	NA	NA	16.18	15.51	090
25931		A	Amputation follow-up surgery	7.81	NA	NA	13.10	11.06	0.79	NA	NA	21.70	19.66	090
25999		C	Forearm or wrist surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
26010		A	Drainage of finger abscess	1.54	4.47	3.48	3.06	2.43	0.12	6.13	5.14	4.72	4.09	010
26011		A	Drainage of finger abscess	2.19	6.18	5.05	5.27	4.37	0.22	8.59	7.46	7.68	6.78	010
26020		A	Drain hand tendon sheath	4.67	NA	NA	10.75	9.07	0.49	NA	NA	15.91	14.23	090
26025		A	Drainage of palm bursa	4.82	NA	NA	10.69	9.24	0.50	NA	NA	16.01	14.56	090
26030		A	Drainage of palm bursa(s)	5.93	NA	NA	11.55	10.22	0.62	NA	NA	18.10	16.77	090
26034		A	Treat hand bone lesion	6.23	NA	NA	12.79	10.74	0.64	NA	NA	19.66	17.61	090
26035		A	Decompress fingers/hand	9.51	NA	NA	14.74	12.46	0.97	NA	NA	25.22	22.94	090
26037		A	Decompress fingers/hand	7.25	NA	NA	11.30	10.20	0.75	NA	NA	19.30	18.20	090
26040		A	Release palm contracture	3.33	NA	NA	10.46	8.62	0.34	NA	NA	14.13	12.29	090
26045		A	Release palm contracture	5.56	NA	NA	11.77	10.14	0.57	NA	NA	17.90	16.27	090
26055		A	Incise finger tendon sheath	2.69	6.79	5.98	6.46	5.74	0.28	9.76	8.95	9.43	8.71	090
26060		A	Incision of finger tendon	2.81	NA	NA	6.76	5.38	0.30	NA	NA	9.87	8.49	090
26070		A	Explore/treat hand joint	3.69	NA	NA	9.24	7.68	0.32	NA	NA	13.25	11.69	090
26075		A	Explore/treat finger joint	3.79	NA	NA	10.07	8.58	0.35	NA	NA	14.21	12.72	090
26080		A	Explore/treat finger joint	4.24	NA	NA	10.91	9.04	0.43	NA	NA	15.58	13.71	090
26100		A	Biopsy hand joint lining	3.67	NA	NA	7.50	6.44	0.36	NA	NA	11.53	10.47	090
26105		A	Biopsy finger joint lining	3.71	NA	NA	10.99	9.38	0.38	NA	NA	15.08	13.47	090
26110		A	Biopsy finger joint lining	3.53	NA	NA	10.26	8.49	0.36	NA	NA	14.15	12.38	090
26115		A	Removal of hand lesion	3.86	6.64	5.53	6.64	5.53	0.39	10.89	9.78	10.89	9.78	090
26116		A	Removal of hand lesion	5.53	NA	NA	11.69	9.78	0.57	NA	NA	17.79	15.88	090
26117		A	Remove tumor, hand/finger	8.55	NA	NA	13.40	11.43	0.88	NA	NA	22.83	20.86	090
26121		A	Release palm contracture	7.54	NA	NA	13.48	12.36	0.78	NA	NA	21.80	20.68	090
26123		A	Release palm contracture	9.29	NA	NA	14.43	13.29	0.97	NA	NA	24.69	23.55	090
26125		A	Release palm contracture	4.61	NA	NA	2.51	2.59	0.49	NA	NA	7.61	7.69	ZZZ
26130		A	Remove wrist joint lining	5.42	NA	NA	13.13	11.21	0.56	NA	NA	19.11	17.19	090
26135		A	Revise finger joint, each	6.96	NA	NA	14.52	12.21	0.73	NA	NA	22.21	19.90	090
26140		A	Revise finger joint, each	6.17	NA	NA	13.67	11.45	0.64	NA	NA	20.48	18.26	090
26145		A	Tendon excision, palm/finger	6.32	NA	NA	13.99	11.77	0.66	NA	NA	20.97	18.75	090
26160		A	Remove tendon sheath lesion	3.15	6.63	5.60	6.63	5.60	0.32	10.10	9.07	10.10	9.07	090
26170		A	Removal of palm tendon, each	4.77	NA	NA	7.54	6.42	0.53	NA	NA	12.84	11.72	090
26180		A	Removal of finger tendon	5.18	NA	NA	7.99	7.08	0.55	NA	NA	13.72	12.81	090
26185		A	Remove finger bone	5.25	NA	NA	7.57	6.83	0.54	NA	NA	13.36	12.62	090
26200		A	Remove hand bone lesion	5.51	NA	NA	11.89	10.13	0.56	NA	NA	17.96	16.20	090
26205		A	Remove/graft bone lesion	7.70	NA	NA	12.85	11.38	0.81	NA	NA	21.36	19.89	090
26210		A	Removal of finger lesion	5.15	NA	NA	12.13	10.16	0.53	NA	NA	17.81	15.84	090
26215		A	Remove/graft finger lesion	7.10	NA	NA	12.28	10.72	0.66	NA	NA	20.04	18.48	090
26230		A	Partial removal of hand bone	6.33	NA	NA	11.46	9.75	0.66	NA	NA	18.45	16.74	090
26235		A	Partial removal, finger bone	6.19	NA	NA	10.63	9.11	0.65	NA	NA	17.47	15.95	090
26236		A	Partial removal, finger bone	5.32	NA	NA	10.62	9.01	0.55	NA	NA	16.49	14.88	090
26250		A	Extensive hand surgery	7.55	NA	NA	15.21	13.04	0.75	NA	NA	23.51	21.34	090
26255		A	Extensive hand surgery	12.43	NA	NA	17.34	15.43	1.19	NA	NA	30.96	29.05	090
26260		A	Extensive finger surgery	7.03	NA	NA	13.81	11.91	0.72	NA	NA	21.56	19.66	090
26261		A	Extensive finger surgery	9.09	NA	NA	16.65	14.58	0.66	NA	NA	26.40	24.33	090
26262		A	Partial removal of finger	5.67	NA	NA	12.62	10.75	0.59	NA	NA	18.88	17.01	090
26320		A	Removal of implant from hand	3.98	NA	NA	11.03	9.23	0.41	NA	NA	15.42	13.62	090
26350		A	Repair finger/hand tendon	5.99	NA	NA	17.09	14.38	0.62	NA	NA	23.70	20.99	090
26352		A	Repair/graft hand tendon	7.68	NA	NA	18.11	15.37	0.80	NA	NA	26.59	23.85	090
26356		A	Repair finger/hand tendon	8.07	NA	NA	18.25	15.64	0.85	NA	NA	27.17	24.56	090
26357		A	Repair finger/hand tendon	8.58	NA	NA	18.19	15.43	0.89	NA	NA	27.66	24.90	090
26358		A	Repair/graft hand tendon	9.14	NA	NA	18.03	15.53	0.95	NA	NA	28.12	25.62	090
26370		A	Repair finger/hand tendon	7.11	NA	NA	17.56	14.99	0.74	NA	NA	25.41	22.84	090
26372		A	Repair/graft hand tendon	8.76	NA	NA	18.63	15.71	0.90	NA	NA	28.29	25.37	090
26373		A	Repair finger/hand tendon	8.16	NA	NA	17.00	14.61	0.84	NA	NA	26.00	23.61	090
26390		A	Revise hand/finger tendon	9.19	NA	NA	14.62	13.12	0.95	NA	NA	24.76	23.26	090
26392		A	Repair/graft hand tendon	10.26	NA	NA	19.52	16.98	1.07	NA	NA	30.85	28.31	090
26410		A	Repair hand tendon	4.63	NA	NA	13.51	11.03	0.48	NA	NA	18.62	16.14	090
26412		A	Repair/graft hand tendon	6.31	NA	NA	15.08	12.94	0.66	NA	NA	22.05	19.91	090
26415		A	Excision, hand/finger tendon	8.34	NA	NA	13.72	12.12	0.74	NA	NA	22.80	21.20	090
26416		A	Graft hand or finger tendon	9.37	NA	NA	16.12	14.44	0.96	NA	NA	26.45	24.77	090
26418		A	Repair finger tendon	4.25	NA	NA	13.70	11.25	0.44	NA	NA	18.39	15.94	090
26420		A	Repair/graft finger tendon	6.77	NA	NA	15.04	12.82	0.70	NA	NA	22.51	20.29	090
26426		A	Repair finger/hand tendon	6.15	NA	NA	14.32	12.45	0.64	NA	NA	21.11	19.24	090
26428		A	Repair/graft finger tendon	7.21	NA	NA	16.32	13.73	0.74	NA	NA	24.27	21.68	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
26432		A	Repair finger tendon	4.02	NA	NA	11.21	9.26	0.42	NA	NA	15.65	13.70	090
26433		A	Repair finger tendon	4.56	NA	NA	12.10	10.15	0.48	NA	NA	17.14	15.19	090
26434		A	Repair/graft finger tendon	6.09	NA	NA	12.26	10.54	0.61	NA	NA	18.96	17.24	090
26437		A	Realignment of tendons	5.82	NA	NA	12.08	10.16	0.61	NA	NA	18.51	16.59	090
26440		A	Release palm/finger tendon	5.02	NA	NA	15.82	12.83	0.53	NA	NA	21.37	18.38	090
26442		A	Release palm & finger tendon	8.16	NA	NA	17.40	13.97	0.85	NA	NA	26.41	22.98	090
26445		A	Release hand/finger tendon	4.31	NA	NA	15.64	12.61	0.45	NA	NA	20.40	17.37	090
26449		A	Release forearm/hand tendon	0.07	NA	NA	16.13	13.61	0.74	NA	NA	16.94	14.42	090
26450		A	Incision of palm tendon	3.67	NA	NA	7.21	6.03	0.38	NA	NA	11.26	10.08	090
26455		A	Incision of finger tendon	3.64	NA	NA	7.16	5.88	0.38	NA	NA	11.18	9.90	090
26460		A	Incise hand/finger tendon	3.46	NA	NA	6.78	5.55	0.36	NA	NA	10.60	9.37	090
26471		A	Fusion of finger tendons	5.73	NA	NA	11.56	9.80	0.59	NA	NA	17.88	16.12	090
26474		A	Fusion of finger tendons	5.32	NA	NA	12.03	10.27	0.55	NA	NA	17.90	16.14	090
26476		A	Tendon lengthening	5.18	NA	NA	11.86	9.68	0.52	NA	NA	17.56	15.38	090
26477		A	Tendon shortening	5.15	NA	NA	11.88	9.99	0.53	NA	NA	17.56	15.67	090
26478		A	Lengthening of hand tendon	5.80	NA	NA	12.34	10.42	0.60	NA	NA	18.74	16.82	090
26479		A	Shortening of hand tendon	5.74	NA	NA	12.60	10.89	0.60	NA	NA	18.94	17.23	090
26480		A	Transplant hand tendon	6.69	NA	NA	16.32	14.01	0.70	NA	NA	23.71	21.40	090
26483		A	Transplant/graft hand tendon	8.29	NA	NA	17.42	15.37	0.86	NA	NA	26.57	24.52	090
26485		A	Transplant palm tendon	7.70	NA	NA	17.18	14.65	0.79	NA	NA	25.67	23.14	090
26489		A	Transplant/graft palm tendon	9.55	NA	NA	13.84	11.30	0.86	NA	NA	24.25	21.71	090
26490		A	Revise thumb tendon	8.41	NA	NA	13.39	12.16	0.88	NA	NA	22.68	21.45	090
26492		A	Tendon transfer with graft	9.62	NA	NA	13.93	12.82	0.95	NA	NA	24.50	23.39	090
26494		A	Hand tendon/muscle transfer	8.47	NA	NA	14.18	12.61	0.90	NA	NA	23.55	21.98	090
26496		A	Revise thumb tendon	9.59	NA	NA	13.44	12.45	0.01	NA	NA	23.04	22.05	090
26497		A	Finger tendon transfer	9.57	NA	NA	13.77	12.50	0.96	NA	NA	24.30	23.03	090
26498		A	Finger tendon transfer	0.14	NA	NA	16.18	15.33	1.45	NA	NA	17.77	16.92	090
26499		A	Revision of finger	8.98	NA	NA	15.42	13.67	0.81	NA	NA	25.21	23.46	090
26500		A	Hand tendon reconstruction	5.98	NA	NA	12.82	10.56	0.62	NA	NA	19.40	17.14	090
26502		A	Hand tendon reconstruction	7.14	NA	NA	12.04	10.46	0.71	NA	NA	19.89	18.31	090
26504		A	Hand tendon reconstruction	7.47	NA	NA	11.60	10.52	0.74	NA	NA	19.81	18.73	090
26508		A	Release thumb contracture	6.01	NA	NA	12.28	10.34	0.62	NA	NA	18.91	16.97	090
26510		A	Thumb tendon transfer	5.43	NA	NA	11.54	9.78	0.56	NA	NA	17.53	15.77	090
26516		A	Fusion of knuckle joint	7.15	NA	NA	12.67	10.63	0.74	NA	NA	20.56	18.52	090
26517		A	Fusion of knuckle joints	8.83	NA	NA	14.66	12.91	0.90	NA	NA	24.39	22.64	090
26518		A	Fusion of knuckle joints	9.02	NA	NA	14.10	12.34	0.94	NA	NA	24.06	22.30	090
26520		A	Release knuckle contracture	5.30	NA	NA	15.82	13.08	0.55	NA	NA	21.67	18.93	090
26525		A	Release finger contracture	5.33	NA	NA	15.99	12.98	0.55	NA	NA	21.87	18.86	090
26530		A	Revise knuckle joint	6.69	NA	NA	16.00	13.40	0.68	NA	NA	23.37	20.77	090
26531		A	Revise knuckle with implant	7.91	NA	NA	16.42	14.12	0.82	NA	NA	25.15	22.85	090
26535		A	Revise finger joint	5.24	NA	NA	8.96	8.03	0.39	NA	NA	14.59	13.66	090
26536		A	Revise/implant finger joint	6.37	NA	NA	14.44	12.73	0.64	NA	NA	21.45	19.74	090
26540		A	Repair hand joint	6.43	NA	NA	12.69	11.32	0.67	NA	NA	19.79	18.42	090
26541		A	Repair hand joint with graft	8.62	NA	NA	13.84	12.81	0.88	NA	NA	23.34	22.31	090
26542		A	Repair hand joint with graft	6.78	NA	NA	12.19	10.68	0.71	NA	NA	19.68	18.17	090
26545		A	Reconstruct finger joint	6.92	NA	NA	13.16	11.30	0.73	NA	NA	20.81	18.95	090
26546		A	Repair nonunion hand	8.92	NA	NA	13.85	12.59	0.93	NA	NA	23.70	22.44	090
26548		A	Reconstruct finger joint	8.03	NA	NA	14.07	12.12	0.84	NA	NA	22.94	20.99	090
26550		A	Construct thumb replacement	21.24	NA	NA	16.51	17.76	2.24	NA	NA	39.99	41.24	090
26551		A	Great toe-hand transfer	46.58	NA	NA	29.27	33.42	4.99	NA	NA	80.84	84.99	090
26553		A	Single transfer, toe-hand	46.27	NA	NA	27.76	32.21	4.95	NA	NA	78.98	83.43	090
26554		A	Double transfer, toe-hand	54.95	NA	NA	31.20	36.98	5.74	NA	NA	91.89	97.67	090
26555		A	Positional change of finger	16.63	NA	NA	18.52	18.07	1.73	NA	NA	36.88	36.43	090
26556		A	Toe joint transfer	47.26	NA	NA	31.42	35.14	5.06	NA	NA	83.74	87.46	090
26560		A	Repair of web finger	5.38	NA	NA	10.33	9.01	0.53	NA	NA	16.24	14.92	090
26561		A	Repair of web finger	10.92	NA	NA	16.52	14.80	1.13	NA	NA	28.57	26.85	090
26562		A	Repair of web finger	9.68	NA	NA	14.66	13.89	1.02	NA	NA	25.36	24.59	090
26565		A	Correct metacarpal flaw	6.74	NA	NA	12.83	11.20	0.70	NA	NA	20.27	18.64	090
26567		A	Correct finger deformity	6.82	NA	NA	12.46	10.51	0.71	NA	NA	19.99	18.04	090
26568		A	Lengthen metacarpal/finger	9.08	NA	NA	18.19	15.94	0.91	NA	NA	28.18	25.93	090
26580		A	Repair hand deformity	18.18	NA	NA	14.46	15.43	1.51	NA	NA	34.15	35.12	090
26585		A	Repair finger deformity	14.05	NA	NA	11.55	12.18	0.84	NA	NA	26.44	27.07	090
26587		C	Reconstruct extra finger	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
26590		A	Repair finger deformity	17.96	NA	NA	16.48	16.87	1.79	NA	NA	36.23	36.62	090
26591		A	Repair muscles of hand	3.25	NA	NA	11.27	9.08	0.34	NA	NA	14.86	12.67	090
26593		A	Release muscles of hand	5.31	NA	NA	11.47	9.72	0.55	NA	NA	17.33	15.58	090
26596		A	Excision constricting tissue	8.95	NA	NA	8.35	8.50	0.87	NA	NA	18.17	18.32	090
26597		A	Release of scar contracture	9.82	NA	NA	14.98	13.41	1.03	NA	NA	25.83	24.26	090
26600		A	Treat metacarpal fracture	1.96	3.68	3.18	2.21	2.08	0.20	5.84	5.34	4.37	4.24	090
26605		A	Treat metacarpal fracture	2.85	5.36	4.64	3.79	3.47	0.30	8.51	7.79	6.94	6.62	090
26607		A	Treat metacarpal fracture	5.36	NA	NA	7.43	6.54	0.55	NA	NA	13.34	12.45	090
26608		A	Treat metacarpal fracture	5.36	NA	NA	7.18	6.35	0.56	NA	NA	13.10	12.27	090
26615		A	Treat metacarpal fracture	5.33	NA	NA	7.02	6.59	0.55	NA	NA	12.90	12.47	090
26641		A	Treat thumb dislocation	3.94	5.64	4.53	3.69	3.07	0.37	9.95	8.84	8.00	7.38	090
26645		A	Treat thumb fracture	4.41	6.57	5.53	4.65	4.09	0.42	11.40	10.36	9.48	8.92	090
26650		A	Treat thumb fracture	5.72	NA	NA	7.55	6.75	0.59	NA	NA	13.86	13.06	090
26665		A	Treat thumb fracture	7.60	NA	NA	8.22	7.90	0.78	NA	NA	16.60	16.28	090
26670		A	Treat hand dislocation	3.69	5.54	4.42	3.48	2.87	0.35	9.58	8.46	7.52	6.91	090
26675		A	Treat hand dislocation	4.64	5.97	5.66	3.59	3.87	0.47	11.08	10.77	8.70	8.98	090
26676		A	Pin hand dislocation	5.52	NA	NA	7.52	6.96	0.57	NA	NA	13.61	13.05	090
26685		A	Treat hand dislocation	6.98	NA	NA	7.78	7.40	0.72	NA	NA	15.48	15.10	090
26686		A	Treat hand dislocation	7.94	NA	NA	8.12	7.80	0.81	NA	NA	16.87	16.55	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
26700		A	Treat knuckle dislocation	3.69	4.18	3.38	2.20	1.89	0.35	8.22	7.42	6.24	5.93	090
26705		A	Treat knuckle dislocation	4.19	5.45	4.57	3.80	3.33	0.41	10.05	9.17	8.40	7.93	090
26706		A	Pin knuckle dislocation	5.12	NA	NA	5.20	5.17	0.53	NA	NA	10.85	10.82	090
26715		A	Treat knuckle dislocation	5.74	NA	NA	7.09	6.44	0.60	NA	NA	13.43	12.78	090
26720		A	Treat finger fracture, each	1.66	2.57	2.23	1.30	1.27	0.16	4.39	4.05	3.12	3.09	090
26725		A	Treat finger fracture, each	3.33	4.49	3.79	2.76	2.49	0.34	8.16	7.46	6.43	6.16	090
26727		A	Treat finger fracture, each	5.23	NA	NA	7.52	6.31	0.54	NA	NA	13.29	12.08	090
26735		A	Treat finger fracture, each	5.98	NA	NA	7.45	6.60	0.61	NA	NA	14.04	13.19	090
26740		A	Treat finger fracture, each	1.94	3.17	2.69	2.13	1.91	0.19	5.30	4.82	4.26	4.04	090
26742		A	Treat finger fracture, each	3.85	6.32	5.28	4.54	3.94	0.39	10.56	9.52	8.78	8.18	090
26746		A	Treat finger fracture, each	5.81	NA	NA	7.49	6.91	0.61	NA	NA	13.91	13.33	090
26750		A	Treat finger fracture, each	1.70	2.98	2.46	1.73	1.52	0.16	4.84	4.32	3.59	3.38	090
26755		A	Treat finger fracture, each	3.10	4.25	3.48	2.50	2.17	0.31	7.66	6.89	5.91	5.58	090
26756		A	Pin finger fracture, each	4.39	NA	NA	7.24	5.95	0.46	NA	NA	12.09	10.80	090
26765		A	Treat finger fracture, each	4.17	NA	NA	6.45	5.56	0.43	NA	NA	11.05	10.16	090
26770		A	Treat finger dislocation	3.02	4.07	3.26	1.96	1.68	0.29	7.38	6.57	5.27	4.99	090
26775		A	Treat finger dislocation	3.71	5.31	4.29	3.22	2.72	0.37	9.39	8.37	7.30	6.80	090
26776		A	Pin finger dislocation	4.80	NA	NA	7.35	6.08	0.51	NA	NA	12.66	11.39	090
26785		A	Treat finger dislocation	4.21	NA	NA	6.37	5.58	0.44	NA	NA	11.02	10.23	090
26820		A	Thumb fusion with graft	8.26	NA	NA	13.49	11.92	0.86	NA	NA	22.61	21.04	090
26841		A	Fusion of thumb	7.13	NA	NA	12.94	11.38	0.74	NA	NA	20.81	19.25	090
26842		A	Thumb fusion with graft	8.24	NA	NA	13.80	12.68	0.85	NA	NA	22.89	21.77	090
26843		A	Fusion of hand joint	7.61	NA	NA	12.96	11.45	0.76	NA	NA	21.33	19.82	090
26844		A	Fusion/graft of hand joint	8.73	NA	NA	13.60	12.20	0.88	NA	NA	23.21	21.81	090
26850		A	Fusion of knuckle	6.97	NA	NA	12.42	10.57	0.73	NA	NA	20.12	18.27	090
26852		A	Fusion of knuckle with graft	8.46	NA	NA	13.34	11.56	0.88	NA	NA	22.68	20.90	090
26860		A	Fusion of finger joint	4.89	NA	NA	11.32	9.66	0.49	NA	NA	16.50	14.84	090
26861		A	Fusion of finger jnt, add-on	1.74	NA	NA	0.95	1.23	0.18	NA	NA	2.87	3.15	ZZZ
26862		A	Fusion/graft of finger joint	7.37	NA	NA	12.64	10.88	0.76	NA	NA	20.77	19.01	090
26863		A	Fuse/graft added joint	3.90	NA	NA	2.14	2.52	0.40	NA	NA	6.44	6.82	ZZZ
26910		A	Amputate metacarpal bone	7.60	NA	NA	12.61	10.86	0.79	NA	NA	21.00	19.25	090
26951		A	Amputation of finger/thumb	4.59	NA	NA	11.14	9.13	0.48	NA	NA	16.21	14.20	090
26952		A	Amputation of finger/thumb	6.31	NA	NA	12.54	10.49	0.66	NA	NA	19.51	17.46	090
26989		C	Hand/finger surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
26990		A	Drainage of pelvis lesion	7.48	NA	NA	13.74	11.15	0.73	NA	NA	21.95	19.36	090
26991		A	Drainage of pelvis bursa	6.68	10.94	8.70	8.25	6.68	0.65	18.27	16.03	15.58	14.01	090
26992		A	Drainage of bone lesion	13.02	NA	NA	17.03	14.50	1.36	NA	NA	31.41	28.88	090
27000		A	Incision of hip tendon	5.62	NA	NA	6.50	5.38	0.58	NA	NA	12.70	11.58	090
27001		A	Incision of hip tendon	6.94	NA	NA	7.23	6.06	0.71	NA	NA	14.88	13.71	090
27003		A	Incision of hip tendon	7.34	NA	NA	7.97	7.82	0.76	NA	NA	16.07	15.92	090
27005		A	Incision of hip tendon	9.66	NA	NA	9.26	7.86	0.98	NA	NA	19.90	18.50	090
27006		A	Incision of hip tendons	9.68	NA	NA	9.31	8.24	1.01	NA	NA	20.00	18.93	090
27025		A	Incision of hip/thigh fascia	11.16	NA	NA	9.68	8.92	1.17	NA	NA	22.01	21.25	090
27030		A	Drainage of hip joint	13.01	NA	NA	11.13	11.45	1.34	NA	NA	25.48	25.80	090
27033		A	Exploration of hip joint	13.39	NA	NA	11.29	11.59	1.37	NA	NA	26.05	26.35	090
27035		A	Denervation of hip joint	16.69	NA	NA	15.61	14.93	1.69	NA	NA	33.99	33.31	090
27036		A	Excision of hip joint/muscle	12.88	NA	NA	12.40	12.41	1.33	NA	NA	26.61	26.62	090
27040		A	Biopsy of soft tissues	2.87	5.04	3.98	3.62	2.91	0.17	8.08	7.02	6.66	5.95	010
27041		A	Biopsy of soft tissues	9.89	NA	NA	7.86	6.62	0.84	NA	NA	18.59	17.35	090
27047		A	Remove hip/pelvis lesion	7.45	8.29	6.73	6.51	5.40	0.74	16.48	14.92	14.70	13.59	090
27048		A	Remove hip/pelvis lesion	6.25	NA	NA	7.01	6.43	0.63	NA	NA	13.89	13.31	090
27049		A	Remove tumor, hip/pelvis	13.66	NA	NA	11.99	11.74	1.33	NA	NA	26.98	26.73	090
27050		A	Biopsy of sacroiliac joint	4.36	NA	NA	5.89	5.72	0.44	NA	NA	10.69	10.52	090
27052		A	Biopsy of hip joint	6.23	NA	NA	7.20	7.26	0.64	NA	NA	14.07	14.13	090
27054		A	Removal of hip joint lining	8.54	NA	NA	9.20	9.45	0.87	NA	NA	18.61	18.86	090
27080		A	Removal of ischial bursa	5.43	NA	NA	6.58	6.00	0.55	NA	NA	12.56	11.98	090
27062		A	Remove femur lesion/bursa	5.37	NA	NA	6.38	5.93	0.55	NA	NA	12.30	11.85	090
27065		A	Removal of hip bone lesion	5.90	NA	NA	7.63	7.24	0.60	NA	NA	14.13	13.74	090
27066		A	Removal of hip bone lesion	10.33	NA	NA	10.85	10.28	1.04	NA	NA	22.22	21.65	090
27067		A	Remove/graft hip bone lesion	13.83	NA	NA	12.50	12.53	1.42	NA	NA	27.75	27.78	090
27070		A	Partial removal of hip bone	10.72	NA	NA	16.03	14.03	1.10	NA	NA	27.85	25.85	090
27071		A	Partial removal of hip bone	11.46	NA	NA	16.51	14.69	1.17	NA	NA	29.14	27.32	090
27075		A	Extensive hip surgery	17.23	NA	NA	15.10	15.00	1.76	NA	NA	34.09	33.99	090
27076		A	Extensive hip surgery	22.12	NA	NA	18.00	17.94	2.24	NA	NA	42.36	42.30	090
27077		A	Extensive hip surgery	23.13	NA	NA	18.85	19.29	2.42	NA	NA	44.40	44.84	090
27078		A	Extensive hip surgery	13.44	NA	NA	13.15	12.36	1.39	NA	NA	27.98	27.19	090
27079		A	Extensive hip surgery	13.75	NA	NA	14.37	13.12	1.40	NA	NA	29.52	28.27	090
27080		A	Removal of tail bone	6.39	NA	NA	6.58	6.23	0.67	NA	NA	13.64	13.29	090
27086		A	Remove hip foreign body	1.87	4.35	3.42	3.24	2.59	0.15	6.37	5.44	5.26	4.61	010
27087		A	Remove hip foreign body	8.54	NA	NA	7.93	6.93	0.85	NA	NA	17.32	16.32	090
27090		A	Removal of hip prosthesis	11.15	NA	NA	10.02	9.98	1.15	NA	NA	22.32	22.28	090
27091		A	Removal of hip prosthesis	22.14	NA	NA	15.90	17.30	2.17	NA	NA	40.21	41.61	090
27093		A	Injection for hip x-ray	1.30	10.78	8.31	0.50	0.60	0.08	12.16	9.69	1.88	1.98	000
27095		A	Injection for hip x-ray	1.50	11.04	8.53	0.54	0.66	0.09	12.63	10.12	2.13	2.25	000
27096		A	Inject sacroiliac joint	1.10	10.67	10.67	0.42	0.42	0.09	11.86	11.86	1.61	1.61	000
27097		A	Revision of hip tendon	8.80	NA	NA	8.56	8.51	0.92	NA	NA	18.28	18.23	090
27098		A	Transfer tendon to pelvis	8.83	NA	NA	8.53	8.49	0.92	NA	NA	18.28	18.24	090
27100		A	Transfer of abdominal muscle	11.08	NA	NA	10.94	10.29	1.10	NA	NA	23.12	22.47	090
27105		A	Transfer of spinal muscle	11.77	NA	NA	10.83	9.72	1.23	NA	NA	23.83	22.72	090
27110		A	Transfer of iliopsoas muscle	13.26	NA	NA	13.65	13.12	1.18	NA	NA	28.09	27.56	090
27111		A	Transfer of iliopsoas muscle	12.15	NA	NA	10.73	11.20	1.27	NA	NA	24.15	24.62	090
27120		A	Reconstruction of hip socket	18.01	NA	NA	13.71	15.19	1.84	NA	NA	33.56	35.04	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
27122		A	Reconstruction of hip socket	14.98	NA	NA	12.87	14.13	1.54	NA	NA	29.39	30.65	090
27125		A	Partial hip replacement	14.69	NA	NA	12.35	13.65	1.50	NA	NA	28.54	29.84	090
27130		A	Total hip replacement	20.12	NA	NA	15.52	17.65	2.05	NA	NA	37.69	39.82	090
27132		A	Total hip replacement	23.30	NA	NA	17.33	19.95	2.38	NA	NA	43.01	45.63	090
27134		A	Revise hip joint replacement	28.52	NA	NA	19.92	23.45	2.92	NA	NA	51.36	54.89	090
27137		A	Revise hip joint replacement	21.17	NA	NA	16.19	18.46	2.17	NA	NA	39.53	41.80	090
27138		A	Revise hip joint replacement	22.17	NA	NA	16.66	19.07	2.28	NA	NA	41.11	43.52	090
27140		A	Transplant femur ridge	12.24	NA	NA	10.71	11.03	1.26	NA	NA	24.21	24.53	090
27146		A	Incision of hip bone	17.43	NA	NA	14.75	14.02	1.80	NA	NA	33.98	33.25	090
27147		A	Revision of hip bone	20.58	NA	NA	15.95	16.57	2.08	NA	NA	38.61	39.23	090
27151		A	Incision of hip bones	22.51	NA	NA	10.14	12.41	2.36	NA	NA	35.01	7.28	090
27156		A	Revision of hip bones	24.63	NA	NA	17.71	18.25	2.57	NA	NA	44.91	45.45	090
27158		A	Revision of pelvis	19.74	NA	NA	12.98	13.65	2.06	NA	NA	34.78	35.45	090
27161		A	Incision of neck of femur	16.71	NA	NA	12.76	13.45	1.71	NA	NA	31.18	31.87	090
27165		A	Incision/fixation of femur	17.91	NA	NA	13.67	14.80	1.82	NA	NA	33.40	34.53	090
27170		A	Repair/graft femur head/neck	16.07	NA	NA	12.71	13.99	1.65	NA	NA	30.43	31.71	090
27175		A	Treat slipped epiphysis	8.46	NA	NA	6.54	5.23	0.89	NA	NA	15.89	14.58	090
27176		A	Treat slipped epiphysis	12.05	NA	NA	8.95	9.53	1.19	NA	NA	22.19	22.77	090
27177		A	Treat slipped epiphysis	15.08	NA	NA	10.55	11.28	1.57	NA	NA	27.20	27.93	090
27178		A	Treat slipped epiphysis	11.99	NA	NA	9.15	9.70	1.03	NA	NA	22.17	22.72	090
27179		A	Revise head/neck of femur	12.98	NA	NA	9.77	10.35	1.35	NA	NA	24.10	24.68	090
27181		A	Treat slipped epiphysis	14.68	NA	NA	8.52	9.96	1.37	NA	NA	24.57	26.01	090
27185		A	Revision of femur epiphysis	9.18	NA	NA	7.81	6.61	0.80	NA	NA	17.79	16.59	090
27187		A	Reinforce hip bones	13.54	NA	NA	12.00	13.04	1.38	NA	NA	26.92	27.96	090
27193		A	Treat pelvic ring fracture	5.56	6.49	5.52	4.93	4.35	0.57	12.62	11.65	11.06	10.48	090
27194		A	Treat pelvic ring fracture	9.65	8.11	7.14	7.12	6.40	1.01	18.77	17.80	17.78	17.06	090
27200		A	Treat tail bone fracture	1.84	2.55	2.32	1.47	1.51	0.18	4.57	4.34	3.49	3.53	090
27202		A	Treat tail bone fracture	7.04	NA	NA	14.51	12.55	0.89	NA	NA	22.44	20.48	090
27215		A	Treat pelvic fracture(s)	10.05	NA	NA	8.86	9.65	0.01	NA	NA	18.92	19.71	090
27216		A	Treat pelvic ring fracture	15.19	NA	NA	10.99	9.41	1.56	NA	NA	27.74	26.16	090
27217		A	Treat pelvic ring fracture	14.11	NA	NA	11.67	12.70	1.44	NA	NA	27.22	28.25	090
27218		A	Treat pelvic ring fracture	20.15	NA	NA	11.30	12.42	1.96	NA	NA	33.41	34.53	090
27220		A	Treat hip socket fracture	6.18	6.86	6.30	5.27	5.11	0.64	13.68	13.12	12.09	11.93	090
27222		A	Treat hip socket fracture	12.70	NA	NA	9.47	8.83	1.32	NA	NA	23.49	22.85	090
27226		A	Treat hip wall fracture	14.91	NA	NA	11.99	13.28	1.11	NA	NA	28.01	29.30	090
27227		A	Treat hip fracture(s)	23.45	NA	NA	16.20	17.50	2.53	NA	NA	42.18	43.48	090
27228		A	Treat hip fracture(s)	27.16	NA	NA	18.25	19.10	2.79	NA	NA	48.20	49.05	090
27230		A	Treat thigh fracture	5.50	6.74	5.95	5.24	4.83	0.55	12.79	12.00	11.29	10.88	090
27232		A	Treat thigh fracture	10.68	NA	NA	8.43	8.76	1.11	NA	NA	20.22	20.55	090
27235		A	Treat thigh fracture	12.16	NA	NA	10.08	11.19	1.25	NA	NA	23.49	24.60	090
27236		A	Treat thigh fracture	15.60	NA	NA	11.76	13.41	1.59	NA	NA	28.95	30.60	090
27238		A	Treat thigh fracture	5.52	NA	NA	5.46	5.43	0.56	NA	NA	11.54	11.51	090
27240		A	Treat thigh fracture	12.50	NA	NA	9.40	9.68	1.30	NA	NA	23.20	23.48	090
27244		A	Treat thigh fracture	15.94	NA	NA	11.98	13.41	1.63	NA	NA	29.55	30.98	090
27245		A	Treat thigh fracture	20.31	NA	NA	14.39	15.22	2.09	NA	NA	36.79	37.62	090
27246		A	Treat thigh fracture	4.71	6.42	5.87	5.14	4.91	0.49	11.62	11.07	10.34	10.11	090
27248		A	Treat thigh fracture	10.45	NA	NA	9.00	9.87	1.06	NA	NA	20.51	21.38	090
27250		A	Treat hip dislocation	6.95	NA	NA	4.85	4.50	0.68	NA	NA	12.48	12.13	090
27252		A	Treat hip dislocation	10.39	NA	NA	7.49	6.80	1.08	NA	NA	18.96	18.27	090
27253		A	Treat hip dislocation	12.92	NA	NA	9.98	11.05	1.33	NA	NA	24.23	25.30	090
27254		A	Treat hip dislocation	18.26	NA	NA	12.39	12.95	1.83	NA	NA	32.48	33.04	090
27256		A	Treat hip dislocation	4.12	NA	NA	3.69	3.28	0.39	NA	NA	8.20	7.79	010
27257		A	Treat hip dislocation	5.22	NA	NA	4.02	4.27	0.53	NA	NA	9.77	10.02	010
27258		A	Treat hip dislocation	15.43	NA	NA	12.63	13.20	1.58	NA	NA	29.64	30.21	090
27259		A	Treat hip dislocation	21.55	NA	NA	16.20	16.82	2.14	NA	NA	39.89	40.51	090
27265		A	Treat hip dislocation	5.05	NA	NA	5.09	4.76	0.53	NA	NA	10.67	10.34	090
27266		A	Treat hip dislocation	7.49	NA	NA	6.64	6.19	0.78	NA	NA	14.91	14.46	090
27275		A	Manipulation of hip joint	2.27	NA	NA	3.01	2.77	0.24	NA	NA	5.52	5.28	010
27280		A	Fusion of sacroiliac joint	13.39	NA	NA	12.61	12.19	1.38	NA	NA	27.38	26.96	090
27282		A	Fusion of pubic bones	11.34	NA	NA	11.09	10.76	0.84	NA	NA	23.27	22.94	090
27284		A	Fusion of hip joint	16.76	NA	NA	12.97	13.66	1.65	NA	NA	31.38	32.07	090
27286		A	Fusion of hip joint	16.79	NA	NA	13.55	14.29	1.76	NA	NA	32.10	32.84	090
27290		A	Amputation of leg at hip	23.28	NA	NA	15.77	18.72	2.28	NA	NA	41.33	44.28	090
27295		A	Amputation of leg at hip	18.65	NA	NA	13.33	14.49	1.97	NA	NA	33.95	35.11	090
27299		C	Pelvis/hip joint surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
27301		A	Drain thigh/knee lesion	6.49	13.61	10.88	12.20	9.82	0.67	20.77	18.04	19.36	16.98	090
27303		A	Drainage of bone lesion	8.28	NA	NA	12.58	11.03	0.85	NA	NA	21.71	20.16	090
27305		A	Incise thigh tendon & fascia	5.92	NA	NA	7.98	7.02	0.63	NA	NA	14.53	13.57	090
27306		A	Incision of thigh tendon	4.62	NA	NA	6.45	5.38	0.48	NA	NA	11.55	10.48	090
27307		A	Incision of thigh tendons	5.80	NA	NA	7.16	6.19	0.60	NA	NA	13.56	12.59	090
27310		A	Exploration of knee joint	9.27	NA	NA	8.82	9.22	0.95	NA	NA	19.04	19.44	090
27315		A	Partial removal, thigh nerve	6.97	NA	NA	4.77	5.04	0.72	NA	NA	12.46	12.73	090
27320		A	Partial removal, thigh nerve	6.30	NA	NA	4.38	4.69	0.62	NA	NA	11.30	11.61	090
27323		A	Biopsy, thigh soft tissues	2.28	4.98	3.98	3.12	2.59	0.14	7.40	6.40	5.54	5.01	010
27324		A	Biopsy, thigh soft tissues	4.90	NA	NA	6.24	5.39	0.53	NA	NA	11.67	10.82	090
27327		A	Removal of thigh lesion	4.47	7.39	6.17	5.65	4.86	0.45	12.31	11.09	10.57	9.78	090
27328		A	Removal of thigh lesion	5.57	NA	NA	6.33	5.85	0.56	NA	NA	12.46	11.98	090
27329		A	Remove tumor, thigh/knee	14.14	NA	NA	13.21	13.08	1.40	NA	NA	28.75	28.62	090
27330		A	Biopsy, knee joint lining	4.97	NA	NA	5.57	5.66	0.51	NA	NA	11.05	11.14	090
27331		A	Explore/treat knee joint	5.88	NA	NA	6.55	6.67	0.60	NA	NA	13.03	13.15	090
27332		A	Removal of knee cartilage	8.27	NA	NA	7.78	8.31	0.83	NA	NA	16.88	17.41	090
27333		A	Removal of knee cartilage	7.30	NA	NA	7.31	7.66	0.74	NA	NA	15.35	15.70	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
27334		A	Remove knee joint lining	8.70	NA	NA	8.56	9.02	0.90	NA	NA	18.16	18.62	090
27335		A	Remove knee joint lining	0.10	NA	NA	9.34	9.99	1.02	NA	NA	10.46	11.11	090
27340		A	Removal of kneecap bursa	4.18	NA	NA	5.18	4.93	0.43	NA	NA	9.79	9.54	090
27345		A	Removal of knee cyst	5.92	NA	NA	6.40	6.33	0.61	NA	NA	12.93	12.86	090
27347		A	Remove knee cyst	5.78	2.59	2.59	2.59	2.59	0.59	8.96	8.96	8.96	8.96	090
27350		A	Removal of kneecap	8.17	NA	NA	7.89	8.36	0.84	NA	NA	16.90	17.37	090
27355		A	Remove femur lesion	7.65	NA	NA	8.88	8.72	0.78	NA	NA	17.31	17.15	090
27356		A	Remove femur lesion/graft	9.48	NA	NA	10.01	9.73	0.97	NA	NA	20.46	20.18	090
27357		A	Remove femur lesion/graft	10.53	NA	NA	10.44	10.22	1.08	NA	NA	22.05	21.83	090
27358		A	Remove femur lesion/fixation	4.74	NA	NA	2.53	3.13	0.49	NA	NA	7.76	8.36	ZZZ
27360		A	Partial removal, leg bone(s)	10.50	NA	NA	15.94	14.28	1.09	NA	NA	27.53	25.87	090
27365		A	Extensive leg surgery	16.27	NA	NA	13.16	13.65	1.64	NA	NA	31.07	31.56	090
27370		A	Injection for knee x-ray	0.96	10.98	8.40	0.34	0.42	0.04	11.98	9.40	1.34	1.42	000
27372		A	Removal of foreign body	5.07	6.87	6.08	5.94	5.38	0.51	12.45	11.66	11.52	10.96	090
27380		A	Repair of kneecap tendon	7.16	NA	NA	7.48	7.75	0.74	NA	NA	15.38	15.65	090
27381		A	Repair/graft kneecap tendon	10.34	NA	NA	9.18	9.94	1.07	NA	NA	20.59	21.35	090
27385		A	Repair of thigh muscle	7.76	NA	NA	7.84	8.20	0.79	NA	NA	16.39	16.75	090
27386		A	Repair/graft of thigh muscle	10.56	NA	NA	9.80	10.50	1.08	NA	NA	21.44	22.14	090
27390		A	Incision of thigh tendon	5.33	NA	NA	6.78	6.27	0.54	NA	NA	12.65	12.14	090
27391		A	Incision of thigh tendons	7.20	NA	NA	7.78	7.31	0.75	NA	NA	15.73	15.26	090
27392		A	Incision of thigh tendons	9.20	NA	NA	9.65	9.32	0.93	NA	NA	19.78	19.45	090
27393		A	Lengthening of thigh tendon	6.39	NA	NA	7.29	7.01	0.64	NA	NA	14.32	14.04	090
27394		A	Lengthening of thigh tendons	8.50	NA	NA	9.27	8.51	0.87	NA	NA	18.64	17.88	090
27395		A	Lengthening of thigh tendons	11.73	NA	NA	11.95	11.81	1.21	NA	NA	24.89	24.75	090
27396		A	Transplant of thigh tendon	7.86	NA	NA	9.00	8.67	0.80	NA	NA	17.66	17.33	090
27397		A	Transplants of thigh tendons	11.28	NA	NA	10.64	10.39	1.17	NA	NA	23.09	22.84	090
27400		A	Revise thigh muscles/tendons	9.02	NA	NA	9.64	9.37	0.92	NA	NA	19.58	19.31	090
27403		A	Repair of knee cartilage	8.33	NA	NA	7.99	8.38	0.86	NA	NA	17.18	17.57	090
27405		A	Repair of knee ligament	8.65	NA	NA	8.60	9.03	0.89	NA	NA	18.14	18.57	090
27407		A	Repair of knee ligament	10.28	NA	NA	9.36	9.43	1.02	NA	NA	20.66	20.73	090
27409		A	Repair of knee ligaments	12.90	NA	NA	10.76	11.92	1.34	NA	NA	25.00	26.16	090
27418		A	Repair degenerated kneecap	10.85	NA	NA	9.78	10.58	1.12	NA	NA	21.75	22.55	090
27420		A	Revision of unstable kneecap	9.83	NA	NA	8.76	9.50	0.99	NA	NA	19.58	20.32	090
27422		A	Revision of unstable kneecap	9.78	NA	NA	8.74	9.48	0.01	NA	NA	18.53	19.27	090
27424		A	Revision/removal of kneecap	9.81	NA	NA	8.68	9.44	1.02	NA	NA	19.51	20.27	090
27425		A	Lateral retinacular release	5.22	NA	NA	6.30	6.28	0.53	NA	NA	12.05	12.03	090
27427		A	Reconstruction, knee	9.36	NA	NA	8.41	9.10	0.94	NA	NA	18.71	19.40	090
27428		A	Reconstruction, knee	0.14	NA	NA	11.45	12.30	1.40	NA	NA	12.99	13.84	090
27429		A	Reconstruction, knee	15.52	NA	NA	11.72	11.85	1.56	NA	NA	28.80	28.93	090
27430		A	Revision of thigh muscles	9.67	NA	NA	8.77	9.12	0.97	NA	NA	19.41	19.76	090
27435		A	Incision of knee joint	9.49	NA	NA	8.58	8.34	0.98	NA	NA	19.05	18.81	090]
27437		A	Revise kneecap	8.46	NA	NA	8.61	8.98	0.85	NA	NA	17.92	18.29	090
27438		A	Revise kneecap with implant	11.23	NA	NA	9.88	10.76	1.15	NA	NA	22.26	23.14	090
27440		A	Revision of knee joint	10.43	NA	NA	9.34	10.12	0.73	NA	NA	20.50	21.28	090
27441		A	Revision of knee joint	10.82	NA	NA	9.90	9.91	0.78	NA	NA	21.50	21.51	090
27442		A	Revision of knee joint	11.89	NA	NA	10.48	11.41	1.22	NA	NA	23.59	24.52	090
27443		A	Revision of knee joint	10.93	NA	NA	10.12	10.85	1.12	NA	NA	22.17	22.90	090
27445		A	Revision of knee joint	17.68	NA	NA	13.68	15.54	1.83	NA	NA	33.19	35.05	090
27446		A	Revision of knee joint	15.84	NA	NA	12.81	14.34	1.60	NA	NA	30.25	31.78	090
27447		A	Total knee replacement	21.48	NA	NA	15.77	18.24	2.19	NA	NA	39.44	41.91	090
27448		A	Incision of thigh	11.06	NA	NA	10.60	11.25	1.14	NA	NA	22.80	23.45	090
27450		A	Incision of thigh	13.98	NA	NA	12.36	13.30	1.43	NA	NA	27.77	28.71	090
27454		A	Realignment of thigh bone	17.56	NA	NA	13.81	14.62	1.76	NA	NA	33.13	33.94	090
27455		A	Realignment of knee	12.82	NA	NA	11.21	11.67	1.27	NA	NA	25.30	25.76	090
27457		A	Realignment of knee	13.45	NA	NA	10.66	11.60	1.37	NA	NA	25.48	26.42	090
27465		A	Shortening of thigh bone	13.87	NA	NA	12.19	12.46	1.43	NA	NA	27.49	27.76	090
27466		A	Lengthening of thigh bone	16.33	NA	NA	14.41	14.45	1.67	NA	NA	32.41	32.45	090
27468		A	Shorten/lengthen thighs	18.97	NA	NA	13.33	14.57	1.94	NA	NA	34.24	35.48	090
27470		A	Repair of thigh	16.07	NA	NA	14.32	15.26	1.64	NA	NA	32.03	32.97	090
27472		A	Repair/graft of thigh	17.72	NA	NA	15.17	16.67	1.83	NA	NA	34.72	36.22	090
27475		A	Surgery to stop leg growth	8.64	NA	NA	8.40	8.40	0.86	NA	NA	17.90	17.90	090
27477		A	Surgery to stop leg growth	9.85	NA	NA	8.85	9.58	0.96	NA	NA	19.66	20.39	090
27479		A	Surgery to stop leg growth	12.80	NA	NA	10.34	10.91	1.35	NA	NA	24.49	25.06	090
27485		A	Surgery to stop leg growth	8.64	NA	NA	8.40	8.45	0.89	NA	NA	18.13	18.18	090
27486		A	Revise/replace knee joint	19.27	NA	NA	14.63	16.73	1.97	NA	NA	35.87	37.97	090
27487		A	Revise/replace knee joint	25.27	NA	NA	17.88	20.94	2.57	NA	NA	45.72	48.78	090
27488		A	Removal of knee prosthesis	15.74	NA	NA	12.79	13.98	1.61	NA	NA	30.14	31.33	090
27495		A	Reinforce thigh	15.55	NA	NA	14.05	15.18	1.59	NA	NA	31.19	32.32	090
27496		A	Decompression of thigh/knee	6.11	NA	NA	7.27	6.68	0.66	NA	NA	14.04	13.45	090
27497		A	Decompression of thigh/knee	7.17	NA	NA	8.00	7.51	0.75	NA	NA	15.92	15.43	090
27498		A	Decompression of thigh/knee	7.99	NA	NA	7.07	7.02	0.87	NA	NA	15.93	15.88	090
27499		A	Decompression of thigh/knee	0.09	NA	NA	7.31	7.46	0.93	NA	NA	8.33	8.48	090
27500		A	Treatment of thigh fracture	5.92	8.41	7.78	6.31	6.20	0.61	14.94	14.31	12.84	12.73	090
27501		A	Treatment of thigh fracture	5.92	9.23	8.39	7.38	7.00	0.62	15.77	14.93	13.92	13.54	090
27502		A	Treatment of thigh fracture	10.58	NA	NA	9.81	9.44	1.10	NA	NA	21.49	21.12	090
27503		A	Treatment of thigh fracture	10.58	NA	NA	9.94	9.54	1.10	NA	NA	21.62	21.22	090
27506		A	Treatment of thigh fracture	17.45	NA	NA	13.20	14.25	1.79	NA	NA	32.44	33.49	090
27507		A	Treatment of thigh fracture	13.99	NA	NA	11.28	12.64	1.43	NA	NA	26.70	28.06	090
27508		A	Treatment of thigh fracture	5.83	6.53	6.04	4.93	4.84	0.60	12.96	12.47	11.36	11.27	090
27509		A	Treatment of thigh fracture	7.71	NA	NA	8.20	7.30	0.80	NA	NA	16.71	15.81	090
27510		A	Treatment of thigh fracture	9.13	NA	NA	6.83	6.97	0.95	NA	NA	16.91	17.05	090
27511		A	Treatment of thigh fracture	13.64	NA	NA	11.89	12.99	1.40	NA	NA	26.93	28.03	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
27513		A	Treatment of thigh fracture	17.92	NA	NA	14.17	14.98	1.83	NA	NA	33.92	34.73	090
27514		A	Treatment of thigh fracture	17.30	NA	NA	13.43	14.35	1.78	NA	NA	32.51	33.43	090
27516		A	Treat thigh fx growth plate	5.37	7.23	6.73	5.35	5.32	0.56	13.16	12.66	11.28	11.25	090
27517		A	Treat thigh fx growth plate	8.78	7.73	7.92	7.15	7.49	0.90	17.41	17.60	16.83	17.17	090
27519		A	Treat thigh fx growth plate	15.02	NA	NA	12.56	12.86	1.51	NA	NA	29.09	29.39	090
27520		A	Treat kneecap fracture	2.86	4.93	4.52	3.20	3.23	0.30	8.09	7.68	6.36	6.39	090
27524		A	Treat kneecap fracture	0.10	NA	NA	8.07	8.86	1.03	NA	NA	9.20	9.99	090
27530		A	Treat knee fracture	3.78	5.45	5.01	3.86	3.82	0.39	9.62	9.18	8.03	7.99	090
27532		A	Treat knee fracture	7.30	7.01	6.80	5.42	5.61	0.76	15.07	14.86	13.48	13.67	090
27535		A	Treat knee fracture	11.50	NA	NA	10.81	11.28	1.18	NA	NA	23.49	23.96	090
27536		A	Treat knee fracture	15.65	NA	NA	11.06	11.47	1.61	NA	NA	28.32	28.73	090
27538		A	Treat knee fracture(s)	4.87	6.83	6.04	4.92	4.61	0.51	12.21	11.42	10.30	9.99	090
27540		A	Treat knee fracture	13.10	NA	NA	9.57	10.15	1.33	NA	NA	24.00	24.58	090
27550		A	Treat knee dislocation	5.76	6.61	5.66	4.89	4.37	0.57	12.94	11.99	11.22	10.70	090
27552		A	Treat knee dislocation	7.90	NA	NA	7.09	6.25	0.82	NA	NA	15.81	14.97	090
27556		A	Treat knee dislocation	14.41	NA	NA	12.83	13.01	1.51	NA	NA	28.75	28.93	090
27557		A	Treat knee dislocation	16.77	NA	NA	13.73	14.26	1.72	NA	NA	32.22	32.75	090
27558		A	Treat knee dislocation	17.72	NA	NA	14.37	14.74	1.80	NA	NA	33.89	34.26	090
27560		A	Treat kneecap dislocation	3.82	5.45	4.48	3.18	2.77	0.36	9.63	8.66	7.36	6.95	090
27562		A	Treat kneecap dislocation	5.79	NA	NA	4.82	5.02	0.59	NA	NA	11.20	11.40	090
27566		A	Treat kneecap dislocation	12.23	NA	NA	9.06	9.67	1.26	NA	NA	22.55	23.16	090
27570		A	Fixation of knee joint	1.74	NA	NA	2.73	2.52	0.18	NA	NA	4.65	4.44	010
27580		A	Fusion of knee	19.37	NA	NA	15.02	15.53	1.98	NA	NA	36.37	36.88	090
27590		A	Amputate leg at thigh	12.03	NA	NA	11.31	10.96	1.30	NA	NA	24.64	24.29	090
27591		A	Amputate leg at thigh	12.68	NA	NA	12.89	12.86	1.34	NA	NA	26.91	26.88	090
27592		A	Amputate leg at thigh	10.02	NA	NA	10.44	10.03	1.07	NA	NA	21.53	21.12	090
27594		A	Amputation follow-up surgery	6.92	NA	NA	8.06	7.04	0.75	NA	NA	15.73	14.71	090
27596		A	Amputation follow-up surgery	10.60	NA	NA	11.01	10.26	1.15	NA	NA	22.76	22.01	090
27598		A	Amputate lower leg at knee	10.53	NA	NA	10.22	10.39	1.10	NA	NA	21.85	22.02	090
27599		C	Leg surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
27600		A	Decompression of lower leg	5.65	NA	NA	7.34	6.43	0.65	NA	NA	13.64	12.73	090
27601		A	Decompression of lower leg	5.64	NA	NA	7.42	6.48	0.64	NA	NA	13.70	12.76	090
27602		A	Decompression of lower leg	7.35	NA	NA	7.32	6.59	0.86	NA	NA	15.53	14.80	090
27603		A	Drain lower leg lesion	4.94	13.35	10.66	9.08	7.46	0.50	18.79	16.10	14.52	12.90	090
27604		A	Drain lower leg bursa	4.47	9.03	7.05	7.19	5.67	0.37	13.87	11.89	12.03	10.51	090
27605		A	Incision of achilles tendon	2.87	7.59	6.01	3.45	2.91	0.28	10.74	9.16	6.60	6.06	010
27606		A	Incision of achilles tendon	4.14	8.89	7.24	4.46	3.92	0.42	13.45	11.80	9.02	8.48	010
27607		A	Treat lower leg bone lesion	7.97	NA	NA	13.03	11.40	0.80	NA	NA	21.80	20.17	090
27610		A	Explore/treat ankle joint	8.34	NA	NA	9.19	8.91	0.84	NA	NA	18.37	18.09	090
27612		A	Exploration of ankle joint	7.33	NA	NA	7.23	7.59	0.68	NA	NA	15.24	15.60	090
27613		A	Biopsy lower leg soft tissue	2.17	5.26	4.13	2.70	2.21	0.13	7.56	6.43	5.00	4.51	010
27614		A	Biopsy lower leg soft tissue	5.66	9.43	7.69	6.43	5.44	0.55	15.64	13.90	12.64	11.65	090
27615		A	Remove tumor, lower leg	12.56	NA	NA	15.09	13.55	1.26	NA	NA	28.91	27.37	090
27618		A	Remove lower leg lesion	5.09	10.20	8.22	5.89	4.99	0.48	15.77	13.79	11.46	10.56	090
27619		A	Remove lower leg lesion	8.40	10.81	9.23	8.11	7.20	0.80	20.01	18.43	17.31	16.40	090
27620		A	Explore/treat ankle joint	5.98	NA	NA	7.06	6.93	0.58	NA	NA	13.62	13.49	090
27625		A	Remove ankle joint lining	8.30	NA	NA	8.46	8.71	0.78	NA	NA	17.54	17.79	090
27626		A	Remove ankle joint lining	8.91	NA	NA	8.91	9.34	0.88	NA	NA	18.70	19.13	090
27630		A	Removal of tendon lesion	4.80	9.61	8.05	6.02	5.36	0.45	14.86	13.30	11.27	10.61	090
27635		A	Remove lower leg bone lesion	7.78	NA	NA	9.47	9.29	0.78	NA	NA	18.03	17.85	090
27637		A	Remove/graft leg bone lesion	9.85	NA	NA	10.80	10.40	1.01	NA	NA	21.66	21.26	090
27638		A	Remove/graft leg bone lesion	10.57	NA	NA	11.24	10.91	1.06	NA	NA	22.87	22.54	090
27640		A	Partial removal of tibia	11.37	NA	NA	15.60	14.36	1.14	NA	NA	28.11	26.87	090
27641		A	Partial removal of fibula	9.24	NA	NA	14.09	12.50	0.92	NA	NA	24.25	22.66	090
27645		A	Extensive lower leg surgery	14.17	NA	NA	15.60	14.86	1.46	NA	NA	31.23	30.49	090
27646		A	Extensive lower leg surgery	12.66	NA	NA	15.38	14.45	1.24	NA	NA	29.28	28.35	090
27647		A	Extensive ankle/heel surgery	12.24	NA	NA	10.41	10.51	1.02	NA	NA	23.67	23.77	090
27648		A	Injection for ankle x-ray	0.96	8.42	6.46	0.34	0.40	0.05	9.43	7.47	1.35	1.41	000
27650		A	Repair achilles tendon	9.89	NA	NA	8.44	8.77	0.95	NA	NA	19.08	19.41	090
27652		A	Repair/graft achilles tendon	10.33	NA	NA	8.66	9.32	0.98	NA	NA	19.97	20.63	090
27654		A	Repair of achilles tendon	10.02	NA	NA	8.93	9.66	0.90	NA	NA	19.85	20.58	090
27656		A	Repair leg fascia defect	4.57	12.05	9.90	6.14	5.47	0.44	17.06	14.91	11.15	10.48	090
27658		A	Repair of leg tendon, each	4.98	8.99	7.63	7.53	6.74	0.46	14.43	13.27	12.97	12.18	090
27659		A	Repair of leg tendon, each	6.81	12.60	11.04	8.15	7.71	0.61	20.02	18.46	15.57	15.13	090
27664		A	Repair of leg tendon, each	4.59	9.19	7.82	7.94	6.88	0.45	14.23	12.86	12.98	11.92	090
27665		A	Repair of leg tendon, each	5.40	12.76	10.91	7.88	7.25	0.53	18.69	16.84	13.81	13.18	090
27675		A	Repair lower leg tendons	7.18	NA	NA	7.18	7.12	0.69	NA	NA	15.05	14.99	090
27676		A	Repair lower leg tendons	8.42	NA	NA	8.29	8.27	0.74	NA	NA	17.45	17.43	090
27680		A	Release of lower leg tendon	5.74	NA	NA	6.93	6.32	0.54	NA	NA	13.21	12.60	090
27681		A	Release of lower leg tendons	6.82	NA	NA	7.58	7.31	0.68	NA	NA	15.08	14.81	090
27685		A	Revision of lower leg tendon	6.50	7.33	6.54	7.29	6.51	0.56	14.39	13.60	14.35	13.57	090
27686		A	Revise lower leg tendons	7.46	8.98	8.52	8.58	8.22	0.74	17.18	16.72	16.78	16.42	090
27687		A	Revision of calf tendon	6.24	NA	NA	7.22	6.89	0.56	NA	NA	14.02	13.69	090
27690		A	Revise lower leg tendon	8.71	NA	NA	8.15	7.94	0.78	NA	NA	17.62	17.41	090
27691		A	Revise lower leg tendon	9.96	NA	NA	9.62	9.36	0.95	NA	NA	20.53	20.27	090
27692		A	Revise additional leg tendon	1.87	NA	NA	0.90	1.23	0.19	NA	NA	2.96	3.29	ZZZ
27695		A	Repair of ankle ligament	6.51	NA	NA	7.91	7.88	0.63	NA	NA	15.05	15.02	090
27696		A	Repair of ankle ligaments	8.27	NA	NA	8.64	8.40	0.78	NA	NA	17.67	17.43	090
27698		A	Repair of ankle ligament	9.36	NA	NA	8.47	9.15	0.84	NA	NA	18.67	19.35	090
27700		A	Revision of ankle joint	9.29	NA	NA	7.03	8.05	0.68	NA	NA	17.00	18.02	090
27702		A	Reconstruct ankle joint	13.67	NA	NA	11.57	12.76	1.41	NA	NA	26.65	27.84	090
27703		A	Reconstruction, ankle joint	15.87	NA	NA	11.62	12.47	1.32	NA	NA	28.81	29.66	090

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
27704		A	Removal of ankle implant	7.62	NA	NA	8.28	7.80	0.67	NA	NA	16.57	16.09	090
27705		A	Incision of tibia	10.38	NA	NA	10.17	10.54	1.06	NA	NA	21.61	21.98	090
27707		A	Incision of fibula	4.37	NA	NA	7.01	6.55	0.45	NA	NA	11.83	11.37	090
27709		A	Incision of tibia & fibula	9.95	NA	NA	10.05	10.51	1.02	NA	NA	21.02	21.48	090
27712		A	Realignment of lower leg	14.25	NA	NA	12.30	12.21	1.46	NA	NA	28.01	27.92	090
27715		A	Revision of lower leg	14.39	NA	NA	13.32	13.41	1.47	NA	NA	29.18	29.27	090
27720		A	Repair of tibia	11.79	NA	NA	11.93	12.47	1.21	NA	NA	24.93	25.47	090
27722		A	Repair/graft of tibia	11.82	NA	NA	11.76	11.67	1.21	NA	NA	24.79	24.70	090
27724		A	Repair/graft of tibia	14.99	NA	NA	13.71	14.49	1.54	NA	NA	30.24	31.02	090
27725		A	Repair of lower leg	15.59	NA	NA	13.93	13.28	1.58	NA	NA	31.10	30.45	090
27727		A	Repair of lower leg	14.01	NA	NA	12.63	12.02	1.41	NA	NA	28.05	27.44	090
27730		A	Repair of tibia epiphysis	7.41	13.48	11.09	8.85	7.61	0.74	21.63	19.24	17.00	15.76	090
27732		A	Repair of fibula epiphysis	5.32	12.65	10.80	7.02	6.58	0.53	18.50	16.65	12.87	12.43	090
27734		A	Repair lower leg epiphyses	8.48	NA	NA	8.27	8.25	0.76	NA	NA	17.51	17.49	090
27740		A	Repair of leg epiphyses	9.30	20.08	17.33	8.60	8.72	0.97	30.35	27.60	18.87	18.99	090
27742		A	Repair of leg epiphyses	10.30	14.63	13.49	9.00	9.27	0.93	25.86	24.72	20.23	20.50	090
27745		A	Reinforce tibia	10.07	NA	NA	10.23	10.11	1.02	NA	NA	21.32	21.20	090
27750		A	Treatment of tibia fracture	3.19	5.08	4.75	3.49	3.55	0.32	8.59	8.26	7.00	7.06	090
27752		A	Treatment of tibia fracture	5.84	7.42	6.95	5.66	5.63	0.61	13.87	13.40	12.11	12.08	090
27756		A	Treatment of tibia fracture	6.78	NA	NA	9.22	8.94	0.70	NA	NA	16.70	16.42	090
27758		A	Treatment of tibia fracture	11.67	NA	NA	10.82	11.60	1.19	NA	NA	23.68	24.46	090
27759		A	Treatment of tibia fracture	13.76	NA	NA	11.97	12.71	1.41	NA	NA	27.14	27.88	090
27760		A	Treatment of ankle fracture	3.01	4.87	4.35	3.19	3.09	0.31	8.19	7.67	6.51	6.41	090
27762		A	Treatment of ankle fracture	5.25	6.98	6.15	5.19	4.81	0.53	12.76	11.93	10.97	10.59	090
27766		A	Treatment of ankle fracture	8.36	NA	NA	7.54	7.79	0.86	NA	NA	16.76	17.01	090
27780		A	Treatment of fibula fracture	2.65	4.78	4.12	3.01	2.79	0.26	7.69	7.03	5.92	5.70	090
27781		A	Treatment of fibula fracture	4.40	5.98	5.38	4.28	4.10	0.45	10.83	10.23	9.13	8.95	090
27784		A	Treatment of fibula fracture	7.11	NA	NA	7.50	7.14	0.73	NA	NA	15.34	14.98	090
27786		A	Treatment of ankle fracture	2.84	4.83	4.31	3.12	3.02	0.29	7.96	7.44	6.25	6.15	090
27788		A	Treatment of ankle fracture	4.45	5.99	5.38	4.20	4.04	0.46	10.90	10.29	9.11	8.95	090
27792		A	Treatment of ankle fracture	7.66	NA	NA	7.21	7.41	0.78	NA	NA	15.65	15.85	090
27808		A	Treatment of ankle fracture	2.83	5.74	5.06	3.79	3.60	0.29	8.86	8.18	6.91	6.72	090
27810		A	Treatment of ankle fracture	5.13	6.97	6.60	5.17	5.25	0.53	12.63	12.26	10.83	10.91	090
27814		A	Treatment of ankle fracture	10.68	NA	NA	9.69	9.98	1.10	NA	NA	21.47	21.76	090
27816		A	Treatment of ankle fracture	2.89	5.27	4.90	3.77	3.77	0.29	8.45	8.08	6.95	6.95	090
27818		A	Treatment of ankle fracture	5.50	7.19	7.04	5.29	5.61	0.56	13.25	13.10	11.35	11.67	090
27822		A	Treatment of ankle fracture	9.20	NA	NA	10.68	10.76	0.95	NA	NA	20.83	20.91	090
27823		A	Treatment of ankle fracture	11.80	NA	NA	12.04	12.50	1.21	NA	NA	25.05	25.51	090
27824		A	Treat lower leg fracture	2.89	5.71	5.23	3.86	3.84	0.29	8.89	8.41	7.04	7.02	090
27825		A	Treat lower leg fracture	6.19	7.68	7.53	5.83	6.14	0.64	14.51	14.36	12.66	12.97	090
27826		A	Treat lower leg fracture	8.54	NA	NA	10.34	10.30	0.88	NA	NA	19.76	19.72	090
27827		A	Treat lower leg fracture	14.06	NA	NA	13.38	13.21	1.44	NA	NA	28.88	28.71	090
27828		A	Treat lower leg fracture	16.23	NA	NA	14.48	14.33	1.67	NA	NA	32.38	32.23	090
27829		A	Treat lower leg joint	5.49	NA	NA	7.46	7.23	0.56	NA	NA	13.51	13.28	090
27830		A	Treat lower leg dislocation	3.79	5.32	4.87	3.48	3.49	0.38	9.49	9.04	7.65	7.66	090
27831		A	Treat lower leg dislocation	4.56	NA	NA	4.35	4.34	0.46	NA	NA	9.37	9.36	090
27832		A	Treat lower leg dislocation	6.49	NA	NA	7.25	6.99	0.68	NA	NA	14.42	14.16	090
27840		A	Treat ankle dislocation	4.58	NA	NA	4.37	3.79	0.45	NA	NA	9.40	8.82	090
27842		A	Treat ankle dislocation	6.21	NA	NA	4.42	3.92	0.64	NA	NA	11.27	10.77	090
27846		A	Treat ankle dislocation	9.79	NA	NA	9.17	9.21	0.96	NA	NA	19.92	19.96	090
27848		A	Treat ankle dislocation	11.20	NA	NA	10.48	10.13	1.15	NA	NA	22.83	22.48	090
27860		A	Fixation of ankle joint	2.34	NA	NA	3.05	2.67	0.23	NA	NA	5.62	5.24	010
27870		A	Fusion of ankle joint	13.91	NA	NA	12.27	12.82	1.40	NA	NA	27.58	28.13	090
27871		A	Fusion of tibiofibular joint	9.17	NA	NA	9.43	9.19	0.92	NA	NA	19.52	19.28	090
27880		A	Amputation of lower leg	11.85	NA	NA	10.61	10.23	1.27	NA	NA	23.73	23.35	090
27881		A	Amputation of lower leg	12.34	NA	NA	11.70	11.71	1.31	NA	NA	25.35	25.36	090
27882		A	Amputation of lower leg	8.94	NA	NA	11.10	10.32	0.98	NA	NA	21.02	20.24	090
27884		A	Amputation follow-up surgery	8.21	NA	NA	9.64	8.15	0.89	NA	NA	18.74	17.25	090
27886		A	Amputation follow-up surgery	9.32	NA	NA	9.71	9.23	1.01	NA	NA	20.04	19.56	090
27888		A	Amputation of foot at ankle	9.67	NA	NA	9.73	9.87	1.01	NA	NA	20.41	20.55	090
27889		A	Amputation of foot at ankle	9.98	NA	NA	8.85	8.93	1.10	NA	NA	19.93	20.01	090
27892		A	Decompression of leg	7.39	NA	NA	7.49	6.54	0.80	NA	NA	15.68	14.73	090
27893		A	Decompression of leg	7.35	NA	NA	6.92	6.11	0.69	NA	NA	14.96	14.15	090
27894		A	Decompression of leg	10.49	NA	NA	8.68	7.61	1.12	NA	NA	20.29	19.22	090
27899		C	Leg/ankle surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
28001		A	Drainage of bursa of foot	2.73	4.44	3.47	2.80	2.24	0.18	7.35	6.38	5.71	5.15	010
28002		A	Treatment of foot infection	4.62	5.68	4.87	3.86	3.51	0.37	10.67	9.86	8.85	8.50	010
28003		A	Treatment of foot infection	8.41	8.93	7.65	8.93	7.65	0.66	18.00	16.72	18.00	16.72	090
28005		A	Treat foot bone lesion	8.68	NA	NA	9.06	7.90	0.74	NA	NA	18.48	17.32	090
28008		A	Incision of foot fascia	4.45	6.25	5.42	5.32	4.72	0.31	11.01	10.18	10.08	9.48	090
28010		A	Incision of toe tendon	2.84	5.83	5.36	4.08	4.04	0.19	8.86	8.39	7.11	7.07	090
28011		A	Incision of toe tendons	4.14	7.19	5.87	5.81	4.84	0.33	11.66	10.34	10.28	9.31	090
28020		A	Exploration of foot joint	5.01	7.63	6.92	5.57	5.37	0.41	13.05	12.34	10.99	10.79	090
28022		A	Exploration of foot joint	4.67	6.36	5.51	5.09	4.56	0.35	11.38	10.53	10.11	9.58	090
28024		A	Exploration of toe joint	4.38	6.15	5.26	4.94	4.35	0.32	10.85	9.96	9.64	9.05	090
28030		A	Removal of foot nerve	6.15	NA	NA	3.22	3.48	0.42	NA	NA	9.79	10.05	090
28035		A	Decompression of tibia nerve	5.09	6.67	6.68	4.89	5.35	0.42	12.18	12.19	10.40	10.86	090
28043		A	Excision of foot lesion	3.54	5.87	4.87	4.26	3.67	0.27	9.68	8.68	8.07	7.48	090
28045		A	Excision of foot lesion	4.72	6.46	5.93	4.88	4.74	0.36	11.54	11.01	9.96	9.82	090
28046		A	Resection of tumor, foot	10.18	9.50	8.58	9.50	8.58	0.82	20.50	19.58	20.50	19.58	090
28050		A	Biopsy of foot joint lining	4.25	5.67	5.30	4.71	4.58	0.33	10.25	9.88	9.29	9.16	090
28052		A	Biopsy of foot joint lining	3.94	5.86	5.43	5.04	4.82	0.32	10.12	9.69	9.30	9.08	090

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
28054		A	Biopsy of toe joint lining	3.45	5.92	5.05	5.53	4.76	0.29	9.66	8.79	9.27	8.50	090
28060		A	Partial removal, foot fascia	5.23	6.92	6.34	5.56	5.32	0.38	12.53	11.95	11.17	10.93	090
28062		A	Removal of foot fascia	6.52	8.48	8.28	5.39	5.96	0.45	15.45	15.25	12.36	12.93	090
28070		A	Removal of foot joint lining	5.10	6.01	5.72	5.15	5.08	0.37	11.48	11.19	10.62	10.55	090
28072		A	Removal of foot joint lining	4.58	6.92	6.06	5.78	5.21	0.41	11.91	11.05	10.77	10.20	090
28080		A	Removal of foot lesion	3.58	5.96	5.58	4.51	4.49	0.26	9.80	9.42	8.35	8.33	090
28086		A	Excise foot tendon sheath	4.78	8.96	7.57	6.38	5.63	0.47	14.21	12.82	11.63	10.88	090
28088		A	Excise foot tendon sheath	3.86	6.57	5.91	5.66	5.23	0.35	10.78	10.12	9.87	9.44	090
28090		A	Removal of foot lesion	4.41	6.26	5.52	4.67	4.32	0.32	10.99	10.25	9.40	9.05	090
28092		A	Removal of toe lesions	3.64	6.95	5.76	5.01	4.31	0.28	10.87	9.68	8.93	8.23	090
28100		A	Removal of ankle/heel lesion	5.66	8.94	7.95	6.41	6.05	0.49	15.09	14.10	12.56	12.20	090
28102		A	Remove/graft foot lesion	7.73	NA	NA	7.70	7.63	0.72	NA	NA	16.15	16.08	090
28103		A	Remove/graft foot lesion	6.50	13.01	11.28	5.70	5.80	0.52	20.03	18.30	12.72	12.82	090
28104		A	Removal of foot lesion	5.12	6.78	6.26	5.75	5.49	0.38	12.28	11.76	11.25	10.99	090
28106		A	Remove/graft foot lesion	7.16	NA	NA	5.96	6.21	0.53	NA	NA	13.65	13.90	090
28107		A	Remove/graft foot lesion	5.56	6.52	6.21	6.03	5.84	0.40	12.48	12.17	11.99	11.80	090
28108		A	Removal of toe lesions	4.16	5.74	5.45	4.42	4.46	0.28	10.18	9.89	8.86	8.90	090
28110		A	Part removal of metatarsal	4.08	6.83	6.07	5.66	5.19	0.31	11.22	10.46	10.05	9.58	090
28111		A	Part removal of metatarsal	5.01	8.32	7.61	6.41	6.18	0.42	13.75	13.04	11.84	11.61	090
28112		A	Part removal of metatarsal	4.49	7.09	6.39	6.11	5.66	0.35	11.93	11.23	10.95	10.50	090
28113		A	Part removal of metatarsal	4.79	7.03	6.48	5.93	5.65	0.36	12.18	11.63	11.08	10.80	090
28114		A	Removal of metatarsal heads	9.79	9.64	9.72	9.27	9.44	0.82	20.25	20.33	19.88	20.05	090
28116		A	Revision of foot	7.75	7.07	6.79	5.89	5.91	0.56	15.38	15.10	14.20	14.22	090
28118		A	Removal of heel bone	5.96	6.95	6.76	5.99	6.04	0.48	13.39	13.20	12.43	12.48	090
28119		A	Removal of heel spur	5.39	6.61	6.43	5.11	5.31	0.37	12.37	12.19	10.87	11.07	090
28120		A	Part removal of ankle/heel	5.40	10.73	9.42	8.00	7.37	0.47	16.60	15.29	13.87	13.24	090
28122		A	Partial removal of foot bone	7.29	8.78	7.80	7.92	7.16	0.56	16.63	15.65	15.77	15.01	090
28124		A	Partial removal of toe	4.81	7.35	6.63	6.29	5.83	0.32	12.48	11.76	11.42	10.96	090
28126		A	Partial removal of toe	3.52	6.27	5.78	5.70	5.36	0.24	10.03	9.54	9.48	9.12	090
28130		A	Removal of ankle bone	8.11	NA	NA	7.88	7.82	0.75	NA	NA	16.74	16.68	090
28140		A	Removal of metatarsal	6.91	7.66	7.08	6.70	6.36	0.59	15.16	14.58	14.20	13.86	090
28150		A	Removal of toe	4.09	6.78	5.98	5.87	5.30	0.32	11.19	10.39	10.28	9.71	090
28153		A	Partial removal of toe	3.66	6.30	5.81	4.54	4.49	0.24	10.20	9.71	8.44	8.39	090
28160		A	Partial removal of toe	3.74	6.47	5.97	5.95	5.58	0.27	10.48	9.96	9.96	9.59	090
28171		A	Extensive foot surgery	9.60	NA	NA	6.92	7.36	0.62	NA	NA	17.14	17.58	090
28173		A	Extensive foot surgery	8.80	9.04	8.34	7.65	7.30	0.71	18.55	17.85	17.16	16.81	090
28175		A	Extensive foot surgery	6.05	7.41	7.02	5.84	5.84	0.41	13.87	13.48	12.30	12.30	090
28190		A	Removal of foot foreign body	1.96	5.06	3.94	2.52	2.03	0.13	7.15	6.03	4.61	4.12	010
28192		A	Removal of foot foreign body	4.64	6.70	5.56	4.66	4.03	0.36	11.70	10.56	9.66	9.03	090
28193		A	Removal of foot foreign body	5.73	6.90	5.82	5.51	4.78	0.42	13.05	11.97	11.66	10.93	090
28200		A	Repair of foot tendon	4.60	6.57	6.30	5.38	5.41	0.33	11.50	11.23	10.31	10.34	090
28202		A	Repair/graft of foot tendon	6.84	7.03	6.85	5.91	6.01	0.53	14.40	14.22	13.28	13.38	090
28206		A	Repair of foot tendon	4.37	6.29	5.48	4.84	4.39	0.31	10.97	10.16	9.52	9.07	090
28210		A	Repair/graft of foot tendon	6.35	8.04	7.55	5.64	5.75	0.46	14.85	14.36	12.45	12.56	090
28220		A	Release of foot tendon	4.53	6.13	5.65	5.12	4.89	0.30	10.96	10.48	9.95	9.72	090
28222		A	Release of foot tendons	5.62	6.54	6.64	6.05	6.28	0.36	12.52	12.62	12.03	12.26	090
28225		A	Release of foot tendon	3.66	5.90	5.07	4.71	4.18	0.25	9.81	8.98	8.62	8.09	090
28226		A	Release of foot tendons	4.53	6.11	5.50	5.33	4.92	0.33	10.97	10.36	10.19	9.78	090
28230		A	Incision of foot tendon(s)	4.24	6.24	5.34	5.64	4.89	0.31	10.79	9.89	10.19	9.44	090
28232		A	Incision of toe tendon	3.39	6.44	5.27	5.38	4.47	0.25	10.08	8.91	9.02	8.11	090
28234		A	Incision of foot tendon	3.37	6.52	5.31	4.80	4.02	0.24	10.13	8.92	8.41	7.63	090
28238		A	Revision of foot tendon	7.73	7.38	7.50	6.40	6.76	0.56	15.67	15.79	14.69	15.05	090
28240		A	Release of big toe	4.36	6.09	5.15	5.29	4.55	0.32	10.77	9.83	9.97	9.23	090
28250		A	Revision of foot fascia	5.92	7.01	6.47	6.17	5.84	0.42	13.35	12.81	12.51	12.18	090
28260		A	Release of midfoot joint	7.96	7.47	6.81	6.37	5.98	0.57	16.00	15.34	14.90	14.51	090
28261		A	Revision of foot tendon	11.73	9.37	8.63	8.39	7.90	0.84	21.94	21.20	20.96	20.47	090
28262		A	Revision of foot and ankle	15.83	15.10	14.56	13.41	13.29	1.48	32.41	31.87	30.72	30.60	090
28264		A	Release of midfoot joint	10.35	8.87	9.25	8.87	9.25	0.86	20.08	20.46	20.08	20.46	090
28270		A	Release of foot contracture	4.76	6.73	5.76	6.01	5.22	0.32	11.81	10.84	11.09	10.30	090
28272		A	Release of toe joint, each	3.80	5.84	4.93	4.49	3.92	0.24	9.88	8.97	8.53	7.96	090
28280		A	Fusion of toes	5.19	6.73	5.65	5.93	5.05	0.45	12.37	11.29	11.57	10.69	090
28285		A	Repair of hammertoe	4.59	6.72	6.23	5.48	5.30	0.32	11.63	11.14	10.39	10.21	090
28286		A	Repair of hammertoe	4.58	6.64	5.95	5.30	4.95	0.32	11.52	10.83	10.18	9.83	090
28288		A	Partial removal of foot bone	4.74	6.58	5.95	6.58	5.95	0.38	11.70	11.07	11.70	11.07	090
28289		A	Repair hallux rigidus	7.04	8.05	8.05	7.23	7.23	0.55	15.64	15.64	14.82	14.82	090
28290		A	Correction of bunion	5.66	7.57	7.13	7.47	7.06	0.46	13.69	13.25	13.59	13.18	090
28292		A	Correction of bunion	7.04	7.75	7.73	6.41	6.72	0.50	15.29	15.27	13.95	14.26	090
28293		A	Correction of bunion	9.15	8.84	9.22	6.78	7.68	0.61	18.60	18.98	16.54	17.44	090
28294		A	Correction of bunion	8.56	8.28	8.70	8.60	7.44	0.55	17.39	17.81	15.71	16.55	090
28296		A	Correction of bunion	9.18	8.83	9.01	7.42	7.96	0.66	18.67	18.85	17.26	17.80	090
28297		A	Correction of bunion	9.18	8.75	9.01	8.75	9.01	0.74	18.67	18.93	18.67	18.93	090
28298		A	Correction of bunion	7.94	8.15	8.48	7.09	7.69	0.54	16.63	16.96	15.57	16.17	090
28299		A	Correction of bunion	8.88	8.35	8.91	7.05	7.94	0.61	17.84	18.40	16.54	17.43	090
28300		A	Incision of heel bone	9.54	9.20	8.67	8.19	7.91	0.87	19.61	19.08	18.60	18.32	090
28302		A	Incision of ankle bone	9.55	12.77	11.99	8.55	8.83	0.78	23.10	22.32	18.88	19.16	090
28304		A	Incision of midfoot bones	9.16	8.77	8.33	7.08	7.04	0.68	18.61	18.17	16.90	16.88	090
28305		A	Incise/graft midfoot bones	10.50	13.32	12.66	9.03	9.45	0.61	24.43	23.77	20.14	20.56	090
28306		A	Incision of metatarsal	5.86	6.76	6.31	5.35	5.25	0.45	13.07	12.62	11.66	11.56	090
28307		A	Incision of metatarsal	6.33	7.90	7.52	7.43	7.17	0.51	14.74	14.36	14.27	14.01	090
28308		A	Incision of metatarsal	5.29	6.16	6.17	4.45	4.89	0.35	11.80	11.81	10.09	10.53	090
28309		A	Incision of metatarsals	12.78	NA	NA	9.49	8.98	0.99	NA	NA	23.26	22.75	090
28310		A	Revision of big toe	5.43	7.09	6.45	5.65	5.37	0.37	12.89	12.25	11.45	11.17	090

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
28312		A	Revision of toe	4.55	6.86	6.38	6.10	5.81	0.33	11.74	11.26	10.98	10.69	090
28313		A	Repair deformity of toe	5.01	7.38	6.23	7.38	6.23	0.45	12.84	11.69	12.84	11.69	090
28315		A	Removal of sesamoid bone	4.86	6.23	5.82	4.73	4.70	0.33	11.42	11.01	9.92	9.89	090
28320		A	Repair of foot bones	9.18	NA	NA	8.07	8.41	0.82	NA	NA	18.07	18.41	090
28322		A	Repair of metatarsals	8.34	7.30	6.74	7.24	6.70	0.74	16.38	15.82	16.32	15.78	090
28340		A	Resect enlarged toe tissue	6.98	7.81	7.58	5.73	6.02	0.52	15.31	15.08	13.23	13.52	090
28341		A	Resect enlarged toe	8.41	8.27	8.26	6.18	6.71	0.55	17.23	17.24	15.14	15.67	090
28344		A	Repair extra toe(s)	4.26	5.68	5.27	5.15	4.87	0.38	10.32	9.91	9.79	9.51	090
28345		A	Repair webbed toe(s)	5.92	6.98	6.69	6.46	6.30	0.48	13.38	13.09	12.86	12.70	090
28360		A	Reconstruct cleft foot	13.34	NA	NA	12.26	12.43	1.39	NA	NA	26.99	27.16	090
28400		A	Treatment of heel fracture	2.16	5.13	4.55	3.91	3.63	0.21	7.50	6.92	6.28	6.00	090
28405		A	Treatment of heel fracture	4.57	5.88	5.47	5.33	5.06	0.44	10.89	10.48	10.34	10.07	090
28406		A	Treatment of heel fracture	6.31	NA	NA	7.65	7.39	0.65	NA	NA	14.61	14.35	090
28415		A	Treat heel fracture	15.97	NA	NA	13.83	12.82	1.58	NA	NA	31.38	30.37	090
28420		A	Treat/graft heel fracture	16.64	NA	NA	14.33	13.70	1.67	NA	NA	32.64	32.01	090
28430		A	Treatment of ankle fracture	2.09	4.67	4.17	3.30	3.14	0.20	6.96	6.46	5.59	5.43	090
28435		A	Treatment of ankle fracture	3.40	5.18	4.80	4.24	4.09	0.31	8.89	8.51	7.95	7.80	090
28436		A	Treatment of ankle fracture	4.71	NA	NA	6.25	5.83	0.50	NA	NA	11.46	11.04	090
28445		A	Treat ankle fracture	9.33	NA	NA	9.36	9.41	0.90	NA	NA	19.59	19.64	090
28450		A	Treat midfoot fracture, each	1.90	4.55	3.92	3.18	2.89	0.18	6.63	6.00	5.26	4.97	090
28455		A	Treat midfoot fracture, each	3.09	4.22	3.86	4.11	3.77	0.25	7.56	7.20	7.45	7.11	090
28456		A	Treat midfoot fracture	2.68	NA	NA	4.98	4.35	0.26	NA	NA	7.92	7.29	090
28465		A	Treat midfoot fracture, each	7.01	NA	NA	7.40	7.05	0.65	NA	NA	15.06	14.71	090
28470		A	Treat metatarsal fracture	1.99	4.00	3.49	2.69	2.51	0.19	6.18	5.67	4.87	4.69	090
28475		A	Treat metatarsal fracture	2.97	4.48	4.00	3.93	3.58	0.26	7.71	7.23	7.16	6.81	090
28476		A	Treat metatarsal fracture	3.38	NA	NA	5.64	5.15	0.32	NA	NA	9.34	8.85	090
28485		A	Treat metatarsal fracture	5.71	NA	NA	6.80	6.37	0.48	NA	NA	12.99	12.56	090
28490		A	Treat big toe fracture	1.09	2.18	1.88	1.53	1.39	0.10	3.37	3.07	2.72	2.58	090
28495		A	Treat big toe fracture	1.58	2.24	1.99	1.74	1.61	0.12	3.94	3.69	3.44	3.31	090
28496		A	Treat big toe fracture	2.33	7.03	5.84	4.40	3.86	0.23	9.59	8.40	6.96	6.42	090
28505		A	Treat big toe fracture	3.81	9.21	7.72	5.77	5.14	0.34	13.36	11.87	9.92	9.29	090
28510		A	Treatment of toe fracture	1.09	1.93	1.69	1.46	1.34	0.09	3.11	2.87	2.64	2.52	090
28515		A	Treatment of toe fracture	1.46	2.13	1.90	1.66	1.55	0.11	3.70	3.47	3.23	3.12	090
28525		A	Treat toe fracture	3.32	8.37	6.84	5.44	4.64	0.30	11.99	10.46	9.06	8.26	090
28530		A	Treat sesamoid bone fracture	1.06	2.75	2.34	2.31	2.01	0.08	3.89	3.48	3.45	3.15	090
28531		A	Treat sesamoid bone fracture	2.35	8.01	6.53	3.15	2.88	0.17	10.53	9.05	5.67	5.40	090
28540		A	Treat foot dislocation	2.04	3.30	2.64	3.27	2.62	0.15	5.49	4.83	5.46	4.81	090
28545		A	Treat foot dislocation	2.45	3.17	2.73	3.17	2.73	0.22	5.84	5.40	5.84	5.40	090
28546		A	Treat foot dislocation	3.20	4.91	4.43	4.91	4.43	0.30	8.41	7.93	8.41	7.93	090
28555		A	Repair foot dislocation	6.30	6.33	6.26	6.33	6.26	0.59	13.22	13.15	13.22	13.15	090
28570		A	Treat foot dislocation	1.66	3.68	3.19	3.32	2.92	0.14	5.48	4.99	5.12	4.72	090
28575		A	Treat foot dislocation	3.31	3.36	3.27	3.36	3.27	0.32	6.99	6.90	6.99	6.90	090
28576		A	Treat foot dislocation	4.17	5.30	4.73	5.30	4.73	0.41	9.88	9.31	9.88	9.31	090
28585		A	Repair foot dislocation	7.99	8.58	7.78	7.12	6.69	0.71	17.28	16.48	15.82	15.39	090
28600		A	Treat foot dislocation	1.89	4.01	3.19	3.52	2.83	0.16	6.06	5.24	5.57	4.88	090
28605		A	Treat foot dislocation	2.71	4.63	4.09	3.98	3.60	0.26	7.60	7.06	6.95	6.57	090
28606		A	Treat foot dislocation	4.90	14.59	11.89	6.15	5.56	0.50	19.99	17.29	11.55	10.96	090
28615		A	Repair foot dislocation	7.77	NA	NA	8.27	7.55	0.77	NA	NA	16.81	16.09	090
28630		A	Treat toe dislocation	1.70	1.84	1.66	1.76	1.60	0.14	3.68	3.50	3.60	3.44	010
28635		A	Treat toe dislocation	1.91	2.15	2.01	2.15	2.01	0.15	4.21	4.07	4.21	4.07	010
28636		A	Treat toe dislocation	2.77	5.54	4.85	2.57	2.62	0.26	8.57	7.88	5.60	5.65	010
28645		A	Repair toe dislocation	4.22	5.25	4.82	3.81	3.74	0.31	9.78	9.35	8.34	8.27	090
28660		A	Treat toe dislocation	1.23	2.48	2.03	1.70	1.45	0.11	3.82	3.37	3.04	2.79	010
28665		A	Treat toe dislocation	1.92	2.21	1.92	2.21	1.92	0.14	4.27	3.98	4.27	3.98	010
28666		A	Treat toe dislocation	2.66	8.41	6.97	2.58	2.60	0.26	11.33	9.89	5.50	5.52	010
28675		A	Repair of toe dislocation	2.92	6.74	5.87	4.12	3.91	0.28	9.94	9.07	7.32	7.11	090
28705		A	Fusion of foot bones	15.21	NA	NA	11.91	13.03	1.40	NA	NA	28.52	29.64	090
28715		A	Fusion of foot bones	13.10	NA	NA	11.12	11.69	1.28	NA	NA	25.50	26.07	090
28725		A	Fusion of foot bones	11.61	NA	NA	10.22	10.23	1.06	NA	NA	22.89	22.90	090
28730		A	Fusion of foot bones	10.76	NA	NA	9.42	9.51	0.01	NA	NA	20.19	20.28	090
28735		A	Fusion of foot bones	10.85	NA	NA	9.22	9.56	0.96	NA	NA	21.03	21.37	090
28737		A	Revision of foot bones	9.84	NA	NA	8.25	8.60	0.86	NA	NA	18.75	19.10	090
28740		A	Fusion of foot bones	8.02	10.13	8.99	7.78	7.22	0.70	18.85	17.71	16.48	15.94	090
28750		A	Fusion of big toe joint	7.30	10.13	9.04	8.01	7.45	0.70	18.13	17.04	16.01	15.45	090
28755		A	Fusion of big toe joint	4.74	7.26	6.45	5.46	5.10	0.38	12.38	11.57	10.58	10.22	090
28760		A	Fusion of big toe joint	7.75	7.39	7.01	6.62	6.43	0.59	15.73	15.35	14.98	14.77	090
28800		A	Amputation of midfoot	8.21	NA	NA	8.02	7.82	0.82	NA	NA	17.05	16.85	090
28805		A	Amputation thru metatarsal	8.39	NA	NA	7.92	7.86	0.89	NA	NA	17.20	16.94	090
28810		A	Amputation toe & metatarsal	6.21	NA	NA	6.82	6.18	0.65	NA	NA	13.68	13.04	090
28820		A	Amputation of toe	4.41	8.78	7.29	6.11	5.28	0.44	13.63	12.14	10.96	10.13	090
28825		A	Partial amputation of toe	3.59	8.11	6.73	5.74	4.96	0.35	12.05	10.67	9.68	8.90	090
28899		C	Foot/toes surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
29000		A	Application of body cast	2.25	2.42	2.32	1.26	1.45	0.34	5.01	4.91	3.85	4.04	000
29010		A	Application of body cast	2.06	2.14	2.24	1.24	1.56	0.26	4.46	4.56	3.56	3.88	000
29015		A	Application of body cast	2.41	2.85	2.77	1.18	1.52	0.14	5.40	5.32	3.73	4.07	000
29020		A	Application of body cast	2.11	2.55	2.41	1.03	1.27	0.12	4.78	4.64	3.26	3.50	000
29025		A	Application of body cast	2.40	2.44	2.03	1.34	1.21	0.27	5.11	4.70	4.01	3.88	000
29035		A	Application of body cast	1.77	2.33	2.28	0.95	1.24	0.19	4.29	4.24	2.91	3.20	000
29040		A	Application of body cast	2.22	1.83	1.92	0.90	1.22	0.18	4.23	4.32	3.30	3.62	000
29044		A	Application of body cast	2.12	2.53	2.47	1.30	1.54	0.23	4.88	4.82	3.65	3.89	000
29046		A	Application of body cast	2.41	2.02	2.12	1.45	1.69	0.25	4.68	4.78	4.11	4.35	000
29049		A	Application of figure eight	0.89	1.46	1.21	0.36	0.39	0.09	2.44	2.19	1.34	1.37	000

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
29055		A	Application of shoulder cast	1.78	2.07	1.88	1.03	1.10	0.18	4.03	3.84	2.99	3.06	000
29058		A	Application of shoulder cast	1.31	1.69	1.45	0.66	0.67	0.12	3.12	2.88	2.09	2.10	000
29065		A	Application of long arm cast	0.87	1.20	1.12	0.52	0.61	0.09	2.16	2.08	1.48	1.57	000
29075		A	Application of forearm cast	0.77	1.15	1.03	0.45	0.50	0.08	2.00	1.88	1.30	1.35	000
29085		A	Apply hand/wrist cast	0.87	1.18	1.02	0.46	0.48	0.09	2.14	1.98	1.42	1.44	000
29105		A	Apply long arm splint	0.87	1.19	1.03	0.37	0.41	0.09	2.15	1.99	1.33	1.37	000
29125		A	Apply forearm splint	0.59	1.03	0.87	0.25	0.29	0.06	1.68	1.52	0.90	0.94	000
29126		A	Apply forearm splint	0.77	1.46	1.20	0.38	0.39	0.07	2.30	2.04	1.22	1.23	000
29130		A	Application of finger splint	0.50	0.79	0.64	0.22	0.21	0.05	1.34	1.19	0.77	0.76	000
29131		A	Application of finger splint	0.55	1.30	1.08	0.33	0.35	0.05	1.90	1.68	0.93	0.95	000
29200		A	Strapping of chest	0.65	0.99	0.82	0.25	0.26	0.06	1.70	1.53	0.96	0.97	000
29220		A	Strapping of low back	0.64	0.90	0.78	0.33	0.35	0.05	1.59	1.47	1.02	1.04	000
29240		A	Strapping of shoulder	0.71	1.09	0.89	0.27	0.28	0.07	1.87	1.67	1.05	1.06	000
29260		A	Strapping of elbow or wrist	0.55	0.90	0.74	0.23	0.24	0.05	1.50	1.34	0.83	0.84	000
29280		A	Strapping of hand or finger	0.51	0.98	0.79	0.22	0.22	0.05	1.54	1.35	0.78	0.78	000
29305		A	Application of hip cast	2.03	2.25	2.20	1.23	1.43	0.21	4.49	4.44	3.47	3.67	000
29325		A	Application of hip casts	2.32	2.10	2.10	1.35	1.54	0.24	4.66	4.66	3.91	4.10	000
29345		A	Application of long leg cast	1.40	1.57	1.46	0.80	0.88	0.14	3.11	3.00	2.34	2.42	000
29355		A	Application of long leg cast	1.53	1.58	1.48	0.85	0.94	0.15	3.26	3.16	2.53	2.62	000
29358		A	Apply long leg cast brace	1.43	1.71	1.71	0.90	1.10	0.14	3.28	3.28	2.47	2.67	000
29365		A	Application of long leg cast	1.18	1.42	1.30	0.69	0.75	0.12	2.72	2.60	1.99	2.05	000
29405		A	Apply short leg cast	0.86	1.12	1.08	0.49	0.58	0.09	2.07	2.01	1.44	1.53	000
29425		A	Apply short leg cast	1.01	1.10	1.09	0.55	0.68	0.10	2.21	2.20	1.66	1.79	000
29435		A	Apply short leg cast	1.18	1.63	1.54	0.75	0.88	0.11	2.92	2.83	2.04	2.17	000
29440		A	Addition of walker to cast	0.57	0.85	0.70	0.30	0.29	0.06	1.48	1.33	0.93	0.92	000
29445		A	Apply rigid leg cast	1.78	1.85	1.85	0.85	1.10	0.16	3.79	3.79	2.79	3.04	000
29450		A	Application of leg cast	1.02	1.06	0.90	0.54	0.51	0.08	2.16	2.00	1.64	1.61	000
29505		A	Application, long leg splint	0.69	1.34	1.16	0.35	0.42	0.07	2.10	1.92	1.11	1.18	000
29515		A	Application lower leg splint	0.73	1.01	0.89	0.35	0.39	0.06	1.80	1.68	1.14	1.18	000
29520		A	Strapping of hip	0.54	1.06	0.89	0.36	0.37	0.03	1.63	1.46	0.93	0.94	000
29530		A	Strapping of knee	0.57	0.97	0.82	0.24	0.28	0.05	1.59	1.44	0.86	0.90	000
29540		A	Strapping of ankle	0.51	0.46	0.43	0.23	0.26	0.03	1.00	0.97	0.77	0.80	000
29550		A	Strapping of toes	0.47	0.44	0.41	0.22	0.24	0.03	0.94	0.91	0.72	0.74	000
29580		A	Application of paste boot	0.57	0.76	0.79	0.29	0.43	0.05	1.38	1.41	0.91	1.05	000
29590		A	Application of foot splint	0.76	0.67	0.58	0.37	0.35	0.05	1.48	1.39	1.18	1.16	000
29700		A	Removal/revision of cast	0.57	0.72	0.63	0.29	0.31	0.06	1.35	1.26	0.92	0.94	000
29705		A	Removal/revision of cast	0.76	0.89	0.76	0.39	0.39	0.08	1.73	1.60	1.23	1.23	000
29710		A	Removal/revision of cast	1.34	1.50	1.25	0.76	0.69	0.12	2.96	2.71	2.22	2.15	000
29715		A	Removal/revision of cast	0.94	1.16	1.10	0.40	0.53	0.10	2.20	2.14	1.44	1.57	000
29720		A	Repair of body cast	0.68	1.34	1.07	0.47	0.42	0.07	2.09	1.82	1.22	1.17	000
29730		A	Windowing of cast	0.75	0.86	0.72	0.37	0.35	0.08	1.69	1.55	1.20	1.18	000
29740		A	Wedging of cast	1.12	1.26	1.05	0.51	0.49	0.11	2.49	2.28	1.74	1.72	000
29750		A	Wedging of clubfoot cast	1.26	1.19	1.03	0.69	0.65	0.11	2.56	2.40	2.06	2.02	000
29799		C	Casting/strapping procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
29800		A	Jaw arthroscopy/surgery	6.43	NA	NA	7.69	6.86	0.59	NA	NA	14.71	13.88	090
29804		A	Jaw arthroscopy/surgery	8.14	NA	NA	8.18	8.56	0.62	NA	NA	16.94	17.32	090
29815		A	Shoulder arthroscopy	5.89	NA	NA	6.70	6.34	0.58	NA	NA	13.17	12.81	090
29819		A	Shoulder arthroscopy/surgery	7.62	NA	NA	8.57	8.70	0.78	NA	NA	16.97	17.10	090
29820		A	Shoulder arthroscopy/surgery	7.07	NA	NA	8.28	8.32	0.73	NA	NA	16.08	16.12	090
29821		A	Shoulder arthroscopy/surgery	7.72	NA	NA	8.60	8.75	0.78	NA	NA	17.10	17.25	090
29822		A	Shoulder arthroscopy/surgery	7.43	NA	NA	8.51	8.60	0.76	NA	NA	16.70	16.79	090
29823		A	Shoulder arthroscopy/surgery	8.17	NA	NA	8.92	9.13	0.83	NA	NA	17.92	18.13	090
29825		A	Shoulder arthroscopy/surgery	7.62	NA	NA	8.63	8.75	0.78	NA	NA	17.03	17.15	090
29826		A	Shoulder arthroscopy/surgery	8.99	NA	NA	9.34	9.69	0.93	NA	NA	19.26	19.61	090
29830		A	Elbow arthroscopy	5.76	NA	NA	5.44	5.52	0.62	NA	NA	11.82	11.90	090
29834		A	Elbow arthroscopy/surgery	6.28	NA	NA	6.10	6.16	0.64	NA	NA	13.02	13.08	090
29835		A	Elbow arthroscopy/surgery	6.48	NA	NA	6.15	6.25	0.66	NA	NA	13.29	13.39	090
29836		A	Elbow arthroscopy/surgery	7.55	NA	NA	6.84	7.04	0.77	NA	NA	15.16	15.36	090
29837		A	Elbow arthroscopy/surgery	6.87	NA	NA	6.34	6.49	0.71	NA	NA	13.92	14.07	090
29838		A	Elbow arthroscopy/surgery	7.71	NA	NA	6.91	7.10	0.80	NA	NA	15.42	15.61	090
29840		A	Wrist arthroscopy	5.54	NA	NA	7.35	6.41	0.57	NA	NA	13.46	12.52	090
29843		A	Wrist arthroscopy/surgery	6.01	NA	NA	7.45	7.11	0.66	NA	NA	14.12	13.78	090
29844		A	rist arthroscopy/surgery	6.37	NA	NA	7.70	7.29	0.67	NA	NA	14.74	14.33	090
29845		A	Wrist arthroscopy/surgery	7.52	NA	NA	7.72	7.69	0.77	NA	NA	16.01	15.98	090
29846		A	Wrist arthroscopy/surgery	6.75	NA	NA	9.98	9.50	0.71	NA	NA	17.44	16.96	090
29847		A	Wrist arthroscopy/surgery	7.08	NA	NA	9.84	9.22	0.74	NA	NA	17.66	17.04	090
29848		A	Wrist endoscopy/surgery	5.44	NA	NA	7.30	6.52	0.58	NA	NA	13.32	12.54	090
29850		A	Knee arthroscopy/surgery	8.19	NA	NA	6.68	7.46	0.71	NA	NA	15.58	16.36	090
29851		A	Knee arthroscopy/surgery	13.10	NA	NA	10.43	10.79	1.37	NA	NA	24.90	25.26	090
29855		A	Tibial arthroscopy/surgery	10.62	NA	NA	9.42	10.24	1.09	NA	NA	21.13	21.95	090
29856		A	Tibial arthroscopy/surgery	14.14	NA	NA	11.36	11.69	1.47	NA	NA	26.97	27.30	090
29860		A	Hip arthroscopy, dx	8.05	NA	NA	7.10	6.64	0.77	NA	NA	15.92	15.46	090
29861		A	Hip arthroscopy/surgery	9.15	NA	NA	8.23	8.72	0.88	NA	NA	18.26	18.75	090
29862		A	Hip arthroscopy/surgery	9.90	NA	NA	8.63	9.21	0.95	NA	NA	19.48	20.06	090
29863		A	Hip arthroscopy/surgery	9.90	NA	NA	8.97	9.09	0.95	NA	NA	19.82	19.94	090
29870		A	Knee arthroscopy, dx	5.07	NA	NA	5.50	5.22	0.52	NA	NA	11.09	10.81	090
29871		A	Knee arthroscopy/drainage	6.55	NA	NA	7.26	7.28	0.59	NA	NA	14.40	14.42	090
29874		A	Knee arthroscopy/surgery	7.05	NA	NA	7.02	7.37	0.68	NA	NA	14.75	15.10	090
29875		A	Knee arthroscopy/surgery	6.31	NA	NA	6.72	6.92	0.66	NA	NA	13.69	13.89	090
29876		A	Knee arthroscopy/surgery	7.92	NA	NA	8.07	8.42	0.80	NA	NA	16.79	17.14	090
29877		A	Knee arthroscopy/surgery	7.35	NA	NA	7.30	7.67	0.78	NA	NA	15.41	15.78	090
29879		A	Knee arthroscopy/surgery	8.04	NA	NA	7.67	8.15	0.84	NA	NA	16.55	17.03	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
29880		A	Knee arthroscopy/surgery	8.50	NA	NA	7.93	8.49	0.89	NA	NA	17.32	17.88	090
29881		A	Knee arthroscopy/surgery	7.76	NA	NA	7.53	7.97	0.80	NA	NA	16.09	16.53	090
29882		A	Knee arthroscopy/surgery	8.65	NA	NA	7.96	8.55	0.90	NA	NA	17.51	18.10	090
29883		A	Knee arthroscopy/surgery	9.46	NA	NA	8.45	9.16	0.98	NA	NA	18.89	19.60	090
29884		A	Knee arthroscopy/surgery	7.33	NA	NA	7.74	7.99	0.75	NA	NA	15.82	16.07	090
29885		A	Knee arthroscopy/surgery	9.09	NA	NA	8.72	8.77	0.95	NA	NA	18.76	18.81	090
29886		A	Knee arthroscopy/surgery	7.54	NA	NA	7.89	7.76	0.78	NA	NA	16.21	16.08	090
29887		A	Knee arthroscopy/surgery	9.04	NA	NA	8.69	9.22	0.94	NA	NA	18.67	19.20	090
29888		A	Knee arthroscopy/surgery	13.90	NA	NA	11.22	12.56	1.41	NA	NA	26.53	27.87	090
29889		A	Knee arthroscopy/surgery	15.13	NA	NA	12.34	12.04	1.56	NA	NA	29.03	28.73	090
29891		A	Ankle arthroscopy/surgery	8.40	NA	NA	8.15	8.52	0.81	NA	NA	17.36	17.73	090
29892		A	Ankle arthroscopy/surgery	0.09	NA	NA	8.53	8.80	0.87	NA	NA	9.49	9.76	090
29893		A	Scope, plantar fasciotomy	5.22	NA	NA	4.74	4.97	0.37	NA	NA	10.33	10.56	090
29894		A	Ankle arthroscopy/surgery	7.21	NA	NA	7.25	7.59	0.65	NA	NA	15.11	15.45	090
29895		A	Ankle arthroscopy/surgery	6.99	NA	NA	7.16	7.46	0.65	NA	NA	14.80	15.10	090
29897		A	Ankle arthroscopy/surgery	7.18	NA	NA	7.69	7.91	0.68	NA	NA	15.55	15.77	090
29898		A	Ankle arthroscopy/surgery	8.32	NA	NA	7.47	8.09	0.74	NA	NA	16.53	17.15	090
29909		C	Arthroscopy of joint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
30000		A	Drainage of nose lesion	1.43	2.14	1.76	1.31	1.14	0.11	3.68	3.30	2.85	2.68	010
30020		A	Drainage of nose lesion	1.43	2.30	1.89	1.36	1.18	0.07	3.80	3.39	2.86	2.68	010
30100		A	Intranasal biopsy	0.94	1.12	1.03	0.51	0.57	0.07	2.13	2.04	1.52	1.58	000
30110		A	Removal of nose polyp(s)	1.63	2.28	2.06	0.85	0.99	0.11	4.02	3.80	2.59	2.73	010
30115		A	Removal of nose polyp(s)	4.35	NA	NA	3.92	3.70	0.31	NA	NA	8.58	8.36	090
30117		A	Removal of intranasal lesion	3.16	3.90	3.70	2.79	2.86	0.23	7.29	7.09	6.18	6.25	090
30118		A	Removal of intranasal lesion	9.69	NA	NA	7.57	7.85	0.71	NA	NA	17.97	18.25	090
30120		A	Revision of nose	5.27	5.38	5.61	5.38	5.61	0.40	11.05	11.28	11.05	11.28	090
30124		A	Removal of nose lesion	3.10	NA	NA	2.98	2.60	0.21	NA	NA	6.29	5.91	090
30125		A	Removal of nose lesion	7.16	NA	NA	5.89	5.92	0.48	NA	NA	13.53	13.56	090
30130		A	Removal of turbinate bones	3.38	NA	NA	3.45	3.04	0.23	NA	NA	7.06	6.65	090
30140		A	Removal of turbinate bones	3.43	NA	NA	3.87	3.73	0.25	NA	NA	7.55	7.41	090
30150		A	Partial removal of nose	9.14	NA	NA	7.75	7.96	0.77	NA	NA	17.66	17.87	090
30160		A	Removal of nose	9.58	NA	NA	7.80	8.71	0.75	NA	NA	18.13	19.04	090
30200		A	Injection treatment of nose	0.78	1.02	0.87	0.42	0.42	0.06	1.86	1.71	1.26	1.26	000
30210		A	Nasal sinus therapy	1.08	1.75	1.38	0.60	0.52	0.08	2.91	2.54	1.76	1.68	010
30220		A	Insert nasal septal button	1.54	2.09	1.98	0.84	1.04	0.11	3.74	3.63	2.49	2.69	010
30300		A	Remove nasal foreign body	1.04	2.18	1.76	0.38	0.41	0.08	3.30	2.88	1.50	1.53	010
30310		A	Remove nasal foreign body	1.96	NA	NA	1.72	1.73	0.14	NA	NA	3.82	3.83	010
30320		A	Remove nasal foreign body	4.52	NA	NA	4.79	4.76	0.33	NA	NA	9.64	9.61	090
30400		R	Reconstruction of nose	9.83	NA	NA	7.94	8.66	0.84	NA	NA	18.61	19.33	090
30410		R	Reconstruction of nose	12.98	NA	NA	9.79	11.22	1.14	NA	NA	23.91	25.34	090
30420		R	Reconstruction of nose	15.88	NA	NA	11.32	13.23	1.25	NA	NA	28.45	30.36	090
30430		R	Revision of nose	7.21	NA	NA	6.40	6.45	0.62	NA	NA	14.23	14.28	090
30435		R	Revision of nose	11.71	NA	NA	9.22	9.68	1.03	NA	NA	21.96	22.42	090
30450		R	Revision of nose	18.65	NA	NA	13.02	12.82	1.65	NA	NA	33.32	33.12	090
30460		A	Revision of nose	9.96	NA	NA	8.39	8.62	0.87	NA	NA	19.22	19.45	090
30462		A	Revision of nose	19.57	NA	NA	13.07	14.46	1.90	NA	NA	34.54	35.93	090
30520		A	Repair of nasal septum	5.70	NA	NA	5.13	5.55	0.41	NA	NA	11.24	11.66	090
30540		A	Repair nasal defect	7.75	NA	NA	5.44	5.88	0.54	NA	NA	13.73	14.17	090
30545		A	Repair nasal defect	11.38	NA	NA	8.13	9.04	0.88	NA	NA	20.39	21.30	090
30560		A	Release of nasal adhesions	1.26	1.92	1.59	1.30	1.13	0.09	3.27	2.94	2.65	2.48	010
30580		A	Repair upper jaw fistula	6.69	4.64	5.17	4.64	5.17	0.49	11.82	12.35	11.82	12.35	090
30600		A	Repair mouth/nose fistula	6.02	4.17	4.15	4.17	4.15	0.47	10.66	10.64	10.66	10.64	090
30620		A	Intranasal reconstruction	5.97	NA	NA	5.72	6.07	0.45	NA	NA	12.14	12.49	090
30630		A	Repair nasal septum defect	7.12	NA	NA	6.25	6.38	0.53	NA	NA	13.90	14.03	090
30801		A	Cauterization, inner nose	1.09	2.14	1.73	1.88	1.54	0.08	3.31	2.90	3.05	2.71	010
30802		A	Cauterization, inner nose	2.03	2.62	2.22	2.41	2.06	0.14	4.79	4.39	4.58	4.23	010
30901		A	Control of nosebleed	1.21	1.84	1.53	0.40	0.45	0.10	3.15	2.84	1.71	1.76	000
30903		A	Control of nosebleed	1.54	2.18	1.87	0.58	0.67	0.12	3.84	3.53	2.24	2.33	000
30905		A	Control of nosebleed	1.97	3.88	3.40	0.85	1.12	0.15	6.00	5.52	2.97	3.24	000
30906		A	Repeat control of nosebleed	2.45	4.16	3.41	1.29	1.26	0.18	6.79	6.04	3.92	3.89	000
30915		A	Ligation, nasal sinus artery	7.20	NA	NA	6.04	5.87	0.52	NA	NA	13.76	13.59	090
30920		A	Ligation, upper jaw artery	9.83	NA	NA	7.56	8.26	0.70	NA	NA	18.09	18.79	090
30930		A	Therapy, fracture of nose	1.26	NA	NA	1.77	1.52	0.09	NA	NA	3.12	2.87	010
30999		C	Nasal surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31000		A	Irrigation, maxillary sinus	1.15	2.00	1.62	0.62	0.58	0.08	3.23	2.85	1.85	1.81	010
31002		A	Irrigation, sphenoid sinus	1.91	NA	NA	1.76	1.45	0.13	NA	NA	3.80	3.49	010
31020		A	Exploration, maxillary sinus	2.94	3.60	3.42	3.15	3.09	0.21	6.75	6.57	6.30	6.24	090
31030		A	Exploration, maxillary sinus	5.92	4.44	5.10	4.24	4.95	0.43	10.79	11.45	10.59	11.30	090
31032		A	Explore sinus,remove polyps	6.57	NA	NA	5.41	6.02	0.48	NA	NA	12.46	13.07	090
31040		A	Exploration behind upper jaw	9.42	NA	NA	6.21	6.82	0.69	NA	NA	16.32	16.93	090
31050		A	Exploration, sphenoid sinus	5.28	NA	NA	4.47	4.93	0.39	NA	NA	10.14	10.60	090
31051		A	Sphenoid sinus surgery	7.11	NA	NA	5.79	6.47	0.55	NA	NA	13.45	14.13	090
31070		A	Exploration of frontal sinus	4.28	NA	NA	4.30	4.50	0.31	NA	NA	8.89	9.09	090
31075		A	Exploration of frontal sinus	9.16	NA	NA	7.33	8.23	0.63	NA	NA	17.12	18.02	090
31080		A	Removal of frontal sinus	11.42	NA	NA	8.36	8.77	0.81	NA	NA	20.59	21.00	090
31081		A	Removal of frontal sinus	12.75	NA	NA	8.91	9.48	1.86	NA	NA	23.52	24.09	090
31084		A	Removal of frontal sinus	13.51	NA	NA	9.56	11.18	1.03	NA	NA	24.10	25.72	090
31085		A	Removal of frontal sinus	14.20	NA	NA	9.85	11.63	1.35	NA	NA	25.40	27.18	090
31086		A	Removal of frontal sinus	12.86	NA	NA	9.37	9.98	0.96	NA	NA	23.19	23.80	090
31087		A	Removal of frontal sinus	13.10	NA	NA	9.24	9.75	0.93	NA	NA	23.27	23.78	090
31090		A	Exploration of sinuses	9.53	NA	NA	7.89	8.76	0.68	NA	NA	18.10	18.97	090
31200		A	Removal of ethmoid sinus	4.97	NA	NA	5.43	5.33	0.28	NA	NA	10.68	10.58	090

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
31201		A	Removal of ethmoid sinus	8.37	NA	NA	6.87	7.06	0.59	NA	NA	15.83	16.02	090
31205		A	Removal of ethmoid sinus	10.24	NA	NA	8.10	8.25	0.61	NA	NA	18.95	19.10	090
31225		A	Removal of upper jaw	19.23	NA	NA	13.72	15.57	1.41	NA	NA	34.36	36.21	090
31230		A	Removal of upper jaw	21.94	NA	NA	15.38	17.43	1.67	NA	NA	38.99	41.04	090
31231		A	Nasal endoscopy, dx	1.10	1.68	1.63	0.58	0.81	0.08	2.86	2.81	1.76	1.99	000
31233		A	Nasal/sinus endoscopy, dx	2.18	2.28	2.47	1.20	1.66	0.15	4.61	4.80	3.53	3.99	000
31235		A	Nasal/sinus endoscopy, dx	2.64	2.54	2.55	1.45	1.74	0.18	5.36	5.37	4.27	4.56	000
31237		A	Nasal/sinus endoscopy, surg	2.98	2.80	2.99	1.60	2.09	0.21	5.99	6.18	4.79	5.28	000
31238		A	Nasal/sinus endoscopy, surg	3.26	3.21	3.38	1.79	2.32	0.23	6.70	6.87	5.28	5.81	000
31239		A	Nasal/sinus endoscopy, surg	8.70	NA	NA	6.28	7.31	0.44	NA	NA	15.42	16.45	010
31240		A	Nasal/sinus endoscopy, surg	2.61	NA	NA	1.47	1.88	0.18	NA	NA	4.26	4.67	000
31254		A	Revision of ethmoid sinus	4.65	NA	NA	2.65	3.38	0.32	NA	NA	7.62	8.35	000
31255		A	Removal of ethmoid sinus	6.96	NA	NA	3.92	5.02	0.50	NA	NA	11.38	12.48	000
31256		A	Exploration maxillary sinus	3.29	NA	NA	1.89	2.40	0.23	NA	NA	5.41	5.92	000
31267		A	Endoscopy, maxillary sinus	5.46	NA	NA	3.09	3.74	0.39	NA	NA	8.94	9.59	000
31276		A	Sinus endoscopy, surgical	8.85	NA	NA	4.88	5.48	0.63	NA	NA	14.36	14.96	000
31287		A	Nasal/sinus endoscopy, surg	3.92	NA	NA	2.24	2.85	0.28	NA	NA	6.44	7.05	000
31288		A	Nasal/sinus endoscopy, surg	4.58	NA	NA	2.61	3.33	0.32	NA	NA	7.51	8.23	000
31290		A	Nasal/sinus endoscopy, surg	17.24	NA	NA	10.95	12.68	1.28	NA	NA	29.47	31.20	010
31291		A	Nasal/sinus endoscopy, surg	18.19	NA	NA	11.31	13.18	1.73	NA	NA	31.23	33.10	010
31292		A	Nasal/sinus endoscopy, surg	14.76	NA	NA	9.54	10.79	1.03	NA	NA	25.33	26.58	010
31293		A	Nasal/sinus endoscopy, surg	16.21	NA	NA	10.18	11.61	1.09	NA	NA	27.48	28.91	010
31294		A	Nasal/sinus endoscopy, surg	19.06	NA	NA	11.83	13.41	1.71	NA	NA	32.60	34.18	010
31299		C	Sinus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31300		A	Removal of larynx lesion	14.29	NA	NA	14.94	14.35	1.02	NA	NA	30.25	29.66	090
31320		A	Diagnostic incision, larynx	5.26	NA	NA	11.08	9.36	0.39	NA	NA	16.73	15.01	090
31360		A	Removal of larynx	17.08	NA	NA	16.69	17.62	1.24	NA	NA	35.01	35.94	090
31365		A	Removal of larynx	24.16	NA	NA	20.46	22.56	1.77	NA	NA	46.39	48.49	090
31367		A	Partial removal of larynx	21.86	NA	NA	21.00	20.42	1.59	NA	NA	44.45	43.87	090
31368		A	Partial removal of larynx	27.09	NA	NA	24.85	25.90	1.98	NA	NA	53.92	54.97	090
31370		A	Partial removal of larynx	21.38	NA	NA	20.88	20.32	1.60	NA	NA	43.86	43.30	090
31375		A	Partial removal of larynx	20.21	NA	NA	18.41	17.84	1.41	NA	NA	40.03	39.46	090
31380		A	Partial removal of larynx	20.21	NA	NA	18.61	18.64	1.44	NA	NA	40.26	40.29	090
31382		A	Partial removal of larynx	20.52	NA	NA	20.08	19.42	1.51	NA	NA	42.11	41.45	090
31390		A	Removal of larynx & pharynx	27.53	NA	NA	25.18	26.23	1.99	NA	NA	54.70	55.75	090
31395		A	Reconstruct larynx & pharynx	31.09	NA	NA	29.74	31.40	2.25	NA	NA	63.08	64.74	090
31400		A	Revision of larynx	10.31	NA	NA	13.34	12.13	0.74	NA	NA	24.39	23.18	090
31420		A	Removal of epiglottis	10.22	NA	NA	13.25	12.13	0.74	NA	NA	24.21	23.09	090
31500		A	Insert emergency airway	2.33	NA	NA	0.64	0.79	0.17	NA	NA	3.14	3.29	000
31502		A	Change of windpipe airway	0.65	1.59	1.35	0.26	0.35	0.04	2.28	2.04	0.95	1.04	000
31505		A	Diagnostic laryngoscopy	0.61	1.49	1.24	0.31	0.35	0.05	2.15	1.90	0.97	1.01	000
31510		A	Laryngoscopy with biopsy	1.92	2.37	1.93	0.96	0.87	0.14	4.43	3.99	3.02	2.93	000
31511		A	Remove foreign body, larynx	2.16	2.56	2.18	0.78	0.85	0.18	4.90	4.52	3.12	3.19	000
31512		A	Removal of larynx lesion	2.07	2.49	2.35	1.07	1.29	0.19	4.75	4.61	3.33	3.55	000
31513		A	Injection into vocal cord	2.10	NA	NA	1.24	1.56	0.15	NA	NA	3.49	3.81	000
31515		A	Laryngoscopy for aspiration	1.80	2.18	1.94	0.81	0.92	0.12	4.10	3.86	2.73	2.84	000
31520		A	Diagnostic laryngoscopy	2.56	NA	NA	1.34	1.45	0.18	NA	NA	4.08	4.19	000
31525		A	Diagnostic laryngoscopy	2.63	2.54	2.50	1.44	1.68	0.18	5.35	5.31	4.25	4.49	000
31526		A	Diagnostic laryngoscopy	2.57	NA	NA	1.49	1.89	0.18	NA	NA	4.24	4.64	000
31527		A	Laryngoscopy for treatment	3.27	NA	NA	1.66	2.06	0.23	NA	NA	5.16	5.56	000
31528		A	Laryngoscopy and dilatation	2.37	NA	NA	1.28	1.67	0.18	NA	NA	3.83	4.22	000
31529		A	Laryngoscopy and dilatation	2.68	NA	NA	1.46	1.76	0.19	NA	NA	4.33	4.63	000
31530		A	Operative laryngoscopy	3.39	NA	NA	1.72	2.28	0.23	NA	NA	5.34	5.90	000
31531		A	Operative laryngoscopy	3.59	NA	NA	2.07	2.63	0.26	NA	NA	5.92	6.48	000
31535		A	Operative laryngoscopy	3.16	NA	NA	1.78	2.28	0.23	NA	NA	5.17	5.67	000
31536		A	Operative laryngoscopy	3.56	NA	NA	2.04	2.59	0.26	NA	NA	5.86	6.41	000
31540		A	Operative laryngoscopy	4.13	NA	NA	2.34	2.99	0.30	NA	NA	6.77	7.42	000
31541		A	Operative laryngoscopy	4.53	NA	NA	2.56	3.16	0.32	NA	NA	7.41	8.01	000
31560		A	Operative laryngoscopy	5.46	NA	NA	3.02	3.62	0.39	NA	NA	8.87	9.47	000
31561		A	Operative laryngoscopy	0.06	NA	NA	3.33	4.20	0.43	NA	NA	3.82	4.69	000
31570		A	Laryngoscopy with injection	3.87	3.80	4.01	2.16	2.78	0.29	7.96	8.17	6.32	6.94	000
31571		A	Laryngoscopy with injection	4.27	NA	NA	2.40	3.02	0.31	NA	NA	6.98	7.60	000
31575		A	Diagnostic laryngoscopy	1.10	1.81	1.78	0.60	0.87	0.08	2.99	2.96	1.78	2.05	000
31576		A	Laryngoscopy with biopsy	1.97	1.95	2.05	1.03	1.36	0.13	4.05	4.15	3.13	3.46	000
31577		A	Remove foreign body, larynx	2.47	2.26	2.43	1.26	1.68	0.18	4.91	5.08	3.91	4.33	000
31578		A	Removal of larynx lesion	2.84	2.57	2.78	0.94	1.55	0.20	5.61	5.82	3.98	4.59	000
31579		A	Diagnostic laryngoscopy	2.26	2.52	2.52	1.19	1.53	0.16	4.94	4.94	3.61	3.95	000
31580		A	Revision of larynx	12.38	NA	NA	13.61	13.90	0.88	NA	NA	26.87	27.16	090
31582		A	Revision of larynx	21.62	NA	NA	19.32	19.34	1.54	NA	NA	42.48	42.50	090
31584		A	Treat larynx fracture	19.64	NA	NA	16.79	16.04	1.54	NA	NA	37.97	37.22	090
31585		A	Treat larynx fracture	4.64	NA	NA	7.46	6.62	0.32	NA	NA	12.42	11.58	090
31586		A	Treat larynx fracture	8.03	NA	NA	10.88	9.94	0.57	NA	NA	19.48	18.54	090
31587		A	Revision of larynx	11.99	NA	NA	12.34	11.21	0.88	NA	NA	25.21	24.08	090
31588		A	Revision of larynx	13.11	NA	NA	14.69	13.92	0.94	NA	NA	28.74	27.97	090
31590		A	Reinnervate larynx	6.97	NA	NA	10.11	9.15	0.47	NA	NA	17.55	16.59	090
31595		A	Larynx nerve surgery	8.34	NA	NA	9.68	9.12	0.61	NA	NA	18.63	18.07	090
31599		C	Larynx surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31600		A	Incision of windpipe	3.62	NA	NA	1.61	2.29	0.34	NA	NA	5.57	6.25	000
31601		A	Incision of windpipe	4.45	NA	NA	2.16	2.95	0.36	NA	NA	6.97	7.76	000
31603		A	Incision of windpipe	4.15	NA	NA	1.86	2.54	0.38	NA	NA	6.39	7.07	000
31605		A	Incision of windpipe	3.58	NA	NA	1.31	2.05	0.36	NA	NA	5.25	5.99	000
31610		A	Incision of windpipe	8.76	NA	NA	9.71	9.09	0.70	NA	NA	19.17	18.55	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
31611		A	Surgery/speech prosthesis	5.64	NA	NA	8.30	7.98	0.41	NA	NA	14.35	14.03	090
31612		A	Puncture/clear windpipe	0.91	1.24	1.25	0.40	0.62	0.06	2.21	2.22	1.37	1.59	000
31613		A	Repair windpipe opening	4.59	NA	NA	8.03	6.62	0.37	NA	NA	12.99	11.58	090
31614		A	Repair windpipe opening	7.12	NA	NA	10.28	9.54	0.53	NA	NA	17.93	17.19	090
31615		A	Visualization of windpipe	2.09	2.90	2.71	1.10	1.36	0.14	5.13	4.94	3.33	3.59	000
31622		A	Dx bronchoscope/wash	2.78	3.12	3.18	1.12	1.68	0.13	6.03	6.09	4.03	4.59	000
31623		A	Dx bronchoscope/brush	2.88	3.16	3.21	1.16	1.71	0.15	6.19	6.24	4.19	4.74	000
31624		A	Dx bronchoscope/lavage	2.88	2.68	2.85	1.16	1.71	0.15	5.71	5.88	4.19	4.74	000
31625		A	Bronchoscopy with biopsy	3.37	2.68	3.02	1.27	1.96	0.16	6.21	6.55	4.80	5.49	000
31628		A	Bronchoscopy with biopsy	3.81	3.13	3.49	1.33	2.14	0.13	7.07	7.43	5.27	6.08	000
31629		A	Bronchoscopy with biopsy	3.37	NA	NA	1.20	1.91	0.11	NA	NA	4.68	5.39	000
31630		A	Bronchoscopy with repair	3.82	NA	NA	2.06	2.56	0.34	NA	NA	6.22	6.72	000
31631		A	Bronchoscopy with dilation	4.37	NA	NA	2.07	2.62	0.31	NA	NA	6.75	7.30	000
31635		A	Remove foreign body, airway	3.68	NA	NA	1.64	2.33	0.23	NA	NA	5.55	6.24	000
31640		A	Bronchoscopy & remove lesion	4.94	NA	NA	2.47	3.22	0.37	NA	NA	7.78	8.53	000
31641		A	Bronchoscopy, treat blockage	5.03	NA	NA	2.09	3.07	0.28	NA	NA	7.40	8.38	000
31643		A	Diag bronchoscope/catheter	3.50	1.73	2.13	1.47	1.94	0.20	5.43	5.83	5.17	5.64	000
31645		A	Bronchoscopy, clear airways	3.16	NA	NA	1.17	1.82	0.13	NA	NA	4.46	5.11	000
31646		A	Bronchoscopy, reclear airway	2.72	NA	NA	1.04	1.59	0.12	NA	NA	3.88	4.43	000
31656		A	Bronchoscopy, inj for xray	2.17	NA	NA	0.91	1.33	0.10	NA	NA	3.18	3.60	000
31700		A	Insertion of airway catheter	1.34	1.69	1.64	0.61	0.83	0.08	3.11	3.06	2.03	2.25	000
31708		A	Instill airway contrast dye	1.41	NA	NA	0.59	0.65	0.06	NA	NA	2.06	2.12	000
31710		A	Insertion of airway catheter	1.30	NA	NA	0.70	0.77	0.05	NA	NA	2.05	2.12	000
31715		A	Injection for bronchus x-ray	1.11	NA	NA	0.71	0.66	0.04	NA	NA	1.86	1.81	000
31717		A	Bronchial brush biopsy	2.12	2.92	2.39	0.82	0.81	0.08	5.12	4.59	3.02	3.01	000
31720		A	Clearance of airways	1.06	1.74	1.51	0.33	0.45	0.06	2.86	2.63	1.45	1.57	000
31725		A	Clearance of airways	1.96	NA	NA	0.64	0.86	0.08	NA	NA	2.68	2.90	000
31730		A	Intro, windpipe wire/tube	2.85	2.27	2.37	1.07	1.47	0.15	5.27	5.37	4.07	4.47	000
31750		A	Repair of windpipe	13.02	NA	NA	14.19	13.05	0.01	NA	NA	27.22	26.08	090
31755		A	Repair of windpipe	15.93	NA	NA	16.14	15.71	1.20	NA	NA	33.27	32.84	090
31760		A	Repair of windpipe	22.35	NA	NA	13.56	13.13	2.09	NA	NA	38.00	37.57	090
31766		A	Reconstruction of windpipe	30.43	NA	NA	16.74	17.55	3.73	NA	NA	50.90	51.71	090
31770		A	Repair/graft of bronchus	22.51	NA	NA	16.73	16.64	2.06	NA	NA	41.30	41.21	090
31775		A	Reconstruct bronchus	23.54	NA	NA	18.57	18.37	2.80	NA	NA	44.91	44.71	090
31780		A	Reconstruct windpipe	17.72	NA	NA	13.24	14.63	1.70	NA	NA	32.66	34.05	090
31781		A	Reconstruct windpipe	23.53	NA	NA	16.29	16.79	2.83	NA	NA	42.65	43.15	090
31785		A	Remove windpipe lesion	17.23	NA	NA	12.42	11.74	1.35	NA	NA	31.00	30.32	090
31786		A	Remove windpipe lesion	23.98	NA	NA	17.54	16.76	1.99	NA	NA	43.51	42.73	090
31800		A	Repair of windpipe injury	7.43	NA	NA	6.72	6.37	0.74	NA	NA	14.89	14.54	090
31805		A	Repair of windpipe injury	13.13	NA	NA	12.40	11.97	1.72	NA	NA	27.25	26.82	090
31820		A	Closure of windpipe lesion	4.49	7.10	6.30	7.10	6.30	0.34	11.93	11.13	11.93	11.13	090
31825		A	Repair of windpipe defect	6.81	9.62	8.57	9.62	8.57	0.52	16.95	15.90	16.95	15.90	090
31830		A	Revise windpipe scar	4.50	6.87	6.15	6.87	6.15	0.36	11.73	11.01	11.73	11.01	090
31899		C	Airways surgical procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
32000		A	Drainage of chest	1.54	3.01	2.50	0.50	0.62	0.07	4.62	4.11	2.11	2.23	000
32001		D	Total lung lavage	0.06	2.38	2.38	2.38	2.38	0.60	3.04	3.04	3.04	3.04	000
32002		A	Treatment of collapsed lung	2.19	NA	NA	0.84	0.99	0.11	NA	NA	3.14	3.29	000
32005		A	Treat lung lining chemically	2.19	NA	NA	0.93	0.99	0.18	NA	NA	3.30	3.36	000
32020		A	Insertion of chest tube	3.98	NA	NA	1.57	1.89	0.37	NA	NA	5.92	6.24	000
32035		A	Exploration of chest	8.67	NA	NA	10.06	9.38	1.05	NA	NA	19.78	19.10	090
32036		A	Exploration of chest	9.68	NA	NA	11.25	10.37	1.19	NA	NA	22.12	21.24	090
32095		A	Biopsy through chest wall	8.36	NA	NA	10.17	9.87	0.98	NA	NA	19.51	19.21	090
32100		A	Exploration/biopsy of chest	11.84	NA	NA	11.45	11.64	1.45	NA	NA	24.74	24.93	090
32110		A	Explore/repair chest	13.62	NA	NA	11.89	12.04	1.67	NA	NA	27.18	27.33	090
32120		A	Re-exploration of chest	11.54	NA	NA	12.00	11.57	1.45	NA	NA	24.99	24.56	090
32124		A	Explore chest free adhesions	12.72	NA	NA	11.18	11.35	1.57	NA	NA	25.47	25.64	090
32140		A	Removal of lung lesion(s)	13.93	NA	NA	12.89	13.02	1.68	NA	NA	28.50	28.63	090
32141		A	Remove/treat lung lesions	0.14	NA	NA	10.96	11.86	1.74	NA	NA	12.84	13.74	090
32150		A	Removal of lung lesion(s)	14.15	NA	NA	12.31	12.04	1.71	NA	NA	28.17	27.90	090
32151		A	Remove lung foreign body	14.21	NA	NA	13.42	12.55	1.76	NA	NA	29.39	28.52	090
32160		A	Open chest heart massage	9.30	NA	NA	7.25	7.92	1.07	NA	NA	17.62	18.29	090
32200		A	Drain, open, lung lesion	15.29	NA	NA	11.18	10.26	1.25	NA	NA	27.72	26.80	090
32201		A	Drain, percut, lung lesion	0.04	NA	NA	6.43	5.65	0.32	NA	NA	6.79	6.01	000
32215		A	Treat chest lining	11.33	NA	NA	12.10	11.14	1.37	NA	NA	24.80	23.84	090
32220		A	Release of lung	19.27	NA	NA	15.25	15.73	2.28	NA	NA	36.80	37.28	090
32225		A	Partial release of lung	13.96	NA	NA	12.48	12.57	1.74	NA	NA	28.18	28.27	090
32310		A	Removal of chest lining	13.44	NA	NA	12.13	12.26	1.65	NA	NA	27.22	27.35	090
32320		A	Free/remove chest lining	20.54	NA	NA	14.86	16.06	2.50	NA	NA	37.90	39.10	090
32400		A	Needle biopsy chest lining	1.76	1.69	1.67	0.57	0.83	0.07	3.52	3.50	2.40	2.66	000
32402		A	Open biopsy chest lining	7.56	NA	NA	10.48	9.92	0.94	NA	NA	18.98	18.42	090
32405		A	Biopsy, lung or mediastinum	1.93	2.45	2.41	0.67	1.08	0.08	4.46	4.42	2.68	3.09	000
32420		A	Puncture/clear lung	2.18	NA	NA	0.83	1.03	0.10	NA	NA	3.11	3.31	000
32440		A	Removal of lung	21.02	NA	NA	15.28	16.50	2.60	NA	NA	38.90	40.12	090
32442		A	Sleeve pneumonectomy	26.24	NA	NA	16.28	17.08	3.28	NA	NA	45.80	46.60	090
32445		A	Removal of lung	25.09	NA	NA	16.11	17.63	3.09	NA	NA	44.29	45.81	090
32480		A	Partial removal of lung	18.32	NA	NA	13.25	14.59	2.25	NA	NA	33.82	35.16	090
32482		A	Bilobectomy	19.71	NA	NA	14.24	15.33	2.38	NA	NA	36.33	37.42	090
32484		A	Segmentectomy	20.69	NA	NA	14.81	15.76	2.54	NA	NA	38.04	38.99	090
32486		A	Sleeve lobectomy	23.92	NA	NA	17.05	17.28	3.04	NA	NA	44.01	44.24	090
32488		A	Completion pneumonectomy	25.71	NA	NA	17.26	17.76	3.19	NA	NA	46.16	46.66	090
32491		R	Lung volume reduction	21.25	NA	NA	15.68	15.95	2.84	NA	NA	39.77	40.04	090
32500		A	Partial removal of lung	14.30	NA	NA	12.90	13.33	1.79	NA	NA	28.99	29.42	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
32501		A	Repair bronchus add-on	4.69	NA	NA	1.86	2.57	0.53	NA	NA	7.08	7.79	ZZZ
32520		A	Remove lung & revise chest	21.68	NA	NA	15.82	17.47	2.75	NA	NA	40.25	41.90	090
32522		A	Remove lung & revise chest	24.20	NA	NA	16.66	18.44	3.03	NA	NA	43.89	45.67	090
32525		A	Remove lung & revise chest	26.50	NA	NA	17.13	19.22	3.29	NA	NA	46.92	49.01	090
32540		A	Removal of lung lesion	14.64	NA	NA	13.15	13.03	1.81	NA	NA	29.60	29.48	090
32601		A	Thoracoscopy, diagnostic	5.46	NA	NA	4.52	4.33	0.68	NA	NA	10.66	10.47	000
32602		A	Thoracoscopy, diagnostic	5.96	NA	NA	4.71	4.58	0.74	NA	NA	11.41	11.28	000
32603		A	Thoracoscopy, diagnostic	7.81	NA	NA	5.26	4.89	0.78	NA	NA	13.85	13.48	000
32604		A	Thoracoscopy, diagnostic	8.78	NA	NA	6.02	5.57	1.07	NA	NA	15.87	15.42	000
32605		A	Thoracoscopy, diagnostic	6.93	NA	NA	5.50	5.07	0.86	NA	NA	13.29	12.86	000
32606		A	Thoracoscopy, diagnostic	8.40	NA	NA	5.71	5.33	1.04	NA	NA	15.15	14.77	000
32650		A	Thoracoscopy, surgical	10.75	NA	NA	10.60	10.02	1.26	NA	NA	22.61	22.03	090
32651		A	Thoracoscopy, surgical	12.91	NA	NA	10.60	11.16	1.55	NA	NA	25.06	25.62	090
32652		A	Thoracoscopy, surgical	18.66	NA	NA	13.59	14.48	2.30	NA	NA	34.55	35.44	090
32653		A	Thoracoscopy, surgical	12.87	NA	NA	11.41	11.36	1.55	NA	NA	25.83	25.78	090
32654		A	Thoracoscopy, surgical	12.44	NA	NA	8.98	9.86	1.48	NA	NA	22.90	23.78	090
32655		A	Thoracoscopy, surgical	13.10	NA	NA	10.70	11.67	1.54	NA	NA	25.34	26.31	090
32656		A	Thoracoscopy, surgical	12.91	NA	NA	11.57	12.30	1.61	NA	NA	26.09	26.82	090
32657		A	Thoracoscopy, surgical	13.65	NA	NA	11.49	12.27	1.65	NA	NA	26.79	27.57	090
32658		A	Thoracoscopy, surgical	11.63	NA	NA	11.47	12.07	1.45	NA	NA	24.55	25.15	090
32659		A	Thoracoscopy, surgical	11.59	NA	NA	11.18	11.85	1.46	NA	NA	24.23	24.90	090
32660		A	Thoracoscopy, surgical	17.43	NA	NA	15.53	16.85	2.29	NA	NA	35.25	36.57	090
32661		A	Thoracoscopy, surgical	13.25	NA	NA	12.02	11.53	1.65	NA	NA	26.92	26.43	090
32662		A	Thoracoscopy, surgical	16.44	NA	NA	12.76	13.52	2.03	NA	NA	31.23	31.99	090
32663		A	Thoracoscopy, surgical	18.47	NA	NA	13.50	14.78	2.25	NA	NA	34.22	35.50	090
32664		A	Thoracoscopy, surgical	14.20	NA	NA	10.80	10.96	1.64	NA	NA	26.64	26.80	090
32665		A	Thoracoscopy, surgical	15.54	NA	NA	11.27	12.34	1.80	NA	NA	28.61	29.68	090
32800		A	Repair lung hernia	13.69	NA	NA	13.17	12.13	1.41	NA	NA	28.27	27.23	090
32810		A	Close chest after drainage	13.05	NA	NA	12.42	11.08	1.66	NA	NA	27.13	25.79	090
32815		A	Close bronchial fistula	23.15	NA	NA	17.73	17.43	2.94	NA	NA	43.82	43.52	090
32820		A	Reconstruct injured chest	21.48	NA	NA	15.97	17.14	2.40	NA	NA	39.85	41.02	090
32850		X	Donor pneumonectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
32851		A	Lung transplant, single	38.63	NA	NA	24.89	25.60	5.21	NA	NA	68.73	69.44	090
32852		A	Lung transplant with bypass	41.80	NA	NA	25.98	27.00	5.81	NA	NA	73.59	74.61	090
32853		A	Lung transplant, double	47.81	NA	NA	28.44	30.00	6.43	NA	NA	82.68	84.24	090
32854		A	Lung transplant with bypass	50.98	NA	NA	30.44	32.08	6.75	NA	NA	88.17	89.81	090
32900		A	Removal of rib(s)	20.27	NA	NA	14.63	13.27	2.40	NA	NA	37.30	35.94	090
32905		A	Revise & repair chest wall	20.75	NA	NA	14.48	14.32	2.55	NA	NA	37.78	37.62	090
32906		A	Revise & repair chest wall	26.77	NA	NA	17.44	17.26	3.34	NA	NA	47.55	47.37	090
32940		A	Revision of lung	19.43	NA	NA	14.32	13.83	2.37	NA	NA	36.12	35.63	090
32960		A	Therapeutic pneumothorax	1.84	1.90	1.68	0.55	0.67	0.13	3.87	3.65	2.52	2.64	000
32997		A	Total lung lavage	0.06	NA	NA	2.28	2.28	0.58	NA	NA	2.92	2.92	000
32999		C	Chest surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
33010		A	Drainage of heart sac	2.24	NA	NA	0.99	1.16	0.27	NA	NA	3.50	3.67	000
33011		A	Repeat drainage of heart sac	2.24	NA	NA	1.02	1.07	0.26	NA	NA	3.52	3.57	000
33015		A	Incision of heart sac	6.80	NA	NA	5.20	5.06	0.88	NA	NA	12.88	12.74	090
33020		A	Incision of heart sac	12.61	NA	NA	10.08	11.16	1.63	NA	NA	24.32	25.40	090
33025		A	Incision of heart sac	12.09	NA	NA	10.01	11.12	1.55	NA	NA	23.65	24.76	090
33030		A	Partial removal of heart sac	18.71	NA	NA	15.79	17.43	2.41	NA	NA	36.91	38.55	090
33031		A	Partial removal of heart sac	21.79	NA	NA	17.76	16.92	2.90	NA	NA	42.45	41.61	090
33050		A	Removal of heart sac lesion	14.36	NA	NA	12.85	12.15	1.77	NA	NA	28.98	28.28	090
33120		A	Removal of heart lesion	24.56	NA	NA	21.22	23.25	3.19	NA	NA	48.97	51.00	090
33130		A	Removal of heart lesion	21.39	NA	NA	15.50	15.29	2.42	NA	NA	39.31	39.10	090
33140		A	Heart revascularize (tmr)	0.20	NA	NA	12.66	12.66	2.56	NA	NA	15.42	15.42	090
33200		A	Insertion of heart pacemaker	12.48	NA	NA	11.57	12.01	1.45	NA	NA	25.50	25.94	090
33201		A	Insertion of heart pacemaker	10.18	NA	NA	12.09	12.10	1.34	NA	NA	23.61	23.62	090
33206		A	Insertion of heart pacemaker	3.11	NA	NA	1.28	2.95	0.84	NA	NA	5.23	6.90	000
33207		A	Insertion of heart pacemaker	3.30	NA	NA	1.36	3.42	1.03	NA	NA	5.69	7.75	000
33208		A	Insertion of heart pacemaker	2.64	NA	NA	1.10	3.25	1.07	NA	NA	4.81	6.96	000
33210		A	Insertion of heart electrode	3.30	NA	NA	1.35	1.91	0.42	NA	NA	5.07	5.63	000
33211		A	Insertion of heart electrode	3.40	NA	NA	1.44	1.98	0.44	NA	NA	5.28	5.82	000
33212		A	Insertion of pulse generator	3.32	NA	NA	1.36	2.48	0.71	NA	NA	5.39	6.51	000
33213		A	Insertion of pulse generator	4.92	NA	NA	2.03	2.98	0.82	NA	NA	7.77	8.72	000
33214		A	Upgrade of pacemaker system	4.27	NA	NA	1.75	2.78	0.99	NA	NA	7.01	8.04	000
33216		A	Revise eltrd pacing-defib	3.21	NA	NA	1.33	2.36	0.70	NA	NA	5.24	6.27	000
33217		A	Revise eltrd pacing-defib	3.57	NA	NA	1.48	2.47	0.76	NA	NA	5.81	6.80	000
33218		A	Revise eltrd pacing-defib	3.26	NA	NA	1.34	2.25	0.70	NA	NA	5.30	6.21	000
33220		A	Revise eltrd pacing-defib	2.90	NA	NA	1.19	2.14	0.71	NA	NA	4.80	5.75	000
33222		A	Revise pocket, pacemaker	4.96	NA	NA	4.21	4.64	0.62	NA	NA	9.79	10.22	090
33223		A	Revise pocket, pacing-defib	6.46	NA	NA	5.63	5.77	0.88	NA	NA	12.97	13.11	090
33233		A	Removal of pacemaker system	1.11	NA	NA	0.46	1.06	0.44	NA	NA	2.01	2.61	000
33234		A	Removal of pacemaker system	5.64	NA	NA	2.35	2.53	1.05	NA	NA	9.04	9.22	000
33235		A	Removal pacemaker electrode	4.58	NA	NA	1.91	2.29	1.26	NA	NA	7.75	8.13	000
33236		A	Remove electrode/thoracotomy	12.60	NA	NA	11.19	9.47	1.63	NA	NA	25.42	23.70	090
33237		A	Remove electrode/thoracotomy	13.71	NA	NA	12.01	11.61	1.77	NA	NA	27.49	27.09	090
33238		A	Remove electrode/thoracotomy	15.22	NA	NA	11.41	11.35	1.41	NA	NA	28.04	27.98	090
33240		A	Insert pulse generator	5.13	NA	NA	2.14	3.07	1.03	NA	NA	8.30	9.23	000
33241		A	Remove pulse generator	1.51	NA	NA	0.63	1.06	0.44	NA	NA	2.58	3.01	000
33242		D	Repair pulse generator/leads	6.17	2.45	3.68	2.45	3.68	0.83	9.45	10.68	9.45	10.68	090
33243		A	Remove eltrd/thoracotomy	22.64	NA	NA	13.53	12.60	3.03	NA	NA	39.20	38.27	090
33244		A	Remove eltrd, transven	9.85	NA	NA	4.11	5.53	1.83	NA	NA	15.79	17.21	000
33245		A	Insert epic eltrd pace-defib	14.30	NA	NA	13.63	14.49	1.83	NA	NA	29.76	30.62	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
33246		A	Insert epic eltrd/generator	20.71	NA	NA	17.00	18.39	2.74	NA	NA	40.45	41.84	090
33247		D	Insert/replace leads	10.21	4.05	[6].09	4.05	6.09	1.27	15.53	17.57	15.53	17.57	090
33249		A	Eltrd/insert pace-defib	11.41	NA	NA	4.80	7.57	1.79	NA	NA	18.00	20.77	000
33250		A	Ablate heart dysrhythm focus	21.85	NA	NA	14.28	13.85	2.97	NA	NA	39.10	38.67	090
33251		A	Ablate heart dysrhythm focus	24.88	NA	NA	18.57	18.38	3.26	NA	NA	46.71	46.52	090
33253		A	Reconstruct atria	31.06	NA	NA	21.60	22.12	4.12	NA	NA	56.78	57.30	090
33261		A	Ablate heart dysrhythm focus	24.88	NA	NA	18.92	17.98	2.94	NA	NA	46.74	45.80	090
33282		A	Implant pat-active ht record	2.83	NA	NA	1.15	1.15	0.53	NA	NA	4.51	4.51	000
33284		A	Remove pat-active ht record	1.16	NA	NA	0.47	0.47	0.33	NA	NA	1.96	1.96	000
33300		A	Repair of heart wound	17.92	NA	NA	14.78	14.98	2.33	NA	NA	35.03	35.23	090
33305		A	Repair of heart wound	21.44	NA	NA	17.53	17.87	2.81	NA	NA	41.78	42.12	090
33310		A	Exploratory heart surgery	18.51	NA	NA	16.72	15.60	2.48	NA	NA	37.71	36.59	090
33315		A	Exploratory heart surgery	22.37	NA	NA	17.98	17.41	0.03	NA	NA	40.38	39.81	090
33320		A	Repair major blood vessel(s)	16.79	NA	NA	13.62	14.05	2.14	NA	NA	32.55	32.98	090
33321		A	Repair major vessel	20.20	NA	NA	16.08	17.96	2.36	NA	NA	38.64	40.52	090
33322		A	Repair major blood vessel(s)	20.62	NA	NA	16.85	18.54	2.70	NA	NA	40.17	41.86	090
33330		A	Insert major vessel graft	21.43	NA	NA	15.66	15.18	2.79	NA	NA	39.88	39.40	090
33332		A	Insert major vessel graft	23.96	NA	NA	15.85	15.98	3.29	NA	NA	43.10	43.23	090
33335		A	Insert major vessel graft	30.01	NA	NA	20.81	19.70	3.99	NA	NA	54.81	53.70	090
33400		A	Repair of aortic valve	25.34	NA	NA	22.27	23.81	3.34	NA	NA	50.95	52.49	090
33401		A	Valvuloplasty, open	23.91	NA	NA	18.29	20.83	3.19	NA	NA	45.39	47.93	090
33403		A	Valvuloplasty, w/cp bypass	24.89	NA	NA	21.83	23.48	3.47	NA	NA	50.19	51.84	090
33404		A	Prepare heart-aorta conduit	28.54	NA	NA	23.34	25.98	3.68	NA	NA	55.56	58.20	090
33405		A	Replacement of aortic valve	30.61	NA	NA	21.23	24.19	3.97	NA	NA	55.81	58.77	090
33406		A	Replacement of aortic valve	32.30	NA	NA	22.08	26.20	4.18	NA	NA	58.56	62.68	090
33410		A	Replacement of aortic valve	32.46	NA	NA	21.99	21.99	4.21	NA	NA	58.66	58.66	090
33411		A	Replacement of aortic valve	32.47	NA	NA	22.05	26.23	4.21	NA	NA	58.73	62.91	090
33412		A	Replacement of aortic valve	34.79	NA	NA	25.59	29.58	4.18	NA	NA	64.56	68.55	090
33413		A	Replacement of aortic valve	35.24	NA	NA	26.30	30.24	4.59	NA	NA	66.13	70.07	090
33414		A	Repair of aortic valve	30.35	NA	NA	26.14	28.67	3.88	NA	NA	60.37	62.90	090
33415		A	Revision, subvalvular tissue	27.15	NA	NA	22.75	25.17	2.84	NA	NA	52.74	55.16	090
33416		A	Revise ventricle muscle	30.35	NA	NA	21.71	23.92	0.04	NA	NA	52.10	54.31	090
33417		A	Repair of aortic valve	28.53	NA	NA	25.47	27.62	3.72	NA	NA	57.72	59.87	090
33420		A	Revision of mitral valve	22.70	NA	NA	11.43	13.95	1.58	NA	NA	35.71	38.23	090
33422		A	Revision of mitral valve	25.94	NA	NA	19.74	22.55	3.34	NA	NA	49.02	51.83	090
33425		A	Repair of mitral valve	0.27	NA	NA	19.58	22.74	3.47	NA	NA	23.32	26.48	090
33426		A	Repair of mitral valve	31.03	NA	NA	21.42	24.74	4.03	NA	NA	56.48	59.80	090
33427		A	Repair of mitral valve	33.72	NA	NA	22.50	26.29	4.42	NA	NA	60.64	64.43	090
33430		A	Replacement of mitral valve	31.43	NA	NA	21.56	25.55	4.09	NA	NA	57.08	61.07	090
33460		A	Revision of tricuspid valve	23.60	NA	NA	18.32	20.78	0.03	NA	NA	41.95	44.41	090
33463		A	Valvuloplasty, tricuspid	25.62	NA	NA	19.22	22.06	3.34	NA	NA	48.18	51.02	090
33464		A	Valvuloplasty, tricuspid	27.33	NA	NA	20.03	23.18	3.57	NA	NA	50.93	54.08	090
33465		A	Replace tricuspid valve	28.79	NA	NA	20.61	24.05	3.65	NA	NA	53.05	56.49	090
33468		A	Revision of tricuspid valve	30.12	NA	NA	28.69	30.51	3.93	NA	NA	62.74	64.56	090
33470		A	Revision of pulmonary valve	20.81	NA	NA	11.28	13.84	2.50	NA	NA	34.59	37.15	090
33471		A	Valvotomy, pulmonary valve	22.25	NA	NA	13.15	16.51	1.75	NA	NA	37.15	40.51	090
33472		A	Revision of pulmonary valve	22.25	NA	NA	14.81	17.75	2.53	NA	NA	39.59	42.53	090
33474		A	Revision of pulmonary valve	23.04	NA	NA	19.11	21.21	2.62	NA	NA	44.77	46.87	090
33475		A	Replacement, pulmonary valve	28.41	NA	NA	22.03	25.00	3.73	NA	NA	54.17	57.14	090
33476		A	Revision of heart chamber	25.77	NA	NA	16.56	20.06	2.38	NA	NA	44.71	48.21	090
33478		A	Revision of heart chamber	26.74	NA	NA	22.18	24.62	3.68	NA	NA	52.60	55.04	090
33496		A	Repair, prosth valve clot	27.25	NA	NA	22.69	25.15	3.63	NA	NA	53.57	56.03	090
33500		A	Repair heart vessel fistula	25.55	NA	NA	19.25	22.07	3.10	NA	NA	47.90	50.72	090
33501		A	Repair heart vessel fistula	17.78	NA	NA	14.32	14.58	2.09	NA	NA	34.19	34.45	090
33502		A	Coronary artery correction	21.04	NA	NA	23.68	21.60	2.86	NA	NA	47.58	45.50	090
33503		A	Coronary artery graft	21.78	NA	NA	14.97	17.73	2.70	NA	NA	39.45	42.21	090
33504		A	Coronary artery graft	24.66	NA	NA	23.84	25.24	2.63	NA	NA	51.13	52.53	090
33505		A	Repair artery w/tunnel	26.84	NA	NA	15.91	19.94	3.16	NA	NA	45.91	49.94	090
33506		A	Repair artery, translocation	26.71	NA	NA	19.83	22.84	2.94	NA	NA	49.48	52.49	090
33510		A	CABG, vein, single	25.12	NA	NA	18.98	21.73	3.27	NA	NA	47.37	50.12	090
33511		A	CABG, vein, two	27.40	NA	NA	19.87	23.08	3.56	NA	NA	50.83	54.04	090
33512		A	CABG, vein, three	29.67	NA	NA	20.57	24.28	3.79	NA	NA	54.03	57.74	090
33513		A	CABG, vein, four	31.95	NA	NA	21.68	25.80	4.11	NA	NA	57.74	61.86	090
33514		A	CABG, vein, five	0.35	NA	NA	23.07	27.75	4.49	NA	NA	27.91	32.59	090
33516		A	Cabg, vein, six or more	37.40	NA	NA	24.08	29.22	4.78	NA	NA	66.26	71.40	090
33517		A	CABG, artery-vein, single	2.57	NA	NA	1.05	1.56	0.33	NA	NA	3.95	4.46	ZZZ
33518		A	CABG, artery-vein, two	4.85	NA	NA	1.98	2.94	0.63	NA	NA	7.46	8.42	ZZZ
33519		A	CABG, artery-vein, three	7.12	NA	NA	2.91	4.31	0.92	NA	NA	10.95	12.35	ZZZ
33521		A	CABG, artery-vein, four	9.40	NA	NA	3.84	5.69	1.21	NA	NA	14.45	16.30	ZZZ
33522		A	CABG, artery-vein, five	11.67	NA	NA	4.78	7.07	1.49	NA	NA	17.94	20.23	ZZZ
33523		A	Cabg, art-vein, six or more	13.95	NA	NA	5.73	8.46	1.78	NA	NA	21.46	24.19	ZZZ
33530		A	Coronary artery, bypass/reop	5.86	NA	NA	2.39	3.54	0.76	NA	NA	9.01	10.16	ZZZ
33533		A	CABG, arterial, single	25.83	NA	NA	19.25	22.15	3.33	NA	NA	48.41	51.31	090
33534		A	CABG, arterial, two	28.82	NA	NA	19.86	23.50	3.68	NA	NA	52.36	56.00	090
33535		A	CABG, arterial, three	31.81	NA	NA	20.88	25.15	3.96	NA	NA	56.65	60.92	090
33536		A	Cabg, arterial, four or more	34.79	NA	NA	21.59	26.58	4.39	NA	NA	60.77	65.76	090
33542		A	Removal of heart lesion	28.85	NA	NA	22.46	25.18	3.76	NA	NA	55.07	57.79	090
33545		A	Repair of heart damage	36.78	NA	NA	25.43	28.55	4.80	NA	NA	67.01	70.13	090
33572		A	Open coronary endarterectomy	4.45	NA	NA	1.82	2.24	0.58	NA	NA	6.85	7.27	ZZZ
33600		A	Closure of valve	29.51	NA	NA	20.23	23.98	2.58	NA	NA	52.32	56.07	090
33602		A	Closure of valve	28.54	NA	NA	20.00	23.27	2.84	NA	NA	51.38	54.65	090
33606		A	Anastomosis/artery-aorta	30.74	NA	NA	22.08	25.73	3.97	NA	NA	56.79	60.44	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
33608		A	Repair anomaly w/conduit	31.09	NA	NA	24.35	27.54	4.27	NA	NA	59.71	62.90	090
33610		A	Repair by enlargement	30.61	NA	NA	25.44	28.22	3.64	NA	NA	59.69	62.47	090
33611		A	Repair double ventricle	32.30	NA	NA	23.19	27.03	4.44	NA	NA	59.93	63.77	090
33612		A	Repair double ventricle	33.26	NA	NA	26.76	30.00	4.51	NA	NA	64.53	67.77	090
33615		A	Repair, simple fontan	32.06	NA	NA	26.81	29.68	3.88	NA	NA	62.75	65.62	090
33617		A	Repair, modified fontan	34.03	NA	NA	28.98	31.89	4.75	NA	NA	67.76	70.67	090
33619		A	Repair single ventricle	37.57	NA	NA	34.35	36.98	5.03	NA	NA	76.95	79.58	090
33641		A	Repair heart septum defect	21.39	NA	NA	15.27	17.84	2.78	NA	NA	39.44	42.01	090
33645		A	Revision of heart veins	24.82	NA	NA	20.05	22.45	3.32	NA	NA	48.19	50.59	090
33647		A	Repair heart septum defects	28.73	NA	NA	23.71	26.36	3.81	NA	NA	56.25	58.90	090
33660		A	Repair of heart defects	25.54	NA	NA	22.37	24.40	3.13	NA	NA	51.04	53.07	090
33665		A	Repair of heart defects	28.60	NA	NA	23.01	25.74	0.04	NA	NA	51.65	54.38	090
33670		A	Repair of heart chambers	32.73	NA	NA	16.81	22.38	3.35	NA	NA	52.89	58.46	090
33681		A	Repair heart septum defect	27.67	NA	NA	23.93	26.21	3.60	NA	NA	55.20	57.48	090
33684		A	Repair heart septum defect	29.65	NA	NA	22.11	25.43	3.63	NA	NA	55.39	58.71	090
33688		A	Repair heart septum defect	30.62	NA	NA	13.26	19.08	3.74	NA	NA	47.62	53.44	090
33690		A	Reinforce pulmonary artery	19.55	NA	NA	17.97	19.31	2.38	NA	NA	39.90	41.24	090
33692		A	Repair of heart defects	30.75	NA	NA	21.05	24.97	4.22	NA	NA	56.02	59.94	090
33694		A	Repair of heart defects	31.73	NA	NA	21.44	25.55	3.36	NA	NA	56.53	60.64	090
33697		A	Repair of heart defects	33.71	NA	NA	22.24	26.74	4.52	NA	NA	60.47	64.97	090
33702		A	Repair of heart defects	26.54	NA	NA	22.68	24.93	3.55	NA	NA	52.77	55.02	090
33710		A	Repair of heart defects	29.71	NA	NA	20.63	24.34	4.15	NA	NA	54.49	58.20	090
33720		A	Repair of heart defect	26.56	NA	NA	21.31	23.91	3.56	NA	NA	51.43	54.03	090
33722		A	Repair of heart defect	28.41	NA	NA	24.35	26.53	3.97	NA	NA	56.73	58.91	090
33730		A	Repair heart-vein defect(s)	31.67	NA	NA	18.46	23.30	4.24	NA	NA	54.37	59.21	090
33732		A	Repair heart-vein defect	28.16	NA	NA	19.98	23.39	3.93	NA	NA	52.07	55.48	090
33735		A	Revision of heart chamber	21.39	NA	NA	16.06	19.02	2.21	NA	NA	39.66	42.62	090
33736		A	Revision of heart chamber	23.52	NA	NA	21.57	23.15	3.03	NA	NA	48.12	49.70	090
33737		A	Revision of heart chamber	21.76	NA	NA	18.24	20.18	0.86	NA	NA	40.86	42.80	090
33750		A	Major vessel shunt	21.41	NA	NA	13.17	15.87	2.72	NA	NA	37.30	40.00	090
33755		A	Major vessel shunt	21.79	NA	NA	12.97	15.72	1.37	NA	NA	36.13	38.88	090
33762		A	Major vessel shunt	21.79	NA	NA	12.97	15.72	2.95	NA	NA	37.71	40.46	090
33764		A	Major vessel shunt & graft	21.79	NA	NA	14.29	16.71	2.07	NA	NA	38.15	40.57	090
33766		A	Major vessel shunt	22.76	NA	NA	20.06	21.04	3.08	NA	NA	45.90	46.88	090
33767		A	Major vessel shunt	24.50	NA	NA	15.20	18.37	3.49	NA	NA	43.19	46.36	090
33770		A	Repair great vessels defect	33.29	NA	NA	22.08	26.50	2.76	NA	NA	58.13	62.55	090
33771		A	Repair great vessels defect	34.65	NA	NA	16.38	22.63	2.87	NA	NA	53.90	60.15	090
33774		A	Repair great vessels defect	30.98	NA	NA	23.14	25.84	1.18	NA	NA	55.30	58.00	090
33775		A	Repair great vessels defect	32.20	NA	NA	17.10	21.31	2.67	NA	NA	51.97	56.18	090
33776		A	Repair great vessels defect	34.04	NA	NA	17.83	22.85	2.82	NA	NA	54.69	59.71	090
33777		A	Repair great vessels defect	33.46	NA	NA	17.60	21.69	2.77	NA	NA	53.83	57.92	090
33778		A	Repair great vessels defect	35.82	NA	NA	24.62	29.16	2.97	NA	NA	63.41	67.95	090
33779		A	Repair great vessels defect	36.21	NA	NA	16.37	23.09	4.72	NA	NA	57.30	64.02	090
33780		A	Repair great vessels defect	36.94	NA	NA	18.98	25.26	5.08	NA	NA	61.00	67.28	090
33781		A	Repair great vessels defect	36.45	NA	NA	16.86	23.53	3.02	NA	NA	56.33	63.00	090
33786		A	Repair arterial trunk	34.84	NA	NA	18.14	24.00	2.88	NA	NA	55.86	61.72	090
33788		A	Revision of pulmonary artery	26.62	NA	NA	14.64	18.93	2.21	NA	NA	43.47	47.76	090
33800		A	Aortic suspension	16.24	NA	NA	17.96	17.31	1.95	NA	NA	36.15	35.50	090
33802		A	Repair vessel defect	17.66	NA	NA	17.86	18.67	2.40	NA	NA	37.92	38.73	090
33803		A	Repair vessel defect	19.60	NA	NA	12.10	14.93	2.35	NA	NA	34.05	36.88	090
33813		A	Repair septal defect	20.65	NA	NA	16.34	18.25	2.92	NA	NA	39.91	41.82	090
33814		A	Repair septal defect	25.77	NA	NA	21.49	23.81	3.47	NA	NA	50.73	53.05	090
33820		A	Revise major vessel	16.29	NA	NA	16.46	17.21	2.05	NA	NA	34.80	35.55	090
33822		A	Revise major vessel	17.32	NA	NA	11.20	13.57	2.19	NA	NA	30.71	33.08	090
33824		A	Revise major vessel	19.52	NA	NA	17.41	18.88	2.45	NA	NA	39.38	40.85	090
33840		A	Remove aorta constriction	20.63	NA	NA	19.94	21.11	2.89	NA	NA	43.46	44.63	090
33845		A	Remove aorta constriction	22.12	NA	NA	18.65	20.59	3.10	NA	NA	43.87	45.81	090
33851		A	Remove aorta constriction	21.27	NA	NA	22.24	23.03	2.92	NA	NA	46.43	47.22	090
33852		A	Repair septal defect	23.71	NA	NA	21.42	23.14	3.07	NA	NA	48.20	49.92	090
33853		A	Repair septal defect	31.72	NA	NA	28.53	30.86	4.07	NA	NA	64.32	66.65	090
33860		A	Ascending aortic graft	33.96	NA	NA	22.70	26.44	4.46	NA	NA	61.12	64.86	090
33861		A	Ascending aortic graft	34.52	NA	NA	22.46	26.26	4.58	NA	NA	61.56	65.36	090
33863		A	Ascending aortic graft	36.47	NA	NA	23.38	26.95	4.77	NA	NA	64.62	68.19	090
33870		A	Transverse aortic arch graft	40.31	NA	NA	25.09	30.84	5.38	NA	NA	70.78	76.53	090
33875		A	Thoracic aortic graft	33.06	NA	NA	21.33	24.48	4.27	NA	NA	58.66	61.81	090
33877		A	Thoracoabdominal graft	42.60	NA	NA	26.55	31.88	5.48	NA	NA	74.63	79.96	090
33910		A	Remove lung artery emboli	24.59	NA	NA	17.98	17.46	3.12	NA	NA	45.69	45.17	090
33915		A	Remove lung artery emboli	21.02	NA	NA	13.96	13.73	2.26	NA	NA	37.24	37.01	090
33916		A	Surgery of great vessel	25.83	NA	NA	17.22	17.68	3.27	NA	NA	46.32	46.78	090
33917		A	Repair pulmonary artery	24.50	NA	NA	20.89	22.98	3.30	NA	NA	48.69	50.78	090
33918		A	Repair pulmonary atresia	26.45	NA	NA	14.82	19.01	3.77	NA	NA	45.04	49.23	090
33919		A	Repair pulmonary atresia	32.67	NA	NA	17.28	22.71	4.56	NA	NA	54.51	59.94	090
33920		A	Repair pulmonary atresia	31.95	NA	NA	23.86	27.43	4.47	NA	NA	60.28	63.85	090
33922		A	Transect pulmonary artery	23.52	NA	NA	20.14	22.13	2.40	NA	NA	46.06	48.05	090
33924		A	Remove pulmonary shunt	5.50	NA	NA	2.25	2.77	0.77	NA	NA	8.52	9.04	ZZZ
33930		X	Removal of donor heart/lung	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33935		R	Transplantation, heart/lung	60.96	NA	NA	33.84	43.58	8.06	NA	NA	102.86	112.60	090
33940		X	Removal of donor heart	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33945		R	Transplantation of heart	42.10	NA	NA	26.76	32.64	5.60	NA	NA	74.46	80.34	090
33960		A	External circulation assist	19.36	NA	NA	6.06	6.45	1.59	NA	NA	27.01	27.40	XXX
33961		A	External circulation assist	10.93	NA	NA	4.16	5.02	1.35	NA	NA	16.44	17.30	ZZZ
33968		A	Remove aortic assist device	0.64	NA	NA	0.25	0.25	0.27	NA	NA	1.16	1.16	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
33970		A	Aortic circulation assist	6.75	NA	NA	2.77	4.09	0.91	NA	NA	10.43	11.75	000
33971		A	Aortic circulation assist	9.69	NA	NA	9.64	8.63	1.29	NA	NA	20.62	19.61	090
33973		A	Insert balloon device	9.76	NA	NA	3.98	5.03	1.32	NA	NA	15.06	16.11	000
33974		A	Remove intra-aortic balloon	14.41	NA	NA	12.73	11.06	1.94	NA	NA	29.08	27.41	090
33975		A	Implant ventricular device	0.21	NA	NA	8.53	10.25	2.86	NA	NA	11.60	13.32	XXX
33976		A	Implant ventricular device	0.23	NA	NA	9.36	12.27	3.91	NA	NA	13.50	16.41	XXX
33977		A	Remove ventricular device	19.29	NA	NA	13.26	13.31	2.56	NA	NA	35.11	35.16	090
33978		A	Remove ventricular device	21.73	NA	NA	14.17	14.48	2.89	NA	NA	38.79	39.10	090
33999		C	Cardiac surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
34001		A	Removal of artery clot	12.91	NA	NA	6.36	7.37	1.56	NA	NA	20.83	21.84	090
34051		A	Removal of artery clot	15.21	NA	NA	7.77	8.22	1.85	NA	NA	24.83	25.28	090
34101		A	Removal of artery clot	9.97	NA	NA	5.04	6.04	1.13	NA	NA	16.14	17.14	090
34111		A	Removal of arm artery clot	8.07	NA	NA	4.36	5.33	0.84	NA	NA	13.27	14.24	090
34151		A	Removal of artery clot	16.86	NA	NA	7.91	9.18	1.87	NA	NA	26.64	27.91	090
34201		A	Removal of artery clot	9.13	NA	NA	5.09	6.23	1.06	NA	NA	15.28	16.42	090
34203		A	Removal of leg artery clot	12.21	NA	NA	6.34	7.10	1.43	NA	NA	19.98	20.74	090
34401		A	Removal of vein clot	12.86	NA	NA	6.31	6.92	1.25	NA	NA	20.42	21.03	090
34421		A	Removal of vein clot	9.93	NA	NA	5.56	6.19	0.97	NA	NA	16.46	17.09	090
34451		A	Removal of vein clot	14.44	NA	NA	6.90	8.08	1.60	NA	NA	22.94	24.12	090
34471		A	Removal of vein clot	10.18	NA	NA	4.96	4.67	0.01	NA	NA	15.15	14.86	090
34490		A	Removal of vein clot	7.60	NA	NA	5.56	6.14	0.76	NA	NA	13.92	14.50	090
34501		A	Repair valve, femoral vein	10.93	NA	NA	8.35	8.26	1.43	NA	NA	20.71	20.62	090
34502		A	Reconstruct vena cava	26.95	NA	NA	12.48	14.42	2.97	NA	NA	42.40	44.34	090
34510		A	Transposition of vein valve	13.25	NA	NA	10.63	10.39	1.64	NA	NA	25.52	25.28	090
34520		A	Cross-over vein graft	13.74	NA	NA	7.91	8.47	1.64	NA	NA	23.29	23.85	090
34530		A	Leg vein fusion	17.61	NA	NA	9.52	10.49	0.02	NA	NA	27.15	28.12	090
35001		A	Repair defect of artery	19.64	NA	NA	9.31	11.30	2.51	NA	NA	31.46	33.45	090
35002		A	Repair artery rupture, neck	0.21	NA	NA	9.42	10.50	2.43	NA	NA	12.06	13.14	090
35005		A	Repair defect of artery	18.12	NA	NA	8.19	8.93	1.40	NA	NA	27.71	28.45	090
35011		A	Repair defect of artery	11.65	NA	NA	5.72	7.77	1.36	NA	NA	18.73	20.78	090
35013		A	Repair artery rupture, arm	17.40	NA	NA	7.73	9.79	0.02	NA	NA	25.15	27.21	090
35021		A	Repair defect of artery	19.65	NA	NA	10.14	12.53	2.42	NA	NA	32.21	34.60	090
35022		A	Repair artery rupture, chest	23.18	NA	NA	9.78	11.35	2.15	NA	NA	35.11	6.68	090
35045		A	Repair defect of arm artery	11.26	NA	NA	6.68	8.36	1.26	NA	NA	19.20	20.88	090
35081		A	Repair defect of artery	28.01	NA	NA	12.65	15.31	3.30	NA	NA	43.96	46.62	090
35082		A	Repair artery rupture, aorta	36.35	NA	NA	14.91	17.40	4.14	NA	NA	55.40	57.89	090
35091		A	Repair defect of artery	35.40	NA	NA	15.36	17.67	4.28	NA	NA	55.04	57.35	090
35092		A	Repair artery rupture, aorta	38.39	NA	NA	16.08	19.19	4.48	NA	NA	58.95	62.06	090
35102		A	Repair defect of artery	30.76	NA	NA	13.47	16.11	3.65	NA	NA	47.88	50.52	090
35103		A	Repair artery rupture, groin	33.57	NA	NA	14.15	17.71	3.84	NA	NA	51.56	55.12	090
35111		A	Repair defect of artery	18.43	NA	NA	7.76	10.60	1.82	NA	NA	26.01	28.85	090
35112		A	Repair artery rupture,spleen	18.69	NA	NA	8.32	9.08	2.14	NA	NA	29.15	29.91	090
35121		A	Repair defect of artery	25.99	NA	NA	11.71	13.97	3.10	NA	NA	40.80	43.06	090
35122		A	Repair artery rupture, belly	33.45	NA	NA	14.23	15.54	3.69	NA	NA	51.37	52.68	090
35131		A	Repair defect of artery	18.55	NA	NA	8.94	11.01	2.20	NA	NA	29.69	31.76	090
35132		A	Repair artery rupture, groin	21.95	NA	NA	9.94	12.52	2.47	NA	NA	34.36	36.94	090
35141		A	Repair defect of artery	14.46	NA	NA	7.31	9.47	1.73	NA	NA	23.50	25.66	090
35142		A	Repair artery rupture, thigh	15.86	NA	NA	7.63	10.09	1.92	NA	NA	25.41	27.87	090
35151		A	Repair defect of artery	0.17	NA	NA	8.20	10.32	2.01	NA	NA	10.38	12.50	090
35152		A	Repair artery rupture, knee	16.70	NA	NA	8.18	8.65	2.01	NA	NA	26.89	27.36	090
35161		A	Repair defect of artery	18.76	NA	NA	9.56	11.48	2.19	NA	NA	30.51	32.43	090
35162		A	Repair artery rupture	19.78	NA	NA	9.78	12.40	2.26	NA	NA	31.82	34.44	090
35180		A	Repair blood vessel lesion	13.62	NA	NA	6.97	7.23	1.53	NA	NA	22.12	22.38	090
35182		A	Repair blood vessel lesion	17.74	NA	NA	8.93	9.59	2.19	NA	NA	28.86	29.52	090
35184		A	Repair blood vessel lesion	12.25	NA	NA	6.22	7.31	1.45	NA	NA	19.92	21.01	090
35188		A	Repair blood vessel lesion	14.28	NA	NA	6.78	7.29	1.70	NA	NA	22.76	23.27	090
35189		A	Repair blood vessel lesion	18.43	NA	NA	9.10	9.90	2.17	NA	NA	29.70	30.50	090
35190		A	Repair blood vessel lesion	12.75	NA	NA	6.37	7.58	1.48	NA	NA	20.60	21.81	090
35201		A	Repair blood vessel lesion	9.99	NA	NA	5.28	6.69	1.23	NA	NA	16.50	17.91	090
35206		A	Repair blood vessel lesion	9.25	NA	NA	6.15	7.37	1.06	NA	NA	16.46	17.68	090
35207		A	Repair blood vessel lesion	10.15	NA	NA	8.67	9.43	1.06	NA	NA	19.88	20.64	090
35211		A	Repair blood vessel lesion	22.12	NA	NA	17.68	16.89	2.91	NA	NA	42.71	41.92	090
35216		A	Repair blood vessel lesion	18.75	NA	NA	13.90	13.32	2.24	NA	NA	34.89	34.31	090
35221		A	Repair blood vessel lesion	16.42	NA	NA	7.89	8.93	1.81	NA	NA	26.12	27.16	090
35226		A	Repair blood vessel lesion	9.06	NA	NA	6.96	7.93	1.15	NA	NA	17.17	18.14	090
35231		A	Repair blood vessel lesion	0.12	NA	NA	6.65	8.57	1.38	NA	NA	8.15	10.07	090
35236		A	Repair blood vessel lesion	10.54	NA	NA	6.73	8.19	1.23	NA	NA	18.50	19.96	090
35241		A	Repair blood vessel lesion	23.12	NA	NA	19.86	18.56	2.84	NA	NA	45.82	44.52	090
35246		A	Repair blood vessel lesion	19.84	NA	NA	14.12	15.19	2.42	NA	NA	36.38	37.45	090
35251		A	Repair blood vessel lesion	17.49	NA	NA	8.01	8.61	1.87	NA	NA	27.37	27.97	090
35256		A	Repair blood vessel lesion	11.38	NA	NA	7.05	8.65	1.37	NA	NA	19.80	21.40	090
35261		A	Repair blood vessel lesion	11.63	NA	NA	5.81	7.83	1.38	NA	NA	18.82	20.84	090
35266		A	Repair blood vessel lesion	10.30	NA	NA	6.37	7.85	1.24	NA	NA	17.91	19.39	090
35271		A	Repair blood vessel lesion	22.12	NA	NA	17.64	16.63	2.95	NA	NA	42.71	41.70	090
35276		A	Repair blood vessel lesion	18.75	NA	NA	15.11	14.28	2.50	NA	NA	36.36	35.53	090
35281		A	Repair blood vessel lesion	16.48	NA	NA	7.93	10.64	1.84	NA	NA	26.25	28.96	090
35286		A	Repair blood vessel lesion	11.87	NA	NA	7.52	8.82	1.39	NA	NA	20.78	22.08	090
35301		A	Rechanneling of artery	18.70	NA	NA	9.48	11.03	2.29	NA	NA	30.47	32.02	090
35311		A	Rechanneling of artery	23.85	NA	NA	12.09	15.05	3.12	NA	NA	39.06	42.02	090
35321		A	Rechanneling of artery	11.97	NA	NA	5.92	7.96	1.40	NA	NA	19.29	21.33	090
35331		A	Rechanneling of artery	23.52	NA	NA	10.77	11.70	2.88	NA	NA	37.17	38.10	090
35341		A	Rechanneling of artery	25.11	NA	NA	11.34	13.22	3.07	NA	NA	39.52	41.40	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
35351		A	Rechanneling of artery	20.11	NA	NA	9.40	11.11	2.33	NA	NA	31.84	33.55	090
35355		A	Rechanneling of artery	16.09	NA	NA	7.85	10.07	1.86	NA	NA	25.80	28.02	090
35361		A	Rechanneling of artery	23.59	NA	NA	10.70	13.28	2.74	NA	NA	37.03	39.61	090
35363		A	Rechanneling of artery	24.66	NA	NA	11.26	14.62	2.81	NA	NA	38.73	42.09	090
35371		A	Rechanneling of artery	11.64	NA	NA	5.94	7.85	1.37	NA	NA	18.95	20.86	090
35372		A	Rechanneling of artery	13.56	NA	NA	6.68	8.05	1.59	NA	NA	21.83	23.20	090
35381		A	Rechanneling of artery	15.81	NA	NA	7.75	9.52	1.85	NA	NA	25.41	27.18	090
35390		A	Reoperation, carotid add-on	3.19	NA	NA	1.22	1.37	0.40	NA	NA	4.81	4.96	ZZZ
35400		A	Angioscopy	0.03	NA	NA	1.14	1.47	0.27	NA	NA	1.44	1.77	ZZZ
35450		A	Repair arterial blockage	10.07	NA	NA	4.51	6.39	1.17	NA	NA	15.75	17.63	000
35452		A	Repair arterial blockage	6.91	NA	NA	3.31	3.66	0.83	NA	NA	11.05	11.40	000
35454		A	Repair arterial blockage	6.04	NA	NA	2.87	3.96	0.71	NA	NA	9.62	10.71	000
35456		A	Repair arterial blockage	7.35	NA	NA	3.42	4.76	0.87	NA	NA	11.64	12.98	000
35458		A	Repair arterial blockage	9.49	NA	NA	4.26	5.94	1.13	NA	NA	14.88	16.56	000
35459		A	Repair arterial blockage	8.63	NA	NA	3.85	5.46	0.99	NA	NA	13.47	15.08	000
35460		A	Repair venous blockage	6.04	NA	NA	2.71	2.89	0.64	NA	NA	9.39	9.57	000
35470		A	Repair arterial blockage	8.63	NA	NA	4.00	5.58	0.68	NA	NA	13.31	14.89	000
35471		A	Repair arterial blockage	10.07	NA	NA	4.60	6.46	0.82	NA	NA	15.49	17.35	000
35472		A	Repair arterial blockage	6.91	NA	NA	3.34	3.49	0.55	NA	NA	10.80	10.95	000
35473		A	Repair arterial blockage	6.04	NA	NA	2.97	4.03	0.41	NA	NA	9.42	10.48	000
35474		A	Repair arterial blockage	7.36	NA	NA	3.48	4.81	0.53	NA	NA	11.37	12.70	000
35475		R	Repair arterial blockage	9.49	NA	NA	4.15	5.86	0.51	NA	NA	14.15	15.86	000
35476		A	Repair venous blockage	6.04	NA	NA	2.87	3.01	0.26	NA	NA	9.17	9.31	000
35480		A	Atherectomy, open	11.08	NA	NA	4.78	6.89	1.16	NA	NA	17.02	19.13	000
35481		A	Atherectomy, open	7.61	NA	NA	3.77	4.01	0.95	NA	NA	12.33	12.57	000
35482		A	Atherectomy, open	6.65	NA	NA	3.27	4.44	0.83	NA	NA	10.75	11.92	000
35483		A	Atherectomy, open	8.10	NA	NA	3.70	5.19	0.96	NA	NA	12.78	14.27	000
35484		A	Atherectomy, open	10.44	NA	NA	4.65	6.24	1.11	NA	NA	16.20	17.79	000
35485		A	Atherectomy, open	9.49	NA	NA	4.26	4.42	1.15	NA	NA	14.90	15.06	000
35490		A	Atherectomy, percutaneous	11.08	NA	NA	4.91	6.99	1.03	NA	NA	17.02	19.10	000
35491		A	Atherectomy, percutaneous	7.61	NA	NA	3.51	3.81	0.77	NA	NA	11.89	12.19	000
35492		A	Atherectomy, percutaneous	6.65	NA	NA	3.22	4.40	0.71	NA	NA	10.58	11.76	000
35493		A	Atherectomy, percutaneous	8.10	NA	NA	4.06	5.46	0.91	NA	NA	13.07	14.47	000
35494		A	Atherectomy, percutaneous	10.44	NA	NA	4.53	6.15	0.50	NA	NA	15.47	17.09	000
35495		A	Atherectomy, percutaneous	9.49	NA	NA	4.74	4.78	1.09	NA	NA	15.32	15.36	000
35500		A	Harvest vein for bypass	6.45	NA	NA	2.42	2.42	0.73	NA	NA	9.60	9.60	ZZZ
35501		A	Artery bypass graft	19.19	NA	NA	7.22	10.67	2.39	NA	NA	28.80	32.25	090
35506		A	Artery bypass graft	19.67	NA	NA	9.22	12.12	2.41	NA	NA	31.30	34.20	090
35507		A	Artery bypass graft	19.67	NA	NA	9.17	11.74	2.43	NA	NA	31.27	33.84	090
35508		A	Artery bypass graft	18.65	NA	NA	9.04	11.69	2.42	NA	NA	30.11	32.76	090
35509		A	Artery bypass graft	18.07	NA	NA	8.17	11.26	2.21	NA	NA	28.45	31.54	090
35511		A	Artery bypass graft	16.83	NA	NA	8.06	8.87	0.02	NA	NA	24.91	25.72	090
35515		A	Artery bypass graft	18.65	NA	NA	8.73	9.60	2.39	NA	NA	29.77	30.64	090
35516		A	Artery bypass graft	16.32	NA	NA	7.60	10.41	0.02	NA	NA	23.94	26.75	090
35518		A	Artery bypass graft	15.42	NA	NA	6.88	9.76	1.74	NA	NA	24.04	26.92	090
35521		A	Artery bypass graft	16.17	NA	NA	7.91	10.69	1.88	NA	NA	25.96	28.74	090
35526		A	Artery bypass graft	0.20	NA	NA	10.05	11.05	2.48	NA	NA	12.73	13.73	090
35531		A	Artery bypass graft	25.61	NA	NA	11.45	14.08	3.04	NA	NA	40.10	42.73	090
35533		A	Artery bypass graft	20.52	NA	NA	9.51	12.84	2.27	NA	NA	32.30	35.63	090
35536		A	Artery bypass graft	23.11	NA	NA	10.45	13.64	2.90	NA	NA	36.46	39.65	090
35541		A	Artery bypass graft	25.80	NA	NA	11.88	14.22	3.08	NA	NA	40.76	43.10	090
35546		A	Artery bypass graft	25.54	NA	NA	11.51	14.44	2.91	NA	NA	39.96	42.89	090
35548		A	Artery bypass graft	21.57	NA	NA	10.11	12.89	2.34	NA	NA	34.02	36.80	090
35549		A	Artery bypass graft	23.35	NA	NA	10.99	14.05	2.69	NA	NA	37.03	40.09	090
35551		A	Artery bypass graft	26.67	NA	NA	12.32	14.46	2.85	NA	NA	41.84	43.98	090
35556		A	Artery bypass graft	21.76	NA	NA	10.06	12.62	2.57	NA	NA	34.39	36.95	090
35558		A	Artery bypass graft	14.04	NA	NA	7.06	9.49	1.61	NA	NA	22.71	25.14	090
35560		A	Artery bypass graft	23.56	NA	NA	11.13	13.83	2.84	NA	NA	37.53	40.23	090
35563		A	Artery bypass graft	15.14	NA	NA	7.86	8.15	1.71	NA	NA	24.71	25.00	090
35565		A	Artery bypass graft	15.14	NA	NA	7.51	10.15	1.78	NA	NA	24.43	27.07	090
35566		A	Artery bypass graft	26.92	NA	NA	15.00	16.85	3.22	NA	NA	45.14	46.99	090
35571		A	Artery bypass graft	18.58	NA	NA	10.37	13.03	2.22	NA	NA	31.17	33.83	090
35582		A	Vein bypass graft	27.13	NA	NA	11.64	15.17	3.14	NA	NA	41.91	45.44	090
35583		A	Vein bypass graft	22.37	NA	NA	11.14	13.90	2.63	NA	NA	36.14	38.90	090
35585		A	Vein bypass graft	28.39	NA	NA	14.75	17.29	3.33	NA	NA	46.47	49.01	090
35587		A	Vein bypass graft	19.05	NA	NA	11.39	14.23	2.23	NA	NA	32.67	35.51	090
35601		A	Artery bypass graft	17.50	NA	NA	7.99	11.10	2.16	NA	NA	27.65	30.76	090
35606		A	Artery bypass graft	18.71	NA	NA	8.65	11.25	2.27	NA	NA	29.63	32.23	090
35612		A	Artery bypass graft	15.76	NA	NA	7.68	10.31	1.90	NA	NA	25.34	27.97	090
35616		A	Artery bypass graft	15.70	NA	NA	7.35	10.07	1.93	NA	NA	24.98	27.70	090
35621		A	Artery bypass graft	14.54	NA	NA	7.40	9.89	1.74	NA	NA	23.68	26.17	090
35623		A	Bypass graft, not vein	16.62	NA	NA	8.02	8.20	0.02	NA	NA	24.66	24.84	090
35626		A	Artery bypass graft	23.63	NA	NA	11.33	14.06	2.98	NA	NA	37.94	40.67	090
35631		A	Artery bypass graft	24.60	NA	NA	11.14	13.20	0.03	NA	NA	35.77	37.[illegible]	090
35636		A	Artery bypass graft	22.46	NA	NA	10.15	11.28	2.70	NA	NA	35.31	36.44	090
35641		A	Artery bypass graft	24.57	NA	NA	11.55	14.24	0.03	NA	NA	36.15	38.84	090
35642		A	Artery bypass graft	17.98	NA	NA	7.79	8.65	2.16	NA	NA	27.93	28.79	090
35645		A	Artery bypass graft	17.47	NA	NA	7.99	9.02	1.85	NA	NA	27.31	28.34	090
35646		A	Artery bypass graft	25.81	NA	NA	11.76	15.27	3.08	NA	NA	40.65	44.16	090
35650		A	Artery bypass graft	14.36	NA	NA	6.73	9.34	1.71	NA	NA	22.80	25.41	090
35651		A	Artery bypass graft	25.04	NA	NA	11.42	15.10	2.81	NA	NA	39.27	42.95	090
35654		A	Artery bypass graft	18.61	NA	NA	8.81	12.16	2.20	NA	NA	29.62	32.97	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
35656		A	Artery bypass graft	19.53	NA	NA	9.10	11.64	2.27	NA	NA	30.90	33.44	090
35661		A	Artery bypass graft	13.18	NA	NA	6.64	8.92	1.55	NA	NA	21.37	23.65	090
35663		A	Artery bypass graft	14.17	NA	NA	7.32	9.72	1.72	NA	NA	23.21	25.61	090
35665		A	Artery bypass graft	15.40	NA	NA	7.58	10.28	1.84	NA	NA	24.82	27.52	090
35666		A	Artery bypass graft	19.19	NA	NA	11.41	14.00	2.28	NA	NA	32.88	35.47	090
35671		A	Artery bypass graft	14.80	NA	NA	9.43	11.31	1.75	NA	NA	25.98	27.86	090
35681		A	Composite bypass graft	1.60	NA	NA	2.45	4.24	0.19	NA	NA	4.24	6.03	ZZZ
35682		A	Composite bypass graft	7.20	2.71	4.44	2.70	4.43	0.85	10.76	12.49	10.75	12.48	ZZZ
35683		A	Composite bypass graft	8.50	3.20	4.81	3.18	4.79	1.01	12.71	14.32	12.69	14.30	ZZZ
35691		A	Arterial transposition	18.05	NA	NA	8.23	11.50	2.27	NA	NA	28.55	31.82	090
35693		A	Arterial transposition	15.36	NA	NA	7.00	7.80	1.94	NA	NA	24.30	25.10	090
35694		A	Arterial transposition	19.16	NA	NA	8.26	8.73	2.33	NA	NA	29.75	30.22	090
35695		A	Arterial transposition	19.16	NA	NA	8.42	8.85	2.16	NA	NA	29.74	30.17	090
35700		A	Reoperation, bypass graft	3.08	NA	NA	3.17	2.82	0.38	NA	NA	6.63	6.28	ZZZ
35701		A	Exploration, carotid artery	5.55	NA	NA	3.58	4.27	0.64	NA	NA	9.77	10.46	090
35721		A	Exploration, femoral artery	5.28	NA	NA	4.73	5.06	0.62	NA	NA	10.63	10.96	090
35741		A	Exploration popliteal artery	5.37	NA	NA	4.39	4.85	0.62	NA	NA	10.38	10.84	090
35761		A	Exploration of artery/vein	5.37	NA	NA	4.30	4.80	0.61	NA	NA	10.28	10.78	090
35800		A	Explore neck vessels	7.02	NA	NA	4.16	4.55	0.82	NA	NA	12.00	12.39	090
35820		A	Explore chest vessels	12.88	NA	NA	5.28	6.11	1.70	NA	NA	19.86	20.69	090
35840		A	Explore abdominal vessels	9.77	NA	NA	5.36	5.98	1.08	NA	NA	16.21	16.83	090
35860		A	Explore limb vessels	5.55	NA	NA	3.71	4.36	0.65	NA	NA	9.91	10.56	090
35870		A	Repair vessel graft defect	22.17	NA	NA	10.63	10.86	2.63	NA	NA	35.43	35.66	090
35875		A	Removal of clot in graft	10.13	NA	NA	6.31	6.96	1.08	NA	NA	17.52	18.17	090
35876		A	Removal of clot in graft	0.17	NA	NA	9.03	9.00	1.92	NA	NA	11.12	11.09	090
35879		A	Revise graft w/vein	0.16	NA	NA	8.30	8.30	1.97	NA	NA	10.43	10.43	090
35881		A	Revise graft w/vein	0.18	NA	NA	8.83	8.83	2.21	NA	NA	11.22	11.22	090
35901		A	Excision, graft, neck	8.19	NA	NA	5.91	6.38	0.97	NA	NA	15.07	15.54	090
35903		A	Excision, graft, extremity	9.39	NA	NA	8.10	8.02	1.08	NA	NA	18.57	18.49	090
35905		A	Excision, graft, thorax	18.19	NA	NA	12.25	11.14	2.15	NA	NA	32.59	31.48	090
35907		A	Excision, graft, abdomen	19.24	NA	NA	9.67	9.20	2.29	NA	NA	31.20	30.73	090
36000		A	Place needle in vein	0.18	0.55	0.48	0.05	0.10	0.01	0.74	0.67	0.24	0.29	XXX
36005		A	Injection, venography	0.95	15.60	11.83	0.33	0.38	0.05	16.60	12.83	1.33	1.38	000
36010		A	Place catheter in vein	2.43	NA	NA	0.87	1.23	0.16	NA	NA	3.46	3.82	XXX
36011		A	Place catheter in vein	3.14	NA	NA	1.13	1.36	0.20	NA	NA	4.47	4.70	XXX
36012		A	Place catheter in vein	3.52	NA	NA	1.26	1.67	0.15	NA	NA	4.93	5.34	XXX
36013		A	Place catheter in artery	2.52	NA	NA	0.83	1.20	0.21	NA	NA	3.56	3.93	XXX
36014		A	Place catheter in artery	3.02	NA	NA	1.09	1.44	0.12	NA	NA	4.23	4.58	XXX
36015		A	Place catheter in artery	3.52	NA	NA	1.26	1.67	0.15	NA	NA	4.93	5.34	XXX
36100		A	Establish access to artery	3.02	NA	NA	1.23	1.63	0.32	NA	NA	4.57	4.97	XXX
36120		A	Establish access to artery	2.01	NA	NA	0.73	1.15	0.12	NA	NA	2.86	3.28	XXX
36140		A	Establish access to artery	2.01	NA	NA	0.72	0.92	0.13	NA	NA	2.86	3.06	XXX
36145		A	Artery to vein shunt	2.01	NA	NA	0.73	1.15	0.09	NA	NA	2.83	3.25	XXX
36160		A	Establish access to aorta	2.52	NA	NA	0.97	1.36	0.23	NA	NA	3.72	4.11	XXX
36200		A	Place catheter in aorta	3.02	NA	NA	1.08	1.55	0.16	NA	NA	4.26	4.73	XXX
36215		A	Place catheter in artery	4.68	NA	NA	1.71	2.04	0.28	NA	NA	6.67	7.00	XXX
36216		A	Place catheter in artery	5.28	NA	NA	1.90	2.32	0.25	NA	NA	7.43	7.85	XXX
36217		A	Place catheter in artery	6.30	NA	NA	2.32	2.80	0.36	NA	NA	8.98	9.46	XXX
36218		A	Place catheter in artery	1.01	NA	NA	0.40	0.47	0.06	NA	NA	1.47	1.54	ZZZ
36245		A	Place catheter in artery	4.68	NA	NA	1.80	2.21	0.35	NA	NA	6.83	7.24	XXX
36246		A	Place catheter in artery	5.28	NA	NA	1.95	2.36	0.33	NA	NA	7.56	7.97	XXX
36247		A	Place catheter in artery	6.30	NA	NA	2.28	2.77	0.35	NA	NA	8.93	9.42	XXX
36248		A	Place catheter in artery	1.01	NA	NA	0.41	0.48	0.07	NA	NA	1.49	1.56	ZZZ
36260		A	Insertion of infusion pump	9.71	NA	NA	5.40	5.88	0.93	NA	NA	16.04	16.52	090
36261		A	Revision of infusion pump	5.45	NA	NA	3.05	2.89	0.53	NA	NA	9.03	8.87	090
36262		A	Removal of infusion pump	4.02	NA	NA	2.50	2.40	0.41	NA	NA	6.93	6.83	090
36299		C	Vessel injection procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
36400		A	Drawing blood	0.18	0.56	0.45	0.05	0.06	0.02	0.76	0.65	0.25	0.26	XXX
36405		A	Drawing blood	0.18	0.44	0.45	0.05	0.16	0.01	0.63	0.64	0.24	0.35	XXX
36406		A	Drawing blood	0.18	0.50	0.42	0.05	0.08	0.01	0.69	0.61	0.24	0.27	XXX
36410		A	Drawing blood	0.18	0.43	0.38	0.05	0.10	0.01	0.62	0.57	0.24	0.29	XXX
36415		I	Drawing blood	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36420		A	Establish access to vein	1.01	NA	NA	0.34	0.39	0.10	NA	NA	1.45	1.50	XXX
36425		A	Establish access to vein	0.76	2.63	2.00	0.18	0.16	0.06	3.45	2.82	1.00	0.98	XXX
36430		A	Blood transfusion service	0.00	1.02	1.03	1.02	1.03	0.05	1.07	1.08	1.07	1.08	XXX
36440		A	Blood transfusion service	1.03	NA	NA	0.28	0.47	0.10	NA	NA	1.41	1.60	XXX
36450		A	Exchange transfusion service	2.23	NA	NA	0.70	1.04	0.14	NA	NA	3.07	3.41	XXX
36455		A	Exchange transfusion service	2.43	NA	NA	0.91	1.30	0.14	NA	NA	3.48	3.87	XXX
36460		A	Transfusion service, fetal	6.59	NA	NA	2.32	3.02	0.60	NA	NA	9.51	10.21	XXX
36468		R	Injection(s), spider veins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36469		R	Injection(s), spider veins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36470		A	Injection therapy of vein	1.09	2.65	2.06	0.41	0.38	0.11	3.85	3.26	1.61	1.58	010
36471		A	Injection therapy of veins	1.57	3.07	2.41	0.58	0.54	0.14	4.78	4.12	2.29	2.25	010
36481		A	Insertion of catheter, vein	6.99	NA	NA	2.84	3.57	0.40	NA	NA	10.23	10.96	000
36488		A	Insertion of catheter, vein	1.35	NA	NA	0.67	0.77	0.11	NA	NA	2.13	2.23	000
36489		A	Insertion of catheter, vein	1.22	3.56	2.98	0.62	0.77	0.09	4.87	4.29	1.93	2.08	000
36490		A	Insertion of catheter, vein	1.67	NA	NA	0.81	0.98	0.13	NA	NA	2.61	2.78	000
36491		A	Insertion of catheter, vein	1.43	NA	NA	0.73	0.97	0.13	NA	NA	2.29	2.53	000
36493		A	Repositioning of cvc	1.21	NA	NA	0.82	0.79	0.06	NA	NA	2.09	2.06	000
36500		A	Insertion of catheter, vein	3.52	NA	NA	1.28	0.98	0.17	NA	NA	4.97	4.67	000
36510		A	Insertion of catheter, vein	1.09	NA	NA	0.65	0.58	0.07	NA	NA	1.81	1.74	000
36520		A	Plasma and/or cell exchange	1.74	NA	NA	0.96	1.24	0.10	NA	NA	2.80	3.08	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
36521		A	Apheresis w/ adsorp/reinfuse	1.74	NA	NA	0.96	0.96	0.09	NA	NA	2.79	2.79	000
36522		A	Photopheresis	1.67	6.96	5.89	1.08	1.48	0.06	8.69	7.62	2.81	3.21	000
36530		R	Insertion of infusion pump	6.20	NA	NA	3.49	3.93	0.63	NA	NA	10.32	10.76	010
36531		R	Revision of infusion pump	4.87	NA	NA	3.26	3.63	0.49	NA	NA	8.62	8.99	010
36532		R	Removal of infusion pump	3.30	NA	NA	1.58	1.67	0.33	NA	NA	5.21	5.30	010
36533		A	Insertion of access device	5.32	4.17	4.29	3.32	3.66	0.52	10.01	10.13	9.16	9.50	010
36534		A	Revision of access device	2.80	NA	NA	1.43	1.91	0.22	NA	NA	4.45	4.93	010
36535		A	Removal of access device	2.27	2.66	2.49	1.90	1.92	0.23	5.16	4.99	4.40	4.42	010
36550		A	Declot vascular device	0.00	0.54	0.54	0.06	0.06	0.32	0.86	0.86	0.38	0.38	XXX
36600		A	Withdrawal of arterial blood	0.32	0.36	0.35	0.09	0.14	0.02	0.70	0.69	0.43	0.48	XXX
36620		A	Insertion catheter, artery	1.15	NA	NA	0.25	0.37	0.08	NA	NA	1.48	1.60	000
36625		A	Insertion catheter, artery	2.11	NA	NA	0.56	0.65	0.17	NA	NA	2.84	2.93	000
36640		A	Insertion catheter, artery	2.10	NA	NA	0.77	1.21	0.19	NA	NA	3.06	3.50	000
36660		A	Insertion catheter, artery	1.40	NA	NA	0.45	0.47	0.07	NA	NA	1.92	1.94	000
36680		A	Insert needle, bone cavity	1.20	NA	NA	0.51	0.72	0.11	NA	NA	1.82	2.03	000
36800		A	Insertion of cannula	2.43	NA	NA	1.55	1.77	0.21	NA	NA	4.19	4.41	000
36810		A	Insertion of cannula	3.97	NA	NA	2.27	2.89	0.39	NA	NA	6.63	7.25	000
36815		A	Insertion of cannula	2.62	NA	NA	1.81	2.14	0.27	NA	NA	4.70	5.03	000
36819		A	Av fusion by basilic vein	0.14	NA	NA	6.63	6.63	1.55	NA	NA	8.32	8.32	090
36821		A	Av fusion direct any site	8.93	NA	NA	4.95	5.68	0.99	NA	NA	14.87	15.60	090
36822		A	Insertion of cannula(s)	5.42	NA	NA	9.86	8.92	0.70	NA	NA	15.98	15.04	090
36823		A	Insertion of cannula(s)	0.21	NA	NA	11.62	11.62	0.67	NA	NA	12.50	12.50	090
36825		A	Artery-vein graft	9.84	NA	NA	5.64	7.17	1.10	NA	NA	16.58	18.11	090
36830		A	Artery-vein graft	0.12	NA	NA	6.26	7.40	1.36	NA	NA	7.74	8.88	090
36831		A	Av fistula excision	0.08	2.77	2.77	2.77	2.77	0.85	3.70	3.70	3.70	3.70	090
36832		A	Av fistula revision	10.50	NA	NA	5.63	6.15	1.16	NA	NA	17.29	17.81	090
36833		A	Av fistula revision	11.95	4.44	4.44	4.44	4.44	1.33	17.72	17.72	17.72	17.72	090
36834		A	Repair A-V aneurysm	9.93	NA	NA	3.95	5.08	1.13	NA	NA	15.01	16.14	090
36835		A	Artery to vein shunt	7.15	NA	NA	4.94	4.63	0.80	NA	NA	12.89	12.58	090
36860		A	External cannula declotting	2.01	1.97	2.18	1.58	1.88	0.13	4.11	4.32	3.72	4.02	000
36861		A	Cannula declotting	2.52	NA	NA	1.72	2.04	0.22	NA	NA	4.46	4.78	000
37140		A	Revision of circulation	23.60	NA	NA	10.40	12.22	1.06	NA	NA	35.06	36.88	090
37145		A	Revision of circulation	24.61	NA	NA	9.22	11.56	0.95	NA	NA	34.78	37.12	090
37160		A	Revision of circulation	21.60	NA	NA	9.43	11.89	2.29	NA	NA	33.32	35.78	090
37180		A	Revision of circulation	24.61	NA	NA	10.80	11.95	2.45	NA	NA	37.86	39.01	090
37181		A	Splice spleen/kidney veins	26.68	NA	NA	11.53	13.10	2.56	NA	NA	40.77	42.34	090
37195		A	Thrombolytic therapy, stroke	0.00	8.14	8.19	8.14	8.19	0.39	8.53	8.58	8.53	8.58	XXX
37200		A	Transcatheter biopsy	4.56	NA	NA	1.62	1.65	0.25	NA	NA	6.43	6.46	000
37201		A	Transcatheter therapy infuse	0.05	NA	NA	2.52	3.38	0.25	NA	NA	2.82	3.68	000
37202		A	Transcatheter therapy infuse	5.68	NA	NA	3.08	3.48	0.74	NA	NA	9.50	9.90	000
37203		A	Transcatheter retrieval	5.03	NA	NA	2.56	2.96	0.25	NA	NA	7.84	8.24	000
37204		A	Transcatheter occlusion	18.14	NA	NA	6.41	8.54	0.77	NA	NA	25.32	27.45	000
37205		A	Transcatheter stent	8.28	NA	NA	3.84	4.28	0.61	NA	NA	12.73	13.17	000
37206		A	Transcatheter stent add-on	4.13	NA	NA	1.58	1.89	0.32	NA	NA	6.03	6.34	ZZZ
37207		A	Transcatheter stent	8.28	NA	NA	3.72	4.19	0.97	NA	NA	12.97	13.44	000
37208		A	Transcatheter stent add-on	4.13	NA	NA	1.57	1.88	0.49	NA	NA	6.19	6.50	ZZZ
37209		A	Exchange arterial catheter	2.27	NA	NA	0.83	1.01	0.11	NA	NA	3.21	3.39	000
37250		A	Iv us first vessel add-on	2.10	NA	NA	0.88	0.97	0.24	NA	NA	3.22	3.31	ZZZ
37251		A	Iv us each add vessel add-on	1.60	NA	NA	0.68	0.75	0.19	NA	NA	2.47	2.54	ZZZ
37565		A	Ligation of neck vein	4.44	NA	NA	2.61	2.99	0.44	NA	NA	7.49	7.87	090
37600		A	Ligation of neck artery	4.57	NA	NA	3.29	3.82	0.42	NA	NA	8.28	8.81	090
37605		A	Ligation of neck artery	6.19	NA	NA	3.72	4.30	0.75	NA	NA	10.66	11.24	090
37606		A	Ligation of neck artery	6.28	NA	NA	4.11	4.69	1.11	NA	NA	11.50	12.08	090
37607		A	Ligation of a-v fistula	6.16	NA	NA	3.66	3.58	0.69	NA	NA	10.51	10.43	090
37609		A	Temporal artery procedure	2.30	6.02	5.12	2.13	2.20	0.22	8.54	7.64	4.65	4.72	010
37615		A	Ligation of neck artery	5.73	NA	NA	3.72	4.32	0.58	NA	NA	10.03	10.63	090
37616		A	Ligation of chest artery	16.49	NA	NA	12.76	10.71	1.70	NA	NA	30.95	28.90	090
37617		A	Ligation of abdomen artery	15.95	NA	NA	7.53	7.82	1.61	NA	NA	25.09	25.38	090
37618		A	Ligation of extremity artery	4.84	NA	NA	3.47	3.95	0.54	NA	NA	8.85	9.33	090
37620		A	Revision of major vein	10.56	NA	NA	5.50	6.52	0.78	NA	NA	16.84	17.86	090
37650		A	Revision of major vein	5.13	NA	NA	3.72	3.88	0.60	NA	NA	9.45	9.61	090
37660		A	Revision of major vein	10.61	NA	NA	6.05	6.10	1.19	NA	NA	17.85	17.90	090
37700		A	Revise leg vein	3.73	NA	NA	3.00	3.24	0.41	NA	NA	7.14	7.38	090
37720		A	Removal of leg vein	5.66	NA	NA	3.59	4.08	0.62	NA	NA	9.87	10.36	090
37730		A	Removal of leg veins	7.33	NA	NA	4.50	5.26	0.80	NA	NA	12.63	13.39	090
37735		A	Removal of leg veins/lesion	10.53	NA	NA	5.92	6.70	1.16	NA	NA	17.61	18.39	090
37760		A	Revision of leg veins	10.47	NA	NA	5.64	6.26	1.08	NA	NA	17.19	17.81	090
37780		A	Revision of leg vein	3.84	NA	NA	3.03	2.79	0.43	NA	NA	7.30	7.06	090
37785		A	Revise secondary varicosity	3.88	6.63	5.24	2.84	2.40	0.40	10.91	9.52	7.12	6.68	090
37788		A	Revascularization, penis	22.01	NA	NA	11.76	12.93	1.43	NA	NA	35.20	36.37	090
37790		A	Penile venous occlusion	8.34	NA	NA	7.25	6.99	0.53	NA	NA	16.12	15.86	090
37799		C	Vascular surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38100		A	Removal of spleen, total	13.01	NA	NA	6.20	6.97	1.30	NA	NA	20.51	21.28	090
38101		A	Removal of spleen, partial	13.74	NA	NA	6.39	6.69	1.39	NA	NA	21.52	21.82	090
38102		A	Removal of spleen, total	4.80	NA	NA	1.80	2.03	0.48	NA	NA	7.08	7.31	ZZZ
38115		A	Repair of ruptured spleen	14.19	NA	NA	6.68	7.08	1.43	NA	NA	22.30	22.70	090
38120		A	Laparoscopy, splenectomy	0.17	NA	NA	7.66	7.66	1.04	NA	NA	8.87	8.87	090
38129		C	Laparoscope proc, spleen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38200		A	Injection for spleen x-ray	2.64	NA	NA	0.97	1.19	0.12	NA	NA	3.73	3.95	000
38230		R	Bone marrow collection	4.54	NA	NA	2.39	2.55	0.23	NA	NA	7.16	7.32	010
38231		R	Stem cell collection	1.50	NA	NA	0.59	0.82	0.06	NA	NA	2.15	2.38	000
38240		R	Bone marrow/stem transplant	2.24	NA	NA	0.82	1.18	0.11	NA	NA	3.17	3.53	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
38241		R	Bone marrow/stem transplant	2.24	NA	NA	0.85	1.19	0.10	NA	NA	3.19	3.53	XXX
38300		A	Drainage, lymph node lesion	1.53	3.69	2.93	2.21	1.82	0.14	5.36	4.60	3.88	3.49	010
38305		A	Drainage, lymph node lesion	4.61	6.96	5.75	5.53	4.68	0.36	11.93	10.72	10.50	9.65	090
38308		A	Incision of lymph channels	4.95	NA	NA	4.88	4.58	0.43	NA	NA	10.26	9.96	090
38380		A	Thoracic duct procedure	7.46	NA	NA	7.35	6.72	0.60	NA	NA	15.41	14.78	090
38381		A	Thoracic duct procedure	12.88	NA	NA	11.92	10.99	1.66	NA	NA	26.46	25.53	090
38382		A	Thoracic duct procedure	10.08	NA	NA	8.65	7.80	1.06	NA	NA	19.79	18.94	090
38500		A	Biopsy/removal, lymph nodes	2.88	2.47	2.29	2.11	2.02	0.28	5.63	5.45	5.27	5.18	010
38505		A	Needle biopsy, lymph nodes	1.14	2.75	2.37	1.05	1.09	0.09	3.98	3.60	2.28	2.32	000
38510		A	Biopsy/removal, lymph nodes	4.14	NA	NA	4.00	3.69	0.38	NA	NA	8.52	8.21	090
38520		A	Biopsy/removal, lymph nodes	5.12	NA	NA	4.95	4.52	0.53	NA	NA	10.60	10.17	090
38525		A	Biopsy/removal, lymph nodes	4.66	NA	NA	3.67	3.46	0.47	NA	NA	8.80	8.59	090
38530		A	Biopsy/removal, lymph nodes	6.13	NA	NA	5.96	5.33	0.66	NA	NA	12.75	12.12	090
38542		A	Explore deep node(s), neck	5.91	NA	NA	5.46	5.25	0.50	NA	NA	11.87	11.66	090
38550		A	Removal, neck/armpit lesion	6.92	NA	NA	5.22	4.79	0.50	NA	NA	12.64	12.21	090
38555		A	Removal, neck/armpit lesion	14.14	NA	NA	10.98	10.21	1.53	NA	NA	26.65	25.88	090
38562		A	Removal, pelvic lymph nodes	10.49	NA	NA	6.19	6.51	0.84	NA	NA	17.52	17.84	090
38564		A	Removal, abdomen lymph nodes	10.83	NA	NA	6.04	6.54	0.01	NA	NA	16.88	17.38	090
38570		A	Laparoscopy, lymph node biop	9.25	NA	NA	4.49	5.10	0.81	NA	NA	14.55	15.16	010
38571		A	Laparoscopy, lymphadenectomy	12.38	NA	NA	5.27	6.28	0.78	NA	NA	18.43	19.44	010
38572		A	Laparoscopy, lymphadenectomy	14.32	NA	NA	6.18	7.35	1.04	NA	NA	21.54	22.71	010
38589		C	Laparoscope proc, lymphatic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38700		A	Removal of lymph nodes, neck	8.24	NA	NA	11.93	11.41	0.63	NA	NA	20.80	20.28	090
38720		A	Removal of lymph nodes, neck	13.61	NA	NA	14.13	14.66	1.03	NA	NA	28.77	29.30	090
38724		A	Removal of lymph nodes, neck	14.54	NA	NA	14.51	14.78	1.11	NA	NA	30.16	30.43	090
38740		A	Remove armpit lymph nodes	6.77	NA	NA	4.44	4.61	0.67	NA	NA	11.88	12.05	090
38745		A	Remove armpit lymph nodes	8.84	NA	NA	6.35	7.01	0.86	NA	NA	16.05	16.71	090
38746		A	Remove thoracic lymph nodes	4.39	NA	NA	1.76	1.94	0.56	NA	NA	6.71	6.89	ZZZ
38747		A	Remove abdominal lymph nodes	4.89	NA	NA	1.82	2.06	0.45	NA	NA	7.16	7.40	ZZZ
38760		A	Remove groin lymph nodes	8.74	NA	NA	5.38	5.84	0.83	NA	NA	14.95	15.41	090
38765		A	Remove groin lymph nodes	16.06	NA	NA	9.64	10.67	1.34	NA	NA	27.04	28.07	090
38770		A	Remove pelvis lymph nodes	13.23	NA	NA	6.48	8.81	0.85	NA	NA	20.56	22.89	090
38780		A	Remove abdomen lymph nodes	16.59	NA	NA	8.63	10.83	1.26	NA	NA	26.48	28.68	090
38790		A	Inject for lymphatic x-ray	1.29	21.16	16.32	0.48	0.81	0.09	22.54	17.70	1.86	2.19	000
38792		A	Identify sentinel node	0.52	NA	NA	0.21	0.21	0.01	NA	NA	0.74	0.74	000
38794		A	Access thoracic lymph duct	4.45	NA	NA	1.51	1.90	0.17	NA	NA	6.13	6.52	090
38999		C	Blood/lymph system procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
39000		A	Exploration of chest	6.10	NA	NA	9.45	8.73	0.75	NA	NA	16.30	15.58	090
39010		A	Exploration of chest	11.79	NA	NA	12.37	12.39	1.52	NA	NA	25.68	25.70	090
39200		A	Removal chest lesion	13.62	NA	NA	12.96	12.86	1.65	NA	NA	28.23	28.13	090
39220		A	Removal chest lesion	17.42	NA	NA	14.12	14.64	2.16	NA	NA	33.70	34.22	090
39400		A	Visualization of chest	5.61	NA	NA	9.32	8.38	0.72	NA	NA	15.65	14.71	010
39499		C	Chest procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
39501		A	Repair diaphragm laceration	13.19	NA	NA	8.29	9.11	1.35	NA	NA	22.83	23.65	090
39502		A	Repair paraesophageal hernia	16.33	NA	NA	8.51	9.62	1.64	NA	NA	26.48	27.59	090
39503		A	Repair of diaphragm hernia	37.54	NA	NA	15.86	18.73	3.26	NA	NA	56.66	59.53	090
39520		A	Repair of diaphragm hernia	16.10	NA	NA	11.26	11.85	1.82	NA	NA	29.18	29.77	090
39530		A	Repair of diaphragm hernia	15.41	NA	NA	9.17	10.69	1.68	NA	NA	26.26	27.78	090
39531		A	Repair of diaphragm hernia	16.42	NA	NA	9.08	9.52	1.79	NA	NA	27.29	27.73	090
39540		A	Repair of diaphragm hernia	13.32	NA	NA	8.75	9.81	1.39	NA	NA	23.46	24.52	090
39541		A	Repair of diaphragm hernia	14.41	NA	NA	8.37	9.58	1.47	NA	NA	24.25	25.46	090
39545		A	Revision of diaphragm	13.37	NA	NA	11.21	10.55	1.59	NA	NA	26.17	25.51	090
39560		A	Resect diaphragm, simple	0.12	NA	NA	8.66	8.66	1.22	NA	NA	10.00	10.00	090
39561		A	Resect diaphragm, complex	17.50	NA	NA	10.85	10.85	1.79	NA	NA	30.14	30.14	090
39599		C	Diaphragm surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
40490		A	Biopsy of lip	1.22	1.56	1.37	0.61	0.66	0.06	2.84	2.65	1.89	1.94	000
40500		A	Partial excision of lip	4.28	5.19	5.17	5.07	5.08	0.31	9.78	9.76	9.66	9.67	090
40510		A	Partial excision of lip	4.70	5.84	5.78	5.76	5.72	0.37	10.91	10.85	10.83	10.79	090
40520		A	Partial excision of lip	4.67	6.77	6.30	6.05	5.76	0.41	11.85	11.38	11.13	10.84	090
40525		A	Reconstruct lip with flap	7.55	NA	NA	7.43	7.83	0.69	NA	NA	15.67	16.07	090
40527		A	Reconstruct lip with flap	9.13	NA	NA	8.34	8.98	0.79	NA	NA	18.26	18.90	090
40530		A	Partial removal of lip	5.40	5.98	5.87	5.54	5.54	0.45	11.83	11.72	11.39	11.39	090
40650		A	Repair lip	3.64	4.89	4.75	3.95	4.05	0.32	8.85	8.71	7.91	8.01	090
40652		A	Repair lip	4.26	6.11	5.86	5.73	5.57	0.40	10.77	10.52	10.39	10.23	090
40654		A	Repair lip	5.31	6.68	6.60	6.48	6.45	0.48	12.47	12.39	12.27	12.24	090
40700		A	Repair cleft lip/nasal	12.79	NA	NA	9.72	9.59	0.98	NA	NA	23.49	23.36	090
40701		A	Repair cleft lip/nasal	15.85	NA	NA	10.38	13.03	1.38	NA	NA	27.61	30.26	090
40702		A	Repair cleft lip/nasal	13.04	NA	NA	8.77	9.12	0.95	NA	NA	22.76	23.11	090
40720		A	Repair cleft lip/nasal	13.55	NA	NA	10.71	10.64	1.31	NA	NA	25.57	25.50	090
40761		A	Repair cleft lip/nasal	14.72	NA	NA	11.41	11.50	1.31	NA	NA	27.44	27.53	090
40799		C	Lip surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
40800		A	Drainage of mouth lesion	1.17	1.68	1.46	0.48	0.56	0.09	2.94	2.72	1.74	1.82	010
40801		A	Drainage of mouth lesion	2.53	2.22	2.13	1.69	1.73	0.18	4.93	4.84	4.40	4.44	010
40804		A	Removal, foreign body, mouth	1.24	2.27	1.86	1.85	1.55	0.09	3.60	3.19	3.18	2.88	010
40805		A	Removal, foreign body, mouth	2.69	2.72	2.72	2.34	2.43	0.19	5.60	5.60	5.22	5.31	010
40806		A	Incision of lip fold	0.31	0.70	0.62	0.51	0.48	0.03	1.04	0.96	0.85	0.82	000
40808		A	Biopsy of mouth lesion	0.96	1.77	1.53	1.76	1.53	0.07	2.80	2.56	2.79	2.56	010
40810		A	Excision of mouth lesion	1.31	2.31	2.05	1.97	1.80	0.10	3.72	3.46	3.38	3.21	010
40812		A	Excise/repair mouth lesion	2.31	2.60	2.36	2.48	2.27	0.17	5.08	4.84	4.96	4.75	010
40814		A	Excise/repair mouth lesion	3.42	3.66	3.62	3.66	3.62	0.25	7.33	7.29	7.33	7.29	090
40816		A	Excision of mouth lesion	3.67	3.95	3.84	3.95	3.84	0.26	7.88	7.77	7.88	7.77	090
40818		A	Excise oral mucosa for graft	2.41	3.82	3.48	3.82	3.48	0.14	6.37	6.03	6.37	6.03	090

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
40819		A	Excise lip or cheek fold	2.41	3.18	2.72	3.05	2.62	0.17	5.76	5.30	5.63	5.20	090
40820		A	Treatment of mouth lesion	1.28	2.07	1.70	1.90	1.57	0.09	3.44	3.07	3.27	2.94	010
40830		A	Repair mouth laceration	1.76	2.20	1.83	1.89	1.60	0.15	4.11	3.74	3.80	3.51	010
40831		A	Repair mouth laceration	2.46	2.28	2.24	2.28	2.24	0.21	4.95	4.91	4.95	4.91	010
40840		R	Reconstruction of mouth	8.73	5.72	6.00	5.72	6.00	0.66	15.11	15.39	15.11	15.39	090
40842		R	Reconstruction of mouth	8.73	5.44	5.79	5.44	5.79	0.71	14.88	15.23	14.88	15.23	090
40843		R	Reconstruction of mouth	12.10	8.08	8.45	6.31	7.12	0.63	20.81	21.18	19.04	19.85	090
40844		R	Reconstruction of mouth	16.01	8.60	9.61	8.60	9.61	1.44	26.05	27.06	26.05	27.06	090
40845		R	Reconstruction of mouth	18.58	10.03	13.07	10.03	13.07	1.56	30.17	33.21	30.17	33.21	090
40899		C	Mouth surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
41000		A	Drainage of mouth lesion	1.30	2.00	1.71	1.27	1.16	0.10	3.40	3.11	2.67	2.56	010
41005		A	Drainage of mouth lesion	1.26	1.83	1.54	1.28	1.13	0.10	3.19	2.90	2.64	2.49	010
41006		A	Drainage of mouth lesion	3.24	3.56	2.95	3.01	2.53	0.24	7.04	6.43	6.49	6.01	090
41007		A	Drainage of mouth lesion	3.10	3.24	3.22	2.80	2.89	0.16	6.50	6.48	6.06	6.15	090
41008		A	Drainage of mouth lesion	3.37	3.12	2.63	2.99	2.53	0.24	6.73	6.24	6.60	6.14	090
41009		A	Drainage of mouth lesion	3.59	3.26	3.34	2.79	2.99	0.27	7.12	7.20	6.65	6.85	090
41010		A	Incision of tongue fold	1.06	2.80	2.20	2.80	2.20	0.06	3.92	3.32	3.92	3.32	010
41015		A	Drainage of mouth lesion	3.96	3.74	3.04	2.98	2.47	0.29	7.99	7.29	7.23	6.72	090
41016		A	Drainage of mouth lesion	4.07	3.55	3.66	3.00	3.25	0.32	7.94	8.05	7.39	7.64	090
41017		A	Drainage of mouth lesion	4.07	3.74	3.19	3.05	2.67	0.32	8.13	7.58	7.44	7.06	090
41018		A	Drainage of mouth lesion	5.10	4.17	4.20	3.46	3.66	0.34	9.61	9.64	8.90	9.10	090
41100		A	Biopsy of tongue	1.63	2.26	1.91	2.18	1.85	0.11	4.00	3.65	3.92	3.59	010
41105		A	Biopsy of tongue	1.42	2.04	1.81	2.04	1.81	0.11	3.57	3.34	3.57	3.34	010
41108		A	Biopsy of floor of mouth	1.05	1.96	1.70	1.88	1.64	0.08	3.09	2.83	3.01	2.77	010
41110		A	Excision of tongue lesion	1.51	2.60	2.30	2.17	1.98	0.11	4.22	3.92	3.79	3.60	010
41112		A	Excision of tongue lesion	2.73	3.15	3.01	3.15	3.01	0.20	6.08	5.94	6.08	5.94	090
41113		A	Excision of tongue lesion	3.19	3.13	3.27	3.13	3.27	0.23	6.55	6.69	6.55	6.69	090
41114		A	Excision of tongue lesion	8.47	NA	NA	5.85	6.12	0.62	NA	NA	14.94	15.21	090
41115		A	Excision of tongue fold	1.74	2.37	2.26	2.15	2.10	0.12	4.23	4.12	4.01	3.96	010
41116		A	Excision of mouth lesion	2.44	3.06	2.97	3.02	2.94	0.18	5.68	5.59	5.64	5.56	090
41120		A	Partial removal of tongue	9.77	NA	NA	7.88	7.89	0.73	NA	NA	18.38	18.39	090
41130		A	Partial removal of tongue	11.15	NA	NA	8.64	8.94	0.82	NA	NA	20.61	20.91	090
41135		A	Tongue and neck surgery	23.09	NA	NA	14.89	16.13	1.71	NA	NA	39.69	40.93	090
41140		A	Removal of tongue	25.50	NA	NA	15.51	16.76	1.90	NA	NA	42.91	44.16	090
41145		A	Tongue removal, neck surgery	30.06	NA	NA	19.45	20.77	2.20	NA	NA	51.71	53.03	090
41150		A	Tongue, mouth, jaw surgery	23.04	NA	NA	15.76	16.97	1.70	NA	NA	40.50	41.71	090
41153		A	Tongue, mouth, neck surgery	23.77	NA	NA	16.30	19.01	1.79	NA	NA	41.86	44.57	090
41155		A	Tongue, jaw, & neck surgery	27.72	NA	NA	18.54	22.03	2.03	NA	NA	48.29	51.78	090
41250		A	Repair tongue laceration	1.91	2.35	2.05	1.44	1.37	0.16	4.42	4.12	3.51	3.44	010
41251		A	Repair tongue laceration	2.27	2.15	2.18	1.72	1.85	0.17	4.59	4.62	4.16	4.29	010
41252		A	Repair tongue laceration	2.97	2.95	2.85	2.12	2.23	0.24	6.16	6.06	5.33	5.44	010
41500		A	Fixation of tongue	3.71	NA	NA	3.72	3.68	0.25	NA	NA	7.68	7.64	090
41510		A	Tongue to lip surgery	3.42	NA	NA	4.55	4.10	0.21	NA	NA	8.18	7.73	090
41520		A	Reconstruction, tongue fold	2.73	2.62	2.75	2.62	2.75	0.20	5.55	5.68	5.55	5.68	090
41599		C	Tongue and mouth surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
41800		A	Drainage of gum lesion	1.17	1.69	1.46	1.06	0.98	0.10	2.96	2.73	2.33	2.25	010
41805		A	Removal foreign body, gum	1.24	1.68	1.49	1.68	1.49	0.09	3.01	2.82	3.01	2.82	010
41806		A	Removal foreign body,jawbone	2.69	2.33	2.19	2.13	2.04	0.20	5.22	5.08	5.02	4.93	010
41820		R	Excision, gum, each quadrant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41821		R	Excision of gum flap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41822		R	Excision of gum lesion	2.31	2.52	2.71	0.97	1.55	0.18	5.01	5.20	3.46	4.04	010
41823		R	Excision of gum lesion	3.30	3.19	3.38	2.69	3.00	0.23	6.72	6.91	6.22	6.53	090
41825		A	Excision of gum lesion	1.31	2.10	1.98	1.92	1.85	0.10	3.51	3.39	3.33	3.26	010
41826		A	Excision of gum lesion	2.31	2.39	2.36	2.36	2.33	0.17	4.87	4.84	4.84	4.81	010
41827		A	Excision of gum lesion	3.42	3.22	3.44	3.22	3.44	0.25	6.89	7.11	6.89	7.11	090
41828		R	Excision of gum lesion	3.09	2.77	3.18	2.16	2.73	0.21	6.07	6.48	5.46	6.03	010
41830		R	Removal of gum tissue	3.35	2.96	3.22	2.57	2.93	0.24	6.55	6.81	6.16	6.52	010
41850		R	Treatment of gum lesion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41870		R	Gum graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41872		R	Repair gum	2.59	2.77	2.85	2.15	2.39	0.19	5.55	5.63	4.93	5.17	090
41874		R	Repair tooth socket	3.09	2.64	2.90	2.18	2.56	0.24	5.97	6.23	5.51	5.89	090
41899		C	Dental surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42000		A	Drainage mouth roof lesion	1.23	2.11	1.75	1.32	1.16	0.09	3.43	3.07	2.64	2.48	010
42100		A	Biopsy roof of mouth	1.31	2.05	1.75	2.03	1.74	0.10	3.46	3.16	3.44	3.15	010
42104		A	Excision lesion, mouth roof	1.64	2.11	2.02	2.11	2.02	0.11	3.86	3.77	3.86	3.77	010
42106		A	Excision lesion, mouth roof	2.10	2.37	2.38	2.37	2.38	0.15	4.62	4.63	4.62	4.63	010
42107		A	Excision lesion, mouth roof	4.44	3.76	4.15	3.76	4.15	0.32	8.52	8.91	8.52	8.91	090
42120		A	Remove palate/lesion	6.17	NA	NA	5.39	5.89	0.45	NA	NA	12.01	12.51	090
42140		A	Excision of uvula	1.62	3.07	2.67	2.69	2.39	0.11	4.80	4.40	4.42	4.12	090
42145		A	Repair palate, pharynx/uvula	8.05	NA	NA	6.65	7.39	0.57	NA	NA	15.27	16.01	090
42160		A	Treatment mouth roof lesion	1.80	2.62	2.38	2.20	2.07	0.13	4.55	4.31	4.13	4.00	010
42180		A	Repair palate	2.50	2.35	2.37	1.86	2.00	0.18	5.03	5.05	4.54	4.68	010
42182		A	Repair palate	3.83	2.74	3.00	2.74	3.00	0.29	6.86	7.12	6.86	7.12	010
42200		A	Reconstruct cleft palate	0.12	NA	NA	9.18	8.84	1.03	NA	NA	10.33	9.99	090
42205		A	Reconstruct cleft palate	9.59	NA	NA	6.94	8.07	0.85	NA	NA	17.38	18.51	090
42210		A	Reconstruct cleft palate	14.50	NA	NA	8.56	9.82	1.15	NA	NA	24.21	25.47	090
42215		A	Reconstruct cleft palate	8.82	NA	NA	7.61	7.79	0.76	NA	NA	17.19	17.37	090
42220		A	Reconstruct cleft palate	7.02	NA	NA	5.90	5.89	0.49	NA	NA	13.41	13.40	090
42225		A	Reconstruct cleft palate	9.54	NA	NA	8.73	8.42	0.80	NA	NA	19.07	18.76	090
42226		A	Lengthening of palate	10.01	NA	NA	8.28	8.35	0.79	NA	NA	19.08	19.15	090
42227		A	Lengthening of palate	9.52	NA	NA	6.01	6.52	0.78	NA	NA	16.31	16.82	090
42235		A	Repair palate	7.87	NA	NA	5.85	5.89	0.59	NA	NA	14.31	14.35	090

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
42260		A	Repair nose to lip fistula	9.80	6.88	6.24	6.88	6.24	0.76	17.44	16.80	17.44	16.80	090
42280		A	Preparation, palate mold	1.54	1.31	1.52	0.73	1.09	0.10	2.95	3.16	2.37	2.73	010
42281		A	Insertion, palate prosthesis	1.93	1.58	1.59	0.95	1.11	0.13	3.64	3.65	3.01	3.17	010
42299		C	Palate/uvula surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42300		A	Drainage of salivary gland	1.93	2.27	1.96	1.69	1.53	0.14	4.34	4.03	3.76	3.60	010
42305		A	Drainage of salivary gland	6.07	NA	NA	4.81	4.20	0.46	NA	NA	11.34	10.73	090
42310		A	Drainage of salivary gland	1.56	2.04	1.81	1.39	1.32	0.11	3.71	3.48	3.06	2.99	010
42320		A	Drainage of salivary gland	2.35	2.43	2.32	1.97	1.98	0.17	4.95	4.84	4.49	4.50	010
42325	•	A	Create salivary cyst drain	2.75	2.87	2.73	1.02	1.34	0.22	5.84	5.70	3.99	4.31	090
42326		A	Create salivary cyst drain	3.78	4.10	4.20	1.55	2.29	0.27	8.15	8.25	5.60	6.34	090
42330		A	Removal of salivary stone	2.21	2.40	2.10	1.13	1.15	0.16	4.77	4.47	3.50	3.52	010
42335		A	Removal of salivary stone	3.31	3.13	3.02	3.13	3.02	0.24	6.68	6.57	6.68	6.57	090
42340		A	Removal of salivary stone	4.60	4.26	4.35	4.26	4.35	0.32	9.18	9.27	9.18	9.27	090
42400		A	Biopsy of salivary gland	0.78	2.06	1.76	0.39	0.51	0.06	2.90	2.60	1.23	1.35	000
42405		A	Biopsy of salivary gland	3.29	2.95	2.63	2.92	2.61	0.24	6.48	6.16	6.45	6.14	010
42408		A	Excision of salivary cyst	4.54	3.84	3.76	3.84	3.76	0.34	8.72	8.64	8.72	8.64	090
42409		A	Drainage of salivary cyst	2.81	3.00	3.01	3.00	3.01	0.20	6.01	6.02	6.01	6.02	090
42410		A	Excise parotid gland/lesion	9.34	NA	NA	7.15	6.98	0.78	NA	NA	17.27	17.10	090
42415		A	Excise parotid gland/lesion	16.89	NA	NA	11.50	12.07	1.30	NA	NA	29.69	30.26	090
42420		A	Excise parotid gland/lesion	19.59	NA	NA	13.03	13.79	1.48	NA	NA	34.10	34.86	090
42425		A	Excise parotid gland/lesion	13.02	NA	NA	9.62	10.23	0.99	NA	NA	23.63	24.24	090
42426		A	Excise parotid gland/lesion	21.26	NA	NA	13.97	16.82	1.60	NA	NA	36.83	39.68	090
42440		A	Excise submaxillary gland	6.97	NA	NA	5.37	6.11	0.53	NA	NA	12.87	3.61	090
42450		A	Excise sublingual gland	4.62	4.28	4.14	4.28	4.14	0.34	9.24	9.10	9.24	9.10	090
42500		A	Repair salivary duct	4.30	4.26	4.45	4.26	4.45	0.32	8.88	9.07	8.88	9.07	090
42505		A	Repair salivary duct	6.18	4.72	5.39	4.72	5.39	0.47	11.37	12.04	11.37	12.04	090
42507		A	Parotid duct diversion	6.11	NA	NA	5.60	5.46	0.46	NA	NA	12.17	12.03	090
42508		A	Parotid duct diversion	9.10	NA	NA	6.93	7.26	0.68	NA	NA	16.71	17.04	090
42509		A	Parotid duct diversion	11.54	NA	NA	8.74	8.54	0.82	NA	NA	21.10	20.90	090
42510		A	Parotid duct diversion	8.15	NA	NA	6.60	7.03	0.81	NA	NA	15.56	15.99	090
42550		A	Injection for salivary x-ray	1.25	11.98	9.11	0.44	0.45	0.05	13.28	10.41	1.74	1.75	000
42600		A	Closure of salivary fistula	4.82	5.56	5.23	4.93	4.75	0.37	10.75	10.42	10.12	9.94	090
42650		A	Dilation of salivary duct	0.77	0.94	0.81	0.39	0.40	0.06	1.77	1.64	1.22	1.23	000
42660		A	Dilation of salivary duct	1.13	1.08	0.95	1.08	0.95	0.07	2.28	2.15	2.28	2.15	000
42665		A	Ligation of salivary duct	2.53	3.15	2.92	3.02	2.82	0.18	5.86	5.63	5.73	5.53	090
42699		C	Salivary surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42700		A	Drainage of tonsil abscess	1.62	2.57	2.16	1.62	1.45	0.11	4.30	3.89	3.35	3.18	010
42720		A	Drainage of throat abscess	5.42	4.43	3.84	4.26	3.71	0.39	10.24	9.65	10.07	9.52	010
42725		A	Drainage of throat abscess	10.72	NA	NA	7.92	7.15	0.84	NA	NA	19.48	18.71	090
42800		A	Biopsy of throat	1.39	2.43	2.02	2.13	1.80	0.10	3.92	3.51	3.62	3.29	010
42802		A	Biopsy of throat	1.54	2.49	2.15	2.20	1.93	0.11	4.14	3.80	3.85	3.58	010
42804		A	Biopsy of upper nose/throat	1.24	2.37	2.07	2.05	1.83	0.09	3.70	3.40	3.38	3.16	010
42806		A	Biopsy of upper nose/throat	1.58	2.74	2.44	2.25	2.07	0.11	4.43	4.13	3.94	3.76	010
42808		A	Excise pharynx lesion	2.30	3.89	3.60	2.64	2.66	0.16	6.35	6.06	5.10	5.12	010
42809		A	Remove pharynx foreign body	1.81	2.77	2.30	1.49	1.34	0.14	4.72	4.25	3.44	3.29	010
42810		A	Excision of neck cyst	3.25	4.76	4.42	3.81	3.71	0.27	8.28	7.94	7.33	7.23	090
42815		A	Excision of neck cyst	7.07	NA	NA	5.89	6.58	0.55	NA	NA	13.51	14.20	090
42820		A	Remove tonsils and adenoids	3.91	NA	NA	3.48	3.47	0.26	NA	NA	7.65	7.64	090
42821		A	Remove tonsils and adenoids	4.29	NA	NA	3.68	3.83	0.31	NA	NA	8.28	8.43	090
42825		A	Removal of tonsils	3.42	NA	NA	3.27	3.17	0.25	NA	NA	6.94	6.84	090
42826		A	Removal of tonsils	3.38	NA	NA	3.22	3.43	0.24	NA	NA	6.84	7.05	090
42830		A	Removal of adenoids	2.57	NA	NA	2.16	2.13	0.18	NA	NA	4.91	4.88	090
42831		A	Removal of adenoids	2.71	NA	NA	2.26	2.34	0.19	NA	NA	5.16	5.24	090
42835		A	Removal of adenoids	2.30	NA	NA	2.53	2.40	0.16	NA	NA	4.99	4.86	090
42836		A	Removal of adenoids	3.18	NA	NA	3.13	3.11	0.23	NA	NA	6.54	6.52	090
42842		A	Extensive surgery of throat	8.76	NA	NA	6.93	7.01	0.63	NA	NA	16.32	16.40	090
42844		A	Extensive surgery of throat	14.31	NA	NA	10.50	10.82	1.07	NA	NA	25.88	26.20	090
42845		A	Extensive surgery of throat	24.29	NA	NA	16.02	17.07	1.82	NA	NA	42.13	43.18	090
42860		A	Excision of tonsil tags	2.22	NA	NA	2.59	2.46	0.16	NA	NA	4.97	4.84	090
42870		A	Excision of lingual tonsil	5.40	NA	NA	5.28	4.59	0.38	NA	NA	11.06	10.37	090
42890		A	Partial removal of pharynx	12.94	NA	NA	9.75	9.75	0.94	NA	NA	23.63	23.63	090
42892		A	Revision of pharyngeal walls	15.83	NA	NA	11.21	11.37	1.15	NA	NA	28.19	28.35	090
42894		A	Revision of pharyngeal walls	22.88	NA	NA	15.71	16.14	1.69	NA	NA	40.28	40.71	090
42900		A	Repair throat wound	5.25	NA	NA	3.50	3.78	0.39	NA	NA	9.14	9.42	010
42950		A	Reconstruction of throat	8.10	NA	NA	6.67	7.42	0.62	NA	NA	15.39	16.14	090
42953		A	Repair throat, esophagus	8.96	NA	NA	8.11	7.80	0.75	NA	NA	17.82	17.51	090
42955		A	Surgical opening of throat	7.39	NA	NA	5.88	5.31	0.59	NA	NA	13.86	13.29	090
42960		A	Control throat bleeding	2.33	NA	NA	1.87	1.70	0.17	NA	NA	4.37	4.20	010
42961		A	Control throat bleeding	5.59	NA	NA	4.66	3.97	0.40	NA	NA	10.65	9.96	090
42962		A	Control throat bleeding	7.14	NA	NA	5.44	5.70	0.52	NA	NA	13.10	13.36	090
42970		A	Control nose/throat bleeding	5.43	NA	NA	3.38	2.82	0.34	NA	NA	9.15	8.59	090
42971		A	Control nose/throat bleeding	6.21	NA	NA	4.91	4.47	0.45	NA	NA	11.57	11.13	090
42972		A	Control nose/throat bleeding	7.20	NA	NA	5.08	5.05	0.53	NA	NA	12.81	12.78	090
42999		C	Throat surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43020		A	Incision of esophagus	8.09	NA	NA	6.52	6.68	0.76	NA	NA	15.37	15.53	090
43030		A	Throat muscle surgery	7.69	NA	NA	6.15	6.91	0.62	NA	NA	14.46	15.22	090
43045		A	Incision of esophagus	20.12	NA	NA	12.89	13.05	2.34	NA	NA	35.35	35.51	090
43100		A	Excision of esophagus lesion	9.19	NA	NA	6.75	6.74	0.87	NA	NA	16.81	16.80	090
43101		A	Excision of esophagus lesion	16.24	NA	NA	10.02	10.09	1.88	NA	NA	28.14	28.21	090
43107		A	Removal of esophagus	28.79	NA	NA	16.57	18.53	3.29	NA	NA	48.65	50.61	090
43108		A	Removal of esophagus	34.19	NA	NA	16.97	19.58	3.79	NA	NA	54.95	57.56	090
43112		A	Removal of esophagus	31.22	NA	NA	18.51	19.76	3.63	NA	NA	53.36	54.61	090

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
43113		A	Removal of esophagus	35.27	NA	NA	18.53	20.75	4.18	NA	NA	57.98	60.20	090
43116		A	Partial removal of esophagus	31.22	NA	NA	17.68	20.12	3.01	NA	NA	51.91	54.35	090
43117		A	Partial removal of esophagus	30.02	NA	NA	17.24	19.79	3.45	NA	NA	50.71	53.26	090
43118		A	Partial removal of esophagus	33.20	NA	NA	17.18	19.74	3.39	NA	NA	53.77	56.33	090
43121		A	Partial removal of esophagus	29.19	NA	NA	17.78	19.13	3.40	NA	NA	50.37	51.72	090
43122		A	Partial removal of esophagus	29.11	NA	NA	15.73	17.59	3.21	NA	NA	48.05	49.91	090
43123		A	Partial removal of esophagus	33.20	NA	NA	19.23	21.28	3.58	NA	NA	56.01	58.06	090
43124		A	Removal of esophagus	27.32	NA	NA	16.53	18.50	2.94	NA	NA	46.79	48.76	090
43130		A	Removal of esophagus pouch	11.75	NA	NA	8.86	9.50	1.06	NA	NA	21.67	22.81	090
43135		A	Removal of esophagus pouch	16.10	NA	NA	11.12	11.52	1.90	NA	NA	29.12	29.52	090
43200		A	Esophagus endoscopy	1.59	5.33	4.55	1.09	1.37	0.11	7.03	6.25	2.79	3.07	000
43202		A	Esophagus endoscopy, biopsy	1.89	4.72	4.20	1.04	1.44	0.13	6.74	6.22	3.06	3.46	000
43204		A	Esophagus endoscopy & inject	3.77	NA	NA	1.58	2.31	0.24	NA	NA	5.59	6.32	000
43205		A	Esophagus endoscopy/ligation	3.79	NA	NA	1.57	1.91	0.23	NA	NA	5.59	5.93	000
43215		A	Esophagus endoscopy	2.60	NA	NA	1.20	1.68	0.19	NA	NA	3.99	4.47	000
43216		A	Esophagus endoscopy/lesion	2.40	NA	NA	1.11	1.55	0.17	NA	NA	3.68	4.12	000
43217		A	Esophagus endoscopy	2.90	NA	NA	1.28	1.83	0.19	NA	NA	4.37	4.92	000
43219		A	Esophagus endoscopy	2.80	NA	NA	1.36	1.86	0.20	NA	NA	4.36	4.86	000
43220		A	Esoph endoscopy, dilation	2.10	NA	NA	1.03	1.40	0.13	NA	NA	3.26	3.63	000
43226		A	Esoph endoscopy, dilation	2.34	NA	NA	1.09	1.52	0.15	NA	NA	3.58	4.01	000
43227		A	Esoph endoscopy, repair	3.60	NA	NA	1.51	2.21	0.23	NA	NA	5.34	6.04	000
43228		A	Esoph endoscopy, ablation	3.77	NA	NA	1.66	2.37	0.26	NA	NA	5.69	6.40	000
43234		A	Upper GI endoscopy, exam	2.01	3.50	3.32	0.98	1.43	0.14	5.65	5.47	3.13	3.58	000
43235		A	Uppr gi endoscopy, diagnosis	2.39	4.70	4.36	1.11	1.67	0.15	7.24	6.90	3.65	4.21	000
43239		A	Upper GI endoscopy, biopsy	2.69	4.92	4.62	1.21	1.84	0.17	7.78	7.48	4.07	4.70	000
43241		A	Upper GI endoscopy with tube	2.59	NA	NA	1.16	1.64	0.17	NA	NA	3.92	4.40	000
43243		A	Upper gi endoscopy & inject	4.57	NA	NA	1.86	2.76	0.28	NA	NA	6.71	7.61	000
43244		A	Upper GI endoscopy/ligation	4.59	NA	NA	1.86	2.34	0.28	NA	NA	6.73	7.21	000
43245		A	Operative upper GI endoscopy	3.39	NA	NA	1.44	2.09	0.22	NA	NA	5.05	5.70	000
43246		A	Place gastrostomy tube	4.33	NA	NA	1.74	2.60	0.30	NA	NA	6.37	7.23	000
43247		A	Operative upper GI endoscopy	3.39	NA	NA	1.44	2.09	0.22	NA	NA	5.05	5.70	000
43248		A	Uppr gi endoscopy/guide wire	3.15	NA	NA	1.36	1.96	0.20	NA	NA	4.71	5.31	000
43249		A	Esoph endoscopy, dilation	2.90	NA	NA	1.26	1.81	0.18	NA	NA	4.34	4.89	000
43250		A	Upper GI endoscopy/tumor	3.20	NA	NA	1.37	1.98	0.21	NA	NA	4.78	5.39	000
43251		A	Operative upper GI endoscopy	3.70	NA	NA	1.54	2.26	0.24	NA	NA	5.48	6.20	000
43255		A	Operative upper GI endoscopy	4.40	NA	NA	1.71	2.60	0.27	NA	NA	6.38	7.27	000
43258		A	Operative upper GI endoscopy	4.55	NA	NA	1.85	2.75	0.29	NA	NA	6.69	7.59	000
43259		A	Endoscopic ultrasound exam	4.89	NA	NA	2.03	2.61	0.30	NA	NA	7.22	7.80	000
43260		A	Endo cholangiopancreatograph	5.96	NA	NA	2.34	3.38	0.36	NA	NA	8.66	9.70	000
43261		A	Endo cholangiopancreatograph	6.27	NA	NA	2.45	3.46	0.38	NA	NA	9.10	10.11	000
43262		A	Endo cholangiopancreatograph	7.39	NA	NA	2.85	4.34	0.46	NA	NA	10.70	12.19	000
43263		A	Endo cholangiopancreatograph	6.19	NA	NA	2.42	3.40	0.38	NA	NA	8.99	9.97	000
43264		A	Endo cholangiopancreatograph	8.90	NA	NA	3.39	4.96	0.54	NA	NA	12.83	14.40	000
43265		A	Endo cholangiopancreatograph	8.90	NA	NA	3.38	4.39	0.54	NA	NA	12.82	13.83	000
43267		A	Endo cholangiopancreatograph	7.39	NA	NA	2.85	4.15	0.46	NA	NA	10.70	12.00	000
43268		A	Endo cholangiopancreatograph	7.39	NA	NA	2.85	4.34	0.46	NA	NA	10.70	12.19	000
43269		A	Endo cholangiopancreatograph	6.04	NA	NA	2.37	3.58	0.37	NA	NA	8.78	9.99	000
43271		A	Endo cholangiopancreatograph	7.39	NA	NA	2.84	4.20	0.44	NA	NA	10.67	12.03	000
43272		A	Endo cholangiopancreatograph	7.39	NA	NA	2.85	3.66	0.44	NA	NA	10.68	11.49	000
43280		A	Laparoscopy, fundoplasty	17.25	NA	NA	8.58	9.66	1.72	NA	NA	27.55	28.63	090
43289		C	Laparoscope proc, esoph	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43300		A	Repair of esophagus	9.14	NA	NA	6.78	7.81	0.88	NA	NA	16.80	17.83	090
43305		A	Repair esophagus and fistula	17.39	NA	NA	12.11	12.80	1.32	NA	NA	30.82	31.51	090
43310		A	Repair of esophagus	27.47	NA	NA	17.92	18.05	3.07	NA	NA	48.46	48.59	090
43312		A	Repair esophagus and fistula	30.50	NA	NA	22.78	20.81	3.46	NA	NA	56.74	54.77	090
43320		A	Fuse esophagus & stomach	16.07	NA	NA	10.44	11.00	1.69	NA	NA	28.20	28.76	090
43324		A	Revise esophagus & stomach	16.58	NA	NA	8.54	9.63	1.66	NA	NA	26.78	27.87	090
43325		A	Revise esophagus & stomach	16.17	NA	NA	8.91	9.83	1.66	NA	NA	26.74	27.66	090
43326		A	Revise esophagus & stomach	15.91	NA	NA	10.41	9.85	1.84	NA	NA	28.16	27.60	090
43330		A	Repair of esophagus	15.94	NA	NA	8.50	9.46	1.54	NA	NA	25.98	26.94	090
43331		A	Repair of esophagus	16.23	NA	NA	10.62	11.85	1.72	NA	NA	28.57	29.80	090
43340		A	Fuse esophagus & intestine	15.81	NA	NA	10.01	10.88	1.70	NA	NA	27.52	28.39	090
43341		A	Fuse esophagus & intestine	16.81	NA	NA	14.01	13.19	1.33	NA	NA	32.15	31.33	090
43350		A	Surgical opening, esophagus	12.72	NA	NA	8.22	8.30	1.19	NA	NA	22.13	22.21	090
43351		A	Surgical opening, esophagus	14.79	NA	NA	10.69	10.40	1.76	NA	NA	27.24	26.95	090
43352		A	Surgical opening, esophagus	12.30	NA	NA	9.57	9.58	1.29	NA	NA	23.16	23.17	090
43360		A	Gastrointestinal repair	28.78	NA	NA	16.03	17.82	2.97	NA	NA	47.78	49.57	090
43361		A	Gastrointestinal repair	32.65	NA	NA	18.56	20.78	3.21	NA	NA	54.42	56.64	090
43400		A	Ligate esophagus veins	17.09	NA	NA	8.46	9.28	1.39	NA	NA	26.94	27.76	090
43401		A	Esophagus surgery for veins	17.81	NA	NA	9.27	9.56	1.76	NA	NA	28.84	29.13	090
43405		A	Ligate/staple esophagus	16.13	NA	NA	8.97	10.62	1.77	NA	NA	26.87	28.52	090
43410		A	Repair esophagus wound	10.86	NA	NA	8.91	9.10	1.16	NA	NA	20.93	21.12	090
43415		A	Repair esophagus wound	17.06	NA	NA	10.65	11.45	1.90	NA	NA	29.61	30.41	090
43420		A	Repair esophagus opening	11.57	NA	NA	7.50	7.22	0.85	NA	NA	19.92	19.64	090
43425		A	Repair esophagus opening	16.95	NA	NA	11.60	11.40	0.02	NA	NA	28.57	28.37	090
43450		A	Dilate esophagus	1.38	1.22	1.10	0.59	0.63	0.09	2.69	2.57	2.06	2.10	000
43453		A	Dilate esophagus	1.51	NA	NA	0.63	0.88	0.10	NA	NA	2.24	2.49	000
43456		A	Dilate esophagus	2.57	NA	NA	1.01	1.43	0.16	NA	NA	3.74	4.16	000
43458		A	Dilate esophagus	3.06	NA	NA	1.20	1.31	0.20	NA	NA	4.46	4.57	000
43460		A	Pressure treatment esophagus	3.80	NA	NA	1.46	1.55	0.28	NA	NA	5.54	5.63	000
43496		C	Free jejunum flap, microvasc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
43499		C	Esophagus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
43500		A	Surgical opening of stomach	8.44	NA	NA	4.25	4.85	0.82	NA	NA	13.51	14.11	090
43501		A	Surgical repair of stomach	15.31	NA	NA	7.11	7.66	1.53	NA	NA	23.95	24.50	090
43502		A	Surgical repair of stomach	17.67	NA	NA	8.22	8.49	1.80	NA	NA	27.69	27.96	090
43510		A	Surgical opening of stomach	9.99	NA	NA	5.93	6.70	0.77	NA	NA	16.69	17.46	090
43520		A	Incision of pyloric muscle	7.63	NA	NA	5.17	5.09	0.88	NA	NA	13.68	13.60	090
43600		A	Biopsy of stomach	1.91	NA	NA	0.93	0.83	0.12	NA	NA	2.96	2.86	000
43605		A	Biopsy of stomach	9.15	NA	NA	4.55	5.02	0.90	NA	NA	14.60	15.07	090
43610		A	Excision of stomach lesion	11.15	NA	NA	5.60	6.42	1.11	NA	NA	17.86	18.68	090
43611		A	Excision of stomach lesion	13.63	NA	NA	6.59	7.16	1.33	NA	NA	21.55	22.12	090
43620		A	Removal of stomach	22.54	NA	NA	10.41	11.98	2.25	NA	NA	35.20	36.77	090
43621		A	Removal of stomach	23.06	NA	NA	10.53	12.07	2.29	NA	NA	35.88	37.42	090
43622		A	Removal of stomach	24.41	NA	NA	11.08	12.48	2.44	NA	NA	37.93	39.33	090
43631		A	Removal of stomach, partial	19.66	NA	NA	8.75	9.93	1.96	NA	NA	30.37	31.55	090
43632		A	Removal of stomach, partial	19.66	NA	NA	8.72	9.91	1.95	NA	NA	30.33	31.52	090
43633		A	Removal of stomach, partial	20.10	NA	NA	8.87	10.02	0.02	NA	NA	28.99	30.14	090
43634		A	Removal of stomach, partial	21.86	NA	NA	9.57	12.83	2.21	NA	NA	33.64	36.90	090
43635		A	Removal of stomach, partial	2.06	NA	NA	0.77	0.87	0.20	NA	NA	3.03	3.13	ZZZ
43638		A	Removal of stomach, partial	21.76	NA	NA	9.67	10.71	2.19	NA	NA	33.62	34.66	090
43639		A	Removal of stomach, partial	22.25	NA	NA	9.92	10.90	2.25	NA	NA	34.42	35.40	090
43640		A	Vagotomy & pylorus repair	14.81	NA	NA	6.93	8.00	1.47	NA	NA	23.21	24.28	090
43641		A	Vagotomy & pylorus repair	15.03	NA	NA	7.26	8.25	1.50	NA	NA	23.79	24.78	090
43651		A	Laparoscopy, vagus nerve	10.15	NA	NA	4.70	4.90	1.01	NA	NA	15.86	16.06	090
43652		A	Laparoscopy, vagus nerve	12.15	NA	NA	5.44	5.73	1.03	NA	NA	18.62	18.91	090
43653		A	Laparoscopy, gastrostomy	7.73	NA	NA	4.27	4.88	0.74	NA	NA	12.74	13.35	090
43659		C	Laparoscope proc, stom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43750		A	Place gastrostomy tube	4.49	NA	NA	2.51	3.06	0.34	NA	NA	7.34	7.89	010
43760		A	Change gastrostomy tube	1.10	1.24	1.12	0.44	0.52	0.08	2.42	2.30	1.62	1.70	000
43761		A	Reposition gastrostomy tube	2.01	NA	NA	0.80	0.89	0.10	NA	NA	2.91	3.00	000
43800		A	Reconstruction of pylorus	10.46	NA	NA	5.44	5.94	1.04	NA	NA	16.94	17.44	090
43810		A	Fusion of stomach and bowel	11.19	NA	NA	5.57	6.25	1.07	NA	NA	17.83	18.51	090
43820		A	Fusion of stomach and bowel	11.74	NA	NA	5.78	6.59	1.16	NA	NA	18.68	19.49	090
43825		A	Fusion of stomach and bowel	14.68	NA	NA	6.87	8.16	1.45	NA	NA	23.00	24.29	090
43830		A	Place gastrostomy tube	7.28	NA	NA	4.12	4.77	0.70	NA	NA	12.10	12.75	090
43831		A	Place gastrostomy tube	7.84	NA	NA	4.28	4.62	0.74	NA	NA	12.86	13.20	090
43832		A	Place gastrostomy tube	11.92	NA	NA	6.20	6.81	1.14	NA	NA	19.26	19.87	090
43840		A	Repair of stomach lesion	11.89	NA	NA	5.83	6.50	1.18	NA	NA	18.90	19.57	090
43842		A	Gastroplasty for obesity	14.71	NA	NA	9.81	11.08	1.49	NA	NA	26.01	27.28	090
43843		A	Gastroplasty for obesity	14.85	NA	NA	9.14	10.58	1.47	NA	NA	25.46	26.90	090
43846		A	Gastric bypass for obesity	19.15	NA	NA	11.04	12.30	1.90	NA	NA	32.09	33.35	090
43847		A	Gastric bypass for obesity	21.44	NA	NA	12.44	13.35	2.06	NA	NA	35.94	36.85	090
43848		A	Revision gastroplasty	23.41	NA	NA	13.40	14.07	2.34	NA	NA	39.15	39.82	090
43850		A	Revise stomach-bowel fusion	19.69	NA	NA	8.65	9.65	1.91	NA	NA	30.25	31.25	090
43855		A	Revise stomach-bowel fusion	20.83	NA	NA	9.19	9.73	1.92	NA	NA	31.94	32.48	090
43860		A	Revise stomach-bowel fusion	19.91	NA	NA	8.82	9.73	1.98	NA	NA	30.71	31.62	090
43865		A	Revise stomach-bowel fusion	21.12	NA	NA	9.32	10.62	2.12	NA	NA	32.56	33.86	090
43870		A	Repair stomach opening	7.40	NA	NA	4.20	4.72	0.72	NA	NA	12.32	12.84	090
43880		A	Repair stomach-bowel fistula	19.63	NA	NA	9.10	9.06	1.97	NA	NA	30.70	30.66	090
43999		C	Stomach surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44005		A	Freeing of bowel adhesion	13.84	NA	NA	6.49	7.12	1.37	NA	NA	21.70	22.33	090
44010		A	Incision of small bowel	10.68	NA	NA	5.65	6.11	1.06	NA	NA	17.39	17.85	090
44015		A	Insert needle cath bowel	2.62	NA	NA	0.97	1.51	0.25	NA	NA	3.84	4.38	ZZZ
44020		A	Exploration of small bowel	11.93	NA	NA	5.74	6.43	1.15	NA	NA	18.82	19.51	090
44021		A	Decompress small bowel	12.01	NA	NA	6.17	6.53	1.17	NA	NA	19.35	19.71	090
44025		A	Incision of large bowel	12.18	NA	NA	5.84	6.48	1.20	NA	NA	19.22	19.86	090
44050		A	Reduce bowel obstruction	11.40	NA	NA	5.56	6.28	1.13	NA	NA	18.09	18.81	090
44055		A	Correct malrotation of bowel	13.14	NA	NA	6.14	6.68	1.28	NA	NA	20.56	21.10	090
44100		A	Biopsy of bowel	2.01	NA	NA	0.99	1.12	0.14	NA	NA	3.14	3.27	000
44110		A	Excision of bowel lesion(s)	10.07	NA	NA	5.10	5.91	0.97	NA	NA	16.14	16.95	090
44111		A	Excision of bowel lesion(s)	12.19	NA	NA	6.31	7.36	1.17	NA	NA	19.67	20.72	090
44120		A	Removal of small intestine	14.50	NA	NA	6.72	7.61	1.43	NA	NA	22.65	23.54	090
44121		A	Removal of small intestine	4.45	NA	NA	1.67	1.88	0.44	NA	NA	6.56	6.77	ZZZ
44125		A	Removal of small intestine	14.96	NA	NA	6.91	8.10	1.48	NA	NA	23.35	24.54	090
44130		A	Bowel to bowel fusion	12.36	NA	NA	5.92	6.79	1.22	NA	NA	19.50	20.37	090
44139		A	Mobilization of colon	2.23	NA	NA	0.83	0.94	0.22	NA	NA	3.28	3.39	ZZZ
44140		A	Partial removal of colon	18.35	NA	NA	8.53	9.48	1.81	NA	NA	28.69	29.64	090
44141		A	Partial removal of colon	19.51	NA	NA	11.51	11.85	1.94	NA	NA	32.96	33.30	090
44143		A	Partial removal of colon	20.17	NA	NA	11.77	12.16	0.02	NA	NA	31.96	32.35	090
44144		A	Partial removal of colon	18.89	NA	NA	10.59	11.22	1.88	NA	NA	31.36	31.99	090
44145		A	Partial removal of colon	23.18	NA	NA	10.67	11.60	2.30	NA	NA	36.15	37.08	090
44146		A	Partial removal of colon	24.16	NA	NA	13.81	14.42	2.40	NA	NA	40.37	40.98	090
44147		A	Partial removal of colon	18.17	NA	NA	9.06	10.96	1.81	NA	NA	29.04	30.94	090
44150		A	Removal of colon	21.01	NA	NA	12.63	13.50	2.11	NA	NA	35.75	36.62	090
44151		A	Removal of colon/ileostomy	20.04	NA	NA	12.85	12.41	1.98	NA	NA	34.87	34.43	090
44152		A	Removal of colon/ileostomy	24.41	NA	NA	14.96	15.41	2.39	NA	NA	41.76	42.21	090
44153		A	Removal of colon/ileostomy	26.83	NA	NA	15.33	16.75	2.72	NA	NA	44.88	46.30	090
44155		A	Removal of colon/ileostomy	24.44	NA	NA	13.60	14.72	2.44	NA	NA	40.48	41.60	090
44156		A	Removal of colon/ileostomy	23.01	NA	NA	14.36	13.86	2.33	NA	NA	39.70	39.20	090
44160		A	Removal of colon	15.88	NA	NA	7.58	9.06	1.58	NA	NA	25.04	26.52	090
44200		A	Laparoscopy, enterolysis	14.44	NA	NA	6.71	7.28	1.41	NA	NA	22.56	23.13	090
44201		A	Laparoscopy, jejunostomy	9.78	NA	NA	5.28	5.28	1.35	NA	NA	16.41	16.41	090
44202		A	Laparo, resect intestine	22.04	NA	NA	9.89	11.01	2.17	NA	NA	34.10	35.22	090
44209		C	Laparoscope proc, intestine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
44300		A	Open bowel to skin	8.88	NA	NA	5.48	5.75	0.88	NA	NA	15.24	15.51	090
44310		A	Ileostomy/jejunostomy	11.70	NA	NA	8.53	8.54	1.16	NA	NA	21.39	21.40	090
44312		A	Revision of ileostomy	5.88	NA	NA	4.39	4.13	0.53	NA	NA	10.80	10.54	090
44314		A	Revision of ileostomy	11.04	NA	NA	8.64	8.29	1.05	NA	NA	20.73	20.38	090
44316		A	Devise bowel pouch	15.47	NA	NA	11.30	11.09	1.47	NA	NA	28.24	28.03	090
44320		A	Colostomy	12.94	NA	NA	9.77	9.35	1.28	NA	NA	23.99	23.57	090
44322		A	Colostomy with biopsies	11.98	NA	NA	9.54	9.62	1.18	NA	NA	22.70	22.78	090
44340		A	Revision of colostomy	5.66	NA	NA	3.91	3.39	0.55	NA	NA	10.12	9.60	090
44345		A	Revision of colostomy	11.32	NA	NA	6.66	6.31	1.12	NA	NA	19.10	18.75	090
44346		A	Revision of colostomy	12.46	NA	NA	7.06	7.10	1.23	NA	NA	20.75	20.79	090
44360		A	Small bowel endoscopy	2.92	NA	NA	1.36	1.89	0.18	NA	NA	4.46	4.99	000
44361		A	Small bowel endoscopy/biopsy	3.23	NA	NA	1.45	2.05	0.19	NA	NA	4.87	5.47	000
44363		A	Small bowel endoscopy	3.94	NA	NA	1.67	2.08	0.23	NA	NA	5.84	6.23	000
44364		A	Small bowel endoscopy	4.22	NA	NA	1.81	2.62	0.27	NA	NA	6.30	7.11	000
44365		A	Small bowel endoscopy	3.73	NA	NA	1.66	2.36	0.24	NA	NA	5.63	6.33	000
44366		A	Small bowel endoscopy	4.97	NA	NA	2.08	3.05	0.31	NA	NA	7.36	8.33	000
44369		A	Small bowel endoscopy	5.09	NA	NA	2.13	3.12	0.32	NA	NA	7.54	8.53	000
44372		A	Small bowel endoscopy	4.97	NA	NA	2.11	3.07	0.33	NA	NA	7.41	8.37	000
44373		A	Small bowel endoscopy	3.94	NA	NA	1.75	2.49	0.25	NA	NA	5.94	6.68	000
44376		A	Small bowel endoscopy	5.69	NA	NA	2.33	2.85	0.37	NA	NA	8.39	8.91	000
44377		A	Small bowel endoscopy/biopsy	5.98	NA	NA	2.46	3.00	0.37	NA	NA	8.81	9.35	000
44378		A	Small bowel endoscopy	7.71	NA	NA	3.08	3.74	0.50	NA	NA	11.29	11.95	000
44380		A	Small bowel endoscopy	1.51	NA	NA	0.83	1.07	0.10	NA	NA	2.44	2.68	000
44382		A	Small bowel endoscopy	1.82	NA	NA	0.95	1.26	0.11	NA	NA	2.88	3.19	000
44385		A	Endoscopy of bowel pouch	1.82	3.11	2.97	0.89	1.30	0.13	5.06	4.92	2.84	3.25	000
44386		A	Endoscopy, bowel pouch/biop	2.12	4.25	3.61	1.06	1.21	0.17	6.54	5.90	3.35	3.50	000
44388		A	Colon endoscopy	2.82	4.27	4.18	1.31	1.96	0.22	7.31	7.22	4.35	5.00	000
44389		A	Colonoscopy with biopsy	3.13	4.68	4.60	1.43	2.16	0.22	8.03	7.95	4.78	5.51	000
44390		A	Colonoscopy for foreign body	3.83	5.47	4.82	1.64	1.94	0.31	9.61	8.96	5.78	6.08	000
44391		A	Colonoscopy for bleeding	4.32	5.14	5.28	1.69	2.70	0.29	9.75	9.89	6.30	7.31	000
44392		A	Colonoscopy & polypectomy	3.82	5.07	5.20	1.67	2.65	0.28	9.17	9.30	5.77	6.75	000
44393		A	Colonoscopy, lesion removal	4.84	5.39	5.51	2.03	2.99	0.34	10.57	10.69	7.21	8.17	000
44394		A	Colonoscopy w/snare	4.43	6.60	6.35	1.90	2.83	0.32	11.35	11.10	6.65	7.58	000
44500		A	Intro, gastrointestinal tube	0.49	NA	NA	0.34	0.35	0.02	NA	NA	0.85	0.86	000
44602		A	Suture, small intestine	10.61	NA	NA	5.30	6.05	1.05	NA	NA	16.96	17.71	090
44603		A	Suture, small intestine	0.14	NA	NA	6.56	7.39	1.38	NA	NA	8.08	8.91	090
44604		A	Suture, large intestine	14.28	NA	NA	6.64	7.12	1.39	NA	NA	22.31	22.79	090
44605		A	Repair of bowel lesion	15.37	NA	NA	7.32	8.03	1.50	NA	NA	24.19	24.90	090
44615		A	Intestinal stricturoplasty	14.19	NA	NA	6.60	6.78	1.39	NA	NA	22.18	22.36	090
44620		A	Repair bowel opening	10.87	NA	NA	5.31	5.60	1.08	NA	NA	17.26	17.55	090
44625		A	Repair bowel opening	13.41	NA	NA	6.26	7.30	1.33	NA	NA	21.00	22.04	090
44626		A	Repair bowel opening	22.59	NA	NA	9.70	10.36	2.23	NA	NA	34.52	35.18	090
44640		A	Repair bowel-skin fistula	14.83	NA	NA	7.19	7.17	1.48	NA	NA	23.50	23.48	090
44650		A	Repair bowel fistula	15.25	NA	NA	7.31	7.47	1.50	NA	NA	24.06	24.22	090
44660		A	Repair bowel-bladder fistula	14.63	NA	NA	6.83	7.39	1.24	NA	NA	22.70	23.26	090
44661		A	Repair bowel-bladder fistula	16.99	NA	NA	7.85	9.67	1.57	NA	NA	26.41	28.23	090
44680		A	Surgical revision, intestine	13.72	NA	NA	6.82	7.75	1.37	NA	NA	21.91	22.84	090
44700		A	Suspend bowel w/prosthesis	14.35	NA	NA	7.02	8.35	1.25	NA	NA	22.62	23.95	090
44799		C	Intestine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44800		A	Excision of bowel pouch	11.23	NA	NA	5.53	5.57	1.09	NA	NA	17.85	17.89	090
44820		A	Excision of mesentery lesion	10.31	NA	NA	5.32	5.56	1.01	NA	NA	16.64	16.88	090
44850		A	Repair of mesentery	9.57	NA	NA	4.96	5.24	0.95	NA	NA	15.48	15.76	090
44899		C	Bowel surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44900		A	Drain app abscess, open	8.82	NA	NA	5.13	5.01	0.81	NA	NA	14.76	14.64	090
44901		A	Drain app abscess, percut	3.38	NA	NA	4.22	3.86	0.32	NA	NA	7.92	7.56	000
44950		A	Appendectomy	8.70	NA	NA	4.70	4.85	0.86	NA	NA	14.26	14.41	090
44955		A	Appendectomy add-on	1.53	NA	NA	0.57	0.88	0.14	NA	NA	2.24	2.55	ZZZ
44960		A	Appendectomy	10.74	NA	NA	5.75	5.91	1.07	NA	NA	17.56	17.72	090
44970		A	Laparoscopy, appendectomy	8.70	NA	NA	4.18	4.48	0.86	NA	NA	13.74	14.02	090
44979		C	Laparoscope proc, app	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
45000		A	Drainage of pelvic abscess	4.52	NA	NA	3.55	3.10	0.38	NA	NA	8.45	8.00	090
45005		A	Drainage of rectal abscess	1.99	4.11	3.43	1.45	1.44	0.19	6.29	5.61	3.63	3.62	010
45020		A	Drainage of rectal abscess	4.72	NA	NA	3.39	3.25	0.45	NA	NA	8.56	8.42	090
45100		A	Biopsy of rectum	3.68	4.47	3.86	1.98	2.00	0.35	8.50	7.89	6.01	6.03	090
45108		A	Removal of anorectal lesion	4.76	5.51	4.86	3.01	2.98	0.48	10.75	10.10	8.25	8.22	090
45110		A	Removal of rectum	23.80	NA	NA	11.62	13.14	2.33	NA	NA	37.75	39.27	090
45111		A	Partial removal of rectum	16.48	NA	NA	8.49	9.56	1.63	NA	NA	26.60	27.67	090
45112		A	Removal of rectum	25.96	NA	NA	11.93	13.31	2.55	NA	NA	40.44	41.82	090
45113		A	Partial proctectomy	25.99	NA	NA	11.18	12.74	2.48	NA	NA	39.65	41.21	090
45114		A	Partial removal of rectum	23.22	NA	NA	10.86	12.32	2.29	NA	NA	36.37	37.83	090
45116		A	Partial removal of rectum	20.89	NA	NA	9.88	10.33	2.04	NA	NA	32.81	33.26	090
45119		A	Remove rectum w/reservoir	26.21	NA	NA	11.68	13.12	2.58	NA	NA	40.47	41.91	090
45120		A	Removal of rectum	0.25	NA	NA	11.47	13.05	2.31	NA	NA	14.03	15.61	090
45121		A	Removal of rectum and colon	27.51	NA	NA	12.98	12.66	2.65	NA	NA	43.14	42.82	090
45123		A	Partial proctectomy	14.20	NA	NA	6.99	8.44	1.41	NA	NA	22.60	24.05	090
45126		A	Pelvic exenteration	38.39	14.50	14.50	14.50	14.50	2.73	55.62	55.62	55.62	55.62	090
45130		A	Excision of rectal prolapse	13.97	NA	NA	6.76	7.49	1.41	NA	NA	22.14	22.87	090
45135		A	Excision of rectal prolapse	16.39	NA	NA	8.01	10.34	1.62	NA	NA	26.02	28.35	090
45150		A	Excision of rectal stricture	5.67	5.23	4.84	3.05	3.21	0.56	11.46	11.07	9.28	9.44	090
45160		A	Excision of rectal lesion	13.02	NA	NA	6.28	6.74	1.30	NA	NA	20.60	21.06	090
45170		A	Excision of rectal lesion	9.77	NA	NA	5.01	5.01	0.98	NA	NA	15.76	15.76	090
45190		A	Destruction, rectal tumor	8.28	NA	NA	4.45	4.72	0.83	NA	NA	13.56	13.83	090

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[3] PE RVU

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
45300		A	Proctosigmoidoscopy	0.70	1.27	1.10	0.33	0.40	0.06	2.03	1.86	1.09	1.16	000
45303		A	Proctosigmoidoscopy	0.80	1.46	1.27	0.37	0.45	0.07	2.33	2.14	1.24	1.32	000
45305		A	Proctosigmoidoscopy & biopsy	1.01	1.43	1.30	0.45	0.57	0.10	2.54	2.41	1.56	1.68	000
45307		A	Proctosigmoidoscopy	1.71	2.57	2.27	0.69	0.86	0.16	4.44	4.14	2.56	2.73	000
45308		A	Proctosigmoidoscopy	1.51	1.62	1.52	0.64	0.79	0.14	3.27	3.17	2.29	2.44	000
45309		A	Proctosigmoidoscopy	2.01	2.19	1.95	0.81	0.92	0.19	4.39	4.15	3.01	3.12	000
45315		A	Proctosigmoidoscopy	2.54	2.66	2.32	1.00	1.07	0.23	5.43	5.09	3.77	3.84	000
45317		A	Proctosigmoidoscopy	2.73	2.08	1.90	1.08	1.15	0.25	5.06	4.88	4.06	4.13	000
45320		A	Proctosigmoidoscopy	2.88	2.07	2.06	1.13	1.36	0.26	5.21	5.20	4.27	4.50	000
45321		A	Proctosigmoidoscopy	2.12	NA	NA	0.85	1.04	0.18	NA	NA	3.15	3.34	000
45330		A	Diagnostic sigmoidoscopy	0.96	1.68	1.59	0.42	0.65	0.07	2.71	2.62	1.45	1.68	000
45331		A	Sigmoidoscopy and biopsy	1.26	1.93	1.89	0.53	0.84	0.09	3.28	3.24	1.88	2.19	000
45332		A	Sigmoidoscopy	1.96	3.39	3.02	0.78	1.06	0.14	5.49	5.12	2.88	3.16	000
45333		A	Sigmoidoscopy & polypectomy	1.96	3.04	2.89	0.78	1.19	0.14	5.14	4.99	2.88	3.29	000
45334		A	Sigmoidoscopy for bleeding	2.99	NA	NA	1.15	1.60	0.20	NA	NA	4.34	4.79	000
45337		A	Sigmoidoscopy & decompress	2.36	NA	NA	0.93	1.40	0.17	NA	NA	3.46	3.93	000
45338		A	Sigmoidoscopy	2.57	3.29	3.08	1.01	1.37	0.18	6.04	5.83	3.76	4.12	000
45339		A	Sigmoidoscopy	3.14	2.36	2.65	1.20	1.78	0.22	5.72	6.01	4.56	5.14	000
45355		A	Surgical colonoscopy	3.52	NA	NA	1.26	1.26	0.28	NA	NA	5.06	5.06	000
45378		A	Diagnostic colonoscopy	3.70	5.39	5.16	1.63	2.34	0.26	9.35	9.12	5.59	6.30	000
45378	53	A	Diagnostic colonoscopy	0.96	1.68	1.59	0.42	0.65	0.07	2.71	2.62	1.45	1.68	000
45379		A	Colonoscopy	4.72	5.92	5.89	1.99	2.94	0.34	10.98	10.95	7.05	8.00	000
45380		A	Colonoscopy and biopsy	4.01	5.61	5.51	1.74	2.61	0.26	9.88	9.78	6.01	6.88	000
45382		A	Colonoscopy/control bleeding	5.73	6.72	6.63	2.18	3.23	0.36	12.81	12.72	8.27	9.32	000
45383		A	Lesion removal colonoscopy	5.87	6.47	6.46	2.40	3.41	0.40	12.74	12.73	8.67	9.68	000
45384		A	Colonoscopy	4.70	7.26	6.85	1.98	2.89	0.32	12.28	11.87	7.00	7.91	000
45385		A	Lesion removal colonoscopy	5.31	7.43	7.38	2.20	3.46	0.35	13.09	13.04	7.86	9.12	000
45500		A	Repair of rectum	7.29	NA	NA	3.96	4.59	0.73	NA	NA	11.98	12.61	090
45505		A	Repair of rectum	6.02	NA	NA	3.07	4.01	0.60	NA	NA	9.69	10.63	090
45520		A	Treatment of rectal prolapse	0.55	0.65	0.65	0.19	0.31	0.06	1.26	1.26	0.80	0.92	000
45540		A	Correct rectal prolapse	12.92	NA	NA	6.67	7.69	1.26	NA	NA	20.85	21.87	090
45541		A	Correct rectal prolapse	10.64	NA	NA	5.78	7.10	1.07	NA	NA	17.49	18.81	090
45550		A	Repair rectum/remove sigmoid	18.26	NA	NA	8.56	9.54	1.82	NA	NA	28.64	29.62	090
45560		A	Repair of rectocele	8.40	NA	NA	4.74	4.86	0.68	NA	NA	13.82	13.94	090
45562		A	Exploration/repair of rectum	12.21	NA	NA	6.06	6.74	1.14	NA	NA	19.41	20.09	090
45563		A	Exploration/repair of rectum	18.63	NA	NA	9.22	10.38	1.80	NA	NA	29.65	30.81	090
45800		A	Repair rect/bladder fistula	14.11	NA	NA	6.53	7.56	1.11	NA	NA	21.75	22.78	090
45805		A	Repair fistula w/colostomy	16.50	NA	NA	8.45	9.68	1.49	NA	NA	26.44	27.67	090
45820		A	Repair rectourethral fistula	14.67	NA	NA	6.76	7.51	1.28	NA	NA	22.71	23.46	090
45825		A	Repair fistula w/colostomy	16.87	NA	NA	8.91	9.36	1.49	NA	NA	27.27	27.72	090
45900		A	Reduction of rectal prolapse	1.83	NA	NA	0.76	0.73	0.18	NA	NA	2.77	2.74	010
45905		A	Dilation of anal sphincter	1.61	2.85	2.33	0.70	0.72	0.15	4.61	4.09	2.46	2.48	010
45910		A	Dilation of rectal narrowing	1.96	3.89	3.15	0.82	0.85	0.16	6.01	5.27	2.94	2.97	010
45915		A	Remove rectal obstruction	2.20	3.90	3.14	0.78	0.80	0.19	6.29	5.53	3.17	3.19	010
45999		C	Rectum surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
46030		A	Removal of rectal marker	1.23	2.61	2.07	1.08	0.92	0.12	3.96	3.42	2.43	2.27	010
46040		A	Incision of rectal abscess	4.96	5.00	4.21	2.94	2.66	0.50	10.46	9.67	8.40	8.12	090
46045		A	Incision of rectal abscess	4.32	NA	NA	2.64	2.48	0.43	NA	NA	7.39	7.23	090
46050		A	Incision of anal abscess	1.19	3.17	2.54	1.12	1.00	0.11	4.47	3.84	2.42	2.30	010
46060		A	Incision of rectal abscess	5.69	NA	NA	3.51	4.09	0.57	NA	NA	9.77	10.35	090
46070		A	Incision of anal septum	2.71	NA	NA	2.56	2.29	0.28	NA	NA	5.55	5.28	090
46080		A	Incision of anal sphincter	2.49	3.29	3.05	1.55	1.74	0.25	6.03	5.79	4.29	4.48	010
46083		A	Incise external hemorrhoid	1.40	4.20	3.32	1.23	1.09	0.11	5.71	4.83	2.74	2.60	010
46200		A	Removal of anal fissure	3.42	3.38	3.43	2.19	2.54	0.34	7.14	19	5.95	6.30	090
46210		A	Removal of anal crypt	2.67	4.94	3.92	2.01	1.72	0.25	7.86	6.84	4.93	4.64	090
46211		A	Removal of anal crypts	4.25	4.53	3.91	2.65	2.50	0.41	9.19	8.57	7.31	7.16	090
46220		A	Removal of anal tab	1.56	1.22	1.09	0.58	0.61	0.15	2.93	2.80	2.29	2.32	010
46221		A	Ligation of hemorrhoid(s)	1.43	2.79	2.27	0.53	0.58	0.14	4.36	3.84	2.10	2.15	010
46230		A	Removal of anal tabs	2.57	3.87	3.13	1.59	1.42	0.25	6.69	5.95	4.41	4.24	010
46250		A	Hemorrhoidectomy	4.53	5.02	4.54	2.77	2.85	0.44	9.99	9.51	7.74	7.82	090
46255		A	Hemorrhoidectomy	5.36	5.69	5.55	3.05	3.57	0.53	11.58	11.44	8.94	9.46	090
46257		A	Remove hemorrhoids & fissure	6.28	NA	NA	3.35	3.93	0.63	NA	NA	10.26	10.84	090
46258		A	Remove hemorrhoids & fistula	6.67	NA	NA	3.43	4.17	0.66	NA	NA	10.76	11.50	090
46260		A	Hemorrhoidectomy	7.42	NA	NA	4.17	4.78	0.74	NA	NA	12.33	12.94	090
46261		A	Remove hemorrhoids & fissure	8.24	NA	NA	4.39	5.09	0.83	NA	NA	13.46	14.16	090
46262		A	Remove hemorrhoids & fistula	8.73	NA	NA	4.61	5.28	0.87	NA	NA	14.21	14.88	090
46270		A	Removal of anal fistula	3.72	4.65	4.00	2.44	2.34	0.37	8.74	8.09	6.53	6.43	090
46275		A	Removal of anal fistula	4.56	4.41	4.67	2.65	3.35	0.46	9.43	9.69	7.67	8.37	090
46280		A	Removal of anal fistula	5.98	NA	NA	3.54	4.31	0.61	NA	NA	10.13	10.90	090
46285		A	Removal of anal fistula	4.09	3.61	3.33	2.45	2.46	0.41	8.11	7.83	6.95	6.96	090
46288		A	Repair anal fistula	7.13	NA	NA	4.06	4.01	0.71	NA	NA	11.90	11.85	090
46320		A	Removal of hemorrhoid clot	1.61	3.45	2.78	1.26	1.14	0.15	5.21	4.54	3.02	2.90	010
46500		A	Injection into hemorrhoids	1.61	2.33	1.84	0.59	0.53	0.16	4.10	3.61	2.36	2.30	010
46600		A	Diagnostic anoscopy	0.50	0.70	0.60	0.15	0.19	0.04	1.24	1.14	0.69	0.73	000
46604		A	Anoscopy and dilation	1.31	0.90	0.78	0.48	0.46	0.11	2.32	2.20	1.90	1.88	000
46606		A	Anoscopy and biopsy	0.81	0.79	0.69	0.30	0.32	0.08	1.68	1.58	1.19	1.21	000
46608		A	Anoscopy/ remove for body	1.51	1.72	1.58	0.49	0.66	0.13	3.36	3.22	2.13	2.30	000
46610		A	Anoscopy/remove lesion	1.32	1.34	1.24	0.49	0.60	0.11	2.77	2.67	1.92	2.03	000
46611		A	Anoscopy	1.81	1.86	1.63	0.67	0.73	0.16	3.83	3.60	2.64	2.70	000
46612		A	Anoscopy/ remove lesions	2.34	2.23	2.05	0.87	1.03	0.20	4.77	4.59	3.41	3.57	000
46614		A	Anoscopy/control bleeding	2.01	1.56	1.59	0.72	0.96	0.17	3.74	3.77	2.90	3.14	000
46615		A	Anoscopy	2.68	1.63	1.64	1.00	1.17	0.23	4.54	4.55	3.91	4.08	000

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
46700		A	Repair of anal stricture	7.25	NA	NA	3.89	4.58	0.74	NA	NA	11.88	12.57	090
46705		A	Repair of anal stricture	7.17	NA	NA	4.16	4.10	0.73	NA	NA	12.06	12.00	090
46715		A	Repair of anovaginal fistula	7.46	NA	NA	4.26	4.15	0.86	NA	NA	12.58	12.47	090
46716		A	Repair of anovaginal fistula	12.85	NA	NA	6.75	6.71	1.21	NA	NA	20.81	20.77	090
46730		A	Construction of absent anus	22.39	NA	NA	12.17	12.04	1.91	NA	NA	36.47	36.34	090
46735		A	Construction of absent anus	27.02	NA	NA	12.49	12.91	2.59	NA	NA	42.10	42.52	090
46740		A	Construction of absent anus	24.19	NA	NA	10.81	11.24	2.31	NA	NA	37.31	37.74	090
46742		A	Repair of imperforated anus	29.67	NA	NA	15.06	16.65	0.03	NA	NA	44.76	46.35	090
46744		A	Repair of cloacal anomaly	33.21	NA	NA	14.24	16.70	2.51	NA	NA	49.96	52.42	090
46746		A	Repair of cloacal anomaly	36.74	NA	NA	17.86	19.98	3.23	NA	NA	57.83	59.95	090
46748		A	Repair of cloacal anomaly	40.52	NA	NA	19.36	21.85	1.94	NA	NA	61.82	64.31	090
46750		A	Repair of anal sphincter	8.14	NA	NA	4.60	5.08	0.74	NA	NA	13.48	13.96	090
46751		A	Repair of anal sphincter	8.77	NA	NA	5.63	5.33	0.86	NA	NA	15.26	14.96	090
46753		A	Reconstruction of anus	6.58	NA	NA	3.36	3.85	0.67	NA	NA	10.61	11.10	090
46754		A	Removal of suture from anus	1.54	4.61	3.86	1.07	1.21	0.13	6.28	5.53	2.74	2.88	010
46760		A	Repair of anal sphincter	11.46	NA	NA	5.98	6.33	1.08	NA	NA	18.52	18.87	090
46761		A	Repair of anal sphincter	10.99	NA	NA	5.34	5.86	1.06	NA	NA	17.39	17.91	090
46762		A	Implant artificial sphincter	10.09	NA	NA	4.91	5.24	0.93	NA	NA	15.93	16.26	090
46900		A	Destruction, anal lesion(s)	1.91	3.10	2.43	0.76	0.68	0.16	5.17	4.50	2.83	2.75	010
46910		A	Destruction, anal lesion(s)	1.86	3.34	2.68	1.34	1.18	0.15	5.35	4.69	3.35	3.19	010
46916		A	Cryosurgery, anal lesion(s)	1.86	3.17	2.56	1.55	1.35	0.09	5.12	4.51	3.50	3.30	010
46917		A	Laser surgery, anal lesions	1.86	4.07	3.58	1.37	1.56	0.16	6.09	5.60	3.39	3.58	010
46922		A	Excision of anal lesion(s)	1.86	3.38	2.88	1.35	1.36	0.18	5.42	4.92	3.39	3.40	010
46924		A	Destruction, anal lesion(s)	2.76	4.63	4.17	1.62	1.91	0.22	7.61	7.15	4.60	4.89	010
46934		A	Destruction of hemorrhoids	4.08	5.46	4.42	3.21	2.73	0.33	9.87	8.83	7.62	7.14	090
46935		A	Destruction of hemorrhoids	2.43	3.74	3.25	0.88	1.10	0.22	6.39	5.90	3.53	3.75	010
46936		A	Destruction of hemorrhoids	4.30	5.01	4.38	3.22	3.04	0.37	9.68	9.05	7.89	7.71	090
46937		A	Cryotherapy of rectal lesion	2.69	3.86	3.53	1.69	1.91	0.12	6.67	6.34	4.50	4.72	010
46938		A	Cryotherapy of rectal lesion	4.66	5.32	4.67	2.92	2.87	0.47	10.45	9.80	8.05	8.00	090
46940		A	Treatment of anal fissure	2.32	2.67	2.14	0.85	0.78	0.23	5.22	4.69	3.40	3.33	010
46942		A	Treatment of anal fissure	2.04	2.43	1.95	0.70	0.65	0.21	4.68	4.20	2.95	2.90	010
46945		A	Ligation of hemorrhoids	2.14	3.51	2.80	1.93	1.62	0.20	5.85	5.14	4.27	3.96	090
46946		A	Ligation of hemorrhoids	0.03	4.40	3.56	2.21	1.91	0.27	4.70	3.86	2.51	2.21	090
46999		C	Anus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47000		A	Needle biopsy of liver	1.90	8.42	6.70	0.66	0.88	0.09	10.41	8.69	2.65	2.87	000
47001		A	Needle biopsy, liver add-on	1.90	NA	NA	0.71	0.91	0.18	NA	NA	2.79	2.99	ZZZ
47010		A	Open drainage, liver lesion	10.28	NA	NA	7.57	7.51	0.54	NA	NA	18.39	18.33	090
47011		A	Percut drain, liver lesion	3.70	NA	NA	5.55	4.92	0.20	NA	NA	9.45	8.82	000
47015		A	Inject/aspirate liver cyst	9.70	NA	NA	5.96	6.30	0.85	NA	NA	16.51	16.85	090
47100		A	Wedge biopsy of liver	7.49	NA	NA	4.82	4.51	0.74	NA	NA	13.05	12.74	090
47120		A	Partial removal of liver	22.79	NA	NA	12.23	12.43	2.21	NA	NA	37.23	37.43	090
47122		A	Extensive removal of liver	35.39	NA	NA	16.94	17.48	3.39	NA	NA	55.72	56.26	090
47125		A	Partial removal of liver	31.58	NA	NA	15.59	16.42	3.05	NA	NA	50.22	51.05	090
47130		A	Partial removal of liver	34.25	NA	NA	16.58	17.64	3.31	NA	NA	54.14	55.20	090
47133		X	Removal of donor liver	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
47134		R	Partial removal, donor liver	39.15	NA	NA	15.52	17.20	3.78	NA	NA	58.45	60.13	XXX
47135		R	Transplantation of liver	81.52	NA	NA	41.25	45.72	8.02	NA	NA	130.79	135.26	090
47136		R	Transplantation of liver	68.60	NA	NA	39.63	38.81	6.62	NA	NA	114.85	114.03	090
47300		A	Surgery for liver lesion	9.68	NA	NA	5.63	6.30	0.95	NA	NA	16.26	16.93	090
47350		A	Repair liver wound	12.56	NA	NA	6.89	7.19	1.23	NA	NA	20.68	20.98	090
47360		A	Repair liver wound	17.28	NA	NA	9.41	10.02	1.70	NA	NA	28.39	29.00	090
47361		A	Repair liver wound	30.25	NA	NA	14.23	14.65	2.96	NA	NA	47.44	47.86	090
47362		A	Repair liver wound	11.88	NA	NA	6.85	6.56	1.12	NA	NA	19.85	19.56	090
47399		C	Liver surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47400		A	Incision of liver duct	20.86	NA	NA	10.64	10.30	1.96	NA	NA	33.46	33.12	090
47420		A	Incision of bile duct	16.72	NA	NA	8.24	8.75	1.67	NA	NA	26.63	27.14	090
47425		A	Incision of bile duct	16.68	NA	NA	8.53	9.58	1.63	NA	NA	26.84	27.89	090
47460		A	Incise bile duct sphincter	15.17	NA	NA	7.83	10.09	1.26	NA	NA	24.26	26.52	090
47480		A	Incision of gallbladder	9.10	NA	NA	5.92	6.50	0.89	NA	NA	15.91	16.49	090
47490		A	Incision of gallbladder	7.23	NA	NA	7.41	6.53	0.30	NA	NA	14.94	14.06	090
47500		A	Injection for liver x-rays	1.96	NA	NA	0.68	0.92	0.08	NA	NA	2.72	2.96	000
47505		A	Injection for liver x-rays	0.76	14.95	11.48	0.26	0.46	0.03	15.74	12.27	1.05	1.25	000
47510		A	Insert catheter, bile duct	7.83	NA	NA	8.28	6.99	0.32	NA	NA	16.43	15.14	090
47511		A	Insert bile duct drain	10.50	NA	NA	9.50	7.90	0.41	NA	NA	20.41	18.81	090
47525		A	Change bile duct catheter	5.55	NA	NA	3.24	2.86	0.22	NA	NA	9.01	8.63	010
47530		A	Revise/reinsert bile tube	5.85	NA	NA	4.84	4.04	0.28	NA	NA	10.97	10.17	090
47550		A	Bile duct endoscopy add-on	3.02	NA	NA	1.13	1.27	0.30	NA	NA	4.45	4.59	ZZZ
47552		A	Biliary endoscopy thru skin	6.04	NA	NA	2.51	2.25	0.49	NA	NA	9.04	8.78	000
47553		A	Biliary endoscopy thru skin	6.35	NA	NA	2.67	3.03	0.28	NA	NA	9.30	9.66	000
47554		A	Biliary endoscopy thru skin	9.06	NA	NA	3.58	3.75	0.74	NA	NA	13.38	13.55	000
47555		A	Biliary endoscopy thru skin	7.56	NA	NA	3.09	3.03	0.31	NA	NA	10.96	10.90	000
47556		A	Biliary endoscopy thru skin	8.56	NA	NA	3.44	3.29	0.33	NA	NA	12.33	12.18	000
47560		A	Laparoscopy w/cholangio	4.89	NA	NA	1.94	2.21	0.46	NA	NA	7.29	7.56	000
47561		A	Laparo w/cholangio/biopsy	5.18	NA	NA	2.17	2.70	0.47	NA	NA	7.82	8.35	000
47562		A	Laparoscopic cholecystectomy	11.09	NA	NA	4.91	5.85	1.09	NA	NA	17.09	18.03	090
47563		A	Laparo cholecystectomy/graph	11.94	NA	NA	5.39	6.33	1.17	NA	NA	18.50	19.44	090
47564		A	Laparo cholecystectomy/explr	14.23	NA	NA	6.97	7.77	1.37	NA	NA	22.57	23.37	090
47570		A	Laparo cholecystoenterostomy	12.58	NA	NA	6.01	6.99	1.27	NA	NA	19.86	20.84	090
47579		C	Laparoscope proc, biliary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47600		A	Removal of gallbladder	11.42	NA	NA	6.01	6.55	1.14	NA	NA	18.57	19.11	090
47605		A	Removal of gallbladder	12.36	NA	NA	6.32	6.95	1.22	NA	NA	19.90	20.53	090
47610		A	Removal of gallbladder	15.83	NA	NA	7.71	8.33	1.57	NA	NA	25.11	25.73	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
47612		A	Removal of gallbladder	15.80	NA	NA	7.59	9.55	1.58	NA	NA	24.97	26.93	090
47620		A	Removal of gallbladder	17.36	NA	NA	8.26	9.24	1.73	NA	NA	27.35	28.33	090
47630		A	Remove bile duct stone	9.11	NA	NA	3.19	3.41	0.47	NA	NA	12.77	12.99	090
47700		A	Exploration of bile ducts	15.62	NA	NA	8.29	8.29	1.37	NA	NA	25.28	25.28	090
47701		A	Bile duct revision	29.55	NA	NA	13.79	12.57	2.87	NA	NA	46.21	44.99	090
47711		A	Excision of bile duct tumor	19.37	NA	NA	9.86	10.67	1.86	NA	NA	31.09	31.90	090
47712		A	Excision of bile duct tumor	25.44	NA	NA	12.03	12.30	2.67	NA	NA	40.14	40.41	090
47715		A	Excision of bile duct cyst	15.81	NA	NA	8.14	8.34	1.55	NA	NA	25.50	25.70	090
47716		A	Fusion of bile duct cyst	13.83	NA	NA	7.50	7.41	1.30	NA	NA	22.63	22.54	090
47720		A	Fuse gallbladder & bowel	13.38	NA	NA	7.62	8.20	1.33	NA	NA	22.33	22.91	090
47721		A	Fuse upper gi structures	16.08	NA	NA	8.58	9.53	1.58	NA	NA	26.24	27.19	090
47740		A	Fuse gallbladder & bowel	15.54	NA	NA	8.50	9.15	1.57	NA	NA	25.61	26.26	090
47741		A	Fuse gallbladder & bowel	17.95	NA	NA	9.26	10.84	1.78	NA	NA	28.99	30.57	090
47760		A	Fuse bile ducts and bowel	21.74	NA	NA	10.66	11.15	2.17	NA	NA	34.57	35.06	090
47765		A	Fuse liver ducts & bowel	20.93	NA	NA	10.91	12.15	2.07	NA	NA	33.91	35.15	090
47780		A	Fuse bile ducts and bowel	22.29	NA	NA	10.93	11.74	2.21	NA	NA	35.43	36.24	090
47785		A	Fuse bile ducts and bowel	26.23	NA	NA	12.90	13.22	2.63	NA	NA	41.76	42.08	090
47800		A	Reconstruction of bile ducts	19.60	NA	NA	10.05	11.13	1.91	NA	NA	31.56	32.64	090
47801		A	Placement, bile duct support	12.76	NA	NA	9.29	8.46	0.74	NA	NA	22.79	21.96	090
47802		A	Fuse liver duct & intestine	18.13	NA	NA	10.16	10.41	1.85	NA	NA	30.14	30.39	090
47900		A	Suture bile duct injury	16.74	NA	NA	8.90	10.26	1.68	NA	NA	27.32	28.68	090
47999		C	Bile tract surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
48000		A	Drainage of abdomen	14.91	NA	NA	7.96	7.88	1.32	NA	NA	24.19	24.11	090
48001		A	Placement of drain, pancreas	18.83	NA	NA	8.88	8.87	1.85	NA	NA	29.56	29.55	090
48005		A	Resect/debride pancreas	22.40	NA	NA	10.42	10.31	2.21	NA	NA	35.03	34.92	090
48020		A	Removal of pancreatic stone	14.22	NA	NA	6.90	7.02	1.02	NA	NA	22.14	22.26	090
48100		A	Biopsy of pancreas	11.08	NA	NA	6.40	5.94	1.08	NA	NA	18.56	18.10	090
48102		A	Needle biopsy, pancreas	4.68	8.18	6.79	2.36	2.43	0.19	13.05	11.66	7.23	7.30	010
48120		A	Removal of pancreas lesion	14.36	NA	NA	6.86	7.78	1.42	NA	NA	22.64	23.56	090
48140		A	Partial removal of pancreas	20.78	NA	NA	9.96	11.08	2.05	NA	NA	32.79	33.91	090
48145		A	Partial removal of pancreas	21.76	NA	NA	10.48	12.12	2.16	NA	NA	34.40	36.04	090
48146		A	Pancreatectomy	23.91	NA	NA	12.41	13.78	2.44	NA	NA	38.76	40.13	090
48148		A	Removal of pancreatic duct	15.71	NA	NA	8.55	8.65	1.54	NA	NA	25.80	25.90	090
48150		A	Partial removal of pancreas	43.48	NA	NA	20.63	21.59	4.28	NA	NA	68.39	69.35	090
48152		A	Pancreatectomy	39.63	NA	NA	19.18	20.50	4.06	NA	NA	62.87	64.19	090
48153		A	Pancreatectomy	43.38	NA	NA	20.61	21.57	4.31	NA	NA	68.30	69.26	090
48154		A	Pancreatectomy	39.95	NA	NA	18.95	20.33	3.99	NA	NA	62.89	64.27	090
48155		A	Removal of pancreas	22.32	NA	NA	12.72	15.08	2.20	NA	NA	37.24	39.60	090
48160		N	Pancreas removal/transplant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
48180		A	Fuse pancreas and bowel	22.39	NA	NA	10.26	11.11	2.22	NA	NA	34.87	35.72	090
48400		A	Injection, intraop add-on	1.95	NA	NA	0.70	0.81	0.10	NA	NA	2.75	2.86	ZZZ
48500		A	Surgery of pancreas cyst	13.84	NA	NA	6.28	7.03	1.23	NA	NA	21.35	22.10	090
48510		A	Drain pancreatic pseudocyst	12.96	NA	NA	7.05	7.33	0.92	NA	NA	20.93	21.21	090
48511		A	Drain pancreatic pseudocyst	0.04	NA	NA	4.03	3.85	0.29	NA	NA	4.36	4.18	000
48520		A	Fuse pancreas cyst and bowel	14.12	NA	NA	6.77	8.14	1.38	NA	NA	22.27	23.64	090
48540		A	Fuse pancreas cyst and bowel	17.86	NA	NA	8.20	9.59	1.80	NA	NA	27.86	29.25	090
48545		A	Pancreatorrhaphy	16.47	NA	NA	8.27	8.28	1.76	NA	NA	26.50	26.51	090
48547		A	Duodenal exclusion	23.40	NA	NA	10.30	10.73	2.42	NA	NA	36.12	36.55	090
48550		X	Donor pancreatectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
48554		R	Transpl allograft pancreas	34.17	NA	NA	13.55	15.01	3.26	NA	NA	50.98	52.44	090
48556		A	Removal, allograft pancreas	15.71	NA	NA	8.37	8.25	1.50	NA	NA	25.58	25.46	090
48999		C	Pancreas surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49000		A	Exploration of abdomen	11.68	NA	NA	6.06	6.39	1.14	NA	NA	18.88	19.21	090
49002		A	Reopening of abdomen	10.49	NA	NA	5.89	6.06	1.03	NA	NA	17.41	17.58	090
49010		A	Exploration behind abdomen	12.28	NA	NA	6.94	7.09	1.22	NA	NA	20.44	20.59	090
49020		A	Drain abdominal abscess	16.79	NA	NA	9.33	8.31	1.12	NA	NA	27.24	26.22	090
49021		A	Drain abdominal abscess	3.38	NA	NA	5.05	4.80	0.20	NA	NA	8.63	8.38	000
49040		A	Drain, open, abdom abscess	9.94	NA	NA	6.76	6.85	0.67	NA	NA	17.37	17.46	090
49041		A	Drain, percut, abdom abscess	0.04	NA	NA	5.31	4.81	0.27	NA	NA	5.62	5.12	000
49060		A	Drain, open, retrop abscess	11.66	NA	NA	7.76	7.32	0.65	NA	NA	20.07	19.63	090
49061		A	Drain, percut, retroper absc	3.70	NA	NA	5.44	4.84	0.21	NA	NA	9.35	8.75	000
49062		A	Drain to peritoneal cavity	11.36	NA	NA	6.91	7.37	1.07	NA	NA	19.34	19.80	090
49080		A	Puncture, peritoneal cavity	1.35	2.99	2.48	0.59	0.68	0.08	4.42	3.91	2.02	2.11	000
49081		A	Removal of abdominal fluid	1.26	2.80	2.30	0.55	0.62	0.08	4.14	3.64	1.89	1.96	000
49085		A	Remove abdomen foreign body	8.93	NA	NA	5.26	4.88	0.90	NA	NA	15.09	14.71	090
49180		A	Biopsy, abdominal mass	1.73	6.65	5.48	0.60	0.95	0.08	8.46	7.29	2.41	2.76	000
49200		A	Removal of abdominal lesion	10.25	NA	NA	6.01	6.78	0.92	NA	NA	17.18	17.95	090
49201		A	Removal of abdominal lesion	14.84	NA	NA	8.23	9.46	1.28	NA	NA	24.35	25.58	090
49215		A	Excise sacral spine tumor	23.20	NA	NA	10.76	10.38	2.18	NA	NA	36.14	35.76	090
49220		A	Multiple surgery, abdomen	14.88	NA	NA	7.69	9.11	1.45	NA	NA	24.02	25.44	090
49250		A	Excision of umbilicus	8.35	NA	NA	5.00	4.98	0.79	NA	NA	14.14	14.12	090
49255		A	Removal of omentum	11.14	NA	NA	6.28	6.11	1.04	NA	NA	18.46	18.29	090
49320		A	Diag laparo separate proc	5.10	NA	NA	2.89	3.38	0.47	NA	NA	8.46	8.95	010
49321		A	Laparoscopy, biopsy	5.40	NA	NA	2.95	3.54	0.49	NA	NA	8.84	9.43	010
49322		A	Laparoscopy, aspiration	5.70	NA	NA	3.23	3.75	0.49	NA	NA	9.42	9.94	010
49323		A	Laparo drain lymphocele	9.48	NA	NA	4.25	5.01	0.90	NA	NA	14.63	15.39	090
49329		C	Laparo proc, abdm/per/oment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49400		A	Air injection into abdomen	1.88	NA	NA	0.81	0.91	0.11	NA	NA	2.80	2.90	000
49420		A	Insert abdominal drain	2.22	NA	NA	0.94	1.13	0.16	NA	NA	3.32	3.51	000
49421		A	Insert abdominal drain	5.54	NA	NA	3.81	3.98	0.56	NA	NA	9.91	10.08	090
49422		A	Remove perm cannula/catheter	6.25	NA	NA	2.98	3.36	0.63	NA	NA	9.86	10.24	010
49423		A	Exchange drainage catheter	1.46	NA	NA	0.67	0.80	0.15	NA	NA	2.28	2.41	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
49424		A	Assess cyst, contrast inject	0.76	NA	NA	0.43	0.48	0.05	NA	NA	1.24	1.29	000
49425		A	Insert abdomen-venous drain	11.37	NA	NA	7.00	7.55	1.21	NA	NA	19.58	20.13	090
49426		A	Revise abdomen-venous shunt	9.63	NA	NA	5.77	5.79	0.99	NA	NA	16.39	16.41	090
49427		A	Injection, abdominal shunt	0.89	NA	NA	0.47	0.49	0.04	NA	NA	1.40	1.42	000
49428		A	Ligation of shunt	2.38	NA	NA	1.88	1.69	0.29	NA	NA	4.55	4.36	010
49429		A	Removal of shunt	7.40	NA	NA	3.71	3.68	0.79	NA	NA	11.90	11.87	010
49495		A	Repair inguinal hernia, init	5.84	NA	NA	3.22	3.77	0.56	NA	NA	9.62	10.17	090
49496		A	Repair inguinal hernia, init	8.79	NA	NA	6.12	5.96	0.85	NA	NA	15.76	15.60	090
49500		A	Repair inguinal hernia	4.68	NA	NA	3.04	3.63	0.43	NA	NA	8.15	8.74	090
49501		A	Repair inguinal hernia, init	7.58	NA	NA	3.99	4.36	0.75	NA	NA	12.32	12.69	090
49505		A	Repair inguinal hernia	6.49	3.90	4.15	3.58	3.91	0.64	11.03	11.28	10.71	11.04	090
49507		A	Repair inguinal hernia	8.17	NA	NA	5.30	5.34	0.81	NA	NA	14.28	14.32	090
49520		A	Rerepair inguinal hernia	8.22	NA	NA	4.75	4.98	0.82	NA	NA	13.79	14.02	090
49521		A	Repair inguinal hernia, rec	10.22	NA	NA	5.09	5.19	1.02	NA	NA	16.33	16.43	090
49525		A	Repair inguinal hernia	7.32	NA	NA	4.28	4.72	0.73	NA	NA	12.33	12.77	090
49540		A	Repair lumbar hernia	8.87	NA	NA	5.01	5.17	0.89	NA	NA	14.77	14.93	090
49550		A	Repair femoral hernia	7.37	NA	NA	3.95	4.21	0.74	NA	NA	12.06	12.32	090
49553		A	Repair femoral hernia, init	8.06	NA	NA	4.32	4.49	0.80	NA	NA	13.18	13.35	090
49555		A	Repair femoral hernia	7.71	NA	NA	4.59	5.09	0.77	NA	NA	13.07	13.57	090
49557		A	Repair femoral hernia, recur	9.52	NA	NA	4.85	5.29	0.95	NA	NA	15.32	15.76	090
49560		A	Repair abdominal hernia	9.88	NA	NA	5.33	5.53	0.99	NA	NA	16.20	16.40	090
49561		A	Repair incisional hernia	12.17	NA	NA	5.87	5.94	1.21	NA	NA	19.25	19.32	090
49565		A	Rerepair abdominal hernia	9.88	NA	NA	5.44	5.82	0.98	NA	NA	16.30	16.68	090
49566		A	Repair incisional hernia	12.30	NA	NA	5.91	6.17	1.22	NA	NA	19.43	19.69	090
49568		A	Hernia repair w/mesh	4.89	NA	NA	1.84	2.08	0.49	NA	NA	7.22	7.46	ZZZ
49570		A	Repair epigastric hernia	4.86	NA	NA	3.11	3.52	0.49	NA	NA	8.46	8.87	090
49572		A	Repair epigastric hernia	5.75	NA	NA	3.47	4.12	0.57	NA	NA	9.79	10.44	090
49580		A	Repair umbilical hernia	3.34	NA	NA	2.52	2.94	0.34	NA	NA	6.20	6.62	090
49582		A	Repair umbilical hernia	5.68	NA	NA	4.23	4.42	0.57	NA	NA	10.48	10.67	090
49585		A	Repair umbilical hernia	5.32	NA	NA	3.55	3.86	0.53	NA	NA	9.40	9.71	090
49587		A	Repair umbilical hernia	6.46	NA	NA	3.68	3.96	0.64	NA	NA	10.78	11.06	090
49590		A	Repair abdominal hernia	7.29	NA	NA	4.29	4.75	0.73	NA	NA	12.31	12.77	090
49600		A	Repair umbilical lesion	10.96	NA	NA	5.89	5.85	0.95	NA	NA	17.80	17.76	090
49605		A	Repair umbilical lesion	24.94	NA	NA	12.12	11.42	2.20	NA	NA	39.26	38.56	090
49606		A	Repair umbilical lesion	21.31	NA	NA	9.86	9.65	1.91	NA	NA	33.08	32.87	090
49610		A	Repair umbilical lesion	10.50	NA	NA	6.57	6.42	1.05	NA	NA	18.12	17.97	090
49611		A	Repair umbilical lesion	8.92	NA	NA	6.05	6.98	0.68	NA	NA	15.65	16.58	090
49650		A	Laparo hernia repair initial	6.27	NA	NA	3.26	3.67	0.62	NA	NA	10.15	10.56	090
49651		A	Laparo hernia repair recur	8.24	NA	NA	4.34	4.67	0.82	NA	NA	13.40	13.73	090
49659		C	Laparo proc, hernia repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49900		A	Repair of abdominal wall	12.28	NA	NA	6.77	6.07	1.20	NA	NA	20.25	19.55	090
49905		A	Omental flap	6.55	NA	NA	2.52	2.82	0.64	NA	NA	9.71	10.01	ZZZ
49906		C	Free omental flap, microvasc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
49999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
50010		A	Exploration of kidney	10.98	NA	NA	6.47	7.44	0.75	NA	NA	18.20	19.17	090
50020		A	Renal abscess, open drain	14.66	NA	NA	12.90	11.52	0.68	NA	NA	28.24	26.86	090
50021		A	Renal abscess, percut drain	3.38	NA	NA	10.51	8.58	0.15	NA	NA	14.04	12.11	000
50040		A	Drainage of kidney	14.94	NA	NA	10.67	9.95	0.79	NA	NA	26.40	25.68	090
50045		A	Exploration of kidney	15.46	NA	NA	7.82	8.53	1.13	NA	NA	24.41	25.12	090
50060		A	Removal of kidney stone	19.30	NA	NA	9.13	10.17	1.14	NA	NA	29.57	30.61	090
50065		A	Incision of kidney	20.79	NA	NA	9.72	11.07	1.17	NA	NA	31.68	33.03	090
50070		A	Incision of kidney	20.32	NA	NA	9.53	10.64	1.44	NA	NA	31.29	32.40	090
50075		A	Removal of kidney stone	25.34	NA	NA	11.47	13.18	1.50	NA	NA	38.31	40.02	090
50080		A	Removal of kidney stone	14.71	NA	NA	9.85	10.70	0.81	NA	NA	25.37	26.22	090
50081		A	Removal of kidney stone	21.80	NA	NA	12.02	13.08	1.23	NA	NA	35.05	36.11	090
50100		A	Revise kidney blood vessels	16.09	NA	NA	9.23	9.73	1.74	NA	NA	27.06	27.56	090
50120		A	Exploration of kidney	15.91	NA	NA	8.04	8.99	0.95	NA	NA	24.90	25.85	090
50125		A	Explore and drain kidney	16.52	NA	NA	8.39	9.26	1.24	NA	NA	26.15	27.02	090
50130		A	Removal of kidney stone	17.29	NA	NA	8.52	9.86	1.05	NA	NA	26.86	28.20	090
50135		A	Exploration of kidney	19.18	NA	NA	9.15	11.49	1.18	NA	NA	29.51	31.85	090
50200		A	Biopsy of kidney	2.63	NA	NA	0.92	1.40	0.14	NA	NA	3.69	4.17	000
50205		A	Biopsy of kidney	11.31	NA	NA	6.15	6.14	0.88	NA	NA	18.34	18.33	090
50220		A	Removal of kidney	17.15	NA	NA	8.57	10.04	1.18	NA	NA	26.90	28.37	090
50225		A	Removal of kidney	20.23	NA	NA	9.50	11.61	1.26	NA	NA	30.99	33.10	090
50230		A	Removal of kidney	22.07	NA	NA	10.07	12.55	1.37	NA	NA	33.51	35.99	090
50234		A	Removal of kidney & ureter	22.40	NA	NA	10.18	12.15	1.38	NA	NA	33.96	35.93	090
50236		A	Removal of kidney & ureter	24.86	NA	NA	12.99	14.56	1.51	NA	NA	39.36	40.93	090
50240		A	Partial removal of kidney	0.22	NA	NA	11.95	13.30	1.37	NA	NA	13.54	14.89	090
50280		A	Removal of kidney lesion	15.67	NA	NA	7.90	8.87	0.01	NA	NA	23.58	24.55	090
50290		A	Removal of kidney lesion	14.73	NA	NA	7.49	8.03	1.16	NA	NA	23.38	23.92	090
50300		X	Removal of donor kidney	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
50320		A	Removal of donor kidney	22.21	NA	NA	10.33	12.22	1.74	NA	NA	34.28	36.17	090
50340		A	Removal of kidney	12.15	NA	NA	9.28	10.35	1.03	NA	NA	22.46	23.53	090
50360		A	Transplantation of kidney	31.53	NA	NA	17.33	19.63	2.91	NA	NA	51.77	54.07	090
50365		A	Transplantation of kidney	36.81	NA	NA	20.38	23.62	3.32	NA	NA	60.51	63.75	090
50370		A	Remove transplanted kidney	13.72	NA	NA	9.07	9.81	1.24	NA	NA	24.03	24.77	090
50380		A	Reimplantation of kidney	20.76	NA	NA	12.42	12.06	1.79	NA	NA	34.97	34.61	090
50390		A	Drainage of kidney lesion	1.96	NA	NA	0.68	0.97	0.08	NA	NA	2.72	3.01	000
50392		A	Insert kidney drain	3.38	NA	NA	1.17	1.52	0.13	NA	NA	4.68	5.03	000
50393		A	Insert ureteral tube	4.16	NA	NA	1.43	1.89	0.16	NA	NA	5.75	6.21	000
50394		A	Injection for kidney x-ray	0.76	13.48	10.26	0.26	0.35	0.03	14.27	11.05	1.05	1.14	000
50395		A	Create passage to kidney	3.38	NA	NA	1.16	1.77	0.13	NA	NA	4.67	5.28	000

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
50396		A	Measure kidney pressure	2.09	NA	NA	0.87	0.79	0.09	NA	NA	3.05	2.97	000
50398		A	Change kidney tube	1.46	0.94	0.85	0.50	0.52	0.06	2.46	2.37	2.02	2.04	000
50400		A	Revision of kidney/ureter	19.50	NA	NA	9.19	10.60	1.17	NA	NA	29.86	31.27	090
50405		A	Revision of kidney/ureter	23.93	NA	NA	12.24	13.87	1.48	NA	NA	37.65	39.28	090
50500		A	Repair of kidney wound	19.57	NA	NA	10.73	11.43	1.54	NA	NA	31.84	32.54	090
50520		A	Close kidney-skin fistula	17.23	NA	NA	10.77	10.88	1.08	NA	NA	29.08	29.19	090
50525		A	Repair renal-abdomen fistula	22.27	NA	NA	12.53	12.82	0.02	NA	NA	34.82	35.11	090
50526		A	Repair renal-abdomen fistula	24.02	NA	NA	15.04	13.29	2.40	NA	NA	41.46	39.71	090
50540		A	Revision of horseshoe kidney	19.93	NA	NA	9.46	10.73	1.37	NA	NA	30.76	32.03	090
50541		A	Laparo ablate renal cyst	0.16	NA	NA	6.40	6.40	1.03	NA	NA	7.59	7.59	090
50544		A	Laparoscopy, pyeloplasty	22.40	NA	NA	8.49	8.49	1.36	NA	NA	32.25	32.25	090
50546		A	Laparoscopic nephrectomy	20.48	NA	NA	8.03	8.03	1.41	NA	NA	29.92	29.92	090
50547		A	Laparo removal donor kidney	25.50	NA	NA	11.10	11.10	1.98	NA	NA	38.58	38.58	090
50548		A	Laparo-asst remove k/ureter	24.40	NA	NA	9.19	9.19	1.52	NA	NA	35.11	35.11	090
50549		C	Laparoscope proc, renal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
50551		A	Kidney endoscopy	5.60	4.47	3.95	1.82	1.96	0.32	10.39	9.87	7.74	7.88	000
50553		A	Kidney endoscopy	5.99	16.44	12.78	2.02	1.97	0.33	22.76	19.10	8.34	8.29	000
50555		A	Kidney endoscopy & biopsy	6.53	12.06	10.32	2.15	2.89	0.34	18.93	17.19	9.02	9.76	000
50557		A	Kidney endoscopy & treatment	6.62	18.22	14.94	2.16	2.90	0.37	25.21	21.93	9.15	9.89	000
50559		A	Renal endoscopy/radiotracer	6.78	NA	NA	2.44	2.19	0.30	NA	NA	9.52	9.27	000
50561		A	Kidney endoscopy & treatment	7.59	16.47	13.74	2.50	3.27	0.42	24.48	21.75	10.51	11.28	000
50570		A	Kidney endoscopy	9.54	NA	NA	3.10	2.72	0.54	NA	NA	13.18	12.80	000
50572		A	Kidney endoscopy	10.35	NA	NA	3.42	4.53	0.56	NA	NA	4.33	15.44	000
50574		A	Kidney endoscopy & biopsy	11.02	NA	NA	3.67	4.67	0.62	NA	NA	15.31	16.31	000
50575		A	Kidney endoscopy	13.98	NA	NA	4.56	6.12	0.79	NA	NA	19.33	20.89	000
50576		A	Kidney endoscopy & treatment	10.99	NA	NA	3.60	5.06	0.64	NA	NA	15.23	16.69	000
50578		A	Renal endoscopy/radiotracer	11.35	NA	NA	4.50	4.40	0.57	NA	NA	16.42	16.32	000
50580		A	Kidney endoscopy & treatment	11.86	NA	NA	3.86	3.87	0.68	NA	NA	16.40	16.41	000
50590		A	Fragmenting of kidney stone	9.09	9.63	9.94	4.74	6.27	0.52	19.24	19.55	14.35	15.88	090
50600		A	Exploration of ureter	15.84	NA	NA	8.00	8.63	0.99	NA	NA	24.83	25.46	090
50605		A	Insert ureteral support	15.46	NA	NA	8.13	7.76	1.10	NA	NA	24.69	24.32	090
50610		A	Removal of ureter stone	15.92	NA	NA	8.35	9.46	0.99	NA	NA	25.26	26.37	090
50620		A	Removal of ureter stone	15.16	NA	NA	7.68	8.88	0.90	NA	NA	23.74	24.94	090
50630		A	Removal of ureter stone	14.94	NA	NA	7.54	9.10	0.92	NA	NA	23.40	24.96	090
50650		A	Removal of ureter	17.41	NA	NA	8.68	9.79	1.06	NA	NA	27.15	28.26	090
50660		A	Removal of ureter	19.55	NA	NA	9.71	10.67	1.20	NA	NA	30.46	31.42	090
50684		A	Injection for ureter x-ray	0.76	12.30	9.36	0.25	0.32	0.04	13.10	10.16	1.05	1.12	000
50686		A	Measure ureter pressure	1.51	4.53	3.50	0.70	0.63	0.09	6.13	5.10	2.30	2.23	000
50688		A	Change of ureter tube	1.17	NA	NA	1.68	1.37	0.05	NA	NA	2.90	2.59	010
50690		A	Injection for ureter x-ray	1.16	13.98	10.57	0.39	0.38	0.06	15.20	11.79	1.61	1.60	000
50700		A	Revision of ureter	15.21	NA	NA	8.84	10.04	0.94	NA	NA	24.99	26.19	090
50715		A	Release of ureter	18.90	NA	NA	10.86	11.20	1.38	NA	NA	31.14	31.48	090
50722		A	Release of ureter	16.35	NA	NA	8.85	9.44	1.17	NA	NA	26.37	26.96	090
50725		A	Release/revise ureter	18.49	NA	NA	9.63	10.49	1.34	NA	NA	29.46	30.32	090
50727		A	Revise ureter	8.18	NA	NA	5.83	5.83	0.52	NA	NA	14.53	14.53	090
50728		A	Revise ureter	12.02	NA	NA	7.31	7.63	0.91	NA	NA	20.24	20.56	090
50740		A	Fusion of ureter & kidney	18.42	NA	NA	9.01	10.29	1.49	NA	NA	28.92	30.20	090
50750		A	Fusion of ureter & kidney	19.51	NA	NA	9.68	11.07	1.13	NA	NA	30.32	31.71	090
50760		A	Fusion of ureters	18.42	NA	NA	9.26	10.60	1.19	NA	NA	28.87	30.21	090
50770		A	Splicing of ureters	19.51	NA	NA	9.50	11.26	1.19	NA	NA	30.20	31.96	090
50780		A	Reimplant ureter in bladder	18.36	NA	NA	9.14	10.59	1.18	NA	NA	28.68	30.13	090
50782		A	Reimplant ureter in bladder	19.54	NA	NA	9.98	11.22	1.29	NA	NA	30.81	32.05	090
50783		A	Reimplant ureter in bladder	20.55	NA	NA	10.13	11.34	1.32	NA	NA	32.00	33.21	090
50785		A	Reimplant ureter in bladder	20.52	NA	NA	9.91	11.62	1.30	NA	NA	31.73	33.44	090
50800		A	Implant ureter in bowel	14.52	NA	NA	8.88	10.64	0.92	NA	NA	24.32	26.08	090
50810		A	Fusion of ureter & bowel	20.05	NA	NA	11.82	12.28	1.62	NA	NA	33.49	33.95	090
50815		A	Urine shunt to bowel	19.93	NA	NA	10.71	13.39	1.28	NA	NA	31.92	34.60	090
50820		A	Construct bowel bladder	21.89	NA	NA	11.13	13.50	1.46	NA	NA	34.48	36.85	090
50825		A	Construct bowel bladder	28.18	NA	NA	13.90	18.71	1.71	NA	NA	43.79	48.60	090
50830		A	Revise urine flow	31.28	NA	NA	14.48	16.54	2.15	NA	NA	47.91	49.97	090
50840		A	Replace ureter by bowel	0.20	NA	NA	10.89	11.78	1.25	NA	NA	12.34	13.23	090
50845		A	Appendico-vesicostomy	20.89	NA	NA	9.44	10.84	1.26	NA	NA	31.59	32.99	090
50860		A	Transplant ureter to skin	15.36	NA	NA	8.30	9.19	1.01	NA	NA	24.67	25.56	090
50900		A	Repair of ureter	13.62	NA	NA	7.39	8.25	0.97	NA	NA	21.98	22.84	090
50920		A	Closure ureter/skin fistula	14.33	NA	NA	7.86	8.48	1.03	NA	NA	23.22	23.84	090
50930		A	Closure ureter/bowel fistula	18.72	NA	NA	9.15	10.26	1.34	NA	NA	29.21	30.32	090
50940		A	Release of ureter	14.51	NA	NA	7.70	8.46	0.95	NA	NA	23.16	23.92	090
50945		A	Laparoscopy ureterolithotomy	0.17	NA	NA	7.00	7.00	1.07	NA	NA	8.24	8.24	090
50951		A	Endoscopy of ureter	5.84	4.70	3.98	1.91	1.89	0.34	10.88	10.16	8.09	8.07	000
50953		A	Endoscopy of ureter	6.24	16.67	12.95	2.04	1.98	0.36	23.27	19.55	8.64	8.58	000
50955		A	Ureter endoscopy & biopsy	6.75	11.95	9.66	2.21	2.35	0.37	19.07	16.78	9.33	9.47	000
50957		A	Ureter endoscopy & treatment	6.79	12.00	9.68	2.24	2.36	0.38	19.17	16.85	9.41	9.53	000
50959		A	Ureter endoscopy & tracer	4.40	NA	NA	1.41	1.98	0.25	NA	NA	6.06	6.63	000
50961		A	Ureter endoscopy & treatment	6.05	22.24	17.39	1.98	2.20	0.33	28.62	23.77	8.36	8.58	000
50970		A	Ureter endoscopy	7.14	NA	NA	2.36	3.17	0.41	NA	NA	9.91	10.72	000
50972		A	Ureter endoscopy & catheter	6.89	NA	NA	2.27	2.12	0.40	NA	NA	9.56	9.41	000
50974		A	Ureter endoscopy & biopsy	9.17	NA	NA	3.02	4.17	0.50	NA	NA	12.69	13.84	000
50976		A	Ureter endoscopy & treatment	9.04	NA	NA	2.99	3.98	0.51	NA	NA	12.54	13.53	000
50978		A	Ureter endoscopy & tracer	5.10	NA	NA	2.02	2.62	0.33	NA	NA	7.45	8.05	000
50980		A	Ureter endoscopy & treatment	6.85	NA	NA	2.24	2.53	0.38	NA	NA	9.47	9.76	000
51000		A	Drainage of bladder	0.78	1.70	1.41	0.25	0.32	0.05	2.53	2.24	1.08	1.15	000
51005		A	Drainage of bladder	1.02	2.85	2.26	0.35	0.39	0.08	3.95	3.36	1.45	1.49	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
51010		A	Drainage of bladder	3.53	6.54	5.17	1.74	1.57	0.22	10.29	8.92	5.49	5.32	010
51020		A	Incise & treat bladder	6.71	NA	NA	5.06	5.65	0.42	NA	NA	12.19	12.78	090
51030		A	Incise & treat bladder	6.77	NA	NA	5.30	5.21	0.40	NA	NA	12.47	12.38	090
51040		A	Incise & drain bladder	4.40	NA	NA	3.88	4.22	0.27	NA	NA	8.55	8.89	090
51045		A	Incise bladder/drain ureter	6.77	NA	NA	5.03	5.12	0.43	NA	NA	12.23	12.32	090
51050		A	Removal of bladder stone	6.92	NA	NA	4.59	5.38	0.41	NA	NA	11.92	12.71	090
51060		A	Removal of ureter stone	8.85	NA	NA	5.53	6.79	0.53	NA	NA	14.91	16.17	090
51065		A	Removal of ureter stone	8.85	NA	NA	5.62	6.14	0.52	NA	NA	14.99	15.51	090
51080		A	Drainage of bladder abscess	5.96	NA	NA	5.17	5.28	0.36	NA	NA	11.49	11.60	090
51500		A	Removal of bladder cyst	10.14	NA	NA	6.01	6.37	0.82	NA	NA	16.97	17.33	090
51520		A	Removal of bladder lesion	9.29	NA	NA	5.81	6.67	0.57	NA	NA	15.67	16.53	090
51525		A	Removal of bladder lesion	13.97	NA	NA	7.33	8.39	0.85	NA	NA	22.15	23.21	090
51530		A	Removal of bladder lesion	12.38	NA	NA	6.96	7.73	0.85	NA	NA	20.19	20.96	090
51535		A	Repair of ureter lesion	12.57	NA	NA	7.28	7.54	0.84	NA	NA	20.69	20.95	090
51550		A	Partial removal of bladder	15.66	NA	NA	8.00	8.91	1.10	NA	NA	24.76	25.67	090
51555		A	Partial removal of bladder	21.23	NA	NA	10.20	10.98	1.38	NA	NA	32.81	33.59	090
51565		A	Revise bladder & ureter(s)	21.62	NA	NA	10.54	12.20	1.37	NA	NA	33.53	35.19	090
51570		A	Removal of bladder	24.24	NA	NA	11.55	12.91	1.50	NA	NA	37.29	38.65	090
51575		A	Removal of bladder & nodes	30.45	NA	NA	14.21	16.86	1.90	NA	NA	46.56	49.21	090
51580		A	Remove bladder/revise tract	31.08	NA	NA	14.62	16.38	1.93	NA	NA	47.63	49.39	090
51585		A	Removal of bladder & nodes	35.23	NA	NA	15.82	18.68	2.21	NA	NA	53.26	56.12	090
51590		A	Remove bladder/revise tract	32.66	NA	NA	14.75	17.72	2.03	NA	NA	49.44	52.41	090
51595		A	Remove bladder/revise tract	37.14	NA	NA	16.05	21.21	2.21	NA	NA	55.40	60.56	090
51596		A	Remove bladder/create pouch	39.52	NA	NA	17.23	22.39	2.37	NA	NA	59.12	64.28	090
51597		A	Removal of pelvic structures	38.35	NA	NA	17.07	21.11	2.53	NA	NA	57.95	61.99	090
51600		A	Injection for bladder x-ray	0.88	13.95	10.54	0.30	0.30	0.04	14.87	11.46	1.22	1.22	000
51605		A	Preparation for bladder xray	0.64	12.73	9.63	0.22	0.25	0.03	13.40	10.30	0.89	0.92	000
51610		A	Injection for bladder x-ray	1.05	14.61	11.03	0.35	0.34	0.05	15.71	12.13	1.45	1.44	000
51700		A	Irrigation of bladder	0.88	3.59	2.75	0.31	0.29	0.05	4.52	3.68	1.24	1.22	000
51705		A	Change of bladder tube	1.02	2.41	1.91	1.19	1.00	0.06	3.49	2.99	2.27	2.08	010
51710		A	Change of bladder tube	1.49	4.56	3.58	1.33	1.15	0.09	6.14	5.16	2.91	2.73	010
51715		A	Endoscopic injection/implant	3.74	3.88	3.63	1.23	1.64	0.22	7.84	7.59	5.19	5.60	000
51720		A	Treatment of bladder lesion	1.96	3.79	2.97	0.64	0.60	0.11	5.86	5.04	2.71	2.67	000
51725		A	Simple cystometrogram	1.51	0.90	0.95	NA	NA	0.12	2.53	2.58	NA	NA	000
51725	26	A	Simple cystometrogram	1.51	0.50	0.55	0.50	0.55	0.09	2.10	2.15	2.10	2.15	000
51725	TC	A	Simple cystometrogram	0.00	0.40	0.40	NA	NA	0.03	0.43	0.43	NA	NA	000
51726		A	Complex cystometrogram	1.71	1.08	1.16	NA	NA	0.14	2.93	3.01	NA	NA	000
51726	26	A	Complex cystometrogram	1.71	0.57	0.65	0.57	0.65	0.10	2.38	2.46	2.38	2.46	000
51726	TC	A	Complex cystometrogram	0.00	0.51	0.51	NA	NA	0.04	0.55	0.55	NA	NA	000
51736		A	Urine flow measurement	0.61	0.36	0.38	NA	NA	0.05	1.02	1.04	NA	NA	000
51736	26	A	Urine flow measurement	0.61	0.20	0.22	0.20	0.22	0.04	0.85	0.87	0.85	0.87	000
51736	TC	A	Urine flow measurement	0.00	0.16	0.16	NA	NA	0.01	0.17	0.17	NA	NA	000
51741		A	Electro-uroflowmetry, first	1.14	0.60	0.60	NA	NA	0.09	1.83	1.83	NA	NA	000
51741	26	A	Electro-uroflowmetry, first	1.14	0.38	0.38	0.38	0.38	0.07	1.59	1.59	1.59	1.59	000
51741	TC	A	Electro-uroflowmetry, first	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	000
51772		A	Urethra pressure profile	1.61	1.00	1.00	NA	NA	0.14	2.75	2.75	NA	NA	000
51772	26	A	Urethra pressure profile	1.61	0.55	0.55	0.55	0.55	0.10	2.26	2.26	2.26	2.26	000
51772	TC	A	Urethra pressure profile	0.00	0.45	0.45	NA	NA	0.04	0.49	0.49	NA	NA	000
51784		A	Anal/urinary muscle study	1.53	0.92	0.97	NA	NA	0.13	2.58	2.63	NA	NA	000
51784	26	A	Anal/urinary muscle study	1.53	0.51	0.56	0.51	0.56	0.10	2.14	2.19	2.14	2.19	000
51784	TC	A	Anal/urinary muscle study	0.00	0.41	0.41	NA	NA	0.03	0.44	0.44	NA	NA	000
51785		A	Anal/urinary muscle study	1.53	0.92	0.97	NA	NA	0.12	2.57	2.62	NA	NA	000
51785	26	A	Anal/urinary muscle study	1.53	0.51	0.56	0.51	0.56	0.09	2.13	2.18	2.13	2.18	000
51785	TC	A	Anal/urinary muscle study	0.00	0.41	0.41	NA	NA	0.03	0.44	0.44	NA	NA	000
51792		A	Urinary reflex study	1.10	1.86	1.92	NA	NA	0.17	3.13	3.19	NA	NA	000
51792	26	A	Urinary reflex study	1.10	0.44	0.49	0.44	0.49	0.06	1.60	1.65	1.60	1.65	000
51792	TC	A	Urinary reflex study	0.00	1.42	1.43	NA	NA	0.11	1.53	1.54	NA	NA	000
51795		A	Urine voiding pressure study	1.53	1.43	1.47	NA	NA	0.17	3.13	3.17	NA	NA	000
51795	26	A	Urine voiding pressure study	1.53	0.51	0.54	0.51	0.54	0.09	2.13	2.16	2.13	2.16	000
51795	TC	A	Urine voiding pressure study	0.00	0.92	0.93	NA	NA	0.08	1.00	1.01	NA	NA	000
51797		A	Intraabdominal pressure test	1.60	1.02	1.02	NA	NA	0.14	2.76	2.76	NA	NA	000
51797	26	A	Intraabdominal pressure test	1.60	0.54	0.54	0.54	0.54	0.10	2.24	2.24	2.24	2.24	000
51797	TC	A	Intraabdominal pressure test	0.00	0.48	0.48	NA	NA	0.04	0.52	0.52	NA	NA	000
51800		A	Revision of bladder/urethra	17.42	NA	NA	8.67	9.76	1.09	NA	NA	27.18	28.27	090
51820		A	Revision of urinary tract	17.89	NA	NA	9.70	9.28	1.37	NA	NA	28.96	28.54	090
51840		A	Attach bladder/urethra	10.71	NA	NA	6.15	7.12	0.74	NA	NA	17.60	18.57	090
51841		A	Attach bladder/urethra	13.03	NA	NA	7.54	8.64	0.90	NA	NA	21.47	22.57	090
51845		A	Repair bladder neck	9.73	NA	NA	6.06	7.45	0.59	NA	NA	16.38	17.77	090
51860		A	Repair of bladder wound	12.02	NA	NA	7.20	7.47	0.93	NA	NA	20.15	20.42	090
51865		A	Repair of bladder wound	15.04	NA	NA	8.04	9.00	1.05	NA	NA	24.13	25.09	090
51880		A	Repair of bladder opening	7.66	NA	NA	5.11	5.18	0.53	NA	NA	13.30	13.37	090
51900		A	Repair bladder/vagina lesion	12.97	NA	NA	7.39	8.70	0.89	NA	NA	21.25	22.56	090
51920		A	Close bladder-uterus fistula	11.81	NA	NA	6.58	6.97	0.85	NA	NA	19.24	19.63	090
51925		A	Hysterectomy/bladder repair	15.58	NA	NA	8.84	9.36	1.17	NA	NA	25.59	26.11	090
51940		A	Correction of bladder defect	28.43	NA	NA	14.08	15.70	1.90	NA	NA	44.41	46.03	090
51960		A	Revision of bladder & bowel	23.01	NA	NA	11.95	14.77	1.39	NA	NA	36.35	39.17	090
51980		A	Construct bladder opening	11.36	NA	NA	6.52	6.92	0.73	NA	NA	18.61	19.01	090
51990		A	Laparo urethral suspension	12.50	NA	NA	5.95	5.95	0.87	NA	NA	19.32	19.32	090
51992		A	Laparo sling operation	14.01	NA	NA	6.10	6.10	0.86	NA	NA	20.97	20.97	090
52000		A	Cystoscopy	2.01	3.01	2.62	0.66	0.86	0.11	5.13	4.74	2.78	2.98	000
52005		A	Cystoscopy & ureter catheter	2.37	4.72	4.14	0.77	1.18	0.13	7.22	6.64	3.27	3.68	000
52007		A	Cystoscopy and biopsy	3.02	NA	NA	0.99	1.51	0.17	NA	NA	4.18	4.70	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
52010		A	Cystoscopy & duct catheter	3.02	4.94	4.22	0.99	1.26	0.17	8.13	7.41	4.18	4.45	000
52204		A	Cystoscopy	2.37	5.46	4.74	0.77	1.22	0.13	7.96	7.24	3.27	3.72	000
52214		A	Cystoscopy and treatment	3.71	5.82	5.13	1.21	1.67	0.21	9.74	9.05	5.13	5.59	000
52224		A	Cystoscopy and treatment	3.14	5.67	5.04	1.02	1.55	0.18	8.99	8.36	4.34	4.87	000
52234		A	Cystoscopy and treatment	4.63	6.55	6.19	1.51	2.41	0.26	11.44	11.08	6.40	7.30	000
52235		A	Cystoscopy and treatment	5.45	6.82	6.74	1.78	2.96	0.31	12.58	12.50	7.54	8.72	000
52240		A	Cystoscopy and treatment	9.72	8.23	9.06	3.17	5.27	0.55	18.50	19.33	13.44	15.54	000
52250		A	Cystoscopy and radiotracer	4.50	NA	NA	1.47	1.88	0.26	NA	NA	6.23	6.64	000
52260		A	Cystoscopy and treatment	3.92	NA	NA	1.28	1.53	0.22	NA	NA	5.42	5.67	000
52265		A	Cystoscopy and treatment	2.94	3.39	2.91	0.96	1.09	0.17	6.50	6.02	4.07	4.20	000
52270		A	Cystoscopy & revise urethra	3.37	6.14	5.55	1.10	1.77	0.19	9.70	9.11	4.66	5.33	000
52275		A	Cystoscopy & revise urethra	4.70	6.65	5.92	1.53	2.08	0.27	11.62	10.89	6.50	7.05	000
52276		A	Cystoscopy and treatment	0.05	6.76	6.31	1.63	2.47	0.29	7.10	6.65	1.97	2.81	000
52277		A	Cystoscopy and treatment	6.17	NA	NA	2.03	2.83	0.36	NA	NA	8.56	9.36	000
52281		A	Cystoscopy and treatment	2.80	3.39	3.17	0.91	1.31	0.16	6.35	6.13	3.87	4.27	000
52282		A	Cystoscopy, implant stent	6.40	6.97	6.47	2.09	2.81	0.36	13.73	13.23	8.85	9.57	000
52283		A	Cystoscopy and treatment	3.74	6.06	4.96	1.22	1.33	0.21	10.01	8.91	5.17	5.28	000
52285		A	Cystoscopy and treatment	3.61	6.27	5.50	1.18	1.68	0.21	10.09	9.32	5.00	5.50	000
52290		A	Cystoscopy and treatment	4.59	NA	NA	1.50	1.76	0.26	NA	NA	6.35	6.61	000
52300		A	Cystoscopy and treatment	5.31	NA	NA	1.73	2.24	0.31	NA	NA	7.35	7.86	000
52301		A	Cystoscopy and treatment	5.51	NA	NA	1.73	2.24	0.40	NA	NA	7.64	8.15	000
52305		A	Cystoscopy and treatment	5.31	NA	NA	1.73	2.25	0.31	NA	NA	7.35	7.87	000
52310		A	Cystoscopy and treatment	2.81	13.88	11.22	0.92	1.50	0.16	16.85	14.19	3.89	4.47	000
52315		A	Cystoscopy and treatment	5.21	14.82	12.22	1.70	2.38	0.30	20.33	17.73	7.21	7.89	000
52317		A	Remove bladder stone	6.72	23.00	18.93	2.19	3.32	0.38	30.10	26.03	9.29	10.42	000
52318		A	Remove bladder stone	9.19	NA	NA	2.99	4.38	0.52	NA	NA	12.70	14.09	000
52320		A	Cystoscopy and treatment	4.70	NA	NA	1.52	2.46	0.27	NA	NA	6.49	7.43	000
52325		A	Cystoscopy, stone removal	6.16	NA	NA	2.00	3.34	0.35	NA	NA	8.51	9.85	000
52327		A	Cystoscopy, inject material	5.19	NA	NA	1.72	2.29	0.30	NA	NA	7.21	7.78	000
52330		A	Cystoscopy and treatment	5.04	18.80	15.04	1.64	2.17	0.29	24.13	20.37	6.97	7.50	000
52332		A	Cystoscopy and treatment	2.83	28.16	21.99	0.92	1.56	0.16	31.15	24.98	3.91	4.55	000
52334		A	Create passage to kidney	4.83	NA	NA	1.57	2.08	0.28	NA	NA	6.68	7.19	000
52335		A	Endoscopy of urinary tract	5.86	NA	NA	1.91	2.71	0.33	NA	NA	8.10	8.90	000
52336		A	Cystoscopy, stone removal	6.88	NA	NA	2.23	3.73	0.39	NA	NA	9.50	11.00	000
52337		A	Cystoscopy, stone removal	7.97	NA	NA	2.58	4.32	0.45	NA	NA	11.00	12.74	000
52338		A	Cystoscopy and treatment	7.34	NA	NA	2.39	3.40	0.42	NA	NA	10.15	11.16	000
52339		A	Cystoscopy and treatment	8.82	NA	NA	2.89	3.77	0.51	NA	NA	12.22	13.10	000
52340		A	Cystoscopy and treatment	9.68	NA	NA	5.10	5.22	0.55	NA	NA	15.33	15.45	090
52450		A	Incision of prostate	7.64	NA	NA	5.85	5.74	0.43	NA	NA	13.92	13.81	090
52500		A	Revision of bladder neck	8.47	NA	NA	6.08	6.58	0.48	NA	NA	15.03	15.53	090
52510		A	Dilation prostatic urethra	6.72	NA	NA	5.24	5.94	0.38	NA	NA	12.34	13.04	090
52601		A	Prostatectomy (TURP)	12.37	NA	NA	7.37	8.75	0.70	NA	NA	20.44	21.82	090
52606		A	Control postop bleeding	8.13	NA	NA	5.63	5.12	0.47	NA	NA	14.23	13.72	090
52612		A	Prostatectomy, first stage	7.98	NA	NA	5.95	6.85	0.46	NA	NA	14.39	15.29	090
52614		A	Prostatectomy, second stage	6.84	NA	NA	5.69	6.19	0.39	NA	NA	12.92	13.42	090
52620		A	Remove residual prostate	6.61	NA	NA	5.50	5.57	0.37	NA	NA	12.48	12.55	090
52630		A	Remove prostate regrowth	7.26	NA	NA	5.73	6.47	0.41	NA	NA	13.40	14.14	090
52640		A	Relieve bladder contracture	6.62	NA	NA	5.12	5.59	0.37	NA	NA	12.11	12.58	090
52647		A	Laser surgery of prostate	10.36	54.31	43.83	4.50	6.47	0.58	65.25	54.77	15.44	17.41	090
52648		A	Laser surgery of prostate	11.21	NA	NA	6.94	8.43	0.64	NA	NA	18.79	20.28	090
52700		A	Drainage of prostate abscess	6.80	NA	NA	5.58	5.08	0.40	NA	NA	12.78	12.28	090
53000		A	Incision of urethra	2.28	6.48	5.34	2.26	2.17	0.14	8.90	7.76	4.68	4.59	010
53010		A	Incision of urethra	3.64	NA	NA	3.59	3.65	0.30	NA	NA	7.53	7.59	090
53020		A	Incision of urethra	1.77	3.92	3.16	0.63	0.70	0.11	5.80	5.04	2.51	2.58	000
53025		A	Incision of urethra	1.13	4.23	3.39	0.42	0.53	0.07	5.43	4.59	1.62	1.73	000
53040		A	Drainage of urethra abscess	6.40	12.20	9.65	7.34	6.01	0.38	18.98	16.43	14.12	12.79	090
53060		A	Drainage of urethra abscess	2.63	5.75	4.45	2.39	1.93	0.18	8.56	7.26	5.20	4.74	010
53080		A	Drainage of urinary leakage	6.29	NA	NA	8.27	7.28	0.36	NA	NA	14.92	13.93	090
53085		A	Drainage of urinary leakage	10.27	NA	NA	8.94	8.54	0.61	NA	NA	19.82	19.42	090
53200		A	Biopsy of urethra	2.59	4.96	4.02	0.91	0.98	0.15	7.70	6.76	3.65	3.72	000
53210		A	Removal of urethra	12.57	NA	NA	7.18	7.19	0.80	NA	NA	20.55	20.56	090
53215		A	Removal of urethra	15.58	NA	NA	7.90	8.64	0.94	NA	NA	24.42	25.16	090
53220		A	Treatment of urethra lesion	0.07	NA	NA	4.93	4.99	0.41	NA	NA	5.41	5.47	090
53230		A	Removal of urethra lesion	9.58	NA	NA	5.69	6.42	0.56	NA	NA	15.83	16.56	090
53235		A	Removal of urethra lesion	10.14	NA	NA	5.87	5.77	0.59	NA	NA	16.60	16.50	090
53240		A	Surgery for urethra pouch	6.45	NA	NA	4.60	4.63	0.42	NA	NA	11.47	11.50	090
53250		A	Removal of urethra gland	5.89	NA	NA	4.14	4.21	0.38	NA	NA	10.41	10.48	090
53260		A	Treatment of urethra lesion	2.98	5.36	4.33	2.10	1.88	0.19	8.53	7.50	5.27	5.05	010
53265		A	Treatment of urethra lesion	3.12	5.80	4.86	2.09	2.08	0.19	9.11	8.17	5.40	5.39	010
53270		A	Removal of urethra gland	3.09	5.44	4.31	2.23	1.90	0.21	8.74	7.61	5.53	5.20	010
53275		A	Repair of urethra defect	4.53	NA	NA	2.98	2.88	0.26	NA	NA	7.77	7.67	010
53400		A	Revise urethra, stage 1	12.77	NA	NA	7.06	7.32	0.74	NA	NA	20.57	20.83	090
53405		A	Revise urethra, stage 2	14.48	NA	NA	7.59	8.51	0.82	NA	NA	22.89	23.81	090
53410		A	Reconstruction of urethra	16.44	NA	NA	8.26	8.52	0.95	NA	NA	25.65	25.91	090
53415		A	Reconstruction of urethra	19.41	NA	NA	8.73	9.77	1.19	NA	NA	29.33	30.37	090
53420		A	Reconstruct urethra, stage 1	14.08	NA	NA	7.84	8.83	0.84	NA	NA	22.76	23.75	090
53425		A	Reconstruct urethra, stage 2	15.98	NA	NA	8.55	8.92	0.90	NA	NA	25.43	25.80	090
53430		A	Reconstruction of urethra	16.34	NA	NA	8.36	8.21	0.97	NA	NA	25.67	25.52	090
53440		A	Correct bladder function	12.34	NA	NA	7.20	8.97	0.72	NA	NA	20.26	22.03	090
53442		A	Remove perineal prosthesis	8.27	NA	NA	5.29	5.55	0.47	NA	NA	14.03	14.29	090
53443		A	Reconstruction of urethra	19.89	NA	NA	9.18	9.61	1.25	NA	NA	30.32	30.75	090
53445		A	Correct urine flow control	14.06	NA	NA	7.78	10.03	0.82	NA	NA	22.66	24.91	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
53447		A	Remove artificial sphincter	13.17	NA	NA	7.14	7.84	0.75	NA	NA	21.06	21.76	090
53449		A	Correct artificial sphincter	9.70	NA	NA	6.03	6.81	0.55	NA	NA	16.28	17.06	090
53450		A	Revision of urethra	6.14	NA	NA	4.45	4.08	0.34	NA	NA	10.93	10.56	090
53460		A	Revision of urethra	7.12	NA	NA	4.78	4.25	0.42	NA	NA	12.32	11.79	090
53502		A	Repair of urethra injury	7.63	NA	NA	5.28	5.31	0.48	NA	NA	13.39	13.42	090
53505		A	Repair of urethra injury	7.63	NA	NA	4.91	5.09	0.45	NA	NA	12.99	13.17	090
53510		A	Repair of urethra injury	10.11	NA	NA	6.38	6.68	0.68	NA	NA	17.17	17.47	090
53515		A	Repair of urethra injury	13.31	NA	NA	6.88	7.61	0.78	NA	NA	20.97	21.70	090
53520		A	Repair of urethra defect	8.68	NA	NA	5.33	5.60	0.52	NA	NA	14.53	14.80	090
53600		A	Dilate urethra stricture	1.21	3.77	2.92	0.48	0.45	0.07	5.05	4.20	1.76	1.73	000
53601		A	Dilate urethra stricture	0.98	3.70	2.85	0.40	0.38	0.06	4.74	3.89	1.44	1.42	000
53605		A	Dilate urethra stricture	1.28	NA	NA	0.42	0.44	0.08	NA	NA	1.78	1.80	000
53620		A	Dilate urethra stricture	1.62	5.61	4.34	0.53	0.53	0.10	7.33	6.06	2.25	2.25	000
53621		A	Dilate urethra stricture	1.35	5.61	4.31	0.44	0.43	0.08	7.04	5.74	1.87	1.86	000
53660		A	Dilation of urethra	0.71	3.54	2.73	0.32	0.32	0.04	4.29	3.48	1.07	1.07	000
53661		A	Dilation of urethra	0.72	3.61	2.78	0.24	0.25	0.04	4.37	3.54	1.00	1.01	000
53665		A	Dilation of urethra	0.76	NA	NA	0.26	0.29	0.05	NA	NA	1.07	1.10	000
53670		A	Insert urinary catheter	0.50	3.33	2.56	0.19	0.20	0.03	3.86	3.09	0.72	0.73	000
53675		A	Insert urinary catheter	1.47	4.46	3.47	0.47	0.48	0.09	6.02	5.03	2.03	2.04	000
53850		A	Prostatic microwave thermotx	9.45	12.11	10.90	4.17	4.95	0.53	22.09	20.88	14.15	14.93	090
53852		A	Prostatic rf thermotx	9.88	67.86	52.80	4.28	5.11	0.56	78.30	63.24	14.72	15.55	090
53899		C	Urology surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
54000		A	Slitting of prepuce	1.54	5.16	4.04	1.30	1.15	0.09	6.79	5.67	2.93	2.78	010
54001		A	Slitting of prepuce	2.19	5.51	4.36	1.80	1.58	0.13	7.83	6.68	4.12	3.90	010
54015		A	Drain penis lesion	5.32	6.48	5.09	2.83	2.35	0.32	12.12	10.73	8.47	7.99	010
54050		A	Destruction, penis lesion(s)	1.24	2.28	1.81	0.49	0.47	0.07	3.59	3.12	1.80	1.78	010
54055		A	Destruction, penis lesion(s)	1.22	5.92	4.61	1.28	1.13	0.07	7.21	5.90	2.57	2.42	010
54056		A	Cryosurgery, penis lesion(s)	1.24	2.75	2.21	0.53	0.54	0.05	4.04	3.50	1.82	1.83	010
54057		A	Laser surg, penis lesion(s)	1.24	2.67	2.42	1.19	1.31	0.07	3.98	3.73	2.50	2.62	010
54060		A	Excision of penis lesion(s)	1.93	4.98	4.05	1.43	1.39	0.11	7.02	6.09	3.47	3.43	010
54065		A	Destruction, penis lesion(s)	2.42	5.01	4.43	1.92	2.11	0.13	7.56	6.98	4.47	4.66	010
54100		A	Biopsy of penis	1.90	3.38	2.71	0.71	0.71	0.10	5.38	4.71	2.71	2.71	000
54105		A	Biopsy of penis	3.50	5.83	4.65	1.94	1.73	0.20	9.53	8.35	5.64	5.43	010
54110		A	Treatment of penis lesion	10.13	NA	NA	7.28	7.10	0.60	NA	NA	18.01	17.83	090
54111		A	Treat penis lesion, graft	13.57	NA	NA	8.38	8.78	0.78	NA	NA	22.73	23.13	090
54112		A	Treat penis lesion, graft	15.86	NA	NA	9.30	9.92	0.96	NA	NA	26.12	26.74	090
54115		A	Treatment of penis lesion	6.15	10.08	8.70	5.98	5.62	0.36	16.59	15.21	12.49	12.13	090
54120		A	Partial removal of penis	9.97	NA	NA	7.21	7.16	0.57	NA	NA	17.75	17.70	090
54125		A	Removal of penis	13.53	NA	NA	8.44	9.47	0.79	NA	NA	22.76	23.79	090
54130		A	Remove penis & nodes	20.14	NA	NA	10.99	12.22	1.20	NA	NA	32.33	33.56	090
54135		A	Remove penis & nodes	26.36	NA	NA	13.30	14.79	1.54	NA	NA	41.20	42.69	090
54150		A	Circumcision	1.81	5.36	4.17	1.64	1.38	0.12	7.29	6.10	3.57	3.31	010
54152		A	Circumcision	2.31	NA	NA	1.57	1.67	0.15	NA	NA	4.03	4.13	010
54160		A	Circumcision	2.48	5.57	4.63	1.64	1.68	0.17	8.22	7.28	4.29	4.33	010
54161		A	Circumcision	3.27	NA	NA	1.86	1.99	0.19	NA	NA	5.32	5.45	010
54200		A	Treatment of penis lesion	1.06	2.36	1.86	0.37	0.37	0.06	3.48	2.98	1.49	1.49	010
54205		A	Treatment of penis lesion	7.93	NA	NA	6.51	6.27	0.46	NA	NA	14.90	14.66	090
54220		A	Treatment of penis lesion	2.42	1.79	1.77	0.94	1.13	0.14	4.35	4.33	3.50	3.69	000
54230		A	Prepare penis study	1.34	NA	NA	0.44	0.69	0.08	NA	NA	1.86	2.11	000
54231		A	Dynamic cavernosometry	2.04	1.92	1.83	0.79	0.98	0.14	4.10	4.01	2.97	3.16	000
54235		A	Penile injection	1.19	1.02	0.88	0.39	0.41	0.07	2.28	2.14	1.65	1.67	000
54240		A	Penis study	1.31	0.95	0.98	NA	NA	0.14	2.40	2.43	NA	NA	000
54240	26	A	Penis study	1.31	0.44	0.47	0.44	0.47	0.09	1.84	1.87	1.84	1.87	000
54240	TC	A	Penis study	0.00	0.51	0.51	NA	NA	0.05	0.56	0.56	NA	NA	000
54250		A	Penis study	2.22	1.05	1.00	NA	NA	0.15	3.42	3.37	NA	NA	000
54250	26	A	Penis study	2.22	0.72	0.68	0.72	0.68	0.13	3.07	3.03	3.07	3.03	000
54250	TC	A	Penis study	0.00	0.32	0.32	NA	NA	0.02	0.34	0.34	NA	NA	000
54300		A	Revision of penis	10.41	NA	NA	8.03	7.89	0.61	NA	NA	19.05	18.91	090
54304		A	Revision of penis	12.49	NA	NA	9.06	9.15	0.78	NA	NA	22.33	22.42	090
54308		A	Reconstruction of urethra	11.83	NA	NA	8.59	8.03	0.77	NA	NA	21.19	20.63	090
54312		A	Reconstruction of urethra	13.57	NA	NA	9.81	9.90	0.69	NA	NA	24.07	24.16	090
54316		A	Reconstruction of urethra	16.82	NA	NA	12.01	12.09	0.95	NA	NA	29.78	29.86	090
54318		A	Reconstruction of urethra	11.25	NA	NA	8.97	8.77	0.64	NA	NA	20.86	20.66	090
54322		A	Reconstruction of urethra	13.01	NA	NA	8.63	8.54	0.74	NA	NA	22.38	22.29	090
54324		A	Reconstruction of urethra	16.31	NA	NA	10.48	10.84	1.18	NA	NA	27.97	28.33	090
54326		A	Reconstruction of urethra	15.72	NA	NA	9.95	10.32	1.11	NA	NA	26.78	27.15	090
54328		A	Revise penis/urethra	15.65	NA	NA	9.77	10.24	0.88	NA	NA	26.30	26.77	090
54332		A	Revise penis/urethra	17.08	NA	NA	10.52	11.29	1.03	NA	NA	28.63	29.40	090
54336		A	Revise penis/urethra	20.04	NA	NA	12.59	14.54	1.47	NA	NA	34.10	36.05	090
54340		A	Secondary urethral surgery	8.91	NA	NA	7.43	7.22	0.63	NA	NA	16.97	16.76	090
54344		A	Secondary urethral surgery	15.94	NA	NA	9.85	11.90	1.03	NA	NA	26.82	28.87	090
54348		A	Secondary urethral surgery	17.15	NA	NA	10.71	11.19	1.15	NA	NA	29.01	29.49	090
54352		A	Reconstruct urethra/penis	24.74	NA	NA	13.45	14.48	1.11	NA	NA	39.30	40.33	090
54360		A	Penis plastic surgery	11.93	NA	NA	7.82	7.77	0.70	NA	NA	20.45	20.40	090
54380		A	Repair penis	13.18	NA	NA	9.50	9.68	0.86	NA	NA	23.54	23.72	090
54385		A	Repair penis	15.39	NA	NA	11.18	11.22	0.99	NA	NA	27.56	27.60	090
54390		A	Repair penis and bladder	21.61	NA	NA	13.64	13.91	1.39	NA	NA	36.64	36.91	090
54400		A	Insert semi-rigid prosthesis	8.99	NA	NA	5.75	7.00	0.53	NA	NA	15.27	16.52	090
54401		A	Insert self-contd prosthesis	10.28	NA	NA	6.51	7.95	0.61	NA	NA	17.40	18.84	090
54402		A	Remove penis prosthesis	9.21	NA	NA	5.83	6.00	0.54	NA	NA	15.58	15.75	090
54405		A	Insert multi-comp prosthesis	13.43	NA	NA	7.57	9.69	0.78	NA	NA	21.78	23.90	090
54407		A	Remove multi-comp prosthesis	13.34	NA	NA	7.18	8.43	0.77	NA	NA	21.29	22.54	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
54409		A	Revise penis prosthesis	12.20	NA	NA	6.84	7.56	0.71	NA	NA	19.75	20.47	090
54420		A	Revision of penis	11.42	NA	NA	8.37	8.38	0.67	NA	NA	20.46	20.47	090
54430		A	Revision of penis	10.15	NA	NA	7.24	7.33	0.60	NA	NA	17.99	18.08	090
54435		A	Revision of penis	6.12	NA	NA	5.44	5.21	0.34	NA	NA	11.90	11.67	090
54440		C	Repair of penis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
54450		A	Preputial stretching	1.12	0.91	0.87	0.44	0.52	0.07	2.10	2.06	1.63	1.71	000
54500		A	Biopsy of testis	1.31	5.27	4.07	0.43	0.44	0.08	6.66	5.46	1.82	1.83	000
54505		A	Biopsy of testis	3.46	NA	NA	2.43	2.33	0.21	NA	NA	6.10	6.00	010
54510		A	Removal of testis lesion	5.45	NA	NA	3.27	3.28	0.34	NA	NA	9.06	9.07	090
54520		A	Removal of testis	5.23	NA	NA	3.37	3.97	0.32	NA	NA	8.92	9.52	090
54530		A	Removal of testis	8.58	NA	NA	4.87	5.64	0.53	NA	NA	13.98	14.75	090
54535		A	Extensive testis surgery	12.16	NA	NA	6.67	7.32	0.79	NA	NA	19.62	20.27	090
54550		A	Exploration for testis	7.78	NA	NA	4.41	4.73	0.47	NA	NA	12.66	12.98	090
54560		A	Exploration for testis	11.13	NA	NA	6.54	6.87	0.75	NA	NA	18.42	18.75	090
54600		A	Reduce testis torsion	7.01	NA	NA	3.98	4.24	0.41	NA	NA	11.40	11.66	090
54620		A	Suspension of testis	4.90	NA	NA	2.99	3.14	0.29	NA	NA	8.18	8.33	010
54640		A	Suspension of testis	6.90	NA	NA	4.00	5.06	0.47	NA	NA	11.37	12.43	090
54650		A	Orchiopexy (Fowler-Stephens)	11.45	NA	NA	6.40	6.92	0.63	NA	NA	18.48	19.00	090
54660		A	Revision of testis	5.11	NA	NA	3.74	3.73	0.29	NA	NA	9.14	9.13	090
54670		A	Repair testis injury	6.41	NA	NA	3.70	3.94	0.42	NA	NA	10.53	10.77	090
54680		A	Relocation of testis(es)	12.65	NA	NA	7.35	7.74	0.86	NA	NA	20.86	21.25	090
54690		A	Laparoscopy, orchiectomy	10.96	NA	NA	6.35	6.73	0.69	NA	NA	18.00	18.38	090
54692		A	Laparoscopy, orchiopexy	12.88	NA	NA	5.50	5.50	0.87	NA	NA	19.25	19.25	090
54699		C	Laparoscope proc, testis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
54700		A	Drainage of scrotum	3.43	7.72	6.04	3.15	2.61	0.22	11.37	9.69	6.80	6.26	010
54800		A	Biopsy of epididymis	2.33	5.30	4.51	0.81	1.14	0.14	7.77	6.98	3.28	3.61	000
54820		A	Exploration of epididymis	5.14	NA	NA	3.38	3.25	0.36	NA	NA	8.88	8.75	090
54830		A	Remove epididymis lesion	5.38	NA	NA	3.43	3.53	0.33	NA	NA	9.14	9.24	090
54840		A	Remove epididymis lesion	5.20	NA	NA	3.36	3.83	0.31	NA	NA	8.87	9.34	090
54860		A	Removal of epididymis	6.32	NA	NA	3.91	4.34	0.36	NA	NA	10.59	11.02	090
54861		A	Removal of epididymis	8.90	NA	NA	4.74	5.54	0.51	NA	NA	14.15	14.95	090
54900		A	Fusion of spermatic ducts	13.20	NA	NA	6.43	7.25	0.74	NA	NA	20.37	21.19	090
54901		A	Fusion of spermatic ducts	17.94	NA	NA	9.45	10.42	1.18	NA	NA	28.57	29.54	090
55000		A	Drainage of hydrocele	1.43	1.76	1.43	0.48	0.47	0.10	3.29	2.96	2.01	2.00	000
55040		A	Removal of hydrocele	5.36	NA	NA	3.22	3.74	0.35	NA	NA	8.93	9.45	090
55041		A	Removal of hydroceles	7.74	NA	NA	4.19	5.17	0.50	NA	NA	12.43	13.41	090
55060		A	Repair of hydrocele	5.52	NA	NA	3.28	3.58	0.37	NA	NA	9.17	9.47	090
55100		A	Drainage of scrotum abscess	2.13	8.89	6.84	3.34	2.68	0.13	11.15	9.10	5.60	4.94	010
55110		A	Explore scrotum	5.70	NA	NA	3.35	3.46	0.35	NA	NA	9.40	9.51	090
55120		A	Removal of scrotum lesion	5.09	NA	NA	3.17	2.86	0.30	NA	NA	8.56	8.25	090
55150		A	Removal of scrotum	7.22	NA	NA	4.26	4.67	0.46	NA	NA	11.94	12.35	090
55175		A	Revision of scrotum	5.24	NA	NA	3.37	3.75	0.31	NA	NA	8.92	9.30	090
55180		A	Revision of scrotum	10.72	NA	NA	5.97	6.33	0.72	NA	NA	17.41	17.77	090
55200		A	Incision of sperm duct	4.24	NA	NA	2.93	2.73	0.27	NA	NA	7.44	7.24	090
55250		A	Removal of sperm duct(s)	3.29	8.34	6.97	2.79	2.81	0.20	11.83	10.46	6.28	6.30	090
55300		A	Prepare, sperm duct x-ray	3.51	NA	NA	1.44	1.82	0.19	NA	NA	5.14	5.52	000
55400		A	Repair of sperm duct	8.49	NA	NA	4.84	5.41	0.52	NA	NA	13.85	14.42	090
55450		A	Ligation of sperm duct	4.12	7.19	6.10	2.26	2.40	0.31	11.62	10.53	6.69	6.83	010
55500		A	Removal of hydrocele	5.59	NA	NA	3.46	3.77	0.43	NA	NA	9.48	9.79	090
55520		A	Removal of sperm cord lesion	6.03	NA	NA	3.59	3.54	0.57	NA	NA	10.19	10.14	090
55530		A	Revise spermatic cord veins	5.66	NA	NA	3.53	4.06	0.36	NA	NA	9.55	10.08	090
55535		A	Revise spermatic cord veins	6.56	NA	NA	3.82	4.06	0.41	NA	NA	10.79	11.03	090
55540		A	Revise hernia & sperm veins	7.67	NA	NA	4.23	4.41	0.73	NA	NA	12.63	12.81	090
55550		A	Laparo ligate spermatic vein	6.57	NA	NA	3.31	3.68	0.41	NA	NA	10.29	10.66	090
55559		C	Laparo proc, spermatic cord	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
55600		A	Incise sperm duct pouch	6.38	NA	NA	3.91	4.10	0.36	NA	NA	10.65	10.84	090
55605		A	Incise sperm duct pouch	7.96	NA	NA	4.62	4.99	0.52	NA	NA	13.10	13.47	090
55650		A	Remove sperm duct pouch	11.80	NA	NA	5.95	6.42	0.70	NA	NA	18.45	18.92	090
55680		A	Remove sperm pouch lesion	5.19	NA	NA	4.11	4.29	0.30	NA	NA	9.60	9.78	090
55700		A	Biopsy of prostate	1.57	3.49	3.03	0.51	0.79	0.09	5.15	4.69	2.17	2.45	000
55705		A	Biopsy of prostate	4.57	NA	NA	3.47	3.52	0.25	NA	NA	8.29	8.34	010
55720		A	Drainage of prostate abscess	7.64	NA	NA	5.38	4.99	0.44	NA	NA	13.46	13.07	090
55725		A	Drainage of prostate abscess	8.68	NA	NA	5.97	6.00	0.52	NA	NA	15.17	15.20	090
55801		A	Removal of prostate	17.80	NA	NA	8.80	10.06	1.09	NA	NA	27.69	28.95	090
55810		A	Extensive prostate surgery	22.58	NA	NA	10.48	12.71	1.32	NA	NA	34.38	36.61	090
55812		A	Extensive prostate surgery	27.51	NA	NA	12.82	14.41	1.65	NA	NA	41.98	43.57	090
55815		A	Extensive prostate surgery	30.46	NA	NA	13.67	17.09	1.88	NA	NA	46.01	49.43	090
55821		A	Removal of prostate	14.25	NA	NA	7.43	9.26	0.85	NA	NA	22.53	24.36	090
55831		A	Removal of prostate	15.62	NA	NA	7.90	9.88	0.94	NA	NA	24.46	26.44	090
55840		A	Extensive prostate surgery	22.69	NA	NA	11.18	12.89	1.37	NA	NA	35.24	38.95	090
55842		A	Extensive prostate surgery	24.38	NA	NA	11.79	14.04	1.50	NA	NA	37.67	39.92	090
55845		A	Extensive prostate surgery	28.55	NA	NA	13.05	16.60	1.69	NA	NA	43.29	46.84	090
55859		A	Percut/needle insert, pros	12.52	NA	NA	6.97	6.83	0.69	NA	NA	20.18	20.04	090
55860		A	Surgical exposure, prostate	14.45	NA	NA	7.90	7.86	0.78	NA	NA	23.13	23.09	090
55862		A	Extensive prostate surgery	18.39	NA	NA	9.50	10.30	1.19	NA	NA	29.08	29.88	090
55865		A	Extensive prostate surgery	22.87	NA	NA	10.55	14.57	1.40	NA	NA	34.82	38.84	090
55870		A	Electroejaculation	2.58	1.65	1.74	0.91	1.18	0.14	4.37	4.46	3.63	3.90	000
55899		C	Genital surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
55970		N	Sex transformation, M to F	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
55980		N	Sex transformation, F to M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56300		D	Laparoscopy; diagnostic	5.10	2.02	2.72	2.02	2.72	0.47	7.59	8.29	7.59	8.29	010
56301		D	Laparoscopy; tubal cautery	5.60	2.22	2.94	2.22	2.94	0.43	8.25	8.97	8.25	8.97	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
56302		D	Laparoscopy; tubal block	5.60	2.22	3.09	2.22	3.09	0.43	8.25	9.12	8.25	9.12	010
56303		D	Laparoscopy; excise lesions	11.79	4.67	5.00	4.67	5.00	0.93	17.39	17.72	17.39	17.72	090
56304		D	Laparoscopy; lysis	11.29	4.48	4.88	4.48	4.88	1.04	16.81	17.21	16.81	17.21	090
56305		D	Laparoscopy; biopsy	5.40	2.14	2.94	2.14	2.94	0.50	8.04	8.84	8.04	8.84	010
56306		D	Laparoscopy; aspiration	5.70	2.26	3.02	2.26	3.02	0.48	8.44	9.20	8.44	9.20	010
56307		D	Laparoscopy; remove adnexa	11.05	4.38	5.23	4.38	5.23	0.86	16.29	17.14	16.29	17.14	010
56308		D	Laparoscopy; hysterectomy	14.19	5.63	6.77	5.63	6.77	1.09	20.91	22.05	20.91	22.05	010
56309		D	Laparoscopy; remove myoma	14.21	5.63	5.52	5.63	5.52	1.13	20.97	20.86	20.97	20.86	010
56310		D	Laparoscopic enterolysis	14.44	5.72	6.54	5.72	6.54	1.42	21.58	22.40	21.58	22.40	090
56311		D	Laparoscopic lymph node biop	9.25	3.67	4.48	3.67	4.48	0.82	13.74	14.55	13.74	14.55	010
56312		D	Laparoscopic lymphadenectomy	12.38	4.91	6.01	4.91	6.01	0.77	18.06	19.16	18.06	19.16	010
56313		D	Laparoscopic lymphadenectomy	14.32	5.68	6.98	5.68	6.98	1.02	21.02	22.32	21.02	22.32	010
56314		D	Lapar; drain lymphocele	9.48	3.76	4.65	3.76	4.65	0.91	14.15	15.04	14.15	15.04	090
56315		D	Laparoscopic appendectomy	8.70	3.45	3.92	3.45	3.92	0.86	13.01	13.48	13.01	13.48	090
56316		D	Laparoscopic hernia repair	6.27	2.49	3.09	2.49	3.09	0.62	9.38	9.98	9.38	9.98	090
56317		D	Laparoscopic hernia repair	8.24	3.27	3.87	3.27	3.87	0.83	12.34	12.94	12.34	12.94	090
56318		D	Laparoscopic orchiectomy	10.96	4.34	5.22	4.34	5.22	0.69	15.99	16.87	15.99	16.87	090
56320		D	Laparoscopy, spermatic veins	6.57	2.60	3.15	2.60	3.15	0.41	9.58	10.13	9.58	10.13	090
56321		D	Laparoscopy; adrenalectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
56322		D	Laparoscopy, vagus nerves	10.15	4.02	4.39	4.02	4.39	1.01	15.18	15.55	15.18	15.55	090
56323		D	Laparoscopy, vagus nerves	12.15	4.82	5.27	4.82	5.27	1.16	18.13	18.58	18.13	18.58	090
56324		D	Laparoscopy, cholecystoenter	12.58	4.99	6.23	4.99	6.23	1.26	18.83	20.07	18.83	20.07	090
56340		D	Laparoscopic cholecystectomy	11.09	4.40	5.47	4.40	5.47	1.10	16.59	17.66	16.59	17.66	090
56341		D	Laparoscopic cholecystectomy	11.94	4.73	5.84	4.73	5.84	1.18	17.85	18.96	17.85	18.96	090
56342		D	Laparoscopic cholecystectomy	14.23	5.64	6.77	5.64	6.77	1.38	21.25	22.38	21.25	22.38	090
56343		D	Laparoscopic salpingostomy	13.74	5.45	5.52	5.45	5.52	1.11	20.30	20.37	20.30	20.37	090
56344		D	Laparoscopic fimbrioplasty	12.88	5.11	5.22	5.11	5.22	1.11	19.10	19.21	19.10	19.21	090
56345		D	Laparoscopic splenectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56346		D	Laparoscopic gastrostomy	7.73	3.06	3.98	3.06	3.98	0.74	11.53	12.45	11.53	12.45	090
56347		D	Laparoscopic jejunostomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56348		D	Laparo; resect intestine	22.04	8.74	10.15	8.74	10.15	2.19	32.97	34.38	32.97	34.38	090
56349		D	Laparoscopy; fundoplasty	17.25	6.84	8.35	6.84	8.35	1.73	25.82	27.33	25.82	27.33	090
56350		D	Hysteroscopy; diagnostic	3.33	1.32	1.53	1.32	1.53	0.25	4.90	5.11	4.90	5.11	000
56351		D	Hysteroscopy; biopsy	4.75	1.88	1.95	1.88	1.95	0.36	6.99	7.06	6.99	7.06	000
56352		D	Hysteroscopy; lysis	6.17	2.45	2.86	2.45	2.86	0.47	9.09	9.50	9.09	9.50	000
56353		D	Hysteroscopy; resect septum	0.07	2.78	3.11	2.78	3.11	0.53	3.38	3.71	3.38	3.71	000
56354		D	Hysteroscopy; remove myoma	0.10	3.96	4.31	3.96	4.31	0.75	4.81	5.16	4.81	5.16	000
56355		D	Hysteroscopy; remove impact	5.21	2.07	2.09	2.07	2.09	0.39	7.67	7.69	7.67	7.69	000
56356		D	Hysteroscopy; ablation	6.17	2.45	3.03	2.45	3.03	0.47	9.09	9.67	9.09	9.67	000
56362		D	Laparoscopy w/cholangio	4.89	1.94	2.21	1.94	2.21	0.47	7.30	7.57	7.30	7.57	000
56363		D	Laparoscopy w/biopsy	5.18	2.05	2.61	2.05	2.61	0.47	7.70	8.26	7.70	8.26	000
56399		D	Laparoscopy procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
56405		A	I & D of vulva/perineum	1.44	2.15	1.82	1.20	1.11	0.11	3.70	3.37	2.75	2.66	010
56420		A	Drainage of gland abscess	1.39	2.15	1.83	1.11	1.05	0.11	3.65	3.33	2.61	2.55	010
56440		A	Surgery for vulva lesion	2.84	3.29	3.18	2.12	2.30	0.22	6.35	6.24	5.18	5.36	010
56441		A	Lysis of labial lesion(s)	1.97	2.35	2.21	1.89	1.87	0.13	4.45	4.31	3.99	3.97	010
56501		A	Destruction, vulva lesion(s)	1.53	2.12	1.74	1.24	1.08	0.11	3.76	3.38	2.88	2.72	010
56515		A	Destruction, vulva lesion(s)	1.88	2.50	2.52	1.81	2.00	0.13	4.51	4.53	3.82	4.01	010
56605		A	Biopsy of vulva/perineum	1.10	1.64	1.42	0.46	0.53	0.09	2.83	2.61	1.65	1.72	000
56606		A	Biopsy of vulva/perineum	0.55	1.41	1.15	0.21	0.25	0.04	2.00	1.74	0.80	0.84	ZZZ
56620		A	Partial removal of vulva	7.47	NA	NA	4.57	5.18	0.56	NA	NA	12.60	13.21	090
56625		A	Complete removal of vulva	8.40	NA	NA	5.37	6.54	0.63	NA	NA	14.40	15.57	090
56630		A	Extensive vulva surgery	12.36	NA	NA	7.07	8.96	0.94	NA	NA	20.37	22.26	090
56631		A	Extensive vulva surgery	16.20	NA	NA	9.56	12.01	1.21	NA	NA	26.97	29.42	090
56632		A	Extensive vulva surgery	20.29	NA	NA	8.00	11.79	1.52	NA	NA	29.81	33.60	090
56633		A	Extensive vulva surgery	16.47	NA	NA	8.68	10.84	1.24	NA	NA	26.39	28.55	090
56634		A	Extensive vulva surgery	17.88	NA	NA	10.18	12.97	1.34	NA	NA	29.40	32.19	090
56637		A	Extensive vulva surgery	21.97	NA	NA	11.79	14.66	1.64	NA	NA	35.40	38.27	090
56640		A	Extensive vulva surgery	22.17	NA	NA	11.69	14.18	1.64	NA	NA	35.50	37.99	090
56700		A	Partial removal of hymen	2.52	2.87	2.65	1.88	1.91	0.18	5.57	5.35	4.58	4.61	010
56720		A	Incision of hymen	0.68	1.48	1.24	0.62	0.60	0.05	2.21	1.97	1.35	1.33	000
56740		A	Remove vagina gland lesion	3.76	3.30	3.25	2.45	2.62	0.31	7.37	7.32	6.52	6.69	010
56800		A	Repair of vagina	3.89	NA	NA	2.54	2.70	0.29	NA	NA	6.72	6.88	010
56805		A	Repair clitoris	18.86	NA	NA	8.80	9.79	1.08	NA	NA	28.74	29.73	090
56810		A	Repair of perineum	4.13	NA	NA	2.60	2.66	0.32	NA	NA	7.05	7.11	010
57000		A	Exploration of vagina	2.97	NA	NA	2.21	2.21	0.22	NA	NA	5.40	5.40	010
57010		A	Drainage of pelvic abscess	6.03	NA	NA	3.64	3.45	0.48	NA	NA	10.15	9.96	090
57020		A	Drainage of pelvic fluid	1.50	1.46	1.27	0.59	0.62	0.11	3.07	2.88	2.20	2.23	000
57061		A	Destruction vagina lesion(s)	1.25	2.05	1.76	1.16	1.09	0.10	3.40	3.11	2.51	2.44	010
57065		A	Destruction vagina lesion(s)	2.61	2.68	2.79	2.10	2.35	0.20	5.49	5.60	4.91	5.16	010
57100		A	Biopsy of vagina	0.97	1.32	1.16	0.40	0.47	0.08	2.37	2.21	1.45	1.52	000
57105		A	Biopsy of vagina	1.69	2.01	1.93	2.01	1.93	0.12	3.82	3.74	3.82	3.74	010
57106		A	Remove vagina wall, partial	6.36	2.46	2.46	2.46	2.46	0.51	9.33	9.33	9.33	9.33	090
57107		A	Remove vagina tissue, part	0.23	NA	NA	10.00	10.00	1.75	NA	NA	11.98	11.98	090
57109		A	Vaginectomy partial w/nodes	0.27	NA	NA	11.68	11.68	1.81	NA	NA	13.76	13.76	090
57110		A	Remove vagina wall, complete	14.29	NA	NA	6.89	7.31	1.07	NA	NA	22.25	22.67	090
57111		A	Remove vagina tissue, compl	0.27	NA	NA	11.75	11.75	2.03	NA	NA	14.05	14.05	090
57112		A	Vaginectomy w/nodes, compl	0.29	NA	NA	12.28	12.28	1.89	NA	NA	14.46	14.46	090
57120		A	Closure of vagina	7.41	NA	NA	4.32	5.14	0.56	NA	NA	12.29	13.11	090
57130		A	Remove vagina lesion	2.43	NA	NA	1.94	2.17	0.19	NA	NA	4.56	4.79	010
57135		A	Remove vagina lesion	2.67	2.67	2.53	2.07	2.08	0.20	5.54	5.40	4.94	4.95	010
57150		A	Treat vagina infection	0.55	0.87	0.71	0.21	0.21	0.04	1.46	1.30	0.80	0.80	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
57160		A	Insert pessary/other device	0.89	1.25	1.01	0.34	0.32	0.07	2.21	1.97	1.30	1.28	000
57170		A	Fitting of diaphragm/cap	0.91	1.27	1.04	0.34	0.34	0.07	2.25	2.02	1.32	1.32	000
57180		A	Treat vaginal bleeding	1.58	2.07	1.70	1.34	1.16	0.12	3.77	3.40	3.04	2.86	010
57200		A	Repair of vagina	3.94	NA	NA	2.80	2.84	0.31	NA	NA	7.05	7.09	090
57210		A	Repair vagina/perineum	5.17	NA	NA	3.25	3.33	0.40	NA	NA	8.82	8.90	090
57220		A	Revision of urethra	4.31	NA	NA	3.12	3.55	0.32	NA	NA	7.75	8.18	090
57230		A	Repair of urethral lesion	5.64	NA	NA	3.87	3.95	0.40	NA	NA	9.91	9.99	090
57240		A	Repair bladder & vagina	6.07	NA	NA	4.08	4.87	0.44	NA	NA	10.59	11.38	090
57250		A	Repair rectum & vagina	5.53	NA	NA	3.57	4.33	0.42	NA	NA	9.52	10.28	090
57260		A	Repair of vagina	8.27	NA	NA	4.62	5.81	0.63	NA	NA	13.52	14.71	090
57265		A	Extensive repair of vagina	11.34	NA	NA	6.36	7.33	0.86	NA	NA	18.56	19.53	090
57268		A	Repair of bowel bulge	6.76	NA	NA	4.02	4.92	0.52	NA	NA	11.30	12.20	090
57270		A	Repair of bowel pouch	12.11	NA	NA	5.94	6.31	0.92	NA	NA	18.97	19.34	090
57280		A	Suspension of vagina	15.04	NA	NA	7.07	7.62	1.13	NA	NA	23.24	23.79	090
57282		A	Repair of vaginal prolapse	8.86	NA	NA	4.88	6.03	0.67	NA	NA	14.41	15.56	090
57284		A	Repair paravaginal defect	12.70	NA	NA	6.65	7.32	0.93	NA	NA	20.28	20.95	090
57288		A	Repair bladder defect	13.02	NA	NA	6.52	7.80	0.80	NA	NA	20.34	21.62	090
57289		A	Repair bladder & vagina	11.58	NA	NA	6.26	6.92	0.78	NA	NA	18.62	19.28	090
57291		A	Construction of vagina	7.95	NA	NA	5.54	5.61	0.62	NA	NA	14.11	14.18	090
57292		A	Construct vagina with graft	13.09	NA	NA	6.67	6.78	1.08	NA	NA	20.84	20.95	090
57300		A	Repair rectum-vagina fistula	7.61	NA	NA	4.49	5.51	0.69	NA	NA	12.79	13.81	090
57305		A	Repair rectum-vagina fistula	13.77	NA	NA	6.74	7.10	1.34	NA	NA	21.85	22.21	090
57307		A	Fistula repair & colostomy	15.93	NA	NA	7.55	7.32	1.57	NA	NA	25.05	24.82	090
57308		A	Fistula repair, transperine	9.94	NA	NA	5.53	6.11	0.86	NA	NA	16.33	16.91	090
57310		A	Repair urethrovaginal lesion	6.78	NA	NA	4.40	4.47	0.43	NA	NA	11.61	11.68	090
57311		A	Repair urethrovaginal lesion	7.98	NA	NA	5.06	5.31	0.41	NA	NA	13.45	13.70	090
57320		A	Repair bladder-vagina lesion	8.01	NA	NA	4.91	6.07	0.51	NA	NA	13.43	14.59	090
57330		A	Repair bladder-vagina lesion	12.35	NA	NA	6.37	7.03	0.78	NA	NA	19.50	20.16	090
57335		A	Repair vagina	18.73	NA	NA	8.67	8.38	1.37	NA	NA	28.77	28.48	090
57400		A	Dilation of vagina	2.27	NA	NA	1.24	1.02	0.16	NA	NA	3.67	3.45	000
57410		A	Pelvic examination	1.75	2.48	1.96	1.02	0.86	0.11	4.34	3.82	2.88	2.72	000
57415		A	Remove vaginal foreign body	2.17	3.13	2.45	1.92	1.54	0.16	5.46	4.78	4.25	3.87	010
57452		A	Examination of vagina	0.99	1.52	1.32	0.36	0.45	0.08	2.59	2.39	1.43	1.52	000
57454		A	Vagina examination & biopsy	1.27	1.60	1.53	0.48	0.69	0.10	2.97	2.90	1.85	2.06	000
57460		A	Cervix excision	2.83	1.89	1.97	1.10	1.37	0.21	4.93	5.01	4.14	4.41	000
57500		A	Biopsy of cervix	0.97	1.29	1.12	0.41	0.46	0.08	2.34	2.17	1.46	1.51	000
57505		A	Endocervical curettage	1.14	1.76	1.49	1.16	1.04	0.09	2.99	2.72	2.39	2.27	010
57510		A	Cauterization of cervix	1.90	2.87	2.29	1.45	1.23	0.14	4.91	4.33	3.49	3.27	010
57511		A	Cryocautery of cervix	1.90	2.21	1.89	0.72	0.77	0.14	4.25	3.93	2.76	2.81	010
57513		A	Laser surgery of cervix	1.90	2.37	2.35	1.44	1.65	0.14	4.41	4.39	3.48	3.69	010
57520		A	Conization of cervix	4.04	3.87	3.84	2.63	2.91	0.31	8.22	8.19	6.98	7.26	090
57522		A	Conization of cervix	3.36	3.44	3.52	2.35	2.70	0.26	7.06	7.14	5.97	6.32	090
57530		A	Removal of cervix	4.79	NA	NA	3.32	3.47	0.37	NA	NA	8.48	8.63	090
57531		A	Removal of cervix, radical	0.28	NA	NA	13.09	14.64	2.16	NA	NA	15.53	17.08	090
57540		A	Removal of residual cervix	12.22	NA	NA	6.01	6.34	0.01	NA	NA	18.24	18.57	090
57545		A	Remove cervix/repair pelvis	13.03	NA	NA	6.27	5.95	1.02	NA	NA	20.32	20.00	090
57550		A	Removal of residual cervix	5.53	NA	NA	3.58	4.34	0.43	NA	NA	9.54	10.30	090
57555		A	Remove cervix/repair vagina	8.95	NA	NA	5.28	6.63	0.70	NA	NA	14.93	16.28	090
57556		A	Remove cervix, repair bowel	8.37	NA	NA	4.61	5.96	0.64	NA	NA	13.62	14.97	090
57700		A	Revision of cervix	3.55	NA	NA	2.43	2.47	0.26	NA	NA	6.24	6.28	090
57720		A	Revision of cervix	4.13	NA	NA	3.05	3.04	0.31	NA	NA	7.49	7.48	090
57800		A	Dilation of cervical canal	0.77	1.06	0.93	0.33	0.38	0.06	1.89	1.76	1.16	1.21	000
57820		A	D & c of residual cervix	1.67	2.36	2.34	2.02	2.08	0.13	4.16	4.14	3.82	3.88	010
58100		A	Biopsy of uterus lining	0.71	1.91	1.61	0.27	0.38	0.06	2.68	2.38	1.04	1.15	000
58120		A	Dilation and curettage	3.27	3.48	3.34	2.26	2.43	0.25	7.00	6.86	5.78	5.95	010
58140		A	Removal of uterus lesion	14.60	NA	NA	6.86	7.41	1.24	NA	NA	22.70	23.25	090
58145		A	Removal of uterus lesion	8.04	NA	NA	4.58	5.67	0.60	NA	NA	13.22	14.31	090
58150		A	Total hysterectomy	15.24	NA	NA	7.21	8.01	1.19	NA	NA	23.64	24.44	090
58152		A	Total hysterectomy	15.09	NA	NA	7.16	8.62	1.16	NA	NA	23.41	24.87	090
58180		A	Partial hysterectomy	15.29	NA	NA	7.22	8.06	1.23	NA	NA	23.74	24.58	090
58200		A	Extensive hysterectomy	21.59	NA	NA	10.53	11.42	1.65	NA	NA	33.77	34.66	090
58210		A	Extensive hysterectomy	28.85	NA	NA	13.32	14.81	2.18	NA	NA	44.35	45.84	090
58240		A	Removal of pelvis contents	38.39	NA	NA	17.96	21.27	2.98	NA	NA	59.33	62.64	090
58260		A	Vaginal hysterectomy	12.20	NA	NA	5.65	6.79	0.94	NA	NA	18.79	19.93	090
58262		A	Vaginal hysterectomy	13.99	NA	NA	6.41	7.36	1.06	NA	NA	21.46	22.41	090
58263		A	Vaginal hysterectomy	15.28	NA	NA	6.89	7.97	1.16	NA	NA	23.33	24.41	090
58267		A	Hysterectomy & vagina repair	0.15	NA	NA	6.76	8.20	1.15	NA	NA	8.06	9.50	090
58270		A	Hysterectomy & vagina repair	13.48	NA	NA	6.19	7.44	1.03	NA	NA	20.70	21.95	090
58275		A	Hysterectomy/revise vagina	14.98	NA	NA	6.76	8.06	1.17	NA	NA	22.91	24.21	090
58280		A	Hysterectomy/revise vagina	15.41	NA	NA	6.92	8.04	1.18	NA	NA	23.51	24.63	090
58285		A	Extensive hysterectomy	18.57	NA	NA	9.33	10.15	1.42	NA	NA	29.32	30.14	090
58300		N	Insert intrauterine device	1.01	1.31	1.19	0.40	0.51	0.08	2.40	2.28	1.49	1.60	XXX
58301		A	Remove intrauterine device	1.27	1.41	1.18	0.48	0.48	0.10	2.78	2.55	1.85	1.85	000
58321		A	Artificial insemination	0.92	0.90	0.87	0.36	0.46	0.07	1.89	1.86	1.35	1.45	000
58322		A	Artificial insemination	1.10	0.94	0.90	0.42	0.51	0.08	2.12	2.08	1.60	1.69	000
58323		A	Sperm washing	0.23	0.46	0.39	0.09	0.11	0.02	0.71	0.64	0.34	0.36	000
58340		A	Catheter for hysterography	0.88	8.09	6.22	0.32	0.40	0.06	9.03	7.16	1.26	1.34	000
58345		A	Reopen fallopian tube	4.66	NA	NA	1.72	2.24	0.26	NA	NA	6.64	7.16	010
58350		A	Reopen fallopian tube	1.01	1.81	1.55	1.02	0.95	0.08	2.90	2.64	2.11	2.04	010
58400		A	Suspension of uterus	6.36	NA	NA	3.79	4.37	0.49	NA	NA	10.64	11.22	090
58410		A	Suspension of uterus	12.73	NA	NA	6.43	6.32	0.94	NA	NA	20.10	19.99	090
58520		A	Repair of ruptured uterus	11.92	NA	NA	5.93	5.60	1.03	NA	NA	18.88	18.55	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
58540		A	Revision of uterus	14.64	NA	NA	5.92	6.10	1.11	NA	NA	21.67	21.85	090
58550		A	Laparo-asst vag hysterectomy	14.19	NA	NA	6.44	7.38	1.11	NA	NA	21.74	22.68	010
58551		A	Laparoscopy, remove myoma	14.21	NA	NA	6.35	6.06	1.15	NA	NA	21.71	21.42	010
58555		A	Hysteroscopy, dx, sep proc	3.33	2.58	2.48	1.39	1.58	0.26	6.17	6.07	4.98	5.17	000
58558		A	Hysteroscopy, biopsy	4.75	3.14	2.90	1.95	2.00	0.36	8.25	8.01	7.06	7.11	000
58559		A	Hysteroscopy, lysis	6.17	2.43	2.85	2.43	2.85	0.48	9.08	9.50	9.08	9.50	000
58560		A	Hysteroscopy, resect septum	0.07	2.76	3.09	2.76	3.09	0.54	3.37	3.70	3.37	3.70	000
58561		A	Hysteroscopy, remove myoma	0.10	3.94	4.29	3.94	4.29	0.77	4.81	5.16	4.81	5.16	000
58562		A	Hysteroscopy, remove fb	5.21	NA	NA	2.12	2.13	0.40	A	NA	7.73	7.74	000
58563		A	Hysteroscopy, ablation	6.17	2.41	3.00	2.41	3.00	0.48	9.06	9.65	9.06	9.65	000
58578		C	Laparo proc, uterus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
58579		C	Hysteroscope procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
58600		A	Division of fallopian tube	3.84	NA	NA	2.44	2.98	0.30	NA	NA	6.58	7.12	090
58605		A	Division of fallopian tube	3.34	NA	NA	2.36	2.77	0.26	NA	NA	5.96	6.37	090
58611		A	Ligate oviduct(s) add-on	0.63	NA	NA	0.24	0.31	0.05	NA	NA	0.92	0.99	ZZZ
58615		A	Occlude fallopian tube(s)	3.90	NA	NA	3.03	3.06	0.30	NA	NA	7.23	7.26	010
58660		A	Laparoscopy, lysis	11.29	NA	NA	5.31	5.50	1.04	NA	NA	17.64	17.83	090
58661		A	Laparoscopy, remove adnexa	11.05	NA	NA	5.00	5.69	0.87	NA	NA	16.92	17.61	010
58662		A	Laparoscopy, excise lesions	11.79	NA	NA	5.26	5.45	0.94	NA	NA	17.99	18.18	090
58670		A	Laparoscopy, tubal cautery	5.60	NA	NA	3.32	3.77	0.43	NA	NA	9.35	9.80	090
58671		A	Laparoscopy, tubal block	5.60	NA	NA	3.38	3.96	0.43	NA	NA	9.41	9.99	090
58672		A	Laparoscopy, fimbrioplasty	12.88	NA	NA	6.14	5.99	1.10	NA	NA	20.12	19.97	090
58673		A	Laparoscopy, salpingostomy	13.74	NA	NA	6.54	6.34	1.12	NA	NA	21.40	21.20	090
58679		C	Laparo proc, oviduct-ovary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
58700		A	Removal of fallopian tube	6.49	NA	NA	3.66	4.46	0.58	NA	NA	10.73	11.53	090
58720		A	Removal of ovary/tube(s)	11.36	NA	NA	5.60	6.24	0.95	NA	NA	17.91	18.55	090
58740		A	Revise fallopian tube(s)	5.83	NA	NA	3.55	4.40	0.46	NA	NA	9.84	10.69	090
58750		A	Repair oviduct	14.84	NA	NA	7.02	6.98	1.20	NA	NA	23.06	23.02	090
58752		A	Revise ovarian tube(s)	14.84	NA	NA	6.85	6.97	1.09	NA	NA	22.78	22.90	090
58760		A	Remove tubal obstruction	13.13	NA	NA	6.39	6.18	0.99	NA	NA	20.51	20.30	090
58770		A	Create new tubal opening	13.97	NA	NA	6.66	6.43	1.14	NA	NA	21.77	21.54	090
58800		A	Drainage of ovarian cyst(s)	4.14	3.80	3.58	3.80	3.58	0.28	8.22	8.00	8.22	8.00	090
58805		A	Drainage of ovarian cyst(s)	5.88	NA	NA	3.39	4.27	0.52	NA	NA	9.79	10.67	090
58820		A	Drain ovary abscess, open	4.22	NA	NA	3.23	3.17	0.25	NA	NA	7.70	7.64	090
58822		A	Drain ovary abscess, percut	10.13	NA	NA	5.20	4.86	0.85	NA	NA	16.18	15.84	090
58823		A	Drain pelvic abscess, percut	3.38	NA	NA	3.02	2.96	0.23	NA	NA	6.63	6.57	000
58825		A	Transposition, ovary(s)	6.13	NA	NA	3.72	3.88	0.48	NA	NA	10.33	10.49	090
58900		A	Biopsy of ovary(s)	5.99	NA	NA	3.50	4.03	0.51	NA	NA	10.00	10.53	090
58920		A	Partial removal of ovary(s)	6.78	NA	NA	3.78	4.68	0.60	NA	NA	11.16	12.06	090
58925		A	Removal of ovarian cyst(s)	11.36	NA	NA	5.51	5.91	0.01	NA	NA	16.88	17.28	090
58940		A	Removal of ovary(s)	7.29	NA	NA	3.90	4.69	0.66	NA	NA	11.85	12.64	090
58943		A	Removal of ovary(s)	18.43	NA	NA	9.10	10.11	1.53	NA	NA	29.06	30.07	090
58950		A	Resect ovarian malignancy	15.27	NA	NA	7.94	9.01	1.24	NA	NA	24.45	25.52	090
58951		A	Resect ovarian malignancy	21.81	NA	NA	10.57	12.90	1.70	NA	NA	34.08	36.41	090
58952		A	Resect ovarian malignancy	25.01	NA	NA	11.83	13.79	1.94	NA	NA	38.78	40.74	090
58960		A	Exploration of abdomen	14.65	NA	NA	7.72	9.31	1.16	NA	NA	23.53	25.12	090
58970		A	Retrieval of oocyte	3.53	7.26	6.13	1.70	1.96	0.25	11.04	9.91	5.48	5.74	000
58974		C	Transfer of embryo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
58976		A	Transfer of embryo	3.83	2.20	2.39	1.52	1.88	0.29	6.32	6.51	5.64	6.00	000
58999		C	Genital surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
59000		A	Amniocentesis	1.30	1.49	1.38	0.50	0.64	0.19	2.98	2.87	1.99	2.13	000
59012		A	Fetal cord puncture,prenatal	3.45	NA	NA	1.64	1.94	0.51	NA	NA	5.60	5.90	000
59015		A	Chorion biopsy	2.20	1.25	1.26	0.87	0.98	0.32	3.77	3.78	3.39	3.50	000
59020		A	Fetal contract stress test	0.66	0.79	0.92	NA	NA	0.21	1.66	1.79	NA	NA	000
59020	26	A	Fetal contract stress test	0.66	0.26	0.39	0.26	0.39	0.13	1.05	1.18	1.05	1.18	000
59020	TC	A	Fetal contract stress test	0.00	0.53	0.53	NA	NA	0.08	0.61	0.61	NA	NA	000
59025		A	Fetal non-stress test	0.53	0.44	0.49	NA	NA	0.10	1.07	1.12	NA	NA	000
59025	26	A	Fetal non-stress test	0.53	0.21	0.26	0.21	0.26	0.08	0.82	0.87	0.82	0.87	000
59025	TC	A	Fetal non-stress test	0.00	0.23	0.23	NA	NA	0.02	0.25	0.25	NA	NA	000
59030		A	Fetal scalp blood sample	1.99	NA	NA	1.02	1.19	0.30	NA	NA	3.31	3.48	000
59050		A	Fetal monitor w/report	0.89	NA	NA	0.34	0.48	0.12	NA	NA	1.35	1.49	XXX
59051		A	Fetal monitor/interpret only	0.74	NA	NA	0.28	0.43	0.10	NA	NA	1.12	1.27	XXX
59100		A	Remove uterus lesion	12.35	NA	NA	6.08	5.68	1.80	NA	NA	20.23	19.83	090
59120		A	Treat ectopic pregnancy	11.49	NA	NA	5.77	6.46	1.67	NA	NA	18.93	19.62	090
59121		A	Treat ectopic pregnancy	11.67	NA	NA	5.90	5.89	1.70	NA	NA	19.27	19.26	090
59130		A	Treat ectopic pregnancy	14.22	NA	NA	6.97	6.85	2.07	NA	NA	23.26	23.14	090
59135		A	Treat ectopic pregnancy	13.88	NA	NA	6.83	7.80	2.01	NA	NA	22.72	23.69	090
59136		A	Treat ectopic pregnancy	13.18	NA	NA	6.55	6.60	1.92	NA	NA	21.65	21.70	090
59140		A	Treat ectopic pregnancy	5.46	NA	NA	3.41	3.82	0.79	NA	NA	9.66	10.07	090
59150		A	Treat ectopic pregnancy	6.89	NA	NA	4.06	4.28	0.01	NA	NA	10.96	11.18	090
59151		A	Treat ectopic pregnancy	7.86	NA	NA	4.07	5.39	1.15	NA	NA	13.08	14.40	090
59160		A	D & c after delivery	2.71	3.24	3.23	2.06	2.34	0.39	6.34	6.33	5.16	5.44	010
59200		A	Insert cervical dilator	0.79	1.21	1.06	0.30	0.37	0.11	2.11	1.96	1.20	1.27	000
59300		A	Episiotomy or vaginal repair	2.41	1.57	1.45	0.96	0.99	0.34	4.32	4.20	3.71	3.74	000
59320		A	Revision of cervix	2.48	NA	NA	1.36	1.50	0.36	NA	NA	4.20	4.34	000
59325		A	Revision of cervix	4.07	NA	NA	1.99	2.28	0.59	NA	NA	6.65	6.94	000
59350		A	Repair of uterus	4.95	NA	NA	1.96	2.43	0.73	NA	NA	7.64	8.11	000
59400		A	Obstetrical care	23.06	NA	NA	13.43	14.14	3.35	NA	NA	39.84	40.55	MMM
59409		A	Obstetrical care	13.50	NA	NA	5.14	6.43	1.97	NA	NA	20.61	21.90	MMM
59410		A	Obstetrical care	14.78	NA	NA	6.05	7.34	2.15	NA	NA	22.98	24.27	MMM
59412		A	Antepartum manipulation	1.71	1.19	1.22	0.66	0.83	0.25	3.15	3.18	2.62	2.79	MMM
59414		A	Deliver placenta	1.61	NA	NA	1.14	1.17	0.24	NA	NA	2.99	3.02	MMM

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
59425		A	Antepartum care only	4.81	4.65	4.27	4.65	4.27	0.71	10.17	9.79	10.17	9.79	MMM
59426		A	Antepartum care only	8.28	7.95	7.30	7.93	7.29	1.20	17.43	16.78	17.41	16.77	MMM
59430		A	Care after delivery	2.13	1.16	0.97	1.15	0.97	0.32	3.61	3.42	3.60	3.42	MMM
59510		A	Cesarean delivery	26.22	NA	NA	15.65	16.32	3.82	NA	NA	45.69	46.36	MMM
59514		A	Cesarean delivery only	15.97	NA	NA	6.06	7.53	2.32	NA	NA	24.35	25.82	MMM
59515		A	Cesarean delivery	17.37	NA	NA	7.63	8.93	2.53	NA	NA	27.53	28.83	MMM
59525		A	Remove uterus after cesarean	8.54	NA	NA	3.23	3.46	1.24	NA	NA	13.01	13.24	ZZZ
59610		A	Vbac delivery	24.62	NA	NA	14.37	14.85	3.58	NA	NA	42.57	43.05	MMM
59612		A	Vbac delivery only	15.06	NA	NA	5.85	6.96	2.20	NA	NA	23.11	24.22	MMM
59614		A	Vbac care after delivery	16.34	NA	NA	7.07	8.10	2.38	NA	NA	25.79	26.82	MMM
59618		A	Attempted vbac delivery	27.78	NA	NA	11.46	13.18	4.05	NA	NA	43.29	45.01	MMM
59620		A	Attempted vbac delivery only	17.53	NA	NA	6.75	8.05	2.55	NA	NA	26.83	28.13	MMM
59622		A	Attempted vbac after care	18.93	NA	NA	8.55	9.62	2.76	NA	NA	30.24	31.31	MMM
59812		A	Treatment of miscarriage	3.25	2.94	3.19	2.23	2.65	0.48	6.67	6.92	5.96	6.38	090
59820		A	Care of miscarriage	4.01	3.22	3.43	2.50	2.89	0.59	7.82	8.03	7.10	7.49	090
59821		A	Treatment of miscarriage	4.47	3.48	3.35	2.69	2.76	0.66	8.61	8.48	7.82	7.89	090
59830		A	Treat uterus infection	6.11	NA	NA	3.65	3.97	0.89	NA	NA	10.65	10.97	090
59840		R	Abortion	3.01	3.26	3.32	2.12	2.46	0.44	6.71	6.77	5.57	5.91	010
59841		R	Abortion	5.24	4.80	4.62	3.34	3.52	0.75	10.79	10.61	9.33	9.51	010
59850		R	Abortion	5.91	NA	NA	2.50	2.96	0.86	NA	NA	9.27	9.73	090
59851		R	Abortion	5.93	NA	NA	2.90	3.34	0.86	NA	NA	9.69	10.13	090
59852		R	Abortion	8.24	NA	NA	4.36	4.77	1.19	NA	NA	13.79	14.20	090
59855		R	Abortion	6.12	NA	NA	3.18	3.51	0.89	NA	NA	10.19	10.52	090
59856		R	Abortion	7.48	NA	NA	3.58	4.07	1.09	NA	NA	12.15	12.64	090
59857		R	Abortion	9.29	NA	NA	4.34	4.94	1.36	NA	NA	14.99	15.59	090
59866		R	Abortion (mpr)	0.04	NA	NA	1.59	1.97	0.58	NA	NA	2.21	2.59	000
59870		A	Evacuate mole of uterus	4.28	NA	NA	2.85	2.93	0.62	NA	NA	7.75	7.83	090
59871		A	Remove cerclage suture	2.13	1.89	1.90	0.85	1.12	0.32	4.34	4.35	3.30	3.57	000
59898		C	Laparo proc, ob care/deliver	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
59899		C	Maternity care procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
60000		A	Drain thyroid/tongue cyst	1.76	2.10	1.74	1.80	1.51	0.11	3.97	3.61	3.67	3.38	010
60001		A	Aspirate/inject thyriod cyst	0.97	1.51	1.42	0.36	0.56	0.07	2.55	2.46	1.40	1.60	000
60100		A	Biopsy of thyroid	0.97	2.09	1.85	0.35	0.55	0.06	3.12	2.88	1.38	1.58	000
60200		A	Remove thyroid lesion	9.55	NA	NA	6.22	6.30	0.87	NA	NA	16.64	16.72	090
60210		A	Partial thyroid excision	10.88	NA	NA	6.24	7.04	1.01	NA	NA	18.13	18.93	090
60212		A	Partial thyroid excision	16.03	NA	NA	8.05	8.49	1.54	NA	NA	25.62	26.06	090
60220		A	Partial removal of thyroid	10.53	NA	NA	6.21	6.98	0.97	NA	NA	17.71	18.48	090
60225		A	Partial removal of thyroid	14.19	NA	NA	7.67	8.60	1.30	NA	NA	23.16	24.09	090
60240		A	Removal of thyroid	16.06	NA	NA	8.92	9.56	1.49	NA	NA	26.47	27.11	090
60252		A	Removal of thyroid	18.20	NA	NA	10.11	11.29	1.64	NA	NA	29.95	31.13	090
60254		A	Extensive thyroid surgery	23.88	NA	NA	13.75	15.53	1.99	NA	NA	39.62	41.40	090
60260		A	Repeat thyroid surgery	15.46	NA	NA	8.98	7.59	1.42	NA	NA	25.86	24.47	090
60270		A	Removal of thyroid	17.94	NA	NA	11.42	12.36	1.86	NA	NA	31.22	32.16	090
60271		A	Removal of thyroid	14.89	NA	NA	8.95	10.01	1.39	NA	NA	25.23	26.29	090
60280		A	Remove thyroid duct lesion	5.87	NA	NA	4.56	5.24	0.48	NA	NA	10.91	11.59	090
60281		A	Remove thyroid duct lesion	8.53	NA	NA	6.21	6.03	0.74	NA	NA	15.48	15.30	090
60500		A	Explore parathyroid glands	16.23	NA	NA	7.86	8.98	1.58	NA	NA	25.67	26.79	090
60502		A	Re-explore parathyroids	20.35	NA	NA	9.85	10.48	1.97	NA	NA	32.17	32.80	090
60505		A	Explore parathyroid glands	21.49	NA	NA	12.26	12.76	2.20	NA	NA	35.95	36.45	090
60512		A	Autotransplant parathyroid	4.45	NA	NA	1.77	1.96	0.44	NA	NA	6.66	6.85	ZZZ
60520		A	Removal of thymus gland	16.81	NA	NA	11.17	12.05	1.90	NA	NA	29.88	30.76	090
60521		A	Removal of thymus gland	18.87	NA	NA	14.18	14.31	2.43	NA	NA	35.48	35.61	090
60522		A	Removal of thymus gland	23.09	NA	NA	15.47	15.28	2.88	NA	NA	41.44	41.25	090
60540		A	Explore adrenal gland	17.03	NA	NA	7.84	9.15	1.40	NA	NA	26.27	27.58	090
60545		A	Explore adrenal gland	19.88	NA	NA	9.60	11.07	1.68	NA	NA	31.16	32.63	090
60600		A	Remove carotid body lesion	17.93	NA	NA	14.06	13.66	1.95	NA	NA	33.94	33.54	090
60605		A	Remove carotid body lesion	20.24	NA	NA	17.41	15.96	1.89	NA	NA	39.54	38.09	090
60650		A	Laparoscopy adrenalectomy	0.20	NA	NA	9.24	9.24	1.35	NA	NA	10.79	10.79	090
60659		C	Laparo proc, endocrine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
60699		C	Endocrine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
61000		A	Remove cranial cavity fluid	1.58	1.54	1.45	1.39	1.33	0.13	3.25	3.16	3.10	3.04	000
61001		A	Remove cranial cavity fluid	1.49	1.53	1.39	1.35	1.25	0.13	3.15	3.01	2.97	2.87	000
61020		A	Remove brain cavity fluid	1.51	1.96	1.81	1.38	1.38	0.28	3.75	3.60	3.17	3.17	000
61026		A	Injection into brain canal	1.69	1.96	1.98	1.50	1.63	0.24	3.89	3.91	3.43	3.56	000
61050		A	Remove brain canal fluid	1.51	NA	NA	1.43	1.41	0.16	NA	NA	3.10	3.08	000
61055		A	Injection into brain canal	2.10	NA	NA	1.55	1.67	0.12	NA	NA	3.77	3.89	000
61070		A	Brain canal shunt procedure	0.89	6.07	4.69	1.07	0.94	0.09	7.05	5.67	2.05	1.92	000
61105		A	Twist drill hole	5.14	NA	NA	3.47	4.14	1.03	NA	NA	9.64	10.31	090
61107		A	Drill skull for implantation	0.05	NA	NA	3.03	3.77	0.01	NA	NA	3.09	3.83	000
61108		A	Drill skull for drainage	10.19	NA	NA	6.74	8.10	2.04	NA	NA	18.97	20.33	090
61120		A	Burr hole for puncture	8.76	NA	NA	5.61	5.82	1.78	NA	NA	16.15	16.36	090
61140		A	Pierce skull for biopsy	15.90	NA	NA	9.47	10.94	3.06	NA	NA	28.43	29.90	090
61150		A	Pierce skull for drainage	17.57	NA	NA	10.72	12.02	3.40	NA	NA	31.69	32.99	090
61151		A	Pierce skull for drainage	12.42	NA	NA	7.98	6.56	2.51	NA	NA	22.91	21.49	090
61154		A	Pierce skull & remove clot	14.99	NA	NA	9.72	11.77	2.94	NA	NA	27.65	29.70	090
61156		A	Pierce skull for drainage	16.32	NA	NA	9.90	11.82	3.25	NA	NA	29.47	31.39	090
61210		A	Pierce skull, implant device	5.84	NA	NA	3.46	4.23	1.15	NA	NA	10.45	11.22	000
61215		A	Insert brain-fluid device	4.89	NA	NA	3.95	4.42	0.95	NA	NA	9.79	10.26	090
61250		A	Pierce skull & explore	10.42	NA	NA	6.47	7.03	2.07	NA	NA	18.96	19.52	090
61253		A	Pierce skull & explore	12.36	NA	NA	7.27	8.06	2.40	NA	NA	22.03	22.82	090
61304		A	Open skull for exploration	21.98	NA	NA	12.11	15.64	4.20	NA	NA	38.27	41.80	090
61305		A	Open skull for exploration	26.61	NA	NA	14.68	18.91	0.05	NA	NA	41.34	45.57	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
61312		A	Open skull for drainage	24.57	NA	NA	14.00	17.05	4.77	NA	NA	43.34	46.39	090
61313		A	Open skull for drainage	24.93	NA	NA	14.21	17.18	4.81	NA	NA	43.95	46.92	090
61314		A	Open skull for drainage	24.23	NA	NA	13.79	17.29	4.73	NA	NA	42.75	46.25	090
61315		A	Open skull for drainage	27.68	NA	NA	15.59	18.32	5.37	NA	NA	48.64	51.37	090
61320		A	Open skull for drainage	25.62	NA	NA	14.44	15.90	4.90	NA	NA	44.96	46.42	090
61321		A	Open skull for drainage	28.50	NA	NA	15.58	17.07	5.28	NA	NA	49.36	50.85	090
61330		A	Decompress eye socket	23.32	NA	NA	15.92	15.46	2.77	NA	NA	42.01	41.55	090
61332		A	Explore/biopsy eye socket	27.28	NA	NA	18.15	19.24	4.31	NA	NA	49.74	50.83	090
61333		A	Explore orbit/remove lesion	27.95	NA	NA	16.54	17.96	3.08	NA	NA	47.57	48.99	090
61334		A	Explore orbit/remove object	18.27	NA	NA	11.69	12.74	2.49	NA	NA	32.45	33.50	090
61340		A	Relieve cranial pressure	18.66	NA	NA	11.26	12.46	3.47	NA	NA	33.39	34.59	090
61343		A	Incise skull (press relief)	29.77	NA	NA	17.15	21.02	5.80	NA	NA	52.72	56.59	090
61345		A	Relieve cranial pressure	27.20	NA	NA	16.05	17.24	5.29	NA	NA	48.54	49.73	090
61440		A	Incise skull for surgery	26.63	NA	NA	13.99	16.12	2.95	NA	NA	43.57	45.70	090
61450		A	Incise skull for surgery	25.95	NA	NA	14.08	16.10	5.14	NA	NA	45.17	47.19	090
61458		A	Incise skull for brain wound	27.29	NA	NA	15.32	18.89	5.28	NA	NA	47.89	51.46	090
61460		A	Incise skull for surgery	28.39	NA	NA	16.16	18.92	4.73	NA	NA	49.28	52.04	090
61470		A	Incise skull for surgery	26.06	NA	NA	14.01	14.27	4.30	NA	NA	44.37	44.63	090
61480		A	Incise skull for surgery	26.49	NA	NA	14.70	15.11	4.97	NA	NA	46.16	46.57	090
61490		A	Incise skull for surgery	25.66	NA	NA	14.23	13.85	4.81	NA	NA	44.70	44.32	090
61500		A	Removal of skull lesion	17.92	NA	NA	10.53	13.25	3.14	NA	NA	31.59	34.31	090
61501		A	Remove infected skull bone	14.84	NA	NA	8.90	11.10	2.53	NA	NA	26.27	28.47	090
61510		A	Removal of brain lesion	28.45	NA	NA	15.99	19.33	5.53	NA	NA	49.97	53.31	090
61512		A	Remove brain lining lesion	35.09	NA	NA	19.46	22.47	6.83	NA	NA	61.38	64.39	090
61514		A	Removal of brain abscess	25.26	NA	NA	14.44	17.76	4.82	NA	NA	44.52	47.84	090
61516		A	Removal of brain lesion	24.61	NA	NA	14.35	17.95	4.78	NA	NA	43.74	47.34	090
61518		A	Removal of brain lesion	37.32	NA	NA	21.33	24.14	7.20	NA	NA	65.85	68.66	090
61519		A	Remove brain lining-lesion	41.39	NA	NA	23.33	25.97	8.02	NA	NA	72.74	75.38	090
61520		A	Removal of brain lesion	54.84	NA	NA	30.85	32.32	9.62	NA	NA	95.31	96.78	090
61521		A	Removal of brain lesion	44.48	NA	NA	24.54	27.35	8.18	NA	NA	77.20	80.01	090
61522		A	Removal of brain abscess	29.45	NA	NA	16.97	18.14	5.79	NA	NA	52.21	53.38	090
61524		A	Removal of brain lesion	27.86	NA	NA	16.22	19.61	5.32	NA	NA	49.40	52.79	090
61526		A	Removal of brain lesion	52.17	NA	NA	29.68	31.49	6.38	NA	NA	88.23	90.04	090
61530		A	Removal of brain lesion	43.86	NA	NA	25.95	28.69	6.16	NA	NA	75.97	78.71	090
61531		A	Implant brain electrodes	14.63	NA	NA	9.29	11.03	2.88	NA	NA	26.80	28.54	090
61533		A	Implant brain electrodes	19.71	NA	NA	11.78	13.45	3.88	NA	NA	35.37	37.04	090
61534		A	Removal of brain lesion	20.97	NA	NA	12.50	11.11	3.84	NA	NA	37.31	35.92	090
61535		A	Remove brain electrodes	11.63	NA	NA	7.51	7.71	2.13	NA	NA	21.27	21.47	090
61536		A	Removal of brain lesion	35.52	NA	NA	20.13	21.06	7.13	NA	NA	62.78	63.71	090
61538		A	Removal of brain tissue	26.81	NA	NA	15.73	19.69	5.27	NA	NA	47.81	51.77	090
61539		A	Removal of brain tissue	32.08	NA	NA	18.32	19.97	6.37	NA	NA	56.77	58.42	090
61541		A	Incision of brain tissue	28.85	NA	NA	16.71	17.91	5.40	NA	NA	50.96	52.16	090
61542		A	Removal of brain tissue	31.02	NA	NA	18.34	19.16	6.27	NA	NA	55.63	56.45	090
61543		A	Removal of brain tissue	29.22	NA	NA	16.60	17.13	5.25	NA	NA	51.07	51.60	090
61544		A	Remove & treat brain lesion	25.50	NA	NA	13.80	17.96	3.85	NA	NA	43.15	47.31	090
61545		A	Excision of brain tumor	43.80	NA	NA	24.49	25.33	8.32	NA	NA	76.61	77.45	090
61546		A	Removal of pituitary gland	31.30	NA	NA	18.13	20.93	5.86	NA	NA	55.29	58.09	090
61548		A	Removal of pituitary gland	21.53	NA	NA	13.00	16.18	3.48	NA	NA	38.01	41.19	090
61550		A	Release of skull seams	14.65	NA	NA	8.48	9.57	0.57	NA	NA	23.70	24.79	090
61552		A	Release of skull seams	19.56	NA	NA	9.50	10.88	1.48	NA	NA	30.54	31.92	090
61556		A	Incise skull/sutures	22.26	NA	NA	11.57	12.89	3.45	NA	NA	37.28	38.60	090
61557		A	Incise skull/sutures	22.38	NA	NA	12.04	13.27	4.12	NA	NA	38.54	39.77	090
61558		A	Excision of skull/sutures	25.58	NA	NA	13.85	15.20	5.17	NA	NA	44.60	45.95	090
61559		A	Excision of skull/sutures	32.79	NA	NA	18.43	20.07	6.63	NA	NA	57.85	59.49	090
61563		A	Excision of skull tumor	26.83	NA	NA	15.39	16.65	4.50	NA	NA	46.72	47.98	090
61564		A	Excision of skull tumor	33.83	NA	NA	14.31	17.17	0.05	NA	NA	48.19	51.05	090
61570		A	Remove foreign body, brain	24.60	NA	NA	13.36	14.50	4.45	NA	NA	42.41	43.55	090
61571		A	Incise skull for brain wound	26.39	NA	NA	14.48	15.83	4.79	NA	NA	45.66	47.01	090
61575		A	Skull base/brainstem surgery	34.36	NA	NA	20.37	24.23	5.12	NA	NA	59.85	63.71	090
61576		A	Skull base/brainstem surgery	52.43	NA	NA	30.84	30.79	6.55	NA	NA	89.82	89.77	090
61580		A	Craniofacial approach, skull	30.35	NA	NA	18.00	19.20	2.98	NA	NA	51.33	52.53	090
61581		A	Craniofacial approach, skull	34.60	NA	NA	0.50	21.84	2.46	NA	NA	57.56	58.90	090
61582		A	Craniofacial approach, skull	31.66	NA	NA	18.04	19.41	5.44	NA	NA	55.14	56.51	090
61583		A	Craniofacial approach, skull	36.21	NA	NA	21.39	22.75	6.91	NA	NA	64.51	65.87	090
61584		A	Orbitocranial approach/skull	34.65	NA	NA	19.94	21.44	6.45	NA	NA	61.04	62.54	090
61585		A	Orbitocranial approach/skull	38.61	NA	NA	21.82	23.62	7.01	NA	NA	67.44	69.24	090
61586		A	Resect nasopharynx, skull	25.10	NA	NA	15.15	17.16	3.10	NA	NA	43.35	45.36	090
61590		A	Infratemporal approach/skull	41.78	NA	NA	24.15	26.01	4.74	NA	NA	70.67	72.53	090
61591		A	Infratemporal approach/skull	43.68	NA	NA	25.73	27.58	5.52	NA	NA	74.93	76.78	090
61592		A	Orbitocranial approach/skull	39.64	NA	NA	22.75	24.57	7.30	NA	NA	69.69	71.51	090
61595		A	Transtemporal approach/skull	29.57	NA	NA	18.42	19.36	3.03	NA	NA	51.02	51.96	090
61596		A	Transcochlear approach/skull	35.63	NA	NA	21.17	22.62	4.03	NA	NA	60.83	62.28	090
61597		A	Transcondylar approach/skull	37.96	NA	NA	21.90	23.55	5.65	NA	NA	65.51	67.16	090
61598		A	Transpetrosal approach/skull	33.41	NA	NA	19.41	20.83	5.09	NA	NA	57.91	59.33	090
61600		A	Resect/excise cranial lesion	25.85	NA	NA	15.58	16.50	2.80	NA	NA	44.23	45.15	090
61601		A	Resect/excise cranial lesion	27.89	NA	NA	16.37	17.44	5.14	NA	NA	49.40	50.47	090
61605		A	Resect/excise cranial lesion	29.33	NA	NA	17.76	18.77	2.67	NA	NA	49.76	50.77	090
61606		A	Resect/excise cranial lesion	38.83	NA	NA	22.70	24.32	7.06	NA	NA	68.59	70.21	090
61607		A	Resect/excise cranial lesion	36.27	NA	NA	20.76	22.39	6.59	NA	NA	63.62	65.25	090
61608		A	Resect/excise cranial lesion	42.10	NA	NA	23.94	25.89	8.11	NA	NA	74.15	76.10	090
61609		A	Transect artery, sinus	9.89	NA	NA	4.59	5.39	0.02	NA	NA	14.50	15.30	ZZZ
61610		A	Transect artery, sinus	29.67	NA	NA	14.59	16.80	4.63	NA	NA	48.89	51.10	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
61611		A	Transect artery, sinus	7.42	NA	NA	2.94	3.67	1.50	NA	NA	11.86	12.59	ZZZ
61612		A	Transect artery, sinus	27.88	NA	NA	14.12	16.09	4.21	NA	NA	46.21	48.18	ZZZ
61613		A	Remove aneurysm, sinus	40.86	NA	NA	23.29	25.25	8.27	NA	NA	72.42	74.38	090
61615		A	Resect/excise lesion, skull	32.07	NA	NA	19.39	20.53	4.42	NA	NA	55.88	57.02	090
61616		A	Resect/excise lesion, skull	43.33	NA	NA	25.79	27.49	7.27	NA	NA	76.39	78.09	090
61618		A	Repair dura	16.99	NA	NA	10.79	11.17	2.83	NA	NA	30.61	30.99	090
61619		A	Repair dura	20.71	NA	NA	12.44	13.18	3.40	NA	NA	36.55	37.29	090
61624		A	Occlusion/embolization cath	20.15	NA	NA	7.28	9.61	1.04	NA	NA	28.47	30.80	000
61626		A	Occlusion/embolization cath	16.62	NA	NA	5.88	7.83	0.74	NA	NA	23.24	25.19	000
61680		A	Intracranial vessel surgery	30.71	NA	NA	17.66	21.67	5.90	NA	NA	54.27	58.28	090
61682		A	Intracranial vessel surgery	61.57	NA	NA	33.18	34.47	11.84	NA	NA	106.59	107.88	090
61684		A	Intracranial vessel surgery	39.81	NA	NA	22.68	25.09	8.05	NA	NA	70.54	72.95	090
61686		A	Intracranial vessel surgery	64.49	NA	NA	35.15	36.13	12.87	NA	NA	112.51	113.49	090
61690		A	Intracranial vessel surgery	29.31	NA	NA	16.43	19.77	5.46	NA	NA	51.20	54.54	090
61692		A	Intracranial vessel surgery	51.87	NA	NA	28.24	28.99	9.05	NA	NA	89.16	89.91	090
61700		A	Inner skull vessel surgery	50.52	NA	NA	27.43	29.17	9.86	NA	NA	87.81	89.55	090
61702		A	Inner skull vessel surgery	48.41	NA	NA	26.43	29.68	9.56	NA	NA	84.40	87.65	090
61703		A	Clamp neck artery	17.47	NA	NA	10.57	11.24	3.28	NA	NA	31.32	31.99	090
61705		A	Revise circulation to head	36.20	NA	NA	19.36	22.77	6.67	NA	NA	62.23	65.64	090
61708		A	Revise circulation to head	35.30	NA	NA	15.57	18.52	2.42	NA	NA	53.29	56.24	090
61710		A	Revise circulation to head	29.67	NA	NA	13.92	14.95	3.62	NA	NA	47.21	48.24	090
61711		A	Fusion of skull arteries	36.33	NA	NA	20.00	23.97	7.04	NA	NA	63.37	67.34	090
61720		A	Incise skull/brain surgery	16.77	NA	NA	10.36	12.78	3.29	NA	NA	30.42	32.84	090
61735		A	Incise skull/brain surgery	20.43	NA	NA	12.35	12.78	3.98	NA	NA	36.76	37.19	090
61750		A	Incise skull/brain biopsy	18.20	NA	NA	10.57	11.60	3.52	NA	NA	32.29	33.32	090
61751		A	Brain biopsy w/ ct/mr guide	17.62	NA	NA	10.41	13.07	3.47	NA	NA	31.50	34.16	090
61760		A	Implant brain electrodes	22.27	NA	NA	6.98	9.30	4.18	NA	NA	33.43	35.75	090
61770		A	Incise skull for treatment	21.44	NA	NA	12.86	14.90	3.85	NA	NA	38.15	40.19	090
61790		A	Treat trigeminal nerve	10.86	NA	NA	5.06	7.04	1.75	NA	NA	17.67	19.65	090
61791		A	Treat trigeminal tract	14.61	NA	NA	8.91	9.33	2.90	NA	NA	26.42	26.84	090
61793		A	Focus radiation beam	17.24	NA	NA	10.48	13.01	3.31	NA	NA	31.03	33.56	090
61795		A	Brain surgery using computer	4.04	NA	NA	2.08	2.77	0.80	NA	NA	6.92	7.61	ZZZ
61850		A	Implant neuroelectrodes	12.39	NA	NA	7.71	8.94	2.10	NA	NA	22.20	23.43	090
61855		D	Implant neuroelectrodes	13.39	5.31	6.80	5.31	6.80	2.63	21.33	22.82	21.33	22.82	090
61860		A	Implant neuroelectrodes	20.87	NA	NA	12.64	11.69	4.22	NA	NA	37.73	36.78	090
61862		A	Implant neurostimul, subcort	19.34	NA	NA	11.59	11.59	3.89	NA	NA	34.82	34.82	090
61865		D	Implant neuroelectrodes	22.97	9.11	11.12	9.11	11.12	4.65	36.73	38.74	36.73	38.74	090
61870		A	Implant neuroelectrodes	14.94	NA	NA	8.59	7.58	3.03	NA	NA	26.56	25.55	090
61875		A	Implant neuroelectrodes	15.06	NA	NA	8.64	8.30	3.05	NA	NA	26.75	26.41	090
61880		A	Revise/remove neuroelectrode	6.29	NA	NA	4.94	5.01	1.25	NA	NA	12.48	12.55	090
61885		A	Implant neurostim one array	5.85	NA	NA	4.03	3.56	1.18	NA	NA	11.06	10.59	090
61886		A	Implant neurostim arrays	0.08	NA	NA	5.82	5.82	1.43	NA	NA	7.33	7.33	090
61888		A	Revise/remove neuroreceiver	5.07	NA	NA	3.74	3.42	1.02	NA	NA	9.83	9.51	010
62000		A	Treat skull fracture	12.53	NA	NA	5.31	5.54	0.90	NA	NA	18.74	18.97	090
62005		A	Treat skull fracture	16.17	NA	NA	8.46	9.35	2.61	NA	NA	27.24	28.13	090
62010		A	Treatment of head injury	19.81	NA	NA	11.42	13.78	3.72	NA	NA	34.95	37.31	090
62100		A	Repair brain fluid leakage	22.03	NA	NA	13.45	15.95	3.82	NA	NA	39.30	41.80	090
62115		A	Reduction of skull defect	21.66	NA	NA	11.16	12.58	2.96	NA	NA	35.78	37.20	090
62116		A	Reduction of skull defect	23.59	NA	NA	12.78	14.18	4.47	NA	NA	40.82	42.24	090
62117		A	Reduction of skull defect	26.60	NA	NA	15.26	16.66	5.38	NA	NA	47.24	48.64	090
62120		A	Repair skull cavity lesion	23.35	NA	NA	13.79	14.93	3.46	NA	NA	40.60	41.74	090
62121		A	Incise skull repair	21.58	NA	NA	13.05	14.54	3.52	NA	NA	38.15	39.64	090
62140		A	Repair of skull defect	13.51	NA	NA	8.29	9.86	2.56	NA	NA	24.36	25.93	090
62141		A	Repair of skull defect	14.91	NA	NA	9.38	11.49	2.80	NA	NA	27.09	29.20	090
62142		A	Remove skull plate/flap	10.79	NA	NA	7.00	8.47	2.06	NA	NA	19.85	21.32	090
62143		A	Replace skull plate/flap	13.05	NA	NA	8.43	8.81	2.47	NA	NA	23.95	24.33	090
62145		A	Repair of skull & brain	18.82	NA	NA	11.28	12.03	3.76	NA	NA	33.86	34.61	090
62146		A	Repair of skull with graft	16.12	NA	NA	9.96	10.45	2.93	NA	NA	29.01	29.50	090
62147		A	Repair of skull with graft	19.34	NA	NA	11.52	12.21	3.22	NA	NA	34.08	34.77	090
62180		A	Establish brain cavity shunt	21.06	NA	NA	12.49	13.22	0.04	NA	NA	33.59	34.32	090
62190		A	Establish brain cavity shunt	11.07	NA	NA	7.06	8.60	2.21	NA	NA	20.34	21.88	090
62192		A	Establish brain cavity shunt	12.25	NA	NA	8.00	9.66	2.28	NA	NA	22.53	24.19	090
62194		A	Replace/irrigate catheter	5.03	NA	NA	1.94	1.97	0.47	NA	NA	7.44	7.47	010
62200		A	Establish brain cavity shunt	18.32	NA	NA	11.14	12.96	3.67	NA	NA	33.13	34.95	090
62201		A	Establish brain cavity shunt	14.86	NA	NA	9.34	9.39	2.71	NA	NA	26.91	26.96	090
62220		A	Establish brain cavity shunt	0.13	NA	NA	8.26	10.08	2.52	NA	NA	10.91	12.73	090
62223		A	Establish brain cavity shunt	12.87	NA	NA	8.15	9.96	2.43	NA	NA	23.45	25.26	090
62225		A	Replace/irrigate catheter	5.41	NA	NA	3.91	4.24	1.07	NA	NA	10.39	10.72	090
62230		A	Replace/revise brain shunt	10.54	NA	NA	6.44	7.50	2.02	NA	NA	19.00	20.06	090
62256		A	Remove brain cavity shunt	6.60	NA	NA	5.08	5.54	1.30	NA	NA	12.98	13.44	090
62258		A	Replace brain cavity shunt	14.54	NA	NA	8.43	10.33	2.80	NA	NA	25.77	27.67	090
62263		A	Lysis epidural adhesions	6.02	5.33	5.33	2.27	2.27	0.88	12.23	12.23	9.17	9.17	010
62268		A	Drain spinal cord cyst	4.74	NA	NA	2.52	2.70	0.42	NA	NA	7.68	7.86	000
62269		A	Needle biopsy, spinal cord	5.02	NA	NA	2.42	2.29	0.28	NA	NA	7.72	7.59	000
62270		A	Spinal fluid tap, diagnostic	1.13	3.10	2.52	0.45	0.53	0.14	4.37	3.79	1.72	1.80	000
62272		A	Drain spinal fluid	1.35	2.97	2.50	0.61	0.73	0.19	4.51	4.04	2.15	2.27	000
62273		A	Treat epidural spine lesion	2.15	1.27	1.26	1.06	1.10	0.14	3.56	3.55	3.35	3.39	000
62274		D	Inject spinal anesthetic	1.78	0.71	0.73	0.71	0.73	0.12	2.61	2.63	2.61	2.63	000
62275		D	Inject spinal anesthetic	1.79	0.71	0.69	0.71	0.69	0.12	2.62	2.60	2.62	2.60	000
62276		D	Inject spinal anesthetic	2.04	0.81	0.94	0.81	0.94	0.14	2.99	3.12	2.99	3.12	000
62277		D	Inject spinal anesthetic	2.15	0.85	0.87	0.85	0.87	0.14	3.14	3.16	3.14	3.16	000
62278		D	Inject spinal anesthetic	1.51	0.60	0.72	0.60	0.72	0.11	2.22	2.34	2.22	2.34	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
62279		D	Inject spinal anesthetic	1.58	0.63	0.70	0.63	0.70	0.11	2.32	2.39	2.32	2.39	000
62280		A	Treat spinal cord lesion	2.63	4.36	3.46	0.71	0.73	0.17	7.16	6.26	3.51	3.53	010
62281		A	Treat spinal cord lesion	2.66	3.46	2.83	0.58	0.67	0.18	6.30	5.67	3.42	3.51	010
62282		A	Treat spinal canal lesion	2.33	5.32	4.45	0.59	0.90	0.15	7.80	6.93	3.07	3.38	010
62284		A	Injection for myelogram	1.54	4.00	3.54	0.67	1.04	0.11	5.65	5.19	2.32	2.69	000
62287		A	Percutaneous diskectomy	8.08	NA	NA	4.88	5.55	0.83	NA	NA	13.79	14.46	090
62288		D	Injection into spinal canal	1.74	0.69	0.82	0.69	0.82	0.14	2.57	2.70	2.57	2.70	000
62289		D	Injection into spinal canal	1.64	0.65	0.78	0.65	0.78	0.11	2.40	2.53	2.40	2.53	000
62290		A	Inject for spine disk x-ray	0.03	4.16	3.63	1.30	1.48	0.21	4.40	3.87	1.54	1.72	000
62291		A	Inject for spine disk x-ray	2.91	5.21	4.39	1.13	1.33	0.21	8.33	7.51	4.25	4.45	000
62292		A	Injection into disk lesion	7.86	NA	NA	3.98	5.33	0.71	NA	NA	12.55	13.90	090
62294		A	Injection into spinal artery	11.83	NA	NA	6.37	6.36	0.68	NA	NA	18.88	18.87	090
62298		D	Injection into spinal canal	2.20	0.87	0.94	0.87	0.94	0.14	3.21	3.28	3.21	3.28	000
62310		A	Inject spine c/t	1.91	3.22	3.22	0.42	0.42	0.26	5.39	5.39	2.59	2.59	000
62311		A	Inject spine l/s (cd)	1.54	3.71	3.71	0.36	0.36	0.25	5.50	5.50	2.15	2.15	000
62318		A	Inject spine w/cath, c/t	2.04	3.28	3.28	0.45	0.45	0.32	5.64	5.64	2.81	2.81	000
62319		A	Inject spine w/cath l/s (cd)	1.87	3.26	3.26	0.39	0.39	0.28	5.41	5.41	2.54	2.54	000
62350		A	Implant spinal canal cath	6.87	NA	NA	3.38	3.48	0.67	NA	NA	10.92	11.02	090
62351		A	Implant spinal canal cath	0.10	NA	NA	6.49	6.27	1.61	NA	NA	8.20	7.98	090
62355		A	Remove spinal canal catheter	5.45	NA	NA	2.58	2.88	0.51	NA	NA	8.54	8.84	090
62360		A	Insert spine infusion device	2.62	NA	NA	1.93	1.75	0.23	NA	NA	4.78	4.60	090
62361		A	Implant spine infusion pump	5.42	NA	NA	2.93	2.93	0.54	NA	NA	8.89	8.89	090
62362		A	Implant spine infusion pump	7.04	NA	NA	3.83	3.83	0.86	NA	NA	11.73	11.73	090
62365		A	Remove spine infusion device	5.42	NA	NA	2.95	3.16	0.72	NA	NA	9.09	9.30	090
62367		C	Analyze spine infusion pump	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
62367	26	A	Analyze spine infusion pump	0.48	0.13	0.19	0.13	0.19	0.05	0.66	0.72	0.66	0.72	XXX
62367	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
62368		C	Analyze spine infusion pump	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
62368	26	A	Analyze spine infusion pump	0.75	0.20	0.30	0.20	0.30	0.06	1.01	1.11	1.01	1.11	XXX
62368	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
63001		A	Removal of spinal lamina	15.82	NA	NA	10.93	12.92	2.62	NA	NA	29.37	31.36	090
63003		A	Removal of spinal lamina	15.95	NA	NA	11.15	13.13	2.70	NA	NA	29.80	31.78	090
63005		A	Removal of spinal lamina	14.92	NA	NA	10.68	12.46	2.29	NA	NA	27.89	29.67	090
63011		A	Removal of spinal lamina	14.52	NA	NA	8.83	9.33	1.74	NA	NA	25.09	25.59	090
63012		A	Removal of spinal lamina	15.40	NA	NA	9.82	11.96	2.25	NA	NA	27.47	29.61	090
63015		A	Removal of spinal lamina	19.35	NA	NA	12.81	15.37	3.59	NA	NA	35.75	38.31	090
63016		A	Removal of spinal lamina	19.20	NA	NA	12.92	15.42	3.29	NA	NA	35.41	37.91	090
63017		A	Removal of spinal lamina	15.94	NA	NA	11.19	13.15	2.55	NA	NA	29.68	31.64	090
63020		A	Neck spine disk surgery	14.81	NA	NA	10.52	12.24	2.69	NA	NA	28.02	29.74	090
63030		A	Low back disk surgery	0.12	NA	NA	9.13	10.43	1.95	NA	NA	11.20	12.50	090
63035		A	Spinal disk surgery add-on	3.15	NA	NA	1.63	2.17	0.51	NA	NA	5.29	5.83	ZZZ
63040		A	Neck spine disk surgery	18.81	NA	NA	12.60	15.06	3.09	NA	NA	34.50	36.96	090
63042		A	Low back disk surgery	17.47	NA	NA	11.98	14.20	2.69	NA	NA	32.14	34.36	090
63045		A	Removal of spinal lamina	16.50	NA	NA	11.36	13.45	2.91	NA	NA	30.77	32.86	090
63046		A	Removal of spinal lamina	15.80	NA	NA	11.12	13.06	2.63	NA	NA	29.55	31.49	090
63047		A	Removal of spinal lamina	14.61	NA	NA	10.50	12.24	2.22	NA	NA	27.33	29.07	090
63048		A	Remove spinal lamina add-on	3.26	NA	NA	1.70	2.25	0.51	NA	NA	5.47	6.02	ZZZ
63055		A	Decompress spinal cord	21.99	NA	NA	14.25	17.13	3.94	NA	NA	40.18	43.06	090
63056		A	Decompress spinal cord	20.36	NA	NA	13.44	16.01	3.01	NA	NA	36.81	39.38	090
63057		A	Decompress spine cord add-on	5.26	NA	NA	2.65	3.03	0.86	NA	NA	8.77	9.15	ZZZ
63064		A	Decompress spinal cord	24.61	NA	NA	15.92	18.41	4.26	NA	NA	44.79	47.28	090
63066		A	Decompress spine cord add-on	3.26	NA	NA	1.65	1.91	0.53	NA	NA	5.44	5.70	ZZZ
63075		A	Neck spine disk surgery	19.41	NA	NA	12.94	14.47	3.38	NA	NA	35.73	37.26	090
63076		A	Neck spine disk surgery	4.05	NA	NA	2.09	2.78	0.70	NA	NA	6.84	7.53	ZZZ
63077		A	Spine disk surgery, thorax	21.44	NA	NA	14.55	15.91	2.72	NA	NA	38.71	40.07	090
63078		A	Spine disk surgery, thorax	3.28	NA	NA	1.69	1.98	0.40	NA	NA	5.37	5.66	ZZZ
63081		A	Removal of vertebral body	23.73	NA	NA	15.60	18.78	4.08	NA	NA	43.41	46.59	090
63082		A	Remove vertebral body add-on	4.37	NA	NA	2.27	3.01	0.74	NA	NA	7.38	8.12	ZZZ
63085		A	Removal of vertebral body	26.92	NA	NA	17.62	20.65	4.10	NA	NA	48.64	51.67	090
63086		A	Remove vertebral body add-on	3.19	NA	NA	1.63	2.18	0.49	NA	NA	5.31	5.86	ZZZ
63087		A	Removal of vertebral body	35.57	NA	NA	21.82	24.03	4.66	NA	NA	62.05	64.26	090
63088		A	Remove vertebral body add-on	4.33	NA	NA	2.25	2.98	0.61	NA	NA	7.19	7.92	ZZZ
63090		A	Removal of vertebral body	28.16	NA	NA	17.58	21.11	3.66	NA	NA	49.40	52.93	090
63091		A	Remove vertebral body add-on	3.03	NA	NA	1.54	1.90	0.37	NA	NA	4.94	5.30	ZZZ
63170		A	Incise spinal cord tract(s)	19.83	NA	NA	13.14	14.98	3.84	NA	NA	36.81	38.65	090
63172		A	Drainage of spinal cyst	17.66	NA	NA	12.50	14.65	3.36	NA	NA	33.52	35.67	090
63173		A	Drainage of spinal cyst	21.99	NA	NA	14.53	15.10	4.25	NA	NA	40.77	41.34	090
63180		A	Revise spinal cord ligaments	18.27	NA	NA	12.60	12.60	2.76	NA	NA	33.63	33.63	090
63182		A	Revise spinal cord ligaments	20.50	NA	NA	12.26	13.66	3.22	NA	NA	35.98	37.38	090
63185		A	Incise spinal column/nerves	15.04	NA	NA	9.08	11.03	2.43	NA	NA	26.55	28.50	090
63190		A	Incise spinal column/nerves	17.45	NA	NA	11.60	13.91	2.84	NA	NA	31.89	34.20	090
63191		A	Incise spinal column/nerves	17.54	NA	NA	10.76	11.61	2.78	NA	NA	31.08	31.93	090
63194		A	Incise spinal column & cord	19.19	NA	NA	12.06	12.58	3.89	NA	NA	35.14	35.66	090
63195		A	Incise spinal column & cord	18.84	NA	NA	12.39	13.05	3.71	NA	NA	34.94	35.60	090
63196		A	Incise spinal column & cord	22.30	NA	NA	11.82	13.10	4.52	NA	NA	38.64	39.92	090
63197		A	Incise spinal column & cord	21.11	NA	NA	12.24	13.08	4.27	NA	NA	37.62	38.46	090
63198		A	Incise spinal column & cord	25.38	NA	NA	10.42	12.24	5.14	NA	NA	40.94	42.76	090
63199		A	Incise spinal column & cord	26.89	NA	NA	16.23	17.98	4.52	NA	NA	47.64	49.39	090
63200		A	Release of spinal cord	19.18	NA	NA	12.71	12.92	3.23	NA	NA	35.12	35.33	090
63250		A	Revise spinal cord vessels	40.76	NA	NA	21.25	23.53	5.30	NA	NA	67.31	69.59	090
63251		A	Revise spinal cord vessels	41.20	NA	NA	22.47	23.02	7.84	NA	NA	71.51	72.06	090
63252		A	Revise spinal cord vessels	41.19	NA	NA	22.29	24.38	7.47	NA	NA	70.95	73.04	090

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
63265		A	Excise intraspinal lesion	21.56	NA	NA	12.65	15.48	4.01	NA	NA	38.22	41.03	090
63266		A	Excise intraspinal lesion	22.30	NA	NA	13.25	16.59	4.17	NA	NA	39.72	43.06	090
63267		A	Excise intraspinal lesion	17.95	NA	NA	10.97	13.59	3.14	NA	NA	32.06	34.68	090
63268		A	Excise intraspinal lesion	18.52	NA	NA	9.47	10.51	3.31	NA	NA	31.30	32.34	090
63270		A	Excise intraspinal lesion	26.80	NA	NA	15.44	16.50	5.33	NA	NA	47.57	48.63	090
63271		A	Excise intraspinal lesion	26.92	NA	NA	15.53	18.87	5.19	NA	NA	47.64	50.98	090
63272		A	Excise intraspinal lesion	25.32	NA	NA	14.59	17.22	4.72	NA	NA	44.63	47.26	090
63273		A	Excise intraspinal lesion	24.29	NA	NA	14.34	15.52	4.53	NA	NA	43.16	44.34	090
63275		A	Biopsy/excise spinal tumor	23.68	NA	NA	13.69	17.34	4.31	NA	NA	41.68	45.33	090
63276		A	Biopsy/excise spinal tumor	23.45	NA	NA	13.66	17.11	4.29	NA	NA	41.40	44.85	090
63277		A	Biopsy/excise spinal tumor	20.83	NA	NA	12.43	15.54	3.64	NA	NA	36.90	40.01	090
63278		A	Biopsy/excise spinal tumor	20.56	NA	NA	12.29	15.36	3.52	NA	NA	36.37	39.44	090
63280		A	Biopsy/excise spinal tumor	28.35	NA	NA	16.18	19.75	5.51	NA	NA	50.04	53.61	090
63281		A	Biopsy/excise spinal tumor	28.05	NA	NA	15.97	19.49	5.42	NA	NA	49.44	52.96	090
63282		A	Biopsy/excise spinal tumor	26.39	NA	NA	15.33	18.04	4.95	NA	NA	46.67	49.38	090
63283		A	Biopsy/excise spinal tumor	0.25	NA	NA	13.15	14.96	4.52	NA	NA	17.92	19.73	090
63285		A	Biopsy/excise spinal tumor	0.36	NA	NA	20.07	21.70	7.01	NA	NA	27.44	29.07	090
63286		A	Biopsy/excise spinal tumor	35.63	NA	NA	19.65	22.54	6.85	NA	NA	62.13	65.02	090
63287		A	Biopsy/excise spinal tumor	36.70	NA	NA	20.64	22.46	7.13	NA	NA	64.47	66.29	090
63290		A	Biopsy/excise spinal tumor	37.38	NA	NA	20.76	22.94	6.99	NA	NA	65.13	67.31	090
63300		A	Removal of vertebral body	24.43	NA	NA	14.23	15.36	4.35	NA	NA	43.01	44.14	090
63301		A	Removal of vertebral body	27.60	NA	NA	15.56	16.68	4.63	NA	NA	47.79	48.91	090
63302		A	Removal of vertebral body	27.81	NA	NA	15.88	17.71	4.56	NA	NA	48.25	50.08	090
63303		A	Removal of vertebral body	30.50	NA	NA	16.81	17.63	4.47	NA	NA	51.78	52.60	090
63304		A	Removal of vertebral body	30.33	NA	NA	17.38	18.82	6.14	NA	NA	53.85	55.29	090
63305		A	Removal of vertebral body	32.03	NA	NA	17.54	19.26	5.24	NA	NA	54.81	56.53	090
63306		A	Removal of vertebral body	32.22	NA	NA	17.96	19.65	5.44	NA	NA	55.62	57.31	090
63307		A	Removal of vertebral body	31.63	NA	NA	16.57	19.05	4.17	NA	NA	52.37	54.85	090
63308		A	Remove vertebral body add-on	5.25	NA	NA	2.63	3.07	0.86	NA	NA	8.74	9.18	ZZZ
63600		A	Remove spinal cord lesion	14.02	NA	NA	5.67	7.16	1.51	NA	NA	21.20	22.69	090
63610		A	Stimulation of spinal cord	8.73	NA	NA	3.15	4.19	0.54	NA	NA	12.42	13.46	000
63615		A	Remove lesion of spinal cord	16.28	NA	NA	9.65	10.37	3.14	NA	NA	29.07	29.79	090
63650		A	Implant neuroelectrodes	6.74	NA	NA	3.62	4.73	0.55	NA	NA	10.91	12.02	090
63655		A	Implant neuroelectrodes	10.29	NA	NA	6.79	8.17	1.75	NA	NA	18.83	20.21	090
63660		A	Revise/remove neuroelectrode	6.16	NA	NA	3.54	4.50	0.71	NA	NA	10.41	11.37	090
63685		A	Implant neuroreceiver	7.04	NA	NA	3.95	4.97	0.89	NA	NA	11.88	12.90	090
63688		A	Revise/remove neuroreceiver	5.39	NA	NA	3.23	4.03	0.73	NA	NA	9.35	10.15	090
63700		A	Repair of spinal herniation	16.53	NA	NA	10.18	10.72	2.48	NA	NA	29.19	29.73	090
63702		A	Repair of spinal herniation	18.48	NA	NA	11.60	12.17	3.04	NA	NA	33.12	33.69	090
63704		A	Repair of spinal herniation	21.18	NA	NA	12.09	12.92	3.87	NA	NA	37.14	37.97	090
63706		A	Repair of spinal herniation	24.11	NA	NA	13.90	14.86	2.61	NA	NA	40.62	41.58	090
63707		A	Repair spinal fluid leakage	11.26	NA	NA	7.60	9.06	1.[illegible]	NA	NA	20.64	22.10	090
63709		A	Repair spinal fluid leakage	14.32	NA	NA	9.24	11.20	2.18	NA	NA	25.74	27.70	090
63710		A	Graft repair of spine defect	14.07	NA	NA	8.98	9.38	2.49	NA	NA	25.54	25.94	090
63740		A	Install spinal shunt	11.36	NA	NA	7.38	8.93	2.15	NA	NA	20.89	22.44	090
63741		A	Install spinal shunt	8.25	NA	NA	4.63	5.94	1.28	NA	NA	14.16	15.47	090
63744		A	Revision of spinal shunt	8.10	NA	NA	5.35	6.22	1.41	NA	NA	14.86	15.73	090
63746		A	Removal of spinal shunt	6.43	NA	NA	3.61	4.21	0.73	NA	NA	10.77	11.37	090
64400		A	Injection for nerve block	1.11	2.10	1.71	0.26	0.33	0.09	3.30	2.91	1.46	1.53	000
64402		A	Injection for nerve block	1.25	3.65	2.91	0.45	0.51	0.08	4.98	4.24	1.78	1.84	000
64405		A	Injection for nerve block	1.32	2.26	1.87	0.30	0.40	0.12	3.70	3.31	1.74	1.84	000
64408		A	Injection for nerve block	1.41	2.39	2.08	0.59	0.73	0.13	3.93	3.62	2.13	2.27	000
64410		A	Injection for nerve block	1.43	2.32	1.93	0.30	0.42	0.09	3.84	3.45	1.82	1.94	000
64412		A	Injection for nerve block	1.18	2.63	2.14	0.25	0.36	0.10	3.91	3.42	1.53	1.64	000
64413		A	Injection for nerve block	1.40	2.47	2.05	0.37	0.48	0.11	3.98	3.56	1.88	1.99	000
64415		A	Injection for nerve block	1.48	2.66	2.07	0.31	0.30	0.11	4.25	3.66	1.90	1.89	000
64417		A	Injection for nerve block	1.44	2.26	1.87	0.32	0.41	0.11	3.81	3.42	1.87	1.96	000
64418		A	Injection for nerve block	1.32	2.13	1.83	0.28	0.44	0.10	3.55	3.25	1.70	1.86	000
64420		A	Injection for nerve block	1.18	2.18	1.81	0.27	0.38	0.08	3.44	3.07	1.53	1.64	000
64421		A	Injection for nerve block	1.68	2.51	2.11	0.37	0.50	0.11	4.30	3.90	2.16	2.29	000
64425		A	Injection for nerve block	1.75	2.15	1.77	0.40	0.46	0.12	4.02	3.64	2.27	2.33	000
64430		A	Injection for nerve block	1.46	2.58	2.13	0.42	0.51	0.10	4.14	3.69	1.98	2.07	000
64435		A	Injection for nerve block	1.45	2.71	2.16	0.52	0.52	0.11	4.27	3.72	2.08	2.08	000
64440		D	Injection for nerve block	1.34	0.53	0.61	0.53	0.61	0.10	1.97	2.05	1.97	2.05	000
64441		D	Injection for nerve block	1.79	0.71	0.81	0.71	0.81	0.12	2.62	2.72	2.62	2.72	000
64442		D	Injection for nerve block	1.41	0.56	0.74	0.56	0.74	0.11	2.08	2.26	2.08	2.26	000
64443		D	Inject, nerve block add-on	0.98	0.39	0.46	0.39	0.46	0.07	1.44	1.51	1.44	1.51	ZZZ
64445		A	Injection for nerve block	1.48	2.98	2.37	0.34	0.39	0.10	4.56	3.95	1.92	1.97	000
64450		A	Injection for nerve block	1.27	1.54	1.30	0.33	0.39	0.09	2.90	2.66	1.69	1.75	000
64470		A	Inj paravertebral c/t	1.85	3.62	3.62	0.50	0.50	0.12	5.59	5.59	2.47	2.47	000
64472		A	Inj paravertebral c/t add-on	1.29	3.29	3.29	0.37	0.37	0.09	4.67	4.67	1.75	1.75	ZZZ
64475		A	Inj paravertebral l/s	1.41	3.45	3.45	0.38	0.38	0.10	4.96	4.96	1.89	1.89	000
64476		A	Inj paravertebral l/s add-on	0.98	3.58	3.58	0.26	0.26	0.07	4.63	4.63	1.31	1.31	ZZZ
64479		A	Inj foramen epidural c/t	2.20	3.71	3.71	0.61	0.61	0.15	6.06	6.06	2.96	2.96	000
64480		A	Inj foramen epidural add-on	1.54	3.77	3.77	0.39	0.39	0.11	5.42	5.42	2.04	2.04	ZZZ
64483		A	Inj foramen epidural l/s	1.90	3.59	3.59	0.52	0.52	0.10	5.59	5.59	2.52	2.52	000
64484		A	Inj foramen epidural add-on	1.33	3.69	3.69	0.34	0.34	0.10	5.12	5.12	1.77	1.77	ZZZ
64505		A	Injection for nerve block	1.36	2.06	1.71	0.35	0.43	0.09	3.51	3.16	1.80	1.88	000
64508		A	Injection for nerve block	1.12	1.93	1.73	0.40	0.58	0.13	3.18	2.98	1.65	1.83	000
64510		A	Injection for nerve block	1.22	2.16	1.81	0.26	0.39	0.08	3.46	3.11	1.56	1.69	000
64520		A	Injection for nerve block	1.35	3.35	2.71	0.29	0.41	0.10	4.80	4.15	1.74	1.86	000
64530		A	Injection for nerve block	1.58	2.63	2.29	0.36	0.59	0.11	4.32	3.98	2.05	2.28	000

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
64550		A	Apply neurostimulator	0.18	0.47	0.47	0.05	0.16	0.01	0.66	0.66	0.24	0.35	000
64553		A	Implant neuroelectrodes	2.31	1.58	1.46	1.21	1.19	0.06	3.95	3.83	3.58	3.56	010
64555		A	Implant neuroelectrodes	2.27	2.10	1.69	0.52	0.51	0.16	4.53	4.12	2.95	2.94	010
64560		A	Implant neuroelectrodes	2.36	2.11	1.98	0.85	1.03	0.17	4.64	4.51	3.38	3.56	010
64565		A	Implant neuroelectrodes	1.76	2.27	1.91	0.56	0.63	0.13	4.16	3.80	2.45	2.52	010
64573		A	Implant neuroelectrodes	7.50	NA	NA	5.19	4.75	0.84	NA	NA	13.53	13.09	090
64575		A	Implant neuroelectrodes	4.35	NA	NA	3.30	3.31	0.68	NA	NA	8.33	8.34	090
64577		A	Implant neuroelectrodes	4.62	NA	NA	3.51	3.38	0.74	NA	NA	8.87	8.74	090
64580		A	Implant neuroelectrodes	4.12	NA	NA	3.50	3.42	0.38	NA	NA	8.00	7.92	090
64585		A	Revise/remove neuroelectrode	2.06	4.14	3.37	1.89	1.68	0.26	6.46	5.69	4.21	4.00	010
64590		A	Implant neuroreceiver	2.40	NA	NA	2.27	2.20	0.37	NA	NA	5.04	4.97	010
64595		A	Revise/remove neuroreceiver	1.73	NA	NA	1.95	1.77	0.14	NA	NA	3.82	3.64	010
64600		A	Injection treatment of nerve	3.45	3.01	2.72	1.92	1.90	0.34	6.80	6.51	5.71	5.69	010
64605		A	Injection treatment of nerve	5.61	3.48	3.03	2.44	2.25	0.43	9.52	9.07	8.48	8.29	010
64610		A	Injection treatment of nerve	7.16	NA	NA	4.01	4.98	1.28	NA	NA	12.45	13.42	010
64612		A	Destroy nerve, face muscle	1.96	2.62	2.36	1.58	1.58	0.14	4.72	4.46	3.68	3.68	010
64613		A	Destroy nerve, spine muscle	1.96	1.48	1.50	1.25	1.33	0.36	3.80	3.82	3.57	3.65	010
64620		A	Injection treatment of nerve	2.84	2.78	2.36	0.63	0.75	0.20	5.82	5.40	3.67	3.79	010
64622		A	Destr paravertebrl nerve l/s	0.03	4.03	3.52	0.73	1.04	0.21	4.27	3.76	0.97	1.28	010
64623		A	Destr paravertebral n add-on	0.99	3.01	2.49	0.24	0.41	0.07	4.07	3.55	1.30	1.47	ZZZ
64626		A	Destr paravertebrl nerve c/t	3.28	3.64	3.64	0.94	0.94	0.22	7.14	7.14	4.44	4.44	010
64627		A	Destr paravertebral n add-on	1.16	3.00	3.00	0.33	0.33	0.08	4.24	4.24	1.57	1.57	ZZZ
64630		A	Injection treatment of nerve	0.03	2.79	2.57	0.72	1.01	0.25	3.07	2.85	1.00	1.29	010
64640		A	Injection treatment of nerve	2.76	4.44	3.58	0.93	0.95	0.20	7.40	6.54	3.89	3.91	010
64680		A	Injection treatment of nerve	2.62	2.46	2.27	0.69	0.94	0.16	5.24	5.05	3.47	3.72	010
64702		A	Revise finger/toe nerve	4.23	NA	NA	3.63	3.87	0.44	NA	NA	8.30	8.54	090
64704		A	Revise hand/foot nerve	4.57	NA	NA	2.95	3.58	0.36	NA	NA	7.88	8.51	090
64708		A	Revise arm/leg nerve	6.12	NA	NA	4.69	5.34	0.66	NA	NA	11.47	12.12	090
64712		A	Revision of sciatic nerve	7.75	NA	NA	4.63	5.79	0.74	NA	NA	13.12	14.28	090
64713		A	Revision of arm nerve(s)	0.11	NA	NA	5.02	6.32	1.14	NA	NA	6.27	7.57	090
64714		A	Revise low back nerve(s)	10.33	NA	NA	3.77	4.49	0.78	NA	NA	14.88	15.60	090
64716		A	Revision of cranial nerve	6.31	NA	NA	4.65	4.80	0.59	NA	NA	11.55	11.70	090
64718		A	Revise ulnar nerve at elbow	5.99	NA	NA	4.81	5.40	0.74	NA	NA	11.54	12.13	090
64719		A	Revise ulnar nerve at wrist	4.85	NA	NA	4.28	4.55	0.53	NA	NA	9.66	9.93	090
64721		A	Carpal tunnel surgery	4.29	5.58	5.47	5.31	5.26	0.49	10.36	10.25	10.09	10.04	090
64722		A	Relieve pressure on nerve(s)	4.70	NA	NA	2.81	3.51	0.40	NA	NA	7.91	8.61	090
64726		A	Release foot/toe nerve	4.18	NA	NA	2.85	2.33	0.31	NA	NA	7.34	6.82	090
64727		A	Internal nerve revision	3.10	NA	NA	1.49	2.00	0.33	NA	NA	4.92	5.43	ZZZ
64732		A	Incision of brow nerve	4.41	NA	NA	3.36	3.69	0.75	NA	NA	8.52	8.85	090
64734		A	Incision of cheek nerve	4.92	NA	NA	3.30	3.73	0.72	NA	NA	8.94	9.37	090
64736		A	Incision of chin nerve	4.60	NA	NA	2.77	3.29	0.39	NA	NA	7.76	8.28	090
64738		A	Incision of jaw nerve	5.73	NA	NA	3.28	3.84	0.58	NA	NA	9.59	10.15	090
64740		A	Incision of tongue nerve	5.59	NA	NA	3.39	3.95	0.38	NA	NA	9.36	9.92	090
64742		A	Incision of facial nerve	6.22	NA	NA	4.51	4.74	0.53	NA	NA	11.26	11.49	090
64744		A	Incise nerve, back of head	5.24	NA	NA	3.50	4.19	0.92	NA	NA	9.66	10.35	090
64746		A	Incise diaphragm nerve	5.93	NA	NA	4.98	4.76	0.68	NA	NA	11.59	11.37	090
64752		A	Incision of vagus nerve	7.06	NA	NA	5.30	5.04	0.67	NA	NA	13.03	12.77	090
64755		A	Incision of stomach nerves	13.52	NA	NA	6.15	7.45	1.22	NA	NA	20.89	22.19	090
64760		A	Incision of vagus nerve	6.96	NA	NA	3.39	4.35	0.64	NA	NA	10.99	11.95	090
64761		A	Incision of pelvis nerve	6.41	NA	NA	3.68	4.03	0.44	NA	NA	10.53	10.88	090
64763		A	Incise hip/thigh nerve	6.93	NA	NA	5.18	5.19	0.71	NA	NA	12.82	12.83	090
64766		A	Incise hip/thigh nerve	8.67	NA	NA	5.11	5.64	1.34	NA	NA	15.12	15.65	090
64771		A	Sever cranial nerve	7.35	NA	NA	5.17	5.62	0.86	NA	NA	13.38	13.83	090
64772		A	Incision of spinal nerve	7.21	NA	NA	4.72	5.38	1.14	NA	NA	13.07	13.73	090
64774		A	Remove skin nerve lesion	5.17	NA	NA	3.54	3.40	0.52	NA	NA	9.23	9.09	090
64776		A	Remove digit nerve lesion	5.12	NA	NA	3.70	3.53	0.44	NA	NA	9.26	9.09	090
64778		A	Digit nerve surgery add-on	3.11	NA	NA	1.45	1.83	0.34	NA	NA	4.90	5.28	ZZZ
64782		A	Remove limb nerve lesion	6.23	NA	NA	3.47	3.88	0.45	NA	NA	10.15	10.56	090
64783		A	Limb nerve surgery add-on	3.72	NA	NA	1.85	2.27	0.37	NA	NA	5.94	6.36	ZZZ
64784		A	Remove nerve lesion	9.82	NA	NA	6.37	6.31	1.06	NA	NA	17.25	17.19	090
64786		A	Remove sciatic nerve lesion	15.46	NA	NA	9.79	10.78	1.93	NA	NA	27.18	28.17	090
64787		A	Implant nerve end	4.30	NA	NA	2.20	2.59	0.43	NA	NA	6.93	7.32	ZZZ
64788		A	Remove skin nerve lesion	4.61	NA	NA	3.22	3.40	0.49	NA	NA	8.32	8.50	090
64790		A	Removal of nerve lesion	11.31	NA	NA	6.84	7.06	1.47	NA	NA	19.62	19.84	090
64792		A	Removal of nerve lesion	14.92	NA	NA	8.43	8.76	1.97	NA	NA	25.32	25.65	090
64795		A	Biopsy of nerve	3.01	NA	NA	1.77	1.97	0.43	NA	NA	5.21	5.41	000
64802		A	Remove sympathetic nerves	9.15	NA	NA	6.02	5.98	1.03	NA	NA	16.20	16.16	090
64804		A	Remove sympathetic nerves	14.64	NA	NA	7.75	9.28	1.83	NA	NA	24.22	25.75	090
64809		A	Remove sympathetic nerves	13.67	NA	NA	6.71	7.90	1.68	NA	NA	22.06	23.25	090
64818		A	Remove sympathetic nerves	10.30	NA	NA	6.01	6.83	1.16	NA	NA	17.47	18.29	090
64820		A	Remove sympathetic nerves	10.37	NA	NA	7.51	7.61	1.08	NA	NA	18.96	19.06	090
64831		A	Repair of digit nerve	9.44	NA	NA	6.77	6.00	0.99	NA	NA	17.20	16.43	090
64832		A	Repair nerve add-on	5.66	NA	NA	3.03	2.65	0.59	NA	NA	9.28	8.90	ZZZ
64834		A	Repair of hand or foot nerve	10.19	NA	NA	6.82	6.07	1.06	NA	NA	18.07	17.32	090
64835		A	Repair of hand or foot nerve	10.94	NA	NA	7.51	7.25	1.14	NA	NA	19.59	19.33	090
64836		A	Repair of hand or foot nerve	10.94	NA	NA	7.50	7.44	1.17	NA	NA	19.61	19.55	090
64837		A	Repair nerve add-on	6.26	NA	NA	3.16	3.58	0.65	NA	NA	10.07	10.49	ZZZ
64840		A	Repair of leg nerve	13.02	NA	NA	8.76	9.38	1.03	NA	NA	22.81	23.43	090
64856		A	Repair/transpose nerve	13.80	NA	NA	8.98	8.96	1.52	NA	NA	24.30	24.28	090
64857		A	Repair arm/leg nerve	14.49	NA	NA	9.50	9.71	1.54	NA	NA	25.53	25.74	090
64858		A	Repair sciatic nerve	16.49	NA	NA	9.97	10.46	2.38	NA	NA	28.84	29.33	090
64859		A	Nerve surgery	4.26	NA	NA	2.27	2.65	0.45	NA	NA	6.98	7.36	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
64861		A	Repair of arm nerves	19.24	NA	NA	12.35	12.90	1.68	NA	NA	33.27	33.82	090
64862		A	Repair of low back nerves	19.44	NA	NA	11.27	14.30	3.93	NA	NA	34.64	37.67	090
64864		A	Repair of facial nerve	12.55	NA	NA	9.35	9.15	1.12	NA	NA	23.02	22.82	090
64865		A	Repair of facial nerve	15.24	NA	NA	10.71	11.38	1.37	NA	NA	27.32	27.99	090
64866		A	Fusion of facial/other nerve	15.74	NA	NA	10.98	11.27	1.42	NA	NA	28.14	28.43	090
64868		A	Fusion of facial/other nerve	14.04	NA	NA	10.55	10.95	1.62	NA	NA	26.21	26.61	090
64870		A	Fusion of facial/other nerve	15.99	NA	NA	9.58	10.96	1.71	NA	NA	27.28	28.66	090
64872		A	Subsequent repair of nerve	1.99	NA	NA	1.11	1.22	0.22	NA	NA	3.32	3.43	ZZZ
64874		A	Repair & revise nerve add-on	2.98	NA	NA	1.47	1.69	0.32	NA	NA	4.77	4.99	ZZZ
64876		A	Repair nerve/shorten bone	3.38	NA	NA	1.34	1.67	0.37	NA	NA	5.09	5.42	ZZZ
64885		A	Nerve graft, head or neck	17.53	NA	NA	11.23	11.87	1.47	NA	NA	30.23	30.87	090
64886		A	Nerve graft, head or neck	20.75	NA	NA	13.47	14.21	1.74	NA	NA	35.96	36.70	090
64890		A	Nerve graft, hand or foot	15.15	NA	NA	11.58	12.01	1.57	NA	NA	28.30	28.73	090
64891		A	Nerve graft, hand or foot	16.14	NA	NA	11.15	11.19	1.54	NA	NA	28.83	28.87	090
64892		A	Nerve graft, arm or leg	14.65	NA	NA	9.04	9.78	1.74	NA	NA	25.43	26.17	090
64893		A	Nerve graft, arm or leg	15.60	NA	NA	9.64	11.01	2.41	NA	NA	27.65	29.02	090
64895		A	Nerve graft, hand or foot	19.25	NA	NA	13.16	13.44	1.81	NA	NA	34.22	34.50	090
64896		A	Nerve graft, hand or foot	20.49	NA	NA	13.13	14.60	2.18	NA	NA	35.80	37.27	090
64897		A	Nerve graft, arm or leg	18.24	NA	NA	11.21	11.84	1.91	NA	NA	31.36	31.99	090
64898		A	Nerve graft, arm or leg	19.50	NA	NA	12.61	13.37	1.97	NA	NA	34.08	34.84	090
64901		A	Nerve graft add-on	10.22	NA	NA	5.56	6.93	1.02	NA	NA	16.80	18.17	ZZZ
64902		A	Nerve graft add-on	11.83	NA	NA	5.81	7.59	1.07	NA	NA	18.71	20.49	ZZZ
64905		A	Nerve pedicle transfer	14.02	NA	NA	8.70	9.08	1.02	NA	NA	23.74	24.12	090
64907		A	Nerve pedicle transfer	18.83	NA	NA	11.86	12.43	1.97	NA	NA	32.66	33.23	090
64999		C	Nervous system surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
65091		A	Revise eye	6.46	NA	NA	9.51	9.06	0.27	NA	NA	16.24	15.79	090
65093		A	Revise eye with implant	6.87	NA	NA	9.66	9.30	0.28	NA	NA	16.81	16.45	090
65101		A	Removal of eye	7.03	NA	NA	9.87	9.50	0.30	NA	NA	17.20	16.83	090
65103		A	Remove eye/insert implant	7.57	NA	NA	9.90	9.69	0.30	NA	NA	17.77	17.56	090
65105		A	Remove eye/attach implant	8.49	NA	NA	10.42	10.35	0.33	NA	NA	19.24	19.17	090
65110		A	Removal of eye	13.95	NA	NA	13.21	14.07	0.68	NA	NA	27.84	28.70	090
65112		A	Remove eye/revise socket	16.38	NA	NA	15.27	14.75	1.19	NA	NA	32.84	32.32	090
65114		A	Remove eye/revise socket	17.53	NA	NA	15.13	14.89	0.82	NA	NA	33.48	33.24	090
65125		A	Revise ocular implant	3.12	4.76	4.24	1.53	1.82	0.16	8.04	7.52	4.81	5.10	090
65130		A	Insert ocular implant	7.15	NA	NA	9.61	9.34	0.30	NA	NA	17.06	16.79	090
65135		A	Insert ocular implant	7.33	NA	NA	9.42	8.54	0.31	NA	NA	17.06	16.18	090
65140		A	Attach ocular implant	8.02	NA	NA	10.08	9.25	0.32	NA	NA	18.42	17.59	090
65150		A	Revise ocular implant	6.26	NA	NA	8.93	8.57	0.25	NA	NA	15.44	15.08	090
65155		A	Reinsert ocular implant	8.66	NA	NA	10.99	10.83	0.40	NA	NA	20.05	19.89	090
65175		A	Removal of ocular implant	6.28	NA	NA	9.04	8.66	0.25	NA	NA	15.57	15.19	090
65205		A	Remove foreign body from eye	0.71	5.10	3.93	0.20	0.25	0.04	5.85	4.68	0.95	1.00	000
65210		A	Remove foreign body from eye	0.84	5.26	4.07	0.30	0.35	0.04	6.14	4.95	1.18	1.23	000
65220		A	Remove foreign body from eye	0.71	6.81	5.25	0.19	0.28	0.06	7.58	6.02	0.96	1.05	000
65222		A	Remove foreign body from eye	0.93	5.21	4.06	0.27	0.36	0.04	6.18	5.03	1.24	1.33	000
65235		A	Remove foreign body from eye	7.57	NA	NA	6.79	6.62	0.32	NA	NA	14.68	14.51	090
65260		A	Remove foreign body from eye	10.96	NA	NA	11.60	11.04	0.42	NA	NA	22.98	22.42	090
65265		A	Remove foreign body from eye	12.59	NA	NA	13.36	12.75	0.50	NA	NA	26.45	25.84	090
65270		A	Repair of eye wound	1.90	3.47	2.92	2.06	1.86	0.08	5.45	4.90	4.04	3.84	010
65272		A	Repair of eye wound	3.82	5.06	4.24	4.10	3.52	0.15	9.03	8.21	8.07	7.49	090
65273		A	Repair of eye wound	4.36	NA	NA	4.48	4.23	0.17	NA	NA	9.01	8.76	090
65275		A	Repair of eye wound	5.34	4.96	3.90	4.39	3.47	0.27	10.57	9.51	10.00	9.08	090
65280		A	Repair of eye wound	7.66	NA	NA	7.28	7.75	0.30	NA	NA	15.24	15.71	090
65285		A	Repair of eye wound	12.90	NA	NA	13.49	13.45	0.51	NA	NA	26.90	26.86	090
65286		A	Repair of eye wound	5.51	7.87	7.20	6.72	6.34	0.22	13.60	12.93	12.45	12.07	090
65290		A	Repair of eye socket wound	5.41	NA	NA	6.06	6.16	0.22	NA	NA	11.69	11.79	090
65400		A	Removal of eye lesion	6.06	7.21	7.16	6.02	6.27	0.24	13.51	13.46	12.32	12.57	090
65410		A	Biopsy of cornea	1.47	1.71	1.72	0.70	0.96	0.06	3.24	3.25	2.23	2.49	000
65420		A	Removal of eye lesion	4.17	7.11	6.49	6.03	5.68	0.16	11.44	10.82	10.36	10.01	090
65426		A	Removal of eye lesion	5.25	7.24	7.00	6.14	6.17	0.21	12.70	12.46	11.60	11.63	090
65430		A	Corneal smear	1.47	5.77	4.48	0.70	0.67	0.06	7.30	6.01	2.23	2.20	000
65435		A	Curette/treat cornea	0.92	1.34	1.22	0.42	0.53	0.04	2.30	2.18	1.38	1.49	000
65436		A	Curette/treat cornea	4.19	5.20	4.32	4.27	3.62	0.16	9.55	8.67	8.62	7.97	090
65450		A	Treatment of corneal lesion	3.27	6.87	6.04	5.61	5.10	0.12	10.26	9.43	9.00	8.49	090
65600		A	Revision of cornea	3.40	4.82	4.33	1.54	1.87	0.14	8.36	7.87	5.08	5.41	090
65710		A	Corneal transplant	12.35	NA	NA	12.32	12.62	0.49	NA	NA	25.16	25.46	090
65730		A	Corneal transplant	14.25	NA	NA	13.79	14.45	0.55	NA	NA	28.59	29.25	090
65750		A	Corneal transplant	0.15	NA	NA	14.19	15.01	0.58	NA	NA	14.92	15.74	090
65755		A	Corneal transplant	14.89	NA	NA	12.87	14.02	0.58	NA	NA	28.34	29.49	090
65760		N	Revision of cornea	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65765		N	Revision of cornea	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65767		N	Corneal tissue transplant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65770		A	Revise cornea with implant	17.56	NA	NA	15.04	15.03	0.69	NA	NA	33.29	33.28	090
65771		N	Radial keratotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65772		A	Correction of astigmatism	4.29	5.92	5.72	5.32	5.27	0.17	10.38	10.18	9.78	9.73	090
65775		A	Correction of astigmatism	5.79	NA	NA	7.37	7.26	0.23	NA	NA	13.39	13.28	090
65800		A	Drainage of eye	1.91	2.04	2.00	1.39	1.51	0.08	4.03	3.99	3.38	3.50	000
65805		A	Drainage of eye	1.91	2.04	2.02	1.39	1.53	0.08	4.03	4.01	3.38	3.52	000
65810		A	Drainage of eye	4.87	NA	NA	7.40	7.01	0.19	NA	NA	12.46	12.07	090
65815		A	Drainage of eye	5.05	8.08	7.28	6.93	6.42	0.20	13.33	12.53	12.18	11.67	090
65820		A	Relieve inner eye pressure	8.13	NA	NA	9.40	9.64	0.32	NA	NA	17.85	18.09	090
65850		A	Incision of eye	10.52	NA	NA	9.59	10.33	0.41	NA	NA	20.52	21.26	090
65855		A	Laser surgery of eye	4.30	4.31	4.86	3.28	4.09	0.17	8.78	9.33	7.75	8.56	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
65860		A	Incise inner eye adhesions	3.55	3.83	3.93	2.99	3.30	0.14	7.52	7.62	6.68	6.99	090
65865		A	Incise inner eye adhesions	5.60	NA	NA	6.28	6.38	0.22	NA	NA	12.10	12.20	090
65870		A	Incise inner eye adhesions	6.27	NA	NA	6.62	6.56	0.25	NA	NA	13.14	13.08	090
65875		A	Incise inner eye adhesions	6.54	NA	NA	6.74	6.76	0.26	NA	NA	13.54	13.56	090
65880		A	Incise inner eye adhesions	7.09	NA	NA	6.98	7.09	0.28	NA	NA	14.35	14.46	090
65900		A	Remove eye lesion	10.93	NA	NA	11.68	10.91	0.48	NA	NA	23.09	22.32	090
65920		A	Remove implant from eye	8.40	NA	NA	7.63	7.99	0.33	NA	NA	16.36	16.72	090
65930		A	Remove blood clot from eye	7.44	NA	NA	8.12	8.17	0.29	NA	NA	15.85	15.90	090
66020		A	Injection treatment of eye	1.59	2.30	2.20	1.49	1.59	0.07	3.96	3.86	3.15	3.25	010
66030		A	Injection treatment of eye	1.25	2.13	1.75	1.32	1.14	0.05	3.43	3.05	2.62	2.44	010
66130		A	Remove eye lesion	7.69	6.85	6.57	5.97	5.91	0.31	14.85	14.57	13.97	13.91	090
66150		A	Glaucoma surgery	8.30	NA	NA	8.55	8.89	0.32	NA	NA	17.17	17.51	090
66155		A	Glaucoma surgery	8.29	NA	NA	8.49	8.84	0.32	NA	NA	17.10	17.45	090
66160		A	Glaucoma surgery	10.17	NA	NA	9.99	10.42	0.41	NA	NA	20.57	21.00	090
66165		A	Glaucoma surgery	8.01	NA	NA	8.86	9.04	0.32	NA	NA	17.19	17.37	090
66170		A	Glaucoma surgery	12.16	NA	NA	11.02	11.56	0.48	NA	NA	23.66	24.20	090
66172		A	Incision of eye	15.04	NA	NA	12.79	12.89	0.59	NA	NA	28.42	28.52	090
66180		A	Implant eye shunt	14.55	NA	NA	12.25	13.53	0.57	NA	NA	27.37	28.65	090
66185		A	Revise eye shunt	8.14	NA	NA	8.41	8.74	0.32	NA	NA	16.87	17.20	090
66220		A	Repair eye lesion	7.77	NA	NA	10.07	9.17	0.32	NA	NA	18.16	17.26	090
66225		A	Repair/graft eye lesion	11.05	NA	NA	9.69	10.57	0.43	NA	NA	21.17	22.05	090
66250		A	Follow-up surgery of eye	5.98	7.20	7.19	5.98	6.27	0.24	13.42	13.41	12.20	12.49	090
66500		A	Incision of iris	3.71	NA	NA	4.07	4.16	0.14	NA	NA	7.92	8.01	090
66505		A	Incision of iris	4.08	NA	NA	4.18	4.02	0.16	NA	NA	8.42	8.26	090
66600		A	Remove iris and lesion	8.68	NA	NA	9.15	9.40	0.34	NA	NA	18.17	18.42	090
66605		A	Removal of iris	12.79	NA	NA	12.30	12.45	0.53	NA	NA	25.62	25.77	090
66625		A	Removal of iris	5.13	7.37	7.06	6.97	6.76	0.20	12.70	12.39	12.30	12.09	090
66630		A	Removal of iris	6.16	NA	NA	8.01	7.85	0.24	NA	NA	14.41	14.25	090
66635		A	Removal of iris	6.25	NA	NA	6.13	6.47	0.25	NA	NA	12.63	12.97	090
66680		A	Repair iris & ciliary body	5.44	NA	NA	5.71	5.91	0.21	NA	NA	11.36	11.56	090
66682		A	Repair iris & ciliary body	6.21	NA	NA	8.04	7.88	0.24	NA	NA	14.49	14.33	090
66700		A	Destruction, ciliary body	4.78	7.63	7.15	6.35	6.19	0.20	12.61	12.13	11.33	11.17	090
66710		A	Destruction, ciliary body	4.78	7.66	7.17	6.35	6.19	0.19	12.63	12.14	11.32	11.16	090
66720		A	Destruction, ciliary body	4.78	7.40	6.98	6.32	6.17	0.20	12.38	11.96	11.30	11.15	090
66740		A	Destruction, ciliary body	4.78	NA	NA	5.89	5.85	0.19	NA	NA	10.86	10.82	090
66761		A	Revision of iris	4.07	4.37	4.49	3.59	3.91	0.16	8.60	8.72	7.82	8.14	090
66762		A	Revision of iris	4.58	4.49	4.74	3.77	4.20	0.18	9.25	9.50	8.53	8.96	090
66770		A	Removal of inner eye lesion	5.18	4.77	5.13	4.06	4.59	0.20	10.15	10.51	9.44	9.97	090
66820		A	Incision, secondary cataract	3.89	NA	NA	6.90	6.34	0.15	NA	NA	10.94	10.38	090
66821		A	After cataract laser surgery	2.35	3.06	3.00	2.43	2.53	0.10	5.51	5.45	4.88	4.98	090
66825		A	Reposition intraocular lens	8.23	NA	NA	9.01	8.75	0.32	NA	NA	17.56	17.30	090
66830		A	Removal of lens lesion	8.20	NA	NA	6.37	6.86	0.32	NA	NA	14.89	15.38	090
66840		A	Removal of lens material	7.91	NA	NA	6.26	7.06	0.32	NA	NA	14.49	15.29	090
66850		A	Removal of lens material	9.11	NA	NA	6.80	7.82	0.36	NA	NA	16.27	17.29	090
66852		A	Removal of lens material	9.97	NA	NA	7.29	8.45	0.39	NA	NA	17.65	18.81	090
66920		A	Extraction of lens	8.86	NA	NA	6.71	7.68	0.35	NA	NA	15.92	16.89	090
66930		A	Extraction of lens	10.18	NA	NA	8.73	9.39	0.40	NA	NA	19.31	19.97	090
66940		A	Extraction of lens	8.93	NA	NA	8.11	8.75	0.35	NA	NA	17.39	18.03	090
66983		A	Remove cataract/insert lens	8.99	NA	NA	5.17	6.56	0.49	NA	NA	14.65	16.04	090
66984		A	Remove cataract/insert lens	10.28	NA	NA	7.15	8.43	0.43	NA	NA	17.86	19.14	090
66985		A	Insert lens prosthesis	8.39	NA	NA	6.37	7.28	0.34	NA	NA	15.10	16.01	090
66986		A	Exchange lens prosthesis	12.28	NA	NA	8.37	9.59	0.49	NA	NA	21.14	22.36	090
66999		C	Eye surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67005		A	Partial removal of eye fluid	5.70	NA	NA	2.77	3.78	0.22	NA	NA	8.69	9.70	090
67010		A	Partial removal of eye fluid	6.87	NA	NA	3.35	4.56	0.27	NA	NA	10.49	11.70	090
67015		A	Release of eye fluid	6.92	NA	NA	7.77	7.58	0.27	NA	NA	14.96	14.77	090
67025		A	Replace eye fluid	6.84	14.66	12.83	7.24	7.26	0.27	21.77	19.94	14.35	14.37	090
67027		A	Implant eye drug system	10.85	16.52	14.84	9.18	9.34	0.42	27.79	26.11	20.45	20.61	090
67028		A	Injection eye drug	2.52	7.78	6.71	1.22	1.79	0.10	10.40	9.33	3.84	4.41	000
67030		A	Incise inner eye strands	4.84	NA	NA	6.85	6.58	0.19	NA	NA	11.88	11.61	090
67031		A	Laser surgery, eye strands	3.67	3.91	4.03	3.07	3.40	0.14	7.72	7.84	6.88	7.21	090
67036		A	Removal of inner eye fluid	11.89	NA	NA	8.19	9.69	0.47	NA	NA	20.55	22.05	090
67038		A	Strip retinal membrane	21.24	NA	NA	14.31	17.07	0.83	NA	NA	36.38	39.14	090
67039		A	Laser treatment of retina	14.52	NA	NA	11.69	13.10	0.56	NA	NA	26.77	28.18	090
67040		A	Laser treatment of retina	17.23	NA	NA	13.01	14.90	0.68	NA	NA	30.92	32.81	090
67101		A	Repair detached retina	7.53	10.72	10.29	8.67	8.75	0.30	18.55	18.12	16.50	16.58	090
67105		A	Repair detached retina	7.41	7.49	8.10	5.58	6.67	0.29	15.19	15.80	13.28	14.37	090
67107		A	Repair detached retina	14.84	NA	NA	13.04	14.21	0.58	NA	NA	28.46	29.63	090
67108		A	Repair detached retina	20.82	NA	NA	17.33	19.21	0.81	NA	NA	38.96	40.84	090
67110		A	Repair detached retina	8.81	18.21	16.29	10.08	10.19	0.34	27.36	25.44	19.23	19.34	090
67112		A	Rerepair detached retina	16.86	NA	NA	15.40	16.03	0.66	NA	NA	32.92	33.55	090
67115		A	Release encircling material	4.99	NA	NA	6.45	6.33	0.19	NA	NA	11.63	11.51	090
67120		A	Remove eye implant material	5.98	14.12	12.38	6.82	6.90	0.24	20.34	18.60	13.04	13.12	090
67121		A	Remove eye implant material	10.67	NA	NA	11.58	11.24	0.42	NA	NA	22.67	22.33	090
67141		A	Treatment of retina	5.20	7.65	7.29	6.60	6.50	0.20	13.05	12.69	12.00	11.90	090
67145		A	Treatment of retina	5.37	5.24	5.69	4.18	4.90	0.21	10.82	11.27	9.76	10.48	090
67208		A	Treatment of retinal lesion	6.70	8.03	8.02	6.84	7.13	0.26	14.99	14.98	13.80	14.09	090
67210		A	Treatment of retinal lesion	8.82	7.27	7.90	5.85	6.84	0.34	16.43	17.06	15.01	16.00	090
67218		A	Treatment of retinal lesion	13.52	NA	NA	12.19	12.75	0.53	NA	NA	26.24	26.80	090
67220		N	Treatment of choroid lesion	13.13	6.66	6.66	6.60	6.60	0.52	20.31	20.31	20.25	20.25	090
67227		A	Treatment of retinal lesion	6.58	8.46	8.31	6.86	7.11	0.27	15.31	15.16	13.71	13.96	090
67228		A	Treatment of retinal lesion	12.74	9.91	9.98	7.40	8.10	0.50	23.15	23.22	20.64	21.34	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
67250		A	Reinforce eye wall	8.66	NA	NA	10.24	9.58	0.39	NA	NA	19.29	18.63	090
67255		A	Reinforce/graft eye wall	8.90	NA	NA	9.83	10.03	0.35	NA	NA	19.08	19.28	090
67299		C	Eye surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67311		A	Revise eye muscle	6.65	NA	NA	6.39	6.78	0.27	NA	NA	13.31	13.70	090
67312		A	Revise two eye muscles	8.54	NA	NA	7.34	8.05	0.33	NA	NA	16.21	16.92	090
67314		A	Revise eye muscle	7.52	NA	NA	6.81	7.35	0.30	NA	NA	14.63	15.17	090
67316		A	Revise two eye muscles	9.66	NA	NA	7.38	8.32	0.38	NA	NA	17.42	18.36	090
67318		A	Revise eye muscle(s)	7.85	NA	NA	7.22	7.10	0.31	NA	NA	15.38	15.26	090
67320		A	Revise eye muscle(s) add-on	4.33	NA	NA	6.84	7.72	0.17	NA	NA	11.34	12.22	ZZZ
67331		A	Eye surgery follow-up add-on	4.06	NA	NA	5.18	6.31	0.16	NA	NA	9.40	10.53	ZZZ
67332		A	Rerevise eye muscles add-on	4.49	NA	NA	5.90	7.11	0.18	NA	NA	10.57	11.78	ZZZ
67334		A	Revise eye muscle w/suture	3.98	NA	NA	5.45	5.80	0.15	NA	NA	9.58	9.93	ZZZ
67335		A	Eye suture during surgery	2.49	NA	NA	1.20	1.64	0.10	NA	NA	3.79	4.23	ZZZ
67340		A	Revise eye muscle add-on	4.93	NA	NA	6.30	6.86	0.20	NA	NA	11.43	11.99	ZZZ
67343		A	Release eye tissue	7.35	NA	NA	7.13	6.93	0.29	NA	NA	14.77	14.57	090
67345		A	Destroy nerve of eye muscle	2.96	4.01	3.61	1.42	1.67	0.27	7.24	6.84	4.65	4.90	010
67350		A	Biopsy eye muscle	2.87	NA	NA	2.49	2.52	0.12	NA	NA	5.48	5.51	000
67399		C	Eye muscle surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67400		A	Explore/biopsy eye socket	9.76	NA	NA	10.99	11.16	0.43	NA	NA	21.18	21.35	090
67405		A	Explore/drain eye socket	7.93	NA	NA	9.58	9.55	0.39	NA	NA	17.90	17.87	090
67412		A	Explore/treat eye socket	9.50	NA	NA	12.32	12.08	0.41	NA	NA	22.23	21.99	090
67413		A	Explore/treat eye socket	0.10	NA	NA	10.94	10.40	0.49	NA	NA	11.53	10.99	090
67414		A	Explr/decompress eye socket	11.13	NA	NA	13.25	12.22	0.52	NA	NA	24.90	23.87	090
67415		A	Aspiration, orbital contents	1.76	NA	NA	0.80	1.13	0.09	NA	NA	2.65	2.98	000
67420		A	Explore/treat eye socket	20.06	NA	NA	17.90	17.98	1.07	NA	NA	39.03	39.11	090
67430		A	Explore/treat eye socket	13.39	NA	NA	15.11	14.22	0.59	NA	NA	29.09	28.20	090
67440		A	Explore/drain eye socket	13.09	NA	NA	13.67	14.16	0.54	NA	NA	27.30	27.79	090
67445		A	Explr/decompress eye socket	14.42	NA	NA	14.50	13.90	0.61	NA	NA	29.53	28.93	090
67450		A	Explore/biopsy eye socket	13.51	NA	NA	14.35	14.80	0.66	NA	NA	28.52	28.97	090
67500		A	Inject/treat eye socket	0.79	2.24	1.88	0.20	0.35	0.05	3.08	2.72	1.04	1.19	000
67505		A	Inject/treat eye socket	0.82	0.91	0.97	0.21	0.44	0.04	1.77	1.83	1.07	1.30	000
67515		A	Inject/treat eye socket	0.61	0.70	0.68	0.30	0.38	0.03	1.34	1.32	0.94	1.02	000
67550		A	Insert eye socket implant	10.19	NA	NA	10.23	10.28	0.49	NA	NA	20.91	20.96	090
67560		A	Revise eye socket implant	10.60	NA	NA	10.48	10.11	0.48	NA	NA	21.56	21.19	090
67570		A	Decompress optic nerve	13.58	NA	NA	13.96	12.52	0.81	NA	NA	28.35	26.91	090
67599		C	Orbit surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67700		A	Drainage of eyelid abscess	35	5.11	3.97	0.60	0.58	0.06	6.52	5.38	2.01	1.99	010
67710		A	Incision of eyelid	1.02	5.22	4.19	0.50	0.65	0.04	6.28	5.25	1.56	1.71	010
67715		A	Incision of eyelid fold	1.22	NA	NA	0.60	0.81	0.05	NA	NA	1.87	2.08	010
67800		A	Remove eyelid lesion	1.38	5.25	4.19	0.67	0.76	0.06	6.69	5.63	2.11	2.20	010
67801		A	Remove eyelid lesions	1.88	5.47	4.48	0.92	1.07	0.08	7.43	6.44	2.88	3.03	010
67805		A	Remove eyelid lesions	2.22	5.74	4.68	1.08	1.19	0.09	8.05	6.99	3.39	3.50	010
67808		A	Remove eyelid lesion(s)	3.80	NA	NA	3.41	3.14	0.16	NA	NA	7.37	7.10	090
67810		A	Biopsy of eyelid	1.48	4.18	3.36	0.72	0.76	0.06	5.72	4.90	2.26	2.30	000
67820		A	Revise eyelashes	0.89	1.43	1.18	0.38	0.39	0.04	2.36	2.11	1.31	1.32	000
67825		A	Revise eyelashes	1.38	6.51	5.13	1.51	1.38	0.06	7.95	6.57	2.95	2.82	010
67830		A	Revise eyelashes	1.70	7.77	6.40	1.77	1.90	0.07	9.54	8.17	3.54	3.67	010
67835		A	Revise eyelashes	5.56	NA	NA	4.07	4.71	0.23	NA	NA	9.86	10.50	090
67840		A	Remove eyelid lesion	2.04	5.51	4.46	0.99	1.07	0.09	7.64	6.59	3.12	3.20	010
67850		A	Treat eyelid lesion	1.69	6.87	5.38	1.83	1.60	0.07	8.63	7.14	3.59	3.36	010
67875		A	Closure of eyelid by suture	1.35	7.38	6.00	1.58	1.65	0.06	8.79	7.41	2.99	3.06	000
67880		A	Revision of eyelid	3.80	8.92	7.76	2.83	3.19	0.15	12.87	11.71	6.78	7.14	090
67882		A	Revision of eyelid	5.07	11.35	10.03	4.05	4.55	0.21	16.63	15.31	9.33	9.83	090
67900		A	Repair brow defect	6.14	8.86	7.67	6.58	5.96	0.30	15.30	14.11	13.02	12.40	090
67901		A	Repair eyelid defect	6.97	NA	NA	8.46	8.43	0.34	NA	NA	15.77	15.74	090
67902		A	Repair eyelid defect	7.03	NA	NA	6.60	7.05	0.32	NA	NA	13.95	14.40	090
67903		A	Repair eyelid defect	6.37	9.22	8.82	9.22	8.82	0.40	15.99	15.59	15.99	15.59	090
67904		A	Repair eyelid defect	6.26	12.49	11.24	7.32	7.36	0.27	19.02	17.77	13.85	13.89	090
67906		A	Repair eyelid defect	6.79	8.77	8.06	8.39	7.78	0.27	15.83	15.12	15.45	14.84	090
67908		A	Repair eyelid defect	5.13	8.37	7.81	6.10	6.11	0.20	13.70	13.14	11.43	11.44	090
67909		A	Revise eyelid defect	5.40	8.13	7.71	6.00	6.11	0.24	13.77	13.35	11.64	11.75	090
67911		A	Revise eyelid defect	5.27	NA	NA	6.46	6.42	0.24	NA	NA	11.97	11.93	090
67914		A	Repair eyelid defect	3.68	8.93	7.80	3.03	3.37	0.15	12.76	11.63	6.86	7.20	090
67915		A	Repair eyelid defect	3.18	7.86	6.24	1.53	1.49	0.12	11.16	9.54	4.83	4.79	090
67916		A	Repair eyelid defect	5.31	12.81	11.19	4.98	5.32	0.23	18.35	16.73	10.52	10.86	090
67917		A	Repair eyelid defect	6.02	9.21	8.70	6.31	6.53	0.26	15.49	14.98	12.59	12.81	090
67921		A	Repair eyelid defect	3.40	8.59	7.46	2.80	3.12	0.13	12.12	10.99	6.33	6.65	090
67922		A	Repair eyelid defect	3.06	7.91	6.26	2.64	2.30	0.12	11.09	9.44	5.82	5.48	090
67923		A	Repair eyelid defect	5.88	12.25	10.94	4.89	5.42	0.24	18.37	17.06	11.01	11.54	090
67924		A	Repair eyelid defect	5.79	8.01	7.74	5.80	6.08	0.24	14.04	13.77	11.83	12.11	090
67930		A	Repair eyelid wound	3.61	9.17	7.22	2.63	2.32	0.16	12.94	10.99	6.40	6.09	010
67935		A	Repair eyelid wound	6.22	13.33	11.03	5.17	4.91	0.30	19.85	17.55	11.69	11.43	090
67938		A	Remove eyelid foreign body	1.33	6.15	4.75	0.52	0.53	0.07	7.55	6.15	1.92	1.93	010
67950		A	Revision of eyelid	5.82	7.80	7.59	7.00	6.99	0.28	13.90	13.69	13.10	13.09	090
67961		A	Revision of eyelid	5.69	7.62	7.41	7.62	7.41	0.26	13.57	13.36	13.57	13.36	090
67966		A	Revision of eyelid	6.57	7.04	7.24	6.19	6.61	0.31	13.92	14.12	13.07	13.49	090
67971		A	Reconstruction of eyelid	9.79	NA	NA	7.89	8.82	0.41	NA	NA	18.09	19.02	090
67973		A	Reconstruction of eyelid	12.87	NA	NA	9.93	11.12	0.58	NA	NA	23.38	24.57	090
67974		A	Reconstruction of eyelid	12.84	NA	NA	10.47	11.67	0.59	NA	NA	23.90	25.10	090
67975		A	Reconstruction of eyelid	9.13	NA	NA	9.76	8.45	0.37	NA	NA	19.26	17.95	090
67999		C	Revision of eyelid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
68020		A	Incise/drain eyelid lining	1.37	5.19	4.03	0.66	0.63	0.06	6.62	5.46	2.09	2.06	010

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
68040		A	Treatment of eyelid lesions	0.85	5.00	3.87	0.38	0.41	0.04	5.89	4.76	1.27	1.30	000
68100		A	Biopsy of eyelid lining	1.35	5.39	4.31	0.65	0.76	0.06	6.80	5.72	2.06	2.17	000
68110		A	Remove eyelid lining lesion	1.77	6.10	4.91	1.36	1.36	0.07	7.94	6.75	3.20	3.20	010
68115		A	Remove eyelid lining lesion	2.36	5.91	4.96	1.14	1.38	0.10	8.37	7.42	3.60	3.84	010
68130		A	Remove eyelid lining lesion	4.93	NA	NA	2.40	2.91	0.19	NA	NA	7.52	8.03	090
68135		A	Remove eyelid lining lesion	1.84	5.47	4.30	0.89	0.87	0.08	7.39	6.22	2.81	2.79	010
68200		A	Treat eyelid by injection	0.49	5.17	4.02	0.24	0.32	0.02	5.68	4.53	0.75	0.83	000
68320		A	Revise/graft eyelid lining	5.37	5.28	5.56	5.28	5.56	0.22	10.87	11.15	10.87	11.15	090
68325		A	Revise/graft eyelid lining	7.36	NA	NA	8.48	8.56	0.34	NA	NA	16.18	16.26	090
68326		A	Revise/graft eyelid lining	7.15	NA	NA	7.76	7.96	0.31	NA	NA	15.22	15.42	090
68328		A	Revise/graft eyelid lining	8.18	NA	NA	7.63	8.17	0.40	NA	NA	16.21	16.75	090
68330		A	Revise eyelid lining	4.83	6.45	6.28	5.11	5.27	0.19	11.47	11.30	10.13	10.29	090
68335		A	Revise/graft eyelid lining	7.19	NA	NA	5.23	6.07	0.30	NA	NA	12.72	13.56	090
68340		A	Separate eyelid adhesions	4.17	11.25	9.29	3.83	3.73	0.17	15.59	13.63	8.17	8.07	090
68360		A	Revise eyelid lining	4.37	6.19	5.95	4.84	4.94	0.17	10.73	10.49	9.38	9.48	090
68362		A	Revise eyelid lining	7.34	NA	NA	7.65	7.91	0.29	NA	NA	15.28	15.54	090
68399		C	Eyelid lining surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
68400		A	Incise/drain tear gland	1.69	8.04	6.30	1.91	1.71	0.07	9.80	8.06	3.67	3.47	010
68420		A	Incise/drain tear sac	2.30	8.48	6.64	2.16	1.90	0.10	10.88	9.04	4.56	4.30	010
68440		A	Incise tear duct opening	0.94	5.14	4.06	0.46	0.55	0.04	6.12	5.04	1.44	1.53	010
68500		A	Removal of tear gland	11.02	NA	NA	8.72	8.61	0.52	NA	NA	20.26	20.15	090
68505		A	Partial removal, tear gland	10.94	NA	NA	9.97	9.84	0.65	NA	NA	21.56	21.43	090
68510		A	Biopsy of tear gland	4.61	9.83	8.37	2.27	2.70	0.18	14.62	13.16	7.06	7.49	000
68520		A	Removal of tear sac	7.51	NA	NA	6.63	7.21	0.32	NA	NA	14.46	15.04	090
68525		A	Biopsy of tear sac	4.43	NA	NA	2.13	2.60	0.18	NA	NA	6.74	7.21	000
68530		A	Clearance of tear duct	3.66	10.17	8.40	2.54	2.68	0.15	13.98	12.21	6.35	6.49	010
68540		A	Remove tear gland lesion	10.60	NA	NA	7.73	8.05	0.53	NA	NA	18.86	19.18	090
68550		A	Remove tear gland lesion	13.26	NA	NA	8.92	9.77	0.95	NA	NA	23.13	23.98	090
68700		A	Repair tear ducts	6.60	NA	NA	5.59	4.92	0.27	NA	NA	12.46	11.79	090
68705		A	Revise tear duct opening	2.06	5.70	4.55	1.00	1.03	0.09	7.85	6.70	3.15	3.18	010
68720		A	Create tear sac drain	8.96	NA	NA	6.65	7.66	0.38	NA	NA	15.99	17.00	090
68745		A	Create tear duct drain	8.63	NA	NA	6.39	6.57	0.35	NA	NA	15.37	15.55	090
68750		A	Create tear duct drain	8.66	NA	NA	6.92	7.78	0.36	NA	NA	15.94	16.80	090
68760		A	Close tear duct opening	1.73	5.34	4.26	0.84	0.88	0.07	7.14	6.06	2.64	2.68	010
68761		A	Close tear duct opening	1.36	6.11	4.83	0.61	0.71	0.07	7.54	6.26	2.04	2.14	010
68770		A	Close tear system fistula	7.02	11.88	10.06	5.03	4.92	0.31	19.21	17.39	12.36	12.25	090
68801		A	Dilate tear duct opening	0.94	5.95	4.58	0.44	0.45	0.04	6.93	5.56	1.42	1.43	010
68810		A	Probe nasolacrimal duct	1.90	7.39	5.69	1.74	1.46	0.08	9.37	7.67	3.72	3.44	010
68811		A	Probe nasolacrimal duct	2.35	NA	NA	2.00	1.91	0.10	NA	NA	4.45	4.36	010
68815		A	Probe nasolacrimal duct	3.20	8.35	6.79	2.42	2.34	0.14	11.69	10.13	5.76	5.68	010
68840		A	Explore/irrigate tear ducts	1.25	6.56	5.05	0.54	0.54	0.05	7.86	6.35	1.84	1.84	010
68850		A	Injection for tear sac x-ray	0.80	12.29	9.36	0.31	0.37	0.03	13.12	10.19	1.14	1.20	000
68899		C	Tear duct system surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69000		A	Drain external ear lesion	1.45	1.78	1.43	0.53	0.49	0.10	3.33	2.98	2.08	2.04	010
69005		A	Drain external ear lesion	2.11	2.17	1.94	1.82	1.68	0.15	4.43	4.20	4.08	3.94	010
69020		A	Drain outer ear canal lesion	1.48	1.86	1.52	0.72	0.66	0.11	3.45	3.11	2.31	2.25	010
69090		N	Pierce earlobes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
69100		A	Biopsy of external ear	0.81	1.43	1.25	0.40	0.48	0.04	2.28	2.10	1.25	1.33	000
69105		A	Biopsy of external ear canal	0.85	1.25	1.16	0.84	0.85	0.06	2.16	2.07	1.75	1.76	000
69110		A	Remove external ear, partial	3.44	3.23	3.14	2.52	2.60	0.25	6.92	6.83	6.21	6.29	090
69120		A	Removal of external ear	4.05	NA	NA	3.88	3.12	0.32	NA	NA	8.25	7.49	090
69140		A	Remove ear canal lesion(s)	7.97	NA	NA	7.00	7.42	0.56	NA	NA	15.53	15.95	090
69145		A	Remove ear canal lesion(s)	2.62	2.89	2.85	2.19	2.32	0.19	5.70	5.66	5.00	5.13	090
69150		A	Extensive ear canal surgery	13.43	NA	NA	10.15	10.45	1.01	NA	NA	24.59	24.89	090
69155		A	Extensive ear/neck surgery	20.80	NA	NA	13.90	14.75	1.65	NA	NA	36.35	37.20	090
69200		A	Clear outer ear canal	0.77	1.20	1.02	0.55	0.53	0.06	2.03	1.85	1.38	1.36	000
69205		A	Clear outer ear canal	1.20	NA	NA	1.29	1.26	0.09	NA	NA	2.58	2.55	010
69210		A	Remove impacted ear wax	0.61	1.11	0.90	0.24	0.24	0.04	1.76	1.55	0.89	0.89	000
69220		A	Clean out mastoid cavity	0.83	1.25	1.07	0.42	0.45	0.06	2.14	1.96	1.31	1.34	000
69222		A	Clean out mastoid cavity	1.40	1.83	1.57	1.42	1.27	0.10	3.33	3.07	2.92	2.77	010
69300		R	Revise external ear	6.36	NA	NA	4.14	4.54	0.51	NA	NA	11.01	11.41	YYY
69310		A	Rebuild outer ear canal	10.79	NA	NA	8.63	9.14	0.77	NA	NA	20.19	20.70	090
69320		A	Rebuild outer ear canal	16.96	NA	NA	12.58	13.41	1.21	NA	NA	30.75	31.58	090
69399		C	Outer ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69400		A	Inflate middle ear canal	0.83	1.24	1.05	0.43	0.45	0.06	2.13	1.94	1.32	1.34	000
69401		A	Inflate middle ear canal	0.63	1.14	0.92	0.35	0.33	0.05	1.82	1.60	1.03	1.01	000
69405		A	Catheterize middle ear canal	2.63	2.61	2.09	1.41	1.19	0.18	5.42	4.90	4.22	4.00	010
69410		A	Inset middle ear (baffle)	0.33	1.10	0.99	0.15	0.28	0.02	1.45	1.34	0.50	0.63	000
69420		A	Incision of eardrum	1.33	1.89	1.61	0.70	0.71	0.10	3.32	3.04	2.13	2.14	010
69421		A	Incision of eardrum	1.73	2.14	1.92	1.60	1.51	0.12	3.99	3.77	3.45	3.36	010
69424		A	Remove ventilating tube	0.85	1.35	1.18	0.70	0.69	0.06	2.26	2.09	1.61	1.60	000
69433		A	Create eardrum opening	1.52	1.91	1.79	0.83	0.98	0.11	3.54	3.42	2.46	2.61	010
69436		A	Create eardrum opening	1.96	NA	NA	1.74	1.88	0.14	NA	NA	3.84	3.98	010
69440		A	Exploration of middle ear	7.57	NA	NA	6.41	7.07	0.53	NA	NA	14.51	15.17	090
69450		A	Eardrum revision	5.57	NA	NA	5.22	5.58	0.40	NA	NA	11.19	11.55	090
69501		A	Mastoidectomy	9.07	NA	NA	7.18	8.09	0.66	NA	NA	16.91	17.82	090
69502		A	Mastoidectomy	12.38	NA	NA	9.54	10.78	0.89	NA	NA	22.81	24.05	090
69505		A	Remove mastoid structures	12.99	NA	NA	9.81	11.24	0.94	NA	NA	23.74	25.17	090
69511		A	Extensive mastoid surgery	13.52	NA	NA	10.10	11.61	0.96	NA	NA	24.58	26.09	090
69530		A	Extensive mastoid surgery	19.19	NA	NA	13.64	14.76	1.43	NA	NA	34.26	35.38	090
69535		A	Remove part of temporal bone	36.14	NA	NA	22.50	23.73	2.61	NA	NA	61.25	62.48	090
69540		A	Remove ear lesion	1.20	1.82	1.71	1.31	1.33	0.09	3.11	3.00	2.60	2.62	010•

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
69550		A	Remove ear lesion	10.99	NA	NA	8.56	9.70	0.77	NA	NA	20.32	21.46	090
69552		A	Remove ear lesion	19.46	NA	NA	13.33	14.54	1.38	NA	NA	34.17	35.38	090
69554		A	Remove ear lesion	33.16	NA	NA	20.30	21.43	2.94	NA	NA	56.40	57.53	090
69601		A	Mastoid surgery revision	13.24	NA	NA	10.43	11.63	0.95	NA	NA	24.62	25.82	090
69602		A	Mastoid surgery revision	13.58	NA	NA	10.11	11.64	0.96	NA	NA	24.65	26.18	090
69603		A	Mastoid surgery revision	14.02	NA	NA	10.43	12.01	0.01	NA	NA	24.46	26.04	090
69604		A	Mastoid surgery revision	14.02	NA	NA	10.34	11.94	0.01	NA	NA	24.37	25.97	090
69605		A	Mastoid surgery revision	18.49	NA	NA	13.31	14.04	1.24	NA	NA	33.04	33.77	090
69610		A	Repair of eardrum	4.43	3.67	3.01	3.08	2.56	0.31	8.41	7.75	7.82	7.30	010
69620		A	Repair of eardrum	5.89	5.78	6.09	3.28	4.22	0.42	12.09	12.40	9.59	10.53	090
69631		A	Repair eardrum structures	9.86	NA	NA	8.16	9.07	0.70	NA	NA	18.72	19.63	090
69632		A	Rebuild eardrum structures	12.75	NA	NA	10.21	11.47	0.91	NA	NA	23.87	25.13	090
69633		A	Rebuild eardrum structures	12.10	NA	NA	9.88	11.02	0.86	NA	NA	22.84	23.98	090
69635		A	Repair eardrum structures	13.33	NA	NA	10.10	11.55	0.95	NA	NA	24.38	25.83	090
69636		A	Rebuild eardrum structures	15.22	NA	NA	11.65	13.28	1.09	NA	NA	27.96	29.59	090
69637		A	Rebuild eardrum structures	15.11	NA	NA	11.53	13.16	1.08	NA	NA	27.72	29.35	090
69641		A	Revise middle ear & mastoid	12.71	NA	NA	9.75	11.11	0.91	NA	NA	23.37	24.73	090
69642		A	Revise middle ear & mastoid	16.84	NA	NA	12.51	14.41	1.19	NA	NA	30.54	32.44	090
69643		A	Revise middle ear & mastoid	15.32	NA	NA	11.67	13.33	1.10	NA	NA	28.09	29.75	090
69644		A	Revise middle ear & mastoid	16.97	NA	NA	12.53	14.46	1.20	NA	NA	30.70	32.63	090
69645		A	Revise middle ear & mastoid	16.38	NA	NA	12.23	14.06	1.16	NA	NA	29.77	31.60	090
69646		A	Revise middle ear & mastoid	17.99	NA	NA	13.16	15.24	1.29	NA	NA	32.44	34.52	090
69650		A	Release middle ear bone	9.66	NA	NA	7.50	8.51	0.69	NA	NA	17.85	18.86	090
69660		A	Revise middle ear bone	11.90	NA	NA	8.73	10.10	0.85	NA	NA	21.48	22.85	090
69661		A	Revise middle ear bone	15.74	NA	NA	11.29	13.17	1.14	NA	NA	28.17	30.05	090
69662		A	Revise middle ear bone	15.44	NA	NA	11.11	12.94	1.10	NA	NA	27.65	29.48	090
69666		A	Repair middle ear structures	9.75	NA	NA	7.59	8.60	0.69	NA	NA	18.03	19.04	090
69667		A	Repair middle ear structures	9.76	NA	NA	7.59	8.61	0.69	NA	NA	18.04	19.06	090
69670		A	Remove mastoid air cells	11.51	NA	NA	9.03	9.54	0.79	NA	NA	21.33	21.84	090
69676		A	Remove middle ear nerve	9.52	NA	NA	7.94	8.27	0.66	NA	NA	18.12	18.45	090
69700		A	Close mastoid fistula	8.23	NA	NA	5.44	6.21	0.62	NA	NA	14.29	15.06	090
69710		N	Implant/replace hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
69711		A	Remove/repair hearing aid	10.44	NA	NA	8.24	8.47	0.73	NA	NA	19.41	19.64	090
69720		A	Release facial nerve	14.38	NA	NA	11.15	12.66	1.03	NA	NA	26.56	28.07	090
69725		A	Release facial nerve	25.38	NA	NA	16.53	16.37	1.62	NA	NA	43.53	43.37	090
69740		A	Repair facial nerve	15.96	NA	NA	10.68	11.22	1.11	NA	NA	27.75	28.29	090
69745		A	Repair facial nerve	16.69	NA	NA	11.02	12.59	1.80	NA	NA	29.51	31.08	090
69799		C	Middle ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69801		A	Incise inner ear	8.56	NA	NA	6.68	7.57	0.61	NA	NA	15.85	16.74	090
69802		A	Incise inner ear	13.10	NA	NA	9.55	10.21	1.04	NA	NA	23.69	24.35	090
69805		A	Explore inner ear	13.82	NA	NA	9.50	10.69	0.97	NA	NA	24.29	25.48	090
69806		A	Explore inner ear	12.35	NA	NA	9.21	10.60	0.88	NA	NA	22.44	23.83	090
69820		A	Establish inner ear window	10.34	NA	NA	7.91	8.33	0.55	NA	NA	18.80	19.22	090
69840		A	Revise inner ear window	10.26	NA	NA	8.49	8.67	0.40	NA	NA	19.15	19.33	090
69905		A	Remove inner ear	11.10	NA	NA	8.48	9.67	0.77	NA	NA	20.35	21.54	090
69910		A	Remove inner ear & mastoid	13.63	NA	NA	9.74	11.37	0.97	NA	NA	24.34	25.97	090
69915		A	Incise inner ear nerve	21.23	NA	NA	14.11	15.39	1.50	NA	NA	36.84	38.12	090
69930		A	Implant cochlear device	16.81	NA	NA	11.34	13.52	1.21	NA	NA	29.36	31.54	090
69949		C	Inner ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69950		A	Incise inner ear nerve	25.64	NA	NA	15.46	16.48	2.34	NA	NA	43.44	44.46	090
69955		A	Release facial nerve	27.04	NA	NA	17.99	19.00	2.31	NA	NA	47.34	48.35	090
69960		A	Release inner ear canal	27.04	NA	NA	16.77	17.42	2.52	NA	NA	46.33	46.98	090
69970		A	Remove inner ear lesion	30.04	NA	NA	18.13	18.94	2.13	NA	NA	50.30	51.11	090
69979		C	Temporal bone surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69990		R	Microsurgery add-on	3.47	NA	NA	1.79	1.79	0.64	NA	NA	5.90	5.90	ZZZ
70010		A	Contrast x-ray of brain	1.19	4.79	4.86	NA	NA	0.24	6.22	6.29	NA	NA	XXX
70010	26	A	Contrast x-ray of brain	1.19	0.41	0.45	0.41	0.45	0.05	1.65	1.69	1.65	1.69	XXX
70010	TC	A	Contrast x-ray of brain	0.00	4.38	4.41	NA	NA	0.19	4.57	4.60	NA	NA	XXX
70015		A	Contrast x-ray of brain	1.19	1.77	1.82	NA	NA	0.12	3.08	3.13	NA	NA	XXX
70015	26	A	Contrast x-ray of brain	1.19	0.40	0.44	0.40	0.44	0.05	1.64	1.68	1.64	1.68	XXX
70015	TC	A	Contrast x-ray of brain	0.00	1.37	1.38	NA	NA	0.07	1.44	1.45	NA	NA	XXX
70030		A	X-ray eye for foreign body	0.17	0.48	0.49	NA	NA	0.03	0.68	0.69	NA	NA	XXX
70030	26	A	X-ray eye for foreign body	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
70030	TC	A	X-ray eye for foreign body	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
70100		A	X-ray exam of jaw	0.18	0.59	0.60	NA	NA	0.03	0.80	0.81	NA	NA	XXX
70100	26	A	X-ray exam of jaw	0.18	0.06	0.07	0.06	0.07	0.01	0.25	0.26	0.25	0.26	XXX
70100	TC	A	X-ray exam of jaw	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
70110		A	X-ray exam of jaw	0.25	0.72	0.73	NA	NA	0.04	1.01	1.02	NA	NA	XXX
70110	26	A	X-ray exam of jaw	0.25	0.09	0.10	0.09	0.10	0.01	0.35	0.36	0.35	0.36	XXX
70110	TC	A	X-ray exam of jaw	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX
70120		A	X-ray exam of mastoids	0.18	0.69	0.70	NA	NA	0.04	0.91	0.92	NA	NA	XXX
70120	26	A	X-ray exam of mastoids	0.18	0.06	0.07	0.06	0.07	0.01	0.25	0.26	0.25	0.26	XXX
70120	TC	A	X-ray exam of mastoids	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX
70130		A	X-ray exam of mastoids	0.34	0.91	0.93	NA	NA	0.05	1.30	1.32	NA	NA	XXX
70130	26	A	X-ray exam of mastoids	0.34	0.12	0.13	0.12	0.13	0.01	0.47	0.48	0.47	0.48	XXX
70130	TC	A	X-ray exam of mastoids	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
70134		A	X-ray exam of middle ear	0.34	0.86	0.88	NA	NA	0.05	1.25	1.27	NA	NA	XXX
70134	26	A	X-ray exam of middle ear	0.34	0.12	0.13	0.12	0.13	0.01	0.47	0.48	0.47	0.48	XXX
70134	TC	A	X-ray exam of middle ear	0.00	0.74	0.75	NA	NA	0.04	0.78	0.79	NA	NA	XXX
70140		A	X-ray exam of facial bones	0.19	0.70	0.71	NA	NA	0.04	0.93	0.94	NA	NA	XXX
70140	26	A	X-ray exam of facial bones	0.19	0.07	0.08	0.07	0.08	0.01	0.27	0.28	0.27	0.28	XXX
70140	TC	A	X-ray exam of facial bones	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
70150		A	X-ray exam of facial bones	0.26	0.88	0.90	NA	NA	0.05	1.19	1.21	NA	NA	XXX
70150	26	A	X-ray exam of facial bones	0.26	0.09	0.10	0.09	0.10	0.01	0.36	0.37	0.36	0.37	XXX
70150	TC	A	X-ray exam of facial bones	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
70160		A	X-ray exam of nasal bones	0.17	0.59	0.60	NA	NA	0.03	0.79	0.80	NA	NA	XXX
70160	26	A	X-ray exam of nasal bones	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
70160	TC	A	X-ray exam of nasal bones	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
70170		A	X-ray exam of tear duct	0.30	1.07	1.09	NA	NA	0.06	1.43	1.45	NA	NA	XXX
70170	26	A	X-ray exam of tear duct	0.30	0.11	0.12	0.11	0.12	0.01	0.42	0.43	0.42	0.43	XXX
70170	TC	A	X-ray exam of tear duct	0.00	0.96	0.97	NA	NA	0.05	1.01	1.02	NA	NA	XXX
70190		A	X-ray exam of eye sockets	0.21	0.70	0.71	NA	NA	0.04	0.95	0.96	NA	NA	XXX
70190	26	A	X-ray exam of eye sockets	0.21	0.07	0.08	0.07	0.08	0.01	0.29	0.30	0.29	0.30	XXX
70190	TC	A	X-ray exam of eye sockets	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX
70200		A	X-ray exam of eye sockets	0.28	0.89	0.91	NA	NA	0.05	1.22	1.24	NA	NA	XXX
70200	26	A	X-ray exam of eye sockets	0.28	0.10	0.11	0.10	0.11	0.01	0.39	0.40	0.39	0.40	XXX
70200	TC	A	X-ray exam of eye sockets	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
70210		A	X-ray exam of sinuses	0.17	0.69	0.70	NA	NA	0.04	0.90	0.91	NA	NA	XXX
70210	26	A	X-ray exam of sinuses	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
70210	TC	A	X-ray exam of sinuses	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX
70220		A	X-ray exam of sinuses	0.25	0.88	0.90	NA	NA	0.05	1.18	1.20	NA	NA	XXX
70220	26	A	X-ray exam of sinuses	0.25	0.09	0.10	0.09	0.10	0.01	0.35	0.36	0.35	0.36	XXX
70220	TC	A	X-ray exam of sinuses	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
70240		A	X-ray exam, pituitary saddle	0.19	0.49	0.50	NA	NA	0.03	0.71	0.72	NA	NA	XXX
70240	26	A	X-ray exam, pituitary saddle	0.19	0.07	0.08	0.07	0.08	0.01	0.27	0.28	0.27	0.28	XXX
70240	TC	A	X-ray exam, pituitary saddle	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
70250		A	X-ray exam of skull	0.24	0.71	0.72	NA	NA	0.04	0.99	1.00	NA	NA	XXX
70250	26	A	X-ray exam of skull	0.24	0.08	0.09	0.08	0.09	0.01	0.33	0.34	0.33	0.34	XXX
70250	TC	A	X-ray exam of skull	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX
70260		A	X-ray exam of skull	0.34	1.02	1.04	NA	NA	0.06	1.42	1.44	NA	NA	XXX
70260	26	A	X-ray exam of skull	0.34	0.12	0.13	0.12	0.13	0.01	0.47	0.48	0.47	0.48	XXX
70260	TC	A	X-ray exam of skull	0.00	0.90	0.91	NA	NA	0.05	0.95	0.96	NA	NA	XXX
70300		A	X-ray exam of teeth	0.10	0.30	0.30	NA	NA	0.03	0.43	0.43	NA	NA	XXX
70300	26	A	X-ray exam of teeth	0.10	0.04	0.04	0.04	0.04	0.01	0.15	0.15	0.15	0.15	XXX
70300	TC	A	X-ray exam of teeth	0.00	0.26	0.26	NA	NA	0.02	0.28	0.28	NA	NA	XXX
70310		A	X-ray exam of teeth	0.16	0.48	0.49	NA	NA	0.03	0.67	0.68	NA	NA	XXX
70310	26	A	X-ray exam of teeth	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
70310	TC	A	X-ray exam of teeth	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
70320		A	Full mouth x-ray of teeth	0.22	0.87	0.89	NA	NA	0.05	1.14	1.16	NA	NA	XXX
70320	26	A	Full mouth x-ray of teeth	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
70320	TC	A	Full mouth x-ray of teeth	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
70328		A	X-ray exam of jaw joint	0.18	0.56	0.57	NA	NA	0.03	0.77	0.78	NA	NA	XXX
70328	26	A	X-ray exam of jaw joint	0.18	0.06	0.07	0.06	0.07	0.01	0.25	0.26	0.25	0.26	XXX
70328	TC	A	X-ray exam of jaw joint	0.00	0.50	0.50	NA	NA	0.02	0.52	0.52	NA	NA	XXX
70330		A	X-ray exam of jaw joints	0.24	0.93	0.95	NA	NA	0.05	1.22	1.24	NA	NA	XXX
70330	26	A	X-ray exam of jaw joints	0.24	0.08	0.09	0.08	0.09	0.01	0.33	0.34	0.33	0.34	XXX
70330	TC	A	X-ray exam of jaw joints	0.00	0.85	0.86	NA	NA	0.04	0.89	0.90	NA	NA	XXX
70332		A	X-ray exam of jaw joint	0.54	2.31	2.34	NA	NA	0.12	2.97	3.00	NA	NA	XXX
70332	26	A	X-ray exam of jaw joint	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
70332	TC	A	X-ray exam of jaw joint	0.00	2.12	2.13	NA	NA	0.10	2.22	2.23	NA	NA	XXX
70336		A	Magnetic image, jaw joint	1.48	11.85	11.91	NA	NA	0.56	13.89	13.95	NA	NA	XXX
70336	26	A	Magnetic image, jaw joint	1.48	0.52	0.51	0.52	0.51	0.06	2.06	2.05	2.06	2.05	XXX
70336	TC	A	Magnetic image, jaw joint	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
70350		A	X-ray head for orthodontia	0.17	0.44	0.45	NA	NA	0.03	0.64	0.65	NA	NA	XXX
70350	26	A	X-ray head for orthodontia	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
70350	TC	A	X-ray head for orthodontia	0.00	0.38	0.38	NA	NA	0.02	0.40	0.40	NA	NA	XXX
70355		A	Panoramic x-ray of jaws	0.20	0.65	0.66	NA	NA	0.04	0.89	0.90	NA	NA	XXX
70355	26	A	Panoramic x-ray of jaws	0.20	0.07	0.08	0.07	0.08	0.01	0.28	0.29	0.28	0.29	XXX
70355	TC	A	Panoramic x-ray of jaws	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
70360		A	X-ray exam of neck	0.17	0.48	0.49	NA	NA	0.03	0.68	0.69	NA	NA	XXX
70360	26	A	X-ray exam of neck	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
70360	TC	A	X-ray exam of neck	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
70370		A	Throat x-ray & fluoroscopy	0.32	1.43	1.45	NA	NA	0.07	1.82	1.84	NA	NA	XXX
70370	26	A	Throat x-ray & fluoroscopy	0.32	0.11	0.12	0.11	0.12	0.01	0.44	0.45	0.44	0.45	XXX
70370	TC	A	Throat x-ray & fluoroscopy	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
70371		A	Speech evaluation, complex	0.84	2.41	2.45	NA	NA	0.13	3.38	3.42	NA	NA	XXX
70371	26	A	Speech evaluation, complex	0.84	0.29	0.32	0.29	0.32	0.03	1.16	1.19	1.16	1.19	XXX
70371	TC	A	Speech evaluation, complex	0.00	2.12	2.13	NA	NA	0.10	2.22	2.23	NA	NA	XXX
70373		A	Contrast x-ray of larynx	0.44	1.95	1.98	NA	NA	0.11	2.50	2.53	NA	NA	XXX
70373	26	A	Contrast x-ray of larynx	0.44	0.15	0.17	0.15	0.17	0.02	0.61	0.63	0.61	0.63	XXX
70373	TC	A	Contrast x-ray of larynx	0.00	1.80	1.81	NA	NA	0.09	1.89	1.90	NA	NA	XXX
70380		A	X-ray exam of salivary gland	0.17	0.73	0.75	NA	NA	0.04	0.94	0.96	NA	NA	XXX
70380	26	A	X-ray exam of salivary gland	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
70380	TC	A	X-ray exam of salivary gland	0.00	0.67	0.68	NA	NA	0.03	0.70	0.71	NA	NA	XXX
70390		A	X-ray exam of salivary duct	0.38	1.93	1.95	NA	NA	0.11	2.42	2.44	NA	NA	XXX
70390	26	A	X-ray exam of salivary duct	0.38	0.13	0.14	0.13	0.14	0.02	0.53	0.54	0.53	0.54	XXX
70390	TC	A	X-ray exam of salivary duct	0.00	1.80	1.81	NA	NA	0.09	1.89	1.90	NA	NA	XXX
70450		A	CAT scan of head or brain	0.85	5.07	5.13	NA	NA	0.25	6.17	6.23	NA	NA	XXX
70450	26	A	CAT scan of head or brain	0.85	0.30	0.33	0.30	0.33	0.03	1.18	1.21	1.18	1.21	XXX
70450	TC	A	CAT scan of head or brain	0.00	4.77	4.80	NA	NA	0.22	4.99	5.02	NA	NA	XXX
70460		A	Contrast CAT scan of head	1.13	6.11	6.18	NA	NA	0.31	7.55	7.62	NA	NA	XXX
70460	26	A	Contrast CAT scan of head	1.13	0.39	0.43	0.39	0.43	0.05	1.57	1.61	1.57	1.61	XXX
70460	TC	A	Contrast CAT scan of head	0.00	5.72	5.75	NA	NA	0.26	5.98	6.01	NA	NA	XXX
70470		A	Contrast CAT scans of head	1.27	7.59	7.67	NA	NA	0.37	9.23	9.31	NA	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
70470	26	A	Contrast CAT scans of head	1.27	0.44	0.48	0.44	0.48	0.05	1.76	1.80	1.76	1.80	XXX
70470	TC	A	Contrast CAT scans of head	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
70480		A	CAT scan of skull	1.28	5.22	5.29	NA	NA	0.27	6.77	6.84	NA	NA	XXX
70480	26	A	CAT scan of skull	1.28	0.45	0.49	0.45	0.49	0.05	1.78	1.82	1.78	1.82	XXX
70480	TC	A	CAT scan of skull	0.00	4.77	4.80	NA	NA	0.22	4.99	5.02	NA	NA	XXX
70481		A	Contrast CAT scan of skull	1.38	6.20	6.28	NA	NA	0.31	7.89	7.97	NA	NA	XXX
70481	26	A	Contrast CAT scan of skull	1.38	0.48	0.53	0.48	0.53	0.05	1.91	1.96	1.91	1.96	XXX
70481	TC	A	Contrast CAT scan of skull	0.00	5.72	5.75	NA	NA	0.26	5.98	6.01	NA	NA	XXX
70482		A	Contrast CAT scans of skull	1.45	7.66	7.75	7.50	0.56	0.38	9.49	9.58	9.33	2.39	XXX
70482	26	A	Contrast CAT scans of skull	1.45	0.51	0.56	0.51	0.56	0.06	2.02	2.07	2.02	2.07	XXX
70482	TC	A	Contrast CAT scans of skull	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
70486		A	Cat scan of face/jaw	1.14	5.17	5.24	5.05	0.44	0.27	6.58	6.65	6.46	1.85	XXX
70486	26	A	Cat scan of face/jaw	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
70486	TC	A	Cat scan of face/jaw	0.00	4.77	4.80	NA	NA	0.22	4.99	5.02	NA	NA	XXX
70487		A	Contrast CAT scan, face/jaw	1.30	6.17	6.24	6.04	0.49	0.31	7.78	7.85	7.65	2.10	XXX
70487	26	A	Contrast CAT scan, face/jaw	1.30	0.45	0.49	0.45	0.49	0.05	1.80	1.84	1.80	1.84	XXX
70487	TC	A	Contrast CAT scan, face/jaw	0.00	5.72	5.75	NA	NA	0.26	5.98	6.01	NA	NA	XXX
70488		A	Contrast cat scans, face/jaw	1.42	7.64	7.73	7.49	0.54	0.38	9.44	9.53	9.29	2.34	XXX
70488	26	A	Contrast cat scans, face/jaw	1.42	0.49	0.54	0.49	0.54	0.06	1.97	2.02	1.97	2.02	XXX
70488	TC	A	Contrast cat scans, face/jaw	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
70490		A	CAT scan of neck tissue*	1.28	5.22	5.29	5.09	0.49	0.27	6.77	6.84	6.64	2.04	XXX
70490	26	A	CAT scan of neck tissue	1.28	0.45	0.49	0.45	0.49	0.05	1.78	1.82	1.78	1.82	XXX
70490	TC	A	CAT scan of neck tissue	0.00	4.77	4.80	NA	NA	0.22	4.99	5.02	NA	NA	XXX
70491		A	Contrast CAT of neck tissue	1.38	6.20	6.28	6.06	0.53	0.31	7.89	7.97	7.75	2.22	XXX
70491	26	A	Contrast CAT of neck tissue	1.38	0.48	0.53	0.48	0.53	0.05	1.91	1.96	1.91	1.96	XXX
70491	TC	A	Contrast CAT of neck tissue	0.00	5.72	5.75	NA	NA	0.26	5.98	6.01	NA	NA	XXX
70492		A	Contrast CAT of neck tissue	1.45	7.65	7.74	7.49	0.55	0.38	9.48	9.57	9.32	2.38	XXX
70492	26	A	Contrast CAT of neck tissue	1.45	0.50	0.55	0.50	0.55	0.06	2.01	2.06	2.01	2.06	XXX
70492	TC	A	Contrast CAT of neck tissue	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
70540		A	Magnetic image, face/neck	1.48	11.85	11.97	NA	NA	0.56	13.89	14.01	NA	NA	XXX
70540	26	A	Magnetic image, face/neck	1.48	0.52	0.57	0.52	0.57	0.06	2.06	2.11	2.06	2.11	XXX
70540	TC	A	Magnetic image, face/neck	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
70541		R	Magnetic image, head (MRA)	1.81	11.96	12.05	NA	NA	0.57	14.34	14.43	NA	NA	XXX
70541	26	R	Magnetic image, head (MRA)	1.81	0.63	0.65	0.63	0.65	0.07	2.51	2.53	2.51	2.53	XXX
70541	TC	R	Magnetic image, head (MRA)	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
70551		A	Magnetic image, brain (MRI)	1.48	11.85	11.97	NA	NA	0.56	13.89	14.01	NA	NA	XXX
70551	26	A	Magnetic image, brain (MRI)	1.48	0.52	0.57	0.52	0.57	0.06	2.06	2.11	2.06	2.11	XXX
70551	TC	A	Magnetic image, brain (MRI)	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
70552		A	Magnetic image, brain (MRI)	1.78	14.22	14.36	NA	NA	0.67	16.67	16.81	NA	NA	XXX
70552	26	A	Magnetic image, brain (MRI)	1.78	0.63	0.69	0.63	0.69	0.07	2.48	2.54	2.48	2.54	XXX
70552	TC	A	Magnetic image, brain (MRI)	0.00	13.59	13.67	NA	NA	0.60	14.19	14.27	NA	NA	XXX
70553		A	Magnetic image, brain (mri)	2.36	25.98	26.22	NA	NA	1.21	29.55	29.79	NA	NA	XXX
70553	26	A	Magnetic image, brain (mri)	2.36	0.82	0.91	0.82	0.91	0.09	3.27	3.36	3.27	3.36	XXX
70553	TC	A	Magnetic image, brain (mri)	0.00	25.16	25.31	NA	NA	1.12	26.28	26.43	NA	NA	XXX
71010		A	Chest x-ray	0.18	0.54	0.55	NA	NA	0.03	0.75	0.76	NA	NA	XXX
71010	26	A	Chest x-ray	0.18	0.06	0.07	0.06	0.07	0.01	0.25	0.26	0.25	0.26	XXX
71010	TC	A	Chest x-ray	0.00	0.48	0.48	NA	NA	0.02	0.50	0.50	NA	NA	XXX
71015		A	Chest x-ray	0.21	0.60	0.61	NA	NA	0.03	0.84	0.85	NA	NA	XXX
71015	26	A	Chest x-ray	0.21	0.07	0.08	0.07	0.08	0.01	0.29	0.30	0.29	0.30	XXX
71015	TC	A	Chest x-ray	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
71020		A	Chest x-ray	0.22	0.71	0.72	NA	NA	0.04	0.97	0.98	NA	NA	XXX
71020	26	A	Chest x-ray	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
71020	TC	A	Chest x-ray	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX
71021		A	Chest x-ray	0.27	0.83	0.85	NA	NA	0.05	1.15	1.17	NA	NA	XXX
71021	26	A	Chest x-ray	0.27	0.09	0.10	0.09	0.10	0.01	0.37	0.38	0.37	0.38	XXX
71021	TC	A	Chest x-ray	0.00	0.74	0.75	NA	NA	0.04	0.78	0.79	NA	NA	XXX
71022		A	Chest x-ray	0.31	0.85	0.87	NA	NA	0.05	1.21	1.23	NA	NA	XXX
71022	26	A	Chest x-ray	0.31	0.11	0.12	0.11	0.12	0.01	0.43	0.44	0.43	0.44	XXX
71022	TC	A	Chest x-ray	0.00	0.74	0.75	NA	NA	0.04	0.78	0.79	NA	NA	XXX
71023		A	Chest x-ray and fluoroscopy	0.38	0.93	0.95	NA	NA	0.05	1.36	1.38	NA	NA	XXX
71023	26	A	Chest x-ray and fluoroscopy	0.38	0.14	0.15	0.14	0.15	0.01	0.53	0.54	0.53	0.54	XXX
71023	TC	A	Chest x-ray and fluoroscopy	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
71030		A	Chest x-ray	0.31	0.90	0.92	NA	NA	0.05	1.26	1.28	NA	NA	XXX
71030	26	A	Chest x-ray	0.31	0.11	0.12	0.11	0.12	0.01	0.43	0.44	0.43	0.44	XXX
71030	TC	A	Chest x-ray	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
71034		A	Chest x-ray and fluoroscopy	0.46	1.63	1.66	NA	NA	0.09	2.18	2.21	NA	NA	XXX
71034	26	A	Chest x-ray and fluoroscopy	0.46	0.17	0.19	0.17	0.19	0.02	0.65	0.67	0.65	0.67	XXX
71034	TC	A	Chest x-ray and fluoroscopy	0.00	1.46	1.47	NA	NA	0.07	1.53	1.54	NA	NA	XXX
71035		A	Chest x-ray	0.18	0.59	0.60	NA	NA	0.03	0.80	0.81	NA	NA	XXX
71035	26	A	Chest x-ray	0.18	0.06	0.07	0.06	0.07	0.01	0.25	0.26	0.25	0.26	XXX
71035	TC	A	Chest x-ray	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
71036		A	X-ray guidance for biopsy	0.54	1.77	1.80	NA	NA	0.10	2.41	2.44	NA	NA	XXX
71036	26	A	X-ray guidance for biopsy	0.54	0.18	0.20	0.18	0.20	0.02	0.74	0.76	0.74	0.76	XXX
71036	TC	A	X-ray guidance for biopsy	0.00	1.59	1.60	NA	NA	0.08	1.67	1.68	NA	NA	XXX
71040		A	Contrast x-ray of bronchi	0.58	1.68	1.71	NA	NA	0.09	2.35	2.38	NA	NA	XXX
71040	26	A	Contrast x-ray of bronchi	0.58	0.20	0.22	0.20	0.22	0.02	0.80	0.82	0.80	0.82	XXX
71040	TC	A	Contrast x-ray of bronchi	0.00	1.48	1.49	NA	NA	0.07	1.55	1.56	NA	NA	XXX
71060		A	Contrast x-ray of bronchi	0.74	2.49	2.53	NA	NA	0.14	3.37	3.41	NA	NA	XXX
71060	26	A	Contrast x-ray of bronchi	0.74	0.26	0.29	0.26	0.29	0.03	1.03	1.06	1.03	1.06	XXX
71060	TC	A	Contrast x-ray of bronchi	0.00	2.23	2.24	NA	NA	0.11	2.34	2.35	NA	NA	XXX
71090		A	X-ray & pacemaker insertion	0.54	1.92	1.94	NA	NA	0.11	2.57	2.59	NA	NA	XXX
71090	26	A	X-ray & pacemaker insertion	0.54	0.22	0.23	0.22	0.23	0.02	0.78	0.79	0.78	0.79	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
71090	TC	A	X-ray & pacemaker insertion	0.00	1.70	1.71	NA	NA	0.09	1.79	1.80	NA	NA	XXX
71100		A	X-ray exam of ribs	0.22	0.66	0.67	NA	NA	0.04	0.92	0.93	NA	NA	XXX
71100	26	A	X-ray exam of ribs	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
71100	TC	A	X-ray exam of ribs	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
71101		A	X-ray exam of ribs/chest	0.27	0.76	0.78	NA	NA	0.04	1.07	1.09	NA	NA	XXX
71101	26	A	X-ray exam of ribs/chest	0.27	0.09	0.10	0.09	0.10	0.01	0.37	0.38	0.37	0.38	XXX
71101	TC	A	X-ray exam of ribs/chest	0.00	0.67	0.68	NA	NA	0.03	0.70	0.71	NA	NA	XXX
71110		A	X-ray exam of ribs	0.27	0.88	0.90	NA	NA	0.05	1.20	1.22	NA	NA	XXX
71110	26	A	X-ray exam of ribs	0.27	0.09	0.10	0.09	0.10	0.01	0.37	0.38	0.37	0.38	XXX
71110	TC	A	X-ray exam of ribs	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
71111		A	X-ray exam of ribs/ chest	0.32	1.01	1.03	NA	NA	0.06	1.39	1.41	NA	NA	XXX
71111	26	A	X-ray exam of ribs/ chest	0.32	0.11	0.12	0.11	0.12	0.01	0.44	0.45	0.44	0.45	XXX
71111	TC	A	X-ray exam of ribs/ chest	0.00	0.90	0.91	NA	NA	0.05	0.95	0.96	NA	NA	XXX
71120		A	X-ray exam of breastbone	0.20	0.72	0.74	NA	NA	0.04	0.96	0.98	NA	NA	XXX
71120	26	A	X-ray exam of breastbone	0.20	0.07	0.08	0.07	0.08	0.01	0.28	0.29	0.28	0.29	XXX
71120	TC	A	X-ray exam of breastbone	0.00	0.65	0.66	NA	NA	0.03	0.68	0.69	NA	NA	XXX
71130		A	X-ray exam of breastbone	0.22	0.79	0.81	NA	NA	0.04	1.05	1.07	NA	NA	XXX
71130	26	A	X-ray exam of breastbone	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
71130	TC	A	X-ray exam of breastbone	0.00	0.71	0.72	NA	NA	0.03	0.74	0.75	NA	NA	XXX
71250		A	Cat scan of chest	1.16	6.37	6.45	NA	NA	0.32	7.85	7.93	NA	NA	XXX
71250	26	A	Cat scan of chest	1.16	0.40	0.44	0.40	0.44	0.05	1.61	1.65	1.61	1.65	XXX
71250	TC	A	Cat scan of chest	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
71260		A	Contrast CAT scan of chest	1.24	7.58	7.66	NA	NA	0.37	9.19	9.27	NA	NA	XXX
71260	26	A	Contrast CAT scan of chest	1.24	0.43	0.47	0.43	0.47	0.05	1.72	1.76	1.72	1.76	XXX
71260	TC	A	Contrast CAT scan of chest	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
71270		A	Contrast CAT scans of chest	1.38	9.42	9.52	NA	NA	0.44	11.24	11.34	NA	NA	XXX
71270	26	A	Contrast CAT scans of chest	1.38	0.48	0.53	0.48	0.53	0.05	1.91	1.96	1.91	1.96	XXX
71270	TC	A	Contrast CAT scans of chest	0.00	8.94	8.99	NA	NA	0.39	9.33	9.38	NA	NA	XXX
71550		A	Magnetic image, chest (mri)	1.60	11.89	12.02	NA	NA	0.56	14.05	14.18	NA	NA	XXX
71550	26	A	Magnetic image, chest (mri)	1.60	0.56	0.62	0.56	0.62	0.06	2.22	2.28	2.22	2.28	XXX
71550	TC	A	Magnetic image, chest (mri)	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
71555		R	Magnetic image, chest (mra)	1.81	11.96	12.07	NA	NA	0.57	14.34	14.45	NA	NA	XXX
71555	26	R	Magnetic image, chest (mra)	1.81	0.63	0.67	0.63	0.67	0.07	2.51	2.55	2.51	2.55	XXX
71555	TC	R	Magnetic image, chest (mra)	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
72010		A	X-ray exam of spine	0.45	1.20	1.23	NA	NA	0.07	1.72	1.75	NA	NA	XXX
72010	26	A	X-ray exam of spine	0.45	0.16	0.18	0.16	0.18	0.02	0.63	0.65	0.63	0.65	XXX
72010	TC	A	X-ray exam of spine	0.00	1.04	1.05	NA	NA	0.05	1.09	1.10	NA	NA	XXX
72020		A	X-ray exam of spine	0.15	0.47	0.48	NA	NA	0.03	0.65	0.66	NA	NA	XXX
72020	26	A	X-ray exam of spine	0.15	0.05	0.06	0.05	0.06	0.01	0.21	0.22	0.21	0.22	XXX
72020	TC	A	X-ray exam of spine	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
72040		A	X-ray exam of neck spine	0.22	0.69	0.70	NA	NA	0.04	0.95	0.96	NA	NA	XXX
72040	26	A	X-ray exam of neck spine	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
72040	TC	A	X-ray exam of neck spine	0.00	0.61	0.61	NA	NA	0.03	0.64	0.64	NA	NA	XXX
72050		A	X-ray exam of neck spine	0.31	1.01	1.03	NA	NA	0.06	1.38	1.40	NA	NA	XXX
72050	26	A	X-ray exam of neck spine	0.31	0.11	0.12	0.11	0.12	0.01	0.43	0.44	0.43	0.44	XXX
72050	TC	A	X-ray exam of neck spine	0.00	0.90	0.91	NA	NA	0.05	0.95	0.96	NA	NA	XXX
72052		A	X-ray exam of neck spine	0.36	1.27	1.29	NA	NA	0.06	1.69	1.71	NA	NA	XXX
72052	26	A	X-ray exam of neck spine	0.36	0.13	0.14	0.13	0.14	0.01	0.50	0.51	0.50	0.51	XXX
72052	TC	A	X-ray exam of neck spine	0.00	1.14	1.15	NA	NA	0.05	1.19	1.20	NA	NA	XXX
72069		A	X-ray exam of trunk spine	0.22	0.58	0.59	NA	NA	0.03	0.83	0.84	NA	NA	XXX
72069	26	A	X-ray exam of trunk spine	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
72069	TC	A	X-ray exam of trunk spine	0.00	0.50	0.50	NA	NA	0.02	0.52	0.52	NA	NA	XXX
72070		A	X-ray exam of thoracic spine	0.22	0.73	0.75	NA	NA	0.04	0.99	1.01	NA	NA	XXX
72070	26	A	X-ray exam of thoracic spine	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
72070	TC	A	X-ray exam of thoracic spine	0.00	0.65	0.66	NA	NA	0.03	0.68	0.69	NA	NA	XXX
72072		A	X-ray exam of thoracic spine	0.22	0.82	0.84	NA	NA	0.05	1.09	1.11	NA	NA	XXX
72072	26	A	X-ray exam of thoracic spine	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
72072	TC	A	X-ray exam of thoracic spine	0.00	0.74	0.75	NA	NA	0.04	0.78	0.79	NA	NA	XXX
72074		A	X-ray exam of thoracic spine	0.22	1.00	1.02	NA	NA	0.06	1.28	1.30	NA	NA	XXX
72074	26	A	X-ray exam of thoracic spine	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
72074	TC	A	X-ray exam of thoracic spine	0.00	0.92	0.93	NA	NA	0.05	0.97	0.98	NA	NA	XXX
72080		A	X-ray exam of trunk spine	0.22	0.75	0.77	NA	NA	0.04	1.01	1.03	NA	NA	XXX
72080	26	A	X-ray exam of trunk spine	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
72080	TC	A	X-ray exam of trunk spine	0.00	0.67	0.68	NA	NA	0.03	0.70	0.71	NA	NA	XXX
72090		A	X-ray exam of trunk spine	0.28	0.77	0.79	NA	NA	0.04	1.09	1.11	NA	NA	XXX
72090	26	A	X-ray exam of trunk spine	0.28	0.10	0.11	0.10	0.11	0.01	0.39	0.40	0.39	0.40	XXX
72090	TC	A	X-ray exam of trunk spine	0.00	0.67	0.68	NA	NA	0.03	0.70	0.71	NA	NA	XXX
72100		A	X-ray exam of lower spine	0.22	0.75	0.77	NA	NA	0.04	1.01	1.03	NA	NA	XXX
72100	26	A	X-ray exam of lower spine	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
72100	TC	A	X-ray exam of lower spine	0.00	0.67	0.68	NA	NA	0.03	0.70	0.71	NA	NA	XXX
72110		A	X-ray exam of lower spine	0.31	1.03	1.05	NA	NA	0.06	1.40	1.42	NA	NA	XXX
72110	26	A	X-ray exam of lower spine	0.31	0.11	0.12	0.11	0.12	0.01	0.43	0.44	0.43	0.44	XXX
72110	TC	A	X-ray exam of lower spine	0.00	0.92	0.93	NA	NA	0.05	0.97	0.98	NA	NA	XXX
72114		A	X-ray exam of lower spine	0.36	1.33	1.35	NA	NA	0.07	1.76	1.78	NA	NA	XXX
72114	26	A	X-ray exam of lower spine	0.36	0.13	0.14	0.13	0.14	0.02	0.51	0.52	0.51	0.52	XXX
72114	TC	A	X-ray exam of lower spine	0.00	1.20	1.21	NA	NA	0.05	1.25	1.26	NA	NA	XXX
72120		A	X-ray exam of lower spine	0.22	0.98	1.00	NA	NA	0.06	1.26	1.28	NA	NA	XXX
72120	26	A	X-ray exam of lower spine	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
72120	TC	A	X-ray exam of lower spine	0.00	0.90	0.91	NA	NA	0.05	0.95	0.96	NA	NA	XXX
72125		A	CAT scan of neck spine	1.16	6.37	6.45	NA	NA	0.32	7.85	7.93	NA	NA	XXX
72125	26	A	CAT scan of neck spine	1.16	0.40	0.44	0.40	0.44	0.05	1.61	1.65	1.61	1.65	XXX
72125	TC	A	CAT scan of neck spine	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
72126		A	Contrast CAT scan of neck	1.22	7.57	7.65	NA	NA	0.37	9.16	9.24	NA	NA	XXX
72126	26	A	Contrast CAT scan of neck	1.22	0.42	0.46	0.42	0.46	0.05	1.69	1.73	1.69	1.73	XXX
72126	TC	A	Contrast CAT scan of neck	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
72127		A	Contrast CAT scans of neck	1.27	9.38	9.47	NA	NA	0.44	11.09	11.18	NA	NA	XXX
72127	26	A	Contrast CAT scans of neck	1.27	0.44	0.48	0.44	0.48	0.05	1.76	1.80	1.76	1.80	XXX
72127	TC	A	Contrast CAT scans of neck	0.00	8.94	8.99	NA	NA	0.39	9.33	9.38	NA	NA	XXX
72128		A	CAT scan of thorax spine	1.16	6.37	6.45	NA	NA	0.32	7.85	7.93	NA	NA	XXX
72128	26	A	CAT scan of thorax spine	1.16	0.40	0.44	0.40	0.44	0.05	1.61	1.65	1.61	1.65	XXX
72128	TC	A	CAT scan of thorax spine	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
72129		A	Contrast CAT scan of thorax	1.22	7.57	7.65	NA	NA	0.37	9.16	9.24	NA	NA	XXX
72129	26	A	Contrast CAT scan of thorax	1.22	0.42	0.46	0.42	0.46	0.05	1.69	1.73	1.69	1.73	XXX
72129	TC	A	Contrast CAT scan of thorax	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
72130		A	Contrast CAT scans of thorax	1.27	9.38	9.47	NA	NA	0.44	11.09	11.18	NA	NA	XXX
72130	26	A	Contrast CAT scans of thorax	1.27	0.44	0.48	0.44	0.48	0.05	1.76	1.80	1.76	1.80	XXX
72130	TC	A	Contrast CAT scans of thorax	0.00	8.94	8.99	NA	NA	0.39	9.33	9.38	NA	NA	XXX
72131		A	CAT scan of lower spine	1.16	6.37	6.45	NA	NA	0.32	7.85	7.93	NA	NA	XXX
72131	26	A	CAT scan of lower spine	1.16	0.40	0.44	0.40	0.44	0.05	1.61	1.65	1.61	1.65	XXX
72131	TC	A	CAT scan of lower spine	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
72132		A	Contrast CAT of lower spine	1.22	7.57	7.65	NA	NA	0.37	9.16	9.24	NA	NA	XXX
72132	26	A	Contrast CAT of lower spine	1.22	0.42	0.46	0.42	0.46	0.05	1.69	1.73	1.69	1.73	XXX
72132	TC	A	Contrast CAT of lower spine	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
72133		A	Contrst cat scans, low spine	1.27	9.39	9.48	NA	NA	0.44	11.10	11.19	NA	NA	XXX
72133	26	A	Contrst cat scans, low spine	1.27	0.45	0.49	0.45	0.49	0.05	1.77	1.81	1.77	1.81	XXX
72133	TC	A	Contrst cat scans, low spine	0.00	8.94	8.99	NA	NA	0.39	9.33	9.38	NA	NA	XXX
72141		A	Magnetic image, neck spine	1.60	11.89	12.02	NA	NA	0.56	14.05	14.18	NA	NA	XXX
72141	26	A	Magnetic image, neck spine	1.60	0.56	0.62	0.56	0.62	0.06	2.22	2.28	2.22	2.28	XXX
72141	TC	A	Magnetic image, neck spine	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
72142		A	Magnetic image, neck spine	1.92	14.27	14.41	NA	NA	0.68	16.87	17.01	NA	NA	XXX
72142	26	A	Magnetic image, neck spine	1.92	0.68	0.74	0.68	0.74	0.08	2.68	2.74	2.68	2.74	XXX
72142	TC	A	Magnetic image, neck spine	0.00	13.59	13.67	NA	NA	0.60	14.19	14.27	NA	NA	XXX
72146		A	Magnetic image, chest spine	1.60	13.14	13.27	NA	NA	0.61	15.35	15.48	NA	NA	XXX
72146	26	A	Magnetic image, chest spine	1.60	0.56	0.62	0.56	0.62	0.06	2.22	2.28	2.22	2.28	XXX
72146	TC	A	Magnetic image, chest spine	0.00	12.58	12.65	NA	NA	0.55	13.13	13.20	NA	NA	XXX
72147		A	Magnetic image, chest spine	1.92	14.26	14.41	NA	NA	0.68	16.86	17.01	NA	NA	XXX
72147	26	A	Magnetic image, chest spine	1.92	0.67	0.74	0.67	0.74	0.08	2.67	2.74	2.67	2.74	XXX
72147	TC	A	Magnetic image, chest spine	0.00	13.59	13.67	NA	NA	0.60	14.19	14.27	NA	NA	XXX
72148		A	Magnetic image, lumbar spine	1.48	13.10	13.22	NA	NA	0.61	15.19	15.31	NA	NA	XXX
72148	26	A	Magnetic image, lumbar spine	1.48	0.52	0.57	0.52	0.57	0.06	2.06	2.11	2.06	2.11	XXX
72148	TC	A	Magnetic image, lumbar spine	0.00	12.58	12.65	NA	NA	0.55	13.13	13.20	NA	NA	XXX
72149		A	Magnetic image, lumbar spine	1.78	14.22	14.36	NA	NA	0.67	16.67	16.81	NA	NA	XXX
72149	26	A	Magnetic image, lumbar spine	1.78	0.63	0.69	0.63	0.69	0.07	2.48	2.54	2.48	2.54	XXX
72149	TC	A	Magnetic image, lumbar spine	0.00	13.59	13.67	NA	NA	0.60	14.19	14.27	NA	NA	XXX
72156		A	Magnetic image, neck spine	2.57	26.06	26.30	NA	NA	1.22	29.85	30.09	NA	NA	XXX
72156	26	A	Magnetic image, neck spine	2.57	0.90	0.99	0.90	0.99	0.10	3.57	3.66	3.57	3.66	XXX
72156	TC	A	Magnetic image, neck spine	0.00	25.16	25.31	NA	NA	1.12	26.28	26.43	NA	NA	XXX
72157		A	Magnetic image, chest spine	2.57	26.06	26.30	NA	NA	1.22	29.85	30.09	NA	NA	XXX
72157	26	A	Magnetic image, chest spine	2.57	0.90	0.99	0.90	0.99	0.10	3.57	3.66	3.57	3.66	XXX
72157	TC	A	Magnetic image, chest spine	0.00	25.16	25.31	NA	NA	1.12	26.28	26.43	NA	NA	XXX
72158		A	Magnetic image, lumbar spine	2.36	25.98	26.22	NA	NA	1.21	29.55	29.79	NA	NA	XXX
72158	26	A	Magnetic image, lumbar spine	2.36	0.82	0.91	0.82	0.91	0.09	3.27	3.36	3.27	3.36	XXX
72158	TC	A	Magnetic image, lumbar spine	0.00	25.16	25.31	NA	NA	1.12	26.28	26.43	NA	NA	XXX
72159		M	Magnetic image, spine (mra)	1.80	13.29	13.36	NA	NA	0.62	15.71	15.78	NA	NA	XXX
72159	26	M	Magnetic image, spine (mra)	1.80	0.71	0.71	0.71	0.71	0.07	2.58	2.58	2.58	2.58	XXX
72159	TC	M	Magnetic image, spine (mra)	0.00	12.58	12.65	NA	NA	0.55	13.13	13.20	NA	NA	XXX
72170		A	X-ray exam of pelvis	0.17	0.59	0.60	NA	NA	0.03	0.79	0.80	NA	NA	XXX
72170	26	A	X-ray exam of pelvis	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
72170	TC	A	X-ray exam of pelvis	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
72190		A	X-ray exam of pelvis	0.21	0.74	0.76	NA	NA	0.04	0.99	1.01	NA	NA	XXX
72190	26	A	X-ray exam of pelvis	0.21	0.07	0.08	0.07	0.08	0.01	0.29	0.30	0.29	0.30	XXX
72190	TC	A	X-ray exam of pelvis	0.00	0.67	0.68	NA	NA	0.03	0.70	0.71	NA	NA	XXX
72192		A	CAT scan of pelvis	1.09	6.35	6.43	NA	NA	0.31	7.75	7.83	NA	NA	XXX
72192	26	A	CAT scan of pelvis	1.09	0.38	0.42	0.38	0.42	0.04	1.51	1.55	1.51	1.55	XXX
72192	TC	A	CAT scan of pelvis	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
72193		A	Contrast CAT scan of pelvis	1.16	7.32	7.40	NA	NA	0.36	8.84	8.92	NA	NA	XXX
72193	26	A	Contrast CAT scan of pelvis	1.16	0.40	0.44	0.40	0.44	0.05	1.61	1.65	1.61	1.65	XXX
72193	TC	A	Contrast CAT scan of pelvis	0.00	6.92	6.96	NA	NA	0.31	7.23	7.27	NA	NA	XXX
72194		A	Contrast CAT scans of pelvis	1.22	9.00	9.09	NA	NA	0.42	10.64	10.73	NA	NA	XXX
72194	26	A	Contrast CAT scans of pelvis	1.22	0.42	0.46	0.42	0.46	0.05	1.69	1.73	1.69	1.73	XXX
72194	TC	A	Contrast CAT scans of pelvis	0.00	8.58	8.63	NA	NA	0.37	8.95	9.00	NA	NA	XXX
72196		A	Magnetic image, pelvis	1.60	11.89	12.02	NA	NA	0.56	14.05	14.18	NA	NA	XXX
72196	26	A	Magnetic image, pelvis	1.60	0.56	0.62	0.56	0.62	0.06	2.22	2.28	2.22	2.28	XXX
72196	TC	A	Magnetic image, pelvis	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
72198		M	Magnetic image, pelvis (mra)	1.80	12.04	12.13	NA	NA	0.57	14.41	14.50	NA	NA	XXX
72198	26	M	Magnetic image, pelvis (mra)	1.80	0.71	0.73	0.71	0.73	0.07	2.58	2.60	2.58	2.60	XXX
72198	TC	N	Magnetic image, pelvis (mra)	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
72200		A	X-ray exam sacroiliac joints	0.17	0.59	0.60	NA	NA	0.03	0.79	0.80	NA	NA	XXX
72200	26	A	X-ray exam sacroiliac joints	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
72200	TC	A	X-ray exam sacroiliac joints	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
72202		A	X-ray exam sacroiliac joints	0.19	0.70	0.71	NA	NA	0.04	0.93	0.94	NA	NA	XXX
72202	26	A	X-ray exam sacroiliac joints	0.19	0.07	0.08	0.07	0.08	0.01	0.27	0.28	0.27	0.28	XXX
72202	TC	A	X-ray exam sacroiliac joints	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX
72220		A	X-ray exam of tailbone	0.17	0.64	0.65	NA	NA	0.04	0.85	0.86	NA	NA	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
72220	26	A	X-ray exam of tailbone	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
72220	TC	A	X-ray exam of tailbone	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
72240		A	Contrast x-ray of neck spine	0.91	5.10	5.17	NA	NA	0.26	6.27	6.34	NA	NA	XXX
72240	26	A	Contrast x-ray of neck spine	0.91	0.30	0.34	0.30	0.34	0.04	1.25	1.29	1.25	1.29	XXX
72240	TC	A	Contrast x-ray of neck spine	0.00	4.80	4.83	NA	NA	0.22	5.02	5.05	NA	NA	XXX
72255		A	Contrast x-ray, thorax spine	0.91	4.66	4.73	NA	NA	0.23	5.80	5.87	NA	NA	XXX
72255	26	A	Contrast x-ray, thorax spine	0.91	0.28	0.32	0.28	0.32	0.04	1.23	1.27	1.23	1.27	XXX
72255	TC	A	Contrast x-ray, thorax spine	0.00	4.38	4.41	NA	NA	0.19	4.57	4.60	NA	NA	XXX
72265		A	Contrast x-ray, lower spine	0.83	4.38	4.44	NA	NA	0.23	5.44	5.50	NA	NA	XXX
72265	26	A	Contrast x-ray, lower spine	0.83	0.26	0.30	0.26	0.30	0.04	1.13	1.17	1.13	1.17	XXX
72265	TC	A	Contrast x-ray, lower spine	0.00	4.12	4.14	NA	NA	0.19	4.31	4.33	NA	NA	XXX
72270		A	Contrast x-ray of spine	1.33	6.61	6.70	NA	NA	0.34	8.28	8.37	NA	NA	XXX
72270	26	A	Contrast x-ray of spine	1.33	0.44	0.49	0.44	0.49	0.06	1.83	1.88	1.83	1.88	XXX
72270	TC	A	Contrast x-ray of spine	0.00	6.17	6.21	NA	NA	0.28	6.45	6.49	NA	NA	XXX
72275		A	Epidurography	0.54	2.23	2.24	NA	NA	0.24	3.01	3.02	NA	NA	XXX
72275	26	A	Epidurography	0.54	0.17	0.17	0.17	0.17	0.05	0.76	0.76	0.76	0.76	XXX
72275	TC	A	Epidurography	0.00	2.06	2.07	NA	NA	0.19	2.25	2.26	NA	NA	XXX
72285		A	X-ray c/t spine disk	1.16	8.88	8.93	NA	NA	0.41	10.45	10.50	NA	NA	XXX
72285	26	A	X-ray c/t spine disk	1.16	0.41	0.41	0.41	0.41	0.04	1.61	1.61	1.61	1.61	XXX
72285	TC	A	X-ray c/t spine disk	0.00	8.47	8.52	NA	NA	0.37	8.84	8.89	NA	NA	XXX
72295		A	X-ray of lower spine disk	0.83	8.24	8.32	NA	NA	0.38	9.45	9.53	NA	NA	XXX
72295	26	A	X-ray of lower spine disk	0.83	0.29	0.32	0.29	0.32	0.04	1.16	1.19	1.16	1.19	XXX
72295	TC	A	X-ray of lower spine disk	0.00	7.95	8.00	NA	NA	0.34	8.29	8.34	NA	NA	XXX
73000		A	X-ray exam of collar bone	0.16	0.59	0.60	NA	NA	0.03	0.78	0.79	NA	NA	XXX
73000	26	A	X-ray exam of collar bone	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
73000	TC	A	X-ray exam of collar bone	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
73010		A	X-ray exam of shoulder blade	0.17	0.59	0.60	NA	NA	0.03	0.79	0.80	NA	NA	XXX
73010	26	A	X-ray exam of shoulder blade	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73010	TC	A	X-ray exam of shoulder blade	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
73020		A	X-ray exam of shoulder	0.15	0.53	0.54	NA	NA	0.03	0.71	0.72	NA	NA	XXX
73020	26	A	X-ray exam of shoulder	0.15	0.05	0.06	0.05	0.06	0.01	0.21	0.22	0.21	0.22	XXX
73020	TC	A	X-ray exam of shoulder	0.00	0.48	0.48	NA	NA	0.02	0.50	0.50	NA	NA	XXX
73030		A	X-ray exam of shoulder	0.18	0.64	0.65	NA	NA	0.04	0.86	0.87	NA	NA	XXX
73030	26	A	X-ray exam of shoulder	0.18	0.06	0.07	0.06	0.07	0.01	0.25	0.26	0.25	0.26	XXX
73030	TC	A	X-ray exam of shoulder	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
73040		A	Contrast x-ray of shoulder	0.54	2.31	2.34	NA	NA	0.12	2.97	3.00	NA	NA	XXX
73040	26	A	Contrast x-ray of shoulder	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
73040	TC	A	Contrast x-ray of shoulder	0.00	2.12	2.13	NA	NA	0.10	2.22	2.23	NA	NA	XXX
73050		A	X-ray exam of shoulders	0.20	0.74	0.76	NA	NA	0.04	0.98	1.00	NA	NA	XXX
73050	26	A	X-ray exam of shoulders	0.20	0.07	0.08	0.07	0.08	0.01	0.28	0.29	0.28	0.29	XXX
73050	TC	A	X-ray exam of shoulders	0.00	0.67	0.68	NA	NA	0.03	0.70	0.71	NA	NA	XXX
73060		A	X-ray exam of humerus	0.17	0.64	0.65	NA	NA	0.04	0.85	0.86	NA	NA	XXX
73060	26	A	X-ray exam of humerus	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73060	TC	A	X-ray exam of humerus	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
73070		A	X-ray exam of elbow	15	0.58	0.59	NA	NA	0.03	0.76	0.77	NA	NA	XXX
73070	26	A	X-ray exam of elbow	0.15	0.05	0.06	0.05	0.06	0.01	0.21	0.22	0.21	0.22	XXX
73070	TC	A	X-ray exam of elbow	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
73080		A	X-ray exam of elbow	0.17	0.64	0.65	NA	NA	0.04	0.85	0.86	NA	NA	XXX
73080	26	A	X-ray exam of elbow	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73080	TC	A	X-ray exam of elbow	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
73085		A	Contrast x-ray of elbow	0.54	2.32	2.35	NA	NA	0.12	2.98	3.01	NA	NA	XXX
73085	26	A	Contrast x-ray of elbow	0.54	0.20	0.22	0.20	0.22	0.02	0.76	0.78	0.76	0.78	XXX
73085	TC	A	Contrast x-ray of elbow	0.00	2.12	2.13	NA	NA	0.10	2.22	2.23	NA	NA	XXX
73090		A	X-ray exam of forearm	0.16	0.59	0.60	NA	NA	0.03	0.78	0.79	NA	NA	XXX
73090	26	A	X-ray exam of forearm	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
73090	TC	A	X-ray exam of forearm	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
73092		A	X-ray exam of arm, infant	0.16	0.56	0.57	NA	NA	0.03	0.75	0.76	NA	NA	XXX
73092	26	A	X-ray exam of arm, infant	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
73092	TC	A	X-ray exam of arm, infant	0.00	0.50	0.50	NA	NA	0.02	0.52	0.52	NA	NA	XXX
73100		A	X-ray exam of wrist	0.16	0.56	0.57	NA	NA	0.03	0.75	0.76	NA	NA	XXX
73100	26	A	X-ray exam of wrist	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
73100	TC	A	X-ray exam of wrist	0.00	0.50	0.50	NA	NA	0.02	0.52	0.52	NA	NA	XXX
73110		A	X-ray exam of wrist	0.17	0.60	0.61	NA	NA	0.03	0.80	0.81	NA	NA	XXX
73110	26	A	X-ray exam of wrist	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73110	TC	A	X-ray exam of wrist	0.00	0.54	0.54	NA	NA	0.02	0.56	0.56	NA	NA	XXX
73115		A	Contrast x-ray of wrist	0.54	1.79	1.82	NA	NA	0.10	2.43	2.46	NA	NA	XXX
73115	26	A	Contrast x-ray of wrist	0.54	0.20	0.22	0.20	0.22	0.02	0.76	0.78	0.76	0.78	XXX
73115	TC	A	Contrast x-ray of wrist	0.00	1.59	1.60	NA	NA	0.08	1.67	1.68	NA	NA	XXX
73120		A	X-ray exam of hand	0.16	0.56	0.57	NA	NA	0.03	0.75	0.76	NA	NA	XXX
73120	26	A	X-ray exam of hand	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
73120	TC	A	X-ray exam of hand	0.00	0.50	0.50	NA	NA	0.02	0.52	0.52	NA	NA	XXX
73130		A	X-ray exam of hand	0.17	0.60	0.61	NA	NA	0.03	0.80	0.81	NA	NA	XXX
73130	26	A	X-ray exam of hand	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73130	TC	A	X-ray exam of hand	0.00	0.54	0.54	NA	NA	0.02	0.56	0.56	NA	NA	XXX
73140		A	X-ray exam of finger(s)	0.13	0.47	0.48	NA	NA	0.03	0.63	0.64	NA	NA	XXX
73140	26	A	X-ray exam of finger(s)	0.13	0.05	0.06	0.05	0.06	0.01	0.19	0.20	0.19	0.20	XXX
73140	TC	A	X-ray exam of finger(s)	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
73200		A	CAT scan of arm	1.09	5.39	5.46	NA	NA	0.26	6.74	6.81	NA	NA	XXX
73200	26	A	CAT scan of arm	1.09	0.38	0.42	0.38	0.42	0.04	1.51	1.55	1.51	1.55	XXX
73200	TC	A	CAT scan of arm	0.00	5.01	5.04	NA	NA	0.22	5.23	5.26	NA	NA	XXX
73201		A	Contrast CAT scan of arm	1.16	6.37	6.45	NA	NA	0.32	7.85	7.93	NA	NA	XXX
73201	26	A	Contrast CAT scan of arm	1.16	0.40	0.44	0.40	0.44	0.05	1.61	1.65	1.61	1.65	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
73201	TC	A	Contrast CAT scan of arm	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
73202		A	Contrast CAT scans of arm	1.22	7.94	8.02	NA	NA	0.38	9.54	9.62	NA	NA	XXX
73202	26	A	Contrast CAT scans of arm	1.22	0.43	0.47	0.43	0.47	0.05	1.70	1.74	1.70	1.74	XXX
73202	TC	A	Contrast CAT scans of arm	0.00	7.51	7.55	NA	NA	0.33	7.84	7.88	NA	NA	XXX
73220		A	Magnetic image, arm/hand	1.48	11.85	11.97	NA	NA	0.56	13.89	14.01	NA	NA	XXX
73220	26	A	Magnetic image, arm/hand	1.48	0.52	0.57	0.52	0.57	0.06	2.06	2.11	2.06	2.11	XXX
73220	TC	A	Magnetic image, arm/hand	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
73221		A	Magnetic image, joint of arm	1.48	11.85	11.91	NA	NA	0.56	13.89	13.95	NA	NA	XXX
73221	26	A	Magnetic image, joint of arm	1.48	0.52	0.51	0.52	0.51	0.06	2.06	2.05	2.06	2.05	XXX
73221	TC	A	Magnetic image, joint of arm	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
73225		N	Magnetic image, upper (mra)	1.73	12.02	12.10	NA	NA	0.57	14.32	14.40	NA	NA	XXX
73225	26	N	Magnetic image, upper (mra)	1.73	0.69	0.70	0.69	0.70	0.07	2.49	2.50	2.49	2.50	XXX
73225	TC	N	Magnetic image, upper (mra)	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
73500		A	X-ray exam of hip	0.17	0.54	0.55	NA	NA	0.03	0.74	0.75	NA	NA	XXX
73500	26	A	X-ray exam of hip	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73500	TC	A	X-ray exam of hip	0.00	0.48	0.48	NA	NA	0.02	0.50	0.50	NA	NA	XXX
73510		A	X-ray exam of hip	0.21	0.65	0.66	NA	NA	0.04	0.90	0.91	NA	NA	XXX
73510	26	A	X-ray exam of hip	0.21	0.07	0.08	0.07	0.08	0.01	0.29	0.30	0.29	0.30	XXX
73510	TC	A	X-ray exam of hip	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
73520		A	X-ray exam of hips	0.26	0.76	0.78	NA	NA	0.04	1.06	1.08	NA	NA	XXX
73520	26	A	X-ray exam of hips	0.26	0.09	0.10	0.09	0.10	0.01	0.36	0.37	0.36	0.37	XXX
73520	TC	A	X-ray exam of hips	0.00	0.67	0.68	NA	NA	0.03	0.70	0.71	NA	NA	XXX
73525		A	Contrast x-ray of hip	0.54	2.31	2.34	NA	NA	0.12	2.97	3.00	NA	NA	XXX
73525	26	A	Contrast x-ray of hip	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
73525	TC	A	Contrast x-ray of hip	0.00	2.12	2.13	NA	NA	0.10	2.22	2.23	NA	NA	XXX
73530		A	X-ray exam of hip	0.29	0.63	0.64	NA	NA	0.03	0.95	0.96	NA	NA	XXX
73530	26	A	X-ray exam of hip	0.29	0.10	0.11	0.10	0.11	0.01	0.40	0.41	0.40	0.41	XXX
73530	TC	A	X-ray exam of hip	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
73540		A	X-ray exam of pelvis & hips	0.20	0.65	0.66	NA	NA	0.04	0.89	0.90	NA	NA	XXX
73540	26	A	X-ray exam of pelvis & hips	0.20	0.07	0.08	0.07	0.08	0.01	0.28	0.29	0.28	0.29	XXX
73540	TC	A	X-ray exam of pelvis & hips	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
73542		A	X-ray exam, sacroiliac joint	0.54	2.25	2.26	NA	NA	0.14	2.93	2.94	NA	NA	XXX
73542	26	A	X-ray exam, sacroiliac joint	0.54	0.19	0.19	0.19	0.19	0.04	0.77	0.77	0.77	0.77	XXX
73542	TC	A	X-ray exam, sacroiliac joint	0.00	2.06	2.07	NA	NA	0.10	2.16	2.17	NA	NA	XXX
73550		A	X-ray exam of thigh	0.17	0.64	0.65	NA	NA	0.04	0.85	0.86	NA	NA	XXX
73550	26	A	X-ray exam of thigh	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73550	TC	A	X-ray exam of thigh	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
73560		A	X-ray exam of knee, 1 or 2	0.17	0.59	0.60	NA	NA	0.03	0.79	0.80	NA	NA	XXX
73560	26	A	X-ray exam of knee, 1 or 2	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73560	TC	A	X-ray exam of knee, 1 or 2	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
73562		A	X-ray exam of knee, 3	0.18	0.64	0.65	NA	NA	0.04	0.86	0.87	NA	NA	XXX
73562	26	A	X-ray exam of knee, 3	0.18	0.06	0.07	0.06	0.07	0.01	0.25	0.26	0.25	0.26	XXX
73562	TC	A	X-ray exam of knee, 3	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
73564		A	X-ray exam, knee, 4 or more	0.22	0.71	0.72	NA	NA	0.04	0.97	0.98	NA	NA	XXX
73564	26	A	X-ray exam, knee, 4 or more	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
73564	TC	A	X-ray exam, knee, 4 or more	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX
73565		A	X-ray exam of knees	0.17	0.56	0.57	NA	NA	0.03	0.76	0.77	NA	NA	XXX
73565	26	A	X-ray exam of knees	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73565	TC	A	X-ray exam of knees	0.00	0.50	0.50	NA	NA	0.02	0.52	0.52	NA	NA	XXX
73580		A	Contrast x-ray of knee joint	0.54	2.83	2.87	NA	NA	0.14	3.51	3.55	NA	NA	XXX
73580	26	A	Contrast x-ray of knee joint	0.54	0.18	0.20	0.18	0.20	0.02	0.74	0.76	0.74	0.76	XXX
73580	TC	A	Contrast x-ray of knee joint	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
73590		A	X-ray exam of lower leg	0.17	0.59	0.60	NA	NA	0.03	0.79	0.80	NA	NA	XXX
73590	26	A	X-ray exam of lower leg	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73590	TC	A	X-ray exam of lower leg	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
73592		A	X-ray exam of leg, infant	0.16	0.56	0.57	NA	NA	0.03	0.75	0.76	NA	NA	XXX
73592	26	A	X-ray exam of leg, infant	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
73592	TC	A	X-ray exam of leg, infant	0.00	0.50	0.50	NA	NA	0.02	0.52	0.52	NA	NA	XXX
73600		A	X-ray exam of ankle	0.16	0.56	0.57	NA	NA	0.03	0.75	0.76	NA	NA	XXX
73600	26	A	X-ray exam of ankle	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
73600	TC	A	X-ray exam of ankle	0.00	0.50	0.50	NA	NA	0.02	0.52	0.52	NA	NA	XXX
73610		A	X-ray exam of ankle	0.17	0.60	0.61	NA	NA	0.03	0.80	0.81	NA	NA	XXX
73610	26	A	X-ray exam of ankle	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73610	TC	A	X-ray exam of ankle	0.00	0.54	0.54	NA	NA	0.02	0.56	0.56	NA	NA	XXX
73615		A	Contrast x-ray of ankle	0.54	2.31	2.34	NA	NA	0.12	2.97	3.00	NA	NA	XXX
73615	26	A	Contrast x-ray of ankle	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
73615	TC	A	Contrast x-ray of ankle	0.00	2.12	2.13	NA	NA	0.10	2.22	2.23	NA	NA	XXX
73620		A	X-ray exam of foot	0.16	0.56	0.57	NA	NA	0.03	0.75	0.76	NA	NA	XXX
73620	26	A	X-ray exam of foot	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
73620	TC	A	X-ray exam of foot	0.00	0.50	0.50	NA	NA	0.02	0.52	0.52	NA	NA	XXX
73630		A	X-ray exam of foot	0.17	0.60	0.61	NA	NA	0.03	0.80	0.81	NA	NA	XXX
73630	26	A	X-ray exam of foot	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
73630	TC	A	X-ray exam of foot	0.00	0.54	0.54	NA	NA	0.02	0.56	0.56	NA	NA	XXX
73650		A	X-ray exam of heel	0.16	0.54	0.55	NA	NA	0.03	0.73	0.74	NA	NA	XXX
73650	26	A	X-ray exam of heel	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
73650	TC	A	X-ray exam of heel	0.00	0.48	0.48	NA	NA	0.02	0.50	0.50	NA	NA	XXX
73660		A	X-ray exam of toe(s)	0.13	0.47	0.48	NA	NA	0.03	0.63	0.64	NA	NA	XXX
73660	26	A	X-ray exam of toe(s)	0.13	0.05	0.06	0.05	0.06	0.01	0.19	0.20	0.19	0.20	XXX
73660	TC	A	X-ray exam of toe(s)	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
3700		A	CAT scan of leg	1.09	5.39	5.46	NA	NA	0.26	6.74	6.81	NA	NA	XXX
73700	26	A	CAT scan of leg	1.09	0.38	0.42	0.38	0.42	0.04	1.51	1.55	1.51	1.55	XXX
73700	TC	A	CAT scan of leg	0.00	5.01	5.04	NA	NA	0.22	5.23	5.26	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
73701		A	Contrast CAT scan of leg	1.16	6.37	6.45	NA	NA	0.32	7.85	7.93	NA	NA	XXX
73701	26	A	Contrast CAT scan of leg	1.16	0.40	0.44	0.40	0.44	0.05	1.61	1.65	1.61	1.65	XXX
73701	TC	A	Contrast CAT scan of leg	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
73702		A	Contrast CAT scans of leg	1.22	7.93	8.01	NA	NA	0.38	9.53	9.61	NA	NA	XXX
73702	26	A	Contrast CAT scans of leg	1.22	0.42	0.46	0.42	0.46	0.05	1.69	1.73	1.69	1.73	XXX
73702	TC	A	Contrast CAT scans of leg	0.00	7.51	7.55	NA	NA	0.33	7.84	7.88	NA	NA	XXX
73720		A	Magnetic image, leg/foot	1.48	11.85	11.97	NA	NA	0.56	13.89	14.01	NA	NA	XXX
73720	26	A	Magnetic image, leg/foot	1.48	0.52	0.57	0.52	0.57	0.06	2.06	2.11	2.06	2.11	XXX
73720	TC	A	Magnetic image, leg/foot	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
73721		A	Magnetic image, joint of leg	1.48	11.85	11.91	NA	NA	0.56	13.89	13.95	NA	NA	XXX
73721	26	A	Magnetic image, joint of leg	1.48	0.52	0.51	0.52	0.51	0.06	2.06	2.05	2.06	2.05	XXX
73721	TC	A	Magnetic image, joint of leg	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
73725		R	Magnetic image/lower (mra)	1.82	11.96	12.05	NA	NA	0.57	14.35	14.44	NA	NA	XXX
73725	26	R	Magnetic image/lower (mra)	1.82	0.63	0.65	0.63	0.65	0.07	2.52	2.54	2.52	2.54	XXX
73725	TC	R	Magnetic image/lower (mra)	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
74000		A	X-ray exam of abdomen	0.18	0.59	0.60	NA	NA	0.03	0.80	0.81	NA	NA	XXX
74000	26	A	X-ray exam of abdomen	0.18	0.06	0.07	0.06	0.07	0.01	0.25	0.26	0.25	0.26	XXX
74000	TC	A	X-ray exam of abdomen	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
74010		A	X-ray exam of abdomen	0.23	0.66	0.67	NA	NA	0.04	0.93	0.94	NA	NA	XXX
74010	26	A	X-ray exam of abdomen	0.23	0.08	0.09	0.08	0.09	0.01	0.32	0.33	0.32	0.33	XXX
74010	TC	A	X-ray exam of abdomen	0.00	0.58	0.58	NA	NA	0.03	0.61	0.61	NA	NA	XXX
74020		A	X-ray exam of abdomen	0.27	0.72	0.73	NA	NA	0.04	1.03	1.04	NA	NA	XXX
74020	26	A	X-ray exam of abdomen	0.27	0.09	0.10	0.09	0.10	0.01	0.37	0.38	0.37	0.38	XXX
74020	TC	A	X-ray exam of abdomen	0.00	0.63	0.63	NA	NA	0.03	0.66	0.66	NA	NA	XXX
74022		A	X-ray exam series, abdomen	0.32	0.85	0.87	NA	NA	0.05	1.22	1.24	NA	NA	XXX
74022	26	A	X-ray exam series, abdomen	0.32	0.11	0.12	0.11	0.12	0.01	0.44	0.45	0.44	0.45	XXX
74022	TC	A	X-ray exam series, abdomen	0.00	0.74	0.75	NA	NA	0.04	0.78	0.79	NA	NA	XXX
74150		A	CAT scan of abdomen	1.19	6.13	6.20	NA	NA	0.31	7.63	7.70	NA	NA	XXX
74150	26	A	CAT scan of abdomen	1.19	0.41	0.45	0.41	0.45	0.05	1.65	1.69	1.65	1.69	XXX
74150	TC	A	CAT scan of abdomen	0.00	5.72	5.75	NA	NA	0.26	5.98	6.01	NA	NA	XXX
74160		A	Contrast CAT scan of abdomen	1.27	7.36	7.44	NA	NA	0.36	8.99	9.07	NA	NA	XXX
74160	26	A	Contrast CAT scan of abdomen	1.27	0.44	0.48	0.44	0.48	0.05	1.76	1.80	1.76	1.80	XXX
74160	TC	A	Contrast CAT scan of abdomen	0.00	6.92	6.96	NA	NA	0.31	7.23	7.27	NA	NA	XXX
74170		A	Contrast CAT scans, abdomen	1.40	9.07	9.17	NA	NA	0.43	10.90	11.00	NA	NA	XXX
74170	26	A	Contrast CAT scans, abdomen	1.40	0.49	0.54	0.49	0.54	0.06	1.95	2.00	1.95	2.00	XXX
74170	TC	A	Contrast CAT scans, abdomen	0.00	8.58	8.63	NA	NA	0.37	8.95	9.00	NA	NA	XXX
74181		A	Magnetic image/abdomen (mri)	1.60	11.89	12.02	NA	NA	0.56	14.05	14.18	NA	NA	XXX
74181	26	A	Magnetic image/abdomen (mri)	1.60	0.56	0.62	0.56	0.62	0.06	2.22	2.28	2.22	2.28	XXX
74181	TC	A	Magnetic image/abdomen (mri)	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
74185		R	Magnetic image/abdomen (MRA)	1.80	11.96	12.07	NA	NA	0.57	14.33	14.44	NA	NA	XXX
74185	26	R	Magnetic image/abdomen (MRA)	1.80	0.63	0.67	0.63	0.67	0.07	2.50	2.54	2.50	2.54	XXX
74185	TC	R	Magnetic image/abdomen (MRA)	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
74190		A	X-ray exam of peritoneum	0.48	1.49	1.49	NA	NA	0.08	2.05	2.05	NA	NA	XXX
74190	26	A	X-ray exam of peritoneum	0.48	0.17	0.16	0.17	0.16	0.02	0.67	0.66	0.67	0.66	XXX
74190	TC	A	X-ray exam of peritoneum	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
74210		A	Contrst x-ray exam of throat	0.36	1.33	1.35	NA	NA	0.06	1.75	1.77	NA	NA	XXX
74210	26	A	Contrst x-ray exam of throat	0.36	0.13	0.14	0.13	0.14	0.01	0.50	0.51	0.50	0.51	XXX
74210	TC	A	Contrst x-ray exam of throat	0.00	1.20	1.21	NA	NA	0.05	1.25	1.26	NA	NA	XXX
74220		A	Contrast x-ray, esophagus	0.46	1.36	1.39	NA	NA	0.07	1.89	1.92	NA	NA	XXX
74220	26	A	Contrast x-ray, esophagus	0.46	0.16	0.18	0.16	0.18	0.02	0.64	0.66	0.64	0.66	XXX
74220	TC	A	Contrast x-ray, esophagus	0.00	1.20	1.21	NA	NA	0.05	1.25	1.26	NA	NA	XXX
74230		A	Cinema x-ray, throat/esoph	0.53	1.51	1.54	NA	NA	0.08	2.12	2.15	NA	NA	XXX
74230	26	A	Cinema x-ray, throat/esoph	0.53	0.19	0.21	0.19	0.21	0.02	0.74	0.76	0.74	0.76	XXX
74230	TC	A	Cinema x-ray, throat/esoph	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
74235		A	Remove esophagus obstruction	1.19	3.06	3.12	NA	NA	0.17	4.42	4.48	NA	NA	XXX
74235	26	A	Remove esophagus obstruction	1.19	0.41	0.45	0.41	0.45	0.05	1.65	1.69	1.65	1.69	XXX
74235	TC	A	Remove esophagus obstruction	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
74240		A	X-ray exam, upper gi tract	0.69	1.72	1.76	NA	NA	0.10	2.51	2.55	NA	NA	XXX
74240	26	A	X-ray exam, upper gi tract	0.69	0.24	0.27	0.24	0.27	0.03	0.96	0.99	0.96	0.99	XXX
74240	TC	A	X-ray exam, upper gi tract	0.00	1.48	1.49	NA	NA	0.07	1.55	1.56	NA	NA	XXX
74241		A	X-ray exam, upper gi tract	0.69	1.75	1.79	NA	NA	0.10	2.54	2.58	NA	NA	XXX
74241	26	A	X-ray exam, upper gi tract	0.69	0.24	0.27	0.24	0.27	0.03	0.96	0.99	0.96	0.99	XXX
74241	TC	A	X-ray exam, upper gi tract	0.00	1.51	1.52	NA	NA	0.07	1.58	1.59	NA	NA	XXX
74245		A	X-ray exam, upper gi tract	0.91	2.72	2.77	NA	NA	0.15	3.78	3.83	NA	NA	XXX
74245	26	A	X-ray exam, upper gi tract	0.91	0.32	0.35	0.32	0.35	0.04	1.27	1.30	1.27	1.30	XXX
74245	TC	A	X-ray exam, upper gi tract	0.00	2.40	2.42	NA	NA	0.11	2.51	2.53	NA	NA	XXX
74246		A	Contrst x-ray uppr gi tract	0.69	1.90	1.94	NA	NA	0.11	2.70	2.74	NA	NA	XXX
74246	26	A	Contrst x-ray uppr gi tract	0.69	0.24	0.27	0.24	0.27	0.03	0.96	0.99	0.96	0.99	XXX
74246	TC	A	Contrst x-ray uppr gi tract	0.00	1.66	1.67	NA	NA	0.08	1.74	1.75	NA	NA	XXX
74247		A	Contrst x-ray uppr gi tract	0.69	1.94	1.98	NA	NA	0.12	2.75	2.79	NA	NA	XXX
74247	26	A	Contrst x-ray uppr gi tract	0.69	0.24	0.27	0.24	0.27	0.03	0.96	0.99	0.96	0.99	XXX
74247	TC	A	Contrst x-ray uppr gi tract	0.00	1.70	1.71	NA	NA	0.09	1.79	1.80	NA	NA	XXX
74249		A	Contrst x-ray uppr gi tract	0.91	2.92	2.97	NA	NA	0.16	3.99	4.04	NA	NA	XXX
74249	26	A	Contrst x-ray uppr gi tract	0.91	0.32	0.35	0.32	0.35	0.04	1.27	1.30	1.27	1.30	XXX
74249	TC	A	Contrst x-ray uppr gi tract	0.00	2.60	2.62	NA	NA	0.12	2.72	2.74	NA	NA	XXX
74250		A	X-ray exam of small bowel	0.47	1.48	1.51	NA	NA	0.08	2.03	2.06	NA	NA	XXX
74250	26	A	X-ray exam of small bowel	0.47	0.16	0.18	0.16	0.18	0.02	0.65	0.67	0.65	0.67	XXX
74250	TC	A	X-ray exam of small bowel	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
74251		A	X-ray exam of small bowel	0.69	1.56	1.57	NA	NA	0.09	2.34	2.35	NA	NA	XXX
74251	26	A	X-ray exam of small bowel	0.69	0.24	0.24	0.24	0.24	0.03	0.96	0.96	0.96	0.96	XXX
74251	TC	A	X-ray exam of small bowel	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
74260		A	X-ray exam of small bowel	0.50	1.68	1.71	NA	NA	0.09	2.27	2.30	NA	NA	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
74260	26	A	X-ray exam of small bowel	0.50	0.17	0.19	0.17	0.19	0.02	0.69	0.71	0.69	0.71	XXX
74260	TC	A	X-ray exam of small bowel	0.00	1.51	1.52	NA	NA	0.07	1.58	1.59	NA	NA	XXX
74270		A	Contrast x-ray exam of colon	0.69	1.96	2.00	NA	NA	0.12	2.77	2.81	NA	NA	XXX
74270	26	A	Contrast x-ray exam of colon	0.69	0.24	0.27	0.24	0.27	0.03	0.96	0.99	0.96	0.99	XXX
74270	TC	A	Contrast x-ray exam of colon	0.00	1.72	1.73	NA	NA	0.09	1.81	1.82	NA	NA	XXX
74280		A	Contrast x-ray exam of colon	0.99	2.60	2.65	NA	NA	0.15	3.74	3.79	NA	NA	XXX
74280	26	A	Contrast x-ray exam of colon	0.99	0.34	0.38	0.34	0.38	0.04	1.37	1.41	1.37	1.41	XXX
74280	TC	A	Contrast x-ray exam of colon	0.00	2.26	2.27	NA	NA	0.11	2.37	2.38	NA	NA	XXX
74283		A	Contrast x-ray exam of colon	2.02	3.29	3.38	NA	NA	0.20	5.51	5.60	NA	NA	XXX
74283	26	A	Contrast x-ray exam of colon	2.02	0.70	0.77	0.70	0.77	0.08	2.80	2.87	2.80	2.87	XXX
74283	TC	A	Contrast x-ray exam of colon	0.00	2.59	2.61	NA	NA	0.12	2.71	2.73	NA	NA	XXX
74290		A	Contrast x-ray, gallbladder	0.32	0.85	0.87	NA	NA	0.05	1.22	1.24	NA	NA	XXX
74290	26	A	Contrast x-ray, gallbladder	0.32	0.11	0.12	0.11	0.12	0.01	0.44	0.45	0.44	0.45	XXX
74290	TC	A	Contrast x-ray, gallbladder	0.00	0.74	0.75	NA	NA	0.04	0.78	0.79	NA	NA	XXX
74291		A	Contrast x-rays, gallbladder	0.20	0.49	0.50	NA	NA	0.03	0.72	0.73	NA	NA	XXX
74291	26	A	Contrast x-rays, gallbladder	0.20	0.07	0.08	0.07	0.08	0.01	0.28	0.29	0.28	0.29	XXX
74291	TC	A	Contrast x-rays, gallbladder	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
74300		C	X-ray bile ducts/pancreas	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
74300	26	A	X-ray bile ducts/pancreas	0.36	0.13	0.14	0.13	0.14	0.01	0.50	0.51	0.50	0.51	XXX
74300	TC	C	X-ray bile ducts/pancreas	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
74301		C	X-rays at surgery add-on	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	ZZZ
74301	26	A	X-rays at surgery add-on	0.21	0.07	0.08	0.07	0.08	0.01	0.29	0.30	0.29	0.30	ZZZ
74301	TC	C	X-rays at surgery add-on	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	ZZZ
74305		A	X-ray bile ducts/pancreas	0.42	0.94	0.97	NA	NA	0.06	1.42	1.45	NA	NA	XXX
74305	26	A	X-ray bile ducts/pancreas	0.42	0.15	0.17	0.15	0.17	0.02	0.59	0.61	0.59	0.61	XXX
74305	TC	A	X-ray bile ducts/pancreas	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
74320		A	Contrast x-ray of bile ducts	0.54	3.38	3.42	NA	NA	0.16	4.08	4.12	NA	NA	XXX
74320	26	A	Contrast x-ray of bile ducts	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
74320	TC	A	Contrast x-ray of bile ducts	0.00	3.19	3.21	NA	NA	0.14	3.33	3.35	NA	NA	XXX
74327		A	X-ray bile stone removal	0.70	2.02	2.06	NA	NA	0.12	2.84	2.88	NA	NA	XXX
74327	26	A	X-ray bile stone removal	0.70	0.24	0.27	0.24	0.27	0.03	0.97	1.00	0.97	1.00	XXX
74327	TC	A	X-ray bile stone removal	0.00	1.78	1.79	NA	NA	0.09	1.87	1.88	NA	NA	XXX
74328		A	Xray bile duct endoscopy	0.70	3.43	3.48	NA	NA	0.17	4.30	4.35	NA	NA	XXX
74328	26	A	Xray bile duct endoscopy	0.70	0.24	0.27	0.24	0.27	0.03	0.97	1.00	0.97	1.00	XXX
74328	TC	A	Xray bile duct endoscopy	0.00	3.19	3.21	NA	NA	0.14	3.33	3.35	NA	NA	XXX
74329		A	X-ray for pancreas endoscopy	0.70	3.43	3.48	NA	NA	0.17	4.30	4.35	NA	NA	XXX
74329	26	A	X-ray for pancreas endoscopy	0.70	0.24	0.27	0.24	0.27	0.03	0.97	1.00	0.97	1.00	XXX
74329	TC	A	X-ray for pancreas endoscopy	0.00	3.19	3.21	NA	NA	0.14	3.33	3.35	NA	NA	XXX
74330		A	X-ray bile/panc endoscopy	0.90	3.50	3.53	NA	NA	0.18	4.58	4.61	NA	NA	XXX
74330	26	A	X-ray bile/panc endoscopy	0.90	0.31	0.32	0.31	0.32	0.04	1.25	1.26	1.25	1.26	XXX
74330	TC	A	X-ray bile/panc endoscopy	0.00	3.19	3.21	NA	NA	0.14	3.33	3.35	NA	NA	XXX
74340		A	X-ray guide for GI tube	0.54	2.84	2.88	NA	NA	0.14	3.52	3.56	NA	NA	XXX
74340	26	A	X-ray guide for GI tube	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
74340	TC	A	X-ray guide for GI tube	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
74350		A	X-ray guide, stomach tube	0.76	3.45	3.50	NA	NA	0.17	4.38	4.43	NA	NA	XXX
74350	26	A	X-ray guide, stomach tube	0.76	0.26	0.29	0.26	0.29	0.03	1.05	1.08	1.05	1.08	XXX
74350	TC	A	X-ray guide, stomach tube	0.00	3.19	3.21	NA	NA	0.14	3.33	3.35	NA	NA	XXX
74355		A	X-ray guide, intestinal tube	0.76	2.91	2.96	NA	NA	0.15	3.82	3.87	NA	NA	XXX
74355	26	A	X-ray guide, intestinal tube	0.76	0.26	0.29	0.26	0.29	0.03	1.05	1.08	1.05	1.08	XXX
74355	TC	A	X-ray guide, intestinal tube	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
74360		A	X-ray guide, GI dilation	0.54	3.38	3.42	NA	NA	0.16	4.08	4.12	NA	NA	XXX
74360	26	A	X-ray guide, GI dilation	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
74360	TC	A	X-ray guide, GI dilation	0.00	3.19	3.21	NA	NA	0.14	3.33	3.35	NA	NA	XXX
74363		A	X-ray, bile duct dilation	0.88	6.47	6.54	NA	NA	0.32	7.67	7.74	NA	NA	XXX
74363	26	A	X-ray, bile duct dilation	0.88	0.30	0.33	0.30	0.33	0.04	1.22	1.25	1.22	1.25	XXX
74363	TC	A	X-ray, bile duct dilation	0.00	6.17	6.21	NA	NA	0.28	6.45	6.49	NA	NA	XXX
74400		A	Contrst x-ray, urinary tract	0.49	1.87	1.90	NA	NA	0.11	2.47	2.50	NA	NA	XXX
74400	26	A	Contrst x-ray, urinary tract	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX
74400	TC	A	Contrst x-ray, urinary tract	0.00	1.70	1.71	NA	NA	0.09	1.79	1.80	NA	NA	XXX
74410		A	Contrst x-ray, urinary tract	0.49	2.14	2.17	NA	NA	0.11	2.74	2.77	NA	NA	XXX
74410	26	A	Contrst x-ray, urinary tract	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX
74410	TC	A	Contrst x-ray, urinary tract	0.00	1.97	1.98	NA	NA	0.09	2.06	2.07	NA	NA	XXX
74415		A	Contrst x-ray, urinary tract	0.49	2.31	2.34	NA	NA	0.12	2.92	2.95	NA	NA	XXX
74415	26	A	Contrst x-ray, urinary tract	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX
74415	TC	A	Contrst x-ray, urinary tract	0.00	2.14	2.15	NA	NA	0.10	2.24	2.25	NA	NA	XXX
74420		A	Contrst x-ray, urinary tract	0.36	2.77	2.80	NA	NA	0.14	3.27	3.30	NA	NA	XXX
74420	26	A	Contrst x-ray, urinary tract	0.36	0.12	0.13	0.12	0.13	0.02	0.50	0.51	0.50	0.51	XXX
74420	TC	A	Contrst x-ray, urinary tract	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
74425		A	Contrst x-ray, urinary tract	0.36	1.44	1.46	NA	NA	0.07	1.87	1.89	NA	NA	XXX
74425	26	A	Contrst x-ray, urinary tract	0.36	0.12	0.13	0.12	0.13	0.01	0.49	0.50	0.49	0.50	XXX
74425	TC	A	Contrst x-ray, urinary tract	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
74430		A	Contrast x-ray, bladder	0.32	1.18	1.20	NA	NA	0.06	1.56	1.58	NA	NA	XXX
74430	26	A	Contrast x-ray, bladder	0.32	0.11	0.12	0.11	0.12	0.01	0.44	0.45	0.44	0.45	XXX
74430	TC	A	Contrast x-ray, bladder	0.00	1.07	1.08	NA	NA	0.05	1.12	1.13	NA	NA	XXX
74440		A	X-ray, male genital tract	0.38	1.27	1.29	NA	NA	0.07	1.72	1.74	NA	NA	XXX
74440	26	A	X-ray, male genital tract	0.38	0.13	0.14	0.13	0.14	0.02	0.53	0.54	0.53	0.54	XXX
74440	TC	A	X-ray, male genital tract	0.00	1.14	1.15	NA	NA	0.05	1.19	1.20	NA	NA	XXX
74445		A	X-ray exam of penis	1.14	1.53	1.58	NA	NA	0.11	2.78	2.83	NA	NA	XXX
74445	26	A	X-ray exam of penis	1.14	0.39	0.43	0.39	0.43	0.06	1.59	1.63	1.59	1.63	XXX
74445	TC	A	X-ray exam of penis	0.00	1.14	1.15	NA	NA	0.05	1.19	1.20	NA	NA	XXX
74450		A	X-ray, urethra/bladder	0.33	1.59	1.61	NA	NA	0.08	2.00	2.02	NA	NA	XXX
74450	26	A	X-ray, urethra/bladder	0.33	0.11	0.12	0.11	0.12	0.01	0.45	0.46	0.45	0.46	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
74450	TC	A	X-ray, urethra/bladder	0.00	1.48	1.49	NA	NA	0.07	1.55	1.56	NA	NA	XXX
74455		A	X-ray, urethra/bladder	0.33	1.70	1.72	NA	NA	0.09	2.12	2.14	NA	NA	XXX
74455	26	A	X-ray, urethra/bladder	0.33	0.11	0.12	0.11	0.12	0.01	0.45	0.46	0.45	0.46	XXX
74455	TC	A	X-ray, urethra/bladder	0.00	1.59	1.60	NA	NA	0.08	1.67	1.68	NA	NA	XXX
74470		A	X-ray exam of kidney lesion	0.54	1.45	1.48	NA	NA	0.08	2.07	2.10	NA	NA	XXX
74470	26	A	X-ray exam of kidney lesion	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
74470	TC	A	X-ray exam of kidney lesion	0.00	1.26	1.27	NA	NA	0.06	1.32	1.33	NA	NA	XXX
74475		A	X-ray control, cath insert	0.54	4.31	4.35	NA	NA	0.21	5.06	5.10	NA	NA	XXX
74475	26	A	X-ray control, cath insert	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
74475	TC	A	X-ray control, cath insert	0.00	4.12	4.14	NA	NA	0.19	4.31	4.33	NA	NA	XXX
74480		A	X-ray control, cath insert	0.54	4.31	4.35	NA	NA	0.21	5.06	5.10	NA	NA	XXX
74480	26	A	X-ray control, cath insert	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
74480	TC	A	X-ray control, cath insert	0.00	4.12	4.14	NA	NA	0.19	4.31	4.33	NA	NA	XXX
74485		A	X-ray guide, GU dilation	0.54	3.37	3.41	NA	NA	0.16	4.07	4.11	NA	NA	XXX
74485	26	A	X-ray guide, GU dilation	0.54	0.18	0.20	0.18	0.20	0.02	0.74	0.76	0.74	0.76	XXX
74485	TC	A	X-ray guide, GU dilation	0.00	3.19	3.21	NA	NA	0.14	3.33	3.35	NA	NA	XXX
74710		A	X-ray measurement of pelvis	0.34	1.19	1.21	NA	NA	0.06	1.59	1.61	NA	NA	XXX
74710	26	A	X-ray measurement of pelvis	0.34	0.12	0.13	0.12	0.13	0.01	0.47	0.48	0.47	0.48	XXX
74710	TC	A	X-ray measurement of pelvis	0.00	1.07	1.08	NA	NA	0.05	1.12	1.13	NA	NA	XXX
74740		A	X-ray, female genital tract	0.38	1.45	1.47	NA	NA	0.08	1.91	1.93	NA	NA	XXX
74740	26	A	X-ray, female genital tract	0.38	0.13	0.14	0.13	0.14	0.02	0.53	0.54	0.53	0.54	XXX
74740	TC	A	X-ray, female genital tract	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
74742		A	X-ray, fallopian tube	0.61	3.40	3.44	NA	NA	0.16	4.17	4.21	NA	NA	XXX
74742	26	A	X-ray, fallopian tube	0.61	0.21	0.23	0.21	0.23	0.02	0.84	0.86	0.84	0.86	XXX
74742	TC	A	X-ray, fallopian tube	0.00	3.19	3.21	NA	NA	0.14	3.33	3.35	NA	NA	XXX
74775		A	X-ray exam of perineum	0.62	1.70	1.73	NA	NA	0.10	2.42	2.45	NA	NA	XXX
74775	26	A	X-ray exam of perineum	0.62	0.22	0.24	0.22	0.24	0.03	0.87	0.89	0.87	0.89	XXX
74775	TC	A	X-ray exam of perineum	0.00	1.48	1.49	NA	NA	0.07	1.55	1.56	NA	NA	XXX
75552		A	Magnetic image, myocardium	1.60	11.89	12.02	NA	NA	0.56	14.05	14.18	NA	NA	XXX
75552	26	A	Magnetic image, myocardium	1.60	0.56	0.62	0.56	0.62	0.06	2.22	2.28	2.22	2.28	XXX
75552	TC	A	Magnetic image, myocardium	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
75553		A	Magnetic image, myocardium	0.02	12.03	12.12	NA	NA	0.58	12.63	12.72	NA	NA	XXX
75553	26	A	Magnetic image, myocardium	0.02	0.70	0.72	0.70	0.72	0.08	0.80	0.82	0.80	0.82	XXX
75553	TC	A	Magnetic image, myocardium	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
75554		A	Cardiac MRI/function	1.83	12.01	12.11	NA	NA	0.57	14.41	14.51	NA	NA	XXX
75554	26	A	Cardiac MRI/function	1.83	0.68	0.71	0.68	0.71	0.07	2.58	2.61	2.58	2.61	XXX
75554	TC	A	Cardiac MRI/function	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
75555		A	Cardiac MRI/limited study	1.74	12.02	12.11	NA	NA	0.56	14.32	14.41	NA	NA	XXX
75555	26	A	Cardiac MRI/limited study	1.74	0.69	0.71	0.69	0.71	0.06	2.49	2.51	2.49	2.51	XXX
75555	TC	A	Cardiac MRI/limited study	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
75556		N	Cardiac MRI/flow mapping	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
75600		A	Contrast x-ray exam of aorta	0.49	12.94	13.02	NA	NA	0.58	14.01	14.09	NA	NA	XXX
75600	26	A	Contrast x-ray exam of aorta	0.49	0.20	0.21	0.20	0.21	0.02	0.71	0.72	0.71	0.72	XXX
75600	TC	A	Contrast x-ray exam of aorta	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75605		A	Contrast x-ray exam of aorta	1.14	13.17	13.27	NA	NA	0.60	14.91	15.01	NA	NA	XXX
75605	26	A	Contrast x-ray exam of aorta	1.14	0.43	0.46	0.43	0.46	0.04	1.61	1.64	1.61	1.64	XXX
75605	TC	A	Contrast x-ray exam of aorta	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75625		A	Contrast x-ray exam of aorta	1.14	13.14	13.25	NA	NA	0.61	14.89	15.00	NA	NA	XXX
75625	26	A	Contrast x-ray exam of aorta	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
75625	TC	A	Contrast x-ray exam of aorta	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75630		A	X-ray aorta, leg arteries	1.79	13.92	14.00	NA	NA	0.66	16.37	16.45	NA	NA	XXX
75630	26	A	X-ray aorta, leg arteries	1.79	0.65	0.65	0.65	0.65	0.07	2.51	2.51	2.51	2.51	XXX
75630	TC	A	X-ray aorta, leg arteries	0.00	13.27	13.35	NA	NA	0.59	13.86	13.94	NA	NA	XXX
75650		A	Artery x-rays, head & neck	1.49	13.26	13.38	NA	NA	0.62	15.37	15.49	NA	NA	XXX
75650	26	A	Artery x-rays, head & neck	1.49	0.52	0.57	0.52	0.57	0.06	2.07	2.12	2.07	2.12	XXX
75650	TC	A	Artery x-rays, head & neck	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75658		A	Artery x-rays, arm	1.31	13.25	13.35	NA	NA	0.61	15.17	15.27	NA	NA	XXX
75658	26	A	Artery x-rays, arm	1.31	0.51	0.54	0.51	0.54	0.05	1.87	1.90	1.87	1.90	XXX
75658	TC	A	Artery x-rays, arm	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75660		A	Artery x-rays, head & neck	1.31	13.21	13.32	NA	NA	0.61	15.13	15.24	NA	NA	XXX
75660	26	A	Artery x-rays, head & neck	1.31	0.47	0.51	0.47	0.51	0.05	1.83	1.87	1.83	1.87	XXX
75660	TC	A	Artery x-rays, head & neck	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75662		A	Artery x-rays, head & neck	1.66	13.37	13.48	NA	NA	0.62	15.65	15.76	NA	NA	XXX
75662	26	A	Artery x-rays, head & neck	1.66	0.63	0.67	0.63	0.67	0.06	2.35	2.39	2.35	2.39	XXX
75662	TC	A	Artery x-rays, head & neck	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75665		A	Artery x-rays, head & neck	1.31	13.21	13.32	NA	NA	0.62	15.14	15.25	NA	NA	XXX
75665	26	A	Artery x-rays, head & neck	1.31	0.47	0.51	0.47	0.51	0.06	1.84	1.88	1.84	1.88	XXX
75665	TC	A	Artery x-rays, head & neck	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75671		A	Artery x-rays, head & neck	1.66	13.32	13.45	NA	NA	0.63	15.61	15.74	NA	NA	XXX
75671	26	A	Artery x-rays, head & neck	1.66	0.58	0.64	0.58	0.64	0.07	2.31	2.37	2.31	2.37	XXX
75671	TC	A	Artery x-rays, head & neck	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75676		A	Artery x-rays, neck	1.31	13.21	13.32	NA	NA	0.62	15.14	15.25	NA	NA	XXX
75676	26	A	Artery x-rays, neck	1.31	0.47	0.51	0.47	0.51	0.06	1.84	1.88	1.84	1.88	XXX
75676	TC	A	Artery x-rays, neck	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75680		A	Artery x-rays, neck	1.66	13.32	13.45	NA	NA	0.63	15.61	15.74	NA	NA	XXX
75680	26	A	Artery x-rays, neck	1.66	0.58	0.64	0.58	0.64	0.07	2.31	2.37	2.31	2.37	XXX
75680	TC	A	Artery x-rays, neck	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75685		A	Artery x-rays, spine	1.31	13.20	13.31	NA	NA	0.61	15.12	15.23	NA	NA	XXX
75685	26	A	Artery x-rays, spine	1.31	0.46	0.50	0.46	0.50	0.05	1.82	1.86	1.82	1.86	XXX
75685	TC	A	Artery x-rays, spine	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75705		A	Artery x-rays, spine	2.18	13.51	13.65	NA	NA	0.65	16.34	16.48	NA	NA	XXX
75705	26	A	Artery x-rays, spine	2.18	0.77	0.84	0.77	0.84	0.09	3.04	3.11	3.04	3.11	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
75705	TC	A	Artery x-rays, spine	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75710		A	Artery x-rays, arm/leg	1.14	13.15	13.25	NA	NA	0.61	14.90	15.00	NA	NA	XXX
75710	26	A	Artery x-rays, arm/leg	1.14	0.41	0.44	0.41	0.44	0.05	1.60	1.63	1.60	1.63	XXX
75710	TC	A	Artery x-rays, arm/leg	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75716		A	Artery x-rays, arms/legs	1.31	13.20	13.31	NA	NA	0.61	15.12	15.23	NA	NA	XXX
75716	26	A	Artery x-rays, arms/legs	1.31	0.46	0.50	0.46	0.50	0.05	1.82	1.86	1.82	1.86	XXX
75716	TC	A	Artery x-rays, arms/legs	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75722		A	Artery x-rays, kidney	1.14	13.17	13.27	NA	NA	0.60	14.91	15.01	NA	NA	XXX
75722	26	A	Artery x-rays, kidney	1.14	0.43	0.46	0.43	0.46	0.04	1.61	1.64	1.61	1.64	XXX
75722	TC	A	Artery x-rays, kidney	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75724		A	Artery x-rays, kidneys	1.49	13.34	13.44	NA	NA	0.61	15.44	15.54	NA	NA	XXX
75724	26	A	Artery x-rays, kidneys	1.49	0.60	0.63	0.60	0.63	0.05	2.14	2.17	2.14	2.17	XXX
75724	TC	A	Artery x-rays, kidneys	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75726		A	Artery x-rays, abdomen	1.14	13.14	13.25	NA	NA	0.61	14.89	15.00	NA	NA	XXX
75726	26	A	Artery x-rays, abdomen	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
75726	TC	A	Artery x-rays, abdomen	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75731		A	Artery x-rays, adrenal gland	1.14	13.14	13.25	NA	NA	0.61	14.89	15.00	NA	NA	XXX
75731	26	A	Artery x-rays, adrenal gland	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
75731	TC	A	Artery x-rays, adrenal gland	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75733		A	Artery x-rays, adrenals	1.31	13.21	13.32	NA	NA	0.61	15.13	15.24	NA	NA	XXX
75733	26	A	Artery x-rays, adrenals	1.31	0.47	0.51	0.47	0.51	0.05	1.83	1.87	1.83	1.87	XXX
75733	TC	A	Artery x-rays, adrenals	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75736		A	Artery x-rays, pelvis	1.14	13.14	13.25	NA	NA	0.61	14.89	15.00	NA	NA	XXX
75736	26	A	Artery x-rays, pelvis	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
75736	TC	A	Artery x-rays, pelvis	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75741		A	Artery x-rays, lung	1.31	13.19	13.31	NA	NA	0.61	15.11	15.23	NA	NA	XXX
75741	26	A	Artery x-rays, lung	1.31	0.45	0.50	0.45	0.50	0.05	1.81	1.86	1.81	1.86	XXX
75741	TC	A	Artery x-rays, lung	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75743		A	Artery x-rays, lungs	1.66	13.32	13.45	NA	NA	0.63	15.61	15.74	NA	NA	XXX
75743	26	A	Artery x-rays, lungs	1.66	0.58	0.64	0.58	0.64	0.07	2.31	2.37	2.31	2.37	XXX
75743	TC	A	Artery x-rays, lungs	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75746		A	Artery x-rays, lung	1.14	13.14	13.25	NA	NA	0.60	14.88	14.99	NA	NA	XXX
75746	26	A	Artery x-rays, lung	1.14	0.40	0.44	0.40	0.44	0.04	1.58	1.62	1.58	1.62	XXX
75746	TC	A	Artery x-rays, lung	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75756		A	Artery x-rays, chest	1.14	13.22	13.31	NA	NA	0.60	14.96	15.05	NA	NA	XXX
75756	26	A	Artery x-rays, chest	1.14	0.48	0.50	0.48	0.50	0.04	1.66	1.68	1.66	1.68	XXX
75756	TC	A	Artery x-rays, chest	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75774		A	Artery x-ray, each vessel	0.36	12.87	12.95	NA	NA	0.57	13.80	13.88	NA	NA	ZZZ
75774	26	A	Artery x-ray, each vessel	0.36	0.13	0.14	0.13	0.14	0.01	0.50	0.51	0.50	0.51	ZZZ
75774	TC	A	Artery x-ray, each vessel	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	ZZZ
75790		A	Visualize A-V shunt	1.84	2.01	2.09	NA	NA	0.15	4.00	4.08	NA	NA	XXX
75790	26	A	Visualize A-V shunt	1.84	0.64	0.71	0.64	0.71	0.08	2.56	2.63	2.56	2.63	XXX
75790	TC	A	Visualize A-V shunt	0.00	1.37	1.38	NA	NA	0.07	1.44	1.45	NA	NA	XXX
75801		A	Lymph vessel x-ray, arm/leg	0.81	5.75	5.81	NA	NA	0.29	6.85	6.91	NA	NA	XXX
75801	26	A	Lymph vessel x-ray, arm/leg	0.81	0.28	0.31	0.28	0.31	0.04	1.13	1.16	1.13	1.16	XXX
75801	TC	A	Lymph vessel x-ray, arm/leg	0.00	5.47	5.50	NA	NA	0.25	5.72	5.75	NA	NA	XXX
75803		A	Lymph vessel x-ray,arms/legs	1.17	5.87	5.94	NA	NA	0.30	7.34	7.41	NA	NA	XXX
75803	26	A	Lymph vessel x-ray,arms/legs	1.17	0.40	0.44	0.40	0.44	0.05	1.62	1.66	1.62	1.66	XXX
75803	TC	A	Lymph vessel x-ray,arms/legs	0.00	5.47	5.50	NA	NA	0.25	5.72	5.75	NA	NA	XXX
75805		A	Lymph vessel x-ray, trunk	0.81	6.46	6.53	NA	NA	0.31	7.58	7.65	NA	NA	XXX
75805	26	A	Lymph vessel x-ray, trunk	0.81	0.29	0.32	0.29	0.32	0.03	1.13	1.16	1.13	1.16	XXX
75805	TC	A	Lymph vessel x-ray, trunk	0.00	6.17	6.21	NA	NA	0.28	6.45	6.49	NA	NA	XXX
75807		A	Lymph vessel x-ray, trunk	1.17	6.57	6.65	NA	NA	0.33	8.07	8.15	NA	NA	XXX
75807	26	A	Lymph vessel x-ray, trunk	1.17	0.40	0.44	0.40	0.44	0.05	1.62	1.66	1.62	1.66	XXX
75807	TC	A	Lymph vessel x-ray, trunk	0.00	6.17	6.21	NA	NA	0.28	6.45	6.49	NA	NA	XXX
75809		A	Nonvascular shunt, x-ray	0.47	0.95	0.97	NA	NA	0.06	1.48	1.50	NA	NA	XXX
75809	26	A	Nonvascular shunt, x-ray	0.47	0.16	0.17	0.16	0.17	0.02	0.65	0.66	0.65	0.66	XXX
75809	TC	A	Nonvascular shunt, x-ray	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
75810		A	Vein x-ray, spleen/liver	1.14	13.13	13.24	NA	NA	0.61	14.88	14.99	NA	NA	XXX
75810	26	A	Vein x-ray, spleen/liver	1.14	0.39	0.43	0.39	0.43	0.05	1.58	1.62	1.58	1.62	XXX
75810	TC	A	Vein x-ray, spleen/liver	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75820		A	Vein x-ray, arm/leg	0.70	1.20	1.24	NA	NA	0.08	1.98	2.02	NA	NA	XXX
75820	26	A	Vein x-ray, arm/leg	0.70	0.24	0.27	0.24	0.27	0.03	0.97	1.00	0.97	1.00	XXX
75820	TC	A	Vein x-ray, arm/leg	0.00	0.96	0.97	NA	NA	0.05	1.01	1.02	NA	NA	XXX
75822		A	Vein x-ray, arms/legs	1.06	1.87	1.92	NA	NA	0.11	3.04	3.09	NA	NA	XXX
75822	26	A	Vein x-ray, arms/legs	1.06	0.37	0.41	0.37	0.41	0.04	1.47	1.51	1.47	1.51	XXX
75822	TC	A	Vein x-ray, arms/legs	0.00	1.50	1.51	NA	NA	0.07	1.57	1.58	NA	NA	XXX
75825		A	Vein x-ray, trunk	1.14	13.14	13.25	NA	NA	0.61	14.89	15.00	NA	NA	XXX
75825	26	A	Vein x-ray, trunk	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
75825	TC	A	Vein x-ray, trunk	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75827		A	Vein x-ray, chest	1.14	13.13	13.24	NA	NA	0.61	14.88	14.99	NA	NA	XXX
75827	26	A	Vein x-ray, chest	1.14	0.39	0.43	0.39	0.43	0.05	1.58	1.62	1.58	1.62	XXX
75827	TC	A	Vein x-ray, chest	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75831		A	Vein x-ray, kidney	1.14	13.14	13.25	NA	NA	0.61	14.89	15.00	NA	NA	XXX
75831	26	A	Vein x-ray, kidney	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
75831	TC	A	Vein x-ray, kidney	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75833		A	Vein x-ray, kidneys	1.49	13.26	13.38	NA	NA	0.62	15.37	15.49	NA	NA	XXX
75833	26	A	Vein x-ray, kidneys	1.49	0.52	0.57	0.52	0.57	0.06	2.07	2.12	2.07	2.12	XXX
75833	TC	A	Vein x-ray, kidneys	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75840		A	Vein x-ray, adrenal gland	1.14	13.14	13.25	NA	NA	0.61	14.89	15.00	NA	NA	XXX
75840	26	A	Vein x-ray, adrenal gland	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
75840	TC	A	Vein x-ray, adrenal gland	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
75842		A	Vein x-ray, adrenal glands	1.49	13.26	13.38	NA	NA	0.62	15.37	15.49	NA	NA	XXX
75842	26	A	Vein x-ray, adrenal glands	1.49	0.52	0.57	0.52	0.57	0.06	2.07	2.12	2.07	2.12	XXX
75842	TC	A	Vein x-ray, adrenal glands	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75860		A	Vein x-ray, neck	1.14	13.14	13.25	NA	NA	0.61	14.89	15.00	NA	NA	XXX
75860	26	A	Vein x-ray, neck	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
75860	TC	A	Vein x-ray, neck	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75870		A	Vein x-ray, skull	1.14	13.14	13.25	NA	NA	0.61	14.89	15.00	NA	NA	XXX
75870	26	A	Vein x-ray, skull	1.14	0.40	0.44	0.40	0.44	0.05	1.59	1.63	1.59	1.63	XXX
75870	TC	A	Vein x-ray, skull	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75872		A	Vein x-ray, skull	1.14	13.13	13.24	NA	NA	0.61	14.88	14.99	NA	NA	XXX
75872	26	A	Vein x-ray, skull	1.14	0.39	0.43	0.39	0.43	0.05	1.58	1.62	1.58	1.62	XXX
75872	TC	A	Vein x-ray, skull	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75880		A	Vein x-ray, eye socket	0.70	1.20	1.24	NA	NA	0.08	1.98	2.02	NA	NA	XXX
75880	26	A	Vein x-ray, eye socket	0.70	0.24	0.27	0.24	0.27	0.03	0.97	1.00	0.97	1.00	XXX
75880	TC	A	Vein x-ray, eye socket	0.00	0.96	0.97	NA	NA	0.05	1.01	1.02	NA	NA	XXX
75885		A	Vein x-ray, liver	1.44	13.24	13.36	NA	NA	0.62	15.30	15.42	NA	NA	XXX
75885	26	A	Vein x-ray, liver	1.44	0.50	0.55	0.50	0.55	0.06	2.00	2.05	2.00	2.05	XXX
75885	TC	A	Vein x-ray, liver	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75887		A	Vein x-ray, liver	1.44	13.24	13.36	NA	NA	0.62	15.30	15.42	NA	NA	XXX
75887	26	A	Vein x-ray, liver	1.44	0.50	0.55	0.50	0.55	0.06	2.00	2.05	2.00	2.05	XXX
75887	TC	A	Vein x-ray, liver	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75889		A	Vein x-ray, liver	1.14	13.13	13.24	NA	NA	0.61	14.88	14.99	NA	NA	XXX
75889	26	A	Vein x-ray, liver	1.14	0.39	0.43	0.39	0.43	0.05	1.58	1.62	1.58	1.62	XXX
75889	TC	A	Vein x-ray, liver	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75891		A	Vein x-ray, liver	1.14	13.13	13.24	NA	NA	0.61	14.88	14.99	NA	NA	XXX
75891	26	A	Vein x-ray, liver	1.14	0.39	0.43	0.39	0.43	0.05	1.58	1.62	1.58	1.62	XXX
75891	TC	A	Vein x-ray, liver	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75893		A	Venous sampling by catheter	0.54	12.93	13.02	NA	NA	0.58	14.05	14.14	NA	NA	XXX
75893	26	A	Venous sampling by catheter	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
75893	TC	A	Venous sampling by catheter	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75894		A	X-rays, transcath therapy	1.31	24.86	25.04	NA	NA	1.13	27.30	27.48	NA	NA	XXX
75894	26	A	X-rays, transcath therapy	1.31	0.46	0.50	0.46	0.50	0.05	1.82	1.86	1.82	1.86	XXX
75894	TC	A	X-rays, transcath therapy	0.00	24.40	24.54	NA	NA	1.08	25.48	25.62	NA	NA	XXX
75896		A	X-rays, transcath therapy	1.31	21.70	21.86	NA	NA	0.99	24.00	24.16	NA	NA	XXX
75896	26	A	X-rays, transcath therapy	1.31	0.48	0.52	0.48	0.52	0.05	1.84	1.88	1.84	1.88	XXX
75896	TC	A	X-rays, transcath therapy	0.00	21.22	21.34	NA	NA	0.94	22.16	22.28	NA	NA	XXX
75898		A	Follow-up angiogram	1.65	1.66	1.72	NA	NA	0.12	3.43	3.49	NA	NA	XXX
75898	26	A	Follow-up angiogram	1.65	0.59	0.64	0.59	0.64	0.07	2.31	2.36	2.31	2.36	XXX
75898	TC	A	Follow-up angiogram	0.00	1.07	1.08	NA	NA	0.05	1.12	1.13	NA	NA	XXX
75900		A	Arterial catheter exchange	0.49	21.37	21.51	NA	NA	0.97	22.83	22.97	NA	NA	XXX
75900	26	A	Arterial catheter exchange	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX
75900	TC	A	Arterial catheter exchange	0.00	21.20	21.32	NA	NA	0.95	22.15	22.27	NA	NA	XXX
75940		A	X-ray placement, vein filter	0.54	12.93	13.02	NA	NA	0.58	14.05	14.14	NA	NA	XXX
75940	26	A	X-ray placement, vein filter	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
75940	TC	A	X-ray placement, vein filter	0.00	12.74	12.81	NA	NA	0.56	13.30	13.37	NA	NA	XXX
75945		A	Intravascular us	0.40	4.76	4.81	NA	NA	0.24	5.40	5.45	NA	NA	XXX
75945	26	A	Intravascular us	0.40	0.15	0.17	0.15	0.17	0.03	0.58	0.60	0.58	0.60	XXX
75945	TC	A	Intravascular us	0.00	4.61	4.64	NA	NA	0.21	4.82	4.85	NA	NA	XXX
75946		A	Intravascular us add-on	0.40	2.47	2.50	NA	NA	0.13	3.00	3.03	NA	NA	ZZZ
75946	26	A	Intravascular us add-on	0.40	0.15	0.17	0.15	0.17	0.02	0.57	0.59	0.57	0.59	ZZZ
75946	TC	A	Intravascular us add-on	0.00	2.32	2.33	NA	NA	0.11	2.43	2.44	NA	NA	ZZZ
75960		A	Transcatheter intro, stent	0.82	15.36	15.48	NA	NA	0.70	16.88	17.00	NA	NA	XXX
75960	26	A	Transcatheter intro, stent	0.82	0.30	0.33	0.30	0.33	0.04	1.16	1.19	1.16	1.19	XXX
75960	TC	A	Transcatheter intro, stent	0.00	15.06	15.15	NA	NA	0.66	15.72	15.81	NA	NA	XXX
75961		A	Retrieval, broken catheter	4.25	12.10	12.31	NA	NA	0.63	16.98	17.19	NA	NA	XXX
75961	26	A	Retrieval, broken catheter	4.25	1.48	1.63	1.48	1.63	0.16	5.89	6.04	5.89	6.04	XXX
75961	TC	A	Retrieval, broken catheter	0.00	10.62	10.68	NA	NA	0.47	11.09	11.15	NA	NA	XXX
75962		A	Repair arterial blockage	0.54	16.11	16.22	NA	NA	0.73	17.38	17.49	NA	NA	XXX
75962	26	A	Repair arterial blockage	0.54	0.20	0.22	0.20	0.22	0.02	0.76	0.78	0.76	0.78	XXX
75962	TC	A	Repair arterial blockage	0.00	15.91	16.00	NA	NA	0.71	16.62	16.71	NA	NA	XXX
75964		A	Repair artery blockage, each	0.36	8.61	8.67	NA	NA	0.39	9.36	9.42	NA	NA	ZZZ
75964	26	A	Repair artery blockage, each	0.36	0.13	0.14	0.13	0.14	0.02	0.51	0.52	0.51	0.52	ZZZ
75964	TC	A	Repair artery blockage, each	0.00	8.48	8.53	NA	NA	0.37	8.85	8.90	NA	NA	ZZZ
75966		A	Repair arterial blockage	1.31	16.40	16.53	NA	NA	0.76	18.47	18.60	NA	NA	XXX
75966	26	A	Repair arterial blockage	1.31	0.49	0.53	0.49	0.53	0.05	1.85	1.89	1.85	1.89	XXX
75966	TC	A	Repair arterial blockage	0.00	15.91	16.00	NA	NA	0.71	16.62	16.71	NA	NA	XXX
75968		A	Repair artery blockage, each	0.36	8.62	8.68	NA	NA	0.38	9.36	9.42	NA	NA	ZZZ
75968	26	A	Repair artery blockage, each	0.36	0.14	0.15	0.14	0.15	0.01	0.51	0.52	0.51	0.52	ZZZ
75968	TC	A	Repair artery blockage, each	0.00	8.48	8.53	NA	NA	0.37	8.85	8.90	NA	NA	ZZZ
75970		A	Vascular biopsy	0.83	11.97	12.07	NA	NA	0.55	13.35	13.45	NA	NA	XXX
75970	26	A	Vascular biopsy	0.83	0.30	0.33	0.30	0.33	0.03	1.16	1.19	1.16	1.19	XXX
75970	TC	A	Vascular biopsy	0.00	11.67	11.74	NA	NA	0.52	12.19	12.26	NA	NA	XXX
75978		A	Repair venous blockage	0.54	16.10	16.27	NA	NA	0.73	17.37	17.54	NA	NA	XXX
75978	26	A	Repair venous blockage	0.54	0.19	0.27	0.19	0.27	0.02	0.75	0.83	0.75	0.83	XXX
75978	TC	A	Repair venous blockage	0.00	15.91	16.00	NA	NA	0.71	16.62	16.71	NA	NA	XXX
75980		A	Contrast xray exam bile duct	1.44	5.97	6.05	NA	NA	0.31	7.72	7.80	NA	NA	XXX
75980	26	A	Contrast xray exam bile duct	1.44	0.50	0.55	0.50	0.55	0.06	2.00	2.05	2.00	2.05	XXX
75980	TC	A	Contrast xray exam bile duct	0.00	5.47	5.50	NA	NA	0.25	5.72	5.75	NA	NA	XXX
75982		A	Contrast xray exam bile duct	1.44	6.67	6.76	NA	NA	0.34	8.45	8.54	NA	NA	XXX
75982	26	A	Contrast xray exam bile duct	1.44	0.50	0.55	0.50	0.55	0.06	2.00	2.05	2.00	2.05	XXX
75982	TC	A	Contrast xray exam bile duct	0.00	6.17	6.21	NA	NA	0.28	6.45	6.49	NA	NA	XXX
75984		A	Xray control catheter change	0.72	2.22	.26	NA	NA	0.12	3.06	3.10	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
75984	26	A	Xray control catheter change	0.72	0.25	0.28	0.25	0.28	0.03	1.00	1.03	1.00	1.03	XXX
75984	TC	A	Xray control catheter change	0.00	1.97	1.98	NA	NA	0.09	2.06	2.07	NA	NA	XXX
75989		A	Abscess drainage under x-ray	1.19	3.60	3.66	NA	NA	0.19	4.98	5.04	NA	NA	XXX
75989	26	A	Abscess drainage under x-ray	1.19	0.41	0.45	0.41	0.45	0.05	1.65	1.69	1.65	1.69	XXX
75989	TC	A	Abscess drainage under x-ray	0.00	3.19	3.21	NA	NA	0.14	3.33	3.35	NA	NA	XXX
75992		A	Atherectomy, x-ray exam	0.54	16.12	16.23	NA	NA	0.73	17.39	17.50	NA	NA	XXX
75992	26	A	Atherectomy, x-ray exam	0.54	0.21	0.23	0.21	0.23	0.02	0.77	0.79	0.77	0.79	XXX
75992	TC	A	Atherectomy, x-ray exam	0.00	15.91	16.00	NA	NA	0.71	16.62	16.71	NA	NA	XXX
75993		A	Atherectomy, x-ray exam	0.36	8.63	8.69	NA	NA	0.38	9.37	9.43	NA	NA	ZZZ
75993	26	A	Atherectomy, x-ray exam	0.36	0.15	0.16	0.15	0.16	0.01	0.52	0.53	0.52	0.53	ZZZ
75993	TC	A	Atherectomy, x-ray exam	0.00	8.48	8.53	NA	NA	0.37	8.85	8.90	NA	NA	ZZZ
75994		A	Atherectomy, x-ray exam	1.31	16.41	16.53	NA	NA	0.77	18.49	18.61	NA	NA	XXX
75994	26	A	Atherectomy, x-ray exam	1.31	0.50	0.53	0.50	0.53	0.06	1.87	1.90	1.87	1.90	XXX
75994	TC	A	Atherectomy, x-ray exam	0.00	15.91	16.00	NA	NA	0.71	16.62	16.71	NA	NA	XXX
75995		A	Atherectomy, x-ray exam	1.31	16.38	16.51	NA	NA	0.75	18.44	18.57	NA	NA	XXX
75995	26	A	Atherectomy, x-ray exam	1.31	0.47	0.51	0.47	0.51	0.04	1.82	1.86	1.82	1.86	XXX
75995	TC	A	Atherectomy, x-ray exam	0.00	15.91	16.00	NA	NA	0.71	16.62	16.71	NA	NA	XXX
75996		A	Atherectomy, x-ray exam	0.36	8.61	8.67	NA	NA	0.38	9.35	9.41	NA	NA	ZZZ
75996	26	A	Atherectomy, x-ray exam	0.36	0.13	0.14	0.13	0.14	0.01	0.50	0.51	0.50	0.51	ZZZ
75996	TC	A	Atherectomy, x-ray exam	0.00	8.48	8.53	NA	NA	0.37	8.85	8.90	NA	NA	ZZZ
76000		A	Fluoroscope examination	0.17	1.38	1.40	NA	NA	0.07	1.62	1.64	NA	NA	XXX
76000	26	A	Fluoroscope examination	0.17	0.06	0.07	0.06	0.07	0.01	0.24	0.25	0.24	0.25	XXX
76000	TC	A	Fluoroscope examination	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
76001		A	Fluoroscope exam, extensive	0.67	2.88	2.93	NA	NA	0.15	3.70	3.75	NA	NA	XXX
76001	26	A	Fluoroscope exam, extensive	0.67	0.23	0.26	0.23	0.26	0.03	0.93	0.96	0.93	0.96	XXX
76001	TC	A	Fluoroscope exam, extensive	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
76003		A	Needle localization by x-ray	0.54	1.50	1.53	NA	NA	0.08	2.12	2.15	NA	NA	XXX
76003	26	A	Needle localization by x-ray	0.54	0.18	0.20	0.18	0.20	0.02	0.74	0.76	0.74	0.76	XXX
76003	TC	A	Needle localization by x-ray	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
76005		A	Fluoroguide for spine inject	0.60	1.48	1.49	NA	NA	0.09	2.17	2.18	NA	NA	XXX
76005	26	A	Fluoroguide for spine inject	0.60	0.20	0.20	0.20	0.20	0.03	0.83	0.83	0.83	0.83	XXX
76005	TC	A	Fluoroguide for spine inject	0.00	1.28	1.29	NA	NA	0.06	1.34	1.35	NA	NA	XXX
76006		A	X-ray stress view	0.41	0.14	0.14	NA	NA	0.02	0.57	0.57	NA	NA	XXX
76010		A	X-ray, nose to rectum	0.18	0.59	0.60	NA	NA	0.03	0.80	0.81	NA	NA	XXX
76010	26	A	X-ray, nose to rectum	0.18	0.06	0.07	0.06	0.07	0.01	0.25	0.26	0.25	0.26	XXX
76010	TC	A	X-ray, nose to rectum	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
76020		A	X-rays for bone age	0.19	0.60	0.61	NA	NA	0.03	0.82	0.83	NA	NA	XXX
76020	26	A	X-rays for bone age	0.19	0.07	0.08	0.07	0.08	0.01	0.27	0.28	0.27	0.28	XXX
76020	TC	A	X-rays for bone age	0.00	0.53	0.53	NA	NA	0.02	0.55	0.55	NA	NA	XXX
76040		A	X-rays, bone evaluation	0.27	0.89	0.91	NA	NA	0.05	1.21	1.23	NA	NA	XXX
76040	26	A	X-rays, bone evaluation	0.27	0.10	0.11	0.10	0.11	0.01	0.38	0.39	0.38	0.39	XXX
76040	TC	A	X-rays, bone evaluation	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	XXX
76061		A	X-rays, bone survey	0.45	1.17	1.20	NA	NA	0.07	1.69	1.72	NA	NA	XXX
76061	26	A	X-rays, bone survey	0.45	0.16	0.18	0.16	0.18	0.02	0.63	0.65	0.63	0.65	XXX
76061	TC	A	X-rays, bone survey	0.00	1.01	1.02	NA	NA	0.05	1.06	1.07	NA	NA	XXX
76062		A	X-rays, bone survey	0.54	1.65	1.68	NA	NA	0.09	2.28	2.31	NA	NA	XXX
76062	26	A	X-rays, bone survey	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
76062	TC	A	X-rays, bone survey	0.00	1.46	1.47	NA	NA	0.07	1.53	1.54	NA	NA	XXX
76065		A	X-rays, bone evaluation	0.28	0.84	0.86	NA	NA	0.05	1.17	1.19	NA	NA	XXX
76065	26	A	X-rays, bone evaluation	0.28	0.10	0.11	0.10	0.11	0.01	0.39	0.40	0.39	0.40	XXX
76065	TC	A	X-rays, bone evaluation	0.00	0.74	0.75	NA	NA	0.04	0.78	0.79	NA	NA	XXX
76066		A	Joint(s) survey, single film	0.31	1.23	1.25	NA	NA	0.06	1.60	1.62	NA	NA	XXX
76066	26	A	Joint(s) survey, single film	0.31	0.11	0.12	0.11	0.12	0.01	0.43	0.44	0.43	0.44	XXX
76066	TC	A	Joint(s) survey, single film	0.00	1.12	1.13	NA	NA	0.05	1.17	1.18	NA	NA	XXX
76070		I	CT scan, bone density study	0.25	3.08	3.11	NA	NA	0.14	3.47	3.50	NA	NA	XXX
76070	26	I	CT scan, bone density study	0.25	0.10	0.11	0.10	0.11	0.01	0.36	0.37	0.36	0.37	XXX
76070	TC	I	CT scan, bone density study	0.00	2.98	3.00	NA	NA	0.13	3.11	3.13	NA	NA	XXX
76075		A	Dual energy x-ray study	0.30	3.24	3.27	NA	NA	0.15	3.69	3.72	NA	NA	XXX
76075	26	A	Dual energy x-ray study	0.30	0.11	0.12	0.11	0.12	0.01	0.42	0.43	0.42	0.43	XXX
76075	TC	A	Dual energy x-ray study	0.00	3.13	3.15	NA	NA	0.14	3.27	3.29	NA	NA	XXX
76076		A	Dual energy x-ray study	0.22	0.84	0.86	NA	NA	0.05	1.11	1.13	NA	NA	XXX
76076	26	A	Dual energy x-ray study	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
76076	TC	A	Dual energy x-ray study	0.00	0.76	0.77	NA	NA	0.04	0.80	0.81	NA	NA	XXX
76078		A	Photodensitometry	0.20	0.83	0.85	NA	NA	0.05	1.08	1.10	NA	NA	XXX
76078	26	A	Photodensitometry	0.20	0.07	0.08	0.07	0.08	0.01	0.28	0.29	0.28	0.29	XXX
76078	TC	A	Photodensitometry	0.00	0.76	0.77	NA	NA	0.04	0.80	0.81	NA	NA	XXX
76080		A	X-ray exam of fistula	0.54	1.26	1.29	NA	NA	0.07	1.87	1.90	NA	NA	XXX
76080	26	A	X-ray exam of fistula	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
76080	TC	A	X-ray exam of fistula	0.00	1.07	1.08	NA	NA	0.05	1.12	1.13	NA	NA	XXX
76086		A	X-ray of mammary duct	0.36	2.78	2.81	NA	NA	0.13	3.27	3.30	NA	NA	XXX
76086	26	A	X-ray of mammary duct	0.36	0.13	0.14	0.13	0.14	0.01	0.50	0.51	0.50	0.51	XXX
76086	TC	A	X-ray of mammary duct	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
76088		A	X-ray of mammary ducts	0.45	3.86	3.90	NA	NA	0.18	4.49	4.53	NA	NA	XXX
76088	26	A	X-ray of mammary ducts	0.45	0.16	0.18	0.16	0.18	0.02	0.63	0.65	0.63	0.65	XXX
76088	TC	A	X-ray of mammary ducts	0.00	3.70	3.72	NA	NA	0.16	3.86	3.88	NA	NA	XXX
76090		A	Mammogram, one breast	0.58	1.27	1.26	NA	NA	0.07	1.92	1.91	NA	NA	XXX
76090	26	A	Mammogram, one breast	0.58	0.20	0.18	0.20	0.18	0.02	0.80	0.78	0.80	0.78	XXX
76090	TC	A	Mammogram, one breast	0.00	1.07	1.08	NA	NA	0.05	1.12	1.13	NA	NA	XXX
76091		A	Mammogram, both breasts	0.69	1.56	1.56	NA	NA	0.09	2.34	2.34	NA	NA	XXX
76091	26	A	Mammogram, both breasts	0.69	0.24	0.23	0.24	0.23	0.03	0.96	0.95	0.96	0.95	XXX
76091	TC	A	Mammogram, both breasts	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
76092		X	Mamm0gram, screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
76093		A	Magnetic image, breast	1.63	18.39	18.54	NA	NA	0.84	20.86	21.01	NA	NA	XXX
76093	26	A	Magnetic image, breast	1.63	0.57	0.62	0.57	0.62	0.06	2.26	2.31	2.26	2.31	XXX
76093	TC	A	Magnetic image, breast	0.00	17.82	17.92	NA	NA	0.78	18.60	18.70	NA	NA	XXX
76094		A	Magnetic image, both breasts	1.63	24.74	24.93	NA	NA	1.12	27.49	27.68	NA	NA	XXX
76094	26	A	Magnetic image, both breasts	1.63	0.57	0.62	0.57	0.62	0.06	2.26	2.31	2.26	2.31	XXX
76094	TC	A	Magnetic image, both breasts	0.00	24.17	24.31	NA	NA	1.06	25.23	25.37	NA	NA	XXX
76095		A	Stereotactic breast biopsy	1.59	7.80	7.89	NA	NA	0.40	9.79	9.88	NA	NA	XXX
76095	26	A	Stereotactic breast biopsy	1.59	0.56	0.61	0.56	0.61	0.08	2.23	2.28	2.23	2.28	XXX
76095	TC	A	Stereotactic breast biopsy	0.00	7.24	7.28	NA	NA	0.32	7.56	7.60	NA	NA	XXX
76096		A	X-ray of needle wire, breast	0.56	1.52	1.55	NA	NA	0.08	2.16	2.19	NA	NA	XXX
76096	26	A	X-ray of needle wire, breast	0.56	0.20	0.22	0.20	0.22	0.02	0.78	0.80	0.78	0.80	XXX
76096	TC	A	X-ray of needle wire, breast	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
76098		A	X-ray exam, breast specimen	0.16	0.48	0.49	NA	NA	0.03	0.67	0.68	NA	NA	XXX
76098	26	A	X-ray exam, breast specimen	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
76098	TC	A	X-ray exam, breast specimen	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
76100		A	X-ray exam of body section	0.58	1.46	1.49	NA	NA	0.08	2.12	2.15	NA	NA	XXX
76100	26	A [3]	X-ray exam of body section	0.58	0.20	0.22	0.20	0.22	0.02	0.80	0.82	0.80	0.82	XXX
76100	TC	A	X-ray exam of body section	0.00	1.26	1.27	NA	NA	0.06	1.32	1.33	NA	NA	XXX
76101		A	Complex body section x-ray	0.58	1.64	1.67	NA	NA	0.09	2.31	2.34	NA	NA	XXX
76101	26	A	Complex body section x-ray	0.58	0.20	0.22	0.20	0.22	0.02	0.80	0.82	0.80	0.82	XXX
76101	TC	A	Complex body section x-ray	0.00	1.44	1.45	NA	NA	0.07	1.51	1.52	NA	NA	XXX
76102		A	Complex body section x-rays	0.58	1.95	1.98	NA	NA	0.11	2.64	2.67	NA	NA	XXX
76102	26	A	Complex body section x-rays	0.58	0.20	0.22	0.20	0.22	0.02	0.80	0.82	0.80	0.82	XXX
76102	TC	A	Complex body section x-rays	0.00	1.75	1.76	NA	NA	0.09	1.84	1.85	NA	NA	XXX
76120		A	Cinematic x-rays	0.38	1.21	1.23	NA	NA	0.07	1.66	1.68	NA	NA	XXX
76120	26	A	Cinematic x-rays	0.38	0.14	0.15	0.14	0.15	0.02	0.54	0.55	0.54	0.55	XXX
76120	TC	A	Cinematic x-rays	0.00	1.07	1.08	NA	NA	0.05	1.12	1.13	NA	NA	XXX
76125		A	Cinematic x-rays add-on	0.27	0.89	0.91	NA	NA	0.05	1.21	1.23	NA	NA	ZZZ
76125	26	A	Cinematic x-rays add-on	0.27	0.10	0.11	0.10	0.11	0.01	0.38	0.39	0.38	0.39	ZZZ
76125	TC	A	Cinematic x-rays add-on	0.00	0.79	0.80	NA	NA	0.04	0.83	0.84	NA	NA	ZZZ
76140		I	X-ray consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76150		A	X-ray exam, dry process	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
76350		C	Special x-ray contrast study	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
76355		A	CAT scan for localization	1.21	8.77	8.86	NA	NA	0.41	10.39	10.48	NA	NA	XXX
76355	26	A	CAT scan for localization	1.21	0.42	0.46	0.42	0.46	0.05	1.68	1.72	1.68	1.72	XXX
76355	TC	A	CAT scan for localization	0.00	8.35	8.40	NA	NA	0.36	8.71	8.76	NA	NA	XXX
76360		A	CAT scan for needle biopsy	1.16	8.75	8.84	NA	NA	0.41	10.32	10.41	NA	NA	XXX
76360	26	A	CAT scan for needle biopsy	1.16	0.40	0.44	0.40	0.44	0.05	1.61	1.65	1.61	1.65	XXX
76360	TC	A	CAT scan for needle biopsy	0.00	8.35	8.40	NA	NA	0.36	8.71	8.76	NA	NA	XXX
76365		A	CAT scan for cyst aspiration	1.16	8.75	8.84	NA	NA	0.41	10.32	10.41	NA	NA	XXX
76365	26	A	CAT scan for cyst aspiration	1.16	0.40	0.44	0.40	0.44	0.05	1.61	1.65	1.61	1.65	XXX
76365	TC	A	CAT scan for cyst aspiration	0.00	8.35	8.40	NA	NA	0.36	8.71	8.76	NA	NA	XXX
76370		A	CAT scan for therapy guide	0.85	3.27	3.32	NA	NA	0.16	4.28	4.33	NA	NA	XXX
76370	26	A	CAT scan for therapy guide	0.85	0.29	0.32	0.29	0.32	0.03	1.17	1.20	1.17	1.20	XXX
76370	TC	A	CAT scan for therapy guide	0.00	2.98	3.00	NA	NA	0.13	3.11	3.13	NA	NA	XXX
76375		A	3d/holograph reconstr add-on	0.16	3.64	3.67	NA	NA	0.16	3.96	3.99	NA	NA	XXX
76375	26	A	3d/holograph reconstr add-on	0.16	0.06	0.07	0.06	0.07	0.01	0.23	0.24	0.23	0.24	XXX
76375	TC	A	3d/holograph reconstr add-on	0.00	3.58	3.60	NA	NA	0.15	3.73	3.75	NA	NA	XXX
76380		A	CAT scan follow-up study	0.98	3.88	3.94	NA	NA	0.19	5.05	5.11	NA	NA	XXX
76380	26	A	CAT scan follow-up study	0.98	0.34	0.38	0.34	0.38	0.04	1.36	1.40	1.36	1.40	XXX
76380	TC	A	CAT scan follow-up study	0.00	3.54	3.56	NA	NA	0.15	3.69	3.71	NA	NA	XXX
76390		A	Mr spectroscopy	1.40	11.82	11.95	NA	NA	0.56	13.78	13.91	NA	NA	XXX
76390	26	A	Mr spectroscopy	1.40	0.49	0.55	0.49	0.55	0.06	1.95	2.01	1.95	2.01	XXX
76390	TC	A	Mr spectroscopy	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
76400		A	Magnetic image, bone marrow	1.60	11.89	12.02	NA	NA	0.56	14.05	14.18	NA	NA	XXX
76400	26	A	Magnetic image, bone marrow	1.60	0.56	0.62	0.56	0.62	0.06	2.22	2.28	2.22	2.28	XXX
76400	TC	A	Magnetic image, bone marrow	0.00	11.33	11.40	NA	NA	0.50	11.83	11.90	NA	NA	XXX
76499		C	Radiographic procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
76499	26	C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76499	TC	C	Radiographic procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
76506		A	Echo exam of head	0.63	1.68	1.71	NA	NA	0.10	2.41	2.44	NA	NA	XXX
76506	26	A	Echo exam of head	0.63	0.24	0.26	0.24	0.26	0.03	0.90	0.92	0.90	0.92	XXX
76506	TC	A	Echo exam of head	0.00	1.44	1.45	NA	NA	0.07	1.51	1.52	NA	NA	XXX
76511		A	Echo exam of eye	0.94	1.69	1.66	NA	NA	0.09	2.72	2.69	NA	NA	XXX
76511	26	A	Echo exam of eye	0.94	0.43	0.39	0.43	0.39	0.03	1.40	1.36	1.40	1.36	XXX
76511	TC	A	Echo exam of eye	0.00	1.26	1.27	NA	NA	0.06	1.32	1.33	NA	NA	XXX
76512		A	Echo exam of eye	0.66	1.84	1.86	NA	NA	0.10	2.60	2.62	NA	NA	XXX
76512	26	A	Echo exam of eye	0.66	0.31	0.32	0.31	0.32	0.02	0.99	1.00	0.99	1.00	XXX
76512	TC	A	Echo exam of eye	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76513		A	Echo exam of eye, water bath	0.66	1.83	1.85	NA	NA	0.10	2.59	2.61	NA	NA	XXX
76513	26	A	Echo exam of eye, water bath	0.66	0.30	0.31	0.30	0.31	0.02	0.98	0.99	0.98	0.99	XXX
76513	TC	A	Echo exam of eye, water bath	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76516		A	Echo exam of eye	0.54	1.52	1.53	NA	NA	0.08	2.14	2.15	NA	NA	XXX
76516	26	A	Echo exam of eye	0.54	0.26	0.26	0.26	0.26	0.02	0.82	0.82	0.82	0.82	XXX
76516	TC	A	Echo exam of eye	0.00	1.26	1.27	NA	NA	0.06	1.32	1.33	NA	NA	XXX
76519		A	Echo exam of eye	0.54	1.52	1.53	NA	NA	0.08	2.14	2.15	NA	NA	XXX
76519	26	A	Echo exam of eye	0.54	0.26	0.26	0.26	0.26	0.02	0.82	0.82	0.82	0.82	XXX
76519	TC	A	Echo exam of eye	0.00	1.26	1.27	NA	NA	0.06	1.32	1.33	NA	NA	XXX
76529		A	Echo exam of eye	0.57	1.65	1.66	NA	NA	0.09	2.31	2.32	NA	NA	XXX
76529	26	A	Echo exam of eye	0.57	0.27	0.27	0.27	0.27	0.02	0.86	0.86	0.86	0.86	XXX
76529	TC	A	Echo exam of eye	0.00	1.38	1.39	NA	NA	0.07	1.45	1.46	NA	NA	XXX
76536		A	Echo exam of head and neck	0.56	1.64	1.67	NA	NA	0.09	2.29	2.32	NA	NA	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
76536	26	A	Echo exam of head and neck	0.56	0.20	0.22	0.20	0.22	0.02	0.78	0.80	0.78	0.80	XXX
76536	TC	A	Echo exam of head and neck	0.00	1.44	1.45	NA	NA	0.07	1.51	1.52	NA	NA	XXX
76604		A	Echo exam of chest	0.55	1.51	1.54	NA	NA	0.08	2.14	2.17	NA	NA	XXX
76604	26	A	Echo exam of chest	0.55	0.19	0.21	0.19	0.21	0.02	0.76	0.78	0.76	0.78	XXX
76604	TC	A	Echo exam of chest	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
76645		A	Echo exam of breast(s)	0.54	1.26	1.29	NA	NA	0.07	1.87	1.90	NA	NA	XXX
76645	26	A	Echo exam of breast(s)	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
76645	TC	A	Echo exam of breast(s)	0.00	1.07	1.08	NA	NA	0.05	1.12	1.13	NA	NA	XXX
76700		A	Echo exam of abdomen	0.81	2.27	2.31	NA	NA	0.12	3.20	3.24	NA	NA	XXX
76700	26	A	Echo exam of abdomen	0.81	0.28	0.31	0.28	0.31	0.03	1.12	1.15	1.12	1.15	XXX
76700	TC	A	Echo exam of abdomen	0.00	1.99	2.00	NA	NA	0.09	2.08	2.09	NA	NA	XXX
76705		A	Echo exam of abdomen	0.59	1.65	1.68	NA	NA	0.09	2.33	2.36	NA	NA	XXX
76705	26	A	Echo exam of abdomen	0.59	0.21	0.23	0.21	0.23	0.02	0.82	0.84	0.82	0.84	XXX
76705	TC	A	Echo exam of abdomen	0.00	1.44	1.45	NA	NA	0.07	1.51	1.52	NA	NA	XXX
76770		A	Echo exam abdomen back wall	0.74	2.25	2.29	NA	NA	0.12	3.11	3.15	NA	NA	XXX
76770	26	A	Echo exam abdomen back wall	0.74	0.26	0.29	0.26	0.29	0.03	1.03	1.06	1.03	1.06	XXX
76770	TC	A	Echo exam abdomen back wall	0.00	1.99	2.00	NA	NA	0.09	2.08	2.09	NA	NA	XXX
76775		A	Echo exam abdomen back wall	0.58	1.64	1.67	NA	NA	0.09	2.31	2.34	NA	NA	XXX
76775	26	A	Echo exam abdomen back wall	0.58	0.20	0.22	0.20	0.22	0.02	0.80	0.82	0.80	0.82	XXX
76775	TC	A	Echo exam abdomen back wall	0.00	1.44	1.45	NA	NA	0.07	1.51	1.52	NA	NA	XXX
76778		A	Echo exam kidney transplant	0.74	2.25	2.29	NA	NA	0.12	3.11	3.15	NA	NA	XXX
76778	26	A	Echo exam kidney transplant	0.74	0.26	0.29	0.26	0.29	0.03	1.03	1.06	1.03	1.06	XXX
76778	TC	A	Echo exam kidney transplant	0.00	1.99	2.00	NA	NA	0.09	2.08	2.09	NA	NA	XXX
76800		A	Echo exam spinal canal	1.13	1.81	1.86	NA	NA	0.12	3.06	3.11	NA	NA	XXX
76800	26	A	Echo exam spinal canal	1.13	0.37	0.41	0.37	0.41	0.05	1.55	1.59	1.55	1.59	XXX
76800	TC	A	Echo exam spinal canal	0.00	1.44	1.45	NA	NA	0.07	1.51	1.52	NA	NA	XXX
76805		A	Echo exam of pregnant uterus	0.99	2.47	2.52	NA	NA	0.14	3.60	3.65	NA	NA	XXX
76805	26	A	Echo exam of pregnant uterus	0.99	0.35	0.39	0.35	0.39	0.04	1.38	1.42	1.38	1.42	XXX
76805	TC	A	Echo exam of pregnant uterus	0.00	2.12	2.13	NA	NA	0.10	2.22	2.23	NA	NA	XXX
76810		A	Echo exam of pregnant uterus	1.97	4.95	5.04	NA	NA	0.26	7.18	7.27	NA	NA	XXX
76810	26	A	Echo exam of pregnant uterus	1.97	0.71	0.77	0.71	0.77	0.07	2.75	2.81	2.75	2.81	XXX
76810	TC	A	Echo exam of pregnant uterus	0.00	4.24	4.27	NA	NA	0.19	4.43	4.46	NA	NA	XXX
76815		A	Echo exam of pregnant uterus	0.65	1.68	1.71	NA	NA	0.09	2.42	2.45	NA	NA	XXX
76815	26	A	Echo exam of pregnant uterus	0.65	0.24	0.26	0.24	0.26	0.02	0.91	0.93	0.91	0.93	XXX
76815	TC	A	Echo exam of pregnant uterus	0.00	1.44	1.45	NA	NA	0.07	1.51	1.52	NA	NA	XXX
76816		A	Echo exam follow-up/repeat	0.57	1.33	1.36	NA	NA	0.07	1.97	2.00	NA	NA	XXX
76816	26	A	Echo exam follow-up/repeat	0.57	0.21	0.23	0.21	0.23	0.02	0.80	0.82	0.80	0.82	XXX
76816	TC	A	Echo exam follow-up/repeat	0.00	1.12	1.13	NA	NA	0.05	1.17	1.18	NA	NA	XXX
76818		A	Fetal biophysical profile	0.77	1.92	1.95	NA	NA	0.11	2.80	2.83	NA	NA	XXX
76818	26	A	Fetal biophysical profile	0.77	0.29	0.31	0.29	0.31	0.03	1.09	1.11	1.09	1.11	XXX
76818	TC	A	Fetal biophysical profile	0.00	1.63	1.64	NA	NA	0.08	1.71	1.72	NA	NA	XXX
76825		A	Echo exam of fetal heart	1.67	2.63	2.58	NA	NA	0.15	4.45	4.40	NA	NA	XXX
76825	26	A	Echo exam of fetal heart	1.67	0.64	0.58	0.64	0.58	0.06	2.37	2.31	2.37	2.31	XXX
76825	TC	A	Echo exam of fetal heart	0.00	1.99	2.00	NA	NA	0.09	2.08	2.09	NA	NA	XXX
76826		A	Echo exam of fetal heart	0.83	1.03	1.15	NA	NA	0.07	1.93	2.05	NA	NA	XXX
76826	26	A	Echo exam of fetal heart	0.83	0.32	0.43	0.32	0.43	0.03	1.18	1.29	1.18	1.29	XXX
76826	TC	A	Echo exam of fetal heart	0.00	0.71	0.72	NA	NA	0.04	0.75	0.76	NA	NA	XXX
76827		A	Echo exam of fetal heart	0.58	1.96	2.09	NA	NA	0.12	2.66	2.79	NA	NA	XXX
76827	26	A	Echo exam of fetal heart	0.58	0.22	0.34	0.22	0.34	0.02	0.82	0.94	0.82	0.94	XXX
76827	TC	A	Echo exam of fetal heart	0.00	1.74	1.75	NA	NA	0.10	1.84	1.85	NA	NA	XXX
76828		A	Echo exam of fetal heart	0.56	1.34	1.37	NA	NA	0.09	1.99	2.02	NA	NA	XXX
76828	26	A	Echo exam of fetal heart	0.56	0.22	0.24	0.22	0.24	0.02	0.80	0.82	0.80	0.82	XXX
76828	TC	A	Echo exam of fetal heart	0.00	1.12	1.13	NA	NA	0.07	1.19	1.20	NA	NA	XXX
76830		A	Echo exam, transvaginal	0.69	1.77	1.81	NA	NA	0.11	2.57	2.61	NA	NA	XXX
76830	26	A	Echo exam, transvaginal	0.69	0.24	0.27	0.24	0.27	0.03	0.96	0.99	0.96	0.99	XXX
76830	TC	A	Echo exam, transvaginal	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76831		A	Echo exam, uterus	0.72	1.79	1.82	NA	NA	0.11	2.62	2.65	NA	NA	XXX
76831	26	A	Echo exam, uterus	0.72	0.26	0.28	0.26	0.28	0.03	1.01	1.03	1.01	1.03	XXX
76831	TC	A	Echo exam, uterus	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76856		A	Echo exam of pelvis	0.69	1.77	1.81	NA	NA	0.11	2.57	2.61	NA	NA	XXX
76856	26	A	Echo exam of pelvis	0.69	0.24	0.27	0.24	0.27	0.03	0.96	0.99	0.96	0.99	XXX
76856	TC	A	Echo exam of pelvis	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76857		A	Echo exam of pelvis	0.38	1.20	1.22	NA	NA	0.07	1.65	1.67	NA	NA	XXX
76857	26	A	Echo exam of pelvis	0.38	0.13	0.14	0.13	0.14	0.02	0.53	0.54	0.53	0.54	XXX
76857	TC	A	Echo exam of pelvis	0.00	1.07	1.08	NA	NA	0.05	1.12	1.13	NA	NA	XXX
76870		A	Echo exam of scrotum	0.64	1.75	1.78	NA	NA	0.11	2.50	2.53	NA	NA	XXX
76870	26	A	Echo exam of scrotum	0.64	0.22	0.24	0.22	0.24	0.03	0.89	0.91	0.89	0.91	XXX
76870	TC	A	Echo exam of scrotum	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76872		A	Echo exam, transrectal	0.69	1.76	1.80	NA	NA	0.11	2.56	2.60	NA	NA	XXX
76872	26	A	Echo exam, transrectal	0.69	0.23	0.26	0.23	0.26	0.03	0.95	0.98	0.95	0.98	XXX
76872	TC	A	Echo exam, transrectal	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76873		A	Echograp trans r, pros study	1.38	2.53	2.54	NA	NA	0.20	4.11	4.12	NA	NA	XXX
76873	26	A	Echograp trans r, pros study	1.38	0.47	0.47	0.47	0.47	0.07	1.92	1.92	1.92	1.92	XXX
76873	TC	A	Echograp trans r, pros study	0.00	2.06	2.07	NA	NA	0.13	2.19	2.20	NA	NA	XXX
76880		A	Echo exam of extremity	0.59	1.65	1.68	NA	NA	0.09	2.33	2.36	NA	NA	XXX
76880	26	A	Echo exam of extremity	0.59	0.21	0.23	0.21	0.23	0.02	0.82	0.84	0.82	0.84	XXX
76880	TC	A	Echo exam of extremity	0.00	1.44	1.45	NA	NA	0.07	1.51	1.52	NA	NA	XXX
76885		A	Echo exam, infant hips	0.74	1.79	1.82	NA	NA	0.11	2.64	2.67	NA	NA	XXX
76885	26	A	Echo exam, infant hips	0.74	0.26	0.28	0.26	0.28	0.03	1.03	1.05	1.03	1.05	XXX
76885	TC	A	Echo exam, infant hips	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76886		A	Echo exam, infant hips	0.62	1.66	1.69	NA	NA	0.09	2.37	2.40	NA	NA	XXX
76886	26	A	Echo exam, infant hips	0.62	0.22	0.24	0.22	0.24	0.02	0.86	0.88	0.86	0.88	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
76886	TC	A	Echo exam, infant hips	0.00	1.44	1.45	NA	NA	0.07	1.51	1.52	NA	NA	XXX
76930		A	Echo guide for heart sac tap	0.67	1.80	1.83	NA	NA	0.10	2.57	2.60	NA	NA	XXX
76930	26	A	Echo guide for heart sac tap	0.67	0.27	0.29	0.27	0.29	0.02	0.96	0.98	0.96	0.98	XXX
76930	TC	A	Echo guide for heart sac tap	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76932		A	Echo guide for heart biopsy	0.67	1.80	1.83	NA	NA	0.10	2.57	2.60	NA	NA	XXX
76932	26	A	Echo guide for heart biopsy	0.67	0.27	0.29	0.27	0.29	0.02	0.96	0.98	0.96	0.98	XXX
76932	TC	A	Echo guide for heart biopsy	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76934		A	Echo guide for chest tap	0.67	1.76	1.80	NA	NA	0.11	2.54	2.58	NA	NA	XXX
76934	26	A	Echo guide for chest tap	0.67	0.23	0.26	0.23	0.26	0.03	0.93	0.96	0.93	0.96	XXX
76934	TC	A	Echo guide for chest tap	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76936		A	Echo guide for artery repair	1.99	7.07	7.27	NA	NA	0.40	9.46	9.66	NA	NA	XXX
76936	26	A	Echo guide for artery repair	1.99	0.71	0.87	0.71	0.87	0.11	2.81	2.97	2.81	2.97	XXX
76936	TC	A	Echo guide for artery repair	0.00	6.36	6.40	NA	NA	0.29	6.65	6.69	NA	NA	XXX
76938		A	Echo exam for drainage	0.67	1.76	1.80	NA	NA	0.11	2.54	2.58	NA	NA	XXX
76938	26	A	Echo exam for drainage	0.67	0.23	0.26	0.23	0.26	0.03	0.93	0.96	0.93	0.96	XXX
76938	TC	A	Echo exam for drainage	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76941		A	Echo guide for transfusion	1.34	2.07	2.11	NA	NA	0.12	3.53	3.57	NA	NA	XXX
76941	26	A	Echo guide for transfusion	1.34	0.53	0.56	0.53	0.56	0.05	1.92	1.95	1.92	1.95	XXX
76941	TC	A	Echo guide for transfusion	0.00	1.54	1.55	NA	NA	0.07	1.61	1.62	NA	NA	XXX
76942		A	Echo guide for biopsy	0.67	1.76	1.80	NA	NA	0.11	2.54	2.58	NA	NA	XXX
76942	26	A	Echo guide for biopsy	0.67	0.23	0.26	0.23	0.26	0.03	0.93	0.96	0.93	0.96	XXX
76942	TC	A	Echo guide for biopsy	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76945		A	Echo guide, villus sampling	0.67	1.77	1.89	NA	NA	0.10	2.54	2.66	NA	NA	XXX
76945	26	A	Echo guide, villus sampling	0.67	0.23	0.34	0.23	0.34	0.03	0.93	1.04	0.93	1.04	XXX
76945	TC	A	Echo guide, villus sampling	0.00	1.54	1.55	NA	NA	0.07	1.61	1.62	NA	NA	XXX
76946		A	Echo guide for amniocentesis	0.38	1.67	1.69	NA	NA	0.09	2.14	2.16	NA	NA	XXX
76946	26	A	Echo guide for amniocentesis	0.38	0.14	0.15	0.14	0.15	0.01	0.53	0.54	0.53	0.54	XXX
76946	TC	A	Echo guide for amniocentesis	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76948		A	Echo guide, ova aspiration	0.38	1.66	1.68	NA	NA	0.10	2.14	2.16	NA	NA	XXX
76948	26	A	Echo guide, ova aspiration	0.38	0.13	0.14	0.13	0.14	0.02	0.53	0.54	0.53	0.54	XXX
76948	TC	A	Echo guide, ova aspiration	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76950		A	Echo guidance radiotherapy	0.58	1.52	1.55	NA	NA	0.09	2.19	2.22	NA	NA	XXX
76950	26	A	Echo guidance radiotherapy	0.58	0.20	0.22	0.20	0.22	0.03	0.81	0.83	0.81	0.83	XXX
76950	TC	A	Echo guidance radiotherapy	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
76960		A	Echo guidance radiotherapy	0.58	1.52	1.55	NA	NA	0.09	2.19	2.22	NA	NA	XXX
76960	26	A	Echo guidance radiotherapy	0.58	0.20	0.22	0.20	0.22	0.03	0.81	0.83	0.81	0.83	XXX
76960	TC	A	Echo guidance radiotherapy	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
76965		A	Echo guidance radiotherapy	1.34	6.08	6.40	NA	NA	0.32	7.74	8.06	NA	NA	XXX
76965	26	A	Echo guidance radiotherapy	1.34	0.45	0.74	0.45	0.74	0.07	1.86	2.15	1.86	2.15	XXX
76965	TC	A	Echo guidance radiotherapy	0.00	5.63	5.66	NA	NA	0.25	5.88	5.91	NA	NA	XXX
76970		A	Ultrasound exam follow-up	0.40	1.21	1.24	NA	NA	0.07	1.68	1.71	NA	NA	XXX
76970	26	A	Ultrasound exam follow-up	0.40	0.14	0.16	0.14	0.16	0.02	0.56	0.58	0.56	0.58	XXX
76970	TC	A	Ultrasound exam follow-up	0.00	1.07	1.08	NA	NA	0.05	1.12	1.13	NA	NA	XXX
76975		A	GI endoscopic ultrasound	0.81	1.81	1.84	NA	NA	0.11	2.73	2.76	NA	NA	XXX
76975	26	A	GI endoscopic ultrasound	0.81	0.28	0.30	0.28	0.30	0.03	1.12	1.14	1.12	1.14	XXX
76975	TC	A	GI endoscopic ultrasound	0.00	1.53	1.54	NA	NA	0.08	1.61	1.62	NA	NA	XXX
76977		A	Us bone density measure	0.05	0.86	0.87	NA	NA	0.05	0.96	0.97	NA	NA	XXX
76977	26	A	Us bone density measure	0.05	0.02	0.02	0.02	0.02	0.01	0.08	0.08	0.08	0.08	XXX
76977	TC	A	Us bone density measure	0.00	0.84	0.85	NA	NA	0.04	0.88	0.89	NA	NA	XXX
76986		A	Echo exam at surgery	1.20	3.08	3.14	NA	NA	0.18	4.46	4.52	NA	NA	XXX
76986	26	A	Echo exam at surgery	1.20	0.43	0.47	0.43	0.47	0.06	1.69	1.73	1.69	1.73	XXX
76986	TC	A	Echo exam at surgery	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
76999		C	Echo examination procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
76999	26	C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76999	TC	C	Echo examination procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77261		A	Radiation therapy planning	1.39	0.55	0.58	0.55	0.58	0.05	1.99	2.02	1.99	2.02	XXX
77262		A	Radiation therapy planning	2.11	0.81	0.86	0.81	0.86	0.08	3.00	3.05	3.00	3.05	XXX
77263		A	Radiation therapy planning	3.14	1.20	1.28	1.20	1.28	0.12	4.46	4.54	4.46	4.54	XXX
77280		A	Set radiation therapy field	0.70	3.75	3.80	NA	NA	0.18	4.63	4.68	NA	NA	XXX
77280	26	A	Set radiation therapy field	0.70	0.24	0.27	0.24	0.27	0.03	0.97	1.00	0.97	1.00	XXX
77280	TC	A	Set radiation therapy field	0.00	3.51	3.53	NA	NA	0.15	3.66	3.68	NA	NA	XXX
77285		A	Set radiation therapy field	1.05	5.99	6.06	NA	NA	0.30	7.34	7.41	NA	NA	XXX
77285	26	A	Set radiation therapy field	1.05	0.36	0.40	0.36	0.40	0.04	1.45	1.49	1.45	1.49	XXX
77285	TC	A	Set radiation therapy field	0.00	5.63	5.66	NA	NA	0.26	5.89	5.92	NA	NA	XXX
77290		A	Set radiation therapy field	1.56	7.12	7.22	NA	NA	0.36	9.04	9.14	NA	NA	XXX
77290	26	A	Set radiation therapy field	1.56	0.54	0.60	0.54	0.60	0.06	2.16	2.22	2.16	2.22	XXX
77290	TC	A	Set radiation therapy field	0.00	6.58	6.62	NA	NA	0.30	6.88	6.92	NA	NA	XXX
77295		A	Set radiation therapy field	4.57	29.82	30.15	NA	NA	1.44	35.83	36.16	NA	NA	XXX
77295	26	A	Set radiation therapy field	4.57	1.58	1.75	1.58	1.75	0.17	6.32	6.49	6.32	6.49	XXX
77295	TC	A	Set radiation therapy field	0.00	28.24	28.40	NA	NA	1.27	29.51	29.67	NA	NA	XXX
77299		C	Radiation therapy planning	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77299	26	C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77299	TC	C	Radiation therapy planning	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77300		A	Radiation therapy dose plan	0.62	1.57	1.60	NA	NA	0.08	2.27	2.30	NA	NA	XXX
77300	26	A	Radiation therapy dose plan	0.62	0.21	0.23	0.21	0.23	0.02	0.85	0.87	0.85	0.87	XXX
77300	TC	A	Radiation therapy dose plan	0.00	1.36	1.37	NA	NA	0.06	1.42	1.43	NA	NA	XXX
77305		A	Radiation therapy dose plan	0.70	2.12	2.16	NA	NA	0.12	2.94	2.98	NA	NA	XXX
77305	26	A	Radiation therapy dose plan	0.70	0.24	0.27	0.24	0.27	0.03	0.97	1.00	0.97	1.00	XXX
77305	TC	A	Radiation therapy dose plan	0.00	1.88	1.89	NA	NA	0.09	1.97	1.98	NA	NA	XXX
77310		A	Radiation therapy dose plan	1.05	2.72	2.77	NA	NA	0.15	3.92	3.97	NA	NA	XXX
77310	26	A	Radiation therapy dose plan	1.05	0.36	0.40	0.36	0.40	0.04	1.45	1.49	1.45	1.49	XXX
77310	TC	A	Radiation therapy dose plan	0.00	2.36	2.37	NA	NA	0.11	2.47	2.48	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
77315		A	Radiation therapy dose plan	1.56	3.23	3.31	NA	NA	0.18	4.97	5.05	NA	NA	XXX
77315	26	A	Radiation therapy dose plan	1.56	0.54	0.60	0.54	0.60	0.06	2.16	2.22	2.16	2.22	XXX
77315	TC	A	Radiation therapy dose plan	0.00	2.69	2.71	NA	NA	0.12	2.81	2.83	NA	NA	XXX
77321		A	Radiation therapy port plan	0.95	4.42	4.48	NA	NA	0.22	5.59	5.65	NA	NA	XXX
77321	26	A	Radiation therapy port plan	0.95	0.33	0.37	0.33	0.37	0.04	1.32	1.36	1.32	1.36	XXX
77321	TC	A	Radiation therapy port plan	0.00	4.09	4.11	NA	NA	0.18	4.27	4.29	NA	NA	XXX
77326		A	Radiation therapy dose plan	0.93	2.71	2.76	NA	NA	0.15	3.79	3.84	NA	NA	XXX
77326	26	A	Radiation therapy dose plan	0.93	0.32	0.36	0.32	0.36	0.04	1.29	1.33	1.29	1.33	XXX
77326	TC	A	Radiation therapy dose plan	0.00	2.39	2.40	NA	NA	0.11	2.50	2.51	NA	NA	XXX
77327		A	Radiation therapy dose plan	1.39	3.99	4.06	NA	NA	0.21	5.59	5.66	NA	NA	XXX
77327	26	A	Radiation therapy dose plan	1.39	0.48	0.53	0.48	0.53	0.06	1.93	1.98	1.93	1.98	XXX
77327	TC	A	Radiation therapy dose plan	0.00	3.51	3.53	NA	NA	0.15	3.66	3.68	NA	NA	XXX
77328		A	Radiation therapy dose plan	2.09	5.73	5.83	NA	NA	0.30	8.12	8.22	NA	NA	XXX
77328	26	A	Radiation therapy dose plan	2.09	0.72	0.79	0.72	0.79	0.08	2.89	2.96	2.89	2.96	XXX
77328	TC	A	Radiation therapy dose plan	0.00	5.01	5.04	NA	NA	0.22	5.23	5.26	NA	NA	XXX
77331		A	Special radiation dosimetry	0.87	0.81	0.84	NA	NA	0.05	1.73	1.76	NA	NA	XXX
77331	26	A	Special radiation dosimetry	0.87	0.30	0.33	0.30	0.33	0.03	1.20	1.23	1.20	1.23	XXX
77331	TC	A	Special radiation dosimetry	0.00	0.51	0.51	NA	NA	0.02	0.53	0.53	NA	NA	XXX
77332		A	Radiation treatment aid(s)	0.54	1.55	1.58	NA	NA	0.08	2.17	2.20	NA	NA	XXX
77332	26	A	Radiation treatment aid(s)	0.54	0.19	0.21	0.19	0.21	0.02	0.75	0.77	0.75	0.77	XXX
77332	TC	A	Radiation treatment aid(s)	0.00	1.36	1.37	NA	NA	0.06	1.42	1.43	NA	NA	XXX
77333		A	Radiation treatment aid(s)	0.84	2.21	2.25	NA	NA	0.12	3.17	3.21	NA	NA	XXX
77333	26	A	Radiation treatment aid(s)	0.84	0.29	0.32	0.29	0.32	0.03	1.16	1.19	1.16	1.19	XXX
77333	TC	A	Radiation treatment aid(s)	0.00	1.92	1.93	NA	NA	0.09	2.01	2.02	NA	NA	XXX
77334		A	Radiation treatment aid(s)	1.24	3.71	3.77	NA	NA	0.19	5.14	5.20	NA	NA	XXX
77334	26	A	Radiation treatment aid(s)	1.24	0.43	0.47	0.43	0.47	0.05	1.72	1.76	1.72	1.76	XXX
77334	TC	A	Radiation treatment aid(s)	0.00	3.28	3.30	NA	NA	0.14	3.42	3.44	NA	NA	XXX
77336		A	Radiation physics consult	0.00	3.01	3.03	NA	NA	0.13	3.14	3.16	NA	NA	XXX
77370		A	Radiation physics consult	0.00	3.53	3.55	NA	NA	0.15	3.68	3.70	NA	NA	XXX
77380		D	Proton beam delivery	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77380	26	D	Proton beam delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77380	TC	D	Proton beam delivery	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77381		D	Proton beam treatment	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77381	26	D	Proton beam treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77381	TC	D	Proton beam treatment	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77399		C	External radiation dosimetry	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77399	26	C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77399	TC	C	External radiation dosimetry	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77401		A	Radiation treatment delivery	0.00	1.79	1.80	NA	NA	0.09	1.88	1.89	NA	NA	XXX
77402		A	Radiation treatment delivery	0.00	1.79	1.80	NA	NA	0.09	1.88	1.89	NA	NA	XXX
77403		A	Radiation treatment delivery	0.00	1.79	1.80	NA	NA	0.09	1.88	1.89	NA	NA	XXX
77404		A	Radiation treatment delivery	0.00	1.79	1.80	NA	NA	0.09	1.88	1.89	NA	NA	XXX
77406		A	Radiation treatment delivery	0.00	1.79	1.80	NA	NA	0.09	1.88	1.89	NA	NA	XXX
77407		A	Radiation treatment delivery	0.00	2.11	2.12	NA	NA	0.10	2.21	2.22	NA	NA	XXX
77408		A	Radiation treatment delivery	0.00	2.11	2.12	NA	NA	0.10	2.21	2.22	NA	NA	XXX
77409		A	Radiation treatment delivery	0.00	2.11	2.12	NA	NA	0.10	2.21	2.22	NA	NA	XXX
77411		A	Radiation treatment delivery	0.00	2.11	2.12	NA	NA	0.10	2.21	2.22	NA	NA	XXX
77412		A	Radiation treatment delivery	0.00	2.36	2.37	NA	NA	0.11	2.47	2.48	NA	NA	XXX
77413		A	Radiation treatment delivery	0.00	2.36	2.37	NA	NA	0.11	2.47	2.48	NA	NA	XXX
77414		A	Radiation treatment delivery	0.00	2.36	2.37	NA	NA	0.11	2.47	2.48	NA	NA	XXX
77416		A	Radiation treatment delivery	0.00	2.36	2.37	NA	NA	0.11	2.47	2.48	NA	NA	XXX
77417		A	Radiology port film(s)	0.00	0.60	0.60	NA	NA	0.03	0.63	0.63	NA	NA	XXX
77419		D	Weekly radiation therapy	3.60	1.43	1.51	1.43	1.51	0.13	5.16	5.24	5.16	5.24	XXX
77420		D	Weekly radiation therapy	1.61	0.64	0.68	0.64	0.68	0.06	2.31	2.35	2.31	2.35	XXX
77425		D	Weekly radiation therapy	2.44	0.97	1.03	0.97	1.03	0.10	3.51	3.57	3.51	3.57	XXX
77427		A	Radiation tx management, x5	3.31	1.14	1.14	1.14	1.14	0.11	4.56	4.56	4.56	4.56	XXX
77430		D	Weekly radiation therapy	3.60	1.43	1.51	1.43	1.51	0.13	5.16	5.24	5.16	5.24	XXX
77431		A	Radiation therapy management	1.81	0.73	0.77	0.73	0.77	0.07	2.61	2.65	2.61	2.65	XXX
77432		A	Stereotactic radiation trmt	7.93	3.10	3.67	3.10	3.67	0.31	11.34	11.91	11.34	11.91	XXX
77470		A	Special radiation treatment	2.09	11.99	12.13	NA	NA	0.58	14.66	14.80	NA	NA	XXX
77470	26	A	Special radiation treatment	2.09	0.72	0.79	0.72	0.79	0.08	2.89	2.96	2.89	2.96	XXX
77470	TC	A	Special radiation treatment	0.00	11.27	11.34	NA	NA	0.50	11.77	11.84	NA	NA	XXX
77499		C	Radiation therapy management	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77499	26	C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77499	TC	C	Radiation therapy management	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77520		C	Proton beam delivery	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77523		C	Proton beam delivery	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77600		R	Hyperthermia treatment	1.56	3.62	3.70	NA	NA	0.19	5.37	5.45	NA	NA	XXX
77600	26	R	Hyperthermia treatment	1.56	0.54	0.60	0.54	0.60	0.06	2.16	2.22	2.16	2.22	XXX
77600	TC	R	Hyperthermia treatment	0.00	3.08	3.10	NA	NA	0.13	3.21	3.23	NA	NA	XXX
77605		R	Hyperthermia treatment	2.09	4.85	4.94	NA	NA	0.28	7.22	7.31	NA	NA	XXX
77605	26	R	Hyperthermia treatment	2.09	0.74	0.81	0.74	0.81	0.09	2.92	2.99	2.92	2 99	XXX
77605	TC	R	Hyperthermia treatment	0.00	4.11	4.13	NA	NA	0.19	4.30	4.32	NA	NA	XXX
77610		R	Hyperthermia treatment	1.56	3.62	3.70	NA	NA	0.19	5.37	5.45	NA	NA	XXX
77610	26	R	Hyperthermia treatment	1.56	0.54	0.60	0.54	0.60	0.06	2.16	2.22	2.16	2.22	XXX
77610	TC	R	Hyperthermia treatment	0.00	3.08	3.10	NA	NA	0.13	3.21	3.23	NA	NA	XXX
77615		R	Hyperthermia treatment	2.09	4.83	4.92	NA	NA	0.27	7.19	7.28	NA	NA	XXX
77615	26	R	Hyperthermia treatment	2.09	0.72	0.79	0.72	0.79	0.08	2.89	2.96	2.89	2.96	XXX
77615	TC	R	Hyperthermia treatment	0.00	4.11	4.13	NA	NA	0.19	4.30	4.32	NA	NA	XXX
77620		R	Hyperthermia treatment	1.56	3.70	3.76	NA	NA	0.19	5.45	5.51	NA	NA	XXX
77620	26	R	Hyperthermia treatment	1.56	0.62	0.66	0.62	0.66	0.06	2.24	2.28	2.24	2.28	XXX
77620	TC	R	Hyperthermia treatment	0.00	3.08	3.10	NA	NA	0.13	3.21	3.23	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
77750		A	Infuse radioactive materials	4.91	3.05	3.19	NA	NA	0.24	8.20	8.34	NA	NA	090
77750	26	A	Infuse radioactive materials	4.91	1.70	1.83	1.70	1.83	0.18	6.79	6.92	6.79	6.92	090
77750	TC	A	Infuse radioactive materials	0.00	1.35	1.36	NA	NA	0.06	1.41	1.42	NA	NA	090
77761		A	Radioelement application	3.81	3.68	3.85	NA	NA	0.28	7.77	7.94	NA	NA	090
77761	26	A	Radioelement application	3.81	1.15	1.30	1.15	1.30	0.16	5.12	5.27	5.12	5.27	090
77761	TC	A	Radioelement application	0.00	2.53	2.55	NA	NA	0.12	2.65	2.67	NA	NA	090
77762		A	Radioelement application	5.72	5.66	5.83	NA	NA	0.40	11.78	11.95	NA	NA	090
77762	26	A	Radioelement application	5.72	2.01	2.16	2.01	2.16	0.24	7.97	8.12	7.97	8.12	090
77762	TC	A	Radioelement application	0.00	3.65	3.67	NA	NA	0.16	3.81	3.83	NA	NA	090
77763		A	Radioelement application	8.57	7.50	7.76	NA	NA	0.55	16.62	16.88	NA	NA	090
77763	26	A	Radioelement application	8.57	2.96	3.19	2.96	3.19	0.35	11.88	12.11	11.88	12.11	090
77763	TC	A	Radioelement application	0.00	4.54	4.57	NA	NA	0.20	4.74	4.77	NA	NA	090
77776		A	Radioelement application	4.66	3.16	3.50	NA	NA	0.31	8.13	8.47	NA	NA	XXX
77776	26	A	Radioelement application	4.66	0.96	1.29	0.96	1.29	0.20	5.82	6.15	5.82	6.15	XXX
77776	TC	A	Radioelement application	0.00	2.20	2.21	NA	NA	0.11	2.31	2.32	NA	NA	XXX
77777		A	Radioelement application	7.48	6.85	7.09	NA	NA	0.50	14.83	15.07	NA	NA	090
77777	26	A	Radioelement application	7.48	2.57	2.78	2.57	2.78	0.31	10.36	10.57	10.36	10.57	090
77777	TC	A	Radioelement application	0.00	4.28	4.31	NA	NA	0.19	4.47	4.50	NA	NA	090
77778		A	Radioelement application	11.19	9.04	9.38	NA	NA	0.67	20.90	21.24	NA	NA	090
77778	26	A	Radioelement application	11.19	3.85	4.16	3.85	4.16	0.44	15.48	15.79	15.48	15.79	090
77778	TC	A	Radioelement application	0.00	5.19	5.22	NA	NA	0.23	5.42	5.45	NA	NA	090
77781		A	High intensity brachytherapy	1.66	21.10	21.27	NA	NA	0.98	23.74	23.91	NA	NA	090
77781	26	A	High intensity brachytherapy	1.66	0.57	0.62	0.57	0.62	0.07	2.30	2.35	2.30	2.35	090
77781	TC	A	High intensity brachytherapy	0.00	20.53	20.65	NA	NA	0.91	21.44	21.56	NA	NA	090
77782		A	High intensity brachytherapy	2.49	21.39	21.58	NA	NA	1.01	24.89	25.08	NA	NA	090
77782	26	A	High intensity brachytherapy	2.49	0.86	0.93	0.86	0.93	0.10	3.45	3.52	3.45	3.52	090
77782	TC	A	High intensity brachytherapy	0.00	20.53	20.65	NA	NA	0.91	21.44	21.56	NA	NA	090
77783		A	High intensity brachytherapy	3.73	21.81	22.03	NA	NA	1.05	26.59	26.81	NA	NA	090
77783	26	A	High intensity brachytherapy	3.73	1.28	1.38	1.28	1.38	0.14	5.15	5.25	5.15	5.25	090
77783	TC	A	High intensity brachytherapy	0.00	20.53	20.65	NA	NA	0.91	21.44	21.56	NA	NA	090
77784		A	High intensity brachytherapy	5.61	22.46	22.73	NA	NA	1.12	29.19	29.46	NA	NA	090
77784	26	A	High intensity brachytherapy	5.61	1.93	2.08	1.93	2.08	0.21	7.75	7.90	7.75	7.90	090
77784	TC	A	High intensity brachytherapy	0.00	20.53	20.65	NA	NA	0.91	21.44	21.56	NA	NA	090
77789		A	Radioelement application	1.12	0.86	0.89	NA	NA	0.06	2.04	2.07	NA	NA	090
77789	26	A	Radioelement application	1.12	0.40	0.43	0.40	0.43	0.04	1.56	1.59	1.56	1.59	090
77789	TC	A	Radioelement application	0.00	0.46	0.46	NA	NA	0.02	0.48	0.48	NA	NA	090
77790		A	Radioelement handling	1.05	0.87	0.91	NA	NA	0.06	1.98	2.02	NA	NA	XXX
77790	26	A	Radioelement handling	1.05	0.36	0.40	0.36	0.40	0.04	1.45	1.49	1.45	1.49	XXX
77790	TC	A	Radioelement handling	0.00	0.51	0.51	NA	NA	0.02	0.53	0.53	NA	NA	XXX
77799		C	Radium/radioisotope therapy	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
77799	26	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77799	TC	C	Radium/radioisotope therapy	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78000		A	Thyroid, single uptake	0.19	1.05	1.07	NA	NA	0.06	1.30	1.32	NA	NA	XXX
78000	26	A	Thyroid, single uptake	0.19	0.07	0.08	0.07	0.08	0.01	0.27	0.28	0.27	0.28	XXX
78000	TC	A	Thyroid, single uptake	0.00	0.98	0.99	NA	NA	0.05	1.03	1.04	NA	NA	XXX
78001		A	Thyroid, multiple uptakes	0.26	1.41	1.43	NA	NA	0.07	1.74	1.76	NA	NA	XXX
78001	26	A	Thyroid, multiple uptakes	0.26	0.09	0.10	0.09	0.10	0.01	0.36	0.37	0.36	0.37	XXX
78001	TC	A	Thyroid, multiple uptakes	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
78003		A	Thyroid suppress/stimul	0.33	1.10	1.12	NA	NA	0.06	1.49	1.51	NA	NA	XXX
78003	26	A	Thyroid suppress/stimul	0.33	0.12	0.13	0.12	0.13	0.01	0.46	0.47	0.46	0.47	XXX
78003	TC	A	Thyroid suppress/stimul	0.00	0.98	0.99	NA	NA	0.05	1.03	1.04	NA	NA	XXX
78006		A	Thyroid imaging with uptake	0.49	2.57	2.61	NA	NA	0.13	3.19	3.23	NA	NA	XXX
78006	26	A	Thyroid imaging with uptake	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX
78006	TC	A	Thyroid imaging with uptake	0.00	2.40	2.42	NA	NA	0.11	2.51	2.53	NA	NA	XXX
78007		A	Thyroid image, mult uptakes	0.50	2.78	2.82	NA	NA	0.14	3.42	3.46	NA	NA	XXX
78007	26	A	Thyroid image, mult uptakes	0.50	0.18	0.20	0.18	0.20	0.02	0.70	0.72	0.70	0.72	XXX
78007	TC	A	Thyroid image, mult uptakes	0.00	2.60	2.62	NA	NA	0.12	2.72	2.74	NA	NA	XXX
78010		A	Thyroid imaging	0.39	1.98	2.00	NA	NA	0.11	2.48	2.50	NA	NA	XXX
78010	26	A	Thyroid imaging	0.39	0.14	0.15	0.14	0.15	0.02	0.55	0.56	0.55	0.56	XXX
78010	TC	A	Thyroid imaging	0.00	1.84	1.85	NA	NA	0.09	1.93	1.94	NA	NA	XXX
78011		A	Thyroid imaging with flow	0.45	2.59	2.63	NA	NA	0.13	3.17	3.21	NA	NA	XXX
78011	26	A	Thyroid imaging with flow	0.45	0.16	0.18	0.16	0.18	0.02	0.63	0.65	0.63	0.65	XXX
78011	TC	A	Thyroid imaging with flow	0.00	2.43	2.45	NA	NA	0.11	2.54	2.56	NA	NA	XXX
78015		A	Thyroid met imaging	0.67	2.84	2.89	NA	NA	0.15	3.66	3.71	NA	NA	XXX
78015	26	A	Thyroid met imaging	0.67	0.24	0.27	0.24	0.27	0.03	0.94	0.97	0.94	0.97	XXX
78015	TC	A	Thyroid met imaging	0.00	2.60	2.62	NA	NA	0.12	2.72	2.74	NA	NA	XXX
78016		A	Thyroid met imaging/studies	0.82	3.82	3.87	NA	NA	0.18	4.82	4.87	NA	NA	XXX
78016	26	A	Thyroid met imaging/studies	0.82	0.30	0.33	0.30	0.33	0.03	1.15	1.18	1.15	1.18	XXX
78016	TC	A	Thyroid met imaging/studies	0.00	3.52	3.54	NA	NA	0.15	3.67	3.69	NA	NA	XXX
78018		A	Thyroid met imaging, body	0.86	5.79	5.86	NA	NA	0.28	6.93	7.00	NA	NA	XXX
78018	26	A	Thyroid met imaging, body	0.86	0.31	0.35	0.31	0.35	0.03	1.20	1.24	1.20	1.24	XXX
78018	TC	A	Thyroid met imaging, body	0.00	5.48	5.51	NA	NA	0.25	5.73	5.76	NA	NA	XXX
78020		A	Thyroid met uptake	0.60	0.39	0.39	NA	NA	0.00	0.99	0.99	NA	NA	ZZZ
78020	26	A	Thyroid met uptake	0.60	0.24	0.24	0.24	0.24	0.00	0.84	0.84	0.84	0.84	ZZZ
78020	TC	A	Thyroid met uptake	0.00	0.15	0.15	NA	NA	0.00	0.15	0.15	NA	NA	ZZZ
78070		A	Parathyroid nuclear imaging	0.82	2.13	2.13	NA	NA	0.12	3.07	3.07	NA	NA	XXX
78070	26	A	Parathyroid nuclear imaging	0.82	0.29	0.28	0.29	0.28	0.03	1.14	1.13	1.14	1.13	XXX
78070	TC	A	Parathyroid nuclear imaging	0.00	1.84	1.85	NA	NA	0.09	1.93	1.94	NA	NA	XXX
78075		A	Adrenal nuclear imaging	0.74	5.76	5.81	NA	NA	0.28	6.78	6.83	NA	NA	XXX
78075	26	A	Adrenal nuclear imaging	0.74	0.28	0.30	0.28	0.30	0.03	1.05	1.07	1.05	1.07	XXX
78075	TC	A	Adrenal nuclear imaging	0.00	5.48	5.51	NA	NA	0.25	5.73	5.76	NA	NA	XXX
78099		C	Endocrine nuclear procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
78099	26	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78099	TC	C	Endocrine nuclear procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78102		A	Bone marrow imaging, ltd	0.55	2.26	2.29	NA	NA	0.12	2.93	2.96	NA	NA	XXX
78102	26	A	Bone marrow imaging, ltd	0.55	0.20	0.22	0.20	0.22	0.02	0.77	0.79	0.77	0.79	XXX
78102	TC	A	Bone marrow imaging, ltd	0.00	2.06	2.07	NA	NA	0.10	2.16	2.17	NA	NA	XXX
78103		A	Bone marrow imaging, mult	0.75	3.48	3.53	NA	NA	0.17	4.40	4.45	NA	NA	XXX
78103	26	A	Bone marrow imaging, mult	0.75	0.27	0.30	0.27	0.30	0.03	1.05	1.08	1.05	1.08	XXX
78103	TC	A	Bone marrow imaging, mult	0.00	3.21	3.23	NA	NA	0.14	3.35	3.37	NA	NA	XXX
78104		A	Bone marrow imaging, body	0.80	4.41	4.46	NA	NA	0.22	5.43	5.48	NA	NA	XXX
78104	26	A	Bone marrow imaging, body	0.80	0.29	0.32	0.29	0.32	0.03	1.12	1.15	1.12	1.15	XXX
78104	TC	A	Bone marrow imaging, body	0.00	4.12	4.14	NA	NA	0.19	4.31	4.33	NA	NA	XXX
78110		A	Plasma volume, single	0.19	1.03	1.05	NA	NA	0.06	1.28	1.30	NA	NA	XXX
78110	26	A	Plasma volume, single	0.19	0.07	0.08	0.07	0.08	0.01	0.27	0.28	0.27	0.28	XXX
78110	TC	A	Plasma volume, single	0.00	0.96	0.97	NA	NA	0.05	1.01	1.02	NA	NA	XXX
78111		A	Plasma volume, multiple	0.22	2.68	2.71	NA	NA	0.13	3.03	3.06	NA	NA	XXX
78111	26	A	Plasma volume, multiple	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
78111	TC	A	Plasma volume, multiple	0.00	2.60	2.62	NA	NA	0.12	2.72	2.74	NA	NA	XXX
78120		A	Red cell mass, single	0.23	1.83	1.85	NA	NA	0.10	2.16	2.18	NA	NA	XXX
78120	26	A	Red cell mass, single	0.23	0.08	0.09	0.08	0.09	0.01	0.32	0.33	0.32	0.33	XXX
78120	TC	A	Red cell mass, single	0.00	1.75	1.76	NA	NA	0.09	1.84	1.85	NA	NA	XXX
78121		A	Red cell mass, multiple	0.32	3.06	3.09	NA	NA	0.13	3.51	3.54	NA	NA	XXX
78121	26	A	Red cell mass, multiple	0.32	0.12	0.13	0.12	0.13	0.01	0.45	0.46	0.45	0.46	XXX
78121	TC	A	Red cell mass, multiple	0.00	2.94	2.96	NA	NA	0.12	3.06	3.08	NA	NA	XXX
78122		A	Blood volume	0.45	4.81	4.86	NA	NA	0.23	5.49	5.54	NA	NA	XXX
78122	26	A	Blood volume	0.45	0.16	0.18	0.16	0.18	0.02	0.63	0.65	0.63	0.65	XXX
78122	TC	A	Blood volume	0.00	4.65	4.68	NA	NA	0.21	4.86	4.89	NA	NA	XXX
78130		A	Red cell survival study	0.61	3.10	3.14	NA	NA	0.14	3.85	3.89	NA	NA	XXX
78130	26	A	Red cell survival study	0.61	0.22	0.24	0.22	0.24	0.02	0.85	0.87	0.85	0.87	XXX
78130	TC	A	Red cell survival study	0.00	2.88	2.90	NA	NA	0.12	3.00	3.02	NA	NA	XXX
78135		A	Red cell survival kinetics	0.64	5.16	5.21	NA	NA	0.24	6.04	6.09	NA	NA	XXX
78135	26	A	Red cell survival kinetics	0.64	0.23	0.25	0.23	0.25	0.02	0.89	0.91	0.89	0.91	XXX
78135	TC	A	Red cell survival kinetics	0.00	4.93	4.96	NA	NA	0.22	5.15	5.18	NA	NA	XXX
78140		A	Red cell sequestration	0.61	4.19	4.23	NA	NA	0.20	5.00	5.04	NA	NA	XXX
78140	26	A	Red cell sequestration	0.61	0.21	0.23	0.21	0.23	0.02	0.84	0.86	0.84	0.86	XXX
78140	TC	A	Red cell sequestration	0.00	3.98	4.00	NA	NA	0.18	4.16	4.18	NA	NA	XXX
78160		A	Plasma iron turnover	0.33	3.82	3.85	NA	NA	0.17	4.32	4.35	NA	NA	XXX
78160	26	A	Plasma iron turnover	0.33	0.12	0.13	0.12	0.13	0.01	0.46	0.47	0.46	0.47	XXX
78160	TC	A	Plasma iron turnover	0.00	3.70	3.72	NA	NA	0.16	3.86	3.88	NA	NA	XXX
78162		A	Iron absorption exam	0.45	3.42	3.45	NA	NA	0.15	4.02	4.05	NA	NA	XXX
78162	26	A	Iron absorption exam	0.45	0.18	0.19	0.18	0.19	0.01	0.64	0.65	0.64	0.65	XXX
78162	TC	A	Iron absorption exam	0.00	3.24	3.26	NA	NA	0.14	3.38	3.40	NA	NA	XXX
78170		A	Red cell iron utilization	0.41	5.52	5.56	NA	NA	0.26	6.19	6.23	NA	NA	XXX
78170	26	A	Red cell iron utilization	0.41	0.15	0.16	0.15	0.16	0.02	0.58	0.59	0.58	0.59	XXX
78170	TC	A	Red cell iron utilization	0.00	5.37	5.40	NA	NA	0.24	5.81	5.64	NA	NA	XXX
78172		C	Total body iron estimation	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78172	26	A	Total body iron estimation	0.53	0.19	0.21	0.19	0.21	0.02	0.74	0.76	0.74	0.76	XXX
78172	TC	C	Total body iron estimation	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78185		A	Spleen imaging	0.40	2.53	2.56	NA	NA	0.13	3.06	3.09	NA	NA	XXX
78185	26	A	Spleen imaging	0.40	0.14	0.16	0.14	0.16	0.02	0.56	0.58	0.56	0.58	XXX
78185	TC	A	Spleen imaging	0.00	2.39	2.40	NA	NA	0.11	2.50	2.51	NA	NA	XXX
78190		A	Platelet survival, kinetics	1.09	6.21	6.26	NA	NA	0.30	7.60	7.65	NA	NA	XXX
78190	26	A	Platelet survival, kinetics	1.09	0.43	0.45	0.43	0.45	0.04	1.56	1.58	1.56	1.58	XXX
78190	TC	A	Platelet survival, kinetics	0.00	5.78	5.81	NA	NA	0.26	6.04	6.07	NA	NA	XXX
78191		A	Platelet survival	0.61	7.64	7.70	NA	NA	0.34	8.59	8.65	NA	NA	XXX
78191	26	A	Platelet survival	0.61	0.22	0.24	0.22	0.24	0.02	0.85	0.87	0.85	0.87	XXX
78191	TC	A	Platelet survival	0.00	7.42	7.46	NA	NA	0.32	7.74	7.78	NA	NA	XXX
78195		A	Lymph system imaging	1.20	4.55	4.55	NA	NA	0.24	5.99	5.99	NA	NA	XXX
78195	26	A	Lymph system imaging	1.20	0.43	0.41	0.43	0.41	0.05	1.68	1.66	1.68	1.66	XXX
78195	TC	A	Lymph system imaging	0.00	4.12	4.14	NA	NA	0.19	4.31	4.33	NA	NA	XXX
78199		C	Blood/lymph nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78199	26	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78199	TC	C	Blood/lymph nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78201		A	Liver imaging	0.44	2.55	2.57	NA	NA	0.13	3.12	3.14	NA	NA	XXX
78201	26	A	Liver imaging	0.44	0.16	0.17	0.16	0.17	0.02	0.62	0.63	0.62	0.63	XXX
78201	TC	A	Liver imaging	0.00	2.39	2.40	NA	NA	0.11	2.50	2.51	NA	NA	XXX
78202		A	Liver imaging with flow	0.51	3.09	3.13	NA	NA	0.14	3.74	3.78	NA	NA	XXX
78202	26	A	Liver imaging with flow	0.51	0.18	0.20	0.18	0.20	0.02	0.71	0.73	0.71	0.73	XXX
78202	TC	A	Liver imaging with flow	0.00	2.91	2.93	NA	NA	0.12	3.03	3.05	NA	NA	XXX
78205		A	Liver imaging (3D)	0.71	6.22	6.29	NA	NA	0.30	7.23	7.30	NA	NA	XXX
78205	26	A	Liver imaging (3D)	0.71	0.25	0.28	0.25	0.28	0.03	0.99	1.02	0.99	1.02	XXX
78205	TC	A	Liver imaging (3D)	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
78206		A	Liver image (3d) w/flow	0.96	6.34	6.38	NA	NA	0.13	7.43	7.47	NA	NA	XXX
78206	26	A	Liver image (3d) w/flow	0.96	0.35	0.35	0.35	0.35	0.04	1.35	1.35	1.35	1.35	XXX
78206	TC	A	Liver image (3d) w/flow	0.00	5.99	6.03	NA	NA	0.09	6.08	6.12	NA	NA	XXX
78215		A	Liver and spleen imaging	0.49	3.14	3.18	NA	NA	0.14	3.77	3.81	NA	NA	XXX
78215	26	A	Liver and spleen imaging	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX
78215	TC	A	Liver and spleen imaging	0.00	2.97	2.99	NA	NA	0.12	3.09	3.11	NA	NA	XXX
78216		A	Liver & spleen image/flow	0.57	3.72	3.76	NA	NA	0.17	4.46	4.50	NA	NA	XXX
78216	26	A	Liver & spleen image/flow	0.57	0.20	0.22	0.20	0.22	0.02	0.79	0.81	0.79	0.81	XXX
78216	TC	A	Liver & spleen image/flow	0.00	3.52	3.54	NA	NA	0.15	3.67	3.69	NA	NA	XXX
78220		A	Liver function study	0.49	3.93	3.97	NA	NA	0.18	4.60	4.64	NA	NA	XXX
78220	26	A	Liver function study	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
78220	TC	A	Liver function study	0.00	3.76	3.78	NA	NA	0.16	3.92	3.94	NA	NA	XXX
78223		A	Hepatobiliary imaging	0.84	4.00	4.05	NA	NA	0.19	5.03	5.08	NA	NA	XXX
78223	26	A	Hepatobiliary imaging	0.84	0.30	0.33	0.30	0.33	0.03	1.17	1.20	1.17	1.20	XXX
78223	TC	A	Hepatobiliary imaging	0.00	3.70	3.72	NA	NA	0.16	3.86	3.88	NA	NA	XXX
78230		A	Salivary gland imaging	0.45	2.35	2.38	NA	NA	0.13	2.93	2.96	NA	NA	XXX
78230	26	A	Salivary gland imaging	0.45	0.15	0.17	0.15	0.17	0.02	0.62	0.64	0.62	0.64	XXX
78230	TC	A	Salivary gland imaging	0.00	2.20	2.21	NA	NA	0.11	2.31	2.32	NA	NA	XXX
78231		A	Serial salivary imaging	0.52	3.40	3.44	NA	NA	0.16	4.08	4.12	NA	NA	XXX
78231	26	A	Serial salivary imaging	0.52	0.19	0.21	0.19	0.21	0.02	0.73	0.75	0.73	0.75	XXX
78231	TC	A	Serial salivary imaging	0.00	3.21	3.23	NA	NA	0.14	3.35	3.37	NA	NA	XXX
78232		A	Salivary gland function exam	0.47	3.75	3.79	NA	NA	0.17	4.39	4.43	NA	NA	XXX
78232	26	A	Salivary gland function exam	0.47	0.17	0.19	0.17	0.19	0.02	0.66	0.68	0.66	0.68	XXX
78232	TC	A	Salivary gland function exam	0.00	3.58	3.60	NA	NA	0.15	3.73	3.75	NA	NA	XXX
78258		A	Esophageal motility study	0.74	3.17	3.22	NA	NA	0.15	4.06	4.11	NA	NA	XXX
78258	26	A	Esophageal motility study	0.74	0.26	0.29	0.26	0.29	0.03	1.03	1.06	1.03	1.06	XXX
78258	TC	A	Esophageal motility study	0.00	2.91	2.93	NA	NA	0.12	3.03	3.05	NA	NA	XXX
78261		A	Gastric mucosa imaging	0.69	4.40	4.45	NA	NA	0.22	5.31	5.36	NA	NA	XXX
78261	26	A	Gastric mucosa imaging	0.69	0.26	0.28	0.26	0.28	0.03	0.98	1.00	0.98	1.00	XXX
78261	TC	A	Gastric mucosa imaging	0.00	4.14	4.17	NA	NA	0.19	4.33	4.36	NA	NA	XXX
78262		A	Gastroesophageal reflux exam	0.68	4.55	4.60	NA	NA	0.21	5.44	5.49	NA	NA	XXX
78262	26	A	Gastroesophageal reflux exam	0.68	0.25	0.27	0.25	0.27	0.02	0.95	0.97	0.95	0.97	XXX
78262	TC	A	Gastroesophageal reflux exam	0.00	4.30	4.33	NA	NA	0.19	4.49	4.52	NA	NA	XXX
78264		A	Gastric emptying study	0.78	4.45	4.51	NA	NA	0.22	5.45	5.51	NA	NA	XXX
78264	26	A	Gastric emptying study	0.78	0.28	0.31	0.28	0.31	0.03	1.09	1.12	1.09	1.12	XXX
78264	TC	A	Gastric emptying study	0.00	4.17	4.20	NA	NA	0.19	4.36	4.39	NA	NA	XXX
78267		X	Breath tst attain/anal c-14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78268		X	Breath test analysis, c-14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78270		A	Vit B-12 absorption exam	0.20	1.63	1.65	NA	NA	0.09	1.92	1.94	NA	NA	XXX
78270	26	A	Vit B-12 absorption exam	0.20	0.07	0.08	0.07	0.08	0.01	0.28	0.29	0.28	0.29	XXX
78270	TC	A	Vit B-12 absorption exam	0.00	1.56	1.57	NA	NA	0.08	1.64	1.65	NA	NA	XXX
78271		A	Vit B-12 absorp exam, IF	0.20	1.73	1.75	NA	NA	0.09	2.02	2.04	NA	NA	XXX
78271	26	A	Vit B-12 absorp exam, IF	0.20	0.07	0.08	0.07	0.08	0.01	0.28	0.29	0.28	0.29	XXX
78271	TC	A	Vit B-12 absorp exam, IF	0.00	1.66	1.67	NA	NA	0.08	1.74	1.75	NA	NA	XXX
78272		A	Vit B-12 absorp, combined	0.27	2.45	2.47	NA	NA	0.12	2.84	2.86	NA	NA	XXX
78272	26	A	Vit B-12 absorp, combined	0.27	0.10	0.11	0.10	0.11	0.01	0.38	0.39	0.38	0.39	XXX
78272	TC	A	Vit B-12 absorp, combined	0.00	2.35	2.36	NA	NA	0.11	2.46	2.47	NA	NA	XXX
78278		A	Acute GI blood loss imaging	0.99	5.28	5.35	NA	NA	0.26	6.53	6.60	NA	NA	XXX
78278	26	A	Acute GI blood loss imaging	0.99	0.35	0.39	0.35	0.39	0.04	1.38	1.42	1.38	1.42	XXX
78278	TC	A	Acute GI blood loss imaging	0.00	4.93	4.96	NA	NA	0.22	5.15	5.18	NA	NA	XXX
78282		C	GI protein loss exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78282	26	A	GI protein loss exam	0.38	0.14	0.15	0.14	0.15	0.01	0.53	0.54	0.53	0.54	XXX
78282	TC	C	GI protein loss exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78290		A	Meckel's divert exam	0.68	3.32	3.37	NA	NA	0.16	4.16	4.21	NA	NA	XXX
78290	26	A	Meckel's divert exam	0.68	0.24	0.27	0.24	0.27	0.03	0.95	0.98	0.95	0.98	XXX
78290	TC	A	Meckel's divert exam	0.00	3.08	3.10	NA	NA	0.13	3.21	3.23	NA	NA	XXX
78291		A	Leveen/shunt patency exam	0.88	3.42	3.47	NA	NA	0.16	4.46	4.51	NA	NA	XXX
78291	26	A	Leveen/shunt patency exam	0.88	0.32	0.35	0.32	0.35	0.03	1.23	1.26	1.23	1.26	XXX
78291	TC	A	Leveen/shunt patency exam	0.00	3.10	3.12	NA	NA	0.13	3.23	3.25	NA	NA	XXX
78299		C	GI nuclear procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78299	26	C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78299	TC	C	GI nuclear procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78300		A	Bone imaging, limited area	0.62	2.73	2.77	NA	NA	0.14	3.49	3.53	NA	NA	XXX
78300	26	A	Bone imaging, limited area	0.62	0.22	0.24	0.22	0.24	0.02	0.86	0.88	0.86	0.88	XXX
78300	TC	A	Bone imaging, limited area	0.00	2.51	2.53	NA	NA	0.12	2.63	2.65	NA	NA	XXX
78305		A	Bone imaging, multiple areas	0.83	3.99	4.04	NA	NA	0.19	5.01	5.06	NA	NA	XXX
78305	26	A	Bone imaging, multiple areas	0.83	0.29	0.32	0.29	0.32	0.03	1.15	1.18	1.15	1.18	XXX
78305	TC	A	Bone imaging, multiple areas	0.00	3.70	3.72	NA	NA	0.16	3.86	3.88	NA	NA	XXX
78306		A	Bone imaging, whole body	0.86	4.82	4.68	NA	NA	0.22	5.70	5.76	NA	NA	XXX
78306	26	A	Bone imaging, whole body	0.86	0.30	0.33	0.30	0.33	0.03	1.19	1.22	1.19	1.22	XXX
78306	TC	A	Bone imaging, whole body	0.00	4.32	4.35	NA	NA	0.19	4.51	4.54	NA	NA	XXX
78315		A	Bone imaging, 3 phase	1.02	5.19	5.25	NA	NA	0.26	6.47	6.53	NA	NA	XXX
78315	26	A	Bone imaging, 3 phase [3]	1.02	0.36	0.39	0.36	0.39	0.04	1.42	1.45	1.42	1.45	XXX
78315	TC	A	Bone imaging, 3 phase	0.00	4.83	4.86	NA	NA	0.22	5.05	5.08	NA	NA	XXX
78320		A	Bone imaging (3D)	1.04	6.35	6.42	NA	NA	0.31	7.70	7.77	NA	NA	XXX
78320	26	A	Bone imaging (3D)	1.04	0.38	0.41	0.38	0.41	0.04	1.46	1.49	1.46	1.49	XXX
78320	TC	A	Bone imaging (3D)	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
78350		A	Bone mineral, single photon	0.22	0.84	0.86	NA	NA	0.05	1.11	1.13	NA	NA	XXX
78350	26	A	Bone mineral, single photon	0.22	0.08	0.09	0.08	0.09	0.01	0.31	0.32	0.31	0.32	XXX
78350	TC	A	Bone mineral, single photon	0.00	0.76	0.77	NA	NA	0.04	0.80	0.81	NA	NA	XXX
78351		N	Bone mineral, dual photon	0.30	1.45	1.14	0.12	0.14	0.01	1.76	1.45	0.43	0.45	XXX
78399		C	Musculoskeletal nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78399	26	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78399	TC	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78414		C	Non-imaging heart function	0.00	0.00	0.18	NA	NA	0.00	0.00	0.18	NA	NA	XXX
78414	26	A	Non-imaging heart function	0.45	0.17	0.18	0.17	0.18	0.02	0.64	0.65	0.64	0.65	XXX
78414	TC	C	Non-imaging heart function	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78428		A	Cardiac shunt imaging	0.78	2.59	2.62	NA	NA	0.14	3.51	3.54	NA	NA	XXX
78428	26	A	Cardiac shunt imaging	0.78	0.31	0.33	0.31	0.33	0.03	1.12	1.14	1.12	1.14	XXX
78428	TC	A	Cardiac shunt imaging	0.00	2.28	2.29	NA	NA	0.11	2.39	2.40	NA	NA	XXX
78445		A	Vascular flow imaging	0.49	2.06	2.09	NA	NA	0.11	2.66	2.69	NA	NA	XXX
78445	26	A	Vascular flow imaging	0.49	0.18	0.20	0.18	0.20	0.02	0.69	0.71	0.69	0.71	XXX
78445	TC	A	Vascular flow imaging	0.00	1.88	1.89	NA	NA	0.09	1.97	1.98	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
78455		A	Venous thrombosis study	0.73	4.29	4.34	NA	NA	0.21	5.23	5.28	NA	NA	XXX
78455	26	A	Venous thrombosis study	0.73	0.26	0.29	0.26	0.29	0.03	1.02	1.05	1.02	1.05	XXX
78455	TC	A	Venous thrombosis study	0.00	4.03	4.05	NA	NA	0.18	4.21	4.23	NA	NA	XXX
78456		A	Acute venous thrombus image	0.01	4.28	4.30	NA	NA	0.30	4.59	4.61	NA	NA	XXX
78456	26	A	Acute venous thrombus image	0.01	0.37	0.37	0.37	0.37	0.05	0.43	0.43	0.43	0.43	XXX
78456	TC	A	Acute venous thrombus image	0.00	3.91	3.93	NA	NA	0.25	4.16	4.18	NA	NA	XXX
78457		A	Venous thrombosis imaging	0.77	2.96	3.01	NA	NA	0.15	3.88	3.93	NA	NA	XXX
78457	26	A	Venous thrombosis imaging	0.77	0.27	0.30	0.27	0.30	0.03	1.07	1.10	1.07	1.10	XXX
78457	TC	A	Venous thrombosis imaging	0.00	2.69	2.71	NA	NA	0.12	2.81	2.83	NA	NA	XXX
78458		A	Ven thrombosis images, bilat	0.90	4.41	4.45	NA	NA	0.21	5.52	5.56	NA	NA	XXX
78458	26	A	Ven thrombosis images, bilat	0.90	0.34	0.36	0.34	0.36	0.03	1.27	1.29	1.27	1.29	XXX
78458	TC	A	Ven thrombosis images, bilat	0.00	4.07	4.09	NA	NA	0.18	4.25	4.27	NA	NA	XXX
78459		I	Heart muscle imaging (PET)	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78459	26	I	Heart muscle imaging (PET)	1.88	0.75	0.93	0.75	0.93	0.07	2.70	2.88	2.70	2.88	XXX
78459	TC	I	Heart muscle imaging (PET)	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78460		A	Heart muscle blood, single	0.86	2.70	2.74	NA	NA	0.14	3.70	3.74	NA	NA	XXX
78460	26	A	Heart muscle blood, single	0.86	0.31	0.34	0.31	0.34	0.03	1.20	1.23	1.20	1.23	XXX
78460	TC	A	Heart muscle blood, single	0.00	2.39	2.40	NA	NA	0.11	2.50	2.51	NA	NA	XXX
78461		A	Heart muscle blood, multiple	1.23	5.23	5.29	NA	NA	0.26	6.72	6.78	NA	NA	XXX
78461	26	A	Heart muscle blood, multiple	1.23	0.46	0.49	0.46	0.49	0.04	1.73	1.76	1.73	1.76	XXX
78461	TC	A	Heart muscle blood, multiple	0.00	4.77	4.80	NA	NA	0.22	4.99	5.02	NA	NA	XXX
78464		A	Heart image (3d), single	1.09	7.55	7.62	NA	NA	0.36	9.00	9.07	NA	NA	XXX
78464	26	A	Heart image (3d), single	1.09	0.40	0.43	0.40	0.43	0.04	1.53	1.56	1.53	1.56	XXX
78464	TC	A	Heart image (3d), single	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
78465		A	Heart image (3d), multiple	1.46	12.49	12.60	NA	NA	0.58	14.53	14.64	NA	NA	XXX
78465	26	A	Heart image (3d), multiple	1.46	0.56	0.60	0.56	0.60	0.05	2.07	2.11	2.07	2.11	XXX
78465	TC	A	Heart image (3d), multiple	0.00	11.93	12.00	NA	NA	0.53	12.46	12.53	NA	NA	XXX
78466		A	Heart infarct image	0.69	2.91	2.95	NA	NA	0.15	3.75	3.79	NA	NA	XXX
78466	26	A	Heart infarct image	0.69	0.26	0.28	0.26	0.28	0.03	0.98	1.00	0.98	1.00	XXX
78466	TC	A	Heart infarct image	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
78468		A	Heart infarct image (ef)	0.80	3.99	4.04	NA	NA	0.19	4.98	5.03	NA	NA	XXX
78468	26	A	Heart infarct image (ef)	0.80	0.29	0.32	0.29	0.32	0.03	1.12	1.15	1.12	1.15	XXX
78468	TC	A	Heart infarct image (ef)	0.00	3.70	3.72	NA	NA	0.16	3.86	3.88	NA	NA	XXX
78469		A	Heart infarct image (3D)	0.92	5.60	5.66	NA	NA	0.27	6.79	6.85	NA	NA	XXX
78469	26	A	Heart infarct image (3D)	0.92	0.32	0.35	0.32	0.35	0.03	1.27	1.30	1.27	1.30	XXX
78469	TC	A	Heart infarct image (3D)	0.00	5.28	5.31	NA	NA	0.24	5.52	5.55	NA	NA	XXX
78472		A	Gated heart, planar, single	0.98	5.93	5.99	NA	NA	0.30	7.21	7.27	NA	NA	XXX
78472	26	A	Gated heart, planar, single	0.98	0.36	0.39	0.36	0.39	0.04	1.38	1.41	1.38	1.41	XXX
78472	TC	A	Gated heart, planar, single	0.00	5.57	5.60	NA	NA	0.26	5.83	5.86	NA	NA	XXX
78473		A	Gated heart, multiple	1.47	8.89	8.98	NA	NA	0.41	10.77	10.86	NA	NA	XXX
78473	26	A	Gated heart, multiple	1.47	0.54	0.58	0.54	0.58	0.05	2.06	2.10	2.06	2.10	XXX
78473	TC	A	Gated heart, multiple	0.00	8.35	8.40	NA	NA	0.36	8.71	8.76	NA	NA	XXX
78478		A	Heart wall motion add-on	0.62	1.81	1.84	NA	NA	0.10	2.53	2.56	NA	NA	ZZZ
78478	26	A	Heart wall motion add-on	0.62	0.24	0.26	0.24	0.26	0.02	0.88	0.90	0.88	0.90	ZZZ
78478	TC	A	Heart wall motion add-on	0.00	1.57	1.58	NA	NA	0.08	1.65	1.66	NA	NA	ZZZ
78480		A	Heart function add-on	0.62	1.81	1.84	NA	NA	0.10	2.53	2.56	NA	NA	ZZZ
78480	26	A	Heart function add-on	0.62	0.24	0.26	0.24	0.26	0.02	0.88	0.90	0.88	0.90	ZZZ
78480	TC	A	Heart function add-on	0.00	1.57	1.58	NA	NA	0.08	1.65	1.66	NA	NA	ZZZ
78481		A	Heart first pass, single	0.98	5.66	5.72	NA	NA	0.27	6.91	6.97	NA	NA	XXX
78481	26	A	Heart first pass, single	0.98	0.38	0.41	0.38	0.41	0.03	1.39	1.42	1.39	1.42	XXX
78481	TC	A	Heart first pass, single	0.00	5.28	5.31	NA	NA	0.24	5.52	5.55	NA	NA	XXX
78483		A	Heart first pass, multiple	1.47	8.53	8.62	NA	NA	0.40	10.40	10.49	NA	NA	XXX
78483	26	A	Heart first pass, multiple	1.47	0.57	0.61	0.57	0.61	0.05	2.09	2.13	2.09	2.13	XXX
78483	TC	A	Heart first pass, multiple	0.00	7.96	8.01	NA	NA	0.35	8.31	8.36	NA	NA	XXX
78491		I	Heart image (pet), single	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78491	26	I	Heart image (pet), single	1.50	0.59	0.81	0.59	0.81	0.05	2.14	2.36	2.14	2.36	XXX
78491	TC	I	Heart image (pet), single	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78492		I	Heart image (pet), multiple	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78492	26	I	Heart image (pet), multiple	1.87	0.74	0.92	0.74	0.92	0.07	2.68	2.86	2.68	2.86	XXX
78492	TC	I	Heart image (pet), multiple	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78494		A	Heart image, spect	1.19	6.02	6.05	NA	NA	0.30	7.51	7.54	NA	NA	XXX
78494	26	A	Heart image, spect	1.19	0.44	0.44	0.44	0.44	0.04	1.67	1.67	1.67	1.67	XXX
78494	TC	A	Heart image, spect	0.00	5.58	5.61	NA	NA	0.26	5.84	5.87	NA	NA	XXX
78496		A	Heart first pass add-on	0.50	1.77	1.78	NA	NA	0.28	2.55	2.56	NA	NA	ZZZ
78496	26	A	Heart first pass add-on	0.50	0.20	0.20	0.20	0.20	0.02	0.72	0.72	0.72	0.72	ZZZ
78496	TC	A	Heart first pass add-on	0.00	1.57	1.58	NA	NA	0.26	1.83	1.84	NA	NA	ZZZ
78499		C	Cardiovascular nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78499	26	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78499	TC	C	Cardiovascular nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78580		A	Lung perfusion imaging	0.74	3.73	3.78	NA	NA	0.18	4.65	4.70	NA	NA	XXX
78580	26	A	Lung perfusion imaging	0.74	0.26	0.29	0.26	0.29	0.03	1.03	1.06	1.03	1.06	XXX
78580	TC	A	Lung perfusion imaging	0.00	3.47	3.49	NA	NA	0.15	3.62	3.64	NA	NA	XXX
78584		A	Lung V/Q image single breath	0.99	3.59	3.65	NA	NA	0.18	4.76	4.82	NA	NA	XXX
78584	26	A	Lung V/Q image single breath	0.99	0.35	0.39	0.35	0.39	0.04	1.38	1.42	1.38	1.42	XXX
78584	TC	A	Lung V/Q image single breath	0.00	3.24	3.26	NA	NA	0.14	3.38	3.40	NA	NA	XXX
78585		A	Lung V/Q imaging	1.09	6.08	6.15	NA	NA	0.30	7.47	7.54	NA	NA	XXX
78585	26	A	Lung V/Q imaging	1.09	0.38	0.42	0.38	0.42	0.04	1.51	1.55	1.51	1.55	XXX
78585	TC	A	Lung V/Q imaging	0.00	5.70	5.73	NA	NA	0.26	5.96	5.99	NA	NA	XXX
78586		A	Aerosol lung image, single	0.40	2.76	2.80	NA	NA	0.14	3.30	3.34	NA	NA	XXX
78586	26	A	Aerosol lung image, single	0.40	0.14	0.16	0.14	0.16	0.02	0.56	0.58	0.56	0.58	XXX
78586	TC	A	Aerosol lung image, single	0.00	2.62	2.64	NA	NA	0.12	2.74	2.76	NA	NA	XXX
78587		A	Aerosol lung image, multiple	0.49	3.00	3.04	NA	NA	0.14	3.63	3.67	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
78587	26	A	Aerosol lung image, multiple	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX
78587	TC	A	Aerosol lung image, multiple	0.00	2.83	2.85	NA	NA	0.12	2.95	2.97	NA	NA	XXX
78588		A	Perfusion lung image	1.09	3.87	3.89	NA	NA	0.19	5.15	5.17	NA	NA	XXX
78588	26	A	Perfusion lung image	1.09	0.39	0.39	0.39	0.39	0.04	1.52	1.52	1.52	1.52	XXX
78588	TC	A	Perfusion lung image	0.00	3.48	3.50	NA	NA	0.15	3.63	3.65	NA	NA	XXX
78591		A	Vent image, 1 breath, 1 proj	0.40	3.02	3.06	NA	NA	0.14	3.56	3.60	NA	NA	XXX
78591	26	A	Vent image, 1 breath, 1 proj	0.40	0.14	0.16	0.14	0.16	0.02	0.56	0.58	0.56	0.58	XXX
78591	TC	A	Vent image, 1 breath, 1 proj	0.00	2.88	2.90	NA	NA	0.12	3.00	3.02	NA	NA	XXX
78593		A	Vent image, 1 proj, gas	0.49	3.66	3.70	NA	NA	0.17	4.32	4.36	NA	NA	XXX
78593	26	A	Vent image, 1 proj, gas	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX
78593	TC	A	Vent image, 1 proj, gas	0.00	3.49	3.51	NA	NA	0.15	3.64	3.66	NA	NA	XXX
78594		A	Vent image, mult proj, gas	0.53	5.22	5.27	NA	NA	0.24	5.99	6.04	NA	NA	XXX
78594	26	A	Vent image, mult proj, gas	0.53	0.19	0.21	0.19	0.21	0.02	0.74	0.76	0.74	0.76	XXX
78594	TC	A	Vent image, mult proj, gas	0.00	5.03	5.06	NA	NA	0.22	5.25	5.28	NA	NA	XXX
78596		A	Lung differential function	1.27	7.60	7.68	NA	NA	0.37	9.24	9.32	NA	NA	XXX
78596	26	A	Lung differential function	1.27	0.45	0.49	0.45	0.49	0.05	1.77	1.81	1.77	1.81	XXX
78596	TC	A	Lung differential function	0.00	7.15	7.19	NA	NA	0.32	7.47	7.51	NA	NA	XXX
78599		C	Respiratory nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78599	26	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78599	TC	C	Respiratory nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78600		A	Brain imaging, ltd static	0.44	3.07	3.11	NA	NA	0.14	3.65	3.69	NA	NA	XXX
78600	26	A	Brain imaging, ltd static	0.44	0.16	0.18	0.16	0.18	0.02	0.62	0.64	0.62	0.64	XXX
78600	TC	A	Brain imaging, ltd static	0.00	2.91	2.93	NA	NA	0.12	3.03	3.05	NA	NA	XXX
78601		A	Brain imaging, ltd w/ flow	0.51	3.62	3.66	NA	NA	0.17	4.30	4.34	NA	NA	XXX
78601	26	A	Brain imaging, ltd w/ flow	0.51	0.18	0.20	0.18	0.20	0.02	0.71	0.73	0.71	0.73	XXX
78601	TC	A	Brain imaging, ltd w/ flow	0.00	3.44	3.46	NA	NA	0.15	3.59	3.61	NA	NA	XXX
78605		A	Brain imaging, complete	0.53	3.63	3.67	NA	NA	0.17	4.33	4.37	NA	NA	XXX
78605	26	A	Brain imaging, complete	0.53	0.19	0.21	0.19	0.21	0.02	0.74	0.76	0.74	0.76	XXX
78605	TC	A	Brain imaging, complete	0.00	3.44	3.46	NA	NA	0.15	3.59	3.61	NA	NA	XXX
78606		A	Brain imaging, compl w/flow	0.64	4.14	4.18	NA	NA	0.19	4.97	5.01	NA	NA	XXX
78606	26	A	Brain imaging, compl w/flow	0.64	0.23	0.25	0.23	0.25	0.02	0.89	0.91	0.89	0.91	XXX
78606	TC	A	Brain imaging, compl w/flow	0.00	3.91	3.93	NA	NA	0.17	4.08	4.10	NA	NA	XXX
78607		A	Brain imaging (3D)	1.23	7.08	7.16	NA	NA	0.35	8.66	8.74	NA	NA	XXX
78607	26	A	Brain imaging (3D)	1.23	0.45	0.49	0.45	0.49	0.05	1.73	1.77	1.73	1.77	XXX
78607	TC	A	Brain imaging (3D)	0.00	6.63	6.67	NA	NA	0.30	6.93	6.97	NA	NA	XXX
78608		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78609		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78610		A	Brain flow imaging only	0.30	1.70	1.72	NA	NA	0.09	2.09	2.11	NA	NA	XXX
78610	26	A	Brain flow imaging only	0.30	0.11	0.12	0.11	0.12	0.01	0.42	0.43	0.42	0.43	XXX
78610	TC	A	Brain flow imaging only	0.00	1.59	1.60	NA	NA	0.08	1.67	1.68	NA	NA	XXX
78615		A	Cerebral blood flow imaging	0.42	4.05	4.08	NA	NA	0.19	4.66	4.69	NA	NA	XXX
78615	26	A	Cerebral blood flow imaging	0.42	0.16	0.17	0.16	0.17	0.02	0.60	0.61	0.60	0.61	XXX
78615	TC	A	Cerebral blood flow imaging	0.00	3.89	3.91	NA	NA	0.17	4.06	4.08	NA	NA	XXX
78630		A	Cerebrospinal fluid scan	0.68	5.33	5.39	NA	NA	0.26	6.27	6.33	NA	NA	XXX
78630	26	A	Cerebrospinal fluid scan	0.68	0.24	0.27	0.24	0.27	0.03	0.95	0.98	0.95	0.98	XXX
78630	TC	A	Cerebrospinal fluid scan	0.00	5.09	5.12	NA	NA	0.23	5.32	5.35	NA	NA	XXX
78635		A	CSF ventriculography	0.61	2.83	2.86	NA	NA	0.14	3.58	3.61	NA	NA	XXX
78635	26	A	CSF ventriculography	0.61	0.26	0.27	0.26	0.27	0.02	0.89	0.90	0.89	0.90	XXX
78635	TC	A	CSF ventriculography	0.00	2.57	2.59	NA	NA	0.12	2.69	2.71	NA	NA	XXX
78645		A	CSF shunt evaluation	0.57	3.68	3.72	NA	NA	0.17	4.42	4.46	NA	NA	XXX
78645	26	A	CSF shunt evaluation	0.57	0.21	0.23	0.21	0.23	0.02	0.80	0.82	0.80	0.82	XXX
78645	TC	A	CSF shunt evaluation	0.00	3.47	3.49	NA	NA	0.15	3.62	3.64	NA	NA	XXX
78647		A	Cerebrospinal fluid scan	0.90	6.30	6.37	NA	NA	0.30	7.50	7.57	NA	NA	XXX
78647	26	A	Cerebrospinal fluid scan	0.90	0.33	0.36	0.33	0.36	0.03	1.26	1.29	1.26	1.29	XXX
78647	TC	A	Cerebrospinal fluid scan	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
78650		A	CSF leakage imaging	0.61	4.91	4.96	NA	NA	0.23	5.75	5.80	NA	NA	XXX
78650	26	A	CSF leakage imaging	0.61	0.22	0.24	0.22	0.24	0.02	0.85	0.87	0.85	0.87	XXX
78650	TC	A	CSF leakage imaging	0.00	4.69	4.72	NA	NA	0.21	4.90	4.93	NA	NA	XXX
78660		A	Nuclear exam of tear flow	0.53	2.33	2.36	NA	NA	0.12	2.98	3.01	NA	NA	XXX
78660	26	A	Nuclear exam of tear flow	0.53	0.19	0.21	0.19	0.21	0.02	0.74	0.76	0.74	0.76	XXX
78660	TC	A	Nuclear exam of tear flow	0.00	2.14	2.15	NA	NA	0.10	2.24	2.25	NA	NA	XXX
78699		C	Nervous system nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78699	26	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78699	TC	C	Nervous system nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78700		A	Kidney imaging, static	0.45	3.24	3.28	NA	NA	0.15	3.84	3.88	NA	NA	XXX
78700	26	A	Kidney imaging, static	0.45	0.16	0.18	0.16	0.18	0.02	0.63	0.65	0.63	0.65	XXX
78700	TC	A	Kidney imaging, static	0.00	3.08	3.10	NA	NA	0.13	3.21	3.23	NA	NA	XXX
78701		A	Kidney imaging with flow	0.49	3.77	3.81	NA	NA	0.17	4.43	4.47	NA	NA	XXX
78701	26	A	Kidney imaging with flow	0.49	0.17	0.19	0.17	0.19	0.02	0.68	0.70	0.68	0.70	XXX
78701	TC	A	Kidney imaging with flow	0.00	3.60	3.62	NA	NA	0.15	3.75	3.77	NA	NA	XXX
78704		A	Imaging renogram	0.74	4.26	4.31	NA	NA	0.21	5.21	5.26	NA	NA	XXX
78704	26	A	Imaging renogram	0.74	0.26	0.29	0.26	0.29	0.03	1.03	1.06	1.03	1.06	XXX
78704	TC	A	Imaging renogram	0.00	4.00	4.02	NA	NA	0.18	4.18	4.20	NA	NA	XXX
78707		A	Kidney flow/function image	0.96	4.86	4.92	NA	NA	0.24	6.06	6.12	NA	NA	XXX
78707	26	A	Kidney flow/function image	0.96	0.34	0.37	0.34	0.37	0.04	1.34	1.37	1.34	1.37	XXX
78707	TC	A	Kidney flow/function image	0.00	4.52	4.55	NA	NA	0.20	4.72	4.75	NA	NA	XXX
78708		A	Kidney flow/function image	1.21	4.95	4.99	NA	NA	0.25	6.41	6.45	NA	NA	XXX
78708	26	A	Kidney flow/function image	1.21	0.43	0.44	0.43	0.44	0.05	1.69	1.70	1.69	1.70	XXX
78708	TC	A	Kidney flow/function image	0.00	4.52	4.55	NA	NA	0.20	4.72	4.75	NA	NA	XXX
78709		A	Kidney flow/function image	1.41	5.02	5.04	NA	NA	0.25	6.68	6.70	NA	NA	XXX
78709	26	A	Kidney flow/function image	1.41	0.50	0.49	0.50	0.49	0.05	1.96	1.95	1.96	1.95	XXX
78709	TC	A	Kidney flow/function image	0.00	4.52	4.55	NA	NA	0.20	4.72	4.75	NA	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
78710		A	Kidney imaging (3D)	0.66	6.20	6.27	NA	NA	0.30	7.16	7.23	NA	NA	XXX
78710	26	A	Kidney imaging (3D)	0.66	0.23	0.26	0.23	0.26	0.03	0.92	0.95	0.92	0.95	XXX
78710	TC	A	Kidney imaging (3D)	0.00	5.97	6.01	NA	NA	0.27	6.24	6.28	NA	NA	XXX
78715		A	Renal vascular flow exam	0.30	1.70	1.72	NA	NA	0.09	2.09	2.11	NA	NA	XXX
78715	26	A	Renal vascular flow exam	0.30	0.11	0.12	0.11	0.12	0.01	0.42	0.43	0.42	0.43	XXX
78715	TC	A	Renal vascular flow exam	0.00	1.59	1.60	NA	NA	0.08	1.67	1.68	NA	NA	XXX
78725		A	Kidney function study	0.38	1.94	1.96	NA	NA	0.10	2.42	2.44	NA	NA	XXX
78725	26	A	Kidney function study	0.38	0.14	0.15	0.14	0.15	0.01	0.53	0.54	0.53	0.54	XXX
78725	TC	A	Kidney function study	0.00	1.80	1.81	NA	NA	0.09	1.89	1.90	NA	NA	XXX
78730		A	Urinary bladder retention	0.36	1.61	1.63	NA	NA	0.09	2.06	2.08	NA	NA	XXX
78730	26	A	Urinary bladder retention	0.36	0.13	0.14	0.13	0.14	0.02	0.51	0.52	0.51	0.52	XXX
78730	TC	A	Urinary bladder retention	0.00	1.48	1.49	NA	NA	0.07	1.55	1.56	NA	NA	XXX
78740		A	Ureteral reflux study	0.57	2.34	2.37	NA	NA	0.12	3.03	3.06	NA	NA	XXX
78740	26	A	Ureteral reflux study	0.57	0.20	0.22	0.20	0.22	0.02	0.79	0.81	0.79	0.81	XXX
78740	TC	A	Ureteral reflux study	0.00	2.14	2.15	NA	NA	0.10	2.24	2.25	NA	NA	XXX
78760		A	Testicular imaging	0.66	2.94	2.99	NA	NA	0.15	3.75	3.80	NA	NA	XXX
78760	26	A	Testicular imaging	0.66	0.23	0.26	0.23	0.26	0.03	0.92	0.95	0.92	0.95	XXX
78760	TC	A	Testicular imaging	0.00	2.71	2.73	NA	NA	0.12	2.83	2.85	NA	NA	XXX
78761		A	Testicular imaging/flow	0.71	3.49	3.54	NA	NA	0.17	4.37	4.42	NA	NA	XXX
78761	26	A	Testicular imaging/flow	0.71	0.25	0.28	0.25	0.28	0.03	0.99	1.02	0.99	1.02	XXX
78761	TC	A	Testicular imaging/flow	0.00	3.24	3.26	NA	NA	0.14	3.38	3.40	NA	NA	XXX
78799		C	Genitourinary nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78799	26	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78799	TC	C	Genitourinary nuclear exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78800		A	Tumor imaging, limited area	0.66	3.67	3.72	NA	NA	0.18	4.51	4.56	NA	NA	XXX
78800	26	A	Tumor imaging, limited area	0.66	0.23	0.26	0.23	0.26	0.03	0.92	0.95	0.92	0.95	XXX
78800	TC	A	Tumor imaging, limited area	0.00	3.44	3.46	NA	NA	0.15	3.59	3.61	NA	NA	XXX
78801		A	Tumor imaging, mult areas	0.79	4.55	4.61	NA	NA	0.22	5.56	5.62	NA	NA	XXX
78801	26	A	Tumor imaging, mult areas	0.79	0.28	0.31	0.28	0.31	0.03	1.10	1.13	1.10	1.13	XXX
78801	TC	A	Tumor imaging, mult areas	0.00	4.27	4.30	NA	NA	0.19	4.46	4.49	NA	NA	XXX
78802		A	Tumor imaging, whole body	0.86	5.90	5.96	NA	NA	0.29	7.05	7.11	NA	NA	XXX
78802	26	A	Tumor imaging, whole body	0.86	0.31	0.34	0.31	0.34	0.03	1.20	1.23	1.20	1.23	XXX
78802	TC	A	Tumor imaging, whole body	0.00	5.59	5.62	NA	NA	0.26	5.85	5.88	NA	NA	XXX
78803		A	Tumor imaging (3D)	1.09	7.03	7.10	NA	NA	0.34	8.46	8.53	NA	NA	XXX
78803	26	A	Tumor imaging (3D)	1.09	0.40	0.43	0.40	0.43	0.04	1.53	1.56	1.53	1.56	XXX
78803	TC	A	Tumor imaging (3D)	0.00	6.63	6.67	NA	NA	0.30	6.93	6.97	NA	NA	XXX
78805		A	Abscess imaging, ltd area	0.73	3.70	3.75	NA	NA	0.18	4.61	4.66	NA	NA	XXX
78805	26	A	Abscess imaging, ltd area	0.73	0.26	0.29	0.26	0.29	0.03	1.02	1.05	1.02	1.05	XXX
78805	TC	A	Abscess imaging, ltd area	0.00	3.44	3.46	NA	NA	0.15	3.59	3.61	NA	NA	XXX
78806		A	Abscess imaging, whole body	0.86	6.81	6.88	NA	NA	0.33	8.00	8.07	NA	NA	XXX
78806	26	A	Abscess imaging, whole body	0.86	0.31	0.34	0.31	0.34	0.03	1.20	1.23	1.20	1.23	XXX
78806	TC	A	Abscess imaging, whole body	0.00	6.50	6.54	NA	NA	0.30	6.80	6.84	NA	NA	XXX
78807		A	Nuclear localization/abscess	1.09	7.04	7.11	NA	NA	0.34	8.47	8.54	NA	NA	XXX
78807	26	A	Nuclear localization/abscess	1.09	0.41	0.44	0.41	0.44	0.04	1.54	1.57	1.54	1.57	XXX
78807	TC	A	Nuclear localization/abscess	0.00	6.63	6.67	NA	NA	0.30	6.93	6.97	NA	NA	XXX
78810		N	Tumor imaging (PET)	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78810	26	N	Tumor imaging (PET)	1.93	0.77	0.95	0.77	0.95	0.07	2.77	2.95	2.77	2.95	XXX
78810	TC	N	Tumor imaging (PET)	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78890		[redacted]	Nuclear medicine data proc	0.05	1.34	1.35	NA	NA	0.06	1.45	1.46	NA	NA	XXX
78890	26	[redacted]	Nuclear medicine data proc	0.05	0.02	0.02	0.02	0.02	0.01	0.08	0.08	0.08	0.08	XXX
78890	TC	B	Nuclear medicine data proc	0.00	1.32	1.33	NA	NA	0.05	1.37	1.38	NA	NA	XXX
78891		B	Nuclear med data proc	0.10	2.69	2.71	NA	NA	0.12	2.91	2.93	NA	NA	XXX
78891	26	B	Nuclear med data proc	0.10	0.04	0.04	0.04	0.04	0.01	0.15	0.15	0.15	0.15	XXX
78891	TC	B	Nuclear med data proc	0.00	2.65	2.67	NA	NA	0.11	2.76	2.78	NA	NA	XXX
78990		I	Provide diag radionuclide(s)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999		C	Nuclear diagnostic exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
78999	26	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999	TC	C	Nuclear diagnostic exam	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
79000		A	Init hyperthyroid therapy	1.80	3.29	3.37	NA	NA	0.19	5.28	5.36	NA	NA	XXX
79000	26	A	Init hyperthyroid therapy	1.80	0.64	0.70	0.64	0.70	0.07	2.51	2.57	2.51	2.57	XXX
79000	TC	A	Init hyperthyroid therapy	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
79001		A	Repeat hyperthyroid therapy	1.05	1.69	1.73	NA	NA	0.10	2.84	2.88	NA	NA	XXX
79001	26	A	Repeat hyperthyroid therapy	1.05	0.37	0.40	0.37	0.40	0.04	1.46	1.49	1.46	1.49	XXX
79001	TC	A	Repeat hyperthyroid therapy	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
79020		A	Thyroid ablation	1.81	3.28	3.36	NA	NA	0.19	5.28	5.36	NA	NA	XXX
79020	26	A	Thyroid ablation	1.81	0.63	0.69	0.63	0.69	0.07	2.51	2.57	2.51	2.57	XXX
79020	TC	A	Thyroid ablation	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
79030		A	Thyroid ablation, carcinoma	2.10	3.39	3.48	NA	NA	0.20	5.69	5.78	NA	NA	XXX
79030	26	A	Thyroid ablation, carcinoma	2.10	0.74	0.81	0.74	0.81	0.08	2.92	2.99	2.92	2.99	XXX
79030	TC	A	Thyroid ablation, carcinoma	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
79035		A	Thyroid metastatic therapy	2.52	3.57	3.67	NA	NA	0.21	6.30	6.40	NA	NA	XXX
79035	26	A	Thyroid metastatic therapy	2.52	0.92	1.00	0.92	1.00	0.09	3.53	3.61	3.53	3.61	XXX
79035	TC	A	Thyroid metastatic therapy	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
79100		A	Hematopoetic nuclear therapy	1.32	3.13	3.19	NA	NA	0.17	4.62	4.68	NA	NA	XXX
79100	26	A	Hematopoetic nuclear therapy	1.32	0.48	0.52	0.48	0.52	0.05	1.85	1.89	1.85	1.89	XXX
79100	TC	A	Hematopoetic nuclear therapy	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
79200		A	Intracavitary nuclear trmt	1.99	3.37	3.45	NA	NA	0.19	5.55	5.63	NA	NA	XXX
79200	26	A	Intracavitary nuclear trmt	1.99	0.72	0.78	0.72	0.78	0.07	2.78	2.84	2.78	2.84	XXX
79200	TC	A	Intracavitary nuclear trmt	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
79300		C	Interstitial nuclear therapy	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
79300	26	A	Interstitial nuclear therapy	1.60	0.58	0.63	0.58	0.63	0.06	2.24	2.29	2.24	2.29	XXX
79300	TC	C	Interstitial nuclear therapy	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
79400		A	Nonhemato nuclear therapy	1.96	3.36	3.44	NA	NA	0.19	5.51	5.59	NA	NA	XXX
79400	26	A	Nonhemato nuclear therapy	1.96	0.71	0.77	0.71	0.77	0.07	2.74	2.80	2.74	2.80	XXX
79400	TC	A	Nonhemato nuclear therapy	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
79420		C	Intravascular nuclear ther	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
79420	26	A	Intravascular nuclear ther	1.51	0.53	0.58	0.53	0.58	0.06	2.10	2.15	2.10	2.15	XXX
79420	TC	C	Intravascular nuclear ther	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
79440		A	Nuclear joint therapy	1.99	3.42	3.49	NA	NA	0.20	5.61	5.68	NA	NA	XXX
79440	26	A	Nuclear joint therapy	1.99	0.77	0.82	0.77	0.82	0.08	2.84	2.89	2.84	2.89	XXX
79440	TC	A	Nuclear joint therapy	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
79900		C	Provide ther radiopharm(s)	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
79999		C	Nuclear medicine therapy	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
79999	26	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999	TC	C	Nuclear medicine therapy	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
80048		X	Basic metabolic panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80049		D	Metabolic panel, basic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80050		N	General health panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80051		X	Electrolyte panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80053		X	Comprehen metabolic panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80054		D	Comprehen metabolic panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80055		I	Obstetric panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80058		D	Hepatic function panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80059		D	Hepatitis panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80061		X	Lipid panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80069		X	Renal function panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80072		X	Arthritis panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80074		X	Acute hepatitis panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80076		X	Hepatic function panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80090		X	Torch antibody panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80091		D	Thyroid panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80092		D	Thyroid panel w/TSH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80100		X	Drug screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80101		X	Drug screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80102		X	Drug confirmation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80103		X	Drug analysis, tissue prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80150		X	Assay of amikacin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80152		X	Assay of amitriptyline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80154		X	Assay of benzodiazepines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80156		X	Assay of carbamazepine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80158		X	Assay of cyclosporine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80160		X	Assay of desipramine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80162		X	Assay of digoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80164		X	Assay, dipropylacetic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80166		X	Assay of doxepin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80168		X	Assay of ethosuximide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80170		X	Assay of gentamicin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80172		X	Assay of gold	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80174		X	Assay of imipramine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80176		X	Assay of lidocaine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80178		X	Assay of lithium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80182		X	Assay of nortriptyline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80184		X	Assay of phenobarbital	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80185		X	Assay of phenytoin, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80186		X	Assay of phenytoin, free	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80188		X	Assay of primidone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80190		X	Assay of procainamide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80192		X	Assay of procainamide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80194		X	Assay of quinidine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80196		X	Assay of salicylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80197		X	Assay of tacrolimus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80198		X	Assay of theophylline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80200		X	Assay of tobramycin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80201		X	Assay of topiramate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80202		X	Assay of vancomycin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80299		X	Quantitative assay, drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80400		X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80402		X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80406		X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80408		X	Aldosterone suppression eval	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80410		X	Calcitonin stimul panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80412		X	CRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80414		X	Testosterone response	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80415		X	Estradiol response panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80416		X	Renin stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80417		X	Renin stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80418		X	Pituitary evaluation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80420		X	Dexamethasone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80422		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80424		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80426		X	Gonadotropin hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80428		X	Growth hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80430		X	Growth hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80432		X	Insulin suppression panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
80434		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80435		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80436		X	Metyrapone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80438		X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80439		X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80440		X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80500		A	Lab pathology consultation	0.37	0.19	0.20	0.16	0.18	0.01	0.57	0.58	0.54	0.56	XXX
80502		A	Lab pathology consultation	1.33	0.63	0.56	0.57	0.52	0.04	2.00	1.93	1.94	1.89	XXX
81000		X	Urinalysis, nonauto w/scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81001		X	Urinalysis, auto w/scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81002		X	Urinalysis nonauto w/o scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81003		X	Urinalysis, auto, w/o scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81005		X	Urinalysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81007		X	Urine screen for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81015		X	Microscopic exam of urine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81020		X	Urinalysis, glass test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81025		X	Urine pregnancy test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81050		X	Urinalysis, volume measure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81099		X	Urinalysis test procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82000		X	Assay of blood acetaldehyde	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82003		X	Assay of acetaminophen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82009		X	Test for acetone/ketones	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82010		X	Acetone assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82013		X	Acetylcholinesterase assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82016		X	Acylcarnitines, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82017		X	Acylcarnitines, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82024		X	Assay of acth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82030		X	Assay of adp & amp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82040		X	Assay of serum albumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82042		X	Assay of urine albumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82043		X	Microalbumin, quantitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82044		X	Microalbumin, semiquant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82055		X	Assay of ethanol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82075		X	Assay of breath ethanol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82085		X	Assay of aldolase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82088		X	Assay of aldosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82101		X	Assay of urine alkaloids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82103		X	Alpha-1-antitrypsin, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82104		X	Alpha-1-antitrypsin, pheno	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82105		X	Alpha-fetoprotein, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82106		X	Alpha-fetoprotein, amniotic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82108		X	Assay of aluminum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82120		X	Amines, vaginal fluid qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82127		X	Amino acid, single qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82128		X	Amino acids, mult qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82131		X	Amino acids, single quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82135		X	Assay, aminolevulinic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82136		X	Amino acids, quant, 2–5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82139		X	Amino acids, quan, 6 or more	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82140		X	Assay of ammonia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82143		X	Amniotic fluid scan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82145		X	Assay of amphetamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82150		X	Assay of amylase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82154		X	Androstanediol glucuronide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82157		X	Assay of androstenedione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82160		X	Assay of androsterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82163		X	Assay of angiotensin II	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82164		X	Angiotensin I enzyme test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82172		X	Assay of apolipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82175		X	Assay of arsenic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82180		X	Assay of ascorbic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82190		X	Atomic absorption	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82205		X	Assay of barbiturates	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82232		X	Assay of beta-2 protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82239		X	Bile acids, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82240		X	Bile acids, cholylglycine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82247		X	Bilirubin, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82248		X	Bilirubin, direct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82251		I	Assay of bilirubin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82252		X	Fecal bilirubin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82261		X	Assay of biotinidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82270		X	Test for blood, feces	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82273		X	Test for blood, other source	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82286		X	Assay of bradykinin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82300		X	Assay of cadmium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82306		X	Assay of vitamin D	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82307		X	Assay of vitamin D	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82308		X	Assay of calcitonin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82310		X	Assay of calcium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82330		X	Assay of calcium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82331		X	Calcium infusion test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82340		X	Assay of calcium in urine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

[1] CPT codes and descriptions only are copyright 2000 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
82355		X	Calculus (stone) analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82360		X	Calculus (stone) assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82365		X	Calculus (stone) assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82370		X	X-ray assay, calculus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82374		X	Assay, blood carbon dioxide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82375		X	Assay, blood carbon monoxide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82376		X	Test for carbon monoxide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82378		X	Carcinoembryonic antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82379		X	Assay of carnitine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82380		X	Assay of carotene	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82382		X	Assay, urine catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82383		X	Assay, blood catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82384		X	Assay, three catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82387		X	Assay of cathepsin-d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82390		X	Assay of ceruloplasmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82397		X	Chemiluminescent assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82415		X	Assay of chloramphenicol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82435		X	Assay of blood chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82436		X	Assay of urine chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82438		X	Assay, other fluid chlorides	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82441		X	Test for chlorohydrocarbons	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82465		X	Assay of serum cholesterol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82480		X	Assay, serum cholinesterase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82482		X	Assay, rbc cholinesterase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82485		X	Assay, chondroitin sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82486		X	Gas/liquid chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82487		X	Paper chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82488		X	Paper chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82489		X	Thin layer chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82491		X	Chromotography, quant, sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82492		X	Chromotography, quant, mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82495		X	Assay of chromium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82507		X	Assay of citrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82520		X	Assay of cocaine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82523		X	Collagen crosslinks	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82525		X	Assay of copper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82528		X	Assay of corticosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82530		X	Cortisol, free	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82533		X	Total cortisol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82540		X	Assay of creatine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82541		X	Column chromotography, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82542		X	Column chromotography, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82543		X	Column chromotograph/isotope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82544		X	Column chromotograph/isotope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82550		X	Assay of ck (cpk)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82552		X	Assay of cpk in blood	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82553		X	Creatine, MB fraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82554		X	Creatine, isoforms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82565		X	Assay of creatinine	0.00	0.00	0.00	0.00	0.00	0.00	00	0.00	0.00	0.00	XXX
82570		X	Assay of urine creatinine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82575		X	Creatinine clearance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82585		X	Assay of cryofibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82595		X	Assay of cryoglobulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82600		X	Assay of cyanide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82607		X	Vitamin B-12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82608		X	B-12 binding capacity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82615		X	Test for urine cystines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82626		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82627		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82633		X	Desoxycorticosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82634		X	Deoxycortisol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82638		X	Assay of dibucaine number	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82646		X	Assay of dihydrocodeinone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82649		X	Assay of dihydromorphinone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82651		X	Assay of dihydrotestosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82652		X	Assay of dihydroxyvitamin d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82654		X	Assay of dimethadione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82657		X	Enzyme cell activity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82658		X	Enzyme cell activity, ra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82664		X	Electrophoretic test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82666		X	Assay of epiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82668		X	Assay of erythropoietin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82670		X	Assay of estradiol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82671		X	Assay of estrogens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82672		X	Assay of estrogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82677		X	Assay of estriol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82679		X	Assay of estrone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82690		X	Assay of ethchlorvynol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82693		X	Assay of ethylene glycol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82696		X	Assay of etiocholanolone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82705		X	Fats/lipids, feces, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82710		X	Fats/lipids, feces, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
82715		X	Assay of fecal fat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82725		X	Assay of blood fatty acids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82726		X	Long chain fatty acids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82728		X	Assay of ferritin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82731		X	Assay of fetal fibronectin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82735		X	Assay of fluoride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82742		X	Assay of flurazepam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82746		X	Blood folic acid serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82747		X	Assay of folic acid, rbc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82757		X	Assay of semen fructose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82759		X	Assay of rbc galactokinase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82760		X	Assay of galactose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82775		X	Assay galactose transferase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82776		X	Galactose transferase test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82784		X	Assay of gammaglobulin igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82785		X	Assay of gammaglobulin ige	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82787		X	Igg 1, 2, 3 and 4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82800		X	Blood pH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82803		X	Blood gases: pH, pO2 & pCO2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82805		X	Blood gases W/02 saturation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82810		X	Blood gases, O2 sat only	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82820		X	Hemoglobin-oxygen affinity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82926		X	Assay of gastric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82928		X	Assay of gastric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82938		X	Gastrin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82941		X	Assay of gastrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82943		X	Assay of glucagon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82946		X	Glucagon tolerance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82947		X	Assay of glucose, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82948		X	Reagent strip/blood glucose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82950		X	Glucose test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82951		X	Glucose tolerance test (GTT)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82952		X	GTT-added samples	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82953		X	Glucose-tolbutamide test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82955		X	Assay of g6pd enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82960		X	Test for G6PD enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82962		X	Glucose blood test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82963		X	Assay of glucosidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82965		X	Assay of gdh enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82975		X	Assay of glutamine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82977		X	Assay of GGT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82978		X	Assay of glutathione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82979		X	Assay, rbc glutathione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82980		X	Assay of glutethimide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82985		X	Glycated protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83001		X	Gonadotropin (FSH)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83002		X	Gonadotropin (LH)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83003		X	Assay, growth hormone (hgh)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
?????		X	Assay of guanosine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83010		X	Assay of haptoglobin, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83012		X	Assay of haptoglobins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83013		X	H pylori breath tst analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83014		X	H pylori drug admin/collect	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83015		X	Heavy metal screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83018		X	Quantitative screen, metals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83020		X	Hemoglobin electrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83020	26	A	Hemoglobin electrophoresis	0.37	0.16	0.18	0.16	0.18	0.01	0.54	0.56	0.54	0.56	XXX
83021		X	Hemoglobin chromotography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83026		X	Hemoglobin, copper sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83030		X	Fetal hemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83033		X	Fetal fecal hemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83036		X	Glycated hemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83045		X	Blood methemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83050		X	Blood methemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83051		X	Assay of plasma hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83055		X	Blood sulfhemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83060		X	Blood sulfhemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83065		X	Assay of hemoglobin heat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83068		X	Hemoglobin stability screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83069		X	Assay of urine hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83070		X	Assay of hemosiderin, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83071		X	Assay of hemosiderin, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83080		X	Assay of b hexosaminidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83088		X	Assay of histamine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83150		X	Assay of for hva	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83491		X	Assay of corticosteroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83497		X	Assay of 5-hiaa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83498		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83499		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83500		X	Assay, free hydroxyproline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83505		X	Assay, total hydroxyproline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83516		X	Immunoassay, nonantibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
83518		X	Immunoassay, dipstick	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83519		X	Immunoassay, nonantibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83520		X	Immunoassay, RIA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83525		X	Assay of insulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83527		X	Assay of insulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83528		X	Assay of intrinsic factor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83540		X	Assay of iron	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83550		X	Iron binding test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83570		X	Assay of idh enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83582		X	Assay of ketogenic steroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83586		X	Assay 17-ketosteroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83593		X	Fractionation, ketosteroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83605		X	Assay of lactic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83615		X	Lactate (LD) (LDH) enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83625		X	Assay of ldh enzymes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83632		X	Placental lactogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83633		X	Test urine for lactose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83634		X	Assay of urine for lactose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83655		X	Assay of lead	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83661		X	Assay of l/s ratio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83662		X	L/S ratio, foam stability	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83670		X	Assay of lap enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83690		X	Assay of lipase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83715		X	Assay of blood lipoproteins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83716		X	Assay of blood lipoproteins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83718		X	Assay of lipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83719		X	Assay of blood lipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83721		X	Assay of blood lipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83727		X	Assay of lrh hormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83735		X	Assay of magnesium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83775		X	Assay of md enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83785		X	Assay of manganese	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83786		X	Mass spectrometry qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83789		X	Mass spectrometry quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83805		X	Assay of meprobamate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83825		X	Assay of mercury	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83835		X	Assay of metanephrines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83840		X	Assay of methadone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83857		X	Assay of methemalbumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83858		X	Assay of methsuximide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83864		X	Mucopolysaccharides	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83866		X	Mucopolysaccharides screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83872		X	Assay synovial fluid mucin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83873		X	Assay of csf protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83874		X	Assay of myoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83883		X	Assay, nephelometry not spec	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83885		X	Assay of nickel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83887		X	Assay of nicotine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83890		X	Molecule isolate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83891		X	Molecule isolate nucleic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83892		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83893		X	Molecule dot/slot/blot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83894		X	Molecule gel electrophor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83896		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83897		X	Molecule nucleic transfer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83898		X	Molecule nucleic ampli	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83901		X	Molecule nucleic ampli	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83902		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83903		X	Molecule mutation scan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83904		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83905		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83906		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83912		X	Genetic examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83912	26	A	Genetic examination	0.37	0.18	0.19	0.16	0.18	0.01	0.56	0.57	0.54	0.56	XXX
83915		X	Assay of nucleotidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83916		X	Oligoclonal bands	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83918		X	Assay, organic acids quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83919		X	Assay, organic acids qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83925		X	Assay of opiates	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83930		X	Assay of blood osmolality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83935		X	Assay of urine osmolality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83937		X	Assay of osteocalcin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83945		X	Assay of oxalate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83970		X	Assay of parathormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83986		X	Assay of body fluid acidity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83992		X	Assay for phencyclidine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84022		X	Assay of phenothiazine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84030		X	Assay of blood pku	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84035		X	Assay of phenylketones	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84060		X	Assay acid phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84061		X	Phosphatase, forensic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84066		X	Assay prostate phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
84075		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84078		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84080		X	Assay alkaline phosphatases	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84081		X	Amniotic fluid enzyme test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84085		X	Assay of rbc pg6d enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84087		X	Assay phosphohexose enzymes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84100		X	Assay of phosphorus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84105		X	Assay of urine phosphorus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84106		X	Test for porphobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84110		X	Assay of porphobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84119		X	Test urine for porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84120		X	Assay of urine porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84126		X	Assay of feces porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84127		X	Assay of feces porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84132		X	Assay of serum potassium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84133		X	Assay of urine potassium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84134		X	Assay of prealbumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84135		X	Assay of pregnanediol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84138		X	Assay of pregnanetriol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84140		X	Assay of pregnenolone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84143		X	Assay of 17-hydroxypregneno	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84144		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84146		X	Assay of prolactin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84150		X	Assay of prostaglandin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84153		X	Assay of psa, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84154		X	Assay of psa, free	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84155		X	Assay of protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84160		X	Assay of serum protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84165		X	Assay of serum proteins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84165	26	A	Assay of serum proteins	0.37	0.17	0.18	0.16	0.18	0.01	0.55	0.56	0.54	0.56	XXX
84181		X	Western blot test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84181	26	A	Western blot test	0.37	0.15	0.17	0.15	0.17	0.01	0.53	0.55	0.53	0.55	XXX
84182		X	Protein, western blot test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84182	26	A	Protein, western blot test	0.37	0.15	0.17	0.15	0.17	0.01	0.53	0.55	0.53	0.55	XXX
84202		X	Assay RBC protoporphynn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84203		X	Test RBC protoporphyrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84206		X	Assay of proinsulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84207		X	Assay of vitamin b-6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84210		X	Assay of pyruvate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84220		X	Assay of pyruvate kinase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84228		X	Assay of quinine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84233		X	Assay of estrogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84234		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84235		X	Assay of endocnne hormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84238		X	Assay, nonendocnne receptor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84244		X	Assay of renin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84252		X	Assay of vitamin b-2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84255		X	Assay of selenium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84260		X	Assay of serotonin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84270		X	Assay of sex hormone globul	0.00	00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84275		X	Assay of sialic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84285		X	Assay of silica	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84295		X	Assay of serum sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84300		X	Assay of urine sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84305		X	Assay of somatomedin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84307		X	Assay of somatostatin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84311		X	Spectrophotometry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84315		X	Body fluid specific gravity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84375		X	Chromatogram assay, sugars	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84376		X	Sugars, single, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84377		X	Sugars, multiple, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84378		X	Sugars single quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84379		X	Sugars multiple quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84392		X	Assay of urine sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84402		X	Assay of testosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84403		X	Assay of total testosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84425		X	Assay of vitamin b-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84430		X	Assay of thiocyanate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84432		X	Assay of thyroglobulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84436		X	Assay of total thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84437		X	Assay of neonatal thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84439		X	Assay of free thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84442		X	Assay of thyroid activity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84443		X	Assay thyroid stim hormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84445		X	Assay of tsi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84446		X	Assay of vitamin e	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84449		X	Assay of transcortin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84450		X	Transferase (AST) (SGOT)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84460		X	Alanine amino (ALT) (SGPT)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84466		X	Assay of transferrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84478		X	Assay of triglycerides	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84479		X	Assay of thyroid (t3 or t4)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
84480		X	Assay, triiodothyronine (t3)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84481		X	Free assay (FT-3)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84482		X	T3 reverse	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84484		X	Assay of troponin, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84485		X	Assay duodenal fluid trypsin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84488		X	Test feces for trypsin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84490		X	Assay of feces for trypsin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84510		X	Assay of tyrosine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84512		X	Assay of troponin, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84520		X	Assay of urea nitrogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84525		X	Urea nitrogen semi-quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84540		X	Assay of urine/urea-n	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84545		X	Urea-N clearance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84550		X	Assay of blood/uric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84560		X	Assay of urine/uric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84577		X	Assay of feces/urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84578		X	Test urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84580		X	Assay of urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84583		X	Assay of urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84585		X	Assay of urine vma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84586		X	Assay of vip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84588		X	Assay of vasopressin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84590		X	Assay of vitamin a	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84597		X	Assay of vitamin k	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84600		X	Assay of volatiles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84620		X	Xylose tolerance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84630		X	Assay of zinc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84681		X	Assay of c-peptide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84702		X	Chorionic gonadotropin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84703		X	Chorionic gonadotropin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84830		X	Ovulation tests	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84999		X	Clinical chemistry test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85002		X	Bleeding time test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85007		X	Differential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85008		X	Nondifferential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85009		X	Differential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85013		X	Hematocrit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85014		X	Hematocrit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85018		X	Hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85021		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85022		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85023		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85024		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85025		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85027		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85031		X	Manual hemogram, cbc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85041		X	Red blood cell (RBC) count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85044		X	Reticulocyte count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85045		X	Reticulocyte count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85046		X	Reticyte/hgb concentrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85048		X	White blood cell (WBC) count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85060		A	Blood smear interpretation	0.45	0.20	0.21	0.19	0.20	0.01	0.66	0.67	0.65	0.66	XXX
85095		A	Bone marrow aspiration	1.08	4.30	3.41	0.42	0.50	0.03	5.41	4.52	1.53	1.61	XXX
85097		A	Bone marrow interpretation	0.94	0.40	0.43	0.40	0.43	0.03	1.37	1.40	1.37	1.40	XXX
85102		A	Bone marrow biopsy	1.37	4.41	3.53	0.53	0.62	0.04	5.82	4.94	1.94	2.03	XXX
85130		X	Chromogenic substrate assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85170		X	Blood clot retraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85175		X	Blood clot lysis time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85210		X	Blood clot factor II test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85220		X	Blood clot factor V test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85230		X	Blood clot factor VII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85240		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85244		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85245		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85246		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85247		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85250		X	Blood clot factor IX test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85260		X	Blood clot factor X test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85270		X	Blood clot factor XI test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85280		X	Blood clot factor XII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85290		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85291		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85292		X	Blood clot factor assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85293		X	Blood clot factor assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85300		X	Antithrombin III test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85301		X	Antithrombin III test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85302		X	Blood clot inhibitor antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85303		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85305		X	Blood clot inhibitor assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85306		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85335		X	Factor inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85337		X	Thrombomodulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
85345		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85347		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85348		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85360		X	Euglobulin lysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85362		X	Fibrin degradation products	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85366		X	Fibrinogen test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85370		X	Fibrinogen test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85378		X	Fibrin degradation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85379		X	Fibrin degradation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85384		X	Fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85385		X	Fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85390		X	Fibrinolysins screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85390	26	A	Fibrinolysins screen	0.37	0.12	0.15	0.12	0.15	0.01	0.50	0.53	0.50	0.53	XXX
85400		X	Fibrinolytic plasmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85410		X	Fibrinolytic antiplasmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85415		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85420		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85421		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85441		X	Heinz bodies, direct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85445		X	Heinz bodies, induced	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85460		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85461		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85475		X	Hemolysin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85520		X	Heparin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85525		X	Heparin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85530		X	Heparin-protamine tolerance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85535		X	Iron stain, blood cells	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85540		X	Wbc alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85547		X	RBC mechanical fragility	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85549		X	Muramidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85555		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85557		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85576		X	Blood platelet aggregation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85576	26	A	Blood platelet aggregation	0.37	0.16	0.18	0.16	0.18	0.01	0.54	0.56	0.54	0.56	XXX
85585		X	Blood platelet estimation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85590		X	Platelet count, manual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85595		X	Platelet count, automated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85597		X	Platelet neutralization	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85610		X	Prothrombin time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85611		X	Prothrombin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85612		X	Viper venom prothrombin time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85613		X	Russell viper venom, diluted	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85635		X	Reptilase test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85651		X	Rbc sed rate, nonautomated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85652		X	Rbc sed rate, automated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85660		X	RBC sickle cell test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85670		X	Thrombin time, plasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85675		X	Thrombin time, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85705		X	Thromboplastin inhibition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85730		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85732		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85810		X	Blood viscosity examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85999		X	Hematology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86000		X	Agglutinins, febrile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86003		X	Allergen specific IgE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86005		X	Allergen specific IgE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86021		X	WBC antibody identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86022		X	Platelet antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86023		X	Immunoglobulin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86038		X	Antinuclear antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86039		X	Antinuclear antibodies (ANA)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86060		X	Antistreptolysin o, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86063		X	Antistreptolysin o, screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86077		A	Physician blood bank service	0.94	0.50	0.46	0.40	0.38	0.03	1.47	1.43	1.37	1.35	XXX
86078		A	Physician blood bank service	0.94	0.52	0.48	0.40	0.39	0.02	1.48	1.44	1.36	1.35	XXX
86079		A	Physician blood bank service	0.94	0.51	0.47	0.40	0.39	0.02	1.47	1.43	1.36	1.35	XXX
86140		X	C-reactive protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86147		X	Cardiolipin antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86148		X	Phospholipid antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86155		X	Chemotaxis assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86156		X	Cold agglutinin, screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86157		X	Cold agglutinin, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86160		X	Complement, antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86161		X	Complement/function activity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86162		X	Complement, total (CH50)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86171		X	Complement fixation, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86185		X	Counterimmunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86215		X	Deoxyribonuclease, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86225		X	DNA antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86226		X	DNA antibody, single strand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86235		X	Nuclear antigen antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86243		X	Fc receptor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
86255		X	Fluorescent antibody, screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86255	26	A	Fluorescent antibody, screen	0.37	0.18	0.19	0.16	0.18	0.01	0.56	0.57	0.54	0.56	XXX
86256		X	Fluorescent antibody, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86256	26	A	Fluorescent antibody, titer	0.37	0.16	0.18	0.16	0.18	0.01	0.54	0.56	0.54	0.56	XXX
86277		X	Growth hormone antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86280		X	Hemagglutination inhibition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86308		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86309		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86310		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86316		X	Immunoassay, tumor antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86317		X	Immunoassay,infectious agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86318		X	Immunoassay,infectious agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86320		X	Serum immunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86320	26	A	Serum immunoelectrophoresis	0.37	0.16	0.18	0.16	0.18	0.01	0.54	0.56	0.54	0.56	XXX
86325		X	Other immunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86325	26	A	Other immunoelectrophoresis	0.37	0.18	0.19	0.15	0.17	0.01	0.56	0.57	0.53	0.55	XXX
86327		X	Immunoelectrophoresis assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86327	26	A	Immunoelectrophoresis assay	0.42	0.17	0.18	0.17	0.18	0.01	0.60	0.61	0.60	0.61	XXX
86329		X	Immunodiffusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86331		X	Immunodiffusion ouchterlony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86332		X	Immune complex assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86334		X	Immunofixation procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86334	26	A	Immunofixation procedure	0.37	0.16	0.18	0.16	0.18	0.01	0.54	0.56	0.54	0.56	XXX
86337		X	Insulin antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86340		X	Intrinsic factor antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86341		X	Islet cell antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86343		X	Leukocyte histamine release	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86344		X	Leukocyte phagocytosis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86353		X	Lymphocyte transformation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86359		X	T cells, total count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86360		X	T cell, absolute count/ratio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86361		X	T cell, absolute count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86376		X	Microsomal antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86378		X	Migration inhibitory factor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	.00	XXX
86382		X	Neutralization test, viral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86384		X	Nitroblue tetrazolium dye	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86403		X	Particle agglutination test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86406		X	Particle agglutination test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86430		X	Rheumatoid factor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86431		X	Rheumatoid factor, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86485		C	Skin test, candida	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86490		A	Coccidioidomycosis skin test	0.00	0.29	0.29	NA	NA	0.02	0.31	0.31	NA	NA	XXX
86510		A	Histoplasmosis skin test	0.00	0.32	0.32	NA	NA	0.02	0.34	0.34	NA	NA	XXX
86580		A	TB intradermal test	0.00	0.25	0.25	NA	NA	0.02	0.27	0.27	NA	NA	XXX
86585		A	TB tine test	0.00	0.21	0.21	NA	NA	0.01	0.22	0.22	NA	NA	XXX
86586		C	Skin test, unlisted	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
86588		D	Streptocollus, direct screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86590		X	Streptokinase, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86592		X	Blood serology, qualitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86593		X	Blood serology, quantitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86602		X	Antinomyces antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86603		X	Adenovirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86606		X	Aspergillus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86609		X	Bacterium antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86612		X	Blastomyces antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86615		X	Bordetella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86617		X	Lyme disease antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86618		X	Lyme disease antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86619		X	Borrelia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86622		X	Brucella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86625		X	Campylobacter antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86628		X	Candida antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86631		X	Chlamydia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86632		X	Chlamydia igm antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86635		X	Coccidioides antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86638		X	Q fever antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86641		X	Cryptococcus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86644		X	CMV antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86645		X	CMV antibody, IgM	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86648		X	Diphtheria antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86651		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86652		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86653		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86654		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86658		X	Enterovirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86663		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86664		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86665		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86668		X	Francisella tularensis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86671		X	Fungus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86674		X	Giardia lamblia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86677		X	Helicobacter pylori	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
86682		X	Helminth antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86684		X	Hemophilus influenza	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86687		X	Htlv-i antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86688		X	Htlv-ii antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86689		X	HTLV/HIV confirmatory test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86692		X	Hepatitis, delta agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86694		X	Herpes simplex test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86695		X	Herpes simplex test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86698		X	Histoplasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86701		X	HIV-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86702		X	HIV-2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86703		X	HIV-1/HIV-2, single assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86704		X	Hep b core antibody, igg/igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86705		X	Hep b core antibody, igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86706		X	Hep b surface antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86707		X	Hep be antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86708		X	Hep a antibody, igg/igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86709		X	Hep a antibody, igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86710		X	Influenza virus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86713		X	Legionella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86717		X	Leishmania antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86720		X	Leptospira antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86723		X	Listeria monocytogenes ab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86727		X	Lymph choriomeningitis ab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86729		X	Lympho venereum antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86732		X	Mucormycosis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86735		X	Mumps antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86738		X	Mycoplasma antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86741		X	Neisseria meningitidis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86744		X	Nocardia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86747		X	Parvovirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86750		X	Malaria antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86753		X	Protozoa antibody nos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86756		X	Respiratory virus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86759		X	Rotavirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86762		X	Rubella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86765		X	Rubeola antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86768		X	Salmonella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86771		X	Shigella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86774		X	Tetanus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86777		X	Toxoplasma antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86778		X	Toxoplasma antibody, igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86781		X	Treponema pallidum, confirm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86784		X	Trichinella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86787		X	Varicella-zoster antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86790		X	Virus antibody nos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86793		X	Yersinia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86800		X	Thyroglobulin antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86803		X	Hepatitis c ab test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86804		X	Hep c ab test, confirm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86805		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86806		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86807		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86808		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86812		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86813		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86816		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86817		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86821		X	Lymphocyte culture, mixed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86822		X	Lymphocyte culture, primed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86849		X	Immunology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86850		X	RBC antibody screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86860		X	RBC antibody elution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86870		X	RBC antibody identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86880		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86885		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86886		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86890		X	Autologous blood process	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86891		X	Autologous blood, op salvage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86900		X	Blood typing, ABO	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86901		X	Blood typing, Rh (D)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86903		X	Blood typing, antigen screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86904		X	Blood typing, patient serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86905		X	Blood typing, RBC antigens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86906		X	Blood typing, Rh phenotype	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86910		N	Blood typing, paternity test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86911		N	Blood typing, antigen system	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86915		X	Bone marrow/stem cell prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86920		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86921		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86922		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86927		X	Plasma, fresh frozen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
86930		X	Frozen blood prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86931		X	Frozen blood thaw	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86932		X	Frozen blood freeze/thaw	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86940		X	Hemolysins/agglutinins, auto	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86941		X	Hemolysins/agglutinins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86945		X	Blood product/irradiation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86950		X	Leukacyte transfusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86965		X	Pooling blood platelets	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86970		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86971		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86972		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86975		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86976		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86977		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86978		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86985		X	Split blood or products	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86999		X	Transfusion procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87001		X	Small animal inoculation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87003		X	Small animal inoculation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87015		X	Specimen concentration	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87040		X	Blood culture for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87045		X	Stool culture for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87060		X	Nose/throat culture, bact	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87070		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87072		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87075		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87076		X	Bacteria identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87081		X	Bacteria culture screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87082		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87083		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87084		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87085		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87086		X	Urine culture/colony count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87087		X	Urine bacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87088		X	Urine bacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87101		X	Skin fungus culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87102		X	Fungus isolation culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87103		X	Blood fungus culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87106		X	Fungus identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87109		X	Mycoplasma culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87110		X	Culture, chlamydia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87116		X	Mycobacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87117		X	Mycobacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87118		X	Mycobacteria identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87140		X	Culture typing, fluorescent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87143		X	Culture typing, GLC method	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87145		X	Culture typing, phage method	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87147		X	Culture typing, serologic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87151		X	Culture typing, serologic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87155		X	Culture typing, precipitin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87158		X	Culture typing, added method	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87163		X	Special microbiology culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87164		X	Dark field examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87164	26	A	Dark field examination	0.37	0.15	0.17	0.15	0.17	0.01	0.53	0.55	0.53	0.55	XXX
87166		X	Dark field examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87174		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87175		X	Assay, endotoxin, bacterial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87176		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87177		X	Ova and parasites smears	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87181		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87184		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87186		X	Antibiotic sensitivity, MIC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87187		X	Antibiotic sensitivity, MBC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87188		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87190		X	TB antibiotic sensitivity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87192		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87197		X	Bactericidal level, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87205		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87206		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87207		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87207	26	A	Smear, stain & interpret	0.37	0.18	0.19	0.16	0.18	0.01	0.56	0.57	0.54	0.56	XXX
87208		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87210		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87211		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87220		X	Tissue exam for fungi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87230		X	Assay, toxin or antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87250		X	Virus inoculation for test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87252		X	Virus inoculation for test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87253		X	Virus inoculation for test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87260		X	Adenovirus ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87265		X	Pertussis ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87270		X	Chylmd trach ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
87272		X	Cryptosporidum ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87274		X	Herpes simplex ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87276		X	Influenza ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87278		X	Legion pneumo ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87280		X	Resp syncytial ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87285		X	Trepon pallidum ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87290		X	Varicella ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87299		X	Ag detection nos, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87301		X	Adenovirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87320		X	Chylmd trach ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87324		X	Clostridium ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87328		X	Cryptospor ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87332		X	Cytomegalovirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87335		X	E coli 0157 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87338		X	Hpylori, stool, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87340		X	Hepatitis b surface ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87350		X	Hepatitis be ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87380		X	Hepatitis delta ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87385		X	Histoplasma capsul ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87390		X	Hiv-1 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87391		X	Hiv-2 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87420		X	Resp syncytial ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87425		X	Rotavirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87430		X	Strep a ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87449		X	Ag detect nos, eia, mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87450		X	Ag detect nos, eia, single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87470		X	Bartonella, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87471		X	Bartonella, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87472		X	Bartonella, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87475		X	Lyme dis, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87476		X	Lyme dis, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87477		X	Lyme dis, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87480		X	Candida, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87481		X	Candida, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87482		X	Candida, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87485		X	Chylmd pneum, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87486		X	Chylmd pneum, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87487		X	Chylmd pneum, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87490		X	Chylmd trach, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87491		X	Chylmd trach, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87492		X	Chylmd trach, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87495		X	Cytomeg, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87496		X	Cytomeg, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87497		X	Cytomeg, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87510		X	Gardner vag, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87511		X	Gardner vag, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87512		X	Gardner vag, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87515		X	Hepatitis b, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87516		X	Hepatitis b , dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87517		X	Hepatitis b , dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87520		X	Hepatitis c , rna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87521		X	Hepatitis c , rna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87522		X	Hepatitis c, rna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87525		X	Hepatitis g , dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87526		X	Hepatitis g, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87527		X	Hepatitis g, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87528		X	Hsv, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87529		X	Hsv, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87530		X	Hsv, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87531		X	Hhv-6, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87532		X	Hhv-6, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87533		X	Hhv-6, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87534		X	Hiv-1, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87535		X	Hiv-1, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87536		X	Hiv-1, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87537		X	Hiv-2, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87538		X	Hiv-2, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87539		X	Hiv-2, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87540		X	Legion pneumo, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87541		X	Legion pneumo, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87542		X	Legion pneumo, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87550		X	Mycobacteria, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87551		X	Mycobacteria, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87552		X	Mycobacteria, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87555		X	M.tuberculo, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87556		X	M.tuberculo, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87557		X	M.tuberculo, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87560		X	M.avium-intra, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87561		X	M.avium-intra, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87562		X	M.avium-intra, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87580		X	M.pneumon, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87581		X	M.pneumon, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

[1] CPT codes and descriptions only are copyright 2000 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
87582		X	M.pneumon, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87590		X	N.gonorrhoeae, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87591		X	N.gonorrhoeae, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87592		X	N.gonorrhoeae, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87620		X	Hpv, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87621		X	Hpv, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87622		X	Hpv, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87650		X	Strep a, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87651		X	Strep a, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87652		X	Strep a, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87797		X	Detect agent nos, dna, dir	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87798		X	Detect agent nos, dna, amp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87799		X	Detect agent nos, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87810		X	Chylmd trach assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87850		X	N. gonorrhoeae assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87880		X	Strep a assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87899		X	Agent nos assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87999		X	Microbiology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88000		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88005		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88007		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88012		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88014		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88016		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88020		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88025		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88027		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88028		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88029		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88036		N	Limited autopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88037		N	Limited autopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88040		N	Forensic autopsy (necropsy)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88045		N	Coroner's autopsy (necropsy)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88099		N	Necropsy (autopsy) procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88104		A	Cytopathology, fluids	0.56	0.90	0.79	NA	NA	0.03	1.49	1.38	NA	NA	XXX
88104	26	A	Cytopathology, fluids	0.56	0.24	0.24	0.24	0.24	0.01	0.81	0.81	0.81	0.81	XXX
88104	TC	A	Cytopathology, fluids	0.00	0.66	0.55	NA	NA	0.02	0.68	0.57	NA	NA	XXX
88106		A	Cytopathology, fluids	0.56	0.56	0.53	NA	NA	0.03	1.15	1.12	NA	NA	XXX
88106	26	A	Cytopathology, fluids	0.56	0.24	0.24	0.24	0.24	0.01	0.81	0.81	0.81	0.81	XXX
88106	TC	A	Cytopathology, fluids	0.00	0.32	0.29	NA	NA	0.02	0.34	0.31	NA	NA	XXX
88107		A	Cytopathology, fluids	0.76	0.94	0.83	NA	NA	0.04	1.74	1.63	NA	NA	XXX
88107	26	A	Cytopathology, fluids	0.76	0.33	0.31	0.33	0.31	0.02	1.11	1.09	1.11	1.09	XXX
88107	TC	A	Cytopathology, fluids	0.00	0.61	0.52	NA	NA	0.02	0.63	0.54	NA	NA	XXX
88108		A	Cytopath, concentrate tech	0.56	0.81	0.74	NA	NA	0.03	1.40	1.33	NA	NA	XXX
88108	26	A	Cytopath, concentrate tech	0.56	0.24	0.25	0.24	0.25	0.01	0.81	0.82	0.81	0.82	XXX
88108	TC	A	Cytopath, concentrate tech	0.00	0.57	0.49	NA	NA	0.02	0.59	0.51	NA	NA	XXX
88125		A	Forensic cytopathology	0.26	0.30	0.25	NA	NA	0.02	0.58	0.53	NA	NA	XXX
88125	26	A	Forensic cytopathology	0.26	0.11	0.10	0.11	0.10	0.01	0.38	0.37	0.38	0.37	XXX
88125	TC	A	Forensic cytopathology	0.00	0.19	0.15	NA	NA	0.01	0.20	0.16	NA	NA	XXX
88130		X	Sex chromatin identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88140		X	Sex chromatin identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88141		A	Cytopath, c/v, interpret	0.42	0.19	0.23	0.19	0.23	0.01	0.62	0.66	0.62	0.66	XXX
88142		X	Cytopath, c/v, thin layer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88143		X	Cytopath c/v thin layer redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88144		X	Cytopath, c/v thin lyr redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88145		X	Cytopath, c/v thin lyr sel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88147		X	Cytopath, c/v, automated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88148		X	Cytopath, c/v, auto rescreen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88150		X	Cytopath, c/v, manual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88152		X	Cytopath, c/v, auto redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88153		X	Cytopath, c/v, redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88154		X	Cytopath, c/v, select	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88155		X	Cytopath, c/v, index add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88160		A	Cytopath smear, other source	0.50	1.08	0.90	NA	NA	0.03	1.61	1.43	NA	NA	XXX
88160	26	A	Cytopath smear, other source	0.50	0.21	0.20	0.21	0.20	0.01	0.72	0.71	0.72	0.71	XXX
88160	TC	A	Cytopath smear, other source	0.00	0.87	0.70	NA	NA	0.02	0.89	0.72	NA	NA	XXX
88161		A	Cytopath smear, other source	0.50	0.52	0.50	NA	NA	0.03	1.05	1.03	NA	NA	XXX
88161	26	A	Cytopath smear, other source	0.50	0.21	0.21	0.21	0.21	0.01	0.72	0.72	0.72	0.72	XXX
88161	TC	A	Cytopath smear, other source	0.00	0.31	0.29	NA	NA	0.02	0.33	0.31	NA	NA	XXX
88162		A	Cytopath smear, other source	0.76	0.94	0.92	NA	NA	0.04	1.74	1.72	NA	NA	XXX
88162	26	A	Cytopath smear, other source	0.76	0.33	0.36	0.33	0.36	0.02	1.11	1.14	1.11	1.14	XXX
88162	TC	A	Cytopath smear, other source	0.00	0.61	0.56	NA	NA	0.02	0.63	0.58	NA	NA	XXX
88164		X	Cytopath tbs, c/v, manual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88165		X	Cytopath tbs, c/v, redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88166		X	Cytopath tbs, c/v, auto redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88167		X	Cytopath tbs, c/v, select	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88170		A	Fine needle aspiration	1.27	0.88	0.93	NA	NA	0.08	2.23	2.28	NA	NA	XXX
88170	26	A	Fine needle aspiration	1.27	0.53	0.54	0.53	0.54	0.05	1.85	1.86	1.85	1.86	XXX
88170	TC	A	Fine needle aspiration	0.00	0.35	0.39	NA	NA	0.03	0.38	0.42	NA	NA	XXX
88171		A	Fine needle aspiration	1.27	0.75	0.93	NA	NA	0.07	2.09	2.27	NA	NA	XXX
88171	26	A	Fine needle aspiration	1.27	0.48	0.55	0.48	0.55	0.04	1.79	1.86	1.79	1.86	XXX
88171	TC	A	Fine needle aspiration	0.00	0.27	0.38	NA	NA	0.03	0.30	0.41	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
88172		A	Evaluation of smear	0.60	1.13	1.04	NA	NA	0.04	1.77	1.68	NA	NA	XXX
88172	26	A	Evaluation of smear	0.60	0.26	0.29	0.26	0.29	0.02	0.88	0.91	0.88	0.91	XXX
88172	TC	A	Evaluation of smear	0.00	0.87	0.75	NA	NA	0.02	0.89	0.77	NA	NA	XXX
88173		A	Interpretation of smear	1.39	1.42	1.30	NA	NA	0.06	2.87	2.75	NA	NA	XXX
88173	26	A	Interpretation of smear	1.39	0.60	0.57	0.60	0.57	0.04	2.03	2.00	2.03	2.00	XXX
88173	TC	A	Interpretation of smear	0.00	0.82	0.73	NA	NA	0.02	0.84	0.75	NA	NA	XXX
88180		A	Cell marker study	0.36	0.76	0.66	NA	NA	0.03	1.15	1.05	NA	NA	XXX
88180	26	A	Cell marker study	0.36	0.15	0.16	0.15	0.16	0.01	0.52	0.53	0.52	0.53	XXX
88180	TC	A	Cell marker study	0.00	0.61	0.50	NA	NA	0.02	0.63	0.52	NA	NA	XXX
88182		A	Cell marker study	0.77	1.15	1.11	NA	NA	0.05	1.97	1.93	NA	NA	XXX
88182	26	A	Cell marker study	0.77	0.33	0.37	0.33	0.37	0.02	1.12	1.16	1.12	1.16	XXX
88182	TC	A	Cell marker study	0.00	0.82	0.74	NA	NA	0.03	0.85	0.77	NA	NA	XXX
88199		C	Cytopathology procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
88199	26	C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88199	TC	C	Cytopathology procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
88230		X	Tissue culture, lymphocyte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88233		X	Tissue culture, skin/biopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88235		X	Tissue culture, placenta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88237		X	Tissue culture, bone marrow	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88239		X	Tissue culture, tumor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88240		X	Cell cryopreserve/storage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88241		X	Frozen cell preparation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88245		X	Chromosome analysis, 20–25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88248		X	Chromosome analysis, 50–100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88249		X	Chromosome analysis, 100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88261		X	Chromosome analysis, 5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88262		X	Chromosome analysis, 15–20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88263		X	Chromosome analysis, 45	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88264		X	Chromosome analysis, 20–25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88267		X	Chromosome analys, placenta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88269		X	Chromosome analys, amniotic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88271		X	Cytogenetics, dna probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88272		X	Cytogenetics, 3–5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88273		X	Cytogenetics, 10–30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88274		X	Cytogenetics, 25–99	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88275		X	Cytogenetics, 100–300	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88280		X	Chromosome karyotype study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88283		X	Chromosome banding study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88285		X	Chromosome count, additional	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88289		X	Chromosome study, additional	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88291		A	Cyto/molecular report	0.52	0.22	0.22	0.22	0.22	0.01	0.75	0.75	0.75	0.75	XXX
88299		C	Cytogenetic study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88300		A	Surgical path, gross	0.08	0.40	0.36	NA	NA	0.02	0.50	0.46	NA	NA	XXX
88300	26	A	Surgical path, gross	0.08	0.03	0.05	0.03	0.05	0.01	0.12	0.14	0.12	0.14	XXX
88300	TC	A	Surgical path, gross	0.00	0.37	0.31	NA	NA	0.01	0.38	0.32	NA	NA	XXX
88302		A	Tissue exam by pathologist	0.13	1.29	1.08	NA	NA	0.03	1.45	1.24	NA	NA	XXX
88302	26	A	Tissue exam by pathologist	0.13	0.06	0.09	0.06	0.09	0.01	0.20	0.23	0.20	0.23	XXX
88302	TC	A	Tissue exam by pathologist	0.00	1.23	0.99	NA	NA	0.02	1.25	1.01	NA	NA	XXX
88304		A	Tissue exam by pathologist	0.22	0.82	0.77	NA	NA	0.03	1.07	1.02	NA	NA	XXX
88304	26	A	Tissue exam by pathologist	0.22	0.09	0.13	0.09	0.13	0.01	0.32	0.36	0.32	0.36	XXX
88304	TC	A	Tissue exam by pathologist	0.00	0.73	0.64	NA	NA	0.02	0.75	0.66	NA	NA	XXX
88305		A	Tissue exam by pathologist	0.75	1.57	1.46	NA	NA	0.05	2.37	2.26	NA	NA	XXX
88305	26	A	Tissue exam by pathologist	0.75	0.33	0.39	0.33	0.39	0.02	1.10	1.16	1.10	1.16	XXX
88305	TC	A	Tissue exam by pathologist	0.00	1.24	1.07	NA	NA	0.03	1.27	1.10	NA	NA	XXX
88307		A	Tissue exam by pathologist	1.59	2.92	2.60	NA	NA	0.09	4.60	4.28	NA	NA	XXX
88307	26	A	Tissue exam by pathologist	1.59	0.68	0.72	0.68	0.72	0.04	2.31	2.35	2.31	2.35	XXX
88307	TC	A	Tissue exam by pathologist	0.00	2.24	1.88	NA	NA	0.05	2.29	1.93	NA	NA	XXX
88309		A	Tissue exam by pathologist	2.28	3.90	3.44	NA	NA	0.11	6.29	5.83	NA	NA	XXX
88309	26	A	Tissue exam by pathologist	2.28	0.98	1.00	0.98	1.00	0.06	3.32	3.34	3.32	3.34	XXX
88309	TC	A	Tissue exam by pathologist	0.00	2.92	2.44	NA	NA	0.05	2.97	2.49	NA	NA	XXX
88311		A	Decalcify tissue	0.24	0.18	0.20	NA	NA	0.02	0.44	0.46	NA	NA	XXX
88311	26	A	Decalcify tissue	0.24	0.10	0.11	0.10	0.11	0.01	0.35	0.36	0.35	0.36	XXX
88311	TC	A	Decalcify tissue	0.00	0.08	0.09	NA	NA	0.01	0.09	0.10	NA	NA	XXX
88312		A	Special stains	0.54	1.62	1.29	NA	NA	0.02	2.18	1.85	NA	NA	XXX
88312	26	A	Special stains	0.54	0.23	0.21	0.23	0.21	0.01	0.78	0.76	0.78	0.76	XXX
88312	TC	A	Special stains	0.00	1.39	1.08	NA	NA	0.01	1.40	1.09	NA	NA	XXX
88313		A	Special stains	0.24	1.14	0.92	NA	NA	0.02	1.40	1.18	NA	NA	XXX
88313	26	A	Special stains	0.24	0.10	0.11	0.10	0.11	0.01	0.35	0.36	0.35	0.36	XXX
88313	TC	A	Special stains	0.00	1.04	0.81	NA	NA	0.01	1.05	0.82	NA	NA	XXX
88314		A	Histochemical stain	0.45	2.25	1.86	NA	NA	0.03	2.73	2.34	NA	NA	XXX
88314	26	A	Histochemical stain	0.45	0.19	0.24	0.19	0.24	0.01	0.65	0.70	0.65	0.70	XXX
88314	TC	A	Histochemical stain	0.00	2.06	1.62	NA	NA	0.02	2.08	1.64	NA	NA	XXX
88318		A	Chemical histochemistry	0.42	0.71	0.60	NA	NA	0.02	1.15	1.04	NA	NA	XXX
88318	26	A	Chemical histochemistry	0.42	0.18	0.17	0.18	0.17	0.01	0.61	0.60	0.61	0.60	XXX
88318	TC	A	Chemical histochemistry	0.00	0.53	0.43	NA	NA	0.01	0.54	0.44	NA	NA	XXX
88319		A	Enzyme histochemistry	0.53	2.16	1.75	NA	NA	0.03	2.72	2.31	NA	NA	XXX
88319	26	A	Enzyme histochemistry	0.53	0.23	0.24	0.23	0.24	0.01	0.77	0.78	0.77	0.78	XXX
88319	TC	A	Enzyme histochemistry	0.00	1.93	1.51	NA	NA	0.02	1.95	1.53	NA	NA	XXX
88321		A	Microslide consultation	1.30	0.62	0.58	0.56	0.53	0.04	1.96	1.92	1.90	1.87	XXX
88323		A	Microslide consultation	1.35	1.82	1.56	NA	NA	0.06	3.23	2.97	NA	NA	XXX
88323	26	A	Microslide consultation	1.35	0.59	0.55	0.59	0.55	0.04	1.98	1.94	1.98	1.94	XXX
88323	TC	A	Microslide consultation	0.00	1.23	1.01	NA	NA	0.02	1.25	1.03	NA	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
88325		A	Comprehensive review of data	2.22	0.99	0.87	0.95	0.84	0.06	3.27	3.15	3.23	3.12	XXX
88329		A	Pathology consult in surgery	0.67	0.40	0.40	0.29	0.32	0.02	1.09	1.09	0.98	1.01	XXX
88331		A	Pathology consult in surgery	1.19	0.84	0.94	NA	NA	0.06	2.09	2.19	NA	NA	XXX
88331	26	A	Pathology consult in surgery	1.19	0.51	0.54	0.51	0.54	0.03	1.73	1.76	1.73	1.76	XXX
88331	TC	A	Pathology consult in surgery	0.00	0.33	0.40	NA	NA	0.03	0.36	0.43	NA	NA	XXX
88332		A	Pathology consult in surgery	0.59	0.47	0.51	NA	NA	0.04	1.10	1.14	NA	NA	XXX
88332	26	A	Pathology consult in surgery	0.59	0.25	0.27	0.25	0.27	0.02	0.86	0.88	0.86	0.88	XXX
88332	TC	A	Pathology consult in surgery	0.00	0.22	0.24	NA	NA	0.02	0.24	0.26	NA	NA	XXX
88342		A	Immunocytochemistry	0.85	1.34	1.18	NA	NA	0.04	2.23	2.07	NA	NA	XXX
88342	26	A	Immunocytochemistry	0.85	0.36	0.36	0.36	0.36	0.02	1.23	1.23	1.23	1.23	XXX
88342	TC	A	Immunocytochemistry	0.00	0.98	0.82	NA	NA	0.02	1.00	0.84	NA	NA	XXX
88346		A	Immunofluorescent study	0.86	1.60	1.36	NA	NA	0.04	2.50	2.26	NA	NA	XXX
88346	26	A	Immunofluorescent study	0.86	0.37	0.36	0.37	0.36	0.02	1.25	1.24	1.25	1.24	XXX
88346	TC	A	Immunofluorescent study	0.00	1.23	1.00	NA	NA	0.02	1.25	1.02	NA	NA	XXX
88347		A	Immunofluorescent study	0.86	1.17	0.99	NA	NA	0.04	2.07	1.89	NA	NA	XXX
88347	26	A	Immunofluorescent study	0.86	0.33	0.29	0.33	0.29	0.02	1.21	1.17	1.21	1.17	XXX
88347	TC	A	Immunofluorescent study	0.00	0.84	0.70	NA	NA	0.02	0.86	0.72	NA	NA	XXX
88348		A	Electron microscopy	1.51	9.91	8.05	NA	NA	0.10	11.52	9.66	NA	NA	XXX
88348	26	A	Electron microscopy	1.51	0.64	0.80	0.64	0.80	0.04	2.19	2.35	2.19	2.35	XXX
88348	TC	A	Electron microscopy	0.00	9.27	7.25	NA	NA	0.06	9.33	7.31	NA	NA	XXX
88349		A	Scanning electron microscopy	0.76	7.58	6.10	NA	NA	0.07	8.41	6.93	NA	NA	XXX
88349	26	A	Scanning electron microscopy	0.76	0.33	0.46	0.33	0.46	0.02	1.11	1.24	1.11	1.24	XXX
88349	TC	A	Scanning electron microscopy	0.00	7.25	5.64	NA	NA	0.05	7.30	5.69	NA	NA	XXX
88355		A	Analysis, skeletal muscle	1.85	2.74	2.53	NA	NA	0.10	4.69	4.48	NA	NA	XXX
88355	26	A	Analysis, skeletal muscle	1.85	0.80	0.85	0.80	0.85	0.05	2.70	2.75	2.70	2.75	XXX
88355	TC	A	Analysis, skeletal muscle	0.00	1.94	1.68	NA	NA	0.05	1.99	1.73	NA	NA	XXX
88356		A	Analysis, nerve	3.02	4.05	3.76	NA	NA	0.15	7.22	6.93	NA	NA	XXX
88356	26	A	Analysis, nerve	3.02	1.27	1.33	1.27	1.33	0.09	4.38	4.44	4.38	4.44	XXX
88356	TC	A	Analysis, nerve	0.00	2.78	2.43	NA	NA	0.06	2.84	2.49	NA	NA	XXX
88358		A	Analysis, tumor	2.82	2.17	2.26	NA	NA	0.13	5.12	5.21	NA	NA	XXX
88358	26	A	Analysis, tumor	2.82	1.22	1.23	1.22	1.23	0.07	4.11	4.12	4.11	4.12	XXX
88358	TC	A	Analysis, tumor	0.00	0.95	1.03	NA	NA	0.06	1.01	1.09	NA	NA	XXX
88362		A	Nerve teasing preparations	2.17	3.99	3.53	NA	NA	0.12	6.28	5.82	NA	NA	XXX
88362	26	A	Nerve teasing preparations	2.17	0.92	0.96	0.92	0.96	0.07	3.16	3.20	3.16	3.20	XXX
88362	TC	A	Nerve teasing preparations	0.00	3.07	2.57	NA	NA	0.05	3.12	2.62	NA	NA	XXX
88365		A	Tissue hybridization	0.93	2.17	1.84	NA	NA	0.04	3.14	2.81	NA	NA	XXX
88365	26	A	Tissue hybridization	0.93	0.39	0.40	0.39	0.40	0.02	1.34	1.35	1.34	1.35	XXX
88365	TC	A	Tissue hybridization	0.00	1.78	1.44	NA	NA	0.02	1.80	1.46	NA	NA	XXX
88371		X	Protein, western blot tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88371	26	A	Protein, western blot tissue	0.37	0.15	0.17	0.15	0.17	0.01	0.53	0.55	0.53	0.55	XXX
88372		X	Protein analysis w/probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88372	26	A	Protein analysis w/probe	0.37	0.16	0.18	0.16	0.18	0.01	0.54	0.56	0.54	0.56	XXX
88399		C	Surgical pathology procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
88399	26	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88399	TC	C	Surgical pathology procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
89050		X	Body fluid cell count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89051		X	Body fluid cell count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89060		X	Exam,synovial fluid crystals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89060	26	A	Exam,synovial fluid crystals	0.37	0.17	0.18	0.16	0.18	0.01	0.55	0.56	0.54	0.56	XXX
89100		A	Sample intestinal contents	0.60	1.37	1.14	0.22	0.28	0.02	1.99	1.76	0.84	0.90	XXX
89105		A	Sample intestinal contents	0.50	2.37	1.88	0.17	0.23	0.02	2.89	2.40	0.69	0.75	XXX
89125		X	Specimen fat stain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89130		A	Sample stomach contents	0.45	1.59	1.30	0.14	0.22	0.02	2.06	1.77	0.61	0.69	XXX
89132		A	Sample stomach contents	0.19	1.59	1.25	0.07	0.11	0.01	1.79	1.45	0.27	0.31	XXX
89135		A	Sample stomach contents	0.79	1.82	1.52	0.25	0.35	0.03	2.64	2.34	1.07	1.17	XXX
89136		A	Sample stomach contents	0.21	1.77	1.39	0.08	0.12	0.01	1.99	1.61	0.30	0.34	XXX
89140		A	Sample stomach contents	0.94	1.91	1.65	0.34	0.48	0.04	2.89	2.63	1.32	1.46	XXX
89141		A	Sample stomach contents	0.85	2.95	2.41	0.34	0.45	0.03	3.83	3.29	1.22	1.33	XXX
89160		X	Exam feces for meat fibers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89190		X	Nasal smear for eosinophils	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89250		X	Fertilization of oocyte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89251		X	Culture oocyte w/embryos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89252		X	Assist oocyte fertilization	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89253		X	Embryo hatching	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89254		X	Oocyte identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89255		X	Prepare embryo for transfer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89256		X	Prepare cryopreserved embryo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89257		X	Sperm identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89258		X	Cryopreservation, embryo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89259		X	Cryopreservation, sperm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89260		X	Sperm isolation, simple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89261		X	Sperm isolation, complex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89264		X	Identify sperm tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89300		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89310		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89320		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89325		X	Sperm antibody test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89329		X	Sperm evaluation test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89330		X	Evaluation, cervical mucus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89350		A	Sputum specimen collection	0.00	0.41	0.41	NA	NA	0.02	0.43	0.43	NA	NA	XXX
89355		X	Exam feces for starch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89360		A	Collect sweat for test	0.00	0.46	0.46	NA	NA	0.02	0.48	0.48	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
89365		X	Water load test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399		C	Pathology lab procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
89399	26	C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399	TC	C	Pathology lab procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
90281		I	Human ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90283		I	Human ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90287		I	Botulinum antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90288		I	Botulism ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90291		I	Cmv ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90296		E	Diphtheria antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90371		E	Hep b ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90375		E	Rabies ig, im/sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90376		E	Rabies ig, heat treated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90378		X	Rsv ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90379		E	Rsv ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90384		I	Rh ig, full-dose, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90385		E	Rh ig, minidose, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90386		I	Rh ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90389		E	Tetanus ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90393		E	Vaccina ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90396		E	Varicella-zoster ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90399		I	Immune globulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90471		X	Immunization admin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90472		X	Immunization admin, each add	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90476		E	Adenovirus vaccine, type 4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90477		E	Adenovirus vaccine, type 7	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90581		E	Anthrax vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90585		E	Bcg vaccine, percut	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90586		E	Bcg vaccine, intravesical	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90592		D	Cholera vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90632		E	Hep a vaccine, adult im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90633		E	Hep a vacc, ped/adol, 2 dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90634		E	Hep a vacc, ped/adol, 3 dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90636		E	Hep a/hep b vacc, adult im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90645		E	Hib vaccine, hboc, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90646		E	Hib vaccine, prp-d, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90647		E	Hib vaccine, prp-omp, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90648		E	Hib vaccine, prp-t, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90657		X	Flu vaccine, 6–35 mo, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90658		X	Flu vaccine, 3 yrs, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90659		X	Flu vaccine, whole, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90660		X	Flu vaccine, nasal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90665		E	Lyme disease vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90669		N	Pneumococcal vaccine, ped	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90675		E	Rabies vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90676		E	Rabies vaccine, id	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90680		E	Rotovirus vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90690		E	Typhoid vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90691		E	Typhoid vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90692		E	Typhoid vaccine, h-p, sc/id	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90693		E	Typhoid vaccine, akd, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90700		E	Dtap vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90701		E	Dtp vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90702		E	Dt vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90703		E	Tetanus vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90704		E	Mumps vaccine, sc	0.00	0.00	.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90705		E	Measles vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90706		E	Rubella vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90707		E	Mmr vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90708		E	Measles-rubella vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90709		E	Rubella & mumps vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90710		E	Mmrv vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90712		E	Oral poliovirus vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90713		E	Poliovirus, ipv, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90716		E	Chicken pox vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90717		E	Yellow fever vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90718		E	Td vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90719		E	Diphtheria vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90720		E	Dtp/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90721		E	Dtap/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90725		E	Cholera vaccine, injectable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90727		E	Plague vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90732		X	Pneumococcal vaccine, adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90733		E	Meningococcal vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90735		E	Encephalitis vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90744		X	Hep b vaccine, ped/adol, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90745		D	Hepb vaccine, adol/risk, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90746		X	Hep b vaccine, adult, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90747		X	Hep b vaccine, ill pat, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90748		E	Hep b/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90749		E	Vaccine toxoid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90780		A	IV infusion therapy, 1 hour	0.00	1.12	1.13	1.12	1.13	0.06	1.18	1.19	1.18	1.19	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
90781		A	IV infusion, additional hour	0.00	0.57	0.57	0.57	0.57	0.03	0.60	0.60	0.60	0.60	ZZZ
90782		T	Injection, sc/im	0.00	0.11	0.11	0.11	0.11	0.01	0.12	0.12	0.12	0.12	XXX
90783		T	Injection, ia	0.00	0.41	0.41	0.41	0.41	0.02	0.43	0.43	0.43	0.43	XXX
90784		T	Injection, iv	0.00	0.48	0.48	0.48	0.48	0.03	0.51	0.51	0.51	0.51	XXX
90788		T	Injection of antibiotic	0.00	0.12	0.12	0.12	0.12	0.01	0.13	0.13	0.13	0.13	XXX
90799		C	Ther/prophylactic/dx inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90801		A	Psy dx interview	2.80	1.09	1.00	0.91	0.87	0.07	3.96	3.87	3.78	3.74	XXX
90802		A	Intac psy dx interview	3.01	1.12	0.94	0.95	0.82	0.08	4.21	4.03	4.04	3.91	XXX
90804		A	Psytx, office, 20–30 min	1.21	0.50	0.47	0.40	0.40	0.03	1.74	1.71	1.64	1.64	XXX
90805		A	Psytx, off, 20–30 min w/e&m	1.37	0.55	0.51	0.42	0.41	0.04	1.96	1.92	1.83	1.82	XXX
90806		A	Psytx, off, 45–50 min	1.86	0.74	0.70	0.64	0.63	0.05	2.65	2.61	2.55	2.54	XXX
90807		A	Psytx, off, 45–50 min w/e&m	2.02	0.74	0.70	0.63	0.62	0.05	2.81	2.77	2.70	2.69	XXX
90808		A	Psytx, office, 75–80 min	2.79	1.08	1.10	0.97	1.01	0.07	3.94	3.96	3.83	3.87	XXX
90809		A	Psytx, off, 75–80, w/e&m	2.95	1.06	1.08	0.92	0.98	0.08	4.09	4.11	3.95	4.01	XXX
90810		A	Intac psytx, off, 20–30 min	1.32	0.52	0.55	0.42	0.48	0.03	1.87	1.90	1.77	1.83	XXX
90811		A	Intac psytx, 20–30, w/e&m	1.48	0.58	0.60	0.46	0.51	0.04	2.10	2.12	1.98	2.03	XXX
90812		A	Intac psytx, off, 45–50 min	1.97	0.81	0.77	0.67	0.66	0.05	2.83	2.79	2.69	2.68	XXX
90813		A	Intac psytx, 45–50 min w/e&m	2.13	0.80	0.76	0.66	0.66	0.05	2.98	2.94	2.84	2.84	XXX
90814		A	Intac psytx, off, 75–80 min	2.90	1.15	1.02	1.01	0.92	0.07	4.12	3.99	3.98	3.89	XXX
90815		A	Intac psytx, 75–80 w/e&m	3.06	1.15	1.02	0.94	0.87	0.08	4.29	4.16	4.08	4.01	XXX
90816		A	Psytx, hosp, 20–30 min	1.25	0.57	0.52	0.43	0.42	0.03	1.85	1.80	1.71	1.70	XXX
90817		A	Psytx, hosp, 20–30 min w/e&m	1.41	0.57	0.52	0.43	0.42	0.04	2.02	1.97	1.88	1.87	XXX
90818		A	Psytx, hosp, 45–50 min	1.89	0.79	0.74	0.65	0.64	0.05	2.73	2.68	2.59	2.58	XXX
90819		A	Psytx, hosp, 45–50 min w/e&m	2.05	0.78	0.73	0.63	0.62	0.05	2.88	2.83	2.73	2.72	XXX
90821		A	Psytx, hosp, 75–80 min	2.83	1.13	1.13	0.96	1.01	0.07	4.03	4.03	3.86	3.91	XXX
90822		A	Psytx, hosp, 75–80 min w/e&m	2.99	1.07	1.09	0.92	0.98	0.08	4.14	4.16	3.99	4.05	XXX
90823		A	Intac psytx, hosp, 20–30 min	1.36	0.65	0.65	0.44	0.49	0.03	2.04	2.04	1.83	1.88	XXX
90824		A	Intac psytx, hsp 20–30 w/e&m	1.52	0.64	0.64	0.47	0.51	0.04	2.20	2.20	2.03	2.07	XXX
90826		A	Intac psytx, hosp, 45–50 min	2.01	0.90	0.84	0.70	0.69	0.05	2.96	2.90	2.76	2.75	XXX
90827		A	Intac psytx, hsp 45–50 w/e&m	2.16	0.85	0.80	0.66	0.66	0.06	3.07	3.02	2.88	2.88	XXX
90828		A	Intac psytx, hosp, 75–80 min	2.94	1.25	1.10	1.04	0.94	0.08	4.27	4.12	4.06	3.96	XXX
90829		A	Intac psytx, hsp 75–80 w/e&m	3.10	1.14	1.02	0.96	0.88	0.08	4.32	4.20	4.14	4.06	XXX
90845		A	Psychoanalysis	1.79	0.66	0.61	0.56	0.53	0.05	2.50	2.45	2.40	2.37	XXX
90846		R	Family psytx w/o patient	1.83	0.72	0.71	0.62	0.63	0.05	2.60	2.59	2.50	2.51	XXX
90847		R	Family psytx w/patient	2.21	0.83	0.78	0.73	0.71	0.06	3.10	3.05	3.00	2.98	XXX
90849		R	Multiple family group psytx	0.59	0.31	0.30	0.21	0.23	0.02	0.92	0.91	0.82	0.84	XXX
90853		A	Group psychotherapy	0.59	0.33	0.32	0.20	0.22	0.02	0.94	0.93	0.81	0.83	XXX
90857		A	Intac group psytx	0.63	0.33	0.29	0.22	0.21	0.02	0.98	0.94	0.87	0.86	XXX
90862		A	Medication management	0.95	0.40	0.40	0.29	0.32	0.02	1.37	1.37	1.26	1.29	XXX
90865		A	Narcosynthesis	2.84	1.31	1.12	0.87	0.79	0.10	4.25	4.06	3.81	3.73	XXX
90870		A	Electroconvulsive therapy	1.88	0.68	0.66	0.68	0.66	0.05	2.61	2.59	2.61	2.59	000
90871		A	Electroconvulsive therapy	2.72	NA	NA	0.96	0.95	0.07	NA	NA	3.75	3.74	000
90875		N	Psychophysiological therapy	1.20	0.82	0.82	0.48	0.48	0.03	2.05	2.05	1.71	1.71	XXX
90876		N	Psychophysiological therapy	1.90	1.09	1.09	0.75	0.75	0.05	3.04	3.04	2.70	2.70	XXX
90880		A	Hypnotherapy	2.19	0.86	0.82	0.69	0.69	0.06	3.11	3.07	2.94	2.94	XXX
90882		N	Environmental manipulation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90885		B	Psy evaluation of records	0.97	0.38	0.37	0.38	0.37	0.02	1.37	1.36	1.37	1.36	XXX
90887		B	Consultation with family	1.48	0.78	0.68	0.59	0.53	0.04	2.30	2.20	2.11	2.05	XXX
90889		B	Preparation of report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90899		C	Psychiatric service/therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90901		A	Biofeedback train, any meth	0.41	0.66	0.76	0.18	0.40	0.02	1.09	1.19	0.61	0.83	000
90911		A	Biofeedback peri/uro/rectal	0.89	0.74	0.86	0.37	0.59	0.05	1.68	1.80	1.31	1.53	000
90918		A	ESRD related services, month	11.18	5.18	4.48	5.18	4.48	0.48	16.84	16.14	16.84	16.14	XXX
90919		A	ESRD related services, month	8.54	4.20	3.75	4.20	3.75	0.39	13.13	12.68	13.13	12.68	XXX
90920		A	ESRD related services, month	7.27	3.61	3.30	3.61	3.30	0.38	11.26	10.95	11.26	10.95	XXX
90921		A	ESRD related services, month	4.47	2.54	2.50	2.54	2.50	0.26	7.27	7.23	7.27	7.23	XXX
90922		A	ESRD related services, day	0.37	0.15	0.13	0.15	0.13	0.02	0.54	0.52	0.54	0.52	XXX
90923		A	Esrd related services, day	0.28	0.14	0.13	0.14	0.13	0.01	0.43	0.42	0.43	0.42	XXX
90924		A	Esrd related services, day	0.24	0.12	0.11	0.12	0.11	0.01	0.37	0.36	0.37	0.36	XXX
90925		A	Esrd related services, day	0.15	0.09	0.09	0.09	0.09	0.01	0.25	0.25	0.25	0.25	XXX
90935		A	Hemodialysis, one evaluation	1.22	NA	NA	0.73	0.91	0.07	NA	NA	2.02	2.20	000
90937		A	Hemodialysis, repeated eval	2.11	NA	NA	1.04	1.41	0.11	NA	NA	3.26	3.63	000
90945		A	Dialysis, one evaluation	1.28	NA	NA	0.76	0.92	0.08	NA	NA	2.12	2.28	000
90947		A	Dialysis, repeated eval	2.16	NA	NA	1.06	1.36	0.12	NA	NA	3.34	3.64	000
90989		X	Dialysis training, complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90993		X	Dialysis training, incompl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90997		A	Hemoperfusion	1.84	NA	NA	1.05	1.34	0.10	NA	NA	2.99	3.28	000
90999		C	Dialysis procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91000		A	Esophageal intubation	0.73	0.34	0.44	NA	NA	0.03	1.10	1.20	NA	NA	000
91000	26	A	Esophageal intubation	0.73	0.26	0.36	0.26	0.36	0.02	1.01	1.11	1.01	1.11	000
91000	TC	A	Esophageal intubation	0.00	0.08	0.08	NA	NA	0.01	0.09	0.09	NA	NA	000
91010		A	Esophagus motility study	1.25	1.27	1.55	NA	NA	0.09	2.61	2.89	NA	NA	000
91010	26	A	Esophagus motility study	1.25	0.44	0.71	0.44	0.71	0.04	1.73	2.00	1.73	2.00	000
91010	TC	A	Esophagus motility study	0.00	0.83	0.84	NA	NA	0.05	0.88	0.89	NA	NA	000
91011		A	Esophagus motility study	1.50	1.58	1.90	NA	NA	0.10	3.18	3.50	NA	NA	000
91011	26	A	Esophagus motility study	1.50	0.54	0.85	0.54	0.85	0.05	2.09	2.40	2.09	2.40	000
91011	TC	A	Esophagus motility study	0.00	1.04	1.05	NA	NA	0.05	1.09	1.10	NA	NA	000
91012		A	Esophagus motility study	1.46	1.69	2.01	NA	NA	0.12	3.27	3.59	NA	NA	000
91012	26	A	Esophagus motility study	1.46	0.53	0.84	0.53	0.84	0.06	2.05	2.36	2.05	2.36	000
91012	TC	A	Esophagus motility study	0.00	1.16	1.17	NA	NA	0.06	1.22	1.23	NA	NA	000
91020		A	Gastric motility	1.44	1.27	1.58	NA	NA	0.11	2.82	3.13	NA	NA	000
91020	26	A	Gastric motility	1.44	0.50	0.80	0.50	0.80	0.06	2.00	2.30	2.00	2.30	000

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
91020	TC	A	Gastric motility	0.00	0.77	0.78	NA	NA	0.05	0.82	0.83	NA	NA	000
91030		A	Acid perfusion of esophagus	0.91	0.55	0.56	NA	NA	0.05	1.51	1.52	NA	NA	000
91030	26	A	Acid perfusion of esophagus	0.91	0.33	0.34	0.33	0.34	0.03	1.27	1.28	1.27	1.28	000
91030	TC	A	Acid perfusion of esophagus	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	000
91032		A	Esophagus, acid reflux test	1.21	1.18	1.42	NA	NA	0.09	2.48	2.72	NA	NA	000
91032	26	A	Esophagus, acid reflux test	1.21	0.43	0.66	0.43	0.66	0.04	1.68	1.91	1.68	1.91	000
91032	TC	A	Esophagus, acid reflux test	0.00	0.75	0.76	NA	NA	0.05	0.80	0.81	NA	NA	000
91033		A	Prolonged acid reflux test	1.30	1.82	2.10	NA	NA	0.14	3.26	3.54	NA	NA	000
91033	26	A	Prolonged acid reflux test	1.30	0.46	0.73	0.46	0.73	0.05	1.81	2.08	1.81	2.08	000
91033	TC	A	Prolonged acid reflux test	0.00	1.36	1.37	NA	NA	0.09	1.45	1.46	NA	NA	000
91052		A	Gastric analysis test	0.79	0.62	0.69	NA	NA	0.05	1.46	1.53	NA	NA	000
91052	26	A	Gastric analysis test	0.79	0.28	0.35	0.28	0.35	0.03	1.10	1.17	1.10	1.17	000
91052	TC	A	Gastric analysis test	0.00	0.34	0.34	NA	NA	0.02	0.36	0.36	NA	NA	000
91055		A	Gastric intubation for smear	0.94	0.58	0.65	NA	NA	0.07	1.59	1.66	NA	NA	000
91055	26	A	Gastric intubation for smear	0.94	0.28	0.35	0.28	0.35	0.05	1.27	1.34	1.27	1.34	000
91055	TC	A	Gastric intubation for smear	0.00	0.30	0.30	NA	NA	0.02	0.32	0.32	NA	NA	000
91060		A	Gastric saline load test	0.45	0.37	0.47	NA	NA	0.04	0.86	0.96	NA	NA	000
91060	26	A	Gastric saline load test	0.45	0.15	0.25	0.15	0.25	0.02	0.62	0.72	0.62	0.72	000
91060	TC	A	Gastric saline load test	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	000
91065		A	Breath hydrogen test	0.20	0.43	0.47	NA	NA	0.03	0.66	0.70	NA	NA	000
91065	26	A	Breath hydrogen test	0.20	0.07	0.11	0.07	0.11	0.01	0.28	0.32	0.28	0.32	000
91065	TC	A	Breath hydrogen test	0.00	0.36	0.36	NA	NA	0.02	0.38	0.38	NA	NA	000
91100		A	Pass intestine bleeding tube	1.08	NA	NA	0.39	0.45	0.07	NA	NA	1.54	1.60	000
91105		A	Gastric intubation treatment	0.37	NA	NA	0.16	0.23	0.02	NA	NA	0.55	0.62	000
91122		A	Anal pressure record	1.77	1.35	1.49	NA	NA	0.18	3.30	3.44	NA	NA	000
91122	26	A	Anal pressure record	1.77	0.64	0.77	0.64	0.77	0.11	2.52	2.65	2.52	2.65	000
91122	TC	A	Anal pressure record	0.00	0.71	0.72	NA	NA	0.07	0.78	0.79	NA	NA	000
91299		C	Gastroenterology procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
91299	26	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91299	TC	C	Gastroenterology procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
92002		A	Eye exam, new patient	0.88	1.11	0.97	0.34	0.39	0.03	2.02	1.88	1.25	1.30	XXX
92004		A	Eye exam, new patient	1.67	1.50	1.28	0.68	0.67	0.06	3.23	3.01	2.41	2.40	XXX
92012		A	Eye exam established pat	0.67	1.07	0.92	0.30	0.35	0.02	1.76	1.61	0.99	1.04	XXX
92014		A	Eye exam & treatment	1.10	1.38	1.18	0.48	0.51	0.04	2.52	2.32	1.62	1.65	XXX
92015		N	Refraction	0.38	1.40	1.14	0.15	0.20	0.01	1.79	1.53	0.54	0.59	XXX
92018		A	New eye exam & treatment	1.51	NA	NA	0.69	0.65	0.05	NA	NA	2.25	2.21	XXX
92019		A	Eye exam & treatment	1.31	NA	NA	0.58	0.56	0.05	NA	NA	1.94	1.92	XXX
92020		A	Special eye evaluation	0.37	0.70	0.60	0.17	0.21	0.01	1.08	0.98	0.55	0.59	XXX
92060		A	Special eye evaluation	0.69	1.24	1.04	NA	NA	0.03	1.96	1.76	NA	NA	XXX
92060	26	A	Special eye evaluation	0.69	0.29	0.28	0.29	0.28	0.02	1.00	0.99	1.00	0.99	XXX
92060	TC	A	Special eye evaluation	0.00	0.95	0.76	NA	NA	0.01	0.96	0.77	NA	NA	XXX
92065		A	Orthoptic/pleoptic training	0.37	0.77	0.68	NA	NA	0.02	1.16	1.07	NA	NA	XXX
92065	26	A	Orthoptic/pleoptic training	0.37	0.15	0.17	0.15	0.17	0.01	0.53	0.55	0.53	0.55	XXX
92065	TC	A	Orthoptic/pleoptic training	0.00	0.62	0.51	NA	NA	0.01	0.63	0.52	NA	NA	XXX
92070		A	Fitting of contact lens	0.70	1.04	1.11	0.34	0.58	0.02	1.76	1.83	1.06	1.30	XXX
92081		A	Visual field examination(s)	0.36	1.34	1.10	NA	NA	0.02	1.72	1.48	NA	NA	XXX
92081	26	A	Visual field examination(s)	0.36	0.16	0.17	0.16	0.17	0.01	0.53	0.54	0.53	0.54	XXX
92081	TC	A	Visual field examination(s)	0.00	1.18	0.93	NA	NA	0.01	1.19	0.94	NA	NA	XXX
92082		A	Visual field examination(s)	0.44	1.32	1.12	NA	NA	0.02	1.78	1.58	NA	NA	XXX
92082	26	A	Visual field examination(s)	0.44	0.20	0.23	0.20	0.23	0.01	0.65	0.68	0.65	0.68	XXX
92082	TC	A	Visual field examination(s)	0.00	1.12	0.89	NA	NA	0.01	1.13	0.90	NA	NA	XXX
92083		A	Visual field examination(s)	0.50	1.09	1.04	NA	NA	0.03	1.62	1.57	NA	NA	XXX
92083	26	A	Visual field examination(s)	0.50	0.23	0.32	0.23	0.32	0.02	0.75	0.84	0.75	0.84	XXX
92083	TC	A	Visual field examination(s)	0.00	0.86	0.72	NA	NA	0.01	0.87	0.73	NA	NA	XXX
92100		A	Serial tonometry exam(s)	0.92	0.78	0.65	0.36	0.34	0.03	1.73	1.60	1.31	1.29	XXX
92120		A	Tonography & eye evaluation	0.81	0.76	0.66	0.31	0.32	0.03	1.60	1.50	1.15	1.16	XXX
92130		A	Water provocation tonography	0.81	0.87	0.79	0.32	0.37	0.03	1.71	1.63	1.16	1.21	XXX
92135		A	Opthalmic dx imaging	0.35	1.02	1.02	NA	NA	0.02	1.39	1.39	NA	NA	XXX
92135	26	A	Opthalmic dx imaging	0.35	0.16	0.16	0.16	0.16	0.01	0.52	0.52	0.52	0.52	XXX
92135	TC	A	Opthalmic dx imaging	0.00	0.86	0.86	NA	NA	0.01	0.87	0.87	NA	NA	XXX
92140		A	Glaucoma provocative tests	0.50	0.93	0.78	0.22	0.25	0.02	1.45	1.30	0.74	0.77	XXX
92225		A	Special eye exam, initial	0.38	1.64	1.35	0.16	0.24	0.01	2.03	1.74	0.55	0.63	XXX
92226		A	Special eye exam, subsequent	0.33	1.72	1.40	0.15	0.22	0.01	2.06	1.74	0.49	0.56	XXX
92230		A	Eye exam with photos	0.60	1.26	1.13	0.21	0.35	0.02	1.88	1.75	0.83	0.97	XXX
92235		A	Eye exam with photos	0.81	2.08	1.99	NA	NA	0.08	2.97	2.88	NA	NA	XXX
92235	26	A	Eye exam with photos	0.81	0.39	0.45	0.39	0.45	0.03	1.23	1.29	1.23	1.29	XXX
92235	TC	A	Eye exam with photos	0.00	1.69	1.54	NA	NA	0.05	1.74	1.59	NA	NA	XXX
92240		A	Icg angiography	1.10	2.72	2.47	NA	NA	0.08	3.90	3.65	NA	NA	XXX
92240	26	A	Icg angiography	1.10	0.53	0.56	0.53	0.56	0.03	1.66	1.69	1.66	1.69	XXX
92240	TC	A	Icg angiography	0.00	2.19	1.91	NA	NA	0.05	2.24	1.96	NA	NA	XXX
92250		A	Eye exam with photos	0.44	1.73	1.41	NA	NA	0.02	2.19	1.87	NA	NA	XXX
92250	26	A	Eye exam with photos	0.44	0.20	0.22	0.20	0.22	0.01	0.65	0.67	0.65	0.67	XXX
92250	TC	A	Eye exam with photos	0.00	1.53	1.19	NA	NA	0.01	1.54	1.20	NA	NA	XXX
92260		A	Ophthalmoscopy/dynamometry	0.20	0.21	0.31	0.09	0.22	0.01	0.42	0.52	0.30	0.43	XXX
92265		A	Eye muscle evaluation	0.81	1.89	1.50	NA	NA	0.05	2.75	2.36	NA	NA	XXX
92265	26	A	Eye muscle evaluation	0.81	0.31	0.25	0.31	0.25	0.03	1.15	1.09	1.15	1.09	XXX
92265	TC	A	Eye muscle evaluation	0.00	1.58	1.25	NA	NA	0.02	1.60	1.27	NA	NA	XXX
92270		A	Electro-oculography	0.81	1.37	1.22	NA	NA	0.05	2.23	2.08	NA	NA	XXX
92270	26	A	Electro-oculography	0.81	0.34	0.36	0.34	0.36	0.03	1.18	1.20	1.18	1.20	XXX
92270	TC	A	Electro-oculography	0.00	1.03	0.86	NA	NA	0.02	1.05	0.88	NA	NA	XXX
92275		A	Electroretinography	1.01	1.12	1.09	NA	NA	0.06	2.19	2.16	NA	NA	XXX
92275	26	A	Electroretinography	1.01	0.44	0.47	0.44	0.47	0.04	1.49	1.52	1.49	1.52	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
92275	TC	A	Electroretinography	0.00	0.68	0.62	NA	NA	0.02	0.70	0.64	NA	NA	XXX
92283		A	Color vision examination	0.17	0.86	0.73	NA	NA	0.02	1.05	0.92	NA	NA	XXX
92283	26	A	Color vision examination	0.17	0.08	0.11	0.08	0.11	0.01	0.26	0.29	0.26	0.29	XXX
92283	TC	A	Color vision examination	0.00	0.78	0.62	NA	NA	0.01	0.79	0.63	NA	NA	XXX
92284		A	Dark adaptation eye exam	0.24	1.50	1.24	NA	NA	0.02	1.76	1.50	NA	NA	XXX
92284	26	A	Dark adaptation eye exam	0.24	0.09	0.14	0.09	0.14	0.01	0.34	0.39	0.34	0.39	XXX
92284	TC	A	Dark adaptation eye exam	0.00	1.41	1.10	NA	NA	0.01	1.42	1.11	NA	NA	XXX
92285		A	Eye photography	0.20	1.90	1.51	NA	NA	0.02	2.12	1.73	NA	NA	XXX
92285	26	A	Eye photography	0.20	0.09	0.12	0.09	0.12	0.01	0.30	0.33	0.30	0.33	XXX
92285	TC	A	Eye photography	0.00	1.81	1.39	NA	NA	0.01	1.82	1.40	NA	NA	XXX
92286		A	Internal eye photography	0.66	1.95	1.80	NA	NA	0.04	2.65	2.50	NA	NA	XXX
92286	26	A	Internal eye photography	0.66	0.31	0.46	0.31	0.46	0.02	0.99	1.14	0.99	1.14	XXX
92286	TC	A	Internal eye photography	0.00	1.64	1.34	NA	NA	0.02	1.66	1.36	NA	NA	XXX
92287		A	Internal eye photography	0.81	1.84	1.79	0.36	0.68	0.03	2.68	2.63	1.20	1.52	XXX
92310		N	Contact lens fitting	1.17	0.90	1.03	0.46	0.70	0.00	2.07	2.20	1.63	1.87	XXX
92311		A	Contact lens fitting	1.08	0.92	0.94	0.39	0.54	0.04	2.04	2.06	1.51	1.66	XXX
92312		A	Contact lens fitting	1.26	0.91	1.00	0.63	0.79	0.04	2.21	2.30	1.93	2.09	XXX
92313		A	Contact lens fitting	0.92	0.84	0.87	0.27	0.44	0.03	1.79	1.82	1.22	1.39	XXX
92314		N	Prescription of contact lens	0.69	0.70	0.73	0.27	0.41	0.00	1.39	1.42	0.96	1.10	XXX
92315		A	Prescription of contact lens	0.45	0.63	0.65	0.18	0.32	0.02	1.10	1.12	0.65	0.79	XXX
92316		A	Prescription of contact lens	0.68	0.71	0.79	0.27	0.46	0.02	1.41	1.49	0.97	1.16	XXX
92317		A	Prescription of contact lens	0.45	0.79	0.70	0.18	0.24	0.01	1.25	1.16	0.64	0.70	XXX
92325		A	Modification of contact lens	0.00	0.30	0.33	0.12	0.19	0.01	0.31	0.34	0.13	0.20	XXX
92326		A	Replacement of contact lens	0.00	0.31	0.66	0.12	0.51	0.05	0.36	0.71	0.17	0.56	XXX
92330		A	Fitting of artificial eye	1.08	0.75	0.87	0.28	0.52	0.04	1.87	1.99	1.40	1.64	XXX
92335		A	Fitting of artificial eye	0.45	0.73	1.08	0.18	0.67	0.02	1.20	1.55	0.65	1.14	XXX
92340		N	Fitting of spectacles	0.37	0.52	0.51	0.15	0.23	0.00	0.89	0.88	0.52	0.60	XXX
92341		N	Fitting of spectacles	0.47	0.56	0.57	0.19	0.29	0.00	1.03	1.04	0.66	0.76	XXX
92342		N	Fitting of spectacles	0.53	0.58	0.60	0.21	0.32	0.00	1.11	1.13	0.74	0.85	XXX
92352		B	Special spectacles fitting	0.37	0.52	0.47	0.15	0.20	0.01	0.90	0.85	0.53	0.58	XXX
92353		B	Special spectacles fitting	0.50	0.57	0.54	0.20	0.26	0.02	1.09	1.06	0.72	0.78	XXX
92354		B	Special spectacles fitting	0.00	0.43	2.61	0.16	2.41	0.08	0.51	2.69	0.24	2.49	XXX
92355		B	Special spectacles fitting	0.00	0.43	1.44	0.16	1.24	0.01	0.44	1.45	0.17	1.25	XXX
92358		B	Eye prosthesis service	0.00	0.28	0.46	0.10	0.33	0.04	0.32	0.50	0.14	0.37	XXX
92370		N	Repair & adjust spectacles	0.32	0.41	0.41	0.13	0.20	0.00	0.73	0.73	0.45	0.52	XXX
92371		B	Repair & adjust spectacles	0.00	0.28	0.37	0.10	0.24	0.02	0.30	0.39	0.12	0.26	XXX
92390		M	Supply of spectacles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92391		N	Supply of contact lenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92392		I	Supply of low vision aids	0.00	0.28	1.28	0.10	1.12	0.02	0.30	1.28	0.12	1.14	XXX
92393		I	Supply of artificial eye	0.00	0.28	3.46	0.10	3.32	0.48	0.76	3.94	0.58	3.80	XXX
92395		I	Supply of spectacles	0.00	0.28	0.57	0.10	0.43	0.08	0.36	0.65	0.18	0.51	XXX
92396		I	Supply of contact lenses	0.00	0.28	0.81	0.10	0.67	0.06	0.34	0.87	0.16	0.73	XXX
92499		C	Eye service or procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
92499	26	C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92499	TC	C	Eye service or procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
92502		A	Ear and throat examination	1.51	NA	NA	1.16	1.18	0.05	NA	NA	2.72	2.74	000
92504		A	Ear microscopy examination	0.18	0.81	0.68	0.09	0.14	0.01	1.00	0.87	0.28	0.33	XXX
92506		A	Speech/hearing evaluation	0.86	1.20	1.04	0.40	0.44	0.03	2.09	1.93	1.29	1.33	XXX
92507		A	Speech/hearing therapy	0.52	1.11	0.92	0.25	0.28	0.02	1.65	1.46	0.79	0.82	XXX
92508		A	Speech/hearing therapy	0.26	0.94	0.76	0.15	0.16	0.01	1.21	1.03	0.42	0.43	XXX
92510		A	Rehab for ear implant	1.50	1.59	1.56	0.65	0.86	0.05	3.14	3.11	2.20	2.41	XXX
92511		A	Nasopharyngoscopy	0.84	1.04	1.01	0.42	0.55	0.03	1.91	1.88	1.29	1.42	000
92512		A	Nasal function studies	0.55	0.88	0.79	0.25	0.32	0.02	1.45	1.36	0.82	0.89	XXX
92516		A	Facial nerve function test	0.43	0.74	0.66	0.22	0.27	0.01	1.18	1.10	0.66	0.71	XXX
92520		A	Laryngeal function studies	0.76	0.51	0.53	0.43	0.47	0.03	1.30	1.32	1.22	1.26	XXX
92525		A	Oral function evaluation	1.50	1.76	1.60	0.74	0.83	0.05	3.31	3.15	2.29	2.38	XXX
92526		A	Oral function therapy	0.55	1.39	1.17	0.21	0.29	0.02	1.96	1.74	0.78	0.86	XXX
92531		B	Spontaneous nystagmus study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92532		B	Positional nystagmus study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92533		M	Caloric vestibular test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92534		B	Optokinetic nystagmus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92541		A	Spontaneous nystagmus test	0.40	0.42	0.50	NA	NA	0.03	0.85	0.93	NA	NA	XXX
92541	26	A	Spontaneous nystagmus test	0.40	0.19	0.27	0.19	0.27	0.01	0.60	0.68	0.60	0.68	XXX
92541	TC	A	Spontaneous nystagmus test	0.00	0.23	0.23	NA	NA	0.02	0.25	0.25	NA	NA	XXX
92542		A	Positional nystagmus test	0.33	0.42	0.48	NA	NA	0.03	0.78	0.84	NA	NA	XXX
92542	26	A	Positional nystagmus test	0.33	0.16	0.22	0.16	0.22	0.01	0.50	0.56	0.50	0.56	XXX
92542	TC	A	Positional nystagmus test	0.00	0.26	0.26	NA	NA	0.02	0.28	0.28	NA	NA	XXX
92543		A	Caloric vestibular test	0.10	0.16	0.18	NA	NA	0.02	0.28	0.30	NA	NA	XXX
92543	26	A	Caloric vestibular test	0.10	0.05	0.07	0.05	0.07	0.01	0.16	0.18	0.16	0.18	XXX
92543	TC	A	Caloric vestibular test	0.00	0.11	0.11	NA	NA	0.01	0.12	0.12	NA	NA	XXX
92544		A	Optokinetic nystagmus test	0.26	0.34	0.38	NA	NA	0.03	0.63	0.67	NA	NA	XXX
92544	26	A	Optokinetic nystagmus test	0.26	0.12	0.16	0.12	0.16	0.01	0.39	0.43	0.39	0.43	XXX
92544	TC	A	Optokinetic nystagmus test	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	XXX
92545		A	Oscillating tracking test	0.23	0.33	0.36	NA	NA	0.03	0.59	0.62	NA	NA	XXX
92545	26	A	Oscillating tracking test	0.23	0.11	0.14	0.11	0.14	0.01	0.35	0.38	0.35	0.38	XXX
92545	TC	A	Oscillating tracking test	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	XXX
92546		A	Sinusoidal rotational test	0.29	0.37	0.42	NA	NA	0.03	0.69	0.74	NA	NA	XXX
92546	26	A	Sinusoidal rotational test	0.29	0.13	0.18	0.13	0.18	0.01	0.43	0.48	0.43	0.48	XXX
92546	TC	A	Sinusoidal rotational test	0.00	0.24	0.24	NA	NA	0.02	0.26	0.26	NA	NA	XXX
92547		A	Supplemental electrical test	0.00	0.57	0.57	NA	NA	0.05	0.62	0.62	NA	NA	ZZZ
92548		A	Posturography	0.50	1.75	1.82	NA	NA	0.13	2.38	2.45	NA	NA	XXX
92548	26	A	Posturography	0.50	0.26	0.32	0.26	0.32	0.02	0.78	0.84	0.78	0.84	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
92548	TC	A	Posturography	0.00	1.49	1.50	NA	NA	0.11	1.60	1.61	NA	NA	XXX
92551		N	Pure tone hearing test, air	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92552		A	Pure tone audiometry, air	0.00	0.45	0.45	NA	NA	0.03	0.48	0.48	NA	NA	XXX
92553		A	Audiometry, air & bone	0.00	0.66	0.67	NA	NA	0.05	0.71	0.72	NA	NA	XXX
92555		A	Speech threshold audiometry	0.00	0.38	0.38	NA	NA	0.03	0.41	0.41	NA	NA	XXX
92556		A	Speech audiometry, complete	0.00	0.58	0.58	NA	NA	0.05	0.63	0.63	NA	NA	XXX
92557		A	Comprehensive hearing test	0.00	1.20	1.21	NA	NA	0.10	1.30	1.31	NA	NA	XXX
92559		N	Group audiometric testing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92560		N	Bekesy audiometry, screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92561		A	Bekesy audiometry, diagnosis	0.00	0.72	0.73	NA	NA	0.05	0.77	0.78	NA	NA	XXX
92562		A	Loudness balance test	0.00	0.41	0.41	NA	NA	0.03	0.44	0.44	NA	NA	XXX
92563		A	Tone decay hearing test	0.00	0.38	0.38	NA	NA	0.03	0.41	0.41	NA	NA	XXX
92564		A	Sisi hearing test	0.00	0.48	0.48	NA	NA	0.04	0.52	0.52	NA	NA	XXX
92565		A	Stenger test, pure tone	0.00	0.40	0.40	NA	NA	0.03	0.43	0.43	NA	NA	XXX
92567		A	Tympanometry	0.00	0.53	0.53	NA	NA	0.05	0.58	0.58	NA	NA	XXX
92568		A	Acoustic reflex testing	0.00	0.38	0.38	NA	NA	0.03	0.41	0.41	NA	NA	XXX
92569		A	Acoustic reflex decay test	0.00	0.41	0.41	NA	NA	0.03	0.44	0.44	NA	NA	XXX
92571		A	Filtered speech hearing test	0.00	0.39	0.39	NA	NA	0.03	0.42	0.42	NA	NA	XXX
92572		A	Staggered spondaic word test	0.00	0.09	0.09	NA	NA	0.01	0.10	0.10	NA	NA	XXX
92573		A	Lombard test	0.00	0.35	0.35	NA	NA	0.03	0.38	0.38	NA	NA	XXX
92575		A	Sensorineural acuity test	0.00	0.30	0.30	NA	NA	0.02	0.32	0.32	NA	NA	XXX
92576		A	Synthetic sentence test	0.00	0.45	0.45	NA	NA	0.04	0.49	0.49	NA	NA	XXX
92577		A	Stenger test, speech	0.00	0.72	0.73	NA	NA	0.06	0.78	0.79	NA	NA	XXX
92579		A	Visual audiometry (vra)	0.00	0.73	0.74	NA	NA	0.05	0.78	0.79	NA	NA	XXX
92582		A	Conditioning play audiometry	0.00	0.73	0.74	NA	NA	0.05	0.78	0.79	NA	NA	XXX
92583		A	Select picture audiometry	0.00	0.90	0.91	NA	NA	0.07	0.97	0.98	NA	NA	XXX
92584		A	Electrocochleography	0.00	2.50	2.52	NA	NA	0.18	2.68	2.70	NA	NA	XXX
92585		A	Auditory evoked potential	0.50	2.09	2.45	NA	NA	0.14	2.73	3.09	NA	NA	XXX
92585	26	A	Auditory evoked potential	0.50	0.22	0.57	0.22	0.57	0.02	0.74	1.09	0.74	1.09	XXX
92585	TC	A	Auditory evoked potential	0.00	1.87	1.88	NA	NA	0.12	1.99	2.00	NA	NA	XXX
92587		A	Evoked auditory test	0.13	1.38	1.41	NA	NA	0.10	1.61	1.64	NA	NA	XXX
92587	26	A	Evoked auditory test	0.13	0.06	0.08	0.06	0.08	0.01	0.20	0.22	0.20	0.22	XXX
92587	TC	A	Evoked auditory test	0.00	1.32	1.33	NA	NA	0.09	1.41	1.42	NA	NA	XXX
92588		A	Evoked auditory test	0.36	1.65	1.70	NA	NA	0.12	2.13	2.18	NA	NA	XXX
92588	26	A	Evoked auditory test	0.36	0.16	0.20	0.16	0.20	0.01	0.53	0.57	0.53	0.57	XXX
92588	TC	A	Evoked auditory test	0.00	1.49	1.50	NA	NA	0.11	1.60	1.61	NA	NA	XXX
92589		A	Auditory function test(s)	0.00	0.54	0.54	NA	NA	0.05	0.59	0.59	NA	NA	XXX
92590		N	Hearing aid exam, one ear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92591		N	Hearing aid exam, both ears	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92592		N	Hearing aid check, one ear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92593		N	Hearing aid check, both ears	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92594		N	Electro hearng aid test, one	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92595		N	Electro hearng aid tst, both	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92596		A	Ear protector evaluation	0.00	0.60	0.60	NA	NA	0.05	0.65	0.65	NA	NA	XXX
92597		A	Oral speech device eval	1.35	1.48	1.39	0.73	0.82	0.04	2.87	2.78	2.12	2.21	XXX
92598		A	Modify oral speech device	0.99	0.85	0.82	0.51	0.56	0.03	1.87	1.84	1.53	1.58	XXX
92599		C	ENT procedure/service	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
92599	26	C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92599	TC	C	ENT procedure/service	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
92950		A	Heart/lung resuscitation cpr	3.80	1.57	1.79	1.11	1.45	0.21	5.58	5.80	5.12	5.46	000
92953		A	Temporary external pacing	0.23	NA	NA	0.19	0.21	0.01	NA	NA	0.43	0.45	000
92960		A	Cardioversion electric, ext	2.25	2.03	2.03	0.90	1.19	0.08	4.36	4.36	3.23	3.52	000
92961		A	Cardioversion, electric, int	4.60	NA	NA	1.92	1.92	0.31	NA	NA	6.83	6.83	000
92970		A	Cardioassist, internal	3.52	NA	NA	1.09	1.76	0.17	NA	NA	4.78	5.45	000
92971		A	Cardioassist, external	1.77	NA	NA	0.89	0.97	0.06	NA	NA	2.72	2.80	000
92975		A	Dissolve clot, heart vessel	7.25	NA	NA	3.08	3.86	0.22	NA	NA	10.55	11.33	000
92977		A	Dissolve clot, heart vessel	0.00	NA	NA	8.14	8.19	0.39	NA	NA	8.53	8.58	XXX
92978		A	Intravasc us, heart add-on	1.80	5.37	5.50	NA	NA	0.27	7.44	7.57	NA	NA	ZZZ
92978	26	A	Intravasc us, heart add-on	1.80	0.76	0.86	0.76	0.86	0.06	2.62	2.72	2.62	2.72	ZZZ
92978	TC	A	Intravasc us, heart add-on	0.00	4.61	4.64	NA	NA	0.21	4.82	4.85	NA	NA	ZZZ
92979		A	Intravasc us, heart add-on	1.44	2.93	3.02	NA	NA	0.15	4.52	4.61	NA	NA	ZZZ
92979	26	A	Intravasc us, heart add-on	1.44	0.61	0.69	0.61	0.69	0.04	2.09	2.17	2.09	2.17	ZZZ
92979	TC	A	Intravasc us, heart add-on	0.00	2.32	2.33	NA	NA	0.11	2.43	2.44	NA	NA	ZZZ
92980		A	Insert intracoronary stent	14.84	NA	NA	6.33	9.18	0.02	NA	NA	21.19	24.04	000
92981		A	Insert intracoronary stent	4.17	NA	NA	1.77	2.57	0.56	NA	NA	6.50	7.30	ZZZ
92982		A	Coronary artery dilation	10.98	NA	NA	4.70	6.80	1.48	NA	NA	17.16	19.26	000
92984		A	Coronary artery dilation	2.97	NA	NA	1.26	1.83	0.40	NA	NA	4.63	5.20	ZZZ
92986		A	Revision of aortic valve	21.80	NA	NA	10.87	11.42	2.82	NA	NA	35.49	36.04	090
92987		A	Revision of mitral valve	22.70	NA	NA	11.23	11.73	2.99	NA	NA	36.92	37.42	090
92990		A	Revision of pulmonary valve	17.34	NA	NA	8.47	8.96	1.90	NA	NA	27.71	28.20	090
92992		C	Revision of heart chamber	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
92993		C	Revision of heart chamber	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
92995		A	Coronary atherectomy	12.09	NA	NA	5.16	7.48	1.63	NA	NA	18.88	21.20	000
92996		A	Coronary atherectomy add-on	3.26	NA	NA	1.43	2.05	0.44	NA	NA	5.13	5.75	ZZZ
92997		A	Pul art balloon repr, percut	0.12	NA	NA	5.12	7.42	1.45	NA	NA	6.69	8.99	000
92998		A	Pul art balloon repr, percut	0.08	NA	NA	2.48	2.89	0.73	NA	NA	3.27	3.68	ZZZ
93000		A	Electrocardiogram, complete	0.17	0.53	0.56	NA	NA	0.03	0.73	0.76	NA	NA	XXX
93005		A	Electrocardiogram, tracing	0.00	0.46	0.46	NA	NA	0.02	0.48	0.48	NA	NA	XXX
93010		A	Electrocardiogram report	0.17	0.07	0.10	0.07	0.10	0.01	0.25	0.28	0.25	0.28	XXX
93012		A	Transmission of ecg	0.00	2.39	2.40	NA	NA	0.15	2.54	2.55	NA	NA	XXX
93014		A	Report on transmitted ecg	0.52	0.20	0.26	0.20	0.26	0.02	0.74	0.80	0.74	0.80	XXX
93015		A	Cardiovascular stress test	0.75	2.00	2.13	NA	NA	0.11	2.86	2.99	NA	NA	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
93016		A	Cardiovascular stress test	0.45	0.18	0.24	0.18	0.24	0.01	0.64	0.70	0.64	0.70	XXX
93017		A	Cardiovascular stress test	0.00	1.70	1.71	NA	NA	0.09	1.79	1.80	NA	NA	XXX
93018		A	Cardiovascular stress test	0.30	0.12	0.18	0.12	0.18	0.01	0.43	0.49	0.43	0.49	XXX
93024		A	Cardiac drug stress test	1.17	1.61	1.85	NA	NA	0.11	2.89	3.13	NA	NA	XXX
93024	26	A	Cardiac drug stress test	1.17	0.48	0.71	0.48	0.71	0.04	1.69	1.92	1.69	1.92	XXX
93024	TC	A	Cardiac drug stress test	0.00	1.13	1.14	NA	NA	0.07	1.20	1.21	NA	NA	XXX
93040		A	Rhythm ECG with report	0.16	0.20	0.22	NA	NA	0.02	0.38	0.40	NA	NA	XXX
93041		A	Rhythm ECG, tracing	0.00	0.15	0.15	NA	NA	0.01	0.16	0.16	NA	NA	XXX
93042		A	Rhythm ECG, report	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
93224		A	ECG monitor/report, 24 hrs	0.52	3.67	3.79	NA	NA	0.21	4.40	4.52	NA	NA	XXX
93225		A	ECG monitor/record, 24 hrs	0.00	1.25	1.26	NA	NA	0.07	1.32	1.33	NA	NA	XXX
93226		A	ECG monitor/report, 24 hrs	0.00	2.21	2.22	NA	NA	0.12	2.33	2.34	NA	NA	XXX
93227		A	ECG monitor/review, 24 hrs	0.52	0.21	0.31	0.21	0.31	0.02	0.75	0.85	0.75	0.85	XXX
93230		A	ECG monitor/report, 24 hrs	0.52	3.94	4.06	NA	NA	0.22	4.68	4.80	NA	NA	XXX
93231		A	Ecg monitor/record, 24 hrs	0.00	1.53	1.54	NA	NA	0.09	1.62	1.63	NA	NA	XXX
93232		A	ECG monitor/report, 24 hrs	0.00	2.20	2.21	NA	NA	0.11	2.31	2.32	NA	NA	XXX
93233		A	ECG monitor/review, 24 hrs	0.52	0.21	0.31	0.21	0.31	0.02	0.75	0.85	0.75	0.85	XXX
93235		A	ECG monitor/report, 24 hrs	0.45	2.83	2.94	NA	NA	0.13	3.41	3.52	NA	NA	XXX
93236		A	ECG monitor/report, 24 hrs	0.00	2.65	2.67	NA	NA	0.12	2.77	2.79	NA	NA	XXX
93237		A	ECG monitor/review, 24 hrs	0.45	0.18	0.27	0.18	0.27	0.01	0.64	0.73	0.64	0.73	XXX
93268		A	ECG record/review	0.52	3.84	3.92	NA	NA	0.24	4.60	4.68	NA	NA	XXX
93270		A	ECG recording	0.00	1.25	1.26	NA	NA	0.07	1.32	1.33	NA	NA	XXX
93271		A	Ecg/monitoring and analysis	0.00	2.39	2.40	NA	NA	0.15	2.54	2.55	NA	NA	XXX
93272		A	Ecg/review,interpret only	0.52	0.20	0.26	0.20	0.26	0.02	0.74	0.80	0.74	0.80	XXX
93278		A	ECG/signal-averaged	0.25	1.26	1.32	NA	NA	0.10	1.61	1.67	NA	NA	XXX
93278	26	A	ECG/signal-averaged	0.25	0.10	0.15	0.10	0.15	0.01	0.36	0.41	0.36	0.41	XXX
93278	TC	A	ECG/signal-averaged	0.00	1.16	1.17	NA	NA	0.09	1.25	1.26	NA	NA	XXX
93303		A	Echo transthoracic	1.30	4.40	4.57	NA	NA	0.24	5.94	6.11	NA	NA	XXX
93303	26	A	Echo transthoracic	1.30	0.50	0.65	0.50	0.65	0.04	1.84	1.99	1.84	1.99	XXX
93303	TC	A	Echo transthoracic	0.00	3.90	3.92	NA	NA	0.20	4.10	4.12	NA	NA	XXX
93304		A	Echo transthoracic	0.75	2.25	2.37	NA	NA	0.13	3.13	3.25	NA	NA	XXX
93304	26	A	Echo transthoracic	0.75	0.29	0.40	0.29	0.40	0.02	1.06	1.17	1.06	1.17	XXX
93304	TC	A	Echo transthoracic	0.00	1.96	1.97	NA	NA	0.11	2.07	2.08	NA	NA	XXX
93307		A	Echo exam of heart	0.92	4.28	4.48	NA	NA	0.23	5.43	5.63	NA	NA	XXX
93307	26	A	Echo exam of heart	0.92	0.38	0.56	0.38	0.56	0.03	1.33	1.51	1.33	1.51	XXX
93307	TC	A	Echo exam of heart	0.00	3.90	3.92	NA	NA	0.20	4.10	4.12	NA	NA	XXX
93308		A	Echo exam of heart	0.53	2.18	2.29	NA	NA	0.13	2.84	2.95	NA	NA	XXX
93308	26	A	Echo exam of heart	0.53	0.22	0.32	0.22	0.32	0.02	0.77	0.87	0.77	0.87	XXX
93308	TC	A	Echo exam of heart	0.00	1.96	1.97	NA	NA	0.11	2.07	2.08	NA	NA	XXX
93312		A	Echo transesophageal	2.20	4.69	4.86	NA	NA	0.34	7.23	7.40	NA	NA	XXX
93312	26	A	Echo transesophageal	2.20	0.87	1.02	0.87	1.02	0.09	3.16	3.31	3.16	3.31	XXX
93312	TC	A	Echo transesophageal	0.00	3.82	3.84	NA	NA	0.25	4.07	4.09	NA	NA	XXX
93313		A	Echo transesophageal	0.95	5.13	4.03	0.23	0.36	0.05	6.13	5.03	1.23	1.36	XXX
93314		A	Echo transesophageal	1.25	4.32	4.40	NA	NA	0.29	5.86	5.94	NA	NA	XXX
93314	26	A	Echo transesophageal	1.25	0.50	0.56	0.50	0.56	0.04	1.79	1.85	1.79	1.85	XXX
93314	TC	A	Echo transesophageal	0.00	3.82	3.84	NA	NA	0.25	4.07	4.09	NA	NA	XXX
93315		A	Echo transesophageal	2.78	4.90	5.02	NA	NA	0.36	8.04	8.16	NA	NA	XXX
93315	26	A	Echo transesophageal	2.78	1.08	1.18	1.08	1.18	0.11	3.97	4.07	3.97	4.07	XXX
93315	TC	A	Echo transesophageal	0.00	3.82	3.84	NA	NA	0.25	4.07	4.09	NA	NA	XXX
93316		A	Echo transesophageal	0.95	1.66	1.43	0.28	0.39	0.05	2.66	2.43	1.28	1.39	XXX
93317		A	Echo transesophageal	1.83	4.54	4.56	NA	NA	0.32	6.69	6.71	NA	NA	XXX
93317	26	A	Echo transesophageal	1.83	0.72	0.72	0.72	0.72	0.07	2.62	2.62	2.62	2.62	XXX
93317	TC	A	Echo transesophageal	0.00	3.82	3.84	NA	NA	0.25	4.07	4.09	NA	NA	XXX
93320		A	Doppler echo exam, heart	0.38	1.89	1.98	NA	NA	0.11	2.38	2.47	NA	NA	ZZZ
93320	26	A	Doppler echo exam, heart	0.38	0.16	0.24	0.16	0.24	0.01	0.55	0.63	0.55	0.63	ZZZ
93320	TC	A	Doppler echo exam, heart	0.00	1.73	1.74	NA	NA	0.10	1.83	1.84	NA	NA	ZZZ
93321		A	Doppler echo exam, heart	0.15	1.18	1.22	NA	NA	0.08	1.41	1.45	NA	NA	ZZZ
93321	26	A	Doppler echo exam, heart	0.15	0.06	0.09	0.06	0.09	0.01	0.22	0.25	0.22	0.25	ZZZ
93321	TC	A	Doppler echo exam, heart	0.00	1.12	1.13	NA	NA	0.07	1.19	1.20	NA	NA	ZZZ
93325		A	Doppler color flow add-on	0.07	2.96	2.96	NA	NA	0.19	3.22	3.24	NA	NA	ZZZ
93325	26	A	Doppler color flow add-on	0.07	0.03	0.03	0.03	0.03	0.01	0.11	0.11	0.11	0.11	ZZZ
93325	TC	A	Doppler color flow add-on	0.00	2.93	2.95	NA	NA	0.18	3.11	3.13	NA	NA	ZZZ
93350		A	Echo transthoracic	0.78	2.10	2.26	NA	NA	0.13	3.01	3.17	NA	NA	XXX
93350	26	A	Echo transthoracic	0.78	0.32	0.47	0.32	0.47	0.02	1.12	1.27	1.12	1.27	XXX
93350	TC	A	Echo transthoracic	0.00	1.78	1.79	NA	NA	0.11	1.89	1.90	NA	NA	XXX
93501		A	Right heart catheterization	3.02	17.58	18.46	NA	NA	1.27	21.87	22.75	NA	NA	000
93501	26	A	Right heart catheterization	3.02	1.24	1.83	1.24	1.83	0.37	4.63	5.22	4.63	5.22	000
93501	TC	A	Right heart catheterization	0.00	16.34	16.63	NA	NA	0.90	17.24	17.53	NA	NA	000
93503		A	Insert/place heart catheter	2.91	1.03	1.42	0.76	1.21	0.22	4.16	4.55	3.89	4.34	000
93505		A	Biopsy of heart lining	4.38	3.74	4.15	NA	NA	0.70	8.82	9.23	NA	NA	000
93505	26	A	Biopsy of heart lining	4.38	1.83	2.20	1.83	2.20	0.57	6.78	7.15	6.78	7.15	000
93505	TC	A	Biopsy of heart lining	0.00	1.91	1.95	NA	NA	0.13	2.04	2.08	NA	NA	000
93508		A	Cath placement, angiography	4.10	13.90	14.44	NA	NA	1.11	19.11	19.65	NA	NA	000
93508	26	A	Cath placement, angiography	4.10	1.72	2.05	1.72	2.05	0.55	6.37	6.70	6.37	6.70	000
93508	TC	A	Cath placement, angiography	0.00	12.18	12.39	NA	NA	0.56	12.74	12.95	NA	NA	000
93510		A	Left heart catheterization	4.33	37.53	38.53	NA	NA	2.55	44.41	45.41	NA	NA	000
93510	26	A	Left heart catheterization	4.33	1.83	2.20	1.83	2.20	0.58	6.74	7.11	6.74	7.11	000
93510	TC	A	Left heart catheterization	0.00	35.70	36.33	NA	NA	1.97	37.67	38.30	NA	NA	000
93511		A	Left heart catheterization	5.03	36.87	37.67	NA	NA	2.59	44.49	45.29	NA	NA	000
93511	26	A	Left heart catheterization	5.03	2.12	2.30	2.12	2.30	0.68	7.83	8.01	7.83	8.01	000
93511	TC	A	Left heart catheterization	0.00	34.75	35.37	NA	NA	1.91	36.66	37.28	NA	NA	000
93514		A	Left heart catheterization	7.05	37.65	38.78	NA	NA	2.87	47.57	48.70	NA	NA	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
93514	26	A	Left heart catheterization	7.05	2.90	3.41	2.90	3.41	0.96	10.91	11.42	10.91	11.42	000
93514	TC	A	Left heart catheterization	0.00	34.75	35.37	NA	NA	1.91	36.66	37.28	NA	NA	000
93524	.....	A	Left heart catheterization	6.95	48.31	49.66	NA	NA	3.45	58.71	60.06	NA	NA	000
93524	26	A	Left heart catheterization	6.95	2.91	3.45	2.91	3.45	0.95	10.81	11.35	10.81	11.35	000
93524	TC	A	Left heart catheterization	0.00	45.40	46.21	NA	NA	2.50	47.90	48.71	NA	NA	000
93526	.....	A	Rt & Lt heart catheters	5.99	49.17	50.85	NA	NA	3.37	58.53	60.21	NA	NA	000
93526	26	A	Rt & Lt heart catheters	5.99	2.52	3.37	2.52	3.37	0.80	9.31	10.16	9.31	10.16	000
93526	TC	A	Rt & Lt heart catheters	0.00	46.65	47.48	NA	NA	2.57	49.22	50.05	NA	NA	000
93527	.....	A	Rt & Lt heart catheters	7.28	48.47	50.45	NA	NA	3.47	59.22	61.20	NA	NA	000
93527	26	A	Rt & Lt heart catheters	7.28	3.07	4.24	3.07	4.24	0.97	11.32	12.49	11.32	12.49	000
93527	TC	A	Rt & Lt heart catheters	0.00	45.40	46.21	NA	NA	2.50	47.90	48.71	NA	NA	000
93528	.....	A	Rt & Lt heart catheters	0.09	49.24	50.29	NA	NA	3.73	53.06	54.11	NA	NA	000
93528	26	A	Rt & Lt heart catheters	0.09	3.84	4.08	3.84	4.08	1.23	5.16	5.40	5.16	5.40	000
93528	TC	A	Rt & Lt heart catheters	0.00	45.40	46.21	NA	NA	2.50	47.90	48.71	NA	NA	000
93529	.....	A	Rt, Lt heart catheterization	4.80	47.32	48.45	NA	NA	3.08	55.20	56.33	NA	NA	000
93529	26	A	Rt, Lt heart catheterization	4.80	1.92	2.24	1.92	2.24	0.58	7.30	7.62	7.30	7.62	000
93529	TC	A	Rt, Lt heart catheterization	0.00	45.40	46.21	NA	NA	2.50	47.90	48.71	NA	NA	000
93530	.....	A	Rt heart cath, congenital	4.23	18.00	18.86	NA	NA	1.45	23.68	24.54	NA	NA	000
93530	26	A	Rt heart cath, congenital	4.23	1.66	2.23	1.66	2.23	0.55	6.44	7.01	6.44	7.01	000
93530	TC	A	Rt heart cath, congenital	0.00	16.34	16.63	NA	NA	0.90	17.24	17.53	NA	NA	000
93531	.....	A	R & I heart cath, congenital	8.35	50.10	51.55	NA	NA	3.70	62.15	63.60	NA	NA	000
93531	26	A	R & I heart cath, congenital	8.35	3.45	4.07	3.45	4.07	1.13	12.93	13.55	12.93	13.55	000
93531	TC	A	R & I heart cath, congenital	0.00	46.65	47.48	NA	NA	2.57	49.22	50.05	NA	NA	000
93532	.....	A	R & I heart cath, congenital	0.10	49.31	51.08	NA	NA	3.92	53.33	55.10	NA	NA	000
93532	26	A	R & I heart cath, congenital	0.10	3.91	4.87	3.91	4.87	1.42	5.43	6.39	5.43	6.39	000
93532	TC	A	R & I heart cath, congenital	0.00	45.40	46.21	NA	NA	2.50	47.90	48.71	NA	NA	000
93533	.....	A	R & I heart cath, congenital	6.70	47.91	48.89	NA	NA	3.40	58.01	58.99	NA	NA	000
93533	26	A	R & I heart cath, congenital	6.70	2.51	2.68	2.51	2.68	0.90	10.11	10.28	10.11	10.28	000
93533	TC	A	R & I heart cath, congenital	0.00	45.40	46.21	NA	NA	2.50	47.90	48.71	NA	NA	000
93536	.....	A	Insert circulation assi	4.85	NA	NA	2.08	3.01	0.65	NA	NA	7.58	8.51	000
93539	.....	A	Injection, cardiac cath	0.40	0.74	0.80	0.17	0.37	0.01	1.15	1.21	0.58	0.78	000
93540	.....	A	Injection, cardiac cath	0.43	0.77	0.82	0.18	0.38	0.01	1.21	1.26	0.62	0.82	000
93541	.....	A	Injection for lung angiogram	0.29	NA	NA	0.12	0.18	0.01	NA	NA	0.42	0.48	000
93542	.....	A	Injection for heart x-rays	0.29	NA	NA	0.12	0.18	0.01	NA	NA	0.42	0.48	000
93543	.....	A	Injection for heart x-rays	0.29	0.49	0.52	0.12	0.25	0.01	0.79	0.82	0.42	0.55	000
93544	.....	A	Injection for aortography	0.25	0.47	0.51	0.11	0.24	0.01	0.73	0.77	0.37	0.50	000
93545	.....	A	Inject for coronary x-rays	0.40	0.76	0.69	0.17	0.25	0.01	1.17	1.10	0.58	0.66	000
93555	.....	A	Imaging, cardiac cath	0.81	6.40	6.50	NA	NA	0.32	7.53	7.63	NA	NA	XXX
93555	26	A	Imaging, cardiac cath	0.81	0.34	0.33	0.34	0.33	0.03	1.18	1.17	1.18	1.17	XXX
93555	TC	A	Imaging, cardiac cath	0.00	6.06	6.17	NA	NA	0.29	6.35	6.46	NA	NA	XXX
93556	.....	A	Imaging, cardiac cath	0.83	9.91	10.12	NA	NA	0.46	11.20	11.41	NA	NA	XXX
93556	26	A	Imaging, cardiac cath	0.83	0.35	0.39	0.35	0.39	0.03	1.21	1.25	1.21	1.25	XXX
93556	TC	A	Imaging, cardiac cath	0.00	9.56	9.73	NA	NA	0.43	9.99	10.16	NA	NA	XXX
93561	.....	A	Cardiac output measurement	0.50	0.69	0.81	NA	NA	0.07	1.26	1.38	NA	NA	000
93561	26	A	Cardiac output measurement	0.50	0.17	0.28	0.17	0.28	0.02	0.69	0.80	0.69	0.80	000
93561	TC	A	Cardiac output measurement	0.00	0.52	0.53	NA	NA	0.05	0.57	0.58	NA	NA	000
93562	.....	A	Cardiac output measurement	0.16	0.35	0.40	NA	NA	0.04	0.55	0.60	NA	NA	000
93562	26	A	Cardiac output measurement	0.16	0.05	0.09	0.05	0.09	0.01	0.22	0.26	0.22	0.26	000
93562	TC	A	Cardiac output measurement	0.00	0.30	0.31	NA	NA	0.03	0.33	0.34	NA	NA	000
93571	.....	A	Heart flow reserve measure	1.80	5.33	5.36	NA	NA	0.27	7.40	7.43	NA	NA	ZZZ
93571	26	A	Heart flow reserve measure	1.80	0.71	0.71	0.71	0.71	0.06	2.57	2.57	2.57	2.57	ZZZ
93571	TC	A	Heart flow reserve measure	0.00	4.62	4.65	NA	NA	0.21	4.83	4.86	NA	NA	ZZZ
93572	.....	A	Heart flow reserve measure	1.44	5.19	5.22	NA	NA	0.15	6.78	6.81	NA	NA	ZZZ
93572	26	A	Heart flow reserve measure	1.44	0.57	0.57	0.57	0.57	0.04	2.05	2.05	2.05	2.05	ZZZ
93572	TC	A	Heart flow reserve measure	0.00	4.62	4.65	NA	NA	0.11	4.73	4.76	NA	NA	ZZZ
93600	.....	A	Bundle of His recording	2.12	2.87	3.29	NA	NA	0.18	5.17	5.59	NA	NA	000
93600	26	A	Bundle of His recording	2.12	0.90	1.31	0.90	1.31	0.07	3.09	3.50	3.09	3.50	000
93600	TC	A	Bundle of His recording	0.00	1.97	1.98	NA	NA	0.11	2.08	2.09	NA	NA	000
93602	.....	A	Intra-atrial recording	2.12	2.02	2.29	NA	NA	0.15	4.29	4.56	NA	NA	000
93602	26	A	Intra-atrial recording	2.12	0.90	1.16	0.90	1.16	0.09	3.11	3.37	3.11	3.37	000
93602	TC	A	Intra-atrial recording	0.00	1.12	1.13	NA	NA	0.06	1.18	1.19	NA	NA	000
93603	.....	A	Right ventricular recording	2.12	2.60	2.98	NA	NA	0.18	4.90	5.28	NA	NA	000
93603	26	A	Right ventricular recording	2.12	0.90	1.27	0.90	1.27	0.09	3.11	3.48	3.11	3.48	000
93603	TC	A	Right ventricular recording	0.00	1.70	1.71	NA	NA	0.09	1.79	1.80	NA	NA	000
93607	.....	A	Left ventricular recording	3.26	2.91	3.17	NA	NA	0.19	6.36	6.62	NA	NA	000
93607	26	A	Left ventricular recording	3.26	1.40	1.65	1.40	1.65	0.10	4.76	5.01	4.76	5.01	000
93607	TC	A	Left ventricular recording	0.00	1.51	1.52	NA	NA	0.09	1.60	1.61	NA	NA	000
93609	.....	A	Mapping of tachycardia	10.07	6.99	6.99	NA	NA	0.46	17.52	17.52	NA	NA	000
93609	26	A	Mapping of tachycardia	10.07	4.24	4.22	4.24	4.22	0.32	14.63	14.61	14.63	14.61	000
93609	TC	A	Mapping of tachycardia	0.00	2.75	2.77	NA	NA	0.14	2.89	2.91	NA	NA	000
93610	.....	A	Intra-atrial pacing	3.02	2.64	2.96	NA	NA	0.19	5.85	6.17	NA	NA	000
93610	26	A	Intra-atrial pacing	3.02	1.27	1.58	1.27	1.58	0.11	4.40	4.71	4.40	4.71	000
93610	TC	A	Intra-atrial pacing	0.00	1.37	1.38	NA	NA	0.08	1.45	1.46	NA	NA	000
93612	.....	A	Intraventricular pacing	3.02	2.90	3.23	NA	NA	0.21	6.13	6.46	NA	NA	000
93612	26	A	Intraventricular pacing	3.02	1.27	1.59	1.27	1.59	0.12	4.41	4.73	4.41	4.73	000
93612	TC	A	Intraventricular pacing	0.00	1.63	1.64	NA	NA	0.09	1.72	1.73	NA	NA	000
93615	.....	A	Esophageal recording	0.99	0.65	0.66	NA	NA	0.08	1.72	1.73	NA	NA	000
93615	26	A	Esophageal recording	0.99	0.33	0.34	0.33	0.34	0.06	1.38	1.39	1.38	1.39	000
93615	TC	A	Esophageal recording	0.00	0.32	0.32	NA	NA	0.02	0.34	0.34	NA	NA	000
93616	.....	A	Esophageal recording	1.49	0.71	0.98	NA	NA	0.10	2.30	2.57	NA	NA	000
93616	26	A	Esophageal recording	1.49	0.39	0.66	0.39	0.66	0.08	1.96	2.23	1.96	2.23	000
93616	TC	A	Esophageal recording	0.00	0.32	0.32	NA	NA	0.02	0.34	0.34	NA	NA	000

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
93618		A	Heart rhythm pacing	4.26	5.82	6.66	NA	NA	0.33	10.41	11.25	NA	NA	000
93618	26	A	Heart rhythm pacing	4.26	1.81	2.63	1.81	2.63	0.12	6.19	7.01	6.19	7.01	000
93618	TC	A	Heart rhythm pacing	0.00	4.01	4.03	NA	NA	0.21	4.22	4.24	NA	NA	000
93619		A	Electrophysiology evaluation	7.32	10.90	12.36	NA	NA	0.62	18.84	20.30	NA	NA	000
93619	26	A	Electrophysiology evaluation	7.32	3.11	4.52	3.11	4.52	0.22	10.65	12.06	10.65	12.06	000
93619	TC	A	Electrophysiology evaluation	0.00	7.79	7.84	NA	NA	0.40	8.19	8.24	NA	NA	000
93620		A	Electrophysiology evaluation	11.59	13.90	16.20	NA	NA	0.79	26.28	28.58	NA	NA	000
93620	26	A	Electrophysiology evaluation	11.59	4.84	7.09	4.84	7.09	0.34	16.77	19.02	16.77	19.02	000
93620	TC	A	Electrophysiology evaluation	0.00	9.06	9.11	NA	NA	0.45	9.51	9.56	NA	NA	000
93621		C	Electrophysiology evaluation	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	000
93621	26	A	Electrophysiology evaluation	12.66	5.37	7.81	5.37	7.81	0.41	18.44	20.88	18.44	20.88	000
93621	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	000
93622		C	Electrophysiology evaluation	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	000
93622	26	A	Electrophysiology evaluation	12.74	5.25	7.74	5.25	7.74	0.39	18.38	20.87	18.38	20.87	000
93622	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	000
93623		C	Stimulation, pacing heart	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	ZZZ
93623	26	A	Stimulation, pacing heart	2.85	1.20	1.66	1.20	1.66	0.10	4.15	4.61	4.15	4.61	ZZZ
93623	TC	C	Stimulation, pacing heart	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	ZZZ
93624		A	Electrophysiologic study	4.81	4.04	4.35	NA	NA	0.26	9.11	9.42	NA	NA	000
93624	26	A	Electrophysiologic study	4.81	2.04	2.34	2.04	2.34	0.15	7.00	7.30	7.00	7.30	000
93624	TC	A	Electrophysiologic study	0.00	2.00	2.01	NA	NA	0.11	2.11	2.12	NA	NA	000
93631		A	Heart pacing, mapping	7.60	9.37	10.19	NA	NA	0.95	17.92	18.74	NA	NA	000
93631	26	A	Heart pacing, mapping	7.60	3.15	3.93	3.15	3.93	0.42	11.17	11.95	11.17	11.95	000
93631	TC	A	Heart pacing, mapping	0.00	6.22	6.26	NA	NA	0.53	6.75	6.79	NA	NA	000
93640		A	Evaluation heart device	3.52	8.74	9.46	NA	NA	0.47	12.73	13.45	NA	NA	000
93640	26	A	Evaluation heart device	3.52	1.49	2.17	1.49	2.17	0.11	5.12	5.80	5.12	5.80	000
93640	TC	A	Evaluation heart device	0.00	7.25	7.29	NA	NA	0.36	7.61	7.65	NA	NA	000
93641		A	Electrophysiology evaluation	5.93	9.75	10.94	NA	NA	0.54	16.22	17.41	NA	NA	000
93641	26	A	Electrophysiology evaluation	5.93	2.50	3.65	2.50	3.65	0.18	8.61	9.76	8.61	9.76	000
93641	TC	A	Electrophysiology evaluation	0.00	7.25	7.29	NA	NA	0.36	7.61	7.65	NA	NA	000
93642		A	Electrophysiology evaluation	4.89	9.26	10.26	NA	NA	0.50	14.65	15.65	NA	NA	000
93642	26	A	Electrophysiology evaluation	4.89	2.01	2.97	2.01	2.97	0.14	7.04	8.00	7.04	8.00	000
93642	TC	A	Electrophysiology evaluation	0.00	7.25	7.29	NA	NA	0.36	7.61	7.65	NA	NA	000
93650		A	Ablate heart dysrhythm focus	10.51	NA	NA	4.50	6.51	0.32	NA	NA	15.33	17.34	000
93651		A	Ablate heart dysrhythm focus	16.25	NA	NA	6.86	9.98	0.50	NA	NA	23.61	26.73	000
93652		A	Ablate heart dysrhythm focus	17.68	NA	NA	7.49	10.46	0.54	NA	NA	25.71	28.68	000
93660		A	Tilt table evaluation	1.89	0.80	0.99	NA	NA	0.06	2.75	2.94	NA	NA	000
93660	26	A	Tilt table evaluation	1.89	0.80	0.99	0.80	0.99	0.06	2.75	2.94	2.75	2.94	000
93660	TC	C	Tilt table evaluation	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	000
93720		A	Total body plethysmography	0.17	0.76	0.82	NA	NA	0.06	0.99	1.05	NA	NA	XXX
93721		A	Plethysmography tracing	0.00	0.71	0.72	NA	NA	0.05	0.76	0.77	NA	NA	XXX
93722		A	Plethysmography report	0.17	0.05	0.10	0.05	0.10	0.01	0.23	0.28	0.23	0.28	XXX
93724		A	Analyze pacemaker system	4.89	6.09	6.37	NA	NA	0.35	11.33	11.61	NA	NA	000
93724	26	A	Analyze pacemaker system	4.89	2.08	2.34	2.08	2.34	0.14	7.11	7.37	7.11	7.37	000
93724	TC	A	Analyze pacemaker system	0.00	4.01	4.03	NA	NA	0.21	4.22	4.24	NA	NA	000
93727		A	Analyze ilr system	0.52	0.21	0.21	0.21	0.21	0.02	0.75	0.75	0.75	0.75	XXX
93731		A	Analyze pacemaker system	0.45	0.69	0.73	NA	NA	0.05	1.19	1.23	NA	NA	XXX
93731	26	A	Analyze pacemaker system	0.45	0.19	0.23	0.19	0.23	0.02	0.66	0.70	0.66	0.70	XXX
93731	TC	A	Analyze pacemaker system	0.00	0.50	0.50	NA	NA	0.03	0.53	0.53	NA	NA	XXX
93732		A	Analyze pacemaker system	0.92	0.90	0.92	NA	NA	0.06	1.88	1.90	NA	NA	XXX
93732	26	A	Analyze pacemaker system	0.92	0.38	0.40	0.38	0.40	0.03	1.33	1.35	1.33	1.35	XXX
93732	TC	A	Analyze pacemaker system	0.00	0.52	0.52	NA	NA	0.03	0.55	0.55	NA	NA	XXX
93733		A	Telephone analy, pacemaker	0.17	0.80	0.85	NA	NA	0.06	1.03	1.08	NA	NA	XXX
93733	26	A	Telephone analy, pacemaker	0.17	0.07	0.11	0.07	0.11	0.01	0.25	0.29	0.25	0.29	XXX
93733	TC	A	Telephone analy, pacemaker	0.00	0.73	0.74	NA	NA	0.05	0.78	0.79	NA	NA	XXX
93734		A	Analyze pacemaker system	0.38	0.51	0.56	NA	NA	0.03	0.92	0.97	NA	NA	XXX
93734	26	A	Analyze pacemaker system	0.38	0.16	0.21	0.16	0.21	0.01	0.55	0.60	0.55	0.60	XXX
93734	TC	A	Analyze pacemaker system	0.00	0.35	0.35	NA	NA	0.02	0.37	0.37	NA	NA	XXX
93735		A	Analyze pacemaker system	0.74	0.76	0.80	NA	NA	0.06	1.56	1.60	NA	NA	XXX
93735	26	A	Analyze pacemaker system	0.74	0.31	0.35	0.31	0.35	0.03	1.08	1.12	1.08	1.12	XXX
93735	TC	A	Analyze pacemaker system	0.00	0.45	0.45	NA	NA	0.03	0.48	0.48	NA	NA	XXX
93736		A	Telephone analy, pacemaker	0.15	0.71	0.74	NA	NA	0.06	0.92	0.95	NA	NA	XXX
93736	26	A	Telephone analy, pacemaker	0.15	0.07	0.10	0.07	0.10	0.01	0.23	0.26	0.23	0.26	XXX
93736	TC	A	Telephone analy, pacemaker	0.00	0.64	0.64	NA	NA	0.05	0.69	0.69	NA	NA	XXX
93737		A	Analyze cardio/defibrillator	0.45	0.69	0.72	NA	NA	0.04	1.18	1.21	NA	NA	XXX
93737	26	A	Analyze cardio/defibrillator	0.45	0.19	0.22	0.19	0.22	0.01	0.65	0.68	0.65	0.68	XXX
93737	TC	A	Analyze cardio/defibrillator	0.00	0.50	0.50	NA	NA	0.03	0.53	0.53	NA	NA	XXX
93738		A	Analyze cardio/defibrillator	0.92	0.91	0.92	NA	NA	0.06	1.89	1.90	NA	NA	XXX
93738	26	A	Analyze cardio/defibrillator	0.92	0.39	0.40	0.39	0.40	0.03	1.34	1.35	1.34	1.35	XXX
93738	TC	A	Analyze cardio/defibrillator	0.00	0.52	0.52	NA	NA	0.03	0.55	0.55	NA	NA	XXX
93740		B	Temperature gradient studies	0.16	0.21	0.28	NA	NA	0.02	0.39	0.46	NA	NA	XXX
93740	26	B	Temperature gradient studies	0.16	0.05	0.12	0.05	0.12	0.01	0.22	0.29	0.22	0.29	XXX
93740	TC	B	Temperature gradient studies	0.00	0.16	0.16	NA	NA	0.01	0.17	0.17	NA	NA	XXX
93741		A	Analyze ht pace device sngl	0.64	1.16	1.17	NA	NA	0.05	1.85	1.86	NA	NA	XXX
93741	26	A	Analyze ht pace device sngl	0.64	0.25	0.25	0.25	0.25	0.02	0.91	0.91	0.91	0.91	XXX
93741	TC	A	Analyze ht pace device sngl	0.00	0.91	0.92	NA	NA	0.03	0.94	0.95	NA	NA	XXX
93742		A	Analyze ht pace device sngl	0.73	1.54	1.55	NA	NA	0.05	2.32	2.33	NA	NA	XXX
93742	26	A	Analyze ht pace device sngl	0.73	0.29	0.29	0.29	0.29	0.02	1.04	1.04	1.04	1.04	XXX
93742	TC	A	Analyze ht pace device sngl	0.00	1.25	1.26	NA	NA	0.03	1.28	1.29	NA	NA	XXX
93743		A	Analyze ht pace device dual	0.83	1.24	1.25	NA	NA	0.05	2.12	2.13	NA	NA	XXX
93743	26	A	Analyze ht pace device dual	0.83	0.33	0.33	0.33	0.33	0.02	1.18	1.18	1.18	1.18	XXX
93743	TC	A	Analyze ht pace device dual	0.00	0.91	0.92	NA	NA	0.03	0.94	0.95	NA	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
93744		A	Analyze ht pace device dual	0.95	1.63	1.64	NA	NA	0.05	2.63	2.64	NA	NA	XXX
93744	26	A	Analyze ht pace device dual	0.95	0.38	0.38	0.38	0.38	0.02	1.35	1.35	1.35	1.35	XXX
93744	TC	A	Analyze ht pace device dual	0.00	1.25	1.26	NA	NA	0.03	1.28	1.29	NA	NA	XXX
93760		N	Cephalic thermogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93762		N	Peripheral thermogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93770		B	Measure venous pressure	0.16	0.08	0.11	NA	NA	0.02	0.26	0.29	NA	NA	XXX
93770	26	B	Measure venous pressure	0.16	0.05	0.08	0.05	0.08	0.01	0.22	0.25	0.22	0.25	XXX
93770	TC	B	Measure venous pressure	0.00	0.03	0.03	NA	NA	0.01	0.04	0.04	NA	NA	XXX
93784		N	Ambulatory BP monitoring	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93786		N	Ambulatory BP recording	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93788		N	Ambulatory BP analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93790		N	Review/report BP recording	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93797		A	Cardiac rehab	0.18	0.34	0.31	0.07	0.11	0.01	0.53	0.50	0.26	0.30	000
93798		A	Cardiac rehab/monitor	0.28	0.43	0.45	0.11	0.21	0.01	0.72	0.74	0.40	0.50	000
93799		C	Cardiovascular procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
93799	26	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93799	TC	C	Cardiovascular procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
93875		A	Extracranial study	0.22	1.19	1.25	NA	NA	0.10	1.51	1.57	NA	NA	XXX
93875	26	A	Extracranial study	0.22	0.08	0.13	0.08	0.13	0.01	0.31	0.36	0.31	0.36	XXX
93875	TC	A	Extracranial study	0.00	1.11	1.12	NA	NA	0.09	1.20	1.21	NA	NA	XXX
93880		A	Extracranial study	0.60	3.98	4.05	NA	NA	0.34	4.92	4.99	NA	NA	XXX
93880	26	A	Extracranial study	0.60	0.22	0.27	0.22	0.27	0.04	0.86	0.91	0.86	0.91	XXX
93880	TC	A	Extracranial study	0.00	3.76	3.78	NA	NA	0.30	4.06	4.08	NA	NA	XXX
93882		A	Extracranial study	0.40	2.65	2.70	NA	NA	0.22	3.27	3.32	NA	NA	XXX
93882	26	A	Extracranial study	0.40	0.15	0.18	0.15	0.18	0.03	0.58	0.61	0.58	0.61	XXX
93882	TC	A	Extracranial study	0.00	2.50	2.52	NA	NA	0.19	2.69	2.71	NA	NA	XXX
93886		A	Intracranial study	0.94	4.64	4.69	NA	NA	0.38	5.96	6.01	NA	NA	XXX
93886	26	A	Intracranial study	0.94	0.38	0.40	0.38	0.40	0.05	1.37	1.39	1.37	1.39	XXX
93886	TC	A	Intracranial study	0.00	4.26	4.29	NA	NA	0.33	4.59	4.62	NA	NA	XXX
93888		A	Intracranial study	0.62	3.08	3.12	NA	NA	0.27	3.97	4.01	NA	NA	XXX
93888	26	A	Intracranial study	0.62	0.24	0.26	0.24	0.26	0.04	0.90	0.92	0.90	0.92	XXX
93888	TC	A	Intracranial study	0.00	2.84	2.86	NA	NA	0.23	3.07	3.09	NA	NA	XXX
93922		A	Extremity study	0.25	1.25	1.31	NA	NA	0.13	1.63	1.69	NA	NA	XXX
93922	26	A	Extremity study	0.25	0.09	0.14	0.09	0.14	0.02	0.36	0.41	0.36	0.41	XXX
93922	TC	A	Extremity study	0.00	1.16	1.17	NA	NA	0.11	1.27	1.28	NA	NA	XXX
93923		A	Extremity study	0.45	2.38	2.48	NA	NA	0.23	3.06	3.16	NA	NA	XXX
93923	26	A	Extremity study	0.45	0.17	0.26	0.17	0.26	0.04	0.66	0.75	0.66	0.75	XXX
93923	TC	A	Extremity study	0.00	2.21	2.22	NA	NA	0.19	2.40	2.41	NA	NA	XXX
93924		A	Extremity study	0.50	2.57	2.70	NA	NA	0.27	3.34	3.47	NA	NA	XXX
93924	26	A	Extremity study	0.50	0.18	0.29	0.18	0.29	0.05	0.73	0.84	0.73	0.84	XXX
93924	TC	A	Extremity study	0.00	2.39	2.41	NA	NA	0.22	2.61	2.63	NA	NA	XXX
93925		A	Lower extremity study	0.58	3.99	4.06	NA	NA	0.34	4.91	4.98	NA	NA	XXX
93925	26	A	Lower extremity study	0.58	0.21	0.26	0.21	0.26	0.04	0.83	0.88	0.83	0.88	XXX
93925	TC	A	Lower extremity study	0.00	3.78	3.80	NA	NA	0.30	4.08	4.10	NA	NA	XXX
93926		A	Lower extremity study	0.39	2.66	2.72	NA	NA	0.23	3.28	3.34	NA	NA	XXX
93926	26	A	Lower extremity study	0.39	0.14	0.18	0.14	0.18	0.03	0.56	0.60	0.56	0.60	XXX
93926	TC	A	Lower extremity study	0.00	2.52	2.54	NA	NA	0.20	2.72	2.74	NA	NA	XXX
93930		A	Upper extremity study	0.46	4.19	4.27	NA	NA	0.35	5.00	5.08	NA	NA	XXX
93930	26	A	Upper extremity study	0.46	0.17	0.23	0.17	0.23	0.03	0.66	0.72	0.66	0.72	XXX
93930	TC	A	Upper extremity study	0.00	4.02	4.04	NA	NA	0.32	4.34	4.36	NA	NA	XXX
93931		A	Upper extremity study	0.31	2.78	2.84	NA	NA	0.23	3.32	3.38	NA	NA	XXX
93931	26	A	Upper extremity study	0.31	0.11	0.15	0.11	0.15	0.02	0.44	0.48	0.44	0.48	XXX
93931	TC	A	Upper extremity study	0.00	2.67	2.69	NA	NA	0.21	2.88	2.90	NA	NA	XXX
93965		A	Extremity study	0.35	1.23	1.31	NA	NA	0.12	1.70	1.78	NA	NA	XXX
93965	26	A	Extremity study	0.35	0.13	0.20	0.13	0.20	0.02	0.50	0.57	0.50	0.57	XXX
93965	TC	A	Extremity study	0.00	1.10	1.11	NA	NA	0.10	1.20	1.21	NA	NA	XXX
93970		A	Extremity study	0.68	4.42	4.50	NA	NA	0.39	5.49	5.57	NA	NA	XXX
93970	26	A	Extremity study	0.68	0.25	0.30	0.25	0.30	0.05	0.98	1.03	0.98	1.03	XXX
93970	TC	A	Extremity study	0.00	4.17	4.20	NA	NA	0.34	4.51	4.54	NA	NA	XXX
93971		A	Extremity study	0.45	2.94	2.99	NA	NA	0.26	3.65	3.70	NA	NA	XXX
93971	26	A	Extremity study	0.45	0.16	0.19	0.16	0.19	0.03	0.64	0.67	0.64	0.67	XXX
93971	TC	A	Extremity study	0.00	2.78	2.80	NA	NA	0.23	3.01	3.03	NA	NA	XXX
93975		A	Vascular study	1.80	5.39	5.38	NA	NA	0.47	7.66	7.65	NA	NA	XXX
93975	26	A	Vascular study	1.80	0.64	0.60	0.64	0.60	0.10	2.54	2.50	2.54	2.50	XXX
93975	TC	A	Vascular study	0.00	4.75	4.78	NA	NA	0.37	5.12	5.15	NA	NA	XXX
93976		A	Vascular study	1.21	3.60	3.59	NA	NA	0.32	5.13	5.12	NA	NA	XXX
93976	26	A	Vascular study	1.21	0.43	0.40	0.43	0.40	0.06	1.70	1.67	1.70	1.67	XXX
93976	TC	A	Vascular study	0.00	3.17	3.19	NA	NA	0.26	3.43	3.45	NA	NA	XXX
93978		A	Vascular study	0.65	4.13	4.20	NA	NA	0.37	5.15	5.22	NA	NA	XXX
93978	26	A	Vascular study	0.65	0.24	0.29	0.24	0.29	0.05	0.94	0.99	0.94	0.99	XXX
93978	TC	A	Vascular study	0.00	3.89	3.91	NA	NA	0.32	4.21	4.23	NA	NA	XXX
93979		A	Vascular study	0.44	2.76	2.81	NA	NA	0.24	3.44	3.49	NA	NA	XXX
93979	26	A	Vascular study	0.44	0.17	0.20	0.17	0.20	0.03	0.64	0.67	0.64	0.67	XXX
93979	TC	A	Vascular study	0.00	2.59	2.61	NA	NA	0.21	2.80	2.82	NA	NA	XXX
93980		A	Penile vascular study	1.25	3.96	4.10	NA	NA	0.37	5.58	5.72	NA	NA	XXX
93980	26	A	Penile vascular study	1.25	0.43	0.55	0.43	0.55	0.08	1.76	1.88	1.76	1.88	XXX
93980	TC	A	Penile vascular study	0.00	3.53	3.55	NA	NA	0.29	3.82	3.84	NA	NA	XXX
93981		A	Penile vascular study	0.44	3.40	3.49	NA	NA	0.30	4.14	4.23	NA	NA	XXX
93981	26	A	Penile vascular study	0.44	0.15	0.22	0.15	0.22	0.03	0.62	0.69	0.62	0.69	XXX
93981	TC	A	Penile vascular study	0.00	3.25	3.27	NA	NA	0.27	3.52	3.54	NA	NA	XXX
93990		A	Doppler flow testing	0.25	2.62	2.67	NA	NA	0.21	3.08	3.13	NA	NA	XXX
93990	26	A	Doppler flow testing	0.25	0.10	0.13	0.10	0.13	0.01	0.36	0.39	0.36	0.39	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
93990	TC	A	Doppler flow testing	0.00	2.52	2.54	NA	NA	0.20	2.72	2.74	NA	NA	XXX
94010		A	Breathing capacity test	0.17	0.47	0.53	NA	NA	0.03	0.67	0.73	NA	NA	XXX
94010	26	A	Breathing capacity test	0.17	0.05	0.11	0.05	0.11	0.01	0.23	0.29	0.23	0.29	XXX
94010	TC	A	Breathing capacity test	0.00	0.42	0.42	NA	NA	0.02	0.44	0.44	NA	NA	XXX
94014		A	Patient recorded spirometry	0.52	0.83	0.78	NA	NA	0.03	1.38	1.33	NA	NA	XXX
94015		A	Patient recorded spirometry	0.00	0.62	0.57	NA	NA	0.01	0.63	0.58	NA	NA	XXX
94016		A	Review patient spirometry	0.52	0.21	0.21	0.21	0.21	0.02	0.75	0.75	0.75	0.75	XXX
94060		A	Evaluation of wheezing	0.31	1.04	1.12	NA	NA	0.06	1.41	1.49	NA	NA	XXX
94060	26	A	Evaluation of wheezing	0.31	0.09	0.16	0.09	0.16	0.01	0.41	0.48	0.41	0.48	XXX
94060	TC	A	Evaluation of wheezing	0.00	0.95	0.96	NA	NA	0.05	1.00	1.01	NA	NA	XXX
94070		A	Evaluation of wheezing	0.60	1.66	1.73	NA	NA	0.10	2.36	2.43	NA	NA	XXX
94070	26	A	Evaluation of wheezing	0.60	0.18	0.24	0.18	0.24	0.02	0.80	0.86	0.80	0.86	XXX
94070	TC	A	Evaluation of wheezing	0.00	1.48	1.49	NA	NA	0.08	1.56	1.57	NA	NA	XXX
94150		B	Vital capacity test	0.07	0.12	0.14	NA	NA	0.02	0.21	0.23	NA	NA	XXX
94150	26	B	Vital capacity test	0.07	0.03	0.05	0.03	0.05	0.01	0.11	0.13	0.11	0.13	XXX
94150	TC	B	Vital capacity test	0.00	0.09	0.09	NA	NA	0.01	0.10	0.10	NA	NA	XXX
94200		A	Lung function test (MBC/MVV)	0.11	0.28	0.31	NA	NA	0.03	0.42	0.45	NA	NA	XXX
94200	26	A	Lung function test (MBC/MVV)	0.11	0.03	0.06	0.03	0.06	0.01	0.15	0.18	0.15	0.18	XXX
94200	TC	A	Lung function test (MBC/MVV)	0.00	0.25	0.25	NA	NA	0.02	0.27	0.27	NA	NA	XXX
94240		A	Residual lung capacity	0.26	0.77	0.82	NA	NA	0.05	1.08	1.13	NA	NA	XXX
94240	26	A	Residual lung capacity	0.26	0.08	0.12	0.08	0.12	0.01	0.35	0.39	0.35	0.39	XXX
94240	TC	A	Residual lung capacity	0.00	0.69	0.70	NA	NA	0.04	0.73	0.74	NA	NA	XXX
94250		A	Expired gas collection	0.11	0.17	0.20	NA	NA	0.02	0.30	0.33	NA	NA	XXX
94250	26	A	Expired gas collection	0.11	0.03	0.06	0.03	0.06	0.01	0.15	0.18	0.15	0.18	XXX
94250	TC	A	Expired gas collection	0.00	0.14	0.14	NA	NA	0.01	0.15	0.15	NA	NA	XXX
94260		A	Thoracic gas volume	0.13	0.59	0.62	NA	NA	0.04	0.76	0.79	NA	NA	XXX
94260	26	A	Thoracic gas volume	0.13	0.04	0.07	0.04	0.07	0.01	0.18	0.21	0.18	0.21	XXX
94260	TC	A	Thoracic gas volume	0.00	0.55	0.55	NA	NA	0.03	0.58	0.58	NA	NA	XXX
94350		A	Lung nitrogen washout curve	0.26	0.63	0.67	NA	NA	0.04	0.93	0.97	NA	NA	XXX
94350	26	A	Lung nitrogen washout curve	0.26	0.08	0.12	0.08	0.12	0.01	0.35	0.39	0.35	0.39	XXX
94350	TC	A	Lung nitrogen washout curve	0.00	0.55	0.55	NA	NA	0.03	0.58	0.58	NA	NA	XXX
94360		A	Measure airflow resistance	0.26	1.06	1.10	NA	NA	0.06	1.38	1.42	NA	NA	XXX
94360	26	A	Measure airflow resistance	0.26	0.08	0.11	0.08	0.11	0.01	0.35	0.38	0.35	0.38	XXX
94360	TC	A	Measure airflow resistance	0.00	0.98	0.99	NA	NA	0.05	1.03	1.04	NA	NA	XXX
94370		A	Breath airway closing volume	0.26	0.35	0.37	NA	NA	0.03	0.64	0.66	NA	NA	XXX
94370	26	A	Breath airway closing volume	0.26	0.08	0.10	0.08	0.10	0.01	0.35	0.37	0.35	0.37	XXX
94370	TC	A	Breath airway closing volume	0.00	0.27	0.27	NA	NA	0.02	0.29	0.29	NA	NA	XXX
94375		A	Respiratory flow volume loop	0.31	0.58	0.62	NA	NA	0.03	0.92	0.96	NA	NA	XXX
94375	26	A	Respiratory flow volume loop	0.31	0.09	0.13	0.09	0.13	0.01	0.41	0.45	0.41	0.45	XXX
94375	TC	A	Respiratory flow volume loop	0.00	0.49	0.49	NA	NA	0.02	0.51	0.51	NA	NA	XXX
94400		A	CO2 breathing response curve	0.40	0.45	0.55	NA	NA	0.07	0.92	1.02	NA	NA	XXX
94400	26	A	CO2 breathing response curve	0.40	0.13	0.23	0.13	0.23	0.02	0.55	0.65	0.55	0.65	XXX
94400	TC	A	CO2 breathing response curve	0.00	0.32	0.32	NA	NA	0.05	0.37	0.37	NA	NA	XXX
94450		A	Hypoxia response curve	0.40	0.52	0.55	NA	NA	0.03	0.95	0.98	NA	NA	XXX
94450	26	A	Hypoxia response curve	0.40	0.13	0.16	0.13	0.16	0.01	0.54	0.57	0.54	0.57	XXX
94450	TC	A	Hypoxia response curve	0.00	0.39	0.39	NA	NA	0.02	0.41	0.41	NA	NA	XXX
94620		A	Pulmonary stress test/simple	0.64	1.64	1.79	NA	NA	0.11	2.39	2.54	NA	NA	XXX
94620	26	A	Pulmonary stress test/simple	0.64	0.20	0.34	0.20	0.34	0.03	0.87	1.01	0.87	1.01	XXX
94620	TC	A	Pulmonary stress test/simple	0.00	1.44	1.45	NA	NA	0.08	1.52	1.53	NA	NA	XXX
94621		A	Pulm stress test/complex	1.42	1.88	1.97	NA	NA	0.11	3.41	3.50	NA	NA	XXX
94621	26	A	Pulm stress test/complex	1.42	0.44	0.52	0.44	0.52	0.03	1.89	1.97	1.89	1.97	XXX
94621	TC	A	Pulm stress test/complex	0.00	1.44	1.45	NA	NA	0.08	1.52	1.53	NA	NA	XXX
94640		A	Airway inhalation treatment	0.00	0.59	0.55	0.19	0.25	0.02	0.61	0.57	0.21	0.27	XXX
94642		C	Aerosol inhalation treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94650		A	Pressure breathing (IPPB)	0.00	0.56	0.52	0.18	0.24	0.02	0.58	0.54	0.20	0.26	XXX
94651		A	Pressure breathing (IPPB)	0.00	0.51	0.48	0.17	0.23	0.02	0.53	0.50	0.19	0.25	XXX
94652		A	Pressure breathing (IPPB)	0.00	0.60	0.56	0.19	0.25	0.06	0.66	0.62	0.25	0.31	XXX
94656		A	Initial ventilator mgmt	1.22	NA	NA	0.33	0.56	0.06	NA	NA	1.61	1.84	XXX
94657		A	Continued ventilator mgmt	0.83	NA	NA	0.25	0.36	0.03	NA	NA	1.11	1.22	XXX
94660		A	Pos airway pressure, CPAP	0.76	0.57	0.62	0.23	0.37	0.03	1.36	1.41	1.02	1.16	XXX
94662		A	Neg press ventilation, cnp	0.76	NA	NA	0.24	0.26	0.02	NA	NA	1.02	1.04	XXX
94664		A	Aerosol or vapor inhalations	0.00	0.43	0.46	0.14	0.24	0.03	0.46	0.49	0.17	0.27	XXX
94665		A	Aerosol or vapor inhalations	0.00	0.46	0.47	0.15	0.24	0.04	0.50	0.51	0.19	0.28	XXX
94667		A	Chest wall manipulation	0.00	0.60	0.60	0.19	0.29	0.04	0.64	0.64	0.23	0.33	XXX
94668		A	Chest wall manipulation	0.00	0.59	0.54	0.18	0.23	0.02	0.61	0.56	0.20	0.25	XXX
94680		A	Exhaled air analysis, o2	0.26	0.61	0.67	NA	NA	0.06	0.93	0.99	NA	NA	XXX
94680	26	A	Exhaled air analysis, o2	0.26	0.09	0.15	0.09	0.15	0.01	0.36	0.42	0.36	0.42	XXX
94680	TC	A	Exhaled air analysis, o2	0.00	0.52	0.52	NA	NA	0.05	0.57	0.57	NA	NA	XXX
94681		A	Exhaled air analysis, o2/co2	0.20	1.46	1.52	NA	NA	0.11	1.77	1.83	NA	NA	XXX
94681	26	A	Exhaled air analysis, o2/co2	0.20	0.06	0.11	0.06	0.11	0.01	0.27	0.32	0.27	0.32	XXX
94681	TC	A	Exhaled air analysis, o2/co2	0.00	1.40	1.41	NA	NA	0.10	1.50	1.51	NA	NA	XXX
94690		A	Exhaled air analysis	0.07	0.56	0.57	NA	NA	0.04	0.67	0.68	NA	NA	XXX
94690	26	A	Exhaled air analysis	0.07	0.02	0.03	0.02	0.03	0.01	0.10	0.11	0.10	0.11	XXX
94690	TC	A	Exhaled air analysis	0.00	0.54	0.54	NA	NA	0.03	0.57	0.57	NA	NA	XXX
94720		A	Monoxide diffusing capacity	0.26	0.93	0.98	NA	NA	0.06	1.25	1.30	NA	NA	XXX
94720	26	A	Monoxide diffusing capacity	0.26	0.08	0.12	0.08	0.12	0.01	0.35	0.39	0.35	0.39	XXX
94720	TC	A	Monoxide diffusing capacity	0.00	0.85	0.86	NA	NA	0.05	0.90	0.91	NA	NA	XXX
94725		A	Membrane diffusion capacity	0.26	1.84	1.88	NA	NA	0.11	2.21	2.25	NA	NA	XXX
94725	26	A	Membrane diffusion capacity	0.26	0.08	0.11	0.08	0.11	0.01	0.35	0.38	0.35	0.38	XXX
94725	TC	A	Membrane diffusion capacity	0.00	1.76	1.77	NA	NA	0.10	1.86	1.87	NA	NA	XXX
94750		A	Pulmonary compliance study	0.23	0.66	0.71	NA	NA	0.04	0.93	0.98	NA	NA	XXX
94750	26	A	Pulmonary compliance study	0.23	0.07	0.12	0.07	0.12	0.01	0.31	0.36	0.31	0.36	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
94750	TC	A	Pulmonary compliance study	0.00	0.59	0.59	NA	NA	0.03	0.62	0.62	NA	NA	XXX
94760		T	Measure blood oxygen level	0.00	0.07	0.12	0.02	0.08	0.02	0.09	0.14	0.04	0.10	XXX
94761		T	Measure blood oxygen level	0.00	0.14	0.28	0.05	0.21	0.05	0.19	0.33	0.10	0.26	XXX
94762		A	Measure blood oxygen level	0.00	0.11	0.38	NA	NA	0.08	0.19	0.46	NA	NA	XXX
94770		A	Exhaled carbon dioxide test	0.15	0.34	0.36	NA	NA	0.07	0.56	0.58	NA	NA	XXX
94770	26	A	Exhaled carbon dioxide test	0.15	0.04	0.06	0.04	0.06	0.01	0.20	0.22	0.20	0.22	XXX
94770	TC	A	Exhaled carbon dioxide test	0.00	0.30	0.30	NA	NA	0.06	0.36	0.36	NA	NA	XXX
94772		C	Breath recording, infant	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
94772	26	C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94772	TC	C	Breath recording, infant	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
94799		C	Pulmonary service/procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
94799	26	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799	TC	C	Pulmonary service/procedure	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
95004		A	Allergy skin tests	0.00	0.10	0.10	0.10	0.10	0.01	0.11	0.11	0.11	0.11	XXX
95010		A	Sensitivity skin tests	0.15	0.39	0.32	0.06	0.08	0.01	0.55	0.48	0.22	0.24	XXX
95015		A	Sensitivity skin tests	0.15	0.41	0.34	0.07	0.08	0.01	0.57	0.50	0.23	0.24	XXX
95024		A	Allergy skin tests	0.00	0.15	0.15	0.15	0.15	0.01	0.16	0.16	0.16	0.16	XXX
95027		A	Skin end point titration	0.00	0.15	0.15	NA	NA	0.01	0.16	0.16	NA	NA	XXX
95028		A	Allergy skin tests	0.00	0.23	0.23	NA	NA	0.01	0.24	0.24	NA	NA	XXX
95044		A	Allergy patch tests	0.00	0.21	0.21	0.21	0.21	0.01	0.22	0.22	0.22	0.22	XXX
95052		A	Photo patch test	0.00	0.25	0.25	0.25	0.25	0.01	0.26	0.26	0.26	0.26	XXX
95056		A	Photosensitivity tests	0.00	0.18	0.18	0.18	0.18	0.01	0.19	0.19	0.19	0.19	XXX
95060		A	Eye allergy tests	0.00	0.35	0.35	NA	NA	0.02	0.37	0.37	NA	NA	XXX
95065		A	Nose allergy test	0.00	0.21	0.21	NA	NA	0.01	0.22	0.22	NA	NA	XXX
95070		A	Bronchial allergy tests	0.00	2.31	2.32	NA	NA	0.02	2.33	2.34	NA	NA	XXX
95071		A	Bronchial allergy tests	0.00	2.95	2.97	NA	NA	0.02	2.97	2.99	NA	NA	XXX
95075		A	Ingestion challenge test	0.95	0.80	1.14	0.39	0.83	0.03	1.78	2.12	1.37	1.81	XXX
95078		A	Provocative testing	0.00	0.25	0.25	NA	NA	0.02	0.27	0.27	NA	NA	XXX
95115		A	Immunotherapy, one injection	0.00	0.39	0.39	0.39	0.39	0.02	0.41	0.41	0.41	0.41	000
95117		A	Immunotherapy injections	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	000
95120		I	Immunotherapy, one injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95125		I	Immunotherapy, many antigens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95130		I	Immunotherapy, insect venom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95131		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95132		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95133		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95134		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95144		A	Antigen therapy services	0.06	0.22	0.20	0.03	0.06	0.01	0.29	0.27	0.10	0.13	000
95145		A	Antigen therapy services	0.06	0.45	0.43	0.03	0.12	0.01	0.52	0.50	0.10	0.19	000
95146		A	Antigen therapy services	0.06	0.60	0.62	0.03	0.19	0.01	0.67	0.69	0.10	0.26	000
95147		A	Antigen therapy services	0.06	0.74	0.80	0.02	0.26	0.01	0.81	0.87	0.09	0.33	000
95148		A	Antigen therapy services	0.06	0.75	0.81	0.02	0.26	0.01	0.82	0.88	0.09	0.33	000
95149		A	Antigen therapy services	0.06	0.92	1.00	0.02	0.33	0.01	0.99	1.07	0.09	0.40	000
95165		A	Antigen therapy services	0.06	0.23	0.20	0.02	0.04	0.01	0.30	0.27	0.09	0.11	000
95170		A	Antigen therapy services	0.06	0.23	0.27	0.02	0.11	0.01	0.30	0.34	0.09	0.18	000
95180		A	Rapid desensitization	2.01	1.50	1.16	0.87	0.69	0.06	3.57	3.23	2.94	2.76	000
95199		C	Allergy immunology services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
95805		A	Multiple sleep latency test	1.88	9.74	8.80	NA	NA	0.35	11.97	11.03	NA	NA	XXX
95805	26	A	Multiple sleep latency test	1.88	0.66	0.65	0.66	0.65	0.06	2.60	2.59	2.60	2.59	XXX
95805	TC	A	Multiple sleep latency test	0.00	9.08	8.15	NA	NA	0.29	9.37	8.44	NA	NA	XXX
95806		A	Sleep study, unattended	1.66	2.21	3.60	NA	NA	0.32	4.19	5.58	NA	NA	XXX
95806	26	A	Sleep study, unattended	1.66	0.53	1.06	0.53	1.06	0.05	2.24	2.77	2.24	2.77	XXX
95806	TC	A	Sleep study, unattended	0.00	1.68	2.54	NA	NA	0.27	1.95	2.81	NA	NA	XXX
95807		A	Sleep study, attended	1.66	7.01	7.47	NA	NA	0.41	9.08	9.54	NA	NA	XXX
95807	26	A	Sleep study, attended	1.66	0.53	0.90	0.53	0.90	0.05	2.24	2.61	2.24	2.61	XXX
95807	TC	A	Sleep study, attended	0.00	6.48	6.57	NA	NA	0.36	6.84	6.93	NA	NA	XXX
95808		A	Polysomnography, 1–3	2.65	10.89	10.55	NA	NA	0.45	13.99	13.65	NA	NA	XXX
95808	26	A	Polysomnography, 1–3	2.65	0.92	1.36	0.92	1.36	0.09	3.66	4.10	3.66	4.10	XXX
95808	TC	A	Polysomnography, 1–3	0.00	9.97	9.19	NA	NA	0.36	10.33	9.55	NA	NA	XXX
95810		A	Polysomnography, 4 or more	3.53	17.47	15.48	NA	NA	0.47	21.47	19.48	NA	NA	XXX
95810	26	A	Polysomnography, 4 or more	3.53	1.18	1.55	1.18	1.55	0.11	4.82	5.19	4.82	19	XXX
95810	TC	A	Polysomnography, 4 or more	0.00	16.29	13.93	NA	NA	0.36	16.65	14.29	NA	NA	XXX
95811		A	Polysomnography w/cpap	3.80	14.75	13.56	NA	NA	0.49	19.04	17.85	NA	NA	XXX
95811	26	A	Polysomnography w/cpap	3.80	1.28	1.66	1.28	1.66	0.12	5.20	5.58	5.20	5.58	XXX
95811	TC	A	Polysomnography w/cpap	0.00	13.47	11.90	NA	NA	0.37	13.84	12.27	NA	NA	XXX
95812		A	Electroencephalogram (EEG)	1.08	3.00	2.75	NA	NA	0.13	4.21	3.96	NA	NA	XXX
95812	26	A	Electroencephalogram (EEG)	1.08	0.45	0.47	0.45	0.47	0.04	1.57	1.59	1.57	1.59	XXX
95812	TC	A	Electroencephalogram (EEG)	0.00	2.55	2.28	NA	NA	0.09	2.64	2.37	NA	NA	XXX
95813		A	Electroencephalogram (EEG)	1.73	4.41	3.82	NA	NA	0.16	6.30	5.71	NA	NA	XXX
95813	26	A	Electroencephalogram (EEG)	1.73	0.72	0.68	0.72	0.68	0.07	2.52	2.48	2.52	2.48	XXX
95813	TC	A	Electroencephalogram (EEG)	0.00	3.69	3.14	NA	NA	0.09	3.78	3.23	NA	NA	XXX
95816		A	Electroencephalogram (EEG)	1.08	3.06	2.71	NA	NA	0.12	4.26	3.91	NA	NA	XXX
95816	26	A	Electroencephalogram (EEG)	1.08	0.46	0.42	0.46	0.42	0.04	1.58	1.54	1.58	1.54	XXX
95816	TC	A	Electroencephalogram (EEG)	0.00	2.60	2.29	NA	NA	0.08	2.68	2.37	NA	NA	XXX
95819		A	Electroencephalogram (EEG)	1.08	3.24	2.92	NA	NA	0.12	4.44	4.12	NA	NA	XXX
95819	26	A	Electroencephalogram (EEG)	1.08	0.48	0.48	0.46	0.48	0.04	1.58	1.60	1.58	1.60	XXX
95819	TC	A	Electroencephalogram (EEG)	0.00	2.78	2.44	NA	NA	0.08	2.86	2.52	NA	NA	XXX
95822		A	Sleep electroencephalogram	1.08	2.07	2.18	NA	NA	0.15	3.30	3.41	NA	NA	XXX
95822	26	A	Sleep electroencephalogram	1.08	0.46	0.50	0.46	0.50	0.04	1.58	1.62	1.58	1.62	XXX
95822	TC	A	Sleep electroencephalogram	0.00	1.61	1.68	NA	NA	0.11	1.72	1.79	NA	NA	XXX
95824		A	Electroencephalography	0.74	0.69	1.12	NA	NA	0.05	1.48	1.91	NA	NA	XXX
95824	26	A	Electroencephalography	0.74	0.32	0.40	0.32	0.40	0.03	1.09	1.17	1.09	1.17	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
95824	TC	A	Electroencephalography	0.00	0.37	0.72	NA	NA	0.02	0.39	0.74	NA	NA	XXX
95827		A	Night electroencephalogram	1.08	2.71	2.86	NA	NA	0.16	3.95	4.10	NA	NA	XXX
95827	26	A	Night electroencephalogram	1.08	0.39	0.53	0.39	0.53	0.04	1.51	1.65	1.51	1.65	XXX
95827	TC	A	Night electroencephalogram	0.00	2.32	2.33	NA	NA	0.12	2.44	2.45	NA	NA	XXX
95829		A	Surgery electrocorticogram	6.21	7.49	5.78	NA	NA	0.26	13.96	12.25	NA	NA	XXX
95829	26	A	Surgery electrocorticogram	6.21	2.48	1.98	2.48	1.98	0.24	8.93	8.43	8.93	8.43	XXX
95829	TC	A	Surgery electrocorticogram	0.00	5.01	3.80	NA	NA	0.02	5.03	3.82	NA	NA	XXX
95830		A	Insert electrodes for EEG	1.70	2.80	2.31	0.74	0.77	0.07	4.57	4.08	2.51	2.54	XXX
95831		A	Limb muscle testing, manual	0.28	0.38	0.36	0.14	0.18	0.01	0.67	0.65	0.43	0.47	XXX
95832		A	Hand muscle testing, manual	0.29	0.33	0.32	0.14	0.17	0.01	0.63	0.62	0.44	0.47	XXX
95833		A	Body muscle testing, manual	0.47	0.49	0.47	0.23	0.28	0.02	0.98	0.96	0.72	0.77	XXX
95834		A	Body muscle testing, manual	0.60	0.58	0.60	0.29	0.38	0.02	1.20	1.22	0.91	1.00	XXX
95851		A	Range of motion measurements	0.16	0.43	0.39	0.08	0.13	0.01	0.60	0.56	0.25	0.30	XXX
95852		A	Range of motion measurements	0.11	0.36	0.31	0.06	0.09	0.01	0.48	0.43	0.18	0.21	XXX
95857		A	Tensilon test	0.53	0.57	0.56	0.23	0.31	0.02	1.12	1.11	0.78	0.86	XXX
95858		A	Tensilon test & myogram	1.56	1.07	1.08	NA	NA	0.09	2.72	2.73	NA	NA	XXX
95858	26	A	Tensilon test & myogram	1.56	0.67	0.68	0.67	0.68	0.06	2.29	2.30	2.29	2.30	XXX
95858	TC	A	Tensilon test & myogram	0.00	0.40	0.40	NA	NA	0.03	0.43	0.43	NA	NA	XXX
95860		A	Muscle test, one limb	0.96	0.81	0.90	NA	NA	0.06	1.83	1.92	NA	NA	XXX
95860	26	A	Muscle test, one limb	0.96	0.43	0.52	0.43	0.52	0.04	1.43	1.52	1.43	1.52	XXX
95860	TC	A	Muscle test, one limb	0.00	0.38	0.38	NA	NA	0.02	0.40	0.40	NA	NA	XXX
95861		A	Muscle test, two limbs	1.54	1.43	1.61	NA	NA	0.11	3.08	3.26	NA	NA	XXX
95861	26	A	Muscle test, two limbs	1.54	0.69	0.86	0.69	0.86	0.06	2.29	2.46	2.29	2.46	XXX
95861	TC	A	Muscle test, two limbs	0.00	0.74	0.75	NA	NA	0.05	0.79	0.80	NA	NA	XXX
95863		A	Muscle test, 3 limbs	1.87	1.76	1.95	NA	NA	0.12	3.75	3.94	NA	NA	XXX
95863	26	A	Muscle test, 3 limbs	1.87	0.81	0.99	0.81	0.99	0.07	2.75	2.93	2.75	2.93	XXX
95863	TC	A	Muscle test, 3 limbs	0.00	0.95	0.96	NA	NA	0.05	1.00	1.01	NA	NA	XXX
95864		A	Muscle test, 4 limbs	1.99	2.68	2.95	NA	NA	0.18	4.85	5.12	NA	NA	XXX
95864	26	A	Muscle test, 4 limbs	1.99	0.88	1.14	0.88	1.14	0.08	2.95	3.21	2.95	3.21	XXX
95864	TC	A	Muscle test, 4 limbs	0.00	1.80	1.81	NA	NA	0.10	1.90	1.91	NA	NA	XXX
95867		A	Muscle test, head or neck	0.79	0.93	1.00	NA	NA	0.06	1.78	1.85	NA	NA	XXX
95867	26	A	Muscle test, head or neck	0.79	0.34	0.41	0.34	0.41	0.03	1.16	1.23	1.16	1.23	XXX
95867	TC	A	Muscle test, head or neck	0.00	0.59	0.59	NA	NA	0.03	0.62	0.62	NA	NA	XXX
95868		A	Muscle test, head or neck	1.18	1.20	1.43	NA	NA	0.09	2.47	2.70	NA	NA	XXX
95868	26	A	Muscle test, head or neck	1.18	0.50	0.72	0.50	0.72	0.05	1.73	1.95	1.73	1.95	XXX
95868	TC	A	Muscle test, head or neck	0.00	0.70	0.71	NA	NA	0.04	0.74	0.75	NA	NA	XXX
95869		A	Muscle test, thor paraspinal	0.37	0.38	0.43	NA	NA	0.03	0.78	0.83	NA	NA	XXX
95869	26	A	Muscle test, thor paraspinal	0.37	0.16	0.21	0.16	0.21	0.01	0.54	0.59	0.54	0.59	XXX
95869	TC	A	Muscle test, thor paraspinal	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	XXX
95870		A	Muscle test, nonparaspinal	0.37	0.38	0.43	NA	NA	0.03	0.78	0.83	NA	NA	XXX
95870	26	A	Muscle test, nonparaspinal	0.37	0.16	0.21	0.16	0.21	0.01	0.54	0.59	0.54	0.59	XXX
95870	TC	A	Muscle test, nonparaspinal	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	XXX
95872		A	Muscle test, one fiber	1.50	1.25	1.28	NA	NA	0.10	2.85	2.88	NA	NA	XXX
95872	26	A	Muscle test, one fiber	1.50	0.64	0.67	0.64	0.67	0.06	2.20	2.23	2.20	2.23	XXX
95872	TC	A	Muscle test, one fiber	0.00	0.61	0.61	NA	NA	0.04	0.65	0.65	NA	NA	XXX
95875		A	Limb exercise test	1.34	1.25	1.10	NA	NA	0.10	2.69	2.54	NA	NA	XXX
95875	26	A	Limb exercise test	1.34	0.57	0.49	0.57	0.49	0.05	1.96	1.88	1.96	1.88	XXX
95875	TC	A	Limb exercise test	0.00	0.68	0.61	NA	NA	0.05	0.73	0.66	NA	NA	XXX
95900		A	Motor nerve conduction test	0.42	0.47	0.52	NA	NA	0.04	0.93	0.98	NA	NA	XXX
95900	26	A	Motor nerve conduction test	0.42	0.19	0.24	0.19	0.24	0.02	0.63	0.68	0.63	0.68	XXX
95900	TC	A	Motor nerve conduction test	0.00	0.28	0.28	NA	NA	0.02	0.30	0.30	NA	NA	XXX
95903		A	Motor nerve conduction test	0.60	0.51	0.54	NA	NA	0.04	1.15	1.18	NA	NA	XXX
95903	26	A	Motor nerve conduction test	0.60	0.26	0.29	0.26	0.29	0.02	0.88	0.91	0.88	0.91	XXX
95903	TC	A	Motor nerve conduction test	0.00	0.25	0.25	NA	NA	0.02	0.27	0.27	NA	NA	XXX
95904		A	Sense/mixed n conduction tst	0.34	0.37	0.43	NA	NA	0.03	0.74	0.80	NA	NA	XXX
95904	26	A	Sense/mixed n conduction tst	0.34	0.15	0.21	0.15	0.21	0.01	0.50	0.56	0.50	0.56	XXX
95904	TC	A	Sense/mixed n conduction tst	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	XXX
95920		A	Intraop nerve test add-on	2.11	2.26	2.42	NA	NA	0.15	4.52	4.68	NA	NA	ZZZ
95920	26	A	Intraop nerve test add-on	2.11	0.94	1.09	0.94	1.09	0.09	3.14	3.29	3.14	3.29	ZZZ
95920	TC	A	Intraop nerve test add-on	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	ZZZ
95921		A	Autonomic nerv function test	0.90	0.71	0.72	NA	NA	0.05	1.66	1.67	NA	NA	XXX
95921	26	A	Autonomic nerv function test	0.90	0.33	0.34	0.33	0.34	0.03	1.26	1.27	1.26	1.27	XXX
95921	TC	A	Autonomic nerv function test	0.00	0.38	0.38	NA	NA	0.02	0.40	0.40	NA	NA	XXX
95922		A	Autonomic nerv function test	0.96	0.78	0.77	NA	NA	0.06	1.80	1.79	NA	NA	XXX
95922	26	A	Autonomic nerv function test	0.96	0.40	0.39	0.40	0.39	0.04	1.40	1.39	1.40	1.39	XXX
95922	TC	A	Autonomic nerv function test	0.00	0.38	0.38	NA	NA	0.02	0.40	0.40	NA	NA	XXX
95923		A	Autonomic nerv function test	0.90	2.84	2.31	NA	NA	0.06	3.80	3.27	NA	NA	XXX
95923	26	A	Autonomic nerv function test	0.90	0.38	0.37	0.38	0.37	0.04	1.32	1.31	1.32	1.31	XXX
95923	TC	A	Autonomic nerv function test	0.00	2.46	1.94	NA	NA	0.02	2.48	1.96	NA	NA	XXX
95925		A	Somatosensory testing	0.54	1.15	1.28	NA	NA	0.07	1.76	1.89	NA	NA	XXX
95925	26	A	Somatosensory testing	0.54	0.23	0.35	0.23	0.35	0.02	0.79	0.91	0.79	0.91	XXX
95925	TC	A	Somatosensory testing	0.00	0.92	0.93	NA	NA	0.05	0.97	0.98	NA	NA	XXX
95926		A	Somatosensory testing	0.54	1.16	1.28	NA	NA	0.07	1.77	1.89	NA	NA	XXX
95926	26	A	Somatosensory testing	0.54	0.24	0.35	0.24	0.35	0.02	0.80	0.91	0.80	0.91	XXX
95926	TC	A	Somatosensory testing	0.00	0.92	0.93	NA	NA	0.05	0.97	0.98	NA	NA	XXX
95927		A	Somatosensory testing	0.54	1.18	1.30	NA	NA	0.07	1.79	1.91	NA	NA	XXX
95927	26	A	Somatosensory testing	0.54	0.26	0.37	0.26	0.37	0.02	0.82	0.93	0.82	0.93	XXX
95927	TC	A	Somatosensory testing	0.00	0.92	0.93	NA	NA	0.05	0.97	0.98	NA	NA	XXX
95930		A	Visual evoked potential test	0.35	0.94	0.93	NA	NA	0.02	1.31	1.30	NA	NA	XXX
95930	26	A	Visual evoked potential test	0.35	0.15	0.27	0.15	0.27	0.01	0.51	0.63	0.51	0.63	XXX
95930	TC	A	Visual evoked potential test	0.00	0.79	0.66	NA	NA	0.01	0.80	0.67	NA	NA	XXX
95933		A	Blink reflex test	0.59	1.02	1.11	NA	NA	0.07	1.68	1.77	NA	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
95933	26	A	Blink reflex test	0.59	0.23	0.31	0.23	0.31	0.02	0.84	0.92	0.84	0.92	XXX
95933	TC	A	Blink reflex test	0.00	0.79	0.80	NA	NA	0.05	0.84	0.85	NA	NA	XXX
95934		A	H-reflex test	0.51	0.45	0.49	NA	NA	0.04	1.00	1.04	NA	NA	XXX
95934	26	A	H-reflex test	0.51	0.23	0.27	0.23	0.27	0.02	0.76	0.80	0.76	0.80	XXX
95934	TC	A	H-reflex test	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	XXX
95936		A	H-reflex test	0.55	0.46	0.49	NA	NA	0.04	1.05	1.08	NA	NA	XXX
95936	26	A	H-reflex test	0.55	0.24	0.27	0.24	0.27	0.02	0.81	0.84	0.81	0.84	XXX
95936	TC	A	H-reflex test	0.00	0.22	0.22	NA	NA	0.02	0.24	0.24	NA	NA	XXX
95937		A	Neuromuscular junction test	0.65	0.60	0.66	NA	NA	0.05	1.30	1.36	NA	NA	XXX
95937	26	A	Neuromuscular junction test	0.65	0.26	0.32	0.26	0.32	0.03	0.94	1.00	0.94	1.00	XXX
95937	TC	A	Neuromuscular junction test	0.00	0.34	0.34	NA	NA	0.02	0.36	0.36	NA	NA	XXX
95950		A	Ambulatory eeg monitoring	1.51	3.47	4.57	NA	NA	0.44	5.42	6.52	NA	NA	XXX
95950	26	A	Ambulatory eeg monitoring	1.51	0.63	0.80	0.63	0.80	0.07	2.21	2.38	2.21	2.38	XXX
95950	TC	A	Ambulatory eeg monitoring	0.00	2.84	3.77	NA	NA	0.37	3.21	4.14	NA	NA	XXX
95951		A	EEG monitoring/videorecord	0.06	21.00	18.15	NA	NA	0.63	21.69	18.84	NA	NA	XXX
95951	26	A	EEG monitoring/videorecord	0.06	2.55	2.32	2.55	2.32	0.24	2.85	2.62	2.85	2.62	XXX
95951	TC	A	EEG monitoring/videorecord	0.00	18.45	15.83	NA	NA	0.39	18.84	16.22	NA	NA	XXX
95953		A	EEG monitoring/computer	3.08	7.70	7.74	NA	NA	0.49	11.27	11.31	NA	NA	XXX
95953	26	A	EEG monitoring/computer	3.08	1.30	1.30	1.30	1.30	0.12	4.50	4.50	4.50	4.50	XXX
95953	TC	A	EEG monitoring/computer	0.00	6.40	6.44	NA	NA	0.37	6.77	6.81	NA	NA	XXX
95954		A	EEG monitoring/giving drugs	2.45	3.66	3.37	NA	NA	0.15	6.26	5.97	NA	NA	XXX
95954	26	A	EEG monitoring/giving drugs	2.45	1.06	1.30	1.06	1.30	0.10	3.61	3.85	3.61	3.85	XXX
95954	TC	A	EEG monitoring/giving drugs	0.00	2.60	2.07	NA	NA	0.05	2.65	2.12	NA	NA	XXX
95955		A	EEG during surgery	1.01	2.35	2.55	NA	NA	0.19	3.55	3.75	NA	NA	XXX
95955	26	A	EEG during surgery	1.01	0.37	0.56	0.37	0.56	0.05	1.43	1.62	1.43	1.62	XXX
95955	TC	A	EEG during surgery	0.00	1.98	1.99	NA	NA	0.14	2.12	2.13	NA	NA	XXX
95956		A	Eeg monitoring, cable/radio	3.08	23.17	19.43	NA	NA	0.49	26.74	23.00	NA	NA	XXX
95956	26	A	Eeg monitoring, cable/radio	3.08	1.32	1.40	1.32	1.40	0.12	4.52	4.60	4.52	4.60	XXX
95956	TC	A	Eeg monitoring, cable/radio	0.00	21.85	18.03	NA	NA	0.37	22.22	18.40	NA	NA	XXX
95957		A	EEG digital analysis	1.98	2.57	2.54	NA	NA	0.18	4.73	4.70	NA	NA	XXX
95957	26	A	EEG digital analysis	1.98	0.85	0.81	0.85	0.81	0.08	2.91	2.87	2.91	2.87	XXX
95957	TC	A	EEG digital analysis	0.00	1.72	1.73	NA	NA	0.10	1.82	1.83	NA	NA	XXX
95958		A	EEG monitoring/function test	4.25	3.51	3.96	NA	NA	0.27	8.03	8.48	NA	NA	XXX
95958	26	A	EEG monitoring/function test	4.25	1.75	2.19	1.75	2.19	0.16	6.16	6.60	6.16	6.60	XXX
95958	TC	A	EEG monitoring/function test	0.00	1.76	1.77	NA	NA	0.11	1.87	1.88	NA	NA	XXX
95961		A	Electrode stimulation, brain	2.97	2.64	2.71	NA	NA	0.17	5.78	5.85	NA	NA	XXX
95961	26	A	Electrode stimulation, brain	2.97	1.32	1.38	1.32	1.38	0.11	4.40	4.46	4.40	4.46	XXX
95961	TC	A	Electrode stimulation, brain	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	XXX
95962		A	Electrode stim, brain add-on	3.21	2.72	2.77	NA	NA	0.19	6.12	6.17	NA	NA	ZZZ
95962	26	A	Electrode stim, brain add-on	3.21	1.40	1.44	1.40	1.44	0.13	4.74	4.78	4.74	4.78	ZZZ
95962	TC	A	Electrode stim, brain add-on	0.00	1.32	1.33	NA	NA	0.06	1.38	1.39	NA	NA	ZZZ
95970		A	Analyze neurostim, no prog	0.45	0.15	0.15	0.13	0.13	0.03	0.63	0.63	0.61	0.61	XXX
95971		A	Analyze neurostim, simple	0.78	0.28	0.28	0.23	0.23	0.05	1.11	1.11	1.06	1.06	XXX
95972		A	Analyze neurostim, complex	1.50	0.54	0.54	0.45	0.45	0.09	2.13	2.13	2.04	2.04	XXX
95973		A	Analyze neurostim, complex	0.92	0.33	0.33	0.28	0.28	0.06	1.31	1.31	1.26	1.26	ZZZ
95974		A	Cranial neurostim, complex	0.03	1.07	1.07	0.95	0.95	0.16	1.26	1.26	1.14	1.14	XXX
95975		A	Cranial neurostim, complex	1.70	0.62	0.62	0.58	0.58	0.09	2.41	2.41	2.37	2.37	ZZZ
95999		C	Neurological procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96100		A	Psychological testing	0.00	1.78	1.79	1.78	1.79	0.15	1.93	1.94	1.93	1.94	XXX
96105		A	Assessment of aphasia	0.00	1.78	1.79	1.78	1.79	0.15	1.93	1.94	1.93	1.94	XXX
96110		C	Developmental test, lim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96111		A	Developmental test, extend	0.00	1.78	1.79	1.78	1.79	0.15	1.93	1.94	1.93	1.94	XXX
96115		A	Neurobehavior status exam	0.00	1.78	1.79	1.78	1.79	0.15	1.93	1.94	1.93	1.94	XXX
96117		A	Neuropsych test battery	0.00	1.78	1.79	1.78	1.79	0.15	1.93	1.94	1.93	1.94	XXX
96400		A	Chemotherapy, sc/im	0.00	0.14	0.14	0.14	0.14	0.01	0.15	0.15	0.15	0.15	XXX
96405		A	Intralesional chemo admin	0.52	1.72	1.39	0.24	0.28	0.02	2.26	1.93	0.78	0.82	000
96406		A	Intralesional chemo admin	0.80	2.20	1.80	0.26	0.35	0.02	3.02	2.62	1.08	1.17	000
96408		A	Chemotherapy, push technique	0.00	0.98	0.99	0.98	0.99	0.05	1.03	1.04	1.03	1.04	XXX
96410		A	Chemotherapy,infusion method	0.00	1.56	1.57	1.56	1.57	0.07	1.63	1.64	1.63	1.64	XXX
96412		A	Chemo, infuse method add-on	0.00	1.16	1.17	1.16	1.17	0.06	1.22	1.23	1.22	1.23	ZZZ
96414		A	Chemo, infuse method add-on	0.00	1.35	1.36	1.35	1.36	0.07	1.42	1.43	1.42	1.43	XXX
96420		A	Chemotherapy, push technique	0.00	1.26	1.27	1.26	1.27	0.07	1.33	1.34	1.33	1.34	XXX
96422		A	Chemotherapy,infusion method	0.00	1.24	1.25	1.24	1.25	0.07	1.31	1.32	1.31	1.32	XXX
96423		A	Chemo, infuse method add-on	0.00	0.49	0.49	0.49	0.49	0.02	0.51	0.51	0.51	0.51	ZZZ
96425		A	Chemotherapy,infusion method	0.00	1.45	1.46	1.45	1.46	0.07	1.52	1.53	1.52	1.53	XXX
96440		A	Chemotherapy, intracavitary	2.37	7.24	5.65	0.99	0.96	0.09	9.70	8.11	3.45	3.42	000
96445		A	Chemotherapy, intracavitary	2.20	7.39	5.81	0.97	0.99	0.07	9.66	8.08	3.24	3.26	000
96450		A	Chemotherapy, into CNS	1.89	5.81	4.59	0.89	0.90	0.06	7.76	6.54	2.84	2.85	000
96520		A	Pump refilling, maintenance	0.00	0.90	0.91	0.90	0.91	0.05	0.95	0.96	0.95	0.96	XXX
96530		A	Pump refilling, maintenance	0.00	1.08	1.09	1.08	1.09	0.05	1.13	1.14	1.13	1.14	XXX
96542		A	Chemotherapy injection	1.42	3.54	2.95	0.54	0.70	0.04	5.00	4.41	2.00	2.16	XXX
96545		B	Provide chemotherapy agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96549		C	Chemotherapy, unspecified	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96570		A	Photodynamic tx, 30 min	1.10	0.73	0.73	0.44	0.44	0.28	2.11	2.11	1.82	1.82	ZZZ
96571		A	Photodynamic tx, addl 15 min	0.55	0.31	0.31	0.22	0.22	0.28	1.14	1.14	1.05	1.05	ZZZ
96900		A	Ultraviolet light therapy	0.00	0.40	0.40	0.40	0.40	0.02	0.42	0.42	0.42	0.42	XXX
96902		B	Trichogram	0.41	0.23	0.25	0.16	0.20	0.01	0.65	0.67	0.58	0.62	XXX
96910		A	Photochemotherapy with UV–B	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
96912		A	Photochemotherapy with UV–A	0.00	0.66	0.67	0.66	0.67	0.04	0.70	0.71	0.70	0.71	XXX
96913		A	Photochemotherapy, UV–A or B	0.00	1.37	1.38	1.37	1.38	0.08	1.45	1.46	1.45	1.46	XXX
96999		C	Dermatological procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97001		A	Pt evaluation	1.20	0.80	0.70	0.51	0.48	0.05	2.05	1.95	1.76	1.73	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
97002		A	Pt re-evaluation	0.60	0.44	0.34	0.24	0.19	0.02	1.06	0.96	0.86	0.81	XXX
97003		A	Ot evaluation	1.20	0.78	0.68	0.39	0.39	0.05	2.03	1.93	1.64	1.64	XXX
97004		A	Ot re-evaluation	0.60	0.44	0.34	0.19	0.15	0.02	1.06	0.96	0.81	0.77	XXX
97010		B	Hot or cold packs therapy	0.06	0.24	0.24	0.03	0.08	0.01	0.31	0.31	0.10	0.15	XXX
97012		A	Mechanical traction therapy	0.25	0.32	0.29	0.12	0.14	0.01	0.58	0.55	0.38	0.40	XXX
97014		A	Electric stimulation therapy	0.18	0.29	0.27	0.09	0.12	0.01	0.48	0.46	0.28	0.31	XXX
97016		A	Vasopneumatic device therapy	0.18	0.29	0.29	0.09	0.14	0.01	0.48	0.48	0.28	0.33	XXX
97018		A	Paraffin bath therapy	0.06	0.22	0.23	0.03	0.09	0.01	0.29	0.30	0.10	0.16	XXX
97020		A	Microwave therapy	0.06	0.24	0.24	0.03	0.08	0.01	0.31	0.31	0.10	0.15	XXX
97022		A	Whirlpool therapy	0.17	0.43	0.38	0.08	0.11	0.01	0.61	0.56	0.26	0.29	XXX
97024		A	Diathermy treatment	0.06	0.24	0.24	0.03	0.08	0.01	0.31	0.31	0.10	0.15	XXX
97026		A	Infrared therapy	0.06	0.23	0.23	0.03	0.08	0.01	0.30	0.30	0.10	0.15	XXX
97028		A	Ultraviolet therapy	0.08	0.24	0.23	0.04	0.08	0.01	0.33	0.32	0.13	0.17	XXX
97032		A	Electrical stimulation	0.25	0.35	0.30	0.12	0.13	0.01	0.61	0.56	0.38	0.39	XXX
97033		A	Electric current therapy	0.26	0.37	0.32	0.13	0.14	0.01	0.64	0.59	0.40	0.41	XXX
97034		A	Contrast bath therapy	0.21	0.33	0.28	0.10	0.10	0.01	0.55	0.50	0.32	0.32	XXX
97035		A	Ultrasound therapy	0.21	0.21	0.19	0.10	0.11	0.01	0.43	0.41	0.32	0.33	XXX
97036		A	Hydrotherapy	0.28	0.43	0.38	0.14	0.16	0.01	0.72	0.67	0.43	0.45	XXX
97039		A	Physical therapy treatment	0.20	0.32	0.31	0.10	0.14	0.01	0.53	0.52	0.31	0.35	XXX
97110		A	Therapeutic exercises	0.45	0.32	0.28	0.22	0.20	0.02	0.79	0.75	0.69	0.67	XXX
97112		A	Neuromuscular reeducation	0.45	0.43	0.36	0.22	0.20	0.02	0.90	0.83	0.69	0.67	XXX
97113		A	Aquatic therapy/exercises	0.44	0.44	0.39	0.22	0.22	0.02	0.90	0.85	0.68	0.68	XXX
97116		A	Gait training therapy	0.40	0.41	0.34	0.20	0.18	0.01	0.82	0.75	0.61	0.59	XXX
97124		A	Massage therapy	0.35	0.38	0.32	0.17	0.16	0.01	0.74	0.68	0.53	0.52	XXX
97139		A	Physical medicine procedure	0.21	0.31	0.28	0.10	0.12	0.01	0.53	0.50	0.32	0.34	XXX
97140		A	Manual therapy	0.43	0.41	0.41	0.21	0.21	0.02	0.86	0.86	0.66	0.66	XXX
97150		A	Group therapeutic procedures	0.27	0.34	0.31	0.13	0.15	0.02	0.63	0.60	0.42	0.44	XXX
97504		A	Orthotic training	0.45	0.41	0.35	0.22	0.20	0.03	0.89	0.83	0.70	0.68	XXX
97520		A	Prosthetic training	0.45	0.43	0.36	0.22	0.21	0.02	0.90	0.83	0.69	0.68	XXX
97530		A	Therapeutic activities	0.44	0.30	0.27	0.22	0.21	0.02	0.76	0.73	0.68	0.67	XXX
97535		A	Self care mngment training	0.45	0.43	0.37	0.22	0.21	0.02	0.90	0.84	0.69	0.68	XXX
97537		A	Community/work reintegration	0.45	0.43	0.37	0.22	0.21	0.01	0.89	0.83	0.68	0.67	XXX
97542		A	Wheelchair mngment training	0.25	0.33	0.29	0.12	0.14	0.01	0.59	0.55	0.38	0.40	XXX
97545		R	Work hardening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97546		■	Work hardening add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
97703		A	Prosthetic checkout	0.25	0.21	0.21	0.12	0.14	0.01	0.47	0.47	0.38	0.40	XXX
97750		A	Physical performance test	0.45	0.35	0.33	0.22	0.23	0.02	0.82	0.80	0.69	0.70	XXX
97770		A	Cognitive skills development	0.44	0.38	0.36	0.22	0.24	0.01	0.83	0.81	0.67	0.69	XXX
97780		■	Acupuncture w/o stimul	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97781		N	Acupuncture w/stimul	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97799		C	Physical medicine procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
98925		A	Osteopathic manipulation	0.45	0.32	0.31	0.15	0.18	0.02	0.79	0.78	0.62	0.65	000
98926		A	Osteopathic manipulation	0.65	0.39	0.40	0.25	0.30	0.02	1.06	1.07	0.92	0.97	000
98927		A	Osteopathic manipulation	0.87	0.50	0.48	0.30	0.33	0.03	1.40	1.38	1.20	1.23	000
98928		A	Osteopathic manipulation	1.03	0.54	0.52	0.34	0.37	0.03	1.60	1.58	1.40	1.43	000
98929		A	Osteopathic manipulation	1.19	0.63	0.58	0.37	0.38	0.04	1.86	1.81	1.60	1.61	000
98940		A	Chiropractic manipulation	0.45	0.24	0.26	0.12	0.17	0.01	0.70	0.72	0.58	0.63	000
98941		A	Chiropractic manipulation	0.65	0.31	0.31	0.18	0.21	0.02	0.98	0.98	0.85	0.88	000
98942		A	Chiropractic manipulation	0.87	0.36	0.35	0.24	0.26	0.03	1.26	1.25	1.14	1.16	000
98943		N	Chiropractic manipulation	0.40	0.33	0.33	0.16	0.20	0.01	0.74	0.74	0.57	0.61	XXX
99000		B	Specimen handling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99001		B	Specimen handling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99002		B	Device handling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99024		B	Postop follow-up visit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99025		B	Initial surgical evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99050		E	Medical services after hrs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99052		E	Medical services at night	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99054		B	Medical servcs, unusual hrs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99056		B	Non-office medical services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99058		E	Office emergency care	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99070		B	Special supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99071		B	Patient education materials	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99075		N	Medical testimony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	00	XXX
99078		B	Group health education	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99080		B	Special reports or forms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99082		C	Unusual physician travel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99090		B	Computer data analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99100		■	Special anesthesia service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99116		B	Anesthesia with hypothermia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99135		B	Special anesthesia procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99140		B	Emergency anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99141		■	Sedation, iv/im or inhalant	0.80	1.69	1.49	0.32	0.47	0.05	2.54	2.34	1.17	1.32	XXX
99142		B	Sedation, oral/rectal/nasal	0.60	1.62	1.38	0.24	0.35	0.04	2.26	2.02	0.88	0.99	XXX
99170		A	Anogenital exam, child	1.75	1.75	1.75	0.69	0.69	0.11	3.61	3.61	2.55	2.55	000
99173		N	Visual screening test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99175		A	Induction of vomiting	0.00	1.41	1.42	1.41	1.42	0.08	1.49	1.50	1.49	1.50	XXX
99183		A	Hyperbaric oxygen therapy	2.34	NA	NA	0.74	1.01	0.12	NA	NA	3.20	3.47	XXX
99185		A	Regional hypothermia	0.00	NA	NA	0.65	0.65	0.03	NA	NA	0.68	0.68	XXX
99186		A	Total body hypothermia	0.00	NA	NA	1.80	1.81	0.38	NA	NA	2.18	2.19	XXX
99190		X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99191		X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99192		X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
99195		A	Phlebotomy	0.00	0.45	0.45	0.45	0.45	0.02	0.47	0.47	0.47	0.47	XXX
99199		C	Special service/proc/report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99201		A	Office/outpatient visit, new	0.45	0.75	0.68	0.16	0.24	0.02	1.22	1.15	0.63	0.71	XXX
99202		A	Office/outpatient visit, new	0.88	0.99	0.88	0.32	0.38	0.04	1.91	1.80	1.24	1.30	XXX
99203		A	Office/outpatient visit, new	1.34	1.30	1.14	0.49	0.53	0.07	2.71	2.55	1.90	1.94	XXX
99204		A	Office/outpatient visit, new	0.02	1.74	1.55	0.73	0.79	0.09	1.85	1.66	0.84	0.90	XXX
99205		A	Office/outpatient visit, new	2.67	1.92	1.70	0.94	0.97	0.11	4.70	4.48	3.72	3.75	XXX
99211		A	Office/outpatient visit, est	0.17	0.54	0.46	0.06	0.10	0.01	0.72	0.64	0.24	0.28	XXX
99212		A	Office/outpatient visit, est	0.45	0.60	0.54	0.16	0.21	0.02	1.07	1.01	0.63	0.68	XXX
99213		A	Office/outpatient visit, est	0.67	0.73	0.67	0.24	0.30	0.02	1.42	1.36	0.93	0.99	XXX
99214		A	Office/outpatient visit, est	1.10	0.97	0.88	0.40	0.46	0.04	2.11	2.02	1.54	1.60	XXX
99215		A	Office/outpatient visit, est	1.77	1.24	1.16	0.63	0.71	0.07	3.08	3.00	2.47	2.55	XXX
99217		A	Observation care discharge	1.28	NA	NA	0.44	0.47	0.05	NA	NA	1.77	1.80	XXX
99218		A	Observation care	1.28	NA	NA	0.44	0.52	0.05	NA	NA	1.77	1.85	XXX
99219		A	Observation care	2.14	NA	NA	0.73	0.83	0.08	NA	NA	2.95	3.05	XXX
99220		A	Observation care	2.99	NA	NA	1.03	1.08	0.11	NA	NA	4.13	4.18	XXX
99221		A	Initial hospital care	1.28	NA	NA	0.46	0.53	0.05	NA	NA	1.79	1.86	XXX
99222		A	Initial hospital care	2.14	NA	NA	0.75	0.85	0.08	NA	NA	2.97	3.07	XXX
99223		A	Initial hospital care	2.99	NA	NA	1.04	1.09	0.11	NA	NA	4.14	4.19	XXX
99231		A	Subsequent hospital care	0.64	NA	NA	0.23	0.28	0.02	NA	NA	0.89	0.94	XXX
99232		A	Subsequent hospital care	1.06	NA	NA	0.37	0.40	0.04	NA	NA	1.47	1.50	XXX
99233		A	Subsequent hospital care	1.51	NA	NA	0.53	0.56	0.05	NA	NA	2.09	2.12	XXX
99234		A	Observ/hosp same date	1.95	NA	NA	0.89	0.85	0.10	NA	NA	2.94	2.90	XXX
99235		A	Observ/hosp same date	2.81	NA	NA	1.17	1.16	0.12	NA	NA	4.10	4.09	XXX
99236		A	Observ/hosp same date	3.66	NA	NA	1.47	1.41	0.14	NA	NA	5.27	5.21	XXX
99238		A	Hospital discharge day	1.28	NA	NA	0.44	0.47	0.04	NA	NA	1.76	1.79	XXX
99239		A	Hospital discharge day	1.75	NA	NA	0.61	0.60	0.06	NA	NA	2.42	2.41	XXX
99241		A	Office consultation	0.64	0.90	0.85	0.23	0.35	0.04	1.58	1.53	0.91	1.03	XXX
99242		A	Office consultation	1.29	1.28	1.17	0.48	0.57	0.08	2.65	2.54	1.85	1.94	XXX
99243		A	Office consultation	1.72	1.51	1.40	0.65	0.75	0.09	3.32	3.21	2.46	2.56	XXX
99244		A	Office consultation	2.58	1.95	1.80	0.94	1.04	0.11	4.64	4.49	3.63	3.73	XXX
99245		A	Office consultation	3.43	2.35	2.22	1.26	1.40	0.14	5.92	5.79	4.83	4.97	XXX
99251		A	Initial inpatient consult	0.66	NA	NA	0.29	0.40	0.04	NA	NA	0.99	1.10	XXX
99252		A	Initial inpatient consult	1.32	NA	NA	0.56	0.63	0.08	NA	NA	1.96	2.03	XXX
99253		A	Initial inpatient consult	1.82	NA	NA	0.75	0.82	0.09	NA	NA	2.66	2.73	XXX
99254		A	Initial inpatient consult	2.64	NA	NA	1.05	1.11	0.11	NA	NA	3.80	3.86	XXX
99255		A	Initial inpatient consult	3.65	NA	NA	1.42	1.49	0.15	NA	NA	5.22	5.29	XXX
99261		A	Follow-up inpatient consult	0.42	NA	NA	0.20	0.24	0.02	NA	NA	0.64	0.68	XXX
99262		A	Follow-up inpatient consult	0.85	NA	NA	0.36	0.40	0.03	NA	NA	1.24	1.28	XXX
99263		A	Follow-up inpatient consult	1.27	NA	NA	0.51	0.57	0.05	NA	NA	1.83	1.89	XXX
99271		A	Confirmatory consultation	0.45	0.60	0.61	0.20	0.31	0.02	1.07	1.08	0.67	0.78	XXX
99272		A	Confirmatory consultation	0.84	0.83	0.82	0.36	0.46	0.05	1.72	1.71	1.25	1.35	XXX
99273		A	Confirmatory consultation	1.19	1.02	1.04	0.50	0.65	0.07	2.28	2.30	1.76	1.91	XXX
99274		A	Confirmatory consultation	1.73	1.33	1.33	0.71	0.86	0.09	3.15	3.15	2.53	2.68	XXX
99275		A	Confirmatory consultation	2.31	1.58	1.66	0.88	1.13	0.10	3.99	4.07	3.29	3.54	XXX
99281		A	Emergency dept visit	0.33	NA	NA	0.09	0.14	0.02	NA	NA	0.44	0.49	XXX
99282		A	Emergency dept visit	0.55	NA	NA	0.15	0.22	0.03	NA	NA	0.73	0.80	XXX
99283		A	Emergency dept visit	1.24	NA	NA	0.32	0.37	0.08	NA	NA	1.64	1.69	XXX
99284		A	Emergency dept visit	1.95	NA	NA	0.49	0.56	0.12	NA	NA	2.56	2.63	XXX
99285		A	Emergency dept visit	3.06	NA	NA	0.74	0.86	0.19	NA	NA	3.99	4.11	XXX
99288		B	Direct advanced life support	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99291		A	Critical care, first hour	0.04	1.39	1.43	1.17	1.27	0.14	1.57	1.61	1.35	1.45	XXX
99292		A	Critical care, addl 30 min	0.02	0.76	0.74	0.58	0.61	0.08	0.86	0.84	0.68	0.71	ZZZ
99295		A	Neonatal critical care	0.16	NA	NA	4.93	5.08	0.62	NA	NA	5.71	5.86	XXX
99296		A	Neonatal critical care	0.08	NA	NA	2.64	2.65	0.24	NA	NA	2.96	2.97	XXX
99297		A	Neonatal critical care	0.04	NA	NA	1.36	1.35	0.11	NA	NA	1.51	1.50	XXX
99298		A	Neonatal critical care	2.75	NA	NA	0.94	0.94	0.09	NA	NA	3.78	3.78	XXX
99301		A	Nursing facility care	1.20	NA	NA	0.41	0.43	0.04	NA	NA	1.65	1.67	XXX
99302		A	Nursing facility care	1.61	NA	NA	0.55	0.55	0.06	NA	NA	2.22	2.22	XXX
99303		A	Nursing facility care	2.01	NA	NA	0.67	0.76	0.07	NA	NA	2.75	2.84	XXX
99311		A	Nursing fac care, subseq	0.60	NA	NA	0.20	0.24	0.02	NA	NA	0.82	0.86	XXX
99312		A	Nursing fac care, subseq	0.01	NA	NA	0.33	0.36	0.03	NA	NA	0.37	0.40	XXX
99313		A	Nursing fac care, subseq	1.42	NA	NA	0.48	0.49	0.05	NA	NA	1.95	1.96	XXX
99315		A	Nursing fac discharge day	1.13	NA	NA	0.38	0.42	0.04	NA	NA	1.55	1.59	XXX
99316		A	Nursing fac discharge day	1.50	NA	NA	0.52	0.53	0.05	NA	NA	2.07	2.08	XXX
99321		A	Rest home visit, new patient	0.71	0.41	0.41	0.32	0.34	0.03	1.15	1.15	1.06	1.08	XXX
99322		A	Rest home visit, new patient	1.01	0.64	0.62	0.44	0.47	0.04	1.69	1.67	1.49	1.52	XXX
99323		A	Rest home visit, new patient	1.28	0.84	0.83	0.53	0.60	0.05	2.17	2.16	1.86	1.93	XXX
99331		A	Rest home visit, est pat	0.60	0.43	0.40	0.30	0.30	0.02	1.05	1.02	0.92	0.92	XXX
99332		A	Rest home visit, est pat	0.80	0.53	0.50	0.37	0.38	0.03	1.36	1.33	1.20	1.21	XXX
99333		A	Rest home visit, est pat	0.01	0.65	0.61	0.44	0.45	0.03	0.69	0.65	0.48	0.49	XXX
99341		A	Home visit, new patient	1.01	0.52	0.54	0.48	0.51	0.04	1.57	1.59	1.53	1.56	XXX
99342		A	Home visit, new patient	1.52	0.79	0.76	0.59	0.61	0.06	2.37	2.34	2.17	2.19	XXX
99343		A	Home visit, new patient	2.27	1.20	1.11	0.89	0.88	0.08	3.55	3.46	3.24	3.23	XXX
99344		A	Home visit, new patient	3.03	1.47	1.33	1.09	1.05	0.10	4.60	4.46	4.22	4.18	XXX
99345		A	Home visit, new patient	3.79	1.74	1.54	1.32	1.22	0.12	5.65	5.45	5.23	5.13	XXX
99347		A	Home visit, est patient	0.76	0.45	0.46	0.35	0.39	0.03	1.24	1.25	1.14	1.18	XXX
99348		A	Home visit, est patient	1.26	0.67	0.65	0.52	0.54	0.04	1.97	1.95	1.82	1.84	XXX
99349		A	Home visit, est patient	2.02	0.99	0.91	0.79	0.76	0.07	3.08	3.00	2.88	2.85	XXX
99350		A	Home visit, est patient	3.03	1.35	1.22	1.11	1.04	0.10	4.48	4.35	4.24	4.17	XXX
99354		A	Prolonged service, office	1.77	1.28	1.17	0.61	0.66	0.06	3.11	3.00	2.44	2.49	ZZZ
99355		A	Prolonged service, office	1.77	1.14	1.06	0.58	0.64	0.06	2.97	2.89	2.41	2.47	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
99356		A	Prolonged service, inpatient	1.71	NA	NA	0.59	0.67	0.06	NA	NA	2.36	2.44	ZZZ
99357		A	Prolonged service, inpatient	1.71	NA	NA	0.61	0.69	0.07	NA	NA	2.39	2.47	ZZZ
99358		B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99359		B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99360		X	Physician standby services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99361		B	Physician/team conference	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99362		B	Physician/team conference	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99371		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99372		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99373		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99374		B	Home health care supervision	1.10	1.28	1.10	0.44	0.47	0.04	2.42	2.24	1.58	1.61	XXX
99375		N	Home health care supervision	1.73	1.30	0.93	0.60	0.58	0.06	3.09	2.72	2.39	2.37	XXX
99377		B	Hospice care supervision	1.10	1.29	1.11	0.44	0.47	0.04	2.43	2.25	1.58	1.61	XXX
99378		N	Hospice care supervision	1.73	1.50	1.03	0.58	0.57	0.06	3.29	2.82	2.37	2.36	XXX
99379		B	Nursing fac care supervision	1.10	1.27	1.09	0.44	0.47	0.04	2.41	2.23	1.58	1.61	XXX
99380		B	Nursing fac care supervision	1.73	1.54	1.29	0.69	0.66	0.06	3.33	3.08	2.48	2.45	XXX
99381		N	Prev visit, new, infant	1.19	1.33	1.33	0.47	0.69	0.18	2.70	2.70	1.84	2.06	XXX
99382		N	Prev visit, new, age 1–4	1.36	1.37	1.41	0.54	0.79	0.04	2.77	2.81	1.94	2.19	XXX
99383		N	Prev visit, new, age 5–11	1.36	1.31	1.37	0.54	0.79	0.04	2.71	2.77	1.94	2.19	XXX
99384		N	Prev visit, new, age 12–17	1.53	1.38	1.47	0.61	0.89	0.05	2.96	3.05	2.19	2.47	XXX
99385		N	Prev visit, new, age 18–39	1.53	1.38	1.42	0.61	0.84	0.05	2.96	3.00	2.19	2.42	XXX
99386		N	Prev visit, new, age 40–64	1.88	1.56	1.64	0.75	1.03	0.06	3.50	3.58	2.69	2.97	XXX
99387		N	Prev visit, new, 65 & over	2.06	1.69	1.78	0.82	1.13	0.06	3.81	3.90	2.94	3.25	XXX
99391		N	Prev visit, est, infant	1.02	0.91	0.97	0.40	0.59	0.15	2.08	2.14	1.57	1.76	XXX
99392		N	Prev visit, est, age 1–4	1.19	0.98	1.07	0.47	0.69	0.04	2.21	2.30	1.70	1.92	XXX
99393		N	Prev visit, est, age 5–11	1.19	0.96	1.05	0.47	0.69	0.04	2.19	2.28	1.70	1.92	XXX
99394		N	Prev visit, est, age 12–17	1.36	1.04	1.16	0.54	0.79	0.04	2.44	2.56	1.94	2.19	XXX
99395		N	Prev visit, est, age 18–39	1.36	1.06	1.14	0.54	0.75	0.04	2.46	2.54	1.94	2.15	XXX
99396		N	Prev visit, est, age 40–64	1.53	1.15	1.24	0.61	0.84	0.05	2.73	2.82	2.19	2.42	XXX
99397		N	Prev visit, est, 65 & over	1.71	1.25	1.36	0.68	0.93	0.05	3.01	3.12	2.44	2.69	XXX
99401		N	Preventive counseling, indiv	0.48	0.54	0.53	0.19	0.27	0.01	1.03	1.02	0.68	0.76	XXX
99402		N	Preventive counseling, indiv	0.98	0.78	0.83	0.39	0.54	0.03	1.79	1.84	1.40	1.55	XXX
99403		N	Preventive counseling, indiv	1.46	1.01	1.12	0.58	0.80	0.04	2.51	2.62	2.08	2.30	XXX
99404		N	Preventive counseling, indiv	1.95	1.24	1.41	0.77	1.06	0.05	3.24	3.41	2.77	3.06	XXX
99411		N	Preventive counseling, group	0.15	0.16	0.16	0.06	0.08	0.01	0.32	0.32	0.22	0.24	XXX
99412		N	Preventive counseling, group	0.25	0.22	0.23	0.10	0.14	0.01	0.48	0.49	0.36	0.40	XXX
99420		N	Health risk assessment test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99429		N	Unlisted preventive service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99431		A	Initial care, normal newborn	1.17	NA	NA	0.39	0.62	0.04	NA	NA	1.60	1.83	XXX
99432		A	Newborn care, not in hosp	1.26	0.73	0.90	0.40	0.66	0.04	2.03	2.20	1.70	1.96	XXX
99433		A	Normal newborn care/hospital	0.62	NA	NA	0.22	0.34	0.02	NA	NA	0.86	0.98	XXX
99435		A	Newborn discharge day hosp	1.50	NA	NA	0.50	0.80	0.05	NA	NA	2.05	2.35	XXX
99436		A	Attendance, birth	1.50	0.48	0.78	0.48	0.78	0.05	2.03	2.33	2.03	2.33	XXX
99440		A	Newborn resuscitation	2.93	NA	NA	0.97	1.55	0.09	NA	NA	3.99	4.57	XXX
99450		N	Life/disability evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99455		R	Disability examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99456		R	Disability examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99499		C	Unlisted e&m service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0021		I	Outside state ambulance serv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0030		X	Air ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0040		X	Helicopter ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0050		X	Water amb service emergency	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0080		I	Noninterest escort in non er	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0090		I	Interest escort in non er	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0100		I	Nonemergency transport taxi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0110		I	Nonemergency transport bus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0120		I	Noner transport mini-bus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0130		I	Noner transport wheelch van	0.00	0.00	0 00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0140		I	Nonemergency transport air	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0160		I	Noner transport case worker	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0170		I	Noner transport parking fees	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0180		I	Noner transport lodgng recip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0190		I	Noner transport meals recip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0200		I	Noner transport lodgng escrt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0210		I	Noner transport meals escort	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0225		X	Neonatal emergency transport	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0300		X	Ambulance basic non-emer all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0302		X	Ambulance basic emergeny all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0304		X	Amb adv non-er no serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0306		X	Amb adv non-er spec serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0308		X	Amb adv er no spec serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0310		X	Amb adv er spec serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0320		X	Amb basic non-er + supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0322		X	Amb basic emerg + supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0324		X	Adv non-er serv sep mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0326		X	Adv non-er no serv sep mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0328		X	Adv er no serv sep mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0330		X	Adv er spec serv sep mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0340		X	Amb basic non-er + mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0342		X	Ambul basic emer + mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0344		X	Amb adv non-er no serv +mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0346		X	Amb adv non-er serv + mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
A0348		X	Adv emer no spec serv + mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0350		X	Adv emer spec serv + mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0360		X	Basic non-er sep mile & supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0362		X	Basic emer sep mile & supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0364		X	Adv non-er no serv sep mi&su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0366		X	Adv non-er serv sep mil&supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0368		X	Adv er no serv sep mile&supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0370		X	Adv er spec serv sep mi&supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0380		X	Basic life support mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0382		X	Basic support routine suppls	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0384		X	Bls defibrillation supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0390		X	Advanced life support mileag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0392		X	Als defibrillation supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0394		X	Als IV drug therapy supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0396		X	Als esophageal intub suppls	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0398		X	Als routine disposble suppls	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0420		X	Ambulance waiting 1/2 hr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0422		X	Ambulance 02 life sustaining	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0424		X	Extra ambulance attendant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0888		N	Noncovered ambulance mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0999		X	Unlisted ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4206		I	1 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4207		I	2 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4208		I	3 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4209		I	5+ CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4210		N	Nonneedle injection device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4211		P	Supp for self-adm injections	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4212		P	Non coring needle or stylet	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4213		I	20+ CC syringe only	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4214		P	30 CC sterile water/saline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4215		I	Sterile needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4220		P	Infusion pump refill kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4221		X	Maint drug infus cath per wk	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4222		X	Drug infusion pump supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4230		X	Infus insulin pump non needl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4231		X	Infusion insulin pump needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4232		X	Syringe w/needle insulin 3cc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4244		I	Alcohol or peroxide per pint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4245		I	Alcohol wipes per box	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4246		I	Betadine/phisohex solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4247		I	Betadine/iodine swabs/wipes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4250		N	Urine reagent strips/tablets	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4253		P	Blood glucose/reagent strips	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4254		X	Battery for glucose monitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4255		X	Glucose monitor platforms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4256		P	Calibrator solution/chips	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4258		P	Lancet device each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4259		P	Lancets per box	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4260		N	Levonorgestrel implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4261		N	Cervical cap contraceptive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4262		B	Temporary tear duct plug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4263		A	Permanent tear duct plug	0.00	0.00	0.26	0.00	0.26	0.00	0.00	0.26	0.00	0.26	XXX
A4265		P	Paraffin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4270		B	Disposable endoscope sheath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4280		X	Brst prsths adhsv attchmnt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4300		A	Cath impl vasc access portal	0.00	0.00	0.26	0.00	0.26	0.00	0.00	0.26	0.00	0.26	XXX
A4301		P	Implantable access syst perc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4305		P	Drug delivery system >=50 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4306		P	Drug delivery system <=5 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4310		P	Insert tray w/o bag/cath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4311		P	Catheter w/o bag 2-way latex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4312		P	Cath w/o bag 2-way silicone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4313		P	Catheter w/bag 3-way	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4314		P	Cath w/drainage 2-way latex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4315		P	Cath w/drainage 2-way silcne	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4316		P	Cath w/drainage 3-way	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4320		P	Irrigation tray	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4321		X	Cath therapeutic irrig agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4322		P	Irrigation syringe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4323		P	Saline irrigation solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4326		P	Male external catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4327		P	Fem urinary collect dev cup	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4328		P	Fem urinary collect pouch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4329		P	External catheter start set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4330		P	Stool collection pouch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4335		P	Incontinence supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4338		P	Indwelling catheter latex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4340		P	Indwelling catheter special	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4344		P	Cath indw foley 2 way silicn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4346		P	Cath indw foley 3 way	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4347		P	Male external catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4351		P	Straight tip urine catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
A4352		P	Coude tip urinary catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4353		X	Intermittent urinary cath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4354		P	Cath insertion tray w/bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4355		P	Bladder irrigation tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4356		P	Ext ureth clmp or compr dvc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4357		P	Bedside drainage bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4358		P	Urinary leg bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4359		P	Urinary suspensory w/o leg b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4361		P	Ostomy face plate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4362		P	Solid skin barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4363		D	Liquid skin barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4364		P	Ostomy/cath adhesive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4365		X	Ostomy adhesive remover wipe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4367		P	Ostomy belt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4368		X	Ostomy filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4369		X	Skin barrier liquid per oz	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4370		X	Skin barrier paste per oz	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4371		X	Skin barrier powder per oz	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4372		X	Skin barrier solid 4x4 equiv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4373		X	Skin barrier with flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4374		X	Skin barrier extended wear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4375		X	Drainable plastic pch w fcpl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4376		X	Drainable rubber pch w fcplt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4377		X	Drainable plstic pch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4378		X	Drainable rubber pch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4379		X	Urinary plastic pouch w fcpl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4380		X	Urinary rubber pouch w fcplt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4381		X	Urinary plastic pouch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4382		X	Urinary hvy plstc pch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4383		X	Urinary rubber pouch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4384		X	Ostomy faceplt/silicone ring	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4385		X	Ost skn barrier sld ext wear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4386		X	Ost skn barrier w flng ex wr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4387		X	Ost clsd pouch w att st barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4388		X	Drainable pch w ex wear barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4389		X	Drainable pch w st wear barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4390		X	Drainable pch ex wear convex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4391		X	Urinary pouch w ex wear barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4392		X	Urinary pouch w st wear barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4393		X	Urine pch w ex wear bar conv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4394		X	Ostomy pouch liq deodorant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4395		X	Ostomy pouch solid deodorant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4397		P	Irrigation supply sleeve	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4398		P	Ostomy irrigation bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4399		P	Ostomy irrig cone/cath w brs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4400		P	Ostomy irrigation set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4402		P	Lubricant per ounce	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4404		P	Ostomy ring each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4421		P	Ostomy supply misc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4454		P	Tape all types all sizes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4455		P	Adhesive remover per ounce	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4460		P	Elastic compression bandage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4462		X	Abdmnl drssng holder/binder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4465		P	Non-elastic extremity binder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4470		P	Gravlee jet washer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4480		P	Vabra aspirator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4481		X	Tracheostoma filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4483		X	Moisture exchanger	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4490		N	Above knee surgical stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4495		N	Thigh length surg stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4500		N	Below knee surgical stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4510		N	Full length surg stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4550		A	Surgical trays	0.00	0.00	0.26	0.00	0.26	0.00	0.00	0.26	0.00	0.26	XXX
A4554		N	Disposable underpads	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4556		P	Electrodes, pair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4557		P	Lead wires, pair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4558		P	Conductive paste or gel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4560		X	Pessary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4565		X	Slings	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4570		X	Splint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4572		X	Rib belt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4575		N	Hyperbaric o2 chamber disps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4580		X	Cast supplies (plaster)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4590		X	Special casting material	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4595		X	TENS suppl 2 lead per month	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4611		X	Heavy duty battery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4612		X	Battery cables	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4613		X	Battery charger	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4614		X	Hand-held PEFR meter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4615		X	Cannula nasal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4616		X	Tubing (oxygen) per foot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4617		X	Mouth piece	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
A4618		X	Breathing circuits	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4619		X	Face tent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4620		X	Variable concentration mask	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4621		X	Tracheotomy mask or collar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4622		X	Tracheostomy or laryngectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4623		X	Tracheostomy inner cannula	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4624		X	Tracheal suction tube	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4625		X	Trach care kit for new trach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4626		X	Tracheostomy cleaning brush	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4627		N	Spacer bag/reservoir	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4628		X	Oropharyngeal suction cath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4629		X	Tracheostomy care kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4630		X	Repl bat t.e.n.s. own by pt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4631		X	Wheelchair battery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4635		X	Underarm crutch pad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4636		X	Handgrip for cane etc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4637		X	Repl tip cane/crutch/walker	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4640		X	Alternating pressure pad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4641		E	Diagnostic imaging agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4642		E	Satumomab pendetide per dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4643		E	High dose contrast MRI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4644		E	Contrast 100–199 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4645		E	Contrast 200–299 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4646		E	Contrast 300–399 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4647		B	Supp- paramagnetic contr mat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4649		P	Surgical supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4650		X	Supp esrd centrifuge	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4655		X	Esrd syringe/needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4660		X	Esrd blood pressure device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4663		X	Esrd blood pressure cuff	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4670		N	Auto blood pressure monitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4680		X	Activated carbon filters	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4690		X	Dialyzers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4700		X	Standard dialysate solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4705		X	Bicarb dialysate solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4712		X	Sterile water	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4714		X	Treated water for dialysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4730		X	Fistula cannulation set dial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4735		X	Local/topical anesthetics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4740		X	Esrd shunt accessory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4750		X	Arterial or venous tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4755		X	Arterial and venous tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4760		X	Standard testing solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4765		X	Dialysate concentrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4770		X	Blood testing supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4771		X	Blood clotting time tube	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4772		X	Dextrostick/glucose strips	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4773		X	Hemostix	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4774		X	Ammonia test paper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4780		X	Esrd sterilizing agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4790		X	Esrd cleansing agents	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4800		X	Heparin/antidote dialysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4820		X	Supplies hemodialysis kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4850		X	Rubber tipped hemostats	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4860		X	Disposable catheter caps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4870		X	Plumbing/electrical work	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4880		X	Water storage tanks	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4890		R	Contracts/repair/maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4900		X	Capd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4901		X	Ccpd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4905		X	Ipd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4910		X	Esrd nonmedical supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4912		X	Gomco drain bottle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4913		X	Esrd supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4914		X	Preparation kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4918		X	Venous pressure clamp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4919		X	Supp dialysis dialyzer holde	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4920		X	Harvard pressure clamp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4921		X	Measuring cylinder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4927		X	Gloves	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5051		P	Pouch clsd w barr attached	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5052		P	Clsd ostomy pouch w/o barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5053		P	Clsd ostomy pouch faceplate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5054		P	Clsd ostomy pouch w/flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5055		P	Stoma cap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5061		P	Pouch drainable w barrier at	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5062		P	Drnble ostomy pouch w/o barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5063		P	Drain ostomy pouch w/flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5064		I	Drain ostomy pouch w/fcepite	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5065		I	Drain ostomy pouch on fcplte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5071		P	Urinary pouch w/barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5072		P	Urinary pouch w/o barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
A5073		P	Urinary pouch on barr w/flng	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5074		I	Urinary pouch w/faceplate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5075		I	Urinary pouch on faceplate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5081		P	Continent stoma plug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5082		P	Continent stoma catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5093		P	Ostomy accessory convex inse	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5102		P	Bedside drain btl w/wo tube	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5105		P	Urinary suspensory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5112		P	Urinary leg bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5113		P	Latex leg strap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5114		P	Foam/fabric leg strap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5119		P	Skin barrier wipes box pr 50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5121		P	Solid skin barrier 6x6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5122		P	Solid skin barrier 8x8	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5123		P	Skin barrier with flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5126		P	Disk/foam pad +or- adhesive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5131		P	Appliance cleaner	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5149		P	Incontinence/ostomy supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5200		X	Percutaneous catheter anchor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5500		X	Diab shoe for density insert	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5501		X	Diabetic custom molded shoe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5502		X	Diabetic shoe density insert	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5503		X	Diabetic shoe w/roller/rockr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5504		X	Diabetic shoe with wedge	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5505		X	Diab shoe w/metatarsal bar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5506		X	Diabetic shoe w/off set heel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5507		X	Modification diabetic shoe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5508		X	Diabetic deluxe shoe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6020		P	Collagen wound dressing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6025		I	Silicone gel sheet, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6154		P	Wound pouch each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6196		P	Alginate dressing <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6197		P	Alginate drsg >16 <=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6198		P	alginate dressing > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6199		P	Alginate drsg wound filler	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6200		X	Compos drsg <=16 no border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6201		X	Compos drsg >16<=48 no bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6202		X	Compos drsg >48 no border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6203		P	Composite drsg <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6204		P	Composite drsg >16<=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6205		P	Composite drsg > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6206		P	Contact layer <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6207		P	Contact layer >16<= 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6208		P	Contact layer > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6209		P	Foam drsg <=16 sq in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6210		P	Foam drg >16<=48 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6211		P	Foam drg > 48 sq in w/o brdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6212		P	Foam drg <=16 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6213		P	Foam drg >16<=48 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6214		P	Foam drg > 48 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6215		P	Foam dressing wound filler	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6216		P	Non-sterile gauze<=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6217		P	Non-sterile gauze≤16<=48 sq	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6218		P	Non-sterile gauze > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6219		P	Gauze <= 16 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6220		P	Gauze >16 <=48 sq in w/bordr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6221		P	Gauze > 48 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6222		P	Gauze <=16 in no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6223		P	Gauze >16<=48 no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6224		P	Gauze > 48 in no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6228		P	Gauze <= 16 sq in water/sal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6229		P	Gauze >16<=48 sq in watr/sal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6230		P	Gauze > 48 sq in water/saline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6234		P	Hydrocolld drg <=16 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6235		P	Hydrocolld drg >16<=48 w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6236		P	Hydrocolld drg > 48 in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6237		P	Hydrocolld drg <=16 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6238		P	Hydrocolld drg >16<=48 w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6239		P	Hydrocolld drg > 48 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6240		P	Hydrocolld drg filler paste	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6241		P	Hydrocolloid drg filler dry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6242		P	Hydrogel drg <=16 in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6243		P	Hydrogel drg >16<=48 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6244		P	Hydrogel drg >48 in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6245		P	Hydrogel drg <= 16 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6246		P	Hydrogel drg >16<=48 in w/b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6247		P	Hydrogel drg > 48 sq in w/b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6248		P	Hydrogel drsg gel filler	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6250		P	Skin seal protect moisturizr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6251		P	Absorpt drg <=16 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6252		P	Absorpt drg >16 <=48 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6253		P	Absorpt drg > 48 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
A6254		P	Absorpt drg <=16 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6255		P	Absorpt drg >16<=48 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6256		P	Absorpt drg > 48 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6257		P	Transparent film <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6258		P	Transparent film >16<=48 in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6259		P	Transparent film > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6260		P	Wound cleanser any type/size	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6261		P	Wound filler gel/paste /oz	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6262		P	Wound filler dry form / gram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6263		P	Non-sterile elastic gauze/yd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6264		P	Non-sterile no elastic gauze	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6265		P	Tape per 18 sq inches	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6266		P	Impreg gauze no h20/sal/yard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6402		P	Sterile gauze <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6403		P	Sterile gauze≤16 <= 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6404		P	Sterile gauze > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6405		P	Sterile elastic gauze /yd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6406		P	Sterile non-elastic gauze/yd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7000		X	Disposable canister for pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7001		X	Nondisposable pump canister	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7002		X	Tubing used w suction pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7003		X	Nebulizer administration set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7004		X	Disposable nebulizer sml vol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7005		X	Nondisposable nebulizer set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7006		X	Filtered nebulizer admin set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7007		X	Lg vol nebulizer disposable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7008		X	Disposable nebulizer prefill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7009		X	Nebulizer reservoir bottle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7010		X	Disposable corrugated tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7011		X	Nondispos corrugated tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7012		X	Nebulizer water collec devic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7013		X	Disposable compressor filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7014		X	Compressor nondispos filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7015		X	Aerosol mask used w nebulize	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7016		X	Nebulizer dome & mouthpiece	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7017		X	Nebulizer not used w oxygen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9150		E	Misc/exper non-prescript dru	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9160		N	Podiatrist non-covered servi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9170		N	Chiropractor non-covered ser	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9190		N	Misc/expe personal comfort i	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9270		N	Non-covered item or service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9300		N	Exercise equipment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9500		E	Technetium TC 99m sestamibi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9502		X	Technetium TC99M tetrofosmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9503		E	Technetium TC 99m medronate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9504		X	Technetium tc 99m apcitide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9505		E	Thallous chloride TL 201/mci	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9507		X	Indium/111 capromab pendetid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9600		X	Strontium-89 chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9605		X	Samarium sm153 lexidronamm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9900		X	Supply/accessory/service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9901		X	Delivery/set up/dispensing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0120		N	Periodic oral evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0140		N	Limit oral eval problm focus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0150		R	Comprehensve oral evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0160		N	Extensv oral eval prob focus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0170		N	Re-eval,est pt,problem focus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0210		I	Intraor complete film series	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0220		I	Intraoral periapical first f	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0230		I	Intraoral periapical ea add	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0240		R	Intraoral occlusal film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0250		R	Extraoral first film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0260		R	Extraoral ea additional film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0270		R	Dental bitewing single film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0272		R	Dental bitewings two films	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0274		R	Dental bitewings four films	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0277		R	Vert bitewings-sev to eight	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0290		I	Dental film skull/facial bon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0310		I	Dental sialography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0320		I	Dental tmj arthrogram incl i	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0321		I	Dental other tmj films	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0322		I	Dental tomographic survey	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0330		I	Dental panoramic film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0340		I	Dental cephalometric film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0350		I	Oral/facial images	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0415		N	Bacteriologic study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0425		N	Caries susceptibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0460		R	Pulp vitality test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0470		N	Diagnostic casts	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0471		D	Diagnostic photographs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0472		R	Gross exam, prep & report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0473		R	Micro exam, prep & report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
D0474		R	Micro w exam of surg margins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0480		R	Cytopath smear prep & report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0501		R	Histopathologic examinations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0502		R	Other oral pathology procedu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0999		R	Unspecified diagnostic proce	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1110		N	Dental prophylaxis adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1120		N	Dental prophylaxis child	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1201		N	Topical fluor w prophy child	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1203		N	Topical fluor w/o prophy chi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1204		N	Topical fluor w/o prophy adu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1205		N	Topical fluoride w/ prophy a	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1310		N	Nutri counsel-control caries	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1320		N	Tobacco counseling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1330		N	Oral hygiene instruction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1351		N	Dental sealant per tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1510		R	Space maintainer fxd unilat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1515		R	Fixed bilat space maintainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1520		R	Remove unilat space maintain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1525		R	Remove bilat space maintain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1550		R	Recement space maintainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D2110		N	Amalgam one surface primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2120		N	Amalgam two surfaces primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2130		N	Amalgam three surfaces prima	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2131		N	Amalgam four/more surf prima	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2140		N	Amalgam one surface permanen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2150		N	Amalgam two surfaces permane	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2160		N	Amalgam three surfaces perma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2161		N	Amalgam 4 or ≤ surfaces perm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2210		D	Silicate cement per restorat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2330		N	Resin one surface-anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2331		N	Resin two surfaces-anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2332		N	Resin three surfaces-anterio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2335		N	Resin 4/≤ surf or w incis an	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2336		N	Composite resin crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2337		N	Compo resin crown ant-perm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2380		N	Resin one surf poster primar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2381		N	Resin two surf poster primar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2382		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2385		N	Resin one surf poster perman	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2386		N	Resin two surf poster perman	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2387		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2388		N	Resin four/more, post perm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2410		N	Dental gold foil one surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2420		N	Dental gold foil two surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2430		N	Dental gold foil three surfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2510		N	Dental inlay metalic 1 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2520		N	Dental inlay metallic 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2530		N	Dental inlay metl 3/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2542		N	Dental onlay metallic 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2543		N	Dental onlay metallic 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2544		N	Dental onlay metl 4/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2610		N	Inlay porcelain/ceramic 1 su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2620		N	Inlay porcelain/ceramic 2 su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2630		N	Dental onlay porc 3/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2642		N	Dental onlay porcelin 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2643		N	Dental onlay porcelin 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2644		N	Dental onlay porc 4/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2650		N	Inlay composite/resin one su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2651		N	Inlay composite/resin two su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2652		N	Dental inlay resin 3/mre sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2662		N	Dental onlay resin 2 surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2663		N	Dental onlay resin 3 surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2664		N	Dental onlay resin 4/mre sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2710		N	Crown resin laboratory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2720		N	Crown resin w/ high noble me	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2721		N	Crown resin w/ base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2722		N	Crown resin w/ noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2740		N	Crown porcelain/ceramic subs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2750		N	Crown porcelain w/ h noble m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2751		N	Crown porcelain fused base m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2752		N	Crown porcelain w/ noble met	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2780		N	Crown 3/4 cast hi noble met	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2781		N	Crown 3/4 cast base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2782		N	Crown 3/4 cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2783		N	Crown 3/4 porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2790		N	Crown full cast high noble m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2791		N	Crown full cast base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2792		N	Crown full cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2799		N	Provisional crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2810		D	Crown 3/4 cast metallic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2910		N	Dental racement inlay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2920		N	Dental racement crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
D2930		N	Prefab stnlss steel crwn pri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2931		N	Prefab stnlss steel crown pe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2932		N	Prefabricated resin crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2933		N	Prefab stainless steel crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2940		N	Dental sedative filling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2950		N	Core build-up incl any pins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2951		N	Tooth pin retention	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2952		N	Post and core cast + crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2953		N	Each addtnl cast post	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2954		N	Prefab post/core + crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2955		N	Post removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2957		N	Each addtnl prefab post	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2960		N	Laminate labial veneer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2961		N	Lab labial veneer resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2962		N	Lab labial veneer porcelain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2970		R	Temporary-fractured tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D2980		N	Crown repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2999		R	Dental unspec restorative pr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D3110		N	Pulp cap direct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3120		N	Pulp cap indirect	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3220		N	Therapeutic pulpotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3221		N	Gross pulpal debridement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3230		N	Pulpal therapy anterior prim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3240		N	Pulpal therapy posterior pri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3310		N	Anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3320		N	Root canal therapy 2 canals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3330		N	Root canal therapy 3 canals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3331		N	Non-surg tx root canal obs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3332		N	Incomplete endodontic tx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3333		N	Internal root repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3346		N	Retreat root canal anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3347		N	Retreat root canal bicuspid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3348		N	Retreat root canal molar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3351		N	Apexification/recalc initial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3352		N	Apexification/recalc interim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3353		N	Apexification/recalc final	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3410		N	Apicoect/perirad surg anter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3421		N	Root surgery bicuspid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3425		N	Root surgery molar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3426		N	Root surgery ea add root	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3430		N	Retrograde filling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3450		N	Root amputation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3460		R	Endodontic endosseous implan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D3470		N	Intentional replantation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3910		N	Isolation-tooth w rubb dam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3920		N	Tooth splitting	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3950		N	Canal prep/fitting of dowel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3960		D	Bleaching of discolored toot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3999		R	Endodontic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4210		I	Gingivectomy/plasty per quad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4211		I	Gingivectomy/plasty per toot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4220		N	Gingival curettage per quadr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4240		N	Gingival flap proc w/ planin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4245		N	Apically positioned flap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4249		N	Crown lengthen hard tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4250		D	Mucogingival surg per quadra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4260		R	Osseous surgery per quadrant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4263		R	Bone replce graft first site	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4264		R	Bone replce graft each add	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4266		N	Guided tiss regen resorble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4267		N	Guided tiss regen nonresorb	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4268		R	Surgical revision procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4270		R	Pedicle soft tissue graft pr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4271		R	Free soft tissue graft proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4273		R	Subepithelial tissue graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4274		N	Distal/proximal wedge proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4320		N	Provision splint intracoronal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4321		N	Provisional splint extracoro	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4341		N	Periodontal scaling & root	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4355		R	Full mouth debridement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4381		R	Localized chemo delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4910		N	Periodontal maint procedures	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4920		N	Unscheduled dressing change	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4999		N	Unspecified periodontal proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5110		N	Dentures complete maxillary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5120		N	Dentures complete mandible	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5130		N	Dentures immediat maxillary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5140		N	Dentures immediat mandible	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5211		N	Dentures maxill part resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5212		N	Dentures mand part resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5213		N	Dentures maxill part metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5214		N	Dentures mandibl part metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
D5281		N	Removable partial denture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5410		N	Dentures adjust cmplt maxil	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5411		N	Dentures adjust cmplt mand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5421		N	Dentures adjust part maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5422		N	Dentures adjust part mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5510		N	Dentur repr broken compl bas	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5520		N	Replace denture teeth complt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5610		N	Dentures repair resin base	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5620		N	Rep part denture cast frame	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5630		N	Rep partial denture clasp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5640		N	Replace part denture teeth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5650		N	Add tooth to partial denture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5660		N	Add clasp to partial denture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5710		N	Dentures rebase cmplt maxil	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5711		N	Dentures rebase cmplt mand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5720		N	Dentures rebase part maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5721		N	Dentures rebase part mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5730		N	Denture reln cmplt maxil ch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5731		N	Denture reln cmplt mand chr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5740		N	Denture reln part maxil chr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5741		N	Denture reln part mand chr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5750		N	Denture reln cmplt max lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5751		N	Denture reln cmplt mand lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5760		N	Denture reln part maxil lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5761		N	Denture reln part mand lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5810		N	Denture interm cmplt maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5811		N	Denture interm cmplt mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5820		N	Denture interm part maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5821		N	Denture interm part mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5850		N	Denture tiss conditn maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5851		N	Denture tiss condtin mandbl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5860		N	Overdenture complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5861		N	Overdenture partial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5862		N	Precision attachment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5867		N	Replacement of precision att	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5875		N	Prosthesis modification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5899		N	Removable prosthodontic proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5911		R	Facial moulage sectional	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5912		R	Facial moulage complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5913		I	Nasal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5914		I	Auricular prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5915		I	Orbital prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5916		I	Ocular prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5919		I	Facial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5922		I	Nasal septal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5923		I	Ocular prosthesis interim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5924		I	Cranial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5925		I	Facial augmentation implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5926		I	Replacement nasal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5927		I	Auricular replacement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5928		I	Orbital replacement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5929		I	Facial replacement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5931		I	Surgical obturator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5932		I	Postsurgical obturator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5933		I	Refitting of obturator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5934		I	Mandibular flange prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5935		I	Mandibular denture prosth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5936		I	Temp obturator prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5937		I	Trismus appliance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5951		R	Feeding aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5952		I	Pediatric speech aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5953		I	Adult speech aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5954		I	Superimposed prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5955		I	Palatal lift prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5958		I	Intraoral con def inter plt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5959		I	Intraoral con def mod palat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5960		I	Modify speech aid prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5982		I	Surgical stent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5983		R	Radiation applicator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5984		R	Radiation shield	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5985		R	Radiation cone locator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5986		N	Fluoride applicator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5987		R	Commissure splint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5988		I	Surgical splint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5999		I	Maxillofacial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6010		I	Odontics endosteal implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6020		I	Odontics abutment placement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6040		I	Odontics eposteal implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6050		I	Odontics transosteal implnt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6055		I	Implant connecting bar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6056		N	Prefabricated abutment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6057		N	Custom abutment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
D6058		N	Abutment supported crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6059		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6060		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6061		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6062		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6063		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6064		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6065		N	Implant supported crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6066		N	Implant supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6067		N	Implant supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6068		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6069		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6070		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6071		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6072		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6073		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6074		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6075		N	Implant supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6076		N	Implant supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6077		N	Implant supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6078		N	Implnt/abut suprtd fixd dent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6079		N	Implnt/abut suprtd fixd dent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6080		I	Implant maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6090		I	Repair implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6095		I	Odontics repr abutment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6100		I	Removal of implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6199		I	Implant procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6210		N	Prosthodont high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6211		N	Bridge base metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6212		N	Bridge noble metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6240		N	Bridge porcelain high noble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6241		N	Bridge porcelain base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6242		N	Bridge porcelain nobel metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6245		N	Bridge porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6250		N	Bridge resin w/high noble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6251		N	Bridge resin base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6252		N	Bridge resin w/noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6519		N	Inlay/onlay porce/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6520		N	Dental retainer two surfaces	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6530		N	Retainer metallic 3+ surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6543		N	Dental retainr onlay 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6544		N	Dental retainr onlay 4/more	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6545		N	Dental retainr cast metl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6548		N	Porcelain/ceramic retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6720		N	Retain crown resin w hi nble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6721		N	Crown resin w/base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6722		N	Crown resin w/noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6740		N	Crown porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6750		N	Crown porcelain high noble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6751		N	Crown porcelain base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6752		N	Crown porcelain noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6780		N	Crown 3/4 high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6781		N	Crown 3/4 cast based metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6782		N	Crown 3/4 cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6783		N	Crown 3/4 porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6790		N	Crown full high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6791		N	Crown full base metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6792		N	Crown full noble metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6920		R	Dental connector bar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D6930		N	Dental recement bridge	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6940		N	Stress breaker	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6950		N	Precision attachment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6970		N	Post & core plus retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6971		N	Cast post bridge retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6972		N	Prefab post & core plus reta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6973		N	Core build up for retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6975		N	Coping metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6976		N	Each addtnl cast post	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6977		N	Each addtl prefab post	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6980		N	Bridge repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6999		N	Fixed prosthodontic proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7110		R	Oral surgery single tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7120		R	Each add tooth extraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7130		R	Tooth root removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7210		R	Rem imp tooth w mucoper flp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7220		R	Impact tooth remov soft tiss	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7230		R	Impact tooth remov part bony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7240		R	Impact tooth remov comp bony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7241		R	Impact tooth rem bony w/comp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7250		R	Tooth root removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7260		R	Oral antral fistula closure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7270		N	Tooth reimplantation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
D7272		N	Tooth transplantation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7280		N	Exposure impact tooth orthod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7281		N	Exposure tooth aid eruption	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7285		I	Biopsy of oral tissue hard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7286		I	Biopsy of oral tissue soft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7290		N	Repositioning of teeth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7291		R	Transseptal fiberotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7310		I	Alveoplasty w/ extraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7320		I	Alveoplasty w/o extraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7340		I	Vestibuloplasty ridge extens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7350		I	Vestibuloplasty exten graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7410		I	Rad exc lesion up to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7420		I	Lesion ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7430		I	Exc benign tumor to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7431		I	Benign tumor exc ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7440		I	Malig tumor exc to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7441		I	Malig tumor ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7450		I	Rem odontogen cyst to 1.25cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7451		I	Rem odontogen cyst ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7460		I	Rem nonodonto cyst to 1.25cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7461		I	Rem nonodonto cyst ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7465		I	Lesion destruction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7470		D	Rem exostosis maxilla/mandib	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7471		I	Rem exostosis any site	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7480		I	Partial ostectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7490		I	Mandible resection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7510		I	I&d absc intraoral soft tiss	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7520		I	I&d abscess extraoral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7530		I	Removal fb skin/areolar tiss	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7540		I	Removal of fb reaction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7550		I	Removal of sloughed off bone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7560		I	Maxillary sinusotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7610		I	Maxilla open reduct simple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7620		I	Clsd reduct simpl maxilla fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7630		I	Open red simpl mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7640		I	Clsd red simpl mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7650		I	Open red simp malar/zygom fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7660		I	Clsd red simp malar/zygom fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7670		I	Closd rductn splint alveolus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7680		I	Reduct simple facial bone fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7710		I	Maxilla open reduct compound	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7720		I	Clsd reduct compd maxilla fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7730		I	Open reduct compd mandble fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7740		I	Clsd reduct compd mandble fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7750		I	Open red comp malar/zygma fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7760		I	Clsd red comp malar/zygma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7770		I	Open reduc compd alveolus fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7780		I	Reduct compnd facial bone fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7810		I	Tmj open reduct-dislocation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7820		I	Closed tmp manipulation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7830		I	Tmj manipulation under anest	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7840		I	Removal of tmj condyle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7850		I	Tmj meniscectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7852		I	Tmj repair of joint disc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7854		I	Tmj excisn of joint membrane	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7856		I	Tmj cutting of a muscle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7858		I	Tmj reconstruction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7860		I	Tmj cutting into joint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7865		I	Tmj reshaping components	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7870		I	Tmj aspiration joint fluid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7871		N	Lysis + lavage w catheters	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7872		I	Tmj diagnostic arthroscopy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7873		I	Tmj arthroscopy lysis adhesn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7874		I	Tmj arthroscopy disc reposit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7875		I	Tmj arthroscopy synovectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7876		I	Tmj arthroscopy discectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7877		I	Tmj arthroscopy debridement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7880		I	Occlusal orthotic appliance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7899		I	Tmj unspecified therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7910		I	Dent sutur recent wnd to 5cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7911		I	Dental suture wound to 5 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7912		I	Suture complicate wnd ≤ 5 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7920		I	Dental skin graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7940		R	Reshaping bone orthognathic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7941		I	Bone cutting ramus closed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7942		D	Bone cutting ramus open	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7943		I	Cutting ramus open w/graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7944		I	Bone cutting segmented	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7945		I	Bone cutting body mandible	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7946		I	Reconstruction maxilla total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7947		I	Reconstruct maxilla segment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7948		I	Reconstruct midface no graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS[2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
D7949		I	Reconstruct midface w/graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7950		I	Mandible graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7955		I	Repair maxillofacial defects	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7960		I	Frenulectomy/frenulotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7970		I	Excision hyperplastic tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7971		I	Excision pericoronal gingiva	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7980		I	Sialolithotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7981		I	Excision of salivary gland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7982		I	Sialodochoplasty	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7983		I	Closure of salivary fistula	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7990		I	Emergency tracheotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7991		I	Dental coronoidectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7995		I	Synthetic graft facial bones	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7996		I	Implant mandible for augment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7997		N	Appliance removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7999		I	Oral surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8010		N	Limited dental tx primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8020		N	Limited dental tx transition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8030		N	Limited dental tx adolescent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8040		N	Limited dental tx adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8050		N	Intercep dental tx primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8060		N	Intercep dental tx transitn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8070		N	Compre dental tx transition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8080		N	Compre dental tx adolescent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8090		N	Compre dental tx adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8210		N	Orthodontic rem appliance tx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8220		N	Fixed appliance therapy habt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8660		N	Preorthodontic tx visit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8670		N	Periodic orthodontic tx visit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8680		N	Orthodontic retention	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8690		N	Orthodontic treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8691		N	Repair ortho appliance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8692		N	Replacement retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8999		N	Orthodontic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9110		R	Tx dental pain minor proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9210		I	Dentl anesthesia w/o surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9211		I	Regional block anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9212		I	Trigeminal block anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9215		I	Local anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9220		I	General anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9221		I	General anesthesia ea ad 15m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9230		R	Analgesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9240		D	Intravenous sedation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9241		I	Intravenous sedation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9242		I	IV sedation ea ad 30 m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9248		R	Sedation (non-iv)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9310		I	Dental consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9410		I	Dental house call	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9420		I	Hospital call	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9430		I	Office visit during hours	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9440		I	Office visit after hours	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9610		I	Dent therapeutic drug inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9630		R	Other drugs/medicaments	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9910		N	Dent appl desensitizing med	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9911		N	Appl desensitizing resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9920		N	Behavior management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9930		R	Treatment of complications	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9940		R	Dental occlusal guard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9941		N	Fabrication athletic guard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9950		R	Occlusion analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9951		R	Limited occlusal adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9952		R	Complete occlusal adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9970		N	Enamel microabrasion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9971		N	Odontoplasty 1–2 teeth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9972		N	Extrnl bleaching per arch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9973		N	Extrnl bleaching per tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9974		N	Intrnl bleaching per tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9999		I	Adjunctive procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0001		X	Drawing blood for specimen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0002		A	Temporary urinary catheter	0.50	3.05	2.48	0.16	0.31	0.03	3.58	3.01	0.69	0.84	000
G0004		A	ECG transm phys review & int	0.52	7.53	7.64	NA	NA	0.46	8.51	8.62	NA	NA	XXX
G0005		A	ECG 24 hour recording	0.00	1.25	1.26	NA	NA	0.07	1.32	1.33	NA	NA	XXX
G0006		A	ECG transmission & analysis	0.00	6.08	6.12	NA	NA	0.37	6.45	6.49	NA	NA	XXX
G0007		A	ECG phy review & interpret	0.52	0.20	0.26	0.20	0.26	0.02	0.74	0.80	0.74	0.80	XXX
G0008		X	Admin influenza virus vac	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0009		X	Admin pneumococcal vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0010		X	Admin hepatitis b vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0015		A	Post symptom ECG tracing	0.00	6.08	6.12	NA	NA	0.37	6.45	6.49	NA	NA	XXX
G0016		A	Post symptom ECG md review	0.52	0.26	0.30	0.26	0.30	0.02	0.80	0.84	0.80	0.84	XXX
G0025		A	Collagen skin test kit	0.00	0.00	0.26	0.00	0.26	0.00	0.00	0.26	0.00	0.26	XXX
G0026		X	Fecal leukocyte examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0027		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
G0030		C	PET imaging prev PET single	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0030	26	A	PET imaging prev PET single	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0030	TC	C	PET imaging prev PET single	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0031		C	PET imaging prev PET multple	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0031	26	A	PET imaging prev PET multple	1.87	0.70	0.70	0.70	0.70	0.07	2.64	2.64	2.64	2.64	XXX
G0031	TC	C	PET imaging prev PET multple	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0032		C	PET follow SPECT 78464 singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0032	26	A	PET follow SPECT 78464 singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0032	TC	C	PET follow SPECT 78464 singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0033		C	PET follow SPECT 78464 mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0033	26	A	PET follow SPECT 78464 mult	1.87	0.70	0.70	0.70	0.70	0.06	2.63	2.63	2.63	2.63	XXX
G0033	TC	C	PET follow SPECT 78464 mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0034		C	PET follow SPECT 76865 singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0034	26	A	PET follow SPECT 76865 singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0034	TC	C	PET follow SPECT 76865 singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0035		C	PET follow SPECT 78465 mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0035	26	A	PET follow SPECT 78465 mult	1.87	0.70	0.70	0.70	0.70	0.07	2.64	2.64	2.64	2.64	XXX
G0035	TC	C	PET follow SPECT 78465 mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0036		C	PET follow cornry angio sing	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0036	26	A	PET follow cornry angio sing	1.50	0.52	0.52	0.52	0.52	0.06	2.08	2.08	2.08	2.08	XXX
G0036	TC	C	PET follow cornry angio sing	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0037		C	PET follow cornry angio mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0037	26	A	PET follow cornry angio mult	1.87	0.70	0.70	0.70	0.70	0.07	2.64	2.64	2.64	2.64	XXX
G0037	TC	C	PET follow cornry angio mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0038		C	PET follow myocard perf sing	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0038	26	A	PET follow myocard perf sing	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0038	TC	C	PET follow myocard perf sing	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0039		C	PET follow myocard perf mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0039	26	A	PET follow myocard perf mult	1.87	0.70	0.70	0.70	0.70	0.06	2.63	2.63	2.63	2.63	XXX
G0039	TC	C	PET follow myocard perf mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0040		C	PET follow stress echo singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0040	26	A	PET follow stress echo singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0040	TC	C	PET follow stress echo singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0041		C	PET follow stress echo mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0041	26	A	PET follow stress echo mult	1.87	0.70	0.70	0.70	0.70	0.06	2.63	2.63	2.63	2.63	XXX
G0041	TC	C	PET follow stress echo mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0042		C	PET follow ventriculogm sing	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0042	26	A	PET follow ventriculogm sing	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0042	TC	C	PET follow ventriculogm sing	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0043		C	PET follow ventriculogm mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0043	26	A	PET follow ventriculogm mult	1.87	0.70	0.70	0.70	0.70	0.06	2.63	2.63	2.63	2.63	XXX
G0043	TC	C	PET follow ventriculogm mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0044		C	PET following rest ECG singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0044	26	A	PET following rest ECG singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0044	TC	C	PET following rest ECG singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0045		C	PET following rest ECG mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0045	26	A	PET following rest ECG mult	1.87	0.70	0.70	0.70	0.70	0.06	2.63	2.63	2.63	2.63	XXX
G0045	TC	C	PET following rest ECG mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0046		C	PET follow stress ECG singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0046	26	A	PET follow stress ECG singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0046	TC	C	PET follow stress ECG singl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0047		C	PET follow stress ECG mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0047	26	A	PET follow stress ECG mult	1.87	0.70	0.70	0.70	0.70	0.06	2.63	2.63	2.63	2.63	XXX
G0047	TC	C	PET follow stress ECG mult	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0050		A	Residual urine by ultrasound	0.00	0.86	0.87	NA	NA	0.04	0.90	0.91	NA	NA	XXX
G0101		A	CA screen;pelvic/breast exam	0.45	0.59	0.52	0.17	0.20	0.02	1.06	0.99	0.64	0.67	XXX
G0102		A	Prostate ca screening; dre	0.17	0.54	0.46	0.06	0.10	0.01	0.72	0.64	0.24	0.28	XXX
G0103		X	Psa, total screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0104		A	CA screen;flexi sigmoidscope	0.96	1.68	1.59	0.42	0.65	0.07	2.71	2.62	1.45	1.68	000
G0105		A	Colorectal scrn; hi risk ind	3.70	5.39	5.16	1.63	2.34	0.26	9.35	9.12	5.59	6.30	000
G0106		A	Colon CA screen;barium enema	0.99	2.60	2.65	NA	NA	0.15	3.74	3.79	NA	NA	XXX
G0106	26	A	Colon CA screen;barium enema	0.99	0.34	0.38	0.34	0.38	0.04	1.37	1.41	1.37	1.41	XXX
G0106	TC	A	Colon CA screen;barium enema	0.00	2.26	2.27	NA	NA	0.11	2.37	2.38	NA	NA	XXX
G0107		X	CA screen; fecal blood test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0108		A	Diab manage trn per indiv	0.00	1.64	1.64	1.64	1.64	0.01	1.65	1.65	1.65	1.65	XXX
G0109		A	Diab manage trn ind/group	0.00	0.96	0.96	0.96	0.96	0.01	0.97	0.97	0.97	0.97	XXX
G0110		R	Nett pulm-rehab educ; ind	0.90	0.66	0.57	0.36	0.34	0.03	1.59	1.50	1.29	1.27	XXX
G0111		R	Nett pulm-rehab educ; group	0.27	0.27	0.26	0.14	0.16	0.01	0.55	0.54	0.42	0.44	XXX
G0112		R	Nett;nutrition guid, initial	1.72	1.36	1.28	0.68	0.77	0.07	3.15	3.07	2.47	2.56	XXX
G0113		R	Nett;nutrition guid,subseqnt	1.29	0.95	0.92	0.41	0.52	0.05	2.29	2.26	1.75	1.86	XXX
G0114		R	Nett; psychosocial consult	1.20	0.49	0.46	0.37	0.37	0.03	1.72	1.69	1.60	1.60	XXX
G0115		R	Nett; psychological testing	1.20	0.52	0.49	0.48	0.46	0.03	1.75	1.72	1.71	1.69	XXX
G0116		R	Nett; psychosocial counsel	1.11	0.60	0.55	0.33	0.34	0.03	1.74	1.69	1.47	1.48	XXX
G0120		A	Colon ca scrn; barium enema	0.99	2.60	2.65	NA	NA	0.15	3.74	3.79	NA	NA	XXX
G0120	26	A	Colon ca scrn; barium enema	0.99	0.34	0.38	0.34	0.38	0.04	1.37	1.41	1.37	1.41	XXX
G0120	TC	A	Colon ca scrn; barium enema	0.00	2.26	2.27	NA	NA	0.11	2.37	2.38	NA	NA	XXX
G0121		N	Colon ca scrn not hi rsk ind	3.70	6.16	5.74	1.47	2.22	0.13	9.99	9.57	5.30	6.05	XXX
G0122		N	Colon ca scrn; barium enema	0.99	2.65	2.69	NA	NA	0.15	3.79	3.83	NA	NA	XXX
G0122	26	N	Colon ca scrn; barium enema	0.99	0.39	0.42	0.39	0.42	0.04	1.42	1.45	1.42	1.45	XXX
G0122	TC	N	Colon ca scrn; barium enema	0.00	2.26	2.27	NA	NA	0.11	2.37	2.38	NA	NA	XXX
G0123		X	Screen cerv/vag thin layer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0124		A	Screen c/v thin layer by MD	0.42	0.19	0.23	0.19	0.23	0.01	0.62	0.66	0.62	0.66	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
G0125		A	Lung image (PET)	1.50	56.15	56.15	NA	NA	2.06	59.71	59.71	NA	NA	XXX
G0125	26	A	Lung image (PET)	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0125	TC	A	Lung image (PET)	0.00	55.63	55.63	NA	NA	2.01	57.64	57.64	NA	NA	XXX
G0126		A	Lung image (PET) staging	1.87	56.33	56.33	NA	NA	2.07	60.27	60.27	NA	NA	XXX
G0126	26	A	Lung image (PET) staging	1.87	0.70	0.70	0.70	0.70	0.06	2.63	2.63	2.63	2.63	XXX
G0126	TC	A	Lung image (PET) staging	0.00	55.63	55.63	NA	NA	2.01	57.64	57.64	NA	NA	XXX
G0127		R	Trim nail(s)	0.11	0.48	0.43	0.04	0.10	0.01	0.60	0.55	0.16	0.22	000
G0128		R	CORF skilled nursing service	0.08	0.03	0.03	0.03	0.03	0.01	0.12	0.12	0.12	0.12	XXX
G0130		A	Single energy x-ray study	0.22	0.90	0.90	NA	NA	0.05	1.17	1.17	NA	NA	XXX
G0130	26	A	Single energy x-ray study	0.22	0.11	0.11	0.11	0.11	0.01	0.34	0.34	0.34	0.34	XXX
G0130	TC	A	Single energy x-ray study	0.00	0.79	0.79	NA	NA	0.04	0.83	0.83	NA	NA	XXX
G0131		A	CT scan, bone density study	0.25	3.18	3.18	NA	NA	0.14	3.57	3.57	NA	NA	XXX
G0131	26	A	CT scan, bone density study	0.25	0.13	0.13	0.13	0.13	0.01	0.39	0.39	0.39	0.39	XXX
G0131	TC	A	CT scan, bone density study	0.00	3.05	3.05	NA	NA	0.13	3.18	3.18	NA	NA	XXX
G0132		A	CT scan, bone density study	0.22	0.90	0.90	NA	NA	0.05	1.17	1.17	NA	NA	XXX
G0132	26	A	CT scan, bone density study	0.22	0.11	0.11	0.11	0.11	0.01	0.34	0.34	0.34	0.34	XXX
G0132	TC	A	CT scan, bone density study	0.00	0.79	0.79	NA	NA	0.04	0.83	0.83	NA	NA	XXX
G0141		A	Scr c/v cyto,autosys and md	0.42	0.19	0.23	0.19	0.23	0.01	0.62	0.66	0.62	0.66	XXX
G0143		X	Scr c/v cyto,thinlayer,rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0144		X	Scr c/v cyto,thinlayer,rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0145		X	Scr c/v cyto,thinlayer,rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0147		X	Scr c/v cyto, automated sys	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0148		X	Scr c/v cyto, autosys, rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0159		C	Perc declot dialysis graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0160		C	Cryo. ablation, prostate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
G0161		C	Echo guide for cryo probes	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0161	26	C	Echo guide for cryo probes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0161	TC	C	Echo guide for cryo probes	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
G0163		A	Pet for rec of colorectal ca	1.50	56.22	56.22	NA	NA	2.06	59.78	59.78	NA	NA	XXX
G0163	26	A	Pet for rec of colorectal ca	1.50	0.59	0.59	0.59	0.59	0.05	2.14	2.14	2.14	2.14	XXX
G0163	TC	A	Pet for rec of colorectal ca	0.00	55.63	55.63	NA	NA	2.01	57.64	57.64	NA	NA	XXX
G0164		A	Pet for lymphoma staging	1.87	56.37	56.37	NA	NA	2.06	60.30	60.30	NA	NA	XXX
G0164	26	A	Pet for lymphoma staging	1.87	0.74	0.74	0.74	0.74	0.05	2.66	2.66	2.66	2.66	XXX
G0164	TC	A	Pet for lymphoma staging	0.00	55.63	55.63	NA	NA	2.01	57.64	57.64	NA	NA	XXX
G0165		A	Pet,rec of melanoma/met ca	1.50	56.22	56.22	NA	NA	2.06	59.78	59.78	NA	NA	XXX
G0165	26	A	Pet,rec of melanoma/met ca	1.50	0.59	0.59	0.59	0.59	0.05	2.14	2.14	2.14	2.14	XXX
G0165	TC	A	Pet,rec of melanoma/met ca	0.00	55.63	55.63	NA	NA	2.01	57.64	57.64	NA	NA	XXX
G0166		A	Extrnl counterpulse, per tx	0.07	4.11	4.11	0.03	0.03	0.01	4.19	4.19	0.11	0.11	XXX
G0167		C	Hyperbaric oz tx;no md reqrd	0.00	NA	NA	0.71	0.72	0.00	NA	NA	0.71	0.72	XXX
G0168		A	Wound closure by adhesive	0.45	1.86	1.86	0.26	0.26	0.02	2.33	2.33	0.73	0.73	010
G0169		A	Removal tissue; no anesthsia	0.50	0.56	0.56	0.56	0.56	0.04	1.10	1.10	1.10	1.10	XXX
G0170		A	Skin biograft	1.50	2.29	2.29	0.99	0.99	0.39	4.18	4.18	2.88	2.88	010
G0171		A	Skin biograft add-on	0.38	0.30	0.30	0.15	0.15	0.39	1.07	1.07	0.92	0.92	ZZZ
Gxxx1		A	Home health care supervision	1.73	1.31	1.12	0.61	0.60	0.06	3.10	2.91	2.40	2.39	XXX
Gxxx2		A	Hospice care supervision	1.73	1.55	1.30	0.58	0.57	0.06	3.34	3.09	2.37	2.36	XXX
Gxxx3		A	Initial cert, home health	0.67	1.10	1.10	0.27	0.27	0.06	1.83	1.83	1.00	1.00	XXX
Gxxx4		A	Recertification, home health	0.45	1.00	1.00	0.18	0.18	0.06	1.51	1.51	0.69	0.69	XXX
Gxxx5		A	Treatment of choroid lesion	13.13	9.93	9.93	9.10	9.10	0.52	23.58	23.58	22.75	22.75	090
Gxxx6		A	Ocular phototherapy, iv incl	0.55	34.59	34.[redacted]	0.27	0.27	0.52	35.66	35.66	1.34	1.34	XXX
Gxxx7		A	Ocular phototherapy, iv incl	0.28	0.24	0.24	0.14	0.14	0.52	1.04	1.04	0.94	0.94	ZZZ
J0120		E	Tetracyclin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0130		E	Abciximab injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0150		E	Injection adenosine 6 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0151		E	Adenosine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0170		E	Adrenalin epinephrin inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0190		E	Inj biperiden lactate/5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0200		E	Alatrofloxacin mesylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0205		E	Alglucerase injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0207		E	Amifostine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0210		E	Methyldopate hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0256		E	Alpha 1 proteinase inhibitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0270		E	Alprostadil for injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0275		E	Alprostadil urethral suppos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0280		E	Aminophyllin 250 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0285		E	Amphotericin B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0286		E	Amphotericin B lipid complex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0290		E	Ampicillin 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0295		E	Ampicillin sodium per 1.5 gm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0300		E	Amobarbital 125 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0330		E	Succinycholine chloride inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0340		E	Nandrolon phenpropionate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0350		E	Injection anistreplase 30 u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0360		E	Hydralazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0380		E	Inj metaraminol bitartrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0390		E	Chloroquine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0395		E	Arbutamine HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0400		E	Inj trimethaphan camsylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0456		E	Azithromycin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0460		E	Atropine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0470		E	Dimecaprol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0475		E	Baclofen 10 MG injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0476		E	Baclofen intrathecal trial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
J0500		E	Dicyclomine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0510		E	Benzquinamide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0515		E	Inj benztropine mesylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0520		E	Bethanechol chloride inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0530		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0540		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0550		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0560		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0570		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0580		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0585		E	Botulinum toxin a per unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0590		E	Ethylnorepinephrine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0600		E	Edetate calcium disodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0610		E	Calcium gluconate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0620		E	Calcium glycer & lact/10 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0630		E	Calcitonin salmon injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0635		E	Calcitriol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0640		E	Leucovorin calcium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0670		E	Inj mepivacaine HCL/10 ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0690		E	Cefazolin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0694		E	Cefoxitin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0695		E	Cefonocid sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0696		E	Ceftriaxone sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0697		E	Sterile cefuroxime injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0698		E	Cefotaxime sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0702		E	Betamethasone acet&sod phosp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0704		E	Betamethasone sod phosp/4 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0710		E	Cephapirin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0713		E	Inj ceftazidime per 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0715		E	Ceftizoxime sodium / 500 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0720		E	Chloramphenicol sodium injec	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0725		E	Chorionic gonadotropin/1000u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0730		E	Chlorpheniramin maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0735		E	Clonidine hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0740		E	Cidofovir injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0743		E	Cilastatin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0745		E	Inj codeine phosphate /30 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0760		E	Colchicine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0770		E	Colistimethate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0780		E	Prochlorperazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0800		E	Corticotropin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0810		E	Cortisone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0835		E	Inj cosyntropin per 0.25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0850		E	Cytomegalovirus imm IV /vial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0895		E	Deferoxamine mesylate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0900		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0945		E	Brompheniramine maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0970		E	Estradiol valerate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1000		E	Depo-estradiol cypionate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1020		E	Methylprednisolone 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1030		E	Methylprednisolone 40 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1040		E	Methylprednisolone 80 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1050		E	Medroxyprogesterone inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1055		N	Medrxyprogester acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1060		E	Testosterone cypionate 1 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1070		E	Testosterone cypionat 100 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1080		E	Testosterone cypionat 200 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1090		E	Testosterone cypionate 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1095		E	Inj dexamethasone acetate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1100		E	Dexamethasone sodium phos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1110		E	Inj dihydroergotamine mesylt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1120		E	Acetazolamid sodium injectio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1160		E	Digoxin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1165		E	Phenytoin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1170		E	Hydromorphone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1180		E	Dyphylline injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1190		E	Dexrazoxane HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1200		E	Diphenhydramine hcl injectio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1205		E	Chlorothiazide sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1212		E	Dimethyl sulfoxide 50% 50 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1230		E	Methadone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1240		E	Dimenhydrinate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1245		E	Dipyridamole injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1250		E	Inj dobutamine HCL/250 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1260		E	Dolasetron mesylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1320		E	Amitriptyline injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1325		E	Epoprostenol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1327		E	Eptifibatide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1330		E	Ergonovine maleate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1362		E	Erythromycin glucep / 250 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1364		E	Erythro lactobionate /500 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1380		E	Estradiol valerate 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

CPT [1]/ HCPCS [2]
J1390
J1410
J1435
J1436
J1438
J1440
J1441
J1450
J1455
J1460
J1470
J1480
J1490
J1500
J1510
J1520
J1530
J1540
J1550
J1560
J1561
J1562
J1565
J1570
J1580
J1600
J1610
J1620
J1626
J1630
J1631
J1642
J1644
J1645
J1650
J1670
J1690
J1700
J1710
J1720
J1730
J1739
J1741
J1742
J1745
J1750
J1760
J1770
J1780
J1785
J1790
J1800
J1810
J1820
J1825
J1830
J1840
J1850
J1885
J1890
J1910
J1930
J1940
J1950
J1955
J1956
J1960
J1970
J1980
J1990
J2000
J2010
J2060
J2150
J2175
J2180
J2210
J2240
J2250
J2260
J2270
J2271

[1] CPT co
[2] Copyrig
[3] PE RVU

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
J1390		E	Estradiol valerate 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1410		E	Inj estrogen conjugate 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1435		E	Injection estrone per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1436		E	Etidronate disodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1438		E	Etanercept injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1440		E	Filgrastim 300 mcg injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1441		E	Filgrastim 480 mcg injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1450		E	Fluconazole	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1455		E	Foscarnet sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1460		E	Gamma globulin 1 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1470		E	Gamma globulin 2 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1480		E	Gamma globulin 3 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1490		E	Gamma globulin 4 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1500		E	Gamma globulin 5 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1510		E	Gamma globulin 6 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1520		E	Gamma globulin 7 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1530		E	Gamma globulin 8 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1540		E	Gamma globulin 9 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1550		E	Gamma globulin 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1560		E	Gamma globulin ≤ 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1561		E	Immune globulin 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1562		E	Immune globulin 5 gms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1565		E	RSV-ivig	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1570		E	Ganciclovir sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1580		E	Garamycin gentamicin inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1600		E	Gold sodium thiomaleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1610		E	Glucagon hydrochloride/1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1620		E	Gonadorelin hydrochl/ 100 mcg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1626		E	Granisetron HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1630		E	Haloperidol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1631		E	Haloperidol decanoate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1642		E	Inj heparin sodium per 10 u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1644		E	Inj heparin sodium per 1000u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1645		E	Dalteparin sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1650		E	Inj enoxaparin sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1670		E	Tetanus immune globulin inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1690		E	Prednisolone tebutate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1700		E	Hydrocortisone acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1710		E	Hydrocortisone sodium ph inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1720		E	Hydrocortisone sodium succ i	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1730		E	Diazoxide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1739		E	Hydroxyprogesterone cap 125	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1741		E	Hydroxyprogesterone cap 250	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1742		E	Ibutilide fumarate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1745		E	Infliximab injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1750		E	Iron dextran	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1760		D	Iron dextran 2 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	.00	0.00	0.00	XXX
J1770		D	Iron dextran 5 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1780		D	Iron dextran 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1785		E	Injection imiglucerase /unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1790		E	Droperidol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1800		E	Propranolol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1810		E	Droperidol/fentanyl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1820		E	Insulin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1825		E	Interferon beta-1a	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1830		E	Interferon beta-1b / .25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1840		E	Kanamycin sulfate 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1850		E	Kanamycin sulfate 75 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1885		E	Ketorolac tromethamine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1890		E	Cephalothin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1910		E	Kutapressin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1930		E	Propiomazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1940		E	Furosemide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1950		E	Leuprolide acetate /3.75 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1955		E	Inj levocarnitine per 1 gm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1956		E	Levofloxacin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1960		E	Levorphanol tartrate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1970		E	Methotrimeprazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1980		E	Hyoscyamine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1990		E	Chlordiazepoxide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2000		E	Lidocaine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2010		E	Lincomycin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2060		E	Lorazepam injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2150		E	Mannitol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2175		E	Meperidine hydrochl /100 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2180		E	Meperidine/promethazine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2210		E	Methylergonovin maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2240		E	Metocurine iodide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2250		E	Inj midazolam hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2260		E	Inj milrinone lactate / 5 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2270		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2271		E	Morphine so4 injection 100mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
J2275		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2300		E	Inj nalbuphine hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2310		E	Inj naloxone hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2320		E	Nandrolone decanoate 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2321		E	Nandrolone decanoate 100 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2322		E	Nandrolone decanoate 200 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2330		E	Thiothixene injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2350		E	Niacinamide/niacin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2352		E	Octreotide acetate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2355		E	Oprelvekin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2360		E	Orphenadrine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2370		E	Phenylephrine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2400		E	Chloroprocaine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2405		E	Ondansetron hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2410		E	Oxymorphone hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2430		E	Pamidronate disodium /30 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2440		E	Papaverin hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2460		E	Oxytetracycline injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2480		E	Hydrochlorides of opium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2500		E	Paricalcitol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2510		E	Penicillin g procaine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2512		E	Inj pentagastrin per 2 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2515		E	Pentobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2540		E	Penicillin g potassium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2543		E	Piperacillin/tazobactam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2545		E	Pentamidine isethionte/300mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2550		E	Promethazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2560		E	Phenobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2590		E	Oxytocin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2597		E	Inj desmopressin acetate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2640		E	Prednisolone sodium ph inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2650		E	Prednisolone acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2670		E	Totazolne hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2675		E	Inj progesterone per 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2680		E	Fluphenazine decanoate 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2690		E	Procainamide hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2700		E	Oxacillin sodium injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2710		E	Neostigmine methylsltte inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2720		E	Inj protamine sulfate/10 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2725		E	Inj protirelin per 250 mcg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2730		E	Pralidoxime chloride inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2760		E	Phentolaine mesylate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2765		E	Metoclopramide hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2780		E	Ranitidine hydrochloride inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2790		E	Rho d immune globulin inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2792		E	Rho(D) immune globulin h, sd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2800		E	Methocarbamol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2810		E	Inj theophylline per 40 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2820		E	Sargramostim injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2860		E	Secobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2910		E	Aurothioglucose injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2912		E	Sodium chloride injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2920		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2930		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2950		E	Promazine hcl injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2970		E	Methicillin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2994		E	Reteplase double bolus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2995		E	Inj streptokinase /250000 IU	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2996		E	Alteplase recombinant inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3000		E	Streptomycin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3010		E	Fentanyl citrate injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3030		E	Sumatriptan succinate / 6 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3070		E	Pentazocine hcl injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3080		E	Chlorprothixene injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3105		E	Terbutaline sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3120		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3130		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3140		E	Testosterone suspension inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3150		E	Testosteron propionate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3230		E	Chlorpromazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3240		E	Thyrotropin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3245		E	Tirofiban hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3250		E	Trimethobenzamide hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3260		E	Tobramycin sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3265		E	Injection torsemide 10 mg/ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3270		E	Imipramine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3280		E	Thiethylperazine maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3301		E	Triamcinolone acetonide inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3302		E	Triamcinolone diacetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3303		E	Triamcinolone hexacetonl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3305		E	Inj trimetrexate glucoronate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3310		E	Perphenazine injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
J3320		E	Spectinomycn di-hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3350		E	Urea injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3360		E	Diazepam injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3364		E	Urokinase 5000 IU injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3365		E	Urokinase 250,000 IU inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3370		R	Vancomycin hcl injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3390		E	Methoxamine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3400		E	Triflupromazine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3410		E	Hydroxyzine hcl injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3420		E	Vitamin b12 injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3430		E	Vitamin k phytonadione inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3450		E	Mephentermine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3470		E	Hyaluronidase injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3475		E	Inj magnesium sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3480		E	Inj potassium chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3490		E	Drugs unclassified injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3520		N	Edetate disodium per 150 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3530		E	Nasal vaccine inhalation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3535		N	Metered dose inhaler drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3570		N	Laetrile amygdalin vit B17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7030		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7040		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7042		E	5% dextrose/normal saline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7050		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7051		E	Sterile saline/water	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7060		E	5% dextrose/water	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7070		E	D5w infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7100		E	Dextran 40 infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7110		E	Dextran 75 infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7120		E	Ringers lactate infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7130		E	Hypertonic saline solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7190		X	Factor viii	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7191		X	Factor VIII (porcine)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7192		X	Factor viii recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7194		X	Factor ix complex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7196		D	Othr hemophilia clot factors	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7197		X	Antithrombin iii injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7198		E	Anti-inhibitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7199		E	Hemophilia clot factor noc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7300		N	Intraut copper contraceptive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7310		E	Ganciclovir long act implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7315		E	Sodium hyaluronate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7320		E	Hylan G–F 20 injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7500		X	Azathioprine oral 50mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7501		X	Azathioprine parenteral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7502		E	Cyclosporine oral 100 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7503		D	Cyclosporine parenteral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7504		X	Lymphocyte immune globulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7505		X	Monoclonal antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7506		X	Prednisone oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7507		E	Tacrolimus oral per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7508		E	Tacrolimus oral per 5 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7509		X	Methylprednisolone oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7510		X	Prednisolone oral per 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7513		E	Daclizumab, parenteral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7515		E	Cyclosporine oral 25 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7516		E	Cyclosporin parenteral 250mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7517		E	Mycophenolate mofetil oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7599		X	Immunosuppressive drug noc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7608		E	Acetylcysteine inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7610		E	Acetylcysteine 10% injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7615		E	Acetylcysteine 20% injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7618		E	Albuterol inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7619		E	Albuterol inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7620		E	Albuterol sulfate .083%/ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7625		E	Albuterol sulfate .5% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7627		E	Bitolterolmesylate inhal sol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7628		E	Bitolterol mes inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7629		E	Bitolterol mes inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7630		E	Cromolyn sodium injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7631		E	Cromolyn sodium inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7635		E	Atropine inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7636		E	Atropine inhal sol unit dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7637		E	Dexamethasone inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7638		E	Dexamethasone inhal sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7639		E	Dornase alpha inhal sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7640		E	Epinephrine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7642		E	Glycopyrrolate inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7643		E	Glycopyrrolate inhal sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7644		E	Ipratropium brom inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7645		E	Ipratropium bromide .02%/ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7648		E	Isoetharine hcl inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

[1] CPT codes and descriptions only are copyright 2000 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
J7649		E	Isoetharine hcl inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7650		E	Isoetharine hcl .1% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7651		E	Isoetharine hcl .125% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7652		E	Isoetharine hcl .167% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7653		E	Isoetharine hcl .2%/ inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7654		E	Isoetharine hcl .25% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7655		E	Isoetharine hcl 1% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7658		E	Isoproterenolhcl inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7659		E	Isoproterenol hcl inh sol ud	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7660		E	Isoproterenol hcl .5% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7665		E	Isoproterenol hcl 1% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7668		E	Metaproterenol inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7669		E	Metaproterenol inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7670		E	Metaproterenol sulfate .4%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7672		E	Metaproterenol sulfate .6%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7675		E	Metaproterenol sulfate 5%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7680		E	Terbutaline so4 inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7681		E	Terbutaline so4 inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7682		E	Tobramycin inhalation sol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7683		E	Triamcinolone inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7684		E	Triamcinolone inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7699		E	Inhalation solution for DME	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7799		E	Non-inhalation drug for DME	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8499		N	Oral prescrip drug non chemo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8510		E	Oral busulfan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8520		E	Capecitabine, oral, 150 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8521		E	Capecitabine, oral, 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8530		E	Cyclophosphamide oral 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8560		E	Etoposide oral 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8600		E	Melphalan oral 2 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8610		E	Methotrexate oral 2.5 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8999		E	Oral prescription drug chemo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9000		E	Doxorubic hcl 10 MG vl chemo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9001		E	Doxorubicin hcl liposome inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9015		E	Aldesleukin/single use vial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9020		E	Asparaginase injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9031		E	Bcg live intravesical vac	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9040		E	Bleomycin sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9045		E	Carboplatin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9050		E	Carmus bischl nitro inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9060		E	Cisplatin 10 MG injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9062		E	Cisplatin 50 MG injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9065		E	Inj cladribine per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9070		E	Cyclophosphamide 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9080		E	Cyclophosphamide 200 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9090		E	Cyclophosphamide 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9091		E	Cyclophosphamide 1.0 grm inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9092		E	Cyclophosphamide 2.0 grm inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9093		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9094		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9095		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9096		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9097		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9100		E	Cytarabine hcl 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9110		E	Cytarabine hcl 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9120		E	Dactinomycin actinomycin d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9130		E	Dacarbazine 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9140		E	Dacarbazine 200 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9150		E	Daunorubicin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9151		E	Daunorubicin citrate liposom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9165		E	Diethylstilbestrol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9170		E	Docetaxel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9181		E	Etoposide 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9182		E	Etoposide 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9185		E	Fludarabine phosphate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9190		E	Fluorouracil injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9200		E	Floxuridine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9201		E	Gemcitabine HCl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9202		E	Goserelin acetate implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9206		E	Irinotecan injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9208		E	Ifosfomide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9209		E	Mesna injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9211		E	Idarubicin hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9212		E	Interferon alfacon-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9213		E	Interferon alfa-2a inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9214		E	Interferon alfa-2b inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9215		E	Interferon alfa-n3 inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9216		E	Interferon gamma 1-b inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9217		E	Leuprolide acetate suspnsion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9218		E	Leuprolide acetate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9230		E	Mechlorethamine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9245		E	Inj melphalan hydrochl 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
J9250		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9260		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9265		E	Paclitaxel injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9266		E	Pegaspargase/singl dose vial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9268		E	Pentostatin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9270		E	Plicamycin (mithramycin) inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9280		E	Mitomycin 5 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9290		E	Mitomycin 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9291		E	Mitomycin 40 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9293		E	Mitoxantrone hydrochl / 5 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9310		E	Rituximab cancer treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9320		E	Streptozocin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9340		E	Thiotepa injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9350		E	Topotecan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9355		E	Trastuzumab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9357		E	Valrubicin, 200 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9360		E	Vinblastine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9370		E	Vincristine sulfate 1 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9375		E	Vincristine sulfate 2 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9380		E	Vincristine sulfate 5 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9390		E	Vinorelbine tartrate/10 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9600		E	Porfimer sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9999		E	Chemotherapy drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0064		A	Visit for drug monitoring	0.37	0.24	0.23	0.12	0.14	0.01	0.62	0.61	0.50	0.52	XXX
M0075		N	Cellular therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0076		N	Prolotherapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0100		N	Intragastric hypothermia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0300		N	IV chelationtherapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0301		N	Fabric wrapping of aneurysm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0302	TC	A	Assessment of cardiac output	0.00	0.81	0.81	NA	NA	0.02	0.83	0.83	NA	NA	XXX
P2028		X	Cephalin flocculation test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2029		X	Congo red blood test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2031		N	Hair analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2033		X	Blood thymol turbidity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2038		X	Blood mucoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P3000		X	Screen pap by tech w md supv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P3001		A	Screening pap smear by phys	0.42	0.19	0.23	0.19	0.23	0.01	0.62	0.66	0.62	0.66	XXX
P7001		I	Culture bacterial urine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9010		E	Whole blood for transfusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9011		E	Blood split unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9012		E	Cryoprecipitate each unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9013		E	Unit/s blood fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9016		E	Leukocyte poor blood, unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9017		E	One donor fresh frozn plasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9018		E	Plasma protein fract, unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9019		E	Platelet concentrate unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9020		E	Platelet rich plasma unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9021		E	Red blood cells unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9022		E	Washed red blood cells unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9023		X	Frozen plasma, pooled, sd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9603		X	One-way allow prorated miles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9604		X	One-way allow prorated trip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9612		X	Catheterize for urine spec	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9615		X	Urine specimen collect mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0034		X	Admin of influenza vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0035		A	Cardiokymography	0.17	0.46	0.48	NA	NA	0.03	0.66	0.68	NA	NA	XXX
Q0035	26	A	Cardiokymography	0.17	0.07	0.09	0.07	0.09	0.01	0.25	0.27	0.25	0.27	XXX
Q0035	TC	A	Cardiokymography	0.00	0.39	0.39	NA	NA	0.02	0.41	0.41	NA	NA	XXX
Q0068		D	Extracorpeal plasmapheresis	1.67	4.42	3.66	0.98	1.08	0.11	6.20	5.44	2.76	2.86	000
Q0091		A	Obtaining screen pap smear	0.37	0.54	0.48	0.14	0.18	0.01	0.92	0.86	0.52	0.56	XXX
Q0092		A	Set up port xray equipment	0.00	0.32	0.32	NA	NA	0.01	0.33	0.33	NA	NA	XXX
Q0111		X	Wet mounts/ w preparations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0112		X	Potassium hydroxide preps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0113		X	Pinworm examinations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0114		X	Fern test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0115		X	Post-coital mucous exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0132		D	Dispensing fee DME neb drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0136		X	Non esrd epoetin alpha inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0144		N	Azithromycin dihydrate, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0156		X	Human albumin 5%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0157		X	Human albumin 25%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0160		X	Factor IX non-recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0161		X	Factor IX recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0163		X	Diphenhydramine HCl 50mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0164		X	Prochlorperazine maleate 5mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0165		X	Prochlorperazine maleate10mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0166		X	Granisetron HCl 1 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0167		X	Dronabinol 2.5mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0168		X	Dronabinol 5mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0169		X	Promethazine HCl 12.5mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0170		X	Promethazine HCl 25 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0171		X	Chlorpromazine HCl 10mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
Q0172		X	Chlorpromazine HCl 25mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0173		X	Trimethobenzamide HCl 250mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0174		X	Thiethylperazine maleate10mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0175		X	Perphenazine 4mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0176		X	Perphenazine 8mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0177		X	Hydroxyzine pamoate 25mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0178		X	Hydroxyzine pamoate 50mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0179		X	Ondansetron HCl 8mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0180		X	Dolasetron mesylate oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0181		X	Unspecified oral anti-emetic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0183		X	Nonmetabolic active tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0184		X	Metabolically active tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0185		X	Metabolic active D/E tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0186		X	Paramedic intercept, rural	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0187		E	Factor viia recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1001		X	Ntiol category 1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1002		X	Ntiol category 2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1003		X	Ntiol category 3	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1004		X	Ntiol category 4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1005		X	Ntiol category 5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9920		E	Epoetin with hct <= 20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9921		E	Epoetin with hct = 21	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9922		E	Epoetin with hct = 22	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9923		E	Epoetin with hct = 23	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9924		E	Epoetin with hct = 24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9925		E	Epoetin with hct = 25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9926		E	Epoetin with hct = 26	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9927		E	Epoetin with hct = 27	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9928		E	Epoetin with hct = 28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9929		E	Epoetin with hct = 29	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9930		E	Epoetin with hct = 30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9931		E	Epoetin with hct = 31	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9932		E	Epoetin with hct = 32	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9933		E	Epoetin with hct = 33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9934		E	Epoetin with hct = 34	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9935		E	Epoetin with hct = 35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9936		E	Epoetin with hct = 36	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9937		E	Epoetin with hct = 37	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9938		E	Epoetin with hct = 38	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9939		E	Epoetin with hct = 39	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9940		E	Epoetin with hct >= 40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0070		C	Transport portable x-ray	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
R0075		C	Transport port x-ray multipl	0.00	0.00	0.00	NA	NA	0.00	0.00	0.00	NA	NA	XXX
R0076		B	Transport portable EKG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0009		I	Injection, butorphanol tartr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0010		I	Injection, somatrem, 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0011		I	Injection, somatropin, 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0012		I	Butorphanol tartrate, nasal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0014		I	Tacrine hydrochloride, 10 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0016		I	Injection, amikacin sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0017		I	Injection, aminocaproic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0020		I	Injection, bupivicaine hydro	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0021		I	Injection, ceftoperazone sod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0023		I	Injection, cimetidine hydroc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0024		I	Injection, ciprofloxacin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0028		I	Injection, famotidine, 20 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0029		I	Injection, fluconazole	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0030		I	Injection, metronidazole	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0032		I	Injection, nafcillin sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0034		I	Injection, ofloxacin, 400 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0039		I	Injection, sulfamethoxazole	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0040		I	Injection, ticarcillin disod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0071		I	Injection, acyclovir sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0072		I	Injection, amikacin sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0073		I	Injection, aztreonam, 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0074		I	Injection, cefotetan disodiu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0077		I	Injection, clindamycin phosp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0078		I	Injection, fosphenytoin sodi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0080		I	Injection, pentamidine iseth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0081		I	Injection, piperacillin sodi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0090		I	Sildenafil citrate, 25 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0096		I	Injection, itraconazole, 200	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0097		I	Injection, ibutilide fumarat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0098		I	Injection, sodium ferric glu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0601		I	Screening proctoscopy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0605		I	Digital rectal examination,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0610		I	Annual gynecological examina	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0612		I	Annual gynecological examina	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0620		I	Routine ophthalmological exa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0621		I	Routine ophthalmological exa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0800		I	Laser in situ keratomileusis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S0810		I	Photorefractive keratectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
S2050		I	Donor enterectomy, with prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2052		I	Transplantation of small int	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2053		I	Transplantation of small int	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2054		I	Transplantation of multivisc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2055		I	Harvesting of donor multivis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2109		I	Autologous chondrocyte trans	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2190		I	Subcutaneous implantation of	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2204		I	Transmyocardial laser revasc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2205		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2206		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2207		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2208		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2209		I	Minimally invasive direct co	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2210		I	Cryosurgical ablation (in si	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2300		I	Arthroscopy, shoulder, surgi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2350		I	Diskectomy, anterior, with d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S2351		I	Diskectomy, anterior, with d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S3645		I	HIV–1 antibody testing of or	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S3650		I	Saliva test, hormone level;	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S3652		I	Saliva test, hormone level;	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8035		I	Magnetic source imaging	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8040		I	Topographic brain mapping	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8048		I	Isolated limb perfusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8049		I	Intraoperative radiation the	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8060		I	Supply of contrast material	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8092		I	Electron beam computed tomog	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8095		I	Wig (for medically-induced h	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8096		I	Portable peak flow meter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8110		I	Peak expiratory flow rate (p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8200		I	Chest compression vest	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8205		I	Chest compression system gen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8260		I	Oral orthotic for treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8300		I	Sacral nerve stimulation tes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S8950		I	Complex lymphedema therapy,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9001		I	Home uterine monitor with or	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9022		I	Digital subtraction angiogra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9023		I	Xenon regional cerebral bloo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9024		I	Paranasal sinus ultrasound	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9033		I	Gait analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9055		I	Procuren or other growth fac	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9056		I	Coma stimulation per diem	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9075		I	Smoking cessation treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9085		I	Meniscal allograft transplan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9090		I	Vertebral axial decompressio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9122		I	Home health aide or certifie	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9123		I	Nursing care, in the home; b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9124		I	Nursing care, in the home; b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9125		I	Respite care, in the home, p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9126		I	Hospice care, in the home, p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9127		I	Social work visit, in the ho	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9128		I	Speech therapy, in the home,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9129		I	Occupational therapy, in the	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9140		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9141		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9455		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9460		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9465		I	Diabetic Management Program,	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9470		I	Nutritional counseling, diet	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9472		I	Cardiac rehabilitation progr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9473		I	Pulmonary rehabilitation pro	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9474		I	Enterostomal therapy by a re	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9475		I	Ambulatory setting substance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9480		I	Intensive outpatient psychia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9485		I	Crisis intervention mental h	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9524		I	Nursing services related to	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9527		I	Insertion of a peripherally	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9528		I	Insertion of midline central	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9543		I	Administration of medication	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9990		I	Services provided as part of	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9991		I	Services provided as part of	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9992		I	Transportation costs to and	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9994		I	Lodging costs (e.g. hotel ch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9996		I	Meals for clinical trial par	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
S9999		I	Sales tax	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2020		X	Vision svcs frames purchases	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2025		X	Eyeglasses delux frames	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2100		X	Lens spher single plano 4.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2101		X	Single visn sphere 4.12–7.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2102		X	Singl visn sphere 7.12–20.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2103		X	Spherocylindr 4.00d/12–2.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2104		X	Spherocylindr 4.00d/2.12–4d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2105		X	Spherocylinder 4.00d/4.25–6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
V2106		X	Spherocylinder 4.00d/≤6.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2107		X	Spherocylinder 4.25d/12–2d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2108		X	Spherocylinder 4.25d/2.12–4d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2109		X	Spherocylinder 4.25d/4.25–6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2110		X	Spherocylinder 4.25d/over 6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2111		X	Spherocylindr 7.25d/.25–2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2112		X	Spherocylindr 7.25d/2.25–4d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2113		X	Spherocylindr 7.25d/4.25–6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2114		X	Spherocylinder over 12.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2115		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2116		X	Nonaspheric lens bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2117		X	Aspheric lens bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2118		X	Lens aniseikonic single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2199		X	Lens single vision not oth c	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2200		X	Lens spher bifoc plano 4.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2201		X	Lens sphere bifocal 4.12–7.0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2202		X	Lens sphere bifocal 7.12–20.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2203		X	Lens sphcyl bifocal 4.00d/.1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2204		X	Lens sphcy bifocal 4.00d/2.1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2205		X	Lens sphcy bifocal 4.00d/4.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2206		X	Lens sphcy bifocal 4.00d/ove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2207		X	Lens sphcy bifocal 4.25–7d/.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2208		X	Lens sphcy bifocal 4.25–7/2.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2209		X	Lens sphcy bifocal 4.25–7/4.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2210		X	Lens sphcy bifocal 4.25–7/ov	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2211		X	Lens sphcy bifo 7.25–12/.25–	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2212		X	Lens sphcyl bifo 7.25–12/2.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2213		X	Lens sphcyl bifo 7.25–12/4.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2214		X	Lens sphcyl bifocal over 12.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2215		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2216		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2217		X	Lens lenticular aspheric bif	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2218		X	Lens aniseikonic bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2219		X	Lens bifocal seg width over	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2220		X	Lens bifocal add over 3.25d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2299		X	Lens bifocal speciality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2300		X	Lens sphere trifocal 4.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2301		X	Lens sphere trifocal 4.12–7.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2302		X	Lens sphere trifocal 7.12–20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2303		X	Lens sphcy trifocal 4.0/.12–	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2304		X	Lens sphcy trifocal 4.0/2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2305		X	Lens sphcy trifocal 4.0/4.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2306		X	Lens sphcyl trifocal 4.00/≤6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2307		X	Lens sphcy trifocal 4.25–7/.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2308		X	Lens sphc trifocal 4.25–7/2.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2309		X	Lens sphc trifocal 4.25–7/4.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2310		X	Lens sphc trifocal 4.25–7/≤6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2311		X	Lens sphc trifo 7.25–12/.25–	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2312		X	Lens sphc trifo 7.25–12/2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2313		X	Lens sphc trifo 7.25–12/4.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2314		X	Lens sphcyl trifocal over 12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2315		X	Lens lenticular trifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2316		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2317		X	Lens lenticular aspheric tri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2318		X	Lens aniseikonic trifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2319		X	Lens trifocal seg width ≤ 28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2320		X	Lens trifocal add over 3.25d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2399		X	Lens trifocal speciality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2410		X	Lens variab asphericity sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2430		X	Lens variable asphericity bi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2499		X	Variable asphericity lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2500		X	Contact lens pmma sphencal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2501		X	Cntct lens pmma-toric/prism	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2502		X	Contact lens pmma bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2503		X	Cntct lens pmma color vision	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2510		X	Cntct gas permeable sphericl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2511		X	Cntct toric prism ballast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2512		X	Cntct lens gas permbl bifocl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2513		X	Contact lens extended wear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2520		P	Contact lens hydrophilic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2521		X	Cntct lens hydrophilic toric	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2522		X	Cntct lens hydrophil bifocl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2523		X	Cntct lens hydrophil extend	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2530		X	Contact lens gas impermeable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2531		X	Contact lens gas permeable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2599		X	Contact lens/es other type	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2600		X	Hand held low vision aids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2610		X	Single lens spectacle mount	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2615		X	Telescop/othr compound lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2623		X	Plastic eye prosth custom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2624		X	Polishing artifical eye	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2625		X	Enlargemnt of eye prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—CONTINUED

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Fully implemented non-facility PE RVUs	Year 2001 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2001 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2001 transitional non-facility total	Fully implemented facility total	Year 2001 transitional facility total	Global
V2626		X	Reduction of eye prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2627		X	Scleral cover shell	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2628		X	Fabrication & fitting	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2629		X	Prosthetic eye other type	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2630		X	Anter chamber intraocul lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2631		X	Iris support intraocir lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2632		X	Post chmbr intraocular lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2700		X	Balance lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2710		X	Glass/plastic slab off prism	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2715		X	Prism lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2718		X	Fresnell prism press-on lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2730		X	Special base curve	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2740		X	Rose tint plastic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2741		X	Non-rose tint plastic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2742		X	Rose tint glass	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2743		X	Non-rose tint glass	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2744		X	Tint photochromatic lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2750		X	Anti-reflective coating	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2755		X	UV lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2760		X	Scratch resistant coating	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2770		X	Occluder lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2780		X	Oversize lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2781		X	Progressive lens per lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2785		X	Corneal tissue processing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2799		X	Miscellaneous vision service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5008		N	Hearing screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5010		N	Assessment for hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5011		N	Hearing aid fitting/checking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5014		N	Hearing aid repair/modifying	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5020		N	Conformity evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5030		N	Body-worn hearing aid air	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5040		N	Body-worn hearing aid bone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5050		N	Body-worn hearing aid in ear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5060		N	Behind ear hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5070		N	Glasses air conduction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5080		N	Glasses bone conduction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5090		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5100		N	Body-worn bilat hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5110		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5120		N	Body-worn binaur hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5130		N	In ear binaural hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5140		N	Behind ear binaur hearing ai	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5150		N	Glasses binaural hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5160		N	Dispensing fee binaural	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5170		N	Within ear cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5180		N	Behind ear cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5190		N	Glasses cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5200		N	Cros hearing aid dispens fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5210		N	In ear bicros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5220		N	Behind ear bicros hearing ai	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5230		N	Glasses bicros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5240		N	Dispensing fee bicros	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5299		R	Hearing service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5336		N	Repair communication device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5362		R	Speech screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5363		R	Language screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5364		R	Dysphagia screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] PE RVUs = Practice Expense Relative Value Units.

ADDENDUM C.—CLINICAL STAFF TIMES FOR SELECTED CODES

Procedure code	Type of staff	Additional time included (minutes)
11000	RN/LPN/MA/Tech	3
11011	RN/MA	3
11012	RN/MA	3
11040	RN/LPN/MA/Tech	3
11041	RN/LPN/MA/Tech	3
11042	RN/LPN/MA/Tech	3
11055	RN/LPN/MA/Tech	3
11056	RN/LPN/MA/Tech	3
11057	RN/LPN/MA/Tech	3
11305	RN/MA	3
11740	RN/LPN/MA/Tech	2
11921	RN/MA	2
11950	RN/MA	2
15775	RN/MA	2
15851	RN/MA	3
15852	RN/MA	3
16000	RN/LPN/MA/Tech	3
16010	RN/LPN/MA/Tech	3
16015	RN/LPN/MA/Tech	3
16020	RN/LPN/MA/Tech	3
16025	RN/LPN/MA/Tech	3
16030	RN/MA	10
17250	RN/LPN/MA/Tech	3
20200	RN/MA	3
20205	RN/MA	3
20220	RN	25
20225	RN	25
20610	RN	20
20660	RN	15
20950	RN	25
29000	RN	15
29010	RN	15
29015	RN	15
29020	RN	15
29025	RN	15
29035	RN	15
29040	RN	15
29044	RN	15
29046	RN	15
29049	RN	15
29055	RN	15
29058	RN	15
29065	RN	15
29065	RN/LPN	3
29075	RN	15
29075	RN/LPN	3
29550	RN	15
29550	RN/LPN	3
29580	RN	15
29580	RN/LPN	3
29590	RN	15
29700	RN	15
29700	RN/LPN	3
29705	RN	15
29705	RN/LPN	3
29710	RN	15
29715	RN	15
29720	RN	15
29730	RN	15
29730	RN/LPN	3
29740	RN	15
29740	RN/LPN	3
29750	RN	15
30901	RN/LPN/MA	10
30903	RN/LPN/MA	10
30905	RN/LPN/MA	10
30906	RN/LPN/MA	10
31240	RN/LPN/MA	10
31254	RN/LPN/MA	10
31255	RN/LPN/MA	10
29085	RN	15
29085	RN/LPN	3
29105	RN	15
29105	RN/LPN	3
29125	RN	15
29125	RN/LPN	3
29126	RN	15
29130	RN	15
29130	RN/LPN	3
29131	RN	15
29200	RN	15
29200	RN/LPN	3
29220	RN	15
29220	RN/LPN	3
29240	RN	15
29240	RN/LPN	3
29260	RN	15
29260	RN/LPN	3
29280	RN	15
29280	RN/LPN	3
29305	RN	15
29325	RN	15
29345	RN	15
29345	RN/LPN	3
29355	RN	15
29355	RN/LPN	3
29358	RN	15
29365	RN	15
29365	RN/LPN	3
29405	RN	15
29405	RN/LPN	3
29425	RN	15
29425	RN/LPN	3
29435	RN	15
29440	RN	15
29440	RN/LPN	3
29445	RN	15
29450	RN	15
29505	RN	15
29515	RN	15
29520	RN	15
29520	RN/LPN	3
29530	RN	15
29530	RN/LPN	3
29540	RN	15
29540	RN/LPN	3
31561	RN/LPN/MA	10
31570	RN/LPN/MA	10
31571	RN/LPN/MA	10
31575	RN/LPN/MA	5
31612	RN	5
31615	RN	20
31622	RN	20
31623	RN	20
31624	RN	20
31625	RN	20
31628	RN	20
31629	RN	20
31630	RN	30
31631	RN	30
31635	RN	30
31640	RN	30
31641	RN	30
31643	RN	20
31645	RN	20
31646	RN	20
31656	RN	20
31700	RN	20
31708	RN/LPN/MA	10
31710	RN	20
31256		
31267		
31276		
31287		
31288		
31500		
31505		
31513		
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ADDENDUM C.—CLINICAL STAFF TIMES FOR SELECTED CODES—Continued

Procedure code	Type of staff	Additional time included (minutes)	Procedure code	Type of staff	Additional time included (minutes)
31256	RN/LPN/MA	10	31715	RN	20
31267	RN/LPN/MA	10	31717	RN	20
31276	RN/LPN/MA	10	31730	RN	10
31287	RN/LPN/MA	10	32002	RN	10
31288	RN/LPN/MA	10	32005	RN	10
31500	RN/LPN/MA	10	32020	RN	10
31505	RN/LPN/MA	10	32420	RN	10
31513	RN/LPN/MA	10	32960	RN	10
31515	RN/LPN/MA	10	33010	RN	10
31520	RN/LPN/MA	10	33011	RN	10
31525	RN/LPN/MA	10	36481	RN	25
31526	RN/LPN/MA	10	36488	RN	25
31527	RN/LPN/MA	10	36489	RN	25
31528	RN/LPN/MA	10	36490	RN	25
31529	RN/LPN/MA	10	36491	RN	25
31530	RN/LPN/MA	10	36493	RN	25
31531	RN/LPN/MA	10	36510	RN	25
31535	RN/LPN/MA	10	36520	RN	25
31536	RN/LPN/MA	10	36521	RN	25
31540	RN/LPN/MA	10	36522	RN	25
31541	RN/LPN/MA	10	36680	RN	10
31560	RN/LPN/MA	10	40806	RN/LPN/MA	10
42660	RN/LPN/MA	10	43761	RN/LPN/MA	10
43200	RN/LPN/MA	45	44100	RN/LPN/MA	45
43202	RN/LPN/MA	45	44360	RN/LPN/MA	55
43204	RN/LPN/MA	40	44361	RN/LPN/MA	55
43205	RN/LPN/MA	40	44363	RN/LPN/MA	55
43215	RN/LPN/MA	25	44364	RN/LPN/MA	55
43216	RN/LPN/MA	40	44365	RN/LPN/MA	55
43217	RN/LPN/MA	40	44366	RN/LPN/MA	55
43219	RN/LPN/MA	40	44369	RN/LPN/MA	55
43220	RN/LPN/MA	40	44372	RN/LPN/MA	55
43226	RN/LPN/MA	40	44373	RN/LPN/MA	55
43227	RN/LPN/MA	40	44376	RN/LPN/MA	55
43228	RN/LPN/MA	40	44377	RN/LPN/MA	55
43234	RN/LPN/MA	45	44378	RN/LPN/MA	55
43235	RN/LPN/MA	45	44380	RN/LPN/MA	55
43239	RN/LPN/MA	45	44382	RN/LPN/MA	55
43241	RN/LPN/MA	40	44385	RN/LPN/MA	55
43243	RN/LPN/MA	40	44386	RN/LPN/MA	55
43244	RN/LPN/MA	40	44388	RN/LPN/MA	55
43245	RN/LPN/MA	40	44389	RN/LPN/MA	55
43246	RN/LPN/MA	33	44390	RN/LPN/MA	55
43247	RN/LPN/MA	40	44391	RN/LPN/MA	25
43248	RN/LPN/MA	40	44392	RN/LPN/MA	55
43249	RN/LPN/MA	40	44393	RN/LPN/MA	55
43250	RN/LPN/MA	40	44394	RN/LPN/MA	55
43251	RN/LPN/MA	40	44500	RN/LPN/MA	15
43255	RN/LPN/MA	25	45300	RN/LPN/MA	15
43258	RN/LPN/MA	40	45303	RN/LPN/MA	15
43259	RN/LPN/MA	55	45305	RN/LPN/MA	15
43260	RN/LPN/MA	38	45307	RN/LPN/MA	15
43261	RN/LPN/MA	38	45308	RN/LPN/MA	15
43262	RN/LPN/MA	38	45309	RN/LPN/MA	15
43263	RN/LPN/MA	38	45315	RN/LPN/MA	15
43264	RN/LPN/MA	38	45317	RN/LPN/MA	15
43265	RN/LPN/MA	38	45320	RN/LPN/MA	15
43267	RN/LPN/MA	38	45321	RN/LPN/MA	15
43268	RN/LPN/MA	38	45330	RN/LPN/MA	15
43269	RN/LPN/MA	38	45331	RN/LPN/MA	15
43271	RN/LPN/MA	38	45332	RN/LPN/MA	15
43272	RN/LPN/MA	38	45333	RN/LPN/MA	15
43450	RN/LPN/MA	15	45334	RN/LPN/MA	15
43453	RN/LPN/MA	15	45337	RN/LPN/MA	15
43456	RN/LPN/MA	15	45338	RN/LPN/MA	15
43458	RN/LPN/MA	15	45339	RN/LPN/MA	15
43600	RN/LPN/MA	45	45378	RN/LPN/MA	55
43760	RN/LPN/MA	10	45379	RN/LPN/MA	55
45380	RN/LPN/MA	55	57100	RN/MA	5
45382	RN/LPN/MA	25	57400	RN/MA	5

ADDENDUM C.—CLINICAL STAFF TIMES FOR SELECTED CODES—Continued

Procedure code	Type of staff	Additional time included (minutes)
45383	RN/LPN/MA	55
45384	RN/LPN/MA	55
45385	RN/LPN/MA	55
47552	RN/LPN/MA	38
47553	RN/LPN/MA	38
47554	RN/LPN/MA	38
47555	RN/LPN/MA	38
47556	RN/LPN/MA	38
47561	RN	18
49080	RN	10
49081	RN	10
49400	RN	10
49423	RN	10
49424	RN	10
49427	RN	10
50021	RN	60
50396	RN	10
50686	RN	10
51700	RN	5
51726	RN	10
51772	RN	15
51784	RN	15
51785	RN	15
51792	RN	10
51795	RN	10
51797	RN	15
53020	RN	10
53025	RN	10
53200	RN	10
53600	RN	15
53601	RN	15
53660	RN	15
53670	RN	5
54100	RN	15
54220	RN	30
54231	RN	15
54240	RN	15
54250	RN	15
54450	RN	15
55300	RN	30
55870	RN	15
56605	RN/MA	5
56720	RN/MA	5
57020	RN/MA	5
91010	RN/LPN/MA	15
91011	RN/LPN/MA	15
91012	RN/LPN/MA	15
91020	RN/LPN/MA	15
91030	RN/LPN/MA	15
91032	RN/LPN/MA	15
91033	RN/LPN/MA	15
91052	RN/LPN/MA	15
91055	RN/LPN/MA	15
91060	RN/LPN/MA	15
91065	RN/LPN/MA	15
91100	RN/LPN/MA	15
91105	RN/LPN/MA	10
92950	RN/LPN	12
92953	RN/LPN	12
92971	RN/LPN	12
96440	RN/OCN	10
96445	RN/OCN	10
96450	RN/OCN	10
G0104	RN/LPN/MA	15
G0105	RN/LPN/MA	55
Q0068	RN	25
57410	RN/MA	5
57500	RN/MA	5
57800	RN/MA	5
58555	RN/MA	13
58558	RN/MA	13
58559	RN/MA	13
58560	RN/MA	13
58561	RN/MA	13
58562	RN/MA	13
58563	RN/MA	13
58970	Medical Assistant	10
58970	RN	30
59012	RN	25
59030	RN	25
59300	RN/MA	5
59320	RN/MA	5
59325	RN/MA	5
59350	RN/MA	10
59871	RN/MA	3
61000	RN/LPN/MA	16
61001	RN/LPN/MA	14
61020	RN/LPN/MA	13
61026	RN/LPN/MA	14
61050	RN/LPN/MA	20
61055	RN/LPN/MA	20
61070	RN/LPN/MA	10
61107	RN/LPN/MA	20
61210	RN/LPN/MA	20
62268	RN/LPN/MA	20
62270	RN	5
62272	RN	5
62273	RN/LPN/MA	12
62284	RN/LPN/MA	20
62290	RN/LPN/MA	20
62291	RN/LPN/MA	20
63610	RN/LPN/MA	20
90870	RN	40
90871	RN	40
90935	RN	45
90937	RN	45
90945	RN	45
90947	RN	45
90997	RN	45
91000	RN/LPN/MA	15

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Additional time included (minutes)
5
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ADDENDUM D.—COMPARISON OF 1999 AND PROPOSED 2002 OFFICE RENT INDEX BY FEE SCHEDULE AREA

[In descending order of difference]

Carrier	Locality	Fee schedule area	Office rent index		Difference	Percentage difference
			2000	2002		
31140	05	SAN FRANCISCO, CA	1.629	2.174	0.545	33.5
31140	06	SAN MATEO, CA	1.629	2.174	0.545	33.5
31140	09	SANTA CLARA, CA	1.548	1.949	0.401	25.9
31140	03	MARIN/NAPA/SOLANO, CA	1.346	1.647	0.301	22.4
00900	11	DALLAS, TX	1.005	1.196	0.191	19.0
00910	09	UTAH	0.827	0.978	0.151	18.3
31143	99	REST OF MASSACHUSETTS	1.170	1.308	0.138	11.8
00824	01	COLORADO	0.956	1.066	0.110	11.5
00835	01	PORTLAND, OR	1.006	1.120	0.114	11.3
00740	02	METROPOLITAN KANSAS CITY, MO.	828	0.916	0.088	10.6
00511	01	ATLANTA, GA	1.034	1.136	0.102	9.9
31143	01	METROPOLITAN BOSTON	1.369	1.504	0.135	9.9
31140	07	OAKLAND/BERKLEY, CA	1.339	1.470	0.131	9.8
00953	01	DETROIT, MI	0.971	1.045	0.074	7.6
05535	00	NORTH CAROLINA	0.817	0.869	0.052	6.4
16360	00	OHIO	0.812	0.863	0.051	6.3
00655	00	NEBRASKA	0.770	0.817	0.047	6.1
00900	28	FORT WORTH, TX	0.921	0.977	0.056	6.1
00836	02	SEATTLE (KING CNTY), WA	1.162	1.232	0.070	6.0
05440	35	TENNESSEE	0.758	0.800	0.042	5.5
00820	02	SOUTH DAKOTA	0.809	0.853	0.044	5.4
00952	99	REST OF ILLINOIS	0.756	0.797	0.041	5.4
00820	01	NORTH DAKOTA	0.761	0.800	0.039	5.1
00630	00	INDIANA	0.806	0.847	0.041	5.1
10240	00	MINNESOTA	0.896	0.940	0.044	4.9
00832	00	ARIZONA	0.955	1.000	0.045	4.7
00805	99	REST OF NEW JERSEY	1.261	1.312	0.051	4.0
16510	16	WEST VIRGINIA	0.659	0.685	0.026	3.9
00825	21	WYOMING	0.769	0.799	0.030	3.9
00880	01	SOUTH CAROLINA	0.795	0.825	0.030	3.8
00902	01	DELAWARE	1.013	1.051	0.038	3.8
00751	01	MONTANA	0.766	0.794	0.028	3.7
00834	00	NEVADA	1.078	1.117	0.039	3.6
00510	00	ALABAMA	0.713	0.738	0.025	3.5
00650	00	KANSAS *	0.772	0.793	0.021	2.7
00740	04	KANSAS *	0.772	0.793	0.021	2.7
00803	02	NYC SUBURBS/LONG I., NY	1.535	1.573	0.038	2.5
31145	50	VERMONT	0.980	1.004	0.024	2.4
00953	99	REST OF MICHIGAN	0.829	0.848	0.019	2.3
00865	99	REST OF PENNSYLVANIA	0.826	0.844	0.018	2.2
00900	09	BRAZORIA, TX	1.001	1.018	0.017	1.7
00740	99	REST OF MISSOURI *	0.651	0.662	0.011	1.7
00523	99	REST OF MISSOURI *	0.651	0.662	0.011	1.7
00522	00	OKLAHOMA	0.713	0.725	0.012	1.7
00900	18	HOUSTON, TX	0.972	0.988	0.016	1.6
00590	99	REST OF FLORIDA	0.936	0.951	0.015	1.6
00900	15	GALVESTON, TX	0.910	0.924	0.014	1.5
00951	00	WISCONSIN	0.854	0.866	0.012	1.4
00865	01	METROPOLITAN PHILADELPHIA, PA	1.162	1.178	0.016	1.4
10490	00	VIRGINIA	0.881	0.892	0.011	1.2
00826	00	IOWA	0.778	0.785	0.007	0.9
00523	01	METROPOLITAN ST. LOUIS, MO	0.807	0.814	0.007	0.9
00520	13	ARKANSAS	0.698	0.704	0.006	0.9
00511	99	REST OF GEORGIA	0.765	0.771	0.006	0.8
00952	16	CHICAGO, IL	1.207	1.216	0.009	0.7
00952	15	SUBURBAN CHICAGO, IL	1.207	1.216	0.009	0.7
00528	01	NEW ORLEANS, LA	0.826	0.832	0.006	0.7
00952	12	EAST ST. LOUIS, IL	0.787	0.792	0.005	0.6
00835	99	REST OF OREGON	0.896	0.901	0.005	0.6
00900	99	REST OF TEXAS	0.791	0.795	0.004	0.5
00903	01	DC + MD/VA SUBURBS	1.335	1.341	0.006	0.4
00660	00	KENTUCKY	0.719	0.721	0.002	0.3
00836	99	REST OF WASHINGTON	0.957	0.958	0.001	0.1
00900	20	BEAUMONT, TX	0.758	0.758	.....	0.0
10250	00	MISSISSIPPI	0.690	0.690	.....	0.0
00901	01	BALTIMORE/SURR. CNTYS, MD	1.027	1.026	(0.001)	−0.1
31144	40	NEW HAMPSHIRE	1.091	1.089	(0.002)	−0.2
00900	31	AUSTIN, TX	1.118	1.111	(0.007)	−0.6
00521	05	NEW MEXICO	0.844	0.837	(0.007)	−0.8

ADDENDUM D.—COMPARISON OF 1999 AND PROPOSED 2002 OFFICE RENT INDEX BY FEE SCHEDULE AREA—Continued

[In descending order of difference]

Carrier	Locality	Fee schedule area	Office rent index		Difference	Percentage difference
			2000	2002		
00528	99	REST OF LOUISIANA	0.721	0.715	(0.006)	−0.8
00805	01	NORTHERN NJ	1.415	1.399	(0.016)	−1.1
00870	01	RHODE ISLAND	1.111	1.098	(0.013)	−1.2
05130	00	IDAHO	0.801	0.791	(0.010)	−1.2
00831	01	ALASKA	1.265	1.249	(0.016)	−1.3
02050	99	REST OF CALIFORNIA *	1.068	1.050	(0.018)	−1.7
31140	99	REST OF CALIFORNIA *	1.068	1.050	(0.018)	−1.7
00590	03	FORT LAUDERDALE, FL	1.114	1.090	(0.024)	−2.2
00901	99	REST OF MARYLAND	1.020	0.995	(0.025)	−2.5
02050	17	VENTURA, CA	1.329	1.294	(0.035)	−2.6
31142	99	REST OF MAINE	0.827	0.801	(0.026)	−3.1
02050	26	ANAHEIM/SANTA ANA, CA	1.474	1.422	(0.052)	−3.5
00803	01	MANHATTAN, NY	1.808	1.744	(0.064)	−3.5
14330	04	QUEENS, NY	1.466	1.414	(0.052)	−3.5
00801	99	REST OF NEW YORK	0.909	0.875	(0.034)	−3.7
00973	50	VIRGIN ISLANDS	1.309	1.260	(0.049)	−3.7
00973	20	PUERTO RICO	0.715	0.688	(0.027)	−3.8
00803	03	POUGHKPSIE/N NYC SUBURBS, NY	1.305	1.254	(0.051)	−3.9
10230	00	CONNECTICUT	1.283	1.215	(0.068)	−5.3
00590	04	MIAMI, FL	1.232	1.139	(0.093)	−7.5
31142	03	SOUTHERN MAINE	1.119	1.009	(0.110)	−9.8
00833	01	HAWAII/GUAM	1.639	1.389	(0.250)	−15.3
02050	18	LOS ANGELES, CA	1.466	1.223	(0.243)	−16.6

Notes:
*—Indicates multiple carriers for this Fee Schedule Area.
Neither Office Rent Index reflects budget neutrality adjusting.

ADDENDUM E.—COMPARISON OF 1999 AND PROPOSED 2002 MALPRACTICE GPCIS BY FEE SCHEDULE AREA

[Sorted by percentage difference]

Carrier	Locality	Fee schedule area	2000	2002	Difference	Percentage difference
00825	21	WYOMING	0.705	1.003	0.298	42.27
00521	05	NEW MEXICO	0.716	0.900	0.184	25.70
16510	16	WEST VIRGINIA	1.106	1.375	0.269	24.32
00865	99	REST OF PENNSYLVANIA	0.637	0.772	0.135	21.19
00834	00	NEVADA	0.997	1.206	0.209	20.96
00952	15	SUBURBAN CHICAGO, IL	1.365	1.641	0.276	20.22
05535	00	NORTH CAROLINA	0.497	0.594	0.097	19.52
00630	00	INDIANA	0.408	0.480	0.072	17.65
00865	01	METROPOLITAN PHILADELPHIA, PA	1.207	1.410	0.203	16.82
00952	99	REST OF ILLINOIS	0.990	1.155	0.165	16.67
00952	12	EAST ST. LOUIS, IL	1.487	1.687	0.200	13.45
02050	26	ANAHEIM/SANTA ANA, CA	0.846	0.953	0.107	12.65
02050	18	LOS ANGELES, CA	0.846	0.953	0.107	12.65
00951	00	WISCONSIN	0.841	0.937	0.096	11.41
00528	01	NEW ORLEANS, LA	1.153	1.280	0.127	11.01
31143	01	METROPOLITAN BOSTON	0.713	0.782	0.069	9.68
31143	99	REST OF MASSACHUSETTS	0.713	0.782	0.069	9.68
00900	99	REST OF TEXAS	0.871	0.954	0.083	9.53
02050	17	VENTURA, CA	0.717	0.781	0.064	8.93
00660	00	KENTUCKY	0.807	0.875	0.068	8.43
00910	09	UTAH	0.594	0.643	0.049	8.25
00805	01	NORTHERN NJ	0.795	0.858	0.063	7.92
00805	99	REST OF NEW JERSEY	0.795	0.858	0.063	7.92
10250	00	MISSISSIPPI	0.721	0.777	0.056	7.77
00590	04	MIAMI, FL	2.350	2.523	0.173	7.36
05440	35	TENNESSEE	0.552	0.591	0.039	7.07
02050	99	REST OF CALIFORNIA *	0.698	0.746	0.048	6.88
31140	99	REST OF CALIFORNIA *	0.698	0.746	0.048	6.88
00836	99	REST OF WASHINGTON	0.742	0.786	0.044	5.93
00836	02	SEATTLE (KING CNTY), WA	0.742	0.786	0.044	5.93
00952	16	CHICAGO, IL	1.693	1.793	0.100	5.91
00824	01	COLORADO	0.795	0.838	0.043	5.41
00590	03	FORT LAUDERDALE, FL	1.783	1.873	0.090	5.05
00528	99	REST OF LOUISIANA	1.031	1.071	0.040	3.88
31140	03	MARIN/NAPA/SOLANO, CA	0.667	0.686	0.019	2.85

ADDENDUM E.—COMPARISON OF 1999 AND PROPOSED 2002 MALPRACTICE GPCIS BY FEE SCHEDULE AREA—Continued

[Sorted by percentage difference]

Carrier	Locality	Fee schedule area	2000	2002	Difference	Percentage difference
31140	07	OAKLAND/BERKLEY, CA	0.667	0.686	0.019	2.85
31140	05	SAN FRANCISCO, CA	0.667	0.686	0.019	2.85
31140	06	SAN MATEO, CA	0.667	0.686	0.019	2.85
14330	04	QUEENS, NY	1.839	1.867	0.028	1.52
00900	31	AUSTIN, TX	0.849	0.857	0.008	0.94
00803	02	NYC SUBURBS/LONG I., NY	1.932	1.948	0.016	0.83
00803	01	MANHATTAN, NY	1.654	1.664	0.010	0.60
00820	01	NORTH DAKOTA	0.656	0.656	.....	0.00
00900	11	DALLAS, TX	0.930	0.929	(0.001)	−0.11
00900	28	FORT WORTH, TX	0.930	0.929	(0.001)	−0.11
00880	01	SOUTH CAROLINA	0.280	0.278	(0.002)	−0.71
00751	01	MONTANA	0.732	0.725	(0.007)	−0.96
00522	00	OKLAHOMA	0.451	0.443	(0.008)	−1.77
31145	50	VERMONT	0.548	0.538	(0.010)	−1.82
00511	01	ATLANTA, GA	0.951	0.933	(0.018)	−1.89
00511	99	REST OF GEORGIA	0.951	0.933	(0.018)	−1.89
00973	50	VIRGIN ISLANDS	1.032	1.000	(0.032)	−3.10
00655	00	NEBRASKA	0.443	0.429	(0.014)	−3.16
00900	20	BEAUMONT, TX	1.386	1.335	(0.051)	−3.68
00900	09	BRAZORIA, TX	1.386	1.335	(0.051)	−3.68
00900	15	GALVESTON, TX	1.386	1.335	(0.051)	−3.68
00801	99	REST OF NEW YORK	0.793	0.762	(0.031)	−3.91
00803	03	POUGHKPSIE/N NYC SUBURBS, NY	1.326	1.272	(0.054)	−4.07
31140	09	SANTA CLARA, CA	0.667	0.638	(0.029)	−4.35
00590	99	REST OF FLORIDA	1.327	1.262	(0.065)	−4.90
00900	18	HOUSTON, TX	1.418	1.333	(0.085)	−5.99
31142	99	REST OF MAINE	0.708	0.665	(0.043)	−6.07
31142	03	SOUTHERN MAINE	0.708	0.665	(0.043)	−6.07
00832	00	ARIZONA	1.189	1.109	(0.080)	−6.73
00820	02	SOUTH DAKOTA	0.435	0.405	(0.030)	−6.90
00510	00	ALABAMA	0.876	0.805	(0.071)	−8.11
00826	00	IOWA	0.648	0.595	(0.053)	−8.18
10230	00	CONNECTICUT	1.052	0.964	(0.088)	−8.37
10490	00	VIRGINIA	0.557	0.499	(0.058)	−10.41
00901	99	REST OF MARYLAND	0.866	0.772	(0.094)	−10.85
00953	01	DETROIT, MI	3.069	2.732	(0.337)	−10.98
10240	00	MINNESOTA	0.507	0.451	(0.056)	−11.05
16360	00	OHIO	1.074	0.955	(0.119)	−11.08
00903	01	DC + MD/VA SUBURBS	1.032	0.907	(0.125)	−12.11
05130	00	IDAHO	0.566	0.496	(0.070)	−12.37
00833	01	HAWAII/GUAM	0.954	0.832	(0.122)	−12.79
00953	99	REST OF MICHIGAN	1.828	1.568	(0.260)	−14.22
00650	00	KANSAS*	0.890	0.754	(0.136)	−15.28
00740	04	KANSAS*	0.890	0.754	(0.136)	−15.28
00520	13	ARKANSAS	0.403	0.339	(0.064)	−15.88
00901	01	BALTIMORE/SURR. CNTYS, MD	1.098	0.914	(0.184)	−16.76
00902	01	DELAWARE	0.860	0.710	(0.150)	−17.44
31144	40	NEW HAMPSHIRE	1.013	0.823	(0.190)	−18.76
00831	01	ALASKA	1.533	1.220	(0.313)	−20.42
00973	20	PUERTO RICO	0.359	0.274	(0.085)	−23.68
00835	01	PORTLAND, OR	0.587	0.435	(0.152)	−25.89
00835	99	REST OF OREGON	0.587	0.435	(0.152)	−25.89
00870	01	RHODE ISLAND	1.189	0.881	(0.308)	−25.90
00740	02	METROPOLITAN KANSAS CITY, MO	1.196	0.844	(0.352)	−29.43
00523	01	METROPOLITAN ST. LOUIS, MO	1.198	0.844	(0.354)	−29.55
00740	99	REST OF MISSOURI*	1.165	0.791	(0.374)	−32.10
00523	99	REST OF MISSOURI*	1.165	0.791	(0.374)	−32.10

Notes:
*—Indicates multiple carriers for this Fee Schedule Area.
1999 Malpractice GPCIs have been budget neutrality adjusted.
The 2002 MGPCIs have NOT been budget neutrality adjusted.

ADDENDUM F.—2002 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00510	00	ALABAMA	0.978	0.870	0.807
00831	01	ALASKA	1.064	1.172	1.223

ADDENDUM F.—2002 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00832	00	ARIZONA	0.994	0.978	1.111
00520	13	ARKANSAS	0.953	0.847	0.340
02050	26	ANAHEIM/SANTA ANA, CA	1.037	1.184	0.955
02050	18	LOS ANGELES, CA	1.056	1.139	0.955
31140	03	MARIN/NAPA/SOLANO, CA	1.015	1.248	0.687
31140	07	OAKLAND/BERKELEY, CA	1.041	1.235	0.687
31140	05	SAN FRANCISCO, CA	1.068	1.458	0.687
31140	06	SAN MATEO, CA	1.048	1.432	0.687
31140	09	SANTA CLARA, CA	1.063	1.380	0.639
02050	17	VENTURA, CA	1.028	1.125	0.783
02050	99	REST OF CALIFORNIA *	1.007	1.034	0.748
31140	99	REST OF CALIFORNIA *	1.007	1.034	0.748
00824	01	COLORADO	0.985	0.992	0.840
10230	00	CONNECTICUT	1.050	1.156	0.966
00902	01	DELAWARE	1.019	1.035	0.712
00903	01	DC + MD/VA SUBURBS	1.050	1.166	0.909
00590	03	FORT LAUDERDALE, FL	0.996	1.018	1.877
00590	04	MIAMI, FL	1.015	1.052	2.528
00590	99	REST OF FLORIDA	0.975	0.946	1.265
00511	01	ATLANTA, GA	1.006	1.059	0.935
00511	99	REST OF GEORGIA	0.970	0.892	0.935
00833	01	HAWAII/GUAM	0.997	1.124	0.834
05130	00	IDAHO	0.960	0.881	0.497
00952	16	CHICAGO, IL	1.028	1.092	1.797
00952	12	EAST ST. LOUIS, IL	0.988	0.924	1.691
00952	15	SUBURBAN CHICAGO, IL	1.006	1.071	1.645
00952	99	REST OF ILLINOIS	0.964	0.889	1.157
00630	00	INDIANA	0.981	0.922	0.481
00826	00	IOWA	0.959	0.876	0.596
00650	00	KANSAS *	0.963	0.895	0.756
00740	04	KANSAS *	0.963	0.895	0.749
00660	00	KENTUCKY	0.970	0.866	0.877
00528	01	NEW ORLEANS, LA	0.998	0.945	1.283
00528	99	REST OF LOUISIANA	0.968	0.870	1.073
31142	03	SOUTHERN MAINE	0.979	0.999	0.666
31142	99	REST OF MAINE	0.961	0.910	0.666
00901	01	BALTIMORE/SURR. CNTYS, MD	1.021	1.038	0.916
00901	99	REST OF MARYLAND	0.984	0.972	0.774
31143	01	METROPOLITAN BOSTON	1.041	1.239	0.784
31143	99	REST OF MASSACHUSETTS	1.010	1.129	0.784
00953	01	DETROIT, MI	1.043	1.038	2.738
00953	99	REST OF MICHIGAN	0.997	0.938	1.571
10240	00	MINNESOTA	0.990	0.974	0.452
10250	00	MISSISSIPPI	0.957	0.837	0.779
00740	02	METROPOLITAN KANSAS CITY, MO	0.988	0.967	0.846
00523	01	METROPOLITAN ST. LOUIS, MO	0.994	0.938	0.846
00740	99	REST OF MISSOURI *	0.946	0.825	0.793
00523	99	REST OF MISSOURI *	0.946	0.825	0.793
00751	01	MONTANA	0.950	0.876	0.727
00655	00	NEBRASKA	0.948	0.877	0.430
00834	00	NEVADA	1.005	1.039	1.209
31144	40	NEW HAMPSHIRE	0.986	1.030	0.825
00805	01	NORTHERN NJ	1.058	1.193	0.860
00805	99	REST OF NEW JERSEY	1.029	1.110	0.860
00521	05	NEW MEXICO	0.973	0.900	0.902
00803	01	MANHATTAN, NY	1.094	1.351	1.668
00803	02	NYC SUBURBS/LONG I., NY	1.068	1.251	1.952
00803	03	POUGHKPSIE/N NYC SUBURBS, NY	1.011	1.075	1.275
14330	04	QUEENS, NY	1.058	1.228	1.871
00801	99	REST OF NEW YORK	0.998	0.944	0.764
05535	00	NORTH CAROLINA	0.970	0.931	0.595
00820	01	NORTH DAKOTA	0.950	0.880	0.657
16360	00	OHIO	0.988	0.944	0.957
00522	00	OKLAHOMA	0.968	0.876	0.444
00835	01	PORTLAND, OR	0.996	1.049	0.436
00835	99	REST OF OREGON	0.961	0.933	0.436
00865	01	METROPOLITAN PHILADELPHIA, PA	1.023	1.092	1.413
00865	99	REST OF PENNSYLVANIA	0.989	0.929	0.774
00973	20	PUERTO RICO	0.881	0.712	0.275
00870	01	RHODE ISLAND	1.017	1.065	0.883
00880	01	SOUTH CAROLINA	0.974	0.904	0.279

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ADDENDUM F.—2002 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00820	02	SOUTH DAKOTA	0.935	0.878	0.406
05440	35	TENNESSEE	0.975	0.900	0.592
00900	31	AUSTIN, TX	0.986	0.996	0.859
00900	20	BEAUMONT, TX	0.992	0.890	1.338
00900	09	BRAZORIA, TX	0.992	0.978	1.338
00900	11	DALLAS, TX	1.010	1.065	0.931
00900	28	FORT WORTH, TX	0.987	0.981	0.931
00900	15	GALVESTON, TX	0.988	0.969	1.338
00900	18	HOUSTON, TX	1.020	1.007	1.336
00900	99	REST OF TEXAS	0.966	0.880	0.956
00910	09	UTAH	0.976	0.941	0.644
31145	50	VERMONT	0.973	0.986	0.539
00973	50	VIRGIN ISLANDS	0.965	1.023	1.002
10490	00	VIRGINIA	0.984	0.938	0.500
00836	02	SEATTLE (KING CNTY), WA	1.005	1.100	0.788
00836	99	REST OF WASHINGTON	0.981	0.972	0.788
16510	16	WEST VIRGINIA	0.963	0.850	1.378
00951	00	WISCONSIN	0.981	0.929	0.939
00825	21	WYOMING	0.967	0.895	1.005

* Payment locality is serviced by two carriers.

Note: Work GPCI is the ¼ work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act. GPCIs rescaled by the following factors for budget netrality: Work = 0.99699; Practice Expense = 0.99235; Malpractice Expense = 1.00215.

ADDENDUM G.—2001 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00510	00	ALABAMA	0.978	0.871	0.841
00831	01	ALASKA	1.063	1.172	1.378
00832	00	ARIZONA	0.994	0.975	1.150
00520	13	ARKANSAS	0.953	0.851	0.371
02050	26	ANAHEIM/SANTA ANA, CA	1.036	1.187	0.901
02050	18	LOS ANGELES, CA	1.055	1.169	0.901
31140	03	MARIN/NAPA/SOLANO, CA	1.014	1.205	0.677
31140	07	OAKLAND/BERKELEY, CA	1.040	1.216	0.677
31140	05	SAN FRANCISCO, CA	1.067	1.378	0.677
31140	06	SAN MATEO, CA	1.047	1.353	0.677
31140	09	SANTA CLARA, CA	1.062	1.321	0.653
02050	17	VENTURA, CA	1.027	1.128	0.750
02050	99	REST OF CALIFORNIA *	1.007	1.039	0.723
31140	99	REST OF CALIFORNIA *	1.007	1.039	0.723
00824	01	COLORADO	0.986	0.981	0.817
10230	00	CONNECTICUT	1.049	1.164	1.009
00902	01	DELAWARE	1.019	1.032	0.786
00903	01	DC + MD/VA SUBURBS	1.050	1.164	0.970
00590	03	FORT LAUDERDALE, FL	0.996	1.022	1.830
00590	04	MIAMI, FL	1.015	1.064	2.439
00590	99	REST OF FLORIDA	0.975	0.947	1.296
00511	01	ATLANTA, GA	1.006	1.046	0.943
00511	99	REST OF GEORGIA	0.970	0.896	0.943
00833	01	HAWAII/GUAM	0.997	1.154	0.894
05130	00	IDAHO	0.960	0.887	0.532
00952	16	CHICAGO, IL	1.027	1.090	1.745
00952	12	EAST ST. LOUIS, IL	0.988	0.927	1.589
00952	15	SUBURBAN CHICAGO, IL	1.006	1.069	1.505
00952	99	REST OF ILLINOIS	0.964	0.888	1.074
00630	00	INDIANA	0.981	0.919	0.445
00826	00	IOWA	0.959	0.879	0.622
00650	00	KANSAS *	0.963	0.897	0.823
00740	04	KANSAS *	0.963	0.897	0.819
00660	00	KENTUCKY	0.970	0.870	0.842
00528	01	NEW ORLEANS, LA	0.998	0.947	1.218
00528	99	REST OF LOUISIANA	0.969	0.876	1.052
31142	03	SOUTHERN MAINE	0.979	1.015	0.687
31142	99	REST OF MAINE	0.961	0.917	0.687
00901	01	BALTIMORE/SURR. CNTYS, MD	1.020	1.038	1.007
00901	99	REST OF MARYLAND	0.985	0.979	0.820
31143	01	METROPOLITAN BOSTON	1.040	1.218	0.748
31143	99	REST OF MASSACHUSETTS	1.010	1.111	0.748

ADDENDUM G.—2001 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00953	01	DETROIT, MI	1.042	1.030	2.903
00953	99	REST OF MICHIGAN	0.996	0.938	1.700
10240	00	MINNESOTA	0.990	0.971	0.479
10250	00	MISSISSIPPI	0.957	0.841	0.750
00740	02	METROPOLITAN KANSAS CITY, MO	0.988	0.958	1.021
00523	01	METROPOLITAN ST. LOUIS, MO	0.994	0.940	1.022
00740	99	REST OF MISSOURI *	0.946	0.826	0.979
00523	99	REST OF MISSOURI *	0.946	0.826	0.979
00751	01	MONTANA	0.951	0.877	0.729
00655	00	NEBRASKA	0.949	0.875	0.436
00834	00	NEVADA	1.005	1.035	1.103
31144	40	NEW HAMPSHIRE	0.987	1.032	0.919
00805	01	NORTHERN NJ	1.057	1.192	0.827
00805	99	REST OF NEW JERSEY	1.028	1.102	0.827
00521	05	NEW MEXICO	0.973	0.905	0.809
00803	01	MANHATTAN, NY	1.093	1.352	1.661
00803	02	NYC SUBURBS/LONG I., NY	1.067	1.242	1.942
00803	03	POUGHKPSIE/N NYC SUBURBS, NY	1.010	1.079	1.300
14330	04	QUEENS, NY	1.057	1.231	1.855
00801	99	REST OF NEW YORK	0.998	0.951	0.778
05535	00	NORTH CAROLINA	0.970	0.927	0.546
00820	01	NORTH DAKOTA	0.950	0.879	0.657
16360	00	OHIO	0.989	0.941	1.016
00522	00	OKLAHOMA	0.969	0.879	0.447
00835	01	PORTLAND, OR	0.996	1.035	0.511
00835	99	REST OF OREGON	0.961	0.935	0.511
00865	01	METROPOLITAN PHILADELPHIA, PA	1.023	1.090	1.310
00865	99	REST OF PENNSYLVANIA	0.989	0.930	0.705
00973	20	PUERTO RICO	0.882	0.720	0.317
00870	01	RHODE ISLAND	1.017	1.067	1.036
00880	01	SOUTH CAROLINA	0.975	0.905	0.279
00820	02	SOUTH DAKOTA	0.935	0.876	0.420
05440	35	TENNESSEE	0.975	0.900	0.572
00900	31	AUSTIN, TX	0.986	0.998	0.854
00900	20	BEAUMONT, TX	0.992	0.895	1.362
00900	09	BRAZORIA, TX	0.992	0.978	1.362
00900	11	DALLAS, TX	1.010	1.040	0.930
00900	28	FORT WORTH, TX	0.987	0.976	0.930
00900	15	GALVESTON, TX	0.988	0.969	1.362
00900	18	HOUSTON, TX	1.020	1.007	1.377
00900	99	REST OF TEXAS	0.966	0.884	0.914
00910	09	UTAH	0.977	0.925	0.619
31145	50	VERMONT	0.973	0.985	0.544
00973	50	VIRGIN ISLANDS	0.965	1.029	1.017
10490	00	VIRGINIA	0.985	0.939	0.529
00836	02	SEATTLE (KING CNTY), WA	1.005	1.090	0.765
00836	99	REST OF WASHINGTON	0.982	0.974	0.765
16510	16	WEST VIRGINIA	0.963	0.852	1.242
00951	00	WISCONSIN	0.981	0.931	0.890
00825	21	WYOMING	0.967	0.895	0.855

* Payment locality is serviced by two carriers.

Note: Work GPCI is the 1/4 work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act. GPCIs rescaled by the following factors for budget neutrality: Work = 0.99699; Practice Expense = 0.99235; Malpractice Expense = 1.00215.

ADDENDUM H.—PROPOSED 2002 VERSUS 1999 GEOGRAPHIC ADJUSTMENT FACTORS (GAF)

[In descending order of difference]

Locality	1999 GAF	2002 GAF	Difference	Percent difference
SAN MATEO, CA	1.122	1.199	0.077	6.89
SAN FRANCISCO, CA	1.143	1.221	0.078	6.84
SANTA CLARA, CA	1.125	1.184	0.059	5.28
MARIN/NAPA/SOLANO, CA	1.058	1.104	0.046	4.33
METROPOLITAN BOSTON	1.088	1.117	0.029	2.64
OAKLAND/BERKELEY, CA	1.086	1.113	0.027	2.46
REST OF MASSACHUSETTS	1.030	1.053	0.023	2.24
DALLAS, TX	1.009	1.031	0.022	2.19
UTAH	0.931	0.951	0.020	2.10
SEATTLE (KING CNTY), WA	1.023	1.038	0.015	1.48

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ADDENDUM H.—PROPOSED 2002 VERSUS 1999 GEOGRAPHIC ADJUSTMENT FACTORS (GAF)—Continued

[In descending order of difference]

Locality	1999 GAF	2002 GAF	Difference	Percent difference
INDIANA	0.927	0.941	0.014	1.46
NORTH CAROLINA	0.928	0.942	0.014	1.46
WYOMING	0.925	0.938	0.013	1.36
PORTLAND, OR	0.987	1.000	0.013	1.35
REST OF NEW JERSEY	1.044	1.058	0.014	1.34
COLORADO	0.971	0.983	0.012	1.27
ATLANTA, GA	1.015	1.026	0.011	1.10
SOUTH CAROLINA	0.913	0.923	0.010	1.06
NEVADA	1.016	1.026	0.010	1.00
SOUTH DAKOTA	0.886	0.895	0.009	0.99
MINNESOTA	0.957	0.966	0.009	0.99
REST OF PENNSYLVANIA	0.948	0.956	0.008	0.89
NORTHERN NJ	1.099	1.109	0.010	0.89
VERMONT	0.957	0.965	0.008	0.88
NEBRASKA	0.894	0.902	0.008	0.87
TENNESSEE	0.924	0.932	0.008	0.82
VENTURA, CA	1.055	1.062	0.007	0.66
NORTH DAKOTA	0.906	0.912	0.006	0.63
ANAHEIM/SANTA ANA, CA	1.090	1.097	0.007	0.63
REST OF ILLINOIS	0.933	0.939	0.006	0.60
SUBURBAN CHICAGO, IL	1.048	1.054	0.006	0.57
METROPOLITAN PHILADELPHIA, PA	1.059	1.065	0.006	0.56
FORT WORTH, TX	0.978	0.983	0.005	0.55
OKLAHOMA	0.908	0.913	0.005	0.52
NEW MEXICO	0.935	0.940	0.005	0.49
WEST VIRGINIA	0.925	0.929	0.004	0.39
VIRGINIA	0.946	0.950	0.004	0.37
REST OF WASHINGTON	0.968	0.971	0.003	0.35
REST OF CALIFORNIA	1.007	1.010	0.003	0.32
ARKANSAS	0.886	0.889	0.003	0.32
WISCONSIN	0.955	0.957	0.002	0.26
MONTANA	0.910	0.912	0.002	0.19
AUSTIN, TX	0.985	0.986	0.001	0.14
DELAWARE	1.015	1.016	0.001	0.12
MISSISSIPPI	0.900	0.901	0.001	0.08
IOWA	0.912	0.913	0.001	0.08
KENTUCKY	0.923	0.924	0.001	0.07
REST OF TEXAS	0.929	0.930	0.001	0.07
DC + MD/VA SUBURBS	1.095	1.095	−0.000	−0.02
IDAHO	0.913	0.912	−0.001	−0.14
REST OF OREGON	0.934	0.933	−0.001	−0.15
NEW ORLEANS, LA	0.986	0.984	−0.002	−0.17
ARIZONA	0.994	0.991	−0.003	−0.27
NYC SUBURBS/LONG I., NY	1.177	1.173	−0.004	−0.30
ALABAMA	0.930	0.927	−0.003	−0.36
REST OF MAINE	0.934	0.931	−0.003	−0.36
CHICAGO, IL	1.084	1.080	−0.004	−0.38
OHIO	0.973	0.968	−0.005	−0.47
MANHATTAN, NY	1.227	1.221	−0.006	−0.47
REST OF GEORGIA	0.940	0.936	−0.004	−0.47
PUERTO RICO	0.794	0.790	−0.004	−0.47
BALTIMORE/SURR. CNTYS, MD	1.031	1.025	−0.006	−0.57
VIRGIN ISLANDS	0.997	0.991	−0.006	−0.57
EAST ST. LOUIS, IL	0.989	0.983	−0.006	−0.57
REST OF NEW YORK	0.973	0.967	−0.006	−0.57
KANSAS	0.933	0.928	−0.005	−0.58
CONNECTICUT	1.100	1.093	−0.007	−0.65
REST OF LOUISIANA	0.936	0.930	−0.006	−0.68
BRAZORIA, TX	1.005	0.997	−0.008	−0.77
METROPOLITAN KANSAS CITY, MO	0.982	0.974	−0.008	−0.77
REST OF MARYLAND	0.980	0.972	−0.008	−0.77
HOUSTON, TX	1.034	1.025	−0.009	−0.86
NEW HAMPSHIRE	1.008	0.999	−0.009	−0.86
GALVESTON, TX	1.000	0.991	−0.009	−0.87
REST OF FLORIDA	0.981	0.972	−0.009	−0.88
POUGHKPSIE/N NYC SUBURBS, NY	1.056	1.046	−0.010	−0.94
SOUTHERN MAINE	0.987	0.977	−0.010	−0.97
QUEENS, NY	1.167	1.156	−0.011	−0.98
FORT LAUDERDALE, FL	1.046	1.033	−0.013	−1.23
RHODE ISLAND	1.047	1.033	−0.014	−1.33

ADDENDUM H.—PROPOSED 2002 VERSUS 1999 GEOGRAPHIC ADJUSTMENT FACTORS (GAF)—Continued

[In descending order of difference]

Locality	1999 GAF	2002 GAF	Difference	Percent difference
BEAUMONT, TX	0.973	0.959	−0.014	−1.39
ALASKA	1.131	1.115	−0.016	−1.44
LOS ANGELES, CA	1.104	1.088	−0.016	−1.46
METROPOLITAN ST. LOUIS, MO	0.983	0.965	−0.018	−1.79
REST OF MISSOURI	0.908	0.890	−0.018	−2.00
REST OF MICHIGAN	1.013	0.990	−0.023	−2.24
MIAMI, FL	1.105	1.079	−0.026	−2.36
HAWAII/GUAM	1.072	1.046	−0.026	−2.42
DETROIT, MI	1.131	1.095	−0.036	−3.20

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Part IV

Nuclear Regulatory Commission

10 CFR Part 71

Major Revision to 10 CFR Part 71: Compatibility With ST–1—The IAEA Transportation Safety Standards—And Other Transportation Safety Issues, Issues Paper, and Notice of Public Meetings; Proposed Rule

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Major Revision to 10 CFR Part 71: Compatibility With ST–1—The IAEA Transportation Safety Standards—and Other Transportation Safety Issues, Issues Paper, and Notice of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment on issues paper, and notice of plans for public meetings.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering a rulemaking that would revise the Commission's regulations on packaging and transporting radioactive material to make it compatible with the International Atomic Energy Agency (IAEA) transportation safety standards as well as codify other requirements. The NRC is seeking early public input on the major issues associated with such a rulemaking. To aid in that process, the NRC is requesting comments on the issues paper included in this notice. Specifically, the NRC is interested in public and industry comments related to: Quantitative information on the costs and benefits resulting from consideration of the factors described in the issues paper, operational data on radiation exposures (increased or reduced) that might result from implementing the contemplated changes; whether the presented factors are appropriate; and whether other factors should be considered, including providing quantitative information for these factors. The Commission believes that the stakeholders' comments will help to quantify the potential impact of these changes and will assist the NRC, as the proposed rule is developed, in developing a risk-informed alternative as its preferred option. NRC also intends to conduct three public meetings in August and September of this year to discuss those issues and solicit public comments.

DATES: Submit comments at the public meetings, or in writing by September 30, 2000. Comments received after this date will be considered if it is practicable to do so, but the Commission is able to assure consideration only for comments received on or before this date.

In addition to providing opportunity for written (and electronic) comments, public meetings on the paper will be held as follows :

August 10, 2000 NRC Headquarters, Washington, DC, 8:30 am–5pm

September 20, 2000 Atlanta, Georgia, J.W. Marriott, 3300 Lenox Road Northeast, Atlanta, GA 30326, 6–10 pm

September 26, 2000 Oakland, California, Oakland Federal Building, Edward R. Roybal Auditorium and Conference Center, 1301 Clay Street, Oakland, CA 94612, 6–10 pm

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5095 (e-mail:CAG@nrc.gov).

Copies of any comments received and documents related to this action may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, telephone: (301) 415–6103; e-mail: nst@nrc.gov, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001. Specific comments on the public meeting process should be directed to Francis X. Cameron; e-mail fxc@nrc.gov, telephone: (301) 415–1642; Office of the General Counsel, USNRC, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

By international agreement and through Commission direction, the NRC staff is preparing an overall rulemaking effort that addresses the need to make 10 CFR Part 71 regulations, "Packaging and Transportation of Radioactive Material" compatible with the most current revision of the IAEA Safety Standards Series No. ST–1. Part 71 is based, in general, on the safety standards developed by the IAEA. The IAEA has been revising its transportation standards on approximately a 10-year cycle, with the last edition, ST–1, published in December 1996. Further, several additional issues related to other changes to 10 CFR Part 71 are being considered by NRC. These issues include the fissile material exemptions, general license provisions, and the current requirements for double containment of plutonium.

The NRC is supplementing its standard rulemaking process by conducting enhanced public participatory activities including facilitated public meetings before the start of any formal rulemaking process to solicit early and active public input on major issues with revision of 10 CFR Part 71. The NRC will also utilize its rulemaking website to make the issues paper available to the public and to solicit public comments. To facilitate discussion and public comments, the NRC has prepared an issues paper that describes 18 rulemaking issues (IAEA and Non-IAEA-related) to be addressed in revisions to Part 71. These issues are described in more detail in Section III of this notice.

II. Request for Written and Electronic Comments and Plans for Public Meetings

The NRC is soliciting comments on the items presented in the issues paper in Section III of this notice. Comments may be submitted either in writing or electronically as indicated under the **ADDRESSES** heading. In addition to providing an opportunity for written comments, the NRC is holding facilitated public meetings at three different geographical locations on the issues discussed in Section III (see the DATES heading of this notice for the dates and locations of these meetings). In addition to the NRC staff, a representative from the Department of Transportation (DOT) will be available to answer any questions related to their concurrent rulemaking efforts.

In addition to inviting public comments on the issues presented in Section III, NRC is soliciting specific comments related to: (1) Quantitative information on the costs and benefits resulting from consideration of the factors described in the issues paper, (2) operational data on radiation exposures (increased or reduced) that might result from implementing the Part 71 changes; (3) whether the presented factors are appropriate; and (4) whether other factors should be considered, including

providing quantitative information for these factors. The Commission believes that the stakeholders' comments will help to quantify the potential impact of these changes and will assist the NRC, as the proposed rule is developed, in developing a risk-informed alternative as its preferred option.

Based on the comments received in written or electronic form, and at the public meetings, the Commission will then be in a better position to evaluate options for Part 71 rulemaking, to decide on the preferred options, and to proceed with development of a proposed rule.

III. Issues Paper on Major Revision to 10 CFR Part 71: Compatibility with ST–1—the IAEA Transportation Safety Standards—and Other Transportation Safety Issues

A. Introduction

1. Background

In 1969, the International Atomic Energy Agency (IAEA), recognizing that its international regulations for the safe transportation of radioactive material should be revised from time to time because of scientific and technical advances, and accumulated experience, invited Member States (the U.S. is a Member State) to submit comments and suggest changes to its standards. As a result of this initiative, the IAEA issued revised standards in 1973 (Regulations for the Safe Transport of Radioactive Material, 1973 Edition, Safety Series (SS) No. 6). The IAEA has periodically reviewed its transportation regulations (about every ten years) to ensure that the regulations are kept current. Thus, a review of IAEA regulations was initiated in 1979 and resulted in the publication of revised regulations in 1985 (1985 Edition, SS No. 6).

The U.S. Nuclear Regulatory Commission (NRC) also periodically revises its regulations to make them compatible, to the extent appropriate, with those of the IAEA. On August 5, 1983 (48 FR 35600), the NRC published, in the **Federal Register**, a final revision to 10 CFR Part 71, "Packaging and Transportation of Radioactive Material." That revision, in combination with a parallel revision of the hazardous materials transportation regulations of the U.S. Department of Transportation (DOT), brought U.S. domestic transport regulations into general accord with the 1973 edition of SS No. 6. The next IAEA revision of the transportation standards in SS No. 6 resulted in a revision to Part 71 that was published on September 28, 1995 (60 FR 50248), to make Part 71 compatible with the 1985 edition of SS No. 6. DOT published its corresponding revision to Title 49 of the Code of Federal Regulations on the same date.

In each case, the NRC coordinated its Part 71 revisions with the DOT. DOT is the U.S. Competent Authority for transportation of hazardous materials. "Radioactive Materials Regulations" is a subset of "Hazardous Materials Regulations" in Title 49. The DOT and the NRC co-regulate transport of radioactive material in the United States and have a Memorandum of Understanding to that effect.

The last revision to the IAEA SS No. 6 was titled Safety Standards Series No. ST–1, referred to hereafter as ST–1, and was published in December 1996.

2. Scope of Part 71 Rulemaking

The Commission has directed the NRC staff to begin rulemaking to revise Part 71 for compatibility with ST–1. The NRC staff compared ST–1 to SS No. 6 to identify changes made in ST–1, and then identified affected sections of Part 71. Based on this comparison, the NRC staff identified eleven Part 71 IAEA-compatibility issues to be addressed through the rulemaking process. These eleven issues (identified as issues 1 through 11) are discussed in greater detail in Section B. Seven additional issues were identified (issues 12 thru 18) for incorporation in the rulemaking process, through NRC staff identification and through Commission direction, and are also discussed in further detail in Section B.

The Part 71 rulemaking and this issues paper are being coordinated with DOT to ensure that consistent regulatory standards are maintained between NRC and DOT radioactive material transportation regulations, and to ensure coordinated publication of the final rules by each agency. Note that on December 28, 1999 (64 FR 72633), DOT published an Advance Notice of Proposed Rule regarding adoption of ST–1 in its regulations, and plans to proceed to develop a proposed rule for public comments and subsequently a final rule. In order to develop a final rule concurrent with the timing of the DOT final rule, the NRC staff developed the following schedule: (1) the NRC staff will submit to the Commission for approval, a proposed rule to revise Part 71 by March 1, 2001, (2) the proposed rule is expected to be published for public comment in April 2001, (3) the NRC staff is planning to hold public meetings during the public comment period, and (4) after the end of the public comment period, the staff will revise the rule and submit it for approval as a final rule by June 2002.

The NRC proposed rule will include a cost-benefit (regulatory analysis). Contrary to the NRC's rulemaking process under the Administrative Procedure Act, development of the IAEA ST–1 did not directly involve the public or include a cost-benefit analysis, to our knowledge. In contrast, NRC is bound to consider costs and benefits in its regulatory analysis, and is prepared to differ from the ST–1 standards, at least for domestic purposes, to the extent the standards cannot be justified from a cost-benefit perspective.

B. Issues Format

The following format is used in the presentation of the issues that follow. Each issue is assigned a tracking number with a short title, and includes an issue description paragraph and a listing of factors for consideration. The factors for consideration in this document are not meant to be a complete or final listing, but are included to help prompt consideration and discussion of the issue. In August and September 2000, through a series of public meetings and a summary workshop, the public and industry will be requested to (1) comment on and recommend additions, deletions, or modifications to the factors for consideration; (2) propose implementation options for each issue; and (3) provide estimated implementation cost information. Other venues for feedback will be made available through mailings and by internet through the NRC web site. This public feedback will then be used in developing implementation options for Commission consideration as the Part 71 rulemaking process proceeds. Comments received that are outside the scope of this rulemaking may be addressed in future rulemaking if warranted.

Factors for consideration that are common to most of the issues are stated here, rather than repeated in each issue. These include: (1) How should risk considerations (*i.e.*, what can happen, how likely is it, what are the consequences) be factored into rulemaking on applicable issues, (2) costs (*i.e.*, administrative, training, testing) to industry and/or Government agencies in adopting ST–1 requirements (issues 1–11) or the NRC-initiated changes (issues 12–18), and (3) potential problems that may occur as a result of adopting ST–1 requirements, or problems that may occur from partial or non-adoption of the ST–1 requirements resulting in dual standards between domestic (10 CFR 71) and international (ST–1) requirements. For issues 1–11, the "factors for consideration" noted under each issue are generally written

in the context of adopting the ST–1 requirements into Part 71.

In the case of the eleven IAEA-compatibility issues, portions of the Safety Standards Series ST–1 are referenced by the corresponding paragraph number from the original IAEA document. The full text of the ST–1 references can be found in Appendix A of this issues paper.

Issue 1. Changing Part 71 to SI Units Only

Description

ST–1, Annex II, page 199 states: "This edition of the Regulations for the Safe Transport of Radioactive Material uses the International System of Units (SI)." The change to SI units exclusively is evident throughout ST–1. ST–1 also requires that activity values contained in shipping papers and displayed on package labels be expressed only in SI units (paragraphs 543 and 549). SS No. 6, 1985 Edition, used SI units as the primary controlling units, with subsidiary units in parentheses; either units were permissible on labels and shipping papers.

The ST–1 requirement regarding only the use of SI units conflicts with the NRC Metrication Policy issued on June 19, 1996 (61 FR 31169). This policy allows a dual-unit system to be used; SI units with English units in parentheses. According to the NRC's metrication policy, the following documents should be published in dual units: New regulations, major amendments to existing regulations, regulatory guides, NUREG-series documents, policy statements, information notices, generic letters, bulletins, and all written communications directed to the public. Documents specific to a licensee, such as inspection reports and docketed material dealing with a particular licensee, will be issued in the system of units employed by the licensee. Currently, Part 71 utilizes the dual unit scheme in accordance with the NRC Metrication Policy.

Factors for Consideration

- What changes would licensees and Certificate of Compliance holders have to make to relevant documents if NRC revised 10 CFR Part 71 to require SI units only?
- What risks and safety impacts might occur in shipments because of possible confusion or erroneous conversion between the currently utilized English units and SI units?
- What sort of transition period would be needed to allow for the conversion to exclusive use of SI units?
- What other conforming changes would have to be made to Title 10?

Issue 2. Radionuclide Exemption Values

Description

Exempt materials are those which are of such low potential hazard that they may not be required to be shipped in accordance with specific transportation regulations. In ST–1, the IAEA adopted a new approach to specifying these materials by developing radionuclide-specific activity concentration values for exempt materials and activity limits for exempt consignments. These new values are found in ST–1, Tables I and II, and Section IV. Related information is provided in paragraphs 401 through 406 of ST–1. Exempt materials are those that fall below the listed activity concentration values. Exempt consignments are packages or loads that have a total activity less than the listed activity values.

The exempt materials activity concentration values range from 0.1 to 1,000,000 Bq/g, with most radionuclides in the 1 to 100 Bq/g range. This IAEA requirement does not currently exist in Part 71. Appendix A to Part 71—Determination of A_1 and A_2, does not contain exemption values for each radionuclide because the exemption for low-level radioactive material as contained in 10 CFR 71.10(a) is 70 Bq/g (2000 picoCuries per gram) or less.

Some materials, such as ores containing naturally occurring radionuclides, would be brought into the scope of the regulations for the first time; however, provisions are included in ST–1 that reduce the potential impact on natural materials containing radionuclides at these low levels. The provisions continue to exempt natural material and ores containing naturally occurring radionuclides, that are not intended to be processed for the use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the values [ST–1 paragraph 107(e)]. Additionally, for materials that may appear in the scope of the regulations for the first time, but which have activity concentrations not exceeding 30 times the exempt activity concentrations, provisions exist in ST–1 to allow them to be transported as LSA–I materials that may be transported unpackaged (in bulk). However, there may be unintended consequences in implementing the ST–1 concentration values where applied to non-transportation activities. The DOT current exempt material standard of 70 Bq/g (2000 picoCuries per gram), based on previous IAEA transportation standards, has application by cross reference outside the domain of transportation.

Factors for Consideration

- In some cases, would shippers have to expend resources to: (1) Identify the radionuclides in a material; (2) measure the activity concentration of each radionuclide; and, (3) apply the method for mixtures of radionuclides when determining the basic radionuclide values for exempt material?
- Should the exemption values apply to domestic as well as export shipments?
- If the exemption values only applied to export shipments, would the resulting standard be practical to implement?
- If DOT specifies the exemption values in its regulations (49 CFR 173), should the NRC incorporate those same exemption values in Part 71, or simply make reference to the exemption values in the DOT regulations?
- There may be unintended consequences to adoption of specific exemption values as the current exemption value is used for non-transportation related activities. To what extent and in what manner would a change to specific exemption values affect entities whose non-transportation activities are linked to the current exemption value?

Issue 3. Revision of A_1 and A_2

Description

The A_1 and A_2 values specified in Part 71, Appendix A, are basic dose-based values used in several areas of the regulations, including determining the type of package that must be used for transporting radioactive material. For example, the A_1 values are the maximum activity of special-form materials allowed in a Type A package, and the A_2 values are the maximum activity of non-special-form material allowed in a Type A package. The A_1 and A_2 values are also used for several other quantitative limits including Type B-package activity release limits, low-specific activity material specifications, and excepted package content limits.

The ST–1 revised A_1 and A_2 values are primarily based on dosimetric models that use the IAEA's Q system for dose determination. The Q system includes consideration of a broad range of specific exposure pathways consisting of: External photon dose, external beta dose, inhalation dose, skin and ingestion dose because of contamination, and dose from submersion in gaseous isotopes. The main changes in the Q system resulted from making the dosimetric models

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consistent with those used in International Commission on Radiation Protection (ICRP) Publication 61. The lung model and dose conversion factors were updated to the latest ICRP models and the radionuclide values were recalculated. The Q system reference doses and exposure pathways were not changed.

Factors for Consideration

- Is there a practical alternative to adoption of the A_1 and A_2 values?
- Are there specific values that should be modified for domestic use only? What would be the justification for doing so?
- To what extent should the US partial adoption of ICRP 61 be considered for revising the A_1 and A_2 values?

Issue 4. Uranium Hexafluoride Package Requirements

Description

ST–1 introduces detailed requirements for uranium hexaflouride (UF_6) packages designed for more than 0.1 kg UF_6. NRC certifies Type B and fissile (*i.e.*, enriched uranium) UF_6 packages under 10 CFR Part 71. Although most of these issues are under DOT in 49 CFR Part 173, the new ST–1 provisions relevant to 10 CFR Part 71 are summarized as follows (see Appendix A for a listing of the specific ST–1 provisions):

Para 629: Packages shall be packaged and transported in accordance with an international standard, ISO 7195, "Packaging of Uranium Hexafluoride (UF_6) for Transport." ST–1 also allows [para 632(a)] for use of equivalent national standards (*e.g.*, ANSI N14.1); provided that approval by all countries involved in the shipment is obtained (*i.e.*, multilateral approval).

Para 630: ST–1 requires that packages must withstand: (a) A minimum internal pressure test to 2.8 MPa (1.4 MPa for multilateral approval), (b) the "normal conditions of transport" drop test, and (c) the hypothetical accident condition thermal test (except that packages containing grater than 9000 kg are exempt from this test if given multilateral approval).

Para 631: ST–1 prohibits packages from utilizing pressure relief devices.

Para 677(b): ST–1 includes an exception that allows UF_6 packages to be evaluated for criticality without considering the in-leakage of water into the containment system. This provision means that a single fissile UF_6 package does not have to be subcritical assuming that water leaks into the containment system. This provision only applies when there is no physical contact of the cylinder valve to any other component of the packaging after the hypothetical accident tests, the valve remains leaktight, and when there is a high degree of quality control in the manufacture, maintenance, and repair of packaging coupled with tests to demonstrate closure of each package before each shipment.

Factors for Consideration

- NRC practice has been to certify fissile UF_6 packages (including the cylinder which is the containment vessel and a protective overpack) that are shown to be leaktight when subject to the hypothetical accident tests and to specify that the cylinder meets ANSI N14.1 (ANSI N14.1 has the domestic pressure test requirement in 630(a), not the regulations). For this reason, it is believed that NRC-certified UF_6 packages already comply with the above package performance requirements (para 630 and 677(b)). However, these changes appear to have significant ramifications for non-fissile UF_6 packaging that are under the purview of DOT.
- NRC practice has been to reference the ANSI N14.1 standard in the certification, but not to reference the standard in the rule. Although the ISO–7195–2000 standard (in draft) has been drafted taking into account ANSI N14.1, a detailed confirmation of the compatibility of the two standards has not been performed. NRC has representation on the ANSI N14.1 revision panel.

Issue 5. Introduction of Criticality Safety Index (CSI) Requirements

Description

For fissile material packages, ST–1 defines a new term, "criticality safety index" (CSI) (paragraph 218), that applies in addition to the traditional package transport index (TI). In current domestic regulations and in the previous IAEA regulations, the overall package TI was determined based upon the more limiting of a "TI based upon criticality considerations" and a "TI based on package radiation levels." Both NRC and DOT regulations define and rely on the TI to determine appropriate safety requirements.

The CSI is determined in the same manner as the current TI "based upon criticality considerations," but it now must be displayed on shipments of fissile material (paras 544–545) using a new "fissile material" label. A package TI is still determined in the same way as the "TI based on package radiation levels" and continues to be displayed on the traditional "radioactive material" label.

Factors for Consideration

- Under the new approach, it is believed that some shipments of fissile material packages might be made more efficiently (equivalent safety but more packages allowed in a single shipment), due to avoiding the situation where separation distance requirements (radiological safety) restrict package accumulation (criticality safety), or vice versa.
- Are any issues envisioned in the use of two TI values for shipments?

Issue 6. Type C Packages and Low Dispersible Material

Description

IAEA has adopted the concept of a new category of package, the Type C package (paragraphs 230, 667–670, 730, 734–737) that could withstand severe accident conditions in air transport without loss of containment or significant increase in external radiation levels. At the same time, ST–1 introduced a new category of material, Low Dispersible Material (LDM), which due to its limited radiation hazard and low dispersibility could continue to be transported by aircraft in Type B packages. U.S. regulations have no Type C package or LDM category, but do have specific requirements for the air transport of plutonium. These specific NRC requirements for the air transportation of plutonium (10 CFR 71.64 and 71.74) continue to apply, and will not be addressed in this rulemaking.

The Type C requirements apply to packages destined for air transport that contain a total activity above the following thresholds: for special form material—3,000 A_1 or 100,000 A_2, whichever is lesser, and for all other radioactive material—3,000 A_2. Below these thresholds, Type B packages would be permitted to be used in air transport.

The Type C package performance requirements are significantly more stringent than those for Type B packages. For example, a 90 m/s impact test is required instead of the 9 m-drop test. A 60-minute fire test is required instead of the 30-minute Type B requirement. Other additional tests, such as a puncture/tearing test are also imposed. These tests are more stringent and are expected to result in package designs that will survive more severe aircraft accidents than Type B package designs.

The LDM specification was added to account for materials (package contents)

that have inherently limited dispersibility, solubility, and external radiation levels. The test requirements for LDM are a subset of the Type C package requirements (90 m/s impact and 60 minute thermal test) with an added solubility test, and must be performed on the material without packaging. Specific acceptance criteria are established for evaluating the performance of the material during and after the tests (less than 100 A_2 in gaseous or particulate form of less than 100 micrometer aerodynamic equivalent diameter and less than 100 A_2 in solution). These stringent performance and acceptance requirements are intended to ensure that these materials can continue to be transported safely in Type B packages aboard aircraft.

Factors for Consideration

- What would be the impact on air transport of currently certified Type B packages if the activity content is limited to the activity content thresholds specified above?
- What tests and analyses would be a practical method for demonstrating compliance with the type C package standards?

Issue 7. Deep Immersion Test

Description

The IAEA performance requirement for deep water immersion contained in ST–1 (para. 657 and 730) is an expansion of the requirement contained in SS No. 6. Previously, the deep immersion test was only required for packages of irradiated fuel exceeding 37 PBq (1,000,000 Ci). The ST–1 requirements apply to all Type B(U) and B(M) packages containing more than 10^5A_2 and to Type C packages.

10 CFR 71.61 requires a deep immersion test for packages of irradiated nuclear fuel with activity greater than 10^6 Ci. Currently, 10 CFR 71.61 is more conservative than SS No. 6, with respect to irradiated fuel package design requirements because it requires that a package for irradiated nuclear fuel must be designed such that its undamaged containment system can withstand an external water pressure of 2 MPa for a period of not less than one hour without collapse, buckling, or in leakage of water. The conservatism lies in the test criteria of no collapse, buckling, or in leakage as compared to the "no rupture" criteria found in SS No. 6 and ST–1.

To be consistent with ST–1, the NRC would have to revise 10 CFR Part 71.61 to apply to all packages with activity greater than 10^5A_2 and adopt the ST–1 test criteria.

Factors for Consideration

- How should the differences in the acceptance standards be addressed?
- What would be the impact on availability of packages and shipping costs if all packages with an activity greater than 10^5A_2 are required to pass the immersion test requirements?
- Would US origin package designs have to be specially reviewed and certified before shippers could export them in accordance with international regulations if ST–1 requirements were not adopted?

Issue 8. Grandfathering Previously Approved Packages

Description

Historically, IAEA, DOT, and NRC regulations have included transitional arrangements or "grandfathering" provisions whenever the regulations have undergone major revision. The purpose of grandfathering is to minimize the costs and impacts of implementing changes in the regulations. Package designs and packagings compliant with the existing regulations do not become "unsafe" when the regulations are amended (unless a significant safety issue is corrected in the revision).

Grandfathering typically includes provisions that allow for: (1) Continued use of existing package designs and packagings already fabricated, although some additional requirements may be imposed, (2) completion of packagings in the process of being fabricated or that may be fabricated within a given time period after the regulatory change; and (3) limited modifications to package designs and packagings without the need to demonstrate full compliance with the revised regulations, provided that the modifications do not significantly affect the safety of the package.

A major change in ST–1 is that "grandfathering" should be limited to only those package designs that have been certified under the last two major revisions of the regulations. Packages approved under an earlier revision would either be removed from service or be required to be re-certified under the revised regulations that result from this rulemaking.

As revised in 1996, IAEA regulations in ST–1 only recognize the "grandfathering" of package designs certified under the 1973 and 1985 editions of IAEA regulations (SS No. 6). Package designs approved under the 1967 edition of SS No. 6 would be required to be re-certified, removed from service, or shipped via exemption (*i.e.*, special arrangement). If this approach to "grandfathering" is adopted in DOT and NRC regulations, package designs approved to earlier versions of DOT and NRC regulations (*i.e.*, those based on 1967 IAEA regulations) would be required to be re-certified, removed from service, or shipped via exemption.

Factors for Consideration

- Should the "grandfathering " of previously approved packages be limited to those approved under the last two major revisions of the regulations? If not, on what basis should the "grandfathering " of previously approved packages be allowed?
- How long should "grandfathered" packages be allowed to be fabricated or used?
- What type and magnitude of package design changes should be allowed for "grandfathered" packages, before re-certification to the current set of regulations is required?
- IAEA has initiated a process to review and update ST–1 on a two-year frequency and does this new process raise any issues on the grandfathering limitations to the last two major revisions?

Issue 9. Changes to Various Definitions

Description

The NRC is contemplating changes to various definitions in Part 71 to provide internal consistency and improve correlation with ST–1. 10 CFR 71.4 includes defined terms used throughout Part 71. These terms require clear definition so that they can be used to accurately communicate requirements to licensees. The NRC would add the following definitions from ST–1: (1) Confinement system (paragraph 209), (2) Criticality safety index (paragraph 218; reference issue 5), (3) Low dispersible radioactive material (paragraph 225; reference issue 6), and (4) Quality assurance (paragraph 232). Additionally, the NRC would propose to revise the definition of "package" in 10 CFR 71.4 to be consistent with ST–1. For reference, the ST–1 definitions are contained in Appendix A and provided below.

Para. 209. "Confinement System shall mean the assembly of fissile material and packaging components specified by the designer and agreed to by the competent authority as intended to preserve criticality safety."

Para. 218. "Criticality safety index (CSI) assigned to a package, overpack or freight container containing fissile material shall mean a number which is used to provide control over the accumulation of packages, overpacks or freight containers containing material."

Para. 225. "Low dispersible radioactive material shall mean either a solid radioactive material or a solid radioactive material in a sealed capsule, that has limited dispersibility and is not in powdered form."

Para. 232. "Quality assurance shall mean a systematic programme of controls qand inspections applied by an organization or body involved in the transport of radioactive material which is aimed at providing adequate confidence that the standard of safety prescribed in these Regulations is achieved in practice."

Factors for Consideration

- Do the definitions conflict with existing programs, or introduce other issues or concerns?
- Are there other definitions of terms that are recommended for incorporation in Part 71?

Issue 10. Crush Test for Fissile Material Package Design

Description

Under requirements for packages containing fissile material, ST–1 682(b) requires tests specified in paragraphs 719–724 followed by whichever of the following is the more limiting: the drop test onto a bar as identified in paragraph 727(b) and, either the crush test listed in paragraph 727(c) for packages having a mass not greater than 500 kg and an overall density not greater than 1000 kg/m^3 based on external dimensions, or the nine meter drop test listed in paragraph 727(a) for all other packages; or the water immersion test of paragraph 729.

SS No.6 and Part 71 presently require the crush test for fissile material packages having a mass not greater than 500 kg and an overall density not greater than 1000 kg/m^3 based on external dimensions, and radioactive contents greater than 1000 A_2 not as special form radioactive material. Under ST–1, the crush test is no longer limited to fissile material packages containing an activity greater than 1000 A_2 because ST–1 has extended the crush test requirement to include fissile material package designs regardless of the activity of the contents. This was done in recognition that the crush environment was a potential accident force that should be protected against for both radiological safety purposes (packages containing more than 1000 A_2 in normal form) and criticality safety purposes (fissile material package designs).

To be consistent with ST–1, the NRC would have to revise 10 CFR Part 71 wording to recognize removal of the 1000 A_2 activity limit with respect to the crush test requirement for fissile material package designs. However, full compliance with ST–1 requirements for fissile material packages would also require changes to the hypothetical accident conditions test sequencing of 10 CFR 71.73 and would require performance of the nine-meter free drop test or the crush test, but not both as presently required by § 71.73.

Factors for Consideration

- How should the differences in the test sequencing and required tests be addressed? Would the test sequencing requirements be applied to Type B packages as well?
- What would be the impact on availability of packages and shipping costs due to elimination of the 1000 A_2 activity limit for fissile material packages having a mass not greater than 500 kg and an overall density not greater than 1000 kg/m^3 based on external dimensions?
- If Part 71 is changed to only eliminate the 1000 A_2 activity limit for fissile material packages, but all other tests and the testing sequence remains unchanged, what implications would this have for US origin packages for export?

Issue 11. Fissile Material Package Design for Transport by Aircraft

Issue Description

For shipment of fissile material by air, ST–1 requires that packages with quantities greater than excepted amounts (that would include all the NRC certified packages) require an additional criticality evaluation. Specifically, the requirements are:

Para 680(a): Packages must remain subcritical, assuming 20 centimeters water reflection but not inleakage (*i.e.*, moderation) when subjected to the tests for Type C packages (see Issue 6). The specification of no water ingress is given as the objective of this requirement is protection from criticality events resulting from mechanical or physical rearrangement of the geometry of the package (*i.e.*, fast criticality).

Para 680(b) This provision states that if a package takes credit for "special features," this package can only be presented for air transport if it is shown that these features remain effective even under the Type C test conditions followed by a water immersion test. "Special features" are specified in ST–1 Para 677, and include features that provide moderator exclusion.

The application of the paragraph 680 requirement to fissile-by-air packages is in addition to the normal condition tests (and possibly accident tests) that the package already must meet. Thus:

- A Type IF or AF package by air must: 1) Withstand incident-free conditions of transport with respect to release, shielding, and maintaining subcriticality (single package and array of packages), (2) withstand accident condition tests with respect to maintaining subcriticality (single package and array of packages), and (3) comply with para 680 with respect to maintaining subcriticality (single package).
- A Type BF package by air must: (1) Withstand incident-free conditions of transport *and* Type B tests with respect to release, shielding, and maintaining subcriticality (single package and array of packages); and (2) comply with para 680 with respect to maintaining subcriticality (single package).
- A Type C fissile material package must withstand: incident-free conditions of transport (single package and array of packages), Type B tests (single package and array of packages), and Type C tests (single package) with respect to release, shielding, and maintainIng subcriticality.

Factors for Consideration

- Certain factors need to be considered in determining the practical impacts of domestic adoption of ST–1 paragraph 680. First, all uranium can be shipped in non-Type C package (IF, AF) due to its A_1 and A_2 values. The paragraph 680(a) requirements appear to be readily satisfied by low-enriched uranium, because low enriched uranium (less than approximately 5% enrichment) would typically require moderation (*e.g.*, by water) to achieve nuclear criticality, but the test specifies no water ingress. Secondly, there are statutory restrictions on air transport of plutonium in the U.S. Finally, packaging for air transportation may follow International Civil Aviation Organization Technical Instructions that are also being revised for compatibility with ST–1.

Issue 12: Special Package Approvals

Description

The transport of large objects that are too large for certified packagings and cannot satisfy the packaging requirements was not considered in the development of Part 71. However, as decommissioning activities increase, the need to transport large objects is rising. For example, in 1997, Portland General Electric Company (PGE) requested approval of the Trojan Reactor Vessel Package (TRVP) (including internals) for transport to the disposal facility

operated by US Ecology on the Hanford Nuclear Reservation near Richland, Washington. The TRVP contained approximately 74 petabequerels (2 million curies) in the form of activated metal and 5.7 terabequerels (155 curies) in the form of internal surface contamination; was filled with low-density concrete; and weighed approximately 900 metric tons (1000 tons).

The Commission approved the Trojan shipment under exemptions issued through 10 CFR Part 71.8. Also, the U.S. Department of Transportation's (DOT's) regulations that govern radioactive material shipments do not recognize packages approved via NRC exemption, so DOT also had to consider and issue an exemption for the Trojan shipment.

Because it is the Commission's policy to avoid the use of exemptions for recurring licensing actions, the NRC staff is considering adding regulatory provisions to Part 71 to address special package approvals. If adopted, these provisions would provide a mechanism for review of special packages under the regulations without the need for exemptions.

Factors for Consideration

- Should Part 71 be revised to address reactor vessels specifically or to address large objects in general?
- Should NRC consider adopting an analogue of IAEA's special arrangement provision modified to address packaging?
- What (additional) determinations should be included in an application for a special package approval?
- Should the risk-informed basis used specifically for the Trojan approval be adopted for other special package approvals?

Issue 13. Expansion of Part 71 Quality Assurance Requirements to Holders of, and Applicants for, a Certificate of Compliance

Description

The NRC has observed problems with the performance of 10 CFR Part 72 Certificate of Compliance (CoC) holders in implementing the Part 72 quality assurance (QA) requirements. Problems have occurred in design, design control, fabrication, and corrective action areas. Although CoCs are legally binding documents, certificate holders or applicants for a CoC and their contractors and subcontractors have not clearly been brought within the scope of Part 72 requirements. Therefore, because the terms "certificate holder" and "applicant for a certificate of compliance" do not appear in the Part 72, Subpart G regulations, the NRC has not had a clear basis to cite these persons for violations of Part 72 requirements in the same way it treats licensees.

The NRC Enforcement Policy [1] and its implementing program were established to support the NRC's overall safety mission in protecting public health and safety and the environment. Consistent with this purpose, enforcement actions are used as a deterrent to emphasize the importance of compliance with requirements and to encourage prompt identification and comprehensive correction of the violations. Enforcement sanctions consist of Notices of Violation (NOVs), civil penalties, and orders of various types. In addition to formal enforcement actions, the NRC also uses related administrative actions such as Notices of Nonconformance (NONs), Confirmatory Action Letters, and Demands for Information to supplement its enforcement program. The NRC expects licensees, certificate holders, and applicants for a CoC to adhere to any obligations and commitments that result from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met. The nature and extent of the enforcement action are intended to reflect the seriousness of the violation involved. An NOV is a written notice setting forth one or more violations of a legally binding requirement.

However, when the NRC has identified a failure to comply with Part 72 QA requirements by certificate holders or applicants for a CoC, it has issued an NON rather than an NOV. Although an NON and an NOV appear to be similar, the Commission prefers the issuance of an NOV because: (1) The issuance of an NOV effectively conveys to both the person violating the requirement and the public that a violation of a legally binding requirement has occurred; (2) the use of graduated severity levels associated with an NOV allows the NRC to effectively convey to both the person violating the requirement and the public a clearer perspective on the safety and regulatory significance of the violation; and (3) violation of a regulation reflects the NRC's conclusion that potential risk to public health and safety could exist. Therefore, the NRC believed that limiting the available enforcement sanctions to administrative actions was insufficient to address the performance problems observed in industry.

[1] NUREG–1600, "General Statement of Policy and Procedures for NRC Enforcement Actions," May 2000.

In response to this problem, the NRC staff submitted a rulemaking plan to revise Part 72 to the Commission in SECY–97–214.[2] In a Staff Requirements Memorandum (SRM) to SECY–97–214, the Commission approved the staff's rulemaking plan and directed the staff to also consider whether conforming changes to the quality assurance (QA) regulations in Part 71 would be necessary, because of dual purpose cask designs. Dual purpose cask designs are intended for both the storage of spent fuel under Part 72 and the transportation of spent fuel under Part 71. In a memorandum from the EDO to the Commission, dated December 3, 1997, the NRC staff indicated that expansion of the Part 71 QA provisions to include certificate holders and applicants for a Certificate of Compliance (CoC) would be made as part of the rulemaking to conform Part 71 to IAEA standard ST–1.

The Commission recently issued a final rule expanding QA regulations in Part 72, Subpart G, to specifically include certificate holders and applicants for a CoC. Consequently, the NRC is now considering similarly expanding the QA regulations in Part 71, Subpart H, to specifically include certificate holders and applicants for a CoC. The NRC believes that this change is necessary to ensure consistency between the QA provisions of Parts 71 and 72, particularly in light of NRC approval of dual purpose cask designs. As with the Part 72 final rule, this issue would provide explicit notice to certificate holders and applicants for a CoC of their QA responsibilities; and would provide the NRC staff with additional enforcement sanction—should violations of the Part 71 QA requirements occur.

Factors for Consideration

- Should consistency be maintained between the QA provisions of Parts 71 and 72, in light of the existence of dual purpose cask designs?

Issue 14. Adoption of ASME Code

Description

The NRC staff proposes that the ASME (American Society of Mechanical Engineers) Code, Section III, Division 3, be incorporated by reference in 10 CFR Part 71 via rulemaking. This rule will ensure implementation of the ASME

[2] SECY–97–214, "Changes to 10 CFR Part 72, Expand Applicability to Include Certificate Holders and Applicants and Their Contractors and Subcontractors," dated September 24, 1997. This rulemaking plan expanded the applicability of the QA provision of Part 72, Subpart G, to specifically include Part 72 certificate holders and applicants for a Certificate of Compliance.

Code in cask fabrication, including all QA aspects of the code, such as the presence of an authorized nuclear inspector (ANI) during the fabrication to ensure that the code requirements are met, and stamping of components after fabrication is complete. This approach would be similar to how the ASME Code is endorsed for power reactors under 10 CFR 50.55(a) and would make the fabrication process for transportation cask containments commensurate with that used for nuclear power plant components.

NRC inspections of vendors'/fabricators' shops (for fabrication of spent fuel storage canisters and transportation casks) have identified, over the past several years, quality control (QC) and quality assurance (QA) problems in these fabricated systems. A major reason for these problems is that these fabricators/vendors do not fully use a code for QA in the fabrication process of these systems. These QA problems have in some instances continued in spite of repeated adverse NRC and licensee findings.

The NRC staff intends to incorporate two recent developments. First, ASME issued a consensus code in May 1997 entitled: "Containment Systems and Transport Packages for Spent Fuel and High Level Radioactive Waste," ASME B&PV Code Section III, Division 3, that would require stamping of components constructed to it (*i.e.*, the transportation cask's containment). Second, Public Law 104–113 "National Technology Transfer and Advancement Act" was enacted in 1996 to require that Federal agencies use consensus standards (*e.g.*, the ASME B&PV Code), except when there are justified reasons for not doing so. These two developments support efforts to initiate rulemaking in this area.

Factors for Consideration

- Can other regulatory vehicles for NRC endorsement of Code be used or should this only be done by rulemaking?
- Are there other voluntary consensus standards that should be considered in addition to, or in lieu of, ASME code?

Issue 15. Adoption of Changes, Tests, and Experiments Authority

Description

The Commission recently approved a final rule to expand the provisions of 10 CFR 72.48, "Changes, Tests, and Experiments," to include Part 72 certificate holders (October 4, 1999; 64 FR 53582). 10 CFR Part 72 Certificate holders are allowed to make changes to a spent fuel storage cask design or conduct tests and experiments, without prior NRC review and approval, if certain requirements are met. However, Part 71 contains no similar provisions to permit a certificate holder to change the design of a Part 71 transportation package. The NRC has issued Certificates of Compliance (CoC) under Parts 71 and 72 for dual purpose casks [packages] (*i.e.*, containers intended for both the storage and transportation of spent fuel). This has created the situation where a 10 CFR Part 72 certificate holder is authorized to change a storage design feature of a dual-purpose storage/transportation cask without obtaining NRC prior approval; however, the 10 CFR Part 71 certificate holder is not authorized to modify transportation package design without obtaining NRC prior approval, even when the same physical component and change is involved.

In SECY–99–130 [3] and SECY–99–054.[4] the staff indicated that comments had been received on the proposed rule that requested that authority similar to 10 CFR 72.48 be created in Part 71, particularly with respect to dual purpose casks. Staff indicated that this issue would be addressed in the subsequent rulemaking to conform Part 71 with IAEA standard ST–1. The Commission adopted the staff's recommendations in a Staff Requirements Memorandum (SRM) dated June 22, 1999.

In SECY–99–054 staff recommended that a similar authority to 10 CFR 72.48 be created for spent fuel transportation packages intended for domestic use only. Staff also recommended that this authority be limited to Part 50 and 72 licensees shipping spent fuel and the Part 71 certificate holder. Furthermore, other supporting changes to Part 71 would be required to ensure consistency with the process contained in 10 CFR 72.48. These changes would include using common terminology such as "changes to the cask design, as described in the final safety analysis report" (FSAR) and a process for requesting amendments to a CoC. Requirements for periodically updating a transportation package FSAR would also be required to ensure an accurate "licensing" basis is available for evaluating future proposed changes, and requirements for package users to have a copy of the FSAR, and the updated FSAR.

The current IAEA standard ST–1 does not contain any equivalent provisions for changing a transportation package's design, without prior review by the competent authority.

Factors for Consideration

- Should this change authority apply to spent fuel packages involved in domestic commerce only?
- Should this change authority be expanded to include all types of transportation packages, licensees, or users?
- Should the change authority apply to all domestic transportation packages?
- Should the change authority apply to dual purpose spent fuel packages?

Issue 16. Fissile Material Exemptions and General License Provisions

Discussion

The NRC published an emergency final rule on February 10, 1997 (62 FR 5907), amending Part 71 regulations that deal with shipments of exempt quantities of fissile material and shipments of fissile material under a general license. An NRC licensee had identified that a shipment of waste material (beryllium oxide containing a low concentration of high-enriched uranium) that met the fissile exemption provisions of 10 CFR 71.53 had the potential for an accidental criticality in certain specific circumstances. Packages shipped under the provisions of 10 CFR 71.53 were considered inherently safe for criticality-safety purposes. These regulations assumed that only ordinary water (H_2O) could be present as a moderating material. The regulations did not contemplate the presence of special moderating materials (*e.g.*, beryllium, graphite, or deuterium). Because of this criticality safety issue, the NRC published a rule that was immediately effective with no opportunity for pre-promulgation public comment. The NRC did solicit comments after the rule was effective. All public comments supported the need for the emergency final rule when the shipments contained special moderators (moderators other than water); however, the commenters stated that the rule had gone too far for water moderated shipments, that it was excessively restrictive and costly to licensees, and that further rulemaking was necessary.

Based on these comments, NRC staff contracted with Oak Ridge National Laboratory (ORNL) to thoroughly review fissile material exemptions and general license provisions. ORNL performed

[3] SECY–99–130, "Final Rule—Revisions to Requirements of 10 CFR Parts 50 and 72 Concerning Changes, Tests, and Experiments," dated May 12, 1999.

[4] SECY–99–054, "Plans for Final Rule—Revisions to Requirements of 10 CFR Parts 50, 52, and 72 Concerning Changes, Tests, and Experiments," dated February 22, 1999.

computer model calculations of k_{eff} (k-effective) for various combinations of fissile material and moderating material—including beryllium, carbon, deuterium, silicon-dioxide, and water—to verify the accuracy of minimum critical mass values. These minimum critical mass values were then applied to the regulatory structure contained in Part 71, and revised mass limits for both the general license and exemption provisions to Part 71 were determined. Also, ORNL researched the historical bases for the fissile material exemption and general license regulations in Part 71 and discussed the impact of the emergency final rule's restrictions on NRC licensees. The ORNL study was issued as NUREG/CR–5342 in July 1998 (available via the following NRC website: http://www.nrc.gov/NRC/NUREGS/CR5342/index.html). The ORNL study confirmed that the emergency rule was needed to provide safe transportation of packages with special moderators that are shipped under the general license and fissile material exemptions, but may be excessive for water-moderated shipments.

NUREG/CR–5342 identified 16 recommended actions for additional rulemaking. Additionally, the Commission's SRM on SECY–96–268 approving the emergency final rule directed the staff to issue guidance for instances where fissile materials may be mixed in the same shipping container with different moderators. The staff indicated that this issue would be addressed in a forthcoming rulemaking (memorandum from the EDO to the Commission, dated September 8, 1998). On October 27, 1999, the NRC published **Federal Register** Notice 64 FR 57769 responding to public comments on the emergency final rule, and also requesting information on the cost impact of the final rule from the public, industry, and the DOE, because the NRC staff had not been successful in obtaining this information. The requirements for the fissile material general licenses are provided in 10 CFR 71.18, 71.20, 71.22, and 71.24, and the fissile material exemptions are provided in 71.53.

IAEA standard ST–1 contains language on fissile exemptions and restrictions on the use of special moderators. However, ST–1 does not presently contain provisions on general licenses for shipment of fissile material; previous version did contain general license conditions.

Factors for Consideration

- Should all, or only some, of the 16 sub-issues (*i.e.*, the recommendations contained in NUREG/CR–5342) be included in this rulemaking on this issue?
- Should additional issues or alternative approaches on the fissile exemptions or general license provisions be included in this rulemaking?
- Is there available cost data that may help to understand the cost impact of the implemented emergency rule; or help to better understand the possible cost impact of the ORNL recommendations?

Issue 17. Double Containment of Plutonium (PRM–71–12)

Description

The NRC received a Petition for Rulemaking from International Energy Consultants, Inc. (IEC), dated September 25, 1997. The petition was docketed as PRM–71–12 and was published for public comment on February 19, 1998. The comment period was extended to July 31, 1998. The petitioner requested that regulations in 10 CFR 71.63 be eliminated. The petitioner argued that the double containment requirement in 71.63(b) was not consistent with the basis for other packaging standards (*i.e.*, the Q-value system for identifying the A_1 and A_2 values for each nuclide). The petitioner also argued that the use of double containment for shipments of plutonium imposed unnecessary costs (*i.e.*, fabrication of shipping packages and a weight penalty). As an option, the petitioner requested that 71.63 be entirely eliminated.

In 1974, the Atomic Energy Commission (AEC) issued 10 CFR 71.63 which imposed special requirements on the shipment of plutonium in excess of 0.74 terabecquerels (20 curies). These requirements specify that plutonium must be in solid form (71.63(a)) and that packages used to ship plutonium must provide a separate inner containment (*i.e.*, the "double containment" requirement) (71.63(b)). In adopting these requirements, the AEC specifically excluded plutonium in the form of reactor fuel elements, metal or metal alloys, and other plutonium-bearing solids that the Commission determines, on a case-by-case basis, do not require double containment. These regulations have remained essentially unchanged since 1974, except for the addition in 1998 of vitrified high-level waste in sealed canisters to the list of exempt forms of plutonium. Double containment is in addition to Type B packaging standards and is not required for any other nuclides that are listed in Part 71. Additionally, IAEA standard ST–1 does not contain a double containment requirement for any nuclide.

The AEC issued this regulation at a time when wide-spread reprocessing of commercial spent fuel was anticipated. The AEC expected increases in the quantities of plutonium to be shipped and the number of shipments of plutonium. In addition, the specific activity of the plutonium was expected to increase with increased burnup, resulting in higher gamma and neutron radiation levels, greater heat generation, and greater pressure generation potential from plutonium nitrate solutions in shipping containers. Because of these expected changes and because of the susceptibility of liquids to leakage, the AEC believed that safety would be significantly enhanced if the basic form for shipments of plutonium were changed from liquid to solid, and if the solid form of plutonium were required to be shipped in a package providing double containment of the contents.

The AEC indicated that "The arguments for requiring a solid form of plutonium for shipment are largely subjective, in that there is no hard evidence on which to base statistical probabilities or to assess quantitatively the incremental increase in safety which is expected." [5] The AEC also indicated that the double containment provision compensates for the fact that the plutonium may not be in a "nonrespirable" form. Notwithstanding these rationales, some of the underlying assumptions for this rule were altered in 1979 when the U.S. government decided that reprocessing of civilian spent fuel and reuse of plutonium was not desirable. Consequently, the expected plutonium reprocessing economy and wide-spread shipments never materialized.

With respect to PRM–71–12, eight public comments were received on the petition; of those, three supported the petition and five opposed the petition. The supporting comments essentially stated that the IAEA's Q-System accurately reflects the dangers of nuclides, including plutonium, and that elimination of 10 CFR 71.63(a) and (b) would make the regulations more performance based, reduce costs and personnel exposures, and be consistent with the IAEA standards.

The five opposing comments essentially stated that plutonium is very dangerous, especially in liquid form, and therefore additional regulatory requirements are warranted, that existing regulations are not overly burdensome, especially in light of the

[5] SECY–R–74–5, dated July 6, 1973.

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total expected transportation cost, that TRUPACT–II package meets 71.63(b) requirement, that a commenter (i.e., the Western Governors Association) has worked for over 10 years to ensure a safe transportation system for WIPP, including educating the public about the TRUPACT–II package, and that any change now would erode public confidence and be detrimental to the entire transportation system for WIPP shipments, and that additional personnel exposure due to double containment is insignificant.

Factors for Consideration

- Should NRC change any of the special requirements for the transportation of plutonium?
- Should the double containment requirement in 71.63(b) be eliminated?
- Should both the solid form and the double containment requirements of 71.63(a) and (b) be eliminated?
- Is consistency with IAEA standard ST–1 important on this issue?

Issue 18. Contamination Limits as Applied to Spent Fuel and High Level Waste (HLW) Packages

Description

As part of the NRC's upcoming public meetings on proposed changes to 10 CFR Part 71, the Commission will consider the issue of removable package contamination limits for transportation (*i.e.*, radioactive material that can be removed from the surface of a package prior to shipment). This issue involves contamination limits for all transportation packages, including spent fuel and HLW packages, contained in DOT regulations which are based on the international transportation standards for contamination limits. The NRC staff requests public and stakeholder views on whether different contamination limits should be considered for spent fuel and HLW packages, and recommendations for future interactions that NRC has with DOT and IAEA on this issue. NRC staff is aware that the IAEA is starting a review of contamination models and limits, and this review will be conducted over the next few years.

The removable contamination limit of 4 Becquerels per square centimeter (4Bq/cm2) is contained in IAEA Safety Series 6, in ST–1, in U.S. DOT regulations (49 CFR 173.443), and by reference to DOT's regulations in NRC's 10 CFR Part 71. The limit applies to the transportation of all packages, regardless of size. Thus, the 4 Bq/cm2 contamination limit applies to shipment of spent fuel and HLW packages, even though the unique aspects of these packages were not explicitly considered in the modeling assumptions used in developing the contamination limit. Specifically, the contamination limit was designed to reduce delivery worker exposure from external contamination on small packages during frequent manual handling of these packages in freight facilities; however, unlike small packages moved by delivery workers, handling of spent fuel and HLW packages is done by cranes and other manipulation equipment, due to the large weights involved, and does not involve extensive personnel contact, thereby reducing worker exposure from external package contamination.

Irrespective of remote handling, workers must obtain contamination readings on a spent fuel or HLW package's external surfaces to ensure compliance with the 4 Bq/cm2 limit prior to release for shipment. Due to the large surface areas involved in the contamination checks, and the prolonged time that workers are in the vicinity of a loaded package while performing these checks, they receive exposure from radiation emanating through the package walls. Further, should the contamination checks reveal contamination above 4 Bq/cm2, then additional worker exposure occurs during decontamination activities and subsequent checks of contamination levels to achieve the 4 Bq/cm2 limit. It should be noted that if the contamination limit for spent fuel and HLW packages was changed, workers would still be required to check the packages for contamination (under the changed limit) and thus receive exposure while performing this activity and any required decontamination activities.

Factors for Consideration

- Should the 4 Bq/cm2 limit continue to apply to spent fuel and HLW packages or should an alternative limit be developed? Is there an alternate contamination limit or alternative approach that will result in lowered exposure to workers, yet ensure that the rail and truck workers as well as the public are adequately protected from external package contamination?
- If alternative contamination limits are established for spent fuel and HLW packages, is there any concern with the possible resulting difference in US domestic regulations and international standards?

Appendix A—Paragraphs Referenced from IAEA ST–1

Appendix A contains the full text of specific paragraphs from ST–1 referenced in the eleven IAEA-compatibility issues. Paragraphs are listed numerically in ascending order, with the corresponding issue identified in bold text at the end of the reference.

107. The Regulations do not apply to:

(e) natural material and ores containing naturally occurring radionuclides which are not intended to be processed for use of these radionuclides provided the activity concentration of the material does not exceed 10 times the values specified in paras 401–406. (Issue 2)

209. Confinement system shall mean the assembly of fissile material and packaging components specified by the designer and agreed to by the competent authority as intended to preserve criticality safety. (Issue 9)

218. Criticality safety index (CSI) assigned to a package, overpack or freight container containing fissile material shall mean a number which is used to provide control over the accumulation of packages, overpacks or freight containers containing fissile material. (Issue 9)

225. Low dispersible radioactive material shall mean either a solid radioactive material or a solid radioactive material in a sealed capsule, that has limited dispersibility and is not in powder form. (Issue 9)

230. Package shall mean the packaging with its radioactive contents as presented for transport. The types of packages covered by these Regulations, which are subject to the activity limits and material restrictions of Section IV and meet the corresponding requirements, are:

(a) Excepted package;
(b) Industrial package Type 1 (Type IP–1);
(c) Industrial package Type 2 (Type IP–2);
(d) Industrial package Type 3 (Type IP–3);
(e) Type A package;
(f) Type B(U) package;
(g) Type B(M) package;
(h) Type C package.

Packages containing fissile material or uranium hexafluoride are subject to additional requirements. (Issue 6)

232. Quality assurance shall mean a systematic programme of controls and inspections applied by any organization or body involved in the transport of radioactive material which is aimed at providing adequate confidence that the standard of safety prescribed in these Regulations is achieved in practice. (Issue 9)

401. The following basic values for individual radionuclides are given in Table I:

(a) A_1 and A_2 in TBq;
(b) activity concentration for exempt material in Bq/g; and
(c) activity limits for exempt consignments in Bq. (Issue 2)

402. For individual radionuclides which are not listed in Table I the determination of the basic radionuclide values referred to in para. 401 shall require competent authority approval or, for international transport, multilateral approval. Where the chemical form of each radionuclide is known, it is permissible to use the A_2 value related to its solubility class as recommended by the International Commission on Radiological Protection, if the chemical forms under both normal and accident conditions of transport

are taken into consideration. Alternatively, the radionuclide values in Table II may be used without obtaining competent authority approval. (Issue 2)

403. In the calculations of A_1 and A_2 for a radionuclide not in Table I, a single radioactive decay chain in which the radionuclides are present in their naturally occurring proportions, and in which no daughter nuclide has a half-life either longer than 10 days or longer than that of the parent nuclide, shall be considered as a single radionuclide; and the activity to be taken into account and the A_1 or A_2 value to be applied shall be those corresponding to the parent nuclide of that chain. In the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than 10 days or greater than that of the parent nuclide, the parent and such daughter nuclides shall be considered as mixtures of different nuclides. (Issue 2)

404. For mixtures of radionuclides, the determination of the basic radionuclide values referred to in para. 401 may be determined as follows:

$$X_m = \frac{1}{\sum_i \frac{f(i)}{X(i)}}$$

Text Continued After Table I

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Table I. BASIC RADIONUCLIDE VALUES

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Actinium (89)				
Ac-225 (a)	8×10^{-1}	6×10^{-3}	1×10^{1}	1×10^{4}
Ac-227 (a)	9×10^{-1}	9×10^{-5}	1×10^{-1}	1×10^{3}
Ac-228	6×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{6}
Silver (47)				
Ag-105	2×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Ag-108m (a)	7×10^{-1}	7×10^{-1}	1×10^{1} (b)	1×10^{6} (b)
Ag-110m (a)	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{6}
Ag-111	2×10^{0}	6×10^{-1}	1×10^{3}	1×10^{6}
Aluminium (13)				
Al-26	1×10^{-1}	1×10^{-1}	1×10^{1}	1×10^{5}
Americium (95)				
Am-241	1×10^{1}	1×10^{-3}	1×10^{0}	1×10^{4}
Am-242m (a)	1×10^{1}	1×10^{-3}	1×10^{0} (b)	1×10^{4} (b)
Am-243 (a)	5×10^{0}	1×10^{-3}	1×10^{0} (b)	1×10^{3} (b)
Argon (18)				
Ar-37	4×10^{1}	4×10^{1}	1×10^{6}	1×10^{8}
Ar-39	2×10^{1}	4×10^{1}	1×10^{7}	1×10^{4}
Ar-41	3×10^{-1}	3×10^{-1}	1×10^{2}	1×10^{9}
Arsenic (33)				
As-72	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
As-73	4×10^{1}	4×10^{1}	1×10^{3}	1×10^{7}
As-74	1×10^{0}	9×10^{-1}	1×10^{1}	1×10^{6}
As-76	3×10^{-1}	3×10^{-1}	1×10^{2}	1×10^{5}
As-77	2×10^{1}	7×10^{-1}	1×10^{3}	1×10^{6}
Astatine (85)				
At-211 (a)	2×10^{1}	5×10^{-1}	1×10^{3}	1×10^{7}
Gold (79)				
Au-193	7×10^{0}	2×10^{0}	1×10^{2}	1×10^{7}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Au-194	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Au-195	1×10^{1}	6×10^{0}	1×10^{2}	1×10^{7}
Au-198	1×10^{0}	6×10^{-1}	1×10^{2}	1×10^{6}
Au-199	1×10^{1}	6×10^{-1}	1×10^{2}	1×10^{6}
Barium (56)				
Ba-131 (a)	2×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Ba-133	3×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Ba-133m	2×10^{1}	6×10^{-1}	1×10^{2}	1×10^{6}
Ba-140 (a)	5×10^{-1}	3×10^{-1}	1×10^{1} (b)	1×10^{5} (b)
Beryllium (4)				
Be-7	2×10^{1}	2×10^{1}	1×10^{3}	1×10^{7}
Be-10	4×10^{1}	6×10^{-1}	1×10^{4}	1×10^{6}
Bismuth (83)				
Bi-205	7×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{6}
Bi-206	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
Bi-207	7×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{6}
Bi-210	1×10^{0}	6×10^{-1}	1×10^{3}	1×10^{6}
Bi-210m (a)	6×10^{-1}	2×10^{-2}	1×10^{1}	1×10^{5}
Bi-212 (a)	7×10^{-1}	6×10^{-1}	1×10^{1} (b)	1×10^{5} (b)
Berkelium (97)				
Bk-247	8×10^{0}	8×10^{-4}	1×10^{0}	1×10^{4}
Bk-249 (a)	4×10^{1}	3×10^{-1}	1×10^{3}	1×10^{6}
Bromine (35)				

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Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Br-76	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{5}
Br-77	3×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Br-82	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{6}
Carbon (6)				
C-11	1×10^{0}	6×10^{-1}	1×10^{1}	1×10^{6}
C-14	4×10^{1}	3×10^{0}	1×10^{4}	1×10^{7}
Calcium (20)				
Ca-41	Unlimited	Unlimited	1×10^{5}	1×10^{7}
Ca-45	4×10^{1}	1×10^{0}	1×10^{4}	1×10^{7}
Ca-47 (a)	3×10^{0}	3×10^{-1}	1×10^{1}	1×10^{6}
Cadmium (48)				
Cd-109	3×10^{1}	2×10^{0}	1×10^{4}	1×10^{6}
Cd-113m	4×10^{1}	5×10^{-1}	1×10^{3}	1×10^{6}
Cd-115 (a)	3×10^{0}	4×10^{-1}	1×10^{2}	1×10^{6}
Cd-115m	5×10^{-1}	5×10^{-1}	1×10^{3}	1×10^{6}
Cerium (58)				
Ce-139	7×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Ce-141	2×10^{1}	6×10^{-1}	1×10^{2}	1×10^{7}
Ce-143	9×10^{-1}	6×10^{-1}	1×10^{2}	1×10^{6}
Ce-144 (a)	2×10^{-1}	2×10^{-1}	1×10^{2} (b)	1×10^{5} (b)
Californium (98)				
Cf-248	4×10^{1}	6×10^{-3}	1×10^{1}	1×10^{4}
Cf-249	3×10^{0}	8×10^{-4}	1×10^{0}	1×10^{3}
Cf-250	2×10^{1}	2×10^{-3}	1×10^{1}	1×10^{4}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Cf-251	7×10^{0}	7×10^{-4}	1×10^{0}	1×10^{3}
Cf-252	5×10^{-2}	3×10^{-3}	1×10^{1}	1×10^{4}
Cf-253 (a)	4×10^{1}	4×10^{-2}	1×10^{2}	1×10^{5}
Cf-254	1×10^{-3}	1×10^{-3}	1×10^{0}	1×10^{3}
Chlorine (17)				
Cl-36	1×10^{1}	6×10^{-1}	1×10^{4}	1×10^{6}
Cl-38	2×10^{-1}	2×10^{-1}	1×10^{1}	1×10^{5}
Curium (96)				
Cm-240	4×10^{1}	2×10^{-2}	1×10^{2}	1×10^{5}
Cm-241	2×10^{0}	1×10^{0}	1×10^{2}	1×10^{6}
Cm-242	4×10^{1}	1×10^{-2}	1×10^{2}	1×10^{5}
Cm-243	9×10^{0}	1×10^{-3}	1×10^{0}	1×10^{4}
Cm-244	2×10^{1}	2×10^{-3}	1×10^{1}	1×10^{4}
Cm-245	9×10^{0}	9×10^{-4}	1×10^{0}	1×10^{3}
Cm-246	9×10^{0}	9×10^{-4}	1×10^{0}	1×10^{3}
Cm-247 (a)	3×10^{0}	1×10^{-3}	1×10^{0}	1×10^{4}
Cm-248	2×10^{-2}	3×10^{-4}	1×10^{0}	1×10^{3}
Cobalt (27)				
Co-55	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{6}
Co-56	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
Co-57	1×10^{1}	1×10^{1}	1×10^{2}	1×10^{6}
Co-58	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Co-58m	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{7}
Co-60	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{5}

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Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Chromium (24)				
Cr-51	3×10^{1}	3×10^{1}	1×10^{3}	1×10^{7}
Caesium (55)				
Cs-129	4×10^{0}	4×10^{0}	1×10^{2}	1×10^{5}
Cs-131	3×10^{1}	3×10^{1}	1×10^{3}	1×10^{6}
Cs-132	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{5}
Cs-134	7×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{4}
Cs-134m	4×10^{1}	6×10^{-1}	1×10^{3}	1×10^{5}
Cs-135	4×10^{1}	1×10^{0}	1×10^{4}	1×10^{7}
Cs-136	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{5}
Cs-137 (a)	2×10^{0}	6×10^{-1}	1×10^{1} (b)	1×10^{4} (b)
Copper (29)				
Cu-64	6×10^{0}	1×10^{0}	1×10^{2}	1×10^{6}
Cu-67	1×10^{1}	7×10^{-1}	1×10^{2}	1×10^{6}
Dysprosium (66)				
Dy-159	2×10^{1}	2×10^{1}	1×10^{3}	1×10^{7}
Dy-165	9×10^{-1}	6×10^{-1}	1×10^{3}	1×10^{6}
Dy-166 (a)	9×10^{-1}	3×10^{-1}	1×10^{3}	1×10^{6}
Erbium (68)				
Er-169	4×10^{1}	1×10^{0}	1×10^{4}	1×10^{7}
Er-171	8×10^{-1}	5×10^{-1}	1×10^{2}	1×10^{6}
Europium (63)				
Eu-147	2×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Eu-148	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{6}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Eu-149	2×10^{1}	2×10^{1}	1×10^{2}	1×10^{7}
Eu-150(short lived)	2×10^{0}	7×10^{-1}	1×10^{3}	1×10^{6}
Eu-150(long lived)	7×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{6}
Eu-152	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Eu-152m	8×10^{-1}	8×10^{-1}	1×10^{2}	1×10^{6}
Eu-154	9×10^{-1}	6×10^{-1}	1×10^{1}	1×10^{6}
Eu-155	2×10^{1}	3×10^{0}	1×10^{2}	1×10^{7}
Eu-156	7×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{6}
Fluorine (9)				
F-18	1×10^{0}	6×10^{-1}	1×10^{1}	1×10^{6}
Iron (26)				
Fe-52 (a)	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{6}
Fe-55	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{6}
Fe-59	9×10^{-1}	9×10^{-1}	1×10^{1}	1×10^{6}
Fe-60 (a)	4×10^{1}	2×10^{-1}	1×10^{2}	1×10^{5}
Gallium (31)				
Ga-67	7×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Ga-68	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{5}
Ga-72	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{5}
Gadolinium (64)				
Gd-146 (a)	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{6}
Gd-148	2×10^{1}	2×10^{-3}	1×10^{1}	1×10^{4}
Gd-153	1×10^{1}	9×10^{0}	1×10^{2}	1×10^{7}
Gd-159	3×10^{0}	6×10^{-1}	1×10^{3}	1×10^{6}

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Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Germanium (32)				
Ge-68 (a)	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{5}
Ge-71	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{8}
Ge-77	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
Hafnium (72)				
Hf-172 (a)	6×10^{-1}	6×10^{-1}	1×10^{1}	1×10^{6}
Hf-175	3×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Hf-181	2×10^{0}	5×10^{-1}	1×10^{1}	1×10^{6}
Hf-182	Unlimited	Unlimited	1×10^{2}	1×10^{6}
Mercury (80)				
Hg-194 (a)	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Hg-195m (a)	3×10^{0}	7×10^{-1}	1×10^{2}	1×10^{6}
Hg-197	2×10^{1}	1×10^{1}	1×10^{2}	1×10^{7}
Hg-197m	1×10^{1}	4×10^{-1}	1×10^{2}	1×10^{6}
Hg-203	5×10^{0}	1×10^{0}	1×10^{2}	1×10^{5}
Holmium (67)				
Ho-166	4×10^{-1}	4×10^{-1}	1×10^{3}	1×10^{5}
Ho-166m	6×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{6}
Iodine (53)				
I-123	6×10^{0}	3×10^{0}	1×10^{2}	1×10^{7}
I-124	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
I-125	2×10^{1}	3×10^{0}	1×10^{3}	1×10^{6}
I-126	2×10^{0}	1×10^{0}	1×10^{2}	1×10^{6}
I-129	Unlimited	Unlimited	1×10^{2}	1×10^{5}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
I-131	3×10^{0}	7×10^{-1}	1×10^{2}	1×10^{6}
I-132	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{5}
I-133	7×10^{-1}	6×10^{-1}	1×10^{1}	1×10^{6}
I-134	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
I-135 (a)	6×10^{-1}	6×10^{-1}	1×10^{1}	1×10^{6}
Indium (49)				
In-111	3×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
In-113m	4×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
In-114m (a)	1×10^{1}	5×10^{-1}	1×10^{2}	1×10^{6}
In-115m	7×10^{0}	1×10^{0}	1×10^{2}	1×10^{6}
Iridium (77)				
Ir-189 (a)	1×10^{1}	1×10^{1}	1×10^{2}	1×10^{7}
Ir-190	7×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{6}
Ir-192	1×10^{0}(c)	6×10^{-1}	1×10^{1}	1×10^{4}
Ir-194	3×10^{-1}	3×10^{-1}	1×10^{2}	1×10^{5}
Potassium (19)				
K-40	9×10^{-1}	9×10^{-1}	1×10^{2}	1×10^{6}
K-42	2×10^{-1}	2×10^{-1}	1×10^{2}	1×10^{6}
K-43	7×10^{-1}	6×10^{-1}	1×10^{1}	1×10^{6}
Krypton (36)				
Kr-81	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{7}
Kr-85	1×10^{1}	1×10^{1}	1×10^{5}	1×10^{4}
Kr-85m	8×10^{0}	3×10^{0}	1×10^{3}	1×10^{10}
Kr-87	2×10^{-1}	2×10^{-1}	1×10^{2}	1×10^{9}

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Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Lanthanum (57)				
La-137	3×10^{1}	6×10^{0}	1×10^{3}	1×10^{7}
La-140	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{5}
Lutetium (71)				
Lu-172	6×10^{-1}	6×10^{-1}	1×10^{1}	1×10^{6}
Lu-173	8×10^{0}	8×10^{0}	1×10^{2}	1×10^{7}
Lu-174	9×10^{0}	9×10^{0}	1×10^{2}	1×10^{7}
Lu-174m	2×10^{1}	1×10^{1}	1×10^{2}	1×10^{7}
Lu-177	3×10^{1}	7×10^{-1}	1×10^{3}	1×10^{7}
Magnesium (12)				
Mg-28 (a)	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
Manganese (25)				
Mn-52	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
Mn-53	Unlimited	Unlimited	1×10^{4}	1×10^{9}
Mn-54	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Mn-56	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
Molybdenum (42)				
Mo-93	4×10^{1}	2×10^{1}	1×10^{3}	1×10^{8}
Mo-99 (a)	1×10^{0}	6×10^{-1}	1×10^{2}	1×10^{6}
Nitrogen (7)				
N-13	9×10^{-1}	6×10^{-1}	1×10^{2}	1×10^{9}
Sodium (11)				
Na-22	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{6}
Na-24	2×10^{-1}	2×10^{-1}	1×10^{1}	1×10^{5}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Niobium (41)				
Nb-93m	4×10^{1}	3×10^{1}	1×10^{4}	1×10^{7}
Nb-94	7×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{6}
Nb-95	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Nb-97	9×10^{-1}	6×10^{-1}	1×10^{1}	1×10^{6}
Neodymium (60)				
Nd-147	6×10^{0}	6×10^{-1}	1×10^{2}	1×10^{6}
Nd-149	6×10^{-1}	5×10^{-1}	1×10^{2}	1×10^{6}
Nickel (28)				
Ni-59	Unlimited	Unlimited	1×10^{4}	1×10^{8}
Ni-63	4×10^{1}	3×10^{1}	1×10^{5}	1×10^{8}
Ni-65	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{6}
Neptunium (93)				
Np-235	4×10^{1}	4×10^{1}	1×10^{3}	1×10^{7}
Np-236(short-lived)	2×10^{1}	2×10^{0}	1×10^{3}	1×10^{7}
Np-236(long-lived)	9×10^{0}	2×10^{-2}	1×10^{2}	1×10^{5}
Np-237	2×10^{1}	2×10^{-3}	1×10^{0} (b)	1×10^{3} (b)
Np-239	7×10^{0}	4×10^{-1}	1×10^{2}	1×10^{7}
Osmium (76)				
Os-185	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Os-191	1×10^{1}	2×10^{0}	1×10^{2}	1×10^{7}
Os-191m	4×10^{1}	3×10^{1}	1×10^{3}	1×10^{7}
Os-193	2×10^{0}	6×10^{-1}	1×10^{2}	1×10^{6}
Os-194 (a)	3×10^{-1}	3×10^{-1}	1×10^{2}	1×10^{5}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Phosphorus (15)				
P-32	5×10^{-1}	5×10^{-1}	1×10^{3}	1×10^{5}
P-33	4×10^{1}	1×10^{0}	1×10^{5}	1×10^{8}
Protactinium (91)				
Pa-230 (a)	2×10^{0}	7×10^{-2}	1×10^{1}	1×10^{6}
Pa-231	4×10^{0}	4×10^{-4}	1×10^{0}	1×10^{3}
Pa-233	5×10^{0}	7×10^{-1}	1×10^{2}	1×10^{7}
Lead (82)				
Pb-201	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Pb-202	4×10^{1}	2×10^{1}	1×10^{3}	1×10^{6}
Pb-203	4×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Pb-205	Unlimited	Unlimited	1×10^{4}	1×10^{7}
Pb-210 (a)	1×10^{0}	5×10^{-2}	1×10^{1} (b)	1×10^{4} (b)
Pb-212 (a)	7×10^{-1}	2×10^{-1}	1×10^{1} (b)	1×10^{5} (b)
Palladium (46)				
Pd-103 (a)	4×10^{1}	4×10^{1}	1×10^{3}	1×10^{8}
Pd-107	Unlimited	Unlimited	1×10^{5}	1×10^{8}
Pd-109	2×10^{0}	5×10^{-1}	1×10^{3}	1×10^{6}
Promethium (61)				
Pm-143	3×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Pm-144	7×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{6}
Pm-145	3×10^{1}	1×10^{1}	1×10^{3}	1×10^{7}
Pm-147	4×10^{1}	2×10^{0}	1×10^{4}	1×10^{7}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Pm-148m (a)	8×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{6}
Pm-149	2×10^{0}	6×10^{-1}	1×10^{3}	1×10^{6}
Pm-151	2×10^{0}	6×10^{-1}	1×10^{2}	1×10^{6}
Polonium (84)				
Po-210	4×10^{1}	2×10^{-2}	1×10^{1}	1×10^{4}
Praseodymium (59)				
Pr-142	4×10^{-1}	4×10^{-1}	1×10^{2}	1×10^{5}
Pr-143	3×10^{0}	6×10^{-1}	1×10^{4}	1×10^{6}
Platinum (78)				
Pt-188 (a)	1×10^{0}	8×10^{-1}	1×10^{1}	1×10^{6}
Pt-191	4×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Pt-193	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{7}
Pt-193m	4×10^{1}	5×10^{-1}	1×10^{3}	1×10^{7}
Pt-195m	1×10^{1}	5×10^{-1}	1×10^{2}	1×10^{6}
Pt-197	2×10^{1}	6×10^{-1}	1×10^{3}	1×10^{6}
Pt-197m	1×10^{1}	6×10^{-1}	1×10^{2}	1×10^{6}
Plutonium (94)				
Pu-236	3×10^{1}	3×10^{-3}	1×10^{1}	1×10^{4}
Pu-237	2×10^{1}	2×10^{1}	1×10^{3}	1×10^{7}
Pu-238	1×10^{1}	1×10^{-3}	1×10^{0}	1×10^{4}
Pu-239	1×10^{1}	1×10^{-3}	1×10^{0}	1×10^{4}
Pu-240	1×10^{1}	1×10^{-3}	1×10^{0}	1×10^{3}
Pu-241 (a)	4×10^{1}	6×10^{-2}	1×10^{2}	1×10^{5}
Pu-242	1×10^{1}	1×10^{-3}	1×10^{0}	1×10^{4}

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Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Pu-244 (a)	4×10^{-1}	1×10^{-3}	1×10^{0}	1×10^{4}
Radium (88)				
Ra-223 (a)	4×10^{-1}	7×10^{-3}	1×10^{2} (b)	1×10^{5} (b)
Ra-224 (a)	4×10^{-1}	2×10^{-2}	1×10^{1} (b)	1×10^{5} (b)
Ra-225 (a)	2×10^{-1}	4×10^{-3}	1×10^{2}	1×10^{5}
Ra-226 (a)	2×10^{-1}	3×10^{-3}	1×10^{1} (b)	1×10^{4} (b)
Ra-228 (a)	6×10^{-1}	2×10^{-2}	1×10^{1} (b)	1×10^{5} (b)
Rubidium (37)				
Rb-81	2×10^{0}	8×10^{-1}	1×10^{1}	1×10^{6}
Rb-83 (a)	2×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Rb-84	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Rb-86	5×10^{-1}	5×10^{-1}	1×10^{2}	1×10^{5}
Rb-87	Unlimited	Unlimited	1×10^{4}	1×10^{7}
Rb(nat)	Unlimited	Unlimited	1×10^{4}	1×10^{7}
Rhenium (75)				
Re-184	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Re-184m	3×10^{0}	1×10^{0}	1×10^{2}	1×10^{6}
Re-186	2×10^{0}	6×10^{-1}	1×10^{3}	1×10^{6}
Re-187	Unlimited	Unlimited	1×10^{6}	1×10^{9}
Re-188	4×10^{-1}	4×10^{-1}	1×10^{2}	1×10^{5}
Re-189 (a)	3×10^{0}	6×10^{-1}	1×10^{2}	1×10^{6}
Re(nat)	Unlimited	Unlimited	1×10^{6}	1×10^{9}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Rhodium (45)				
Rh-99	2×10^{0}	2×10^{0}	1×10^{1}	1×10^{6}
Rh-101	4×10^{0}	3×10^{0}	1×10^{2}	1×10^{7}
Rh-102	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{6}
Rh-102m	2×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Rh-103m	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{8}
Rh-105	1×10^{1}	8×10^{-1}	1×10^{2}	1×10^{7}
Radon (86)				
Rn-222 (a)	3×10^{-1}	4×10^{-3}	1×10^{1} (b)	1×10^{8} (b)
Ruthenium (44)				
Ru-97	5×10^{0}	5×10^{0}	1×10^{2}	1×10^{7}
Ru-103 (a)	2×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Ru-105	1×10^{0}	6×10^{-1}	1×10^{1}	1×10^{6}
Ru-106 (a)	2×10^{-1}	2×10^{-1}	1×10^{2} (b)	1×10^{5} (b)
Sulphur (16)				
S-35	4×10^{1}	3×10^{0}	1×10^{5}	1×10^{8}
Antimony (51)				
Sb-122	4×10^{-1}	4×10^{-1}	1×10^{2}	1×10^{4}
Sb-124	6×10^{-1}	6×10^{-1}	1×10^{1}	1×10^{6}
Sb-125	2×10^{0}	1×10^{0}	1×10^{2}	1×10^{6}
Sb-126	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{5}
Scandium (21)				
Sc-44	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{5}

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Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Sc-46	5×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{6}
Sc-47	1×10^{1}	7×10^{-1}	1×10^{2}	1×10^{6}
Sc-48	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
Selenium (34)				
Se-75	3×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Se-79	4×10^{1}	2×10^{0}	1×10^{4}	1×10^{7}
Silicon (14)				
Si-31	6×10^{-1}	6×10^{-1}	1×10^{3}	1×10^{6}
Si-32	4×10^{1}	5×10^{-1}	1×10^{3}	1×10^{6}
Samarium (62)				
Sm-145	1×10^{1}	1×10^{1}	1×10^{2}	1×10^{7}
Sm-147	Unlimited	Unlimited	1×10^{1}	1×10^{4}
Sm-151	4×10^{1}	1×10^{1}	1×10^{4}	1×10^{8}
Sm-153	9×10^{0}	6×10^{-1}	1×10^{2}	1×10^{6}
Tin (50)				
Sn-113 (a)	4×10^{0}	2×10^{0}	1×10^{3}	1×10^{7}
Sn-117m	7×10^{0}	4×10^{-1}	1×10^{2}	1×10^{6}
Sn-119m	4×10^{1}	3×10^{1}	1×10^{3}	1×10^{7}
Sn-121m (a)	4×10^{1}	9×10^{-1}	1×10^{3}	1×10^{7}
Sn-123	8×10^{-1}	6×10^{-1}	1×10^{3}	1×10^{6}
Sn-125	4×10^{-1}	4×10^{-1}	1×10^{2}	1×10^{5}
Sn-126 (a)	6×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{5}
Strontium (38)				
Sr-82 (a)	2×10^{-1}	2×10^{-1}	1×10^{1}	1×10^{5}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Sr-85	2×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Sr-85m	5×10^{0}	5×10^{0}	1×10^{2}	1×10^{7}
Sr-87m	3×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Sr-89	6×10^{-1}	6×10^{-1}	1×10^{3}	1×10^{6}
Sr-90 (a)	3×10^{-1}	3×10^{-1}	1×10^{2} (b)	1×10^{4} (b)
Sr-91 (a)	3×10^{-1}	3×10^{-1}	1×10^{1}	1×10^{5}
Sr-92 (a)	1×10^{0}	3×10^{-1}	1×10^{1}	1×10^{6}
Tritium (1)				
T(H-3)	4×10^{1}	4×10^{1}	1×10^{6}	1×10^{9}
Tantalum (73)				
Ta-178(long-lived)	1×10^{0}	8×10^{-1}	1×10^{1}	1×10^{6}
Ta-179	3×10^{1}	3×10^{1}	1×10^{3}	1×10^{7}
Ta-182	9×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{4}
Terbium (65)				
Tb-157	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{7}
Tb-158	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Tb-160	1×10^{0}	6×10^{-1}	1×10^{1}	1×10^{6}
Technetium (43)				
Tc-95m (a)	2×10^{0}	2×10^{0}	1×10^{1}	1×10^{6}
Tc-96	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{6}
Tc-96m (a)	4×10^{-1}	4×10^{-1}	1×10^{3}	1×10^{7}
Tc-97	Unlimited	Unlimited	1×10^{3}	1×10^{8}
Tc-97m	4×10^{1}	1×10^{0}	1×10^{3}	1×10^{7}
Tc-98	8×10^{-1}	7×10^{-1}	1×10^{1}	1×10^{6}

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Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Tc-99	4×10^{1}	9×10^{-1}	1×10^{4}	1×10^{7}
Tc-99m	1×10^{1}	4×10^{0}	1×10^{2}	1×10^{7}
Tellurium (52)				
Te-121	2×10^{0}	2×10^{0}	1×10^{1}	1×10^{6}
Te-121m	5×10^{0}	3×10^{0}	1×10^{2}	1×10^{5}
Te-123m	8×10^{0}	1×10^{0}	1×10^{2}	1×10^{7}
Te-125m	2×10^{1}	9×10^{-1}	1×10^{3}	1×10^{7}
Te-127	2×10^{1}	7×10^{-1}	1×10^{3}	1×10^{6}
Te-127m (a)	2×10^{1}	5×10^{-1}	1×10^{3}	1×10^{7}
Te-129	7×10^{-1}	6×10^{-1}	1×10^{2}	1×10^{6}
Te-129m (a)	8×10^{-1}	4×10^{-1}	1×10^{3}	1×10^{6}
Te-131m (a)	7×10^{-1}	5×10^{-1}	1×10^{1}	1×10^{6}
Te-132 (a)	5×10^{-1}	4×10^{-1}	1×10^{2}	1×10^{7}
Thorium (90)				
Th-227	1×10^{1}	5×10^{-3}	1×10^{1}	1×10^{4}
Th-228 (a)	5×10^{-1}	1×10^{-3}	1×10^{0} (b)	1×10^{4} (b)
Th-229	5×10^{0}	5×10^{-4}	1×10^{0} (b)	1×10^{3} (b)
Th-230	1×10^{1}	1×10^{-3}	1×10^{0}	1×10^{4}
Th-231	4×10^{1}	2×10^{-2}	1×10^{3}	1×10^{7}
Th-232	Unlimited	Unlimited	1×10^{1}	1×10^{7}
Th-234 (a)	3×10^{-1}	3×10^{-1}	1×10^{3} (b)	1×10^{5} (b)
Th(nat)	Unlimited	Unlimited	1×10^{0} (b)	1×10^{3} (b)

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Titanium (22)				
Ti-44 (a)	5×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{5}
Thallium (81)				
Tl-200	9×10^{-1}	9×10^{-1}	1×10^{1}	1×10^{6}
Tl-201	1×10^{1}	4×10^{0}	1×10^{2}	1×10^{6}
Tl-202	2×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Tl-204	1×10^{1}	7×10^{-1}	1×10^{4}	1×10^{4}
Thulium (69)				
Tm-167	7×10^{0}	8×10^{-1}	1×10^{2}	1×10^{6}
Tm-170	3×10^{0}	6×10^{-1}	1×10^{3}	1×10^{6}
Tm-171	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{8}
Uranium (92)				
U-230 (fast lung absorption)(a)(d)	4×10^{1}	1×10^{-1}	1×10^{1} (b)	1×10^{5} (b)
U-230 (medium lung absorption)(a)(e)	4×10^{1}	4×10^{-3}	1×10^{1}	1×10^{4}
U-230 (slow lung absorption)(a)(f)	3×10^{1}	3×10^{-3}	1×10^{1}	1×10^{4}
U-232 (fast lung absorption)(d)	4×10^{1}	1×10^{-2}	1×10^{0} (b)	1×10^{3} (b)
U-232 (medium lung absorption)(e)	4×10^{1}	7×10^{-3}	1×10^{1}	1×10^{4}
U-232 (slow lung absorption)(f)	1×10^{1}	1×10^{-3}	1×10^{1}	1×10^{4}
U-233 (fast lung absorption)(d)	4×10^{1}	9×10^{-2}	1×10^{1}	1×10^{4}
U-233 (medium lung absorption)(e)	4×10^{1}	2×10^{-2}	1×10^{2}	1×10^{5}
U-233 (slow lung absorption)(f)	4×10^{1}	6×10^{-3}	1×10^{1}	1×10^{5}
U-234 (fast lung absorption)(d)	4×10^{1}	9×10^{-2}	1×10^{1}	1×10^{4}
U-234 (medium lung absorption)(e)	4×10^{1}	2×10^{-2}	1×10^{2}	1×10^{5}

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Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
U-234 (slow lung absorption)(f)	4×10^{1}	6×10^{-3}	1×10^{1}	1×10^{5}
U-235 (all lung absorption types)(a),(d),(e),(f)	Unlimited	Unlimited	1×10^{1} (b)	1×10^{4} (b)
U-236 (fast lung absorption)(d)	Unlimited	Unlimited	1×10^{1}	1×10^{4}
U-236 (medium lung absorption)(e)	4×10^{1}	2×10^{-2}	1×10^{2}	1×10^{5}
U-236 (slow lung absorption)(f)	4×10^{1}	6×10^{-3}	1×10^{1}	1×10^{4}
U-238 (all lung absorption types)(d),(e),(f)	Unlimited	Unlimited	1×10^{1} (b)	1×10^{4} (b)
U (nat)	Unlimited	Unlimited	1×10^{0} (b)	1×10^{3} (b)
U (enriched to 20% or less)(g)	Unlimited	Unlimited	1×10^{0}	1×10^{3}
U (dep)	Unlimited	Unlimited	1×10^{0}	1×10^{3}
Vanadium (23)				
V-48	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{5}
V-49	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{7}
Tungsten (74)				
W-178 (a)	9×10^{0}	5×10^{0}	1×10^{1}	1×10^{6}
W-181	3×10^{1}	3×10^{1}	1×10^{3}	1×10^{7}
W-185	4×10^{1}	8×10^{-1}	1×10^{4}	1×10^{7}
W-187	2×10^{0}	6×10^{-1}	1×10^{2}	1×10^{6}
W-188 (a)	4×10^{-1}	3×10^{-1}	1×10^{2}	1×10^{5}
Xenon (54)				
Xe-122 (a)	4×10^{-1}	4×10^{-1}	1×10^{2}	1×10^{9}
Xe-123	2×10^{0}	7×10^{-1}	1×10^{2}	1×10^{9}
Xe-127	4×10^{0}	2×10^{0}	1×10^{3}	1×10^{5}
Xe-131m	4×10^{1}	4×10^{1}	1×10^{4}	1×10^{4}

Radionuclide (atomic number)	A_1	A_2	Activity concentration for exempt material	Activity limit for an exempt consignment
	(TBq)	(TBq)	(Bq/g)	(Bq)
Xe-133	2×10^{1}	1×10^{1}	1×10^{3}	1×10^{4}
Xe-135	3×10^{0}	2×10^{0}	1×10^{3}	1×10^{10}
Yttrium (39)				
Y-87 (a)	1×10^{0}	1×10^{0}	1×10^{1}	1×10^{6}
Y-88	4×10^{-1}	4×10^{-1}	1×10^{1}	1×10^{6}
Y-90	3×10^{-1}	3×10^{-1}	1×10^{3}	1×10^{5}
Y-91	6×10^{-1}	6×10^{-1}	1×10^{3}	1×10^{6}
Y-91m	2×10^{0}	2×10^{0}	1×10^{2}	1×10^{6}
Y-92	2×10^{-1}	2×10^{-1}	1×10^{2}	1×10^{5}
Y-93	3×10^{-1}	3×10^{-1}	1×10^{2}	1×10^{5}
Ytterbium (79)				
Yb-169	4×10^{0}	1×10^{0}	1×10^{2}	1×10^{7}
Yb-175	3×10^{1}	9×10^{-1}	1×10^{3}	1×10^{7}
Zinc (30)				
Zn-65	2×10^{0}	2×10^{0}	1×10^{1}	1×10^{6}
Zn-69	3×10^{0}	6×10^{-1}	1×10^{4}	1×10^{6}
Zn-69m (a)	3×10^{0}	6×10^{-1}	1×10^{2}	1×10^{6}
Zirconium (40)				
Zr-88	3×10^{0}	3×10^{0}	1×10^{2}	1×10^{6}
Zr-93	Unlimited	Unlimited	1×10^{3} (b)	1×10^{7} (b)
Zr-95 (a)	2×10^{0}	8×10^{-1}	1×10^{1}	1×10^{6}
Zr-97 (a)	4×10^{-1}	4×10^{-1}	1×10^{1} (b)	1×10^{5} (b)

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(a) A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days

(b) Parent nuclides and their progeny included in secular equilibrium are listed in the following:

Sr-90	Y-90
Zr-93	Nb-93m
Zr-97	Nb-97
Ru-106	Rh-106
Cs-137	Ba-137m
Ce-134	La-134
Ce-144	Pr-144
Ba-140	La-140
Bi-212	Tl-208 (0.36), Po-212 (0.64)
Pb-210	Bi-210, Po-210
Pb-212	Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-220	Po-216
Rn-222	Po-218, Pb-214, Bi-214, Po-214
Ra-223	Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224	Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Ra-226	Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228	Ac-228
Th-226	Ra-222, Rn-218, Po-214
Th-228	Ra-224, Rn-220, Po-216, Pb212, Bi-212, Tl208 (0.36), Po-212 (0.64)
Th-229	Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-209
Th-nat	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-234	Pa-234m
U-230	Th-226, Ra-222, Rn-218, Po-214
U-232	Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235	Th-231
U-238	Th-234, Pa-234m
U-nat	Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214,
	Pb-210, Bi-210, Po-210
U-240	Np-240m
Np-237	Pa-233
Am-242m	Am-242
Am-243	Np-239

(c) The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.

(d) These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.

(e) These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.

(f) These values apply to all compounds of uranium other than those specified in (d) and (e) above.

(g) These values apply to *unirradiated uranium* only.

where,

f(i) is the fraction of activity or activity concentration of radionuclide i in the mixture;

Table II. BASIC RADIONUCLIDE VALUES FOR UNKNOWN RADIONUCLIDES OR MIXTURES

Radioactive contents	A_1	A_2	Activity concentration for exempt material	Activity limits for exempt consignments
	TBq	TBq	Bq/g	Bq
Only beta or gamma emitting nuclides are known to be present	0.1	0.02	1×10^{1}	1×10^{4}
Only alpha emitting nuclides are known to be present	0.2	9×10^{-5}	1×10^{-1}	1×10^{3}
No relevant data are available	0.001	9×10^{-5}	1×10^{-1}	1×10^{3}

X(i) is the appropriate value of A_1 or A_2, or the activity concentration for exempt material or the activity limit for an exempt consignment as appropriate for the radionuclide i; and X_m is the derived value of A_1 or A_2, or the activity concentration for exempt material or the activity limit for an exempt consignment in the case of a mixture. **(Issue 2)**

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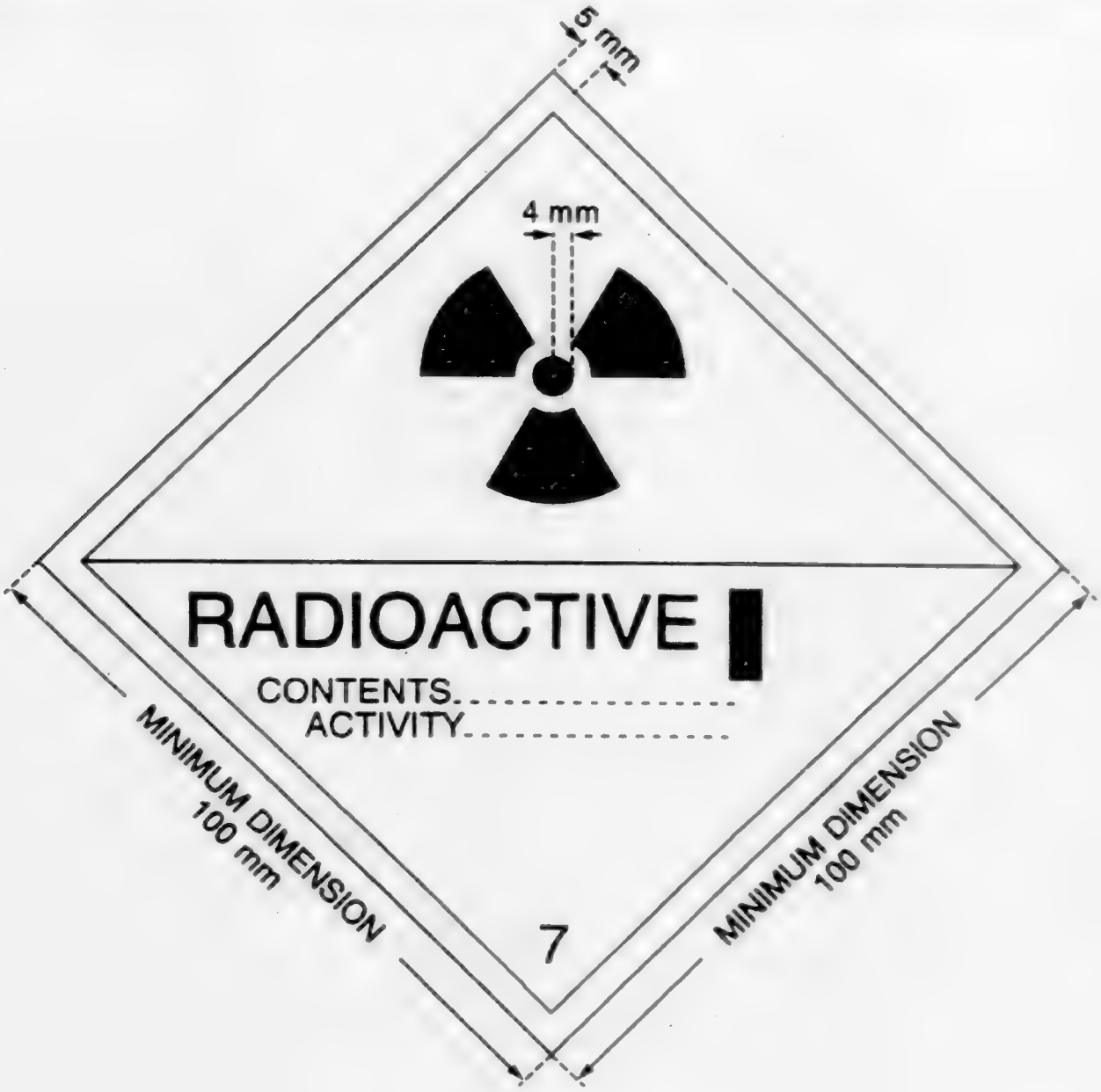
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CONTENTS.....
ACTIVITY.....
MINIMUM DIMENSION 100 mm
MINIMUM DIMENSION 100 mm
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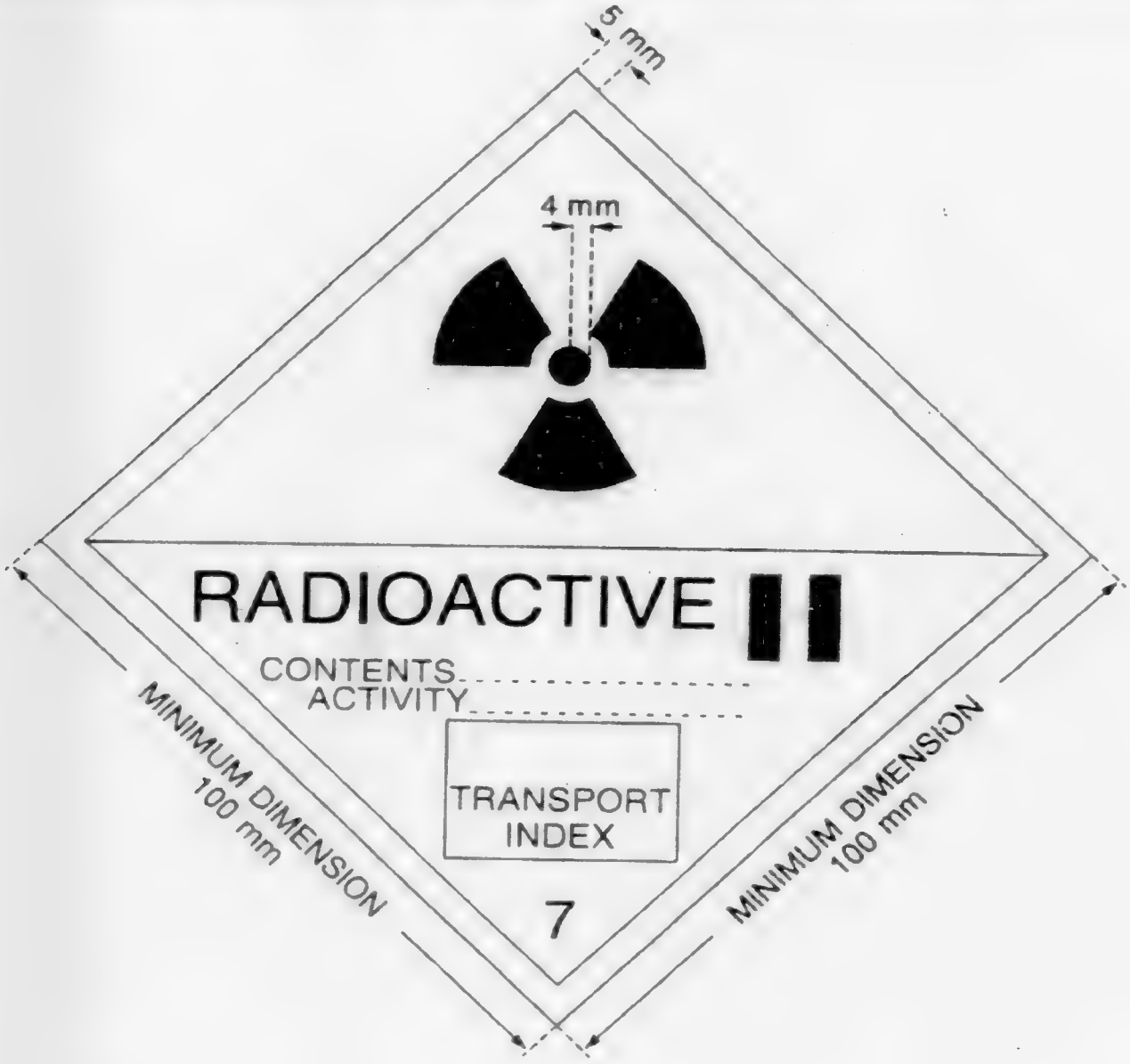
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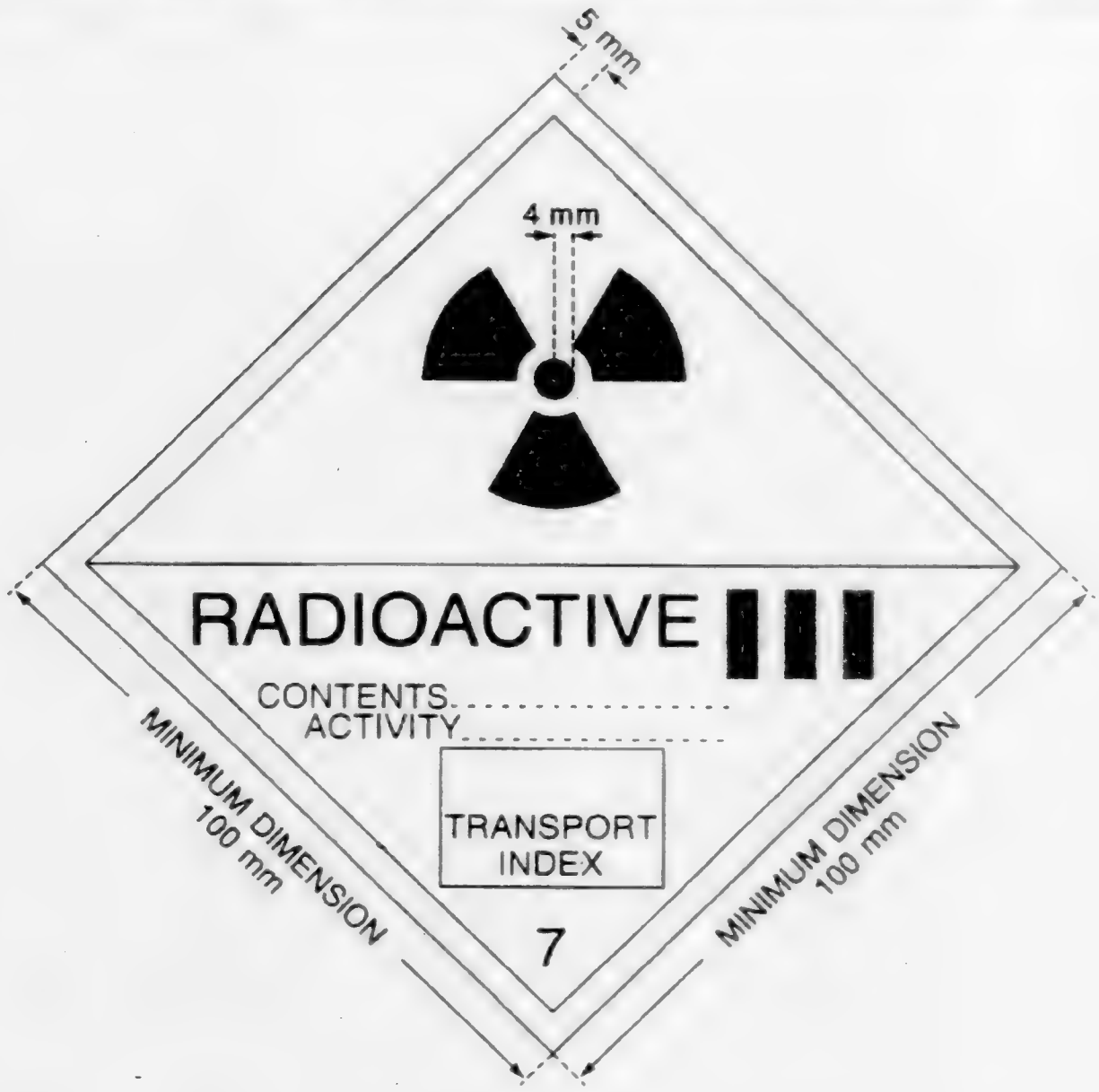

BILLING CODE 7590–01–C

FIG. 4. Category III–YELLOW label. The background colour of the upper half of the label shall be yellow and the lower half white, the colour of the trefoil and the printing shall be black, and the clour of the category bars shall be red.

(a) Contents:

(i) Except for LSA–I material, the name(s) of the radionuclide(s) as taken from Table I, using the symbols prescribed therein. For mixtures of radionuclides, the most restrictive nuclides must be listed to the extent the space on the line permits. The group of LSA or SCO shall be shown following the name(s) of the radionuclide(s). The terms "LSA–II","LSA–III", "SCO–I" and "SCO–II" shall be used for this purpose.

(ii) For LSA–I material, the term "LSA–I" is all that is necessary; the name of the radionuclide is not necessary.

(b) Activity: The maximum activity of the radioactive contents during transport expressed in units of becquerels (Bq) with the appropriate SI prefix (see Annex II). For fissile material, the mass of fissile material in units of grams (g), or multiples thereof, may be used in place of activity.

(c) For overpacks and freight containers the "contents" and "activity" entries on the label shall bear the information required in subparas 543(a) and 543(b), respectively, totalled together for the entire contents of the overpack or freight container except that on labels for overpacks or freight containers containing mixed loads of packages containing different radionuclides, such entries may read "See Transport Documents".

(d) Transport index: See paras 526 and 527. (No transport index entry is required for category I–WHITE.) (Issue 1)

544. Each label conforming to the model in Fig. 5 shall be completed with the criticality safety index (CSI) as stated in the certificate of approval for special arrangement or the certificate of approval for the package design issued by the competent authority. (Issue 5)

545. For overpacks and freight containers, the criticality safety index (CSI) on the label shall bear the information required in para. 544 totalled together for the fissile contents of the overpack or freight container. (Issue 5)

549. The consignor shall include in the transport documents with each consignment the following information, as applicable in the order given:

(a) The proper shipping name, as specified in Table VIII;

(b) The United Nations Class number "7";

(c) The United Nations number assigned to the material as specified in Table VIII, preceded by the letters "UN";

(d) The name or symbol of each radionuclide or, for mixtures of radionuclides, an appropriate general description or a list of the most restrictive nuclides;

(e) A description of the physical and chemical form of the material, or a notation that the material is special form radioactive material or low dispersible radioactive material. A generic chemical description is acceptable for chemical form;

(f) The maximum activity of the radioactive contents during transport expressed in units

of becquerels (Bq) with an appropriate SI prefix (see Annex II). For fissile material, the mass of fissile material in units of grams (g), or appropriate multiples thereof, may be used in place of activity.

(g) The category of the package, *i.e.* I–WHITE, II–YELLOW, III–YELLOW;

(h) The transport index (categories II–YELLOW and III–YELLOW only);

(i) For consignments including fissile material other than consignments excepted under para. 672, the criticality safety index;

(j) The identification mark for each competent authority approval certificate (special form radioactive material, low dispersible radioactive material, special arrangement, package design, or shipment) applicable to the consignment;

(k) For consignments of packages in an overpack or freight container, a detailed statement of the contents of each package within the overpack or freight container and, where appropriate, of each overpack or freight container in the consignment. If packages are to be removed from the overpack or freight container at a point of intermediate unloading, appropriate transport documents shall be made available;

(l) Where a consignment is required to be shipped under exclusive use, the statement "EXCLUSIVE USE SHIPMENT"; and

(m) For LSA–II, LSA–III, SCO–I and SCO–II, the total activity of the consignment as a multiple of A_2. (Issue 1)

629. Except as allowed in para. 632, uranium hexafluoride shall be packaged and transported in accordance with the provisions of the International Organization for Standardization document ISO 7195:, "Packaging of uranium hexafluoride (UF_6) for transport" [1], and the requirements of paras 630–631. The package shall also meet the requirements prescribed elsewhere in these Regulations which pertain to the radioactive and fissile properties of the material. (Issue 4)

630. Each package designed to contain 0.1 kg or more of uranium hexafluoride shall be designed so that it would meet the following requirements:

(a) withstand without leakage and without unacceptable stress, as specified in the International Organization for Standardization document ISO 7195[10], the structural test as specified in para. 718;

(b) withstand without loss or dispersal of the uranium hexafluoride the test specified in para. 722; and

(c) withstand without rupture of the containment system the test specified in para. 728. (Issue 4)

631. Packages designed to contain 0.1 kg or more of uranium hexafluoride shall not be provided with pressure relief devices. (Issue 4)

632. Subject to the approval of the competent authority, packages designed to contain 0.1 kg or more of uranium hexafluoride may be transported if:

(a) the packages are designed to requirements other than those given in ISO 7195[10] and paras 630–631 but, notwithstanding, the requirements of paras 630–631 are met as far as practicable. (Issue 4)

657. A package for radioactive contents with activity greater than 10^5 A_2 shall be so designed that if it were subjected to the enhanced water immersion test specified in para. 730, there would be no rupture of the containment system. (Issue 7)

667. Type C packages shall be designed to meet the requirements specified in paras 606–619, and of paras 634–647, except as specified in para. 646(a), and of the requirements specified in paras 651–654, paras 658–664, and, in addition, of paras 668–670. (Issue 6)

668. A package shall be capable of meeting the assessment criteria prescribed for tests in paras 656(b) and 660 after burial in an environment defined by a thermal conductivity of 0.33 W/m.K and a temperature of 38°C in the steady state. Initial conditions for the assessment shall assume that any thermal insulation of the package remains intact, the package is at the maximum normal operating pressure and the ambient temperature is 38°C. (Issue 6)

669. A package shall be so designed that, if it were at the maximum normal operating pressure and subjected to:

(a) the tests specified in paras 719–724, it would restrict the loss of radioactive contents to not more than 10^{-6} A_2 per hour; and

(b) the test sequences in para. 734, it would meet the following requirements:

(i) retain sufficient shielding to ensure that the radiation level at 1 m from the surface of the package would not exceed 10 mSv/h with the maximum radioactive contents which the package is designed to contain; and

(ii) restrict the accumulated loss of radioactive contents in a period of 1 week to not more than 10 A_2 for krypton-85 and not more than A_2 for all other radionuclides.

Where mixtures of different radionuclides are present, the provisions of paras 404–406 shall apply except that for krypton-85 an effective A_2(i) value equal to 10 A_2 may be used. For case (a) above, the assessment shall take into account the external contamination limits of para. 508. (Issue 6)

670. A package shall be so designed that there will be no rupture of the containment system following performance of the enhanced water immersion test specified in para. 730. (Issue 6)

677. For a package in isolation, it shall be assumed that water can leak into or out of all void spaces of the package, including those within the containment system. However, if the design incorporates special features to prevent such leakage of water into or out of certain void spaces, even as a result of error, absence of leakage may be assumed in respect of those void spaces. Special features shall include the following:

(a) Multiple high standard water barriers, each of which would remain watertight if the package were subject to the tests prescribed in para. 682(b), a high degree of quality control in the manufacture, maintenance and repair of packagings and tests to demonstrate the closure of each package before each shipment; or

(b) For packages containing uranium hexafluoride only:

(i) packages where, following the tests prescribed in para. 682(b), there is no physical contact between the valve and any other component of the packaging other than at its original point of attachment and where, in addition, following the test prescribed in para. 728 the valves remain leaktight; and

(ii) a high degree of quality control in the manufacture, maintenance and repair of packagings coupled with tests to demonstrate closure of each package before each shipment. (Issue 4 and issue 11)

680. For packages to be transported by air:

(a) the package shall be subcritical under conditions consistent with the tests prescribed in para. 734 assuming reflection by at least 20cm of water but no water inleakage; and

(b) allowance shall not be made for special features of para. 677 unless, following the tests specified in para. 734 and, subsequently, para. 733, leakage of water into or out of the void spaces is prevented. (Issue 11)

682. A number "N" shall be derived, such that two times "N" shall be subcritical for the arrangement and package conditions that provide the maximum neutron multiplication consistent with the following:

(a) Hydrogenous moderation between packages, and the package arrangement reflected on all sides by at least 20 cm of water; and

(b) The tests specified in paras 719–724 followed by whichever of the following is the more limiting:

(i) the tests specified in para. 727(b) and, either para. 727(c) for packages having a mass not greater than 500 kg and an overall density not greater than 1000 kg/m3 based on the external dimensions, or para. 727(a) for all other packages; followed by the test specified in para. 728 and completed by the tests specified in paras 731–733; or

(ii) the test specified in para. 729; and

(c) Where any part of the fissile material escapes from the containment system following the tests specified in para. 682(b), it shall be assumed that fissile material escapes from each package in the array and all of the fissile material shall be arranged in the configuration and moderation that results in the maximum neutron multiplication with close reflection by at least 20 cm of water. (Issue 10)

719. The tests are: the water spray test, the free drop test, the stacking test and the penetration test. Specimens of the package shall be subjected to the free drop test, the stacking test and the penetration test, preceded in each case by the water spray test. One specimen may be used for all the tests, provided that the requirements of para. 720 are fulfilled. (Issue 10)

720. The time interval between the conclusion of the water spray test and the succeeding test shall be such that the water has soaked in to the maximum extent, without appreciable drying of the exterior of the specimen. In the absence of any evidence to the contrary, this interval shall be taken to be two hours if the water spray is applied from four directions simultaneously. No time interval shall elapse, however, if the water spray is applied from each of the four directions consecutively. (Issue 10)

721. Water spray test: The specimen shall be subjected to a water spray test that simulates exposure to rainfall of approximately 5 cm per hour for at least one hour. (Issue 10).

722. Free drop test: The specimen shall drop onto the target so as to suffer maximum damage in respect of the safety features to be tested.

(a) The height of drop measured from the lowest point of the specimen to the upper surface of the target shall be not less than the distance specified in Table XIII for the applicable mass. The target shall be as defined in para. 717.

(b) For rectangular fibreboard or wood packages not exceeding a mass of 50 kg, a separate specimen shall be subjected to a free drop onto each corner from a height of 0.3 m.

(c) For cylindrical fibreboard packages not exceeding a mass of 100 kg, a separate specimen shall be subjected to a free drop onto each of the quarters of each rim from a height of 0.3 m. (Issue 10)

723. Stacking test: Unless the shape of the packaging effectively prevents stacking, the specimen shall be subjected, for a period of 24 h, to a compressive load equal to the greater of the following:

(a) The equivalent of 5 times the mass of the actual package; and

(b) The equivalent of 13 kPa multiplied by the vertically projected area of the package.

The load shall be applied uniformly to two opposite sides of the specimen, one of which shall be the base on which the package would typically rest. (Issue 10)

724. Penetration test: The specimen shall be placed on a rigid, flat, horizontal surface which will not move significantly while the test is being carried out.

(a) A bar of 3.2 cm in diameter with a hemispherical end and a mass of 6 kg shall be dropped and directed to fall, with its longitudinal axis vertical, onto the centre of the weakest part of the specimen, so that, if it penetrates sufficiently far, it will hit the containment system. The bar shall not be significantly deformed by the test performance.

(b) The height of drop of the bar measured from its lower end to the intended point of impact on the upper surface of the specimen shall be 1 m. (Issue 10)

727. Mechanical test: The mechanical test consists of three different drop tests. Each specimen shall be subjected to the applicable drops as specified in para. 656 or para. 682. The order in which the specimen is subjected to the drops shall be such that, on completion of the mechanical test, the specimen shall have suffered such damage as will lead to the maximum damage in the thermal test which follows.

(a) For drop I, the specimen shall drop onto the target so as to suffer the maximum damage, and the height of the drop measured from the lowest point of the specimen to the upper surface of the target shall be 9 m. The target shall be as defined in para. 717.

(b) For drop II, the specimen shall drop so as to suffer the maximum damage onto a bar rigidly mounted perpendicularly on the target. The height of the drop measured from the intended point of impact of the specimen to the upper surface of the bar shall be 1 m. The bar shall be of solid mild steel of circular section, (15.0 ± 0.5) cm in diameter and 20 cm long unless a longer bar would cause greater damage, in which case a bar of sufficient length to cause maximum damage shall be used. The upper end of the bar shall be flat and horizontal with its edges rounded off to a radius of not more than 6 mm. The target on which the bar is mounted shall be as described in para. 717.

(c) For drop III, the specimen shall be subjected to a dynamic crush test by positioning the specimen on the target so as to suffer maximum damage by the drop of a 500 kg mass from 9 m onto the specimen. The mass shall consist of a solid mild steel plate 1 m by 1 m and shall fall in a horizontal attitude. The height of the drop shall be measured from the underside of the plate to the highest point of the specimen. The target on which the specimen rests shall be as defined in para. 717. (Issue 10)

729. Water immersion test: The specimen shall be immersed under a head of water of at least 15 m for a period of not less than eight hours in the attitude which will lead to maximum damage. For demonstration purposes, an external gauge pressure of at least 150 kPa shall be considered to meet these conditions. (Issue 10)

730. Enhanced water immersion test: The specimen shall be immersed under a head of water of at least 200 m for a period of not less than one hour. For demonstration purposes, an external gauge pressure of at least 2 MPa shall be considered to meet these conditions. (Issue 7)

734. Specimens shall be subjected to the effects of each of the following test sequences in the orders specified:

(a) the tests specified in paras 727(a), 727(c), 735 and 736; and

(b) the test specified in para. 737.

Separate specimens are allowed to be used for each of the sequences (a) and (b). (Issue 6)

735. Puncture/tearing test: The specimen shall be subjected to the damaging effects of a solid probe made of mild steel. The orientation of the probe to the surface of the specimen shall be as to cause maximum damage at the conclusion of the test sequence specified in para. 734(a).

(a) The specimen, representing a package having a mass less than 250 kg, shall be placed on a target and subjected to a probe having a mass of 250 kg falling from a height of 3 m above the intended impact point. For this test the probe shall be a 20 cm diameter cylindrical bar with the striking end forming a frustum of a right circular cone with the following dimensions: 30 cm height and 2.5 cm in diameter at the top. The target on which the specimen is placed shall be as specified in para. 717.

(b) For packages having a mass of 250 kg or more, the base of the probe shall be placed on a target and the specimen dropped onto the probe. The height of the drop , measured from the point of impact with the specimen to the upper surface of the probe shall be 3 m. For this test the probe shall have the same properties and dimensions as specified in (a) above, except that the length and mass of the probe shall be such as to incur maximum damage to the specimen. The target on which the base of the probe is placed shall be as specified in para. 717. (Issue 6)

736. Enhanced thermal test: The conditions for this test shall be as specified in para. 728, except that the exposure to the thermal environment shall be for a period of 60 minutes. (Issue 6)

737. Impact test: The specimen shall be subject to an impact on a target at a velocity of not less than 90 m/s, at such an orientation as to suffer maximum damage. The target shall be as defined in para. 717. (Issue 6)

Dated at Rockville, Maryland, this 11th day of July, 2000.

For the Nuclear Regulatory Commission.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

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Monday,
July 17, 2000

Part V

Department of Justice

Bureau of Prisons

28 CFR Parts 540 and 544

Postsecondary Education Programs and Occupational Education Programs; Proposed Rules

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP–1019–P]

RIN 1120–AA25

Postsecondary Education Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on postsecondary education programs to exclude courses which are offered as part of an occupational education program. Courses which are offered as part of an occupational education program are to be covered by separate Bureau regulations. Consequently, the inmate is to be responsible for paying postsecondary education tuition costs either through personal funds, community resources, or scholarships available to the inmate. This amendment is intended to simplify the organization of the Bureau's regulations and to conform with the usual community standards of government-funded educational opportunities available to the general public.

DATES: Comments due by September 15, 2000.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on postsecondary education programs (28 CFR part 544, subpart C). Current regulations on this subject were published in the **Federal Register** on May 7, 1997 (62 FR 25100).

Why Is the Bureau Revising Its Regulations on Postsecondary Education Programs?

The current regulations on postsecondary education programs generally require the inmate to pay for tuition. If resources allow, however, the institution may pay the tuition if all of the following apply: The inmate is unable to pay; the course is directly related to preparation for a specific occupation/vocation; and the course is part of a one year certificate or a two year Associate Arts degree program. The Bureau is reorganizing and revising its regulations in order to cover occupational education courses separately (see the Bureau's proposed rule on Occupational Education Programs published elsewhere in today's **Federal Register**). Consequently, there is no need to make any determinations under the postsecondary education program as to the responsibility for payment. The inmate is to be responsible for postsecondary education tuition costs either through personal funds, community resources, or available scholarships. This conforms to the usual community standards for government-funded educational opportunities available to the general public. Under the usual community standards, the local government funds public elementary and secondary school systems. The individual is responsible for paying tuition for postsecondary education. In revising the regulations on postsecondary education programs, the Bureau is also eliminating unnecessary definitions and is restating eligibility criteria in plainer language.

Who Is Affected by the Changes Being Made to the Regulations?

The regulations are applicable to all Federal inmates. The actual effect of the changes on inmates is likely to be minimal. Postsecondary education courses pertinent to the vocational education needs of inmates can be funded by the institution when offered through a Bureau-approved occupational education program. An inmate who has the financial resources to pay for tuition costs may continue to take postsecondary courses provided that the courses are appropriate for the institution's need for discipline, security, and good order. Most postsecondary education courses do not pose problems to institution discipline, security, and good order. However, a course in waste treatment management, for example, which requires the unsupervised use of particular tools may pose problems for institution security. Such a course would likely not be approved.

The combined effect of the proposed revisions to the Bureau's regulations on Postsecondary Education and Occupational Education Programs is to ensure that Bureau funding of occupational education courses occurs as part of a comprehensive occupational education program designed to address the general occupational education needs of the greatest number of inmates as is practicable.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address listed above.

List of Subjects in 28 CFR Part 544

Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(o), part 544 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart C is revised to read as follows:

Subpart C—Postsecondary Education Programs for Inmates

Sec.
544.20 Purpose and scope.
544.21 Procedures.

Subpart C—Postsecondary Education Programs for Inmates

§ 544.20 Purpose and scope.

The Bureau of Prisons offers inmates the opportunity under its postsecondary education program to participate in postsecondary education courses (courses for college credit other than those courses which pertain to occupational education programs) which have been determined to be appropriate in light of the institution's need for discipline, security, and good order. Participation in postsecondary education courses which are part of occupational education programs is governed by the provisions of the Bureau's occupational education program (see subpart F of this part).

§ 544.21 Procedures.

(a) The Warden or designee must appoint a postsecondary education coordinator (ordinarily an education staff member) for the institution. The postsecondary education coordinator is responsible for coordinating the institution's postsecondary education program.

(b) An inmate who wishes to participate in a postsecondary education course must apply through the postsecondary education coordinator. If the postsecondary education coordinator determines that the course is appropriate in light of the institution's need for discipline, security, and good order, the inmate may enroll provided that:

(1) The inmate meets eligibility requirements for the course which have been set by the course provider, and

(2) The inmate is responsible for payment of any tuition either through personal funds, community resources, or scholarships available to the inmate.

(3) The unit team determines that the course is appropriate for the inmate's apparent needs.

[FR Doc. 00–18050 Filed 7–14–00; 8:45 am]
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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1096–P]

RIN 1120–AA92

Occupational Education Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on occupational education programs in order to exclude, with certain exceptions, inmates currently under an order of deportation, exclusion, or removal, and to remove obsolete or redundant provisions. This amendment is intended to help ensure that available educational opportunities for occupational training ordinarily will be allocated to inmates who will be returning to the community within, rather than outside, the United States upon release.

DATES: Comments due by September 15, 2000.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on occupational education programs (28 CFR part 544, subpart F). Current regulations on this subject were published in the **Federal Register** on March 29, 1988 (53 FR 10204).

The Bureau's occupational education programs are designed to enhance post-release employment opportunities for inmates with occupational training needs. The Bureau is revising its regulations on occupational education programs in order to exclude, with certain exceptions, inmates currently under an order of deportation, exclusion, or removal, and to remove obsolete or redundant provisions. An inmate or detainee who is currently under an order of deportation, exclusion, or removal may be considered for placement in an occupational education program if the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept his/her return. Under internal agency procedures, the Immigration and Naturalization Service is responsible for informing the Bureau when an inmate/detainee's designated country of removal will not accept his/her return. In restricting other inmates under an order of deportation, removal, or exclusion from consideration, the Bureau intends to help ensure that available educational opportunities for occupational training ordinarily will be allocated to inmates who will be returning to the community within, rather than outside, the United States upon release.

In revising the regulations, the Bureau has included procedures for making application similar to revised procedures for postsecondary education programs (see the Bureau's proposed rule published elsewhere in today's **Federal Register**) and has reorganized the provisions in order to remove obsolete or redundant provisions and to improve general clarity.

Interested persons may participate in this proposed rulemaking by submitting

data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address listed above.

List of Subjects in 28 CFR Part 544

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(o), part 544 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart F is revised to read as follows:

Subpart F—Occupational Education Programs

Sec.
544.50 Purpose and scope.
544.51 Procedures.
544.52 Levels of Occupational Education Programs.

Subpart F—Occupational Education Programs

§ 544.50 Purpose and scope.

The Bureau of Prisons offers eligible inmates the opportunity under its occupational education programs to participate in occupational education courses for the purpose of obtaining marketable skills designed to enhance post-release employment opportunities.

§ 544.51 Procedures.

(a) An inmate is eligible to participate in an institution's occupational education program unless the inmate is currently under an order of deportation, exclusion, or removal. However, an inmate or detainee who is currently under an order of deportation, exclusion, or removal may be considered for placement in an occupational education program if the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept his/her return.

(b) An eligible inmate must apply through the inmate's unit team for placement consideration. The unit team is responsible for determining that the occupational education course is appropriate for the inmate's apparent needs.

§ 544.52 Levels of Occupational Education Programs.

Occupational education programs are offered at the certificate level and the classroom level. Each level may include the following types of training:

(a) *Exploratory Training.* Exploratory training is a study of occupations and industries for the purpose of providing the student with a general knowledge of the occupation and the world of work, rather than specific skill development.

(b) *Marketable Training.* Marketable training provides specific entry-level or advanced job skills. Marketable training may include "live work", that is, the training would result in a product or service produced by the inmate for actual use by the institution, FPI, another federal agency, or community service project.

(c) *Apprentice Training.* Apprentice training provides an inmate the opportunity to participate in training which prepares the inmate for employment in various trades through structured apprenticeship programs approved at the state and national levels by the Bureau of Apprenticeship and Training, U.S. Department of Labor.

[FR Doc. 00–18049 Filed 7–14–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Dusky gopher frog; Mississippi gopher frog distinct population segment; comments due by 7-24-00; published 5-23-00
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- Approved spent fuel storage casks; list additions; comments due by 7-24-00; published 6-22-00

Spent nuclear fuel and high-level radioactive waste; independent storage; lic ensing requirements:
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Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
- Approved spent fuel storage casks; list additions; comments due by 7-24-00; published 6-22-00

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- Empresa Brasileira de Aeronautica S.A.; correction; comments due by 7-27-00; published 7-13-00
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 4425/P.L. 106–246

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. (July 13, 2000; 114 Stat. 511)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
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Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

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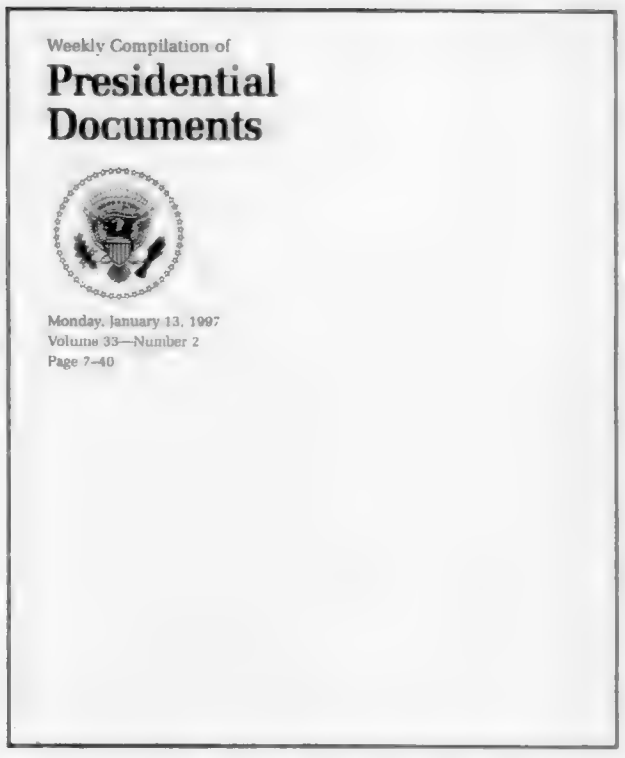

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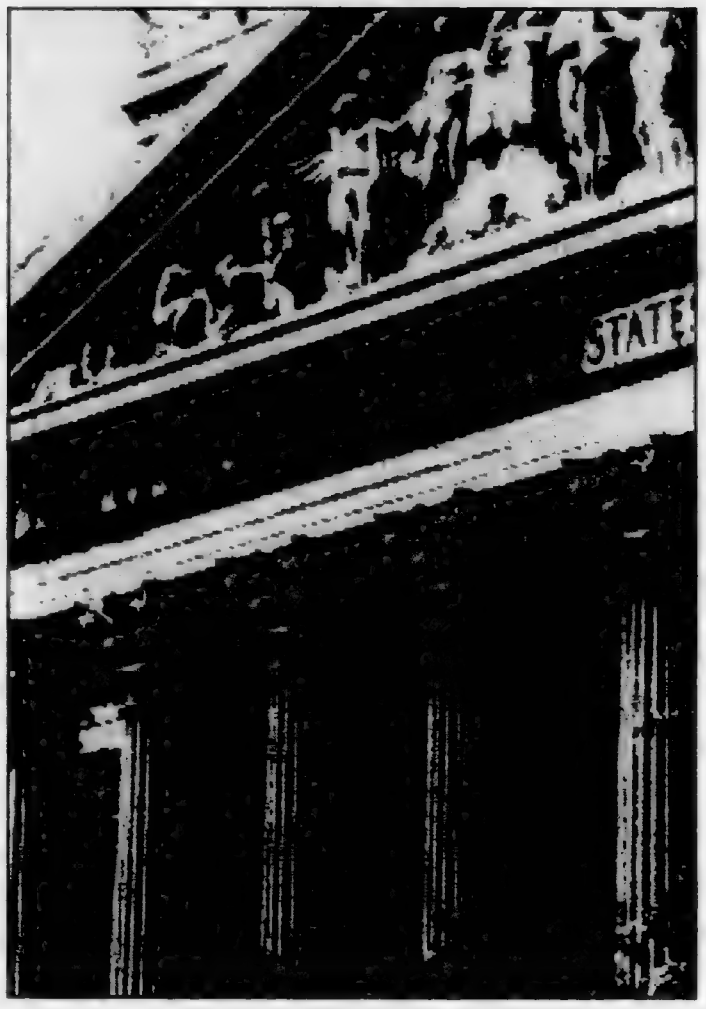

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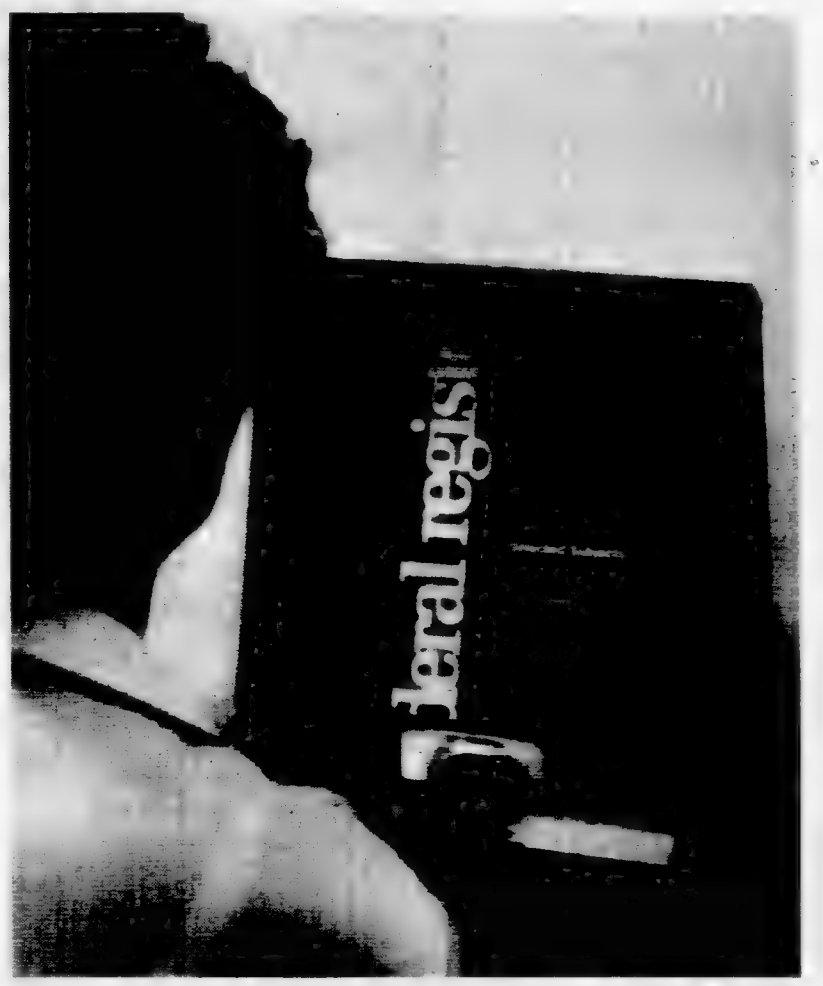

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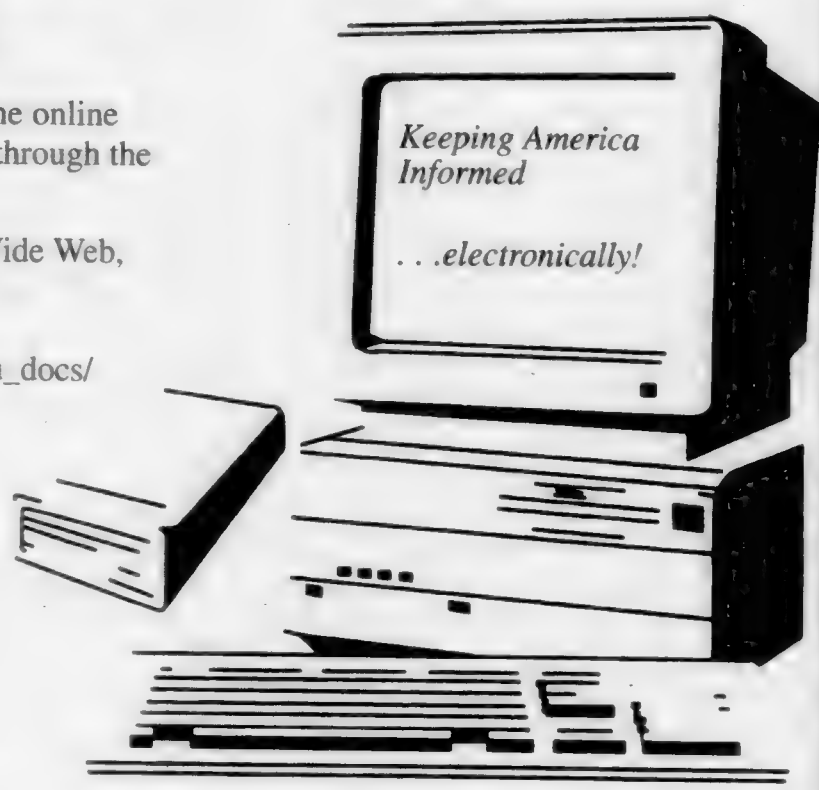

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–26 of July 7, 2000

Determination on the Proposed Agreement for Cooperation Between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize you to arrange for its execution.

The Secretary of State is authorized to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 7, 2000.

[FR Doc. 00–18236
Filed 7–17–00; 8:45 am]
Billing code 4710–10–M

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AGENCY: A
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ACTION: F

SUMMARY:
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Rules and Regulations

Federal Register
Vol. 65, No. 138
Tuesday, July 18, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–989–3 FR]

Raisins Produced From Grapes Grown in California; Increase in Desirable Carryout Used To Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the desirable carryout used to compute the yearly trade demand for raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This action will ultimately make more raisins available to handlers, especially for immediate use early in the season, and will allow desirable carryout to more accurately reflect actual carryout inventory.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

Question and Answer Overview

What Are Marketing Orders?

Marketing orders are rules which are authorized under the Agricultural Marketing Agreement Act of 1937. They are based on evidence developed at a formal hearing. Marketing orders help fruit and vegetable growers work together to solve marketing problems that cannot be solved individually. Industries voluntarily implement these programs and choose to have Federal oversight of certain aspects of their operations.

The California raisin industry has operated under a marketing order since 1949. The order authorizes implementation of volume control for the various varietal types grown. Preliminary and interim free and reserve percentages are computed and announced by the Committee and final percentages are established by the Department of Agriculture. When volume controls are implemented for a particular varietal type, a portion of the crop can be sold by handlers to any market (free tonnage), and the remaining portion (reserve tonnage) is required to be held by handlers for the account of the Committee. Reserve raisins are disposed of through programs authorized under the marketing order. Under the order, reporting and recordkeeping requirements for gathering statistical information and supporting volume control activities are implemented. Quality controls, and marketing research and development, and promotional activities also are implemented in the interest of growers, handlers, and consumers.

What Is Desirable Carryout?

Desirable carryout is the amount of raisins from one season needed during the first part of the next season for market needs, and is one of the factors used in computing yearly trade demand. When computed trade demand is less than the quantity of raisins produced, volume controls are implemented under the order.

Why Did the Committee Recommend This Action?

The Committee recommended the increase in the desirable carryout to make more raisins available to handlers for immediate use early in the season when supplies are often tight, and to bring desirable carryout more in line with actual carryout inventory and early season shipments. The increase is expected to more accurately reflect the marketing conditions currently facing the industry.

Who Will Be Affected by This Action?

Growers and handlers of raisins produced in California will be affected by this action. Volume controls implemented under the order are designed to promote orderly marketing conditions, stabilize prices and supplies, and improve grower returns.

Were Any Comments Received on This Action?

One comment was received. The commenter supports the increase in desirable carryout, but expressed concern over the impact of the change on the Committee's program to promote California raisin sales in foreign markets. The increase in desirable carryout would make more raisins available to handlers as free tonnage, and might reduce the amount of reserve raisins purchased to meet their market needs. However, Committee sponsored promotional activities are not expected to be negatively impacted by the amount of the desirable carryout, because those activities are planned and implemented later in the season when carrying inventories and size of the new crop are known. Additionally, those promotional activities are planned by the Committee with the most recent information available, and approved by the Department.

When Will This Action Be Effective?

This action will be effective August 1, 2000, the beginning of the 2000/2001 crop year, and the increased desirable carryout will be used to compute trade demand for that year.

Executive Orders 12866 and 12998

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Discussion of the Increase in Desirable Carryout

This final rule increases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from one crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule increases the desirable carryout from 2½ months (August, September, and one-half of October) of prior year's shipments to a rolling average of 3 months (August, September, and October) of shipments over the past 5 years, dropping the high and low figures. This action was recommended by the Committee at a meeting on November 10, 1999.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the Committee could adopt a formula for desirable carryout in the order's rules and regulations. The formula has allowed the Committee to periodically adjust the desirable carryout to better reflect changes in each season's marketing conditions.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). This amount was gradually reduced to 2½ months in 1991–92, 2¼ months in 1995–96, and to 2 months in 1996–97. The Committee reduced the desirable carryout between 1991–1997 because it believed that an excessive supply of raisins was available early in a new crop year creating unstable market conditions.

In 1998, the Committee determined that, because of the reduced desirable carryout, not enough raisins were being made available for growth. Thus, the desirable carryout was increased to 2½ months of prior year's shipments to allow for a higher trade demand figure and, thus, a higher free tonnage percentage, making more raisins available to handlers, especially for immediate use early in the season when supplies are often tight. This action also allowed desirable carryout to move towards what handlers actually hold in inventory at the end of a crop year, or about 100,000 tons.

The Committee would like to continue to bring the desirable carryout in line with handlers' actual inventory at the end of a crop year. Desirable carryout has averaged 63,364 tons at 2 months, 71,203 tons at 2¼ months, and 80,248 tons at 2½ months. For the past 5 years, an average of 102,452 tons has been held in inventory by all handlers at the end of a crop year. Increasing the desirable carryout will also bring this factor more in line with early-season shipments while providing some raisins for market expansion. For the past 5 years, an average of 94,147 tons of raisins has been shipped during the first 3 months of the crop year (August, September, and October).

Thus, the Committee met on November 10, 1999, and recommended increasing the desirable carryout to a rolling average of 3 months of shipments (August, September, and October) over the past 5 years, dropping the high and low figures. If this formula would have been used for the current crop year (1999–2000), the desirable carryout would have equaled 94,083 tons as compared to the current 73,809 tons. The 94,083-ton figure would have thus been much closer to the actual inventory of 102,452 tons, and closer to the 5-year average level of shipments for August, September, and October of 94,147 tons. The following table illustrates this computation.

TABLE 1.—COMPUTATION OF PROPOSED NEW DESIRABLE CARRYOUT CROP YEARS

	A 1998–99	B 1997–98	C 1996–97	D 1995–96	E 1994–95
Total of free tonnage shipments during August, September, and October (Natural condition tons)	91,015	89,756	98,731	96,109	95,125
Total of 3-months of shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by 3 (Natural condition tons)[1]	94,083				

[1] (Columns A+D+E)/3

Finally, as with the 1998–99 increase in the formula, this action will result in a higher free tonnage percentage which will make more raisins available to handlers, especially for immediate use early in the season when supplies can be tight. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

Much of the discussion at the Committee's meeting concerned the desirable carryout of Natural (sun-dried) Seedless raisins (Naturals). Naturals are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99 crop year, volume regulation has been implemented for Naturals for the past several seasons. However, the Committee also believes that the increase in desirable carryout should apply to the other varietal types of raisins covered under the order.

The Committee's vote on this action was 24 in favor and 13 opposed. The no votes were primarily from members who favored a higher desirable carryout. After much deliberation, the majority of Committee members supported basing desirable carryout on a rolling average of 3 months of shipments over the past 5 years, dropping the high and low figures. Thus, paragraph (a) in § 989.154 is modified accordingly.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This final rule increases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from one crop year needed during the first part of the succeeding crop year to meet market needs, before new crop raisins are available for shipment. This rule will increase the desirable carryout specified in paragraph (a) of § 989.154 from 2½ months (August, September, and one-half of October) of prior year's shipments to a rolling average of 3 months (August, September, and October) of shipments for the past 5 years, dropping the high and low figures.

The new desirable carryout level will apply uniformly to all handlers in the industry, whether small or large, with no known additional costs incurred by small handlers. As previously mentioned, increasing the desirable carryout will increase the trade demand and free tonnage percentage, making more raisins available to handlers early in the season. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

The Committee considered a number of alternatives to the 3-month rolling shipment average in the desirable carryout level. The Committee has an appointed subcommittee which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on November 9, 1999, and discussed desirable carryout. All of the subcommittee members agreed with increasing the desirable carryout and considered a number of alternatives. Options considered included: Basing desirable carryout on a 5-year rolling average of actual carryout inventory; an average of 3 months of prior year's shipments; or a rolling average of 3 months of shipments over the past 5 years, dropping the high and low figures. The subcommittee ultimately recommended to the full Committee that desirable carryout be based on a 5-year rolling average of actual carryout inventory.

At the Committee meeting on November 10, 1999, these options were again reviewed. After much discussion, the majority of Committee members agreed that desirable carryout should be based on shipments, not actual carryout inventory. Most Committee members concurred that basing desirable carryout on actual carryout inventory could create problems if handlers carried out large inventories. In addition, most members believed that shipments are driven by market demand, and should thus continue to be the basis for desirable carryout. The Committee ultimately recommended that the desirable carryout be based on a rolling average of 3 months of shipments for the past 5 years, dropping the high and low figures.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce

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information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on November 9, 1999, and the Committee meeting on November 10, 1999, where this action was deliberated, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on January 31, 2000 (65 FR 4583). Copies of the rule were mailed by the Committee's staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 31, 2000. One comment was received.

The commenter supports the change in desirable carryout, but expressed concern over the impact of the change on the Committee's program to promote California raisin sales in foreign markets. The purpose of this rulemaking action is to change the desirable carryout to more accurately reflect actual carryout inventory and early-season shipments. Desirable carryout is the amount of tonnage from a specific crop year needed during the first part of the succeeding crop year to meet market needs. Failure to provide adequate raisins for market needs during the first part of the crop year would likely have a negative impact on prices and sales later in the season. Such an impact would likely be felt in domestic and foreign markets. The increase in desirable carryout would make more raisins available to handlers as free tonnage, and might reduce the amount of reserve raisins handlers purchase to meet their market needs. However, Committee sponsored promotional activities are not expected to be negatively impacted by this action. Those promotional activities are planned and implemented later in the season, when carryin inventories and the size of the new crop are known. Additionally, those promotional activities are planned by the Committee with the most recent information available, and approved by the Department.

Accordingly, no changes will be made to the rule, as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee, the comment received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2000–2001 crop year begins on August 1, 2000, and this rule should be effective promptly because the order provides that the Committee meet on or before August 15 to compute and announce the trade demand, and the desirable carryout level is a necessary item in that calculation; (2) this action is a relaxation in that it will make more raisins available to handlers especially for use early in the season; (3) producers and handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) a 60-day comment period was provided for in the proposed rule, and the comment received is addressed in this final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.154 is amended by revising paragraph (a) to read as follows:

§ 989.154 Marketing policy computations.

(a) *Desirable carryout levels.* The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage during August, September, and October for each of the past 5 crop years, for each varietal type, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three.

* * * * *

Dated: July 11, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–18073 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1140

[Docket No. DA–00–06]

Final Rule for Dairy Forward Pricing Pilot Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a pilot program which exempts handlers regulated under the Federal milk order program from paying producers and cooperative associations the minimum Federal order price(s) for that portion of their milk for nonfluid use that is under forward contract. Establishment of the pilot program is required by a November 1999 amendment to the Agricultural Marketing Agreement Act of 1937 (AMAA).

EFFECTIVE DATE: July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas.Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: This rule implements an amendment to the AMAA which directs the Secretary of Agriculture to establish a temporary pilot program for forward contracting of milk under Federal milk marketing orders. The effect of the amendment is to permit a handler to pay producers or cooperative associations a negotiated price, rather than the minimum Federal order price, for milk that is under forward contract, provided that such milk does not exceed the handler's nonfluid use of milk for the month. The amendment appears in Section 3 of H.R. 3428 of the 106th Congress, as enacted by Section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536). It was signed into law on November 29, 1999. The

amendment specifies that the pilot program shall only apply to federally regulated milk that is not classified as Class I milk or otherwise intended for fluid use and that is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce in federally regulated milk. The pilot program expires December 31, 2004.

This pilot program does not invalidate, supersede, or otherwise change existing milk contracts between handlers and dairy farmers. Contracts eligible for this pilot program shall be those contracts beginning no earlier than the effective date of this final rule.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The pilot program is a voluntary program that does not require extensive preparation for those handlers and dairy farmers who choose to participate in it; and (2) most handlers and farmers desiring to participate in the program are anticipating the publication of this rule and would like to have their contractual transactions under the program effective as soon as possible.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to judicial challenge to the provisions of this rule.

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866. This rule is not economically significant for the purposes of Executive Order 12866.

The forward pricing pilot program is a voluntary program that will permit a handler and a producer to negotiate prices that, at times, may be below the minimum order prices that would otherwise apply to such milk. Some producers, proprietary handlers, and cooperative associations now negotiate forward contracts on part or all of their milk. The pilot program will expand the opportunities to engage in forward contracting by exempting participating proprietary handlers from the minimum prices to producers and cooperative associations required under Federal milk marketing orders. These regulations do not affect the ability of cooperative associations to forward contract with their members.

The Regulatory Flexibility Act and the Effects on Small Businesses

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) considered the economic impact of this rule on small entities and has prepared this final regulatory flexibility analysis.

The legal basis for this rule is set forth in an amendment to the AMAA signed into law on November 29, 1999, that directs the Secretary of Agriculture to establish the dairy forward pricing pilot program. The Secretary was directed "to establish a temporary pilot program under which milk producers and cooperatives are authorized to voluntarily enter into forward price contracts with milk handlers."

The pilot program will provide the dairy industry, which has experienced substantial price volatility in recent years, with another tool to deal with such volatility. With the phase-down of the dairy price support program to a safety-net program, the prices of dairy products have fluctuated to a much greater extent than they did during the prior 20 years. This price fluctuation has created problems for processors of manufactured dairy products (*e.g.*, butter, nonfat dry milk, and cheese), the dairy farmers who supply these processors, and the retailers, school systems, and other public institutions who provide these products to consumers.

Under the Small Business Administration's definition, a dairy farm is a small business if it has annual gross revenues of less than $500,000 and a handler is a small business if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Based upon the most current information available, USDA identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that had their milk pooled under a Federal order in January 2000. Thus, small businesses represent approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there were approximately 1,200 plants associated with Federal orders in January 2000, and of these plants, approximately 720 qualify as "small businesses," representing about 60 percent of the total. At the present time, 142 cooperative associations represent 61,405 dairy farmers under the Federal milk order program. In addition, there were 10,311 dairy farmers who were not affiliated with any cooperative association in January 2000. Of these nonmember producers, 9,559 meet the SBA's definition of a small business.

The recordkeeping and reporting requirements for this rule are minimal. At the present time, any handler that enters into a forward contract with a producer presumably has written proof for such an arrangement. Under the pilot program, a handler will be required to submit a copy of each forward contract with a producer or a cooperative association to the market administrator of the order that regulates the milk. In addition, the handler will be required to attach a specific disclosure statement to each forward contract with each producer under the pilot program. The disclosure statement will have to be signed by each dairy farmer entering into a forward contract. The disclosure statement explains that a dairy farmer entering into a forward contract under the pilot program forfeits his or her right to receive the minimum order price(s) for that portion of their milk that is under contract for the duration of the contract period. These requirements are discussed further in the Paperwork Reduction Act section of this document.

In drafting the rule, the Department considered whether any limit should be established for the amount of milk that a dairy farmer could forward contract. We decided not to impose such a limit because we did not wish to interfere with a dairy farmer's desire to forward contract all of his or her milk. Also, in order to gain as much knowledge as possible about the types of forward contracts that might be offered by handlers, we believe it is beneficial to allow handlers and dairy farmers to decide between themselves how much milk to put under forward contract and how much milk to keep under minimum Federal order pricing.

Comments were specifically requested on the impact of this rule on small businesses. Many comments, particularly from dairy farmers and

cheese plant operators, stated that the pilot program would assist them in running their business. No comments were received from a small business stating that the pilot program would be a burden to them.

The Department does not believe that the forward pricing pilot program will unduly burden small entities or impair their ability to compete in the marketplace. In fact, by providing another tool to reduce price risk, the pilot program may aid small businesses in competing with larger entities that have the ability to use existing futures and options markets, and other means, to reduce their price risks.

Several provisions that were in the proposed rule have been modified or eliminated in response to those commenters who noted that these provisions could limit the ability of small businesses to participate in the pilot program. A provision that would have provided a 3-day period in which a forward contract could be canceled has been removed to facilitate hedging of forward contracts, and a provision limiting initial forward contracts to 6 months has been changed to 12 months to better reflect dairy farmers' budgeting practices. In addition, another change was made so that proprietary handlers that do not operate pool plants can participate in the program. These provisions are discussed in more detail in the discussion of the rules applicable to the pilot program.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act of 1995

The information collection requirements contained in this final rule were submitted to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) for emergency approval and such approval was granted. A separate 60-day notice seeking public comment on the information collection will be published after this final rule is issued. OMB has assigned this request No. 0581–0190.

Under the pilot program for the forward contracting of milk under Federal milk orders, a one-page disclosure statement was designed so that the Secretary's representatives administering the pilot program can be certain that dairy farmers have entered into the pilot program voluntarily. The disclosure statement is attached to a fact sheet containing general guidelines to help dairy farmers understand the forward contracting process. It also explains to the dairy farmer that the program is voluntary and that by entering into the program with a handler, the dairy farmer will be forfeiting his or her right to the minimum prices provided under the order. The form should take no more than 15 minutes to be read, understood, and signed by a dairy farmer. We estimate that the number of dairy farmers involved would be approximately 8,000, and the total annual time burden would not exceed 2,000 hours.

Handlers will be required to submit their forward contracts under the pilot program to their respective market administrator's office. There are 2 reasons for this. First, the market administrator must be able to review the contract to ensure it is signed and to verify that it complies with the regulations provided here. Second, the Department is required to conduct a study of forward contracting under the pilot program to determine the impact on milk prices paid to producers in the United States. This study must be submitted to Congress no later than April 30, 2002. In order to do such a study, the Secretary will have to review, summarize, and evaluate the different types of contracts that were written under the pilot program.

The time required for handlers to prepare and submit copies of contracts would approximate 30 minutes per contract. If all of the nearly 1200 plants associated with Federal orders decide to forward contract under the pilot program, the total annual burden to submit these contracts would be 600 hours.

In the proposed rule, and as continued in this final rule, the disclosure statement described above must be submitted each time that a dairy farmer enters into a forward contract under the pilot program. Several commenters stated that this requirement was redundant and resulted in unnecessary paperwork. They suggested that the disclosure statement should only be required to be submitted the first time that a dairy farmer enters into a forward contract under the pilot program. Except for these comments with respect to the disclosure statement, no other comments were received that relate to paperwork reduction or information collection.

While we are concerned about burdening handlers with unnecessary paperwork, we do not believe that the very short disclosure statement specified in Section 1140.1(e) of this final rule would create such a burden. Furthermore, we are not convinced by the argument that producers need be told only once that entering into a forward contract precludes them from receiving the order minimum prices for their milk. Forward contracting by producers is a significant departure from the historical regulatory environment. As such, it is essential that producers fully understand the consequences of entering into a voluntary contract that forfeits their right to receive minimum order prices for milk. By signing a disclosure statement for each contract, producers will be certifying that they have been given the opportunity to review the Forward Pricing Pilot Program Fact Sheet that describes the program, provides some advice, and cautions the producer to fully understand the terms and conditions of each contract.

Public Comments

A proposed rule was issued on February 25, 2000 (44 FR 10981). Interested parties were given 15 days to file written comments concerning the proposed rule. These comments were accepted by regular mail, e-mail, and by fax. A total of 97 comments were received. These comments came from—in order from most to least—dairy farmers, handlers, federal and state legislators, futures industry representatives, banking industry representatives, and other interested parties. All of the comments are available for viewing on our web site: www.ams.usda.gov/dairy/for_contr_pilot.htm.

Discussion of Rules Applicable to Pilot Program

Under the rules adopted here to administer the pilot program, producer milk under forward contract with a handler in compliance with the rules will not be subject to a Federal milk order's minimum price requirements provided that such milk does not exceed the handler's Class II, III, and IV utilization of milk for the month in the market that regulates the milk. This rule contains a clarification in § 1140.2(a) to make it clear that in order to be eligible for exemption from minimum order pricing under this pilot program handlers must be in compliance with the program rules.

For convenience, a handler's combined Class II, III, and IV utilization is defined as the handler's eligible milk. In the case of a multi-plant handler, the handler's Class II, III, and IV utilization will be combined together for all of the handler's milk regulated under one order. A handler will only be exempt from paying the order's minimum price(s) on its quantity of eligible milk.

The determination of which producers' milk is over-contracted is left to the handler. If the handler fails to make this determination, the market administrator will prorate the over-contract milk to each producer and cooperative association having a contract with the handler.

Although handlers participating in the pilot program will not be required to pay producers and cooperative associations the order's minimum uniform or component prices for contract milk, they will still be required to account to the pool for all milk they receive at the respective order's minimum class prices. In the case of milk received by transfer from a cooperative association's pool plant, a handler may forward contract for all such transferred milk that is not used in Class I and will be exempt from paying the cooperative the minimum class prices for contract milk.

In the proposed rule (See § 1140.2(a)), forward contracting under the pilot program was restricted to a handler that operates "one or more pool plants." In this final rule, this has been changed to read "any handler defined in §§ 1000.9 and 1135.9." The language in the proposed rule would have excluded proprietary handlers that do not operate pool plants from participating in the pilot program. As noted by Kraft Foods in its comment, "this limitation is not in the statute creating the pilot program, and would unnecessarily exclude a number of handlers and producers from enjoying the benefits intended by Congress."

The language contained in the proposed rule would not have permitted forward contracting for many manufacturing plants that use pooled milk for their manufactured dairy products. In fact, many nonpool plants that receive producer milk by diversion from pool plants would have been unable to forward contract under the pilot program.

In providing for the forward contract pilot program, Congress provided handlers who forward contract with an exemption from paying the minimum Federal order price to producers with whom they have contracted. The November 1999 amendments to the Act did not *permit* handlers who manufacture Class II, III, and IV products to forward contract because any handler, even handlers with all Class I milk, could have forward contracted prior to the amendments. What the amendments did do, however, was excuse handlers from paying producers minimum order prices for Class II, III, and IV milk under forward contract.

The language in § 1140.2(a) for the proposed rule stated that only pool plant operators could forward contract and be exempt from minimum Federal order pricing. This language, however, does not take into consideration the complex marketing arrangements that exist between pool plants, cooperative association bulk tank handlers, and nonpool plants.

In many markets, milk of nonmember producers that is regularly received at a nonpool plant is actually pooled by a pool plant operator or by a cooperative association through its deliveries to a pool plant. The nonmember milk delivered to the nonpool plant is reported as producer milk diverted to a nonpool plant by the cooperative association on its monthly report of receipts and utilization to the market administrator. Alternatively, if a cooperative association is not involved in the transaction, such milk could be reported by a pool plant operator on its report.

Many nonpool plant operators that receive nonmember milk that is pooled through another handler issue checks to their nonmember producers. They submit their payrolls showing these payments to the market administrator. Nevertheless, these nonpool plant operators are not responsible under the order for paying their nonmember producers the minimum Federal order price; it is the handler—*i.e.*, either the cooperative association or pool plant operator—that pools the milk for them who would be held responsible for an underpayment.

In this final rule, only producer milk that is under forward contract with a handler in compliance with the rules provided here will be exempt from the order's minimum prices. In the case of nonmember milk that is reported as producer milk by a cooperative association handler or pool plant operator, but payrolled by a nonpool plant operator, the cooperative association or pool plant operator, respectively, will be held responsible for any underpayment to a nonmember producer in the event that milk under contract becomes subject to minimum order pricing (for instance, in the case of over-contracted milk). In this way, cooperative association handlers, pool plant operators, and nonpool plant operators may continue the complex arrangements that have evolved to pool milk under the Federal milk order program and all will be permitted to participate in the pilot program.

The language in § 1140.2(a) of this final rule has been modified to reflect the change from "handler that operates one or more pool plants" to simply "handler." As defined in § 1000.9, handler includes not only the operator of a pool plant or a nonpool plant, but also a broker serving as a handler as provided in § 1000.9(b) and a cooperative association acting as a handler with respect to milk delivered to a pool plant or diverted to a nonpool plant. Finally, the term "handler" includes a proprietary bulk tank handler as defined in § 1135.9 of the Western order.

Any handler participating in the pilot program will still be required to file all of the reports that are now required under an order. This includes reports of receipts and utilization of milk and monthly payroll reports that show all information now required under the orders.

Handlers participating in the pilot program will have to submit to the market administrator a copy of each contract for which it is claiming exemption from the order's minimum pricing. This contract must be signed prior to the 1st day of the 1st month for which the contract applies and must be received by the market administrator by the 15th day of that month. For the first month that the pilot program is effective, contracts must be signed on or after the day on which the program becomes effective. For example, if the program becomes effective on July 17, contracts for August milk must be signed between July 17 and July 31 and must be in the market administrator's office by August 15.

It is the responsibility of each handler to give to each contracting dairy farmer or cooperative association a disclosure statement informing them of the nature of the pilot program and providing them with certain information that they should consider before entering into a forward contract. The disclosure statement must be signed on the same date as the contract by the dairy farmer or cooperative association representative and will have to be returned to the market administrator together with the contract by the 15th day of the month. Any contract that is submitted to the market administrator without the disclosure statement will be considered to be invalid for the purpose of being exempt from the order's minimum pricing and will be returned to the handler.

Several commenters objected to having to submit a disclosure statement each time they contract with a producer. They argued that attaching a disclosure statement to the first forward contract with a producer was sufficient and that having to do so with each succeeding contract involved unnecessary paperwork.

As noted earlier in the section dealing with the Paperwork Reduction Act, we do not believe that the very short disclosure statement specified in Section 1140.1(e) of this final rule would create such a burden. In fact, it is only one paragraph long and can easily be incorporated in the body of a forward contract itself or can be handled as a one-page supplement that may be attached to the forward contract.

In its proposed rule, the Department proposed 2 provisions to help dairy farmers adjust to the new program. One provision would have required that each forward contract under the pilot program contain a clause that gives a dairy farmer 3 days to change his or her mind about forward contracting their milk. The 2nd proposed provision would have limited the contract period for first-time contracts under the pilot program to 6 months. Both of these proposals were opposed by a majority of the commenters who addressed these issues.

Numerous commenters contended that these 2 provisions would be very damaging to the pilot program, even rendering it totally ineffective. One commenter who specializes in hedging price risks noted that the 3-day cancellation provision would severely constrain a handler in offsetting its risk if it had to wait for 3 days after signing a contract before it could safely hedge a price commitment that it had made 3 days earlier. With respect to the proposed rule limiting first-time contracts to 6 months, many commenters observed that a 6-month contract would not match up with a dairy farmer's budgeting process.

In response to those commenters who argued that having to wait 3 days would subject handlers to extraordinary, unreasonable price risk, we undertook a careful review of the options available to handlers for hedging such risk. In particular, we analyzed the costs associated with purchasing at-the-money put options in lieu of selling futures to hedge forward contracts during the 3 days when a forward contract could be canceled. We also looked at the costs incurred in selling futures and simultaneously purchasing an equivalent amount of at-the-money call options to hedge the price risks associated with entering into forward contracts during the 3 days when the contract could be canceled. Our analysis indicates that the costs of the 3-day cancellation provision could amount to between 10 and 15 cents per hundredweight. These costs would likely be passed on to producers in the form of lower contract prices which could dampen any interest in the pilot program.

In proposing the 3-day cancellation clause for producers who enter into forward contracts under the pilot program it was our intent to help farmers adjust to the new program and to protect them from undue pressure in signing forward contracts. However, based on the comments and on our analysis it is clear that the 3-day cancellation provision would result in some additional costs to handlers who enter into forward contracts and hedge such contracts by using the futures market. Such costs could be passed on to producers in terms of lower forward contract prices. Therefore, while we continue to see merit in this provision, we must conclude that, on balance, the 3-day cancellation provision could work against the interests of dairy farmers by denying them the opportunity to utilize forward contracts under the pilot program. Accordingly, this provision has been removed from this final rule. Nevertheless, we will carefully monitor whether producers have been provided with adequate time and information before entering into forward contracts with handlers under the pilot program and will revisit this issue if necessary.

With respect to the 6-month forward contract restriction for producers forward contracting for the first time, we still believe that a restriction for first-time forward contracts would have merit. However, we are convinced by the comments submitted that the maximum contract length should be changed from 6 months to 12 months to be more consistent with budgeting and banking practices. After a producer has entered into his or her first forward contract under the pilot program, subsequent contracts could be written for longer periods of time.

A 3rd proposed provision that was widely opposed by commenters and received virtually no support would have required the basis for pricing milk under a forward contract to be the same as the basis for pricing milk that was not under forward contract. Specifically, in the 4 Federal orders with butterfat and skim milk pricing, forward contracts would have been required to be written in those terms, and in the 7 orders with component pricing of milk, forward contracts would have been required to be written in terms of those same components. This provision was proposed for 2 reasons. First, we thought such pricing would be more understandable to producers who had part of their milk subject to minimum order pricing and part of it subject to forward contract pricing. Second, we thought that such pricing would be easier for producers to verify using testing data provided by the market administrator.

This proposal was seen by commenters to be unnecessarily limiting and an obstacle to effectively hedging contract prices, which may be based upon futures market prices that may not price each component of milk. Therefore, it has been removed. However, producers who are not members of a cooperative association should understand that their milk weights and tests will continue to be handled in the same way by the market administrator even if they choose to enter into a forward contract which prices their milk on a basis that differs from the order in which their milk is pooled. For example, if a producer under the Appalachian Order, which prices milk to dairy farmers on the basis of skim milk and butterfat, enters into a contract that prices milk on the basis of protein, butterfat, other solids, and somatic cell count, the producer will not receive data from the market administrator to compare against the buying handler's test data. If the producer wishes to verify these tests, he or she will have to do so at their own expense.

As proposed, payments specified under a forward contract must be made on the same dates as order payments which they replace. No comments were received in opposition to this provision and it should be carried forward for several reasons. First, nearly every handler entering into forward contracts would have some milk that is subject to minimum order pricing. It is highly unlikely that these handlers would establish a dual accounting and payment system even if they thought that different payment dates would be preferable to those specified under the order. Second, if handlers paid producers under contract at different times than producers not under contract, this disparate treatment could cause problems which might influence the success of the pilot program for reasons entirely apart from more predictable pricing. Third, from an administrative standpoint, it will be much easier to administer the pilot program if payments are made on the same day as minimum order payments.

Some commenters argued that the market administrator should enforce forward contract prices just as they do minimum order prices. Another comment stated that the regulations should enforce payment of all contracts.

The Act requires the Secretary to establish a forward pricing pilot program. Milk for nonfluid use which is covered by forward contracts under the

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pilot program is exempt from the minimum price provisions of the orders. We do not believe it should be the role of the market administrator or the Department to determine the terms of forward contracts or to enforce negotiated prices. Payment for milk covered under forward contract is required to be made by the dates specified in § 1140.2(e) of the regulations.

Some commenters argued that allowing a handler to draw money from the producer-settlement fund and not pass it on to its producers could create disorderly marketing conditions. One commenter concluded that allowing a handler to keep the difference between the order's blend price and the contract price was an unjustified windfall to the handler.

This issue merits some discussion. Frankly, we do not know what form forward contracts will take under the pilot program. We do know the nature of some forward contracts prior to the pilot program. In the Upper Midwest, where much of the milk that is pooled is used for Class III use, many forward contracts provided for a Class III price plus a pool draw. If a handler was a cheese operation, the pool draw would equal the difference between the order's blend price and the Class III price.

It may be that this same formula will be the popular way to forward contract under the pilot program, but there are several variables that make this unclear. First, the pilot program applies to all Federal order markets, with Class I utilizations ranging from 90 percent to 10 percent. There is a significant difference in the pool draw between these extremes. Second, forward contracts may only cover milk used for Class II, III, or IV use. While a contract providing for a Class III price plus the pool draw might make sense for a cheese plant, it may not fit well with an ice cream or butter-powder operation.

Producers who are contemplating forward contracting should keep in mind that their benchmark price is the Federal order blend price. That is the minimum price that they would receive in the absence of a forward contract. Thus, it seems reasonable that when producers negotiate a forward contract price, they would hope to approximate, ideally, the minimum blend price plus applicable premiums averaged over the forward contract period.

As noted above, we do not know how handlers will arrive at forward contract prices. They could look at futures markets for guidance. A forward contract price could be a flat blend price approximation; it could be an average futures market cheese price plus a pool draw; or, for a butter-powder operation, it could be an average future butter and powder price on a hundredweight basis plus a pool draw.

Over time, we would expect to see forward prices to producers below the blend price in some months and above the blend price in other months. When the contract price is below the blend price, the pool draw could accrue to the contracting handler. On the other hand, when the contract price is above the blend price, the contracting handler will have to supplement the pool draw to pay the producer the contract price. On balance, the pluses and minuses should cancel each other out since, one could argue, the desired objective of forward contracting is to remove the uncertainty and variability in prices, not to reduce a handler's cost by cutting its payments to producers. In fact, if producers continually find that they are losing money by forward contracting, it would seem illogical for them to continue to do so.

Some commenters also argued that handlers with forward contracts under the pilot program should be prohibited from excluding milk from regulation or, as it more commonly called, depooling milk.

This issue would by necessity involve amendments to Federal orders, unlike the pilot program, which involves no amendments to Federal orders. The depooling issue is really separate from forward contracting and is not appropriate for consideration in this informal rulemaking process.

Participation in the pilot program must be entirely voluntary on the part of dairy farmers and handlers. If the Department believes that the program is being used to coerce dairy farmers into signing contracts providing for prices that, on average, are consistently below minimum order prices, steps will be taken to halt such practices. One indication that such practices could be occurring would be complaints from dairy farmers that they were dropped because they refused to sign a forward contract with a handler. Another indication might be manifested by the replacement of one group of dairy farmers with another group of dairy farmers who have entered into forward contracts with the handler. It is conceivable that some farmers might intentionally enter into a forward contract that would consistently provide a price below the minimum order price simply to get their milk pooled on a particular market for possible future benefit. This type of activity would undermine the concept of minimum prices to dairy farmers and lead to the type of conditions that the AMAA was enacted to remedy. Should these types of activities occur after the pilot program becomes effective, the Secretary would consider appropriate actions to halt such activities.

Many commenters, including several members of Congress, took issue with our reference to suspend or terminate the pilot program in the discussion part of the proposed rule. Other commenters, however, specifically welcomed the discussion of these contingencies.

It may be true, as one commenter stated, that it is unnecessary to state that the Secretary of Agriculture can terminate the pilot program if he finds that it is operating in conflict with the Agricultural Marketing Agreement Act. However, we see no harm in stating what may not be obvious to all pilot program participants: If the program is abused, steps will be taken to stop the abuse.

Therefore, based on the rationale set forth in the proposed rule and in this document we are adopting provisions of the proposal as a final rule, with the changes discussed in this document, as well as several technical changes made for clarity.

Additional information about the pilot program is included in the Department's program announcement. The information is also available on the Dairy Programs' web site (www:ams.usda.gov/fmor/index.htm) and is available from local market administrator offices.

For the reasons set forth in the preamble, Title 7 of Chapter X of the CFR is amended by adding a new Part 1140 as follows:

PART 1140—DAIRY FORWARD PRICING PILOT PROGRAM

Subpart A—Definitions

Sec.
1140.1 Definitions.

Subpart B—Rules Governing Forward Contracts

1140.2 Rules governing forward contracts.

Authority: 7 U.S.C. 601 *et seq.*

Subpart A—Definitions

§ 1140.1 Definitions.

(a) *Pilot program* means the dairy forward pricing pilot program provided by an amendment to the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 *et seq.*) signed into law on November 29, 1999 (Section 3 of H.R. 3428 of the 106th Congress, as enacted by section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536)).

(b) *Eligible milk* means the quantity of milk equal to the contracting handler's Class II, III, and IV utilization of

producer milk, in product pounds, during the month, combining all plants of a single handler regulated under the same Federal order.

(c) *Forward contract* means an agreement covering the terms and conditions for the sale of milk from a producer defined in §§ 1001.12, 1005.12, 1006.12, 1007.12, 1030.12, 1032.12, 1033.12, 1124.12, 1126.12, 1131.12, and 1135.12, or a cooperative association defined in § 1000.18, and a handler defined in §1000.9 or 1135.9.

(d) *Contract milk* means the producer milk covered by a forward contract.

(e) *Disclosure statement* means the following statement which must be signed by each producer entering into a forward contract with a handler before the market administrator will recognize the terms and conditions provided in such contract.

Disclosure Statement

I am voluntarily entering into a forward contract with _____ (handler's name). I have been given a copy of the contract and I have received the USDA's Pilot Program Fact Sheet to which this disclosure statement was attached. By signing this form, I understand that I am forfeiting my right to receive the order's minimum prices for that portion of my milk that is under forward contract for the duration of the contract. I also understand that my milk will be priced in accordance with the terms and conditions of the contract.

Printed Name: _____
Signature: _____
Date: _____
Address: _____
Producer No: _____

(f) *Other definitions.* The definition of any term in parts 1000–1135 of this chapter apply to, and are hereby made a part of, this part.

Subpart B—Rules Governing Forward Contracts

§ 1140.2 Rules governing forward contracts.

(a) Any handler defined in §§ 1000.9 and 1135.9 may enter into forward contracts with producers or cooperative associations for the handler's eligible milk. Milk under forward contract in compliance with these rules will be exempt from the minimum payment provisions that would apply to such milk pursuant to §§ 1001.73, 1005.73, 1006.73, 1007.73, 1030.73, 1032.73, 1033.73, 1124.73, 1126.73, 1131.73 and 1135.73 for the period of time covered by the contract.

(b) A forward contract with a producer or cooperative association participating for the first time in this pilot program may not exceed 12 months. In no event shall a forward contract executed pursuant to this part extend beyond December 31, 2004.

(c) Forward contracts must be signed and dated by the contracting handler and producer (or cooperative association) prior to the 1st day of the 1st month for which they are to be effective and must be in the possession of the market administrator by the 15th day of that month.[1] The disclosure statement provided in § 1140.1(e) must be signed on the same date as the contract by each producer entering into a forward contract under the pilot program, and this signed disclosure statement must be attached to each contract submitted to the market administrator.

(d) In the event that a handler's contract milk exceeds the handler's eligible milk for any month in which the specified contract price(s) are below the order's minimum prices, the handler must designate which producer milk shall not be contract milk. If the handler does not designate the suppliers of the over-contracted milk, the market administrator shall prorate the over-contracted milk to each producer and cooperative association having a forward contract with the handler.

(e) Payments for milk covered by a forward contract must be made on or before the dates applicable to payments for milk that is not under forward contract under the respective Federal order.

(f) Handlers participating in the pilot program will continue to be required to file all reports that are currently required under the respective marketing orders and will continue to be required to account to the pool for all milk they receive at their respective order's minimum class prices.

(g) Nothing in this part shall impede the contractual arrangements that exist between a cooperative association and its members.

Dated: July 13, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–18113 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–02–P

[1] Contracts that have been signed prior to the effective date of these rules are invalid under the pilot program.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 917, 926, 944, 950, 952, 961 and 980

[No. 2000–34]

RIN 3069–AA97

Federal Home Loan Bank Advances, Eligible Collateral, New Business Activities and Related Matters

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its Advances Regulation and other regulations to implement the requirements of the Federal Home Loan Bank System Modernization Act of 1999 by: allowing the Federal Home Loan Banks (Banks) to accept from community financial institution (CFI) members new categories of collateral to secure advances; expanding the purposes for which the Banks may make long-term advances to CFI members; and removing the limit on the amount of a member's advances that may be secured by other real estate-related collateral. The Finance Board also is making related and other technical changes to its regulations on General Definitions, Powers and Responsibilities of Bank Boards of Directors and Senior Management, Federal Home Loan Bank Housing Associates, Community Support Requirements, Community Investment Cash Advance Programs and Standby Letters of Credit, and adopting a new regulation on New Business Activities.

DATES: The final rule is effective on August 17, 2000.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Historical Benefits of Federal Home Loan Bank System

The Federal Home Loan Bank System (Bank System) comprises twelve regional Banks that are instrumentalities

of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may own the capital stock of a Bank and only members and certain eligible nonmember borrowers (housing associates) (such as state housing finance agencies) may obtain access to the products provided by a Bank. *See* 12 U.S.C. 1426, 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public by enhancing the availability of residential housing finance and community lending credit through its members and housing associates. *See* 12 U.S.C. 1427. Any eligible institution (typically, an insured depository institution) may become a member of a Bank by satisfying certain criteria and by purchasing a specified amount of a Bank's capital stock. *See* 12 U.S.C. 1424, 1426; 12 CFR part 925.

As government sponsored enterprises (GSEs), the Banks are granted certain privileges that enable them to borrow funds in the capital markets on terms more favorable than could be obtained by private entities, so that the Bank System generally can borrow funds at a modest spread over the rates on U.S. Treasury securities of comparable maturity. The Banks pass along their GSE funding advantage to their members, and ultimately to consumers, by providing secured loans, called advances, and other financial products and services at rates and terms that would not otherwise be available to their members.

The Banks must fully secure advances with eligible collateral. *See* 12 U.S.C. 1430(a). At the time of origination or renewal of an advance, a Bank must obtain a security interest in collateral eligible under one or more of the collateral categories set forth in the Bank Act. *See* 12 U.S.C. 1430(a).

Under section 10 of the Bank Act and part 950 of the Finance Board's regulations, the Banks have broad authority to make advances in support of residential housing finance, which includes community lending, defined, in the final rule, as providing financing for economic development projects for targeted beneficiaries and, for CFIs, purchasing or funding small business loans, small farm loans or small agri-business loans. *See* 12 U.S.C. 1430(a), (i), (j); 12 CFR parts 900, 950. The Banks also are required to offer two programs, the Affordable Housing Program (AHP) and the Community Investment Program (CIP), to provide subsidized or at-cost advances, respectively, in support of unmet housing finance or targeted economic development credit needs. *See* 12 U.S.C. 1430(i), (j); 12 CFR parts 951, 952. In addition, section 10(j)(10) of the Bank Act authorizes the Banks to establish additional Community Investment Cash Advance (CICA) Programs for targeted community lending, defined as providing financing for economic development projects for targeted beneficiaries. *See* 12 U.S.C. 1430(j)(10); 12 CFR part 952.

B. Expanded Access to Bank System Benefits

On November 12, 1999, the President signed into law the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act) [1] which, among other things, amended the Bank Act by providing smaller lenders with greater access to membership in the Bank System and greater access to Bank advances. The Modernization Act established a category of members consisting of depository institutions whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) that have less than $500,000,000 in average total assets (based on an average of total assets over three years) called community financial institutions (CFIs),[2] and authorized the Banks to make long-term advances to CFI members for the purposes of providing funds for small businesses, small farms and small agri-businesses. *See* Modernization Act, sections 602, 604(a)(2), 605. The Modernization Act also authorized the Banks to accept from CFI members as security for advances secured loans for small business, agriculture, or securities representing a whole interest in such secured loans. *See id.*, section 604(a)(5)(C).

For all members, the Modernization Act removed the statutory limit on the amount of aggregate outstanding advances that could be secured by "other real estate-related collateral," which had been capped at 30 percent of a member's capital. *See id.*, section 604(a)(5)(B). The Banks, therefore, are now authorized to accept other real estate-related collateral as security for advances to any member as long as the collateral has a readily ascertainable value and the Bank is able to perfect a security interest in that collateral. *See* 12 U.S.C. 1430(a)(3)(D) (as amended).

[1] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[2] The Finance Board recently adopted an Interim Final Rule that amended the Finance Board's Membership Regulation to implement the Modernization Act amendments regarding membership in the Bank System. See 65 FR 13866 (March 15, 2000). The Finance Board adopted the Interim Final Rule as a Final Rule, with several changes, at its June 23, 2000 Board meeting.

C. Proposed Rule

On May 8, 2000, the Finance Board issued a notice of proposed rulemaking that proposed amendments to the Finance Board's regulations to implement the new statutory authorities described above. *See* 65 FR 26518 (May 8, 2000). The public comment period on the proposed rule closed on June 7, 2000. The Finance Board received letters from a total of 64 commenters, including: 11 Banks; 15 financial institution trade associations; 34 Bank members; 1 home builders' association; the Farm Credit System trade association; the Bank's trade association; and a Congressman. Comments as they relate to specific issues raised by the proposed rule are discussed below.

II. Analysis of Final Rule

A. Modernization Act Amendments Establishing Newly Eligible Collateral

1. New CFI-Eligible Collateral

The Modernization Act amended the Bank Act to allow CFI members to pledge new types of collateral as security for advances, specifically, secured loans for small business or agriculture, or securities representing a whole interest in such secured loans. *See* Modernization Act, section 604(a)(5)(C). Proposed § 950.7(b)(1) implemented this amendment by authorizing the Banks to accept from CFI members or their affiliates as security for advances, small business loans, small farm loans or small agri-business loans fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that: (i) The loans have a readily ascertainable liquidation value and can be freely liquidated in due course; and (ii) the Bank can perfect a security interest in such collateral (CFI-eligible collateral). Proposed § 950.7(b)(1) also required that, prior to accepting any such CFI-eligible collateral, a Bank shall meet the new business activity requirements of proposed part 980. This requirement was intended to ensure that a Bank has the capacity to value, discount and manage the newly eligible collateral prior to making advances secured by such collateral.

Proposed § 950.7(b)(1) excluded loans secured by real estate because these types of loans were included in proposed § 950.7(a)(4).

a. Types of CFI-eligible collateral—Definitions of "small business loans," "small farm loans" and "small agri-business loans". Proposed § 950.1 defined the terms "small business

loans," "small farm loans" and "small agri-business loans" using a loan size approach and an alternative business (or farm) size approach. Specifically, loans below a prescribed aggregate amount—$1 million for small business loans, and $500,000 for small farm loans and small agri-business loans—were considered a proxy for business (or farm) size based on the loan size standards established by regulation of the agencies comprising the Federal Financial Institutions Examination Council (FFIEC),[3] and met the proposed definitions. *See* 57 FR 54235 (Nov. 17, 1992). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, these aggregate loan size limits were derived from the FFIEC requirement that financial institutions report to their primary regulators small business loans of up to $1 million and small farm loans of up to $500,000. *See id.* Loans above these aggregate loan size limits would not meet the proposed definitions, unless business data specific to the borrowing enterprise (annual gross receipts or number of employees) showed that the borrower met the eligibility standards for a small business (or farm) concern under the Small Business Administrations (SBA) regulations. *See* 13 CFR part 121.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the business size approach provides greater accuracy, but may result in costs that deter CFI members from fully employing Banks as a funding source for loans to small businesses and small farms. The loan size approach is less precise, but has the advantage of lower implementation costs, since it involves information already available to Federally regulated financial institutions in the reports they are required to file with their primary federal regulator.

In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board stated that the proposed definitions represented an appropriate compromise between these two approaches that would allow CFI members to use Bank System funding to finance small businesses and small farms, as authorized by the Modernization Act. *See* Modernization Act, section 604(a)(5)(C). The Finance Board requested comment on whether there were any other appropriate methods of categorizing or defining small business loans, small farm loans, and small agri-business loans.

Many of the community bank commenters noted that the expansion of eligible collateral to secure advances is critical to their funding needs. Many commenters of all types stated that neither of the alternatives set forth in the proposed definitions would allow CFI members to utilize such loans as a source of funding to the extent intended by Congress. The consensus among commenters was that the aggregate loan size limits set forth in the proposed definitions were too restrictive, and that the alternative documentation requirements for loans above the aggregate loan size limits would be too time-consuming and burdensome to offer a practical alternative. Many commenters recommended instead that the Finance Board adopt a definitional approach tied to the legal "loans to one borrower" (LTOB) limits to which members already are subject. Other commenters variously recommended raising the maximum aggregate loan size limits, making any aggregate loan size limits uniform for all categories of CFI-eligible collateral, providing a mechanism that would adjust the aggregate loan size limits over time for inflation, and reducing documentation requirements. One commenter recommended adopting an aggregate loan size limit based on the standard for small farms developed by the Secretary of Agriculture (less than $250,000 in annual gross agricultural sales).

Loans and extensions of credit by insured depository institutions are subject to statutory and regulatory LTOB limits. *See, e.g.*, 12 U.S.C. 84(a); 12 CFR part 32 (Office of the Comptroller of the Currency); 12 CFR 560.93 (Office of Thrift Supervision). Generally, the total loans and extensions of credit made by an insured depository institution to any one borrower may not exceed 15 percent of that institution's total unimpaired capital and unimpaired surplus, with exceptions for, among other things, loans fully secured by high quality and highly liquid collateral. *See* 12 U.S.C. 84(a)(1), (2), (c). These LTOB limits are intended to protect the safety and soundness of insured depository institutions by prohibiting concentration of lending to any one entity. Commenters pointed out that, in conjunction with the LTOB limits, the size limit on a member's CFI eligibility of $500 million in total assets effectively limits the size of the loans the member may pledge for advances. Various commenters calculated the "effective" loan limit resulting from the LTOB approach to range from $3.75 million to $6 million for a $500 million institution, depending on the institution's capital level. Several commenters pointed out that the Finance Board adopted a similar approach in amending the definition of "combination business or farm property" in the Advances Regulation in order to permit members with assets of $500 million and less to pledge combination agriculture/residential loans and business/residential loans as eligible collateral. *See* 63 FR 35117 (June 29, 1998). The Finance Board noted at that time that by limiting the size of members that could pledge the loans, the Finance Board was indirectly limiting the size of the loans themselves. *See id.* at 35122.

The Finance Board recognizes that the LTOB approach offers certain advantages over the definitions of "small business loans," "small farm loans," and "small agri-business loans" set forth in the proposed rule. For example, the aggregate loan size limits in the proposed rule represent static, one-size-fits-all loan amounts. One commenter noted, in this regard, that while the proposed aggregate loan size limits might not impact CFI members with assets of $100 million or less, the proposed limits could create an impediment for larger CFI members making larger loans. By contrast, the LTOB approach would result in aggregate loan size limits that are relative to the size of each CFI member and arguably more relevant and appropriate. Additionally, since LTOB restrictions are already in place, reliance on this measure would ease administration and limit implementation costs. Further, a CFI member's LTOB limit would follow the movement of its assets and capital, thereby making adjustments for inflation unnecessary.

The Finance Board also recognizes that LTOB restrictions are not uniform. Legal lending limits for similarly sized CFI members will vary, not only because institutions will hold different amounts of capital and unimpaired surplus, but because LTOB restrictions themselves may vary in form or application among the federal and state regulatory bodies that promulgate and enforce such restrictions. Even within the same regulatory structure, the size of loan a CFI member is permitted to make may vary depending on the extent to which certain exceptions to the general LTOB limit may apply to that particular loan. However, the Finance Board does not believe that these variances, including the potential for higher loan amounts under certain circumstances, would prevent the LTOB approach from

[3] FFIEC is a formal interagency body empowered to prescribe uniform principals, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the FDIC, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and to make recommendations to promote uniformity in the supervision of financial institutions. *See* 12 U.S.C. 3301 *et seq.*

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serving as an appropriate method of categorizing or defining small business loans, small farm loans and small agri-business loans.

On balance, the Finance Board is persuaded that the LTOB approach is the most reasonable and cost efficient means of implementing the Modernization Act in a manner that will facilitate CFI member access to Bank advances for the purpose of funding small businesses, small farms and small agri-businesses. Further, the Finance Board does not believe that the LTOB approach raises any additional safety and soundness concerns that cannot be adequately addressed by the collateral policy requirements in § 917.4 and the new business activities requirements in part 980 discussed below. Accordingly, § 950.1 of the final rule defines "small business loans," "small farm loans," and "small agri-business loans" as loans that are within the legal lending limit of the reporting CFI member and reported on certain regulatory financial reports as specifically provided in § 950.1. To ensure that loan size is effectively limited by the definitions of "small business loans," "small farm loans," and "small agri-business loans," the definitions shall apply only to whole loans and not to loan participations.

As proposed, § 950.7(b)(1) of the final rule does not explicitly refer to secured loans for agriculture, as does the Modernization Act. *See* Modernization Act, section 604(a)(5)(C). Instead, the Finance Board has interpreted "agriculture loans" to mean small farm loans and small agri-business loans, and substituted these terms, in the text of § 950.7(b)(1). These terms also appear in § 950.3, which sets forth the authorized purposes of long-term Bank advances, so their use in § 950.7(b)(1) is consistent with the Finance Board's general policy of employing uniform terminology in its regulations whenever possible. The Finance Board also stated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule that permitting the Banks to accept as collateral only "small" agriculture loans was consistent with both the Banks' mission of assisting members with community lending and with the Modernization Act's emphasis on small institutions' lending to small enterprises. *See* Modernization Act, sections 602, 604(a)(3), 604(a)(5)(C).

Many commenters stated that the Finance Board's interpretation of the statutory term "agriculture loans" as small farm loans and small agri-business loans was unnecessarily restrictive, on the basis that the Modernization Act does not explicitly specify an aggregate size limit on secured loans for agriculture. The Finance Board's adoption of the LTOB approach to loan size definitions in the final rule resolves this issue, since it allows CFI members to pledge as collateral to secure advances farm loans and agri-business loans up to their respective legal lending limits.

b. Restrictions on acceptance of CFI-eligible collateral. The primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. *See* 12 U.S.C. 1422a(a)(3)(A). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, in view of the potentially greater risks inherent in non-mortgage, CFI-eligible collateral, with which the Banks have limited or no experience, the Finance Board, for safety and soundness reasons, considered whether limits or restrictions should be established on the types of collateral that could secure such loans or securities pledged by a CFI member or affiliate to secure an advance. For example, small business loans secured by accounts receivable or inventory, or small farm loans secured by crops or livestock, which may present greater risks than other types of secured small business or small farm loans, could have been excluded from the types of eligible collateral. The Finance Board chose not to impose limits or restrictions in the proposed rule, but instead to require in proposed § 917.4 that the Banks have policies and capacity to value the collateral, whatever it may be. In addition, proposed part 980 treated the acceptance of CFI-eligible collateral for the first time as a new business activity requiring 60-day notice to the Finance Board before the activity could be undertaken.

The Finance Board requested comment on whether certain types of CFI-eligible collateral should be prohibited as eligible collateral on the basis of risk. Several commenters supported the approach in the proposed rule, stating that no types of CFI-eligible collateral are so inherently risky as to justify a prohibition on their acceptance, and that each Bank should have the discretion to determine risk parameters and eligibility standards for each type of CFI-eligible collateral it chooses to accept.

The Finance Board continues to believe that requiring each Bank to determine the value of collateral in accordance with a member products policy established pursuant to § 917.4 will minimize appropriately the Banks' exposure to risk in accepting CFI-eligible collateral. The Finance Board expects such policies, if properly developed and implemented, will take the appropriate risk factors into account in their valuation and discounting procedures. Of course, those policies, and the Banks' activities in this regard, would continue to be subject to examination by the Finance Board and to the new business activities requirements of part 980, discussed in section II.B., below. Accordingly, as proposed, the final rule establishes no limits on the types of collateral that may secure such loans or securities pledged by a CFI member or affiliate.

c. CFI status. (i) Definition of "CFI"—Determination of CFI status based on calculation of three-year total assets average. The Modernization Act defines a "community financial institution" as an FDIC-insured institution that has, as of the date of the transaction at issue, less than $500 million in average total assets, based on an average of total assets over the three years preceding that date. *See* Modernization Act, § 602 (*to be codified at* 12 U.S.C. 1422(13)). The proposed rule included a definition of "CFI" in § 900.1 that mirrored the statutory definition.

A number of commenters recommended that the Banks be allowed to determine the status of their members by calculating the average total assets of their members on an annual basis, based on calendar year-end financial data available from the institutions' regulatory financial reports filed with their regulators, or, in the alternative, based on data available from the institutions' quarterly regulatory financial reports for the preceding three years. Commenters stated that it would be confusing to determine CFI status on a quarterly or monthly basis when § 925.22(b)(1) of the Membership Regulation requires the Banks to calculate annually each member's minimum capital stock requirement using calendar year-end financial data. Commenters stated that calculation of CFI status on a quarterly or monthly basis would result in unnecessary administrative burdens and expense. Other commenters supported quarterly calculations of average total assets based on the institutions' quarterly regulatory financial reports over the three preceding years. Commenters also stated that calculation of CFI status on a quarterly or monthly basis would cause some members' CFI status to fluctuate more frequently, which, for members approaching the CFI asset cap, could have a negative effect on their reliance on Bank funding secured by CFI-eligible collateral.

The Finance Board finds merit in these comments and believes it would be reasonable and less burdensome for

the Banks to determine their members' CFI status by calculating annually the members' average total assets based on data drawn from the members' regulatory financial reports for the three most recent calendar year-ends. The April 1 effective date adopted in the final rule provides sufficient time for the Banks to use calendar year-end data available from the regulatory financial reports.

The issue of how to calculate the three-year total assets average also arises in the context of the membership application review process regarding the determination of whether an applicant for membership qualifies as a CFI and, therefore, is exempt from the statutory requirement that at least 10 percent of its total assets must be residential mortgage loans. *See* 12 U.S.C. 1424(a)(2) (1994). Because the calculation of the three-year total assets average affects the determination of CFI status for both membership and advances collateral purposes, consistent with the proposed Advances Collateral Rule, the final rule moves the definition of "CFI" to § 900.1, which contains general definitions applying to all Finance Board regulations. The final rule revises the proposed definition of "CFI" to include the calculation for advances collateral purposes described above, as well as a separate calculation for membership purposes discussed in the **SUPPLEMENTARY INFORMATION** section of the Finance Board's final rule on membership and advances adopted by the Finance Board on June 23, 2000.

(ii) Change in CFI status. The proposed rule provided that if a member that previously qualified as a CFI loses its CFI status, the Bank may not accept as security for new advances CFI-eligible collateral from that member. Proposed § 950.7(b)(2) also provided that a Bank shall not require a member that loses its CFI status and has outstanding advances secured by CFI-eligible collateral to repay such advances prior to the stated maturities, or to provide substitute collateral, eligible under paragraphs (a)(1) through (5), based solely on the member's change in CFI status. All of the comments addressing the change in CFI status provisions in proposed § 950.7(b)(2) supported allowing outstanding advances held by members that no longer qualify as CFIs to run to their stated maturities. Accordingly, this provision is adopted without change in § 950.7(b)(2)(i) of the final rule.

Proposed § 950.7(b)(2) also authorized a Bank to allow a member that has lost its CFI status to renew maturing advances secured by CFI-eligible collateral for up to 6 months in order to provide the member with sufficient time to wind down advances and replace them with other funding in an orderly fashion. The Finance Board requested comment on whether allowing renewals of such advances is appropriate and, if so, whether allowing renewals for up to 6 months would provide sufficient time for members to obtain alternative funding. Some of the commenters stated that the proposed 6-month renewal period for maturing advances was not enough time for members to obtain replacement funding for maturing advances. Alternative suggestions from commenters included a 12-month renewal period, an 18-month renewal period, and allowing members to maintain a permanent maximum eligible collateral limit, based on one-to two-year historical usage. In addition, some of the commenters indicated that it would be difficult to determine which advances are secured by CFI-eligible collateral and which advances are secured by other collateral.

Based on the comments, § 950.7(b)(2) of the final rule has been revised to apply to members that no longer qualify as CFIs and have total advances outstanding that exceed the amount that can be fully secured by collateral under § 950.7(a) (non-CFI-eligible collateral).

While the Finance Board believes that it is inappropriate to allow CFI members that lose their CFI status to continue to pledge CFI-eligible collateral as security for advances indefinitely, it does acknowledge that the proposed 6-month renewal period may not be long enough for members to obtain replacement funding for maturing advances. A 12-month renewal period would appear to be a more reasonable amount of time for transition, especially given that the calculation of CFI status is based on a three-year total assets average and a member, therefore, is likely to be aware of its potential loss of CFI status well before it actually occurs. Accordingly, § 950.7(b)(2)(ii) of the final rule has been revised to provide that maturing advances may be renewed to mature no later that 12 months from the date the Bank determines that a member ceases to qualify as a CFI. Since, as discussed above, § 900.1 of the final rule requires each Bank to perform the CFI calculation of the three-year total assets average on an annual basis effective April 1 of each year, the 12-month renewal period will run from April 1 of the year that a Bank determines that a member no longer qualifies as a CFI to March 31 of the following year.

Section 950.7(b)(2) of the final rule also provides that the total of a member's advances under § § 950.7(b)(2)(i) and (ii) shall be fully secured by collateral set forth in paragraphs (a) and (b) of this section.

d. Readily ascertainable value. Proposed § 950.7(b)(1) authorized the Banks to accept from CFI members or their affiliates as security for advances, CFI-eligible collateral provided that: (i) the loans have a readily ascertainable liquidation value and can be freely liquidated in due course; and (ii) the Bank can perfect a security interest in such collateral. The basis of this standard was the Finance Board's belief that the liquidation value of collateral, and the ability to liquidate the collateral quickly, was an appropriate measure of the value of CFI-eligible collateral securing an advance.

A substantial number of Bank commenters opposed the proposed standard on the grounds that liquidation value is difficult to measure and, therefore, impractical as a standard. The commenters also found the phrase "freely liquidated in due course" to be unclear in terms of when and how frequently such determination would have to be made.

In response to the Banks' concerns, § 950.7(a)(4) is revised in the final rule to provide that CFI-eligible collateral is eligible to secure advances if it has "a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course." This standard is intended to clarify that the critical factor is the Bank's ability to reliably discount the collateral in question. The phrase "can be liquidated in due course" is intended to mean that there are no known impediments to liquidation at the time the collateral is accepted by the Bank. This change also is made in § 950.7(a)(4)(i)(A) of the final rule with respect to other real estate-related collateral.

2. Cash or Deposits in a Bank

Current § 950.9 of the Advances Regulation (redesignated as § 950.7 in the final rule) sets forth the types of eligible collateral that a Bank may accept to secure advances. The Modernization Act revised section 10(a)(3) of the Bank Act to add "cash" to the types of eligible collateral. *See* Modernization Act, section 604(a)(5)(A). As proposed, § 950.7(a)(3) of the final rule implements this change by adding cash as eligible collateral.

3. Other Real Estate-Related Collateral

a. New business activity notice requirement. The Modernization Act amended section 10(a)(4) of the Bank Act by removing the limit on the dollar amount of advances that may be secured by other real estate-related collateral,

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which had been set at 30 percent of the member's capital. *See* Modernization Act, section 604(a)(5)(B). Section 950.7(a)(4) of the final rule implements this change by removing the 30 percent limitation. As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, because the Banks have had no or limited experience with accepting other real estate-related collateral, the Banks will need to build capacity and exercise caution in evaluating and accepting such collateral. For this reason, the proposed rule treated the acceptance of other real estate-related collateral as a new business activity, and proposed § 950.7(a)(4)(iii) prohibited a Bank from making total advances to all members secured by other real estate-related collateral in an aggregate amount exceeding 25% of the highest level of advances previously secured by such collateral (125% trigger), until the Bank met the new business activity requirements of proposed part 980. Proposed § 980.3 required a Bank to provide at least 60 days prior notice to the Finance Board to include, among other things, information demonstrating the Bank's capacity, sufficiency of experience and expertise to safely value, discount and manage the risks associated with other real estate-related collateral. Under proposed § § 980.4 and 980.5, the Bank was permitted to commence acceptance of other real-estate related collateral if, 60 days after receipt by the Finance Board of the notice, the Finance Board had not issued to the Bank a notice of disapproval, a notice instructing the Bank not to commence the new activity pending further consideration by the Finance Board, a notice of intent to examine, or a request for additional information, or if the Finance Board had issued a letter of approval.

The Finance Board requested comment on what the appropriate threshold should be for triggering the new business activity requirement with respect to the use of other real estate-related collateral, and whether there should be any other limits on the use of such collateral to ensure that the Banks' lending against this type of collateral was done in a safe and sound manner. A number of commenters opposed the proposed 125% trigger, stating that it was too severe, and several suggested a higher trigger. Most of the commenters recommended a trigger linked to a percentage or dollar limit per member. Various commenters recommended a trigger of 100% of member capital, 55% of member capital, 55% of Bank capital, and 100% of Bank capital. One commenter recommended that the final rule establish specific discount rates to be used by the Banks, rather than the Finance Board reviewing each Bank's capacity, sufficiency of experience and expertise to safely discount and manage the risks associated with other real estate-related collateral. Many commenters observed that the Banks had ample experience accepting this type of collateral without limit before the 30 percent cap was imposed by amendment of the Bank Act in 1989 and, thus, already were well qualified to manage and discount this type of collateral.

The Finance Board has reconsidered the 125% trigger in light of the comments, as being more restrictive than may be necessary, and has deleted the trigger from the final rule. However, because other real estate-related collateral has only been accepted by a few Banks in limited amounts since 1989, and because the Bank System's operations were very different prior to 1989, the Finance Board still believes it necessary for the Banks to establish policies and procedures to adequately value and discount this type of collateral. Rather than dictating specific discount rates to be applied by the Banks, which is a management function more appropriately administered by the Banks, which are in the best position to assess their members' underwriting capacity and the quality of loans pledged, § 980.1 of the final rule treats a Bank's acceptance of other real estate-related collateral of any amount as a new business activity, regardless of whether the Bank has accepted such collateral in the past, and § 980.3(b) requires the Bank to file a new business activity notice with the Finance Board prior to accepting such collateral. As stated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, in evaluating a Bank's notice, the Finance Board intends to encourage conservative discounting of new collateral until the Bank gains experience in valuing such collateral. However, in order to expedite the Banks' acceptance of such collateral while ensuring that it is done in a safe and sound manner, § 980.4(b) of the final rule allows a Bank to begin accepting such collateral immediately upon receipt by the Finance Board of the notice. The Finance Board intends to review the Banks' acceptance of such collateral through either special examinations or the regular examination process as it deems appropriate.

b. Pledge of all available collateral before pledge of other real estate-related collateral. The Finance Board requested comment in the **SUPPLEMENTARY INFORMATION** section of the proposed rule on whether members should be required to pledge all available collateral under proposed §§ 950.7(a)(1) through (3) prior to pledging other real estate-related collateral under paragraph (4), in order to prevent members from using only their least liquid collateral to secure Bank advances. While each Bank has the discretion to include such a requirement in its member products policy, the Finance Board questioned whether it would be appropriate to require collateral prioritization by regulation, especially in light of the Modernization Act authorization for the Finance Board to review, and increase, the Banks' standards for other real estate-related collateral. *See* Modernization Act, section 604(a)(7).

A number of commenters opposed imposition of a collateral prioritization requirement, recommending instead that decisions on adoption of any collateral prioritization standards be left to the discretion of each Bank, although one Bank supported the proposal as sound credit policy. The Finance Board believes generally that decisions on adopting collateral prioritization standards should be dealt with by each Bank in the context of its collateral policies. Accordingly, the final rule does not include a collateral prioritization requirement.

c. Readily ascertainable value. Current § 950.9(a)(4)(i)(A) of the Advances Regulation requires other real estate-related collateral to have a readily ascertainable value. *See* 12 CFR 950.9(a)(4)(i)(A). The Finance Board stated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule that the liquidation value of collateral, and the ability to liquidate the collateral quickly, is a more appropriate measure of the value of other real estate-related collateral securing an advance, particularly given the lifting of the 30 percent cap. Accordingly, proposed § 950.7(a)(4)(i)(A) provided that other real estate-related collateral have a readily ascertainable liquidation value and be able to be freely liquidated in due course. As discussed above, this change also was proposed in § 950.7(b)(1)(i) with respect to CFI-eligible collateral.

A significant number of Bank commenters opposed this change on the ground that liquidation value is difficult or impossible to measure and, therefore, impractical as a standard. The commenters also found the phrase "freely liquidated in due course" to be unclear in terms of when and how frequently such determination would have to be made.

In response to the Banks' concerns, the final rule has been revised to provide that other real estate-related collateral is eligible to secure advances if it has "a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course." This standard is intended to clarify that the critical factor is the Bank's ability to reliably discount the collateral in question. The phrase "can be liquidated in due course" is intended to mean that there are no known impediments to liquidation at the time the collateral is accepted by the Bank. As discussed above, this change also is made in § 950.7(b)(1)(i) of the final rule with respect to CFI-eligible collateral.

4. Removal of Combination Business or Farm Property From Definition of "Residential Real Property"

Under current § 950.1 of the Advances Regulation, the term "residential real property" is defined to include combination business or farm property, where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of a CFI, combination business or farm property on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property. 12 CFR 950.1. This provision allows mortgage loans on combination properties to qualify as eligible collateral and to be included in a member's total residential housing assets for the purposes of qualifying for membership and obtaining long-term advances. The Modernization Act's removal of the statutory limit on the amount of advances that may be secured by other real estate-related collateral has eliminated the need to allow combination business or farm property to be counted under the mortgage loan category of eligible collateral. In addition, the Modernization Act's removal of the requirement that CFI members have 10 percent of their total assets in residential mortgage loans to qualify for membership and the expansion of the purposes for which advances may be made to CFI members has reduced the significance of counting such combination properties as residential mortgage loans.

The Finance Board requested comment on whether there were any reasons to retain combination business or farm property in the definition of "residential real property." A number of commenters generally acknowledged that for most institutions seeking to join and borrow from the Bank System, the removal of the 30 percent cap on other real estate-related collateral and the exemption of CFI members from the 10 percent residential mortgage loans requirement reduced the need for the inclusion of combination business or farm property loans as "residential real estate." However, commenters pointed out that institutions that do not qualify as CFI members would still benefit from the inclusion of combination property loans held in portfolio so long as such loans continued to qualify as "residential real estate." For that reason, commenters urged that these types of loans be retained in the definition.

The Finance Board believes that non-CFI members have sufficient other means available by which to meet the 10 percent residential mortgage loans requirement (for example, purchasing mortgage-backed securities), and would not have to rely on loans on combination properties to meet the requirement. Accordingly, as proposed, the final rule removes combination business or farm property from the definition of "residential real property" in § 950.1.

B. New Business Activity Requirement

As discussed above, the changes in types and amounts of collateral that may now be pledged to secure advances will present new management challenges for the Banks. In order to ensure that entering into these and other new types of business activities will not create safety and soundness concerns, the proposed rule added a new part 980. Proposed § 980.3 required a Bank to provide at least 60 days prior written notice to the Finance Board of any new business activity that the Bank wished to undertake—including the acceptance of increased volumes of other real estate-related collateral (based on a 125% trigger, discussed in section II.A.3.a. above) and of new CFI-eligible collateral for the first time—so that the Finance Board could disapprove, examine, or impose restrictions on, such activities, as necessary, on a case-by-case basis. In addition to the acceptance of new or increased volumes of collateral, proposed § 980.1 defined a "new business activity" as any business activity undertaken, transacted, conducted or engaged in by a Bank that has not been previously approved by the Finance Board, including: (1) A business activity that has not been undertaken previously by that Bank, or was undertaken previously under materially different terms and conditions; (2) a business activity that entails risks not previously and regularly managed by that Bank, its members, or both, as appropriate; or (3) a business activity that involves operations not previously undertaken by that Bank. The prior notice requirement applied to any Bank desiring to pursue a new business activity, even if another Bank had already undertaken the same activity. With respect to accepting either newly eligible collateral or significantly higher volumes of other real estate-related collateral, proposed § 980.3(b) required that the written notice include: a description of the classes or amounts of collateral proposed to be accepted by the Bank; a copy of the Bank's member products policy; a copy of the Bank's procedures for determining the value of the collateral in question; and a demonstration of the Bank's capacity, personnel, technology, experience and expertise to value, discount and manage the risks associated with the collateral in question. This requirement was intended to ensure that a Bank has the capacity to value, discount and manage the additional collateral prior to making advances secured by such collateral.

Many commenters, including most of the Banks, criticized the proposed definition of "new business activity" in § 980.1 as vague or overly broad, and recommended that the definition be revised to include only a new program or new product undertaking and not an expansion or refinement of an existing line of business. Some commenters opposed any prior notice requirement for undertaking new business activities, while other commenters opposed a prior notice requirement specifically for acceptance of increased volumes of other real estate-related collateral and CFI-eligible collateral for the first time. Commenters stated that a prior notice requirement was unnecessary and inconsistent with the general movement toward devolution of corporate governance responsibilities by the Finance Board to the Banks' boards of directors. Commenters expressed concern that a prior notice requirement would significantly delay a Bank's ability to meet marketplace demand or engage in new business activities, or stifle innovation.

Notwithstanding the concerns of the commenters, the Finance Board continues to believe, as discussed above, that a prior notice requirement is necessary in order to maintain adequate safety and soundness oversight over the Banks' acceptance of the newly eligible types of collateral and undertaking of other new business activities. Accordingly, the proposed prior notice requirement is retained in the final rule. However, the Finance Board agrees with commenters that the proposed definition of "new business activity"

may be more broad than necessary. Accordingly, the final rule revises the definition of "new business activity" in § 980.1 by substituting the words "such that" for "and that" in the introductory text, which has the effect of including only those activities specifically enumerated in paragraphs (1) through (4) of the definition as "new business activities." In addition, as further discussed in section II.A.3.a. above, based on the comments, the Finance Board believes that the proposed 125% trigger requiring notice of acceptance of other real estate-related collateral in § 950.7(a)(4)(iii) may be more restrictive than necessary, and has deleted the trigger from the final rule. Instead, "new business activity" is defined in the final rule to include the acceptance of any other real estate-related collateral, and § 980.4 is revised to permit a Bank to commence accepting other real estate-related collateral immediately upon receipt by the Finance Board of a notice of new business activity under § 980.3. This change will enable Banks to accept other real estate-related collateral without undue delay as a result of the § 980.3 prior notice requirement.

A substantial number of commenters also stated that the proposed requirement that the Banks establish procedures for determining the value of other real estate-related collateral and new CFI-eligible collateral on a loan-by-loan basis was administratively burdensome. Commenters recommended that the Banks therefore be permitted to adopt a valuation methodology based on evaluating a member's credit management systems ("institutional underwriting"). Although the Banks evaluate their members from a credit risk perspective, the Banks historically have been collateralized lenders, relying on the collateral securing advances. The Banks' policies of overcollateralizing advances have resulted in the Bank System never suffering a credit loss since it was established in 1932. In light of the significant challenges associated with implementation of the new collateral authority in the Modernization Act, the Finance Board does not believe that this is an appropriate time for the Bank System to turn its attention away from its traditional focus of evaluating the collateral securing its advances.

C. Clarification of Other Collateral Provisions in Existing Regulation

1. Securities Representing Equity Interests in Eligible Collateral

Current § 950.9(a)(5) of the Advances Regulation provides that a Bank may accept as collateral any security, such as mutual fund shares, the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as: (i) Eligible collateral under paragraph (a)(1) (mortgage loans and privately issued mortgage-backed securities) or paragraph (a)(2) (agency securities); or (ii) cash or cash equivalents. As discussed above, cash is now included as eligible collateral under paragraph (a)(3). Accordingly, for greater clarity, a reference to paragraph (a)(3) is included in § 950.7(a)(5)(i) of the final rule and the reference to cash in paragraph (a)(5)(ii) is removed.

The current Advances Regulation does not include a definition of "cash equivalents." As proposed, § 950.1 of the final rule defines "cash equivalents" as investments that: (1) Are readily convertible into known amounts of cash; (2) have a remaining maturity of 90 days or less at the acquisition date; and (3) are held for liquidity purposes. This definition codifies a Finance Board regulatory interpretation (Regulatory Interpretation 2000-RI–1 (March 6, 2000)) that allowed a Bank to accept as collateral under § 950.7(a)(5), shares of mutual funds that enter into certain limited types of repurchase agreements. For cash management purposes, mutual funds typically hold securities, pursuant to repurchase agreements, that represent short-term investments as part of their daily cash management activities. A mutual fund's ability to enter into such repurchase agreements, typically with a maturity of less than 90 days, allows the excess cash in the fund to be invested without losing liquidity or incurring price risk. Even mutual funds with particularly restrictive investment limitations, such as those limited to mortgage loans, government securities, and agency securities, typically use repurchase agreements to maintain a liquidity position and manage the fund.

The Financial Accounting Standards Board (FASB) defines "cash equivalents" for financial reporting purposes as short-term, highly liquid investments that are both: (a) readily convertible into cash; and (b) so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. *See* FAS 95 Paragraphs 8–10. FASB also states that, generally, only investments with original maturities of three months or less qualify under that definition. *See id.*

The definition of "cash equivalents" is derived from the FASB definition, but adapts it by requiring that investments have a remaining maturity of 90 days or less at the acquisition date, because this standard is more practical to implement than a requirement that investments be so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. In addition, a requirement that the investments be held for liquidity purposes is included in the definition. The Banks will be required to determine on a case-by-case basis whether this requirement has been met.

Other real estate-related collateral under current § 950.9(a)(4) was not originally included in current § 950.9(a)(5)(i) because the dollar amount of advances that could be secured by other real estate-related collateral was limited to 30 percent of the member's capital and the Finance Board believed this limitation would result in monitoring complexities that would make the inclusion of other real estate-related collateral in § 950.9(a)(5)(i) impractical. *See* 64 FR 16618 (April 6, 1999). As discussed above, the Modernization Act amended section 10(a)(4) of the Bank Act by removing the 30 percent cap on other real estate-related collateral. *See* Modernization Act, section 604(a)(5)(B). Since this impediment has been eliminated, § 950.7(a)(5)(i) of the final rule includes a reference to other real estate-related collateral under § 950.7(a)(4).

2. Bank Restrictions on Eligible Collateral

Section 9 of the Bank Act provides that the Banks have discretion to deny, or to approve with conditions, a request for an advance, and section 10(a)(1) confers on the Banks the authority to determine whether collateral is sufficient to fully secure an advance. *See* 12 U.S.C. 1429, 1430(a)(1). Current § 950.9(b) of the Advances Regulation grants a Bank the discretion to further restrict the types of eligible collateral it will accept as security for advances based on the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria. 12 CFR 950.9(b). In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board stated that the discretionary authority conferred on the Banks by current § 950.9(b) was unnecessary in light of the Banks' statutory authority, and because the factors listed in current § 950.9(b) are ordinarily considered in valuing collateral. Accordingly, the proposed rule removed current § 950.9(b). However, a number of Bank commenters requested that this provision be retained in the final rule because it further clarifies the Banks' statutory authority in this area. Based on

these comments, the provision has been retained in § 950.7(c) of the final rule.

3. Pledge of Advances Collateral by Affiliates

The Bank Act does not directly address the acceptance of eligible collateral from an affiliate, apart from section 10(e) of the Bank Act, which gives a priority to any security interest granted by a member or its affiliates, subject to certain exceptions. *See* 12 U.S.C. 1430(e). Implicit in Congress' inclusion of collateral pledged by an affiliate in the so-called "superlien provision" is the authority for the Banks to accept collateral from members' affiliates. Accordingly, the Finance Board has determined that Congress has authorized the Banks to accept collateral not only from a wholly-owned subsidiary, but from any affiliate of a member, and states that expressly, as proposed, in § 950.7(f) of the final rule. Several Bank commenters supported this interpretation of the statutory authority of the Banks to accept eligible collateral from members' affiliates.

As proposed, § 950.7(f)(1) of the final rule requires that the pledge of collateral by an affiliate of a member used to secure advances to the member shall either directly secure the member's obligation to repay the advances, or secure a surety or other agreement under which the affiliate has assumed, along with the member, a primary co-obligation to repay the advances made to the member. Because the Bank Act requires that each advance be fully secured, *see* 12 U.S.C. 1430(a), a guaranty by an affiliate of a member's obligation, backed by the eligible assets held by the affiliate, would not meet the requirements of the Bank Act or the final rule, as the collateral would then be securing the affiliate's secondary obligation and not the advance itself. As provided by § 950.7(f)(1), however, where the affiliate enters into a surety arrangement under which it assumes a primary joint and several co-obligation to repay the advance made to the member, and fully secures this primary surety obligation with eligible collateral, such collateral would be considered as securing the advance itself, as required by the statute.

As proposed, § 950.7(f)(2) of the final rule requires the Bank to obtain from an affiliate, and maintain, a legally enforceable security interest pursuant to which the Bank's legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly. The Bank would be required to have on file adequate documentation demonstrating this functional equivalence. The Finance Board anticipates that Banks that decide to accept collateral from affiliates of members will need to make this determination on a case-by-case basis, after careful legal review and analysis, taking into consideration the structure of the transaction and the law of the state that governs the transaction.

These regulatory additions represent a modification of an earlier proposal on third-party collateral that was published for comment by the Finance Board, but that was subsequently withdrawn. In December 1998, the Finance Board published a proposed rule to amend the Advances Regulation (at that time designated as 12 CFR part 935), that, among other things, would have permitted the Banks to accept pledges of eligible collateral from a member's "qualifying investment subsidiary" (QIS) if the Bank were able to obtain and maintain a security interest in the collateral pursuant to which its rights and privileges were functionally equivalent to those that the Bank would possess if the member were to pledge the collateral directly. Under the December 1998 proposed rule, the term "qualifying investment subsidiary" would have included business entities that: (1) Are wholly owned by a member; (2) are operated solely as passive investment vehicles on behalf of that member; and (3) hold only cash equivalents and assets that are eligible collateral under § § 935.9(a)(1) and (2) of the Advances Regulation. *See* 63 FR 67625 (Dec. 8, 1998).

In proposing the December 1998 amendments, the Finance Board intended to codify into regulation a series of Finance Board regulatory interpretations regarding the acceptance of eligible collateral held by a real estate investment trust and state security corporation subsidiaries. However, in response to the proposed rule, a large number of commenters questioned the Finance Board's proposal to address only pledges of collateral from a narrow class of wholly-owned subsidiaries, while ignoring collateral arrangements with other types of affiliates that may be permissible under the Bank Act. In light of these comments, the Finance Board removed the QIS provisions from the text of the final rule pending further analysis of the issue. *See* 64 FR 16618 (April 6, 1999).

In conjunction with § 950.7(f) of the final rule, and consistent with the proposed rule, the final rule amends § 950.1 by defining an "affiliate" as any business entity that controls, is controlled by, or is under common control with, a member. The definition of "affiliate" is intended to limit the scope of eligible third-party collateral to assets over which the member exercises control or shares control.

4. Bank Advances Policy

Consistent with the proposed rule, the final rule removes existing § 950.3 of the Finance Board's Advances Regulation. That section requires each Bank's board of directors to adopt and review a policy on advances and outlines some basic criteria for the content of the advances policy. The final rule moves the requirement for the Bank's board of directors to adopt and periodically re-adopt an advances or credit policy to new § 917.4, "Bank Member Products Policy." The Finance Board believes that it would make for a more logical presentation in its regulations to have all of the requirements for Bank policies contained in one regulatory part (part 917), rather than to have such requirements scattered throughout its regulations. The requirements for Bank member products policies are discussed in section II.F. 2., below.

5. Removal of Non-QTL Definitions

Prior to the enactment of the Modernization Act, section 10(e) of the Bank Act restricted access to Bank advances to Bank members that did not meet the qualified thrift lender (QTL) test.[4] These restrictions limited the purposes for which non-QTL members could obtain advances, limited Bank System-wide advances to non-QTL members to 30 percent of total Bank System advances outstanding, and gave QTL members a priority over non-QTL members in obtaining advances. *See* 12 U.S.C. 1430(e)(1), (2) (1994). The Bank Act also established a statutory presumption, for the purpose of determining the minimum amount of Bank capital stock that a member must purchase pursuant to section 6(b) of the Bank Act, that each member has at least 30 percent of its assets in home mortgage loans. *See* 12 U.S.C. 1430(e)(3) (1994). Coupled with the section 6(b) requirement that all members must subscribe to Bank stock equaling at least one percent of the member's aggregate

[4] The "qualified thrift lender" test is set forth in section 10(m) of the Home Owners' Loan Act, 12 U.S.C. 1467a(m), and applies directly only to savings associations. Originally enacted in 1987, the QTL test was intended to ensure that savings associations remained committed to the business of providing housing-related loans. Failure to meet the test subjected both the savings association and its holding company to certain statutory penalties, including reduced access to Bank advances for the association. In 1989, Congress revised the QTL test and the penalties for failing to meet it, including more severe restrictions on access to Bank advances for savings associations, as well as for commercial banks, that did not meet the test.

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unpaid loan principal, this presumption effectively limited the dollar amount of advances that a non-QTL member could obtain in relation to the amount of Bank stock it had purchased. *See id.*

The Modernization Act repealed section 10(e) of the Bank Act in its entirety, thereby providing access to Bank advances without regard to the percentage of housing-related assets a member holds. *See* Modernization Act, section 604(c). In a recently adopted Interim Final Rule that was finalized on June 23, 2000, the Finance Board removed the provisions in its Membership and Advances Regulations containing the additional capital stock purchase requirements and limitations on advances applicable to non-QTL members. *See* 65 FR 13866 (March 15, 2000). Consistent with the proposed rule, the final rule removes all remaining references to non-QTL status from the Advances Regulation. *See* 12 CFR 950.1, 950.21 (1999). Specifically, § 950.1 of the final rule deletes the following QTL-related definitions from the Advances Regulation: definitions of the terms "Actual thrift investment percentage" or "ATIP;" "Non-Qualified Thrift Lender Member;" "Qualified Thrift Lender" or "QTL;" and "Qualified Thrift Lender test" or "QTL test." 12 CFR 950.1.

D. Modernization Act Amendment to Long-term Advances Purpose Provision for CFI Members

Section 10(a) of the Bank Act formerly provided that all long-term advances shall be made only for the purpose of providing funds for residential housing finance. *See* 12 U.S.C. 1430(a) (1994). This purpose is set forth in current § 950.14(a), and is implemented by use of a proxy test set forth in current § 950.14(b). 12 CFR 950.14(a), (b). Specifically, current § 950.14(b)(1) provides that, before funding a long-term advance (*i.e.*, an advance with a maturity greater than five years), a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of the member's "residential housing finance assets." 12 CFR 950.1, 950.14(b)(1). "Residential housing finance assets" are defined in current § 950.1 to mean any of the following: (1) Loans secured by residential real property; (2) mortgage-backed securities; (3) participations in loans secured by residential real property; (4) loans or investments financed by advances made pursuant to a CICA program; (5) loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or (6) any loans or investments which the Finance Board, in its discretion, otherwise determines to be residential housing finance assets. 12 CFR 950.1. Current § 950.14(b)(1) requires a Bank to determine the total book value of the member's residential housing finance assets using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member. 12 CFR 950.14(b)(1). This proxy test was determined by the Finance Board to be an operationally feasible compliance monitoring mechanism for residential housing finance assets to implement the statutory requirement that long-term advances be only for residential housing finance purposes. *See* 57 FR 45338 (Oct. 1, 1992).

The Modernization Act amended section 10(a) of the Bank Act to provide that a Bank may make long-term advances not only for the purpose of providing funds for residential housing finance, but also for the purpose of providing funds to any CFI for small businesses, small farms and small agri-businesses. *See* Modernization Act, section 604(a)(3). Accordingly, consistent with the proposed rule, the final rule amends current § 950.14 by adding this new purpose in redesignated § 950.3. Section 950.3(a) of the final rule provides that a Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans and small agri-business loans. Instead of the statutory terms "small businesses," "small farms" and "small agri-businesses," § 950.3 utilizes the terms "small business loans," "small farm loans" and "small agri-business loans," which the Finance Board is defining for purposes of identifying the new types of collateral that Banks are authorized to accept from CFI members. *See* Modernization Act, section 604(a)(5)(C). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board believes that a single set of terms that would apply to both CFI-eligible collateral and the new purposes for which Banks may make advances to CFI members will reduce confusion and otherwise provide an efficient means of implementing the new authorities conferred on the Banks in regard to their CFI members. Further, the Modernization Act provides that the terms "small business," "small farm" and "small agri-business" shall have the meanings given to those terms by regulation of the Finance Board. *See* Modernization Act, section 604(a)(7). Accordingly, the Finance Board is interpreting the statutory phrase "providing funds to any community financial institution for small businesses, small farms, and small agri-businesses" to mean making advances to CFI members for small business loans, small farm loans and small agri-business loans. Section 950.3(b)(1) of the final rule maintains the proxy test in its current form. However, revisions to certain definitions will have the effect of including small business loans, small farm loans and small agri-business loans in the denominator of the proxy test for CFI members.

Specifically, as proposed, the final rule amends § 900.1 by adding a new definition of "community lending," which applies, wherever it appears, in all of the Finance Board's regulations. The term "community lending" currently is defined in § 952.3 of the CICA Regulation as "providing financing for economic development projects for targeted beneficiaries." 12 CFR 952.3. The definition of "community lending" in § 900.1 adds to that definition, "and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter." This addition to the definition implements changes made by the Modernization Act and supports the Finance Board's belief that CFI lending to small businesses, small farms and small agri-businesses is community lending. For purposes of the CICA and Community Support Regulations, the current definition of "community lending," redesignated in the final rule as "targeted community lending," would continue to apply.

Concurrently, the definition of "residential housing finance assets" is amended in the final rule to change the element that currently reads "Loans or investments financed by advances made pursuant to a CICA program" to "Loans or investments qualifying under the definition of community lending in § 900.1 of this chapter."

Thus, by operation of the revised definitions of "residential housing finance assets" and "community lending," the proxy test calculation of the total book value of residential housing assets will include, for CFI members, small business loans, small farm loans and small agri-business loans. This result implements section 604(a)(5)(C) of the Modernization Act, which authorizes a Bank to make long-term advances to CFIs for the purpose of providing financing for small businesses, small farms and small agri-

businesses. *See* Modernization Act, section 604(a)(5)(C).

Current § 950.14(b)(1) of the Advances Regulation allows a Bank to determine the total book value of residential housing financial assets using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member. 12 CFR 950.14(b)(1). As proposed, § 950.3(b)(1) of the final rule adds to this list "other reliable documentation" made available by the member. This revision is intended to give the Banks more flexibility in the form of documentation they may use in administering the proxy test, as long as the data supplied by the member is reliable.

E. Clarification of Other Advances Provisions in Current Regulation

1. Pricing

The Finance Board proposed to clarify a provision of the Advances Regulation dealing with the pricing of advances. Current § 950.6(b)(1) of the Advances Regulation requires each Bank to price its advances to members taking into account two factors: (1) The marginal cost to the Bank of raising matching maturity funds in the marketplace; and (2) the administrative and operating costs associated with making such advances to members. 12 CFR 950.6(b)(1). A separate provision, current § 950.8(b)(1), provides that each Bank shall establish and charge a prepayment fee pursuant to a specified formula which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date. 12 CFR 950.8(b)(1). These provisions do not clearly indicate whether Banks must consider the costs of associated options and the administrative costs of funding advances with such options in pricing an advance. Further, because current § 950.6(b)(1) merely requires the Bank "to take into account" the marginal cost to the Bank of raising matching maturity funds in the marketplace, and the administrative and operating costs associated with making such advances to members, the current rule allows a Bank to price an advance below its marginal cost of funds, a practice the Finance Board could find to be an unsafe and unsound practice in some circumstances and one the Finance Board wishes to discourage.

Therefore, redesignated § 950.5(b)(1) of the proposed rule prohibited a Bank from pricing an advance below the Bank's marginal cost of funds, including the cost of any embedded options, plus the administrative and operating costs associated with making the advance when funding an advance with similar maturity and options characteristics.

Several Banks commented that the proposed prohibition on pricing advances below a Bank's marginal cost of funds was too restrictive in that it could prohibit Banks from passing on the benefits of lower costs to member borrowers. However, the Finance Board believes that the proposed exceptions, discussed below, provide the Banks with ample flexibility to pass on lower costs to borrowers for special purposes. Accordingly, the advance pricing prohibition in proposed § 950.5(b) is adopted without change in the final rule.

Proposed § 950.5(b)(3)(i) provided that the advance pricing prohibition would not apply to a Bank's CICA programs. This was intended to provide the Banks with maximum flexibility in designing and offering AHP and other CICA programs. Proposed § 950.5(b)(3)(ii) also provided that the advance pricing prohibition would not apply to any other advances that are volume limited and specifically approved by a Bank's board of directors. This exception was intended to allow a Bank to price targeted advances at below the cost of funds for some special purpose that does not meet all of the criteria for CICA advances. It was intended that the special purpose involve some social benefit, such as providing relief from a natural disaster. The proposed exception also would allow a Bank to conduct market testing of alternative pricing strategies for advances.

The exceptions have been adopted in the final rule as proposed. In response to a Bank comment, the final rule substitutes the term "advances program" for "advances" in § 950.5(b)(3)(ii) to make clear that the exception for volume limited advances does not require a Bank's board of directors to approve each individual advance.

2. Putable and Convertible Advances Disclosure; Replacement Funding for Putable Advances

Current § 950.6(d)(1) of the Advances Regulation provides that a Bank that offers a putable advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable advance funding, and that such disclosure should include detail sufficient to describe such risks. 12 CFR 950.6(d)(1). A convertible advance is similar to a putable advance in that it carries risks associated with a triggering event, usually a shift in a designated interest rate index. Accordingly, redesignated § 950.5(d)(1) of the proposed rule made the current disclosure requirements for putable advances applicable to convertible advances as well. Current § 950.6(d)(2) was not proposed to be revised because replacement funding is not an issue for convertible advances, as convertible advances involve only a change in the stated interest rate, not the repayment of funds.

The Finance Board requested comment on whether there are other appropriate requirements for putable or convertible advances. A Bank commenter suggested that the final rule clarify that replacement funding for putable advances is subject to normal and customary safety and soundness considerations. The final rule adopts § 950.5(d) as proposed except for a revision to paragraph (d)(2), in response to the Bank comment, to clarify that a member receiving replacement funding for putable advances must be able to satisfy the normal credit and collateral requirements of the Bank for such funding.

F. Other Technical Changes

1. Bank Housing Associates—Parts 900.1, 926

As part of a continuing effort to revise and achieve consistency in regulatory nomenclature regarding nonmember borrowers, the proposed rule amended the text, where appropriate, to refer to nonmember borrowers who are eligible under section 10b of the Bank Act, 12 U.S.C. 1430b, to obtain advances from the Banks, as "associates." The definition of "associate" was recently added to 12 CFR 900.1, which contains definitions of terms that apply to all parts of the Finance Board's regulations. In response to a commenter's suggestion, the final rule replaces the term "associates" with the term "housing associates," which the Finance Board has acknowledged represents a more accurate description of such borrowers. Consistent with this change, the final rule revises the title of subpart B to "Advances to Housing Associates." Since the term "housing associate" is defined in § 900.1, it is not defined in any of the individual parts addressed by this final rule.

Eligibility requirements for housing associates, including application procedures and requirements for advances to housing associates, currently are contained in the Advances Regulation. *See* 12 CFR 950.22, 950.23. For the sake of greater organizational clarity, consistent with the proposed

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rule, the final rule sets forth the housing associate eligibility requirements and advances requirements in separate regulations, by moving the housing associate eligibility requirements to a new part 926 under subpart B. No substantive changes have been made in subpart B.

2. Bank Member Products Policy—Section 917.4

In its recently adopted final rule, "Powers and Responsibilities of Bank Boards of Directors and Senior Management," the Finance Board consolidated all of the requirements for the Bank's board of directors' operational policies into one regulatory part, part 917, rather than have such requirements scattered throughout its regulations. *See* 65 FR 25267 (May 1, 2000). As proposed, § 917.4 of the final rule adds to that part a new requirement for adoption by a Bank's board of directors of a member products policy that would combine the requirements for an advances policy from current § 950.3(a), with the requirements for a standby letter of credit policy from current § 961.5(a), into one policy. The member products policy also addresses other products that the Banks may offer, such as acquired member assets.

As proposed, § 917.4(b) of the final rule requires a Bank's member products policy to address the following items: the credit underwriting criteria to be applied to advances (including renewals) and standby letters of credit; collateralization (including levels, valuation and discounts) for advances and standby letters of credit; advances-related fees (including any schedules or formulas pertaining to such fees); standards and criteria for pricing member products (including differential pricing of advances pursuant to § 950.4(b)(2)); criteria regarding the pricing of standby letters of credit (including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any CICA programs under part 952); the maintenance of appropriate systems, procedures and internal controls; and the maintenance of appropriate operational and personnel capacity.

A Bank's member products policy also must provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with § 975.6(b).

As proposed, § 917.4(a)(2) of the final rule requires each Bank's board of directors to review the Bank's member products policy annually, amend the policy as appropriate, and re-adopt the policy, including interim amendments, not less often than every three years.

References to the "advances policy" in other sections of the Finance Board's current regulations are changed in the final rule to references to the "member products policy."

A few commenters questioned whether it was appropriate to include all of the information required by a Bank in a policy that may be distributed to members. Commenters also stated that policies governing member credit products should be separate and distinct from policies governing acquired member assets, that the regulation should accommodate policy differences among Banks from one year to the next, and that some of the member products policy requirements may already be covered in the regulatory requirements for the Banks' risk management policies.

The final rule retains all of the member products policy requirements contained in the proposed rule because it is important that the Banks' boards consider and address all of these issues as they pertain to advances and other member products. By requiring that each Bank adopt its own member products policy, the Finance Board recognizes that such policies will differ among the Banks, as is currently the case with the Banks' advances policies. The Finance Board also recognizes that some provisions contained in the member products policies will apply only to certain products, and that a Bank may address different products separately in its policy as it sees fit. In addition, the member products policy requirement does not preclude a Bank from creating separate materials for distribution to members.

3. Bank Primary Credit Mission—Removal of § 950.2

In the Finance Board's recently adopted final rule on parts 900, 917 and 940, the Finance Board revised part 940 to add a new definition of the mission of the Banks. *See* 65 FR 25267 (May 1, 2000). Accordingly, as proposed, the final rule removes existing § 950.2 of the Advances Regulation, which states the primary credit mission of the Banks and how the Banks must fulfill such mission, as no longer necessary.

4. Community Support Requirements and Community Investment Cash Advance programs—Parts 944 and 952

As discussed previously, the final rule amends part 944 and § 952.3 by re-designating the term "community lending" as "targeted community lending," with no substantive change to the corresponding definition. This revision is intended to differentiate CICA community lending, which is targeted, from the broader term "community lending" that the final rule adds to § 900.1. The broader definition of "community lending" in § 900.1 would include, for CFIs, purchasing or funding small business loans, small farm loans and small agri-business loans, as defined in § 950.1 of this chapter.

5. Standby Letters of Credit—Part 961

As proposed, the final rule amends part 961 to update cross-references to reflect the reorganization of Finance Board regulations, change references from nonmember mortgagees to housing associates, and make other technical and conforming changes. The proposed rule amended § 961.2(c)(2)(i) to allow standby letters of credit issued for a purpose described in § 961.2(a)(1) or (2) to be secured by CFI-eligible collateral, regardless of whether the applicant is a CFI. The final rule removes this provision because the loan-to-one-borrower approach to the definition of "small business loans," "small farm loans" and "small agribusiness loans" adopted in the final rule does not apply to members that do not qualify as CFIs. The final rule retains the current provision in § 961.2(c)(2)(ii) authorizing investment-grade obligations of state or local government units or agencies as additional collateral eligible to secure standby letters of credit issued for a purpose described in § 961.2(a)(1) or (2).

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* § 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 900, 917, 926, 944, 950, 952, 961 and 980

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, parts

900, 917, 926, 944, 950, 952, 961 and 980, Code of Federal Regulations, as follows:

PART 900—GENERAL DEFINITIONS

1. The authority citation for part 900 is revised to read as follows:

Authority: 12 U.S.C. 1422, 1422b(a)(1).

2. Amend § 900.1 by:

a. Adding, in alphabetical order, definitions of "appropriate regulator", "community financial institution", "community financial institution asset cap", "community lending" and "regulatory financial report"; and

b. Removing the term "Associate" and, in its place, adding the term "Housing associate", to read as follows:

§ 900.1 Definitions applying to all regulations.

* * * * *

Appropriate regulator means a regulatory entity listed in § 925.8 of this chapter, as applicable.

* * * * *

Community financial institution or *CFI* means an institution—

(1) The deposits of which are insured under the Federal Deposit Insurance Act; and

(2) That has, as of the date of the transaction at issue, less than the community financial institution asset cap in total assets, based on an average of total assets over three years, which shall be calculated by the Bank as follows:

(i) For purposes of determining eligibility for membership under part 925 of this chapter, based on the average of total assets drawn from the institution's regulatory financial reports filed with its appropriate regulator for the most recent calendar quarter and the immediately preceding 11 calendar quarters; and

(ii) For purposes of making advances under part 950 of this chapter:

(A) The calculation shall be based on the average of total assets drawn from the institution's regulatory financial reports filed with its appropriate regulator for the three most recent calendar year-ends; and

(B) The calculation shall be made annually and shall be effective April 1 of each year.

Community financial institution asset cap means, for 2000, $500 million. Beginning in 2001 and for subsequent years, the cap shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register** of the CPI-adjusted cap.

Community lending means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter.

* * * * *

Regulatory financial report means a financial report that an institution is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks, thrift financial report for savings associations, quarterly or semi-annual call report for credit unions, the National Association of Insurance Commissioners' annual or quarterly report for insurance companies, or other similar report, including such report maintained by the primary regulator on the computer on-line database.

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

3. The authority citation for part 917 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1427, 1432(a), 1436(a), 1440.

4. Add § 917.4 to read as follows:

§ 917.4 Bank Member Products Policy.

(a) *Adoption and review of member products policy.* (1) *Adoption.* Beginning November 15, 2000, each Bank's board of directors shall have in effect at all times a policy that addresses the Bank's management of products offered by the Bank to members and housing associates, including but not limited to advances, letters of credit and acquired member assets, consistent with the requirements of the Act, paragraph (b) of this section, and all applicable Finance Board regulations and policies.

(2) *Review and compliance.* Each Bank's board of directors shall:

(i) Review the Bank's member products policy annually;

(ii) Amend the member products policy as appropriate; and

(iii) Re-adopt the member products policy, including interim amendments, not less often than every three years.

(b) *Member products policy requirements.* In addition to meeting any other requirements set forth in this chapter, each Bank's member products policy shall:

(1) Address credit underwriting criteria to be applied in evaluating applications for advances, standby letters of credit, and renewals;

(2) Address appropriate levels of collateralization, valuation of collateral and discounts applied to collateral values for advances and standby letters of credit;

(3) Address advances-related fees to be charged by each Bank, including any schedules or formulas pertaining to such fees;

(4) Address standards and criteria for pricing member products, including differential pricing of advances pursuant to § 950.5(b)(2) of this chapter, and criteria regarding the pricing of standby letters of credit, including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any of the Banks' CICA programs under part 952 of this chapter;

(5) Provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with the requirements of § 975.6(b) of this chapter;

(6) Address the maintenance of appropriate systems, procedures and internal controls; and

(7) Address the maintenance of appropriate operational and personnel capacity.

5. Revise the heading of subchapter D to read as follows:

SUBCHAPTER D—FEDERAL HOME LOAN BANK MEMBERS AND HOUSING ASSOCIATES

6. In subchapter D, add a new part 926 to read as follows:

PART 926—FEDERAL HOME LOAN BANK HOUSING ASSOCIATES

Sec.

926.1 Definitions.
926.2 Bank authority to make advances to housing associates.
926.3 Housing associate eligibility requirements.
926.4 Satisfaction of eligibility requirements.
926.5 Housing associate application process.
926.6 Appeals.

Authority: 12 U.S.C. 1422b(a), 1430b.

§ 926.1 Definitions.

As used in this part:

Advance has the meaning set forth in § 950.1 of this chapter.

Governmental agency means the governor, legislature, and any other component of a federal, state, local, tribal, or Alaskan native village government with authority to act for or on behalf of that government.

HUD means the Department of Housing and Urban Development.

State housing finance agency or *SHFA* means:

(1) A public agency, authority, or publicly sponsored corporation that serves as an instrumentality of any state or political subdivision of any state, and functions as a source of residential mortgage loan financing in that state; or

(2) A legally established agency, authority, corporation, or organization that serves as an instrumentality of any Indian tribe, band, group, nation, community, or Alaskan Native village recognized by the United States or any state, and functions as a source of residential mortgage loan financing for the Indian or Alaskan Native community.

§ 926.2 Bank authority to make advances to housing associates.

Subject to the provisions of the Act and part 950 of this chapter, a Bank may make advances to an entity that is not a member of the Bank if the Bank has certified the entity as a housing associate under the provisions of this part.

§ 926.3 Housing associate eligibility requirements.

(a) *General.* A Bank may certify as a housing associate any applicant that meets the following requirements, as determined using the criteria set forth in § 926.4:

(1) The applicant is approved under title II of the National Housing Act (12 U.S.C. 1707, *et seq.*);

(2) The applicant is a chartered institution having succession;

(3) The applicant is subject to the inspection and supervision of some governmental agency;

(4) The principal activity of the applicant in the mortgage field consists of lending its own funds; and

(5) The financial condition of the applicant is such that advances may be safely made to it.

(b) *State housing finance agencies.* In addition to meeting the requirements in paragraph (a) of this section, any applicant seeking access to advances as a SHFA pursuant to § 950.17(b)(2) of this chapter shall provide evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations describing the applicant's structure and responsibilities, that the applicant is a state housing finance agency as defined in § 926.1.

§ 926.4 Satisfaction of eligibility requirements.

(a) *HUD approval requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and § 926.3(a)(1) that it be approved under title II of the National Housing Act if it submits a current HUD Yearly Verification Report or other documentation issued by HUD stating that the Federal Housing Administration of HUD has approved the applicant as a mortgagee.

(b) *Charter requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and § 926.3(a)(2) that it be a chartered institution having succession if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations under which the applicant was created, that:

(1) The applicant is a government agency; or

(2) The applicant is chartered under state, federal, local, tribal, or Alaskan Native village law as a corporation or other entity that has rights, characteristics, and powers under applicable law similar to those granted a corporation.

(c) *Inspection and supervision requirement.* (1) An applicant shall be deemed to meet the inspection and supervision requirement in section 10b(a) of the Act and § 926.3(a)(3) if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, relevant statutes and/or regulations, that, pursuant to statute or regulation, the applicant is subject to the inspection and supervision of a federal, state, local, tribal, or Alaskan native village governmental agency.

(2) An applicant shall be deemed to meet the inspection requirement if there is a statutory or regulatory requirement that the applicant be audited or examined periodically by a governmental agency or by an external auditor.

(3) An applicant shall be deemed to meet the supervision requirement if the governmental agency has statutory or regulatory authority to remove an applicant's officers or directors for cause or otherwise exercise enforcement or administrative control over actions of the applicant.

(d) *Mortgage activity requirement.* An applicant shall be deemed to meet the mortgage activity requirement in section 10b(a) of the Act and § 926.3(a)(4) if it provides documentary evidence satisfactory to the Bank, such as a financial statement or other financial documents that include the applicant's mortgage loan assets and their funding liabilities, that it lends its own funds as its principal activity in the mortgage field. For purposes of this paragraph, lending funds includes, but is not limited to, the purchase of whole mortgage loans. In the case of a federal, state, local, tribal, or Alaskan Native village government agency, appropriated funds shall be considered an applicant's own funds. An applicant shall be deemed to satisfy this requirement notwithstanding that the majority of its operations are unrelated to mortgage lending if its mortgage activity conforms to this requirement. An applicant that acts principally as a broker for others making mortgage loans, or whose principal activity is to make mortgage loans for the account of others, does not meet this requirement.

(e) *Financial condition requirement.* An applicant shall be deemed to meet the financial condition requirement in § 926.3(a)(5) if the Bank determines that advances may be safely made to the applicant. The applicant shall submit to the Bank copies of its most recent regulatory audit or examination report, or external audit report, and any other documentary evidence, such as financial or other information, that the Bank may require to make the determination.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

§ 926.5 Housing associate application process.

(a) *Authority.* The Banks are authorized to approve or deny all applications for certification as a housing associate, subject to the requirements of the Act and this part. A Bank may delegate the authority to approve applications for certification as a housing associate only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Application requirements.* An applicant for certification as a housing associate shall submit an application that satisfies the requirements of the Act and this part to the Bank of the district in which the applicant's principal place of business, as determined in accordance with part 925 of this chapter, is located.

(c) *Bank decision process.* (1) *Action on applications.* A Bank shall approve or deny an application for certification as a housing associate within 60 calendar days of the date the Bank deems the application to be complete. A Bank shall deem an application complete, and so notify the applicant in writing, when it has obtained all of the information required by this part and any other information it deems necessary to process the application. If a Bank determines during the review process that additional information is

necessary to process the application, the Bank may deem the application incomplete and stop the 60-day time period by providing written notice to the applicant. When the Bank receives the additional information, it shall again deem the application complete, so notify the applicant in writing, and resume the 60-day time period where it stopped.

(2) *Decision on applications.* The Bank or a duly delegated committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development shall approve, or the board of directors of a Bank shall deny, each application for certification as a housing associate by a written decision resolution stating the grounds for the decision. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Finance Board with a copy of the Bank's decision resolution.

(3) *File.* The Bank shall maintain a certification file for each applicant for at least three years after the date the Bank decides whether to approve or deny certification or the date the Finance Board resolves any appeal, whichever is later. At a minimum, the certification file shall include all documents submitted by the applicant or otherwise obtained or generated by the Bank concerning the applicant, all documents the Bank relied upon in making its determination regarding certification, including copies of statutes and regulations, and the decision resolution.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

§ 926.6 Appeals.

(a) *General.* Within 90 calendar days of the date of a Bank's decision to deny an application for certification as a housing associate, the applicant may submit a written appeal to the Finance Board that includes the Bank's decision resolution and a statement of the basis for the appeal with sufficient facts, information, analysis, and explanation to support the applicant's position. Appeals shall be sent to the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, with a copy to the Bank.

(b) *Record for appeal.* Upon receiving a copy of an appeal, the Bank whose action has been appealed shall provide to the Finance Board a complete copy of the applicant's certification file maintained by the Bank under § 926.5(c)(3). Until the Finance Board resolves the appeal, the Bank shall promptly provide to the Finance Board any relevant new materials it receives. The Finance Board may request additional information or further supporting arguments from the applicant, the Bank, or any other party that the Finance Board deems appropriate.

(c) *Deciding appeals.* Within 90 calendar days of the date an applicant files an appeal with the Finance Board, the Finance Board shall consider the record for appeal described in paragraph (b) of this section and resolve the appeal based on the requirements of the Act and this part.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

PART 944—COMMUNITY SUPPORT REQUIREMENTS

7. The authority citation for part 944 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), 1429, and 1430.

8. Amend part 944 by removing the term "community lending" wherever it appears, and, in its place, adding the term "targeted community lending".

§ 944.6 [Amended]

9. Amend § 944.6(b)(2) by removing the term "nonmember borrowers" and, in its place, adding the term "housing associates".

PART 950—ADVANCES

10. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

11. The table of contents for part 950 is revised to read as follows:

Subpart A—Advances to Members

Sec.
950.1 Definitions.
950.2 Authorization and application for advances; obligation to repay advances.
950.3 Purpose of long-term advances; Proxy text.
950.4 Limitations on access to advances.
950.5 Terms and conditions for advances.
950.6 Fees.
950.7 Collateral.
950.8 Banks as secured creditors.
950.9 Pledged collateral; verification.
950.10 Collateral valuation; appraisals.
950.11 Capital stock requirements; unilateral redemption of excess stock.
950.12 Intradistrict transfer of advances.
950.13 Special advances to savings associations.
950.14 Advances to the Savings Association Insurance Fund.
950.15 Liquidation of advances upon termination of membership.

Subpart B—Advances to Housing Associates

950.16 Scope.
950.17 Advances to housing associates.

12. Amend § 950.1 by:

a. Adding, in alphabetical order, a definition of "affiliate";

b. Adding, in alphabetical order, a definition of "cash equivalents";

c. Removing the definitions of "Actual thrift investment percentage" or "ATIP", "combination business or farm property", "Non-Qualified Thrift Lender member", "Qualified Thrift Lender" or "QTL", and "Qualified Thrift Lender test" or "QTL test";

d. Amending the definition of "Community Investment Cash Advance" or "CICA" by removing the term "community lending", and, in its place, adding the term "targeted community lending";

e. Revising paragraph (4) of the definition of "residential housing finance assets";

f. Amending the definition of "residential real property" by removing paragraph (1)(v); and

g. Adding, in alphabetical order, definitions of "small agri-business loans", "small business loans", and "small farm loans", to read as follows:

§ 950.1 Definitions.

* * * * *

Affiliate means any business entity that controls, is controlled by, or is under common control with, a member.

* * * * *

Cash equivalents means investments that—

(1) Are readily convertible into known amounts of cash;

(2) Have a remaining maturity of 90 days or less at the acquisition date; and

(3) Are held for liquidity purposes.

* * * * *

Residential housing finance assets means any of the following:

* * * * *

(4) Loans or investments qualifying under the definition of "community lending" in § 900.1 of this chapter;

* * * * *

Small agri-business loans means loans to finance agricultural production and other loans to farmers that are within the legal lending limit of the reporting CFI member, and that are reported on either: Schedule RC–C, Part I, item 3 of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or

Schedule SC300, SC303 or SC306 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

Small business loans means commercial and industrial loans that are within the legal lending limit of the reporting CFI member and that are reported on either: Schedule RC–C, Part I, item 1.e or Schedule RC–C, Part I, item 4 of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC300, SC303 or SC306 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules)

Small farm loans means loans secured primarily by farmland that are within the legal lending limit of the reporting CFI member, and that are reported on either: Schedule RC–C, Part I, item 1.a. or 1.b. of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC260 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

* * * * *

§ 950.2 [Removed]

13. Remove § 950.2.

§ 950.3 [Removed]

14. Remove § 950.3.

§ 950.4 [Redesignated as § 950.2]

15. Section 950.4 is redesignated as § 950.2.

§ 950.14 [Redesignated as § 950.3]

16. Section 950.14 is redesignated as § 950.3, and the heading and paragraphs (a) and (b)(1) are revised to read as follows:

* * * * *

§ 950.3 Purpose of long-term advances; Proxy test.

(a) A Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans and small agri-business loans.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, financial statement or other reliable documentation made available by the member.

* * * * *

§ 950.5 [Redesignated as § 950.4]

17. Section 950.5 is redesignated as § 950.4.

§ 950.6 [Redesignated as § 950.5]

18. Section 950.6 is redesignated as § 950.5, and paragraphs (b)(1), (b)(2)(ii), (b)(3), (d)(1) and (d)(2) are revised to read as follows:

§ 950.5 Terms and conditions for advances.

* * * * *

(b) *Advance pricing.* (1) *General.* A Bank shall not price its advances to members below:

(i) The marginal cost to the Bank of raising matching term and maturity funds in the marketplace, including embedded options; and

(ii) The administrative and operating costs associated with making such advances to members.

(2) * * *

(ii) Each Bank shall include in its member products policy required by § 917.4 of this chapter, standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) *Exceptions.* The advance pricing policies contained in paragraph (b)(1) of this section shall not apply in the case of:

(i) A Bank's CICA programs; and

(ii) Any other advances programs that are volume limited and specifically approved by the Bank's board of directors.

* * * * *

(d) *Putable or convertible advances.* (1) *Disclosure.* A Bank that offers a putable or convertible advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable or convertible advance funding. The disclosure should include detail sufficient to describe such risks.

(2) *Replacement funding for putable advances.* If a Bank terminates a putable advance prior to the stated maturity date of such advance, the Bank shall offer to provide replacement funding to the member, provided the member is able to satisfy the normal credit and collateral requirements of the Bank for the replacement funding requested.

* * * * *

§ 950.8 [Redesignated as § 950.6]

19. Section 950.8 is redesignated as § 950.6, and paragraphs (a) and (b)(1) are revised to read as follows:

§ 950.6 Fees.

(a) *Fees in member products policy.* All fees charged by each Bank and any schedules or formulas pertaining to such fees shall be included in the Bank's member products policy required by § 917.4 of this chapter. Any such fee schedules or formulas shall be applied consistently and without discrimination to all members.

(b) *Prepayment fees.* (1) Except where an advance product contains a prepayment option, each Bank shall establish and charge a prepayment fee pursuant to a specified formula which makes the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

* * * * *

20. Amend § 950.9 by:

§ 950.9 [Redesignated as § 950.7]

a. Redesignating § 950.9 as § 950.7;

b. Revising paragraphs (a) introductory text, (a)(3), (a)(4), and (a)(5);

c. Redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (f) respectively;

d. Revising newly designated paragraphs (c) and (d); and

e. Adding paragraphs (b) and (g), to read as follows:

§ 950.7 Collateral.

(a) *Eligible security for advances to all members.* At the time of origination or renewal of an advance, each Bank shall obtain from the borrowing member or, in accordance with paragraph (g) of this section, an affiliate of the borrowing member, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

* * * * *

(3) *Cash or deposits.* Cash or deposits in a Bank.

(4) *Other real estate-related collateral.* (i) Other real estate-related collateral provided that:

(A) Such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;
(C) Commercial real estate loans; and
(D) Mortgage loan participations.
(5) *Securities representing equity interests in eligible advances collateral.* Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as:
(i) Eligible collateral under paragraphs (a)(1), (2), (3) or (4) of this section; or
(ii) Cash equivalents.
(b) *Additional collateral eligible as security for advances to CFI members or their affiliates.* (1) *General.* Subject to the requirements set forth in part 980 of this chapter, a Bank is authorized to accept from CFI members or their affiliates as security for advances small business loans, small farm loans or small agri-business loans fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that:
(i) Such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course; and
(ii) The Bank can perfect a security interest in such collateral.
(2) *Change in CFI status.* If a Bank determines, as of April 1 of each year, that a member that has previously qualified as a CFI no longer qualifies as a CFI, and the member has total advances outstanding that exceed the amount that can be fully secured by collateral under paragraph (a) of this section, the Bank may:
(i) Permit the advances of such member to run to their stated maturities; and
(ii) Renew such member's advances to mature no later than March 31 of the following year; provided that the total of the member's advances under paragraphs (b)(2)(i) and (ii) of this section shall be fully secured by collateral set forth in paragraphs (a) and (b) of this section.
(c) *Bank restrictions on eligible advances collateral.* A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.
(d) *Additional advances collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraphs (a) or (b) of this section or section 10 of the Act (12 U.S.C. 1430).
* * * * *
(g) *Pledge of advances collateral by affiliates.* Assets held by an affiliate of a member that are eligible as collateral under paragraphs (a) or (b) of this section may be used to secure advances to that member only if:
(1) The collateral is pledged to secure either:
(i) The member's obligation to repay advances; or
(ii) A surety or other agreement under which the affiliate has assumed, along with the member, a primary obligation to repay advances made to the member; and
(2) The Bank obtains and maintains a legally enforceable security interest pursuant to which the Bank's legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly, and such functional equivalence is supported by adequate documentation.

§ 950.10 [Redesignated as § 950.8]

21. Section 950.10 is redesignated as § 950.8.

§ 950.11 [Redesignated as § 950.9]

22. Section 950.11 is redesignated as § 950.9.

§ 950.12 [Redesignated as § 950.10]

23. Section 950.12 is redesignated as § 950.10, and is revised to read as follows:

§ 950.10 Collateral valuation; appraisals.

(a) *Collateral valuation.* Each Bank shall determine the value of collateral securing the Bank's advances in accordance with the collateral valuation procedures set forth in the Bank's member products policy established pursuant to § 917.4 of this chapter.
(b) *Fair application of procedures.* Each Bank shall apply the collateral valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.
(c) *Appraisals.* A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

§ 950.15 [Redesignated as § 950.11]

24. Section 950.15 is redesignated as § 950.11.

§ 950.17 [Redesignated as § 950.12]

25. Section 950.17 is redesignated as § 950.12.

§ 950.18 [Redesignated as § 950.13]

26. Section 950.18 is redesignated as § 950.13.

§ 950.20 [Redesignated as § 950.14]

27. Section 950.20 is redesignated as § 950.14 and transferred to subpart A.

§ 950.19 [Redesignated as § 950.15]

28. Section 950.19 is redesignated as § 950.15.
29. The heading of Subpart B is revised to read as follows:

Subpart B—Advances to Housing Associates

§ 150.21 [Redesignated as § 950.16]

30. Section 950.21 is redesignated as § 950.16, and is revised to read as follows:

§ 950.16 Scope.

Except as otherwise provided in § § 950.14 and 950.17, the requirements of subpart A apply to this subpart.

§ 950.22 [Removed]

§ 950.23 [Removed]

31. Sections 950.22 and 950.23 are removed.

§ 950.24 [Redesignated as § 950.17]

32. Section 950.24 is redesignated as § 950.17, and is amended by:
a. Revising the section heading;
b. Removing the words "nonmember mortgagee" and "nonmember mortgagees", wherever they appear, and, in their place, adding the words "housing associate" and "housing associates", respectively; and
c. In paragraph (b)(2)(i) introductory text, removing the term "§ 950.22(d)", and, in its place, adding the term "§ 926.3(b)";
d. In paragraph (b)(2)(i)(B), removing the terms "§ 950.9(a)(3)" and "§ 950.22(d)", and in their place, adding the terms "§ 950.7(a)(3)" and "§ 926.3(b)," respectively; and
e. Revising paragraph (b)(2)(i)(C), to read as follows:

§ 950.17 Advances to housing associates.

* * * * *
(b) * * *
(2) * * *
(i) * * *
(C) The other real estate-related collateral described in § 950.7(a)(4), provided that such collateral is comprised of mortgage loans on one-to-

four family or multifamily residential property.

* * * * *

PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

33. The authority citation for part 952 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 952.3 [Amended]

34. Amend § 952.3 by removing the definition of "nonmember borrower".

35. Amend part 952 by:

a. Removing the term "community lending", wherever it appears, and, in its place, adding the term "targeted community lending"; and

b. Removing the terms "nonmember borrower" and "nonmember borrowers", wherever they appear, and, in their place, adding the terms "housing associate borrower" and "housing associate borrowers", respectively.

PART 961—STANDBY LETTERS OF CREDIT

36. The authority citation for part 961 continues to read as follows:

Authority: 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

37. Amend § 961.1 by:

a. Removing the definition of "community lending";

b. Removing the definition of "nonmember mortgagee";

c. Removing the definition of "nonmember SHFA";

d. Adding the definition of "SHFA associate"; and

e. Removing the definition of "small business", to read as follows:

§ 961.1 Definitions.

* * * * *

SHFA associate means a housing associate that is a "state housing finance agency," as that term is defined in § 926.1 of this chapter, and that has met the requirements of § 926.3(b) of this chapter.

* * * * *

38. Amend part 961 by:

a. Removing the terms "nonmember mortgagee" and "nonmember mortgagees", wherever they appear, and, in their place, adding the terms "housing associate" and "housing associates", respectively; and

b. Removing the terms "nonmember SHFA" and "nonmember SHFAs", wherever they appear, and, in their place, adding the terms "SHFA associate" and "SHFA associates", respectively.

39. Amend § 961.2 by revising paragraphs (a)(2), (c)(1), and (c)(2), to read as follows:

§ 961.2 Standby letters of credit on behalf of members.

(a) * * *

(2) To assist members in facilitating community lending;

* * * * *

(c) *Eligible collateral.* (1) Any standby letter of credit issued or confirmed on behalf of a member may be secured in accordance with the requirements for advances under § 950.7 of this chapter.

(2) A standby letter of credit issued or confirmed on behalf of a member for a purpose described in paragraphs (a)(1) or (a)(2) of this section may, in addition to the collateral described in paragraph (c)(1) of this section, be secured by obligations of state or local government units or agencies rated as investment grade by an NRSRO.

40. Amend § 961.3 by:

a. In the introductory text of paragraph (a), removing the term "§ § 950.24(b)(1)(i) or (ii)" and, in its place, adding the term "§ § 950.17(b)(1)(i) or (ii)";

b. Revising paragraph (a)(2); and

c. In paragraph (b), removing the term "950.24(b)(2)(i)(A), (B) or (C)" and, in its place, adding the term "950.17(b)(2)(i)(A), (B) or (C)", to read as follows:

§ 961.3 Standby letters of credit on behalf of housing associates.

(a) * * *

(2) To assist housing associates in facilitating community lending;

* * * * *

§ 961.4 [Amended]

41. Amend § 961.4 by removing the term "§§ 950.24(b)(2)(i)(B), 950.24(d), or 965.2(a)(2)" in paragraph (a)(1) and, in its place, adding the term "§ § 950.17(b)(2)(i)(B), 950.17(d), or 969.2".

42. Amend § 961.5 by:

a. Revising paragraph (a); and

b. In paragraph (b)(2), removing the reference to "§ § 950.9(b), 950.9(d), 950.9(e), 950.10, 950.11 and 950.12", and, in its place, adding a reference to § § 950.7(d), 950.7(e), 950.8, 950.9 and 950.10", to read as follows:

§ 961.5 Additional provisions applying to all standby letters of credit.

(a) *Requirements.* Each standby letter of credit issued or confirmed by a Bank shall:

(1) Contain a specific expiration date, or be for a specific term; and

(2) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity.

* * * * *

43. In subchapter J, add a new part 980 to read as follows:

PART 980—NEW BUSINESS ACTIVITIES

Sec.

980.1 Definitions.
980.2 Limitation on Bank authority to undertake new business activities.
980.3 New business activity notice requirement.
980.4 Commencement of new business activities.
980.5 Notice by the Finance Board.
980.6 Finance Board consent.
980.7 Examinations; requests for additional information.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1431(a), 1432(a).

§ 980.1 Definitions.

As used in this part:

New business activity means any business activity undertaken, transacted, conducted, or engaged in by a Bank that has not been previously undertaken, transacted, conducted, or engaged in by that Bank, or was previously undertaken, transacted, conducted, or engaged in under materially different terms and conditions, such that it:

(1) Involves the acceptance of collateral enumerated under § 950.7(a)(4) of this chapter;

(2) Involves the acceptance of classes of collateral enumerated under § 950.7(b) of this chapter for the first time;

(3) Entails risks not previously and regularly managed by that Bank, its members, or both, as appropriate; or

(4) Involves operations not previously undertaken by that Bank.

§ 980.2 Limitation on Bank authority to undertake new business activities.

No Bank shall undertake any new business activity except in accordance with the procedures set forth in this part.

§ 980.3 New business activity notice requirement.

At least sixty days prior to undertaking a new business activity, except as provided in § 980.4(b), a Bank shall submit to the Finance Board a written notice containing the following information:

(a) *General requirements.* Except as provided in paragraph (b) of this section, a Bank's notice of new business activity shall include:

(1) An opinion of counsel citing the statutory, regulatory, or other legal authority for the new business activity;

(2) A good faith estimate of the anticipated dollar volume of the activity over the short-and long-term;

(3) A full description of:

(i) The purpose and operation of the proposed activity;

(ii) The market targeted by the activity;

(iii) The delivery system for the activity;

(iv) The effect of the activity on the housing, or relevant community lending, market; and

(4) A demonstration of the Bank's capacity, through staff, or contractors employed by the Bank, sufficiency of experience and expertise, to safely administer and manage the risks associated with the new activity;

(5) An assessment of the risks associated with the activity, including the Bank's ability to manage these risks and the Bank's ability to manage the risks associated with increasing volumes of the new activity; and

(6) The criteria that the Bank will use to determine the eligibility of its members or housing associates to participate in the new activity.

(b) *New collateral activities.* If a proposed new business activity relates to the acceptance of collateral under § 950.7 of this chapter, a Bank's notice of new business activity shall include:

(1) A description of the classes or amounts of collateral proposed to be accepted by the Bank;

(2) A copy of the Bank's member products policy, adopted pursuant to § 917.4 of this chapter;

(3) A copy of the Bank's procedures for determining the value of the collateral in question, established pursuant to § 950.10 of this chapter; and

(4) A demonstration of the Bank's capacity, personnel, technology, experience and expertise to value, discount and manage the risks associated with the collateral in question.

§ 980.4 Commencement of new business activities.

A Bank may commence a new business activity:

(a) Sixty days after receipt by the Finance Board of the notice of new business activity under § 980.3, if the Finance Board has not issued to the Bank a notice as described in § 980.5(a)(1) through (4);

(b) In the case of the acceptance of collateral enumerated under § 950.7(a)(4) of this chapter, immediately upon receipt by the Finance Board of a notice of new business activity under § 980.3; or

(c) Immediately upon issuance by the Finance Board of a letter of approval under § 980.6.

§ 980.5 Notice by the Finance Board.

(a) *Issuance.* Within sixty days after receipt of a notice of new business activity under § 980.3, the Finance Board may issue to a Bank a notice that:

(1) Disapproves the new business activity;

(2) Instructs the Bank not to commence the new business pending further consideration by the Finance Board;

(3) Declares an intent to examine the Bank;

(4) Requests additional information including but not limited to the requests listed in § 980.7;

(5) Establishes conditions for the Finance Board's approval of the new business activity, including but not limited to the conditions listed in § 980.7; or

(6) Contains other instructions or information that the Finance Board deems appropriate under the circumstances.

(b) *Effect.* Following receipt of a notice issued pursuant to paragraph (a) of this section, a Bank may not undertake any new business activity that is the subject of the notice until the Bank has received the Finance Board's consent pursuant to § 980.6.

§ 980.6 Finance Board consent.

The Finance Board may at any time provide consent for a Bank to undertake a particular new business activity and setting forth the terms and conditions that apply to the activity, with which the Bank shall comply if the Bank undertakes the activity in question.

§ 980.7 Examinations; requests for additional information.

(a) *General.* Nothing in this part shall limit in any manner the right of the Finance Board to conduct any examination of any Bank.

(b) *Requests for additional information and conditions for approval.* With respect to a new business activity, nothing in this part shall limit the right of the Finance Board at any time to:

(1) Request further information from a Bank concerning a new business activity; and

(2) Require a Bank to comply with certain conditions in order to undertake, or continue to undertake, the new business activity in question, including but not limited to:

(i) Successful completion of pre- or post-implementation safety and soundness examinations;

(ii) Demonstration by the Bank of adequate operational capacity, including the existence of appropriate policies, procedures and controls;

(iii) Demonstration by the Bank of its ability to manage the risks associated with accepting increasing volumes of particular collateral, or holding increasing volumes of particular assets, including the Bank's capacity reliably to value, discount and market the collateral or assets for liquidation;

(iv) Demonstration by the Bank that the new business activity is consistent with the housing finance and community lending mission of the Banks and the cooperative nature of the Bank System; and

(v) Finance Board review of any contracts or agreements between the Bank and its members or housing associates.

Dated: June 29, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–17133 Filed 7–17–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–66–AD; Amendment 39–11799; AD 2000–12–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped with Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Boeing Model 747–400 series airplanes. That AD currently requires installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. This document publishes Appendix 1, which was referenced in, but inadvertently omitted from, the existing AD. Appendix 1 describes procedures for a functional test to detect discrepancies of the additional locking system on each engine thrust reverser. This correction is necessary to ensure that operators have the procedures necessary to perform the required functional test.

DATES: Effective July 28, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of July 28, 2000 (65 FR 39079, June 23, 2000).

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On June 14, 2000, the Federal Aviation Administration (FAA) issued AD 2000–12–21, amendment 39–11799 (65 FR 39079, June 23, 2000), which applies to certain Boeing Model 747–400 series airplanes. That AD requires installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. That AD was prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in airplane controllability. The actions required by that AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

Need for the Correction

Since the issuance of that AD, the FAA discovered that Appendix 1 was inadvertently omitted from the final version of the AD. Appendix 1 is referenced in paragraph (b) of the AD as the appropriate source of procedures for the functional test to detect discrepancies of the additional locking system on each engine thrust reverser. Appendix 1 was published in the notice of proposed rulemaking (NPRM), which preceded the final rule. No comments affecting the procedures described in Appendix 1 were received in response to the NPRM.

The FAA has determined that a correction to AD 2000–12–21 is necessary. The correction will add Appendix 1 to the existing AD to ensure that operators have the procedures necessary to perform the functional test required by paragraph (b) of the AD.

Correction of Publication

This document adds Appendix 1 and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains July 28, 2000.

Since this action only adds procedures to make it possible for operators to accomplish the AD, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2000–12–21 Boeing: Amendment 39–11799. Docket 99–NM–66–AD.

Applicability: Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Modifications

(a) For airplanes identified in Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD at the times specified in those paragraphs. Accomplishment of these actions constitutes terminating action for the inspections and tests required by paragraph (a) of AD 94–15–05, amendment 39–8976.

(1) Within 36 months after the effective date of this AD: Install an additional locking system on each engine thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998.

Note 2: Installations accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–78–2155, Revision 1, dated January 30, 1997, are considered acceptable for compliance with paragraph (a)(1) of this AD.

(2) Prior to or concurrent with the installation required by paragraph (a)(1) of this AD, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD:

(i) Modify the central maintenance computer system hardware and software in accordance with Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996.

(ii) Modify the integrated display system software in accordance with Boeing Service Bulletin 747–31–2245, dated June 27, 1996.

(iii) Install the provisional wiring for the locking system on the thrust reversers in accordance with Boeing Service Bulletin 747–78–2154, Revision 3, dated December 11, 1997.

Note 3: Installations accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–78–2154, Revision 1, dated November 2, 1995, and Revision 2, dated October 31, 1996, are considered acceptable for compliance with paragraph (a)(2)(iii) of this AD.

Repetitive Functional Tests

(b) Within 4,000 hours time-in-service after accomplishment of paragraph (a) of this AD, or production equivalent; or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later: Perform a functional test to detect discrepancies of the additional locking system on each engine thrust reverser, in accordance with Appendix 1 of this AD. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair, in accordance with the procedures described in the Boeing 747–400 Airplane Maintenance Manual. Repeat the functional test thereafter at intervals not to exceed 4,000 hours time-in-service.

Terminating Action Airplanes Having Line Numbers 1067 and Higher

(c) For airplanes having line numbers 1067 and higher on which the intent of Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998, was accomplished during production: Accomplishment of the repetitive functional tests required by paragraph (b) of this AD constitutes terminating action for the repetitive inspections and functional tests required by paragraph (a) of AD 94–15–05, amendment 39–8976.

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Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998; Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996; Boeing Service Bulletin 747–31–2245, dated June 27, 1996; or Boeing Service Bulletin 747–78–2154, Revision 3, dated December 11, 1997; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of July 28, 2000 (65 FR 39079, June 23, 2000). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) The effective date of this amendment remains July 28, 2000.

Appendix 1.—Thrust Reverser Sync-Lock—Adjustment/Test

1. General

A. There are two sync-locks for each engine thrust reverser. The sync-lock is installed on the lower non-locking hydraulic actuator of each thrust reverser sleeve.

B. The Thrust Reverser Sync-Lock Integrity Test has two tasks:

(1) The first task does a test of the electrical circuit which controls the operation of the sync-lock on each thrust reverser sleeve.

(2) The second task does a test of the mechanical function of the sync-lock on each thrust reverser sleeve.

C. The thrust reverser sync-lock is referred to as "the sync-lock" in this procedure.

2. Thrust Reverser Sync-Lock Integrity Test

A. Equipment—Multi-meter, Simpson 260 or equivalent—commercially available

B. Prepare to do the integrity test for the sync-locks

(1) Supply electrical power

(2) For the applicable engine, make sure these circuit breakers on the Main Power Distribution Panel P6, are closed:

6F12 ENG 1 T/R IND
6E12 ENG 2 T/R IND
6D12 ENG 3 T/R IND
6C12 ENG 4 T/R IND
6F13 ENG 1 T/R CONT
6E13 ENG 2 T/R CONT
6D13 ENG 3 T/R CONT
6C13 ENG 4 T/R CONT
6F11 ENG 1 T/R LOCK CONT
6E11 ENG 2 T/R LOCK CONT
6D11 ENG 3 T/R LOCK CONT
6C11 ENG 4 T/R LOCK CONT

(3) Open the fan cowl panels for the applicable engine.

C. Do the electrical integrity test for the sync-locks.

(1) Do these steps, for the applicable engine, to make sure there are no "hot" short circuits in the electrical system which can accidentally supply power to the sync-locks:

(a) Remove the electrical connector, D20194, from the sync-lock, V170, on the left sleeve of the thrust reverser.

(b) Remove the electrical connector, D20196, from the sync-lock, V171, on the right sleeve of the thrust reverser.

(c) Use a multi-meter on the plug end of the applicable electrical connector to make sure that these conditions are correct:

D20194 PIN 1	D20194 PIN 2	−3 TO +1 VDC AND CONTINUITY (LESS THAN 5 OHMS)
D20196 PIN 1	D20196 PIN 2	−3 TO +1 VDC AND CONTINUITY (LESS THAN 5 OHMS)

(d) If you find the correct conditions, do the mechanical integrity test for the sync-locks.

(e) If you did not find these conditions to be correct, you must do these steps:

(1) Make a careful visual inspection of all the electrical wires and connectors between the sync-lock and its power circuit.

(2) Repair all the unserviceable electrical wire and connectors that you find.

(3) Use the multi-meter again to make sure there are no "hot" short circuits in the electrical system which can accidentally supply power to the sync-locks.

D. Do the mechanical integrity test for the sync-locks.

(1) Supply hydraulic power.

WARNING: MAKE SURE ALL PERSONS AND EQUIPMENT ARE CLEAR OF THE AREA BEHIND EACH THRUST REVERSER. IF YOU DO NOT OBEY THIS INSTRUCTION, INJURIES TO PERSONS OR DAMAGE TO EQUIPMENT CAN OCCUR IF THE SYNC-LOCKS DO NOT OPERATE CORRECTLY AND THE THRUST REVERSER EXTENDS.

(2) Move the applicable reverser thrust lever aft to try to extend the thrust reverser with hydraulic power.

Note: If the thrust reverser sleeves do not extend, the sync-locks are serviceable. If the thrust reverser sleeves extend, the applicable sync-lock did not operate correctly.

(3) Replace the sync-lock(s) on the thrust reverser sleeve(s) that did extend when you moved the reverse thrust levers. Repeat steps 2.D.(1) and 2.D.(2) to verify that functional sync-locks are installed.

(4) Move the applicable thrust reverser lever forward to the stow position.

(5) Install the electrical connector, D20194, on the sync-lock, V170 on the left sleeve of the thrust reverser.

(6) Install the electrical connector, D20196, on the sync-lock, V171, on the right sleeve of the thrust reverser.

WARNING: MAKE SURE ALL PERSONS AND EQUIPMENT ARE CLEAR OF THE AREA BEHIND EACH THRUST REVERSER. IF YOU DO NOT OBEY THIS INSTRUCTION, INJURIES TO PERSONS OR DAMAGE TO EQUIPMENT CAN OCCUR WHEN THE THRUST REVERSERS ARE EXTENDED.

(7) Move the applicable thrust reverser aft to try to extend the thrust reverser with hydraulic power.

Note: If the thrust reverser sleeves extended, the sync-locks are serviceable. If the thrust reverser sleeves did not extend, the applicable sync-lock is not serviceable.

(8) Replace the sync-lock(s) on the thrust reverser sleeve that did not extend when you moved the reverse thrust levers. Repeat steps 2.D.(4) through 2.D.(7) to verify that functional sync-locks are installed.

(9) Repeat steps 2.A. through 2.D. for all other engine positions.

E. Put the airplane back to its usual condition.

(1) Move the reverse thrust levers forward to fully retract the thrust reversers on the applicable engine.

(2) Remove the hydraulic power if it is not necessary.

(3) Remove the electrical power if it is not necessary.

(4) Close the fan cowl panels.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18041 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–12]

Revision of Class E Airspace, Carrizo Springs, Glass Ranch, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises the Class E Airspace at Carrizo Springs, Glass Ranch, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 21301 is effective 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 21, 2000, (65 FR 21301). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 30, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–18134 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

Vessels in Foreign and Domestic Trades

CFR Correction

In Title 19 of the Code of Federal Regulations, Parts 1 to 140, revised as of April 1, 2000, on page 64, in §4.95, the third sentence is removed.

[FR Doc. 00–55512 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 99N–4955]

Amendment of Various Device Regulations to Reflect Current American Society for Testing and Materials Citations; Confirmation in Part and Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation in part and technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is confirming, in part, the direct final rule amending certain references in various medical device regulations. The amendments update the references in those regulations to various standards of the American Society for Testing and Materials (ASTM) to reflect the current standards designations. In addition, FDA is correcting errors made in the direct final rule regarding ASTM's address and an FDA zip code.

DATES: The direct final rule published on January 24, 2000 (65 FR 3627), as amended by this rule, is effective June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 24, 2000 (65 FR 3627), FDA published a direct final rule and a companion proposed rule to amend various medical device regulations. The amendments would update references in those regulations to various standards issued by the American Society for Testing and Materials (ASTM). The preamble to the direct final rule and the companion proposed rule explained that ASTM had been working on a project to help Federal agencies update and maintain the ASTM standards that are referenced in the Code of Federal Regulations. As part of the ASTM project, ASTM informed FDA that many ASTM standards cited in FDA's food additive and device regulations were out-of-date and provided a list of standards with their current year designations.

Based on information received from ASTM, FDA, through the direct final rule and companion proposed rule, identified several device regulations that contained obsolete or withdrawn ASTM standards. The medical device regulations and the ASTM standards at issue are:

- 21 CFR 801.410 *Use of impact-resistant lenses in eyeglasses and sunglasses*—The agency proposed to amend paragraph (d)(2) by replacing "ASTM Method D 1415–68 'Test for International Hardness of Vulcanized Rubber,'" with "ASTM Method D 1415–88, 'Standard Test Method for Rubber Property—International Hardness,'" and also replace "ASTM Method D 412–68 'Tension Test of Vulcanized Rubber'" with "ASTM Method D 412–97, 'Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension'".
- 21 CFR 801.430 *User labeling for menstrual tampons*—The agency sought to amend paragraph (f)(2) by replacing "(ASTM) D 3492–83, 'Standard Specification for Rubber Contraceptives (Male Condoms)'" with "(ASTM) D 3492–96, 'Standard Specification for Rubber Contraceptives (Male Condoms)'".

FDA received one comment. The comment, submitted by ASTM, pointed out that because ASTM had revised two of the cited ASTM references again, the two references in the direct final rule were now obsolete. ASTM recommended changing D412–97 to D412–98A and D3492–96 to D3492–97 to reflect the current ASTM cites. ASTM's comment explained how the standards had changed and provided detailed descriptions of the changes in its comment. In general, the changes were not significant; some changes involved removing terms that were not commonly used or defined, deleting redundant wording, adding metric measurements, and changing measurement methods to improve accuracy or clarity.

Because these changes are not significant and ASTM has already made these changes to its standards, FDA finds for good cause that notice and public comment on the latest ASTM standards citation revisions is unnecessary.

Therefore, FDA is confirming, in part, the direct final rule insofar as it pertains to § 801.410 and its reference to ASTM Method D 1415–88, "Standard Test Method for Rubber Property—International Hardness" and the addresses where the standards may be found or inspected. Similarly, FDA is confirming the addresses in § 801.430 where the standards may be found or inspected, although it is correcting errors that were made in the direct final rule regarding the ASTM's address.

FDA is amending § 801.410 by replacing "ASTM Method D 412–97" with "ASTM Method D 412–98A" and using the current title for ASTM method D 412.98A. FDA is also amending § 801.430(f)(2) by replacing "(ASTM), D 3492–96," with "(ASTM) D 3492–97,".

List of Subjects 21 CFR Part 801

Hearing aids, Medical devices, Professional and patient labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, the direct final rule published on January 24, 2000 (65 FR 3627), is confirmed as effective June 7, 2000, with the following changes:

PART 801—LABELING

1. The authority citation for part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

§ 801.410 [Amended]

2. Section 801.410 "*Use of impact-resistant lenses in eyeglasses and sunglasses*" is amended in paragraph (d)(2) by removing "ASTM Method D 412–97, Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension," and by adding in its place "ASTM Method D 412–98A, 'Standard Test Methods for Vulcanized Rubber and Thermoplastic Elastomers—Tension'," and by removing "10850" and by adding in its place "20850".

§ 801.430 [Amended]

3. Section 801.430 "*User labeling for menstrual tampons*" is amended in paragraph (f)(2) by removing "(ASTM) D 3492–96, 'Standard Specification for Rubber Contraceptives (Male Condoms)'" and by adding in its place "(ASTM) D 3492–97, 'Standard Specification for Rubber Contraceptives (Male Condoms)'"; and by revising the footnote to read "Copies of the standard are available from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, or available for inspection at the Center for Devices and Radiological Health's Library, 9200 Corporate Blvd., Rockville, MD 20850, or at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC."

Dated: June 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–18082 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8893]

RIN 1545–AW52

Retention of Income Tax Return Preparers' Signatures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide income tax return preparers with two alternative means of meeting the requirement that a preparer retain the copy of the return or claim manually signed by the preparer. The regulations are necessary to inform preparers about the two alternatives and to provide them with the guidance needed to comply with the alternatives.

DATES: *Effective Date:* These regulations are effective July 18, 2000.

Applicability Date: For dates of applicability, see § 1.6695–1(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the penalty for failure to sign an income tax return under section 6695(b) of the Internal Revenue Code.

On December 31, 1998, final and temporary regulations (TD 8803, 1999–12 I.R.B. 15) under section 6695 were published in the **Federal Register** (63 FR 72182). A notice of proposed rulemaking (REG–106386–98, 1999–12 I.R.B. 31) cross-referencing the temporary regulations was published in the **Federal Register** (63 FR 72218) on the same date. Although written or electronic comments and requests for a public hearing were solicited, no comments were received and no public hearing was requested or held. The proposed regulations under section 6695 are adopted by this Treasury decision and the corresponding temporary regulations are removed.

Section 6695(b) provides that any person who is an income tax return preparer with respect to a return or claim for refund, who is required by regulations prescribed by the Secretary to sign the return or claim, and who fails to comply with those regulations, must pay a penalty of $50 for such failure, unless it is shown that the failure is due to reasonable cause and not willful neglect. The maximum penalty imposed with respect to documents filed during a calendar year will not exceed $25,000.

Section 7701(a)(36)(A) provides that, in general, the term *income tax return preparer* means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim is treated as if it were the preparation of such return or claim.

Section 1.6695–1(b)(1) generally provides that an income tax return preparer, with respect to a return or claim for refund, must manually sign the return or claim (which may be a photocopy) in the appropriate space provided on the return or claim after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

Explanation of Provisions

The final regulations provide that the employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim. In the alternative, the person required to retain the manually signed copy of the return or claim may either retain a photocopy of that manually signed copy or use an electronic storage system meeting the requirements of section 4 of Rev. Proc. 97–22 (1997–1 C.B. 652), or procedures subsequently prescribed by the Commissioner, to store and produce a copy of the return or claim manually signed by the preparer.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for section 1.6695–1T and by revising the entry for section 1.6695–1 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6695–1 also issued under 26 U.S.C. 6060(b) and 6695(b). * * *

Par. 2. Section 1.6695–1 is amended by:

1. Revising paragraph (b)(4)(i).
2. Adding paragraph (g).
3. Removing the authority citation immediately following the end of the section.

The revision and addition read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * * *

(b) * * *

(4)(i) The manual signature requirement of paragraphs (b)(1) and (2) of this section may be satisfied by a photocopy of a copy of the return or claim for refund which copy is manually signed by the preparer after completion of its preparation. After a copy of the return or claim for refund is signed by the preparer and before it is photocopied, no person other than the preparer may alter any entries on the copy other than to correct arithmetical errors discernible on the return or claim for refund. The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim for refund. In the alternative, for a return or claim for refund presented to a taxpayer for signature after December 31, 1998, and for returns or claims for refund retained on or before that date, the person required to retain the manually signed copy of the return or claim for refund may choose to retain a photocopy of the manually signed copy of the return or claim for refund, or use an electronic storage system to store and produce a copy of the manually signed return or claim for refund. For purposes of this paragraph (b)(4)(i), an electronic storage system must meet the electronic storage system requirements prescribed in section 4 of Rev. Proc. 97–22 (1997–1 C.B. 652) (see § 601.601(d)(2) of this chapter) or other procedures prescribed by the Commissioner. A record of any arithmetical errors corrected must be retained and made available upon request by the person required to retain the manually signed copy of the return or claim for refund.

* * * * * *

(g) *Effective date.* This section applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 1998, and for returns or claims for refund retained on or before that date.

§ 1.6695–1T [Removed]

Par. 3. Section 1.6695–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 30, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–18117 Filed 7–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8892]

RIN 1545–AR97

TeleFile Voice Signature Test

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary regulations.

SUMMARY: This document removes temporary regulations that provide that an individual Federal income tax return completed as part of the Telefile Voice Signature test will be treated as a return that is signed, authenticated, verified and filed by the taxpayer as required by the Internal Revenue Code. The temporary regulations were published in the **Federal Register** on December 27, 1993. Because the temporary regulations applied only to 1992 and 1993 calendar year returns, the IRS is removing them.

EFFECTIVE DATE: These regulations are effective July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1993, the IRS issued temporary regulations (TD 8510) in the **Federal Register** (58 FR 68295) under sections 6012, 6061, and 6065 relating to the TeleFile Voice Signature test. Because the temporary regulations applied only to 1992 and 1993 calendar year returns, the IRS has decided to remove them. Therefore, temporary regulations §§ 1.6012–7T, 1.6061–2T, and 1.6065–2T are being removed.

On December 27, 1993, the IRS also issued a notice of proposed rulemaking (58 FR 68335) under sections 6012, 6061, and 6065. Although written comments and requests for a public hearing were solicited, no written or oral comments were received and no public hearing was requested or held. This notice of proposed rulemaking is being withdrawn in a separate document.

Explanation of Provisions

Under sections 6012, 6061, and 6065 of the Internal Revenue Code, each individual with gross income in excess of a specified amount must file an annual income tax return that (i) is signed in accordance with prescribed forms and instructions and, (ii) except as otherwise provided by the Service, contains (or is verified by) a written declaration that the return is made under penalties of perjury.

The temporary regulations provide rules to facilitate the implementation of the Telefile Voice Signature test. Generally, pursuant to the temporary regulations a taxpayer's individual income tax return will be treated as having been properly filed if the taxpayer is eligible to participate in the Telefile Voice Signature test and, pursuant to the instructions from the Telefile system interactive voice computer, provides the requested information and the voice signature during the telephonic filing season.

The Telefile Voice Signature test occurred during the 1993 and 1994 filing seasons. Since that time the Service has published final regulations generally authorizing alternative signature methods. See § 301.6061–1. Accordingly, the regulations relating to

the Telefile Voice Signature test are being removed.

Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Removal of Temporary Regulations

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.6012–7T [Removed]

Par. 2. Section 1.6012–7T is removed.

§ 1.6061–2T [Removed]

Par. 3. Section 1.6061–2T is removed.

§ 1.6065–2T [Removed]

Par. 4. Section 1.6065–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 602.101(c) is amended by removing the following entries in the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * *	*
1.6012–7T	1545–1348
1.6061–2T	1545–1348
* * *	*

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 30, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–18116 Filed 7–17–00; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 20

Global Package Link

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: The Postal Service is adopting changes to Global Package Link (GPL) service. Expansion of the service is planned to the European Union (EU) countries as well as expansion to Australia. Rates are being increased 5 percent for existing GPL services with a 15 percent increase to the oversize GPL package service to Japan.

There are several new fees that will be added to GPL. There will be a fee schedule for data exceptions. Customers will be charged when they fail to provide usable data needed to process GPL. In addition, there will be a new fee of $250 per hour for providing assistance in establishing necessary data links with GPL, for assistance in updating its manifesting systems, and for providing harmonization services needed to utilize GPL's Customs Preadvisory System. These new fees for service will allow the customer to access expertise quickly and for a reasonable charge thus making it easier for them to use GPL.

There will also be a new surcharge of $11 per piece when customers fail to meet the requirement of mailing a minimum of 10,000 packages to any combination of GPL destination countries per year. They will also be required to use the premium service where available. Any existing customers that have been using GPL for over a year will be reviewed and also subject to the surcharge if applicable.

EFFECTIVE DATE: The interim rule is effective 12:01 a.m. EST, August 6, 2000. Comments must be received on or before September 7, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, International Business Results, Room 370–IBU, International Business, U.S. Postal Service, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in International Business, 10th Floor, 901 D Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: Global Package Link service is an international mail service designed for companies sending merchandise packages to other countries. To use GPL, a customer must send at least 10,000 packages per year of mailing and agree to link its information systems with the Postal Service so that certain information about the contents of the customer's packages can be extracted for operational, customs clearance, and other purposes.

The Postal Service is proposing to add new features to GPL that will enhance its value to customers. The weight and size limits for items sent to Argentina are being increased. The weight limit is increased to 70 pounds from 44 pounds for both premium and standard services. The maximum size is increased to 60 inches in length and 108 inches in length and girth combined.

Service is being extended to Australia. Service to Australia includes premium and standard service. The maximum weight is 66 pounds for both premium and standard services. The maximum size limit for premium items is 36 inches maximum length and a maximum length and girth combined of 79 inches. The maximum size limit for standard items is 42 inches maximum length and a maximum length and girth combined of 79 inches.

The rates for service to Australia are:

Weight not over (pounds)	Premium ($)	Standard ($)
1	16.00	10.50
2	20.00	14.00
3	24.50	18.00
4	29.00	22.00
5	33.00	25.50
6	37.50	29.50
7	42.00	33.00
8	46.00	27.00
9	50.50	40.50
10	55.00	44.50
11	59.00	48.50
12	61.00	50.00
13	63.00	51.50
14	67.00	55.00
15	71.00	58.50
16	75.00	62.00
17	79.00	65.50
18	83.00	69.00
19	87.00	73.00
20	91.00	76.50
21	95.00	80.00
22	99.00	83.50
23	103.00	87.00
24	107.00	90.50
25	111.00	94.00
26	115.00	97.50

Weight not over (pounds)	Premium ($)	Standard ($)
27	119.00	101.00
28	123.00	104.50
29	127.00	108.00
30	131.00	111.50
31	135.00	115.00
32	139.00	118.50
33	143.00	122.00
34	147.00	125.50
35	151.00	129.00
36	155.00	132.50
37	159.50	136.00
38	163.50	139.50
39	167.50	143.00
40	171.50	146.50
41	175.50	150.50
42	179.50	153.50
43	183.50	157.00
44	187.50	160.50
45	191.50	164.00
46	195.50	164.00
47	199.50	171.00
48	203.50	178.00
49	207.50	178.00
50	211.50	181.50
51	215.50	185.00
52	219.50	188.50
53	223.50	192.00
54	227.50	195.50
55	231.50	199.00
56	235.50	202.50
57	239.50	206.00
58	243.50	209.50
59	247.50	213.00
60	251.50	216.50
61	255.50	220.00
62	259.50	223.50
63	263.50	227.50
64	267.50	230.00
65	271.50	234.00
66	275.50	237.50

The Postal Service is extending service to all countries in the EU. Under this service, packages will be transported to Great Britain for customs clearance. Once cleared, the packages will be delivered to the other countries in the EU with no further customs clearance required. There are two rate groups. Rate Group 1 includes Ireland, Belgium, The Netherlands, Denmark, France, and Germany. Rate Group 2 includes Luxembourg, Greece, Italy, Portugal, Spain, Austria, Finland, and Sweden. The rates for this service are as follows:

Weight not over (pounds)	Group 1 ($)	Group 2 ($)
1	13.25	21.50
2	15.00	23.25
3	16.50	24.75
4	18.00	26.25
5	19.75	28.00
6	21.25	29.50
7	22.75	31.00
8	24.50	32.50
9	26.00	34.50
10	27.50	35.75
11	29.25	37.25
12	30.75	39.00
13	32.25	40.50
14	34.00	42.00
15	35.50	43.75
16	37.00	45.25
17	38.50	46.75
18	40.25	48.50
19	41.25	50.00
20	43.25	51.50
21	45.00	53.25
22	46.50	54.75
23	48.00	56.25
24	49.75	58.00
25	51.25	59.50
26	52.75	61.00
27	54.50	62.50
28	56.00	64.25
29	57.50	65.75
30	59.25	67.25
31	60.75	69.00
32	62.25	70.50
33	64.00	72.00
34	65.50	73.75
35	67.00	75.25
36	68.50	76.50
37	70.25	78.50
38	71.75	80.00
39	73.25	81.50
40	75.00	83.25
41	76.50	84.75
42	78.00	86.25
43	79.75	87.75
44	81.25	89.50
45	82.75	91.00
46	84.50	92.50
47	86.00	84.25
48	87.50	95.75
49	89.25	97.25
50	90.75	99.00
51	92.25	100.50
52	93.75	102.00
53	95.50	103.75
54	97.00	105.25
55	98.50	106.75
56	100.25	108.50
57	101.75	110.00
58	103.25	111.50
59	105.00	113.25
60	106.50	114.75
61	108.00	116.75
62	111.25	117.75
63	111.25	119.50
64	112.75	121.00
65	114.50	122.50
66	116.00	124.25
67	117.50	125.75
68	119.25	127.50
69	120.75	129.00
70	122.25	130.50

The rates for oversized packages to Japan are increased 5 percent. These packages, which are too large for delivery by Japanese postal authorities, are tendered to a private delivery firm for delivery. The rates for this service are as follows:

Weight not over (pounds)	Rates ($)
1	28.75
2	32.25
3	36.00
4	39.50
5	44.25
6	49.00
7	52.50
8	57.25
9	60.50
10	63.00
11	65.50
12	68.75
13	71.25
14	74.00
15	76.00
16	78.50
17	81.25
18	83.25
19	86.50
20	88.50
21	90.50
22	92.50
23	94.75
24	96.75
25	98.75
26	101.00
27	103.00
28	105.00
29	107.25
30	108.25
31	110.25
32	112.50
33	114.50
34	116.50
35	118.50
36	120.75
37	121.75
38	122.75
39	126.75
40	129.00
41	132.00
42	135.00
43	138.75
44	140.00
45	143.50
46	147.75
47	150.00
48	152.75
49	155.00
50	158.00
51	161.50
52	164.00
53	167.50
54	169.50
55	173.50
56	176.25
57	178.75
58	181.00
59	185.50
60	187.50
61	189.00
62	193.75
63	196.00
64	199.00
65	202.50
66	208.00
67	210.00
68	213.75
69	216.75
70	219.00

The Postal Service is increasing the rates of all existing GPL services by 5 percent. Japan rates are also being

announced for parcels weighing up to 66 lbs. Rates for each country are as follows:

Premium Service

Weight Not Over (Pounds)	Germany ($)	Chile ($)	Brazil ($)	Argentina ($)	China ($)	Singapore ($)	Hong Kong ($)	Japan ($)	Canada ($)	Mexico ($)	UK ($)
1	12.25	11.00	14.25	11.50	14.75	15.50	17.75	16.50	10.50	8.75	15.75
2	14.25	13.50	16.50	15.00	17.75	19.50	21.50	19.00	11.50	10.25	17.25
3	16.00	16.00	19.50	17.75	21.00	23.25	25.25	21.75	13.25	12.00	19.00
4	17.75	18.50	21.50	21.00	24.25	27.50	29.00	24.75	15.00	13.75	20.50
5	19.75	21.00	24.75	24.00	30.75	32.50	32.50	27.50	16.50	15.50	22.00
6	21.50	23.00	26.75	26.75	33.75	36.75	36.25	31.00	18.50	17.00	23.75
7	23.25	25.75	30.00	60.25	37.00	41.25	40.00	33.75	20.00	18.50	25.00
8	25.25	28.00	32.00	32.75	40.25	46.25	43.50	36.75	21.75	20.00	27.00
9	27.00	30.75	35.25	35.50	43.50	50.50	47.25	39.50	23.25	21.75	28.50
10	29.00	33.00	37.25	38.25	46.75	54.25	51.00	42.25	25.25	23.25	30.50
11	30.75	35.50	39.50	42.25	50.00	58.25	54.50	45.25	26.75	25.25	32.00
12	32.50	37.75	42.50	44.75	53.00	63.00	58.25	48.00	25.28	26.25	33.50
13	34.50	40.25	44.75	47.50	56.25	67.50	62.25	51.00	30.25	28.00	35.50
14	36.25	42.75	47.75	50.75	59.25	72.25	65.75	53.75	31.75	29.75	37.00
15	38.00	45.25	49.75	53.50	62.75	76.25	69.50	56.75	33.50	31.00	38.75
16	40.00	47.75	53.00	56.75	66.00	80.50	73.25	59.50	35.25	32.50	40.50
17	41.75	50.25	55.00	59.50	69.00	85.25	77.00	62.50	37.00	34.50	42.25
18	43.50	52.50	57.50	62.75	72.25	89.75	80.50	65.25	38.50	35.50	44.25
19	45.50	54.75	59.50	65.75	75.50	94.00	84.25	68.00	40.50	37.25	46.50
20	47.25	57.50	62.50	68.75	78.75	98.50	88.00	71.00	42.00	38.25	48.00
21	49.00	59.75	64.75	71.75	82.00	103.00	91.50	73.75	43.50	40.25	50.00
22	51.00	62.25	66.75	75.25	85.00	107.00	95.25	76.75	45.25	41.25	51.50
23	52.75	64.50	69.75	78.00	88.25	116.25	99.00	79.50	47.00	43.00	53.00
24	54.50	67.00	72.00	80.25	91.25	120.75	102.75	82.50	48.50	44.00	54.50
25	56.50	69.50	75.00	83.50	94.75	124.75	106.25	85.25	50.50	45.75	56.25
26	58.50	72.00	77.25	86.25	98.00	129.00	110.00	88.25	52.00	47.00	58.00
27	60.50	74.50	80.25	89.50	101.00	133.25	113.75	91.00	53.25	48.50	61.25
28	62.25	77.00	82.25	92.50	104.25	137.25	117.25	94.00	55.50	50.00	62.75
29	64.00	79.25	85.25	95.25	107.25	141.25	121.00	96.50	57.25	51.00	64.50
30	66.00	81.75	87.50	98.50	110.50	145.50	124.75	99.50	58.75	52.75	66.25
31	67.75	84.25	90.50	101.25	114.00	150.00	128.25	102.50	60.00	53.75	68.00
32	69.50	86.75	92.75	104.25	117.00	153.75	132.28	105.25	61.75	54.75	69.50
33	71.50	89.00	94.75	107.25	120.25	158.00	136.00	108.25	63.50	56.25	71.25
34	73.25	91.50	97.75	110.25	123.50	167.75	139.75	111.00	65.00	57.75	73.00
35	75.00	93.75	100.00	114.50	126.50	171.75	143.25	114.00	67.00	59.00	74.50
36	77.00	96.25	103.00	117.00	129.75	175.50	147.00	116.75	68.50	60.00	76.50
37	78.75	98.75	105.25	119.50	133.00	180.25	150.75	119.75	70.25	61.25	78.00
38	80.50	101.25	108.25	122.50	136.25	184.25	154.25	122.50	72.00	62.50	79.50
39	82.50	103.75	110.25	125.50	139.50	188.25	158.00	125.25	73.50	63.50	83.00
40	84.25	106.00	113.25	128.25	142.50	193.00	161.75	128.00	75.25	64.50	84.50
41	86.00	108.50	115.50	131.25	145.75	197.00	165.50	131.00	76.50	66.50	86.25
42	88.00	111.00	118.50	134.50	148.75	200.75	169.00	134.00	78.25	67.50	88.00
43	89.75	113.50	120.75	137.25	152.25	204.75	172.75	136.75	79.75	68.75	89.75
44	91.50	115.75	122.75	140.25	155.50	209.50	176.50	139.75	81.50	69.75	91.50
45	93.50	118.50	125.75	141.50	158.50	218.75		142.50	83.25	71.00	93.25
46	95.25	120.50	128.00	144.50	161.75	222.50		145.50	84.25	71.75	95.00
47	97.25	123.00	131.00	147.50	164.75	227.00		148.25	85.75	72.75	96.50
48	99.00	125.50	133.25	150.50	168.00	231.25		151.25	87.50	73.75	98.50
49	100.75	128.00	136.25	153.25	171.50	235.25		154.00	89.00	75.00	100.00
50	102.75	130.50	138.25	158.50	174.50	239.75		157.00	90.75	77.25	103.50
51	104.50	132.75	141.25	161.25	177.75	243.75		159.75	92.50	78.50	105.25
52	106.25	135.25	143.50	164.25	180.75	247.75		162.75	94.25	79.00	106.75
53	108.25	137.75	146.50	167.25	184.00	251.75		165.75	96.75	79.00	106.75
54	110.00	140.25	148.75	170.25	187.50	256.50		168.50	97.50	80.00	108.75
55	111.75	142.50	150.75	173.00	190.50	260.50		171.50	99.25	81.50	110.25
56	113.75	145.25	153.75	176.00	193.75	269.50		174.25	100.00	82.50	112.00
57	115.50	147.50	156.00	179.00	197.00	274.00		177.25	101.75	83.00	113.75
58	117.25	150.00	159.00	181.75	200.00	278.00		180.00	103.50	84.00	115.50
59	119.25	152.25	161.00	184.75	203.25	282.25		183.00	105.00	85.25	117.00
60	121.00	155.00	164.25	192.00	206.50	286.75		185.75	106.75	85.75	119.00
61	123.00	157.25	166.25	195.00	209.75	290.50		188.75	108.50	87.00	120.50
62	125.00	159.75	169.25	198.00	213.00	294.75		191.75	110.00	87.75	122.25
63	126.75	162.00	171.50	200.75	216.00	298.75		194.50	110.75	88.75	124.25
64	128.75	164.50	174.50	203.75	219.25	303.25		197.50	112.50	89.75	125.75
65	130.50	167.00	176.75	206.75	222.25	307.50		200.25	114.25		127.50
66	132.25	169.25	178.75	209.75	225.75	311.25		203.25	115.75		129.25
67	134.25	172.00		212.50	229.00						
68	136.00	174.25		215.50	232.00						
69	137.75	176.75		218.50	235.25						
70	139.75	179.00		221.50	238.25						

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Standard Service Weight Not Over (Pounds)	Japan ($)	Singapore ($)	Mexico ($)	France ($)	Argentina ($)	UK ($)
1	6.25	12.00	5.75	7.50	9.00	12.75
2	9.75	16.00	6.75	10.00	11.50	14.25
3	15.00	19.50	8.25	12.25	14.00	15.75
4	19.00	23.25	9.25	14.75	16.00	17.25
5	25.25	28.00	10.25	16.75	18.00	18.75
6	28.50	32.00	12.00	19.25	20.25	20.25
7		36.00	13.25	21.50	23.00	21.50
8		40.25	14.50	23.75	25.25	23.00
9		44.00	15.50	26.00	27.25	24.75
10		48.00	16.80	28.25	29.75	26.00
11		52.00	17.75	30.75	33.00	27.50
12		56.25	19.00	32.75	35.25	29.00
13		60.00	20.00	35.25	37.25	30.50
14		64.50	21.25	37.50	39.50	32.00
15		68.75	22.25	40.00	42.50	33.25
16		72.75	23.25	42.00	44.75	35.00
17		76.75	24.75	44.25	47.25	36.50
18		80.50	25.75	46.75	49.50	37.75
19		84.75	26.75	48.75	52.00	39.50
20		89.25	28.00	51.25	54.75	40.75
21		92.75	28.50	53.50	57.00	42.25
22		96.50	29.75	56.00	60.00	43.75
23		103.75	31.00	58.00	62.50	45.25
24		107.75	32.00	60.50	64.75	46.75
25		111.00	33.00	62.75	67.50	48.00
26		115.00	34.50	64.75	69.75	49.50
27		119.00	35.50	67.25	72.25	51.25
28		123.00	36.75	69.50	74.50	52.50
29		126.50	37.25	72.00	77.25	54.00
30		130.50	38.25	74.00	79.50	55.50
31		134.50	39.50	76.50	82.00	57.00
32		138.50	40.75	78.75	84.50	58.50
33		142.00	41.75	80.75	87.00	59.75
34		148.75	42.25	83.25	89.25	61.50
35		152.75	43.50	85.50	93.00	63.00
36		156.75	44.75	88.00	95.25	64.25
37		160.25	45.75	90.00	97.75	66.00
38		164.25	46.50	92.50	100.00	67.25
39		168.25	47.50	94.75	102.75	68.75
40		172.25	48.50	97.25	105.00	70.25
41		175.50	50.00	99.25	107.25	71.75
42		179.75	50.50	101.50	109.75	73.25
43		183.75	51.50	104.00	112.25	74.50
44		187.25	52.75	106.00	114.75	76.25
45		194.00	53.25	108.50	115.50	77.75
46		198.00	54.25	110.75	118.00	79.00
47		202.25	55.50	113.25	120.50	80.50
48		205.50	56.25	115.25	122.75	82.25
49		209.50	57.25	117.50	125.25	83.50
50		213.50	57.75	120.00	129.75	85.00
51		217.25	59.00	122.00	132.25	86.25
52		220.75	60.00	124.50	134.50	88.00
53		225.00	60.75	126.75	137.00	89.50
54		229.00	61.75	129.25	139.50	90.75
55		232.75	62.50	131.25	141.75	92.50
56		239.25	63.50		144.25	93.75
57		243.25	64.00		146.50	95.25
58		247.25	65.25		149.00	96.75
59		251.25	66.00		151.50	98.25
60		254.75	67.00		158.25	99.75
61		258.50	67.50		160.75	101.00
62		262.75	68.75		163.00	102.75
63		266.75	69.25		165.50	104.25
64		270.00	70.25		168.00	105.50
65		274.00			170.25	107.00
66		278.00			172.75	108.75

Economy Service Weight Not Over (Pounds)	UK ($)
1	11.25
2	12.75
3	14.25
4	15.75
5	17.00
6	18.50
7	20.00
8	21.25
9	22.75
10	24.25
11	25.50
12	27.00
13	28.25
14	30.00
15	31.25
16	32.50
17	34.25
18	35.50
19	37.00
20	38.25
21	39.75
22	41.25
23	42.50
24	44.00
25	45.50
26	46.75
27	48.25
28	49.50
29	51.25
30	52.50
31	54.00
32	55.50
33	56.75
34	58.25
35	59.50
36	61.25
37	62.50
38	63.75
39	65.25
40	66.75
41	68.25
42	69.50
43	71.00
44	72.50
45	73.75
46	75.25
47	76.75
48	78.00
49	79.50
50	80.75
51	82.50
52	83.75
53	85.00
54	86.75
55	88.00
56	89.50
57	90.75
58	92.25
59	93.75
60	95.00
61	96.50
62	98.00
63	99.25
64	100.75
65	102.00
66	103.75

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Canada

Weight Not to Exceed (Pounds)	Premium ($)	US Origin Zone A: Buffalo, New York City, and Chicago Canadian Entry: Toronto			US Origin Zone B: Miami and Dallas* Canadian Entry: Toronto			Schedule C, US Origins: Seattle Canadian Entry: Vancouver			Schedule D, US Origins: San Francisco Canadian Entry: Vancouver			
		Local ($)	Regional ($)	National ($)	Local ($)	Regional ($)	National ($)	Local (V), ($)	Regional (V), ($)	National (V), ($)	Local (V), ($)	Regional (V), ($)	National (V), ($)	Returns ($)
1	10.50	5.75	7.50	8.00	6.50	8.25	8.50	8.00	9.50	12.00	8.50	10.00	12.50	7.25
2	11.50	6.25	8.75	9.25	7.50	10.00	10.50	8.50	9.75	12.25	9.50	11.00	13.75	8.25
3	13.25	6.75	9.75	10.50	8.75	11.50	12.25	8.75	10.25	12.75	10.50	12.00	14.75	9.00
4	15.00	7.25	10.50	11.75	9.75	12.75	14.25	9.25	10.75	13.50	11.50	13.25	15.75	9.75
5	16.50	8.00	11.25	13.25	10.75	14.50	16.25	9.75	11.00	13.75	12.50	14.25	16.75	10.50
6	18.50	8.50	12.25	14.50	12.00	16.00	18.00	10.00	11.50	14.25	13.75	15.25	17.75	11.25
7	20.00	9.00	13.25	15.75	13.25	17.25	20.25	10.50	11.75	14.50	14.75	16.25	19.00	12.00
8	21.75	9.50	14.00	17.00	14.25	19.00	22.00	10.75	12.25	15.00	15.75	17.25	20.00	12.75
9	23.25	10.00	15.00	18.50	15.50	20.50	24.00	11.25	12.75	15.50	16.75	18.00	20.75	13.75
10	25.25	10.50	15.75	19.75	16.50	21.75	26.00	11.75	13.25	15.75	17.75	19.25	21.75	14.25
11	26.75	11.00	16.25	20.25	17.50	22.75	27.00	12.25	13.75	16.25	19.00	20.50	23.00	15.00
12	28.25	11.50	17.00	21.50	18.75	24.50	29.00	12.75	14.50	17.00	20.00	21.50	24.25	15.75
13	30.25	12.00	18.00	22.75	20.00	26.00	30.75	13.50	15.00	17.50	21.25	22.75	25.50	16.50
14	31.75	12.50	19.00	24.25	21.00	27.25	32.75	13.75	15.50	18.00	22.25	24.00	26.50	17.25
15	33.50	13.25	19.75	25.50	22.25	29.00	34.75	14.25	16.00	18.75	23.25	25.25	27.75	18.00
16	35.25	13.75	20.75	26.75	23.25	30.50	36.50	14.75	16.75	19.25	24.50	26.25	29.00	19.00
17	37.00	14.25	21.50	28.00	24.50	31.75	38.50	15.25	17.25	20.00	25.75	27.50	30.25	19.75
18	38.50	14.75	22.25	29.50	25.75	33.25	40.50	15.75	17.75	20.50	26.75	28.50	31.25	20.50
19	40.50	15.25	23.25	31.00	26.75	35.00	42.25	16.25	18.50	21.00	27.75	30.00	32.50	21.25
20	42.00	15.75	24.25	32.25	27.75	36.25	44.25	16.75	19.00	21.50	29.00	31.25	33.75	22.00
21	43.50	16.25	25.25	33.50	29.25	37.75	46.25	17.25	19.75	22.25	30.25	32.25	35.00	22.50
22	45.25	16.75	25.50	33.75	30.25	38.75	47.25	17.75	20.25	22.75	31.25	33.50	36.25	23.25
23	47.00	17.25	26.50	35.25	31.25	40.50	49.00	18.50	20.75	23.25	32.25	34.75	37.25	24.25
24	48.50	17.75	27.25	36.50	32.25	41.75	51.25	19.00	21.25	24.00	33.25	36.00	38.50	25.00
25	50.50	18.50	28.00	37.75	33.50	43.25	53.00	19.50	21.75	24.50	34.75	37.00	39.75	25.75
26	52.00	19.00	29.25	39.00	34.75	45.00	54.75	20.00	22.50	25.25	35.75	38.25	41.00	26.50
27	53.25	19.50	30.00	40.50	35.75	46.25	57.00	20.50	23.00	25.75	36.75	39.50	42.00	27.25
28	55.50	20.00	30.75	42.00	37.00	47.75	58.75	21.00	23.75	26.25	37.75	40.75	43.25	28.00
29	57.25	20.50	31.75	43.25	38.00	49.25	60.75	21.50	24.25	26.75	39.00	41.75	44.25	29.00
30	58.75	21.00	32.50	44.75	39.50	50.75	62.75	22.00	24.75	27.25	40.25	43.00	45.75	29.75
31	60.00	21.50	33.25	46.00	40.50	52.25	64.50	22.50	25.50	28.00	41.25	44.00	46.75	30.50
32	61.75	22.25	34.50	47.25	41.50	53.75	66.50	23.00	26.00	28.50	42.25	45.50	48.00	31.00
33	63.50	22.50	34.75	47.50	42.50	54.75	67.50	23.25	26.50	29.25	43.50	46.50	49.00	31.75
34	65.00	23.00	35.75	48.75	43.75	56.25	69.50	24.00	27.00	29.75	44.75	47.75	50.50	32.50
35	67.00	23.75	36.50	50.25	45.00	57.75	71.50	24.50	27.50	30.25	45.75	48.75	51.50	33.25
36	68.50	24.25	37.50	51.50	46.00	59.25	73.25	25.00	28.25	31.00	46.75	50.25	52.75	34.25
37	70.25	24.75	38.25	53.00	47.25	60.75	75.25	25.50	29.00	31.50	48.00	51.25	53.75	35.00
38	72.00	25.25	39.00	54.25	48.25	62.25	77.25	26.00	29.50	32.00	49.00	52.50	55.25	35.75
39	73.50	26.00	40.25	56.75	49.25	63.75	79.00	26.50	30.00	32.50	50.25	53.50	56.25	36.50
40	75.25	26.50	41.00	57.00	50.75	65.00	81.00	27.00	30.50	33.00	51.50	54.75	57.50	37.25
41	76.50	27.00	41.75	58.25	51.75	66.75	83.00	27.50	31.25	33.75	52.50	56.00	58.50	38.00
42	78.25	27.50	42.75	59.50	52.75	68.25	84.75	28.00	31.75	34.50	53.50	57.25	59.75	38.75
43	79.75	28.00	43.50	61.00	54.00	69.50	87.00	28.50	32.25	35.00	54.50	58.25	61.00	39.75
44	81.50	28.25	44.00	61.25	55.25	70.50	88.00	29.25	32.75	35.50	56.00	59.50	62.25	40.25
45	83.25	29.00	45.00	62.50	56.25	72.25	89.75	29.75	33.25	36.00	57.00	60.75	63.25	41.00
46	84.25	29.75	46.00	64.00	57.50	73.50	92.00	30.25	34.25	36.75	58.00	62.00	64.50	41.75
47	85.75	30.25	46.75	65.25	58.50	75.00	93.75	30.75	34.75	37.25	59.00	63.00	65.75	42.50
48	87.50	30.75	47.50	66.75	59.50	76.75	95.50	31.25	35.25	37.75	60.50	64.25	67.00	43.25
49	89.00	31.25	48.50	68.00	61.00	78.00	97.75	31.75	35.75	38.25	61.50	65.25	68.00	44.00
50	90.75	31.75	49.25	69.25	62.00	79.50	99.50	32.25	36.25	38.75	62.50	66.75	69.25	45.00
51	92.50	32.25	50.25	70.50	63.00	81.00	101.25	32.75	37.00	39.75	63.50	67.75	70.25	45.75
52	94.25	32.75	51.25	72.00	64.25	82.50	103.50	33.00	37.50	40.25	64.75	69.00	71.75	46.50
53	95.75	33.25	52.00	73.25	65.25	84.00	105.25	33.50	38.00	40.75	66.00	70.00	72.75	47.25
54	97.50	33.75	52.50	73.75	66.50	85.00	106.25	34.25	38.50	41.25	67.00	71.50	74.00	48.00
55	99.25	34.50	53.25	75.00	67.50	86.75	106.25	34.75	39.00	41.75	68.00	72.50	75.00	48.50
56	100.00	35.00	54.00	76.50	68.75	88.00	110.25	35.25	40.00	42.50	69.25	73.75	76.50	49.25
57	101.75	35.50	55.25	77.75	69.75	89.50	112.00	35.75	40.50	43.00	70.25	74.75	77.50	50.25
58	103.50	36.00	56.00	79.00	71.00	91.00	114.00	36.25	41.00	43.50	71.50	76.25	78.75	51.00
59	105.00	36.50	57.00	80.25	72.25	92.50	116.00	36.75	41.50	44.00	72.50	77.25	79.75	51.75
60	106.75	37.00	57.75	81.75	73.25	94.00	117.75	37.25	42.00	44.75	73.75	78.50	81.00	52.50
61	708.50	37.50	58.50	83.00	74.50	95.50	119.75	37.75	42.75	45.50	74.75	79.50	82.25	53.25
62	110.00	38.00	59.50	84.25	75.50	96.75	121.75	38.25	43.25	46.00	75.75	80.75	83.50	54.00
63	110.75	38.50	60.50	85.50	76.75	98.50	123.75	38.75	43.75	46.50	77.00	82.00	84.50	54.75
64	112.50	39.00	61.25	87.00	78.00	100.00	125.50	39.50	44.25	47.00	78.25	83.25	85.75	55.75
65	114.25	39.75	61.75	87.50	79.00	101.00	126.50	40.00	45.00	47.50	79.25	84.50	87.25	56.50
66	115.75	40.25	62.50	88.75	80.00	102.50	128.75	40.50	45.75	48.25	80.25	85.50	88.25	57.00

*By special arrangement, Dallas origin mail may be entered in Vancouver. This mail will be charged Origin Zone C rates.

The Postal Service is introducing storage and other charges for GPL items tendered when the data required from the mailer is not sent, is incomplete or corrupt, or otherwise cannot be processed due to the mailer's fault. The lack of correct data causes significant operational problems and requires that packages be stored and rehandled. Such storage and rehandling results in additional costs, which are caused by the mailer. The Postal Service will charge fees for modifying corrupt data files sent by the mailer so that the mailer's packages can be processed and delivered. The Postal Service will charge a fee of $.30 per package for

storage, $1.50 for each data exception, and $50 for each file modification.

The Postal Service is establishing a new surcharge for customers not mailing at least 10,000 packages per year. If a mailer does not send 10,000 packages, combined volumes to GPL destination countries, in any year of mailing, an $11 per package surcharge will be applied. The mailer will also be required to use only the premium service level. The Postal Service will review a mailer's volume annually after its first complete year of mailing, based on the previous 13 complete accounting periods of mailing. The surcharge will be effective 30 days thereafter. In addition, the Postal Service is invoking the standard for bulk mailings such that GPL mailers will be required to send a minimum of 200 pieces or 50 pounds per mailing.

The Postal Service is revising the customs clearance service procedures to specify information a mailer must or may provide. The existing fee of $1.25 for each item harmonized is being replaced with a new fee structure. Before customs clearance services are initiated, the Postal Service will provide the mailer with a binding proposal stating the number of hours required to complete the service and the total fee for the service calculated on an hourly basis at $250 per hour. In addition, the existing harmonization of 2,500 free items in the first year of using GPL is changed to 2,500 annually. The current fee and customs clearance service causes additional costs to be incurred by the Postal Service and causes uncertainty among mailers in their not knowing the fees they will be charged. The Postal Service is also instituting a fee for assisting mailers in establishing an electronic data interchange or for manifesting GPL packages. Prior to providing such assistance, the Postal Service will provide the mailer with a binding proposal stating the number of hours that will be required to complete the assistance and the total fee for the assistance calculated on an hourly basis at $250 per hour.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service is amending Subchapter 620, "Global Package Link," and the appropriate Individual Country Listings, International Mail Manual, which are incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, incorporation by reference, international postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate program changes to Subchapter 620, "Global Package Link", as follows:

620 Global Package Link

* * * * *

621.3 Availability

GPL service is available only to Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, Luxembourg, Mexico, The Netherlands, Portugal, Singapore, Spain, Sweden, and Great Britain.

622 Qualifying Mailers

622.1 General

622.11 Qualifications

To qualify for GPL service, a mailer must:

a. Send a minimum of 200 pieces or 50 pounds per mailing.

b. Electronically send required parcel information to the Postal Service.

c. Meet the general and specific preparation requirements for each country.

d. Designate the Postal Service as its carrier of choice to each country for which it uses GPL service.

e. Enter into a service agreement with the Postal Service.

622.12 Service Agreement

Each service agreement must contain the following:

a. If a mailer does not send 10,000 packages, combined volumes to GPL destination countries, in any complete year of mailing, an $11 per package surcharge will be applied as stated in 623.444.

b. The mailer's commitment to provide the required information and a statement of what, if any, optional information it will provide under 626.422.

c. The mailer's intention, if desired, to use the electronic data interchange or manifesting assistance technical support service under 622.23.

622.13 Wholesaler Service Agreements

Each wholesaler must enter into the service agreement for wholesalers.

622.2 Linking Information Systems

622.21 General

The mailer must be able to electronically send parcel information to the Postal Service so that (1) the Postal Service and the mailer can exchange data transmissions concerning the mailer's packages and (2) by scanning the mailer-provided barcode on each package, the Postal Service can extract, on an as-needed basis, the following information about the contents of each package to produce necessary customs forms and package labels and to provide tracking and tracing:

a. Order number.

b. Package identification number.

c. Delivery option used for package if more than one level of service is available.

d. Buyer's name and address.

e. Recipient's name, address, and post code.

f. Total weight of package.

g. Total value of the package's contents.

h. Total number of items in each package.

i. Numbers of each item in package.

j. SKU or key word description of each item.

k. Value of each item.

l. Country of origin of each item (for mailings to Germany and France, unless mailed using Global Package Link-Europe, and Canada, Mexico, Argentina, Brazil, Chile, Australia, China, Hong Kong, and Singapore).

m. Buyer's national identification or import number, where required by law (Brazil, Mexico).

n. Postage and handling charge per order.

o. Buyer's telephone number at delivery address (required for Mexico only).

622.22 Fees for Exceptions

If the mailer does not meet the requirements in 622.21 such that when its packages are processed at a GPL processing facility and it has failed to transmit package data or the data is not complete or is corrupt or otherwise prevents the Postal Service from processing packages, the Postal Service will charge the following fees for modifying corrupt data files sent by the mailer so that the mailer's packages can be processed and delivered:

Data exception	Fees
Individual package lacks data to process.	$.30 per package for storage, per calendar day, for every package that the Postal Service is unable to process. Plus $1.50 per data exception scan.
No data file sent by the mailer.	$.30 per package for storage, per calendar day, for every package listed in the postage statement for that mailing.
File sent by the mailer is corrupted.	$50.00 per file modification. Plus $.30 per package for storage, per calendar day, for every package listed in the postage statement for that mailing.

If data exceptions cannot be resolved within 5 business days, the associated packages will be returned to the mailer at a rate of $5 per package. These fees will be deducted from the mailer's CAPS account, and the Postal Service will send the mailer a monthly notice of these charges.

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622.23 Payment of Fees for Technical Support Services for Electronic Data Interchange Linkage and Manifesting

622.231. The Postal Service will provide, at no cost to the mailer, general technical advice to assist the mailer in establishing electronic data interchange links required in 622.21 and documentation and manifesting required in 623.43.

622.232. The Postal Service will provide the mailer, if desired, specific technical advice including but not limited to technical direction and support to establish such links or manifesting system changes in accordance with a binding written proposal prior to commencing with the technical support services. The proposal will state the number of hours needed to provide the technical support at the rate of $250 per hour. The Postal Service will charge the amount stated in the proposal, unless the mailer materially changes the nature and scope of the technical support provided.

622.233. The mailer will pay the Postal Service for such technical support in the manner and the time agreed to by the mailer in the GPL Service Agreement.

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623 General

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623.2 Customs Documentation

Customs documentation will be produced by the Postal Service from data transmitted by the mailer.

623.3 Size and Weight Limits

623.31 Weight

The weight limits for GPL service are 70 pounds for Argentina, Chile, China, and Germany; 66 pounds for Australia, Brazil, Canada, Japan, Singapore, Great Britain, and countries in the EU; 64 pounds for Mexico; 55 pounds for France; and 44 pounds for Hong Kong. Oversize service is available to Japan. To use the GPL premium oversize service, the mailer must select it when choosing the class of service and use the corresponding GPL premium oversize rate chart.

623.32 Size

All GPL packages must be large enough to accommodate the necessary labels and customs forms on the address side. The maximum length of GPL packages is 60 inches. The maximum length and girth combined is 108 inches.

GPL premium packages to Japan, with the length more than 60 inches, up to a maximum length plus girth of 108 inches, must be mailed as GPL premium oversize. To use the GPL premium oversize service, the mailer must select GPL premium oversize service when selecting the class of service and use the corresponding GPL premium oversize rate chart. GPL premium packages longer than 60 inches, up to length plus girth of 108 inches, will be returned to the mailer for remailing if GPL premium oversize service is not selected.

Exceptions: Maximum size for Germany is length 47 inches, height 23 inches, and width 23 inches; for Japan standard packages weighing less than 1 pound, the maximum length is 24 inches with a combined maximum length, depth, and height of 36 inches; maximum size for Australia for premium items is 36 inches maximum length and a maximum length and girth combined of 79 inches and for standard items is 42 inches maximum length and a maximum length and girth combined of 79 inches.

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623.4 Postage

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623.444 Surcharge

If a mailer does not send 10,000 packages of combined volumes to GPL destination countries in any year of mailing, an $11 per package surcharge will be applied. The mailer must use the premium level of service for all packages in any year it does not mail 10,000 GPL packages. The Postal Service will review a mailer's volume annually after its first complete year of mailing, based on the previous 13 complete accounting periods of mailing. The surcharge will be effective 30 days thereafter.

626 Services Available

626.1 Delivery Options

Delivery options vary according to destination country, as set forth below.

626.11 Premium Service

Premium service is available to all countries except France and countries in the EU. Packages sent through premium service are transported to the destination country by air where they receive special handling and expedited delivery. The mailer can track premium service packages through the GPL website as well as reports of delivery performance furnished to the mailer in the formats and at the frequencies agreed upon by the Postal Service and the mailer.

626.12 Standard Service

Standard service is available to Argentina, Australia, Canada, France, Japan, Mexico, Singapore, and Great Britain. Packages sent through standard service are transported to the destination country by air (or a combination of air/ground to Canada) for delivery. The mailer can track standard service packages through dispatch from the GPL processing facility for Japan and through delivery for Great Britain, Singapore, and Canada. In Mexico, standard service provides for customer pick up of parcels at selected secured customer service centers with tracking to pick up.

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626.2 Merchandise Return Service

626.21 Japan

Merchandise return service is available from Japan. The mailer or the recipient is responsible for returning merchandise to the designated Japanese return center where packages will be opened and the contents consolidated for return to the United States. The mailer will receive a daily electronic notification of returns. Returned merchandise will be shipped to the mailer on a mutually agreed-upon schedule.

626.211 Merchandise Return Reply Service

The mailer may use merchandise return reply service (MRRS) to pay the

postage of its customers' return of merchandise to the return center in Japan. For each package using MRRS, the mailer will be charged the postage for getting the package from the customer to the return center and a handling fee of $1.50.

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626.22 Great Britain and the European Union

A return merchandise service is available to mailers that mail GPL shipments to Great Britain and the EU. The returns agent will open and inspect the contents of each box and process for return to the United States. The returns agent may apply for a refund of duties and taxes from Great Britain customs. The packages will then be sent to the mailer's designated center for returns in the United States. The return prices per parcel are detailed in the GPL rate charts in the Individual Country Listings.

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626.3 Insurance and Indemnity

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626.322 Mexico, Great Britain, and Countries in the EU

Packages sent through standard service to Mexico, Great Britain, and countries in the EU are insured against loss, damage, or rifling at no additional cost. Indemnity payments are subject to the provisions of DMM S500. Standard service packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay.

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626.4 Customs

626.41 Customs Forms

All necessary customs forms are automatically generated by the Postal Service's GPL computer system. The Postal Service will print the necessary customs forms and affix them to the mailer's packages after it scans the mailer-printed barcode on each package and correlates the barcode with the package-specific information transmitted electronically.

626.42 Customs Clearance

The customs preadvisory system (CPAS) electronically collects package-specific data to facilitate customs requirements in the destination country. For all destination countries except China, Japan, Hong Kong, and Singapore, CPAS electronically advises agents in the destination country of the contents of each package and determines the duties and taxes for each item in the package. Recipients of merchandise must designate the Postal Service and its agents as the recipients' agents for customs clearance.

626.421 Customs Clearance Services

CPAS determines the applicable duties and taxes due in each destination country for each item based upon the international Harmonization Tariff Schedule (HTS) code-assigned to each item mailed in a package. The Postal Service will provide the destination country customs agency with the HTS codes and applicable duties and taxes for each item.

626.422 Information Provided by the Mailer

Prior to the first mailing, the mailer must provide to the Postal Service the following required information electronically (preferred) or printed copy and may provide the following optional information concerning the merchandise it will be sending:

a. Required information:

1. SKU and product name and description.
2. Country of origin of each item (required for all countries except Japan and GPL–EU countries).
3. Product composition and characteristics.
4. Catalog or product information sheets.

b. Optional information:

1. Existing full or partial HTS code for each item.
2. Customs description of each item.
3. The number of SKU items to be assessed duties and taxes.
4. Digitized pictures (for Europe).
5. Country of origin of each item for Japan and GPL–EU countries.

626.423 Payment of Customs Clearance Services Fees

a. In each calendar year, the Postal Service will assign, at no cost to the mailer, the HTS code and applicable duties and taxes for 2,500 items. For all additional items, the Postal Service will charge the mailer for this service in accordance with a binding written proposal provided to the mailer prior to commencing the customs clearance service. The Postal Service will base its estimate upon whether and to what extent the mailer provides the required and optional information in 626.422. The proposal will state the number of hours needed to complete the customs clearance service process before the first mailing. The Postal Service will charge the amount in the proposal unless the mailer fails to provide the information it promised or the number of items assessed duties and taxes differs from the number estimated by the mailer. In that event, the Postal Service will charge the mailer for the number of hours needed to complete the customs clearance process at the rate of $250 per hour.

b. If the customs clearance process has not been previously completed prior to a mailing, the Postal Service will provide one hour of customs clearance services each month at no additional charge. If the customs clearance process for such items takes more than one hour per month and the Postal Service has completed the process for more than 2,500 items, the Postal Service will charge the mailer for the number of hours needed to complete the customs clearance process at the rate of $250 per hour.

c. The mailer will pay the Postal Service for these services in a manner and within the time agreed to by the Postal Service and the mailer in the GPL Service Agreement.

626.43 Payment of Customs Duty

626.431 All Countries Except China, Japan, Hong Kong, and Singapore

For all countries except China, Japan, Hong Kong, and Singapore, the Postal Service will arrange payment of customs duty on behalf of the recipient at the time the merchandise enters the country of destination. Any banking costs or foreign exchange fees applicable to the customs payments will be charged to the mailer. The Postal Service will notify the mailer electronically of the amount of duty and fees paid, and the mailer will reimburse the Postal Service in a manner and within a time agreed between the mailer and the Postal Service. Because of the need to have funds available for customs at the time of clearance in Brazil, Chile, and Mexico, mailers must make an advance deposit prior to the first mailing to cover anticipated duties and taxes in addition to postage. For subsequent mailings, this account must be replenished by the mailer after the actual amount of duties and taxes are assessed. The mailer is responsible for collecting duties and taxes from the recipient. (This can be done when payment for the order is made.) For Mexico, GPL mailers will pay customs the day after the shipments arrive in customs, through a preauthorized automated clearinghouse debit program (ACH). GPL mailers must agree to allow the Postal Service to debit their designated bank account through the ACH debit program to pay these charges.

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626.432 China, Japan, Hong Kong, and Singapore

In China, Japan, Hong Kong, and Singapore any customs duties and fees will be collected from the recipient at the time of delivery.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–18075 Filed 7–17–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301014; FRL–6594–6]

RIN 2070–AB78

Trifloxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for trifloxystrobin regulated as trifloxystrobin and the free form of its acid metabolite CGA–321113 in or on almond nutmeat, almond hulls, dried hops cones, sugar beet roots, sugar beet tops, sugar beet dried pulp, sugar beet molasses, potato tubers, wheat grain, wheat forage, wheat hay, wheat straw, wheat bran, and aspirated grain fractions. Novartis Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301014, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301014 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7740 and e-mail address: giles-parker.cynthia@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301014. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 17, 1998 (63 FR 43937) (FRL–6018–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 8F4955 for tolerances by Novartis Crop Protection, Inc. This notice included a summary of the petition prepared by Novartis Crop Protection, Inc., the registrant. An amendment to the notice of filing was published in the **Federal Register** of August 26, 1999 (64 FR 46680) (FRL–6099–8) which revised proposed tolerance levels and added the metabolite CGA–321113. No comments were received in response to the amendment.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for combined residues of the fungicide trifloxystrobin and the free form of its acid metabolite CGA–321113, in or on almond nutmeat at 0.04 parts per million (ppm), almond hulls at 3.0 ppm, dried hops cones at 11.0 ppm, sugar beet roots at 0.1 ppm, sugar beet tops at 4.0 ppm, sugar beet dried pulp at 0.4 ppm, sugar beet molasses at 0.2 ppm, potato tubers at 0.04 ppm, fruiting vegetables at 0.5 ppm, wheat grain at 0.05 ppm, wheat forage at 0.3 ppm, wheat hay at 0.2, wheat straw at 5.0 ppm, and aspirated grain fractions at 5.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and

to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of trifloxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 on almond nutmeat at 0.04 ppm, almond hulls at 3.0 ppm, dried hops cones at 11.0 ppm, sugar beet roots at 0.1 ppm, sugar beet tops at 4.0 ppm, sugar beet dried pulp at 0.4 ppm, sugar beet molasses at 0.2 ppm, potato tubers at 0.04 ppm, fruiting vegetables at 0.5 ppm, wheat grain at 0.05 ppm, wheat forage at 0.3 ppm, wheat hay at 0.2, wheat bran at 0.15 ppm, and aspirated grain fractions at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The results of toxicity studies for trifloxystrobin are listed below:

1. *Subchronic-Feeding Study— Rat.* The No Observed Adverse Effects Level (NOAEL) was 500 ppm (30.6–32.8 milligrams/kilogram/day (mg/kg/day). Decreased body weight, hypertrophy of hepatocytes in males and pancreatic atrophy were observed at the Lowest Observed Adverse Effects Level (LOAEL) of 2,000 ppm (127–133 mg/kg/day).

2. *Subchronic-Feeding Study— Mouse.* The NOAEL was 500 ppm (76.9–110 mg/kg/day). Increased liver weights and necrosis of hepatocytes were observed at the LOAEL of 2,000 ppm (315–425 mg/kg/day).

3. *Subchronic-Feeding Study— Dog.* The NOAEL was 30 mg/kg/day. Increased liver weight and hepatocyte hypertrophy in males were observed at the LOAEL of 150 mg/kg/day.

4. *28–Day Dermal Toxicity Study— Rat.* The NOAEL was 100 mg/kg/day. Increased liver and kidney weight were observed at the LOAEL of 1,000 mg/kg/day.

5. *Developmental Toxicity Study— Rat.* The maternal NOAEL was 10 mg/kg/day. Decreased body weight gain and food consumption were observed at the maternal LOAEL of 100 mg/kg/day. The developmental NOAEL was 1,000 mg/kg/day. No developmental effects were observed. The developmental LOAEL was equal to or greater than 1,000 mg/kg/day.

6. *Developmental Toxicity Study— Rabbit.* The maternal NOAEL was 10 mg/kg/day. Decreased mean body weights and decreased mean body weight gain (compared to control), food consumption and efficiency were observed at the maternal LOAEL of 50 mg/kg/day. The developmental NOAEL was 250 mg/kg/day. Skeletal anomolies were observed at the Developmental LOAEL of 500 mg/kg/day.

7. *Reproductive Toxicity Study— Rat.* The parental NOAEL was 50 ppm (3.8 mg/kg/day). Decreased mean body weight and decreased mean weight gain (compared to control), decreased food consumption, and increased incidence of liver, kidney and spleen effects were observed at the parental LOAEL of 750 ppm (55.3 mg/kg/day). The reproductive NOAEL was 1,500 ppm (110.6 mg/kg/day). The reproductive LOAEL was greater than 1,500 ppm (110.6 mg/kg/day).

8. *Chronic-Feeding Study— Dog.* The NOAEL was 5 mg/kg/day. Increased clinical signs, increased liver weight and hepatocellular hypertrophy were observed at the LOAEL of 50 mg/kg/day.

9. *Carcinogenicity Study— Mouse.* The NOAEL was 300 ppm (39.4 mg/kg/day). Liver effects were observed at the LOAEL of 1,000 ppm (131.1 mg/kg/day).

10. *Chronic Toxicity/Carcinogenicity Study— Rat.* The NOAEL was 250 ppm (9.81–11.37 mg/kg/day). Decreased mean body weight and decreased mean body weight gain (compared to control) were observed at the LOAEL of 750 ppm (29.7–34.5 mg/kg/day).

11. *Gene Mutation Study— Salmonella.* Negative.

12. *Gene Mutation study— Chinese Hamster Cultured V–79.* Positive.

13. *Structural Chromosome Aberration-Micronucleus study— Mouse.* Negative.

14. *Structural Chromosome Aberration-Cytogenetics study— Chinese Hamster.* Negative.

15. *DNA Repair study-hepatocytes— Rat.* Negative.

16. *Acute Oral Neurotoxicity study— Rat.* The NOAEL and LOAEL could not be determined.

17. *Metabolism study—Rat.* The tissue half-lives ranged from 13 to 42 hours. The highest residues were found in liver, kidneys, spleen and blood. The parent compound was extensively metabolized to approximately 35 metabolites.

B. Toxicological Endpoints

The following endpoints were used in the the risk assessments for trifloxystrobin.

1. *Acute toxicity—Dietary Developmental Toxicity Study— Rabbits.* The developmental NOAEL was 250 mg/kg/day. The endpoint was an increase in fetal incidence of fused sternebrae 1#3 and 1#4 at a LOAEL of 500 mg/kg/day. The uncertainty factor (UF) was 100 based on intraspecies and interspecies variation. The acute reference dose (RfD) was 2.5 mg/kg/day; the acute population adjusted dose (aPAD) was 2.5 mg/kg/day. In the study selected, the developmental effects were presumed to occur after a single exposure. Since this is an *in utero* effect it is applicable only to the population subgroup, females 13+ years.

2. *Short- and intermediate-term toxicity— 28–Day Dermal Toxicity Study— Rats.* The systemic NOAEL was 100 mg/kg/day. The endpoint was an increase in liver and kidney weights at a LOAEL of 1,000 mg/kg/day.

3. *Long-term toxicity.* Long-term dermal exposure is not expected based on the proposed use pattern. Therefore, a long term dermal risk assessment was not performed.

4. *Chronic toxicity—Chronic Toxicity Study— Dogs.* The NOAEL was 5 mg/kg/day. The endpoint was an increased incidence of clinical signs, increased mean liver weight and hepatocellular hypertrophy at a LOAEL of 50 mg/kg/day. The UF was 100 for intraspecies and intraspecies variation. The chronic RfD was 0.05 mg/kg/day; the chronic PAD was 0.05 mg/kg/day. The chronic toxicity study in dogs was chosen for the chronic dietary risk assessment because the study is chronic and the systemic NOAEL is lower than that in the chronic rat study. Also, the toxic effects observed were seen in the chronic rat study and the multi-generation reproduction study in rats.

5. *Carcinogenicity.* Trifloxystrobin has been classified as a "not likely human carcinogen".

C. Exposures and Risks

1. *From food and feed uses.* Tolerances are being established for the combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 on the following commodities: almond nutmeat at 0.04 ppm, almond hulls at 3.0 ppm, dried hops cones at 11.0 ppm, sugar beet roots at 0.1 ppm, sugar beet tops at 4.0 ppm, sugar beet dried pulp at 0.4 ppm, sugar beet molasses at 0.2 ppm, potato tubers at 0.04 ppm, fruiting vegetables at 0.5 ppm, wheat grain at 0.05 ppm, wheat forage at 0.3 ppm, wheat hay at 0.2, wheat straw at 5.0 ppm, wheat bran 0.15 ppm, and aspirated grain fractions at 5.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM) detailed acute analysis estimates the distribution of single exposures for the overall U.S. population and certain subgroups. For this assessment, the only population subgroup of concern for acute dietary risk is Females 13 years and older. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989–1992 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of trifloxystrobin in the commodity supply. In conducting the acute dietary risk assessment, the Agency made highly conservative assumptions. One hundred percent of proposed crops are assumed to be treated with trifloxystrobin, and this is expected to result in an overestimate of dietary risk. Therefore, this acute dietary (food only) risk assessment should be viewed as a highly conservative risk estimate. Further refinement using anticipated residues or percent of crop treated data in conjunction with a Monte Carlo analysis would result in a lower dietary exposure estimate. In the DEEM acute analysis the proposed tolerances for combined residues of trifloxystrobin and CGA–321113 utilized < 1% of the aPAD for females 13–50 years.

ii. *Chronic exposure and risk.* In conducting the chronic dietary (food only) risk assessment, the Agency made highly conservative assumptions which resulted in an overestimate of human dietary exposure. One hundred percent of proposed crops are assumed to be treated with trifloxystrobin, and this is expected to result in an overestimate of dietary risk. Therefore, this chronic dietary (food only) risk assessment should be viewed as a highly conservative risk estimate. Further refinement using anticipated residues or percent of crop treated data would result in a lower dietary exposure estimate. Thus, in making a safety determination for these tolerances, EPA takes into account this highly conservative exposure assessment. The Agency is generally concerned with chronic exposures that exceed 100% of the chronic PAD (cPAD) or chronic RfD. The proposed trifloxystrobin tolerances were used to calculate the the exposure and risk estimate. The percentages cPAD utilized were 15% for all infants (< 1 year), 18% for children 1–6 years old, and 7.5% or lower for other population subgroups.

iii. *Cancer dietary risk from food sources.* Trifloxystrobin was classified as a "not likely human carcinogen." Therefore, a cancer risk assessment was not conducted.

2. *From drinking water.* EPA does not have monitoring data available to perform a quantitative dietary (drinking water) risk assessment for trifloxystrobin and the free form of its acid metabolite. In the absence of reliable, available monitoring data, EPA uses models to estimate concentrations of pesticides in ground-water and surface water. Drinking water estimates for the parent, trifloxystrobin, plus the free form of its acid metabolite CGA–321113, were generated by the Screening Concentration in Ground Water (SCI-GROW) model. Conservative assumptions were built into the ground water scenario used by the SCI-GROW model, such as assuming shallow ground water, coarse soils and high levels of irrigation. The estimate from SCI-GROW represents an upper bound on the concentration of trifloxystrobin in ground waters as a result of agricultural use.

The estimate for the parent, trifloxystrobin, using the SCI-GROW model is 0.006 part per billion (ppb). For the primary metabolite CGA–321113, the estimated value is 4.9 ppb. For risk assessment purposes, EPA used the estimates for the primary metabolite (and not a sum of parent plus metabolite) because the SCI-GROW model assumes 100% conversion from parent to CGA–321113.

Estimates of concentrations of trifloxystrobin and its metabolite in surface water were made using the generic expected environmental concentration (GENEEC) model. The peak estimate for the parent, trifloxystrobin, using the GENEEC model, ranges from 5.29 to 5.56 ppb. The 56–day average for the parent ranges from 0.64 to 2.97. For the primary metabolite, the peak estimate is 47.98 ppb, and the 56–day average estimate is 47.31 ppb. For risk assessment purposes, EPA used the estimates for the primary metabolite (and not a sum of parent plus metabolite) because the GENEEC model assumes 100% conversion from parent to CGA–321113.

A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit of a pesticide's concentration in drinking water in light of total aggregate exposure to that pesticide in food and through residential uses. A DWLOC will vary depending on the toxic endpoint, consumption and body weight. Different populations will have different DWLOCs. EPA uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, the DWLOC is used as a point of comparison against conservative model estimates of potential pesticide concentration in water. DWLOC values are not regulatory standards for drinking water. EPA has calculated DWLOCs for acute and chronic (non-cancer) exposure to trifloxystrobin and the primary metabolite CGA–321113 for the U.S. population and selected subgroups.

The DWLOC for acute risk is 75,000 µg/l for females 13–50 years. The DWLOCs for chronic exposure are 1,600 µg/l for the U.S. population, 430 µg/l for all infants, 1,400 µg/l for females 13–50 years, and 615 µg/l for children 1–6 years. The estimated concentrations of trifloxystrobin in ground water, 4.9 µg/l and surface water, 47 µg/l, are less than the DWLOCs as a contribution to acute and chronic exposure. The estimated concentrations of trifloxystrobin and its primary metabolite in ground and surface water are considered conservative estimates. Therefore, EPA concludes with reasonable certainty that residues of trifloxystrobin in food and drinking water would not result in an unacceptable estimate of acute or chronic (non-cancer) aggregate human health risk.

3. *From non-dietary exposure.* Trifloxystrobin, is proposed for use on the following residential non-food sites: turfgrass and ornamentals. There are no homeowner uses of trifloxystrobin

proposed, but residential lawns are listed on the label as sites which may be treated by a professional pesticide applicator. Therefore, risk assessments (dermal and oral) were conducted for adults and children who may be exposed to trifloxystrobin after application by a professional pesticide applicator. Short and intermediate-term post-application residential risk estimates do not exceed EPA's level of concern, Margins Of Exposure (MOE) range from 760 to 300,000. Acute and chronic aggregate risk (food plus water) estimates do not exceed EPA's level of concern. Short- and intermediate-term aggregate risk estimates also do not exceed EPA's level of concern.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Trifloxystrobin belongs to a new class of fungicides, the MAEs (beta-methoxyacryl esters), which are synthetic analogs of strobilurin A, an antifungal secondary metabolite of the fungus *Strobilurus tenacellus*. Trifloxystrobin works by interfering with respiration in plant pathogenic fungi. The site of action of strobilurin compounds is located in the mitochondrial respiration pathway between cytochromes b and c1 at the level of the hydroquinone binding site. As a result of this mode of action, trifloxystrobin is a potent inhibitor of fungal spore germination and mycelial growth. Trifloxystrobin can be referred to more specifically as an oximinoacetate.

EPA does not have, at this time, available data to determine whether trifloxystrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that trifloxystrobin has a common mechanism of toxicity with other substances. For information regarding EPA efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL. start

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* To calculate acute aggregate dietary risk, high-end exposures from food and drinking water sources are compared to the acute PAD. Exposure to trifloxystrobin residues and the free form of its acid metabolite, CGA–321113 in food will occupy no more than < 1% of the acute PAD for females 13–50 years. Acute dietary risk from food was calculated for females 13–50 years because the endpoint upon which the acute PAD is based is on developmental effects. Residue levels used for food-source dietary risk assessments were very conservative: proposed tolerance levels were used, and 100% crop treated was assumed, with no refinements. Acute dietary exposure estimates were calculated for the 95th percentile. Estimated drinking water levels were calculated using drinking water models (SCI-GROW and GENEEC)). Estimated concentrations of trifloxystrobin residues in surface and ground water are lower than EPA's DWLOCs. Therefore, EPA does not expect acute aggregate risk to trifloxystrobin residues from acute food and drinking water sources to exceed EPA's level of concern for acute aggregate risk.

2. *Chronic risk.* Exposure to trifloxystrobin and the free form of its acid metabolite, CGA–321113 residues in food will occupy no more than 3.5% of the chronic PAD for adult population subgroups (females 13–50 years) and no more than 18% of the chronic PAD for infant/children subgroups (highest subgroup: children 1–6 years). Residue levels used for food-source dietary risk assessments were not refined and did not incorporate percent of crop treated. Estimated concentrations of trifloxystrobin residues in surface and ground water are lower than EPA's DWLOCs. Estimated drinking water levels were calculated using drinking water models. Chronic residential exposure of trifloxystrobin is not expected. EPA does not expect chronic aggregate risk to trifloxystrobin residues from food, water and residential sources to exceed EPA's level of concern for chronic aggregate risk.

3. *Short-term risk.* To calculate short-term aggregate risk, high-end residential risk (oral) is combined with chronic food and drinking water risks. Since trifloxystrobin causes the same toxic effects but different NOAELs were found across different routes, risks for food, drinking water and residential exposure paths are combined to estimate short-term risk. Based on EPA's short-term aggregate risk calculation, EPA does not expect short-term aggregate risk to trifloxystrobin residues from food, water and residential sources to exceed EPA's level of concern for short-term aggregate risk.

4. *Intermediate-term risk.* To calculate intermediate-term aggregate risk, high-end residential risk (oral) are combined with chronic food and drinking water risks. Since trifloxystrobin causes the same toxic effects but different NOAELs were found across different routes, risks for food, drinking water and residential exposure paths are combined to estimate intermediate-term risk. Based on EPA's intermediate term aggregate risk calculation, EPA does not expect intermediate-term aggregate risk to trifloxystrobin residues from food, water and residential sources to exceed the EPA's level of concern for intermediate-term aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Not applicable. There is no evidence of carcinogenicity.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

EPA determined the 10x safety factor for the protection of infants and children should be removed. Based on the following:

1. The toxicology database is complete for FQPA assessment.

2. There is no indication of increased susceptibility of rat or rabbits to trifloxystrobin. In the developmental and reproductive toxicity studies, effects in the fetuses/offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

3. It was determined that a developmental neurotoxicity study in rats is not required.

4. The exposure assessments will not underestimate the potential dietary (food and drinking water) or nondietary exposures for infants and children from the use of trifloxystrobin.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. *For plants.* EPA determined that the qualitative nature of the residue in plants is adequately understood for almonds, hops, fruiting vegetables, tuberous and corm vegetables, and sugar beets based on acceptable studies conducted on apples, cucumbers, peanuts and a supplementary study on

wheat and that these plant commodities are of concern for both regulatory and risk assessment purposes. EPA concluded that additional metabolism studies would be needed to support registration of trifloxystrobin and the free form of its acid metabolite CGA–321113 on wheat.

2. *For animals.* The EPA determined that the qualitative nature of the residue in animals is adequately understood based on acceptable studies conducted in goats and laying hens. It was determined that the total toxic residues for animals, both for regulatory and risk assessment purposes, is trifloxystrobin and the free form of its acid metabolite CGA–321113. Additionally, the liver contribution for metabolite L7a (taurine conjugate of trifloxystrobin) is to be included for risk assessment purposes, assuming equal toxicity as trifloxystrobin.

B. Analytical Enforcement Methodology

EPA has completed a method validation of AG–659A on apples, wet apple pomace, grapes, summer squash, peanut hay, peanuts, cow liver, cow milk and raisins, and concluded that AG–659A is suitable for enforcement of trifloxystrobin and the free form of its acid metabolite in plant and animal commodities. Method AG–659A is the proposed analytical method for the enforcement of trifloxystrobin in plant and animal commodities. It supersedes Method AG–659. Compared to AG–659, AG–659A also includes extractability and accountability of ^{14}C-CGA–279202 in animal matrices, minor changes, and suggestions resulting from the independent laboratory validation (ILV) to improve the ruggedness of the method. Method AG–659A has been validated by the petitioner for both trifloxystrobin and its acid metabolite CGA–321113. This method adequately recovers residues of trifloxystrobin and CGA–321113, usually with a limit of quantitation (LOQ) of 0.02 ppm.

C. Magnitude of Residue

1. *Crop field trials.* The field trials were adequate in number, geographically representative, and reasonably reflected the proposed use patterns. In all cases, the tolerances EPA recommended were for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113.

i. *Almond.* EPA recommended for a 0.04 ppm tolerance in/on almond nutmeats and 3.0 ppm in/on almond hulls.

ii. *Fruiting vegetables.* Additional residue data would be needed to support future registrations for fruiting vegetables. In the interim, EPA recommended for a 0.5 ppm tolerance.

iii. *Hops.* EPA recommended for a 11.0 ppm tolerance in/on hops, dried cones.

iv. *Potato.* EPA recommended for a tolerance of 0.04 ppm (based on LOQs).

v. *Sugar beet.* EPA recommended for a 0.1 ppm tolerance on sugar beet roots and 4.0 ppm on sugar beet tops.

vi. *Wheat.* EPA recommended at 0.05 ppm on wheat grain, 0.3 ppm on wheat forage, 0.2 ppm on wheat hay, 5.0 ppm on wheat straw.

vii. *Aspirated grain fractions.* EPA recommended for a 5.0 ppm tolerance.

2. *Processed commodities.* In all cases, the tolerances EPA recommended were for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113.

i. *Sugar beet.* No concentration of residues occurred in refined sugar; no tolerance is required. EPA recommended a 0.2 ppm in molasses and 0.4 ppm in dried beet pulp.

ii. *Potato.* No concentration of residues occured in flakes and chips, and no tolerances are required. Residues for wet peel were lower than the tolerance level recommended for potato, hence, no tolerance for wet peel is required.

iii. *Tomato.* No concentration of residues occurred in puree; no tolerance is required. No tolerance on tomato paste is required, pending residue data reflecting the maximum application rate.

iv. *Wheat.* No concentration of residues occurred in germ, middlings, shorts, and flour. EPA recommended tolerance of 0.15 ppm on bran and 5.0 ppm on aspirated grain fractions.

3. *Residues in poultry and eggs.* Based on the poultry metabolism study, EPA concluded that finite residues of trifloxystrobin are not expected in poultry commodities. Thus, poultry feeding data and tolerances for poultry commodities are not required at this time.

4. *Residues in meat and milk.* A dairy cattle feeding study was conducted at levels equivalent to 2, 6, and 20 ppm in the diet (mg/kg diet on a dry weight basis). Because the highest feeding level was only 3–4x the calculated maximum theoretical dietary burden (6.2 ppm, beef cattle; 4.9 ppm, dairy cattle) and because residues of trifloxystrobin and the acid metabolite CGA–321113 were detected in fat at this feeding level, EPA concluded that animal commodity tolerances were needed. Based on LOQs each for parent and CGA–321113 of 0.01 ppm for milk and 0.02 ppm for other animal commodities, EPA has established a 0.02 ppm LOQ tolerance for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 in milk and a 0.05 ppm combined residue tolerance for the meat, fat and meat byproducts of cattle, goats, hogs, horses and sheep. For risk assessment purposes only, 0.1 ppm trifloxystrobin-equivalent residue is used for liver. This value is based on the sum of the liver contribution of metabolite L7a (estimated at ca 0.05 ppm trifloxystrobin equivalent, adjusted to a 1x feeding level from the goat metabolism study, TFMP–^{14}C label) plus that of the recommended 0.05 ppm tolerance for the combined residues of trifloxystrobin and CGA–321113 in meat byproducts.

D. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) established for trifloxystrobin. Harmonization is thus not an issue at this time.

E. Rotational Crop Restrictions

An acceptable confined rotational crop study was submitted. The predominant metabolite, trifluoroacetic acid, is not of concern at the (≤ 0.2 ppm) levels reported. Quantifiable residues (≥ 0.02 ppm) of trifloxystrobin and CGA–321113 are not expected in/on crops rotated at a 30–day plantback interval. Nonetheless, the petitioner did submit new data on field accumulation in rotational crops. Trifloxystrobin (as CGA–279202 50 WG) was applied to squash or cucumbers as a post-foliar spray four times at 7–day intervals at 0.25 lb active ingredient/acre (ai/A/) application for a maximum rate of 1.0 lb ai/A/season. The last application occurred on the day of primary crop harvest. Rotational crops were planted 30–31, and 120 days after the last application. The following rotational crops were planted: leaf lettuce, turnips, and wheat. Crops were grown under normal agricultural conditions. Samples of the appropriate RACs were collected at normal harvest maturity, frozen, and maintained frozen (approximately -20° C) until analysis using method AG–659A. The LOQ for both analytes were 0.02 ppm. Residues of trifloxystrobin and its acid metabolite CGA–321113 were all less than the LOQ in all crops planted at 30–31 days after the last application. The revised draft Flint® label (EPA Reg. 100–919) proposes a 30–day plantback restriction for crops not listed on the label and would permit treated areas to be replanted immediately following harvest with any crop listed on the label (pome fruits, grapes, cucurbit vegetables, almonds, fruiting vegetables, hops, potatoes, sugar

beets, and wheat). For the Stratego® labels, celery, cereals, corn, pineapple, and sugarcane may be replanted 30 days after the last application; for all other crops, a 105–day plantback interval must be observed. The proposed plantback restrictions for Flint® and Stratego® are adequate and no rotational crop tolerances need to be proposed, provided that rotational crop restrictions of the Stratego® labels are compatible with those of the propiconazole labels.

V. Conclusion

Therefore, tolerances are established for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 in/on almond nutmeat at 0.04 ppm, almond hulls at 3.0 ppm, dried hops cones at 11.0 ppm, sugar beet roots at 0.1 ppm, sugar beet tops at 4.0 ppm, sugar beet dried pulp at 0.4 ppm, sugar beet molasses at 0.2 ppm, potato tubers at 0.04 ppm, fruiting vegetables at 0.5 ppm, wheat grain at 0.05 ppm, wheat forage at 0.3 ppm, wheat hay at 0.2, wheat straw at 5.0 ppm, wheat bran 0.15 ppm, and aspirated grain fractions at 5.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301014 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 18, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A. of this preamble, you should also send a copy of your request to the PIRB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–301014, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established EPA, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any

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unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.555 is amended by alphabetically adding the following entries to the table in paragraph (a) to read as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	3.0
Almond, nutmeat	0.04
* * * * *	
Aspirated grain fractions	5.0
* * * * *	
Fruiting vegetables	0.5
* * * * *	
Hops, dried cones	11.0
* * * * *	
Potato, tubers	0.04
* * * * *	
Sugar beet, dried pulp	0.4
Sugar beet, molasses	0.2
Sugar beet, roots	0.1
Sugar beet, tops	4.0
Wheat, bran	0.15
Wheat, forage	0.3
Wheat, grain	0.05
Wheat, hay	0.2
Wheat, straw	5.0

* * * * *

[FR Doc. 00–18100 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301015; FRL–6594–8]

RIN 2070–AB78

Vinclozolin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on the raw agricultural commodities: succulent beans at 2.0 parts per million (ppm); canola at 1.0 ppm; eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and in the meat, fat, and meat byproducts of poultry at 0.1 ppm. These tolerances will expire and are revoked on September 30, 2003. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301015, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301015 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection

Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301015. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 21, 2000 (65 FR 78) (FRL–6555–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 0F6079) for tolerances by BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by BASF Corporation, the registrant. In addition, on June 2, 2000, the Agency added a supplemental notice of filing to the docket which summarized the toxicity and risk associated with the proposed tolerances. The Agency received comments from the Natural Resources Defense Council (NRDC), Earthjustice Legal Defense Fund (EJLDF), and BASF Corporation. The comments from outside parties are summarized in Unit IV below, followed by the Agency's response.

The petition requested that 40 CFR 180.380 be amended by establishing tolerances for combined residues of the fungicide vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety, in or on succulent beans at 2.0 ppm and canola at 1.0 ppm. The petition was later amended to request tolerances on eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm and in the meat, fat, and meat byproducts of poultry at 0.1 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of vinclozolin in or on succulent beans at 2.0 ppm; canola at 1.0 ppm; eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and the meat, fat, and meat byproducts of poultry at 0.1 ppm. EPA's assessment of the exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by vinclozolin are discussed in this unit.

1. *Acute toxicity.* A battery of acute toxicity studies placed technical vinclozolin in toxicity category IV for acute oral toxicity (LD_{50} of > 10,000 mg/kg), and acute inhalation toxicity (LC_{50} of 29.1 mg/l); and toxicity category III for acute dermal toxicity (LD_{50} of > 5,000 mg/kg). Technical vinclozolin caused minimal eye and dermal

irritation and the technical material is positive for skin sensitization.

2. *Chronic toxicity.* i. A 1–year chronic feeding study in dogs fed dosages of 0, 1.1, 2.4, 4.9, and 48.7 mg/kg/day with a No-Observed-Adverse-Effect Level (NOAEL) of 2.4 mg/kg/day based on the following effects: (1) Slight decrease in hematological and increase in clinical chemistry values in the 48.7 mg/kg/day dose group (highest dose tested—HDT); (2) increased absolute and/or relative weights for the testes (male only), adrenal, liver, spleen, and thyroids in the 4.9 or 48.7 mg/kg/day dose groups; (3) a dose-related atrophy of the prostate in the 4.9 or 48.7 mg/kg/day dose groups; and (4) microscopic findings in the adrenal and testes (males) in the 48.7 mg/kg/day dose group and liver findings for both male and female dogs in the 48.7 mg/kg/day dose groups and in the females in the 4.9 mg/kg/day dose group, only.

ii. A combination of two chronic feeding studies and one carcinogenicity study resulted in rats being fed combined dosages of 0, 1.2, 2.4, 7.0, 23, 71, 143, and 221 mg/kg/day (males) and 0, 1.6, 3.1, 7.0, 23, 71, 180, and 221 mg/kg/day (females) with a NOAEL of 1.2 mg/kg/day (males) and 1.6 mg/kg/day (females) based on the following effects: (1) Decreased body weights in both male and female rats at dose levels ≥ 23 mg/kg/day with a progression of severity to the upper levels; (2) decreased food consumption in both male and female rats at dose levels ≥ 71 mg/kg/day with a progression of severity to the upper dose levels; (3) cataracts with associated histopathology at dose levels ≥ 23 mg/kg/day and lenticular changes at dose levels ≥ 7.0 mg/kg/day for male and female rats; (4) hematological and clinical chemistry value changes at dose levels ≥ 71 mg/kg/day with increase of severity at the higher doses tested; (5) increased absolute and/or relative weights for adrenal at dose levels ≥ 143 mg/kg/day, for the liver at dose levels ≥ 71 mg/kg/day, for the testes at dose levels ≥ 23 mg/kg/day, and for the ovaries at dose levels ≥ 143 mg/kg/day; (6) microscopic findings were observed in the liver, adrenal, pancreas, testes (males), ovaries and uterus (females) at dose levels of ≥ 7.0 mg/kg/day with a progression of severity of histological effects in the upper dose levels; and (7) an increased incidence of neoplasms occurred at dose levels greater than the maximum tolerated dose (MTD) of ≥ 23 mg/kg/day in the liver, adrenal, pituitary, prostate (males), uterus (females), and ovaries (females) at dose levels ≥ 143 mg/kg/day. In the testes (males), Leydig cell adenomas were seen at the MTD for dose levels ≥ 23.0 mg/kg/day due to the anti-androgenic nature of vinclozolin.

3. *Carcinogenicity.* A carcinogenicity study in mice fed dosages of 0, 2.1, 20.6, 432, and 1,225 HDT mg/kg/day (males) and 0, 2.8, 28.5, 557, and 1,411 (HDT) mg/kg/day (females) with a NOAEL of 20.6 mg/kg/day (males) and 28.5 mg/kg/day (females) based on the following effects:

i. Increased mortality in the HDT as compared to controls;

ii. Decreased body weights and significant signs of clinical toxicity were observed in both male and female mice at the upper two dose levels with a progression of severity;

iii. Hematological and clinical chemistry value changes were observed at the highest dose tested;

iv. Increased absolute and/or relative weights for adrenal and liver were observed at the upper two dose levels, atrophic seminal vesicles and coagulation glands with reduction of the prostate (males) and atrophic uteri were observed at the upper two dose levels;

v. Microscopic findings were observed in the liver, adrenal, testes (males), ovaries and uterus (females), and related sexual organs in the upper two dose levels;

vi An increased incidence of neoplasms occurred at dose levels greater than the maximum tolerated dose (> 28.5 mg/kg/day) in the liver of female mice.

4. *Developmental toxicity.* i. In four developmental toxicity studies, vinclozolin was given orally from gestational day (gd) 6 through 19 as follows: Study 4—dose levels of 0, 15, 50, or 150 mg/kg/day; study 5—dose levels of 0, 50, 100, 200 mg/kg/day, study 6—dose levels of 0, 200, 400 mg/kg/day and study 8—dose levels of 0, 600, and 1,000 mg/kg/day. At the gd 20, the fetuses were evaluated.

Maternal toxicity was demonstrated at 600 and 1,000 mg/kg/day by the statistically significant increase in absolute and relative adrenal and liver weight in study 8. This was the only study where organ weights were determined. A maternal NOAEL could not be established and therefore, the study was not considered to demonstrate any extra sensitivity. No histology was conducted on the organs, but other studies have demonstrated lipid accumulation in the adrenals, and centrilobular cloudiness of the liver. In addition, a dermal developmental study has indicated adrenal and liver weight increases occurred at 180 mg/kg/day and higher. Statistically significant increases and decreases occurred in the body weight gain and in food consumption with no apparent dose relatedness in any of the studies. The relative efficiency of food utilization was too variable to be definitive.

Statistically significant male and female fetal body weight decrement occurred at 1,000 mg/kg/day. These weight decrements were considered test material related. A statistically significant decrease occurred in anogenital distance among male fetuses. The term pseudohermaphroditism was used to describe the effect because these males exhibited decreased anogenital distances, but exhibited superficially normal internal testes. The anogenital distance in male fetuses was statistically decreased at 50 mg/kg/day and higher in studies 4, 6, and 8. (The anogenital index was statistically significantly depressed at 150 mg/kg/day and higher). The anogenital distance and index were not determined in study 5. The response was dose related. Although the anogenital index was not statistically significantly depressed at 50 mg/kg/day, it was nominally depressed. Considering the significantly depressed anogenital distance at 50 mg/kg/day and higher and the nominally depressed anogenital index at 50 mg/kg/day, the NOAEL for this study was considered to be 15 mg/kg/day, the lowest dose tested (LDT). These results are consistent with hormonal or anti-hormonal effects from the test material.

Soft tissue examination of fetuses indicated that increased incidence occurred in dilated renal pelvis and hydro-ureter at 400 mg/kg/day in study 6. At higher dose levels in study 8, the incidence of dilated renal pelvis and hydro-ureter was nominally increased. The failure of the dilated renal pelvis, and hydro-ureter to be significantly increased in study 8 was attributed to the fewer litters used (7, 5, and 8 in controls, 600, and 1,000 mg/kg/day). The NOAEL for these renal effects is considered to be 200 mg/kg/day.

Skeletal examination of fetuses indicated increased incidence of accessory 14th rib at 400 mg/kg/day and in fetuses and litters at 600, and 1,000 mg/kg/day. These effects on the 14th rib may be related to dose administration. Evaluation of the Preliminary Study suggested a dose related increase in 14th ribs at these high dose levels. No other dose related effects were reported.

The developmental toxicity NOAEL was set at 15 mg/kg/day and the developmental LOAEL was 50 mg/kg/day based on decreased anogenital distance in males. Increased incidence of dilated renal pelvis, hydro-ureter, and accessary 14th rib may have occurred at 400 mg/kg/day and higher. The maternal toxicity LOAEL was < 600 mg/kg/day based on increases in absolute

and relative adrenal and liver weight. Organ weights were not determined at lower dose levels.

ii. A developmental study in rats via dermal exposure for 6 hours/day on intact skin with dosages of 0, 60, 180, and 360 mg/kg/day HDT had a developmental NOAEL of 60 mg/kg/day and a maternal NOAEL of 60 mg/kg/day based on the following: (1) Increased absolute liver weights at dose levels > 180 mg/kg/day; and (2) decreased anogenital distance and index at dose levels ≥ 180 mg/kg/day.

iii. A developmental study in rabbits via oral gavage resulted in dosages of 0, 20, 80, and 300 mg/kg/day HDT with a developmental NOAEL of 300 mg/kg/day and a maternal NOAEL of 300 mg/kg/day based on no signs of maternal or meaningful fetal toxicity observed at any of the dose levels mentioned.

iv. A second developmental study in rabbits via oral gavage resulted in dosages of 0, 50, 200, and 800 mg/kg/day HDT with a development toxicity NOAEL of 200 mg/kg/day and a maternal toxicity NOAEL of 50 mg/kg/day based on the following: (1) Severe maternal toxicity with simultaneous change in hematological values and high number of abortions at the HDT; and (2) increased absolute and/or relative weights for adrenal in the mid and high dose groups.

v. A two-generation rat reproduction study (consisting of two studies: Study A—dose levels of 0, 2.0 and 4.1 mg/kg/day; study B—dose levels of 0, 4.9, 29, 100, and 307 mg/kg/day) with a reproductive NOAEL of 4.9 mg/kg/day based on decreased epididymal weight and male's inability to mate at dose levels > 100 mg/kg/day and pup effects at 29 mg/kg/day; and with a parental NOAEL of 4.9 mg/kg/day based on general toxicity consistent with previous rat studies at levels > 29 mg/kg/day. Study A was performed to clarify an equivocal finding of decreased absolute and relative weight of the epididymides without any morphological correlation in the male FY and FZ generations in Study B. However, the Agency concluded that the effects at the 4.9 mg/kg/day dose level were minimal and considered sufficiently close to the NOAEL. The study is acceptable and the 4.9 mg/kg/day dose level was considered to be the NOAEL.

5. *Mutagenicity*. The following test/assays showed no evidence of mutagenic activity: Modified Ames Test (3 studies, point mutation); Host-Mediated Assay (point mutation); Mouse Lymphoma Test (point mutation); *In Vitro* CHO Cells (point mutation); *In Vitro* Cytogenetics—CHO Cells (Chromosome Aberrations); *In Vivo* Dominant Lethal Test—Male NMRI Mouse (Chromosome Aberrations); Rec Assay (2 test, DNA damage and repair); *In Vitro* UDS Test Using Hepatocyte (DNA damage and repair); and *In Vivo* SCE Using Chinese Hamster (DNA damage and repair).

6. *Mechanistic studies-anti-androgenicity activity*. A series of mechanistic studies (*In Vivo* and *In Vitro*) were conducted to define the anti-androgenic properties of vinclozolin. The results of these studies showed that vinclozolin elicits the anti-androgenic effects by binding to androgen sensitive organs.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA selected the NOAEL of 6 mg/kg/day (adjusted for a single dose) from a developmental toxicity study in rats based on decreased ventral prostate weight in male offspring observed at the adjusted LOAEL of 11.5 mg/kg/day. The endpoint is the most sensitive indicator of acute anti-androgenic developmental toxicity. The population subgroup of concern is females (13+) because the endpoint is an *in utero* effect applicable only to females of childbearing age. An uncertainty factor of 100 was used to account for interspecies extrapolation and intraspecies variation. On this basis, the acute reference dose (aRfD) is 0.06 mg/kg/day. EPA determined that a 10X FQPA safety factor is applicable, and the margin of exposure (MOE) for the population subgroup of concern, females (13+) is 1,000X. The acute population adjusted dose (aPAD) is 0.006 mg/kg/day. An acute dose and endpoint were not identified for other population subgroups.

2. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for vinclozolin at 0.012 mg/kg/day. This RfD is based on a NOAEL of 1.2 mg/kg/day from the combined chronic toxicity/carcinogenicity study in rats in which histopathological lesions occurred in the lungs and livers of male rats, in ovaries of females, and in the eyes of both sexes at the LOAEL of 2.3 mg/kg/day. An uncertainty factor of 100 was used to account for interspecies extrapolation and intraspecies variation. A 10X FQPA safety factor was added resulting in a cPAD of 0.0012 mg/kg/day.

3. *Short- and intermediate-term toxicity*. For short- and intermediate-term dermal and inhalation toxicity, the NOAEL of 3 mg/kg/day from a rat developmental toxicity study was selected for the population subgroup of concern, females (13+). The LOAEL of 6 mg/kg/day was based on decreased ventral prostate weights. For short- and intermediate-term dermal and inhalation toxicity, the NOAEL of 5 mg/kg/day from a rat developmental toxicity study was selected for the population subgroup of concern, infants and children. The LOAEL of 15 mg/kg/day was based on delayed puberty. A dermal absorption factor of 25% was used to correct for route-to-route extrapolation (oral to dermal exposure) and a default inhalation absorption factor of 100% was assumed for oral to inhalation exposure. The MOE for females (13+), infants and children is 1,000X.

4. *Long-term dermal and inhalation toxicity (cancer and non- cancer)*. For chronic non-cancer and cancer dermal and inhalation toxicity, EPA selected the chronic NOAEL of 1.2 mg/kg/day from the combined rat chronic toxicity/carcinogenicity study in which histopathological lesions occurred in the lungs and livers of male rats, in ovaries of females, and in the eyes of both sexes at the LOAEL of 2.3 mg/kg/day. The Q_1 * calculated in a low-dose linear extrapolation is 2.9×10^{-1} $(mg/kg/day)^{-1}$. A dermal absorption factor of 25% was used to correct for route-to-route extrapolation (oral to dermal exposure) and a default inhalation absorption factor of 100% was assumed for oral to inhalation exposure. The cancer assessment includes not only the adult U.S. population but also infants and children as well.

5. *Carcinogenicity*. Vinclozolin is classified as a Group C carcinogen based on Leydig (interstitial testicular) cell tumors in a perinatal rat developmental toxicity study. A non-linear (MOE) approach was determined to be appropriate based on a weight-of-the-evidence conclusion that tumor induction is via an anti-androgenic mechanism. Prostate weight decreases occurred at the LOAEL of 6 mg/kg/day; the point of departure for use in the non-linear risk assessment is 3 mg/kg/day (NOAEL). EPA believes that use of the population adjusted dose (PAD) for overall anti-androgenic effects (0.0012 mg/kg/day) is also protective of cancer effects because it is protective of the anti-androgenic effects that are, in effect, precursors to tumor formation.

6. *Overall anti-androgenic effects*. The Agency has determined that use of the most sensitive regulatory toxicity endpoint and the highest uncertainty factor (UF) would be protective of the anti-androgenic effects on all population subgroups caused by vinclozolin including developmental/reproductive effects as well as carcinogenic effects. In the case of vinclozolin, the most sensitive toxicity endpoint/dose and UF

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are derived from the rat oral chronic/carcinogenicity study, i.e., the NOAEL of 1.2 mg/kg/day and an UF of 1,000. The PAD of 0.0012 mg/kg/day was used in assessment of risks resulting from the anti-androgenic activity of vinclozolin.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.380) for the combined residues of vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety, in or on the following raw agricultural commodities: Belgian endive tops, cucumbers, wine grapes, kiwi fruit, head and leaf lettuce, dry bulb onions, bell peppers, raspberries, stone fruit (except plums/fresh prunes), and strawberries. There are no U.S. registered vinclozolin products for use on wine grapes, cucumbers, and peppers, and the current tolerances for these commodities are for imported commodities only. In addition, as a risk mitigation measure, BASF requested deletion of the strawberry and stone fruit uses from their vinclozolin label on June 30, 1998. The Agency published a **Federal Register** notice announcing the use deletion on July 30, 1998, (63 FR 40710) (FRL–6020–9) and under the existing stock plan, vinclozolin could be used on strawberries and stone fruit until January 30, 2000. Revocation of the stone fruit and strawberry tolerances are expected in the near future.

To further mitigate risk associated with the use of vinclozolin, the Agency is considering a proposal submitted by the registrant which includes the following items to occur over the next 5 years: A phase out of all domestic food uses of vinclozolin except for the use on canola, and the reinstatement of the snap bean tolerance for a period of 5 years; revocation of all import tolerances except for wine grapes to cover residues in wine; future phase out of use on sod farms resulting in the remaining turf use limited to golf courses; and voluntary cancellation of use on ornamental plants. In addition as a short-term risk reduction measure, label amendments were approved on June 14, 2000 to add a 24–day pre-harvest interval for sod harvested for residential uses.

The Agency has been petitioned by BASF Corporation to establish tolerances on the following commodities: Succulent beans; canola; eggs, milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and fat, meat, and meat byproducts of poultry. Risk assessments were conducted by EPA to assess dietary exposure from vinclozolin as a result of all current tolerances (excluding stone fruit and strawberries) and all proposed tolerances. Strawberries and stone fruit were excluded because the use of vinclozolin on these crops was deleted and significant residues are not expected to occur in these crops as the latest possible use of vinclozolin under the existing stocks plan was January 30, 2000.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT data for domestic crops and percent of imported crop treated (PICT) data for all imported crops. Data on stone fruits and strawberries were not included as the uses have been deleted from labels. For the acute analysis, the estimated maximum PCT was used and for the chronic analyses, the weighted average PCT was incorporated.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimate. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which the pesticide may be applied in a particular area.

The dietary (food only) risk assessments used anticipated residues from field trial data which EPA believes are very conservative for the following qualitative reasons: (1) Field trial data assumes that all crops are treated at the maximum application rate and harvested at the minimum pre-harvest interval (PHI). In practice, crops are sometimes treated at lower application rates and harvested at longer PHI's leading to lower residues in the crops; (2) Field trial data assumes no decline between harvest and consumption of the crop. However, residues of vinclozolin will decline between harvest and consumption. Data are not available to

quantify the extent of this decline; (3) Home "processing" was not accounted for in the risk assessment. Practices such as washing, peeling, and cooking could lead to significantly lower residues than those from field trial data; and (4) For the acute dietary risk assessment, the vinclozolin metabolites of greatest concern are those closely related to the parent compound. Use of field trial data in the acute dietary assessment assumes that all residues have structures closely related to the parent compound and that they all elicit the developmental effects of concern. In reality, many metabolites convertible to 3,5-DCA may have structures different from the parent such that they are not of acute concern.

Although EPA cannot quantify for vinclozolin the combined residue reduction from the factors identified above, for many pesticides the difference in residues between field trial and monitoring data can be an order of magnitude 10X or more. The registrant is submitting processing (washing/cooking) studies which could allow for further future refinement of the dietary risk assessment.

The Dietary Exposure Evaluation Model (DEEM®), which incorporates consumption data generated in USDA's Continuing Surveys of Food Intakes by Individuals (CSFII), 1989–1992 was used to conduct the dietary risk assessments. For refined acute dietary risk assessments, the entire distribution of consumption events for individuals is multiplied by the distribution of residues to obtain a distribution of exposures in mg/kg/day. This is a probabilistic analysis, referred to as a "Monte Carlo" analysis and the risk is reported at various percentiles of exposure. For chronic dietary risk assessments, the 3–day average of consumption for each population subgroup is combined with residues in commodities to determine average exposure in mg/kg/day.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The acute dietary exposure estimates for the only population subgroup of concern (taking into account the toxicological studies on vinclozolin), females (13+), utilized the following percentage of the aPAD (0.006 mg/kg/day) at the various percentiles of exposure as indicated: 120% of the aPAD at the 99.9th percentile; 98% of the aPAD at 99.85th percentile; 83% of the aPAD at the 99.8th percentile; 73% of the aPAD at the 99.75th percentile; 60% of the aPAD at the 99.6th percentile; and 49% of the aPAD at the 99.5th percentile. Because the anticipated residues are based on field trial data and are conservative estimates (i.e. they overestimate residue levels), the Agency believes that basing its exposure estimate on the very upper ranges of potential exposure (the 99.5th and above) will unreasonably overestimate exposure. Considering this factor in choosing a population percentile of exposure that is adequately protective was explicitly discussed in EPA's policy on the use of population percentiles of exposure in acute risk assessments. U.S. EPA (Office of Pesticide Programs), "Choosing A Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern" (March 2000). In addition, as part of the reregistration process for vinclozolin, the registrant is proposing to further reduce the dietary exposure to vinclozolin, and the Agency may request future tolerance revocations for certain commodities as well. The very conservatively estimated acute dietary risk (food only) does not exceed the Agency's level of concern.

ii. *Chronic exposure and risk.* The chronic dietary exposure estimates expressed as a percentage of the cPAD (0.0012 mg/kg/day) were 4% for the U.S. population and 7% for the most highly exposed population subgroup, children (1–6 years old). EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Therefore, the chronic dietary risk (food only) does not exceed the Agency's level of concern.

iii. *For cancer and anti-androgenic risk assessment.* EPA believes that vinclozolin should be classified as a Group C carcinogen. The cancer risk assessment included both the U.S. population and infants and children. EPA believes the key concern for infants and children exposed to vinclozolin is the potential for developmental/reproductive effects related to the anti-androgenic properties of vinclozolin. In addition, the possibility of increased incidence of testicular Leydig cell tumors in adults as a result of exposure to vinclozolin as infants or children cannot be ruled out. However, due to the relationship between vinclozolin's anti-androgenic properties and its carcinogenic effects, the Agency believes protecting against the anti-androgenic effects would also be protective against potential carcinogenic effects to all population subgroups (including infants and children).

Accordingly, the cPAD will be protective against potential carcinogenic effects as well as the developmental/reproductive effects. The cPAD already incorporates the full, additional 10x safety factor for the protection of infants and children (i.e., it is derived from the NOAEL of 1.2 mg/kg/day with an MOE of 1,000 – 10x for intraspecies extrapolation; 10x for interspecies variation; and 10x for FQPA). Since this approach (using the cPAD) would be more protective than the proposed POD for cancer risk assessment of 3 mg/kg/day, and includes an additional 10x factor for the protection of infants and children, a separate non-linear risk assessment for cancer is not necessary.

Exposure estimates expressed as a percentage of the anti-androgenic PAD (0.0012 mg/kg/day) were 4% for the general U.S. population and 7% for the most highly exposed population subgroup, children (1–6 years old). In addition, as a point of comparison, the MOE was calculated to be 75,000 for the general U.S. population and 38,000 for children (1–6 years old).

2. *From drinking water.* In general, available monitoring data are of limited use because metabolite concentration measurements were not performed. For both surface water and groundwater, the sum of vinclozolin and its principal metabolites, assumed to degrade completely to 3,5-dichloroaniline (hereafter referred to as 3,5-DCA), have been used to assess the cancer risk associated with 3,5-DCA whereas vinclozolin per se has been used for the vinclozolin risk assessments.

In the absence of reliable, available monitoring data, EPA uses models to calculate the estimated environmental concentrations (EECs) of pesticides in ground and surface water. However, EPA does not use these model estimates to quantify risk. Currently, EPA uses DWLOCs as a surrogate to capture risk associated with exposure to pesticides in drinking water. A DWLOC represents the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses (if any). A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and the drinking water consumption patterns and body weights for specific population subgroups. The calculated DWLOC is compared to the model estimate (EEC), and if the model estimates are below the DWLOC, the risks are not considered to be of concern.

For estimating groundwater concentrations of vinclozolin and 3,5-DCA, EPA used the Screening

Concentration in Ground Water (SCI-GROW) model. The SCI-GROW model is based on scaled groundwater concentration from groundwater monitoring studies, and environmental fate properties (aerobic soil half-lives and organic carbon partitioning coefficients-Koc's). SCI-GROW provides a screening concentration which is an estimate of likely groundwater concentrations if the pesticide were used at the maximum allowed label rate in areas with groundwater vulnerable to contamination. In most cases, a majority of the pesticide use area will have groundwater that is less vulnerable to contamination than the areas used to derive the SCI-GROW estimate. Using SCI-GROW, the acute and chronic ground water EEC of vinclozolin per se is 0.53 parts per billion (ppb), and the acute and chronic ground water EEC of 3,5-DCA is 2.65 ppb.

For estimating surface water concentrations of vinclozolin and 3,5-DCA, EPA used tier II models, Pesticide Root Zone Model (PRZM) 3.12 and Exposuer Analysis Modeling System (EXAMS) 2.975, which assumed decline of parent vinclozolin and formation and decline of metabolites in a sequential degradation pattern in both field and pond such that degradation proceeds completely to 3,5-DCA. Vinclozolin per se is a major residue near application, but eventually the metabolites are the principal residues in both surface and drinking water. The metabolites are the only residues that are likely to be found in the environment except fairly soon after application. The scenario used in the model (application to onions in California) is the worst-case scenario for water modeling. A tier II EEC for a particular crop or use is based on a single site that represents a high exposure scenario for the crop or use. Weather and agricultural practices are simulated at the site for 36 years to estimate the probability of exceeding a given concentration (maximum concentration or average concentration) in a single year. Maximum EECs are calculated so that there is a 10% probability that the maximum concentration in a given year will exceed the EEC at the site; peak and chronic EECs were calculated so that there is a 10% probability the maximum average concentration for a given duration (4–day, 21–day, etc.) will equal or exceed the EEC at the site. This can also be expressed as an expectation that water concentrations will exceed EECs once every 10 years. The acute (peak) surface water EEC for vinclozolin is 5.68 ppb and for 3,5-DCA is 26 ppb. The chronic (annual mean) surface water EEC for vinclozolin is 0.165 ppb and for 3,5-DCA is 3.12 ppb.

i. *Acute exposure and risk.* For the population subgroup of concern, females (13+), the DWLOCs for vinclozolin per se at the various percentiles of exposure are as follows: 0 ppb at the 99.9th percentile; 4 ppb at the 99.85th percentile; 30 ppb at the 99.8th percentile; 47 ppb at the 99.75th percentile; 80 ppb at the 99.6th percentile; and 92 at the 99.5th percentile. At all but the very highest percentiles of exposure (99.85th and above), the DWLOC for vinclozolin per se is higher than the EEC of 5.68 ppb in surface water and 0.53 ppb in ground water. As explained above, given the level of refinement in the vinclozolin exposure estimate, EPA believes using the highest percentiles of exposure in estimating risk would unreasonably overstate risk. Therefore, EPA is reasonably certain that exposure to vinclozolin per se in drinking water will result in no harm.

ii. *Chronic exposure and risk.* The following chronic DWLOCs were calculated for vinclozolin per se: general U.S. population, 41 ppb; females (13+) 35 ppb; and children (1–6 years old), 11 ppb. The lowest DWLOC of 11 ppb for children 1–6 years old is higher than the EEC of 0.165 ppb in surface water and 0.53 ppb in ground water. Therefore, EPA is reasonably certain that exposure to vinclozolin in drinking water will result in no harm.

3. *From non-dietary exposure.* There are no vinclozolin pesticide products registered for use by homeowners. Therefore, there is no potential for homeowner handler exposure to vinclozolin pesticide products. Vinclozolin can, however, be occupationally used in a manner that may lead to post-application exposures to the general population, in particular, golfers playing on treated golf courses and homeowners and their families coming into contact with or playing on sod which was previously treated on a sod farm. A chemical-specific turf exposure study was used to measure human exposure as well as residue dissipation over time.

All residential exposures are considered to be short-/intermediate-term duration (i.e., 1 day to 1 week and 1 week to several months, respectively), and the same endpoint applies to both durations of exposure. As the endpoints selected are from oral toxicity studies (NOAEL of 3 mg/kg/day for females (13+)) and NOAEL of 5 mg/kg/day for infants and children, route-to-route exposure was corrected by applying a 25% dermal absorption factor and a 100% default inhalation absorption factor was assumed. A 100% safety factor was used and a 10X FQPA safety factor was added raising the Agency's level of concern to 1,000.

Post-application risks to the general population were considered for golfers following treatment of greens, tees, and fairways. Adult golfer exposures, women (13+), were less than the Agency's level of concern even on the day of application (MOE = 1,700). Given the magnitude of the MOE for adult women golfers, the Agency does not believe that the risks to child golfers would exceed the Agency level of concern either because the skin surface area/body weight ratio of the typical child golfer is similar to that of adults (within 15%). Therefore, the MOE for a child golfer is only slightly less than the MOE for adult golfers.

The exposure scenario used for toddlers playing on treated sod was the worst case scenario. The exposure scenario assumed that toddlers were playing on sod which had been treated with vinclozolin on a sod farm that same day, cut and laid in a residential setting. The MOE for toddlers is 33. This MOE represents an upper-bound exposure which includes dermal and non-dietary ingestion pathways (dermal exposure and hand-to-mouth oral exposure to grass and dirt). EPA has calculated that foliar dislodgeable residues on the sod decline such that risks fall beneath the Agency's level of concern 26 days after application (MOE = 1,100). To mitigate the unacceptable risk resulting from exposure before the 26–day period has elapsed; the registrant has proposed deletion of use on sod farms; amended the label to add a 24–day pre-harvest interval; and initiated the immediate restickering of all product in the channels of trade to require a 24–day period before sod can be harvested. It is assumed that, at a minimum, sod harvesting and replanting in a residential setting would take an additional 2 days; thereby, providing a total of 26 days for residues of vinclozolin to decline to an acceptable level. Although the Agency's level of concern is exceeded, EPA believes that these risk reduction measures when taken into consideration with the extremely conservative exposure scenario and exposure assumptions will immediately reduce the exposure such that it is below the Agency's level of concern.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative

effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Vinclozolin, procymidone, and iprodione are members of the imide group of the dicarboximide class of fungicides. Each of these three pesticides can metabolize to 3,5-DCA. FQPA requires EPA to estimate cumulative risk from consumption of food and water containing 3,5-DCA derived from vinclozolin, iprodione, and procymidone.

i. *Acute exposure and risk.* EPA has certain evidence that these compounds induce similar toxic effects but has not yet determined whether or not these compounds modulate androgens by a common mechanism of toxicity. In fact, there is evidence that iprodione does not share a common mechanism of toxicity as it disrupts the endocrine system by inhibiting androgen synthesis rather than competing for the androgen receptor as vinclozolin does. In addition, these three chemicals do not have any known metabolites/degradates in common with the possible exception of 3,5-DCA which is structurally and toxicologically different from the parent compounds and unlikely to be an androgen receptor antagonist.

EPA has, at this time, some data which suggests that vinclozolin and procymidone have a common mechanism of toxicity. An article published in *Toxicology & Industrial Health* (Vol. 15, ISS 1–2, 1999, page 80–93) which reports the findings by Dr. Earl Gray, National Health and Environmental Effects Research Laboratory, U.S. EPA, Research Triangle Park, NC, suggests that procymidone alters sexual differentiation in the male rat by acting as an androgen-receptor antagonist *in vivo* and *in vitro*. The Agency has yet to make a conclusion as to whether these data are sufficient to evaluate whether vinclozolin and procymidone have a common mechanism of toxicity. Within the next year, the Agency expects to reach a conclusion as to whether these data are sufficient to determine that vinclozolin and procymidone have a common mechanism of toxicity.

Even if it is assumed that vinclozolin and procymidone share a common mechanism of toxicity, EPA believes that it can still make the finding of reasonable certainty of no harm for vinclozolin because any cumulative risk resulting from adding procymidone residues in wine to vinclozolin exposure is unlikely to differ significantly from the risk of vinclozolin alone. This conclusion is based on a number of factors. The exposure assessment for vinclozolin estimates that vinclozolin exposure through wine grapes contributes < 2% of the total vinclozolin exposure. The percent of imported wine grapes that are treated with procymidone is similar to that of vinclozolin (estimated 10% of wine grapes treated with vinclozolin and 9.4% of wine grapes treated with procymidone), and therefore, the exposure pattern for these chemicals is similar. In addition, the exposure estimates conservatively assume that all wine bearing vinclozolin residues also contain procymidone residues. In all likelihood, wine grapes would be treated with either vinclozolin or procymidone but not both chemicals. Therefore, EPA believes that vinclozolin exposure and procymidone exposure through wine grapes would each add < 2% to the "cumulative exposure". As noted above, the acute food-only risk of vinclozolin is 83% of the aPAD at the 99.8th percentile of exposure, and the acute ground water EEC of 0.53 ppb and the acute surface water EEC of 5.68 ppb are lower than the drinking water DWLOC which is 30 ppb at the 99.8th percentile of exposure. EPA believes there is ultimately enough room in the risk cup to accommodate vinclozolin and procymidone risk, even, if in the future, EPA does determine that procymidone and vinclozolin share a common mechanism of toxicity.

ii. *Carcinogenic exposure and risk.* Since 3,5-DCA is not a registered pesticide, there is no FIFRA toxicology data base for this compound. EPA has used the Q_1* for *p*-chloroaniline (PCA) to assess the carcinogenicity (only toxicological endpoint identified for 3,5-DCA) for other structurally related chloroanilines. EPA's approach on chloroanilines is to consider chloroaniline metabolites to be toxicologically equivalent to PCA unless there is sufficient evidence that the metabolite is not carcinogenic. A Q_1* of 6.38×10^{-2} $(mg/kg/day)^{-1}$ has been calculated for *p*-chloroaniline based on the spleen sarcoma rate in male rats from a National Toxicology Program bioassay.

Exposure to 3,5-DCA was evaluated from the following sources: residues of vinclozolin- and iprodione-derived 3,5-DCA in food and wine, residues of procymidone-derived 3,5-DCA in imported wine, and 3,5-DCA residues in water from domestic agricultural uses of iprodione and vinclozolin. There are no U.S. registrations for procymidone. Therefore, an evaluation of exposure to procymidone-derived 3,5-DCA in water is not appropriate.

a. *Food risk*— (1) *From vinclozolin-derived 3,5-DCA residues.* Cancer risks were 5.1×10^{-7} for all crops, including strawberries and stone fruits. Cancer risks were 2.6×10^{-7} for all crops, excluding strawberries and stone fruits. Neither of these risks exceed the Agency's level of concern.

(2) From iprodione-derived 3,5-DCA residues. As stated in the July 1998 Iprodione RED, the cancer risk associated with 3,5-DCA derived from iprodione was 6×10^{-9}. This risk does not exceed the Agency's level of concern.

(3) *From procymidone-derived 3,5-DCA residues.* The cancer risk associated with 3,5-DCA in imported wine produced from grapes treated with procymidone was estimated to be 3.7×10^{-7}. This risk does not exceed the Agency's level of concern

b. *Drinking water risk*—(1) *From vinclozolin derived 3,5- DCA.* As stated previously, Tier II surface water EECs were generated using PRZM/EXAMS for 3,5-DCA. Onions grown in California were considered to be the worst-case scenario for water modeling. The highest chronic EEC is 3.12 ppb in surface water while the carcinogenic DWLOC for 3,5-DCA has been calculated to range from 0.47 ppb to 1.6 ppb. Therefore, the EEC exceeds the DWLOC indicating a potential for concern. The onion scenario was selected because this use site represents the highest maximum seasonal rate currently allowed on vinclozolin labels. However, the registrant has requested deletion of onions after this growing season (July 15, 2000). If the Agency accepts this request, this scenario is not appropriate for use in a carcinogenic risk assessment which represents life-time exposure.

Assuming acceptance of BASF's use deletion request, the carcinogenic DWLOC for 3,5-DCA (based on the commodities available for consumption after this use season) has been calculated to range from 0.46 ppb to 1.6 ppb. Using Tier II PRZM/EXAMS, the modeled EECs are 0.64 ppb for lettuce and 0.34 ppb for canola. The use site which represents the highest modeled exposure in drinking water is golf courses. Application to golf course turf is currently permitted on grass mowed at 1 inch or less. Using the Tier I generic expected environmental concentration (GENEEC) model, the Agency has calculated a chronic EEC of 0.29 ppb based on application to tees and greens and a chronic EEC of 2.33 ppb assuming application to tees, greens, and fairways. These EECs were the result of refinements to the GENEEC model. These refinements included the incorporation of an 87 percent crop area (PCA) factor as well as the percentage of the golf course that actually receives

pesticide treatment, bringing the resulting PCA factor down to 17%. It was assumed that tees and greens comprise 2.8% of the acreage of a golf course. When fairways are included, an additional 16.7% of the golf course is treated. The EEC of 2.33 ppb exceeds the DWLOC. In evaluating whether this EEC indicated a risk of concern EPA considered the following factors:

(i) The drinking water assessment on turf is based on GENEEC, a screening-level Tier I model. At present, PRZM-EXAMS, the Tier II model, does not have the appropriate parameters to accurately model turf runoff. Although GENEEC is not an ideal tool for use in drinking water risk assessments, it can provide high-end estimates of the concentrations that might be found in a confined pond of one hectare. Drinking water from surface water sources does not typically come from this type of scenario, but rather from bodies of water that are substantially larger than such ponds and from diverse watersheds. Unlike a confined pond, there is always some flow (in a river) or turn over (in a lake or reservoir) resulting in an over-estimation of the persistence of the chemicals near the drinking water utility intakes. Although a PCA of 17% was used to refine the model, the Agency recognizes that there are still uncertainties in the accuracy of the model to represent drinking water concentrations.

(ii) The GENEEC model uses the 56–day average of pesticide concentrations immediately after an event (application of pesticide). This short time-period may not adequately characterize a person's average daily exposure over a year, even more so, over a life time of 70 years.

(iii) The GENEEC model assumes that once in every 10 years the EEC will be exceeded. For the other 9 out of 10 years the level of residue in drinking water is likely to be below the EEC with at least one half of the years falling significantly below by a factor of 5 to 10. Therefore, a person may be exposed to the EEC once in every 10 years or a total of seven times during a lifetime of 70 years. The Agency believes the potential for such a lifetime exposure is minimal.

The first of these factors raises some concern because there is a possibility that GENEEC may underpredict residue levels although such underprediction would not be expected to be great. The second and third factors, on the other hand, could lead to a significant overstatement of drinking water exposure values. In light of all of these factors, EPA believes that it is likely there is no risk of concern from exposure to vinclozolin-derived 3,5-DCA.

Nonetheless, the exceedance of the DWLOC, based on a screening level model, does indicate a need to take steps to insure that exposures do not raise a risk of concern. Therefore, the Agency is considering requiring the registrants of vinclozolin and iprodione to submit targeted surface water monitoring studies. The studies would be used to compare the existing modeled results to the more accurate data. The Agency will also consider requiring BASF to develop a survey of golf course superintendents to obtain current information on actual vinclozolin use patterns. Estimates for turf use will be examined further pending receipt of better usage characterization data. Lastly, the Agency is considering requiring additional toxicological information on 3,5-DCA from the registrants of vinclozolin, iprodione and procymidone, including data for use in evaluating the carcinogenic potential of this metabolite.

(2) *Iprodione 3,5-DCA*. As stated in the RED, the DWLOC for 3,5-DCA derived from domestic uses of iprodione was estimated to be 0.55 ppb. The 3,5-DCA EEC in surface water associated with the use of iprodione alone was estimated to be 0.45 ppb. Thus, the iprodione derived 3,5-DCA carcinogenic DWLOC is not exceeded.

(3) *From procymidone 3,5-DCA*. There is no drinking water exposure because procymidone is not registered for use in the United States.

c. *Cumulative risk*. The cumulative, food-only cancer risk associated with 3,5-DCA derived from all three of these imide fungicides is 9.2×10^{-7} (includes stone fruit and strawberries) and the cumulative food-only cancer risk is 6.3×10^{-7} when stone fruit and strawberries are excluded. There is uncertainty in the above risk estimates in that a surrogate Q_1^* is being used for 3,5-DCA. However, due to the structural similarities of 3,5-DCA and *p*-chloroaniline (PCA), EPA believes that for 3,5-DCA, the use of the PCA Q_1^* represents an upper-bound estimate. The Agency is considering requiring registrants of vinclozolin, iprodione, and procymidone to provide additional toxicological information on 3,5-DCA including data for use in evaluating the carcinogenic potential. The cumulative, food-only cancer risk estimates are conservative and are considered to be a negligible cancer risk.

The 3,5-DCA DWLOC from all three imide fungicides (including canola, snap beans and those currently registered vinclozolin uses which are not being supported after this use season) ranges from 0.26 ppb to 1.4 ppb. The estimated concentration of 3,5-DCA in water from applications of iprodione (1998 iprodione RED) is 0.45 ppb and falls within the range of the aggregated DWLOC cited above. The estimated concentration of 3,5-DCA in water from applications of vinclozolin after this use season is estimated to range from 0.29 ppb to 2.33 ppb. As already stated, this range could potentially present a risk of concern based on the model, however, based on how the model estimates residue concentrations for cancer assessment, EPA believes that it is unlikely that a cancer risk of concern is present.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk*. The acute dietary (food only) risk does not exceed the Agency's level of concern at the percentiles of exposure up to the 99.8th percentile. Using anticipated residues, PCT data, and PICT data, the population subgroup of concern, females (13+) utilized 83% of the dietary (food only) aPAD at the 99.8th percentile of exposure. For drinking water, the EEC of 5.68 ppb in surface water and the EEC of 0.53 in groundwater did not exceed the DWLOC of 30 ppb at the 99.8th percentile of exposure.

2. *Chronic risk*. Using the exposure assumptions described above, EPA believes that aggregate dietary exposure to the U.S. population will use 4% of the cPAD and exposure to the most highly exposed population subgroup, children (1–6 year old) will use 7% of the cPAD. The chronic DWLOCs for vinclozolin were 41 ppb for the general U.S. population and 35 ppb for the most highly exposed population subgroup, women (13+). The chronic DWLOCs were higher than the chronic EEC of 0.53 ppb in ground water and 0.165 ppb in surface water. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. All residential exposures are considered to be short- and intermediate-term duration and since the same endpoint applies to both durations of exposures, the dermal and inhalation exposures must be aggregated together with the food and water exposures for each population subgroup

of concern, females (13+) and infants and children. The risks currently exceed the Agency's level of concern. However, when considering the conservative method of exposure estimations previously discussed, and the following risk mitigation measures (stone fruit and strawberry use deletion, and the immediate restickering of all vinclozolin products for sod farm use to include a 24–day period before harvesting), the MOE is ≥1,010 for aggregate risks to the population subgroups of concern, females (13+) and infants and children as well as the general U.S. population resulting from vinclozolin uses are not of concern. Therefore, the risks do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Because the overall anti-androgenic effects are a prerequisite for hyperplasia and tumor formation, and are considered to be protective of the potential carcinogenic outcome of exposure to the anti-androgenic vinclozolin and its metabolites, the overall anti-androgenic aggregate risk which are identical to the chronic aggregate risk. The chronic aggregate risks are presented. The chronic (non-cancer) aggregate risk was below the Agency's level of concern for food and drinking water sources of exposure. Chronic food-source risks were ≤7% of the cPAD when stone fruit and strawberries are excluded (uses have been canceled). Estimated environmental concentrations were compared to the chronic DWLOCs. The chronic EEC for residues of vinclozolin per se in ground water (0.53 ppb) was below the chronic DWLOCs for water consumption by adults (41 ppb for the general U.S. population and 35 ppb for females (13+)) and by children (11 ppb).

Cancer risks from vinclozolin derived 3,5-DCA were 2.6×10^{-7} for all crops, excluding strawberries and stone fruits. This risk does not exceed the Agency's level of concern. The 3,5-DCA DWLOC from all three Imide fungicides (including canola, snap beans and those currently registered vinclozolin uses which are not being supported after this use season) ranges from 0.26 ppb to 1.4 ppb. The 3,5-DCA EEC resulting from iprodione use is 0.45 ppb and falls with the range of the aggregated DWLOC cited above. The 3,5-DCA EEC resulting from vinclozolin use after this use season is estimated to range from 0.29 ppb to 2.33 ppb. As already stated, this range could potentially present a risk of concern based on the model, however, based on how the model estimates residue concentrations for cancer assessment, EPA believes that it is unlikely that a cancer risk of concern is present.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to vinclozolin residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of vinclozolin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children.

ii. *Prenatal and postnatal sensitivity.* The rationale for retaining the 10X FQPA safety factor is explained below:

a. There is evidence of increased susceptibility of offspring following *in utero* exposure to vinclozolin in the prenatal developmental toxicity study in rats.

b. A developmental neurotoxicity study in rats with an expanded protocol is required for vinclozolin as a result of concern for the anti-androgenic properties of vinclozolin and its metabolites.

iii. *Conclusion.* Based on the developmental and reproductive data for vinclozolin, EPA determined that an additional 10X safety factor for the protection of infants and children (as required by FQPA) should be retained.

2. *Acute risk.* No study with vinclozolin indicated that acute exposure to vinclozolin is likely to cause an adverse effect of concern on infants or children or the general public with the exception of the *in utero* effects on the developing fetus. Risks to the fetus are estimated by examining exposure to women of child-bearing age.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to vinclozolin from food will utilize 7% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since the EEC's for residues of vinclozolin per se are lower than the chronic DWLOC's, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* The short- and intermediate-term risks currently exceed the Agency's level of concern (MOE = 1,000). However, the Agency believes the exposure estimates are conservative, as previously discussed, and therefore, overestimate risk. When the following risk mitigation measures (stone fruit and strawberry use deletion, and the immediate restickering of all vinclozolin products for sod farm use to include a 24–day period before harvesting) are taken into consideration, the MOE is ≥ 1,010 for aggregate risks to infants and children resulting from use of vinclozolin. Therefore, the risks do not exceed the Agency's level of concern.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to vinclozolin residues.

IV. Response to Public Comments

A. Natural Resources Defense Council Comments

1. *Comment number 1.* NRDC argues that EPA is not authorized to use percent crop treated information in acute risk assessments. NRDC bases this argument on the fact that the provision explicitly addressing percent crop treated information, section 408(b)(2)(F), only mentions use of such information in chronic assessments.

Agency response. EPA disagrees with this interpretation of the FFDCA. FFDCA Section 408(b)(2)(D)(vi) directs EPA, in making tolerance decisions, to consider "available information concerning the aggregate exposure levels of consumers to the pesticide chemical residue." 21 U.S.C. 346a(b)(2)(D)(vi). This is a broad mandate that includes all manner of information bearing on exposure, not the least of which would be percent crop treated information. Thus, EPA believes that subsection (b)(2)(D)(vi) authorizes use of percent crop treated information in both acute and chronic risk assessments.

Congress explicitly addressed use of percent crop treated information in section 408(b)(2)(F) where it imposed certain conditions on EPA's use of

percent crop treated information in chronic risk assessments. Section 408(b)(2)(F) states:

> In establishing, modifying, leaving in effect, or revoking a tolerance for a pesticide chemical residue, the Administrator may, when assessing chronic dietary risk, consider available data and information on the percent of food actually treated with the pesticide chemical (including aggregate pesticide use data collected by the Department of Agriculture) only if the Administrator—
>
> (i) finds that the data are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide chemical residue;
>
> (ii) finds that the exposure estimate does not understate exposure for any significant subpopulation group;
>
> (iii) finds that, if data are available on pesticide use and consumption of food in a particular area, the population in such area is not dietarily exposed to residues above those estimated by the Administrator; and
>
> (iv) provides for the periodic reevaluation of the estimate of anticipated dietary exposure.

21 U.S.C. 346a(b)(2)(F) (emphasis added). Although this paragraph affirms the ability of EPA to use percent crop treated information for chronic dietary risk assessments, the clear thrust of this paragraph is to impose four limitations on the use of such information in chronic risk assessments (i.e. the limitations set forth in clauses (i)—(iv) following the "only if"). Because the limitations expressly apply only "when assessing chronic dietary risk", Congress did not impose any limitation on the authority in subsection (b)(2)(D)(vi) to consider percent crop treated for risk assessments that consider risks other than chronic ones (i.e. acute risks).

NRDC contends that subparagraph (F) impliedly bars EPA from relying on percent crop treated information for acute risk assessments under subparagraph (D)(vi) because subparagraph (F) only mentions chronic risk assessments. EPA, however, does not believe that the statutory silence on acute risk assessments in subparagraph (F) compels such an interpretation. In fact, the statutory structure suggests the converse conclusion. Subparagraph (F) clearly sets forth that percent crop treated information may be used in chronic risk assessments "only if" four conditions can be met. If Congress had intended that this provision limit EPA's general authority to consider percent crop treated information other than as applied to chronic risk assessments, the reference to chronic risk assessments should not have been included as part of the introductory clause but as one of the "only if" conditions. Failure to include it as one of the "only if" conditions suggests that Congress was merely setting out rules for chronic risk assessments and not making a broader statement about use of percent crop treated information generally.

Moreover, it is not surprising that Congress chose only to address use of percent crop treated information in the context of chronic risk assessment given EPA's historical practice regarding use of percent crop treated data. Although EPA has considered percent crop treated information in chronic risk assessment for decades, use of such information in acute risk assessments is a relatively recent phenomenon, and Congress, in 1996, may have either not been aware of the rapidly evolving risk assessment techniques for acute hazards or believed that it was premature to enact statutory requirements as to such assessments.

There were two key events in 1995 that triggered the use of percent crop treated information in acute risk assessments: (1) A new focus on acute hazards; and (2) a new risk methodology for assessing acute risks. In 1995, EPA began for the first time consistently identifying acute endpoints and performing acute risk assessments for each pesticide. EPA was initially reluctant to use percent crop treated information in such assessments due to the difference between acute and chronic risks. With chronic risk, EPA is concerned with hazards that occur from exposure over an extended time period. Thus, in assessing chronic risk, EPA generally combines percent crop treated information with data on residue levels to produce an estimate of the residue level a person is exposed to over an extended time-frame assuming the person gets a mixture of treated and untreated commodities. With acute hazards, EPA is concerned with the risk from a single exposure and thus is interested in the exposure that can come from a single commodity. Accordingly, for acute risk assessments it is inappropriate to produce a single estimate of the residue level in commodities if such estimate does not reflect high end values that are likely to occur. Use of percent crop treated data in the manner used in chronic assessment, however, reduces high-end values in proportion to percent of crop treated. To overcome this problem, a new risk assessment methodology was developed that used a complex, probabilistic model that incorporated all residue values, including the high end values, and percent crop treated information. EPA first accepted these probabilistic acute risk assessments late in 1995, and use of this new risk assessment technique in regulatory actions was still relatively infrequent prior to the drafting and passage of the FQPA in the summer of 1996.

In sum, NRDC can demonstrate, at best, that the statute is silent regarding use of percent crop treated information in acute risk assessments. Given the general language in section 408 directing EPA to consider "available information" on aggregate exposure levels, EPA's interpretation of section 408 as permitting use of percent crop treated data in acute risk assessments is certainly reasonable. NRDC's interpretation, on the other hand, would erect an absolute bar to the use of the most advanced scientific techniques for reliably and accurately estimating anticipated exposure to pesticide residues.

2. *Comment number 2.* EPA fails to identify the correct NOAEL for vinclozolin's endocrine disrupting effects. Dr. Gray has reported an apparent lack of a NOAEL for vinclozolin's developmental effects. Therefore, use of a NOAEL of 6 mg/kg/day for the acute analysis and use of 3 mg/kg/day as the NOAEL for short-term, intermediate-term, and carcinogenic risk assessments is not scientifically supportable. NRDC feels that a LOAEL of 3 mg/kg/day, adjusted for the lack of a true NOAEL, should be used as the hazard component in risk assessments.

Agency response. First, the Agency stresses that it conducted a statistical analysis of anogenital distance in response to dose in the Gray developmental rat study, and it was determined that the NOAEL for acute effects was 6 mg/kg/day and the LOAEL was 12 mg/kg/day. In a 12/8/99 memorandum, the Agency determined that decreased ventral prostate weight, observed at 6 mg/kg/day, was an even more sensitive indicator of the anti-androgenic activity of vinclozolin; the next lower dose (3 mg/kg/day) was thus selected as the study NOAEL.

Second, the Agency must stress that the NOAEL of 6 mg/kg/day for the acute dietary analysis represents the 3 mg/kg/day treatment level (study NOAEL) in the [multidose] perinatal oral developmental rat study noted above that has been adjusted by a plasma equilibrium factor to derive an adjusted NOAEL that reflects a single dose; the adjusted LOAEL causing decreased ventral prostate weight has been calculated to be 11.5 mg/kg/day.

The perinatal oral developmental rat study mentioned above was also used as the source of the NOAEL for short-term and intermediate-term dermal and inhalation risk assessments for women (13–50); note that the study NOAEL of 3 mg/kg/day was not adjusted for the

plasma equilibrium factor because the applicable short-term and intermediate-term routes of exposure are not oral and because they typically reflect multiple exposure events more closely approximated by the multidose oral developmental rat study.

The Agency disagrees with NRDC's suggestion that the 3 mg/kg dose from the Gray, et al. oral developmental rat study is a LOAEL. As noted above, EPA's statistical analysis shows that the anogenital distance effect has a NOAEL of 6 mg/kg/day in the Gray study. NRDC has not offered any explanation of why it does not agree with that statistical analysis. Second, as to the decreased ventral prostate weight effect, EPA's review of the data shows that this adverse affect was not present at 3 mg/kg; however, this adverse effect was a dose-related effect in male offspring at 6 mg/kg and above. No adverse effects were observed at the 3 mg/kg/day dose level. Thus, EPA cannot agree with NRDC that the 3 mg/kg/day dose should be treated as a LOAEL in conducting the risk assessment for vinclozolin.

The perinatal rat developmental toxicity study was also used to derive the point of departure (POD = NOAEL of 3 mg/kg/day) to be used in the non-linear carcinogenicity risk assessments; the effect seen at the LOAEL of 6 mg/kg/day was prostate weight decrease, seen as an early manifestation of the anti-androgenic action of vinclozolin ultimately resulting in Leydig (testicular interstitial) cell tumors in the chronic/cancer studies. However, note that the NOAEL of 1.2 mg/kg/day from the rat chronic/cancer studies is considered to be protective of cancer effects because it is protective of the anti-androgenic effects that are the likely precursors to tumor formation. The chronic Population Adjusted Dose (cPAD), used to calculate risk, is derived by dividing the NOAEL of 1.2 mg/kg/day by the safety factor of 1,000 (10X for intraspecies extrapolation, 10X for interspecies variation, and 10X for FQPA). Because this approach (using the cPAD) would be more protective than the proposed POD for cancer risk assessment of 3 mg/kg/day, and includes an additional 10X factor for the protection of infants and children, a separate non-linear risk assessment for cancer is not necessary.

3. *Comment number 3.* Vinclozolin and iprodione do share a common mechanism of toxicity. NRDC disagrees with EPA's judgement that vinclozolin and iprodione do not share a common mechanism because they are both known anti-androgens, both have the metabolite 3,5-dichloroaniline in common, and both cause the same effect even if the exact manner of androgen interference is different. In fact, they may act additively or synergistically as a result of affecting the androgen pathway at different sites as opposed to the potential competition for the same binding site if both act at the exact same point in the process.

Agency response. FQPA requires EPA to consider available information concerning the cumulative effects of compounds that have a common mechanism of toxicity. It should be stressed, however, that EPA is moving in a stepwise fashion to evaluating the cumulative assessment of anti-androgenic pesticides.

Vinclozolin, procymidone, and iprodione are members of the imide group of the dicarboximide class of fungicides. There is some evidence that these compounds induce similar toxic effects. Further, all of these fungicides appear to be anti-androgenic. The mechanistic basis for their anti-androgenic properties have been studied to different degrees. There are studies underway at EPA's National Health and Environmental Effects Laboratory to better elucidate the mechanism of toxicity for these anti-androgenic fungicides as well as mixture studies on how they interact. Although all three of these fungicides effectively reduce the level of testosterone, they do so by different pathways. Vinclozolin and procymidone bind and compete for the androgen receptor. Iprodione disrupts the endocrine system by inhibiting androgen synthesis rather than competing for the androgen receptor. It should be noted that these three chemicals do not have any known metabolites/degradates in common with the possible exception of 3,5-dichloroaniline which is structurally and toxicologically different from the parent compounds and unlikely to be anti-androgenic.

The androgen system may be modulated in different ways including competitive binding to androgen receptors, interference with gene control over the synthesis of several enzymes or other factors associated with synthesis of androgen and testosterone. All of these variables relate to the potency, specificity, and site of action of the anti-androgen and determine the expression of the anti-androgenicity induced by various compounds. Because of the complexity of the androgen system, a careful evaluation of all the available data is needed as well as peer review by the FIFRA Science Advisory Panel before a formal decision is made regarding whether or not these compounds modulate androgens by a common mechanism of toxicity. The evaluation of a common mechanism would follow the 1999 EPA Guidance for Identifying Pesticide Chemicals and Other Substances That Have A Common Mechanism of Toxicity (64 FR 5796, February 5, 1999) (FRL–6060–7). Furthermore, procymidone has yet to be subjected to the Reregistration Eligibility Decision (RED) process and, as part of this process, its toxicology database must meet current standards of acceptability. Although there are data suggesting that these dicarboximide fungicides induce some of the same anti-androgenic effects, the mechanism by which they cause these toxic effects have not been adequately evaluated.

Even after an evaluation of all the data and a decision is made regarding a common mechanism of toxicity, other analyses are important to conduct regarding the integration of exposure and hazard data to determine the likelihood that such groupings might result in a cumulative risk as described in the Agency's Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity (http://www.epa.gov/scipoly/sap/1999/september/cumdoc.pdf). Only then can it be determined whether there is a need to conduct a cumulative risk assessment on these dicarboximide fungicides.

Nonetheless, because of the apparent similarity of mechanism of toxicity between vinclozolin and procymidone EPA has considered, as discussed above, whether the cumulative effects from vinclozolin and procymidone (assuming these pesticides' effects are cumulative) would raise a risk of concern. EPA is unwilling, at this time, to make the same assumption concerning iprodione and vinclozolin. NRDC hypothesizes that, because iprodione and vinclozolin operate in a different manner on the androgen system, they are likely to have an additive anti-androgenic effect. A conclusion that chemicals that operate at different stages in the androgen pathway are acting through a common mechanism of toxicity or otherwise merit a cumulative assessment is beyond any cumulative effects determination EPA has made either pre- or post-FQPA. That does not mean that further evaluation of the science of cumulative effects concerning anti-androgenic effects will not lead to a conclusion that iprodione and vinclozolin have a common mechanism of toxicity. At this time, however, given the scientific understanding of the mechanisms of these two pesticides, EPA is unwilling to presume that such common mechanism exists or that there is some other justification for treating

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these pesticides as having cumulative effects.

4. *Comment number 4.* EPA should not approve tolerances that exceed safe levels. The elevated risk numbers in the case of short-term and intermediate-term risk and the exceedance of the drinking water level of concern (DWLOC) are especially of concern and there is doubt that the proposed mitigation measures will alleviate the estimated risks. There is concern that EPA's assessments are not sufficiently conservative to protect public health and the Agency should not ignore or explain-away its own elevated risk estimates.

Agency response. EPA has high confidence in the short-term and intermediate-term risk assessments (these involve treated sod) because a chemical-specific turf exposure study was used and because foliar residue dissipation over time was determined. We, therefore, have confidence that the mitigation measure to require a 24-day interval between final treatment and harvest of sod before it is shipped for placement in a residential setting will be protective. Only in the case of acute aggregate risk from vinclozolin and carcinogenic risk from 3,5-DCA was there an indication of a potential drinking water concern. The exposure estimates (EECs) were based on conservative modeling. Also, the food exposures (subtracted from the aPAD to determine the DWLOC) are very conservative because they are based on field trial residue data. DWLOCs cannot be used in a quantitative risk assessment as representative monitoring data may. Rather, they are used to determine the magnitude of potential concern by comparison to the EEC's. As the 99.9th percentile of food exposure to vinclozolin is considered to be overly conservative given the use in this exposure assessment and the overly conservative drinking water assessment, EPA has little concern for an apparent elevated risk particularly in light of the registrant's mitigation proposals. Finally, discussion of the strengths and weaknesses of our assessments, the assumptions made, and our level of confidence are all part of the risk characterization component of risk assessment. We must provide qualitative descriptors to facilitate the risk management process.

B. Earthjustice Legal Defense Fund comment

Comment. EPA is asked to consider Earthjustice's prior comments and objections to the previous vinclozolin tolerance.

Agency response. EPA has addressed Earthjustice's prior comments and objections in the Agency letter of May 11, 2000 to the Earthjustice Legal Defense Fund, and therefore, the Agency believes that further detailed discussion is not necessary. In brief, Earthjustice's prior comments focused on two issues: the use of the additional safety factor for the protection of infants and children; and the cumulative effects of vinclozolin, iprodione, and procymidone. In considering Earthjustice's comments in the course of assessing vinclozolin, EPA has acceded to Earthjustice's request to retain the additional safety factor for the protection of infants and children and has assumed, for this tolerance rulemaking, that vinclozolin and procymidone have a common mechanism of action that will lead to cumulative effects. EPA decided against reaching that conclusion as to vinclozolin and iprodione for the reasons explained above. EPA's full response to Earthjustice has been included in the docket for this action.

C. BASF Corporation Comments

1. *Comment number 1.* BASF has supplied information which would allow the Agency to further refine the acute dietary risk by using monitoring data provided in response to the Agency's preliminary risk assessment. Use of this information would significantly reduce the calculated acute dietary risk.

Agency response. BASF did submit grape and lettuce metabolism studies and a proposal that monitoring data be used as a source of refined dietary exposure estimates, i.e., anticipated residues. FDA and USDA/Pesticide Data Program monitoring data are available for most foods expected to bear vinclozolin residues. However, these monitoring data are not useful for risk assessment purposes because these programs do not analyze all 3,5-DCA containing metabolites, which are the residues of concern. Agency review of the plant metabolism studies reveals that a significant portion of the vinclozolin residue may exist as 3,5-DCA per se or conjugates, all of which tend to increase with time as they are the terminal, more stable residues. Conjugates and 3,5-DCA per se are not analyzed by either FDA or PDP. These residues are, however, analyzed by the data collection method used to generate the field trial data because the method converts all of these residues to a common moiety (derivatized 3,5-DCA). Also, there was significant variability in the ratios of vinclozolin per se to total residues with time, between crops, and between studies on the same crop. Therefore, at this time the Agency does not believe that the plant metabolism studies provide sufficient additional information supporting use of monitoring data to generate anticipated residues (ARs) and that field trial data should be used to calculate AR values for dietary exposure in food.

2. *Comment number 2.* BASF has submitted or cited information it feels supports their contention that 3,5-DCA should not be assumed to be toxicologically equivalent to *p*-chloroaniline, i.e., that 3,5-DCA should not be considered to be a carcinogen like *p*-chloroaniline for risk assessment purposes. Based on physicochemical and stereochemical differences from *p*-chloroaniline, BASF thinks that 3,5-DCA would not be mutagenic. Calculations indicate that the amino group of *p*-chloroaniline is 1,300 times more reactive than the amino group of 3,5-DCA in a peroxidation reaction, a step necessary to generate the corresponding hydroxylamine which is a prerequisite for mutagenicity. Side-by-side Ames Bioassays demonstrated that *p*-chloroaniline is clearly mutagenic whereas 3,5-DCA is nonmutagenic in the presence of metabolic activation and a cocarcinogen. This indicates that the two chloroanilines behave different biologically.

Agency response. While the submitted information provides some support for the claim that 3,5-DCA may be less potent than *p*-chloroaniline, there is insufficient evidence to show that 3,5-DCA is not mutagenic or carcinogenic. The available mutagenicity data are insufficient because 3,5-DCA was tested using only one of the four or five *Salmonella typhimurium* strains usually tested in the Ames bioassay; also, 3,5-DCA was not the subject of any other *in vitro* mutagenicity study required for pesticide registration.

Only long-term studies in which two mammalian species are exposed to a potential carcinogen can provide concrete evidence of carcinogenicity. Therefore, until sufficient data are submitted, DCA will continue to be regulated based on a Q_1^* calculation for *p*-chloroaniline.

3. *Comment number 3.* BASF claims that recently submitted details of calculations of turf foliar dislodgeable residues provides evidence that a 9-day preharvest interval (PHI), rather than the Agency-calculated 24-day PHI, is sufficient to bring the children's MOE to a level below the Agency's level of concern. Regardless of the outcome of the Agency review, BASF is willing to impose the 24-day PHI suggested in the supplemental notice.

Agency response. These data are currently under review, and no comment can be provided at this time.

V. Other Considerations

A. Metabolism in Plants and Animals

1. *Plant metabolism.* The qualitative nature of the residue in plants is adequately understood based on metabolism studies on strawberries, lettuce, peaches, and grapes. The plant metabolism studies indicate that metabolism in plants results from the hydrolytic cleavage of the oxazolidinedione ring and/or loss of the ethenyl moiety. Formation of conjugates and hydrolysis to 3,5-DCA occur and these may increase with time. The residues of concern are vinclozolin per se and its metabolites containing the 3,5-DCA moiety.

2. *Animal metabolism.* The qualitative nature of the residue in livestock is adequately understood based on adequate ruminant and poultry metabolism studies submitted in conjunction with pesticide petitions PP#7H5531 and PP#9F3750. The residues of concern are vinclozolin, a mixture of the diastereomers of *N*-(3,5-dichlorophenyl)-2-methyl-2,3,4-trihydroxybutyramide (BF 352–25), and a mixture of diastereomers derived by dihydroxylation of the vinclozolin vinyl group (BF 352–37). These metabolites are covered by the present tolerance expression, i.e., they contain the 3,5-DCA moiety.

B. Analytical Enforcement Methodology

1. *Plants.* Adequate analytical methodology is available for data collection and enforcing tolerances of vinclozolin per se and its metabolites containing the 3,5-DCA moiety in/on plant commodities. Method I in PAM, Vol. II, which underwent a successful EPA method validation on strawberries, involves base hydrolysis of residues to convert vinclozolin and its metabolites to 3,5-DCA. After steam distillation and organic solvent extraction, the isolated DCA is derivatized to *N*-(3,5-dichlorophenyl)chloroacetamide using chloroacetyl chloride prior to quantitation by gas chromatography/electron capture detection (GC/ECD). The limit of quantitation is 0.05 ppm.

2. *Livestock.* EPA has concluded that the following methods are available for the enforcement of tolerances for livestock tissues: method A9004A, a GC/ECD method, and method A9207, a High Performance Liquid Chromatography method. Method A9004A is based on conversion of vinclozolin and its metabolites to 3,5-DCA. However, it does not distinguish between residues of vinclozolin and other compounds convertible to 3,5-DCA. The LOQ is generally 0.05 ppm (0.1 ppm for poultry commodities). To confirm that the 3,5-DCA detected by method A9004A is derived from vinclozolin, method A9207 is used to measure 2,3,4-trihydroxy-*w*-methylbutanoic acid-(3,5-dichloroanilide) (BF 352–25), the major metabolite of vinclozolin in livestock commodities. The LOQ and the limit of detection are estimated to be 0.05 and 0.025 ppm, respectively. Both methods have been successfully validated.

3. The FDA PESTDATA database dated 1/94 (PAM, Vol. I, Appendix II) indicates that vinclozolin is completely recovered (> 80%) using FDA Multiresidue Protocols D and E (oily and non-oily matrices). Vinclozolin metabolite B is completely recovered using Protocols D and E (for oily matrices), and only partially recovered (50–80%) using Protocol E for non-oily matrices. Metabolite E is completely recovered using Protocol D. Metabolite F is recovered using Protocol D but no quantitative information is available. Metabolite S is partially recovered using Protocol E (non-oily matrices). The FDA multiresidue methodology differentiates between vinclozolin and iprodione, a pesticide that also contains the DCA moiety.

C. Magnitude of Residues

1. *Snap beans.* Sixteen (16) residue trials were conducted in a total of 7 states. Each trial consisted of a single residue sample. The residue trials were conducted using the Ronilin WP formulation. Eight of the trials involved application to lima beans and eight to snap beans. Ground applications were made in approximately 50 gallons of finish spray per acre and air applications in 5 to 15 gallons per acre. Samples of beans, cannery waste, green forage, and dry forage were analyzed. Residues in snap beans were as follows: 0.38, 0.53, 0.62, 0.64, 0.73, 0.76, 0.95, and 2.40 ppm.

2. *Canola.* Four field trials were conducted in Canada (two in Alberta and one each in Manitoba and Saskatchewan). These sites represent Regions 5, 7, and 14. A single treatment was applied at 0.22, 0.33, or 0.45 lb active ingredient per acre (ai/A) (0.44X, 0.66X, and 0.89X the maximum rate of 0.5 lb ai/A proposed on the U.S. label) in 40 gallons of water per acre using ground equipment. Two major canola varieties were treated at 20–35% bloom; the treatment-to-harvest intervals were 37–57 days. The canola seed were stored frozen for 330 days. The preponderance of data support the storage stability of the 3,5-DCA moiety for this length of time in canola seed. At the 0.44X application rate, canola seed contained 3,5-DCA-containing residues of 0.038–0.20 ppm. At the 0.33X rate, residues were detected at 0.065–0.28 ppm. At the 0.88X rate, residues were found at 0.068–0.42 ppm. An additional six field trials were conducted in Canada between 1982 and 1996 to support Section 18 requests. A single application was made at 0.22–0.67 lb ai/A (0.44X – 1.34X) during the early bloom to the mid-bloom stage using aerial and ground equipment. The treatment-to-harvest intervals were 36–69 days. Residues containing the 3,5-DCA moiety in canola seed were ≤ 0.93 ppm. The highest residue value resulted from an application of 0.44 lb ai/A (0.88X). Although some of the available trials do not reflect the maximum rate, others represent exaggerated rates. The earlier-submitted data, combined with the four Canadian field trials submitted with this petition, provide sufficient magnitude of the residue data upon which to base a canola seed tolerance.

A canola seed processing study was conducted on seed harvested from a Saskatchewan field trial. A single treatment at 0.45 lb ai/A (0.89X) occurred at 40% bloom. At maturity, 49 days later, seeds were subjected to typical processing into oil and meal. The seed, crude oil, refined oil, and meal byproduct were analyzed in Germany by BASF using method P–14.003.02. Residues containing the 3,5-DCA moiety were detected at 0.62 – 0.89 ppm in four replicates of seed (mean = 0.76 ppm). Residues in crude oil were 0.85 = 0.94 ppm (mean = 0.88 ppm) indicating very slight concentration in this intermediate component of the process that is not used for food or feed. Upon purifying, refined oil (the product for commerce) did not contain detectable residues (< 0.05 ppm) indicating residue reduction. In addition, the byproduct canola meal contained residue levels identical to those in the seed (0.68 – 0.89 ppm) demonstrating a lack of concentration of vinclozolin residues in this livestock feed.

3. *Meat, milk, poultry, and eggs.* There are no feed items associated with the currently registered use sites or succulent beans. However, canola meal may be fed to beef and dairy cows, swine, and poultry at up to 15% of the diet. The canola seed tolerance level of 1 ppm was used for canola meal to calculate livestock diets because the processing study indicated that vinclozolin concentrations in seed remains the same in the meal. The meal dry matter content of 88% (corrected for

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cattle only) was also used to calculate livestock diets for tolerance-setting purposes. The dietary burdens are thus: 0.17 ppm for beef and dairy cattle and 0.15 ppm for swine and poultry.

Based on livestock feeding studies, the theoretical residues in tissues were calculated using tissue residues at the lowest feeding level (100 ppm) extrapolated to the dietary burdens provided above. Livestock commodity residues resulting from the three feeding levels (100, 300, and 1,000 ppm) were fairly linear lending some support to the assumed linearity down to the dietary burden levels. Theoretical residues ranged from 0.004 ppm to 0.015 ppm in cattle tissues and milk, 0.001 ppm to 0.004 ppm in poultry tissues and eggs, and 0.003 ppm to 0.014 ppm in swine tissues. In accordance with 40 CFR 180.6(a)(2), EPA believes that the available data indicate that there is a reasonable expectation of finite residues of vinclozolin transferring from treated canola to livestock commodities via canola meal in the diet. Accordingly, EPA recommends that tolerances at the LOQ of the method be proposed as follows: 0.05 ppm in eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and 0.1 ppm in the meat, fat, and meat byproducts of poultry.

D. International Residue Limits

CODEX maximum residue limits (MRLs) for residues of vinclozolin and its metabolites containing the 3,5-DCA moiety have been established in common bean at 2 ppm, rape seed at 1 ppm (no limit for canola), cattle meat and milk at 0.5 ppm, and chicken meat and eggs at 0.05 ppm. No Canadian or Mexican tolerances have been established for vinclozolin residues in succulent beans, rape, canola, meat, milk, poultry, or eggs.

The CODEX MRLs for canola (rape seed), cattle meat, cattle milk, and poultry eggs are in harmony with the proposed tolerances associated with this petition. The chicken meat MRL (0.05 ppm) is not in harmony with the proposed tolerance in poultry meat (0.1 ppm) due to recovery discrepancies with the analytical method.

E. Rotational Crop Restrictions

Based on a limited field rotational crop study which was adequate to satisfy the data requirement, vinclozolin residues were all < 0.05 ppm (LOQ of method) in all plant commodities (wheat, cabbage, and potatoes) at the minimum plant-back interval of 30 days. Therefore, EPA has concluded that it is permissible to rotate to small grains, leafy vegetables and root crops after a 30–day interval.

VI. Conclusion

Therefore, tolerances are established for combined residues of vinclozolin, 3-(3,5-dichlorophenyl)-5-ethynyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety, in or on succulent beans at 2.0 ppm; canola at 1.0 ppm; eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and the meat, fat, and meat byproducts of poultry at 0.1 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301015 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 18, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301015, to: Public

Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.380, the table to paragraph (a) is amended by revising the entry for "beans, succulent", and by adding new entries to read as follows:

§ 180.380 Vinclozolin; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Beans, succulent ..	2.0	9/30/03
* * *	*	*
Canola	1.0	9/30/03
Cattle, fat	0.05	9/30/03
Cattle, mbyp	0.05	9/30/03
Cattle, meat	0.05	9/30/03
* * *	*	*
Eggs	0.05	9/30/03
Goats, fat	0.05	9/30/03
Goats, mbyp	0.05	9/30/03
Goats, meat	0.05	9/30/03
Hogs, fat	0.05	9/30/03
Hogs, mbyp	0.05	9/30/03
Hogs, meat	0.05	9/30/03
Horses, fat	0.05	9/30/03
Horses, mbyp	0.05	9/30/03
Horses, meat	0.05	9/30/03
* * *	*	*
Milk	0.05	9/30/03
* * *	*	*
Poultry, fat, ...	0.1	9/30/03
Poultry, meat	0.1	9/30/03
Poultry mbyp	0.1	9/30/03
* * *	*	*
Sheep, fat	0.05	9/30/03
Sheep, mbyp	0.05	9/30/03
Sheep, meat	0.05	9/30/03
* * *	*	*

* * * * *

[FR Doc. 00–18099 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301017; FRL–6595–9]

RIN 2070–AB

Humic Acid, Sodium Salt, Exemption Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of humic acid, sodium salt when used as an inert ingredient (adjuvant, UV protectant) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. LignoTech USA, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of humic acid, sodium salt.

DATES: This regulation is effective July 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301017, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301017 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6379; and e-mail address: gairola.indira@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301017. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 12, 2000 (65 FR 19759) (FRL–6498–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition PP 6E4705 by, LignoTech USA, Inc., 100 Highway 51 South, Rothschild, WI 54474–1198. This notice included a summary of the petition prepared by the petitioner LignoTech USA, Inc. There were no comments received in response to the notice of filing.

The initial petition requested that 40 CFR 180.1001(c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of humic acid, sodium salt. Subsequently the petitioner revised the petition to request the establishment of an exemption from the requirement of a tolerance for residues of humic acid, sodium salt under 40 CFR 180.1001(c) only.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this

action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by humic acid, sodium salt are discussed in this unit.

Humic substances including humic acid, sodium salt occur naturally in the environment, as they are derived from soil or soil deposits. Humic acid, sodium salt is a hydrophilic, reversible colloid whose molecular weight ranges from 2,000-500,000 daltons. Chemically, humic acids are complex, polymeric polyhydroxy acids formed by the process of degradation of organic matter under the action of soil microorganisms and ground worms.

The Agency has reviewed three mammalian acute toxicity tests. In an acute oral toxicity test of humic acid, sodium salt, an $LD_{50} > 5,000$ milligrams/kilograms (mg/kg) was determined. This was Toxicity Category IV. In a primary dermal irritation test, humic acid, sodium salt was found to be Toxicity Category IV. In a primary eye irritation test, humic acid, sodium salt was found to be a mild eye irritant. This was Toxicity Category III. Due to placement in Categories III and IV, no acute effects are expected to occur. Due to the ubiquitous nature of humic substances including humic acid, sodium salt, no chronic effects are expected to occur. There is no available information to indicate that these naturally occuring substances are carcinogenic, mutagenic, or are expected to have any effect on the immune or endocrine systems.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Not only are humic substances abundant in nature, but they have been used in commercial agriculture for years to condition soils. Therefore, increased dietary exposure from the use of humic acid, sodium salt as an inert ingredient in pesticide formulations is expected to be minimal.

2. *Drinking water exposure.* Humic substances occur in abundance in nature, including soils, fresh water and oceans. Increased drinking water exposure from the use of humic acid, sodium salt in pesticide formulations would not be expected.

B. Other Non-Occupational Exposure

Humic substances occur in abundance in nature, including soils that are in and around the home. The potential for an increase in the existing non-dietary exposure to the general population, including infants and children, is unlikely as these pesticide formulations containing humic acid, sodium salt would be used in agricultural and horticultural settings.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not humic acid, sodium salt shares a common mechanism of toxicity with other chemicals. However, humic acid, sodium salt is expected to be practically non-toxic to mammals. Due to the expected lack of toxicity, a cummulative risk assessment is not necessary.

VI. Determination of Safety for U.S. Population, Infants and Children

Humic substances are present in abundance in the soil and the environment. Humic substances have been used in commercial agriculture for years to condition soils. Based on known acute toxicity studies, humic acid, sodium salt is not acutely toxic. Due to the ubiquitous nature of humic substances including humic acid, sodium salt, no chronic effects are expected to occur. There is no available information to indicate that these naturally occuring substances are carcinogenic or mutagenic, or expected to have any effect on the immune or endocrine systems. Because of its abundance in nature and lack of toxicity, the Agency did not use the safety factor analysis in evaluating the risk posed by humic acid, sodium salt and did not apply an additional tenfold safety factor to protect infants and children.

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of humic acid, sodium salt. Accordingly, EPA finds that exempting humic acid, sodium salt from the requirement of a tolerance will be safe.

VII. Other Considerations

A. Analytical Method

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Existing Tolerances Exemptions

There are no existing tolerance exemptions for humic acid, sodium salt.

C. International Tolerances

There are no international tolerances or tolerance exemptions for humic acid, sodium salt. No CODEX maximum residue levels have been established for humic acid, sodium salt.

D. Conclusion

Therefore, based on the information and the data considered, EPA is establishing an exemption from the requirement of a tolerance for residues of humic acid, sodium salt.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301017 in the subject line on the first page of your submission. All requests must be in writing, and must be

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mailed or delivered to the Hearing Clerk on or before September 18, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301017, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 27, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001, the table in paragraph (c) is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Humic acid, sodium salt (CAS Reg. No. 68131–04–4)		Adjuvant, UV protectant.
* * * * * * *		

* * * * *

[FR Doc. 00–18097 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301022; FRL–6596–7]

RIN 2070–AB

Tebuconazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide tebuconazole in or on garlic at 0.1 part per million (ppm) for an additional 18-month period. This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on garlic. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective July 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301022, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301022 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9362; and e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to

the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301022. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of May 26, 1999 (64 FR 28377) (FRL–6079–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of tebuconazole in or on garlic at 0.1 ppm, with an expiration date of June 30, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebuconazole on garlic for this year's growing season due to the continued inefficacy of registered fungicides at controlling rust under high pest pressure and continued mild winters which have led to infection earlier in the growing season. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebuconazole on garlic for control of rust in Arizona, California, and Nevada.

EPA assessed the potential risks presented by residues of tebuconazole in or on garlic. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 26, 1999 (64 FR 28377). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on garlic after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301022 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 18, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–

5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301022, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 5, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.474 [Amended]

2. In § 180.474, by amending the table in paragraph (b), by revising the Expiration/Revocation Date of "6/30/00" for the commodity "garlic" to read "12/31/01".

[FR Doc. 00–18098 Filed 7–17–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1527; MM Docket No. 99–345; RM–9782]

Radio Broadcasting Services; Minerva, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Bible Broadcasting Associates, allots Channel 264A to Minerva, NY, as the community's first local aural service. *See* 64 FR 70671, December 17, 1999. Channel 264A can be allotted to Minerva in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) northwest, at coordinates 43–48–33 NL; 74–00–41 WL, to avoid a short-spacing to Station WKBE, Channel 262B1, Warrensburg, NY, and Station WWFY, Channel 265A, Middlebury, VT. Channel 264A at Minerva, at the reference coordinates, is short-spaced to Station CBF-FM, Channel 264C1, Montreal, Quebec, Canada. Therefore, since Minerva is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian Government in the allotment, as a specially negotiated, short-spaced allotment, has been obtained. A filing window for Channel 264A at Minerva will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–345, adopted June 28, 2000, and released July 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Minerva, Channel 264A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18081 Filed 7–17–00; 8:45 am]

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Proposed Rules

Federal Register
Vol. 65, No. 138
Tuesday, July 18, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3 and 212

[EOIR No. 127P; AG Order No. 2315–2000]

RIN 1125–AA29

Executive Office for Immigration Review; Section 212(c) Relief for Certain Aliens in Deportation Proceedings Before April 24, 1996

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This rule would create a uniform procedure for applying the law as enacted by the Antiterrrorism and Effective Death Penalty Act of 1996 (AEDPA). This rule would allow certain aliens in deportation proceedings that commenced before April 24, 1996, to apply for relief pursuant to section 212(c) of the Immigration and Nationality Act (INA).

DATES: Written comments must be submitted on or before August 17, 2000.

ADDRESSES: Please submit written comments, original and two copies, to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470. Comments are available for public inspection at the above address by calling (703) 305–0470 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305-0470.

SUPPLEMENTARY INFORMATION:

What has Happened to Aliens Seeking Section 212(c) Relief Since Enactment of AEDPA?

Before the comprehensive revision of the INA by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, 110 Stat. 3009, section 212(c) of the INA provided that aliens who were lawfully admitted for permanent residence, who temporarily proceeded abroad voluntarily and not under an order of deportation, and who were returning to a lawful unrelinquished domicile in the United States of seven consecutive years, could be admitted to the United States in the discretion of the Attorney General. 8 U.S.C. § 1182(c) (1994). Although section 212(c) by its terms applied only to aliens in exclusion proceedings (*i.e.*, aliens seeking to enter at the border), it had been construed for many years also to allow aliens who were placed in deportation proceedings in the United States to apply for discretionary relief from deportation. See *Matter of Silva*, 16 I. & N. Dec. 26 (Board 1976); *Gonzalez* v. *INS*, 996 F.2d 804, 806 (6th Cir. 1993); *Ashby* v. *INS*, 961 F.2d 555, 557 & n.2 (5th Cir. 1992); *Tapica-Acuna* v. *INS*, 640 F.2d 223 (9th Cir. 1981); *Francis* v. *INS*, 532 F.2d 268, 273 (2d Cir. 1976).

In the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104–132, 110 Stat. 1214, Congress significantly restricted the availability of discretionary relief from deportation under section 212(c). Section 440(d) of AEDPA amended section 212(c) of the INA to provide that section 212(c) "shall not apply to an alien who is deportable by reason of having committed any criminal offense covered by section 241(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 241(a)(2)(A)(i)." AEDPA § 440(d), as amended by IIRIRA section 306(d). The effect of section 440(d) of AEDPA was to render ineligible for relief under INA section 212(c) aliens deportable because of convictions for certain criminal offenses, including aggravated felonies, controlled substance offenses, certain firearms offenses, espionage, and multiple crimes of moral turpitude.

AEDPA did not contain a provision expressly stating whether section 440(d) was to be applied to criminal aliens who were placed in deportation proceedings, were convicted, or who committed the crimes rendering them deportable before AEDPA was passed. In *Matter of Soriano*, Interim Decision 3289 (Board 1996), the Board of Immigration Appeals (Board) held that section 440(d) of AEDPA did not apply to aliens who had applied for section 212(c) relief before AEDPA was passed, but did apply to all other aliens covered in the provision, even those whose criminal conduct or conviction occurred before AEDPA was issued.

At the request of the Immigration and Naturalization Service (INS), the Attorney General vacated the Board's decision in *Soriano* and certified the question to herself. On February 21, 1997, the Attorney General concluded that section 440(d) applied to (and thereby rendered ineligible for section 212(c) relief) all aliens who had committed one of the specified offenses and who had not finally been granted section 212(c) relief before AEDPA was passed. As construed in that decision, AEDPA section 440(d) rendered ineligible for section 212(c) relief even those aliens who were already in deportation proceedings and who had already applied for section 212(c) relief at the time AEDPA was passed.

How Have the Federal Courts Ruled on the Issue?

Following the Attorney General's decision in *Soriano*, the Board and Immigration Court denied applications for relief under section 212(c) filed by aliens who fell within the categories identified in AEDPA section 440(d), regardless of the date of the alien's crime, conviction, deportation proceedings, or application for section 212(c) relief. Numerous aliens challenged their final orders of deportation in both district courts and courts of appeals, arguing that AEDPA section 440(d) should not be applied "retroactively" to their cases, and that the Attorney General had erred in her construction of AEDPA section 440(d) in *Soriano*.

The *Soriano* issue has given rise to widespread litigation in almost every circuit. Only the D.C. Circuit has yet to decide a case on the *Soriano* issue. Eight circuits—the First, Second, Third,

Fourth, Sixth, Eighth, Ninth, and Eleventh Circuits—have now disagreed with the Attorney General's holding in *Soriano*. Seven of the eight circuits have held that section 440(d) of AEDPA does not apply to aliens who filed applications for section 212(c) relief before AEDPA was passed. *See Goncalves* v. *Reno*, 144 F.3d 110, 126–33 (1st Cir. 1998), *cert. denied*, 526 U.S. 1004 (1999); *Henderson* v. *INS*, 157 F.3d 106, 128–30 (2d Cir. 1998), *cert. denied sub nom. Reno* v. *Navas*, 526 U.S. 1004 (1999); *Sandoval* v. *Reno*, 166 F.3d 225, 239–42 (3d Cir. 1999); *Tasios* v. *Reno*, 204 F.3d 544, 547–52 (4th Cir. 2000); *Pak* v. *Reno*, 196 F.3d 666, 674–76 (6th Cir. 1999); *Shah* v. *Reno*, 184 F.3d 719, 724 (8th Cir. 1999); *Magana-Pizano* v. *INS*, 200 F.3d 603, 610–11 (9th Cir. 1999); *Mayers* v. *INS*, 175 F.3d 1289, 1301–04 (11th Cir. 1999).

The First Circuit has gone further and held that AEDPA section 440(d) likewise does not apply to aliens who were placed in deportation proceedings before AEDPA was passed, even if they did not actually request section 212(c) relief until after AEDPA was passed. *See Wallace* v. *Reno*, 194 F.3d 279, 285–88 (1st Cir. 1999). Other circuits have either likewise so held or strongly implied in their reasoning. *See Henderson*, 157 F.3d at 129–31; *Sandoval*, 166 F.3d at 241–42; *Mayers*, 175 F.3d at 1304; *see also Shah*, 184 F.3d at 724 (adopting reasoning of *Goncalves*, *Henderson*, and *Mayers*).

By contrast, the Seventh Circuit has held, consistent with the Attorney General's conclusion in *Soriano*, that section 440(d) of AEDPA applies even to aliens who were in deportation proceedings and had applied for section 212(c) relief when AEDPA was enacted. *See Turkhan* v. *Perryman*, 188 F.3d 814, 824–28 (7th Cir. 1999); *see also LaGuerre* v. *Reno*, 164 F.3d 1035, 1040–41 (7th Cir. 1998), *cert. denied*, 120 S. Ct. 1157 (2000).

Aliens have also argued that persons who were placed in deportation proceedings *after* AEDPA was enacted, but who committed their crimes and were convicted before that date, should be eligible for section 212(c) relief, and that AEDPA section 440(d) would be impermissibly retroactive if applied to them.

Three circuits—the Third, Fifth and Tenth—have affirmatively held that AEDPA section 440(d) *does* foreclose section 212(c) relief for aliens who were placed in proceedings after AEDPA was enacted, even if their criminal offenses were committed before the enactment of AEDPA. *See DeSousa* v. *Reno*, 190 F.3d 175, 185–87 (3d Cir. 1999); *Requena-Rodriguez* v. *Pasquarell*, 190 F.3d 299, 306–08 (5th Cir. 1999); *Jurado-Gutierrez* v. *Greene*, 190 F.3d 1135, 1147–52 (10th Cir. 1999), *cert. denied sub nom Palaganas-Suarez* v. *Greene*, 120 S. Ct. 1539 (2000). The Seventh Circuit has necessarily adopted that position as well. *See Turkhan*, 188 F.3d at 824–28 (holding that section 440(d) bars relief for *all* criminal aliens who had not been granted section 212(c) relief at the time AEDPA was enacted, necessarily including all those whose convictions occurred prior to AEDPA but whose deportation proceedings were initiated after enactment of AEDPA).

The Ninth Circuit has concluded that aliens who are deportable based on a qualifying criminal conviction entered prior to AEDPA but after a full trial are properly covered by AEDPA section 440(d) and therefore ineligible for section 212(c) relief. *See Magana-Pizano*, 200 F.3d at 610–11. The Ninth Circuit also held, however, that because of concerns about retroactivity and reliance, it could not exclude the possibility that section 440(d) should not be applied to an alien who pleaded guilty or nolo contendere to his disqualifying criminal offense and who can show that the plea "was entered in reliance on the availability of discretionary waiver under § 212(c)." *Id.* at 613. The court therefore remanded the case to the district court to determine whether the alien could show such reliance. *See id.* at 609. The First Circuit has issued a similar ruling, holding that section 440(d) does not apply in a case where an alien pleaded guilty to and was convicted of a qualifying offense before AEDPA was enacted but was placed in proceedings afterwards, if the alien could show that he entered his guilty plea in reliance on the state of the law before AEDPA's enactment. *See Mattis* versus *Reno*, — F.3d—, 2000 WL 554957, at *5-*9 (1st Cir. May 8, 2000). The First Circuit found no evidence of such reliance in that case, however. *See id.* at *9.

Additionally, the Fourth Circuit held that the statute is inapplicable, because of perceived retroactivity concerns, to an alien who pleaded guilty and was convicted before AEDPA was enacted even if his deportation proceedings were commenced after enactment of AEDPA. The court reasoned that the alien had detrimentally relied upon the availability of discretionary relief from deportation when he entered his guilty plea prior to the enactment date. *See Tasios*, 204 F.3d at 550–52.

Why is the Attorney General Implementing a Rule of Uniform Implementation of AEDPA for Aliens Seeking Section 212(c) Relief?

Issues concerning the construction of AEDPA section 440(d) affect a large number of aliens and are of considerable importance to the Department of Justice, including the INS and the Executive Office for Immigration Review (EOIR).

Approximately 800 aliens who have been found deportable by the Immigration Court and the Board have filed challenges to *Soriano* in federal district court. In addition, a number of cases in which the application of *Soriano* may be dispositive are still pending before the Immigration Court and the Board.

There is an important public interest in the uniform administration of the immigration laws. The Constitution grants Congress the power to establish "an uniform Rule of Naturalization," U.S. Const. art. I, § 8, cl. 4, and it is generally desirable as well that immigration rules be consistent throughout the country to minimize distinctions among aliens based solely on geographical factors. There is also an important public interest in the completion of proceedings involving criminal aliens. The Department of Justice therefore sought to have the Supreme Court definitively resolve the *Soriano* issue October Term 1998 by petitioning for a writ of certiorari from the First Circuit's decision in *Goncalves* and the Second Circuit's decision in *Henderson*. On March 8, 1999, the Supreme Court denied those certiorari petitions.

In light of the Supreme Court's denial of certiorari in *Goncalves*, *Henderson/Navas*, and *LaGuerre* in February 2000, the decisions of eight circuits rejecting the decision in *Soriano*, and the large number of aliens who are affected by the issue, the Attorney General has considered whether the government's interest in the uniform administration of the immigration laws, avoiding unnecessary delays in the completion of proceedings involving criminal aliens, and the reasoning of the courts that have rejected her construction of AEDPA section 440(d) in *Soriano*, warrant a change in the Department's application of AEDPA section 440(d). In the interest of the uniform and expeditious administration of the immigration laws, the Attorney General proposes to acquiesce on a nationwide basis in those appellate decisions holding that AEDPA section 440(d) is not to be applied in the cases of aliens whose deportation proceedings were commenced before AEDPA was enacted.

In particular, the Attorney General proposes to acquiesce in the courts' conclusion, as a matter of statutory construction, that Congress intended that section 440(d) of AEDPA not be applied to deportation proceedings that had been commenced before AEDPA was enacted into law. In reaching that conclusion, the courts generally have applied the first step of the two-step retroactivity analysis set forth by the Supreme Court in *Landgraf* v. *USI Film Products*, 511 U.S. 244 (1994). In the first step of that analysis, the courts inquire whether Congress has specifically addressed the temporal application of a statute. The courts that have rejected *Soriano* have generally relied on two factors to reach the conclusion that Congress specifically addressed the temporal application of AEDPA section 440(d). First, they have observed that Congress expressly made other provisions of AEDPA, such as section 413(f), applicable to pending deportation proceedings, and they have drawn a negative inference from that fact that Congress did not intend section 440(d) to be applied to pending proceedings. Second, examining the legislative history of AEDPA, they have noted that an earlier version of AEDPA in Congress would have applied what became section 440(d) to pending cases, but that provision was deleted by the conference committee. *See Magana-Pizano*, 200 F.3d at 611; *Pak*, 196 F.3d at 676; *Shah*, 184 F.3d at 724; *Mayers*, 175 F.3d at 1302–03; *Sandoval*, 166 F.3d at 241; *Henderson*, 157 F.3d at 129–30; *Goncalves*, 144 F.3d at 128–33.

These factors are specific to AEDPA and concern only the first step of the *Landgraf* analysis. They do not concern the question of whether application of section 440(d) to pending deportation proceedings would be regarded as retroactive under the second step of the *Landgraf analysis*. As to that question, the Attorney General maintains the Department of Justice's longstanding position that questions about an alien's deportability or eligibility for discretionary relief from deportation are matters inherently prospective in nature.

In the absence of adverse appellate precedent, the Attorney General will continue to apply AEDPA section 440(d) in the cases of aliens whose deportation proceedings were commenced *after* AEDPA was enacted into law, even if the alien committed his crime or was convicted of the crime before that date. The appellate decisions rejecting *Soriano* have concluded only that Congress did not intend to apply AEDPA section 440(d) to the cases of aliens whose deportation proceedings were commenced before AEDPA was enacted, and do not (with the exception of the *Mattis, Tasios,* and *Magana-Pizano* decisions from the First, Fourth, and Ninth Circuits, respectively) question its applicability to cases commenced after that date.

The interpretation of AEDPA that would be changed by this proposed rule has, of course, affected many aliens whose deportation proceedings were commenced before enactment of AEDPA but who were unable to obtain section 212(c) relief in those proceedings because of the *Soriano* decision. This rule provides a mechanism for such aliens who now have a final order of deportation to reopen their immigration proceedings if they would have been eligible to apply for section 212(c) relief but for the *Soriano* decision.

The Attorney General has considered the important interest in avoiding delays in deportation proceedings and, on balance, has decided to define the class of aliens eligible for reopening under this proposed rule in categorical terms. For aliens who have a final order of deportation, based on established principles requiring exhaustion of all available administrative remedies, this rule could properly be written to limit relief on reopening only to those aliens who can show that they had affirmatively applied for relief under section 212(c) in their prior immigration proceedings and had appealed an immigration judge's adverse decision to the Board of Immigration Appeals. However, this rule does not require that eligible aliens make a specific factual showing that they previously applied for section 212(c) relief notwithstanding the *Soriano* decision, or appealed an immigration judge's adverse decision to the Board. Instead, this proposed rule is drafted in order to relieve both the government and the alien of the burdens of litigating such factual issues in each case at the motion to reopen stage. In light of the highly unusual circumstances of the *Soriano* litigation, the interest in expeditious enforcement of the immigration laws will be more effectively served by focusing attention on the merits of the claims for discretionary relief from deportation with respect to aliens in the defined class who otherwise would have been eligible to seek section 212(c) relief in their immigration proceedings but for the *Soriano* precedent.

Who is Eligible to Apply for Section 212(c) Relief?

Under this proposed rule, eligible aliens in pending immigration proceedings may apply for section 212(c) relief if their immigration proceedings were commenced prior to the enactment of AEDPA. This rule also provides a 90-day period for a defined class of aliens who had been adversely affected by the *Soriano* decision to file a motion to reopen in order to apply for section 212(c) relief. This special reopening rule would cover aliens who:

(1) had deportation proceedings before the Immigration Court commenced before April 24, 1996;

(2) are subject to a final order of deportation;

(3) would presently be eligible to apply for section 212(c) relief if proceedings were reopened and section 212(c) as in effect on April 23, 1996 were applied; and

(4) either,

(i) applied for and were denied section 212(c) relief by the Board on the basis of the 1997 decision of the Attorney General in *Soriano* (or its rationale), and not any other basis;

(ii) applied for and were denied section 212(c) relief by the Immigration Court and did not appeal the denial to the Board (or withdrew an appeal), and would have been eligible to apply for section 212(c) relief at the time the deportation became final but for the 1997 decision of the Attorney General in *Soriano* (or its rationale); or

(iii) did not apply for section 212(c) relief but would have been eligible to apply for such relief at the time the deportation order became final but for the 1997 decision of the Attorney General in *Soriano* (or its rationale).

This rule is not intended to apply to an alien who filed an application for section 212(c) relief that was denied by an immigration judge or the Board for reasons other than *Soriano* or its rationale. For example, an alien whose section 212(c) application was denied on the merits or before the AEDPA statute was enacted is not covered by this rule.

This rule is also not intended to apply to aliens outside the United States or aliens with a final order of deportation who have returned to the United States illegally. Moreover, this rule does not provide a basis for such aliens to seek or secure admission or parole into the United States to file a section 212(c) application.

What is Required to be Statutorily Eligible for Section 212(c) Relief?

The alien must be a lawful permanent resident, returning to a lawful, unrelinquished domicile of seven consecutive years, who may be admitted in the discretion of the Attorney General without regard to section 212(a) (other than paragraphs (3) and (9)(C)), who is deportable on a ground that has a

corresponding ground of exclusion, and who has not been convicted of one or more aggravated felonies for which he or she has served an aggregate term of imprisonment of at least five years. *See* INA section 212(c).

How is 7 Years Lawful, Unrelinquished Domicile in the United States Defined in this Rule?

The alien must have lived in the United States as either a lawful permanent resident or a lawful temporary resident pursuant to section 245A or section 210 of the INA for at least seven years, as defined in 8 CFR 212.3(f). For purposes of this rule, an alien begins accruing time as of the date of entry or admission as either a lawful permanent resident or lawful temporary resident and the accrual of time ceases when there is a final administrative order in the alien's case, as defined in 8 CFR 240.52 and 3.1(d)(2). When a motion to reopen is filed pursuant to this rule, the alien must have accrued seven years of lawful unrelinquished domicile as of the date of his or her final administrative order which the alien seeks to reopen.

Is There a Fee for Filing this Application?

If the alien has already filed a section 212(c) application and only needs to update the application, no fee is required. If the alien has not filed a section 212(c) application and has a final administrative order, he or she must file a motion to reopen. If the motion to reopen is granted, he or she must pay the fee required by 8 CFR 103.7(b)(1) for Form I–191 (currently $170). *See* 8 CFR 103.7.

An alien in deportation proceedings who has not filed an application shall submit the Form I–191 to the Immigration Court with the appropriate fee receipt attached.

If the case is pending before the Board, the alien must file a copy of the application with the motion and if the motion is granted and the case is remanded to the Immigration Court, the alien must then file the application with the appropriate fee. Nothing in this rule changes the requirements and procedures in 8 CFR 3.31(b), 103.7(b)(1), and 240.11(f) for paying the application fee for a section 212(c) application after a motion to reopen is granted if such an application was not previously filed. Fees must be submitted to the local office of the INS in accordance with 8 CFR 3.31. An applicant who is deserving of section 212(c) relief and is unable to pay the filing fee may request a fee waiver in accordance with 8 CFR 103.7(c).

What is the Procedure for an Applicant who is Currently in Deportation Proceedings Before the Immigration Court or the Board of Immigration Appeals?

Immigration Court. An eligible alien who has a deportation proceeding pending before the Immigration Court should file a section 212(c) application pursuant to this rule, or request a reasonable period of time to submit an application pursuant to this rule. If the alien already has an application on file, he or she may file a supplement to the existing section 212(c) application.

Board of Immigration Appeals. An eligible alien who has a deportation proceeding pending before the Board should file with the Board a motion to remand to the Immigration Court to file a section 212(c) application or to supplement his or her existing section 212(c) application on the basis of his or her eligibility for such relief pursuant to this rule. If the alien appears to be statutorily eligible for relief and meets the other eligibility requirements defined in this rule, the Board shall remand the case to the Immigration Court for adjudication of the section 212(c) application.

What if an Applicant is the Subject of a Final Order of Deportation?

Aliens who have final administrative orders. An alien who is the subject of a final order of deportation who is eligible to apply for section 212(c) relief pursuant to this rule must file a motion to reopen with the Immigration Court or the Board of Immigration Appeals, whichever last held jurisdiction. The front page of the motion and any envelope containing the motion should include the notation "Special 212(c) Motion." The fee for motions to reopen (currently $110) will be waived for aliens eligible for section 212(c) relief pursuant to this rule. The waiver of the fee is only applicable to motions to reopen seeking section 212(c) relief pursuant to this rule. The reopening and remand will be limited to issues concerning the alien's eligibility for relief under section 212(c) and may not address the alien's deportability or any other basis for relief from deportation, unless the Board is also reopening under other applicable provisions of law, in which case the issues may be consolidated for hearing as appropriate and all appropriate motions fees will apply.

If the alien previously filed an application for section 212(c) relief, he or she must file a copy of that application or a copy of a new application and supporting documents with the motion to reopen. If the motion to reopen is granted, an alien who previously filed an application will not be required to pay a new filing fee for the section 212(c) application, Form I–191.

If the alien has not previously filed an application for section 212(c) relief, the alien must submit a copy of his or her completed application and supporting documents with the motion to reopen. If the motion is granted, the alien must then file the application with the appropriate fee.

Cases remanded to the Board. If a case has been remanded to the Board by a federal court based on a judicial decision rejecting the Attorney General's decision in *Soriano*, the Board will comply with the order of the district or circuit court.

What happens if an applicant currently has a Motion to Reopen or motion to reconsider pending before the Immigration Court or the Board?

Immigration Court. If an alien has a pending motion to reopen or reconsider filed with the Immigration Court, he or she must file a new motion to reopen with the Immigration Court to apply for section 212(c) relief on the basis of his or her eligibility pursuant to this rule.

Board of Immigration Appeals. If an alien has a pending motion to reopen or reconsider filed with the Board the alien must file a new motion to reopen with the Board to apply for section 212(c) relief on the basis of his or her eligibility pursuant to this rule.

New Motion to Reopen. An alien may file only one motion to reopen for purposes of establishing eligibility under this rule. A new motion to reopen filed pursuant to this rule either before the Immigration Court or the Board, as appropriate, must specify whether the alien has any pending motions before the Immigration Court or the Board. All motions to reopen to apply for section 212(c) relief filed pursuant to this rule are subject to the restrictions specified in this rule. The usual time and number restrictions on motions, as articulated in 8 CFR 3.2 and 3.23, shall apply to all other motions.

Is an Alien with a Final Administrative Order of Deportation Required to File a Motion to Reopen under this Rule Within the 90-day Period in Order to Seek Section 212(c) Relief?

This rule is intended to provide a single, straightforward process for the defined class of aliens who were adversely affected by *Soriano* to reopen their immigration proceedings based on the interpretive change announced in this rule.

Accordingly, 8 CFR 3.44 is intended to provide the sole process for eligible aliens who have a final administrative order of deportation to reopen their cases on account of the change in the governing law announced in this rule in order to apply for section 212(c) relief. However, the existing reopening rules in 8 CFR 3.2 and 3.23 allow aliens to seek to reopen their cases notwithstanding the time limits on certain other grounds unrelated to a change in the law. As provided in 8 CFR 3.44(h), this rule would not prevent an alien from filing a motion to reopen under the existing rules based on any other basis or exception.

Does the Filing of an Application for Section 212(c) Relief stay the Execution of a Final Order?

The mere filing of a motion to reopen to apply for section 212(c) relief with the Immigration Court or the Board does not stay the execution of the final order of deportation. To request that execution of the final order be stayed by the INS, the alien must file an Application for Stay of Removal (Form I–246), following the procedures set forth in 8 CFR 241.6.

What Happens if an Application is Denied by the Immigration Court?

If the Immigration Court denies the section 212(c) application of an alien in deportation proceedings before the Immigration Court, the decision may be appealed to the Board along with, and under the same procedures as apply to, other issues, if any, properly before the Board on appeal.

What Happens if an Alien Fails to Appear for a Hearing Before the Immigration Court on a Section 212(c) Application?

An alien must appear for all scheduled hearings before an Immigration Court, unless his or her appearance is waived by the Immigration Court. An alien who is in deportation proceedings before the Immigration Court, and who fails to appear for a hearing regarding a section 212(c) application, will be subject to the applicable statutory and regulatory *in absentia* procedures (*i.e.*, section 242B of the INA as it existed prior to amendment by IIRIRA).

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule allows certain aliens to apply for INA section 212(c) relief; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provision of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

The regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section six of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041, telephone: (703) 305–0470.

Paperwork Reduction Act

This rule will increase the use of Form I–191 but will not result in a material change in the form, and the INS is adjusting the total burden hours of the form accordingly.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 will continue to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 8 U.S.C. 1103, 1252 note, 1324b, 1362, 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.44 is added to subpart C to read as follows:

§ 3.44 Motion to reopen to apply for section 212(c) relief for certain aliens in deportation proceedings before April 24, 1996.

(a) *Standard for Adjudication.* Except as provided in this section, a motion to reopen proceedings to apply for relief under section 212(c) of the Act will be adjudicated under applicable statutes and regulations governing motions to reopen.

(b) *Aliens eligible to reopen proceedings to apply for section 212(c) relief.* A motion to reopen proceedings to seek section 212(c) relief under this section must establish that the alien:

(1) Had deportation proceedings before the Immigration Court commenced before April 24, 1996;

(2) Is subject to a final order of deportation,

(3) Would presently be eligible to apply for section 212(c) as in effect on or before April 23, 1996; and

(4) Either—

(i) Applied for and was denied section 212(c) relief by the Board on the basis of the 1997 decision of the Attorney General in *Matter of Soriano* (or its rationale), and not any other basis;

(ii) Applied for and was denied section 212(c) relief by the Immigration Court, did not appeal the denial to the Board (or withdrew an appeal), and would have been eligible to apply for section 212(c) relief at the time the deportation became final but for the 1997 decision of the Attorney General in *Matter of Soriano* (or its rationale); or (iii) Did not apply for section 212(c) relief but would have been eligible to apply for such relief at the time the deportation order became final but for the 1997 decision of the Attorney General in *Matter of Soriano* (or its rationale).

(c) *Scope of reopened proceedings.* Proceedings shall be reopened under this section solely for the purpose of adjudicating the application for section 212(c) relief, but if the Immigration Court or the Board reopens on other applicable grounds, all issues encompassed within the reopening proceedings may be considered together, as appropriate.

(d) *Procedure for filing a motion to reopen to apply for section 212(c) relief.* An eligible alien must file either a copy of the original Form I–191 application, and supporting documents, or file a copy of a newly completed Form I–191, plus all supporting documents. An alien who has a pending motion to reopen or reconsider before the Immigration Court or the Board must file a new motion to reopen to apply for section 212(c)relief pursuant to this section. The new motion to reopen shall specify any other motions currently pending before the Immigration Court or the Board that should be consolidated. The Service shall have 45 days from the date of service of the motion to reopen to respond. In the event the Service does not respond to the motion to reopen, the Service retains the right in the reopened proceedings to contest any and all issues raised.

(e) *Fee and number restriction for motion to reopen waived.* No filing fee is required for a motion to reopen to apply for section 212(c) relief under this section. An eligible alien may file one motion to reopen to apply for section 212(c) relief under this section, even if a motion to reopen was filed previously in his or her case.

(f) *Deadline to file a motion to reopen to apply for section 212(c) relief under this section.* An alien with a final administrative order of deportation must file a motion to reopen within 90 days of the effective date of the final rule.

(g) *Jurisdiction over motion to reopen to apply for section 212(c)relief and remand of appeals.*

(1) Notwithstanding any other provisions, any motion to reopen filed pursuant to this section to apply for section 212(c) relief shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case.

(2) If the Immigration Court has jurisdiction, and grants only the motion to reopen to apply for section 212(c) relief pursuant to this section, it shall adjudicate only the section 212(c) application.

(3) If the Board has jurisdiction and grants only the motion to reopen to apply for section 212(c) relief pursuant to this section, it shall remand the case to the Immigration Court solely for adjudication of the section 212(c) application (Form I–191).

(h) *Applicability of other exceptions to motions to reopen.* Nothing in this section shall be interpreted to preclude or restrict the applicability of any other exception to the motion to reopen provisions of this part as defined in 8 CFR 3.2(c)(3) and 3.23(b).

(i) *Limitations on eligibility for reopening under this rule.* This special reopening rule does not apply to:

(1) Aliens who have departed the United States;

(2) Aliens with a final order of deportation who have illegally returned to the United States; or

(3) Aliens who have not been admitted or paroled.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184,1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

4. Paragraph (g) is added to Section 212.3 to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

* * * * *

(g) *Relief for certain aliens who were in deportation proceedings before April 24, 1996.* Section 440(d) of Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) shall not apply to any applicant for relief under this section whose deportation proceedings were commenced before the Immigration Court before April 24, 1996.

Dated: July 12, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–18210 Filed 7–17–00; 8:45 am]

BILLING CODE 4410–30–U

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1077]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation E, which implements the Electronic Fund Transfer Act (EFTA). The proposed revisions implement amendments to the EFTA contained in the Gramm-Leach-Bliley Act that require the disclosure of certain fees associated with automated teller machine (ATM) transactions. The amendments require ATM operators who impose a fee for providing electronic fund transfer services to disclose this fact in a prominent and conspicuous location on or at the ATM. The operator must also disclose that a fee will be imposed and the amount of the fee, either on the screen of the machine or on a paper notice before the consumer is committed to completing the transaction. In addition, when the consumer contracts for an electronic fund transfer service, financial institutions are required to disclose that a fee may be imposed for electronic fund transfers initiated at an ATM owned by another entity.

DATES: Comments must be received by August 18, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1077, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551 or mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.12.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller or Natalie E. Taylor, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve

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System, Washington, D.C. 20551, at (202) 452–2412 or (202) 452-3667. For the hearing impaired *only*, contact Janice Simms, Telecommunications Device for the Deaf (TDD), at (202) 872–4984.

SUPPLEMENTARY INFORMATION:

I. The Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or home-banking program. The act and regulation prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFT services by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFT services.

The Official Staff Commentary (12 CFR part 205 (Supp. I)) interprets the regulation, and provides guidance to financial institutions in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically, as necessary, to address significant questions that arise.

EFTA coverage is not limited to traditional financial institutions holding consumers' asset accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable.

II. The Gramm-Leach-Bliley Amendments to the EFTA

On November 12, 1999, the Gramm-Leach-Bliley Act (GLBA) became law (Pub. L. 106–102, 113 Stat. 1338). Sections 702, 703, and 705 of the GLBA contain amendments to the EFTA. The amendments require disclosure of ATM fees (sometimes referred to as "surcharges") imposed by ATM operators on consumers who hold accounts at other financial institutions. Many ATM operators including financial institutions that impose such a fee, currently disclose information about the fee to satisfy existing regulatory and network requirements.

Section 702 of the GLBA amends section 904(d) of the EFTA regarding services provided by entities other than the account-holding institution. An ATM operator that imposes a fee on a consumer for providing EFT services is required to provide notice of that fact in a prominent and conspicuous location on or at the ATM on which the EFT is initiated. The ATM operator must also disclose that a fee will be imposed and the amount of the fee, either on the screen of the ATM or on a paper notice, before the consumer is committed to completing the transaction. No fee may be imposed unless proper notice is provided and the consumer elects to complete the transaction.

Section 703 of the GLBA amends section 905(a) of the EFTA regarding the disclosure of terms and conditions. The financial institution holding the consumer's account must include in its initial disclosures a notice that a fee may be imposed by (1) An ATM operator not holding the consumer's account, or (2) any national, regional, or local network used to complete the transaction.

Section 705 of the GLBA amends section 910 of the EFTA regarding liability of financial institutions. ATM operators are not liable for failing to comply with the requirement to post notice if the notice posted at an ATM is subsequently removed, damaged, or altered by any person other than the ATM operator.

III. Proposed Revisions to Regulation E

Pursuant to its authority under section 904(a) of the EFTA, the Board is proposing amendments to Regulation E to implement sections 702 and 703 of the GLBA. Section 705, like other statutory provisions regarding liability, would not be made part of the regulation.

To ease compliance, the Board proposes to add a new § 205.16 to address in a single location the rules related to disclosure of surcharges by ATM operators. Below is a section-by-section analysis of the proposed amendments including proposed revisions to §§ 205.3 and 205.7. A cross-reference would also be added to the Official Staff Commentary to existing § 205.9(a)(1). The Board contemplates issuing a final rule in early fall that would be effective 30 days thereafter.

Section 205.3—Coverage

3(b) Electronic Fund Transfer

Section 205.3(b) generally defines the term "electronic fund transfer." Proposed paragraph (b)(6) would add balance inquiries at ATMs to the list of examples of an EFT. A balance inquiry would only be considered an EFT for purposes of proposed § 205.16. Thus, balance inquiries at ATMs would be subject to the new ATM fee disclosure requirements, but would not otherwise be subject to Regulation E requirements.

Section 205.7—Initial Disclosures

7(b) Content of Disclosures

Section 205.7(b) would be revised to implement section 703 of the GLBA. At the time a consumer contracts for an EFT service or before the first EFT, a financial institution is required to provide initial disclosures related to the EFT service, such as fees and a summary of the consumer's liability for unauthorized transfers. Section 703 of the GLBA amends section 905(a) of the EFTA by adding to the initial disclosures a provision that a fee may be imposed by an ATM operator not holding the consumer's account and by a national, regional, or local network used to complete the transfer. If a financial institution's disclosures do not currently include such a provision, it may comply with the new requirement by including an insert regarding ATM surcharges. The Board solicits specific comment on whether national, regional, or local networks separately impose fees and, thus, should be distinguished or whether it is sufficient to refer to "any network" in the disclosures as an alternative to the statutory language, as the proposal provides. In addition, the proposed language would capture national networks that impose a surcharge and that operate internationally.

Section 205.16—Disclosures at Automatic Teller Machines

A new § 205.16 would be added to implement generally section 702 of the GLBA. Proposed § 205.16 (a) defines ATM operator and provides, for purposes of this section, that a balance inquiry is an EFT. The proposal does not incorporate the definition for host transfer services contained in section 702 of the GLBA, as it seems unnecessary to do so.

Proposed §§ 205.16(b) and (c) set forth the ATM disclosure requirements. The disclosure required on the screen or on a paper notice does not apply to any ATM operator that lacks the technical capability to provide such information.

Appendix A to Part 205—Model Disclosure Clauses and Forms

Model language that reflects the new disclosure in proposed § 205.7(b)(11)

regarding fees that may be imposed by an ATM operator and by any network would be added to appendix A–2.

IV. Proposed Revisions to the Official Staff Commentary

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

Section 205.9(a)(1) requires financial institutions that include in the transaction amount a fee for completing an EFT at an electronic terminal to disclose the amount of the fee on the receipt and to display it on or at the terminal. Comment 9(a)(1)-1, which provides guidance on complying with the disclosure requirement, would be revised to provide a cross-reference to the notice requirements in proposed § 205.16(b) for ATM operators.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1077, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch computer-diskettes in any IBM-compatible DOS- or Windows-based format.

VI. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act and section 904(a)(2) of the EFTA, the Board has reviewed the proposed amendments to Regulation E. The proposal would impose a disclosure requirement on account-holding financial institutions with respect to ATM surcharges and a notice requirement on ATM operators. The proposal exempts ATMs lacking technical capabilities from certain notice requirements until December 31, 2004.

The proposed amendments are not expected to have any significant impact on small entities. Many financial institutions that impose a fee for carrying out an EFT at an ATM already disclose the fee on a receipt and on the screen of a terminal or at the electronic terminal to satisfy existing requirements under § 205.9(a)(1). The proposed amendment would require that the notification regarding the fee be posted at the terminal and on the screen. The notice, however, is generic and can easily be programmed to be viewed on the screen and posted once at the terminal. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0200.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of Regulation E and the Electronic Fund Transfer Act (EFTA). The revised requirements would be used to ensure adequate disclosure of fees imposed for electronic fund transfers at ATMs owned by a party other than the account-holding financial institution. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for 24 months. This regulation applies to all types of financial institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions are not expected to increase the ongoing annual burden of Regulation E. With respect to state member banks, it is estimated that there are 851 respondents/recordkeepers and an average frequency of about 85,800 responses per respondent each year. Therefore the current amount of annual burden is estimated to be approximately 462,800 hours. Using the same hourly cost, the Federal Reserve estimates that there would be associated start up cost ranging from $1,600 to $5,000 per respondent, depending on size and location, for changing disclosures (or disclosure producing software) to include disclosures relating to ATM surcharges and for posting a notice regarding the surcharge at either the ATM or on the screen of the ATM.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between institutions and the customer.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology; and (d) capital and start up costs and costs of operations, maintenance, and purchase of services to provide information. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and record keeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation E. New language is shown inside bold-faced arrows, deletions inside bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would continue to read as follows:

Authority: 15 U.S.C. 1693–1693r.

2. Under § 205.3—Coverage, paragraph (b) would be revised to read as follows:

§ 205.3 Coverage.

* * * * *

(b) *Electronic fund transfer.* The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:

(1) Point-of-sale transfers;

(2) Automated teller machine transfers;

(3) Direct deposits or withdrawals of funds;

(4) Transfers initiated by telephone; [and]

(5) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal[.]►; and

(6) Balance inquiries at automated teller machines for purposes of § 205.16.◄

* * * * *

3. Under § 205.7—Initial Disclosures, new paragraph (b)(11) would be added to read as follows:

§ 205.7 Initial disclosures.

* * * * *

(b) Content of disclosures. * * *

►(11) *ATM surcharge.* A notice that a fee may be imposed by an automated teller machine operator as defined in § 205.16(a)(1), when the consumer initiates an electronic fund transfer or makes a balance inquiry at an automated teller machine operated by a non-accountholding financial institution, and by any network used to complete the transaction.◄

* * * * *

4. A new § 205.16-Disclosures at Automatic Teller Machines, would be added to read as follows:

►**§ 205.16 Disclosures at automatic teller machines.**

(a) *Definitions,* (1) *Automated teller machine operator* means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer as defined in § 205.3(b), and that does not hold the account from which the transfer is made.

(2) *Balance inquiry as EFT.* For purposes of this section, the term *electronic fund transfer* includes a transaction that involves a balance inquiry initiated by a consumer.

(b) *General.* An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer shall:

(1) Provide notice that a fee will be imposed; and

(2) Disclose the amount of the fee.

(c) *Notice requirement.* (1) *On the machine.* Notice required by paragraph (b)(1) of this section shall be posted in a prominent and conspicuous location on or at the automatic teller machine.

(2) *Screen or paper notice.* The notice required by paragraph (b) of this section shall be given to the consumer, either by showing it on the screen of the automatic teller machine or by printing out a paper notice, before the consumer is irrevocably committed to completing the transaction.

(d) *Temporary exemption.* The notice requirement in paragraph (c)(2) of this section does not apply to any automated teller machine that lacks the technical capability to provide such information until December 31, 2004.

(e) *Imposition of fee.* An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer only if

(1) The consumer receives the notice required under paragraph (c) of this section, and

(2) The consumer elects to continue the transaction after receiving such notice.◄

* * * * *

5. Under Appendix A, in A–2 a new paragraph (j) would be added to read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–2—Model Clauses for Initial Disclosures (§ 205.7(b))

* * * * *

►(j) *ATM surcharges (§ 205.7(b)(11)).* When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used to complete the transfer (and you may be charged a fee for a balance inquiry).◄

* * * * *

6. In Supplement I to Part 205, under Section 205.9—Receipts at Electronic Terminals; Periodic Statements, under Paragraph 9(a)(1)—Amount, paragraph 1. would be revised to read as follows:

Supplement I to Part 205—Official Staff Interpretations

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

* * * * *

Paragraph 9(a)(1)—Amount

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as consumers are given the option to cancel the transaction after receiving notice of a fee. ►(See § 205.16(c) for the notice requirements applicable to ATM operators that impose a fee for providing EFT services.)◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 7, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–17674 Filed 7–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 436

Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Proposed Rule; Commission Solicits Demonstration Projects for Electronic Pre-Sale Disclosure.

SUMMARY: The Federal Trade Commission (the "Commission") solicits proposals to conduct demonstration projects implementing the proposed instructions for electronic dissemination of disclosure documents set forth in § 436.7 of the Commission's October 22, 1999, Notice of Proposed Rulemaking.

DATES: Proposals to conduct demonstration project start on July 18, 2000.

ADDRESSES: Petitions for permission to implement a demonstration projects should be addressed to: Federal Trade Commission, Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326–3135, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On October 22, 1999, the Commission published a Notice of Proposed Rulemaking ("NPR"), soliciting comment on a wide-range of proposed amendments to the Franchise Rule. One proposal would permit franchisors to comply with the Franchise Rule by furnishing prospective franchises with disclosures electronically, including through the Internet. Among other things, the proposal would: (1) Require franchisors to obtain a prospective franchisee's prior consent to receive disclosure electronically; (2) permit a prospective franchisee the right to obtain a paper disclosure document until the time of sale; and (3) require franchisors to provide a prospective franchisee with a paper summary

document, which among other things, includes the disclosure document's table of contents, as well as an admonition to download or otherwise preserve document's table of contents, as well as an admonition to download or otherwise preserve the electronic disclosure document. The proposed instructions would also specify the general formal for an electronic disclosure document, ensuring that the disclosure document could be downloaded or otherwise preserved, and that the disclosures are clear, conspicuous, and do not contain extraneous or distracting features (such as animation or pop-up screens). The proposal would permit franchisors to insert navigational tools that aid in the reviewing a disclosure document, including scroll bars, search features, and internal links.

The NPR comment period closed at the end of January, 2000. Forty comments, including five rebuttal comments, were submitted, several of which address the Commission's proposed Internet compliance instructions. Commission staff are currently analyzing the various comments and are preparing recommendations to the Commission on Internet compliance and other disclosure issues.

The Commission recognizes that, to date, few franchisors have sought to use the Internet or other electronic technologies to comply with the Franchise Rule. One reason is that the Rule itself requires franchisors to "furnish" a "written" disclosure document. Arguably, these requirements would preclude the use of the Internet until such time as the Commission clarifies the term "furnish" and revises the definition of "written" to include electronic communications. Another reason is fear of liability. Franchisors appear unwilling to incur the costs associated with developing an online disclosure mechanism without some assurances that their mechanism will pass Commission muster. This reluctance is understandable in light of the Commission's evolving policy in this area, as developed through the ongoing Franchise Rule amendment process.

The Commission believes that demonstration projects of the NPR's proposed Internet instructions would be in the public interest. In light of the franchise community's lack of practical experience with Internet disclosure, it is critical to probe the strengths and weaknesses of the NPR proposed instructions before they are incorporated into the final revised Rule. Through demonstration projects, the Commission can be alerted to any technological problems with the proposed instructions, receive feedback on whether franchisors are able to comply with the proposed instructions efficiently, as well as to identify areas where the proposed instructions might need fine-tuning. As a result, the final Rule's Internet instructions are likely to be much more precise, enabling franchisors to comply with the Rule efficiently and with significant cost reductions.

Accordingly, the Commission solicits all interested parties to submit petitions to the Commission for permission to implement a demonstration project, consistent with proposed section 436.7 of the NPR. The Commission will consider all such petitions on a case-by-case basis. To gain approval, the interested party must be able to demonstrate that its proposal meets the standards specified in proposed section 436.7 of the NPR. All demonstration projects will be on a trial basis only, and the Commission specifically reserves its right to terminate any demonstration project for any reason. To enable the Commission and the public to benefit from a demonstration project, an approved party must file written reports to appropriate Commission staff of its progress on at least a quarterly basis, describing any problems it has encountered with the proposed Internet instructions, any complaints from franchisors and franchisees, as well as any suggested improvements. Such reports will be placed on the public record.

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 00–17994 Filed 7–17–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 00N–1380]

Human Bone Allograft: Manipulation and Homologous Use in Spine and Other Orthopedic Reconstruction and Repair; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER) and Center for Devices and Radiological Health (CDRH), is announcing a public meeting entitled "Human Bone Allograft: Manipulation and Homologous Use in Spine and Other Orthopedic Reconstruction and Repair." The purpose of the meeting is to provide a public forum for gathering scientific information and views from the public to help FDA in clarifying the regulation of human bone allograft.

DATES: The public meeting will be held on Wednesday, August 2, 2000, from 8:30 a.m. to 5 p.m. Submit registration information by July 24, 2000. Submit written comments by September 1, 2000.

ADDRESSES: The public meeting will be held at the National Institutes of Health (NIH), NIH Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document. Submit registration information to Kathy A. Eberhart (address below).

FOR FURTHER INFORMATION CONTACT: For registration and meeting information: Kathy A. Eberhart, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–1317, FAX 301–827–3079, e-mail: eberhart@cber.fda.gov.

For information about presentations: Martha A. Wells, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6106.

For information about this notice: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA began regulating tissue establishments in 1993 when it issued an interim rule entitled "Human Tissue Intended for Transplantation" that was codified in 21 CFR 1270 (58 FR 65514, December 14, 1993). In 1997 the agency replaced the interim rule with a final rule entitled "Human Tissue Intended

for Transplantation" (62 FR 40429, July 29, 1997). FDA announced a plan for a new approach to regulate cells and tissue-based products in February 1997 with two documents: "Reinventing the Regulation of Human Tissue" and "A Proposed Approach to the Regulation of Cellular and Tissue-Based Products." FDA requested written comments on the proposed approach and on March 17, 1997, held a public meeting to solicit information and views from the interested public (62 FR 9721, March 4, 1997). FDA is implementing its regulatory plan for human cellular and tissue-based products with publication of a series of proposed regulations. On May 14, 1998, FDA published a proposed regulation entitled "Establishment Registration and Listing for Manufacturers of Human Cellular and Tissue-Based Products" (63 FR 26744). On September 30, 1999, FDA published a proposed rule entitled "Suitability Determination for Donors of Human Cellular and Tissue-Based Products" (64 FR 52696). The comment period for the 1999 proposed rule was reopened on April 18, 2000 (65 FR 20774), and will close on July 17, 2000.

The proposed rule for establishment registration and listing also proposed criteria that human cellular and tissue-based products must meet for regulation solely under section 361 of the Public Health Service Act. One of the criteria is that these products be "minimally manipulated." "Minimal manipulation" is defined in proposed § 1271.3(g) for structural tissue, as processing that does not alter the original relevant characteristics of the tissue relating to the tissue's utility for reconstruction, repair, or replacement. Another criterion, "homologous use," is defined in proposed § 1271.3(d). "Homologous use" means the use of a cellular or tissue-based product for replacement or supplementation or for structural tissue-based products, used for the same basic function that it fulfills in its native state, in a location where such structural function normally occurs. FDA has received numerous comments to the dockets of both proposed rules (Docket Nos. 97N–484R and 97N–484S) about the application of the definitions for minimal manipulation and homologous use in the regulation of human allograft bone products. Many of these comments request that FDA clarify how these definitions will be applied to bone products that are preshaped for use in spinal fixation. Other comments cite the long history of safe use of bone products.

This public meeting is being organized by CBER and CDRH to provide stakeholders with the opportunity to provide additional information to the agency. The agency is requesting information concerning the characteristics of various bone products as they relate to the agency's proposed definitions for "minimal manipulation" and "homologous use." Such information will be considered for future guidance to industry in conjunction with the regulations discussed above. Stakeholders are encouraged to provide information about the following issues:

1. Which processing procedures applied to human bone allograft fall within, or outside of, FDA's proposed definition for "minimal manipulation?"
2. Which uses of human bone allograft fall within, or outside of, FDA's proposed definition for "homologous use?"
3. What risks to health have been identified and characterized for human bone allograft products?
4. What controls have been identified to adequately address the risk to health of human bone allograft products?
5. What industry standards for bone allograft products are available, and what standards will be needed in the future?

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments by September 1, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the appropriate docket number found in brackets in the heading of this document. FDA is requesting that those persons making oral presentations at the public meeting also submit in writing comments based on their statements by September 1, 2000, to ensure their adequate consideration. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Registration and Requests for Oral Presentations

Those persons interested in attending the public meeting should fax or e-mail their registration information (including name, title, firm name, address, and telephone and fax numbers), a summary of their presentation, and a notice of intent to make an oral presentation, to Kathy Eberhart (address above) by Monday, July 24, 2000. Registration is not required for attendees not making a presentation. However, all interested persons are encouraged to preregister because space is limited. An announcement of the public meeting and the notice of intent to participate may be accessed at http://www.fda.gov/cber/scireg/htm. FDA will post a draft agenda on this web site about a week before the meeting.

If time permits, those who did not submit a notice of participation will be given an opportunity to speak at the end of the meeting.

If you need special accommodations due to a disability, please contact Kathy Eberhart at least 7 days in advance.

IV. Transcripts

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript will also be available at http://www.fda.gov/cber/minutes/workshop-min.htm.

Dated: July 10, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–17942 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 172

[FHWA Docket No. FHWA–98–4350]

RIN 2125–AE45

Administration of Engineering and Design Related Services Contracts

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to revise its regulation on the administration of engineering and design related services contracts in order to establish procedures to be followed when using Federal-aid highway funds for the procurement of engineering and design related services, materials, equipment, or supplies. The proposed regulation describes procurement methods contracting agencies are to use when acquiring these services or related items. This proposed rule implements 23 U.S.C. 112(b), as amended by section 307 of the National Highway System Designation Act of 1995 (NHS Act) and section 1205(a) of the Transportation Equity Act for the 21st Century (TEA–21), by requiring States to award Federal-aid highway engineering and design service contracts: In accordance

with the provisions of title IX of the Federal Property and Administrative Services Act of 1949, or by use of equivalent State qualifications-based procedures unless a State has previously established by statute a formal procurement procedure for engineering and design related services.

DATES: Written comments are due on or before September 18, 2000. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Signed written comments should refer to the docket number that appears at the top of this document and should be submitted to the Docket Clerk, U.S. DOT Dockets Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notifications of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Gary E. Moss, Office of Program Administration, (HIPA–10), (202)–366–4654, or Mr. Steven Rochlis, Office of the Chief Counsel, (HCC–30), (202)–366–1395, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resources locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and at the Government Printing Office's web page at *http://www.access.gpo.gov/nara*.

Background

The FHWA's regulation on the administration of engineering and design related services contracts, 23 CFR part 172, draws its authority from 23 U.S.C. 112. Title 23, U.S.C., section 112 references the provisions of title IX of the Federal Property and Administrative Services Act of 1949 (Pub. L. 92–582, 86 Stat. 1278 (1972); 40 U.S.C. 541, *et seq.*) which provides the qualifications-based procedures to be followed for the selection of engineering and design related services. Section 307 of the NHS Act, Public Law 104–59, 109 Stat. 568, modified 23 U.S.C. 112 by requiring grantees of Federal highway funds to accept indirect cost rates for architectural and engineering firms which are established in accordance with the Federal Acquisition Regulations (FAR) and accepted by a cognizant Federal or State agency if such rates are not under dispute. The law also specifies that once a firm's indirect cost rate is accepted, the grantee shall apply those indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment. The NHS Act also provided a period of time in which State Departments of Transportation (State DOTs) could adopt statutes to allow use of alternate State procedures other than those provided for in the NHS Act.

Section 1205 of TEA–21, Public Law 105–178, 112 Stat. 107 (1998), further modified 23 U.S.C. 112(b) by removing the provision allowing State DOTs to adopt alternate procedures for the procurement of design and engineering consultants.

The changes made to 23 U.S.C. 112(b) by these two laws, as well as provisions in 23 U.S.C. 106(c) relating to the assumption by the State of responsibilities of the Secretary for project design and construction, require the FHWA to modify 23 CFR part 172, subpart A—Procurement Procedures. In addition, the FHWA proposes to add several new terms to the definition section to clarify existing terms used in the regulation.

The small purchase procedures section would be revised by raising the maximum value for small purchases from $25,000 to $100,000.

The references to Certification Acceptance (CA), and § 172.15, Alternate Procedures, which were incorporated into 23 CFR part 172 to implement Certification Acceptance, would be removed since Certification Acceptance was repealed by section 1601 of the TEA–21.

Reference to the Secondary Road Plan (SRP) and the Combined Road Plan (CRP) demonstration project, would be removed since these programs are no longer being funded.

Section-by-Section Analysis

Section 172.1 Purpose and Applicability

The statement of purpose and applicability would be revised to remove the references to the Certification Acceptance Plans that were repealed by the TEA–21; to remove an obsolete reference to the Secondary Road Plans; and to remove the reference to Combined Road Plans because the Secondary and Combined Road programs are no longer being funded. Additionally, paragraph (b) would be revised to limit the use of State statutes for an alternate procedure to those enacted into law before June 9, 1998 (the date the TEA–21 was enacted) and redesignated as § 172.5(b).

Section 172.3 Definitions

The term "cognizant agency" would be added to the list of definitions to mean any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has been developed in accordance with the cost principles contained in the Federal Acquisition Regulations (title 48, Code of Federal Regulations). This term was used in section 307(a) of the NHS Act. The term "competitive negotiation" would be revised to prohibit the use of procurement procedures enacted into State law after the enactment of TEA–21 (June 9, 1998). The terms "contract modification," "extra work," "fixed fee," "prenegotiation audit," and "scope of work" would be removed since they would not be used in the new regulation.

Section 172.5 General Principles

This section, with the exception of paragraphs (b) and (e) would be removed. The material that was covered in § 172.5 is either covered by other regulations or is not required by law. The provisions of paragraph (a) need for consultant services in management roles are still required to be consistent with 49 CFR 18.36(a) which requires States to use the same procurement procedures as if they were procuring with State funds, except where such procedures are inconsistent with Federal statute requirements (see 49 CFR 18.4). In addition, States would still have to meet the provisions of 23 U.S.C. 112(b)(2) that require a State to award architectural and engineering contracts relating to highway construction in the same manner as a contract for architectural and engineering services is negotiated under the Brooks Architects-Engineering Act (title IX of the Federal Property and Administrative Services

Act of 1949, as amended; 40 U.S.C 541–544) , or equivalent State based qualifications requirements. Alternatively, prior to TEA–21, the Congress authorized a State to adopt a formal procedure for procurement of architectural and engineering services adopted by State statute (23 U.S.C. 112(b)(2)(B)(ii)).

Paragraph (b), written procedures, would be redesignated as § 172.9(a).

The provisions of paragraph (c) are still required to be consistent with 49 CFR 18.36(a) which requires States to use the same procurement procedures as if they were procuring with State funds, except where such procedures are inconsistent with Federal statutory requirements (see 49 CFR 18.4).

The provisions of paragraph (d) are still required to be consistent with 49 CFR 18.36 and 18.37, except where such procedures are inconsistent with Federal statutory requirements (see 49 CFR 18.4). But, as stated in the comments for § 172.5(a), State and local agencies must meet the requirements of 23 U.S.C. 112(b)(2).

The requirements of paragraph (e), the Disadvantaged Business Enterprise program, are specified under 49 CFR part 26. Paragraph (e), is redesignated as paragraph (b).

The requirements of paragraph (f), Contractual responsibilities, are still required to be consistent with 49 CFR 18.36(a) which requires States to use the same procurement procedures as if they were procuring with State funds, except where such procedures are inconsistent with Federal statutory requirements (see 49 CFR 18.4). Because States would be responsible for approving contracts and settlements, provided such contracts and settlements follow the same policies and procedures as the State would follow using State funds, there would no longer be a requirement that such settlements be approved by the FHWA, except for settlements on contracts requiring approval under proposal § 172.9.

Section 172.7 Methods of Procurement

This section would be redesignated as § 172.5 and revised. This section generally covers the methods that can be used for procurement of design engineering services. Those same methods are still in the regulations, but have been simplified. The small purchase section would be revised by raising the maximum amount for procurement by small purchase procedures from $25,000 to $100,000 to conform to the simplified acquisition threshold set in 41 U.S.C. 403(11) and 49 CFR 18.36(d). The threshold has already been raised from $25,000 to $100,000 by FHWA memorandum dated June 26, 1996, from the Director, Office of Engineering to the FHWA Regional Administrators to implement the change in the final rule published in the **Federal Register** of April 19, 1995 (60 FR 19646) concerning 49 CFR part 18 and the change to 41 U.S.C. 403(11), which defines the "simplified acquisition threshold" to mean $100,000.

Section 172.9 Compensation

The information in paragraph (a) of this section would be transferred to a new paragraph (a) in § 172.7, Audit Principles, and revised to prohibit procedures enacted into State law after June 9, 1998 (TEA–21). Paragraphs (b), (c), and (d) would be removed.

Section 172.11 Contract Modification

This section would be removed to promote uniformity with the common grant rule, 49 CFR part 18. The requirements of this section would in general be addressed by 49 CFR 18.36 and 18.52.

Section 172.13 Monitoring the Contract Work

This section would be removed to promote uniformity with the common grant rule, 49 CFR part 18. The requirements of this section would be covered by 49 CFR 18.36 which generally involve State procedures.

Section 172.15 Alternate Procedures

This section would be removed as it implemented 23 U.S.C. 117, Certification Acceptance, which was repealed by section 1601 of the TEA–21 in 1998.

Sections 172.21, 172.23, and 172.25 of Subpart B

Subpart B, Private sector involvement program, would be removed. This section was developed to meet the requirements of the Intermodel Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, section 1060, Private sector involvement program, but has never been funded.

For ease of reference the following distribution table is provided:

Old section	New section
172.1(a)	172.1 Revised.
172.1(b)	172.1 Revised and 172.5(b) Revised.
172.3	172.3 Revised.
Cognizant agency	Added.
Competitive negotiation.	Revised.
Contract modification	Removed.
Extra work	Removed.
Fixed fee	Removed.
Prenegotiation audit	Removed.
Scope of work	Removed.
172.5(a)	Removed.
172.5(b)	172.9(a).
172.5(c)	Removed.
172.5(d)	Removed.
172.5(e)	172.5(b) Revised.
172.5(f)	Removed.
172.7 introductory paragraph.	172.5 introductory paragraph revised and 172.5(a)(1) Revised.
172.7(a)	172.5(a)(1) Revised.
172.7(a)(3)(ii)(B)	172.5(a)(2) Revised.
172.7(b)	172.5(a)(4) Revised.
172.7(c)	172.5(a)(3) Revised.
172.7(c)(1)	172.5(a)(3) Revised.
172.7(c)(1)(i)	172.5(a)(3)(i) Revised.
172.7(c)(1)(ii)	172.5(a)(3)(ii) Revised.
172.7(c)(1)(iii)	172.5(a)(3)(iii) Revised.
172.7(c)(2)	Removed.
None	172.7(b) Added.
None	172.7(c) Added.
None	172.7(d) Added.
72.9(a)	172.7(a) Revised.
172.9(b), (c), and (d)	Removed.
None	172.9(a), (b), (c) Added.
172.11	Removed.
172.13	Removed.
172.15	Removed.
172 Subpart B	Removed.
172.21	Removed.
172.23	Removed.
172.25	Removed.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This proposed action would

not adversely affect, in a material way, any sector of the economy. In addition, these proposed changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking merely proposes to amend current regulations governing the administration of engineering and design related services contracts based on changes in law. It is not anticipated that these proposed changes would affect the total Federal funding available under the engineering and design related services contracts. Consequently, it is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the anticipated effects of this proposed rule on small entities, such as local governments and businesses. Based on the evaluation, the FHWA hereby certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

Essentially, this rulemaking proposes to implement certain changes in 23 U.S.C. 112 as mandated by recent laws. The rulemaking would eliminate sections that were removed by the recent laws and other sections that were not required directly by law or that were outdated. Thus, the projected impact upon the small entities affected is expected to be negligible because the FHWA merely proposes to update, simplify, and clarify existing procedures. We specifically invite comments on the projected economic impact of this proposal and would consider such information before completing our Regulatory Flexibility Act analysis when adopting final rules.

Unfunded Mandates Reform Act of 1995

This proposed rule will not impose a Federal mandate resulting in the expenditure by State, Local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

The proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this proposed action does not have a substantial direct affect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State Law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposed action does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 172

Government procurement, Grant programs—transportation, Highways and roads.

Issued on: June 26, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise part 172 of title 23, Code of Federal Regulations to read as set forth below:

PART 172—ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICE CONTRACTS

Sec.

172.1 Purpose and applicability.
172.3 Definitions.
172.5 Methods of procurement.
172.7 Audit principles.
172.9 Approvals.

Authority: 23 U.S.C. 112, 114(a), 302, 315, and 402; 40 U.S.C. 541 *et seq.*; 41 U.S.C. 253 and 259; sec. 1205(a), Pub L. 105–178, 112 Stat. 107 (1998); sec. 307, Pub. L. 104–59, 109 Stat. 568 (1995); sec. 1060, Pub. L. 102–240, 105 Stat. 1914, 2003 (1991); 48 CFR 12 and 31; 49 CFR 1.48(b) and 18.

§ 172.1 Purpose and applicability.

To prescribe policies and procedures for exceptions to the general contracting regulations under the common grant rule, 49 CFR part 18. It is not the intent of this regulation to release the grantee from the other requirements of the common rule. The exceptions involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost.

§ 172.3 Definitions.

As used in this part:

Cognizant agency means any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has been developed in accordance with the cost principles contained in the Federal Acquisition Regulations (FAR).

Competitive negotiation means any form of negotiations that utilizes the following;

(1) Qualifications-based procedures complying with title IX of the Federal Property and Administrative Services

Act of 1949 (Pub. L. 92–582, 86 Stat. 1278 (1972));

(2) Equivalent State qualifications-based procedures; or

(3) A formal procedure permitted by State statute that was enacted into State law prior to the enactment of Public Law 105–178 (TEA–21) on June 9, 1998.

Consultant means the individual or firm providing engineering and design related services as a party to the contract.

Contracting agencies means State Departments of Transportation (State DOTs) or local governmental agencies that are responsible for the procurement of engineering and design services.

Engineering and design services means program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a construction project subject to 23 U.S.C. 112(a).

Private sector engineering and design firms means any individual or private firm (including small business concerns and small businesses owned and controlled by socially and economically disadvantaged individuals as defined in 49 CFR part 26) contracting with a State to provide engineering and design services.

§ 172.5 Methods of procurement.

(a) *Procurement.* The procurement of Federal-aid highway contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, and architectural related services as specified in 23 U.S.C. 112(b)(2) shall be evaluated and ranked by the contracting agency using one of the following procedures:

(1) *Competitive negotiation.* Contracting agencies shall use competitive negotiation for the procurement of engineering and design related services when Federal-aid highway funds are involved in the contract. These contracts shall use qualifications-based selection procedures in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541–544) or equivalent State qualifications-based requirements. The proposal solicitation (project, task, or service) process shall be by public announcement/advertisement or any other method that assures qualified in-State and out-of-State consultants/firms are given fair opportunity to be awarded the contract.

(2) *State statutory procedures.* States may procure engineering and design related services using a different selection procedure as long as these procedures are established in State statutes and the State statutes were enacted into law before June 9, 1998.

(3) *Noncompetitive negotiation.* Noncompetitive negotiation may be used to procure engineering and design related services on Federal-aid participating contracts when it is not feasible to award the contract using competitive negotiation or equivalent State qualifications-based procedures. Contracting agencies shall submit justification and receive approval from the FHWA before using this form of contracting. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(i) The service is available only from a single source;

(ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or

(iii) After solicitation of a number of sources responding is determined to be inadequate.

(4) *Small purchases.* Contracting agencies may use small purchase procedures for the procurement of engineering and design related services when the contract costs do not exceed $100,000.

(b) *Disadvantaged Business Enterprise (DBE) program.* The contracting agency shall give consideration to DBE firms in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26.

§ 172.7 Audit principles.

(a) *Performance of audits.* When contracts or subcontracts awarded in accordance with 23 U.S.C. 112(b)(2)(A) are audited, the audits shall comply with the cost principles contained in the Federal Acquisition Regulations provided at 48 CFR part 31. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(b) *Audits for indirect cost rate.* Contracting agencies shall use the indirect cost rate established by a cognizant agency audit for the consultant, if such rates are not under dispute. The grantee shall apply these indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rates shall not be limited by any administrative ceilings. The cost rates have a one-year applicability period. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(c) *Disputed audits.* When the indirect cost rate(s) as established by the cognizant audit in paragraph (b) of this section are in dispute, then the parties of any proposed new contract must negotiate a provisional indirect cost rate or perform an independent audit to establish a rate for the specific contract.

(d) *Prenotification; confidentiality of data.* Only the FHWA and recipients and sub-recipients of Federal-aid highway funds may share the audit information, provided that the firm is given notice of such use. Audit information shall not be provided to other firms or any other government agencies without the written permission of the affected firms, unless otherwise required by Federal law, regulation, or pursuant to court order.

§ 172.9 Approvals.

(a) *Written procedures.* The contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures and all revisions shall be approved by the FHWA and describe, as appropriate to the particular method of procurement, each step used:

(1) In preparing a scope of work, evaluation factors and cost estimate for selecting a consultant,

(2) In soliciting proposals from prospective consultants,

(3) In the evaluation of proposals and the ranking/selection of a consultant,

(4) In negotiation of the reimbursement to be paid to the selected consultant,

(5) In monitoring the consultant's work and in preparing a consultant's performance evaluation when completed, and

(6) In determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract.

(b) *Contracts.* Contracts and contract settlements involving design services for projects that have not been delegated to the State under 23 U.S.C. 106(c) or that do not fall under the small purchase procedures in § 172.5(a)(4) shall be submitted to the FHWA for approval.

(c) *Major projects.* Any contract, revision of a contract or settlement of a contract for design services for a project that is expected to fall under 23 U.S.C. 106(h) shall be submitted to the FHWA for approval.

[FR Doc. 00–17774 Filed 7–17–00; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209640–93]

RIN 1545–AR69

TeleFile Voice Signature Test

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of cross-referencing notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the Telefile Voice Signature test that was published in the **Federal Register** on December 27, 1993. The notice of proposed rulemaking cross-referenced temporary regulations published on the same day that provided that an individual federal income tax return completed as part of the Telefile Voice Signature test would be treated as a return that is signed, authenticated, verified and filed by the taxpayer as required by the Internal Revenue Code.

EFFECTIVE DATE: These regulations are effective July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1993, the IRS issued proposed regulations (REG–209640–93) in the **Federal Register** (58 FR 68335) under sections 6012, 6061, and 6065 relating to the TeleFile Voice Signature test. The notice of proposed rulemaking cross-referenced temporary regulations published in the **Federal Register** for the same day (58 FR 68295). Although written comments and requests for a public hearing were solicited, no written or oral comments were received and no public hearing was requested or held. Because the applicable temporary regulations apply only to 1992 and 1993 calendar year returns, the IRS has decided not to finalize those regulations and, thus, is withdrawing the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on December 27, 1993, (58 FR 68335) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–18118 Filed 7–17–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRN–6838–1]

RIN 2050–AE07

Hazardous Waste Identification Rule (HWIR): Identification and Listing of Hazardous of Hazardous Wastes; Notice of Data Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment; extension of the public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is making available for public comment human health and ecological risk data and information relating to an exemption from hazardous waste management that we discussed in a **Federal Register** notice published on November 19, 1999 (64 FR 63382).

That exemption, also known as the Hazardous Waste Identification Rule (HWIR) exemption, would exempt listed hazardous wastes that meet chemical-specific exemption levels from hazardous waste management requirements. We plan to develop these exemption levels based on results from the Multimedia, Multipathway and Multireceptor Risk Assessment (3MRA) Model. The model evaluates simultaneous chemical exposures across several environmental media and multiple exposure pathways to human and ecological receptors in order to estimate the health and ecological effects in the vicinity of waste disposal units that may receive exempt listed hazardous waste.

We presented the underlying methodology and assumptions for the 3MRA Model in the **Federal Register** (64 FR 63382, November 19, 1999). However, because of technical difficulties, we were unable to propose exemption levels in that notice. Since then, we have made numerous revisions to correct and improve the model. On April 12, 2000, we provided an updated version of the 3MRA Model (beta Version 0.98) and results for five chemicals in Docket number F–99–WH2P–FFFFF. On April 19, 2000 (65 FR 20934), we also extended the original deadline of May 17, 2000 for public comment on the modeling methodology to August 15, 2000 to allow additional time for review and comment.

Today's notice makes available the results for 36 chemicals, including the five already in the docket, using an updated version of the model (Version0.98r). In addition, today's notice again extends the comment period for the November 19, 1999 HWIR exemption discussion until October 16, 2000, to coincide with the comment period for today's notice.

Before using a revised risk assessment to support a final regulatory action, we would propose the HWIR exemption. Comments on the 1999 HWIR discussion and on today's notice will be helpful to us in developing such a proposal.

Please note that today's notice does *not* re-open the comment period on the revisions to the mixture and derived-from rules that were proposed in the November 19, 1999 **Federal Register** notice (64 FR 63382, Sections I–IV, Sections XXI–XVI (as applicable) of the preamble and the proposed regulatory language amending 40 CFR Part 261).

DATES: We will accept comments through October 16, 2000 on: (1) The concentration-based HWIR exemption discussed in the November 19, 1999 **Federal Register** notice; (2) the possible revisions to the Land Disposal Restriction (LDR) treatment standard which were also discussed in the November 19, 1999 **Federal Register** notice; and (3) the additional data presented today. The discussions of the HWIR exemption and possible LDR treatment standard revisions are in Sections V–XX and Sections XXI–VVCI (as applicable) of the preamble, 64 FR 63382 (November 19, 1999).

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2000–WH2A–FFFFF to: (1) If using regular U.S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number

F–2000–WH2A–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption and should include commenter's mailing address and phone number. If comments are not submitted electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name and address. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. We emphasize that the submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Ave., N.W., Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The notice and other material associated with this action can be electronically accessed on the Internet at http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/index.htm.

The official record will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the record maintained at the address in **ADDRESSES** at the beginning of this document. The comments and other documents associated with the November 19, 1999 HWIR notice (64 FR 63382) are kept in docket Number F–99–WH2P–FFFFF.

We will respond to submitted comments, whether written or electronic, in a notice in the **Federal Register** or in a response to comments document placed in the official record. We will not immediately reply to electronically submitted comments other than to seek clarification of comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For specific information on the risk modeling, contact David Cozzie, (703) 308–0479, *cozzie.david@epa.gov*, Stephen Kroner, (703) 308–0468, *kroner.stephen@epa.gov*, or Zubair Saleem, (703) 308–0467, *saleem.zubair@epa.gov*, all at: Office of Solid Waste, U.S. Environmental Protection Agency (5307W), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION:

Outline

I. How does today's notice relate to the November 19, 1999 notice?
II. How has EPA revised the 3MRA Model since the November 19, 1999 notice?
III What are the results from the revised 3MRA Model?
IV. What are possible next steps for the HWIR exemption development?

I. How Does Today's Notice Relate to the November 19, 1999 Notice?

The November 19, 1999 **Federal Register** notice includes (among other things) a discussion of a concentration-based exemption (the "HWIR exemption") from the definition of hazardous waste (64 FR 63382 and docket number F–99–WH2P–FFFFF; see also the web site at: *http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/index.htm* for accessing the background documents electronically). Included in this discussion is an extensive explanation of the risk assessment methodology that would support this exemption. The version of the 3MRA Model that we discussed was beta Version 0.93. However, because of unresolved technical issues, we did not have results from the risk assessment modeling, other than for acrylonitrile, to include in the **Federal Register** notice.

Since then, we have addressed many technical issues and have revised the 3MRA Model. Today's notice and materials placed in the docket explain the revisions to the 3MRA Model and present results for 36 chemicals using beta Version 0.98r of the revised model.

II. How Has EPA Revised the 3MRA Model Since the November 19, 1999 Notice?

The details of all the improvements and corrections made to beta Version 0.93 of the model and incorporated in beta Version 0.98r of the model are presented in the RCRA docket number F–2000–WH2A–FFFFF. Selected examples of changes we made are listed below.

(1) We changed the aerated tank and surface impoundment modules so that exceedance of constituent solubility in either the leachate or the waste management unit (WMU) causes an error that terminates the model instead of issuing a warning that allows the model to continue. We changed this because solubility exceedance indicates that the modules were not operating within the intended range of simulation; that is, the modules were not intended to model concentrations that lead to the formation of non-aqueous phase liquids.

(2) We changed the national data table in the aquifer module so that it simulates the effects of fractures and heterogeneities on the transport of chemical constituents. We did this to better reflect the nature of the subsurface environment in the vicinity of the WMUs.

(3) We corrected an error in the data transfer between the ecological risk module and the exit-level processor (ELP–I). Previously the ELP–I misread the ecological receptor group descriptors. In beta version 0.98r, the ecological module outputs the ecological receptor groups directly to the ELP–I; and

(4) We changed the exit-level processor (ELP–II) to correct the exposure pathway tables to include only those pathways relevant to the chemical. The ELP–II now refers to flags in the human health benchmarks database to identify appropriate exposure pathways for each chemical. This specific change has occurred since Version 0.98.

III. What Are the Results From the Revised 3MRA Model?

We are presenting the draft chemical-specific results estimated for the three waste forms (liquids, solids, and semi-solids) and one WMU type (landfill) for the four Protection Groups. The Protection Groups are based on five different types of protection criteria: (1) Cancer risk level, (2) human health hazard quotient (HQ) for non-cancer risks, (3) ecological hazard quotient, (4) population percentile, and (5)

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probability of protection. We summarize below these five risk protection criteria, which are explained more fully in the November 19, 1999 **Federal Register** notice (see 64 FR 63440–41).

1. Cancer Risk Level. The cancer risk level refers to an individual's increased chance of developing cancer over a lifetime due to potential exposure to a specific chemical. A risk of 1×10^{-6} translates as an increased chance of one in a million of developing cancer during a lifetime. EPA generally sets regulations at risk levels between 10^{-6} and 10^{-4} (in other words, from one in a million to one in ten thousand increased chance of developing cancer during a lifetime). In the RCRA hazardous waste listing program, a 10^{-6} risk is usually the presumptive "no list" level, while 10^{-5} is often used to determine which wastes are considered initial candidates for listing (see, for example the petroleum listing at 63 FR 42117). We present the exemption levels that result from both the 10^{-6} and 10^{-5} risk levels.

2. Human Health Hazard Quotient (HQ). The HQ refers to the likelihood that exposure to a specific chemical would result in a non-cancer health problem (for example, neurological effects). The hazard quotient is developed by dividing the estimated exposure to a chemical by the reference dose (RfD) for oral ingestion pathways or reference concentration (RfC) for inhalation pathways. The RfD and RfC are estimates of the highest dose or concentration that might be considered safe. An HQ of one or lower indicates that the given exposure is unlikely to result in adverse health effects. We present the exemption levels that result from both an HQ of 0.1 and an HQ of one.

3. Ecological Hazard Quotient. The ecological hazard quotient is analogous to the human health HQ, except that the estimated exposure is compared with an ecological toxicity value rather than the human health RfD or RfC. For this analysis, we developed two types of toxicity values: (1) An ecological benchmark that is calculated as a dose (mg/kg-day); and (2) a chemical stressor concentration limit (CSCL) that is calculated as a concentration in media (for example, mg/l). The ecological hazard quotient protects ecological health at the population or community level, and, therefore, focuses on reproductive and developmental effects, rather than the mortality of individual organisms. In developing ecological toxicity values for this risk assessment, we used the geometric mean between a No Observed Effects Level (NOEL) and a Lowest Observed Effects Level (LOEL). (Human health reference doses are based on NOELs.) We present the exemption levels that result from an ecological hazard quotient of one and ten.

4. Population Percentile. The population percentile is the percentage of the population protected at the specified risk level and hazard quotient for a single environmental setting. A setting is a specific WMU at a specific site, and is defined by combining site-based information (such as unit size, and unit placement) with variable environmental information (such as rainfall and exposure rates) from regional and national databases. We present the exemption levels that result from population protection percentiles of 99% and 95%.

5. Probability of Protection. The probability of protection is defined as the percentage of WMU settings that meet the population percentile criteria. We present the exemption levels that result from probability of protection levels of 95% and 90%.

Four Protection Groups are defined below in Table 1. These four groups serve to indicate the potential range of risk decision measures, from most conservative (Group 1) to least conservative (Group 4), that we could use to determine the final HWIR regulatory exemption levels. These groups are not an exhaustive look at all possible combinations of potential risk protection criteria; we could choose a different combination altogether. An example of how these protection groups are interpreted is provided below with respect to the Group 2 criteria for cancer and hazard effects, respectively:

—99% of the population are subject to cancer risks of less than 10–6 across 90% of the environmental settings;

—99% of the population experience exposure levels below an HQ of 1 across 90% of the environmental settings.

TABLE 1.—PROTECTION GROUPS EVALUATED

	Protection group 1	Protection group 2	Protection group 3	Protection group 4
Risk Level	10^{-6}	10^{-6}	10^{-5}	10^{-5}
Human Health HQ	0.1	1	1	1
Ecological HQ	1	1	1	10
Population Percentile	99	99	99	95
Probability of Protection	95	90	90	90

In addition to the five risk criteria set forth in the November 19, 1999 notice and summarized above, we present a sixth risk criterion: the distance to human and ecological receptors from the WMU. We developed draft chemical-specific waste concentrations for each of the 36 chemicals that are presented in Tables 2 through 13. These tables present results using 3MRA Model beta Version 0.98r for the four Protection Groups based on the above five protection criteria and for various distances to human receptors corresponding to 500, 1000, 2000 meters and for a fixed distance of 2000 meters for ecological receptors.

We also are presenting in the RCRA Docket (Docket Number F–2000–WH2A–FFFFF) the following results for the same 36 chemicals:

1. *Protection Group Results.* Draft chemical-specific waste concentrations identified for the additional four waste management unit types (waste piles, aerated tanks, surface impoundments, and land application units);

2. *Sub-Population Results.* Risk or hazard quotient estimates for each sub-population (residents, gardeners, beef/dairy farmers, and fishers) for each Protection Group and the three waste forms and the five waste management unit types;

3. *Cohort Results.* Risk or hazard quotient estimates for each cohort (infants, children 1–12, and adults 13 and older) for each Protection Group and the three waste forms and the five waste management unit types; and

4. *Exposure Pathway Results.* Risk or hazard quotient estimates for each exposure pathway (air inhalation, soil ingestion, water ingestion, crop ingestion, beef ingestion, milk ingestion, fish ingestion, shower inhalation, breast milk, all inhalation, all ingestion, all

ingestion and inhalation, and groundwater total) for each Protection Group for the three waste forms and for the five waste management unit types.

Copies of beta Version 0.98r of the 3MRA Model are in the RCRA docket on a CD. Beta Version 0.98r of the 3MRA model can also be accessed at: http://www.epa.gov/ceampubl/hwir.htm.

IV. What Are Possible Next Steps for the HWIR Exemption Development?

Since the results of the HWIR risk assessment model presented in today's notice are intrinsically related to the discussion of the HWIR risk assessment found in the November 19, 1999 **Federal Register** notice, we have harmonized the comment periods for both to end on October 16, 2000. However, please note that nothing in today's notice changes or supersedes the information in the November 19, 1999 **Federal Register** notice. The information available by today's notice specifically supplements the information in Sections XV–XIX in the preamble to the November 19, 1999 discussion. Please note that today's notice does *not* re-open the comment period on the revisions to the mixture and derived-from rules that were proposed in the same November 19, 1999 **Federal Register** notice. That comment period ended February 17, 2000.

We will review the public comments and decide if further revisions to the HWIR risk assessment (3MRA) model or other aspects, *e.g.*, implementation, of the HWIR exemption are necessary. We also are continuing independent testing and external peer review of the HWIR risk assessment model. Before we go final with an HWIR exemption, we will publish a proposal to allow public comment on a unified package. The exact timing of this proposal will depend on the extent of the public and peer review comments.

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Table 2. Chemical-specific Waste Concentrations for Solids Category (mg/kg)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

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Table 2. Chemical-specific Waste Concentrations for Solids Category (mg/kg)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	5	note 1	5	90	note 1	90	90	note 1	90	200	note 1	200
Acrylonitrile	107-13-1	0.003	note 1	0.003	0.006	note 1	0.006	0.07	note 1	0.07	0.09	note 1	0.09
Aniline	62-53-3	0.7	100*	0.7	2	100*	2	40	100*	40	60	100*	60
Arsenic	7440-38-2	10	20	10	20	40	20	100	40	40	100	5000	100
Barium	7440-39-3	2000	600	600	30000	2000	2000	30000	2000	2000	50000	60000	50000
Benzene	71-43-2	30	1000*	30	60	1000*	60	600	1000*	600	800	1000*	800
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	60	60	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	100	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	20	10	10	200	50	50	200	50	50	700	90	90
Chlorobenzene	108-90-7	30	100*	30	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	200	700	200	500	3000	500	7000	3000	3000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	5	note 1	5	50	note 1	50	50	note 1	50	60	note 1	60
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.005	note 1	0.005	0.009	note 1	0.009	0.4	note 1	0.4	0.6	note 1	0.6
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	6	1000*	6	200	1000*	200	200	1000*	200	600	1000*	600
Methyl methacrylate	80-62-6	70	note 1	70	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	3	6000	3	5	10000*	5	400	10000*	400	400	10000*	400
Nickel [+2]	7440-02-0	700	600	600	6000	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	40	1000*	40	700	1000*	700	700	1000*	700	1000*	1000*	1000*
Pentachlorophenol	87-86-5	3	1	1	5	70	5	300	70	70	400	800	400
Phenol	108-95-2	6000	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	0.3	1000*	0.3	6	1000*	6	6	1000*	6	7	1000*	7
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.002	0.0006	0.0006	0.004	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	300	5000*	300	1000	5000*	1000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.03	5	0.03	0.4	8	0.4	0.4	8	0.4	0.6	100*	0.6
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	2000	2000	5000*	4000	4000	5000*	4000	4000	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	800	6000	800	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	300	200	200	600	300	300	9000	300	300	10000*	2000	2000
Vinyl chloride	75-01-4	0.2	5	0.2	0.4	9	0.4	4	9	4	7	200	7
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

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Table 3. Chemical-specific Waste Concentrations for Liquids Category (mg/l)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	30	note 1	30	800	note 1	800	800	note 1	800	1000	note 1	1000
Acrylonitrile	107-13-1	0.005	note 1	0.005	0.01	note 1	0.01	0.7	note 1	0.7	1	note 1	1
Aniline	62-53-3	0.4	1000*	0.4	0.8	1000*	0.8	8	1000*	8	8	1000*	8
Arsenic	7440-38-2	0.003	0.3	0.003	0.006	0.6	0.006	0.3	0.6	0.3	0.4	10	0.4
Barium	7440-39-3	4	700	4	80	1000*	80	80	1000*	80	200	1000*	200
Benzene	71-43-2	0.07	20	0.07	0.4	40	0.4	30	40	30	40	100*	40
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.03	10*	0.03	0.5	10*	0.5	0.5	10*	0.5	0.7	10*	0.7
Carbon disulfide	75-15-0	5	10	5	100*	30	30	100*	30	30	100*	100*	100*
Chlorobenzene	108-90-7	0.7	100*	0.7	40	100*	40	40	100*	40	40	100*	40
Chloroform	67-66-3	0.3	3	0.3	0.7	8	0.7	8	8	8	9	300	9
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.3	note 1	0.3	6	note 1	6	6	note 1	6	8	note 1	8
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0002	note 1	0.0002	0.0005	note 1	0.0005	0.02	note 1	0.02	0.07	note 1	0.07
Lead	7439-92-1	note 2	2	2	note 2	3	3	note 2	3	3	note 2	40	40
Methyl ethyl ketone	78-93-3	80	2000	80	7000	6000	6000	7000	6000	6000	10000*	10000*	10000*
Methyl methacrylate	80-62-6	70	note 1	70	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	0.5	1000*	0.5	1	1000*	1	100	1000*	100	200	1000*	200
Nickel [+2]	7440-02-0	0.6	1000*	0.6	40	1000*	40	40	1000*	40	50	1000*	50
Nitrobenzene	98-95-3	0.04	100*	0.04	0.9	100*	0.9	0.9	100*	0.9	1	100*	1
Pentachlorophenol	87-86-5	0.3	1*	0.3	0.6	1*	0.6	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	400	4000	400	8000	10000*	8000	8000	10000*	8000	10000*	10000*	10000*
Pyridine	110-86-1	0.05	10*	0.05	0.9	10*	0.9	0.9	10*	0.9	3	10*	3
Silver	7440-22-4	note 4	4000	note 4	6	10000*	6	6	10000*	6	8	10000*	8
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000005	0.00001*	0.000005	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.06	100*	0.06	0.1	100*	0.1	6	100*	6	10	100*	10
Thallium [+1]	7446-18-6	0.003	1	0.003	0.05	1	0.05	0.05	1	0.05	0.05	1	0.05
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	10	6	6	700	20	20	700	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	note 4	20	note 4	70	60	60	70	60	60	100	900	100
Trichloroethylene	79-01-6	0.5	0.3	0.3	1	0.6	0.6	60	0.6	0.6	70	20	20
Vinyl chloride	75-01-4	0.004	0.2	0.004	0.008	0.4	0.008	0.5	0.4	0.4	0.6	10	0.6
Zinc	7440-66-6	30	2000	30	600	3000	600	600	3000	600	700	10000*	700

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 4. Chemical-specific Waste Concentrations for Semi-solids Category (mg/kg)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

Table 4. Chemical-specific Waste Concentrations for Semi-solids Category (mg/kg)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	10	note 1	10	400	note 1	400	400	note 1	400	600	note 1	600
Acrylonitrile	107-13-1	0.003	note 1	0.003	0.005	note 1	0.005	0.07	note 1	0.07	0.09	note 1	0.09
Aniline	62-53-3	0.3	100*	0.3	0.5	100*	0.5	5	100*	5	8	100*	8
Arsenic	7440-38-2	0.003	0.04	0.003	0.006	0.08	0.006	0.3	0.08	0.08	0.4	10	0.4
Barium	7440-39-3	4	20	4	80	60	60	80	60	60	200	900	200
Benzene	71-43-2	0.07	20	0.07	0.4	40	0.4	30	40	30	40	100*	40
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.03	0.3	0.03	0.5	0.7	0.5	0.5	0.7	0.5	0.7	10*	0.7
Carbon disulfide	75-15-0	5	0.6	0.6	100*	10	10	100*	10	10	100*	80	80
Chlorobenzene	108-90-7	0.7	30	0.7	40	100*	40	40	100*	40	40	100*	40
Chloroform	67-66-3	0.2	3	0.2	0.3	8	0.3	2	8	2	4	300	4
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.3	note 1	0.3	6	note 1	6	6	note 1	6	8	note 1	8
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	note 4	note 1	note 4	0.0005	note 1	0.0005	0.004	note 1	0.004	0.005	note 1	0.005
Lead	7439-92-1	note 2	note 4	note 4	note 2	0.6	0.6	note 2	0.6	0.6	note 2	30	30
Methyl ethyl ketone	78-93-3	80	1000*	80	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Methyl methacrylate	80-62-6	30	note 1	30	600	note 1	600	600	note 1	600	800	note 1	800
Methylene chloride	75-09-2	0.5	600	0.5	1	1000*	1	100	1000*	100	200	1000*	200
Nickel [+2]	7440-02-0	0.6	5	0.6	40	9	9	40	9	9	50	900	50
Nitrobenzene	98-95-3	0.04	100*	0.04	0.4	100*	0.4	0.4	100*	0.4	0.4	100*	0.4
Pentachlorophenol	87-86-5	0.03	1*	0.03	0.06	1*	0.06	0.9	1*	0.9	1*	1*	1*
Phenol	108-95-2	400	4000	400	8000	10000*	8000	8000	10000*	8000	10000*	10000*	10000*
Pyridine	110-86-1	0.05	10*	0.05	0.5	10*	0.5	0.5	10*	0.5	0.5	10*	0.5
Silver	7440-22-4	note 4	0.7	note 4	6	3	3	6	3	3	8	10*	8
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000005	0.00001*	0.000005	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.06	100*	0.06	0.1	100*	0.1	6	100*	6	10	100*	10
Thallium [+1]	7446-18-6	note 4	0.2	note 4	0.05	0.8	0.05	0.05	0.8	0.05	0.05	1*	0.05
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	10	6	6	700	20	20	700	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	note 4	20	note 4	70	60	60	70	60	60	100	900	100
Trichloroethylene	79-01-6	0.5	0.3	0.3	1	0.6	0.6	60	0.6	0.6	70	20	20
Vinyl chloride	75-01-4	0.004	0.2	0.004	0.008	0.4	0.008	0.4	0.4	0.4	0.5	9	0.5
Zinc	7440-66-6	30	5	5	600	8	8	600	8	8	700	800	700

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.
+ Represents the lower concentration between human health effects and ecological impacts.
* Values in the highlighted cells are the same as the highest waste concentration evaluated.
note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.
note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

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Table 5. Chemical-specific Waste Concentrations for Landfills Category (mg/kg)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	60	note 1	60	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.01	note 1	0.01	0.04	note 1	0.04	0.7	note 1	0.7	0.7	note 1	0.7
Aniline	62-53-3	0.7	100*	0.7	2	100*	2	60	100*	60	70	100*	70
Arsenic	7440-38-2	10	20	10	20	40	20	100	40	40	100	5000	100
Barium	7440-39-3	2000	800	800	30000	3000	3000	30000	3000	3000	50000	60000	50000
Benzene	71-43-2	50	1000*	50	100	1000*	100	1000*	1000*	1000*	1000*	1000*	1000*
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	200	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	60	10	10	1000*	50	50	1000*	50	50	1000*	90	90
Chlorobenzene	108-90-7	30	100*	30	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	200	2000	200	500	4000	500	7000	4000	4000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	5	note 1	5	50	note 1	50	50	note 1	50	60	note 1	60
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.005	note 1	0.005	0.01	note 1	0.01	0.4	note 1	0.4	0.8	note 1	0.8
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	50	1000*	50	800	1000*	800	800	1000*	800	1000*	1000*	1000*
Methyl methacrylate	80-62-6	600	note 1	600	1000*	note 1	1000*	1000	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	100	10000*	100	300	10000*	300	2000	10000*	2000	4000	10000*	4000
Nickel [+2]	7440-02-0	1000	600	600	10000*	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	70	1000*	70	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Pentachlorophenol	87-86-5	3	1	1	5	70	5	300	70	70	400	800	400
Phenol	108-95-2	10000*	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	3	1000*	3	50	1000*	50	50	1000*	50	70	1000*	70
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.005	0.0006	0.0006	0.01*	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	400	5000*	400	1000	5000*	1000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.03	5	0.03	0.4	8	0.4	0.4	8	0.4	0.6	100*	0.6
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	3000	3000	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	1000	10000*	1000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	400	200	200	800	300	300	10000*	300	300	10000*	4000	4000
Vinyl chloride	75-01-4	0.4	8	0.4	0.7	30	0.7	20	30	20	30	300	30
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 6. Chemical-specific Waste Concentrations for Solids Category (mg/kg)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

Table 6. Chemical-specific Waste Concentrations for Solids Category (mg/kg)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	6	note 1	6	200	note 1	200	200	note 1	200	600	note 1	600
Acrylonitrile	107-13-1	0.005	note 1	0.005	0.009	note 1	0.009	0.09	note 1	0.09	0.3	note 1	0.3
Aniline	62-53-3	0.9	100*	0.9	3	100*	3	60	100*	60	70	100*	70
Arsenic	7440-38-2	10	20	10	20	40	20	1000	40	40	3000	5000	3000
Barium	7440-39-3	2000	600	600	30000	2000	2000	30000	2000	2000	70000	60000	60000
Benzene	71-43-2	30	1000*	30	50	1000*	50	700	1000*	700	700	1000*	700
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	60	60	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	200	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	40	10	10	700	50	50	700	50	50	1000*	90	90
Chlorobenzene	108-90-7	40	100*	40	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	300	700	300	600	3000	600	10000*	3000	3000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	8	note 1	8	60	note 1	60	60	note 1	60	90	note 1	90
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.006	note 1	0.006	0.06	note 1	0.06	0.6	note 1	0.6	0.8	note 1	0.8
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	20	1000*	20	600	1000*	600	600	1000*	600	900	1000*	900
Methyl methacrylate	80-62-6	80	note 1	80	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	4	6000	4	8	10000*	8	400	10000*	400	600	10000*	600
Nickel [+2]	7440-02-0	800	600	600	9000	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	50	1000*	50	900	1000*	900	900	1000*	900	1000*	1000*	1000*
Pentachlorophenol	87-86-5	1	1	1	4	70	4	300	70	70	500	800	500
Phenol	108-95-2	8000	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	0.4	1000*	0.4	7	1000*	7	7	1000*	7	20	1000*	20
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.002	0.0006	0.0006	0.004	0.003	0.003	0.01	0.003	0.003	0.01	0.01	0.01
Tetrachloroethylene	127-18-4	500	5000*	500	1000	5000*	1000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.03	5	0.03	0.6	8	0.6	0.6	8	0.6	0.9	100	0.9
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	2000	2000	5000*	4000	4000	5000*	4000	4000	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	2000	6000	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	400	200	200	700	300	300	9000	300	300	10000*	2000	2000
Vinyl chloride	75-01-4	0.2	5	0.2	0.4	9	0.4	6	9	6	9	200	9
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.
+ Represents the lower concentration between human health effects and ecological impacts.
* Values in the highlighted cells are the same as the highest waste concentration evaluated.
note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.
note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

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Table 7. Chemical-specific Waste Concentrations for Liquids Category (mg/l)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	20	note 2	20	500	note 2	500	500	note 2	500	2000	note 2	2000
Acrylonitrile	107-13-1	0.005	note 2	0.005	0.01	note 2	0.01	0.7	note 2	0.7	5	note 2	5
Aniline	62-53-3	0.4	1000*	0.4	0.9	1000*	0.9	7	1000*	7	10	1000*	10
Arsenic	7440-38-2	0.004	0.3	0.004	0.007	0.6	0.007	0.4	0.6	0.4	0.6	10	0.6
Barium	7440-39-3	4	700	4	90	1000*	90	90	1000*	90	600	1000*	600
Benzene	71-43-2	0.07	20	0.07	0.4	40	0.4	30	40	30	70	100*	70
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.04	10*	0.04	0.6	10*	0.6	0.6	10*	0.6	1	10*	1
Carbon disulfide	75-15-0	6	10	6	100*	30	30	100*	30	30	100*	100*	100*
Chlorobenzene	108-90-7	0.5	100*	0.5	20	100*	20	20	100*	20	70	100*	70
Chloroform	67-66-3	0.3	3	0.3	0.6	8	0.6	6	8	6	100	300	100
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.3	note 2	0.3	6	note 2	6	6	note 2	6	40	note 2	40
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0002	note 2	0.0002	0.0004	note 2	0.0004	0.02	note 2	0.02	0.2	note 2	0.2
Lead	7439-92-1	note 1	2	2	note 1	3	3	note 1	3	3	note 1	40	40
Methyl ethyl ketone	78-93-3	80	2000	80	6000	6000	6000	6000	6000	6000	10000*	10000*	10000*
Methyl methacrylate	80-62-6	60	note 2	60	1000*	note 2	1000*	1000*	note 2	1000*	1000*	note 2	1000*
Methylene chloride	75-09-2	0.4	1000*	0.4	0.8	1000*	0.8	100	1000*	100	500	1000*	500
Nickel [+2]	7440-02-0	1	1000*	1	50	1000*	50	50	1000*	50	200	1000*	200
Nitrobenzene	98-95-3	0.03	100*	0.03	0.6	100*	0.6	0.6	100*	0.6	20	100*	20
Pentachlorophenol	87-86-5	0.4	1*	0.4	0.8	1*	0.8	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	500	4000	500	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Pyridine	110-86-1	0.04	10*	0.04	1	10*	1	1	10*	1	6	10*	6
Silver	7440-22-4	note 3	4000	note 3	7	10000*	7	7	10000*	7	30	10000*	30
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	2E-006	0.00001*	2E-006	6E-006	0.00001*	6E-006	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001
Tetrachloroethylene	127-18-4	0.06	100*	0.06	0.3	100*	0.3	7	100*	7	50	100*	50
Thallium [+1]	7446-18-6	0.003	1*	0.003	0.05	1*	0.05	0.05	1*	0.05	0.09	1*	0.09
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	20	6	6	800	20	20	800	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	note 3	20	note 3	60	60	60	60	60	60	600	900	600
Trichloroethylene	79-01-6	0.4	0.3	0.3	0.8	0.6	0.6	60	0.6	0.6	100*	20	20
Vinyl chloride	75-01-4	0.003	0.2	0.003	0.007	0.4	0.007	0.4	0.4	0.4	0.9	10	0.9
Zinc	7440-66-6	40	2000	40	700	3000	700	700	3000	700	3000	10000*	3000

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 8. Chemical-specific Waste Concentrations for Semi-solids Category (mg/kg)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

Table 8. Chemical-specific Waste Concentrations for Semi-solids Category (mg/kg)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	20	note 1	20	500	note 1	500	500	note 1	500	600	note 1	600
Acrylonitrile	107-13-1	0.003	note 1	0.003	0.006	note 1	0.006	0.09	note 1	0.09	0.3	note 1	0.3
Aniline	62-53-3	0.3	100*	0.3	0.6	100*	0.6	7	100*	7	10	100*	10
Arsenic	7440-38-2	0.004	0.04	0.004	0.007	0.08	0.007	0.4	0.08	0.08	0.6	10	0.6
Barium	7440-39-3	4	20	4	90	60	60	90	60	60	600	900	600
Benzene	71-43-2	0.07	20	0.07	0.4	40	0.4	30	40	30	70	100	70
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.04	0.3	0.04	0.6	0.7	0.6	0.6	0.7	0.6	1	10*	1
Carbon disulfide	75-15-0	6	0.6	0.6	100*	10	10	100*	10	10	100*	80	80
Chlorobenzene	108-90-7	0.5	30	0.5	20	100*	20	20	100*	20	70	100*	70
Chloroform	67-66-3	0.2	3	0.2	0.4	8	0.4	4	8	4	4	300	4
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.3	note 1	0.3	6	note 1	6	6	note 1	6	30	note 1	30
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0002	note 1	0.0002	0.0004	note 1	0.0004	0.005	note 1	0.005	0.005	note 1	0.005
Lead	7439-92-1	note 2	note 3	note 3	note 2	0.6	0.6	note 2	0.6	0.6	note 2	30	30
Methyl ethyl ketone	78-93-3	80	1000*	80	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Methyl methacrylate	80-62-6	40	note 1	40	700	note 1	700	700	note 1	700	1000*	note 1	1000*
Methylene chloride	75-09-2	0.4	600	0.4	0.8	1000*	0.8	100	1000*	100	400	1000*	400
Nickel [+2]	7440-02-0	1	5	1	50	9	9	50	9	9	200	900	200
Nitrobenzene	98-95-3	0.03	100*	0.03	0.4	100*	0.4	0.4	100*	0.4	0.6	100*	0.6
Pentachlorophenol	87-86-5	0.04	1*	0.04	0.07	1*	0.07	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	500	4000	500	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Pyridine	110-86-1	0.04	10*	0.04	0.5	10*	0.5	0.5	10*	0.5	0.8	10*	0.8
Silver	7440-22-4	note 3	0.7	note 3	7	3	3	7	3	3	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000006	0.00001*	0.000006	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.06	100*	0.06	0.3	100*	0.3	7	100*	7	50	100*	50
Thallium [+1]	7446-18-6	note 3	0.2	note 3	0.05	0.8	0.05	0.05	0.8	0.05	0.09	1*	0.09
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	20	6	6	800	20	20	800	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	note 3	20	note 3	60	60	60	60	60	60	600	900	600
Trichloroethylene	79-01-6	0.4	0.3	0.3	0.8	0.6	0.6	60	0.6	0.6	100*	20	20
Vinyl chloride	75-01-4	0.003	0.2	0.003	0.007	0.4	0.007	0.4	0.4	0.4	0.5	9	0.5
Zinc	7440-66-6	40	5	5	700	8	8	700	8	8	3000	800	800

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.
+ Represents the lower concentration between human health effects and ecological impacts.
* Values in the highlighted cells are the same as the highest waste concentration evaluated.
note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.
note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

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Table 9. Chemical-specific Waste Concentrations for Landfills Category (mg/kg)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	70	note 1	70	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.008	note 1	0.008	0.03	note 1	0.03	0.7	note 1	0.7	3	note 1	3
Aniline	62-53-3	0.9	100*	0.9	3	100*	3	70	100*	70	100*	100*	100*
Arsenic	7440-38-2	10	20	10	20	40	20	1000	40	40	3000	5000	3000
Barium	7440-39-3	2000	800	800	30000	3000	3000	30000	3000	3000	70000	60000	60000
Benzene	71-43-2	80	1000*	80	300	1000*	300	1000*	1000*	1000*	1000*	1000*	1000*
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	200	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	60	10	10	1000*	50	50	1000*	50	50	1000*	90	90
Chlorobenzene	108-90-7	40	100*	40	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	300	2000	300	600	4000	600	10000*	4000	4000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	8	note 1	8	60	note 1	60	60	note 1	60	200	note 1	200
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.008	note 1	0.008	0.1	note 1	0.1	0.6	note 1	0.6	7	note 1	7
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	50	1000*	50	800	1000*	800	800	1000*	800	1000*	1000*	1000*
Methyl methacrylate	80-62-6	500	note 1	500	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	200	10000*	200	300	10000*	300	3000	10000*	3000	6000	10000*	6000
Nickel [+2]	7440-02-0	800	600	600	10000*	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	80	1000*	80	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Pentachlorophenol	87-86-5	1	1	1	4	70	4	300	70	70	500	800	500
Phenol	108-95-2	10000*	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	3	1000*	3	60	1000*	60	60	1000*	60	200	1000*	200
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.008	0.0006	0.0006	0.01*	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	500	5000*	500	1000	5000*	1000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.03	5	0.03	0.6	8	0.6	0.6	8	0.6	1	100*	1
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	3000	3000	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	3000	10000*	3000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	500	200	200	1000	300	300	10000*	300	300	10000*	4000	4000
Vinyl chloride	75-01-4	0.4	8	0.4	0.8	30	0.8	20	30	20	50	300	50
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 10. Chemical-specific Waste Concentrations for Solids Category (mg/kg)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

Table 10. Chemical-specific Waste Concentrations for Solids Category (mg/kg)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	6	note 1	6	200	note 1	200	200	note 1	200	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.005	note 1	0.005	0.01	note 1	0.01	0.1	note 1	0.1	10*	note 1	10*
Aniline	62-53-3	0.7	100*	0.7	4	100*	4	60	100*	60	100*	100*	100*
Arsenic	7440-38-2	20	20	20	40	40	40	2000	40	40	8000	5000	5000
Barium	7440-39-3	3000	600	600	50000	2000	2000	50000	2000	2000	100000*	60000	60000
Benzene	71-43-2	20	1000*	20	50	1000*	50	800	1000*	800	1000*	1000*	1000*
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	60	60	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	400	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	50	10	10	900	50	50	900	50	50	1000*	90	90
Chlorobenzene	108-90-7	60	100*	60	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	400	700	400	700	3000	700	10000*	3000	3000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1
Dichlorophenoxyacetic acid, 2,4-	94-75-7	10	note 1	10	90	note 1	90	90	note 1	90	800	note 1	800
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.01	note 1	0.01	0.2	note 1	0.2	0.7	note 1	0.7	40	note 1	40
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	20	1000*	20	600	1000*	600	600	1000*	600	1000*	1000*	1000*
Methyl methacrylate	80-62-6	100	note 1	100	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	5	6000	5	10	10000*	10	400	10000*	400	10000*	10000*	10000*
Nickel [+2]	7440-02-0	3000	600	600	10000*	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	60	1000*	60	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000
Pentachlorophenol	87-86-5	3	1	1	7	70	7	400	70	70	1000*	800	800
Phenol	108-95-2	10000*	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	0.5	1000*	0.5	10	1000*	10	10	1000*	10	1000*	1000*	1000*
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.003	0.0006	0.0006	0.007	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	900	5000*	900	2000	5000*	2000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.05	5	0.05	0.9	8	0.9	0.9	8	0.9	7	100*	7
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	2000	2000	5000*	4000	4000	5000*	4000	4000	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	2000	6000	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	500	200	200	900	300	300	10000	300	300	10000*	2000	2000
Vinyl chloride	75-01-4	0.3	5	0.3	0.5	9	0.5	8	9	8	700	200	200
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.
+ Represents the lower concentration between human health effects and ecological impacts.
* Values in the highlighted cells are the same as the highest waste concentration evaluated.
note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.
note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

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Table 11. Chemical-specific Waste Concentrations for Liquids Category (mg/l)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	30	note 2	30	2000	note 2	2000	2000	note 2	2000	9000	note 2	9000
Acrylonitrile	107-13-1	0.05	note 2	0.05	0.3	note 2	0.3	1	note 2	1	50	note 2	50
Aniline	62-53-3	0.5	1000*	0.5	6	1000*	6	9	1000*	9	600	1000*	600
Arsenic	7440-38-2	0.007	0.3	0.007	0.2	0.6	0.2	0.7	0.6	0.6	40	10	10
Barium	7440-39-3	7	700	7	600	1000*	600	600	1000*	600	1000*	1000*	1000*
Benzene	71-43-2	0.4	20	0.4	1	40	1	60	40	40	100*	100*	100*
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.07	10*	0.07	2	10*	2	2	10*	2	10*	10*	10*
Carbon disulfide	75-15-0	20	10	10	100*	30	30	100*	30	30	100*	100*	100*
Chlorobenzene	108-90-7	0.9	100*	0.9	70	100*	70	70	100*	70	100*	100*	100*
Chloroform	67-66-3	0.4	3	0.4	0.8	8	0.8	100	8	8	700	300	300
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.8	note 2	0.8	40	note 2	40	40	note 2	40	100*	note 2	100*
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0004	note 2	0.0004	0.0008	note 2	0.0008	0.2	note 2	0.2	0.5	note 2	0.5
Lead	7439-92-1	note 1	2	2	note 1	3	3	note 1	3	3	note 1	40	40
Methyl ethyl ketone	78-93-3	500	2000	500	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Methyl methacrylate	80-62-6	100	note 2	100	1000*	note 2	1000*	1000*	note 2	1000*	1000*	note 2	1000*
Methylene chloride	75-09-2	3	1000*	3	8	1000*	8	300	1000*	300	1000*	1000*	1000*
Nickel [+2]	7440-02-0	3	1000*	3	200	1000*	200	200	1000*	200	1000*	1000*	1000*
Nitrobenzene	98-95-3	0.07	100*	0.07	10	100*	10	10	100*	10	80	100*	80
Pentachlorophenol	87-86-5	0.7	1*	0.7	1*	1*	1*	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	2000	4000	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Pyridine	110-86-1	0.2	10*	0.2	6	10*	6	6	10*	6	10*	10*	10*
Silver	7440-22-4	note 4	4000	note 4	30	10000*	30	30	10000*	30	2000	10000*	2000
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000008	0.00001*	0.000008	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.4	100*	0.4	1	100*	1	20	100*	20	100*	100*	100*
Thallium [+1]	7446-18-6	0.005	1*	0.005	0.1	1*	0.1	0.1	1*	0.1	1*	1*	1*
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	60	6	6	1000*	20	20	1000*	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	4	20	4	100	60	60	100	60	60	1000*	900	900
Trichloroethylene	79-01-6	0.8	0.3	0.3	20	0.6	0.6	80	0.6	0.6	100*	20	20
Vinyl chloride	75-01-4	0.006	0.2	0.006	0.08	0.4	0.08	0.7	0.4	0.4	30	10	10
Zinc	7440-66-6	80	2000	80	2000	3000	2000	2000	3000	2000	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 12. Chemical-specific Waste Concentrations for Semi-solids Category (mg/kg)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

Table 12. Chemical-specific Waste Concentrations for Semi-solids Category (mg/kg)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	30	note 1	30	700	note 1	700	700	note 1	700	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.004	note 1	0.004	0.008	note 1	0.008	0.2	note 1	0.2	0.7	note 1	0.7
Aniline	62-53-3	0.4	100*	0.4	0.7	100*	0.7	9	100*	9	50	100*	50
Arsenic	7440-38-2	0.007	0.04	0.007	0.2	0.08	0.08	0.7	0.08	0.08	40	10	10
Barium	7440-39-3	7	20	7	600	60	60	600	60	60	1000*	900	900
Benzene	71-43-2	0.4	20	0.4	1	40	1	60	40	40	100*	100*	100*
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.07	0.3	0.07	2	0.7	0.7	2	0.7	0.7	10*	10*	10*
Carbon disulfide	75-15-0	20	0.6	0.6	100*	10	10	100*	10	10	100*	80	80
Chlorobenzene	108-90-7	0.9	30	0.9	70	100*	70	70	100*	70	100*	100*	100*
Chloroform	67-66-3	0.2	3	0.2	0.5	8	0.5	6	8	6	300	300	300
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.4	note 1	0.4	40	note 1	40	40	note 1	40	60	note 1	60
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0004	note 1	0.0004	0.0008	note 1	0.0008	0.007	note 1	0.007	0.5	note 1	0.5
Lead	7439-92-1	note 2	note 3	note 2	note 2	0.6	0.6	note 2	0.6	0.6	note 2	30	30
Methyl ethyl ketone	78-93-3	500	1000*	500	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Methyl methacrylate	80-62-6	70	note 1	70	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	3	600	3	8	1000*	8	300	1000*	300	900	1000*	900
Nickel [+2]	7440-02-0	3	5	3	200	9	9	200	9	9	1000	900	900
Nitrobenzene	98-95-3	0.07	100*	0.07	0.7	100*	0.7	0.7	100*	0.7	10	100*	10
Pentachlorophenol	87-86-5	0.07	1*	0.07	0.2	1*	0.2	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	2000	4000	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Pyridine	110-86-1	0.2	10*	0.2	0.7	10*	0.7	0.7	10*	0.7	4	10*	4
Silver	7440-22-4	note 3	0.7	note 3	10*	3	3	10*	3	3	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000008	0.00001*	0.000008	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.4	100*	0.4	1	100*	1	20	100*	20	100*	100*	100*
Thallium [+1]	7446-18-6	note 3	0.2	note 3	0.09	0.8	0.09	0.09	0.8	0.09	0.4	1*	0.4
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	60	6	6	1000*	20	20	1000*	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	4	20	4	100	60	60	100	60	60	1000*	900	900
Trichloroethylene	79-01-6	0.8	0.3	0.3	9	0.6	0.6	80	0.6	0.6	100*	20	20
Vinyl chloride	75-01-4	0.006	0.2	0.006	0.08	0.4	0.08	0.6	0.4	0.4	5	9	5
Zinc	7440-66-6	80	5	5	2000	8	8	2000	8	8	10000*	800	800

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.
+ Represents the lower concentration between human health effects and ecological impacts.
* Values in the highlighted cells are the same as the highest waste concentration evaluated.
note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.
note 2: Human impacts were not evaluated due to the lack of human health toxicity values.
note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.
NA: Not Applicable

Table 13. Chemical-specific Waste Concentrations for Landfills Category mg/kg)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

Chemical Name	CASRN	Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
		HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	200	note 1	200	1000*	note 1	1000	1000*	note 1	1000*	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.04	note 1	0.04	0.07	note 1	0.07	2	note 1	2	10	note 1	10
Aniline	62-53-3	3	100*	3	6	100*	6	100*	100*	100*	100*	100*	100*
Arsenic	7440-38-2	20	20	20	40	40	40	2000	40	40	8000	5000	5000
Barium	7440-39-3	3000	800	800	50000	3000	3000	50000	3000	3000	100000*	60000	60000
Benzene	71-43-2	300	1000*	300	600	1000*	600	1000*	1000*	1000*	1000*	1000*	1000*
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	400	30	30	1000*	50	50	1000*		50	1000*	1000*	1000*
Carbon disulfide	75-15-0	200	10	10	1000*	50	50	1000*	50	50	1000*	90	90
Chlorobenzene	108-90-7	80	100*	80	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	400	2000	400	800	4000	800	10000	4000	4000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	10	note 1	10	90	note 1	90	90	note 1	90	800	note 1	800
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.04	note 1	0.04	0.2	note 1	0.2	0.9	note 1	0.9	40	note 1	40
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	100	1000*	100	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Methyl methacrylate	80-62-6	800	note 1	800	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	200	10000*	200	400	10000*	400	5000	10000*	5000	10000*	10000*	10000*
Nickel [+2]	7440-02-0	3000	600	600	10000*	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	200	1000*	200	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Pentachlorophenol	87-86-5	3	1	1	7	70	7	400	70	70	1000*	800	800
Phenol	108-95-2	10000*	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	4	1000*	4	80	1000*	80	80	1000*	80	1000*	1000*	1000*
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.008	0.0006	0.0006	0.01*	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	900	5000*	900	2000	5000*	2000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.06	5	0.06	1	8	1	1	8	1	7	100	7
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	3000	3000	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	2000	10000*	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	500	200	200	900	300	300	10000*	300	300	10000*	4000	4000
Vinyl chloride	75-01-4	0.6	8	0.6	2	30	2	40	30	30	700	300	300
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Dated: July 7, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–18103 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 00–1536]

Comment Sought on Federal-State Joint Board on Universal Service Recommendations for Phasing Down Interim Hold-Harmless Provision

AGENCY: Federal Communications Commission.

ACTION: Solicitation of comments.

SUMMARY: This document seeks comment on the Federal-State Joint Board on Universal Service recommended decision for phasing down the interim hold-harmless provision of the new, forward-looking high-cost universal service support mechanism for non-rural carriers.

DATES: Submit comments on or before August 14, 2000 and reply comments on or before August 28, 2000.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Bill J. Scher (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On June 30, 2000, the Federal-State Joint Board on Universal Service (Joint Board) released a Recommended Decision for phasing down the interim hold-harmless provision of the new, forward-looking high-cost universal service support mechanism for non-rural carriers. The Joint Board recommended that Long Term Support (LTS) be maintained under the Commission's current rules until the Commission considers appropriate reforms for the LTS program in connection with the pending proceedings for high-cost reform for rural carriers and/or interstate access charge reform for rate-of-return carriers. The Joint Board further recommended that the Commission phase down the balance of interim hold-harmless support, excluding LTS, through $1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter. Finally, the Joint Board recommended against phasing down any interim hold-harmless support that is transferred to a rural carrier when it acquires exchanges from a non-rural carrier. Instead, the Joint Board recommended that such transferred interim hold-harmless support should be maintained until the Commission completes a review of the rule governing the transfer of universal service support or until rural high-cost reform is complete. In this document, the Common Carrier Bureau seeks comment on the Joint Board's recommendations.

Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on the Recommended Decision on or before August 14, 2000, and reply comments on or before August 28, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Dated: July 12, 2000.

Katherine L. Schroder,

Deputy Chief, Accounting Policy Division.

[FR Doc. 00–18036 Filed 7–17–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1518, MM Docket No. 00–123, RM–9903]

Radio Broadcasting Services; Rincon, PR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ocean Communications seeking the allotment of FM Channel 300B to Rincon, PR, as the community's first local aural service. Channel 300B can be allotted to Rincon in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.6 kilometers (16.5 miles) west, at coordinates 18–23–06 NL; 67–29–51 WL, to avoid short-spacings to Station WCMN–FM, Channel 297B, Arecibo, PR, and Station WVOZ–FM, Channel 299B, Carolina, PR. If the channel is ultimately allotted, it will be conditioned on formal approval by the International Telecommunication Union. In addition, the proposed allotment is within the Radio Astronomy Coordination Zone in Puerto Rico, and applicant's will be required to coordinate their applications with the Interference Office at Arecibo Observatory.

DATES: Comments must be filed on or before August 28, 2000, and reply comments on or before September 12, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jose J. Arzuaga, Jr., P.O. Box 980, Quebradillas, PR 00678 (Technical consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–123, adopted June 28, 2000, and released July 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor,

tion criteria for this scenario.
note 3: The lowest waste concentration run does not meet the protection cri
NA: Not Applicable

International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18080 Filed 7–17–00; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

RIN 3090–AH25

Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the GSA Acquisition Regulation (GSAR) for consistency with the proposed Federal Acquisition Regulation (FAR) revision of energy conservation regulations and President Clinton's issuance of Executive Order 13123 on efficient energy management.

DATES: Comments should be submitted on or before September 18, 2000.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, Division (MVP), 1800 F Street, NW., Room 4015, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, GSA Acquisition Policy Division, (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Background

GSAR 538.273(a)(3) is revised to reflect the new clause title. Clause 552.238–72, Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (*e.g.*, Reduced Pollutants), is revised to update the definition of energy-efficient products and to reflect language that is consistent with Executive Order 13123 (64 FR 30851) and proposed FAR Part 23.2 (FAR Case 99–011, 65 FR 30311, May 10, 2000).

B. Executive Order 12866

This regulatory action is not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

GSA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The revised clause at 552.238–72, Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (*e.g.*, Reduced Pollutants), contains an information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). However, the revisions to the clause made by this rule do not affect the information collection requirement which was approved previously by OMB and assigned control number 3090–0262.

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

Accordingly, 48 CFR parts 538 and 552 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

2. Revise section 538.273(a)(3) to read as follows:

538.273 Contract clauses.

* * * * *

(a) * * *

(3) 552.238–72, Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (*e.g.*, Reduced Pollutants).

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 552.212–72 by revising the date of the clause and by revising the title of the clause in paragraph 552.238–72(b) to read as follows:

552.212–72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (DATE)

* * * * *

_____552.238–72 Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (*e.g.*, Reduced Pollutants)

* * * * *

4. Revise section 552.238–72 to read as follows:

552.238–72 Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (e.g., Reduced Pollutants).

As prescribed in 538.273(a)(3), insert the following clause:

IDENTIFICATION OF PRODUCTS THAT CONTAIN RECOVERED MATERIALS, ARE ENERGY-EFFICIENT, OR HAVE OTHER ENVIRONMENTAL ATTRIBUTES (e.g., REDUCED POLLUTANTS) (DATE)

Several laws, Executive orders, and Agency directives require Federal buyers to purchase products and services that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products and services under Federal Supply Service Schedule contracts in various communications media; *e.g.*, publications and electronic formats.

(a) *Definitions.* "Recovered Materials," as used in this clause, means waste material and by-products which have been recovered or diverted from solid waste. This term does not include those materials and by-products generated from, and commonly reused, within an original manufacturing process (42 U.S.C. 6903(19)). For paper, it also includes postconsumer materials, and manufacturing certain other wastes. (42 U.S.C. 6962(h)). Note that the Environmental Protection Agency (EPA) has developed a list of Comprehensive Procurement Guideline Items (CPG Items) that directs Federal agencies to purchase products that meet recommended

minimum recovered materials levels for specific products (40 CFR Part 247).

"Energy-Efficient Product," as used in this clause, refers to a product that is either ENERGY STAR® labeled or its energy consumption measures in the upper 25 percent of efficiency within its comparable class of products as designated by the Department of Energy Federal Energy Management Program (FEMP). (See Executive Order 13123)

"Other Environmental Attributes," as used in this clause, refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

"GAS Advantage," as used in this clause, refers to the GSA electronic on-line shopping mall that makes it easier for Federal employees to order products and services via the internet.

(b) The offeror must identify products that contain recovered or remanufactured materials, are energy-efficient, water-efficient or have other environmental attributes in each of the offeror's following mediums:

(1) The offer itself;

(2) Printed commercial catalogs, brochures, and pricelists;

(3) Online product website; and,

(4) Electronic data submission for *GSAAdvantage!*

(c) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR 260, Guides for the Use of Environmental Marketing Claims). The government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency sponsored program, *e.g.*, the EPA and DOE Energy Star product labeling program;

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis research, study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

Dated: July 12, 2000.

David Drabkin,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–18062 Filed 7–17–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1247

[STB Ex Parte No. 583]

Modification of the Class I Reporting Regulations

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) solicits comments on requiring Class I railroads to report the number of rail cars loaded and terminated annually. The effect of this proposal, if adopted, will be to ensure the continued availability of these data.

DATES: Comments are due on September 1, 2000.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 583 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, NW, Washington, D.C. 20423–0001.

FOR FURTHER INFORMATION CONTACT: Paul A. Aguiar, (202) 565–1527 or H. Jeff Warren, (202) 565–1533. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Association of American Railroads (AAR) currently collects quarterly data on the number of rail cars loaded and terminated by each Class I railroad in Equipment Report, Cars Loaded and Cars Terminated (AAR Form CS–54–1). Data contained in these quarterly reports are aggregated by the AAR to create an annual AAR Form CS–54–1 report for each railroad. These annual reports are used by the Board as inputs into the Uniform Railroad Costing System (URCS). To ensure the continued availability of these data, we propose that the Class I railroads file an abbreviated version of the AAR's annual Form CS–54–1 with the Board within 90 days after the end of the calendar year. The proposed STB report—Annual Report of Cars Loaded and Cars Terminated (Form STB–54)—would require reporting of only that data used as inputs for URCS, namely, Sections A and B of AAR Form CS–54–1.

If the proposed regulation set forth below is adopted, it will be codified at 49 CFR part 1247. Copies of proposed Form STB–54 and its instructions are available on the Board's web site (www.stb.dot.gov) under decisions of this docket. Alternatively, copies can be requested by writing or calling the contact persons listed above.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1247

Freight, Railroads, Reporting and recordkeeping requirements.

Decided: June 30, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

For the reasons set forth in the Preamble, Part 1247 Report of Cars Loaded and Cars Terminated would be added to Title 49, Chapter X of the Code of Federal regulations to read as follows:

PART 1247—REPORT OF CARS LOADED AND CARS TERMINATED

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

§ 1247.1 Annual Report of Cars Loaded and Cars Terminated.

Beginning with the reporting period commencing January 1, 2001, and annually thereafter, each Class I railroad shall file Form STB–54, Annual Report of Cars Loaded and Cars Terminated with the Office of Economics, Environmental Analysis, and Administration (OEEA&A), Surface Transportation Board, Washington, DC 20243, within 90 days after the end of the reporting year. Blank forms and instructions are available on the Board's web site (www.stb.dot.gov) or can be obtained by contacting OEEA&A.

[FR Doc. 00–18077 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG26

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in North-Central South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplementary information.

VOL 65 ISS 138 JL 18 2000 UMI

SUMMARY: We, the Fish and Wildlife Service (Service), in cooperation with the Cheyenne River Sioux Tribe, the U.S. Forest Service, and the Bureau of Indian Affairs, propose to reintroduce black-footed ferrets (*Mustela nigripes*) into north-central South Dakota on the Cheyenne River Sioux Reservation. We also announce the availability of the draft environmental assessment for this action. The purposes of this reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. If this rule is finalized, we will release surplus captive-raised black-footed ferrets in 2000, if possible, and release additional animals annually for several years thereafter until we establish a self-sustaining population. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Cheyenne River Sioux Reservation population would be established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. We would manage this population under provisions of this proposed special rule.

DATES: Comments on both the proposed rule and the draft environmental assessment must be received by August 17, 2000.

ADDRESSES: Send your comments on this proposed rule or on the draft environmental assessment to Pete Gober, Field Supervisor, or Scott Larson, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501 or telephone 605/224–8693. We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments received will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling 605/224–8693.

FOR FURTHER INFORMATION CONTACT: Mike Lockhart at 307/721–8805.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Congress made significant changes to the Endangered Species Act of 1973 (Act), as amended, in 1984 with the addition of section 10(j) to allow for the designation of specific populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range but within its historical range as "experimental." Based on the best available information, the Secretary will determine whether such populations are "essential," or "nonessential," to the continued existence of the species. Regulatory restrictions are considerably reduced under a nonessential experimental population (NEP) designation.

Species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of a listed species. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For the purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEP's are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEP's as if the population is proposed for listing, but we treat NEP's as threatened species when they are located within a National Wildlife Refuge or National Park. When NEP's occur outside of such refuges or parks, Federal agencies are required to confer with the Service, in accordance with section 7(a)(4) of the Act, on their actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature, and agencies are not restricted from committing resources to projects as a result of a conference.

Individuals used to establish an experimental population may come from a donor population, provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In this case, the donor ferret population is a captive-bred population, which was propagated with the intention of reestablishing wild populations to achieve recovery goals. In addition, wild progeny from other NEP areas (and which also originated from captive sources) may be directly translocated to the proposed reintroduction site.

2. *Biological:* The black-footed ferret is a member of the Mustelid or weasel family; has a black facemask, black legs, and a black-tipped tail; is nearly 60 centimeters (2 feet) in length; and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret species native to North America. The historical range of the species, based on specimen collections, extends over 12 western States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. Prehistoric evidence indicates that ferrets once occurred from the Yukon Territory in Canada to Mexico and Texas (Anderson *et al.* 1986).

Black-footed ferrets depend almost exclusively on prairie dog colonies for food, shelter, and denning (Henderson *et al.* 1969, Forrest *et al.* 1985). The range of the ferret coincides with that of prairie dogs (Anderson *et al.* 1986), and ferrets with young have been documented only in the vicinity of active prairie dog colonies. Historically, black-footed ferrets have been reported in association with black-tailed prairie

dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson *et al.* 1986).

Significant reductions in both prairie dog numbers and distribution occurred during the last century due to widespread poisoning of prairie dogs, the conversion of native prairie to farmland, and outbreaks of sylvatic plague, particularly in the southern portions of several species of prairie dog ranges in North America. Sylvatic plague arrived from Asia in approximately 1900. It is an exotic disease foreign to the evolutionary history of prairie dogs, who have little or no immunity to it. Black-footed ferrets are also highly susceptible to sylvatic plague. This severe reduction in the availability of the ferret's principal prey species, in combination with other factors such as secondary poisoning from prairie dog toxicants, resulted in the near extinction of the black-footed ferret in the wild.

In 1974, a remnant wild population of ferrets in South Dakota, originally discovered in 1964, abruptly disappeared. Afterwards, we believed the species to be extinct. However, in 1981, a small population of ferrets was discovered near Meeteetse, Wyoming. In 1985–1986, the Meeteetse population declined to only 18 animals due to outbreaks of sylvatic plague and canine distemper. Following this critical decline, the remaining individuals were taken into captivity in 1986–1987 to serve as founders for a captive propagation program. Since that time, captive breeding efforts have been highly successful and have facilitated ferret reintroductions in several areas of formerly occupied range. Today, the captive population of juveniles and adults fluctuates annually between 300 and 600 animals depending on the time of year, yearly reproductive success, and annual mortalities. The captive ferret population is currently divided among six captive breeding facilities throughout the United States and Canada, with a small number on display for educational purposes at several facilities. Also, 65 to 90 ferrets are located at several field-based captive breeding sites in Arizona, Colorado, New Mexico, and Montana.

3. *Recovery Goals/Objectives:* The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) contains the following recovery objectives for reclassification:

(a) Increasing the captive population of ferrets to 200 breeding adults by 1991 (which has been achieved);

(b) Establishing a prebreeding population of 1,500 free-ranging breeding adults in 10 or more different populations, with no fewer than 30 breeding adults in each population by the year 2010 (not achieved); and,

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historical range. Although several reintroduction efforts have occurred throughout the ferret's range, populations may have become self-sufficient at only one site in South Dakota.

We can reclassify the black-footed ferret to threatened status when the recovery objectives listed above have been achieved, assuming that the mortality rate of established populations remains at or below a rate at which new populations become established or increase. We have been successful in rearing black-footed ferrets in captivity, and in 1997 we reached captive breeding program objectives.

In 1988, we divided the single captive population into three subpopulations to avoid the possibility of a catastrophic event eliminating the entire captive population (*e.g.*, contagious disease). Additional breeding centers were added later, and presently there are six separate subpopulations in captivity. Current recovery priorities emphasize the reintroduction of animals back into the wild from the captive source stock. Surplus individuals produced in captivity are now available for use on reintroduction areas.

4. *Reintroduction Sites:* The Service, in cooperation with western State and Federal agencies, Tribal representatives, and conservation groups, evaluates potential black-footed ferret reintroduction sites and has previously initiated ferret reintroduction projects at several sites within the historical range of the black-footed ferret. The first reintroduction project occurred in Wyoming in 1991, and subsequent efforts have taken place in South Dakota and Montana in 1994, in Arizona in 1996, a second effort in Montana in 1997, and in Colorado/Utah in 1999. The Service and the Black-footed Ferret Recovery Implementation Team (composed of 27 State and Federal agencies, Indian Tribes, and conservation organizations) have identified the Cheyenne River Sioux Reservation (Reservation) as a priority black-footed ferret reintroduction site due to its extensive black-tailed prairie dog habitat and the absence of sylvatic plaque.

(a) *Cheyenne River Sioux Reservation Experimental Population Reintroduction Area:* The area designated as the Cheyenne River Sioux Reservation, Black-footed Ferret Experimental Population Area (Experimental Population Area) overlays all of Dewey and Ziebach Counties in South Dakota. The boundaries of these Counties are also the boundaries of the Reservation. Within the Experimental Population Area, the proposed primary reintroduction area will be in large black-tailed prairie dog complexes located along the Moreau River. The approximate center of the Experimental Population Area is the town of Eagle Butte, the location of Cheyenne River Sioux Tribal offices. Eagle Butte is approximately 160 kilometers (100 miles) northwest of Pierre, the capital of South Dakota.

The Experimental Population Area supports two large complexes of black-tailed prairie dog colonies located within the two-county area. These two Counties encompass approximately 1,141,558 hectares (2,820,751 acres). Approximately half or 574,752 hectares (1,420,193 acres) of the Experimental Population Area is Tribal Trust and Allotted lands. The majority of this Tribal Trust and Allotted land, approximately 90 percent or 505,875 hectares (1,250,000 acres), is native rangeland, which is used for grazing.

Some lands within the Experimental Population Area are owned by private landowners (approximately 50 percent, although much less in the primary reintroduction area). No ferrets will be released on private lands. The Tribe and other Cooperators have agreed that if any ferrets disperse onto private lands they will capture and translocate them to Tribal lands if requested by the landowner or if necessary for the protection of the ferrets.

Black-footed ferret dispersal to and occupation of areas outside of the Experimental Population Area is unlikely due to the large size of the Experimental Population Area, the absence of suitable nearby habitat (few if any prairie dogs can be found to the south and west), cropland barriers (*e.g.*, expansive cultivation over the northern portion of the Experimental Population Area), and physical barriers (*e.g.*, the Missouri River to the east). The Tribe estimates a total of approximately 8,408 hectares (20,777 acres) of black-tailed prairie dog colonies are potentially available to black-footed ferrets in the Experimental Population Area and could support over 200 ferret families (characterized as an adult female, three kits, and one-half an adult male; *i.e.*, one adult male for every two adult females). Large, contiguous prairie dog colonies and the absence of physical barriers between prairie dog colonies along the

Moreau River (the primary ferret release area) should facilitate ferret distribution throughout the Moreau River reintroduction area.

(b) *Primary Reintroduction Areas:* In the early 1990s, the Tribe began development of a Prairie Management Plan as a framework for managing the natural resources of 574,752 hectares (1,420,193 acres) of Tribal and Allotted lands within the Reservation boundaries (Cheyenne River Sioux Tribe 1992). The Prairie Management Plan included development of prairie dog and black-footed ferret management strategies. Phase I of the Prairie Management Plan accomplished initial prairie dog surveys along the Moreau River in areas believed to be well-suited for ferret reintroduction. Follow up Phase II surveys confirmed that prairie dog colonies along the Moreau River are highly suitable for ferret releases due to the number and size of prairie dog colonies, the spatial relationships of prairie dog towns to each other, their location on Tribal and Allotted Trust lands, their remoteness, and their distance from human settlements (Cheyenne River Sioux Tribe 1999). Recent surveys revealed 5,739 hectares (14,156 acres) of prairie dog colonies within the Moreau River complex. In addition to the Moreau River prairie dog complex, a secondary black-footed ferret release area was identified to the south in the Southeast Parade Management Area, an area that supports 2,280 hectares (6,621 acres) of black-tailed prairie dog towns. This area requires further research to ensure appropriate conditions exist prior to conducting future reintroductions of black-footed ferrets. The Tribe selected the Moreau River prairie dog complex as the primary ferret reintroduction area because of its location within the historical range of the black-footed ferret, our determination that ferrets are no longer present, the abundance of suitable ferret habitat (lands containing active prairie dog colonies), the extensive amount of land managed by the Tribe, and the area's isolation from human activities.

The primary reintroduction area within the Experimental Population Area generally includes lands along the Moreau River in Dewey and Ziebach Counties in north-central South Dakota. Extensive ferret surveys were conducted in this area in the 1980s and 1990s, but no evidence of ferrets was found. There are no confirmed records of ferrets occurring within the boundaries of the Experimental Population Area since the early 1960s.

Black-footed ferrets will be released only if biological conditions are suitable and meet the management framework developed by the Tribe, in cooperation with the Bureau of Indian Affairs, the Service, private landowners, and Federal and State land managers. The Service will reevaluate ferret reintroduction efforts in the Experimental Population Area should any of the following conditions occur:

(i) Failure to maintain sufficient habitat on specific reintroduction areas to support at least 30 breeding adults after 5 years.

(ii) Failure to maintain suitable prairie dog habitat that was available on specific reintroduction areas in 1999.

(iii) A wild ferret population is found within the Experimental Population Area following the initial reintroduction and prior to the first breeding season. The only black-footed ferrets currently occurring in the wild result from reintroductions in Wyoming, Montana, South Dakota, Arizona, and Utah/Colorado. Consequently, the discovery of a black-footed ferret at the proposed experimental population area prior to the reintroduction would confirm the presence of a new population, which would prevent the designation of an experimental population in the area.

(iv) Discovery of an active case of canine distemper or other disease contagious to black-footed ferrets on or near the reintroduction area prior to the scheduled release.

(v) Less than 20 captive black-footed ferrets are available for the first release.

(vi) Funding is not available to implement the reintroduction phase of the project on the Cheyenne River Sioux Reservation.

(vii) Land ownership changes significantly, or cooperators withdraw from the project.

All of the above conditions will be based on information routinely collected by us or the Tribe.

5. *Reintroduction procedures:* The standard reintroduction protocol calls for the release of 20 or more captive-raised, or wild-translocated black-footed ferrets in the Experimental Population Area in the first year of the program, and 20 or more animals released annually for the next 2 to 4 years. However, if the proposal is finalized, biologists expect to release 50 or more ferrets in the first year and believe a self-sustaining wild population could be established on the Reservation within 5 years. Released ferrets will be excess to the needs of the captive breeding program, and their use will not affect the genetic diversity of the captive ferret population (ferrets used for reintroduction efforts can be replaced through captive breeding). In the future, it may be necessary to interchange ferrets from established, reintroduced populations to enhance the genetic diversity of the population on the Experimental Population Area.

Recent studies (Biggins *et al.* 1998, Vargas *et al.* 1998) have documented the importance of outdoor "preconditioning" experience on captive-reared ferrets prior to release in the wild. Ferrets exposed to natural prairie dog burrows in outdoor pens and natural prey prior to release survive in the wild at significantly higher rates than do cage-reared, non-preconditioned ferrets. The U.S. Forest Service will participate in the reestablishment of ferrets on the Cheyenne River Sioux Reservation by preconditioning captive-raised ferrets in large open-air pens on the Conata Basin District of the Buffalo Gap National Grasslands in southwestern South Dakota. In these pens, young ferrets are exposed to live prairie dogs, burrows, and other natural stimuli. In addition, biologists may translocate up to 25 ferrets born in the wild on the Buffalo Gap National Grasslands to the Reservation (if annual production levels of wild ferrets on Conata Basin are sufficient to allow translocation of excess young).

The Tribe will develop specific reintroduction plans and submit them in a proposal to the Service as part of an established, annual black-footed ferret allocation process. Ferret reintroduction cooperators submit proposals by mid-March of each year, and the Service makes preliminary allocation decisions (numbers of ferrets provided to specific projects) by May. Proposals submitted to the Service include updated information on habitat, disease, project/ferret status, proposed reintroduction and monitoring methods, and predator management. In this manner, the Service and reintroduction cooperators evaluate the success of prior year efforts and apply current knowledge to various aspects of reintroduction efforts, thereby providing greater assurance of long-range reintroduction success.

We will transport ferrets to identified reintroduction areas within the Experimental Population Area and release them directly from transport cages into prairie dog holes. Depending on the availability of suitable vaccine, we will vaccinate released animals against certain diseases (especially canine distemper) and take appropriate measures to reduce predation from coyotes, badgers, and raptors, where warranted. All ferrets we release will be marked with passive integrated transponder tags (PIT tags), and we may promote use of radio-telemetry studies

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to document ferret behavior and movements. Other monitoring will include spotlight surveys, snow tracking surveys, and visual surveillance.

Since captive-born ferrets are more susceptible to predation, starvation, and environmental conditions than wild animals, up to 90 percent of the released ferrets could die during the first year of release. Mortality is usually highest during the first month following release. In the first year of the program, a realistic goal is to have at least 25 percent of the animals survive the first winter.

The goal of the Cheyenne River Sioux Reservation reintroduction project is to establish a free-ranging population of at least 30 adults within the Experimental Population Area within 5 years of release. At the release site, population demographics and potential sources of mortality will be monitored on an annual basis (for up to 5 years). We do not intend to change the nonessential designation for this experimental population unless we deem this reintroduction a failure or the black-footed ferret is recovered in the wild.

6. *Status of Reintroduced Population:* We determine this reintroduction to be nonessential to the continued existence of the species for the following reasons:

(a) The captive population (founder population of the species) is protected against the threat of extinction from a single catastrophic event by housing ferrets in six separate subpopulations. As a result, any loss of an experimental population in the wild will not threaten the survival of the species as a whole.

(b) The primary repository of genetic diversity for the species is 240 adult ferrets maintained in the captive breeding population. Animals selected for reintroduction purposes are surplus to the captive population. Hence, any use of animals for reintroduction efforts will not affect the overall genetic diversity of the species.

(c) Captive breeding can replace any ferrets lost during this reintroduction attempt. Juvenile ferrets produced in excess of the numbers needed to maintain the captive breeding population are available for reintroduction.

The proposed reintroduction would be the seventh release of ferrets back into the wild in six experimental population areas. The other experimental populations occur in Wyoming, southwestern South Dakota, north-central Montana (with two separate reintroduction efforts), Arizona, and Colorado/Utah (a single reintroduction area that overlays both States). Reintroductions are necessary to further the recovery of this species. The NEP designation alleviates landowner concerns about possible land use restrictions. This nonessential designation provides a flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners are unaffected.

7. *Location of Reintroduced Population:* Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. Since the mid 1980s, BIA and the Tribe conducted black-footed ferret surveys in the Experimental Population Area. In addition to these surveys, they spent many hours surveying prairie dog colonies at the proposed reintroduction site. No ferrets or ferret sign (skulls, feces, trenches) were located. Therefore, we conclude that wild ferrets are no longer present on the Experimental Population Area, and that this reintroduction will not overlap with any wild population.

All released ferrets and their offspring are expected to remain in the Experimental Population Area due to the presence of prime habitat (lands occupied by prairie dog colonies) and surrounding geographic barriers. We will capture any ferret that leaves the Experimental Population Area (in an attempt to identify its origin) and will either return it to the release site, translocate it to another site, or place it in captivity. If a ferret leaves the reintroduction area, but remains within the Experimental Population Area, and occupies private property, the landowner can request its removal. Ferrets will remain on private lands only when the landowner does not object to their presence there.

We will mark all released ferrets and will attempt to determine the source of any unmarked animals found. Any ferret found outside the Experimental Population Area is considered endangered, as provided under the Act. We will undertake efforts to confirm whether any ferret found outside the Experimental Population Area originated from captive stock. If the animal is unrelated to members of this or other experimental populations (*i.e.*, it is from non-captive stock), we will place it in captivity as part of the breeding population to improve the overall genetic diversity of the captive population. Existing contingency plans allow for the capture and retention of up to nine ferrets that are not from any captive stock. In the highly unlikely event that a ferret from captive stock is found outside the Experimental Population Area, we will move the ferret back to habitats that would support the primary population(s) of ferrets.

8. *Management:* This reintroduction will be undertaken in cooperation with the Cheyenne River Sioux Tribe, the Bureau of Indian Affairs, and the U.S. Forest Service in accordance with the "Cooperative Management Plan for Black-footed Ferrets, Moreau River or Southeast Parade Reintroduction Areas"—Cheyenne River Sioux Reservation. Copies of the Cooperative Management Plan may be obtained from the Prairie Management Program Coordinator, P.O. Box 590, Eagle Butte, South Dakota 57625. In the future, we will evaluate whether additional black-footed ferret reintroductions are feasible within the Experimental Population Area (over 45,000 total acres of occupied prairie dog habitat exist within the Experimental Population Area). Cooperating agencies and private landowners would be involved in the selection of any additional sites. Management considerations of the proposed reintroduction project include:

(a) Monitoring: Several monitoring efforts will occur during the first 5 years of the program. We will annually monitor prairie dog distribution and numbers, and test for the occurrence of sylvatic plague. Testing resident carnivores (*e.g.*, coyotes) for canine distemper will begin prior to the first ferret release and continue each year. We will monitor released ferrets and their offspring annually using spotlight surveys, snowtracking, other visual survey techniques, and possibly radio-telemetry on some individuals. The surveys will incorporate methods to monitor breeding success and long-term survival rates.

Through public outreach programs, we will inform the public and other appropriate State and Federal agencies about the presence of ferrets in the Experimental Population Area and the handling of any sick or injured animals. To meet our responsibilities to treat the Tribe on a Government to Government basis, we will request that the Tribe inform Tribal members of the presence of ferrets on Reservation lands, and the proper handling of any sick or injured ferrets that are found. The Tribe will serve as the primary point of contact to report any injured or dead ferrets. Reports of injured or dead ferrets must also be provided to the Service Field Supervisor (see **ADDRESSES** section). It is important that we determine the cause of death for any ferret carcass found. Therefore, we request that discovered ferret carcasses not be disturbed, but reported as soon as possible to appropriate Tribal and Service offices.

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(b) Disease: The presence of canine distemper in any mammal on or near the reintroduction site will cause us to reevaluate the reintroduction program. Prior to releasing ferrets, we will establish the presence or absence of canine distemper in the release area by collecting at least 20 coyotes (and possibly other carnivores). Sampled predators will be tested for canine distemper and other diseases.

We will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into core ferret release areas. Any dead mammal or any unusual behavior observed in animals found within the area should be reported to us. Efforts are under way to develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague in prairie dog towns will take place before and during the reintroduction effort, and annually thereafter.

(c) Genetics: Ferrets selected for reintroduction are excess to the needs of the captive population. Experimental populations of ferrets are usually less genetically diverse than overall captive populations. Selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases can correct this disparity. The ultimate goal is to establish wild ferret populations with the maximum genetic diversity that is possible from founder ferrets. The eventual interchange of ferrets between established populations found elsewhere in the western United States will ensure that genetic diversity is maintained to the maximum extent possible.

(d) Prairie Dog Management: We will work with the Tribe, affected landowners, and other Federal and State agencies to resolve any management conflicts in order to: (1) Maintain sufficient prairie dog acreage and density to support no less than 30 adult black-footed ferrets; and (2) maintain suitable prairie dog habitat on core release areas at or above 1999 survey levels.

(e) Mortality: We will reintroduce only ferrets that are surplus to the captive breeding program. Predator control, prairie dog management, vaccination, ferret preconditioning, and improved release methods should reduce mortality. Public education will help reduce potential sources of human-caused mortality.

The Act defines "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A person may take a ferret within the Experimental Population Area provided that the take is unavoidable, unintentional, and was not due to negligent conduct. Such conduct will not constitute "knowing take," and we will not pursue legal action. However, when we have evidence of knowing (*i.e.*, intentional) take of a ferret, we will refer matters to the appropriate authorities for prosecution. Any take of a black-footed ferret, whether incidental or not, must be reported to the local Service Field Supervisor (see **ADDRESSES** section). We expect a low level of incidental take since the reintroduction is compatible with existing land use practices for the area.

Based on studies of wild black-footed ferrets at Meeteetse, Wyoming, black-footed ferrets can be killed by motor vehicles and dogs. We expect a rate of mortality similar to what was documented at Meeteetse, and, therefore, we estimate a human-related annual mortality rate of about 12 percent of all reintroduced ferrets and their offspring, annually. If this level is exceeded in any given year, we will develop and implement measures to reduce the level of mortality.

(f) Special Handling: Service employees and authorized agents acting on their behalf may handle black-footed ferrets for scientific purposes; to relocate ferrets to avoid conflict with human activities; for recovery purposes; to relocate ferrets to other reintroduction sites; to aid sick, injured, and orphaned ferrets; and salvage dead ferrets. We will return to captivity any ferret we determine to be unfit to remain in the wild. We also will determine the disposition of all sick, injured, orphaned, and dead ferrets.

(g) Coordination With Landowners and Land Managers: The Service and cooperators identified issues and concerns associated with the proposed ferret reintroduction before preparing this proposed rule. The proposed reintroduction also has been discussed with potentially affected State agencies and landowners within the proposed release area. Affected State agencies, landowners, and land managers have indicated support for the reintroduction, if ferrets released in the Experimental Population Area are an NEP, and if land use activities in the Experimental Population Area are not constrained without the consent of affected landowners.

(h) Potential for Conflict With Grazing and Recreational Activities: We do not expect conflicts between livestock grazing and ferret management. Grazing and prairie dog management on private lands within the Experimental Population Area will continue without additional restriction during implementation of the ferret recovery activities. With proper management, we do not expect adverse impacts to ferrets from hunting, prairie dog shooting, prairie dog control, and trapping of furbearers or predators in the Experimental Population Area. If proposed prairie dog shooting or control locally affect ferret prey base within a specific area, State, Tribal, and Federal biologists will determine whether ferrets could be impacted and, if necessary, take steps to avoid such impacts. If private activities impede the establishment of ferrets, we will work closely with the Tribe and landowners to develop appropriate procedures to minimize conflicts.

(i) Protection of Black-footed Ferrets: We will release ferrets in a manner that provides short-term protection from natural (predators, disease, lack of prey base) and human-related sources of mortality. Improved release methods, vaccination, predator control, and management of prairie dog populations should help reduce natural mortality. Releasing ferrets in areas with little human activity and development will minimize human-related sources of mortality. We will work with the Tribe and landowners to help avoid certain activities that could impair ferret recovery.

(j) Public Awareness and Cooperation: We will inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret.

The designation of the NEP on the Cheyenne River Sioux Reservation would provide greater flexibility in the management of the reintroduced ferrets. The NEP designation is necessary to secure needed cooperation of the Tribe, landowners, agencies, and recreational interests in the affected area. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the Experimental Population Area will further the conservation of the species.

Public Comments Solicited

Black-footed ferret kits targeted for wild release are introduced into preconditioning pens at 40–90 days of age and released at about 120 to 140 days. It is imperative that ferrets kits are preconditioned and released at proper developmental ages to enhance their survival in the wild. Because of earlier than usual ferret production at captive breeding centers in the United States and Canada (as of early June 2000), it has become urgent to expedite this nonessential, experimental rulemaking

process in order to ensure that an adequate number of ferrets can be released at proper ages and with adequate preconditioning experience on the Cheyenne River Sioux Experimental Population Area. Consequently, we are proposing a 30-day public comment period for the proposed rule instead of the standard 60 days.

The Service wishes to ensure that this proposed rulemaking to designate the Cheyenne River Sioux Reservation black-footed ferret population as an NEP and the draft environmental assessment on the proposed action effectively evaluate all potential issues associated with this action. Therefore, we request comments or recommendations concerning any aspect of this proposed rule and the draft environmental assessment from the public, as well as Tribal, local, State, and Federal government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible. To promulgate a final rule to implement this proposed action and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information received. Such information may lead to a final rule that differs from this proposal.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, available for public inspection in their entirety.

Public Hearings

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 20 days of the date of publication of the proposal in the **Federal Register**. Such requests for a hearing must be made in writing and addressed to the South Dakota State Field Supervisor for the Fish and Wildlife Service in Pierre, South Dakota (see **ADDRESSES** section).

Required Determinations

1. Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the proposed rule to designate NEP status for the black-footed ferret reintroduction into north-central South Dakota is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million and will not have an adverse effect upon any economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required.

All the lands within the NEP area are within the Cheyenne River Sioux Reservation, and the specific lands where ferrets will actually be released are Tribal Trust allotted lands. Other public areas in the NEP include South Dakota school lands, South Dakota Department of Game, Fish and Parks lands, and U.S. Army Corps of Engineers lands. Most of the prairie dogs within the NEP area occur on Tribal Trust lands, and those occurring on other lands are not needed for a successful ferret release. Land uses on private, Tribal, and State school lands will not be hindered by the proposal, and only voluntary participation by private landowners will occur.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily other Department of the Interior bureaus (*i.e.*, Bureau of Land Management) and the Department of Agriculture (Forest Service). The action proposed by this rulemaking is consistent with the policies and guidelines of the other Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the black-footed ferret in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues. The Service has previously designated experimental populations of black-footed ferrets at five other locations (in Colorado/Utah, Montana, South Dakota, Arizona, and Wyoming) and for other species at numerous locations throughout the nation.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The area affected by this rule consists of Dewey and Ziebach Counties, South Dakota. A majority of the area affected by this rule is within the Cheyenne River Sioux Reservation, which is administered by the Tribe. Reintroduction of ferrets allowed by this rule will not have any significant effect on recreational activities in the experimental area. We do not expect any closures of roads, trails, or other recreational areas. Suspension of prairie dog shooting for ferret management purposes will be localized and prescribed by the Tribe. We do not expect ferret reintroduction activities to affect grazing operations, resource development actions, or the status of any other plants or animal species within the release area. Because only voluntary participation in ferret reintroduction by private landowners is proposed, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of an NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these ferrets, will not create inconsistencies with other agency actions, and will not conflict with existing or proposed human activity, or Tribal and public use of the land.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more for reasons outlined above. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

The nonessential experimental population designation will not place any additional requirements on any city, county, or other local municipalities. The site designated for release of the experimental population is predominantly Cheyenne River Sioux Tribal Trust land administered by the Cheyenne River Sioux Tribe, who

support this project. Some South Dakota State school lands may also be affected. The State of South Dakota has expressed support for accomplishing the reintroduction through a nonessential experimental designation. Accordingly, this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Because this rulemaking does not require any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2, U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (*i.e.*, it is not a "significant regulatory action" under the Act).

5. Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements with respect to the reintroduced listed species within the NEP. Under NEP designations, the Act requires a Federal agency to confer with the Service if the agency determines its action within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, even if an agency action totally eliminated a reintroduced species from an NEP and jeopardized the species' continued existence, the Act does not compel a Federal agency to stop a project, deny issuing a permit, or cease any activity. Additionally, regulatory relief can be provided regarding take of reintroduced species within NEP areas, and a special rule has been developed stipulating that unavoidable and unintentional take (including killing or injuring) of the reintroduced black-footed ferrets would not be a violation of the Act, when such take is nonnegligent and incidental to a legal activity (*e.g.*, livestock management, mineral development) and the activity is in accordance with State laws and regulations.

Most of the lands within the Experimental Population Area are administered by the Cheyenne River Sioux Tribe. Multiple-use management of these lands by industry and recreation interests will not change as a result of the experimental designation. Private landowners within the Experimental Population Area will still be allowed to conduct lawful control of prairie dogs, and may elect to have black-footed ferrets removed from their land should ferrets move to private lands.

Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of ferrets would conflict with existing human activities or hinder public use of the area. The South Dakota Department of Game, Fish and Parks has endorsed the ferret reintroduction under an NEP designation. The NEP designation will not require the South Dakota Department of Game, Fish and Parks to specifically manage for reintroduced ferrets. A takings implication assessment is not required.

6. Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As stated above, most of the lands within the Experimental Population Area are Tribal Trust lands, and multiple-use management of these lands will not change to accommodate black-footed ferrets. The designation will not impose any new restrictions on the State of South Dakota. The Service has coordinated extensively with the Tribe and State of South Dakota, and they endorse the NEP designation as the only feasible way to pursue ferret recovery in the area. A Federalism Assessment is not required.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

This regulation contains information collection requirements under the Paperwork Reduction Act (and approval by the Office of Management and Budget) under 44 U.S.C. 3501 *et seq.* Authorization for this information collection has been approved by OMB and has been assigned OMB control number 1018–0095. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must send your comments to OMB by the above referenced date.

9. National Environmental Policy Act

The Service has prepared a draft environmental assessment as defined under authority of the National Environmental Policy Act of 1969. It is available from Service offices identified in the **ADDRESSES** section.

10. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ""Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Execsec@ios.doi.gov

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Authors

The primary authors of this rule are Mike Lockhart and Scott Larson (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.11(h) by revising the existing entry for "Ferret, black-footed" under "MAMMALS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Ferret, black-footed	*Mustela nigripes*	Western U.S.A., western Canada.	Entire, except where listed as an experimental population.	E	1, 3, 343, 433, 545, 546, 582, 646, ____.	NA	NA
Do	.....do	.....do	U.S.A. (specific portions of AZ, CO, MT, SD, UT, and WY, see 17.84(g)(9)).	XN	433, 545, 546, 582, 646, ____.	NA	17.84(g)
*	*	*	*	*	*	*	*

3. Amend § 17.84 as follows: Revise the text of paragraph (g)(1) and add paragraphs (g)(6)(vi), (g)(9)(vi), and a new map to follow the five existing maps at the end of paragraph (g):

§ 17.84 Special rules—vertebrates.

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) through (vi) of this section are nonessential experimental populations. We will manage each of these populations in accordance with their respective management plans.

* * * * *

(6) * * *

(vi) Report such taking in the Cheyenne River Sioux Tribe Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224–8693).

* * * * *

(9) * * *

* * * * *

(vi) The Cheyenne River Sioux Tribe Reintroduction Area is shown on the map of north-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area are the exterior boundaries of the Cheyenne River Indian Reservation which includes all of Dewey and Ziebach Counties, South Dakota. Any black-footed ferret found in the wild within these Counties will be considered part of the nonessential experimental population after the first breeding season following the first year of black-footed ferret release. A black-footed ferret occurring outside the Experimental Population Area in north-central South Dakota would initially be considered as endangered but may be captured for genetic testing. When a ferret is found outside the Experimental Population Area, the following may occur:

(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-footed ferrets may be taken for use in the captive-breeding program.

* * * * *

BILLING CODE 4310–55–P

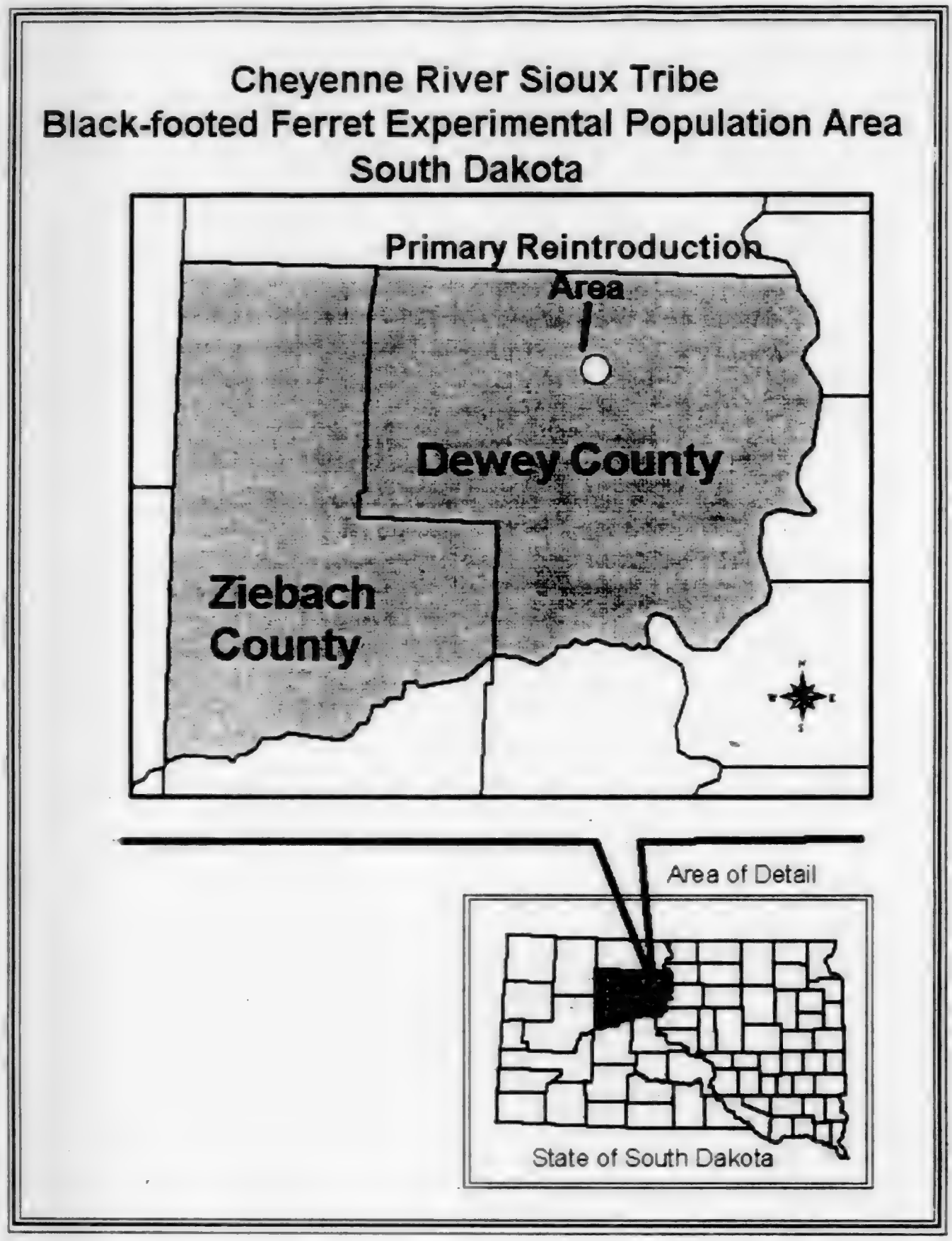

Dated: June 29, 2000.

Donald J. Barry,

Assistant Secretary, Fish, Wildlife, and Parks.

[FR Doc. 00–18123 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 65, No. 138
Tuesday, July 18, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Office of Secretary, USDA.
ACTION: Notice of renewal of charter.

SUMMARY: The Secretary of Agriculture has renewed the charter of the Lake Tahoe Federal Advisory Committee. Chartered under the Federal Advisory Committee Act, the Committee provides advice to the Secretary of Agriculture and to the Federal Interagency Partnership on how the Partnership can best fulfill its duties, pursuant to Executive Order 13057, to protect the extraordinary natural, recreational, and ecological resources in the Lake Tahoe Region.

DATES: The charter renewal is effective June 23, 2000. As provided by law, the charter will expire 24 months from the date of filing.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson, Forest Supervisor, Lake Tahoe Basin Management Unit, telephone (530) 573–2773.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has renewed the charter of the Lake Tahoe Basin Federal Advisory Committee. The purpose of the Committee is to provide advice to the Secretary of Agriculture and to the Federal Interagency Partnership on how the Partnership can best fulfill its duties to protect the extraordinary natural, recreational, and ecological resources in the Lake Tahoe Region. The Partnership was established in accordance with Executive Order 13057, "Federal Actions in the Lake Tahoe Region." The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conduct public meetings to discuss management strategies, gather information about and review Federal agency accomplishments, and prepare a progress report every 6 months for submission to regional Federal executives. Three members of the Committee have been selected as members-at-large. The others have been selected to represent each of the following interests: Gaming, environmental, national environmental, ski resorts, North Shore economic/recreation, South Shore economic/recreation, resort associations, education, property rights advocates, science and research, local government, Washoe Tribe, State of California, State of Nevada, Tahoe Regional Planning Agency, labor, and transportation. The Committee Chair will be recommended by the Committee and approved by the Secretary. A vacancy on the Committee will be filled in the manner in which the original appointment was made.

The Secretary of Agriculture appoints the members to the Committee. In line with USDA policies, equal opportunity practices are followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership includes to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: June 12, 2000.
Paul W. Fiddick,
Assistant Secretary for Administration.
[FR Doc. 00–18125 Filed 7–17–00; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on July 27 and 28, 2000, at the Northern California Service Center, Training Rooms 2 and 3, 6101 Airport Road, Redding, California. The meeting on Thursday, July 27, will start at 1 p.m. and adjourn at 5 p.m. The meeting will reconvene on Friday, July 28 at 8 a.m. and will adjourn at 12 p.m. Agenda items for the meeting include: (1) Discussion on topics of general interest to the PAC (FERC Relicensing, an update on the Shasta-Trinity National Forest Fire Management Strategy, Southern Oregon BLM Wild & Scenic River Plan); (2) Total Maximum Daily Loads discussion and update; and (3) Public Comment Periods. All Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 11263 N. Hwy 3, Fort Jones, California 96032; telephone 530–468–1281 (voice), TDD 530–468–2783.

Dated: July 19, 2000.
Constance J. Hendryx,
PAC Support Staff.
[FR Doc. 00–18078 Filed 7–17–00; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South Chickamauga Creek Watershed: Catoosa, Walker, Whitfield Counties, Georgia; Bradley and Hamilton Counties, Tennessee

AGENCY: Natural Resources Conservation Service, U.S.D.A.
ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the South Chickamauga Creek Watershed, Catoosa, Walker, Whitfied Counties, Georgia and Bradley and Hamilton Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Earl Cosby, State Conservationist, Natural Resources Conservation Service, Federal Building, STOP 200, 355 E. Hancock

Avenue, Athens, Georgia 30601, telephone (706) 546–2272.

SUPPLEMENTAL INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Earl Cosby, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are watershed protection and improvement of water quality. The planned works of improvement include animal waste management systems and accelearated pasture and cropland treatment.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cran Upshaw at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernment consultation with State and local officials.)

Earl Cosby,

State Conservationist.

Finding of No Significant Impact for South Chickamauga Creek Watershed, Catoosa, Walker, Whitfield Counties, GA; Bradley and Hamilton Counties, TN

July 2000.

Introduction

The South Chickamauga Creek Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for Watershed Protection and improvement of water quality and includes measures for the control of agricultural animal waste related pollution and reduction of sediment from pasture and cropland. The plan reduces excessive animal waste and associated nutrients and bacteria entering waterways from about 10 dairy, 43 poultry and 159 beef operations. The plan also provides measures to reduce nutrient runoff and erosion on 304 acres of cropland, Sedimentation from streambanks and animal walkways will be substantially reduces and forage quality will be improves on 4,560 acres of pastureland. These measures will be accomplished by providing financial and technical assistance through a local sponsor.

The principal project measures are to:

1. Develop and install approximately 212 animal waste management systems and provide enhanced cover to 4,560 acres of pastureland and adjoining stream banks to reduce sedimentation, improve water quality and enhance forage production. These practices will include all or parts of the following: fencing, cross fencing with gates, alternative livestock water supply with piping and troughs, stream crossings, riparian buffers, animal waste, lagoons, flush down and hose down systems, solid waste separators, heavy use protection areas, solid waste stack facilities and dead bird composters on 10 dairy, 43 poultry and 159 beef operations. Conservation management with nutrient and grazing land management practices will be used when applying animal waste.

2. The measures will be planned and installed by developing long-term contracts with landowners.

Effects of Recommended Action

Installation of animal waste management measures and grazing land practices will reduce offsite nutrient, bacteria, sediment and chemical damages and increase utilization of nutrients onsite. The results will be a significant reduction in current impairments to the area's water quality, biological habitats, recreational opportunities, land values and improvement of long-term productivity and quality of pastureland in the watershed. Installation of the selected plan will also provide local and regional employment, promote rural economic development in the drainage area, and provide long term natural resource protection in the watershed.

The project measures will reduce agricultural related nutrients, bacteria and sediment entering watershed streams, the South Chickamauga Creek and Nickajack Lake in Tennessee. The project will also minimize the impact on surface and ground water quality by:

—Reducing the 76 tons of nitrogen and 21 tons of phosphorus from animal waste operations delivered annually by an average of 47%.

—Providing a significant reduction in the amount of nitrates, ammonia, and bacteria delivered annually to area waterways, thus improving biological habitats, recreational opportunities, and real estate values.

—Reducing the 45,835 tons of sediment from streambanks and overgrazed pastureland.

Grazing land practices will increase forage productivity through improved management and utilizing waste more efficiently. This will reduce stream enrichment and conserve the nutrients for plant production. The proposed plan will also encourage and promote the agricultural enterprises in the watershed through improved efficiency.

Wildlife habitat will not be disturbed during installation of animal waste systems and grazing land practices. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 1,251 acres of wetland and wetland type wildlife habitat will be improved. Conversions to permanent vegetation will provide a more diverse upland game habitat. The value of woodland habitat will not decline. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Scenic values will be complemented with improved riparian quality and cover conditions resulting from the installation of conservation animal waste management system and grazing land practices.

Alternatives

Three alternative plans, that included 25 combinations of systems and practices, was considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete and acceptable means of protecting the watershed by managing animal waste and stabilizing pasture and cropland.

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Consultation—Public Participation

Water quality concerns in the South Chickamauga Creek Watershed were expressed by local citizens, Soil and Water Conservation Districts, other regional residents. NRCS personnel in partnership with interagency team members from the Tennessee Valley Authority (TVA), Georgia Department of Natural Resources (DNR) and Environmental Protection Division (EPD) made a watershed assessment and evaluated existing water quality data. The team determined that agricultural related water quality problems were negatively affecting the watershed and the region's air, plant, animal, soil, and water resources. With these concerns identified, the team agreed that a holistic approach for assistance to operators based on the watershed approach would help solve the problems. The Sponsors requested NRCS planning assistance under PL–566 authority for a watershed protection plan.

At the initiation of the planning process, meetings were held with key farmers and District representatives from the watershed area to discuss problem identification, conservation systems and PL–566 requirements. A public meeting was held on June 29, 1999 to scope the problems and concerns and to explain impacts of the PL–566 program initiatives relative to a watershed project and discuss possible solutions. Notice of the meeting appeared in the local newspaper and on radio for several weeks prior to the date. Door to door verbal invitations were also made. One hundred eighty landowners, operators and interested citizens attended the meeting.

NRCS developed an interdisciplinary, interagency planning team to work with the Sponsor, landowners, and other interested groups. The team was compiled of specialists from NRCS, TVA, Ga. Cooperative Extension Service, EPD, along with local sponsors. The team worked in the watershed area and downstream to Nickajack Lake, to gain insight to the magnitude of the problems and possible solutions. Several meetings, group discussions, and interviews were held with local planners, individuals, government officials and other technical experts. Evaluations and alternative solutions were developed with the Sponsor and other officials. The Recommended Plan was agreed upon.

Another public meeting was held in Rocksprings, Georgia on March 21, 2000. Local operators, landowners and citizens attended the meeting. The results of surveys, studies, field investigations and the Recommended Plan were presented. The Recommended Plan was agreed upon by those in attendance.

In April 2000, representatives of the NRCS, TVA, DNR, and other officials evaluated data to determine the quality and quantity of resources that would be impacted by selected practices and to consider possible mitigation measures. It was the consensus of the group that an Environmental Impact Statement (EIS) was not needed for this project. This agreement was based on the type of practices and systems planned and that each would be installed on previously disturbed land. With this consensus, an Environmental Assessment (EA) was prepared accordingly.

Upon review of the EA, this Finding of No Significant Impact (FONSI) was prepared. These documents are being distributed to all concerned agencies, groups, and interested individuals. A Notice of Availability of the FONSI is being published in the **Federal Register**.

Agency consolidations and public participation to date has shown no conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended South Chickamauga Creek Watershed Plan is not required.

Dated: July 10, 2000.

Earl Cosby,

State Conservationist.

[FR Doc. 00–17947 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. A–580–809]

Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Administrative Review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the seventh administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. The period of review is November 1, 1998, through October 31, 1999. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

EFFECTIVE DATE: July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Gregory Campbell, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4087 or 482–2239, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351, April 1999.

Extension of Time Limit for Preliminary Results

Due to the number of companies involved, the large number of transactions and the significance of outstanding issues, it is not practicable to complete this review within the time limit currently mandated (*i.e.*, August 1, 2000). Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results to not later than October 6, 2000.

Partial Rescission of Review

On November 30, 1999, Allied Tube and Conduit Corporation, Sawhill Tubular Division-Armco, Inc., and Wheatland Tube Company (the petitioners) requested a review of, inter alios, Korea Iron and Steel Company, Ltd (KISCO). As a result, an administrative review including KISCO was initiated on December 28, 1999, (*see, Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 72644 (December 28, 1999)). KISCQ did not separately request a review.

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On June 15, 2000, the petitioners withdrew their request for a review of KISCO. Section 351.213(d)(1) of our regulations states that:

> The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of the publication of notice of initiation of the requested review.

Section 351.213(d)(1) of our regulations further provides that we may extend that deadline, and it is our practice to do so, where it is reasonable, i.e., where the Department has not expended considerable time and resources, and where it does not appear that the procedures are being abused. *See*, e.g., *Fresh Kiwifruit From New Zealand: Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order, and Rescission of Antidumping Duty Administrative Review*, 64 FR 45508 45509 (August 20, 1999); *see also, Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27317 (May 19, 1997). In this review, the petitioners withdrew their request for review after the 90-day deadline. However, since the petitioners' withdrawal was made before the review had progressed beyond a point where it would be unreasonable to rescind, and because KISCO supports the petitioners' request for withdrawal, we find that rescinding the review with respect to KISCO would not prejudice any party to the proceeding and would, therefore, be reasonable. *See*, e.g., *Glycine From the People's Republic of China; Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 54406 56607 (October 22, 1998). Therefore, in accordance with section 351.213(d)(1) of our regulations, we have rescinded the review with respect to KISCO (*see*, Memorandum to Susan Kuhbach of June 27, 2000 on Partial Rescission of Administrative Review).

This notice is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213(h)(2).

Dated: July 11, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 00–18121 Filed 7–17–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms from India: Notice of Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to a timely request from the petitioners [1], on March 30, 2000, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to Agro Dutch Foods, Ltd., Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Hindustan Lever Limited (formerly Ponds India, Ltd.), Saptarishi Agro Industries, Ltd., Techtran Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., Weikfield Agro Products, Ltd., Dinesh Agro Products, Ltd., and Himalya International, covering the period August 5, 1998, through January 31, 2000.

See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 65 FR 16875 (March 30, 2000). On June 22, 2000, the petitioners timely withdrew their request for review of the following companies: Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Saptarishi Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., and Dinesh Agro Products, Ltd.

In accordance with 19 CFR 351.213(d)(1), the Department of Commerce is now rescinding this review, in part, as to the companies named above because the petitioners have withdrawn their request for review and no other interested parties have requested a review.

EFFECTIVE DATE: July 18, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Dinah McDougall, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 351 (1999).

Background

On February 14, 2000, the Department published in the **Federal Register** (65 FR 7348) a notice of "Opportunity To Request Administrative Review" of the antidumping duty order on certain preserved mushrooms from India for the period August 5, 1998, through January 31, 2000. On February 29, 2000, the petitioners requested an administrative review of the above-referenced antidumping duty order for the period August 5, 1998, through January 31, 2000, for the following companies: Agro Dutch Foods, Ltd., Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Hindustan Lever Limited (formerly Ponds India, Ltd.), Saptarishi Agro Industries, Ltd., Techtran Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., Weikfield Agro Products, Ltd., Dinesh Agro Products, Ltd., and Himalya International. On March 30, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to these companies (65 FR 16875).

Recission in Part of Review

On June 22, 2000, the petitioners timely withdrew their request for review with respect to the following companies: Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Saptarishi Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., and Dinesh Agro Products, Ltd. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary will permit a party that requests a review to withdraw the request within 90 days after the date of publication of the notice of initiation of the requested review. In this case, the petitioners have withdrawn their request for review within the 90-day

[1] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

period. No other interested party requested a review with respect to the named companies and we have received no other submissions regarding petitioners' withdrawal of their request for review. Therefore, we are rescinding, in part, this review of the antidumping duty order on certain preserved mushrooms from India as to the companies name above.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: July 11, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–18120 Filed 7–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seat for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for the vacant Commercial Shipping seat on its Sanctuary Advisory Council (Council). A member is chosen based upon his or her particular expertise and experience in relation to the seat for which the individual is applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. The applicant who is chosen as a member should expect to serve a 2-year term, pursuant to the Council's Charter.

DATES: Applications are due by July 28, 2000.

ADDRESSES: Application kits may be obtained from Kellie Araki at 6700 Kalanianaole Hwy., Suite 104, Honolulu, Hawaii 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Kellie Araki at (808) 397–2651, or kellie.araki@noaa.gov.

SUPPLEMENTARY INFORMATION: The HIHWNMS SAC was originally established in March 1996 (the current SAC was selected in July 1998) and has a broad representation consisting of 25 members. The SAC represents the coordination link between the Sanctuary and the state and federal management agencies, Native Hawaiians, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat.

The SAC functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping produce annual operating plans and reports by identifying education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The SAC works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. Section 1431 *et seq.*

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 12, 2000.

Capt. Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 00–18076 Filed 7–17–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board

AGENCY: Department of the Army, DoD.

ACTION: Notice or request for nominations.

SUMMARY: Section 302 of Public Law (PL) 99–662 established the Inland Waterways Users board. The Board is an independent Federal advisory committee. Its 11 members are appointed by the Secretary of the Army. This notice is to solicit nominations for six (6) appointments or reappointments to two-year terms that will begin January 1, 2001.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, D.C. 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph W. Westphal, Assistant Secretary of the Army (Civil Works), (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of PL 99–662. The substance of those provisions is as follows:

a. Selection. Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. Service. The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. Appointment. The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (PL 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) Carriers and Shippers

The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) Geographical Representation

The law specifies "varous" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in PL 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its

tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tobigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with the representation determined by the regional concentration of the individual's traffic on the waterways.

(3) Commodity Representation

Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

D. Nomination. Reflecting preceding selection criteria, the current representation by the six (6) Board members whose terms expire December 31, 2000, is one member representing region 1, two members representing region 3, one member representing region 4, one member representing region 5, and one member representing region 6. Also, these Board members represent four carriers and two shipper/carriers.

Four (4) of the six members whose terms expire December 31, 2000, are eligible for reappointment. Nominations to replace Board members whose terms expire December 31, 2000, may be made by individuals, firms or associations. Nominations will:

(1) State the region to be represented;

(2) State whether the nominee is representing carriers, shippers or both;

(3) Provide information on the nominee's personal qualifications;

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice, published on July 29, 1999, have been retained for consideration. Renomination is not required but may be desirable.

Deadline for Nominations. All nominations must be received at the address shown above no later than August 31, 2000.

John A. Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 00–18063 Filed 7–17–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed new Form EIA–905, "Monthly Natural Gas Biller Survey ."

DATES: Written comments must be submitted on or before September 18, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Roy Kass, EI–44, Form EIA–905, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Alternatively, Roy Kass may be reached by phone at 202–586–4790, by e-mail nathaniel.kass@eia.doe.gov, or by FAX at 202–586–4420.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Roy Kass at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3506(c) of the Paperwork Reduction Act of 1995.

EIA's coverage of prices paid for natural gas is declining as customers choose to purchase gas from alternative supplies rather than the traditional local distribution companies. The coverage of residential and commercial natural gas prices is expected to continue declining as the result of customer choice programs. Data requirements were established to assess the gas industry's performance. (See *http://www.eia.doe.gov/oil_gas/natural_gas/ng2/ng2main.html* for more information on the data requirements.) The data requirements were developed with careful consideration of the public policy and economic issues through a series of focus groups conducted by EIA with representatives from the natural gas industry, state and Federal government representatives, and others.

II. Current Actions

The proposed survey will collect monthly billing data, specifically the volume of natural gas sold and distributed (in therms), heat content (in Btu per cubic feet), and price components of natural gas (including commodity, taxes, distribution, and other charges), and number of customers by sector (residential and commercial).

The data will be collected from local distribution companies, marketers, and billing agents that bill for natural gas sold and/or delivered in deregulated states. The data will be incorporated and used in EIA's monthly and annual natural gas publications. The data will also be used in EIA's modeling and analytic efforts, and to answer questions

from Federal policy makers, Congress and the general public.

Submission of the data will be mandatory under Section 13(b) of the Federal Energy Administration Act of 1974 (FEA Act) (Pubic Law 93–275), as amended. The information collected on this questionnaire will be kept confidential and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act.

EIA will begin cognitive testing of 20 respondents and field testing of over 200 LDCs and marketers in select states in August 2000. Information from respondents acquired through pretesting will be considered in the development of the collection instrument.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 6 hours per response. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. In your opinion, how accurate is this estimate?

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Will respondents incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the method(s) of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C. July 11, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–18086 Filed 7–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed three-year extension of the Forms EIA–1605, "Voluntary Reporting of Greenhouse Gases," (long version) and the Form EIA–1605EZ, "Voluntary Reporting of Greenhouse Gases," (short version).

DATES: Written comments must be submitted on or before September 18, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Stephen E. Calopedis, Energy Information Administration, Office of Integrated Analysis, EI–81, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Alternatively, Stephen E. Calopedis may be reached by phone at (202) 586–1156, by e-mail: *stephen.calopedis@eia.doe.gov*, or by FAX: (202) 586–3045.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Stephen E. Calopedis at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h)(1) and 3506 (c) of the Paperwork Reduction Act of 1995.

The Voluntary Reporting of Greenhouse Gases collections are conducted pursuant to Section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13385) under General Guidelines (DOE/PO–0028). These forms are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and increased carbon fixation. Further, the forms support President William J. Clinton's 1993 Climate Change Action Plan, by collecting information on commitments to reduce greenhouse gas emissions and to sequester carbon in future years, including the progress made toward meeting those commitments.

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II. Current Actions

This request is for public comments on a proposed extension to an existing collection. The actions will include an extension from the currently approved OMB expiration dates of the Form EIA–1605 and EIA–1605EZ (from May 31, 2001 to May 31, 2004) i.e., three-year extension.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average:

1. Form EIA–1605 (long version): 40 hours per response

2. Form EIA–1605EZ (short version): 4 hours per response

The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Please comment if respondents will incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection.

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a potential user:

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) and 3506 (c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C. July 11, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–18087 Filed 7–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2016–044]

City of Tacoma; Notice of Extension of Time To File Motions To Intervene and Protests, and Comments, Final Terms and Conditions, Recommendations and Prescriptions

July 12, 2000.

By letter dated July 12, 2000, Martha Bean, mediator working with the City of Tacoma and other parties on the relicensing of the Cowlitz River Project, filed on behalf of federal, state, and local agencies and the City of Tacoma, a request for an extension of time to file protests and motions to intervene, and comments, recommendations, terms and conditions, and prescriptions, in the above-docketed project. Upon consideration, notice is hereby given that an extension of time for the filing of protests and motions to intervene, and final comments, recommendations, terms and conditions, and prescriptions is granted to and including August 15, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18066 Filed 7–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

July 12, 2000.

a. Type of Filing: Notice of Intent to File An Application for a New License.

b. Project No.: 2194.

c. Date Filed: June 30, 2000.

d. Submitted By: FPL Energy Maine Hydro LLC-current licensee.

e. Name of Project: Bar Mills Hydroelectric Project.

f. Location: On the Saco River near the towns of Hollis and Buxton, in York County, Maine.

g. Filed Pursuant to: Section 15 of the Federal Power Act.

h. Licensee Contact: Frank H. Dunlap, FPL Energy Maine Hydro LLC, 150 Main Street, Lewiston, ME 04240 (207) 771–3534.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. Effective date of current license: July 1, 1955.

k. Expiration date of current license: June 30, 2005.

l. Description of the Project: The project consists of the following existing facilities: (1) A 25-foot-high, 400-foot-long concrete dam and spillway section topped with 6.75-foot-high steel hinged flashboards; (2) a 263-acre reservoir at a normal pool elevation of 148.5 feet msl; (3) a 725-foot-long power canal; (4) a powerhouse containing two generating units with a total installed capacity of 4,000 kW, (5) a short 38-kV transmission line; and (6) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2003.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18067 Filed 7–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

July 12, 2000.

a. Type of Filing: Notice of Intent to File An Application for a Subsequent License.

b. Project No.: 7264.

c. Dated Filed: June 19, 2000.

d. Submitted By: Fox River Paper Company, and N.E.W. Hydro, Inc.—current licensees.

e. Name of Project: Middle Appleton Dam Hydroelectric Project.

f. Location: On the Fox River in the city of Appleton, Outagamie County, Wisconsin. The project does not utilize federal lands.

g. Filed Pursuant to: Section 15 of the Federal Power Act.

h. Licensee Contact: Linda D. Mitchell, Mead & Hunt, Inc., 6501 Watts Road, Madison, WI 53719, (608) 273–6380.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. Effective date of current license: July 1, 1955.

k. Expiration date of current license: June 30, 2005.

l. Description of the Project: The project consists of the following existing facilities: (1) A 10-foot-high, 372-foot-long concrete dam with 16 Taintor gates; (2) a 35.5-acre reservoir with a normal pool elevation of 721.37 feet msl; (3) a 100-foot-wide, 1,700-foot-long power canal (West's Canal); (4) Mill powerhouses 1, 2, and 3 containing two 240-kW generators, four 140-kW generators, and one 150-kW generator, respectively, with a total installed capacity of 1,190 kW; (5) a tailrace; (6) other appurtenances.

m. Each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 hours prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2003.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18068 Filed 7–17–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–9]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Supplemental Distribution of a Registered Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Notice of Supplemental Distribution of a Registered Pesticide Product,* (EPA ICR No. 0278.07, OMB No. 2070–0044). The ICR, which expires on September 30, 2000 and is abstracted below, describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument. The Agency is requesting that OMB renew approval of the ICR for a three year period.

DATES: Addition comments may be submitted on or before August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer by phone at 202–260–2740, or via e-mail at "farmer.sandy@epa.gov", or using the address indicated below. Please refer to EPA ICR No. 0278.07 and OMB Control No. 2070–0044.

ADDRESSES: Send comments, referencing EPA ICR No. 0278.07 and OMB Control No. 2070–0044, to the following addresses; Ms. Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: *Title:* Notice of Supplemental Distribution of a Registered Pesticide Product (EPA) ICR No. 0278.07; OMB Control No. 2070–0044) expiring on September 30, 2000. This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

Abstract: This collection activity provides the Agency with notification of supplemental registration of distributors of pesticide products. The Environmental Protection Agency (EPA, the Agency) is responsible for the regulation of pesticides as mandated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Section 3(3) of FIFRA allows pesticide registrants to distribute or sell a registered pesticide product under a different name instead of or in addition to his own. Such distribution and sale is termed "supplemental distribution" and the product is termed "distributor product." EPA requires the pesticide registrant to submit a supplemental statement (EPA Form 8570–5) when the registrant has entered into an agreement with a second company that will distribute the registrant's product under the second company's name and product name. Since the last approval, EPA has not changed the substance or the method of collection for this activity.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 minutes per response. Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 29, 1999 (64 FR 73040). No comments were received on this ICR during the comment period. The following is a summary of the estimates taken from the ICR:

Respondents/Affected Entities: Pesticide Registrants.

Estimated Number of Respondents: 5000.

Frequency of Response: As needed per event.

Estimated total number of responses for each respondent: 1.

Estimated Total Annual Burden: 1,250 hours.

Estimated Total Annualized Costs: $118,350.

Changes in Burden Estimates: The total burden associated with this ICR has decreased from 1,500 hours in the 1997 ICR to 1,250 for this ICR. This adjustment represents an improved estimate of the volume of responses received by the Agency. According to the procedures prescribed in 5 CFR

1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: July 13, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–18107 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6838–6]

Notice of Availability, "Understanding and Accounting for Method Variability in WET Applications Under the NPDES Program"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of document.

SUMMARY: On June 30, 2000, EPA issued the final document, entitled "Understanding and Accounting for Method Variability in Whole Effluent Toxicity (WET) Applications Under the NPDES Program" in response to questions on WET test method variability. WET applications are implemented under the National Pollutant Discharge Elimination System (NPDES) Program.

DATES: Final document issued June 30, 2000.

ADDRESSES: A copy of the final document and supporting documents including the public comments received by EPA on the July 26, 1999 draft document are available for review at the EPA's Water Docket, Room EB57, 401 M Street, S.W., Washington, D.C. 20460. For access the Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time for an appointment.

The complete text of this **Federal Register** notice and "Understanding and Accounting for Method Variability in Whole Effluent Toxicity (WET) Applications Under the NPDES Program" may be viewed or downloaded on the Internet at *http://www.epa.gov/owm/npdes.htm.*

FOR FURTHER INFORMATION CONTACT: For technical questions on this document, contact Debra Denton, (415–744–1919) or Laura Phillips (202–260–9522), Water Permits Division, (4203), USEPA, Office of Wastewater Management, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Copies of the document may be requested from the Office of Water's Resource Center at (202–260–1827) or by contacting the National Center for Environmental Publications and Information (NCEPI) at (513–489–8190).

SUPPLEMENTARY INFORMATION:

Background

The Whole Effluent Toxicity (WET) approach to protection of water quality is the focus of this document. In 1989, EPA defined whole effluent toxicity as "the aggregate toxic effect of an effluent measured directly by an aquatic toxicity test." At the same time, EPA promulgated regulations requiring NPDES permit limitations for WET under certain circumstances. [54 FR 23868 at 23895, June 2, 1989]. Aquatic toxicity tests are laboratory experiments that measure the biological effect (*e.g.,* growth, survival, and reproduction) of effluents or receiving waters on aquatic organisms. In aquatic toxicity tests, groups of organisms of a particular species are held in test chambers and exposed to different concentrations of an aqueous test sample, for example, a reference toxicant, an effluent, or a receiving water. Observations are made at predetermined exposure periods. At the end of the test, the responses of test organisms are used to estimate the effects of the toxicant or effluent. In the early 1980s, EPA published methods (USEPA 1985, 1988, 1989) for estimating the short-term acute and chronic toxicity of effluents and receiving waters to freshwater and marine organisms.

Effect of This Document

EPA is providing this document to clarify several issues regarding WET variability and reaffirm EPA's earlier guidance and recommendations published in the Technical Support Document for Water Quality-Based Toxics Control (TSD, USEPA 1991). Today's document is intended to provide NPDES regulatory authorities and all stakeholders, including permittees, with guidance and recommendations on how to understand and account for measurement variability in WET testing.

Three Goals of Today's Document

Today's document describes three goals EPA has defined to address issues surrounding WET variability. In addition, the document is intended to satisfy the requirements of a settlement agreement to resolve litigation over rulemaking to standardize WET testing procedures. These three goals are:

1. To quantify the variability of the promulgated test methods and report a coefficient of variation (CV) as a measure of test method variability.

2. To evaluate the statistical methods described in the Technical Support Document for Water Quality-Based Toxics Control (TSD) for determining the need for and deriving WET permit conditions.

3. To suggest guidance for regulatory authorities on approaches to address and to minimize test method variability. In addition, the document is intended to provide guidance to regulatory authorities, permittees, and WET testing laboratories on conducting the biological and statistical methods and evaluating test effect concentrations.

Principal Conclusions

The principal conclusions of this document in response to the three document goals follow.

Evaluation of Test Method Variability

- Comparisons of WET method precision with method precision for analytes commonly limited in NPDES permits demonstrate that the variability of the promulgated WET methods is within the range of variability experienced in other types of analyses. Several researchers also noted that method performance improves when prescribed methods are followed closely by experienced analysts.
- The document provides interim CVs for promulgated WET methods in Appendix A of the final document pending completion of between-laboratory studies, which may affect these interim CV estimates.

Evaluation of Approach To Incorporate Test Method Variability

- EPA's Technical Support Document for Water Quality-based Toxics Control (TSD) presents guidance for developing effluent limits that appropriately protect water quality, regarding both effluent variability and analytical variability, provided that the WET criteria and waste load allocation (WLA) are derived correctly.
- EPA's analysis of data gathered in the development of today's document indicates that the TSD approach appropriately accounts for both effluent variability and method variability. EPA does not accept that a reasonable alternative approach is available to determine a factor that would discount the effects of method variability in TSD procedures based on CVs because the approach would not assure adequate protection of water quality.

Development of Guidance to Regulatory Authorities

- EPA recommends that NPDES permitting authorities implement the statistical approach as described in the

TSD to evaluate effluent and to derive WET limits or monitoring triggers.

• EPA recommends that NPDES permitting authorities calculate the facility-specific CVs using point estimate techniques to determine the need for and to derive a permit limit for WET, even if self-monitoring data are to be determined using hypothesis testing techniques, for example, to determine a "no effect concentration (NOEC)". The document describes such facility-specific calculation procedures.

Additional Recommendations and Guidance

This document also provides recommendations and guidance on minimizing variability in three specific areas in order to generate sound WET test results: (1) Obtaining a representative effluent sample; (2) conducting the toxicity tests properly to generate the biological endpoints; and (3) conducting the appropriate statistical analysis to determine the effect concentrations (IC25, NOEC). If these recommendations are addressed, the reliability of the test endpoint values should improve.

• Permitting authorities should design a sampling program that collects representative effluent samples to fully characterize effluent variability for a specific facility over time.

• Permitting authorities should ensure proper application of WET statistical procedures and test methods.

• EPA recommends that NPDES permitting authorities incorporate both the upper and lower bounds using the percent minimum significant difference (PMSD) to control and to minimize within-test method variability and increase test sensitivity. To achieve the PMSD upper bound, either the replication should increase or within-test method variability should decrease, or both.

• EPA recommends that WET testing laboratories maintain control charts for PMSD and the control mean and report the PMSD with all WET test results.

• NPDES permitting authorities should develop a quality control checklist to assist in evaluating and interpreting toxicity test results.

• EPA recommends that permitting authorities and laboratories participate in the National Environment Laboratory Accreditation Program and conduct routine performance audit inspections to evaluate laboratory performance.

Dated: July 12, 2000.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 00–18102 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–8]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Butler Mine Tunnel De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Butler Mine Tunnel Superfund Site in Pittston Township, Luzerne County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on June 2, 2000, and is subject to review by the public pursuant to this document. The agreement has been approved by the Attorney General, United States Department of Justice or her designee.

The Environmental Protection Agency is proposing to enter into a de minimis settlement pursuant to section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g). This proposed settlement is intended to resolve the liability under CERCLA of one de minimis party for response costs incurred by the United States Environmental Protection Agency at the Butler Mine Tunnel Superfund Site, Pittston Township, Luzerne County, Pennsylvania.

The City of College Park, a municipality, is the Settling Party who has executed binding certifications of its consent to participate in this settlement. This party has agreed to pay $4,000 to the United States Environmental Protection Agency subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be provided on or before August 17, 2000.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should refer to: In Re: Butler Mine Tunnel Superfund Site, Pittston Township, Luzerne County, Pennsylvania, U.S. EPA Docket No. CERC–DEM–2000–01. The proposed settlement agreement is available for public inspection at the United States Environmental Protection Agency, Region III. A copy of the Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103 by contacting Dawnmarie Dominski, Paralegal Specialist, at (215) 814–2614.

FOR FURTHER INFORMATION CONTACT: Charles Hayden, Assistant Regional Counsel, (215) 814–2668, United States Environmental Protection Agency, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with de minimis parties to allow them to resolve their liabilities under, inter alia, section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with a municipal party at the Butler Mine Tunnel Superfund Site who is responsible for less than one percent of the volume of identified hazardous substances at the Site. The de minimis party listed above will be required to pay its volumetric share of the Government's past response costs and the estimated future response costs at the Butler Mine Tunnel Superfund Site.

Dated: July 7, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–18106 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–P

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ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51947; FRL–6592–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 24, 2000 to May 19, 2000, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51947 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51947. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51947 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51947 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 24, 2000 to May 19, 2000, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 93 PREMANUFACTURE NOTICES RECEIVED FROM: 04/24/00 TO 05/19/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0743	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0744	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0745	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0746	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0747	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0748	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0749	04/24/00	07/23/00	CBI	(G) Rheomate, the commercial formulation based on zirconyl citrate, is an additive for water based drilling fluids to be used as a thinner/deflocculant, alone or in combinatio with other additives for low and high temperature applications on-shore and off-shore	(G) Polycarboxylic acid, zirconium salt
P–00–0750	04/27/00	07/26/00	U.S. Polymers Inc.	(S) Let down vehicle ink application; component in overprint varnishes	(G) Reaction product of: 1,2 ethane diamine, aliphatic diisocyanate and polyether polyols
P–00–0751	04/24/00	07/23/00	CBI	(G) Lubricant	(G) Alkanedioic acid, diester with branched alcohols
P–00–0752	04/25/00	07/24/00	CBI	(G) Emulsifier	(G) Polyoxyethylene alkyl ether sulfo-succinate metal salts
P–00–0753	04/27/00	07/26/00	Englehard Corporation	(S) A colorant for plastics	(G) Azo maroon pigment
P–00–0754	04/27/00	07/26/00	CBI	(G) Non-dispersive use.	(G) Blocked aromatic isocyanate
P–00–0755	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0756	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0757	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0758	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0759	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0760	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer

I. 93 PREMANUFACTURE NOTICES RECEIVED FROM: 04/24/00 TO 05/19/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0761	04/28/00	07/27/00	Condea Vista Company	(S) Surfactant/emulsifier for liquid laundry detergents and general purpose cleaners, (both pmn substances a&b)	(S) 2-propanol, 1-amino-, compds. with polyethylene glycol hydrogen sulfate C_{12-16}-alkyl ethers*
P–00–0762	04/28/00	07/27/00	Condea Vista Company	(S) Surfactant/emulsifier for liquid laundry detergents and general purpose cleaners, (both pmn substances a&b)	(S) 2-propanol, 1,11/4,11/41/4-nitrilotris-, compds. with polyethylene glycol hydrogen sulfate C_{12-16}-alkyl ethers*
P–00–0763	04/28/00	07/27/00	CBI	(G) Additive for inks and coatings	(G) Polyester modified polydimethylsiloxane
P–00–0764	04/28/00	07/27/00	3M	(G) Binder resin	(G) Polyester resin
P–00–0765	05/01/00	07/30/00	CBI	(S) Chemical intermediate	(G) Alkylaryl polyether
P–00–0766	05/01/00	07/30/00	CBI	(G) An open non-dispersive use	(G) Rosin modified phenolic resin
P–00–0767	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0768	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0769	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0770	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0771	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0772	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0773	05/02/00	07/31/00	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(S) 1-dodecanesulfonyl chloride*
P–00–0774	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0775	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0776	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0777	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0778	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0779	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Synthetic lubricant	(G) Mixed butene oligomers, hydrogenated
P–00–0780	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Synthetic lubricant	(G) Mixed butene oligomers, hydrogenated
P–00–0781	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Synthetic lubricant	(G) Mixed butene oligomers, hydrogenated
P–00–0782	05/02/00	07/31/00	CBI	(S) Aqueous dispersion of polyurethane for leather fininshing	(G) Fatty acid polymer with alkyl diols, isocyanic acid, ester, alkoxylated polyether diolsulfonate, 2-oxepanone and alkyl diamine
P–00–0783	05/03/00	08/01/00	Westvaco Corporation—Chemical Division	(S) Dye dispersant for dye formualtions	(G) Sodium derivatives of modified alkali lignin reaction products with formaldehyde
P–00–0784	05/03/00	08/01/00	Gelest, Inc.	(S) Intermediate for conversion to final product; research purposes	(S) Silane, trichloro[(ethylphenyl)ethyl]-*
P–00–0785	05/03/00	08/01/00	Gelest, Inc.	(S) Component in resin formulation for coating glass; r&d purposes	(G) Silane ester
P–00–0786	05/04/00	08/02/00	CBI	(G) Thermoplastic elastomer for industrial use	(G) Crosslinked polyolefin elastomer
P–00–0787	05/04/00	08/02/00	Alco Chem, Inc.	(G) Component of low viscosity industrial lubricant	(S) Alkanes, C_{10-24}-branched*
P–00–0788	05/04/00	08/02/00	Alco Chem, Inc.	(G) Solvent component	(S) Alkanes, C_{10-24}*
P–00–0789	05/04/00	08/02/00	Cyclics Corp.	(S) Curable thermoplastic resin	(S) 1,4-benzedicarboxylic acid, dimethy ester, polymer with 1,4-butanediol, cyclized*
P–00–0790	05/05/00	08/03/00	Huntsman Petrochemical Corporation	(G) Chemical intermediate	(G) Poly(oxyalkylene) carbonate
P–00–0791	05/05/00	08/03/00	CBI	(S) Acrylic resin used to make waterbased coatings for plastics surfaces; acrylic resin used to make various waterbased coatings	(G) Copolymer of styrene and methacrylic esters

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I. 93 PREMANUFACTURE NOTICES RECEIVED FROM: 04/24/00 TO 05/19/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0792	05/05/00	08/03/00	CBI	(S) Surfactant for polyurethane foam	(G) Silicone copolymer
P–00–0793	05/05/00	08/03/00	CBI	(G) Acrylic pressure sensitive adhesive	(G) Acrylic solution polymer
P–00–0794	05/08/00	08/06/00	CBI	(G) Component of catalyst	(G) Chloroformate
P–00–0795	05/08/00	08/06/00	CBI	(G) Adhesive	(G) Waterbourne polyurethane
P–00–0796	05/09/00	08/07/00	FMC Corporation	(S) Chemical intermediate	(G) Substituted cyclopropane ester
P–00–0797	05/09/00	08/07/00	FMC Corporation	(S) Chemical intermediate	(G) Substituted cyclopropane ester
P–00–0798	05/09/00	08/07/00	FMC Corporation	(S) Chemical intermediate	(G) Substituted aliphatic carboxylic acid chloride
P–00–0799	05/09/00	08/07/00	FMC Corporation	(S) Chemical intermediate	(G) Substituted aliphatic carboxylic acid chloride
P–00–0800	05/09/00	08/07/00	CBI	(G) Cross-linking agent for thermosetting resin	(G) Amine adduct of epoxy resin
P–00–0801	05/11/00	08/09/00	Arizona Chemical Company	(S) Adhesive tackifier	(S) Rosin, fumarated, C_{9-11}-isoalkyl esters, C_{10}-rich, compds. with 2-(dimethylamino)ethanol*
P–00–0802	05/11/00	08/09/00	Arizona Chemical Company	(S) Adhesive tackifier	(S) Rosin, polymd., compd. with 2-(dimethylamino) ethanol*
P–00–0803	05/11/00	08/09/00	CIBA Specialty Chem. Corp., Colors Division	(G) Textile dye	(G) 2,7-naphthalenedisulfonic acid, 5-[[4-chloro-6-[substituted] amino]-1,3,5-triazin-2-yl] amino]-4-hydroxy-3-[(1-sulfo-2-naphthalenyl)azo]-, trisodium salt
P–00–0804	05/11/00	08/09/00	Union carbide corporation	(G) Chemical intermediate	(G) Aliphatic dialdehyde
P–00–0805	05/11/00	08/09/00	Union Carbide Corporation	(G) Chemical intermediate	(G) Aliphatic dialdehyde
P–00–0806	05/11/00	08/09/00	CIBA Specialty Chem. Corp., Colors Division	(G) Textile dye	(G) 1,3,6-naphthalenetrisulfonic acid, 7-[[2-[(substituted)amino]-4-[[4-[[2-[2-[substituted]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo]-, trisodium salt
P–00–0807	05/11/00	08/09/00	Eastman Kodak Company	(G) Contained use in an article	(G) Substituted cycloalkyl heterocyclic derivative
P–00–0808	05/11/00	08/09/00	Ashland Inc.	(G) Adhesive	(G) Modified copolymer of acrylic esters and styrene
P–00–0809	05/11/00	08/09/00	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Heterocyclic alkyl acid derivative
P–00–0810	05/11/00	08/09/00	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Heterocyclic alkyl alcohol
P–00–0811	05/11/00	08/09/00	CBI	(S) Heat resistant filler	(G) Inorganic layer polymer
P–00–0812	05/12/00	08/10/00	CBI	(S) Adhesive for assembling furniture	(G) Aliphatic polyamide polymer
P–00–0813	05/12/00	08/10/00	CBI	(S) Adhesive for filter pleating	(G) Aliphatic polyamide polymer
P–00–0814	05/12/00	08/10/00	CBI	(G) Moisture curing polyurethane adhesive	(G) Isocyanate terminated urethane pre-polymer
P–00–0815	05/12/00	08/10/00	CBI	(S) Paint or coating component	(G) Fluoroethylene-vinylether copolymer
P–00–0816	05/12/00	08/10/00	E.I. Dupont Denemours & Co.	(G) Open, non-dispersive use	(G) Alkyl aminosulfonylcarboxylate
P–00–0817	05/12/00	08/10/00	CBI	(G) Open, non-dispersive use	(G) Silicon resin
P–00–0818	05/12/00	08/10/00	Condea Servo LLC	(S) Thickener for solvent-based industrial coating systems	(G) Fatty acids, unsatd., dimers, polymers with a,w-diisocyanate and w-hydroxyalkyl-imidazolidinone
P–00–0819	05/12/00	08/10/00	Degussa-Huls Corporation	(G) Chemical intermediate	(S) 1,1-cyclopropanedicarboxylic acid, dimethyl ester*
P–00–0820	05/15/00	08/13/00	Cytec Industries Inc.	(S) Automotive coating; wood coatings;industrial coatings;transportation coatings	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, 4-hydroxybutyl 2-propenoate and 2-propenoic acid, compd. with *N,N*-diethylethanamine*
P–00–0821	05/15/00	08/13/00	Cytec Industries Inc.	(S) Automotive coating; wood coatings;industrial coatings;transportation coatings	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 2-hydroxyethyl 2-propenoate and 2-propenoic acid, compd. with *N,N*-diethylethanamine*

I. 93 PREMANUFACTURE NOTICES RECEIVED FROM: 04/24/00 TO 05/19/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0822	05/15/00	08/13/00	Cytec Industries Inc.	(S) Automotive coating; wood coatings;industrial coatings;transportation coatings	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 4-hydroxybutyl 2-propenoate and 2-propenoic acid, compd. with *N,N*-diethylethanamine*
P–00–0823	05/15/00	08/13/00	CBI	(G) Coating additive for open, non-dispersive use	(G) Magnesium salt of phosphate ester.
P–00–0824	05/15/00	08/13/00	CBI	(G) Agent for copier	(G) Substituted methylenebisnaphthalene
P–00–0825	05/16/00	08/14/00	CBI	(G) Open, non-dispersive use (dyestuff)	(G) Azo dyestuff
P–00–0826	05/16/00	08/14/00	CBI	(S) For use as plasticizer in acrylic polymer dispersions for use with cementitious materials	(G) Polyacrylate, partially neutralized
P–00–0827	05/16/00	08/14/00	CBI	(G) Solvent	(G) Substituted alcohol
P–00–0828	05/16/00	08/14/00	Crompton Corporation (formerly CK Witco Corporation)	(G) Polymer Additive	(S) 2,4(1*h*,3*h*)-pyrimidinedione, 6-amino-1,3-dimethyl-*
P–00–0829	05/17/00	08/15/00	Cytec Industries Inc.	(G) Uv light stabilizer in plastics	(G) Hindered amine light stabilizer
P–00–0830	05/18/00	08/16/00	CBI	(S) Additive, open non-dispersive	(G) Polyether modified polydimethylsiloxane
P–00–0831	05/18/00	08/16/00	CBI	(S) Additive, open non-dispersive	(G) Polyer ether modified dimethylpolysiloxane
P–00–0832	05/18/00	08/16/00	CBI	(S) Additive, open non-dispersive	(G) Polyether modified polydimethylsiloxane
P–00–0833	05/18/00	08/16/00	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polysiloxane, acrylated
P–00–0834	05/18/00	08/16/00	CBI	(S) Laminating Adhesive	(G) Polyester polyurethane meth-acrylic graft copolymer
P–00–0835	05/19/00	08/17/00	CBI	(G) Polymer Additive	(G) Substituted picolinate

II. 67 NOTICES OF COMMENCEMENT FROM: 04/24/00 TO 05/19/00

Case No.	Received Date	Commencement/Import Date	Chemical
P–00–0016	05/19/00	05/14/00	(G) Aqueous dispersion of a polyester polyurethane
P–00–0026	05/01/00	04/18/00	(G) Polyisocyanate prepolymer
P–00–0036	05/05/00	04/11/00	(G) Monoazo napthanilide pigment, aminomethoxybenzoyltrifluroromethylanalide
P–00–0095	05/11/00	05/08/00	(G) Formaldehyde, polymer with an aliphatic polyamine
P–00–0096	05/10/00	04/24/00	(G) Vinyl tripolymer
P–00–0100	05/08/00	04/28/00	(G) Substituted polydimethylsiloxane
P–00–0183	05/15/00	04/26/00	(G) Substituted phenylenediamide reaction products with substituted phenylenediamine, and sulfur, leuco derivs
P–00–0268	04/26/00	04/10/00	(G) Acetyl heterocyclic compound
P–00–0293	05/11/00	05/08/00	(G) Organophosphinothioyl ester
P–00–0316	05/03/00	04/19/00	(G) Propanoic acid, 3-(alkylthio)-, thiobis (alkylphenylene ester
P–00–0319	05/10/00	04/03/00	(G) Benzenedicarboxylic acid, alkyl alkylaminocarbonyloxyethyl ester
P–00–0336	05/15/00	05/01/00	(G) Liquid anionic polymer
P–00–0337	05/15/00	05/01/00	(G) Liquid anionic polymer
P–00–0348	05/10/00	04/03/00	(G) *N,N*′¼-bis (octadecanoyl) hexylenediamine, or hexamethylenebisstearamide*
P–00–0356	05/02/00	04/07/00	(G) Alkarylsulfonic acid.
P–00–0357	05/04/00	04/21/00	(G) Polyether—type polyurethane
P–00–0376	05/04/00	04/18/00	(S) 1,5-naphthalenedisulfonic acid, 2 (or 3)-[[8-amino-7-[[5-[[4-[4-[2-[[4-[[3-[[1-amino-7-[[1,5 (or 4,8) -disulfo-2-naphthalenyl]azo]-8-hydroxy-3,6-disulfo-2-naphthalenyl]azo] -4-sulfophenyl]amino]-6-chloro-1,3,5-triazin-2-yl]amino]ethyl]-1-piperazinyl] -6-chloro-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-hydroxy-3, 6-disulfo-2-naphthalenyl]azo]-, sodium salt*
P–00–0408	05/16/00	04/13/00	(G) Calcium fatty acid complex.
P–00–0409	05/16/00	04/12/00	(G) Calcium fatty acid complex
P–00–0414	05/16/00	04/18/00	(G) Calcium fatty acid complex
P–00–0416	05/16/00	04/20/00	(G) Calcium fatty acid complex
P–00–0422	05/05/00	04/26/00	(G) Non-volatile emulsion acrylic polymer
P–00–0429	04/26/00	04/19/00	(G) Fluoroelastomer
P–00–0440	05/18/00	05/03/00	(G) Polyester resin

II. 67 NOTICES OF COMMENCEMENT FROM: 04/24/00 TO 05/19/00—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–00–0465	05/18/00	05/02/00	(G) Isocyanate terminated urethane polymer
P–96–1460	05/04/00	04/11/00	(S) 3-amino-4-chlorobenzoic acid*
P–97–0447	04/24/00	03/29/00	(G) Hydroxy functional methacrylic copolymer
P–97–0520	05/01/00	04/07/00	(S) 1,3-dimethyl-2-piperidinone*
P–97–0521	05/01/00	04/07/00	(S) 1,5-dimethyl-2-piperidinone
P–98–0047	04/26/00	03/31/00	(G) Polyester resin
P–98–0069	05/16/00	09/14/99	(S) 1-octadecanol, manuf. of distn. lights*
P–98–0261	05/19/00	04/21/00	(S) Cyclohexane, 1-(1,1-dimethylpropyl)-4-ethoxy-,cis-; cyclohexane, 1-(1,1-dimethylpropyl)-4-ethoxy-, trans-*
P–98–0630	04/25/00	04/06/00	(G) Grace isopropanolamine salt solution
P–98–0903	05/04/00	04/11/00	(G) Acidic polyester polyamide
P–98–0905	05/04/00	04/11/00	(G) Alkenyl half-ester of alkylpolyethoxylate
P–98–1076	05/15/00	05/05/00	(G) Polycyclic alkanol
P–98–1085	05/05/00	04/11/00	(G) Diketo—pyrrolopyrrol
P–99–0165	04/28/00	12/20/99	(G) Acrylate functional polyester
P–99–0169	04/28/00	12/20/99	(G) Acrylate functional polyester emulsion
P–99–0177	04/28/00	12/20/99	(G) Acrylate functional polyester
P–99–0189	04/24/00	04/11/00	(G) Styrenated acrylic compolyer
P–99–0534	04/24/00	04/07/00	(G) Mixed thio acid amide molybdenum complexes
P–99–0595	04/25/00	03/13/00	(S) 3-cyclohexene-1-carboxylic acid, 1-methyl-1–(4-methyl-3-cyclohenen-1-yl) ethyl ester*
P–99–0596	04/25/00	03/13/00	(S) 3-cyclohexene-1-carbonyl chloride*
P–99–0597	04/25/00	03/06/00	(S) 3-cyclohexene-1-carboxylic acid*
P–99–0598	04/24/00	03/21/00	(S) 7-oxabicyclo[4.1.0]heptane-3-carboxylic acid, 1-methyl-1–(6-methyl-7-oxabicyclo [4.1.0]hept-3-yl) ethyl ester*
P–99–0845	04/28/00	04/07/00	(G) Aluminate, bis[[(substituted)azo] [hydroxyphenylbenzenesulfonamidato] hydrogen compound with tetramethylpiperidinamine
P–99–0918	05/08/00	04/22/00	(G) Halogenated polystyrene copolymer
P–99–0923	05/15/00	04/20/00	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid, ammonium salt
P–99–0930	05/15/00	04/17/00	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid
P–99–0983	05/04/00	04/11/00	(G) Alkylol ammonium salt of a high-molecular weight carboxylic acid
P–99–0992	05/04/00	04/11/00	(G) Modified polysiloxane
P–99–1014	05/16/00	04/25/00	(G) Cycloaliphatic olefin distillate stream polymerized with substituted alkyl phenol
P–99–1080	05/01/00	04/13/00	(G) Naphthaquinone diazide sulfonyl ester mixture of a polynuclear polyhydroxy phenol
P–99–1245	05/01/00	04/16/00	(S) Carbonic dichloride, polymer with 4,4*1*/4–(9*h*-fluoren-9-ylidene) bis[2,6-dibromophenol]*
P–99–1345	04/26/00	04/20/00	(S) Propanoyl fluoride, 2,3,3,3-tetrafluoro-2-[1,1,2,2,3,3-hexafluoro-3-(trifluoromethoxy) propoxy]-*
P–99–1351	05/04/00	03/30/00	(G) Polycarboxylate
P–99–1352	05/04/00	03/31/00	(G) Polycarboxylate
P–99–1363	05/04/00	04/11/00	(G) Aminopolyamide
P–99–1364	05/02/00	04/12/00	(G) Aminopolyamide
P–99–1372	05/01/00	04/21/00	(S) 2-naphthalenamine, *N*-(2-ethylhexyl)-1–((3-methyl-4–((3-methylphenyl)azo)phenyl)azo)-*
P–99–1376	05/09/00	05/02/00	(G) Polydimethylsiloxane resin
P–99–1377	05/18/00	05/10/00	(G) Polydimethylsiloxane resin
P–99–1385	05/17/00	04/15/00	(G) Substituted bis cyclopentadienyl metallocene
P–99–1394	05/15/00	05/02/00	(G) Polyester polyether isocyanate polymer
P–99–1395	05/17/00	05/02/00	(G) Polyester polyether isocyanate polymer
P–99–1402	05/05/00	05/02/00	(G) Acrylic acid ester copolymer with vinylimidazole, grafted with styrene-acrylnitril copolymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 3, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–18101 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 20, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

OPEN SESSION

A. Approval of Minutes

—June 8, 2000 (Open)

B. Reports

—Mission-Related Investment Prior Approval
—Notice and Request for Comment on National Charters Booklet

C. New Business

1. Regulations
—Civil Money Penalty Adjustment [12 CFR Part 622] (Final)
—Loan Purchase and Sales [12 CFR Parts 614 and 619] (Proposed)
—Stockholder Vote on Like Lending Authority [12 CFR Part 611] (Final)
2. Other—Corporate Approvals
—Sacramento Valley ACA
—Yosemite FLCA
3. Report
—Report on Corporate Approvals

CLOSED SESSION*

D. Report

—Litigation

Dated: July 14, 2000.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

* Session closed—exempt pursuant to 5 U.S.C. 552b(c)(10).

[FR Doc. 00–18284 Filed 7–14–00; 3:48 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the August 10, 2000 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9:00 a.m. on Tuesday, August 8, 2000. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–18285 Filed 7–14–00; 3:49 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 24, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–18309 Filed 7–14–00; 4:13 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–159]

Availability of ATSDR's Draft Research Agenda 2002–2010

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR).

ACTION: Notice and request for public comment.

SUMMARY: The Agency for Toxic Substances and Disease Registry announces the availability for public comment the draft document, Environmental Public Health Research Agenda, Agency for Toxic Substances, 2002–2010.

DATES: Comments must be received by September 1, 2000.

ADDRESSES: The document is available by contacting Robert F. Spengler, Sc.D., Associate Administrator for Science, ATSDR, Mailstop E–28, 1600 Clifton Road, Atlanta, Georgia 30333, (404) 639–0708, or (toll free) 1–888–42–ATSDR, 1–888–422–8737, rys2@cdc.gov.

SUPPLEMENTARY INFORMATION: The Agency for Toxic Substances and Disease Registry (ATSDR) is the lead Public Health Service agency addressing human health concerns and risks in communities near hazardous waste sites or other sources of environmental contamination. ATSDR has developed a research agenda that incorporates a wide range of input from governmental partners, professional associations, universities, non-governmental organizations, affected citizens, community groups, and American Indian Tribes. Six focus areas were identified through this collaborative effort: Exposure Assessment; Chemical Mixtures; Susceptible Populations; Communities and Native American Tribes; Evaluation and Surveillance of Health Effects; and Health Promotion and Intervention.

The proposed ATSDR Research Agenda will assist in the Agency's critical mission to reduce and prevent exposures and adverse health outcomes from exposure to hazardous substances. The proposed research agenda will also support the Agency's goals of identifying people at health risk and evaluating relationships between hazardous substances and human health.

This draft Research Agenda is being made available so that the Agency can benefit from public review and input before finalizing the Agenda. This **Federal Register** notice announces that ATSDR's draft Research Agenda 2002–2010 is available for public comment.

Dated: July 13, 2000.

Georgi Jones,

Director, Office of Policy and External Affairs Agency for Toxic Substances and Disease Registry.

[FR Doc. 00–18079 Filed 7–17–00; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1341]

Blood Standards; Pilot Program for Licensing and Draft "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained From an Outside Supplier;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of a draft guidance document entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier," dated June 2000. FDA is announcing its intent to establish a pilot program for licensed manufacturers of Source Plasma seeking to supplement their licenses to include a Red Blood Cell Immunization Program (RBCIP). The pilot program is intended to allow self-certification in lieu of submission to FDA of a detailed biologics license application (BLA) supplement. The draft guidance document provides criteria for participating in the pilot program and for manufacturing, quality control, and labeling of products in an RBCIP. FDA intends to determine if this pilot program streamlines the process for licensing and is more efficient and effective without compromising the health of the donor or product safety, purity, and potency.

DATES: Submit written comments at any time, however, comments are to be submitted by September 18, 2000, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier," dated June 2000, to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: About participation in the pilot program: Mary Ann Denham, Center for Biologics Evaluation and Research (HFM–375), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3543.

About this notice: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier," dated June 2000. The draft guidance document is intended to assist those manufacturers who wish to participate in CBER's RBCIP pilot program. CBER is proposing a pilot program that would allow a licensed manufacturer of Source Plasma to self-certify conformance to specific criteria prescribed as part of a pilot program in lieu of submission of a detailed BLA supplement filing. Instead of submitting a BLA supplement with supporting operating procedures and data derived from validation and quality control testing, the manufacturer would submit: (1) An application form (Form FDA 356h); (2) a self-certification statement that provides that the manufacturer is in compliance with all applicable FDA regulations and meets the recommended criteria for RBCIP using immunogen Red Blood Cells obtained from an outside supplier, set forth in the draft guidance document entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier," dated June 2000; and (3) a written request to the CBER Director for an exception to filing a detailed supplement. The pilot program provides that FDA will review for completeness Form FDA 356h, the self-certification, and written request for an exception to filing a detailed supplement, and at FDA discretion, will schedule a prelicense inspection within 90 days of receipt of the self-certification to confirm conformance with applicable Federal regulations and the recommended criteria in the draft guidance document. To participate in the program a manufacturer of Source Plasma must: (1) Hold an unsuspended and unrevoked biologics license for Source Plasma; (2) seek to supplement the license to include a RBCIP; (3) plan to use immunogen Red Blood Cells (IRBC), already thawed and deglycerolized, obtained per written agreement from an outside supplier; and (4) have identified an outside supplier of IRBC who holds an unsuspended and unrevoked biologics license for Source Plasma that already includes CBER's authorization for a RBCIP. The manufacturer should be ready for a prelicense inspection at the time it forwards Form FDA 356h, self-certification, and a request for exception to FDA. If, during the prelicense inspection, FDA finds significant deficiencies in quality assurance, manufacturing facilities, or product safety, purity, potency or effectiveness, FDA may withdraw the manufacturer from the pilot program, and the manufacturer will be required to submit a BLA supplement with complete supporting documentation prior to marketing in interstate commerce Source Plasma from donors immunized with IRBC obtained from an outside supplier.

If there is adequate interest in the pilot program, FDA will announce its implementation in the **Federal Register** and will conduct the pilot program for approximately 1 year. At the end of the pilot program period, FDA will evaluate the pilot program for efficiency and effectiveness. If the pilot program proves to be efficient and effective without compromising the health of the donor or product safety, purity, or potency, FDA intends to permit qualified manufacturers of Source Plasma to continue with the self-certification option. FDA is also announcing the availability of a draft guidance document entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier," dated June 2000. At this time, the draft guidance document is

being made available for comment purposes only and is not intended for use by the industry. The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is being issued as a draft level 1 guidance document consistent with the GGP's.

This draft guidance document represents the agency's current thinking on immunization of Source Plasma donors using IRBC obtained from an outside supplier. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. However, manufacturers should conform to the specific criteria set forth in this draft guidance document for voluntary participation in this program. Manufacturers who want to use an alternative approach must submit a detailed BLA supplement under 21 CFR 601.12 or otherwise satisfy FDA that an exemption from that requirement is justified under 21 CFR 640.120. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. CBER intends to revise this draft guidance document based on comments received from the public. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document and the pilot program, including those comments expressing interest in participating in the pilot program. Written comments may be submitted at any time, however, comments are to be submitted by September 18, 2000, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: July 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–18059 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4910]

Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled "Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3." The final regulations implementing the Mammography Quality Standards Act of 1992 (the MQSA) became effective April 28, 1999, replacing the interim regulations. The guidance document is intended to assist facilities and their personnel to meet the MQSA final regulations.

DATES: Submit written comments concerning this guidance document at any time.

ADDRESSES: Submit written requests for single copies on a 3″ diskette of the guidance document entitled "Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document. Submit written comments on the guidance document to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document was published as a draft proposal for public comment in the **Federal Register** of December 8, 1999 (64 FR 68696). It has been discussed with the National Mammography Quality Assurance Advisory Committee at two separate meetings (July 1999 and January 2000). The guidance document has been modified from the original draft proposal to address public comments. While there are several clarifying changes in the guidance document, there were no major substantive changes.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the final regulations implementing the MQSA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touchtone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1496) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance document may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes previously issued "Compliance Guidance for the Mammography Quality Standards Act Final Regulations Document #3," device safety alerts, **Federal Register** reprints, information on premarket submissions

(including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3 will be available at http://www.fda.gov/cdrh/mammography/guidance-rev.html.

IV. Comments

Interested persons may submit to the contact person (address above) written comments regarding this guidance at any time. Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Dated: June 29, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–18060 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2152]

Guidance for Industry and FDA Reviewers on Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled "Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management." This guidance describes how to incorporate human factors techniques and theory into risk management during medical device design and development. The guidance is intended to assist reviewers of premarket device submissions, design control documentation, and manufacturers that develop devices. The guidance is necessary to decrease problems with the use of medical devices that impact safety and effectiveness, and help ensure safer and more effective devices.

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled "Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on "Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management" to the contact person listed below. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Ron D. Kaye, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–2436.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance is intended to provide a suggested approach for integrating human factors within risk management for medical device design and development. It also contains an introduction to both risk management and human factors and a discussion of how they are linked. The focus is on reducing hazards related specifically to the use of medical devices. Human factors techniques are discussed within the context of applying risk management. The guidance also suggests how human factors-risk management efforts should be documented and included in premarket submissions. This guidance document was published for public comment on August 3, 1999, as a draft guidance entitled "Device Use Safety: Incorporating Human Factors in Risk Management." The document has been modified from the original draft version to address public comments. There were changes made in the document for the purposes of clarity, but there were no major substantive changes.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the application of human factors to new medical device design and development to help ensure that intended users can use a device safely and effectively. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touchtone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1497) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes "Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management" is also available at http://www.fda.gov/cdrh/HumanFactors.html.

IV. Comments

Interested persons may, at any time, submit written comments on the guidance to the contact person (address above). Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be

identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–18061 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0331]

Medical Devices; Draft Guidance for Staff, Industry, and Third Parties Implementation of Third Party Programs Under the FDA Modernization Act of 1997; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of Availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revision to the guidance entitled, "Guidance for Staff, Industry and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997." FDA is proposing to amend this guidance to provide procedures for third party review of additional moderate risk (class II) devices under the FDA Modernization Act of 1997 (FDAMA) Accredited Persons Program. As described in this document and in the draft guidance, FDA intends to expand the list of devices eligible for third party review. The revised guidance would assist those who are interested in participating in the expanded program.

DATES: Submit written comments on the draft guidance to ensure their adequate consideration in the preparation of the final document by September 1, 2000.

ADDRESSES: Submit written requests for single copies on a 3.5 inch diskette of the draft guidance entitled "Guidance for Staff, Industry, and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John F. Stigi, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1996, FDA began a voluntary Third Party Review Pilot Program. The purpose of the pilot program was to: (1) Provide manufacturers of eligible devices an alternative review process that could yield more rapid marketing clearance decisions; and (2) enable FDA to target its scientific review resources at higher risk devices, while maintaining confidence in the review by third parties of low-to-moderate risk devices. Under the program, all class I devices that were not exempt from premarket notification (510(k)) at that time and 30 class II devices were eligible for third party review. During the first 18 months of the pilot program, FDA received 22 510(k)'s that were reviewed by Recognized Third Parties. In contrast, during the same period, FDA received more than 1,300 510(k)'s for third party eligible devices that were not reviewed by third parties.

FDAMA was signed into law by the President on November 21, 1997. Section 210 of FDAMA essentially codified and expanded the Third Party Review Pilot Program by establishing a new section 523 of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 360m). Section 210 of FDAMA directs FDA to accredit third parties (Accredited Persons) in the private sector to conduct the review of 510(k)'s for low-to-moderate risk devices and make recommendations to FDA regarding the initial classification under section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)). FDA established and published criteria in the **Federal Register** on May 22, 1998 (63 FR 28388) to accredit or deny accreditation to persons who request to review 510(k)'s. In addition, FDA issued a list of devices that are eligible for review by Accredited Persons (May 20, 1998) as well as a guidance document entitled "Guidance for Staff, Industry and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997" (October 30, 1998). Copies of these documents can be found at http://www.fda.gov/cdrh/thirdparty. By November 21, 1998, FDA accredited 13 organizations to review 510(k)'s, and the agency was prepared to begin accepting reviews and recommendations from Accredited Persons. Concurrently, FDA terminated the Third Party Review Pilot Program that began on August 1, 1996. In the first 17 months that the FDAMA third party program has been in effect, 28 companies have used third parties to review a total of 54 510(k) submissions. During that same period, nearly 2,000 510(k) submissions from approximately 800 companies were eligible for third party review. This approach has typically yielded rapid marketing clearance decisions. In fiscal year 1999, the average total elapsed time between a third party's receipt of a 510(k) submission and FDA's substantial equivalence determination was 57 days. The portion of this time that occurred between FDA's receipt of the third party's recommendation and FDA's determination averaged just 15 days. In spite of these advantages, industry use of the third party approach has been low.

In an effort to expand the use of the Accredited Persons Program, the agency is proposing to initiate a pilot that will allow third party review of a greatly expanded list of devices (see details below). Accordingly, FDA is issuing a draft revision of the guidance document entitled "Guidance for Staff, Industry and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997" as well as making available an expanded list of additional devices that will be eligible under the pilot. Copies of these documents can be found at http://www.fda.gov/cdrh/thirdparty. After FDA reviews comments and finalizes this guidance, it will supersede the October 30, 1998, guidance currently in effect.

The May 20, 1998, list of devices eligible for review by Accredited Persons included 50 class I devices and 104 class II devices. FDA included all class I devices, not exempt from 510(k), because the agency determined that general guidance provided by CDRH is a sufficient basis for third party review of these relatively low risk products. However, FDA's decision to include class II devices was partly dependent on the existence of device specific guidance and/or FDA recognized standards. FDA is currently updating the May 20, 1998, list to reflect changes

in device classification and to include additional Class II devices for which device specific guidance is now available.

In addition to updating the May 20, 1998, list, the agency is now proposing to initiate a pilot that will expand the device list by allowing third party review of all class II devices regulated by the Center for Devices and Radiological Health (CDRH) that the agency believes are not prohibited from such review under the statute,[1] regardless of whether device specific guidance is available for the device. The pilot program will also include devices for which there is a limited exemption from 510(k). If a new version of a device requires a 510(k) because the change exceeds the limitation, that device is eligible for third party review unless it can not be reviewed by a third party because of the statutory exclusions under section 523 of the act. As with the current Accredited Persons Program, the expansion pilot will not include 510(k)'s that require multi-Center review (e.g., 510(k)'s for drug/device combination products) and devices for which the Center for Biologics Evaluation and Research has primary responsibility for review.

Any 510(k) for a class II device for which clinical data are needed to make a determination of substantial equivalence will continue to be subject to initial and supervisory review by FDA and will not be processed by FDA under the special procedures for the Accredited Persons Program. The decision to require clinical data is a matter of judgment that is often dependent on the nature of any differences between the new device and the device to which it is being compared (e.g., an additional specific indication for use). Manufacturers and Accredited Persons seeking guidance on the need for clinical data in a 510(k) should consult FDA's guidance documents and may also contact the appropriate review division in CDRH's Office of Device Evaluation.

FDA expects the pilot program to encourage more widespread use of the third party program. Under the pilot program, FDA will accept reviews from Accredited Persons of devices for which there is no device specific guidance under the following circumstances. An Accredited Person may review a class II device that does not have device specific guidance if:

(1) The Accredited Person has previously completed three successful 510(k) reviews under the third party program. This should include at least one 510(k) review that was in the same or similar medical specialty area as the device the Accredited Person now intends to review. The prior 510(k) reviews can be for class II devices that have device specific guidance or for class I devices.

(2) The Accredited Person contacts the appropriate CDRH Office of Device Evaluation (ODE) Branch Chief (or designee) before initiating a 510(k) review for a class II device that does not have device specific guidance to confirm that the Accredited Person meets the criteria in paragraph 1 above and to identify pertinent issues and review criteria related to this type of device.

(3) The Accredited Person prepares a summary documenting the discussions and submits the summary of those discussions to ODE.

The discussion and summary would not be binding on the agency or the Accredited Person. The presubmission discussions and the creation of a record of those discussions will help FDA ensure the consistency and timeliness that can be provided by device specific guidances. In addition, the FDA may utilize such documentation to ensure consistency in its own interactions with different Accredited Persons and regular submitters. Moreover, the record of these discussions will help FDA determine whether there is a need to issue device specific guidance and could facilitate future development of those documents.

The pilot will begin after FDA reviews comments and finalizes the guidance entitled "Guidance for Staff, Industry and Third Parties: Implementation of Third Party Programs under the FDA Modernization Act of 1997." Existing Accredited Persons should refer to the guidance for procedures on how to expand the scope of their accreditation. In addition, persons seeking to become accredited under section 523 of the act also should refer to the procedures in this guidance.

The agency intends to review the pilot program in 12 months after it begins to see if the number of third party 510(k)'s has increased significantly, if the timeliness of review is maintained, and to consider whether particular divisions within CDRH's Office of Device Evaluation are devoting disproportionate staff time to presubmission discussions with Accredited Persons. The agency reserves the option to stop or reevaluate the pilot at any time it determines that additional work load generated by third party consultations compromises FDA's ability to review other applications or the agency has reason to believe the quality of the reviews is significantly diminished by lack of device specific guidance.

[1] Section 523(a)(3)(A) of the act specifies that an Accredited Person may not review: (a) A class III device; (b) a class II device which is intended to be permanently implanted or life-supporting or life-sustaining; or (c) a class II device which requires clinical data in the report submitted under section 510(k). (Section 523 of the act sets limits on the number of class II devices that may be ineligible for Accredited Person review because clinical data are required.)

II. Significance of Guidance

This draft guidance represents the agency's current thinking on expanding the scope of the Accredited Persons Program to include class II devices not excluded by statute. It does not create nor confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a draft Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Guidance for Staff, Industry, and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997," via your fax machine, call CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1160) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Guidance

for Staff, Industry and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997" will be available at http://www.gov/cdrh/dsma/3rdptythirdparty.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by September 1, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–18083 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting and Communication, Education and Outreach Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces a field trip and meeting of the Aquatic Nuisance Species (ANS) Task Force and a meeting of the Communication, Education and Outreach Committee of the ANS Task Force. The focus of the field trip and meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The field trip will take place from 12 p.m. to 6 p.m., Monday, July 31, 2000. The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to 5 p.m., Tuesday, August 1, 2000 and 8:30 a.m. to 12 p.m., Wednesday, August 2, 2000. The Communication, Education and Outreach Committee will meet from 1:30 p.m. to 4 p.m. on Wednesday, August 2, 2000.

ADDRESSES: The field trip will begin at the Radisson Hotel, 60 Battery Street, Burlington, Vermont. The ANS Task Force meeting will be held at the University of Vermont, Rowell Hall, Room 103, Burlington, Vermont. The Communication, Education, and Outreach Committee meeting will be held at the Lake Champlain Basin Science Center (across from the Radisson Hotel), Burlington, Vermont.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon__gross@fws.gov* or Joe Starinchak, Outreach Coordinator, at 703–358–2018 or by e-mail at: *joe__starinchak@fws.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a field trip and meeting of the Aquatic Nuisance Species Task Force and the Communication, Education and Outreach Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The field trip will consist of a boat tour to view the water chestnut problem and some of the control and harvesting operations in Lake Champlain, and description of some of the lake's invasive fish species. Topics to be covered during the ANS Task Force meeting on Tuesday and Wednesday include: briefings about regional nonindigenous species problems and initiatives; updates of activities from the Task Force's regional panels; a discussion of the Coast Guard's ballast water management program; a discussion of the Asian Swamp Eel initiatives; a discussion about the recent Caulerpa taxifolia invasions in Southern California and the activities of the Caulerpa taxifolia Prevention Committee; an overview of the activities of the Invasive Species Council; a discussion of the relationship of the Regional Panels with the ANS Task Force; and other topics. Topics to be covered during the Communications, Education and Outreach Committee include: Review of committee membership and roles and responsibilities; review of ANS Task Force coordination issues such as linkages with other committees and reporting relationships; review of the Act and committee charge; and discussion of products.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: July 13, 2000.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 00–18085 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–EU–01–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0157

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request renewal of an existing approval to collect certain information from applicants who wish to acquire a right-of-way on public lands under the Federal Land Policy and Management Act (FLPMA) of 1976. Section 304(b) of FLPMA (90 Stat. 2765, 43 U.S.C. 1734) authorizes the Secretary to require applicants to reimburse the United States in advance for the expected reasonable administrative costs incurred by the United States to process rights-of-way applications. The information collection requirements found at 43 CFR 2808.3 are necessary for making a determination as to the reasonable level of reimbursement pursuant to Section 304(b) of FLPMA and to determine who may be granted a reduction or waiver of cost reimbursement.

DATES: Comments on the proposed information collection must be received by September 18, 2000 to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include "ATTN: 1004–0157" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C. 20036.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday).

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FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Lands and Realty Group 202–452–7772.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in a published current rule to solicit comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The BLM grants rights-of-way on public lands through the authority of Title V of the FLPMA (90 Stat. 2776, 43 U.S.C. 1761). Section 304(b) of FLPMA authorizes the BLM to receive payment of reasonable cost to reimburse the government for the cost of processing rights-of-way applications. In determining reasonable cost, BLM must consider such things as actual cost (exclusive of management overhead), the portion of cost incurred that is for the benefit of the general public rather than for the exclusive benefit of the applicant, the public service provided, and other relevant factors must be considered to determine who may be entitled to an off-set against reimbursement of costs. The information collection requirements found at 43 CFR 2808.3 are necessary to making a determination as to the reasonable level of reimbursement pursuant to Section 304(b) of FLPMA. The following is an explanation of specific items of information requested pursuant to 43 CFR 2803.3: Information on the monetary value of the rights and privileges sought by the applicant is needed to determine both eligibility and, if eligible, the reasonable level of reimbursement. Such data consist of an estimate of the cost to construct the proposed project on public lands. If applicants believe that they are eligible for further reimbursement reductions for public benefit or service aspects of the proposed project, proof of such public benefit or service, consisting of the identification of any original study data developed, identification of tangible improvements, such as roads, trails, recreation facilities, etc., are needed. Where applicants believe they should be considered for additional reductions or a waiver of cost reimbursement requirements, a showing of information on the nature of a financial hardship, existence of an outstanding lease or permit, proof of full time residency, requirements for the relocation of an existing facility or the existence of other compelling public benefits or services are needed in accordance with 43 CFR 2808.5 to aid in determining whether the applicant meets specific statutory requirements to obtain benefits. Failure to collect the necessary information would result in the inability of the BLM to develop defendable, reasonable reimbursement costs for applicants in accordance with statutory and regulatory requirements. The effect to the government would be insufficient payment received for services rendered or increased cost to the government relating to protest and appeal actions contesting the accuracy of the reimbursement cost determinations.

The respondents are individuals or companies who request a reduction or waiver of cost reimbursement. The frequency of response is once per applicant. The BLM estimates approximately 14 requests are received annually. Based on the BLM's experience it will take an average of three hours for a respondent to supply the necessary information. Based on the estimated 14 requests received annually and the average time of three hours it takes to supply the necessary information, the total annual burden is collectively 42 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: July 12, 2000.

Shirlean Beshir,

BLM Information Clearance Officer.

[FR Doc. 00–18091 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–00–1430–PD]

Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure.

SUMMARY: Under the authority of 43 CFR 8364.1(a), notice is hereby given that an emergency closure for the use and operation of motorized vehicles is in effect on public lands administered by the Salt Lake Field Office, Bureau of Land Management, as follows:

All existing and future Federal land within the North Oquirrh Management Area within the following description:

T. 1 S., R. 3 W., SLM
Section 20, SW¼; Sections 19, 29, 30, 31, 32;
T. 2 S., R. 3 W., SLM
Tract 37;
Sections 5, 6, 7, 8;
Section 16, SW¼SW¼;
Sections 17, 18, 19, 20;
Section 21, W½W½;
Section 28, W½, SE¼;
Sections 29, 30, 31, 32, 33;
Section 34, W½W½;
T. 1 S., R. 4 W., SLM
Section 24, SE¼;
Sections 25, 36;

All lands east of the Union Pacific Railroad within:

T. 2 S., R. 4 W., SLM
Tract 37;
Sections 1, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 36;

DATES: Effective July 18, 2000, this closure will remain in effect until revoked.

FOR FURTHER INFORMATION CONTACT: Michael Nelson, Acting Assistant Field Manager, Salt Lake Field Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119; (801)–977–4300.

SUPPLEMENTARY INFORMATION: This order is put into effect due to extreme wildland fire conditions and the immediate threat to high value private property, degradation of watershed, and the loss of important resources values resulting from wildland fires in the area. The closure is also necessary to protect fragile slopes already burned from erosion and damage by motorized vehicles while rehabilitation actions are underway.

Violations of this closure are punishable by a fine up to $100,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.

Dated: July 11, 2000.

Glenn A. Carpenter,

Field Office Manager.

[FR Doc. 00–18064 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–SS–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Draft Environmental Assessment (EA)

AGENCY: National Park Service, Interior.

ACTION: Notice of release of draft environmental assessment.

SUMMARY: This notice announces the release of a draft environmental assessment (EA) on a proposal to construct the Joseph M. McDade Recreational Trail within the Delaware Water Gap National Recreation Area.

EA Comment Period: Comments on or before August 18, 2000.

Copies available at: Website: www.nps.gov/dewa

Park Headquarters, River Road, Bushkill, PA 18324.

Kemp Library, East Stroudsburg University, E Stroudsburg, PA 18301.

State Library of PA, PO Box 1601, Harrisburg, PA 17105.

Easton Area Public Library, 6th and Church Street, Easton, PA 18042.

Sussex County Library, 125 Morris Turnpike, Newton, NJ 07860.

New Jersey State Library, 185 West State Street CN 520, Trenton, NJ 08625.

Eastern Monroe Public Library, 1002 North Ninth Street, Stroudsburg, PA 18360.

Pike County Library, 201 Broad Street, Milford, PA 18337.

Warren County Library, 199 Hardwick St., Belvidere, NJ 07823.

This draft environmental assessment, prepared by the National Park Service, deals with the environmental consequences of constructing a 32-mile trail within the Delaware Water Gap National Recreation Area (DWGNRA). Designated by Congress as the "McDade Recreational Trail", it is intended to parallel the Delaware River on the Pennsylvania-side of the park, providing access to the two largest communities bordering DWGNRA: Shawnee-on-the-Delaware to the south and the borough of Milford to the north. The trail would follow historic traces, connecting historic properties, existing facilities and a variety of natural environments, thus providing an intimate glimpse of the natural and cultural history of the area. The trail would also offer a variety of difficulty levels for a wide population, including those use wheelchairs. Trail use would be restricted to hiking (including wheelchairs in some sections), biking and cross-country skiing.

SUPPLEMENTARY INFORMATION: This environmental assessment is the third phase of a series of planning efforts that have led to this proposal. In 1987, the park's General Management Plan began the process by identifying the need for a park trails system. Recently, the park adopted a Park Trails Plan (PTP) under an amendment to that 1987 General Management Plan (GMPA). This PTP/GMPA called for a primary trail or "spine" that parallels the Delaware River on each side of the park as the highest trail-development priority. These spines would later be the frameworks for a network of park trails. In 1996, Congress appropriated funding for the spine on the Pennsylvania side which was designated as the Joseph M. McDade Recreational Trail.

The EA is available for public comment. Any member of the public may file a written comment. Comments should be addressed to the Superintendent, Delaware Water Gap National Recreation Area, River Road, Bushkill, PA 18324. Public workshops are tentatively scheduled for August 9 at 10 a.m. and August 10 at 7:00 p.m. at the Bushkill Visitor Center in Bushkill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: July 6, 2000.

William G. Laitner,

Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, DC 20510–3002.

Honorable Robert G. Torricelli, U.S. Senate, Washington, DC 20510–3001.

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510.

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, DC 20510–3802.

Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, DC 20515–3815.

Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, DC 20515–3810.

Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005.

Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120.

Honorable Christine Whitman, State House, Trenton, NJ 08625.

Honorable Joe Battisto, State Representative, 206 South Capitol Building, Harrisburg, PA 17120–0028

[FR Doc. 00–18034 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the American Heritage Center, University of Wyoming, Laramie, WY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the American Heritage Center (AHC), University of Wyoming, Laramie, WY. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by AHC professional staff in consultation with representatives of the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

In 1964, human remains representing one individual were donated to the AHC by Elizabeth Oskamp. This individual has been identified as Ah-Ho-Ap-Pa, daughter of Spotted Tail. No associated funerary objects are present.

Documentation for these human remains indicates that Ms. Oskamp's father collected them when he visited Fort Laramie, WY at an unknown date. Based on donor information, this individual has been identified as Native American, specifically Ah-Ho-Ap-Pa. No evidence exists to contradict this information.

Based on the above-mentioned information, officials of the American Heritage Center have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the American Heritage Center have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

This notice has been sent to officials of the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Rick Ewig, Associate Director, American Heritage Center, University of Wyoming, P.O. Box 3924, Laramie, WY 82071; telephone: (307) 766–4114, before August 17, 2000. Repatriation of the human remains to the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota may begin after that date if no additional claimants come forward.

Dated: June 13, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18136 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service.

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Saline County, MO in the Possession of the Museum of Anthropology, University of Missouri-Columbia, Columbia, MO

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Saline County, MO in the possession of the Museum of Anthropology, Department of Anthropology, University of Missouri-Columbia, Columbia, MO. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Missouri-Columbia professional staff in consultation with representatives of the Otoe-Missouria Tribe of Indians, Oklahoma; and the Iowa Tribe of Oklahoma.

Between 1939-1980, human remains representing a minimum of 114 individuals were recovered from site 23SA002 (Utz site), Saline County, MO during excavations conducted by University of Missouri-Columbia professional staff, supervised field school students, and volunteers of the Missouri Archaeological Society. No known individuals were identified. The 22 associated funerary objects include ceramic sherds, canine bones, limestone fragments, debitage, metal fragments, a shell gorget, burial soil, a biface, a terrapin carapace, faunal remains, a piece of daub, worked antler, and worked shell.

Based on oral tradition, types of associated funerary objects, and historical documents, these individuals have been determined to be Native American. Based on radiocarbon dating, presence of trade objects, and historical documents, the Utz site has been identified as a village occupation estimating to date to approximately A.D. 1460-1712. Oral tradition, archeological evidence, and historical documents indicate the Utz site was a village of the Missouria Tribe and the burials are reasonably believed to be culturally affiliated with the Otoe-Missouria Tribe of Indians, Oklahoma.

Based on the above-mentioned information, officials of the University of Missouri-Columbia have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 114 individuals of Native American ancestry. Officials of the University of Missouri-Columbia also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 22 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Missouri-Columbia have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Otoe-Missouria Tribe of Indians, Oklahoma. This notice has been sent to officials of the Otoe-Missouria Tribe of Indians, Oklahoma; and the Iowa Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Michael J. O'Brien, Director, Museum of Anthropology, 317 Lowry Hall, University of Missouri, Columbia, MO 65211, telephone (573) 882–4421, before August 17, 2000. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Oklahoma on behalf of the Otoe-Missouria Tribe of Indians, Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 22, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18137 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Barrow, AK in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE– REVISION

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the **revision** of an inventory of human remains in the possession of University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

A detailed assessment of the human remains was made by University of Nebraska-Lincoln professional staff in consultation with representatives of North Slope Borough as the authorized representative of the Native Village of Barrow Inupiat Traditional Government, **and Mrs. C. Boellstorff**.

In 1931, human remains representing one individual were donated to the University of Nebraska State Museum by Mrs. Charles Fritch. No known individual was identified. No associated funerary objects are present.

These human remains were erroneously identified in the Notice of Inventory Completion, published April 6, 1999, as having been collected in

Barrow, AK by T.L. Richardson and donated to the Museum by Mrs. C. Boellstorff. In fact, these human remains were donated by Mrs. Fritch who lived in Pawnee County, NE. These human remains come from an unknown location and were collected under unknown circumstances and are now re-classified as culturally unidentifiable.

Based on the above-mentioned information, officials of the University of Nebraska-Lincoln have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Nebraska-Lincoln also have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can be reasonably traced between these Native American human remains and any present-day Indian tribe.

This notice has been sent to officials of the North Slope Borough, the Native Village of Barrow Inupiat Traditional Government. Representatives of any other Indian tribe that wish consultation regarding these human remains should contact Dr. Priscilla Grew, NAGPRA Coordinator, University of Nebraska-Lincoln, 301 Bessey Hall, Lincoln, NE 68588–0381, telephone (402) 472–7854.

Dated: June 14, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18138 Filed 7–17–00; 8:45 am]

BILLING CODE BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Notice of Proposed Year-Round Closure at Fort Funston and Request for Comments

DATE: Friday, July 14, 2000.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the resource protection mandate of the National Park Service (NPS), the Golden Gate National Recreation Area, NPS, is announcing its proposal to close year-round approximately 12 acres of Fort Funston to off-trail recreational use by the public. The closure is located in the northwest portion of Fort Funston. This closure is necessary to protect habitat for the California threatened bank swallows (*Riparia riparia*), enhance significant native plant communities, improve public safety and reduce human-induced impacts to the coastal bluffs and dunes, a significant geological feature. NPS invites comments on this proposed year-round closure.

Background: Section 1.5 of Title 36 of the Code of Federal Regulations authorizes the Superintendent to effect closures and public use limits within a national park unit when necessary for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities. The proposed closure at Fort Funston is necessary to protect public safety, to protect environmental values and natural resources, and to implement management responsibilities. Because of a May 16, 2000, Federal District Court ordered preliminary injunction against the NPS, disallowing the closure until such time as appropriate public notice and opportunity for comment was provided, NPS is providing this notice and invites comments from the public on this proposed year-round closure.

Reference: Public Law 92–589 of October 27, 1972, as amended, as codified in Title 16 United States Code Sections 460bb through 460bb–5. Title 16 United States Code Sections 1 and la–1. Title 36 Code of Federal Regulations Sections 1.5, 1.7, 2.1, and 2.15. Ft. Funston Dog Walkers v. Babbitt, No. C 00–00877 WHA, N.D. Cal., Preliminary Injunction, May 16, 2000.

Comments: Public comments will be accepted for a period of 60 calendar days from the date of this notice. Therefore, public comments on this notice must be received by September 12, 2000. Public comments should be submitted to NPS as early as possible in order to assure their maximum consideration. Comments will be considered and this proposal may be modified accordingly, and the final decision of the National Park Service will be published in the **Federal Register**.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always, NPS will make available for public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Send Comments To: Superintendent, Golden Gate National Recreation Area, Bay and Franklin Streets, Building 201, Ft. Mason, San Francisco, 94123.

Further Information: Detailed information concerning this proposal, including a map depicting the closure area and open park trails, is available at the following locations:

- Fort Funston Visitor Center and Ranger Office, ¼ mile south of John Muir Drive, on the west side of Hwy 35, Golden Gate National Recreation Area, National Park Service, San Francisco
- Pacific West Information Center, National Park Service, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco
- San Francisco Public Library, Marina Branch, 1890 Chestnut Street, San Francisco
- San Francisco Public Library, Sunset Branch, 1305 18th Avenue, San Francisco

Contact: For further information, contact Scalla Sheen, Office of Public Affairs, GGNRA at 415–561–4730.

Brian O'Neill,

Superintendent, GGNRA.

[FR Doc. 00–18112 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance, National White Collar Crime Center; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection national business survey on white collar crime.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, National White Collar Crime Center (NWCCC) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 18, 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instruments with instructions, or

additional information, please contact Project Director of National Business Survey on White Collar Crime, (877) 693–2874, National White Collar Crime Center, Training and Research Institute, 12 Roush Drive, Morgantown, WV 26501.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technology collection techniques or other forms of information technology (*e.g.* permitting electronic submission of responses).

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2). *Title of the Form/Collection:* National Business Survey on White Collar Crime.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form = None. National White Collar Crime Center (NWCCC), Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: United States businesses. Other: None. The NWCCC Training and Research Institute anticipates conducting a national survey of professional business persons and their perceptions of white collar crime. Particular areas of interest include victimization, perpetration, prevention measures, cyber-crime, and general demographics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,070 respondents at 25 minutes per mail survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 450 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: July 13, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–18124 Filed 7–17–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

July 13, 2000.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by July 25, 2000. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Ira L. Mills (202) 219–5095.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503.

The Office of Management and Budget is particularly interested in comments which:

C. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

C. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

C. Enhance the quality, utility, and clarity of the information to be collected; and

C. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title: Welfare to Work (WtW) Formula/Competitive Cumulative Quarterly Status Reports.

OMB Number: 1205–0385.

Affected Public: State, Local, or Tribal Government; Business or other for-profit; Not-for-profit institutions.

Requirements for ETA 9068 (formula)	1st year	2nd year	3rd year	4th year
Number of reports per entity per quarter	1	1	2	2
Total number of reports per entity per year	3	4	[illegible]	8
Number of minutes for recording/reporting per quarter per report	40	80	120	80
Total number of hours required for recording/reporting per entity per year	2	5	8	5
Number of entities reporting	55	55	55	55
Total number of hours required for recording/reporting per year	110	293	440	293

Note: Formula grants will only be issued in years 1 and 2; grantees may be eligible for a Bonus grant in year 3. All grant funds will be tracked in the same automated format. In year 1, formula grants will not be allocated until the 2nd quarter.

Requirements for ETA 9068–1 (competitive)	1st year	2nd year	3rd year	4th year
Number of reports per entity per quarter	1	1	2	2
Total number of reports per entity per year	3	4	4	4

Requirements for ETA 9068–1 (competitive)	1st year	2nd year	3rd year	4th year
Number of minutes for recording/reporting per quarter per report	40	80	120	80
Total number of hours required for recording/reporting per entity per year	2	5	8	5
Number of entities reporting	200	200	200	200
Total number of hours required for recording/reporting per year	200	1,067	1,600	1,067

Note: Competitive Grants to be awarded in years 1 and 2. Estimate 200 grants will be awarded to eligible applicants. All grant funds will be tracked in the same automated format. In year 1, competitive grants will not be let until the 2nd quarter.

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintaining): $0

Description: This request for approval of the WtW Formula and Competitive Cumulative Quarterly Status report formats is necessary so that the Department may collect statutorily required data from the States and other grant recipients on a quarterly basis. The information will provide a means for the Secretary of Labor to manage and evaluate the WtW program as well as to develop a formula for measuring State performance to be utilized in determining and awarding bonuses to States. These performance bonuses are authorized under the Act in Section 403(a)(5)(E).

Karin G. Kurz,

Acting Departmental Clearance Officer.

[FR Doc. 00–18092 Filed 7–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

This notice announces a change in benefit period eligibility under the EB Program for Alaska.

Summary

The following change has occurred since the publication of the last notice regarding the State's EB status:

• May 27, 2000 Alaska's 13-week insured unemployment rate for the week ending May 6, 2000 fell below 6.0 percent and was less than 120 percent of the average for the corresponding period for the prior two years, causing Alaska to trigger "off" EB effective May 27, 2000.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State ending an EB period, the State employment security agency will furnish a written notice to each individual who is currently filing a claim for EB of the forthcoming end of the EB period and its effect on the individual's rights to EB (20 CFR 615.13(c)(4)).

Signed at Washington, DC., on July 12, 2000.

Raymond Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 00–18093 Filed 7–17–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Time and Date: 9:30 a.m. Tuesday, July 25, 2000.

Place: NTSB Board Room, 429 L'Enfant Plaza, S.W., Washington, D.C. 20594.

Status: Open to the Public.

Matters to be Considered:

7047B Aviation Accident Report: Crash During Landing, Federal Express, Inc., Flight 14, McDonnell Douglas MD–11, N611FE, Newark International Airport, Newark, New Jersey, July 31, 1997.

News Media Contact: Telephone: (202) 314–6100 Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

July 14, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–18308 Filed 7–14–00; 4:13 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

In the Matter of Northeast Nuclear Energy Company, et al. (Millstone Nuclear Power Station, Unit 2); Exemption

I

Northeast Nuclear Energy Company, et al., is the holder of Facility Operating License No. DPR–65 which authorizes operation of Millstone Nuclear Power Station, Unit 2. Millstone Nuclear Power Station, Unit 2 is a pressurized water reactor located in Waterford, Connecticut. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," to title 10 of the Code of Federal Regulations (10 CFR) part 50, establishes fire protection features required to satisfy General Design Criterion 3, "Fire protection," of Appendix A to 10 CFR part 50, with respect to certain generic issues for nuclear power plants licensed to operate prior to January 1, 1979. By letter dated February 14, 2000, as supplemented by letters dated April 5 and May 31, 2000, Northeast Nuclear Energy Company, (NNECO), the licensee for Millstone Nuclear Power Station, Unit No. 2, requested an exemption from the technical requirements of 10 CFR part 50, appendix R, section III.J to the extent that it requires emergency lighting units with at least an 8-hour battery power supply to light all areas needed for operation of safe shutdown equipment and in access and egress routes thereto. NNECO proposed to credit the security lighting system currently installed at the plant for access and egress route emergency lighting in lieu of providing separate emergency lighting units with an 8-hour battery supply in the Unit 3 yard area.

III

As a result of the decommissioning of Unit 1, the existing tie to Unit 1 Vital

Electrical Bus 14H will be disconnected. The licensee will credit a new 4160-volt electrical tie to the Unit 3 Alternate AC diesel generator as the alternate AC power source for Unit 2 to comply with Appendix R. Access to the Unit 3 Alternate AC diesel generator and associated switchgear enclosures so that Unit 3 operators could start the diesel generator and make the necessary electrical ties to the Unit 2 bus requires travel through the Unit 3 yard area.

The outdoor access and egress route to the Unit 3 Alternate AC diesel generator and switchgear enclosures extends from the west entrance of Millstone Unit 3 Building 323 (grade elevation), north through a paved area to a service road, following the road generally to the east and then south to the enclosures.

The licensee proposes to credit the security lighting system for access and egress route emergency lighting in lieu of an 8-hour battery supply in the yard area. The basis for this is as follows:

1. The security lighting system illuminates the required access and egress routes;

2. The security lighting power supply is backed by a security diesel generator with fuel storage capacity to ensure operation greater than or equal to 8 hours;

3. The security generator, components, and circuits are independent from the postulated fire areas which require access to the 4160-volt Bus 14H enclosure, Intake Structure, or RWST pipe chase.

These actions will ensure that the appendix R, section III.J requirement to the extent that emergency lighting units with at least an 8-hour supply are met.

There are also portable lighting units dedicated for operations department use that would provide additional defense-in-depth for ensuring adequate lighting is available. The equipment is administratively controlled and located inside the Millstone Unit 3 Control Room Complex.

IV

The underlying purpose of section III.J of appendix R is to ensure that fixed lighting of sufficient duration and reliability is provided to allow operation of equipment required for post-fire, safe shutdown of the reactor. Lighting for access/egress associated with the equipment is also required.

Large area applications will typically impose electrical load requirements which are beyond the normal limits of battery units. The security lighting system illuminates the required access and egress routes. The power supply is backed by a security diesel generator with fuel storage capacity to ensure operation with at least an 8-hour supply. The security generator, components and circuits are independent from the postulated fire areas which require access to the Unit 3 Alternate AC diesel generator and consistent with the defense-in-depth approach to fire protection.

Based on the availability and reliability of the security lighting of sufficient duration and the availability of portable lighting, there is reasonable assurance that the access/egress routes through the yard area that are relied on for safe shutdown of the facility can be accessed in the event of a fire.

On the basis of its evaluation, the NRC staff has concluded that the application of the regulation, pursuant to 10 CFR 50.12(a)(2)(ii), in this special circumstance is not necessary to achieve the underlying purpose of the rule.

V

The Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption to allow use of security lighting is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, special circumstances are present, as set forth in 10 CFR 50.12(a)(2)(ii). Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR, part 50, appendix R, section III.J.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (65 FR 41738).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of July 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18114 Filed 7–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Order Approving Transfer of License and Conforming Amendment

I.

Vermont Yankee Nuclear Power Corporation (VYNPC or the licensee) is the holder of Facility Operating License No. DPR–28, which authorizes the operation of Vermont Yankee Nuclear Power Station (Vermont Yankee or the facility) at steady-state power levels not in excess of 1593 megawatts thermal. The facility is located at the licensee's site in the Town of Vernon, Windham County, Vermont. The license authorizes VYNPC to possess, use, and operate the facility.

II.

Under cover of a letter dated January 6, 2000, AmerGen Vermont, Limited Liability Company (LLC), (AmerGen Vermont) and VYNPC, jointly submitted an application requesting approval of the transfer of Facility Operating License No. DRP–28 for Vermont Yankee from VYNPC to AmerGen Vermont. The licensee and AmerGen Vermont also jointly requested approval of a conforming amendment to reflect the transfer. The application was supplemented by submittals dated January 13, February 18, March 13, March 30, and April 6, 2000, collectively referred to as the "application" herein unless otherwise indicated.

AmerGen Vermont is a Vermont limited liability company established by AmerGen Energy Company, LLC (AmerGen), to own and operate Vermont Yankee. AmerGen Vermont is a wholly owned subsidiary of AmerGen. AmerGen is a Delaware limited liability company formed to acquire and operate nuclear power plants in the United States. PECO Energy Company (PECO) and British Energy, Inc., (BE, Inc.), each own a 50-percent interest in AmerGen. BE, Inc., is a wholly owned subsidiary of British Energy, plc. The conforming license amendment would remove references to VYNPC from the license and add references to AmerGen Vermont in respective places, and make other administrative changes of a similar nature to reflect the proposed transfer.

Approval of the transfer of the facility operating license and a conforming license amendment was requested by

VYNPC and AmerGen Vermont pursuant to 10 CFR 50.80 and 50.90. Notice of the requests for approval and for an opportunity for a hearing was published in the **Federal Register** on February 3, 2000 (65 FR 5376). Pursuant to such notice, the Commission received two requests for hearing. One hearing request was from the State of Vermont Department of Public Service, dated February 23, 2000. A second hearing request was filed by the Citizens Awareness Network, dated February 22, 2000. Commission review of these hearing requests is pending.

Pursuant to 10 CFR 2.1316, during the pendancy of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the NRC staff's findings in its Safety Evaluation Report (SER). Notice of the action shall be promptly transmitted to the Presiding Officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the Nuclear Regulatory Commission (NRC) staff has determined that AmerGen Vermont is qualified to be the holder of the license, and that the transfer of the license to AmerGen Vermont is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR chapter 1; that the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; that there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; that the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and that the issuance of the proposed license amendment will be in accordance with 10 CFR part 51 of the Commission's regulations, and that all applicable requirements have been satisfied. These findings are supported by a safety evaluation dated July 7, 2000.

III.

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the license as described herein to AmerGen Vermont is approved, subject to the following conditions:

(1) AmerGen Vermont shall take no action to cause PECO or BE, Inc., or their affiliates, successors or assigns, to void, cancel, or diminish their $200 million contingency commitment to provide funding for AmerGen's nuclear power plants, including but not limited to any plant owned by any subsidiary of AmerGen, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen or AmerGen Vermont's ability to draw upon the commitment. Also, AmerGen Vermont shall inform the NRC in writing at any time that it or AmerGen, for the benefit of AmerGen Vermont, draws upon the $200 million commitment.

(2) AmerGen Vermont shall provide decommissioning funding assurance of no less than $280 million, after payment of any taxes, deposited in the decommissioning trust fund for Vermont Yankee when Vermont Yankee is transferred to AmerGen Vermont.

(3) The decommissioning trust agreement must be in a form acceptable to the NRC.

(4) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, BE, Inc., AmerGen, AmerGen Vermont, or their affiliates, successors, or assigns shall be prohibited. Except for investments tied to market indexes or other nonnuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(5) The decommissioning trust agreement must provide that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days' prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(6) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days' prior written notification to the Director, Office of Nuclear Reactor Regulation.

(7) The appropriate section of the trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(8) AmerGen Vermont shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Vermont Yankee license to it, the requirements of this Order approving the transfer, and the safety evaluation supporting this Order.

(9) The AmerGen Vermont Limited Liability Company Agreement dated January 1, 2000, and any subsequent amendments thereto as of the date of this Order, may not be modified in any material respect concerning decision-making authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(10) At least half of the members of the Management Committee of AmerGen Vermont shall be appointed by a non-foreign member group of AmerGen, all of which appointees shall be U.S. citizens.

(11) The Chief Executive Officer (CEO), Chief Nuclear Officer (if someone other than the CEO), and Chairman of the Management Committee of AmerGen Vermont shall be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of AmerGen Vermont with respect to the Vermont Yankee operating license are at all times conducted in a manner consistent with the protection of the public health and safety and the common defense and security of the United States.

(12) AmerGen Vermont shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of stock of PECO or of any affiliate, successor, or assignee of

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PECO to which PECO's ownership interest in AmerGen may be subsequently assigned with the prior written consent of the NRC, [or of the parent or owner of such affiliate, successor, or assignee, whichever entity is the issuer of such stock.]

(13) Before the completion of the sale and transfer of Vermont Yankee to it, AmerGen Vermont shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that AmerGen Vermont has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(14) After receipt of all required regulatory approvals of the transfer of Vermont Yankee, AmerGen Vermont and VYNPC shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt within 5 business days, and of the closing date of the sale and transfer of Vermont Yankee no later than 7 business days prior to the date of closing. If the transfer of the license is not completed by July 1, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may, in writing, be extended.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this order, see the initial application dated January 6, 2000, supplemental letters dated January 13, February 18, March 13, March 30, and April 6, 2000, and the safety evaluation dated July 7, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 7th day of July 2000.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18115 Filed 7–17–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43024; File No. SR–AMEX–00–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Index Fund Shares (Amex Rules 1000A and 127)

July 12, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2000, the American Stock Exchange Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .04 to Amex Rule 1000A (Index Fund Shares) regarding hours of trading for iShares Index Funds and iShares MSCI Index Funds; and to amend Commentary .02 to Amex Rule 127 (Minimum Fractional Changes), relating to these securities. Below is the text of the proposed rule change: New language is *italicized,* and deletions are bracketed.

Index Fund Shares
Rule 1000A

* * * Commentary

[.02] *.04* Transactions in [series of the] iShares SM *Index Funds* of the iShares Trust may be effected until 4:15 p.m. (*New York Time*) each business day. *Transactions in iShares MSCI Index Funds* (formerly "WEBS Index Series") of iShares, Inc. may be effected until 4:00 p.m. (*New York Time*).

* * * * *

Minimum Fractional Changes
Rule 127

* * * Commentary

.02 The minimum fractional change for dealings in Index Fund Shares listed under Rule 1000A et seq. shall be 1/16 of $1.00. However, the minimum fractional change for dealings in Select Sector SPDRs SM, Technology 100 Index Fund Shares and [series of] *iShares*SM *Index Funds* of the Shares SM Trust shall be 1/64 of $1.00. *Transactions in iShares MSCI Index Funds (formerly WEBS Index Series) of iShares, Inc. shall be 1/16 of $1.00.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In File No. SR–Amex–99–49,[3] the Commission approved Commentary .02 to Amex Rule 1000A, which provided that transactions in series of the iShares Trust may be effected until 4:15 p.m. each business day. The Exchange is renumbering this Commentary .02 to Commentary .04 to eliminate conflict with Commentary .02 to Amex Rule 1000A, approved by the Commission in SR–Amex–00–14 relating to generic listing criteria for Index Fund Shares.[4] The Exchange is further amending new Commentary .04 to distinguish between: (1) iShares MSCI Index Funds, (formerly WEBS Index Series), and (2) iShares Index Funds of the iShares Trust. As of May 15, 2000, WEBS Index Series have been renamed iShares MSCI Index Funds and WEBS Index Fund, Inc. has been renamed iShares, Inc. iShares MSCI Index Funds trade until 4:00 p.m. (New York time). However, iShares Index Funds of the iShares Trust, which do not include iShares MSCI Index Funds, trade until 4:15 p.m. (New York time). Commentary .04 to Amex rule 1000A states the different trading hours for these securities.

In File No. SR–Amex–99–49, the Commission also approved an amendment to Commentary .02 to Amex Rule 127 (Minimum Fractional Changes), to provide that trading in series of the iShares Trust will be in increments of 1/64.[5] Commentary .02 is amended to refer to these securities as "ishares SM Index Funds of the iShares Trust." MSCI Index Funds trade in 1/16's, the same trading increment as the former WEBS Index Series. The

[3] *See* Securities Exchange Act Release No. 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000).

[4] *See* Securities Exchange Act Release No. 42786 (May 15, 2000), 65 FR 33598 (May 24, 2000).

[5] *See supra* note 3.

Exchange is amending Commentary .02 to Amex Rule 127 to clarify the different trading increments between these securities.

The Exchange represents that these amendments to Amex Rules 1000A and 127 are strictly clarifying in nature and provide no change from existing hours of trading or trading increments for these securities.

2. Statutory Basis

The Exchanges believes the proposed rule change is consistent with Section 6(b)[6] of the Act in general and furthers the objectives of Section 6(b)(5)[7] in particular in that is it designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(3) thereunder[9] because the proposed rule change is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–00–35 and should be submitted by August 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18069 Filed 7–17–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f.
[7] 15 U.S.C. 78f(b)(5).
[8] 15 U.S.C. 78s(b)(3)(A).
[9] 17 CFR 240.19b–4(f)(3).
[10] 15 U.S.C. 78s(b)(3)(C).
[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43016; File No. SR–Amex–00–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC To Establish an Interim Seat Allocation Program

July 7, 2000.

I. Introduction

On April 14, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act",[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish an Interim Seat Allocation Program. The proposed rule change was published for comment in the **Federal Register** on June 7, 2000.[3] The Commission received no comments on the proposal. This order approves the Amex's proposal.

II. Description of the Proposal

Active seats on the Exchange are assigned to a person, not a firm. Consequently, when a person to whom a seat is assigned is absent from the trading floor, the seat cannot be used to participate in trading activities.

The Exchange has proposed an Interim Seat Allocation Program, which will allow an active member (*i.e.*, the person to whom the seat has been assigned and who actively participates in securities transactions on the Exchange floor) temporarily to allocate the membership to an interim member when the active member is absent from the trading floor. An interim member must be approved for membership in accordance with the Amex's Constitution and Rules. The Exchange also will require prior approval of the interim member by the lessor of the seat. An active member must pay an interim member status annual fee of $1,500 for the right make any allocations and a flat fee of $250 for each allocation. After an interim member has been approved for membership and the active member has paid the necessary fees and submitted the appropriate form to the Exchange's Membership Services Department, the active member may allocate its seat to the interim member. A temporary allocation may be for a minimum of one day to a maximum of one year.

Contracts made on the trading floor by an interim member will be considered contracts made by the active member, and the active member will be responsible for all obligations to the Exchange and all obligations to other members resulting from Exchange transactions, or transactions in other securities, conducted by the interim member. The owner of the membership, rather than the interim member, will be deemed to be the member of the Amex for purposes of participating in any distribution of the assets and funds of the Exchange in the event of any voluntary or involuntary final liquidation, dissolution, or winding up of the Exchange's affairs. The owner of the membership or active member (as the case may be), rather than the interim member, would be the Participant in the Exchange's Gratuity Fund and entitled to the benefits described in Article IX of the Exchange Constitution. In addition, and interim member may not vote the active member's seat or serve on an Exchange committee in the place of the active member.

If an interim member is not allocated the membership held by the active member within one year of approval by

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] Securities Exchange Act Release No. 42853 (May 30, 2000), 65 FR 36182.

the Exchange's Membership Services Department, the individual's eligibility for interim membership would be terminated. To become eligible again for interim member status, the individual would have to requalify for membership in accordance with the Constitution and Rules of the Exchange.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[4] In particular, the Commission finds the proposal is consistent with Sections 6(b)(4) and 6(b)(5) of the Act.[5]

Section 6(b)(5) of the Act[6] requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The Commission believes that the proposed Interim Seat Allocation program will promote just and equitable principles of trade and will protect the public interest by maximizing Amex members' use of personal and capital resources. Currently, seats on the Exchange may not be available for use during absences by active members due, for example, to vacation or illness. Allowing interim members to fill these seats, and to use then to continue trading, will provide greater liquidity on the Exchange than may exist otherwise. Furthermore, the proposed rule change is designed to protect investors because interim members must be approved for membership in accordance with the Exchange's rules in the same manner as active members. The public interest and investor protection will also be served by the requirement that the active member bear responsibility for all obligations to the Exchange and to other members resulting from Exchange transactions conducted by an interim member.

Section 6(b)(4) of the Act[7] requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members. All of the Exchange's members that wish to avail themselves of the Interim Seat Allocation Program will be subject to the same fees, and these fees do not appear to be unreasonable. Therefore, the Commission believes that the Exchange's proposal meets the requirements of Section 6(b)(4) of the Act.

[4] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(4) and (b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)4.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–00–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 00–18071 Filed 7–17–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43028; File No. SR–Amex–00–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Amendments to the Listing Agreement Form

July 12, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Listing Agreement Form, which is submitted to the Exchange in connection with an issuer's listing application. The text of the proposed rule change follows. Additions are in *italics*; deletions are **[**bracketed**]**.

The American Stock Exchange—Listing Form

Listing Agreement

_____ (the "Company"), in consideration of the listing of its securities, hereby agrees, with The American Stock Exchange LLC (the "Exchange") that **[**it will**]**:

(1) *The Company certifies that it will* **[**C**]**comply with all Exchange rules, policies and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company's organization documents would allow for a different result.

(2) *The Company shall* [N]notify the Exchange at least 20 days in advance of any change in the form or nature of any listed security or in the rights, benefits, and privileges of the holders of such security.

(3) *The Company understands that the Exchange may remove its securities from listing on the Exchange, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1–2 of this agreement.*

(4) *In order to publicize the Company's listing of the Exchange, the Company authorizes the Exchange to use the Company's corporate logos, Web site address (URL): , trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, Web site address, trade names, and trade/service marks and with any subsequent changes. Questions regarding logo usage should be directed to: at ( ) – .*

The Company indemnifies the Exchange and holds it harmless from any third party rights and/or claims arising out of use by the Exchange or any affiliate ("Corporations") of the Company's corporate logos, Web site address, trade names, trade/service marks, and/or the trading symbol used by the Company.

(5) *The Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company's trading symbol is controlled by the Exchange and is provided to the Company for the limited purpose of identifying the Company's security in authorized quotation and trading systems. The Exchange reserves the right to change the Company's trading symbol at the Exchange's discretion at any time.*

Exchange Warranties: Disclaimers of Warranties. For any goods or services provided to Company, the Exchange shall endeavor to provide them in a good and workmanlike manner. Beyond the warranties stated in this section, there are no other warranties of any kind, express, implied or statutory (including the implied warranties of

[7] 15 U.S.C. 78f(b)4.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

merchantability or fitness for a particular use or purpose).

Limitation of Corporations' Liability:

(1) In no event will the Corporations be liable for trading losses, losses of profits, indirect, special, punitive, consequential, or incidental loss or damage, even if the Corporations have been advised of the possibility of such damages.

(2) If the Corporations are held liable, the liability of the Corporations is lilmited:

(a) for goods and services for which the Company is specifically charged, to the amount paid by Company for those goods or services during the twelve months preceding the accrual of the claim; and

(b) in all other instances, to the amount of the annual listing fee paid by the Company during the twelve months preceding the accrual of the claim.

(3) For goods and services provided under a separate written agreement, the limitation of liability provisions in that agreement shall govern any claims relating to or arising from the provision of those goods and services.

(4) This subsection shall not relieve the Corporations from liability for damages that result from their own gross negligence or willful tortuous misconduct, or from personal injury or wrongful death claims.

(5) The Corporations shall not be liable for any third parties' goods or services.

(6) The Company agrees that these terms reflect a reasonable allocation of risk and limitation of liability.

Dated: _____

By: _____

Name: _____

Title: _____

Accepted at New York, New York, the American Stock Exchange LLC

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Each listed company is required to file a Listing Agreement with the Exchange in connection with its listing application. The Listing Agreement currently requires that the company agree that it will comply with all Exchange rules, policies and procedures and that the company will notify the Exchange at least 20 days in advance of any changes in the form or nature of a listed security or in the rights, benefits and privileges of shareholders. The Commission recently approved amendments to the Exchange's Listing Agreement on March 17, 2000.[3]

The Exchange proposes to add several provisions to the Listing Agreement Form comparable to those included in the Nasdaq National Market Listing Agreement. These provisions include the following:

- A representation that the company understands that its securities can be delisted pursuant to applicable procedures, if the company does not comply with paragraphs 1 and 2 of the Listing Agreement (*i.e.*, certification that the company will comply with all Exchange rules, policies and procedures applicable to listed companies, and the requirement that the company notify the Exchange at least 20 days in advance of any change in the form or nature of the security or the rights, benefits and privileges of holders of the security).
- In connection with publicizing the company's listing, the company's authorization of the Exchange to use the company's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information and other information in connection with Exchange listing and trading. The company would also indemnify the Exchange and its affiliates and hold them harmless from any third party rights and/or claims arising in the use of the above-referenced corporate information.
- The company's warranty and representation that the trading symbol used by the company does not violate any trade/service mark, trade name or other intellectual property right of any third party. This provision would specify that the Exchange reserves the right to change the company's trading symbol at the Exchange's discretion.
- The Exchange's disclaimer of warranties to the company.
- The Exchange's and Exchange affiliates' limitation of liability, which provides, among other things, that the Exchange and affiliates will not be liable to the company for trading loss, loss of profits and damages.

The Exchange believes that these amendments to the Listing Agreement improve the Exchange's listing process and regulatory function by clarifying the responsibilities and obligations of listed companies and the Exchange in connection with the listing process. In addition, the proposed amendments are similar to provisions in the Nasdaq National Market Listing Agreement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Burden on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from June 16, 2000, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed

[3] Securities Exchange Act Release No. 42539 (March 17, 2000), 65 FR 15672 (March 23, 2000) (SR–Amex–99–39). The Commission notes that this filing eliminated the requirement that issuers file certain documents with its Listing Agreement.

[4] 14 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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rule change at least five business days prior to the filing date, it has become effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(6)[7] thereunder.[8] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–34 and should be submitted by August 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18090 Filed 7–17–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 15 CFR 240.19b–4(f)(6).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43026; File No. SR–GSCC–00–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to GSCC's Fee Structure With Respect to Minimum Monthly Fees and Additional Accounts Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 29, 2000, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC is proposing to amend its fee structure with respect to (i) minimum monthly fees and (ii) fees for additional accounts maintained by a single member to fairly reflect the costs incurred by GSCC in providing services to its members.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is proposing to amend its fee structure with respect to (i) Minimum monthly fees and (ii) fees for additional accounts maintained by a single member. These changes were effective as of July 3, 2000.

(i) Minimum Monthly Fees

Under GSCC's current fee structure, a member is charged a minimum monthly fee if the fees associated with its actual level of activity do not equal or exceed the minimum fee. Specifically, each comparison-only member is subject to a minimum monthly fee of $500 ($250 if it has an affiliate that is a netting member), and each netting member is subject to minimum monthly fees of $500 for its comparison system activity and $500 for its netting system activity.

The proposed rule change imposes a $1,000 minimum monthly fee on each comparison-only member (regardless of whether it has an affiliate that is a netting member) and each netting member. The increase to the $1,000 minimum for comparison-only members is necessary in order to cover the administrative and operational costs involved in opening and maintaining the comparison-only accounts. The change to the $1,000 minimum fee for netting members from the $500–$500 fee is being implemented for administrative convenience; it allows for a member's total GSCC activity to be calculated and compared against one minimum. This change will result in a decrease in fees for some netting members.

(ii) Fees Applicable to Additional Accounts

Some GSCC members maintain more than one GSCC account.[4] Additional accounts fall into two categories: (A) those that are opened at the request of a member[5] and (B) those that are opened at the direction of GSCC.[6]

(A) Additional Account Opened at the Request of a Member

The proposed rule change imposes a monthly maintenance fee of $1,000 for each additional account maintained by a member in addition to its primary account that is opened at the member's request. The maintenance fee will be in

[1] 15 U.S.C. 78s(b)(1).

[2] The revised fee structure, attached as "Exhibit A" to GSCC's filing, is available for inspection and copying in the Commission's Public Reference Section and through GSCC.

[3] The Commission has modified the text of the summaries prepared by GSCC.

[4] For fee purposes, GSCC will consider the account with the most activity to be the member's primary account.

[5] Under certain circumstances, a member is permitted to open one or more additional accounts in order to separate certain GSCC activity from its primary GSCC account. Such accounts can be maintained for comparison-only or netting activity. Each additional account is governed by an agreement between the member and GSCC and is subject to GSCC's rules.

[6] For example, under GSCC's rules, interdealer broker netting members are required to maintain separate accounts for their buy-sell and repo activity.

addition to any actual transaction-based fees and applicable non-transaction-based fees, such as communication fees.

The new maintenance fee reflects the costs incurred by GSCC in maintaining additional accounts for members. Such costs include the administrative costs of opening additional accounts, the operational costs of maintaining the accounts, the continuous risk surveillance that is conducted on the accounts, and the reports necessary to be provided with respect to activity in the accounts. The imposition of the proposed fee is consistent with GSCC's policy of charging fees that fairly reflect the costs incurred by GSCC in providing services to its members.

(B) Additional Accounts Opened at the Direction of GSCC

Any additional account that is opened at the direction of GSCC will not be subject to a maintenance fee. Such account's transaction-based fees will be subject to a minimum monthly fee of $1,000 per account.

GSCC believes that the proposed rule change is consistent with the requirements of the Act[7] and the rules and regulations thereunder applicable to GSCC because it proposes changes to GSCC's fee structure that fairly reflect the costs incurred by GSCC in providing services to its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[8] of the Act and Rule 19b–4(f)(2)[9] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by GSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–07 and should be submitted by August 8, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18088 Filed 7–17–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2)

[10] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43027; File No. SR–NYSE–00–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. Amending Global Market Capitalization Listing Standards

July 12, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. On July 3, 2000, the NYSE submitted an amendment to the proposed rule filing ("Amendment No. 1").[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change and Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its global market capitalization original listing standard to reduce the minimum revenue requirements from $250 million to $100 million. The NYSE further proposes to amend the related continued listing standard to reduce the minimum total revenue requirement from $50 million to $20 million. These changes would amend Sections 102, 103, and 802 of the NYSE's Listed Company Manual and a corresponding amendment would be made to NYSE Rule 499. The text of the proposed rule change is as follows. Proposed additions are *italicized* and proposed deletions are in brackets.

NYSE Listed Company Manual

* * * * *

Section: 102.1—Minimum Numerical Standards—Domestic Companies—Equity Listings.

* * * * *

102.01C—A company must meet one of the following financial standards:

* * * * *

(II) For companies with not less than $1 billion in total worldwide market capitalization and with not less than [$250] *$100* million in revenues in the most recent fiscal year, there are no additional financial requirements.

* * * * *

Section: 103.01—Minimum Numerical Standards Non-US Companies Equity Listings Distribution.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Daniel P. Odell, Assistant Secretary, NYSE to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 29, 2000 ("Amendment No. 1"). In Amendment No. 1, the NYSE requests accelerated approval to accommodate the timetable of certain issuers wishing to list on the NYSE.

103.01B—A company must meet one of the following financial standards:

* * * * *

(III) For companies with not less than $1 billion in total worldwide market capitalization and with not less than [$250] *$100* million in revenues in the most recent fiscal year, there are no additional financial requirements.

* * * * *

Section: 8

Section 802.01—Continued Listing Criteria.

* * * * *

802.01B Numerical Criteria for Capital or Common Stock. If a company falls below any of the following criteria, it is subject to the procedures outlined in Para. 802.02 and 802.03:

* * * * *

• For companies that qualify under the "global market capitalization" standard:

Total global market capitalization is less than $500,000,000 and total revenues are less than [$50,000,000] *$20,000,000* over the last 12 months (unless the resultant entity qualifies as an original listing under one of the other standards)(C)

or

Average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000.

NYSE Rules

Rule 499—Supplementary Material

* * * * *

.20 Numerical and Other Criteria.

* * * * *

6. For companies that qualify under the "global market capitalization" standard:

• Total global market capitalization is less than $500,000,000 and total revenues are less than [$50,000,000] *$20,000,000* over the last 12 months.

* * * * *

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Last year, the NYSE implemented a new stand-alone listing criterion for extremely large companies, both domestic and non-U.S., with $1 billion in total global market capitalization and revenues in their most recent fiscal year of $250 million.[4] The Exchange did so in the belief that companies of such size were appropriate for listing and trading on the Exchange, regardless of any short-term variations in profitability. The Exchange also believed that its then-current numerical criteria placed too much emphasis on a company's earnings to the exclusion of other relevant factors.

Currently, the NYSE believes that the new criteria has worked well and has permitted the Exchange to qualify and list companies that otherwise would not have qualified under the traditional criteria. However, after a year's experience under the new standard, the Exchange's analysis of the universe of companies considered suitable for Exchange listing suggests that the Exchange was too conservative in its initial approach, and that a criterion of $1 billion in total global market capitalization and a reduction in the requirement for $250 million to $100 million in revenues in the most recent fiscal year would be more appropriate. The NYSE believes that such a standard would better enable it to offer listing to companies of suitable size and scope, even though their business model differs from the traditional.

In connection with the new original listing criterion implemented last year, the Exchange also constructed new continued listing criteria applicable specifically to companies listed under the global market capitalization standard.[5] Such companies are currently considered below standards if their global market capitalization falls below $500 million *and* total revenues are below $50 million over the previous twelve months. Of course, if the company can qualify under one of the other original listing criteria, it is not considered below standards. Alternatively, companies that listed under the global market capitalization standard are considered below standards if their average global market capitalization is below $100 million over 30 consecutive trading days. In connection with amending the original listing criterion as discussed above, the Exchange proposes to proportionately reduce the minimum revenue requirement from $50 million to $20 million. The $500 million and $100 million market capitalization minimums would remain unchanged.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any written comments on the proposal.

III. Solicitation of Comments

Interested person are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[4] *See* Securities Exchange Act Release No. 41834 (September 3, 1999), 64 FR 50129 (September 15, 1999).

[5] *Id.*

[6] 15 U.S.C. 78f(b)(5).

available for inspection and copying in the Commission's Pubic Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–27 and should be submitted by August 8, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds, for the reasons set forth below, that the NYSE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.[8] Section 6(b)(5) of the Act requires that the rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act because the NYSE's alternative financial listing standards with $1 billion in market capitalization and $100 million in revenues, reduced from $250 million, in the most recent fiscal year, should still allow the Exchange to list companies that the Exchange believes will prove to be financially successful in the future, although recently they may not have been as profitable. The Commission believes that the reduction in the continued listing standard from $50 million in revenues in the last fiscal year to $20 million is not inconsistent with the Act for the same reason. The Commission also believes that, by providing issuers another alternative forum for their securities in the U.S. marketplace, the proposed rule change is consistent with the requirements of the Act to remove impediments to and perfect the mechanism of a free and open market.

In addition, the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice in the **Federal Register**. The Exchange represents that certain issuers are eager to list on the Exchange under the proposed standards. To ensure that such issuers are permitted to list on the Exchange in a timely basis, the Commission approves the proposed rule change, as amended, on an accelerated basis, pursuant to Sections 6(b)(5) and 19(b)(2) of the Act.[9]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change and Amendment No. 1 (SR–NYSE–00–27) are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18089 Filed 7–17–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43020; File No. SR–PCX–00–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Modifying PCX Transaction and On-Line Comparison Fees and Establishing a Credit for Book Executions

July 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its transaction and on-line comparison fees and establish a credit for book executions. The Exchange also proposes to clarify its treatment of the portion of the market maker transaction charge that is collected for Options Industry Conference ("OIC") activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reduce the transaction fee for customer trades that are executed manually and to eliminate the fee for customer trades that are executed electronically. The Exchange is also proposing to eliminate the on-line comparison charge for customer trades and to establish a credit for book executions. Moreover, the Exchange is proposing to raise the market maker transaction fee and implement a floor brokerage charge. Finally, the Exchange also proposes to clarify its treatment of the portion of the current market maker transaction charge ($0.01 per contract) collected for OIC activities.

Currently, the PCX Schedule of Rates and Charges provides for a customer transaction charge of $0.12 per contract side for all transactions except Pacific Options Exchange Trading System ("POETS") automated executions, and a market maker transaction charge of $0.185 per contract side. In addition, the PCX charges an on-line comparison charge of $0.05 per contract for customers, firms, and market makers.

The Exchange proposes to reduce customer transaction fees from $0.12 to $0.09 per contract side for manual (non-hand held) executions and to eliminate customer transaction charges for all other forms of electronic executions including book executions, cabinet trades, automated opening rotation and broker hand-held executions. The PCX also proposes to establish a $0.10 per contract credit for customer book executions.[3] The Exchange further

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[7] The Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Customers will receive a $0.10 credit per book execution that will be applied to each customer's total monthly Exchange fees. Customers will not receive a cash payment for unused portions of the credit and any unused portion will not carry forward to the next billing month. The credit will

proposes to eliminate the on-line comparison charge of $0.05 per contract for customer executions.[4] The Exchange will continue to charge $0.05 per contract for firm and market maker executions. The Exchange believes that these proposed changes will attract order flow to the Exchange and enable it to remain competitive.

The Exchange also proposes to increase the market maker transaction fee from $0.185 to $0.235 per contract side and to implement a floor brokerage fee of $0.01 per contract, charged to the executing floor broker member. The Exchange believes that the proposed fees will (1) help offset the proposed reduction of customer transaction fees and the elimination of customer online comparison charges, and (2) cover the operational charges associated with running the PCX options floor.

Finally, the Exchange proposes to clarify that the PCX does not pay to the OIC each $0.01 charged to PCX market makers. On August 26, 1992, the Commission approved an Exchange proposal to increase certain market maker transaction charges by $0.01 in order to fund an OIC industry-wide options education and media program.[5] Since 1992, the Exchange has continued to fund the program by reimbursing the OIC for the PCX's share of OIC expenses. These expenses are billed to the PCX on a regular basis, as the OIC incurs them.

The Exchange notes that it does not pay to the OIC each $0.01 per contract side charged to each PCX market maker. In recent years, the amount charged has exceeded the amount paid for OIC expenses by 16% to 37%.[6] The Exchange represents that if it pays less into the OIC program than it has collected (on an aggregate $0.01 per contract basis), then it will treat that excess amount as ordinary revenue. Conversely, if the PCX pays the OIC more than has been collected (on an aggregate $0.01 basis), the Exchange will treat the amount that is over and above what it has collected as an ordinary business expense.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4)[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] and Rule 19b–4(f)(2) thereunder,[10] in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–00–14 and should be submitted by August 8, 2000.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[12]

Margaret H.McFarland,

Deputy Secretary.

[FR Doc. 00–18070 Filed 7–17–00; 8:45 am]

BILLING CODE 8010–01–M

not apply to customer orders in the limit order book that were executed as part of an opening rotation.

[4] The Exchange charges the on-line comparison charge for matching buyers and sellers. This charge will not apply to customers orders executed manually or electronically. Telephone conversation between Michael Pierson, Vice President, Regulatory Policy, PCX, Sonia Patton, Attorney, Division of Market Regulation ("Division"), Commission, and Susie Cho, Attorney, Division, Commission, June 13, 2000.

[5] *See* Securities Exchange Act Release No. 31098 (Aug. 26, 1992), 57 FR 40238 (Sept. 2, 1992).

[6] The Exchange increased the charge for manual transactions of market makers in equity options from $0.085 to $0.095 and in index options from $0.10 to $0.11. *See* Securities Exchange Act Release No. 31098 (Aug. 26, 1992), 57 FR 40238 (Sept. 2, 1992).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78c(b)(3)(A)(ii).

[10] 17 CFT 240.19b–4(f)(2).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43025; File No. SR–PCX–99–40]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to Order Book Officials

July 12, 2000.

I. Introduction

On October 8, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its rules pertaining to the Exchange's order book officials ("OBOs"). The proposed rule change was published for comment in the **Federal Register** on November 4, 1999.[3] The Commission received on comments on the proposal. On May 25, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposal, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 42068 (October 28, 1999), 64 FR 60259.

[4] Letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Senior Special Counsel, Division of Market Regulation,

Continued

II. Description of the Proposal

The Exchange proposes to amend PCX Rule 6 ("Options Trading—Rules Principally Applicable to Trading of Options Contracts") by deleting certain Options Floor Procedure Advices ("OFPAs") and incorporating their relevant language into the text of PCX Rule 6.

OFPA E–2 addresses market maker assignments and will be incorporated into PCX Rule 6.51(b). This proposed change will require that a list of market makers holding primary appointments in a particular issue be maintained by the OBO at each trading post where the issue is traded. This modifies the current rule by requiring the OBO to maintain the market maker appointment list, instead of the Options Floor Manager and the Options Appointment Committee, which currently maintain the lists.

OFPA A–4, which addresses the timeliness of entering orders in the limit order book, is proposed to become PCX Rule 6.52(c). In addition, the Exchange proposes to require OBOs to report to Floor Officials, instead of the Options Floor Trading Committee ("OFTC"), any instances that appear to violate a floor broker's obligation to ensure that the urgency of dealing with the book at any given moment is consistent with the maintenance of a fair and orderly book market. Floor brokers are required to enter orders into the book in a timely manner. In some instances, however, a floor broker's attempt to enter an order that is reasonably away from the market,[5] which therefore does not possess an immediate urgency, may be disruptive to the book market. In such instances, the OBO is currently required to report such disruptive behavior to the OFTC. The Exchange proposes to permit the OBO to report such violations to a Floor Official instead of the OFTC.[6] [1]

In addition, the Exchange proposes to delete the last sentence of Commentary .01 to PCX Rule 6.52. This sentence currently states "(a)s of the effective date of these rules, the Committee has not designated any additional types of orders that may be accepted by the order book officials."

Finally, OFPA B–7, which details when a call for market makers is issued, is proposed to become Commentary .01 to PCX Rule 6.53; and OFPA G–4, which defines the term "displayed" as used in PCX Rule 6.56, is proposed to be added to the text of PCX Rule 6.56. Neither of these two proposals contains any substantive amendments.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should foster efficiency in the implementation and enforcement of the Exchange's rules. Currently, members have to refer to both the Exchange's rules as well as the OFPAs to ensure that they are complying with the rules of the Exchange. The proposal combines selected OFPAs and Exchange rules that address the obligations of OBOs into one location. The Commission believes that this change should make it easier for Exchange members to locate pertinent rule language.

The proposed rule change also contains some amendments to the Exchange's current procedures. For example, OBOs will now be required to maintain market maker assignment lists at each trading post. Currently, the Options Floor Manager, along with the Options Appointment Committee maintain the market maker assignment list. The Commission believes that because the OBO will be able to provide market maker assignment information faster than the current procedure, this change should foster efficiency on the floor of the Exchange. In addition, this proposal should assist trading functions on the floor because market makers are more readily identifiable by OBOs.

The Commission also finds the proposal to amend the procedure for reporting violations by floor brokers of their obligation to deal with the book in a manner that is consistent with the maintenance of an orderly book market to be consistent with the Act. Currently, such violations by floor brokers must be reported to the entire OFTC. Upon approval of this order, OBOs will have to report such violations to a Floor Official. This should allow the Exchange to take more immediate action after a violation occurs because OBOs will only have to report disruptive action to a Floor Official instead of the entire OFTC.

The Exchange proposed to delete language in Commentary .01 to PCX Rule 6.52, which relates to the OFTC's authority to designate the types of orders that must be accepted by the OBOs. The Commission believes that the deleted language is redundant and, therefore, unnecessary when read in relation to the first sentence of the Commentary. The first sentence specifically states that OBOs are obligated to accept limit orders and such other orders as may be designated by the OFTC. The deleted language only states that no other orders have been so designated by the OFTC as of the date of the Rules. Thus, OBOs are still required to accept all orders designated by the OFTC.

Finally, the Commission finds good cause to accelerate approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, the Exchange clarified how Floor Officials determine if an order is reasonably away from the book market for purposes of proposed PCX Rule 6.52(c). In addition, the Exchange stated that floor brokers will be subject to disciplinary action for violations of proposed PCX Rule 6.52(c). The commission believes that Amendment No. 1 provides only further clarification to the proposed rule change and does not change the substance of the proposed rule. Therefore, the Commission believes that good cause exists, consistent with Section 6(b)(5) [9]

SEC, dated May 24, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified how the Exchange determines when an order is considered to be reasonably away from the book market, pursuant to PCX Rule 6.52(c). In addition, the Exchange stated that a floor broker that violates PCX Rule 6.52(c) may be subject to a Minor Rule Plan Violation under PCX Rule 10.13(h)(16) or may be found to be in violation of PCX Rule 6.2(c)(2).

[5] According to the Exchange, floor officials determine on a case-by-case basis if an order is reasonably away from the book market by considering, among other things, market volatility, spreads, unusual market conditions, and the number of contracts traded in the issue. *See* Amendment No. 1.

[6] A floor broker that attempts to enter an order that is reasonably away from the book market may be found in violation of Minor Rule Plan Violation Rule 10.13(h)(16) or may be found in violation of PCX Rule 6.2(c)(2) regarding standards of conduct on the floor. Upon a report by an OBO, the Floor Official will document the alleged violation and forward it to the Exchange's Enforcement Division for review. *See* Amendment No. 1.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5).

and Section 19(b)[10] of the Act, to accelerate approval of Amendment No. 1 to the proposed rule change.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PCX–99–40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18072 Filed 7–17–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Aviation Proceedings

Aviation Proceedings, Agreements filed during the week ending June 30, 2000. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7582.
Date Filed: June 26, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC2 AFR 0089 dated 23 June 2000, Mail Vote 077—Resolution 010z, TC2 Within Africa Special Passenger Amending Resolution, Intended effective date: 1 July 2000.

Docket Number: OST–2000–7583.
Date Filed: June 27, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0443 dated 23 June 2000, Mail Vote 078—Resolution 010a, TC3 Special Passenger Amending Resolution (Japan/Korea-South East Asia), Intended effective date: 1 July 2000.

Docket Number: OST–2000–7584.
Date Filed: June 27, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0647, Mail Vote 079—Resolution 010b, TC2/12/23 Special Passenger Amending Resolution from Kuwait, Intended effective date: 1 July 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–18132 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–62–P

[10] 15 U.S.C. 78s(b).
[11] 15 U.S.C. 78s(b)(2).
[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Aviation Proceedings

Aviation Proceedings, Agreements filed during the week ending July 7, 2000. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7612.
Date Filed: July 3, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–ME 0093 dated 30 June 2000, Europe-Middle East Expedited Resolution 002j, Intended effective date: 1 August 2000.

Docket Number: OST–2000–7613.
Date Filed: July 3, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR 0102 dated 27 June 2000 North Atlantic USA–Europe Resolutions r1–r26, PTC12 USA–EUR 0103 dated 30 June 2000 (Technical Correction), Minutes—PTC12 USA–EUR 0100 dated 23 June 2000, Tables—PTC12 USA–EUR Fares 0045 dated 30 June 2000, Intended effective date: 1 November 2000.

Docket Number: OST–2000–7614
Date Filed: July 5, 2000.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0287 dated 2 June 2000, Worldwide Area Resolutions, (Except USA/US Territories), Minutes—CTC COMP 0292 dated 20 June 2000, Intended effective date: 1 October 2000

Docket Number: OST–2000–7615.
Date Filed: July 6, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–ME 0094 dated 4 July 2000, TC2 Europe-Middle East Expedited Resolutions r1-r3, Intended effective date: 15 August/1 September 2000.

Docket Number: OST–2000–7621.
Date Filed: July 7, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC2 ME 0081 dated 23 June 2000, TC2 Within Middle East Expedited Resolution 002e, Intended effective date: 15 August 2000.

Docket Number: OST–2000–7622.
Date Filed: July 7, 2000.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0286 dated 2 June 2000, Composite Resolutions, Intended effective date: 1 October 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–18133 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience; Applications

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending June 30, 2000. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–6385.
Date Filed: June 27, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 18, 2000.

Description: Motion of United Air Lines, Inc. for leave to file a Supplement to its application for a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between the United States and the addition of the following points to the list of countries included in Appendix A of its application: Comoros; Cyprus; Dominica; French Guyana; French Polynesia; Lesotho; Macau; Maldives; Marshall Islands; Micronesia, Federated States of Mongolia; Palau; Portugal; Qatar; St. Kitts & Nevis; St. Vincent & Grenadines; Samoa; Swaziland; Turks and Caicos; for the Department's convenience, United has attached a Revised Appendix A, which includes all of these points. United is supplementing it's application to include countries with which the U.S. has signed open skies agreements since United filed its original application as well as countries which were included in competing omnibus certificate applications of other carriers.

Docket Number: OST–2000–7588.
Date Filed: June 27, 2000.

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Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 18, 2000.

Description: Application of Kitty Hawk International, Inc. ("Kitty Hawk") pursuant to 49 U.S.C. 41105 and Subpart Q, applies for authority to transfer its certificate of public convenience and necessity for interstate air transportation issued by the Department to a newly-created and wholly-owed subsidiary of Kitty Hawk to be named Kitty Hawk Air, Inc. ("Kitty Hawk Air").

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–18131 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 2000, there were six applications approved. This notice also includes information on one application, approved in April 2000, inadvertently left off the April 2000 notice. Additionally, 13 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Blair County Airport Authority, Martinsburg, Pennsylvania.

Application Number: 00–03–C–00–AOO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $206,335.

Earliest Charge Effective Date: July 1, 2000.

Estimated Charge Expiration Date: November 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: Air taxis/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Altoona-Blair County Airport.

Brief Description of Projects Approved for Collection and Use:

Preparation of PFC application.
Runway 12/30 and taxiway D lighting.
Security fencing.
Master plan update.

Brief Description of Projects Approved for Collection:

Avigation easement acquisition and obstruction removal.
Land acquisition.
Purchase of snow removal equipment (SRE).
Improve aircraft rescue and firefighting (ARFF)/SRE building.
Runway 12/30 rehabilitation.

Brief Description of Projects Withdrawn: Land acquisition for runway 12/30 extension.

Determination: This project was withdrawn by the public agency in its letter dated April 25, 2000. Therefore, the FAA did not rule on this project in this decision.

Decision Date: April 28, 2000.

For Further Information Contact: Roxane Wren, Harrisburg Airports District Office, (717) 730–2830.

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.

Application Number: 00–09–C–00–HSV.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $557,969.

Earliest Charge Effective Date: January 1, 2009.

Estimated Charge Expiration Date: June 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: (1) Any air taxi/commercial operator having fewer than 500 annual enplanements; (2) certified air carriers having fewer than 500 annual enplanements; (3) certified route air carriers having fewer than 500 annual enplanements.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Huntsville International Airport.

Brief Description of Projects Approved for Collection and Use:

Air cargo expansion.
Replace airline counters/heating, ventilation, and air conditioning improvements.
Terminal renovations/baggage claim expansion design.
Year 2000 upgrades.
Security vehicle.
Access/security road.
Snozzle for crash vehicle.
Air carrier apron repair.
Two 7.5KV regulators.

Decision Date: June 6, 2000.

For Further Information Contact: Roderick T. Nicholson, Jackson Airports District Office, (601) 664–9884.

Public Agency: Puerto Rico Ports Authority, San Juan, Puerto Rico.

Application Number: 00–04–C–00–SJU.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $98,663,704.

Earliest Charge Effective Date: November 1, 2002.

Estimated Charge Expiration Date: November 1, 2020.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection at San Juan International Airport (SJU) and Use at SJU:

Development of utilities master plan.
Preliminary engineering for development of dual midfield cross taxiway system.
Environmental assessment for runway 26 safety area and extension of taxiway Sierra.
Computer controlled access system.
Acquire two runway sweepers.
Design and installation of terminal signage and airfield signage.
Design and build an ARFF facility.
Expansion of midfield taxiway.
Cargo access road.
Development of new south general aviation area (apron and taxiway).

Brief Description of Project Approved for Collection at SJU and Use at Fernando Ribas Dominici Airport: Develop an airport layout plan including property map.

Brief Description of Project Approved for Collection at SJU and Use at Humacao Regional Airport: Design and construct apron.

Brief Description of Projects Approved for Collection at SJU and Use at Rafael Hernandez Airport:

Installation of automatic weather observation system.
Relocation of taxiway A.
Preliminary engineering runway reconstruction.
Final design runway reconstruction.
Reconstruct runway.

Brief Description of Project Partially Approved for Collection at SJU and Use at Rafael Hernandez Airport:
Improvements to computer controlled access system.
Determination: Partially approved. The approved amount was reduced from that requested due to funding provided by an Airport Improvement Program (AIP) grant.
Brief Description of Project Partially Approved for Collection at SJU and Use at San Antonio Rivera Rodriguez Airport: Runway obstruction removal, threshold relocation, and associated taxiway work.
Determination: Partially approved. The approved amount was reduced from that requested due to funding provided by an AIP grant.
Brief Description of Projects Approved for Collection at SJU and Use at Mercedita Airport:
Install airport signage.
Acquire jaws of life and safety equipment.
Improvements to computer controlled access system.
Acquire runway sweeper.
Install loading bridges.
Reconstruct taxiway light system.
Improve runway 12 safety area.
Reconstruct terminal apron.
Reconstruct runway and taxiway connectors.
Brief Description of Project Approved for Collection at SJU and Use at Benjamin Noriega Airport: Widen runway and extend taxiway; construct apron.
Brief Description of Projects Approved for Collection at SJU:
Construct standard safety area, runway 26.
Design extension, taxiway Sierra.
Decision Date: June 14, 2000.
For Further Information Contact: Ilia Quinones, Orlando Airports District Office, (407) 812–6331, ext. 30.
Public Agency: City of Lynchburg, Virginia.
Application Number: 00–02–C–00–LYH.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $832,756.
Earliest Charge Effective Date: September 1, 2000.
Estimated Charge Expiration Date: February 1, 2002.
Class of Air Carriers Not Required To Collect PFC's: Air taxi operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lynchburg Regional Airport.
Brief Description of Projects Approved for Collection and Use:
PFC formulation and annual administrative costs.
Construct airport service road.
Overlay runway 3/21.
Acquire land runway 21 runway protection zone.
Overlay general aviation apron.
Brief Description of Project Disapproved for Collection and Use: Relocate State Route 758 to recover full extended runway safety area to runway 21 (design only).
Determination: Disapproved. Two parcels of land must be acquired by the public agency in order to successfully accomplish the relocation of the highway. One of the necessary parcels included a life-estate clause in the purchase agreement. Therefore, the FAA has no reasonable expectation that the public agency will be able to acquire the parcel and, thus, begin the road relocation within the 2-year timeframe required by § 158.33(a)(1) and has disapproved the project.
Decision Date: June 16, 2000.
For Further Information Contact: Arthur Winder, Washington Airports District Office, (703) 661–1363.
Public Agency: Birmingham Airport Authority, Birmingham, Alabama.
Application Number: 00–03–C–00–BHM.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $8,000,000.
Earliest Charge Effective Date: October 1, 2000.
Estimated Charge Expiration Date: November 1, 2002.
Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Birmingham International Airport.
Brief Description of Project Approved for Collection and Use: Rehabilitate air carrier apron.
Decision Date: June 21, 2000.
For Further Information Contact: Keafur Grimes, Jackson Airports District Office, (601) 664–9886.
Public Agency: City of Pendleton, Oregon.
Application Number: 00–02–C–00–PDT.
Application Type: Impose and use a PFC.
PFC Level $3.00.
Total PFC Revenue Approved in This Decision: $303,739.
Earliest Charge Effective Date: December 1, 2002.
Estimated Charge Expiration Date: January 1, 2012.
Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Eastern Oregon Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Replace ARFF vehicle.
Rehabilitate pavement on west general aviation apron A.
Rehabilitate pavement of taxiway D.
Install precision approach path indicator on runway 25.
Rehabilitate runway 11/29.
Rehabilitate terminal apron.
Decision Date: June 23, 2000.
For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.
Public Agency: City of Kansas City—Aviation Department, Kansas City, Missouri.
Application Number: 00–03–C–00–MCI.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $99,645,586.
Earliest Charge Effective Date: August 1, 2009.
Estimated Charge Expiration Date: May 1, 2013.
Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Kansas City International Airport (MCI).
Brief Description of Project Approved for Collection at MCI and Use at MCI:
Terminal equipment.
Airfield lighting generator.
Brief Description of Projects Approved for Collection at MCI and Use at Kansas City Downtown Airport (MKC): Relocate airfield generator.

Brief Description of Project Approved for Collection at MCI: Overlay runway 1/19–MKC.

Decision Date: June 29, 2000.

For Further Information Contact: Mark Schenkelberg, Central Region Airports Division, (816) 329–2645.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–03–CO–01–TYS, Knoxville, TN	05/10/00	$1,617,216	$1,497,864	07/01/21	07/01/21
97–01–C–02–COD, Cody, WY	06/06/00	123,662	123,441	07/01/02	07/01/02
92–01–C–02–PDX, Portland, OR	06/06/00	22,000,000	22,000,000	05/01/16	05/01/16
95–01–C–01–PDT, Pendleton, OR	06/07/00	153,381	182,801	01/01/02	12/01/02
96–03–C–01–MQT, Marquette, MI	06/12/00	32,500	29,799	11/01/02	11/01/02
00–03–C–01–AOO, Altoona, PA	06/15/00	206,335	223,500	11/01/02	03/01/03
95–02–C–02–COS, Colorado Springs, CO	06/21/00	11,864,672	11,333,785	04/01/05	04/01/05
96–02–C–01–CPR, Casper, WY	06/21/00	427,704	490,749	05/01/04	05/01/04
97–04–C–01–COS, Colorado Springs, CO	06/26/00	15,050,000	0	05/01/04	01/01/01
98–05–C–01–COS, Colorado Springs, CO	06/26/00	9,029,906	10,353,578	05/01/04	01/01/01
95–01–C–03–MCI, Kansas City, MO	06/29/00	145,661,106	215,381,098	01/01/02	01/01/08
99–02–C–01–MCI, Kansas City, MO	06/29/00	28,723,139	23,844,977	05/01/06	08/01/09
97–01–C–01–TUS, Tucson, AZ	06/30/00	26,717,799	101,234,420	12/01/02	05/01/15

Issued in Washington, DC, on July 11, 2000.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 00–18135 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration and Federal Transit Administration

Environmental Impact Statement; King County, Washington

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA and FTA, in cooperation with Sound Transit (ST) and Washington State Department of Transportation (WSDOT) are issuing this notice to advise the public, affected Indian tribes and agencies that an environmental impact statement (EIS) will be prepared for improvements within the SR 520 corridor from Seattle to Redmond in King County, Washington. High capacity transit (HCT) alternatives across Lake Washington, including the SR 520 and I–90 corridors, will also be considered at a programmatic level.

FOR FURTHER INFORMATION CONTACT: James A. Leonard, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, Washington 98501–1284, Telephone: (360) 753–9408; Jennifer Bowman, Federal Transit Administration, 915 2nd Avenue, Seattle, Washington 98174, Telephone: (206) 220–7954; Rob Fellows, Washington State Department of Transportation, Office of Urban Mobility, 401 Second Avenue South, Suite 301, Seattle, Washington 98104–2887, Telephone (206) 464–6234; Barb Gilliland, Sound Transit, 401 S. Jackson Street, Seattle, Washington 98104–2826, Telephone (206) 398–5051; or see website at http://www.wsdot.wa.gov/translake

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to improve mobility for people and goods across Lake Washington within the SR 520 corridor from Seattle to Redmond to address the following needs in the corridor. Land uses and transportation systems are not integrated in their planning and implementation; the transportation system suffers from extensive congestion; reliability and safety of the system are impaired; and neighborhoods, business centers and the environment are negatively impacted by high traffic volumes.

Alternatives under initial consideration include: (1) No action; (2) maintain SR 520 as four lanes, but improve access, operation, and safety; (3) add one HOV lane in each direction; (4) add one HOV lane and high-capacity transit in each direction; (5) add one HOV lane and one general purpose lane in each direction; and (6) add one HOV lane, high-capacity transit, and one general purpose lane in each direction. Each "build" alternative will also include Transportation System Management (TSM) measures, Transportation Demand Management (TDM) measures, bicycle and pedestrian facilities, and environmental and neighborhood mitigation and enhancement measures. HCT alternatives across Lake Washington, including the SR 520 and I–90 corridors, will also be considered at a programmatic level.

Letters describing the proposed action and soliciting comments on the scope of the EIS will be sent to appropriate Federal, State, and local agencies, affected Indian tribes, and to organizations and citizens who have previously expressed or are known to have interest in this proposal. A public hearing will be held and notice will be given of the time and place of the hearing. A series of agency and public scoping meetings are scheduled to be held during July 2000. (See below for details.)

Each public scoping meeting will consist of an informal open house setting from 5–7 p.m. and a formal meeting format beginning at 7 p.m. The formal meeting will begin with a short presentation, after which, comments will be received in the group forum. A court reporter will be available to record oral comments in an informal one-on-one setting, for the open house, and will also record the formal meeting and comments from individuals in the group setting.

Comments may be made at one of the following public scoping meetings.

- Tuesday, July 18, 2000 at the Museum of History and Industry, 2700 24th Ave. East, Seattle, WA
- Wednesday, July 19, 2000 at Medina Elementary School, 8001 NE 8th Street, Medina, WA
- Thursday, July 20, 2000 at North Bellevue Community/Senior Center, 4063 148th Avenue NE, Bellevue, WA

In addition, a scoping meeting for governmental agencies and tribes will be held on July 12, 2000 at 9 a.m. at the Museum of History and Industry, 2700 24th Ave. East, Seattle, WA. A second

agency scoping meeting will be held on July 26, 2000 at 9 a.m. at the WSDOT Office of Urban Mobility, 401 Second Avenue S., Suite 300, Seattle, WA.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments on the scope of alternatives and impacts to be considered are requested by August 3, 2000 and should be sent to: Rob Fellows, WSDOT Office of Urban Mobility, 401 Second Avenue South, Suite 300, Seattle, WA 98104–2887; fax number (206) 464–6084; or e-mail to translake@wsdot.wa.gov.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 10, 2000.

Helen M. Knoll,

Regional Administrator, Federal Transit Administration, Region 10.

James A. Leonard,

Transportation and Environmental Engineer, Federal Highways Administration, Washington Division.

[FR Doc. 00–18065 Filed 7–17–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–00–7638]

NHTSA's Recommendations for Global Technical Regulations Under the United Nations/Economic Commission for Europe 1998 Global Agreement; Motor Vehicle Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: In anticipation of the entry into force of the United Nations/Economic Commission for Europe 1998 Global Agreement, NHTSA seeks public comments on its preliminary recommendations for the first motor vehicle safety technical regulations to be considered for establishment under that Agreement.

DATES: Written comments may be submitted to this agency and must be received by September 1, 2000.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Ms. Julie Abraham, Director, Office of International Policy and Harmonization, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2114. Fax: (202) 366–2559.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: You may read the materials placed in the docket for this notice (*e.g.*, the comments submitted in response to this notice by other interested persons) by visiting the address given above under **ADDRESSES**. The hours of the Docket Management System (DMS) are indicated above in the same location.

You may also read the materials on the Internet. To do so, take the following steps:

(1) Go to the Web page of the Department of Transportation DMS (http://dms.dot.gov/).

(2) On that page, click on "search" near the top of the page or scroll down to the words "Search the DMS Web" and click on them.

(3) On the next page (http://dms.dot.gov/search/), scroll down to "Docket Number" and type in the four-digit docket number (7638) shown in the title at the beginning of this notice. After typing the docket number, click on "search."

(4) On the next page ("Docket Summary Information"), which contains docket summary information for the materials in the docket you selected, scroll down to "search results" and click on the desired materials. You may download the materials.

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I. Background

A. 1998 Global Agreement

On June 25, 1998, the U.S. became the first signatory to the United Nations/Economic Commission for Europe (UN/ECE) [1] Agreement Concerning the Establishment of Global and Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted And/or Be Used On Wheeled Vehicles (the "1998 Global Agreement"). [2] The 1998 Global Agreement provides for the establishment of global technical regulations regarding the safety, emissions, energy conservation and theft prevention of wheeled vehicles, equipment and parts. [3] The Agreement contains procedures for establishing global technical regulations by either harmonizing existing regulations or developing a new regulation.

The establishment of global technical regulations is expected to lead to a significant degree of convergence in motor vehicle regulations at the regional and national levels. However, while in some instances the result may be the adoption of identical or substantially identical regulations at those levels, in other instances, the result may be regulations that differ but do not conflict with each other. While the Agreement obligates the Contracting Parties, under certain circumstances, to *consider* adopting the global technical regulations within their own jurisdictions, it does not obligate the Parties to adopt them. The Agreement recognizes that governments have the right to determine whether the global technical regulations established under the Agreement are suitable for their own particular safety needs. Those needs vary from country to country due to differences in the traffic environment, vehicle fleet composition, driver

[1] The Economic Commission for Europe was established by the United Nations (UN) in 1947 to help rebuild post-war Europe, develop economic activity and strengthen economic relations between European countries and between them and the other countries of the world.

[2] To aid persons unfamiliar with the 1998 Global Agreement in gaining an understanding of its provisions, this agency has summarized the key aspects in an appendix to this notice. The complete text of the Agreement may be found on the Internet at the following address: http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29glob.html.

[3] The covered equipment and parts include, but are not limited to, exhaust systems, tires, engines, acoustic shields, anti-theft alarms, warning devices and child restraint systems.

characteristics and seat belt usage rates. Further, the Agreement explicitly recognizes the right of governments to adopt and maintain technical regulations that are more stringently protective of health and the environment than the global technical regulations.

The Agreement was negotiated under the auspices of the UN/ECE's World Forum for Harmonization of Vehicle Regulations (WP.29) [4] under the leadership of the United States (U.S.), [5] the European Community (EC), and Japan. Becoming a Contracting Party to the 1998 Global Agreement accomplishes several purposes for the U.S. First, it provides the U.S. with a vote in the establishment of global technical regulations for wheeled vehicles, equipment and parts under the UN/ECE and enables the U.S. to take a leading role in effectively influencing the selection of the level of vehicle safety regulations world wide. [6] Second, it ensures that U.S. standards and their benefits will be properly considered in any effort to adopt a harmonized global technical regulation.

B. Why NHTSA Is Issuing This Request for Comments

The 1998 Global Agreement is nearing entry into force. The Agreement provides that it will enter into force 30 days after the number of Contracting Parties [7] reaches eight. There are now seven Contracting Parties and an eighth country has signed the Agreement subject to ratification. [8]

In early 1999, NHTSA began making preparations for the 1998 Global Agreement's entry into force by issuing a notice requesting public comments on a draft policy statement describing the agency's activities and practices for facilitating public participation with respect to motor vehicle safety issues that arise in the implementation of the Agreement. [9] The draft statement also set forth the general substantive policy goals regarding vehicle safety that the agency will pursue in participating in the implementation of the agreement. Those goals are: (a) Advance vehicle safety by identifying the best safety practices among the safety standards from around the world and incorporating those practices into the U.S. standards or by developing and adopting new standards reflecting anticipated technological advances and current and anticipated safety problems, [10] (b) preserve the agency's ability to adopt standards that meet U.S. vehicle safety needs, and (c) harmonize the U.S. safety standards with those of other countries to the extent consistent with maintaining or improving existing levels of motor vehicle safety in the U.S. NHTSA will issue a final version of the policy statement shortly.

Now that the Agreement's entry into force appears imminent, NHTSA is issuing this notice to obtain public comments on a list of preliminary recommendations of standards or aspects of standards for consideration by the Contracting Parties in prioritizing the development and establishment of global technical regulations under the Agreement. The agency believes that the recommendations will serve the interest of improving motor vehicle safety in the U.S. They will also help to carry out the 1998 Global Agreement's goal of continuously improving and seeking high levels of safety around the world. In turn, accomplishing that goal will promote the development of new and/or better U.S. standards, thus leveraging NHTSA's resources available for such development.

NHTSA cautions that its list of preliminary recommendations for the initial priorities under the 1998 Global Agreement should not be mistaken for the much more inclusive list of its activities under the former National Traffic and Motor Vehicle Safety Act, 49 U.S.C. 30101 *et seq.* ("the Vehicle Safety Act").

Based on available information and analysis concerning the relative level of stringency and benefits of U.S. and foreign standards and regulations, NHTSA has placed its preliminary recommendations into two categories: (1) Priority recommendations, and (2) Other recommendations.

The "priority recommendations" category includes some foreign standards or aspects of those standards that may represent best current safety practices among the existing national and regional standards and should therefore be considered by the Contracting Parties when establishing global technical regulations. [11] If those standards or aspects of standards do, in fact, represent best practices, their addition to the U.S. standards would improve vehicle safety in the U.S. [12] In allocating its resources among its preliminary recommendations, the agency will give priority to the recommendations in this category. If NHTSA's research and analysis indicates that a foreign standard, in whole or in part, is indeed more beneficial to safety, the agency anticipates that it will propose under the Vehicle Safety Act to raise its standards at least to the level of that foreign standard. [13] The standards in this category were largely drawn from NHTSA's ongoing upward harmonization activities under the Vehicle Safety Act.

The "other recommendations" category includes some U.S. standards or aspects of those standards that appear to represent best current safety practices and should therefore be considered by the Contracting Parties when establishing global technical regulations. NHTSA would like to obtain international review and feedback concerning these U.S. standards. Such feedback and review

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[4] Formerly, "Working Party on the Construction of Vehicles (WP.29)".

[5] The U.S. was represented in those negotiations by this agency and the U.S. Environmental Protection Agency (EPA).

[6] The U.S. does not have a vote under an existing earlier UN/ECE agreement regarding wheeled vehicles, equipment and parts, known as the "1958 Agreement" because it is not a contracting party to that agreement. Historically, the United States did not become a contracting party to the 1958 Agreement because (1) it was not feasible to develop regulations regarding motor vehicle safety in what was then a primarily common European regulatory development forum and (2) NHTSA's enforcement procedures precluded the U.S. from engaging in the 1958 Agreement's mutual recognition obligations. Although the 1958 Agreement was amended in late 1995 to reduce the impediments to becoming a contracting party, the U.S. determined that further amendments were desirable. Ultimately, it determined in talks with the contracting parties to the 1958 Agreement that the most desirable course of action was to develop a new, parallel agreement.

[7] As used here and in the balance of this notice, "Contracting Parties" refers to Contracting Parties to the 1998 Global Agreement.

[8] The first seven Contracting Parties are: Canada, the EC, France, Germany, Japan, United Kingdom, and the U.S. The Republic of South Africa has signed the Agreement subject to ratification. The Russian Federation reports that its signing of the Agreement is imminent.

[9] Draft NHTSA statement of policy concerning the agency's goals in the implementation of the 1998 Global Agreement. (January 5, 1999; 64 FR 563)

[10] For example, if the U.S. examined its standard and those of other countries addressing a particular safety problem and concluded that the standard of country A represented best safety practices, i.e., produced more safety benefits than all the other counterpart standards, the U.S. would propose to raise its standard to the level of country A's standard. Consideration of anticipated technological advances and current and anticipated safety problems might lead the U.S. to propose to raise its standard even higher.

[11] NHTSA wants to emphasize that neither the list in this category nor the list in the second category is exhaustive. The purpose in developing these lists is not to provide a complete census of all standards or aspects of standards that may represent best practices. Instead, the purpose is to provide recommendations regarding a limited number of standards on which the Contracting Parties should initially focus their efforts.

[12] Whether a standard or aspect of a standard actually represents best practices is best determined through analysis of real world crash data and research data.

[13] During the development of all proposals and during WP.29 proceedings, best available technology and future technology will be considered.

may lead to improvements in the U.S. standards. Further, the agency believes that it is important to ensure that global technical regulations are established at levels not less than those of the U.S. standards. The standards in this category were selected largely because they address safety problems that are the subject of either NHTSA's ongoing upward harmonization activities under the Vehicle Safety Act or WP.29's ongoing activities.

In anticipation of the 1998 Global Agreement's entry into force, interest groups and other governments have also begun to make recommendations concerning vehicle safety priorities for harmonization activities under the Agreement. At the 120th Session of WP.29 in March 2000, the U.S. and other Contracting Parties were asked to develop their own recommendations. We have placed a document in the docket for this notice, entitled "Summary of Suggestions by the Governments of Japan and the Russian Federation and by Various Industry and Consumer Groups for Technical Regulations to be Established under 1998 Global Agreement." The documents from which those suggestions were drawn have also been placed in the docket for this notice.

II. NHTSA's Preliminary Recommendations for the Initial Subjects To Be Considered Under the 1998 Global Agreement

A. Priority Recommendations

Head Restraints: NHTSA received a petition from the former American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers (AIAM) requesting that NHTSA recognize the ECE head restraint standard as functionally equivalent to the U.S. head restraint standard (Federal Motor Vehicle Safety Standard (FMVSS) No. 202). Based on the agency's comparison of the dimensional requirements of the standards, the ECE standard appears to be more stringent in several important respects. NHTSA intends to propose upgrading the U.S. head restraint standard to at least the level of the ECE standard.

Steering column movement: Currently, the ECE regulation limits rearward and vertical movement of the steering column, while the U.S. standard (FMVSS No. 204) limits rearward movement only. Vertical displacement and misalignment of the steering wheel may result in head, upper chest and abdominal injuries. NHTSA has begun studying the safety consequences of rearward and vertical displacement as part of its offset frontal crash test evaluation program. (See the next entry entitled "Frontal offset.")

Frontal offset: NHTSA believes that the use of a full frontal crash test, supplemented by a frontal offset crash test, would enhance the safety of all passengers. The full frontal crash test requirements have led to significant reductions in head, neck and chest injuries, while frontal offset crash test requirements are expected to reduce lower extremity injuries.

In fiscal years 1996 and 1997, Congress provided NHTSA with funds to be used toward establishing a U.S. standard for frontal offset crash testing. It directed NHTSA to work with interested parties, including the automotive industry, to develop such a standard under established rulemaking procedures and further stated that these activities should reflect ongoing efforts to enhance international harmonization of safety standards. NHTSA has been evaluating the European offset test and plans to propose a high speed belted offset test with a fixed deformable barrier as a supplement to its existing full frontal test. A lower speed offset requirement (i.e., 40 kmph) already has been incorporated as part of the agency's advanced air bag final rule issued in May 2000. That test is intended to ensure that crash sensors work properly in offset crashes.

Dummy (10 year old child): Currently, the largest dummy specified in the ECE child restraint regulation is a 10 year old dummy, while the largest child dummy specified in the U.S. child restraint standard (FMVSS No. 213) is a 6 year old dummy. A 10 year old dummy represents children weighing 70–75 lb., while a 6 year old dummy represents children weighing about 50 lb. NHTSA's addition of a 10 year old dummy to FMVSS No. 213 would allow it to assess the safety of 70–75 lb. children restrained in lap/shoulder belt with or without a booster seat, as well as in belt positioning devices that are marketed for use by older children and small-statured adults. The addition of that dummy to the U.S. occupant protection (air bags and seat belts) standard (FMVSS No. 208) could also aid in minimizing the risk of air bag-induced injuries to children in that weight range.

Side impact dummy (SID): In 1996, Congress instructed NHTSA to develop a plan to harmonize the U.S. side impact standard and the ECE side impact regulation. In 1997, NHTSA received a petition from AAMA, AIAM and the Insurance Institute for Highway Safety to recognize the ECE regulation as functionally equivalent to the U.S. standard (FMVSS No. 204). NHTSA has recently denied the petition based on test results and analyses (May 24, 2000; 65 FR 33508). However, in its denial, as well as its report to Congress, NHTSA stated that it will consider proposing to adopt EuroSID–2, a modified version of the ECE dummy, EuroSID–1, and the ECE injury assessment criteria.[14] The EuroSID–2 measures the potential for injury not only to the same portions of body measured by the U.S. dummy, but also to portions (*i.e.*, head, upper neck and abdomen) that the U.S. dummy does not measure.

Car tires: The Rubber Manufacturers Association and five other tire industry organizations from around the world petitioned NHTSA to amend the U.S. standard (FMVSS No. 109) to adopt a standard, Global Tire Standard 2000, which was agreed upon by the tire industry worldwide. The same proposal was submitted to WP.29 for consideration as a global regulation. The agency considers tire harmonization to be a priority because FMVSS No. 109, which was developed primarily for bias-ply tires, needs to be updated and upgraded for radial tires. The agency also believes that certain test requirements in other national standards are more appropriate for radial tires and that their adoption would be an improvement over the bias-ply tire provisions in the U.S. standard. The goal is to harmonize the performance requirements of tires by adopting best practices in national tire standards from around the world and, to the extent that supporting data are available, improve those practices.

Signal lamp visibility: The ECE lighting performance requirements are set forth in several different regulations. We are seeking to harmonize the ECE regulations and any other national regulations regarding signal lamp visibility with the counterpart provisions in the U.S. standard on lighting (FMVSS No. 108).

NHTSA has issued a notice for proposed rulemaking (NPRM) based on the ECE requirements for signal lamp visibility. The agency initiated this rulemaking in response to a petition by Working Party "Brussels 1952" (also known as Groupes Travails Bruxelles (GTB)), a association of lighting and vehicle manufacturers' technical experts, requesting that the U.S. adopt more objective lamp visibility requirements. The geometric visibility angles for some lamps are greater under the ECE regulation. The proposal uses

[14] "Status of NHTSA Plan for Side Impact Regulation Harmonization and Upgrade, Report to Congress, March 1999." See Docket No. NHTSA–98–3935–10.

the area measurement method for determining signal visibility as contained in the current U.S. standard and, as an alternative, the light intensity measurement of the ECE regulation. The proposal also includes specified angles for viewing locations that are specified only in the ECE regulation. The adoption of this proposal would improve enforceability through increasing objectivity and improve safety through increasing the visibility of some lamps.

Vehicle classification: Vehicle classification is a fundamental issue because it affects the applicability of all safety standards and regulations. A significant difference in classification is that vans and sport utility vehicles are classified as passenger cars in many countries, but as multipurpose passenger vehicles in the U.S. and Canada.

In response to a submission by Japan, the Administrative Committee of WP.29 agreed during the 121st Session of WP.29 in July 2000 that an informal group should be established under the Working Party on General Safety Provisions for the purpose of developing common definitions of vehicle classes and vehicle mass and dimensions for vehicle safety purposes. The Committee agreed further that the group should be chaired by Japan. One possible outcome of revising the definitions would be to increase the extent to passenger carrying vehicles are regulated in similar ways.

B. Other Recommendations

Upper interior impact protection: WP.29 is contemplating the possibility of updating the ECE head impact regulation. Thus, the opportunity exists for developing a harmonized global regulation. The development of such a regulation should reflect due consideration of NHTSA activity in this area in the mid-1990's. NHTSA upgraded the U.S. interior impact protection standard (FMVSS No. 201) in 1995 by adding performance requirements for the upper interior of vehicles. The standard utilizes an up-to-date free motion headform that is propelled into various interior target locations at various angles. The standard was later amended to incorporate a side impact pole test in order to allow and/or encourage inflatable devices that provide superior head protection.

Full frontal crash test: For the reasons stated above, NHTSA believes that the safety of all passengers would be enhanced by assessing the protection provided to both 50th percentile adult male dummies and 5th percentile adult female dummies in a full frontal crash test, and a supplementary frontal offset crash test. NHTSA notes that the ECE regulations do not currently specify a full frontal crash test. Further, the ECE offset crash test regulation does not assess the protection of 5th percentile adult female dummies and does not assess the risks posed by air bags to either those dummies or child dummies.

Lower anchors and tethers for children: The U.S. standard (FMVSS No. 225) requires a new, dedicated system of anchorages for securing child restraints in motor vehicles. The system consists of two anchorages in the vehicle seat bight (*i.e.*, the area where the seat back and the seat cushion meet) and a top tether. [15] The U.S. strength requirements differ from the International Organization for Standardization (ISO) [16] requirements for lower anchorages and the Canadian requirements for tethers. This is because the U.S. requirements are intended to protect children who weigh up to 50 pounds, while both the ISO and Canadian requirements are based on a 3 year old, 33-pound child. Further, new child seats have recently been marketed for use to restrain children weighing up to 65 pounds. NHTSA has made efforts to ensure that the requirements in the U.S. standard are objective and meet the need to protect those larger children. For example, NHTSA specified the failure of an anchorage in terms of a measurable displacement instead of a subjective criterion such as whether the anchorage "withstands" a specified force.

WP.29 is currently working on upgrading the ECE child restraint regulation and is leaning toward adopting slightly different bars and using legs, *i.e.*, braces extending between the lower front of the child restraint and the vehicle floor, instead of tethers. Working with WP.29 at this stage will minimize divergences in the U.S. standard and the ECE regulations while ensuring that children worldwide receive the best protection possible.

Door retention components: The existing U.S. and foreign standards have been in place a long time. NHTSA has already begun work to upgrade the U.S. standard (FMVSS No. 206). Sharing this work with WP.29 and seeking comments at the outset about current and future best practices could eliminate potential future divergences and lead to a global technical regulation.

Fuel system integrity: The existing U.S. and foreign standards are, for the most part, similar and have been in place a long time. NHTSA has already begun work to upgrade the U.S. standard (FMVSS No. 301). Sharing this work with WP.29 and seeking comments at the outset about current and future best practices could eliminate potential future divergences and lead to a global technical regulation.

Controls and displays: No ECE regulation exists on this subject. Further, the European Union (EU) directive on this subject lacks many of the location and illumination requirements of the U.S. standard (FMVSS No. 101) and concentrates mainly on symbols. WP.29 is interested in developing an ECE regulation on controls and displays and has asked the U.S. and Canada to develop a draft harmonized standard that will incorporate control and display requirements currently in standards of other countries. The draft will include requirements regarding visibility, illumination and location of controls and displays, and will specify many standardized ISO symbols as mandatory or optional.

Area of windshield cleared by defrosters, defoggers, and windshield wipers: The agency was petitioned by the AAMA and AIAM to recognize the EU directive as functionally equivalent to the U.S. standards (FMVSS No. 103 and 104). Based on its assessment of the differences between the directive and standard, NHTSA denied the petition. The swept and cleared areas in the U.S. standards are greater that those in the EU directive. In its denial notice, NHTSA announced that it will seek a globally harmonized regulation under WP.29 that would include the larger swept and cleared areas under the U.S. standards. WP.29 is interested in establishing a global regulation on this subject.

III. Technical Regulations for Future Consideration by NHTSA

Under the International Harmonized Research Activities (IHRA), working groups have been formed to address specific issues. These six groups are: (1) Biomechanics, (2) Side Impact, (3) Advanced Offset Frontal Crash

[15] Each lower anchorage will include a rigid round rod or "bar" unto which a hook, a jaw-like buckle or other connector can be snapped. The upper anchorage will be a ring-like object to which the upper tether of a child restraint system can be attached.

[16] The International Standards Organization (ISO) is a non-governmental, worldwide federation of national standards bodies from approximately 130 countries. *(http://www.iso.ch/)* It was established in 1947. Its mission is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity. Its work is carried out through a hierarchy of technical committees, subcommittees, and working groups.

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Protection, (4) Vehicle Compatibility, (5) Pedestrian Safety, and (6) Intelligent Transportation Systems. The working groups are comprised of government officials and of industry and other nongovernmental organization members nominated by their respective governments.

The following working groups are conducting research in areas that the NHTSA foresees contributing to future harmonization activity:

Side impact (side impact barrier and test procedure): The group is considering a proposal for a dynamic side crash test. The details of the test procedures are still under discussion. It is hoped that the quantified requirements that evolve will be flexible enough to allow the various countries to select requirements suited to their individual needs. Participating members of the working group will test vehicles to assess the validity of the proposed test procedures.

Advanced offset frontal crash: The working group's approach is to develop a fixed deformable barrier offset test for the near term, and for the long term to develop a test procedure based on the use of a moving deformable barrier. Major topics of discussion have included vehicle categories for consideration, type of barrier (rigid vs. deformable), impact speed, performance criteria, air bag performance, impact angle, and trolley characteristics.

Vehicle compatibility: The aim of this work is to develop internationally agreed upon test procedures designed to improve the compatibility of passenger car and light truck structures in front-to-front and in front-to-side impacts, thus enhancing the level of occupant protection in these crash modes. A concept for improved vehicle compatibility that has emerged from discussions to date involves limiting the amount of crush that the occupant compartment sustains while also limiting the magnitude and location of crash loading that a colliding vehicle can impose during a crash. Activities have been recently initiated by the working group members to explore this concept.

Pedestrian safety: The working group is assembling field data from the various countries into a unified database. Research priorities are being established based on these data, with the first priority given to head protection for both adults and children. Adult leg protection is also high on the priority list. Existing component level test procedures for head, leg, and thigh/pelvis are being examined for future harmonization efforts.

IV. Issues for Public Comment

To facilitate NHTSA's selection of the initial technical regulations to be recommended for development under the 1998 Global Agreement, NHTSA requests responses to the following questions. If you respond to any of the questions by suggesting changes to the agency's list of preliminary recommendations, we request that you support your suggestions with real world crash data and research data.

1. Should any changes be made to the agency's list of preliminary recommendations? If you believe that any changes should be made to the list, describe the changes and explain why they should be made.

For example, should the agency add to its list any other standards (*e.g.*, brakes and lighting) on which significant amounts of time and resources have already been spent in an effort to update/upgrade and harmonize them? Should the agency add any of the standards that are being harmonized under an earlier agreement administered by WP.29 known as the "1958 Agreement"? [17]

2. Should any of the standards or items listed in "Summary of Suggestions by the Governments of Japan and the Russian Federation and by Various Industry and Consumer Groups for Technical Regulations to be Established under 1998 Global Agreement" be added to the agency's list of preliminary recommendations? (As noted above, that document has been placed in the docket for this notice.) If so, explain why they should be added.

3. In the long term, what relationship should NHTSA establish between its rulemaking activities under the Vehicle Safety Act and WP.29's priority activities under the 1998 Global Agreement? To what extent, and how, should those two different sets of activities be linked so that both sets advance vehicle safety?

V. Future Actions

NHTSA will take all public comments into account and publish a revised list of recommendations. The agency will present its list to WP.29 in November and use it in deliberating with other Contracting Parties concerning the establishment of priorities under the 1998 Global Agreement.

[17] The full formal title of the 1958 Agreement is the "Agreement concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions."

Appendix—Highlights of the 1998 Global Agreement

- The Agreement establishes a global process under the United Nations, Economic Commission for Europe (UN/ECE), for developing and harmonizing global technical regulations ensuring high levels of environmental protection, safety, energy efficiency and anti-theft performance of wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles. Motor vehicle engines are included. (Preamble, Art. 1)
- Members of the ECE, as well as member countries of the United Nations that participate in certain ECE activities, are eligible to become Contracting Parties to the 1998 Global Agreement. Specialized agencies and organizations that have been granted consultative status may participate in that capacity. (Art. 2)
- The Agreement will enter into force when a minimum of eight (8) countries or regional economic integration organizations become Contracting Parties. At least one of the eight must be either the EC, Japan, or the U.S. (Art. 11)
- The Agreement explicitly recognizes the importance of continuously improving and seeking high levels of safety and environmental protection and the right of national and subnational authorities, *e.g.*, California, to adopt and maintain technical regulations that are more stringently protective of health and the environment than those established at the global level. (Preamble)
- The Agreement explicitly states that one of its purposes is to ensure that actions under the Agreement do not promote, or result in, a lowering of safety and environmental protection within the jurisdiction of the Contracting Parties, including the subnational level. (Art. 1)
- To the extent consistent with achieving high levels of environmental protection and vehicle safety, the Agreement also seeks to promote global harmonization of motor vehicle and engine regulations. (Preamble)
- The Agreement recognizes that governments have the right to determine whether the global technical regulations established under the Agreement are suitable for their needs. (Preamble)
- The Agreement emphasizes that the development of global technical regulations will be transparent. (Art. 1)

Annex A provides that the term "transparent procedures" includes the opportunity to have views and arguments represented at:

(1) Meetings of Working Parties of Experts through organizations granted consultative status; and

(2) Meetings of Working Parties of Experts and of the Executive Committee (*i.e.*, the Contracting Parties to the 1998 Global Agreement) through pre-meeting consulting with representatives of Contracting Parties.

- The Agreement provides two different paths to the establishment of global technical regulations. The first is the harmonization of existing standards. The second is the establishment of a new global technical regulation where there are no existing standards. (Article 6.2 and 6.3)

- The process for developing a harmonized global technical regulation includes a technical review of existing regulations of the Contracting Parties and of the UN/ECE regulations, as well as relevant international voluntary standards (*e.g.*, standards of the International Standards Organization). If available, comparative assessments of the benefits of these regulations (also known as functional equivalence assessments) are also reviewed. (Art. 1.1.2, Article 6.2)
- The process for developing a new global technical regulation includes the assessment of technical and economic feasibility and a comparative evaluation of the potential benefits and cost effectiveness of alternative regulatory requirements and the test method(s) by which compliance is to be demonstrated. (Article 6.3)
- To establish any global technical regulation, there must be a consensus vote, *i.e.*, all Contracting Parties present and voting must vote for establishment. Thus, if any Contracting Party votes against a recommended global technical regulation, it would *not* be established. (Annex B, Article 7.2)
- The establishment of a global technical regulation does not obligate Contracting Parties to adopt that regulation into its own laws and regulations. Contracting Parties retain the right to choose whether or not to adopt any technical regulation established as a global technical regulation under the Agreement. (Preamble, Article 7)
- Consistent with the recognition of that right, Contracting Parties have only a limited obligation when a global technical regulation is established under the Agreement. If a Contracting Party voted to establish the regulation, that Contracting Party must initiate the procedures used by the Party to adopt such a regulation as a domestic regulation. (Article 7)

For the U.S., this would likely entail initiating the rulemaking process by issuing an Advanced Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM). If the U.S. were to adopt a global technical regulation into national law, it would do so in accordance with all applicable procedural and substantive statutory provisions, including the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*, the Vehicle Safety Act, and comparable provisions of other relevant statutes, such as the Clean Air Act.

- The Agreement allows the inclusion in global technical regulations of a "global" level of stringency for most parties and "alternative" levels of stringency for developing countries. In this way, all countries, including the developing ones, will have an interest in participating in the development, establishment, adoption and implementation of global technical regulations. It is anticipated that a developing country may wish to begin by adopting one of the lower levels of stringency and later successively adopt higher levels of stringency. (Article 4)

Issued on: July 12, 2000.

Julie Abraham,

Director, Office of Harmonization.

[FR Doc. 00–18130 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33896]

Ohio Southern Railroad, Inc.—Acquisition and Operation Exemption—Glouster Coal Company, Glouster, OH

Ohio Southern Railroad, Incoporated (OSRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease from Glouster Coal Company (Glouster Coal) and operate approximately 0.6 miles of existing right-of-way and industrial trackage (milepost 56.7-milepost 57.3), near Glouster, OH (line).[1]

The transaction was expected to be consummated promptly following the effective date of the exemption. The earliest the transaction could be consummated was July 7, 2000, 7 days after the exemption was filed.

The transaction is related to *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company*, STB Finance Docket No. 33895 (STB served July 18, 2000), and *Ohio Southern Railroad, Incorporated—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company*, STB Finance Docket No. 33902 (STB served July 18, 2000) to exempt OSRR's extension of its lines from Wilbren, OH, to New Lexington, OH, and OSRR's trackage rights over Norfolk Southern Railway Company's (NSR) West Secondary line from New Lexington to a point near Glouster. Upon consummation of these transactions OSSR will be able to provide coal transportation service in conjunction with NSR from the Buckingham Mine to Glouster Coal's customers located on or accessed via the lines of OSRR.[2]

[1] According to the verified notice of exemption, the trackage is presently exempt industrial track within the meaning of 49 U.S.C. 10906; it is located entirely on property owned by Glouster Coal and was built and intended to be used for the sole purpose of enabling Glouster Coal to ship coal from its Buckingham Mine.

[2] On July 5, 2000, NSR filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered an agreement between Pennsylvania Lines, LLC, NSR and OSRR for the grant by OSRR to NSR of overhead and local trackage rights over the line. The trackage rights will enable NSR to initiate new operations over the line to serve the existing customer and to provide a competitive alternative to OSRR for any new customers that may choose to locate on the line. *See Norfolk Southern Railway Company—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated in Athens County, OH*, STB Finance Docket No. 33899 (STB served July 18, 2000).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33896, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, NW, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 11, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18044 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33899]

Norfolk Southern Railway Co.—Trackage Rights Exemption—Ohio Southern Railroad, Inc. in Athens County, OH

Ohio Southern Railroad, Incorporated (OSRR) has agreed to grant overhead and local trackage rights to Norfolk Southern Railway Company (NS) over OSRR's mainline of railroad between the division of control/ownership between OSRR and the Pennsylvania Lines LLC line of railroad operated by NS, milepost RR–65.7 (OSRR's milepost 56.7) at Glouster, OH, and the end of OSRR's line of railroad at OSRR's milepost 57.3 at South Glouster, OH, a total distance of approximately 0.6 miles.

The transaction is related to and will be effective on the consummation of OSRR's acquisition of the line pursuant to its notice of exemption filed June 30, 2000, in STB Finance Docket No. 33896, *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Glouster Coal Company, Glouster, OH.*

NS says that the purpose of this trackage rights is to permit it to initiate new operations over the line to serve the existing customer and to provide a competitive alternative to OSRR for any

new customers that may choose to locate on the line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33899, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John V. Edwards, Norfolk Southern Railway Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Decided: July 11, 2000.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18045 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33900]

Norfolk Southern Railway Co.—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated in Perry County, OH

Ohio Southern Railroad, Incorporated (OSRR) has agreed to grant overhead trackage rights to Norfolk Southern Railway Company (NS) over OSRR's mainline of railroad between the division of control/ownership between OSRR and the Pennsylvania Lines LLC (PRR) line of railroad operated by NS, (1) between milepost RQ–36.0 at Wilbren, and the south wye connection, milepost RQ–38.1, at New Lexington, OH, known as the Rosevillle Industrial Track, and (2) the above-mentioned milepost RQ–38.1 and milepost RR–47.3 of PRR's line knows as the West Virginia Secondary, a total distance of approximately 2.3 miles.

NS states that the transaction is related to and will be effective on the consummation of OSRR's acquisition of the line pursuant to its notice of exemption filed June 30, 2000, in STB Finance Docket No. 33895, *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company.*

The purpose of this trackage rights is to permit NS to continue operations over the line recently subleased by NS and PRR to OSRR and to facilitate the development of a more efficient routing for both OSRR and NS. *See* STB Finance Docket No. 33895.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33900, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John V. Edwards, Norfolk Southern Railway Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 11, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18047 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33895]

Ohio Southern Railroad, Inc.—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company

Ohio Southern Railroad, Incorporated (OSRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by sublease from Pennsylvania Lines LLC (PRR) and Norfolk Southern Railway Company (NSR) and operate approximately 2.1 route miles of rail line between milepost RQ 36.0, at Wilbren, OH, and milepost RQ 38.1, at New Lexington, OH (line).[1]

The transaction was expected to be consummated promptly following the effective date of the exemption. The earliest the transaction could be consummated was July 7, 2000, 7 days after the exemption was filed.

The transaction is related to *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Glouster Coal Company, Glouster*, OH, STB Finance Docket No. 33896 (STB served July 18, 2000) and *Ohio Southern Railroad, Incorporated—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company*, STB Finance Docket No. 33902 (STB served July 18, 2000), to exempt OSRR's extension of service over Glouster Coal Company's line serving its Buckingham Mine and OSRR's trackage rights over NSR's West Secondary line from New Lexington to a point near Glouster, OH. Upon consummation of these transactions OSRR will be able to provide coal transportation service in conjunction with NSR from the Buckingham Mine to customers of Glouster Coal Company located on or accessed via the lines of OSRR.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33895, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

[1] On July 5, 2000, NSR filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered an agreement between PRR, NSR and OSRR for the grant by OSRR to NSR of overhead trackage rights over the line. The trackage rights will enable NSR to continue operations over the line and facilitate the development of a more efficient routing for both OSRR and NSR to move traffic more expeditiously in the region. *See Norfolk Southern Railway Company—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated in Perry County, OH*, STB Finance Docket No. 33900 (STB served July 18, 2000).

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 11, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18043 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33902]

Ohio Southern Railroad, Inc.—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Co.

Pennsylvania Lines LLC and Norfolk Southern Railway Company (NSR) have agreed to grant overhead trackage rights to Ohio Southern Railroad, Incorporated (OSRR) over 18.4 miles of the West Virginia Secondary line between milepost RR 47.3, at New Lexington, OH, and milepost RR 65.7, near Glouster, OH (line).[1]

The earliest the transaction can be consummated is July 12, 2000, the effective date of the exemption. However, the parties have stated that consummation will not occur until an agreed upon date has been established by OSRR and NSR, which is expected to occur following the latter of (1) the effective date of the exemption, or (2) the expiration of any NSR's labor notice to its employees.

The trackage rights will permit OSRR to bridge presently unconnected segments of its line, and to initiate direct, single carrier service from Glouster Coal Company's Buckingham Mine to Zanesville, OH.[2] The purpose of the transaction is to maintain and enhance the financial and operational stability of OSRR, to maintain efficient rail service over its lines, and to reduce the number of inter-carrier interchanges needed to move coal from the Buckingham Mine to Glouster Coal Company's customers.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33902, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 11, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18046 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The line is owned by PRR and operated by NSR.

[2] This transaction is related to *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company*, STB Finance Docket No. 33895 (STB served July 18, 2000), and *Ohio Southern Railroad, Incorporated-Acquisition and Operation Exemption-Glouster Coal Company, Glouster, OH*, STB Finance Docket No. 33896 (STB served July 18, 2000), to exempt OSRR's extension of its lines from Wilbren, OH, to New Lexington, and from a point on NSR's West Virginia Secondary line near Glouster, to the Buckingham Mine.

Corrections

Federal Register
Vol. 65, No. 138
Tuesday, July 18, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–02]

Announcement of Funding Awards for Fiscal Year 1999 for the Rental Voucher and Rental Certificate Programs

Correction

In notice document 00–8203, beginning on page 17661, in the issue of Tuesday, April 4, 2000, make the following corrections:

1. On page 17663, in the table, under the heading "Address", remove "Litigation (Vouchers)".

2. On page 17664, in the table, under the heading "Address", remove "Litigation (Vouchers)".

3. On page 17665, in the table, under the heading "Address", remove "Litigation (Vouchers)".

4. On page 17666, in the table, under the heading "Address", remove "Litigation (Vouchers)".

5. On page 17668, in the table, under the heading "Address", remove "Litigation (Vouchers)".

6. On page 17669, in the table, under the heading "Address", remove "Litigation (Vouchers)".

7. On page 17670, in the table, under the heading "Address",remove "Litigation (Vouchers)".

[FR Doc. C0–8203 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG50

Revision of Fee Schedules; 100% Fee Recovery, FY 2000

Correction

In rule document 00–14496, beginning on page 36946, in the issue of Monday, June 12, 2000, make the following corrections:

1. On page 36953, in the third column, above the table, after "annual fees:" remove "FY 1999 FY 2000".

2. On page 36954, in Table I, under the heading "Reactor program"

a. In the third line "$98.8" should read "$98.8M".

b. In the fourth line, "$ 255.3" should read "$ 255.3M".

c. In the fifth line, "-1" should read "-.1M".

d. In the sixth line, " $255.2" should read " $ 255.2M".

3. On page 36954, in the table, under the heading " Materials Program":

a. In the third line, "$27.9" should read " $27.9M".

b. In the fourth and sixth lines, " $72.2" should read " $72.2M ".

§ 171.16 [Corrected]

4. On page 36965, in § 171.16(c)(4), in the second column, in the second line, "2,300" should read $2,300".

Appendix A [Corrected]

5. On page 36971, in appendix A, in Table 2:

a. Under the heading "Services 3N", in the third line, add " 130".

b. Under the heading " Industrial radiography 3O", in the third line, add " 280".

c. Under the heading " Gauges 3P", in the third line, add " 80".

d. Under the heading "Well logging 5A", in the third line, add " 320".

[FR Doc. C0–14496 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Help Supply Services

Correction

In rule document 00–14015 beginning on page 35810 in the issue of Tuesday, June 6, 2000, make the following corrections:

§121.201 [Corrected]

1. On page 35812, in the third column, the heading for section 121.201 should be moved down so that it is above amendatory instruction 3.

2. On page 35813, in the first column, in the table, in the column for "Size standards in number of employees or millions of dollars", "10.0" should read "$10.0".

[FR Doc. C0–14015 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8878]

RIN 1545–AU61

Tax Treatment of Cafeteria Plans

Correction

In rule document 00–5817 beginning on page 15548 in the issue of Thursday, March 23, 2000, make the following correction:

On page 15550, at the end of the first column, footnote 8 should read as follows: "See §1.125–3, published as a proposed rule at 60 FR 66229 (December 21, 1995)."

[FR Doc. C0–5817 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
July 18, 2000

Part II

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 2000; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 00–58; FCC 00–240]

Assessment and Collection of Regulatory Fees For Fiscal Year 2000

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for Fiscal Year 2000. The Communications Act of 1934 ("Act"), as amended, provides for the annual assessment and collection of regulatory fees. For Fiscal Year 2000, changes to the Schedule of Regulatory Fees will be made per section 9(b)(2) of the Act. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Effective September 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445, or Roland Helvajian, Office of Managing Director at (202) 418–0444.

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Separate Statement of Commissioner Harold Furchtgott-Roth, Approving in Part, Dissenting in Part Text of Final Rule

I. Introduction

1. By this *Report and Order*, the Commission concludes a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 2000.[1]

2. Congress has required that we collect $185,754,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 2000.[2] This amount is $13,231,000 or approximately 7.67% more than the amount that Congress designated for recovery through regulatory fees for FY 1999.[3] Thus, we are revising our fees to collect the increased amount that Congress has specified. Additionally, we are amending the Schedule in order to simplify and streamline it.

3. In revising our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with section 9(b)(2). The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.[4]

4. We also note that Congress has before it for consideration a Supplemental Appropriation Act "[u]nder the heading 'Federal Communications Commission, salaries and Expenses' in title V of H.R. 3421 of the 106th Congress, as enacted by section 1000(a)(1) of Public Law 106–113," which proposes to increase the amount we must collect in FY 2000 regulatory fees by $5.8 million to an aggregate total of $191,554,000. This would be an increase of approximately 3.12 percent over the $185,754,000 the Congress originally requested. If this additional increase or (any other increase) is enacted by the Congress, we will adjust the Schedule of Regulatory Fees adopted in this Report and Order by first applying the increase percentage to the expected revenues contained in this decision. Then, we will divide the new expected revenues by the estimated number of payment units detailed in this decision and adjust for rounding as required by section 9(b)(2). 47 U.S.C. 159(b)(2). We delegate to the Managing Director authority to issue a subsequent order amending the Schedule of Regulatory Fees for FY2000 to reflect the change in the law, should it be enacted.

II. Background

5. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.[5] See Attachment G for a description of these activities. In our *FY 1994 Fee Order*,[6] we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress.[7] Subsequently, we modified the fee Schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our prior experience administering the program.[8]

6. As noted, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.[9] Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress

[1] 47 U.S.C. 159 (a) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, FCC 00–117, Notice of Proposed Rulemaking (NPRM) released April 3, 2000, 65 FR 19580 (Apr. 11, 2000).

[2] Public Law 106–113 and 47 U.S.C. 159(a)(2).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, FCC 98–200, released June 18, 1999, 64 FR 35831 (Jul. 1, 1999).

[4] 47 CFR 1.1152 through 1.1156.

[5] 47 U.S.C. 159(a).

[6] 59 FR 30984 (Jun. 16, 1994).

[7] 47 U.S.C. 159(b), (f)(1).

[8] 47 CFR 1.1151 *et seq.*

[9] 47 U.S.C. 159(b)(2), (b)(3).

requires us to recover through regulatory fees.[10]

7. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services."[11]

8. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of various services that are subject to a fee, and for other purposes.[12] For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1997 fees without incorporation of costs. This methodology, which we continued to use for FY 1998, enabled us to develop regulatory fees which we believed would be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, while still consistent with the public interest, on the actual costs of regulating those services that are subject to a fee. However, we found that developing a regulatory fee structure based on cost information did not produce the desired results. We were anticipating that our regulatory costs would level off or, perhaps, decline causing these adjustments to decrease from the 25 percent towards zero. Since our regulatory costs have continued to rise, this methodology was discontinued. Therefore, we chose to base the FY 1999 fees only on the basis of "Mandatory Adjustments". Finally, section 9(b)(4)(B) requires us to notify Congress of any permitted amendments 90 days before those amendments go into effect.[13]

[10] 47 U.S.C. 159(b)(2).

[11] 47 U.S.C. 159(b)(3).

[12] 47 U.S.C. 159(i).

[13] 47 U.S.C. 159(b)(4)(B).

III. Discussion

A. Summary of FY 2000 Fee Methodology

9. As noted, Congress has required that the Commission recover $185,754,000 for FY 2000 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.[14]

10. In developing our FY 2000 fee schedule, we first determined that we should continue to use the same general methodology for "Mandatory Adjustments" to the Fee Schedule that we used in developing the FY 1999 fee schedule. Our regulatory costs continue to rise, and using cost information produced by our current cost accounting system to determine a regulatory fee schedule does not produce the desired result of collecting the amount required by Congress. Therefore, we estimated the number of payment units[15] for FY 2000 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1999 fees. Then we compared this revenue amount to the $185,754,000 that Congress has required us to collect in FY 2000 and pro-rated the difference among all the existing fee categories.

11. Once we established our tentative FY 2000 fees, we evaluated proposals made by Commission staff concerning changes to the Fee Schedule and our collection procedures. These proposals are discussed in paragraphs 15–19 and are factored into our FY 2000 Schedule of Regulatory Fees, set forth in Attachment D.

12. Finally, we have incorporated, as Attachment F, a section entitled "Guidance" that contains detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2000.[16] In the following paragraphs, we describe in greater detail our methodology for establishing our FY 2000 regulatory fees.

[14] 47 U.S.C. 159(a).

[15] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

[16] Attachment F contains updated information concerning any changes made to the proposed fees adopted by this *Report and Order*.

B. Development of FY 2000 Fees

i. Adjustment of Payment Units

13. In calculating FY 2000 regulatory fees for each service, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1999 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.[17]

ii. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by the FY 1999 fees for each category to determine how much revenue we would collect without any change to the FY 1999 Schedule of Regulatory Fees. The amount of revenue which we would collect without changes to the Fee Schedule is approximately $191.6 million. This amount is approximately $5.9 million more than the amount the Commission is required to collect in FY 2000. We then adjusted the revenue requirements for each category on a proportional basis, consistent with section 9(b)(2) of the Act, to obtain an estimate of the revenue requirements for each fee category so that the Commission could collect $185,754,000 as required by Congress. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

15. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(2) of the Act. *See* Attachment C.

[17] It is important to also note that Congress' required revenue increase in total regulatory fee payments of approximately 7.67 percent in FY 2000 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees. Further, distribution of various overhead costs and rounding of fees will also affect the final percentage increase or decrease.

iv. Discussion of Issues and Changes to Fee Schedule

16. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3).[18] Further, we have reviewed the comments received in this proceeding. As a result of this review, we are making the following "Mandatory Adjustments" and adjustments to our Fee Schedule and Guidance:

a. INTELSAT Satellites

17. In our NPRM, we reversed the approach taken in our prior fee orders [19] of treating Comsat as exempt from section 9 geostationary space station fees. We proposed that: "it is clear, that, for FY 2000, Comsat as the United States Signatory to INTELSAT is subject to regulatory fees." *Assessment and Collection of Fees for Fiscal Year 2000*, FCC 00–117 (Apr. 3, 2000) at paragraph 17. We cited the decision of the United States Court of Appeals for the District of Columbia Circuit in *Panamsat Corp.* v. *FCC*, 198 F.3d 890 (D.C. Cir. 1999), which set aside and remanded our 1998 fee order, which did not assess a fee against Comsat. We also cited Congress' enactment on March 17, 2000 of the Open Market Reorganization for the Betterment of International Telecommunications Act (ORBIT). Act of March 17, 2000, Pub. L. 106–180, 114 Stat. 48 (2000). That legislation provides that:

(c) Parity of Treatment—Notwithstanding any other law or executive agreement, the Commission shall have the authority to impose similar regulatory fees on the United States signatory [*i.e.*, Comsat] which it imposes on other entities providing similar services.

18. Comsat contends in its comments that no justification exists for assessing a regulatory fee against it. According to Comsat, the geostationary space station fee contained in the rules since 1993 does not apply to INTELSAT space stations because: (1) they are not licensed by the Commission; (2) they are not regulated under 47 C.F.R. Part 25; and (3) they are non-U.S. facilities outside of United States jurisdiction.[20] Moreover, Comsat asserts that neither *Panamsat* nor ORBIT establishes any new fee uniquely applicable to Comsat, and that Comsat already pays the fees applicable to similarly situated parties. Finally, Comsat urges that any fee imposed on it should be discounted to reflect that: (1) Comsat utilizes only 17.01 percent of INTELSAT'S transponder capacity, and (2) ORBIT was not enacted until March 17, 2000, 2½ months after the October 1, 1999 cut-off for determining liability for FY 2000 regulatory fees. Panamsat Corporation and GE American Communications, Inc. support the analysis set forth in the NPRM. They assert that they will unfairly bear the costs associated with Comsat's participation in INTELSAT unless Comsat assumes its proportionate share of the space station fees.

19. We disagree with Comsat and agree in substance with the views of Panamsat and GE Americom.[21] Our analysis of Comsat's arguments is guided by the mandate of the court of appeals in *Panamsat*, as well as by the will of Congress as embodied in ORBIT. *Panamsat* holds that:

> * * * the statute [*i.e.*, section 9] does not require—and may not permit—Comsat's exemption from space station regulatory fees. Nor would the legislative history [*see* note 2, *supra*] change the result, assuming the statute to be ambiguous enough to allow its consideration.

Panamsat, 198 F.3d at 895. Further, *Panamsat* rejects the view, now argued by Comsat, that Comsat's operation of INTELSAT space stations is not licensed or within Commission jurisdiction, as arguably required to make Comsat subject to the space station fee. As the court of appeals noted (198 F.3d at 896), Comsat must seek Commission authorization under Title III for its participation in the operation of INTELSAT satellites. *See also Communications Satellite Corp.*, 46 FCC 2d 338 (1974) (establishing procedures for Comsat to obtain Commission authorization to participate in the construction and operation of INTELSAT facilities, pursuant to Title III and section 214 of the Communications Act, and section 201(c) of the Communications Satellite Act).[22] Comsat has received such authorizations whether or not the satellite in question served North America. The court concludes:

> * * * it seems perfectly reasonable to say under these circumstances that the Commission "licenses" Comsat's operation of Intelsat satellites. Thus, the legislative history's embrace of fees for satellites "directly licensed by the Commission under Title III" seems reasonably to encompass Comsat.

Panamsat, 198 F.3d at 896. The court further noted that Comsat pays Title III space station application fees under section 8 in connection with its satellite authorizations. *Panamsat*, 198 F.3d at 895. In view of the foregoing, Comsat cannot be heard to argue—based on the same language considered by the court of appeals—that its INTELSAT operations are not licensed or that they are "foreign" within the relevant meaning of those terms.[23]

20. In this regard, we see no merit to Comsat's suggestion that the Commission may not impose regulatory fees on Comsat unless it imposes the same fees on the users of foreign-licensed satellites and on direct access users of INTELSAT's system. We do not grant Title III authorizations to direct access users, who are merely customers of INTELSAT. Comsat is the U.S. Signatory to INTELSAT. As such, it is the largest and the sole U.S. investor in the system receiving a return on its investment. It also is the U.S. entity that participates in INTELSAT commercial decisions involving procurement and operation of satellites and development and pricing of services provided by INTELSAT. Comsat, therefore, is the U.S. entity responsible for operation of the INTELSAT satellites. This unique status, established by the Communications Satellite Act, makes Comsat subject to obtaining Title III authorization. Neither the investors in foreign-licensed systems nor direct access users of INTELSAT's system (now codified by ORBIT) have similar status.

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[18] In FY 1997 and FY 1998 we limited increases to 25%. For FY 1999 and FY 2000, none of the proposed fee increases exceed 25%.

[19] *See Assessment and Collection of Fees for Fiscal Year 1994*, 9 FCC Rcd 5333 (1994); *Assessment and Collection of Fees for Fiscal Year 1995*, 10 FCC Rcd 13512 (1995); *Assessment and Collection of Fees for Fiscal Year 1996*, 11 FCC Rcd 18774 (1996); *Assessment and Collection of Fees for Fiscal Year 1997*, 12 FCC Rcd 17161 (1997); *Assessment and Collection of Fees for Fiscal Year 1998*, 13 FCC Rcd 19820 (1998); *Assessment and Collection of Fees for Fiscal Year 1999*, 14 FCC Rcd 9868 (1999).

[20] Comsat relies on the following language contained in H.R. Rep. No. 207, 102nd Cong., 1st Sess. 1991, *incorporated by reference in* H.R. Rep. No. 213, 103rd Cong., 1st Sess. 1993:

> The Committee intends that fees in this category [space stations] be assessed on operators of U.S. facilities, consistent with FCC jurisdiction. Therefore, these fees will apply only to space stations directly licensed by the Commission under Title III of the Communications Act. Fees will not be applied to space stations operated by international organizations subject to the International Organizations Immunities Act, 22 U.S.C. Section 288 *et seq.* [*e.g.*, INTELSAT].

[21] Because our analysis largely overlaps those of Panamsat and GE Americom, we will not summarize their arguments at length.

[22] The Communications Satellite Act expressly designates Comsat as a common carrier fully subject to the provisions of Title II and Title III of the Communications Act. 47 U.S.C. section 741.

[23] We recognize that this analysis departs from our treatment of this issue in past fee orders. *Panamsat*, however, establishes the applicable law, and we are bound by its teachings.

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21. Comsat also makes a related argument, noting that the pertinent fee is described as follows: "Space Station (per operational station in geosynchronous orbit) (47 CFR Part 25)." 47 U.S.C. section 159(g). Comsat maintains that the parenthetical reference to Part 25 indicates that the fee only applies to space stations that are licensed subject to the technical and other regulations contained in Part 25. INTELSAT's facilities are not subject to the licensing provisions of Part 25. In this regard, the court in *Panamsat* left open the question of whether "* * * there is some ambiguity in the coverage of the 'space station' category in section 9, such that the Commission might 'permissibly' read the statute as allowing a Comsat exemption." *Panamsat*, 198 F.3d at 896.[24]

22. We find that adopting the interpretation of section 9 proposed by Comsat would be contrary to the intent of Congress. Section 9's primary mandate is for the Commission to recover the costs of its regulatory activities, including international activities, through the collection of fees assessed against those who benefit from the Commission's activities. 47 U.S.C. section 159(a)(1), (b)(1)(A). In enacting section 9, Congress established an initial schedule of fees, which the Commission may modify under appropriate circumstances. It would unreasonably frustrate the intent of Congress to suppose that it framed the fee schedule in a way that made a category of costs either unrecoverable or not chargeable against the party most directly related to them, without creating an express exemption. This leads us to conclude that section 9's reference to part 25 is essentially clerical, *i.e.*, that it simply calls attention to the section of the rules most relevant to the fee, but does not reflect a substantive limitation. To hold otherwise would elevate form over substance. It is reasonable to infer that Congress intended to relate the fee to the costs of effectuating all of our statutory satellite responsibilities and not simply those that happen to have been codified as part 25. For example, we have held that the section 9 regulatory fee applies to DBS satellites although they are regulated under part 100 rather than part 25. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, 11 FCC Rcd 18774, 1811 (1996); *Direct Broadcast Satellites*, 90 FCC 2d 676 (1982) (establishing interim rules for DBS).[25] Moreover, Part 25 is, in part, a manifestation of some of the statutory responsibilities set forth in the Communications Satellite Act. *See* 47 U.S.C. section 721(c)(11); 47 CFR section 25.101(a). Thus, for example, when we place Comsat's applications on public notice, we apply the pleading requirements of 47 CFR section 25.154, although Comsat's applications are not, strictly speaking, "Part 25 applications." *See, e.g., Applications Accepted for Filing*, Rep. No. SPB–109 (Oct. 28, 1997).

23. We further find that the foregoing analysis is consistent with and reinforced by the "Parity of Treatment" provision of ORBIT. Indeed, we agree with Comsat that in pertinent respects a degree of "redundancy" exists between ORBIT and *Panamsat*. Comments of Comsat Corporation at 18 n.9. As Comsat points out, the Parity of Treatment provision is a carryover from a previous satellite privatization bill (H.R. 1872, 105th Cong., 2nd Sess.). In 1998, when the provision was first introduced, the United States Court of Appeals for the District of Columbia Circuit had recently decided *Comsat Corp.* v. *FCC*, 114 F.3d 223 (D.C. Cir. 1997), which had struck down a Commission attempt to impose a novel "signatory fee" against Comsat.[26] In our view, the provision codifies the proposition, also reflected in *Panamsat*, that the invalidity of the signatory fee does not mean that Comsat is exempt from the space station fee. The House Report accompanying H.R. 1872 states:

> The Committee believes that the Commission currently has the statutory authority to impose such fees [*i.e.*, fees similar to the regulatory fees imposed on other entities providing similar services] but wishes to make explicit here that the Commission does indeed have such authority. This subsection should not be interpreted to imply that the Commission does not currently have the authority to enact such regulatory fees.

H.R. Rep. No. 494, 105th Cong., 2nd Sess. 1998. We reject Comsat's attempt to avoid the implications of this provision. ORBIT, like *Panamsat*, makes clear that Comsat is not exempt from the space station fee as regards INTELSAT facilities. To accept Comsat's interpretation, that it is not subject to the space station fee despite ORBIT, would give the relevant provision of ORBIT no effect at all. Thus, we reject Comsat's argument that ORBIT's reference to "similar services" as opposed to "similar facilities" applies only to Comsat's international bearer circuits, as to which there has been no dispute over Comsat's liability.[27] We also reject Comsat's baseless suggestion that ORBIT establishes a requirement that the space station fee would be applicable to Comsat only if its satellites were "similarly situated" to other satellites. Each of these arguments, if accepted, would nullify the parity provision of ORBIT.

24. In sum, we conclude that Comsat should pay a proportionate share of the fees applicable to holders of Title III authorizations to launch and operate geosynchronous space stations. As we concluded in years past, the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, 11 FCC Rcd 18774, 18790 paragraphs 45–46 (1996). These costs are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat's non-Intelsat satellites, and earth station fees. If Comsat does not pay its share, these costs will be borne by other holders of Title III authorizations.

25. We disagree with Comsat's suggestion that imposing a fee pursuant to ORBIT would have an improper retroactive effect. We see no significance to the fact that ORBIT was not enacted until March 17, 2000, after the October 1, 1999 cut-off established pursuant to our rules for authorizations that will be subject to annual regulatory fees for fiscal year 2000. *See Assessment and Collection of Fees for Fiscal Year 2000*, FCC 00–117 (Apr. 3, 2000) at paragraph 27. As discussed above, we find that ORBIT merely reaffirms Comsat's

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[24] Elsewhere, however, the Court states: "The plain terms of section 9 * * * clearly do not require an exemption for Comsat, and there is no obvious hook in the language on which to hang an exemption." *Panamsat*, 198 F.3d at 895.

[25] Since its establishment in 1982, the Part 100 DBS service has referred to satellite systems operating on the Ku-band at frequencies and orbital positions different from satellites authorized under Part 25. *See Policies and Rules for the Direct Broadcast Satellite Service*, 13 FCC Rcd 6907, 6909 paragraph 2 (1998) (proposing to make Part 25 applicable to DBS); *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 1589, 1589–90 paragraphs 3–4 (1993). *See also Satellite Communications Services*, 56 Fed. Reg. 24014, 24016 (May 28, 1991) (amending the rules to add: "§ 25.109 Cross-reference. The space radiocommunications stations in the following services are not licensed under this part: * * * Direct Broadcasting Satellite Service, see 47 CFR part 100 * * *.)

[26] The court held that the signatory fee, which was not among those initially specified by Congress in section 9, could not be added consistent with the section's requirement that new fees must reflect additions deletions, or changes in the nature of service.

[27] Additionally, we note that Comsat's own literature indicates that it provides "satellite capacity services" as "the U.S. owner of the INTELSAT satellite system * * *." *COMSAT Corporation: Satellite Capacity Services, available at* <http://www.comsat.com/sat_cap/> (visited May 10, 2000).

liability for fees under section 9 and does not create any new liability. Thus, the date of its enactment has no significance with respect to the fees chargeable to Comsat. In any event, we do not in this proceeding contemplate retroactively imposing, pursuant to ORBIT, any fees due prior to ORBIT's enactment.[28] The fees at issue here are due prospectively in September 2000. We note further that irrespective of the date of ORBIT's enactment, Comsat held the authorizations relevant to the fee as of October 1, 1999. Thus, while the cut-off would normally bar applying fees to authorizations issued or acquired after October 1, 1999, no such action is contemplated here.

26. We also find no basis to discount the fees based on the level of Comsat's usage of INTELSAT's system. We have previously rejected proposals to base the space station fee on the number of transponders used rather than the number of space segments. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13550–51 paragraph 111 (1995). Comsat has furnished no justification for us to adopt a utilization-based approach generally. In this regard, our decision in *Columbia Communications Corp.*, 14 FCC Rcd 1122 (1999), should not be read as endorsing a utilization-based approach to the space station fee. In that case, we granted Columbia a partial waiver of the fee based on the unique circumstances present. Specifically, Columbia leased transponder capacity on two NASA Tracking Data and Relay Satellites (TDRSS). Under the terms of the lease, NASA could preempt Columbia's usage on minimal notice. Moreover, Columbia already paid 70 percent of its revenues to the United States Government under the lease. Because the usefulness of Columbia's license had been impaired by another governmental body, and because Columbia already paid the government for the use of the satellites, we found that a partial waiver was appropriate.

27. We note that Comsat has also requested a reduction in any fees that may be assessed. We express no view in this rulemaking proceeding whether such a reduction in fees should be granted. Waivers and reductions in fees are granted on a case-by-case basis under section 1.1166 of our rules. Comsat is free to submit such a request in accordance with the requirements of that section.

[28] We will consider elsewhere to what extent the court's decision in *Panamsat* may require the adjustment of past fees.

b. Interstate Telephone Service Providers

28. The Commission is required under the Communications Act of 1934, as amended,[29] to establish procedures that will finance interstate telecommunications relay services (TRS), universal service support mechanisms, administration of the North American Numbering Plan (NANPA), and shared costs of the local number portability (LNPA) program. In a series of separate proceedings, the Commission has already established procedures that permits the administrators of these programs to collect contributions from all providers of telecommunications services in support of the above mandates.[30] In 1999, as part of its paperwork streamlining efforts, the Commission amended its rules and required contributors to file only a single form FCC Form 499–A, Telecommunications Reporting Worksheet, and eliminated FCC Form 431, TRS Fund Worksheet.[31] Previously, Form 431, TRS Fund Worksheet, was used to obtain base revenue data from which telephone services regulatory fees were calculated. Because of this form change, it is no longer feasible to obtain base telephone services revenue data using adjusted gross interstate revenues as derived from data previously provided on FCC Form 431, TRS Fund Worksheet. Therefore, beginning in FY 2000, we are requiring that the interstate telephone services regulatory fee be derived from interstate and international end-user revenues data submitted on FCC Form 499–A, Telecommunications Reporting Worksheet, rather than from data provided on Form 431, TRS Fund Worksheet. A copy of the form and instructions can be downloaded at: <*http://www.fcc.gov/formpage.html*>.

29. All providers of telecommunications services within the United States, with very limited exceptions, must file a FCC Form 499–A, Telecommunications Reporting Worksheet. For this filing, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island. Each legal entity that provides interstate telecommunications service for a fee, including each affiliate or subsidiary of an entity, must complete and file separately a copy of the Telecommunications Reporting Worksheet.

30. In determining who must file Form 499–A, the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. For the purpose of filing the Telecommunication Reporting Worksheet, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony including cellular and personal communications services (PCS); paging and messaging services; dispatch services; mobile radio services; operator services; access to interexchange service; special access; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; and resale services. For example, all local exchange carriers provide access services and, therefore, provide interstate telecommunications. Included are entities that offer interstate telecommunications services to the public for a fee, even if only a narrow or limited class of users could use the services. Also included are entities that provide interstate telecommunications services to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," must file the worksheet. Most telecommunications carriers must file the worksheet even if they qualify for the *de minimis* exemption under the commission's rules for universal service.[32]

31. With the introduction of a new form, FCC Form 499–A, it is no longer feasible to base the interstate telephone services regulatory fee on the adjusted gross interstate revenues because this data was derived from a previously used form (FCC 431) to contribute to the Telecommunication Relay Services Fund. Therefore, beginning in FY 2000, we are requiring that the interstate and international telephone services regulatory fee be derived from interstate

[29] 47 U.S.C. 151, 225, 251, 254.

[30] These contributions are separate and apart from regulatory fees collected to fund the Commission's operations.

[31] *1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (July 30, 1999) (*Contributor Reporting Requirements Order*).

[32] 47 CFR 54.708.

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and international end-user revenues as submitted by providers on FCC Form 499–A, Telecommunications Reporting Worksheet, as part of the telecommunications provider reporting requirements. The following providers are exempt from paying the interstate telephone service provider regulatory fees: interstate service providers that have mobile service or satellite service revenue, but no local or non-satellite toll service;[33] government entities within the meaning of the term 47 CFR 1.1162; and carriers whose payment obligation would be less than $10.[34] Note, the interstate telephone service provider fee is based on interstate and international end-user revenues for local and most toll services only. Filers are not allowed to deduct any expenses from subject interstate and international end-user revenues.

32. There have been no comments received regarding the proposal to rely on the FCC Form 499-A data as the basis for computing the interstate telephone service provider regulatory fee. Therefore, we are adopting the proposal. We are, however, making a minor adjustment in our revenue estimate as a result of more current data from the April 2000 filing. The most current estimate is $74,124,558,460; however, the fee factor remains unchanged at 0.00117 per revenue dollar.

c. Commercial Radio and Television

33. The National Association of Broadcasters ("NAB") commented on several aspects of how the radio and television station fees were developed and collected. NAB suggests that the fees should be based on the cost of regulating a particular class of License. The Commission's Cost Accounting System does not provide cost detail at that level. NAB recommends that the number of payment units within a class and population should determine the amount of fees paid by each category group. In fact, that is exactly what is done for AM and FM radio fees. NAB argues that costs of regulating the new non-commercial low power FM operations should be separated from the costs for regulating full-power radio stations and applied as overhead to all feeable services. Our cost accounting system is not capable of adequately performing this recommendation. A new cost accounting system is being planned for future development, and this concept will be discussed and considered at the appropriate time. Finally, NAB criticizes the accuracy of posting of fee payments and the level of research performed before taking collections actions against suspected non-payers. The Commission is dedicated to improving its processes and will carefully consider recommendations from the NAB or other interested parties of additional sources of reliable information about radio and television payees.

34. Sunbelt Communications Company and Ruby Mountain Broadcasting Company (collectively, "Sunbelt") argue that small television stations located near large designated market areas (DMA) are assessed disproportionately high fees because the A.C. Nielsen ratings include them in the DMA but they do not serve households in the DMA. Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves. Sunbelt asserts that it is not in the public interest to force small, local television stations out of the market. Sunbelt further suggests that a provision should be made for small television stations to pay a reduced fee comparable to the satellite television fee, or alternatively a fee based on the number of households (rather than DMA). It is certainly not the Commission's intent to force anyone out of the market. As Sunbelt acknowledges in its comments, the Commission has an established procedure for a case-by-case determination of requests for waiver or reduction of a regulatory fee. *See* 47 CFR 1. The Commission has previously addressed the issues raised by Sunbelt and set standards for determining, on a case-by-case basis, whether fees for a small station may be reduced below the fees assessed for an assigned DMA and whether fees may be reduced because their payment will create financial hardship. *See Implementation of Section 9 of the Communications Act,* 10 FCC Rcd 12759, 12761–63 (1995). Finally, the Commission is unaware of the existence of any reliable published source that can identify which television stations are serving small markets at the fringe of larger DMA's. We would encourage interested parties to submit a copy of or reference to such a publication that may enable us to predetermine small market television stations for the FY 2001 regulatory fee cycle.

d. Non-Geostationary Orbit Space Station Systems

35. Space Imaging LLC ("Space Imaging") is constructing a non-geostationary orbit (NGSO) space station system that is not currently subject to regulatory fees because it is not operational. However, Space Imaging revives an issue, which we have previously addressed asking that we create a small constellation fee for systems of less than five satellites. As we have stated before, our regulatory costs are constant without respect to the number of satellites in a constellation. We believe that endless controversy will ensue in determining the appropriate number of satellites for determining the cut-off point. Finally, there simply are not enough systems in operation, and subject to a fee, to warrant creation of multiple categories for FY 2000. In fact, one feeable system has ceased operation leaving only two operational systems.

36. As referenced in the preceding paragraph, Iridium LLC has ceased providing services to its customers and is in bankruptcy. Space Systems License, Inc., Motorola Pacific Communications, Inc., and Motorola Satellite Communications, Inc. (collectively, "Motorola") argue that "it would not be equitable, consistent with prior Commission policy, or otherwise in the public interest to require Motorola to pay the fiscal year 2000 regulatory fees associated with the satellite and Earth station authorizations for the Iridium system."[35] Procedures for requesting a waiver or reduction of regulatory fees are specified in section 1.1166 of the Commission's Rules.[36] Therefore, no waiver or reduction decision will be made in this *Report and Order.*

e. Commercial Mobile Radio Services (CMRS)

37. The Cellular Telecommunications Industry Association (CTIA) questions our methodology and calculations used to determine the FY 2000 regulatory fees. CTIA argues that the CMRS industry is being levied a 42 percent increase versus the 7.67 percent increase imposed by the Congress. The 7.67 percent figure represents the increase in the aggregate amount that we must collect rather than the increases for specific industries or services within them. In the *NPRM* it is clearly stated that the percentage will not fall equally on all payers due to a variety of factors.[37] CTIA further argues that fees should be based on the number of units and the costs associated with a particular sector, rather than across all telecommunications sectors. We agree, however, in its current state, our cost accounting system contains certain

[33] However, these service providers may be subject to payment of regulatory fees under other categories, *e.g.* space stations.

[34] *See* 47 U.S.C. 159(h); *see also* paragraph 29, *infra.*

[35] Motorola comments at page 4.

[36] 47 CFR 1.1166

[37] 37 *NPRM* at footnote 18.

anomalies that require us to make adjustments in the public interest. Specifically, our cost data indicates that the CMRS Mobile Services sector has incurred costs in excess of $30 million, which has been reduced by our methodology to approximately $25 million. Further, this adjustment resulted in a reduction in the fee from $0.32 in FY 1999 to our *NPRM* estimate of $0.31 per unit for FY 2000. However, figures released by CTIA in April 2000 indicate that wireless subscribers reached 86 million by the end of 1999. Using such publicly available documents as news releases, cellular industry surveys including surveys conducted by CTIA, and filings with the Securities and Exchange Commission, we adjusted our estimate to 86 million payment units which reduced the CMRS Mobile Services fee to $0.30 per unit.

38. Several parties which include: BellSouth Corporation ("BellSouth"), Council of Independent Communications Suppliers ("CICS") and the USMSS, Inc. ("USMSS"), and the American Mobile Telecommunications Association ("AMTA") have expressed concern that we may have reversed our decision from FY 1999 that small specialized mobile radio (SMR) systems be treated as CMRS Messaging Service for purposes of assessing regulatory fees. This is not true. Specific language stating that small SMR systems possessing less than 10 MHz of bandwidth are to be considered in the CMRS Messaging Services fee category was inadvertently omitted from the text of the Guidelines in Attachment F of the *NPRM*. That oversight has been corrected in this *Report and Order*.

C. Procedures for Payment of Regulatory Fees

39. Generally, we are retaining the procedures that we have previously established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." *See* 47 U.S.C. 159(f)(2). Consistent with section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

i. Annual Payments of Standard Fees

40. As we have in the past, we are treating regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in this *Report and Order* terminating this proceeding or by public notice in the **Federal Register** pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

41. As we noted in the *NPRM*, time constraints will preclude an opportunity for installment payments. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, there will not be sufficient time for installment payments, and regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for a single payment will be announced either in this *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

42. As we have in the past, we are treating regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.[38] Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in this *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

43. As we have in the past, we are establishing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 2000.

v. Standard Fee Calculations and Payment Dates

44. As noted, the time for payment of standard fees and any installment payments will be announced in this *Report and Order* terminating this proceeding or will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, fees must be paid for any authorization issued on or before *October 1, 1999*. Regulatory fees are due and payable by the holder of record of the license or permit of the service as of October 1, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after October 1, 1999, the licensee or holder of the authorization on the date that payment is due must pay the fee.

45. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatee's' subscribers, units or circuits on *December 31, 1999*, will be used to calculate the fee payment.[39] Regulatory fees are due and payable by the holder of record of the license or permit of the

[38] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS), 218–219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call Signs.

[39] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers=Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1999, rather than on a count as of December 31, 1999.

service as of December 31, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 1999, the licensee or holder of the authorization on the date that payment is due must pay the fee.

vi. Improved Fee Collection Systems

46. The Commission is taking several steps to improve its fee collection program. Development of a new fee collection system has begun by which it is expected will provide a single improved internal source of information for all of the Commission's financial transactions. In addition, we are implementing procedures that will require assignment of a unique identifier (FCC Registration Number) to each entity doing business with the FCC to enable it to track payments and other transactions made by the entity, even when its name or ownership changes. These enhancements will assist the FCC in identifying all feeable entities and ensuring that proper payments are received and recorded accurately.

vii. Late or Insufficient Regulatory Fee Payment

47. As a reminder, in accordance with section 1.1164 of the Commission's Rules, regulatees will be subject to a 25 percent penalty for late or insufficient regulatory fee payment. All payments not received by the due date shall be assessed the penalty.

D. Schedule of Regulatory Fees

48. The Commission's Schedule of Regulatory Fees for FY 2000 is contained in Attachment D of this *Report and Order*.

IV. Procedural Matters

A. Ordering Clause

49. It is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective September 10, 2000, which is no less than 60 days from the date of publication in the **Federal Register**. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Federal Communications Commission's Consumer Information Bureau, Reference Information Center, send this to Small Business Administration (SBA). Finally, it is ordered that this proceeding is *Terminated*.

B. Authority and Further Information

50. This action is taken pursuant to sections 4(i) and (j), 9, and 303 (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 159, and 303(r).

51. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225–5322.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, communications common carriers, radio, telecommunications, television.

Federal Communicaitons Commission.

William F. Caton,

Deputy Secretary.

Note: The attachments will not appear in the Code of Federal Regulations.

Attachment A—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[40–41] an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, 65 FR 19580 (Apr. 11, 2000). The Commission sought written public comments on the proposals in its FY 2000 regulatory fees *NPRM*, including on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding was initiated in order to collect regulatory fees in the amount of $185,754,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. None.

III. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, herein adopted.[42] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[43] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[44] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[45] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[46] Nationwide, as of 1992, there were approximately 275,801 small organizations.[47] "Small governmental jurisdiction"[48] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[49] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[50] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[51] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, herein adopted.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[52] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[53]

[40–41] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[42] 5 U.S.C. 603(b)(3).

[43] *Id.* 601(6).

[44] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[45] Small Business Act, 15 U.S.C. 632 (1996).

[46] 5 U.S.C. 601(4).

[47] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[48] 47 CFR 1.1162.

[49] 5 U.S.C. 601(5).

[50] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[51] *Id.*

[52] 13 CFR 121.201, SIC code 4841.

[53] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4841 (U.S.

Continued

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[54] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[55] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[56] The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[57] Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450.[58] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[59] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Other Pay Services.* Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[60] multipoint distribution systems (MDS),[61] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report.[62] However, in a recent news release, the Commission indicated that there are 4,144 interstate carriers.[63] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[64] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[65] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[66] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

12. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[67] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."[68] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, herein adopted.

13. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[69] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[70] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, herein adopted.

14. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is

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Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[54] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[55] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[56] 47 U.S.C. 543(m)(2).

[57] 47 CFR 76.1403(b).

[58] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[59] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. *See* 47 CFR 76.1403(d).

[60] Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

[61] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

[62] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[63] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[64] 13 CFR 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[65] 5 U.S.C. 601(3).

[66] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[67] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*).

[68] *See generally* 15 U.S.C. 632(a)(1).

[69] *1992 Census, supra*, at Firm Size 1–123.

[70] 13 CFR 121.201, SIC code 4813.

for telephone communications companies other than radiotelephone (wireless) companies.[71] According to the most recent *Telecommunications Industry Revenue* data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.[72] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, herein adopted.

15. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[73] According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services.[74] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 171 small entity IXCs that may be affected by the proposed rules, herein adopted.

16. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[75] According to the most recent *Trends in Telephone Service* data, 212 CAP/CLECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services.[76] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 212 small entity CAPs and 10 other LECs that may be affected by the proposed rules, herein adopted.

17. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[77] According to the most recent *Trends in Telephone Service* data, 24 carriers reported that they were engaged in the provision of operator services.[78] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 24 small entity operator service providers that may be affected by the proposed rules, herein adopted.

18. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[79] According to the most recent *Trends in Telephone Service* data, 615 carriers reported that they were engaged in the provision of pay telephone services.[80] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 615 small entity pay telephone operators that may be affected by the proposed rules, herein adopted.

19. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[81] According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service.[82] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the proposed rules, herein adopted.

20. *Toll-Free 800 and 800-Like Service Subscribers.*[83] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[84] According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, less than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the proposed rules, herein adopted.

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[85] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[86] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million.[87] The Census report does not provide more precise data.

22. *International High Frequency Broadcast Stations.* Commission records show that there are 18 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition.

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[71] 71 Id.

[72] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[73] 13 CFR 121.201, SIC code 4813.

[74] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[75] 13 CFR 121.201, SIC code 4813.

[76] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[77] 13 CFR 121.201, SIC code 4813.

[78] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[79] 13 CFR 121.201, SIC code 4813.

[80] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[81] 13 CFR 121.201, SIC code 4813.

[82] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[83] We include all toll-free number subscribers in this category, including 888 numbers.

[84] FCC, CCB Industry Analysis Division, FCC Releases, Study on Telephone Trends, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

[85] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

[86] 13 CFR 120.121, SIC code 4899.

[87] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

23. *International Public Fixed Radio (Public and Control Stations).* There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

26. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 304 current VSAT System authorizations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

27. *Mobile Satellite Earth Stations.* There are 11 licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. *Space Stations (Geostationary).* There are 64 current Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

30. *Space Stations (Non-Geostationary).* There are 12 current Non-Geostationary Space Station authorizations, of which only three systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." [88] This definition provides that a small entity is one with $11.0 million or less in annual receipts. [89] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS service, and thus are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Mass Media Services

32. *Commercial Radio and Television Services.* These rules and policies will apply to television broadcasting licensees and radio broadcasting licensees. [90] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business. [91] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. [92] Included in this industry are commercial, religious, educational, and other television stations. [93] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. [94] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. [95] There were 1,509 television stations operating in the nation in 1992. [96] That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 30, 1999. [97] For 1992, [98] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. [99] Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. [100] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. [101] Included in this industry are commercial, religious, educational, and other radio stations. [102] Radio broadcasting stations, which primarily are engaged in, radio broadcasting and which produce radio program materials are similarly included. [103] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. [104] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. [105] Official Commission records indicate that 11,334 individual radio stations were operating in 1992. [106] As of September 30, 1999, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations. [107] Only commercial stations are subject to regulatory fees.

34. Thus, the rules may affect approximately 1,616 full power television stations, approximately 1,200 of which are considered small businesses. [108]

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[88] 13 CFR 120.121, SIC code 4841.

[89] 13 CFR 121.201, SIC code 4841.

[90] While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Notice* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Notice*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), citing 5 U.S.C. 601(3).

[91] 13 CFR 121.201, SIC code 4833.

[92] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995) (*1992 Census, Series UC92–S–1*).

[93] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[94] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[95] *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[96] FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92–S–1*, at Appendix A–9.

[97] FCC News Release, "Broadcast Station Totals as of September 30, 1999."

[98] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See *1992 Census, Series UC92–S–1*, at III.

[99] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[100] 13 CFR 121.201, SIC code 4832.

[101] *1992 Census, Series UC92-S–1*, at Appendix A–9.

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[106] FCC News Release, No. 31327 (Jan. 13, 1993).

[107] FCC News Release, "Broadcast Station Totals as of September 30, 1999."

[108] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1558 TV stations to

Additionally, these rules will affect some 12,615 full power radio stations, approximately 11,670 of which are small businesses. [109] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,194 low power television stations (LPTV). [110] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting. [111] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements. [112] We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 5,186, of which 340 are television stations. [113]

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations. [114]

37. There are currently 3,237 FM translators and boosters, and 2,964 TV translators. [115] The FCC does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated. [116]

38. *Multipoint Distribution Service (MDS).* This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems. [117] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million. [118] This definition of a small entity in the context of MDS auctions has been approved by the SBA. [119] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended. [120] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. [121] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,650 MDS licensees are subject to regulatory fees, and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. [122] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. [123] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. [124] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the proposed rules, herein adopted.

40. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. [125] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. [126] Therefore, if this general ratio

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arrive at 1,200 stations categorized as small businesses.

[109] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[110] FCC News Release, No. 7033 (Mar. 6, 1997).

[111] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (Jun. 6, 1970).

[112] *See, e.g.,* 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees). *See also, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding,* FCC 00–20, released February 2, 2000 ("*Review of EEO Rules*").

[113] See Review of EEO Rules, Appendix B, Sec. C [from compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), Equal Employment Opportunity Staff, Mass Media Bureau, FCC].

[114] 13 CFR 121.201, SIC code 4832.

[115] FCC News Release, *Broadcast Station Totals as of September 30, 1999,* No. 71831 (Jan. 21, 1997).

[116] 15 U.S.C. 632.

[117] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[118] 47 CFR 1.2110 (a)(1).

[119] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of section 309(j) of the Communications Act—Competitive Bidding,* 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[120] 47 U.S.C. 309(j).

[121] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide,* 123rd Edition, pages 36–39.

[122] 13 CFR 121.201, SIC code 4812.

[123] *1992 Census, Series UC92–S–1,* at Table 5, SIC code 4812.

[124] *Trends in Telephone Service,* Table 19.3 (March 2000).

[125] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

[126] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5,

Continued

continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

41. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[127] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[128] The SBA has approved these definitions.[129] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[130] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[131]

42. *Private and Common Carrier Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[132] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[133] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, herein adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

43. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[134] and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.[135] Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, herein adopted.

44. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[136] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[137] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[138] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[139] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

45. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

46. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[140] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[141] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[142] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

47. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[143] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[144] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

48. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and

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Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[127] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paragraphs 291-295 (1997).

[128] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, paragraph 291.

[129] See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[130] See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[131] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[132] 13 CFR 121.201, SIC code 4812.

[133] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[134] 13 CFR 121.201, SIC code 4812.

[135] *Trends in Telephone Service*. No. 7,744 (released Jan. 14, 1997.)

[136] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, paragraphs 57-60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

[137] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, paragraph 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[138] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[139] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

[140] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[141] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[142] 13 CFR 121.201, SIC code 4812.

[143] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[144] 13 CFR 121.201, SIC code 4812.

900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[145] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

49. These fees apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

50. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

51. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

52. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs [146] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the rules in this context could potentially impact every small business in the United States.

53. *Amateur Radio Service.* We estimate that 8,000 applicants will apply for vanity call signs in FY 2000. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

54. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.[147]

55. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate, however, that only 16,800 will be subject to FY 2000 regulatory fees.

56. *Fixed Microwave Services.* Microwave services include common carrier,[148] private-operational fixed,[149] and broadcast auxiliary radio services.[150] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[151] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

57. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[152] There are a total of approximately 127,540 licensees within these services. Governmental entities [153] as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[154] All licensees in this category are exempt from the payment of regulatory fees.

58. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[155] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

59. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[156] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

60. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area

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[145] 47 CFR 90.814(b)(1).

[146] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at page 116.

[147] 13 CFR 121.201, SIC code 4812.

[148] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[149] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[150] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[151] 13 CFR 121.201, SIC 4812.

[152] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[153] 47 CFR 1.1162.

[154] 5 U.S.C. 601(5).

[155] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[156] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

61. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[157] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

62. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. This latter, optional procedure may require additional technical skills. Applicants who pay small fees in advance may supply fee information as part of their application and may not need to use FCC Form 159.

63. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of 25 percent in addition to the required fee.[158] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[159] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[160] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 194–134. Appropriate enforcement measures, *e.g.*, interest as well as administrative and judicial remedies, may be exercised by the Commission. Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[161]

64. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[162] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section IV of this IRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have also created Attachment F, *infra*, which gives "Detailed Guidance on Who Must Pay Regulatory Fees." Because the collection of fees is statutory, our efforts at proposing alternatives are constrained and, throughout these annual fee proceedings, have been largely directed toward simplifying the instructions and necessary procedures for all filers. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

66. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999*, Public Law 105–277 requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2000.[163] As noted, we have sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

67. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology we are adopting in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services, which, for the most part, are larger entities.

68. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 149, *supra*, and Attachment F of the *Report and Order*, *infra*.

Report to Small Business Administration: The Commission will send a copy of this *Report and Order*, including a copy of the final certification, to the Chief Counsel for Advocacy of the Small Business Administration. The certification will also be published in the **Federal Register** pursuant to 5 U.S.C. 605(b).

Report to Congress: The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order*, including a copy of the final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the **Federal Register**, along with this *Report and Order*.

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[157] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[158] 47 CFR 1.1164(a).

[159] 159 47 CFR 1.1164(c).

[160] Public Law 104–134, 110 Stat. 1321 (1996).

[161] 31 U.S.C. 7701(c)(2)(B).

[162] 47 CFR 1.1166.

[163] 47 U.S.C. 159(a).

SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2000

In order to calculate individual service fees for FY 2000, we adjusted FY 1999 payment unites for each service to more accurately reflect expected FY 2000 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2000 estimates with actual FY 1999 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2000 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2000 payment units are based on FY 1999 actual payment units, it does not necessarily mean that our FY 2000 projection is *exactly* the same number as FY 1999. It means that we have either rounded the FY 2000 number or adjusted it slightly to account for these variables.

Attachment B

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz[164], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on industry estimates of growth between FY 1999 and FY 2000 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on actual FY 1999 payment units.
UHF/VHF Television Stations	Based on actual FY 1999 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1999 payment units.
LPTV, Translators and Boosters	Based on actual FY 1999 payment units.
Auxiliaries	Based on Wireless Telecommunications Bureau (WTB) projections.
MDS/MMDS	Based on actual FY 1999 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1999 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers	Based on actual FY 1999 interstate revenues associated with the Telecommunications Reporting Worksheet, adjusted to take into consideration FY 2000 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1999 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on actual FY 1999 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on actual FY 1999 payment units.

[164] The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for 218-219 MHz (formerly IVDS) in FY 2000.

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Attachment C

CALCULATION OF REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee Category	FY 2000 Payment Units	(times) FY 1999 Fee	(times) Payment Years	(equals) Computed FY 2000 Revenue Requirement	Pro-Rated Revenue Requirement**	Rounded New FY 2000 Regulatory Fee	Expected FY 2000 Revenue
PLMRS (Exclusive Use)	3,800	13	5	247,000	239,406	13	239,406
Microwave	6,250	13	10	812,500	787,525	13	787,525
218-219 MHz (Formerly IVDS)	0	13	10	0	0	0	0
Marine (Ship)	6,300	7	10	441,000	427,444	7	427,444
GMRS/PLMRS (Shared Use)	59,000	7	5	2,065,000	2,001,526	7	2,001,526
Aviation (Aircraft)	3,300	7	10	231,000	223,889	7	223,889
Marine (Coast)	1,500	7	5	52,500	50,886	7	50,886
Aviation (Ground)	1,750	7	5	61,250	59,367	7	59,367
Amateur Vanity Call Signs	8,000	1.4	10	112,000	108,557	1.4	112,000
AM Class A	72	1,942	1	139,824	135,526	1,875	135,000
AM Class B	1,155	1,491	1	1,722,105	1,669,171	1,450	1,674,750
AM Class C	806	738	1	594,828	576,544	715	576,290
AM Class D	2,001	970	1	1,940,970	1,881,308	940	1,880,940
FM Classes A, B1 & C3	2,656	1,491	1	3,960,096	3,838,370	1,445	3,851,200
FM Classes B, C, C1 & C2	2,555	1,942	1	4,961,810	4,809,293	1,875	4,790,625
AM Construction Permits	60	260	1	15,600	15,120	250	15,000
FM Construction Permits	341	780	1	265,980	257,804	755	257,455
Satellite TV	70	1,300	1	91,000	88,203	1,250	87,500
Satellite TV Construction Permit	4	460	1	1,840	1,783	445	1,780
VHF Markets 1-10	44	41,225	1	1,813,900	1,758,144	39,950	1,757,800
VHF Markets 11-25	54	34,325	1	1,853,550	1,796,575	33,275	1,796,850
VHF Markets 26-50	67	23,475	1	1,572,825	1,524,479	22,750	1,524,250
VHF Markets 51-100	115	13,150	1	1,512,250	1,465,766	12,750	1,466,250
VHF Remaining Markets	195	3,400	1	663,000	642,621	3,300	643,500
VHF Construction Permits	19	2,775	1	52,725	51,104	2,700	51,300
UHF Markets 1-10	70	15,550	1	1,088,500	1,055,041	15,075	1,055,250
UHF Markets 11-25	75	11,775	1	883,125	855,979	11,425	856,875
UHF Markets 26-50	102	7,300	1	744,600	721,712	7,075	721,650
UHF Markets 51-100	148	4,350	1	643,800	624,011	4,225	625,300
UHF Remaining Markets	163	1,175	1	191,525	185,638	1,150	187,450
UHF Construction Permits	93	2,900	1	269,700	261,410	2,800	260,400
Auxiliaries	22,500	12	1	270,000	261,701	12	261,701

Fee Category	FY 2000 Payment Units	(times) FY 1999 Fee	(times) Payment Years	(equals) Computed FY 2000 Revenue Requirement	Pro-Rated Revenue Requirement**	Rounded New FY 2000 Regulatory Fee	Expected FY 2000 Revenue
International HF Broadcast	5	520	1	2,600	2,520	505	2,525
LPTV/Translators/Boosters	2,710	290	1	785,900	761,743	280	758,800
CARS	1,687	55	1	92,785	89,933	53	89,933
Cable Systems	66,690,000	0.48	1	32,011,200	31,027,233	0.47	31,027,233
Interstate Telephone Service Providers	74,124,558,460	0.00121	1	89,419,000	86,670,419	0.00117	86,670,419
CMRS Mobile Services (Cellular/Public Mobile)	86,000,000	0.32	1	26,240,000	25,433,429	0.30	25,433,429
CMRS Messaging Services	38,900,000	0.04	1	1,556,000	1,508,171	0.04	1,508,171
MDS/MMDS/LMDS	3,036	285	1	865,260	838,663	275	834,900
International Bearer Circuits	595,614	7	1	4,169,298	4,041,141	7	4,041,141
International Public Fixed	3	410	1	1,230	1,192	395	1,185
Earth Stations	2,679	180	1	482,220	467,397	175	468,825
Space Stations (Geostationary)	63.5	130,550	1	6,201,125	6,010,513	94,650	6,010,275
Space Stations (Non-geostationary)	3	180,800	1	542,400	525,728	175,250	525,750
——— Total Estimated Revenue Collected				191,844,821	185,754,000		185,753,420
——— Total Revenue Requirement				185,754,000	185,754,000		185,754,000
Difference				5,890,821	0		(243)

** 0.969261778 factor applied

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Attachment D

FY 2000 SCHEDULE OF REGULATORY FEES

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	13
Microwave (per license) (47 CFR part 101)	13
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	13
Marine (Ship) (per station) (47 CFR part 80)	7
Marine (Coast) (per license) (47 CFR part 80)	7
General Mobile Radio Service (per license) (47 CFR part 95)	7
PLMRS (Shared Use) (per license) (47 CFR part 90)	7
Aviation (Aircraft) (per station) (47 CFR part 87)	7
Aviation (Ground) (per license) (47 CFR part 87)	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.30
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.04
Multipoint Distribution Services (Includes MMDS & LMDS)(per call sign) (47 CFR parts 21	275

Fee Category	Annual Regulatory Fee (U.S. $'s)
and 101)	
AM Radio Construction Permits	250
FM Radio Construction Permits	755
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	39,950
Markets 11-25	33,275
Markets 26-50	22,750
Markets 51-100	12,750
Remaining Markets	3,300
Construction Permits	2,700
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	15,075
Markets 11-25	11,425

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Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 26-50	7,075
Markets 51-100	4,225
Remaining Markets	1,150
Construction Permits	2,800
Satellite Television Stations (All Markets)	1,250
Construction Permits - Satellite Television Stations	445
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	280
Broadcast Auxiliary (47 CFR part 74)	12
CARS (47 CFR part 78)	53
Cable Television Systems (per subscriber) (47 CFR part 76)	.47
Interstate Telephone Service Providers (per revenue dollar)	.00117
Earth Stations (47 CFR part 25)	175
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also	

Fee Category	Annual Regulatory Fee (U.S. $'s)
includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	94,650
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	175,250
International Bearer Circuits (per active 64KB circuit)	7
International Public Fixed (per call sign) (47 CFR part 23)	395
International (HF) Broadcast (47 CFR part 73)	505

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RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001 - 50,000	800	625	300	425	625	800
50.001 - 125,000	1,325	850	425	650	850	1,325
125,001 - 400,000	1,950	1,350	625	775	1,350	1,950
400,001 - 1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

Attachment E

COMPARISON BETWEEN FY 1999 & FY 2000

PROPOSED & FINAL REGULATORY FEES

Fee Category	Annual Regulatory Fee FY 1999	NPRM Proposed Fee FY 2000	Annual Regulatory Fee FY 2000
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	13	13	13
Microwave (per license) (47 CFR part 101)	13	13	13
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	13	13	13
Marine (Ship) (per station) (47 CFR part 80)	7	7	7
Marine (Coast) (per license) (47 CFR part 80)	7	7	7
General Mobile Radio Service (per license) (47 CFR part 95)	7	7	7
PLMRS (Shared Use) (47 CFR part 90)	7	7	7
Aviation (Aircraft) (per station) (47 CFR part 87)	7	7	7
Aviation (Ground) (per license) (47 CFR part 87)	7	7	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40	1.40	1.40

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Fee Category	Annual Regulatory Fee FY 1999	NPRM Proposed Fee FY 2000	Annual Regulatory Fee FY 2000
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.32	.31	.30
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.04	.04	.04
Multipoint Distribution Services (Includes MMDS and LMDS)(per call sign) (47 CFR part 21 and 101)	285	275	275
AM Construction Permits	260	250	250
FM Construction Permits	780	755	755
TV (47 CFR part 73) VHF Commercial			
Markets 1-10	41,225	39,950	39,950
Markets 11-25	34,325	33,275	33,275
Markets 26-50	23,475	22,750	22,750
Markets 51-100	13,150	12,750	12,750
Remaining Markets	3,400	3,300	3,300
Construction Permits	2,775	2,700	2,700
TV (47 CFR part 73) UHF Commercial			

Fee Category	Annual Regulatory Fee FY 1999	NPRM Proposed Fee FY 2000	Annual Regulatory Fee FY 2000
Markets 1-10	15,550	15,075	15,075
Markets 11-25	11,775	11,425	11,425
Markets 26-50	7,300	7,075	7,075
Markets 51-100	4,350	4,225	4,225
Remaining Markets	1,175	1,150	1,150
Construction Permits	2,900	2,800	2,800
Satellite Television Stations (All Markets)	1,300	1,250	1,250
Construction Permits – Satellite Television Stations	460	445	445
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	290	280	280
Broadcast Auxiliary (47 CFR part 74)	12	12	12
CARS (47 CFR part 78)	55	53	53
Earth Stations (47 CFR part 25)	180	175	175
Cable Television Systems (per subscriber) (47 CFR part 76)	.48	.47	.47
Interstate Telephone Service Providers (per revenue dollar)	.00121	.00117	.00117
Space Stations (per operational station in geostationary orbit)			

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Fee Category	Annual Regulatory Fee FY 1999	NPRM Proposed Fee FY 2000	Annual Regulatory Fee FY 2000
(47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	130,550	94,650	94,650
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	180,800	175,250	175,250
International Bearer Circuits (per active 64KB circuit)	7	7	7
International Public Fixed (per call sign) (47 CFR part 23)	410	395	395
International (HF) Broadcast (47 CFR part 73)	520	505	505

FY 1999 RADIO STATION REGULATORY FEES

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	430	325	225	275	325	430
20,001 - 50,000	825	650	325	450	650	825
50.001 - 125,000	1,350	875	450	675	875	1,350
125,001 - 400,000	2,000	1,400	675	825	1,400	2,000
400,001 - 1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

FY 2000 RADIO STATION REGULATORY FEES (Proposed and Final)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001 - 50,000	800	625	300	425	625	800
50,001 - 125,000	1,325	850	425	650	850	1,325
125,001 - 400,000	1,950	1,350	625	775	1,350	1,950
400,001 - 1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

Attachment F—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act,[165] as modified in the instant *Report and Order*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, 1997, 1998 and 1999 and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.[166]

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity is required to have on file with the Commission an IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. In instances where the IRS Determination Letter or the letter of certification from a governmental authority attesting to its nonprofit status is not sufficiently current, the nonprofit entity may be asked to submit more current documentation. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.[167] In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Land Mobile Radio Services (PLMRS) (Exclusive Use):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[168] For FY 2000, PMRS licensees will pay a $13 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[169] The total regulatory fee due is either $65 for a license with a five-year term or $130 for a license with a 10-year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 2000, Microwave licensees will pay a $13 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $130 for the ten-year license term.

6. *218–219 MHz (Formerly Interactive Video Data Service (IVDS)):* The 218–219 MHz service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218–219 MHz service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218–219 MHz service is offered on a private

[165] 47 U.S.C. 159(g).

[166] 47 U.S.C. 159(b)(2), (3).

[167] 47 U.S.C. 159(b)(1)(A).

[168] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[169] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 2000 is less than one-tenth of one percent and, therefore, is statistically insignificant.

carrier basis. The Commission does not anticipate receiving any applications in the 218–219 MHz service during FY 2000. However, for FY 2000, the annual regulatory fee for 218–219 MHz licensees is set at $13 should there be any applications submitted. The total regulatory fee due would be $130 for the ten-year license term.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Thus, private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 2000, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $7 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 for the ten-year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 2000, licensees of Marine (Coast) Stations will pay a $7 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 per call sign for the five-year license term.

9. *Private Land Mobile Radio Services (PLMRS)(Shared Use):* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one-or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 2000, licensees of services in this category will pay a $7 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 for the five-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority. Thus, private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 2000, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $7 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, *i.e.*, possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 2000, licensees of Aviation (Ground) Stations will pay a $7 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $35 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 2000, GMRS licensees will pay a $7 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $35 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $1.40 annual regulatory fee per call sign, as prescribed in the FY 1999 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 2000 fee schedule becomes effective. The total regulatory fee due would be $14 per license for the ten-year license term. [170] For FY 2000, Amateur Vanity Call Sign applicants will again pay a $1.40 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $14 per call sign for the ten-year license term.

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.*, Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90); [171] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 2000, the regulatory fee is $.30 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.*, Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (*e.g.*, one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. In addition, this category includes small SMR systems authorized for use of less than 10 MHz of bandwidth. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 2000, the regulatory fee is $.04 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to make it

[170] Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

[171] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

clear that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is "active" on the "as-of" date for payment of these fees. The unit becomes "feeable" if the end user or assignee of the unit has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data and the unit is either owned and operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.[172] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 2000 are as follows:

FY 2000 RADIO STATION REGULATORY FEES

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001 - 50,000	800	625	300	425	625	800
50,001 - 125,000	1,325	850	425	650	850	1,325
125,001 - 400,000	1,950	1,350	625	775	1,350	1,950
400,001 - 1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

19. Licensees may determine the appropriate fee payment by referring to a list, which will be provided as an attachment to the final *Report and Order* in this proceeding. This same information will be available on the FCC's internet world wide web site (http://www.fcc.gov) by calling the FCC's National Call Center (1–888–225–5322), and may be included in the Public Notices mailed to each licensee for which we have a current address on file.

Note: Note: Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment.

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 2000, permittees will pay a fee of $250 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 2000, permittees will pay a fee of $755 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook, Stations* Volume No. 68, 2000 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10	$39,950
VHF Markets 11–25	33,275
VHF Markets 26–50	22,750
VHF Markets 51–100	12,750
VHF Remaining Markets	3,300
UHF Markets 1–10	15,075
UHF Markets 11–25	11,425
UHF Markets 26–50	7,075
UHF Markets 51–100	4,225
UHF Remaining Markets	1,150

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the

[172] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

primary station are assessed a fee of $1,250 annually. Those stations designated as Television Satellite Stations in the 2000 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 2000, VHF permittees will pay an annual regulatory fee of $2,700. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct new UHF Television Stations. For FY 2000, UHF Television permittees will pay an annual regulatory fee of $2,800. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 2000 is $445. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators are exempt from regulatory fees. For FY 2000, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $280 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 2000, licensees of Commercial Auxiliary Stations will pay a $12 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under parts 21 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 2000, MDS, LMDS, and MMDS stations will pay an annual regulatory fee of $275 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 2000, Cable Systems will pay a regulatory fee of $.47 per subscriber.[173] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1999. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, Appendix B at paragraph 31.

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 2000, licensees will pay an annual regulatory fee of $53 per CARS license.

[173] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *infra*).

b. Interstate Telephone Service Providers

33. This category includes all providers of local and telephone services to end users. Covered services include the interstate and international portion of wireline and fixed wireless local exchange service, local and long distance private line services for both voice and data, dedicated and network packet and packet-like services, long distance message telephone services, and other local and toll services. Providers of such services are referred to herein as "interstate telephone service providers".

Interstate service providers include CAP/CLECs, incumbent local exchange carriers (local telephone operating companies), Interexchange carriers (long distance telephone companies), wireless telephone service carriers that provide fixed local or toll services (Cellular, Personal Communications Service, and Specialized Mobile Radio), local resellers, OSPs (operator service providers that enable customers to make away from home calls and to place calls with alternative billing arrangements), payphone service providers, pre-paid card, private service providers, satellite carriers that provide fixed local or message toll services, shared tenant service providers, toll resellers, and other local and other service providers.

In order to avoid imposing any double payment burden on resellers, we base the regulatory fee on end-user revenues. Accordingly, interstate telephone service providers, including resellers, must submit fee payments based upon their proportionate share of interstate and international end-user revenues for local and toll services. We use the terms end-user revenues, local service and toll service, based on the methodology used for calculating contributions to the Universal Service support mechanisms.[174] Interstate telephone service providers do not pay the Common Carrier regulatory fee on revenue from the provision of intrastate local and toll services, wireless monthly and local message services, satellite toll services, carrier's carrier telecommunications services, customer premises equipment, Internet service and non-telecommunications services. For FY 2000, carriers must multiply their interstate and international revenue

[174] *See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (Jul. 30, 1999) (*Contributor Reporting Requirements Order*).

from subject local and toll services by the factor 0.00117 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

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Calendar 1999 revenue information (show amounts in whole dollars)		
1	Service provided by U.S. carriers that both originates and terminates in foreign points. Form 499-A Line 412 (e)	
2	Interstate end-user revenue from all telecommunications services. Form 499-A Line 420 (d)	
3	International end-user revenue from all telecommunications services exception international-to-international. Form 499-A Line 420 (e)	
4	Total interstate and international end-user revenues (Sum of Lines 1, 2 and 3)	
5	End user interstate mobile service monthly and activation charges. Form 499-A Line 409 (d)	
6	End user international mobile service monthly and activation charges. Form 499-A Line 409 (e)	
7	End user interstate mobile service message charges including roaming charges but excluding toll charges. Form 499-A Line 410 (d)	
8	End user international mobile service message charges including roaming charges but excluding toll charges. Form 499-A Line 410 (e)	
9	End user interstate satellite service. Form 499-A Line 416 (d)	
10	End user international satellite service. Form 499-A Line 416 (e)	
11	Total end user interstate and international mobile and satellite service revenue. (sum lines 5 through 10)	
12	Total end-user interstate and international revenues from local and subject toll services (Line 4 minus Line 11)	
13	Common carrier fee factor	.00117
14	2000 Regulatory Fee (Line 12 times Line 13) *	
* You are exempt from filing if the amount on line 14 is less than $10.		

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[175] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas*, authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) Earth stations, and Earth station uplinks. For FY 2000, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $175 per authorization or registration *as well as a separate fee of $175 for each associated Hub Station.*

35. *Receive-only Earth stations.* For FY 2000, there is no regulatory fee for receive-only Earth stations.

b. Space Stations (Geostationary Orbit)

36. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the Earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and Earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 2000, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $94,650 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

[175] Mobile Earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 2000.

c. Space Stations (Non-Geostationary Orbit)

37. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the Earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and Earth stations on a common carrier and/or private carrier basis. For FY 2000, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $175,250 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order* at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to § 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because § 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we are clarifying our current definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed ■ regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 25.120(d).

d. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 kbps circuits, or equivalent circuits. Under this formulation, 64 kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 kbps circuit equivalent of larger bit stream circuits. For example, the 64 kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, circuits derived from 64 kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 kbps circuits. Such circuits are not subject to fees. Only the 64 kbps circuit from which they have been derived will be subject to payment of a fee. For FY 2000, the regulatory fee is $7 for each active 64 kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel	No. of equivalent 64 kbps circuits
Size in MHz:	
36	630
24	288
18	240

e. International Public Fixed

39. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 2000, International Public Fixed Radio Service licensees will pay a $395 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 2000, International HF Broadcast Stations will pay an annual regulatory fee of $505 per station license.

Attachment G—Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.[176]

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services

[176] Although Authorization of Service is described in this exhibit, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to section 9(a)(1) of the Act. 47 U.S.C. 159(a)(1).

associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

Attachment H—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[177] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[178] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment I—Parties Filing Comments on the Notice of Proposed Rule Making

Space System License, Inc., Motorola Pacific Communications, Inc. and Motorola Satellite Communications, Inc. (collectively, "Motorola")
Sunbelt Communications Company and Ruby Mountain Broadcasting Company (collectively, "Sunbelt")
Space Imaging LLC ("Space Imaging") GE American Communications, Inc. ("GE Americom")
PanAmSat Corporation ("PanAmSat")
COMSAT Corporation ("COMSAT")
National Association of Broadcasters ("NAB")
The Cellular Telecommunications Industry Association ("CTIA")
The Council of Independent Communications Suppliers ("CICS") and the USMSS, Inc. ("USMSS")
American Mobile Telecommunications Association, Inc. ("AMTA")
BellSouth Corporation ("BellSouth")

Parties Filing Reply Comments on the Notice of Proposed Rule Making

GE American Communications, Inc. ("GE Americom")
PanAmSat Corporation ("PanAmSat")
COMSAT Corporation (COMSAT")

Attachment J—AM and FM Radio Regulatory Fees

The List of regulatory fees is available from the FCC Public Reference Room, CY-A257, 445 12th St. SW, Washington, DC 20554.

SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH, Approving in Part, Dissenting in Part

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2000, MD Docket No. 00–58 (rel. July 10, 2000).

I generally support today's item. However, two aspects of the Order particularly concern me. First, I am troubled by yearly increases in fees that do not appear tied to any corresponding increase in the services provided to these licensees by the Commission. Congress requires that the Commission collect $185,754,000 this year to cover the costs of regulation and services.[179] Implicitly, this amount is "reasonably related to the benefits provided to the payor of the fee by the Commission's activities."[180] Over the past 6 years, however, these regulatory fees have increased over 200% and now cover 88.5% of the Commission's operating budget. It is hard to imagine that these increases reflect corresponding increases in Commission services.

These immense sums are not true "fees," but instead are more accurately described as taxes. Ordinarily, administrative fees are distinguishable from taxes in that the payor of fees receives a benefit in return. Conversely, taxes "confer[ ] no special benefit on the payee," rather, they are "intended to raise general revenue" or are "imposed for some public purpose."[181] At this point, our regulatory fees cover nearly 90% of the FCC's total operating budget. It is difficult to contend that the payors of these fees account for 90% of the FCC's costs. "Fees" should not be used as a back door to impose tax-like obligations on licensees.

My second concern is the assessment of fees upon Comsat for the Intelsat satellite system. This order purports to find Comsat liable for certain of these fees. The order contends that Comsat is liable under the fee category, "space station[s] (per operational station in geosynchronous orbit) (47 CFR Part 25)."[182] Comsat satellites are not, however, and never have been regulated or licensed under Part 25. The majority contends that the parenthetical reference to Part 25 following the fee is "essentially clerical" and "does not reflect a substantive limitation."[183] Needless to say, I am troubled by this characterization, particularly since the other parentheticals do not seem designed to merely "call attention to" certain "relevant" portions of our rules. In fact, other parentheticals regarding this fee category seem quite directive: "per operational station in geosynchronous orbit." I do not believe we possess the authority to interpret away that limitation to impose the fee based on some other calculus. I fear that imposition of the fee on non-part 25 systems leads us down that dangerous road.

The Commission does possess clear authority to amend the Schedule of Regulatory Fees.[184] Congress mandates that in "making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law."[185] However, just as we failed to follow this obligation in the original Comsat "Signatory Fee" proceeding,[186] here too the Commission has not undertaken a proceeding

[177] 47 CFR 73.150 and 73.152.

[178] 47 CFR 73.313.

[179] See Public Law 105–277 and 47 U.S.C. 159(a)(2).

[180] 47 U.S.C. § 159(a)(1)(A).

[181] *Thomas* v. *Network Solutions*, 2 F.Supp.2d. 22 (D.C. 1998).

[182] See 47 U.S.C. 159(g). Imposition of fees on Comsat has already endured a troubled history. See Panamsat Corp. v. FCC, 198 F.3d 890 (D.C. Cir. 1999); Comsat Corp. v. FCC, 114 F.3d 223 (D.C. Cir. 1997).

[183] Order at ¶ 22. Indeed, such an interpretation would render the parenthetical "mere surplusage"—contrary to established rules of statutory construction. See Mail Order Ass'n of America v. USPS, 986 F.2d 509 (D.C. Cir. 1993).

[184] See *id.* § 159(b)(3).

[185] *Id.*

[186] See *Comsat Corp.* v. *FCC*, 114 F.3d 223 (D.C. Cir. 1997) (holding that the Commission cannot make an amendment to the fee schedule unless pursuant to a rulemaking or change in the law).

to formally amend the fee schedule based on a "rulemaking proceedings or changes in law."[187] I do not believe we should interpret away such limitations, rather the FCC is obligated to implement the statutory fee schedule as written or formally change it, not merely read purportedly inconvenient limitations out of the statute.[188]

For the foregoing reasons, I respectfully dissent.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90):		
(a) New, Renew/Mod (FCC 601 & 159)	$13.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	13.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5245.
220 MHz Nationwide (a) New, Renew/Mod (FCC 601 & 159)	13.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	13.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
2. Microwave (47 CFR Pt. 101) (Private):		
(a) New, Renew/Mod (FCC 601 & 159)	13.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	13.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
3. 218–219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159)	13.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	13.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
4. Shared Use Services, Land Mobile (Frequencies Below 470 MHz—except 220 MHz):		
(a) New, Renew/Mod (FCC 601 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	7.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
General Mobile Radio Service:		
(a) New, Renew/Mod (FCC 601 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	7.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Rural Radio (Part 22):		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Coast:		
(a) New Renewal (FCC 503 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal (FCC 452R & 159)	7.00	FCC, P.O. Box 358270, Pittsburgh, PA, 15251–5270.
(c) Renewal (Electronic Filing) (FCC 900 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Aviation Ground:		
(a) New, Renewal (FCC 406 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal (FCC 452R & 159)	7.00	FCC, P.O. Box 358270, Pittsburgh, PA, 15251–5270.
(c) Renewal (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Ship:		
(a) New, Renewal (Electronic Filing) (FCC 506 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
Aviation Aircraft:		
(a) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (Electronic Filing) (FCC 605 & 159)	7.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 605 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
5. Amateur Vanity Call Signs:		
(a) Initial or Renew (Electronic Filing) (FCC 605 & 159)	1.40	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	1.40	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
6. CMRS Mobile Services (per unit) (FCC 159)	.30	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

[187] In light of the longstanding nature of the Comsat service and the existing fee category structure, it is not clear that there has been the requisite "additions, deletions, or changes in the nature of its services." See 47 U.S.C. 159(b)(3)

[188] The Order's interpretation seems more like a rewrite. See *Indiana Michigan Power Co.* v. *Department of Energy*, 88 F.3d 1272, 1276 (1996) (Stating that the Department's "treatment of this statute is not an interpretation but a rewrite.").

Exclusive use services (per license)	Fee amount [1]	Address
7. CMRS Messaging Services (per unit) (FCC 159)	.04	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table must be multiplied by the 5- 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also as detailed in § 1.1102 of this chapter.

3. Section 1.1153 is revised to, read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
Radio [AM and FM] (47 CFR, Part 73)		
1. *AM Class A:*		
<=20,000 population	$400	FCC, Radio.
20,001–50,000 population	800	P.O. Box 358835.
50,001–125,000 population	1,325	Pittsburgh, PA.
125,001–400,000 population	1,950	15251–5835.
400,000–1,000,000 population	2,725	
>1,000,000 population	4,375	
2. *AM Class B:*		
<=20,000 population	300	
20,001–50,000 population	625	
50,001–125,000 population	850	
125,001–400,000 population	1,350	
400,001–1,000,000 population	2,200	
>1,000,000 population	3,575	
3. *AM Class C:*		
<=20,000 population	200	
20,001–50,000 population	300	
50,001–125,000 population	425	
125,001–400,000 population	625	
400,001–1,000,000 population	1,200	
>1,000,000 population	1,725	
4. *AM Class D:*		
<=20,000 population	250	
20,001–50,000 population	425	
50,001–125,000 population	650	
125,001–400,000 population	775	
400,001–1,000,000 population	1,450	
>1,000,000 population	2,225	
5. AM Construction Permit	250	
6. FM *Classes A, B1 and C3:*		
<=20,000 population	300	
20,001–50,000 population	625	
50,001–125,000 population	850	
125,001–400,000 population	1,350	
400,001–1,000,000 population	2,200	
>1,000,000 population	3,575	
7. *FM Classes B, C, C1 and C2:*		
<=20,000 population	400	
20,001–50,000 population	800	
50,001–125,000 population	1,325	
125,001–400,000 population	1,950	
400,001–1,000,000 population	2,725	
>1,000,000 population	4,375	
8. FM Construction Permits	755	
TV (47 CFR, Part 73) VHF Commercial		
1. Markets 1 thru 10	39,950	FCC, TV Branch.
2. Markets 11 thru 25	33,275	P.O. Box 358835.
3. Markets 26 thru 50	22,750	Pittsburgh, PA.
4. Markets 51 thru 100	12,750	15251–5835.
5. Remaining Markets	3,300	
6. Construction Permits	2,700	
UHF Commercial		
1. Markets 1 thru 10	15,075	FCC, UHF Commercial.
2. Markets 11 thru 25	11,425	P.O. Box 358835.
3. Markets 26 thru 50	7,075	Pittsburgh, PA.
4. Markets 51 thru 100	4,225	15251–5835.
5. Remaining Markets	1,150	
6. Construction Permits	2,800	
Satellite UHF/VHF Commercial		
1. All Markets	1,250	FCC Satellite TV.
2. Construction Permits	445	P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74).	280	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

	Fee amount	Address
Broadcast Auxiliary Markets	12	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Multipoint Distribution	275	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities:		
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$13	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Carriers:		
1. Interstate Telephone Service Providers (per dollar contributed to TRS Fund).	.00117	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Antenna Relay Service	$53	FCC, Cable, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Cable TV System (per subscriber)	.47	

6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities:		
1. International (HF) Broadcast	$505	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. International Public Fixed	395	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Space Stations:		
(Geostationary Orbit)	94,650	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
(Non-Geostationary Orbit	175,250	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Earth Stations:		
Transmit/Receive & Transmit Only (per authorization or registration).	175	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Carriers:		
1. International Bearer Circuits (per active 64KB circuit or equivalent).	7.00	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

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Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Metal Coil Coating; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6734–3]

RIN 2060–AG97

National Emission Standards for Hazardous Air Pollutants: Metal Coil Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for facilities that coat metal coil. The EPA has identified metal coil coating as a major source of hazardous air pollutant (HAP) emissions such as methyl ethyl ketone, glycol ethers, xylenes (isomers and mixtures), toluene, and isophorone. These proposed standards will implement section 112(d) of the Clean Air Act (CAA or Act) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The proposed standards would eliminate approximately 55 percent of nationwide HAP emissions from these major sources.

DATES: Comments. Submit comments on or before September 18, 2000.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 7, 2000, a public hearing will be held on August 17, 2000.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–47, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Public Hearing. If a public hearing is held, it will be held at our Office of Administration Auditorium in Research Triangle Park, North Carolina. You should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946 to request to speak at a public hearing or to find out if a hearing will be held.

Docket. Docket No. A–97–47 contains supporting information used in developing the proposed standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Rhea Jones, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2940, facsimile number (919) 541–5689; electronic mail address: jones.rhea@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–97–47. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Rhea Jones, c/o OAQPS Document Control Officer (Room 740B), U.S. Environmental Protection Agency, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also call Ms. Eck to verify the time, date, and location of the hearing. The public hearing would provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Plain Language. In compliance with President Clinton's June 1, 1998 Executive Memorandum on plain language in government writing, this preamble is written using plain language, thus, the use of "we" and "us" in this document refers to the EPA. The use of "you" refers to the reader, and may include industry; State, local, and tribal governments; environmental groups; and other interested individuals.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC codes	Examples of potentially regulated entities
Metal coil coating industry ...	3479[a] 2591, 2796, 3053, 3081, 3083, 3086, 3316, 3312, 3313, 3317, 3334, 3341, 3352, 3353, 3355, 3441, 3444, 3446, 3448, 3465, 3471, 3490, 3499, 3555, 3699, 3714, 3861, 5051, 5084, 7389, 8731, 8734.	Those facilities that perform surface coating of metal coil.

[a] The majority of facilities are included in SIC 3479.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in section II of this preamble and in § 63.5090 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background Information Document. The Background Information Document (BID) for the proposed standard may be obtained from the TTNWWW; the metal coil coating docket (A–97–47); the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777; or the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to "National Emission Standards for Hazardous Air Pollutants: Metal Coil Coating NESHAP—Background Information for Proposed Standards" (EPA 453/P–00–001).

Outline. The information presented in this preamble is organized as follows:

I. What are the subject and purpose of this proposed rule?
II. Does this proposed rule apply to me?
III. What is the proposed emission standard?
IV. When do I show initial compliance with the proposed rule?
V. What testing and monitoring must I do?
VI. What notification, recordkeeping, and reporting requirements must I follow?
VII. What are the environmental, energy, and economic impacts of this proposed rule?
VIII. What is the basis for selecting the level of the proposed standards?
IX. What is the basis for selecting the format of the proposed standards?
X. Why did we select the proposed monitoring requirements?
XI. Why did we select the proposed test methods?
XII. Why did we select the proposed notification, recordkeeping, and reporting requirements?
XIII. Administrative Requirements

I. What Are the Subject and Purpose of This Proposed Rule?

The CAA requires us to establish standards to control HAP emissions from source categories identified under section 112(c). An initial source category list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The source category list identifies "Metal Coil Coating (Surface Coating)" as a source category because it contains major sources. Under the CAA, a major source is defined as ". . . any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, at least 10 tons per year (tpy) or more of any one HAP or 25 tpy of any combination of HAP." Sources that emit or have the potential to emit less than these amounts are considered area sources. We have estimated that there are over 90 existing facilities in the source category; all are believed to be major sources.

The purpose of the proposed rule is to reduce emissions of HAP from major sources that coat metal coil. We estimate that annual baseline HAP emissions from this source category are approximately 2,258 megagrams per year (Mg/yr) (2,484 tpy). The proposed rule would eliminate approximately 1,241 Mg/yr (1,366 tpy) or 55 percent of the major source organic HAP emissions.

The major HAP emitted from the metal coil coating process include methyl ethyl ketone and gycol ethers. These compounds account for over 50 percent of the nationwide HAP emissions from this source category. Other HAP identified in emissions include xylenes (isomers and mixtures), toluene, and isophorone. Each of these major HAP can cause reversible or irreversible toxic effects following sufficient exposure. The potential toxic effects include eye, nose, throat, and skin irritation, and blood cell, heart, liver, and kidney damage.

The degree of adverse effects to human health from exposure to HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced are dependent upon (1) the ambient concentration observed in the area (as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency and duration of exposures; (3) characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population; and (4) pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

II. Does This Proposed Rule Apply to Me?

A. What Facilities Are Subject to This Proposed Rule?

Metal coil surface coating is a process-specific rather than a product-specific operation. Accordingly, the proposed rule applies to you if you own or operate any metal coil coating operation at a facility that is a major source of HAP emissions. We have defined a coil coating operation as the application system used to apply an organic coating to the surface of any continuous metal strip at least 0.006 inch thick that is packaged in a roll or coil, which includes the web unwind or feed station; the series of one or more coating stations and any associated curing ovens; the wet section/pretreatment operations; equipment and parts cleaning operations; the quenching operations; the mixing/thinning operations; and the storage and wastewater operations.

A major source would also be subject to all other applicable NESHAP for the various source categories, other than metal coil coating, that may be present at the facility. This means your facility may be subject to multiple NESHAP, and you would be responsible for complying with the standards set for each NESHAP. Coating equipment that is dedicated to research and development is not covered by the proposed NESHAP.

B. How Is the Affected Source Defined?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific emission standard applies. Within a source category, we select the specific emission sources (emission points or groupings of emission points) that will make up the affected source for that category. To select these emission sources, we mainly consider the constituent HAP and quantity emitted from individual or groups of emission points.

For the proposed metal coil NESHAP, the floor level of control on which the emission standard is based is 98 percent overall control efficiency of the capture and control system. The affected source subject to the emission standard is proposed to be the collection of coil coating lines at a facility. Specific emission sources that will be subject to the proposed emission limitations include the coating application stations and associated curing ovens. Wet section/pretreatment and quench operations are part of the metal coil coating line, but are not subject to the proposed emission limitations.

We are not proposing requirements for the storage, wastewater, mixing/thinning, and parts and equipment cleaning operations. The proposed standard would apply to emissions of all organic HAP listed in section 112(b) of the CAA and apply to HAP present in coatings applied to the metal coil.

Some facilities may perform both foil and coil coating operations on the same equipment. Where this situation occurs, both coating operations will be subject to the proposed metal coil coating NESHAP.

III. What Is the Proposed Emission Standard?

A. What Are the Emission Limits?

In the proposed rule, you have two options to limit HAP emissions: (1) Reduce emissions of the organic HAP applied for the month by 98 percent; or (2) limit HAP emissions to no more than 0.029 kilograms per liter (kg/l) of solids applied (0.24 pounds per gallon (lbs/gal)) for the month. The second option can be met through a combination of coating formulation and add-on capture and control devices, or by limiting the amount of HAP in your coatings to no more than 0.029 kg/l of solids (0.24 lbs/gal) on average for the month.

Before your initial compliance demonstration, you would choose one of these emission limit options for your coating lines. In your initial compliance certification, you would notify the Administrator of your choice, and after that you would monitor and report compliance results accordingly. If you decide to change to the other emission limit option, you are required to notify the Administrator, as with other changes at the facility discussed in section VI of this preamble.

In submitting comments, please specify whether the comment pertains to one or all of the emission limitation and compliance options. We will further evaluate the standard based on our review of public comments and other information we may receive. The final rule may reflect either or both of the proposed options to limit HAP emissions.

The General Provisions (40 CFR part 63, subpart A) would also apply to you, as outlined in table 1 of the proposed rule. The General Provisions codify procedures and criteria we use to carry out all part 63 NESHAP promulgated under the CAA. The General Provisions contain administrative procedures, preconstruction review procedures, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The proposed subpart SSSS refers to individual sections of the General Provisions to highlight key sections that we believe will be of particular interest to you. However, unless specifically overridden in table 1 of subpart SSSS, all of the applicable General Provisions requirements would apply to you.

You may be subject to the proposed metal coil NESHAP and other future or existing rules, such as State rules requiring reasonably available control technology limits on volatile organic compounds (VOC) emissions or the new source performance standards (NSPS) in 40 CFR part 60, subpart TT. You must comply with all rules that apply to you. Compliance with different numerical standards should be resolved through your title V permit.

B. What Pollutants Are Limited by This Proposed Rule?

We propose to limit total organic HAP emissions from coating lines. Inorganic HAP are present in pigments and film-forming components of some coatings. These components remain on the substrate for the life of the product and are not expected to be emitted into the air. Therefore, inorganic HAP are not covered by the proposed NESHAP. In section 112, the CAA lists the HAP to be regulated.

IV. When Do I Show Initial Compliance With the Proposed Rule?

Existing sources would have to comply with the final rule no later than 3 years after the effective date of the final rule. The effective date is the date on which the final rule is published in the **Federal Register**. New or reconstructed sources would have to comply upon start-up of the affected source or the effective date of the final rule, whichever is later. Details of compliance demonstrations can be found in the General Provisions, as outlined in table 1 of subpart SSSS.

V. What Testing and Monitoring Must I Do?

In addition to the testing and monitoring requirements specified below for the affected source, the proposed rule adopts the testing requirements specified in § 63.7.

A. Test Methods and Procedures

You may comply with the proposed standards by applying materials meeting the organic HAP emission rate limit, by using capture and control equipment to reduce organic HAP emissions by 98 percent, or by using a combination of low organic HAP materials and capture and control equipment to meet the organic HAP emission rate limit.

If you demonstrate compliance based on the materials applied on your coating lines, you must determine the organic HAP content or the volatile matter content, and the solids content of materials applied. To determine organic HAP content, you may either use EPA Method 311 of appendix A of 40 CFR part 63, use an alternative method for determining the organic HAP content (but only after obtaining EPA approval), or use the volatile matter content of the materials applied as a surrogate for the organic HAP content. The volatile matter content must be determined by EPA Method 24 of appendix A of 40 CFR part 60, or an EPA approved alternative method. The volume solids content of the material must be determined using ASTM D2697–86, or ASTM D6093–97. You may rely on manufacturer's data to determine the organic HAP content or volatile matter and solids content when these data are equivalent to those obtained from Method 311, Method 24, ASTM D2697–86, or ASTM D6093–97 (or an EPA approved alternative method), respectively. You must determine the mass of each coating material applied using company records. If diluent solvents or other ingredients are added to a material prior to application, then the total organic HAP fractions and mass must be adjusted appropriately to account for such additions. You must calculate the organic HAP content and mass of all materials applied on the coating lines for each monthly period. However, only changes in a material formulation would require a re-determination of total organic HAP weight fraction for that material. To demonstrate compliance, you must calculate the average mass of organic HAP in materials applied and show that it is less than the organic HAP emission limit.

If you use an emission capture and control system to comply with the

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standard, you must demonstrate that the overall control efficiency reduces total organic HAP by at least 98 percent. Alternatively, you may use capture and control equipment in combination with low organic HAP materials and demonstrate you meet the organic HAP emission limitation specified. To comply using the combined approach, you must determine the overall control efficiency of the equipment and the organic HAP and solids content of the materials applied. These values must be determined for each monthly period.

The overall control efficiency for a capture and control system would be demonstrated based on capture and reduction efficiency. You must determine the capture efficiency or verify the presence of a total enclosure using EPA Method 204 of 40 CFR part 51, appendix M. The EPA Method 204A through F of 40 CFR part 51, appendix M, is used to determine the capture efficiency of enclosures that do not meet the criteria for total enclosures. You must determine the emission reduction efficiency of a control device by conducting a performance test or using a continuous emission monitoring system (CEMS). If you use CEMS, you must determine the inlet and outlet concentration to calculate the control efficiency. The CEMS must comply with performance specification 8 or 9 in 40 CFR part 60, appendix B.

If you conduct a performance test, we are proposing that the removal efficiency of a control device be determined based on three runs, each run lasting 1 hour. Method 1 or 1A of 40 CFR part 60, appendix A is used for selection of the sampling sites. Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, is used to determine the gas volumetric flow rate. Method 3, 3A, or 3B of 40 CFR part 60, appendix A, is used for gas analysis to determine dry molecular weight. Method 4 of 40 CFR part 60, appendix A, is used to determine stack moisture. Method 25 or 25A of 40 CFR part 60, appendix A, is used to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used upon obtaining EPA approval.

If you use a solvent recovery system, you may alternatively determine the overall control efficiency using a liquid-liquid material balance. If you demonstrate compliance with the material balance, you must measure the amount of all materials applied during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month and calculate the overall solvent recovery efficiency.

B. Monitoring Requirements

Monitoring is required by the proposed standards to ensure that the affected source is in continuous compliance. Monitoring requirements apply if you comply with the proposed rule using emission capture and control devices to meet the standards expressed as a percent control or as an organic HAP emission rate limit.

Monitoring to demonstrate compliance is accomplished by measuring site-specific operating parameters, the values of which you establish during the performance test described in section V.A of this preamble. You must install, calibrate, maintain, and operate all monitoring equipment according to manufacturer's specifications. If you use control devices other than those identified in the proposed standards you must submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by the Administrator and is not delegated.

The operating parameter value is defined as the minimum or maximum (as applicable) value established for a control device or process parameter achieved during the most recent performance test that demonstrated compliance with the emission standard.

If you use a capture and control system to meet the proposed standards and you do not use liquid-liquid material balances to demonstrate compliance, you are required to submit a plan identifying the operating limit and monitoring procedures for the capture efficiency. You must monitor in accordance with your plan unless we require an alternate monitoring procedure.

If you use a thermal or catalytic oxidizer, you must monitor temperature using a continuous recorder. If you use a thermal oxidizer, you must establish the minimum combustion temperature recorded during the performance test as the operating limit. If you use a catalytic oxidizer, you must establish as the operating parameters the minimum gas temperatures both upstream and downstream of the catalyst bed. These minimum temperatures are the operating parameters used to demonstrate continuous compliance. The time weighted average of the values recorded during the performance test shall be computed to establish the parameter value(s). For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

If you operate metal coil coating lines with intermittently-controllable work stations, you must demonstrate that HAP emissions from each curing oven associated with these work stations are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four procedures:

(1) Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;

(2) Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;

(3) Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or

(4) Automatic shutdown system to stop operation of the metal coil coating line when flow is diverted from the control device when the control device is operating.

If you use a solvent recovery system, you must conduct monthly liquid-liquid mass balances or operate CEMS as described above in the test methods and procedures section of this preamble.

If you use a combination of capture and control devices and low-HAP materials, you are required to monitor the parameter of the capture and control device as indicated above. In addition, you must record data on the HAP and solids content of the materials applied to determine the HAP emission rate as described in the performance test section.

VI. What Notification, Recordkeeping, and Reporting Requirements Must I Follow?

A. Initial Notification

If the NESHAP apply to you, you must send notification to the appropriate EPA Regional Office, and to your State or local agency, at least 1 year before the compliance date for existing sources and within 120 days after the date of initial start-up for new and reconstructed sources, or 120 days after publication of the final rule, whichever is later. New major affected sources must submit an application for approval of construction or reconstruction according to § 63.5(d)(1). This application satisfies the initial notification requirement. The initial notification informs us and your State

agency that you have an existing facility that is subject to the proposed NESHAP or that you have constructed a new facility. Thus, it allows you and the enforcement agency to plan for compliance activities.

B. Notification of Performance Test

If you demonstrate compliance by using a capture and control system to reduce emissions of HAP, you must conduct a performance test as described above. Prior to conducting the performance test, you must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin, as indicated in the General Provisions for the NESHAP.

C. Notification of Compliance Status

Your compliance procedures will depend on which compliance option you choose. You are required to send a notification of compliance status within 180 days after the compliance date. The notification of compliance status should specifically identify whether low-HAP materials, emission capture and control systems, or a combination of the two were used to demonstrate compliance, and, for capture and control systems, the results of performance tests and monitoring, and a description of how you will determine continuing compliance. Your notice must also specify what operating limits were established during the performance test, the range of each monitored parameter for your affected source, information verifying that this range shows compliance with the emission standard, and information showing that the source has operated within its designated operating parameters. To comply with the proposed NESHAP, your compliance report must contain at least 5 months of coating content data where low-HAP materials are used and monitoring data where capture and control systems are used to demonstrate that you have been in compliance since the compliance date.

D. Recordkeeping Requirements

Depending on the compliance approach you choose, you may have to keep records of one or more of the following:

- Organic HAP, volatile matter, and solids content of the coatings, as applied.
- Monthly usage of all coatings and other materials applied.
- Equipment monitoring parameter measurements.

Deviations from the proposed standard, as calculated from these records, need to be reported as described in the section below.

E. Periodic Reports

Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period you would submit a semiannual report stating that the affected source has been in compliance. The following semiannual reports would be required under this proposal when deviations occur:

- If you are complying by using oxidizers, report all times when a 3-hour average temperature was below the average temperature established during the most recent performance test when compliance was demonstrated.
- If you are complying with the HAP percent reduction limitation by using solvent recovery systems and you choose to show compliance by means of a liquid-liquid mass balance, report information on all months when the material balances did not meet the standard.
- If you are complying by using oxidizers or solvent recovery systems where liquid-liquid material balances are not conducted, report all days when, for any 3-hour period, the average value of the site-specific operating parameter used to monitor the capture system performance was greater than or less than (as appropriate) the operating parameter value established for the capture system.
- If you are complying by using low-HAP materials, report each deviation from the emission limit.
- If you are complying by using a combination of capture and control systems and low-HAP materials, report information on control device parameter deviations as described above. In addition, you would be required to submit semiannual reports of deviations of monthly calculated HAP emission limitations.

You would also have to send us reports for each semiannual reporting period in which the following occur:

- A change occurs at your facility or within your process that might affect its compliance status.
- A change occurs at your facility or within your process that you must normally report in the initial notice.
- You decide to change to another emission limitation option.

F. Other Reports

You are required to submit other reports, including those you must do for periods of start-up, shutdown, and malfunction. For example, if you use a capture and control system to reduce HAP emissions, you must develop a start-up, shutdown, and malfunction plan. You would have to make the plan available for inspection if the Administrator requests to see it. It would stay in your records for the life of the affected source or until the source is no longer subject to the standard. If the procedures you follow during any start-up, shutdown, or malfunction are inconsistent with your plan, you must report those procedures with your semiannual reports.

VII. What Are the Environmental, Energy, and Economic Impacts of This Proposed Rule?

As explained below, we do not expect any significant adverse environmental or energy impacts resulting from the proposed rule. Any negative economic impacts are also expected to be small. Actual compliance costs will depend on each source's existing equipment and the modifications made to comply with the standard. We have estimated that the installation of permanent total enclosures and the installation of, or improvement to, thermal oxidizers at existing facilities could require nationwide capital costs of approximately $11.6 million and annual operating costs of about $6.2 million. Costs could be much lower if facilities choose to use low-HAP coatings.

A. Emission Reductions

For existing sources in the metal coil coating industry, the nationwide baseline HAP emissions are estimated to be 2,258 Mg/yr (2,484 tpy). We estimate that implementation of the final rule would reduce emissions from these sources by 1,241 Mg/yr (1,366 tpy), or approximately 55 percent.

Since the emission limits for new and existing sources are the same, emission reductions for new sources are expected to be similar to the 55 percent emission reduction estimated for existing sources.

B. Secondary Environmental Impacts

Secondary environmental impacts are considered to be any air, water, or solid waste impacts, positive or negative, associated with the implementation of the final standards. These impacts are exclusive of the direct organic HAP air emission reductions discussed in the previous section.

Most of the organic HAPs are VOC. Capture and control of HAP that are presently emitted will result in a decrease in VOC emissions. In addition, the proposed emission control systems used to reduce HAP emissions will reduce non-HAP VOC emissions as well. We do not have information on non-HAP VOC emissions from metal coil coating operations; consequently,

we cannot quantify the reduction of VOC emissions. However, the percent reduction should be similar to the percent reduction in HAP emissions (i.e., about 55 percent). Emissions of VOC have been associated with a variety of health and welfare impacts. The VOC emissions, together with nitrogen oxides, are precursors to the formation of ground level ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

The use of newly installed or upgraded control devices will result in greater electricity consumption. Increases in emissions of nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon dioxide, as well as certain HAP, from electric utilities could result. In the metal coil coating industry, some plants will comply by installing or upgrading oxidizers. Supplemental fuel, typically natural gas, will be used, particularly for thermal oxidizers. Combustion of this fuel will result in additional carbon dioxide emissions and may result in additional emissions of nitrogen oxides and carbon monoxide.

A small number of facilities using waterborne coatings may install condenser systems to comply with the proposed standard. This will result in the generation of wastewater streams that may require treatment to remove the HAP. It also is expected that some metal coil coating facilities will comply with the proposed standard by substituting non-HAP materials for HAP presently in use. In some cases, the non-HAP materials may be VOC, however, in other cases, non-VOC (*e.g.*, water) materials may be used. Facilities converting to waterborne materials as a means or partial means of compliance may have reduced Resource Conservation and Recovery Act hazardous waste disposal if the status of the waste material changes from hazardous to nonhazardous. An increase in wastewater discharge may occur if waste material and waterborne wash-up materials are discharged to publicly owned treatment works. There is no assurance that facilities converting to low-HAP formulations will adopt waterborne rather than non-HAP VOC-based materials.

New and upgraded catalytic oxidizers will require catalysts. Catalyst life is estimated to be more than 10 years. Spent catalysts will represent a small amount of solid waste, and sometimes the spent catalyst will be regenerated by the manufacturer for reuse. Activated carbon used in solvent recovery systems is returned to the manufacturer at the end of its useful life and converted to other salable products. Little solid waste impact is expected from this source.

C. Energy Impacts

The operation of new and upgraded control devices will require additional energy. Capture of previously uncontrolled solvent-laden air will require fan horsepower. Operation of oxidizers, particularly thermal oxidizers, may require supplemental fuel (typically natural gas).

The total additional electrical energy required to meet the standard is estimated to be 14.6 million kilowatt-hours per year. Nationwide incremental natural gas usage is expected to increase by 110.6 million standard cubic feet per year.

D. Cost Impacts

The total nationwide capital and annualized costs (1997 dollars) attributable to compliance with the proposed standards have been estimated for existing sources. These costs are based on model plant analysis of the least-cost measure needed for facilities to attain one of the compliance options. For existing facilities, with the exception of facilities applying waterborne coatings that do not meet the emission rate limit, the compliance costs represent the incremental costs associated with upgrading existing HAP emission controls.

Compliance Costs for New Sources. Since the proposed HAP emission limits for existing and new sources are the same, the incremental costs required to upgrade existing HAP emission controls are an indication of the incremental costs that will be incurred by new sources to install and operate the level of HAP emission controls required to achieve the proposed emission limits. For example, for a small coating line with one application station enclosed by a permanent total enclosure and a thermal oxidizer to control HAP emissions, the incremental capital costs are estimated to be about $213,000, and the annual costs including monitoring, recordkeeping, and reporting costs approximately $78,000. Similarly, for a large coating line with two application stations enclosed by permanent total enclosures and two thermal oxidizers, the incremental capital costs are estimated to be about $406,000, and the annual costs around $182,000, including monitoring, recordkeeping, and reporting costs. A coating line applying waterborne coatings is estimated to incur capital costs of around $780,000 and annual costs of approximately $277,000, including monitoring, recordkeeping, and reporting to install and operate a condenser system to control HAP emissions.

The incremental costs incurred for coating lines controlled by thermal incinerators include retrofit factors, and, thus for new sources, the incremental costs are probably overstated. Nonetheless, the estimated costs should not deter the construction of new metal coil coating lines or the entry of new companies into the industry.

Capital Costs for Existing Sources. Capital costs would be incurred by installing capture and control systems at those facilities presently without controls and upgrading capture and control systems at existing facilities that do not meet the proposed standard. Additionally, the purchase of monitoring equipment may be needed as a capital investment to meet the monitoring, recordkeeping, and reporting requirements of the proposed rule. Total nationwide capital costs are estimated at $11.6 million, based on the use of permanent total enclosures, thermal oxidizers, solvent recovery systems, and monitoring equipment. The total nationwide capital costs with other methods of control are expected to be lower.

Annual Costs at Existing Sources. Total nationwide annual costs of the proposed standard have been estimated at approximately $6.0 million per year with the use of permanent total enclosures and new or upgraded thermal oxidizers or solvent recovery systems. These costs include capital recovery over a 15-year period, operating costs for the newly installed and upgraded capture and control systems, and costs for monitoring, recordkeeping, and reporting. These are net costs after taking into account the costs presently being incurred for the baseline control level. The total nationwide annual costs with methods of control other than thermal oxidizers are expected to be lower.

E. Economic Impacts

The Economic Impact Analysis (EIA) (included in the BID, EPA 453/P–00–001) shows that the expected price increase for coated metal coils would be approximately 0.2 percent as a result of the proposed standards. Therefore, no adverse impact is expected to occur for those industries that consume coated metal coils such as building and construction, appliances, automotive parts, and other consumer products.

The distribution of costs across metal coil coating facilities is slanted toward the lower impact levels with many

facilities incurring no costs or only those related to initial performance testing and annually recurring monitoring, recordkeeping, and reporting. The EIA indicates that these regulatory costs are expected to represent less than 1 percent of the value of coating services, which should not cause producers to cease or alter their current operations. Hence, no firms or facilities are at risk of closure because of the proposed standards. For more information, consult the docket for this project.

VIII. What Is the Basis for Selecting the Level of the Proposed Standards?

A. Source of Authority for Standards Development

Section 112(c) of the CAA directs us to develop a list of all categories of major sources and appropriate area sources that emit one or more of the 188 HAP listed under section 112(b). Metal coil coating is a listed source category because of its HAP emissions that include, but are not limited to, toluene, methanol, methyl ethyl ketone, xylenes, phenol, methylene chloride, ethylene glycol and glycol ethers, hexane, methyl isobutyl ketone, cresols and cresylic acid, dimethylformamide, vinyl acetate, formaldehyde, and ethyl benzene.

B. What Is the Basis for Defining the Affected Source?

In defining the affected source for the proposed metal coil coating NESHAP, we considered available information on HAP emissions, control configurations, industry practices, and products produced.

A metal coil coating operation is the application system used to apply an organic coating to the surface of any continuous metal strip at least 0.006 inch thick or more that is packaged in a roll or coil. It includes the affected source and associated operations that support the coating process.

In general, metal coil-coating facilities are covered by the SIC codes listed in the Regulated Entities table. However, facilities classified under other SIC codes may be subject to the proposed standards if the facility meets the definition of a major source and conducts metal coil coating.

Although the coil coated metal is used in an extensive list of products, the coating processes used by the different segments of the coil coating industry are very similar. Typically, the coil (or roll) of bare sheet metal strip is unwound, cleaned and treated in a wet section, air-dried, and coated on one or both sides. A prime coat is applied, cured in an oven and quenched (*i.e.*, cooled by an air or water spray), followed by application of a top or finish coat. Curing and quenching are repeated, and the finished strip is cut or rewound and packaged for shipment or additional processing. The coating line may include one coating station or multiple coating stations. A variety of coatings may be applied. These may be decorative or protective, adhesives, or printed patterns.

The primary HAP emission source in metal coil coating is the solvent used in the coatings. The solvent basically acts as a vehicle for the material that is used to coat the coil; this solvent is usually evaporated in curing ovens, with HAP emissions occurring from both application and curing of the coating. Most, if not all, of the solvent emitted can be collected if capture equipment is installed to collect solvent vapors. Solvents are also contained in cleaning solutions that are used to clean residual coating material from the coating equipment. If a facility mixes coatings on site, this process can also be a source of HAP solvent emissions.

In the various segments of the metal coil coating industry, the same primary HAP emission sources can be found. On average, coating application and curing oven HAP emissions represent about 90 percent of the total HAP emissions from metal coil surface coating operations.

We have identified one facility that coats metal coil by electrodeposition. This method of coating application is different than the roll coating method used by most coil coaters. The company which operates this facility has expressed concern about the appropriateness of having the electrodeposition coil coating line subject to the same emission limits as other coil coaters. We have not determined that electrodeposition coating of metal coil warrants a different emission limit. Therefore, in this proposed rule, the electrodeposition coating of metal coil is subject to the same emission limits as all other coil coating. We welcome specific comments on the appropriateness of the proposed emission limits to electrodeposition coating of metal coil.

The affected source is broadly defined as the collection of all coil coating lines at a facility. This definition allows for flexibility with compliance demonstrations, *i.e.*, averaging emissions from all coil coating lines rather than demonstrating compliance for each individual line. The proposed rule limits would apply to only the coating application and curing sections of the affected source.

C. What Is the MACT Floor That Is the Basis for the Proposed Standards?

Quantitative data on HAP use and emission control were obtained from a total of over 90 metal coil coating facilities. Qualitative data providing descriptions of metal coil coating processes, HAP control technologies, and process and control technology concerns also were obtained from site visits and industry trade groups, such as the National Coil Coaters Association. These data verified that the metal coil coating processes and HAP emission sources are similar across all industry segments, and that HAP control technologies also are the same.

The most common approach is capture/control of emissions. At many facilities, coating application stations are enclosed in rooms, and the ventilation air is directed to the control device. This type of capture system can achieve 100 percent capture of emissions when designed to meet the criteria specified in EPA Method 204 of 40 CFR part 51, appendix M. This capture system is called a permanent total enclosure (PTE). Of the surveyed facilities, 45 reported the use of PTE. Oven emissions typically are controlled by a thermal or catalytic incinerator (also known as an oxidizer). Of the surveyed facilities, 72 facilities reported they operate incinerators. Of 105 controlled lines, 79 were controlled with thermal incinerators, and 24 with catalytic oxidizers. Two lines had condenser/scrubber systems. All of the top 12 percent of existing facilities use thermal oxidizers, and eight of the facilities report achieving 100 percent capture of application station emissions through the use of permanent total enclosures. This is, therefore, the control technology that reflects the MACT floor for existing sources.

Reported values show that control systems may be capable of achieving greater than 99 percent HAP destruction, based on 100 percent capture and greater than 99 percent destruction efficiencies. The average reported overall control efficiency (OCE) of the MACT floor facilities is 99.4 percent. However, to determine the level of emission control achievable with this technology, it is important to consider not only the level of control reported, but also the control levels that EPA has generally found to be achievable for this type of control technology. This approach ensures that factors that affect control levels, such as variations in source operating conditions and inlet loadings to the control device, are accommodated in the selection of the MACT floor.

A study conducted by EPA indicated that a 98 percent reduction is the control efficiency achievable by all new oxidizers. Information from vendor guarantees supports the determination of a destruction efficiency of 98 percent for thermal incinerators. Therefore, a 98 percent facilitywide coating line OCE, based on 100 percent capture efficiency of PTE and 98 percent destruction efficiency of thermal oxidizers, was determined to be the MACT floor for existing sources.

A 98 percent facilitywide coating line OCE also was determined to be the MACT floor for new sources. No technology was identified that could achieve a better OCE, that would be applicable for all segments of the industry, than the use of PTE to capture emissions from coating application stations, and a thermal incinerator to destroy emissions from application stations and curing ovens.

Data from the surveyed facilities were used to calculate an alternative facility emission rate limit. This rate was calculated by applying the 98 percent OCE to a pre-controlled facility HAP emission rate representative for this industry. This calculation process, described in the BID (EPA 453/P–00–01), resulted in a facility HAP emission rate of 0.029 kg/l (0.24 lb/gal) of solids applied.

IX. What Is the Basis for Selecting the Format of the Proposed Standards?

Where control devices are or can be used, the proposed format for the emission standards is an overall percent reduction of emissions, taking into account both capture and control device efficiencies.

To encourage the use of low and non-HAP materials, alternative standards based on HAP content are also proposed that will achieve HAP reductions comparable to the overall percent reduction limit. Sources applying materials containing 0.029 kg organic HAP or less per l of solids applied on coating lines will not be required to operate a control device to comply with the standard because we believe that this HAP level is equivalent to an overall HAP control efficiency of 98 percent. Facilities may use a combination of capture and control systems and reduced HAP content in coatings to meet the 0.029 kg per kg of solids (0.24 lb/gal) applied emission limit.

X. Why Did We Select the Proposed Monitoring Requirements?

According to paragraph (a)(3) of section 114 of the CAA, monitoring of stationary sources is required to determine the compliance status of the sources, and whether compliance is continuous or intermittent. For affected sources complying with the proposed standards with capture and control systems, initial compliance is determined through the initial compliance test, and ongoing compliance through continuous monitoring. We are proposing the parameters to be monitored for certain types of control devices now used in the industry. The values of these parameters that correspond to compliance with the proposed standards are set by the owner or operator during the initial compliance test. These values are your operating limits. If future monitoring shows that control equipment is operating outside operating limits, then you are deviating from the operating limits, except as specified for malfunctions.

We believe that the selected monitoring parameters will adequately establish that the facility is limiting HAP emissions to the same level as the proposed MACT standards. The rationale for selecting the control device parameters for thermal and catalytic oxidizers in this proposed rule is long standing. The same monitoring parameters have also been required for previous standards. For more information, see the proposal notice for the synthetic organic chemical manufacturing industry reactor processes NSPS (55 FR 26966, June 29, 1990).

XI. Why Did We Select the Proposed Test Methods?

The proposed rule requires emissions tests for cases in which a source uses an add-on control device to reduce emissions. For the case in which no add-on control device is used, the proposed rule would require determination of the HAP content of each material applied. The test methods we propose to require are existing EPA methods that are familiar to the industry, readily available, and appropriate to the device or the parameter being measured. The tests selected are expected to adequately establish whether the facility is complying with the standard.

XII. Why Did We Select the Proposed Notification, Recordkeeping, and Reporting Requirements?

The proposed rule requires you to comply with notification, recordkeeping, and reporting requirements, generally as described in the General Provisions (40 CFR part 63, subpart A) (see table 1 of subpart SSSS) and specifically as designed to support demonstration of compliance with this proposed rule. We believe that these requirements are necessary and sufficient to ensure that you comply with the requirements in proposed subpart SSSS.

XIII. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that

imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply to this proposed rule, the EPA did consult with State and local officials to enable them to provide timely input in the development of this proposed rule.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate metal coil coating operations. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks and because it is not "economically significant."

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The rule does not impose any enforceable duties on State, local, or tribal governments, *i.e.*, they own or operate no sources subject to this proposed rule and, therefore, are not required to purchase control systems to meet the requirements of this proposed rule. Regarding the private sector, EPA believes the proposed rule will affect approximately 90 existing facilities nationwide. The EPA projects that annual economic effects will be $6.2 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this proposed rule, EPA consulted with States to enable them to provide meaningful and timely input in the development of this proposed rule.

In addition, the EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a

substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards by 4-digit SIC code of the owning entity (in this case, ranging from 100–1,000 employees); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In accordance with the RFA and SBREFA, EPA conducted an assessment of the proposed standard on small businesses within the metal coil coating industry. Based on SBA size definitions and reported sales and employment data, EPA identified 19 of the 49 companies owning metal coil coating facilities as small businesses. Although small businesses represent almost 39 percent of the companies within the source category, they are expected to incur only 8.5 percent of the total industry compliance costs of approximately $6.0 million. Under the proposed standards, the average annual compliance cost share of sales for small businesses is less than 0.2 percent with 7 of the 19 small businesses not expected to incur any additional costs because they are permitted as synthetic minor HAP emission sources. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to limit the impact of this proposed rule on small entities. For example, the requirements of the proposed rule only apply to major sources as defined in 40 CFR part 63 and a title V or part 70 permit application can be used in lieu of an initial notification under certain conditions. Also, during the background information development phase of the rulemaking, numerous stakeholder meetings were held at which input was solicited from small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1957.01) and a copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The public burden of monitoring, recordkeeping, and reporting for this collection is estimated to average 281 hours per year per coil coating facility for each year after the date of promulgation of the rule including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Monitoring, recordkeeping, and reporting costs also include the startup costs associated with initial performance tests and associated notifications and reports required to demonstrate initial compliance; emission rate limit monthly compliance determinations; semiannual reports when someone does not follow a plan for start-ups, shutdowns, and malfunctions; quarterly and semiannual reports on excess emissions; maintenance inspections; notices; and recordkeeping. The total annualized costs associated with monitoring, recordkeeping, and reporting have been estimated at $784,179, which include the estimated annualized capital costs of $232,076.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 18, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by August 17, 2000. The final rule will. respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by one or

more VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable VCS.

Consistent with the NTTAA, EPA conducted searches to identify VCS for use in emissions monitoring. The search for emissions monitoring procedures identified 20 VCS that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing the available standards, EPA determined that ten of the candidate consensus standards (ASTM D3154–91, ASTM D3271–87, ASTM D3464–96, ASTM D3796–90, ASTM D3960–98, ASTM D6053–96, ASTM E337–84, ISO 9096: 1992, PTC 19–10–1981, and EN 1093–4:1996) identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule would not be practical due to lack of equivalency, documentation, and validation data (Docket A–97–47). Seven of the remaining candidate consensus standards (BSR/ASME MFC 13m, ASTM Z6871Z, ISO/DIS 14164, ISO PWI 17895, ISO/DIS 11890–1, ISO/DIS 11890–2, and PREN 12619) are under development. The EPA plans to follow, review, and consider adopting these standards after their development is completed.

The ASTM 2369–95 is practical for EPA use as an acceptable alternative in measuring the volatile matter content of surface coatings. This VCS uses the same techniques, equipment, and procedures as Method 24. The EPA will incorporated by reference (IBR) ASTM D2369–95 into 40 CFR 63.14 in the near future.

The ASTM D2697–86 (Reapproved 98) and ASTM D6093–97 are acceptable procedures for use in determining the volume fraction of solids for a variety of coatings. The EPA will IBR ASTM D2697–86 (Reapproved 98) and ASTM D6093–97 into 40 CFR 63.14 in the near future.

Six consensus standards: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already IBR in EPA Method 24; and five consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are IBR in EPA Method 311.

The EPA takes comment on proposed compliance demonstration requirements proposed in this rule and specifically invites the public to identify potentially-applicable VCS. Commentors should also explain why this proposed rule should adopt these VCS in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A, was used).

Section 63.5160 of the proposed standards lists EPA testing methods and performance standards included in the proposed rule. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, § 63.5160 allows any State or source to apply to EPA for permission to use alternative methods in place of any of the EPA testing methods or performance standards listed in § 63.5160.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 5, 2000.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart SSSS to read as follows:

Subpart SSSS—National Emission Standards for Hazardous Air Pollutants: Metal Coil Coating

Sec.

What This Subpart Covers

63.5080 What is in this subpart?
63.5090 Does this subpart apply to me?
63.5100 Which of my emissions sources are affected by this subpart?
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Emission Standards and Compliance Dates

63.5120 What emission standards must I meet?
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General Requirements for Compliance with the Emission Standards and for Monitoring and Performance Tests

63.5140 What general requirements must I meet to comply with the standards?
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Reporting and Recordkeeping

63.5180 What reports must I submit?
63.5190 What records must I maintain?

Delegation of Authority

63.5200 What authorities may be delegated to the States?
63.5201—63.5209 [Reserved.]

Tables

Table 1 to Subpart SSSS. Applicability of General Provisions to Subpart SSSS

What This Subpart Covers

§ 63.5080 What is in this subpart?

This subpart describes the actions you must take to reduce emissions of hazardous air pollutants (HAP) if you own or operate a facility that performs metal coil coating operations and is a major source of HAP. This subpart establishes emission standards and states what you must do to comply. Certain requirements apply to all who must comply with the subpart; others depend on the means you use to comply with an emission standard.

§ 63.5090 Does this subpart apply to me?

The provisions of this subpart apply to each facility that is a major source of HAP, as defined in § 63.2, at which a coil coating line is operated.

§ 63.5100 Which of my emissions sources are affected by this subpart?

The affected source subject to this subpart is the collection of all of the coil coating lines at your facility except any coil coating line that is part of a research or laboratory facility.

§ 63.5110 What special definitions are used in this subpart?

(a) All terms used in this subpart that are not defined in this section have the meaning given to them in the Clean Air Act (CAA or Act) and in subpart A of this part.

Always-controlled work station means a work station associated with a curing oven from which the exhaust is delivered to a control device with no provision for the dryer exhaust to bypass the control device. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Capture efficiency means the fraction of all organic HAP emissions generated by a process that is delivered to a control device, expressed as a percentage.

Capture system means a hood, enclosed room, or other means of collecting organic HAP emissions and conveying them to a control device.

Car-seal means a seal that is placed on a device that is used to change the position of a valve or damper (*e.g.*, from open to closed) in such a way that the position of the valve or damper cannot be changed without breaking the seal.

Coating means material applied onto or impregnated into a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, inks, adhesives, maskants, and temporary coatings. Decorative, protective, or functional materials that consist only of solvents, protective oils, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coil coating line means a process for metal coil coating that includes a web unwind or feed section, a series of one or more coating stations, any associated curing oven, wet section, and quench station. A coil coating line does not include ancillary operations such as mixing/thinning, cleaning, wastewater treatment, and storage of coating material.

Coil coating operation means the collection of equipment used to apply an organic coating to the surface of any continuous metal strip at least 0.15 millimeter (0.006 inch) thick or more that is packaged in a roll or coil.

Coil coating station means a work station on which a coil coating operation is conducted.

Coating materials means all coatings and products that are combined at the coating facility to create a coating (*e.g.*, a catalyst and resin in multi-component coatings) that are applied to a metal roll or coil. For the purposes of this subpart, an organic solvent that is used to thin coating material prior to application to the metal roll or coil is considered a coating material.

Control device means a device such as a solvent recovery device or oxidizer which reduces the organic HAP in an exhaust gas by recovery or by destruction.

Control device efficiency means the ratio of organic HAP emissions recovered or destroyed by a control device to the total HAP emissions that are introduced into the control device, expressed as a percentage.

Curing oven means the device that uses heat or radiation to dry or cure the coating applied to the metal coil.

Day means a 24-consecutive-hour period.

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during start-up, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

HAP applied means the organic HAP content of all coating materials applied to a substrate by a coil coating line.

Intermittently-controllable coil coating work station means a work station associated with a curing oven with provisions for the curing oven exhaust to be delivered to or diverted from a control device depending on the position of a valve or damper. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Never-controlled coil coating work station means a work station which is not equipped with provisions by which any emissions, including those in the exhaust from any associated curing oven, may be delivered to a control device.

New source means any affected source the construction or reconstruction of which is commenced after July 18, 2000.

Overall organic HAP control efficiency means the total efficiency of a control system, determined either by:

(1) The product of the capture efficiency as determined in accordance with the requirements of § 63.5160(e) or (f) and the control device efficiency as determined in accordance with the requirements of § 63.5160(a)(1) (i) and (ii) or § 63.5160(d); or

(2) A liquid-liquid material balance in accordance with the requirements of § 63.5160(a)(3).

Permanent total enclosure (PTE) means a permanently installed enclosure that completely surrounds a source of emissions such that all emissions are captured and discharged through a control device, as defined in Method 204 of 40 CFR part 51, appendix M.

Research or laboratory equipment means any equipment for which the primary purpose is to conduct research and development into new processes and products, where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a *de minimis* manner.

Temporary total enclosure (TTE) means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source, as defined in Method 204 of 40 CFR part 51, appendix M.

Work station means a unit on a coil coating line where material is deposited onto a substrate.

(b) The symbols used in equations in this subpart are defined as follows:

(1) C_{ahi}=the monthly average, as-applied, organic HAP content of solids-containing coating material, i, expressed as a weight fraction, kilogram (kg)/kg.

(2) C_{asi}=the monthly average, as applied, solids content, of solids-containing coating material, i, expressed as, liter of solids applied/kg of material applied.

(3) C_{hi}=the organic HAP content of coating material, i, expressed as a weight-fraction, kg/kg.

(4) C_{hij}=the organic HAP content of solvent, j, added to coating material, i, expressed as a weight fraction, kg/kg.

(5) C_{hj}=the organic HAP content of solvent, j, expressed as a weight fraction, kg/kg.

(6) C_i=the organic volatile matter concentration in parts per million (ppm), dry basis, of compound, i, in the vent gas, as determined by Method 25 or Method 25A.

(7) C_{si}=the solids content of coating material, i, expressed as, liter of solids/kg of material.

(8) C_{vi}=the volatile matter content of coating material, i, expressed as a weight fraction, kg/kg.

(9) D_i=the density of coating material, i, kg/l.

(10) D_j=the density of solvent, j, kg/l.

(11) E_k=the organic volatile matter control efficiency of control device, k, percent.

(12) F_A=the organic volatile matter capture efficiency of the capture system for coil coating station, A, percent.

(13) H_e=the total monthly organic HAP emitted, kg.

(14) H_m=the facility total monthly organic HAP applied on uncontrolled coil coating stations, kg.

(15) H_s=the monthly average, as-applied, organic HAP to solids ratio, kg organic HAP/liter solids applied.

(16) H_{si}=the as-applied, organic HAP to solids ratio of material, i, kg organic HAP/liter solids applied.

(17) L=the mass organic HAP emitted per volume of solids applied, kg/liter.

(18) M_{Ai}=the mass of coating material, i, applied on coil coating station, A, in a month, kg.

(19) M_{Aij}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, added to solids-containing coating material, i, applied on coil coating station, A, in a month, kg.

(20) M_{Aj}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material (including H_2O), j, applied on coil coating station, A, in a month, kg.

(21) M_{Bi}=the sum of the mass of solids-containing coating material, i, applied on intermittently-controllable work stations operating in bypass mode and the mass of solids-containing coating material, i, applied on never-controlled work stations, in a month, kg.

(22) M_{Bj}=the sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, applied on intermittently-controllable work stations operating in bypass mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, applied on never-controlled work stations, in a month, kg.

(23) M_{ci}=the sum of the mass of solids-containing coating material, i, applied on intermittently-controllable work stations operating in controlled mode and the mass of solids-containing coating material, i, applied on always-controlled work stations, in a month, kg.

(24) M_{cj}=the sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, applied on intermittently-controllable work stations operating in controlled mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, applied on always-controlled work stations in a month, kg.

(25) M_f=the total organic volatile matter mass flow rate, kg/per hour (h).

(26) M_{fi}=the organic volatile matter mass flow rate at the inlet to the control device, kg/h.

(27) M_{fo}=the organic volatile matter mass flow rate at the outlet of the control device, kg/h.

(28) M_i=the mass of coating material, i, applied in a month, kg.

(29) M_{ij}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, added to solids-containing coating material, i, in a month, kg.

(30) M_j=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material (including H2O), j, applied in a month, kg.

(31) M_{kvr}=the mass of volatile matter recovered in a month by solvent recovery device, k, kg.

(32) MW_i=the molecular weight of compound, i, in the vent gas, kg/kg-moles (mol).

(33) V_i=the volume of coating material, i, l.

(34) V_j=the volume of solvent, j, l.

(35) V_{si}=the volume fraction of solids in coating, i, l/l.

(36) n=the number of organic compounds in the vent gas.

(37) p=the number of different coating materials applied in a month.

(38) q=the number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

(39) s=the number of solvent recovery devices used to comply with the standard of § 63.5120 of this subpart, in the facility.

(40) w=the number of always-controlled coil coating stations in the facility.

(41) w_i=the number of intermittently-controllable coil coating stations in the facility.

(42) x=the number of uncontrolled coil coating stations in the facility.

(43) Q_{sd}=the volumetric flow rate of gases entering or exiting the control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters (dscm)/h.

(44) R=the overall organic HAP control efficiency, percent.

(45) R_v=the organic volatile matter collection and recovery efficiency, percent.

(46) 0.0416=conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

Emission Standards and Compliance Dates

§ 63.5120 What emission standards must I meet?

(a) Each coil coating affected source must limit emissions to:

(1) No more than 2 percent of the organic HAP applied for the month; or

(2) No more than 0.029 kg of HAP per liter of solids applied for the month.

(b) You must demonstrate compliance with one of these standards by following one of the procedures in § 63.5170.

§ 63.5130 When must I comply?

(a) Your compliance date is 3 years after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(b) If you own or operate a new affected source subject to the provisions of this subpart, you must comply immediately upon start-up of the affected source, or by [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], whichever is later.

(c) Affected sources which have undergone reconstruction are subject to the requirements for new affected sources.

General Requirements for Compliance With the Emission Standards and for Monitoring and Performance Tests

§ 63.5140 What general requirements must I meet to comply with the standards?

(a) You must be in compliance with the standards in this subpart at all times, except during periods of start-up, shutdown, and malfunction of any capture system and control device used to comply with this subpart. If you are complying with the emission standards of this subpart without the use of a capture system and control device, you must be in compliance with the standards at all times, including periods of start-up, shutdown, and malfunction.

(b) Table 1 of this subpart provides cross references to subpart A of this part, indicating the applicability of the General Provisions requirements to this subpart.

§ 63.5150 What monitoring must I do?

(a) To demonstrate continuing compliance with the standards, you must monitor and inspect each capture system and each control device required to comply with § 63.5120 following the date on which the initial performance test of a control device is completed. You must install and operate the monitoring equipment as specified in paragraphs (a)(1) through (4) of this section.

(1) *Bypass monitoring.* If you operate coil coating lines with intermittently-controllable work stations, you must follow at least one of the procedures in paragraphs (a)(1)(i) through (iv) of this section for each curing oven associated with these work stations to monitor for potential bypass of the control device:

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that provides a record indicating whether the exhaust stream from the curing oven is directed to the control device or is diverted from the control device. The time and flow control position must be recorded at least once per hour, as well as every time the flow direction is changed. The flow control position indicator must be

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installed at the entrance to any bypass line that could divert the exhaust stream away from the control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration when the control device is in operation; a visual inspection of the seal or closure mechanism will be performed at least once every month to ensure that the valve or damper is maintained in the closed position, and the exhaust stream is not diverted through the bypass line.

(iii) *Valve closure continuous monitoring.* Ensure that any bypass line valve or damper is in the closed position through continuous monitoring of valve position when the control device is in operation. The monitoring system must be inspected at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coil coating line is stopped when flow is diverted away from the control device to any bypass line when the control device is in operation. The automatic shutdown system must be inspected at least once every month to verify that it will detect diversions of flow and shut down operations.

(2) *Continuous emission monitoring.* If you are demonstrating continuous compliance with the standards in § 63.5120 through continuous emission monitoring of a control device, you must install, calibrate, operate, and maintain continuous emission monitors to measure the total organic volatile matter concentration at both the control device inlet and the outlet, and you must continuously monitor flow rate.

(i) All continuous emission monitoring systems (CEMS) must comply with performance specification 8 or 9 of 40 CFR part 60, appendix B, as appropriate for the detection principle you choose. The requirements of 40 CFR part 60, procedure 1, appendix F must also be followed. In conducting the quarterly audits of the monitors as required by procedure 1, appendix F, you must use compounds representative of the gaseous emission stream being controlled.

(ii) As specified in § 63.8(c)(4)(ii), each CEMS and each flow rate monitor must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Information which must be determined for recordkeeping purposes, as required by § 63.5190(a)(1)(i) includes:

(A) The hourly average of all recorded readings;

(B) The daily average of all recorded readings for each operating day; and

(C) The 30-day average for each 30-day period during the semiannual reporting period.

(3) *Temperature monitoring of oxidizers.* If you are complying with the requirements of the standards in § 63.5120 through the use of an oxidizer and demonstrating continuous compliance through monitoring of an oxidizer operating parameter, you must:

(i) Determine the value of the oxidizer operating parameter during the initial performance test as specified in § 63.5160(d)(3).

(ii) Install, calibrate, maintain, and operate temperature monitoring equipment according to manufacturer's specifications. The calibration of the chart recorder, data logger, or temperature indicator must be verified every 3 months; or the chart recorder, data logger, or temperature indicator must be replaced. You must replace the equipment either if you choose not to perform the calibration, or if the equipment cannot be calibrated properly.

(iii) For an oxidizer other than a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of ±1 percent of the temperature being monitored in degrees Celsius, or ±1 °Celsius, whichever is greater. The thermocouple or temperature sensor must be installed in the combustion chamber at a location in the combustion zone.

(iv) For a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius, or ±1 degree Celsius, whichever is greater. The thermocouple or temperature sensor must be installed in the vent stream at the nearest feasible point to the inlet and outlet of the catalyst bed. Calculate the temperature rise across the catalyst.

(4) *Capture system monitoring.* If you are complying with the requirements of the standards in § 63.5120 through the use of a capture system and control device, you must submit a monitoring plan containing the information specified in paragraphs (a)(4)(i) and (ii) of this section. You must monitor the capture system in accordance with paragraph (a)(4)(iii) of this section. You must submit the monitoring plan to the Administrator with the compliance status report required by § 63.9(h).

(i) The monitoring plan must identify the operating parameter to be monitored to ensure that the capture efficiency measured during the initial compliance test is maintained, explain why this parameter is appropriate for demonstrating ongoing compliance, and identify the specific monitoring procedures.

(ii) The plan also must set the operating parameter value, or range of values, that demonstrate compliance with the standards in § 63.5120. The specified operating parameter and the specified range must represent the conditions indicative of proper operation and maintenance of the capture system.

(iii) You must conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(b) Any deviation from the required operating parameters which are monitored in accordance with paragraphs (a)(3) and (4) of this section, unless otherwise excused, will be considered a deviation from the operating limit.

TABLE 1 TO § 63.5150.—CONTROL DEVICE MONITORING REQUIREMENTS INDEX

If you operate a coil coating line and have the following:	Then you must:
(1) Intermittently controlled work station.	Monitor parameters related to possible exhaust flow through any bypass to a control device (§ 63.5150(a)(1)).
(2) Continuous emission monitor.	Operate continuous emission monitors and perform a quarterly audit (§ 63.5150(a)(2)).
(3) Oxidizer	Monitor oxidizer operating parameters and calibrate oxidizer temperature sensors quarterly (§ 63.5150(a)(3)).
(4) Capture system.	Monitor capture system operating parameters (§ 63.5150(a)(4)).

§ 63.5160 What performance tests must I complete?

(a) If you use a control device to comply with the requirements of § 63.5120, you are not required to conduct a performance test to demonstrate compliance if one or more of the criteria in paragraphs (a)(1) through (3) of this section are met:

(1) A control device that is in operation prior to July 18, 2000 does not need to be tested if:

(i) It is equipped with continuous emission monitors for determining inlet and outlet total organic volatile matter concentration, and capture efficiency has been determined in accordance with the requirements of this subpart, such that an overall HAP control efficiency can be calculated; and

(ii) The continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.5150(a)(2); or

(2) You have received a waiver of performance testing; or

(3) The control device is a solvent recovery system and you choose to comply by means of a monthly liquid-liquid material balance.

(b) *Organic HAP content.* You must determine the organic HAP weight fraction of each coating material applied by following one of the procedures in paragraphs (b)(1) through (3) of this section:

(1) *Method 311.* You may test the material in accordance with Method 311 of appendix A of this part. The Method 311 determination may be performed by the manufacturer of the material and the results provided to you. The organic HAP content must be calculated according to the criteria and procedures in paragraph (b)(1)(i) through (iii) of this section. If these values cannot be determined using Method 311, you must submit an alternative technique for determining their values for approval by the Administrator. The recovery efficiency of the technique must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(i) Count only those organic HAP that are measured to be present at greater than or equal to 0.1 weight percent for carcinogens and greater than or equal to 1.0 weight percent for noncarcinogens. Do not count any organic HAP that is measured to be present at less than 0.1 weight percent for carcinogens and less than 1.0 weight percent for noncarcinogens.

(ii) The weight fraction of each organic HAP measured to be present at greater than or equal to 0.1 weight percent for carcinogens and greater than or equal to 1.0 weight percent for noncarcinogens shall be expressed as a value truncated four places after the decimal point.

(iii) Calculate the weight fraction of organic HAP in the tested material by summing the counted individual organic HAP weight fractions. The total HAP content shall be expressed as a value truncated three places after the decimal point.

(2) *Method 24.* You must determine the volatile matter content of each coating material applied. You may determine the volatile matter weight fraction using Method 24 of 40 CFR part 60, appendix A or an EPA approved alternative method, or you may use formulation data. The Method 24 determination may be performed by the manufacturer of the material and the results provided to you. Alternatively, you may rely on volatile matter content data provided by material suppliers. In the event of any inconsistency between the formulation data and the results of Method 24 of 40 CFR part 60, appendix A, the Method 24 results will govern.

(3) *Formulation data.* You may use formulation data. Formulation data may be provided to you by the manufacturer of the coating material. In the event of any inconsistency between the Method 311 of appendix A of this part test data and a facility's formulation data, the Method 311 test data will govern. Formulation data may be used provided that the information represents all organic HAP present at a level greater than 0.1 percent for carcinogens and greater than 1.0 percent for noncarcinogens in any raw material used, weighted by the mass fraction of each raw material used in the material.

(c) *Solids content.* You must determine the solids content of each coating material applied. You may determine the volume solids content using ASTM D2697–86 or ASTM D6093–97, or an EPA approved alternative method. The ASTM D2697–86 or ASTM D6093–97 determination may be performed by the manufacturer of the material and the results provided to you. Alternatively, you may rely on formulation data provided by material providers for your volume solids determination.

(d) *Destruction efficiency of oxidizer.* If you use an oxidizer to comply with the standard in § 63.5120, you must conduct a performance test to establish the destruction efficiency of the oxidizer according to the methods and procedures in paragraphs (d)(1) and (2) of this section. Oxidizer inlet and outlet testing to determine control efficiency must be conducted simultaneously. You must establish the associated combustion zone temperature for a thermal oxidizer and the associated catalyst bed inlet temperature for a catalytic oxidizer according to the procedures in paragraph (d)(3) of this section.

(1) An initial performance test to establish the destruction efficiency of an oxidizer must be conducted and the data reduced in accordance with the following methods and procedures:

(i) Method 1 or 1A of 40 CFR part 60, appendix A, is used for sample and velocity traverses to determine sampling locations.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, is used to determine gas volumetric flow rate.

(iii) Method 3, 3A, or 3B of 40 CFR part 60, appendix A, used for gas analysis to determine dry molecular weight.

(iv) Method 4 of 40 CFR part 60, appendix A, is used to determine stack gas moisture.

(v) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run, as specified in paragraph (d)(1)(vii) of this section.

(vi) Method 25 of 40 CFR part 60, appendix A, is used to determine total gaseous non-methane organic matter concentration, except as provided in paragraphs (d)(1)(vi)(A) through (C) of this section. You must submit notification of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7(c). You may use Method 25A of 40 CFR part 60, appendix A, if:

(A) An exhaust gas volatile organic matter concentration of 50 parts per million by volume (ppmv) or less is required to comply with the standards in § 63.5120; or

(B) The volatile organic matter concentration at the inlet to the control system and the required level of control are such that result in exhaust gas volatile organic matter concentrations of 50 ppmv or less; or

(C) Because of the high efficiency of the control device, the anticipated volatile organic matter concentration at the control device exhaust is 50 ppmv or less, regardless of inlet concentration.

(vii) Each performance test must consist of three separate runs, except as provided by § 63.7(e)(3); each run must be conducted for at least 1 hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining volatile organic matter concentrations and mass flow rates, the average of the results of all runs will apply.

(viii) For each run, determine the volatile organic matter mass flow rates using Equation 1:

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$$M_f = Q_{sd}\left[\sum_{i=1}^{n} C_i MW_i\right][0.0416][10^{-6}] \qquad \text{(Eq 1)}$$

(ix) For each run, determine the emission control device efficiency using Equation 2. The control device efficiency is determined as the average, E, of the three runs:

$$E = \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{(Eq 2)}$$

(2) You must record such process information as may be necessary to determine the conditions during the performance test. Operations during periods of start-up, shutdown, and malfunction will not constitute representative conditions for the purpose of a performance test.

(3) For the purpose of determining the value of the oxidizer operating parameter that will demonstrate continuing compliance, the time-weighted average of the values recorded during the performance test will be computed. For an oxidizer other than catalytic oxidizer, you must establish as the operating parameter the minimum combustion temperature in the combustion chamber at a location in the combustion zone. For a catalytic oxidizer, you must establish as the operating parameter the minimum gas temperature at the inlet of the catalyst bed. These minimum temperatures are the operating parameter values that demonstrate continuing compliance with the requirements of § 63.5120.

(e) *Capture efficiency.* If you are required to determine capture efficiency to meet the requirements of § 63.5170(e)(2), (f)(1) through (2), (h)(2) through (4), or (i)(2) through (3), you must determine capture efficiency using the procedures in paragraph (e)(1) or (2) of this section, as applicable.

(1) For PTE and TTE that meet the criteria for total enclosures, capture efficiency will be assumed as 100 percent. Method 204 of 40 CFR part 51, appendix M (or an EPA approved alternative method), must be used to confirm that an enclosure meets the requirements for PTE.

(2) For enclosures that do not meet the criteria for total enclosures, the capture efficiency will be determined according to the protocol specified in Method 204A through F of 40 CFR part 51, appendix M. You may exclude never-controlled work stations from such capture efficiency determinations.

(3) As an alternative to the procedures specified in paragraphs (e)(1) and (2) of this section, if you are required to conduct a capture efficiency test, you may use any capture efficiency protocol and test methods that satisfy the criteria of either the Data Quality Objective or the Lower Confidence Limit approach as described in appendix A to subpart KK of this part. You may exclude never-controlled work stations from such capture efficiency determinations.

TABLE 1 TO § 63.5160.—REQUIRED PERFORMANCE TEST SUMMARY

If you control HAP on your coil coating line by:	You must:
Limiting HAP or volatile matter content of coatings.	Determine the HAP or volatile matter and solids content of coating materials according to the procedures in § 63.5160(b) and (c).
Using an add-on control device.	Conduct performance tests to determine: (1) the destruction efficiency of oxidizers according to § 63.5160(d), and (2) capture efficiency of capture systems according to § 63.5160(e).

Requirements for Showing Compliance

§ 63.5170 How do I demonstrate compliance with the standards?

(a) *As-purchased compliant coatings.* If you elect to use coatings that individually meet the limits in § 63.5120(a)(2) as-purchased, to which you will not add HAP during distribution or application, you must demonstrate that each coating material applied during the month contains no more than 0.029 kg HAP per liter of solids on an as-purchased basis.

(1) Determine the organic HAP content for each coating material in accordance with § 63.5160(b) and the volume solids content in accordance with § 63.5160(c).

(2) Combine these results using Equation 3 and compare the result to the allowable limit to demonstrate that each coating material contains no more organic HAP than the allowable limit.

$$H_{siap} = \frac{C_{hi} D_i}{V_{si}} \qquad \text{(Eq 3)}$$

(b) *As-applied compliant coatings.* You must demonstrate that each coating material applied contains no more than 0.029 kg of organic HAP per liter of solids applied in accordance with paragraph (b)(1) of this section, or demonstrate that the monthly average of all coating materials applied contain no more than 0.029 kg of organic HAP per liter of solids applied in accordance with paragraph (b)(2) of this section.

(1) Demonstrate that the organic HAP content on the basis of solids applied for each coating material applied, H_{Si}, is less than 0.029 kg HAP per liter solids applied as determined by Equation 4:

$$H_{Si} = \frac{V_i D_i C_{ahi} + \sum_{i=1}^{q} V_j D_j C_{hij}}{V_i V_{si}} \qquad \text{(Eq 4)}$$

(2) Demonstrate that the monthly average organic HAP content on the basis of solids applied, H_S, of all coating materials is less than 0.029 kg HAP per liter solids applied as determined by Equation 5:

$$H_{Sa} = \frac{\sum_{i=1}^{p} V_i D_i C_{ahi} + \sum_{j=1}^{q} V_j D_j C_{hij}}{\sum_{i=1}^{p} V_i \sum_{i=1}^{p} V_{si}} \qquad \text{(Eq 5)}$$

(c) *Capture and control to reduce emissions to no more than the allowable limit.* If you use one or more capture systems and one or more control devices and demonstrate a facilitywide average overall organic HAP control efficiency of at least 98 percent for each month, you must follow one of the procedures in paragraphs (c)(1) through (3) of this section.

(1) If the affected source uses one compliance procedure and has only always-controlled coil coating stations, then you must demonstrate compliance with the provisions of paragraph (e) of this section when emissions from the affected source are controlled by one or more solvent recovery device.

(2) If the affected source uses one compliance procedure and has only always-controlled coil coating stations, then you must demonstrate compliance with the provisions of paragraph (f) of this section when emissions are controlled by one or more oxidizers.

(3) If the affected source operates both solvent recovery and oxidizer control devices, one or more never-controlled coil coating stations, or one or more intermittently-controllable coil coating stations, or uses more than one compliance procedure, then you must demonstrate compliance with the provisions of paragraph (g) of this section.

(d) *Capture and control to achieve the emission rate limit.* If you use one or more capture systems and one or more control devices and limit the facility organic HAP emission rate to no more than 0.029 kg organic HAP emitted per liter of solids applied on a monthly average as-applied basis, then you must follow one of the procedures in paragraphs (d)(1) through (3) of this section.

(1) If you use one or more solvent recovery devices, you must demonstrate compliance with the provisions in paragraph (e) of this section.

(2) If you use one or more oxidizers, you must demonstrate compliance with the provisions in paragraph (f) of this section.

(3) You must demonstrate compliance with the provisions in paragraph (g) of this section if you use:

(i) Both solvent recovery and oxidizer control devices.

(ii) One or more never-controlled work stations.

(iii) One or more intermittently controlled work stations.

(e) *Use of solvent recovery to demonstrate compliance.* If you use one or more solvent recovery devices to control emissions from always-controlled coil coating stations, you must show compliance by following the procedures in either paragraph (e)(1) or (2) of this section:

(1) *Liquid-liquid material balance.* Perform a liquid-liquid material balance for each and every month as specified in paragraphs (e)(1)(i) through (vi) of this section and use the applicable equations in paragraphs (e)(1)(viii) and (ix) of this section to convert the data to units of this standard. All determinations of quantity of coating and composition of coating must be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or appropriate adjustments must be made to account for any ingredients added after the amount of coating has been determined.

(i) Measure the mass of each coating material applied on the coil coating station or group of coil coating stations controlled by one or more solvent recovery devices during the month.

(ii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the organic HAP content of each coating material applied during the month following the procedure in § 63.5160(b).

(iii) Determine the volatile matter content of each coating material applied during the month following the procedure in § 63.5160(c).

(iv) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the solids content of each coating material applied during the month following the procedure in § 63.5160(c).

(v) For each solvent recovery device used to comply with § 63.5120(a), install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile matter recovered by the solvent recovery device on a monthly basis. The device must be initially certified by the manufacturer to be accurate to within ±2.0 percent.

(vi) For each solvent recovery device used to comply with § 63.5120(a), measure the amount of volatile matter recovered for the month.

(vii) *Recovery efficiency, R_v.* Calculate the facilitywide average volatile organic matter collection and recovery efficiency, R_v, using Equation 6:

$$R_v = 100 \frac{\sum_{k=1}^{s} M_{kvr}}{\sum_{i=1}^{p} M_i C_{vi} + \sum_{j=1}^{q} M_j} \qquad \text{(Eq 6)}$$

(viii) *Organic HAP emitted, H_e.* Calculate the facility organic HAP emitted during the month, H_e, using Equation 7:

$$H_e = \left[1 - \frac{R_v}{100}\right]\left[\sum_{i=1}^{p}(C_{hi} M_i + \sum_{j=1}^{q} C_{hij} M_{ij})\right] \qquad \text{(Eq 7)}$$

(ix) *Facility organic HAP emission rate based on solids applied, L.* Calculate the facility organic HAP emission rate based on solids applied, L, using Equation 8:

$$L = \frac{H_e}{\sum_{i=1}^{p} C_{si} M_i} \qquad \text{(Eq 8)}$$

(x) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) if:

(A) The facilitywide average volatile organic matter collection and recovery efficiency, R_v, is 98 percent or greater; or

(B) The facility organic HAP emission rate based on solids applied, L, is 0.029 kg organic HAP per liter solids applied or less.

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors to demonstrate recovery efficiency, conduct an initial performance test of capture efficiency and volumetric flow rate, and continuously monitor a site specific operating parameter to ensure that capture efficiency and volumetric flow rate are maintained following the procedures in paragraphs (e)(2) (i) through (xi) of this section:

(i) *Control device control efficiency, E.* For each control device used to comply with § 63.5120(a), continuously monitor the gas stream entering and exiting the control device to determine the total volatile organic matter mass flow rate (e.g., by determining the concentration of the vent gas in grams per cubic meter and the volumetric flow rate in cubic meters per second, such that the total volatile organic matter mass flow rate in grams per second can be calculated using Equation 1 of § 63.5160, such that the percent control efficiency, E, of the control device can be calculated for each month using Equation 2 of § 63.5160.

(ii) Determine the percent capture efficiency, F, for each coil coating station in accordance with § 63.5160(e).

(iii) *Capture efficiency monitoring.* Whenever a coil coating station is operated, continuously monitor the operating parameter established in accordance with § 63.5150(a)(4).

(iv) *Control efficiency, R.* Calculate the facilitywide average overall organic HAP control efficiency, R, achieved for each month using Equation 9:

$$R = 100\frac{\sum_{A=1}^{w}\left[(E_K F_A)\left(\sum_{i=1}^{p} M_{Ai}C_{vi} + \sum_{j=1}^{q} M_{Aj}\right)\right]}{\sum_{i=1}^{p} M_i C_{Vi} + \sum_{j=1}^{q} M_j} \qquad \text{(Eq 9)}$$

(v) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, measure the mass of each coating material applied on each coil coating station during the month.

(vi) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the organic HAP content of each coating material applied during the month in accordance with § 63.5160(b).

(vii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the solids content of each coating material applied during the month in accordance with § 63.5160(c).

(viii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, calculate the organic HAP emitted during the month, H_e, for each month using Equation 10:

$$H_e = \sum_{A=1}^{w}\left[\left(1-(E_K F_A)\left(\sum_{i=1}^{p}\left(C_{hi}M_{Ai} + \sum_{j=1}^{q} C_{hij}M_{Aij}\right)\right)\right)\right] \qquad \text{(Eq 10)}$$

(ix) *Facility organic HAP emission rate based on solids applied, L.* Calculate the organic HAP emission rate based on solids applied, L, using Equation 8 of this section.

(x) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) if each capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.5150 for each 3-hour period; and

(A) The facilitywide average overall organic HAP control efficiency, R, is 98 percent or greater; or

(B) The facility organic HAP emission rate based on solids applied, L, is 0.029 kg organic HAP per liter solids applied or less.

(f) *Use of oxidation to demonstrate compliance.* If you use one or more oxidizers to control emissions from always controlled coil coating stations, you must follow the procedures in either paragraph (f) (1) or (2) of this section:

(1) *Continuous monitoring of capture system and control device operating parameters.* Demonstrate initial compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters as specified in paragraphs (f)(1) (i) through (xi) of this section:

(i) For each oxidizer used to comply with § 63.5120(a), determine the oxidizer control efficiency, E, using the procedure in § 63.5160(d).

(ii) *Destruction efficiency monitoring.* Whenever a coil coating station is operated, continuously monitor the operating parameter established in accordance with § 63.5150(a)(3).

(iii) Determine the capture system capture efficiency, F, for each coil coating station in accordance with § 63.5160(e).

(iv) *Capture efficiency monitoring.* Whenever a coil coating station is operated, continuously monitor the operating parameter established in accordance with § 63.5150(a)(4).

(v) Calculate the facilitywide average overall organic HAP control efficiency, R, achieved using Equation 9 of this section.

(vi) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, measure the mass of each coating material applied on each coil coating station during the month.

(vii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the organic HAP content of each coating material applied during the month following the procedure in § 63.5160(b).

(viii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine

the solids content of each coating material applied during the month following the procedure in § 63.5160(c).

(ix) *Organic HAP emitted, H_e.* Calculate the organic HAP emitted during the month, H_e, for each month:

(A) For each coil coating station and its associated oxidizer (E_K*F_A/100) ≤98, use Equation 10 of this section.

(B) For each coil coating station and its associated oxidizer (E_K*F_A/100) >98, and you have CEMS data to support this calculated efficiency, use Equation 10 of this section.

(C) For each coil coating station and its associated oxidizer (E_K*F_A/100) >98, for which you do not have CEMS data to support this calculated efficiency but have operated within its established operating parameter value, use Equation 11:

$$H_e = \sum_{A=1}^{w}\left[(0.02)\left(\sum_{i=1}^{p} C_{hi} M_{Ai} + \sum_{j=1}^{q} C_{hij} M_{Aij}\right)\right] \qquad \text{(Eq 11)}$$

(D) For periods when the oxidizer has not operated within its established operating parameter value, your control device efficiency is determined to be zero.

(x) *Facility organic HAP emission rate based on solids applied, L.* If demonstrating compliance with the facility organic HAP emission rate based on solids applied, calculate the organic HAP emission rate based on solids applied, L, for each month using Equation 8 of this section.

(xi) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) if each oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in § 63.5150(a)(3) for each 3-hour period, and each capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in § 63.5150(a)(4) for each 3-hour period; and

(A) The facilitywide average overall organic HAP control efficiency, R, is 98 percent or greater; or

(B) The facility organic HAP emission rate based on solids applied, L, is 0.029 kg organic HAP per liter solids applied or less.

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to ensure that capture efficiency is maintained. Compliance will be demonstrated in accordance with paragraph (e)(2) of this section.

(g) *Combination of capture and control.* You must demonstrate compliance according to the procedures in paragraphs (g) (1) through (8) of this section if both solvent recovery and oxidizer control devices, one or more never-controlled coil coating stations, one or more intermittently-controllable coil coating stations are operated, or more than one compliance procedure is used.

(1) *Solvent recovery system using liquid-liquid material balance compliance demonstration.* For each solvent recovery system used to control one or more coil coating stations for which you choose to comply by means of a liquid-liquid material balance, you must determine the organic HAP emissions for those coil coating stations controlled by that solvent recovery system either:

(i) In accordance with paragraphs (e)(1) (i) through (iii) and (e)(1) (v) through (viii) of this section if the coil coating stations controlled by that solvent recovery system are only always-controlled coil coating stations; or

(ii) In accordance with paragraphs (e)(1) (ii) through (iii), (e)(1) (v) through (vi), and (h) of this section if the coil coating stations controlled by that solvent recovery system include one or more never-controlled or intermittently-controllable coil coating stations.

(2) *Solvent recovery system using performance test and continuous monitoring compliance demonstration.* For each solvent recovery system used to control one or more coil coating stations for which you choose to comply by means of an initial test of capture efficiency, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, you must:

(i) For each capture system delivering emissions to that solvent recovery system, monitor an operating parameter established in § 63.5150(a)(4) to ensure that capture system efficiency is maintained; and

(ii) Determine the organic HAP emissions for those coil coating stations served by each capture system delivering emissions to that solvent recovery system either:

(A) In accordance with paragraphs (e)(2) (i) through (iii) and (e)(2) (v) through (viii) of this section if the coil coating stations served by that capture system are only always-controlled coil coating stations; or

(B) In accordance with paragraphs (e)(2) (i) through (iii), (e)(2) (v) through (vii), and (h) of this section if the coil coating stations served by that capture system include one or more never-controlled or intermittently-controllable coil coating stations.

(3) *Oxidizer using performance test and continuous monitoring of operating parameters compliance demonstration.* For each oxidizer used to control emissions from one or more coil coating station for which you choose to demonstrate compliance through performance tests of capture efficiency, control device efficiency, and continuing compliance through continuous monitoring of capture system and control device operating parameters, you must:

(i) Monitor an operating parameter established in § 63.5150(a)(3) to ensure that control device efficiency is maintained; and

(ii) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in § 63.5150(a)(4) to ensure capture efficiency; and

(iii) Determine the organic HAP emissions for those coil coating stations served by each capture system delivering emissions to that oxidizer either:

(A) In accordance with paragraphs (f)(1) (i) through (v) and (ix) of this section if the coil coating stations served by that capture system are only always-controlled coil coating stations; or

(B) In accordance with paragraphs (f)(1) (i) through (v), (ix), and (h) of this section if the coil coating stations served by that capture system include one or more never-controlled or intermittently-controllable coil coating station.

(4) *Oxidizer using continuous emission monitoring compliance demonstration.* For each oxidizer used to control emissions from one or more coil coating station for which you choose to demonstrate compliance through an initial capture efficiency

test, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, you must:

(i) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in § 63.5150(a)(4) to ensure capture efficiency; and

(ii) Determine the organic HAP emissions for those coil coating stations served by each capture system delivering emissions to that oxidizer either:

(A) In accordance with paragraphs (e)(2) (i) through (iii) and (e)(2) (v) through (viii) of this section if the coil coating stations served by that capture system are only always-controlled work stations; or

(B) In accordance with paragraphs (e)(2) (i) through (iii), (e)(2) (v) through (vii), and (h) of this section if the coil coating stations served by that capture system include one or more never-controlled or intermittently-controllable coil coating station.

(5) *Uncontrolled coil coating stations.* For uncontrolled coil coating stations, you must determine the organic HAP applied on those coil coating stations using Equation 12 of this section. The organic HAP emitted from an uncontrolled coil coating station is equal to the organic HAP applied on that coil coating station:

$$H_m = \sum_{A=1}^{x}\left(\sum_{i=1}^{p} C_{hi} M_{Ai} + \sum_{j=1}^{q} C_{hij} M_{Aij}\right) \qquad \text{(Eq 12)}$$

(6) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, you must determine the solids content of each coating material applied during the month following the procedure in § 63.5160(c).

(7) *Organic HAP emitted.* You must determine the organic HAP emissions for the affected source for the month by summing all organic HAP emissions calculated according to paragraphs (g)(1), (g)(2)(ii), (g)(3)(iii), (g)(4)(ii), and (g)(5) of this section.

(8) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) for the month if all operating parameters required to be monitored under paragraphs (g) (2) through (4) of this section were maintained at the values established in § 63.5150; and

(i) The total mass of organic HAP emitted by the affected source was not more than 0.029 kg HAP per liter of solids applied; or

(ii) The total mass of organic HAP emitted by the affected source was not more than 2 percent of the total mass of organic HAP applied by the affected source. You must determine the total mass of organic HAP applied by the affected source in the month using Equation 12 of this section.

(h) *Organic HAP emissions from intermittently-controllable or never-controlled coil coating stations.* If you have been expressly referenced to this paragraph by paragraphs (g)(1)(ii), (g)(2)(ii)(B), (g)(3)(iii)(B), or (g)(4)(ii)(B) of this section for calculation procedures to determine organic HAP emissions, you must for your intermittently-controllable or never-controlled coil coating stations:

(1) Determine the sum of the mass of all solids-containing coating materials which are applied on intermittently-controllable coil coating stations in bypass mode, and the mass of all solids-containing coating materials which are applied on never-controlled coil coating stations during the month, M_{Bi}.

(2) Determine the sum of the mass of all solvents, thinners, reducers, diluents, or other nonsolids-containing coating materials which are applied on intermittently-controllable coil coating stations in bypass mode, and the mass of all solvents, thinners, reducers, diluents or other nonsolids-containing coating materials which are applied on never-controlled coil coating stations during the month, M_{Bj}.

(3) Determine the sum of the mass of all solids-containing coating materials which are applied on intermittently-controllable coil coating stations in controlled mode, and the mass of all solids-containing coating materials which are applied on always-controlled coil coating stations during the month, M_{Ci}.

(4) Determine the sum of the mass of all solvents, thinners, reducers, diluents, or other nonsolids-containing coating materials which are applied on intermittently-controllable coil coating stations in controlled mode, and the mass of all solvents, thinners, reducers, diluents, or other nonsolids-containing coating materials which are applied on always-controlled coil coating stations during the month, M_{Cj}.

(5) *Liquid-liquid material balance calculation of HAP emitted.* For each coil coating station or group of coil coating stations for which you use the provisions of paragraph (g)(1)(ii) of this section, you must calculate the organic HAP emitted during the month using Equation 13:

$$H_e = \left[\sum_{i=1}^{p} M_{Ci} C_{hi} + \sum_{j=1}^{q} M_{Cj} C_{hj}\right]\left[1 - \frac{\sum_{k=1}^{s} M_{kvr}}{\sum_{i=1}^{p} M_{Ci} C_{vi} + \sum_{j=1}^{q} M_{Cj}}\right] + \left[\sum_{i=1}^{p} M_{Bi} C_{hi} + \sum_{j=1}^{q} M_{Bj} C_{hj}\right] \qquad \text{(Eq 13)}$$

(6) *Control efficiency calculation of HAP emitted.* For each coil coating station or group of coil coating stations for which you use the provisions of paragraphs (g)(2)(ii)(B), (g)(3)(iii)(B), or (g)(4)(ii)(B) of this section, you must calculate the organic HAP emitted during the month, H_e, as follows:

(i) For each coil coating station and its associated control device $(E_K * F_A/100) \leq 98$, use Equation 14:

$$H_e = \sum_{A=1}^{w_j}\left[\left(\left(\sum_{i=1}^{p} M_{Ci}C_{hi} + \sum_{j=1}^{q} M_{Cj}C_{hj}\right)(1 - E_K F_A)\right) + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right]\right] \quad \text{(Eq 14)}$$

(ii) For each coil coating station and its associated oxidizer (E_K*F_A/100) > 98, and you have CEMS data to support this calculated efficiency, use Equation 14 of this section.

(iii) For each coil coating station and its associated oxidizer (E_K*F_A/100) > 98, and you do not have CEMS data to support this calculated efficiency, use Equation 15:

$$H_e = \sum_{A=1}^{w_j}\left[\left(\left(\sum_{i=1}^{p} M_{Ci}C_{hi} + \sum_{j=1}^{q} M_{Cj}C_{hj}\right)(0.02)\right) + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right]\right] \quad \text{(Eq 15)}$$

TABLE 1 TO § 63.5170.—COMPLIANCE DEMONSTRATION REQUIREMENTS INDEX

If you choose to demonstrate compliance by:	Then you must demonstrate that:
(1) Use of "as purchased" compliant coatings.	Each coating material used does not exceed 0.029 kg HAP per liter solids, as purchased. Paragraph (a) of this section.
(2) Use of "as applied" compliant coatings.	(i) Each coating material used does not exceed 0.029 kg HAP per liter solids on a monthly average as applied basis. Paragraphs (b)(1) of this section; or (ii) Monthly average of all coating materials used does not exceed 0.029 kg HAP per liter solids on a monthly average as applied basis. Paragraph (b)(2) of this section.
(3) Use of a control device.	Overall organic HAP control efficiency is equal to 98 percent on a monthly basis. Paragraph (c) of this section.
(4) Use of a combination of compliant coatings and control devices and maintaining an acceptable equivalent emission rate.	Average equivalent emission rate does not exceed 0.029 kg HAP per liter solids on a monthly average as applied basis. Paragraph (d) of this section.

Reporting and Recordkeeping

§ 63.5180 What reports must I submit?

(a) Submit the reports specified in paragraphs (b) through (i) of this section to the EPA Regional Office that serves the State or territory in which the affected source is located and to the delegated State agency:

(b) You must submit an initial notification required in § 63.9(b).

(1) Initial notification for existing sources will be submitted no later than 2 years after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(2) Initial notification for new and reconstructed sources will be submitted as required by § 63.9(b).

(3) For the purpose of this subpart, a title V permit application may be used in lieu of the initial notification required under § 63.9(b), provided the same information is contained in the permit application as required by § 63.9(b), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA.

(4) Permit applications used in lieu of the initial notification required under § 63.9(b) will be submitted by the same due dates as those specified in paragraphs (b)(1) and (2) of this section for the initial notifications.

(c) You must submit a Notification of Performance Tests specified in §§ 63.7 and 63.9(e) if you are complying with the emission standard using a control device. This notification and the site-specific test plan required under § 63.7(c)(2) must identify the operating parameter to be monitored to ensure that the capture efficiency measured during the performance test is maintained. You may consider the operating parameter identified in the site-specific test plan to be approved unless explicitly disapproved, or unless comments received from the Administrator require monitoring of an alternate parameter.

(d) You must submit a Notification of Compliance Status as specified in § 63.9(h). You must submit the Notification of Compliance Status by 180 days after the compliance date specified in § 63.5130.

(e) You must submit performance test reports as specified in § 63.10(d)(2) if you are using a control device to comply with the emission standards and you have not obtained a waiver from the performance test requirement.

(f) You must submit start-up, shutdown, and malfunction reports as specified in § 63.10(d)(5). Unless a control device is used to comply with this subpart, the provisions in subpart A of this part pertaining to start-ups, shutdowns, and malfunctions do not apply.

(1) If your actions during a start-up, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's start-up, shutdown, and malfunction plan specified in § 63.6(e)(3), you must state such information in the report. The start-up, shutdown, or malfunction report will consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy, that will be submitted to the Administrator.

(2) Separate start-up, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (g) of this section.

(g) You must submit semi-annual compliance reports containing the information specified in paragraphs (g)(1) and (2) of this section.

(1) Compliance report dates.

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.5130(a) and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.5130(a).

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5130(a).

(iii) Each subsequent compliance report must cover the semiannual

reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(v) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (g)(1)(i) through (iv) of this section.

(2) The semi-annual compliance report must contain the following information:

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) A statement that there were no deviations from the standards during the reporting period, and that no CEMS were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(h) You must submit, for each deviation occurring at an affected source where you are not using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section and the information in paragraphs (h)(1) through (3) of this section:

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable, and the corrective action taken.

(3) Information on the number, duration, and cause for monitor downtime incidents (including unknown cause other than downtime associated with zero and span and other daily calibration checks, if applicable).

(i) You must submit, for each deviation occurring at an affected source where you are using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section, and the information in paragraphs (i)(1) through (12) of this section:

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CEMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date and time that each CEMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of start-up, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period (recorded in minutes for opacity, hours for gases, and in the averaging period specified in the regulation for other types of standards), and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to start-up, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CEMS downtime during the reporting period (recorded in minutes for opacity, hours for gases, and in the averaging period specified in the regulation for other types of standards), and the total duration of CEMS downtime as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of CEMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes.

(9) A brief description of the metal coil coating line.

(10) The monitoring equipment manufacturer(s) and model number(s).

(11) The date of the latest CEMS certification or audit.

(12) A description of any changes in CEMS, processes, or controls since the last reporting period.

§ 63.5190 What records must I maintain?

(a) You must maintain the records specified in paragraphs (a) and (b) of this section in accordance with § 63.10(b)(1):

(1) Records specified in § 63.10(b)(2) of all measurements needed to demonstrate compliance with this subpart, including:

(i) Continuous emission monitor data in accordance with § 63.5150(a)(2);

(ii) Control device and capture system operating parameter data in accordance with § 63.5150(a)(1), (3), and (4);

(iii) Organic HAP content data for the purpose of demonstrating compliance in accordance with § 63.5160(b);

(iv) Volatile matter and solids content data for the purpose of demonstrating compliance in accordance with § 63.5160(c);

(v) Overall control efficiency determination using capture efficiency tests and oxidizer destruction efficiency tests in accordance with § 63.5160(d), (e), and (f); and

(vi) Material usage, HAP usage, volatile matter usage, and solids usage and compliance demonstrations using these data in accordance with § 63.5170(a), (b), and (d);

(2) Records specified in § 63.10(b)(3); and

(3) Additional records specified in § 63.10(c) for each continuous monitoring system operated by the owner or operator in accordance with § 63.5150(a)(2).

(b) Maintain records of all liquid-liquid material balances that are performed in accordance with the requirements of § 63.5170.

Delegation of Authority

§ 63.5200 What authorities may be delegated to the States?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and not transferred to the State, local, or tribal agency.

(c) Authority which will not be delegated to States, local, or tribal agencies:

(1) Approval of alternatives to the emission limitations in § 63.5120;

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.5160;

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.5150; and

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in §§ 63.5180 and 63.5190.

§§ 63.5201–63.5209 [Reserved.]

TABLE 1 TO SUBPART SSSS.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS

General provisions reference	Applicable to subpart SSSS	Explanation
§ 63.1(a)(1)–(4)	Yes.	
§ 63.1(a)(5)	No	Reserved.
§ 63.1(a)(6)–(8)	Yes.	
§ 63.1(a)(9)	No	Reserved.
§ 63.1(a)(10)–(14)	Yes.	
§ 63.1(b)(1)	No	Subpart SSSS specifies applicability.
§ 63.1(b)(2)–(3)	Yes.	
§ 63.1(c)(1)	Yes.	
§ 63.1(c)(2)	Yes.	
§ 63.1(c)(3)	No	Reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Additional definitions in subpart SSSS.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(3)	Yes.	
§ 63.4(a)(4)	No	Reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)–(c)	Yes.	
§ 63.5(a)(1)–(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Reserved.
§ 63.5(b)(3)–(6)	Yes.	
§ 63.5(c)	No	Reserved.
§ 63.5(d)	Yes	Only total HAP emissions in terms of tons per year are required for § 63.5(d)(1)(ii)(H).
§ 63.5(e)	Yes.	
§ 63.5(f)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)–(5)	Yes.	
§ 63.6(b)(6)	No	Reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)–(2)	Yes.	
§ 63.6(c)(3)–(4)	No	Reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Reserved.
§ 63.6(e)	Yes	Provisions in § 63.6(e)(3) pertaining to start-ups, shutdowns, malfunctions, and CEMS only apply if an add-on control system is used.
§ 63.6(f)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart SSSS does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Yes.	
§ 63.6(i)(15)	No	Reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7	Yes	With the exception of § 63.7(a)(2)(vii) and (viii), which are reserved.
§ 63.8(a)(1)–(2)	Yes.	
§ 63.8(a)(3)	No	Reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)	Yes.	
§ 63.8(c)(1)–(3)	Yes	Provisions only apply if an add-on control system is used.
§ 63.8(c)(4)	No.	
§ 63.8(c)(5)	No	Subpart SSSS does not require COMS.
§ 63.8(c)(6)	Yes	Provisions only apply if CEMS are used.
§ 63.8(c)(7)–(8)	Yes.	
§ 63.8(d)–(e)	Yes	Provisions only apply if CEMS are used.
§ 63.8(f)(1)–(5)	Yes.	
§ 63.8(f)(6)	No	Section 63.8(f)(6) provisions are not applicable because subpart SSSS does not require CEMS.
§ 63.8(g)(1)–(4)	Yes.	
§ 63.8(g)(5)	No.	
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	

TABLE 1 TO SUBPART SSSS.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS—Continued

General provisions reference	Applicable to subpart SSSS	Explanation
§ 63.9(b)(2)	Yes	With the exception that § 63.5180(b)(1) provides 2 years after the proposal date for submittal of the initial notification.
§ 63.9(b)(3)–(5)	Yes.	
§ 63.9(c)–(e)	Yes.	
§ 63.9(f)	No	Subpart SSSS does not require opacity and visible emissions observations.
§ 63.9(g)	No	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(3)	Yes.	
§ 63.9(h)(4)	No	Reserved.
§ 63.9(h)(5)–(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)–(3)	Yes	Provisions pertaining to start-ups, shutdowns, malfunctions, and maintenance of air pollution control equipment and to CEMS do not apply unless an add-on control system is used. Also, paragraphs (b)(2) (vi), (x), (xi), and (xiii) do not apply.
§ 63.10(c)(1)	No	
§ 63.10(c)(2)–(4)	No	Reserved.
§ 63.10(c)(5)–(8)	No.	
§ 63.10(c)(9)	No.	Reserved.
§ 63.10(c)(10)–(15)	No.	
§ 63.10(d)(1)–(2)	Yes.	
§ 63.10(d)(3)	No	Subpart SSSS does not require opacity and visible emissions observations.
§ 63.10(d)(4)–(5)	Yes.	
§ 63.10(e)	No.	
§ 63.10(f)	Yes.	
§ 63.11	Yes.	
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes.	
§ 63.15	Yes.	

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- Tebuconazole; published 7-18-00
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 4425/P.L. 106–246

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. (July 13, 2000; 114 Stat. 511)

Last List July 12, 2000

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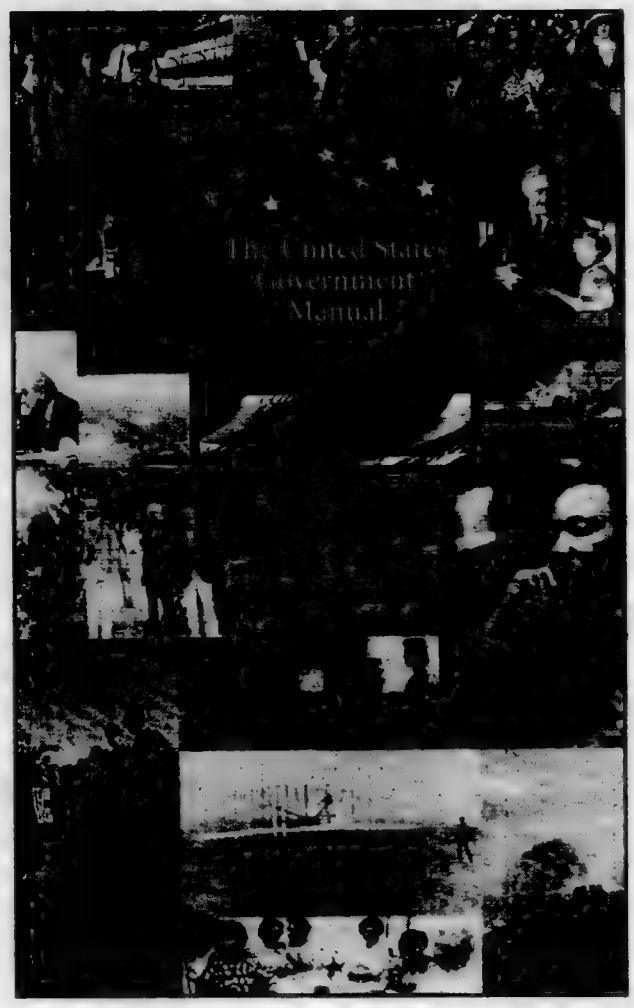

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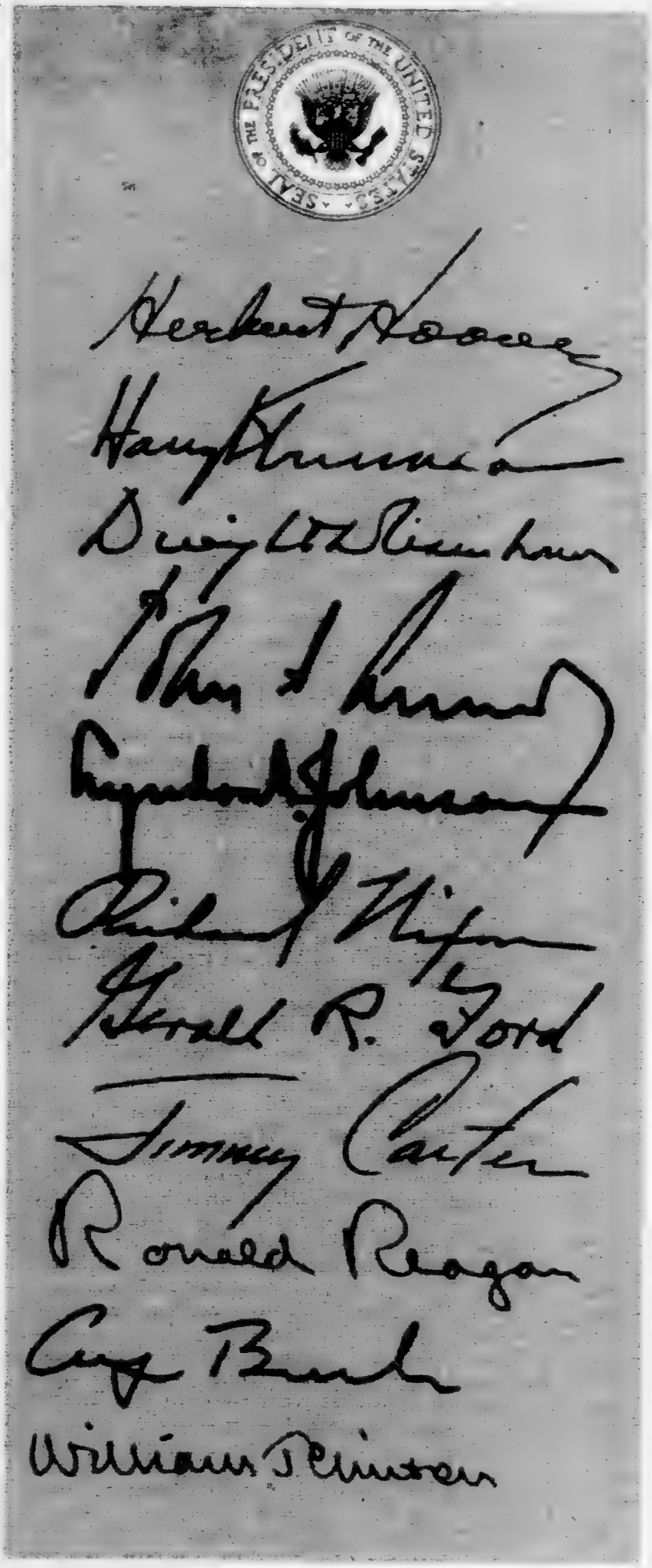

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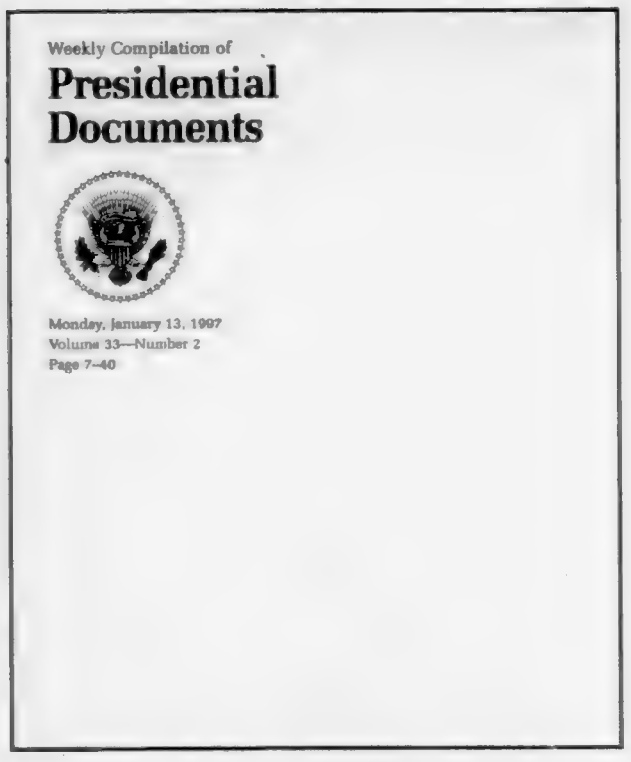

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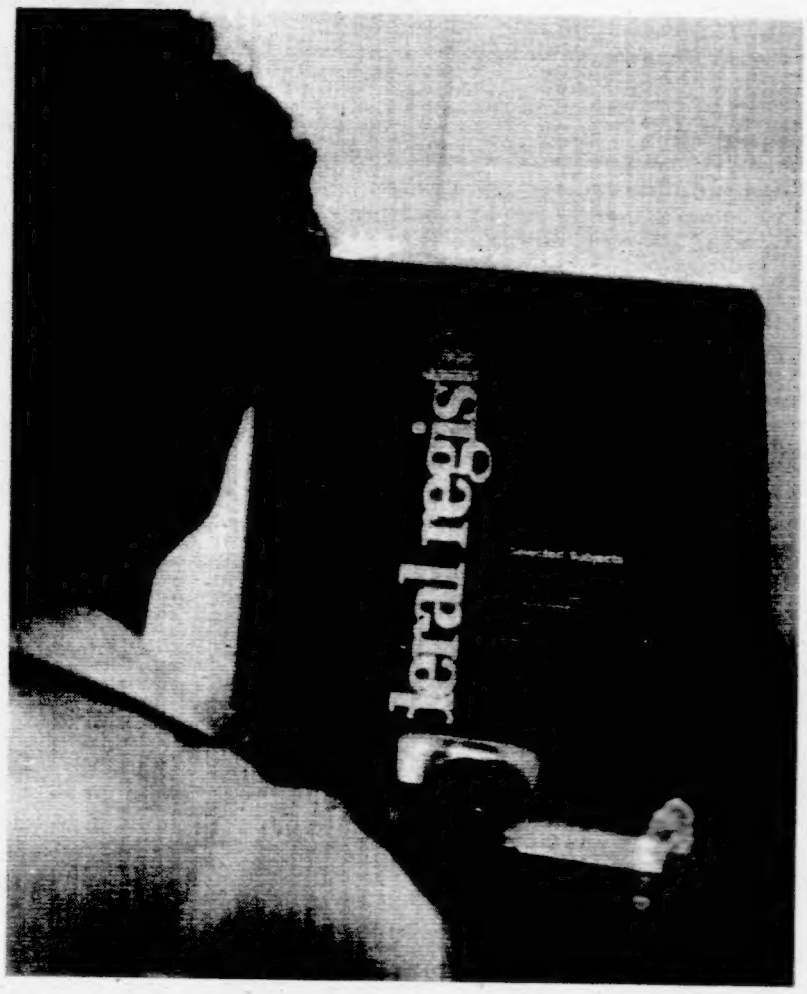

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